

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD AUGUST 28, 2018

Agenda

PUBLIC HEARING: SETBACK VARIANCE FOR AN ACCESSORY BUILDING
A VARIANCE WAS REQUESTED BY MICHAEL AND MAGGIE SULLIVAN FROM SECTION 64.200 OF THE TOWNSHIP ZONING ORDINANCE TO ALLOW A RESIDENTIAL ACCESSORY BUILDING TO BE PLACED A MINIMUM OF TWO FEET FROM ADJACENT PROPERTY LINES WHEN 13 FEET IS REQUIRED. THE SUBJECT PROPERTY IS LOCATED AT 9979 WEST MAIN STREET, KALAMAZOO, MI 49009, WITHIN THE RR: RURAL RESIDENTIAL DISTRICT. PARCEL NO. 3905-17-301-010.

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, August 28, 2018 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: James Sterenberg, Chair
 Bob Anderson
 Nancy Culp
 Neil Sikora, Vice Chair
 Anita Smith
MEMBER ABSENT: Bruce VanderWeele

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

Call to Order and Pledge of Allegiance

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

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of June 26, 2018

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of June 26, 2018.

Mr. Sikora noted there were two places in the minutes referring to tabling a sign variance request from June 16, 2018. They should have read June 26, 2018.

Hearing nothing further, the Chair asked for a motion.

Mr. Sikora made a motion to approve the Minutes of June 26, 2018, with the corrections as indicated. Mr. Anderson supported the motion. The motion was approved unanimously.

**PUBLIC HEARING: SETBACK VARIANCE FOR AN ACCESSORY BUILDING
A VARIANCE WAS REQUESTED BY MICHAEL AND MAGGIE SULLIVAN FROM
SECTION 64.200 OF THE TOWNSHIP ZONING ORDINANCE TO ALLOW A
RESIDENTIAL ACCESSORY BUILDING TO BE PLACED A MINIMUM OF TWO FEET
FROM ADJACENT PROPERTY LINES WHEN 13 FEET IS REQUIRED. THE
SUBJECT PROPERTY IS LOCATED AT 9979 WEST MAIN STREET, KALAMAZOO,
MI 49009, WITHIN THE RR: RURAL RESIDENTIAL DISTRICT. PARCEL NO. 3905-
17-301-010.**

Chairperson Sterenberg moved to the next item on the agenda and asked Ms. Johnston for her presentation.

Ms. Johnston said the subject property and existing single-family home, located on Lot #1 of the Springwood Hills plat near West Main and North 2nd Streets, was purchased by Michael and Maggie Sullivan in November of 2016. The previous owner erected an approximately 360 square-foot residential accessory building near the property's south boundary, but did so without obtaining a building permit and therefore without formal Township review and zoning approval. The accessory structure straddles the common property line between Lots #1 and #2, in clear violation of the Township's standards for an accessory building of this size, per section 64.200: *Setbacks and Sideline Spacing*, which dictates 13 feet of setback from any side or rear property lines in this particular case.

Ms. Johnston continued saying that when the Sullivan's purchased Lot #1 towards the end of 2016, they were provided with a signed seller's disclosure statement that not only had no improvements been made to the property without the necessary permits, but that neither were there any encroachments or zoning violations. It has since become evident such violations are present, and while the current owners have been working with the Southwest Michigan Building Authority to resolve outstanding building code violations, the zoning issues associated with the location of the accessory building have yet to be addressed. The Sullivan's have explored various options for compliance, and have identified a setback variance as the most viable and reasonable way to

correct this historic, pre-existing issue. Specifically, the applicants would like to move the accessory building onto their property, albeit to a narrow corridor that runs towards the adjacent lake to the east. In order to facilitate this correction, the applicants request to be allowed reduced setbacks of two feet along the west and south boundaries and five feet to the east—relief of 11 and eight feet, respectively.

