

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD NOVEMBER 28, 2006

Agenda

**HOWARD - ACCESSORY BUILDING REVIEW - 4194 NORTH 6TH STREET -
(PARCEL NO. 3905-03-155-016)**

**BONTRAGER - VARIANCE - NONCONFORMING STRUCTURE - 7981 WEST MAIN
STREET - (PARCEL NO. 3905-16-430-030)**

**THE ROCK - SITE PLAN AMENDMENT - 2901 NORTH 10TH STREET - (PARCEL NO.
3905-11-230-038)**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, November 28, 2006, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Millard Loy, Chairman
Mike Smith
Roger Taylor
Dave Bushouse
Duane McClung

MEMBERS ABSENT: None

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

Call to Order

The Chairman, Millard Loy, called the meeting to order at approximately 3:00 p.m.

Minutes

The Chairman said the first item for consideration were the Minutes of October 24 and November 3, 2006. Mr. Smith made a motion to approve the Minutes as submitted. The motion was seconded by Mr. Taylor. The Chairman called for a vote on the motion, and the motion passed unanimously.

HOWARD - ACCESSORY BUILDING REVIEW - 4194 NORTH 6TH STREET - (PARCEL NO. 3905-03-155-016)

The Chairman said the next item was the review of a proposed accessory building to be placed between the house and the street. He said the subject property was located at 4194 North 6th Street, Parcel No. 3905-03-155-016. The Chairman asked to hear from the Planning Department. Mr. Brian VanDenBrand submitted his report to the Zoning Board of Appeals dated November 28, 2006, and the same is incorporated herein by reference.

Mr. VanDenBrand explained to the Board that the applicant wanted to construct an agricultural/storage building on a residential property that would be closer to 6th Street than the principal residence. He said that the building would measure 64' x 54', with a total ground area of 3,456 square feet. He said, given the provisions of Section 78.800, Zoning Board of Appeals' approval was required prior to construction. Mr. VanDenBrand explained that the total floor area of the residence was 4,567 square feet, with a guest house of 960 square feet. He said he thought the parcel was 40 acres in size and proceeded to show the Board the approximate location of the proposed building on an aerial of the subject property. Mr. VanDenBrand then took the Board through a review of Section of 78.820, as more fully set forth in his report.

The Chairman asked if there were any questions from Mr. VanDenBrand. Hearing none, the Chairman asked to hear from the applicant. Mr. Willis Howard introduced himself to the Board. He explained that he did actually own 80 acres. He explained that he also owned the 40 acres immediately east of the 40 acres which was shown on the overhead.

The Chairman explained to the applicant that, in the past, they had requested plantings in front of the building and wondered if the applicant would be agreeable to installing some additional trees. The applicant said that, while he would be willing to plant some fruit trees, he really did not see a need since it was not visible from the road. Mr. McClung said he had been in the area and that given the distance from the road, and the topography, he did not think the access building would be visible from the road.

Mr. Bushouse asked the applicant if this was going to be primarily for residential use. The applicant said it would have some agricultural storage use, but his use of it

would be purely residential. Mr. Bushouse explained that the Board was asking applicants to execute a deed restriction to make sure that the accessory building was not used for unpermitted commercial purposes. The applicant expressed some concern, at which point, Attorney Porter noted that it could continue to be used for agricultural storage purposes, as well as all residential purposes, but not commercial or nonagricultural commercial purposes, since those uses were not permitted within the applicant's zoning district. The applicant, after counsel's clarification, said that he would agree to execute the deed restriction.

The Chairman asked if there was anyone in the audience who wanted to comment. Ms. Jean Bourner introduced herself to the Zoning Board of Appeals. She said that she had sold the property to the applicant's predecessor in interest and was concerned about how the property was being proposed to be used. She said she had no objections so long as the property was used to store agricultural equipment or other personal items, but she did not want to see it used as some type of commercial warehouse. Mr. VanDenBrand explained that commercial uses would not be permissible under the Township Zoning Ordinance.

The Chairman called for Board deliberations. He began by saying that he thought the proposed building would be appropriate, so long as some apple trees or grape vines were planted in front of it to insure appropriate screening from the road right-of-way. Mr. Smith said he agreed. Mr. Taylor said he did not object to the proposed building, provided the applicant was willing to execute the appropriate deed restrictions to ensure that it was not used for general commercial purposes at some later date.

The Chairman said he would entertain a motion, at which point, Mr. Smith made a motion to approve the proposed building, provided the requisite deed restrictions were placed on the property. The motion was seconded by Mr. McClung. The Chairman called for a vote on the motion, and the motion passed unanimously.

