

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A VIRTUAL MEETING HELD AUGUST 25, 2020

Agenda

VARIANCE: GILLESPIE, 798 LAUREL WOOD STREET
MELVINA GILLESPIE WAS REQUESTING A 6-FOOT REDUCTION OF THE 10-FOOT REQUIRED REAR YARD SETBACK IN ORDER TO REPLACE AN EXISTING 4'X4' DECK WITH A 12' X 24' DECK.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, August 25, 2020, called to order at approximately 3:02 p.m.

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

ABSENT: Ollie Chambers

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

One guest, applicant Melvina Gillespie, was present.

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

Chairperson asked if anyone objected to approval of the agenda. Hearing no objections, he asked for a motion.

Ms. Bell **made a motion** to approve the agenda as presented. Ms. Maxwell **seconded the motion. The motion was approved unanimously.**

APPROVAL OF THE MINUTES OF JULY 28, 2020

The Chair asked if there were any additions, deletions, or corrections to the Minutes of July 28, 2020.

Ms. Smith noted the word “look” was missing from the third line in the next to the last paragraph on the 3rd page of the Minutes.

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

Mr. Gould **made a motion** to approve the Minutes of July 28, 2020 with the correction noted by Ms. Smith. Ms. Smith **seconded the motion**. **The motion was approved unanimously.**

Chairperson Sikora moved to the next agenda item and asked Ms. Lubbert for her presentation.

VARIANCE: GILLESPIE, 798 LAUREL WOOD STREET **MELVINA GILLESPIE WAS REQUESTING A 6-FOOT REDUCTION OF THE 10-FOOT REQUIRED REAR YARD SETBACK IN ORDER TO REPLACE AN EXISTING 4'X4' DECK WITH A 12' X 24' DECK.**

Ms. Lubbert said 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 a 12' x 24' deck in place of the existing 4' x 4' deck off the back of the house.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 15-foot rear yard setback. It should be noted that in this case Buckham Highlands, the development in which the home is located, was designed and approved under a previous version of the Ordinance which required a 10-foot rear yard setback. Following standard zoning practice the setback that was originally approved with the development is followed.

798 Laurel Wood Street is on a 0.24-acre lot that is 97 feet wide by 109 feet long. The house was built 16 feet from the back-property line, leaving 6 feet of buildable area outside of the required 10-foot setback. Currently there is a 4' x 4' deck off the back of the house. The door leading to this 4' x 4' deck is the only rear exit to the home and is elevated approximately 8 feet off the ground with no stairs.

The configuration of Buckham Highlands places 798 Laurel Wood Street on the western side of the development abutting approximately 110 feet of open space, which acts as a buffer between the development and 9th Street, and is owned by Buckham Highlands Condominium Association. Lots to the north and south of this site have been developed.

She noted the applicant provided the following rationale for this variance request:

- “Strict compliance would unreasonably restrict me from ever using the back door or use the deck. The biggest concern is for the safety for me and my family as an escape route in the event such as a fire.
- This would be substantial justice to allow me the opportunity to utilize the deck for living and safety purposes as well as for resale.
- The placement of my back door prevents me from placing my deck anywhere else and it is a raised deck; therefore, I am unable to exit the house from the rear without stairs leading from the deck.
- The Allen Edwin Homes builders did not consider the setback requirements for the owners eventually building a usable deck and exit. This was not self-created by the applicant/owner.
- Relief from strict compliance will not interfere with the safety and welfare of the public or my neighbor’s safety and welfare. It will however increase the safety and welfare of my family and me by providing a usable exit in the event of an emergency. It will also add to the value and aesthetics of the home and neighborhood.”

Ms. Lubbert said 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 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: The topography around this site is fairly flat. 798 Laurel Wood is built closer to the rear property line than some of the neighboring homes leaving comparatively less space, in this case 16 feet, for a rear yard. Currently the only rear exit to the property leads to the existing elevated 4’

x 4' deck. There is approximately 110 feet of open space behind this property. There do not appear to be any unique physical limitations that prevent compliance.

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

Comment: Per building code a stairway is required to be at least 36 inches (3 feet) wide. There are 6 feet between the back of the building and the 10-foot rear yard setback. A deck, though smaller than what the applicant has requested, could be built with stairs within compliance of the code. Conformance with the code is not unnecessarily burdensome.

