

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD DECEMBER 20, 2016**

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**Agenda**

**PUBLIC HEARING: VARIANCE REQUEST (FISHBECK, THOMPSON, CARR & HUBER ON BEHALF OF FAMILY D, LLC)**

**APPLICANT REQUESTED A VARIANCE FROM SUBSECTION 34.820.F OF THE VILLAGE FORM-BASED CODE OVERLAY ZONE TO ALLOW A DRIVE-THROUGH WINDOW ON THE FRONT BUILDING FAÇADE OF THE HARDING’S FRIENDLY MARKET LOCATED AT 6430 STADIUM DRIVE. THE SUBJECT PROPERTY IS ZONED VC: VILLAGE COMMERCIAL DISTRICT AND THE VILLAGE FORM-BASED CODE OVERLAY ZONE. (PARCEL #3905-26-465-022.)**

**Any Other Business**

**2017 Meeting Dates**

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A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, December 20, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

ABSENT: Cheri Bell, Chairperson

Also present were Ben Clark, Zoning Administrator, Martha Coash, Meeting Transcriptionist, and five interested persons. Vice Chairperson Sterenberg acted as Chair in the absence of Chairperson Bell.

**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 October 25, 2016**

The Vice Chairperson asked if there were any additions, deletions or corrections to the minutes of October 25, 2016. Hearing none, he asked for a motion of approval.

Mr. Loy made a motion to approve minutes of October 25, 2016 as presented. Mr. Smith supported the motion. The motion was approved unanimously.

### **PUBLIC HEARING: VARIANCE REQUEST (FISHBECK, THOMPSON, CARR & HUBER ON BEHALF OF FAMILY D, LLC)**

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Vice Chairperson Sterenberg said the next item was a request from Fishbeck, Thompson, Carr & Huber on behalf of Family D, LLC, for a variance to allow a drive-through window on the front building façade of Hardings Friendly Market, and asked Mr. Clark to review the application.

Mr. Clark explained the applicant, representing Family D, LLC, was requesting a variance from the Village Form-Based Code Overlay Zone, specifically Section 34.820.F, which states that drive-through windows must be located along the rear façade of a building. Harding's Friendly Market would like to develop a pharmacy with a drive-through window at their existing facility at the corner of Stadium Drive and South 9<sup>th</sup> Street. The current location of the building and rear building wall, which is approximately 10 feet from the northern property line, does not offer adequate space for the development of a drive through window while meeting all other Ordinance requirements.

He said 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.

He said since 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?*

Mr. Clark commented the Ordinance requirement for placing the drive-through lane in the rear yard or along the rear facade is intended to support the overall goals of the Village Form-Based Code, which is to create a compact, walkable, mixed-use neighborhood. In addition, the Form-Based Codes are intended to foster a visual aesthetic along roadways, with buildings placed close to the right-of-way and to each other, as well as architectural improvements that evoke a village theme. In most cases, placing a drive through within the front or side yard would be detrimental to this intent.

The current location of the existing Harding's Market does not provide much in the way of additional options for the placement of a drive-through window. This circumstance is exacerbated by the subject site having two front yards. Staff requested the applicant review positioning the drive-through window along the east side façade. This location would require the drive-through window to be as close to the front façade as possible to provide enough space for vehicles to make the turn south to exit. Based on this configuration, cars would still be required to queue along the front façade.

He noted the location of the store does provide some relief from the expectations outlined in the Form-Based Codes. The building is setback approximately 300 feet from the Stadium Drive right-of-way, which makes compliance with the intent of the Form-Based Codes difficult to achieve. In addition, the pharmacy drive-through is planned along the eastern side of the front building façade, which would be approximately 220 feet from South 9<sup>th</sup> Street. The existing location of the front façade from either road right-of-way does not meet the intent of the Form-Based Codes. The best possible scenario for the site would be for the existing building to be demolished and a new structure, which meets all of the requirements of the Form-Based Codes, developed. Staff is unaware of any plans to demolish the building and bring the site into compliance.

*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).*

The requirement for drive-through windows on the rear façade is only found in the Village Form-Based Code Overlay. This requirement would be applied to all other properties within this district, but not to buildings outside of the area affected by the Form-Based Codes. From our research, we were unable to find a similar variance request within the Village area.

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

The physical circumstance that is preventing compliance is the current location of the Harding's Market building. At 10 feet from the rear property line, a single-lane drive-through facility is technically feasible, however a variance for the required landscape buffer would be required and mechanical equipment found in the rear yard would have to be moved.

