

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD SEPTEMBER 22, 2009

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Agenda

**SERVICES REALTY, LLC – INTERPRETATION IN ACCORDANCE WITH SECTIONS 66.201, 66.202 AND 66.204 OR FRONTAGE VARIANCE – (PARCEL NOS. 3905-14-155-028 AND 3905-14-155-014)**

**MORFORD – SETBACK VARIANCE – 7268 WEST ML AVENUE – (PARCEL NO. 3905-27-255-019)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, September 22, 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 four 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 August 25, 2009 regular meeting minutes. There being no revisions, additions or deletions, Mr. Anderson made a motion to approve the minutes, as submitted. The motion was seconded by Mr. Taylor. The Chairman called for a vote on the motion, and the motion passed unanimously.

**SERVICES REALTY, LLC – INTERPRETATION IN ACCORDANCE WITH SECTIONS 66.201, 66.202 AND 66.204 OR FRONTAGE VARIANCE – (PARCEL NOS. 3905-14-155-028 AND 3905-14-155-014)**

The Chairman stated that the next item on the Agenda was consideration of an interpretation or a variance request for a property located at 6958 West Main Street and 6600 West Main Street. The initial question was whether a parcel could be created which had 200 feet of frontage on 9<sup>th</sup> Street but did not maintain a width of 200 feet until the minimum building setback requirement was satisfied. In the event that the Board determined that the subject frontage did not meet the spirit and intent of the Ordinance, the applicant was requesting a variance from the provisions of Section 66.201. The Chairman asked to hear from the Planning Department. Ms. Stefforia submitted a report dated September 22, 2009, to the Zoning Board of Appeals, and the same is incorporated herein by reference.

Ms. Stefforia took the Board through a review of the applicant's property and the applicant's proposal to purchase additional land east of the subject property fronting on 9<sup>th</sup> Street, which would then be combined with the applicant's property, depending upon the Board's interpretation or grant of a variance. Ms. Stefforia then proceeded to take the Board through a review of the interpretation request and the request for a variance as more fully set forth in the Planning Department's report.

The Chairman asked if there were any questions.

Mr. Taylor asked about the zoning of the property north of the applicant's parcel as well as the zoning for the property proposed to be acquired along 9<sup>th</sup> Street. Ms. Stefforia indicated that both properties were zoned "R-2" Residential.

Mr. Taylor then asked whether Menards' modification to its existing drainage pond would have a negative impact on the property proposed to be purchased by the applicant. Ms. Stefforia said that Menards was proposing to make the pond both larger and deeper, but the applicant would have to address whether it would affect his use of the property. Mr. Taylor then asked if the proposed changes to the pond would cause a change in the property line as set forth in the report. Ms. Stefforia said she did not believe that it would.

Mr. Smith asked Ms. Stefforia if Menards had acquired the residential property north of the land with the retention pond. Ms. Stefforia indicated that Menards had not.

The Chairman, hearing no further questions for staff, asked to hear from the applicant. Mr. Paul DeHaan introduced himself to the Board. He thanked Ms. Stefforia for her report. Mr. DeHaan said he believed they were dealing with this issue because the term "frontage" is not defined within the Township's Ordinance. He said, while the Ordinance stated what the requisite frontage requirements were, it did not have any specific direction as to how far back that frontage had to extend toward the interior of the property in order to be "legal." He said he felt the intent was to make sure that

access drives were spaced a minimum of 200 feet from each other and that his proposed use of the property would not violate that purpose. He said that the closest commercial drives at Meijer and Menards would be more than 600 feet away.

Mr. DeHaan said that they would continue to maintain the cross access which they currently have with the Menards' property, but they wanted to have the Board consider the proposed frontage in order to enable him to eventually divide the property and sell off the frontage along West Main Street. He said that the Road Commission had no plans to widen 9<sup>th</sup> Street, and he did not believe there would be any diminution of the road frontage by the Road Commission. He also said that the Road Commission had reviewed and approved the proposed access point for a driveway.

Mr. DeHaan concluded by saying that what he proposed was in no way an attempt to circumvent the Ordinance, but thought he had met the specific requirements of the Ordinance.

The Chairman asked if there were any questions.

