

**CHARTER TOWNSHIP OF LYON  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
September 20, 2004**

Approved as submitted October 18, 2004.

DATE: September 20, 2004  
TIME: 7:30 PM  
PLACE: 58000 Grand River

Call to Order: Chairman Erwin called the meeting to order at 7:30 PM.

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

Absent: Tony Raney

Also Present: Philip Seymour, Township Attorney  
Larry Phillips, Building Official  
Chris Olson, Township Superintendent

Guests: 22

**1. APPROVAL OF MINUTES:**

- Regular Meeting of August 23, 2004
- Special Meeting of September 7, 2004

Ms. Johnson made a motion to approve the minutes from the regular meeting of August 23, 2004 as submitted. Mr. Barber supported the motion.

Voice Vote: Ayes: Barber, Erwin, Johnson  
Nays: None  
Absent: Raney  
Abstain: Hawkins

Motion approved.

Mr. Barber made a motion to approve the minutes from the special meeting of September 7, 2004 as submitted. Ms. Johnson supported the motion.

Voice Vote: Ayes: Barber, Erwin, Johnson  
Nays: None  
Absent: Raney  
Abstain: Hawkins

Motion approved.

**2. PUBLIC HEARINGS:**

**Chet Olzewski, 21383 Chubb Road and the property around 21345 Chubb Road**

Applicant requests a variance from the Private Road Ordinance. Variance requested is from maximum allowable length of 600 feet of a private road as limited by the Lyon Township Private Road Ordinance.

Mr. Olszewski explained that the Private Road Ordinance restricts the length of a private road cul-de-sac road to 600'. He stated that the lots that they are proposing are 1,500' deep and if they were to put in a 600' road, they would end up approximately 7 or 8 acre lots in the back and small lots in the front. He stated that they would like to conform with what is already in existence on Martha Lane, which is just south of their property. He stated that if they are able to put in a 1,100' road, they would be able to put in a couple small lots on the front section so that they would be in conformance with what is already there. He stated that they would be able to go back farther and get 5 acre lots in the back and also the limit the amount of trees that would have to be removed.

Mr. Erwin questioned what the hardship is, other than the fact that the applicant wants to put more lots on this property. Mr. Olszewski responded that the hardship would be to try and maintain 7 or 8 acre lots as single resident homes, which would be a lot of area to maintain.

Richard Dobson, 21345 Chubb Road, questioned if the Board had a copy of the topographical survey with the road layout. The Board indicated that they did have this. Mr. Dobson stated that he plans on splitting his property in half and building a new home on the back 5 acre parcel of his property. He stated that without the variance, he would not be allowed to do this. Mr. Erwin questioned why Mr. Dobson would not be allowed to do this. Mr. Dobson responded that there would be no egress into his property. He stated that where the proposed cul-de-sac is located, it is about the midway point. He stated that there would be 4-3/4 acres from the cul-de-sac forward and 5 acres from the cul-de-sac forward of his property.

The applicants showed the Board their plan and there was brief discussion in front of the Board table regarding the plan. The applicants pointed out on the plan where a 600' road would end up on the property. There was discussion with regard to connecting the road to the adjoining property. Mr. Olszewski noted that they plan on putting an easement in so that sometime in the future there can be a road connection.

Mr. Hawkins stated that it appears that the Township Planner, Chris Doozan, had several other issues. He questioned if any of the other issues have been addressed. Mr. Dobson responded that this is the first time he saw this letter. He stated that they have discussed some of the issues, but have not addressed them yet. Mr. Olson stated that there are a lot of issues that need to be worked out between the applicant's designer and the Township Planner.

Mr. Erwin felt that it would be better to table this issue until some of the issues are addressed. Ms. Johnson stated that she would like to see the applicant comply, as much as possible, to the facets of the ordinance.

Mr. Erwin asked if there were any public comments regarding this issue.

Cary Panko, 53353 Martha Lane, stated that the last time he was here it was in regard to getting a variance to leave the road gravel for the extension. He stated that they did not pass it because they felt that if there is going to be that many homes, the road should be paved. He stated that he is not sure if the applicants intend to leave it gravel or pave the road. He stated that if it is left gravel, he feels sorry for the residents on the road, because of the dust issue.

Carol Panko, 53353 Martha Lane, stated that the only objection that she has is that Martha Lane

would become a primary road for the whole area. She stated that they bought their property because it was in a quiet area and on a cul-de-sac. She stated that they own the whole area from their house all the way down to Chubb Road. She stated that if they had to pay for part of the paving of the road, their portion would be huge because of the road frontage they have.

