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**NOTICE  
OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION**

**REGULAR MEETING – VIRTUAL**

Participate through this Zoom link:  
<https://us02web.zoom.us/j/87242762732>

Or by calling: 1-929-205-6099  
**Meeting ID: 872 4276 2732**

*(Refer to the [www.oshtemo.org](http://www.oshtemo.org) Home Page or the third page of this packet for additional Virtual Meeting Information)*

**THURSDAY, JANUARY 14, 2021  
6:00 P.M.**

**AGENDA**

1. Call to Order and Roll Call
2. Pledge of Allegiance
3. Approval of Agenda
4. Approval of Minutes: December 10<sup>th</sup>, 2020
5. Commission Elections (Chair, Vice Chair, Zoning Board of Appeals Liaison)
6. **Public Hearing: Special Use – Outdoor Dining**  
Special Use approval to permit outdoor dining for Jac's Cekola's Pizza and Latitude 42 Brewing Company, and to grant authority to the Oshtemo Charter Township Planning Department to administer and grant Special Use permits for outdoor dining lasting more than one day to any other restaurants located in Oshtemo Charter Township during the current Pandemic.
7. **Public Hearing: Code Amendment – Pools on corner Lots (front yard setback)**  
Consideration of amendments to the Township Zoning Ordinance that provides clarification on where pools can be placed on a property – specifically as it relates to the front yard.
8. **Public Hearing: Code Amendment – Child and Adult Care Centers**  
Consideration of amendments to the Township Zoning Ordinance to allow all private and public schools within Oshtemo to have Child Care Centers as an accessory use. In addition, the proposed amendment would allow Adult Care Centers to be permitted as a primary use within all Zoning Districts where a Child Care Center is permitted as a primary use.
9. New Business
  - a. Code amendment discussion: Permitted uses on legal nonconforming lots
10. Public Comment
11. Other Updates and Business
12. 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](mailto: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](http://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](mailto:oshtemo@oshtemo.org) and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<b><u>Supervisor</u></b>		
Libby Heiny-Cogswell	216-5220	<a href="mailto:libbyhc@oshtemo.org">libbyhc@oshtemo.org</a>
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<b>Township Department Information</b>		
<b><u>Assessor:</u></b>		
Kristine Biddle	216-5225	<a href="mailto:assessor@oshtemo.org">assessor@oshtemo.org</a>
<b><u>Fire Chief:</u></b>		
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<b><u>Ordinance Enf:</u></b>		
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<b><u>Parks Director:</u></b>		
Karen High	216-5233	<a href="mailto:khigh@oshtemo.org">khigh@oshtemo.org</a>
Rental Info	216-5224	<a href="mailto:oshtemo@oshtemo.org">oshtemo@oshtemo.org</a>
<b><u>Planning Director:</u></b>		
Iris Lubbert	216-5223	<a href="mailto:ilubbert@oshtemo.org">ilubbert@oshtemo.org</a>
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### Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

### To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 872 4276 2732**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet or smartphone then you can join via conference call by following instructions below.

### To join the conference by phone:

1. On your phone, dial the toll-free teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **872 4276 2732#**

### Participant controls in the lower-left corner of the Zoom screen:



Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press \*9 on your touchtone keypad.**

**Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.**

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**OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION**

**DRAFT MINUTES OF A VIRTUAL MEETING HELD DECEMBER 10, 2020**

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**Agenda**

**PUBLIC HEARING: REZONING REQUEST**

**BETHANY CHRISTIAN SERVICES OF MICHIGAN IS REQUESTING SPECIAL USE AND SITE PLAN APPROVAL TO ESTABLISH A CHILD CARING INSTITUTION TO SERVE UP TO 12 MINOR CHILDREN IN THE EXISTING BUILDING LOCATED AT 6350 W. KL AVENUE.**

**NEW BUSINESS**

- a. **Code Amendment Discussion: Pools on Corner Lots (Front yard Setback)**
  - b. **Code Amendment Discussion: Child and Adult Day Care Centers**
- 

A virtual meeting of the Oshtemo Charter Township Planning Commission was held Thursday, December 10, 2020, commencing at approximately 6:01 p.m.

**COMMISSION MEMBERS**

**PRESENT:**

Bruce VanderWeele, Chair  
Kizzy Bradford  
Micki Maxwell, Vice Chair  
Mary Smith  
Anna Versalle  
Chetan Vyas

**COMMISSION MEMBERS**

**ABSENT:**

Deb Everett

Also present were Iris Lubbert, Planning Director, Colten Hutson, Zoning Administrator, James Porter, Township Attorney, and Martha Coash, Meeting Transcriptionist.

Jim Hoekstra, Bethany Christian Services and Kyle Visker, Land and Resource Engineering were in attendance as were neighbors Thomas and Diane, 6240 W. KL Avenue.

**Call to Order and Pledge of Allegiance**

Chairperson VanderWeele called the meeting to order at approximately 6:01 p.m. and invited those in attendance to join in reciting the Pledge of Allegiance.

**Approval of Agenda**

Hearing no changes, Chairperson VanderWeele let the agenda stand as published.

**Approval of the Minutes of the Meeting of November 12, 2020**

The Chair asked if there were additions, deletions, or corrections to the Minutes of the Meeting of November 12, 2020. Hearing none, he asked for a motion.

Ms. Versalle **made a motion** to approve the Minutes of the Meeting of September 24, 2020 as presented. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Chairperson VanderWeele moved to the next agenda item and asked Ms. Lubbert for her presentation.

**BETHANY CHRISTIAN SERVICES OF MICHIGAN WAS REQUESTING SPECIAL USE AND SITE PLAN APPROVAL TO ESTABLISH A CHILD CARING INSTITUTION TO SERVE UP TO 12 MINOR CHILDREN IN THE EXISTING BUILDING LOCATED AT 6350 W. KL AVENUE.**

Ms. Lubbert introduced Colten Hutson, Zoning Administrator, who made a presentation and recommendation to the Commission.

He explained Bethany Christian Services of Michigan was requesting Special Use and Site Plan approval to establish a Child Caring Institution to serve up to 12 minor children in the existing building located at 6350 W KL Avenue. The applicant was proposing to provide housing services, offices, and conference/training rooms throughout the facility for children and staff. Currently occupied by a financial consulting firm, the 14,722 SF one-story building would allow the youth to receive counseling, learn life lesson and management skills, along with other critical services.

6350 W KL Avenue falls within both the R-2 Residence District and the 9<sup>th</sup> Street and West Main Overlay Zone. The proposed Child Caring Institution is a permitted Special Use within the 9th Street and West Main Overlay Zone listed under Larger Facilities for Child and Adult Foster Care.

Any proposed Special Uses require review and approval from the Planning Commission. The office component of this proposal is a permitted use within the 9th Street and West Main Overlay Zone.

Mr. Hutson noted when reviewing this Special Use request, there are three sets of criteria that need to be considered: the general Special Use review criteria outlined in Section 65.30, the specific requirements for *Larger Facilities for Child and Adult Foster Care* outlined under Section 49.140, and the 9th Street and West Main Overlay Zone review and development criteria outlined in Article 35. He provided the following analysis of the proposal against these three Sections. Overall he indicated most of the requirements of Section 65.30, Section 49.140, and Article 35 have been met.

## Section 65.30: Special Use Review Criteria

**A. Master Plan/Zoning Ordinance: The proposed use will be consistent with the purpose and intent of the Master Plan and Zoning Ordinance, including the District in which the use is located.**

The 9<sup>th</sup> Street Sub-Area Plan is one of five designated sub-area plans incorporated within the Township's adopted 2011 Master Plan. The 9<sup>th</sup> Street Sub-Area Plan allows for both commercial and residential uses, with the primary focus of commercial uses being situated near the corridor and then slowly transitioning into medium to low density residential (see map to the right). The proposed project falls within the district's 9<sup>th</sup> Street Commercial designation. This designation reflects a commercial vision along 9th Street that complements the rural nature of the Township as a whole. Uses outlined as permitted in the plan for this land use designation consist of office buildings and low intensity commercial uses. The overall intent for the 9<sup>th</sup> Street Sub-Area, however, is to maintain the capacity and function of the corridor by having an efficient transportation system to maintain the existing rural character of the area, including the protection of existing natural features, and to improve the quality of life in and around the Sub-Area. Enhancing the quality of life in the surrounding area is a crucial component to the 9<sup>th</sup> Street Sub-Area Plan.

From a zoning perspective, the subject property is located within the 9<sup>th</sup> Street and West Main Overlay Zone, within which Child Caring Institutions are permissible with Special Use approval from the Planning Commission within the 9<sup>th</sup> Street and West Main Overlay Zone.

**B. Site Plan Review: The Site Plan Review Criteria of Section 64**

A site plan was provided. Evaluation to be provided with Site Plan Review.

**C. Impacts:**

**1. The proposed use would be compatible, harmonious and appropriate with the existing or planned character and uses of adjacent properties; meaning the proposed use can coexist with neighboring uses in a stable fashion over time such that no neighboring use is unduly negatively impacted.**

Other than a single-family residence and a site condominium adjacent to the project area, all other surrounding properties within the 9<sup>th</sup> Street Overlay Zone are undeveloped. An established commercial use already exists on site. With the proposed use continuing to operate as a commercial space with minimal to no site changes proposed, and being in accordance with both the Master Plan and the Zoning Ordinance, staff has no concerns that the proposed use will negatively affect neighboring uses.

**2. Potentially adverse effects arising from the proposed use on adjacent properties would be minimized through the provision of adequate**

**parking, the placement of buildings, structures and entrances, as well as the location of screening, fencing, landscaping, buffers or setbacks.** Staff does not foresee a significant impact of the proposed use on neighboring properties. The site layout is not changing as the applicant is not proposing any additions to the building. Minor additions of an outdoor basketball court and soccer field are being proposed north of the principal building (rear yard). The applicant is proposing to utilize the existing parking on the property. The proposed site plan exceeds the amount of parking required, exceeds minimum setbacks, and has satisfactory landscaping.

**3. The proposed use would not be detrimental, hazardous, or disturbing to existing or future adjacent uses or to the public welfare by reason of excessive traffic, noise, smoke, odors, glare, or visual clutter.**

Staff anticipates that the proposed project will not generate such negative impacts on adjacent properties as a commercial use has already been established on this site. A commercial use has occupied the building on site since the date of its construction in 2001. The applicant will be utilizing the existing building on site for its operations.

**D. Environment: The natural features of the subject property shall only be cleared or altered to the extent necessary to accommodate site design elements, particularly where the natural features assist in preserving the general character of the area.**

The proposed project will be occupying the existing building on site. The applicant proposed the addition of an outdoor basketball court and soccer field; however, the site modifications that are proposed would not disturb any natural landscaping or natural features. The current percentage of open space on this site will remain at approximately 88.7%.

**E. Public Facilities: Adequate public and/or private infrastructure and services already exist or would be provided, and will safeguard the health, safety, and general welfare of the public.**

The building located at 6350 W KL Avenue is connected to public water and public sanitary sewer and is currently being billed for said services. Regarding the transportation network, the intersection to the east at W KL Avenue and S 11<sup>th</sup> Street is well controlled by a traffic signal. The intersection to the west where W KL Avenue crosses N 9<sup>th</sup> Street is also controlled by a traffic signal. W KL Avenue already supports several commercial and industrial uses. If the Special Use request is granted, it will not negatively affect the area as the proposed use will not generate noise (aside from children playing outside), pollution, traffic, smoke, or odors. Impacts from this proposed use would not exceed the impacts of the commercial/office uses that have been established on this site since 2001.

The Township's Non-Motorized Transportation Plan does identify a 10 Ft wide Shared Use Path adjacent to the subject site on the north side of W KL Avenue. **The applicant requested a deferment for the 10 Ft wide Shared Use Path**



**and has agreed to file a Shared Use Path (SAD) form with the Township as a condition of Site Plan and Special Use approval.** This means that when the Township deems it appropriate to install the path and implement a Special Assessment District to fund the installation of the path, the owners and future owners of this site cannot oppose it. It should be noted that three foot wide bike lanes have already been established in both westbound and eastbound directions in this portion of W KL Avenue.

**F. Specific Use Requirements: The Special Use development requirements of Article 49.**

These requirements are listed in the next section.

Section 49.140 Larger Facilities for Child and Adult Foster Care

- 1. Shall not be located closer than 1,500 feet to any of the following:**
  - a. Another licensed group childcare home or Child Caring Institution;**
  - b. An adult foster care small group home or large group home;**
  - c. A facility offering substance use disorder services to seven or more people;**
  - d. Community correction center, Half-way house, or similar facility**

Location of site satisfies these four requirements.

Using GIS software, staff created a map illustrating a 1,500 Ft buffer surrounding the project area. After analyzing the properties within the 1,500 Ft buffer, staff was able to determine the placement of the site is feasible and satisfies the specific requirements in terms of distance from other similar services.

