

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

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

**Tuesday, July 9, 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: May 28, 2019
5. **Zoning Ordinance Interpretation: 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.
6. Any Other Business
 - a. Draft ZBA By-Laws
7. ZBA Member Comments
8. Adjournment

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

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

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

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

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

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

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

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

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
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Zak Ford	271-5513	zford@oshtemo.org
Ken Hudok	548-7002	khudok@oshtemo.org

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

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD MAY 28, 2019

Agenda

**PUBLIC HEARING: VARIANCE REQUEST FROM MAPLE HILL LEASEHOLD, LLC
CONSIDERATION OF AN APPLICATION FROM JIM VANDENBERG ON BEHALF
OF MAPLE HILL LEASEHOLDS LLC, FOR TWO VARIANCES FROM THE
PROVISIONS OF SECTION 49.130.D., TO ALLOW A REDUCED SETBACK FOR
THE DISPLAY OF VEHICLES FOR SALE. THE SUBJECT PROPERTY IS
ADDRESSED AS 6883 WEST MAIN STREET, WITHIN THE “C” LOCAL BUSINESS
DISTRICT CLASSIFICATION. PARCEL NO. 3905-14-305-015.**

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, May 28, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

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

Also present were Julie Johnston, Planning Director and Martha Coash, Meeting Transcriptionist. No 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

The Chair noted there were no members of the public present.

APPROVAL OF THE MINUTES OF FEBRUARY 26, 2019

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of February 26, 2019.

Mr. Antosz made a motion to approve the Minutes of February 26, 2019 as presented. Mr. Gould supported the motion. The motion was approved unanimously.

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

PUBLIC HEARING: VARIANCE REQUEST FROM MAPLE HILL LEASEHOLD, LLC CONSIDERATION OF AN APPLICATION FROM JIM VANDENBERG ON BEHALF OF MAPLE HILL LEASEHOLDS LLC, FOR TWO VARIANCES FROM THE PROVISIONS OF SECTION 49.130.D., TO ALLOW A REDUCED SETBACK FOR THE DISPLAY OF VEHICLES FOR SALE. THE SUBJECT PROPERTY IS ADDRESSED AS 6883 WEST MAIN STREET, WITHIN THE "C" LOCAL BUSINESS DISTRICT CLASSIFICATION. PARCEL NO. 3905-14-305-015.

Ms. Johnston said Maple Hill Leasehold, LLC, which is currently located at 5622 West Main Street, intends to expand their operation to the former Kalamazoo Kitty site at 6883 West Main Street. The subject property is zoned C: Local Business District and car sales lots are a Special Use under Section 18.30. The Planning Commission approved this Special Use at their meeting on April 11, 2019.

The applicant is requesting relief from the required setbacks for the display of cars in a sales lot. Section 49.130.D states that the sale and display of cars must meet the same setback requirements as any building or structure onsite. This would require the following per Section 50.60: Setback Provisions:

- 170 feet from the centerline of West Main Street
- 70 feet from the right-of-way of North 8th Street

The applicant has requested the following setbacks:

- 110 feet from the centerline of West Main Street, a 60-foot variance
- 40 feet from the right-of-way of North 8th Street, a 30-foot variance

Ms. Johnston said Section 53.50 of the Landscape Ordinance requires a 20-foot landscape buffer along both West Main Street and North 8th Street. The applicant's request for a 110-foot setback for the car sales would violate the required buffer along West Main Street, leaving only 10 feet for landscaping along this right-of-way. The landscape buffer along North 8th Street can still be maintained with the requested variance.

She noted the Zoning Board of Appeals may wish to consider these landscaping requirements when deliberating the requested setback variance.

Ms. Johnston said 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.

She said Staff analyzed the request against these principles and provided the following information.

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

Comment: There is a unique physical circumstance related to this property that limits the frontage along West Main Street. At some point in the past, approximately 1,062 square feet of the northwest corner of the property was reserved by the Michigan Department of Transportation (MDOT) for roadway drainage. This altered the shape of the property, removing 272 linear feet of frontage along West Main Street, leaving approximately 174 feet of frontage. In addition, the removal of this property made the parcel legal nonconforming as the Zoning Ordinance requires 200 feet of frontage for commercial parcels.

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

Comment: The matter of a vehicular sales lot expansion is discretionary, and reasonable use of the property in general does exist for other commercial ventures, even if the variance request is denied. Parking lots for other commercial uses would not be required to meet the building setback standards, only the landscape ordinance requirements. That being said, the limited frontage on West Main Street makes the 170-foot setback particularly burdensome for this use as it further reduces the visibility from the right-of-way.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.*

Review past decisions of the ZBA for consistency (precedence).

Comment: In researching past Zoning Board of Appeals decisions regarding setbacks for the display of cars for sale, staff investigated car dealerships within the Township – Halli's Auto, Maple Hill Auto Group, Metro Toyota, and DeNooyer Chevrolet. All four dealerships sought and were granted variances from the setback requirement for the sales display area.

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

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

Comment: The existing site boundaries and design were not a result of the applicants' actions. However, she noted, the site was originally developed and used as a car lot until about 2008.

In addition to the above principles, the Zoning Enabling Act of Michigan states that when considering a variance request, the Zoning Board of Appeals must ensure that the "spirit of the ordinance is observed, public safety secured, and substantial justice done." To help ensure these standards are met for both the applicant and adjacent property owners, the Zoning Board of Appeals may want to consider conditioning any variances granted on meeting the landscaping requirements of Section 53.50 of the Zoning Ordinance. This would equate to a 120-foot setback from the centerline of West Main Street, necessitating a 50-foot variance. The requested variance along North 8th Street maintains the required landscape buffer.

Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - The unique physical condition of the property, losing approximately 1,062 square feet for an MDOT drainage basin, limits the frontage on West Main Street.
 - The 170-foot setback from the centerline of West Main Street for the display of cars for sale is particularly burdensome to this use due to the limited frontage.
 - Significant precedence has been set allowing encroachment into the required setbacks, especially along rights-of-way.

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

Ms. Johnston said possible motions for the Zoning Board of Appeals to consider included:

1. Applicant's Request

Based on the findings of fact, motion to approve the following variances for parking or display of sale items related to new/used car sales:

- 60-foot variance along West Main Street, allowing a setback of 110 feet
- 30-foot variance along North 8th Street, allowing a setback of 40 feet

If the ZBA chooses this motion, another variance hearing would be required. The Township did not publicly notice for a landscape variance, only a setback variance. Per State statute, public notices are to describe the nature of the request. A second hearing would be scheduled for the June 25th meeting.

2. Alternate Approach

Based on the findings of fact, motion to approve the following variances for parking or display of sale items related to new/used car sales:

- 50-foot variance along West Main Street allowing a setback of 120 feet
- 30-foot variance along North 8th Street, allowing a setback of 40 feet

3. Motion to deny the requested variances because reasonable use of the property is possible under the C: Local Business District for any other allowable use.

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

Ms. Bell asked who provided the calculations on the map provided.

Ms. Johnston indicated the calculations and map were provided by the applicant.

Chairperson Sterenberg confirmed that variances at both West Main and 8th Street would not violate the landscape ordinance. Ms. Johnston indicated the requested setback on West Main Street would violate the landscape ordinance.

In answer to a question from Ms. Bell, Ms. Johnston confirmed the corner is zoned commercial as well as Walmart to the south and that Walmart did not receive a setback variance. The area across the street on 8th Street is zoned R-2.

Ms. Johnston noted the current existing landscaping on the property will not be disturbed along 8th Street as it was a condition of the Special Use approval granted by the Planning Commission.

Mr. Antosz wondered about requirements from the previous dealership who used to be on this property; Ms. Johnston said the site design has not changed since that dealership closed.

Mr. Sikora noted the parcel is on a hill, which could limit visibility from West Main Street.

Hearing no further questions, Chairperson Sterenberg noted the applicant was not in attendance and there were no members of the public present, so he moved to Board Deliberations.

Ms. Bell noted the absence of the applicant and asked if the item could be tabled if that was the Board's choice.

Ms. Johnston said the applicant already has cars parked on the parcel and she believed he would want to move forward.

Mr. Antosz felt the alternate approach offered was more in keeping with the spirit of the ordinance and he would support it.

Ms. Bell was not in support of a variance on 8th Street and noted Walmart does not have one along this roadway. No variance precedent exists at this road, which is a boundary where the Township transitions to a rural area.

Ms. Maxwell wondered what Maple Hill plans to do in the landscape buffer area.

Ms. Johnston said there is no site plan yet for redevelopment. When that is done, they would be required to meet the landscaping ordinance.

Mr. Sikora was concerned that if visibility of the lot is desired along 8th Street, car lights could be a problem for the residential neighbors.

Ms. Johnston said the ordinance only talks about cars for sale; they could use the property within 20 feet of 8th Street for other purposes, such as parking employee or service vehicles.

Ms. Smith thought it might be utilized for service vehicles in which case visibility would not be an issue.

Chairperson Sterenberg noted that whatever the use, it would still be buffered from 8th Street by vegetation. He said he would be inclined to stick with the alternate approach within the spirit of the ordinance, citing: 1) the unique physical condition/extra burden, 2) Precedence with six other businesses and 3) that it would be in keeping with the spirit of the ordinance.

Ms. Maxwell asked if the variance could be approved for the West Main Street request but not the request for 8th Street.

Ms. Johnston said that could be done. She explained that once the Board deliberated and denied a request, the next step would be the Court of Appeals. The applicant could not bring a request back to the Zoning Board Appeals unless it was substantially different. If a request were denied today, the reason(s) for denial must be clear.

Ms. Bell asked if the requests could be considered separately.

Ms. Johnston said they could be considered in two separate motions. She said again that if they approved the West Main request but denied the 8th Street request, the reason would need to be clearly stated since the applicant cannot re-apply for the same request.

Ms. Bell said the two sides of the property are not the same. If the 8th Street request were denied it would be because 1) it abuts a sensitive area of the Township that is residential and so the setback buffer is necessary, and 2) Walmart did not receive a variance for their property along 8th Street so there is no precedence in this area.