Mr. Taylor asked Mr. DeHaan if the modifications to the pond would impact the lot line. Mr. DeHaan said that originally he and Menards had agreed to a 75-foot wide property, which he thought was more than enough for the driveway. However, he had been talking to Menards which had requested that the pond be 20 feet wider, but he was resistant to that proposal because of the need to have access to his property. Mr. Taylor asked if the pond was outside the property proposed to be purchased by Mr. DeHaan. Mr. DeHaan indicated that it was.

Ms. Bell asked if the creation of the driveway would stress the retention pond or impact the water from the pond by the discharge of its water. Ms. Stefforia said she did not know and that the applicant would have to address that question, and it would be subject to Township Engineer review and approval.

The Chairman asked if there was any intent to subdivide the property or simply use it for a driveway. Mr. DeHaan said there was no intent to make any changes to the property he would acquire and that it would be used solely for driveway purposes.

Mr. Anderson asked, if the pond was widened, whether the rain run-off from the road would impact the pond. Mr. DeHaan acknowledged that they would likely have to use the pond for driveway water run-off, but thought Menards' improvements to their facilities could handle the additional load.

Mr. Bushouse said he thought this issue was somewhat unique in that the setback was really not an issue because they would not be building on the parcel but only connecting it to a parcel upon which they had already constructed their facilities. Ms. Bugge pointed out that it could become an issue in the future for others asking for similar reconfigurations because they might want to build upon a parcel configured similar to the one proposed by the applicant. She said that there could be restrictions

placed on the subject parcel which would make it impossible to build upon, but that the Board's decision could impact other properties.

The Chairman asked if there were any further questions from the Board. Hearing none, he asked if there was any public comment. Hearing none, he called for Board deliberations.

Mr. Taylor said, if they did approve this request, they would want to preclude any building permit. Ms. Stefforia concurred and said it would be very difficult to build within the 75-foot area and satisfy setback requirements.

Ms. Stefforia asked counsel if the Board could attach conditions to an interpretation of the Ordinance, or whether they could only attach conditions to a variance. Attorney Porter said the Board could not attach conditions to an interpretation which would not only be applicable to the applicant but to anyone with a similar situation. He said the Board could only attach conditions to a variance which would have a direct impact on the applicant.

Ms. Bell commented that it appeared that this matter was self-created, but for the applicant's desire to eventually split the property, there was really no reason to consider the variance at this time. She said she had a very difficult time getting past that issue at least from a variance standpoint. Ms. Stefforia admitted that it was the interest of the property owner which prompted their request for an interpretation and/or a variance, and that is why the matter was being presented to the Board. However, she noted that the applicant would not want to purchase the property from Menards if its future split would not be permitted.

Mr. Sikora said, looking at the criteria for a variance, he did not think that the Board would be going in the right direction. He said he thought this was certainly self-created and that other options were available.

The Chairman noted that they could, if they chose to, buy the pond and the property from Menards and comply with the Ordinance, but they would be accepting quite a bit of liability by owning the drainage facility.

Mr. Sikora asked why the West Main property was able to develop the way that it did. Ms. Stefforia said that was created in 1991, and the Township had not begun reviewing land divisions until 1997.

The Chairman asked how the Board wanted to proceed – whether they wanted to address the variance or the interpretation. Ms. Stefforia suggested that the Board members deal with the interpretation first, and then if necessary, deal with a variance. Attorney Porter concurred.

Mr. Sikora asked if it made a difference that the property was going to be used as a driveway. Ms. Stefforia said only in that it does distinguish the present case from other cases which the Board has looked at in the past.

Mr. Bushouse said he was not sure whether the Board needed to be overly concerned with how the property was developed because it could only be used for a driveway, and the property was not wide enough to build upon.

Mr. Taylor asked what would happen if someone else purchased the property and wanted to use it for a different purpose. Ms. Stefforia said that the property could not be used as a stand-alone parcel because it would not meet the depth-to-width ratios. Ms. Stefforia said she thought the real issue, from an interpretation standpoint, was whether the proposed frontage was adequate to comply with Section 66.201 for the Golf Services' site to be a stand-alone property in the future.

Mr. Anderson said he thought it was better to make an interpretation rather than grant a variance. He said, if the property complied, there was no need to grant a variance or set a precedent on the issue. Ms. Bell suggested that the Township needed to clarify the text in the Zoning Ordinance. Attorney Porter suggested, if the Board members determined that the applicant did comply with Section 66.201 but were unsatisfied with the reading of the Ordinance, that they should request the Planning Commission to address the issue. Mr. Sikora said he did not see that there was any way to treat this matter differently than the Board did in 1988. Mr. Smith said he thought it should be approved.

