

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD MARCH 24, 2009

Agenda

**JANSSEN – VARIANCE – REBUILD NONCONFORMING BUILDING – 8670
ALMENA DRIVE - (PARCEL NO. 3905-16-330-032)**

**PKSH HOUSING PARTNERS – VARIANCE – BUILDING SETBACK AND WIDTH OF
LANDSCAPING AREA – 5155 CROYDEN AVENUE – (PARCEL NO. 3905-13-230-
022)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, March 24, 2009, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Duane McClung
Dave Bushouse
Robert Anderson
Roger Taylor
Cheri Bell
Neil Sikora, Alternate

MEMBER ABSENT: Mike Smith, Alternate

Also present were Mary Lynn Bugge, Senior Planner; James W. Porter, Township Attorney, and two other interested persons.

Call to Order/Pledge of Allegiance

The Chairman called the meeting to order at approximately 3:00 p.m., and the “Pledge of Allegiance” was recited.

**JANSSEN – VARIANCE – REBUILD NONCONFORMING BUILDING – 8670
ALMENA DRIVE - (PARCEL NO. 3905-16-330-032)**

The Chairman indicated the next item on the Agenda was consideration of a request for a variance from Section 65.150 to allow a home which was destroyed by fire to be rebuilt in the same location even though it did not satisfy the minimum front setback requirement. He said the subject property was located at 8670 Almena Drive, Parcel No. 3905-16-330-032. The Chairman asked to hear from the Planning Department. Ms. Bugge submitted a report to the Zoning Board of Appeals dated March 24, 2009, and is incorporated herein by reference.

Ms. Bugge explained to the Board that the applicants' home was recently destroyed by a fire. She explained that when the house was built it met the appropriate setbacks, but the provisions have changed, now requiring a minimum setback of 120 feet from the centerline. Ms. Bugge then proceeded to take the Board through the criteria for a nonuse variance as more fully set forth in the report.

The Chairman asked if there were any questions of Ms. Bugge. Mr. Sikora asked what utilities were already on site which could be reused by building in the previous location. Ms. Bugge said there was electricity, a well and septic system at the existing building site.

The Chairman asked if there were any further questions. Hearing none, he asked to hear from the applicant's representative. Ms. Lori Janssen said she did not have anything further to add to the information provided by the Planning Department.

The Chairman noted that there was no public, and therefore, there would be no public comment. The Chairman then called for Board deliberations.

Mr. Taylor said he thought it was reasonable to rebuild on the same site. He said the request to rebuild was not voluntary, such as in a remodeling situation, but was a result of the fire. He also noted the previous variance which had been granted for similarly situated individuals. He also noted that the setback was consistent with the surrounding homes and thought those factors, all taken into account, would justify the granting of the variance.

Mr. Bushouse asked why Ms. Bugge had not mentioned the house which burned two doors down from the Janssens' property. Ms. Bugge said she was not aware of it. Ms. Janssen noted that the house had burned approximately five years ago and was rebuilt on the existing building site.

The Chairman asked if there was further comment. Hearing none, he asked for a motion. Mr. Taylor made a motion to grant the variance to permit a front setback of 100-feet from the centerline of the road right-of-way for the reasons set forth in the

record and Staff report. Mr. Anderson seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

PKSH HOUSING PARTNERS – VARIANCE – BUILDING SETBACK AND WIDTH OF LANDSCAPING AREA – 5155 CROYDEN AVENUE – (PARCEL NO. 3905-13-230-022)

The Chairman said the next item was a request for a variance from the provisions of Section 64.710 and Section 75.130 to allow a reduced side and rear yard setbacks and reduced greenspace area in the construction of a senior citizen apartment building at 5155 Croyden Avenue, Parcel No. 3905-13-230-022. The Chairman asked to hear from the Planning Department. Ms. Bugge submitted her report dated March 24, 2009, and the same is incorporated herein by reference.

Ms. Bugge explained that the applicant was resubmitting plans for Croyden Commons which had been previously approved on December 13, 2007. She said the Township approval had expired, and subsequent to the original approval of the plans, the Township had enacted a new Historical Overlay District, which significantly impacted the subject site.

