

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD AUGUST 27, 2013

Agenda

VARIANCE FROM THE MINIMUM FRONT YARD SETBACK REQUIREMENT TO ALLOW CONSTRUCTION OF A COVERED ENTRY WAY ADDITION ON THE FRONT OF AN EXISTING SINGLE-FAMILY RESIDENCE APPROXIMATELY 51 FEET FROM THE ROAD RIGHT OF WAY LINE, 19 FEET LESS THAN THE 70 FOOT MINIMUM. SUBJECT PROPERTY IS LOCATED AT 3336 NORTHFIELD TRAIL (PARCEL NO. 3905-01-482-022).

VARIANCE FROM THE MINIMUM FRONT YARD SETBACK REQUIREMENT AND THE MINIMUM SIDE YARD SETBACK REQUIREMENT TO ALLOW ADDITIONS TO EXISTING STRUCTURES RESULTING IN A SIDE YARD SETBACK OF 7 FEET, 11 INCHES OR 12 FEET, 1 INCH LESS THAN THE 20 FOOT MINIMUM AND A FRONT YARD SETBACK OF 48 FEET, 22 FEET LESS THAN THE 70 FOOT MINIMUM. SUBJECT PROPERTY IS LOCATED AT 5622 WEST MAIN STREET (PARCEL NO. 2905-13-280-035).

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, August 27, 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

Also present were Greg Milliken, Planning Director; James Porter, Attorney; Martha Coash, Meeting Transcriptionist; and six other 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 July 23, 2013

The Chairperson asked if there were any additions, deletions or corrections to the minutes of July 23, 2013. No changes were noted. Mr. Smith made a motion to approve the minutes as presented. Mr. Loy seconded the motion. The motion was approved unanimously.

VARIANCE FROM THE MINIMUM FRONT YARD SETBACK REQUIREMENT TO ALLOW CONSTRUCTION OF A COVERED ENTRY WAY ADDITION ON THE FRONT OF AN EXISTING SINGLE-FAMILY RESIDENCE APPROXIMATELY 51 FEET FROM THE ROAD RIGHT OF WAY LINE, 19 FEET LESS THAN THE 70 FOOT MINIMUM. SUBJECT PROPERTY IS LOCATED AT 3336 NORTHFIELD TRAIL (PARCEL NO. 3905-01-482-022).

Chairperson Taylor asked Mr. Milliken to present his report on the front yard setback variance requested by Pulver Construction Company.

Mr. Milliken explained the applicant was requesting a variance to build a roof over an existing stoop extending from the front entry of an existing house located at 3336 Northfield Trail. The property is located within the Westhaven Condominium development and is at the corner of H Avenue, Northfield Trail, and Westhaven Trail.

The property is in the R-2 district. Due to the fact that it has three road frontages, the property technically has three front yards. The front yard setback in the R-2 district is typically 30 feet. This applies to terraces, decks, and covered projections as well. However, Section 64.100 provides for additional setbacks along specific designated highways. H Avenue is one such highway and calls for a 70 foot setback from the road right of way.

Mr. Milliken continued, saying the house pre-dated the Westhaven development but was incorporated into the development when it was established. At that time, the primary access for the home was moved from H Avenue to Westhaven Trail. In addition, the right of way along H Avenue was widened from 33 feet to 50 feet from the centerline of the road. The home was originally constructed in compliance with the setback requirements and the right of way at the time. However, when the right of way was increased and moved 17 feet closer to the home, the structure became non-conforming. Section 62.151 of the Zoning Ordinance indicates that nonconforming uses or structures may be continued but may not be added to or altered unless such extensions, alterations, or additions are in compliance with the Zoning Ordinance.

He said the proposed construction is part of a larger overall improvement project to the home. The project includes a new garage, paved driveway, interior improvements, and the covered entry off H Avenue. The house already has a deck / patio on the H Avenue side of the house, and the project would build a pitched roof and columns that would cover that landing.

