

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A VIRTUAL MEETING HELD APRIL 28, 2020

Agenda

SITE PLAN: STADIUM AND 11TH STREETS

THE VERNON GROUP REQUESTED SITE PLAN APPROVAL TO CONSTRUCT A 18,500 SQUARE FOOT MEDICAL OFFICE BUILDING AT THE NORTHWEST CORNER OF STADIUM DRIVE AND SOUTH 11TH STREET.

VARIANCE: WINGARD, 3274 S. 6TH STREET

LOGAN WINGARD REQUESTED A 40-FOOT REDUCTION OF THE 70-FOOT REQUIRED FRONT SETBACK FROM THE 6TH STREET RIGHT-OF-WAY TO REPLACE AN OLD CARPORT THAT HAD TO BE DEMOLISHED.

VARIANCE: CONSUMER CREDIT UNION, 6699 W. MAIN STREET

UNIVERSAL SIGN, ON BEHALF OF CONSUMER CREDIT UNION, REQUESTED RELIEF FROM THE ZONING ORDINANCE IN ORDER TO INSTALL A POLE SIGN WITH 80 SQUARE FEET OF DISPLAY AREA WHEN ONLY 60 SQUARE FEET IS ALLOWED.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, April 28, 2020, at approximately 3:00 p.m.

MEMBERS PRESENT: Neil Sikora, Chair
Cheri Bell
Fred Antosz
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair

MEMBER ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Ben Clark, Zoning Administrator, Josh Owens, Assistant to the Supervisor, and Martha Coash, Meeting Transcriptionist.

Guests present were three representatives for the request for the medical office site plan: Matthew Vernon, Jared VanderWeele, and Alex Frazier. Logan Wingard was present for the variance request for 3274 S. 6th Street.

Call to Order and Pledge of Allegiance

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

He read the procedures to be followed for virtual meetings from the “**Oshtemo Township Electronic Meeting Policy**” (4-14-2020) into the record:

Governor Gretchen Whitmer in response to the novel coronavirus (COVID-19) outbreak has declared a State of Emergency and issued an Executive Order temporarily suspending portions of the Michigan Open Meetings Act, MCL 15.261 et seq. requiring meetings of public bodies to be in a physical place open to the public and requiring the physical presence of members of the body.

The Township will continue to conduct public business in a manner permitting both the general public and members of the Township Board, Planning Commission, Zoning Board of Appeals (ZBA) and Downtown Development Authority (DDA) to participate by electronic means and shall do so following these rules:

Meetings Oshtemo Township public meetings may meet and conduct its regular, special and emergency meetings by electronic means using telephone conferencing or video conferencing technology without regard to the physical place and physical presence requirements of the Open Meetings Act (OMA), MCL 15.261 et seq. when the Governor has declared a statewide or local State of Emergency and has issued an Executive Order suspending provisions of the OMA. Public meetings will be held in compliance with the Governor’s Executive Order or any extension of the Executive Order by the Legislature. The Township Board may adopt rules governing the orderly conduct of electronic meetings while permitting the electronic attendance and participation of the public during the meeting.

An item on the Consent Agenda may be moved to the Regular Agenda for individual discussion and action at the request of any Board Member, or by anyone participating in the meeting. A member of the public desiring to move an item from the Consent Agenda to the Regular Agenda must so request when the Consent Agenda is introduced.

Public Comment During public meetings conducted electronically, members of the public attending the meeting, once recognized by the chair, may identify themselves for the record and whether they are a Township resident. Comments will be limited to four minutes for each speaker unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting per existing policy.

Public Comment on Non-Agenda Items

Chairperson Sikora determined there were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF JANUARY 28, 2020

The Chair asked if there were any additions, deletions, or corrections to the minutes of January 28, 2020. He noted the Chair’s name was incorrectly listed under “Adjournment.”

Hearing no further comments, he asked for a motion.

Ms. Maxwell **made a motion** to approve the Minutes of January 28, 2020 as presented with the correction as noted. Ms. Smith **seconded the motion. The motion was approved unanimously by roll call vote.**

Chairperson Sikora moved to the next agenda item and asked Ms. Lubbert for her presentation.

SITE PLAN: STADIUM AND 11TH STREETS
THE VERNON GROUP REQUESTED SITE PLAN APPROVAL TO CONSTRUCT A 18,500 SQUARE FOOT MEDICAL OFFICE BUILDING AT THE NORTHWEST CORNER OF STADIUM DRIVE AND SOUTH 11TH STREET.

