

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD JUNE 28, 2016

Agenda

PARKING LOT REVIEW (PEOPLE'S CHURCH, 1758 NORTH 10TH STREET APPLICANT REQUESTED A PARKING LOT WITH MORE SPACES THAN PERMITTED BY SECTION 68.400: MINIMUM REQUIRED PARKING SPACES. PER SECTION 68.300.K, ADDITIONAL SPACES MAY BE APPROVED IF THE PARKING IS DETERMINED NECESSARY.

TABLED ITEM: VARIANCE REQUEST (SCHLEY TRUST, 4200 SOUTH 9TH STREET) FOR A VARIANCE FROM THE ZONING ORDINANCES, SPECIFICALLY SECTIONS 75.120.a AND 75.130 OF THE LANDSCAPING ORDINANCE AND SECTIONS 40.301.I.3 AND 40.301.N OF THE I-R: INDUSTRIAL DISTRICT, RESTRICTED ORDINANCE RELATED TO LANDSCAPING AND UTILITY LINES FOR THAT PORTION OF THE PROPERTY SUBJECT TO THE EASEMENT TAKEN BY MICHIGAN ELECTRIC TRANSMISSION CO., LLC. (PARCEL #3905-35-330-060)

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, June 28, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

ALL MEMBERS

WERE PRESENT:

Cheri Bell, Chair

Bob Anderson, Alternate

Nancy Culp

Millard Loy

Neil Sikora

L. Michael Smith, Alternate

James Sterenberg

Also present were Julie Johnston, Planning Director, James Porter, Attorney, Martha Coash, Meeting Transcriptionist, and four interested persons.

Call to Order and Pledge of Allegiance

Chairperson Bell 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 public comments on non-agenda items.

Approval of the Minutes of May 24, 2016

The Chairperson asked if there were any additions, deletions or corrections to the minutes of May 24, 2016. Hearing none, she asked for an approval motion.

Mr. Loy made a motion to approve minutes of May 24, 2016 as presented. Mr. Sikora supported the motion. The motion was approved unanimously.

PARKING LOT REVIEW (PEOPLE'S CHURCH, 1758 NORTH 10TH STREET APPLICANT REQUESTED A PARKING LOT WITH MORE SPACES THAN PERMITTED BY SECTION 68.400: MINIMUM REQUIRED PARKING SPACES. PER SECTION 68.300.K, ADDITIONAL SPACES MAY BE APPROVED IF THE PARKING IS DETERMINED NECESSARY.

Chairperson Bell said the next item was a request for a parking lot review from People's Church and asked Ms. Johnston to review the application.

Ms. Johnston said the application for additional parking spaces beyond what is permitted by Section 68.400 was from People's Church of Kalamazoo, 1758 North 10th Street, parcel #3905-12-355-010 in the R-2 Residential District. She noted the ZBA has the authority to grant additional parking spaces beyond the limit required by Section 68.400. In granting additional space, the parking must be determined to be necessary based on documented evidence of actual use.

She explained granting the 25 additional spaces requested by People's Church would bring the total number over the amount allowed by code to 70. She noted the site is heavily wooded with a good amount of screening from the street.

A letter from the Church indicated the additional spaces are necessary because three persons per vehicle is not customary and cars have begun parking in adjacent neighborhoods and along 10th St., which is a particular worry to the Township since it may impede public safety.

Ms. Johnston said the site has the available space for the additional parking without infringing on the extensive landscape buffered areas that surround the church. Based on these factors, staff has no concerns with allowing the additional parking and recommended approval of a parking lot with 172 spaces, 70 more than allowed by Section 68.400, with the condition that the Church complete an administrative site plan review process.

Chairperson Bell asked how the total number of spaces needed is determined for churches.

Ms. Johnston said it is based on the amount of seating in the worship area, but noted that is a little outdated as there are many other areas in the church outside the worship area, so sometimes the Township count can be a little low.

In answer to a question from Mr. Sikora, Ms. Johnston said the current drainage system was determined by the Township Engineer to be sufficient to handle the additional impervious surface.

The Reverend Rachel Lonberg, 1403 Henderson Drive, of the People's Church, told the Board the Church has a vibrant and growing congregation and that there is not enough space for them to park on Church grounds currently. There are generally about 100 children who attend Sunday School which is held simultaneously with services and they want to be sure everyone is safe. She noted they are in the process of adding another service.