Mr. Olszewski stated that with the comments from the residents on Martha Lane, he questioned if the Board felt that they should proceed with the road connection issue. Mr. Hawkins responded that they should document if there are any objections and the fact that they have made an effort to pursue all the available options.

Mr. Dobson questioned if the Board wants to see a final layout with everything noted on the plan. Mr. Erwin responded that the more information they have, the better it is to make a decision. Mr. Hawkins noted that the issues the Township Planner cited need to be addressed.

Mr. Hawkins made a motion in regard to Chet Olszewski, 21383 Chubb Road and the property around 21345 Chubb Road, that this issue be postponed for action by the Board subsequent to the owner or developer pursuing their options with the residents along Martha Lane and that they address the issues specifically noted in the McKenna Associates, Inc. letter dated July 15, 2004. The applicant has been directed to address these issues and return to the Board with substantial information and/or responses to the items discussed this evening. Mr. Barber supported the motion.

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

Motion approved.

**Grant-Perry Development Company, LLC and Brookside Acquisitions, LLC**

Sucher Family Trust. Representative, Robert I. Cohen pursuant to Powers of Attorney. Purpose of request: Applicants seek a variance from all applicable provisions of the Township's zoning ordinance, including, but not limited to, section 23.02A and section 23.03, that would otherwise prohibit the development of the proposed single family manufactured housing community consisting of 709 units as depicted on the attached plan.

Roger Meyers, present on behalf of the owner of the option on the property that is located on the southeast corner of Twelve Mile and South Hill Roads, which is known as the Sucher Farm property. He stated that he is here this evening, on behalf of the applicants, to seek a variance from all divisions in the Township Zoning Ordinance that would otherwise prohibit a development of the proposed 709 unit single family manufactured housing development that is depicted on the plan that was submitted as part of the application. He stated that the basis for the variance request is very simple. The application of the Township Zoning Ordinance provisions create a practical difficulty and an unnecessary hardship in the development and use of the property by rendering the development and use of the property economically unfeasible. He stated that in support of the application there is a significant amount of information that has been submitted. He stated that he does not intend to go over this in detail this evening, but would like to highlight a few points.

Mr. Meyer stated that they submitted the affidavit of Brian Wenzel, a professional Engineer and Chief Operating Officer of Atwell-Hicks. He stated that Mr. Wenzel indicates that Atwell-Hicks undertook and analysis of the cost to develop the property under the existing zoning restrictions. Based upon Atwell-Hicks professional opinion, they determine that the cost to develop the property is approximately \$15,200,000. He stated that as part of Mr. Wenzel's affidavit, there is an itemization and break down of the cost that comprised this number to develop the subject property. He stated that in addition Atwell-Hicks prepared a site plan of the extent of density that is permitted by

the Township Zoning Ordinance with regard to the property to determine the maximum density over which those costs could be economically amortized. He stated that as depicted on the site plan and as indicated in Mr. Wenzel's affidavit, the maximum density that is permissible on this property, based upon a strict application of the Township Zoning restrictions, is 130 lots. He stated that taking the number that Atwell-Hicks determined to develop the property, \$15,200,000, and amortizing that over the maximum density that is permitted by the Zoning Ordinance, 130 lots, it comes up to approximately \$117,000 per lot would be the cost to develop the property. He stated that all this is set forth in the itemization that was provided by Atwell-Hicks.

Mr. Meyers stated that in further support of the variance application, they have also submitted an affidavit from Richard Lewiston, President, Lewis & Smith Building Corporation Real Estate Development Company. He stated that Mr. Lewiston has been in the business of real estate development in Southeast Michigan, which includes western Oakland County, Washtenaw County and western Wayne County for approximately 40 years. He stated that Mr. Lewiston indicates in his affidavit that he has reviewed the Atwell-Hicks information and his professional opinion the costs itemized by Atwell-Hicks are reasonable and would be the actual cost incurred in order to develop and use the property under the existing zoning restrictions. He stated that Mr. Lewiston also indicates that in his professional opinion the market value, if the property were developed with 130 lots under the existing Zoning Ordinance, would not exceed \$100,000 per lot, therefore, the cost to develop the property would be at least \$17,000 per lot greater than the value of each of the developed lots. He stated that Mr. Lewiston also indicates that the development of the this property is not economically feasible for the developer's use under the Zoning Ordinances.

Mr. Meyer stated that with regard to the economic feasibility issue, they have also submitted, in support of the application, the affidavit of Mr. Dale Edsel, who is a certified appraiser with extensive amount of experience, as indicated in his resume which is attached to his affidavit. He stated that Mr. Edsel, in his affidavit, further confirms what Mr. Lewiston indicated in his affidavit, in that upon his market analysis, it is his professional opinion that the cost to develop and use the property significantly exceeds the market value of the developed lot.

