

**MINUTES**

Cascade Charter Township Zoning Board of Appeals  
Tuesday, February 8, 2005  
7:00 pm

- ARTICLE 1.** Chairman Casey called the meeting to order.  
Members Present: Beahan, Casey, Neal, Richards, Vaughn  
Members Absent: Crawley and Lewis (both excused).  
Others Present: Planning Director Peterson, Planner Deem,  
Admin. Assistant Thompson and those listed on Supplement #1.
- ARTICLE 2.** **The agenda was approved on motion by Member Beahan and supported by Member Richards. The motion carried.**
- ARTICLE 3.** **The Minutes of the January 11, 2005 meeting were approved as presented on motion by Member Beahan and supported by Member Neal. The motion carried.**
- ARTICLE 4.** Receive and File:  
The Minutes of January 4, 2005 were received and filed.
- ARTICLE 5.** **Case #05-2696: Loubert**  
*(PUBLIC HEARING)*  
The applicant requested a variance to allow a temporary ice rink in the front yard at 6715 Tricklewood Court.
- Planner Deem related the applicants are requesting a variance to allow a temporary ice rink in the front yard. The Zoning Ordinance classifies it as a "sport court".
- (Member Vaughn entered the meeting at this time – 7:04 pm).
- Planner Deem then went through the criteria to be considered before granting a variance as listed in the Staff Report. Accessory structures are not allowed in the front yard unless they are setback 200 feet. The time frame for the ice rink is the end of November to the beginning of March. There are boards surrounding the ice rink that are four feet tall. The Zoning Ordinance does allow fences four feet high in the front yard or six feet high with a Special Use Permit. The side yard allows six foot high fences or 8 foot high fences with a Special Use Permit. The height of the boards are consistent with the Township requirements regarding fences. The location is the front yard. The ice rink cannot be placed in the side or rear yard due to the topography of the land. The structure is ten feet from the front yard set back. Several letters from neighbors

were received. Most are in favor of the variance and one is against it. Staff presented a map showing the location of the homes of the residents that wrote the letters. Staff today received a letter from a neighbor at the corner of Tricklewood Drive and Tricklewood Court. That was the lone response against the request.

Planner Deem then went through the findings of fact as listed in the Staff Report. 1) the topography prevents placing the structure in the rear yard. 2) the topography of the land is not self-created but a unique case. There is no other place to put the ice rink. 3) to allow a temporary ice rink is the minimum time needed. The structure will not be up all year around. 4) Staff has received letters from several neighbors in support the request. 5) taking all the information regarding this case into consideration, it makes a unique situation that would not require changing the Zoning Ordinance. 6) this is the minimum variance necessary.

Planner Deem related the neighbor from whom the complaint was received is approximately 10 feet below the property where the ice rink is. Planner Deem related the neighbors complained about four halogen flood lights on the rink. He has visited the site three times and has not seen the lights. The applicant would like to put up the rink each year. In doing so, Staff feels the time frame would be limited to November through March, weather permitting. The rink probably not be useable until December.

Planner Deem recommended approval of the variance with the condition a time frame be placed on the use from November through March.

Member Beahan asked will it be taken down March 31, 15<sup>th</sup> or 1<sup>st</sup>? Planner Deem related the applicant would like to use it through February and take it down during March. He views that as the first week of March.

Member Neal asked what is the purpose of the wood wall? Planner Deem responded he is not sure. It is used as a hockey rink. The applicant will answer that question.

Member Vaughn asked how far in from the property line of the complaining neighbor is the wall? Planner Deem related probably 35 or 40 feet.

The applicants, Kevin and Kelly Loubert, were present. They presented pictures of the rink with lights. Mr. Loubert related the boards were put up with the goal toward their house. They put the

lights up and take them down when needed. They didn't want a permanent structure. The boards are a way to make the level water in the front yard. Last year the boards were not quite as high. They increased the heights this year to make it safer.

Member Beahan asked what time in the evening is the latest you have been skating. Mrs. Loubert responded 8:30 – 9:00 pm. They re-surface the ice in the evening.

Member Richards asked is there a reason why you couldn't have the wall one foot high all the way around? Mr. Loubert responded it is about 18" deep in one end and 4" on the other. Once the ice gets to be that high it is better for the kids to have the boards higher and not worry about going over the side.

