

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD MAY 22, 2007

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**Agenda**

**THE ROCK - DEVIATION FROM PAVING REQUIREMENT - 2901 NORTH 10<sup>TH</sup> STREET - (PARCEL NO. 3905-11-230-038)**

**LAGEOC - SITE PLAN REVIEW - 6400 TECHNOLOGY DRIVE - (PARCEL NO. 3905-35-450-002)**

**JAGER - FRONTAGE AND DEPTH-TO-WIDTH RATIO VARIANCE - SOUTH SIDE OF WEST M AVENUE, WEST OF SOUTH 4<sup>TH</sup> STREET - (PARCEL NO. 3905-32-130-030)**

**JAGER - ACCESSORY BUILDING REVIEW - SOUTH SIDE OF WEST M AVENUE, WEST OF SOUTH 4<sup>TH</sup> STREET - (PARCEL NO. 3905-32-130-030)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, May 22, 2007, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Grace Borgfjord, Chairperson  
Duane McClung  
Dave Bushouse  
Roger Taylor  
Robert Anderson  
Cheri Bell, Alternate

MEMBER ABSENT: L. Michael Smith

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

**Call to Order**

The Chairperson called the meeting to order at 3:00 p.m.

**Minutes**

The Chairperson said the first item for consideration was approval of the minutes of March 27, 2007. Mr. McClung made a motion to approve the minutes as submitted, and the motion was seconded by Mr. Taylor. The Chairperson called for a vote on the motion, and the motion passed unanimously.

**THE ROCK - DEVIATION FROM PAVING REQUIREMENT - 2901 NORTH 10<sup>TH</sup> STREET - (PARCEL NO. 3905-11-230-038)**

The Chairperson said that the applicant had requested that this matter be tabled until June 26, 2007. The Board concurred.

**LAGEOC - SITE PLAN REVIEW - 6400 TECHNOLOGY DRIVE - (PARCEL NO. 3905-35-450-002)**

The Chairperson said that the next item for consideration was the site plan review of a proposed industrial building to be constructed at 6400 Technology Drive, Parcel No. 3905-35-450-002. The Chairperson asked to hear from Staff. Ms. Bugge submitted her report to the Zoning Board of Appeals dated May 22, 2007, and the same is incorporated herein by reference.

Ms. Bugge went through her report, outlining the applicant's proposal to construct a 32,500 square foot office/warehouse building on Unit 2 of the Oshtemo Business Park site condominium. Ms. Bugge reviewed the history of the development of the proposed site condominium with the Board, noting that the roads within the condominium were proposed to be dedicated to the Kalamazoo County Road Commission. However, that process was not completed. Therefore, the applicant either had to complete that process or request a special exception use and site plan approval of private streets under Section 60.800. Ms. Bugge said the applicant indicated he would proceed with transferring the roads to the Kalamazoo County Road Commission. Ms. Bugge then took the Board through a review of Section 82.800, with various recommendations as more fully set forth in her report.

The Chairperson asked if there were any questions of Ms. Bugge.

Mr. Bushouse asked if the public roads were required in 2002. Ms. Bugge said public roads were originally required in 1999 when the condominium project was approved, but that somehow the process to effectuate the transfer of the roads to the Road Commission had not been completed.

Mr. Anderson asked about the retention pond and whether it was on site. Ms. Bugge stated that the retention pond was off-site and initially developed for road drainage, and that either an easement or condominium document amendment would be needed in order to use it on behalf of Unit 2.

Mr. McClung asked if the pond was existing. Ms. Bugge said it was, but it needed to be reconfigured. Mr. Bushouse asked if the pond was private. Ms. Bugge stated that it was.

Mr. Taylor asked if other sites within the development would be using the proposed drainage pond. Ms. Bugge said no.

The Chairperson asked to hear from the applicant. Mr. Hollenbeck introduced himself to the Zoning Board of Appeals. He said that they certainly had some homework to do on the roads issue. He explained that a former employee was responsible for making sure that the roads were turned over to the Road Commission, and apparently, had dropped the ball on that matter, and they were looking into correcting that oversight. He said he had talked to the Road Commission and was a bit concerned that the Road Commission was now requesting that the roads be remilled and resurfaced before being transferred to the Road Commission. He said that the roads were only three or four years old and had been approved for acceptance at that time, and simply were not transferred. However, he said he would continue to work on that issue.

The Chairperson then asked if there was any public comment. Hearing none, she called for Board deliberations.

Mr. McClung asked for clarification on whether the Road Commission would accept these roads as public roads. Ms. Bugge said they should have been turned over when they were originally developed, and if they had been, there would not now be a problem. However, because of the delay, the Road Commission was asking that the roads be resurfaced before they were accepted. Attorney Porter noted that getting the Road Commission to accept the roads was probably the only viable option, given that some of the site condominium units had been sold to other individuals, and in order to convert the roads into private roads would require the consent of all of the parties which had previously purchased the condominium units.

Mr. Anderson asked about the parking issue. Mr. Hollenbeck said he was not an engineer and did not have a specified floor plan yet, but he assured the Board that they would meet the parking requirements.

