

CHARTER TOWNSHIP OF LYON  
ZONING BOARD OF APPEALS  
SPECIAL MEETING MINUTES  
August 25, 2003

Approved as corrected September 22, 2003.

DATE: August 25, 2003  
TIME: 5:00 PM  
PLACE: 58000 Grand River

Call to Order: William Erwin called the meeting to order at 5:04 PM.

Roll Call: Present: William Erwin, Chairman  
Michael Barber  
Pamela Johnson, Clerk  
Tony Raney

Absent: Michael Hawkins

Also Present: Dave Gillam, Township Attorney  
Larry Phillips, Building Official  
Chris Doozan, Township Planner

Guests: 12

1. **Woodwind Investment, LLC, 51490 Pontiac Trail, Wixom, MI** – North side of Ten Mile Road, between Milford Road and Johns Road (Woodwind Planned Development). Applicant requests the following variances:

a. A variance is requested from footnote "f" in the Schedule of Regulations, Section 36.02, which requires a 25 foot vegetated setback and a 50 foot building and construction setback for the boundary of any Protected Wetland and from the high water mark of any Watercourse. The proposed building envelopes on the following proposed lots do not comply with the wetland setback requirements:

Lot Numbers	Proposed Wetland Setback (ft.)	Amount of	Variance
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West Portion		Based on 25-foot requirement	Based on 50-foot requirement
Lot 46	10'	15'	40'
Lot 47	8'	17'	42'
Middle Portion			
Lot 34	17'	8'	33'
Lot 36	5'	20'	45'
Lot 38	10'	15'	40'
Lot 43	37'	0'	13'
Lot 45	24'	1'	26'
Lot 46	33'	0'	17'
Lot 48	25'	0'	25'
Lot Numbers	Proposed Wetland Setback (ft.)	Amount of	Variance
		Based on 25-foot requirement	Based on 50-foot requirement
Lot 49	32'	0'	18'
Lot 102	34'	0'	16'
Lot 103	34'	0'	16'
Lot 129	22'	3'	28'
Lot 130	23'	2'	27'
Lot 131	45'	0'	5'
Lot 139	40'	0'	10'
Lot 140	6'	19'	44'
East Portion			
Lot 28	31'	0'	19'
Lot 31	15'	10'	35'
Lot 32	10'	15'	40'
Lot 33	31'	0'	19'
Lot 54	15'	10'	35'

The following proposed multiple family building do not comply with the wetland setback requirements:

Bldg. Numbers	Proposed Wetland Setback (ft.)	Amount of	Variance
		Based on 25-foot requirement	Based on 50-foot requirement
11	46'	0'	4'
12	29' *	0'	21'
13	32' *	0'	18'
15	47' *	0'	3'
16	10' *	15'	40'
17	12' *	13'	38'
18	20' *	5'	30'

19	20' *	5'	30'
20	12' *	13'	38'
21	18' *	7'	32'

\* On those units marked with an asterisk a deck is proposed to encroach 10 feet further into the required setback.

Ray Cusineau thanked the Board for allowing them to have this special meeting. He stated that they are here to address the wetland setbacks in this development. He stated that the Township adopted a wetland setback as part of the Zoning Ordinance in January, 2003. He stated that in October, 2001 they received preliminary PD approval from the Planning Commission with a list of conditions, one of which was final resolution of the wetland lines. He stated that they have revised their plans after many negotiations with MDEQ. These negotiations identified the wetland lines within the development. He stated that they then revised their plans and resubmitted the plans to the Township for final PD approval. He noted that they have complied with all MDEQ requirements with respect to the wetland issue.

Mr. Cusineau stated that the only outstanding issue they have is with the Township's wetland setbacks, which were adopted after preliminary PD approval was granted. He stated that there has been some reference to floodplain issues. He stated that they have already made adjustments with regard to the floodplain issues.

Mr. Cusineau stated that this is not a floodplain issues, this is not a MDEQ issue, it is simply a setback issue which was created by Lyon Township Ordinances. He stated that they submitted a letter along with their applications identifying a list of justifications. He stated that these are not rationalizations, they are justifications that they are prepared defend. He stated that they have received Mr. Olson's August 23, 2003 letter and Mr. Doozan's letter August 25, 2003. He noted that they don't take any issue with anything indicated in Mr. Doozan's letter, but they do take issue with almost everything indicated in Mr. Olson's letter. He stated that he is prepared to refute every negative statement made in Mr. Olson's letter.

Mr. Cusineau briefly explained their position. He noted that throughout this entire process they are

not without guilt, they have done some things inappropriately and out of sequence. He stated that they it has always been their intent to ultimately comply with the provisions of the Township as well as any other jurisdictional issues.

Phil Adkison, Attorney, stated that they are not asking to build in the wetlands. He stated that the application at the preliminary approval stage met the requirements of the Ordinance at that time, specifically with respect to the wetland setbacks.

Mike Warren, Architect, displayed some color coded plans that show where the existing floodplain is and where the existing wetlands are as they relate to the building envelopes.

Mr. Adkison briefly discussed the requirements of the Ordinances. He also discussed a condition that was placed on the preliminary approval that dealt with the wetland areas.

Mr. Erwin opened the public hearing at 5:33 PM. He asked if there were any public comments.

