

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD JUNE 27, 2006

Agenda

**NIEWOONDER ACCESSORY BUILDING REVIEW - 10147 WEST MAIN STREET -
(PARCEL NO. 3905-18-430-050)**

**MURPHY OIL SITE PLAN REVIEW - 573 NORTH 9TH STREET- (PARCEL NO. 3905-
14-305-022)**

**MURPHY OIL SIGN DEVIATION - 573 NORTH 9TH STREET - (PARCEL NO. 3905-14-
305-022)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, June 27, 2006, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Millard Loy, Chairman
Dave Bushouse
Duane McClung
Mike Smith

MEMBERS ABSENT: Roger Taylor

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

Call to Order

The Chairman, Millard Loy, called the meeting to order at approximately 3:00 p.m.

Minutes

The Chairman indicated the first item on the Agenda was the approval of the minutes of June 13, 2006. Mr. McClung 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.

NIEWOONDER ACCESSORY BUILDING REVIEW - 10147 WEST MAIN STREET - (PARCEL NO. 3905-18-430-050)

The Chairman said the next item on the agenda was the consideration of Mr. Niewoonder's request for an addition to an existing accessory building where the floor area exceeded the ground floor area of the dwelling. He said the subject property was located at 10147 West Main Street, Parcel No. 3905-18-430-050. The Chairman asked for a report from the Planning Department. Ms. Stefforia submitted her report, dated June 27, 2006, and the same is incorporated herein by reference.

Ms. Stefforia reminded the Board that it had granted site plan approval for a 4800 square foot building in 2005 on the subject parcel. She said that the dwelling was 2,152 square feet in size and, because the existing accessory building exceeded the ground floor area of the dwelling, review by the Zoning Board of Appeals was necessary pursuant to Section 78.820. She again noted for the Board that they had considered this at their last meeting, and discussed the options that the applicant had for an additional accessory building on his property. She said the applicant was currently seeking a 2500 square foot addition to the existing 4800 square foot accessory building, which would result in an accessory building square footage of 7300 square feet.

Ms. Stefforia located the subject property on an overhead and pointed out the approximate location for the addition to the accessory building. She asked the Board to pay particular attention to Section 78.810B of the Ordinance which indicates that accessory buildings may not be used for purposes other than those accessory and customarily incidental to the permitted residential use of the property.

Ms. Stefforia then concluded with the report requested by the Board regarding accessory buildings in relationship to the size of the homes. She said accessory buildings of ranch homes generally range from 1.2 to 1.7 times the area of the home; two-story structures generally range from .7 to 1.7 times the combined floor area of the dwelling and 1.1 to 2.5 times the ground floor area. She said the applicant's request was for an accessory building 3.3 times the floor area of the ranch dwelling. She said presently the building is 2.2 times the size of the home.

Ms. Stefforia then proceeded to take the Board through a review of Section 78.820, asking that the Board pay particular attention to the proposed size of the

structure and the need for such a large accessory building and that the Board insure that the building would not be used for storage of items used for business purposes.

The Chairman asked if there were any questions of Ms. Stefforia and, hearing none, asked to hear from the applicant. Mr. Steve Niewoonder introduced himself to the Board. He said he thought the Planning Department had covered the subject and asked if the Board had any questions. The Chairman asked what he had in mind for storing in the building. Mr. Niewoonder said he thought his proposal was a compromise to reduce the size of the proposed accessory structure and it would be used solely for personal equipment.

Mr. Niewoonder said the addition would have a lower peak than the existing structure because of a different floor level. He said it would be built exactly like the existing accessory building with the same siding and roofing. He said that he thought his proposal was reasonable, given that it would be built near the run-off area of the airport which was a nonbuildable parcel, and the addition would not be visible from the road or surrounding properties.

Mr. Bushouse asked if the run-off area was part of the airport. Mr. Niewoonder said it was not currently, but thought the approach corridor would be added to the airport in the near future. Mr. Bushouse asked Mr. Niewoonder if he understood the extent of his request and that it was greatly exceeding the square footage usually granted to any residential property. Mr. Niewoonder said he understood but thought if the Board looked at where his property was located and that it was on a large parcel, that they would recognize the reasonableness of his request. Mr. Bushouse responded by saying he was concerned about setting a precedent. He said that rules were established and, while there was a mechanism for granting an exception to those rules, there were limits, in that, if they granted his request he thought they would be setting a precedent for these large buildings in residential areas. He said again that he was very concerned about allowing such a large structure and setting an adverse precedent.

