

## MINUTES

Cascade Charter Township Zoning Board of Appeals  
Tuesday, July 8, 2008  
7:00 p.m.

- ARTICLE 1.** Vice Chairman Lewis called the meeting to order at 7:00 p.m.  
Members Present: Beahan, Casey, Lewis, and Wilson  
Members Absent: Vaughn (unexcused).  
Others Present: Assistant to the Manager Otey, Recording Secretary Hern, and Members of the Public.
- ARTICLE 2. Pledge of Allegiance**
- ARTICLE 3.** Vice-Chairman Lewis requested a motion for approval of the July 8, 2008 Agenda.
- Member Beahan motioned for the approval of the July 8<sup>th</sup> ZBA Agenda with support from Member Wilson. All were in favor, none opposed. The motion carried, July 8, 2008 Agenda approved.**
- ARTICLE 4.** Vice-Chairman Lewis requested a motion for approval or corrections of the April 8, 2008 Meeting Minutes.
- Member Wilson motioned to approve the April 8, 2008 ZBA Meeting Minutes, supported by Member Casey. All in favor with none opposed. April 8, 2008 Zoning Board of Appeals Meeting Minutes was approved as presented.**
- ARTICLE 5. Case #08-2935: Andrew Dykema**  
**Property Address: 6735 Cascade Road**  
**(PUBLIC HEARING)**  
Requested Action: The Applicant is seeking to allow a wall sign where the tenant does not have frontage.
- Assistant to the Manager Otey said the Applicant is proposing modification of the existing wall sign that will allow one (1) of the tenants that has frontage on the parking lot side of the building, south, to exchange that allowed signage for a wall sign on Cascade Road, west side.
- The Applicant is not asking that the sign be any larger than it currently is, simply to move it. The reason for the request is because the Applicant has rearranged the interior of the building and the tenant no longer has Cascade Road frontage.

The P.U.D. has some mixed wall signage. Some buildings have signage on only walls; others were allowed for wall signage on multiple walls. The most similar case Staff found was a PUD an amendment for the building south and west of Family Fare. In that case the Township permitted any tenants in the building to use the west wall for signage. In larger part, this is because the building was off the road and the public could not see the signage from Cascade Road and the sign cutouts were part of the building, and that was the overall sign package that was approved when the development was approved.

This building was not part of the same architectural wall sign system but the building was approved with some spaces for wall signage which the builder did not build.

According to the Sign Ordinance, the Zoning Board of Appeals (ZBA) where the literal application of the Ordinance would create a genuine hardship for the sign user and the following criteria are met may grant a variance. Before the ZBA reaches a decision, they shall consider the following Findings of Fact:

The granting of the requested variance would not be materially detrimental to the property owners in the vicinity and there are several other similar retail strip buildings in the area. Some of these buildings may also request a similar variance.

The hardship created by a literal interpretation of the Ordinance is due to conditions unique to that property and does not apply generally to other properties in the Township. There is no hardship in this case since the Applicant created it.

The granting of the variance would not be contrary to the general purposes of the Ordinance or set an adverse precedent. We have granted some flexibility for signage as part of an overall package, but not on an individual basis like this.

Staff would recommend denying the Variance request.

Vice-Chairman Lewis opened the meeting for questions from the ZBA to Staff.

Member Wilson noted in reviewing Staff's comments and the Township's regulations, each tenant is allowed to have one sign, is this correct? Assistant to the Manager Otey said it is correct. Member Wilson noted that the sign is limited to 1-square foot per lineal foot of building frontage and Assistant to the Manager Otey

said that is correct. Member Wilson clarified that the request for the Variance is because they do not have frontage on Cascade Road because the building's entrance is facing the parking lot and Assistant to the Manager Otey said that is correct.

Member Beahan asked if the sign the Applicant moved to the parking lot side of the building meets Township requirements and Assistant to the Manager Otey said the sign is within compliance.

Member Wilson asked if Staff is proposing that the Applicant leave the Rehab Pros sign where it is and Assistant to the Manager Otey said the sign is on the south side of the building and that sign stay where it is, yes.

Vice-Chairman Lewis invited the Applicant to provide a report to the Zoning Board of Appeals.

Wayne Wiarda, the building's manager representing Andy Dykema, said the sign has been located on Cascade Road for eight (8) years and they are asking the sign remain in that location and they had moved it temporarily. The Applicant had moved the sign, temporarily, in obtaining a sign permit to add a fourth listing to the sign for the new dentist. They are hoping for the variance so they may move the sign back to its original location on Cascade Road.

Mr. Wiarda noted there are four (4) natural sign locations on this building with two (2) gable-ends facing Cascade Road and the other two (2) gable-ends facing the south parking lot.

The Applicant noted that the sign's current location does not have good visibility and it is squeezed in with an overhang entrance at the patient drop-off area and are asking that the sign be relocated to its original spot of eight (8) years.

The Zoning Ordinance in question seems to apply to a multi-tenant strip center where each tenant has their own entrance with their sign above. The ordinance does not seem to apply to a multi-office building with a single-shared entrance. It would not make sense to split the signs up and hang them above each dentist and office that is occupied. This is not a retail strip center and does not feel that this applies in his case.

