

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD NOVEMBER 18, 2008

Agenda

**DIAGNOSTIC SYSTEMS, OSHTEMO BUSINESS PARK - SITE PLAN REVIEW - 6190
TECHNOLOGY AVENUE - "I-R" INDUSTRIAL DISTRICT, RESTRICTED
CLASSIFICATION - (PARCEL NO. 3905-35-450-006)**

**NOTTINGHAM APARTMENTS - VARIANCE - REBUILD NONCONFORMING USE -
704 SOUTH DRAKE ROAD - "R-4" RESIDENCE DISTRICT CLASSIFICATION -
(PARCEL NO. 3905-24-280-040)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, November 18, 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
Cheri Bell, Alternate

MEMBERS ABSENT: None

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

Call to Order/Pledge of Allegiance

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

Minutes

The Chairperson asked the Board members if there were any revisions to the minutes of October 28, 2008. There being none, Mr. McClung made a motion to approve the minutes as submitted, and Mr. Taylor seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

DIAGNOSTIC SYSTEMS, OSHTEMO BUSINESS PARK - SITE PLAN REVIEW - 6190 TECHNOLOGY AVENUE - "I-R" INDUSTRIAL DISTRICT, RESTRICTED CLASSIFICATION - (PARCEL NO. 3905-35-450-006)

The Chairperson said the first action item for consideration was a site plan review for a proposed 10,000 square foot building to be built on a portion of Unit 6 in the Oshtemo Business Park. She said the subject property was located at 6190 Technology Avenue, in the "I-R" District, Parcel No. 3905-35-450-006. The Chairperson asked to hear from the Planning Department. Ms. Bugge submitted her report to the Board dated November 18, 2008, and the same is incorporated herein by reference.

Ms. Bugge proceeded to take the Board through her report, setting forth the particular criteria for site plan review under Section 82.800. At the conclusion of her report, the Chairperson asked if there were any questions. Hearing none, the Chairperson asked to hear from the applicant.

Mr. Rob Mitchell of JMK Holdings, L.L.C., introduced himself to the Board. He said he thought that the Planning Department did a fine job of making the presentation, and he asked if there were any questions.

The Chairperson began by asking what the company did. Mr. Mitchell said the company produced computer hardware and software products and had leased space in a building in the Oshtemo Business Park for approximately eight years.

Mr. Taylor asked how many employees JMK Holdings, L.L.C. had. Mr. Mitchell said they had seven full-time employees and two or three interns. He said he thought that the parking he proposed was more than adequate.

The Chairperson inquired as to whether additional parking spaces could be added if needed. Mr. Mitchell said that there is plenty of room, if needed.

The Chairperson asked if there were further questions of the applicant. Hearing none, she called for public comment. Hearing no public comment, she called for Board deliberations.

Mr. Taylor asked if there had to be a performance guarantee for possible additional parking. Ms. Bugge indicated that a performance guarantee was not required

since space for additional parking was shown on the plan. However, if it was a condition of approval, a performance guarantee could be added if deemed necessary.

Mr. Bushouse asked about the road extension and the turnaround. Ms. Bugge said that both the road extension and the turnaround had been accepted by the Road Commission. Mr. Bushouse then asked if they had been added to their plow route. Ms. Bugge said she assumed that they had.

The Chairperson asked if the applicant would be able to retain all of its water on site. Mr. Mitchell assured the Board that they would be able to retain their water on site with two retention basins.

Mr. Bushouse welcomed the addition to the Oshtemo Business Park. Mr. Smith said he thought the proposal looked good.

The Chairperson then asked for a motion. Mr. McClung made a motion to approve the site plan subject to the conditions recommended in the Staff report, which were as follows:

- (1) Driveway permits shall be obtained from the Kalamazoo County Road Commission for the proposed driveways.
- (2) All parking shall conform to Section 68.000.
- (3) Seven parking spaces are deferred and subject to construction when the Township deems necessary.
- (4) All site and building mounted lighting shall comply with the requirements of Section 78.700 of the Zoning Ordinance.
- (5) Pursuant to Section 76.000, a Sign Permit shall be required before any signs can be placed upon the property.
- (6) A revised landscaping plan in compliance with Section 75 of the Zoning Ordinance shall be provided for Staff review and approval prior to the issuance of a Building Permit. Species and cultivar of all plant material shall be indicated, details of seed mixtures shall be provided.
- (7) All required landscaping shall be installed pursuant to an approved site plan before occupancy is permitted, or a Performance Guarantee, consistent with Section 82.950, shall be provided.
- (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) An Earth Change Permit from the Kalamazoo County Drain Commissioner's Office is required before earth-moving activities commence on this site.

