

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD DECEMBER 17, 2019

Agenda

SITE PLAN: ASCENSION BORGESS

CONSIDERATION OF BREMNER REAL ESTATE REQUEST FOR SITE PLAN APPROVAL FOR A 38,800 SQUARE FOOT OFFICE BUILDING WITHIN THE BUSINESS, TECHNOLOGY AND RESEARCH (BTR) PARK.

2020 MEETING DATES

DISCUSSION: VARIANCE REQUEST REVIEW FORM

DISCUSSION: REVIEW OF PERMITTED USES VS. PERMITTED USES WITH CONDITIONS VS. SPECIFIC USES

ANY OTHER BUSINESS

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, December 17, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Ben Clark, Zoning Administrator and Martha Coash, Meeting Transcriptionist. Four other persons were present.

Call to Order and Pledge of Allegiance

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

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF NOVEMBER 12, 2019

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of November 12, 2019.

Hearing none, he asked for a motion.

Mr. Sikora made a motion to approve the Minutes of November 12, 2019 as presented. Ms. Bell seconded the motion. The motion was approved unanimously.

Chairperson Sterenberg moved to the next agenda item and asked Ms. Lubbert for the staff review.

SITE PLAN: ASCENSION BORGESS CONSIDERATION OF BREMNER REAL ESTATE REQUEST FOR SITE PLAN APPROVAL FOR AN OFFICE BUILDING WITHIN THE BUSINESS, TECHNOLOGY AND RESEARCH (BTR) PARK.

Ms. Lubbert provided background information on the project, noting that in early 2015, Western Michigan University (WMU), partnering with Oshtemo Township, began work to develop a 53-acre vacant parcel of land at the southwest corner of Stadium Drive and Drake Road into a business park. Conceptualized to accommodate uses such as medical research facilities, offices, engineering, and product development, this new park, named *BTR 2.0*, can be considered a thematic successor to the nearby Business, Technology, and Research (BTR) Park in the City of Kalamazoo. Designed to be harmonious with the site's overall topography and other natural qualities, as well as honoring its past use as an orchard and farm, WMU purposefully designed the park to yield a considerable amount of usable land, but also preserve a large portion of the parcel as unimproved, largely un-impacted open space area. The parcel contains significant rolling topography and lies within a hydrologically sensitive part of the Asylum Lake watershed.

She explained now that the park and its infrastructure have been developed, Ascension Borgess, working with Bremner Real Estate, has begun taking steps to build medical offices at its northern end in what will become the first unit in an incrementally established site condominium. Although the BTR 2.0 parcel remains one property at the time of review, the applicant will be acquiring approximately eight acres of land from WMU for their proposed 38,800 square foot office building, with the actual condominium unit to be legally established prior to construction. The site plan has been presented to the Township and reviewed by staff in anticipation of this future land division.

As part of the BRP district requirements the developer, in this case WMU, must create architectural and design standards that are reviewed and approved by the Planning Commission prior to any development of a site in this district. These standards are intended to promote higher quality developments and in no way contravene, compromise, or undermine local ordinance. WMU maintains a design review committee that is authorized to evaluate each project prior to a site plan submittal to the Township

and that body has approved this project against their standards, which are again independent of local ordinance. Ms. Lubbert noted that the required architectural and design standard guidelines were approved the previous week by the Planning Commission.

Ms. Lubbert outlined the request; the building is to be located near the northwest corner of the property, adjacent to the large common open space area for the business park that abuts US 131. Set aside to remain in an unimproved state, this common area is substantially wooded with varying topography. Open space continues onto the site proper and will be contiguous with preserved areas in the common portion of the development. Open space preserved on the eight-acre site will total 1.7 acres, or 21%. This exceeds the minimum requirement of 20%.

She said medical offices, such as the project being presented by the applicant, are permitted by right in the BRP zoning district, necessitating site plan approval from the Zoning Board of Appeals. Performing the customary zoning compliance review, Township staff can verify that the project overall is in good standing with the Zoning Ordinance, although some relatively minor issues do need to be corrected. These items have been included in the proposed conditions of approval.