In the Board Deliberation process it was the consensus of the Board that allowing the additional parking should not be a detriment given there is plenty of room to manage the storm water runoff from additional pavement.

Chairperson Bell asked for a motion on the recommendation.

Mr. Sikora made a motion to approve the application as recommended by Staff with the condition that the Church complete an administrative site plan approval process. Mr. Loy supported the motion. The motion was approved unanimously.

TABLED ITEM: VARIANCE REQUEST FROM SCHLEY TRUST, 4200 SOUTH 9TH STREET FOR A VARIANCE FROM THE ZONING ORDINANCES, SPECIFICALLY SECTIONS 75.120.a AND 75.130 OF THE LANDSCAPING ORDINANCE AND SECTIONS 40.301.I.3 AND 40.301.N OF THE I-R: INDUSTRIAL DISTRICT, RESTRICTED ORDINANCE RELATED TO LANDSCAPING AND UTILITY LINES FOR THAT PORTION OF THE PROPERTY SUBJECT TO THE EASEMENT TAKEN BY MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC., (PARCEL #3905-35-330-060).

Chairperson Bell said the next item, tabled from May 24th, was a request from Schley Trust for a variance from the Landscaping Ordinance requirements and asked Ms. Johnston to review the application.

Ms. Johnston said the Schley Trust was seeking a variance requesting relief from sections of both the I-R: Industrial District, Restricted and the Landscaping Ordinance for property located at 4200 South 9th Street for that portion of the property subject to the easement taken by Michigan Electric Transmission Company, LLC. (parcel #3905-35-330-060).

A 220-foot easement for the ITC power line traverses the property near the western boundary and then reduces to a width of approximately 100 feet along the southern property line, which leaves an approximate width for buildable area of 148 feet.

Ms. Johnston said at the May 24th meeting staff recommended denial of the variance request from *Sections 40.301.i.3* of the I-R: Industrial District, Restricted and *Sections 75.120.A* and *75.130* of the Landscaping Ordinance for the following reasons:

- No physical hardship actually relating to the land exists on the property that necessitates the need for a variance.
- *Section 75.220: Exceptions* allows the approving body to accept an alternate approach to the landscaping materials requirement.
- Previous variances reduced buffer zone size, but did not reduce the required landscaping materials defined by the Landscaping Ordinance.

She explained the item was tabled at the request of Attorney Porter, who wished to review the matter further after hearing Mr. Schley's comments at the May 24 meeting. She said Attorney Porter provided a letter to the ZBA dated June 9th, which stated the Landscaping Ordinance allows for alternate approaches to plantings and visual screenings and therefore a variance in this case is not warranted.

Attorney Porter said he took a different tack than the Planning Department did, looking at this issue from an interpretation standpoint. He thought Mr. Schley's previous presentation addressed the Ordinance in great detail. The language of the Ordinance on this point is confusing and requires interpretation.

He explained in order to grant a variance you have to be sure there is not some other means of relief. He believes there is an alternative "safety valve" in this case to accommodate some relief. The question becomes a matter of interpretation. He believes the interpretation of the applicant that plantings must be replaced as is comes down to a reading of 75.220 Subsection b as a whole. The physical hardship was created by the power company. He noted part of the problem may stem from using the term "physical hardship" rather than "practical difficulty" in the Ordinance and he believes the two terms have a different meaning. Further confusion results when language for a use variance, "unnecessary hardship," is used instead of the nonuse variance "practical difficulty."

Attorney Porter said the land owner cannot be held to the original requirements for vegetation since ITC razed the entire easement and will not allow plantings there, yet he agrees with Mr. Schley there is no basis under the current facts, based on topography and vegetation, to allow the governing body to modify the planting requirements of Section 175.130. He does believe the object of the Ordinance is to

allow reductions or substitutions to the planting requirements provided in Section 75. If this is the intent of the Zoning Ordinance, it makes a variance unnecessary.

He said he agreed with the Planning Director that the land does not have a physical hardship, but believes there is a hardship to the owner/applicant caused by METC/ITC's easement restrictions. He said he believed the Board has the authority to exercise discretion to allow alternate plantings or visual screening such as a hedge, fence or wall to ensure compliance with the spirit, purpose and intent of Section 175.130. Because of that fact, he did not believe a variance is warranted in this case.

