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

**OSHTEMO TOWNSHIP HALL
7275 WEST MAIN STREET**

**TUESDAY, JUNE 24, 2025
3:00 P.M.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Comment on Non-Agenda Items
5. Approval of Minutes: May 27, 2025
6. **Setback and Sidewalk Variances: Miedema (5991 Venture Park Drive; 3905-25-153-160)**
Zoning Board of Appeals to consider request for a side setback variance for a building addition and a sidewalk variance to not have to install sidewalk with a planned building addition in the C, Local Business District.
7. **Setback Variance: St. James (6660 Rose Arbour Avenue; 3905-11-135-100)**
Zoning Board of Appeals to consider request for a front yard setback variance for an accessory building in the R-2, Residence District.
8. Other Updates and Business
9. Adjournment

(Meeting will be available for viewing through <https://www.publicmedianet.org/gavel-to-gavel/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		
<u>Supervisor</u>		
Cheri Bell	216-5220	cbell@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
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Zak Ford	271-5513	zford@oshtemo.org
Michael Chapman	375-4260	mchapman@oshtemo.org

Township Department Information			
<u>Assessor:</u>			
Kristine Biddle	216-5225	assessor@oshtemo.org	
<u>Fire Chief:</u>			
Greg McComb	375-0487	gmccomb@oshtemo.org	
<u>Ordinance Enforcement:</u>			
Alan Miller	216-5230	amiller@oshtemo.org	
<u>Parks Director:</u>			
Vanessa Street	216-5233	vstreet@oshtemo.org	
Rental Info	216-5224	oshtemo@oshtemo.org	
<u>Planning Director:</u>			
Jodi Stefforia	375-4260	jstefforia@oshtemo.org	
<u>Public Works Director:</u>			
Anna Horner	216-5228	ahorner@oshtemo.org	

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD MAY 27, 2025**

SIGN VARIANCE: MAPLE HILL AUTO GROUP (5622 WEST MAIN STREET 3905-13-180-035)

Zoning Board of Appeals to consider request for a variance to allow seven wall signs where four are allowed and for an increased sign area over ordinance limits in the C: Local Business District.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, May 27, 2025, beginning at 3:00 p.m.

MEMBERS PRESENT: Rick Everett
 Dusty Farmer
 Fred Gould
 Harry Jachym, Vice Chair
 Al Smith
 Louis Williams, Chair
 Ron Ver Planck

MEMBERS ABSENT: None

Also present were Jodi Stefforia, Planning Director; Colten Hutson, Zoning Administrator; Leeanna Harris, Planning and Zoning Administrator; Jim Porter, Township Attorney; and 1 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

Chair Williams called for approval of the agenda.

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

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments regarding non-agenda items.

APPROVAL OF THE MINUTES OF APRIL 22, 2025

Chair Williams asked for additions, deletions, or corrections to the Minutes of the meeting held on April 22, 2025.

Mr. Gould noted that in the packet, on page 2, where Township staff is listed, the position of the Planning Director is showing vacant. There were no changes to the minutes.

Ms. Farmer **made a motion** to approve the minutes of the meeting held on April 22, 2025 as presented. Mr. Gould **seconded the motion**. The **motion was approved** unanimously.

SIGN VARIANCE: MAPLE HILL AUTO GROUP (5622 WEST MAIN STREET 3905-13-180-035)

Ms. Harris presented her staff report dated May 22, 2025, and incorporated herein, for the two sign variance requests. RWL Signs, on behalf of Maple Hill Leaseholds, LLC, is requesting two sign variances pertaining to new on-site wall signage for the property located at 5622 West Main Street.

Project Summary

The approximate 5-acre site is located on the north side of West Main Street, east of US-131, and has road frontage adjacent to West Main Street and Maple Hill Drive. The site currently serves as a new and used car sales lot and is zoned C: Local Business District. On the building's south elevation, along West Main Street, there is approximately 185 square feet of sign area. On the east elevation, along Maple Hill Drive, there is approximately 101 square feet of sign area. The applicant is requesting two variances.

Section 55.80 of the zoning ordinance governs the use, area, type, height, and number of signs allowed for commercial land uses, including for automobile sales. Both variance requests are for relief from this section.

For **Request A**, the applicant is requesting a variance to establish a total of 205 square feet (a variance of 9 square feet) of wall sign area on the south elevation of the building to allow a new 20.47 square foot "Genesis" wall sign. The maximum sign area is determined by allowing one (1) square foot for each foot in length or height (whichever is greater) of the wall to which it is affixed. Since this wall is 196 feet in length, only up to 196 square feet in area would be permitted per code. Multiple signs are allowed to be placed on the same wall provided the combined square footage and number do not exceed what is allowed. The east elevation currently has approximately 101 square feet of existing sign area.

For **Request B**, the applicant is requesting a variance in order to allow seven wall signs, while the Ordinance allows for a total four signs. A deviation was granted by the Zoning Board of Appeals in 2015 for six signs, where only four were allowed per code. The proposed signage is shown on page 24 in the meeting packet.

STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty. The applicants rational is offered on page 21 in the meeting packet. Staff has analyzed this request and offered information to the ZBA based on the following criteria:

- 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.

STANDARDS OF APPROVAL OF A NONUSE VARIANCE (PRACTICAL DIFFICULTY):

The applicant has provided a letter of intent for their request. This letter is attached to this report. Staff’s review against these criteria is provided below. **Request A** is to allow a total of 205 square feet in sign area where 196 square feet in sign area is allowed. **Request B** is to allow seven wall signs, where four wall signs are allowed.

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

Comment: It could be argued that there are not unique physical limitations or circumstances that are peculiar to the property involved that would not be generally applicable to other properties in the C: Local Business District.

Request A (sign area): The conditions that prevent compliance are the existing cumulative sign area (185 square feet) and the total linear wall length of the south elevation (196 feet). There is still 11 square feet of signage before the allowance would be exceeded.

The east elevation can accommodate additional signage - approximately 74 square feet.

Request B (number of signs): The condition that limits compliance with the ordinance is the number of signs currently existing on the south elevation and only four being allowed.

Six signs currently exist on the building, with the variance request to allow seven. Four signs exist on the south elevation and two signs exist on the east elevation.

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

Comment: It could be argued that there are reasonable options for compliance available and that reasonable use of the property does exist with the denial of the variance.

Request A: The building’s south elevation is 196 feet long. Currently having 185 square feet of signage, an additional 11 square feet would be allowed. Although this is not enough to cover the proposed 20.47 square foot “Genesis” sign, it could be argued that there are reasonable options while still in compliance with the Zoning Ordinance.

It could be reasonable to install the signage on the east elevation instead (facing Maple Hill Drive, rather than West Main Street) if the requirement is to have the brands displayed on the building. Or, considering the new Subaru dealership planned at 6565 West Main Street, removing the associated signage from this building would allow the “Genesis” sign to be installed without the variance.

If the variance were denied, the applicant would have to propose signage that meets Ordinance requirements, not allowing any signage beyond 196 square feet on the south elevation.

Reasonable options for compliance exist and reasonable use of the property would exist with denial of the variance.

Request B: The Zoning Ordinance allows four signs, while six were allowed with a 2015 deviation request. It could be argued that there are reasonable options for compliance in the same sense as above, that signs could be removed when the Subaru dealership at 6565 West Main Street is established, allowing the additional signage to be installed without the variance. Reasonable use of the property would also still exist.

- Discuss if the location of the signage is flexible (installing on the east elevation, rather than the south) **AND/OR** discuss whether to add a condition requiring the “Subaru” signs be removed with the establishment of the new Subaru dealership at 6565 West Main Street.

Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the Zoning Board of Appeals (ZBA) for consistency (precedence).

Comment: In researching past ZBA decisions regarding sign relief for commercial properties, Planning Department staff were not able to identify any similar requests to Request A for an increased wall sign area and one request to Request B for an increased number of wall signs. A summary of these findings is described below.

Request A: No similar requests were identified where the property is commercial, there are existing wall signs, and additional square footage was allowed to exceed the allowable area.

Most commercial deviations/variances were for one wall sign to exceed the allowance due to distance from the road, architectural details, etc.

Request B: Maple Hill Leaseholds, LLC, 5622 West Main Street, May 26, 2015:

Sign Art, Inc. requested a sign deviation to allow six wall signs, while four wall signs were allowed by Ordinance. The applicant wanted to maintain the existing number of signs on the property, which was six at the time. The applicant also noted similar reasons and requirements for needing signage for each car brand on the site. This request was following renovations at Maple Hill Auto where the subject building was separated from an addition by a fire wall and was interpreted by staff to be two separate buildings, allowing six signs to be installed. Once this fire wall was removed during the renovations, the allowance was removed and set at four signs per building. The request was to maintain the six signs that were allowed before. The Zoning Board of Appeals unanimously approved the request.

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

Comment: **Requests A & B:** The request could be considered a self-created hardship as it is the applicant’s desire to add a new 20.47 square foot sign that exceeds both the maximum sign area, and the number of signs allowed for the building. The applicant did state that a manufacturer requirement for a wall sign for the “Genesis,” car brand is the reason for the request.

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

Comment: **Requests A & B:** Allowing for increased sign area and an additional wall sign would not be expected to negatively impact the health, safety, or welfare of others as it would not be intrusive to motorists or any of the surrounding properties.

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 Request A (sign area)
 - o Public health, safety, and welfare will be secured.
 - o The request may not be considered a self-created hardship since it is a requirement from the “Genesis” car brand to have adequate signage.

- Support of variance denial for Request A (sign area)
 - o There are not unique physical limitations or circumstances that are peculiar to the property involved that would not be generally applicable to other properties in the C: Local Business District.
 - o Conformance with the Zoning Ordinance is not unnecessarily burdensome as reasonable use of the property would still exist if the variance is denied and reasonable options for compliance are available.
 - o Minimum necessary for substantial justice is not satisfied. Similar requests were not identified where the requests were granted.
 - o The request could be considered a hardship that is self-created, as it is the applicant’s desire to add a new sign that exceeds the total maximum sign area allowed on the building’s south elevation per code. The applicant could relocate the wall sign and mount it on the building’s east elevation while still achieving compliance with sign area requirements or remove an existing wall sign.

- Support of variance approval for Request B (number of signs)
 - o There is minimum necessary for substantial justice as a previous request was identified where an additional number of signage was allowed beyond what the Zoning Ordinance would allow.
 - o Public health, safety, and welfare will be secured.
 - o The request may not be considered a self-created hardship since it is a requirement from the “Genesis” car brand to have signage.

- Support of variance denial for Request B (number of signs)
 - o There are not unique physical limitations or circumstances that are peculiar to the property involved that would not be generally applicable to other properties in the C: Local Business District.
 - o Conformance with the Zoning Ordinance is not unnecessarily burdensome as reasonable use of the property would still exist if the variance is denied and reasonable options for compliance are available.
 - o The request could be considered a hardship that is self-created, as it is the applicant’s desire to add a new sign that exceeds the total number of wall signs allowed per code instead of removing an existing sign.

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

Request A – a variance to establish 204 square feet of wall sign area, where 196 square feet are allowed per code.

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the request not being considered a self-created hardship and approval will not negatively impact the health, safety, and welfare of the public.

2. Variance Denial

The Zoning Board of Appeals denies the variance request as there are not unique physical circumstances or limitations, conformance with code requirements is not unnecessarily burdensome, minimum necessary for substantial justice is not satisfied, and the need for the variance could be considered a self-created hardship.

Request B – a variance to establish seven wall signs where four are allowed per code.

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the minimum necessary for substantial justice being satisfied, the request could not be considered a self-created hardship, and approval will not negatively impact the health, safety, and welfare of the public.

2. Variance Denial

The Zoning Board of Appeals denies the variance request as there are not unique physical circumstances or limitations, conformance with code requirements is not unnecessarily burdensome, and the need for the variance could be considered a self-created hardship.

Chair Williams invited the applicant up to the podium to speak.

The applicant, Mr. Jason Headley, addressed the Zoning Board. He expressed his appreciation for the thorough presentation provided by the Planning staff and indicated that he was available to answer any questions.

Mr. Smith asked why the proposed sign exceeds the size limit established by the ordinance. Mr. Headley explained that the variance is needed because the total cumulative signage, including the proposed addition, would exceed the maximum allowable area. He noted that the smallest sign available for the “Genesis” brand is 20 square feet, which is the size they intend to install.

Ms. Farmer asked whether some of the existing signs would be removed in the future. Mr. Headley responded that while he could not confirm this definitively, it is likely that the signs will be removed once the new Subaru location opens.

Mr. Headley suggested that language could be added to the motion indicating that the signs be removed and not replaced as a condition of approving the variance request. Mr. Porter agreed that such a stipulation could be incorporated into the motion.

Mr. Jachym **made a motion** to approve the A and B variance requests with the stipulation that the Subaru signs be removed once the dealership is opened in its new location.

Mr. Gould **seconded both motions.**

Discussion

Mr. Smith requested clarification regarding which specific signs were under consideration. Mr. Everett responded that, according to information provided by the Planning Department, the signs in question are numbers 3, 4, and 5.

The Board then inquired whether it would be possible to remove one of the existing signs immediately, thereby allowing for the installation of a new sign without requiring a variance.

Additionally, the Board asked about the anticipated timeline for the opening of the new location. Mr. Porter stated that the new site may not be ready for operation until sometime next year.

Mr. Jachym **amended the motion** to approve Variance Requests A and B, with the condition that once the Subaru dealership, located at 6565 West Main Street, is established, three associated Subaru signs (signs 3, 4, and 5) shall be removed from the building located at 5622 West Main Street, thus bringing the site into compliance with the Township Zoning Ordinance.

Mr. Gould reconfirmed his **seconding of both motions**, the original and amended as presented. The **motions were passed** by a majority vote, with one dissenting vote.

OTHER UPDATES AND BUSINESS

There were none.

ADJOURNMENT

There being no further business, Chair Williams adjourned the meeting at 3:23 p.m.

Minutes Prepared: May 28, 2025

Minutes Approved:



June 18, 2025

Mtg Date: June 24, 2025

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: Andrew Rossell, AR Engineering

Owner: Neal and Amy Miedema

Property: 5991 Venture Park Drive, Parcel Number 3905-25-153-160

Zoning: C: Local Business District

Request: Requesting a setback variance and sidewalk variance

Section(s): Section 57.90 – Sidewalks And Non-Motorized Facilities
Section 50.70 – Supplemental Setback Provision For Property Abutting A Higher Residential Zoning Classification

OVERVIEW:

AR Engineering, on behalf of Neal and Amy Miedema, are requesting two variances, one for a reduced building setback to accommodate an office addition and the other for relief from the Township’s sidewalk requirements, both for the property located at 5991 Venture Park Drive.

A visual of the subject property is outlined in light blue on the aerial map to the right. The approximate 1.5-acre site is located on the east side of Venture Park Drive, north of Stadium Drive between Quail Run Drive and West Michigan Avenue. The site currently serves as a financial planning office and is zoned C: Local Business District.

For **Request A**, the applicant is requesting a 26-foot reduction of the 85-foot required setback along the south property line in order to construct a 4,129 square foot office building addition. Per Section 50.70 of the Zoning Ordinance, when commercially zoned properties abut residential zoning, an enhanced building setback is required. Since the property



immediately south of the subject site is zoned R-4: Residence District, an 85-foot building setback is required.

For **Request B**, the applicant is requesting a variance to not be obligated to install a 5-foot wide sidewalk along their frontage adjacent to Venture Park Drive. 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. Since the property owners would like to expand the existing building by 4,129 square feet, formal site plan review is needed, which triggers the requirement that a sidewalk be installed.

STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional 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.

STANDARDS OF APPROVAL OF A NONUSE VARIANCE (PRACTICAL DIFFICULTY):

The applicant has provided a narrative for each variance request, both of which are attached to this report. Staff’s review against these criteria is provided below. **Request A** is to allow for a 59-foot setback from the south property line where a minimum setback of 85 feet is required. **Request B** is to provide relief from the Township’s sidewalk requirements to not be obligated to install a 5-foot wide non-motorized facility adjacent to the subject site’s road frontage.

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

Comment: **Request A (Setback):** The applicant indicated that significant grade changes exist on site toward the east side of the property, which prevents the building addition to extend further east to meet the setback from the south property line. Staff visited the property to verify and captured photos of the existing conditions east of the building. There is a stormwater basin on the east side of the existing office building; however, it is proposed to get filled in as the office addition is designed to be placed over the existing stormwater basin location. A new stormwater basin is proposed further to the southeast. There are no obstructions with a private well or septic as the property is serviced by municipal sewer and water. The proposal of a new accessory building, which may or may not be limiting where the addition can be placed, is not required by Ordinance. Site parking can be reduced substantially through the Township’s forthcoming parking text amendments if

the property owner so choose. There are no unique physical circumstances present which prevent the building addition to shift further east. The location and size of the building addition is entirely discretionary and could be placed elsewhere, even with the aforementioned site elements. See applicant's reasoning in the attached narrative.

Request B (Sidewalk): There are no unique physical circumstances on site which would prevent the property owner from being able to install the 5-foot-wide concrete sidewalk along Venture Park Drive. No steep slopes or grading challenges are present. The land is relatively flat in the area where the sidewalk is planned. See applicant's reasoning in the attached narrative.

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

Comment: **Request A (Setback):** Reasonable use of the property remains if the variance request is denied as commercial uses, such as the existing financial planning office, are allowed on the property and may continue. As mentioned above, the building addition could extend further east rather than extending south in order to satisfy setback requirements. An outdoor courtyard area is proposed. Such element could be eliminated from the design, which might bring the placement of the building closer to compliance in terms of the setback from the south property line. Setback requirements would be met while maintaining appropriate distance from the neighboring residential units in efforts to retain privacy.

Additionally, the proposed accessory building could be attached to the building addition or be completely removed from the project. Removing the accessory building would create additional building area for the expansion.

Consider that a financial planning office is a low intensity commercial use compared to allowable uses such as a fast food drive through or gas station. The closest residential unit is approximately 181 feet away from the proposed building addition.

See applicant's reasoning for this criterion in the attached narrative. It could be argued that the spirit of the Ordinance is met given the distance between the proposed building addition and closest neighboring residential unit.

Request B (Sidewalk): There currently are no sidewalk facilities within the Venture Park Condominium development. It could be considered 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 east side of Venture Park Drive would be doing path users a disservice as the sidewalk would terminate abruptly, 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 and text amendments are pending that will eliminate the automatic requirement to build a non-motorized facility.

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

Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the Zoning Board of Appeals (ZBA) for consistency (precedence).

Comment: **Request A (Setback):** In researching past ZBA decisions regarding the request for relief from enhanced setback requirements, Planning Department staff were able to identify four similar cases.

1. *Spurr Dental, 1624 South Drake Road, April 08, 2002:* The applicant sought relief from the supplemental setback requirements from CR: Local Commercial District, Restricted classification to adjacent R-3 properties from the Zoning Board of Appeals to allow for the construction of a new office building on the property. Without the variance, the applicants argued it would be difficult to construct a building with the resulting width of the property with the supplemental setbacks required on the north and south property lines. The Zoning Board of Appeals granted the variance request, allowing the building to be built to the standard commercial office setback requirements and not have to follow the enhanced applicable setbacks, citing that the conformance was unnecessarily burdensome, that the hardship was not self-created, and that the spirit and intent of the Ordinance would be observed by the variance.
2. *D & R Sports, 8178 West Main Street, October 06, 2014:* The applicants sought relief from the supplemental setback requirements for properties abutting residential zoning districts from the Zoning Board of Appeals to allow for the construction of a new storage building. The new structure was proposed to be located 58 feet from the property line, 33 feet less than required by the supplemental setback provisions. The applicant indicated that there was an existing berm fully planted with spruce trees that should completely obstruct the view of the building. The Zoning Boards of Appeals granted the variance request given the adjacent use of the property is a unique element and it was unlikely to have a material impact on the adjacent property.
3. *Friendship Animal Hospital, 2999 South 11th Street, November 14, 2023:* The applicant sought relief from the supplemental setback requirements for properties abutting residential zoning districts, with single-family homes located on them, from the Zoning Board of Appeals to allow for the construction of a new animal hospital. Without the variance, the applicants argued it would be difficult to construct a building given the resulting width of the property with the 50-foot supplemental setbacks required on the north and south property lines, leaving approximately 19

feet to construct a building. The Zoning Boards of Appeals denied the variance request given the request was a self-created hardship.

4. Complete Team Outfitters, 1560 South 8th Street, February 20, 2024: The applicant requested relief from the supplemental setback requirements for properties abutting residential zoning districts to allow for the construction of a new industrial building. A variance would permit a new building 65 feet from the south property line while the Ordinance requires 100 feet, a setback reduction of 35 feet. The variance was granted on the basis that there were unique physical circumstances with the parking lot and retention basin that would make it unnecessarily burdensome for the owners to relocate the building, there was substantial justice in that there are at least two very similar past approved cases, the neighboring home is several hundred feet away from the proposed building site and there is a large greenbelt in between, and that there is no detriment to health, safety, and welfare of the public.

