

**CHARTER TOWNSHIP OF LYON
ZONING BOARD OF APPEALS
MEETING MINUTES
May 19, 2008**

Approved: June 16, 2008 as written

DATE: May 19, 2008
TIME: 7:30 p.m.
PLACE: 58000 Grand River Avenue

Call to Order: Mr. Erwin called the meeting to order at 7:30 p.m.

Present: Mike Barber, Planning Commission Liaison
William Erwin
Michael Hawkins
John Hicks, Township Board Liaison
Tony Raney

Also Present: Al Hogan, Building Official
Phillip Seymour, Township Attorney
Chris Doozan, Township Planner
Leslie Zawada, Township Planner

Guests: 43+

1. APPROVAL OF THE MINUTES

Mr. Barber made a motion to approve the minutes of March 17, 2008 as submitted. Mr. Hicks supported the motion.

Voice Vote:	Ayes:	All
	Nays:	None

MOTION APPROVED

2. PUBLIC HEARINGS

- A. Douglas Faulkner, 21445 Griswold Road, South Lyon, MI 48178. Sidwell #21-32-400-013. Applicant requests a variance from Section 36.02 Schedule of Regulations to allow for a 36' setback for a detached storage structure, as opposed to the required 75'.**

Mr. Hogan explained that he was representing the applicant due to his health issues. He explained that the applicant was wheelchair bound and he would like the accessory structure closer to his home.

Mr. Erwin opened the Public Hearing at 7:42 p.m.

Mark Rowley, Linden, MI – Mr. Rowley spoke in regards to the applicant and explained that the applicant has been homebound for 2 years and that this was as close of a location to the home that he could place it due to the septic field.

Mr. Hawkins made a motion in regards to applicant Douglas Faulkner, 21445 Griswold Road, South

Lyon, MI Sidwell #21-32-400-013 Applicant was requesting a variance from Section 36.02 Schedule of Regulations to allow for a 36' setback for a detached storage structure, as opposed to the required 75'. Applicant has demonstrated a unique condition of dual road frontages with Brandy Trail and Griswold Road. A new garage would be no closer to or creating a greater variance from a typical front yard setback. He recommended to the Board that they grant the applicant's request for a variance from the 75' required to allow a 36' setback for the new garage. Mr. Raney supported the motion.

**Voice Vote: Ayes: All
 Nays: None**

MOTION APPROVED

2. Thomas Alberty, 8116 North Canton Center Road, Canton, MI 48188. Property located at 27491 Pontiac Trail. Sidwell #21-18-200-006. Applicant requests a variance from Section 36.02, footnote f-2, to allow for a 42' setback from wetlands for a dumpster enclosure, as opposed to the required 50'.

Representing Thomas Alberty: Dennis Castile – Guido Architects

Mr. Castile stated that the irregular shaped lot forced the current floor plan into the position shown. There was a utility garage placed on the west side of the main structure. It holds hazardous materials and must be separated from the main structure, according to the rules of the State. The required play area, which was shown to the west of the garage, was wedged in between the north and south setback lines and the required detention pond and the aforementioned buildings. The dumpster would naturally want to be placed behind the facility, next to the storage garage and along the driveway. The criterion has set the enclosure as shown when actually it was an 8' encroachment into the floodplain setback. They would like the board to consider the setback and the positioning of the building as hardships.

Mr. Hawkins questioned why the main garage couldn't be rotated. Mr. Castile stated that they couldn't connect to the building, but he would look into the turning radius of the truck.

After discussion the Board concurred that there were other options that the applicant could do.

Mr. Hawkins made a motion in regards to Thomas Alberty, 8116 North Canton Center Road, Canton, MI 48188. Property located at 27491 Pontiac Trail. Sidwell #21-18-200-006. Applicant requests a variance from Section 36.02, footnote f-2, to allow for a 42' setback from wetlands and a floodplain area. Upon review the Board has determined that there are options available to the client and he would recommend to the Board that they not grant the variance request at this time. Mr. Barber supported the motion.

**Voice Vote: Ayes: All
 Nays: None**

MOTION APPROVED

Item 3 on the agenda was cancelled.

4. **C. Brian James, 1863 Vinsetta Boulevard, Royal Oak, MI 48073. Property located at 21376 Pontiac Trail. Sidwell #21-32-300-001 and #21-32-300-018. Per Section 8.02, A, applicant requests an appeal of the Planning Commission's February 11, 2008 approval of a Meijer Store. Applicant also seeks interpretation of the following sections of the Zoning Ordinance: 3.02, 6.02 C, 10.01 B, 12.07, 12.07 A, 18.01 A, 18.01 F, 21.01, 22.02, 23.02, 24.02, 24.03 B, 31.02 B, and 33.02 Q. Applicant also seeks interpretation of Ordinance No. 95A-04 and Ordinance No. 55C-01, art. III, & 3.03.**

Mr. Hicks explained that per the advice of the Township attorney, he and Mr. Barber would need to exclude themselves from the discussion of this item, since they were both on the Planning Commission at the time the decision was made.