Member Richards related you could put the wall 18" at one end and keep the ice in. Mrs. Loubert responded the boards are four feet high and not 4-1/2 feet. Mr. Loubert related the boards are painted. Mrs. Loubert related they knew immediately who complained. They did go to that neighbor and tried to speak to them. They would have handled it with them versus going through all of this if the neighbor would have told them they were not happy.

Member Vaughn asked if they have been doing this for a few years. Mr. Loubert responded we did it last year on a slightly smaller scale and increased it just a little this year.

Member Beahan asked will it stay at this size? Mr. Loubert responded yes. Mr. Loubert asked what time in March would you like to end. Mr. Loubert related they are always hoping for a cold season to lengthen the season.

Member Beahan related we can put a date in there.

**Member Beahan supported by Member Vaughn moved to open the public hearing. The motion carried and the public hearing was opened.**

Linda Wenger related she lives across the street. Last year before Christmas she was upset about how it looked. Now, she realizes how wrong she was. Last year she called the township office and spoke with a woman and asked her if there was any ordinance that kept them from constructing this structure in the front yard. It took a week to get an answer. The response was there is no ordinance, check your subdivision restrictions. Mrs. Wenger related this year

when her own granddaughter is learning how to skate in a safe atmosphere on her own street she realized that is what we are all about here in Cascade Township. Mrs. Wenger referred to the Mission Statement from the Cascade Township web site: "committed to serve the public by providing the finest community services possible with respect, efficiency, and integrity". Mrs. Wenger stated the ice rink has brought our whole neighborhood out of ourselves and is something lasting for our children and the Louberts' are doing the right thing. The person who complained has no children and none are welcome in their yard. Mrs. Wenger related she has lived there since 1988 and the Louberts are probably the finest neighbors she has ever had and gives the most of themselves. It is truly something to be adored. She was against it until she saw how it has brought all the neighbors together for fun.

Dave VanderArk of 6728 Tricklewood urged the variance be granted for a few years while the kids grow up.

Lisa Isler of 6700 Tricklewood related she has a daughter who is ten and she asked for ice skates this year and skates with all the other kids. She was not happy to find out the rink may have to come down. The ice rink is a good thing. It is really important that kids have some place to go after school and on weekends. The Louberts' are very safety conscious - all the kids wear helmets. She appreciates the time and expense they have expended to put it up. She hopes the township allows it to be up for the winter.

Sarah Snyder of 3075 Hayward related this is a great community and her kids use the rink. Her daughter is learning to ice skate. It is has been the draw for the neighborhood and is a definite bonus. She works for a real estate company and when people are looking for a house they always ask how many kids are in the area. Mrs. Snyder asked please let them have the variance. It is more trouble for the Louberts to do the rink and it is so nice for everybody else.

**Member Beahan supported by Member Neal moved to close the public hearing. The motion carried and the public hearing was closed.**

Member Beahan related he drove by it and was amazed. It was one of the nicest ice rinks he has seen. Over all, he related he can't see any reason not to grant the variance. If the rink is approved, the time period needs to be limited. Member Beahan asked Mr. Loubert how long it takes to put it up. Mr. Loubert responded

about a week to put it up, and about a week to freeze. They probably would not start before Thanksgiving.

Member Richards related he is really torn with this request. He did read through all the letters and comments from the neighbors. It is a wonderful benefit to the neighborhood. The concerns are: 1) it is not typical to have a temporary structure like this in the front yard. He understands the topography is not an option for them. It is unfortunate when this kind of dispute does occur. It causes the neighbors to draw battle lines and that is a sad thing. 2) The biggest concern is the precedent that would be set by granting this variance. In particular he is concerned about the height of the one end. If the high end were at knee level it would be better. The high boards do make it more unsightly to those who object to it.

Member Beahan related the height does not bother him too much because of the slope of the land. That is not a major issue for him.

Member Richards asked isn't it higher than what is allowed for the fence height. Planner Deem responded fences are allowed to be placed on the property line at a height of four feet in the front yard.

Member Neal related after looking at the photos and hearing the comments by the neighbors who are here tonight, he sees no reason why it should not be granted. It seems to be a definite asset for the neighborhood. He urged the variance be approved.

Member Vaughn related he is impressed by people saying they like the appearance of it. He is leaning in the direction of granting the variance. He would have liked the pictures to have been taken from the complaining neighbor's back windows and not from the Louberts yard to get a better perspective for what the complaining neighbor sees.