Request B (Sidewalk): In researching past ZBA decisions regarding variance relief from the non-motorized facilities requirements of Section 57.90, Planning Department staff were able to identify three similar cases.

1. Complete Team Outfitters, 1560 South 8th Street, August 20, 2024: The applicant requested a variance to not be required to install a 6-foot-wide concrete sidewalk along their frontage to S 8th Street. Their argument was that the request was 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 these public improvements. By the property owner executing this agreement, they consented to not oppose the creation of a SAD and to pay the appropriate assessment in the future when the district is established.
2. Fountain Springs, 1410 South 9th Street, February 25, 2025: Similar to the Complete Team Outfitters request, the applicant requested a variance to not be required to install a 6-foot-wide concrete sidewalk along the S 8th Street frontage, as well as along their S 9th Street frontage. The applicant argued that the request is not self-created, and that the sidewalk requirement would be unnecessarily burdensome. Significant grading challenges also affected this site on both their frontages subject to this requirement. On their S 8th St frontage, the corridor could not support the sidewalk

given there would be no other facilities to connect to, and the AMTRAK railway cannot support a pedestrian crossing in the near future. 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.

3. *Blackberry Systems, 6477 West KL Avenue, April 22, 2025*: The applicant sought a variance to not be obligated to install a 6-foot-wide sidewalk adjacent to the property's South 9th Street frontage. 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, citing that there are unique grading challenges and impacts to existing stormwater management facilities, parcel's frontage does not support a non-motorized facility, precedence from recent cases, and that it is not expected that the variance request would negatively impact the health, safety, or welfare of the public.

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

Comment: **Request A (Setback):** The request could be considered a self-created hardship as it is the applicant's desire to place the building addition as proposed. There is potentially an opportunity to redesign the building addition to conform with the minimum setback requirements outlined in the Ordinance. See applicant's reasoning for this criterion in the attached narrative.

Request B (Sidewalk): The applicant's request for relief to not be obligated to install the subject sidewalk infrastructure is what is causing the variance request, and therefore, it could be considered self-created. Reasonable use of the property remains if the variance is denied as the financial planning office use can continue. There are no unique physical limitations which would prevent compliance with the Ordinance. See applicant's reasoning for this criterion in the attached narrative.

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

Comment: **Request A (Setback):** Setbacks act as a crucial part for any type of structure as they provide a form of security and privacy between adjacent land uses, especially if they are not similar to each other. The building addition is proposed to be 26 feet closer to the south property line than the Ordinance minimum. That said, the south building elevation of the building addition is passive versus an active part of a commercial building such as a loading dock. Furthermore, the south side of the subject property is completely wooded, as demonstrated in aerial photos as well as photos from staff's site visit. Given the residential land use to the south, the Ordinance requires a 30-foot-wide landscape buffer along the entire south property line. It could be argued that if the required landscape buffer, as intended, would provide the necessary screening between such commercial and residential uses, allowing the variance as requested may have no impact

to the health, safety, and welfare of the neighboring residential units or the public. Additionally, the Metro Toyota dealership building is situated immediately east of the subject property as well as to Quail Run Condominiums. The building for Metro Toyota is approximately 110 feet away from the residential units within the Quail Run Condominium development. The subject building addition is proposed to be located approximately 180 from the closest residential unit within the Quail Run Condominium, which is setback 70 feet further away compared to the sizable Metro Toyota building. It can be argued that there would be no negative impact on the health, safety, and welfare of the community if the variance were to be granted. See applicant's reasoning for this criterion in the attached narrative.

Request B (Sidewalk): 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 on each variance request:

- 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 **Request A (Setback)**
 - The minimum necessary for substantial justice is satisfied
 - Approval will not negatively impact the health, safety, and welfare of the public.
 - It can be argued that conformance with code requirements is unnecessarily burdensome
- Support of variance denial for **Request A (Setback)**
 - No unique physical circumstances or limitations exist
 - Conformance with code requirements is not unnecessarily burdensome
 - The need for a variance could be considered a self-created hardship
- Support of variance approval for **Request B (Sidewalk)**
 - The minimum necessary for substantial justice is satisfied
 - Conformance with code requirements is unnecessarily burdensome
 - Approval will not negatively impact the health, safety, and welfare of the public
- Support of variance denial for **Request B (Sidewalk)**
 - No unique physical circumstances or limitations exist
 - The need for the variance could be considered a self-created hardship

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

1. The Zoning Board of Appeals denies the variance request from 50.70, but approves the variance from Section 57.90 with the condition that:
 - a. The applicant consents to a Special Assessment District for a future 5-foot-wide non-motorized facility.
2. The Zoning Board of Appeals denies the variance request from Section 57.90, but approves the variance from Section 50.70 with the condition that:
 - a. The required 30-foot-wide landscape buffer along the south property line remain undisturbed and be left in its current, natural state.
3. The Zoning Board of Appeals approves alternate variance relief from Section 50.70, requiring a different setback than what is currently proposed by the applicant, but denies the variance request from Section 57.90.
4. The Zoning Board of Appeals approves both variance requests as requested from Section 50.70 and Section 57.90 with the condition that:
 - a. The applicant consents to a Special Assessment District for a future 5-foot-wide non-motorized facility.
 - b. The required 30-foot-wide landscape buffer along the south property line remain undisturbed and be left in its current, natural state.
5. The Zoning Board of Appeals denies both the variance requests as requested from Section 50.70 and Section 57.90.

Attachments: Application, Applicant Narrative, Maps, Site Photos, and Minutes for Substantial Justice



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

PLEASE PRINT

PROJECT NAME & ADDRESS

Ameriprise Office Addition: 5991 Venture Park Drive, Kalamazoo, MI 49009

PLANNING & ZONING APPLICATION

Applicant Name: AR Engineering

Company: Ameriprise Financial - Miedema Associates

AR Engineering (269) 250-5991

Address: 5991 Venture Park Drive

Kalamazoo, MI 49009

E-mail: [REDACTED]

Telephone: (269) 329-1683 Fax: _____

Interest in Property: Owner / Civil Engineer

OWNER*:

Name: Neal & Amy Miedema

Address: 5991 Venture Park Drive

Kalamazoo, MI 49009

E-mail: [REDACTED]

Phone & Fax: (269) 329-1683

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____

Escrow Amount _____

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

- | | |
|---|---|
| <input type="checkbox"/> Pre-Application Review | <input type="checkbox"/> Accessory Building Review – I083 |
| <input type="checkbox"/> Site Plan Review – I088 | <input type="checkbox"/> Rezoning – I091 |
| <input type="checkbox"/> Administrative Site Plan Review – I086 | <input type="checkbox"/> Subdivision Plat Review – I089 |
| <input type="checkbox"/> Special Exception Use – I085 | <input type="checkbox"/> Interpretation – I082 |
| <input checked="" type="checkbox"/> Zoning Variance – I092 | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Site Condominium – I084 | |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): Owner seeks a variance from the building setback

line of 85' to 59', since the subject commercial zone abuts a residential (R-4) zoned property. The abutting multi-family residences are situated 40' (2301) and 187' (2353) from the property line, and 181' and 247'
from the proposed addition. The abutting multi-family (2355) also borders Commercial to the west, which is a car dealership, and the parking lot approximately 8' from property line, with buildings
approximately 109' apart and dealership 58' from property line. Owner also requests a variance to the sidewalk requirement, as there is no 5' sidewalk throughout the Venture Park Condo Association.

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

See attached

PARCEL NUMBER: 3905- 05-25-153-160

ADDRESS OF PROPERTY: 5991 Venture Park Drive

PRESENT USE OF THE PROPERTY: Office

PRESENT ZONING: C - Commercial: Local Business **SIZE OF PROPERTY:** 1.45 acres

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

5/22/2025

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

5991 Venture Park – Building Setback Variance

Criteria 1: Conformance Unnecessarily Burdensome

Are reasonable options for compliance available? Please note that economic hardship cannot be considered.

No. The addition location is based on the existing office position. While the addition could go further out the rear, there is significant grade change to the property that would make it difficult to maintain the finished floor elevation. The proposed parking and garage will also prevent the office from being expanded to the rear. The parking and front door are located on the north side of the building completely out of view of the residential units.

Criteria 2: Substantial Justice

Is the decision consistent with past decisions of the ZBA (precedence)?

Yes, past variances for building setbacks have been granted. Also, the Metro Toyota Dealership building and parking is significantly closer to the R-4 zone. The dealership parking lot is approximately 8 feet off the property line and the dealership building 58' off the property line. The multi-family buildings, closest being approximately 40' from the property line.

Criteria 3: Unique Physical Circumstances

Are there unique physical limitations or conditions which prevent compliance?

Yes, as mentioned above, the addition is going on an existing building and the significant grade change in the rear is problematic. To the south, considerable buffer between the residential and office building is still provided. The way that the subject lot and corner lot was platted is unique as it relates to each other and the road. The intent of the zoning requirement appears to be geared more towards the more intense use in the commercial district, whereas the office use is an inobtrusive operation, especially compared to a dealership.

Criteria 4: Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

No. The significant grade change in the rear is natural. The commercial to multi-family zoning was applied by the township and generally intended for more intense commercial use, other than a business office. The car dealership has a much higher intensity use and sits only 109' from the residential building. The office building will have a 167' vegetative buffer between the residential building and the expansion. The residential is also a higher intensity as a multi-family use. The layout of the parcels as platted was not the action of the applicant.

Criteria 5: Public Safety and Welfare

If granted, will the spirit of the ordinance be observed, and public safety and welfare secured?

Yes. There will be no harm to the adjacent owners or users due to the decreased setback. It will provide more business opportunities for the business park by expanding an existing building rather than building a new one. The proposed addition is no closer than the existing dealership that is a much more intense use. The addition will not be a threat to the public safety and welfare as it is a professional office with normal office hours.

5991 Venture Park – Sidewalk Variance

Criteria 1: Conformance Unnecessarily Burdensome

Are reasonable options for compliance available? Please note that economic hardship cannot be considered.

No. Being that there is no other sidewalk in the business park, it would have no place to connect to and be a safety issue that would cause confusion to pedestrians. This sidewalk would not be used by pedestrians as there is nowhere for them to go outside of this property. Other properties in the park have not been required to install sidewalks, so it is more than likely that sidewalk would ever continue.

Criteria 2: Substantial Justice

Is the decision consistent with past decisions of the ZBA (precedence)?

Yes, past variances for sidewalks have been granted. There are no existing sidewalks in the business park. The property owners to the north have entered into a sidewalk special assessment district in 2021, which is not available as an option to us since the township updated their ordinance a few years ago. Other properties in the park have not been required to install sidewalks, so it is more than likely that sidewalk would ever continue.

Criteria 3: Unique Physical Circumstances

Are there unique physical limitations or conditions which prevent compliance?

Yes. There are no existing sidewalks in the business park. In order to use the sidewalk, pedestrians would potentially have to cross the street and then back again creating accessibility and safety issues. Additionally, the sidewalk would not be used as much because there is nowhere for it to connect to.

Criteria 4: Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

No. There has been no other business in the park that has been required to put a sidewalk in. The property owners to the north have entered into a sidewalk special assessment district in 2021, which is not available as an option to us since the township updated their ordinance a few years ago.

Criteria 5: Public Safety and Welfare

If granted, will the spirit of the ordinance be observed, and public safety and welfare secured?

Yes. There will be no harm to the adjacent owners or users due to the sidewalk variance. Pedestrians would not feel the need to unnecessarily cross the road to use the short run of sidewalk. In order to use

the sidewalk, pedestrians would potentially have to cross the street and then back again creating accessibility and safety issues. Furthermore, the sidewalk would not be used because there is nowhere for it to connect to and thus be inconvenient to use.

SITE DATA

- PROPERTY INFORMATION:**
 PARCEL #S: 05-25-153-160
 SITE AREA: 63,162 SF (1.45 AC)
 OWNER: MIEDEMA & ASSOCIATES
 5991 VENTURE PARK DR
 KALAMAZOO, MI 49009
 ARCHITECT: BOSCH ARCHITECTURE
 STEVE BOSCH, AIA, RA
 8035 VINEYARD PARKWAY
 KALAMAZOO MI 49009
 PHONE: 269-321-5151
- ZONING:**
 PROPERTY CURRENTLY ZONED:
 C - COMMERCIAL: LOCAL BUSINESS
 ABUTTING PROPERTY CURRENTLY ZONED: BUSINESS
 NORTH: C - COMMERCIAL: LOCAL BUSINESS
 SOUTH: R4 - RESIDENTIAL: SINGLE AND TWO-FAMILY
 EAST: C - COMMERCIAL: LOCAL BUSINESS
 WEST: C - COMMERCIAL: LOCAL BUSINESS
- SETBACKS**
 FRONT = 70'
 SIDES = 20'; 85' IF ABUTTING RESIDENTIAL*
 REAR = 20'
 * VARIANCE REQUIRED FOR SOUTH SETBACK TO BE 59'
- PARKING:**
 REQUIRED - (1) PARKING SPACE PER (150) SF OF NET FLOOR AREA
 4,440 SF / 150 = 30
 PROVIDED = STANDARD 10'X20' SPACES = 28
 BARRIER FREE SPACES = 2
 TOTAL PROVIDED = 30
- BUILDING:**
 OFFICE BLDG: 16'-7" TO THE MEAN OF THE SLOPED ROOF
 STORAGE BLDG: 21'-2" TO THE MEAN OF THE SLOPED ROOF
 MAXIMUM HEIGHT: 35'
 TOTAL AREA OF 6309 SFT. (SEE FLOOR PLAN AND ELEVATIONS FOR MORE DETAIL.)
 PROPOSED BUILDING COVERAGE: 10.6%
- LOT:**
 MINIMUM LOT AREA: 2,900 SFT
 MINIMUM LOT AREA PER DWELLING UNIT: 1,800 SFT
 LOT SIZE: 63,162 SF / 1.45 AC
 LOT DIMENSIONS: IRREGULAR
 OPEN SPACE: 41,297 SFT / 0.95 AC / 65%
- LANDSCAPING:**
 SHALL BE IN ACCORDANCE WITH LANDSCAPING PLAN.
- STORM WATER DETENTION REQUIRED:**
 STORM WATER MANAGEMENT SHALL BE IN ACCORDANCE WITH TOWNSHIP STORM WATER GUIDELINES.

LEGEND

- ASPHALT PAVEMENT
- CONCRETE PAVEMENT AND SIDEWALK
- 1-2" RIVER ROCK ON GEOTEXTILE FABRIC (SEE DETAIL ON L1.0)

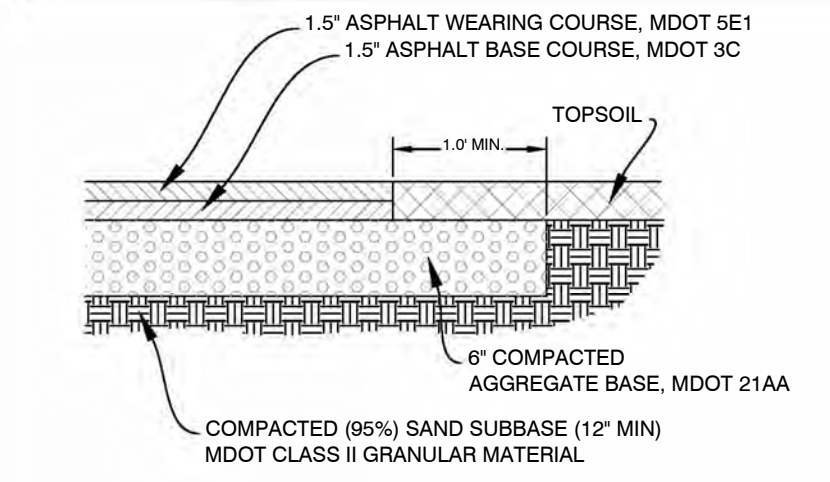
GENERAL NOTES

- DIMENSIONS TAKE PRECEDENCE OVER SCALE. CONTRACTOR TO VERIFY ALL DIMENSIONS IN FIELD.
- IF ANY ERRORS, DISCREPANCIES, OR OMISSIONS BECOME APPARENT, THESE SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ ENGINEER PRIOR TO CONSTRUCTION OF ANYTHING AFFECTED SO THAT CLARIFICATION OR REDESIGN MAY OCCUR.
- ALL CURB RADII AND DIMENSIONS ARE TO FACE OF CURB. CURB TO BE PROVIDED WHERE SHOWN AND INTEGRAL WITH SIDEWALK AT PAVING EDGE.
- SLOPE GRADES UNIFORMLY BETWEEN ELEVATIONS SHOWN. NOMINAL GRADING, SLOPE SIDEWALKS AWAY FROM BUILDING AT 1/4" PER FOOT ON ENTRY WALK.

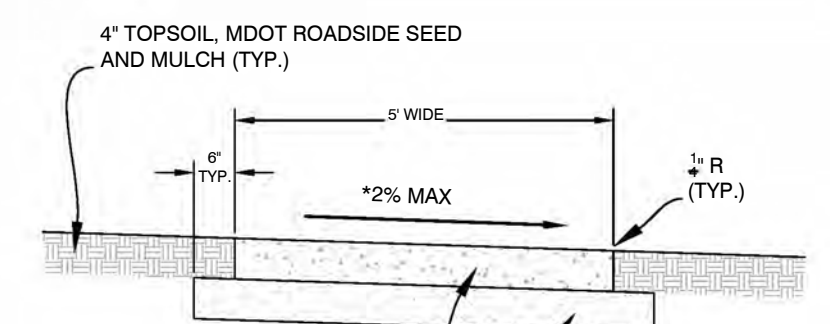
BENCHMARKS

BM-1: ELEV: 952.18
 SET "X" IN THE NORTHWEST CORNER OF BUILDING SIGN LOCATED ± 30' SOUTH OF CENTERLINE OF PRIVATE DRIVE OF SUBJECT PROPERTY AND ± 48' EAST OF CENTERLINE OF VENTURE PARK DR.

BM-2: ELEV: 951.14
 SET MAG NAIL IN EAST SIDE OF 24" DECIDUOUS TREE LOCATED ± 46' NORTH OF SOUTHERLY PROPERTY LINE AND ± 204' EAST OF CENTERLINE OF VENTURE PARK DRIVE.

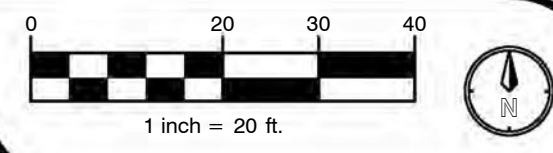


ASPHALT SECTION
 C2.0 - 030401 NOT TO SCALE



5' WIDE SIDEWALK SECTION
 C2.0 - 030301 NOT TO SCALE

REFER TO MDOT STANDARD PLAN R-294 (DRIVEWAY OPENINGS & APPROACHES, AND CONCRETE SIDEWALK)



PLANS PREPARED BY:



DRAWN: EG
 CHECKED: ASR

No.	ISSUED FOR:	DATE	BY
0	SITE PLAN REVIEW	05/02/25	LM
1			
2			
3			
4			

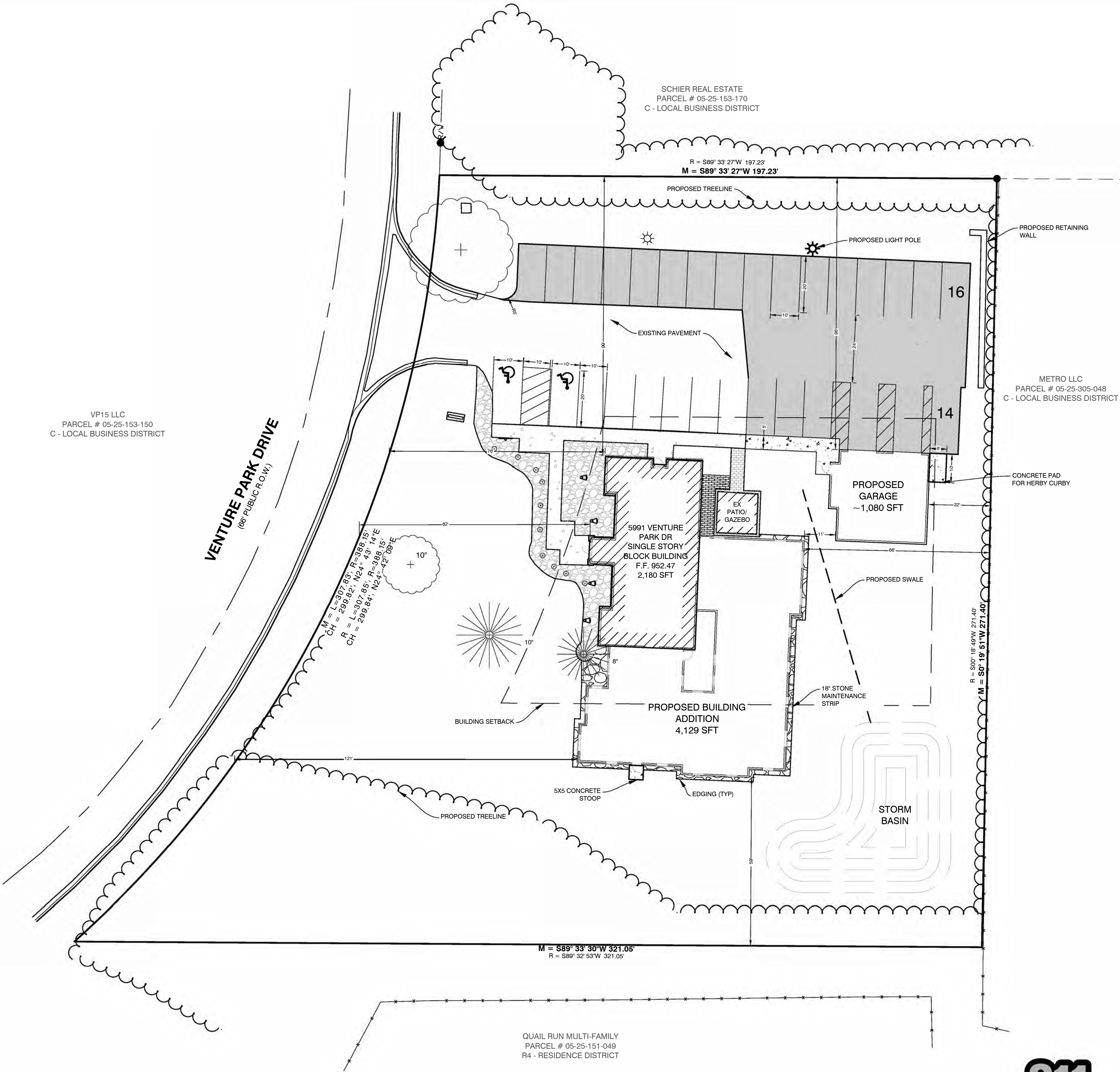
SITE LAYOUT
 MIEDEMA ASSOCIATES OFFICE ADDITION
 MIEDEMA ASSOCIATES
 5991 VENTURE PARK DRIVE, KALAMAZOO, MI
 SECTION 25, T02S, R12W.

