

**OSHTEMO CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS**

**MINUTES OF A MEETING HELD May 24, 2016**

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**Agenda**

**SITE PLAN AMENDMENT REVIEW FOR KALAMAZOO CHINESE CHRISTIAN CHURCH, 5334 PARKVIEW AVENUE. (PARCEL #3905-25-455-110)  
APPLICANT REQUESTED A 5,362 SQUARE FOOT ADDITION TO AN EXISTING CHURCH. (PARCEL #3905-35-450-001)**

**PUBLIC HEARING ON A REQUEST FROM SCHLEY TRUST, 4200 SOUTH 9<sup>TH</sup> STREET FOR A VARIANCE FROM THE ZONING ORDINANCES, SPECIFICALLY SECTIONS 75.120.a AND 75.130 OF THE LANDSCAPING ORDINANCE AND SECTIONS 40.301.I.3 AND 40.301.N OF THE I-R: INDUSTRIAL DISTRICT, RESTRICTED ORDINANCE RELATED TO LANDSCAPING AND UTILITY LINES FOR THAT PORTION OF THE PROPERTY SUBJECT TO THE EASEMENT TAKEN BY MICHIGAN ELECTRIC TRANSMISSION CO., LLC. (PARCEL #3905-35-330-060)**

**PUBLIC HEARING ON A REQUEST FROM KALAMAZOO STORAGE, LLC, 7694 STADIUM DRIVE, FOR A VARIANCE FROM THE ZONING ORDINANCE, SPECIFICALLY SECTIONS 64.300 OF THE SETBACKS ORDINANCE AND SECTION 41.405 OF THE I-1: INDUSTRIAL DISTRICT ORDINANCE RELATED TO THE DISTANCE BETWEEN BUILDINGS WITHIN A MINI WAREHOUSE FACILITY. (PARCEL #3905-34-180-025)**

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A meeting of the Oshtemo Charter Township Zoning Board was held on Tuesday, May 24, 2016, at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

**MEMBERS PRESENT:** James Sterenberg  
Bob Anderson, Alternate  
Nancy Culp  
Millard Loy  
Neil Sikora  
L. Michael Smith, Alternate

**MEMBER ABSENT:** Cheri Bell, Chair

In the absence of Chairperson Bell, Mr. Sterenberg served as Acting Chair.

Also present were Julie Johnston, Planning Director, James Porter, Attorney, Martha Coash, Meeting Transcriptionist, and approximately 10 interested persons.

**Call to Order and Pledge of Allegiance**

Acting Chairperson Sterenberg invited those present to join in reciting the “Pledge of Allegiance.”

**Agenda Approval**

The Chairperson asked if there were any changes to the agenda. Hearing none, he asked for a motion for approval.

Mr. Anderson made a motion to approve the agenda as presented. Mr. Sikora supported the motion. The motion was approved unanimously.

**Approval of the Minutes of April 5, 2016**

The Chairperson asked if there were any additions, deletions or corrections to the minutes of April 5, 2016. It was noted a correction of the date for the last meeting on page two in the motion for approval of the minutes needed to be corrected to April 5, 2016. Hearing no further corrections, he asked for an approval motion.

Mr. Sikora made a motion to approve minutes of April 5, 2016 as corrected. Mr. Loy supported the motion. The motion was approved unanimously.

**Public Comment on Non-Agenda Items**

There were no public comments on non-agenda items.

**SITE PLAN AMENDMENT REVIEW REQUEST FROM KALAMAZOO CHINESE CHRISTIAN CHURCH, 5334 PARKVIEW AVENUE FOR A 5,362 SQUARE FOOT ADDITION TO AN EXISTING CHURCH, (PARCEL #3905-25-455-110).**

Chairperson Sterenberg said the next item was a request for a site plan review and asked Ms. Johnston to review the application.

Ms. Johnston said the Kalamazoo Chinese Christian Fellowship was seeking site plan approval for a 5,362 square foot addition to the preexisting Chinese Christian Church located at 5334 Parkview Avenue in Oshtemo Township. Houses of Worship, being permitted uses within this zoning district, must receive approval from the Zoning Board of Appeals for any significant site plan changes. The proposed addition, 5,632 square feet in size, is intended to house eight classrooms and a meeting space and will

increase the square footage of the existing building by more than 70%. There is one entrance from Parkview Ave., and the site is heavily wooded

Ms. Johnston said the current number of parking spaces available is 47. According to Township requirements an additional 41 spaces for a total of 91 spaces are required, which have been deferred. Additionally 17 more spaces are required based on "day care use" requirements since Staff feels those most closely relate to the proposed classrooms in the addition (one space for every five children). This would bring the total number of spaces required to 108. She noted Church officials feel the current 47 are more than sufficient for current and future use with the addition as proposed, but any approval should include a decision on parking spaces in order to produce a complete site plan. She noted 68.420 allows the approving body to grant a deferment.