*Standard: Minimum Necessary for Substantial Justice
Applied to 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 a primary structure from rear yard setbacks, Planning Department staff was only able to identify one comparable case, as follows:

1. Salbenblatt, 6473 Buckham Wood Drive, 9/26/2006: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 12' x 14' all-season room in place of the existing 11'8" x 11'8" deck. The existing wooden deck, part of the original construction, protruded 4' into the 10' rear setback. The variance was requested to allow a 5'6" rear yard setback. A unique feature that was discussed was that this site's rear yard abutted 30 feet of open space owned by Buckham Highlands Condominium Association, which separated Buckham Highlands from the property to the south. In this case the neighborhood association wished to remain neutral. The Zoning Board of Appeals approved the variance request based on the following reasons: the existing deck already encroaches into the recognized setback area and was not causing problems, the 30 feet of open space in effect acts as additional setback/separation, and the request would not negatively impact surrounding properties.

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

Comment: 798 Laurel Wood Street was built close to the rear lot line. That lot line and setbacks for the property have not changed since its construction. There is room on the back of the property to build a deck with stairs within zoning regulations. The applicant's desire for a larger deck has triggered this variance request. A deck is not a required or necessary amenity.

Ms. Lubbert noted that public safety and welfare should also be a consideration. In other words, if approved, the Board should consider if the request would negatively impact public safety and welfare. She noted that this is a general criterion that should always be applied to any review, variance or not. She noted that setbacks are intended to provide a set spacing distance between different land uses for both safety and quality of life purposes. In this case, there is roughly 110 feet of open space behind this property which is permanently tied to this development. Because of the large landscaping buffer between the property in question and the property behind it, staff does not foresee a negative impact to public safety and welfare if this variance for a smaller rear yard setback is approved.

Ms. Lubbert 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

She noted 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
 - A variance was approved for a similar request in 2006. The comparable variance case is within the same development as 798 Laurel Wood Street.
 - If approved, the variance would not negatively impact public safety and welfare.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not required or a necessary amenity.
 - This variance request for this 12' x 24' deck is a self-created hardship, as a smaller deck with stairs could be built within regulation standards.
 - Conformance is not unnecessarily burdensome.
 - There does not appear to be any unique physical limitation that prevents compliance.

Ms. Lubbert noted possible motions for the Zoning Board of Appeals to consider regarding the applicant's request include:

1. Motion to approve: Based on past precedence, allowing the applicant to construct a 12' x 24' deck with a 4-foot rear yard setback.

She said if the Zoning Board of Appeals chose this motion, staff requested a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Motion to deny: the requested variance based on the findings of fact presented under 'Support of variance denial' as described above.

Chairperson Sikora thanked Ms. Lubbert for her presentation and asked whether board members had questions for her.

Ms. Bell asked her to review the property behind the home.

Ms. Lubbert said there is open space behind the home, approximately 110 feet between the rear yard and 9th Street.

Chairperson Sikora confirmed with Ms. Lubbert that a variance would apply to the entire back yard and, that if granted, the variance would stay with the property.

Hearing no further questions, he asked whether the applicant, Ms. Melvina Gillespie, wished to address the board.

Ms. Gillespie, 798 Laurel Wood, indicated she would like to be able to enjoy her back yard by having a place to sit on a deck. She said there is full vegetation along the back of the property. Her immediate neighbors on both sides are in support of her request for a variance. Kristen and Booth Allen, 700 Laurel Wood, neighbors to the right of her home, submitted a letter of support. The letter cited the value that would be added to the home and the neighborhood by adding a lovely outdoor area to the property and that the addition would not interfere with neighbors of Buckham Highlands.

Ms. Maxwell asked how long Ms. Gillespie has been in residence and whether she would remove any of the vegetation from the back yard.

Ms. Gillespie indicated she has lived in the house since it was built several years ago and noted the house was situated further back on the property than other neighboring homes. She said she would not disturb any of the vegetation within the open space.

Ms. Maxwell also asked whether the proposed deck would span the width of the house and if the deck provides the only rear exit for the home.

Ms. Gillespie said the deck width proposed is 24 feet; the width of the house is 30 feet. She indicated the only other egress from the back of the house is an elevated window.

Attorney Porter noted the windows below the deck probably qualify as egress windows.

Mr. Gould appreciated the wish for use of the deck and better egress.

Attorney Porter explained the original setback for the rear yard was 10 feet. Later ordinance revision subsequent to construction of the house changed the setback to 15 feet. The original 10 foot setback in effect at the time of construction is honored.

Hearing no further questions, Chairperson Sikora asked if there were any public comments. It was determined no members of the public were in attendance, so he closed the public hearing and moved to Board Deliberations.

Mr. Antosz said he had looked over the criteria for considerations and recognized the precedent in the decision in 2006 to grant a variance to 6473 Buckham Wood Drive, but felt the reasons for variance denial as presented by Ms. Lubbert apply in this situation. He noted that based on the various finding of facts outlined, he would not be able to support this request.

Ms. Maxwell disagreed and cited safety as a factor.

