

7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334  
269-216-5220 Fax 375-7180 TDD 375-7198  
www.oshtemo.org

**NOTICE  
OSHTEMO CHARTER TOWNSHIP  
Zoning Board of Appeals**

**Tuesday,  
August 23, 2016  
3:00 p.m.**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Approval of Minutes: August 9, 2016
5. **PUBLIC HEARING: Variance Request (Tobin Schaap, 1640 South 4<sup>th</sup> Street)**  
Applicant is requesting a variance from Subsection 64.100 of Section 64.00 Setback and Side Line Spacing of the Zoning Ordinance to reduce the front building setback from 70 feet to 30 feet from the 4<sup>th</sup> Street right-of-way in order to construct an accessory building. The subject property is zoned RR: Rural Residential. Parcel No. 3905-29-230-040.
6. **PUBLIC HEARING: Variance Request (Hurley & Stewart, LLC, 2800 South 11<sup>th</sup> Street)**  
Applicant is requesting a variance from Subsection 64.100 of Section 64.00 Setback and Side Line Spacing of the Zoning Ordinance to reduce the front building setback from 70 feet to 40 feet from the 11<sup>th</sup> Street right-of-way in order to construct an addition to an existing building. The subject property is zoned R-3: Residence District. Parcel No. 3905-25-335-040.
7. Any Other Business / ZBA Member Comments
8. Adjournment

**Policy for Public Comment**  
**Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be board discussion prior to call for a motion.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment or Citizen Comment on Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 5/9/2000)  
(revised 5/14/2013)

**Policy for Public Comment**  
**6:00 p.m. "Public Comment"/Portion of Township Board Meetings**

At the commencement of the meeting, the Supervisor shall poll the members of the public who are present to determine how many persons wish to make comments. The Supervisor shall allocate maximum comment time among persons so identified based upon the total number of persons indicating their wish to make public comments, but no longer than ten (10) minutes per person. Special permission to extend the maximum comment time may be granted in advance by the Supervisor based upon the topic of discussion.

While this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 2/27/2001)  
(revised 5/14/2013)

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD AUGUST 9, 2016**

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**Agenda**

**PUBLIC HEARING: VARIANCE REQUEST (NATIONAL FLAVORS, 7700 STADIUM DRIVE)**

**DANIEL HINKLE, REPRESENTING NATIONAL FLAVORS, IS REQUESTING A VARIANCE FROM THE ZONING ORDINANCE, SPECIFICALLY SECTION 68.301: LOADING AND UNLOADING OF THE OFF-STREET PARKING ORDINANCE TO ALLOW LOADING/UNLOADING IN THE FRONT YARD. (PARCEL #3905-34-155-050)**

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A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, August 9, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: James Sterenberg, Vice Chairperson  
Nancy Culp  
Millard Loy  
L. Michael Smith, Alternate

MEMBERS ABSENT: Cheri Bell, Chairperson  
Bob Anderson, Alternate  
Neil Sikora

Also present were Julie Johnston, Planning Director, James Porter, Attorney, Martha Coash, Meeting Transcriptionist, and three interested persons.

**Call to Order and Pledge of Allegiance**

Vice Chairperson Sterenberg called the meeting to order and invited those present to join in reciting the "Pledge of Allegiance."

**Public Comment on Non-Agenda Items**

There were no public comments on non-agenda items.

## **Approval of the Minutes of July 26, 2016**

The Vice Chairperson asked if there were any additions, deletions or corrections to the minutes of July 26, 2016. Hearing none, he asked for a motion of approval.

Mr. Loy made a motion to approve minutes of July 26, 2016 as presented. Mr. Smith supported the motion. The motion was approved unanimously.

### **PUBLIC HEARING: VARIANCE REQUEST (NATIONAL FLAVORS, 7700 STADIUM DRIVE)**

#### **DANIEL HINKLE, REPRESENTING NATIONAL FLAVORS, IS REQUESTING A VARIANCE FROM THE ZONING ORDINANCE, SPECIFICALLY SECTION 68.301: LOADING AND UNLOADING OF THE OFF-STREET PARKING ORDINANCE TO ALLOW LOADING/UNLOADING IN THE FRONT YARD. (PARCEL #3905-34-155-050)**

Vice Chairperson Sterenberg said the next item was a request for a variance for National Flavors and asked Ms. Johnston to review the application.

Ms. Johnston said the applicant, representing National Flavors, LLC, intends to develop the subject property as a manufacturing facility, which is a use permitted by right in the I-1 zoning district. The parcel in question is approximately 10 acres and has frontage on both Stadium Drive and Stadium Park Way. The applicant would like to place the front façade of the building facing Stadium Drive, which is the more visible frontage of the parcel. To accomplish this, loading and unloading would have to take place along Stadium Park Way, which is also considered a front yard for this parcel. Placing the loading/unloading at this location necessitates the request for a variance to *Section 68.301: Loading and unloading*, which states that all loading/unloading must take place in a side or rear yard. Front yards are determined by the definitions indicated in *Section 11.355: Lot, parcel or building site frontage* and *Section 11.580: Yard, front*.

Ms. Johnston walked through the relevant standards for review by the Board in considering this variance request.

First to be considered was whether conformance to the Ordinance was *Unnecessarily Burdensome*.

Ms. Johnston commented the Ordinance requirement for placing loading/unloading in the side and rear yards is to help screen this type of activity from the public right-of-way. The difficulty with this property is the two front yards, Stadium Drive and Stadium Park Way. While the property is currently vacant, which provides opportunities to place the loading/unloading in the side or rear yard, the outcome does not meet the screening protections intended. Placing the loading/unloading in the side yard would not screen the activity from Stadium Park Way, as the side of the building is

visible from this public roadway. Placing the loading/unloading in the rear yard also does not accomplish this goal because of its visibility from Stadium Drive.