1. Section 20.50.E of the Zoning Ordinance, which regulates development standards within the BRP zoning district, dictates that sustainable products/methodologies including, but not limited to, green roof systems, LEED compliance, or renewable energy systems are to be included as a part of this project. At the time this report was drafted, no such treatment was presented by the applicant to the Township. Numerous types of green technology can be applied to the structure/property without materially impacting the site plan, and staff is comfortable proceeding with the review though this information is lacking.
2. The building address location, as displayed on the latest available illustrations, needs to be elevated so that it is no less than ten feet above the street grade at Robert Jones Way. The applicant has been working with Township staff to correct this to achieve ordinance compliance as well as ensure adequate emergency services visibility.

Ms. Lubbert indicated on the project site plan, two driveways are shown for the development, both connecting to the cul-de-sac at the end of Robert Jones Way, which is categorized as a local street. This arrangement is compliant with the Oshtemo Township Zoning Ordinance, which only regulates curb cuts on arterial and collector streets, but the applicant's design engineer has yet to receive approval from the Road Commission of Kalamazoo County (RCKC). The design engineer has been in contact with the RCKC throughout the site plan review process and is navigating their formal processes. If the RCKC determines only one curb cut is warranted, then the applicant will need to submit an accordingly revised site plan to the Township for review. If this is necessary, actual site changes should be minimal; it is anticipated such a revision can be handled administratively. In such a case, all Township zoning, engineering, and fire access requirements will still need to be met, and staff will ensure such.

The site will be well served regarding pedestrian accommodations. The park's connection to the adjacent Drake Road shared use path is near the project site, and a public sidewalk will be installed along the north side of Robert Jones Way. Within the project site, there will be a well-delineated, barrier-free pedestrian connection between the building and the public sidewalk.

She said with a calculated building net square footage, the Zoning Ordinance dictates that at least 195 spaces be provided, which is the number proposed by the applicant. When more than 100 spaces are required, Article 52 of the Zoning Ordinance, which regulates off-street parking in the Township, allows the reviewing body to approve a size reduction for up to 25% of the parking stalls. For this project, that means that up to 49 spaces can be smaller than the standard ten foot by 20-foot stall. The applicant is fully utilizing this provision and is proposing 49 nine by 20-foot spaces along the western end of the parking lot and near the west driveway.

Ms. Lubbert indicated the Township's engineering consultant, Prein & Newhof, reviewed the proposed project, and attested the applicant has resolved any engineering concerns identified on preliminary versions of the site plan. In addition, the Township's Fire Marshal has examined the proposed site layout and is satisfied with the design. Additional discussion regarding address location on the building for visibility from the road may be necessary.

Based on the findings discussed in this staff report, Ms. Lubbert said Township Planning Department staff recommended approval of the proposed site plan to the Zoning Board of Appeals, and asked that the following conditions be attached:

1. The Zoning Board of Appeals explicitly approves up to 49 parking spaces with a reduced size of nine by 20 feet.
2. The BTR 2.0 condominium and the project site shall be formally established in accordance with the site plan prior to issuance of a building permit.
3. The required open space illustrated on the project site plan shall be formally established via recorded deed restriction or some other acceptable permanent conveyance prior to issuance of a building permit.
4. Any outstanding zoning and fire concerns shall be administratively resolved.
5. Prior to the issuance of a building permit the project shall receive curb cut approval from the RCKC. Any site plan changes necessary to secure such shall be approved administratively by the Township.
6. A revised site plan showing any changes necessary based on correction of the items above shall be submitted to and administratively approved by the Township prior to the issuance of a building permit.

Chairperson Sterenberg thanked Ms. Lubbert for her presentation and asked whether board members had questions for her.

Mr. Sikora asked where the two curb cuts would be located and asked about the reduced parking spot size concept.

Ms. Lubbert explained that the Townships normal parking spot dimensions are 10' x 20'. The allowance of reduced size spots for parking lots with more than 100 spaces provides for some flexibility for the developer. The allowance of smaller stalls, potentially compact spaces, is a common practice. In this case, the proposed reduced spots are shown at 9' x 20'.

Attorney Porter added that a normal size vehicle can still be accommodated, but the reduced spots also allow a little less impervious surface.

Ms. Bell confirmed the Planning Commission approved the BTR design guidelines at their last meeting.

Hearing no further questions from board members, Chairperson Sterenberg asked whether the applicant wished to speak.

Mr. Ryan Musk, Civil Engineer with Fishbeck, 1515 Arboretum Drive, Grand Rapids MI, and part of the project civil design, indicated it has been a pleasure to work with Township staff on this project and indicated representatives of Bremner Real Estate and an HKC architect were also in attendance.

