



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

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

SPECIAL MEETING

**Tuesday, November 12, 2019
3:00 p.m.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Approval of Minutes: October 22, 2019
5. **Public Hearing: Accessory Building**
A request for plan review and approval to locate a new accessory building within the front yard of 7067 Hawthorne Valley Avenue. Parcel No. 05-10-290-070.
6. Any Other Business
 - a. Draft ZBA By-Laws
7. ZBA Member Comments
8. 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 or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

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. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

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, but it is not required.

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 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 does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Grant Taylor	216-5221	gtaylor@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Deb Everett	375-4260	deverett@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Ken Hudok	548-7002	khudok@oshtemo.org

Township Department Information		
<u>Assessor:</u>		
Kristine Biddle	216-5225	assessor@oshtemo.org
<u>Fire Chief:</u>		
Mark Barnes	375-0487	mbarnes@oshtemo.org
<u>Ordinance Enf:</u>		
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
<u>Parks Director:</u>		
Karen High	216-5233	khigh@oshtemo.org
Rental Info	216-5224	oshtemo@oshtemo.org
<u>Planning Director:</u>		
Julie Johnston	216-5223	jjohnston@oshtemo.org
<u>Public Works:</u>		
Marc Elliott	216-5236	melliott@oshtemo.org

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD OCTOBER 22, 2019

Agenda

ACCESSORY USE REVIEW: DAVID AND BREE BENNETT

A REQUEST FOR PLAN REVIEW AND APPROVAL TO LOCATE A NEW ACCESSORY BUILDING WITHIN THE FRONT YARD OF 7067 HAWTHORNE VALLEY AVENUE. PARCEL NO. 05-10-290-070.

SITE PLAN REVIEW: MEIJER ADDITION

**A REQUEST FOR SITE PLAN REVIEW AND APPROVAL OF A 2,310 SQUARE FOOT ADDITION TO THE EXISTING MEIJER CONVENIENCE STORE LOCATED AT 6660 AND 6700 WEST MAIN STREET.
PARCEL NOS. 5-14-185-022 AND 05-14-185-040.**

ANY OTHER BUSINESS

a. DRAFT ZONING BOARD OF APPEALS BY-LAWS

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, October 22, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS WERE PRESENT: James Sterenberg, Chair
 Fred Antosz
 Cheri Bell
 Fred Gould
 Micki Maxwell
 Neil Sikora, Vice Chair
MEMBER ABSENT: Anita Smith

Also present were Julie Johnston, Planning Director, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist. One other person was present.

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

There were no comments on non-agenda items.

APPROVAL OF THE MINUTES OF SEPTEMBER 24, 2019

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of September 24, 2019.

Mr. Antosz noted the minutes addressed a correction to be made to the August 27, 2019 minutes, but did not reflect action taken by the Board to approve them.

Attorney Porter said the notes he took at the meeting include the board members who made the motion and second for approval and the vote taken. He indicated the minutes could be approved with the understanding they would be amended to include that information.

Given that explanation, Chairperson Sterenberg asked for a motion.

Mr. Sikora made a motion to approve the Minutes of September 24, 2019 with the understanding that the addition of the motion and second made and the vote taken for approval of the August 27th meeting minutes, per Attorney Porter's notes, would be added. Mr. Antosz seconded the motion. The motion was approved unanimously.

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

ACCESSORY USE REVIEW: DAVID AND BREE BENNETT A REQUEST FOR PLAN REVIEW AND APPROVAL TO LOCATE A NEW ACCESSORY BUILDING WITHIN THE FRONT YARD OF 7067 HAWTHORNE VALLEY AVENUE. PARCEL NO. 05-10-290-070.

Ms. Johnston explained the required public notice for this item had not occurred and as a result this item could not be considered at this meeting. She has spoken with the applicants, who were understanding, but wanted the matter considered as soon as possible.

She said public notice could be sent to the Gazette the next day, which would allow for a special meeting on Tuesday, November 12th, if a quorum could be reached on that date.

It was determined enough members would be available to reach a quorum on November 12th.

Mr. Sikora made a motion to table this item until a special meeting of the ZBA at 3:00 p.m. on November 12, 2019. Ms. Bell seconded the motion. The motion was approved unanimously.

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

SITE PLAN REVIEW: MEIJER ADDITION
A REQUEST FOR SITE PLAN REVIEW AND APPROVAL OF A 2,310 SQUARE FOOT ADDITION TO THE EXISTING MEIJER CONVENIENCE STORE LOCATED AT 6660 AND 6700 WEST MAIN STREET. PARCEL NOS. 5-14-185-022 AND 05-14-185-040.