Ms. Johnston said the proposed building addition for the Chinese Christian Fellowship complies with all zoning criteria and should not have any significant impact on either the subject property itself or the surrounding area and therefore recommended approval of the site plan amendment. She noted the Township Fire Marshal has indicated a second fire hydrant is needed. If the Zoning Board of Appeals is inclined to approve the requested changes, Staff suggested the following conditions:

- A parking needs analysis be submitted to Planning Staff, prior to building permit application, clearly indicating that the proposed amount of parking spaces comply with section 68.000 of the Zoning Ordinance. If parking expansion is required, then the lot shall be expanded in compliance with the ordinance, to be evaluated and approved by Staff.
- The location of the new fire hydrant must be evaluated and approved by the Township Fire Marshal.
- Prior to the issuance of a final certificate of occupancy, Planning Staff is to inspect the site, ensuring that sufficient screening remains along the east property line of the subject parcel. If additional plantings are needed, then they must meet the requirements of section 75.000 of the Zoning Ordinance, to be evaluated and approved by Staff.
- Prior to the issuance of a final certificate of occupancy, the applicant is to submit the required non-motorized special assessment agreement to the Township.

Chairperson Sterenberg moved to Board questions and asked if there is a time constraint if parking space requirements are deferred.

Ms. Johnston said there is no time constraint.

Attorney Porter noted additional parking spaces are usually triggered when parking problems arise.

The Chair also asked why a second fire hydrant would be required.

Ms. Johnston said a second hydrant is required to meet the distance from hydrant to the building requirement given the additional square footage being proposed. The applicant is willing to add a second hydrant when the Fire Marshal is available to determine placement.

Chairperson Sterenberg asked about the non-motorized plan requirement.

Ms. Johnston said the non-motorized path is planned along Parkview to the Village Core area at Stadium Drive and 9th Street.

There were no further Board questions: Chairperson Sterenberg asked if the applicant wished to speak.

Mr. Pat Flanagan, Civil Engineer, 1133 E. Milham Road, spoke on behalf of Mr. James Hinze, of Zion Church Builders, said he has been told the Church is satisfied with the current 47 parking spaces but will add more if needed. 10 spaces could be easily added along the south edge of the drive aisle or the lot could be expanded to the north. The new hydrant is placed on the plan about 40-50 feet from the new building corner with a note that says placement is subject to the Fire Marshal's review; there would be no problem moving it.

In answer to a question from Mr. Loy, Mr. Flanagan said the classrooms will be used for child day care while parents are attending services.

The Chairperson determined there was no one from the public who wished to speak, closed the public hearing and moved to Board Deliberation.

The Board considered each of the Staff recommendations and noted they would prefer not to pave any more than necessary for parking spaces and were in favor of deferring required additional parking until such time there is a problem.

Ms. Johnston suggested the recommendation for approval should include an additional 17 spaces to be deferred until needed, which would make the total number of deferred spaces 61.

Commissioners indicated they were in agreement with that suggestion and had no issues with the other three Staff conditions.

Chairperson Sterenberg asked for a motion on the recommendation.

Mr. Loy made a motion to approve the application as submitted based on requiring an additional 17 spaces to be deferred making the total deferred spaces 61 and including conditions 2 - 4 as recommended by Staff. Mr. Anderson supported the motion. The motion was approved unanimously.

**PUBLIC HEARING ON A REQUEST FROM SCHLEY TRUST, 4200 SOUTH 9<sup>TH</sup> STREET FOR A VARIANCE FROM THE ZONING ORDINANCES, SPECIFICALLY SECTIONS 75.120.a AND 75.130 OF THE LANDSCAPING ORDINANCE AND SECTIONS 40.301.I.3 AND 40.301.N OF THE I-R: INDUSTRIAL DISTRICT, RESTRICTED ORDINANCE RELATED TO LANDSCAPING AND UTILITY LINES FOR THAT PORTION OF THE PROPERTY SUBJECT TO THE EASEMENT TAKEN BY MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC., (PARCEL #3905-35-330-060).**

Chairperson Sterenberg said the next item was a request From Schley Trust for a variance from landscaping Ordinance requirements and asked Ms. Johnston to review the application.

Ms. Johnston said the Schley Trust was seeking a variance requesting relief from sections of both the I-R: Industrial District, Restricted and the Landscaping Ordinance for property located at 4200 South 9<sup>th</sup> Street for that portion of the property subject to the easement taken by Michigan Electric Transmission Company, LLC. (parcel #3905-35-330-060).

A 220-foot easement for the ITC power line traverses the property near the western boundary and then reduces to a width of approximately 100 feet along the southern property line.

She listed the specific sections of the Zoning Ordinance that are applicable:

**Section 40.301.i.3: Special Exception Uses**

*All improved areas of an individual site shall be landscaped with a variety of trees, shrubbery, and ground cover to create attractive natural buffers between adjacent uses and properties.*

**Section 40.301.n: Special Exception Uses**

*Public water and sanitary sewer shall be provided as part of the site development. All utilities, including telephone, electric and cable television, shall be placed underground.*

**Section 75.120.A: General Provisions**

*Portions of the site not devoted to floor area, parking, access ways or pedestrian use shall be appropriately landscaped with live plant material consisting of deciduous canopy and coniferous trees, understory trees, shrubs, ground cover, and grasses and maintained in a neat and orderly manner.*

**Section 75.130: Greenspace Areas**

*This section details the requirements for the buffer zones between properties depending on adjacent zoning or use. For example, this address is zoned I-R District and has I-R District zoning to the north and south of the property. Section*

75.130 would require Greenspace Category A, which is minimum width of 10 feet and requires one canopy tree and two understory trees every 100 lineal feet.

Ms. Johnston explained the request to vary from Section 40.301.n will not be considered as part of this review. After consultation with Attorney Porter, it was determined that the applicant has no responsibility to bury lines that are not considered part of a development or are planned for a specific property.

