

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD FEBRUARY 26, 2019**

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**Agenda**

**PUBLIC HEARING: VARIANCE REQUEST FROM CONSUMERS CREDIT UNION BOSCH ARCHITECTS, ON BEHALF OF CONSUMERS CREDIT UNION, REQUESTED VARIANCES FROM SECTION 64.100: DESIGNATEDS HIGHWAYS TO ALLOW FOR A VARIANCE TO THE BUILDING SETBACKS FROM BOTH WEST MAIN STREET AND DRAKE ROAD, AND TO SECTION 75.130: GREENSPACE AREAS TO ALLOW FOR REDUCED LANDSCAPE BUFFERS. THE SUBJECT PROPERTY ADDRESS IS 5018 WEST MAIN ST., PARCEL NO. 3905-13-280-062.**

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A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, February 26, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

All MEMBERS WERE PRESENT:            James Sterenberg, Chair  
   Fred Antosz  
   Fred Gould  
   Micki Maxwell  
   Neil Sikora, Vice Chair  
   Anita Smith

Also present were Julie Johnston, Planning Director, James Porter, Township Attorney, Martha Coash, Meeting Transcriptionist and three other persons.

**Call to Order and Pledge of Allegiance**

Chairperson Sterenberg called the meeting to order and invited those present to join in reciting the "Pledge of Allegiance."

**Public Comment on Non-Agenda Items**

The Chair determined there were no public comments on non-agenda items.

**APPROVAL OF THE MINUTES OF JANUARY 22, 2019**

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of January 22, 2019.

Ms. Smith noted a typo on page one.

Ms. Maxwell made a motion to approve the Minutes of January 22, 2019 as presented with the correction noted by Ms. Smith. Mr. Gould supported the motion. The motion was approved unanimously.

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

Ms. Johnston said Consumer Credit Union (CCU), located at 5018 West Main Street, would like to demolish their existing building to redevelop the site. Based on concerns related to parcel size, the applicant was requesting the following variances associated to both building setbacks and the landscape buffer requirements:

### **Building Setbacks**

- Drake Road (east property line) – a 120-foot setback is required from the centerline of Drake Road. The applicant is requesting a 103-foot setback, resulting in a needed 17-foot variance.
- West Main Street – a 170-foot setback is required from the centerline of West Main Street. The applicant is requesting a 149-foot setback, resulting in a needed 21-foot variance.

### **Landscape Buffers**

- East property line – requires a 20-foot landscape buffer. The applicant is requesting a landscape buffer that tapers from 20 feet down to almost 1 foot as you move from north to the south along the east property line. The maximum variance needed would be 19 feet.
- South property line – requires a 20-foot landscape buffer. The applicant is requesting a five-foot landscape buffer, requiring a 15-foot variance.
- West property line – requires a 10-foot landscape buffer. The applicant is requesting six-foot landscape buffer, requiring a four-foot variance.

She said the current configuration of the property is non-conforming; it meets neither setback nor landscape requirements. The redesign plan for the site, while needing variances to be approved, would bring the site more into compliance with the current setback and buffer standards and would provide more greenspace.

She said the ZBA granted a sign setback variance in 2006 for this property. Per *Section 76.420*, signs are to be setback a minimum of 10 feet from the right-of-way. CCU requested placement of the sign seven feet from the right-of-way of West Main Street. They received approval from MDOT to allow the sign to encroach within the right-of-way. The ZBA granted the variance stating unique circumstances with the loss of property on Drake Road to the improved interchange.

Ms. Johnston listed the Standards of Review principles applied by the Michigan Courts for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.

She said Staff analyzed the request against these principles and offered the following information to the Zoning Board of Appeals.

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

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

*Comment:* The location as a corner property adjacent to two large rights-of-way provides some unique physical circumstances. The width of the parcel has been made incrementally smaller with the acquisition of right-of-way for Drake Road. Property was acquired in 2005/2006 to allow the expansion of Drake Road from a five-lane interchange to a seven-lane interchange adjacent to this parcel. The “land swap,” which provided additional property to CCU at the immediate southeast corner of their site, did not offer any additional square footage that would assist with building setbacks as they are measured from the centerline of the road.

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

*Comment:* The building setback ordinance has changed over time, which has affected this property. When the site was originally developed in 1973, the setbacks for both West Main Street and Drake Road were 100-feet from the centerline of the road, allowing the building in its current location. Today, the setbacks are 170 feet from the centerline of West Main Street and 120 feet from the centerline of Drake Road. While it is believed the setback ordinance was changed as rights-of-ways increased to help maintain a uniform building line, these ordinance changes have impacted the ability to redevelop this site.

