

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD NOVEMBER 14, 2023 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

2024 ZONING BOARD MEETING DATES

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, November 14, 2023, beginning at approximately 3:02 p.m.

ALL MEMBERS WERE PRESENT: Anita Smith, Chair
 Rick Everett
 Dusty Farmer
 Fred Gould
 Harry Jachym
 Louis Williams, Vice Chair
 Alistair Smith

Also present were Iris Lubbert, Planning Director, Jim Porter, Township Attorney, Leeanna Harris, Zoning Administrator, Martha Coash, Recording Secretary and several guests.

Call to Order

Chairperson Smith called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Ms. Lubbert indicated there were no changes to the agenda.

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

The Chair moved to the next agenda item.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of March 21, 2023

Chairperson Smith asked if there were changes to the minutes of March 21, 2023. Hearing none, she asked for a motion.

Mr. Smith made a motion to approve the Minutes of March 21, 2023 as presented. Ms. Farmer seconded the motion. The motion was approved unanimously.

The Chair moved to the next agenda item.

2024 Zoning Board Meeting Dates

Ms. Lubbert provided the proposed meeting dates for the fourth Tuesday of each month with exceptions for holidays or for consistency with the Development Schedule of Applications:

1/23
2/20*
3/26
4/23
5/21*
6/25
7/23
8/20*
9/24
10/22
11/19*
12/17*
1/21/2025

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

Chairperson Smith suggested moving the December Meeting to the 10th. Members decided to leave it as proposed, in the normal pattern.

Chairperson Smith asked for a motion.

Ms. Farmer made a motion to approve the Zoning Board Meeting Dates for 2024 as presented. Mr. Williams seconded the motion. The motion was approved unanimously.

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

PUBLIC HEARING – VARIANCE: FRIENDSHIP ANIMAL HOSPITAL

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance in order to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks.

Ms. Harris said 2999 S. 11th Street, has approximately 119 feet of frontage, is 1.24 acres in size, and is zoned R-3: Residence District. The property is located in the southeast quadrant of the Township, southeast of the Crystal Lane and S. 11th Street intersection.

Hansen Building and Design Corporation, on behalf of Dr. Laura Billings, was requesting a variance from Section 50.70.E. of the Township Ordinance that governs the minimum distance between any building or structure (that is not a single-family home or duplex) and any rear or side property line abutting property with a single- or two-family residence located in an equivalent or lower zoning classification. Specifically, the Ordinance outlines that the setback distance shall be 50 feet, or a type F greenspace shall be installed, along the property line between the improved area of the subject property and the abutting residence.

2999 S. 11th Street is zoned R-3 and is currently vacant. The property in question is situated between two parcels that are also zoned R-3 but have single-family homes. Generally, the required side yard setback for a new commercial building within an R-3 zoning district is 20 feet or the height of the abutting side of the building at its highest point. However, the presence of single-family homes triggers the increased setback requirements of 50.70.E of the Zoning Ordinance; a 50-foot setback or type F greenspace is required along the adjoining property lines. It should be noted that there is an R-2: Residence District abutting the southeastern portion of 2999 S. 11th Street.

Although Section 50.70. E references a type F greenspace, she noted the referenced type F greenspace was removed from the Landscaping Ordinance when it was last updated. Staff were able to research the earlier version of the Landscaping Ordinance and found the greenspace standards previously in place. Generally, the minimum setback distance required between any building and any rear or side property line is 20 feet or the height of the building, whichever is greater. This request would meet this Ordinance requirement since the proposed building height is 25 feet.

The applicant provided a letter outlining their reasoning for the variance request. In summary, the applicant contends that the required increased setbacks would leave little developable space on this 119-foot-wide parcel making development difficult and therefore this section of the ordinance unnecessarily burdensome. They also note the approval of this request will have no material impact on adjacent property owners. The applicant adds that even though the setback would be decreased, if approved, in order to meet the intent of the ordinance, they “will be landscaping the site very heavily, providing significant screening to all sides of the parcel. The 8- foot evergreens will be staggered in such a way to obstruct the view of the building from not only the R-2 parcel but the adjoining R-3 parcels as well.”

STANDARDS OF REVIEW – STAFF ANALYSIS

Ms. Harris reviewed the principles the Michigan courts have applied 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.
- Public safety and welfare.

Ms. Harris indicated Staff analyzed the request against these principles and offered the following information to the Zoning Board of Appeals.

Standards of Approval of a Nonuse Variance (practical difficulty)

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

Comment: 2999 S. 11th Street is currently undeveloped with relatively flat terrain. The ordinance outlines that a parcel within the R-3 district is required to have a minimum frontage of 200 feet and a minimum area of 50,000 square feet. This property's frontage of 119 feet is legal non-conforming. The property's area of 1.24 acres exceeds the ordinance required minimum of 50,000 square feet. The narrower width, almost half what is required, is a unique physical limitation. If the increased setback of 50 feet is strictly enforced for the development of this property, it would only allow a nonresidential structure 19 feet wide or less to be built on this site. It could be argued that the increased setback requirement renders the property essentially undevelopable for any use other than a single-family home or duplex without a setback variance being granted.

