

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DRAFT MINUTES OF A REGULAR MEETING HELD FEBRUARY 20, 2024 AT
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

ELECTION OF 2024 OFFICERS

PUBLIC HEARING – SITE PLAN REVIEW AND VARIANCE: 1560 S. 8th STREET, LLC
Scott Williams, on behalf of 1560 S 8th Street, LLC, is requesting relief from the setback provisions of Section 50.70 of the Zoning Ordinance in order to construct a 6,684 square foot building with a connecting breezeway to an existing building on-site.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, February 20, 2024, beginning at 3:00 p.m.

MEMBERS PRESENT: Louis Williams, Vice Chair
 Rick Everett
 Fred Gould
 Harry Jachym

Also present were Colten Hutson, Zoning Administrator; Leeanna Harris, Zoning Administrator; Jim Porter, Township Attorney; Ann Homrich, Recording Secretary and seven guests.

Call to Order

Vice Chair Williams called the meeting to order. Those present joined in reciting the Pledge of Allegiance.

Approval of Agenda

Mr. Hutson indicated there were no changes to the agenda.

Mr. Jachym **made a motion** to approve the agenda as presented. Vice Chair Williams called for a vote. **The motion was approved** unanimously.

The Vice 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 December 12, 2023

Vice Chair Williams asked for approval of the minutes of December 12, 2023. Mr. Everett **made a motion** to approve the minutes as presented. Mr. Jachym **seconded the motion**. The Vice Chair called for a vote. The **motion was approved** unanimously.

Election of 2024 Officers

The Vice Chair moved to the next agenda item, election of officers: Chair, Vice Chair, and Recording Secretary. Attorney Porter noted for the record that a Recording Secretary is simply an honorary position, and there has always been an individual preparing the recordings, however statute requires that a member of the Board has to be appointed as the Recording Secretary.

Mr. Jachym **nominated** Mr. Williams as Chair. Mr. Everett **seconded the motion**. Vice Chair called for a vote. **Motion was approved** unanimously.

Mr. Gould **nominated** Mr. Jachym as Vice Chair, due to his many years of service. Chairperson called for a vote. **Motion was approved** unanimously.

Mr. Jachym **nominated** Mr. Gould as Recording Secretary. Mr. Williams **seconded the motion**. Chairperson called for a vote. **Motion was approved** unanimously.

Chairperson Williams moved to the next agenda item.

Public Hearing – Site Plan Review and Variance: 1560 S. 8th Street, LLC

The Chair opened the meeting for public hearing, site plan review and variance request for 1560 S. 8th Street.

Ms. Harris presented the site plan review and variance request for 1560 S. 8th Street (parcel 05-22-485-030). The applicant, 1560 S. 8th Street, LLC, is requesting site plan review and relief from Section 50.70.B of the Zoning Ordinance in order to construct a 6,684 square foot building with a connecting breezeway to an existing building on site. If approved, the variance would permit construction of a building 65 feet south of the property line where the ordinance requires a 100-foot setback. If the variance is not approved, Ms. Harris stated the site plan could not be approved and would need to be redesigned to adhere to the required 100-foot setback.

The property currently zoned I-1 Industrial is located in the SE quadrant of the Township. The property currently possesses a 7,803 square foot building. A church previously occupied the building, however in 2003 the property was successfully rezoned from R-3 to I-1 to allow for future industrial land uses. The current owners have an office at said property but wishes to expand the business adding a 6,684 square foot to serve for manufacturing printing and embroidery of pre-manufactured items and supplies. To facilitate the expansion, the intent is to place the proposed building NE of the existing building along the parcel's south boundary line. Generally, the required setback for I-1 Industrial zoning is 20 feet of the height of the abutting side of the building at its highest point. However, the presence of a residential land use to the subject property's immediate south, the supplemental setback provisions outlined in Section 50.70.B of the Zoning Ordinance states that an industrial property requires a setback of 100 feet when abutting a residential property. For this reason, the applicant has requested relief from this side yard setback requirement, to be 65 feet. There are two sets of criteria to be considered. The first is the site plan review criteria outlined in Section 64. The second is the supplemental setback provisions pertaining to industrial land uses neighboring residential properties outlined in Section 50.70.B.