Attorney Porter noted there are other properties who are facing similar problems and are trying to work with ITC. If agreements are worked out, revised site plans may come to the appropriate governing body for review.

Attached, as Addendum No. 1 is the June 9, 2016 Memo from Attorney Porter in its entirety, explaining his interpretation of the Ordinance as it regards the "Requested Variance from Mr. and Mrs. Schley."

There were no questions from the Board. Chairperson Bell asked if the applicant wished to speak.

Mr. Terry Schley, 7497 Watermark Drive, Allendale, MI spoke to the Board on behalf of himself and Jacqueline Schley, owners of the property at 4200 South 9th Street in Oshtemo Township. Mr. Schley read from prepared text, which is attached to these minutes as Addendum #2.

Chairperson Bell thanked Mr. Schley for his comments, acknowledged the difficulty of the situation and moved to Board Deliberations.

Attorney Porter said if someone were to submit an amended site plan to put this property into compliance with Township Ordinance he would have to address the reduction of plantings provided for in sub-section b, probably in both width and amount. His interpretation would allow the governing body, if an amended site plan were brought forward, to provide an alternate solution. They would need to look at the perimeter and see if under the reduction/substitution provision, the reviewing body could permit certain alternatives. It would need to be determined with ITC as to what could be found as a middle ground. He agreed with Mr. Schley that it is not displacement. The perimeter of the property would still need to be addressed; he felt it could be done within the parameters of the Ordinance. He didn't think he and Mr. Schley were in as much disagreement as it may appear.

He continued, saying ITC put the property owner in a terrible position, but the Township does not have the ability to change requirements because the Township did not take the property. The request from the Schleys is logical; it is a matter of interpretation. The applicant unfortunately has the burden as the property owner and

would need to provide an amended site plan. ITC could have provided relief, but they didn't.

Ms. Johnston said the southern property line met the Township's Ordinance requirements until ITC removed all of the landscaping and put it into nonconformance. It remains in noncompliance; through the site plan process it can be brought into compliance.

Mr. Smith asked what would happen if the variance were denied and no site plan amendment is presented.

Attorney Porter said at some point Ordinance enforcement might occur. The owner can't plant or grow anything to come into conformance. There may be an avenue to do it, but it is a real burden on the property owner. The situation is all the fault of ITC's activities.

Mr. Smith said if the variance is approved there would be no need for redevelopment of the site plan. If denied, the avenue is site plan development.

Ms. Johnston noted if the variance is approved it would be assigned to the property in perpetuity.

Mr. Smith said this request is potentially one of many.

Attorney Porter agreed it could be and that part of the problem is that if this variance were granted others would have to be granted.

Mr. Sikora noted that though he did not want to put Mr. Schley out, he saw that site plan amendment is something the Board may have to address.

Attorney Porter said that, unfortunately, the burden is on the applicant. The preference would be to find a mid-point, something ITC would allow, pampas grass or fencing for example. It would give the reviewing body something to look at and react to.

In response to a question from Chairperson Bell, Ms. Johnston said the buffering requirements pertain to the south and north property lines. If a variance is granted it could apply to the whole property.

Chairperson Bell said Attorney Porter's interpretation indicates a variance is not needed because of the exception provisions allowed. It is not an existing hardship. The last paragraph says alternate screening may be required. If relief is granted there still needs to be something at the boundary line. If that is provided in Ordinance then a variance is not needed.

Mr. Schley thanked the Board and asked them to be careful; that the issue is not just about buffering, but also dissimilar uses. The Ordinance asks for numerous 50 foot

tall trees and others of lesser height. He is hopeful they will think differently about that part of the request - that it is not necessarily about screening but trying to provide a different outcome - more plantings and trees to have a community of good character. This expectation could be offset somewhere else. The exception talks about reduction or substitution of plants but they must be in a green space.

Attorney Porter said he would not read the exception that narrowly. The Board has the authorization to deviate from 75.125, for example to require pampas grass rather than trees. If the solution is found in the Ordinance a variance is not needed.

Mr. Schley said the ITC easement language allowed nothing else to be planted.

