

**OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

MINUTES OF A VIRTUAL MEETING HELD JANUARY 14, 2021

Agenda

PUBLIC HEARING: SPECIAL USE – OUTDOOR DINING

SPECIAL USE APPROVAL TO PERMIT OUTDOOR DINING FOR JAC'S CEKOLA'S PIZZA AND LATITUDE 42 BREWING COMPANY, AND TO GRANT AUTHORITY TO THE OSHTEMO CHARTER TOWNSHIP PLANNING DEPARTMENT TO ADMINISTER AND GRANT SPECIAL USE PERMITS FOR OUTDOOR DINING LASTING MORE THAN ONE DAY TO ANY OTHER RESTAURANTS LOCATED IN OSHTEMO CHARTER TOWNSHIP DURING THE CURRENT PANDEMIC.

PUBLIC HEARING: CODE AMENDMENT – POOLS ON CORNER LOTS (FRONT YARD SETBACK)

CONSIDERATION OF AMENDMENTS TO THE TOWNSHIP ZONING ORDINANCE, FOR RECOMMENDATION TO THE TOWNSHIP BOARD THAT PROVIDES CLARIFICATION ON WHERE POOLS CAN BE PLACED ON A PROPERTY – SPECIFICALLY AS IT RELATES TO THE FRONT YARD.

PUBLIC HEARING: CODE AMENDMENT – CHILD AND ADULT CARE CENTERS

CONSIDERATION OF AMENDMENTS TO THE TOWNSHIP ZONING ORDINANCE, FOR RECOMMENDATION TO THE TOWNSHIP BOARD, TO ALLOW ALL PRIVATE AND PUBLIC SCHOOLS WITHIN OSHTEMO TO HAVE CHILD CARE CENTERS AS AN ACCESSORY USE. IN ADDITION, THE PROPOSED AMENDMENT WOULD ALLOW ADULT CARE CENTERS TO BE PERMITTED AS A PRIMARY USE WITHIN THE TOWNSHIP IN ALL ZONING DISTRICTS WHERE A CHILD CARE CENTER IS PERMITTED AS A PRIMARY USE.

NEW BUSINESS

- a. Code Amendment Discussion: Permitted Uses on Legal Nonconforming Lots**

A virtual meeting of the Oshtemo Charter Township Planning Commission was held Thursday, January 14, 2021, commencing at approximately 6:01 p.m.

ALL COMMISSION MEMBERS

WERE PRESENT:

Bruce VanderWeele, Chair
Kizzy Bradford
Deb Everett
Micki Maxwell, Vice Chair
Alistair Smith
Anna Versalle
Chetan Vyas

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, and Martha Coash, Recording Secretary.

Call to Order and Pledge of Allegiance

Chairperson VanderWeele called the meeting to order at approximately 6:02 p.m. and invited those in attendance to join in reciting the Pledge of Allegiance.

Approval of Agenda

Ms. Lubbert requested the agenda include appointment of a recording secretary under the "Election of Officers" item.

Hearing no further requests for change, Chairperson VanderWeele let the agenda stand as published with the requested addition.

Approval of the Minutes of the Meeting of December 10, 2020

The Chair asked if there were additions, deletions or corrections to the Minutes of the Meeting of December 10, 2020. Hearing none, he asked for a motion.

Ms. Versalle **made a motion** to approve the Minutes of the Meeting of December 10, 2020 as presented. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Chairperson VanderWeele moved to the next agenda item.

COMMISSION ELECTIONS (CHAIR, VICE CHAIR, ZONING BOARD LIAISON)

Chairperson VanderWeele indicated 2021 appointments were needed for Chairperson, Vice Chair, Liaison to the Zoning Board of Appeals, and Recording Secretary.

Ms. Maxwell said she was willing to continue in her dual role as Vice Chair and Liaison to the Zoning Board of Appeals for 2021.

Mr. Smith **made a motion** to elect Ms. Maxwell to continue in the positions of Vice Chair and Liaison to the Zoning Board of Appeals. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Mr. VanderWeele indicated he was willing to continue as Chair for 2021.

Ms. Versalle **made a motion** to elect Mr. VanderWeele to continue in the position of Chair for 2021. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

APPOINTMENT OF RECORDING SECRETARY

Mr. Vyas **made a motion** to appoint Ms. Martha Coash to continue in the position of Recording Secretary for 2021. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

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

PUBLIC HEARING: SPECIAL USE – OUTDOOR DINING SPECIAL USE APPROVAL TO PERMIT OUTDOOR DINING FOR JAC'S CEKOLA'S PIZZA AND LATITUDE 42 BREWING COMPANY, AND TO GRANT AUTHORITY TO THE OSHTEMO CHARTER TOWNSHIP PLANNING DEPARTMENT TO ADMINISTER AND GRANT SPECIAL USE PERMITS FOR OUTDOOR DINING LASTING MORE THAN ONE DAY TO ANY OTHER RESTAURANTS LOCATED IN OSHTEMO CHARTER TOWNSHIP DURING THE CURRENT PANDEMIC.