The Applicant also drove the area and noted a similar building along Kraft Avenue in the Glenwood Hills area and referred to one (1) sign placed high on the building for a tenant who occupies an

office in a separate wing on the lower level of the building and provided other examples within the Township.

Mr. Wiarda believes the current sign's location is not a natural-look for the building and they are requesting the sign be placed back to its original location of 8-years.

Vice-Chairman Lewis opened the meeting for any questions of the ZBA to the Applicant.

Member Beahan asked Mr. Wiarda to clarify that the Rehab Pros sign, as it was, is the sign that was moved to the west side of the parking lot? Mr. Wiarda said that they had switched the Rehab Pros sign with Advantage Health. When the tenants originally leased the building, Advantage Health was towards the front and Rehab Pros towards the back and this is how the signs had been for almost the past 8-years. The signs were switched to conform to the Township's sign ordinance and now they would like to switch them back. Member Beahan clarified that there would be two (2) signs on Cascade Road and Mr. Wiarda said there have always been two (2) signs on Cascade Road and by switching signs made them more in compliance with the tenant's locations within the building. They would like to move Advantage Health's sign to the north and Rehab Pros to the south.

Member Casey said he wanted to clarify that Advantage Health has been moved and they will stay in their new office location and Mr. Wiarda said that is correct, they are not allowed to put the Rehab Pros sign where they would like to, therefore it was moved temporarily to the south side facing the parking lot. Member Casey clarified that Advantage Health is no longer behind the large tree indicated in the site plan and Mr. Wiarda said that as you are standing on Cascade Road facing the building, the Advantage Health sign is on the gabled-end to the left and they would like to move the Rehab Pros sign to the opposite gabled-end to balance the signage. Member Casey said that Advantage Health's sign used to be on the south gabled-end and Mr. Wiarda said that is correct. Member Beahan noted that the south gabled-end is currently empty.

Vice-Chairman Lewis noted that the Applicant has presented information for consideration by the ZBA but believes that the allowance of the variance is a concern because the ordinance reflects that those on Cascade Road are allowed to have the signage. The ZBA often hears requests from businesses not on Cascade Road to place a sign on Cascade Road. This situation has

a business that is no longer on Cascade Road and recognizes that if the ZBA were to allow this to happen, additional businesses not on Cascade Road would request signage on Cascade Road.

Mr. Wiarda noted that there are four (4) tenants within the building that share the address of 6735 Cascade Road and all four (4) of the tenants are equally Cascade Road tenants. He views each of the tenants as equal tenants, they all pay the same rent, share the one (1) entrance into the building and share the same address.

Member Beahan asked how the building is entered and Mr. Wiarda said that there is one entrance door with a shared corridor to each of the tenants' offices.

There were no further questions of the Applicant and Vice-Chairman requested a motion to open the Public Hearing.

**Member Casey motioned to open the Public Hearing, supported by Member Beahan. All in favor with none opposed, the Public Hearing was opened.**

Wayne Meulendyk, 2468 Burton Woods Ct. SE, said he believes all of the tenants are Cascade Road businesses and to enter the parking lot, to do so is off of Cascade Road. From his perspective as an individual driving down the street and looking for this business he could see concern for his safety in trying to locate the place never having been there before.

Vice-Chairman Lewis asked Staff if the Township received any phone calls or letters regarding the case and Assistant to the Manager Otey said they did not.

**Member Beahan motioned to close the Public Hearing, supported by Member Casey. All in favor with none opposed, the Public Hearing was closed.**

Vice-Chairman Lewis noted the Applicant made a good point noting that all four (4) of the businesses have an address on Cascade Road. He opened the meeting for additional comments from the Zoning Board.

Member Wilson noted that in reviewing the Findings of Fact the Board is to make a decision. She does not believe in approving the variance that it would be materially detrimental to others in the vicinity and would provide assistance in locating the business on Cascade Road. The hardship is created by the Applicant but agrees

with the public member noting it would be beneficial to find these businesses on Cascade Road. These tenants are all Cascade Road businesses and are not receiving preferential treatment than any other business on Cascade Road.

**Member Wilson motioned to approve the Variance request to allow a wall sign where the tenant has indicated.**

Member Casey noted that the Township has made interpretations over the years and does not believe the ZBA can go ahead and make changes and if the change needs to be made, should be done through the Applicant's zoning. This particular sign would be located right behind the large tree. The plans indicate the large tree without its leaves, once the leaves are on the tree, no one will be able to see the sign. Advantage Health now has more visibility than they used to have and he can see the logic of the Applicant's presentation. Member Casey, however, noted that the ZBA has seen numerous requests for signage along Cascade Road and 28<sup>th</sup> Street come from one (1) building with multiple tenants and believes others will request the same variance if this one is approved. He noted that some of the P.U.D. planning is to take care of these types of issues. He supports Staff's decision in denying this request.