Ms. Bell said the substantial justice rationale stands out for her and that she was willing to support the variance request on that basis. She noted in the statement regarding the previous variance, that part of the reasoning was that the development's captured land would not be impacted and that it would not be detrimental to neighbors. She felt that rationale rings true in this situation as well. An additional point for substantial justice is the photo showing the placement of homes on Laurel Wood, which clearly shows the house at 798 is placed back further on the lot than the other surrounding homes. She also questioned why the builder did not install stairs from the existing deck to the ground.

Ms. Smith agreed with Ms. Bell and expressed concern about the ability to reach the ground from the small deck in case of emergency and that it would be easier to get down the stairs safely from a larger deck. She noted the neighbors would not be impacted by granting this variance, nor would the captured land.

Mr. Antosz said a stairway could be built for egress from the back door onto a larger deck without a variance.

Mr. Gould said the homeowner is unable to use the property as she'd like to – it was not in her plans when she purchased the home but now she would like to use the property a little differently. For him, substantial justice and safety are overriding issues. He wouldn't deny the request just because not every criterion can be satisfied. The specific circumstances need to be considered. He supported granting the variance.

Attorney Porter asked board members to keep in mind that if there is basis to approve a variance on one criterion that weighs more heavily in favor of approval than others, it can still be approved on rationale.

Ms. Bell said her support for approval is based on substantial justice and the reasons she provided can be sufficient for support of approval.

Chairperson Sikora said he did not feel the fire safety issue should be considered by the board. If the fire code determined what was installed originally is ok, it is not for the board to overrule. If the applicant is concerned about egress, the concern can be addressed by adding stairs to a larger deck than what is currently in place, but still within code. The 2006 variance was given under different circumstances. Egress is not valuable as an argument.

Ms. Bell said she understood the variance granted in 2006 was based on unique features – the 30 feet of open space at the back of the lot that was owned by Buckham Highlands to create a buffer. The placement of the home in the current variance request also provides a unique physical circumstance. If more is needed because the property is already encroaching, it is not comparing apples to apples. It contains an abutment that is not unattractive. The deck will extend further behind the other homes because the home in question was built further back on the property than surrounding homes.

Chairperson Sikora argued the home placement is not unique. Examples of unique physical circumstances could be a road, a ravine, or a flood zone. In this case there is nothing to prevent building a smaller deck with stairs within ordinance requirements.

Ms. Smith asked what the maximum width would be allowed for a deck built within the current ordinance in these circumstances.

Ms. Lubbert said that according to building and fire code stairs need to be a minimum of 3 feet wide. She added that there were about six feet between the back of the house and the setback that the applicant could utilize.

The Chair felt a six-foot-wide deck would be a reasonable size.

Mr. Gould confirmed with Ms. Lubbert the original setback dimensions of 10 feet will be honored.

Ms. Maxwell said there were good arguments on both sides.

Ms. Maxwell **made a motion** to grant the requested variance based on the substantial justice rationale expressed by Ms. Bell, that the development's captured land would not be impacted and that it would not be detrimental to neighbors and also based on Ms. Maxwell's comments regarding increased safety with the addition of a larger deck and stairs.

Ms. Bell also asked that the unique placement of the home on the property, closer to the captured land than other surrounding homes, also be cited as a basis for approval.

Ms. Maxwell agreed to that addition.

Ms. Smith **seconded the motion.**

The motion was passed 4 - 2 by roll call vote, with Mr. Antosz and Mr. Sikora dissenting.

Public Comment

Chairperson Sikora determined there were no members of the public present and moved to the next agenda item.

Other Updates and Business

Ms. Lubbert said public meetings will continue to be held virtually through September by order of the Governor.

She also noted that if not live today, the next board meeting will be streamed live which will be a great stride toward transparency. The Township Board moved forward to approve holding live meetings online for both the Zoning Board and the Planning Commission.

Ms. Lubbert indicated there may be a site plan request to consider in September.

Ms. Bell reported the Township Board has been and is working on next year's budget, considering it line by line for all departments, trying to come to a balance of needs with realities and invited members to attend the 6:00 p.m. virtual meeting for the next session on budget later that evening.

She also thanked board members for the great dialogue on the variance application, citing it as the most difficult decision the board has had to make in some time. She appreciated the thorough and respectful conversation. She also encouraged the new era that will allow a virtual meetings component in the move toward better government transparency and the opportunity for more participation for those who may not be able to attend in person.

Mr. Sikora agreed and said just because a decision was made in the past does not necessarily mean it was the right decision and that it was appropriate that issues should be looked at again as they arise. He appreciated the conversation board members had and felt people in the community would also appreciate that they had a thorough discussion before arriving at a decision.

Adjournment

Hearing no further comments, Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:05 p.m.

Minutes prepared:
August 26, 2020

Minutes approved:
November 17, 2020