Mr. Meyer stated that he would like to add, with regard to the services and utilities applicable to the project, there is existing capacity in the Township's sanitary sewer and water systems to accommodate the proposed development. He stated that with regard to the traffic that could be generated from the proposed project, they submitted a report from Birchler, Arroyo, Traffic Engineers, who were retained by the applicant, who concluded in their report that there would not be a detrimental impact to the roads from the proposed development and that Twelve Mile and South Hill Roads would be able to safely accommodate the traffic.

Mr. Meyer stated that in conclusion they submitted the report from Metro Transportation Group, which is a Traffic Engineering Firm that was actually retained by the Township. He stated that Metro Transportation Group was retained by Giffels-Webster Engineers, the Township Engineering Consultants. He stated that Metro Transportation Group was asked to review the Birchler, Arroyo report to determine whether or not it was accurate. He stated that Metro Transportation Group not only confirmed the opinions of Birchler, Arroyo but as indicated in their report, they believe that Birchler, Arroyo actually over estimated the potential traffic that could be generated from this development. He stated that they also confirmed the consequences because there was actually an over estimation, a conservative approach that was taken by Birchler, Arroyo, and that the Township's Traffic Engineer further confirms that there would not be a significant impact on the roads if the property were developed in accordance with the plan that has been submitted.

Mr. Meyer stated that the information that has been submitted conclusively establishes that the development and use of the property under the existing Zoning Ordinances restrictions creates an unnecessary hardship and practical difficulty by rendering the development and use of the property economically unfeasible, for which they are requesting the granting of the variances that

are sought in the application.

Mr. Barber stated that Birchler, Arroyo and Metro Transportation say that nobody drives on the roads. He stated that there are people do live and drive on these roads. He stated that he finds it strange that the reports indicate "zero". He stated that this development will increase traffic and it will also increase the need for maintenance on the roads. He stated that some of the things that he has heard this evening don't jive with what he has read.

Mr. Hawkins questioned if the applicant is requesting that the Zoning Board of Appeals grant a variance so that this property can be rezoned. Mr. Meyers responded that the Zoning Board of Appeals Boards do not, by law, have the authority to grant rezoning of property. He stated that all they are asking for is a variance, which is the full extent of what the Zoning Board of Appeals could possibly grant.

Mr. Olson questioned if they are asking for a use variance so that they can use the property. Mr. Meyers responded that it can be characterized as a use variance, but it is a variance request relative to the Schedule of Regulations.

Mr. Seymour stated that this is a use variance and that it is also, as communicated, some requested variances from dimension. He stated that as far as the latter is concerned, it is deficient because the applicant has not presented to the Board a drawing indicating the variance that they need for each particular lot. He stated that with regard to the use variance the Zoning Board of Appeals does not have the power to grant this under the Township Ordinances.

Mr. Meyers stated that when this matter was before the Township Board for rezoning, the predecessor Counsel, Mr. Jacobs, had submitted an inquiry when the Township Board denied the rezoning. He stated that Mr. Jacobs spoke with Mr. Quinn in regard to pursuing a variance, and Mr. Quinn indicated that the Township Zoning Board of Appeals did not have the authority to grant the relief that was requested. He stated that, as everybody is aware, this subject property has

been

in litigation and the Counsel that was retained by the Insurance Company argued that this matter could have been and should have been pursued before the Zoning Board of Appeals. He stated that he is here tonight as a consequence of what has been argued in court, that this could be and should be pursued before the Zoning Board of Appeals. He stated that it was originally not pursued based upon the information that was originally provided by Mr. Quinn, which was that the Zoning Board of Appeals cannot grant a use variance.

Mr. Olson stated that he believes that there was a Supreme Court case between the two time periods that requires the applicants to address the concerns directly to the Zoning Board of Appeals.

Mr. Hawkins questioned if there has been any evaluation made as to what quantity of lots on this site would be economically feasible. Mr. Meyers responded that this would be dependent on the extent to which there would be variances granted. He stated that to answer the question, it would be "no". He stated that the only thing that they can work with now is what is a strict application of the ordinance. This is the criteria that this Board must employ when determining whether it is appropriate to grant a variance. He stated that they can't look at whether there will eventually be a PUD or a rezoning, which the Zoning Board of Appeals does not have the authority to do either. He stated that the only thing that they can look at is what is the strict application of the Ordinance, which is what they have done. He stated that the strict application of the Ordinance only permits 130 units and this is not economically feasible.

