

Charter Township Of Lyon
Zoning Board Of Appeals
Meeting Minutes
April 17, 2006

Approved as written on May 15, 2006

Date: April 17, 2006
Time: 7:30 PM
Place: 58000 Grand River

Call to order: Mr. Erwin called the meeting to order at 7:35.
Roll Call:

Barber, Mike (PC Liaison)
Erwin, William
Hawkins, Michael
Raney, Tony
Schilling, Troy (Brd Liaison)

Also present:

Philip Seymour, Township Attorney
Al Hogan, Township Building Official
Chris Olson, Township Superintendent
Alexis Marcarello, Township Planner

Guests: 7

Approval of minutes:

1. Approval of March 20, 2006 meeting minutes.

Mr. Barber made the motion "to approve the March 20, 2006 meeting minutes as written."

Voice vote:

Ayes: all
Nays: none

Motion approved.

Public Hearings:

1. Richard Aldrich, 24815 Wedgewood Drive, South Lyon, Sidwell # 21-23-326-007. Applicant requests a 1.6 foot variance of the rear yard setback required in the PD Agreement for Woodwind Planned Development to allow for construction of a sunroom.

Richard Aldrich, 24815 Wedgewood Drive – Mr. Aldrich is asking for a 1 ½ foot variance to build a sun room. There will be no heat in the room. The exterior dimensions are 13 feet from the house to the rear property line (from the door wall to the rear property).

Mr. Erwin asked if the dimensions of the addition were 12X10 by 10X5. Mr. Aldrich commented that Mr. Erwin was looking at the lower level deck. Mr. Erwin asked if the house was already constructed. Mr. Aldrich answered yes; he is living in it now.

Mr. Erwin asked if the sunroom was built yet. Mr. Aldrich answered no. They want to build a deck and put a porch on top the deck.

Mr. Raney asked if Mr. Aldrich needed approval from the homeowner association. Mr. Hogan commented that is why Mr. Aldrich is requesting the variance, because it is a foot and a half outside the building envelope.

Mr. Aldrich commented that he sent letters to his neighbors and they have no problems with it.

Mr. Erwin asked the Zoning Board if they have seen something similar to this already. He asked if they had the right to alter a subdivisions PD. Mr. Seymour commented that the applicant would have to get permission to vary from the deed restrictions.

Mr. Aldrich commented that the association said it was no problem as long as the Zoning Board of Appeals approved it. There are no houses behind them. It is wetlands, so nothing will ever be built there.

Mr. Olson asked if there were meeting minutes or an architectural control committee. Mr. Aldrich commented that there would be a letter from Curtis because they are running the association. Mr. Olson commented that it would be appropriate to get a letter from Curtis.

Mr. Schilling asked if the Zoning Board would need that letter before anything was approved. Mr. Seymour commented that the Zoning Board could approve a variance subject to the approval of the homeowner association.

Mr. Olson commented that the Zoning Board has had three cases from Woodwind. Two of those have been turned down, but they have been enclosed structures.

Mr. Barber commented that there are only 20 homes at Woodwind and the Zoning Board of Appeals has seen 3 homes ask for a variance and the Zoning Board has not allowed many of them because of the lot size.

Mr. Erwin asked what the hardship was. The deck is not built yet. The Zoning Board is designed to handle hardships. The Zoning Board has to look to see if the zoning ordinance puts undue restrictions on you. Where is the hardship?

Mike Leech, 10330 Glen, White Lake – Mr. Leech commented that part of the hardship is that his house sits one foot from the setback. Due to the way the house was constructed, no matter what is done, based on the side yards, it is going to require a variance. Mr. Erwin commented that was the builder’s problem that turned into Mr. Aldrich’s problem. Mr. Leech said yes, now it is Mr. Aldrich’s problem.

Mr. Olson said that does not show a hardship.

Mr. Schilling asked if Mr. Aldrich was aware of the setbacks when the house was purchased. Mr. Aldrich answered no.

Mr. Hawkins asked if there was any reason from a construction standpoint that it could not be made a 1.5 feet shallower. Mr. Leech answered no. They were trying to create enough surface area so the homeowner would have some livable space. Mr. Hawkins commented that the Zoning Boards task is not to meet needs, but resolve hardships. You can build your deck, you can build within your limits.