Ms. Bugge then proceeded to take the Board through a review of the standards for the variance request as more fully set forth in her report. Ms. Bugge clarified that the applicant was requesting a variance to allow a 36-foot building setback from the south property line, measured to the leading edge of the building, and that the applicant was requesting a variance to permit a 20-foot greenspace on the west side along the north parking bay. She said the balance of the west side would comply with landscaping requirements, with the exception of the drive needed for fire vehicular turnaround, and that the 40-foot wide greenspace on the south side of the property could not be installed given the proposed location of the subject building.

Ms. Bugge proceeded to take the Board through a review of the proposed site plans, as well as overviews of the subject site, including the restrictions imposed by the 70-foot front building setback along Croyden Avenue, as well as the building restrictions imposed by the 100-foot setback on the west and south sides of the property imposed by the supplemental setback requirement for property adjacent to the Historical Overlay Zone. Ms. Bugge concluded by saying that, if the Board felt that a variance was warranted that the Board should be specific in their grant of the variance and that it be limited to the proposed facility, and not run with the land in perpetuity.

The Chairman asked if there were any questions for Ms. Bugge. Mr. Bushouse asked if there were any other cases where they had dealt with the issue of the supplemental setback imposed under the Historical Overlay Zone. Ms. Bugge indicated that there were not. Mr. Bushouse noted that the Board needed to be specific on how it addressed the issue because there might be similar requests from other properties abutting the Historical Overlay Zone.

Mr. Bushouse asked how many stories the building on the subject property would be. Ms. Bugge said it would be three stories with a footprint of 25,885 square feet. She said it would be 42 feet high at the peak. Mr. Bushouse asked why the Fire Department did not require a driving lane around the entire building. Ms. Bugge indicated she was not sure why, but that the Fire Department had approved the plans as submitted.

Mr. Taylor asked if the applicant owned both properties. Mr. Palma said that they did not, but had options on Tract 1, which is where the subject property is located.

The Chairman asked if there were further questions. Hearing none, he asked to hear from the applicant. Mr. Stan Palma introduced himself on behalf of PKSH Housing Partners LLC. Mr. Palma said he thought Ms. Bugge had thoroughly covered all of the pertinent facts, but asked the Board members if they had any questions.

Mr. Bushouse asked if the proposed facility would be subsidized. Mr. Palma said not exactly; he said it would be partially financed through tax credits, but that they would not use vouchers for housing. Mr. Bushouse said, in the past, the Board has been told by some developers that there would be a reduced rate or a subsidy to the rent for seniors, but that it did not seem to happen. Mr. Palma explained that they would be using tax credits to finance the facility. Therefore, they would be required to peg their maximum rents based on HUD requirements. However, he said often their rents fell below the HUD maximum rent caps.

Ms. Bell asked if they would be required to capture a certain amount of market rent to operate the facility. Mr. Palma said they would not; they simply had to comply with MISHDA requirements to construct the building, but not to operate the facility. Ms. Bugge pointed out that the PILOT and the agreement for the operation had already been approved by the Township and had not been rescinded. She cautioned the Board that inquiring into this area might not be within the Board's authority.

Mr. Palma offered to move the deck so as to reduce the necessary building setback relief for that. He said, while they might be able to redesign, because of the nature of the project and the money already expended, he thought it would be cost prohibitive if they were going to move ahead with low cost senior housing.

Ms. Bell asked if Mr. Palma was notified when the Historical Overlay District was proposed. Ms. Bugge said he was not specifically notified because their project had already been approved in advance of the adoption of the Historical Overlay Zone text, as well as the establishment of the District Overlay, and therefore, it did not apply to the initial approval. She said that Mr. Palma was notified when their approval was about to expire. Mr. Palma said that was true, that they were notified of the new Historical Overlay Zone language and the District when their site plan needed to be renewed. However, at that time MISHDA was clearly indicating that only those facilities in the Detroit/Flint area would be approved. Therefore, they felt renewing their site plan was

futile. He said, subsequent to that time, MISHDA had changed its policy which should now allow the applicant to obtain MISHDA approval. He said it is only because of that fact that they had even returned to the Township.

