

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD NOVEMBER 12, 2019

Agenda

ACCESSORY USE REVIEW: DAVID AND BREE BENNETT
**A REQUEST FOR PLAN REVIEW AND APPROVAL TO LOCATE A NEW
ACCESSORY BUILDING WITHIN THE FRONT YARD OF 7067 HAWTHORNE
VALLEY AVENUE. PARCEL NO. 05-10-290-070.**

ANY OTHER BUSINESS

a. DRAFT ZONING BOARD OF APPEALS BY-LAWS

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 12, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

Also present were Iris Lubbert, Planning Director, Julie Johnston, Former Planning Director, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist. Three other persons were present.

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 OCTOBER 22, 2019

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of October 22, 2019.

Hearing none, he asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of October 22, 2019 as presented. Mr. Sikora seconded the motion. The motion was approved unanimously.

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

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A REQUEST FOR PLAN REVIEW AND APPROVAL TO LOCATE A NEW
ACCESSORY BUILDING WITHIN THE FRONT YARD OF 7067 HAWTHORNE
VALLEY AVENUE. PARCEL NO. 05-10-290-070.

Ms. Johnston told the Board the applicants, David and Bree Bennett, submitted a request to the Planning Department to construct a new accessory building within the front yard of their lot. Typically, Planning Department staff review and approve accessory buildings per Zoning Ordinance requirements. However, Section 57.100 indicates that the Planning Director may refer any accessory building request to the Zoning Board of Appeals for review.

Section 57.100.B goes on to say that accessory buildings placed in the front yard require additional scrutiny through a plan review process. These types of structures within the front yard of large parcels, often within the Rural Residential District, are characteristically approved. However, when the request is within a platted subdivision or site condominium development, placement in the front yard is denied by Planning staff. Lot size and the residential character of a subdivision do not often lend themselves to accessory buildings in the front yard.

With this application, Ms. Johnston felt additional scrutiny from the Zoning Board of Appeals was needed as the size of the lot is atypical within the R-2 District. The application from the Bennetts indicates they are requesting a variance. Per Section 57.100, no variance is needed, just approval for placement of the accessory building within the front yard from either the Planning Director or the Zoning Board of Appeals, if referred.

She said Section 57.100 indicates that to ensure harmonious relationships and to minimize conflicts between adjacent uses, the Planning Director or designee, which is the Zoning Board of Appeals in this case, shall consider the proposed characteristics and uses of the building in relation to the following:

- **Size of property,**
- **Size of dwelling,**
- **Proposed placement on property,**
- **Existing land uses in area**
- **Future land uses as reflected in the Master Land Use Plan.**

She said the property in question is addressed as 7067 Hawthorne Valley Avenue within the Country Trail Homesites Subdivision, No. 2. The property is 1.75 acres and is one of three lots that gain access from the Hawthorne Valley cul-de-sac. From an aerial of the site, it appears there are two small accessory structures on the property, totaling approximately 370 square feet. According to the Township's assessing database, the existing home is 2,118 square feet.

The applicant's documents indicate the requested accessory building will be 24' x 40' in size and located approximately 30 feet from the existing single-family home on site. It will also be approximately 30 feet from the northeast property line, 62 feet from the southwest property line, and 90 feet from the right-of-way. These planned setbacks meet the requirements of Section 50.60 of the Setback Ordinance.

She noted while it will still be visible from the road, the location of the lot at the end of a cul-de-sac, which is only accessed by three households, helps to mitigate compatibility concerns. From the elevation drawings provided by the applicant, the accessory building will be residential in character, with a pitched roof, roof overhangs, and a porch. Per the applicant's narrative, the colors of the accessory building are intended to match the existing home, to the best extent possible. The siding will be vinyl like the home and the roof will be steel painted to look like architectural shingles.

