

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD APRIL 24, 2012

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Agenda

**WARN - SETBACK VARIANCE FROM SECTION 60.200 OF ZONING ORDINANCE TO ALLOW AN ACCESSORY STRUCTURE WITH A FIVE FOOT REAR YARD SETBACK AND SEVEN FOOT SIDE YARD SETBACK – 3546 SMITHFIELD WAY – (PARCEL NO. 3905-33-171-058)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, April 24, 2012, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Roger Taylor, Chairman  
Cheri Bell  
L. Michael Smith  
Grace Borgfjord  
Robert Anderson  
Neil Sikora, First Alternate  
James Sterenberg, Second Alternate

MEMBERS ABSENT: None

Also present were Greg Milliken, Interim Planning Consultant; James W. Porter, Township Attorney, and two other interested persons.

Call to Order/Pledge of Allegiance

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

Approval of Agenda

Greg Milliken suggested before the Agenda was approved that the Board consider election of its officers for the year. He apologized for not placing the matter on the Agenda, but, he said as the new Planner, he was still familiarizing himself with Township protocol.

Mr. Sikora made a suggestion that they reappoint the current officers as the ZBA officers for 2012. Mr. Smith made a motion to reinstate the ZBA officers for the year of

2012. Ms. Borgfjord seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

The Chairman then asked if there were any other amendments to the Agenda. Hearing none, he called for approval of the Agenda, as submitted. Mr. Smith made a motion to approve the Agenda, as amended. The motion was seconded by Mr. Anderson. The Chairman called for a vote on the motion, and the motion passed unanimously.

#### Public Comment on Non-Agenda Items

The Chairman asked if there was any public comment on non-agenda items, and hearing none, he suggested that the Board proceed with its next Agenda item.

#### Minutes

The Chairman asked the members if they had a chance to review the minutes of November 22, 2011. The members indicated that they had. Ms. Borgfjord then made a motion to approve the minutes, as submitted. The motion was seconded by Mr. Smith. The Chairman called for a vote on the motion, and the motion passed unanimously.

#### **WARN - SETBACK VARIANCE FROM SECTION 60.200 OF ZONING ORDINANCE TO ALLOW AN ACCESSORY STRUCTURE WITH A FIVE FOOT REAR YARD SETBACK AND SEVEN FOOT SIDE YARD SETBACK – 3546 SMITHFIELD WAY – (PARCEL NO. 3905-33-171-058)**

The Chairman said that the next item for review was a variance request from the rear and side yard setbacks of Section 60.200 to allow an accessory structure to be constructed with a five-foot rear yard setback and a seven-foot side yard setback when a 12-foot setback is required due to the height of the structure. The subject property is located at 3546 Smithfield Way, Parcel No. 3905-33-171-058. The Chairman called for a report from Staff. Mr. Milliken submitted his report to the Board dated April 24, 2012, and the same is incorporated herein by reference.

Mr. Milliken then proceeded to take the Board through a review of the variance request, indicating that the applicant was requesting a 22' x 22' accessory structure, totaling 484 square feet. He said, because of the height of the peak of the structure, there should be a 12-foot setback, both from the rear yard and the side yard. However, he said the applicant was concerned about the location of the existing drain field and the reserve area necessary to install another drain field should the original drain field fail.

Mr. Milliken explained, since this was an open space community, the land behind the proposed accessory building would be permanently undeveloped. He also said that adjacent to the proposed site, the neighbors had constructed a 192 square foot

accessory building, 16' x 12', three feet from the shared property line, but because it was under the size limitations controlled by the Zoning Ordinance, it was permitted.

The Chairman began by asking why the drain field made a difference in this case. Mr. Milliken explained that it impacted the applicant's ability to locate the accessory building further into the lot, necessitating the variance request. The Chairman asked if any of the neighbors had commented. Mr. Milliken indicated they had not.

Mr. Sterenberg asked about the neighbor's accessory building. Mr. Milliken indicated that, because it was less than 200 square feet, there were no zoning regulations controlling its location.

Mr. Smith asked how much open space was available on the lot for the construction of the accessory building. A brief discussion ensued, looking at some of the available drawings and maps.

The Chairman thanked Mr. Milliken for his report and asked to hear from the applicant, Craig Warn. Mr. Warn provided a handout to the Board, outlining his request and providing maps and drawings for the Board's consideration. He also submitted letters from his immediate neighbors, indicating they had no objection to his requested variance. Mr. Warn explained that he was requesting a variance due to the location of the tile field and wanted to stay away from the reserve area for the tile field.

The Chairman asked the applicant if he knew exactly where the tile field was. Mr. Warn said he did know where it was at because they had thought about installing a pool, and the exact location of the drain field had to be located with poles driven into the ground. The Chairman asked Mr. Warn if he could move the accessory building any further away from the lot line. Mr. Warn said he might be able to, but he did not want to interfere with the existing tile field or lose the reserve location necessary for installation of an alternate drain field should the first one fail.

