

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD JULY 22, 2014

Agenda

PUBLIC HEARING: VARIANCE REQUEST (BOULDING) FROM THE OSHTEMO TOWNSHIP ZONING ORDINANCE TO ALLOW THE CONSTRUCTION OF A 960 SQUARE FOOT ACCESSORY STRUCTURE WITH A REAR YARD SETBACK OF 0 FEET, 21.5 FEET LESS THAN THE REQUIRED SETBACK IN SECTION 64.200 OF THE TOWNSHIP ZONING ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 9660 STADIUM DRIVE IN THE RR-RURAL RESIDENTIAL DISTRICT (PARCEL #3905-32-380-010).

SITE PLAN REVIEW (SCHLEY ARCHITECTS FOR OB-GYN DEVELOPMENT LLC) OF A PROPOSED 14,400 SQUARE FOOT MEDICAL OFFICE BUILDING ON A 4.78 ACRE PROPERTY AT 2854 SOUTH 11TH STREET IN THE C-LOCAL BUSINESS DISTRICT (WITH CONDITIONS). (PARCEL NO. 3905-25-355-070)

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, July 22, 2014, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Bob Anderson, Second Alternate
 Cheri Bell
 Lee Larson
 Millard Loy
 Neil Sikora, First Alternate
 L. Michael Smith
 James Sterenberg

MEMBER ABSENT: None

Also present were Karen High, Zoning Administrator; James Porter, Attorney; Martha Coash, Meeting Transcriptionist; and five interested persons.

Call to Order and Pledge of Allegiance

Chairperson Bell called the meeting to order and the "Pledge of Allegiance" was recited.

Public Comment on Non-Agenda Items

Chairperson Bell called for public comment on non-agenda items. Hearing none, she proceeded to the next agenda item.

Approval of the Minutes of June 12, 2014

The Chairperson asked if there were any additions, deletions or corrections to the minutes of June 12, 2014. No changes were noted. Mr. Larson made a motion to approve the minutes as presented. Mr. Smith seconded the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (BOULDING) FROM THE OSHTEMO TOWNSHIP ZONING ORDINANCE TO ALLOW THE CONSTRUCTION OF A 960 SQUARE FOOT ACCESSORY STRUCTURE WITH A REAR YARD SETBACK OF 0 FEET, 21.5 FEET LESS THAN THE REQUIRED SETBACK IN SECTION 64.200 OF THE TOWNSHIP ZONING ORDINANCE. THE SUBJECT PROPERTY IS LOCATED AT 9660 STADIUM DRIVE IN THE RR-RURAL RESIDENTIAL DISTRICT (PARCEL #3905-32-380-010).

The Chairperson said the next item on the agenda was a public hearing requesting a variance and asked Ms. High to review the application.

Ms. High said the request is for a variance from the rear yard setback requirements for an accessory structure to be constructed 0 feet from the rear property line, 21.5 feet less than required. The property is adjacent to the Amtrak railway lines and therefore the 0 foot setback would be adjacent to the railway right of way and not an adjacent, occupied parcel.

She said the property is in the RR district, located at 9660 Stadium Drive on the north side of the road west of 4th Street and immediately east of the point where the railroad tracks cross Stadium Drive. It is a 0.94 acre parcel occupied by a single family home and a variety of accessory structures both permanent and temporary. Over the past 15 years, the aerial photos demonstrate that a variety of different number and sizes of such structures have been present on the property. In 2007, it appears there was a larger accessory structure of a similar size and location as what is proposed here on the site. The applicant is proposing a 960 square foot (30 foot by 32 foot) structure to be constructed on site. It has one overhead door and would provide storage and workshop space for the applicant. The peak height proposed is 21.5 feet, and it has vinyl siding, and a shingled roof. The applicant is hoping that the proposed structure will provide a more permanent, long-term storage solution for the property similar to what was previously located at the site.

