

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD OCTOBER 22, 2013**

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**Agenda**

**REQUESTS FOR VARIANCES FROM SECTIONS 66.201 AND 33.401 OF THE OSHTEMO CHARTER TOWNSHIP ZONING ORDINANCE TO ALLOW LAND DIVISION CONFIGURATIONS WHICH COULD RESULT IN NONCONFORMING PARCELS LOCATED ON THE NORTH SIDE OF ATLANTIC AVENUE, SOUTH OF PARKVIEW STREET, WHICH WOULD NOT SATISFY MINIMUM AREA AND/OR MINIMUM FRONTAGE REQUIREMENTS AND/OR WHEN ADDED TO ADJOINING PARCELS WOULD EXCEED THE 4:1 DEPTH TO WIDTH RATIO REQUIRED. THE PROPERTY IS LOCATED IN THE VC-VILLAGE COMMERCIAL DISTRICT AND THE VILLAGE FORM BASED CODE OVERLAY DISTRICT. (PARCEL NO. 3905-35-210-080)**

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A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, October 22, 2013, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Roger Taylor, Chairperson  
Lee Larson  
Millard Loy  
Neil Sikora, First Alternate  
L. Michael Smith  
James Sterenberg, Second Alternate

MEMBERS ABSENT: Cheri Bell

Due to Ms. Bell's absence, Mr. Sikora was called upon to act as a sitting member for the meeting.

Also present were Greg Milliken, Planning Director, (arrived at approximately 3:07 p.m.); James Porter, Attorney; Martha Coash, Meeting Transcriptionist; and four interested persons.

**Call to Order and Pledge of Allegiance**

The meeting was called to order by Chairperson Taylor at approximately 3:00 p.m., and the "Pledge of Allegiance" was recited.

## **Public Comment on Non-Agenda Items**

Chairperson Taylor called for public comment on non-agenda items. Hearing none, he proceeded to the next agenda item.

## **Approval of the Minutes of September 24, 2013**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of September 24, 2013. No changes were noted. Mr. Smith made a motion to approve the minutes as presented. Mr. Larson seconded the motion. The motion was approved unanimously.

**REQUEST FOR VARIANCES FROM SECTIONS 66.201 AND 33.401 OF THE OSHTEMO CHARTER TOWNSHIP ZONING ORDINANCE TO ALLOW LAND DIVISION CONFIGURATIONS WHICH COULD RESULT IN NONCONFORMING PARCELS LOCATED ON THE NORTH SIDE OF ATLANTIC AVENUE, SOUTH OF PARKVIEW STREET, WHICH WOULD NOT SATISFY MINIMUM AREA AND/OR MINIMUM FRONTAGE REQUIREMENTS AND/OR WHEN ADDED TO ADJOINING PARCELS WOULD EXCEED THE 4:1 DEPTH TO WIDTH RATIO REQUIRED. THE PROPERTY IS LOCATED IN THE VC-VILLAGE COMMERCIAL DISTRICT AND THE VILLAGE FORM BASED CODE OVERLAY DISTRICT. (PARCEL NO. 3905-35-210-080)**

As Mr. Milliken was not present at the start of the meeting, Chairperson Taylor asked Attorney Porter to provide background regarding the lot dimension variances requested by Oshtemo Charter Township.

Attorney Porter referred to Exhibit 1 provided to the Board that showed the parcel of land north of Atlantic Avenue previously owned by AT&T which blocked access to Atlantic for a number of properties to the north. The easement property upon which the Township Community Center is located was first purchased by the Township from AT&T. Then, previous Planning Department staff members negotiated with AT&T about the Atlantic Avenue property over a period of several years. Agreement was finally reached for AT&T to transfer the Atlantic Avenue easement to the Township at no cost to be used for public benefit.

