



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS - REGULAR MEETING**

**OSHTEMO TOWNSHIP HALL
7275 WEST MAIN STREET**

**TUESDAY, FEBRUARY 25, 2025
3:00 P.M.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Election of Officers
4. Approval of Agenda
5. Public Comment on Non-Agenda Items
6. Approval of Minutes: September 24, 2024
7. **Non-Motorized Facility Variance: Yes Fountain Springs, LLC**
The applicant is requesting a variance from Section 57.90 of the Zoning Ordinance to eliminate the requirement that a non-motorized facility be established along South 8th Street and South 9th Street (partial) when the Fountain Springs development is expanded at 1410 South 9th Street.
8. Other Updates and Business
 - a. Adopt 2025 meeting dates
9. Adjournment

(Meeting will be available for viewing through <https://www.publicmedianet.org/qavel-to-qavel/oshtemo-township>)

Policy for Public Comment Township Board Regular Meetings, Planning Commission & ZBA Meetings

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday, 8 a.m.-1 p.m. and 2-5 p.m., and on Friday, 8 a.m.-1 p.m. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees

Supervisor

Cheri Bell 216-5220 cbell@oshtemo.org

Clerk

Dusty Farmer 216-5224 dfarmer@oshtemo.org

Treasurer

Clare Buszka 216-5260 cbuszka@oshtemo.org

Trustees

Neil Sikora 760-6769 nsikora@oshtemo.org

Kristin Cole 375-4260 kcole@oshtemo.org

Zak Ford 271-5513 zford@oshtemo.org

Michael Chapman 375-4260 mchapman@oshtemo.org

Township Department Information

Assessor:

Kristine Biddle 216-5225 assessor@oshtemo.org

Fire Chief:

Greg McComb 375-0487 gmccomb@oshtemo.org

Ordinance Enforcement:

Alan Miller 216-5230 amiller@oshtemo.org

Parks Director:

Vanessa Street 216-5233 vstreet@oshtemo.org

Rental Info 216-5224 oshtemo@oshtemo.org

Planning Director:

Jodi Stefforia 375-4260 jstefforia@oshtemo.org

Public Works Director:

Anna Horner 216-5228 ahorner@oshtemo.org

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD SEPTEMBER 24, 2024

Agenda

Accessory Building Variance: Midgett (10273 Skyview Drive)

The applicant is requesting a variance from Section 57.100.D of the Zoning Ordinance to allow the expansion of an accessory building for a total square footage of 4,750 square feet where the ordinance limit is 2,954 square feet in the RR, Rural Residential District.

Extension of Site Plan Approval: Faraday Properties (Unit 3 at BTR2)

The applicant is requesting a 12-month extension of the administrative site plan approval extension granted October 5, 2023 pursuant to Section 64.90 of the Zoning Ordinance.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, September 24, 2024, beginning at 3:00 p.m.

MEMBERS PRESENT: Rick Everett
 Dusty Farmer
 Fred Gould
 Al Smith
 Louis Williams, Chair

MEMBERS ABSENT: Harry Jachym, Vice Chair

Also present were Colten Hutson, Zoning Administrator; Jim Porter, Township Attorney; and 8 interested persons.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chair Williams called the meeting to order at 3:00 p.m. Those in attendance joined in reciting the Pledge of Allegiance.

APPROVAL OF AGENDA

Ms. Farmer **made a motion** to approve the agenda as presented. Mr. Smith **seconded the motion**. The motion was **approved unanimously**.

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF AUGUST 20, 2024

Chair Williams asked for additions, deletions, or corrections to the Minutes of the meeting held on August 20, 2024.

Ms. Farmer **made a motion** to approve the minutes of the meeting held on August 20, 2024. Mr. Smith **seconded the motion**. The **motion was approved** unanimously.

Accessory Building Variance

Mr. Hutson presented his staff report dated September 19, 2024, and incorporated herein, regarding a variance to expand an existing airplane hangar by an additional 2,250 square feet for a total area of 4,750 square feet.

PROJECT SUMMARY:

Mr. Jim Midgett and Mrs. Mary Jane Canney Midgett are requesting a variance from the size restrictions for accessory buildings outlined in Section 57.100.D of the Zoning Ordinance to allow for a greater square footage than required by code.

The square footage of any accessory building located on a property within a subdivision or site condominium cannot exceed the footprint of the livable portion of the property's principal building. If granted, the variance would allow for the expansion of an existing detached airplane hangar by an additional 2,250 square feet for a gross floor area of 4,750 square feet (net floor area of 4,500 square feet) whereas the Zoning Ordinance allows a maximum area of 2,954 square feet. Mr. Hutson shared an aerial view map of the property.

The property under consideration is outlined in light blue in the map above with the subject hangar addition illustrated through the red and white hatch marks. The property is zoned RR, Rural Residential District and is located on a corner building site within the Skyview Estates Site Condominium development located on the north side of Almena Drive between 1st Street and 2nd Street. Said development was approved by the Township in 1999 as an open space community, which includes the grass runway of Newman's Airfield as part of the development

Although Newman's Airfield is a public-use airport, the 15 Site Condominium unit owners within Skyview Estates have interest in the airport and can utilize the air strip, hence allowed to build airplane hangars on their respective properties.