**2. Outside play or social areas are appropriately fenced for the safety of the residents.**

Regarding the requirement for fencing, the applicant made the following request:

“Bethany is requesting that fencing not be required for this site for the following reasons: (1) the site provides a natural barrier around the outside play area with the existing trees / forested area, (2) the site is very large (15 acres) and the play area is in the middle of the property. (3) the closest property line to the play area is over 90 feet in distance through a densely wooded area, (4) the children often come from refugee camps which are fenced. This property can provide a safe natural barrier for the children without the negative connotations of fencing.”

Attorney Porter noted there are no state requirements that would require fencing.

Mr. Hutson said the requirement for fencing is to provide safety and security, not only to the children, but to surrounding properties as well. It is true that there is a considerable amount of wooded area between the side property lines and outdoor play areas in which can act as a buffer. The applicant’s argument has merit. However, he said staff is not fully convinced that the surrounding wooded area meets the safety

intent of the fencing required by this section. As this is a new section of the code and this is the first request of this nature, Mr. Hutson recommended the Planning Commission discuss this request to determine its validity.

**3. The residential character of the property shall be preserved and maintained. Any building must be compatible in size, height, external design, landscaping, and surrounding open space as other residential buildings in the area.**

Requirements have been satisfied. The existing building (14,722 feet) meets the requirements in terms of size due to the footprint of the single-story building not exceeding 25,000 SF in floor area. The building is also oriented correctly facing the interior drive and parking lot. The property has approximately 88.7% of open space.

**4. No signs are permitted.**

The applicant is proposing to utilize the existing monument sign near the entrance off W. KL Avenue and the existing directional sign along the interior drive near the parking lot. The applicant requested to add one incidental sign near the main entrance. The applicant has expressed that the existing monument sign would advertise Bethany Christian Services in terms of the other services they provide. The applicant acknowledged that the signage cannot advertise the Child Caring Institutions use on premises. Directional signs are to be 2 SF or less. The incidental sign they are proposing to place near the main entrance door to the building is 9 SF. Per Section 55.130, incidental signs are to be a maximum of 6 SF or less. The proposed signage will need to be altered accordingly. Mr. Hutson said staff will review signage again in detail at the time of the sign permit application submission as a condition of approval.

**5. One parking space, in accordance with Article 52, shall be provided for each non-resident employee working on site at any one time.**

Child Caring Institutions require one parking space per employee and one parking space per every five children. There are 14 employees and 12 children being proposed. This would require a total of 17 parking spaces for the Child Caring Institution aspect of the facility. There are currently a total of 84 parking spaces onsite.

Section 64: Site Plan Review

**General Zoning Compliance:**

*Zoning:* 6350 Mr. Hutson noted W. KL Avenue is zoned R-2: Residence District and falls within the 9<sup>th</sup> Street and West Main Overlay Zone. The proposed Child Caring Institution and Office abuts an undeveloped wooded parcel to its west, two site condominiums to its north, and a single-family home to its east. All of them are zoned R-2: Residence District and are within the 9<sup>th</sup> Street and West Main Overlay Zone with the exception of one site condominium to the north. Adjacent to the south is an auto collision center zoned I-1: Industrial District. The proposed Child Caring Institution is permitted as a Special Use within the 9<sup>th</sup> Street and West Main Overlay Zone. Additionally, the percentage of land on the proposed site covered by buildings is 2.2%. The percentage of land reserved for open space purposes is 88.7% (5% minimum is required by the overlay code).

**Access and Circulation**

*Access:* Mr. Hutson said the proposed site already has an established access drive adjacent to W KL Avenue. All aisles within the proposed site plan are 24 Ft wide and have safe turning radii. The Fire Marshal has reviewed the proposed layout and has no concerns. An access easement is also already in place though the site that would allow for the installation an internal access drive when the neighboring sites develop.

*Parking:* In terms of parking, he explained the site currently has 84 parking spaces in total, four of which being ADA accessible. All existing spaces are 10' x 20'. The application proposed 5,415 SF of the existing building to be used as Office and the remainder for the Child Caring Institution. Child Caring Institutions require one parking space per employee and one parking space per every five children. There are 14 employees and 12 children being proposed. This means 17 spaces would be needed to support this use. Business and General Offices require one parking space per each 150 SF of net floor area. There is 5,415 SF being proposed as office space. The result is that 36 parking spaces are required for this use and 53 parking spaces for the entire site. Therefore, the site will have approximately 160% of the minimum required parking spaces necessary. To minimize excessive areas of pavement which detract from the aesthetics of an area and contribute to high rates of stormwater runoff, Oshtemo's off street parking code only allows parking lots to have parking spaces totaling no more than 110% of the minimum parking spaces required, unless otherwise approved by the reviewing body (Section 52.50 (H)). These proposed uses would put the site out of compliance in terms of the number of spaces.

Mr. Hutson noted the applicant has indicated that there would be quarterly gatherings of up to 100 people for training/volunteer services as a part of their office operations. The existing impervious surfaces onsite are not being altered whatsoever, with the exception of the addition of a 45 Ft x 33 Ft basketball court in the rear yard. Per Section 52.140, the reviewing body may grant a deviation in the parking requirement and provide an exception to an existing developed property if practical difficulties or unnecessary hardship are presented. As the parking lot is existing, no significant changes are being made the site, and the additional parking spaces would support the mentioned training conferences, it could be argued that a deviation would be appropriate. **He said Staff recommended the Planning Commission grant the requested deviation to permit the applicant to keep the existing parking.**

**He said it should also be noted that the site was established prior to the Township requiring all ADA spaces to be made of concrete. Given standard practice in this type of situation the current asphalt ADA parking spaces can remain, contingent upon passing cross-slopes and other pertinent ADA requirements.**

*Easements:* There is an existing 20 Ft easement in place for the municipal water on site and a 63 Ft wide easement in place for Consumer's Power Company.

There is also a 40 Ft wide ingress/egress easement which is located west and east of the parking lot and access drive. All easement requirements are met.

*Shared Use Path:*

Per Section 57.90, sidewalks indicated on the Township's Non-motorized Plan shall be installed by the developer when properties adjacent to planned nonmotorized facilities receive site plan approval from the municipality. The Township's adopted Non-motorized Plan shows a 10 Ft wide path along this section of W KL Avenue. **The applicant has requested a deferment for the 10 Ft wide Shared Use Path and has agreed to file a Shared Use Path SAD form with the Township as a condition of Site Plan and Special Use approval.**

*Sidewalk:*

Part of section 57.90 sidewalks requires that an interior sidewalk network be provided at the time of a site plan review unless the reviewing body grants a deviation from this provision as such a sidewalk connection from the building to the road would enhance accessibility of the overall non-motorized network. The applicant was requesting the Planning Commission grant them a deviation from this requirement for the following reasons: the sidewalk would be approximately between 400-500 Ft long and may present grading challenges. **He recommended the Planning Commission discuss this request to determine its validity. If the Planning Commission were to grant the deviation, he recommended the Planning Commission add a stipulation of approval that said sidewalk connection be installed when the 10 Ft wide path along the north side of W. KL Avenue is constructed.**

**Building Design**

*Building Information:* The 14,722 SF, one-story building was constructed in 2001. The height of the building is 24 Ft tall and has a first floor elevation of 942.21. As this is not new construction, this requirement is not applicable at this time.

*Lot Dimensions:* The site under consideration is about 15.13 Acres (659,062 SF) and has approximately 504 Ft of road frontage along W KL Avenue and is 1,300 Ft deep. No lot dimension requirements are outlined in the 9<sup>th</sup> Street and West Main Overlay Zone. Therefore, lot requirements in the underlying zoning district must be met. The parcel exceeds in both property area (50,000 SF min.) and frontage (200 Ft min.) in the R-2: Residence District.

*Setbacks:* Properties within the 9<sup>th</sup> Street and West Main Overlay Zone have a minimum front yard setback of 100 Ft. The building is setback approximately 430 Ft from the front yard property line. The minimum setback distance between any building and any interior side property line shall be 10 Ft. The minimum setback distance between any building and any rear property line shall be 15 Ft. However, if the height of the building exceeds said measurements, the height of the building from grade level of the property line to the building's highest point

shall be used as the appropriate setback measurement (Section 50.60). The proposed building is 24 Ft in height on an overall flat terrain, requiring a 24 Ft side and rear yard setback. Based on the scale provided on the site plan, the proposed building is setback 133.6 Ft from the eastern property line and setback 51.6 Ft from the western property line. The building is setback from the rear property line approximately 750 Ft.

*Fencing:* See discussion under Section 49.140 Larger Facilities for Child and Adult Foster Care (2) of this staff report. He noted this item would require discussion.

*Lighting:* No changes to current onsite lighting were proposed. This portion of the review is not applicable.

*Signs:* See discussion under Section 49.140 Larger Facilities for Child and Adult Foster Care (2) of the staff report. The proposed signage will need to be altered accordingly. Signage will be reviewed again in detail at time of the sign permit application submission.

#### **Landscaping and Photometric Plan**

No additional landscaping was required with this Special Use request because of the ample existing vegetation onsite and because neither the building nor the parking area are increasing in size. Landscaping requirements have been satisfied.

#### **Engineering**

The applicant proposed utilizing the existing drainage basin on the property. Prein & Newhof and the Oshtemo Public Works Department have reviewed the project site plan and have noted that all of the onsite engineering concerns have been addressed. As a condition of approval, Engineering requested that **a Soil Erosion and Sedimentation Control Permit from the Kalamazoo County Drain Commissioner's Office be obtained prior to any site modifications.**

#### **Fire Department**

The Township Fire Marshal is satisfied with the overall design of the site; however, he requested that **as conditions of approval: (1) all commercial kitchens are required to have hood and fire suppression systems and (2) will be required to upgrade the current alarm system to meet the Oshtemo Township Fire Alarm Ordinance and current code requirements prior to occupancy.**

### Section 35: 9<sup>th</sup> Street and West Main Overlay Zone and Development

Mr. Hutson explained the proposed Child Care Institution and Office uses are consistent with the 9<sup>th</sup> Street Sub-Area Plan and meet the design development standards and specifications. Since the building is not new, the criteria have already been reviewed or not applicable. See Section 65.30 A for more details.

Section 35.50: 9<sup>th</sup> Street and West Main Overlay Zone Development Standards.

He indicated the standards of this section reiterate the requirements outlined in the previous sections covered in this staff report or are not applicable as this is not new construction. In summary: the proposed use of a Child Care Institution and Office meet the intent of the 9<sup>th</sup> Street Sub-Area Plan, setback and buffer requirements have been met, circulation has been met, the existing building is being utilized (new building requirements are not applicable), the proposed parking and pedestrian pathways will need to meet ordinance requirements, landscaping and open space requirements have been met, review of lighting is not applicable at this time as existing lighting will not be altered, appropriate utilities are in place, and signage will need to comply with current zoning standards.

RECOMMENDATION:

Mr. Hutson recommended the Planning Commission approve the proposed Special Use and Site Plan for the Bethany Christian Services Child Caring Institution with the following deviations and conditions.

- 1) FENCING DEVIATION: The Planning Commission would need to grant or deny the applicant's deviation request from Section 49.140(2). If approved, fencing will not be required for this Special Use.
- 2) PARKING DEVIATION: The Planning Commission would need to grant or deny the applicant's deviation request from Section 55.100. If approved, parking on-site may remain as it exists.
- 3) SIDEWALK DEVIATION: The Planning Commission would need to grant or deny the applicant's deviation request from Section 57.90. If approved, the sidewalk connection from the roadway to the building will not need to be put in at this time. If approved, staff recommended the Planning Commission add a stipulation of approval that said sidewalk connection be installed when the 10 Ft wide path along the north side of W KL Avenue is constructed and the site plan is updated to illustrate this future sidewalk connection prior to building permit issuance.
- 4) A Shared Use Path SAD form shall be submitted to the Township prior to issuing a Certificate of Occupancy.
- 5) Applicant to submit an updated application with property owner signature or proof of purchase prior to building permit issuance.
- 6) Applicant to update signage plan and to submit and receive approval from the Planning Department prior to occupancy.
- 7) A Soil Erosion and Sedimentation Control Permit from the Kalamazoo County Drain Commissioner's Office be obtained prior to building permit issuance.
- 8) All commercial kitchens shall be required to have hood and fire suppression systems prior to occupancy.
- 9) The current alarm system shall be updated to meet the Oshtemo Township Fire Alarm Ordinance and current code prior to occupancy.

Chairperson VanderWeele thanked Mr. Hutson for his report and asked whether Commissioners had questions for him. Hearing none he asked whether the applicant wished to speak.

Mr. Joel Bell, Bethany Director for SW Michigan, the agency proposing the site plan, said Mr. Hutson's site plan review captured their intent and thanked the Commission for its consideration. He said although it is the case that they plan to house 12 refugee minors, they hope to provide up to 14 beds to allow for about 30 days to identify an appropriate program to provide time to find the minors a new situation.

Mr. Vyas asked where the children were residing previously.

Mr. Bell said there are varied circumstances that would require temporary housing for refugee or immigrant youth. They could be at the border waiting or coming from foster homes and may need therapeutic care.

Ms. Maxwell asked whether the floor plan shows space for 14 beds.

Mr. Bell said that is the intent; he deferred to the architect, who said the state license for a small 12 bed facility is planned. The floor plan shows 14 beds.