He walked through each of the seven conditions requested by Ms. Lubbert for site plan approval, indicating:

1. The 9' x 20' parking spaces will be located on the outskirts of the parking lot and are expected to primarily be used by staff. Limiting pavement as much as possible is a goal.
2. Fishbeck is involved with the current BTR project and is working with W.M.U. attorneys to develop a document regarding the partial split regarding the condominium and project site for Township review.
3. Commitment of 21% of the site as open space will be recorded in the deed.
4. RCKC is accepting of the two curb cuts; it is expected they will issue a permit. They need to accept Robert Jones Way as public; they are working on that.
5. Work with the Fire Marshal on signage is in progress.
6. Tentative approval from RCKC was received earlier in the day.
7. No significant changes are expected, but they fully intend to comply with Township requirements.

In addition he noted the landscape plan includes close to 100% native plantings, the interior sidewalks connect to walking trails, the Prein & Newhof engineering

consultant says all concerns regarding the water run off/retention basin have been addressed, the W.M.U. design committee adopted the plan within their guidelines.

He also said sustainability was a priority of the design team and tangible items addressing that priority are included in the plan.

Mr. Kevin Canoe, of Bremner Real Estate in Indianapolis, said his firm is excited about this project, thanked the Township team for their help and the Board for its consideration.

In answer to a question from Ms. Bell, he indicated Borgess Ascension has not yet acquired the site property.

Mr. Ethan Doan, Architect with HKS, Northville, MI, thanked the board for hearing their request and staff for being so helpful. He was encouraged by the sustainability ordinance as his firm is committed to aggressive energy reduction standards with the goal of achieving carbon neutrality by 2030.

Chairperson Sterenberg asked if there were questions for the applicants from board members.

Mr. Gould wondered if electric vehicle charging stations would be available and commented he felt an excellent job has been done protecting trees and shrubs on site.

Mr. Musk indicated two stations, located near the entrance are proposed.

Ms. Bell asked if anyone involved in this project worked on BTR-1?

Mr. Musk said Fishbeck was involved in the Phase 1 design.

Ms. Bell noted she worked with Bob Jones when this land was developed and wanted to publicly credit all those who were involved in that development.

Ms. Smith asked whether the reduced size parking spaces would be mixed in with the standard parking spaces or isolated from them and whether employees would have access to the larger spaces.

In response to questions from Ms. Smith, Mr. Musk explained the 49 reduced size parking spaces would be located mostly at the western end with a few at the very southern area. All spaces close to the building will be standard size. Grouping the reduced size spaces together works best for uniformity. Employees will not have permit parking so will be able to park in more than one area. Six barrier free parking spaces will be available near the building for visitors and staff with disabilities. He also clarified the actual footprint of the building will be 40,621 feet but that this larger square footage does not alter township requirement calculations.

Mr. Sikora wondered how the site plan would be affected if the RCKC does not approve a second curb cut.

Mr. Musk said if there was only one curb cut, exceptions would be needed from the RCKC in order to accommodate emergency vehicle access and would require changes to the plan. He said he was expecting acceptance of the two curb cuts from the Road Commission.

Mr. Clark noted the fire marshal endorses the plan for two driveways.

Chairperson Sterenberg asked whether anyone in the audience wished to make further comment. Hearing none, he moved to Board Deliberations.

In answer to a question from Ms. Bell, Ms. Lubbert indicated the Borgess Ascension project would occupy about a third of the BTR property.

Ms. Bell commented the intent for the BTR was that university land would be parceled off for development, which would help to increase the Township's tax base. She noted Borgess Ascension would be untaxed just like the university and expressed her disappointment that no university representatives were in attendance at the meeting. She also added that she wanted to thank the various environmental groups that have worked with the Township and University to come up with the requirements of the BTR park.

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

Ms. Bell made a motion to approve the site plan as presented, including these recommendations from staff:

1. The Zoning Board of Appeals explicitly approves up to 49 parking spaces with a reduced size of nine by 20 feet.
2. The BTR 2.0 condominium and the project site shall be formally established in accordance with the site plan prior to issuance of a building permit.
3. The required open space illustrated on the project site plan shall be formally established via recorded deed restriction or some other acceptable permanent conveyance prior to issuance of a building permit.
4. Any outstanding zoning and fire concerns shall be administratively resolved.
5. Prior to issuance of a building permit the project shall receive curb cut approval from the RCKC. Any site plan changes necessary to secure such shall be approved administratively by the Township.

