

## MINUTES

Cascade Charter Township Zoning Board of Appeals  
Tuesday, January 11, 2005  
7:00 pm

**ARTICLE 1.** Vice Chair Casey called the meeting to order.  
Members Present: Beahan, Casey, Crawley, Lewis, Neal, Vaughn  
Members Absent: 2<sup>nd</sup> Alternate Richards (excused).  
Others Present: Planning Director Peterson, Admin. Assistant  
Thompson, and those listed on Supplement #1.

**ARTICLE 2.** Vice Chair Casey asked for a motion to revise the agenda to have the Election of Officers at the beginning of the meeting as Article 3. **Member Lewis supported by Member Beahan moved to revise the agenda order and hold the Election of Officers as Article 3. The motion carried.**

**ARTICLE 3.** **Member Lewis supported by Member Crawley nominated Mel Casey for Chairman. The motion carried.**

**Member Beahan supported by Member Crawley nominated Jack Lewis as Vice Chair/Secretary. The motion carried.**

**ARTICLE 4.** **The Minutes of the December 14, 2004 meeting were approved as presented on motion by Member Lewis and supported by Member Crawley. The motion carried.**

**ARTICLE 5.** The Planning Commission Minutes of December 6 and December 20, 2004 were received and filed.

**ARTICLE 6.** **Case #04-2691: Mike Gantos/Thornhills Properties LLC (PUBLIC HEARING)**  
The applicant requested bufferyard and curb cut variances for the redevelopment of 2845 Thornhills, SE.

Planner Director Peterson presented the site plan. The site is vacant and has several issues making it legal non-conforming. The building has been empty for 180 days which requires the site to be brought up to current standards. The site has lost its grand fathered status due the vacancy. The curb cuts are existing but would have to comply with today's standards. One curb cut (southerly) on Thornhills Drive is shared with the Township Hall. The second curb cut is on the north side of the property. The Zoning Ordinance requires driveways to be spaced 300 feet apart. This property has 366 feet of frontage on Thornhills Drive. If the

required 300 foot spacing were exercised, that would push the northerly drive farther to the south and then we would have the same issue with the southerly curb cut.

Planning Director Peterson related the first variance deals with the location of the north driveway. The north drive does provide access for the bank property. In the late 1980's the township required the bank to have access to the curb cut and parking on the south end of the property. These drives have been reviewed and approved by the Kent County Road Commission. The north drive would need changes for curb cut and radius and will be reviewed by the Planning Commission. The existing curb cut is thought to be a good location in terms of future access.

Planning Director Peterson then addressed the second variance. He related that variance deals with the north property line. Today's standards require a 25 foot bufferyard for landscaping. It is not intended to have 25 feet of buffer yard. Staff is suggesting seventeen feet be provided on the north property line. A type D bufferyard would be required which includes 3 canopy trees, 6 understory trees and 9 shrubs every 100 lineal feet. About one-third of the existing bufferyard is provided with a 17 foot width and the remainder goes down to zero. A cross access is provided for the property to the west which is also being redeveloped. The easement is a good movement for that cross connection and would provide good traffic flow. The easement is for the bank to have access and is also for parking for bank employees. Planning Director Peterson related he consulted with the Township Attorney to see if that easement area could be modified to provide for some bufferyard and keep the existing parking and access. The applicant has some concern about that. The Township Attorney determined there is no problem with providing additional bufferyard and additional landscaping within the easement. Staff asked the attorney if they could extend the 17 foot bufferyard along the entire strip of the north property line and the attorney agreed that is possible. No parking spaces would be removed. If additional landscape area is not installed, there is not enough room to put all the landscaping in the existing landscape area.

Planning Director Peterson then went through the findings of fact as found in the Staff Report. Planning Director Peterson recommended approval of the variance for the location of the north drive with the condition that it be modified as required by the Kent County Road Commission. Secondly, Planning Director Peterson recommended the variance for the bufferyard along the north

property line be approved with a 17 foot landscape buffer (Type D) for the entire north property line.

Member Crawley asked if the bank uses the easement. Planning Director Peterson responded yes, they do. They still use it and they want to continue using it. The variance, if granted, would not eliminate any of that.

Member Lewis asked does that impact on the parking also? Planning Director Peterson responded the parking is down a few steps from the rear of the bank building and the bank would still be able to use the parking.

Member Vaughn asked is the easement currently asphalt? Planning Director Peterson responded yes.

Mike Gantos, the applicant, was present. He related his rationale is to redevelop the entire site. He is attempting to make sure there is good pass through to the west. The biggest area in dispute is the area on the north. If a 17 foot bufferyard is installed there, it would make it non-conforming to the easement and would expose him to liability with the bank. The easement is for the exclusive use of the bank. Mr. Gantos related his attorney and the Township Attorney do not agree. A bufferyard would change the purpose of the area. It becomes something different and would be adding an obstruction. Mr. Gantos related he is exposed to liability if he changes that area. Mr. Gantos related he has no issue in trying to talk with the bank.

Member Vaughn asked Mr. Gantos why he hasn't already talked to the bank about that. Mr. Gantos responded he would be asking them to change something they have a current right to.

Member Vaughn asked do you want the variance tabled until you talk to the bank. Mr. Gantos responded if the bank is open to discussions they may change it.