Mr. Milliken noted the applicant initiated work on the covered entryway prior to receiving a building permit, and a stop work order was issued by the Kalamazoo Area Building Authority (KABA). Upon review of the permit application, it was determined by Planning staff that the variance was necessary. Mr. Milliken noted he found several variances that were approved in the past in similar situations for older homes, after a setback was changed by the Township.

Mr. Milliken referred to standards of approval and pointed out this was not a self-created situation but was the result of the increased right of way along H Avenue from 33 feet off center to 50 feet off center. He noted if the variance is denied, the property could continue to be used, but the proposed improvement and any other similar improvements could not occur.

Mr. Milliken indicated he would be happy to answer any questions from the Board.

Chairperson Taylor asked if Board members had questions regarding this variance request.

Mr. Milliken confirmed for Mr. Sterenberg that the "front yard" requirements are because of the type of road(s) the property fronts rather than the orientation of the front of the structure and that the roof requiring a variance is already substantially completed.

Mr. Sterenberg noted the variance is necessary because of the change in the right-of-way which was part of the condominium development; he also confirmed with Mr. Milliken that the existing deck was previously in conformance with the original setback but is now nonconforming due to the increased right of way.

Chairperson Taylor asked the applicant to please address the Board.

Mr. Mark Pulver, of Pulver Construction Co., Inc., 5901 North 7th Street, said it was not realized there would be a problem with the roof and columns encroaching on the right of way since the existing deck and front step protrude further than the roof and pillars he is building.

The Chairperson indicated the Board would deliberate the applicant's request.

Mr. Smith said he felt the request for variance was a good one and the situation was not the homeowner's fault.

In response to a question from Mr. Sterenberg, Attorney Porter said the Road Commission would not have an issue with approving the variance, even if a three lane road is built in the future, since there would be no infringement on their right-of-way; it is a matter of the enhanced setbacks and a variance from those setback requirements.

Chairperson Taylor asked Mr. Milliken if he had heard from any other residents regarding this issue.

Mr. Milliken said no comments were received. The home owner stopped in last week to ask questions and to let him know she was not able to attend today's meeting.

Chairperson Taylor asked for a motion to approve the variance as requested.

Mr. Smith moved and Mr. Loy supported the motion to grant the variance for the reasons set forth in the staff report. Motion carried unanimously.

VARIANCE FROM THE MINIMUM FRONT YARD SETBACK REQUIREMENT AND THE MINIMUM SIDE YARD SETBACK REQUIREMENT TO ALLOW ADDITIONS TO EXISTING STRUCTURES RESULTING IN A SIDE YARD SETBACK OF 7 FEET, 11 INCHES OR 12 FEET, 1 INCH LESS THAN THE 20 FOOT MINIMUM AND A FRONT YARD SETBACK OF 48 FEET, 22 FEET LESS THAN THE 70 FOOT MINIMUM. SUBJECT PROPERTY IS LOCATED AT 5622 WEST MAIN STREET (PARCEL NO. 2905-13-280-035).

Chairperson Taylor asked Mr. Milliken to present his report on the front yard setback variance requested by Maple Hill Leaseholds, LLC.

Mr. Milliken indicated the applicant, Maple Hill Auto Mall, is located at 5622 West Main Street, at the northwest corner of West Main Street and Maple Hill Drive in the C Local Business district. The car dealership is a special exception use in the C district and consists of two large buildings and large lots for outdoor display. The dealership has franchises for five different manufacturers.

He said the applicant is requesting variances as part of an expansion and renovation program at their facility as they upgrade their site in compliance with requirements of the various franchises. Because automobile sales facilities are a special exception use, the site plan review for the expansion will require a public hearing and Planning Commission approval. Due to the fact that variances are necessary as part of the proposed expansion, the plans were submitted for variance approval first. Then, pending the results of this review, they will be submitted to the Planning Commission for review of the site plan and amendment to the special exception use.

Mr. Milliken described the several improvements being made to the site. At Building 1, which is the southernmost building closest to West Main Street, a large addition – approximately 5,860 square feet – is being made to the northwest corner of the building. This area is currently an unused asphalt area used for circulation and parking, and the addition will allow for a greater number of enclosed service bays. Vehicles seeking service enter the building along this west side from the south and are driven out of the back. With the proposed addition, the interior driveway would continue along the west wall and provide access to an expanded service area providing greater and more efficient service options for customers.