RECOMMENDATION:

Planning Department staff recommend that the motion of possible action should include the findings of fact relevant to the requested variance.

Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - o It is not expected that granting the variance would negatively impact the health, safety, or welfare of others.

- o The conditions or circumstances which created the variance request are not entirely self-created.
 - o Conformance to the Zoning Ordinance is unnecessarily burdensome as the latest amendment to the Ordinance did not consider the properties tied to Newman's Airfield.
- Support of variance denial
 - o Minimum necessary for substantial justice is not proven.
 - o There are no unique physical circumstances that prevent strict compliance with the Zoning Ordinance.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval

The Zoning Board of Appeals approves the variance request.

2. Variance Denial

The Zoning Board of Appeals denies the variance request.

Chair Williams invited the applicant to speak. Mr. and Mrs. Midgett spoke in support of the variance stating they have one of the smallest hangars on the airport and want to align with their neighbors. They shared that their request was within the condominium bylaws.

Chair Williams opened the floor to public comments. Three residents spoke expressing support for the variance.

Chair Williams closed the public comments.

Mr. Everett asked a neighbor in the audience who lives directly next to the location where the variance is being requested if he was in support of the variance. The neighbor confirmed his support.

Ms. Farmer asked the Planning Department staff the status of changing this particular Ordinance so variances will not be needed for the hangars. Township attorney Porter agreed that the Ordinance should be changed as this development was approved for hangars up to 4,500 feet so a variance should not be needed.

Mr. Hutson advised that the Ordinance was last updated in 2020 to allow for a more administrative process. He agrees that Ordinance should be revised as it pertains to Newman's Airfield as it is a unique development that is an open space community with an airstrip.

Mr. Smith **made a motion** that the Zoning Board of Appeals approve the variance request to allow for the construction of a hanger not to exceed 4,500 square feet of net floor area for the reasons stated in the staff report. Ms. Farmer **seconded the motion**. The **motion was passed** unanimously.
Extension of Site Plan Approval: Faraday Properties (Unit 3 at BTR2)

Mr. Hutson presented his memo from September 24, 2024, and is incorporated herein. Faraday Properties, LLC is requesting a 12-month extension for their development located on Unit 3 of the Western Michigan University Business, Technology, and Research Park 2, a Site Condominium development on the corner of Parkview Avenue and Drake Road.

PROJECT SUMMARY:

The subject project, which consists of a new 60,785 square foot two-story office and manufacturing/distribution facility, was approved by the Zoning Board of Appeals on November 15, 2022. Administratively, the owner was previously granted a one-year extension on the site plan, extending its validity to November 15, 2023. The property owner has since expressed that construction for this project will not commence until Spring of 2025. As construction isn't scheduled to begin until after November 15, 2024, Faraday Properties, LLC has submitted a request to extend the validity of the site plan until November 15, 2025.

RECOMMENDATION:

Planning Department staff recommended that the Zoning Board of Appeals grant the requested 12-month extension.

Mr. Smith inquired as to the policy on extensions. Mr. Hutson shared with the Board that the code allows for one administrative extension and then one extension from the Zoning Board of Appeals.

Chair Williams invited the applicant to speak.

Mr. Kyle Sischo, with Faraday Properties, LLC, shared that they recently received the IDD and IFT approval from the Township. Part of the delay has been due to logistics and the cost. The cost of the construction increased by \$3-\$5 million from the original quote due to the economy between 2020 and 2022. With the grace of the Oshtemo Township they received an IFT exemption which dramatically helps with the costs. Progress is being made for a Spring or early Summer commencement as expected.

Mr. Smith **made a motion** that the Zoning Board of Appeals grant the requested 12-month extension. Ms. Farmer **seconded the motion**. The **motion was passed** unanimously.

Other Updates and Business

Chair Williams asked if there were any other updates or business.

Mr. Hutson advised that the Planning Department staff did not have any updates at this time.

Adjournment

There being no further business, Chair Williams adjourned the meeting at 3:22 p.m.

Minutes Prepared: September 25, 2024

Minutes Approved:



February 20, 2025

Mtg Date: February 25, 2025

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: Yes Fountain Springs, LLC

Owner: Yes Fountain Springs, LLC

Property: 1410 S 9th Street, Parcel Number 3905-23-355-011

Zoning: R-5: Residence District

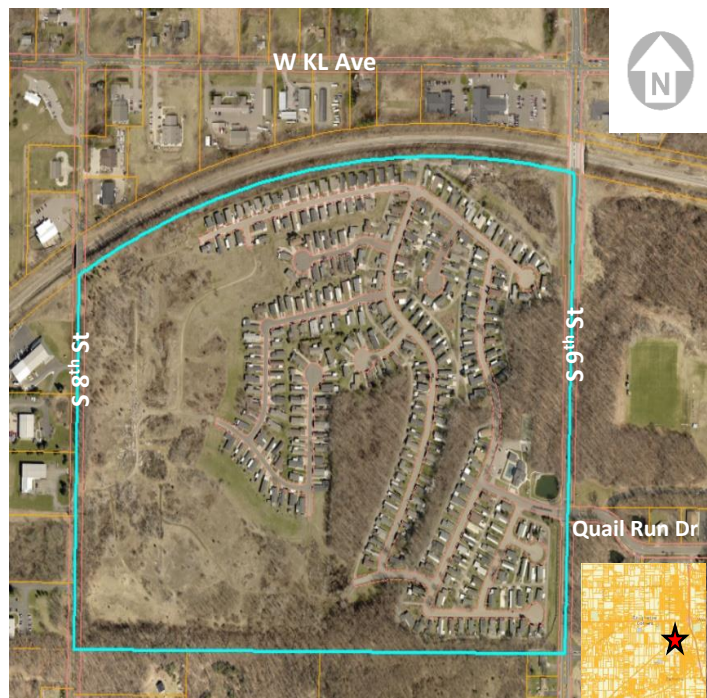
Request: A variance to not be required to construct the non-motorized facility adjacent to S 8th Street and S 9th Street per Section 57.90 of the Zoning Ordinance.