In addition, she said, placing the loading/unloading within either the side or rear yard would require additional impervious surface on this site, increasing storm water runoff and reducing the amount of the parcel that could stay in a natural state. It would also require a reconfiguration of the building, which would alter the location of the front façade from Stadium Drive.

Finally, Ms. Johnston said, the property that faces this parcel along Stadium Park Way is also zoned I-1: Industrial. A pending application has been presented to the Planning Commission for a mini-storage facility at this location. Immediately to the north of this parcel is Harrison Packing, which has their loading/unloading area in the side yard adjacent to the National Flavors parcel. The placement of loading/unloading in the front yard of National Flavors should have minimal impact on these industrial uses. In addition, the planned landscape screening shown on the concept plan immediately adjacent to the loading/unloading area and along both public roadways will help screen the use from the more visible frontage of the parcel, Stadium Drive.

Ms. Johnston noted the second standard to consider was *Substantial Justice*.

Per section 68.301 of the Oshtemo Township Zoning Ordinance, she said, all properties are required to have their loading/unloading take place in the rear or side yards. Planning staff feels that while such a requirement is generally appropriate for office, commercial and retail properties because of their visibility to the public, industrial properties could be viewed differently. In this specific case, the only public that would access Stadium Park Way would be those wishing to access either the subject site, Harrison Packing or the pending mini-storage facility.

Ms. Johnston told the Board that Staff was also able to find past instances of when the Zoning Board of Appeals was inclined to grant relief from this requirement or the Planning Commission offered relief through a Planned Unit Development: Costco, 5100 Century Avenue was granted a loading/unloading variance in the side and rear yard on December 17, 2013, (fronting on Century Avenue, West Michigan Avenue and Stadium Drive) and a PUD concept plan was approved for Field & Stream, 5215 Century Avenue on February 11, 2016. (fronting on Century Avenue and West Michigan Avenue)

The third standard she asked the Board to consider was *Self-Created Hardship*. She said the variance request could be considered a self-created hardship as the applicant could design the building in such a way that loading/unloading is in the rear or side yards. However, as stated previously, the intent of the Ordinance is not being met as both the side and rear yard are visible from an adjacent public road. In addition, redesigning the building would likely move the front façade from the Stadium Drive right-of-way, which is the most visible frontage. From a planning and design perspective, staff would like to see the façade that is architecturally aesthetic facing Stadium Drive. In addition, the status of this property as a corner lot was not created by the applicant.

Ms. Johnston also noted seeking relief from the loading/unloading requirements and permitting it adjacent to a local road that currently only serves a handful of properties does not compromise the public health, safety and welfare of the community.

Staff recommended approval of the variance request from *Section 68.301: Loading and unloading* and cited the following reasons:

- Compliance is unnecessarily burdensome due to the restrictions of two front yards on the lot because of frontage on Stadium Drive and Stadium Park Way.
- The unique characteristic of a double frontage lot was not a circumstance created by the applicant.
- The Oshtemo Township Zoning Board of Appeals and the Planning Commission have granted similar relief in the past. Approving this application for a variance would ensure that substantial justice and equal opportunity is being done.

The Vice Chairperson thanked Ms. Johnston for her review of the application and asked if there were questions from the Board.

In answer to questions, Ms. Johnston noted neighbors within 300 feet of the property had been noticed, notice was published in the *Kalamazoo Gazette*, and no input was received from the public. She also said there will likely be new landscaping proposed by the owner as part of a site plan review.

Hearing no further questions, Vice Chairperson Sterenberg asked if the applicant wished to speak.

Mr. Dan Hinkle, 4285 Squire Heath, Portage MI 49024, explained National Flavors makes flavors for products such as beverages, gum and tea to customer specifications, and described the business as being a high mix, low volume environment. The plan is to replace the old facility with this new building. The old building will possibly be used for storage. Personnel will all be moved to the new location.

Attorney Porter noted the parcel is already in the IDD.

The Vice Chair asked if there were Board comments.

Mr. Loy said it was a long time coming to the community and was in support of granting the variance. Mr. Smith concurred.

Hearing no further comments, Vice Chairperson Sterenberg asked for a motion.

Ms. Culp made a motion to approve the variance request for National Flavors at 7700 Stadium Drive, Parcel #3905-34-155-050, based on the recommendation and reasons provided by Staff. Mr. Loy supported the motion. The motion was approved unanimously.

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

Ms. Johnston noted there would likely be two items on the agenda for the ZBA meeting scheduled for August 23rd.

### **Adjournment**

Vice Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, adjourned the meeting at approximately 3:16 p.m.

Minutes prepared:  
August 10, 2016

Minutes approved:  
\_\_\_\_\_, 2016

8/8/2016



**Mtg Date:** August 23<sup>rd</sup>, 2016

**To:** Zoning Board of Appeals

**From:** Ben Clark, Zoning Administrator

**Applicant:** Tobin Schaap

**Owner:** Tobin Schaap

**Property:** 1640 South 4<sup>th</sup> Street

**Zoning:** RR: Rural Residential

**Request:** Variance from the 70 foot front setback from the 4<sup>th</sup> Street right-of-way, down to 30 feet to construct a residential accessory building.

