

SCIO TOWNSHIP ZONING BOARD OF APPEALS
827 North Zeeb Road, Ann Arbor, Michigan 48103
MEETING MINUTES OF THURSDAY, MARCH 18, 2004

1) ROLL CALL

Present: Auth, Hinson, Knowles, Ream
Absent: Collica

2) CALL TO ORDER

Chair Knowles called the meeting to order at 7:05 p.m.

3) Swearing in at 7:06 p.m.

4) COMMUNICATIONS AND/OR CORRESPONDENCE

1. Memo from Doug Lewan, Township Planner, dated March 18, 2004.

5) Public Hearings

None

6) Old Business

- A. Variance #1454**, OTG 3 LLC, a Delaware Company, in the name of Mohamad & Ali Saad, regarding property code #H-08-26-11-001, 3535 Jackson Road, request the following variances: 1) to expand a pre-existing non-conforming use per Section 14.04; 2) to expand a pre-existing non-conforming structure per section 14.03; 3) to allow variance from the Township Landscape Standards per section 12.06A; 4) to allow variance from Township Access Management Standards per section 10.05.

MOTION BY COMMISSIONER AUTH, SUPPORT BY COMMISSIONER HINSON TO PLACE THIS MATTER BACK ON THE TABLE.

YES: 4

NO: 0

MOTION CARRIED

Applicant/representative:

Mohamad Saad, owner, 773 Fline St., Detroit, Mi
Mowafak Taha, engineer, Dearborn Heights, Mi

Driveway on Jackson Road cannot be moved because of the total traffic area. Landscape plan does not take away any existing space, and applicant agrees to provide any trees as directed. The right-of-way is being increased to approximately 120 feet.

Discussion by Commission:

- Cmsr. Auth had previously questioned authority of the ZBA as to this variance request due to language in the Township Ordinance that appeared to; perhaps, prohibit the ZBA from granting a variance.
- Memo from Doug Lewan dated March 18, 2004 outlines his opinion that the ZBA is empowered to act on any section within the Township Zoning Ordinance. Doug Lewan's opinion is that the first two variance requests show good reasoning for granting. He does take issue with the land and access management variances, to some degree.

- It appears there will be a six-foot wide buffer inside the property, along Jackson Road, coinciding with the existing curb line, which would allow for a parked vehicle and allow an area for another vehicle to go around. This would reduce the number of pumps allowed.
- Would like to grant the first two variances, but deny three and four.
- Respectfully disagree with Doug Lewan's interpretation of expansion of prior non-conforming use; and also disagree with reference to Fran Coy's expansion of a non-conforming use. To the extent the same situation is presented here, not sure that the ZBA would be incorrect if the distinction was made based upon the individual circumstances of the two places; but more importantly, there can be a change of mind with regard to the interpretation of the ordinance. If passed, however, it will probably be okay.

MOTION BY COMMISSIONER REAM, SUPPORT BY COMMISSIONER HINSON, MOVED THAT ZBA GRANT VARIANCE #1454, OTG 3, LLC, A DELAWARE COMPANY, IN THE NAME OF MOHAMAD & ALI SAAD, REGARDING PROPERTY CODE #H-08-26-110-001, 3535 JACKSON ROAD: 1) TO EXPAND A PRE-EXISTING NONCONFORMING USE PER SECTION 14.04; 2) TO ALLOW A PRE-EXISTING NON-CONFORMING STRUCTURE TO EXPAND PER SECTION 14.03.

OUTLINING THE VARIANCE CONSIDERATIONS:

- A. THERE ARE EXCEPTIONAL OR EXTRAORDINARY CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THE PROPERTY THAT DO NOT APPLY GENERALLY TO OTHER PROPERTY OR CLASSES OF USES IN THE SAME DISTRICT. THE EXISTING NATURE OF THE SERVICE STATION, AND THE FACT THAT IT WAS CONFORMING WHEN IT WAS ESTABLISH ARE UNIQUE TO THIS SITUATION;**
- B. SUCH VARIANCE IS NECESSARY TO THE PRESERVATION AND ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTY IN THIS SAME ZONE AND VICINITY. THE EXISTING CLARK STATION IS NOT CONFORMING IN THIS DISTRICT. IT IS AN EXISTING USE THAT WILL LIKELY CONTINUE REGARDLESS OF WHETHER ANY VARIANCE IS GRANTED. WE NOTE THAT THE CURRENT NON-CONFORMING USE WAS ONCE CONFORMING TO THE C-2 ZONING, GENERAL COMMERCIAL DISTRICT REGULATIONS, 1993, AND HAS BEEN MADE NON-CONFORMING WITH SUBSEQUENT CHANGES TO THE ZONING ORDINANCE; AND REZONING THE PROPERTY TO C-4, COMPOSITE COMMERCIAL DISTRICT TO GENERAL USE UPGRADE AND IMPROVEMENT OF A BUSINESS COULD BE VIEWED AS A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTIES IN THE SAME DISTRICT. THE SAME REASONING WOULD APPLY TO A PRE-EXISTING NON-CONFORMING STRUCTURE; THAT PRIOR TO THE CHANGES IN THE ORDINANCE AND REZONING, THE STRUCTURE WAS CONFORMING. SINCE THIS BUSINESS IS SUCCESSFUL AND ON-GOING, THE UPGRADE AND EXPANSION ON THIS SITE WILL BE AN IMPROVEMENT IN THE GENERAL AREA;**
- C. THE GRANTING OF SUCH VARIANCE OR MODIFICATION WILL NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR MATERIALLY INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN SUCH ZONE OR DISTRICT IN WHICH THE PROPERTY IS LOCATED. THIS WILL NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE, OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN SUCH ZONE OR DISTRICT IN WHICH THE PROPERTY IS LOCATED. THE UPGRADING OF THIS SITE FOR THE NEW BUILDING WILL BE A POSITIVE CHANGE;**
- D. THE GRANTING OF SUCH VARIANCE WILL NOT ADVERSELY AFFECT THE PURPOSES OR OBJECTIVES OF THE MASTER PLAN OF THE TOWNSHIP. THE GRANTING OF THESE VARIANCES TO SECTIONS 14.03, NON-CONFORMING STRUCTURE, AND 14.04, NON-CONFORMING USE WILL NOT ADVERSELY AFFECT THE PURPOSES OF THE MASTER PLAN. THE VARIANCES TO THE LANDSCAPE STANDARDS WOULD;**

E. ABSENT EXCEPTION CIRCUMSTANCES WHICH WOULD OTHERWISE RESULT IN A SUBSTANTIAL INJUSTICE, THE CIRCUMSTANCES OR CONDITIONS UPON WHICH THE VARIANCE IS BASED DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT OR HIS PREDECESSORS IN TITLE. THESE CIRCUMSTANCES AS DESCRIBED WERE NOT CAUSED BY THE APPLICANT OR THE PREDECESSORS IN TITLE. WE LOOK FAVORABLY ON THE COMBINING OF TWO DRIVEWAYS INTO ONE DRIVEWAY. IT SHOWS GOOD FAITH ON THE PART OF THE APPLICANT

WE WOULD RECOMMEND APPROVAL OF THE VARIANCES FOR NON-CONFORMING STRUCTURE AND USE, SECTIONS 14.03 AND 14.04 OF THE ZONING ORDINANCE, RESPECTFULLY, FOR THE CLARK STATION.

Further discussion by Commission:

- Cmsr. Auth takes the position that section 14.02 would control in this case
- This pending motion does not consider landscape or access management standards; and in essence, rejects them.
- One criteria in landscape standards is a front 50 foot buffer, 50 foot easement required; and since this is an existing developed site, this will not be achievable, given the size of the site and the fact that it's already developed; but this needs to be addressed, along with access management standards.

YES: 3

NO: 1

MOTION CARRIED

MOTION BY COMMISSIONER AUTH, SUPPORT BY COMMISSIONER REAM, IN THE MATTER OF VARIANCE #1454, OTG 3, LLC, A DELAWARE COMPANY, TO ALLOW A VARIANCE FROM LANDSCAPE STANDARDS PER SECTION 12.06A; AND BASED UPON THE FACT THAT THE LANDSCAPE STANDARDS REQUIRE A LANDSCAPE FRONT GREENBELT EQUIVALENT IN DEPTH TO THE FRONT SETBACK OF 50 FEET; AND THE NUMBER OF PLANTINGS IS RELATED THEREFORE TO THE LOT WIDTH; AND BASED UPON THE FACT THAT THE FRONT SETBACK IS NOT REASONABLY OR LIKELY TO BE MET BECAUSE OF PREVIOUSLY TAKEN LAND FOR THE RIGHT OF WAY OF JACKSON ROAD WHEN IT WAS EXPANDED:

- A. THERE ARE EXCEPTION OR EXTRAORDINARY CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THIS PROPERTY THAT DO NOT APPLY GENERALLY TO OTHER PROPERTIES OR CLASSES OF USES IN THE SAME DISTRICT; NAMELY, THE FACT THAT THE FRONT SETBACK HAS BEEN EFFECTIVELY REDUCED BY THE TAKING OF LAND FOR THE EXPANSION OF JACKSON ROAD;**
- B. THAT SUCH VARIANCE IS NECESSARY FOR THE PRESERVATION AND ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTY IN THE SAME ZONE OR VICINITY; SINCE THE UPGRADE OF A BUSINESS SUCH AS THIS AS FAR AS LANDSCAPE REQUIREMENTS WOULD BE VIEWED AS A SUBSTANTIAL PROPERTY RIGHT UNDER THE MEANING OF THE ZONING ORDINANCE;**
- C. THE GRANTING OF SUCH VARIANCE WOULD NOT BE MATERIALLY DETRIMENTAL FOR THE PUBLIC WELFARE OR MATERIALLY INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN SUCH ZONE OR DISTRICT IN WHICH THE PROPERTY IS LOCATED, BECAUSE ANY OTHER SIMILARLY SITUATED PROPERTY IS GOING TO HAVE THE SAME PROBLEM WITH THE FRONT SETBACK; AND THE GRANTING OF SUCH VARIANCE WILL NOT ADVERSELY AFFECT THE PURPOSE OR OBJECTIVES OF THE MASTER PLAN OF THE TOWNSHIP, OTHER THAN THE SIZE OF THE FRONT GREENBELT, THE OTHER LANDSCAPE STANDARDS WILL BE MET.**