Mr. Hawkins made the motion “in regards to the application of Richard Aldrich, 24815 Wedgewood Drive, South Lyon, lot 7 in the Woodwind Village Condominium Complex, applicant has requested a 1.6 foot variance from the rear yard setback variance. The setback has been established by the planned development of Woodwind Village. The applicant has not demonstrated sufficient information to grant or circumstances that would allow a variance. I would recommend to the board that the request be denied.” Mr. Schilling supported the motion.

Voice vote:

Ayes: all

Nays: none

Motion approved.

2. Quadrants, Inc. and VS-17, L.L.C. Representative: Robert M. Carson, Carson Fischer, P.L.C., on behalf of VS-17, L.L.C. Purpose of request: Applicant seeks to 1) appeal the decision of the Lyon Township Planning Commission of February 13, 2006 regarding certain conditions of approval of AP-05-48, and seeks 2) a use variance to exclude parcel 21-03-352-006 from the requirements of the Lyon Township Tree Protection Ordinance on the subject property located south of Grand River Avenue, at the end of Helene Drive.

Karen Safran, 4111 Andover Road, Bloomfield Hills – Ms. Safran is seeking an appeal from the conditions that were placed by the Planning Commission. There is an issue with three of the four conditions that were placed. Ms. Safran was also seeking a use variance excluding the property from the tree ordinance. Ms. Safran wished to discuss the use variance first. There is a provision in the zoning ordinance in section 8.02 C, which talks about use variances not being allowed. Ms. Safran wanted to see if the Zoning Board of Appeals felt they had jurisdiction over this matter. Mr. Hawkins commented that it is the Zoning Board of Appeals understanding by direction of the Township Board and counsel that the Zoning Board of Appeals does not have the authority to grant use variances.

Mr. Seymour commented that technically the tree ordinance is a police power ordinance and is not in the zoning ordinance. The Zoning Board has the power to pursue the ordinance and interpret the tree ordinance. Ms. Safran is saying that they are requesting a use variance. Mr. Seymour is not certain that is correct. Mr. Hawkins was correct, the Zoning Board of Appeals does not have the power to grant a use variance. Mr. Seymour is questioning if Ms. Safran is really requesting a use variance. If that is what they are requesting, the ZBA does not have the authority to grant a use variance. Mr. Seymour does want everyone to understand that the tree ordinance is not part of the zoning ordinance. It is part of the police power ordinance.

Mr. Erwin asked if the Zoning Board had jurisdiction over the police power ordinance. Mr. Seymour commented that the ZBA could interpret it. The ordinance says if the tree ordinance applies to a site plan and the Planning Commission makes a final determination and then there is an appeal regarding the tree ordinance, it would go to the Zoning Board of Appeals. If the Planning Commission is not the last step and the Township Board is the last step, once the Township Board makes the final determination an appeal regarding the interpretation of that ordinance would go to the Zoning Board of Appeals. In this particular case, a tree ordinance was involved with a site plan approval and the Planning Commission was the final arbiter. It would go from the Planning Commission to the Zoning Board of Appeals.

Mr. Hawkins commented that the way it was addressed in the agenda and in the application was for a use variance for a property. That is why he looked at it that way. Mr. Hawkins asked Ms. Safran if this was being asked for or requested. Ms. Safran said that one component was the request of the use variance, if the board had jurisdiction over the matter. The second component was the issue with the tree ordinance. The Planning Commission conditioned the approval on the submission of a tree plan to the Township Board. It is our position in reviewing the tree ordinance that was not an appropriate action for the Planning Commission to take. In this circumstance, which was a site plan approval, Township Board action is not required under the tree ordinance. The Township Board action is only necessary under a tree plan if the overall plan that the Planning Commission is looking at is something that needs to go to the Township Board. In this instance, the site plan does not go to the Township Board, so the entire tree ordinance issue should have been disposed of or dealt with by the Planning Commission and not delegated to the Township Board.

Mr. Barber commented that he could not remember if Quadrants had a good tree survey. In the past, the Township has found trees that did not have to be saved, which can make a big difference. There was not much conversation about their tree survey at the meeting. There was discussion on the activity statement. The ordinance says that you must have one and it was insufficient. They do respect that the situation is that you have two or three people who might move in; that is why we took the action we did. They still needed an activities statement based on our ordinance.

