

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A VIRTUAL MEETING HELD OCTOBER 26, 2021

Agenda

PUBLIC HEARING –VARIANCE, RUDLAFF POOL

Consideration of relief from Section 50.60 of the Zoning Ordinance which governs setbacks to allow a 4’2” reduction of the 15’ required rear yard setback and a 6’4” reduction of the 10’ required side yard setback in order to construct an 18’ x 36’ in-ground swimming pool at 5756 Coddington Lane was requested by applicant Jennifer Rudlaff. Parcel no. 05-25-120-55, zoned R-1: Residence District.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, October 26, 2021, beginning at approximately 3:02 p.m.

MEMBERS PRESENT: Neil Sikora, Chair
Dusty Farmer
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams
(All attending within Oshtemo Township)

MEMBER ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, Colten Hutson, Zoning Administrator, James Porter, Township Attorney, Martha Coash, Meeting Transcriptionist, and applicant Jennifer Rudlaff.

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.”

APPROVAL OF AGENDA

The Chair determined no agenda changes were needed, let it stand as presented, and moved to the next agenda item.

APPROVAL OF THE MINUTES OF October 12, 2021

The Chair noted Mr. Gould and Mr. Williams were absent, but listed in the minutes as attending the October 12 meeting. There were no other additions, deletions, or corrections to the minutes of October 12, 2021.

Mr. Sikora made a motion to approve the Minutes of October 12, 2021, as presented with the correction as noted. Ms. Maxwell seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Sikora moved to the next agenda item and asked Mr. Hutson for his presentation.

PUBLIC HEARING –VARIANCE, RUDLAFF POOL

Consideration of relief from Section 50.60 of the Zoning Ordinance which governs setbacks to allow a 4’2” reduction of the 15’ required rear yard setback and a 6’4” reduction of the 10’ required side yard setback in order to construct an 18’ x 36’ in-ground swimming pool at 5756 Coddington Lane. Parcel no. 05-25-120-550.

Mr. Hutson indicated the applicant was requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18’ x 36’ in-ground swimming pool in the back yard at 5756 Coddington Lane. Section 50.60 of the Zoning Ordinance requires that any swimming pool, whether in-ground or above ground, located within the R-1: Residence District have a minimum rear yard setback of 15’ and a minimum side yard setback of 10’. If approved, the variance would permit a swimming pool that will protrude 4’2” into the required 15’ rear yard setback and 6’4” into the required 10’ rear yard setback.

The setback measurements for swimming pools are not taken from water’s edge, but rather the concrete or wood decking commonly found surrounding it. Decking of any kind is considered structure and required to meet the minimum setback requirements for both the side and rear yard. As concrete decking was being proposed in this request, the minimum setback measurements were taken from the property line to the nearest edge of the closest structure, which in this case is the concrete decking.

Mr. Hutson outlined the following rationale for this variance request provided by the applicant and noted additional details and the images referenced could be found in the letters of intent submitted by the applicant.

- “The location of the proposed swimming pool will be in the rear yard directly behind the house. There is no other location on site to build the swimming pool. The requested variance would be safer than the current zoning requirement.
 1. Due to the shape and narrowness of this lot combined with the required rear setback of 15 ft. and the required side yard setback of 10 ft. The strict application of the requirements of this applicable zoning chapter would deprive the existing property owner the rights and privileges currently enjoyed on this site by other property owners in the same zoning district. We are requesting a reduction of the required rear setback to 10 ft. and the required side yard setback to 3 ft. which is still inside the 6ft privacy fence (see attached pictures of yard).

2. Granting the variance will NOT be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:
The use is for private use only. It will improve the property and its value by creating a functional recreation and gathering space. It cannot be located elsewhere on site.
3. Granting the variance WILL be an improvement to the neighborhood and result in the overall increase in property value and tax base created by improvement.

As you will see from the pictures provided the requested variance will be safer than the current required variances. The required variance you will be walking out of the home's French doors and fall into the pool. With the requested variance approval will allow more room once you open the French doors to walk out safely without falling into the pool and still be inside the 6 ft privacy fence which surrounds the entire back yard."

Mr. Hutson said Staff analyzed the request against Michigan standards of review for variance requests and provided the following information:

Standards of Approval of a Nonuse Variance (practical difficulty):

Standard: Unique Physical Circumstances

Comment: The principal building located at 5756 Coddington Lane is setback 10' to 12' further back compared to a number of the surrounding principal buildings within the Oshtemo Woods No. 1 plat. The existing positioning of the principal building on-site limits the size and types of structures that may be erected in the rear yard. The natural grade of the site slopes to the east. However, there are no substantial topographical changes to preclude compliance with the Oshtemo Township Zoning Ordinance. A swimming pool can still be constructed at this site without requesting relief from the rear yard and side yard setbacks.

Standard: Conformance Unnecessarily Burdensome

Comment: A swimming pool, though slightly smaller or configured in a different way than what the applicant has proposed, could be built to comply with the Oshtemo Township Zoning Ordinance. Conformance with the code is not unnecessarily burdensome.

Standard: Minimum Necessary for Substantial Justice

Comment: Planning Department staff was unable to identify any similar case. Staff found a number of variances in which were granted setback relief for swimming pools from their front yard setback. All properties in which received variance approval were located on corner lots within subdivisions, with the most recent request being approved on November 17, 2020. Since 5756 Coddington Lane is requesting relief from the side

and rear yard setback, and is not located on a corner lot, the previous cases found by staff cannot be considered for substantial justice.

