

MINUTES
Cascade Charter Township Zoning Board of Appeals
Tuesday, July 12, 2011
7:00 P.M.

ARTICLE 1. Chairman Mel Casey called the meeting to order at 7:00 P.M.
Members Present: Casey, James, Logue, Alternate Neal
Members Absent: Goldberg, McDonald, both excused.
Others Present: Assistant to the Manager Sandra Korhorn

ARTICLE 2. Chairman Casey led the Pledge of Allegiance.

ARTICLE 3. Approve the Agenda

Motion was made by Member Logue and supported by Member Neal to approve the Agenda. Motion carried.

ARTICLE 4. Approve the Minutes of the June 14, 2011 Meeting.

Motion was made by Member Logue and supported by Member Neal to approve the Minutes. Motion carried.

**ARTICLE 5. Case #11-3036 Timothy and Charlene Hill
(Public Hearing)**

Property Address: 6100 Cascade Road SE

Requested Action: The applicants are appealing the Zoning Ordinance interpretation of:
Section 19.05 Driveway Spacing
Section 18.06 Setback for parking lots

This case is related to the development of a proposed daycare facility at 6100 Cascade Road.

Assistant to the Manager Korhorn said that this is an Administrative Appeal. Timothy and Charlene Hill are objecting to the standards that the Zoning Administrator used when the proposed daycare facility site plan was looked at and they believe different standards should be used. The Planning Commission has reviewed the daycare plan as a Special Use Permit and has forwarded a denial of the request to the Township Board. The Township Board will hear the case once the proposed daycare applicant provides some additional engineering information. The applicant for the daycare facility is also waiting for the outcome of this hearing in case they need to make changes to the site plan as the result of this appeal.

In regards to this case and driveway spacing interpretation, Staff used the standards in section 19.05.2; that is for ingress/egress in residential districts. Subsection 2 addresses non-residential uses in the residential district. The daycare is a non-residential use that is permitted by special use permit in the residential district. This section of the ordinance allows for the Township to evaluate the appropriate location of the drive. The applicants believe that we should be using Section 19.04.01 (Table 19-A) of the

Zoning Ordinance. This would require the driveway to be moved approximately 250 feet.

Section 18.06 Setbacks for parking lots.

The standards used in this case is in section 18.06.2. Staff believes this is the section that should be used to address this situation. Like the driveway spacing standards, it applies to the non-residential uses in the residential zoning district. This section specifically states that a type A bufferyard shall only be required when any approved parking lot is located closer to a residentially used lot than the permitted building setback line. The applicant believes 19.18.1 should be used. This would require a 30 foot bufferyard for the parking lot instead of a 10 foot bufferyard.

Any time we have an occurrence where it appears that two sections of the Ordinance may apply, we always use the section that more specifically addresses the situation at hand and also gives the benefit of the doubt to the applicant.

There are other uses in the R1 Zoning District than simply homes. There are day cares, churches, schools, and bed & breakfasts. They are permitted in the residential zoning district and are considered as non-residential uses in the residential zoning district. They are permitted by Special Use Permit.

The most recent example using these standards was for the new driveway and Pine Ridge Elementary. If the standards were used as applied by the applicant we would not have been able to permit the new driveway since they would not have had enough frontage.

Daycare use in the residential zone has been permitted as a Special Use since 1989.

Any interpretation different from staff's interpretation would affect any future applications for day cares, churches, schools, and bed & breakfasts.

Staff believes the Zoning Ordinance was interpreted correctly and the standards should be used as originally interpreted. Staff advised the Zoning Members that if they believe otherwise it would be good to provide a recommendation on the need to amend these sections of the Ordinances.

Chairman Casey asked if there were any questions for Staff. Hearing no questions Cliff Bloom, Assistant Township Atty. was present with basic comments. He stated that the Zoning Board normally deals with variance requests. One of their functions is also strict appeals, which this is. It is regarding interpretations of the Zoning Ordinance. Tonight the ZBA is to simply decide whether the two interpretations made by Steve Peterson as the Township Zoning Administrator are correct, or whether one or both of those should be overturned. Atty. Bloom went on to say that there are some general guidelines; generally the specific controls the general. The applicant submitted a letter stating the past practice, past interpretation by the Zoning Administrator is irrelevant. Bloom disagrees with the applicant. Bloom added that if there is uncertainty or a close call, courts will construe an interpretation in favor of the property owner. The Hills have argued that in both of these cases the two sections are not necessarily mutually

exclusive but that they could be read in a complimentary fashion, and that is a legitimate argument. In Atty. Blooms opinion, these are relatively close calls.