Ms. Johnston said two parcels are involved with this application, the Meijer retail store located at 6660 West Main Street and the convenience store at 6700 West Main Street. The properties are zoned C: Local Business District, which indicates both uses are permitted by right.

She explained the Meijer store is an existing 209,214 square foot retail space. The applicant would like to update the façade of the store, which will require the addition of 2,310 square feet. The convenience store is an existing 1,664 square foot structure. The construction of new bathrooms adds 490 square feet to the building.

Besides the square footage, the additional changes to the Meijer store include:

- The vehicular drive adjacent to the store is being realigned to the south to accommodate the new square footage of the front entrance.
- The realignment will require the loss of 14 parking spaces. Even with the loss of these spaces, the Meijer store is still over parked by 313 spaces per the current Off-Street Parking Ordinance.
- The redesigned accessible parking spaces will be constructed with concrete per Ordinance requirements.
- Some additional landscaping will be added to existing parking lot islands to meet the requirements of Section 53.130 of the Landscape Ordinance.

The additional changes to the convenience store include:

- Added landscaping to meet the requirements of Section 53.130.

Ms. Johnston said the proposed additions are generally in compliance with all applicable parts of the Oshtemo Township Zoning Ordinance, with a few exceptions. The existing use and its proposed expansion are permitted by right, and the new additions will be located within the acceptable building setback envelopes.

New lighting is planned on the building, but detailed cut sheets will be needed to ensure the proposed lighting meets the Township's new Lighting Ordinance.

The site plan indicates parking spaces are 9.5 feet in width. The Off-Street Parking Ordinance requires parking spaces to be 10-feet wide. Staff has asked the project designer to verify the width of the parking spaces. In addition, it was noted to the applicant that all restriped spaces, except for accessible spaces which have specific ADA requirements, must meet the 10-foot width regulation. This notation will need to be added to the site plan.

She said staff found some deficiencies with the proposed landscape plan which will require updated information on the plan.

Ms. Johnston listed the following outstanding items/concerns to be resolved:

1. Cut sheets which detail the new lighting proposed for the building are needed to ensure compliance with the Lighting Ordinance.
2. The parking space size needs to be verified and a note indicating any restriped parking will meet Ordinance requirements.
3. An updated landscape plan will be needed that addresses the outstanding planting issues outlined above.

Chairperson Sterenberg thanked Ms. Johnston for her report and asked if Board members had questions for her.

In response to a question from Ms. Bell, Ms. Johnston confirmed the accessible parking spaces will be moved to the south and will meet all Township and ADA requirements.

Mr. Sikora wondered whether the number of parking spaces will still meet minimum requirements when some areas are covered with plowed snow or when a fireworks stand is on site.

Ms. Johnston said the site is overparked based on current Township Ordinances. In general, if the spaces are provided but the property owner decides to utilize some for snow storage, that would be their decision. Also, temporary uses could utilize required parking spaces, but if such a situation were to occur it would likely only last for around 30-days.

She confirmed for Chairperson Sterenberg that the clearance/setbacks for the gas station meet requirements.

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

Mr. Thomas Reder, Architect for Bergmann and representing Meijer, indicated the site plans were revised last week to meet the landscape requirements, that cut

sheets for the lighting towers would be provided and that the 9-1/2 feet parking spots listed on the original documents were in error – they are actually 10 feet wide.

He explained the number of parking spaces far exceeds what is needed, but in the event that parking spaces would ever be so negatively impacted by snow that shoppers would be affected during the holiday season, the snow would be trucked off.

Ms. Bell asked if the Board moved to approve the site plan whether the conditions listed were acceptable.

Mr. Reder agreed the conditions were acceptable. He described the extensive upgrading to be done at both the store and gas station and noted work is expected to begin January 2, 2020 and completed in four to five months.

The chair moved to Board Discussion and commented that he is enthusiastic about the planned remodeling.

Hearing no further comments, he asked for a motion.

Ms. Bell made a motion to approve the site plan as requested, including the three conditions recommended by Staff. Ms. Maxwell seconded the motion. The motion was approved unanimously.

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

Any Other Business

b. Draft ZBA By-Laws

Ms. Johnston said at the May 28th meeting a request was made for staff to develop a set of by-laws for the Zoning Board of Appeals (ZBA). She suggested discussing the draft by-laws for any possible changes, corrections, or edits.

