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**NOTICE  
OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**Tuesday, September 24, 2019  
3:00 p.m.**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Approval of Minutes: August 27, 2019
5. Any Other Business
6. ZBA Member Comments
7. 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		
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<b>Township Department Information</b>		
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Julie Johnston	216-5223	<a href="mailto:jjohnston@oshtemo.org">jjohnston@oshtemo.org</a>
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**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD AUGUST 27, 2019**

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**Agenda**

**SITE PLAN REVIEW: MARANA GROUP ADDITION**

**A REQUEST FOR SITE PLAN REVIEW AND APPROVAL OF A 5,760 SQUARE FOOT ADDITION ON AN EXISTING BUILDING LOCATED AT 3777 SKY KING BOULEVARD. PARCEL NO. 3905-34-260-002.**

**PUBLIC HEARING: VARIANCE FOR AN ACCESSORY BUILDING**

**CONSIDERATION OF A VARIANCE APPLICATION FROM GREG AND STACEY FLENTJE FOR A VARIANCE FROM THE PROVISIONS OF SECTION 34.40.8.4D, TO ALLOW AN ACCESSORY STRUCTURE TO BE LOCATED IN THE SIDE YARD INSTEAD OF THE REAR YARD AS REQUIRED BY THE VILLAGE FORM-BASED CODE. THE SUBJECT PROPERTY IS LOCATED AT 7001 STADIUM DRIVE, PARCEL NO. 3905-35-115-015.**

**PUBLIC HEARING: ZONING ORDINANCE INTERPRETATION OF THE OFF-STREET PARKING ORDINANCE**

**A REQUEST FROM MARKETPLACE DEVELOPMENT, LLC TO REVIEW STAFF'S INTERPRETATION OF ARTICLE 52: OFF-STREET PARKING OF MOTOR VEHICLES AND ITS APPLICATION TO RETAIL USES.**

**ANY OTHER BUSINESS**

**a. DRAFT BY-LAWS**

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A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, August 27, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

**ALL MEMBERS WERE PRESENT:** James Sterenberg, Chair  
Fred Antosz (alternate 1)  
Cheri Bell  
Fred Gould (alternate 2)  
Micki Maxwell  
Neil Sikora, Vice Chair  
Anita Smith

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

## **Call to Order and Pledge of Allegiance**

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

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

There were no comments on non-agenda items.

## **APPROVAL OF THE MINUTES OF MAY 28, 2019**

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of May 28, 2019.

Ms. Anita Smith pointed out a missing letter typo.

Mr. Sikora made a motion to approve the Minutes of May 28, 2019 as presented with the typo correction as noted. Ms. Maxwell supported the motion. The motion was approved unanimously.

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

## **SITE PLAN REVIEW: MARANA GROUP ADDITION A REQUEST FOR SITE PLAN REVIEW AND APPROVAL OF A 5,760 SQUARE FOOT ADDITION ON AN EXISTING BUILDING LOCATED AT 3777 SKY KING BOULEVARD. PARCEL NO. 3905-260-002.**

Ms. Johnston explained the subject property currently accommodates a 19,900 square foot warehouse facility, and the applicant was requesting site plan approval from the Zoning Board of Appeals to construct a 5,760 square foot addition to the existing structure's south end for more warehouse space. The use in question is permitted by right in the I-1 zoning district, and the size of the proposed addition requires approval from this body.

She said the applicant provided notation on the project site plan indicating how existing vegetation satisfies Township landscaping requirements. No new plantings will be required as a part of this expansion. Likewise, no new access points to the street were proposed, and the parking analysis provided by the applicant indicates no new spaces are needed, given the current floor area use breakdown. At this time, no new paving for vehicle circulation was proposed.

There were two outstanding items/concerns to be resolved:

1. Additional information related to the new building mounted lighting is needed to ensure that the photometric plan and proposed fixtures meet ordinance requirements.
2. The Fire Marshal is still working with the applicant to secure adequate building access for emergency fire response.

She said if the Zoning Board of Appeals was amenable to approving the site plan, staff recommended attaching the following conditions:

1. Prior to issuance of a building permit, documentation shall be submitted to Township staff, verifying that the proposed wall lights are shielded appropriately and do not exceed acceptable wattages.
2. Prior to issuance of a building permit, the Township Fire Marshal shall be satisfied that any site access/circulation issues for fire apparatus have been resolved. Any subsequent site plan amendments shall be reviewed and approved by staff.
3. Prior to issuance of a certificate of occupancy, the photometric plan shall include an illustration of the south property line so that staff can ensure proper light level reduction at that boundary.