Attorney Porter noted an adjoining property owner is currently working with ITC regarding a fence.

Chairperson Bell added her grandfather's property is zoned for agriculture and has been told he may plant grain crops.

Mr. Schley said it would be helpful then for some relief of the specific definition. There has to be some sort of acceptable alternative; guidance is needed on these limits. It is tough to be left holding the bag.

Chairperson Bell thanked Mr. Schley for his comments. She said the purpose of the ZBA is to grant variances as defined by the Ordinance and to share with the Planning Commission if they find they are granting or denying certain Ordinances repeatedly to give them the opportunity to look at it. They have an interpretation from the Township Attorney regarding this variance request.

Mr. Sterenberg said he agreed with the Attorney's findings, that the variance isn't necessary because of relief granted under the Ordinance. If the variance is granted, that door is closed.

In response to a question from Mr. Sikora, Ms. Johnston said she was in agreement with Attorney Porter's interpretation. Ongoing review indicates that section of code would provide some relief. It is an extremely difficult situation; the property owner is harmed. Current code is unclear and difficult to maneuver within. She noted the Planning Commission is working on the Landscaping Ordinance to try to be clearer regarding what can be relieved by the governing body and what that relief would be.

Chairperson Bell said a number of properties were brought into noncompliance by ITC and wondered if there is a difference between commercial and residential properties for this purpose.

Ms. Johnston agreed there are a number of properties affected and said only the commercial properties have specific landscaping requirements.

Mr. Smith expressed concern that property owners are held responsible for something totally out of their control and wondered if ITC plans to monitor the entire width of the property.

Ms. Johnston said ITC maintains a schedule to keep vegetation down. The easement agreement says they will cut down trees and shrubs.

Mr. Loy felt the Board had to abide by Attorney Porter's memo. It would set a dangerous precedent if they granted the variance.

Mr. Sikora hoped something could be done in conjunction with the state legislature regarding the types of things to be planted, but as a Township the Ordinance would have to be changed. He believes something needs to be done for the Schleys but that the Board has to follow the Attorney's opinion. He did not want to put Mr. Schley off again.

Ms. Johnston noted language in 75.202 that speaks a restoring pre-settlement vegetation plan in lieu of a landscape plan.

Mr. Schley said in effect owners are being asked to construct vegetation under agreements that offer no right to do so unless authorization is received from the condemning authority in the first place.

Mr. Anderson expressed his concern with the problems of the property owners affected by the ITC taking and hoped a solution can be found by the Township.

Chairperson Bell said they have tried to solve the problem and have offered one or two alternatives without granting a variance. The ZBA is here to review variance requests. An interpretation was required in this case. She does not want to wander off the ZBA charge. Review by Township Staff indicates the language of the Ordinance supports that an alternate plan on landscaping could be created.

Attorney Porter said a plan would have to come from the applicant and would need to involve ITC. He noted ITC is working with the land owners across the street from the Schley property.

Mr. Sikora said he is sensitive to the Schley's position. There is a way forward to address this issue. He would like to see a way to accommodate all affected by this situation and for the future by a change to the Ordinance. The best way forward is to follow the process.

Mr. Anderson was concerned whether resolution with ITC would satisfy the Township.

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

Mr. Sterenberg made a motion to deny the variance request for the property at 4200 S. 9th Street based on the interpretation from Mr. Porter, Township Attorney. Mr. Loy supported the motion. The motion was approved unanimously.

Any Other Business / ZBA Member Comments

Attorney Porter noted there are several other property owners in the same position as the Schleys who are talking with ITC, and if there is an open door an alternative should be sought.

Ms. Johnston added a mini-storage development across the street is working on their site plan; they are talking with ITC regarding fencing, berming and tall grasses on the berm. The results will be looked at when negotiations are completed.

Adjournment

Chairperson Bell noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, adjourned the meeting at approximately 4:45 p.m.

Minutes prepared:
June 30, 2016

Minutes approved:
July 26, 2016

ADDENDUM NO. 1 TO ZONING BOARD AUTHORITY MINUTES OF THE MEETING OF JUNE 28, 2016: MEMO FROM ATTORNEY PORTER

MEMORANDUM

To: Zoning Board of Appeals
From: James W. Porter
Date: June 9, 2016
Subject: Requested Variance from Mr. and Mrs. Schley

You may recall that Mr. and Mrs. Schley presented their request for a variance at the Zoning Board of Appeals meeting of May 24, 2016. Per my request, the ZBA tabled the request until June 28, 2016. I have had the opportunity to review the Staff Report of Ms. Johnston, as well as Mr. Schley's written reply presented at the initial hearing.