Attorney Porter said the Township is now at the point where it would like to divide this property to create individual parcels that abut the properties to the north and offer them to the people who own the existing, adjacent properties to provide the opportunity to open them up to additional development or access. Approval of the request before the Board would allow creation of small, individual parcels with certain restrictions and conditions. Existing properties already violate the 4:1 depth to width ratio standard of the Ordinance; the combination of these small parcels with the existing properties would exacerbate that violation and require a variance.

Attorney Porter explained there would be a maximum of three drives onto Atlantic from the property to allow ingress/egress via Atlantic Avenue, but that they could be changed by agreement among the parties. The only business that currently has a drive is the Veterinary Clinic.

Attorney Porter concluded by saying it was the goal to provide a legal document and easements that would spell out who can do what, when and how. Much time was devoted to writing a document that would help both property owners and Village development, keeping Township goals for access management in mind. The Township is trying to provide an opportunity, but it is unknown how the opportunity will be used or how it will evolve.

Mr. Milliken arrived at about 3:07 p.m. and Chairperson Taylor asked him for his staff report.

Mr. Milliken noted that as he had arrived late to the meeting, he might be restating information Attorney Porter provided earlier and apologized if that were the case. He said the Township owns parcels in the block surrounded by 9<sup>th</sup> Street, Parkview Avenue, and Atlantic Avenue. These include the Community Center, the land south of the Community Center, and the former AT&T right of way along the north side of Atlantic.

Mr. Milliken explained that providing access to Atlantic via the Township property to those properties that front on Parkview or 9<sup>th</sup> Street, like the Veterinary Clinic has done, would further Township goals to improve traffic circulation and reduce congestion. Customers and employees would have increased alternatives for ingress and egress thereby relieving congestion on Parkview and likely the nearby 9<sup>th</sup> Street / Stadium / Parkview interchanges.

Mr. Milliken pointed out that while it is only the Veterinary Clinic that has sought access to Atlantic to date, it is reasonable to assume that others will seek similar accommodations in the future, once they realize it is possible and understand the goals of the Township. Therefore, the Township is in the process of finalizing a series of easements and policies that would allow for the property to be split and conveyed to the adjacent property owners to the north according to the Access Management Plan.

Mr. Milliken said the proposed policy would establish a maximum of three access points along the Township property. Two easements would be created within the property prior to distribution to the adjacent properties. One would be for a non-motorized facility; the second would be a cross-access easement that would allow for a shared, private drive system to be constructed between adjacent properties utilizing the limited access points. For example, if a property adjacent to the Vet Clinic redevelops and desires access to Atlantic, it would not be permitted an access point onto Atlantic. But, the cross-access easement would allow for a connection to the existing drive and use of the existing access point.

It is anticipated the Township Board will review and approve the proposed easements and agreements for the Atlantic property very soon. It will then be presented to property owners who will have the option to accept the property on Atlantic at this time, wait until later, or not take it at all. It is impossible to predict how people will react or who will choose which course of action. It primarily depends on each property owner's plans for the future of their property and their own development goals.

Mr. Milliken noted that as these choices are made, the Atlantic Avenue property will be split leaving smaller remnant parcels behind. Some of these may not conform to the Ordinance requirements. In addition, the combination of the land on Atlantic to the adjacent property to the north may result in creation of a new parcel that exceeds the 4:1 depth to width ratio requirement. Because it is challenging to know exactly what order requests will come in and what configurations will be created and will remain, it is difficult to know whether variances will be required and what variances will be required, resulting in the proposed process.

Mr. Milliken said Section 33.401 provides the minimum lot frontage requirement for the Village Commercial district. The minimum frontage for a new parcel is 65 feet when there is shared access and/or compliance with access management guidelines. Because of the easements being created, there will be a shared access system in place. All of the parcels have frontage in excess of 65 feet. Thus, if the property is divided like this, no variance from 33.401 is required. However, the possibility exists that these lines could be relocated or that portions of certain properties could be combined with another leaving a narrower portion than currently illustrated. As a result, he suggested the lot frontage variance be included.