Ms. Lubbert said the applicant was requesting site plan approval for a new 18,500 square foot medical office building at the northwest corner of Stadium Drive and South 11th Street. The project site comprises three commercially-zoned parcels, with a combined area of just over 2.5 acres. Currently accommodating three single-family homes, the extant land use for the constituent parcels is legal non-conforming, and construction of a medical office building—a use permitted by right—will eliminate this legacy zoning issue.

On the project site plan, she said the proposed office building will be oriented towards the intersection with the parking area located northwest of the structure. Although the properties to the north are also zoned for commercial use, one of the parcels still accommodates a single-family home, and the office building's location close to the intersection should mitigate any visual impact for the dwelling on the adjacent property. The applicant is further protecting this property from disturbance by erecting a privacy fence along the project site's north property line, adjacent to the parking lot.

Ms. Lubbert explained the proposed use for the property—medical office—is permitted by right in the C: Local Business District zoning classification, but site plan approval from the Zoning Board of Appeals is required. Aside from any concerns explicitly noted in this report, the project site plan complies with all relevant requirements of the Township Zoning Ordinance. This includes observance of a minimum 50-foot setback from the north property line where the subject site abuts an existing residential use. The following items need to be corrected:

- Light limits from the building mounted fixtures illuminating the building entrance exceed the permissible six foot-candle limit. Photometric modeling in the affected area indicates readings as high seven foot-candles.
- The proposed pole height for the parking lot lighting needs to be annotated on the plan.
- The property address characters need to be relocated from the proposed freestanding signs onto the building itself.
- The three parcels that comprise the project site need to be combined.

Ms. Lubbert noted each of the three constituent parcels has a residential curb cut—two on S. 11th St and one on Stadium Drive. The applicant will be closing all existing driveways and reestablishing an appropriately designed non-residential curb cut on S. 11th St, near the project site's north property line. On site, the parking layout is composed of a simple circuit, properly designed and dimensioned to accommodate two-way vehicle movement and emergency vehicle access. The number of proposed parking spaces complies with the Zoning Ordinance.

Per the Township's non-motorized plan, the applicant will be installing a six-foot wide pedestrian path along the project site's S. 11th St. frontage. From this facility an ADA-compliant pedestrian connection to the building's entrance will be constructed. An improved concrete pad for the bus stop on S. 11th St. is also being installed by the applicant. The project's design engineer is coordinating this improvement with Kalamazoo County Metro Transit. Concurrent with this development project, the Township is installing a companion pedestrian path along Stadium Drive, and the two facilities will connect at the corner of Stadium Drive and S. 11th St. Furthermore, the applicant will be installing bicycle racks near the building entrance.

She reported that a landscaping plan was reviewed by Township staff and found to be in compliance with the Zoning Ordinance. No modifications to the plan were required.

The Township's engineering representative, Prein & Newhof, reviewed the project site plan for ADA compliance, appropriate stormwater management, and proper utility layout and design. Any initial deficiencies were corrected and no further changes are needed.

The Township Fire Marshal reviewed the site plan and requested the FDC be relocated adjacent to the on-site hydrant. He noted the Oshtemo Township Fire Department prefers the Stadium Drive driveway stay open, but this preference is not supported by Township ordinance or Road Commission of Kalamazoo County regulations. In this situation the latter two determinations prevail and the curb cut will be closed.

Ms. Lubbert said the remaining items noted to be corrected pose no threat to public health, safety, and welfare; the project site plan is substantially complete. Oshtemo Township Planning Department staff recommended approval of the site plan stipulating the following conditions to be resolved prior to the issuance of a building permit for the office building:

1. A Land Combination Application, unifying the three constituent parcels, shall be submitted to and approved by the Township.
2. An updated photometric plan shall be submitted to the Township for administrative review, annotating parking lot light pole heights and indicating that the identified foot-candle overage has been corrected.

3. Updated building elevation illustrations showing relocation of the property address to the exterior of the building shall be submitted to the Township for administrative review.
4. An amended site plan shall be submitted to the Township, indicating that the FDC has been relocated adjacent to the on-site hydrant.

Chairperson Sikora thanked Ms. Lubbert for her report and asked whether Board members had any questions.

Ms. Bell asked whether zoning ordinance requires LED lights be installed.

Mr. Clark said a maximum amount of lumens are stipulated along with a few other metrics. LED lights are not mandated, but they are common. This project will employ LED lighting.