Mr. Hawkins stated that if a theoretical variance is granted, it would grant substantial relief somewhere between 130 and 709 units. Mr. Meyers stated that there would be relief that would

allow the use of the property in an economically feasible manner.

Mr. Meyers stated that he is here based on the arguments made by the Township's Insurance Company's Attorney. He stated that this is an appropriate use of the property and that they have demonstrated that the property, based upon the strict application of the Ordinances, is not economically feasible for development and use.

Mr. Barber stated that the Township Attorney has told them that the applicant has not asked for anything specific, such as variances for lot dimensions. He stated that the applicant is asking the Zoning Board of Appeals to change the Ordinance just for them.

Mr. Seymour stated that it is really two things, one the Zoning Board of Appeals does not have jurisdiction to do what is being asked. He stated that to the extent that they are asking for variances, i.e., side yard variances, etc., the application is deficient because they have not put forth anything for which the Zoning Board of Appeals can grant a variance on.

Mr. Meyers stated that he filled out the application and has not received any comments or correspondence from the Township Attorney that there is any deficiencies in the application. He stated that the ordinance and the application requires that certain information be provided, which he stated he has done. Mr. Seymour referred Mr. Meyers to Section 8.03 of the Zoning Ordinance which sets forth what has to be done. He stated that he does not think that the application meets these requirements.

Mr. Olson briefly discussed some of the information indicated in Mr. Lewiston's affidavit.

Mr. Erwin asked if there were any public comments regarding this issue.

Richard Gordon, 26890 South Hill Road, stated that his property borders the property in question. He stated that Mr. Meyers made some points, but he is sorry that he has to disagree because 2-1/2 years ago the Planning Commission approved this property for 158 homes. He stated that the developer was given eight homes as a bonus. He stated that between the Planning Commission and the Board, they went through their requests and a year later the developer came back with the modular home park plan. He stated that it is his understanding that the developer sued the Township and the court ruled in the Township's favor, in the fact that the Township did not have to have another modular park since they already had sufficient low income homes. He stated that another point is that it must be on a paved road. He stated that the only thing that they were proposing the last time was to pave only to their entrance. He felt that this does not constitute a paved road. He stated that this is wasting the Township time and it is wasting the Board's time and this should be a done deal. He stated that he doesn't understand why they just don't sell one acre or five acre lots.

Tom Gordon, 26890 South Hill Road, stated that with regard to the low income housing in the Township, the Township meets or exceed the requirements for this. He stated that the Township does not need any more. He stated that the Township is already at their tax limit with the School System. He stated that the roads have to be taken care of and the police and fire services have to be paid for. He stated that these types of parks do not offer the funds to support the Township services, therefore, the taxes go up for residential areas. He stated that people, right now, are at the brink of losing their properties and homes because the tax rates keep going up. He stated that with regard to traffic, the roads just can't handle it. He felt that the \$12,000,000 discussed is too high for developing this property, in his opinion.

Paul Budesheim, 29755 Milford Road, stated that he is new to the Township. He stated that from listening to what was being stated this evening, a 709 unit mobile home park is not the only option that is available for this property. He stated that with regard to traffic, he noted that

Milford Road traffic has become quite severe. He stated that this is a serious condition and can't handle any more traffic that would be generated from this proposed development. He stated that the infrastructure in the Township cannot handle another 709 cars from this development.

Mr. Hawkins made a motion in regard to the applicant Grant-Perry Development Company, LLC and Brookside Acquisitions, LLC, regarding the Sucher Family Trust, in regard to the applicant's request for a variance from all the applicable ordinances within the Township, he submits that according to Section 8.02, Authority of the Zoning Board of Appeals, A. General Authority, the Zoning Board of Appeals does not have the authority to grant use variances, which is being requested. Also, in regard to Section D, Variances, a lesser variance could be adhered, it has been implied that something less than what is being requested would meet the intent of the Ordinance under various other options but there is insufficient information to address those issues relative to Section D. Also, there is objection from the community in regards to this and and the impact relative to the services of the Township. Ms. Johnson supported the motion.

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

Motion approved.

**Heide Oprisiu, 57060 Bonne Terre, New Hudson, Sidwell 21-04-477-009**

Applicant is requesting three variances. 1) A 14' side yard setback variance. 2) A 31.5 foot front yard variance. Variance requests one and two are from Lyon Township Zoning Ordinance Chapter 36, Schedule of Regulations. 3) Applicant requests a 78.5 square foot variance with regards to the allowable size of an attached garage. Variance requested is from Chapter 18 of the Lyon Township Zoning Ordinance.