Ms. Smith wondered whether the 14 beds needed to be formalized in the approval.

Ms. Lubbert indicated that most of the time a maximum of 12 beds would be occupied. Since the two additional beds are for transitional purposes, which is standard operation, they would not need to be addressed in that way.

Ms. Versalle said she understood that fencing might be upsetting to immigrant children as it would visually remind them of fenced refugee camps, but asked whether other options that might be more aesthetically pleasing but still providing the safety benefit had been considered.

Mr. Bell said they had considered a fence but feel it would not do much good given the ages of the children who will be adolescents and that a fence would have minimal impact and would not benefit either the youth or the community, both in or out. There is also a challenge of installing fencing in a wooded area. Kicking a ball over a fence into the wooded area could also be a problem.

Mr. Vyas said he has had experience in the business of child mental health and said there is significant potential for children, especially adolescents to run away, especially when outside during recreational activities. He felt a fence would be helpful in keeping them from running away and added road traffic is a concern.

Hearing no further comments, the Chair moved to Public Hearing.

Thomas Corpus and Diane Peeke, who own the property at 6240 W. KL Ave. and are interested in purchasing the property east of that to open a wedding venue, are concerned that the project may not be fenced. They constantly have people crossing their property who are walking to WalMart from the nearby trailer park and Copper Beech. There are also people who hunt next to their property, are concerned about children who might wander into the woods during hunting season, and do not understand why a fence would not be installed. They are close to a busy road and worry for children's safety. There have been multiple break-ins and theft from people who constantly walk through the woods east of their property as well as homeless people who live to the north and east of them. They are worried about the safety of the children. Section 8 is a mile down the road. It was noted there is only one foot between the bike lane and the road shoulder. They wondered why a child caring center would be built on such expensive property near an extremely busy crossway and a collision shop. If they develop a wedding venue they will not be able to get a liquor license and their property would be devalued.

Hearing no further comments, Chairperson VanderWeeled closed the Public Hearing, moved to Board Deliberations and suggested the request for deviation from the fencing requirement as the first topic for discussion.

Ms. Smith said she did not think this is an approved area for hunting and that issue should be addressed with the Sheriff.

Ms. Maxwell asked whether the fencing being discussed would enclose the entire property or just the recreation areas.

Mr. Hutson said the ordinance addressed enclosing only the outdoor play and social areas.

Attorney Porter said that that was correct and explained there are no State regulations regarding fencing in general; any fencing would be only what the Oshtemo ordinance and the Planning Commission impose.

Ms. Maxwell felt fencing around the entire property would be unreasonable; Ms. Versalle agreed that would be excessive, but felt fencing the recreational areas should be considered.

Mr. Vyas said there is a big concern regarding escape and there should be some degree of fencing with this population. Children with mental problems are likely to try to escape during outdoor activities. He also felt the neighbor's concerns were appropriate for the safety of their property. He would not approve a fencing deviation, especially for outdoor activity areas.

Ms. Versalle said she sees fencing as safety for the children in order to keep others out of their recreational space rather than to keep them in. She thought the application had been carefully considered for observation needs, but living close to this



intersection she has a lot of concern for unwanted foot traffic entry into the recreation area if it is not fenced.

Ms. Bradford said she has worked with adolescent youth, including those with mental illness, and felt if the whole area was fenced in it would not always keep people either in or out. If children are determined, they will get out. If people want to get in, they will. If the State has no guidelines, Commissioners need to start with what is mandated by Oshtemo's ordinance.

Chairperson VanderWeele said it sounded like it was the consensus of the Board that some fencing was needed for the activity areas and agreed. If approved, it could be left to Staff to work with the applicant to develop the area to be fenced. He asked for a motion.

Ms. Versalle **made a motion** to deny the request for deviation and to require fencing per Ordinance, Section 49.140(2) for the outside play and social areas, to be worked out with Planning Department staff. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

The Chair asked for comments regarding the request for deviation from Section 55.100 to allow the parking on-site to remain as it exists.

Ms. Maxwell said as the parking area already exists, she would not vote to remove it; Commissioners indicated they were in consensus with that position.

Chairperson VanderWeele asked for a motion.

Ms. Smith **made a motion** to approve the request for deviation from Section 55.100 to allow on-site parking to remain as it is currently. Ms. Versalle **seconded the motion**. The **motion was approved** unanimously by roll call vote.

The Chair said the next item to discuss was the request for the sidewalk deviation from the building to W. KL Avenue.

Ms. Versalle said since the Planning Commission has granted similar requests in the past, allowing applicants to defer sidewalks until a future time when a non-motorized path is put in, she would approve the same for this application.

Mr. Vyas confirmed that the time a sidewalk would be required was when a path that extends from the building to W. KL Avenue is installed and that the recommendation from staff was to approve this request.

Ms. Maxwell was concerned that the area where a path/sidewalk would be required is very steep.

Chairperson VanderWeele agreed, saying it might require switchbacks.

Ms. Versalle **made a motion** to approve the request for deviation from Section 57.90 regarding the requirement for a sidewalk along the north side of KL Avenue until such time as a 10 foot wide non-motorized pathway is installed, and based on the staff recommendation. Mr. Vyas **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Ms. Versalle **made a motion** to require submission of a Shared Use Path (SAD) form to the Township prior to issuing a Certificate of Occupancy. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Ms. Maxwell **made a motion** to approve the Site Plan request to establish a child caring institution to serve up to 12 minor children in the existing building located at 6350 W. KL Avenue based on the staff recommendations and conditions in the staff report and the four Commission decisions listed above. Ms. Versalle **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Ms. Maxwell **made a motion** to approve the Special Use request to establish a child caring institution to serve up to 12 minor children in the existing building located at 6350 W. KL Avenue based on the staff recommendation and conditions and the four Commission decisions listed above. Ms. Versalle **seconded the motion**. The **motion was approved** unanimously by roll call vote.

Chairperson VanderWeele moved to the next agenda item.

## **NEW BUSINESS**

### **a. Code Amendment Discussion: Pools on Corner Lots (Front yard Setback)**

Ms. Lubbert provided background and a draft of amendment language to the code addressing pools on corner lots for discussion and feedback.

#### **Background:**

On November 17<sup>th</sup> the Zoning Board of Appeals reviewed a variance request to permit an in-ground pool to protrude 20 feet into the required 30-foot front yard setback. The property in question, 5359 Sweet Briar Drive, is a small corner lot located within Rose Arbor plat No. 2. After review and discussion, the Zoning Board of Appeals approved the request. This was not the first variance approved to allow an in-ground pool to protrude into a corner lot's front yard. However, it should be noted this variance was the first of its type approved under the current setback code adopted in 2011. As a result of this meeting, the Zoning Board of Appeals requested that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to in ground pools on corner lots.

She said the current setbacks for pools are outlined in section 50.60 Setback Provisions of the code. In this section, pools are given a side yard setback of 10 feet and a rear yard setback of 15 feet. As the code sets forth a side and rear setback for

pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house. However, corner lots, as they have frontage on two streets, have two front yards. Assuming the house is built up to the two 30-foot front yard setbacks, this means that, a 30-foot front setback is required for a potential pool along each street frontage (at minimum to line up with the house). This is a larger setback area than is required of properties not located on a corner, where only a 10 foot side yard setback is required on each side; meaning that usable rear yard space is reduced at least by approximately 20 feet' along the corner lots' side with street frontage. The Zoning Board of Appeals felt that this unique hardship of corner lots should be taken into consideration and in-ground pools should be treated differently than the standard primary or accessory structure. It should be noted that only public comments in support of the variance request were received.

Proposal:

Based on input from the Zoning Board of Appeals and past precedence of approved pools within Oshtemo Township, staff and legal counsel are recommended a code amendment that would provide additional guidance and flexibility for pools on corner lots. The amendment includes adding a definition of a corner lot, differentiating between what is considered a corner lot's front and side street frontage, and allowing a 10' front yard setback for in-ground pools on corner lots in subdivisions or site condominiums if it is along the Side Street Frontage of the lot, provides the required fencing, and is screened from the road with landscaping. This proposed amendment also clearly notes that any other pools are not permitted in a front yard.

She provided Commissioners with a copy of the "Proposed Pools on Corner Lots (front yard setback) Text Amendment Document."

Chairperson VanderWeele asked for comments from Commissioners.

Ms. Smith asked if the utility right of way was included in the required setback.

Ms. Lubbert said the required setback begins behind the utilities right of way.

Ms. Bradford asked if there might be a vision problem for motorists at corners resulting in a safety hazard.

Ms. Lubbert said there are vision triangle rules regarding placement tied to the Township's fence regulations so front yard pools on corner lots should not cause problems.

Ms. Maxwell said she was fine with the proposed language and noted since the Zoning Board Authority has already received several requests, they will likely keep getting them in the future. She wants people to understand what they are getting into when pursuing a pool on a corner lot.

Ms. Lubbert noted the proposed amended language would affect only subdivisions or site condominiums because other sites are typically very large so not

likely to have pools by the road. They would be able to apply for variances. She chose to start with subdivisions and condominium corner lots.

Mr. Vyas was satisfied with the amended language and thought it was reasonable to move forward to set a public hearing.

Chairperson VanderWeele asked for a motion.

Ms. Versalle **made a motion** to move the proposed code amendment regarding Pools on Corner Lots, as presented, to a public hearing. Mr. Vyas **seconded the motion**. The **motion was approved unanimously by roll call vote**.

Chairperson VanderWeele moved to the next agenda item.

**b. Code Amendment Discussion: Child and Adult Day Care Centers**

Ms. Lubbert provided a proposed text amendment to the Planning Commission for discussion and to provide feedback to staff.

She said recently the Planning Commission reviewed a conditional rezoning request that asked to rezone a property to a higher intensity in order for the site to have a Child Care Center. Although the rezoning request was denied as it was considered spot zoning, the topic of Child Care Centers piqued both the Planning Commission's and Public's interest. There was a general agreement that childcare options are important and more flexibility was needed that would allow for more of this type of service. Planning Staff was asked to review the code and see if there was a way to appropriately allow for more Child Care Centers in Oshtemo.

Coincidentally, around the same time as the rezoning discussion, a site plan for initial discussion was submitted to staff that entailed an Adult Care Center. After reviewing the code, staff found that it was unclear where and if this use was permitted. After discussion with legal counsel it was determined that this use was comparable to a Child Care Center and that a code amendment would be appropriate. For the sake of efficiency, staff incorporated language to address deficiencies in the code regarding Adult Care Centers with the proposed Child Care Center code amendment discussion.

Proposal:

**Child Care Centers:** There are three different intensities of childcare uses that are permitted by the code within Oshtemo: Family day care home (allowing up to 6 children), Group day care home (allowing up to 12 children), and Child Care Center (with no maximum number of children permitted via zoning). All three of these uses provide childcare for periods less than 24 hours a day. Family day cares and Group day cares are permitted in all agricultural and residential zoning districts. This is appropriate as they are small in scale, are required to utilize private residential residences, and must preserve the residential character of the area. Child Care Centers are allowed in the R-3, Residence zoning district and higher. This is appropriate as they are more

institutional in scale and nature. Child Care Centers are often equated to a commercial/office type use. Staff believes the current placement of these three types of childcare uses is appropriate and would not recommend altering the current groupings or placements in the code.

However, the rezoning request that brought this topic to the forefront was unique as the site in question was a large church that has a private preschool. In this case the facility already has accepted characteristics that stand out from a standard low-density residential area: a large parking area, a large nonresidential building, obvious traffic flow, and the regular presence of children onsite. One of the comments that residents in support of the rezoning kept bringing up was their desire to have one location where they could drop off their children for the day. Parents who had children enrolled in the private preschool elaborated on how being able to also drop off their preschool age child at this same location would be advantageous to them. Given the nature of public and private schools, staff did not see a reason why schools could also not support a Child Care Center. With the scale of schools, their already providing services to children, site design/layout, general appropriateness in residential areas, and already established traffic patterns - allowing Child Care Centers at these sites as an accessory use is logical. The addition of a Child Care Center to a school would have little to no negative impact on the surrounding residences. The proposed text amendment would allow all private and public schools in Oshtemo to have Child Care Centers as an accessory use.

**Adult Care Centers:** Adult Day Care Centers are non-residential facilities, properly registered or licensed with the State, and support the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge. Currently in the code the only area that lists Adult Care Centers as an allowed use is the - Neighborhood Overlay zone (Article 37). In this overlay “Child or Adult day care centers” are a special use. It should be noted that no areas of Oshtemo are currently part of this overlay (staff will do research on this at a later date). Adult Care Centers are comparable to Child Care Centers – the only real difference is that they are providing care for a different age group. Both planning staff and legal counsel recommend allowing Adult Care Centers as a primary use in the same zoning districts as Child Care Centers. The proposed text amendment does this.

In addition to the above code amendments, she recommended adding and amending some definitions in the code to help clarify what Child Care Centers and Adult Care Centers are. These proposed definitions were included in the proposed text amendment document.

Chairperson VanderWeele asked for Commissioner comments.

Mr. Vyas wondered about churches opening day care centers and operating to standards.