She said the request by the applicant is a nonuse variance, requiring a practical difficulty that is unique to their property. When considering a variance request, the Zoning Board of Appeals must insure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of unnecessary hardship for use variances or a practical difficulty for nonuse variances. In addition, applicants must demonstrate that their plight is due to the unique circumstances particular to their property and that the problem is not self-created.

Ms. Johnston walked the Board through the 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 said Section 75.220 allows for flexibility within the landscaping ordinance, providing reasonable accommodations to meeting the landscaping materials requirement. She said the greenspace buffer planting materials could be accomplished just outside the easement boundary or by some other approach such as a fence, wall or hedge.

She said the requirements of Sections 40.301.i.3 and 75.120.A state that all areas not devoted to impervious surfaces should be appropriately landscaped with live plant material. This could be managed with ground cover or grasses within the easement area and trees and shrubs elsewhere throughout the property.

**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).*

Ms. Johnston said past variances have allowed the reduction of the greenspace buffer width but the landscape materials were still required.

**Standard: Unique Physical Circumstances**

*Are there unique physical limitations or conditions which prevent compliance?*

Ms. Johnston said Staff's review of the subject site did not uncover any physical hardship to the land that would make compliance with the Zoning Ordinance unnecessarily burdensome.

**Standard: Self-Created Hardship**

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

She explained that technically, the placement of an easement on a property is a self-created hardship. In this case, the hardship is created by the power company instead of the property owner who had no input into the location of the utility line.

Ms. Johnston said Staff recommended denial of the variance request from *Sections 40.301.i.3* of the I-R: Industrial District, Restricted and *Sections 75.120.A* and *75.130* of the Landscaping Ordinance for the following reasons:

- No physical hardship exists on the property that necessitates the need for a variance.
- *Section 75.220: Exceptions* allows the approving body to accept an alternate approach to the landscaping materials requirement.
- Previous variances did not reduce the required landscaping materials defined by the Landscaping Ordinance. The denial of this request is in keeping with these decisions, providing equal treatment and substantial justice.

She noted as stated, the variance request to *Section 40.301.n* of the I-R District was not considered in this staff report because it was determined the applicant has no responsibility to bury the utility lines.

Chairperson Sterenberg asked if there were questions from the Board.

Mr. Anderson asked if there was any recourse with the power company.

Attorney Porter said the easement cuts across the property line of the applicant where the buffer was in place. ITC took that; in essence the buffer was lost through no fault of the property owners. Hopefully the applicant and ITC need to address the issue of the taking. Although there is an "easement agreement" that does not mean the parties sat down and came to an agreement. This is a case of eminent domain. His understanding is it is in litigation.

Ms. Johnston said the easement language is pretty standard about what can be removed. There is no control by the property owner.

Attorney Porter explained the only issue for this Board is whether to approve or deny the variance that has been requested. Whether or not it should be granted should be based on the criteria presented.

There were no further questions from Commissioners. Chairperson Sterenberg asked if the applicant wished to speak.

Mr. Terry Schley, 7497 Watermark Drive, Allendale, MI spoke to the Board on behalf of himself and Jacqueline Schley, owners of the property at 4200 South 9th Street in Oshtemo Township.

Mr. Schley read from prepared text, attached as an addendum to these minutes.

Following Mr. Schley's remarks, Attorney Porter said the application requests a perpetual variance for certain standards, but that he heard something different in Mr. Schley's presentation. Since that was the case, he felt there needs to be some time for the Board to take further input to clarify what relief is being sought and what relief, if any, the Board would be willing to grant. He suggested tabling this matter to analyze what Mr. Schley presented at the meeting, to review the Ordinance and to try to look for some middle ground in order to address the issue.

Mr. Schley said he did not mean to dissuade the Commission from the variance, but based on personal interest, he felt 75.220 had to be challenged.

Chairperson Sterenberg asked if there were any public comments.

Hearing none, he moved to Board Discussion and asked how Commissioners felt, taking into consideration standards, and comments from Staff and Attorney Porter.

Mr. Loy said he felt Attorney Porter's advice should be taken to table this item timely to be fair to both Mr. Schley and Staff.

In answer to a question from Mr. Anderson who wondered if the property were developed in pieces whether the landscaping requests would be considered individually, Attorney Porter said the Board needs to address the issue as the property exists today; speculation is not an issue for the Board.

Attorney Porter repeated his suggestion to table this item for analysis. He noted if some midpoint were reached it may require some expense to acknowledge the impact of "taking" the property. Should the Township capitulate because ITC slaughtered every tree on the line? Examination of the totality of the request vs. Staff's response needs to be done and an approach developed regarding how to proceed.

Chairperson Sterenberg asked for a motion to table this item to June 28 after confirming that was acceptable to both Staff and Mr. Schley.



Mr. Sikora made a motion to table the variance request for the property at 4200 S. 9th Street until the June 28, 2016 meeting of the Planning Commission. Mr. Anderson supported the motion. The motion was approved unanimously.