The group went through the document page by page and suggested a few additions and corrections.

Ms. Johnston will revise the by-laws to reflect the discussion and return them to the Board at the November 12th special meeting for final review. Once the by-laws are in a draft form acceptable to the ZBA, a recommendation of adoption can be forwarded to the Township Board.

ZBA Member Comments

Chairperson Sterenberg acknowledged that Ms. Johnston is leaving the Township to work for a different local employer and thanked her for her excellent work for the Township and for the Zoning Board in particular.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:03 p.m.

Minutes prepared:
October 23, 2019

Minutes approved:
_____, 2019

November 5, 2019



To: Zoning Board of Appeals
Mtg Date: November 12, 2019
Applicant: David and Bree Bennett
Owner: Same as above
Property: 7067 Hawthorne Valley Avenue
Zoning: R-2: Residence District

APPLICATION OVERVIEW

The applicants, David and Bree Bennett, submitted a request to the Planning Department to construct a new accessory building within the front yard of their lot. Typically, Planning Department staff review and approve accessory buildings per Zoning Ordinance requirements. However, Section 57.100 indicates that the Planning Director may refer any accessory building request to the Zoning Board of Appeals for review.

Section 57.100.B goes on to say that accessory buildings placed in the front yard require additional scrutiny through a plan review process. These types of structures within the front yard of large parcels, often within the Rural Residential District, are characteristically approved. However, when the request is within a platted subdivision or site condominium development, placement in the front yard is denied by Planning staff. Lot size and the residential character of a subdivision do not often lend themselves to accessory buildings in the front yard.

With this application, staff felt additional scrutiny from the Zoning Board of Appeals was needed as the size of the lot is atypical within the R-2 District. The application from the Bennett's indicates that they are requesting a variance. Per Section 57.100, no variance is needed, just approval for the placement of the accessory building within the front yard from either the Planning Director or the Zoning Board of Appeals, if referred.

Section 57.100 indicates that to ensure harmonious relationships and to minimize conflicts between adjacent uses, the Planning Director or designee, which is the Zoning Board of Appeals in this case, shall consider the proposed characteristics and uses of the building in relation to the following:

- Size of property,
- Size of dwelling,
- Proposed placement on property,
- Existing land uses in area, and
- Future land uses as reflected in the Master Land Use Plan.

The property in question is addressed as 7067 Hawthorne Valley Avenue within the Country Trail Homesites Subdivision, No. 2. The property is 1.75 acres and is one of three lots that gain access from the Hawthorne Valley cul-de-sac. From an aerial of the site, it appears that there are two small accessory structures on the property, totaling approximately 370 square feet. According to the Township's assessing database, the existing home is 2,118 square feet.

The applicant's documents indicate the requested accessory building will be located approximately 30 feet from the existing single-family home on site. It will also be approximately 30 feet from the northeast property line, 62 feet from the southwest property line, and 90 feet from the right-of-way. These planned setbacks meet the requirements of Section 50.60 of the Setback Ordinance.

There appears to be some respectable tree cover between the proposed location of the accessory building and the road right-of-way. While it will still be visible from the road, the location of the lot at the end of a cul-de-sac, which is only accessed by three households, helps to mitigate compatibility concerns. From the elevation drawings provided by the applicant, the accessory building will be residential in character, with a pitched roof, roof overhangs, and a porch. Per the applicant's narrative, the colors of the accessory building are intended to match the existing home, to the best extent possible. The siding will be vinyl like the home and the roof will be steel painted to look like architectural shingles.

The subject property and a significant area surrounding the site is zoned R-2: Residence District. Adjacent land uses are single-family residential. The home to the north of the subject site combined two lots and has a total of 4.46 acres and the lot to the west includes 1.86 acres. These are larger lots within the Country Trail Homesites neighborhood, with the average lot ranging from 1.0 to 1.3 acres. The Future Land Use Plan indicates this area to be planned for low-density residential. The Country Trail Homesites neighborhood and the subject lot are consistent land uses to both the Township Zoning Ordinance and Master Plan.