Ms. Smith was skeptical that the variance requested for West Main Street would significantly increase visibility.

Ms. Johnston responded to a question from the Chair, saying she was 99% sure Walmart did not receive a setback variance on 8th Street. They did not need one for their structure. She noted without the variance, Mr. VandenBerg could still extend pavement up to 20 feet on 8th Street, but not use it for sales.

Chairperson Sterenberg noted the stand of trees on 8th Street is a natural wall and is the same distance from the Street as the actual wall built by Walmart.

Mr. Sikora asked if the applicant is required to keep that landscaping and wondered if there had been any evaluation to see if it is effective in deterring light from shining in residents' windows or if additional landscaping would be needed.

Ms. Johnston said that could be considered during any site plan review because a car lot is a Special Use. The Planning Commission required the existing vegetation be kept as part of the Special Use approval. If it were torn out and re-done, small, immature plantings would not protect the neighbors. The Planning Commission may require more plantings when an actual site plan is proposed. She added the ZBA may attach a condition for vegetation.

She also noted there will be no curb cut on 8th Street.

Chairperson Sterenberg said the intent of the existing request is to maximize the use of the property. He felt the request was reasonable and that the redevelopment will improve the property.

Hearing no more comments, the Chair asked for a motion.

Ms. Bell made a motion to approve the alternate approach from staff, granting a 50 foot variance/120 foot setback for West Main Street only, to provide substantial justice based on variances granted previously to other dealerships. Mr. Antosz supported the motion. The motion was approved 6 – 1, with Mr. Sterenberg dissenting.

Ms. Bell made a motion to deny the request for any setback variance along 8th Street, based on 1) substantial justice as it is not reasonable since the property abuts the R-2 residential district, and 2) it is a self-created hardship. Mr. Sikora supported the motion. The motion was denied 6 – 1, with Mr. Sterenberg dissenting.

Any Other Business

Ms. Johnston informed the Board there would be no meeting in June due to a lack of agenda items.

ZBA Member Comments

Mr. Antosz said after attending a worthwhile training session for zoning board members, he realized Oshtemo Township does not have bylaws for the Zoning Board of Appeals and suggested that the board discuss the possibility of developing them.

After a brief discussion it was agreed it would be valuable to have Ms. Johnston look into developing bylaws that outline procedures; she will do so.

Mr. Sikora confirmed that most if not all auto dealerships located in the Township have variances.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:57 p.m.

Minutes prepared:
May 30, 2019

Minutes approved:
_____, 2019

June 26, 2019



To: Zoning Board of Appeals

From: Julie Johnston, AICP
Planning Director

Mtg Date: July 9, 2019 Special Meeting

Applicant: Marketplace Development, LLC

Request: Zoning Ordinance interpretation related to parking calculations for retail space

APPLICATION OVERVIEW/BACKGROUND

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 in a memo dated March 11, 2019 to better determine parking calculations. Conversations with the applicant and their engineer after this date informed staff that within the 10,201 square foot building, 3,334 would be retail space and 6,867 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 that 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 stores within the Kalamazoo area, this proposed store would have the most square footage in the region. Staff reviewed assessment data from neighboring jurisdictions and found the following information on other O'Reilly stores:

3130 Portage Road, City of Kalamazoo
Existing building built in 1928 (previously a Hollywood Video store)
Building square footage = 8,480

7300 South Westnedge, City of Portage
Built in 2012 for O'Reilly's
Building square footage = 7,667

735 South Kalamazoo Street, Village of Paw Paw
Built approx. 2003 as a multi-use center. Currently holds O'Reilly, Subway, and Admiral Tobacco.
Building square footage = 9,445. O'Reilly's looks to occupy approximately half of the building (4,700 square feet).

1298 M-89 Highway, Otsego Township
Built in 1994. Not sure of original use.
Building square footage = 7,038

6076 Gull Road, Comstock Township
Built in 2014 for O'Reilly's
Building square footage = 7,200

The applicant was placed on the June 13th Planning Commission agenda for site plan review. The site plan continued to show 44 parking spaces so staff indicated any approval would have to include a condition to reduce the number of spaces to 21. On June 12th, the applicant provided a letter with a floor plan indicating they felt most of the 10,201 square feet should be counted as retail, allowing them the 44 spaces. Staff reviewed the floor plan and recalculated the maximum number of parking spaces to be 29. Based on this, the applicant would like the Zoning Board of Appeals to review staff's interpretation, particularly related to the identification and definition of retail space.

INTERPRETATION CONSIDERATIONS

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

Net floor area is defined in Section 2.20 as the following:

Floor area, net – Non-dwellings - *The area of all floors in a building computed by measuring the dimensions of the outside walls of a building excluding elevator shafts, stairwells, hallways, floor space used for basic utilities and sanitary facilities such as heating and cooling equipment and lavatories, mezzanines, attics or portions thereof with headroom of less than 6.5 feet, verandas, porches, patios, carports, parking garages, terraces, atriums and decks.*

Staff has two ways to determine net floor area; either through a floor plan, which provides specifics related to uses, 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 on June 12th, 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

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.

The main dispute between the applicant and staff is not in how we calculated parking, 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.

Merriam-Webster Dictionary defines “retail” as the sale of commodities or goods in small quantities to ultimate consumers. However, it does not define “retail space or area.” Staff looked to other sources and found many definitions for “retail” but not many sources on “retail space.” The Entrepreneur Small Business Encyclopedia indicates a Retail Location is a space you lease for the selling of goods to a consumer. BizFluent indicates retail space is “...the last stop in the manufacturing chain, the spot where merchants sell products to customers.” It goes on to say that roughly 70 percent of the space in a retail business is devoted to product display, with the remaining area used for office and inventory.

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.

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.

FINDINGS SUMMARY

The following is a summary of the information which could influence 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.

POSSIBLE ACTIONS

Based on the considerations outlined above, the Zoning Board of Appeals may 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 that some or all of the stockroom should be considered retail space, allowing for more parking spaces than the 29 currently calculated by staff.

Respectfully Submitted,



Julie Johnston, AICP
Planning Director

Attachment: June 12th Applicant letter
Web-based article from Entrepreneur Small Business Encyclopedia
Web-based article from BizFluent

Marketplace Development LLC

Real Estate Development & Management

700 COLONIAL RD., SUITE 101 | MEMPHIS, TN 38117 | fax: 901-328-5791

June 12, 2019

Julie Johnston
Oshtemo Township
7275 West Main Street
Kalamazoo, MI 49009

RE: Proposed O' Reilly Auto Parts Store
Parking Requirement Response

Ms. Johnston:

As a way to better define net usable square footage for the O' Reilly Auto Parts store, I reached out to O' Reilly's project manager and architect for help. Attached is the Interior Finish Plan they provided as well as an explanation of how the usable space of the building is defined.

1. Front of House Retail (3,300 sf) – This area is accessible by customers and is stocked with auto products and convenience items that are universal to every make and model car (wind shield wipers, motor oil, air fresheners, etc.).
2. Back of House Retail (6,188 sf) – This area is technically accessible to customers however only for bathroom use and is stocked with auto parts that are specific to certain makes and models of cars (carburetors, brake pads, batteries, etc.). The reason O' Reilly and other auto parts stores restrict customers from accessing this area is the complexity of their inventory system as well as a safeguard from theft of their most expensive inventory. According to O' Reilly's project manager, this store will carry over 35,000 different skus, most of which are back of house retail products, therefore it's unrealistic to expect a customer to spend hours sifting through hundreds of different carburetors for their make and model car. Instead, the customer asks a salesperson at the counter who then checks their inventory and if available, goes and pulls the product from the back of house retail space.
3. Non-Retail (523 sf) – This area is not accessible to customers and is used for employee purposes only.

According to O' Reilly's project manager, no O' Reilly Auto Parts store, including this one, carries backstock products. As each store sells particular products, it is replenished from distribution centers via delivery within 1-2 days. In his words, it is a complex inventory and logistical system that ensures each store offers its customers the widest assortment of products possible.

Based on the information provided and how parking is calculated under the zoning ordinance, the number of parking spaces allowed are

$3,300 \text{ sf Front of House Retail} + 6,188 \text{ sf Back of House Retail} = 9,488 \text{ X } 70\% \text{ net} = 6,641.6 / 150 \text{ sf per space} = 44.3 \text{ spaces}$

We ask that our original plan showing 44 parking spaces be approved.