The primary issue was a matter of interpretation with regard to the Township Zoning Ordinance's landscaping provisions provided for in Section 75, and in particular, the exceptions allowed provided pursuant to Section 75.220. Therefore, we must begin with a legal analysis of how to interpret an Ordinance for purposes of application. The Michigan Courts have uniformly held that the rules of statutory construction also apply to Zoning Ordinances. *Kalinoff v Columbus Township*, 214 Mich App 7 (1995).

The primary rules for statutory construction are as follows:

- ◆ Where language used in a Zoning Ordinance is clear and unambiguous, the Ordinance must be enforced as written.
- ◆ The primary principle for proper construction of a Zoning Ordinance is to discover and give effect to the intent of the lawmakers.

- ◆ Zoning Ordinances must be construed as a whole and construed reasonably with regard to the object sought to be achieved by the general structure of the Ordinance as a whole.
- ◆ Ordinances should be read with the presumption that every word has meaning.
- ◆ Full force and effect must be given to definitions contained in an Ordinance.
- ◆ The specific provisions of an Ordinance control over the general.

Because the applicant in this case was seeking a variance, I believe an analysis of variances under Michigan law should also be considered. Michigan laws describe the power to grant a variance as a safety valve where the strict application of the Ordinance would impose a hardship to a particular property owner not shared by others. *Tiremay-Joi-Chicago Improvement Association v Chermick*, 361 Mich 211 (1960).

There are two types of variances which can be granted under Michigan Law. One is a use variance, and the other is a dimensional variance. In Oshtemo Township's case, we have never authorized, nor do we currently authorize the granting of use variances, and therefore, only the non-use variance standards need to be considered.

Non-use variances do not involve the use of the land but rather the changes in a structure's area, height, setback, etc. *Grabow v Macomb Township*, 270 Mich App 222 (2006). "Common subjects of this kind of request include front, side or rear yard setback requirements of the zoning ordinance; landscaping restrictions; lot coverage restrictions, height regulations, parking; and vehicular access regulations. . . ." *Michigan Zoning, Planning and Land Use*,

Section 7.3

The standards for granting a non-use variance require showing practical difficulties. That requires:

- “1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.”

In the case at hand, I think part of the problem may stem from the term in our Zoning Ordinance referring to “physical hardship;” it is being confused with the term “practical difficulty.” I do not believe the two are the same. The confusion is further compounded when we realize people familiar with variance requests understand that the standard for a use variance is “unnecessary hardship.”

In the present case, we need to determine whether a variance is necessary since one should not seek a variance if an alternative “safety valve” exists within the Ordinance. Let’s begin by an analysis of the present Zoning Ordinance Section 75.220, particularly the exceptions provided for under Section 75.220, Subsection B. Section 75.220B reads in pertinent part as

follows:

“B. Reductions and substitutions of Plantings – If a physical hardship exists or existing topography and vegetation are determined by the reviewing body to provide equal or better landscape and buffering effect, the reviewing body may approve modifications only to the planting requirements of Section 75.130. The reviewing body may require such alternate plantings and visual screens as hedges, fences, walls, and/or combination thereof which it deems necessary to ensure compliance with the spirit, purpose and intent of this Section.”

Let's cross the first hurdle and acknowledge that there is some ambiguity to this Ordinance requiring interpretation. If that were not the case, we would not have differences of opinion between our Planning Director and Mr. Schley. Given that, we must look at the language of the Ordinance and attempt to discover the intent of the Township in drafting Section 75.220B.

The caption says that this provision was adopted to allow for reductions and substitutions of plantings required under the Landscaping Ordinance provisions. The first sentence then goes on to say if a physical hardship exists, or existing topography and vegetation are determined by the Planning Commission to provide an equal or better buffer, they may approve modifications only to the plantings requirements of Section 75.130. There are two issues presented in this first sentence -- the first issue -- Is there a physical hardship, and the second issue -- Does existing topography and vegetation provide equal or better landscaping, allowing the Planning Commission to modify the planting requirements of Section 75.130?