1560 S. 8th Street currently possesses 300 feet of frontage and is approximately 8 acres in size. Adjacent to the north is I-1 Industrial zoned property, adjacent to the south is RR rural residentially zoned property, and across S. 8th are R-5 zoned and R-3 zoned properties. The proposed warehousing and office use are considered permitted uses within the I-1 Industrial district. The subject property currently has an existing drive into the site on S. 8th Street and all drives will be used similar to previous use. The circulation aisle is proposed to be 24 feet in width, which meets the minimum requirements for two-way travel. There are 32 planned parking spaces, nine are newly proposed and two designated to be ADA accessible and concrete. All spaces are designated to be 10 feet by 20 feet. After calculations based on the square footage and floor plan for the proposed uses on-site, a total of 34 spaces will be required on site. Two spaces can be added, reviewed, and approved administratively prior to issuance of a building permit. Lastly, all easements have been illustrated, and are present along the eastern property line for Consumers Energy and for Michigan Bell Telephone.

Request for Deviations:

The applicant has also applied for two deviations: one for the shared use path and one for the internal sidewalk network. These requirements are outlined in Section 57.90 of the Township Zoning Ordinance as well as the nonmotorized transportation plan. There is connection to and establishment of a six-foot wide shared use path along the west side of S. 8th Street. The applicant has indicated the reason for requesting such, is that the proposed sidewalk would be running through an existing water runoff area and under existing utilities where there is steep terrain along this area and would require significant site rework.

Per Section 57.90, unique circumstances may exist for the installation of non-motorized facilities in compliance with Article 50 may not be appropriate at the time of development. Accordingly, in lieu of constructing the required facility, they may request to enter into an escrow agreement with the Township as outlined in the Ordinance. The reviewing body is authorized to approve an escrow agreement in lieu of the required non-motorized facility when strict application would result in extraordinary difficulty including but not limited to severe variations of topography, unsuitable soils where difficulty in providing safe separation between pedestrian and vehicular traffic due to site location layout or existing building arrangements. In addition to considering these, the Oshtemo Public Works department provided a letter (in the packet) supporting the two deviations for the shared use path and for the internal sidewalk network. With the support of the Public Works department, Staff recommend that the Zoning Board of Appeals grant the requested deviations to permit the applicant to enter into an escrow agreement with the Township outlined in the non-motorized facilities/sidewalk ordinance in lieu of constructing the non-motorized facilities and not be required to construct the connecting internal sidewalk network.

Site Plan Review:

The proposed 6,684 square foot building is proposed to be approximately 26 feet east of the existing building connected by a breezeway and a proposed height of 18 feet. All frontage and area requirements for non-platted parcels carrying an I-1 Industrial District designation have been met. Building setbacks from the northeast and west property lines have been met as the proposed building is set back an excess of 100 feet from those property lines. However, the proposed building location does not meet the minimum side yard setback 100-foot requirement from the south property line. Per Section 50.70.B of the Ordinance, an enhanced setback is required when an industrially zoned property abuts a property with a residentially zoned designation. Due to this provision, the applicant has requested a variance requesting that the

proposed side yard building setback from the south property line be reduced from the required 100 feet in the Ordinance, down to 65 feet.

1. A landscaping plan was provided but a number of details are still missing. An updated landscaping plan meeting all applicable requirements of Article 53, of the Zoning Ordinance shall be submitted to the Township and can be reviewed and approved administratively. A lighting and photometric plan has also been submitted, however, some details are missing or need to be slightly adjusted. An updated lighting plan meeting all applicable requirements of Article 54 shall be submitted to the Township. Staff are confident that a revised lighting plan can be reviewed and approved administratively and recommend that the ZBA include as a condition of approval.
2. Prein & Newhof and the Oshtemo Public Works department have reviewed the proposal and noted there are some engineering concerns that have not been addressed. However, they do feel that the remaining engineering concerns are minor enough to where they can be reviewed and approved administratively and recommend that the ZBA include as a condition of approval.
3. Lastly, the Oshtemo Fire Marshal has reviewed the site plan and for the most part is satisfied with the site plan, however he does have concerns about the breezeway connecting the existing building to the proposed building. The Fire Marshal provided three different courses of action that the applicant could take to address the concerns. Staff are confident that these are something that could be reviewed and approved administratively and recommend the ZBA include as a condition of approval.

Standards of Approval:

Moving on to the previously referenced variance portion of the presentation, the applicants have provided rationale for this request, and is attached to the packet. The Michigan courts have provided the principles for dimensional variance which collectively amount to demonstrating approximate practical difficulty. Staff have analyzed the requests against these principles and offer the information in the Staff Report to the Zoning Board of Appeals.