Hearing no further questions, Chairperson Sikora asked whether the applicant wished to speak.

Mr. Matt Vernon, The Vernon Group, thanked the Board for considering this project. If approved, the plan is to begin construction as soon as possible after construction restrictions are lifted by the Governor. They are excited to begin and feel the building will be a great addition to the Township. The four conditions recommended by Staff are minor and will not be an issue for compliance. The “flex concept” building will look fantastic and will include infrastructure data with a hub that will be brought to the corner that will allow many individual businesses to reside in that location.

Attorney Porter said the project will eliminate a longstanding eyesore.

Ms. Maxwell asked if there is a specific hospital connected to the plan.

Mr. Vernon said one medical facility will occupy one end of the building. The remainder can be utilized by any profession. 11 x 11 foot offices or multiples with movable partitions can be grouped together to allow flexibility depending upon need.

Ms. Bell asked if he had any comment on the increase in traffic in this area, already a difficult traffic situation, and wondered if there would be an increase to four lanes.

Mr. Vernon noted the traffic flow could be altered by MDOT if the project is approved; he would encourage turning north out of the parking lot, but felt the problem is generally during rush hour. He noted there is a dedicated turn lane east on Stadium off 11th Street.

Mr. Clark said the Road Commission was engaged during early development of the project as well as Kalamazoo County Metro Transit. The Road Commission will review the driveway permit before it is issued and will take care of future issues.

Mr. Alex Frazier, Engineer with Hurley-Stewart, indicated the Road Commission will designate the driveway be pushed as far away from Stadium Drive as possible to maximize separation to improve traffic flow and emergency access. They will evaluate what can be handled on 11th Street.

Chairperson Sikora asked if there were any questions from the Board.

Mr. Antosz asked how many parking places would be on site.

Mr. Frazier said there would be 83; Mr. Clark noted that is the amount calculated according to ordinance.

The Chair opened the meeting to public comment. As there were no public comments, he closed the public hearing and moved to board discussion.

Both Ms. Maxwell and Ms. Bell felt this was a great project and indicated their support.

Mr. Gould noted the corner is an eyesore and looked forward to seeing it improved. He commended the Vernon Group for their vision.

Ms. Bell **made a motion** to approve the site plan to construct an 18,500 square foot medical office building at the northwest corner of Stadium Drive and South 11th Street as requested with the following four conditions recommended by staff to be resolved prior to the issuance of a building permit for the office building:

1. A Land Combination Application, unifying the three constituent parcels, shall be submitted to and approved by the Township.
2. An updated photometric plan shall be submitted to the Township for administrative review, annotating parking lot light pole heights and indicating that the identified foot-candle overage has been corrected.
3. Updated building elevation illustrations showing relocation of the property address to the exterior of the building shall be submitted to the Township for administrative review.
4. An amended site plan shall be submitted to the Township, indicating that the FDC has been relocated adjacent to the on-site hydrant.

Ms. Smith **seconded the motion. The motion was approved unanimously by roll call vote.**

Chairperson Sikora moved to the next item on the agenda.

VARIANCE: WINGARD, 3274 S. 6th STREET
LOGAN WINGARD REQUESTED A 40-FOOT REDUCTION OF THE 70-FOOT
REQUIRED FRONT SETBACK FROM THE 6TH STREET RIGHT-OF-WAY TO
REPLACE AN OLD CARPORT THAT HAD TO BE DEMOLISHED.

Ms. Lubbert said the applicant is requesting a variance for relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts. On the subject property, the applicant wishes to replace an existing carport located approximately 40 feet from the public right-of-way with a similar structure in the same location. Front setbacks along S. 6th Street, that roadway being one of the Township's Designated Highways, is 70 feet from the right-of-way rather than the customary 30 feet.

In order to place the new carport in the same location of the preexisting one, the applicant requested a variance to allow a 40-foot front setback from the public right-of-way instead of the required 70 feet. This decreased distance is where the home is located, as are numerous other legal non-conforming structures along this portion of S. 6th Street. As well as improving the property in a way that matches its previous layout, the applicant also attests there are numerous site restrictions that make placing the carport in compliance with the 70-foot setback unreasonably burdensome. Following are the applicant's rationale for requesting the variance:

- Without a carport in this location, reasonable use of the driveway will be compromised due to nearby trees that occasionally drop branches that may lead to vehicle damage.
- Immediately west of the carport location there is a marked upslope and continuing the driveway up this grade would require significant regrading of the land.
- Allowing the carport in this location will not compromise public health, safety, and welfare.
- The old, legal non-conforming carport was dilapidated and had to be replaced.
- Placement of a carport in compliance with the extant 70-foot setback is further complicated due to the location of the septic system and a pole barn in the back yard. Much of the back yard also experiences periods of standing water and is composed of unstable soil. Additional earth changes and possibly engineering may be required to adequately prepare another vehicle parking area.