**Section(s):** Section 64.100: Setbacks from Designated Highways  
Section 80.400: Variance

## OVERVIEW

The applicant wishes to construct an approximately 800 square foot residential accessory building on his property, located at 1640 South 4<sup>th</sup> Street, near the intersection of L Avenue. South 4<sup>th</sup> Street, classified as a *Designated Highway* by section 64.100 of the Oshtemo Township Zoning Ordinance, has an enhanced setback from the right-of-way of 70 feet, where many other residential properties in the Township only require 30 feet. The undulating topography and drainage patterns of the property, the applicant argues, makes compliance with the stated 70 foot minimum front setback from 4<sup>th</sup> Street impractical. While the part of the parcel that the house is built on, which is approximately 27 feet from the 4<sup>th</sup> Street right-of-way, is fairly flat, as is the majority of the remainder of the property along that frontage, there is a marked drop off to the west, terminating at the lowest spot of the property.

Requiring compliance with the 70 foot setback for the accessory building would require that the structure encroach into this low area, which accepts stormwater runoff from the majority of the property. If required to locate the building in this area, the applicant will have to implement significant regrading and possibly install drainage measures in order to help ensure that the accessory structure can be protected from flooding. Placing the structure here will also likely alter

the natural drainage patterns for the property, causing issues not only for the applicant, but also for the adjacent parcel to the south, into which the depression on the applicant's land drains.

Conversely, allowing the applicant to observe a 30 foot front setback would allow the accessory structure to be placed on a relatively flat area near the top of the slope by the 4<sup>th</sup> Street frontage, mitigating any negative impacts on stormwater management—moving the building further up the slope means that runoff generated by the structure will have more time to naturally infiltrate before it reaches the depression at the bottom of the hill. This more level area in question appears to have been at least partially graded sometime in the past, and has historically been used for parking and even for a now demolished accessory building sometime in the 1950s.

Moving further west past the depression and towards the back of the property, the slope picks back up, rising until it flattens out somewhat at the northwest corner of the property. Even if the applicant were to place the accessory structure on this part of the parcel, significant tree clearing and grading would have to occur, and the building would have to be set far enough back from L Avenue so as to not encroach into a power line corridor that runs parallel to that frontage.

Building placement on other properties of South 4<sup>th</sup> Street varies extensively. While some homes and accessory buildings, especially on larger parcels, are located at the 70 foot setback and further, numerous other properties have their structures located much closer to the right-of-way, sometimes within 25 feet. In proposing to locate his accessory building 30 feet from the right-of-way, the structure will be further away from 4<sup>th</sup> Street than the furthest projecting point on the legally non-conforming house, and will be located in the south side yard, not in the front.

## **APPROVAL CRITERIA**

The Zoning Enabling Act of Michigan outlines that when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of a practical difficulty for a nonuse (dimensional) variance. In addition, applicants must demonstrate that their plight is due to the unique circumstances peculiar to that property and that the problem is not self-created.

The request by the applicant is a nonuse variance. The ZBA should review the following standards in considering the variance request:

Standards of Approval of a Nonuse Variance (practical difficulty):

*Standard: Conformance Unnecessarily Burdensome*

*Are reasonable options for compliance available?*

*Does reasonable use of the property exist with denial of the variance?*

**Comment:** While the applicant could hypothetically locate the accessory building in compliance with the 70 front setback from the 4<sup>th</sup> Street right-of-way, doing such could be viewed as unnecessarily burdensome, as it would require a significant amount of regrading and drainage interventions to ensure that runoff doesn't intrude into the structure. Additional soil engineering may also be required so that the depression's stormwater retention qualities are maintained, preventing any increase in runoff onto the adjacent property to the south. Other portions of the property outside of the minimum setback areas also suffer from steep slopes and are largely wooded, meaning that the location for the accessory structure that the applicant has identified is the most suitable on the property.

While the primary use of the property—single family residential—can essentially continue in its present state if the variance were to be denied by the Zoning Board of Appeals, Staff does feel that it is reasonable for the applicant to wish to erect an accessory structure for personal use, and that requiring compliance with the 70 foot setback would practically preclude that from happening.

*Standard: Substantial Justice*

*Applied to both applicant as well as to other property owners in district.*

*Review past decisions of the ZBA for consistency (precedence).*

**Comment:** Staff was able to find past instances of when the Zoning Board of Appeals was inclined to grant relief for residential properties from the stated setback requirements due to physical circumstances. Following is a summary of selected relevant cases:

- Paul Retz, Variance from the minimum 10 foot sideline setback for an accessory building, 3493 North Van Kal Street, 8/3/1998
  - Citing dense tree coverage and challenging topography on the subject property, the Zoning Board of Appeals granted relief to the applicant, allowing a 5 foot side setback where 10 feet is typically required.

- Martin Homes, Variance from the KL Avenue minimum 70 front setback, 9112 West KL Avenue, 2/28/2000
  - Arguing that the property was subject to unique physical circumstances that limited where a home could be placed due to the need for a septic drain field and that allowing the variance would not be out of character with the surroundings, the ZBA ruled that the minimum front setback was to be reduced from 70 feet from the right-of-way to 36 feet. As with South 4<sup>th</sup> Street, KL Avenue is a Designated Highway with an enhanced front setback.
  
- Bob & Deb Withee, Variance from the minimum 40 foot front setback for a garage expansion, 1441 Breezy Point Land, 6/18/2001
  - Determining that the subject property's topography made much of it essentially unbuildable, the Zoning Board of Appeals granted relief from the 40 foot front setback, allowing 31.5 feet instead. This provided the applicant with the room to extend a preexisting attached garage, as building a detached structure on another part of the property was deemed impractical and unnecessarily burdensome.