Sincerely,

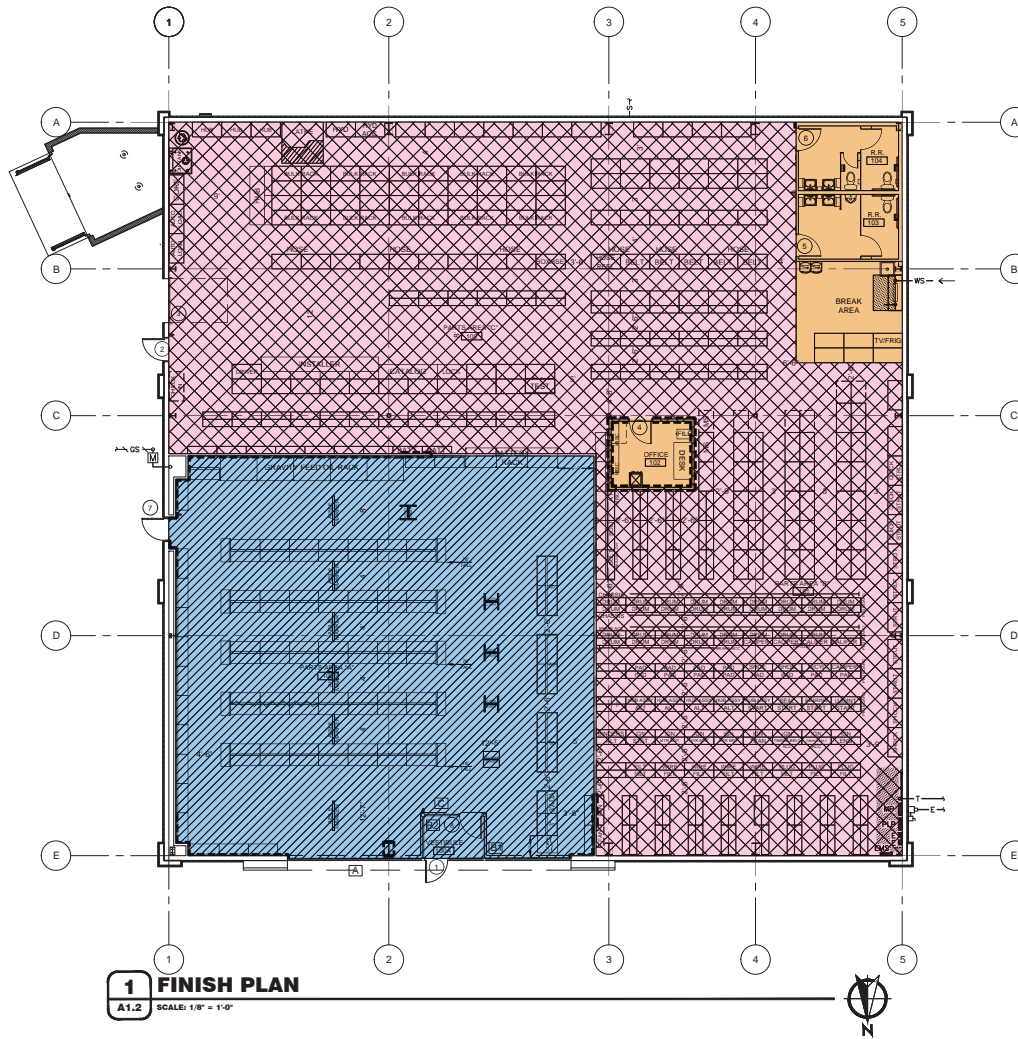
A handwritten signature in blue ink that reads "J. Wise Smith". The signature is written in a cursive style with a long horizontal stroke extending from the top of the "S".

Wise Smith

 FRONT OF HOUSE RETAIL
~ 3,300 SF




 BACK OF HOUSE RETAIL
~ 6,188 SF

 NON-RETAIL
~ 523 SF



1 FINISH PLAN
A1.2 SCALE: 1/8" = 1'-0"

INTERIOR FINISH SCHEDULE												
NO.	ROOM OR SPACE	FLOORING	WALLS				CEILING	DOORS		NOTES		
		TYPE	BASE	SOUTH	WEST	NORTH	EAST	TYPE	HEIGHT	DOOR	FRAME	
100	PARTS AREA (A)	F-1	B-1	W-2, 3	W-2, 3	W-2, 3	W-2, 3	C-1	11'-0"	D-3	D-3	2, 4, 6
101	PARTS AREA (B)	F-2	N/A	W-2, 3	W-2	W-2	W-2	C-4	VARIES	-	-	1, 2, 3, 5
102	OFFICE	F-2	B-1	W-2	W-2	W-2	W-2	C-3	8'-6"	D-1	D-2	
103	REST ROOM	F-2	B-1	W-4	W-4	W-4	W-4	C-3	8'-6"	D-1	D-2	
104	REST ROOM	F-2	B-1	W-4	W-4	W-4	W-4	C-3	8'-6"	D-1	D-2	
105	PARTS AREA (C)	F-2	N/A	W-2, 3	W-2	W-2	W-2	C-4	VARIES	D-3	D-3	1, 2, 5
100A	VESTIBULE	F-1	-	-	-	-	-	C-3	11'-4"	-	-	

SYMBOLS LEGEND	
	F-1: POLISHED CONCRETE:
	F-2: LIQUID DENSIFIER TREATED CONCRETE
	B-1: BASE:

GENERAL NOTES

- A REFER TO PROJECT MANUAL FOR ADDITIONAL REQUIREMENTS.
- B FIXTURES AND EQUIPMENT SHOWN FOR REFERENCE ONLY AND ARE OWNER FURNISHED AND INSTALLED.
- C DIMENSIONS TO ROUGH FACE OF ROUGH FRAMING OR FACE OF FIXTURE UNLESS OTHERWISE NOTED.
- D PROVIDE SUSPENDED CEILING SEISMIC BRACING WHERE REQUIRED. REFER TO DETAIL 10A.2.
- E ALL FINISH SUBSTITUTION REQUEST REQUIRE OWNER PRIOR APPROVAL.

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MFG: (REFER TO PROJECT MANUAL - SECTION 03 30 03)
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MFG: EQUAL TO VP
SIZE: 4" COVE
COLOR: JET, #01
- WALLS**
- W-1:**
(NOT USED)
- W-2:**
TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS LATEX
COLOR: SW6126 'NAVAJO WHITE'
- W-3:**
TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS LATEX
COLOR: SW6468 'HUNT CLUB'
- W-4:**
TYPE: SANITARY WALL AND CEILING PANEL SYSTEM
MFG: (REFER PROJECT MANUAL)
COLOR: WHITE
- W-5 (ONLY WHERE INDICATED)**
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- CEILING**
- C-1:**
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MFG: ARMSTRONG SPECIFIED
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GRID SERIES: "PRELUDE" 15/16" EXPOSED TEE SYSTEM
GRID COLOR: WHITE
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(NOT USED)
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TYPE: STAIN
SPECIES: CUSTOM GRADE ROTARY SLICED NATURAL BIRCH
FINISH: FACTORY FINISHED
COLOR: EQUAL TO "GRAHAM" #300, MEDIUM BROWN
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TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS ENAMEL
COLOR: SW6468 'HUNT CLUB'
- D-3 (EXTERIOR DOORS & FRAMES):**
TYPE: PAINT
FINISH: REFER TO EXTERIOR FINISH SCHEDULE
COLOR: REFER TO EXTERIOR FINISH SCHEDULE

ARCHITECT OF RECORD
KYLE RADER, ARCHITECT
REGISTERED LICENSE NUMBER
1301062638
216 N. 2ND AVENUE
OSARK, MO 65721
P (417) 581-8889
F (417) 581-9002

PROJECT:
NEW O'REILLY AUTO PARTS STORE
6297 W. MAIN ST.
OSHTEMO TOWNSHIP, MI 49009

DESIGNED BY
O'Reilly AUTO PARTS
CORPORATE OFFICE
203 SOUTH PATTERSON
SPRINGFIELD, MISSOURI 65802
(417) 868-2674 TELEPHONE

DRAWN BY
NO

CREATED BY
KR

DATE:
05/31/2019

REVISION

PROJECT NUMBER:
19065-0TP

SHEET NUMBER
A1.2

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Advance tomorrow.[← BACK TO ENCYCLOPEDIA](#)

Retail Location

Definition: A space you lease for the selling of goods to consumers

When it comes to business, retailers have one overall goal: to sell merchandise. That's why they focus on sales floor space, adequate parking for customers, and an overall image that draws in customers. Of secondary interest to many retail operations are office space and storage requirements, since most inventory is on the sales floor.

A retail operation's space is usually subdivided among display, office, and storage. As a rule of thumb, office and storage spaces take up 10 to 25 percent of the total floor area. While the storage and office spaces are important parts of any retail operation--to handle shipping and receiving and related chores, to take care of paperwork, and to store extra inventory--you want to get the most out of all space that's not used for display and sales. Here's where good organizational skills come in handy, along with shelves and cabinets and anything else that helps you maximize your space. If you're not an organizer by nature, hire someone who is. Look in the Yellow Pages under "Organizing Services--Household and Business."

Retail space comes in a variety of shapes and sizes and may be located in free-standing buildings, enclosed malls, strip shopping centers, downtown shopping districts, or mixed-use facilities. You will also find retail space in airports and other transportation facilities, hotel lobbies, sports stadiums, and temporary or special-event venues.

Got a retail location? Ask yourself these questions to make sure your store has the "eye appeal" it needs to keep customers coming back:

- Are your shelves clean and neat? Is merchandise displayed so people can see it easily?
- Is the area around your cash registers or terminals clean and orderly?
- Can you find forms, packaging and related materials quickly and easily?
- Are light fixtures clean, bright and working properly?
- Is there plenty of room between counters and shelves so that aisles are wide and free of barriers?
- Are glass surfaces clean and floors vacuumed or swept and scrubbed regularly?

Keeping an eye on these factors will help create a welcome environment for your customers.

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The NEW iX1500
wireless desktop scanner

Streamline your productivity with an intuitive touchscreen.

Capture today.
Advance tomorrow.

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Retail Space Definition



By: **Laura Scott**
Updated September 26, 2017



suburban shopping center under construction image by getphoto from iStock.com



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Retail space is the last stop in the manufacturing chain, the spot where merchants sell products to customers. Retail space differs from other commercial properties, such as industrial or office space, in that the emphasis is on product display and customer accommodation.

Ad

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Location

Merchants usually create or find retail spaces in single-standing buildings, in malls, and on the main streets of busy commercial districts. Airports, college campuses, subway stops, sports arenas, hospitals, train stations and other places that experience heavy foot traffic also have retail space.

Terms

Merchants either buy or lease retail space. A triple net lease, which requires merchants to pay for insurance, maintenance and taxes, in addition to rent, is a common arrangement in retail. Rent can be a fixed amount due each month, or a percentage of the retailer's receipts.

Assets

Roughly 70 percent of the space in a retail business is devoted to product display, with the remaining area used for office work and inventory. A well-lit spacious floor plan helps merchants present goods to customers. Easy access, nearby parking and proximity to other popular shops and restaurants benefit customers and are considered assets for retail space.

Ads

[NCR Silver™ Point of Sale](#)

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Definition of I

Retail I

Business Sp

Retail Custom

Commercial Bu

1 | Real-Time Rep and Powerful!

Gain Access to Business From Anywhere in Real Time Today.

