

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD OCTOBER 23, 2007

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**Agenda**

**KALAMAZOO COUNTY ROAD COMMISSION / BLACKBERRY SYSTEMS, INC. -  
SETBACK VARIANCE- 6477 WEST KL AVENUE- (PARCEL NO. 3905-23-405-013)**

**THE ROCK - SITE PLAN REVIEW - 2901 NORTH 10<sup>TH</sup> STREET - (PARCEL NO.  
3905-11-230-038)**

**GOLF RIDGE, LLC - SUPPLEMENTAL SETBACK AND SITE PLAN REVIEW - 5349  
WEST MAIN STREET - (PARCEL NO. 3905-13-405-029)**

**TREPANIER - SITE PLAN REVIEW - WEST SIDE OF SOUTH 8<sup>TH</sup> STREET, SOUTH  
OF KL AVENUE - (PARCEL NO. 3905-22-430-039)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, October 23, 2007, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

MEMBERS ABSENT: Roger Taylor  
Cheri Bell, Alternate

Also present were Jodi Stefforia, Planning Director; Mary Lynn Bugge, Senior Planner; Brian VanDenBrand, Associate Planner; James W. Porter, Township Attorney; and 19 other interested persons.

**Call to Order**

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

## **Minutes**

The Chairperson said that the first item on the Agenda was approval of the minutes of September 25, 2007. Mr. McClung made a motion to approve the minutes as submitted. The motion was seconded by Mr. Bushouse. The Chairperson called for a vote on the motion, and the motion passed unanimously.

### **KALAMAZOO COUNTY ROAD COMMISSION / BLACKBERRY SYSTEMS, INC. - SETBACK VARIANCE- 6477 WEST KL AVENUE- (PARCEL NO. 3905-23-405-013)**

The Chairperson stated that the next item on the agenda was a request for a variance to allow a future building's front yard setback to be based upon the current right-of-way lines. She said this was prompted by the Kalamazoo County Road Commission's request to acquire 23 additional feet of right-of-way from Blackberry Systems to accommodate the widening of 9<sup>th</sup> Street over the railroad tracks. The subject property is located at 6477 West KL Avenue, Parcel No. 3905-23-405-013. The Chairperson called for a report from the Planning Department. Mr. VanDenBrand submitted his report to the Board dated October 23, 2007, and the same is incorporated herein by reference.

Mr. VanDenBrand explained that the Road Commission needed to acquire 23 feet of right-of-way on the subject property in order to accommodate the 9<sup>th</sup> Street roadway and bridge widening project. He said, if 23 feet of additional right-of-way was granted, the property owner would lose 4,221 square feet of "buildable area" unless a front setback variance was granted. Therefore, the Kalamazoo County Road Commission was seeking a variance on behalf of Blackberry Systems to allow the future construction of a building based on current 9<sup>th</sup> Street right-of-way lines. Mr. VanDenBrand then proceeded to take the Zoning Board of Appeals through the standards of approval for a nonuse variance as more specifically set forth in his report.

At the conclusion of Mr. VanDenBrand's report, the Chairperson asked if there were any questions. Hearing none, she asked to hear from the applicant. Mr. Tom Hohm introduced himself as Chief Engineer of the Kalamazoo County Road Commission. Mr. Hohm said the new bridge had to be higher and the approach wider. Therefore, they needed a much larger grading area to accommodate the future five-lane bridge. It also raised the road right-of-way and increased the slope away from the road, necessitating the acquisition of 23 feet of the subject property.

The Chairperson asked if there were any questions of Mr. Hohm. Mr. Bushouse asked if the grade from the bridge to KL Avenue would be reduced. Mr. Hohm said that the grade would be reduced somewhat and would be a bit flatter than currently existed.

Mr. Smith asked if the applicant would be allowed a driveway onto 9<sup>th</sup> Street. Ms. Stefforia said a driveway would not be allowed under the Township Ordinance. Mr. Hohm also added that the Road Commission would prefer all access be from KL Avenue, not from 9<sup>th</sup> Street.

The Chairperson asked if the Road Commission currently had funding for the project. Mr. Hohm indicated that they did and that it had been designated for this improvement approximately three years ago.

