

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD MAY 23, 2017

Agenda

PUBLIC HEARING: VARIANCE REQUEST (LATITUDE 42 / BETSY DEKORNE TRUST)

APPLICANT WAS REQUESTING A VARIANCE FROM SECTION 75.310 OF THE ZONING ORDINANCE TO ELIMINATE A 10-FOOT WIDE LANDSCAPE BUFFER ON BOTH SIDES OF THE COMMON PROPERTY LINE SHARED BY LATITUDE 42 AND THE ETHAN ALLEN STORE. THE SUBJECT PROPERTIES ARE LOCATED AT 6075 AND 6025 WEST MAIN STREET, KALAMAZOO MI 49009, WITHIN THE C: LOCAL BUSINESS DISTRICT. PARCEL NUMBERS 3905-14-430-071 AND 3905-14-435-030.

SITE PLAN REVIEW: (H & K EXCAVATING)

HARRY MARTIN, REPRESENTING H & K EXCAVATING, WAS REQUESTING SITE PLAN APPROVAL FOR A NEW BUSINESS OFFICE AND EQUIPMENT STORAGE AT 7504 STADIUM DRIVE. PARCEL NO. 3905-34-180-059.

A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, May 23, 2017, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: James Sterenberg, Chair
Bob Anderson
Wiley Boulding, Sr.
Neil Sikora, Vice Chair
Anita Smith
L. Michael Smith

ABSENT: Nancy Culp

Also present were Ben Clark, Zoning Administrator, Martha Coash, Meeting Transcriptionist, and seven interested persons.

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 March 28, 2017

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of March 28, 2017. Hearing none, he asked for a motion for approval.

Mr. Smith made a motion to approve the minutes of March 28, 2017 as corrected. Mr. Sikora Sr. supported the motion. The motion was approved unanimously.

PUBLIC HEARING: VARIANCE REQUEST (LATITUDE 42/BETSY DEKORNE TRUST)

APPLICANT WAS REQUESTING A VARIANCE FROM SECTION 75.310 OF THE ZONING ORDINANCE TO ELIMINATE A 10-FOOT WIDE LANDSCAPE BUFFER ON BOTH SIDES OF THE COMMON PROPERTY LINE SHARED BY LATITUDE 42 AND THE ETHAN ALLEN STORE. THE SUBJECT PROPERTIES ARE LOCATED AT 6075 AND 6025 WEST MAIN STREET, KALAMAZOO MI 49009, WITHIN THE C: LOCAL BUSINESS DISTRICT. PARCEL NUMBERS 3905-14-430-071 AND 3905-14-435-030.

Chairperson Sterenberg said the next item was a request for variance to eliminate of a 10-foot wide landscape buffer from Latitude 42 and Betsy DeKorne Trust, and asked Mr. Clark to review the request.

Mr. Clark explained the site plan for Latitude 42, 6101 West Main Street was approved by the Planning Commission on March 23, 2017. The applicant was seeking a variance from the greenspace area required along the east property line for the Latitude 42 site and the west property line for the adjacent Ethan Allen store to eliminate this greenspace area. Elimination of the greenspace area will allow for the development of an access drive from the Latitude 42 site through the Ethan Allen property. The placement of the intended drive eliminates a row of parking on the Ethan Allen site. The elimination of the 10-foot landscape buffer for each property would allow this parking to be replaced at this location.

He said the desire by the applicant and Township staff to see this drive developed is due to a decision by the Michigan Department of Transportation (MDOT), which limited the curb cut to the Latitude 42 site to a right-out only. Traffic exiting the subject property will only be allowed to move eastbound on West Main Street. In order to move westbound, traffic will have to find some location to turn around, which will likely be the Ethan Allen property. Traffic will exit out of the Latitude 42 site and move immediately into the western curb cut for the Ethan Allen store, drive through the site to exit onto Lodge Lane and then utilize the light to move west bound on West Main Street.