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2 | Retail Shipments Management - Tracking Data

Improve customer accuracy ETA estimate label emails for delivery

[visitbytrible.com](#)

3 | Self-Storage Options

Many have made their self-storage business

[buildingforall.com](#)

4 | Commercial Real Estate - Cold Calling

Only \$20 Per Month. 5 Contacts, Properties & Leads

[realbound.com](#)

July 2, 2019



Mtg Date: July 9, 2019
To: Zoning Board of Appeals
From: Julie Johnston, AICP
Subject: O'Reilly Auto Parts Application

Attached to this memo are the documents requested by the applicant to be included in the agenda packet. As you will see, reference is made to a request for a variance. To ensure there is no confusion between staff's report and the applicant's documents, the requested special meeting is to appeal staff's interpretation of the Zoning Ordinance, not for a variance. The Michigan Zoning Enabling Act, Public Act 110 or 2006, states the following:

125.3603 Zoning board of appeals; powers; concurring vote of majority of members.

Sec. 603. (1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. **It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act.** For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance. (2)

The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

From: [Darren Malek](#)
To: [Julie Johnston](#)
Cc: [Deborah Vogds](#); [Wise Smith \(wise@mpcon.biz\)](mailto:wise@mpcon.biz); hunter@marketplacedevelopment.biz
Subject: [EmailDefender SPAM suspect] Marketplace Development - O'Reilly's - 6297 W. Main Street - ZBA Appeal
Date: Tuesday, July 2, 2019 10:43:18 AM
Attachments: [image002.png](#)
[-A1.2-INTERIOR FINISH PLAN.PDF](#)
[OSHEMO TOWNSHIP ML \(OTP\).pdf](#)
[Letter to Julie Johnston 6.12.19.pdf](#)
[1st Round - O'Reilly Site Plan Staff Comments.pdf](#)
[2nd Round - O'Reilly Site Plan Staff Comments-2.pdf](#)
[8 - O'Reilly Auto Parts Staff Report.pdf](#)
[Planning and Zoning Application - BZA 1.pdf](#)

Julie –

Please include the following in the packet.

We have been asked to provide information in connection with a variance request. To begin with, we feel it is important to provide a brief history of how we got to the point of where we are now.

- On March 11, Staff issued a review statement acknowledging that the property could be built with 47 spaces, noting that the staff uses a 70% of gross calculation. The Applicant indicated a desire to decrease parking slightly. Without advising the applicant that a decrease in the area defined as “retail,” Staff suggested “[i]f the entire building is not intended for retail use, a different calculation can be applied. In addition, areas like restrooms, mechanical rooms, etc. can be eliminated from the parking calculation.” The Staff report went on to note that “a reduced number of parking may be needed.”
- After the applicant provided additional information to Staff in the hope of working with Staff to obtain a small reduction in parking, a May 1 Staff report indicated that the maximum number of spaces would be reduced to 21 spaces. No direction was provided as to increasing spots - such as the anecdotal comments offered in the March 11 report.
- On June 4, Staff issued another report citing to numbers the applicant provided as to “retail” and “stockroom / storage” space. In this latest report, Staff took a firm position that “the site plan must conform to the 21-maximum number of spaces.” This, of course, was very different from the language used in the March 11 report relating to parking when Staff cooperatively invited additional information for consideration in calculations. No such invitation was extended in the June 4 report. Moreover, unlike the March 11 report, the language of the June 4 report used mandatory, non-discretionary language like “must” rather than the “can” language used by Staff when suggesting that different allocations as between retail and stockroom “can” apply to modify parking requirements or that areas like “restrooms, mechanical rooms, etc. can be eliminated from the parking calculation.”

In sum, we are concerned that staff has used an inconsistent analytical approach. Staff is flexible and indicated discretionary standards when considering reducing parking requirements consistent with the Township’s apparent goals in that regard, but then disposes of discretionary standards when an applicant seeks to add parking. Certainly, if more of the area is intended for retail use, then a different calculation can be applied. And, just as certainly, if restrooms and mechanical rooms – etc. (whatever that means) can be eliminated from the parking calculation as per staff, then of

course such rooms can also be added to the parking calculation. Indeed, the use by the staff of a 70% of gross calculation is itself inconsistent with the ordinance. The drafters of the ordinance could have included that requirement. It was not. The issues with this non-ordinance 70% become even more pronounced when one considers the fact that staff invited lower base calculations and then exacerbated the issue even more by not counting 100% of the space identified.

Thus, to the extent that the terms of the ordinance are open to the discretionary interpretation by Staff, it seems clear that that discretion is being exercised in an arbitrary and capricious standard in a single direction – antagonistic to parking. These mutable rules which are not codified will certainly lead to unpredictable standards that will not be uniform among applicants. We attribute this not to staff as much as to some directive by some other authority or political consideration that staff may be receiving to limit parking. That may or may not be a wise objective. But it is not an end supported by the strict language of the ordinance or any reasonable reading of it.

That said, we believe that the ordinance, as stated allows for 47 parking spaces. Section 52.100 is simply a chart - <http://online.encodeplus.com/regs/oshtemo-mi/doclibrary.aspx?id=a0e67ae0-8c01-4ac9-b398-bebbc51b994d> . As to “retail sales” uses not otherwise more specifically defined (section C of the chart), the ordinance simply states “1 per each 150 s.f. of net floor area.” The term “net floor area” is undefined. In this case there is approximately 9,500 square feet of “net floor area.” As described in the June 12, 2019 letter to Staff, 100% of the floor space is used for retail functions. By way of further clarification, none of the “back of house” retail area is used for inventory for other areas of the store floor or for other stores. In other words, each place in the store where retail goods are stocked for sale is the only place within the store that such goods are stocked. If a particular item sells out or falls below a required level of floor availability, O’Reilly’s inventory management system kicks in and new stock is delivered from a remote warehouse facility the same day or the next day. The only unique aspect of the floor is as alluded to in the June 12, 2019 letter. Because not every customer is going to be able to reliably – on their own be able to identify the specific starter or other “bolt on” part they need for their 2006 Ford F-150 or their 2005 Honda Odyssey (such as the one in this author’s personal “stable”), and because of the difficulties in honoring warranties related to such items or accepting returns of such items if customers pick up and attempt to install the wrong part, O’Reilly and every other similar auto parts retailer (including the AutoZone down the street), uses the exact same system. Because customer access is limited does not mean that the area is any less retail than any other area. It’s not like the backroom at WalMart or Meijer or even Walgreens – where overstock is located and pulled onto the floor as needed. The only space in this store is for current “floor” inventory. The “overstock” and “storage” is located off-site.

With all of this in mind, the applicant seeks a “variance” in applying what applicant believes to be the correct and proper definition of “net floor area” to the current circumstances and, consequently, the full right and ability to install 47 spaces. Certainly, applicant is interested in reducing the number of spaces to something closer to 42. In the event that this “variance” is granted, applicant would likely seek to defer construction of the difference between the 47 spots permitted and the lower number of spots sought, in light of what it believes to be the optimal sight design given the other requirements of the ordinances and its vision for the site for its current actual use.

Please include this email together with the attachments in the packet for consideration by the ZBA.

Darren



Darren Malek, J.D.
Principal
Kalamazoo

Admitted in Michigan and Illinois

Kalamazoo Building
5th Floor
107 W. Michigan Avenue
Kalamazoo, Michigan 49007

dmalek@veritaslawgroup.net

Kalamazoo Office: 269-270-3500*
Mobile: 269-567-0127



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

PLEASE PRINT

PROJECT NAME & ADDRESS O'Reilly's - 6297 W Main Street

PLANNING & ZONING APPLICATION

Applicant Name : Wise Smith
Company Marketplace Development, LLC
700 Colonial Rd, Ste 101
Address MEMPHIS, TN. 38117

E-mail wise@mpcon.biz
9014850004 Telephone Fax 9013285791
Interest in Property Developer

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____
Escrow Amount _____

OWNER*:

Name Jack and Patricia Hamilton
Address 18762 E. Brandywine Drive
Gobles, MI 49055
Email unclecookee@yahoo.com
Phone & Fax (269) 628-5360 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 checked="" 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): We request a variance in

applying what applicant believes to be the correct and proper definition of "net floor area" and the full
right and ability to install 47 spaces. For additional explanation, please see Darren Malak's email and
supplemental submission with attachments.

Marketplace Development LLC

Real Estate Development & Management

700 COLONIAL RD., SUITE 101 | MEMPHIS, TN 38117 | fax: 901-328-5791

June 12, 2019

Julie Johnston
Oshtemo Township
7275 West Main Street
Kalamazoo, MI 49009

RE: Proposed O' Reilly Auto Parts Store
Parking Requirement Response

Ms. Johnston:

As a way to better define net usable square footage for the O' Reilly Auto Parts store, I reached out to O' Reilly's project manager and architect for help. Attached is the Interior Finish Plan they provided as well as an explanation of how the usable space of the building is defined.

1. Front of House Retail (3,300 sf) – This area is accessible by customers and is stocked with auto products and convenience items that are universal to every make and model car (wind shield wipers, motor oil, air fresheners, etc.).
2. Back of House Retail (6,188 sf) – This area is technically accessible to customers however only for bathroom use and is stocked with auto parts that are specific to certain makes and models of cars (carburetors, brake pads, batteries, etc.). The reason O' Reilly and other auto parts stores restrict customers from accessing this area is the complexity of their inventory system as well as a safeguard from theft of their most expensive inventory. According to O' Reilly's project manager, this store will carry over 35,000 different skus, most of which are back of house retail products, therefore it's unrealistic to expect a customer to spend hours sifting through hundreds of different carburetors for their make and model car. Instead, the customer asks a salesperson at the counter who then checks their inventory and if available, goes and pulls the product from the back of house retail space.
3. Non-Retail (523 sf) – This area is not accessible to customers and is used for employee purposes only.

According to O' Reilly's project manager, no O' Reilly Auto Parts store, including this one, carries backstock products. As each store sells particular products, it is replenished from distribution centers via delivery within 1-2 days. In his words, it is a complex inventory and logistical system that ensures each store offers its customers the widest assortment of products possible.

Based on the information provided and how parking is calculated under the zoning ordinance, the number of parking spaces allowed are

$3,300 \text{ sf Front of House Retail} + 6,188 \text{ sf Back of House Retail} = 9,488 \text{ X } 70\% \text{ net} = 6,641.6 / 150 \text{ sf per space} = 44.3 \text{ spaces}$

We ask that our original plan showing 44 parking spaces be approved.

