

MINUTES OF THE REGULAR MEETING OF THE GEORGETOWN CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD APRIL 28, 2010

The meeting was called to order at 7:30 p.m. by Chairperson Joyce Weise.

Members Present: Joyce Weise, Greg Honderd, Carl DeVree, D. Dale Mohr, John Fanthorpe
Members Absent: none
Others Present: Mannelle Minier, Secretary and Zoning Administrator; and the applicants

#100428-01 - Approval of the minutes

The minutes of the regular meeting held on March 24, 2010 were presented.

Moved by Carl DeVree, seconded by John Fanthorpe, to approve the minutes as presented with a correction to motion #100324-02 to read the vote was a “failed” vote.

MOTION CARRIED UNANIMOUSLY.

#100428-02 – Unfinished Business (VAR1002) Water of Life Church, 1294 Chicago Dr., is requesting to have a daycare center with 2,025 square feet of usable fenced and screened outdoor recreation area for 69 clients, a variance of 8,325 square feet from the 10,350 square feet required in Sec. 20.4(K)(1); (69 clients x 150 sf = 10,350 sf; 10,350 sf – 2,025 sf = 8,325 sf variance); in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, Michigan. ([site plan](#), [application](#))

The Zoning Administrator presented a review as follows.

REQUEST

(VAR1002) Water of Life Church, 1294 Chicago Dr., is requesting to have a daycare center with 2,025 square feet of usable fenced and screened outdoor recreation area for 69 clients, a variance of 8,325 square feet from the 10,350 square feet required in Sec. 20.4(K)(1); (69 clients x 150 sf = 10,350 sf; 10,350 sf – 2,025 sf = 8,325 sf variance); in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, MI.

The application states that the daycare facility is requesting to be approved for up to 69 clients. A special use permit standard listed in Sec. 20.4(K)(1) requires 150 square feet of outdoor recreation area for each client, resulting in the total requirement of 10,350 square feet of outdoor recreation area. The proposal is to have 2,025 square feet of outdoor recreation area which is a variance of 8,325 square feet or 80.4% less than required.

Variance standards in Sec. 28.11(C) are required to be met in order for a variance to be granted. The ZBA should determine if they agree with the determination that the following standards are met or not met.

Variance ID		VAR1002	
Applicant		Water of Life Church	
Address		1294 Chicago Dr.	
Request		Waive outdoor recreation requirement	
Date		For March 24, 2010 meeting	
#	YES	NO	CONDITIONS (Chapter 28.11-C)
1			Granting the variance(s) will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.
2	X		Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.
3		X	That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.
4	X		That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.
5		X	That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.
6	X		That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance with Section 27.12.
7		X	That the variance is not necessitated as a result of any action or inaction of the applicant.

Standard #1 - Granting the variance will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.

The ZBA will have to determine if this is met. The spirit of the ordinance is “to promote and safeguard the public health, safety, morals, prosperity and general welfare of the people of this Township,” as stated in the Zoning Ordinance.

In addition to the requirement in Sec. 20.4(K) of 150 square feet of outdoor recreation area for each client in a daycare facility, Sec. 20.4(N) also has the same requirement for a Group Day Care Home where up to 12 children receive care.

On February 17, 2010 (minutes follow this review), the Planning Commission considered a request from the church to amend the Zoning Ordinance to only require the same amount of outdoor recreation area as the State requires for the licensing of the facility. With motion #100217-08, the Planning Commission determined to leave the ordinance as it currently exists because the Township has the authority to require more and to continue with the current requirement. The minutes note that the applicants have the opportunity to request a variance if they do not have enough land.

A point to note is that the site plan shows the outdoor recreation area to the east of the building in the side yard. The application notes that there are industrial and commercial uses to the rear (south) and to the other side (west). While it makes sense to not have children playing outside adjacent to commercial and industrial uses, the current recreation area could be expanded by more than 50% towards the south. It may be appropriate to grant a smaller variance than requested since there is a possibility for expansion of the outdoor recreation area to the south which would still be away from the industrial and commercial uses.



Standard #2 - Granting the variance shall not permit the establishment within a district of any use, which is prohibited, nor shall any use variances be granted.

Met as long as the site complies with the special use standards.

Standard #3 - That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.

Not met as proposed. It makes sense not to locate a recreation area to the south or west of the site adjacent to industrial and commercial uses. Those areas would not be good areas for children to play. However, there does not appear to be any practical difficulties that result from exceptional, extraordinary or unique circumstances applying to the property that prevent the outdoor play area from being expanded over 50% in area directly to the south in the side yard.