Attorney Porter said he was concerned that if the definition of what churches can do for money is broadened, we would be moving away from the land use planning principle and where we would draw the line. Would we also allow health centers and gyms, for example? It could be a slippery slope and could change the nature of churches in residential districts. The scope could be changed by opening up these types of operations that might not fit in a residential zone.

Ms. Maxwell wondered why Child Care Centers were not allowed in the R-2 District.

Ms. Lubbert noted family daycares (up to six children) and group daycares (up to 12 children) are allowed in throughout the district. We would need to be careful of larger facilities to ensure compatibility.

Ms. Maxwell thought limits could be imposed; most child care centers are smaller. She felt strongly that we need child care centers where we have population. She felt R-2 is a reasonable transitional area.

Ms. Lubbert noted that the R-3 district is defined as the transitional zone and that was not the intent of the R-2 district. But added that this could be explored further if the Commission wished to go that direction.

Ms. Versalle said she felt Ms. Lubbert was moving in the right direction regarding childcare facilities in schools, especially Centerpoint. If a church is looking to provide day care they usually also have some type of school. It seems appropriate to tie childcare to school requirements. If we get a lot of Child Care Centers without their meeting a school requirement it could be a can of worms and we would need to revisit the subject.

Mr. Vyas and Ms. Smith agreed with Ms. Versalle.

Chairperson VanderWeele said it looked as though most were in agreement except Ms. Maxwell who was hoping for a broader interpretation, and asked for a motion.

Ms. Versalle **made a motion** to move the proposed text amendment to public hearing as presented. Mr. Vyas **seconded the motion**. The **motion was approved unanimously by roll call vote.**

The Chair moved to the next item and asked Ms. Lubbert for her presentation.

## **2021 MEETING DATES**

Ms. Lubbert provided the following proposed meeting schedule for 2021 for consideration

**Planning Commission**  
**Second and Fourth\* Thursdays of every month @ 6PM**

### 2021 Meeting Dates

<u>2nd Thursday of the Month</u>	<u>4th Thursday of the Month</u>
1/14	1/28
2/11	2/25
3/11	3/25
4/8	4/29*
5/13	5/27
6/10	6/24
7/8	7/29*
8/12	8/26
9/9	9/30*
10/14	10/28
No meeting	11/18*
No meeting	12/16*
1/13/2022	1/27/2022

\*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications.

Chairperson VanderWeele asked for a motion.

Mr. Vyas **made a motion** to approve the 2021 Planning Commission Meeting Schedule as presented. Ms. Maxwell **seconded the motion**. The **motion was approved** unanimously by roll call vote.

### PUBLIC COMMENT

Chairperson VanderWeele determined there were no members of the public wishing to speak and moved to the next agenda item.

### OTHER UPDATES AND BUSINESS

Ms. Lubbert told the group this was the last meeting for Ms. Smith who is leaving the Commission and thanked her for her service.

Ms. Smith said it was an honor to have worked with the Planning Commissioners. Everyone has always provided thoughtful deliberation and did the very best they could and that was what the people of Oshtemo Township could hope for.

Ms. Lubbert said Ms. Farmer had also left the Planning Commission as liaison from the Township Board and thanked her for her service.

Ms. Farmer was present and said it had been her feeling that after eight years on the Planning Commission it was time for someone else to fill the Township Board liaison

position. She did not realize that the November meeting was her last. She said it had been her honor to serve and that she had learned so much. She will now be the Board's liaison to the Zoning Board of Appeals. She said the Planning Commissioners were all so great and care so much about the Township and thanked them for everything.

Chairperson VanderWeele said it was good to have had both Ms. Smith and Ms. Farmer on the Planning Commission and they would be missed.

The Chair mentioned he thought the Holiday Inn had been told they were not allowed to utilize the up lights on the building but has seen them on for the last two weeks.

Ms. Lubbert said she would inform Code Enforcement.

She wished everyone happy holidays and said she hopes 2021 will be better than 2020. Governor Whitmer will likely extend virtual meeting requirements into the new year.

## **ADJOURNMENT**

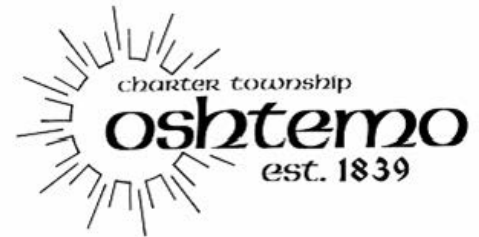
With there being no further business to consider, Chairperson VanderWeele adjourned the meeting at approximately 7:45 p.m.

Minutes prepared:  
December 14, 2020

Minutes approved:  
\_\_\_\_\_, 2021



January 7, 2021



**Mtg Date:** January 14, 2021

**To:** Oshtemo Township Planning Commission

**From:** Iris Lubbert, Planning Director

**Applicant:** Oshtemo Planning Department  
**Owner:** Bill Cekola (Jac's Cekola's Pizza); Joseph Stoddard (Latitude 42 Brewing Company)

**Property:** 3112 S 9<sup>th</sup> Street, Parcel number 05-26-380-048  
6101 W Main Street, Parcel number 05-14-430-064

**Zoning:** C Local Business District; R-2 Residence District

**Request:** Special Use approval to permit outdoor dining for Jac's Cekola's Pizza and Latitude 42 Brewing Company, and to grant authority to the Oshtemo Charter Township Planning Department to administer and grant Special Use permits for outdoor dining lasting more than one day to any other restaurants located in Oshtemo Charter Township during the current Pandemic.

**Section(s):** Section 65: Special Uses  
Section 49.260: Temporary Outdoor Events (lasting more than one day)

**Project Name:** Outdoor dining during the current Pandemic

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**BACKGROUND:**

As a response to COVID-19 and in an effort to limit its spread, Governor Whitmer and the Michigan Department of Health and Human Services have instituted a number of Orders which require activities not necessary to sustain or protect life to be restricted at varying degrees. In effect, business owners are no longer able to generate revenue as before, which negatively impacts their cashflows and ability to continue operations and pay employees. Restaurants, bars, and similar establishments across the United States are especially being affected by these restrictions as they are being permitted to only operate at reduced capacities. In an effort to offset the mandated reduction to the indoor occupancy loads many of these establishments are looking for ways to convert outdoor spaces into temporary seating. Jac's Cekola's Pizza and Latitude 42 Brewing Company are both such establishments.

**REQUEST:**

Jac's Cekola's Pizza and Latitude 42 Brewing Company are seeking permission to cover their existing outdoor patio areas in order to offer sheltered outdoor dining at their establishments. It was recently brought to staff's attention that both restaurants installed temporary tents/coverings without proper permits or approval from the Township. Both establishments were unaware that tents are considered structures by the Township Ordinance and as such require review and approval. Both Jac's Cekola's Pizza and Latitude 42 Brewing Company seek to comply and would like to be able to continue to offer sheltered outdoor dining throughout the remainder of the pandemic. Outdoor temporary dining spaces

fall into the temporary outdoor events category which is considered a Special Use within Oshtemo's zoning ordinance. Special Uses require review and approval by the Planning Commission – a process that can take up to two months. The longer timeframe dictated by the code for this type of review is unnecessarily burdensome for these establishments in this time of need. Staff is requesting that the Planning Commission permit both Cekola's Pizza and Latitude 42 Brewing Company permission for their covered outdoor dining areas and grant authority to the Oshtemo Charter Township Planning Department to administer and grant special use permits for outdoor dining lasting more than one day to any other restaurants, bars, or similar establishments located in Oshtemo Charter Township during the current Pandemic.

ANALYSIS:

Temporary outdoor events lasting more than one day are identified as Special Uses within the Oshtemo Ordinance. Special Uses requires the review and approval of the Planning Commission (Section 64.20). When reviewing a Special Use there are two sets of criteria that need to be considered: the general Special Use review criteria outlined in Section 65.30 and the specific requirements for the use in question outlined under Section 49.260. Below is an analysis of the two proposals against these sections.

Section 65.30: Special Use Review Criteria

**A. Master Plan/Zoning Ordinance: The proposed use will be consistent with the purpose and intent of the Master Plan and Zoning Ordinance, including the District in which the use is located.**

3112 S 9<sup>th</sup> Street (Jac's Cekola's Pizza) is located within the C, Local Business District and the Village Form-Based Code Overlay Zone. 6101 W Main Street (Latitude 42 Brewing Company) is located within the R-2, Residence District and the 9<sup>th</sup> Street and West Main Overlay Zone. Both restaurants are permitted uses within their districts and have existing patio spaces where they are proposing to temporarily, throughout the Pandemic, to be able to install tents to allow for sheltered, year-round outdoor dining. The requested Special Use is incidental to the existing restaurants and consistent with the purpose and intent of the Master Plan and Zoning Districts that the properties are located in.

**B. Site Plan Review: The Site Plan Review Criteria of Section 64**

This section is not applicable as the proposal does not include a permanent proposed structure. Section 49.260 Temporary Outdoor Events (Lasting more than one day) outlines the site plan requirements for these temporary cases.

**C. Impacts:**

- a. **The proposed use would be compatible, harmonious and appropriate with the existing or planned character and uses of adjacent properties; meaning the proposed use can coexist with neighboring uses in a stable fashion over time such that no neighboring use is unduly negatively impacted.**

With both proposed tents located on properties that already provide outdoor dining options in the summer and with the proposed tents not interfering with the either site's parking or vehicle circulation, staff is confident that this requested special use will not negatively impact adjacent properties or the general public.

- b. **Potentially adverse effects arising from the proposed use on adjacent properties would be minimized through the provision of adequate parking, the placement of**

**buildings, structures and entrances, as well as the location of screening, fencing, landscaping, buffers or setbacks.**

Planning Department staff as well as the Township's Fire Marshal have reviewed both sites and found them to be satisfactory and not detrimental to the public health, safety, and welfare of the community. Traffic will still continue to circulate freely throughout the site, sufficient parking accommodations remain, and any relevant zoning requirements for outdoor events are met.

- c. The proposed use would not be detrimental, hazardous, or disturbing to existing or future adjacent uses or to the public welfare by reason of excessive traffic, noise, smoke, odors, glare, or visual clutter.**

The proposed Special Use request will not be detrimental, hazardous, or disturbing to existing or future adjacent uses or to the public welfare for the reasons outlined under C.a. and C.b. of this section.

- D. Environment: The natural features of the subject property shall only be cleared or altered to the extent necessary to accommodate site design elements, particularly where the natural features assist in preserving the general character of the area.**

The proposed Special Use for both Jac's Cekola's Pizza and Latitude 42 Brewing Company will be placed onsite, over existing hard surfaced areas. No changes to the sites natural features are proposed.

- E. Public Facilities: Adequate public and/or private infrastructure and services already exist or would be provided, and will safeguard the health, safety, and general welfare of the public.**

Both Jac's Cekola's Pizza and Latitude 42 Brewing Company are established restaurants in Oshtemo. The proposed Special Use will not put additional strain on the public or private infrastructure in their corresponding areas.

- F. Specific Use Requirements: The Special Use development requirements of Article 49.**

See analysis below.

49.260 Temporary Outdoor Events (Lasting more than one day)

- A. May last more than one day.**

The request for both cases is to be able to erect these tents as deemed necessary to help with business during the Covid18 pandemic.

- B. Use is incidental to the principal use of the property.**

Both are restaurants that already have outdoor patio dining options established onsite. The proposed temporary event will just expand on their ability to offer outdoor dining throughout the seasons.

- C. A Site Plan shall be submitted for administrative review indicating the following:**

- 1. Traffic lanes and on-site parking.**

Both Jac's Cekola's Pizza and Latitude 42 Brewing Company are proposing their tents to be located over existing patios. Parking or traffic for the site will not be affected.

- 2. Fire lanes and emergency vehicle turning areas.**

Not Applicable.

**3. Restrooms provided (in building or portable facilities).**

Both establishments will allow patrons to use their indoor restrooms.

**4. Placement of vehicles, trailers, and all other equipment is away from adjoining residentially used properties and complies with all applicable setbacks.**

Not applicable.

**5. All activity takes place on subject property.**

Criterion met.

**D. The Fire Chief, or his designee, has approved the placement of vehicles, trailers, and all other equipment associated with the event.**

The Fire Marshall has inspected both tents and is satisfied that they both meet fire safety standards.

**E. All signs directed off-site must receive a temporary sign permit and comply with all applicable sign ordinances.**

No signs are proposed for either proposed Special Use.

**F. Property owner must approve and acknowledge the use of the property for the event.**

Oshtemo Staff has been working closely with both property owners and both are in support of their respective requests.

**RECOMMENDATION**

1. Planning Department staff is requesting that the Planning Commission grant both Jac's Cekola's Pizza and Latitude 42 Brewing Company permission for their proposed Special Use - Temporary Outdoor Event which would allow them to offer covered outdoor dining areas throughout the current Pandemic.
2. Planning Department staff request that the Planning Commission grant authority to the Oshtemo Charter Township Planning Department to administer and grant Special Use permits for outdoor dining lasting more than one day to any other restaurants, bars, or similar establishments located in Oshtemo Charter Township during the current Pandemic.