Ms. Lubbert reported Jac's Cekola's Pizza, 3112 S. 9th Street and Latitude 42 Brewing Company, 6101 W. Main Street were seeking permission to cover their existing outdoor patio areas in order to offer sheltered outdoor dining at their establishments. It was recently brought to staff's attention that both restaurants installed temporary tents/coverings without proper permits or approval from the Township. Both establishments were unaware that tents are considered structures by the Township Ordinance and as such require review and approval. Both businesses seek to comply and would like to be able to continue to offer sheltered outdoor dining throughout the remainder of the pandemic. Outdoor temporary dining spaces fall into the temporary outdoor events category which is considered a Special Use within Oshtemo's zoning ordinance. Special Uses require review and approval by the Planning Commission – a process that can take up to two months. The longer timeframe dictated by the code for this type of review is unnecessarily burdensome for these establishments in this time of need. Staff is requested the Planning Commission grant both Cekola's Pizza and Latitude 42 Brewing Company permission for their covered outdoor dining areas and grant authority to the Oshtemo Charter Township Planning Department to administer and grant special use permits for outdoor dining lasting more than one day to any other restaurants, bars, or similar establishments located in Oshtemo Charter Township during the current Pandemic.

She explained as a response to COVID-19 and in an effort to limit its spread, Governor Whitmer and the Michigan Department of Health and Human Services have instituted a number of Orders which require activities not necessary to sustain or protect life to be restricted at varying degrees. In effect, many business owners are no longer able to generate revenue as before, which negatively impacts their cash flows and ability to continue operations and pay employees. Restaurants, bars, and similar establishments across the United States are especially being affected by these restrictions as they are being permitted to only operate at reduced capacities. In an effort to offset the mandated reduction to the indoor occupancy loads many of these establishments are looking for ways to convert outdoor spaces into temporary seating

for outdoor dining. Jac's Cekola's Pizza and Latitude 42 Brewing Company are both such establishments.

She noted temporary outdoor events lasting more than one day are identified as Special Uses within the Oshtemo Ordinance. Special Uses require review and approval of the Planning Commission (Section 64.20). When reviewing a Special Use there are two sets of criteria need to be considered: the general Special Use review criteria outlined in Section 65.30 and the specific requirements for the use in question outlined under Section 49.260. Both restaurants are permitted uses within their districts and have existing patio spaces where they propose to temporarily, throughout the Pandemic, to be able to install tents to allow sheltered, year-round outdoor dining. The requested Special Use is incidental to the existing restaurants and consistent with the purpose and intent of the Master Plan and Zoning Districts in which the properties are located.

Ms. Lubbert said both requests are consistent with the Special Use Criteria requirements and noted the Fire Marshal has inspected both installations and had no issues with them.

She recommended the Planning Commission:

1. Grant both Jac's Cekola's Pizza and Latitude 42 Brewing Company permission for their proposed Special Use - Temporary Outdoor Event which would allow them to offer covered outdoor dining areas throughout the current Pandemic.
2. Grant authority to the Oshtemo Charter Township Planning Department to administer and grant Special Use permits for outdoor dining lasting more than one day to any other restaurants, bars, or similar establishments located in Oshtemo Charter Township during the current Pandemic.

After Chairperson VanderWeele determined there were no questions from Commissioners, he opened a Public Hearing for comments. Hearing none, he closed the hearing and moved to Board Deliberations.

Ms. Maxwell wondered what the criteria would be to determine when the pandemic is over.

Attorney Porter indicated it would be safe to assume the pandemic is considered over for this purpose when state authorities allow restaurants to open with no restrictions.

Mr. Vyas expressed surprise it took this long to make these provisions, hopes the restaurants can open soon, and felt there is a need to be more proactive in the future.

Ms. Bradford asked whether the outdoor areas will meet State mandates.

Attorney Porter said the owners are responsible for complying with State requirements. Staff reviewed anything for which the Township would be responsible.

Mr. Vyas felt that should be clear in the motion to approve the request.

Chairperson VanderWeele asked if the two requests for approval required two motions.

Attorney Porter indicated two motions would be appropriate.

The Chair moved to Public Hearing for comments from the public.