Mr. Clark explained that in an effort to manage traffic generated by patrons leaving the forthcoming Latitude 42 restaurant adjacent to the Ethan Allen store in a more safe and effective manner, staff contacted Mr. DeKorne, the Ethan Allen property owner, to explain the situation and suggest that planning for this traffic would be a better approach than leaving the vehicle circulation unmanaged. With that in mind, the two property owners worked out an agreement that would provide access to Latitude 42 patrons. Working with staff, a site plan was developed that would accommodate the access drive behind the Ethan Allen store and would move the eliminated parking to the requested location, necessitating the need for the variance.

He noted the revised site plan has been provided to the Road Commission of Kalamazoo County for a new curb cut onto Lodge Lane. The Road Commission has some concerns that still need to be reviewed with staff and the applicant. They hope to convince the Road Commission that this is the best scenario for the project at this time because the proposed curb cut allows for more left-turn stacking room on Lodge Lane, north-facing towards West Main Street. If the new curb cut is not approved, the two property owners will need to renegotiate utilizing the existing curb cut to Lodge Lane.

Mr. Clark told the Board the Township is investigating the possibility of developing a road that would run along the southern boundary of the properties that front West Main Street between Lodge Lane and 9th Street. The need for this road has become more important after the decision by MDOT to limit turning movements of future curb cuts on West Main. The location and connections of this road have not been determined, but a road was proposed in the West Main Sub-Area Plan of the Master Plan. It is their intention that the Latitude 42 site would connect to this road at some point in the future. When this occurs, the connection to Lodge Lane through Ethan Allen could be eliminated.

Mr. Clark noted when reviewing the variance request standards, the Board should especially consider “*practical difficulty*,” noting that while reasonable use of the Latitude 42 property still exists without the need for a variance to landscaping, the limitation of turning movements onto West Main is a burden unexpected when the site plan was approved by the Township. Compliance with this mandate by MDOT requires some creative alternatives to move traffic safely. Staff feels this is the most reasonable option available to meet the requirements of MDOT, safeguard westbound traffic, and ensure both sites continue to meet all other Zoning Ordinance requirements, including parking.

Also, when considering whether “*the spirit of the Ordinance will be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted*,” he said seeking relief from the Landscape Ordinance allows other Ordinance requirements and intentions to be accommodated on the site, including the necessary parking calculations for each property. In addition, the reduction of landscaping will allow the placement of the access drive which promotes a safer way to exit the subject site.

Mr. Clark said Staff recommends approval of the variance request from *Section 75.130: Greenspace areas* for the following reasons:

- The limitation of a right-out only turning movement onto West Main Street was an unexpected burden placed on the site and a new unique circumstance to the West Main corridor.
- The reduction or removal of perimeter landscaping has been approved by the Planning Commission and Zoning Board of Appeals in the past, particularly if the applicant has supplied additional landscaping in other areas of the development.
- The hardship was not self-created.

He noted some enhanced landscape elements will still meet landscape requirements; the amount of landscaping is still substantial.

Chairperson Sterenberg thanked Mr. Clark for his report and asked whether Board Members had questions for him.

Mr. Sikora asked if the current amount of landscaping would still be maintained.

Mr. Clark said even with the removal of the buffer the total square footage of landscaping on the Latitude 42 property will remain at or above the Ordinance requirement.

Mr. Sterenberg confirmed with Mr. Clark that the south side parking is mostly for employees and that if eliminated without relocating it to the west side of DeKorne's, there would not be enough parking to meet code.

Mr. Clark indicated notice of the request for variance was sent to property owners whose property is within 300 feet of the two properties affected. No feedback was received.

In answer to a question from the Chair, Mr. Clark said if the issue of the new curb cut cannot be resolved with the Road Commission of Kalamazoo County, the two businesses would have to work out some other mutually agreeable solution.

Chairperson Sterenberg determined the applicants did not wish to address the Board and opened the meeting to public comment.

Mr. Mark Orbe, 527 Lodge Lane, said he did not receive the public hearing notification, and that it appeared residents who are within 300 feet of Latitude 42 received notices, but those within 300 feet of DeKorne's did not. He and other residents have been trying to stay informed and want to be kept informed. He said he is concerned about traffic, especially how it may impact Lodge Lane, but that what was proposed seemed like a good compromise.

No one else wished to speak; Chairperson Sterenberg closed the public hearing and moved to Board Deliberations.

Mr. Smith said it appeared granting the variance was the best way to solve the problem.

