

Charter Township of Lyon
Zoning Board of Appeals
Regular Meeting Minutes
August 17, 2015

Approved: September 21, 2015

The meeting was called to order by Mr. Erwin at 7:01 p.m.

Roll Call: Bill Erwin, Chairman
John Hicks, Board Liaison
Kurt Radke
Carl Towne, Planning Commission

Absent: Tony Raney, Vice-Chairman

Guests: 7

Also Present: Leann Kimberlin, Township Attorney

APPROVAL OF MINUTES

**Motion by Towne, second by Radke
To approve the minutes from June 15, 2015 as presented.**

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

PUBLIC HEARINGS

1. **Shoppes of Lyon, LLC. 25900 West 11 Mile Road, Suite 250, Southfield, MI 48034. Sidwell #21-21-400-054. Property located at 57066 10 Mile Road. Applicant requests a variance from Section 12.09, B of the Zoning Ordinance, which requires the front lot line of all lots shall abut onto a publicly dedicated road right-of-way or onto a private road approved and in place prior to December 9, 2009. A lot split is being requested, which would create a lot that does not meet that requirement.**

Mr. Wyett explained that they have a dentist that would like to build their dental practice. The site plan was approved prior to the existing ordinance. He stated that they can't have frontage on 10 Mile and Milford.

Mr. Towne stated it is virtually impossible to meet the criteria. He agreed with the variance request. Mr. Hicks agreed as well.

**Motion by Towne, second by Radke
To approve the variance for a private road easement in place above the prior road that was in place prior to December 9, 2009. A split is requested**

which would create a lot that does not meet the requirement but because of the road easement that was not originally placed in the documents it would hinder the right-of-way that should have existed. To correct the harm he would recommend approval of a lot split. Including the Township Attorney letter from June 26, 2015.

Voice Vote: Ayes: Unanimous
Nays: None

MOTION APPROVED

2. **BBI Holdings, LLC, 5475 Settlers Pass, Kentwood, MI 49512. Sidwell #21-04-151-004. Property located at 58019 Grand River Avenue. Applicant requests variances from the following sections of the Zoning Ordinance:**
- **Section 19.02-O-7, which requires a minimum of 150 square feet of outdoor play area provided per child. Based on the 164 children, the required amount would be 24,600 square feet. 15,300 square feet is proposed. Therefore, a variance of 9,300 square feet is being requested.**
 - **Section 36.02, Schedule of Regulations, footnote t, which requires a side yard setback of 40' in a commercial district if it is adjacent to a parcel used for residential purposes. A 27.6' setback is proposed on the east side. Therefore, a variance of 12.4' is being requested.**

Representing BBI Holdings: Steve Witte
Dan Boverhif

Mr. Witte gave a brief description of the property and the request. The facility will be licensed for 164 children with the hours of operation Monday-Friday, 6:00 a.m. – 6:00 p.m. There is a playground area associated with this project. The first variance being requested is for the playground area, 24,600 square feet of play area is required and they are proposing 15,300 square feet of play area. The age ground is between 6 months and 12 years of age which means there is a fair amount of children that are just too young to go outside and the children are not let out all at one time, it is staggered with 32-40 children at one time. If they had to make the playground area larger they would have to shove the stormwater holding area further to the south and remove more trees and vegetation. In addition to that there is a gas easement that runs along the west side of the building.

Mr. Erwin stated if they have 164 kids, they are pushing the limit. If they held it at 98 kids, as originally proposed, then a variance is not needed. Mr. Witte stated there are normally about 130 kids on any given day, but it is licensed for 164. Mr. Witte confirmed there are doors to the playground and an outside gate.

Mr. Boverhif confirmed that they are very much regimented for when the kids go outside; he didn't think the number of kids ever reached 40 at one time. Mr. Towne confirmed this is a written procedure. Mr. Boverhif commented that one area of the playground is defined for younger kids with only 12-16 kids. The other playground

would have one class go out at a time. He explained that one group would go in before another group came out. He thought, at the most, there would be 32 kids out at once. Each classroom has their own door that exits to the playground.