The Chairman asked Mr. Niewoonder why he needed so much storage. Mr. Niewoonder said he had two boats, a motor home, and lots of cars. He said he had an accessory building at his home in Portage full of "stuff" for which he had no room at this new home.

The Chairman said he noted everyone wanted storage but he was concerned allowing accessory buildings to be increased in size to 3.3 times the home. Mr. Niewoonder said he did not think it would matter in this case since he bordered M-43. The Chairman said he understood that, but asked how the Board would deny someone else such a large building in relationship to their home if they had 20 acres next door to Mr. Niewoonder. Mr. Bushouse noted, in response to Mr. Niewoonder's comments, that his request for an exception was ignoring the fact he had already been granted an exception, and a considerable one at that, in allowing the construction of the 4800 square foot accessory building currently located on his property.

Mr. Niewoonder asked if the Board would have considered a request for a 7,000 square foot building if he had made that his initial request. Mr. Bushouse said he did not think he would not have been inclined to grant such a request if it had been made.

The Chairman asked to hear from those in the audience. Mr. Dan Wilkinson introduced himself to the Board. He said he lived at the airport. He noted what Mr. Niewoonder had done with his property and complimented him on how nicely it was developed and taken care of. He said what the applicant was requesting would allow him to store all his stuff inside and he felt the neighbors would appreciate having the items stored inside rather than outside. He told the Board he disagreed with zoning and thought the Board should let Mr. Niewoonder do what he wanted to do with his own property.

The Chairman asked if there were any further comments and, hearing none, called for Board deliberations. The Chairman began by saying this was a very difficult and touchy subject. He said he had hobbies that required him to lease property elsewhere to accommodate what he wanted to do. He said in his opinion if the request were granted, they would be establishing a precedent from which they could not return or deny future similar requests.

Mr. Smith said he did not have a concern about the proposed addition. He said he was certainly more comfortable with that than allowing an additional building to be constructed on site. Mr. Smith said in view of the existing size of the building, he did not think that a 2,500 square foot addition was unreasonable.

Mr. Bushouse said he was very concerned about establishing a precedent that would allow an accessory building 3.3 times the floor area of the existing home. He said currently most accessory buildings fell within a range of 1.1 to 2.5 times the area of the home, and he did not think there was any basis to exceed that limitation. He said it was his experience that making these types of exceptions caused serious problems, not only with their present use, but more particularly, with regard to their future use. He said in order to maintain uniformity for all of the 20,000 residents of the Township, he thought that the proposal should be rejected. He again noted that he saw no reason to grant the exception.

Mr. McClung said he did not have a problem with the addition. He said he thought the applicant would meet all of the setbacks and he was more in favor in granting an addition to the existing building than allowing another separate structure to be constructed.

Mr. Smith said he thought this property was sufficiently unique that granting a variance would not set an adverse precedent. He said the Board could review all the cases separately and because of the location of the building and the relationship to the

surrounding properties, he thought this request could be approved without requiring approval for requests which did not have similarly situated property.

The Chairman again asked for clarification as to whether the Zoning Board of Appeals had allowed any accessory buildings similar to the applicant's request. Ms. Stefforia said there was one that was as high as 2.5 times the size of the house. She said in that case, the DeForest property, the home had a first floor of 3,800 square feet and with the balance of the house the resulting total square footage was over 6,000 square feet. The Chairman said this request would be 3.3 times the size of the house. Ms. Stefforia indicated that was correct.

Mr. Smith said that if a similar use was proposed elsewhere based upon size of the property or its location in relationship to the neighbors, it might not necessarily be a good idea, but given the current proposal and its location, he did not have a problem with the addition.

Mr. Bushouse said there certainly were a number of large buildings around the airport, but it was primarily a residential area and that the airport was developed to accommodate residences with large buildings. However, he said that in order to maintain its residential character, he thought they needed to preclude buildings three and four times the size of the residences; otherwise, the accessory buildings would become the primary use, not the other way around. He said he thought the Board needed to be consistent and if they allowed such development, it would just spawn further requests of this nature.

Mr. McClung said he understood Mr. Bushouse's position, but said that if the gentleman wanted to expand his attached garage, he could do so without asking. Mr. Bushouse said that was true, but then it would certainly be developed to look like the house and would more likely serve the primary interest of serving the residential use of the property.