IT IS HEREBY MOVED TO GRANT A VARIANCE FROM THE STANDARDS OF THE LANDSCAPE STANDARDS PURSUANT TO 12.06E, WITH REFERENCE TO THE SIZE OF THE FRONT SETBACK, BUT OTHERWISE TO HAVE ALL OTHER ASPECTS OF THE STANDARDS APPLY. THE GREENBELT WIDTH SHALL BE AT A MINIMUM SIX FEET.

Further discussion by Commission:

- Cmsr. Auth will vote in favor of motion only based upon the prior approval of the other variances, which he previously voted against.
- Affected will be not only Jackson Road frontage but Jackson Plaza frontage. This is a dimensional variance, with a 50 requirement. It appears from the plans that the applicant has submitted that he can achieve a minimum six-foot wide greenbelt and, perhaps, more on Jackson Plaza.

YES: 4

NO: 0

MOTION CARRIED

MOTION BY COMMISSIONER AUTH, SUPPORT BY COMMISSIONER REAM IN THE MATTER OF VARIANCE #1454, OTG 3, LLC, A DELAWARE COMPANY, TO ALLOW A VARIANCE FROM THE TOWNSHIP ACCESS MANAGEMENT STANDARDS PURSUANT TO SECTION 10.05 THAT:

- A. THERE ARE NO EXCEPTIONAL OR EXTRAORDINARY CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THE PROPERTY INVOLVED OR TO THE INTENDED USE OF THE PROPERTY THAT WOULD NOT APPLY GENERALLY TO OTHER PROPERTIES OR CLASS OF USES IN THE SAME DISTRICT;**
- B. SUCH VARIANCE IS NOT NECESSARY FOR THE PRESERVATION AND ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTIES IN THE SAME ZONE OR VICINITY, SINCE THE RULES WOULD APPLY EQUALLY TO ANYBODY ELSE IN THE SAME SITUATION AS PRESENTED HERE;**
- C. THE GRANTING OF SUCH A VARIANCE WOULD BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR MATERIALLY INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN SUCH ZONE OR DISTRICT IN WHICH THE PROPERTY IS LOCATE, SINCE THOSE STANDARDS HAVE BEEN ARTICULATED AFTER A WELL THOUGH OUT CONCERN FOR APPROPRIATE TRAFFIC PATTERNS, PARTICULARLY ALONG JACKSON ROAD.**
- D. THE GRANTING OF SUCH VARIANCE WOULD ADVERSELY AFFECT THE PURPOSE OR OBJECTIVES OF THE MASTER PLAN OF THE TOWNSHIP, WHICH ARE INTENDED, AMONG OTHER THINGS, TO ENSURE THAT THERE ARE REQUIREMENTS AND LIMITATIONS TO THE ACCESS TO SUCH ROADS AS JACKSON ROAD.**
- E. THE CIRCUMSTANCES OR CONDITIONS UPON WHICH THE VARIANCE IS BASED WOULD RESULTS FROM THE ACTIONS OF THE APPLICANT OR HIS PREDECESSORS IN TITLE.**
- F. THE APPLICANT HAS ALREADY INDICATED THAT HE DOES NOT INTEND TO SEEK THIS VARIANCE AT THIS TIME, IN ANY EVENT.**
- G. CONFORMING TO THE ORDINANCE DOES NOT PROHIBIT ACCESS TO THE SITE. IS TRYING TO ALLEVIATE WHAT IS CONSIDERED A POTENTIALLY DANGEROUS CONDITION.**

AND THEREFORE MOVE TO DENY THAT PARTICULAR VARIANCE.

YES: 4

NO: 0

MOTION CARRIED

7) APPROVAL OF MINUTES

Minutes of February 19, 2004.

MOTION BY COMMISSIONER AUTH, SUPPORT BY COMMISSIONER HINSON TO APPROVE MINUTES OF FEBRUARY 19, 2004 AS CORRECTED.

YES: 4 NO: 0 MOTION CARRIED

8) ANY OTHER BUSINESS

None

9) ADJOURNMENT

MOTION BY COMMISSIONER AUTH, SUPPORT BY COMMISSIONER REAM TO ADJOURN AT 7:46 P.M.

YES: 4 NO: 0 MOTION CARRIED

Minute preparation by James H. LaVoie