Mr. Witte explained that they can only have 102 kids out at one per the ordinance and they are saying there are only 30-40 kids out at one time. They may cross paths going to and from the building, making it a total of 80 kids at one time, but they are still under the 102 kids as provided by the ordinance.

Mr. Towne explained that the Planning Commission agreed to save the trees to the north. Procedurally this is tighter than the policy for the school district. It does meet the State of Michigan licensing number. With the restriction to not exceed 100 kids, it would do justice to this variance.

Motion by Towne, second by Radke

To approve the 9,300 sq. ft. variance on the playground area. Sidwell #21-04-151-004 being that the property lends itself to be restrictive and to keep a buffer from the neighborhood as well as the Zoning Ordinance is over restrictive more than what the State of Michigan requires. Also, for safety purposes he would condition that the number of children on the playground at any one time does not exceed 100.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

Mr. Witte explained the second variance they are requesting a variance to the setback. The way the ordinance is written it states a normal side yard setback for a B-2 zoned property is 25', however, there is a footnote in the Schedule of Regulations that says if the adjacent property has a residential use the setback has to be 40'. The adjacent property is zoned B-2 and is Master Planned for B-2 but it is apartments. Because it is a non-conforming use that footnote applies. They are at 27.6 setback. There is a gas main on the west side of the property as well. This building is not a tall building and it will not tower over the adjacent property.

Motion by Radke, second by Towne

To approve the variance 12.4' as requested per the reasons stated, the distance between the building and the residential, the gas right of way, and the narrowness of the lot.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

- 3. JJS Holdings (Lightning Lawn & Landscape), 410 Pettibone, South Lyon, MI 48178. Sidwell #21-29-226-021. Property located at 23655 Griswold Road. Applicant requests variances from the following sections of the Zoning**

Ordinance.

- **Section 12.16-C-1, which prohibits a fence from extending toward the front of the lot beyond the principal structure. Requesting a 54' variance on Griswold Court.**
- **Section 12.16-C-1, which prohibits a fence from extending toward the front of the lot beyond the principal structure. Requesting a variance of 68' on Griswold Road.**
- **Section 15.08-A-4-b, which prohibits a chain link fence being used for screening purposes. Requesting a variance to allow a chain link fence along Griswold Court.**
- **Section 33.03-B-3, which prohibits outside storage within 75' of a residentially-zoned district. Requesting a 75' variance to allow existing landscape bin blocks to remain in placed from the front of the principal structure and rearward.**
- **Section 33.03-B-3, which prohibits outside storage closer to any road than the principal building site. Applicant requests a 54' variance along Griswold Court.**
- **Section 36.02, Schedule of Regulations, footnote u, item 2, which prohibits a building within 75' of a residential zone. Requesting a 60 variance to allow for a 15' setback.**

Representing JJS Holdings: Bob Langan

Mr. Langan explained that the variances are driven because the property is really on two roads. On Griswold Road and Griswold Court. Griswold Court has pretty much zero traffic and it serves 4 parcels of land, two of which are occupied and two vacant parcels to the west end of Griswold Court.

The building that is on the property and the ordinance prevents construction of a fence forward of the building. Technically the proposed fence is 54' closer to Griswold Court than the front of the building. This is a site that has been in use for 40+ years. The first variance request is to place a fence 54' closer to Griswold Court than the front of the existing building.

Mr. Towne stated that it's an unsightly piece of property, but the fact remains, if you look at the zoning ordinance as a whole, he questioned how they could give a variance on a fence length when the fence itself is not approved. They are putting the horse before the cart and need to take time to digest what's there. Why is the storage building so close to the north side? As a whole, they need to understand the property. He stated that they needed to find a way to work together and he didn't see every variance request as a homerun. He questioned why the proposed storage building is so far away and when this was before the Planning Commission there was no site plan for this building.

Mr. Langan explained this site is an eyesore. It was selected for their landscaping business. This location is also in a district that has varying degrees of any semblance of compliance with the current zoning ordinance. They are trying to bring them into compliance but are handcuffed. There is no apparent record from the 60's or 70's when

this was approved; there is a building there and a use. They are trying very hard to utilize the property reasonably. We are stuck with the building where it is, it is where it is. There is paving, septic lines and utilities on the site. This represents their effort after meeting with the Township Engineer and Planner. The variances allow the site to maintain some utility and allow what's there to stay there and to respect the property owners.