BONTRAGER - VARIANCE - NONCONFORMING STRUCTURE - 7981 WEST MAIN STREET - (PARCEL NO. 3905-16-430-030)

The Chairman said the next item for consideration was a variance from Section 62.152 to allow an accessory building to be rebuilt in its current location which did not satisfy the side yard setback requirement. He said the subject property is located at 7981 West Main Street, Parcel No. 3905-16-430-030. The Chairman asked to hear from the Planning Department. Mr. VanDenBrand submitted his report to the Board dated November 28, 2006, and the same is incorporated herein by reference.

Mr. VanDenBrand explained to the Board that an accessory building, which had existed on the property since 1945 and set back approximately only two feet from the property line, had been hit not once, but twice, by cars traveling across West Main Street from the 6th Street intersection. He said, given the current setback requirements

and the nonconforming structure provisions of Section 62.152, the applicant could not rebuild his garage on the existing concrete slab without a variance from the Zoning Board of Appeals. Mr. VanDenBrand then took the Board through a review of the variance standards for construction of accessory buildings, as more fully set forth in his report.

The Chairman asked if there were any questions of the Planning Department. Mr. Taylor asked Mr. VanDenBrand what the distance was of the existing pole barn immediately south of the damaged accessory building. Mr. VanDenBrand said it was perhaps a few feet further to the west, but not to any significant degree.

The Chairman then asked to hear from the applicant. Mr. Bontrager introduced himself to the Zoning Board of Appeals. He explained that the pole barn had been in its present location approximately 20 years and, at that time, its location had been approved by the Township. He said that he had looked at various plans but that, unless he was allowed to reconstruct on the existing concrete pad, he could not reconstruct his garage. Mr. Bontrager then asked some questions regarding the Building Code. Attorney Porter noted that the Zoning Board of Appeals was only convened for the purpose of determining the side yard setback and applicable variance and could not make any decisions regarding the Building Code. The Chairman explained that the applicant would have to comply with the Code regardless of what the Zoning Board of Appeals decided. Concern was raised whether the applicant could build a stick-built building on the existing pad, or whether he would have to build a pole barn. Again, Ms. Bugge reiterated that all the Zoning Board of Appeals should be concerned with is the granting or denying of the setback variance request.

The Chairman asked if there were any comments from the audience. Hearing none, he called for Board deliberations. After a brief discussion, Mr. Smith made a motion to grant the proposed variance. Mr. McClung seconded the motion. Mr. Bushouse, during discussion, noted that perhaps the Zoning Board of Appeals should grant a greater variance than requested. Mr. Bushouse's reasoning was that if they allowed the variance to build on the existing pad, but Mr. Bontrager could not meet Code for the foundation, the applicant might actually need a further reduction in the setback to build a pole barn over the current pad. With that, Mr. Smith rescinded his motion and Mr. McClung his second. Mr. Smith then made a motion to grant a variance to build on the existing pad or within one foot outside of the existing concrete pad, and to establish a side yard setback variance accordingly. The motion was seconded by Mr. McClung. The Chairman called for a vote on the motion, and the motion passed unanimously.

THE ROCK - SITE PLAN AMENDMENT - 2901 NORTH 10TH STREET - (PARCEL NO. 3905-11-230-038)

The Chairman said the next item on the agenda was consideration of a site plan amendment to allow temporary use of a tent for a gathering space and temporary parking on unpaved areas of the site. He said the property was located at 2901 North 10th Street, Parcel No. 3905-11-230-038. There being no one to represent the applicant in attendance, the Chairman asked that the Planning Department contact the applicant to see if someone could be present for discussion. The meeting was temporarily adjourned.

After a ten minute recess, the meeting was re-convened when the applicant's representative arrived. The Chairman asked to hear from the Planning Department. Ms. Mary Lynn Bugge submitted her report dated November 28, 2006, and the same is incorporated herein by reference. Ms. Bugge explained that the location of the subject property was on 10th Street, which housed the Rock: Kalamazoo Four-Square Church. She explained that the property consisted of 9.9 acres and had a building approximately 3,900 square feet in size, along with a parking lot for 35 vehicles. She said the church had recently been reactivated and was holding two Sunday services. Prior to submission of the request, they had installed a 1,368 square foot tent which they proposed to use for up to six months as a reception area, but not for services. She said she thought the tent was erected sometime during the last week in October. Ms. Bugge then took the Board through the site plan review provisions of Section 82.800, as more fully set forth in her report.

The Chairman asked if there were any questions of the applicant. Hearing none, the Chairman asked that the audience member in attendance who had asked to speak previously reiterate her concerns. Ms. Robin Meyer said she lived on 10th Street. She said she was concerned that the tent looked very much like a circus tent and thought it was inappropriate in the area. She said in her opinion, it was an eyesore.