JOB NUMBER
 25200001

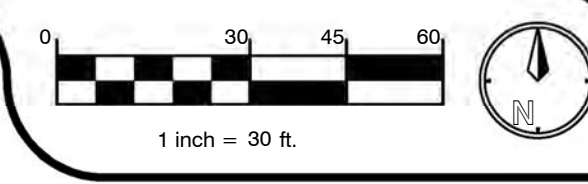
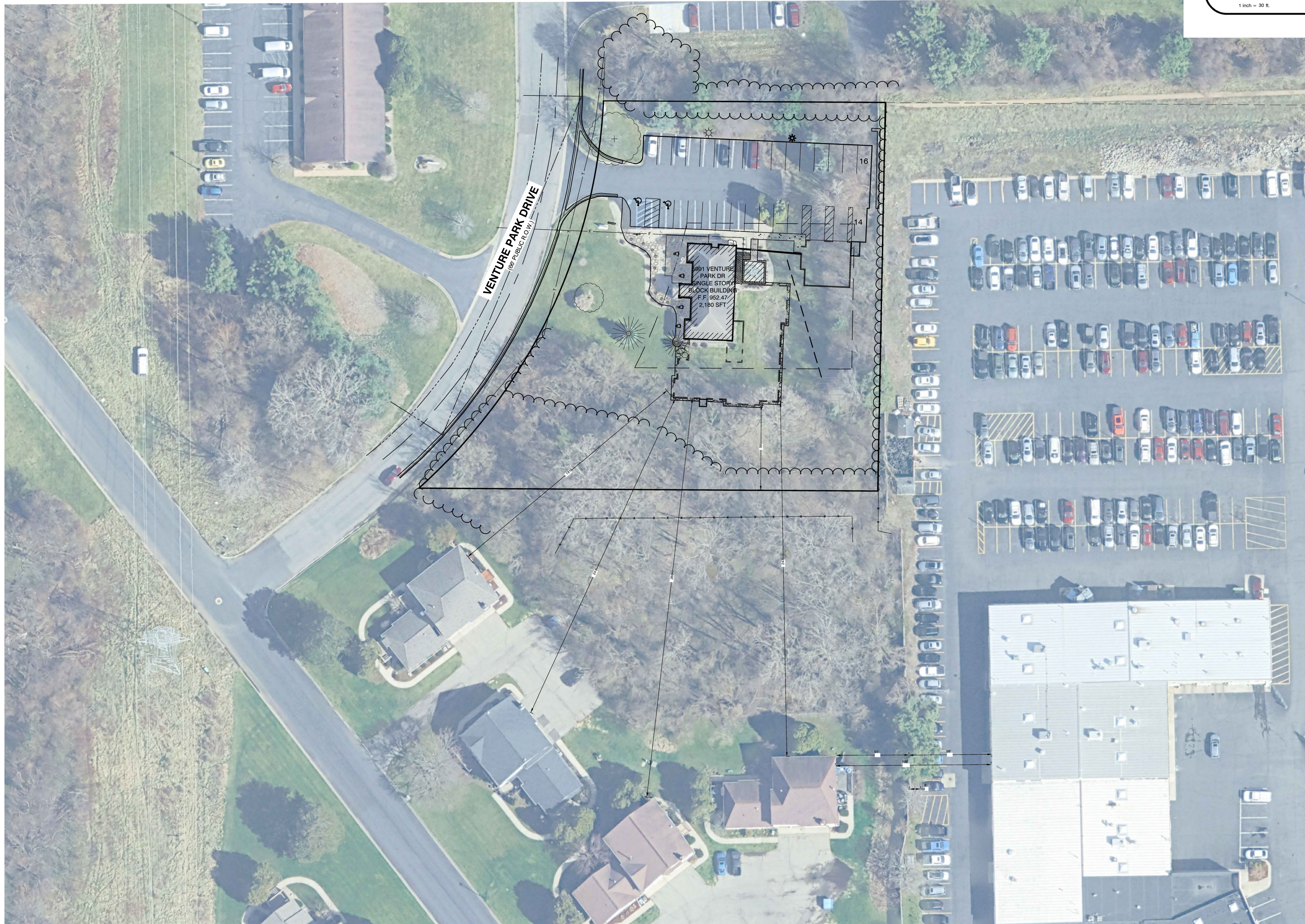
DATE
 05/02/2025

SHEET NUMBER

C2.0



ALL UTILITIES AS SHOWN ARE APPROXIMATE LOCATIONS DERIVED FROM ACTUAL MEASUREMENTS AND AVAILABLE RECORDS. THEY SHOULD NOT BE INTERPRETED TO BE EXACT LOCATION NOR SHOULD IT BE ASSUMED THAT THEY ARE THE ONLY UTILITIES IN THE AREA. FIELD WORK PERFORMED BY: AR ENGINEERING



PLANS PREPARED BY:



DRAWN: EG
CHECKED: ASR

No.	ISSUED FOR:	DATE	BY
0	SITE PLAN REVIEW	05/02/25	LM
1			
2			
3			
4			

SITE LAYOUT
 MIEDEMA ASSOCIATES OFFICE ADDITION
 MIEDEMA ASSOCIATES
 5991 VENTURE PARK DRIVE, KALAMAZOO, MI
 SECTION 25, T02S, R12W.

PROJECT:
CLIENT:
SITE ADDRESS:
SITE SECTION:

JOB NUMBER
25200001

DATE
05/02/2025

SHEET NUMBER
C2.1























Miedema & Associates
A Private Wealth Advisory Practice
5991 Venture Park Drive









Mr. Fred Gould, 1919 Quail Run Drive, stated he was the former owner of the J Avenue property now owned by his daughter. He wants to maintain the integrity of their property. He and his wife are concerned about possible future development on the property adjacent to theirs if the variance were granted, especially if a building were placed close to their property and noted the intent of the previous owner, Mr. Snow, was not to divide the parcel in question and voicing their concern about quality of life and for wildlife in the area and their opposition to shrinking the "footprint" of the original property. Mr. Gould said there had been an opportunity for them to purchase the property in question from Mr. Snow, but that they had chosen not to do so. He also said he would have been at previous meetings regarding past similar requests if he had been notified, but that the 300 foot notification does not cover many people in more rural areas and suggested the Township consider expanding its notification guidelines.

Attorney Porter commented that if people buy property they can build on it wherever they choose as long as they follow the ordinance.

At this point, Chairperson Bell moved to Board Deliberations.

Mr. Smith said he appreciated the Goulds' sentiment, but that the request was not unique and noted that if one does not like what might occur on adjacent property in the future, they should buy it.

Comments indicated there was consensus in favor of the request.

Chairperson Bell asked for a motion to approve the variance request.

Mr. Smith made a motion to approve the request from Mr. Schoolmaster for the reasons listed above regarding the standards of approval and precedent as a result of previous approvals in the area for similar requests. Mr. Larson seconded the motion. The motion was approved unanimously.

PUBLIC HEARING: APPLICANT (D&R SPORTS) REQUESTS VARIANCE FROM THE OSHTEMO TOWNSHIP ZONING ORDINANCE TO ALLOW THE CONSTRUCTION OF A 9,600 SQUARE FOOT STORAGE BUILDING WITH A SUPPLEMENTAL SIDE YARD SETBACK OF 58 FEET, 33 FEET LESS THAN THE 91 FOOT MINIMUM PROVIDED IN SECTION 64.750(b) OF THE TOWNSHIP ZONING ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 8178 WEST MAIN STREET IN THE C-LOCAL BUSINESS DISTRICT (PARCEL #3905-16-280-012).

Chairperson Bell said the next item on the agenda was a request from D & R Sports for a supplemental side yard setback variance and asked Mr. Milliken to speak regarding the request.

Mr. Milliken told the Board the applicants own and operate D&R Sports on West Main Street and seek to add a new 80'x120' (9,600 square feet) storage building on site

for interior storage of boats and equipment. A 26 foot overhang / porch would be included on the east side of the structure. The proposed building is located on the western portion of the site about 300 feet from West Main Street. It is proposed to be 31 feet in height at its peak.

He said the subject property is predominately located in the C – Commercial zoning district. The side yard setback for buildings in the C district is 20 feet or the height of the building, whichever is greater. However, when the property is adjacent to a residential zoning district, the setback is expanded to 85 feet plus one foot for each foot in height of the proposed structure over 25 feet. The property to the west of the subject property is in the RR-Rural Residential zoning district. Thus, the side yard setback requirement for the proposed structure is 91 feet.

He noted the new structure is proposed to be located 58 feet from the west property line, 33 feet less than the required, enhanced setback. Because of the nature of the use and improvements proposed and existing on site, the development could be approved administratively. However, due to the encroachment into the side yard setback, it is before the ZBA for a dimensional variance request.

He said while the adjacent property is in a residential district, it is occupied by a commercial entity – Handley’s Tree Service – who has submitted a letter of support in favor of the proposed variance. It is unlikely that the proposed expansion would have a material impact on the adjacent property due to the unique nature of the use.

Mr. Milliken referred to the Standards of Approval and said in its current configuration, the building really cannot be shifted east to accommodate the setback requirement. With the large trucks and trailers involved on the site, it is important to maintain the separation between buildings. The building could be reconfigured to be narrower and longer and not encroach into the setback, although this could affect its functionality. It could also be relocated to the northern portion of the site.

He reviewed past decisions of the ZBA noting an August 26, 2014 denial of a variance request from Kalamazoo Hotels, LLC, denied due to potential impact on the adjacent Church facility, particularly considering the intensity of the commercial use. A variance was approved for Menard’s in 2006 based on the use of adjacent property and a variance request from Hansen / Spurr Dental Office was approved in 2002 because without variance the property was unbuildable.

The prevailing unique element that affects this request is the existing use of the adjacent property. The Ordinance requires an enhanced setback from the subject property when adjacent to a residential zoning district. Although that is the case here, the adjacent property is occupied by a commercial use and the proposed structure would be adjacent to log piles.

He noted the applicant has chosen the size and location of the structure, both of which have combined to result in the need for the current variance. However, the applicant did not place the adjacent commercially used property in a residential zoning

district. The question for the ZBA to consider is whether the use of the adjacent property is a unique element that warrants the granting of the variance.

Chairperson Bell asked if there were any questions for Mr. Milliken regarding the application. Hearing none, she asked the applicant to speak.

Mr. Randy Van Dam, D & R Sports Center, said he has worked with an environmental engineer to address both current and future issues and visions for the site. The original building placement was chosen to leave enough room for future development. He noted one of the reasons for the 26 foot overhang included on the building is to provide more display area for boats that is out of the weather.

In response to a question from Mr. Loy, Mr. Van Dam said the end of the lean-to structure would not be enclosed. He also explained the plan provides enough interior floor area for turnaround space while still leaving room to be able to use both sides of the structure for rack storage.

Mr. Larson confirmed the ridge line runs north and south.

In answer to a question from Mr. Larson about what portion of the 16 foot sidewall would be seen from the adjacent Handley property, Mr. Van Dam said there is an existing elevated berm fully planted with spruce trees that should completely obstruct the view. He commented that he has a good relationship with Mr. Handley and that he has no problem with Mr. Van Dam's request.

Attorney Porter commented the change in topography could be a point for the Board to use as a basis for their decision.

Chairperson Bell moved to Board Deliberation at this point.

Mr. Sikora confirmed with Mr. Milliken that the added outside display did not have a bearing on the request. Mr. Milliken indicated that in fact it would actually reduce the number of boats displayed outside which would be an improvement.

The Chairperson noted Handley's is in the RR district and that because it is adjacent to the D & R property, an enhanced setback is required for the D&R property.

Attorney Porter said commercial activity has been in place at the Handley's site long before now.

Chairperson Bell noted the denial that occurred at last month's meeting for a similar request was because the adjacent property to the commercial property was a church and Mr. Loy also noted that was also a request for a five story building; this request concerns a building that is 16 feet in height and will not be seen from the Handley property due to the existing berm/trees.

Responding to a question about what might occur in the future on the Handley property; Chairperson Bell confirmed with Mr. Milliken that any change would require the berm to remain in place, as approved years ago.

Mr. Loy made a motion to approve the request for setback from D & R for the reasons stated in Board discussion. Mr. Larson seconded the motion. The motion was approved unanimously.

Any Other Business / ZBA Member Comments

Mr. Milliken told the Board a special meeting was scheduled for October 6 regarding a sign deviation request for the "Corner at Drake" development. If Omni is ready with an amended request, it could also be included on the agenda.

Chairperson Bell said she thought the suggestion by Mr. Gould to expand notification to property owners in residential areas was worth consideration.

Attorney Porter noted the Board has, on occasion, expanded notification beyond statute requirement.

Adjournment

Chairperson Bell noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, she adjourned the meeting at approximately 4:23 p.m.

Minutes prepared:
September 25, 2014

Minutes approved:
_____, 2014

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF MEETING HELD APRIL 8, 2002

Agenda

PATTISON - FRONTAGE AND DEPTH-TO-WIDTH VARIANCES - 1600 BLOCK OF 9TH STREET (AT THE END OF STEEPLECHASE COURT) - (PARCEL NO. 3905-11-355-041)

HARDINGS - WALL SIGN DEVIATION - 5161 WEST MAIN STREET- (PARCEL NO. 3905-13-430-036)

EICHELBERG - SITE PLAN REVIEW - HOUSE CONVERSION TO OFFICE USE - 2800 SOUTH 11TH STREET - (PARCEL NO. 3905-25-335-040)

HANSEN (SPURR DENTAL OFFICE) - SUPPLEMENTAL SETBACK VARIANCE - 1624 SOUTH DRAKE ROAD - (PARCEL NO. 3905-25-230-074)

A meeting was conducted by the Oshtemo Charter Township Zoning Board of Appeals on Monday, April 8, 2002, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Stanley Rakowski, Acting Chairperson
Dave Bushouse
Jill Jensen
Grace Borgfjord

MEMBER ABSENT: Millard Loy

Also present were Jodi Stefforia, Planning Director, Mary Lynn Bugge, Township Planner; Patricia R. Mason, Township Attorney, and 8 other interested persons.

CALL TO ORDER

The Acting Chairperson called the meeting to order at 3:00 p.m.

HANSEN (SPURR DENTAL OFFICE) - SUPPLEMENTAL SETBACK VARIANCE - 1624 SOUTH DRAKE ROAD - (PARCEL NO. 3905-25-230-074)

The applicant requested a variance from the supplemental setback required from the north and south property lines to allow the construction of a new office building on the subject property. The property is located at 1624 South Drake Road and is Parcel No. 3905-25-230-074. The property is located in the "CR" Local Business District zoning classification. The Report of the Planning and Zoning Department is incorporated herein by reference.

Mr. Rakowski indicated that he would like to abstain from consideration of the request because Dr. Spurr is his dentist.

Mr. Bushouse moved to allow Mr. Rakowski to abstain, and the motion was seconded by Ms. Jensen. The motion carried unanimously.

Ms. Bugge noted that the property does not currently comply with the dimensional requirements of the Ordinance, but that it is being platted and would conform once the platting process was complete. Further, the site plan would be reviewed by the Planning Commission at a future date.

It was pointed out that the properties abutting the subject site are currently zoned "R-3", although the Land Use Plan designates their future zoning as "CR". The property to the north, zoned "R-3", is also the location of a dental office.

Because the adjacent properties are "R-3", a supplemental setback of 85 feet from both the north and south property lines is applicable. Since the property is only 159 feet wide, no buildable area would remain.

Steve Bosch was present on behalf of the applicant. He argued that the situation was unique because the property would be unbuildable without a variance.

No public comment was offered, and the public hearing was closed.

Reference was made to the criteria required for the issuance of a nonuse variance.

Board members agreed that the conformance was unnecessarily burdensome in this case and that no buildable area would result from the supplemental setback.

Ms. Jensen moved to grant a variance conditioned upon use of the subject site for an office. It was required that the site meet the setbacks applicable to a commercial office building. It was reasoned that substantial justice would weigh in favor of granting the variance in that the office use would not be out of keeping with the office or residential uses

in the area, and further in recognition that conformance was unnecessarily burdensome. Further, the hardship was not self-created. It was felt that the spirit and intent of the Ordinance would be observed by the variance in that the Land Use Plan indicated that surrounding properties would be zoned "CR" in the future.

Ms. Borgfjord seconded the motion, and the motion carried 3-to-0 with Mr. Rakowski abstaining.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 4:35 p.m.

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

By: Stanley Rakowski
Stanley Rakowski, Acting Chairperson

By: David Bushouse
David Bushouse

By: Jill Jensen
Jill Jensen

By: Grace A. Borgfjord
Grace Borgfjord

Minutes Prepared:
April 11, 2002

Minutes Approved:
May 20, 2002

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**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD NOVEMBER 14, 2023 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

2024 ZONING BOARD MEETING DATES

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 14, 2023, beginning at approximately 3:02 p.m.

ALL MEMBERS WERE PRESENT: Anita Smith, Chair
 Rick Everett
 Dusty Farmer
 Fred Gould
 Harry Jachym
 Louis Williams, Vice Chair
 Alistair Smith

Also present were Iris Lubbert, Planning Director, Jim Porter, Township Attorney, Leeanna Harris, Zoning Administrator, Martha Coash, Recording Secretary and several guests.

Call to Order

Chairperson Smith called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Ms. Lubbert indicated there were no changes to the agenda.

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

The Chair moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of March 21, 2023

Chairperson Smith asked if there were changes to the minutes of March 21, 2023. Hearing none, she asked for a motion.

Mr. Smith made a motion to approve the Minutes of March 21, 2023 as presented. Ms. Farmer seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item.

2024 Zoning Board Meeting Dates

Ms. Lubbert provided the proposed meeting dates for the fourth Tuesday of each month with exceptions for holidays or for consistency with the Development Schedule of Applications:

1/23
2/20*
3/26
4/23
5/21*
6/25
7/23
8/20*
9/24
10/22
11/19*
12/17*
1/21/2025

*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications.

Chairperson Smith suggested moving the December Meeting to the 10th. Members decided to leave it as proposed, in the normal pattern.

Chairperson Smith asked for a motion.

Ms. Farmer made a motion to approve the Zoning Board Meeting Dates for 2024 as presented. Mr. Williams seconded the motion. The motion was approved unanimously.

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

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

Ms. Harris said 2999 S. 11th Street, has approximately 119 feet of frontage, is 1.24 acres in size, and is zoned R-3: Residence District. The property is located in the southeast quadrant of the Township, southeast of the Crystal Lane and S. 11th Street intersection.

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance from Section 50.70.E. of the Township Ordinance that governs the minimum distance between any building or structure (that is not a single-family home or duplex) and any rear or side property line abutting property with a single- or two-family residence located in an equivalent or lower zoning classification. Specifically, the Ordinance outlines that the setback distance shall be 50 feet, or a type F greenspace shall be installed, along the property line between the improved area of the subject property and the abutting residence.