Section(s): Section 57.90 – Sidewalks and Non-Motorized Facilities

OVERVIEW:

The property owner, Yes Fountain Springs, LLC, is requesting a variance from Section 57.90 of the Zoning Ordinance to not be obligated to install non-motorized facilities along the property's frontage. The site encompasses a manufactured housing community proposed to expand with an additional 270 lots/dwelling units. Section 57.90 of the Zoning Ordinance states that if a project requires formal site plan review and approval from a reviewing body and there is a non-motorized facility identified within the Township's Non-Motorized Transportation Action Plan along the road frontage of where the project is planned to take place, said non-motorized facility must be constructed along the respective site's frontage at time development commences.

The site in question possesses frontage adjacent to S 9th Street and S 8th Street. The Township's Non-Motorized Transportation Action Plan envisions 6-foot-wide sidewalk adjacent to both frontages. With each road frontage having different existing conditions and unique profiles, staff will provide an analysis against the standards for a variance for each road frontage separately. The subject property is outlined in light blue on the aerial map above. The property is situated between S 8th Street and S 9th Street, south of W KL Avenue and west of Quail Run Drive.



STANDARDS OF REVIEW – STAFF ANALYSIS

The Michigan courts have applied the following principles for a variance, which collectively amount to demonstrating a practical difficulty, as follows:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.
- Public safety and welfare.

Staff have analyzed the request against these principles and offer the following information to the Zoning Board of Appeals.

Standards of Approval of a Nonuse Variance (practical difficulty)

Standard: Unique Physical Circumstances

Are there unique physical limitations or conditions which prevent compliance?

Comment: S 9th Street – The applicant provided reasoning in the attached narrative along with visuals and other documentation which support that unique physical limitations or conditions are present along the S 9th Street frontage. As captured in Exhibit A, the construction of sidewalk along this frontage presents significant grading challenges with the existing terrain. The entire frontage where sidewalk would be placed is incredibly steep. The installation of a sidewalk would require significant re-grading, clearing of trees, as well as the need to install retaining walls throughout most of the frontage.

S 8th Street – There are several severe variations in topography along the S 8th Street road frontage. Not only do the elevation changes present difficulties in terms of constructability, but there would also be challenges with trying to accommodate a 6-foot-wide concrete sidewalk and creating separation between the pedestrians and motorists given how narrow it would be from edge of pavement to the front of the sidewalk in some areas.

Standard: Conformance Unnecessarily Burdensome

Are reasonable options for compliance available?

Does reasonable use of the property exist with denial of the variance?

Comment: S 9th Street – It would be unreasonable to require a sidewalk to be installed that does not connect to another non-motorized facility nearby. Given the recent changes in the law, constructing a 'sidewalk to nowhere' violates the new Public Right-Of-Way Accessibility Guidelines (PROWAG) statute. It could be argued that installing a sidewalk on the west side of S 9th Street would be doing path users a disservice as the sidewalk would terminate at the bridge and pedestrians would be forced to cross the street mid-block since the existing non-motorized facility is located on the east side of the bridge, which would be hazardous and unsafe. Additionally, as a part of the Comprehensive Master Plan, a close look will be taken at the non-motorized transportation plan

and recommendations for revisions will arise with the completion and implementation. See also applicant's reasoning for this criterion in the attached narrative.

S 8th Street – The same would apply to the non-motorized facility on S 8th Street as what was stated for S 9th Street. S 8th Street is also burdened by a bridge crossing the AMTRAK railway. Building a non-motorized facility that terminates immediately south of the bridge would be unsafe. Additionally, installing a sidewalk that does not connect to a designed sidewalk network north of the bridge or to the south would be in violation with the new PROWAG legislation. As a part of the Comprehensive Master Plan, a close look will be taken at the non-motorized transportation plan and recommendations will arise with the completion and implementation.

*Standard: Minimum Necessary for 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: In researching past ZBA decisions regarding variance relief from the non-motorized facilities requirements of Section 57.90 of the Zoning Ordinance, Planning Department staff were able to identify one similar request where such Ordinance requirement was waived since the provision was adopted in 2021. A summary of said findings is described below.