Mr. James stated that he was the attorney representing 3 homeowners associations, and they are asking the Board to make a ruling regarding the language in the Zoning Ordinance. The problem they are having is that adjacent to the Meijer property is a residential parcel. The approval by the Planning Commission was to put an accessory use on the residential parcel. That amounts to a several acre retention pond that was proposed for the adjoining, currently residential-zoned parcel. His clients understand that they don't control the property and generally don't object to the development of the property. What they are objecting to is the application of the Zoning Ordinance that allows the accessory uses incidental to the commercial use on a residential parcel.

Mr. James stated that they have appeared in the Oakland County Circuit Court on two separate occasions, trying not to be before the Board. The Township defended it on the basis of the homeowners associations not being appropriate parties and that the Planning Commission had not yet acted. He would like to highlight the fact that the Township could have opted to have a legal opinion from the court months ago. The Planning Commission then met and approved the site plan submitted by Meijer. They went back to court and asked them to review the legal issue. Again, the Township defended because they had not been in front of the ZBA for relief. He has been trying to short circuit the process because it was a clearly a legal issue that would clearly need to be handled by the courts because there was some political process in place that was governing this operation. He noted that the original application from Meijer was executed by a man that was employed in Acme Township when Meijer attempted to remove the Acme Township Board for failing to approve a Meijer location in that township.

Mr. James continued that this was very simple; the ordinance was a permissive ordinance. A permissive ordinance was very simple. If it says you can do it, you can do it; if it says you can't, then you can't. Within the residential Zoning Ordinance, there was no provision for uses for a detention pond accessory to a commercial dwelling in a residential district. The single time that this township has allowed that was an exception in the ordinance for a septic field adjacent to a Kroger store, and it was carved out as an exception to the ordinance. In his review of the site plan, he detailed other problems with this approved site plan, but the essential one was whether or not the ordinance allowed for placement of an accessory use to benefit a commercial establishment on a residential parcel.

Mr. James continued that in response to a direct question at the Planning Commission meeting, Meijer was asked if this was legal to put a retention pond on a residential property to benefit an adjoining commercial property. Meijer answered that it was not a problem because the Township Attorney said it was not a problem and because the Township Engineer and Planner said that it wasn't a problem. There was no legal, attorney-based basis for this opinion. Under Industrial Districts, the Township Zoning Ordinance does specifically detail that detention and retention ponds are an accessory use. It was impossible that the Township Engineering Design standards trump the Zoning Ordinance, those are the two foundations that the Township has relied upon to say that this accessory use on a residential parcel adjacent to a commercial parcel was acceptable. The only other explanation that was offered by the Township Attorney referred to Article 5 of the Zoning Ordinance; because this was a single building, it did not require any action by the Zoning Board or the Township Board of Trustees. It may be that Meijer could do this, but it cannot be that they can do this unless they get a variance or get the property rezoned. The drawing was approved by the Township, and it was drawn when Meijer was proposing a permeable asphalt parking lot, which drastically impacts the run off. After the November Planning Commission meeting, Oakland County told Meijer that the permeable parking lot would not work, even though the application says that the permeable parking lot was a necessary portion of the project because it reduces the stormwater and downstream flooding. The latest drawing started having a small retention pond in the corner; it now borders the entire commercial property because it needed to be much larger because of the run off factor. The Township Engineer and Planner have missed the boat; the rationale was not true within the confines of the Ordinance. They got it wrong.

Mr. Doozan stated that the Industrial District Standards were written at a different time and place, they were not written at the same time the rest of the Ordinance was written. The Ordinance was written 19 years ago, and the Industrial District Standards were written two years ago and written in response to Continental Aluminum. They

were designed to have very detailed standards and be set apart from the rest of the Ordinance. Mr. James stated that the affidavit submitted by the Planner was not true, and the rationale offered by the engineer was not true. If what the engineer said were true, then there wouldn't need to be any reference in the industrial section because they would already be covered. Mr. James stated that a PUD would also be an option.

Mr. Hawkins clarified that the Niles parcel was R-1.0.