Mr. Langan explained that the applicant has stressed to him that security is paramount, since he has had a lot of mowers stolen. A security fence is very important and the placement of the fence is further away from the center of the road than the neighboring fence, in a reasonably developed property having a fence along that right of way line is a reasonable placement for it. He confirmed it is proposed to be a chain link fence. Mr. Langan confirmed because of the fact Griswold Court has virtually no traffic, the only thing they would be screening their yard from is the far inferior yard across Griswold Court. The suggestion was to landscape a shoulder or corner up at Griswold Road so people would see the landscaping and the fence would go away from them. Mr. Langan stated technically they are asking to use a non-screening chain link fence. Mr. Towne stated that the request is for a chain link fence used for screening which is in contrast to what is being asked for.

Mr. Towne stated that there is no clean site plan, there are a lot of hoops we have to jump through. There are neighbors over there and there are rules and regulations that have to be followed. Ms. Kimberlin noted that if the variances are approved it does not mean that the Planning Commission will approve the site plan.

Regarding the first variance request, Mr. Erwin asked if there is a reason the fence has to go out past the principal structure. Mr. Langan stated if it was placed at the structure they would lose ¼ or more of the property. They are stuck with the structure where it is.

Motion by Towne, second by Hicks

To approve the 54' variance on Griswold Court. There is no site plan for this parcel and the 660' of landscaping is unreasonable for a court street that is gravel and only serviced by another non-conforming lot and to retain the utility on the property.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

Mr. Erwin asked why the fence has to go out that far. Mr. Langan stated the proposed fence will sit at the setback line from Griswold Road. The existing building being where it is, is set back far from Griswold Road, and an existing parking lot in front of the building. Mr. Erwin confirmed the parking is for employees. Mr. Langan stated that the fence is proposed to be gated and accessible by the employees only, it is not open to the public. Mr. Erwin thought 68' was excessive and he would like to see a smaller gap between the parking and the fence line. Mr. Shigley explained that the fence is a security issue. The property is not easy to work with and after working with Mr. Doozan this is what they came up with. If they moved the fence closer then it would hinder the

turning radius.

Mr. Towne stated he had no issue with it.

Motion by Towne, second by Radke

To approve the 68' variance on Griswold Road from Section 12 16-C-1. It does meet the 75' setback from Griswold Road. It allows use of the property with the existing building that would not be allowed if the fence was not given the 68' setback that would retain the utility of the property.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

Motion by Towne, second by Radke

To allow the chain link fence along Griswold Court on the condition that the applicant provide landscaping on the corner of Griswold and Griswold Court which landscaping meets with the satisfaction of the Planning Commission upon its review of a proposed site plan. The required landscaping shall take the place of a full obscuring wall or other screening along Griswold Court. This variance is warranted because it would be otherwise restrictive to the property. And since there is no site plan on record, this would make better use of the property.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

Mr. Langan explained the proposal is to remove the bin blocks so they line up with the front of the building and don't extend further than the front of the building. They are proposing they remain in place so the utility of the site can be maintained and they have been there a very long time. If they were moved anywhere they would be eliminating from that portion of the site any utility whatsoever. Mr. Langan stated in their view it is an existing non-conformity. He noted that the adjacent residential owners have been contacted and they have had no complaints. Mr. Towne noted that there are no property owners in attendance to speak regarding these requests. Mr. Langan explained that the practical difficulty is moving the blocks, they are movable but not easily and by not allowing the variance it would essentially eliminate 1/3 of the site from being utilized from any storage whatsoever.

Mr. Towne asked what the useful life of what is there for storage. Mr. Langan stated those bins will be used for stone and bark. He stated that the bin blocks will never be moved, they are structurally sound. Mr. Shigley stated he operates out of South Lyon now and has not had one complaint. They operate from 7:00 a.m. to 7 or 8:00 p.m. Monday- Friday, and at 8:00 a.m. till 1 or 2:00 p.m. on Saturdays, not open on Sunday.

