

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD JUNE 23, 2009

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Agenda

**SMITH – VARIANCE – AREA AND FRONTAGE - 573 NORTH 8<sup>TH</sup> STREET-  
(PARCEL NO. 3905-15-430-191)**

**DURWOOD CUSTOM HOMES – VARIANCE – SETBACK – 1165 HAWKINS COURT  
– (PARCEL NO. 3905-16-160-240)**

**JANSEN, VALK, THOMPSON, REAHM, P.C. – SITE PLAN REVIEW – 7171  
STADIUM DRIVE – (PARCEL NO. 3905-34-275-004)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, June 23, 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  
Mike Smith, First Alternate  
Neil Sikora, Second Alternate

MEMBERS ABSENT: None

Also present were Jodi Stefforia, Planning Director; Mary Lynn Bugge, Senior Planner; Chris West, Associate Planner; James W. Porter, Township Attorney, and eight 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.

## Minutes

The Chairman stated that the next item on the Agenda was the approval of the May 26, 2009 regular meeting minutes. There being no changes, Ms. Bell made a motion to approve the minutes, as submitted. The motion was seconded by Mr. Anderson. The Chairman called for a vote on the motion, and the motion passed unanimously.

### **SMITH – VARIANCE – AREA AND FRONTAGE - 573 NORTH 8<sup>TH</sup> STREET- (PARCEL NO. 3905-15-430-191)**

The Chairman stated that the next item on the Agenda was consideration of a variance to allow a parcel which does not satisfy the area, frontage and depth-to-width requirements of Section 66.201 to be buildable. He said the subject property is located at 573 North 8<sup>th</sup> Street, Parcel No. 3905-15-430-191. The Chairman asked to hear from the Planning Department.

Mr. West submitted his report to the Zoning Board of Appeals dated June 23, 2009, and the same is incorporated herein by reference. Mr. West took the Board through a review of the subject parcel, which had been split sometime in 1993, thereby creating a nonconforming parcel. Prior to the split, the parcel was a legal nonconforming “grandfathered” parcel. Mr. West took the Board through a review of the approval standards for a nonuse variance as more fully set forth in his report.

The Chairman asked if there were any questions of the staff. Hearing none, he asked to hear from the applicant.

Mr. Wendell Smith introduced himself to the Board. He said he purchased the property from his brother. He stated that he owned a business in Grand Rapids and wanted a small vacation home in Kalamazoo and thought he could restore the subject property so it would no longer be an eyesore to the community.

The Chairman asked if there were any questions of Mr. Smith. Mr. Anderson asked if he was planning a larger home. Mr. Smith indicated that he was not planning on enlarging the home. He said he had a very nice home in Grand Rapids and just wanted something which was small and quiet to get away to on the weekends. Ms. Bugge pointed out that, if the variance was granted, the existing house could be removed and a new dwelling constructed.

Ms. Bell asked the staff when the property was split. Mr. West indicated sometime in 1993, but that the house was preexisting. The Chairman noted that nothing about the split changed the width of the property. The previous owner had simply transferred the rear portion of the property to an adjacent property owner. The applicant indicated that was correct. He also noted that the house was not currently inhabited.

The Chairman asked if there was any public. Hearing no public comment, he called for Board deliberations.

Mr. Mike Smith said, since there was a house there to begin with, he thought it was appropriate, under the standards, to allow Mr. Wendell Smith to rehabilitate the home. However, he would like to see some time limit placed on the rehabilitation of the property. The Chairman also noted that he would have to get a septic permit, as well as the appropriate building permits before commencing construction.

Mr. Anderson asked if there was a problem with the septic. Ms. Bugge said she understood there was a problem.

Ms. Bell asked, if the building was completely destroyed by fire, whether the structure would be able to be rebuilt. Ms. Bugge said if the variance was granted, rebuilding could occur. Ms. Bell noted that there were other homes in the area which would be under the same constraints if they were destroyed by fire, i.e., they had narrow building lots.

Mr. Bushouse noted that there was water on the far side of the road, and therefore, the applicant could more easily comply with health requirements because there would not be a well separation distance from the septic system.

Ms. Bell suggested that the Board establish a time table in order for the applicant to seek a permit to either rehabilitate the structure or begin demolition. Mr. Smith said that he had contractors ready and waiting to begin the remodeling. Attorney Porter noted that typically the Dangerous Building Officer gives property owners 30 days in which to commence construction. Ms. Bugge suggested, given the need to satisfy certain requirements, including obtaining a septic permit, that the applicant be given 45 days in order to obtain the appropriate permits.

