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**NOTICE  
OSHTEMO CHARTER TOWNSHIP  
Zoning Board of Appeals**

**Tuesday,  
January 22, 2019  
3:00 p.m.**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Election of 2019 Officers – Chair and Vice Chair
5. Approval of Minutes: November 27, 2018
6. **Zoning Ordinance Interpretation: Planned Unit Development Special Exception Use**  
Build Senior Living and Byce & Associates, on behalf of Hampton Manor, request a zoning ordinance interpretation of Section 60.400: Planned Unit Development Special Exception Use ordinance, specifically Section 60.412: Allowable Land Uses, to determine if assisted living facilities would be a permitted commercial use.
7. Any Other Business
8. ZBA Member Comments
9. Adjournment

**Policy for Public Comment**  
**Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be board discussion prior to call for a motion.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment or Citizen Comment on Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 5/9/2000)  
(revised 5/14/2013)

**Policy for Public Comment**  
**6:00 p.m. "Public Comment"/Portion of Township Board Meetings**

At the commencement of the meeting, the Supervisor shall poll the members of the public who are present to determine how many persons wish to make comments. The Supervisor shall allocate maximum comment time among persons so identified based upon the total number of persons indicating their wish to make public comments, but no longer than ten (10) minutes per person. Special permission to extend the maximum comment time may be granted in advance by the Supervisor based upon the topic of discussion.

While this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 2/27/2001)  
(revised 5/14/2013)



## **Public Comment on Non-Agenda Items**

There were no comments on non-agenda items.

## **Approval of the Minutes of October 23, 2018**

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of October 23, 2018. Hearing none, he asked for a motion.

Mr. Sikora made a motion to approve the Minutes of October 23, 2018, as presented. Mr. VanderWeele supported the motion. The motion was approved unanimously.

## **PUBLIC HEARING: VARIANCE REQUEST FROM METRO LEASING, LLC METRO LEASING, LLC, ON BEHALF OF RYKSES PROPERTIES LLC, REQUESTED VARIANCES FROM SECTION 30.409.A AND SECTION 30.409.D OF THE C: LOCAL BUSINESS DISTRICT ORDINANCE TO ALLOW THE EXISTING SALES OFFICE AT 5850 STADIUM DRIVE TO FUNCTION AS THE CAR SALES OFFICE FOR THE SUBJECT PARCEL AND TO UTILIZE THE EXISTING PARKING LOT FOUND AT 5924 STADIUM DRIVE, WHICH VIOLATES THE CURRENT SETBACK ORDINANCE. THE SUBJECT PROPERTY IS ADDRESSED AS 5924 STADIUM DRIVE, PARCEL 3905-25-305-030.**

Chairperson Sterenberg moved to the next item on the agenda and asked Ms. Johnston for her report.

Ms. Johnston indicated Metro Leasing, LLC, located at 5850 Stadium Drive, was interested in purchasing the Rykse's restaurant property to expand their automotive sales lot. The subject property is located to the west of the existing automotive sales business, across Quail Run Drive, at 5924 Stadium Drive. She noted the area to the north is zoned R-4.

She noted car sales lots are a special exception use under Section 30.409 of the C: Local Business District ordinance, which will also require Planning Commission approval. The applicant's hope is to demolish the existing restaurant building and utilize the extent of the current parking lot for their sales lot, requiring needed relief from Section 30.409, which states the following:

***Section 30.409:*** *New and/or used car sales lots; recreational vehicle sales lots; mobile home sales lots outside of mobile home parks; farm machinery and other equipment sales lots; boat sales lots; and other businesses involving substantial outdoor sales or activities connected with retail sales, subject to the conditions and limitations:*

- 
- a. *No such outdoor sales or activities in connection therewith shall be conducted upon premises which do not contain a sales office in a building.*

- d. *All operations and business activities, including the parking or display of sales items and equipment and outdoor sales and display area enclosures, shall comply with the setback requirements for buildings and structures contained in the Ordinance.*

She explained the two variances requested:

Variance request #1: The applicant would like to utilize the existing sales office located at 5850 Stadium Drive, which is across Quail Run Drive to the east, to meet the Ordinance requirement outlined in Section 30.409.a.

Variance request #2: Per Section 30.409.d, the sale and display of cars must meet the same setback requirements as any building or structure onsite. This would require the following setbacks per Sections 64.100, 64.300, and 64.700 of the Setback Ordinance:

- 120 feet from the centerline of Stadium Drive
- 70 feet from the right-of-way of Quail Run Drive
- 85 feet from the rear property line and the adjacent R-4 property, which is a supplemental setback between residentially and commercially zoned properties
- 20 feet from the west property line adjacent to the Consumers Energy parcel, which is also zoned C: Local Business District

Ms. Johnston explained the applicant would like to utilize the existing pavement found at the site for the display of vehicles, which has the following setbacks:

- 83 feet from the centerline of Stadium Drive, requiring a 37-foot variance
- 11 feet from the right-of-way of Quail Run Drive, requiring a 59-foot variance (The applicant's statement indicates the parking lot is approximately 26 feet from the edge of Quail Run Drive. From staff's review of aerial photography, this dimension appears to be from the Quail Run Drive pavement, not the right-of-way or property boundary. The applicant cannot utilize linear feet within the right-of-way towards required setbacks.)
- 9 feet from the rear (north) property line, requiring a 76-foot variance
- 15 feet from the side (west) property line, requiring a 5-foot variance

