

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD SEPTEMBER 27, 2016

Agenda

SITE PLAN REVIEW: (NATIONAL FLAVORS, 7700 STADIUM DRIVE)
DANIEL HINKLE, REPRESENTING NATIONAL FLAVORS, IS REQUESTING SITE PLAN REVIEW FOR A NEW MANUFACTURING FACILITY ON A VACANT PARCEL AT THE NORTHWEST CORNER OF STADIUM DRIVE AND STADIUM PARKWAY. (PARCEL #3905-34-155-050.)

PUBLIC HEARING: VARIANCE REQUEST (MERITAGE HOSPITALITY GROUP, 5455 WEST MAIN STREET)
APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 78.720 OF THE ZONING ORDINANCE TO ALLOW THE PROPOSED SITE LIGHTING TO EXCEED THE REQUIRED 0.1 FOOTCANDLES AT THE PROPERTY LINE. THE SUBJECT PROPERTY IS ZONED C: LOCAL BUSINESS DISTRICT. (PARCEL #3905-13-401-020.)

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

MEMBERS ABSENT: James Sterenberg, Vice Chairperson

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

SITE PLAN REVIEW: (NATIONAL FLAVORS, 7700 STADIUM DRIVE) DANIEL HINKLE, REPRESENTING NATIONAL FLAVORS, IS REQUESTING SITE PLAN REVIEW FOR A NEW MANUFACTURING FACILITY ON A VACANT PARCEL AT THE NORTHWEST CORNER OF STADIUM DRIVE AND STADIUM PARKWAY. (PARCEL #3905-34-155-050.)

Chairperson Bell said the next item was a request from Daniel Hinkle for site plan review for a new manufacturing facility 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 building is planned to be 36,000 square feet consisting of offices, labs for new flavor development and manufacturing and distribution. Access to the development will be from Stadium Park Way for both car and truck traffic.

She said the proposed development generally complies with all Zoning Ordinance requirements for a use permitted by right within the *I-1: Industrial District*. Building setbacks exceed the required distance from the property lines. The photometric plan and light poles comply with the requirements of *Section 78.720: Outdoor Lighting Standards*. The dumpster enclosure is six feet in height and is opaque, meeting all trash enclosure standards. Finally, the requirements for a complete site plan have been met.

Ms. Johnston noted parking for the site meets the requirements of *Section 68: Off-Street Parking* based on the office and manufacturing uses planned in the building. Loading and unloading for the site has been placed in the front yard along Stadium Park Way. The Zoning Board of Appeals granted a variance to National Flavors on August 9, 2016 to allow loading and unloading in the front yard, granting relief from *Section 68.301: Loading and unloading*.

She indicated the applicant intends to close the current curb cut located on Stadium Drive and open two new curb cuts on Stadium Park Way. The first cut, closest to Stadium Drive, will be for employees and guests to the site. The second curb cut, farther north on the site, will be for the truck traffic accessing the loading/unloading zone.

She said all circulation aisles within the parking lot meets the 24 foot wide requirements of *Section 68.300: Aisle Widths*. However, along the north side of the building there is a 20-foot drive with a T-turn around adjacent to the buildings west side. While not technically required to be 24-feet in width, the Township Fire Marshal has requested the change from 20 to 24 feet.

Ms. Johnston also said the Township Engineer needs to better understand the storm water volume calculations provided by the applicant, but stated the project is generally buildable. The calculations will need to be resolved prior to the issuance of a building permit.

Overall, she said, the landscape plan meets the requirements of *Section 75: Landscaping*. However, *Section 75.180: Material requirements and maintenance* states that at least 75 percent of the canopy trees on the site must be native to Lower Michigan. While the total number of required canopy trees have been provided, the percentage required to be native has not been met. A revised landscaping plan will be needed.

The Fire Marshal has confirmed the applicant placed hydrants in the locations he requested and has no further concerns except for the drive aisle.

Ms. Johnston said Staff recommended approval of the site plan for National Flavors at the northwest corner of Stadium Drive and Stadium Park Way with the following three conditions:

- Final storm water volume calculations are to be provided to the Township Engineer for review, as well as any final engineering concerns addressed.
- A revised landscape plan provided prior to the issuance of a building permit that meets the requirements for 75 percent native canopy trees.
- The northern most drive aisle will be changed from 20-feet to 24-feet to better accommodate fire safety equipment.

There were no questions from Board Members. Chairperson Bell asked whether the applicant wished to speak.