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

Comment: The applicant conveyed that the unique circumstances are the size and location of the existing parking lot, the existing location of the septic tank and drain field, the setback of the existing building and location of the entrances of the existing building. However, the location of the existing building is discretionary and could be placed elsewhere, even with the previously mentioned site elements. The property is 300 feet in width and has an average depth of 1,200 feet and is approximately 360,000 square feet in size not including the unaddressed uncombined parcel to the rear.

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

Comment: The applicants indicated the location of the proposed building was chosen largely for the location of the existing 7,803 square foot building, existing building

entrances and existing septic and drain field, existing parking lots, existing driveways, and to encourage traffic flow and promote an attractive curb appeal. However, as a matter of building an additional structure is discretionary and reasonable use on the property does still exist whether in its present state or in a different configuration even with the enhanced setbacks abutting the residential zoning on the south property line. The proposed building could be placed elsewhere especially given the property to the immediate west, giving more options for reasonable compliance.

Standard: Minimum necessary for substantial justice.

Comment: This is applied both to the applicant and other property owners in the district. We have reviewed past decisions of the ZBA for consistency and a check for precedence. In researching past decisions regarding the request for relief from enhanced setback requirements, Planning department Staff were able to identify three different cases with the most recent one being on November 14, 2023. *Information showing these decisions were in the packet.*

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

Comment: In 2023, the current property owners elected to rezone this property from R-3, to I-1 Industrial. With a current configuration of the site, it could be argued that the need for the variance is self-created since the previous setbacks of the south were 50 feet with the R-3 zoning classification abutting Rural Residential zoning classification, but due to the rezoning, now it's subject to an increased setback requirement. The applicants did indicate this would not be a self-created hardship since they were not the original developer of the property however, it is the owner's desire to expand and construct a new 6,684 square foot building.

Standard: Public Safety and Welfare: Will the variance request negatively impact the health, safety, and welfare of others?

Comment: Regarding setbacks, they serve as a crucial part for any type of structure to provide security and privacy between adjacent uses especially between property owners of industrial uses and residential uses. Setbacks are considered the breathing room between properties where building restrictions apply. The applicants did indicate careful planning was utilized in order to preserve the greenbelt along the south property line in between the existing building and residential property to the south. It should also be noted there is currently a legally nonconforming 7,803 square foot building located approximately 47 feet from the southern property line. In addition, the applicants conveyed the property owner to the immediate south has no issues with the placement of the proposed building, however it is still important to note that ownership of property is not static, and the current property owner could be okay with the proposed layout but that does not mean that such would continue with future landowners.

Possible Actions:

The motion from the Zoning Board of Appeals should include the findings of fact relevant to the requested variance. Based on Staff analysis, the following findings of fact are presented:

- Support of variance approval considers substantial justice being met. The Zoning Board of Appeals has approved setback variances for two similar cases in the past:
 - *These case reports were presented in the packet.*
 - Support of variance denial includes the necessity of the variance from the enhanced 100-foot setback, being a self-created hardship with the following stated:
 - There are no unique physical circumstances that prevent strict compliance with the Zoning Ordinance.
 - Conformance to the Ordinance is not unnecessarily burdensome.
 - Allowing the variance may have a negative impact to the health, safety, and welfare of the public by allowing the building to be built within the required enhanced setback.
1. The ZBA approves the site plan and variance request due to substantial justice being met with the following conditions as well as other conditions assigned by the Board:
 - The ZBA grant deviations from the requirements in 57.90 for internal sidewalk network and shared use path.
 - An updated landscaping plan meeting the requirements in Section 53 of the Zoning Ordinance be submitted to the Township for review and approval prior to issuance of a building permit.
 - A revised lighting plan meeting the requirements outlined in Section 54 of the Zoning Ordinance be submitted to the Township for review and approval before issuance of a building permit.
 - The finalization of grading details and any other engineering details shall be subject to the administrative review and approval of the Township engineer prior to issuance of a building permit.
 - There are some annotations on sheet 1 of the site plan indicating the setbacks to the south property line are 20 feet, and these just need to be eliminated from the site plan prior to building permit issuance.
 - Verification of floor plan area calculations in relation to the parking need to be reviewed and approved administratively prior to building permit issuance.
 - A soil erosion and sedimentation control permit from the Kalamazoo County Drain Commissioner's Office will be required prior to building permit issuance.
 2. Alternatively, the ZBA can deny the site plan and variance request due to:
 - Proposal being a self-created hardship.
 - The lack of unique physical limitations on site.
 - Conformance to the Ordinance is not unnecessarily burdensome, as reasonable use of the property will still remain if denied.
 - Allowing the variance may have a negative impact to the healthy, safety, and welfare of the public.