Mr. Seymour stated that the issue was whether or not the detention basin was a use under the ordinance. He would further state that they are bound by the terms of the ordinance and consider specifically the issue before them. Nowhere does it talk about being in residential developments. They should look at the way the consultant has interpreted or administered the ordinance over time. It has always been that detention basins are not considered uses in a residential area, and the reason was that it has always just gone to the engineer to figure out how big it needed to be. They have always considered it under the Design Engineer Criteria, and that was the way the Ordinance has always been interpreted. The reason this may have gotten expensive for Mr. James's clients is that they have been to court two times when they shouldn't have been to court yet. They should have waited; they attempted to stop the Planning Commission from making a decision. After the decision was made, Mr. James should have come to the ZBA first before going to court. Technically, they are late in their appeal here. The decision of preliminary site plan approval by the Planning Commission was granted on February 11, 2008, the minutes were approved on March 10, 2008 and an appeal to the ZBA should have been done within 30 days. That would have been April 28, 2008, when the application was stamped. He would ask that they read the affidavit and listen to what Mr. Doozan has to say and the way they have always treated detention basins in a residential area. There was a big difference between a septic field in an industrial area, as opposed to a detention basin.

Mr. Doozan stated that he submitted a letter dated May 9, 2008. Mr. Doozan stated that the plans that the Planning Commission approved in February did not have the porous surface on the plans; they approved the plans that showed the full size detention basin. The proposal was for a 192, 214 square foot Meijer store. Mr. Doozan stated that it was significant that detention ponds are not listed among the permitted uses and structures in the R-1.0 district, yet retention, detention, and other kinds of ponds are located on R-1.0 property throughout the Township. The reason was that such ponds have always been considered an engineering requirement governed by the engineering design standards. Unlike accessory structures, detention ponds have no lot coverage, setback or size limitations. The Township has never required redoing, special land use approval, or a location variance for a pond that satisfies Township engineering standards. To require rezoning, special land use approval, or a variance in this case would represent a substantial change in policy, which would affect every subdivision, site condominium, farm, and homeowner in need of a pond of any type.

It was also significant that there was no provision in the Zoning Ordinance that would prohibit the detention basin from being placed on the residentially zoned property. The Niles property could have constructed a pond on their property even if there was not an approved site plan for a Meijer store.

Mr. Doozan continued regarding the concern of outside storage being allowed, areas that might be misconstrued as outside storage include: 1) the Garden Center Storage would be totally under cover but was open on one side, which the Planning Commission found acceptable. 2) the Outdoor Garden Center, which would be totally enclosed; and 3) the Milk Cart Storage Area, which was proposed to be enclosed on three sides and was hidden from view.

Concerning porous pavement, Mr. Doozan stated that it was their understanding that the proposal to use porous pavement was dropped because the Drain Commissioner's office would not give "credit" for the pavement in the form of a reduction in stormwater retention or detention requirements, thus negating the extra cost of putting in the porous pavement. Meijer has reverted to a conventional pavement with an appropriately sized detention basin, which will discharge water at an agricultural rate so as to minimize downstream impacts on the Underhill Drain and on wetlands. In summary, Meijer will be controlling the stormwater with a larger detention basin, so the net effect on the Underhill Drain and the wetlands would be the same.

Mr. Doozan stated it was not unusual for plans to be changed as they go through the review process and are subjected to the regulations, standards, and policies of the various agencies that have jurisdiction.

Regarding the storm water discharge, Mr. Doozan stated that the changes in discharge calculations were required by the Township Engineer to bring the plan into compliance with Township Engineering Regulations. The Township Engineer has approved the revised drainage plan.

In response to the concern of an impact on the wells, Mr. Doozan stated this was less usage than if all of the 59.85 acres were developed at an R-1.0 density, which would result in about 48 homes on the site. The impact on wells from the Meijer development will be less than from a low-density subdivision on the subject property.

In terms of trees on parking lot islands, Mr. Doozan stated that a formal application must be submitted to Michigan Consolidated, at which time a decision will be made what landscaping would be permitted within the easement. As noted in their February 8, 2008 review letter, if Michigan Consolidated disallows the trees, then the islands will have to be moved. This would typically be addressed on the final plan, which would be administratively approved, since it would be considered a minor modification.

Regarding the cost of connecting to the sanitary sewer, Mr. Doozan stated that the rates to hook into the sanitary sewer system are established annually by resolution and published in writing in a Utility Fee Schedule, so there was no need for a separate agreement. According to Ordinance, capital charges are due when engineering plans are submitted. The Township Engineer was in the process of calculating sanitary sewer connection charger in anticipation of submittal of the engineering plans. It would have been premature at the time of Site Plan approval by the Planning Commission to calculate sewer connection fees.

In terms of the approval of the private water system, Mr. Doozan continued that Section 46-54 applied to private water systems, which consist of a well, mains, connections, pipes, meters, hydrants, and appurtenances necessary to supply multiple users. Meijer was not proposing a private water system. Rather, Meijer was proposing a simple well to serve one user, which was totally under the jurisdiction of the Oakland County Health Division.