Ms. Smith asked about the possibility of sidewalks in the neighborhood.

Mr. Clark said sidewalks for this area are not included in the 5-year Capital Improvement Plan, but could be considered as part of the review of the Master Plan this year.

In answer to a question from the Chair, Mr. Clark indicated the parking plan is conceptual at this point, that there would be cross access and that the current non-conformity to the Ordinance of the number of spaces will not increase.

Chairperson Sterenberg emphasized the Board was considering a parking variance, that it has nothing to do with traffic, and the variance needs to meet the criteria for approval.

Since there were no further comments from Board Members, the Chairperson asked for a motion to approve the request.

Mr. Smith made a motion to approve the variance as requested, based on applicable standards and the recommendation of Staff. Mr. Anderson supported the motion. The motion was approved unanimously.

SITE PLAN REVIEW: (H & K EXCAVATING)
HARRY MARTIN, REPRESENTING H & K EXCAVATING, WAS REQUESTING SITE PLAN APPROVAL FOR A NEW BUSINESS OFFICE AND EQUIPMENT STORAGE AT 7504 STADIUM DRIVE. PARCEL NO. 3905-34-180-059.

Chairperson Sterenberg moved to the next item on the agenda and asked Mr. Clark for the Staff report.

Mr. Clark explained the applicant is requesting site plan approval for a new 5,375 square-foot structure in which to locate the administrative office and equipment storage garage for H&K Excavating. The project site is located approximately 600 feet north of Stadium Drive on a *legally non-conforming* (insufficient frontage), densely wooded, 7.7 acre flag-shaped lot. A 20 foot barrier of existing vegetation is proposed to remain around the perimeter of the site, exceeding requirements. The subject parcel's road frontage is situated immediately to the north of South 7th Street's terminus at Stadium Drive, and to the north and east of an existing architect's office. This property, as well as all surrounding parcels, is zoned as *I-1, Industrial District, Manufacturing/Servicing*.

He said regarding Ordinance compliance in general, the proposed project does meet all zoning requirements not otherwise discussed in the Staff report. Along with the proposed structure, the applicant also intends to store some commodities related to the excavation business on site between jobs. Per section *41.300: Limitation*, such a use is allowed in the side and rear yards of a given site, provided the area used for storage does not exceed the footprint of the principal structure in size. At 5,375 square feet, the portions of the site indicated on the site plan as being used for outdoor storage are cumulatively the same size as the new building.

He said also of note on the site are the two proposed diesel fuel tanks and the compacted sand area behind the building. The location of the tanks, which have a combined capacity of 2,000 gallons is satisfactory, but only 500 gallons of spill containment capacity is proposed. As dictated by section *69.200.6: Groundwater Protection Standards* of the Zoning Ordinance, adequate secondary containment must be provided in the event of a spill. Staff has interpreted this to mean that accommodations to hold the entire contents of one tank—1,000 gallons—shall be provided on site. To that end, the currently proposed spill retention capacity of 500 gallons needs to be doubled. Regarding the compacted sand area, the applicant has indicated that this part of the site will be used for the intermittent parking of excavation equipment, and will be covered with asphalt millings sometime in the future, presumably as material becomes available. The Zoning Ordinance offers little guidance in the way of regulating vehicle storage yards such as this, but the Township has allowed such accommodations to be maintained on sites in the past, provided they were surfaced with a dust-free material. Staff is satisfied that both proposed substances—compacted sand first, and then milled asphalt—satisfy this preference.

Mr. Clark noted that given the driveway's proposed location near the subject property's east boundary, the curvature of the concrete driveway apron will place that feature at least partially in front of the adjacent parcel. Per section *67.500: Driveway Spacing*, written consent to allow such an encroachment is required from the affected neighbor. While no such arrangements have been formally made at this time, the applicant may one day elect to grant a 33-foot wide easement to the Township in order to help facilitate the eventual extension of 7th Street north of Stadium Drive.

