

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A SPECIAL MEETING HELD MAY 15, 2007

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**Agenda**

**GOLF RIDGE, LLC - SUPPLEMENTAL SETBACK VARIANCE AND SITE PLAN  
REVIEW - 5349 WEST MAIN STREET - (PARCEL NO. 3905-13-405-029)**

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A special meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, May 15, 2007, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Grace Borgfjord  
Duane McClung  
Dave Bushouse  
Robert Anderson  
Cheri Bell

MEMBERS ABSENT: Roger Taylor

Also present were Jodi Stefforia, Planning Director; Mary Lynn Bugge, Senior Planner; Brian VanDenBrand, Associate Planner; James W. Porter, Township Attorney; and approximately 18 other interested persons.

**Call to Order**

The Acting Chairman, Duane McClung, called the meeting to order. He welcomed Robert Anderson as the new Planning Commission representative to the ZBA. He also welcomed Grace Borgfjord as a full-time member of the Board.

**Agenda**

The Acting Chairman said that the next item for consideration was approval of the Agenda. Ms. Borgfjord moved to approve the Agenda as submitted. The motion was seconded by Robert Anderson. The Acting Chairman called for a vote on the motion, and the motion passed unanimously.

### **Election of New Chair and Vice Chair**

The Acting Chairman said the next item up for consideration was the election of a new Chairman and possibly a new Vice Chairman. After a brief discussion, the Acting Chairman called for nominations. Ms. Stefforia pointed out that if a new Chairman was elected, that Mr. McClung could remain as Vice Chair, if he so chose. Mr. Anderson then made a motion to approve Grace Borgfjord as Chairperson of the ZBA. The motion was seconded by Cheri Bell. The Acting Chairman noted that he would be willing to remain as Vice Chairman. The Acting Chairman asked if there were any additional nominations. Hearing none, he closed the floor to further nominations and called for a vote on the motion. The motion passed unanimously.

### **GOLF RIDGE, LLC - SUPPLEMENTAL SETBACK VARIANCE AND SITE PLAN REVIEW - 5349 WEST MAIN STREET - (PARCEL NO. 3905-13-405-029)**

The Chairperson indicated the next item on the Agenda was the supplemental setback variance and site plan review for Golf Ridge, LLC. She noted that the ZBA was being asked to consider a variance from Section 64.750 to allow a rear yard setback of less than 85 feet and to conduct site plan review of the proposed redevelopment known as Golf Ridge at 5349 West Main Street, Parcel No. 3905-13-405-029. The Chairperson asked to hear from the Staff. Ms. Stefforia submitted her report to the Board dated April 24, 2007, and the same is incorporated herein by reference.

Ms. Stefforia provided the Board with background information on the proposed development. She stated that the applicant was proposing to develop the project in three phases. Phase 1 would include the eastern half of the new building site. Phase 2 would include development of the western half of the site. Finalization of site improvements would be Phase 3. Ms. Stefforia then proceeded to outline how the subject property was proposed to be developed in relationship to the abutting Elks' property, making particular note of the desire to maintain a drive aisle along West Main Street with a width of 30 feet. She noted that the Planning Department had been recently informed that there was an access easement across the north 33 feet of the property, but that the location of that easement did not necessarily coincide with the location of the drive aisle as requested by the Planning Department. The Township would like to see the drive aisle located south of the north property line to allow for appropriate setback and landscaping.

Ms. Stefforia then proceeded to take the Board through a review of the supplemental setback provisions of Section 64.700 and the standards of approval for a nonuse variance, being practical difficulty, as more fully set forth in the report. She

concluded her report with a review of Section 82.800 as more fully set forth in her report.

The Chairperson asked if there were any questions of Ms. Stefforia. Hearing none, Attorney Porter recommended that the Board initially consider the proposed variance, specifically stating the facts upon which the Board would rely in supporting or denying the proposed variance. He said, once the Board has concluded making its decision with regard to the variance, it could proceed with site plan review.

The Chairperson asked to hear from the applicant. Mr. Josh Weiner introduced himself to the Board on behalf of Golf Ridge, LLC. He thanked the Board for scheduling a special meeting.

Mr. Weiner indicated to the ZBA that the request for the variance was based upon the Planning Department's desire to maintain the access drive at a width of 30 feet. He said he did not think that they could do that without a six-foot variance. Mr. Weiner reminded the Board that his company had developed the Kohls' and Hardings' property seven years ago, and they had done so with the grant of a similar variance. He said his company would stand behind its commitment to the community, and he thought their request for the variance to house a Office Depot should receive a similar variance to other buildings in the area. He noted there would be no increase in stormwater run-off to adjacent properties. He also noted that, if the property to the south redeveloped as the Elks wished, that the whole issue of the variance would be moot because the property would be redeveloped as commercial property rather than recreational or residential property.