Member Beahan noted that the building's entrance is clearly marked by the canopy that goes towards the parking lot and noted the street numbers of 6735 are above the canopy. The building has its entrance on the opposite side of Cascade Road and noted that traffic can clearly see the entrance points of the building. Member Wilson asked if the Applicant could put their address numbers facing Cascade Road and Member Beahan believes the Applicant could move the street numbers, they are not limited.

Vice-Chairman Lewis noted there are four (4) occupants within the building with two (2) on the Cascade Road side of the building. The Township is saying that those located on Cascade Road side of the building should receive the signage. He noted that the Applicant made valid points as to the uniqueness of this situation as this property is not a P.U.D. and this is under the B1 Village Zoning and as such, the ZBA should be reviewing that zoning which clearly states the tenant must have Cascade Road frontage.

Vice-Chairman Lewis noted there is still a motion on the table to disagree with Staff's recommendation and the Vice-Chair is requesting a second to the motion. Not hearing one, Vice-

**Chairman Lewis removed the motion from the table and requested a different motion be made.**

**Member Beahan motioned to deny the Applicant's request for a variance to allow a wall sign as requested with the reason that if this were allowed what is to prevent others from making the same request, setting a precedent. Member Casey supported the motion.**

**Vice-Chairman Lewis called the motion to question. Three (3) members in favor of the motion to deny the Applicant's request with one (1) opposed. Motion carried.**

**ARTICLE 6.**

**Case # 08-2936: Albert Sears**

**Property Address: 6625 Burger Street  
(PUBLIC HEARING)**

**Requested Action: The Applicant is requesting a Variance to construct a detached building before the home is more than fifty-percent (50%) completed.**

Assistant to the Manager Otey said the Applicant is currently constructing a new home on this property.

The Township's Variance is needed due to the timing of the construction of the garage. The Ordinance limits the start of a detached building until after the home is fifty percent (50%) completed. The intent of this section of the Ordinance is to avoid having an accessory building on a parcel with no principal structure.

The Building Department has indicated that fifty percent (50%) would be when the home is being framed. The Building Department has also indicated that at the time of the Applicant's Variance Hearing, the home will be approximately thirty-five percent (35%) complete.

Staff researched previous cases and found a couple of similar requests in 1995. One case was tabled and the other case was denied because the applicants had no plans to build a home and the ZBA did not want the accessory building on the property for an indefinite period.

Staff has discussed with the Applicant the idea of providing a Performance Bond that would allow the Township to remove the accessory building if the home is not completed. Staff believes this could be used to help satisfy the intent of this regulation.

Before the ZBA can grant a Variance, they must review the Findings of Fact:

That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning districts. The intent of this section is to avoid having an accessory building with no principal structure. The Applicant has pulled the building permit for the home and have already begun construction.

This is the result of the action by the Applicant but unlike a setback variance, the issue is timing and not dimensional.

The Applicant is allowed to have the accessory building without the variance it would be started later, when the home is fifty percent (50%) completed. The Planning Commission has approved the size of the accessory building; the Zoning Board is to determine the construction time of the accessory building.

Staff does not believe the variance would be harmful since the Applicant has already started building the home.

The Township has received only a couple of these requests over the past thirteen years. This does not seem to be a common occurrence and with the home already being built and the Applicant's willingness to provide a Performance Bond the concern should be addressed.

Staff recommends approval of the Variance with the following conditions:

1. The Applicant provides a Performance Bond in the amount of \$5,000.
2. This bond will be released once the home is completed.
3. The Planning Director will report to the ZBA and the Applicant if he believes the bond will need to be used.

Vice-Chairman Lewis opened the meeting for questions of Staff by the ZBA.

Member Casey how the Township arrived at the \$5,000 bond and Assistant to the Manager Otey said it would be used to cover the expenses of tearing down the accessory building if needed.



Applicant Albert Sears said he is building a detached garage because he did not believe it would look attractive if attached to the house.

The lumber for the house was delivered this afternoon said the construction crew would be putting in the steel beams for the basement, start with the frame in the morning. He believes the home would be fifty percent (50%) completed in approximately two (2) weeks. He would like to pour the garage footings now so the framing crew, once having the roof completed, could begin construction on the garage.

Both the house and the garage are being constructed with sip-walls that are manufactured off-site with the window frames already in place, making less waste at the site, and also allows for the home and garage to be constructed faster.

It is a matter of economics to hold onto the framing crew on site by having the garage ready to go for them next, therefore, Applicant Sears is asking for the variance by two (2) weeks ahead of fifty percent (50%) completion of the home.

Mr. Sears also said that according to Staff's recommendations, he would be willing to provide a Performance Bond in the amount of \$5,000 but wondered if this could be waived since he is only looking at two (2) weeks until the home is fifty percent (50%) complete. He is willing to do whatever the Board recommends to keep the construction crew working on his property.

Vice-Chairman Lewis opened the meeting for questions of the Applicant of the ZBA.

Member Beahan asked the Applicant if he has been held up a bit with this project and Applicant Sear said he has been since he is doing the general contracting and he thought he could do the basement and the garage at the same time and this slowed him down.