Ms. High said the setbacks for an accessory structure over 200 square feet are as follows. The front setback is the same as a primary building; on Stadium Drive, that is 120 feet from the centerline of the road. The proposed structure appears to satisfy that standard. The side and rear yard setback requirement is 10 feet or the height of the building (measured at its tallest point), whichever is greater. As stated previously, the proposed building is 21.5 feet in height. Therefore, the setback for the proposed structure is 21.5 feet from the north and east property lines.

She noted the applicant has not provided a traditional site plan associated with this request. He has indicated that he does not have a survey of the property and is hoping to avoid incurring that expense. He has contacted surveying companies regarding the project and been quoted approximately \$2000 for the job. The applicant has marked the approximate location of the accessory building on an aerial photo of the site, and that image is attached here.

Ms. High explained the accessory structure is proposed to be constructed at the north property line, which is the right of way for Amtrak railroad. It is also the location of an existing concrete slab from previous structures on the site that can be reused as a floor for the new accessory structure. It may or may not be able to be used as the foundation for the new structure, depending on Code requirements.

Ms. High went through the approval criteria for the ZBA's review and provided the following comments.

She indicated other locations for the accessory building are available on the site, although they would require extensive tree clearing, placement directly in front of the residence, or an extension of the driveway. Construction of a smaller accessory building, with a lower roof height, might reduce or eliminate the need for a variance.

She said there have been variance requests in the past for setbacks and for accessory structures, but no requests were found involving properties adjacent to a railroad. She provided a written summary of recent setback variances for accessory buildings.

She indicated several elements of the site may be considered to determine uniqueness. The site is immediately adjacent to a railroad right of way, and the property immediately adjacent to the proposed accessory structure will not be developed as a result. The site is triangular in shape, which limits the available building envelope for location of the accessory structure. Finally, there is an existing concrete pad on site.

Although the applicant did not create the shape of the parcel nor did he locate the railroad right of way in this location, he is choosing to site the accessory structure immediately adjacent to the property line. This choice is being made in order to fully utilize property adjacent to land that will not be developed or impacted by improvements on his property. He also desires to build on the existing concrete pad near the driveway.

She asked the members to consider if the fact that the property adjacent to railroad right of way makes it unique and thereby open the possibility for a variance? Or would such a variance open potential for future requests from similarly situated properties? Also, even though this does not appear to be replacing a specific structure, the applicant is proposing to use an existing concrete pad that is located on the property line. Does such reuse warrant variance?

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

In response to a question from Mr. Loy regarding square footage requirements for houses and accessory buildings, Ms. High explained that in past years, accessory building requests were handled through administrative review when certain criteria were met. One of those criteria is that if the square footage of the accessory building exceeds that of the house, there is an acknowledgment of zoning restrictions required to be signed by the owner and recorded with the deed, stating that the accessory building is for residential purposes only and can't be used for commercial purposes. She said over the past two years a number of those have come through. In this case the two structures are close in size, so the applicant may be required to go through that step.

Mr. Loy also asked about screening requirements; Ms. High indicated the ordinance does not require additional screening because of the house.

Mr. Sterenberg asked about notification to the railroad. Attorney Porter said the railroad had been noticed, but did not reply. He also asked about the property line; Ms. High indicated there is little information on the property line, that information on the structure removed would predate the relevant ordinance and the new structure may or may not be over the property line.

Mr. Sikora asked if the current concrete pad is over the property line. Ms. High said that could not be determined without a survey.

Attorney Porter said if the building is over the property line it may be a case of adverse possession but that is not the focus of the Board – they can only act on the setback variance request. As a public entity, the Board is not under obligation to ensure any structure is within property boundaries.

Chairperson Bell confirmed with Attorney Porter that a legal survey wouldn't affect the circumstances regarding a 0 foot setback.

Further questions determined the new structure would be smaller than the one that was removed and that it would not be practical to try to build a structure elsewhere on the property without encroaching on the driveway, needing to provide a new concrete pad/footings, building in front of the house, or having to remove a number of trees.

Hearing no further questions for staff, Chairperson Bell asked the applicant to speak.

Shannon Boulding, 9660 Stadium Drive, told the ZBA he was looking to replace the garage that had been in place, but torn down before he bought the property. He said he will build walls directly on the existing footings.