Ms. Johnston walked through the standards of approval to be considered:

Standards of Approval of a Nonuse Variance (practical difficulty):

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

Ms. Johnston commented that in evaluating this variance request, Township staff determined the existing accessory building cannot reasonably be relocated elsewhere on the subject property without giving rise to other zoning issues or causing the applicant to incur an unnecessary burden:

- Moving the building anywhere north of the house would encroach into the West Main setback.
- The eastern area of the property is either occupied by a paved driveway/turnaround area or a stone retaining wall and marked elevation changes. The structure could hypothetically be moved to the end of the driveway, but it would be situated between a stone wall and a metal pool enclosure fence, leaving approximately one foot of clearance on either side of the building.
- Along the south property line, there is insufficient room to locate the structure due to the dwelling's proximity to the lot boundary.
- Moving the building to the property's front yard adjacent to 2nd Street would require land clearing and regrading and the building would have to be disassembled to be moved, as there is no accessible path via which the structure can be relocated.

She also noted the applicants attempted to purchase land from their neighbor to the south in order to correct this issue, but that party was unwilling to enter into such a sales agreement. Similarly, the possibility of a long-term lease, which is recognized as property transaction per the State of Michigan's Land Division Act, was also explored, but it was determined that terms necessary to ensure the encroachment would not be re-established in the future could not be mutually arrived at by both parties.

Standard: Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).

Researching past actions by the Zoning Board of Appeals, staff identified the following decisions regarding setback relief for residential accessory buildings;

1. Michael Noora, 10540 West J Avenue, March 28th, 2017:

Citing challenging topography, restrictive parcel shape and size, and existing structures and other permanent objects on the property, the ZBA granted permission for an accessory building to located eight feet from a side property line when 16 feet would typically be required.

2. Matthew and Diane Basse, 2433 North 5th Street, January 24th, 2017:

The applicant sought and was granted sideline setback relief in order to place a residential accessory building three feet from the south property line as opposed to the ordinance-mandated 17 feet. Deliberating the case, the ZBA found that various physical difficulties associated with the subject property meant that the only reasonably suitable location for a new structure was in the narrow strip of land near the street, necessitating a variance.

3. James Heim, 8269 West Main Street, November 11th, 2009:

The applicant had mistakenly erected a residential accessory building partially onto a neighbor's property. As part of the attempt to correct this encroachment, Mr. Heim was attempting to purchase property from his neighbor, but that party desired to sell as little land as possible. To wit, the applicant had arrived at a tentative agreement with his neighbor to purchase only enough land to establish a ten-foot setback for the non-compliant structure, which would still leave an eight-foot setback deficiency. Acknowledging that the applicant was making a good faith effort to resolve a past mistake, the ZBA found that granting the desired setback relief was the most practical and reasonable way to correct an existing compliance issue.

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

Ms. Johnston noted much of the subject property is already occupied by the primary dwelling, stone retaining walls and grade changes, or paved driveway areas. While the applicant does own a strip of land leading to the

lake to the east, it is too narrow to accommodate the accessory building. Due to various obstacles between the current site of the structure and the North 2nd Street front yard, the structure would likely have to be completely disassembled in order to be moved to that area. Furthermore, the large front setback from West Main Street—170 feet from the center of the right-of-way—means that the entirety of the subject lot's north front yard is restricted and cannot accommodate building placement.

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

She said that upon purchasing the subject property, the applicant was told explicitly that there were no zoning compliance issues. The illegal placement of the accessory building predates their ownership; therefore, the conditions and circumstances are not self-created.

Standard: Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?

Ms. Johnston said Township Staff view granting this ordinance as a reasonable way to correct a longstanding compliance issue. Approval of the requested variance would have no foreseeable deleterious impact on public health, safety, and general welfare. Indeed, the existing encroachment has existed for at least five years—likely longer—without soliciting concerns from the property owners to the south.