Ms. Stefforia asked the Board to recall from the last meeting that Ms. Bugge had noted properties with large buildings often prompt calls from potential buyers asking to use them for business purposes. Mr. McClung said he thought that was a matter of ordinance enforcement and should not preclude this applicant from making the request as submitted.

The Chairman said while that was not the issue, he thought the real issue was if the Board were to grant this exception and deviate so drastically from their normal size limitations that it would generate similar requests and he was not in favor of that. After a further discussion, the Chairman said he thought all the Board members had expressed their view and called for a motion. Mr. Smith made a motion to grant the addition as submitted. The motion was seconded by Mr. McClung. The Chairman called for a vote which resulted in a 2-2 tie; Mr. McClung and Mr. Smith in favor; Mr. Bushouse and Mr. Loy in opposition. The motion failed.

After a brief discussion, counsel recommended that the matter be tabled until the full Board could be assembled to further consider Mr. Niewoonder's request. It was noted that the item may have to be renoticed under the new Michigan Zoning Enabling Act. The Board concurred.

MURPHY OIL SITE PLAN REVIEW - 573 NORTH 9TH STREET- (PARCEL NO. 3905-14-305-022)

The Chairman said the next item on the Agenda was consideration of a site plan review for a proposed gas station to be constructed at 573 North 9th Street, Parcel No. 3905-14-305-022. The Chairman asked to hear from the Planning Department. Ms. Stefforia submitted her report dated June 27, 2006, and the same is incorporated herein by reference.

Ms. Stefforia explained to the Board that the applicant was requesting site plan approval for a 10-pump Murphy Oil gas station with kiosk to be located along 9th Street in front of Wal-Mart. She said the kiosk would be 543 square feet and house the cashier and limited snack items for retail sales. She said Murphy Oil would lease the property from Wal-Mart and it would not be further subdivided. She noted that gas stations were a permitted use in the "C" Local Business District.

Ms. Stefforia then proceeded to take the Board through an extensive review of Section 82.800, as more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Stefforia. Hearing none, he asked to hear from the applicant. Mr. John Horn introduced himself on behalf of Kimley-Horn and Associates representing Murphy Oil. Mr. Horn explained that Murphy Oil would be leasing the property and proposing to construct the gas station in accordance with the site plan. He said that the ice station which had been questioned during the Planning Department's report could be moved to the other side of the kiosk so that it would not face the road.

Mr. Horn then raised the issue regarding the additional signs. The Chairman told him that would be addressed under Item #5 of the Agenda.

The Chairman asked how many tanks there would be at the site. Mr. Horn said there would be two, one for regular unleaded and another split tank with diesel and super unleaded. The Chairman suggested that they possibly consider adding an additional tank at this point to pump E85 fuel. Mr. Horn said he would relay that to this client.

Mr. Horn then said he would like to address the lighting issue. He wanted the Board to be aware of their willingness to work with the Planning Department. He said they would be willing to look at the lighting plan and address the concerns raised by

Staff. He suggested that perhaps that issue be left up to the Staff to work out with the developer. He said that even with the lighting as proposed, it would only be one foot candle at the property's perimeter. He said the light would be reduced due to the fact that the canopy created sharp cut-off lighting to reduce glare from the site.

Mr. Bushouse asked again for confirmation that the ice machine would be put behind the building in order to keep the development in line with other development in the area. Mr. Horn indicated that would not be a problem.

The Chairman asked about the proposed dumpster. Mr. Horn said it would be fully enclosed with a cedar gate. The Chairman suggested they consider metal doors since the wood doors did not seem to stand up very well. Mr. Horn said he could talk with their manufacturer and look for possible alternatives.

Mr. McClung said he thought the proposal looked straightforward, with the exception of the lighting which had to be addressed, given the proximity of the development to 9th Street. Mr. Smith said he agreed with Mr. McClung, but that the lighting was quite a bit too high and needed to be reduced.

Mr. Horn let the Board know that Murphy Oil only operated from 5:00 to 6:00 a.m. to 11:00 p.m. and it would not be a 24-hour operation. The Chairman asked what the radiuses were for turns. Mr. Horn indicated they were 30-foot radii, giving clearance for the larger trucks outside the canopy area.

The Chairman asked if they could turn the lighting issue over to Staff. Ms. Stefforia said they would be willing to work with the developer and if, for any reason, the Planning Department was uncomfortable with what the developer proposed, they would return to the Board for further input.

The Chairman asked if there was any comment from the audience. Ms. Stefforia noted there was a letter from Kadir Mohammed expressing his concerns about possible environmental contamination and the effect upon his property. The representatives of Murphy Oil said it would be duly noted.