Mr. Weiner asked the Board members if they had any questions. Hearing none, he asked for a brief comment from his attorney. Mr. King introduced himself to the ZBA. He said, if there was opposition to the requested variance, he would like to be given an opportunity to respond. He again emphasized the fact that the variance was necessary in order to accommodate the Planning Department's request to maintain the 30-foot wide access drive. The Chairperson asked if there were any questions of Mr. King. Hearing none, he opened the meeting to public comment.

Mr. Robert Lennon, on behalf of the Elks/Prairie Golf Course, introduced himself to the ZBA. He told the Board that there were several misstatements by the applicant which he wished to correct. He said that the reality was, if the proposal went ahead as the developer was requesting, the Elks would likely lose a potential buyer for its property.

Mr. Lennon then emphasized the need to make a finding of practical difficulty under the Municipal Zoning Enabling Act. He said he did not believe there was any support for granting the subject variance. Mr. Lennon then proceeded to take the Board through a review of the criteria set forth in Section 60.380 of the Township Zoning Ordinance. He said he did not see any hardship or practical difficulty under the current

circumstances. He noted that there was already an existing easement for 33 feet across the northern boundary line of the subject property, thereby negating any need for a variance request. He said, if anything, this was a self-created hardship. He stated that the Elks was opposing this request because, if the development went forward as proposed, it would likely hinder the development of the Elks' property, and the Elks' property would remain a golf course indefinitely.

Mr. Lennon then took the Board through a review of the standards as set forth in the ZBA report. He noted first that conformance would not be unnecessarily burdensome. He said that the applicant could easily reconfigure the structure for the proposed site. Second, he stated that there would be no service of substantial justice if the applicant was allowed to deviate when the neighboring properties were required to comply with Township ordinances. Third, Mr. Lennon said that there was nothing unique about the property which weighed in favor of granting the variance and that maintaining a 30-foot-wide drive aisle was a red herring, in that, there was already a 33-foot easement existing along the northern boundary of the subject property. Fourth, he said it was self-created hardship. Fifth, the spirit of the Township Zoning Ordinance would not be observed nor would substantial justice be done because, in this case, the development would be too close to the existing green and fairways located on the Elks' property. Therefore, he concluded that the applicant had not met the standard for granting the variance.

Mr. Lennon asked if there were any questions from the Board. Mr. McClung asked how the denial of a 6-foot variance alleviated any of the problems which Mr. Lennon listed in regard to the impact of the development on the Elks. Mr. Lennon said he was not sure, but it certainly would not make it any better, and if the applicant did not meet the standards, the applicant should not be allowed a variance.

Cheri Bell asked why they had not opposed the variance which was previously requested by Kohl's. Mr. Lennon said because the request abutted their parking lot and not the active portion of the golf course. Ms. Bell asked if the ZBA could require a barrier to address the problem. Attorney Porter noted that they could, since a variance could be granted with conditions. Ms. Stefforia supported that possibility in reference to the Ordinance. Attorney Porter noted that he thought the biggest difference between the request of the Township to maintain the 30-foot drive aisle and the existing 33-foot easement was its location in relationship to the road right-of-way and the desire to maintain the appropriate setback and greenspace normally provided for under existing zoning.

The Chairperson asked if there were any other questions. Hearing none, she called for Board deliberations. The Chairperson began by noting that she did not think that the grant of a six-foot variance was that significant. Attorney Porter again asked the Board to answer the question with regard to the first criteria. Mr. Bushouse noted that the Township had always wanted to maintain the access drive and that regardless of how the property developed, he wanted to see that access drive maintained. He

noted that he did not think that the six-foot difference was significant. Mr. McClung concurred.

Ms. Stefforia again re-read the criteria for the Board and noted that they had to address the issues raised as part of the overall variance review.

Ms. Bell said that she thought it would cause an unnecessary burden to change the configuration of the building when they were only asking for such a minor variance. Ms. Bell asked if the applicant was using a pre-designed building. Mr. Weiner said that they were using a prototype building based on a very specific plan which included a specific amount of floor space necessary for the proposed occupant, Office Depot. He said they were shifting the building to the south at the request of the Township to maintain the 30-foot-wide drive aisle. He said if they cut off six feet of the building, he was not sure whether the proposed tenant would or would not lease the subject building.

Mr. Bushouse said that he has listened to a lot of applicants over the years, saying that big box stores had to meet certain minimum requirements. However, he said there were usually various options which would allow the applicant and its proposed tenant to address the issue.