2999 S. 11th Street is zoned R-3 and is currently vacant. The property in question is situated between two parcels that are also zoned R-3 but have single-family homes. Generally, the required side yard setback for a new commercial building within an R-3 zoning district is 20 feet or the height of the abutting side of the building at its highest point. However, the presence of single-family homes triggers the increased setback requirements of 50.70.E of the Zoning Ordinance; a 50-foot setback or type F greenspace is required along the adjoining property lines. It should be noted that there is an R-2: Residence District abutting the southeastern portion of 2999 S. 11th Street.

Although Section 50.70. E references a type F greenspace, she noted the referenced type F greenspace was removed from the Landscaping Ordinance when it was last updated. Staff were able to research the earlier version of the Landscaping Ordinance and found the greenspace standards previously in place. Generally, the minimum setback distance required between any building and any rear or side property line is 20 feet or the height of the building, whichever is greater. This request would meet this Ordinance requirement since the proposed building height is 25 feet.

The applicant provided a letter outlining their reasoning for the variance request. In summary, the applicant contends that the required increased setbacks would leave little developable space on this 119-foot-wide parcel making development difficult and therefore this section of the ordinance unnecessarily burdensome. They also note the approval of this request will have no material impact on adjacent property owners. The applicant adds that even though the setback would be decreased, if approved, in order to meet the intent of the ordinance, they “will be landscaping the site very heavily, providing significant screening to all sides of the parcel. The 8- foot evergreens will be staggered in such a way to obstruct the view of the building from not only the R-2 parcel but the adjoining R-3 parcels as well.”

STANDARDS OF REVIEW – STAFF ANALYSIS

Ms. Harris reviewed the principles the Michigan courts have applied for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- 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.

Ms. Harris indicated Staff analyzed the request against these principles and offered 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: 2999 S. 11th Street is currently undeveloped with relatively flat terrain. The ordinance outlines that a parcel within the R-3 district is required to have a minimum frontage of 200 feet and a minimum area of 50,000 square feet. This property's frontage of 119 feet is legal non-conforming. The property's area of 1.24 acres exceeds the ordinance required minimum of 50,000 square feet. The narrower width, almost half what is required, is a unique physical limitation. If the increased setback of 50 feet is strictly enforced for the development of this property, it would only allow a nonresidential structure 19 feet wide or less to be built on this site. It could be argued that the increased setback requirement renders the property essentially undevelopable for any use other than a single-family home or duplex without a setback variance being granted.

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

Comment: The matter of building a nonresidential use, specifically a veterinary clinic, on this property is discretionary and reasonable use of the property does still exist as a single- or two-family home; however, the enhanced setbacks from properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel for any other uses.

Section 50.70 E was originally designed to offer two options for enhanced buffering between uses. The first is a setback of 50 feet and the second is the installation of a type F greenspace (i.e. setback of 35 feet with increased landscaping). The second option is no longer available as the ordinance no longer includes the type F landscaping referenced, leaving the applicant with one less option to develop than previous developers. Even though this option is technically no longer applicable, the Zoning Board of Appeals should consider the original intent of 50.70. E which allowed for a decreased setback, in this case from 50 feet to 35 feet, as long as additional landscaping was provided.

Note: to address the spirit of the ordinance, the applicants have indicated they are willing to provide increased landscaping, to the north, south, and east sides of the parcel. Any proposed landscaping plan will need to be reviewed against the landscaping ordinance and approved by the Planning Commission with the review of the site plan. The Commission should consider this as a condition of approval.

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 Zoning Board of Appeals decisions regarding the request for relief from increased setback requirements abutting single- or two-family homes, Planning Department staff were able to identify two similar cases.

1. Spurr Dental, 1624 South Drake Road, 4/8/2002: The applicant sought relief from the supplemental setback requirements from CR: Local Business District classification to adjacent R-3 properties from the Zoning Board of Appeals to allow for the construction of a new office building on the property. Without the variance, the applicants argued, there would be essentially no buildable area resulting since the width of the property is 159 feet with supplemental setback requirements of 85 feet on both the north and south property lines. The Zoning Board of Appeals granted the variance request, allowing the building to be built to the standard commercial office setback requirements and not have to follow the enhanced applicable setbacks, citing that the conformance was unnecessarily burdensome, the hardship was not self-created, and that the spirit and intent of the Ordinance would be observed by the variance.
2. D & R Sports, 8178 West Main Street, 10/6/2014: The applicants sought relief from the supplemental setback requirements for properties abutting residential zoning districts from the Zoning Board of Appeals to allow for the construction of a new storage building. If approved, the new structure was proposed to be located 58 feet from the property line, 33 feet less than required by the supplemental setback provisions. The applicant indicated there was an existing berm fully planted with spruce trees that should completely obstruct the view of the building. The Zoning Board of Appeals granted the variance request given the adjacent use of the property is a unique element and it was unlikely to have a material impact on the adjacent property.

Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: With the site currently being vacant, it could be argued that the need for the variance requested is self-created. However, the building setbacks for this property severely limit the amount of space available for development. The width of the property is 119 feet, and with the 50-foot setback on both the north and south, it would give only 19 feet to construct a building.

Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Comment: The applicant stated they would provide extensive landscape buffering to obscure the site from the properties to the north, south, and east, more similarly aligned with the type F greenspace referenced. If the variance is approved, the

site plan would require the review of the Planning Commission and a public hearing to ensure the proposed use and layout are compatible with the surrounding area. With the willingness to provide additional screening and the safeguards in place through the Planning Commission review, staff does not anticipate that allowing the structure to be built closer to the neighboring properties with single-family homes than is typically allowed would negatively impact the health, safety, or welfare of the neighbors or the community.

POSSIBLE ACTIONS

Ms. Harris suggested Board Members could take the following possible actions:

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

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

- Support of variance approval
 - There are unique physical limitations (property width).
 - Conformance to the ordinance is unnecessarily burdensome as the enhanced setbacks for properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel.
 - With increased landscaping/screening, per the original intent of 50.70 E, there would be no negative impact to the health, safety, or welfare of the public by allowing the building to be built with the proposed setbacks.
 - Substantial justice is met as the Zoning Board of Appeals granted setback variances for two similar cases in the past.
- Support of variance denial
 - The necessity of the variance from the enhanced 50 foot setback is a self-created hardship.

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

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the unique physical limitations that exist, conformance to the ordinance is unnecessarily burdensome and there would be no negative impact to the safety of the public with the condition that enhanced landscaping, reviewed, and approved by the Planning Commission, is installed within the decreased setback areas to meet the intent of Section 50.70.E. and any proposed primary building meets the general zoning setback requirements (in this case, 20 feet or the height of the building, whichever is greater).

2. Variance Denial

The Zoning Board of Appeals denies the variance request due to the proposal being a self-created hardship.

3. Variance Approval and Denial

The Zoning Board of Appeals can choose to approve portions of the requested variance or provide alternate relief. For example, approve a variance for a setback larger than requested but less than the ordinance requires, ex. 35 feet.

Chairperson Smith thanked Ms. Harris for her presentation and asked if Board Members had questions for her. Hearing none, she asked if the applicant wished to speak.

Mr. Walter Hansen, of Building and Design Corporation spoke on behalf of Dr. Laura Billings, and noted the Kalamazoo County Road Commission has approved the proposed location of the drive, and for soil erosion permissions have both been received. He described the intent to develop an office on the property to the north, the extensive landscaping with evergreen trees that is proposed will provide very good screening, noted there would be 400 feet between the back of the residence on the R-2 zoned property and this development, and that approval of the variance would not result in negatively impacting the home directly to the south .

Without the variance, he said it would be almost impossible for any type of office use on the site, specifically citing that no fire truck turnaround would be possible.

Chairperson Smith thanked Mr. Hansen for his comments and opened a public hearing.

Ms. Penny Marsh, 3065 S. 11th Street spoke in opposition to the variance request. Her comments are attached to these minutes in their entirety.

Hearing no further comments, the Chair closed the hearing and moved to Board Deliberations.

Mr. Smith noted that he would be in support of approving the variance as requested with the conditions outlined by staff. He noted the installation of the additional screening and the non-conforming, pre-existing width of the parcel which is a unique limitation.

Ms. Farmer said the request for variance was the result of a self-created hardship and that the ordinance is in place in large part to protect residential properties. The proposed business would be right next to a residence and cited her concern regarding equal or lesser zoning classifications. She noted that as zoning goes with the land, in the future the building might be an entirely different business.

Chairperson Smith also felt the request was based on a self-created hardship.

Mr. Williams encouraged the applicant to take another look at the plan.

Mr. Everett asked whether the site could be used for a residence.

Attorney Porter said it could be used for a single family residence or a duplex.

Hearing no further discussion, Chairperson Smith asked for a motion.

Ms. Farmer **made a motion** to deny the variance request to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks due to the variance request being the result of a self-created hardship. Mr. Williams **seconded the motion**. The

motion was approved and the variance request denied in a roll call vote of 5 – 2. (Roll Call Vote: Mr. Gould – yes; Mr. Jachym – no; Ms. Farmer – yes; Ms. Smith – yes; Mr. Williams – yes; Mr. Smith – no; Mr. Everett – yes.)

Chairperson Smith moved to the next agenda item.

Other Updates and Business

Ms. Lubbert said there will be two items to consider at the December 12 meeting and wished everyone happy holidays.

Ms. Farmer noted this was the first time Ms. Harris had presented to the group and thanked her for a job well done; Chairperson Smith agreed.

Adjournment

Chairperson Smith noted the Zoning Board of Appeals had exhausted its agenda. There being no other business, she adjourned the meeting at approximately 3:44 p.m.

Minutes prepared:
November 15, 2023

Minutes approved:
December 12, 2023

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DRAFT MINUTES OF A REGULAR MEETING HELD FEBRUARY 20, 2024 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

ELECTION OF 2024 OFFICERS

PUBLIC HEARING – SITE PLAN REVIEW AND VARIANCE: 1560 S. 8th STREET, LLC
Scott Williams, on behalf of 1560 S 8th Street, LLC, is requesting relief from the setback provisions of Section 50.70 of the Zoning Ordinance in order to construct a 6,684 square foot building with a connecting breezeway to an existing building on-site.

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

MEMBERS PRESENT: Louis Williams, Vice Chair
 Rick Everett
 Fred Gould
 Harry Jachym

Also present were Colten Hutson, Zoning Administrator; Leeanna Harris, Zoning Administrator; Jim Porter, Township Attorney; Ann Homrich, Recording Secretary and seven guests.

Call to Order

Vice Chair Williams called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Mr. Hutson indicated there were no changes to the agenda.

Mr. Jachym **made a motion** to approve the agenda as presented. Vice Chair Williams called for a vote. **The motion was approved** unanimously.

The Vice Chair moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of December 12, 2023

Vice Chair Williams asked for approval of the minutes of December 12, 2023. Mr. Everett **made a motion** to approve the minutes as presented. Mr. Jachym **seconded the motion**. The Vice Chair called for a vote. The **motion was approved** unanimously.

Election of 2024 Officers

The Vice Chair moved to the next agenda item, election of officers: Chair, Vice Chair, and Recording Secretary. Attorney Porter noted for the record that a Recording Secretary is simply an honorary position, and there has always been an individual preparing the recordings, however statute requires that a member of the Board has to be appointed as the Recording Secretary.

Mr. Jachym **nominated** Mr. Williams as Chair. Mr. Everett **seconded the motion**. Vice Chair called for a vote. **Motion was approved** unanimously.

Mr. Gould **nominated** Mr. Jachym as Vice Chair, due to his many years of service. Chairperson called for a vote. **Motion was approved** unanimously.

Mr. Jachym **nominated** Mr. Gould as Recording Secretary. Mr. Williams **seconded the motion**. Chairperson called for a vote. **Motion was approved** unanimously.

Chairperson Williams moved to the next agenda item.

Public Hearing – Site Plan Review and Variance: 1560 S. 8th Street, LLC

The Chair opened the meeting for public hearing, site plan review and variance request for 1560 S. 8th Street.

Ms. Harris presented the site plan review and variance request for 1560 S. 8th Street (parcel 05-22-485-030). The applicant, 1560 S. 8th Street, LLC, is requesting site plan review and relief from Section 50.70.B of the Zoning Ordinance in order to construct a 6,684 square foot building with a connecting breezeway to an existing building on site. If approved, the variance would permit construction of a building 65 feet south of the property line where the ordinance requires a 100-foot setback. If the variance is not approved, Ms. Harris stated the site plan could not be approved and would need to be redesigned to adhere to the required 100-foot setback.

The property currently zoned I-1 Industrial is located in the SE quadrant of the Township. The property currently possesses a 7,803 square foot building. A church previously occupied the building, however in 2003 the property was successfully rezoned from R-3 to I-1 to allow for future industrial land uses. The current owners have an office at said property but wishes to expand the business adding a 6,684 square foot to serve for manufacturing printing and embroidery of pre-manufactured items and supplies. To facilitate the expansion, the intent is to place the proposed building NE of the existing building along the parcel's south boundary line. Generally, the required setback for I-1 Industrial zoning is 20 feet of the height of the abutting side of the building at its highest point. However, the presence of a residential land use to the subject property's immediate south, the supplemental setback provisions outlined in Section 50.70.B of the Zoning Ordinance states that an industrial property requires a setback of 100 feet when abutting a residential property. For this reason, the applicant has requested relief from this side yard setback requirement, to be 65 feet. There are two sets of criteria to be considered. The first is the site plan review criteria outlined in Section 64. The second is the supplemental setback provisions pertaining to industrial land uses neighboring residential properties outlined in Section 50.70.B.

1560 S. 8th Street currently possesses 300 feet of frontage and is approximately 8 acres in size. Adjacent to the north is I-1 Industrial zoned property, adjacent to the south is RR rural residentially zoned property, and across S. 8th are R-5 zoned and R-3 zoned properties. The proposed warehousing and office use are considered permitted uses within the I-1 Industrial district. The subject property currently has an existing drive into the site on S. 8th Street and all drives will be used similar to previous use. The circulation aisle is proposed to be 24 feet in width, which meets the minimum requirements for two-way travel. There are 32 planned parking spaces, nine are newly proposed and two designated to be ADA accessible and concrete. All spaces are designated to be 10 feet by 20 feet. After calculations based on the square footage and floor plan for the proposed uses on-site, a total of 34 spaces will be required on site. Two spaces can be added, reviewed, and approved administratively prior to issuance of a building permit. Lastly, all easements have been illustrated, and are present along the eastern property line for Consumers Energy and for Michigan Bell Telephone.

Request for Deviations:

The applicant has also applied for two deviations: one for the shared use path and one for the internal sidewalk network. These requirements are outlined in Section 57.90 of the Township Zoning Ordinance as well as the nonmotorized transportation plan. There is connection to and establishment of a six-foot wide shared use path along the west side of S. 8th Street. The applicant has indicated the reason for requesting such, is that the proposed sidewalk would be running through an existing water runoff area and under existing utilities where there is steep terrain along this area and would require significant site rework.

Per Section 57.90, unique circumstances may exist for the installation of non-motorized facilities in compliance with Article 50 may not be appropriate at the time of development. Accordingly, in lieu of constructing the required facility, they may request to enter into an escrow agreement with the Township as outlined in the Ordinance. The reviewing body is authorized to approve an escrow agreement in lieu of the required non-motorized facility when strict application would result in extraordinary difficulty including but not limited to severe variations of topography, unsuitable soils where difficulty in providing safe separation between pedestrian and vehicular traffic due to site location layout or existing building arrangements. In addition to considering these, the Oshtemo Public Works department provided a letter (in the packet) supporting the two deviations for the shared use path and for the internal sidewalk network. With the support of the Public Works department, Staff recommend that the Zoning Board of Appeals grant the requested deviations to permit the applicant to enter into an escrow agreement with the Township outlined in the non-motorized facilities/sidewalk ordinance in lieu of constructing the non-motorized facilities and not be required to construct the connecting internal sidewalk network.

Site Plan Review:

The proposed 6,684 square foot building is proposed to be approximately 26 feet east of the existing building connected by a breezeway and a proposed height of 18 feet. All frontage and area requirements for non-platted parcels carrying an I-1 Industrial District designation have been met. Building setbacks from the northeast and west property lines have been met as the proposed building is set back an excess of 100 feet from those property lines. However, the proposed building location does not meet the minimum side yard setback 100-foot requirement from the south property line. Per Section 50.70.B of the Ordinance, an enhanced setback is required when an industrially zoned property abuts a property with a residentially zoned designation. Due to this provision, the applicant has requested a variance requesting that the

proposed side yard building setback from the south property line be reduced from the required 100 feet in the Ordinance, down to 65 feet.

1. A landscaping plan was provided but a number of details are still missing. An updated landscaping plan meeting all applicable requirements of Article 53, of the Zoning Ordinance shall be submitted to the Township and can be reviewed and approved administratively. A lighting and photometric plan has also been submitted, however, some details are missing or need to be slightly adjusted. An updated lighting plan meeting all applicable requirements of Article 54 shall be submitted to the Township. Staff are confident that a revised lighting plan can be reviewed and approved administratively and recommend that the ZBA include as a condition of approval.
2. Prein & Newhof and the Oshtemo Public Works department have reviewed the proposal and noted there are some engineering concerns that have not been addressed. However, they do feel that the remaining engineering concerns are minor enough to where they can be reviewed and approved administratively and recommend that the ZBA include as a condition of approval.
3. Lastly, the Oshtemo Fire Marshal has reviewed the site plan and for the most part is satisfied with the site plan, however he does have concerns about the breezeway connecting the existing building to the proposed building. The Fire Marshal provided three different courses of action that the applicant could take to address the concerns. Staff are confident that these are something that could be reviewed and approved administratively and recommend the ZBA include as a condition of approval.

Standards of Approval:

Moving on to the previously referenced variance portion of the presentation, the applicants have provided rationale for this request, and is attached to the packet. The Michigan courts have provided the principles for dimensional variance which collectively amount to demonstrating approximate practical difficulty. Staff have analyzed the requests against these principles and offer the information in the Staff Report to the Zoning Board of Appeals.

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

Comment: The applicant conveyed that the unique circumstances are the size and location of the existing parking lot, the existing location of the septic tank and drain field, the setback of the existing building and location of the entrances of the existing building. However, the location of the existing building is discretionary and could be placed elsewhere, even with the previously mentioned site elements. The property is 300 feet in width and has an average depth of 1,200 feet and is approximately 360,000 square feet in size not including the unaddressed uncombined parcel to the rear.

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

Comment: The applicants indicated the location of the proposed building was chosen largely for the location of the existing 7,803 square foot building, existing building

entrances and existing septic and drain field, existing parking lots, existing driveways, and to encourage traffic flow and promote an attractive curb appeal. However, as a matter of building an additional structure is discretionary and reasonable use on the property does still exist whether in its present state or in a different configuration even with the enhanced setbacks abutting the residential zoning on the south property line. The proposed building could be placed elsewhere especially given the property to the immediate west, giving more options for reasonable compliance.

Standard: Minimum necessary for substantial justice.

Comment: This is applied both to the applicant and other property owners in the district. We have reviewed past decisions of the ZBA for consistency and a check for precedence. In researching past decisions regarding the request for relief from enhanced setback requirements, Planning department Staff were able to identify three different cases with the most recent one being on November 14, 2023. *Information showing these decisions were in the packet.*

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

Comment: In 2023, the current property owners elected to rezone this property from R-3, to I-1 Industrial. With a current configuration of the site, it could be argued that the need for the variance is self-created since the previous setbacks of the south were 50 feet with the R-3 zoning classification abutting Rural Residential zoning classification, but due to the rezoning, now it's subject to an increased setback requirement. The applicants did indicate this would not be a self-created hardship since they were not the original developer of the property however, it is the owner's desire to expand and construct a new 6,684 square foot building.

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

Comment: Regarding setbacks, they serve as a crucial part for any type of structure to provide security and privacy between adjacent uses especially between property owners of industrial uses and residential uses. Setbacks are considered the breathing room between properties where building restrictions apply. The applicants did indicate careful planning was utilized in order to preserve the greenbelt along the south property line in between the existing building and residential property to the south. It should also be noted there is currently a legally nonconforming 7,803 square foot building located approximately 47 feet from the southern property line. In addition, the applicants conveyed the property owner to the immediate south has no issues with the placement of the proposed building, however it is still important to note that ownership of property is not static, and the current property owner could be okay with the proposed layout but that does not mean that such would continue with future landowners.