He explained this addition will extend north and west from the existing walls of the building. Building 1 is a nonconforming structure due to the fact that the western side of the building is already located within the required side yard setback area. He noted a variance was granted for this addition in 1996. When the building was originally constructed in 1969, the side yard setback was 0 feet. However, the service entry was added to the west side in 1996 after the setback was changed to 20 feet thereby requiring a variance. Because the building is constructed at an angle and the northern portion of the addition will be closer to the property line than the current building, another side yard setback variance is needed. The addition would sit 7 feet 11 inches from the property line. The addition would be adjacent to the rear parking and storage area that exists behind the Marathon gas station west of the dealership.

Mr. Milliken continued, saying a car wash facility is also being added to the north side of Building 1, within an existing circulation area. To ensure the required 24-foot circulation drive is maintained, some parking / storage spaces will be lost north of Building 1. An older car wash facility currently exists in Building 2. The new facility will allow for greater efficiency when providing this service for both inventory vehicles as well as for customers.

Mr. Milliken said the last major addition to Building 1 is in the southeast corner where a showroom addition (784 square feet) and covered outdoor display space is being added. As shown, both of these are located within the required setback area for West Main Street (170 feet from the center of the right of way). However, a provision in Section 64.100 allows for this setback to be adjusted if adjacent structures are located within the front yard setback. Due to the fact that the Marathon station to the west and the Firestone dealer to the east are both well within the required setback, the proposed five foot encroachment here is compliant.

For Building 2, he said a 1,239 square foot showroom and office addition is being made in the southeast corner for the Audi dealership. The building currently sits at the 70 foot setback line, and the 22 foot addition would extend into the front yard setback off of Maple Hill Drive. It would occupy space currently used for parking and vehicle display. The structure would be 48 feet from the right of way.

Mr. Milliken said, as stated earlier, the setback standards of the Ordinance allow for relief when existing structures in proximity to the subject property are located within

the setback requirements. In this case, the apartment building to the north is located within 300 feet of Building 2 and has a setback of approximately 28 feet. Therefore, using the adjustment formula provided in Section 64.100, the required setback for Building 2 along Maple Hill Drive is actually 56 feet. The proposed construction still needs a variance, but the variance is from 56 feet rather than from 70 feet. Further mitigating these circumstances, the buildings across the street on the east side of Maple Hill Drive are also located within the front yard setback area. Dunham's appears to be about 46 feet from the right of way and Firestone appears to be about 56 feet from the right of way.

Mr. Milliken recommended review of the following standards in considering the variance request. There are two separate variances incorporated within the request; he said he would discuss them separately where appropriate.

1) *Conformance Unnecessarily Burdensome*

Side Yard Setback: Mr. Milliken noted the addition to Building 1 that requires the side yard setback variance is being constructed in line with the existing building. The building is nonconforming as it is already located within the required side yard setback area. The addition could be constructed in compliance with the required setback but would not align with the existing west wall. The internal driveway for vehicles through the building and to the service areas is located in this westernmost portion of the building, thus limiting the options for compliance.

Front Yard Setback: He said the addition to Building 2 that requires the front yard setback variance has a few other options for conformance. As stated above, the adjusted setback along Maple Hill Drive is 56 feet. Therefore, the addition could be reduced in depth from 22 feet to 14 feet in order to satisfy the setback requirement. Or, all or portions of the addition could be moved to the south end of the building to achieve compliance while providing the square footage addition required by the manufacturer.

2) *Substantial Justice-Applied to both applicant as well as to other property owners in district for consistency/precedence.*

Mr. Milliken reviewed two other requests of a similar nature in the vicinity that received variance approval and the similarities involved in those requests.

3) *Unique Physical Circumstances-Are there unique physical limitations or conditions which prevent compliance?*

Side Yard Setback: Mr. Milliken pointed out the unique element of the side yard setback request is the fact that the existing structure is already nonconforming. Although the addition is closer to the west property line than the existing building, this is due to the fact that the building and property line are not parallel.