I agree with Mr. Schley that there is no basis under the current facts, based on existing topography and vegetation, to allow the Planning Commission to modify the planting requirements of Section 75.130. However, I do not believe that you can dispense with the phrase, “if a physical hardship exists.” One then needs to give meaning to the phrase, “if a physical hardship exists.” I believe the only way to do that is look at the second sentence of

Subsection B which allows the Planning Commission to allow alternate plantings and visual screening such as hedges, fences, walls and/or combination thereof which it deems necessary to ensure compliance with the spirit, purpose and intent of this section. This not only gives meaning to the introductory phrase in the first sentence of Section B, but it also makes the caption for Section 75.220B relative. By doing this, we are construing the provision as a whole in order to achieve the object of the Ordinance which is to allow reductions or substitutions to the planting requirements provided in Section 75. If this is the intent of the Zoning Ordinance, then it makes a variance unnecessary. Again, I think much of the confusion turns around the whole phrase of physical hardship, practical difficulty or unnecessary hardship.

Applying the appropriate interpretation of the Ordinance does not necessarily require that there be practical difficulty, but a physical hardship, and in this case, while the land itself does not have a physical hardship, there is certainly a physical hardship as a result of the restrictions provided for by METC/ITC's easement. I agree with the Planning Director that the land does not have a physical hardship, but as I stated, I believe that there is a physical hardship to the owner/applicant caused by METC/UTC's easement restrictions.

I believe the Planning Commission has the authority to exercise its discretion to allow alternate plantings or visual screening such as a hedge, fence or wall, to ensure compliance with the spirit, purpose and intent of this Section. Because of that fact, I do not believe that a variance is warranted in this case.

ADDENDUM NO. 2 TO ZONING BOARD AUTHORITY MINUTES OF THE MEETING OF JUNE 28, 2016: COMMENTS FROM TERRY SCHLEY

We went after this variance on request of our attorney, but I also need to share I truly believed I was on good grounds about what Section 75 of Ordinance called for. Parts of Section 75 speak to buffering but I thought, apparently wrongly, those areas were postured in Ordinance to reflect, as in the purpose statement, that buffering elements of Section 75 were to address things like abutting, dissimilar land uses and to screen unattractive features, etc. I've taken that to be what the broad sections of intent were when things like berms, fences and hedges were asked for in Ordinance. So when I looked at the section of substitutions and reductions I got it wrong, apparently, that it was all just about buffering. And you could see how I went down a wrong path for the conditions of land use where the subject ITC green spaces are at, well, they aren't about buffering situations as the land uses are primarily similar abutting conditions of I-R to I-R zones, not dissimilar to land uses. Then I also was off in my assessment which I've held onto for some time about Section 75 that it also was formulated to both develop and preserve fundamental green space as a requirement of Ordinance for things such as air quality, shade, providing visual relief and adding natural color and texture, and to enhance the community's overall character. Some aspects for me of those characteristics didn't seem deliverable in a potential of hedges or fences in substitution or reduction, and I didn't think that want in Ordinance was about buffering, my error.

I think it gets tough when we start rattling off numbers about what the Ordinance says, but we're generally in agreement, Section 75.228. That language about adding landscape plantings, the Township may increase plantings, and I think about it as not talking about displacement. This is kind of fundamental to one of my points, but that section in A is talking about wanting more landscape and goes on and says it can only be in the required green space. Section 75 defines very specifically a variance where a green space must be. The exception in 75 b gives alternatives and we thought that was also about reducing plantings and substitutions, not about displacement of requirements. Attorney Porter noted the triggers hardship, or practical or whatever that discussion was. I get it and support those differences, but then it also says for existing topography and vegetation, but those triggers we thought that we read in Ordinance where it provided for equal or better landscaping buffering. An example I cite, which is one from the Planning Commission, which I may know something about, is a financial building on 11th St., a commercial site, that PC looked at that was next to a house and therefore needed a buffer, an existing thicket that the applicant committed to keep. I can't fully remember the outcome, but the PC I think judged the natural existing plantings as a pretty good buffer as a substitute to required plantings. There was some kind of problem with the width, but the thicket, the natural things, which were not specifically trees in our schedules, and the other sections of this section, were looked at as alternative substitutions judged adequate enough as existing things.