S 9th Street & S 8th Street – Complete Team Outfitters, 1560 S 8th Street, August 20, 2024: The applicant requested a variance to not be required to install a 6-foot-wide concrete sidewalk along the S 8th Street frontage. The applicant argued the request is not self-created and that the sidewalk requirement would be unnecessarily burdensome. Information was also provided detailing that the Ordinance provision requiring the installation of sidewalk would present a significant grading challenge given the topography where the sidewalk would be placed. It was also mentioned that the surrounding area cannot support the subject sidewalk given there are no other non-motorized facilities to connect to and that the bridge crossing the AMTRAK railway currently does not have the capacity for a sidewalk or pedestrian boardwalk at this time. The ZBA granted the variance with a condition that requires the property owner to consent to a Special Assessment District (SAD) agreement for the sidewalk, which essentially allows for the construction of the sidewalk to be deferred until the Township finds it appropriate to create a SAD to implement such public improvements. By the property owner executing said agreement, he consented to not oppose the creation of a SAD and to pay the appropriate assessment in the future when the district is established.

See also the present applicant's reasoning for this criterion in the attached narrative.

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

Comment: **S 9th Street** – The applicant's request for relief to not be obligated to install the subject non-motorized infrastructure is what is causing the variance request. However, it could be argued that this request is not entirely self-created given that the area abutting the parcel's frontage along

the west side of S 9th Street does not support non-motorized infrastructure at this time. Prior to an amendment to the Zoning Ordinance in 2021, the applicant would have been able to consent to a Special Assessment District and would not have to come forward with this request. See applicant's reasoning for this criterion in the attached narrative.

S 8th Street – The applicant's request for a variance could be considered self-created. The applicant is not required to engage in site plan review with the Township and expand the development. That said, the property owner did not create the existing conditions along the S 8th Street road frontage. The constructability issues as noted in the applicant's narrative and grading challenges as captured in Exhibit B are not man-made.

Standard: Public Safety and Welfare
Will the variance request negatively impact the health, safety, and welfare of others?

Comment: S 9th Street & S 8th Street – It is not expected that the variance request would negatively impact the health, safety, or welfare of others. See applicant's reasoning for this criterion in the attached narrative.

POSSIBLE ACTIONS

The Zoning Board of Appeals may take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval for **S 9th Street**
 - There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - Conformance to the Ordinance is unnecessarily burdensome.
 - Minimum necessary for substantial justice is met.
 - The request is not entirely self-created.
 - It is not expected that the variance request would negatively impact the health, safety, or welfare of the public.
- Support of variance denial for **S 9th Street**
 - The applicant's request to have the sidewalk requirement waived can be considered as a self-created hardship.
- Support of variance approval for **S 8th Street**
 - There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - Conformance to the Ordinance is unnecessarily burdensome.
 - Minimum necessary for substantial justice is met.
 - The request is not entirely self-created.

- It is not expected that the variance request would negatively impact the health, safety, or welfare of the public.
- Support of variance denial for **S 8th Street**
 - The applicant's request to have the sidewalk requirement waived can be considered as a self-created hardship.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval for S 9th Street

The Zoning Board of Appeals approves the variance request.

If the variance were approved, staff also recommend the Zoning Board of Appeals attach the following condition:

- The applicant consents to a Special Assessment District for a future non-motorized facility.

2. Variance Denial for S 9th Street

The Zoning Board of Appeals denies the variance request.

3. Variance Approval for S 8th Street

The Zoning Board of Appeals approves the variance request.

If the variance were approved, staff also recommend the Zoning Board of Appeals attach the following condition:

- The applicant consents to a Special Assessment District for a future non-motorized facility.

4. Variance Denial for S 8th Street

The Zoning Board of Appeals denies the variance request.

Attachments: Application, Applicant Narrative, and Minutes (08/20/2024 ZBA)



7275 W. Main Street, Kalamazoo, Michigan 49009-9334
Phone: 269-375-4260 Fax: 269-375-7180

PLEASE PRINT

PROJECT NAME & ADDRESS _____

PLANNING & ZONING APPLICATION

Applicant Name: _____

Company: _____

Address: _____

E-mail: _____

Telephone: _____ Fax: _____

Interest in Property: _____

OWNER*:

Name: _____

Address: _____

E-mail: _____

Phone & Fax: _____

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____

Escrow Amount _____

NATURE OF THE REQUEST: (Please check the appropriate item(s))

☐ Pre-Application Review

☐ Site Plan Review – I088

☐ Administrative Site Plan Review – I086

☐ Special Exception Use – I085

☐ Zoning Variance – I092

☐ Site Condominium – I084

☐ Accessory Building Review – I083

☐ Rezoning – I091

☐ Subdivision Plat Review – I089

☐ Interpretation – I082

☐ Other: _____

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): _____

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

PARCEL NUMBER: 3905- _____

ADDRESS OF PROPERTY: _____

PRESENT USE OF THE PROPERTY: _____

PRESENT ZONING: _____ **SIZE OF PROPERTY:** _____

**NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING
A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:**

Name(s)

Address(es)

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |

SIGNATURES

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

Owner's Signature (*If different from Applicant)

Date

Craig P. Schellbach

Applicant's Signature

Date

Copies to:
Planning – 1
Applicant – 1
Clerk – 1
Deputy Clerk – 1
Attorney – 1
Assessor – 1
Planning Secretary – Original