**Attachments:**

Application for 3112 S 9<sup>th</sup> Street (Jac's Cekola's Pizza)  
3112 S 9<sup>th</sup> Street (Jac's Cekola's Pizza) Site Plan  
Application for 6101 W Main Street (Latitude 42 Brewing Company)  
6101 W Main Street (Latitude 42 Brewing Company) Site Plan



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

**PLEASE PRINT**

PROJECT NAME & ADDRESS JAC'S @ 3112 S. 9TH STREET

**PLANNING & ZONING APPLICATION**

Applicant Name : BILL CEKOLA  
Company JAC'S - CEKOLA'S PIZZA  
Address 3112 S. 9TH STREET  
KALAMAZOO, MI 49009  
E-mail BCEKOLA@AOL.COM  
Telephone (269) 207-1024 Fax X  
Interest in Property TENANT & LANDLORD

THIS SPACE FOR TOWNSHIP USE ONLY

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

**OWNER\*:**

Name 9TH STREET INVESTMENTS  
Address 2295 WOODY NOEL  
PORTRAGE, MI 49002  
Email BILL CEKOLA @ BCEKOLA@AOL.COM  
Phone & Fax (269) 207-1024 N/A

**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 type="checkbox"/> Interpretation-1082  |
| <input type="checkbox"/> Zoning Variance-1092                 | <input type="checkbox"/> Text Amendment-1081  |
| <input type="checkbox"/> Site Condominium-1084                | <input checked="" type="checkbox"/> Sign Deviation-1080                                 |
| <input type="checkbox"/> Accessory Building Review-1083       | <input checked="" type="checkbox"/> Other: <u>TEMP OUTDOOR EVENT</u><br><u>PER IRIS</u> |

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

COVERING OUR EXISTING PATIO @ JAC'S W/ TENTS  
20'X40' + (2) 10'X10' - TILL JAN 8TH (30 DAY RENTAL FROM  
RENTALEX) ALONG W/ 6 PROPANE HEATERS + LIGHTING + EXIT SIGNS

\* WE WOULD LIKE THE OPTION OF STARTING AGAIN IN MARCH 2021 IF POSSIBLE TILL JUNE '21 W/ 3 MONTH EXTENSION.

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

3112 S. 9TH ST.

KALAMA 200, MI 49009

SEC 26 / TOWNSHIP 2 SOUTH / RANGE 12 WEST

PARCEL NUMBER: 3905- 05-26-380-048 + 05-26-380-080

ADDRESS OF PROPERTY:

PRESENT USE OF THE PROPERTY:

RESTAURANT

PRESENT ZONING

SIZE OF PROPERTY

1.41 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)

9TH STREET INVESTMENTS

2295 WOODY NOCK (LANDLORD)

EOA-O-LLC (DBA - JAC'S)

3112 S. 9TH STREET (TENANT)

**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.*

Owner's Signature (\* If different from Applicant)

*[Handwritten Signature]*

Date

12/14/2020

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**



Proposed Temporary Outdoor Event (lasting more than one day) to be held in the existing patio space outlined in red.



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 : Joseph Stoddard  
Company Latitude 42 Brewing Company  
6101 W. Main St  
Address Kalamazoo, MI 49009  
\_\_\_\_\_  
E-mail jpstoddard@hotmail.com  
269-762-1552 Fax \_\_\_\_\_  
Telephone \_\_\_\_\_  
Interest in Property Owner

THIS  
SPACE  
FOR  
TOWNSHIP  
USE  
ONLY

**OWNER\*:**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Email \_\_\_\_\_  
Phone & Fax \_\_\_\_\_

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 checked="" type="checkbox"/> Special Exception Use-1085 | <input 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):

Utilizing our outdoor space for pandemic  
COVID seating + use. Indoors shut down  
currently,



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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PARCEL NUMBER:** 3905- \_\_\_\_\_

**ADDRESS OF PROPERTY:** 4101 W. main St Kalamazoo, MI 49009

**PRESENT USE OF THE PROPERTY:** Restaurant / Brewery

**PRESENT ZONING** Gen. Business **SIZE OF PROPERTY** 2.75 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)
_____	_____
_____	_____

**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.*

\_\_\_\_\_  
**Owner's Signature** *(\* If different from Applicant)*

*[Handwritten Signature]*  
**Applicant's Signature**

\_\_\_\_\_  
**Date**

1/4/2021  
**Date**

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

\*\*\*\*  
**PLEASE ATTACH ALL REQUIRED DOCUMENTS**



Proposed Temporary Outdoor Event (lasting more than one day) to be held in the existing patio space outlined in red.



January 6, 2021

**Mtg Date:** January 14, 2021  
**To:** Planning Commission  
**From:** Iris Lubbert, AICP, Planning Director  
**Subject:** Public Hearing: Pools on Corner Lots (front yard setback)

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Objective:

Consideration of amendments to the Township Zoning Ordinance, for recommendation to the Township Board, that provides clarification on where pools can be placed on a property – specifically as it relates to the front yard.

Background:

On November 17<sup>th</sup> the Zoning Board of Appeals reviewed a variance request to permit an in-ground pool to protrude 20 feet into the required 30-foot front yard setback. The property in question, 5359 Sweet Briar Drive, is a small corner lot located within Rose Arbor plat No. 2. After review and discussion, the Zoning Board of Appeals approved the request. A copy of the staff report and draft meeting Minutes are attached. This was not the first variance approved to allow an in-ground pool to protrude into a corner lot's front yard. However, it should be noted that this variance was the first of its type approved under the current setback code adopted in 2011. As a result of this meeting, the Zoning Board of Appeals requested that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to in ground pools on corner lots.

The current setbacks for pools are outlined in section 50.60 Setback Provisions of the code. In this section, pools are given a side yard setback of 10 feet and a rear yard setback of 15 feet. As the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house. However, corner lots, as they have frontage on two streets, have two front yards. Assuming the house is built up to the two 30-foot front yard setbacks, this means that, a 30-foot front setback is required for a potential pool along each street frontage (at minimum to line up with the house). This is a larger setback area than is required of properties not located on a corner, where only a 10 foot side yard setback is required; meaning that usable rear yard space is reduced at least by approximately 20 feet along the corner lots' side with street frontage. The Zoning Board of Appeals felt that this unique hardship of corner lots should be taken into consideration and in-ground pools should be treated differently than the standard primary or accessory structure. It should be noted that only public comments in support of the variance request were received.

This proposed code amendment was introduced to the Planning Commission at their regular December 10<sup>th</sup>, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing.

Proposal:

Based on input from the Zoning Board of Appeals and past precedence of approved pools within Oshtemo Township, staff and legal counsel are recommending a code amendment that would provide additional guidance and flexibility for pools on corner lots. The amendment includes adding a definition of a corner lot, differentiating between what is considered a corner lot's front and side street frontage, and allowing a 10 foot front yard setback for in-ground pools on corner lots in subdivisions or site condominiums if it is along the 'Side Street Frontage' of the lot, provides the required fencing, and is screened from the road with landscaping. This proposed amendment also clearly notes that any other pools are not permitted in a front yard.

Attached: Proposed Pools on Corner Lots (front yard setback) Text Amendment Document; 5359 Sweet Briar Drive Variance Staff Report; Images of existing pools on corner lots that encroach into the front yard; November 17<sup>th</sup> ZBA DRAFT Meeting Minutes

## Article 2 – Construction of Language and Definitions

### 2.20 Definitions

**Corner Lot:** A Lot located at the intersection of two or more streets.

**FRONTAGE, FRONT STREET.** A corner Lot has a Front Street and a Side Street Frontage, with the Front Street Frontage being the frontage onto which the front of the building faces.

**FRONTAGE, SIDE STREET.** A corner Lot has a Front Street and a Side Street Frontage, with the Side Street Frontage being the frontage onto which the side of the building faces.

## Article 50 – Schedule of Regulations:

### 50.60 Setback Provisions:

...

B. Agricultural and Residence Districts, which shall include the “AG” Agricultural District, “RR” Rural Residential District, “R-1” Residence District, “R-2” Residence District, “R-3” Residence District, “R-5” Residence District, “R-C” Residential, Conservation District and buildings having two stories or less in “R-4” Residence District.

#### 1. Front yard setbacks for primary structures.

- a. A setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions unless a larger setback is otherwise required.
- b. If a new primary structure is constructed within 300 feet of a building existing on the effective date of this Ordinance (December 24, 1966) which is closer than the 30-foot setback requirement, the setback may be decreased according to the schedule set forth in Section 50.60.A.
- c. If a new primary structure is constructed within 100 feet of a building existing on the effective date of this Ordinance which is further than the 30-foot setback requirement, the minimum setback requirement shall be equal to the average of the closest existing buildings on either side of the new building.
- d. On corner lots in subdivisions or site condominiums inground pools are permitted to have a ten-foot front yard setback along the Side Street Frontage of the lot. In addition to the required fencing, these pools shall be screened from the road with landscaping. Pools are otherwise not allowed in the front yard.

#### 2. Interior side and rear yard setbacks for primary structures.

- a. "AG" Agricultural District, "RR" Rural Residential District, "R-1" Residence District, "R-2" Residence District, "R-3" Residence District, and "R-C" Residential, Conservation District:
  1. i. The minimum setback distance between any primary structure, pool, or associated decks whether attached or detached and any interior side property shall be ten feet unless a larger setback is otherwise required in the Township Zoning Ordinance.
  2. ii. The minimum setback distance between any primary structure, pool, or associated decks whether attached or detached and any rear property shall be 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance.
- b. "R- 5" Residence District, and buildings having two stories or less in "R-4" Residence District:

1. i. The minimum setback distance between any building and any rear or interior side property line shall be ten feet or the height of the abutting side of the building at its highest point as measured from the grade of the property line, whichever is greater.
- c. The setbacks for buildings exceeding two stories in the "R-4" Residence District are set forth in Section 50.60.C.
- d. The rear and interior side property line setbacks for nonresidential buildings in the above zoning districts shall satisfy the requirements of Section 50.60.C.

November 4th, 2020



**Mtg Date:** November 17th, 2020

**To:** Zoning Board of Appeals

**From:** Karen High, Zoning Administrator

**Applicant:** Frank H. and M. Jamie Jeremy  
**Owner:** Frank H. and M. Jamie Jeremy

**Property:** 5359 Sweet Briar Drive, parcel number 05-36-475-010

**Zoning:** R2: Residence District

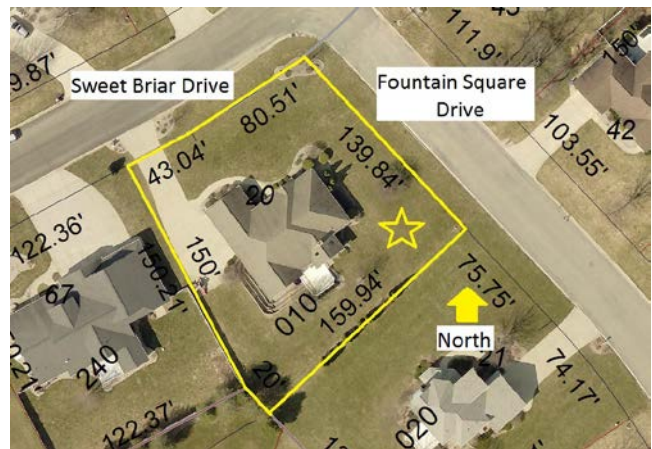
**Request:** A variance to permit a pool which will protrude 20 feet into the required 30-foot front yard setback

OVERVIEW:

The applicant is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 30 foot front yard setback. Required side setback is 10 feet and required rear setback is 15 feet.

5359 Sweet Briar Drive is a 0.50-acre corner lot in Rose Arbor plat No. 2. The lot is approximately 150 feet wide by 150 feet long and also fronts Fountain Square Drive. Though the required front setbacks are 30 feet, the house, built in 2002, is approximately 44 feet from each right of way line. The side and rear yards are somewhat narrow, at approximately 35 foot and 40 foot wide respectively. The lot is outlined in yellow in the aerial photo to the right. Approximate location of the proposed pool is starred.



The applicant has submitted a property sketch showing the proposed layout in more detail. (See attachments.) Though not shown on the plan, they state that required fencing will meet all ordinance requirements. The applicant has provided the following rational for this variance request:

- The entire pool structure will be built below grade, with nothing above ground to impede the character of the neighborhood except enhanced landscape and plantings.

- A 10 foot side and 15 foot rear setback is provided. This shows a good faith effort to meet the side and rear setback requirements for lots not located on a corner.
- There is no other practical or safe location for a conventional pool on the property.
- A house in the neighborhood, also on a corner lot, was permitted to have a pool in the front yard.
- Several houses in the neighborhood have pools in the side and rear yards. Many of these pools would not be permitted if on our corner lot.

Public input was received from six residents of the neighborhood. There were no objections to the variance request. Copies of their statements are attached.

#### STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

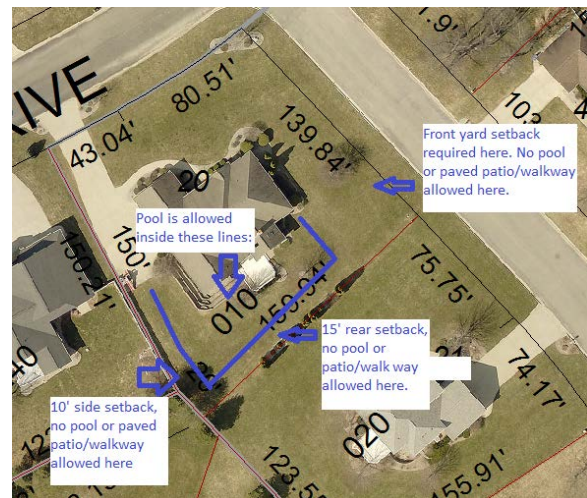
- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted 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.

Staff has analyzed the request against these principles and offer 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 topography around this site is flat. Because it is located on a corner, a 30 foot front setback is required along each street frontage. This is a larger setback than is required of properties not located on a corner, where a 10 foot side yard setback is required on each side. Usable yard space is reduced by approximately 20 feet' along the Fountain Square Drive street frontage.



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



Comment: It is the applicant's desire for a pool that triggered this variance request. A pool is not a required nor necessary amenity. A smaller or differently shaped pool might fit on the property without the need for a variance.

*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 setback relief for a pool in a front yard setback, Planning Department staff identified one comparable case. Further research revealed that interpretation of required setbacks for pools has varied over time. In a cursory review of the Township using aerial photos, staff found two inground pools in front yards. In addition, it should be noted that the zoning ordinance was amended in 2011 to require a setback for pools in the side and rear yard. These findings are described below.

1. Latoskewski, 405 Clubview, 10/20/1997: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 17 foot x 35 foot pool in the required 40 foot front setback of Shadywood Drive. Located on a corner lot, the property also fronted Club View Drive. The Zoning Board of Appeals approved the variance request of 40 feet based on the following reasons: that conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks, that substantial justice would be served by the variance, and that the spirit and intent of the Ordinance would be met because the pool would be below ground and included no pool house or other structure. (See meeting minutes and aerial photo attached.)
2. 4970 Fountain Square, 10/9/01: A building permit for an inground pool in the required front yard was approved with no setback. This property is also on a corner lot. A letter in the file from Planning Department staff indicated that "placement of an inground pool is not subject to setbacks from the abutting streets." The letter and an aerial photo are attached to this staff report. This is consistent with statements in meeting minutes from that time period that 'buildings' were required to meet setback requirements but 'structures' were not.
3. 6488 Killington Drive, 2008: A building permit was issued for an inground pool at this address, also on a corner lot. The pool is located approximately 15 feet from the right of way line. Planning Department staff approved the building permit application. (See aerial photo attached.)
4. Zoning Code text amendment to Section 64 – Setback and Side Line Spacing, 2/24/2011: The zoning ordinance was amended to require a minimum front yard setback of 30 feet rather than 40 feet. Minimum rear yard setback, formerly 10 feet, was increased to 15 feet. In addition, text was added requiring that pools and decks (attached or detached) conform to applicable rear and interior side setbacks. According to the staff report, reasoning was that "this will prevent decks and pools from being too close to property lines." Added text for pools and decks follows in bold:
  - a. "The minimum setback distance between any building and any interior side property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-

1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be ten feet for all buildings, **pools, and associated decks whether attached or detached** unless a larger setback is otherwise required in the Township Zoning Ordinance.

- b. The minimum setback distance between any building, **pools, and associated decks whether attached or detached** and any rear property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be not less than 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance."

Text adopted in 2011 for front yard setbacks was as follows: "there shall be a setback from all street right of way lines and outlots and/or planned future public street extensions of not less than 30 feet for all buildings unless a larger setback is otherwise required."

This is essentially the same as language in the current ordinance, which states "front yard setbacks for primary structures: a setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions." Because the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house.

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

*Comment:* The home at 5359 Sweet Briar Drive was built near the center of the property. The lot lines and setbacks for the property have not changed since its construction. There may be room in the rear yard for a much smaller or irregularly shaped pool that meets setback requirements. It is the applicant's desire for a pool that has triggered this variance request. A pool is not a required or necessary amenity.

#### POSSIBLE ACTIONS

The Zoning Board of Appeals 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 following findings of fact are presented:

- Support of variance approval
  - The corner lot places additional restrictions on this property – is a unique physical circumstance.
  - A variance was approved for a similar request in 1997.

- Pools were previously allowed to be constructed in the Township with no required front setback.
- Support of variance denial
  - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A pool is not a required nor a necessary amenity.
  - The variance request for this 18' x 36' pool is a self-created hardship, as a smaller pool could be built.

Possible motions for the Zoning Board of Appeals to consider include:

1. Applicant's Request

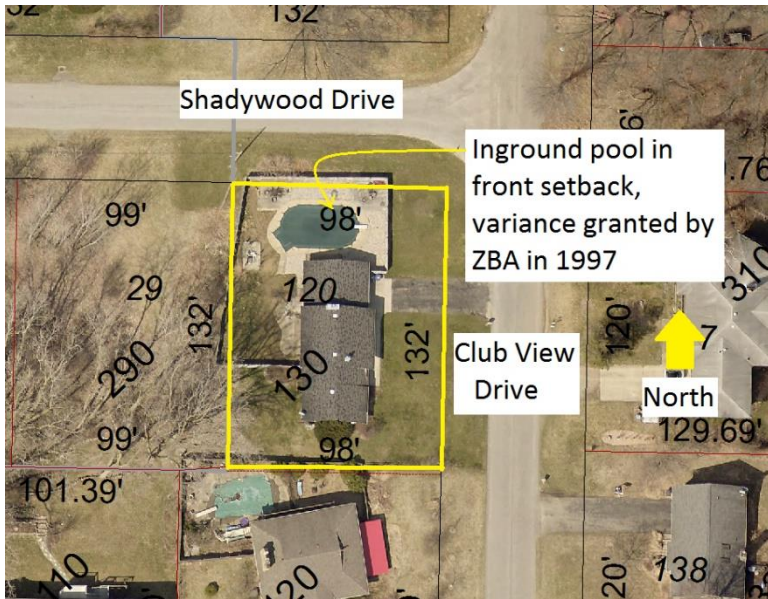
Based on past precedence presented in this memo, motion to approve the variance request, allowing the applicant to construct an 18 foot x 36 foot in ground pool with a 10-foot front yard setback.

If the Zoning Board of Appeals chooses this motion, staff request that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

If the Zoning Board of Appeals chooses this motion, staff also requests that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to pools on corner lots.

2. Motion to deny the requested variance based on the findings of fact presented under 'Support of variance denial' in this memo.

Attachments: Application, Letter from Applicant, Property sketch, Public input received as of 11/9/2020, 10/09/2001 Planning Dept letter, 10/20/1997 ZBA minutes, Aerial photos of existing inground pools in front setback.



**Aerial photo of  
405 Club Drive**



**Aerial photo of  
4970 Fountain Square Drive**



**Aerial photo of  
6488 Killington Drive**

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**DRAFT MINUTES OF A VIRTUAL MEETING HELD NOVEMBER 17, 2020**

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**Agenda**

**VARIANCE: JEREMY, 5359 SWEET BRIAR DRIVE**

**FRANK H. AND M. JAMIE JEREMY REQUESTED RELIEF FROM SECTION 50.60 OF THE ZONING ORDINANCE WHICH GOVERNS SETBACKS FOR STRUCTURES IN RESIDENTIAL ZONING DISTRICTS IN ORDER TO CONSTRUCT AN 18 FOOT X 36 FOOT IN-GROUND POOL AND ASSOCIATED CONCRETE DECKING IN THE REQUIRED FRONT YARD.**

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A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 17, 2020, called to order at approximately 3:02 p.m.

PRESENT: Neil Sikora, Chair  
Fred Antosz  
Cheri Bell  
Fred Gould  
Anita Smith, Vice Chair

ABSENT: Ollie Chambers  
Micki Maxwell

Also present were Iris Lubbert, Planning Director, Karen High, Zoning Administrator, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist.

One guest, applicant M. Jamie Jeremy was present.

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

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

**APPROVAL OF AGENDA**

Chairperson asked if there were changes to the agenda. Hearing none, he asked for a motion.

Ms. Smith **made a motion** to approve the agenda as presented. Mr. Gould **seconded the motion. The motion was approved unanimously.**

## **APPROVAL OF THE MINUTES OF AUGUST 25, 2020**

The Chair asked if there were any additions, deletions or corrections to the minutes of August 25, 2020. Hearing none, Chairperson Sikora asked for a motion.

Ms. Bell **made a motion** to approve the Minutes of August 25, 2020 as presented. Ms. Smith **seconded the motion**. **The motion was approved unanimously.**

Chairperson Sikora moved to the next agenda item and asked Ms. Lubbert for her presentation. Ms. Lubbert indicated Ms. Karen High, Zoning Administrator would be presenting to the Board.

### **VARIANCE: JEREMY, 5359 SWEET BRIAR DRIVE FRANK H. AND M. JAMIE JEREMY REQUESTED RELIEF FROM SECTION 50.60 OF THE ZONING ORDINANCE WHICH GOVERNS SETBACKS FOR STRUCTURES IN RESIDENTIAL ZONING DISTRICTS IN ORDER TO CONSTRUCT AN 18 FOOT X 36 FOOT IN-GROUND POOL AND ASSOCIATED CONCRETE DECKING IN THE REQUIRED FRONT YARD.**

Ms. High indicated the applicant was requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 30 foot front yard setback. Required side setback is 10 feet and required rear setback is 15 feet.

She explained 5359 Sweet Briar Drive is a 0.50-acre corner lot in Rose Arbor plat No. 2. The lot is approximately 150 feet wide by 150 feet long and also fronts Fountain Square Drive. Though the required front setbacks are 30 feet, the house, built in 2002, is approximately 44 feet from each right of way line. The side and rear yards are somewhat narrow, at approximately 35 foot and 40 feet wide respectively.

The applicant submitted a property sketch showing the proposed layout in more detail. Though not shown on the plan, they state that required fencing will meet all ordinance and building code requirements. The applicant provided the following rationale for this variance request:

- The entire pool structure will be built below grade, surrounded by a fence with nothing above ground to impede the character of the neighborhood except enhanced landscaping and plantings. The pool will not be readily visible to anyone driving by; it will appear to be a fenced-in yard.

- A 10 foot side and 15 foot rear setback is provided, which shows a good faith effort to meet the side and rear setback requirements for lots not located on a corner.
- There is no other practical or safe location for a conventional pool on the property.
- A house in the neighborhood, also on a corner lot, was permitted to have a pool in the front yard.
- Several houses in the neighborhood have pools in the side and rear yards. Many of these pools would not be permitted if on our corner lot.

Ms. High indicated public input was received from six residents of the neighborhood, none of which objected to the variance request. Copies of their statements are attached to these minutes.

She urged the board to consider the larger picture. Does the Township wish to allow in-ground pools within required front yard setbacks? Should corner lots be considered differently? Should other structures be allowed as well? This is the first case of this nature under the current ordinance. By approving this case, a precedent would be set allowing in-ground pools or structures in a front yard, which could have negative impacts if not properly justified.

#### STANDARDS OF REVIEW - STAFF ANALYSIS

Ms. High noted the Michigan courts have applied 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.

Staff analyzed the request against these principles and Ms. High offered the following comments.

#### 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 topography around this site is flat. Because it is located on a corner, a 30 foot front setback is required along each street frontage. This is a*

larger setback than is required of properties not located on a corner, where a 10 foot side yard setback is required on each side. Usable yard space is reduced by approximately 20 feet' along the Fountain Square Drive street frontage.

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

**Comment:** It is the applicant's desire for a pool that triggered this variance request. A pool is not a required or necessary amenity. A smaller or differently shaped pool might fit on the property without the need for a variance.

*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 setback relief for a pool in a front yard setback, Planning Department staff identified one comparable case. Further research revealed that interpretation of required setbacks for pools has varied over time. In a cursory review of the Township using aerial photos, staff found two in-ground pools in front yards. In addition, it should be noted that the zoning ordinance was amended in 2011 to require a setback for pools in the side and rear yard. These findings are described below.

1. Latoskewski, 405 Clubview, 10/20/1997: The applicant sought relief from the Zoning Board of Appeals to allow construction of a 17 foot x 35 foot pool in the required 40 foot front setback of Shadywood Drive. Located on a corner lot, the property also fronted Club View Drive. The Zoning Board of Appeals approved the variance request of 40 feet based on the following reasons: that conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks, that substantial justice would be served by the variance, and that the spirit and intent of the Ordinance would be met because the pool would be below ground and included no pool house or other structure.
2. 4970 Fountain Square, 10/9/01: A building permit for an in-ground pool in the required front yard was approved with no setback. This property is also on a corner lot. A letter in the file from Planning Department staff indicated that "placement of an in-ground pool is not subject to setbacks from the abutting streets." This is consistent with statements in meeting minutes from that time period that 'buildings' were required to meet setback requirements but 'structures' were not.
3. 6488 Killington Drive, 2008: A building permit was issued for an in-ground pool at this address, also on a corner lot. The pool is located



approximately 15 feet from the right of way line. Planning Department staff approved the building permit application.