Ms. Johnston explained the subject property and a significant area surrounding the site is zoned R-2: Residence District. Adjacent land uses are single-family residential. The home to the north of the subject site combined two lots and has a total of 4.46 acres and the lot to the west includes 1.86 acres. These are larger lots within the Country Trail Homesites neighborhood, with the average lot ranging from 1.0 to 1.3 acres. The Future Land Use Plan indicates this area to be planned for low-density residential. The Country Trail Homesites neighborhood and the subject lot are consistent land uses to both the Township Zoning Ordinance and Master Plan.

Ms. Johnston indicated the Board could take the following possible actions:

- Motion to approve the accessory building within the front yard. If the ZBA favors this course of action, staff recommends adding the following conditions of approval, which will be outlined below.
 1. The accessory building will be built with the vinyl siding proposed and color scheme of the main home, to the best extent possible.
 2. Corrugated steel shall not be utilized for the steel roof.
 3. Only those trees needed for clearing of the building site will be removed.
 4. The setbacks of the 90 feet from the street, 60 from southwest and 30 from northeast

- Motion to approve with an alternate approach determined at the ZBA meeting after dialogue with the applicant to the placement of the accessory building.
- Motion to deny the placement of the accessory building within the front yard.

Chairperson Sterenberg thanked Ms. Johnston for her report and asked whether Board Members had any questions for her.

Ms. Bell confirmed the roof would be in line with and maintain the residential character of the house.

Chairperson Sterenberg noted the action taken would not be to approve a variance, but rather would either approve or disapprove the request. He wondered if there had been anything similar considered previously.

Attorney Porter explained there used to be a request process for unplatted larger properties, particularly in the western portion of the Township, but so many requests were received it was decided to allow the Planning Director to evaluate and approve them. He indicated the Board should focus their determination and cite the basis of their decision based on the five criteria provided by Ms. Johnston.

Ms. Johnston reported written comment was received from a neighbor asking the Board to deny the request as it was felt it was not permitted per deed restriction. She noted the Township does not enforce private deed restrictions and that such restrictions have a 30 year window unless they are re-recorded. She did not know if such a deed restriction was still valid. She also noted the applicants had submitted a petition signed by 19 neighbors who had no issue with approval of this request.

Attorney Porter said the neighbors have weighed in; the value of the deed restriction is unknown. Though helpful information, the Board's responsibility for determination of this request should be based only on the criteria listed by Ms. Johnston. He also noted full public notice was provided for this application, including notice to all neighbors within 300 feet of the property and in the Kalamazoo Gazette.

Hearing no further comments, Chairperson Sterenberg asked whether the applicants wished to speak.

David and Bree Bennett, 7067 Hawthorn Valley Drive, addressed the Board and said they had been working with Township Staff for over a year, considering several options for placement of the proposed accessory building. The front yard site chosen avoids having the building close to the house, having to build a drive and requires the fewest number of trees to be removed. It is also flat ground which will allow them to construct the size building needed.

They carefully considered how to make the building look just like the house, including an architectural shingle roof metal, and upgrading the garage door on the

house to match the proposed door on the accessory building. They do not want to build an eyesore for the neighbors and spent a lot of time developing the plan. The building will be very well camouflaged. Neighbors who signed the petition are very supportive. In looking around they found two front yard accessory buildings, one in the neighborhood and one in the area.

In answer to a question from Ms. Smith, they said there are no neighborhood bylaws; it is not a condominium so there is no association. There is also no restrictive covenant they are aware of; none was mentioned or evident in documents when they purchased their property

Ms. Maxwell asked about the trees that would be removed and what area would need to be leveled for construction.

Mr. Bennett said the six trees are cherry, one sassafras and one maple. The building was positioned to save as many trees as possible. The area to be leveled will be the size of the building footprint with a base of eight inches.

In answer to Mr. Sikora's question about building use, Mr. Bennett said it would house a utility trailer, boat, stacked wood, etc.

Chairperson Sterenberg determined there were no members of the public who wished to address the Board and moved to Board Discussion.