The Chairman called for further discussion, and hearing none, called for a motion. Mr. Taylor made a motion to approve the variance, as requested, with the provision that the applicant obtain the appropriate permits within 45 days, including both building and septic permits, given the unique circumstances under which the property was created and for the reasons outlined in the staff report. The motion was seconded by Ms. Bell. The Chairman called for a vote on the motion, and the motion passed unanimously.

**DURWOOD CUSTOM HOMES – VARIANCE – SETBACK – 1165 HAWKINS COURT – (PARCEL NO. 3905-16-160-240)**

The Chairman noted that the next item was consideration of a request for a variance to allow a one-foot reduction in the front setback for a residence under construction at 1165 Hawkins Court, Parcel No. 3905-16-160-240. The Chairman called for a report from the Planning Department.

Mr. West submitted his report to the Board dated June 23, 2009, and the same is incorporated herein by reference. Mr. West explained that an error was made when setting the precast foundation, resulting in a one-foot encroachment into the 40-foot front setback area for a corner of the garage. He explained that there had been changes resulting from the need to relocate the septic system, as well as deal with a water main easement, which likely precipitated the error. Mr. West then proceeded through the standards for approval of a nonuse variance as more fully set forth in his report.

The Chairman asked if there were any questions of staff. Hearing none, he asked to hear from the applicant. Mr. Jeffrey Smith introduced himself to the Board. He said initially they had planned for the home to be set further back on the property. However, after meeting with the Health Department, they were asked to relocate the septic tank and the drain field, which required them to pull the house forward toward the cul-de-sac. He stated they also had to deal with the water main easement issue, and as a result, apparently, they pulled the home a little too close to the cul-de-sac.

The Chairman said it appeared to him to be a simple error and noted that they were asking for a one-foot setback reduction for a corner of the garage. Mr. Smith said, in all honesty, they were asking for the one-foot setback, but also one foot for the overhang. So, the variance would be between one and two feet. The Chairman noted that the Board would be looking at a two-foot variance.

The Chairman asked if there was any public comment on the proposed request. Hearing none, he called for Board deliberations.

Mr. Anderson said he thought the request was within the spirit of the Ordinance to grant the variance.

Mr. Sikora said that the problem was caused in part by relocation of the septic system, and he thought granting the variance was consistent with the spirit and intent of the Ordinance.

The Chairman said that the easement for the water line, as well as the septic system all entered into the oversight.

Mr. Mike Smith said he was not too sympathetic, given that the builder should have known better.

Mr. Sikora asked if the applicant could make the garage one foot shorter. Mr. Jeffrey Smith said it could be done, but given the fact that it is located on a cul-de-sac with no straight line sight problems, he decided to request the variance.

Ms. Bell said that denial of the variance would require more than just removing part of the garage; they would actually have to cut away and reconfigure the foundation as well. She said that it would be expensive. Ms. Bugge said that cost could not be a factor which could be considered. Ms. Bugge suggested that if they wanted to

distinguish this request from other variance requests, they should note that it is not the entire front of the building that is encroaching, but simply a small corner of the garage.

Mr. Bushouse said he looked at the house to the west, and he could not tell that this home was any closer to the cul-de-sac than the house next door.

Mr. Taylor said they should either grant the variance with the overhang or simply deny the variance, but not allow a partial variance.

Ms. Stefforia asked that the Board distinguish this variance from others which had been denied in the past so as to not set an adverse precedent. The Chairman said he thought that the relocations of the septic and the drain field, as well as the impact of the water line easement were significant factors. He also said, figuring the right-of-way on a cul-de-sac was quite a bit different than those lots parallel to the road. However, most importantly, he said the size of the variance is so minor, only approximately two square feet, that it did not seem reasonable to have the building reconfigured.

Ms. Bell also noted, in addition to the property being a unique shape and impacted by the water line easement, that the applicant stopped work when requested and voluntarily came into the Township to seek the variance. She thought that was significant.

Mr. Bushouse also noted that they were only talking about two or three square feet at most encroaching within the setback. Mr. Bushouse then made a motion to approve the variance, as requested, based upon unique factors such as the relocation of the septic and drainage field, the waterline easement, the fact that the variance was so minor, as well as the recommendations in the staff report. Mr. Anderson seconded the motion. The Chairman called for further discussion. Hearing none, he called for a vote on the motion, and the motion passed unanimously.

