

**CHARTER TOWNSHIP OF LYON
ZONING BOARD OF APPEALS
MEETING MINUTES
October 17, 2005**

Approved as submitted on November 21, 2005

DATE: October 17, 2005
TIME: 7:30 PM
PLACE: 58000 Grand River

Call to Order: Mr. Erwin called the meeting to order at 7:32 PM.

Roll Call: Present: William Erwin, Chairman
Michael Barber
Michael Hawkins
Tony Raney
Troy Schilling, Trustee

Also Present: Matthew Quinn, Township Attorney
Chris Olson, Township Superintendent
Al Hogan, Building Official

Guests: 11

**1. APPROVAL OF MINUTES:
- Regular Meeting of September 19, 2005**

Mr. Barber made a motion to approve the minutes from the regular meeting of September 19, 2005 as written. Mr. Raney supported the motion.

Voice Vote: Ayes: All
Nays: None

Motion approved.

2. PUBLIC HEARINGS:

Roger Milarch, Milarch Nursery, 28500 Haas Road

Sidwell 21-11-426-025. Applicant requests variance from section 13.05, to expand a legal non-conforming office structure serving an agriculturally-related business in a residential district.

Mr. Milarch explained that they are reconfiguring an existing building which is a 20' x 22' garage. He stated that they plan on taking this building down and replacing it with a 14' x 28' structure. He stated that they would like to add three offices in a 14' x 34' building.

Mr. Erwin questioned if the offices are related to the business. Mr. Milarch responded that they are. Mr. Erwin questioned if anything is grown on the property. Mr. Milarch responded that everything that they do is put in the ground, so technically it is growing for a short duration. He stated that they used to have liners, but probably have about two acres of this left. He stated that this is a wholesale nursery farm business.

Mr. Milarch stated that it was pointed out at the Planning Commission by the attorney, Mr. Seymour,

that they are a non-conforming use based on the count of houses in the surrounding area. He noted that this business was there long before any of the houses were ever constructed. He stated that when they originally purchased the property they bought 10.03 acres so that they would qualify to have a wholesale business on the property. He stated that they then purchased another 5 acres of the same zoning, giving them 15.03 acres. He stated that they then purchased another 14.3 acres of light industrial zoning. He noted that they have operated on this property since 1979 with no comments or complaints from the Township or surrounding neighbors. He stated that he has always been of the opinion that it is a very relaxed relationship between themselves and the Township.

Mr. Barber gave the Board an update of what happened at the Planning Commission with regard to this issue. He read the motion that was made at the Planning Commission.

Mr. Hawkins questioned what the intended use is for the addition of the offices. Mr. Milarch responded that at the last meeting he stated that they were blessed with five children, four of which work in the business. The extra offices will be for their use. He stated that they now have a 20' x 22' garage that they are all kind of stuffed into right now. He stated that they would like to expand so that everyone has their own space to call home.

Mr. Hawkins stated that these people have been here since 1979 and the ordinance did not come into play until much later than this. He asked Mr. Quinn if it would be a legitimate evaluation on the part of the ZBA that this is an existing residence prior to the zoning ordinance and that this should be exempt. Mr. Quinn responded that it would not be exempt, but this certainly is a practical difficulty that they have in seeking the expansion of their building. He stated that the practical difficulty is a finding that the ZBA can easily make in granting the variance to approve the site plan expansion.

Mr. Erwin stated that him and Mr. Raney are in the same type of situation. He asked Mr. Quinn if they would be allowed to do this also. Mr. Quinn responded that in a Zoning Board of Appeals case each case is decided on its own facts and circumstances. He stated that it does not carry over to another case, because no two cases are similar.

Mr. Erwin stated that in the past this ordinance has not affected agricultural property. Mr. Quinn stated that as he looks at this, there does not seem to be any specific special attention paid to agricultural property. He stated that from a legal stand point, if there is a conforming use and then later there was an ordinance that was adopted making it a non-conforming use, they would be subject to the ordinance but the applicant must come to get relief from the ordinance from the Zoning Board of Appeals.