Ms. Harris offered to answer any questions the Board may have and communicated the applicants were present, if the Board has any questions for them directly.

The Chair asked if any of the applicant's representatives would like to add anything. Mr. Matt Gibson approached the podium and stated he represents the property, and that Mr. Stoops is present as the residential owner to the south of the property. Mr. Gibson stated he spoke extensively with Mr. Stoops, and took him through the building, shared the plans of the work they're doing as well as the proposed plans for the property, to be transparent to Mr. Stoops and his wife of plans for this neighboring property. Mr. Gibson asked the Board if he could address any questions or concerns or articulate more detail regarding the property. Mr. Gibson stated

the reason they want to build where proposed is to keep further away from Mr. Stoops' house. The traffic flow was a big part of it as well, to minimize the impact to the topography.

Mr. Jachym asked for clarification of the stated main reason for wanting to construct the new building as proposed to the north of the existing building, if this would cause them to remove the existing parking lot and rebuild a new one, which Mr. Gibson confirmed. Mr. Gibson stated they would also need to build another retention pond due to the current frontage of the existing building and the terrain in that area. Mr. Gibson reiterated they want to make the least amount of impact. Mr. Jachym asked for clarification due to this statement, if it would be difficult to take the proposed building and shift it to the north a little? Mr. Gibson confirmed this would create an odd aesthetic and were also considering the topography and retention pond that exists between the current building and parking lot.

Mr. Gould asked about the amount of traffic flow owners might expect to this site, if anticipating significant traffic on a daily basis, as Mr. Gibson expressed their concern for Mr. Stoops' property and making as little disruption as possible. Mr. Gibson affirmed they will have UPS shipments about 10 a.m. every morning to ship product to customers; they are an 8 a.m. – 4 p.m. business Monday through Friday, unless someone makes an appointment for an alternate day/time. Mr. Gibson added they are by no means a retail operation and a business-to-business operation only.

Chairperson Williams asked if anyone else present would like to comment at this public hearing. Mr. Matthew Stoops stepped to the podium and stated his residence as 1724 S. 8th Street, the property to the south of this proposed development. Mr. Stoops asked for the map visual, to better illustrate and commented that Mr. Gibson had approached his family about the project and that the owners would need to apply for a variance. Mr. Stoops provided a history of said property where in past years, he and his family worked to have this property rezoned as it was a buffer zone abutting his mother's property. Mr. Stoops stated his property is another 300 to 450 feet further west and appreciates Mr. Gibson's efforts to have the proposed building placed to the north. Otherwise, the structure would be much closer to his private property. Mr. Stoops noted that the setback of the current structure was set many years ago and does not see why the 100-foot setback requirement would need to be imposed now or in the future with the difference being only 35 feet and agrees with Mr. Gibson's statements of the proposed aesthetics for the front facing of the new structure. Mr. Stoops also stated that requiring owners to have the building moved to the north to achieve the 100-foot setback would compromise the parking lot traffic for supply deliveries and shipments. Mr. Stoops commented that the sidewalk should be under closer scrutiny as the drop off from the road in this area is somewhere between 10 – 15 feet. Mr. Stoops further stated he approves of this site plan and variance wholeheartedly as presented and hopes that it is granted.

The Chair thanked Mr. Stoops for his comments and asked if there were anyone else who wanted to share comments. Hearing none, Chairperson Williams closed the floor for public comment and moved to Board deliberations.

Mr. Jachym commented from all site plans and variances he has reviewed, he had to review this one several times. Mr. Jachym further stated he could easily pick any one of these criteria to deny or approve. From listening to Mr. Stoops concerning moving the new building to the back, beyond the septic field, would put the proposed building close to his house. Mr. Jachym asked Mr. Stoops if he knew how far back his home is from the road; Mr. Stoops provided an estimate of 968 feet. Mr. Jachym indicated there is a huge green buffer of thick woods, so is leaning to approve on this basis. The statement made earlier in the presentation,

since the property is not static and may sell someday, if the site plan and variance are approved, the potential future buyer of this residential property would need to take into consideration as an existing adjacent property. With similar past approved decisions by the ZBA, this situation comes close. Mr. Jachym stated one of his biggest concerns he has is that the proposed building location is to the north side, though from the explanation having to otherwise replace the parking lot as well as the retention pond. In considering, Mr. Jachym expressed he would tend to approve this.

Chairperson Williams thanked the Vice Chair for his comments.