**PUBLIC HEARING ON A REQUEST FROM KALAMAZOO STORAGE, LLC, 7694 STADIUM DRIVE FOR A VARIANCE FROM THE ZONING ORDINANCE, SPECIFICALLY SECTIONS 64.300 OF THE SETBACKS ORDINANCE AND SECTION 41.405 OF THE I-1: INDUSTRIAL DISTRICT ORDINANCE RELATED TO THE DISTANCE BETWEEN BUILDINGS WITHIN A MINI WAREHOUSE FACILITY. (PARCEL #3905-34-180-025)**

Chairperson Sterenberg moved to the next item on the agenda and asked Ms. Johnston to review the request for variance for Commissioners.

Ms. Johnston said Kalamazoo Storage, LLD, 7694 Stadium Drive was requesting variances to:

- *Section 64.300: Setbacks for Business and Industrial Districts*, which requires a 70-foot setback from Stadium Park Way, and
- *Section 41.405: Supplemental development standards for storage facilities in I-1 zoning districts*, which requires a 30-foot setback between buildings

Ms. Johnston said the applicant, representing Kalamazoo Storage, LLC, is requesting the variances to allow for the development of a self-storage facility. The request is a nonuse variance, requiring a practical difficulty that is unique to their property.

When considering a variance request, the ZBA must ensure the “spirit of the ordinance is observed, public safety secured, and substantial justice done.”

Ms. Johnston walked the Board through the Setback Variance Standards:

***Unique Physical Circumstances***

Ms. Johnston said the property is 200 feet in width and 1,785 feet in length, which is a depth to width ratio of almost 9:1. The property abuts Stadium Park Way for 565 feet of its 1,785 feet in length. The 70 foot setback reduces the buildable width to 130 feet for this 565 feet, resulting in varied setbacks on the lot.

***Substantial Justice***

Ms. Johnston said all properties zoned as I-1 are required to have a minimum setback of 70 feet from all street rights-of-way. The Zoning Ordinance allows for reduced setbacks on interior streets. An example is Section 50.000, which governs the 9<sup>th</sup> Street and West Main Overlay Zone, and allows a 15-foot building setback on interior streets to developments. Past variances have been granted for reduced setbacks on local roads and for narrow lots.

***Self-Created Hardship***

She said the variance request is a result of the minimum setback that is required from the Stadium Park Way right-of-way, which greatly impacts the narrow parcel. This condition was not created by the applicant.

Ms. Johnston said Staff recommended approval of the variance request from Section 64.300 for the following reasons:

- The unique shape of the parcel with a 9:1 depth to width ratio constitutes a practical difficulty in complying with a 70-foot setback requirement from Stadium Park Way.
- The practical difficulty is not self-created.
- Previous variances granted reductions from the setback requirement to properties with similar conditions. The approval is in keeping with these decisions, providing equal treatment and substantial justice.

Ms. Johnston continued, addressing the second request from the applicant who felt the 30 feet required spacing between buildings is excessive and requested that the minimum spacing be reduced to 24 feet between buildings, arguing that this accommodation will serve to dissuade improper parking and prevent vehicles backing into the buildings without compromising any public safety considerations.

Ms. Johnston walked the Board through the Setback Variance Standards:

***Unique Physical Circumstances***

She said while the property is long and narrow, the placement of buildings for the self-storage development can be placed parallel to Stadium Drive (garage doors facing north/south) slowing for the construction of a number of structures.

***Substantial Justice***

Ms. Johnston said Staff was unable to find any past instances of relief being requested from the 30 f-foot spacing requirement. This standard is required for any storage facilities located in the I-1 zoning district and has been consistently applied by the Township in the past.

***Self-created Hardship***

Given there are no physical or other factors that would prevent compliance, Staff considered the hardship to be self-created.

***Public Safety***

She said separation is intended to assist with the prevention of fire spread and to provide room for emergency vehicles, including a pass through lane. Reduction of these lanes could compromise public safety.

Staff recommended denial of the variance request from section 41.405: Supplemental development standards for storage facilities in I-1 zoning districts for the following reasons:

- The difficulty is self-made, and compliance with the 30 foot spacing requirement is not unnecessarily burdensome.
- No previous variances could be found where this reduction was granted. The denial provides equal treatment and substantial justice.
- Public health, safety, and welfare could be compromised.

There were no questions for Ms. Johnston and no comments from the applicant.

Chairperson Sterenberg determined no one from the public had any comment.

Mr. Sterenberg asked for a motion to approve the setback request.

Mr. Loy made a motion to approve the variance request from Kalamazoo Storage, LLC, 7694 Stadium Drive to reduce the set back from 70 feet to 20 feet. Mr. Anderson supported the motion. The motion was approved unanimously.

Mr. Sterenberg asked for a motion to deny the request to reduce the spacing between buildings from 30 to 24 feet.

Mr. Loy made a motion to deny the variance request from Kalamazoo Storage, LLC, 7694 Stadium Drive, to reduce the spacing between buildings from 30 to 24 feet. Mr. Sikora supported the motion. The motion was approved unanimously.

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

There was no other business/no member comments.

### **Adjournment**

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda, and with there being no other business, adjourned the meeting at approximately 4:55 p.m.

Minutes prepared:  
May 26, 2016

Minutes approved:  
June 28, 2016

ADDENDA TO MINUTES OF ZONING BOARD OF APPEALS MEETING OF MAY 24, 2016

Comments from Terry Schley re. Variance Request for 4200 South 9<sup>th</sup> Street

Good Afternoon Chair Sterenberg and ZBA Members,

I am Terry Schley residing with my wife Jackie at 7497 Watermark Drive, Allendale, Michigan 49401. I with my wife own this property. I speak today both for Terry and Jackie Schley as property owners, and I do have an affidavit of my authority to speak for her should you wish it.