He would like to keep the crew onsite and not have to wait for them to return if he cannot start on the garage.

**Member Beahan motioned to open the Public Hearing, supported by Member Wilson. All in favor with none opposed, the Public Hearing was opened.**

Vice-Chairman Lewis invited members of the public to address the case.

There were no public members and Vice-Chairman Lewis asked Staff if any letters or phone calls were received at the Township regarding the case. Assistant to the Manager Otey said none were received.

**Member Beahan motioned to close the Public Hearing, supported by Member Casey. All in favor with none opposed, the Public Hearing was opened.**

Vice-Chairman Lewis noted that it appears to him that this is a difficult situation, when the ZBA provides a variance it weakens the variance as written and sets precedence for future requests allowing for more leniencies such as three weeks or four weeks. He believes that if the variance is approved the chances of the bond being waived are slim.

Vice-Chairman Lewis recognizes the potential of financial hardship if the Applicant needs to wait two (2) weeks and the Ordinance speaks clearly that financial reasons are not a determining factor in changing an ordinance.

Member Beahan said he appreciates the fact that the Applicant realized that he could not build both at the same time and has worked well with the Planning and Building Departments instead of proceeding with the construction.

Member Beahan also noted that the Applicant is seeking the variance for two (2) weeks and is having the home and building constructed in quality materials quickly and is comfortable granting the variance.

**Member Beahan motioned for approval of granting the Applicant's request for a variance to construct a detached building prior to the home being more than fifty percent (50%) completed with Staff's three (3) recommendations, supported by Member Casey.**

Member Casey asked if the workshop included with the accessory building asked if the building would be used in conjunction with a business. Vice-Chairman Lewis noted that at last night's Planning Commission meeting, the Applicant did state that the workshop would not be used in conjunction with a business and he is

constructing the walls with a thicker insulation to help muffle the noise.

**All in favor with none opposed, motion carried.**

**ARTICLE 7.**

**Case # 08-2938: Mark and Mary Mochel  
Property Address: 1919 Watermark Drive  
(PUBLIC HEARING)**

Requested Action: The Applicant is requesting a Variance to allow a roof structure on an existing deck that is inside the required setback.

Assistant to the Manager Otey said the home was built in 2001, the deck was added after the home was built.

The Building Department has no record of when the deck was built. A deck of this size and type would have required a building permit.

The Variance is needed because the deck was built inside the required 25-foot rear setback.

Two explanations for the deck inside the setback are:

- a) The deck did not need a permit because it was a low profile, under 30-inches high, and was treated as a patio
- b) It was built without the proper permits.

The deck is 36-inches high and cannot be treated as a patio.

Even if it was a patio, adding a permanent roof to the deck would change it to part of the structure and would require that the entire structure (deck and roof) meet the 25-foot rear yard setback. However, the patio deck was installed only 23-feet from the rear property line, so it is impossible to simply enclose the existing deck without a variance.

The Township did have one (1) other similar case in the neighborhood in 2001 and the Township denied the owner a 2-foot variance for an addition to the home. The case was resolved when Watermark agreed to sell a small portion of property to the owner.

The Township also had a deck removed from a home in Watermark when it was discovered that it was located in the rear setback.

Because the Township is now aware of the deck, a decision should also be made on the location of the existing deck as well as adding

the roof. In other words, the deck cannot stay in its current location without a variance.

In reviewing the Findings of Fact, there are no exceptional circumstances in this case. The lot is quite common for this neighborhood and has no extraordinary conditions. The fact that it backs up to the golf course is also not unique to this neighborhood or other developments in Cascade that have common open spaces.

The Applicant did not have the deck built but if a permit were requested, this would have been avoided.

This is small amount of a variance but the Applicant does have reasonable use of land without the variance. Denial would not prohibit them from having a deck or a roof structure but it would require that the deck be modified to fit the setback.

Allowing the variance could have a larger impact since the Township has denied one variance in the neighborhood and required another owner to remove an illegal deck.

With only a couple of similar cases, this is not a common request. However, Staff would be concerned with the underlying impact granting the variance would have since the deck was built with no permit and in the wrong location.

Staff recommends denial of the variance to add the roof structure to the existing deck and also recommends that a variance not be granted for the existing deck and that the existing deck be modified to comply with the 25-foot setback. Once the owner has complied, they could add the roof to the compliant deck.

Vice-Chairman Lewis opened the meeting for questions of Staff from the ZBA. There were no questions.

Vice-Chairman Lewis invited the Applicant to provide a report to the ZBA.

Applicant Mark Mochel of 1919 Watermark Dr. SE submitted his presentation to the board members and reviewed the documentation.

Mr. Mochel thanked the Board for the opportunity to participate in the hearing and for their time and attention to his presentation.

After a detailed review of Planning Director Peterson's Staff Report, it is his conclusion that the basis for his recommendation for denial of the roof structure variance, and the further denial of a new variance for the existing structure is based on the following assumptions:

1. Lack of proper permit for the existing deck structure: the Township claims to have no record of deck construction.
2. Past precedence: this Board has previously rejected two (2) setback variance requests for structures in the same neighborhood.
3. Setting of future precedence: approval of the request would have larger impacts and set the stage for future requests.