Attorney Porter stated, based on the comments Mr. Jachym made, just to be sure we have a clear record, the Board has five criteria to consider and for clarification asked if Mr. Jachym could verbalize those criteria in the way of making a motion. Further stating the Planning Department has expressed their opinion as to those, but the Board is the finder of fact, so asking if Mr. Jachym can articulate for the record how he would view some of the findings of fact. In other words, is Mr. Jachym saying that since the drainage basin is preexisting, the pavement is preexisting, to clarify if Mr. Jachym is looking at this as not being a self-created hardship due to the preexisting building? Mr. Jachym confirmed this is what he was articulating as well as the retention pond issue being a difficult change, so does not see this as self-created. Mr. Jachym communicated for substantial justice, there were two previous similar cases approved and sees the retention pond as the unique physical circumstance. Attorney Porter indicated this is helpful for clarity of the record and iterated each Board member does not have to find all five of the criteria, but a minimum of two or three. Only for purpose of a clear record, Attorney Porter asked if Mr. Jachym is stating he doesn't see the site plan and variance as a safety and health risk for the public, which Mr. Jachym affirmed.

Mr. Everett shared his comments regarding substantial justice, looking at past approved examples provided. D&R Sports was granted since it neighbored other commercial properties. In this case, the industrial planned use abuts to an established residential area. In the case of the dental variance, the owner didn't have enough property to afford him the proper setbacks, and the adjacent properties were also commercial in nature and activity, whereas S. 8th Street is residential activity. Mr. Everett further noted that Friendship Animal Hospital was recently denied due to 8th Street residential borders surrounding this area. Mr. Everett requested and received permission to ask Planning Staff a question. Mr. Everett asked Planning Staff regarding sidewalks for this development, and understands owners do not want to install connecting sidewalk to 8th presently, but are enough escrow funds collected for things that need addressing like soils, topography, etc.? Mr. Hutson affirmed escrow funds would include grading, etc., for future construction of connecting sidewalk to 8th Street. Mr. Everett stated in the case of setback conformance being unnecessarily burdensome, if the building were moved 33 feet north to meet the required 100-foot setback, understanding the issue of replacing a parking lot and retention pond issue, however, no costs for performing changes to come into compliance with the Ordinance were provided, and would like to know what the costs might be for considering suitable soils, for example.

Mr. Gould commented he would have a hard time denying this action based on our denial of the potential animal hospital that came before the ZBA. The impact the animal hospital would have had on the residential neighborhood was going to be detrimental to many, but in this situation with this land, this owner, and this residential neighbor adjacent to this property, it is not an issue since there is more than ample space between the residence and the business with the proposed site plan. Mr. Gould stated he would be in favor of approval.

Chairperson Williams called for any other comments from the Board or for a motion. Mr. Jachym **made a motion** to grant the variance as requested on the basis there are unique physical circumstances with the parking lot and retention basin that would make it unnecessarily burdensome for the owners to relocate the building. There is substantial justice in that there are at least two very similar past approved cases and is not a self-created hardship in that they bought the property and now want to do something with it. With regards to safety, health, and welfare, the fact that the neighboring home is several hundred feet away from the proposed building site, and there is a large greenbelt in between, Mr. Jachym stated there is no detriment to health, safety, and welfare.

The Chairperson called for a second. Mr. Gould **seconded the motion**. The Chair called for a vote. Mr. Jachym – yes, Mr. Gould – yes, Mr. Williams - yes, Mr. Everett - no, and 0 abstentions. The **motion was approved**.

Attorney Porter noted the site plan before the Board has been reviewed by Staff and given certain conditions as well as a deviation request for the internal sidewalk network and shared use path. If the Board chooses, they could approve the site plan and then the deviation as set forth in subsection A of the Staff Report and retain positions 1 through 7.

The Chair called for a motion concerning the site sidewalk deviation request. Mr. Jachym **made a motion** to approve the deviation from having the sidewalk along 8th Street due to the physical constraints of the area, and necessary funds be put in escrow for future sidewalk to be built. Mr. Everett **seconded the motion**. The **motion was approved** unanimously.

For approval of the site plan, Mr. Williams **made a motion** to approve the site plan as proposed with the recommended conditions 1 through 7 in the Staff Report. Mr. Jachym **seconded the motion**. The **motion was approved** unanimously.

Chairperson Williams moved to the next agenda item.

Other Updates and Business

Chairperson Williams called for any other updates and business.

Adjournment

The Chair stated there being no other business, he adjourned the meeting at approximately 3:54 p.m.

Minutes prepared:
February 28, 2024

Minutes approved:
March 26, 2024