Possible Actions:

The motion from the Zoning Board of Appeals should include the findings of fact relevant to the requested variance. Based on Staff analysis, the following findings of fact are presented:

- Support of variance approval considers substantial justice being met. The Zoning Board of Appeals has approved setback variances for two similar cases in the past:
 - *These case reports were presented in the packet.*
 - Support of variance denial includes the necessity of the variance from the enhanced 100-foot setback, being a self-created hardship with the following stated:
 - There are no unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - Conformance to the Ordinance is not unnecessarily burdensome.
 - Allowing the variance may have a negative impact to the health, safety, and welfare of the public by allowing the building to be built within the required enhanced setback.
1. The ZBA approves the site plan and variance request due to substantial justice being met with the following conditions as well as other conditions assigned by the Board:
 - The ZBA grant deviations from the requirements in 57.90 for internal sidewalk network and shared use path.
 - An updated landscaping plan meeting the requirements in Section 53 of the Zoning Ordinance be submitted to the Township for review and approval prior to issuance of a building permit.
 - A revised lighting plan meeting the requirements outlined in Section 54 of the Zoning Ordinance be submitted to the Township for review and approval before issuance of a building permit.
 - The finalization of grading details and any other engineering details shall be subject to the administrative review and approval of the Township engineer prior to issuance of a building permit.
 - There are some annotations on sheet 1 of the site plan indicating the setbacks to the south property line are 20 feet, and these just need to be eliminated from the site plan prior to building permit issuance.
 - Verification of floor plan area calculations in relation to the parking need to be reviewed and approved administratively prior to building permit issuance.
 - A soil erosion and sedimentation control permit from the Kalamazoo County Drain Commissioner's Office will be required prior to building permit issuance.
 2. Alternatively, the ZBA can deny the site plan and variance request due to:
 - Proposal being a self-created hardship.
 - The lack of unique physical limitations on site.
 - Conformance to the Ordinance is not unnecessarily burdensome, as reasonable use of the property will still remain if denied.
 - Allowing the variance may have a negative impact to the healthy, safety, and welfare of the public.

Ms. Harris offered to answer any questions the Board may have and communicated the applicants were present, if the Board has any questions for them directly.

The Chair asked if any of the applicant's representatives would like to add anything. Mr. Matt Gibson approached the podium and stated he represents the property, and that Mr. Stoops is present as the residential owner to the south of the property. Mr. Gibson stated he spoke extensively with Mr. Stoops, and took him through the building, shared the plans of the work they're doing as well as the proposed plans for the property, to be transparent to Mr. Stoops and his wife of plans for this neighboring property. Mr. Gibson asked the Board if he could address any questions or concerns or articulate more detail regarding the property. Mr. Gibson stated

the reason they want to build where proposed is to keep further away from Mr. Stoops' house. The traffic flow was a big part of it as well, to minimize the impact to the topography.

Mr. Jachym asked for clarification of the stated main reason for wanting to construct the new building as proposed to the north of the existing building, if this would cause them to remove the existing parking lot and rebuild a new one, which Mr. Gibson confirmed. Mr. Gibson stated they would also need to build another retention pond due to the current frontage of the existing building and the terrain in that area. Mr. Gibson reiterated they want to make the least amount of impact. Mr. Jachym asked for clarification due to this statement, if it would be difficult to take the proposed building and shift it to the north a little? Mr. Gibson confirmed this would create an odd aesthetic and were also considering the topography and retention pond that exists between the current building and parking lot.

Mr. Gould asked about the amount of traffic flow owners might expect to this site, if anticipating significant traffic on a daily basis, as Mr. Gibson expressed their concern for Mr. Stoops' property and making as little disruption as possible. Mr. Gibson affirmed they will have UPS shipments about 10 a.m. every morning to ship product to customers; they are an 8 a.m. – 4 p.m. business Monday through Friday, unless someone makes an appointment for an alternate day/time. Mr. Gibson added they are by no means a retail operation and a business-to-business operation only.

Chairperson Williams asked if anyone else present would like to comment at this public hearing. Mr. Matthew Stoops stepped to the podium and stated his residence as 1724 S. 8th Street, the property to the south of this proposed development. Mr. Stoops asked for the map visual, to better illustrate and commented that Mr. Gibson had approached his family about the project and that the owners would need to apply for a variance. Mr. Stoops provided a history of said property where in past years, he and his family worked to have this property rezoned as it was a buffer zone abutting his mother's property. Mr. Stoops stated his property is another 300 to 450 feet further west and appreciates Mr. Gibson's efforts to have the proposed building placed to the north. Otherwise, the structure would be much closer to his private property. Mr. Stoops noted that the setback of the current structure was set many years ago and does not see why the 100-foot setback requirement would need to be imposed now or in the future with the difference being only 35 feet and agrees with Mr. Gibson's statements of the proposed aesthetics for the front facing of the new structure. Mr. Stoops also stated that requiring owners to have the building moved to the north to achieve the 100-foot setback would compromise the parking lot traffic for supply deliveries and shipments. Mr. Stoops commented that the sidewalk should be under closer scrutiny as the drop off from the road in this area is somewhere between 10 – 15 feet. Mr. Stoops further stated he approves of this site plan and variance wholeheartedly as presented and hopes that it is granted.

The Chair thanked Mr. Stoops for his comments and asked if there were anyone else who wanted to share comments. Hearing none, Chairperson Williams closed the floor for public comment and moved to Board deliberations.

Mr. Jachym commented from all site plans and variances he has reviewed, he had to review this one several times. Mr. Jachym further stated he could easily pick any one of these criteria to deny or approve. From listening to Mr. Stoops concerning moving the new building to the back, beyond the septic field, would put the proposed building close to his house. Mr. Jachym asked Mr. Stoops if he knew how far back his home is from the road; Mr. Stoops provided an estimate of 968 feet. Mr. Jachym indicated there is a huge green buffer of thick woods, so is leaning to approve on this basis. The statement made earlier in the presentation,

since the property is not static and may sell someday, if the site plan and variance are approved, the potential future buyer of this residential property would need to take into consideration as an existing adjacent property. With similar past approved decisions by the ZBA, this situation comes close. Mr. Jachym stated one of his biggest concerns he has is that the proposed building location is to the north side, though from the explanation having to otherwise replace the parking lot as well as the retention pond. In considering, Mr. Jachym expressed he would tend to approve this.

Chairperson Williams thanked the Vice Chair for his comments.

Attorney Porter stated, based on the comments Mr. Jachym made, just to be sure we have a clear record, the Board has five criteria to consider and for clarification asked if Mr. Jachym could verbalize those criteria in the way of making a motion. Further stating the Planning Department has expressed their opinion as to those, but the Board is the finder of fact, so asking if Mr. Jachym can articulate for the record how he would view some of the findings of fact. In other words, is Mr. Jachym saying that since the drainage basin is preexisting, the pavement is preexisting, to clarify if Mr. Jachym is looking at this as not being a self-created hardship due to the preexisting building? Mr. Jachym confirmed this is what he was articulating as well as the retention pond issue being a difficult change, so does not see this as self-created. Mr. Jachym communicated for substantial justice, there were two previous similar cases approved and sees the retention pond as the unique physical circumstance. Attorney Porter indicated this is helpful for clarity of the record and iterated each Board member does not have to find all five of the criteria, but a minimum of two or three. Only for purpose of a clear record, Attorney Porter asked if Mr. Jachym is stating he doesn't see the site plan and variance as a safety and health risk for the public, which Mr. Jachym affirmed.

Mr. Everett shared his comments regarding substantial justice, looking at past approved examples provided. D&R Sports was granted since it neighbored other commercial properties. In this case, the industrial planned use abuts to an established residential area. In the case of the dental variance, the owner didn't have enough property to afford him the proper setbacks, and the adjacent properties were also commercial in nature and activity, whereas S. 8th Street is residential activity. Mr. Everett further noted that Friendship Animal Hospital was recently denied due to 8th Street residential borders surrounding this area. Mr. Everett requested and received permission to ask Planning Staff a question. Mr. Everett asked Planning Staff regarding sidewalks for this development, and understands owners do not want to install connecting sidewalk to 8th presently, but are enough escrow funds collected for things that need addressing like soils, topography, etc.? Mr. Hutson affirmed escrow funds would include grading, etc., for future construction of connecting sidewalk to 8th Street. Mr. Everett stated in the case of setback conformance being unnecessarily burdensome, if the building were moved 33 feet north to meet the required 100-foot setback, understanding the issue of replacing a parking lot and retention pond issue, however, no costs for performing changes to come into compliance with the Ordinance were provided, and would like to know what the costs might be for considering suitable soils, for example.

Mr. Gould commented he would have a hard time denying this action based on our denial of the potential animal hospital that came before the ZBA. The impact the animal hospital would have had on the residential neighborhood was going to be detrimental to many, but in this situation with this land, this owner, and this residential neighbor adjacent to this property, it is not an issue since there is more than ample space between the residence and the business with the proposed site plan. Mr. Gould stated he would be in favor of approval.

Chairperson Williams called for any other comments from the Board or for a motion. Mr. Jachym **made a motion** to grant the variance as requested on the basis there are unique physical circumstances with the parking lot and retention basin that would make it unnecessarily burdensome for the owners to relocate the building. There is substantial justice in that there are at least two very similar past approved cases and is not a self-created hardship in that they bought the property and now want to do something with it. With regards to safety, health, and welfare, the fact that the neighboring home is several hundred feet away from the proposed building site, and there is a large greenbelt in between, Mr. Jachym stated there is no detriment to health, safety, and welfare.

The Chairperson called for a second. Mr. Gould **seconded the motion**. The Chair called for a vote. Mr. Jachym – yes, Mr. Gould – yes, Mr. Williams - yes, Mr. Everett - no, and 0 abstentions. The **motion was approved**.

Attorney Porter noted the site plan before the Board has been reviewed by Staff and given certain conditions as well as a deviation request for the internal sidewalk network and shared use path. If the Board chooses, they could approve the site plan and then the deviation as set forth in subsection A of the Staff Report and retain positions 1 through 7.

The Chair called for a motion concerning the site sidewalk deviation request. Mr. Jachym **made a motion** to approve the deviation from having the sidewalk along 8th Street due to the physical constraints of the area, and necessary funds be put in escrow for future sidewalk to be built. Mr. Everett **seconded the motion**. The **motion was approved** unanimously.

For approval of the site plan, Mr. Williams **made a motion** to approve the site plan as proposed with the recommended conditions 1 through 7 in the Staff Report. Mr. Jachym **seconded the motion**. The **motion was approved** unanimously.

Chairperson Williams moved to the next agenda item.

Other Updates and Business

Chairperson Williams called for any other updates and business.

Adjournment

The Chair stated there being no other business, he adjourned the meeting at approximately 3:54 p.m.

Minutes prepared:
February 28, 2024

Minutes approved:
March 26, 2024

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.

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD FEBRUARY 25, 2025

Agenda

Non-Motorized Facility Variance: Yes Fountain Springs, LLC (1410 S 8th Street, 3905-23-355-011)

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.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, February 25, 2025, beginning at 3:00 p.m.

MEMBERS PRESENT: Dusty Farmer
 Fred Gould
 Harry Jachym, Vice Chair
 Al Smith
 Louis Williams, Chair

MEMBERS ABSENT: Rick Everett

Also present were Jodi Stefforia, Planning Director; Colten Hutson, Zoning Administrator; Jim Porter, Township Attorney; and 3 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.

ELECTION OF OFFICERS

Mr. Gould **made a motion** for Mr. Williams to remain as the Chair of the Zoning Board of Appeals. Mr. Jachym **supported the motion**. The motion was **approved unanimously**.

Ms. Farmer **made a motion** for Mr. Jachym to remain as the Vice Chair of the Zoning Board of Appeals. Chair Williams **supported the motion**. The motion was **approved unanimously**.

APPROVAL OF AGENDA

Ms. Farmer **made a motion** to approve the agenda as presented. Mr. Jachym **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 SEPTEMBER 24, 2024

Chair Williams asked for additions, deletions, or corrections to the Minutes of the meeting held on September 24, 2024. There were none.

Ms. Farmer **made a motion** to approve the minutes of the meeting held on September 24, 2024. Mr. Smith **seconded the motion**. The **motion was approved** unanimously.

NON-MOTORIZED FACILITY VARIANCE: YES FOUNTAIN SPRINGS, LLC

Mr. Hutson presented his staff report dated February 20, 2025, and incorporated herein, regarding 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.

Project Summary

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 property is situated between S 8th Street and S 9th Street, south of W KL Avenue and west of Quail Run Drive. An aerial image was shared.

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 has a steep slope. 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 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 westside 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 was stated for S 9th Street. South 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 was described.

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.

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 expand the development. That said, the property owner did not create the existing conditions along the S 8th Street 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.

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 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.

Chair Williams invited the applicant to speak on the request.

Mr. Alex Phalen, Project Manager with Hurley Stewart Civil Engineers, spoke regarding the variance requests for S 9th Street and S 8th Street reiterating the comments of Mr. Hutson, and offered to address any questions the Zoning Board of Appeals (ZBA) may have.

Mr. Jachym inquired about the project timeline. Mr. Phalen responded that, once approval for the variance requests is received, the team will proceed with the site plan review, with construction anticipated to begin in June.

Chair Williams opened the floor to public comments. There were none.

Mr. Smith raised concerns about the future use and development of the surrounding area.

Ms. Farmer inquired about how this variance request aligns with the non-motorized improvements planned for 9th Street this year. Ms. Stefforia explained that the sidewalk project will be constructed on the west side of the road, extending from Stadium Drive to Quail Run Drive. It will then cross over to the east side but will not extend north to KL Avenue at this time.

Mr. Porter reminded the Board that, regarding 9th Street, the applicant has agreed to be included in a special assessment district, meaning they will be assessed when the project proceeds.

Mr. Jachym asked about the project timeline to build north to KL Avenue. Ms. Stefforia responded that a timeline has not yet been established.

Ms. Stefforia shared that the Planning Department is not aware of any plans to rebuild the bridge over the Amtrak railroad on 8th Street.

Mr. Jachym inquired whether granting the variance with the special assessment district would mean that the non-motorized path would be required in the future. Mr. Porter agreed. Mr. Porter also shared that the Township Engineer recommended delaying the installation of the non-motorized path until the issue with the bridge is resolved.

Mr. Jachym **made a motion** to grant the variance request for 8th Street, citing the unique physical circumstances, the Township's "sidewalk to nowhere" ordinance, and the substantial evidence that the situation is not self-created. The motion also supports requiring consent to the establishment of a Special Assessment District for the property owners now for if and when the sidewalks are constructed on 8th Street, at which point they would be required to participate.

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

Mr. Jachym **made a motion** to grant the variance request for 9th Street, citing the unique physical circumstances, the Township's "sidewalk to nowhere" ordinance, and the substantial evidence that the situation is not self-created. The motion also supports requiring consent to the establishment of a Special Assessment District for the property owners now for if and when the sidewalks are constructed on 9th Street, at which point they would be required to participate.

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

~~Vice Chair~~ Mr. Gould shared a concern with the bridge over the railroad and making it safe for pedestrians when it is rebuilt.

OTHER UPDATES AND BUSINESS

Chair Williams announced that the meeting dates for 2025 had been emailed to the Board.

Ms. Farmer **made a motion** to adopt the ZBA meeting dates for 2025 as presented. Mr. Jachym **seconded the motion**. The **motion was approved** unanimously.

ADJOURNMENT

There being no further business, Chair Williams adjourned the meeting at 3:32 p.m.

Minutes Prepared: February 27, 2025

Minutes Approved:

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD APRIL 22, 2025

Agenda

Variances: Non-Motorized Facility and Landscaping & Site Plan Review: Blackberry Systems (6477 W KL Avenue 3905-23-405-013)

Request for variance from Section 57.90 of the Zoning Ordinance to eliminate the requirement of a non-motorized facility. Zoning Board of Appeals also to conduct site plan review of a proposed 2,100 square foot warehouse building and additions to the existing building.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, April 22, 2025, beginning at 3:00 p.m.

MEMBERS PRESENT: Fred Gould
Harry Jachym, Vice Chair
Al Smith
Louis Williams, Chair
Ron Ver Planck

MEMBERS ABSENT: Rick Everett
Dusty Farmer

Also present were Jodi Stefforia, Planning Director; Colten Hutson, Zoning Administrator; Leeanna Harris, Planning and Zoning Administrator; Jim Porter, Township Attorney; and 3 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

Chair Williams called for approval of the agenda.

Mr. Smith **made a motion** to approve the agenda as amended. Mr. Jachym **seconded the motion**. The motion was **approved unanimously**.

PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments regarding non-agenda items.

APPROVAL OF THE MINUTES OF MARCH 25, 2025

Chair Williams asked for additions, deletions, or corrections to the Minutes of the meeting held on March 25, 2025.

Three changes were noted: Mr. Jachym was not in attendance, Mr. Ver Planck was in attendance, and Ms. Harris was in attendance.

Mr. Smith **made a motion** to approve the minutes of the meeting held on March 25, 2025 with the noted corrections. Mr. Gould **seconded the motion**. The **motion was approved** unanimously.

Variances: Non-Motorized Facility and Landscaping & Site Plan Review: Blackberry Systems (6477 W KL Avenue 3905-23-405-013)

Ms. Harris presented her staff report dated April 17, 2025, and incorporated herein, regarding site plan review for a variance to not be required to construct the non-motorized facility adjacent to S 9th Street, per Section 57.90 of the Zoning Ordinance; and a variance to not be required to install certain landscaping in the greenbelt along the S 9th Street right-of-way, per Section 53.60.

Project Summary

The property owner, Cameron Shields, of Blackberry Systems, is requesting site plan approval and two (2) variances. The site currently encompasses two buildings with additions of buildings for storage, office, and warehouse uses proposed. The project is planned to be constructed in three phases: the 2,100 square footage single story warehouse addition in phase one (2025), the 1,600 square footage office storage addition in phase two (summer of 2027), and the 800 square footage showroom addition in phase three (summer of 2028). The site possesses frontage adjacent to S 9th Street and W KL Avenue.

The applicant also requested two variances, which will be presented later in the meeting.

ANALYSIS:

When reviewing the site plan, the general Site Plan Review criteria outlined in Section 64 must be considered.

Section 64: Site Plan Review

Zoning:

Contractor services are considered a permitted use within the I-1: Industrial District. 6477 W KL Avenue is zoned I-1: Industrial District. Adjacent to the east are other industrial uses and to the south is Township-owned property and the Amtrak railway. The percentage of land proposed to be covered by buildings is 13.5% and remaining open

space is 63.5%. The proposed building and additions are permitted uses within this zoning district. All general zoning requirements have been met.

Lot Dimensions:

The property is approximately 2.63 acres, including rights-of-way, with 298 feet of frontage along W KL Avenue and 248 feet of frontage on S 9th Street. Lot size and dimensions satisfy requirements.

Setbacks:

From S 9th Street and W KL Avenue, a 70-foot setback is required. From the eastern side yard, a setback of 15 feet is required, due to a 5-foot setback variance that was granted by the ZBA at their August 20, 2024 meeting, and a 20-foot setback required from the south property line. Setback requirements are satisfied.

Access:

The property has an established drive from W KL Avenue, and this access is not expected to change. All circulation aisle widths meet the minimum required for two-way travel.

Parking:

There are 25 existing parking spaces on the site, the minimum required for the proposed uses on the site. There are also five large spaces proposed for equipment storage near the frontage to S 9th Street.

Easements:

There is a Consumer's Power easement that spans diagonally across the southwest of the site. Staff also suggest, if the non-motorized variance and site plan are approved, that an easement be provided to the Township to accommodate future non-motorized infrastructure along S 9th Street.

Non-motorized:

A variance was requested by the applicant to not be required to install the non-motorized infrastructure along S 9th Street at this time, per Section 57.90 of the Zoning Ordinance. If the variance is not granted, the site plan would need to be revised and administratively approved by staff and the non-motorized infrastructure would need to be installed at the time of construction. Most access and circulation requirements are satisfied.

Building Information:

The proposed 2,100 square foot single-story warehouse with a south elevation, to be constructed in phase one, is proposed to have a height of 19 feet and have steel siding. The approximate 1,600 square foot office addition on the east side of the site, to be accomplished in phase two, is proposed to have a height of 15 feet. Both this addition, and the approximate 800 square foot addition on the north side of the site to be accomplished in phase three which is not proposed to exceed the existing building in height, are proposed to match the existing side color and style.

Landscaping:

A variance was requested to not install the two (2) canopy and four (4) understory trees in the greenbelt along the S 9th Street right of-way; therefore, these are not currently shown on the site plan. Depending on the outcome of the variance request, the site plan would need to be revised and administratively approved by staff. There are eight (8) shrubs proposed along the parking lot adjacent to S 9th Street. The greenbelt requirements along the W KL Avenue right of-way are satisfied with the three (3) canopy trees and six (6) understory trees shown on the landscaping plan.

Engineering:

The Oshtemo Public Works Department reviewed the submission and have provided a memo, attached to the packet to be incorporated into the record, regarding the non-motorized infrastructure along the S 9th Street frontage. Besides their concerns about existing grades in the area as it pertains to the construction of a future non-motorized facility and the existing stormwater infrastructure, they are satisfied with the site.

Fire Department:

The Oshtemo Township Fire Marshal has reviewed the proposal and have found the site plan to be satisfactory and that it meets code requirements.

Recommendation

Planning Department staff recommend that The Zoning Board of Appeals approve the site plan with the following conditions:

- An updated site plan shall be submitted and approved by the Township prior to building permit issuance showing the following:
 - A note shall be added to the site plan indicating that the final location of the non-motorized facility shall be determined by the Township at the time of construction.
 - Any additional and necessary changes required due to variance approvals or denials.
- An easement for a future non-motorized facility shall be provided to the Township prior to occupancy being granted for the warehouse in phase one.

Chair Williams invited any representatives of the project to come forward and speak.