In doing his own research of the history of the property and with support from Legacy Homes, Watermark LLC, and the surrounding residents, the Applicant has obtained additional information that addresses each of these concerns.

It is Mr. Mochel's recommendation that the Board should reject the need for a variance to keep the current structure in place on the basis that it was built as part of the new construction in 2001, and was approved by the Township per the issuance of a Certificate of Occupancy.

Mr. Mochel's recommends that the request to modify the existing structure by the addition of a roof be approved on the basis that this planned construction would not change the footprint of the existing structure that has already been approved by the Township.

Regarding the issue of lack of proper permit for the existing deck structure, Legacy Homes, with representatives present this evening Jeff Wassenaar and Gerry Wassenaar, has confirmed that the existing deck structure, in its current location, was included in the construction of the home in 2001. The deck structure is shown in the original home drawings, as they were submitted to the Planning Department to obtain the initial building permit. The drawings are shown in Attachment A.

In addition, the Applicant has contacted the previous and only other homeowner, Steve Carey, of the property. Mr. Carey confirmed that they did not add the deck following the original construction, and in fact, purchased the completed home including the deck structure from Legacy Homes.

It is Applicant Mochel's understanding per Legacy homes that it was not required to show deck structures as part of the site survey

in 2001, although this is now a requirement for new home construction. It is through his own submission of the new survey that the Township claims to have been informed of the existence of the deck structure and referred to Attachment B.

The Township inspected the home and the Final Building Inspection awarded on August 20, 2001. Independent of any debate regarding the site plan details on file, with the issuance of a Certificate of Occupancy, the Township did have the opportunity to review the structure and did approve the combined home and deck structures in the existing footprint, referring to Attachment C.

There was no disclosure of any setback concerns by the Township to Legacy Homes upon final inspection, from Legacy to the first owner in 2001-2002, or to himself when he purchased the home in May 2007.

The current deck structure in its present form has been in place since 2001 with no known complaints from the neighbors, the Watermark Country Club or Watermark LLC regarding the proximity of the deck to the property line.

Conclusion: the current deck structure was not added after the home was built, and in fact was constructed by Legacy Homes in 2001 and subsequently approved by the Township through the final inspections process. On the basis of this conclusion, the Applicant sees no requirement to initiate a new variance to approve an already existing structure and respectfully request that the Board reject Planning Director Peterson's recommendation for denial.

The request for Variance to allow modification to the existing deck structure through the addition of a roof. Applicant Mochel referred to Attachment D.

The details of the existing structure and the proposed modification have been reviewed and approved by the Architectural Committee of the Watermark Homeowner's Association per the Association bylaws. That committee is made up of Jack DeBruin, homeowner, and Kevin Einfeld of Watermark LLC. Mr. Einfeld is also recommending approval by this Board of the proposed construction and referred to Attachment E that was faxed to the Township on July 7, 2008.

All of the surrounding neighbors including and in excess of the 300-foot Township requirement has also reviewed the details of

the existing structure and the proposed modification. All have indicated their support and approval of the existing structure and proposed construction through petition of signatures referring to Attachment F.

The Planning Department and Zoning Board of Appeals were made aware of this setback concern through the Applicant's own actions and desire to follow the permit process within the guidelines established by the Township. Mr. Mochel is in no way attempting to subvert the building permit process.

Conclusion: All parties affected by the location of the existing deck structure and the proposed modifications have indicated their approval. Mr. Mochel respectfully requests that the Board consider this general community acceptance in granting approval to proceed with the roof structure modification on the existing building/deck footprint.

Past Precedence: the denial of two (2) setback variance requests in the same neighborhood has been cited as the basis for denial of the Applicant's request.

In each case, it is Mr. Mochel's understanding that the variance requests were created by the Applicant on the basis that the planned construction was designed too close to the lot property line and he referred to the Findings of Fact requirements referring to Attachment G.

Mr. Mochel's request for the modification of the existing deck structure will not in any way modify the existing setback. Construction is planned within the existing footprint that was approved by the Township as noted above.

Conclusion: The previous precedence is not applicable, since the initiation of the variance is for different reasons. Mr. Mochel respectfully request that the Board consider and approve his request on the basis of facts presented here, and not on the basis of other dissimilar cases.

Regarding setting of future precedence and comments from Planning Director Peterson's Staff Report:

"Allowing this could have larger impacts since the Township has denied one variance in the neighborhood and required another owner to remove an illegal deck."

“With only a couple of similar cases this is not a common request. However, Staff would be concerned with the underlying impact granting a variance would have since the deck was built with no permit and in the wrong location.”

It has already been established that there is full neighborhood acceptance of Mr. Mochel’s request, and that the previous denials were based on different set of facts. It has been further demonstrated that the existing deck structure was not improperly built.