Chairperson Sterenberg determined there were no Board comments and asked whether the applicant wished to speak.

Ms. Scott Musser, Delta Design Systems, Stadium Drive, offered to answer questions.

Ms. Bell asked if progress was being made with the Fire Marshal's issues.

Mr. Musser said yes, that they would be meeting during the following week.

Hearing no further questions, the Chair moved to public hearing. There were no public comments so he moved to Board discussion.

As there was no discussion, he asked for a motion.

Ms. Bell made a motion to approve the application as presented, including the three conditions as recommended by Staff. Mr. Sikora supported the motion. The motion was approved unanimously.

**PUBLIC HEARING: VARIANCE FOR AN ACCESSORY BUILDING**  
**CONSIDERATION OF A VARIANCE APPLICATION FROM GREG AND STACEY**  
**FLENTJE FOR A VARIANCE FROM THE PROVISIONS OF SECTION 34.40.8.4D, TO**  
**ALLOW AN ACCESSORY STRUCTURE TO BE LOCATED IN THE SIDE YARD**

**INSTEAD OF THE REAR YARD AS REQUIRED BY THE VILLAGE FORM-BASED CODE. THE SUBJECT PROPERTY IS LOCATED AT 7001 STADIUM DRIVE, PARCEL NO. 3905-35-115-015.**

Ms. Johnston said the applicant owns an approximately 25-acre parcel on the south side of Stadium Drive, directly opposite the southern terminus of South 8<sup>th</sup> Street. The existing home, built in 1932, is located approximately 235 feet south of the Stadium Drive right-of-way. Earlier this year, the applicant approached the Township and SMBA, seeking permission to construct a 1,920 square foot residential accessory building east of the house in the side yard. Upon reviewing Article 34 of the Zoning Ordinance, which governs the Village Form-Based Code Overlay, staff determined that the desired pole barn was not allowed in the proposed location, per section 34.40.4.d which dictates that “accessory buildings in the Village Fringe [the sub district in which this home is located] shall be permitted in the rear yard only.” Staff then informed the applicant that the proposed construction could not be administratively approved, and that relief in the form of a dimensional variance granted by the Zoning Board of Appeals would be necessary.

She indicated 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 felt the application generally meets the standards of approval for a dimensional variance. In addition, when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” Given the characteristics of the property, staff felt the spirit and intent of the ordinance was being observed. If the applicant’s property had been developed to the Form-Based Code, there would be little reason to consider the variance request. However, the subject property is semi-rural in nature, and staff was inclined to treat it like similar parcels in the Township. It was not anticipated granting this variance would undermine the goals of the Overlay or the Zoning Ordinance in general.

Ms. Johnston said any motion made should include the findings of fact relevant to the requested variance. Based on staff analysis, the findings of fact are:

Support of variance approval:

- The current characteristics of the subject property do not reasonably support strict compliance with the standards of the of the Form-Based Code Overlay. The primary dwelling was built approximately 80 years before the Overlay was established and is in very good repair. It will likely stay in this configuration for some time to come. Allowing placement of an accessory building in the side yard, as we would many other properties in the Township, would be reasonable.
- Conformance to the ordinance would require additional property modifications such as the clearing of mature trees and likely site grading.

Support of variance denial:

- Reasonable use of the property still exists without the variance and opportunities for compliance are available.

She noted the Zoning Board of Appeals might take the following possible actions:

- Motion to approve as requested (conditions may be attached). If the ZBA favors this course of action, staff recommends adding some conditions of approval, which will be outlined below.
- Motion to approve with an alternate variance relief (conditions may be attached).
- Motion to deny the variance request.

Possible motions she said the Zoning Board of Appeals could consider included:

1. Based on the findings of fact, motion to approve the applicants' requested variance as presented in their application dated July 16<sup>th</sup>, 2019 to allow the accessory building to be located in the side yard, subject to the following conditions:
  - a. If the subject property ever redevelops in compliance with the Village Form-Based Code, this granted variance shall be nullified.
  - b. Any applicable setback or other requirements of the Zoning Ordinance shall be met.
2. Motion to approve the requested variances with some alternate approach determined acceptable by the Zoning Board of Appeals. The above conditions should also be applied.