We are here today specifically due to an Eminent Domain action which has taken an easement on a large part of our property and in that action creating very real concerns the property was undevelopable for our property investment. The staff report given, and should you agree with it and the discussions as a final record, positively alleviates one part of our concerns. We do have some remaining concerns that not all aspects of the matters are addressed or fully considered in impact, so please bear with me as we seek clarity in your opinion and Township determinations to the best of your ability.

First, you did not see a specific project being proposed here, and our requests are asking for “perpetual” decisions. “Perpetual” in my Dictionary is, “continuing for a long time without stopping”. So today we did ask you to consider something different or new for you, variances that effectively run with the land.

First some further background. (Slide 1 – Existing Site Plan before easement). This is our site as was developed in year 2000 and as it was up until sometime in June 2015. On the plans I’ll show 9<sup>th</sup> Street is on the right and north is up, I’ll point to the building on the site. We acquired the site in late 2000, received site plan approval, remodeled and added onto the building converting the then home into a commercial office. Then before the economic downturn we developed schematic plans for and marketed the site as a single site Office Park with proposed multiple new office buildings. The hard economic times postponed most development projects as you know, including ours, and

then as things began to get economically better, in August 2011 the ITC easement route revealed itself as involving our property. Two and a half years later in late April 2014 we saw for the first time a specific defined easement impact to our site and the land easement was taken from us by ITC/METC in June or July 2014. If anyone suggests we agreed to the taking I will tell you we just treated that as inevitable per our Attorney's recommendations.

This is today the easement overlay on our site in yellow. (Slide 2 – Easement showing on Site Plan)

Our site formerly had many inherent natural features and trees on the south line where the majority of the easement was taken and placed. (Showing Slides 3, 4 and 5 – Showing old tree line) Here you see our site as it was before the power lines, with aged mature growth, and many mature evergreens along the most street visible south side. The north line easement area was essentially a wooded area and even called that by ITC's own Arborist.

Today things are different; here is our site as was at the end of last month which you may have seen or driven by (Slides 6 and 7, Post-ITC at near status quo). The grass area between the torn up easement work and our parking is easement area. For now, we have continued to cut that lawn as we think about the new impact. Also, about half of our parking lot is in the easement, an item I'll come back to.

Our records indicate we asked ITC that the powerlines be moved at least 6 times, and to lessen impact to our site at least twice, yet somehow the power lines ended up almost exactly as was first revealed by ITC. The easement was placed beyond our control and not in respect of any of our wishes; the old natural treed Greenspace as you saw is now gone, and now we are left with a problem.

(Slide 8 – Again Site Plan with easement in yellow and leave it up). The taking of easement by ITC changes what we can do with our site and the impact of that is current and even it has taken us a bit to fully understand how impacting it is. We are here not because of our actions but in realization Government has created a difficulty with consequences upon us and we believe it fair to seek clarity

to that impact, and consideration of both real costs and lost land impacts that have become a burden upon us as property owners derivative of the easement taking, a real hardship, not anything self-created.

What brought us here is that for any new development we will be subject to Site Plan Review. Therefore and to now begin to speak to the variance requests specifically Section 75.110 Scope says all uses subject to site plan review shall be landscaped meeting the requirements of this Section. To develop our site Section 75 should apply.

Julie we believe has it right in explaining the ordinance, but going deeper, Section 75.125 Landscaping, (A) defines Greenspace as, "landscaped area around the perimeter of a parcel, lot, or site". And Section 75.130, A, says that the greenspace requirements are stated in widths measured from the property line or right of way line, that applicable for the site. Property lines and right of way lines are not debatable, so for development **by prescription of ordinance** we must have **"greenspaces" on our site's perimeter**. On our site (keep up easement slide) at the north we are I-R and at rear R-3 base zoning against a similar I-R and R-3 zoning, with now 265 plus feet where the ITC easement is that for development should have both had a required "A" and "C" Greenspaces (10' at I-R to I-R, and 20' R-3 to R-3). I'd call that 50/50 "A" and "C" Greenspace zone split. On the south line there is almost 988' of I-R to I-R zoning, which is an "A" Greenspace required at 10' at the site's perimeter or measured from the property line. Our request has 1,008' but perhaps 20' of that is front yard Greenspace getting us to instead 988' in discussion. But also, **Greenspaces must have per Table 75-A canopy trees growing to 50' tall, and understory trees that grow to at least 25' high, and in the "C" Greenspace add to that shrubs defined as 1 ½ to 13' tall (depending on the species).**

So our dilemma driving one of our variance requests is that a Greenspace must be at the perimeter of the site and those Greenspaces must have trees (and in some cases shrubs) **and staff has correctly described that this direct condition cannot be met due to the clean cut**

**easement requirements for the land taken in eminent domain by the folks that ran the power lines.**

Julie has also reported to you that in areas that are Greenspaces, with the brush covered ground in the ITC easement areas we may be able to offset the required trees or shrubs by elsewhere providing plants, or screening “equal or better” outside the easement meeting the spirit of ordinance per 75.220 – Exceptions.