Conclusion: The facts in Mr. Mochel’s case are truly unique to the circumstances of the existing deck structure and the circumstances of the original site plan, survey, building permit and final inspection. Therefore, it is Mr. Mochel’s opinion that the approval of his request would not in any way set precedence for future setback concerns. He respectfully requests that the Board consider this when approving his request to proceed with the planned construction.

In closing, Mr. Mochel thanked the Board for their time and attention to the matter at hand, and looks forward to a positive outcome and approval of his planned construction. He considers the construction to be an investment in his home, neighborhood and ultimately the Township through employment of local contractors and increasing property value.

Mr. Mochel submitted his own Findings of Fact (Attachment G) and presented his summary.

- A. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
- As noted by Planning Director Peterson, there are no extraordinary physical circumstances or conditions that separate his property from others in the area. However, the circumstance of the previous approval of the existing deck structures makes this an extraordinary case.
  - Facts:
    - a) the existing structure has been in place for seven (7) years with no complaints.
    - b) The modified deck and roof structure will not exceed the current setback.



- c) The 23.1-foot setback of the current structure has already been approved by the Township.
- B. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the Applicant taken subsequent to the adoption of this Ordinance (any action taken by an applicant pursuant to the lawfully adopted regulations preceding this Ordinance will not be considered self-created.
- It can be clearly stated that circumstances of this variance request are not the result of actions taken by Mr. Mochel. The Township has already approved the existing setback and his proposed modification of that deck lies within the same footprint.
- C. That such variance is the minimum variance that would make possible the reasonable use of the land, building or structure.
- The requested variance is the minimum variance that would make possible the reasonable use of the land, building or structure. The addition of the roof structure to the existing deck within the same footprint is the most reasonable use of the above for cosmetic, cost and structural reasons. To disassemble and reconstruct an existing structure is not reasonable.
- D. That the granting of the variance will not be injurious to the neighborhood.
- As has been shown by the support of the Homeowner's Association, Watermark LLC and the petition of the residents of the neighborhood, it can clearly be stated that the approval is not injurious to the Neighborhood. The issues of precedence have already been dismissed. Therefore, Mr. Mochel also sees no detriment to public welfare.
- E. That the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the Zoning Ordinance.
- It has already been established that the existing deck structure was built as part of the new home construction, was approved in its current location and therefore no additional permit was required. This request is unique due to the previous approval by the Township. Mr. Mochel recommends that this is not

common and therefore does not make it practical to amend the Zoning Ordinance.

- F. The Zoning Board of Appeals shall further find that the reasons set forth in application justify the granting of the variance, and that it is the minimum variance that would make possible the reasonable use of the land, building or structure.
- The issue of reasonable use has been covered in Item 3 above.

Vice-Chairman Lewis opened the meeting for questions of the Applicant from the Board. He noted that building inspectors provide approval of the construction but do not measure setbacks, etc.

Assistant to the Manager Otey said she is concerned with the Applicant's statement regarding they are not required to show deck structures on home site plans. The Township has required that if the structure was going to be 30-inches or higher it would have to be including in the building plans so the setbacks are met.

Vice-Chairman Lewis clarified that if a structure is 30-inches or higher it is a deck and needs approval but if the structure is less than 30-inches it is considered a patio and would not need a permit. Assistant to the Manager Otey said that is correct.

Member Beahan asked Staff if they know what the record shows that is held by the Assessment Department and Assistant to the Manager Otey said she does not have that documentation but does know that when the site plan was submitted in 2001, it did not show a deck on the property.

Member Lewis noted the survey that shows the deck and Assistant to the Manager Otey said that is a current site plan showing the deck, the plan submitted in 2001 does not show the deck.

Applicant Mochel noted that in 2001, decks were not required to be part of the site plan.

Member Wilson asked if this case should be tabled and Vice-Chairman Lewis clarified that the Board will further need to review the Township's records and appreciates the packets of information the Applicant submitted.

Member Casey noted that within the Township's packet there is a survey of the property without the deck and agrees the Board needs

more information as to if the deck was actually built with the home and if there was not an ordinance at the time requiring decks be included in the home's site plan. He is uncomfortable making a decision with the information presented but would like to hear from the Public.

**Member Wilson motioned to open the Public Hearing, supported by Member Beahan. All in favor with none opposed, the Public Hearing was opened.**

Jeff Wassenaar of Legacy Homes said he has built several homes within the Township and practice at that time was to draft the site survey configured by the cement foundation laid. It has been in just the past couple of years that the Township required that decks be included within the site plans. The deck is clearly noted on the plans requesting the building permit. They were not trying to conceal anything and the deck was there at the time of inspections in 2001.

Vice-Chairman Lewis noted that Mr. Wassenaar has built a lot of homes in the area and was familiar with the setbacks during construction and asked if they measured for the setbacks during construction?

Mr. Wassenaar noted that the posts for the deck are within compliance of the setback and the deck's cantilever is not. The practice in 2001 was not to show the decks in the surveys.