Mr. Olson commented that the applicant was confusing in the presentation before the Planning Commission. They discussed the tenant build out, but did not want to say who the tenant was. They were willing to customize the structure already.

Ms. Safran explained that the Township Planners letter of January 30th, 2006, it stated the planners saw that the necessary paper work was submitted. Ms. Safran said that the applicant meets the conditions for site plan approval. In this case, not only was the tree survey provided, but the Township asked for permission and went on the property themselves. The Planning Commission wanted to delegate what was going to happen to the replacement plan to the Township Board. That was something that should have happened at the Planning Commission level.

Mr. Barber commented that all the other people that come in to build industrial buildings have site plans, tree surveys, activity statements, and a name of who is going to be in the building. That is what our ordinance states has to be done. The Planning Commission did the best they could with the lack of information. Ms. Safran commented that they did submit an industrial statement which meets all requirements of the ordinance. All of the questions were answered and answered truthfully. The difficulty was the Planning Commission and the planners were not satisfied with the answers. The Planning Commission wants the power to be able to veto who occupies the building. That is not the authority of the Planning Commission. It is not in the authority of the Planning Commission to condition to the Township Planner or to condition the certificate of occupancy. That is not consistent with the Township ordinance. You cannot condition who moves into a building. All of the information was provided. The reason for the Industrial Activities Statement is that it is a planning document to help plan for what types of users will come in for new uses. It is not even a document that is applicable to existing industrial users. If you have an existing building with a tenant and that tenant moves out and a new industrial tenant moves in, that new user is not required to fill out an Industrial Activities Statement.

Mr. Barber asked Mr. Olson if that was true. Mr. Olson commented that the question is not who the user is, but what the use is. There are a number of uses in the industrial section of the zoning ordinance that refers to use by right. There is a special approval one and a special approval two, depending on community impact and the severity of what the operations might do environmentally. In this case, you cannot argue with not allowing the speculative building. The question is going to be, prior to occupancy, does the occupant require special approval for the use that they are going to perform in the building. If they meet everything applicable under use by right then it is ok. If they do need special approval, then they have to come in and have the appropriate public hearing for that use. Just like any other special approval land use.

Mr. Barber commented at the Planning Commission meeting that the Industrial Activities Statement was insufficient. It had very little information and did not give the Planning Commission a good feel for who might be going in the building. Mr. Olson commented that the point the applicant is trying to make is that this is going to be a question at occupancy, not at the construction of the structure. Although the applicant may not have been forthright, from what we know now, it complies with most the zoning ordinances as far as setbacks and other items. Our building official will have to follow up and make sure that the occupant complies with the Township ordinances. If it requires a special approval land use, I am certain that the applicant or representatives will come in and provide that information. Is that a fair statement? Ms. Safran commented that she thought caution was needed in a few circumstances. Saying the applicant was not forthright in the Industrial Activities Statement is going too far. This is a speculative building with no identified tenant, and they answered the questions saying, "we do not have a tenant, but these are the uses." It will be something allowed under the I-2 zoning ordinance. The applicant was being forthright. Mr. Olson commented that the issue was that they were discussing a customized tenant build out, but not providing that information. If there was already a tenant in mind as to whom the building was going to be customized for, the uses could have been discussed. Ms. Safran commented that she was not aware of any signed documents that would have made that appropriate.

Mr. Hawkins commented that according to item A, the Planning Commission did not have authority. To get a certificate of occupancy, the building department does have to review that building to make sure that it complies with the ordinance. In regards to item C, it is the obligation of the building official, not the township planner as requested by the Planning Commission, to approve the site plan. In regards to item D – planting replacement trees, according to the Township Planner, it appears as though they are severely deficient in meeting tree replacement requirements (85%). Ms. Safran commented that it is not practical to put that number of trees on this site and develop it. The two options available to the applicant are to 1: plant on another property in the Township or 2: give money to the Township. Ms. Safran feels that neither option is viable. They are requesting a use variance. Mr. Hawkins commented that it is important to the Zoning Board that they follow the ordinance. It is also important to the Zoning Board that the applicant shows good faith and some reasonable value as to why they do not comply with

it. Noting that your client did not leave any further information with you, I do not know if the board wants to make any decisions tonight.