PLEASE ATTACH ALL REQUIRED DOCUMENTS



January 3, 2025

Charter Township of Oshtemo - Township Board and Planning Commission
7275 West Main Street
Kalamazoo, MI 49009

RE: Non-motorized Facilities Deviation Request.
Yes! Communities Key, LLC – Fountain Springs 1410 S. 9Th St. – PROPERTY DESCRIPTION

SEC 23-2-12 BEG IN W LI 941.7FT SLY OF W1/4 POST BEING ON SLY LI CONRAIL RR TH S 0DEG14MIN W
ON W LI 1686.7FT TO SW COR TH N 89DEG46MIN E ON S LI 2617.22FT TO S 1/4 POST TH N
0DEG40MIN50SEC E ON N & S 1/4 LI 2158.55FT TO SLY LI SD RR (SD PT BEING 472.68FT SLY OF C1/4
POST) TH N 80DEG 32MIN40SEC W ON SD SLY LI 74.45FT TH ON CURVE LEFT 2665.45FT (RAD 3745FT CH
S 79DEG06MIN52SEC W 2608.47FT) TO PL BEG* **12-90 1990 COMINBED WITH 23-335-040 & 23-355-
010

Sincerely,
Yes! Communities

Craig Schellbach
5605 N. MacArthur Blvd. Suite 280
Irving, TX 75038

5050 S. Syracuse St, Suite 1200
Englewood, CO 80111





February 3, 2025

Charter Township of Oshtemo - Township Board and Planning Commission
7275 West Main Street
Kalamazoo, MI 49009

RE: Non-motorized Facilities Variance Request.
Yes! Communities Key, LLC – Fountain Springs 1410 S. 9th St.

Dear Board and Planning Commission Members,

In October 2024, we met with Hurley & Stewart, LLC (H&S) to begin the process of planning the next phases of the Fountain Springs Community. The next phase of this community is planned to include the addition of approximately 270 residential units, open space (with playground potential), parking facilities, and internal sidewalks. We are committed to investing in our residents by providing friendly, inviting, affordable neighborhoods so that, together, we can create communities that the residents can call home.

As part of the planning process, the development team and Township staff met to discuss the next phase of the project to ensure adequate understanding of the shared goals between the Township and ourselves. During these meetings it was brought to the development team's attention that in addition to the 2013 Non-Motorized Facilities Plan that requires a 6' concrete shared use path on the 9th Street frontage, an additional 6' concrete shared use path on the 8th Street frontage is required as depicted in the "Go! Green Oshtemo" plan. In total, this last phase of the development would require installation of approximately 3,735 LF of 6' concrete shared use path.

We believe that the sidewalks are of value to the Township and the Yes! Community and fully support the need and desire to provide walkability within the Township. We are requesting a deviation from the sidewalk and non-motorized facilities requirements as described in Article 57 of the Oshtemo Township Zoning ordinance and request to enter a "Consent to Establishment of Sidewalk Special Assessment District and Assessment". We feel it would be better suited to defer the balance of the development of sidewalk on 9th Street's frontage and 8th Street's frontage until a time when the full corridor of sidewalk can be constructed in a manner that is safe for the community and be mindful of new accessibility guidelines.

In conversations with Jodi Stefforia at the Township to jointly coordinate the cost and planning for a 6-foot sidewalk along the south end of the property on 9th street would be in the best interest of the Oshtemo community and the residents of Fountain Springs. The construction of that stretch requires both an easement and consent to remove trees on YES Fountain Springs property.

5050 S. Syracuse St, Suite 1200
Englewood, CO 80111





We offer the following explanations to the standards of approval for a nonuse deviation request for the 9th Street frontage:

Standard #1 – 9th Street. Unique Physical Circumstances:

Summary:

- A. The change in elevation along the 9th Street frontage would likely require the installation of significant retaining walls and/or pedestrian boardwalk with railings for the shared use path. (See Exhibit A)**

The 9th Street frontage contains a significant grade change. Grade changes will require earth retention structures and/or pedestrian boardwalk with railings (See Exhibit A) to provide safe travel within the Right-Of-Way. Compared to other properties, much smaller earth retention structures, if any, would be required; however, due to the unique existing topography, Yes! Community will have a much greater challenge to install the shared use path.

Standard #2 – 9th Street. Conformance Unnecessarily Burdensome:

Summary:

- A. A new law was recently enacted for Public Right of Way Accessibility Guidelines (PROWAG) that does not recommend installation of accessible routes without connectivity to other accessible facilities.**

The recent law governs accessible routes within the public Right of Way specifically, R203.1 states, “Where provided, the pedestrian facilities addressed in R203 shall contain or connect a pedestrian route and shall comply with these guidelines.” Additionally, R203.2.1, states, “Pedestrian access routes subject to the ADA shall connect accessible elements, spaces, and pedestrian facilities required to be accessible and connect to accessible routes required by section 206.2.1 of appendix B to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) that connect building and facility entrances to public streets and sidewalks.” Installation of sidewalks without connectivity would not be in alignment with the PROWAG rules and standards.