Ms. Oprisiu explained that since submitting the paperwork some of the figures have changed minutely. She explained that she is requesting the variances to allow her to add the addition of an attached garage and storage area. The layout of the property prohibits them from building on either of the other two parcels that they own. She stated that if the Board considers the 013 parcel, the variance from the north then she would not require a front yard variance. She stated that if the measurements are taken from the north border, without this parcel, then the existing structure does not meet the setback requirements. She stated that they also own parcel 12 and a portion of the side yard abuts Mr. Copeland's property. She noted that Mr. Copeland is here this evening, if the Board has any questions for him. She stated that she has spoken with all the neighbors, which have indicated that they don't have a problem with what she is proposing.

Mr. Hawkins questioned if it is a private road that runs down parcel 013. Ms. Oprisiu responded that it is not a private road, it is a common driveway. Mr. Phillips stated that there is no easement recorded and that parcel 013 is strictly owned by Ms. Oprisiu. Ms. Oprisiu stated that it is a 60' wide by 400' long with a asphalt slap down the middle that is used by all of the residents who live on Bonne Terre. She noted that parcel 012 is a non-buildable parcel and that it would not meet any of the setbacks.

There was discussion with regard to the layout of the lots and the common driveway situation.

Mr. Erwin questioned what the hardship would be. Ms. Oprisiu responded that the hardship exists with the layout of the property. She stated that there is really no other alternative for them to build a storage area and garage. Mr. Phillips noted that Ms. Oprisiu intends on turning the existing garage into living space. Ms. Oprisiu stated that they cannot expand to the west because of the septic field. She stated that if they were to expand on the front of the west side of the house, they would still require a variance. She noted that parcel 012 is not buildable and 013 is being used as

a common ingress and egress, which she indicated that she would not prevent this. She noted that they do have issues with crime. She stated that two of their vehicles were broken into recently.

Mr. Erwin stated that the last time he talked with Ms. Oprisiu she was quite passionate about the Continental issue. He questioned why she is expanding rather than moving. Ms. Oprisiu responded that she is still very passionate with regard to the Continental issue, but that she cannot afford to move at this time and does need the additional storage areas. She stated that she wants to get her cars parked inside and that she doesn't want her insurance rates to keep going through the roof. She stated that she did indicate in her letter that her kids do race cars for a hobby and take them to shows. She noted that they had over \$6,000 worth of damage done to a car and that insurance is not going to cover it. She stated that they would like to get the cars inside.

Ms. Oprisiu stated that with the layout of their property, this was the only alternative that they could come up with.

Mr. Erwin asked if there were any public comments.

Mr. Copeland, Milford Road, stated that he feels that Ms. Oprisiu should be allowed to build the garage. He stated that he feels that she needs the garage.

There was further discussion with regard to the variances requested. There was also some discussion as to other locations for the garage. Ms. Oprisiu stated that they have spoken with both an Architect and a Builder who have stated that aesthetically, this is the best option.

Mr. Barber questioned what is west of this property. Ms. Oprisiu responded that it is Dan Cash's property, which is a little over two acres.

Mr. Hawkins stated that he doesn't really have a problem with this other than the fact someone might come and try the same thing. He stated that what is unique here is that this is an older part of the community and the lots were split up real crazy before there were any ordinances developed. He felt that it is reflective of the time that it was generated. He feels that they owe some leniency relative to the application and the ordinances.

There was discussion with regard to combining her lot with lot 013. Mr. Seymour stated that there could still be an easement and that by doing this they may not need the front yard variance. Ms. Oprisiu stated that when they had the Attorney draw up the easement agreement, they were advised not to join the properties. She stated that if they ever sold the property that it would go with the house, if they were joined.

There was discussion with regard to the amount of variance that is needed. It was determined that the variance needed is a lot more than 78.5 square feet, based on the size of the home and the size of the addition. Mr. Hawkins noted that they have denied similar requests for variances when the garage is larger than the home.

If parcel 009 was combined with parcel 012, Mr. Olson questioned if it was possible for a detached accessory building. Ms. Oprisiu responded that they did look at this option, but would require many variances also because parcel 012 is un-buildable. She noted that parcel 012 is 33' wide by 234' long.

Ms. Oprisiu stated that she will work with Mr. Phillips to even out the dimensions. She stated that if she has to build a mud room then she is willing to do so. Mr. Phillips stated that if Ms. Oprisiu is willing to work within the parameters of the ordinance with regard to size, then all that would be needed is the front yard and side yard variances. Ms. Oprisiu indicated that she is in agreement



*Deby Cothery*

Deby Cothery  
Recording Secretary