Ms. Johnston said Staff has analyzed the request against the Standards of Approval established by Michigan courts and offered the following information:

Standards of Approval of a Nonuse Variance (practical difficulty):

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

*Comment:* There are no unique physical conditions to the land hindering development of this parcel like steep slopes, unusual lot shape, water

features, or unstable soils, that would justify a variance. However, there are two circumstances related to this property that warrant consideration. The first is the property is a corner parcel requiring additional front yard setbacks, which is particularly difficult for this request because the display of vehicles for sale must also meet these setbacks. While not necessarily unique, corner lots do carry an extra setback burden having two front yards. The designated highway setback from Stadium Drive would require the placement of vehicles to be a minimum of 120 feet from the centerline of the road. This would locate the setback approximately 56 feet from the property boundary, or 86 feet from the pavement of Stadium Drive. Meeting this setback would eliminate the front row of parking currently existing on site. The setback from Quail Run Drive is 70 feet from the right-of-way. This would remove the entire parking area along the east side of the existing restaurant building. Please see the Setback Area Map provided with this report.

The second item to consider is the existing configuration of the asphalt lot, which currently allows vehicular travel and parking in areas that would not be permitted if the site was built today due the landscape setback requirements. If a new business was to utilize the existing building on site, staff would not require any changes to the existing parking lot configuration. Section 62.152 of the Nonconforming Ordinance indicates that uses of land, existing and lawful at the time the use commenced, may be continued, even though such use does not conform to the provisions of the ordinance.

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

**Comment:** The matter of a vehicular sales lot expansion is discretionary, and reasonable use of the property in general does exist for other commercial ventures, even if the variance requests are denied. Parking lots for other commercial uses would not be required to meet the building setback standards, only the landscape ordinance requirements. That being said, utilizing this site for a car sales lot within the confines of the ordinance would be difficult. After setbacks are met, approximately 25,000 square feet or 29 percent of the 2.0-acre (87,120 square feet) parcel is available for the display of vehicles. This significant reduction in allowable space is unnecessarily burdensome.

With regard to the elimination of the sales building, Section 30.409.a. states that the sales office must be on the same “premises” as the sales lot. Section 11:000: Definitions does not provide a definition for “premises.” Staff has interpreted “premises” outlined in Section 30.409.a to mean the sales office must be on the same parcel in which the outdoor

sales activity takes place. Unfortunately, because of the Quail Run Drive right-of-way, the applicant is not able to adjoin the subject property with their current business at 5850 Stadium Drive, necessitating the variance request. Requiring a sales office at the subject property could be considered unnecessarily burdensome to this particular applicant because of the existing sales office at the neighboring property. If the subject property was not to become part of the larger existing car sales operation, then requiring the sales office would be necessary to ensure a lasting and functional business.

The applicant has provided an alternate definition for “premises” from the Township’s General Ordinance, Section 126.000: Medical Marihuana Operations Ordinance, as follows:

*“**Facility** or Premises means one (1) commercial business premises having a separate or independent postal address...”*

While a legitimate definition within the General Ordinance, the variance request is for the requirement within the Zoning Ordinance, which staff believes is clearly intended to require sales offices and sales lots on the same parcel.

*Standard: Minimum Necessary for Substantial Justice  
Applied to both 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 setbacks for the display of cars for sale, staff investigated car dealerships within the Township – Halli’s Auto, Maple Hill Auto Group, Metro Toyota, and DeNooyer Chevrolet. All four dealerships sought and were granted variances from the setback requirement for the sales display area.

In addition to the car dealerships, the Zoning Board of Appeals granted a variance in September of 2000 to Steensma Lawn and Power Equipment at 7561 Stadium Drive to allow the display of merchandise at the right-of-way line.

Certainly, past precedence has been set to allow some flexibility for the display of merchandise for sale. However, for the current application staff questions if the request is the minimum necessary for substantial justice considering the landscape setbacks also required. Providing the landscape setbacks would offer some consistency along Quail Run Drive and provide an opportunity for better screening between the requested site and the R-4 zoned property to the north.

No past precedent could be found for the variance request to not have a sales office on the subject parcel. However, considering the subject property will be incorporated into the larger Metro Toyota business, substantial justice is achieved as a sales office building currently exists.

*Standard: Self-Created Hardship*

*Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?*

**Comment:** The request to allow the existing sales office at 5850 Stadium Drive to function as the sales office for this parcel is technically created by the applicant. However, expansion of the business can only happen to the west of their current parcel, unless Metro Toyota intends to move from this location entirely. With that said, the true hardship is the right-of-way of Quail Run Drive. If the parcels had been legally described to the centerline of road instead of the right-of-way line, the parcels could have been combined and the variance for the sales office would not be needed. Unfortunately, this is not the case and therefore the ordinance language related to “premises” prevails.

In the case of the setback variances, the applicant is requesting to use the existing parking lot area, which was not self-created.

Ms. Johnston noted in addition to the above principles, the Zoning Enabling Act of Michigan states that when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” To help ensure these standards are met for both the applicant and adjacent property owners, the Zoning Board of Appeals may want to consider conditioning any variances granted on meeting the landscaping requirements of Section 75.000 of the Zoning Ordinance. This suggestion is more thoroughly described in the Alternatives section below.