To briefly address the responses from the applicant: number 8, the applicant asserts that Section 17.06 should govern. Atty. Bloom respectfully disagrees.

There are no standards here. The Zoning Board Members are deciding an issue of law; an interpretation. What you do tonight will have precedent and will bind until or unless the Zoning Ordinance is amended. Atty. Bloom concluded by saying that these are basic comments to consider. None of his comments should be construed as suggesting how the Members should rule.

Chairman Casey asked if there were any questions of Atty. Bloom. Member Logue wished to clarify who Mr. Bloom was talking about in his statement "If there is any ambiguity, the preference would be given to the property owner". Atty. Bloom replied that in this case, the property owner he is referring to would be the daycare applicant.

Chairman Casey asked for the applicant to speak. Timothy Hill of 6150 Cascade Road is the applicant for this appeal. Mr. Hill stated that he had already put his response to staff comments in writing and didn't need to repeat what he had written. He said that he could highlight some of the points that he feels are most relevant. The Atty. had disagreed with his first written comment in reference to Staff comments (number 8) regarding 17.06. Per Mr. Hill, the Special Use approval standards are 17.06 so they are the ones that are triggering the requirements to look at these other standards. Section 17.06.3 specifically talks about driveways, parking, etc. It says that unless otherwise modified in 17.07 all the rest of the standards of the Ordinance shall dictate how this site plan is adopted. If in such case where there is a conflicting standard, the most restrictive shall apply. This seems to contradict the staff comment which says, "the benefit of the doubt" goes to the applicant.

Mr. Hill went on to say that the permissibility of a child day care center in a residential zone has never been disputed. Their appeal is about properly applying the Ordinances as they relate to the site plan at 6100 Cascade Road and whether the proper Ordinances are being applied.

Chairman Casey asked for a Motion to open Public Hearing. **Member Logue made a Motion to open Public Hearing. Support by Member Neal. Motion carried.**

Chairman Casey asked if any correspondence was received by Staff in regards to this case. Assistant to the Manager Korhorn said she had not received any.

Brad Janowiak of 6084 Cascade Road was present. His lot adjoins 6100 Cascade Road. He was present to support the Hills and he agrees with them.

Nikola Calahan of 1905 Mont-Rue Drive was also present. She was there to support the Hills as well. She would like residential areas to stay residential with no exceptions.

Member Logue made a Motion to close Public Hearing. Support by Member Neal.

Motion carried.

Chairman Casey advised that they should discuss the two items independently and have independent Motions.

Member Logue commented that he had heard a lot of passion from the members in the audience; unfortunately they didn't really address whether the procedure was followed and whether the procedure was clear and whether the decision was based on very clear instructions. Regarding the driveway spacing, it seems that the Zoning Administrator was following what the Ordinance says.

Chairman Casey said it could be confusing. Member Neal had no comment.

Member Logue made a Motion to uphold the interpretation or determination of the Zoning Administrator regarding Section 19.05 for Driveway Spacing. Support by Member James. Motion carried.

Chairman Casey asked if there was any discussion regarding setbacks for parking lots.

Member Logue commented that if we are looking around the Ordinance to see where to look to get specific information for the daycare use of this parcel, he would as well follow the Zoning Administrators path with the same sections. He understands that you can look around and find other areas where other language of similar use, but it doesn't follow the layout for the task at hand. It seems to Member Logue that the Zoning Administrator followed procedure; adding that it is his job not to be partial. He's just following the Ordinance.

Member Neal agreed with Member Logue.

Member Logue added that he had reviewed Section 17 regarding the actual Special Use, but he felt it covered a different procedure.

Member Logue made a Motion to uphold the decision of the Zoning Administrator on Section 18.06; the setback that was arrived at. Support by Member James. Motion carried.

ARTICLE 6: Any other business

ARTICLE 7: Adjournment

Motion was made by Member James to adjourn. Support by Member Logue. Motion carried. The meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Tom McDonald, Secretary

Carol M. Meyer, Planning Administrative Assistant