The Chairperson asked if there were any public comments. Mr. Mike Shields, owner of Blackberry Systems, Inc. introduced himself to the Board. He said that his company did not want to stand in the way of progress, and he was willing to grant the Road Commission's request for the 23 additional feet, but he did not want it to negatively impact his ability to develop the subject property as it currently existed. He said that was the reason for asking for the setback variance. He told the Board, when the property was originally laid out, they had looked at the possibility of adding another building in the future, and if the variance was not granted, it would have a negative impact on their ability to complete the development of the property as planned.

The Chairperson asked if there were any other public comments, and hearing none, she closed the public portion of the meeting and called for Board deliberations. Mr. McClung said he thought the variance was warranted, provided that it was granted with the conditions recommended by the planning staff. Mr. Anderson said that the community certainly needed to see the bridge widened. Mr. Bushouse said he thought if the Township was helping the Road Commission, he hoped it would be reciprocal in the future.

Mr. Anderson asked, if the property owner could not reach an agreement with the Road Commission, if the Road Commission could take the property. Attorney Porter said that it was within the authority of the Road Commission to acquire subject property by eminent domain. He said it appeared to him that what the Road Commission was attempting to do by making the request for a variance was to acquire the property, but not leave the owner in a disadvantageous position.

The Chairperson also noted that the property was landlocked to a certain degree because of the railroad to the south, 9<sup>th</sup> Street to the west and development to the east, and if the property was taken by the Road Commission, it would have a negative impact on the existing parcel.

Based upon the Board's discussions, Mr. McClung made a motion to allow the setback variance as requested, subject to the following conditions:

- (1) The variance is contingent upon the property owner granting the Kalamazoo County Road Commission an additional 23 feet for right-of-way purposes.
- (2) The property owner may not conduct any loading or unloading on the 9<sup>th</sup> Street side of any future structure.

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

**THE ROCK - SITE PLAN REVIEW - 2901 NORTH 10<sup>TH</sup> STREET - (PARCEL NO. 3905-11-230-038)**

The Chairperson stated that the next item for consideration was site plan review for The Rock. She said the applicant was seeking site plan review for a proposed 8,280 square foot building to be constructed at 2901 North 10<sup>th</sup> Street, Parcel No. 3905-11-230-038. The Chairperson asked for a report from the Planning Department. Ms. Bugge submitted her report dated October 23, 2007, and the same is incorporated herein by reference.

Ms. Bugge explained to the Board that the applicant had a 9.9-acre site with an existing 3,900 square foot building and paved area for 35 vehicles. She explained that the Zoning Board of Appeals had approved on June 26, 2007, an expansion of the parking area and granted a deviation to postpone paving of the parking area until May of 2008. Additionally, the applicant had received approval for two 1,440 square buildings of modular design, which The Rock was now going to replace with a 8,280 square foot building. Ms. Bugge noted that The Rock was asking to bank 26 future parking spaces until the need for additional space was demonstrated. Ms. Bugge then proceeded to take the Board through site plan review as provided for in Section 82.800 of the Zoning Ordinance, as more fully set forth in her report.

At the conclusion of the report, the Chairperson asked if there were any questions. Mr. Bushouse asked about the elevation of the parking lot in relationship to the surrounding property. He said he had a concern about water run-off leaving the premises. Ms. Bugge said she thought that question would be best addressed by the applicant's engineer and that the Township Engineer had addressed that matter in his comments on the plan.

Mr. Anderson asked that Ms. Bugge elaborate on the concept of approving the site plan subject to an agreement regarding the bike path. Ms. Bugge explained that they were asking that the applicant agree to be included in any future special assessment district if the bike path was developed.

The Chairperson asked if there were any other questions of the Planning Department, and hearing none, asked for input from the applicant. Mr. Roger Lamer of W. L. Perry Associates, Ltd. introduced himself to the Board. Mr. Lamer said that the question raised about the water run-off was an excellent question. He said that there were two leaching basins which had extremely sandy soil and perked very well. He said, because of that, the six-inch pipe shown on the southwest portion of the plan would likely never discharge water except in case of a 100-year flood. Mr. Lamer also said that the applicant would like to bank a certain amount of property for parking and avoid adding additional pavement until such time as it was absolutely necessary. He also said that the applicant was more than willing to agree to participate in a special assessment district in the future for the bike path.

The Chairperson asked if there were any questions of the applicant's engineer. Hearing none, she asked if there was any public comment. Again, hearing none, she closed the public comment portion of the meeting and called for Board deliberations.