3. Motion to deny the requested variances because reasonable use of the property is possible under the VC: Village Commercial District and Village Form-Based Code Overlay.

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

Mr. Sikora asked if this were an open site today and someone wanted to build a non-residence building whether it would be built in the same place as now.

Ms. Johnston said if it were vacant or was to be completely redeveloped, the set back from Stadium Drive would be no more than 25 feet.

Ms. Bell wondered how many feet of frontage this property encompasses.

Ms. Johnston said frontage was at least 200 feet.

In response to a question from the Chair, Ms. Johnston said the proposed pole building will be an accessory to residential use. It will be prohibited from use for a commercial business or home-based business.

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

Ms. Stacey Flentje, owner, answered questions, indicating the property frontage on Stadium Drive is about 220 – 250 feet; that locating the building in the back yard would make it too close to the septic system drain field, that there is a 20 foot land drop also making placement in the rear yard difficult, that they needed to provide the space required between their property and the neighbors and that they would have no yard left if the building were placed in the back of the house. She indicated the trees being left uncut are mature, more than 80 year old maples and oaks. The proposed site for the building is relatively clear of trees; removal was done after storm tree damage. The area behind is heavily wooded and she plans to leave it that way.

Mr. Sterenberg noted the property's topographical challenges.

Ms. Bell asked about the required footage between the house and the proposed building.

Ms. Johnston indicated there needs to be at least 30 feet and said the applicant will submit a plan for review.

Hearing no further questions for the applicant, the Chair asked for public comment. Hearing none, he closed the public hearing and moved to Board Discussion.



Mr. Sikora said he has observed the house is set back so far that it is not noticeable from the road. Every business along that stretch is right at the road.

There was no further discussion; the Chair asked for a motion.

Ms. Maxwell made a motion based on the findings of fact, to approve the applicants' requested variance as presented in their application dated July 16<sup>th</sup>, 2019 to allow the accessory building to be located in the side yard, subject to the following conditions:

- a. If the subject property ever redevelops in compliance with the Village Form-Based Code, this granted variance shall be nullified.
- b. Any applicable setback or other requirements of the Zoning Ordinance shall be met.

Mr. Sikora supported the motion. The motion was approved unanimously.

**PUBLIC HEARING: ZONING ORDINANCE INTERPRETATION OF THE OFF-STREET PARKING ORDINANCE**  
**A REQUEST FROM MARKETPLACE DEVELOPMENT, LLC TO REVIEW STAFF'S INTERPRETATION OF ARTICLE 52: OFF-STREET PARKING OF MOTOR VEHICLES AND ITS APPLICATION TO RETAIL USES.**

Chairperson Sterenberg asked Ms. Johnston for her presentation.

Ms. Johnston said Marketplace Development, LLC submitted a site plan for a new O'Reilly Auto Parts on property addressed as 6297 West Main Street. This property is located within the West Main Overlay, which requires all site plans to be reviewed by the Planning Commission. During the review of the plan, staff calculated parking for the site based on their interpretation of the Off-Street Parking Ordinance, which the applicant felt was too restrictive. The difference in interpretation regarding the retail space of the new store prompted a request to the Zoning Board of Appeals for clarification.

At the beginning of the site plan review process, the applicant provided a plan that did not include information related to the interior floor plan or use of the building. Staff requested additional information related to the floor plan/use to better determine parking calculations. Conversations with the applicant and their engineer after this date informed staff that approximately 3,000 square feet would be retail space and 6,000 would be stockroom/storage. Based on these numbers at a 70 percent net calculation, staff determined the maximum number of allowed spaces would be 21. The site plan indicated 44 parking spaces.

Staff was also concerned about the size and use of the stockroom/storage area as it was more than double the retail space. The concern was that the space would be used as a distribution center, holding stock to be distributed to other O'Reilly retailers, which is not a permitted use. The applicant indicated this particular O'Reilly Auto Parts is not a distribution center but is the larger store model, allowing it to maintain more stock than the smaller stores in the region. If a smaller store ran out of a particular item, it would likely be available at this store. In reviewing other O'Reilly stores within the Kalamazoo area, it was found the proposed store would have the most square footage area in the region.