Ms. Bugge noted that the size of the parking spaces on the site plan were not in compliance with the Township Ordinance. Mr. Hollenbeck asked what was the current dimensional requirements for a parking space. Ms. Bugge stated that a 10-foot x 20-foot space was required. Mr. Hollenbeck said that they would comply with the requirement.

Mr. Hollenbeck asked why rock on the western portion of the site plan would not meet the Ordinance requirements. Ms. Bugge explained that rock was not considered

part of a greenspace, and while rocks could be used as accent pieces, the area had to be landscaped as greenspace in accordance with the Ordinance.

The Chairperson noted that the applicant was not asking for any variances or deviations, only substitution of some evergreen trees for canopy trees, which she believed was reasonable. The Chairperson said she would entertain a motion. Mr. Bushouse made a motion to approve the site plan, based upon the condition that the Kalamazoo County Road Commission accept the dedication of the roads within the site condominium as public roads prior to the issuance of a Building Permit to begin construction and subject to the following conditions:

- (1) Driveway permits shall be obtained from the Kalamazoo County Road Commission for the proposed driveways.
- (2) A revised site plan indicating a use breakdown and the required number of parking spaces, with each space meeting Township dimensional criteria, shall be provided.
- (3) Parking and drive aisles shall be provided in conformance with Section 68.
- (4) Stop signs shall be provided at each egress lane from the parking lot to Technology Avenue.
- (5) Each tenant shall be subject to review and approval by the Township consistent with the provisions of the Zoning Ordinance to ensure that the proposed use is permitted in the "I-R" Industrial District Restricted zone and that adequate parking is available on-site to accommodate all users in the building.
- (6) Enclosure details for the dumpster and recyclables area shall be provided in accordance with Section 75.160.
- (7) All site and building mounted lighting shall comply with the requirements of Section 78.700 of the Zoning Ordinance. Fixture details shall be submitted for Township review and approval prior to the issuance of a Building Permit.
- (8) Pursuant to Section 76.000 a Sign Permit shall be required before any signs can be placed upon the property.
- (9) A revised landscaping plan in compliance with Section 75 of the Zoning Ordinance shall be provided for Staff review and approval prior to the issuance of a Building Permit.

- (10) All required landscaping shall be installed pursuant to an approved site plan before occupancy is permitted or a Performance Guarantee, consistent with Section 82.950, shall be provided.
- (11) Site plan approval shall be subject to the applicant providing a revised site plan satisfying the requirements of the Fire Department, pursuant to the adopted codes.
- (12) Site plan approval shall be subject to the applicant satisfying the requirements of the Township Engineer.
- (13) Stormwater easements and/or amendments to the condominium documents, as required, shall be submitted to the Township for review prior to the issuance of a Building Permit.
- (14) An Environmental Permits Checklist and a Hazardous Substances Reporting Form shall be completed and provided for each tenant locating in the building.
- (15) Each tenant shall be subject to review and approval by the Township consistent with the provisions of the Zoning Ordinance to ensure that the proposed uses are permitted in the "I-R" Industrial District Restricted zone.
- (16) An Earth Change Permit from the Kalamazoo County Drain Commissioner's Office is required before earth-moving activities commence on this site.

Mr. McClung seconded the motion. The Chairperson called for further discussion, and hearing none, called for a vote on the motion. The motion passed unanimously.

**JAGER - FRONTAGE AND DEPTH-TO-WIDTH RATIO VARIANCE - SOUTH SIDE OF WEST M AVENUE, WEST OF SOUTH 4<sup>TH</sup> STREET - (PARCEL NO. 3905-32-130-030)**

The Chairperson announced that the next item on the Agenda was consideration of a variance from the 200-foot frontage and depth-to-width requirement under Section 66.201 to make a nonconforming parcel buildable. She said that the subject property was on the South side of West M Avenue, west of South 4<sup>th</sup> Street, Parcel No. 3905-32-130-030. The Chairperson called for a report from the Planning Department. Mr. Brian VanDenBrand submitted his report dated May 22, 2007, to the ZBA, and the same is incorporated herein by reference.

Mr. VanDenBrand explained that the applicant wished to construct a second accessory building on the property, but that a split occurred sometime between 1965 and 1984, creating a non-buildable parcel with only 66 feet of frontage on a public road. He said that the split came after the 1965 Ordinance provision which required 200 feet

of frontage on a public road. He also noted that the property exceeded the depth-to-width ratio, which was the other issue for which the applicant was seeking a variance. Mr. VanDenBrand then proceeded to take the Board through a review of the criteria for granting a nonuse variance, i.e., practical difficulty. Mr. VanDenBrand provided several examples of previous variance requests from the front footage requirement in which the property owners were denied a variance. He also provided several examples of variance requests which had been granted for nonconformance to the depth-to-width requirements of the Ordinance.

At the conclusion of Mr. VanDenBrand's report, Attorney Porter suggested that the Board separate the two variance issues, first dealing with the issue of a variance from the front footage requirement, and if that variance was granted, dealing with the variance on the depth-to-width ratio. Attorney Porter asked that the Board review each specific standard and set forth its reasons in the record, which would either support a grant or a denial of the proposed variance.