Mr. Raney questioned if the Right to Farm Act supercedes Township law. Mr. Quinn responded that it does not. He stated that it would depend on the specific act. He stated that there are certain portions of the Right to Farm Act that does supercede but those would be State standards and the local communities can't pass ordinances against.

Mr. Olson noted that he provided the Board with the McKenna Associates, Inc. review letter that was discussed at the Planning Commission meeting regarding this issue. He noted that this particular case has a mix of zonings, which make this a unique case.

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

George Boston stated that he lives across the street from this site and that he does not have any

objections to what is being proposed.

Mr. Hawkins stated that the issue here is that the applicant has operated his business since 1979, which is prior to the ordinance, and has operated his business in this manner for years. He felt that it is fair for them to grant a variance based on the business and continued business as it is right now in the current application. He stated that they are not asking for anything new or to change or modify the business, but asking for the opportunity to continue his business.

Mr. Barber questioned if the percentage applies here. Mr. Hawkins responded that they applicant would be exempt if he increased less than 25%.

Mr. Milarch questioned if the Board considers just the office building or all the building in the 25%. He noted that they do have an 80' x 100' pole barn that is used for the business. It was noted that this is a separate building and is not being added onto.

Mr. Barber noted that if the expansion was less than 25% the applicant would not need a variance.

Mr. Milarch stated that they are taking down 400 square feet and adding 1,300 square feet.

Mr. Hawkins made a motion in regard to Roger Milarch, Milarch Nursery, 28500 Haas Road, Sidwell #21-11-426-025, request for a variance from Section 13.05 to permit a modification to an existing non-conforming structure on a residential district zoned property. The applicant has demonstrated that the property and its use and application has been in existence since prior to 1979. The modifications for increasing the existing non-conformity is to an existing structure which is retaining the existing use application for this property. The applicant has demonstrated that in good faith he has served the community and the Township relative to the ordinances and there is no unreasonable objections from neighbors or other parties involved. It is recommended to the Board that the variance be granted from Section 13.05 to permit the expansion of an existing non-conformity. Mr. Raney supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved.

Talon Development, The Learning Experience Day Care Center, at the intersection of Rosemont and 10 Mile Road, within the Woodwind Planned Development. Sidwell 21-23-400-015.

Applicant is seeking (a) an ordinance interpretation to install building and free-standing signs for a non-residential day care use in t a predominantly residential planned development district, and (b) variances from the sign size, number and location in accordance with section 16.07 and 16.05.

The Woodwind Planned Development Agreement does not allow for signs other than entryway boulevard signs. Applicant also has an option to request an amendment to the PD Agreement.

Steve VandenBossche, Talon Development Group, explained that they are really not asking for a variance on the sign because the ordinance does not specifically have information about signs. He stated that they are here tonight to find out what they can have and where it can go. He stated that one of the things mentioned in the notice of public hearing is that the Woodwind PD Agreement does not allow the signage. He stated that actually, the Woodwind PD Agreement does not have any language with regard to signage. He stated that the Township Attorney and the Township Planner indicated that this would be an avenue that they could take.

Mr. VandenBossche, using a displayed site plan, briefly reviewed the site. He described the size of

the building and the site. He stated that they are asking the Board for their determination with regard to a sign. The proposed sign would be located near the intersection of Rosemont and Ten Mile Road behind the existing wall. He explained the reason for the location that they have selected for the sign. He stated that he won't go through the individual ZBA criteria since he has included them in the package of information provided to the ZBA. He stated that he would be happy to answer any questions regarding how they came to the conclusions that they did.

the Mr. VandenBossche stated that the other issue that they are here for this evening has to do with

vinyl fence. He pointed out the area that is proposed to be fenced. He noted that there will be two play areas, one larger than the other. The larger play area will be enclosed with a 6' high chain link fence, which is allowed by the ordinance. He stated that they are asking for a variance in order to make the fence a vinyl privacy fence but have opted to plant some screening around the fence area. He noted that they would like to minimize the visibility into the play area. He stated because of this, this issue can be removed from consideration this evening.