*Standard: Unique Physical Circumstances*  
*Are there unique physical limitations or conditions which prevent compliance?*

*Comment:* Largely devoid of cleared, relatively flat and well-drained land on which to build except near the 4<sup>th</sup> Street frontage, the subject property provides no evident practical opportunities for the applicant to observe compliance with the Zoning Ordinance. Not only does building on sloped and wooded land present a challenge when it comes to preparing a suitable building site, but the necessary earth changes would mean that the land's native drainage patterns could be negatively impacted as well.

*Standard: Self-Created Hardship*  
*Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?*

*Comment:* While ultimately the decision to construct an accessory building is at the applicant's discretion, the topographic and other environmental challenges posed by the land are not self-made, and would pose a difficulty to any project proposed for the property.

*Standard: Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?*

**Comment:** Although South 4<sup>th</sup> Street's Designated Highway status means that an enhanced 70 foot front setback is in place, the 30 foot dimension being sought by the applicant is what is observed for the majority of residential properties in the Township, suggesting that the request is not unreasonable and is in keeping with what is commonly accepted in other parts of Oshtemo. Given that the accessory structure is proposed to be placed further back than the primary residence from 4<sup>th</sup> Street, staff feels that consideration of the public health, safety, and welfare will be observed, as the building's construction will not introduce any new visibility issues for motorists, nor will it significantly alter the character of the property. Also, its proposed location will help to minimize any degradation to the subject parcel's natural drainage patterns compared to placing it in the depression.

Examining the three provided examples of when the Zoning Board of Appeals granted relief from building setbacks, one of which was along a Designated Highway, Staff does feel that substantial justice would be done if this variance request were granted. The ZBA has acknowledged that varying topography is grounds for the granting of a variance, and Township Staff have confirmed in the field that the terrain does appear very challenging to build on.

## **RECOMMENDATION**

Staff recommends approval of the variance request from *Section 64.100: Setbacks from Designated Highways* for the following reasons:

- Considering the subject property's topography and somewhat delicate drainage characteristics, especially when factoring in how stormwater is conveyed onto the adjacent property to the south, compliance with the relatively deep 70 foot setback from the 4<sup>th</sup> Street right-of-way does appear to be unnecessarily burdensome.
- Granting relief from section 64.100 in this case will not damage the public health, safety, welfare of the community, nor will it be out of character with the surroundings.
- The challenging topography and largely wooded nature of the subject property was not self-made by the applicant.

- The Oshtemo Township Zoning Board of Appeals have granted similar relief in the past. Approving this application for a variance would ensure that substantial justice is consistently being done.

Respectfully Submitted,



Ben Clark,  
Zoning Administrator

Attachments: Application  
Aerial map



7275 W. Main Street, Kalamazoo, Michigan 49009-9334  
Phone: 269-216-5223 Fax: 269-375-7180

**PLEASE PRINT**

PROJECT NAME & ADDRESS 1640 South 4th Street accessory building

**PLANNING & ZONING APPLICATION**

Applicant Name : Tobin Schaap  
Company \_\_\_\_\_  
Address 1640 South 4th Street  
Kalamazoo, MI 49009  
E-mail schaapc049@gmail.com  
616-570-9663 Telephone \_\_\_\_\_ Fax \_\_\_\_\_  
Interest in Property Owner

THIS  
SPACE  
FOR  
TOWNSHIP  
USE  
ONLY

Fee Amount \_\_\_\_\_  
Escrow Amount \_\_\_\_\_

**OWNER\*:**

Name Same as applicant  
Address \_\_\_\_\_  
Email \_\_\_\_\_  
Phone & Fax \_\_\_\_\_

**NATURE OF THE REQUEST:** (Please check the appropriate item(s))

- |   |   |
|---|---|
| <input type="checkbox"/> Planning Escrow-1042                 | <input type="checkbox"/> Land Division-1090           |
| <input type="checkbox"/> Site Plan Review-1088                | <input type="checkbox"/> Subdivision Plat Review-1089 |
| <input type="checkbox"/> Administrative Site Plan Review-1086 | <input type="checkbox"/> Rezoning-1091                |
| <input type="checkbox"/> Special Exception Use-1085           | <input type="checkbox"/> Interpretation-1082          |
| <input checked="" type="checkbox"/> Zoning Variance-1092      | <input type="checkbox"/> Text Amendment-1081          |
| <input type="checkbox"/> Site Condominium-1084                | <input type="checkbox"/> Sign Deviation-1080          |
| <input type="checkbox"/> Accessory Building Review-1083       | <input type="checkbox"/> Other: _____                 |

**BRIEFLY DESCRIBE YOUR REQUEST** (Use Attachments if Necessary): \_\_\_\_\_

A reduction of the 70' front building setback from the right-of-way on South 4th Street down to 30' (63'  
from the road centerline).

**LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):**

Attached

**PARCEL NUMBER:** 3905- 29-230-040

**ADDRESS OF PROPERTY:** 1640 South 4th Street

**PRESENT USE OF THE PROPERTY:** Single family residential

**PRESENT ZONING** RR: Rural Residential **SIZE OF PROPERTY** 2.5 acres

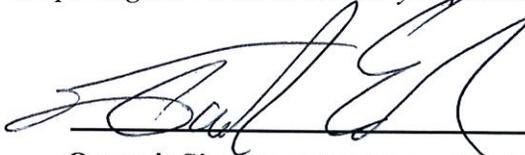
**NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS  
HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:**