Member Richards asked what if you ran a wooden fence to screen the ice rink along the property line. Mr. Loubert responded that wouldn't add to the neighborhood, but it would make things simple for them. He hopes there would not be "bad blood" in the neighborhood over this. Mrs. Loubert related a fence would look really bad as all of the yards connect.

Chairman Casey related this ice rink does require a temporary use variance regardless of the complaint or no complaint. Planner Deem responded correct. The Zoning Ordinance classifies this as a sport court which is an accessory structure. This is the first ice rink we have dealt with.

Chairman Casey asked if somebody came in to make application for an ice rink can you require them to submit a plan and dimensions. Planner Deem responded yes, that would be required under the accessory structures standards in the zoning Ordinance.

Chairman Casey asked where does the ice rink (structure) melt? Mr. Loubert responded into the yard and the larger blocks of ice are hauled into the back yard.

**Member Neal supported by Member Vaughn moved that the variance be granted.**

Discussion took place regarding the time limit.

**Member Neal amended his motion to state the ice rink would not be installed sooner than November 1 nor continued beyond the first week in March.**

**Member Richards suggested on March 1 or as soon thereafter as practical.**

**Member Beahan related the applicant puts it up the week of Thanksgiving. He suggested an amendment to put it up the week of Thanksgiving and take it down no later than March 1 or as soon thereafter as practical.**

**Member Neal related he was agreeable to the amendments and will also include in the motion the Staff Report with the findings of fact. The motion will refer to the variance as meeting the criteria as presented in the Staff Report dated January 31, 2005.**

**The motion carried with Member Richards casting a nay vote. Member Richards related this is a unique circumstance with a benefit which outweighs any detriment to the adjoining properties.**

#### **ARTICLE 6.**

**Case #04-2691: Gantos/Thornhills Properties L.L.C.**  
*(From the Table of January 11, 2005)*

The applicant requested bufferyard and curb cut variances for the re-development of 2845 Thornhills, SE.

**Member Beahan supported by Member Neal moved to remove Case #04-2691 from the Table of January 11, 2005. The motion carried.**

Planning Director Peterson presented two site plans. One showing what the township would like to see with the buffer yard and strip of land along the northern boundary. The other plan shows how the applicant would like the strip of land across the north property line. The Ordinance would require a 25 foot buffer yard which the applicant has complied with - with the exception of the north property boundary. That is part of an easement granted and received by Standard Federal Bank in the late 1980's. The applicant believes the Township does not have the ability to require a bufferyard in that area. Staff has suggested a compromise of a 17 foot buffer yard with all the plantings of a 25 foot buffer yard. The packet contains a series of communications and responses from the applicant, his attorney and the Township Attorney. Staff has followed up with representatives of the bank, both with the local branch and Detroit, and explained what was happening. At this point the Bank has not replied with any objection to the township's idea of extending the bufferyard in the easement area. Also included in the packet are minutes from the 1989 zoning case. The unique circumstance is the easement was there as a result of a condition placed on Standard Federal by the Township. The condition was that a building would not be allowed within 48 feet of the bank property line. Planning Director Peterson related the buffer yard would not affect the parking or access to the site as the bank now enjoys. The applicant does not believe the Township can put this condition on. The Township Attorney believes it can be done. The parties at this time agree to disagree. Staff urged the members to use the findings of fact in making a decision for this request.

Member Neal related the January 17 letter indicates the Township should confirm the bank's position in regard to this matter. He believes the references to the bank being contacted are hearsay statements. He would like something in writing from the bank. Planning Director Peterson responded he gave the bank all the information the Zoning Board of Appeals has, including site plans.

Member Neal asked Staff did you specifically ask if they had any objection. Planning Director Peterson responded yes, we asked for something in writing and gave them the date of this meeting. No response was received. He has not received any written response.

Member Neal expressed his concern of liability for Staff. He related Staff does not have governmental immunity as a township employee. Member Neal related he feels uncomfortable without something in writing from the bank. Planning Director Peterson

related he asked for something in writing. The Township Attorney has supported our position.

Member Richards related Mr. Peterson, as our Staff member, would be protected by governmental immunity. He is not worried about liability. Member Richards related he also would feel more comfortable with something in writing from the bank saying they do not object. He would like to hear something back.