Mr. VandenBossche stated that there is nothing that specifically talks about allowed signage in the PD Agreement for Day Care Centers. He noted that churches are allowed to have signage in a residential district. He stated that the sign that they are proposing is very much like a church sign and noted that a church can have as many as two signs because of multiple uses, i.e., church, school, day care, etc. He stated that the square footage of the sign that they are proposing is very much in keeping with the spirit and intent of signs that are allowed for churches. He stated that they based their request for signage on what might be similar for a church.

Richard Weisman, Owner/Operator of The Learning Experience Day Care Center, stated that he is available to answer any questions that the Board may have with regard to the signage issue.

Mr. Barber summarized what took place at the Planning Commission meeting with regard to this issue.

Mr. Olson stated that this could be considered a flaw in the PD Agreement for Woodwind. He noted that the plan does allow for day care use ancillary to the residential development. He stated that there has been a lot of discussion with regard to not commercializing the Ten Mile Road corridor. He stated that the sign should have been addressed within the PD Agreement, but was apparently overlooked.

Mr. Olson stated that what makes this awkward is that this is an approved use within the PD Agreement, which is its own zoning district. He stated that they are trying to shoehorn a solution by using an interpretation similar to what church uses are. He stated that this particular proposal has a sign that is higher than 5' from grade as well as a 21 square foot sign as opposed to a 20 square foot sign. He stated that the applicant stated at the Planning Commission is that the nature of this business is not an impulse of drive-by business, the parents park and take their child in or park and pick up their child.

Mr. Olson stated that the applicant is correct in that the ordinance does not call for specifications for non-residential uses that are within a residential district. He noted that this is a rather awkward omission. He stated that he told that applicant that he felt that this should be an aspect of the planned development and that the PD should be amended to take care of this as opposed to the zoning ordinance.

Mr. Olson stated that he does not have any issues with the fence. He questioned if the pink area on the plan is the area that will be fenced. The applicant indicated that this is correct.

Mr. Olson stated that with regard to the signage issue, he provided the Board with some additional information from the Planning Commission because the booklet of information provided did not show where the existing monument sign for the subdivision will be located.

Mr. Barber stated that this could probably not be mistaken for anything but a daycare center. He stated that it is right at Ten Mile Road and it is not that far back from the road. He felt that it will be visible from the road. He noted that the entrance to the building will have children's building blocks on it. He felt that the people who will be going to the daycare will know where they are going.

Mr. Weisman stated that the building sits 105' back from the road. He stated that the front entrance would be another 50' to 60' back. He stated that they do not believe that anybody driving at 35 to 40 mph will see the front entrance. He stated that he would agree, if the building were closer to the road. He stated that facing that side of the road it appears to be strictly a brick building that would look like the homes that are being constructed. He stated that their concerns are that a parent in a car with their children may be dealing with their child and possibly miss the turn. He felt that if a parent misses the turn they may be inclined to stop short or do an illegal u-turn.

Mr. Weisman stated that they clearly feel that they need to identify the building somehow. He stated that they are more than willing to decrease the size of the sign, but they just need something to identify the building. He stated that they do understand that the same children will be coming to the center everyday, but most of the children come from two-income families where both parents need to get to work. He felt that the sign is really a safety issue.

Mr. Barber stated that he has never gone past a place where he was going. He felt that there will not be a problem with finding the building because there will probably be about 50 cars lined up to make a left turn into the site.

Mr. VandenBossche stated that there is no sign proposed for the building. He stated that they were under the understanding from the Township that it would be one or the other. He stated that the monument sign is the preferred method. He stated that the building is completely surrounded by trees, therefore, a sign on the building would be completely useless.