Topography and vegetation have a use if existing, in providing better or equal buffering effect to allow reduction or substitutions from requirements. My observations of how you have acted under 75.220 are not for displacement. For how could you displace something if the credit you are considering is existing in an existing place. So the only other 75.220 opportunity we thought existed to displace, required landscaping on a site was due to this physical hardship language. If so, we thought you understood that to say that Section 75.130 can be modified which is both the green space depth requirements and the planting requirements in 75 a and b. Again, technical numbers I hate them. 75.130 begins in Section a, which has language that says green space requirements stated in terms of width in the green space as measured from the

property line. So maybe it's that this Township wants to practice that 75.220 grace to modify includes the ability to move a green space under that language.

However, pretty important here, 75.125 defines green space as being at the perimeter of the site or lot. 75.220, in the exception area, doesn't allow modification of 75.125, just 75.130. So, we thought one could modify green space with, but not displace, well you could say the land could be displaced by modification only to the plants and requirements of 75.130, allowing consideration of offsetting those requirements elsewhere on the site at the Planning Commission's prerogative. Again I'm apparently wrong about 75.220 and 75.125 together. What we wrongly thought the last sentence of b should also be read in overall context giving guidance in the reviewing body's latitude. But that only may require such alternative plantings as in visual screens such as hedges, fences, walls, etc, in Section 75. We thought that was described in alternates as substitution, not displacement. So we thought 75.220 b gave license to two triggers to reduce or substitute plantings required in 75.130 but not that it was codified to be able to consider alternates or plantings to be substituted or reduce elsewhere on the site. We thought that was variance territory. Again, 75.125 has the green space required at the perimeter, we thought wasn't an exception being discussed.

I have to tell you I've made several mistakes here. And you may begin to appreciate how much this is painful to us at the Schley household. Originally the power lines split back behind the Tall Oaks Apartment Complex and only one of the lines was proposed crossing the Schley land. The other line, and you may remember this, went between Langelands Funeral Home and Flesher Field, and was actually in the Flesher Field, and crossing over to the Post Office. In a record of emails with the Township you will find I, personally, was the initiator and facilitator in a meeting held here at the Township, that with the closure of V & V Lumber they could bring the two lines together approaching the V & V owner to take down two buildings, as I knew his business was closed, and nobody had caught it. I made a mistake promoting that idea and the routing work for all that, all the engineering and front end people of ITC couldn't see with all their vast powerhouse capabilities, they didn't understand it, but I brought it forward to bring the two lines together in our Township industrial zone, preserving and protecting the park and the village area I had spent so much time participating in as a vision. My mistake was that ITC in all the negotiations saved, for all those properties of the northern line they would have to have dealt with, the line costs they saved combining those two lines, and longterm maintenance they will save by having those lines in one place, and the community benefit due to lessened impact, I thought that they would be reasonable to the impact on my land ownership. A big mistake on my part.

And here again with the actions should we follow it today as mapped likely being undertaken today, a mistake on my part in subsequently thinking this was a clear variance request that has become an interpretation, like my work combining the power lines benefitting others in outcome at the Schley's own peril. Then as I saw this thing the last time we were together, you were patient with me and the time I took, but it was when I saw this moving to interpretation what I saw was a further loss thinking nonetheless there is uniqueness of this impact on our land, unprecedented in the community's history on its land owners, could at least give clarity to the impact as ZBA was the ideal place to get Ordinance interpretations. I was hopeful then we could understand if we have to have offsetting requirements, that I don't think are quite exactly right, we could find out whether all required green space trees will be asked in future offset or a fence of length X or X height somehow to comply or a 1000' hedge which would satisfy that which we would have been helped.

I am frankly lost today understanding, but accepting, with no other choice, potentially, from what I see coming, that the requirements of ITC's impact on us and something of Landscape Ordinance, something is required, but nothing specific can be determined here, and that is falling to a future body for we simple property owners, when in fact, the ITC impact is now and present in time.

I need to say to you, in all due respect, a variance might not have been favorable to the Schleys, but it would have been clear as to what we would have had upon us. What we are left with is unsure of requirements, the only thing we hoped to clear up in all this process. Thank you.