Standard: Self-Created Hardship

Comment: The purpose of the request originates from when the applicant pre-ordered the fiberglass molds for the swimming pool and later realized through applying for building permits that the 18' x 36' swimming pool would not meet the minimum side and rear yard setbacks where proposed. It is the applicant's desire to construct an 18' x 36' in-ground pool at this location that triggered this variance request. A smaller swimming pool could be constructed on-site. A swimming pool is not a required nor a necessary amenity. This request is a self-created hardship.

Standard: Public Safety and Welfare

Comment: The swimming pool will not be visible from neighbors as the back yard at the subject property is completely fenced-in with a 6' tall vinyl fence. Access to the swimming pool will only be made available to the homeowners and their guests. If approved, the swimming pool will go through the building permit process and will be inspected by the Southwest Michigan Building Authority to ensure the new construction meets building code. The swimming pool will not negatively affect neighboring properties nor harm members of the public. However, setbacks are paramount for any type of structure as they provide security and privacy between adjacent uses and property owners. Approval of this variance request will set a precedent for similar cases in the future and jeopardize the integrity and intent of the code's setback regulations.

Mr. Hutson indicated the Zoning Board of Appeals might 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

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

- Support of variance approval
 - There would be no negative impact to the safety of the public as the swimming pool will not be visible to neighbors and will not directly negatively affect adjacent properties.
- Support of variance denial
 - There are no unique physical limitations that precludes compliance.

- Conformance is not unnecessarily burdensome, other locations/configurations for a swimming pool can be explored.
- The variance for the 18' x 36' swimming pool is a self-created hardship.
- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A swimming pool is not a required nor a necessary amenity.
- This request goes against the intent and integrity of the Zoning Ordinance.

He provided the following possible motions for the Zoning Board of Appeals to consider:

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the proposal not negatively impacting the health, safety, and welfare of the public.

If the Zoning Board of Appeals chooses this motion, staff requests that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Variance Denial

The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and the request will jeopardize the intent and integrity of the Zoning Ordinance.

Chairperson Sikora thanked Mr. Hutson for his presentation and asked whether members had questions for him.

Ms. Farmer asked about the applicable code restrictions.

Attorney Porter said the homeowner is not being kept from using the property for an approved use, the size of the pool desired meets code, it is just the location that would require a variance.

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

Ms. Jennifer Rudlaff indicated the reason for a pool was for health reasons and that swimming would help to keep her active. In addition, the pool would provide recreation for her children. It was crushing to find after the pool was ordered that it would not fit in the proposed area without a variance. She noted they were trying to make it safe to come out the back door without going directly into the pool. Also, it has to be located where it is due to a sloping topography.

Ms. Maxwell asked if the pool needed to be 18' x 36' for medical reasons.

Ms. Rudlaff said not necessarily; the children want to have a slide which requires that size.

Mr. Gould wondered if the pool was one solid piece that has to be set in the hole with a crane.

Ms. Rudlaff said she believed that is the case and that she thought the depth is 8 feet.; part of the fence had to be removed to accommodate installation.

Hearing no further comments, Chairperson Sikora moved to public hearing. No one was present to speak, so he closed the public hearing and moved to Board Deliberations.

Ms. Smith wondered if the variance would allow increased pool safety and whether safety was an issue for fire fighters who might need access.

Attorney Porter said neither of those questions were applicable for variance consideration.

Ms. Maxwell felt the pool could be constructed without a variance.

Chairperson Sikora suggested denial of the variance as the request does not satisfy the required criteria.

Both Ms. Farmer and Mr. Williams concurred as there are other ways to construct a pool without needing a variance.

Ms. Maxwell made a motion to deny the variance request to reduce setbacks in order to construct an 18' x 36' in-ground swimming pool at 5756 Coddington Lane based on the following reasons: the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and the request will jeopardize the intent and integrity of the Zoning Ordinance.

Chairperson Sikora seconded the motion. The motion was approved 5 – 1 by roll call vote, with Mr. Gould dissenting.

Public Comment on Non-Agenda Items

There were no comments from the public.

Other Updates and Business

Ms. Lubbert said the 2022 meeting schedule would need to be approved at the next meeting. Possibly changing meetings to begin at 2:00 on Tuesdays or 3:00 on Wednesdays was discussed in light of frustration with the abrupt meeting adjournment at the October 12 meeting due to time conflict with the Township Board meeting, but the

group felt it best not to change either the start time or day as the conflict was highly unusual. Ms. Lubbert will return with the schedule for approval.

There was discussion both pro and con regarding the recent traffic light addition on West Main. Also discussed was the lack of a slow-down warning where a gate was opened prior to a curb cut being completed, which results in a big bump on the connecting drive between Meijer and Advia.

Ms. Lubbert noted that staff is looking into addressing the situation.

Ms. Farmer commented that since the light was installed and the right turn only was instituted from the Meijer drive, the fire department has been receiving fewer requests to respond to accidents.

There was concern expressed about a new fence at 8th St. and ML Avenue. The enforcement officer will be asked to take a look at that.

Adjournment

Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:46 p.m.

Minutes prepared:
October 28, 2021

Minutes approved:
November 16, 2021