She indicated the site plan presented to the Planning Commission continued to show 44 parking spaces so staff indicated any approval would have to include a condition to reduce the number of spaces. Just prior to the Planning Commission meeting, the applicant provided a letter with a floor plan indicating they felt most of the building's square footage should be counted as retail, allowing them the 44 spaces. Staff reviewed this new information and recalculated the maximum number of parking spaces to be 29. The site plan was approved by the Planning Commission with a condition for this number of spaces.

She explained the Off-Street Parking Ordinance has several sections that contributed to staff's calculation of spaces for the O'Reilly site plan. Based on the information provided by the applicant, staff determined the uses of the building to be retail and warehousing/stockroom.

Section 52.70 indicates that in the case of mixed uses in the same building, the total parking space requirement is the sum of the individual requirements for each use. Further, Section 52.100 states the following:

- Section 52.100.C.1.: Retail Sales – one space per each 150 square feet of net floor area
- Section 52.100.D.2.: Warehouse and Distribution Facilities – one space per each 1,500 of net floor area

Ms. Johnston said staff has two ways to determine net floor area; either through a floor plan, which provides specifics related to use, or through a 70 percent calculation of gross floor area. This calculation is the percentage of a commercial building generally utilized as occupied floor area, and therefore deducts unoccupied areas like stairs, HVAC rooms, mechanical/data management rooms, etc.

Based on the letter and floor plan provided by the applicant, staff calculated the following:

- Retail area – 3,300 square feet / 150 = 22 spaces
- Stockroom area – 6,711 square feet – 262 square feet (approx.) for bathrooms = 6,499 square feet / 1,500 = 4.3
- Total minimum number necessary = 26.3

She said Section 52.50.H indicates that to minimize excessive areas of pavement which detract from the aesthetics of an area and contributes to high rates of storm water runoff, no parking lot shall have parking spaces totaling more than 110 percent of the minimum parking space requirements. This maximum number of spaces brings the site to 28.93 or 29 spaces.

Ms. Johnston indicated that she felt the main dispute between the applicant and staff is not in how the parking was calculated, but in our interpretation of the area within the building defined as retail. The Zoning Ordinance does not define retail space. Per Section 21.10: Construction of Language, terms not defined in the Zoning Ordinance shall have the meaning customarily assigned to them.

Staff has interpreted retail space as the area where goods are displayed and customers can view and interact with those goods. This interpretation is particularly true when considering parking needs. Generally, parking ordinances try to manage those areas of a building upon anticipated events of human occupation, as evidenced by the Township parking requirements being based on net floor area. Different uses have varying needs for parking spaces founded on the number of people generally involved in that use.

Ms. Johnston explained the Zoning Ordinance does not provide a definition for storage, stockroom, or warehouse. Merriam-Webster Dictionary describes a stockroom as a storage place for supplies or goods used in a business and a warehouse as a structure or room for the storage of merchandise or commodities. The O'Reilly building is designed with a customer counter that separates the area where shoppers can interact with goods on display and where an employee must acquire the product for the consumer. Based on the definition for stockroom and warehouse, staff applied the warehouse parking requirements to this area of the building.

She said the applicant would like the Zoning Board of Appeals to consider most of the building square footage as retail space. They indicate that auto parts stores are unique in that much of the inventory is specialized and therefore needs employee assistance. In addition, the complexity of the goods and expensive nature of the inventory requires additional safeguards. So, while separated from the area where customers can interact with the displayed goods, it should still be counted as retail for parking calculations.

The Off-Street Parking Ordinance does provide relief for existing sites that find they do not have enough parking. Section 52.140 allows the Zoning Board of Appeals or Planning Commission, depending on which is tasked to review the use, the right to grant additional parking. While not applicable to the site plan in question, if O'Reilly's finds that the 29 allowed spaces does not meet their needs based on actual demand, a future request can be made to the Planning Commission to allow more parking.

Ms. Johnston said the following was a summary of the information which could affect the Board's deliberations:

- Section 52.70 indicates that in the case of mixed uses in the same building, the total parking space requirement is the sum of the individual requirements for each use.
- The floor plan outlines twice as much stockroom as customer retail space. In addition, the applicant indicated the larger stockroom is designed to hold product for use by other regional O'Reilly stores.
- The Zoning Ordinance does not provide a definition for retail space, stockroom, storage, or warehouse so the generally recognized meaning of the terms should be used.
- The applicant believes the unique nature of the automotive store would allow the stockroom to meet the generally recognized meaning of retail space.
- Relief from the maximum parking requirements could be sought if the property owner found the site, after development, was under parked.

