

OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD NOVEMBER 22, 2011

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Agenda

**DE VISSER LANDSCAPING – LEGAL NONCONFORMING USE VARIANCE FROM SECTION 62 OF ZONING ORDINANCE TO ALLOW AN ADDITION TO A LEGAL NONCONFORMING BUILDING – 4014 SOUTH 9<sup>TH</sup> STREET - (PARCEL NO. 3905-35-330-040**

**LIGHTHOUSE COMMUNITY CHURCH – RECONFIGURATION OF NONCONFORMING PARCELS VARIANCE FROM SECTION 66 OF ZONING ORDINANCE TO ALLOW RECONFIGURATION OF TWO NONCONFORMING PARCELS – 4331 SOUTH 11<sup>TH</sup> STREET – (PARCEL NOS. 3905-36-405-040 AND 3905-36-405-050)**

**HEIM – SIDE YARD SETBACK VARIANCE – FROM SECTION 64 OF ZONING ORDINANCE TO ALLOW A REDUCED SIDE YARD SETBACK FOR AN ACCESSORY BUILDING – 8269 WEST MAIN STREET – (PARCEL NO. 3905-16-452-010)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, November 22, 2011, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Roger Taylor, Chairman  
Cheri Bell  
L. Michael Smith  
Grace Borgfjord  
Neil Sikora, First Alternate  
James Sterenberg, Second Alternate

MEMBER ABSENT: Robert Anderson

Also present were Jodi Stefforia, Planning Director; James W. Porter, Township Attorney, and six other interested persons.

Call to Order/Pledge of Allegiance

The meeting was called to order by the Chairman at approximately 3:00 p.m., and the “Pledge of Allegiance” was recited.

## Minutes

The Chairman said the next item on the Agenda was approval of the minutes of August 23, 2011. A motion was made by Mr. Smith to approve the minutes, as submitted. The motion was seconded by Mr. Sikora. The Chairman called for a vote on the motion, and the motion passed unanimously.

### **DE VISSER LANDSCAPING – LEGAL NONCONFORMING USE VARIANCE FROM SECTION 62 OF ZONING ORDINANCE TO ALLOW AN ADDITION TO A LEGAL NONCONFORMING BUILDING – 4014 SOUTH 9<sup>TH</sup> STREET - (PARCEL NO. 3905-35-330-040)**

The Chairman said that the next item for consideration was a request for a variance from Section 62 of the Zoning Ordinance from DeVisser Landscaping to allow an addition to a legal nonconforming building located at 4014 South 9<sup>th</sup> Street, Parcel No. 3905-35-330-040. The Chairman asked to hear from the Planning Department. Ms. Stefforia submitted her report to the Board dated November 22, 2011, and the same is incorporated herein by reference.

Ms. Stefforia indicated that the applicant's property was originally zoned "AG Rural" where a landscaping business was permitted by special use. The property was then changed to "I-1" and later to "I-R" which then made the landscaping business a nonconforming use. She noted that in 1999 the applicant was granted a variance to expand a nonconforming use for a second pole building on the property.

Ms. Stefforia clarified that this area was included in the Village Form Base Code Overlay Zone, but because it was in the corridor south, it was exempt from the architectural requirements of the Overlay Zone.

Ms. Stefforia then proceeded to take the Board through the criteria for the standards for approval of a nonuse variance as more fully set forth in her report. The Chairman then asked if there were any questions of Ms. Stefforia, and hearing none, asked to hear from the applicant.

Mr. Dave DeVisser introduced himself to the Board members. He explained that their business had grown and that the operation now included snowplowing. He said the business needed to put its equipment undercover to be ready to go at any given moment. He also said he thought it would improve the aesthetics of the area to have the additional vehicles they have inside. Mr. DeVisser noted that the addition would not be visible from the road since it would be located on the west side of the existing pole structure.

The Chairman asked if there were any questions of the applicant. Hearing none, he asked for public comment. There being no public comment, the Chairman asked the Board to begin its deliberations.

The Chairman said he did not see any reasonable basis to object to the proposal. Mr. Smith said he liked where the addition was being located, i.e., on the back side of the existing building. Mr. Smith also said he thought it would be good to get the equipment inside. The Chairman said he thought it would actually be better for the neighbors if the equipment was stored inside.