John Tambor, a Watermark resident, said his house was built also built by Legacy Homes in 2003 and has the same issue as the Applicant. He is curious to know where the Board will go with this issue, if they table the case is it due to the Findings of Fact or when the Certificate of Occupancy was issued. His home was constructed with the deck and has the same exact problems that the Applicant does. The findings will be crucial to many homeowners in Watermark. He believes there are quite a few homes that have the same issue.

Vice-Chairman Lewis said the Board needs more information on this case. Mr. Tambor appreciates the Board reviewing additional information and he is a member of the Homeowner's Association. Vice-Chairman noted that if the case is tabled, they will seek more information from the Assessment Office and the Township and the case will be reviewed next month.

Member Wilson asked Mr. Tambor if he knows how many homes this affects and Mr. Tambor said approximately twenty (20) homes.

Member Beahan asked if the golf cart path is close to the property line and Vice-Chairman Lewis said it is very close at some property lines and there would not be an option to purchase additional land.

Vice-Chairman asked if the Township received any phone calls or letters regarding the case. Assistant to the Manager Otey said the Township did not.

Applicant Mochel asked what makes up a proper building inspection: the builders and the inspectors? It seems the Township is taking the direction that they had no knowledge of the deck and that is not correct. The deck is there, it was visible during construction and concerning parties at the time of construction raised no issues. He is here before the ZBA strictly by his own actions in trying to follow Township procedures. He is curious as to his next steps regarding the issue but the deck was there when the home was constructed.

Gerry Wassenaar of Legacy Homes said he told the Applicant when approached about enclosing the deck that he would talk to the Township regarding if the roof is allowed. The Township told Mr. Wassenaar that if the deck was an existing structure then enclosing the deck should not be a problem. In his mind, the deck has been in existence and therefore included in the Applicant's plans for the variance.

**Member Beahan motioned to close the Public Hearing, supported by Member Casey. All in favor with none opposed, the Public Hearing was closed.**

Vice-Chairman Lewis opened the meeting for any further comments from the Board. There were no comments.

To answer the question of the Applicant of what will happen next, Vice-Chairman Lewis explained that the Board will be sitting down with the Planning Department, the building inspector and probably with the Township's Attorney to review the background of the property, the Township's position regarding the case and the case will be brought back at next month's meeting. The Applicant's porch may be on hold for the next month or maybe longer depending on the information received. He thanked the

Applicant for the information he presented this evening. Applicant Mochel asked if he would be contacted during the course of the research by the Township and would like to be included in the meetings and conversations. Vice-Chairman Lewis noted that the Applicant may be contacted during the research but would depend upon the information received and no decisions would be made prior to the next Zoning Board Meeting.

**Member Wilson motioned to table Case # 08-2938: Mark and Mary Mochel until additional documentation and information is reviewed from the appropriate parties at which the case may be brought back next month provided that the ZBA has the documentation and information that they need. Member Beahan supported Member Wilson's motion. All in favor with none opposed, motion carried. Case # 08-2938: Mark and Mary Mochel tabled.**

**ARTICLE 8.**

**Case # 08-2939: BZ Ventures  
Property Address: 6640 28<sup>th</sup> Street  
(PUBLIC HEARING)**

Requested Action: The Applicant is seeking a Variance to allow for a taller and larger ground sign than permitted by the Sign Ordinance.

Assistant to the Manager Otey said the Applicant is here this evening seeking a Variance for a ground sign for the development of the new building at 6640 28<sup>th</sup> Street that is within the B1 Zoning District.

Within the Board's packets, Staff has provided the regulations for the B1 Zoning District regarding ground signs.

The Applicant is proposing a sign of approximately 6.5-feet high and 57-square feet in area. This would require a setback of 25-feet or more from the property line. The Applicant is proposing a front setback of 10-feet.

The reason the Applicant is seeking the variance is because of the large amount of road right-of-way present in front of the parcel.

When 28<sup>th</sup> Street was moved, the right-of-way never changed so the setback of only 10-feet actually looks much further back.

The Applicant did check with the Kent County Road Commission (KCRC) about reducing the right-of-way. However, due to the amount of utilities in the right-of-way it would not be practical.

However, the KCRC did indicate that if the current road had the “normal” right-of-way, as shown on the drawing, the sign setback would not need a variance.

The only other similar variance Staff found was the variance granted to Cascade Roadhouse in 2006. They were allowed a taller sign but only because it was on top of the waterfall. The sign itself was within the Township’s limits.

In reviewing the Findings of Fact, the properties on Old 28<sup>th</sup> Street also are impacted by the wide right-of-way. However, this property is the most impacted by the excessive right-of-way due to the corner.

The excessive right-of-way makes this situation unique even from the others. They are not asking for a sign any larger than what would be possible in the B1 Zoning District. They have also determined that if the “normal” right-of-way were in place, this sign would not need a variance.

Given the unique right-of-way and the sign would otherwise be in compliance it would not set an adverse precedent.

Staff recommends approval of the variance as requested.

Vice-Chairman Lewis opened the meeting for questions of Staff from the ZBA. There were no questions.

Vice-Chairman Lewis invited the Applicant to provide a report.

Nathan Vriesman from Prein and Newhof was representing the Applicant and had no further comments to Staff’s report.