**Name(s)**

**Address(es)**

**SIGNATURES**

*I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.*



**Owner's Signature**(\* If different from Applicant)

8-2-16

**Date**

**Applicant's Signature**

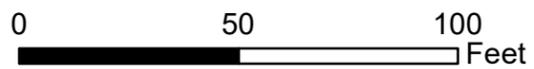
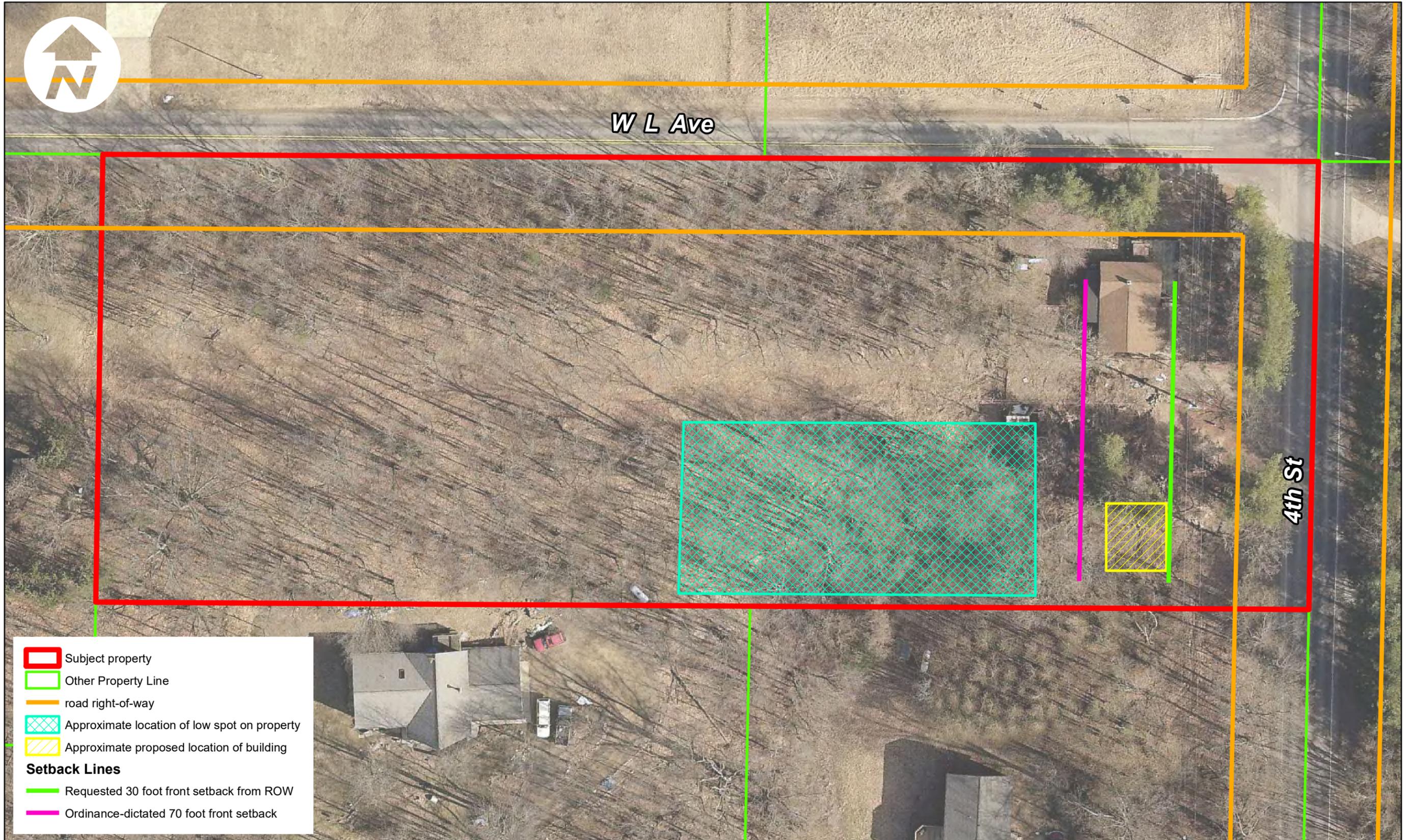
**Date**

- Copies to:
- Planning -1
- Applicant -1
- Clerk -1
- Deputy Clerk -1
- Attorney-1
- Assessor -1
- Planning Secretary - Original

\*\*\*\*

**PLEASE ATTACH ALL REQUIRED DOCUMENTS**

# 1640 South 4th Street





August 15, 2016

**Mtg Date:** August 23, 2016

**To:** Zoning Board of Appeals

**From:** Julie Johnston, AICP  
Planning Director

**Applicant:** Todd Hurley

**Owner:** Hurley & Stewart, LLC

**Property:** 2800 South 11<sup>th</sup> Street

**Zoning:** R-3: Residence District

**Request:** Variance from the 11<sup>th</sup> Street right-of-way setback to reduce from 70 feet to 40 feet to construct a building addition.

**Section(s):** Section 64.100: Setbacks from Designated Highways  
Section 80.400: Variance

## OVERVIEW

The applicant wishes to construct an approximately 1,000 square foot addition to their building located at 2800 South 11<sup>th</sup> Street. South 11<sup>th</sup> Street is classified as a *Designated Highway* by section 64.100 of the Oshtemo Township Zoning Ordinance, which details an enhanced setback from the right-of-way of 70 feet. The request to place the addition within the front yard is due to the following:

1. The narrowness of the lot (150 linear feet) and the location of the existing building would only allow a 16 foot building addition along the southern side yard due to side yard setbacks. Also, it would require the removal of existing vegetation that provides a significant screening barrier for the neighboring residential property to the south.
2. The location of the entrance curb cut and existing parking lot preclude adding to the building to the north.
3. Expanding to the west would require the demolition of an existing garage which is used to store survey and other equipment needed by the applicant. In addition, further west is

an important detention basin designed to handle the storm water runoff for the site. Additional property is available on the lot further west where this basin could be moved. However, this would require the removal of considerable large growth trees from the property.