POSSIBLE ACTIONS

The Zoning Board of Appeals may take the following possible actions:

1. Motion to approve the accessory building within the front yard. If the ZBA favors this course of action, staff recommends adding the following conditions of approval, which will be outlined below.
 - The accessory building will be built with the vinyl siding proposed and color scheme of the main home, to the best extent possible.
 - Corrugated steel shall not be utilized for the steel roof.
 - Only those trees need for clearing of the building site will be removed.
 - The setbacks of the 90 feet from the street, 60 from southwest and 30 from northeast
2. Motion to approve with an alternate approach determined at the ZBA meeting after dialogue with the applicant to the placement of the accessory building.
3. Motion to deny the placement of the accessory building within the front yard.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Julie Johnston". The signature is written in a cursive, flowing style.

Julie Johnston, AICP
Acting Planning Director

Attachments: Applicant documents:

- application
- narrative
- aerial maps
- elevation details



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

PLEASE PRINT

PROJECT NAME & ADDRESS Bennett Detached Garage

PLANNING & ZONING APPLICATION

Applicant Name : David & Bree Bennett

Company —

Address 7067 Hawthorn Valley Ave.
Kalamazoo, MI 49009

E-mail dbbennet@hotmail.com

Telephone ^(Dave) (269)271-8410 Fax —

Interest in Property Owners

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount —

Escrow Amount —

OWNER*:

Name David & Bree Bennett

Address 7067 Hawthorn Valley Ave.
Kalamazoo, MI 49009

Email blbennett1980@gmail.com

Phone & Fax ^(Bree) (269)251-1330

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

- Planning Escrow-1042
- Site Plan Review-1088
- Administrative Site Plan Review-1086
- Special Exception Use-1085
- Zoning Variance-1092
- Site Condominium-1084
- Accessory Building Review-1083
- Land Division-1090
- Subdivision Plat Review-1089
- Rezoning-1091
- Interpretation-1082
- Text Amendment-1081
- Sign Deviation-1080
- Other: —

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): —

We would like to build a detached garage within our "front yard" attached to our driveway to store our RV & other trailered equipment (boat & utility). Due to location of house it would be difficult not to.

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

Country Trail Homesites #2, Lot 32 * ** 6-87
1987 split from 10-280-011 & 10-280-012

PARCEL NUMBER: 3905- 10-290-070

ADDRESS OF PROPERTY: 7067 Hawthorn Valley Ave

PRESENT USE OF THE PROPERTY: Primary Residence - Homestead

PRESENT ZONING 401- Residential **SIZE OF PROPERTY** 1.76 acres

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

Name(s)	Address(es)
<u>Arbor Financial Credit Union</u> <small>(lien holder-mortgage)</small>	<u>269-544-3105 (Mortgage Dept.)</u> <u>1551 S. 9th Street, 49009</u>

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>David B. Burns</u>	<u>10-02-19</u>
Owner's Signature (* If different from Applicant)	Date
<u>David B. Burns</u>	<u>10-02-19</u>
Applicant's Signature	Date

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

PLEASE ATTACH ALL REQUIRED DOCUMENTS

Bennett Detached Garage Variance Request and Accessory Building Review Additional Info

Due to the shape of the parcel and the location of existing structures we would like to request a variance to install an accessory building (detached garage) between the main dwelling and the front property line, or the "front yard". The intent of the accessory building is to provide protected storage of our RV, boat trailer, utility trailer and tractor mower which are currently stored outside. The parcel has a diamond shape with the point coming up off the cul-de-sac and the "front yard" consists solely of the driveway going back over 160 feet to the garage. The driveway is the only visible portion of the "front yard" because the property is densely wooded between the right-of-way (ROW) and the house. The proposed location for the garage would be situated off to one side of the driveway and nearly completely hidden from view from the ROW. Alternative locations are not feasible due to nature of the property and the lack of ingress and egress. I've attached GIS maps from the Kalamazoo County Parcel Viewer with setbacks for the proposed building location as well as a dimensional map of the entire parcel with measurements directly from the Parcel Viewer measurement tool. From this map an overview of the entire parcel with existing structure locations and natural features can be seen as they are instead of a drawn interpretation. I've also attached 3D images of the proposed structure from the project estimating application for review also. The attached 3D prints of the proposed building vary from the actual in the three (3) ways;

1. Colors: The colors of the roof and siding will match the house as closely as possible, not those shown.
2. Roof and Siding: The siding in the pic is vertical steel sheets, however, we will be installing premium vinyl lap siding to match the house. The roof in the pic is solid brown steel sheets, however, we will be installing steel sheets that have been painted to look like architectural shingles the same color as the shingles on our house. We prefer to use steel since we intend to leave as many trees surrounding the structure as possible which would significantly shade the roof, which is not desirable for shingled roofs.
3. Height: The 3D drawing shows the standard 4/12 pitch trusses, however, the actual garage will have a 6/12 pitch putting the peak of the building at roughly 20.5'. The attached dimensional drawing with setbacks indicates this.