Mr. Walt Hanson wondered what would be wrong with granting the requesters permanent approval for outdoor dining if they meet all criteria.

Ms. Lubbert noted the two restaurants already have that permission. It is the addition of the tents, which is temporary, that is under consideration and needs review. She noted that if they wanted to extend their use of the tents they could request an extension at the end of the pandemic. She also noted that if the restaurants wanted to add permanent structures to facilitate outdoor dining year round they could apply through the site plan amendment process.

Hearing no further comments, Chairperson VanderWeele closed the hearing and asked for two motions.

Ms. Versalle **made a motion** to grant both Jac's Cekola's Pizza and Latitude 42 Brewing Company permission to offer covered outdoor dining areas until the current pandemic restrictions are lifted by the State and as long as they meet all requirements for outdoor dining during that time. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Ms. Versalle **made a motion** to grant authority to the Oshtemo Charter Township Planning Department to administer and grant Special Use permits for outdoor dining areas until the current pandemic restrictions are lifted by the State and as long as they meet all requirements for outdoor dining during that time. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

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

PUBLIC HEARING: CODE AMENDMENT – POOLS ON CORNER LOTS (FRONT YARD SETBACK)
CONSIDERATION OF AMENDMENTS TO THE TOWNSHIP ZONING ORDINANCE, FOR RECOMMENDATION TO THE TOWNSHIP BOARD THAT PROVIDES CLARIFICATION ON WHERE POOLS CAN BE PLACED ON A PROPERTY – SPECIFICALLY AS IT RELATES TO THE FRONT YARD.

Ms. Lubbert presented amendments to the Township Zoning Ordinance for

consideration, approval and recommendation to the Township Board, to provide clarification on where pools can be placed on a property – specifically as it relates to the front yard.

She said on November 17th the Zoning Board of Appeals reviewed a variance request to permit an in-ground pool to protrude 20 feet into the required 30-foot front yard setback. The property in question, 5359 Sweet Briar Drive, is a small corner lot located within Rose Arbor plat No. 2. After review and discussion, the Zoning Board of Appeals approved the request. She provided a copy of the related staff report and draft meeting Minutes. This was not the first variance approved to allow an in-ground pool to protrude into a corner lot's front yard. However, she said it should be noted that this variance was the first of its type approved under the current setback code adopted in 2011. As a result of this meeting, the Zoning Board of Appeals requested that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to in-ground pools on corner lots.

She explained the current setbacks for pools are outlined in section 50.60 Setback Provisions of the code. In this section, pools are given a side yard setback of 10 feet and a rear yard setback of 15 feet. As the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house. However, corner lots, as they have frontage on two streets, have two front yards. Assuming the house is built up to the two 30-foot front yard setbacks, this means that, a 30-foot front setback is required for a potential pool along each street frontage (at minimum to line up with the house). This is a larger setback area than is required of properties not located on a corner, where only a 10 foot side yard setback is required. This means usable rear yard space is reduced at least by approximately 20 feet along the corner lots' side with street frontage. The Zoning Board of Appeals felt this unique hardship of corner lots should be taken into consideration and in-ground pools should be treated differently than is the standard primary or accessory structure. Public comments received were all in support of the variance request.

This proposed code amendment was introduced to the Planning Commission at their regular December 10th, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing.

Ms. Lubbert said, based on input from the Zoning Board of Appeals and past precedence of approved pools within Oshtemo Township, staff and legal counsel recommended a code amendment to provide additional guidance and flexibility for pools on corner lots. It includes adding a definition of a corner lot, differentiating between what is considered a corner lot's front and side street frontage, and allowing a 10 foot front yard setback for in-ground pools on corner lots in subdivisions or site condominiums if it is along the 'Side Street Frontage' of the lot, provides the required fencing, and is screened from the road with landscaping. This proposed amendment also clearly notes that any other pools are not permitted in a front yard.

Chairperson VanderWeele thanked Ms. Lubbert for her presentation and asked if Commissioners had questions for her.

There were several questions about required landscaping and fencing.

Attorney Porter indicated fencing requirements are part of Fence Safety in the Building Code and that the Zoning Board or appeals did not feel the fence requirement was enough by itself. Whatever it would take to screen the pool from the road from both sides is what would be required.

The Chair opened a public hearing, but hearing from no one, closed the meeting and moved to Board Deliberations.

Mr. Vyas felt the proposed amendments were reasonable and would allow someone to build a pool as long as protocol is followed.