Due to these site constraints, the only available property is located in the front yard. The applicant purchased the lot in 2007 and received approval that same year to construct an addition in the front yard. Their future plans at that time were to continue expanding in the front yard when the growth of their business warranted the construction. In 2014, they submitted a site plan for an expansion of their parking lot and discussed the continued expansion of their building with the Planning Department. The parking lot expansion site plan shows a future expansion of the building. While this addition was shown on the plan, it was not included as part of the 2014 review and therefore staff can find no mention of the addition in the file.

In July, Hurley & Stewart contacted the Planning Department about moving forward with their addition. It was explained that in 2008, enhanced setbacks were incorporated into the Zoning Ordinance for 11<sup>th</sup> Street. This was concerning to the applicant because when they purchased the property the setbacks from 11<sup>th</sup> were 40 feet. After discussions with the applicant on their options, they chose to submit an application for a variance. Staff toured the lot and found the property constraints mentioned above.

### **APPROVAL CRITERIA**

The Zoning Enabling Act of Michigan outlines that when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of a practical difficulty for a nonuse (dimensional) variance. In addition, applicants must demonstrate that their plight is due to the unique circumstances particular to that property and that the problem is not self-created.

The request by the applicant is a nonuse variance. The ZBA should review the following standards in considering the variance request:

#### Standards of Approval of a Nonuse Variance (practical difficulty):

*Standard: Conformance Unnecessarily Burdensome  
Are reasonable options for compliance available?  
Does reasonable use of the property exist with denial of the variance?*

**Comment:** The applicant could, hypothetically, locate the addition along the west side of the existing building, and therefore remain in compliance with the 70 front setback

from 11<sup>th</sup> Street. Doing such could be viewed as unnecessarily burdensome, as it would require a significant amount of fill, tree removal and the demolition and reconstruction of the existing garage. Additional grading would also be required to recreate the storm water detention area lost to the building addition. No other reasonable options for compliance are available because of the side yard setbacks to the south and the parking lot to the north of the existing structure.

While the primary office use can essentially continue in its present state if the variance were to be denied by the Zoning Board of Appeals, Planning staff does feel that it is reasonable for the property owner to want to expend their business. Based on current site constraints, the only reasonable option is the front yard.

*Standard: Substantial Justice*  
*Applied to both applicant as well as to other property owners in district.*  
*Review past decisions of the ZBA for consistency (precedence).*

**Comment:** Staff was able to find one past instance when the Zoning Board of Appeals granted relief from the enhanced front yard setback requirement for non-residential properties due to physical circumstances. There are also a number of variances to the front yard setback in areas where the enhanced setback either is not required or was not required at the time the variance was granted. A list of these is also provided.

- Taco Bell, Variance from the minimum 170 foot front yard setback, 5013 West Main Street, 4/26/2011
  - Applicant requested a 152 foot setback where 170 feet was required to allow for the redevelopment of the drive-through lane as part of the reconstruction of the restaurant. Substantial justice was cited as the reason for the approval as the McDonalds and Walgreen's on West Main were also granted front yard setback variances.
- Additional properties with front yard setback variances
  - Medical Clinic - 2490 South 11<sup>th</sup> Street - 2000
  - Walgreens – 5020 West Main Street – 2002
  - Public Water Booster Station – 5277 West KL Ave – 2009
  - Frank's Nursery – 5474 West Main – 2010
  - Public Utility Building – 10645 West Main – 2010
  - Kalamazoo Storage – 7694 Stadium Drive – 2016

*Standard: Unique Physical Circumstances*  
*Are there unique physical limitations or conditions which prevent compliance?*

**Comment:** There are two physical circumstances to consider with this variance request. While both of them are man-made, they are existing conditions that directly impact the applicant's ability to complete the building addition in compliance with the Ordinance. The first is the presence and location of a storm water detention basin, which has a grade change of close to 10 feet. The second is the existing structure and its location on the site. The combination of these factors limits the ability to add on to the building without reconfiguring the entire site.

In addition, the presence of a large tree stand in the rear of the lot should be considered and preserved to the best extent possible. Placing the addition in the front yard will allow these trees to remain undisturbed.

*Standard: Self-Created Hardship*  
*Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?*

**Comment:** While ultimately the decision to construct an addition to the building is at the applicant's discretion, the constraints that impede this decision were not entirely created by the applicant. The location of the original single-family home, which was converted into an office in 2007, was predetermined on the site. The additions planned by the applicant were considered when the front yard setback for 11<sup>th</sup> Street was 40 feet and therefore, the site was engineered to drain to the storm water detention basin located along the western portion of the building. Moving this pond would require re-engineering the site to ensure proper storm water management.

*Standard: Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?*

**Comment:** The designated highway status for 11<sup>th</sup> Street requires all properties in this area to comply with a 70 foot setback from the right-of-way. When reviewing existing conditions within the area, many of the structures on 11<sup>th</sup> Street maintain a setback greater than the requested 40 feet. However, there are two buildings to the north of the site that have setback similar to the applicant's request. The first is 2636 South 11<sup>th</sup> Street, which is an office building developed in 2007 prior to the requirement of the enhanced setbacks. Their front yard setback is 40 feet. The second is 2490 South 11<sup>th</sup> Street, which received a variance in 2000 to allow

the remodeled building to encroach into the front yard setbacks. Their current setback is 45 feet from 11<sup>th</sup> Street.

Staff assumes that the requirement for enhanced setbacks in this area is to accommodate the expansion of 11<sup>th</sup> Street by the Road Commission of Kalamazoo County, if increased lanes are determined necessary for the benefit of public safety. The reduction in front yard setback will not impede this expansion or jeopardize public health, safety or welfare as frontage will still be available. In addition, variances have been granted in the past to properties with existing conditions on the site that warranted relief, supporting that the standards for relief are being applied equitably.