- 6. A revised site plan showing any changes necessary based on correction of the items above shall be submitted to and administratively approved by the Township prior to the issuance of a building permit.

. Mr. Sikora seconded the motion. The motion was approved unanimously.
 Chairperson Sterenberg asked Ms. Lubbert for her review of the next item.

2020 MEETING DATES

Ms. Lubbert recommended approval of a meeting schedule for meetings to be held on the fourth Tuesday of every month at 3:00 p. m.

2020 Meeting Dates

01/28
02/25
03/24
04/28
05/26
06/23
07/28
08/25
09/22
10/27
11/24
12/22
01/26/21

Board members preferred the November and December dates be moved to the third Tuesday (November 17th and December 15) to avoid holiday conflicts.

Mr. Sikora made a motion to approve the Schedule of Meetings for 2020 as presented with the changes to the November and December meetings to the third Tuesday. Ms. Maxwell seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item and asked Ms. Lubbert for her presentation.

DISCUSSION: VARIANCE REQUEST REVIEW FORM

Ms. Lubbert said the Zoning Enabling Act of Michigan outlines that when considering a variance request, the ZBA must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of a practical difficulty for

a nonuse (dimensional) variance. In addition, applicants must demonstrate that their plight is due to the unique circumstances particular to that property and that the problem is not self-created.

She explained that to help with consistency between variance cases, to assist the Board in ensuring that all requirements of a variance approval are met, and to improve the Township's documentation of a ZBA's variance decision, Staff drafted a "Variance Request Review Form" and requested the ZBA review the form and provide feedback to staff on its usability. If this form, or a variation of the form, is accepted by the Zoning Board of Appeals it will be provided to the ZBA with each future variance request for the Board's reference and usage.

Mr. Antosz and Mr. Sikora both commented it would be helpful to have such a form listing criteria when considering a variance request.

Attorney Porter said decisions must be made on a factual basis and a review form would help provide a focused discussion and help with the record moving forward. When a ruling is made, the form will serve as the basis on each criteria to be considered.

Ms. Lubbert said after using the form a few times it could be revised if needed.

Hearing no further comments, Chairperson Sterenberg made a motion to use a Zoning Board Authority Variance Request Form for future variance requests. Mr. Sikora seconded the motion. The motion was approved unanimously.

The Chair moved to the next item on the agenda.

DISCUSSION: REVIEW OF PERMITTED USES VS. PERMITTED USES WITH CONDITIONS VS. SPECIFIC USES

Ms. Lubbert noted Oshtemo Township's Zoning Code outlines three different types of uses within each Zoning District: Permitted Uses, Permitted Uses with Conditions, and Special Uses. When a site plan for new construction or a significant alteration is submitted within a zoning district it will fall into one of these three categories, each triggering a different level of review. Apart from single-family homes, duplexes, and accessory buildings, all site plans are required to be reviewed by the Planning Commission or the Zoning Board of Appeals. The Planning Commission reviews all Special Uses, the Zoning Board of Appeals reviews Permitted Uses and Permitted Uses with Conditions, and staff administratively reviews smaller alterations and temporary uses.

Site plans that fall under the review of the Zoning Board of Appeals or the Planning Commission go through a six week or more public review process. A brief summary of the three types of uses requiring this level of review is outlined below:

- **Permitted Uses:** In every zoning district within the Township there are listed Permitted Uses. These are the uses allowed in a zoning district without contention and often are used to define the character and intensity of that district. For example, in the Township's R-1: Residence Zoning District the listed permitted uses are: private one family dwellings, essential services (excluding buildings and regulatory stations), accessory buildings and uses customary to the foregoing, and family daycare homes. Based on the listed uses it is clear that the intent of this district is for low-density single-family development. Submitted site plans that fall under the Permitted Use category can only legally be reviewed on the criteria outlined in the Zoning Ordinance. Often these uses are referred to as "uses by right". When a site plan for a Permitted Use is under review and meets the requirements of the Ordinance, it is required by law to be approved. In these cases, the reviewing body is not permitted to request any additional conditions aside from what the Zoning Code requires.
- **Permitted Use with Conditions:** These type of uses follow the same principles of Permitted Uses with the difference being that there are additional conditions that the submitted site plan needs to meet in order to be approved. For example, a request for a Home Occupation in the R-1 Zoning District needs to meet the general development standards of the zoning code in addition to the specific requirements for this specific use outlined in the code, such as: "the occupation shall not utilize more than 25% of the interior gross floor area of the premises..." (Section 48.60 (A) (6)). Similar to Permitted Uses, when a site plan for a Permitted Use with Conditions is under review and meets the requirements of the Ordinance, it is required by law to be approved. In these cases, the reviewing body is not permitted to request any additional conditions aside from what the Zoning Code requires.
- **Special Uses:** Special Uses are permitted uses identified in a zoning district that may have potentially unique characteristics that could be incompatible with other uses permitted in such zoning district. Unlike the previous two use types, the reviewing body of a site plan that falls into this category is permitted some discretion in their review. This discretion is meant to allow for flexible zoning control and still afford protection of property values and orderly and compatible development. For example, if a site plan is submitted for a Group Day Care Home in the R-1 district the reviewing body is permitted to determine if this type of use is appropriate at that specific location. If they find the use not compatible or if other concerns arise, even if the request meets the zoning requirements, they have the authority to deny the request or request modifications.

