

Charter Township Of Lyon
Zoning Board Of Appeals
Meeting Minutes
September 18, 2006

Approved as corrected on October 16, 2006

Date: September 18, 2006
Time: 7:30 PM
Place: 58000 Grand River

Call to order: Mr. Erwin called the meeting to order at 7:31.

Roll Call:

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

Also present:

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

Guests: 5

Approval of minutes: Approval of August 21, 2006 and July 17, 2006 meeting minutes.

Mr. Hawkins said that the July 17th meeting minutes cannot be approved because Mr. Raney is not present and Mr. Hawkins and Mr. Schilling were not at the meeting.

Mr. Hawkins said that the third motion for the second item needs to include a voice vote for the August 21, 2006 minutes.

Mr. Hawkins moved "to wait until next month to approve the meeting minutes." Mr. Schilling supported the motion.

Voice vote:

Ayes: all
Nays: none
Absent: Tony Raney
Motion approved.

Public Hearings:

- 1. Milford Ten LLC/ Todd Wyett, 25900 W. Eleven Mile Road, Ste. 250, Southfield, MI 48034. Sidwell #21-09-100-043. Applicant requests a variance from the wetland/watercourse setback under Section 36.02 (f)(2) Schedule of Regulations to allow for a service driveway to be constructed within a 50' setback area.**

Greg Obloy 4111 Andover Road – Mr. Obloy explained that they were at last month's ZBA meeting. They submitted a drawing at the ZBA's request, showing the impacts that the recently adopted footnote (f) would have on the site plan. There would be a loss of parking spaces, which would result in 37% of the northern retail commercial building, and the loss of the proposed pharmacy because of the loss of parking spots on the east boundary line.

Mr. Barber asked what the change was to the pharmacy. Mr. Rosenthal said that the drawing shows that they would lose 17 spaces by accommodating the 50-foot setback.

Mr. Hawkins asked if their drain was going to follow parallel to Milford Road. Mr. Rosenthal said yes.

Mr. Rosenthal explained that they would lose 37% parking spaces, plus the CVS.

Mr. Schilling suggested that they rotate the CVS to the corner. Mr. Hawkins said that it was not that simple.

Mr. Rosenthal said that they brought a site plan to the Planning Commission that was L shaped, and it was denied. If they go back to redesign it, it would be in an L shape.

Mr. Barber said that the L shape was a bad design, and he liked the campus set up, but they are trying to work with the developer so that it works and fits on the land.

Mr. Rosenthal said that they are not at the meeting to redesign the site; they are looking for consideration to allow them to continue with the site.

Mr. Barber said that the site plan was approved last August. Now the ordinance has changed in regards to the wetland setbacks, and the Zoning Board of Appeals is trying to help them meet the ordinance. Mr. Barber also said that there is nothing built, so there is no hardship.

Mr. Rosenthal said that if they built right now, they would have no ability to occupy the buildings. There is no water or sewer available.

Mr. Hogan said that by the time they are ready to occupy the buildings, there would most likely be water and sewer.

Mr. Olson said that last week, the Road Commission approved applicant submittal so that water could be built along the lot line north of Ten Mile Road.

The Zoning Board discussed why the applicant was before the Zoning Board of Appeals and why they went to the Zoning Board of Appeals last year in August.

Mr. Obloy said that they are not seeking a variance because they do not like the ordinance. They are seeking a variance because if they were to have proceeded with the site plan and built, at this time, there would be vacant buildings because there is no sewer and water now. The timelines for the effectiveness of the site plan expired after one year. They would like the site plan to be extended for another 12 months.

Mr. Schilling asked how long it would take to build. Mr. Rosenthal answered between 3 and 6 months from the time building starts to the time people occupy. Mr. Hogan said that he thought it would take closer to the 6 month mark. Mr. Schilling was curious as to why they did not start building a month ago or just before the site plan expired so that they would not be before the Zoning Board of Appeals, discussing this issue. Mr. Schilling asked what they were waiting on.

Mr. Rosenthal said that on October 2nd, they will have their permit from MDEQ. They have permits and approval for everything else.

Mr. Olson said that there are also unmet site plan requirements.

Mr. Hawkins said that one year ago, the Zoning Board interpreted the ordinance that said it was permissible for parking services to be in the 50-foot boundaries because the ordinance was not clear. The ordinance has changed to say there should be no construction of any sort within the 50-foot line. Since their site plan approval expired, they had to reapply for approval. For some reason, they did not activate (start construction) their site plan approval.

Mr. Obloy said that when the issue came to light in the spring, and they realized the site plan was going to expire, they went to the Planning Commission, and the Planning Commission voted to extend the site plan subject to the ZBA granting a variance from the regulations. They did not submit a new site plan.