In addition, any consideration for the variance related to the sales office should be closely tied to the existing Metro Toyota business. Granting a variance to the subject parcel eliminating the requirement for a sales office could open up the parcel for future outdoor display sales without a sales building if Metro Toyota ever decides to sell the property. Any considered approval should instead state that the variance is to allow the existing sales office at 5850 Stadium Drive to function as the sales building for the subject parcel. That way, if the parcel ever sells and a new outdoor display use moves in, a sales building would still be required.

Ms. Johnston said the Zoning Board of Appeals might wish to consider an alternative to the requested setback variances. Currently, the applicant is requesting variances be granted so the existing parking lot can continue in its current configuration. However, it is likely that some redevelopment will happen on the site. If the variance to remove the sales office/building is permitted, then the existing restaurant structure will be demolished. If that variance request is denied, the applicant will likely demolish a

portion of the building to allow more space for the outdoor sale of cars. With these inevitable changes to the site, additional alterations could be considered.

She explained that as some yards within the site do not meet current landscaping setback requirements, an alternative to the requested setback variance would be to grant relief to the current requirements for landscaping. This would equate to the following setbacks and variances:

- 20-foot setback from the right-of-way line of Stadium Drive, approximately an 85-foot variance
- 20-foot setback from the right-of-way of Quail Run Drive, a 50-foot variance
- 35-foot setback from the rear (north) property line, a 50-foot variance
- 10-foot setback from the side (west) property line, no variance needed

In addition, the Zoning Board of Appeals could condition the variance to also require the landscape materials outlined in Section 75.130. This would be particularly important to the residentially zoned property to the north. Providing the necessary 35-foot greenspace with the required canopy, understory, and evergreen trees would help to screen the new sales lot use. As the requested use also requires special exception use approval, the Planning Commission would likely require landscaping compliance. Conditioning it as part of any variance consideration would provide surety to the residential neighbors to the north.

Ms. Johnston noted the Board may 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

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the findings of fact are:

Variance request #1: Elimination of a sales office building at 5924 Stadium Drive

Support of variance approval:

- Conformance to the ordinance is unnecessarily burdensome and substantial justice is achieved as a sales office exists for the entirety of the automotive sales business.

Support of variance denial:

- Reasonable use of the property still exists under the C: Local Business District for any other allowable use.

Variance request #2: Setback variance to allow the use of the existing asphalt

Support of variance approval:

- The physical condition of a corner property places an extra burden on the parcel to meet front yard setback requirements.

- Significant precedence has been set allowing encroachment into the required setbacks, especially along rights-of-way.
- The requested setback variances are not the minimum which could still provide substantial justice to both applicant and neighboring residential uses.

Support of variance denial:

- Reasonable use of the property still exists under the C: Local Business District for any other allowable use.

Ms. Johnston listed the following four possible motions for the Zoning Board of Appeals to consider:

1. Applicant Request

Based on the findings of fact, motion to approve to allow the sales office at 5850 Stadium Drive to function as the sales office for 5924 Stadium Drive and to allow the following outdoor sales display setbacks:

- 76 feet from the center of Stadium Drive
- 11 feet from the right-of-way of Quail Run Drive
- 9 feet from the rear (north) property line
- 15 feet from the side (west) property line

2. Alternate Approach

Based on the findings of fact, motion to approve to allow the sales office at 5850 Stadium Drive to function as the sales office for 5924 Stadium Drive and to allow the following outdoor sales display setbacks with the required landscaping outlined in Section 75.130 of the Landscape Ordinance:

- 20-foot setback from the right-of-way line of Stadium Drive
- 20-foot setback from the right-of-way of Quail Run Drive
- 35-foot setback from the rear (north) property line
- 10-foot setback from the side (west) property line

3. Motion to deny the requested variances because reasonable use of the property is possible under the C: Local Business District for any other allowable use.
4. A combination motion that would approve one and deny the other variance request, utilizing the findings of fact and the possible motions outlined above.

Attorney Porter noted the Board should develop a motion after determining the findings of fact.

Chairperson Sterenberg asked if Board Members had questions for Ms. Johnston.

In response to questions from the Chair, Ms. Johnston said the variance granted to the existing DeNooyer Chevrolet site is to allow car display up to the right-of-way on Stadium Drive. She noted the request had been noticed and the only response

received was from one neighbor who asked for written information, which was provided. No further response was received.

Mr. Sikora asked if in the future someone bought both the 5850 and 5924 Stadium properties they could still use the sales office for both.

Ms. Johnston said technically that would be allowed; Attorney Porter explained only new and used car lots would be allowed the sales office under a subsection of the Ordinance.

There were no further questions from Board Members; Chairperson Sterenberg asked whether the applicant wished to speak.

Mr. Matthew VanDyke, Miller Johnson, 100 W. Michigan Avenue, representing the applicant, complimented Ms. Johnston on her presentation and development of the information for the Board to consider, noting not every municipality provides comparable assistance. He noted if the properties abutted without the Quail Run right of way, there wouldn't be a question. He felt their request is consistent and appropriate, they are not asking for a change from what is there. He expressed concern with the suggested alternative that would increase the rear yard setback.

Mr. Jeff DeNooyer, 1426 Edgemoor, owner of Metro Toyota, said his company sees their future growth area in used cars. They considered putting up a new office but determined it would be a burden for customers and for paperwork completion. He said he wants to continue to grow his business in Oshtemo Township, that this is a wonderful opportunity, and the increase in frontage is needed.