All of these things are being done to make the structure much more aesthetically pleasing for ourselves and our neighbors than having all our "toys" parked all up and down the edge of the driveway.

The proposed location is set back greater than 90 feet from the front property line, greater than 30 feet from the property line with our neighbor to the northeast and over 230 feet from the closest corner of their house and should be barely visible from the right-of-way (ROW) or their house due to all the vegetation and trees of various heights between the them. The southwest corner of the proposed location will be set back greater than 60 feet from the property line with our neighbor to our west and over 140 feet from the closest corner of their garage and also should not be visible from their house due to all the vegetation and trees of various heights between.

We feel that there really is no alternative location that better fits the intent and accessibility of the garage than the location proposed and we really hope that we can get this "front yard" variance request approved.

Thank you,



David B. Bennett

Find Address, Parcel No., or [Search Icon]



40ft scale bar and -85.68942311 Degrees longitude

Find Address, Parcel No., or



NORTH

>90ft.

>30ft.

24' X 40'
6/12 pitch
20' @ peak
8' Lean

~70ft.

~240ft.

GELLING KATHERINE TRUST

RICHARDSON JEFFREY L

7095

7087
BENNETT DAVID B & BREE L

HAWTHORN VALLEY AVE

HAWTHORN VALLEY AVE











October 23, 2019

Mtg Date: November 12, 2019
To: Zoning Board of Appeals
From: Julie Johnston, AICP
Subject: DRAFT By-Laws

At the October 22nd meeting, a handful of requests were made to revise the draft ZBA by-laws. Highlights of these requests are outlined below:

- Clarification on terms of office was added to section 4 of Article III.
- A statement was added to Article V, section 5, new letter C, which indicates that a member with a conflict of interest cannot participate in any discussion or vote on the application in which a conflict exists.
- Additional language was added to Article VII, section 1 that clarifies conflict of interest when the application is from a family member, the Board member lives within 300 feet of the application or has a business interest with the applicant.

In addition, staff made a change to Article IV: Officers and Article V: Meetings, section 9: Minutes. When the Planning Commission recently updated their by-laws, they wanted to ensure that the Township had the ability to utilize staff or an outside contractor to write the minutes. Their by-laws were very similar to the language for a Secretary found in the draft by-laws the ZBA reviewed at the October meeting. However, it was pointed out that Planning Commission did not have the authority to assign an outside contractor to manage the minutes, only the Township Board had the authority to enter into a contract. Their minutes were changed to eliminate the Secretary position and instead have a "Recorder of Minutes" added to the section where the minutes are defined. This same change has been made to the draft ZBA by-laws.

Thank you.

**CHARTER TOWNSHIP OF OSHTEMO ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURE**

ARTICLE I: NAME

Sec. 1 The name of the organization shall be the "Charter Township of Oshtemo Zoning Board of Appeals (ZBA)".

ARTICLE II: POWERS AND AUTHORITY

Sec.1 These by-laws and rules of procedure are adopted by the ZBA pursuant to Article 69 of the Township Zoning Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Sec. 2 The ZBA shall perform such legally permissible duties and shall carry out such processes and procedures as may be required by the Township Zoning Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, including the following:

- A. To hear and decide on applications for variances from the Township Zoning Ordinance.
- B. To hear and decide on applications of interpretation of the Township Zoning Ordinance.
- C. To hear and decide any appeals from a decision or determination made by any administrative official or body charged with enforcement of the Township Zoning Ordinance.
- D. To hear and decide any other matters required by the Township Zoning Ordinance.

ARTICLE III: MEMBERS

Sec. 1 MEMBERSHIP COMPOSITION. The ZBA shall consist of five (5) members appointed by the Charter Township of Oshtemo Board of Trustees. One (1) member of the ZBA must be a representative from the Planning Commission and one (1) member may be a representative from the Board of Trustees. The other three (3) members shall be residents from the Charter Township of Oshtemo. In addition, the Board of Trustees may appoint not more than two (2) alternate members.

Sec. 2 COMPENSATION. All appointed members of the ZBA may be compensated at a rate determined by the Township Board of Trustees.