Though the setbacks provide minimal available square footage on the site, a smaller commercial use without the need for drive through lanes could be redeveloped on this site. Building setbacks could be maintained allowing parking and other ordinance requirements to be met within the setback areas.

When this site was originally developed in 1973, there were no landscaping requirements for commercial developments. Since that time, the site has remained relatively unchanged except for the addition of pavement in 2006 when the Planning Commission approved new drive through and ATM lanes. With the redevelopment of the site, the landscaping requirements could be met. But it would be difficult to achieve the other ordinance requirements and have a building that meets the size needs of the credit union, as well as the drive through facility.

In addition, the landscaping requirements on a corner lot have an extra burden. A 20-foot landscape buffer is needed on both West Main Street and Drake Road. If this was an internal commercial lot, the eastern buffer (Drake Road) would be 10 feet.

Finally, the redevelopment of the site is providing an opportunity to increase some of the existing landscape buffers. While still not fully addressing ordinance requirements, the redevelopment will meet the buffer regulations to the north and will provide wider landscape buffers to the west, east and south. However, this does not preclude the site from being redeveloped by a smaller commercial business that may have a better chance of meeting all ordinance requirements.

*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 building and landscape setbacks, Staff found several instances in which the ZBA granted variances for both setbacks and landscape buffers based on these standards.

Some past precedence has been set to allow a certain amount of flexibility for both building setbacks and landscape buffers. Previous Boards have considered the size of the parcels, the impact of larger setbacks on the ability to develop a property, and the substantial rights-of-way that could provide additional greenspace for a project.

Based on the proposed site plan, the applicant has tried to bring the site more into compliance with current setback and landscape buffer standards. In addition, they have worked to accommodate the minimum

variances necessary while still allowing for both a building and drive through facility.

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

**Comment:** She said with the redevelopment of the site an argument could be made that the variances needed are self-created. However, the building setbacks for this corner property severely limit the amount of space available for redevelopment. Based on the aerial provided to Board Members, there is only 4,600 square feet available outside the two required setback areas from Drake Road and West Main Street. In addition, the size of the parcel, which has been reduced by acquired right-of-way, makes it difficult to meet all ordinance requirements for a commercial use that also requires a drive through facility. CCU is reducing the size of the building and pavement from its current configuration to accommodate the small size of the parcel. While three of the four landscape buffers are still noncompliant, the applicant has made an attempt to design the site that improves on existing conditions.

In addition to the above principles, she noted the Zoning Enabling Act of Michigan states that when considering a variance request, the Zoning Board of Appeals must ensure the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” Staff believes the applicant has made every attempt to adhere to the spirit of the ordinance by reducing the size of the building and asphalt on the site and increasing the amount landscaping from what is currently existing. If the Zoning Board of Appeals is amenable to granting the requested variances, Township Staff and the Planning Commission will review the site plan to ensure public safety.

Based on the site plan provided by the applicant, she indicated the only other alternate approach Staff can see for this site is to eliminate the drive through lanes and reorient the building to accommodate enhanced setbacks. This would allow more square footage to be dedicated to the landscape buffer requirements. However, current banking practices would make this approach prohibitive to the applicant.

The only alternative would be to redevelop the site for a commercial use that can be successful within a 4,600 square foot building envelop.

Ms. Johnston explained any motion made by the ZBA should include the findings of fact relevant to the requested variance. Based on the staff analysis, she listed findings of fact:

Variance request #1: Reduction in the required building setbacks

Support of variance approval:

- A unique physical circumstance exists for this property as a corner lot adjacent to two significant rights-of-way, which have acquired property from this parcel over time.
- Conformance to the ordinance is unnecessarily burdensome as the enhanced setbacks for West Main Street and Drake Road severely limit the buildable area of this parcel.

Support of variance denial:

- Reasonable use of the property still exists under the C: Local Business District for an allowable commercial use that can utilize the available 4,600 square feet of building envelope.

Variance request #2: Reduction in the required landscape buffer

Support of variance approval:

- The physical condition of a corner property places an extra burden on the parcel to meet landscape buffer requirements.
- Past precedence has allowed smaller landscape buffers adjacent to large rights-of-way where additional greenspace is provided.

Support of variance denial:

- Reasonable use of the property still exists under the C: Local Business District for an allowable commercial use that can utilize the available 4,600 square feet of building envelope.