Ms. Lubbert explained the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.

- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.

Staff analyzed the request against these principles and Ms. Lubbert provided the following information to the Zoning Board of Appeals.

The subject property's topography does have some significant slopes, one of which begins right behind the carport location—Township resources show an eight foot rise between the driveway and the back yard. While regrading can be done to establish a usable driveway to the back yard, earth works could affect the house and septic system. New soils may also need to be brought in to provide a suitable base on which to park cars and appropriately anchor the carport.

Given the amount of earth changes that could be required to soften the grade at the end of the existing driveway, mitigate impacts on the septic system, and establish a suitable surface to relocate the carport to, it could be interpreted that conformance is unnecessarily burdensome. Although the property modifications needed to accommodate a new carport in accordance with current setbacks may be burdensome, such an accessory structure is discretionary, and overall reasonable use of the property does remain without such.

In researching past Zoning Board of Appeals decisions regarding setback relief for accessory and other residential buildings, Planning Department staff identified and provided decisions on four similar cases to provide past precedent decisions. Ms. Lubbert focused on one:

Schaap, 1640 S 4th St, 8/23/2016: Citing drastic topography changes as well as the existing single-family home's location approximately 30 feet from the S. 4th Street right-of-way, the Zoning Board of Appeals approved the applicant's variance request to build an accessory building with a 30-foot front setback, relief of 40 feet from the standard 70-foot front setback for many designated highways in the Township such as S. 4th Street.

She noted construction of a carport is discretionary, and vehicles can be parked in the driveway but when the home and original carport were constructed, the front setback affecting this parcel was different and now extends onto the property 30 feet further. Also, the applicant did not create the site conditions noted herein, so it is reasonable to say that the hardship is not self-created.

In addition, many of the existing structures along this stretch of S. 6th Street, including the single-family home and the old carport on the subject property, were constructed to previous setbacks that allowed building much closer the road than current regulations do. Allowing a new carport to replace the demolished legal non-conforming structure will not compromise public health, safety, and welfare.

Ms. Lubbert said the chosen motion should include the findings of fact relevant to the requested variance. Based on staff analysis, she presented the following findings of fact:

- Support of variance approval
 - The property experiences unique, challenging topography, with a marked eight-foot change in elevation between the driveway in the front yard and the grade of the back yard—the only area the carport can be moved to in order to comply with the minimum front setback.
 - Further obstructions to relocating the carport in compliance with the 70-foot front setback include the locations of the septic system and a preexisting pole barn further back on the property.
 - Past ZBA decisions granting variances in similar situations has established precedence.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance
 - A carport is discretionary; the applicant can still park cars in the driveway.

She indicated possible motions regarding the applicant's request to consider should include:

1. Motion to approve. Based on the findings of fact discussed in this memo, including the presence of challenging topography, existing property features in the back yard, and past precedence, motion to approve the variance request, allowing the applicant to locate a new carport 40 feet from the S 6th Street right-of-way; a setback reduction of 30 feet.

If the ZBA chooses this motion, staff request that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Motion to deny: Reasonable use of the property is possible under the RR: Rural Residential zoning district allowances for a single-family home.

Chairperson Sikora thanked Ms. Lubbert for her presentation and asked whether Board Members had questions.

He asked whether staff knows for sure that the septic tank is behind the house.

Mr. Clark said staff took the applicant's word for the tank location.

The Chair asked if the house is also non-conforming regarding set back and noted the topography drop-off is not shown on the documents provided.

Mr. Clark said the house is non-conforming, as are numerous other homes in that area that predate current regulations. He said there is no visual for the drop-off, but drop-off to the south and west was confirmed by digital means. It is common to have a steep embankment on that stretch of road.

Ms. Bell asked how the project was brought to the Township's attention.

Mr. Clark indicated the old carport was demolished. Some misunderstanding occurred between the Township and the applicant, with the result that no permit was granted before the new carport was erected. Mr. Suwarsky, Ordinance Enforcement, determined a violation had occurred. Unless the variance is granted, the new structure will have to be removed.

