

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD MAY 28, 2019

Agenda

PUBLIC HEARING: VARIANCE REQUEST FROM MAPLE HILL LEASEHOLD, LLC CONSIDERATION OF AN APPLICATION FROM JIM VANDENBERG ON BEHALF OF MAPLE HILL LEASEHOLDS LLC, FOR TWO VARIANCES FROM THE PROVISIONS OF SECTION 49.130.D., TO ALLOW A REDUCED SETBACK FOR THE DISPLAY OF VEHICLES FOR SALE. THE SUBJECT PROPERTY IS ADDRESSED AS 6883 WEST MAIN STREET, WITHIN THE “C” LOCAL BUSINESS DISTRICT CLASSIFICATION. PARCEL NO. 3905-14-305-015.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, May 28, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

Also present were Julie Johnston, Planning Director and Martha Coash, Meeting Transcriptionist. No other persons were in attendance.

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

The Chair noted there were no members of the public present.

APPROVAL OF THE MINUTES OF FEBRUARY 26, 2019

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of February 26, 2019.

Mr. Antosz made a motion to approve the Minutes of February 26, 2019 as presented. Mr. Gould supported the motion. The motion was approved unanimously.

Chairperson Sterenberg moved to the next agenda item and asked Ms. Johnston for the Staff report.

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Ms. Johnston said Maple Hill Leasehold, LLC, which is currently located at 5622 West Main Street, intends to expand their operation to the former Kalamazoo Kitty site at 6883 West Main Street. The subject property is zoned C: Local Business District and car sales lots are a Special Use under Section 18.30. The Planning Commission approved this Special Use at their meeting on April 11, 2019.

The applicant is requesting relief from the required setbacks for the display of cars in a sales lot. Section 49.130.D states that the sale and display of cars must meet the same setback requirements as any building or structure onsite. This would require the following per Section 50.60: Setback Provisions:

- 170 feet from the centerline of West Main Street
- 70 feet from the right-of-way of North 8th Street

The applicant has requested the following setbacks:

- 110 feet from the centerline of West Main Street, a 60-foot variance
- 40 feet from the right-of-way of North 8th Street, a 30-foot variance

Ms. Johnston said Section 53.50 of the Landscape Ordinance requires a 20-foot landscape buffer along both West Main Street and North 8th Street. The applicant's request for a 110-foot setback for the car sales would violate the required buffer along West Main Street, leaving only 10 feet for landscaping along this right-of-way. The landscape buffer along North 8th Street can still be maintained with the requested variance.

She noted the Zoning Board of Appeals may wish to consider these landscaping requirements when deliberating the requested setback variance.

Ms. Johnston said 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.

She said Staff analyzed the request against these principles and provided the following information.

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

Comment: There is a unique physical circumstance related to this property that limits the frontage along West Main Street. At some point in the past, approximately 1,062 square feet of the northwest corner of the property was reserved by the Michigan Department of Transportation (MDOT) for roadway drainage. This altered the shape of the property, removing 272 linear feet of frontage along West Main Street, leaving approximately 174 feet of frontage. In addition, the removal of this property made the parcel legal nonconforming as the Zoning Ordinance requires 200 feet of frontage for commercial parcels.

*Standard: 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 a vehicular sales lot expansion is discretionary, and reasonable use of the property in general does exist for other commercial ventures, even if the variance request is denied. Parking lots for other commercial uses would not be required to meet the building setback standards, only the landscape ordinance requirements. That being said, the limited frontage on West Main Street makes the 170-foot setback particularly burdensome for this use as it further reduces the visibility from the right-of-way.

*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 Zoning Board of Appeals decisions regarding setbacks for the display of cars for sale, staff investigated car dealerships within the Township – Halli’s Auto, Maple Hill Auto Group, Metro Toyota, and DeNooyer Chevrolet. All four dealerships sought and were granted variances from the setback requirement for the sales display area.