Joseph O'Donnell, 56330 Ten Mile Road, questioned when the Ordinance was put in place, who was it intended to affect. Was it intended to affect anything that was not before final approval or was it to affect anything before preliminary approval? Mr. Doozan responded that it was intended to affect anything that was coming to the Board for approval.

Mr. O'Donnell questioned if there were any required setbacks before January. Mr. Doozan responded that they basically relied on the MDEQ requirements. He noted that the Township did have a watercourse setback.

Mr. O'Donnell stated that if the Township has Ordinances in place, they should be adhered to.

Eileen Foley briefly discussed the access to this development especially the one proposed to connect to Tara Drive. Mr. Warren explained where the entrances would be to the development. He stated that the connection to Tara Drive would be for emergency use only. Ms. Foley noted that Tara Drive is a private road.

Mr. Erwin closed the public hearing at 5:36 PM.

Mr. Erwin questioned how a preliminary approval could have been given when they did not know where the wetlands were. Mr. Doozan responded that the Planning Commission approved the preliminary plan and added a condition on that approval that dealt with the location of the wetlands.

Mr. Erwin stated that if the applicant had preliminary approval but did not comply with the nineteen conditions that were attached to the approval, would the approval still be good? Mr. Gillam stated that the approval becomes effective when all the conditions are met. Mr. Doozan noted that they do now have plans that show the wetland on them. Mr. Erwin questioned if the preliminary plan is a legitimate document if all the conditions have not been met. He noted that the applicant is stating that the preliminary plan is a legitimate document.

Mr. Adkison stated that if there had been no change in the Ordinance in 2003, and if the developer had come back and shown the wetland lines, he questioned if that conditions in the preliminary approval would have been met. Mr. Doozan responded that it would. Mr. Adkison stated that the approval was not conditioned on the Township changing their wetland Ordinance, it was conditioned upon the developer establishing the wetland line. If the wetland line would have gone through the middle of the building envelopes, without regard to the setback, there would be no question as to whether or not they would have complied with the condition of approval. He stated that they would have to modify their plan, if this were to happen.

Mr. Erwin questioned how this development could have been designed, if they did not know where the wetland lines were. Mr. Adkison responded that they knew that the wetlands would not affect the building envelopes. It was a question as to how close the wetlands would be to the building envelopes.

Bob Harris, developer, briefly discussed some of the conversations that they had at the Planning Commission level.

Larry Phillips, Building Official, noted that the first delineation of the wetlands that the Township received from the developer was seven months after the Ordinance was passed. Mr. Adkison stated that they never felt that this would be an issue. They believed that this would be addressed and taken care of at the Planning Commission level.

There was brief discussion with regard to the requirements of the Ordinance. It was noted that the applicant has been in many discussions with MDEQ to determine the wetland lines.

Ms. Johnson stated that this is the problem with conditional approvals. She felt that the Planning Commission should not have given approval until these conditions were met.

After further discussion, Mr. Erwin called for a motion.

Mr. Gillam stated that the first thing the Board has to address is Mr. Adkison's request for a review of the determination by the Administration as to the applicability of the wetland setback. He noted that the Administration has determined that it does apply. The language in Section 8.02.B in the Zoning Ordinance talks about Administration review. He stated that if the Board finds that there is merit to the appeal, then the setback would not apply and the Board would not have to address the question of the variances. If the Board does decide that the Administration is correct,

then the

the request for review should be denied. The issue of the variances from the wetland setbacks would then have to be addressed.

Mr. Barber made a motion with regard to Woodwind Investment, LLC, that the 50' wetland setback

does not apply to this particular planned development because the provision was not in the

Ordinance at the time the preliminary plan was approved and because of confusion regarding the applicability of the provision. Mr. Raney supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None
	Absent:	Hawkins

Motion approved.

b. A variance is requested from Section 15.09, sub-section B, which indicates that the maximum area of an entranceway structure is 60 square feet. The entranceway structure for Woodwind Village is proposed to be 70 square feet, requiring a 10 square foot variance.

Mark Russell, Russell Design, 108 N. Center Street, Northville, explained that the entrance in question is for two developments, Woodwind Village and Woodwind Glens. He stated that they do meet the height requirements of the Ordinance for the sign. Because of the length of the message, they would require a variance.

Mr. Erwin questioned if the letters could be made a little bit smaller so that they would comply with the Ordinance requirements. Mr. Russell responded that if they do this, it would affect the visibility of the sign.

Mr. Erwin stated that they need to address where the hardship is. He stated that other than the fact that the developer wants the sign to be compatible with the other signs. Mr. Russell stated that he believes that the hardship lies with height of the sign and that they don't have the room for the text. He noted that it is easier to read upper-case letters than lower-case letters.

Mr. Erwin asked if there were any public comments. There were none.

After brief discussion, the Board determined that they did not see where the hardship is,

other than

the fact that the developer wants a bigger sign.

Mr. Raney made a motion to deny Woodwind Investment, LLC's request for a variance to the sign

ordinance, because there is no hardship involved and the fact that the sign could be made

smaller. Ms. Johnson supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None
	Absent:	Hawkins

Motion approved.

3. GENERAL BOARD DISCUSSION NONE

4. ADJOURNMENT

Mr. Erwin adjourned the meeting at 6:32 PM.

Respectfully Submitted,

**Deby Cothery**

Deby Cothery  
Recording Secretary