## **RECOMMENDATION**

Staff recommends approval of the variance request from *Section 64.100: Setbacks from Designated Highways* and to allow a 40-foot front yard setback for the following reasons:

- Granting relief from section 64.100 in this case will not damage the public health, safety, welfare of the community, nor will it be out of character with the surrounding area as two other buildings within close proximity have similar setbacks.
- The existing conditions on the site make expansion of the building difficult to achieve except for in the front yard, making compliance with the enhanced setbacks unnecessarily burdensome.
- The Oshtemo Township Zoning Board of Appeals have granted similar relief in the past. Approving this application for a variance would ensure that standards are consistently being applied and substantial justice done.

Respectfully Submitted,



Julie Johnston, AICP  
Planning Director

Attachments: Application  
Aerial map  
Site Plan



7275 W. Main Street, Kalamazoo, Michigan 49009-9334  
Phone: 269-216-5223 Fax: 269-375-7180

**PLEASE PRINT**

**PROJECT NAME & ADDRESS** Hurley & Stewart 2800 S. 11th St.

**PLANNING & ZONING APPLICATION**

Applicant Name : Todd Hurley  
Company Hurley & Stewart, LLC  
2800 S. 11th St  
Address Kalamazoo MI 49009  
E-mail thurley@hurleystewart.com  
Telephone 269-806-0170 Fax 269-552-4961  
Interest in Property Owner/occupant

THIS SPACE FOR TOWNSHIP USE ONLY

**OWNER\*:**

Name Same  
Address \_\_\_\_\_  
Email \_\_\_\_\_  
Phone & Fax \_\_\_\_\_

Fee Amount \_\_\_\_\_  
Escrow Amount \_\_\_\_\_

**NATURE OF THE REQUEST:** (Please check the appropriate item(s))

- |   |   |
|---|---|
| <input type="checkbox"/> Planning Escrow-1042                 | <input type="checkbox"/> Land Division-1090           |
| <input type="checkbox"/> Site Plan Review-1088                | <input type="checkbox"/> Subdivision Plat Review-1089 |
| <input type="checkbox"/> Administrative Site Plan Review-1086 | <input type="checkbox"/> Rezoning-1091                |
| <input type="checkbox"/> Special Exception Use-1085           | <input type="checkbox"/> Interpretation-1082          |
| <input checked="" type="checkbox"/> Zoning Variance-1092      | <input type="checkbox"/> Text Amendment-1081          |
| <input type="checkbox"/> Site Condominium-1084                | <input type="checkbox"/> Sign Deviation-1080          |
| <input type="checkbox"/> Accessory Building Review-1083       | <input type="checkbox"/> Other: _____                 |

**BRIEFLY DESCRIBE YOUR REQUEST** (Use Attachments if Necessary):

Reduce Building Setback from 70' to 40'  
in order to construct building addition.

**LEGAL DESCRIPTION OF PROPERTY** (Use Attachments if Necessary):

See Attached Dwg

PARCEL NUMBER: 3905- 25-335-040

ADDRESS OF PROPERTY: 2800 S. 11th St.

PRESENT USE OF THE PROPERTY: Office

PRESENT ZONING R-3 SIZE OF PROPERTY 2 Ac

**NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:**

Name(s)	Address(es)
<u>Hurley &amp; Stewart, Properties, LLC</u>	<u>Same</u>

**SIGNATURES**

*I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.*

\_\_\_\_\_  
**Owner's Signature** (\* If different from Applicant)

[Signature]  
 \_\_\_\_\_  
**Applicant's Signature**

\_\_\_\_\_  
**Date**

7-19-16  
 \_\_\_\_\_  
**Date**

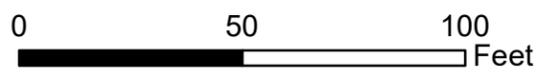
- Copies to:
- Planning -1
- Applicant -1
- Clerk -1
- Deputy Clerk -1
- Attorney -1
- Assessor -1
- Planning Secretary - Original

\*\*\*\*  
**PLEASE ATTACH ALL REQUIRED DOCUMENTS**

# 2800 South 11th Street



-  Subject property
-  Other Property Line
-  Location of 10 foot deep retention basin
-  road right-of-way
- Minimum Setback Line**
-  Ordinance-dictated 70 foot front setback
-  Requested 40 foot setback from ROW