In addition to the car dealerships, the Zoning Board of Appeals granted a variance in September of 2000 to Steensma Lawn and Power Equipment at 7561 Stadium Drive to allow the display of merchandise at the right-of-way line.

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

Comment: The existing site boundaries and design were not a result of the applicants’ actions. However, she noted, the site was originally developed and used as a car lot until about 2008.

In addition to the above principles, the Zoning Enabling Act of Michigan states that when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” To help ensure these standards are met for both the applicant and adjacent property owners, the Zoning Board of Appeals may want to consider conditioning any variances granted on meeting the landscaping requirements of Section 53.50 of the Zoning Ordinance. This would equate to a 120-foot setback from the centerline of West Main Street, necessitating a 50-foot variance. The requested variance along North 8th Street maintains the required landscape buffer.

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

- Support of variance approval
 - The unique physical condition of the property, losing approximately 1,062 square feet for an MDOT drainage basin, limits the frontage on West Main Street.
 - The 170-foot setback from the centerline of West Main Street for the display of cars for sale is particularly burdensome to this use due to the limited frontage.
 - Significant precedence has been set allowing encroachment into the required setbacks, especially along rights-of-way.

- Support of variance denial
 - Reasonable use of the property still exists under the C: Local Business District for any other allowable use.

Ms. Johnston said possible motions for the Zoning Board of Appeals to consider included:

1. Applicant's Request

Based on the findings of fact, motion to approve the following variances for parking or display of sale items related to new/used car sales:

- 60-foot variance along West Main Street, allowing a setback of 110 feet
- 30-foot variance along North 8th Street, allowing a setback of 40 feet

If the ZBA chooses this motion, another variance hearing would be required. The Township did not publicly notice for a landscape variance, only a setback variance. Per State statute, public notices are to describe the nature of the request. A second hearing would be scheduled for the June 25th meeting.

2. Alternate Approach

Based on the findings of fact, motion to approve the following variances for parking or display of sale items related to new/used car sales:

- 50-foot variance along West Main Street allowing a setback of 120 feet
- 30-foot variance along North 8th Street, allowing a setback of 40 feet

3. Motion to deny the requested variances because reasonable use of the property is possible under the C: Local Business District for any other allowable use.

Chairperson Sterenberg thanked Ms. Johnston for her report and asked if there were questions from board members.

Ms. Bell asked who provided the calculations on the map provided.

Ms. Johnston indicated the calculations and map were provided by the applicant.

Chairperson Sterenberg confirmed that variances at both West Main and 8th Street would not violate the landscape ordinance. Ms. Johnston indicated the requested setback on West Main Street would violate the landscape ordinance.

In answer to a question from Ms. Bell, Ms. Johnston confirmed the corner is zoned commercial as well as Walmart to the south and that Walmart did not receive a setback variance. The area across the street on 8th Street is zoned R-2.

Ms. Johnston noted the current existing landscaping on the property will not be disturbed along 8th Street as it was a condition of the Special Use approval granted by the Planning Commission.

Mr. Antosz wondered about requirements from the previous dealership who used to be on this property; Ms. Johnston said the site design has not changed since that dealership closed.

Mr. Sikora noted the parcel is on a hill, which could limit visibility from West Main Street.

Hearing no further questions, Chairperson Sterenberg noted the applicant was not in attendance and there were no members of the public present, so he moved to Board Deliberations.

Ms. Bell noted the absence of the applicant and asked if the item could be tabled if that was the Board's choice.

Ms. Johnston said the applicant already has cars parked on the parcel and she believed he would want to move forward.

Mr. Antosz felt the alternate approach offered was more in keeping with the spirit of the ordinance and he would support it.

Ms. Bell was not in support of a variance on 8th Street and noted Walmart does not have one along this roadway. No variance precedent exists at this road, which is a boundary where the Township transitions to a rural area.

Ms. Maxwell wondered what Maple Hill plans to do in the landscape buffer area.

Ms. Johnston said there is no site plan yet for redevelopment. When that is done, they would be required to meet the landscaping ordinance.