Standard #3 – 9th Street. Minimum Necessary for Substantial Justice:

Summary:

- A. In 2024 the Township granted a similar deviation request for another property located at 1560 S. 8th Street.**



In 2024 the Township granted a similar deviation request for the property located at 1560 S. 8th Street. This applicant had the same request for a deviation from the sidewalk ordinance in which they agreed to “Consent to Establishment of Sidewalk Special Assessment District and Assessment.” Granting Yes! Community similar relief would provide the minimum necessary for substantial justice and would give the Township the ability to construct the entire sidewalk when a majority of the property owners are in agreement.

Standard #4 – 9th Street. Self-Created Hardship:

Summary:

- A. The change in elevation along the 9th Street frontage would likely require the installation of significant retaining walls and/or pedestrian boardwalk with railings for the shared use path. (See Exhibit A)**

As stated above, the 9th Street frontage contains a significant grade change. Grade changes will require earth retention structures and/or pedestrian boardwalk with railings (See Exhibit A) to provide safe travel within the Right-Of-Way. The significant grade changes and constructability issues are not self-created by Yes! Communities. These grade changes are natural features that were in place prior to the community being constructed.

Standard #5 – 9th Street. Public Safety and Welfare:

Summary:

- A. Terminating the shared use path at the railroad crossing/ bridge without proper plans in place has potential to carry more risk to public safety.**

Yes! Communities’ property abuts high speed rail property at the north side of the 9th Street frontage. At these points, safety, especially with respect to ADA routes, becomes a concern and poses a potential hazard to the community.

The safety concern is traffic from the shared use path headed north on 9th Street. The shared use path would terminate at the end of Yes! Community’s property at the bridge. The 9th Street bridge does not contain a pedestrian walkway on the west side of the bridge. Terminating an accessible route at the high-speed rail would pose a significant safety risk for pedestrians.

We offer the following explanations to the standards of approval for a nonuse deviation request for the 8th Street frontage:

Standard #1 – 8th Street. Unique Physical Circumstances:

Summary:



- A. The change in elevation along the 8th Street frontage would likely require the installation of significant retaining walls and/or pedestrian boardwalk with railings for the shared use path. (See Exhibit A)

The 8th Street frontage contains a significant grade change. Grade changes will require earth retention structures and/or pedestrian boardwalk with railings (See Exhibit B) to provide safe travel within the Right-Of-Way. Compared to other properties, much smaller earth retention structures, if any, would be required; however, due to the unique existing topography, Yes! Community will have a much greater challenge to install the shared use path.

Standard #2 – 8th Street. Conformance Unnecessarily Burdensome:

Summary:

- A. A new law was recently enacted for Public Right of Way Accessibility Guidelines (PROWAG) that does not recommend installation of accessible routes without connectivity to other accessible facilities.

The recent law governs accessible routes within the public Right of Way specifically, R203.1 states, “Where provided, the pedestrian facilities addressed in R203 shall contain or connect a pedestrian route and shall comply with these guidelines.” Additionally, R203.2.1, states, “Pedestrian access routes subject to the ADA shall connect accessible elements, spaces, and pedestrian facilities required to be accessible and connect to accessible routes required by section 206.2.1 of appendix B to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) that connect building and facility entrances to public streets and sidewalks.” Installation of sidewalks without connectivity would not be in alignment with the PROWAG rules and standards

Standard #3 – 8th Street. Minimum Necessary for Substantial Justice:

Summary:

- A. In 2024 the Township granted a similar deviation request for another property located at 1560 S. 8th Street.

In 2024 the Township granted a similar deviation request for the property located at 1560 S. 8th Street. This applicant had the same request for a deviation from the sidewalk ordinance in which they agreed to “Consent to Establishment of Sidewalk Special Assessment District and Assessment.” Granting Yes! Community similar relief would provide the minimum necessary for substantial justice and would give the Township the ability to construct the entire sidewalk when a majority of the property owners are in agreement.

Standard #4 – 8th Street. Self-Created Hardship:

Summary:



- A. The change in elevation along the 8th Street frontage would likely require the installation of significant retaining walls and/or pedestrian boardwalk with railings for the shared use path. (See Exhibit B)

As stated above, the 8th Street frontage contains a significant grade change. Grade changes will require earth retention structures and/or pedestrian boardwalk with railings (See Exhibit B) to provide safe travel within the Right-Of-Way. The significant grade changes and constructability issues are not self-created by Yes! Communities. These grade changes are natural features that were in place prior to the community being constructed.

Standard #5 – 8th Street. Public Safety and Welfare:

Summary:

- A. Terminating the shared use path at the railroad crossing/ bridge without proper plans in place has potential to carry more risk to public safety.

Yes! Communities' property abuts high speed rail property at the north side of the 8th Street frontage. At these points, safety, especially with respect to ADA routes, becomes a concern and poses a potential hazard to the community.

The safety concern is traffic from the shared use path headed north on 8th Street. The shared use path would terminate at the end of Yes! Community's property at the bridge. The 8th Street bridge does not contain a pedestrian walkway on the east side of the bridge. Terminating an accessible route at the high-speed rail would pose a significant safety risk for pedestrians.

We greatly appreciate your understanding and consideration for this request and thank you for your time.