Mr. Dan Hinkle, 4285 Squire Heath, Portage MI, indicated additional capacity is needed to create an environment to attract/retain talent and to bring customers on site to partner more collaboratively.

In response to a question from Mr. Sikora, Mr. Hinkle stated the three conditions from Staff are acceptable.

Hearing no further questions, Chairperson Bell determined there were no public comments and moved to Board Deliberations.

Board Members were in consensus that the plan would be a welcome addition to the Township, there was plenty of room for the operation and that they were in support of the site plan as presented.

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

Mr. Loy made a motion to approve the site plan review based on the recommendation and reasons provided by Staff, with the three conditions as listed. Mr. Smith supported the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (MERITAGE HOSPITALITY GROUP, 5455 WEST MAIN STREET) APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 78.720 OF THE ZONING ORDINANCE TO ALLOW THE PROPOSED SITE LIGHTING TO EXCEED THE REQUIRED 0.1 FOOTCANDLES AT THE PROPERTY LINE. THE SUBJECT PROPERTY IS ZONED C: LOCAL BUSINESS DISTRICT. (PARCEL #3905-13-401-020.)

Chairperson Bell moved to the next item on the agenda, a request from Meritage Hospitality Group for a variance to allow proposed site lighting to exceed the required 0.1 footcandles at the property line and asked Ms. Johnston to review the application.

Ms. Johnston said the subject property owner, Meritage Hospitality Group, is in the process of replacing the existing Wendy's restaurant, built in 1976, with a new establishment under the same branding. As a part of this project, new site and building lighting will be installed, but the light levels generated by the desired new fixtures will exceed the 0.1 foot-candles allowed at the site boundaries, per section 78.720: *Outdoor Lighting Standards* of the Zoning Ordinance. Although this project was granted site plan approval by the Planning Commission at its July 14, 2016 meeting with a compliant photometric plan, the applicant seeks to increase light levels beyond what has already been approved.

Located on a relatively small, commercially zoned, property, Ms. Johnston explained the Wendy's property is part of the Elks Plat commercial subdivision and is

only 120 feet wide, east to west. In order to achieve a suitable amount of site lighting, helping to ensure adequate illumination for motorists as well as minimizing security issues, the applicant argues that exceeding the 0.1 foot-candle limit at the property line is necessary. The applicant also feels that allowing such would not be out of character with the area, with the Wendy's property being flanked on either side by other fast food establishments and entirely surrounded by commercial zoning. She noted the golf course at the rear of the property is likely to be developed in the next few years.

She said according to the photometric plan, the proposed indicated light levels exceed 0.1 foot-candles along the north (maximum of 0.4 foot-candles), east (maximum of 1.1 foot-candles), and west (maximum of 1.1 foot-candles) property lines. Light levels at the south property line are in compliance with the Zoning Ordinance. Although light levels at the parcel boundaries are in excess with what the Township typically allows, all other aspects of the lighting plan are compliant, including wattage outputs, pole heights, and cut-off light fixtures.

Ms. Johnston explained the request by the applicant is a nonuse variance, that the ZBA should review the following standards in considering the variance request, and provided Staff comments:

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

Comment: Ms. Johnston said while conformance with the Zoning Ordinance is achievable with less intense site lighting, it could be argued that reasonable use of the property, especially given that it is the site of a fast food restaurant, would be diminished. Other types of businesses may be less reliant on robust site lighting, but establishments such as this, which accommodate lots of vehicle traffic due to the presence of a drive-through window and are typically open well into the night, require lighting that provides good visibility for motorists while also enhancing site security for patrons and employees alike.

*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 review eight approved lighting variance requests for commercial properties, including Long John Silvers, immediately adjacent west of Wendy's. One common denominator that was discussed during the Board's deliberation was the location of the property within a larger commercial center or commercially zoned and built area, which is similar to the requested variance by Wendy's.

While all properties within Township must comply with the Lighting Ordinance, it is clear that commercial properties within certain areas of the Township have been provided some relief. This is particularly true if the commercial property is surrounded by other commercial developments.

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

Comment: The Wendy's property is only 120 feet wide, which is the narrowest lot within the Elk's Plat. In addition, it is narrower than many of the other commercially zoned properties in the Township. This unique physical characteristic is making compliance with the 0.1 footcandle requirement exceedingly difficult to meet.

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

Comment: While the type of lighting requested is certainly self-created, the narrowness of the lot is an existing condition outside of the applicant's ability to change.