The applicant, Mike Gantos, and his attorney, Jeff VanderLaan, were present. Mr. Gantos related they did make an effort to contact the bank. They do have an issue with the 17 foot buffer. They prefer the zero foot buffer because they believe they do not have the legal right to change somebody else's easement area.

Mr. VanderLaan related the issue is whether or not there is a legal impediment with regard to the buffer yard. He related Mr. Gantos is more than willing to accept the compromise of the 17 foot buffer yard, but they believe it is impossible for them to go in and reconfigure that easement area. Mr. Gantos bought the property and found the location of the easement and the conditions that were placed on the property by the previous owner which pre-dates the ordinance that requires the buffer yard. Mr. VanderLaan stated they do not have the right under the terms of the easement to simply reconfigure the area within the easement area. It is not possible. Mr. VanderLaan gave a brief history of the communications between the applicant and township which began on January 11. Mr. VanderLaan further related he objects to Staff contacting the bank directly and feels it complicates their relationship with the bank. Mr. VanderLaan then presented an email from the bank regarding the easement. He related the bank agrees with the applicant's opinion regarding the affect of the easement.

Planning Director Peterson related the reconfiguration does not take away parking from within the easement. It keeps all the parking in the easement just as it is now and he believes the bank agrees with the Township's position.

Mr. VanderLaan stated we simply have no right to control the easement. The easement documents as they are today do not allow them to control the landscaping.

Planning Director Peterson related he read the email from the bank and it looks like a successful negotiation. All the parking is located within the easement and appears to be a win-win situation.



Mr. VanderLaan stated he does not know what the bank will demand from them for a legal document.

Chairman Casey related the condition the previous bank had to meet was that this parcel would not be built on. The prior owner and bank entered into the easement. He questioned at the last meeting why the bank had not been contacted. The township probably should not have contacted the bank. The situation is a non-conforming situation and we must make it conforming. Chairman Casey related to the applicant, Staff has provided a compromise and if the applicant can't live with the compromise, the site plan has to be altered.

Mr. VanderLaan related the easement will not allow the compromise. The easement is clear. It doesn't say you have to have a certain number of parking spaces.

Member Richards clarified your position is your client can't comply with the suggested compromise because it would impair the neighboring properties' easement. Mr. VanderLaan responded we cannot comply because it would render the property useless.

Mr. Gantos related he cannot comply with the buffer yards because they are zero. He does not have time to sit and wait for the bank. He needs to get his variance and move forward with the project.

Planning Director Peterson related you can move it forward and still negotiate with the bank.

Mr. VanderLaan related you could approve the variance based upon that condition.

Mr. Neal related the bank may ask for nothing as compensation.

Mr. Gantos related the bank bought the easement from the former property owner. They made a payment between Harkness and the bank.

Member Beahan related he is not sure how the applicant worded his request to the bank. It sounds like the bank is willing to go along with this. He thinks it can be done.

Mr. Gantos related he does not want to be legally bound.

Planning Director Peterson related at this point the zoning Board of Appeals can approve the variance as Staff has suggested. If the applicant wants to wait until our attorney says you can do this, we can schedule a special meeting.

Member Richards related the email response from the bank suggests they are willing to negotiate and agree with a bufferyard so long as they can keep all the parking they currently enjoy.

Mr. Gantos related he is trying to build a development. He does not want to be legally required to do the 17 foot buffer yard until the easement is changed.

Mr. Neal related it seems to him the bank is willing to sit down and consider specifically what is intended. It is a simple way to solve this problem.

Member Richards related he is unable to approve the variance until an answer from the bank is received.

Member Beahan related we have an obligation to the community to get this site back into proper regulation and we have an obligation to do it. That obligation is bigger than the applicant's need to get a development done.

Chairman Casey we can't set a precedent or not have this come to a conclusion just to expedite matters. This problem was not created by the applicant. We are obligated to give the minimum variance that we can.

Member Neal suggests we table the request.

**Member Richards moved to table. Member Neal supported the motion. The motion carried.**

Mr. VanderLaan objected to the motion to table.

**ARTICLE 7. Any Other Business**

None presented.

**ARTICLE 8. Adjournment**

**Member Beahan supported by Member Neal moved to**

**adjourn. The motion carried and the meeting was adjourned  
at 8:40 pm.**

Respectfully submitted,

Jack Lewis, Secretary

JL:MJT