Mr. Anderson made a motion that the ZBA make the following interpretation: That the proposed division meets the technical requirements of Section 66.201, 66.202 and 66.204, provided the cross access arrangements with Menards remain in effect, and that the Planning Commission be requested to address this issue to clarify the frontage requirements of the Township Zoning Ordinance.

After a brief discussion, the motion was supported by Ms. Bell. The Chairman called for a vote on the motion, and the motion passed 3 to 2.

**MORFORD – SETBACK VARIANCE – 7268 WEST ML AVENUE – (PARCEL NO. 3905-27-255-019)**

The Chairman indicated the next item on the Agenda was a request for a variance from Section 64.200 to allow an already constructed deck to protrude into the front setback area by 12 feet. He said the subject property was located at 7268 West ML Avenue, Parcel No. 3905-27-255-019. The Chairman called for a report from the Planning Department. Mr. West submitted his report to the Board, and the same is incorporated herein by reference.

Mr. West proceeded to take the Board through a review of the subject property. He said the property was a legal nonconforming 5.9 acre parcel with 175 feet of frontage. Mr. West said that the house was originally built in 1965 and that the current parcel was created in 1998 with the combination of two parcels. He said, because the home was built 36 feet from the right-of-way, a portion of the deck constructed on the south side of the residence extends eight feet from the residence, protruding 12 feet into

the required 40-foot front setback. Mr. West noted that, under Section 62.151, unlawful nonconforming uses may be continued but not extended or added to unless in conformance with the Ordinance. Mr. West then took the Board through his analysis of the standards for a nonuse variance as more fully set forth in his report.

The Chairman asked if there were any questions. Mr. Smith asked if a building permit had been requested. Mr. West said he did not believe they had obtained a permit before commencing construction.

There being no other questions, the Chairman asked to hear from the applicant. Ms. Morford introduced herself to the Board. She said that she had trouble getting up and down steps and that she had planned to convert this deck in the future to a wheelchair ramp. She apologized for not getting a permit, but she had talked to the Building Department about another portion of the deck on the north side of the residence, for which she was told that a permit was not required. When she later decided to extend the deck, she was not aware the extension was in violation of the Township Ordinance.

Mr. McCloud introduced himself to the Zoning Board of Appeals. He said he was building the deck as Ms. Morford's friend, and he said he wanted the Board to be aware of the fact that the proposed deck was only 18 inches beyond the original steps going into the front of the home and only a foot past the sidewalk which was originally in place for access to the front of the home. He said he placed a wider, 48-inch step leading up to the deck so that it could be removed and replaced with a wheelchair ramp sometime in the future.

Ms. Bugge asked if there was a ramp to the ground. Mr. McCloud said there was not. The Chairman asked if the ramp was built in the future whether it would be in line with the deck. Mr. McCloud said that it would be.

Ms. Stefforia commented, if the deck was not attached to the house, it would be considered a structure. As a stand-alone structure, not part of the house, it would not be subject to the building setback requirements.

Mr. Sikora asked how much of the deck had been built. Mr. McCloud said approximately five and a half feet along the front of the house, but the remainder of the deck was just posts and beams. The Chairman asked if the house already protruded into the setback area. Mr. West indicated that it protruded approximately four feet into the setback area.

Ms. Stefforia said, as food for thought, the Board members might take into account the fact that many different agencies were asking communities around the country to look at their ordinances and codes carefully to deal with the needs of senior citizens since they would be a significant part of the population in the future and encouraged municipalities to be more flexible to accommodate things such as access ramps to allow seniors to age in place.

Mr. Smith asked if he properly understood Ms. Stefforia's previous statements, indicating if the deck was not attached to the house, the deck would be legal. Ms. Stefforia said that was correct because buildings are restricted from being built within the setback, but structures are not.

Mr. McCloud said he could go ahead and add a ramp to the deck if a ramp would make the Board more comfortable.

Attorney Porter said the fact that the deck would be legal if it was a structure but not if it was attached to the house was tantamount to arguing over how many angels could dance on the head of a pin.