Ms. Lubbert explained that situation was not something that should be considered in board deliberations.

Ms. Maxwell said she lives on S. 6th Street and that she would not want to park on that street without a carport as lots of branches fall down there.

Ms. Smith wondered if this could be a grandfathered situation.

Mr. Clark said the old carport was presumably non-conforming, but once non-conforming goes away upon demolition, current ordinance setbacks must be complied with or relief granted.

Hearing no more questions, the Chair asked whether the applicant wished to speak.

Ms. Logan Wingard, 3274 S. 6th St, thanked the Board for considering her request and noted she has experienced damage to her vehicles since the old carport was removed. She noted the location is the only place that will work on her property and explained it is a 2-car structure, made of steel which replaced an old wooden structure. The new carport is sturdy, stable and much more attractive than the previous one. She did not realize there had been a change in the ordinance when it was constructed.

Chairperson Sikora determined no one from the public was present to comment and moved to Board Discussion.

The Chair commented it would be very difficult to accommodate the carport to meet current ordinance requirements, if it were necessary to move it.

Ms. Bell said if a legally non-conforming structure burned down it could be replaced in the same location. There have been major changes in set-back rules in residential areas and it is understandable that someone might not realize they needed to pursue approval when replacing a structure in the same place. She said she would gladly support this variance approval.

Mr. Clark clarified that if at least 50% of the value of a non-conforming structure is lost in a fire, it has to be fully demolished and the replacement must meet current ordinance.

Ms. Maxwell **made a motion** to approve the variance as requested based on the following findings of fact:

- The property experiences unique, challenging topography, with a marked eight-foot change in elevation between the driveway in the front yard and the grade of the back yard—the only area the carport can be moved to in order to comply with the minimum front setback.
- Further obstructions to relocating the carport in compliance with the 70-foot front setback include the locations of the septic system and a preexisting pole barn further back on the property.
- Past ZBA decisions granting variances in similar situations has established precedence.

In addition, the condition suggested by Staff requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority must be met. Ms. Bell **seconded the motion. The motion was approved unanimously by roll call vote.**

**VARIANCE: CONSUMER CREDIT UNION, 6699 W. MAIN STREET
UNIVERSAL SIGN, ON BEHALF OF CONSUMER CREDIT UNION, REQUESTED
RELIEF FROM THE ZONING ORDINANCE IN ORDER TO INSTALL A POLE SIGN
WITH 80 SQUARE FEET OF DISPLAY AREA WHEN ONLY 60 SQUARE FEET IS
ALLOWED.**

Ms. Lubbert indicated the applicant wished to postpone consideration of this item until a meeting could be conducted in person.

There was discussion regarding whether the date should be set in June or May for timely action and whether additional posting costs could/should be passed on to the applicant if this item were tabled to a date certain and the Governor's orders prohibiting in person meetings was still in effect at the agreed upon date.

Mrs. Maxwell **made a motion** to table consideration of this item until the June 26, 2020 regular board meeting. No one seconded the motion. The **motion died for lack of a second.**

Attorney Porter noted if the meeting is set for the regularly scheduled May 26 meeting but needs to be rescheduled again due to the Governor's order, the applicant can choose to participate in a virtual meeting on May 26, or will be asked for additional funds to pay for public notice for an in person meeting at a later date.

Mrs. Maxwell **made a motion** to table consideration of this item until the May 26, 2020 regular board meeting. Ms. Smith **seconded the motion**. **The motion was approved unanimously by roll call vote.**

Public Comments

Chairperson Sikora determined there no one wished to comment and moved to the next item on the agenda.

Other Updates and Business

Ms. Lubbert congratulated the group on holding their first Zoom meeting and indicated the May 26 meeting would likely also be a virtual one.

Chairperson Sikora thanked everyone for their participation and asked that if anyone had suggestions for a smoother process they should share it for consideration.

Ms. Smith requested paper copies of meeting materials which would help with forming concise motions for approval or denial.

Ms. Bell wondered if there might be a way to retrieve printed meeting packets from the Township office at an agreed upon time. She prefers paper in front of her but would rather not have to print it, noting that packets can consist of many pages.

Ms. Lubbert thought packets might be able to be picked up from the Township's drop box.

Ms. Bell asked that staff discuss whether that can be done.

Adjournment

Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:10 p.m.

Minutes prepared:
April 29, 2020

Minutes approved:
May 26, 2020