Mr. Towne felt that the hours could be more restrictive regarding the deliveries since

there are homeowners on the other side. He suggested no deliveries before 9:00 a.m. and none after 4:00 p.m. Mr. Shigley stated he would keep the mulch and the stone separate. Mr. Hicks stated this is one of the difficult pieces of property and he didn't think they could ever make it non-conforming for any allowable use. Mr. Erwin stated that they are trying to make it less non-conforming by pulling out 3 of those walls and it would also directly affect where the residents are.

Mr. Langan stated that there is no proposal to extend the existing storage, there are overhead lines to the west of the existing bin blocks and the variance requested is limited to the use of these bin blocks, for the length of the site, west of the overhead lines, there is no permissible outside storage and they are not asking to extend that. The rest of the site would be maintained at the 75' setback for outdoor storage. This area is already currently screened with an 8' fence.

Mr. Towne stated that he is against the proposed storage building and the variance on the Griswold Court side.

Motion by Towne, second by Radke

To approve the existing non-conforming setback Section 33-03-b-3 requesting a 75' variance to allow existing landscape bin blocks to remain in place from the front of the principal structure and rearward. The forward 3 bins will be removed, approximately the first remaining would be center to the existing peak of the building. It's a non-conforming existing use with no prior no site plan available. This variance will retain the utility of this property and is conditioned upon the restriction of delivery of outdoor storage material to the hours between 9:00 a.m. – 4:00 p.m. only on days as allowed under applicable ordinance provisions.

**Voice Vote: Ayes: Towne, Erwin, Radke
Nays: Hicks**

MOTION APPROVED

Regarding the 5th variance request, Mr. Towns stated absolutely not. Mr. Erwin stated that they would be increasing a non-conformity in this instance and it just doesn't fit. Mr. Langan stated that there is outdoor storage just off the shoulder of the road. This is a side yard, it runs the length of the property. He agreed it is increasing a non-conformity but he questioned to what end, what substantial justice to neighboring property owners. Will strict compliance unreasonable prevent using the subject property or will conformance be unnecessarily burdensome. Is there a goal that is achieved by making it unusable. Mr. Langan stated that he didn't see the benefit to the community of enforcing this dimensional variance.

Motion by Towne, second by Radke

To deny the variance request Section 33.03-b-3 which prohibits outside storage closer to any road than the principal building on site. Applicant requests a 54' variance along Griswold Court and is denied because it wouldn't stop the applicant from doing what he wants to do on his property, it does not need to be that close to the road.

**Voice Vote: Ayes: Unanimous
Nays: None**

MOTION APPROVED

Regarding the last variance request, Mr. Langan explained this is a proposed steel structure to allow for the indoor storage of equipment that is in compliance with the ordinance. There is no way to comply with the ordinance other than to build a storage structure and there is no other location on the site that is possible.

Mr. Erwin stated that he is for this variance because they just took a substantial amount of property use away from them and they do need indoor storage. If the building stays in the proposed area then there is a wider area to put the bark material.

Mr. Towne stated that the building would fit, he didn't think it restricts the property at all and adhering to the setbacks. Mr. Langan stated that he worked very hard to find a way to not ask for this variance. Mr. Shigley commented that if the building was in the center he would not be able to make the turn with the trucks.

**Motion by Hicks, second by Towne
To deny the 60' variance under Section 36.02 Schedule of Regulations,
footnote u because there is enough wiggle room to reconfigure it.**

**Roll Call Vote: Ayes: Towne, Radke
Nays: Erwin, Hicks**

MOTION FAILED

**Motion by Radke, second by Hicks
To approve the 60' variance under Section 36.02 Schedule of Regulations,
footnote u.**

**Voice Vote: Ayes: Hicks, Erwin
Nays: Towne, Radke**

MOTION FAILED

ADJOURNMENT

The Zoning Board of Appeals meeting was adjourned at 9:39 p.m. due to no further business.

Respectfully Submitted,

Kellie Angelosanto

Kellie Angelosanto
Recording Secretary