The application mentions that the areas to the south and west have industrial uses and that the site has been around for many years. Neither of those reasons prevents the expansion of the area in its current location.

A smaller variance may be appropriate to allow the whole expanded recreation area to be located in the side yard to the east of the building. As it currently is shown, the area could be expanded to well over 4,050 square feet which is still providing less than 50% of the 10,350 square feet required.

Standard #4 - That the granting of such variances will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.

Appears to be met. The daycare use does not appear to have much of an impact on the adjacent areas.

Standard #5 - That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

Appears to not be met. Other than Fair Haven Church, which received a variance to eliminate the outdoor recreation area because they were providing a preschool for only two hours at a time rather than a daycare which is not differentiated in the ordinance, other churches that have daycares, as well as other group day care homes where care is provided for up to 12 children, have complied with the area requirement for outdoor recreation area, including the following:

- 1) Cottonwood Heights CRC on Ash Drive obtained a SUP for a daycare facility in 1996 and complied with the outdoor recreation area standard.
- 2) Georgetown Christian Reformed Church on 40th Ave. obtained a SUP for a daycare facility in 1990 and complied with the outdoor recreation area standard.
- 3) Michelle Brown in Berger Estates obtained a SUP for a group daycare home in 2005 and complied with the outdoor recreation area standard.
- 4) Toni Marion, 1439 Oakwood Dr., obtained a SUP for a group daycare home in 1997 and complied with the outdoor recreation area standard.

5) Beppe's House Daycare, 1938 Pleasantwood, obtained a SUP for a group daycare home in 2004 and complied with the outdoor recreation area standard.

If the variance as requested was to be granted by the ZBA, it may appear as though a property right was granted to this church and not others in similar circumstances.

Standard #6 - That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance in Section 27.12.

Appears to be met.

Standard #7 - That the variance is not necessitated as a result of any action or inaction of the applicant.

Appears to not be met. The current situation appears to be a result of the daycare putting up the fence prior to obtaining all the approvals necessary from the Township and them not being aware of the requirements.

DISCUSSION

The use of a daycare in the church building appears to be a compatible use since their times of operation would be opposite. Several churches in the Township also have daycare facilities. However, most that have received approval in the past ten to twenty years appear to comply with the outdoor recreation area standard.

As noted in the review and in the applicant's narrative, and shown in the pictures, it does not appear to be appropriate to locate the recreation area in the rear yard to the south of the building or in the side yard to the west of the building adjacent to industrial and commercial uses. In those locations, the children could possibly be subject to noise, odor, fumes and dust from the commercial and industrial uses.

However, nothing substantial appears to prevent the expansion of the outdoor recreation area in its current location. As depicted in the site plan, the area could be more than doubled in size on the east side of the building without extending into the drive area or being close to the industrial operation. After raising the question about expanding the area, the applicants provided an emailed answer that a second door to the sanctuary exists along the wall in this area and that there were financial constraints. The doorway to the sanctuary would not seem to present a situation as long as a person could exit the recreation area and the gate provides an exit. Also, financial aspects should not be part of the variance consideration. If this would present a financial burden, an opportunity exists for the site to have fewer clients which would reduce the amount of outdoor recreation area required.

Expanding the recreation area to at least twice its size (from 2025 to 4,050 square feet) would reduce the amount of variance requested from over 80% to about 60%. The variance request would then be to have no less than 4,050 square feet of outdoor recreation area, a variance of 6,300 square feet from the required 10,350 square feet. By reducing the variance amount and increasing the size of the recreation area, it appears possible that the determination could be made that the standards are met due to the following reasons:

- 1) The public interest would be served and the spirit of the ordinance observed since the recreation area would closer meet the amount in the SUP standard.
- 2) The use is allowed.
- 3) The practical difficulty results from the unique situation of the daycare site being located adjacent to industrial and commercial uses that could subject the children to noise, odor, fumes and dust if the area was not located away from those uses on the east side. The increased recreation area would be located away from these detrimental impacts.
- 4) The use will not detrimentally affect the adjacent sites.
- 5) The property right could be determined to allow a daycare in the HS district which is permitted in the ordinance and the use would be physically able to closer meet the SUP standards.
- 6) There does not appear to be nonconforming situations present on the site.
- 7) Although having the fence previously constructed in the current location may have necessitated the variance request for the current amount, if the area was expanded, the situation could then be determined to be necessitated by the location of the site in proximity to the industrial and commercial locations.