Ms. Borgfjord asked for clarification on the applicability of the Village Commercial zoning requirements. Ms. Stefforia clarified that the architectural standards of the Village Commercial zoning did not apply to the proposed building.

Mr. Sikora said he did not see this request as being any different from the request which was proposed in 1999. He said he thought the same rationale which applied then applied now, and the request was being sought under similar circumstances.

Ms. Stefforia said that she thought the fact that the variance was granted in 1999 was also an important consideration.

The Chairman asked if there was any more discussion, and hearing none, said he would entertain a motion. Mr. Sikora made a motion to grant the variance as requested for the same reasons that it was granted in 1999 and for the reasons set forth in the staff report. The Chairman asked if there was a second. Ms. Bell seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

Ms. Borgfjord asked when the applicant might begin construction on the proposed addition. Mr. DeVisser said he hoped construction would commence this fall, but if it was not possible due to the weather, it would be sometime in the spring of 2012.

**LIGHTHOUSE COMMUNITY CHURCH - RECONFIGURATION OF NONCONFORMING PARCELS VARIANCE FROM SECTION 66 OF ZONING ORDINANCE TO ALLOW RECONFIGURATION OF TWO NONCONFORMING PARCELS - 4331 SOUTH 11<sup>TH</sup> STREET - (PARCEL NOS. 3905-36-405-040 AND 3905-36-405-050)**

The Chairman indicated that the next item on the agenda was a request from the Lighthouse Community Church for a variance from Section 66 of the Zoning Ordinance to allow the reconfiguration of two nonconforming parcels at 4331 South 11<sup>th</sup> Street, Parcel Nos. 3905-36-405-040 and 3905-36-405-050. The Chairman asked to hear from Staff. Ms. Stefforia, on behalf of the Planning Department, submitted a report to the Board dated November 22, 2011, and the same is incorporated herein by reference.

Ms. Stefforia explained that the two existing parcels on South 11<sup>th</sup> Street were created sometime in 1988 and that neither of the parcels were conforming, nor were they legal nonconforming. She explained that they did not meet the requisite frontage

or the area requirements and had been split prior to the change in state law which required land divisions to be approved by the local municipality.

She explained that the applicant was asking to have the two parcels treated as if they were platted lots, which would give Parcel A a frontage of 104 feet and a square footage of 19,240 square feet. Parcel B would have 101 feet of frontage and a square foot area of 18,685 square feet. Ms. Stefforia then proceeded to take the Board through a review of the standards for approval for a nonuse variance, as more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Stefforia.

Mr. Sterenberg asked if the purpose of the reconfiguration was to allow the Church to acquire the barn. Ms. Stefforia explained that the Church already owned all three parcels, both the two parcels being considered, as well as the Church parcel to the east. Mr. Sterenberg then asked, if the parcels were granted a variance, if they would conform to platted lot requirements. Ms. Stefforia indicated yes.

Ms. Bell asked if the two lots had to have sewer and water to be considered platted lots. Ms. Stefforia said no, that they could be platted without sewer and water, but with sewer and water, a smaller lot size would be allowed. Ms. Bell then asked if the lots needed both sewer and water to reduce the lot size to 18,000 square feet. Ms. Stefforia said no, as long as the lots had either water or sewer, they would be allowed a platted lot size of 18,000 square feet.

The Chairman asked if there were any further questions, and hearing none, asked to hear from the applicant.

Mr. Dan Lewis introduced himself to the Board. He said he was there representing the Lighthouse Community Church. Mr. Lewis explained that the land division was created by the former owner of the property. He said that the Lighthouse Community Church had purchased the two parcels to use as a parsonage. He added, however, that the Church now offers a housing allowance to the Pastor, and it no longer needed the two properties and house.

Mr. Lewis explained that they had considered going through the platting process, but between the cost of attorneys and engineers, they would end up losing any possible gain they might make in selling the two properties separately. He also indicated that they could combine the properties and sell them, but that would also result in a significant loss to the Church.