Sincerely,

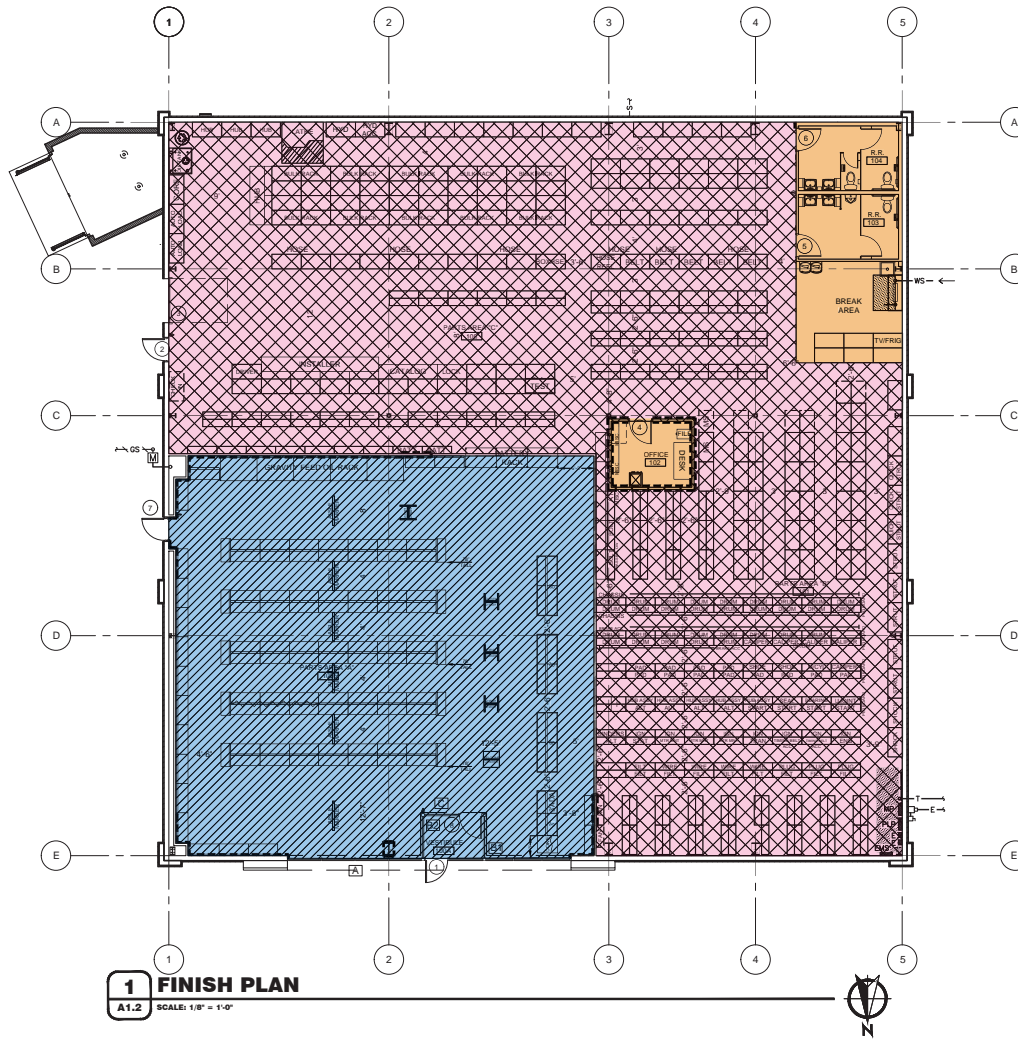
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Wise Smith

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~ 3,300 SF

 BACK OF HOUSE RETAIL
~ 6,188 SF




 NON-RETAIL
~ 523 SF



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-  B-1: BASE;

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MFG: EQUAL TO VP
SIZE: 4" COVE
COLOR: JET, #01
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TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS LATEX
COLOR: SW6126 'NAVAJO WHITE'
- W-3:**
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MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS LATEX
COLOR: SW6468 'HUNT CLUB'
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TYPE: SANITARY WALL AND CEILING PANEL SYSTEM
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COLOR: WHITE
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MFG: ARMSTRONG SPECIFIED
SERIES: 1729 "FINE FISURED"
COLOR: WHITE
GRID SERIES: "PRELUDE" 15/16" EXPOSED TEE SYSTEM
GRID COLOR: WHITE
- C-2:**
(NOT USED)
- C-3:**
TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS LATEX
COLOR: SW6126 'NAVAJO WHITE'
- C-4:**
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- DOORS AND FRAMES**
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TYPE: STAIN
SPECIES: CUSTOM GRADE ROTARY SLICED NATURAL BIRCH
FINISH: FACTORY FINISHED
COLOR: EQUAL TO "GRAHAM" #300, MEDIUM BROWN
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TYPE: PAINT
MFG: SHERWIN WILLIAMS
SERIES: SEMI GLOSS ENAMEL
COLOR: SW6468 'HUNT CLUB'
- D-3 (EXTERIOR DOORS & FRAMES):**
TYPE: PAINT
FINISH: REFER TO EXTERIOR FINISH SCHEDULE
COLOR: REFER TO EXTERIOR FINISH SCHEDULE

ARCHITECT OF RECORD
KYLE RADER, ARCHITECT
REGISTERED LICENSE NUMBER
1301062638
216 N. 2ND AVENUE
OSARK, MO 65721
P (417) 581-8889
F (417) 581-9002

PROJECT:
NEW O'REILLY AUTO PARTS STORE
6297 W. MAIN ST.
OSHTEMO TOWNSHIP, MI 49009

DESIGNED BY
O'Reilly AUTO PARTS
CORPORATE OFFICE
203 SOUTH PATTERSON
SPRINGFIELD, MISSOURI 65802
(417) 868-2674 TELEPHONE

DRAWN BY
NO

CREATED BY
KR

DATE:
05/31/2019

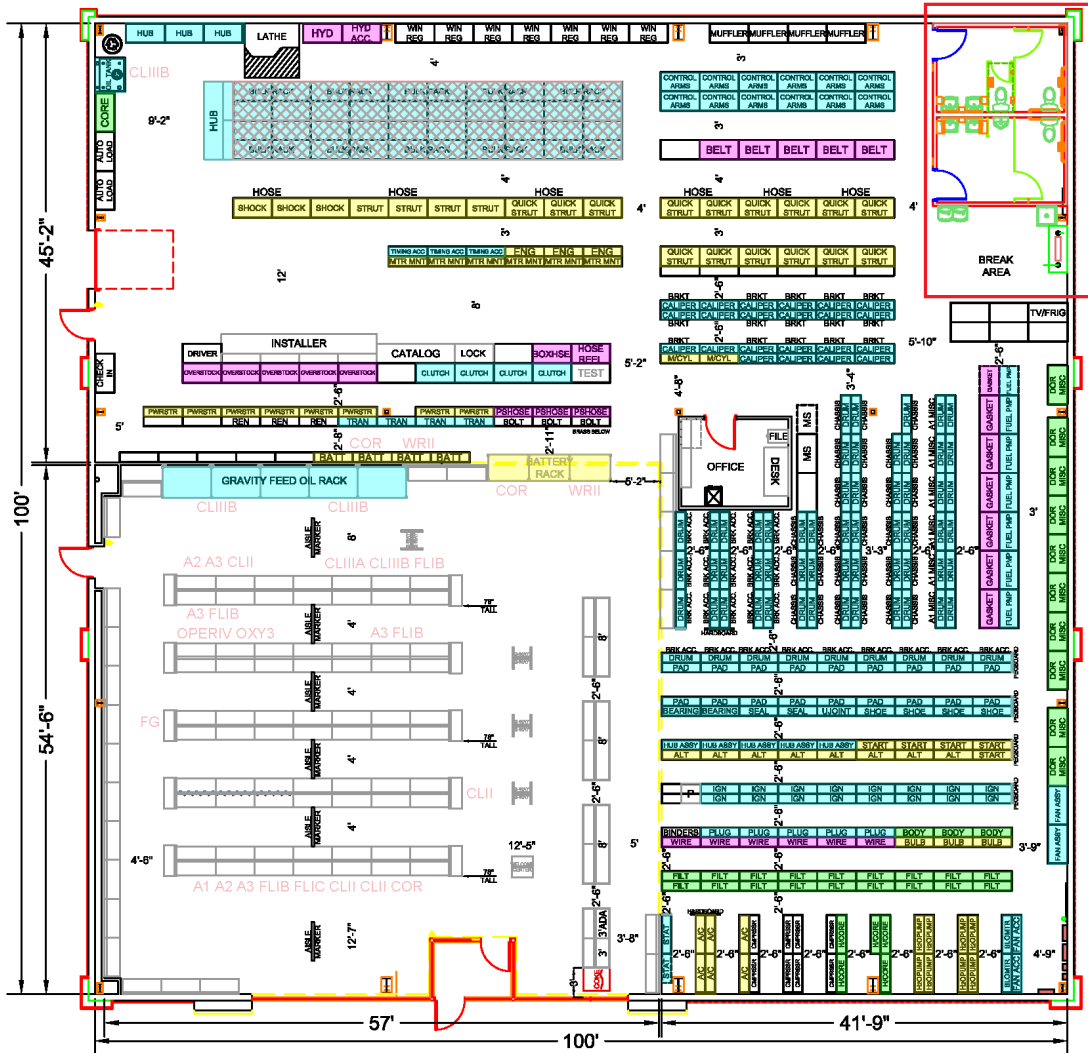
REVISION


PROJECT NUMBER:
19065-0TP

SHEET NUMBER
A1.2

INTERIOR FINISH PLAN

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Building: 100 X 100	Gross Sq Ft: 10000	Display Floor Sq Ft: 3049	Fixture Type: IVORY LOZIER	S/R Ceiling HT: 11-6	Group #: 5609
 # OTP					
OSHTEMO TOWNSHIP, MI					
Hard Parts: 1381 RN FT	Gondola: 70 SECTIONS	Wall Unit: 24 SECTIONS	Fixture sku cnt: 37,000	Date: 6/13/19 d'taylor	



7275 West Main Street
Kalamazoo, MI 49009
269.375.4260 phone
269.375.7180 fax
www.oshtemo.org

March 11, 2019

Wise Smith
Marketplace Development, LLC
700 Colonial Road, Suite 101
Memphis, TN 38117

Dear Mr. Smith,

Oshtemo Township has recently completed the staff review of the site plan submitted for the O'Reilly Auto Parts at 6297 West Main Street. The following is a list of comments pertaining to that review:

Application

The application indicates the owner is the same as the applicant. However, our records nor the record of the Kalamazoo County Register of Deeds shows a sale for this property. The Township must have proof of ownership to ensure the titleholder is aware an application has been made on their property.