Steve Witte, Nederveld Associates, represented the applicant and presented the request. He stated the following. Rob Holland, pastor, was also present. The daycare has changed the number of clients to a maximum of 50 and they currently have 8 signed up. If they move the fence line to the south along the building, they could provide 5,000 square feet of outdoor recreation space. This is all they would like to provide since the adjacent property is zoned Industrial with industrial-type of uses. With a wall to the north of the area, this area is well screened from Chicago Dr. Appletree, which was a PUD, only had 75 square feet per child. All 50 children would not go out at once and they would go out in age groups of about 13 children. The church did already construct the fence without the knowledge of the requirement. They would now like to be approved for 50 children with 5,000 square feet of outdoor recreation area.

John Fanthorpe asked if they planned to have 50 children.

Steve Witte said yes and they currently had 8 signed up.

D. Dale Mohr asked if it would be a maximum of 50.

Steve Witte said yes, but it may take up to five years to reach that number or they may never reach that number.

D. Dale Mohr clarified that they would never go above that number.

Steve Witte said that they could re-apply and request a special use permit for more children if they decided to have more at a later date.

Greg Honderd said that he did not remember why they had decided on requiring 150 square feet of outdoor recreation area for each child.

The Zoning Administrator said that this had been discussed at the last meeting and it was possible that it was an accepted standard amount recommended by the planner at the time.

Joyce Weise said that if they had one child, the area would only be 10 by 15 feet and the ordinance needs to be revisited to become more current with the surrounding municipalities for health, safety and welfare issues.

The Zoning Administrator said that the Township has the authority to be more restrictive and to require more area than the State requires.

D. Dale Mohr asked if the Planning Commission had discussed the requirement.

Greg Honderd said not yet. He said that when daycare facilities get into the larger numbers of children, there is more age variation and so when the number goes over 20, maybe the requirement should drop.

John Fanthorpe said that if the ordinance will be revisited by the Planning Commission, they do not need a variance.

Joyce Weise asked if the Township could say that it is okay now for 13 or 14 people and then wait for the Planning Commission.

The Zoning Administrator explained that the role of the ZBA was to consider the variance as per the standards of the ordinance and the applicant had the choice of going before the Planning Commission. She said that it may be a good idea for the requirement to be changed to have steps, such as 150 square feet each for the first 20 and maybe only 100 square feet for each client over 20.

There was discussion as to how to proceed.

The Zoning Administrator said that the choices were for the ZBA to determine whether or not to grant any type of variance and then the applicant would proceed to the Planning Commission with a plan that reflects the amount of required outdoor recreation area.

D. Dale Mohr said that it does not seem that the applicants are seeking to compromise.

Steve Witte said that the plan now proposes 5,000 square feet of outdoor recreation area by extending the fence to the south, which provides 100 square feet per each client for 50 clients.

Joyce Weise asked if the applicant had considered making the play area larger.

Steve Witte said yes, they planned to proceed by going to the Planning Commission and staying under 13 children until the play area is expanded.

Greg Honderd suggested showing the play area and just building the necessary amount now.

Steve Witte said that if no variance was granted and there was no ordinance change, they would provide 5,000 square feet for 33 clients; however, they would like to be able to have up to 50 clients. He said that he was leery to rely on the Planning Commission changing the ordinance since they looked at it two months ago and decided not to change it.

Joyce Weise asked about the Planning Commission looking at the ordinance.

Steve Witte said that the church sent a letter requesting the Planning Commission to review and modify the ordinance to coincide with the State requirement, but the Planning Commission chose not to amend the ordinance because it was okay as written.

John Fanthorpe said that he did not know what the State requirement was.

Steve Witte stated the following. He did not know exactly what amount the State required, but the State had approved the existing 2,025 square feet for 50 clients. The Township has the option to require more than the State. The scaling idea makes sense because it seems that the ordinance is written towards a smaller operation and not geared toward a larger daycare facility.

Joyce Weise said that Appletree was approved with 75 square feet per child, though it is a PUD.

Steve Witte said that developing the facility as a PUD gave the Planning Commission the discretion to go for less square footage.

Joyce Weise asked if the Planning Commission had revisited the ordinance requirements.

Greg Honderd stated the following. Yes, the Planning Commission had looked at it, but only with a submitted letter and not a plan. The Planning Commission did not really discuss it much because other applicants have met the standard and they had not seen the reason for the request. The Appletree facility was not brought up at the meeting and the information about staggering the number of children was also not brought up. Now there may be a reason to change the ordinance.

John Fanthorpe said that they were asking to provide 5,000 square feet for 50 children.