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

NOTTINGHAM APARTMENTS - VARIANCE - REBUILD NONCONFORMING USE - 704 SOUTH DRAKE ROAD - "R-4" RESIDENCE DISTRICT CLASSIFICATION - (PARCEL NO. 3905-24-280-040)

The Chairperson said the next item on the Agenda was consideration of a variance request from Section 62.150 to allow a building destroyed by fire to be rebuilt when the overall development exceeded current density limitations. The Chairperson said the property was located in Nottingham Apartments, 704 South Drake Road, in the "R-4" Residence District, being Parcel No. 3905-24-280-040. The Chairperson asked for a report from the Planning Department. Ms. Stefforia submitted her report dated November 18, 2008, and the same is incorporated herein by reference.

Ms. Stefforia took the Board through a review of the standards for approval for a variance as more fully set forth in her report. At the conclusion of Ms. Stefforia's report, the Chairperson asked if there were any questions.

Mr. Taylor inquired as to Ms. Stefforia's comment about a possible special exception use to address the issue. Ms. Stefforia said that possibility was being considered by Staff for recommendation to the Planning Commission and was on the list of items to do, but she was not sure how quickly the process could be completed, or if it would be acceptable to the Planning Commission and Township Board.

The Chairperson asked to hear from the applicant. Mr. Craig Harfst, on behalf of Belfor USA, introduced himself. Mr. Harfst said the proposed use was an existing use. He noted that they would not be increasing the number of apartment units on the property. He said if the building was rebuilt, it would be built the same as the pre-existing structure with the exception that it would meet all current Building Code requirements.

The Chairperson asked what Building Code requirements would be changed. Mr. Harfst said they would have to install fire walls, sprinkling, smoke detectors and fire alarms, but that the character and the size of the units would not change.

The Chairperson asked if there was any public comment. Hearing none, she called for Board deliberations.

Mr. Smith said he noted that the applicant was not adding anything new. He also noted that the loss was not their choice, and it certainly was not self-created. He said he thought the applicant's request should be allowed.

Mr. Taylor expressed a concern about setting an adverse precedent and wondered if a text change might be the more appropriate method to address this issue.

Mr. McClung said he did not see a need to make this applicant wait for a text amendment and thought the applicant should be allowed to proceed since they were not making any fundamental changes and would be using the existing foundation.

Attorney Porter noted that granting the applicant's request would set a precedent and that the Board would have to make a finding that there was practical difficulty in losing a structure of this nature and not being allowed to rebuild it. Mr. Smith agreed that it would be a burden not to be allowed to rebuild, and he thought one of the key factors was the fact that the applicant would not be increasing the nonconformance.

Mr. Bushouse pointed out that this type of reconstruction had been allowed in the early 1970's when one of the Concord Apartments burned.

~~Mr. Anderson~~ Ms. Bell asked what percentage of the apartments were rented and inquired as to whether they needed the building. Mr. Bushouse said that was extremely difficult to say. He said occupancy rates could fluctuate from 60% to 100%. He did not think they should make their decision on the occupancy rate since it was too variable.

Ms. Stefforia said she had spoken to her contact at the Edward Rose Development Company about a proposed text change. They thought it was a good idea, but were not necessarily interested in redeveloping their projects, being Concord Place, Seville and Mt. Royal.

Mr. Taylor asked when they planned to begin construction because he thought that might influence the Board as to whether the amendment was needed now. Mr. Smith noted that the proposed text amendment was just on the bucket list, and the Board could not know how long it would take to have it in place, or if it would be adopted at all.

Ms. Stefforia suggested that they apply the standards as set forth in the Zoning Ordinance and her report.

Mr. Anderson said he thought it was crucial that they were not building any additional buildings, and they were not changing anything from what they previously had.

The Chairperson noted the past decisions and that she was not uncomfortable in letting them restore their property to its preexisting condition, and to not let them do so would be an undue burden.

Ms. Bell said it was not necessarily bad to set a precedent if it was a good precedent.

Mr. Bushouse again noted that rebuilding was done in Village Square Apartments and Concord Place Apartments and to tell property owners, who had invested in a particular property that they would not be allowed to rebuild would be an undue burden.

The Chairperson asked if there was a motion to that effect. Mr. McClung made a motion to approve the variance as requested for the reasons set forth in the Staff report and the findings of fact in the record. Mr. Anderson seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

Adopt 2009 Meeting Dates

The Board considered the proposed meeting dates for 2009. Mr. McClung made a motion to adopt the 2009 meeting dates as submitted. Mr. Anderson seconded the motion. Upon vote, the motion passed unanimously.

Public Comment on Non-Agenda Items

None.

Adjournment

Hearing no further business, the meeting was adjourned at approximately 3:40 p.m.

Minutes Prepared:
December 2, 2008

Minutes Approved:
March 17, 2009