*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 building a nonresidential use, specifically a veterinary clinic, on this property is discretionary and reasonable use of the property does still exist as a single- or two-family home; however, the enhanced setbacks from properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel for any other uses.

Section 50.70 E was originally designed to offer two options for enhanced buffering between uses. The first is a setback of 50 feet and the second is the installation of a type F greenspace (i.e. setback of 35 feet with increased landscaping). The second option is no longer available as the ordinance no longer includes the type F landscaping referenced, leaving the applicant with one less option to develop than previous developers. Even though this option is technically no longer applicable, the Zoning Board of Appeals should consider the original intent of 50.70. E which allowed for a decreased setback, in this case from 50 feet to 35 feet, as long as additional landscaping was provided.

Note: to address the spirit of the ordinance, the applicants have indicated they are willing to provide increased landscaping, to the north, south, and east sides of the parcel. Any proposed landscaping plan will need to be reviewed against the landscaping ordinance and approved by the Planning Commission with the review of the site plan. The Commission should consider this as a condition of approval.

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 the request for relief from increased setback requirements abutting single- or two-family homes, Planning Department staff were able to identify two similar cases.

1. Spurr Dental, 1624 South Drake Road, 4/8/2002: The applicant sought relief from the supplemental setback requirements from CR: Local Business District classification to adjacent R-3 properties from the Zoning Board of Appeals to allow for the construction of a new office building on the property. Without the variance, the applicants argued, there would be essentially no buildable area resulting since the width of the property is 159 feet with supplemental setback requirements of 85 feet on both the north and south property lines. The Zoning Board of Appeals granted the variance request, allowing the building to be built to the standard commercial office setback requirements and not have to follow the enhanced applicable setbacks, citing that the conformance was unnecessarily burdensome, the hardship was not self-created, and that the spirit and intent of the Ordinance would be observed by the variance.
2. D & R Sports, 8178 West Main Street, 10/6/2014: The applicants sought relief from the supplemental setback requirements for properties abutting residential zoning districts from the Zoning Board of Appeals to allow for the construction of a new storage building. If approved, the new structure was proposed to be located 58 feet from the property line, 33 feet less than required by the supplemental setback provisions. The applicant indicated there was an existing berm fully planted with spruce trees that should completely obstruct the view of the building. The Zoning Board of Appeals granted the variance request given the adjacent use of the property is a unique element and it was unlikely to have a material impact on the adjacent property.

Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: With the site currently being vacant, it could be argued that the need for the variance requested is self-created. However, the building setbacks for this property severely limit the amount of space available for development. The width of the property is 119 feet, and with the 50-foot setback on both the north and south, it would give only 19 feet to construct a building.

Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Comment: The applicant stated they would provide extensive landscape buffering to obscure the site from the properties to the north, south, and east, more similarly aligned with the type F greenspace referenced. If the variance is approved, the

site plan would require the review of the Planning Commission and a public hearing to ensure the proposed use and layout are compatible with the surrounding area. With the willingness to provide additional screening and the safeguards in place through the Planning Commission review, staff does not anticipate that allowing the structure to be built closer to the neighboring properties with single-family homes than is typically allowed would negatively impact the health, safety, or welfare of the neighbors or the community.

POSSIBLE ACTIONS

Ms. Harris suggested Board Members could take the following possible actions:

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

The motion should include the findings of fact relevant to the requested variance. Based on staff analysis, the following findings of fact were presented:

- Support of variance approval
 - There are unique physical limitations (property width).
 - Conformance to the ordinance is unnecessarily burdensome as the enhanced setbacks for properties abutting those containing single- or two-family homes in equal or lesser zoning classifications severely limits the buildable area of this parcel.
 - With increased landscaping/screening, per the original intent of 50.70 E, there would be no negative impact to the health, safety, or welfare of the public by allowing the building to be built with the proposed setbacks.
 - Substantial justice is met as the Zoning Board of Appeals granted setback variances for two similar cases in the past.
- Support of variance denial
 - The necessity of the variance from the enhanced 50 foot setback is a self-created hardship.

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

1. Variance Approval

The Zoning Board of Appeals approves the variance request due to the unique physical limitations that exist, conformance to the ordinance is unnecessarily burdensome and there would be no negative impact to the safety of the public with the condition that enhanced landscaping, reviewed, and approved by the Planning Commission, is installed within the decreased setback areas to meet the intent of Section 50.70.E. and any proposed primary building meets the general zoning setback requirements (in this case, 20 feet or the height of the building, whichever is greater).

2. Variance Denial

The Zoning Board of Appeals denies the variance request due to the proposal being a self-created hardship.

3. Variance Approval and Denial

The Zoning Board of Appeals can choose to approve portions of the requested variance or provide alternate relief. For example, approve a variance for a setback larger than requested but less than the ordinance requires, ex. 35 feet.

Chairperson Smith thanked Ms. Harris for her presentation and asked if Board Members had questions for her. Hearing none, she asked if the applicant wished to speak.