This is helpful but not definitive, unless supported here in record as the enduring position of the Township for the language of 75.220 Exceptions is, and I know I am being a bit technical here, but under 75.220 “B”, the paraphrased language is the substitutions of plantings can be allowed, “...if are determined by the reviewing body” to be a physical hardship existing or existing topography and vegetation provide equal or better landscape and buffering effect and, “...the reviewing body may approve modifications to planning requirements of Section 75.130. Then, “...which,” the reviewing body, “...deems necessary to ensure compliance” with the section intent and spirit. The word may in that phrase is not shall nor will, and is not a guarantee that a consideration by a future PC or ZBA will allow it. This exception also requires yet an action by the Township or else the property is not developable and 75.220 can only be triggered if a physical hardship exists, or existing topography and vegetation are determined providing an equal or better buffer – a latter condition clearly not possible as both topography and vegetation do not buffer anything at our site and vegetation alone is not a criteria to trigger the exception. So to use 75.220 would require a physical hardship, a condition which staff has summarized within their last 3 report bullet points as does not exist.

75.220 language if used supporting that this will be allowed today, meaning today a hardship is acknowledged and defined modifications will be allowed as the position of the Township, would at least be somewhat more helpful to us. But if not affirmed today and without specifics defined, we are yet at risk as to what we have to work with and may have an



undevelopable property. As for staff positions, you may know staff has cycled through six Planners that I have worked with since 2008 before Julie and Ben joined the Township, and I know of some things today that have been considered differently than when Jodi Stefforia or Greg Milliken were here. That's okay, and comes with change but we can't count on memories of discussions with so much for us at stake. Also this ZBA will change, and with change in a ZBA's members or a PC can come also a different determination on hardship (I hope unnecessary), and which could also be very different in expectation and impact as to what a future ZBA or PC deems "necessary" to ensure compliance with the spirit of Section 75. By the way, usually 75.220 has been used in my experience not to offset trees but in a modification that existing site vegetation and growths could substitute for requirements of buffer; and Costco did have both vegetation and topography issues and it was the applicant volunteering a new 1,000 trees to fully change his site for a huge new retail platform where the severe topo was argued too difficult to work with. I also note that what is "Necessary" is a very subjective term, and further if a physical hardship exists to trigger 75.220 then a physical hardship should exist for a variance.

Your staff report mentions, against variance, it is a reasonable accommodation to absorb or offset the required trees. I need to ask you to consider the practical difficulty of what is being suggested. We could be asked realistically at one for one to what ordinance asks to somewhere spread out the trees and shrubs missing from the easement Greenspaces. The staff report denotes the number of required trees and shrubs have been typically held in variance requests to be that asked by ordinance. One for one to ordinance at the north 265+ feet of what is pretty close to a 50/50 split of "A" and "C" Greenspace is about 133' of "C" and 133' of "A" tree/shrub requirements. At the south edge, 988' of "A" zone tree requirements are required. Now a "C" requirement at greater than 100' length is 4 canopy trees, 6 understory trees and 8 shrubs. The "A" areas combine to 1,121'. At 100' this is a 12 times factor on the table for "A" zone trees or 12 canopy trees and 24 understory trees required. Combining all that together is 16 canopy trees, 30 understory trees and

8 shrubs required. So where could we put these anew if so asked? Can't be in the easement and tradition has been this rear acre which is heavily wooded hasn't typically been asked in Oshtemo for such an area to be cleaned out to make for a replanting of new trees or shrubs. We do have an "A" Greenspace remaining at the north, but that already must have within its 10' area for each 100' of length a required single canopy and two understory trees. Now I sought information out on trees and looked to the National Arbor Day Foundation as a trusted reference. What I will suggest to you now is fully in keeping what you would find at that source for Michigan selection trees appropriate for good growth in our Michigan hardiness zone. The branch area of a tree is called a crown and for a tree 50' tall or more the crowns are usually 40'-50' or more in width (show first two 11" x 17"s); some larger tree crowns can easily be 70' or 80' across. Understory trees seeking maturity at 25' tall have mostly crowns in the 20'-30' range or more. So back to this north target Greenspace, that means for each 100' in this other north "A" Greenspace using a very fair average 45' crown for the canopy trees and with two understory trees at 25' wide crown, well, when properly planted so the crowns don't eventually choke themselves out, the crown to crown mature target widths - that which the trees should be spaced in planting for - that is a linear 95' in each 100' of length available, with maybe 5' of linear ground available for other plants. Maybe we could in this 10' wide zone absorb the 8 shrubs required and I'll then for now stop talking about the shrubs, but you should see this other north required "A" zone will be tapped with no other opportunity for offset trees. Then if you followed me on the crown widths, again a canopy easily averages for a 50' high mature tree 45' in width and understory crowns can be 25' or more across. The formula for the area of a circle, the shape of a healthy crown, is  $\pi R^2$ . Some crowns will be more, some less, but I hope you see the averaging logic is sound (show second other 11" x 17"s). With a 22 ½' radius each canopy tree can easily be on average about 1,589.625 square feet of land for a mature tree planting. Using an understory tree average crown at 25', or 12 ½' radius, each understory tree can easily be about 490.625 square feet. Considering the "equal or better" language at a minimum for the required

