

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD AUGUST 23, 2016

Agenda

PUBLIC HEARING: VARIANCE REQUEST (TOBIN SCHAAP, 1640 SOUTH 4TH 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 4TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN ACCESSORY BUILDING. THE SUBJECT PROPERTY IS ZONED R-3: RESIDENCE DISTRICT. (PARCEL #3905-29-230-040.)

PUBLIC HEARING: VARIANCE REQUEST (HURLEY & STEWART, LLC, 2800 SOUTH 11TH 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 11TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN ADDITION TO AN EXISTING BUILDING. THE SUBJECT PROPERTY IS ZONED R-3: RESIDENCE DISTRICT. (PARCEL #3905-25-335-040.)

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, August 23, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

MEMBERS ABSENT: None

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

Call to Order and Pledge of Allegiance

Chairperson Bell 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 August 9, 2016

The Chairperson asked if there were any additions, deletions or corrections to the minutes of August 9, 2016. Hearing none, she asked for a motion of approval.

Mr. Loy made a motion to approve minutes of August 9, 2016 as presented. Ms. Culp supported the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (TOBIN SCHAAP, 1640 SOUTH 4TH STREET)

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Chairperson Bell said the next item was a request for a variance from Tobin Schaap for 1640 South 4th Street and asked Ms. Johnston to review the application.

Ms. Johnston said Tobin Schaap, 1640 South 4th Street was requesting a variance to reduce the building setback from 70 feet to 30 feet in order to construct an approximately 800 square foot residential accessory building on his property, located at 1640 South 4th Street, near the intersection of L Avenue. South 4th 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 4th Street impractical. While the part of the parcel that the house is built on, which is approximately 27 feet from the 4th 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.

Ms. Johnston walked through the standards of approval the Board needed to consider when reviewing a variance request.

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

Ms. Johnston commented while the applicant could hypothetically locate the accessory building in compliance with the 70 front setback from the 4th 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.

She said Staff feels 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).*

Ms. Johnston noted 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 and provided three examples.

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

She said 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?*

Ms. Johnston said 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?

Ms. Johnston said although South 4th 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 4th 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.

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, she said Staff feels 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.

Ms. Johnston said Staff recommended 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 4th Street right-of-way does appear to be unnecessarily burdensome.
- 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.

Chairperson Bell thanked Ms. Johnston for her review and asked if Board Members had questions.

In answer to a question, Ms. Johnston clarified the location of some features of the property on maps provided of the property in question.

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

Mr. Tobin Schaap, 1640 South 4th Street, noted he wanted a place to park his vehicle during the winter and that restrictions of the property including topography and power line placement leaves the back of the property as the only place feasible to build if the variance were not granted. That would be an undesirable location to park his vehicle. He noted he had taken the house from being an eyesore to a decent structure.

Chairperson Bell asked about other locations if regrading were done.

Mr. Schaap pointed out various problems: the entrance would be difficult as the curb cut is on 4th Street and the septic tank is in the way.

Attorney Porter said requiring the building to be placed elsewhere on the property would be unnecessarily burdensome since the regrading necessary to do so would likely cause flooding for both the applicant and his neighbor.

Hearing no further questions, Chairperson Bell asked for public comment. There were none, so she moved to Board Deliberations.

Board Members were in consensus that they were in support of granting the variance.

There was some discussion about why some streets were designated as highways, likely done years ago to accommodate possible future road widening.

Ms. Johnston confirmed there would be ample width for road widening with the variance and noted streets designated as highways and the resulting 70 foot setbacks is one of the items that will be reviewed and possibly changed during the Zoning Ordinance reorganization.

Hearing no further comments, Chairperson Bell asked for a motion.

Mr. Loy made a motion to approve the variance request as presented, based on the recommendation and reasons provided by Staff. Mr. Sikora supported the motion. The motion was approved unanimously.

**PUBLIC HEARING: VARIANCE REQUEST (HURLEY & STEWART, LLC, 2800
SOUTH 11TH 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 11TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN
ADDITION TO AN EXISTING BUILDING. THE SUBJECT PROPERTY IS ZONED R-3:
RESIDENCE DISTRICT. (PARCEL #3905-25-335-040.)**

Chairperson Bell moved to the next item on the agenda, a request from Hurley & Stewart, 2800 South 11th Street, to reduce the front building setback from 70 feet to 40 feet in order to construct an addition to an existing building and asked Ms. Johnston to review the application.

Ms. Johnston noted this request is very similar to the previous application. The applicant wishes to construct an approximately 1,000 square foot addition to their building located at 2800 South 11th Street. South 11th 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. She said the request to place the addition within the front yard is due to the following:

- 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.
- The location of the entrance curb cut and existing parking lot preclude adding to the building to the north.
- 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.

She said 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.

Ms. Johnston noted 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 11th Street. This was concerning to the applicant because when they purchased the property the setbacks from 11th 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.

As with the previous request, she said this request by the applicant is for a nonuse variance and that the ZBA should review the following standards in considering the variance request:

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

Ms. Johnston said 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 11th 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. 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).*

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 was provided to Board Members.

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

Ms. Johnston noted 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, she said, 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?

Ms. Johnston explained that 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 11th 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?*

Ms. Johnston said two buildings to the north of the site have setbacks similar to the applicant's request. The first is 2636 South 11th Street, 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 11th 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 11th Street.

Staff assumes the requirement for enhanced setbacks in this area is to accommodate the expansion of 11th 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.

Staff recommended 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 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.

Chairperson Bell asked if adequate parking was already in place for a building expansion.

Ms. Johnston said the site plan will be submitted if the variance is granted; parking was added in 2013 and may be adequate for the expansion.

The Chairperson asked if the applicant wished to speak.

Mr. Tim Stewart, 2800 S. 11th Street, told Board Members the business has been at the current location since 2007 and noted there are currently 26 parking spaces striped and there is more area that could be striped if more spaces are required. The addition will be to expand the engineering office space and will consist of cubicles and hallways to the existing building. They have 16 employees currently, are bursting at the seams and wish to add employees.

Chairperson Bell determined no one from the public wished to speak and moved to Board Deliberations.

Ms. Johnston reported Mr. Martin Svhra, 1648 S. 4th Street, stopped in to ask about storm water runoff. He was neither for nor against the application. Staff will contact him when there is a site plan to show him how the storm water will be managed.

Board Members had no objections to granting the variance; Chairperson Bell asked for a motion on the request.

Mr. Sikora made a motion to approve the variance request as presented, based on the reasons provided in the Staff report and on Board discussion. Mr. Smith supported the motion. The motion was approved unanimously.

Any Other Business / ZBA Member Comments

Chairperson Bell noted it would be helpful to have the amount of setback approved in future requests.

Ms. Johnston told Board Members the Planning Commission is still short one Commissioner and asked if anyone knew of someone interested in serving to have them contact her.

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 3:42 p.m.

Minutes prepared:
August 24, 2016

Minutes approved:
September 27, 2016