Mr. Sikora was concerned that if visibility of the lot is desired along 8th Street, car lights could be a problem for the residential neighbors.

Ms. Johnston said the ordinance only talks about cars for sale; they could use the property within 20 feet of 8th Street for other purposes, such as parking employee or service vehicles.

Ms. Smith thought it might be utilized for service vehicles in which case visibility would not be an issue.

Chairperson Sterenberg noted that whatever the use, it would still be buffered from 8th Street by vegetation. He said he would be inclined to stick with the alternate approach within the spirit of the ordinance, citing: 1) the unique physical condition/extra burden, 2) Precedence with six other businesses and 3) that it would be in keeping with the spirit of the ordinance.

Ms. Maxwell asked if the variance could be approved for the West Main Street request but not the request for 8th Street.

Ms. Johnston said that could be done. She explained that once the Board deliberated and denied a request, the next step would be the Court of Appeals. The applicant could not bring a request back to the Zoning Board Appeals unless it was substantially different. If a request were denied today, the reason(s) for denial must be clear.

Ms. Bell asked if the requests could be considered separately.

Ms. Johnston said they could be considered in two separate motions. She said again that if they approved the West Main request but denied the 8th Street request, the reason would need to be clearly stated since the applicant cannot re-apply for the same request.

Ms. Bell said the two sides of the property are not the same. If the 8th Street request were denied it would be because 1) it abuts a sensitive area of the Township that is residential and so the setback buffer is necessary, and 2) Walmart did not receive a variance for their property along 8th Street so there is no precedence in this area.

Ms. Smith was skeptical that the variance requested for West Main Street would significantly increase visibility.

Ms. Johnston responded to a question from the Chair, saying she was 99% sure Walmart did not receive a setback variance on 8th Street. They did not need one for their structure. She noted without the variance, Mr. VandenBerg could still extend pavement up to 20 feet on 8th Street, but not use it for sales.

Chairperson Sterenberg noted the stand of trees on 8th Street is a natural wall and is the same distance from the Street as the actual wall built by Walmart.

Mr. Sikora asked if the applicant is required to keep that landscaping and wondered if there had been any evaluation to see if it is effective in deterring light from shining in residents' windows or if additional landscaping would be needed.

Ms. Johnston said that could be considered during any site plan review because a car lot is a Special Use. The Planning Commission required the existing vegetation be kept as part of the Special Use approval. If it were torn out and re-done, small, immature plantings would not protect the neighbors. The Planning Commission may require more plantings when an actual site plan is proposed. She added the ZBA may attach a condition for vegetation.

She also noted there will be no curb cut on 8th Street.

Chairperson Sterenberg said the intent of the existing request is to maximize the use of the property. He felt the request was reasonable and that the redevelopment will improve the property.

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

Ms. Bell made a motion to approve the alternate approach from staff, granting a 50 foot variance/120 foot setback for West Main Street only, to provide substantial justice based on variances granted previously to other dealerships. Mr. Antosz supported the motion. The motion was approved 6 – 1, with Mr. Sterenberg dissenting.

Ms. Bell made a motion to deny the request for any setback variance along 8th Street, based on 1) substantial justice as it is not reasonable since the property abuts the R-2 residential district, and 2) it is a self-created hardship. Mr. Sikora supported the motion. The motion was denied 6 – 1, with Mr. Sterenberg dissenting.

Any Other Business

Ms. Johnston informed the Board there would be no meeting in June due to a lack of agenda items.

ZBA Member Comments

Mr. Antosz said after attending a worthwhile training session for zoning board members, he realized Oshtemo Township does not have bylaws for the Zoning Board of Appeals and suggested that the board discuss the possibility of developing them.

After a brief discussion it was agreed it would be valuable to have Ms. Johnston look into developing bylaws that outline procedures; she will do so.

Mr. Sikora confirmed that most if not all auto dealerships located in the Township have variances.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:57 p.m.

Minutes prepared:
May 30, 2019

Minutes approved:
August 27, 2019