He said one aspect of site access that warrants additional attention from the Zoning Board of Appeals is the proposed composition of the driveway. Per section *67.300.7: Driveway Design* of the Zoning Ordinance, driveways associated with uses subject to site plan review are to be composed of a hard-paved surface, typically either hot milled asphalt or concrete. Given the project site's approximately 600-foot distance from Stadium Drive, the applicant is presented with a considerable amount of necessary paving. In order to mitigate this, the applicant requests that instead of hard paving, the use of reclaimed asphalt paving (RAP) be allowed to surface the driveway. Compared to a typically seen hot milled asphalt application, RAP is more loose and granular, but does tend to compress and adhere to some degree when subjected to heat and pressure. Although it does not achieve the same state of cohesion as hot milled asphalt, RAP is generally dust free, isn't as loose as gravel, and possesses good load-bearing

capabilities. Even though section 67.300.7 dictates that hard paving be used, section 67.700: *Deviation from Guidelines* does permit the reviewing body to grant *non-variance* relief from the Township's access management guidelines, provided the following criteria are met:

1. *Identification of traffic conditions and/or site restrictions*
2. *Justification of need*
3. *Identification of the impact of the development and its proposed access facilities on the operation of the abutting street*
4. *Description of the internal circulation and parking system*
5. *Compliance with the objectives of the Township's access management guidelines.*

Mr. Clark indicated the applicant's design architect provided a document providing the information required by section 67.700 of the Zoning Ordinance. For this particular project, Township staff asked the applicant to specifically address items one, two, and three in the provided report, as number four is satisfied by the site plan in general, and number five has little applicability here, given that the use of RAP in lieu of hot milled asphalt does not affect the driveway's configuration or its connection point to Stadium Drive. Based on the proposed use's low projected daily vehicle-trip count—around ten per day—coupled with the project site's low visibility from the public right-of-way and adjacent properties, Staff supports the requested departure from the design standards of section 67.000 of the Zoning Ordinance.

He said while Township staff do support the applicant's request to use an alternative driveway surface material, it is recommended that this feature be finished with traditional hard paving if and when additional development occurs on-site in the future. In the interim, the composition of the RAP driveway shall be approved by the Township's Engineer prior to construction in order to ensure the surface can support fire apparatus, and the driveway shall be kept in good repair and kept free of snow. Although the applicant would like to use RAP on the driveways, the project site plan indicates the actual parking spaces in front of the building will be composed of hot milled asphalt, which is in compliance with section 68.000 of the Zoning Ordinance. Also, the Fire Marshal is generally satisfied with the layout of the project site, but asked Planning Department staff to ensure that if RAP is used for the driveway, it shall be of a sufficient construction quality to support any Township Fire Department vehicles that may need to access the site.

Lastly, he said, the Township's Non-motorized Plan does indicate that this part of Stadium Drive is to one day accommodate some kind of pedestrian facility, be that a five-foot wide sidewalk, a ten-foot wide multi-use path, or some other amenity. This portion of the network has yet to be designed, and rather than compel the applicant to build a sidewalk along only their frontage at this time, staff recommends a signed and

notarized form instead be submitted to the Township, attesting to the applicant's willingness to one day be included in any special assessment district established to fund the construction of a pedestrian facility.

Mr. Clark said Township Staff are generally satisfied with the site plan as submitted. If the Zoning Board of Appeals was inclined to grant approval, Staff recommends the following conditions be attached, to be indicated on a revised site plan, where applicable.

1. Any proposed lighting fixtures not of a full cut-off style shall be replaced with compliant appliances.
2. The storage capacity of the concrete containment structure located beneath the diesel fuel tanks shall be increased to 1,000 gallons.
3. Two shrubs shall be added to the landscaped area between the parking lot and the building.
4. Use of reclaimed asphalt paving (RAP) for the driveway, to within 45 feet of the public right-of-way, as indicated on the project site plan, shall be expressly approved by the Zoning Board of Appeals, per section 67.700 of the Zoning Ordinance. The driveway apron, as shown on the site plan, shall be constructed of hard paving.
5. If RAP is approved for use, then it must be applied in a way so that its load bearing qualities are equivalent to eight inches of MDOT 21AA material. To verify this, material test sheets shall be provided to the Township Engineer for review and approval.
6. The RAP material delivered to the site shall be inspected by a licensed engineer or similar professional prior to installation to ensure that it meets the aforementioned 21AA standard. The driveway's construction shall also be overseen by said professional, who shall provide their signature on an as-built plan of the RAP facility, to be submitted to the Township prior to the issuance of a final certificate of occupancy.
7. The RAP driveway shall be maintained in good and clear condition, year-round.
8. Should additional development take place on the subject property, the RAP driveway shall be replaced with hot milled asphalt or a similar hard paved surface.
9. Prior to the issuance of a building permit, the Township is to be provided with a signed statement from the property owner to the east of the subject parcel,

granting permission for the driveway apron to encroach in front of their property within the public right-of-way.