Mr. Lewis said he thought their request should be treated like the platted property because of the proximity to Rose Arbor and the fact that they had bought the two properties in their current configuration, i.e., they had not created the hardship.

Mr. Sterenberg asked if the variance was approved, if both the parcels would be buildable. Ms. Stefforia said yes they would and that was the basis of the applicant's request.

Mr. Smith asked if there would be any expense to combine the properties. Mr. Lewis said that there would not be any significant cost to combine the parcels, but there would be a loss of potential revenue in the sale of the extra lot.

Ms. Bell pointed out to the applicant that the ZBA members could not consider financial gain or loss in their deliberations. Mr. Lewis said he understood.

Ms. Borgfjord asked about the size of the barn which the Church wanted to maintain. Mr. Lewis said it was approximately 25' x 50'. She asked how the barn would be accessed, and Mr. Lewis said they would be moving the door from the side of the barn facing the road to the side of the barn facing the Church.

Ms. Borgfjord asked, if the Board members granted the variance, whether they would be violating the Zoning Ordinance because of the pole barns being located in front of the Church in relationship to the road. Ms. Stefforia said the Township now had the ability to put pole barns in front of homes under certain circumstances, and this could be approved administratively as it is pre-existing.

Mr. Smith asked, if the two parcels were approved, as proposed, if they could each have a curb cut. Ms. Stefforia indicated that they could, or the Board could require that the parcels share a drive.

Hearing no other questions, the Chairman asked if there was public comment.

Pastor Mark Swank, the Pastor of Lighthouse Community Church, told the Board that he would like to stress the fact that the Church purchased the property in its current configuration, and he saw no harm in granting the variance given the fact that the parcels were adjacent to an existing subdivision with similar lot sizes.

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

Mr. Smith said he would like to see the lots combined before a portion of the rear was divided off.

The Chairman said he was also uncomfortable in granting the variance as requested. He said he was uncomfortable in making the properties less compliant rather than more compliant as they did in most of their deliberations.

Ms. Stefforia said she understood the request factually, but there were other alternatives which would allow the property to be brought into compliance.

Mr. Sikora said he also did not see the connection to Rose Arbor. He said they were two totally different types of development. Mr. Sikora also said he did not want to see additional curb cuts in the area, and he did not see a positive reason to grant the variance.

Ms. Bell pointed out the fact that the Church had not created the divisions, and if the Township was not reviewing these types of splits until 1997, it appeared to her that it was not self-created, and she questioned whether the Township should not grant the variance since it had not stopped the splitting of the property.

Attorney Porter pointed out that prior to 1997 people were still on notice that they to comply with local zoning when dividing their property. The fact that they did not have to get Township approval before recording the deeds did cause some difficulty, but that was a result of an error by the property owner, not the Township.

Ms. Stefforia pointed out that there were many existing parcels in the Township which were divided improperly and were not buildable. Attorney Porter cautioned the Board about granting a variance because it had been divided prior to 1997 because it would open the door to the other similarly-situated properties. The Chairman said that is why he said he was concerned about setting an adverse precedent. Ms. Stefforia also noted that is why, in the past, if the properties could be brought more into compliance that is what the Township was looking to do.

Mr. Smith asked if they combined the properties, would they be in compliance? Ms. Stefforia said they would comply with the frontage requirements but not the area requirements if land is added to the Church parcel as proposed. Mr. Smith asked if they could even consider that as a separate request. Attorney Porter and Ms. Stefforia both agreed that the notice for a variance request was broad enough that they could consider such a request. Mr. Sikora said he did not want to spend the time reconfiguring the properties because the Board might do it in a way which would not work for the Church. He suggested that if the Church wanted to come back with a different request, that it do that at a later date. Ms. Stefforia said she agreed with Mr. Sikora; the applicant should be the one to reconfigure the property and resubmit a request for a variance.

Mr. Smith made a motion to deny the variance as requested. The motion was seconded by Mr. Sikora. The Chairman called for a vote on the motion. The motion passed unanimously.