Mr. Sikora said he felt the proposal met all five criteria to be considered and had no issue with approval.

Ms. Maxwell felt the setbacks were clear cut, but did not feel a barn type building would fit in with the character of a sub-division. She was concerned it would not be concealed by underbrush and felt that the six trees to be removed were quite a few.

Attorney Porter reiterated the five criteria needed to be the basis for the Board's decision. The determination must be made as to whether they find the building harmonious with the surrounding area with no negative impact.

Mr. Sikora noted the cul-de-sac has three very large parcels and felt the building would fit based on the character of the immediate area.

Ms. Bell noted the building would not be used for business activity.

Chairperson Sterenberg said he was aware of two instances on N. 10th St. where accessory buildings are located in the front yard in nonplatted areas that he felt look fine. He felt the requested building location is compatible according to criteria.

Ms. Smith felt it would be more compatible if it were near the existing garage.

Ms. Maxwell said the requested location is the most visible to the street and thought it would be better located towards the back of the lot.

Ms. Bell thought a rear location near the heavily wooded area would require the removal of more than six trees and was in agreement with Mr. Sikora. She thought housing equipment in a building rather than leaving it outside would improve the property's visual aspect and that the size of the building would be proportional. Similar land use exists in the area. The size of the lots on the cul-de-sac would provide necessary screening. She said she would approve the request based on the five criteria.

In answer to a question from Ms. Smith, Attorney Porter said that by basing their decision on the five criteria, approval of the request would not set a precedent.

Chairperson Sterenberg asked for a motion.

Mr. Sikora made a motion to approve the request as presented based on the Board's discussion and determination that its characteristics and uses meet the five criteria:

- 1) Size of property: the property is of a large size on a cul-de-sac
- 2) Size of dwelling: the dwelling is also large
- 3) Proposed placement on property/surrounding area: the proposed location is the best placement available without changes to the character of the grounds and the surrounding area and other options do not seem reasonable
- 4) Existing land uses in the area: the request matches existing land uses of the area in the sense of the lots and wooded areas
- 5) Future land uses as reflected in the Master Land Use Plan: the request matches the future land use plan as outlined in the plan.

In addition, he moved that the four conditions recommended by Staff be included in the motion. Ms. Bell seconded the motion. The motion was approved 4 – 1, with Ms. Maxwell dissenting.

Chairperson Sterenberg asked Ms. Johnston for her review of the next item.

Any Other Business

b. Draft ZBA By-Laws

Ms. Johnston said some changes to the draft by-laws were suggested at the meeting of October 22nd, noted they had been made and she was bringing them back for final review. If approved, a recommendation could be sent to the Township Board.

The group reviewed and approved the updates and requested one further change to the beginning of the first sentence of Article 5 D: Declaration of Conflict of

Interest, Any member “shall declare a conflict of interest at the beginning of the meeting and” shall abstain...conflict.

Ms. Maxwell made a motion to recommend the draft By-Laws as presented, including the agreed upon revision, to the Township Board for approval. Mr. Sikora seconded the motion. The motion was approved unanimously.

ZBA Member Comments

Ms. Johnston informed the Board the regularly scheduled meeting of November 19 would be cancelled due to no agenda items.

Since there will be no meeting before the end of the year, a phone poll will be taken of board members regarding the schedule of meeting dates for 2020, generally the fourth Tuesday except for December, which is usually held on the third Tuesday. The schedule will be approved by the Township Board at a December meeting. It will be brought to the January ZBA meeting for official sign off. If changes are needed, the ZBA may amend the calendar at that time.

Ms. Johnston said this would be her last ZBA meeting and introduced Ms. Iris Lubbert, the new Planning Director for the Township, who was welcomed by the Board.

Chairperson Sterenberg thanked Ms. Johnston for her leadership and assistance during her time as Planning Director and wished her well.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:55 p.m.

Minutes prepared:
November 13, 2019

Minutes approved:
December 17, 2019