Sincerely,

Yes! Communities

Craig P. Schellbach

Craig Schellbach, P.E.
5605 N. MacArthur Blvd. Suite 280
Irving, TX 75038

Enclosures: Exhibit A, Exhibit B, Application, Site Plans, Fee Receipt

5050 S. Syracuse St, Suite 1200
Englewood, CO 80111





POTENTIAL 9TH STREET RETAINING WALL TO CONSTRUCT SIDEWALK IN R.O.W.



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

**EXHIBIT A
FOUNTAIN SPRINGS
YES! COMMUNITIES**

20

Drawing No.

1



SIGNIFICANT GRADE CHANGE ALONG 9TH STREET R.O.W. POTENTIAL NEED FOR BOARDWALK



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

**EXHIBIT A
FOUNTAIN SPRINGS
YES! COMMUNITIES**

21

Drawing No.

2



LACK OF WALKWAY ABOVE HIGH SPEED RAIL PROPERTY ALONG WEST SIDE OF 9TH STREET



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

**EXHIBIT A
FOUNTAIN SPRINGS
YES! COMMUNITIES**

22

Drawing No.

3



SIGNIFICANT GRADE CHANGE ALONG 8TH STREET R.O.W. POTENTIAL NEED FOR BOARDWALK



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

**EXHIBIT B
FOUNTAIN SPRINGS
YES! COMMUNITIES**

23

Drawing No.

1



SIGNIFICANT GRADE CHANGE ALONG 8TH STREET R.O.W. POTENTIAL NEED FOR BOARDWALK



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

EXHIBIT B
FOUNTAIN SPRINGS
YES! COMMUNITIES

24

Drawing No.

2



LACK OF WALKWAY ABOVE HIGH SPEED RAIL ON THE EAST SIDE OF 8TH STREET



hurley & stewart, llc
2800 s. 11th street
kalamazoo, michigan 49009
269.552.4960 fax 269.552.4961
www.hurleystewart.com

Job No.: 19-059D
Date: 1/3/25
Scale: NTS
P.M.: ARP
Dft: ARP
QA/QC: 1/3/25

Title:
Project:
Client:

**EXHIBIT B
FOUNTAIN SPRINGS
YES! COMMUNITIES**

25

Drawing No.

3

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD AUGUST 20, 2024

Agenda

Non-Motorized Facility Variance: Scott Williams (Complete Team Outfitters)

The applicant is requesting a variance from Section 57 of the Zoning Ordinance to eliminate the requirement that a non-motorized facility be established at 1560 South 8th Street.

Setback Variance: Michael Shields (Blackberry Systems)

The applicant is requesting a variance from Section 50 of the Zoning Ordinance to allow a 15-foot side yard setback for building additions where the ordinance requires a 20-foot setback in the I-1, Industrial District. Subject property is 6477 West KL Avenue.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, August 20, 2024, beginning at 3:00 p.m.

MEMBERS PRESENT: Rick Everett
 Dusty Farmer
 Fred Gould
 Harry Jachym, Vice Chair
 Al Smith

MEMBERS ABSENT: Louis Williams, Chair

Also present were Jodi Stefforia, Planning Director; Leeanna Harris, Zoning Administrator; Jim Porter, Township Attorney; and 3 interested persons.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Vice Chair Jachym called the meeting to order at 3:03 p.m. Those in attendance joined in reciting the Pledge of Allegiance.

APPROVAL OF AGENDA

Ms. Farmer **made a motion** to approve the agenda as presented. Mr. Smith **seconded the motion**. The motion was **approved unanimously**.

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF JUNE 25, 2024

Vice Chair Jachym asked for additions, deletions, or corrections to the Minutes of the meeting held on June 25, 2024.

Mr. Smith **made a motion** to approve the minutes of the meeting held on June 25, 2024, Ms. Farmer **seconded the motion**. The **motion was approved** unanimously.

NON-MOTORIZED FACILITY VARIANCE (1560 SOUTH 8TH STREET)

Ms. Harris presented her staff report dated August 14, 2024, and incorporated herein, regarding a variance to not be required to install the non-motorized facility adjacent to South 8th Street.

Project Summary:

Mr. Scott Williams, owner of 1560 S. 8th St., is requesting a variance from the requirement to install a non-motorized facility adjacent to South 8th Street, per Section 57.90 of the Zoning Ordinance.

The applicant previously applied for Site Plan Review and a variance request to construct a new 6,684 square foot building with a connecting breezeway to the existing building on site. Since that approval on February 20, 2024, the applicant has made good progress and is nearing completion. However, as a condition of approval for the site plan review, the applicant was required to enter into an escrow agreement in lieu of installing the non-motorized facility and deposit funds of \$45,000 to an escrow account with the Township for future use. Ms. Harris shared an aerial view map of the property.

Recommendation:

Planning Department staff recommended that the motion of possible action should include the findings of fact relevant to the requested variance. Letters of support are incorporated herein by Township Attorney Porter and Township Public Works Director Ms. Anna Horner.

Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - o There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - o Conformance to the Ordinance is unnecessarily burdensome.
 - o The request would not be considered a self-created hardship.
 - o It is not expected that the variance request would negatively impact the health, safety, or welfare of others.
- Support of variance denial
 - o Minimum necessary for substantial justice is not met.

Possible motions for the Zoning Board of Appeals to consider include:

1. **Variance Approval**

The Zoning Board of Appeals approves the variance request.