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

Ms. Versalle **made a motion** to approve the proposed amendments to the Township Zoning Ordinance to provide clarification regarding where pools can be placed on a property – specifically as it relates to the front yard, and to refer them to the Township Board for consideration. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

PUBLIC HEARING: CODE AMENDMENT – CHILD AND ADULT CARE CENTERS

CONSIDERATION OF AMENDMENTS TO THE TOWNSHIP ZONING ORDINANCE, FOR RECOMMENDATION TO THE TOWNSHIP BOARD, TO ALLOW ALL PRIVATE AND PUBLIC SCHOOLS WITHIN OSHTEMO TO HAVE CHILD CARE CENTERS AS AN ACCESSORY USE. IN ADDITION, THE PROPOSED AMENDMENT WOULD ALLOW ADULT CARE CENTERS TO BE PERMITTED AS A PRIMARY USE WITHIN THE TOWNSHIP IN ALL ZONING DISTRICTS WHERE A CHILD CARE CENTER IS PERMITTED AS A PRIMARY USE.

Chairperson VanderWeele asked Ms. Lubbert for her presentation.

Ms. Lubbert said late last year the Planning Commission reviewed a conditional rezoning request that asked to rezone a property to a higher intensity in order for the site to have a Child Care Center. Although the rezoning request was denied as it was considered spot zoning, the topic of Child Care Centers piqued both the Planning Commission's and Public's interest. There was a general agreement that child care options are important and more flexibility is needed to allow for more of this type of service. Planning Staff was asked to review the code and see if there was a way to appropriately allow for more Child Care Centers in Oshtemo.

Coincidentally, she said, around the same time as the rezoning discussion, a site

plan for initial discussion was submitted to staff that entailed an Adult Care Center. After reviewing the code, staff found it was unclear where and if this use was permitted. After discussion with legal counsel it was determined this use is comparable to a Child Care Center and that a code amendment would be appropriate. For the sake of efficiency, staff incorporated language to address deficiencies in the code regarding Adult Care Centers with the proposed Child Care Center code amendment discussion.

This proposed code amendment was introduced to the Planning Commission at their regular December 10th, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing. She provided the following background:

Child Care Centers: There are three different intensities of child care uses that are permitted by the code within Oshtemo: Family day care home (allowing up to 6 children), Group day care home (allowing up to 12 children), and Child Care Center (with no defined maximum number of children permitted). All three of these uses provide child care for periods less than 24 hours a day. Family day cares and Group day cares are permitted in all agricultural and residential zoning districts. This is appropriate as they are small in scale, are required to utilize private residential residences, and must preserve the residential character of the area. Child Care Centers are allowed in the R-3, Residence zoning district and higher. This is appropriate as they are more institutional in scale and nature. Child Care Centers are often equated to a commercial/office type use. Staff and legal counsel believe the current placement of these three types of child care uses is appropriate and would not recommend altering the current groupings or placements in the code.

However, she said the rezoning request that brought this topic to the forefront was unique as the site in question was a large church (CenterPoint) with a private preschool. In this case the facility already has accepted characteristics that stand out from a standard low-density residential area: large parking area, large nonresidential building, obvious traffic flow, and the regular presence of children onsite. One of the comments that residents in support of the rezoning kept bringing up was their desire to have one location where they could drop off their children for the day. Given the nature of public and private schools, staff does not see a reason why schools could not also support a Child Care Center. With the scale of schools, current services provision to children, site design/layout, general appropriateness in residential areas, and already established traffic patterns - allowing Child Care Centers at these sites as an accessory use is logical. The addition of a Child Care Center to a school would have little to no negative impact on the surrounding residences. The proposed text amendment would allow all private and public schools in Oshtemo to have Child Care Centers as an accessory use.

Adult Care Centers: Adult Day Care Centers are non-residential facilities, properly registered or licensed with the State, that support the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge. Currently in the code the only area that lists Adult Care Centers as an allowed use is the - Neighborhood Overlay Zone (Article 37).

In this Overlay “Child or Adult day care centers” are special uses. It should be noted no areas of Oshtemo are currently part of this overlay (staff will do research on this at a later date). Adult Care Centers are comparable to Child Care Centers – the only significant difference is that they are providing care for a different age group. Both planning staff and legal counsel recommend allowing Adult Care Centers as a primary use in the same zoning districts as Child Care Centers.

Other: In addition to the above code amendments, staff recommended adding and amending some definitions in the code to help clarify the purpose of Child Care Centers and Adult Care Centers. These proposed definitions are included in the proposed text amendment document.

The Chair asked if there were questions for Ms. Lubbert.

Mr. Vyas asked whether adults and children could be cared for in the same facility.

Attorney Porter indicated there is no requirement for separate facilities as long as the State requirements for both uses are met.