Ms. Lubbert said It is the Township's practice to take all use types through the Township's six week or more public review process. This process involves staff coordination with the applicant, one or more staff reviews of the submittal to ensure zoning compliance, the creation of a staff report that outlines the compliance or non-compliance of a project, and a presentation and public hearing at the reviewing body.

For site plans that fall into the Permitted Use and Permitted Use with Conditions, the Zoning Board of Appeals can only approve or deny an application based on whether the request meets the code or not. As noted above, the reviewing body cannot request alterations or deny a request if the requirements of the code are met. Currently, staff determines the compliance of the case through review and outlines that compliance in their staff report for the Zoning Board to consider.

She said in many jurisdictions, as there are no considerations beyond what is outlined in the code, reviews of Permitted Uses and Permitted Uses with Conditions are administrative. She requested the Zoning Board of Appeals discuss and consider the possibility of transferring Permitted Use and Permitted Use with Condition site plan reviews to Township Staff for administrative review and approval. This change would drastically decrease the amount of administrative time needed in these types of reviews and streamline the process for Permitted Use and Permitted Use with Condition site plans for staff, board and applicants.

With this request, she said staff understands that certain types of Permitted Uses with Conditions can be controversial, and that the Township may still wish to have certain requests reviewed by a reviewing body as well as allow public comment. However, under the current set up, even if the public is against a specific proposal, the reviewing body cannot react to the public's concern as they are required by law to approve a request of this nature if the plan meets zoning standards. She proposed the Zoning Board of Appeals and Planning Commission move controversial types of uses from Permitted Uses with Conditions to Special Uses. Not only would this allow the continuance of public comment, but it would also allow the Township the ability to respond to public concern and place conditions on these types of requests.

Ms. Lubbert said the first step is presenting this idea to the Zoning Board of Appeals. If staff gets the ZBA's blessing, the next step will be presenting the idea to the Planning Commission. If a consensus is reached, staff will start working on making code updates. This process would be phased and ultimately involve Township Board review and approval. Staff would first move to make the review of Permitted Uses administrative and then work with the reviewing bodies to determine which Permitted Uses with Conditions in each Zoning district should be converted into Special Uses.

After brief discussion and assurance that staff would not take on discretionary issues if this change is approved, members felt it would be good to pursue this suggestion. It could provide a reason to have a dialog with the public as well as streamline the process for approval by several weeks for items that are clearly addressed by ordinance.

Ms. Bell noted the Planning Commission is currently going through the zoning ordinance and that moving forward with this now would likely provide a more cumbersome process; she suggested perhaps the zoning ordinance should be completed before this proposed change is addressed.

Chairperson Sterenberg said he has sometimes wondered if the board needed to be convened for something that is clear cut by ordinance.

Hearing no further comments, the Chair asked for a motion.

Ms. Maxwell made a motion to approve beginning an investigation of the review of permitted uses vs. permitted uses with conditions vs. special uses as presented. Mr. Sikora seconded the motion. The motion was approved unanimously.

Any Other Business

Ms. Lubbert noted this was the last meeting for Chairperson Sterenberg, who is leaving the ZBA, and presented him with a certificate of appreciation. Board members joined her in expressing their thanks for his years of service.

Chairperson Sterenberg said serving the Township had been a pleasure and a great experience.

ZBA Member Comments

There were no further comments.

Adjournment

Chairperson Sterenberg 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:
December 18, 2019

Minutes approved:
January 28, 2020