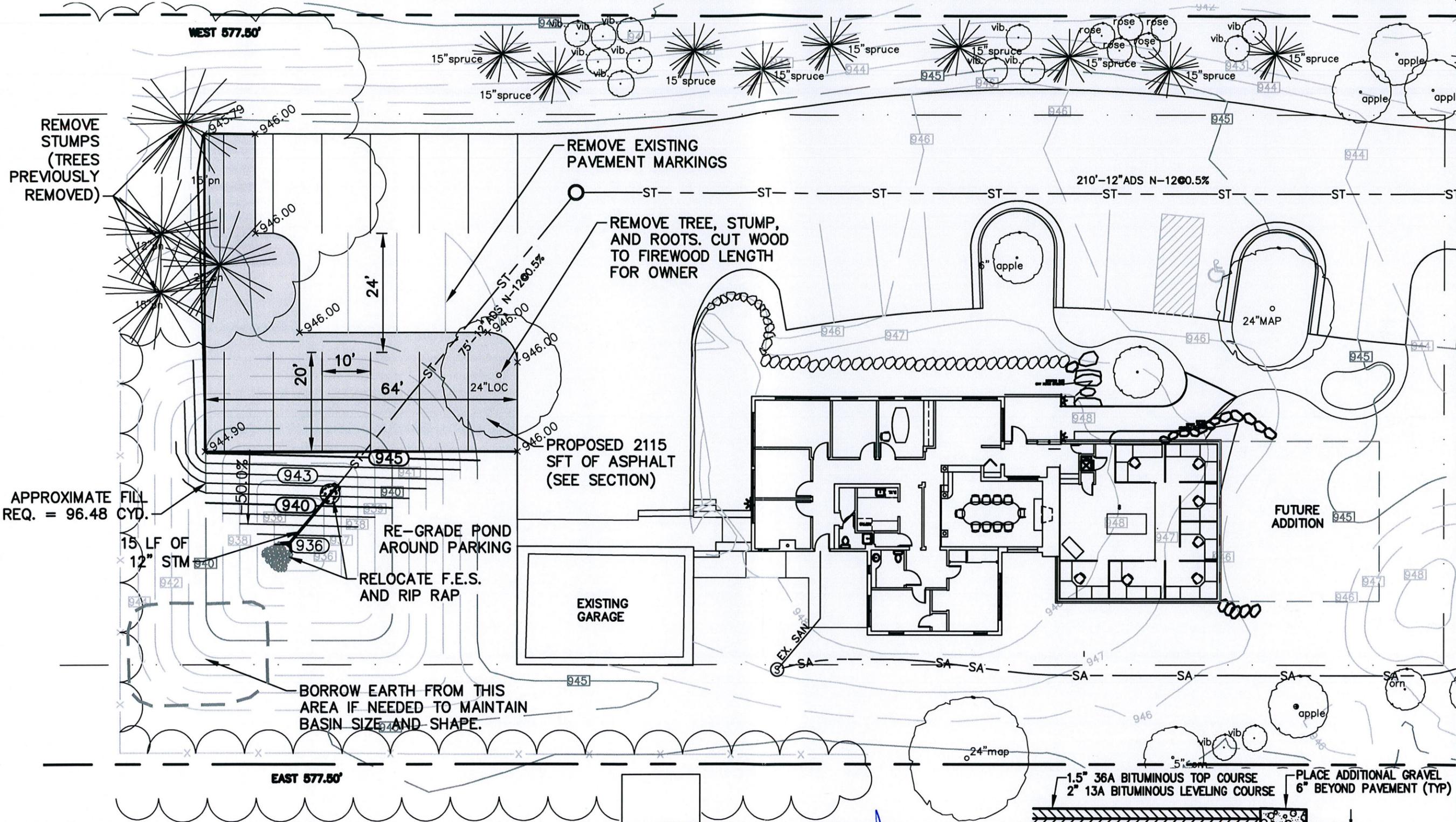




S 11th St

S 11th St

DRAWING LOCATION: H:\07-029D (11th street office)\FINAL DRAWINGS\C-1 Site Plan.dwg LAST SAVED BY: APHELAN ON 5/29/2014



REMOVE STUMPS (TREES PREVIOUSLY REMOVED)

REMOVE EXISTING PAVEMENT MARKINGS

REMOVE TREE, STUMP, AND ROOTS. CUT WOOD TO FIREWOOD LENGTH FOR OWNER

PROPOSED 2115 SFT OF ASPHALT (SEE SECTION)

APPROXIMATE FILL REQ. = 96.48 CYD.

15 LF OF 12" STM

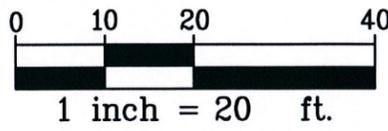
RE-GRADE POND AROUND PARKING

RELOCATE F.E.S. AND RIP RAP

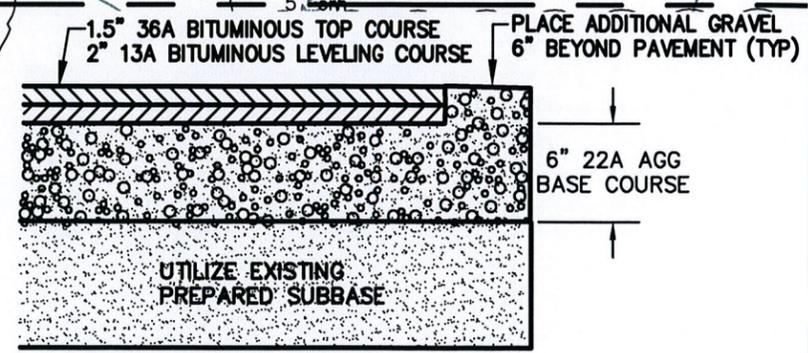
EXISTING GARAGE

BORROW EARTH FROM THIS AREA IF NEEDED TO MAINTAIN BASIN SIZE AND SHAPE.

NOTE: 9 ADDITIONAL SPACES CREATED WITH IMPROVEMENTS



*2014 Approved Plan Showing Addition.*



ALL MATERIALS COMPACTED IN PLACE ON PREPARED SUBGRADE  
**PAVEMENT SECTION**  
NOT TO SCALE

hurley & stewart, llc  
2800 south 11th street  
kalamazoo, michigan 49009  
269.552.4960 fax 269.552.4961  
www.hurleystewart.com

hurley & stewart

Job No.: 07-029D  
Date: 5/29/14  
Scale: AS NOTED  
P.M.: BG  
QA/QC: BG  
Date: 5/29/14

**SITE ADDITIONS**  
**2800 S. 11th ST.**  
**HURLEY & STEWART, LLC**

Title:  
Project:  
Client:

Drawing No.

**1**