Member Lewis asked our attorney does not agree with your attorney. Mr. Gantos responded right. My attorney does real estate and he believes it would not hold up in a court.

Member Lewis related there are two attorneys' opinions. If we have to pick one, it will be the Township Attorney's opinion. Mr. Gantos related he is still trying to make a business decision. His attorney says we can't touch that easement area.

Member Crawley asked how do you plan to keep the easement for the exclusive use of the bank. Mr. Gantos responded it could be used by both parties for shared parking.

Member Vaughn asked if regular people could use the parking spaces. Mr. Gantos responded yes.

Member Lewis asked does the size of the bufferyard impact on the size of the building, etc. Mr. Gantos responded it meets the B-2 zoning with the exception of the northern bufferyard.

Planning Director Peterson related the bufferyard required would not change because of the size of the building.

Chairman Casey asked for a specific count on parking when the bank expanded in the past. Planning Director Peterson related it is about 14 or 15 spaces. As long as the number of spaces remains the same it is not a problem to create a bufferyard.

Chairman Casey related his opinion is the Zoning Board of Appeals cannot practice law. The Zoning Board is supposed to give the minimum variance possible. Unless that easement is actually resolved, that could be a point of fact that would be very important to us. He believes the way the easement is written, it is open to interpretation.

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

Planning Director Peterson related no written or oral communications were received.

There being no one present to speak on the matter, **Member Beahan supported by Member Lewis moved to close the public hearing. The motion carried and the public hearing was closed.**

Member Lewis related he is pretty comfortable with granting the first variance. The curb cut has been there for many years and lines up with the curb cut across the street. He would like to see it re-designed a little.

**Member Lewis supported by Member Vaughn moved that the request for the curb cut with spacing of less than 300 feet be granted in as much that it has been in existence previous to this**

**period of time and lines up with the property across the street and gives good traffic flow to the property to the west.**

Chairman Casey related his concern regarding people avoiding the traffic light at the corner and cutting through parking lots.

**The motion carried.**

Member Lewis related he is uncomfortable with granting the second variance until we have had an opportunity to read a response from the Township Attorney. Member Lewis related he recognizes the applicant would be prevented from coming to the Planning Commission at the next meeting if this were tabled. However, he believes the whole thing has to be settled here before it gets to the Planning Commission. He is not comfortable with what he is hearing as the Township Attorney's point of view. Member Lewis related the zoning Board has three choices: approve, deny or table. Tabling has some appeal which would give our attorney an opportunity to give us something in writing. Member Lewis related he would feel more comfortable in tabling.

Chairman Casey asked do you know who to talk to at the bank. Mr. Gantos responded yes. If they say no, I can't change their easement area. It has been there since 1989 which they paid for. They have no reason to modify it.

Chairman Casey asked does the bank incur any cost for maintenance or plowing of the easement. Mr. Gantos responded no.

Chairman Casey asked do you have to go through the bank's holding company for permission. Mr. Gantos related he will start with the bank manager and go through their committee and channels they may have. He does not want to be legally required to do change the easement.

Chairman Casey asked do you own the property now? Mr. Gantos responded yes.

Planning Director Peterson related he will contact our Township Attorney for a written opinion. He still feels the 17 foot landscape buffer will not impact the easement agreement with the bank.

Member Lewis related he would rather see the opinion from the Township Attorney and how they interpret the easement.

Planning Director Peterson related there is nothing in the easement that prevents the bufferyard from being created. Our attorney says yes we can require a 17 foot bufferyard here.

Member Lewis related he is finding it hard to believe the bank would be adverse to this type of change. He can understand Mr. Gantos' concerns. Member Lewis related he feels very uncomfortable in making a decision tonight.

Member Crawley related if the variance is granted, let the chips fall where they may.

Member Beahan related he is leaning more to tabling and wait for the attorney's opinion.

Mr. Gantos related for the last 16 years it has been a zero bufferyard which the Township granted.

Planning Director Peterson related right, it was a non-conforming situation and they have lost that grand fathered status and now it is different. Non-conforming issues are supposed to end some time. A seventeen foot bufferyard is appropriate instead of asking for the required twenty-five feet.

Member Neal related he feels uncomfortable without a written opinion from Township counsel in respect to the easement.

Member Vaughn related tabling for a written opinion would make him feel more comfortable and give the applicant time to talk to the bank.

**Member Lewis supported by Member Vaughn moved that the second variance be tabled allowing time for the Township Attorney to give a written legal opinion. Tabling would also give the applicant time to talk with the bank. The motion carried with Member Crawley casting a nay vote.**

## **ARTICLE 7.**

### **Any Other Business**

Planning Director Peterson related we also have to appoint a representative to the Village Design Committee. Our previous representative was Member Beahan who is now a Township Board member and unable to serve in that capacity. Member Crawley volunteered to fill the position.

**Member Lewis supported by Member Beahan moved to appoint Gary Crawley as the Zoning Board of Appeals representative to the Village Design Committee. The motion carried.**

**ARTICLE 8.           Adjournment**

**Member Beahan supported by Member Crawley moved to adjourn. The motion carried and the meeting was adjourned at 8:05 pm.**

Respectfully submitted,

Jack Lewis, Secretary

JL:MJT