Vice-Chairman Lewis asked Mr. Vriesman if the site plan he reviewed was based on the “normal” right-of-way and referred to the line drawn on the site map. Assistant to the Manager Otey said that is correct. Vice-Chairman Lewis said if this was the case then the Board is to refer to the size chart, provided in their packets, in relation to the setback feet, the size of the sign is 50-square feet and should be back 25-feet. Assistant to the Manager Otey said this is correct for the sign the Applicant is proposing. Member Lewis said the setback in the chart says 10-feet, is that correct? Assistant to the Manager Otey said that if the Applicant were to measure from the “normal” right-of-way, they have the sign setback 10-feet and in looking at the chart, the Applicant could

have a sign of 30-square feet at 5-feet high. The Applicant is requesting a 6 ½-foot sign at 57-square feet.

Representative Vriesman said that he has spoken with KCRC regarding the right-of-way and they said in a normal situation KCRC would require 60-foot road right-of-way. The line on the drawing behind the sidewalk is where the KCRC, if they were to have a normal situation, is where the road right-of-way would be. This is identical to the road right-of-way on the north side of the road. If you were to measure where this sign is located in relation to where the road right-of-way line would “normally” be, there is approximately 35 to 40-feet of setback. Representative Vriesman noted the sign’s location that is 10-feet within the existing right-of-way line that is artificially large on the map. They are measuring from the “normal” right-of-way line that is 60-feet.

Member Wilson clarified that the line labeled “typical” is the line to be used as the setback line and asked if KCRC concurs as well. Mr. Vriesman said they do agree and for their purposes they do not care about this land. Their concern is to have enough land to maintain their road and have said that 60-feet is enough for them to maintain the road.

Vice-Chairman asked if he has written documentation from KCRC regarding their comments and Mr. Vriesman believes Staff spoke with the KCRC but does not have documentation.

Member Beahan referred to the sign’s dimensions and then to the drawing within the Boards’ packets.

Vice-Chairman Lewis asked if this is the only sign for the property and Jack Vos, sign engineer, said it is. Vice-Chairman Lewis asked if tenants would be added to the as they moved in and that is correct.

**Member Wilson motioned to open the Public Hearing, supported by Member Casey. All in favor with none opposed, the Public Hearing was opened.**

Wayne Meulendyk, owns the building at 6701 Old 28<sup>th</sup> Street, and is in the process of putting a sign up and has been working on it for a year. He had to reconstruct his property in order to comply with the Township. He approves of the site plan now that he has seen the details.

Assistant to the Manager Otey reported that the Township did not receive any phone calls or letters regarding the case.

**Member Beahan motioned to close the Public Hearing, supported by Member Casey. All in favor with none opposed, the Public Hearing was closed.**

Vice-Chairman Lewis noted the Applicant is correct that in some cases the Township has changed the size of the sign in relationship to the road, with those that are further back having larger signs and those closer have smaller signs. In this particular case the question seems to be where do you measure from the road itself. The Board has heard that the KCRC does not care if the Applicant places the sign in the proposed location but nothing formally documented.

Member Beahan asked if there would be additional signage on the building and Representative Vriesman said there is no present signage on the building and the tenants may want wall signage in the future. Member Beahan asked how much they are allowed and the representative said they would comply with what they are allowed per square footage of road frontage.

Member Casey noted that the building has an upper level and asked if the upper level tenants would also request signage? Assistant to the Manager Otey said it is possible if they are along 28<sup>th</sup> Street noting that the Applicant is allowed to have a free standing sign along with wall signage.

**Member Beahan motioned to approve the Applicant's request for a variance as requested for the placement of a taller and larger ground sign being placed within the proposed setback of 10-feet as requested. Member Casey supported the motion.**

Member Wilson wanted to note the uniqueness of this property since 28<sup>th</sup> Street was reconfigured and is secure in not setting precedent. Member Beahan also believes this is the largest space created by the reconfiguration of 28<sup>th</sup> Street.

**All in favor with none opposed. Motion carried.**

## **ARTICLE 9.**

### **Any Other Business**

Vice-Chairman Lewis opened the meeting to any other business of the ZBA.

Member Casey commented that one of the things the Township is very involved in is the planting of landscaping and people want to



protect the green space. His concern is that the Township requires the planting of trees but does not require the maintenance and upkeep of them. Vice-Chairman agreed that the Township should be able to follow through. Member Casey referred to trees at Wal-Mart and 36<sup>th</sup> Street. Vice-Chairman Lewis suggested writing this criteria into the Master Plan.

Assistant to the Manager Otey noted that the landscape bonds are for the installation of the landscape and once the plantings are installed the bond is released.

Member Wilson noted that maintenance should be implemented on the plantings.

**ARTICLE 10.           Adjournment**  
**Member Wilson supported by Member Casey moved to adjourn. The motion carried and the meeting was adjourned at 8:58 p.m.**

Respectfully submitted,

Jack Lewis, Vice-Chairman/Secretary

Lisa Hern, Recording Secretary