

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD MARCH 26, 2013**

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**Agenda**

**MAXIMUM FENCE HEIGHT VARIANCE (COPPER BEECH APARTMENTS, LLC) –A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENTS IN RESIDENTIAL DISTRICTS AS STATED IN SECTION 78.230 TO ALLOW AN EIGHT FOOT TALL FENCE IN THE SIDE YARD, TWO FEET TALLER THAN THE SIX FOOT MAXIMUM, AND A SEVEN FOOT TALL FENCE IN THE FRONT YARD, THREE FEET TALLER THAN THE FOUR FOOT MINIMUM. SUBJECT PROPERTY IS 5724 WEST KL AVENUE. (PARCEL NO. 3905-24-155-023 & 3905-24-155-024)**

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A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, March 26, 2013, at approximately 3:03 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Roger Taylor, Chairperson  
Lee Larson  
Neil Sikora, First Alternate  
James Sterenberg, Second Alternate

MEMBERS ABSENT: Cheri Bell  
Millard Loy  
L. Michael Smith

Also present were Greg Milliken, Planning Director, James Porter, Attorney, four other interested persons, and Martha Coash, Meeting Transcriptionist.

**Call to Order and Pledge of Allegiance**

The meeting was called to order by Chairperson Taylor at approximately 3:03 p.m., and the “Pledge of Allegiance” was recited. Due to the absence of Ms. Bell, Mr. Loy and Mr. Smith, Mr. Sikora and Mr. Sterenberg were called upon to act as sitting member for the meeting.

**Public Comment on Non-Agenda Items**

Chairperson Taylor called for public comment on non-agenda items. Hearing none, he proceeded to the next agenda item.

## **Approval of the Minutes of February 26, 2013**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of February 26, 2013. No changes were noted. Mr. Sikora made a motion to approve the minutes as presented. Mr. Larson seconded the motion. The motion was approved unanimously.

## **Variance Request**

**MAXIMUM FENCE HEIGHT VARIANCE (COPPER BEECH APARTMENTS, LLC) – A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENTS IN RESIDENTIAL DISTRICTS AS STATED IN SECTION 78.230 TO ALLOW AN EIGHT FOOT TALL FENCE IN THE SIDE YARD, TWO FEET TALLER THAN THE SIX FOOT MAXIMUM, AND A SEVEN FOOT TALL FENCE IN THE FRONT YARD, THREE FEET TALLER THAN THE FOUR FOOT MINIMUM. SUBJECT PROPERTY IS 5724 WEST KL AVENUE. (PARCEL NO. 3905-24-155-023 & 3905-24-155-024)**

Chairperson Taylor asked Mr. Milliken for a report on the variance request before the Board.

Mr. Milliken reported the applicant, Copper Beech Apartments, LLC, currently operates a large apartment complex on KL Avenue west of Drake Road. The property is over 52 acres in size and located in the R-4 zoning district. It is adjacent to a similarly sized apartment complex to the east, also in the R-4 district. The properties to the north and west are zoned R2 and the property to the south is zoned I-1. The southern 880 feet of the subject property along the KL Avenue frontage is also located in the 9<sup>th</sup> Street Overlay Zone.

The applicant requests a variance in order to build a fence along the southern road frontage of the property and along the majority of the western property line that is shared with the adjacent apartment complex. The fence along the road frontage is proposed at seven feet in height and would be decorative in nature. It would be a wrought-iron style (aluminum), black fence.

In addition to the fence along the frontage, the applicant would install a gate at the entry drive with the intent of controlling access for guests and visitors. A gatehouse would also be constructed as a result. The gate would be manned at peak times, while at other times, access would be automated. If the variance is approved, Mr. Milliken recommended it be conditioned on access being provided to public safety officials.

The fence along the side property line is proposed as an eight foot tall chain link fence that would be coated in black vinyl. It would run north from KL along the west property line and then turn east along the southern boundary of what was phase 2 of

the development. The applicant is not planning to construct the fence along the northern or western property lines.

Section 78.200 of the Zoning Ordinance provides the fence requirements for the Township. Section 78.230 states the height requirements for fences. Paragraph A indicates that fences in all residential districts, including the R-4 district, are limited to four feet in height in the front yard and six feet in height in side and rear yards.

The front yard setback along KL Avenue is 70 feet. Therefore, any fence within 70 feet of the right of way is limited to four feet and then permitted to be six feet in height beyond that point. Although the fence is setback from the road right of way, it appears most of the proposed fence along KL Avenue will be located within this 70 foot setback area. Therefore, the proposed seven foot fence requires a variance from the four foot height limit in front yard areas. Where the fencing is behind the 70 foot limit, the proposed seven or eight foot fence will require a variance from the six foot height limit.