Sec. 3 RESTRICTIONS. An alternate member shall only serve on the ZBA if a regular member is absent from or unable to attend a meeting, or during the abstention of a regular member for reasons of conflict of interest. In the case of a conflict, the alternate member shall serve on the case until a final decision has been made. An employee or contractor of the Township may not serve as a member of the ZBA.

Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years and until a successor has been appointed. **Regular and alternate members may serve two full terms. If fulfilling the term of a vacant seat, a regular or alternate member may complete this term and then serve for an additional two consecutive terms.**

A successor must be appointed not more than one (1) month after the expiration of the preceding term. Terms shall be arranged such to provide as nearly as possible for the appointment of an equal number of members each year. Members from the Planning Commission and Township Board of Trustees shall have terms limited to their respective other official term or to a lesser period determined by resolution of the Township Board of Trustees.

Sec. 5 VACANCIES. A vacancy on the ZBA occurring other than through the expiration of the term shall be filled for the unexpired term by the Township Board of Trustees.

Sec. 6 VOTING RIGHTS OF ALTERNATE MEMBERS. Alternate members shall only have the right to vote upon those specific matters in which they have been called upon to serve in the absence of a regular member or called upon to serve due to the abstention of a regular member as a result of a conflict of interest. The alternate member shall then continue to hear those cases for which they were called to serve until final disposition of those cases.

ARTICLE IV: OFFICERS

Sec. 1 SELECTION. The ZBA shall elect a Chair and a Vice Chair from amongst the regular members at the first regular meeting of the calendar year. The Township Board of Trustees member may not serve as an officer.

Sec. 2 TERMS OF OFFICE. The terms of the Chair and Vice Chair shall be one (1) year in length or until their successors are elected. The Chair and Vice Chair shall be eligible for re-election at the conclusion of their one-year term.

Sec. 3 DUTIES. The Chair shall preside over all meetings of the ZBA and shall perform the duties prescribed by these by-laws. The Vice Chair shall perform the duties of the Chair in the absence or disability of the Chair.

Sec. 4 ABSENCE OF CHAIR AND VICE CHAIR. If both the Chair and Vice Chair are absent from a meeting, the ZBA members shall vote in a chairperson to perform the necessary duties for that meeting. The Chair and/or Vice Chair shall resume normal duties at the next scheduled ZBA meeting.

Sec. 5 VACANCIES. If a vacancy should occur in any office, the ZBA shall elect another person to fill such vacancy in the same manner and under the same conditions outlined above for the remainder of the term of said office.

Sec. 6 ~~SECRETARY. The Secretary shall be appointed by the ZBA and may be an employee or contractor of the Township, or a member of the ZBA. The Secretary is responsible for keeping a written record, in the English language, of the resolutions, transactions, findings, and determinations of~~

~~the ZBA, which shall be a public record subject to the provisions of the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended.~~

ARTICLE V: MEETINGS

Sec. 1 REGULAR MEETING. The ZBA shall meet on the fourth Tuesday of each month, as necessary, at 3:00 pm at the Oshtemo Township Hall. When the regular meeting day falls on a legal holiday, the ZBA shall select a suitable alternate date. Regular meetings shall be formally established at the last meeting of the ZBA in each calendar year for the following calendar year and notice thereof given pursuant to the Open Meetings Act.

Sec. 2 SPECIAL MEETINGS. Special meetings may be called by the Chair based on a request by an applicant, who will be responsible for all costs associated with the meeting as outlined in an annual fee schedule adopted by the Township Board of Trustees.

The purpose of the meeting shall be stated in the call. The business of the special meeting shall be held in compliance with the Michigan Open Meetings Act. Public notice of the time, date, and place of the special meeting shall be given in the manner required in the Open Meetings Act. A notice of the special meeting shall be sent to ZBA members not less than one (1) week in advance of the meeting, except that any such meeting at which all regular members of the ZBA are present or have waived notice in writing, shall be a legal meeting for all purposes without notice, subject to the Michigan Open Meetings Act.

Sec.3 QUORUM. Three (3) members of the ZBA shall constitute a quorum to conduct business. When a quorum is not present, no official action of the ZBA, except for closing of the meeting, may take place. Due to its quasi-judicial nature, the ZBA shall not engage in discussion on any matter during any time in which a quorum is not present to conduct business. All public hearings without a quorum present shall be rescheduled for the next regular or special meeting and no additional public notice shall be required, provided that the date, time, and a place for the rescheduled public hearing is announced at the meeting.