The Chairperson began by complimenting the applicant on their proposal. Mr. Bushouse said he thought it was a very nice design. Mr. Smith asked why, in some cases, the Township would ask for an escrow of money and in other cases, it was asking for an agreement to enter into a special assessment district. Attorney Porter said he thought it was primarily based upon the likelihood of development. He said if development is likely to take place in the near future, the Township would generally escrow the monies. However, where the development of a bike path is not likely to develop in the near future, developers might be asked to participate in a special assessment district, if one was established in the future. Mr. McClung said he thought an agreement to participate in any future special assessment district was more than adequate in this case, given its location.

The Chairperson asked if there was further discussion. There being no further discussion, the Chairperson said she would entertain a motion. Mr. McClung made a motion to approve the site plan, as submitted, with the following conditions:

- (1) Approval is granted to defer 26 parking spaces which shall be subject to construction when the Township deems necessary per Section 68.420.D.
- (2) Approval shall be subject to installation of a stop sign at the intersection of the driveway and 10<sup>th</sup> Street, if lacking.
- (3) Approval shall be subject to the owner executing a recordable agreement with the Township to enter into an assessment district for construction of the bike path if the Township establishes a district in the future.
- (4) Site plan approval shall be subject to placement of the proposed building a minimum of 40 feet from the existing building.

- (5) All lighting shall comply with Section 78.700. Outside building mounted and freestanding fixture locations and details shall be submitted to the Township for review and approval.
- (6) Approval shall be subject to the submission of sign details for review and approval through the sign-permitting process. All signs shall comply with Section 76.000.
- (7) Site plan approval shall be subject to the submission of a landscaping plan in accordance with Section 75 for Staff review and approval.
- (8) Site plan approval shall be subject to the applicant satisfying the requirements of the Fire Department, pursuant to the adopted codes.
- (9) Site plan approval shall be subject to the applicant satisfying the requirements of the Township Engineer.
- (10) Site plan approval shall be subject to the Health Department finding the existing septic system adequate.

The motion was seconded by Mr. Anderson. Mr. Bushouse asked if the applicant had seen a copy of the report with the proposed conditions. The applicant indicated that they had and that they would comply with those conditions. The Chairperson called for a vote on the motion, and the motion passed unanimously.

**GOLF RIDGE, LLC - SUPPLEMENTAL SETBACK AND SITE PLAN REVIEW - 5349 WEST MAIN STREET - (PARCEL NO. 3905-13-405-029)**

The Chairperson indicated that the next item on the Agenda was a supplemental setback and site plan review for Golf Ridge, LLC. The Chairman said that the applicant was requesting a 23-foot rear yard supplemental setback variance and site plan review for a proposed 17,354 square foot addition to the existing building for a new tenant. She said that the subject property was located at 5349 West Main Street, Parcel No. 3905-13-405-029. The Chairperson asked for a report from the Planning Department, and Ms. Stefforia submitted her report to the Board dated October 23, 2007, and the same is incorporated herein by reference.

Ms. Stefforia explained that this was Phase 2 of the proposed development and that the applicant was proposing to construct a building for Aldi Foods whose prototypical floor plan would not fit the site limitations. Because of that, they were seeking a 23-foot variance along the southern boundary of the property. Ms. Stefforia then proceeded to take the Board through the standards for approval of a nonuse variance, as well as site plan review under Section 82.800, as more fully set forth in her report.

The Chairperson asked if there were any questions of Ms. Stefforia. Hearing none, she asked to hear from the applicant. Mr. Josh Weiner introduced himself on behalf of Golf Ridge, LLC. He said that he was happy to present Phase 2 of the proposed project so quickly. He said that he also had in attendance Mr. Timmons, Matt Milks and Shannon Orr on behalf of Golf Ridge. He also noted that Attorney Bob Lennon was present on behalf of the Elks.

Mr. Weiner said, in reviewing the standards for a variance request, the property was not a clean slate. He said it was a redevelopment of a pre-existing site, and as a result, there were limitations for ingress and egress, and therefore, there was a sufficient basis to grant the requested variance. He said that they had withdrawn their request for a variance for the Office Depot because they were able to reach an accommodation with the Elks regarding an access drive. He said part of that agreement resulted in an agreed-upon southerly east/west service drive. He stated that the proposed service drive would be located along the southerly boundary of the area, calling for a supplemental setback and that the future setback from that drive would likely establish an appropriate separation between the properties when redeveloped in the future. Mr. Weiner stressed the fact that this was a redevelopment of the property and that the applicant was present to explain how their prototype store simply could not be located on the premises without the requested accommodation. He said that the Elks, through its attorney, had reviewed the proposal and that the Elks would not be objecting, based upon an agreement to place six additional 12-foot high evergreen trees along the southern boundary to provide adequate buffering to the south.