Ms. Bell asked if the Planning Commission had discussed this development when it had established the Historical Overlay District. Ms. Bugge indicated that the Planning Commission members knew about the proposed development, but that it had already been approved, and they did not believe there would be an adverse impact because it would be grandfathered. Attorney Porter noted that the Planning Commission did not give this particular development a lot of thought because the Commissioners believed it was a “done deal” and would move ahead without interference by the new Historical Overlay Zone language or the newly-established District.

There was a discussion among the Board members about the possibility of moving or relocating the building on site. However, with the limitations from the street building setback, as well as the limitations due to the Historical Overlay District, it did not seem practical or that there would be much to gain in reconfiguring the building.

The Chairman noted that there was no public comment. Therefore, he asked that the Board continue with its deliberations. He noted that it appeared that the applicant’s site plan had not changed, but that the Township had changed its Zoning Ordinance. Ms. Bugge indicated that was correct, but noted that the applicant could have extended its site plan approval but for the miscues by MISHDA.

Ms. Bell asked if it was relevant that the proposed development was a senior housing development. Attorney Porter said he thought it was relevant to the issue, based upon Ms. Bell’s comments that senior housing would be more compatible with the historic property next door than perhaps other commercial ventures.

Mr. Taylor asked if this would set some type of adverse precedent. Attorney Porter said that it would only be a precedent for similarly-situated properties. He explained that the discussions of the Board and the Staff report would provide the factual basis to distinguish other properties from the subject property because of its characteristics such as the unique shape of the property in that it was quite narrow, the fact that the subject property had 860 feet of frontage on Croyden, which created a large front building setback area, which was unbuildable, as well as the fact that the Drake House itself was 237 feet from the closest point of the subject building. The fact that the property itself was quite narrow greatly reduces buildable area and type of development. Also the fact that being a senior citizen housing complex was more compatible to the adjacent historic use than other commercial properties. All of these factors would set the applicant’s request apart from most other requests. He said as long as the subject property can be distinguished with its unique characteristics from other properties in the future, this variance request would not set a binding precedent.

Mr. Sikora asked if the subject facility would be restricted to seniors. Mr. Palma said it would. Only those persons age 55 and older would be allowed to live within the facility.

Ms. Bell asked about the property to the south and its proximity to the proposed facility location, as well as the driveway and turnaround near the Drake House. Ms. Bugge indicated that the Drake House itself was closer to the property to the south as were portions of driveways involved, and the property was configured differently. Therefore, when that property developed in the future, it would likely be viewed differently than the subject property.

The Chairman asked if there was any further discussion. Hearing none, he said he would entertain a motion. Ms. Bell made a motion to approve the variance to allow a minimum 36-foot building setback from the south property line, measured from the leading edge of the building, only where necessary to allow the building to be placed as indicated on the site plan presented, as well as a variance to allow the drive aisle to intrude into the required 40-foot greenspace on the west side, along the north parking bay, and a 30-foot wide greenspace on the south side of the property, only where necessary to accommodate the proposed building placement with the following conditions:

- (1) The parking spaces extending into the greenspace areas be removed.
- (2) The turnaround aisle on the west side necessary for fire equipment would remain.
- (3) The variance is for the specific development, as proposed, and would not run with the land.

Ms. Bell said this motion was based upon the facts as set forth in the record including, but not limited to, the unique shape and narrowness of the subject property, the building on the subject property being 237 feet from the Drake House itself, the proposed development had predated the adoption and implementation of the Historical Overlay text and the Historical Overlay Zone, and that the subject property had approximately 864 feet of frontage on Croyden Avenue, which requires a 70-foot building setback from the right-of-way, further narrowing the actual buildable area of the subject property. The Chairman asked if there was a second to the motion. Mr. Taylor seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

Adopt 2008 Annual Report

The Chairman indicated that the next item on the agenda was the adoption of the 2008 Annual Report. The Board reviewed the Annual Report as prepared by the

Planning Department. It was a consensus of the Board to adopt the Report and submit it to the Township Board for review.

Public Comment on Non-Agenda Items

The Chairman noted that there was no longer any public at the meeting, and dispensed with public comment.

Any Other Business

The Chairman asked if there was any other business, and there was none.

Adjournment

There being no further business to come before the Board, the meeting was adjourned at approximately 4:17 p.m.

Minutes Prepared:
March 27, 2009

Minutes Approved:
_____, 2009