Front Yard Setback: He said there is nothing particularly unique about the Maple Hill Drive frontage and the Building 2 area that would prevent compliance. As stated, most of the surrounding structures along Maple Hill Drive are already located within the required 70 foot front yard setback area, some closer than the proposed 48-foot setback of Building 2. The buildings on the east side of Maple Hill Drive were originally constructed as outbuildings for the mall that previously existed at that site. The emphasis on internal parking and circulation pushed the buildings closer to the street and their location was approved as part of that overall plan.

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

Side Yard Setback: Mr. Milliken suggested the ZBA should consider the adjacent land uses and potential impact of the proposed development. The Board should also consider the fact the existing building is non-conforming due to its location within the side yard setback and previously received a variance to be located at this site. Although the addition is proposed to be aligned with the west wall of the existing building, it encroaches beyond this existing variance approval due to the fact that the building and property line are not parallel.

Front Yard Setback: Mr. Milliken acknowledged this is a little more challenging and asked the following questions be considered. Does the fact that other structures along Maple Hill Drive are located within the setback support the variance request? Does that fact that the area proposed for the addition is currently used for vehicle display and storage – a use that is grandfathered and must comply with setback requirements – mitigate the encroachment? Or is there simply a lack of practical difficulty and/or alternative arrangements or layouts for the addition that thereby limit justification for the variance?

Mr. Milliken concluded by saying if one or both variances are approved, Staff recommends they be approved conditional upon approval of the special exception use and site plan for the additions by the Planning Commission. He indicated he would be happy to answer any questions.

Chairperson Taylor asked if Mr. Milliken had heard from other property owners. Mr. Milliken did not hear from anyone.

Mr. Sterenberg asked if the 7' 11" side yard setback was a fire issue. Mr. Milliken said he did not seek input from the Fire Marshal as he would provide input for the site plan at the Planning Commission level. Whether the variance is granted or not there is ample access from the rear.

Chairperson Taylor asked the applicant to address the Board.

Mr. Terry Schley, President of Schley Architects, P.O. Box 19640, 4200 S. 9th Street, said he, Jim Vandenberg, Owner and General Manager of Maple Hill

Leaseholds, Gordon Groves, Cornerstone Construction and Chris Nelson of Schley Architects were all available to speak to the Board on behalf of the application for variance.

He indicated there is a soft slope at the back of the next door Marathon station where the two properties align but that it will not impede fire department access. He noted they are before the ZBA for two variance requests. If the ZBA grants the variance requests, next they will go to the Planning Commission with the site plan. He said they are asking for fair consideration of the requests as described by Mr. Milliken.

Mr. Schley said building one, requiring the first variance, has been there for many years and precedes the current Ordinance. The encroachment they are asking for will help to address historic burdens. He showed the Board a representation of how the building could look and said the proposed improvements will provide a more attractive storefront for the site. He said the variance will improve community welfare as part of an overall reinvestment to enhance the front of the building.

Mr. Schley said the second variance is a result of Maple Hill needing to comply with requested changes from Audi. He introduced Mr. Jim Vandenberg to speak about those requirements.

Mr. Vandenberg explained that every 10 years the Audi franchise can request upgrades/expansions of dealerships. If a dealership does not comply, there are financial penalties assessed on each car sold. Many details of the facility are dictated. In order to be competitive, dealerships must meet the requests. He said improvements he needs to make now are an increased number of service bays, more technicians, and his business plan necessitates a new, automated car wash to replace the current 18 year old one. The Maple Hill property is 5-1/2 acres which limits what he can do there. He talked with the owners of both the adjoining Marathon Station and Fridays Restaurant to try to obtain additional land but was unsuccessful. He said he has been a good steward of the property, wants to stay in that location, and feels he has done due diligence, but the options are limited. They considered building out to the south but cannot do so without encroaching on the main fire, freight and garbage lane. He felt the plan they developed, which requires the two variances, is their best option.