4. Zoning Code text amendment to Section 64 – Setback and Side Line Spacing, 2/24/2011: The zoning ordinance was amended to require a minimum front yard setback of 30 feet rather than 40 feet. Minimum rear yard setback, formerly 10 feet, was increased to 15 feet. In addition, text was added requiring that pools and decks (attached or detached) conform to applicable rear and interior side setbacks. According to the staff report, reasoning was that “this will prevent decks and pools from being too close to property lines.” Added text for pools and decks follows in bold:
  - a. “The minimum setback distance between any building and any interior side property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be ten feet for all buildings, **pools, and associated decks whether attached or detached** unless a larger setback is otherwise required in the Township Zoning Ordinance.
  - b. The minimum setback distance between any building, **pools, and associated decks whether attached or detached** and any rear property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be not less than 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance.”

Text adopted in 2011 for front yard setbacks was as follows: “there shall be a setback from all street right of way lines and outlots and/or planned future public street extensions of not less than 30 feet for all buildings unless a larger setback is otherwise required.”

This is essentially the same as language in the current ordinance, which states “front yard setbacks for primary structures: a setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions.” Because the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house.

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

**Comment:** The home at 5359 Sweet Briar Drive was built near the center of the property. The lot lines and setbacks for the property have not changed since its construction. There may be room in the rear yard for a much smaller or irregularly shaped pool that meets setback requirements. It is

the applicant's desire for a pool that has triggered this variance request. A pool is not a required or necessary amenity.

Ms. High indicated approving the requested variance would not negatively affect safety and welfare.

She indicated possible motions for consideration:

1. Based on past precedence, **motion to approve** the variance request, allowing the applicant to construct an 18 foot x 36 foot in ground pool with a 10-foot front yard setback.

If the Zoning Board of Appeals were to choose this motion, staff requested a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority. In addition staff also suggested a request be sent to the Planning Commission to consider an update to the code to provide some flexibility to pools on corner lots.

2. **Motion to deny** the requested variance based on the findings of fact presented under 'Support of variance denial.'

Chairperson Sikora thanked Ms. High for her presentation and asked if there were questions from Board Members.

Mr. Sikora asked about required fencing.

Ms. High said a fence is required by building code for all pools. The applicant has stated fencing will meet zoning requirements, with no variance needed.

Hearing no further questions from Board Members, Chairperson Sikora asked if the applicant wished to speak.

Ms. Jamie Jeremy, 5359 Sweet Briar Drive, thanked Township staff for their guidance through the variance request process, ZBA members for their service to the Township and their consideration of the request, and her neighbors for their support.

She said when their house was built in 2003, they never dreamed they would want a pool, and if they had they would have positioned the house differently. Now, 17 years later, they very much want to add a pool. They were unaware of the second "front" yard with much greater setback requirements than for a normal yard. They wish to commit to undertaking a project that will not detract from their or their neighbors' homes. They will follow the example of the landscaping done at 4970 Fountain Square so that you will hardly know there is a pool there.

The Chair thanked Ms. Jeremy for her comments and asked if there were questions for her from Board Members.

Ms. Smith asked why the pool could not be located west of the deck.

Ms. Jeremy said there is a retaining wall there at a 15 foot setback from the property line. A pool would have to be located very close to it. The landscaper who installed the retaining wall said that could impact the integrity of the wall.

Ms. Smith wondered how a pool located west of the deck would impact a retaining wall.

Ms. Jeremy said the retaining wall is dug down underground at the basement level and holds land back from the lower level windows. Another alternative would have to be figured out. She also noted the pool would not be a part of the yard visually off the sun porch and that a traffic pattern from the house to the pool from the deck flows as it is designed. There is no access currently from that part of the yard. The retaining wall is an eight-foot drop and a safety factor. The fence would need to be closer than if dealing with the property lines.

Ms. High noted she measured using the GIS feature and that a pool this size would not meet the setback requirements if located in the rear corner to the west. It might still require a different type of variance.

Hearing no more questions, the Chair asked if there were any comments from the public. He determined there were no members of the public present and moved to Board Deliberations.

The Chair asked why in the summary of review this particular corner lot is considered a "unique physical circumstance?"

Ms. High said all corner lots are constrained because there is less usable space which puts corner lots at a disadvantage.

Chairperson Sikora said the 1997 variance was approved partially because the pool placement was restricted due to drainage and the septic system location.

Ms. High agreed that was one of the factors discussed in 1997.

Chairperson Sikora said this is the first time since the ordinance was changed in 2011 that a variance has been sought for this purpose and wondered if the circumstances are different. Frontage on two streets comes into play for other cases, such as how assessments are determined for two front yards.

Attorney Porter said sewer and water assessments for corner lots (two front streets) are capped so that a corner lot is not penalized. They cannot be taxed at a different rate; assessment is based on fair market value. A corner lot may be seen as

worth more, but there is no disparity in rates between corner and interior lots. That would be improper.

Ms. Bell noted the 1997 variance for a pool at 405 Clubview was granted prior to the ordinance change in 2011. The similar in-ground pools for 4970 Fountain Square in 2001 and for 6488 Killington Drive in 2008 were approved without variance.

Ms. High noted the 1997 variance granted by the ZBA included language suggesting the Planning Commission should look at and consider amending the ordinance regarding front yard setbacks for pools, but she was unable find any evidence that had occurred.

Attorney Porter said that could have happened as an unintended difference in interpretation.

Ms. High noted the same people signed off on the building permits in 2001 and 2008, but that interpretations evolve and change over time and that may be what occurred.

Ms. Smith wondered how much smaller the pool would need to be if built to the west without encroaching on the retaining wall.

Ms. Lubbert did a rough calculation and thought it could be about 12 feet wide by 15 feet, not including the cement apron decking needed.

Mr. Gould said he has been a pool owner for more than 50 years in two locations. He said 18' x 36' is basically the ideal size for a pool for entertaining, especially for children, who jump, run and need enough space on the deck and around the pool for activities. He heard no opposition to the variance request from neighbors. The ZBA has granted 3-4 site exceptions. He would like to see the Jeremys be able to use and enjoy their property to the fullest. His only question would be concern for anyone moving in later and not finding the variance a problem, though he did not see that as a concern. He cited past precedent and neighbor approval as positives for approval of the variance.

Ms. Bell said she appreciates the tough questions posed by Board Members. There is ambiguity regarding the interpretation of what is and what is not a structure, which should go to the Planning Commission for consideration. Variance was allowed for similarly situated pools in the past which would provide substantial justice in this case and there is strong neighborhood support. Once a variance is granted there will be no problem with later owners. This is a unique circumstance as it is a corner lot. She said she could support approval of the variance request.

Chairperson Sikora was not convinced the criteria for setback relief has been met. He did not feel conformance was burdensome, setbacks granted in the past were

under different circumstances, apples were not being compared to apples, substantial justice doesn't apply with a corner lot, and the problem is self-created.

Attorney Porter said the Board must make a motion and decision as a body whether to grant or deny the variance. If it is felt there is inconsistency in the ordinance regarding corner lot definitions of side and front yards and the definition of "structures," the issue can be referred to the Planning Commission for their consideration.

The Chair said he would support suggesting the Planning Commission consider defining front and side yards for corner lots.

Ms. Smith said she feels the request for variance in this case is a self-created hardship, but would also like to have the Planning Commission look at the side/front yard issue for corner lots which would provide a better opportunity to get the pool where it is wanted.

Ms. Bell asked Attorney Porter whether all five criteria need to be met in order to grant the variance.

Attorney Porter said some would say yes, but he does not agree. Courts do not agree nor does the statute. Practical difficulties are not defined; case law is not clear. People view things differently. It comes down to how ZBA members determine the facts. The ZBA is the jury – you determine the facts.

Chairperson Sikora said he was trying to stick to the variance request form. Sending a request to the Planning Commission will take time. He asked Ms. Jeremy what the timeline is for installing the pool.

Ms. Jeremy said they were looking at the spring of 2021.

Chairperson Sikora asked if someone wished to make a motion.

Ms. Bell **made a motion** to approve the variance as requested, based on the fact that the two front lots are a unique physical circumstance, previous decisions have not been treated in the same way – two pools in the front yard were approved without variance, one with variance, substantial justice is met, reasonable use is not available to place a pool in the rear yard, fencing and screening will maintain safety and welfare.

Per Staff request, a condition will be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

A request will be sent to the Planning Commission to consider an update to the code that provides some flexibility to pools on corner lots, particularly addressing side vs. front lots for corner properties and the definition of "structures."

Mr. Antosz **seconded the motion. The motion was approved 3-2 by roll call vote, with Chairperson Sikora and Vice Chairperson Smith dissenting.**

**Public Comment**

Chairperson Sikora determined there were no members of the public present and moved to the next agenda item.

**Other Updates and Business**

Ms. Lubbert provided a schedule of meeting dates for 2021 consideration.

Zoning Board of Appeals  
Fourth Tuesday of every month @ 3:00 p.m.  
2021 Meeting Dates

1/26  
2/23  
3/23  
4/27  
5/25  
6/22  
7/27  
8/24  
9/28  
10/26  
11/16\*  
12/14\*  
1/25/2022

\*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications

Mr. Gould **made a motion** to approve the Zoning Board of Appeals Meeting Date Schedule as presented. Ms. Smith **seconded the motion. The motion was approved unanimously.**

Ms. Lubbert told the Board public meetings will continue to be held virtually through December by order of the governor. It is likely that order will be extended further. She will keep the Board updated as more information is known.

She indicated she expects there to be two site plans for consideration at the December 15 meeting.

Attorney Porter said he felt the variance request discussion was one of the best the Board has had. It included tough questions and members focused on the issues at

hand, debating head to head on the facts, which is exactly what the ZBA should be doing. He said “the facts are what you say they are.”

Ms. Bell said the new Township Board will be sworn in Friday, November 20 at noon and will include two new Trustees and a new Treasurer. She encouraged Board Members to introduce themselves and welcome Trustees as they look forward to getting to work.

**Adjournment**

Hearing no further comments, Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:15 p.m.

Minutes prepared:  
November 18, 2020

Minutes approved:  
\_\_\_\_\_, 2020

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January 6, 2021

**Mtg Date:** January 14, 2021  
**To:** Planning Commission  
**From:** Iris Lubbert, AICP, Planning Director  
**Subject:** Public Hearing: Child and Adult Care Centers

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Objective:

Consideration of amendments to the Township Zoning Ordinance, for recommendation to the Township Board, to allow all private and public schools within Oshtemo to have Child Care Centers as an accessory use. In addition, the proposed amendment would allow Adult Care Centers to be permitted as a primary use within the Township in all Zoning Districts where a Child Care Center is permitted as a primary use.

Background:

Recently the Planning Commission reviewed a conditional rezoning request that asked to rezone a property to a higher intensity in order for the site to have a Child Care Center. Although the rezoning request was denied as it was considered spot zoning, the topic of Child Care Centers peaked both the Planning Commission's and Public's interest. There was a general agreement that child care options are important and more flexibility was needed that would allow for more of this type of service. Planning Staff was asked to review the code and see if there was a way to appropriately allow for more Child Care Centers in Oshtemo.

Coincidentally, around the same time as the rezoning discussion, a site plan for initial discussion was submitted to staff that entailed an Adult Care Center. After reviewing the code, staff found that it was unclear where and if this use was permitted. After discussion with legal counsel it was determined that this use was comparable to a Child Care Center and that a code amendment would be appropriate. For the sake of efficiency, staff has incorporated language to address deficiencies in the code regarding Adult Care Centers with the proposed Child Care Center code amendment discussion.

This proposed code amendment was introduced to the Planning Commission at their regular December 10<sup>th</sup>, 2020 meeting. After discussion the Commission unanimously approved forwarding the proposed text to a Public Hearing.

Proposal:

**Child Care Centers:** There are three different intensities of child care uses that are permitted by the code within Oshtemo: Family day care home (allowing up to 6 children), Group day care home (allowing up to 12 children), and Child Care Center (with no defined maximum number of children permitted). All three of these uses provide child care for periods less than 24 hours a day. Family day cares and Group day cares are permitted in all agricultural and residential zoning districts. This is appropriate as they are small in scale, are required to utilize private residential residences, and must preserve the residential character of the area. Child Care Centers are allowed in the R-3, Residence zoning district and higher. This is appropriate as they are more institutional in scale and nature. Child Care Centers are often equated to a commercial/office type use. Staff believes the current placement of these three types of child care uses is appropriate and would not recommend altering the current groupings or placements in the code.