ordinance trees potentials offset for the easement Greenspaces, and again this is 16 canopies and 30 understory trees, this is 40,153 square feet of land. But a difference is that when a tree is planted in a usual 10' wide or 20' wide typical Greenspace, its mature crown isn't well considered. I think you understand a mature tree with a 45' crown in the center of a 10' Greenspace along a property edge is going to lie 17' or 18' outside each side of the Greenspace and mutually over the neighbor's property line (show 11" x 17"). Such a tree planting is usually inconsequential to building setbacks; the areas on site in which one can develop buildings. Now adjacent the power line easement, a difference here does exist which is a hardship specific from the power line condition for the Schley's. For the new offset trees we potentially are talking about, properly planted trees for a sound maturity expectation, those trees now must be placed with their crowns fully outside the power line easement, or else in growth and maturity they will have their crowns cut because the crowns can't be in the easement (show last 11" x 17"). Again those one for one to ordinance trees, those 46 trees, are 40,153 square feet of land then being removed from use, specifically in further land loss directly because the trees can't be in the power line easement at all, not trunk, not crown, and which would have been ground inconsequential with what we had as existing Greenspaces, and those formerly having a lot of trees and plantings at the property edges before the easements were taken and which is now gone.

40,153 square feet of land is 92.2% of an acre. Please look at our site. We've lost a direct 2.97 acres to the easement. Then there is the rear acre isolated off by ITC route, then call it an acre for potential offset trees because they sure can't go somewhere else. I call it one acre for a potential Oshtemo request, as surely the trees can't be set directly edge to edge and that totals about 5 acres lost for use, where before ITC we had side Greenspaces with lots of plantings previously and outside of building setbacks. Our site within the right of ways is only 7.215 acres. For a Government action in easement to take so much and another different Government action in reaction to the first Government taking to ask another 14% of the remaining land pushing the overall loss to 5 of 7.215

acres is an effective loss of 70% of our land to easements, made worthless, or for offset trees. We think this is a very unique and practical difficulty, a hardship none of which was self-created.

Understand if offset required trees are pushed into our site as I describe resultant to the easement, I can tell you ITC does not easily intend to pay for the lost land impact derivative of the alternatively offset trees being required. And please remember we had natural Greenspaces in the areas of easement that were with many wonderful aged plantings, the north easement area was woods, and well, you saw our south line photos.

Further ITC paid us \$9,659.00 for the "saw timber value" of the lumber they took out. From the Township's preferred Landscape Architect OCBA the DDA has a \$500.00 estimate for each new planted tree. I can substantiate it should be more like on average maybe \$400.00 to \$450.00 for a properly balled and burlapped, big enough hole dug, weed fabric, mulch top, stacked and warranted tree to meet minimum Township standards. For the planted 46 offset trees using a fair \$400.00 per tree just here for today, that estimates to cost \$18,400.00. That's \$8,750.00 being required anew over what ITC paid for what it took out and I assure you again ITC has not recognized these potential offset landscape costs to us as a consequence of their easement. Other possible offsets were also mentioned by staff such as a fence or berm. Where would that go and buffer to what(?). 1,253' of 6' stockade fence per Farm and Garden was cost identified to me yesterday at \$17-\$18/LF, that's \$22,000.00 or over \$12,000.00 above what we received for the saw wood taken by ITC that could be required of us. On berms, I can work through a similar description of impact on land use and added excavation and soil hauling costs if we need to, but I hope our point is understood.

A variance from 75.120A that speaks to areas of the site not improved in use having to have "deciduous canopy trees, understory trees, shrubs, "etc.", and for the described aspects at 75.130 Table 75A - and Table 75-B, for the easement lengths would have more clarity, for in any development use we would be required to go through an Oshtemo site plan review and again due this easement, unless hardship by this ZBA is acknowledged and some definition is given today as

to what alternative things need to be done to assure compliance, well, we're still very much at risk for any land development use. Without variances there are hardships we did not create.

If the offset trees are required as example, if this body could at least give definition that alternative placement of the required trees in the ITC easement areas are to be placed elsewhere on site at the quantity per Table 75-A for site development, that is something we and others could understand, and it a consequence of the impact of the easement we can assess. Otherwise, and you saw our site before the clearing, later we'll have personal costs for trees that formerly existed and were removed by ITC that we in development will need to replace and pay for, and to lose more land from use due to ITC as Government acting in eminent domain and Oshtemo saying this is a hardship but requires an acre of trees. If we here could get some clarity it has to help us all. A variance as requested in the easement areas would address these issues or a record of agreement today of how this will be treated in the future would be helpful as this ZBA in the future will change and so again could staff or even Attorney Porter as the Township's Attorney.

You may be asking yourselves why not just move the required Greenspaces inward adjacent the easement in your variance considerations? Staff at one point in their report suggested this possibility. For one, it will again cut down the amount of area for a building zone even further. Remember, until the ITC easement our Greenspace requirements were achievable at our south and north edges and were less than or equal to the required building setbacks and we already had a lot of great existing plantings. An inset Greenspace requirement moves the building setback inward, further reducing buildable land, which land by the way ITC again hasn't recognized in settlement. Second, in our case, we can't even add on today, nor if relocating the Greenspace inward could we add on, for you know that for a building addition adding square footage requires more in parking on the site, and unless we relocate our parking and drive, Section 75.130 "D", says, "no off street parking,..., shall be permitted in Greenspace areas". So in our case even if we wanted a simple building addition onto what we have, it will require a parking lot relocation if the Greenspace at the