After further discussion, Mr. McClung made a motion to approve the site plan as presented, with the following conditions:

- 1, The ice machine is to be relocated to the west side of the site;
2. Direct access to 9th Street and the east-west Wal-Mart entrance drives is prohibited.
3. Site lighting shall comply with the provisions of Section 78.700, to be determined in conjunction with Planning Staff.

4. All signs shall comply with Section 76.000, unless a deviation is granted, and be reviewed/approved through the permit process.
5. Dumpster enclosure and gate must be maintained in good condition at all times.
6. Landscaping consistent with the approved landscaping plan of Wal-Mart must be maintained at the site. Any trees damaged or relocated during or due to construction must be replaced.
7. Landscaping shall be installed pursuant to the approved landscaping plan prior to issuance of a Certificate of Occupancy or a Performance Guarantee consistent with Section 82.950 provided to the Township.
8. Site plan approval is subject to review and approval of the Fire Department.
9. Site plan approval is subject to review and acceptance by the Township Engineer as adequate.

The Chairman asked if there was a second to the motion. Mr. Smith seconded the motion. The Chairman called for further discussion and, hearing none, called for a vote on the motion, and the motion passed unanimously.

MURPHY OIL SIGN DEVIATION - 573 NORTH 9TH STREET - (PARCEL NO. 3905-14-305-022)

The Chairman said the 5th Item on the Agenda was the review of Murphy Oil's request for a sign deviation to allow a wall sign package which exceeds the number permitted. He again noted that the property was located at 573 North 9th Street, Parcel No. 3905-14-305-022. The Chairman called for a report from the Staff. Ms. Stefforia submitted her report dated June 27, 2006, and the same is incorporated herein by reference.

Ms. Stefforia indicated that the applicant was seeking a wall sign package that contained nine wall signs, but only six counted as wall signs, since three were considered incidental, not readable from off-site. She said the Ordinance currently limits wall signs to four for this use. She reminded the Zoning Board of Appeals that the Board had, in the past, determined gasoline pump canopies to be walls for purposes of determining wall sign area and placement of wall signs. Ms. Stefforia then took the Board through a review of the criteria for granting sign deviation as more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Stefforia. Hearing none, he asked to hear from the applicant. Mr. Horn said he thought the first question which really needed to be addressed was whether there were, in fact, six signs being requested. He said that he did not think the spanner signs which did not directly face 9th Street should count. After a brief discussion, it was the consensus of the Board that the spanner signs advertising food inside the kiosk would be considered a wall sign. The Board's decision was based upon agreement that the spanner signs would be visible from 9th Street and not just from the Wal-Mart site itself.

The Chairman asked if there was any public comment. Ms. Stefforia presented a letter to the Board from a Township resident, Pamela Larson. Ms. Larson expressed her opinion that there was more than sufficient wall signage for Murphy Oil to adequately advertise its facility and objected to any additional wall signage and, therefore, asked that the Board deny the request for sign deviation.

Ms. Bugge noted that if they had need to put up additional signage they could always put it above the sign with the movable letters. She said it would constitute an incidental sign because it would be facing the Wal-Mart building.

Mr. Smith said he was in favor of maintaining the limitation of four wall signs. Ms. Stefforia said she thought that was appropriate, given that the spanner boards could be clearly read from off-site. The Chairman said he would like to see the Board hold to the number of wall signs currently allowed and not expand it. He said he thought it was best that they comply and that he did not believe it would have a negative impact on their ability to operate their business.

The Chairman said he would entertain a motion. Mr. Smith made a motion to deny the sign deviation request. Mr. McClung seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

OTHER BUSINESS

Ms. Stefforia informed the Board that with the new changes under the Michigan Zoning Enabling Act additional notice time would be required and, therefore, Staff would not likely have anything available for the Board to consider at its proposed July 11, 2006 meeting. After a brief discussion, Mr. McClung made a motion to set the next Zoning Board of Appeals meeting for July 25, 2006, in order to comply with the new notice requirements of the Michigan Zoning Enabling Act. The motion was seconded by Mr. Smith. The Chairman called for a vote on the motion, and the motion passed unanimously.

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: Millard Loy, Chairman

By: Mike Smith

By: Roger Taylor

By: Duane McClung

By: Dave Bushouse

Minutes Prepared:
July 6, 2006

Minutes Approved:
_____, 2006