Mr. Walter Hansen, of Building and Design Corporation spoke on behalf of Dr. Laura Billings, and noted the Kalamazoo County Road Commission has approved the proposed location of the drive, and for soil erosion permissions have both been received. He described the intent to develop an office on the property to the north, the extensive landscaping with evergreen trees that is proposed will provide very good screening, noted there would be 400 feet between the back of the residence on the R-2 zoned property and this development, and that approval of the variance would not result in negatively impacting the home directly to the south .

Without the variance, he said it would be almost impossible for any type of office use on the site, specifically citing that no fire truck turnaround would be possible.

Chairperson Smith thanked Mr. Hansen for his comments and opened a public hearing.

Ms. Penny Marsh, 3065 S. 11th Street spoke in opposition to the variance request. Her comments are attached to these minutes in their entirety.

Hearing no further comments, the Chair closed the hearing and moved to Board Deliberations.

Mr. Smith noted that he would be in support of approving the variance as requested with the conditions outlined by staff. He noted the installation of the additional screening and the non-conforming, pre-existing width of the parcel which is a unique limitation.

Ms. Farmer said the request for variance was the result of a self-created hardship and that the ordinance is in place in large part to protect residential properties. The proposed business would be right next to a residence and cited her concern regarding equal or lesser zoning classifications. She noted that as zoning goes with the land, in the future the building might be an entirely different business.

Chairperson Smith also felt the request was based on a self-created hardship.

Mr. Williams encouraged the applicant to take another look at the plan.

Mr. Everett asked whether the site could be used for a residence.

Attorney Porter said it could be used for a single family residence or a duplex.

Hearing no further discussion, Chairperson Smith asked for a motion.

Ms. Farmer **made a motion** to deny the variance request to construct a new commercial building at 2999 S. 11th St. 25 feet from both of the side yards while Section 50.70.E. of the Township Ordinance requires 50-foot side yard setbacks due to the variance request being the result of a self-created hardship. Mr. Williams **seconded the motion**. The

motion was approved and the variance request denied in a roll call vote of 5 – 2. (Roll Call Vote: Mr. Gould – yes; Mr. Jachym – no; Ms. Farmer – yes; Ms. Smith – yes; Mr. Williams – yes; Mr. Smith – no; Mr. Everett – yes.)

Chairperson Smith moved to the next agenda item.

Other Updates and Business

Ms. Lubbert said there will be two items to consider at the December 12 meeting and wished everyone happy holidays.

Ms. Farmer noted this was the first time Ms. Harris had presented to the group and thanked her for a job well done; Chairperson Smith agreed.

Adjournment

Chairperson Smith noted the Zoning Board of Appeals had exhausted its agenda. There being no other business, she adjourned the meeting at approximately 3:44 p.m.

Minutes prepared:
November 15, 2023

Minutes approved:
December 12, 2023

Statement to Oshtemo Township Zoning Board of Appeals 11/14/2023
Re: Variance for setback of proposed animal hospital on South 11th Street

We are retired and moved to 3065 South 11th Street on December 14, 2022 to be closer to two of our three sons who live in Kalamazoo. We made the decision to buy this house because we fell in love with the park-like character of our lot. Our property looks like a park with many beautiful mature hardwood trees, including maple, cherry and sassafras. We have already added several native woody shrubs and a white oak sapling to the plantings. If the variance is granted to reduce the animal hospital's setback along our property line, there will be a genuine loss to us in the spectacular views and privacy that our property now affords. Our interest is in maintaining the residential quality of our home's setting and the neighborhood's residential assets as well.

We have reviewed the Standards of Approval of a Nonuse Variance published on the Oshtemo Township website and note the following as they apply to this case:

- Re Standard One – reasonable options for compliance *are available* if the developer is willing to alter the sizes and sitings of the building and parking lot.
- Re Standard Three – there *are no unique physical limitations or conditions to prevent compliance.*
- Re Standard Four – the conditions or circumstances which resulted in the variance request *are entirely created by the actions (planning & design) of the applicant.*
- Re Standard Five – the spirit of the Ordinance will *not* be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted since this neighborhood at this end of South 11th Street is zoned R3 and retains the character of a residential neighborhood.

There are several other nearby Oshtemo Twntp Veterinary clinics:

- Oshtemo Animal Hospital, 6303 Parkview Avenue, 49009 (.9 mile away) *
- Kalamazoo Cat Hospital, 5263 W. KL Avenue, 49009 (1.4 miles away) *
- Pet Vet Family Pet Care Center, 229 S. Drake Rd, 49009 (2.2 miles away) *
- West Main Animal Hospital, 7250 W. Main Street, 49009 (3.8 miles away) *
- Eighth Street Veterinary Care, 624 S. Eighth Street, 49009 (2.9 miles away) *

Consider these facilities' settings, sitings on their lots, surrounding uses, set backs from other properties around them, and tell us what you think!

We do *not* approve of this proposed variance and sincerely hope that you will respect the zoning guidelines for residential setbacks in this case. Thank you for considering our input.

John Klyce and Penny Marsh
3065 South 11th Street, Kalamazoo, MI 49009
269-365-9013

*Distance is from our address/proposed vet clinic address