Ms. Bell said she knew the applicant socially and wondered why the builder had not obtained a permit. She asked Mr. McCloud if he was a licensed builder. Mr. McCloud said that he was not a licensed builder, but that he was a licensed roofer. He said, however, he was building this as a friend, not as hired labor. He said he should have known better, but he proceeded based upon Ms. Morford's earlier conversation with the Building Department.

Mr. Sikora asked how this matter even got inspected. Ms. Morford said she originally talked to the Building Department and was told that the deck would not need a permit. She said the deck was noticed by someone from the Township driving by the property.

The Chairman asked if there were any further questions. Hearing none, he called for Board deliberations.

Ms. Bell said she appreciated Ms. Stefforia's comments regarding elderly people being accommodated and allowed to remain in their homes, but she had concerns about whether this met the requirements for a variance.

Mr. Smith said he thought the fact that the applicant failed to get a permit made a bad situation even worse, and he was not sure he was inclined to grant such a request.

Mr. Bushouse said he was torn; he said he was familiar with the ML Avenue area from 4<sup>th</sup> Street to 8<sup>th</sup> Street, and he knew many of the homes built around the same time as the applicant's home was built sat as close or closer to ML Avenue. However, he said it was never good to violate the Ordinance.

Mr. Taylor said he agreed with Mr. Smith about making a bad situation worse. The Chairman said he did not believe they were making a bad situation worse because, when the home was built, it was legal, and now all they wanted to do was add an eight-foot deck. Mr. Taylor said perhaps he chose the wrong words, but the applicant was out of compliance. Mr. Anderson said his original thinking was like Mr. Smith's, but once Ms. Morford explained how she started part of the deck, legally and lawfully, and then decided later to add on to the deck, it certainly did not seem intentional to him. Ms. Bell

explained that she felt they had to stay with the criteria. Mr. Sikora said he agreed, and suggested that the Board review the criteria.

Mr. Taylor asked, if they were to grant it as a ramp versus a deck, whether they had to have better support for granting such a variance. Attorney Porter, after a brief consideration, said that they would.

The Chairman noted that the deck was only 12-18 inches past where the sidewalk or the original steps had been, and he did not think this should be a real problem. Ms. Bell again asked how they might deal with it in light of the criteria at issue.

Attorney Porter told the Board members that they were the fact-finders in this case, and with all due respect to the Planning Department's report, it was up to them to make a determination of the facts, not simply to accept the Planning Department's report. Attorney Porter said he thought the issue was accessibility to the home. He noted that the home is already four feet into the existing setback, and without some type of variance, the applicant would not even be able to replace her own steps to get in her home. He suggested that perhaps the conformance with the Ordinance was unnecessarily burdensome. He also suggested that perhaps a variance would do substantial justice for similarly-situated people, given Mr. Bushouse's statements about other homes located close to ML Avenue. He also said the fact the home was built close to ML Avenue in 1964 was a unique physical circumstance which could be considered.

Mr. West suggested that the applicant still had access to her front door without a deck. Attorney Porter noted that was true, but that having a deck around one's property today is fairly common, and given the fact that the home was within the setback, the applicant could not do what other individuals in the community could do without a variance.

After a brief discussion, Ms. Bell made a motion to grant the variance, finding that approving the variance would meet the substantial justice test, particularly to those similarly-situated along ML Avenue, and that the situation was unique in that rear access to the home was at the basement level, and it was reasonable to allow the applicant to use the front of the home at the higher level via the deck, which could later be converted to accommodate a wheelchair. She also noted the house was built in 1964 and encroached into the current setback, and the applicant could not make any improvements to her front access without a variance.

Ms. Bugge said she did not think Ms. Bell's finding-of-fact that the property was similarly situated to others was factually accurate. Attorney Porter noted that it was consistent with the statement which Mr. Bushouse placed on the record, and therefore, part of the record, and the Board was the fact-finder in these matters.

The Chairman asked if there was a second to the motion. Mr. Anderson seconded the motion. The Chairman called for further discussion, and hearing none, called for a vote on the motion. The motion passed 5-0.

Ms. Bugge noted for the record that when they were first approached by the applicant, they were not aware that she wanted to use the deck for wheelchair access. The Chairman said it would be so noted.

Public Comment on Non-Agenda Items

None.

Any Other Business

None.

Adjournment

There being no further business to come before the Board, the Chairman called for adjournment of the meeting at approximately 4:45 p.m.

Minutes Prepared:  
September 29, 2009

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