Mr. Milliken indicated that the Planning Commission has begun an evaluation of this section of the Ordinance and will be holding a public hearing on amendments that would increase the height for fences in multi-family districts at their April 11<sup>th</sup> meeting. This process is not yet complete however and approval is not assured. Therefore, the applicant is requesting the variance in order to expedite installation of the fence and gate.

The applicant desires a taller fence in order to provide greater safety and security to residents of the apartment complex and for the property. The past several months have seen a marked increase in crime at the facility, the vast majority of which appears to be caused by persons that do not live within the complex. By limiting access and controlling the perimeter of the development, the applicant is hoping to better control these activities and protect their property and residents.

Mr. Milliken stated the ZBA should consider the standards for approval of a variance request as stated in the Zoning Ordinance. He reviewed the standards and some of the issues to consider when evaluating these standards.

He indicated that the ZBA should consider the impact of the increase in public safety issues and security concerns at the development in the past several months on the ability to reasonably use the property and adjacent properties.

Mr. Milliken stated that this is a unique case as there are no other zoning variance cases related to fence height. In 2007, the Ordinance was amended to add height requirements for fences. Prior to that, there were no such requirements and therefore no need for variance requests. Because the Planning Commission is considering amendment language that would increase the fence height limits for the R-4 district, it is unlikely there will be a similar request in the future.

He continued indicating that there is nothing particularly unique about the subject property or the land on which the development is located. What is unique is that few other properties have experienced the same level of safety issues that would warrant this level of security.

Mr. Milliken stated that the conditions or circumstances that have led to this request were not created by actions of the applicant. The increase in security issues have been primarily as a result of non-residents entering the facility, either by vehicle or on foot.

Mr. Milliken stated that the ZBA should consider whether the proposed increase in fence height at this location for a multi-family complex would be consistent with its character and the intent of the standards as presented. He indicated that the ZBA should also consider the public safety impact of the proposed fencing and the potential impact on the surrounding community and the development.

Mr. Milliken concluded by saying notice of the meeting to consider this variance request was published in the *Kalamazoo Gazette* and was provided to residents and property owners within 300 feet of the Copper Beech property. One letter was received from neighboring residents. He indicated he heard various comments regarding the hearing over the past few weeks, some of which included the fact that the fence would be constructed around the entire property and that crime would likely be pushed to the north. According to the Copper Beech property owners, they are proceeding with a phased approach and are willing to look at further fencing later if continued issues warrant that step.

Chairperson Taylor asked whether the present request would meet the requirements of the ordinance amendments that the Planning Commission is considering should they move ahead.

Mr. Milliken indicated the request would meet the amended ordinance being considered.

Attorney Porter noted if the ordinance is amended the variance would become a moot point in a few weeks.

Mr. Sterenberg asked if what the Planning Commission is considering would meet the 7/8 foot height limit being requested.

Mr. Milliken explained the Planning Commission is considering language as part of the ordinance amendment that would establish an eight foot height limit in all yards, as well as decorative standards and an opacity limit in the front yard. If something outside those parameters is desired in the future, for example, a 12 foot fence, it could be considered during the site plan review process and could be approved if it meets certain requirements that are included with the language.

Mr. Sterenberg wondered if the picture of the fence provided in the Board's informational packet is what will be installed.

Mr. Milliken responded it is a picture of the model that is intended to be installed.

In answer to a question from Chairman Taylor, Mr. Milliken indicated the fence in question would meet the aesthetic requirements of the ordinance amendment being considered by the Planning Commission.

Mr. Sterenberg asked if the two different heights of fencing being proposed by Copper Beech could be considered as one variance question.

Attorney Porter indicated it could be considered as one item.

In response to a request from Mr. Sterenberg, Mr. Milliken specified on a map exactly where each type of fence would be constructed on the Copper Beech property.

Mr. Milliken confirmed the fence will end at the right of way for Consumers Energy in response to an inquiry from Chairman Taylor.

There were no further questions or comments from members. Chairman Taylor thanked Mr. Milliken for his report and asked if there were applicant comments.

Amanda Beaudoin, Copper Beach Property Manager, introduced herself and said she has been in her current position for 18 months, is a Detroit native and a graduate of W. M. U.

Ms. Beaudoin reported she instituted a zero tolerance policy regarding tenant misbehavior over the last 18 months. In addition to addressing excessive noise, alcohol related problems and crime, she requires background checks on all rental applicants. She has worked closely with the Sheriff's Department, particularly Lt. Van Dyke and Captain Green and has been very pleased with their cooperation and assistance in working toward improving the behavior problems at the complex.

Guard coverage has been increased from two guards on three nights per week, to three guards every night of the week. She cross checks guard reports with Sheriff's Dept. records, which helps uncover problems. This year three tenants have been evicted for misbehavior. Every effort to control problems has been implemented. The result is that Copper Beech is no longer considered the W. M. U. party place. Most remaining problems are coming from outsiders. She is working in concert with other properties to try to address disturbances from non-tenants and is hopeful the gates will keep the property and the larger area from being a target.