**JANSEN, VALK, THOMPSON, REAHM, P.C. – SITE PLAN REVIEW – 7171 STADIUM DRIVE – (PARCEL NO. 3905-34-275-004)**

The Chairman noted that the next item was the site plan review and approval of a proposed office building to be constructed at 7171 Stadium Drive, Parcel No. 3905-34-275-004. The Chairman asked to hear from the Planning Department.

Ms. Bugge submitted her report dated June 18, 2009, and the same is incorporated herein by reference. Ms. Bugge proceeded to take the Board through a complete review of the site plan pursuant to Section 82.800 of the Zoning Ordinance, as more fully set forth in her report.

The Chairman asked the Board members if they had any questions of the Planner.

Mr. Bushouse asked why they had not been required to put in additional water retention facilities in order to avoid flooding to the west like they had done on Seelye's

property. Ms. Bugge indicated that the only drainage to the west would be contained within a capture site, but all of the rest of the water would be draining to the south, not to the west.

Mr. Sikora asked about the address of the subject property being on Stadium Drive vs. Stadium Pines Street. Ms. Bugge said the initial two units of the site condominium were located adjacent to Stadium Drive, but their entrances are off the future public road. The remainder of the units would require further development of Stadium Pines Street.

Mr. Taylor asked about Stadium Pines Street and whether it met public road standards. Ms. Bugge indicated that it was designed to meet those standards, but they were not extending Stadium Pines Street at this time. However, the road would need to be extended in order to develop additional sites in the future.

The Chairman asked to hear from the applicant. Mr. Jim Valk, representing Jansen, Valk, Thompson, Reahm, P.C., introduced himself to the Board. He said they had been a local CPA firm working in the area for the last 15 years and wished to expand in the area. He said he would be happy to answer any questions, but he thought the Planning Department had covered the issue quite well.

The Chairman noted that there was no longer any public to comment and called for Board deliberations.

Mr. Sikora said he thought it was a very nice building. He said he particularly appreciated parking in the rear from an aesthetic standpoint.

Mr. Smith said he thought it would be a nice addition to the area just outside of the Village boundaries.

After a number of additional statements, the Chairman said it appeared that there was a consensus that the Board was ready to move on approval of the site plan. Ms. Bell made a motion to approve the site plan subject to the following conditions and recommendations as set forth in the staff report:

- (1) All parking shall conform to Section 68.000.
- (2) Five parking spaces are deferred and subject to construction when the Township deems necessary. A revised site plan indicating a location for the reserve spaces that satisfies Township criteria shall be submitted for Township review and approval.
- (3) Dumpster enclosure and doors shall conform to Section 75.160 and a revised site plan shall be submitted for review.

- (4) All site and outside building mounted lighting shall comply with the requirements of Section 78.700 of the Zoning Ordinance. Fixture details and a revised photometric plan shall be submitted for Township review.
- (5) Pursuant to Section 76.000, a Sign Permit shall be required before any signs can be placed upon the property.
- (6) A landscaping plan satisfying the criteria of Section 75 shall be submitted for Township review.
- (7) Use of existing plant material along the west property line shall be permitted provided it satisfies the criteria of Section 75.200 and it is protected during the site development.
- (8) All required landscaping shall be installed prior to building occupancy or a Performance Guarantee, consistent with Section 82.950, shall be provided.
- (9) Site plan approval shall be subject to the applicant satisfying the requirements of the Fire Department, pursuant to the adopted codes.
- (10) Site plan approval shall be subject to the applicant satisfying the requirements of the Township Engineer.
- (11) An easement for stormwater discharge shall be submitted for Township review.
- (12) Approval shall be subject to the owner entering into an agreement with the Township to participate in a future assessment district for installation of a non-motorized facility should one be established by the Township.
- (13) An Earth Change Permit from the Kalamazoo County Drain Commissioner's Office is required before earth moving activities commence on this site.

Mr. Taylor seconded motion. The Chairman asked if there was further discussion. Hearing none, he called for a vote on the motion. The motion passed unanimously.

#### Public Comment on Non-Agenda Items

The Chairman asked if there was any public comment on non-agenda items.

Mr. Peter Tegowski introduced himself on behalf of Tele Systems. He said he was there to monitor the sound system. There was a brief discussion between the Board members and Mr. Tegowski regarding the sound system, as well as a testing of the various microphones for Mr. Tegowski's consideration.

Any Other Business

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

Adjournment

There being no further business to come before the Board, the Chairman called for adjournment of the meeting at approximately 4:20 p.m.

Minutes Prepared:  
June 30, 2009

Minutes Approved:  
\_\_\_\_\_, 2009