Mr. Anderson said that six-foot request was insignificant, and he thought that redesigning the entire building would be burdensome.

Mr. McClung said he thought it would be burdensome to redesign the building, and he thought that the six-foot variance was, as Mr. Anderson indicated, insignificant.

The Chairperson asked for a review of the second factor, substantial justice.

Mr. McClung said that it seemed to go both ways; there had been some variances granted and some variances denied. The Chairperson said that was true, but this property was somewhat more of a clean slate.

The Chairperson asked if there was anything unique about the property. The Chairperson began by saying that she had a hard time believing there was only one building design for Office Depot. Mr. Weiner said he would like to clarify; he said that, while there were other building designs available, the proposed building design was the one included with the proposed lease agreement.

Mr. Lennon said that the real crux is that Mr. Weiner wants the site to be adjusted to accommodate his building, and that is not a basis upon which a variance should be granted. At this point, Mr. Weiner said the best thing to do would be to withdraw his request for a six-foot variance, reconfigure the building in compliance with Township ordinances, change the parking to satisfy the Planning Department and move ahead with the proposed site. Mr. Lennon said he would not object to their reconfiguration of

the site, but he did not believe it was appropriate to include the 200 feet of parking east of the subject property, since it was subject to being relocated at the time the Elks sold the property. Mr. Swenarton said, while that might be true, the property had not sold yet, and therefore, they were entitled to consider the parking as part of their overall site plan.

The Chairperson asked if there was any further public comment, and hearing none, closed the public portion of meeting. Ms. Stefforia pointed out that the Board was going to meet on May 22 and could adjourn this matter until that date if they chose. Mr. Weiner pointed out that they had submitted the site plan some time ago and since they would totally comply with the Ordinance, he thought it was unfair to postpone a decision on the site plan, as submitted, with the removal of the six-foot variance request.

Attorney Porter said he was troubled by considering the parking located on the Elks' property. He said perhaps they could consider that parking area at the time of Phase 2 of the development. Ms. Stefforia said that she was concerned about ignoring the existing cross parking agreement. Attorney Porter said he was not ignoring the cross parking agreement, but he was concerned that it be considered as part of Phase 1 because it could be moved upon the sale of the property. He said, in essence, it was a floating parking lot without any fixed location. Mr. Bushouse said that he did not see any reason to get in the middle of the dispute; he said it was not unlike requiring a developer to reserve a parking area, and if additional parking was needed in the future, to require that they expand their parking lot at that time. He said certainly they would not get a second structure approved until such time as they had the cross parking agreement issue resolved.

The Chairperson asked if there was anyone ready to make a motion. Mr. Bushouse made a motion to approve Phase 1 of the development with no variance, subject to the final reconfiguration of the building and parking to be approved by the Township Planning Department, and subject further to the terms and conditions as set forth in the Planning Department report which were as follows:

- (1) The applicant agrees to a site plan approval condition requiring connection to and shared construction of the rear service drive in the future when it is deemed warranted by the Township. The rear service drive area shall be placed within an easement to the Township to be drafted by the Township Attorney for the applicant's review and recording.
- (2) A permit for the sidewalk construction must be obtained from the Michigan Department of Transportation.
- (3) Exterior lighting shall comply with Section 78.700 of the Zoning Ordinance. All proposed exterior light fixtures must be submitted for Township review and approval before a Building Permit may be issued for new construction.

- (4) Any dumpsters and recyclable storage areas on the site shall be placed and enclosed as required by Section 75.160.
- (5) A Sign Permit, in compliance with Section 76, is necessary before any signs may be placed upon the subject property.
- (6) A formal landscaping plan shall be submitted for Township review and approval before a Building Permit may be issued for new construction.
- (7) Landscaping shall be installed consistent with the approved site plan (and may be phased with prior Staff approval) before a Certificate of Occupancy may be issued unless a Performance Guarantee pursuant to Section 82.950 is provided to the Township.
- (8) Site plan approval is subject to Fire Department approval, pursuant to adopted codes.
- (9) Site plan approval is subject to Township Engineer review and acceptance of site engineering as adequate.

Mr. McClung seconded the motion. The Chairperson called for further comment on the motion. Hearing none, upon vote, the motion passed 5-to-0.

### **Other Business**

None.

### **Adjournment**

There being no further business to come before the Zoning Board of Appeals, the Board adjourned at approximately 4:40 p.m.

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

By: Grace Borgfjord

By: Duane McClung

By: Dave Bushouse

By: Robert Anderson

By: Cheri Bell

Minutes Prepared:  
May 24, 2007  
Minutes Approved:  
\_\_\_\_\_, 2007