Site Plan

1. Staff has several concerns related to the proposed development and its relation to the requirements of Section 35.50: Development Standards of West Main Overlay, as follows:
 - a. Section 35.50.A.1 outlines elements that are required to be a part of every development within the West Main Overlay. Included is the use of the natural features on the site. According to the sheet 3 of 16, every tree will be removed from the site.
 - b. Section 35.50.A.2 indicates that low impact development best management practices shall be used in the development of the site. In addition, the design of the storm water management system shall respond to the natural drainage patterns of the area. The grading plans show the site being essentially leveled and all-natural topography eliminated. The storm water retention basin is not utilizing the low point on the site and extensive grading is required for its planned location. While we understand that some grading will be required, it does not appear that the existing topography or the requirements of the West Main Overlay were considered when designing the site. At a minimum, the storm water retention area should have been designed at the low point of the parcel.
 - c. Section 35.50.A.3 requires that all development be designed to incorporate and/or promote the preservation of the site's natural features and unique physical characteristics. Again, leveling the site and removing all existing trees, some of which are of significant size, does not meet the spirit and intent of this requirement.

2. Section 35.50.J requires at least 5 percent of the site to be dedicated as open space. This open space must include any significant/sensitive environmental resources and be essentially retained in an undeveloped/unimproved state. The full grading of the site does not allow for this regulation to be accommodated. Revised plans showing the location of the dedicated open space will be needed.
3. The dedicated open space must be set aside through an irrevocable conveyance approved by the Planning Commission, such as a recorded deed restriction, covenant or trust. This conveyance will need to be provided for Planning Commission consideration.
4. Staff is concerned about the location of the proposed curb cut off of the shared access drive. This drive not only serves this parcel, but a 1.7-acre parcel to the east and a 22-acre parcel to the south. Ensuring the safe placement of access points to this drive will be important as these adjacent parcels develop or redevelop over time. The current proposed north curb cut is too close to the West Main Street intersection and will likely interfere with the left turning movement stacking lane. In addition, standard practice is to align with existing curb cuts, which is located just to the south of the proposed location. Staff would recommend considering a change to the curb cut location as the redesign of the storm water management plan is examined.
5. Section 35.50.C states developments must provide interconnections/shared access drives to neighboring properties. In addition, Section 35.50.E states the parking layouts shall be designed to accommodate cross-access arrangements. While the property to the west is still undeveloped, a location for cross access must be designed into this project.
6. The site plan indicates 47 parking spaces on site. Per Section 52.100, one parking space is required for every 150 square feet of net retail space. Without a floor plan, staff utilizes 70 percent of the gross floor area to reach net. This would require 47.6 or 48 spaces. This number can be reduced depending on the use of the building. If the entire building is not intended for retail use, a different calculation for warehousing/storage can be applied. In addition, areas like restrooms, mechanical rooms, etc. can be eliminated from the parking calculation. With a redesign for the storm water management, a reduced number of parking may be needed. Utilizing floor plans often helps achieve these lower parking numbers.
7. The parking design also shows a 30-foot drive aisle between parking bays. The ordinance only requires a 24-foot drive aisle. In an effort to reduce impervious surface, we would recommend reducing these aisles to the required 24 feet.
8. Section 35.50.D.2 indicates there shall be a 10-foot setback between the building and any parking. Please ensure this dimension is met and provide it on the site plan.
9. Staff is concerned about the nonmotorized connection design. As currently proposed, a pedestrian moving westbound will have to cross three points of conflict with automobiles. A simpler approach would be to provide direct access from the front entrance through the parking lot to the 10-foot shared use path. This would require some redesign of the accessible spaces and parking lot landscaping. Another option would be to take the pedestrian connection down the west side of the site to the public path.

10. Section 35.50.D.6 indicates buildings and exterior improvements shall be complementary and compatible with the rural character of West Main Street and create a unified development image. No building elevations were provided with the site plan submittal. Section 64.60.C.3 also requires these elevation drawings provide the exterior wall materials and colors.
11. Section 64.60.C.3 also requires and elevation detail of the dumpster enclosure. Please provide this detail with the plan set. The dumpster enclosure, including the gate, must be fully opaque.

Photometric Plan

12. The photometric plan shows light poles at a height of 27 feet, 6 inches. Poles taller than 25 feet requires specific Planning Commission approval per Section 54.20.C. Staff would recommend lowering the height of the pole to 25 feet or less.
13. A detail of the building mounted lighting (wall sconce) was not provided with the photometric plan. Please provide this information.

Landscaping

14. A 10-foot wide buffer is required along the east, south and west property lines that includes one canopy tree and two understory trees per 100 linear feet of buffer. This equals a total of eight canopy trees and 17 understory trees. Four canopy and five understory trees are shown on the plan in these areas. Please either add four additional canopy trees and 12 understory trees to the plan in these buffer areas or utilize existing trees to meet these requirements. Section 53.100 of the Landscaping ordinance outlines the credits received for tree preservation.
15. On the north property line, adjacent to West Main, a minimum of two canopy trees, three understory trees, and four shrubs are required per 100 linear feet of buffer. This equals a total of six canopy trees, eight understory trees, and 11 shrubs. Shrubs have been provided but no trees are shown. Please add at least six canopy trees and eight understory trees to the plan or preserve existing trees as outlined in No. 14 above.
16. Per the West Main Overlay requirements, large masses of native or naturalized perennials and grasses should be utilized in the landscape along West Main Street. They should be informal and have a natural appearance. Open areas should be left in a natural state, not converted to lawn. Undulating landforms are also encouraged. Please revise the landscape buffer along West Main to meet these requirements.
17. The minimum size of interior landscape areas within parking lots should be at least 200 square feet. The landscape island on the north end of the parking lot appears to be roughly 165 square feet. This will need to be increased to be counted in your required interior landscape totals. If not, an additional 200 square feet is needed elsewhere in the parking lot to meet ordinance requirements.
18. At least 60 percent of required landscape materials must be native to Michigan, per the West Main Overlay zone requirements. Please keep this in mind when revising the landscape plan.

Public Works Review

19. The Storm Structure labels on the plan sheets do not appear to correlate with the tabular data on Sheet V-100.
20. Storm system routes and runs should be tabulated. Please also review the breach elevation of IP1 in relation to the basin design elevations.
21. The slope arrow along the west line of the Soil Erosion Control plan sheet appears to be in error.
22. Please review the running slope of the pedestrian pathway between the public path and the structure. Contour lines suggest ADA maximum slope requirements may not be met. Please annotate maximum allowable slopes onto the plans for contractor clarity whether the pedestrian path stays in this location or is moved, as noted above.
23. Please provide and annotate spot elevations, as needed, to assure the public nonmotorized pathway crossing through the driveway entrance is replaced in conformance with ADA standards for cross slopes. The curb cuts for the pathway are to be formed integral to the casting of the new entrance curb.
24. It is noted that very little of the natural land forms or mature trees are to be preserved, nor is the storm water management area shaped in a manner resembling a natural/organic land form.

Fire Department Review

25. Still under review.

Thank you very much for your submission. Unfortunately, there are a number of outstanding issues related to this site plan that concern staff, particularly the requirements of the West Main Overlay zoning district. Based on the items noted above, a redesign of the site is needed. We are concerned that this cannot be accomplished to meet the April 11th Planning Commission deadlines.

Per Township process, comments to the applicant are required by March 14th. While we are still waiting on Fire Department review (which will be provided to you by the deadline), we felt it was important to get these concerns to you as swiftly as possible. With that said, you are required to have a zoning ordinance compliant site plan resubmitted to the Township by March 21st to be placed on the April 11th Planning Commission agenda. With the number of changes that are needed, we believe additional time will be required.

If a compliant site plan can be provided to the Township by April 4th, we may place this item on the April 25th Planning Commission agenda. However, if additional changes are still needed, the plan will be moved to the May 9th meeting. The Planning Commission does not generally hear development review applications on the second meeting of the month. We will make an exception for your site plan if it can be provided in the timeline specified.

O'Reilly Site Plan Staff Review
March 11, 2019

Please feel free to contact me if you have any questions related to the staff comments noted above or with any additional concerns.

Kind Regards,

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

Julie Johnston, AICP
Planning Director



7275 West Main Street
Kalamazoo, MI 49009
269.375.4260 phone
269.375.7180 fax
www.oshtemo.org

May 1, 2019

Wise Smith
Marketplace Development, LLC
700 Colonial Road, Suite 101
Memphis, TN 38117

Dear Mr. Smith,

Oshtemo Township has recently completed the staff review of the revised site plan submitted for the O'Reilly Auto Parts at 6297 West Main Street. The following is a list of comments pertaining to that review:

3rd Party Approvals/Agreements

1. The Township will need documentation that the adjacent property owner has permitted cross access on their property for the driveway connection, which ultimately provides access to West Main Street.
2. In addition, the applicant has proposed improvements outside of their parcel, particularly in the northeast corner of the site. Permission to make these improvements on the adjacent property and within the Michigan Department of Transportation (MDOT) right-of-way will be required. The MDOT permit can be made a condition of site plan approval. However, permission from the adjacent property owner is more critical as the Township cannot approve a plan that shows improvements to an adjacent property without their consent.