Sec. 4 ORDER OF BUSINESS. A written agenda for all regular and special meetings shall be prepared and followed. The order of business shall, at a minimum, be:

- Call to Order
- Pledge of Allegiance
- Public Comment on Non-Agenda Items
- Approval of Minutes
- New Business (Public Hearings)
- Any Other Business
- ZBA Member Comments
- Adjournment

Sec.5 HEARINGS. Hearing shall be scheduled and due notice given in accordance with the provisions of the Michigan Open Meetings Act and the Michigan Zoning Enabling Act under which the public hearing is being held. The absence of the applicant or a representative of the applicant at the

scheduled public hearing may result in a postponement of proceedings. The absence of the applicant or a representative at the postponed public hearing shall be treated as the voluntary withdrawal of the application by the applicant. Public hearings conducted by the ZBA shall be run in an orderly and timely fashion, which shall be accomplished by adhering to the following public hearing procedure:

A. **OPENING ANNOUNCEMENT.** The Chair shall give an official opening announcement of the public hearing indicating the basic nature of the request.

B. **ORDER OF HEARING.** The Chair shall conduct the public hearing in the following order:

- 1) Presentation of the application by Township staff (staff report presentation).
- 2) Questions from ZBA to Township staff.
- 3) Comments and explanations by the applicant.
- 4) Questions from ZBA to applicant.
- 5) Opening of Public Hearing, comments from public.
- 6) Closing of Public Hearing to public comments.
- 7) ZBA deliberation.
- 8) Consideration of action by the ZBA.

C. **RULES OF CONDUCT.** The Chair shall announce the rules of conduct of the public hearing as follows:

- 1) All comments shall be addressed to the Chair;
- 2) Each person shall be given an opportunity to be heard, but second comments will not be permitted until every person has had the opportunity to speak for the first time;
- 3) In the interest of fairness to the public, statements from the floor should be as concise as possible;
- 4) The Chair reserves the right to terminate a presentation or ask for a summation if comments become excessively repetitive or stray from the issues at hand;
- 5) A time limit of four (4) minutes per person shall be placed on public comments;
- 6) At all times during the public hearing, the Chair expects courtesy from all participants and catcalls, booing, or other outbursts from the public shall not be tolerated; and
- 7) Decision of the ZBA shall be based upon the appropriate legal standards based upon proper facts and the authority vested in the ZBA by State law and the Township Zoning Ordinance.

D. **DECLARATON OF CONFLICT OF INTEREST.** Any member declaring a conflict of interest shall abstain from participating in the hearing, deliberation, or voting on the item in which there is a conflict. An alternate member shall serve and hear the merits of that specific case until a final determination on the case is made.

E. **PRESENTATION OF PROPOSAL APPLICATION.** The Chair shall recognize Township staff and request a presentation of their staff report. The staff report will outline the applicants request, the specific sections of the Zoning Ordinance related to the request, and the regulations that are impacted by the subject request. At the conclusion of the staff report,

the Chair will ask the ZBA members if they have any questions of staff. Once all questions have been answered, the Chair will then ask the applicant to provide a concise summary of the reasons for their request and respond to questions raised by the ZBA.

- F. **OPENING OF HEARING TO FLOOR.** The Chair then opens the public hearing to comments from the floor, reminds the public of the rules of conduct, and indicates that once a person has been recognized by the Chair, they are invited to give their name and address and a concise statement of their concerns and/or input. In the event of a large hearing, the Chair may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chair reserves the right to limit the amount of time allocated to a spokesperson to avoid filibustering. The Chair may elect during the course of public comments to obtain brief answers from the Township staff or from the applicant if such comments may expedite the hearing. The Chair shall accept for the official record any documentation received by the ZBA regarding the matter at hand and shall read and/or summarize these materials.
- G. **CLOSING OF PUBLIC HEARING.** When all public comments have been received the Chair shall close the public hearing. After the public hearing is closed, no further comments shall be received from the public.
- H. **CONSIDERATION OF MATTER BY ZBA.** Once the public hearing has been closed to public comments, the Chair may recognize any ZBA member to discuss and seek additional information from others concerning the matter at hand. ZBA members shall address the Chair when speaking and shall request additional information through the Chair. When discussion on the matter at hand by ZBA members has been completed, they may take one of the following four actions on the matter:
 - 1) Approve the request as presented;
 - 2) Approve the request with conditions;
 - 3) Deny the request as presented; or
 - 4) Defer/adjourn the matter to a future meeting.