Based on the considerations outlined above, Ms. Johnston said the Zoning Board of Appeals might wish to deliberate the following possible actions:

1. Conclude that the interpretation of the Off-Street Parking Ordinance by staff related to the uses in the building is accurate, which would allow the site to develop up to 29 parking spaces.
2. Determine whether some or all the stockroom should be considered retail space, allowing for more parking spaces than the 29 currently calculated by staff.

Chairperson Sterenberg thanked Ms. Johnston for her review and asked whether Board members had questions for her.

Ms. Bell wondered if there were guidelines for auto dealerships that have retail for car parts.

Ms. Johnston said she had not reviewed any car dealerships with retail space for auto parts; but knew the ordinance requires dealerships to have five customer parking spaces.

Attorney Porter asked the Board to focus on interpretation of the Zoning Ordinance. Their goal should be to determine the intent of the ordinance drafters as they weigh the factors.

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

Attorney Darren Malek with Veritas Law Group represented the owner and developer. He said he did not see anything regarding the drafters at the time of the drafting of the ordinance but wanted the opportunity to understand Attorney Porter's comments so he could address them.

Attorney Porter replied that his comments were based on Michigan state law. Any ordinance starts out with principles. He instructed the Board to not necessarily focus on the arguments, but rather on the ordinance language itself and to try to interpret what the intent was at the time of its drafting.

Attorney Malek said he understood the focal point was to discern the intent of the actual ordinance language. He said O'Reilly is a retail store, not a warehouse. Like other retail stores the floor is there for customers to view items for sale. Similar stores have determined the best way to deal with unique items is to separate them from the main retail area for several reasons: parts are vehicle specific and cannot be discerned by going to the shelf. Unique items are determined and retrieved from the back by a counter attendant to ensure the correct part is obtained. Other factors are warranty, installation, safety and theft concerns.

He likened the counter and back room to a jewelry case located on a retail store floor. The physical barrier between the retail customer and the item for sale does not mean it is a warehouse. The back room is also not a warehouse; it is just another place to make goods available to customers. It is not a warehouse to supply other stores in the area. Several of the stores identified in the area as smaller were not originally O'Reilly Auto Parts stores. The proposed store is larger because O'Reilly feels that size is needed and they are able to build to specification. The items in the store are anticipated to be sold at that store, though if an item is out of stock at another location, a customer may have it transferred to a store closer to them.

Attorney Malek said the 3/11/19 response from the Township to their initial site plan speaks to parking issues. It identifies using 70% of gross floor area to reach net and uses a different calculation for the warehouse. He said the entry point for this question was that more land area would be needed to be dedicated for storm water retention which could reduce the number of parking spaces below what was required to accommodate that need and that was the only purpose for a reduction. It was felt by his clients that when they provided additional information, much to their chagrin, they were told they were maxed out at 29 spaces. They felt it seemed like the number determined was the number the Township wanted it to be.

He presented two different calculation methods that yielded at least as many parking spaces or more than were being requested by the applicant. He expressed concern about staff's interpretation of floor area and calculations and that methods are not cited in the actual ordinance. He said predictability is needed in the ordinance,

rather than having staff discern between different uses and felt there was no need for discretion based on ordinance wording. He also said a manner of calculation is not spelled out in the ordinance.

He said the goal is to meet O'Reilly Auto Parts' corporate requirements. They have indicated if they don't get sufficient spaces according to their need evaluation, they will not build at that location, but will move on and build elsewhere.

Attorney Malek said this is a straight up retail project, not a mixed use project and trying to make a different calculation of retail area vs. storage or back room seems disingenuous. He felt it would be reasonable to either a) apply Section 2.20 as written; deduct what fits in items to be deducted from square footage; or b) consistent with the actual interpretation, apply the 70% calculation on the gross area. The restriction used is arbitrary. The interpretation made of the property is not the actual use.

Chairperson Sterenberg determined there were no questions for Attorney Malek from Board members.

He asked if there were members of the public who wished to comment. Hearing none, he moved to Board discussion.