Site Plan

3. The dedicated open space must be set aside through an irrevocable conveyance approved by the Planning Commission, such as a recorded deed restriction, covenant or trust. This conveyance will need to be provided for Planning Commission consideration.
4. Based on past conversations and the memo dated April 15th, the usage of the building will be 3,334 square feet of retail and 6,867 square feet of stockroom/storage. This would equate to 16 parking spaces for the retail and five spaces for the stockroom, for a total of 21 required spaces based on a 70 percent net calculation. Please provide the building square footage and required parking information on the site plan

With that said, there are two issues to resolve with the existing parking lot configuration; backing-up movements and required interior landscaping. The existing parking lot does not provide room for vehicles located in the far west and south parking spaces to back-up. With an allowable reduction in parking spaces, the two far west and one far south space could be converted to landscape islands. This would resolve both problems, allowing space for vehicles within the adjacent parking stalls to back-up and meeting the interior landscape requirements for parking lots. More information related to the required landscaping will be provided below.



Photometric Plan

5. Per Section 54.20.A, all light levels are to reach 0.1 foot-candles at the property line. The photometric plan indicates light levels in locations along the south and east property lines that are brighter than the 0.1 requirement.
6. Lighting is required to be significantly reduce during non-operational hours. The photometric plan is not clear on how this will occur. From the plan notes, it appears that all exterior lighting will be on after dark and during business operation and off during non-operational hours. Clarification is needed regarding when security lighting will be utilized.

Landscaping Plan

7. The interior landscaping provided on site meets the planting requirements of Section 53.70 but not the area requirements. Adding the interior landscape islands noted in comment #4 above would not require the addition of new shrubs or trees. A ground cover could be utilized in these new islands.
8. The plan indicates some naturalized areas to remain along West Main Street. The Tree Inventory and Impact Plan outline that understory trees and shrubs are to be removed. We understand this is likely to provide visibility to the new building planned onsite. However, it is unclear how the ground cover will be treated. As sod/lawn is not the preferred method of ground cover in the West Main Overlay, staff would recommend using a native woodland seed mix.

In addition, we would suggest making these natural areas more organic in shape, allowing these undeveloped areas to become "natural beds" adjacent to the turf lawn.

9. The Tree Inventory and Impact Plan also indicates that the existing canopy trees along West Main Street will be limbed to a minimum height of 20 feet. This seems excessive to provide visibility to the building. Staff would suggest a maximum of 10 feet depending on the tree being limbed.
10. As stated, the ordinance speaks to limiting turf lawn. The area along the east property line, outside of the subject site, should be restored to native restoration seed mix. Some consideration should be given to utilizing this same seed mix south of the proposed building, outside of the drain field area.
11. The proposed tree located along the south property line, near the drain field, is not required as tree preservation credits meet the ordinance requirements for this landscape buffer. As this is so near the drain field, staff would recommend eliminating this tree.

12. The shrubs along the east property line adjacent to the parking lot are not required by ordinance. If a reduction in landscaping is desired, planting the proposed canopy and understory trees with a change to the native restoration seed mix for ground cover would be permissible in this area.

Public Works Review

13. The grades in the accessible parking spaces are just slightly above 2 percent; the plans will need to be revised to show grades less than 2 percent.
14. The storm water runoff and storage calculations are acceptable. The pond and rain garden are designed to handle a 100-year storm event.
15. In two cases, the storm piping is shown as 10-inch in diameter. Although this size pipe has the hydraulic capacity for the anticipated flows, we recommend a minimum of 12-inch pipe to reduce clogging and to make future maintenance (cleaning) easier.
16. The 1 1/2-inch domestic and irrigation services will need to be coordinated with the City of Kalamazoo for water service.
17. The proposed hydrant shown near the entrance drive shall be designed and permitted as a public water main extension thru the City of Kalamazoo. To the extent that the hydrant is located on private property, a 15 ft. wide easement shall be executed and recorded in favor of both Oshtemo Township and the City of Kalamazoo.

Fire Department Review

No concerns.

Conclusion

If a compliant site plan can be provided to the Township by May 23, 2019, we will be able to place the project on the June 13th Planning Commission agenda.

Please feel free to contact me if you have any questions related to the staff comments noted above or with any additional concerns.

Kind Regards,



Julie Johnston, AICP
Planning Director



June 4, 2019

Mtg Date: June 13, 2019

To: Planning Commission

From: Julie Johnston, AICP
Planning Director

Applicant: Wise Smith
Marketplace Development, LLC

Owner: Jack Hamilton

Property: 6297 West Main Street, Parcel #3905-14-405-054

Zoning: West Main Overlay Zone

Request: Site Plan Approval

Article(s): Article 35: West Main Overlay
Article 64: Site Plan Review

Project Name: O'Reilly Auto Parts

PROJECT SUMMARY

The applicant is requesting Planning Commission approval for the development of a new retail store for O'Reilly Auto Parts located on vacant property addressed as 6297 West Main Street. A retail store is a use permitted by right within the West Main Overlay zone, which would generally trigger Zoning Board of Appeals approval. However, *Section 35.70: Review Criteria* indicates that all development within the Overlay Zone shall be reviewed by the Planning Commission.

The West Main Overlay Zone is an optional overlay that allows those properties fronting West Main Street the opportunity to develop as commercial instead of residential as dictated by the underlying R-2 zoning. Utilizing this optional zone requires the applicant to conform to a higher level of regulatory standards than would be required of a property zoned in the C: Local Business District. This is to recognize and support the Overlay's intent of distinguishing West Main Street as a significant corridor in the Township.

SITE PLAN PACKET

West Main Overlay Zone

The West Main Overlay has some specific development requirements for new construction. Native landscaping is required along public roadways; building setbacks and landscape buffers should be designed as naturalized green spaces, incorporating sustainable storm water management features; and the design of storm water management systems shall respond to the natural drainage patterns of the area and should incorporate Low Impact Development standards.

The O'Reilly Auto Parts site plan works to conform to these requirements within the limited size and configuration of the site. The property in question is 1.7 acres and contains some significant topography, which will require substantial grading. The highest elevation at the west property line is 968 and the lowest on the east property line is 945, a drop of 23 feet. Much of the site will need to be leveled to allow for the development of a building. The applicant has included the higher elevation areas in their required dedicated open space.

In addition, due to the extensive grading required, many of the existing trees will need to be removed. The applicant has worked to preserve trees primarily along the west property line and West Main Street. They have also provided a robust landscape plan that meets the native planting requirements of the West Main Overlay.

Storm water management is going to be handled mostly by an underground detention area below the eastern parking lot and drive aisle. The necessary grading provides some design challenges for Low Impact Development. The competing requirements of open space and tree preservation against incorporating sustainable storm water management features led to utilizing underground storage. The applicant does provide a rain garden within the West Main Street landscape area, which does meet the requirements of Low Impact Development.

The West Main Overlay requires that at least five percent of the site be set aside as open space. As stated, the dedicated open space is planned along the west property boundary and also within the West Main landscaped area. A total of 13,761.91 square feet of open space will be dedicated as part of this development, which is 18.5 percent of the parcel.

Section 35.50.D.6 states the following:

The design of buildings and exterior improvements on each individual site shall be complementary and compatible with the rural character of the 9th Street Sub-Area or West Main Street Sub-Area to create a unified development image that is consistent with this area of the Township.

Staff provided the applicant with pictures of Latitude 42 and Bronson FastCare, which are the two buildings along West Main Street that have developed under this Overlay. This was to give the applicant an understanding of the Township's expectations with regards to building design and exterior materials. In response, the applicant provided elevations that show primarily fiber cement lap siding and cement fiber wall panels. In addition, some building elevation changes are offered to break up the facade, with slightly taller column heights and a peak parapet along the front façade that helps screen a flat roof. The Planning Commission will need to review the elevation drawings against the Ordinance, as well as the existing construction completed under the Ordinance, for consistency.

Access to the site will be from an existing curb cut on West Main Street that is located on a 22-acre undeveloped piece of property to the east of the subject parcel. This complies with the intent of the West Main Overlay, which encourages cross access and limited curb cuts on West Main Street. In fact, the subject parcel, the 22-acre undeveloped parcel, and the Farm Bureau insurance company east of the subject site, all gain access to West Main Street from this curb cut. Utilizing this curb cut will require a cross-access agreement between the two property owners. Our understanding is the applicant is working

to secure this agreement. In addition, the applicant has agreed to provide an access easement to the neighbor to the west when that property develops. A letter to that effect is included with this staff report.

The site plan meets all other specific design requirements, such as structural setbacks, building size, landscaping, etc., of the West Main Overlay District.

Zoning Requirements

In general, all other zoning requirements have been met. There is one issue related to parking that must still be resolved. Based on staff's calculations of net usable square footage of the building (retail space and stockroom/storage) per Section 52.100, only 19 spaces are required, as follows:

3,334 sq ft of retail X 70% net = 2,333.8 / 150 sq ft per space = 15.5 spaces
6,867 sq ft of stockroom X 70% net = 4,806.9 / 1,500 sq ft per space = 3.2 spaces
Totals 18.7 or 19 spaces

Per Section 52.50.H, the applicant can develop 110 percent of this number, which brings the site to 21 spaces. The applicant has provided 44 spaces, 23 more than allowed.

Staff outlined in our March memo to the applicant that we needed more information related to uses and square footage of the building to make a determination on the required number of parking spaces. They indicated that 3,334 square feet would be retail space and 6,867 square feet would be for stockroom/storage. In our May memo to the applicant, staff detailed the required parking spaces based on these uses and a 70 percent net calculation. However, the most recent site plan still indicates 44 spaces.

The Off-Street Parking Ordinance does not provide any departure from this standard. Only parking lots with more than 50 spaces can request an additional parking allowance from the Planning Commission. Therefore, the site plan must conform to the 21-maximum number of spaces. The reduction in parking could provide some additional opportunities for Low Impact Development design of the storm water management system.

Finally, the Lighting Ordinance indicates that lighting shall be significantly reduced during non-operational hours of the business, allowing only lighting necessary for security purposes. The lighting plan should note when lighting will be reduced. The applicant has indicated the following:

Exterior site lights will turn on when it is dark enough outside and it is within store hours or there is a motion in the store. They will turn off 30 minutes after last motion once the store is closed.