Chairperson Taylor asked if Board members had questions regarding the request.

Mr. Sikora asked if the person eligible for parcel A wants it, but the person eligible for parcel B does not want their parcel, does that mean that the person who has parcel A cannot connect to the driveway if they need to cross parcel B to access it?

Mr. Milliken said parcel A could still connect. That is the purpose of the cross easement.

Attorney Porter added that in that scenario the owner of parcel A would be allowed to construct a connection to the drive regardless of what the owner of parcel B does, but if the owner of parcel B wants to use the access, they would be required to pay for their portion of installation and would be responsible for maintenance according to a proportional formula and provisions.

Mr. Larson asked whether the easement includes provisions for maintenance and if so, who determines when maintenance is needed.

Attorney Porter replied the easement does include maintenance provisions; the parties have to agree regarding maintenance. If they do not, the Township will maintain the drive and will bill the owners.

Mr. Larson asked whether the access points are fixed.

Attorney Porter said the access points are proposed rather than fixed. What is fixed is a maximum of three. Suggestions from property owners would be considered for approval. How the property will be used is not known and will evolve; the Township is trying to provide an opportunity.

Mr. Loy confirmed with Attorney Porter that the Veterinary Clinic already has an access drive. Attorney Porter noted that was correct.

Chairperson Taylor asked whether a neighbor who would want to use the Veterinary Clinic's drive would be responsible for paving access to that drive.

Attorney Porter responded that they would need to pay for that paving as well as a proportional amount for the existing drive to the road. There is a connection cost to the person adding access.

In response to a question from Mr. Smith, Attorney Porter said one parcel owner could not give or sell the easement to a neighboring parcel owner. The Township's intent is to offer the land to the adjacent property owner to the north. He also confirmed for Chairperson Taylor that if a property owner does not accept the transfer of land from the Township the land will remain Township property. There will be no cost or nominal cost to the property owner to accept the property. The Township goal is not to generate funds, but rather to make the properties more usable and developable and to help with Township development goals.

Mr. Larson confirmed with Attorney Porter that the Township will retain an easement on the parcel for a non-motorized facility. It is expected that any resulting assessment increases would be small and restricted.

Mr. Milliken noted that since the 4:1 ratio for existing properties along Parkview would be exacerbated by the additional land, this variance will preclude each individual property's owner from having to come before the board to ask for a variance. An infinite number of scenarios could come up – this is an attempt to cover all bases.

Mr. Sterenberg asked if existing owners will have the right of first refusal in the future.

Attorney Porter said they would; the Township does not want to aid in one neighbor's gain over another. The document is written to eliminate that possibility.

Mr. Sterenberg noted that it would be different if someone came in and bought the entire property.

Chairperson Taylor pointed out that the only eligible property owner for each easement is the owner to the north. If that property owner declines the offer from the Township, the parcel will remain Township property.

The Chairperson asked for public comment. There being none, he moved to Board Deliberations.

Chairperson Taylor asked for a motion on the variance request as presented.

Mr. Sikora moved to grant approval to Oshtemo Charter Township from Sections 66.201 and 33.401 of the Zoning Ordinance to allow potential land division configurations from PIN#3905-35-210-080 that may result in parcels that do not satisfy minimum area and/or frontage requirements and/or when added to the adjoining properties would exceed the 4:1 depth to width ratio requirements. This approval shall apply to this parcel and its descendants only. Mr. Larson supported the motion to approve the request. The motion was approved unanimously.

### **Any Other Business / ZBA Member Comments**

Mr. Sikora encouraged the group to read “Farm City: The Education of an Urban Farmer,” by Novella Carpenter, a current Kalamazoo Public Library “Reading Together” title. It would be particularly interesting to planning and zoning members considering the increased interest in urban farming.

### **Adjournment**

Chairperson Taylor noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, he adjourned the meeting at approximately 3:40 p.m.

Minutes prepared:  
October 24, 2013

Minutes approved:  
November 26, 2013