If the variance were approved, staff also recommend the Zoning Board of Appeals attach the following conditions:

- The applicant consents to a Special Assessment District.

2. Variance Denial

The Zoning Board of Appeals denies the variance request.

Discussion was held around the Special Assessment District (SAD). Vice Chair Jachym requested more information about the Special Assessment District. Mr. Porter stated that historically they would ask an applicant to sign an agreement that if and when a SAD is established, they would support it. This would run with the property.

Ms. Farmer stated that this Ordinance was recently amended, but recommends that it be reviewed again by the Township Planning Commission for recommendation to take into consideration scenarios like this request.

Ms. Stefforia shared that with the work on the comprehensive master plan, there will be a strong transportation component, and the non-motorized plan will be revisited to craft language for streets like this verses S. 9th Street which will see development happening along it and would want the facilities built or escrowed.

Mr. Matt Gibson, from Complete Team Outfitters, the tenant and business partner of Mr. Williams, spoke in support of the variance and offered to address any questions. Mr. Gibson informed the Board they are happy to sign any document or agreement for beautification in the future to put sidewalks in if that is required from the Township, but at this time they would be the only business with a sidewalk.

Vice Chair Jachym inquired about the sign posted out front, “build to suit” and if they were seeking new tenants. Mr. Gibson advised that they had previously planned to build additional spaces, but due to the downturn with commercial real estate, they are not actively seeking new tenants. If that changes, they would come back before the Township and start the process again.

Ms. Farmer **made a motion** that the Zoning Board of Appeals approve the variance request with the following condition:

- The applicant consents to a Special Assessment District.

Mr. Gould **seconded the motion**. The **motion was passed** unanimously.

SETBACK VARIANCE: MICHAEL SHIELDS (6477 W KL AVENUE)

Ms. Harris presented per her staff report from August 14, 2024, and is incorporated herein for a variance from Section 50 of the Zoning Ordinance to allow a 15-foot side yard setback for building additions where the ordinance requires a 20-foot setback in the I-1, Industrial District. The subject property is 6477 West KL Avenue.

Project summary:

SHIELDS MJ LLC is requesting a variance from setback requirements outlined in Section 50.60.C. of the Zoning Ordinance to allow for a reduced setback of 15 feet along the east property line where the Zoning Ordinance requires 20 feet, or the height of the building, whichever is greater, to allow for additions on the east side of the building. The applicant's intent is to submit for full site plan review for planned site modifications once they have completed the variance process. Ms. Harris shared an aerial view map of the property.

Recommendation:

Planning Department staff recommended that the motion of possible action should include the findings of fact relevant to the requested variance.

- Support of variance approval
 - o It is not expected that granting the variance would negatively impact the health, safety, or welfare of others.
 - o The conditions or circumstances which created the variance request are not entirely self-created.
 - o There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
- Support of variance denial
 - o Minimum necessary for substantial justice is not proven.
 - o Compliance with the Ordinance is not unnecessarily burdensome as the property could continue to be utilized in its present state and constructing additions on the site is entirely discretionary.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval
The Zoning Board of Appeals approves the variance request.
2. Variance Denial
The Zoning Board of Appeals denies the variance request.

Ms. Harris advised that the addition would be a single-story addition.

Mr. Mike Shields, owner of Blackberry Systems, shared with the Board that the business has been growing and they enjoy the location and the being part of the Oshtemo Township community. With their growth, they need additional warehouse and office space.

Mr. Everette asked Mr. Shields if they had considered going to the South or building higher. Mr. Shields advised there is not enough room for them to build to the South and confirmed that the section being added is a one-story section.

Mr. Gould asked if this would make it impossible to expand again on this current site. Mr. Shields confirmed that with the three elements they are considering, they would not be able to expand further. They have previously looked for commercial property to build on or leasing options for additional space for warehousing but have been unsuccessful. With this addition, they anticipate they will remain at the current location at least 10 to 15 years.

Ms. Farmer shared that it is good to hear that businesses are expanding.

Mr. Smith **made a motion** that the Zoning Board of Appeals approve the variance request. Mr. Gould **seconded the motion**. The **motion was passed** unanimously.

Vice Chair Jachym thanked Mr. Shields. Mr. Shields thanked the Township staff for the assistance they received. The Board recognized staff for their work.

OTHER UPDATES AND BUSINESS

Vice Chair Jachym called for other updates and business.

Ms. Stefforia shared that on October 15th at 6:00 p.m., there will be a joint meeting of all the Township Boards with a presentation by Progressive AE to share the comprehensive master plan. They are starting to flush out the future use master plan and starting to talk about if are there any additional sub areas that will warrant a closer look in this process.

ADJOURNMENT

There being no further business, Vice Chair Jachym adjourned the meeting at 3:46 p.m.

Minutes Prepared: August 21, 2024
Minutes Approved: September 24, 2024



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269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

Zoning Board of Appeals

Fourth Tuesday of every month @ 3PM

2025 Meeting Dates

| |
|-----------|
| 1/28 |
| 2/25 |
| 3/25 |
| 4/22 |
| 5/27 |
| 6/24 |
| 7/22 |
| 8/26 |
| 9/23 |
| 10/28 |
| 11/25 |
| 12/23 |
| 1/27/2026 |