The Chairman then asked to hear from the church representative. Ms. Jessica Blomgren introduced herself to the Board. She said they were looking to make their site more accessible and wanted to have a hospitality space. She said there was not sufficient area inside to have a hospitality area, since the church building only had a worship area and a couple of classrooms. She said they had met all of the Building Code requirements for heating and electric. She said, in addition, they wanted to plan some tentative overflow parking if necessary, but only after the ground was frozen.

Mr. Bushouse asked Ms. Blomgren why they had not used one of the slabs located west of the sanctuary. Ms. Blomgren said they were using those as playgrounds and that if the tent were back there, it would be quite a walk from the building, and therefore, not suitable for a hospitality area. She said it would mean having to walk outside in the mud, rather than being located immediately adjacent to the existing sanctuary. The Chairman asked the applicant if they had a sub-floor in the tent. Ms. Blomgren said they had not put down a sub-floor, but they had put down gravel and laid carpet over it, and had taken all other necessary steps required by the Building Department.

Mr. Bushouse asked how it was working out. Ms. Blomgren said it was working out very well. She said they had two services: one ending at 10:30 a.m. and the other beginning at 11:00 a.m.. She said the hospitality tent was only used 20 to 30 minutes and allowed them to transition from one service to the next.

The Chairman asked, with only 30 to 40 people attending, why they could not use the existing structure. Ms. Blomgren again noted they only had two Sunday school rooms and those were occupied during both services and were not suitable for a hospitality room. She said other than that, they simply had the sanctuary and did not have any additional room inside. Attorney Porter asked if it was possible to reduce the size of the tent. Ms. Blomgren said that it was not. Ms. Bugge asked when the six months had expired what the applicants would use at that time. Ms. Blomgren said they would build at that time.

Mr. McClung asked if they were serving coffee in the tent. Ms. Blomgren said they were serving coffee in the tent, but they were not making it in the tent. The Chairman asked for clarification regarding heating. Ms. Blomgren said they were heating the space, per the required Building Code requirements.

Mr. Bushouse raised a concern about the use of this tent and the possible uses of similar tents in the future. He said he thought they would be setting quite a precedent in allowing use of a tent for such a long period of time. Mr. Bushouse then asked if they would be using the tent in the future. Ms. Blomgren said they would like to use it in the future for weddings or special celebrations, etc., but not on a continuous basis as they were proposing now. Ms. Bugge said the Building Department advised that the tent could be used up to six months under the Building Code, but it would have to be taken down after that time. Mr. Bushouse again expressed concern that the Board could be setting quite a precedent with the decision that was made in this case.

The applicant was asked by Mr. McClung, if they were given until April 1st, would it be brought down at that point in time. Ms. Blomgren said they would propose to bring it down at the end of April.

Mr. Smith said if they wanted to use it in the future, he would certainly prefer that they ask in advance. Ms. Blomgren said it was their intent to be in compliance with all Township Ordinances and apologized for not previously requesting approval.

The Chairman asked if the tent had been approved for appropriate snow-load. Ms. Blomgren said that it had and that she could provide them with the information regarding the structure itself and the installation.

The Chairman asked if there were any further questions, and hearing none, called for Board deliberations. The Chairman began by saying he was very concerned about setting an adverse precedent for the use of this type of structure, as well as the

proposed parking lot. Mr. Smith said he thought a six-month approval was too long for a temporary structure of this nature. Mr. Bushouse expressed similar concerns. He also said that whatever precedent they set in this case would be applicable to any other church within the community. Ms. Bugge then raised a question as to whether the applicant could be denied, since it appeared it was a building as defined by the Township Zoning Ordinance. Attorney Porter, after a brief consideration, commented that he was not in a position to answer that question and asked the Board to table the matter so he could review the law on the issue and provide the Board with an opinion. Attorney Porter noted that it was certainly a different type of structure and he was as concerned about setting an adverse precedent without a more thorough analysis of the issue.

Mr. McClung made a motion to table this matter until December 19, 2006, at 3:00 p.m. The motion was seconded by Mr. Smith. The Chairman called for a vote on the motion, and the motion passed unanimously.

Other Business

None

Adjournment

There being no further business to come before the Zoning Board of Appeals, the Board adjourned at approximately 4:45 p.m.

OSHTEMO CHARTER TOWNSHIP ZONING BOARD OF APPEALS

By: Millard Loy, Chairman

By: Mike Smith

By: Roger Taylor

By: Duane McClung

By: Dave Bushouse

Minutes Prepared:

December 7, 2006

Minutes Approved:

_____, 2006