In answer to a question from Ms. Smith as to whether they had considered a smaller annex building for basic paperwork, Mr. DeNooyer said he did not know how they would use such a facility; customers will be better served with the existing building which has enough capacity for the expansion. What is needed is more display space for cars.

Chairperson Sterenberg asked if there were comments from the public.

Ms. Dusty Farmer, resident of Quail Run and member of the Home Owners Association (HOA), said she received feedback that not every home owner was noticed since they were not within 300 feet of the proposed development. She noted there are 48 units, all co-owners even though they may not live within the 300 feet requirement for notice. Notification was sent to the HOA President who shared it at a HOA meeting. Residents are concerned about an increase in lighting and noise, especially from unloading which is already a concern with the current lot. She said she expects concerns will likely be expressed at the Planning Commission level.

There were no further comments; Chairperson Sterenberg closed the public hearing and moved to Board Deliberations.

The Chair, after confirmation from Attorney Porter, said the legal obligation for notice was met and reiterated discussion should focus first on findings of fact and then on particulars of a possible motion.

Attorney Porter indicated that although the legal obligation for public notice was met, in the future the HOA will be noticed.

In response to a question from Mr. Sikora, Ms. Johnston said if the variances are granted by the ZBA, a Planning Commission public hearing will be required to consider the outdoor display of cars, which is a special exception use.

The Chairperson asked if required landscaping could be tweaked by the Planning Commission to try to address residents' concerns.

Ms. Johnston said the PC tries to bring properties into compliance as much as they can, but non-conforming lots are legal if they stay as they are. The existing nine feet of green space is not enough to accommodate required landscape materials. The alternate approach to the possible variance, meeting the required landscape setback of 35-feet, is necessary in order to add the required landscaping at the north property line.

Attorney Porter said the Planning Commission will have latitude to help the neighbors with screening if the north setback is increased as a condition of variance.

Mr. VanDyke commented the request was for nine feet on the north property line, agreed the ZBA has discretion, but felt 20 feet would be plenty for landscaping.

Attorney Porter told the Board they could draw the line where they saw fit as a result of their findings.

Ms. Johnston explained the landscape ordinance requirement of 35 feet between commercial and residential properties is greater to accommodate the number of required plantings, which is evergreens, canopy trees, understory trees and shrubs. A wide space is needed; 20 feet would not be sufficient. She noted there is already a six foot fence along that property line, which is the maximum height allowed by ordinance.

Several Board Members expressed support for a 35 foot set back from the north property line in order to provide screening for residents.

Mr. Sikora had safety concerns regarding street crossing to the sales office, but considering the variables, felt the best way to address the sales office is as proposed.

Chairperson Sterenberg agreed, noting the new sales area would be mostly for car display and there would not be a lot of travel back and forth across the street.

Hearing no further discussion, the Chair asked for a motion.

Mr. Sikora said his motion was based on the following findings of fact:

- Conformance to the ordinance is unnecessarily burdensome and substantial justice is achieved as a sales office exists for the entirety of the automotive sales business.
- The physical condition of a corner property places an extra burden on the parcel to meet front yard setback requirements.
- Significant precedence has been set allowing encroachment into the required setbacks, especially along rights-of-way.

Mr. Sikora moved and Mr. VanderWeele supported the motion to approve that the sales office at 5850 Stadium Drive function as the sales office for 5924 Stadium Drive and to allow the following outdoor sales display setbacks, which are the minimum necessary to ensure substantial justice to both the applicant and neighboring residential uses:

- 20-foot setback from the right-of-way line of Stadium Drive
- 20-foot setback from the right-of-way of Quail Run Drive
- 35-foot setback from the rear (north) property line
- 10-foot setback from the side (west) property line

The motion also included the condition that the required landscaping materials outlined in Section 75.130 of the Landscape Ordinance be installed within these required setbacks. The motion carried unanimously.

**SITE PLAN REVIEW: D & R SPORTS: D & R SPORTS REQUESTED SITE PLAN APPROVAL FOR AN EXPANSION TO THEIR EXISTING RETAIL FACILITY LOCATED AT 8178 WEST MAIN STREET, PARCEL NUMBER 3905-16-280-012.**

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

Ms. Johnston said the subject parcel consists of 15-acres, located on the north side of West Main Street, approximately 900 feet west of North 6<sup>th</sup> Street. The location of a large outdoor recreation retail operation for a number of years, the owner wanted to add an additional 9,000 square feet of store space to the west end of the existing main building near West Main Street. Zoned *C: Local Business District*, the proposed retail expansion is permitted by right, per section 30.200 of the Zoning Ordinance, which governs such uses in the C zoning district.

She said Staff reviewed the project site plan and determined that along with the general use, the dimensions, placement, and overall design of the addition are largely in compliance with the applicable standards of the Zoning Ordinance. However, the new parking area south and west of the expansion does not contain the necessary interior landscaping features; an amended site plan will be required. The proposed project site plan contains a surplus of 14 to 18 parking spaces, eight of which can be converted into landscape features without causing ordinance compliance issues. This approach would remedy any interior landscaping deficiencies without impacting the proposed site layout.

Staff also noted the project site plan does not include the necessary 20-foot-wide landscape buffer between the new paving area and the West Main Street right-of-way. Elimination of the new parking spaces in this area will resolve the balance of the parking spaces count overage as well as provide the required landscape buffer area.

The proposed photometric plan also needs revision as light levels in excess of 0.1 foot-candles are indicated at and beyond the subject parcel's south boundary.