**HEIM – SIDE YARD SETBACK VARIANCE – FROM SECTION 64 OF ZONING ORDINANCE TO ALLOW A REDUCED SIDE YARD SETBACK FOR AN ACCESSORY BUILDING – 8269 WEST MAIN STREET – (PARCEL NO. 3905-16-452-010)**

The Chairman announced that the next Agenda item was a request for a side yard setback variance to allow a reduced side yard setback for an accessory building at 8269 West Main Street, Parcel No. 3905-16-452-010. The Chairman asked to hear

from Ms. Stefforia. Ms. Stefforia submitted her report to the Board dated November 22, 2011, and the same is incorporated herein by reference.

Ms. Stefforia pointed out that it was discovered by the applicant that they had actually built their garage across the property line onto the adjoining neighbor's property. She said this was done in 1995, and at that time, the building setback requirement was 10 feet. She noted that, since that time, the Zoning Ordinance was changed, requiring accessory buildings over 200 square feet to have a setback equal to their height, which in this case would require an 18-foot setback. She said the applicant was asking to reduce that setback to 10 feet in a manner consistent with the setback required at the time the garage was built.

Ms. Stefforia proceeded to take the Board through a review of the standards for approval of a nonuse variance as set forth more fully in her report.

The Chairman asked if there were any questions. Hearing none, he asked to hear from the applicant.

Mr. James Heim introduced himself to the Board. He said he became aware of the setback problem when his neighbors did a survey of their property last year. His neighbor, Dr. Jonathan Hopkins, said he was willing to sell him sufficient property to correct the situation, but wanted to sell the least amount of property possible, and he was asking that the Board consider granting the variance of 8 feet, which would allow him to have a 10-foot setback in compliance with the setback requirements which were in place when the accessory building was constructed.

Ms. Borgfjord asked the applicant, since he came forward voluntarily, if he was simply doing this to clean up the matter, or if there was a pending sale. Mr. Heim said that he was making his request to clean up the record, and he had no intentions of selling his property at this time.

The Chairman asked if there were any other questions from the Board.

Ms. Borgfjord asked the Township Attorney if the Township had any responsibility in this regard. Attorney Porter indicated that the Township had no responsibility and that the Township tells applicants for building permits to make sure they know where their lot lines are located prior to construction because the Township cannot survey or check all of the lot lines within the Township.

Mr. Smith said he thought the request was reasonable, and he thought the fact that the Zoning Ordinance had changed in the interim should not work to the disadvantage of Mr. Heim.

The Chairman said he thought the applicant was making a good-faith effort to correct this matter, and he complimented Mr. Heim for being proactive.

Mr. Sikora said that he also did not want to slap the applicant in the face for trying to correct the problem. He said the fact that the applicant was trying to make a reasonable effort to correct this setback matter should be rewarded, not punished. He said he was not sure exactly where the number should be, but the applicant should get some relief.

The Chairman said Mr. Heim could not meet the current Zoning Ordinance setback requirements and that the purpose for the variance was to try to at least reach a middle ground.

Mr. Smith said that he did not think they should hold the applicant's feet to the fire and thought restoring the setback to the 1995 requirements would be sufficient.

Ms. Borgfjord asked if the accessory building was torn down and rebuilt, would it have to meet the new Ordinance requirements. Ms. Stefforia said it would.

The Chairman asked if there was any further discussion. Hearing none, he said he would entertain a motion.

Mr. Smith made a motion to grant the variance as requested. Ms. Borgfjord asked for a friendly amendment to indicate that the variance was subject to Mr. Heim actually purchasing the additional property as represented by the applicant from Dr. and Mrs. Hopkins. Mr. Smith agreed to the friendly amendment. Ms. Borgfjord seconded the motion. The Chairman asked for further discussion, and hearing none, called for a vote on the motion. The motion passed unanimously.

#### Adoption of 2012 Meeting Dates

Ms. Stefforia introduced the proposed meeting dates for 2012. Ms. Borgfjord made a motion to accept those dates for calendar year 2012. The motion was seconded by Mr. Sikora. The Chairman called for a vote on the motion. The motion passed unanimously.

#### Public Comment on Non-Agenda Items

None.

#### Any Other Business

None.

## Adjournment

There being no further business to come before the Board, the Vice Chairman adjourned the meeting at approximately 4:15 p.m.

Minutes Prepared:  
November 29, 2011

Minutes Approved:  
April 24, 2012