The Chairperson asked for Board comment regarding the first standard, whether conformance would be unnecessarily burdensome, whether there were no reasonable options for compliance and whether reasonable use of the property existed with the denial of a variance. Mr. Bushouse noted that it was self-created so he did not think there was a basis to grant the variance. Mr. Taylor, however, said that creating a 200-foot road seemed somewhat burdensome.

Mr. McClung asked for clarification as to when the property was split. Ms. Jager said that the property was sold to her sister in 1966 and that her sister had split and sold the home off in 1971.

Mr. McClung asked if a private road could be developed. Ms. Bugge said not under the current circumstances.

Mr. Anderson asked if there was currently a drive to the property. Mr. Jager said yes.

Hearing no further comment, the Chairperson read the second variance standard; substantial justice, i.e., as applied to both the applicant and to others in the district when reviewing past ZBA decisions. The Chairperson noted that decisions were somewhat mixed. Attorney Porter pointed out that most of the variances for frontage requirements were denied while most of the variances for depth-to-width ratio were granted, but that the two were distinct issues.

The Chairperson asked if there were any physical limitations on the property which would prevent compliance. Mr. Taylor said he did not see any.

The Chairperson then asked if the Board felt that the problem was self created. She did note that the applicant's sister had divided the property in 1971 after the change

in the Ordinance. Mr. Taylor said that if it was done in 1971, it was certainly after the Township established the 200-foot requirement, and therefore, it was self created.

Ms. Stefforia noted that the Township Board did not say anything to the property owners at the time when the land was divided. Attorney Porter noted there was no requirement within the law to notify people if they were dividing property in violation of the Township Zoning Ordinance, nor did the Township have any legal authority to prohibit such division at that time.

The Chairperson asked to read the fifth standard which was whether the spirit of the Ordinance would be observed and the public health, safety and welfare served.

Mr. Bushouse said he thought the Township had the 200-foot road frontage requirement in order to have large parcels. He also noted that, if you had large parcels and you exceeded the depth-to-width ratio requirement, it was not uncommon to grant such a variance. He said he thought the Township had granted similar variances and had asked the applicant to provide a 66-foot right-of-way as a means of developing the property in the future. He said, given that the Township wants to promote green area, he did not see how they were getting any more houses when they approved a division leaving a parcel with just a 66-foot right-of-way. Attorney Porter pointed out that Mr. Bushouse's example was the reverse from the present scenario. He said, in the cases where the Township has granted a variance to allow a division not in compliance with the Land Division Act and the frontage requirements, the applicant is told the remaining parcel will remain unbuildable until a road is developed.

Ms. Bugge pointed out perhaps a text amendment was necessary in order to allow building on these parcels. She agreed with Attorney Porter this was a reverse scenario from what Mr. Bushouse was saying.

Mr. Anderson said he did not see a problem with granting the depth-to-width ratio, but he was concerned about not conforming to the frontage requirements. Mr. McClung again pointed out what they had done on H Avenue. Ms. Bugge noted that what was done on H Avenue in the recent Chilimigras case was done knowingly, not in conformance with the strict provisions of the Ordinance, but subject to the condition that the property would not be built upon until it was brought into conformance by the construction of a road.

Mr. McClung said he thought there was a unique burden in this case and, therefore, made a motion to grant the requested variance. The motion failed for lack of support.

Mr. Taylor said he thought it was self created, and he could not ignore the frontage requirements provided for in the Ordinance. Therefore, Mr. Taylor made a motion to deny the variance as requested. The motion was seconded by Mr. Bushouse.

The Chairperson called for a vote on the motion, and the motion passed 4-to-1, with Mr. McClung voting in opposition.

Attorney Porter noted that the second variance requested for depth-to-width ratio at this point was moot.

**JAGER - ACCESSORY BUILDING REVIEW - SOUTH SIDE OF WEST M AVENUE,  
WEST OF SOUTH 4<sup>TH</sup> STREET - (PARCEL NO. 3905-32-130-030)**

Mr. Taylor then asked if they could table the application so the applicant could look at some alternatives and come back to the Township Board without filing a re-application. Attorney Porter thought that was appropriate. Mr. Taylor then made a motion to table this matter to see if other alternatives could be reviewed and brought back to the Board for its review. The motion was seconded by Mr. McClung. The Chairperson called for a vote on the motion, and the motion passed unanimously.

Attorney Porter also noted there were other options for the applicant and encouraged them to talk with the neighbors about acquiring some additional property and suggested that perhaps a subdivision or site condo would be a way of resolving the problem.

**Other Business**

The Chairperson asked if there were any public comment on non-agenda items, and, hearing none, called for a motion to adjourn.

**Adjournment**

There being no further business to come before the Zoning Board of Appeals, the Board adjourned at approximately 4:30 p.m.

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

By: Grace Borgfjord

By: Duane McClung

By: Dave Bushouse

By: Roger Taylor

By: Robert Anderson

By: Cheri Bell

Minutes Prepared:

May 31, 2007

Minutes Approved:

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