

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD OCTOBER 28, 2008

Agenda

**ARNDT - DEPTH-TO-WIDTH - 10335, 10285 AND 10241 WEST MAIN STREET -
(PARCEL NO. 3905-18-405-020, 3905-18-405-030 AND 3905-18-430-010)**

**ARNDT & LUTKE - FRONTAGE VARIANCE - DIVISION OF 10241 WEST MAIN
STREET - (PARCEL NO. 3905-18-430-010) - RESULTING IN A .056-ACRE
LANDLOCKED PARCEL ADJACENT TO 10216 SKYVIEW DRIVE**

**GOLF RIDGE, LLC - SIGN DEVIATION - 5349 WEST MAIN STREET - (PARCEL NO.
3905-13-405-029)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, October 28, 2008, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

MEMBERS ABSENT: Cheri Bell, Alternate

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

Call to Order/Pledge of Allegiance

The meeting was called to order by the Chairperson, and the "Pledge of Allegiance" was recited.

Minutes

The Chairperson asked if there were any changes to the minutes of September 23, 2008. There being none, Mr. McClung made a motion to approve the minutes as submitted, and Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

**ARNDT - DEPTH-TO-WIDTH - 10335, 10285 AND 10241 WEST MAIN STREET -
(PARCEL NO. 3905-18-405-020, 3905-18-405-030 AND 3905-18-430-010)**

The Chairperson indicated that the next item on the Agenda was consideration of a variance from Section 66.201 to allow the reconfiguration of three parcels resulting in a parcel with a depth-to-width ratio of greater than 4 to 1. She said the subject properties were located at 10335, 10285 and 10241 West Main Street, Parcel Nos. 3905-18-405-020, 3905-18-405-030 and 3905-18-430-010. The Chairperson asked to hear from the Planning Department. Ms. Bugge submitted her report dated October 28, 2008, to the Board, and the same is incorporated herein by reference.

Ms. Bugge explained how the applicant wished to reconfigure three adjacent properties, which would bring two of the properties into compliance with the Zoning Ordinance, but would leave one remaining parcel with a depth-to-width ratio of 4.6 to 1, rather than 4 to 1. She said the applicant was requesting relief from the dimensional requirement to permit the re-description as proposed and not render Parcel A unbuildable. Ms. Bugge then took the Board through a review of the standards for a nonuse variance as is more fully set forth in her report.

The Chairperson asked if there were any questions of Ms. Bugge. Hearing none, she asked to hear from the applicant. Mr. Gary Hahn of Wightman Ward, Inc. introduced himself on behalf of the applicant. He said that the main goal, as indicated by Ms. Bugge, in establishing dimensional requirements was to regulate the open space between buildings, lessen congestion and encourage a more efficient and conservative land use. He said he thought their proposal did just that, and asked the Board for its consideration. He said, without the grant of the variance, there would be two nonconforming parcels, but with the grant of the variance, there would only be one nonconforming parcel.

The Chairperson asked if there was any public comment. Hearing none, she called for Board deliberations. The Chairperson asked first whether the Land Division Act limited the number of splits which a person could make. Ms. Bugge indicated that was correct. However, she said none of the changes would constitute a division under the Land Division Act.

Mr. Taylor said he thought there would be less noncompliance with the Township Zoning Ordinance if the variance was granted. He also stated that he believed there would be more buildable acreage with the grant of the variance.

The Chairperson reminded the Board to make sure that it considered the approved standards for considering the requested variance.

Mr. McClung said he thought one of the items which weighed in favor of the variance was the fact that it would bring two nonconforming lots into conformance.

Mr. Bushouse asked if Parcel A, while not being in compliance with the depth-to-width ratio, would still be in compliance with all other requirements of the Zoning Ordinance. Ms. Bugge said it would be in compliance with all other requirements of the Zoning Ordinance.

The Chairperson said, while she thought the division of the original parcel postdated the Zoning Ordinance and therefore were self-created, what the applicant was proposing was to bring the property into greater compliance with the Zoning Ordinance. The Chairperson also noted that, if the Board did not grant the variance for the reconfiguration proposed, the applicants could gerrymander the property in such a way as to meet their goals, but do it in a less organized fashion than what was currently proposed.

Mr. Anderson said he thought it was a good thing that they were bringing the properties more into compliance and said he would support the variance.