Ms. Maxwell indicated since she voted on this issue at a Planning Commission meeting she was recusing herself from voting here.

Ms. Bell revisited Attorney Porter's comments at the beginning of this item and noted the Board was asked to interpret whether the zoning ordinance was applied met the intent of the ordinance; they were not asked to decide on the number of parking spaces.

Chairperson Sterenberg said the applicant feels everything should be considered retail sales space. The floor area is defined by ordinance. The Planning Dept. defined the store as mixed use and interpreted for that. It is up to the Board to analyze the ordinance and base a decision on the intent of the ordinance.

Mr. Antosz said it comes down to what is retail and what is not retail. Only the person at the counter can access the restricted area.

Ms. Bell felt warehousing is of duplicative items that can be found on shelves.

Ms. Johnston said the items in back are not duplicative.

Ms. Bell likened it to needing a countertop at a home improvement store but needing it to be retrieved from the back room because the desired color is not on the retail floor.

Ms. Smith said she understood the back room is still for retail and customer use. It is not a warehouse; items are just shelved in a different manner.

Ms. Bell noted she has heard businesses say a number of times that if a requirement is not met, such as signage, parking or car stacking, they cannot do business within the Township, but that often turns out not to be true.

Mr. Sikora said finding subtle variations in terms may mean that some needs today weren't possible when the ordinance was drafted. We may need to look at the ordinance to see if it still serves today's needs and if not look at what may need to be considered for updating. We need to base our decision today on what the ordinance actually says and make decisions based on the interpretation of the intent.

Ms. Smith asked how retail vs. non retail space was determined by staff.

Mr. Sikora said the Planning Dept. used the ordinance as written and interpreted the intent to come up with a determination of what is retail and what is warehousing.

Attorney Porter said the Board has the challenge of interpretation to determine what constitutes retail sales – it has been described in two different ways. The Board has to make a decision based on their reading of the two arguments.

Chairperson Sterenberg pointed out there is a process to apply for relief for under parking at existing sites after the fact.

Attorney Porter noted the Planning Director applied common definitions when calculating the number of parking spaces.

Ms. Johnston said the calculations were also based on the application information that was provided that described a floor plan with 3000 square feet of retail space and 6000 square feet of stockroom. The site plan said customers could only go to the back room to use the restroom. She calculated the parking spaces based on a retail sales area where people can interact. She did not agree with the jewelry case example since the case would be in the middle of a retail floor area. When the application was made, the applicant said their retail sales area was unique.

Mr. Sikora agreed, saying he understood the variation of retail and the two are different in his mind.

Ms. Johnston said the customer would go to the counter to tell the employee what is needed and the employee retrieves the item. As a safeguard, it would not be often the customer would go to the back area.

Attorney Malek said there is no definition of warehouse or retail sales area in the ordinance. This is a retail store. The client looking at the ordinance would have no

concept that providing a copy of floor plan would lead to this problem, nothing that would help a person understand this would lead to warehouse space designation.

Chairperson Sterenberg closed Board deliberations and asked for a motion.

Mr. Sikora made a motion that Township Staff interpreted the intent of the Off-Street Parking Ordinance related to the uses in the building accurately, which will allow up to 29 parking spaces to be developed on the site. Mr. Antosz supported the motion. The motion was approved. 3 –yes (Antosz, Sikora, Sterenberg), 2 no (Bell, Smith) and one abstention. (Maxwell)

### **Any Other Business**

#### b. Draft By-Laws

Ms. Johnston said at the May 28<sup>th</sup> meeting, a request was made for staff to develop a set of by-laws for the Zoning Board of Appeals and provided a draft document for consideration.

The group preferred to review the document prior to discussing it at a future meeting. They will forward any questions/comments to Ms. Johnston.

Ms. Bell made a motion to table review of the by-laws draft until the next meeting when there is an application to consider or before the end of the year if there is no application for consideration. Ms. Smith supported the motion. The motion was approved unanimously.

### **ZBA Member Comments**

Chairperson Sterenberg thanked the Township for sending three Board members to a recent zoning training. He felt a number of applicable issues were addressed and that the session was valuable.

### **Adjournment**

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:42 p.m.

Minutes prepared:  
August 29, 2019

Minutes approved:  
\_\_\_\_\_, 2019