Ms. Johnston recommended approval of the project site plan with the following conditions, resolution of which to be administratively reviewed and approved prior to the issuance of a building permit:

1. The recently-installed on-site fire hydrant shall be dedicated to the Township as a public facility, via recorded easement.
2. In order to satisfy internal parking lot landscape requirements, eight spaces within the new parking area shall be converted to landscaped peninsulas, in accordance with the Zoning Ordinance. A revised site plan illustrating such shall be submitted for staff approval.
3. In order to provide the necessary landscape buffer along West Main Street and resolve the remainder of the parking space surplus, the seven new parking stalls currently indicated adjacent to West Main Street shall be eliminated. A revised site plan illustrating such shall be submitted for staff approval.
4. The Township Engineer shall be satisfied that no revised notation or adjustments are needed for the site plan.
5. A revised photometric plan shall be submitted to the Township, indicating that light levels from any new fixtures do not exceed 0.1 foot-candles at or beyond any property line.

Chairperson Sterenberg asked if there were question for Ms. Johnston.

In answer to questions, Ms. Johnston indicated she did not know why D&R wanted extra parking spaces; they are not needed by Ordinance. The Township

determines needed spaces on net retail square feet and the D&R plan calculated them based on gross retail space.

There was no public input; the Chair moved to Board Discussion.

Mr. Sikora noted that people park along M-43 when D&R has special events.

Ms. Johnston said the Township cannot force D&R to prohibit parking along M-43 as it is a state highway and not under Township jurisdiction.

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

Mr. VanderWeele made a motion to approve the site plan as requested by D&R, including the five conditions suggested by Staff. Ms. Culp supported the motion. The motion was approved unanimously.

**Any Other Business**

**a. MEETING DATES FOR 2019**

Ms. Johnston provided proposed meeting dates in the regular pattern for 2019. She noted Thanksgiving falls on Thursday, November 28<sup>th</sup> in 2019 and asked if the Board prefers to meet Tuesday, November 26 or move the date up a week to the 19<sup>th</sup>.

The group agreed they prefer the November meeting be scheduled for the 19<sup>th</sup>.

<b><i>Month</i></b>	<b><i>Meeting Date</i></b>
January	22 <sup>nd</sup>
February	26 <sup>th</sup>
March	26 <sup>th</sup>
April	23 <sup>rd</sup>
May	28 <sup>th</sup>
June	25 <sup>th</sup>
July	23 <sup>rd</sup>
August	27 <sup>th</sup>
September	24 <sup>th</sup>
October	22 <sup>nd</sup>

November	19 <sup>th</sup> *
December	17 <sup>th</sup> *

\*Changed from normal meeting date due to holiday

**JOINT MEETINGS (tentative – still to be approved by Township Board)**

April 16<sup>th</sup>, October 15<sup>th</sup>

Ms. Culp made a motion to approve the ZBA 2019 Meeting Dates as proposed, with the November meeting on the 19<sup>th</sup>. Mr. Sikora supported the motion. The motion was approved unanimously.

**b. ACKNOWLEDGEMENT OF BOARD MEMBER END OF TERM**

Chairperson Sterenberg and the Board acknowledged that Mr. Anderson was leaving the Zoning Board of Appeals after serving since January of 2012. He said the Board had benefitted over the years from his insight and experience and noted Mr. Anderson would receive a certificate of appreciation for his seven years of service.

**ZBA Member Comments**

Ms. Johnston reported Mr. Fred Antosz, who has completed his term on the Planning Commission, will be joining the ZBA in January as a sixth member. One more member is still needed.

**Adjournment**

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at 4:20 p.m.

Minutes prepared:  
November 29, 2018

Minutes approved:  
\_\_\_\_\_, 2018

January 14, 2019



**To:** Zoning Board of Appeals

**From:** Julie Johnston, AICP  
Planning Director

**Mtg Date:** January 22, 2019

**Applicant:** Building Senior Living and Byce & Associates

**Owner:** Seeco II, LLC

**Property:** Northeast corner of 9<sup>th</sup> Street and Lexy Lane – Sky King Meadows PUD  
Parcel No. 3905-14-385-070

**Zoning:** Planned Unit Development Special Exception Use, Section 60.400

**Request:** Zoning Ordinance interpretation related to assisted living facilities in PUDs

**APPLICATION OVERVIEW**

Building Senior Living and Byce & Associates, on behalf of Hampton Manor, would like to develop an assisted living facility within the Sky King Meadows Planned Unit Development (PUD). The property is located at the northeast corner of North 9<sup>th</sup> Street and Lexy Lane, approximately one-half mile south of the 9<sup>th</sup> Street/West Main Street intersection. The specific parcel in question was planned as part of the commercial component of the PUD.

In reviewing the Planned Unit Development Special Exception Use Ordinance, Section 60.412 indicates the following:

*Planned unit developments are restricted to one or more of the following uses regardless of the zoning classification in which the development is located, provided such land uses are consistent with the goals and objectives of the Township Master Plan including the Sub-Area Plans:*

- A. *One-family, two-family, three- or four-family, and multiple-family dwellings, including uses and buildings accessory thereto.*
  
- B. *Low intensity nonresidential uses such as educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto. Non-residential uses shall be compatible in design, layout, scale and appearance with the residential character of the area, and shall be an integral part of a residential development logically oriented to and coordinated with the planned unit development to serve the day-to-day needs of residents in the development.*

After staff review of this language, the applicant was informed that the proposed use did not meet the specific requirements of Section 60.412.B, which details the types of commercial uses permitted within the PUD. While similar to the envisioned uses, staff did not feel an assisted living facility could be defined as educational, cultural, recreational, neighborhood office, or neighborhood commercial.