This note does not indicate if security lighting will be employed or when it will occur. Past notes the Planning Commission have approved generally state the following:

All exterior light fixtures shall be reduced to 30 percent power at the close of business but no later than 10:00 pm until 7:00 am or the start of business via an owner programmable timer.

The Planning Commission will need to work with the applicant to determine how this requirement of the Lighting Ordinance will be met.

Public Works / Public Safety

The concerns of the Public Works and Fire Department have been resolved based on the current site configuration. With the reduction in parking required on site, the Public Works department will need to review any changes to the storm water management system.

Improvements Outside Property Lines

As stated, the site will gain access to West Main Street from an existing curb cut. The applicant intends to improve this access point, requiring work to be completed on another's property. This work will consist of tree removal, grading, and new asphalt to the vehicle entrance on their site. In addition, the improved curb cut will also require approval from the Michigan Department of Transportation (MDOT).

The applicant will also need permission to work outside of their property lines to the south of their access point to assist with grading on the site. The Erosion and Sedimentation Control Plan indicates the limits of disturbance, which goes beyond the boundaries of their property along the full eastern property line.

To date, the Township has not received any agreements from the neighboring property owner allowing work to be completed on their parcel. This will be needed before work can begin.

OUTSTANDING CONCERNS

The following provides a more succinct list of the outstanding items/concerns to be resolved with the site plan packet:

1. The Planning Commission will need to determine if the proposed exterior building design meets the intent of the West Main Overlay zone.
2. A minimum of 23 parking spaces will need to be removed from the site. The removal of these spaces could alter the storm water management design, requiring additional review by the Township Engineer.
3. A note needs to be placed on the lighting plan which indicates when reduced lighting will be employed.
4. Agreements for the off-site improvements are still needed as of the date of this staff report. The Planning Commission will need to consider if a condition that an agreement is provided will suffice for site plan approval.
5. A cross-access agreement for the use of the existing curb cut on West Main Street.
6. Permission from MDOT to work within the road right-of-way.

PLANNING COMMISSION POSSIBLE ACTIONS

If the Planning Commission is amenable to approving the site plan, staff recommends attaching the following conditions:

1. A revised site plan be provided to the Township showing the correct number of parking spaces. If the storm water management plan is altered due to the change in parking, the Township Engineer or his designee will review and approve the redesigned system. This condition will be completed before the issuance of a building permit.
2. A revised lighting plan with a note indicating when lighting will be significantly reduced during non-operational hours of the business, allowing only lighting necessary for security purposes (the Planning Commission to determine those hours.) This condition will be completed prior to the issuance of a building permit.
3. An agreement from the adjacent property owner to the east that allows off-site improvements to their property. This condition will be completed before any site or building improvements are made on the property.
4. A cross-access agreement with the adjacent property owner to the east that allows use of the existing curb cut. This condition will be completed before any site or building improvements are made on the property.
5. A permit from MDOT allowing for improvements within the West Main Street right-of-way. This condition will be completed before any site or building improvements are made on the property.
6. An executed document for the dedication of the open space must be provided to the Township before a certificate of occupancy is issued on the building.

Additional conditions may be needed related to the exterior appearance of the building if the Planning Commission feels it does not comply with the intent of the West Main Overlay Zone.

The Planning Commission may also consider postponing approval of the site plan until some or all of the concerns noted above have been resolved.

Respectfully Submitted,



Julie Johnston, AICP
Planning Director

Attachments: Application
Aerial Map
Access Map
Site Plan
Elevation Drawings
Dedicated Open Space Agreement
Cross Access Letter



July 1, 2019

Mtg Date: July 9, 2019
To: Zoning Board of Appeals
From: Julie Johnston, AICP
Subject: DRAFT By-Laws

At the May 28th meeting, a request was made for staff to develop a set of by-laws for the Zoning Board of Appeals (ZBA). The Zoning Enabling Act permits the ZBA to adopt rules governing their operation. The Township has Article 69 within the Zoning Ordinance that provides some direction for organizational procedure, but a set of by-laws could help specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures, and other aspects of the ZBA's operation.

By-laws are not part of the Zoning Ordinance but are adopted by the ZBA as its rules for operation. Staff would suggest discussing the draft by-laws at the July 9th meeting for any possible changes, corrections, or edits. Once the by-laws are in a draft form acceptable to the ZBA, a recommendation of adoption can be forward to the Township Board.

Thank you.

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

ARTICLE I: NAME

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

ARTICLE II: POWERS AND AUTHORITY

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

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

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

ARTICLE III: MEMBERS

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

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

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

- Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years and until a successor has been appointed. A successor must be appointed not more than one (1) month after the expiration of the preceding term. Terms shall be arranged such to provide as nearly as possible for the appointment of an equal number of members each year. Members from the Planning Commission and Township Board of Trustees shall have terms limited to their respective other official term or to a lesser period determined by resolution of the Township Board of Trustees.
- Sec. 5 VACANCIES. A vacancy on the ZBA occurring other than through the expiration of the term shall be filled for the unexpired term by the Township Board of Trustees.
- Sec. 6 VOTING RIGHTS OF ALTERNATE MEMEBERS. Alternate members shall only have the right to vote upon those specific matters in which they have been called upon to serve in the absence of a regular member or called upon to serve due to the abstention of a regular member as a result of a conflict of interest. The alternate member shall then continue to hear those cases for which they were called to serve until final disposition of those cases.

ARTICLE IV: OFFICERS

- Sec. 1 SELECTION. The ZBA shall elect a Chair and a Vice Chair from amongst the regular members at the first regular meeting of the calendar year. The Township Board of Trustee member may not serve as an officer.
- Sec. 2 TERMS OF OFFICE. The terms of the Chair and Vice Chair shall be one (1) year in length or until their successors are elected. The Chair and Vice Chair shall be eligible for re-election at the conclusion of their one-year term.
- Sec. 3 DUTIES. The Chair shall preside over all meetings of the ZBA and shall perform the duties prescribed by these by-laws. The Vice Chair shall perform the duties of the Chair in the absence or disability of the Chair.
- Sec. 4 ABSENCE OF CHAIR AND VICE CHAIR. If both the Chair and Vice Chair are absent from a meeting, the ZBA members shall vote in a chairperson to perform the necessary duties for that meeting. The Chair and/or Vice Chair shall resume normal duties at the next scheduled ZBA meeting.
- Sec. 5 VACANCIES. If a vacancy should occur in any office, the ZBA shall elect another person to fill such vacancy in the same manner and under the same conditions outlined above for the remainder of the term of said office.
- Sec. 6 SECRETARY. The Secretary shall be appointed by the ZBA and may be an employee or contractor of the Township, or a member of the ZBA. The Secretary is responsible for keeping a written record, in the English language, of the resolutions, transactions, findings, and determinations of the ZBA, which shall be a public record subject to the provisions of the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended.

ARTICLE V: MEETINGS

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

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

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

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

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

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

Sec.5 HEARINGS. Hearing shall be scheduled and due notice given in accordance with the provisions of the Michigan Open Meetings Act and the Michigan Zoning Enabling Act under which the public hearing is being held. The absence of the applicant or a representative of the applicant at the scheduled public hearing may result in a postponement of proceedings. The absence of the applicant or a representative at the postponed public hearing shall be treated as the voluntary withdrawal of the application by the applicant. Public hearings conducted by the ZBA shall be

run in an orderly and timely fashion, which shall be accomplished by adhering to the following public hearing procedure:

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

- B. ORDER OF HEARING. The Chair shall conduct the public hearing in the following order:
 - 1) Presentation of the application by Township staff (staff report presentation).
 - 2) Questions from ZBA to Township staff.
 - 3) Comments and explanations by the applicant.
 - 4) Questions from ZBA to applicant.
 - 5) Opening of Public Hearing, comments from public.
 - 6) Closing of Public Hearing to public comments.
 - 7) ZBA deliberation.
 - 8) Consideration of action by the ZBA.

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

- D. PRESENTATION OF APPLICATION. The Chair shall recognize Township staff and request a presentation of their staff report. The staff report will outline the applicants request, the specific sections of the Zoning Ordinance related to the request, and the regulations that are impacted by the subject request. At the conclusion of the staff report, the Chair will ask the ZBA members if they have any questions of staff. Once all questions have been answered, the Chair will then ask the applicant to provide a concise summary of the reasons for their request and respond to questions raised by the ZBA.

- E. OPENING OF HEARING TO FLOOR. The Chair then opens the public hearing to comments from the floor, reminds the public of the rules of conduct, and indicates that once a person has been recognized by the Chair, they are invited to give their name and address and a concise statement of their concerns and/or input. In the event of a large hearing, the Chair

may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chair reserves the right to limit the amount of time allocated to a spokesperson to avoid filibustering. The Chair may elect during the course of public comments to obtain brief answers from the Township staff or from the applicant if such comments may expedite the hearing. The Chair shall accept for the official record any documentation received by the ZBA regarding the matter at hand and shall read and/or summarize these materials.

- F. CLOSING OF PUBLIC HEARING. When all public comments have been received the Chair shall close the public hearing. After the public hearing is closed, no further comments shall be received from the public.
- G. CONSIDERATION OF MATTER BY ZBA. Once the public hearing has been closed to public comments, the Chair may recognize any ZBA member to discuss and seek additional information from others concerning the matter at hand. ZBA members shall address the Chair when speaking and shall request additional information through the Chair. When discussion on the matter at hand by ZBA members has been completed, they may take one of the following four actions on the matter:
- 1) Approve the request as presented;
 - 2) Approve the request with conditions;
 - 3) Deny the request as presented; or
 - 4) Defer/adjourn the matter to a future meeting.

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

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

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

- The problem is not self-created.

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

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

Sec.9 MEETING MINUTES. Minutes shall be prepared by the Secretary designated by the ZBA. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions made on any action; and recording of attendance.

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

ARTICLE VI: ABSENCES, REMOVALS, AND RESIGNATIONS

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

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

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

ARTICLE VII: CONFLICT OF INTEREST

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

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

ARTICLE VIII: CONFLICTING PROVISIONS

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

ARTICLE IX: AMENDMENT OF BY-LAWS

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

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