

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD SEPTEMBER 25, 2007

Agenda

**WESTERN WOODS - SIGN DEVIATION - WEST SIDE OF NORTH 5TH STREET -
(PARCEL NO. 3905-16-155-012)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, September 25, 2007, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

MEMBERS ABSENT: None

Also present were Mary Lynn Bugge, Senior Planner; Brian VanDenBrand, Associate Planner; and two other interested persons.

Call to Order

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

Minutes

The Chairperson indicated that the first item on the Agenda was approval of the minutes of August 28, 2007. Mr. McClung made a motion to approve the minutes as submitted. Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

WESTERN WOODS- SIGN DEVIATION- WEST SIDE OF NORTH 5TH STREET- (PARCEL NO. 3905-16-155-012)

The Chairperson indicated the next item on the agenda was the consideration of a request for deviation from Section 76.420 to allow a neighborhood identification sign to be placed within the 5th Street right-of-way. The Chairperson called for a report from the Planning Department. Mr. VanDenBrand submitted his report to the Board dated September 25, 2007, and the same is incorporated herein by reference.

Mr. VanDenBrand explained to the Zoning Board of Appeals that the applicant was requesting a deviation because of the location of the street in relationship to the recorded right-of-way. Mr. VanDenBrand pointed out that the center line of the road is offset about 11 feet to the east from the center of the right-of-way. Therefore, the applicant felt the sign would not be very visible if placed in compliance with Section 76.420. He said that normally a sign would be 50 feet from the center of the pavement if the road were perfectly centered within the right-of-way. Thus, the applicant was asking for a deviation so the sign could be placed 15 feet into the 5th Street right-of-way or about 46 feet from the actual paved center of 5th Street. Mr. VanDenBrand then took the Zoning Board of Appeals through the criteria for granting of the deviation under Section 76.420, as more fully set forth in his report.

The Chairperson asked if there were any questions of Mr. VanDenBrand. Mr. Bushouse asked about the size of the proposed sign. Mr. VanDenBrand said he was not sure of the exact size but said it would have to be in compliance with the Township Zoning Ordinance. Mr. Taylor asked if the only deviation being requested was location. Mr. VanDenBrand answered that was correct. Mr. Bushouse said he felt the size of the sign was relevant if the issue was the ability to clearly see the sign. Ms. Bugge said the Ordinance would allow a maximum sign of 30 square feet which could not be higher than five feet off the ground. Mr. VanDenBrand suggested that the Board inquire of the applicant as to the actual size of the sign.

Mr. Bushouse asked if there was a liability issue for the Township. Attorney Porter said he viewed this matter merely as the Township granting a deviation from its setback requirements. He said if there was any liability, it would be that of the Road Commission if it allowed the sign to be placed within the road right-of-way. Ms. Bugge said that if the Board wanted to, as part of its conditions, it could impose limits on the size of the sign.

The Chairperson asked if there were any further questions and, hearing none, said she would like to hear from the applicant. Mr. Michael McCormick introduced himself to the Zoning Board of Appeals. He said that the proposed sign was approximately 6 feet long and 2½ feet high. He said it would be placed no higher than five feet above grade, but they were asking that the sign be placed closer to the road due to the location of the pavement within the right-of-way.

The Chairperson asked if it would be a free-standing sign. Mr. McCormick indicated that it would, with two posts and the sign attached.

The Chairperson asked if there were any questions from the public. The one member of the public present said he had no comments.

The Chairperson called for Board deliberations. Mr. Bushouse asked if the sign itself would be totally in compliance with the Ordinances. Mr. VanDenBrand indicated that it would. Mr. McClung said he did not have a problem with the sign being brought closer to the road as long as it was equal to the offset of the road within the road right-of-way; i.e., 11 feet. However, he said, if 5th Street was relocated, he would want to see the owner be responsible for moving the sign back.

The Chairperson asked what direction the sign would face. Mr. McCormick said it would be parallel with 5th Street with lettering only on one side. The Chairperson asked if the sign would be lighted, and Mr. McCormick said it would not.

Mr. Taylor said he did not see a real issue with granting the requested deviation because he thought that it was necessary due to the location of paved portion of 5th Street within the road right-of-way. The Chairperson stated she did not think it would set an adverse precedent because Mr. VanDenBrand had indicated that most of the roads are not so far off center as to require similar deviations in the future.

The Chairperson asked Mr. Anderson if he had a comment. Mr. Anderson said he did not think a sign was worth much if it could not be read. Mr. Bushouse asked if they were going to move the sign in the future could they stay within the right-of-way and comply with the Ordinance. Mr. VanDenBrand indicated he did not believe that was possible. Ms. Bugge suggested the applicant establish an easement on the property immediately to the west in order to secure that right in the future.

Mr. Bushouse expressed reservations regarding allowing the sign within the right-of-way. He said he thought that doing that on a permanent basis was ill advised and recommended against the granting of the deviation.

Mr. Smith told the applicant that generally the Zoning Board of Appeals resists granting deviations from the Sign Ordinance. However, in this case, he thought that the fact that this street was not properly located within the right-of-way weighed in favor of granting the deviation.

Ms. Bell said she was concerned about establishing a precedent on this issue, but based on Mr. VanDenBrand's representations that this did not happen very often, she was not overly concerned about the issue. Mr. VanDenBrand said the Planning Department had not done a formal study, but based upon general observations using the Township GIS, he did not believe this was a regular problem. Mr. McClung said

they would only be allowing an 11-foot intrusion into the right-of-way, and he did not believe that was a significant deviation from the Ordinance requirement.

A question arose as to whether the applicant should secure an easement to relocate the sign, if necessary. It was the consensus of the Zoning Board of Appeals that it would be up to the developer to determine whether he wanted to reserve an easement, and if they did not do so, they might not be able to have a sign if 5th Street was relocated within the right-of-way.

The Chairperson said she has property in the area and felt, because of that fact, she needed to abstain from the vote on the matter. The Chairperson said she would entertain a motion on the issue. Mr. McClung made a motion to allow a deviation to permit the sign to be placed 11 feet into the 5th Street right-of-way, equal to the offset of the paved portion of the road within the right-of-way, subject to the following:

- (1) The applicant be required to relocate or remove the sign if 5th Street was rebuilt and centered within the right-of-way so that the sign would be in conformance with the then current Zoning Ordinance.
- (2) The applicant secure written approval from the Kalamazoo County Road Commission to place the sign within the 5th Street right-of-way.

Mr. Anderson seconded the motion. The Chairperson called for discussion and, hearing none, called for a vote on the motion. The motion passed 4 to 1, with Mr. Bushouse voting no and Ms. Bell voting in lieu of the Chairperson voting.

Public Comment on Non-Agenda Items

None.

Any Other Business

There being no further business to come before the Zoning Board of Appeals, the Board adjourned at approximately 3:30 p.m.

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

By: _____
Grace Borgfjord

By: _____
Duane McClung

By: _____
Roger Taylor

By: _____
Robert Anderson

By: _____
Cheri Bell

By: _____
Mike Smith

Minutes Prepared:
September 27, 2007
Minutes Approved:
_____, 2007