The applicant is still very interested in the available parcel, so staff outlined some possible steps to achieve their goal of an assisted living facility at this location. One option was to request a zoning ordinance interpretation to evaluate staff's assertion that assisted living facilities are not a permitted use within the PUD. Per the documents provided by the applicant, they believe their use meets the ordinance requirements and is neighborhood commercial in nature.

### **INTERPRETATION CONSIDERATIONS**

After careful review of the zoning districts within the Township, assisted living facilities can be clearly found in the R-4: Residence District and the C: Local Business District. The R-4 District under Section 24.203 permits nursing, handicapped, convalescent, and senior citizen homes by right. The C: Local Business District under Section 30.405 allows nursing, convalescent, handicapped and senior citizen homes as a special exception use. An argument could also be made for these types of facilities within the VC: Village Commercial District. Section 33.310 allows a mix of residential and nonresidential uses within the same building as a special exception use and Section 33.255 allows professional services within the District.

The PUD ordinance indicates that low intensity nonresidential uses should be permitted within the commercial component of a PUD. It goes on to specify that such uses should include educational, cultural, recreational, neighborhood office, or neighborhood commercial that meet the day-to-day needs of the residents in the development. Unfortunately, neither the PUD ordinance or the Definition section of the Zoning Ordinance define what constitutes "neighborhood" commercial or office uses. The Planner's Dictionary, a publication from the American Planning Association, defines neighborhood retail establishments as "*establishments primarily engaged in the provision of frequently or recurrently needed goods for household consumption...*" The requested use of an assisted living facility would not fit this definition or the PUD ordinance requirement of meeting the day-to-day needs of the residents.

In addition, the Zoning Ordinance does not distinguish between neighborhood, local, and general commercial uses. Without clear direction within the Zoning Ordinance for these often-utilized zoning categories, it becomes difficult to differentiate which commercial uses may be considered "neighborhood commercial." However, as the Township has identified senior living centers as a commercial use in the C: Local Business District, allowing them within the commercial component of a PUD does not seem incongruous.

The PUD ordinance also indicates that uses should be consistent with the goals and objectives of the Township Master Plan, which does provide a distinction between neighborhood, local, and general commercial districts. The neighborhood commercial district was specifically established to provide day-to-day convenience needs for residents who live in the rural areas of the Township. Therefore, staff does not feel it correlates to the intent of the PUD ordinance. However, the local commercial district within the Master Plan could be examined as a comparison. The Local Commercial District states the following:

*The purpose of the Local Commercial designation is to provide low volume commercial businesses that mix well with a variety of land uses including residential, industrial, and general commercial. These uses are not high-volume / high-traffic uses with a significant number of cars coming and going, drive-through service, and/or automobile service. (These elements or characteristics can detract from the residential character or pedestrian orientation of the surrounding area and are therefore not present in the Local Commercial designation). Examples of uses that could be found in a Local Commercial designation include professional offices, unique shops such as antique shops and specialty food shops, and generally low volume enterprises that do not operate 24 hours a day.*

Certainly, an assisted living facility would be a low volume commercial business. According to the Institute of Transportation Engineers Common Trip Generation Rates table, an assisted living facility generates 0.22 trips per unit at peak hours. For a 60-unit building, this would equate to approximately 13 vehicle trips. A specialty food or retail store could generate anywhere from 34 trips to 62 trips during peak hours.

The difficulty with the component of the PUD ordinance related to nonresidential uses is the somewhat inconsistent language between “low intensity nonresidential uses” and meeting the “day-to-day needs” of the development residents. From a commercial perspective, the uses that would meet the day-to-day needs of area residents are often the uses that generate the most traffic and typically have ancillary functions like truck deliveries, extended hours, etc., which may have compatibility issues with the neighboring residential development. The Master Plan Local Commercial District considers this by indicating uses should not be high-volume/high-traffic. The language of “day-to-day needs” limits the nonresidential uses which would likely be considered permissible.

It is important to note that the PUD ordinance changed in 2014 to include “to serve the day-to-day needs of residents in the development.” Prior to that change, uses like the Hannapel kitchen and bath design studio, which is located within the Sky King Meadows PUD at 370 North 9<sup>th</sup> Street, were permitted uses. Staff does not believe Hannapel would be allowed under the current PUD ordinance language. A kitchen and bath design studio is a professional service a homeowner may access infrequently during the course of their homeownership.

While possibly not serving the day-to-day needs of the neighboring residents, an argument could be made that both Hannapel and the proposed assisted living facility do serve area residents. If homeowners within the Sky King Meadow PUD have home improvement needs, the design studio is within walking distance, meeting a need of the resident. If a homeowner of Sky King Meadows either has a family member in need of assisted living services, or they themselves now need this service, they can visit family or move to this proposed facility without requiring them to leave their neighborhood.

## **FINDINGS SUMMARY**

The following is a summary of the interpretation arguments which could influence the Board’s deliberations:

- A senior living facility does not meet the commercial day-to-day needs of the PUD residents, as required by Section 60.412.B.