Mr. David Kapusansky, the real estate director for Aldi, introduced himself to the Board. The Aldi representative explained, via an overhead design layout, what the typical prototype store looked like. He said that they had already reduced that prototype by 24 feet, and they also had moved the docking area, which would create additional work for their staff. He stated, even with those changes, they still needed the 23-foot variance.

The Chairperson asked if there were any questions of the Aldi representative. Hearing none, she asked to hear from the public. Mr. Bob Lennon introduced himself as an attorney with Miller, Canfield on behalf of Elks Lodge No. 50. He said that they had discussed the proposal with the applicant, and the applicant had agreed to provide additional screening. He stated that the Elks was of the opinion that the screening was superior to the strict compliance with the setback provisions in the Ordinance, and therefore, the Elks was supporting the applicant's request for a variance. Mr. Lennon asked if there were any questions. Hearing none, the Chairperson asked the Board to move on to their deliberations.

The Chairperson began by thanking the applicant and their neighbors for discussing the matter before presenting the request to the Board. The Chairperson raised a question regarding parking and future development. Ms. Stefforia pointed out

that the applicant's future development might be limited, but that it currently met all Ordinance requirements in that regard.

Mr. Smith said that he had some concern about granting the variance based upon the fact that it abutted residential property. He asked whether there would be the ability to expand to the west rather than to the south. Mr. Bushouse said, in the past, when Super 8 or Kohls developed, the Elks was involved, and that they had not expressed any objections. He said, as a neighbor to several of these developments and the fact the Elks had agreed to the variances in the past, he thought that they had recognized the possible consequences. He said he thought the fact that there was going to be a service drive in this area influenced his opinion, and he did not see how there would be any harm as a result of the granting of the variance. Ms. Stefforia did note that, if there was a service drive, there would be a 15-foot setback from that service drive. Mr. Bushouse noted that the drive would also be 25-50 feet wide and could extend that setback even further.

The Chairperson noted that was a possibility, but they really should base their decision upon what currently exists upon the property. Mr. Anderson said he did not believe the 23-foot variance was significant, given all of the circumstances, and therefore, he was in favor of granting the variance.

Ms. Stefforia pointed out to the Board the fact that the zoning in the area was not consistent east to west. She said that it actually jogged north in this particular area from the commercial zoning, both east and west of the property. She stated that the Board could consider that as a factor in looking at the proposed variance. She said, if the zoning was consistent along M-43 in that area, there would not even be a need for the requested variance.

The Chairperson asked if there was any further discussion. Hearing none, she said she would entertain a motion. Mr. McClung made a motion to approve the variance for the reasons set forth in the record. He said the approval was subject to the applicant installing the screening as proposed and agreed upon between the applicant and the Elks. Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

The Chairperson asked the Board's pleasure with regard to the site plan. Mr. McClung made a motion to approve the site plan subject to the following conditions as recommended by Planning Staff.

- (1) Sidewalk construction along West Main Street must be completed with Phase 2 or a performance guarantee provided to the Township at the time a Certificate of Occupancy is requested.
- (2) Exterior lighting shall comply with Section 78.700 of the Zoning Ordinance.

- (3) All proposed new exterior light fixtures must be submitted for Township review and approval before a Building Permit may be issued.
- (4) All dumpsters and recyclable storage areas on the site shall be placed and enclosed as required by Section 75.160.
- (5) A Sign Permit, in compliance with Section 76, is necessary before any additional signs may be placed upon this property.
- (6) Any area used for shopping cart containment as may be provided adjacent to the building shall be screened by a minimum four-foot-high masonry wall compatible with the building exterior facade and architecture.
- (7) Site plan approval is subject to Fire Department approval, pursuant to adopted codes.
- (8) Site plan approval is subject to Township Engineer review and acceptance of site engineering as adequate.
- (9) The Hazardous Substances Reporting Form shall be submitted by the proposed tenant, Aldi.

The motion was seconded by Mr. Anderson. The Chairperson called for a vote on the motion, and the motion passed unanimously.