Chairperson VanderWeele opened the meeting for public comment. Hearing none, he moved to Board Deliberations.

Mr. Vyas wondered how the code amendments would affect last year’s CenterPoint Church request and denial for a child care center.

Ms. Lubbert indicated their rezoning was denied for multiple reasons. Once this ordinance amendment is adopted, they could apply for a child care center under a special use request.

Attorney Porter said they would need to return with a request under the new criteria.

Chairperson VanderWeele asked for a motion.

Mr. Vyas **made a motion** to approve and forward to the Township Board, the proposed code amendments to the Township Zoning Ordinance to allow all private and public schools within Oshtemo to have child care centers as an accessory use and allow adult care centers to be permitted as a primary use within the Township in all zoning districts where a child care center is permitted as a primary use. Ms. Everett **seconded the motion**. The **motion was approved** unanimously by roll call vote.

NEW BUSINESS

a. Code Amendment Discussion: Permitted Uses on Legal Nonconforming Lots

Ms. Lubbart provided background and a draft of amendment language to the code addressing Permitted Uses on Legal Nonconforming Lots in order to clarify some language, and asked Commissioners to discuss the proposed language and provide feedback to staff.

She said Planning Staff was recently approached by an individual who wished to build a medical office on a legal nonconforming parcel within a R-3 Residence District. A medical office is considered a special use within the R-3 Residence District. What can be built on any legal nonconforming parcel, lot, or building site is outlined in Section 63.20 of the Oshtemo Ordinance. Currently the language reads that “permitted uses of the zoning district” are allowable on these types of properties. There are three categories of uses outlined in the code: permitted uses, permitted uses with conditions, and special uses. Both the Planning Department’s and Legal Counsel’s interpretation of Section 63.20 is that only the uses outlined under the “permitted uses” and “permitted uses with conditions” categories of a zoning district would be allowed on legal nonconforming properties. This means a special use, i.e. the requested medical office, would not be permitted on the legal nonconforming lot in question. However, after additional research and discussion, the Planning Department and Legal Counsel determined this interpretation is not the intent of the code. In this case the use of the word “permitted” actually meant “allowed”, given the context - an instance of poor wording. She recommended the Planning Commission consider the proposed amendment to clarify that special uses may be built on legal nonconforming properties.

Proposal:

To avoid future confusion and provide clear direction, staff is recommending the following change, in red, to Section 63.20 of the Oshtemo Ordinance:

“In any zoning district, notwithstanding limitations imposed by other provisions of this Ordinance, where a nonconforming lot, parcel or building site of record, lawful at the time of its creation, fails to meet the requirements for minimum area, minimum width, minimum frontage or exceeds the allowable depth to width ratio of 4 to 1, such lot, parcel or building site may be used for the permitted uses, **permitted uses with conditions, or special uses** of the zoning district, provided that all other applicable minimum requirements are met.” Section 63.20 Nonconforming Parcels, Lots or Building Sites.

The Chair asked whether there were questions for Ms. Lubbart.

Ms. Maxwell asked if nonconforming lots pertained only to setbacks or something else, like usage.

Ms. Lubbart clarified that there are different types of nonconforming uses, this

change applies only to uses permitted on legal nonconforming lots (example a lot with an area or width that does not meet the minimum requirements of the code). Per the language already existing in this section of the code, anything built there has to meet all other requirements; no variance can be granted. A medical office would have to meet current setbacks. The proposed language will make the intention clearer and remove inconsistency, eliminating the need for interpretation.

Attorney Porter added that the current language defines permitted uses only; the proposed language defines permitted uses with conditions or special uses and defines both terms. This language will be used only for lots that were legally created prior to the adoption of the Ordinance.

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

Ms. Versalle **made a motion** to approve and send to public hearing at the Planning Commission meeting scheduled for February 11, 2021, the proposed code text amendment to Township Zoning Ordinance 63.20. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

PUBLIC COMMENT

Chairperson VanderWeele determined there were no members of the public wishing to speak and moved to the next agenda item.

OTHER UPDATES AND BUSINESS

Ms. Lubbert and Commissioners welcomed the two new members of the Planning Commission, Ms. Deb Everett and Mr. Alistair Smith.

Ms. Maxwell asked about the status of the “to do” list approved by the Commission at the beginning of 2020.

Ms. Lubbert said she would resend the list so Commissioners could look again at the priorities established for discussion. She noted permission was granted to hire a consultant.

ADJOURNMENT

With there being no further business to consider, Chairperson VanderWeele adjourned the meeting at approximately 7:03 p.m.

Minutes prepared:
January 15, 2021

Minutes approved:
January 28, 2021