- Senior living facilities have been deemed a commercial use within the C: Local Business District and therefore are similar to other possible uses allowed within the commercial component of the PUD Ordinance (Section 60.412.B).
- While not meeting the day-to-day needs of the residents of the PUD, a senior living facility does meet a need in both the local neighborhood and general Oshtemo community.
- The PUD Ordinance indicates any use must meet the intent of the Township’s Master Plan. A senior living facility does meet the intent of the Local Commercial District outlined in the Future Land Use Plan.
- A senior living facility is a low intensity nonresidential use generating limited traffic during peak hours.

### **POSSIBLE ACTIONS**

Based on the considerations outlined above, the Zoning Board of Appeals may wish to deliberate the following possible actions:

1. Conclude that since assisted living facilities are a low intensity commercial use within the C: Local Business District, they therefore are an acceptable low intensity nonresidential use with the PUD Ordinance.
2. Determine that an assisted living facility is consistent with the goals and objectives of the Local Commercial District of the Township Master Plan, and therefore is an allowed use within the PUD Ordinance.
3. Conclude that an assisted living facility is not an acceptable use because it does not meet the day-to-day needs of the residents of the PUD.

Regardless of the final interpretation made by the ZBA, staff would recommend forwarding a recommendation to the Planning Commission to review Section 60.412. The language utilized in the ordinance – “day-to-day needs” – severely limits the types of nonresidential uses which may be considered compatible within a residential PUD. In addition, it is incongruent with the desire to have low intensity commercial uses within the PUD. The existing Hannapel business is a good example of this type of use.

Respectfully Submitted,



Julie Johnston, AICP  
Planning Director

Attachment: Application  
Applicant statement  
Aerial



7275 W. Main Street, Kalamazoo, Michigan 49009-9334  
Phone: 269-216-5223 Fax: 269-375-7180

**PLEASE PRINT**

PROJECT NAME & ADDRESS \_\_\_\_\_

**PLANNING & ZONING APPLICATION**

Applicant Name : Build Senior Living

Company Brighton Land Holdings LLC

Address 1320 Rickett Road  
Brighton MI 48116

E-mail imran@brightonassistedliving.com

Telephone \_\_\_\_\_ Fax (810)213-9871

Interest in Property Pending Purchaser

THIS  
SPACE  
FOR  
TOWNSHIP  
USE  
ONLY

**OWNER\*:**

Name Seeco II LLC

Address 3820 Stadium Drive  
Kalamazoo MI 49008

Email msectye1@gmail.com

Phone & Fax (269)207-6564

Fee Amount \_\_\_\_\_

Escrow Amount \_\_\_\_\_

**NATURE OF THE REQUEST:** (Please check the appropriate item(s))

- |   |   |
|---|---|
| <input type="checkbox"/> Planning Escrow-1042                 | <input type="checkbox"/> Land Division-1090             |
| <input type="checkbox"/> Site Plan Review-1088                | <input type="checkbox"/> Subdivision Plat Review-1089   |
| <input type="checkbox"/> Administrative Site Plan Review-1086 | <input type="checkbox"/> Rezoning-1091                  |
| <input type="checkbox"/> Special Exception Use-1085           | <input checked="" type="checkbox"/> Interpretation-1082 |
| <input type="checkbox"/> Zoning Variance-1092                 | <input type="checkbox"/> Text Amendment-1081            |
| <input type="checkbox"/> Site Condominium-1084                | <input type="checkbox"/> Sign Deviation-1080            |
| <input type="checkbox"/> Accessory Building Review-1083       | <input type="checkbox"/> Other: _____                   |

**BRIEFLY DESCRIBE YOUR REQUEST** (Use Attachments if Necessary): \_\_\_\_\_

Request for interpretation of Zoning Ordinance, Sections 60.400  
Planned Unit Development and 60.412 Allowable Land Uses within  
the PUD.

**LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):**

- 1.) 070: Sky King Meadows, Unit 70 12/08 Split 14-385-068 into 14-385-069 and 14-385-070
- 2.) 067: Sky King Meadows, Unit 67 12/05 Split 14-380-010 and 14-380-050 into Sky King Meadows Units 1 thru 68

**PARCEL NUMBER:** 3905-14-385-070 and 3905-14-385-067

**ADDRESS OF PROPERTY:** 400 N. 9th Street (corner of 9th and Lexy)

**PRESENT USE OF THE PROPERTY:** unimproved vacant land

**PRESENT ZONING** R-2 Res **SIZE OF PROPERTY** 5.984 Acres total (5.335 and 0.649)

**NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:**

Name(s)	Address(es)

**SIGNATURES**

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate.

I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

 _____	<u>12-22-18</u>
<b>Owner's Signature</b> (* If different from Applicant)	<b>Date</b>
 _____	<u>12-27-18</u>
<b>Applicant's Signature</b>	<b>Date</b>

- Copies to:
- Planning -1
  - Applicant -1
  - Clerk -1
  - Deputy Clerk -1
  - Attorney -1
  - Assessor -1
  - Planning Secretary - Original

\*\*\*\*

**PLEASE ATTACH ALL REQUIRED DOCUMENTS**

December 21, 2018

487 PORTAGE STREET  
KALAMAZOO, MI 49007

CORPORATE@BYCE.COM  
WWW.BYCE.COM

TEL: 269.381.6170  
FAX: 269.381.6176

Charter Township Oshtemo Zoning Board of Appeals  
c/o: Julie Johnston, Planning Director  
Community Planning & Development Department  
7275 W. Main Street  
Kalamazoo, Michigan 49009  
Phone: (269) 216-5223