10. Prior to the issuance of a final certificate of occupancy, the applicant is to provide the Township with the signed and notarized sidewalk SAD form.

Chairperson Sterenberg thanked Mr. Clark for the report and asked whether Board Members had questions for him.

In answer to a question from Mr. Sikora, Mr. Clark said the storage capacity indicated in #2 was arrived at through Staff interpretation, including the Township Engineer and Fire Marshal, since wording of the Ordinance provides qualification but not quantification and agreed it may need to be clarified.

Mr. Sikora also asked what would constitute “additional development” under #8 and Mr. Anderson asked for clarification on timing of additional development.

Mr. Clark said more buildings, another business, major expansion to the existing structure or anything that would considerably increase traffic to and from the site would qualify. Language was included since the surplus of land makes further development in the future likely.

Chairperson Sterenberg noted any additional buildings would need additional permits.

Mr. Sikora also confirmed that the apron described under #4 would be paved.

In answer to a question from Mr. Boulding, Sr., Mr. Clark said the driveway proper will be completed with RAP material and will be properly constructed at the time of occupancy. He noted approval of the RAP material could be granted at the discretion of the viewing body; a variance is not needed.

Chairperson Sterenberg wondered whose standards need to be met under #7 and whether any problems were anticipated with #9. He also commented there were a lot of conditions and wondered if any problems were anticipated with any of them.

Mr. Clark said the standards for #7 would be established by the Fire Marshal. It is up to the applicant to coordinate and secure permission for #9. He commented that since this is the first time RAP has been proposed in the Township, Staff wanted to eliminate any ambiguity.

Ms. Smith wondered if any changes in the near future are anticipated.

Mr. Clark said he was not aware of any. There may be an extension of 7th Street at some point.

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

Mr. Richard Schramm, Architect, said the site is completely isolated and surrounded by woods. It is on the east side of the Kendall historic residence and they are sensitive to respecting that property. This is a good use of the property and provides space for expansion

He said the RAP material proposed holds up well under heavy equipment and has been used by the Village of Mattawan, by the Cass County Fire Department and by the Arboretum for access to the pavilion building. It is recycled material, a good cost advantage, and an excellent base for asphalt. He described it as asphalt coated gravel and thought a lot of others in the Township may be interested in using it.

Mr. Smith asked about stormwater; Mr. Clark indicated the stormwater proposal meets requirements.

In response to a question from Mr. Boulding, Sr., Mr. Schramm noted provision has been made for security fencing and a gate.

He agreed that the 10 Staff conditions are agreeable to the owner.

Mr. Schramm and Mr. Scott Carr, employee of H & K, explained how the requirement for the storage capacity of the concrete containment structure located beneath the diesel fuel tanks of 50% is based on science and is a safe capacity.

Chairperson Sterenberg determined no one from the public wished to speak and moved to Board Deliberation.

Mr. Smith felt all issues had been covered and supported the project.

Mr. Sikora felt the discussion had been thorough, is clear on the project and supported it; Mr. Anderson concurred.

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

Mr. Sikora made a motion to approve the variance as requested, based on applicable standards, and the recommendation of Staff with the inclusion of the 10 conditions listed. Mr. Smith supported the motion. The motion was approved unanimously.

Any Other Business

Mr. Clark indicated he expected there will be a June meeting; there are currently two items to be included on the agenda.

At the request of Chairperson Sterenberg, Mr. Clark said he would look at the mailing list for the variance request to be sure everyone is captured in the future.

ZBA Member Comments

There were no comments.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda, and there being no other business, adjourned the meeting at approximately 4:00 p.m.

Minutes prepared:
May 25, 2017

Minutes approved:
June 27th, 2017