

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DRAFT MINUTES OF A REGULAR MEETING HELD MARCH 26, 2024 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

PUBLIC HEARING –VARIANCE REQUEST: WESTCARE ASSOCIATES, LLC: Westcare Associates, LLC is requesting relief from the frontage requirements outlined in Section 50.10 of the Zoning Ordinance to allow for a reduced frontage of 120 feet at 6565 W Main Street where the Zoning Ordinance requires 200 feet for commercially-zoned parcels.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, March 26, 2024, beginning at 3:00 p.m.

MEMBERS PRESENT: Louis Williams, Chair
Rick Everett
Dusty Farmer
Fred Gould
Harry Jachym, Vice Chair
Al Smith

Also present were Colten Hutson, Zoning Administrator; Leeanna Harris, Zoning Administrator; Jim Porter, Township Attorney; and two guests.

Call to Order

Chairperson Williams called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Vice Chair Jachym **made a motion** to approve the agenda as presented. Mr. Gould seconded the motion. Vice Chair Williams called for a vote. **The motion was approved** unanimously.

The Chairperson moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of February 20, 2024

Chair Williams asked if there were any amendments needed for approval of the minutes of February 20, 2024. Hearing none, Mr. Jachym **made a motion** to approve the minutes as presented. Clerk Farmer **seconded the motion**. The Chairperson called for a vote. The **motion was approved** unanimously.

Public Hearing –Variance Request: Westcare Associates, LLC

The Chair opened the meeting for public hearing, variance request for 6565 W. Main Street.

Ms. Harris presented the variance request for 6565 W. Main Street (parcel 05-14-330-020). The applicant, Marty Hodges on behalf of Westcare Associates, is requesting a frontage variance from Section 50.10 of the Zoning Ordinance to allow for a reduced frontage of 120 feet, where the Zoning Ordinance requires 200 feet for commercially zoned parcels.

The project is largely in cooperation with Oshtemo Township to ensure the proposed road extension does not constitute a taking. The applicant's intent is to operate the southernmost portion of the property with the present nonconforming frontage with Seeco Drive until the extension of Seeco Drive can be installed, bringing the site into full compliance. This portion of the site will not require a variance since it already possesses sufficient frontage required by ordinance. 6565 W. Main Street outlined in red on the aerial map is in the NE quadrant of the Township. Presently, there are two access points with frontage to the site: 120 feet abutting Seeco Drive, and approximately 661 feet abutting W. Main Street. The entire property is approximately 18 ½ acres and is zoned C-Local Business District. There are currently two buildings on the property totaling 69,500 square feet with corresponding parking, site circulation, stormwater, etc.

Standards of Approval:

Moving to the variance request, the Michigan courts have provided the principles for dimensional variance which collectively amount to demonstrating approximate practical difficulty. Staff have analyzed the requests against these principles and offer the information in the Staff Report to the Zoning Board of Appeals.

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

Comment: The property is currently developed and meets Ordinance requirements for size and frontage from W. Main Street however, if the property were to be divided, the frontage from Seeco Drive from the southernmost area of the parcel would be 120 feet. If the property owner were to grant the Township an easement for the road improvements, then the southernmost area of the parcel would comply. Since the Township is taking initiative and is proposing easement for a public road to intersect the property, it could be argued that such is a physical circumstance.

Standard: Conformance Unnecessarily Burdensome: Are reasonable options for compliance available?

Comment: It could be argued that compliance would be unnecessarily burdensome since without the variance, the property owner would be prevented from operating the southernmost building until Seeco Drive is constructed eastward which is when the southernmost area of the parcel would regain sufficient frontage, to be conforming again. Access is presently occurring from this location from Seeco Drive to the site.

Standard: Minimum necessary for substantial justice.

Comment: In researching past Zoning Board of Appeals decisions regarding the request for relief from road frontage requirements, Planning Department Staff were unable to identify any similar cases, mainly attributable to the uniqueness of this request. In this instance, the Township is taking the initiative and is proposing an easement for road improvements to intersect the 18 ½ acre property in efforts to extend a public roadway east. The few cases Staff identified were instances where a developer initiated the request to install a public road but only in the interest of creating a residential subdivision. The Township is requesting an easement for road improvements in a location where it would burden the southernmost area of the parcel with respects to reduced frontage and although the precedence may not prove substantial justice, approving the variance would provide justice to the property owner by allowing them to continue the use of their property while the Seeco Drive extension is constructed and not allowing the construction of the road to constitute a taking.

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

Comment: It could be argued that the conditions and circumstances which resulted in the variance request were not created by the actions of the applicant. Rather, it could be argued that the need for the variance was created from the cooperative nature of the applicant with the Township in order to receive an easement for road improvements, to construct the Seeco Drive extension.

Standard: Public Safety and Welfare: Will the variance request negatively impact the health, safety, and welfare of others?

Comment: An excerpt of the Township's 2011 Master Plan, specifically the West Main sub-area plan [*visual map in presentation and full plan in the packet, page 25*]. This area of the W. Main sub-area plan is crucial to planning the extension of Seeco Drive with a proposed collector road intersection through the subject property. If the variance were approved, the proposed road would not only significantly improve the health, safety, and welfare of adjacent properties but enhance the entire community as well by providing new road networks and access. Additionally, any traffic created by the extension of Seeco Drive would be well controlled by the traffic signal at the intersection of N. 9th Street and Seeco Drive.