Ms. Bell asked if a tile field was the same as a drain field. Various members indicated that it was. Ms. Bell said it appeared there was still open ground where another accessory building could be built. She asked if the accessory structure could be brought closer to the house. Mr. Warn said he thought if they built the accessory building closer to the house, they would lose the reserve area they needed for the drain field.

Mr. Sterenberg asked Mr. Warn if they built in accordance with the required setbacks, would they be building over the drain field. Mr. Warn said he believed that they would.

Mr. Milliken pointed out that the drawing showing the drain field and the reserve area was prepared by the County Health Department. He questioned whether the building could be moved a bit further away from the rear and side yard setbacks and still

leave enough room for the reserve area. Mr. Warn said he was not sure, and he was trying to make sure that he did not interfere with the drain field or the reserve area.

Ms. Bell asked what the required setback was. Mr. Milliken said it was 12 feet based on the peak of the proposed structure.

Mr. Sterenberg asked where they would put the new drain field if the applicant was allowed to build the proposed accessory building and the current drain field system failed. Mr. Warn said the new drain field would be put in front of the proposed accessory building. Mr. Warn said there was sufficient reserve area between the house and the proposed accessory building.

Ms. Bell asked when the house was built. Mrs. Warn said the house was built in 2001.

The Board thanked Mr. Warn for his presentation, and the Chairman called for Board deliberations.

Mr. Smith said that he did not think the Board would receive a lot of similar requests if they granted the variance because of the drain field issue. He said he did not think it was an unreasonable request.

The Chairman noted that none of the neighbors had objected.

Ms. Bell said, regardless of whether the neighbors objected or not, that the Board had to base the variance on the reasons set forth in the Ordinance.

Attorney Porter noted that the County Health Department is currently requiring a reserve area to be maintained for a future drain field should the original drain field fail.

The Chairman asked if the ZBA should allow encroachment into this reserve area. Attorney Porter said he did not think it should be allowed unless it was approved by the Health Department. Mr. Warn said that Karen High had talked to the Health Department and that he had spoken to the Health Department as well, but they had not approved the proposed plan.

Ms. Bell suggested that, if the Board wanted to approve some type of variance, the Board could subject the variance to Health Department review and approval.

Mr. Sikora expressed concern over being able to rely upon the drawings. He said they were not detailed enough for him to know exactly where the drain field was located in relationship to the proposed accessory structure.

The Chairman said he thought the Board had three options: (1) deny the variance request; (2) approve the variance subject to the Health Department review and approval; or (3) table the matter until the Health Department had a chance to stake the property and bring the issue back to the Board.

Ms. Bell said she thought the Board needed to confirm exactly where the drain field was and the location of the reserve area in order to determine the extent of the variance which would be needed to construct the accessory building, if any. She said then the matter could be referred to Staff in making the final determination as to the extent of the variance.

Mr. Sikora said he was not sure that there was a need for a variance. He said that there were other options. He said they could build a smaller accessory building. He also expressed concern as to whether they should be building an accessory building in the rear yard of a planned unit development. In addition, he said he did not think that the Board had enough information upon which to determine whether to grant a variance or not.

Ms. Bell said she thought the only rationale which warranted the granting of a variance would be if the accessory building could not be built because of the drain field and the reserve area.

The Chairman said he would be more comfortable if he knew exactly where the drain field and the reserve areas were located and exactly what the extent of the variance would be so the Board would only grant the variance which was needed.

Mr. Smith suggested approving the variance subject to the County Health Department locating the drain field. Mr. Anderson asked if that would include the reserve area. Mr. Smith indicated that he thought that it should.

Ms. Bell said the Board needed something in writing showing the exact nature of the variance that was being granted.

Mr. Sikora said he would be more inclined to grant a variance if the Health Department could confirm the locations of the drain field and the reserve area and show that a variance was actually necessary.

The Chairman said he would entertain a motion. Ms. Bell made a motion to approve a variance to allow the construction of a 22' x 22' accessory building up to five feet from the rear lot line of the subject property and seven feet from the side lot line, if necessary, to preserve the existing drain field and the reserve drain field area, and that such determination would be made after the County Health Department marked the drain field and the reserve drain field area, and the same was reviewed by Staff, to grant the least amount of variance necessary to construct the subject building. Mr. Anderson seconded the motion. The Chairman called for a vote on the motion. The motion passed unanimously.

Mr. Warn asked if he should contact the Health Department. Attorney Porter and Mr. Milliken suggested that the Township Zoning Administrator, Karen High, contact the Health Department to discuss the proposal and make arrangements with him for the Health Department inspection and review by the Planning Department.

### Any Other Business

Mr. Milliken told the Zoning Board of Appeals that, as of April 30, 2012, he had been appointed as the new Planning Director for the Township. He said he would strive to have a more complete analysis next time an issue like this arose, and he apologized to the Board that more information was not available to it in analyzing the proposed variance.

The Zoning Board of Appeals members welcomed Mr. Milliken to the Township and said they were looking forward to working with him.

### Adjournment

There being no further matters to come before the Board and the Board having exhausted its Agenda, the meeting was adjourned at 4:00 p.m.

Minutes Prepared:  
April 30, 2012

Minutes Approved:  
May 22, 2012