Motions for approvals or denials and motions to table or adjourn a matter to a future meeting should include reasons for such actions. Motions for tabling or adjournment should also include the date, time, and place at which the matter will be further considered.

Sec.6 **MOTIONS.** Motions shall include the reasons for the approval, denial, or tabling of an application. The name of the maker and who seconded the motion shall be recorded. Motions to table or adjourn a matter to a future meeting shall also include the date, time, and place at which the matter will be further considered. Motions will be restated by the Chair before a vote is taken. Motions should be considerate of the following principles 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.

Sec.7 VOTING. An affirmative vote of the majority of the ZBA’s regular membership shall be required for the approval, denial, or tabling of any requested action or motion. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any ZBA member or directed by the Chair. All members of the ZBA, including the Chair, shall vote on all matters, but the Chair shall vote last in any roll call vote. Any member may be excused from voting only if that person has a bona fide conflict of interest. ~~An alternate member shall serve and hear the merits of that specific case until a final determination on the case is made. Any member abstaining from a vote based on a conflict of interest shall not participate in the discussion of that item.~~

Sec.8 NOTICE OF DECISIONS. A written notice, prepared by Township staff or their designee, containing the decision of the ZBA will be sent to the applicant.

Sec.9 MEETING MINUTES. Minutes shall be prepared by the ~~Secretary~~ **Recorder of Minutes** designated by the ZBA. **The Recorder of Minutes may be an employee or contractor of the Township, or a member of the ZBA. If a contractor of the Township, the Recorder of Minutes shall be approved by the Township Board.** The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions made on any action; and recording of attendance.

Upon receipt of a copy of the tentative minutes, each member of the ZBA shall review the minutes for form and content. ZBA action shall be taken indicating approval of same, with all, if any, corrections. All communications, actions, and resolutions shall be kept in the official file. The official minutes shall be maintained by the Township Clerk upon approval by the ZBA.

ARTICLE VI: ABSENCES, REMOVALS, AND RESIGNATIONS

Sec. 1 ABSENCE. To be excused, ZBA members shall notify the Planning Director, ZBA Chair, or the Township Clerk when they intend to be absent from a meeting. Failure to make this notification will result in an unexcused absence.

Sec. 2 REMOVALS. Members of the ZBA may be removed by a vote of the Township Board of Trustees for nonperformance of duty, misconduct in office, or failure to declare a conflict of interest. For the purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Notice of nonperformance of duty, misconduct in office, or failure to

declare a conflict of interest shall be brought to the Township Board of Trustees for a hearing by the Township Supervisor.

Sec. 3 RESIGNATION. A member may resign from the ZBA by sending a letter of resignation to the Township Supervisor, Planning Director, or ZBA Chair.

ARTICLE VII: CONFLICT OF INTEREST

Sec. 1 ZBA members shall declare a conflict of interest and abstain from participating in hearings, deliberations, or voting on a request when:

- 1) A relative or ~~other~~ immediate family member is involved in any request for which the ZBA is asked to make a decision.
- 2) The ZBA member has a 1 percent business, organizational, or financial interest in the property involved in the request or has a 1 percent business or financial interest in the applicants' company, agency, or association.
- 3) The ZBA member lives within 300 feet of the application to be reviewed.
- 4) The ZBA member is the Planning Commission representative and the matter to be heard is from a previous Planning Commission decision in which the member participated.

ARTICLE VIII: CONFLICTING PROVISIONS

Sec. 1 In the event of a conflict of provisions between these by-laws and the Township Zoning Ordinance, the provisions of the Zoning Ordinance shall prevail.

ARTICLE IX: AMENDMENT OF BY-LAWS

Sec.1 These by-laws may be ~~adopted and~~ recommended for amendment at any regular meeting or special meeting of the ZBA by a two-thirds vote. By-law amendments shall be subject to final approval by the Township Board of Trustees.

~~THESE BY-LAWS WERE DULY ADOPTED~~ **RECOMMENDED** BY THE CHARTER TOWNSHIP OF OSHTEMO ZONING BOARD OF APPEALS DURING ITS REGULAR MEETING HELD ON THE _____ DAY OF _____, 2019.

THESE BY-LAWS WERE DULY ADOPTED BY THE CHARTER TOWNSHIP OF OSHTEMO BOARD OF TRUSTEES DURING ITS REGULAR MEETING HELD ON THE _____ DAY OF _____, 2019.