Possible Actions:

The motion from the Zoning Board of Appeals should include the findings of fact relevant to the requested variance. Based on Staff analysis, the following findings of fact are presented:

- Support of variance approval includes:
 - The unique physical circumstances that prevent strict compliance with the Zoning Ordinance as the Township is requesting an easement to extend Seeco Drive eastward which will ultimately bisect the applicant's property.
 - Conformance to the Ordinance is unnecessarily burdensome as the amount of property that would be required to construct the Seeco Drive extension would

render the southernmost portion of the site essentially unusable by the property owner and could constitute a taking.

- Support of variance approval also includes that the proposed road would not only significantly improve the health, safety, and welfare of adjacent properties but also enhance the entire community by providing new road networks and access, and the conditions and circumstances which result in the variance request were not created by the actions of the applicant but rather by the cooperative actions of the applicant and the Township that created the need for the variance.
- Support of variance denial includes substantial justice not being met due to there being no similar cases found due to the uniqueness of the request.

Possible Zoning Board of Appeals motions to consider include:

1. Zoning Board of Appeals approves the variance request due to the unique physical circumstance, conformance to the Ordinance is unnecessarily burdensome, there would be no negative impact to the health, safety, or welfare of the public, and the conditions or circumstances which resulted in the variance request were not self-created.
2. If the variance is approved, Staff recommend the following conditions:
 - a.) New building permits, if any, shall not be released until the Seeco Drive project design is approved and accepted by the Road Commission of Kalamazoo County and the necessary easement is granted to the Township.
 - b.) New building permits, if any, shall not be released until the land division application is submitted and approved.
3. Alternatively, the Zoning Board of Appeals can deny the variance due to substantial justice not being met since no similar cases were identified.

Ms. Harris offered to answer any questions the Board may have and stated the applicant was present.

Chairperson Williams thanked Ms. Harris for her presentation and asked for confirmation if 6565 W. Main is Westside Medical, which Ms. Harris confirmed. The Chair also asked if there were a traffic signal or if there would be further traffic signals installed at the aforementioned portion of the site. Ms. Harris deferred to Attorney Porter, or Mr. Colten Hutson, Zoning Administrator, but confirmed if variance is approved, there is a signalized intersection at Seeco Drive and N. 9th Street. Attorney Porter noted there would not be a need for additional traffic signals but be an extension of Seeco Drive as it is currently and noted that the roundabout would be installed and then Seeco Drive would simply be extended eastward.

Mr. Jachym asked if there is a timeline for this proposed road project. Attorney Porter responded as he and Mr. Hutson have had conversations with the Public Works Director and this road extension is one of the top priorities of the Township we are looking to move forward as quickly as possible. Further noted, the Township has developers looking at the land immediately east of this property and they will need a second access to fully develop.

Clerk Farmer asked for further clarification of how the construction of this road will bring it into compliance. Ms. Harris conveyed that currently it has 120 feet of frontage, so it is legally nonconforming but if/when the road extension is constructed, it will have more than the 200 feet of frontage required by ordinance. Attorney Porter specified the width is 661 feet of frontage once the road is completed; dividing the north property from the south, giving this property

owner this temporary variance where the property would then have 3 times the required frontage.

Mr. Everett stated his understanding, Seeco Drive to the west only has 120 feet of frontage, but once the road is constructed across the property, they would have the entire width of the property as frontage, which Attorney Porter affirmed.

Chairperson Williams asked if there were any other questions. Hearing none from the Board, he asked Mr. Marty Hodges of Westcare Associates, LLC to approach the lectern if he had anything to share. Mr. Hodges replied that he supports the variance as proposed and further mentioned that when he was approached with this proposal, he felt this would be a good long-term investment for Oshtemo.

The Chair stated without anything further to add, closed the public comment portion of the meeting, and asked for Board deliberation.

Mr. Smith **made a motion** to approve the variance request, due to the unique physical characteristics of this location, the conformance to the Ordinance is unnecessarily burdensome, and that there would be no negative impact to the health, safety, and welfare of the public, on the contrary, it will benefit the health, safety, and welfare of the public, and the conditions and circumstances which resulted in this request for the variance were not self-created. Mr. Smith stated he also recommends that this variance be approved with Staff recommendations, that no new building permits shall be released until Seeco Drive is approved and accepted by Kalamazoo County Road Commission and the necessary easement is given to the Township for construction of the road extension. Also, as a second condition, any building permits be held until such time that a land division application is submitted to the Township and approved. Mr. Jachym **seconded the motion**.

With a motion on the floor, the Chair called for a vote: 6 ayes, 0 nays, 0 abstentions. **Motion carried unanimously.**

Chairperson moved to the next agenda item.

Other Updates and Business

Mr. Hutson stated the new Planning Director will begin later this week, Jodi Stefforia, and that she will be a wonderful addition to this team. Clerk Farmer also communicated there is a new minute-taker and asked when this person will be attending. Mr. Hutson confirmed this person will start in-person at the next Zoning Board of Appeals meeting.

Mr. Gould asked if it were possible to obtain a printed copy of the meeting packet before the start of the meeting, due to a printer issue. Mr. Hutson assured Mr. Gould if he contacted the office, a printed packet could be prepared in advance.

Adjournment

The Chair stated there being no other business, he adjourned the meeting at 3:25 p.m.

Minutes prepared: April 1, 2024

Minutes approved: _____, 2024