Mr. Taylor agreed with the Chairperson and said, if the Board did not grant the variance, the applicant would reconfigure the property in a more illogical fashion. Therefore, he was in favor of granting the variance.

The Chairperson asked if there was any further discussion. Hearing none, Mr. McClung made a motion to approve the variance as requested, based upon Staff's report and the Board discussions. Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

ARNDT & LUTKE - FRONTAGE VARIANCE - DIVISION OF 10241 WEST MAIN STREET - (PARCEL NO. 3905-18-430-010) - RESULTING IN A .056-ACRE LANDLOCKED PARCEL ADJACENT TO 10216 SKYVIEW DRIVE

The Chairperson indicated the next item on the Agenda was consideration of a variance from Section 66.201 to allow the division of a parcel creating a landlocked parcel of land abutting Unit #6 of Skyview Estates, which contained a residence and a hangar at 10216 Skyview Drive. She said the parcel proposed for division was located

at 10241 West Main Street, Parcel No. 3905-18-430-010. The Chairperson called for a report from the Planning Department. Ms. Bugge submitted her report dated October 28, 2008, and the same is incorporated herein by reference.

Ms. Bugge explained that Mr. Lutke owned the property at 10216 Skyview Drive, Unit #6 of Skyview Estates. She stated that Mr. Lutke wanted to purchase .56 acres of the property to the north to square off his land. She said the proposed parcel did not satisfy the dimensional criteria for the "RR" District, and it would be landlocked. She noted the difficulties in trying to address this issue, given the fact that the land could not be combined under the Condominium Act or Land Division Act, unless there was an amendment to the Master Deed for the Condominium. Therefore, the applicant was requesting a variance to permit the establishment of the landlocked, sub-standard sized parcel. Ms. Bugge proceeded to take the Board through a review of the criteria for a non-use variance as more fully set forth in her report.

The Chairperson asked if there were any questions. Hearing none, she asked to hear from the applicant. Mr. Lutke said his only reason for adding to the property was to create an additional buffer between himself and the properties to the north. He said he had no intention of ever building on the property, and he hated to go through the process of amending the Master Deed of the Condominium when he was not even going to construct anything on the subject property.

The Chairperson asked if there was any public comment. Hearing none, she called for Board deliberations. The Chairperson began by saying that this request was quite unique and it did not appear that an issue quite like this one had ever come before the Board. Mr. Bushouse said that was true, but they had come seen situations where individuals within a plat would buy abutting property to create a buffer, and so there was at least some pattern of these types of purchases in the past.

Attorney Porter noted that the real question before the Board was whether it would be unnecessarily burdensome to make the applicant go through the process of amending the Site Condominium Master Deed in order to purchase a parcel of property on which he never intends to build anything, but simply use as greenspace or a buffer?

Mr. Taylor asked if it was an expensive or inexpensive, simple or difficult process to amend a site condominium. Attorney Porter that it was not a simple process. He said, given the number of people currently owning property within the site condominium, it would probably be quite difficult to amend the site condominium since all of the owners within the site condominium would have to approve the change.

Mr. Smith asked if any complaints had been received from abutting property owners. Ms. Bugge indicated that they had received no complaints.

Mr. Lutke said that they did go through the process before to add the property upon which he later built his hangar, and that it was very time consuming, quite difficult and costly. He noted that, because he did not intend to build anything on the property, he wanted to keep it as simple as possible.

Mr. Anderson said he could not understand why the applicant could not simply purchase the property. Ms. Bugge said that they could not approve the land division without the variance because he was asking to create an unlawful parcel of substandard size.

Mr. Anderson said, for this purpose, he did not see any basis for redoing the condominium since all they were doing was adding unbuildable property.

Mr. McClung said he thought it should be approved without going through the difficult process of amending the site condominium, if the variance was subject to deed restrictions and could only be sold in conjunction with Unit #6.

The Chairperson said she thought that the variance would be justified in this case, and the Township could be protected with the appropriate checks and balances as proposed by Staff.

Mr. McClung made a motion to approve the variance as requested subject to the applicant recording a deed and executing a deed restriction indicating that any future sale of the subject property may only be in conjunction with Unit #6, that the parcel is unbuildable unless the Master Deed of Skyview Estates is amended to incorporate the subject property and Unit #6, and that such amendment would be subject to review and approval of the Township. Mr. Taylor seconded the motion. The Chairman called for a vote on the motion. The motion passed unanimously.