However, the rezoning request that brought this topic to the forefront was unique as the site in question was a large church that has a private preschool. In this case the facility already has accepted characteristics that stand out from a standard low-density residential area: a large parking area, a large nonresidential building, obvious traffic flow, and the regular presence of children onsite. One of the comments that residents in support of the rezoning kept bringing up was their desire to have one location where they could drop off their children for the day. Parents that had children enrolled in the private preschool elaborated on how being able to also drop off their preschool age child at this same location would be advantageous to them. Given the nature of public and private schools, staff does not see a reason why schools could also not support a Child Care Center. With the scale of schools, their already providing services to children, site design/layout, general appropriateness in residential areas, and already established traffic patterns - allowing Child Care Centers at these sites as an accessory use is logical. The addition of a Child Care Center to a school would have little to no negative impact on the surrounding residences. The attached proposed text amendment would allow all private and public schools in Oshtemo to have Child Care Centers as an accessory use.

**Adult Care Centers:** Adult Day Care Centers are non-residential facilities, properly registered or licensed with the State, that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge. Currently in the code the only area that lists Adult Care Centers as an allowed use is the - Neighborhood Overlay Zone (Article 37). In this Overlay “Child or Adult day care centers” are a special use. It should be noted that no areas of Oshtemo are currently part of this overlay (staff will do research on this at a later date). Adult Care Centers are comparable to Child Care Centers – the only significant difference is that they are providing care for a different age group. Both planning staff and legal counsel recommend allowing Adult Care Centers as a primary use in the same zoning districts as Child Care Centers.

**Other:** In addition to the above code amendments, staff recommends adding and amending some definitions in the code to help clarify what Child Care Centers and Adult Care Centers are. These proposed definitions are included in the attached proposed text amendment document.

Attached: Proposed Child and Adult Care Centers Text Amendment document

## Article 2 – Construction of Language and Definitions

**Adult Care Center:** a non-residential facility, properly registered or licensed with the State, that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed group setting for periods less than 24 hours a day. These facilities typically provide adults with transitional care and short-term rehabilitation following hospital discharge.

**Child care center** - A facility, other than a private residence, properly registered or licensed under 1973 Public Act 116, as amended, receiving one or more ~~preschool or school-age~~ children for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two consecutive weeks per year. The facility is generally described as a child care center, day care center, day nursery, ~~preschool, nursery school, parent cooperative preschool~~, play group, or drop-in center. Child care center does not include any of the following:

- a. A Sunday school, a vacation bible school, or a religious instruction class that is conducted by a religious organization where children are in attendance for not more than three hours per day for an indefinite period, or not more than eight hours per day for a period not to exceed four weeks during a two-month period.
- b. A facility operated by a religious organization where children are cared for not more than three hours while persons responsible for the children are attending religious services.

**School** – an educational institution that is properly registered or licensed with the State.

## Article 5 – RR, Rural Residential

### 5.40 SPECIAL USES

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- A. Golf courses, parks, and outdoor recreational areas.
- B. Use of existing buildings formerly utilized in the daily operation of a farm (on or before March 12, 2003) on a parcel that is no longer operated as a functioning farm, as defined in the Michigan Right to Farm Act, for a landscaping contractor business or large-item storage subject to a finding by the Building Official that said building is suitable for the proposed use. No outdoor storage of equipment or items such as snow plows, lawn mowers, trailers or boats may occur unless expressly approved during the Special Use and Site Plan review process.
- C. Public and private schools; **may have a Child Care Center as an accessory use.**
- D. Veterinarian clinics.
- E. Kennels, in unplatted areas, for the breeding, raising and/or boarding of dogs or cats.
- F. Shooting ranges and private clubs operating in connection therewith.
- G. Buildings and regulator stations for essential services.
- H. Group day care home.
- I. Temporary outdoor events (lasting more than one day).
- J. Bed and Breakfast Inns.
- K. Communication towers.

- L. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- M. Wind energy conversion systems.
- N. Agritourism, Category 2
- O. Agritourism, Category 3

## **Article 7 – R2, Residence District**

### **7.40 SPECIAL USES**

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- A. Golf courses, parks, and outdoor recreational areas.
- B. Buildings and regulator stations for essential services.
- C. Public and private schools; **may have a Child care center as an accessory use.**
- D. Group day care home.
- E. Temporary outdoor events (lasting more than one day).
- F. Communication towers.
- G. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- H. Wind energy conversion systems.

## **Article 8 – R-3, Residence District**

### **8.40 SPECIAL USES**

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- A. Three or four-family dwellings.
- B. Buildings and regulator stations for essential services.
- C. Golf courses, parks, and outdoor recreational areas.
- D. Office buildings.
- E. Veterinary, small animal clinics.
- F. Banks, credit unions, and savings and loan offices.
- G. Public and private schools.
- H. Child care centers **and Adult care centers.**
- I. Group day care home.
- J. Beauty parlors or barber shops.
- K. Temporary outdoor events (lasting more than one day).
- L. Communication towers.
- M. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- N. Wind energy conversion systems.
- O. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

## Article 9 – R-4, Residence District

### 9.20 PERMITTED USES

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- A. Any permitted use in the "R-2" Residence District.
- B. Child care centers and Adult care centers, ~~nursing, handicapped, convalescent, senior citizens' and foster homes.~~
- C. Funeral homes.
- D. Accessory buildings and uses customarily incidental to the foregoing.
- E. Family day care home.
- F. Adult Foster Care Facility.
- G. Foster Family Home.
- H. ~~Nursing, convalescent, handicapped, or senior citizens' homes.~~

### 9.40 SPECIAL USES

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- A. Private clubs, fraternities, sororities, lodges, except those of which the chief activity is a service customarily carried on as a business.
- B. Buildings and regulator stations for essential services.
- C. Golf courses, parks, and outdoor recreational areas.
- D. Public and private schools.
- E. Group day care home.
- F. Rehabilitation and/or redevelopment of a multiple-family legal nonconforming use where the existing density exceeds the density limitations of Section 48.100. This may not be construed as allowing an increase in density.
- G. Temporary outdoor events (lasting more than one day).
- H. Communication towers.
- I. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- J. Wind energy conversion systems.
- K. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

## Article 11 RC, Residential Conservation District

### 11.40 SPECIAL USES

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- A. Clustered "hamlet" residential development for the purpose of conserving open space, preserving sensitive resources, and reducing impermeable surface area.
- B. Parks, equestrian trails, and outdoor recreational areas.
- C. Public and private schools; ~~libraries~~ may have a Child care center as an accessory use.
- D. Fire stations and other Township buildings.

- E. Buildings and regulator stations for essential services.
- F. Group day care home.
- G. Cemeteries, excluding crematories.
- H. Houses of worship.
- I. Communication towers.
- J. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- K. Wind energy conversion systems.
- L. **Libraries**

## **Article 18, C Local Business District**

### **18.40 SPECIAL USES**

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- A. Assembly and Convention Halls.
- B. Child care centers and **Adult care centers**.
- C. Funeral homes.
- D. Private clubs.
- E. Parks of ten acres or less in size, subject to the conditions and limitations set forth at Section [49.100](#) of this Ordinance.
- F. Nursing, convalescent, handicapped, or senior citizens' homes.
- G. Drive-in service window or drive-through services for businesses.
- H. Retail lumber yards.
- I. 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.
- J. Crematories.
- K. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
- L. Filling stations, carwashes, public garages or service stations, excluding auto body and auto paint shops.
- M. Drive-in theatres.
- N. Buildings and regulator stations for essential services.
- O. Temporary outdoor events (lasting more than one day).
- P. Brewpub.
- Q. Microbrewery.
- R. Wine Tasting Room.
- S. Craft food and beverage production facility, limited to 8,000 square feet gross floor area.
- T. Communication towers.
- U. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- V. Private streets.

W. Wind energy conversion systems.

## Article 19 – VC, Village Commercial District

### 19.50 SPECIAL USES

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- A. All new construction, additions, conversions of buildings to nonresidential use, and exterior facade changes other than routine maintenance.
- B. Outdoor sales or activities accessory to permitted retail uses.
- C. Filling stations, Mini-Food-Mart Stations, and auto glass repair shops, excluding body and engine repair and service garages.
- D. Pet shops, veterinarians.
- E. Child care centers ~~or adult day care centers~~ and Adult care centers.
- F. Public and Private Schools
- G. Indoor recreational facilities and health clubs.
- H. Drive-in service window or drive-through service for businesses, not to include restaurants.
- I. Other uses which are determined by the Planning Commission to be similar to those uses permitted in Section [19.20](#) through [19.40](#).
- J. Mixed uses allowing both residential and nonresidential uses within the same building.
- K. Buildings and regulator stations for essential services.
- L. Temporary outdoor events (lasting more than one day).
- M. Brewpub.
- N. Microbrewery.
- O. Wine tasting room.
- P. Craft food and beverage production facility, less than 8,000 square feet gross floor area.
- Q. Communication towers.
- R. Private streets.
- S. Wind energy conversion systems.

## Article 20 – BRP, Business and Research Park

### 20.40 SPECIAL USES

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- A. Printing, lithographic, blueprinting and similar uses.
- B. Child care centers and Adult care centers.
- C. Banks, credit unions, and similar financial institutions with drive-through service windows.
- D. Conference center facilities.
- E. Solar, wind, and other renewable energy systems (refer to Section [49.290](#) regarding Wind Energy Conversion Systems).
- F. Temporary outdoor events (lasting more than one day).
- G. Drive through service and/or windows.

- H. Communication towers.
- I. Earth removal, quarrying, gravel processing, mining, related mineral extraction businesses, and landfill gas recovery processing facilities.
- J. Private streets.
- K. Wind energy conversion systems.

## Article 35 – 9<sup>th</sup> Street and West Main Overlay Zone

### 35.40 SPECIAL USES

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#### A. Residential

The following uses may be located within the 9th Street Residential and the West Main Street Residential section of the Overlay District subject to Special Use approval:

1. Group day care home.
2. Residential planned unit development subject to [Article 41](#).
3. Golf courses, parks, and outdoor recreational areas.
4. Buildings and regulator stations for essential services.
5. Public and private schools.
6. Larger Facilities for Child and Adult Foster Care, including: Child Caring Institutions, Foster Family Group Home, Adult Foster Care Small Group Home, and Adult Foster Care Large Group Home.

#### B. Commercial

The following uses may be located within the 9th Street Commercial and the West Main Street Commercial section of the Overlay District subject to Special Use approval:

1. Assembly and Convention Halls.
2. Brewpub.
3. Buildings and regulator stations for essential services.
4. Child care centers and Adult care centers.
5. Commercial planned unit developments subject to [Article 41](#).
6. Craft food and beverage production facility.
7. Crematories.
8. Drive-in service window or drive-through service for businesses, not to include restaurants.
9. Funeral homes.
10. Golf courses, parks, and outdoor recreational areas.
11. Group day care home.
12. Hotels, motels.
13. Indoor theaters.
14. Microbrewery.
15. Nursing, convalescent, handicapped, assisted living, or senior citizens' homes.
16. Private clubs.



17. Public and private schools.
18. Skating rinks, bowling alleys, indoor recreational facilities and health clubs.
19. Temporary outdoor events.
20. Veterinary clinics.
21. Wine Tasting Room.
22. Temporary outdoor event (lasting more than one day)

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January 5, 2021

**Mtg Date:** January 14, 2021  
**To:** Planning Commission  
**From:** Iris Lubbert, AICP, Planning Director  
**Subject:** Introduction and Discussion: Permitted uses on a legal nonconforming lot

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Objective:

Planning Director Iris Lubbert will introduce this proposed text amendment to the Planning Commission at their January 14<sup>th</sup> meeting. The Planning Commission is asked to discuss the proposed language and provide feedback to staff.

Background:

Planning Staff was recently approached by an individual that wished to build a medical office on a legal nonconforming parcel within a R-3 Residence District. A medical office is considered a special use within the R-3 Residence District. What can be built on any legal nonconforming parcel, lot, or building site is outlined in Section 63.20 of the Oshtemo Ordinance. Currently the language reads that “permitted uses of the zoning district” are allowable on these types of properties. There are three categories of uses outlined in the code: permitted uses, permitted uses with conditions, and special uses. Both the Planning Department’s and Legal Counsel’s interpretation of Section 63.20 is that only the uses outlined under the “permitted uses” and “permitted uses with conditions” categories of a zoning district would be allowed on legal nonconfining properties. Meaning that a special use, i.e the requested medical office, would not be permitted on the legal non-conforming lot in question. However, after additional research and discussion, the Planning Department and Legal Counsel determined that this interpretation is not the intent of the code. In this case the use of the word “permitted” actually meant “allowed”, given the context - an instance of poor wording. Oshtemo staff is recommending the Planning Commission consider the attached amendment to clarify that special uses may be built on legal nonconforming properties.

Proposal:

To avoid future confusion and provide clear direction, staff is recommending the following change, in red, to Section 63.20 of the Oshtemo Ordinance:

“In any zoning district, notwithstanding limitations imposed by other provisions of this Ordinance, where a nonconforming lot, parcel or building site of record, lawful at the time of its creation, fails to meet the requirements for minimum area, minimum width, minimum frontage or exceeds the allowable depth to width ratio of 4 to 1, such lot, parcel or building site may be used for the permitted uses, **permitted uses with conditions, or special uses** of the zoning district, provided that all other applicable minimum requirements are met.” Section 63.20 Nonconforming Parcels, Lots or Building Sites