Mr. Schley told the Board Audi would ideally like a new building, but it simply wouldn't work. They also looked at other properties in Kalamazoo and on 9th Street, but that would not be a good retail decision and the applicant would like to remain in Oshtemo Township. He said the setbacks requested are actually very close to compliance. The Audi group wants a bigger physical presence and told Maple Hill that what is being proposed is the minimum they can live with. He said the large encroachment on setback for building two has some precedent in the area. He asked Mr. Chris Nelson to present that information to the Board and indicated they would be happy to answer questions after that.

Mr. Nelson explained the technicalities regarding why the setback is close to compliance for building 2, saying they used aerial photography to measure setbacks for Long John Silver's, Firestone, and Dunham's, all of which are close to what Maple Hill is asking for and some of which are less than prescribed by Ordinance. The Vintage Apartment Complex to the north is actually closer to Maple Hill Drive than what Maple Hill Auto Group is requesting. He said the Ordinance speaks to adjusted setbacks, based on adjacent properties within 300 feet of building 2, but it does not say they have to be on the same side of the street. Using the calculation in the Ordinance, and comparing to adjacent properties listed above, it could be argued Maple Hill is actually in compliance by an inch.

In conclusion, Mr. Schley said they feel they the plan may actually comply with the Ordinance requirements, but are trying to do the right thing in making application to the Board. He asked if there were any questions.

Mr. Sterenberg asked if the addition to building 2 might be located on the west side.

Mr. Vandenberg said that would put Volkswagen in the same building as Audi which would not be acceptable to them. A swap would put the showroom behind a service shop.

Mr. Smith asked if the expansion would create jobs.

Mr. Vandenberg said it would create somewhere around 10 jobs.

In answer to a question from Mr. Larson about a firewall and sprinklers for the west wall of building one, Mr. Schley said an appropriate solution would be effected with building code officials.

Mr. Sterenberg noted it could be argued that an outdoor display is being covered with a roof regarding building two.

Mr. Sikora commented traffic is already congested on the east side of building two and it seems traffic flow will be worse with the 22 foot addition.

Mr. Vandenberg said they lowered the number of rows of parked cars there, no one will be backing out anymore, and the drive is actually expanded and should be a slight improvement.

Mr. Sikora did not think the congestion problem would be solved with this plan.

Mr. Milliken agreed that congestion is an issue and noted impacted aisles will need to meet the minimum dimensional standards of the Ordinance.

Mr. Schley acknowledged that auto dealerships involve intensive car concentration and use, that it is the nature of the beast. He said the aisles will be straight, identified and clean.

There were no further questions from the Board and Chairperson Taylor moved to Board deliberations. He asked if there had been any comments from Vintage Apartments.

Mr. Milliken said he had heard comments from no one.

Mr. Smith said he felt the ZBA should bend as far it can to assist a business without affecting neighbors adversely. The setback does not even extend as far as the one for the apartment complex. He said there is not a discussable difference between the two variance requests. He thought the plan was a good one, found no fault with it, and felt they should proceed.

Mr. Sikora agreed with Mr. Smith and noted that the comparison the applicant provided between the different buildings and their setbacks was helpful. He thought a good job was done to make everything fit on the limited land available and that it is a reasonable use of the property. He supported both requests.

Mr. Loy and Mr. Larson both indicated they supported both variance requests.

Mr. Sterenberg said he appreciated the perspective provided in the letter from Mr. Vandenberg. He also appreciated Maple Hill Auto Group's commitment to Oshtemo Township and the specific site to make it work for everyone's benefit. He thought it was a great plan overall and not out of the ballpark when looking at the surrounding area. It will be a positive improvement.

Attorney Porter indicated the two variances could be handled with one motion.

Hearing no further comments, Chairperson Taylor asked for a motion to approve the two variances.

Mr. Sikora moved and Mr. Loy supported the motion to grant the variances for Maple Hill as presented, for the reasons set forth in the staff report. Motion carried unanimously.

The Chairperson thanked those who attended and spoke to the Board regarding the variance request.

Any Other Business / ZBA Member Comments

Mr. Milliken told members there would be a meeting scheduled in September to consider a sign variance request.

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 4:27 p.m.

Minutes prepared:
August 30, 2013

Minutes approved:
September 24 , 2013