Chairperson Bell moved to Board deliberations.

Mr. Smith said this would be a definite improvement to the property, the 0 foot setback would not affect anything, the decision would not create a precedent, and the request was reasonable if the footprint is not expanded.

Mr. Anderson noted the railroad did not respond to notification.

In response to a question from Mr. Larson, Attorney Porter confirmed the applicant would need to go through all building requirements and suitability of the foundation for building would be determined. The variance consideration is based on drawings. He said approval of the request would not set a precedent, the property owner would be building on an existing foundation, and that this is a unique, triangular shaped property up against the railroad.

Chairperson Bell asked for public comment.

Ms. Carolyn Krill, owner of property adjoining that of Mr. Boulding's, confirmed with Mr. Boulding that one garage and one shed will remain on the property. She noted Mr. Boulding had improved the property and she supports his request for variance.

Mr. Terry Schley, 4200 S. 9th Street, noted there was some precedent for approval of the request. Dunshee Body and Frame property is also against the railroad and they have a much more substantial incursion. Although their property is zoned commercial, it is worth noting the similarities, since at that time at least, the Township considered railroad property a little differently than other adjacent property owners.

Hearing no further comments from the public, the Chairperson asked for Board comments. There were none, and the Chairperson asked for a motion.

Mr. Smith made a motion to approve the variance for a 0 foot rear yard setback, because of the unique characteristics of the property as described during earlier discussion. Mr. Loy seconded the motion. The motion was approved unanimously.

SITE PLAN REVIEW (SCHLEY ARCHITECTS FOR OB-GYN DEVELOPMENT LLC) OF A PROPOSED 14,400 SQUARE FOOT MEDICAL OFFICE BUILDING ON A 4.78 ACRE PROPERTY AT 2854 SOUTH 11TH STREET IN THE C-LOCAL BUSINESS DISTRICT (WITH CONDITIONS). (PARCEL NO. 3905-25-355-070)

Chairperson Bell said the next item on the agenda was a site plan review for a medical building at 2854 S. 11th Street and asked Ms. High to speak regarding the request.

Ms. High said the subject property is located at 2854 South 11th Street, which is on the west side of 11th Street south of Stadium Drive and just north of Crystal Lane. It is a vacant property 4.78 acres in size with 360 feet of frontage on South 11th Street. The parcel was recently created as a result of a lot split from the adjacent property and conditionally rezoned. The conditional rezoning to the C district occurred on April 22, 2014 and minutes of the Planning Commission and Township Board meetings where this was reviewed are attached.

Ms. High explained the applicants desire to build a 14,415 square foot medical office building on the site. The majority of the clinic is on the main floor with almost 3,000 square feet of basement space available for storage and other office use. Because it is in the C Commercial zoning district adjacent to residential zoning districts, the site has enhanced setbacks to the north, south, and west. The setback along these boundaries adjacent to the R-3 and R-4 districts is 85 feet. Along 11th Street, the setback is 70 feet from the right of way. The proposed development satisfies all setback requirements.

She said access to the new building will be provided from South 11th Street. Permission from the Road Commission will be required for installation of this access point. They have given preliminary approval to the proposed access point. It will be located immediately across 11th Street from the existing drive for Heritage Christian Reformed Church, which will make for safe, efficient access.

Ms. High said the plan calls for 72 parking spaces, which complies with the Ordinance requirements for a medical office use, which is 71. The size of the spaces and drive aisles conform to Ordinance requirements.

She noted that according to Zoning Ordinance requirements, a sidewalk is required along 11th Street. The proposed plan has included this facility and will be constructed at time of development.

She said a landscape plan has been provided demonstrating the landscaping proposed as part of this development. Both perimeter landscaping and parking lot landscaping are required. The plan provides the calculations for the required landscape materials along the perimeter on all four sides. The green space areas along the north, south, and west sides are enhanced due to the fact that the property is now in the C zoning district and the adjacent properties in these directions are in residential districts.

The greenspace buffer on these sides is 35 feet in width and requires substantial landscape material.