Mr. Olson commented that the applicant did have another option. "Where a tree relocation or replacement is not feasible within the boundaries of a site the relocation or replacement may be made at another location owned by the applicant within the Township approved by the Planning Commission."

Mr. Seymour commented that Ms. Marcarello has brought up a point that there is a provision in the ordinance. Mr. Seymour feels that the applicant has to provide an alternative plan. The ordinance states that the tree preservation ordinance permit shall be in the review of the Planning Commission when there is nothing else to do with the application. The application pertains to something the Planning Commission has authority over. Subsection 9 of section 18-282 says, " where the tree location or replacement is not feasible, either within a woodland area or elsewhere on the property where the activity is being conducted, the Township's second preference is for a relocation or replacement to be made at another location in Township at another property owned by the applicant as approved by the Township Board." If you want to pursue the option of relocating trees on different properties, that has to be reviewed by the Township Board. Prior to that, Mr. Seymour thinks that there should be an obligation to present an alternative plan, that way we know exactly what we are talking about.

Mr. Erwin commented that his first thought is to go back to the Planning Commission and get it straightened out.

Mr. Hawkins commented that he thinks the Planning Commission did not have the authority to put a contingency on approval for items A and C. In regards to item D the applicant needs to have more information and that needs to go to the Planning Commission.

Ms. Marcarello commented that she completed the site plan review and suggested the condition in respect to the tree ordinance. Ms. Marcarello did this because the tree survey was done and McKenna did find that the survey accurately identified the volume and types of trees. The issue was the replacement plan was inadequate. Recognizing that the site plan stopped at the Planning Commission and knowing that the Planning Commission can only approve a replacement plan that satisfies the tree ordinance, the first part of the condition was planting replacement trees on the site. However, a recent amendment has been passed and the ordinance specifically says that you have to go to the Township Board for an alternative planting plan. Due to the fact that a small percentage of replacement trees were provided on site and the applicant made no indication of how the other portion would be addressed, we gave them this option. The applicant has said that the Planning Commission did not correctly apply the ordinance. Ms. Marcarello argued that the Planning Commission did based on the information they were given.

Mr. Hawkins made the motion in regards to "Item A of the Applicant Quadrants Inc. VS-17 LLC as represent by Counsel. In regards to their question and item A on a condition of a site plan approval, I make the recommendation to the board in regards to a grant for an appeal, we grant the appeal. The Planning Commission does not have the authority over issuance of building certificates in regards to tying it to site plan approval. That authority belongs to the building department and the Building Official, per the zoning ordinance. The Lyon Township Planning Commission was inappropriate to attach this to site plan approval." Mr. Raney supported the motion.

Voice vote:

Ayes: Erwin, Hawkins, Raney, and Schilling

Nays: Barber

Motion approved.

Mr. Hawkins made the motion "in regards to item C approval of the outside storage on the site. The Township Planning Commission made a contingency on the site plan approval that the Township Planner approve it; but it is the obligation of the Building Official and not the Township Planner to approve this item relative to the use application of a outside storage. The Township Planning Commission was inappropriate to tie site plan approval to this issue with regards to the Township Planner approving this item." Mr. Raney supported the motion.

Voice vote:

Ayes: all

Nays: none

Motion approved.

Mr. Hawkins made a motion “in regards to item D, which is planting replacement trees. We request that the applicant provide a little more detail, show good faith toward the Township and tree planting ordinance relative to what their true intent is here and make a resubmission to the Planning Commission relative to how they intend on complying with the tree ordinance. Should that fail that would go to the Township Board.” Mr. Schilling supported the motion.

Voice vote:

Ayes: all

Nays: none

Motion approved.

Mr. Hawkins made the motion “in regards to applicant’s request for a variance relative to the tree ordinance, we do not have the authority to grant use variances per Township ordinances.” Mr. Raney supported the motion.

Voice vote:

Ayes: all

Nays: none

Motion approved.

Adjournment:

Mr. Erwin’s adjourned the meeting at 8:46 P.M.

Respectfully Submitted,

Catherine Culver

Catherine Culver
Recording Secretary