Mr. Doozan stated in summary the Planning Commission did not act in an arbitrary or capricious manner in approving the Meijer Site Plan. It conducted a thorough investigation, giving consideration to many of the issues outlined in Mr. James's brief, as well as a multitude of other issues, all of which the Planning Commission deemed were satisfactorily resolved during the course of the review process. The Planning Commission treated the Meijer site plan in a fair and uniform manner and gave due consideration to comments from citizens. Accordingly, they do not believe there was any basis for the appeal and recommend that it be denied.

Ms. Zawada stated that the Engineering Standards require a storm management system irrespective of zoning, and the Engineering Standards explain the sizes required based on the acreage, but it does not have requirements based on zoning. The porous pavement was no longer proposed; it was removed from the plan prior to the meeting when the Planning Commission approved the plan. Wells for the use of water supply and distribution are within the jurisdiction of the Oakland County Health Department. Regarding Michcon, they have to approve any changes to work within their easements, and they would have to give them separate approval to any changes within that gas line.

Mr. Doozan stated that there are 3 parcels, which was clarified in the second submittal. There was the Niles parcel, the Appel parcel, and the other parcel that fronts on Pontiac Trail, which he has labeled the landscape center.

Mr. Erwin opened the Public Hearing at 8:31 p.m.

Abe Ayoub – Mr. Ayoub stated that they have to look at the most recent ordinance. By putting the pond there and the gas line through it, that buffer zone was no longer a buffer zone. He felt that they should make Meijer put it on their property. Meijer doesn't want to because it would be very costly. They haven't done this before, so doing it would be setting precedence. In the beginning, this should have come to the ZBA first, but on the advice of Mr. Quinn, it did not. The Township was wrong again. They have to look at the most recent ordinance. It never should have been before the Planning Commission before it was at the ZBA. This was a money issue, and money is not a hardship.

Jeff Schonder – Mr. Schonder stated that at one point it, was suggested that eventually there would be a pond of some sort on that property so why not have one there now? That may happen, but that pond would be in support of drainage for the streets and curbs of the residents. If there was already one dug for Meijer, and they go to build homes on the residential area, they would then need another detention pond. It would be half of a lake to support homes and Meijer. How can they justify that?

Mr. James stated that there was nothing else the Planning Commission needed to do in order for this project to be built, everything that needs to be done would be administratively approved, it would not come before the ZBA or the Planning Commission or the Board of Trustees. They have heard the ordinance does not permit this; it was a mistake to allow this perverse interpretation of the Zoning Ordinance to go forward.

The Board discussed the process if there were revisions submitted from Meijer.

Mr. Hawkins questioned if the detention basin could fit on their property without going into the R-1.0 district. Ms. Zawada stated that they most likely could do underground retention on their site. Mr. Hawkins stated that the Township has been developing and the ordinances were older, there are options available to Meijer with regards to putting it on their property. The R-1.0 district does not say it was an approved use but does not say that it wasn't either.

Joseph Gasiorowski – Mr. Gasiorowski commented that he has worked in the environmental engineering field for almost 30 years, and it was important to recognize that there was not a distinct difference between industrial stormwater management and commercial. There was really a range of concern with industrial, and those overlap. The 2-year-old ordinance was very applicable and should be considered.

There was brief discussion regarding procedures in the voting process.

Mr. Hawkins stated that he understood the need for retention, and he was concerned that the Township Ordinance does not address the issue. With respect to the ordinance and the Township residents, he would say no, it was not a permissible use in an R-1.0 district.

Mr. Hawkins made a motion in regards to C. Brian James, in regards to the property located at 21376 Pontiac Trail. Sidwell #21-32-300-001 and #21-32-300-018. The applicant has requested an interpretation from the Zoning Board with regards to the commercial use application of a retention pond or detention pond on a piece of property in an R-1.0 district, he would make the recommendation based on the interpretation of the Zoning Ordinance with regards to R-1.0 districts the use application of the element for commercial use was tied directly to commercial use was not permissible per the ordinance. Understanding the need and requirements from the Township Engineer and the interpretations from the Township Planner relative to its application across the Township he did not feel it was fair and he would not consider this application use on an R-1.0 district was appropriate, the Zoning ordinance was not a permitted use. R-1.0 Article 23 does not permit a detention basin in an R-1.0 district. Based on the way the ordinance was written taking into consideration the needs and requirements of the Township with regard to the Township Planner and Engineer requirements and the needs for these types of elements relative to commercial development in the Township. Mr. Raney supported the motion.

Voice Vote:	Ayes:	Hawkins, Raney, Erwin
	Nays:	None
	Abstained:	Barber, Hicks

MOTION APPROVED

3. ADJOURNMENT

Mr. Erwin adjourned the meeting at 8:56 p.m.

Respectfully Submitted,

Kellie Angelosanto
Recording Secretary