Mr. Barber stated that the columns on the front of the building are building blocks which could be considered a sign. Mr. VandenBossche stated that he did have a conversation with Chris Doozan regarding this as to whether or not it should be on the agenda. He stated that Mr. Doozan's comments was that he did not have the opinion that the building blocks would be considered as signs. He noted that they are of a similar opinion. He stated that there is no "Daycare on it", there is no "TLE" on it, they are simply ABC blocks. He stated that the issue here is that the zoning ordinance does not speak to this, so this is really what the hardship is.

Mr. Olson stated that a PD is really its own ordinance and that is where this issue needs to be taken care of. He stated that the Planning Commission and Township Board along with the developer of this planned development should have worked this out to begin with. He stated that this is one option the applicant has, go to the Zoning Board of Appeals or the other option is to go back and amend the PD. The Board members felt that the PD should be amended.

Mr. VandenBossche questioned if the zoning ordinance doesn't apply, then shouldn't an applicant come to the ZBA for an interpretation. Mr. Erwin responded that the ZBA is its own separate law, so to speak. Mr. Olson stated that it is its own zoning set by contract for that particular area. Mr. VandenBossche stated that he was informed by Mr. Doozan that when the PD address something then the zoning ordinance applies. He stated that they were not aware of the issue until

they received the review letter for the plan review. He stated that he was told to put it on the site plan and it would be approved through the site plan approval process.

Mr. Quinn stated that there is no question that this is an unusual situation. He stated that he does not recall the Township ever running into the same situation before. He stated that they now know that this is something that can be addressed in the long term by an ordinance amendment. He stated that the applicant has two options. He stated that they are coming to the ZBA with an option that as available to them. He stated that because this is an unusual situation that is not covered by the zoning ordinance, some consideration could be given to this. He stated that the applicant probably wanted to come to the ZBA first because this is the quickest way to get a solution. He stated that the other option is to have an amendment to the PD Agreement that would go through the usual process which he explained. He stated that from a legal standpoint, he believed that the applicant can get relief from either option. He stated that it is up to this body, the ZBA, to decide if it wants to make a decision or not. He stated that if the ZBA does want to make a decision, there is some room in the ordinance that would allow them to make one. He stated that if the ZBA feels that this is something that is better handled by the Board of Trustees, then the ZBA can decline to act stating that they have no jurisdiction. He stated that the applicant would then have to file an application for a PD amendment.

Mr. Erwin stated that his interpretation of the Zoning Board of Appeals is that they take applications when all other options are exhausted. He stated that he feels that they are stepping over their bounds on this.

Mr. Hawkins stated that if they were to apply their ordinances, this would be a non-conforming use in a residential district and they would only be allowed a wall sign that could not be illuminated.

He

stated that if they were to apply the ordinance the answer would have to be that they could not do this.

Mr. Quinn noted that the proposed sign is not on the daycare's property. He stated that this would make it even more part of the planned development because it is not on the parcel that the daycare owns. Mr. Olson noted that they Township has a prohibition on off-site signage. Mr. Quinn stated that the only way to handle this situation would be through the PD.

After further discussion back and forth, it was determined that the applicant needs to make an application for an PD amendment.

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

Mr. Hawkins made a motion in regard to The Talon Development, The Learning Experience Day Care Center at the intersection of Rosemont and Ten Mile Road, we have reviewed the applicant's

request and consulted with the Township Attorney and would advise Talon Development at this time to pursue and amendment to the Planned Development Agreement for this property and any avenues that they have for relief from the planned development process with the Township Board prior to addressing the issue with the Zoning Board of Appeals. Mr. Schilling supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved.

3. GENERAL BOARD DISCUSSION NONE

4. ADJOURNMENT

Mr. Erwin adjourned the meeting at 8:33 PM.

Respectfully Submitted,

Deby Cothery / Catherine Culver

Recording Secretary