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

The development of a pharmacy drive-through is a new addition to an existing business. While the physical restrictions found on the property force a front façade placement, the desire to have the drive-through window is self-created. However, it is not an unusual request for a grocery store to have a pharmacy for the convenience of their patrons.

*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?*

He said the site plan provided with the application indicates three stacking spaces for the pharmacy drive-through, which meets regulatory requirements per Section 68.300.G: *Drive-Through Windows* of the Off-Street Parking Ordinance. There is some concern that pharmacy traffic will have to cross a west bound circulation lane to enter the drive-through. But, the placement of bollards to delineate the drive-through lane should help mitigate this concern.

Mr. Clark reiterated the outcome staff would like to see for this site is the redevelopment of the Market into a building that fits within the standards of the Village Form-Based Code Overlay Zone. However, until such time as redevelopment occurs, the current location of the building does not offer alternatives for the placement of the drive-through window outside of a variance request. With that in mind, he said, Staff

was recommending approval of the variance from *Section 34.820.F: Drive-Through Windows* for the following reasons:

- Compliance is unnecessarily burdensome due to the location of the existing building, which is approximately 10 feet from the rear property line.
- This existing physical limitation on the site is not self-created.
- Outside of a variance request, no other reasonable options are available for the placement of the drive-through window.

Mr. Clark said that if a new building were built today it would be at the front of the lot and would not violate the Ordinance.

He added that Attorney Porter indicated approval of this variance would not set an undesirable or unreasonable precedent in this district; it is a pretty unique situation and the Board would be justified in granting the requested variance.

Vice Chairperson Sterenberg asked if there were questions from the Board for Mr. Clark. Hearing none, he asked the applicant if he wished to speak.

Mr. Ryan Musch, FTCH, 1515 Arboretum Dr. SE, Grand Rapids, MI, spoke on behalf of the owner, saying Mr. Clark had well represented the variance requested. He noted a truck and vehicle turn analysis had been done and it was determined this could not be done at the rear of the lot without infringing on neighboring property.

Vice Chairperson Sterenberg asked if there were questions for the applicant.

In answer to questions, Mr. Musch said he was not aware of vehicles cutting through the lot to avoid the traffic light, but the drive through would be located at the opposite end of the lot from where such activity would occur. They expect to propose a small canopy over the drive through window during the site plan and special exception use process. He also explained there would be room to operate the door; that there would be somewhat of a curb or bollard to keep vehicles in the pick-up lane. He said whatever would be decided would be in compliance with the building code.

Hearing no further questions, Vice Chairperson Sterenberg asked if there were any public comment. Hearing none, he moved to Board Deliberations.

The Vice Chair noted that if this property were not part of the Form Based Code the project would meet Ordinance standards.

There was concern expressed from Mr. Sikora regarding the possibility of cross traffic in front of the building, but he and Mr. Loy noted most vehicles park and come

and go from the east end of the building, and that granting this variance makes the best of a bad situation.

Mr. Loy made a motion to approve the variance request as presented, based on the recommendation and rationale from Staff regarding Standards of Approval. Mr. Smith supported the motion. The motion was approved unanimously.

**Any Other Business / ZBA Member Comments**

Mr. Clark presented the following schedule of Meeting Dates for 2017, in the normal pattern of fourth Tuesday of the month as well as a tentative schedule of joint meetings.

<i>Month</i>	<i>Meeting Date</i>
January	24
February	28
March	28
April	25
May	23
June	27
July	25
August	22
September	26
October	24
November	21*
December	19*

\*Changed from normal meeting date to 3<sup>rd</sup> Tuesday

## **JOINT MEETINGS (tentative)**

February 21  
May 16  
September 19

Mr. Sikora noted the November meeting was moved to be closer to Thanksgiving and suggested it be held on the regular 4<sup>th</sup> Tuesday, on November 28, which would mean only one meeting, December 19, would be out of the normal pattern.

The group agreed and accepted the 2017 schedule with that change.

### **Board Comments**

Vice Chairperson Sterenberg noted that this was the last meeting for both Chairperson Bell and Mr. Loy, whose terms were up at the end of December and thanked them both for their service.

### **Adjournment**

The Chairperson noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, adjourned the meeting at approximately 3:26 p.m.

Minutes prepared:  
December 22, 2016

Minutes approved:  
January 24<sup>th</sup>, 2017