GOLF RIDGE, LLC - SIGN DEVIATION - 5349 WEST MAIN STREET - (PARCEL NO. 3905-13-405-029)

The Chairperson indicated that the next item on the Agenda was a request for a deviation from Section 76.170 to allow a second freestanding sign on the property located at 5349 West Main Street, Parcel No. 3905-13-405-029. The Chairperson asked to hear from the Planning Department. Ms. Stefforia noted for the Board that she would not be participating in any of the discussions since her husband was the representative of the sign company involved in this application. However, she would remain on the dais because she was the planner in charge of the Golf Ridge development review process and could answer questions if necessary. Mr. VanDenBrand submitted his report to the Board dated October 28, 2008, and the same is incorporated herein by reference.

Mr. VanDenBrand explained that Sign Art was requesting, on behalf of Meyer C. Weiner, a sign deviation at 5349 West Main Street, commonly known as the Golf Ridge development. Mr. VanDenBrand explained that the applicant had gone through a series

of reviews starting in 2006, and again in May, 2007, October, 2007, and then finally June 24, 2008. He noted that the two buildings share a 4.5-acre parcel with approximately 480 feet of frontage on West Main Street. He said that the multi-tenant commercial development was permitted one pylon sign with 60 square feet of display area and a maximum height of 20 feet. He also noted that, as an alternative, the applicant could have one ground (monument) sign, measuring 80 square feet and 10 feet in height. He said the applicant was now requesting two pylon signs so that they could have a separate sign for Spicy Pickle and Noodles. Mr. VanDenBrand then took the Board through a review for granting a sign deviation as more fully set forth in his report.

Attorney Porter noted that, if the applicant was to divide the property into two parcels, as indicated in Mr. VanDenBrand's report, one additional sign would be permitted. He further stated that Mr. VanDenBrand's reference to a side setback variance was correct, but that the Board under Section 64.300 could allow a zero side yard setback, and therefore, could permit the division of the property into two parcels.

Mr. Weiner introduced himself on behalf of the applicant. He said he thought what the Board had here was form over substance. He said the property had frontage of 480 feet and a 150-foot easement to the east. He said that this amount of frontage could easily handle two freestanding signs. He stated that they did not want to split the property to get around the Ordinance, and he thought it was unnecessarily burdensome for them to have to go through that process, given the necessity of surveys, authorization of their lending institutions, etc. For those reasons, he asked that the second sign be approved. He said he thought that the spirit of the Ordinance would be observed if such variance was granted.

The Chairperson asked if there were any questions. Hearing none, she called for public comment. Hearing no public comment, she called for Board deliberations.

Mr. VanDenBrand pointed out again that this was not a variance request, but a deviation request.

Mr. Smith said he thought that the applicant should have considered a ground sign prior to developing the site. He said they had turned down similar requests for properties which were far less out of compliance than this. He said he saw no reason for granting the variance.

Mr. Taylor said he was concerned about setting a precedent, and he did not want such an issue to come back and haunt them in the future.

Mr. Anderson said he did not understand why they were asking for two signs when only one sign was permitted, especially when they could have developed a larger single sign on the property, which they failed to do.

The Chairperson noted that if a deviation was granted for this sign that the people across the street at the Maple Hill Mall would likely request the same, and it would have a negative effect on the community.

Mr. Bushouse said in certain cases he understood why there were larger signs in the area, but those larger signs were only a result of taking down an even larger sign and bringing it more into compliance. He said new developments such as this one should be built in compliance with the Ordinance. He also noted that the applicant had sufficient area for wall signage to make sure their businesses were visible to those along West Main Street.

The Chairperson said that she agreed with the comments of the Board and was concerned about setting an adverse precedent, and asked for a motion on the matter.

Mr. Taylor then made a motion to deny the deviation request for the reasons set forth in the Staff report. Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

Public Comment on Non-Agenda Items

None.

Adjournment

Hearing no further business, the meeting was adjourned at approximately 4:00 p.m.

Minutes Prepared:
November 7, 2008

Minutes Approved:
November 18, 2008