Mr. Mike Shields, representing Blackberry Systems, addressed the Board regarding the request for a landscaping variance. He explained that, due to Consumers Energy previously removing a significant number of trees, Blackberry Systems is hesitant to invest in landscaping between the parking area and the roadside curb—an area over which they have no control. Mr. Shields noted that if assurances could be made that such removals would not occur again, the company would be amenable to installing landscaping in that location.

Regarding the sidewalk installation, Mr. Shields stated that, at present, there is no connectivity to existing pedestrian infrastructure. However, should future connections be established, Blackberry Systems would be agreeable to installing sidewalks at that time.

Chair Williams asked if anyone else wished to speak. Hearing none, no additional comments were offered.

Mr. Smith **made a motion** to approve the site plan for 6477 W KL Avenue, including the recommendations outlined in the staff report. Mr. Gould **seconded the motion**. The motion was **approved unanimously**.

Ms. Harris informed the Board that the applicant is requesting two variances. The requested variances are from Sections 53.60 and 57.90 of the Zoning Ordinance. Per section 53.60, the applicant is requesting to not be obligated to install certain landscaping in the greenbelt area along the S 9th Street right-of-way. The applicant is also requesting relief from Section 57.90 to not be obligated to install the 6-foot wide sidewalk along the property’s frontage on S 9th Street.

Section 69: Standards of Variance Review

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 specific 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: **Sidewalk and greenbelt landscaping along S 9th Street** – The frontage of the property along S 9th Street where non-motorized facilities would be placed is steep and construction at this time would present significant grading challenges with existing terrain as well as impacts to stormwater infrastructure. Photos were shown and are also included in the packet. The same unique physical limitations or conditions are present with regard to the greenbelt landscaping along the rights-of-way with the addition of a Consumers Power easement, shown illustrated on the site plan, which would limit the area and the height available to install canopy or

understory trees. Shrubs required by the streets right-of way section, intended to provide screening to the parking lot, are still being provided on the site plan.

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

Comment: **Sidewalk along 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. Additionally, as a part of the Comprehensive Master Plan which is underway, a close look will be taken at the non-motorized transportation plan and recommendations for revisions will arise with the completion and implementation.

Greenbelt landscaping along S 9th Street – It could be argued that there are reasonable options for compliance. The applicant is requesting not to be required to install the two (2) canopy and four (4) understory trees along the S 9th Street frontage in the greenbelt area and just install shrubs along the parking area. The applicant indicated in their narrative that plantings to satisfy this requirement were provided with past site plan reviews but were removed by Consumers Energy due to the restrictions of the easement, which indicates no trees are allowed to be in this area. This, coupled with the unique topography, could make conformance with the ordinance challenging.

To honor the intent of the ordinance and the restrictions of the easement, staff recommend the ZBA consider reducing the requirements by half, requiring one (1) canopy and two (2) understory trees, or a substitution of low-growing shrubs or other understory trees, to be located outside of the easement area.

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 and Section 53.60 of the Zoning Ordinance, Planning Department staff were able to identify similar requests where these Ordinance requirements were considered, but there no decisions regarding variance relief from the greenbelt canopy and understory trees entirely found. A summary of these findings is available in the staff report included in the packet.

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: **Sidewalk along 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 the parcel’s frontage along the east 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.

Greenbelt landscaping along S 9th Street – The applicant’s request for a variance to not install any trees along the frontage could be considered self-created. However, it should be noted that the property owner did not create the existing conditions along the S 9th Street road frontage, nor did they create the large easement that runs diagonally across the property that prohibits trees to be installed in this area. These, as well as the constructability issues and grading challenges, are not man-made.

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

Comment: **Sidewalk and greenbelt landscaping along S 9th Street** – It is not expected that these variance requests would negatively impact the health, safety, or welfare of others.

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 were shared and in the staff report included in the packet:

- Support of variance approval for the **sidewalk along 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 **the sidewalk along 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 the **greenbelt landscaping along S 9th Street** –
 - There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - 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 the **greenbelt along S 9th Street** –
 - The applicant’s request to have certain landscaping in the greenbelt along the S 9th Street right-of-way be waived can be considered as a self-created hardship.
 - Conformance to the Ordinance is not unnecessarily burdensome.
 - Minimum necessary for substantial justice is not met.

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

1. The Zoning Board of Appeals denies the variance request from Section 53.60, but approves the variance from Section 57.90 with the condition that:
 - a. The applicant consents to a Special Assessment District for a future non-motorized facility.
 - b. An easement for a future non-motorized facility shall be provided to the Township prior to occupancy being granted for the warehouse in phase one.
2. The Zoning Board of Appeals approves the variance from Section 53.60 as requested but denies the variance request from Section 57.90.
3. The Zoning Board of Appeals approves alternate variance relief from Section 53.60, requiring a reduced number of plantings along the S 9th Street right-of-way in the greenbelt area, but denies the variance request from Section 57.90.
4. The Zoning Board of Appeals consider approving alternate variance relief from Section 53.60, requiring a reduced number of plantings along the S 9th Street right-of-way in the greenbelt area, and consider approving the variance from Section 57.90 with the following conditions:
 - a. The applicant consents to a Special Assessment District for a future non-motorized facility.
 - b. An easement for a future non-motorized facility shall be provided to the Township prior to occupancy being granted for the warehouse in phase one.
5. The Zoning Board of Appeals approves both variance requests as requested from Section 53.60 and Section 57.90 with the condition that:
 - a. The applicant consents to a Special Assessment District for a future non-motorized facility.
 - b. An easement for a future non-motorized facility shall be provided to the Township prior to occupancy being granted for the warehouse in phase one.
6. The Zoning Board of Appeals denies both the variance requests as requested from Section 53.60 and Section 57.90.

Mr. Smith requested clarification regarding the variance requests. Ms. Harris confirmed that one pertains to the greenbelt landscaping requirements, and the other relates to the requirement to install non-motorized infrastructure along S 9th Street.

Mr. Smith **made a motion** to support the request for a variance from the requirement to install a non-motorized facility along S 9th Street. He amended the motion to include the conditions recommended by staff and that the applicant consents to the establishment of a Special Assessment District for a future non-motorized facility.

In support of the motion, Mr. Smith stated that the subject property possesses unique physical characteristics that make compliance with the zoning ordinance exceptionally difficult. He noted that strict adherence would result in a sidewalk that leads to no connected infrastructure—essentially a “pathway to nowhere.” He further emphasized that the hardship was not self-created by the property owner and that granting the variance would not adversely affect public health or safety.

Mr. Smith **made a motion** to support the request for a variance from the greenbelt landscaping requirements. He amended the motion to include the conditions recommended by staff.

In support of the motion, Mr. Smith referenced prior actions by Consumers Energy, noting that trees planted in the area had previously been removed and may be removed again, even if planted outside the easement. He reiterated that the property has unique physical characteristics rendering compliance with the zoning ordinance impractical. He emphasized that the hardship was not self-created and that approval of the variance would not negatively impact health or safety.

Mr. Gould **seconded both motions** as presented. The **motions were passed** unanimously.

Mr. Gould inquired about potential changes that would enable staff to administratively approve more requests. Ms. Stefforia responded that this matter is currently under consideration; however, the completion of the Master Plan including a new Non-Motorized Plan should be in place before moving forward with such a change.

OTHER UPDATES AND BUSINESS

There were none.

ADJOURNMENT

There being no further business, Chair Williams adjourned the meeting at 3:30 p.m.

Minutes Prepared: April 24, 2025

Minutes Approved: May 27, 2025

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June 18, 2025

Mtg Date: June 24, 2025

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: James St. James

Owner: James St. James and Brenda Bryan

Property: 6660 Rose Arbour Ave, Parcel Number 3905-11-135-100

Zoning: R-2: Residence District

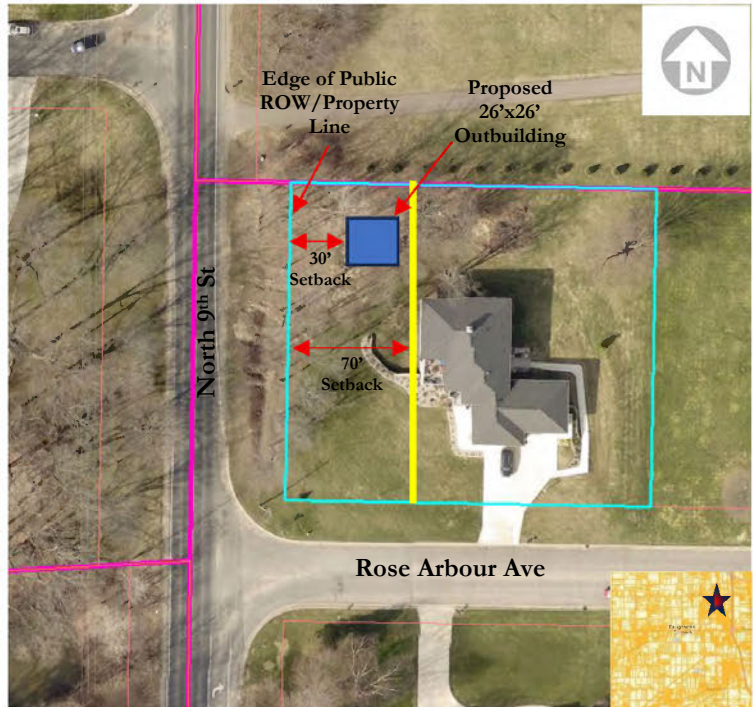
Request: A variance to allow for a reduced setback of 30 feet where the Zoning Ordinance requires 70 feet

Section(s): Section 50.60 – Setback Provisions

OVERVIEW:

The property owner, James St. James, is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts. If granted, the variance would allow for a reduced setback of 30 feet from the west property line in order to construct a 26'x26' accessory building on the property. The minimum front yard setback along North 9th Street, which is identified as being one of the Township's Designated Highways, is 70 feet from the edge of the public right-of-way rather than the customary 30 feet.

A visual of the subject property is outlined in light blue on the aerial map to the right. The property is located at the northeast corner of the North 9th Street and Rose Arbour Avenue intersection. The property is zoned R-2: Residence District.



STANDARDS OF REVIEW – STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional 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 has analyzed the request against these principles and offers 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: 6660 Rose Arbour Avenue presently possesses a single-family home on the property. The property size is approximately ¾-acre and is a corner lot within the West Port No. 10 Plat. As far as unique physical circumstances are concerned, when the home was constructed in 2016, a condition of building permit issuance included a requirement to install a basin and leaching structure in the northeast property corner to assist with stormwater management due to the clay soils on site. Additionally, records demonstrate that there was a signed agreement between the Township and current property owner restricting building activity within 42 feet of the east property line. This is attributed to the common low area on the east side of the property which needed to remain undisturbed and unchanged. A retaining wall along the east end of the home was also required to be installed as a condition of building permit issuance. The site is also subject to the enhanced setback provisions for properties along North 9th Street, preventing construction of any building or structure within 70 feet of the lot's west property line. It should also be noted that there is a 10-foot minimum wall to wall distance requirement between accessory buildings and any other structure on the property. However, it should be noted that the property owner already possesses a four-stall car garage on the property. The property owner was aware of the above physical constraints tied to the property in question prior to building on it. See both the basin location and the enhanced setback within the attachments provided. See applicant's comments on this factor.

Conformance Unnecessarily Burdensome

Are reasonable options for compliance available?

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

Comment: Reasonable options for compliance are available by continuing to operate the property in its present state. Use is presently being made of the property with a home and a four-car garage; denial of the variance would not prevent continuing reasonable use. The applicant references in his narrative that the public right-of-way jogs inward toward his property by 17 feet, making it 50 feet between center and edge of the public right-of-way rather than the standard 33 feet. The 50-foot width from the center to the edge of the street right-of-way was created when the West Port No. 10 plat was established and is the standard width for County Primary roads adjacent to platted subdivisions and site condominiums. The proposal of a new accessory building is not required by Ordinance. However, given the number of restrictions in place for the lot in question related to stormwater and topographical changes on the east side of the property, the enhanced setback from the west property line, and the separation requirement of 10 feet buildings, it could be argued that conformance is unnecessarily burdensome. See applicant's comments on this factor.

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 Zoning Board of Appeals decisions regarding setback relief for accessory buildings, Planning Department staff identified the following cases that may help the ZBA consider past precedence:

1. Wingard, 3274 South 6th Street, 4/28/2020: The applicant wished to replace an existing carport approximately 40 feet from the edge of the public right-of-way with a similar detached structure in the same location. South 6th Street possesses a 70-foot front setback since it is identified as a designated highway according to Township Ordinances. The ZBA granted the variance, citing that the property experiences unique and challenging topography, could not relocate elsewhere due to obstructions including the locations of the septic system and a preexisting pole barn, as well as past ZBA decisions granting variances in similar situations established precedence.
2. Noora, 10540 West J Avenue, 3/28/2017: The applicant wished to demolish an existing accessory building on the property and construct a new one in the same location. The building site, however, was too close to the side property line than currently allowed—only eight feet from the east parcel boundary rather than the necessary 16 feet. Considering site limitations including property size; locations of facilities such as the septic system, the well, and the home’s propane tank; and a considerable ground elevation change in the back yard, the ZBA determined that granting relief from the side setback requirements was warranted.
3. Schaap, 1640 South 4th Street, 8/23/2016: Citing drastic topography changes as well as the existing single-family home’s location approximately 30 feet from the South 4th Street right-of-way, the Zoning Board of Appeals had sufficient reason to allow the applicant to build an accessory building with a 30-foot front setback, relief of 40 feet from the standard 70-foot front setback along designated highways in the Township such as South 4th Street.

Self-Created Hardship

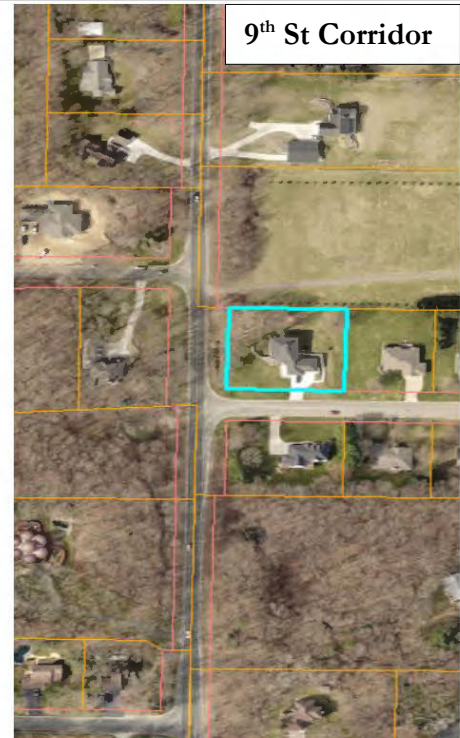
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant or a previous owner?

Comment: The applicant’s interest to construct an accessory building is what is creating the request. While it could be argued that the request is self-created, there are unique conditions or circumstances which leave the corner property with a reduced building area. The corner property is encumbered with an enhanced setback from the property line along its North 9th Street frontage. A basin and leaching structure was required to be installed in the northeast corner of the property to help manage site stormwater when the building permit for the home was obtained in 2016 due to known soil conditions impacting the lot. Also, per the agreement between the Township and property owner, no building activity shall occur within 42 feet of the east property line. See applicant’s comments on this factor.

Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Comment: Setbacks are a building restriction which are designed to provide a form of security for the health, safety, and welfare of the public. Setbacks in essence are the breathing room between buildings and property lines. Building setbacks are also in place to have consistent building lines and maintain views along the corridors. The stretch of North 9th Street that is adjacent to the subject property is 55 mph. An enhanced setback of 70 feet is purposefully in place to protect not only the public but property as well in the occurrence of a motor vehicle accident. That said, if the variance is granted as requested, the proposed accessory building would be 64 feet away from the edge of pavement on North 9th Street. See applicant’s comments on this factor.



POSSIBLE ACTIONS

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
 - The conditions or circumstances which created the variance request are not entirely self-created.
 - There are unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - Minimum necessary for substantial justice is met as similar cases in the past were identified where accessory buildings were constructed within the required setback area.
 - It could be argued that compliance to the Ordinance is unnecessarily burdensome given the site restrictions related to setbacks, topography, and stormwater.

- Support of variance denial
 - Compliance to the Ordinance is not unnecessarily burdensome as the property could continue to be utilized in its present state, and constructing an accessory building on the site is entirely discretionary.
 - Granting a variance could potentially negatively impact the health, safety, and welfare of others.

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 ZBA chooses this motion, staff request that a condition be attached requiring the property owner to obtain a building permit through the Oshtemo Building Department.

2. Variance Denial

The Zoning Board of Appeals denies the variance request.

Attachments: Application, Applicant Narrative, Maps, Background Information, and Minutes for Substantial Justice



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

PLEASE PRINT

PROJECT NAME & ADDRESS

6660 Rose Arbor Ave Kalamazoo
MI. 49009

PLANNING & ZONING APPLICATION

Applicant Name: James St. James and
Brenda Bryan
Company: _____

Address: 6660 Rose Arbor Ave

E-mail: [REDACTED]

Telephone: 269-998-0980 Fax: _____

Interest in Property: owners

OWNER*:

Name: James St. James and Brenda Bryan

Address: 6660 Rose Arbor
Kalamazoo MI. 49009

E-mail: [REDACTED]

Phone & Fax: _____

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____

Escrow Amount _____

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

- | | |
|---|---|
| <input type="checkbox"/> Pre-Application Review | <input type="checkbox"/> Accessory Building Review – I083 |
| <input type="checkbox"/> Site Plan Review – I088 | <input type="checkbox"/> Rezoning – I091 |
| <input type="checkbox"/> Administrative Site Plan Review – I086 | <input type="checkbox"/> Subdivision Plat Review – I089 |
| <input type="checkbox"/> Special Exception Use – I085 | <input type="checkbox"/> Interpretation – I082 |
| <input checked="" type="checkbox"/> Zoning Variance – I092 | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Site Condominium – I084 | |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): See Attachment
Variance for a 26'x26' storage/garage Building.

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

PARCEL NUMBER: 3905- _____

ADDRESS OF PROPERTY: 66660 Rose Arbour Ave. Kalamazoo MI 49009

PRESENT USE OF THE PROPERTY: Residential

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 Oshemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

James H. James
Owner's Signature (*If different from Applicant)

5-21-25
Date

James H. James
Applicant's Signature

5-21-25
Date

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

PLEASE ATTACH ALL REQUIRED DOCUMENTS

Variance response

Property address: 6660 Rose Arbour Ave Kalamazoo Mi 49009

Homeowner: James St. James and Brenda Bryan Home built: Sept. 2016

Criteria 1: Conformance Unnecessarily Burdensome Are reasonable options for compliance available? Please note that economic hardship cannot be considered.

Yes: The conformances are unnecessarily burdensome. **No:** There are no other options available. There is not an area on the east side of our home or at the back of our property. The inability to build in those areas was created by the inaccurate diagnosis of watershed for the property by the Oshtemo Township Engineer. The Township engineer summarized the properties' rainfall watershed was invading onto the neighbor's property to the east of us. The township engineer required us to build 49' from my easterly property line to protect the property of the east.

At the time our home was built In 2016 , restrictions to receive an occupancy permit from the Twp., were implemented. The engineer required us to install a commercial drain field of about 1000 square-feet 10 foot deep to collect water in order to maintain our properties watershed. Upon living in our home for about a year, we discovered that the Kalamazoo County Road commission water from 9th Street was flooding our property at every rainfall and that the watershed issues were not created by our property, but by the road water fall out from combined sources, North Star, and 9th street. Finally, after eight years the water flooding onto our property from 9th street has been resolved by the Kalamazoo County Road commission.

Unfortunately, because of the drain field that was required by the Oshtemo Township engineer we cannot build in that area which consumes a big area in the back of our home see site plan.

Criteria 2: Substantial Justice. Is the decision consistent with past decisions of the ZBA (precedence)? **No:** It would not create substantial justice if a variance was granted.

It would go a long way in mending a wrong hardship for my wife and I that was created by Oshtemo Township almost 9 years ago.

Yes: The township granted La Rue's Restaurant some 20 years ago a variance to build a waiting area with no regard to the criteria in this form. The ZBA members at the time all agreed that quote "the owner was a nice guy and they liked eating there" and the variance was granted. I was present at the meeting that night when the variance was granted.

Criteria 3: Unique Physical Circumstances.

Are there unique physical limitations or conditions which prevent compliance?

Yes: See Answer to Criteria 1

Criteria 4: Self-Created Hardship Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

No: See Answer for Criteria 1

Criteria 5: Public Safety and Welfare

If granted, will the spirit of the ordinance be observed, and public safety and welfare secured?

Yes: The Structure if constructed with an area of only 26' wide will be 64' from the edge of the road on 9th Street.

Summation

The applicant is only asking for a variance of 40'. It is important to note that if this structure was being built on the property adjacent to the north and other homes in our area where the road ROW is only 33' we would only be asking for a variance of 23' and not 40'

Also, it is important to note again that if the watershed issue was created by the KCRC and the inaccurate diagnosis by the Oshtemo township engineer, we would not be here before you today asking for a variance, we would have had an adequate area to build this structure in the back of our home.