**TREPANIER - SITE PLAN REVIEW - WEST SIDE OF SOUTH 8<sup>TH</sup> STREET, SOUTH OF KL AVENUE - (PARCEL NO. 3905-22-430-039)**

The Chairperson said that the Board is being asked to conduct site plan review on a proposed 2,880 square foot warehouse being built on a vacant 1.3-acre parcel on the west side of South 8<sup>th</sup> Street, south of KL Avenue, Parcel No. 3905-22-430-039. The Chairperson called for a report from the Planning Department. Mr. VanDenBrand submitted his report to the Zoning Board of Appeals dated October 23, 2007, and the same is incorporated herein by reference.

Mr. VanDenBrand explained to the Board that the applicant was proposing to build a 2,880 square foot warehouse. He said the applicant would initially use it for personal purposes, but it was being constructed in accordance with the requirements of the "I-1" District as a warehouse. Mr. VanDenBrand then proceeded to take the Board through a review of the proposal, pursuant to Section 82.800 of the Zoning Ordinance as more fully set forth in his report.

The Chairperson asked if there were any questions of Mr. VanDenBrand. Hearing none, she asked to hear from the applicant. Charlie Hill introduced himself on behalf of the applicant. He said that the structure would only have storage and a bathroom and that no offices would be constructed within the building. He explained that the applicant was constructing this facility initially for his personal use, but was designing it for industrial uses in a manner consistent with the Zoning Ordinance for investment purposes. Mr. Hill also said that his client was willing to be placed in an assessment district at such time as a bike path was developed so that a non-motorized improvement would not have to be constructed at this time.

Ms. Bugge noted that the applicant did not have to have a dumpster installed. Mr. Hill noted that the applicant was preparing the property as if it was being used for industrial purposes so the property could be sold without any necessary modifications.

Mr. Smith asked what the elements of the structure would be. Mr. Hill said it would be of 2 x 6 frame construction, concrete floor, 10-foot sidewalls, three overhead doors, as well as a number of windows.

Mr. Bushouse asked if this property would have city water. He noted that water was available on KL Avenue and thought that this matter should be referred to the Sewer and Water Committee to determine whether water should be brought down to the bridge. Mr. Hill said his client would be happy to hold off on drilling a well until such time as it was determined whether public water could be made available to the site.

Mr. Smith said he did not see anything objectionable with the proposed site plan.

Ms. Bugge expressed a concern about the overhead door facing South 8<sup>th</sup> Street. She wanted the applicant to be aware that he would not be allowed to park trucks or provide for loading or unloading in the front of the building per the Zoning Ordinance. The applicant said that he understood.

The Chairperson asked if the Board wanted to discuss the matter further. Otherwise, she would entertain a motion. At that point, Mr. McClung made a motion to approve the site plan, as submitted, subject to the following conditions as set forth in the Staff report:

- (1) Site plan approval is subject to the applicant obtaining a driveway permit or determination from the Kalamazoo County Road Commission.
- (2) Site plan approval is subject to the applicant providing the required non-motorized improvement, a bike lane along 8<sup>th</sup> Street.

- (3) Any change in use from the proposed personal use will require further Township review and approval.
- (4) Lighting details shall be submitted and approved before the issuance of a Building Permit.
- (5) Any lighting is subject to Staff approval and shall be in accordance with Section 78.700 of the Zoning Ordinance.
- (6) Landscaping shall be installed consistent with the approved plan or a performance guarantee posted in accordance with Section 82.950 prior to the issuance of a Certificate of Occupancy.
- (7) Site plan approval shall be subject to the applicant satisfying the requirements of the Fire Department, pursuant to the adopted codes.
- (8) Site plan approval shall be subject to the applicant satisfying the requirements of the Kalamazoo County Health Department.

Mr. Smith seconded the motion. The Chairperson called for a vote on the motion. The motion passed unanimously.

Public Comment on Non-Agenda Items

There was no further public comment.

Any Other Business

There being no further business to come before the Zoning Board of Appeals, the Board adjourned at approximately 4:40 p.m.

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

By: \_\_\_\_\_  
Grace Borgfjord

By: \_\_\_\_\_  
Dave Bushouse

By: \_\_\_\_\_  
Duane McClung

By: \_\_\_\_\_  
Robert Anderson

By: \_\_\_\_\_  
Mike Smith

Minutes Prepared:  
October 29, 2007  
Minutes Approved:  
\_\_\_\_\_, 2007