Ms. Johnston said Township Staff recommend approval of the requested variance from section 64.200 of the Oshtemo Township Zoning Ordinance in order to allow a residential accessory building to be placed not less than two feet from the south and west property lines and five feet from the east property line, when 13 feet would typically be required, based upon the following findings:

1. Compliance with the Zoning Ordinance is unnecessarily burdensome and the applicant has exhausted other reasonable options to correct the encroachment.
2. Past decisions made by the Zoning Board of Appeals support this request.
3. The applicants had no part in creating this non-conformity.
4. Granting of the requested variance would not compromise the health, safety, and general welfare of the public.

Chairperson Sterenberg asked if there were questions from the Board.

Mr. Sikora asked whether Staff talked with the applicant about other possibilities and also whether it would be feasible to eliminate the building.

Ms. Johnston said Staff did talk with the applicant and determined existing features and topography would not allow moving the building within compliance without extensive site work and dismantling and rebuilding the structure. She indicated the applicant could speak to possible elimination of the building.

In answer to a question from Chairperson Sterenberg, Ms. Johnston noted neighbors were noticed regarding the application, but no response was received.

Hearing no further questions, the Chair asked if the applicant wished to speak to the group.

Ms. Maggie Sullivan, 9979 West Main Street, spoke to the Board and said she and her husband had considered and understand other alternatives, but found all solutions prohibitively expensive. Clearing trees, grading, digging and moving the building would be required. Quotes to accomplish the necessary work ranged from \$25,000 to \$32,000. They need the building for storage. Part of the purchase price of the property included this building, which she estimated to be worth \$20,000 - \$25,000.

Ms. Smith asked if the Sullivan's were unaware that the structure crossed the property line at the time of purchase.

Ms. Sullivan said the seller stated on the disclosure form there were no encroachment issues. They found later no permit was obtained for the building.

Chairperson Sterenberg asked whether there was any public comment regarding the application.

Mr. James Rodbard, 141 E. Michigan Avenue, Attorney for the Rodbards who own the property immediately to the south, and whose land the building encroaches upon, said they do not object to the request for variance. The two feet to their north property line will not impact on the owners. They do not feel it would affect property marketability in the future.

Mr. Phil Martin, 9881 West Main St., who owns the adjoining property to the east, noted the garage would be near the southwest corner of his property and that approval of the request would be fine as far as he was concerned.

Mr. James St. James, 6660 Rose Arbor, said he had been helping the Sullivan's and explained they need the storage space afforded by the building, that all other avenues had been considered, that this option would allow for correction of an existing problem which was not of their creation, and that the disclosure statement they received at the time of purchase was inaccurate.

There were no further public comments; the Chair moved to Board deliberations.

Attorney Porter explained setback is based on lot line, not on what is on the other side of the line. It appears everyone has been inconvenienced due to someone's falsehoods. He added that it is not determinative to have neighbors agree, but it is helpful when neighbors are kind enough to come forward.

In response to a question from Chairperson Sterenberg about whether the Township might have recourse against the previous owner, Attorney Porter said he has moved out of state so it would not be viable to try to hold him responsible, and in any event, it would not fix the problem.

The Chair said he was delighted neighbors came forward and asked Attorney Porter whether there would be any liability for the Township in the future if they approve the variance.

Attorney Porter said he expected if the owners sell the property in the future that they would be honest and note the variance for the record. There would be nothing negative that would affect the neighboring property to the south.

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

Mr. Sikora made a motion to grant the setback variance as requested to allow the existing accessory building on the property at 9979 West Main Street to be placed a minimum of two feet from the west and south boundaries and five feet to the east rather than the required 13 feet, based on the four findings provided by Staff. Mr. Anderson supported the motion. The motion was approved unanimously.

Any Other Business

Ms. Johnston indicated there would likely not be a meeting in September due to a lack of agenda items.

ZBA Member Comments

There were no comments.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:30 p.m.

Minutes prepared:
August 29, 2018

Minutes approved:
October 24, 2018