south is required to be inside the site and adjacent to the powerline easement, or again later due easement, we will again have to get another variance not from our doing. These conditions would not be covered in the staff noted planting exception of 75.220. In 2000 we were complimented for our parking lot's appropriate placement by today the Township Superintendent who was then on your Planning Commission. You can see our parking lot's natural expansion would have been to just add spots to the south doubling off the existing drive like any normal parking lot with two sides of parking or displacing the dumpster west – all good design possibilities if we expanded with the way grades now are. So an inset Greenspace creates for us other additional problems and lesser options for site use. You might then say Terry just move your drive with a street access to the north and put your parking lot to the north. Well, our driveway in 2000 was determined by the Township to only be possible to be placed where it is on 9<sup>th</sup> Street due to the Township's Access Standards, and relocation of parking derivative from an unwanted easement is another whole can of trouble and for us more in added costs beyond today's request. If you place a requirement on us in a decision for the Greenspace to be inward against the south easement, we will lose our ability to at least salvage expansion capability that could come without a lot of added site costs, a choice for site use we had available before the easement.

Further from the staff report, we are glad if also understanding 40.301N is being agreed doesn't apply. We were concerned that section of ordinance, **established in 2012 before the powerlines took our land for easement**, might be interpreted to require that, "All utilities including, ..., "electric", shall be placed underground. Our concerns were that ordinance criteria possibly could not be met with the 2016 installed overhead electric wires, wires which are not "underground", power lines installed by METC/ITC beyond our control. In minor digression, this appeared potentially like the Township's current legal fight with ITC which began in our understanding where an Oshtemo ordinance requires power lines within 250' of 9<sup>th</sup> Street to be

underground. We understand now for 40.301 "N", to develop our land, we will not need a variance for the ITC new power lines. If this is not accurate, please correct our understanding.

So we still do have to seek the other variances asked, and as perpetual. Developing our land cannot meet ordinance unless a variance or otherwise a hardship and plantings offset allowances suggested by staff are acknowledged and defined, for again you see our plight from the current easement impact which otherwise gives no definitive assurance a future ZBA or Planning Commission will agree with a perspective suggested here today. You may or may not agree that further lost land and added costs to replace trees that generally formerly existed is a hardship. You may leave us in such a position denying the variances and without clarity in these matters which is a real risk for our site's use we didn't have before, and I suppose such risk anew is something we would just have to address with ITC. You could accept staff's recommendation we do not have a physical hardship and acknowledge therefore 75.220 can't apply and no variance is justified leaving us a further undevelopable property. We hope not, we ask not.

For us not to get clarity in this matter today will be a property ownership risk for any land development, where we owning the property could not know for sure an outcome in a future variance request or PC or ZBA interpretation and the ITC easement impact in change will have become forgotten. This is a very smart and savvy ZBA but in Oshtemo Planning Boards that I have been a part of, I have heard Board member requests ranging from dress codes for the men, to wanting to have all mental fences painted one particular color. So Board member interests can vary widely. Our need for clarity is not your or our fault, but it will remain a huge risk for our property ownership and for development if not clear or pushed into the future. Today we couldn't even sell the property with such risk of what ordinance would or wouldn't allow. We feel we need to know with as much assurity as possible that which we have to work with, so we had to come here today. Again, we did try to get the powerlines moved and we did not invite this situation.

Finally I'd be remiss if not suggesting of how I feel about this request of you for the variances. Imagine the most difficult spot you could be in with your development dreams and investment at risk from nothing you've done and outside forces uninvited into your life, 2-3 years of unspecified threatening impact, and then an outcome worse than hoped, and then years to fight to be treated fairly for value lost. Whatever you decide here as a ZBA has unfortunately for the Schley's a tough outcome either way, and for us no matter your decision, a challenging fight remaining over that taken.

(Keep up easement slide)

As example, this southwest corner of our site is now a chopped off easement isolated corner of about one acre of land. I share with you that from those that took the easement we've been told that is worth nothing in changed value, and just look at how impacting that yellow area is on our site. The Schley's have been really hurt as we've lost the development opportunities that we ultimately acquired the land for.

You may know me and that I've led your Community's Planning efforts through the majority of your last Master Plan, led the implementation of your Form Based Code, and have many times had a role in helping define the character of how Oshtemo land use can be. Our request today isn't about sending a message, this isn't grandstanding, nor is it about our character, but it is about the character of Oshtemo's planning and community and based with real and sound questions from a Township land owner about ordinance outcome and a very tough predicament to be in. Upon many applicants I have laid the requirements without exception to meet your Section 75 and the other prescriptions of your ordinances, and I have told many applicants they could not get a lessening of expectation that others are held to in standard. I have supported your ordinances and previously led efforts to achieve the character of environment and community as has been defined by Oshtemo's citizens and tax payers. It would be sadly hypocritical then for me to tell you we Schley's should get these variances because we've been hurt for development due unwanted actions of



others and therefore we are somehow entitled to a “break”. I believe I can proudly say I have helped the Oshtemo community in its’ planning outcomes, and the challenge here which has destroyed our property, cannot also put me personally in a position to undermine my strong history supportive of Oshtemo planning values. Yet here we the Schley’s are, and I and we find ourselves here, asking you for variances as per our application or for clarity and definition to mutual expectations in these matters. **We do have a practical difficulty with unnecessary hardship of unique circumstances particular to our property and it is not self-created.**

Thank you, thanks for your patience in hearing me, and I’m of course available to answer any of your questions as the Schley’s.