There is a 50' ROW in front of our property that was created for a deacceleration lane to the south of our property on 9th street in front of lot 405. In this case it is not necessary to have a 50' ROW in front of our property it should only be 33'.

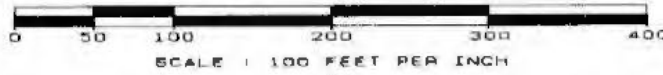
We have 2 road frontages which creates a limitation on our property in terms of the buildable window for the property.

This boils down to having a 23' deep structure on our property encroaching into the setback area where setback requirements of that of homes in the surrounding area.

If the township ZBA could grant a variance for our property we would be very grateful.

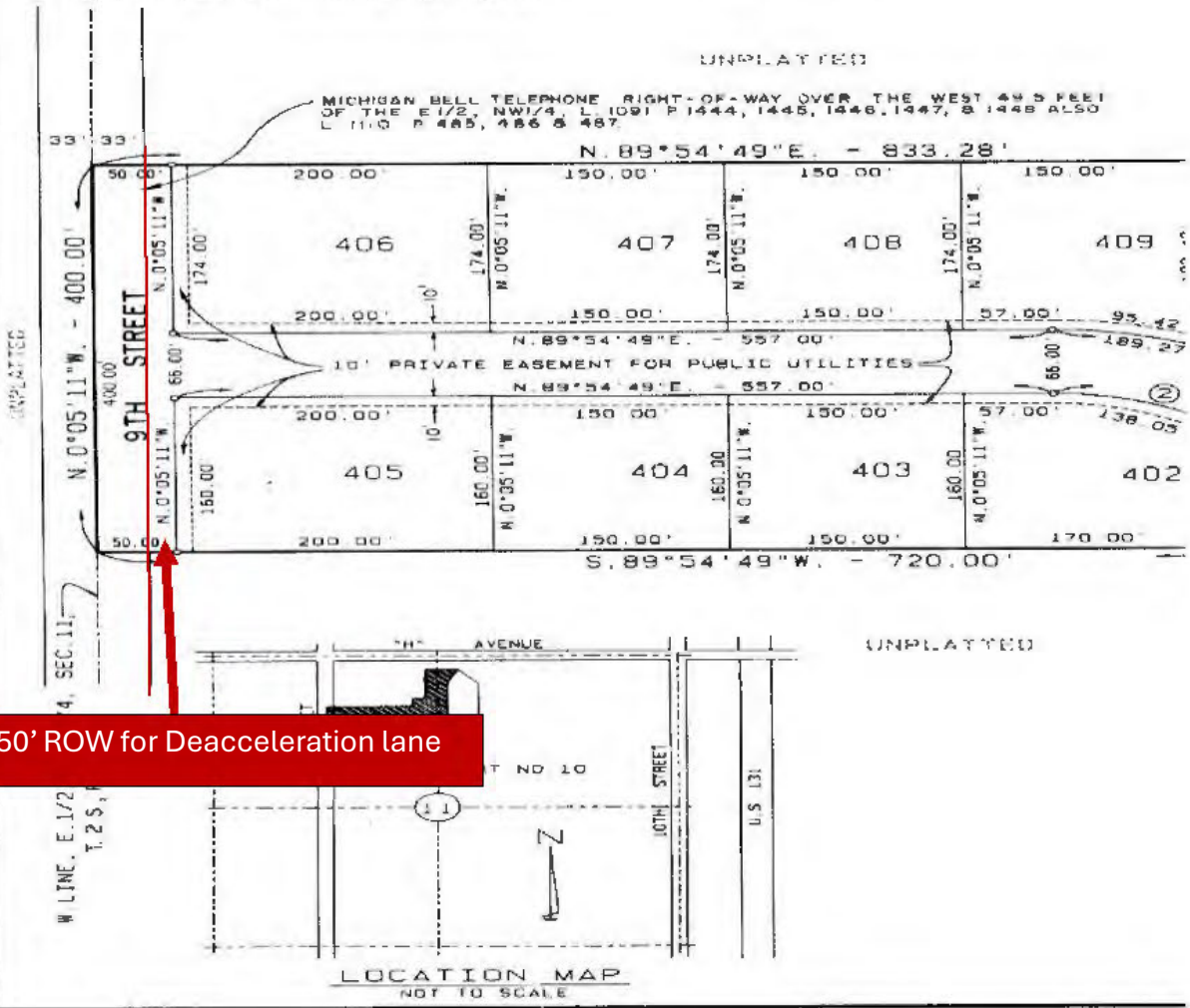
WEST PORT NO. 10

LOCATED IN THE N. 1/2 OF SECTION 11, T. 2 S., R. 1
OSHTEMO TOWNSHIP, KALAMAZOO COUNTY, MICHIGAN



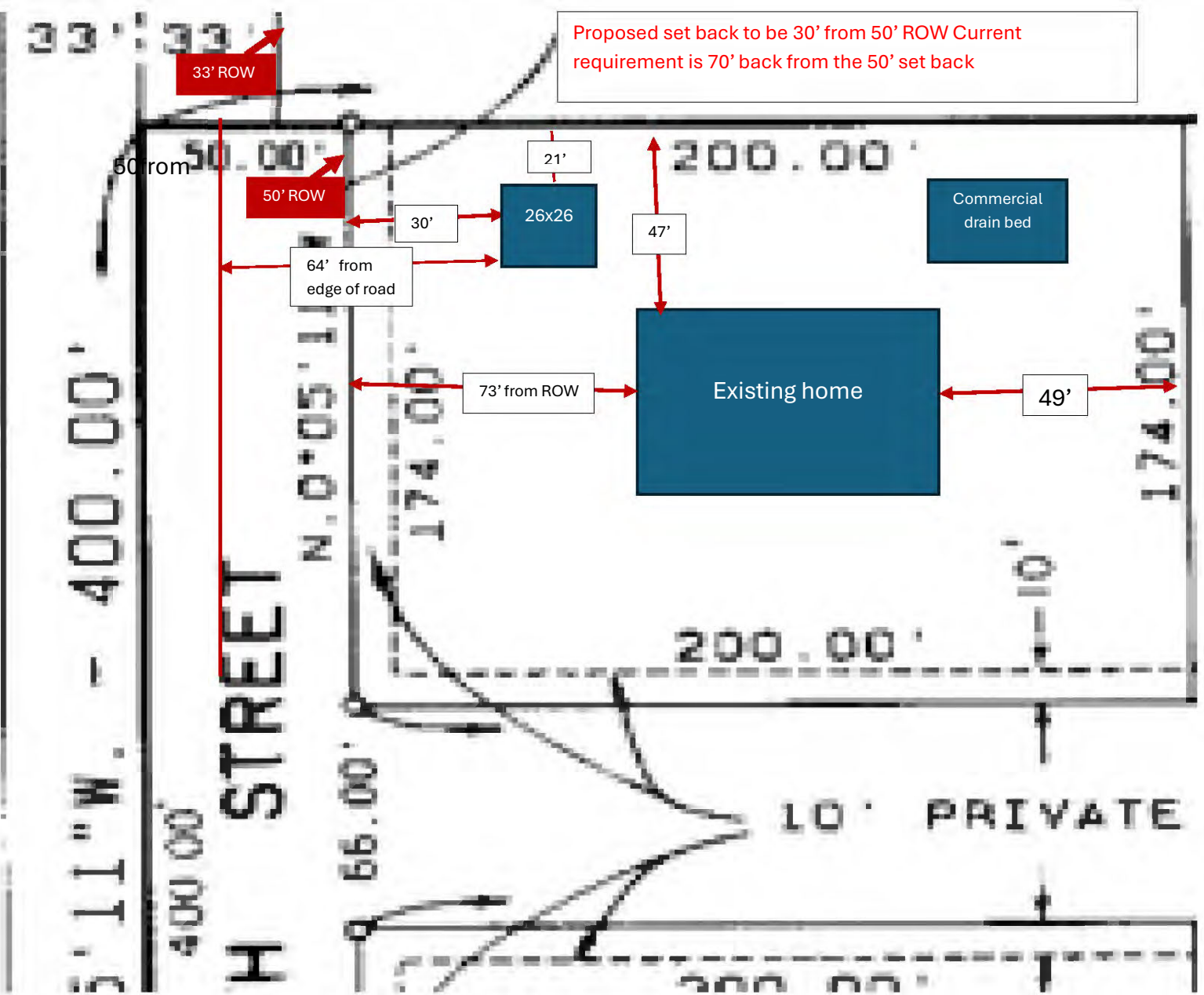
LEGEND

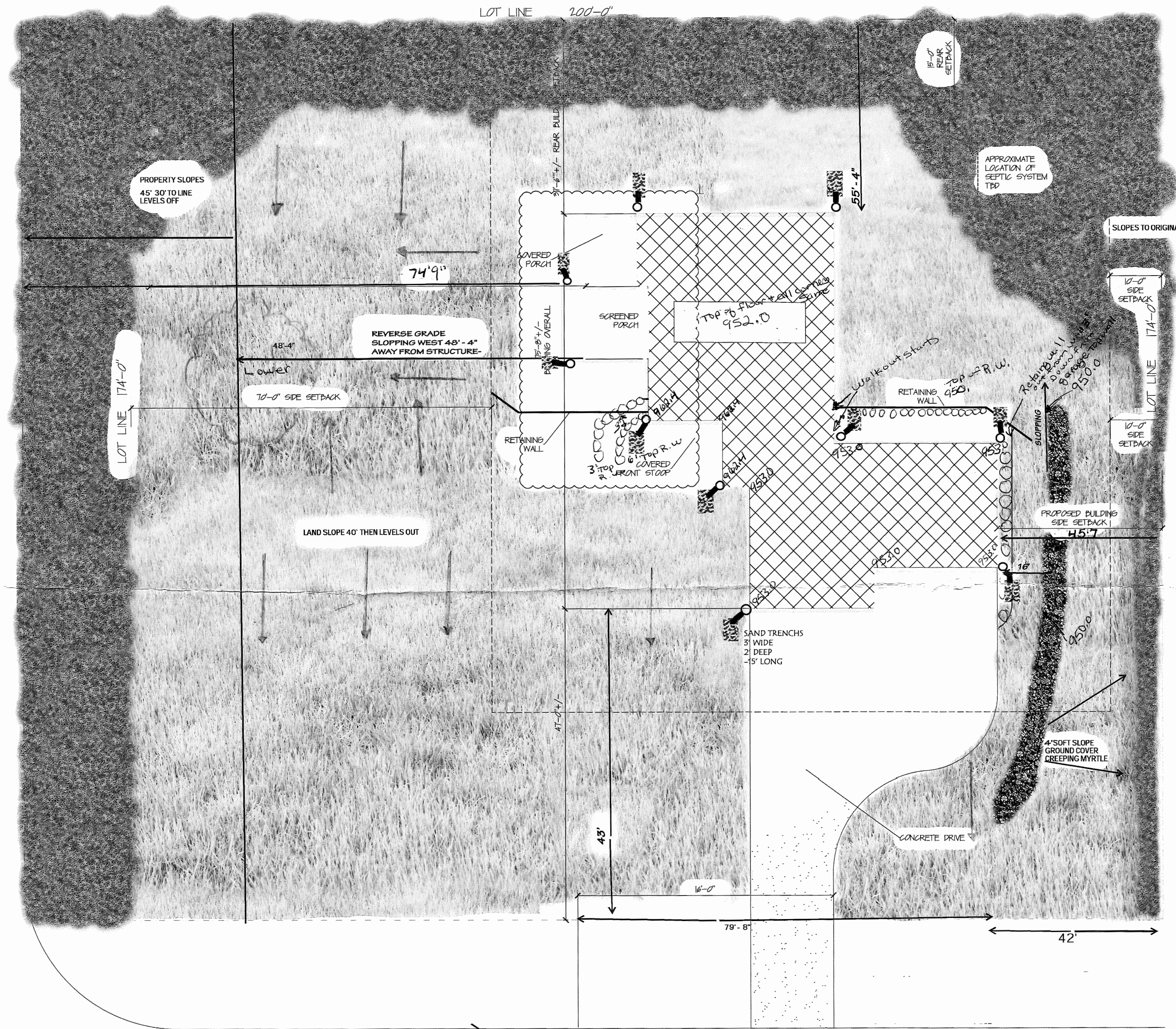
1. ALL DIMENSIONS ARE IN FEET.
2. ALL LOT CORNERS MARKED WITH 1/2" X 18" IRON BAR.
3. 4" DIAMETER CONCRETE MONUMENTS 36" LONG WITH 1/2" IRON ROD HAVE BEEN PLACED AT ALL POINTS MARKED "6".
4. ALL CURVE DIMENSIONS ARE ARC DISTANCES.
5. BEARINGS ORIENTATION ESTABLISHED BY AND MATCHES THE RECORDED PLAT OF "WEST PORT NO. 6", LIBER 32, PAGE 22 AND THE PLAT "WEST PORT NO. 5", LIBER 32, PAGE 8.
6. (R) INDICATES RADIAL LOT LINE.



50' ROW for Deacceleration lane

Proposed set back to be 30' from 50' ROW Current requirement is 70' back from the 50' set back





Record Rainfall 24-hour period
 Aug 31 1914 Bloomingdale MI. 9.78 inches of Rain
 Area - Home Foot Print 2,767 sq. ft.
 9.78 inches of rain water over an area of 2,767 sq. ft. Equates to 77.7 yards of rain water in a 24 hour period.
 Calculated rain fall would equal .324 cubic yards of water per hour. Resident home features 10 down spouts equating to .0324 cubic yards of rain water per down spout per hour.
 Each down spout features a drain basin of 4.4 cubic yards of sand. Basin threshold exceeds the maximum rain fall water capacity in a 100-year period.

SITE DEVELOPEMENT PLAN
 SCALE 1/2"

MAIN LEVEL AREA	= 1575 sf
LOWER LEVEL	= 1162 sf
FINISHED	= 586 sf
TOTAL AREA	= 3323 sf
ATTACHED GARAGE(s)	= 2,762 sf

PARCEL NUMBER: 05-11-135-100
 LEGAL DESCRIPTION:
 WEST PORT #10, LOT 4064 *1-29 1988 PLIT FROM 11-130-020

- DRAIN SPOUTS
 - EYE TROUGHS
 - ▨ SAND TRENCHES FOR DOWN SPOUTS
3' WIDE, 2' DEEP 15' LONG
 - DOWN SPOUTS
 - GRADE MAINTIAN OR RE-STORED TO ORIGINAL GRADE
 - 7' SOFT SLOPE GROUND COVER - CREEPING MYRTLE
- Arrow = watershed direction

SCHULTZ ARCHITECTURE
 1147 N 2ND STREET
 KALAMAZOO, MI 49009
 (269) 615-2897
 www.schultzdesigninc.com
 schultzcraftingdesign@hotmail.com

St. James Residence 4
 6660 Rose Arbour, Kalamazoo, MI 49009

3/21/2016 ENLARGED 2ND GARAGE

SITE DEVELOPEMENT PLAN
 3/21/2016
 1/2"

C100
 St. James 4
 05-11-135-100



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

April 14, 2016

James St. James
5324 Sky Ridge Avenue
Kalamazoo, MI 49009

Re: 6660 Rose Arbor, Release of Foundation Permit

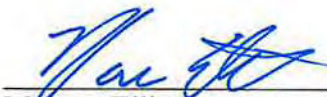
Dear Mr. St James:

As you were informed, we had observed that this lot includes a shared low area along its east property line which receives natural runoff from surrounding lands. We requested that topographic information be provided which would be sufficient to reasonably ascertain that your proposed construction would (a) not unreasonable expose your proposed structure to storm water runoff, and (b) provide reasonable accommodation of the existing hydrologic storage and infiltration that currently takes place over your parcel.

I have now reviewed a hand annotated Site Development Plan (originally dated March 21, 2016) which you delivered this morning. The provided drawing presents a concept plan that reasonably accommodates the above concerns, provided it is implanted as illustrated and as provided by the herein shared interpretation of the proposed construction. This understanding is as follows:

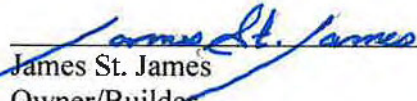
1. Without further evidence to the contrary, the preconstruction contours and presumed elevations shall be as contained in the elevation data available through the digital elevation model that was obtained through aerial photography Oshtemo acquired in collaboration with Kalamazoo County (see attached figure).
2. The common low area to the east shall be undisturbed and unchanged to a side setback of approximately 42-feet. This will require the construction of a retaining wall along the east wall of the structure and which will extend along the east line of the driveway paving a sufficient distance to preserve existing contours. Excess soil-fill placed to construct the driveway and structure in advance of building the retaining wall adjacent to this protected low area shall be removed.
3. The lowest opening of the new structure shall be a minimum of two foot above the existing, natural (preconstruction) low point along the east property line.
4. A depression area is illustrated to the west of the structure. This depression area is intended to function as a "rain garden" storm water capture and infiltration area. The Depression area shall be able to capture approximately 8 cubic yards of storm water before releasing towards the northeast. During construction of this capture area, native clay soils shall be over excavated to assure the observed clay strata of 18-inched to 2-ft in thickness is removed to provide infiltration into the underlying soils.

5. Final grading contours shall assure that overland flows will not “flood” the structure’s lowest opening, and shall have a flow continuity around the structure towards the shared low point along the east line.
6. An evaluation of these items of construction shall be required by the Township prior to the issuance of a certificate of occupancy.
7. Anecdotal testimony of the James St. James and the adjoining property owner, Don Juzwiak has indicated that the identified low area is not known to retain standing water following storm events. Therefore, should standing water be observed, the standing water shall serve as evidence that excess storm water runoff is being allowed to exit the site.
8. Should it be determined that excess storm water is leaving the site, a mitigation plan shall be submitted for Township approval and the proposed corrective actions shall be implemented over the site to contain the excess runoff.



Marc E. Elliott, P.E., Engineer
OSHTEMO CHARTER TOWNSHIP

In Consent and Agreement:



James St. James
Owner/Builder

Memorandum

Date: November 9, 2016

To: Ben Clark, Zoning Administrator

From: Marc Elliott, Director of Public Works *ME*

Subject: 6660 Rose Arbor, Drainage Control

Please know that late yesterday I visited 6660 Rose Arbor and spoke to the owner, Mr. James St. James. The purpose of my visit was to evaluate implementation of the owner's proposed drainage system to manage the site's generation of storm water runoff. My observations focused on whether runoff due to the new development, a single family residence, would not burden the adjoining parcels. I am pleased to report that I observed that earth work and associated infrastructure of the approved plan appear have been properly installed. A site-scale basin and leaching structure is located in the northeast corners. I therefore judge that the Building Inspector may proceed with his evaluation of building code compliance for purposes of issuing a certificate of occupancy.

Please note that I did review with Mr. St James a few items that I believe may need further consideration by the Building Inspector. An annotated photo is attached to illustrate these items.



1. A roof drain has not been properly placed/buried and currently may allow water to pool at the foundation. The owner reported the pipe was uncovered to facilitate earth grading around the structure and that it will be reinstalled and piped further down gradient.
2. I observed that the intent to create a runoff flow-path (see arrows) around the structure may not be adequately graded. I explained to Mr. St. James that my "eye" could not confidently ascertain that the intended flow line exists. I therefore recommended that he check the flow path with a laser level to verify that he has achieved the grade continuity intended. Having learned that item 1 was intended to be addressed by burying a solid wall pipe through this flow path, I recommended the owner consider installing a parallel slotted drain adjacent to the solid pipe. The slotted drain would provide positive drainage of saturated soils should shallow detention pockets form along the intended flow-path.
3. I also noted to Mr. St James that dormant seeding, straw cover and related soil erosion controls are needed until vegetative cover is established.

Please contact me if you have any questions regarding this assessment.

c: Mr. Jerry Reitenour
Building Inspector
Southwest Michigan Building Authority

Mr. James St. James
4655 1B Fox Valley Dr
Portage, MI 49024

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A VIRTUAL MEETING HELD APRIL 28, 2020

Agenda

SITE PLAN: STADIUM AND 11TH STREETS

THE VERNON GROUP REQUESTED SITE PLAN APPROVAL TO CONSTRUCT A 18,500 SQUARE FOOT MEDICAL OFFICE BUILDING AT THE NORTHWEST CORNER OF STADIUM DRIVE AND SOUTH 11TH STREET.

VARIANCE: WINGARD, 3274 S. 6TH STREET

LOGAN WINGARD REQUESTED A 40-FOOT REDUCTION OF THE 70-FOOT REQUIRED FRONT SETBACK FROM THE 6TH STREET RIGHT-OF-WAY TO REPLACE AN OLD CARPORT THAT HAD TO BE DEMOLISHED.

VARIANCE: CONSUMER CREDIT UNION, 6699 W. MAIN STREET

UNIVERSAL SIGN, ON BEHALF OF CONSUMER CREDIT UNION, REQUESTED RELIEF FROM THE ZONING ORDINANCE IN ORDER TO INSTALL A POLE SIGN WITH 80 SQUARE FEET OF DISPLAY AREA WHEN ONLY 60 SQUARE FEET IS ALLOWED.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, April 28, 2020, at approximately 3:00 p.m.