RE: Oshtemo Assisted Living Development  
N 9<sup>th</sup> Street, Kalamazoo, MI 49009  
Zoning Board of Appeals Interpretation

Dear Zoning Board of Appeals –

Build Senior Living and Byce & Associates, Inc. submits this letter on behalf of Hampton Manor, as reference to the submitted *Planning & Zoning Application Request for Interpretation of Ordinance*, pertaining to the planned Assisted Living Facility, proposed for development on parcel 05-14-385-070, addressed at N 9<sup>th</sup> Street, within the Charter Township of Oshtemo. The development property of interest includes approximately 5.34 acres, located adjacent to the existing Sky Kind Meadows PUD, that has been approved for non-residential use within a greater residential Planned Unit Development.

We kindly request that the ZBA exercise their reasonable flexibility in granting approval of the proposed assisted living land use through interpretation of *Sections 60.400 Planned Unit Development and Subsection 60.412 Allowable Land Uses* of Oshtemo Township's Zoning Ordinance.

The proposed assisted living development intends to construct an elderly housing development to include roughly 60 residential elderly housing units in conjunction with amenity spaces such as salon, kitchen and dining spaces, library, entertainment theater, and recreational room. The designated amenity spaces intend not only to benefit the elderly residents within the community but shall be open to the public, specifically welcoming adjacent residents from the Sky King Meadows PUD. The library will be equipped with computers, as experience has proven that integrating technology into activities allows residents to stay engaged while continually improving their quality of life. The community welcomes guest speakers to enlighten residents with beneficial and relevant information while offering educational opportunities.

The proposed development will accommodate elderly housing needs for assisted living and memory care patrons targeting an age demographic of 75+, which our market study reflects a local demand for. The proposed development would allow elderly residents in need of care to remain in their town,

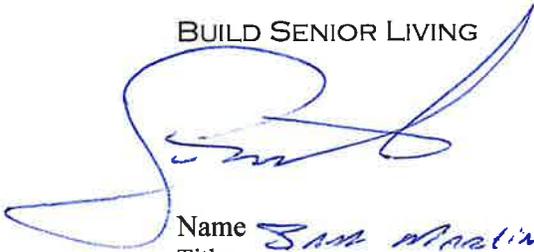
while benefiting Oshtemo Township through bolstering commerce between neighboring communities. Features of the proposed development such as salon services, theatre, recreational areas, and respite care will be available to the public.

In conjunction with Oshtemo Township Planning Director, we feel very strongly that the proposed land use is well suited for the parcel of interest while satisfying the Planned Unit Development requirements of *Section 6.412 B Allowable Land Uses*. According to the ordinance, the proposed Assisted Living development is only permitted within Commercially Zoned Districts of Oshtemo Township. With consideration to this, please approve the proposed land use, characterized by a *neighborhood commercial nature*, that includes within development an *educational, cultural and recreational* component. Furthermore, as required, the proposed building design is *compatible in design, layout, scale and appearance with the residential character of the area*.

Please approve the proposed land use of elderly housing within the intended commercial PUD zoned property. The proposed land use is consistent with the spirit and intent of Oshtemo Township's Zoning Ordinance, Master Plan and Village Theme Development Plans. We are confident the planned developments will contribute beneficially to the local community and surrounding stake holders while maintaining the intent of the Township Ordinance and established Sky King Meadows PUD agreement.

Sincerely,

BUILD SENIOR LIVING



Name *Sam Martin*  
Title *OWNER*

BYCE & ASSOCIATES, INC.



Danielle M Rhodes  
Civil Engineer

Attachments:

- Planning & Zoning Application
- Application Fee (\$200)

cc: Ben Clark, Oshtemo Township Zoning Administrator



# Kalamazoo County, MI Parcel Report

Maps and documents made available to the public by the County are not legally recorded maps nor surveys and are not intended to be used as such. The maps and documents are created as part of a Geographic Information System (GIS) that compiles records, information, and data from various township, village, city, county, state and federal sources. The source data may contain errors. Additionally, maps and documents prepared by the GIS from multiple sources, even if derived from data that is error free, may not be reliable due to differences in the databases or computer programs of the source materials. The County has attempted to include more specific clarifications or advisories on the specific documents or maps however, none of the maps or documents should be used for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found please contact (269) 384-8112. The State, County, Townships, Cities and Villages shall not be liable for any damages or claims that arise out of the user's access to, or use of the maps, documents and data provided. The preceding disclaimer is provided pursuant to Michigan Public Act #462, the Enhanced Access to Public Records ACT, and the user of this map acknowledges that the State, County, Townships, Cities and Villages shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the State, County, Townships, Cities and Villages from any and all claims brought by the User, its employees or agents, or third parties which arise out of the User's access or use of data provided.

*Report Date: 12/6/2018  
Property Data current as of: August 2018*



**Parcel ID:** 05-14-385-070

**Property Address:** N 9TH ST

**Parcel Acreage:** 5.3370248

**Owner:** SEECO 2 LLC

**Owner2:**

**Owner Address:** 3820 STADIUM DRIVE  
KALAMAZOO, MI 49008

**School District:** 39010

**Property Code:** 202

**Taxable Value:** 3,750

**Assessed Value:** 598,600

**Voting Precinct:** OS 9

**2012 Commissioner District:** 5