Ms. Johnston listed possible actions the Zoning Board of Appeals might take:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

She also listed possible motions for the Zoning Board of Appeals to consider:

1. Based on the findings of fact, motion to approve the applicants requested variances as presented in their plan dated January 22, 2019:
  - A 103-foot setback from the centerline of Drake Road, resulting in a needed 17-foot variance.
  - A 149-foot setback from the centerline of West Main Street, resulting in a needed 21-foot variance.

- A landscape buffer variance for the east property line that tapers from the required 20-foot buffer down to a 1-foot buffer, resulting in a maximum 19-foot landscape buffer variance.
  - A five-foot landscape buffer for the south property line, requiring a 15-foot variance.
  - A six-foot landscape buffer for the west property line, requiring a four-foot variance.
2. Motion to approve the requested variances with some alternate approach determined acceptable by the Zoning Board of Appeals.
  3. Motion to deny the requested variances because reasonable use of the property is possible under the C: Local Business District.
  4. A combination motion that would approve one and/or deny the other variance request, utilizing the findings of fact and the possible motions outlined above.

Chairperson Sterenberg thanked Ms. Johnston for her review and asked if there were questions from board members.

Mr. Sikora confirmed the 4,600 square feet proposed was just for the building.

Mr. Gould asked if a zero setback had ever been approved by the ZBA.

Ms. Johnston said a zero setback had been approved for a sign.

Attorney Porter added he remembered zero setbacks similar to this request being approved twice in the past. He noted this situation was a “poster child” for ZBA as the project was originally developed in 1973 and standards have changed since.

Chairperson Sterenberg asked when the property became non-conforming.

Attorney Porter said the 1967 ordinance, which was one of the first Township ordinances, was replaced in 1981; they were out of compliance at that point since the property was developed so early and many ordinance changes have been made since.

Ms. Johnston added there was no landscape ordinance in place at all when the property was developed.

The Chair asked how the property would move closer to compliance if the requested variances are approved.

Ms. Johnston said the setback from Drake Road would go from 84 to 103 feet; the setback from West Main would go from 131 to 149 feet. In addition, landscaping will be included where there is currently no landscaping at all.

Hearing no further questions, Chairperson Sterenberg asked whether the applicant wished to speak.

Ms. Cindy McDonald of Consumers Credit Union, residing at 6303 Plainfield Ave., thanked the Board for their consideration. She explained the exterior of the building underwent a full assessment and it was determined it requires major changes. Approval of the variances will allow them to improve the appearance of the corner property and building and improve its functionality. Efficient land use and updating the appearance are goals. She confirmed the new building will consist of only one story.

Chairperson Sterenberg thanked her for her comments, determined there were no members of the public who wished to speak, and moved to Board Discussion.

The Chair reviewed the Standards of Review principles and felt the restrictions on the property were unnecessarily burdensome and that the owners were working to come into compliance as much as possible. He noted the land swap with MDOT had further restricted options. He felt the criteria was in the spirit of the ordinance and said the east wall in itself provides a kind of buffer. He concluded he was inclined to approve both requests for variance.

As there was Board consensus on the Chair's evaluation, and based on the standard that conformance with the ordinance is unnecessarily burdensome, and that the spirit of the ordinance and findings are being complied with as much as possible to improve the property, Chairperson Sterenberg made a motion to approve the applicant's request as follows:

- A 103-foot setback from the centerline of Drake Road, resulting in a needed 17-foot variance.
- A 149-foot setback from the centerline of West Main Street, resulting in a needed 21-foot variance.
- A landscape buffer variance for the east property line that tapers from the required 20-foot buffer down to a 1-foot buffer, resulting in a maximum 19-foot landscape buffer variance.
- A five-foot landscape buffer for the south property line, requiring a 15-foot variance.
- A six-foot landscape buffer for the west property line, requiring a four-foot variance.

Ms. Maxwell supported the motion. The motion was approved unanimously.

Ms. Johnston noted the Planning Commission would consider the site plan at their March 14 meeting and that if they approve, it is expected construction will be completed yet this year.

### **Any Other Business**

Ms. Johnston said there are no issues to come before the Board in March.

She also indicated that with the departure of Ms. Culp, the Township Board would appoint a liaison to ZBA at their meeting at 7:00 later in the day.

### **ZBA Member Comments**

There were no comments from Members.

### **Adjournment**

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:28 p.m.

Minutes prepared:  
February 27, 2019

Minutes approved:  
May 28, 2019