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

MEMBER ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Ben Clark, Zoning Administrator, Josh Owens, Assistant to the Supervisor, and Martha Coash, Meeting Transcriptionist.

Guests present were three representatives for the request for the medical office site plan: Matthew Vernon, Jared VanderWeele, and Alex Frazier. Logan Wingard was present for the variance request for 3274 S. 6th Street.

Call to Order and Pledge of Allegiance

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

VARIANCE: WINGARD, 3274 S. 6th STREET
LOGAN WINGARD REQUESTED A 40-FOOT REDUCTION OF THE 70-FOOT
REQUIRED FRONT SETBACK FROM THE 6TH STREET RIGHT-OF-WAY TO
REPLACE AN OLD CARPORT THAT HAD TO BE DEMOLISHED.

Ms. Lubbert said the applicant is requesting a variance for relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts. On the subject property, the applicant wishes to replace an existing carport located approximately 40 feet from the public right-of-way with a similar structure in the same location. Front setbacks along S. 6th Street, that roadway being one of the Township's Designated Highways, is 70 feet from the right-of-way rather than the customary 30 feet.

In order to place the new carport in the same location of the preexisting one, the applicant requested a variance to allow a 40-foot front setback from the public right-of-way instead of the required 70 feet. This decreased distance is where the home is located, as are numerous other legal non-conforming structures along this portion of S. 6th Street. As well as improving the property in a way that matches its previous layout, the applicant also attests there are numerous site restrictions that make placing the carport in compliance with the 70-foot setback unreasonably burdensome. Following are the applicant's rationale for requesting the variance:

- Without a carport in this location, reasonable use of the driveway will be compromised due to nearby trees that occasionally drop branches that may lead to vehicle damage.
- Immediately west of the carport location there is a marked upslope and continuing the driveway up this grade would require significant regrading of the land.
- Allowing the carport in this location will not compromise public health, safety, and welfare.
- The old, legal non-conforming carport was dilapidated and had to be replaced.
- Placement of a carport in compliance with the extant 70-foot setback is further complicated due to the location of the septic system and a pole barn in the back yard. Much of the back yard also experiences periods of standing water and is composed of unstable soil. Additional earth changes and possibly engineering may be required to adequately prepare another vehicle parking area.

Ms. Lubbert explained the Michigan courts have applied the following principles for a dimensional 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.

Staff analyzed the request against these principles and Ms. Lubbert provided the following information to the Zoning Board of Appeals.

The subject property's topography does have some significant slopes, one of which begins right behind the carport location—Township resources show an eight foot rise between the driveway and the back yard. While regrading can be done to establish a usable driveway to the back yard, earth works could affect the house and septic system. New soils may also need to be brought in to provide a suitable base on which to park cars and appropriately anchor the carport.

Given the amount of earth changes that could be required to soften the grade at the end of the existing driveway, mitigate impacts on the septic system, and establish a suitable surface to relocate the carport to, it could be interpreted that conformance is unnecessarily burdensome. Although the property modifications needed to accommodate a new carport in accordance with current setbacks may be burdensome, such an accessory structure is discretionary, and overall reasonable use of the property does remain without such.

In researching past Zoning Board of Appeals decisions regarding setback relief for accessory and other residential buildings, Planning Department staff identified and provided decisions on four similar cases to provide past precedent decisions. Ms. Lubbert focused on one:

Schaap, 1640 S 4th St, 8/23/2016: Citing drastic topography changes as well as the existing single-family home's location approximately 30 feet from the S. 4th Street right-of-way, the Zoning Board of Appeals approved the applicant's variance request to build an accessory building with a 30-foot front setback, relief of 40 feet from the standard 70-foot front setback for many designated highways in the Township such as S. 4th Street.

She noted construction of a carport is discretionary, and vehicles can be parked in the driveway but when the home and original carport were constructed, the front setback affecting this parcel was different and now extends onto the property 30 feet further. Also, the applicant did not create the site conditions noted herein, so it is reasonable to say that the hardship is not self-created.

In addition, many of the existing structures along this stretch of S. 6th Street, including the single-family home and the old carport on the subject property, were constructed to previous setbacks that allowed building much closer the road than current regulations do. Allowing a new carport to replace the demolished legal non-conforming structure will not compromise public health, safety, and welfare.

Ms. Lubbert said the chosen motion should include the findings of fact relevant to the requested variance. Based on staff analysis, she presented the following findings of fact:

- Support of variance approval
 - The property experiences unique, challenging topography, with a marked eight-foot change in elevation between the driveway in the front yard and the grade of the back yard—the only area the carport can be moved to in order to comply with the minimum front setback.
 - Further obstructions to relocating the carport in compliance with the 70-foot front setback include the locations of the septic system and a preexisting pole barn further back on the property.
 - Past ZBA decisions granting variances in similar situations has established precedence.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance
 - A carport is discretionary; the applicant can still park cars in the driveway.

She indicated possible motions regarding the applicant's request to consider should include:

1. Motion to approve. Based on the findings of fact discussed in this memo, including the presence of challenging topography, existing property features in the back yard, and past precedence, motion to approve the variance request, allowing the applicant to locate a new carport 40 feet from the S 6th Street right-of-way; a setback reduction of 30 feet.

If the ZBA chooses this motion, staff request that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Motion to deny: Reasonable use of the property is possible under the RR: Rural Residential zoning district allowances for a single-family home.

Chairperson Sikora thanked Ms. Lubbert for her presentation and asked whether Board Members had questions.

He asked whether staff knows for sure that the septic tank is behind the house.

Mr. Clark said staff took the applicant's word for the tank location.

The Chair asked if the house is also non-conforming regarding set back and noted the topography drop-off is not shown on the documents provided.

Mr. Clark said the house is non-conforming, as are numerous other homes in that area that predate current regulations. He said there is no visual for the drop-off, but drop-off to the south and west was confirmed by digital means. It is common to have a steep embankment on that stretch of road.

Ms. Bell asked how the project was brought to the Township's attention.

Mr. Clark indicated the old carport was demolished. Some misunderstanding occurred between the Township and the applicant, with the result that no permit was granted before the new carport was erected. Mr. Suwarsky, Ordinance Enforcement, determined a violation had occurred. Unless the variance is granted, the new structure will have to be removed.

Ms. Lubbert explained that situation was not something that should be considered in board deliberations.

Ms. Maxwell said she lives on S. 6th Street and that she would not want to park on that street without a carport as lots of branches fall down there.

Ms. Smith wondered if this could be a grandfathered situation.

Mr. Clark said the old carport was presumably non-conforming, but once non-conforming goes away upon demolition, current ordinance setbacks must be complied with or relief granted.

Hearing no more questions, the Chair asked whether the applicant wished to speak.

Ms. Logan Wingard, 3274 S. 6th St, thanked the Board for considering her request and noted she has experienced damage to her vehicles since the old carport was removed. She noted the location is the only place that will work on her property and explained it is a 2-car structure, made of steel which replaced an old wooden structure. The new carport is sturdy, stable and much more attractive than the previous one. She did not realize there had been a change in the ordinance when it was constructed.

Chairperson Sikora determined no one from the public was present to comment and moved to Board Discussion.

The Chair commented it would be very difficult to accommodate the carport to meet current ordinance requirements, if it were necessary to move it.

Ms. Bell said if a legally non-conforming structure burned down it could be replaced in the same location. There have been major changes in set-back rules in residential areas and it is understandable that someone might not realize they needed to pursue approval when replacing a structure in the same place. She said she would gladly support this variance approval.

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD MARCH 28, 2017

Agenda

PUBLIC HEARING: VARIANCE REQUEST (MICHAEL NOORA, 10540 WEST J AVENUE)

APPLICANT IS REQUESTING A VARIANCE FROM SECTION 64.000 OF THE ZONING ORDINANCE TO ALLOW A NEW RESIDENTIAL ACCESSORY BUILDING TO BE LOCATED EIGHT FEET FROM THE EAST PROPERTY LINE WHEN 16 WOULD TYPICALLY BE REQUIRED. THE SUBJECT PROPERTY IS ZONED RR: RURAL RESIDENTIAL. PARCEL NO. 3905-07-380-040.

PUBLIC HEARING: VARIANCE REQUEST (CHARTER TOWNSHIP OF OSHTEMO, 7275 WEST MAIN STREET)

APPLICANT IS REQUESTING VARIANCES FROM SECTIONS 64.000 AND 66.000 OF THE ZONING ORDINANCE TO ALLOW THE CONSTRUCTION OF A NEW WATER PRESSURE REDUCTION STATION ON THE NORTH SIDE OF WEST MAIN STREET, LEGALLY BUILDABLE AND THE PROPOSED FACILITY WILL NOT COMPLY WITH THE NECESSARY FRONT SETBACK. SUBJECT PROPERTY IS ZONED AS RR: RURAL RESIDENTIAL. PARCEL NO. IS PENDING.

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, March 28, 2017, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: James Sterenberg, Chair
Bob Anderson.
Nancy Culp
Neil Sikora, Vice Chair
L. Michael Smith

ABSENT: Wiley Boulding, Sr.
Anita Smith

Also present were Ben Clark, Zoning Administrator, James Porter, Township Attorney, Julie Johnston, Planning Director, Martha Coash, Meeting Transcriptionist, and one interested persons.

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 February 28, 2017

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of February 28, 2017. Hearing none, he asked for a motion for approval.

Mr. Sikora made a motion to approve the minutes of February 28, 2017 as corrected. Mr. Smith Sr. supported the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (MICHAEL NOORA, 10540 WEST J AVENUE)

APPLICANT IS REQUESTING A VARIANCE FROM SECTION 64.000 OF THE ZONING ORDINANCE TO ALLOW A NEW RESIDENTIAL ACCESSORY BUILDING TO BE LOCATED EIGHT FEET FROM THE EAST PROPERTY LINE WHEN 16 WOULD TYPICALLY BE REQUIRED. THE SUBJECT PROPERTY IS ZONED RR: RURAL RESIDENTIAL. PARCEL NO. 3905-07-380-040.

Chairperson Sterenberg said the next item was a request for variance to allow a new residential accessory building from Michael Noora and asked Mr. Clark to review the request.

Mr. Clark said the applicant wished to be provided relief from the minimum required side setback for an accessory building. The location of an existing single-family home, the relatively long and narrow subject property once also accommodated a 720-square foot detached garage, which burned down in September of 2016. Having been located approximately eight feet from the east property line, the now-demolished accessory building was legally non-conforming due to insufficient side setback: Section 64.000 of the Zoning Ordinance now requires that such a structure be placed at least ten feet from any side or rear property line, or equal to the structure's height at its peak, if taller than ten feet.

He said, as detailed in section *62.000: Non-conforming Uses* of the ordinance, the loss of such a non-conforming structure means that it may not be reconstructed, unless it is in full compliance with all current standards. Due to numerous practical difficulties present on the property, the applicant is seeking relief from section *64.000: Setbacks and Sideline Spacing* of the Zoning Ordinance, and would like to construct a new, similarly sized accessory building with the same eight-foot setback as the old one, when 16 feet would typically be required. The desired new structure would be located further south on the property and closer to the primary dwelling than the old garage. Site factors motivating this request include narrow property width (105 feet), marked topography variation, driveway location, and the presence of septic and other facilities on the property.

Mr. Clark explained this parcel was created prior to the current Zoning Ordinance, which requires 200 feet of frontage for any new non-platted property in the RR zoning district. With only 105 feet of frontage, and never widening along its 458-foot depth, the subject parcel is quite narrow. Staff did discuss the possibility of placing the new accessory building in the cleared area towards the north end of the property, but the applicant displayed that the property drops off in excess of eight feet just behind where the old garage was located. Requiring relocation would necessitate significant regrading, as the slope in question is very likely too steep to accommodate a driveway, especially when ice and snow are factored in.

Staff also explored the option of moving the garage further to the west with the applicant. The applicant informed staff that conflicts with the septic line would arise if this scenario were to be implemented. Moving the garage to the west would also require that the driveway be altered to wrap around that side of the house, necessitating tree removal and also forcing vehicles to wend their way around the water wellhead in the front yard as well as the home's propane tank, which is close to the west side of the house.

Mr. Clark said this request meets applicable standards, and based upon the following findings, Staff recommended approval of the variance request to allow eight feet of side setback from the east property line of the subject property when 16 feet, equal to the height of the proposed accessory structure at its peak, would typically be required:

1. Due to unique physical circumstances present on the subject property, namely steep slopes and restrictive parcel dimensions, conformance with section 64.000 of the Zoning Ordinance with regards to the east side setback is unnecessarily burdensome, and no reasonable options for compliance are available for the applicant.
2. The Zoning Board of Appeals has granted similar variances in the past, and substantial justice would be served.
3. The spirit of the Zoning Ordinance will be observed, and the public health, safety, and welfare of the community will be secured.

Chairperson Sterenberg asked if there were questions for Mr. Clark.

In answer to a question from Mr. Anderson, Mr. Clark said there had been no comments from neighbors.

The applicant, Mr. Michael Noora, 10540 West J Avenue, owner of the property, asked if Board Members had questions for him.

Hearing no questions, Chairperson Sterenberg noted there were no members of the public present and asked if there were Board Member comments.

Mr. Sikora thanked Mr. Noora for his well thought out design and explanation of the need for the location requested. He said he was in support of the variance based on the Staff report.

Since there were no further comments from Board Members, the Chairperson asked for a motion to approve the request.

Mr. Anderson made a motion to approve the variance as requested, based on applicable standards and the recommendation of Staff. Mr. Smith supported the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (CHARTER TOWNSHIP OF OSHTEMO, 7275 WEST MAIN STREET)
APPLICANT IS REQUESTING VARIANCES FROM SECTIONS 64.000 AND 66.000 OF THE ZONING ORDINANCE TO ALLOW THE CONSTRUCTION OF A NEW WATER PRESSURE REDUCTION STATION ON THE NORTH SIDE OF WEST MAIN STREET, LEGALLY BUILDABLE AND THE PROPOSED FACILITY WILL NOT COMPLY WITH THE NECESSARY FRONT SETBACK. SUBJECT PROPERTY IS ZONED AS RR: RURAL RESIDENTIAL. PARCEL NO. IS PENDING.

Chairperson Sterenberg moved to the next item on the agenda and asked Mr. Clark for the Staff report.

Mr. Clark explained part of the initiative to connect residents in the western reaches of the Township to the public water system due to groundwater contamination from the old KL Avenue landfill, the placement of a pressure reduction station (PRS) is necessary in this part of Oshtemo. In determining an appropriate site for the PRS, the Township identified a small, relatively unusable piece of land that was formerly attached to the south end of 854 Josiane Drive, within the Maple Hill Estates #2 subdivision. Being of limited utility to the private property owners, who were willing to sell the land in question, as well as having frontage on West Main Street, the Township opted to purchase the land for the planned PRS.

He said while the site's location is ideal for the PRS, its size and proximity to West Main Street means that building the station there while complying with sections 64.000: *Setback and Sideline Spacing* and 66.000: *Area Requirements, Dwelling Standards, and Residential Occupancy of the Zoning Ordinance* is practically impossible, necessitating a handful of variances. Due to the fact that the proposed 16-foot by 24-foot PRS qualifies as a structure, compliance with sections 64.000 and 66.000 is technically necessary. The following list details the variance requests at hand:

1. *Section 66.000: Area Requirements...*
 - a. Relief from the minimum amount of frontage necessary for a buildable property. 200 feet required per the ordinance, with only 35 feet available.

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD AUGUST 23, 2016

Agenda

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

APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 64.100 OF SECTION 64.00 SETBACK AND SIDE LINE SPACING OF THE ZONING ORDINANCE TO REDUCE THE FRONT BUILDING SETBACK FROM 70 FEET TO 30 FEET FROM THE 4TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN ACCESSORY BUILDING. THE SUBJECT PROPERTY IS ZONED R-3: RESIDENCE DISTRICT. (PARCEL #3905-29-230-040.)

PUBLIC HEARING: VARIANCE REQUEST (HURLEY & STEWART, LLC, 2800 SOUTH 11TH STREET)

APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 64.100 OF SECTION 64.00 SETBACK AND SIDE LINE SPACING OF THE ZONING ORDINANCE TO REDUCE THE FRONT BUILDING SETBACK FROM 70 FEET TO 40 FEET FROM THE 11TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN ADDITION TO AN EXISTING BUILDING. THE SUBJECT PROPERTY IS ZONED R-3: RESIDENCE DISTRICT. (PARCEL #3905-25-335-040.)

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

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

MEMBERS ABSENT: None

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

Call to Order and Pledge of Allegiance

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

Public Comment on Non-Agenda Items

There were no public comments on non-agenda items.

Approval of the Minutes of August 9, 2016

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

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

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

APPLICANT IS REQUESTING A VARIANCE FROM SUBSECTION 64.100 OF SECTION 64.00 SETBACK AND SIDE LINE SPACING OF THE ZONING ORDINANCE TO REDUCE THE FRONT BUILDING SETBACK FROM 70 FEET TO 30 FEET FROM THE 4TH STREET RIGHT-OF-WAY IN ORDER TO CONSTRUCT AN ACCESSORY BUILDING. THE SUBJECT PROPERTY IS ZONED R-3: RESIDENCE DISTRICT. (PARCEL #3905-29-230-040.)

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

Ms. Johnston said Tobin Schaap, 1640 South 4th Street was requesting a variance to reduce the building setback from 70 feet to 30 feet in order to construct an approximately 800 square foot residential accessory building on his property, located at 1640 South 4th Street, near the intersection of L Avenue. South 4th Street, classified as a *Designated Highway* by section 64.100 of the Oshtemo Township Zoning Ordinance, has an enhanced setback from the right-of-way of 70 feet, where many other residential properties in the Township only require 30 feet. The undulating topography and drainage patterns of the property, the applicant argues, makes compliance with the stated 70 foot minimum front setback from 4th Street impractical. While the part of the parcel that the house is built on, which is approximately 27 feet from the 4th Street right-of-way, is fairly flat, as is the majority of the remainder of the property along that frontage, there is a marked drop off to the west, terminating at the lowest spot of the property.

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

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

Ms. Johnston commented while the applicant could hypothetically locate the accessory building in compliance with the 70 front setback from the 4th Street right-of-way, doing such could be viewed as unnecessarily burdensome, as it would require a significant amount of regrading and drainage interventions to ensure that runoff doesn't intrude into the structure. Additional soil engineering may also be required so that the depression's stormwater retention qualities are maintained, preventing any increase in runoff onto the adjacent property to the south. Other portions of the property outside of the minimum setback areas also suffer from steep slopes and are largely wooded, meaning that the location for the accessory structure that the applicant has identified is the most suitable on the property.

She said Staff feels it is reasonable for the applicant to wish to erect an accessory structure for personal use, and that requiring compliance with the 70 foot setback would practically preclude that from happening.

*Standard: Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Ms. Johnston noted Staff was able to find past instances of when the Zoning Board of Appeals was inclined to grant relief for residential properties from the stated setback requirements due to physical circumstances and provided three examples.

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

She said not only does building on sloped and wooded land present a challenge when it comes to preparing a suitable building site, but the necessary earth changes would mean that the land's native drainage patterns could be negatively impacted as well.

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

Ms. Johnston said while ultimately the decision to construct an accessory building is at the applicant's discretion, the topographic and other environmental

challenges posed by the land are not self-made, and would pose a difficulty to any project proposed for the property.

Standard: Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?

Ms. Johnston said although South 4th Street's Designated Highway status means that an enhanced 70 foot front setback is in place, the 30 foot dimension being sought by the applicant is what is observed for the majority of residential properties in the Township, suggesting that the request is not unreasonable and is in keeping with what is commonly accepted in other parts of Oshtemo. Given that the accessory structure is proposed to be placed further back than the primary residence from 4th Street, staff feels that consideration of the public health, safety, and welfare will be observed, as the building's construction will not introduce any new visibility issues for motorists, nor will it significantly alter the character of the property.

Examining the three provided examples of when the Zoning Board of Appeals granted relief from building setbacks, one of which was along a Designated Highway, she said Staff feels substantial justice would be done if this variance request were granted. The ZBA has acknowledged that varying topography is grounds for the granting of a variance, and Township Staff have confirmed in the field that the terrain does appear very challenging to build on.

Ms. Johnston said Staff recommended approval of the variance request from *Section 64.100: Setbacks from Designated Highways* for the following reasons:

- Considering the subject property's topography and somewhat delicate drainage characteristics, especially when factoring in how stormwater is conveyed onto the adjacent property to the south, compliance with the relatively deep 70 foot setback from the 4th Street right-of-way does appear to be unnecessarily burdensome.
- The challenging topography and largely wooded nature of the subject property was not self-made by the applicant.
- The Oshtemo Township Zoning Board of Appeals have granted similar relief in the past. Approving this application for a variance would ensure that substantial justice is consistently being done.

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

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

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

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

Chairperson Bell asked about other locations if regrading were done.

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

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

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

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

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

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

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

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