Mr. Hawkins said that he believed that the Township has impacted their ability to use their site. He further explained that they asked them to come back so that the Zoning Board could see the impact the new ordinance would have on the development. They are saying that they would lose 37% of their commercial space, and they have a store that is willing to back out because of lack of parking.

Mr. Barber asked what the Zoning Board will do for the next person. Mr. Hawkins said that this is a unique circumstance. They had site plan approval, and the Zoning Board has made considerations for similar situations in the past (building within the first 25 feet). Mr. Hawkins also said that it is not a building on the first 25 feet. It is parking. Mr. Obloy said that there is a curvature in the sidewalk on the southeast corner that dips into the first 25 feet.

Mr. Hawkins said that the Zoning Board needs to resolve whether the information the applicant has provided is just cause in extending the site plan for the year. He said that it is not fair to make the applicant follow the new ordinance.

Mr. Seymour reminded the Zoning Board to consider the factors that they are supposed to. They are a) would the application of the ordinance unreasonably prevent the owner from using his property or render the ordinance conformity unnecessarily burdensome b) the variance would do substantial justice to the applicant, c) a lesser variance would not give substantial relief to the applicant d) unique circumstances peculiar to the property and not generally applicable to the area f) the reason for the variance has not been self-created. Those are the standards that need to be applied to determine if there is a practical difficulty.

Mr. Schilling asked if they could do anything until they received the MDEQ. Mr. Hogan said no.

The Zoning Board discussed the factors to determine if there is a practical difficulty. Mr. Rosenthal said that the site plan before the Zoning Board has far less density than originally proposed. Mr. Hawkins said that the site plan has gone through the Planning Commission and met all of their standards.

Don Walker 57300 Ten Mile Road – Mr. Walker said that he lives west of the development. His concern is in regards to the extra parking and the drainage. He also wanted to know at what part on the property is the water going to be let go into Yerkes Drain. Mr. Rosenthal said that all of the water is going to be stored underground and released at the intersection. Mr. Walker said that Yerkes Drain has not been cleaned in 40 years. Mr. Rosenthal said that they are improving the situation.

Mr. Olson suggested to Mr. Walker that he petition the Drain Commission.

Blaine Smith 57440 Walker Way - Mr. Smith said that when it rains, the water goes to his property and not to Yerkes Drain. He is going to be the one with the hardship. He already has a water problem. Mr. Rosenthal said that they are not going to put any more water in. There is going to be no more water than there is now.

Mr. Olson also commented that they have to meet the one hundred year storm drain, and the Township Engineers have to review the drains as well.

Mr. Erwin said that he was unsure of what to do. Following the ordinance would require them to change halfway through the plan. It has been a year, and they have not done anything, but some of that is not their fault. Mr. Hawkins said that he did not feel it was the Zoning Board's job to pass judgment on why they have not started building.

Mr. Olson said that the question is to what degree does changing the design of the site at this point affect the applicant? Other issues include moving driveways closer to the intersection and moving to the L shape layout. Mr. Olson said that the argument is, what will it do to change the site?

Mr. Hawkins asked Mr. Rosenthal if the sidewalk is encroaching on the first 25 feet for a reason. Mr. Rosenthal said that there are utilities inside that area. Mr. Hawkins asked if there is any way to keep the sidewalk out of the first 25 feet. Mr. Rosenthal said it was possible depending on where the final utilities are placed.

Mr. Hogan said that as far as the one year or construction, there has been an attempt and discussion about building the buildings with temporary services.

Mr. Hawkins moved “in regards to Milford Ten LLC 25900 W. Eleven Mile Road Ste 250 in regards to the applicant’s request for a variance from the non-construction within the 50 foot boundary of Yerkes Drain ordinance. Sidwell number 21-09-100-043. The applicant has made a request to permit construction, and in this case, this construction is limited to driveway, hard surfaces, and curbs only within the second 25 feet of the 50-foot buffer off of Yerkes Drain. I make the recommendation to the Board that based on previous applications that have been approved by the Planning Commission, Township, and Zoning Board, for this site and due to circumstances beyond the control of this board and the applicant and because a new site plan had to be reviewed and applied for. I make the recommendation that due to the hardship of applying a new ordinance that did not apply to the original site plan approval, we grant them a variance to permit construction of hard surfaces, parking lots, driveway, and curbs only within the second 25 feet of the 50 foot buffer for Yerkes Drain.” Mr. Schilling supported the motion.

Mr. Barber asked what happens if there are problems in regards to the drain for Mr. Smith and Mr. Walker. Mr. Hawkins said that is not the issue before the Zoning Board, and the Township Engineers have looked at it.

Voice Vote:

Ayes: all

Nays: Mr. Erwin

Absent: Tony Raney

Motion approved.

Adjournment:

Mr. Erwin adjourned the meeting at 8:14 P.M.

Respectfully Submitted,

Catherine Culver

Catherine Culver

Recording Secretary