Ms. Beaudoin stated the cost to construct the fence as requested will cost well over \$500,000. If problems persist after construction, areas not fenced as part of the current proposed project, will be considered for fencing in the future.

Mr. Larson stated he has reservations about continuing foot traffic access to the property on the north boundary that will not be fenced.

Ms. Beaudoin explained the plan is to immediately plant a thicket of harsh shrubs and plants along that border as a deterrent to walkers. Most problems from walkers occur in the summer when plants would be most effective. If that does not address the problem she is willing to consider further action.

She noted she will be hiring a full time guard in-house, who will be under her supervision rather than employed by a private guard service.

In response to a comment from Mr. Sterenberg that there is currently no challenge to vehicular traffic and this plan will force all traffic to one entrance, Ms. Beaudoin noted that in addition, the taller chain link fence abuts to current access from the highway and will eliminate foot traffic in that location.

Chairman Taylor asked Ms. Beaudoin if Sheriff's Department deputies had reviewed the fence construction plan and if they were on board.

Ms. Beaudoin said constructing such a gated fence was their number one suggestion to help solve the security issues at the site, and they are very excited about its implementation.

Attorney Porter said Lt. Meyer reported they have seen improvement and are convinced current Copper Beech problems primarily involve outside people. They believe the gate will be very helpful and spoke positively about progress.

Chairman Taylor thanked Ms. Beaudoin for her comments and asked if there were public comments.

Dan Thompson, 105 Echo Hills Drive, in the Country Club Village neighborhood, stated that all contacts with Copper Beech personnel have been positive. Although having to construct a fence bothers him a bit, if it is constructed, he is concerned enough about criminal activity that he would prefer it be constructed around the entire property. He expressed doubt that prickly bushes will help deter walkers. He added that he has been concerned from the start about placing high density housing so close to residential property.

Chairman Taylor thanked Mr. Thompson for his comments and began Board deliberations on the variance request by saying he understands neighbors' concerns about the fence but that he heard Copper Beech say they'd address issues if they crop up, and that they would do something to be a good neighbor if foot traffic in adjoining neighborhoods is a problem in the future. They are demonstrating cooperation to address a problem nobody really anticipated, as is the Planning Commission, in looking

at changes to the ordinance. He said he was comfortable with granting the variance request.

Mr. Sterenberg noted the one letter received was from residents of Country Club Village in support of the variance request.

Mr. Larson said Copper Beech is calling this phase one, including installing plantings to discourage foot traffic and has said they will keep working on this issue if foot traffic continues to be a problem.

The Chairman noted if further fencing is needed in the future there will be no impediment to that if the ordinance is amended as expected by the Planning Commission.

Mr. Sikora indicated he had driven by the site and since the fence will be set back so far from the road, he does not believe it will be intrusive. Problems may arise if the traffic moves to another neighborhood. If it turns out seven or eight foot fences are not tall enough, a variance might be needed again in the future. The bottom line for him was that the variance request meets the standards of approval, and he supported granting the variance.

Mr. Sterenberg agreed the fence will be back far enough from the road that it will not be an eyesore. He liked the idea of funneling the traffic to one location and challenging entrants and believes this project is positive for the community. He applauded Ms. Beaudoin for her efforts on behalf of both her community and the community around it.

Ms. Beaudoin pointed out there will be a full electronic record of anyone entering the property.

Chairman Taylor said he is glad to hear from people in the area that Copper Beech is a reasonable neighbor and that the Sheriff's Department has been involved and helpful and in fact that the gated fence was their recommendation. He wanted to be sure the Sheriff's Department would have access to the complex and suggested a motion to approve the variance include that stipulation.

**MOTION:** Mr. Sterenberg moved approval of the maximum fence height variance requested by Copper Beech Apartments, LLC from the maximum fence height requirements in residential districts as stated in section 78.230 to allow an eight foot tall fence in the side yard, two feet taller than the six foot maximum, and a seven foot tall fence in the front yard, three feet taller than the four foot minimum as long as there is unrestricted access for emergency vehicles and personnel. Mr. Sikora supported the motion. The motion passed unanimously.

Attorney Porter expressed appreciation to Ms. Beaudoin for the positive changes she has effected over the last two years.

### **Any Other Business / ZBA Member Comments**

Mr. Milliken told the Board members that Oshtemo Township will host a MAP sanctioned training session on site with training provided by Mr. Milliken on April 30 from 5-9 p.m. He indicated it is great introductory training as well as a good refresher course for experienced members. Board and Commission members from throughout the region have been invited. He asked them to let him or Linda know soon if they will attend as there will likely not be a ZBA meeting in April. The training session fees will be paid from the Township training budget.

### **Adjournment**

Chairperson Taylor noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, he adjourned the meeting at approximately 3:54 p.m.

Minutes prepared:  
April 1, 2013

Minutes approved:  
June 25, 2013