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 intent of the 0.1 footcandle lighting ordinance is to help limit lighting pollution and promote dark skies. While extremely important in the more rural areas of the Township, the Wendy's restaurant is located within an area of dense commercial development. It is likely the area already exceeds the required standards for lighting. The increase requested by Wendy's will not impede public health and may improve the safety of the site and in turn, the welfare of their customers. Precedent has already been set.

Ms. Johnston said Staff recommended approval of the variance request from *Section 78.720: Outdoor Lighting Standards* for 5455 West Main Street to allow 0.4 footcandles along the north property line, and 1.1 footcandles along the east and west property lines for the following reasons:

- Granting relief from section 78.720 will not damage the public health, safety, welfare of the community, nor will it be out of character with the surrounding area as six other properties within close proximity have received a similar variance.
- The narrowness of the lot is a unique physical condition that is not self-created and makes compliance with the Ordinance burdensome.

- The Oshtemo Township Zoning Board of Appeals has 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 Board Members had questions for Ms. Johnston.

There was discussion about how footcandles are determined, that applicants for variance are not required to provide light levels from neighboring properties at the property line, the desire that no more light than is needed is used, that all found variance requests that were relevant to this application were approved.

Chairperson Bell had a question regarding past lighting variance application approvals that moved properties that were out of compliance to being compliant with zoning requirements.

Attorney Porter said that was true of some properties, but that most affected were focused on residential properties; one parking lot to another is different.

Ms. Johnston suggested the Zoning Ordinance requirements may need to be looked at since there have been a number of similar lighting variance requests.

In response to a question from the Chairperson regarding the difference in light intensity from .1 to 1.1 footcandles, Ms. Johnston explained 1.1 would be similar to the middle of the Walgreen's parking lot; .1 would be very dim.

Mr. Sikora wondered what made the physical circumstances unique so that the lights cannot be aimed downward.

Ms. Johnston indicated they will be downward directed, but there is no space at the property lines between buildings to allow the opportunity for a setback of light poles since the lot is only 120 feet wide. The Planning Commission approved plan met the footcandle requirements of the zoning ordinance but from a safety standpoint, the approved lighting plan does not meet the needs of the site. Included in the requests are six light poles and lighting on the building, including one over the drive-through.

Attorney Porter said the pre-existing, non-conforming lot causes difficulty in complying with the zoning ordinance.

The Chairperson asked if the applicant wished to speak.

Mr. Alan Okon of Wendy's, One Dave Thomas Drive, Dublin OH, explained the site is so narrow the light poles must be placed at the property line. State of the Art LED downlights with shields will replace the big box sodium lights installed in 1976. He said neighboring lights may be shut off during late evening hours when Wendy's is still open (until 1:00 a.m.) and while employees are still in the building (until 2:00 a.m.) and that

Wendy's needs to provide sufficient light for safety purposes. The cross-over drive has a lot of traffic, both motorized and pedestrian.

Chairperson Bell asked if employee parking would be in the back, whether lights would be on until dawn and if the lights north of the building were brighter than at the other property lines.

Mr. Okon said employees would park in the back, lights would be on until dawn to accommodate service vehicles and the light pole at the north end of the property would be 8-10 feet from the property line and would be brighter.

Ms. Johnston noted the detention/retention pond at the rear of the building was back from the line.

In response to a question from the Chairperson, Ms. Johnston indicated no objections were received to this request from the public.

Chairperson Bell asked if anyone from the public wished to speak.

Mr. Josh Chandler, District Manager of the neighboring Burger King, 1412 Arrowhead Drive, Maumee OH, said Burger King would be going through the same process in a month or two, indicating there is not enough lighting for safety in their lot, and he was in attendance to gather information.

There were no further comments from the public; Chairperson Bell moved to Board Deliberations.

Board Members were in support of providing adequate lighting for safety and felt granting the variance was a good idea.

Mr. Sikora commented it would be nice to have an overall plan that would cover these issues rather than having to address individual requests. He worries allowing businesses to increase lighting may be a problem down the road if the golf course is developed as a residential area.

Chairperson Bell felt the strongest argument for approval was "substantial justice" noting a variance was granted to Long John Silver's similar to this request. She said she appreciated Mr. Sikora's comments and noted the driveway accessing these businesses is in rough condition and was glad to hear more renovations are coming. She asked for a motion on the request.

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

Any Other Business / ZBA Member Comments

Mr. Sikora requested larger fonts for future photometric design documents.

Ms. Johnston said there are currently no items for an October ZBA agenda.

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 3:51 p.m.

Minutes prepared:
September 29, 2016

Minutes approved:
October 25, 2016