Ms. High pointed out that while there is substantial material required, there are also a substantial number of trees being preserved on the site, particularly within the bufferyard areas. Section 75.200 of the Ordinance allows for credits to be given when existing trees are preserved as part of the proposed development. The proposed plan indicates that a total of 246 trees are being preserved at a value of 322 credits. Based on the calculation of bufferyard requirements, 221 canopy, understory, and evergreen trees are required to be planted within the four bufferyard areas. Therefore, the credits from preservation of existing trees on site exceed the trees required to be planted and satisfies the intent of the bufferyard requirements.

In addition, Ms. High said Section 75.220.B of the Ordinance allows the Board to grant an exception or substitution to the landscape requirements if it seems warranted. As shown in the proposed calculations, over 300 shrubs are required in the bufferyards. A drive by the site will confirm that the existing landscaping is thick with heavy underbrush. Installation of shrubbery in the bufferyards within the existing landscaping will either kill the shrubs or cause the removal of existing material in order to accommodate the new shrubs. For these reasons, Ms. High suggested accepting this exchange. The existing undergrowth in the bufferyard areas will more than satisfy the purpose and intent of the shrubbery requirement. Extensive grading may mean some trees will not survive. Trees will be fenced during construction for protection, but if some do not survive, additional trees will be required

Ms. High told the Board a lighting plan was provided consisting of a total of six LED pole mounted lights around the perimeter of the parking lot. The light levels are maintained on the property and do not spill over onto adjacent properties or right of ways.

She noted a dumpster is shown on the plan on the north end of the parking lot. It is sited and screened in a manner that satisfies ordinance requirements.

She said both the Fire Marshall and the Township Engineer have reviewed the plans and neither had substantial comments on the proposed plans.

She said no variances are required or requested for this development.

Ms. High reviewed the standards for approval and indicated the application meets all requirements. She said the site was conditionally rezoned in April 22, 2014. The applicants have submitted a site plan that satisfies the requirements of the Zoning Ordinance, including the requirements of the conditional rezoning. The proposed medical office building is consistent with recent development along South 11th Street as well as the Master Plan for that area.

She concluded by saying if the Board is inclined to approve the request, staff recommends it do so with conditions provided in its report.

Chairperson Bell thanked Ms. High for her review, asked Board members if they had questions for Ms. High, and hearing none asked to hear from the applicant.

Chris Nelson, Schley Architects, 4200 S. 9th Street, clarified the lighting poles will be 20 feet high and will produce 91 watts.

Chairperson Bell asked about a construction timeline.

Mr. Nelson indicated after approval, and as soon as all required documents are completed, ground will be broken, likely in late summer or early fall.

There were no further questions from the Board and no public comments, so the Chairperson moved to Board Deliberations.

Mr. Sikora and Mr. Smith expressed their support for the project.

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

Mr. Loy made a motion to approve the request for site plan approval for the proposed medical office building, subject to the following six conditions:

1. A sign permit is required before any new signs are installed on site, and all signage shall conform to the requirements of the sign chapter of the Zoning Ordinance.
2. Acceptance of the landscape plan, including the use of tree credits in exchange for required bufferyard plantings and substitution of the existing plant material for the required shrubs.
3. Any proposed site lighting will need to conform to the requirements of Section 78.700 of the Township Zoning Ordinance.
4. The statement of conditions from the conditional rezoning will need to be formally prepared and recorded at the County Register of Deeds.
5. Site plan approval is subject to the approval of the Fire Department, pursuant to adopted codes.
6. Site plan approval is subject to the review and acceptance of the Township Engineer as adequate.

Mr. Larson seconded the motion. The motion was approved unanimously.

Any Other Business / ZBA Member Comments

Chairperson Bell asked if there were any other business or comments from members.

In response to a question from Mr. Sikora, Ms. High explained how staff researched similar requests that involve railroad property.

Attorney Porter noted he has worked for the Township since 1986. The railroad has always been contacted in similar situations, and has never responded.

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 3:55 p.m.

Minutes prepared:
July 24, 2014

Minutes approved:
August 26, 2014