Steve Witte said that they don't know how many children they will get and plan to increase the area to 5,000 square feet for 50 children. He said that they would like to provide 100 square feet per child and that was assuming that they all would go out at once.

D. Dale Mohr asked why they initially asked for 69 clients if they knew that they would only have a maximum of 50.

Steve Witte said that they had initially discussed 69 clients and he had been misinformed; however, they will now stay with the maximum of 50.

D. Dale Mohr said that with the current amount already constructed, they would be okay to get up to 13 now.

Steve Witte said that they expected to get to 13.

D. Dale Mohr said that if the stepping idea was incorporated, they would be okay now, but would have to provide more space if they get above 13.

Greg Honderd said that with 5,000 square feet they could have up to 33 children, and if the ordinance was changed, they could have more.

Steve Witte said that they have two chances, they could either get a variance now or the Planning Commission could amend the ordinance and they have already gone to the Planning Commission.

He said that if they are denied by the ZBA, they still have the option to go back to the Planning Commission, but preferred to get a variance now and to know what they have.

Rob Holland, pastor of the church, stated the following. There is a solid concrete floor to the left of the white fenced area and the concrete will be pulled up to expand the play area. Kerkstra Precast will pull up the concrete. If the variance is granted, they will reinstall more fencing to create the 5,000 square foot enclosed area. The variance would really help. If they were denied by the ZBA, they didn't know what recourse they would have. They have already received the license by the State. They would like to provide Christian daycare for the community.

Joyce Weise asked how much space would be provided.

Steve Witte said that they would provide 5,000 square feet which is 100 feet per client.

D. Dale Mohr said that if the variance was denied and the ordinance revisited by the Planning Commission, it would be okay to have up to 33 clients at this time with 5,000 square feet.

Greg Honderd said that with 5,000 square feet they were okay to have 33 children because that provided 150 square feet per child.

Joyce Weise said that if the variance was granted to allow only 100 square feet per child, they would be sending a message.

The Zoning Administrator said that the ZBA should evaluate the variance request according to the standards in the ordinance.

Greg Honderd said that it is what the ZBA is supposed to do.

The chairperson opened the floor to public comments. No one from the public was present in the audience to speak on this topic. The chairperson closed the floor to public comments.

John Fanthorpe stated the following. The request does not conform to the seven standards in the ordinance, specifically standards 1, 3, 5 and 7. They need to meet the ordinance requirements because if they had less square footage, it would open the floodgates for other applicants. A request for an ordinance change was brought before the Planning Commission. However, 100 square feet per child does seem reasonable. His wife ran a daycare for fourteen years, but that was a different deal. He is familiar with the 100 square foot in that setting and it is reasonable, provided the other section of concrete is removed to provide enough room to take care of 50 children. He hopes the Planning Commission sees it the same. The duties of the ZBA are to grant a variance if all seven standards of the ordinance are met. As much as he did not want to deny the request, four of the seven standards are not met.

Moved by Greg Honderd, seconded by John Fanthorpe, to deny variance (VAR1002) Water of Life Church, 1294 Chicago Dr., to have a daycare center with 5,000 square feet of usable fenced and screened outdoor recreation area for a maximum of 50 clients, a variance of 2,500 square feet from the 7,500 square feet required in Sec. 20.4(K)(1) for 50 clients in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, Michigan; based on the finding that the request does not meet the seven standards of the ordinance.

D. Dale Mohr said that with 5,000 square feet they could have 33 children now.

John Fanthorpe said that if the Planning Commission changes the requirement to 100 square feet per child, the 5,000 square feet would be enough for 50 children.

Yeas: Greg Honderd, John Fanthorpe

Nays: D. Dale Mohr, Joyce Weise, Carl DeVree

MOTION DEFEATED.

D. Dale Mohr stated the following. The standards are judgmental. Granting the variance was in the public interest and did insure that the spirit of the ordinance was met because this is the best interest of the public. There are practical difficulties with complying with the ordinance requirement. Standard number five does not typically apply. In regards to a substantial property right, he does not know of others in the vicinity. Standard number seven is met because this is a result of why they are here and they want the daycare.

Moved by Joyce Weise, seconded by D. Dale Mohr, to approve variance (VAR1002) Water of Life Church, 1294 Chicago Dr., to have a daycare center with 5,000 square feet of usable fenced and screened outdoor recreation area for a maximum of 50 clients, which is 100 square feet per child based on a maximum of 50 children, a variance of 2,500 square feet from the 7,500 square feet required in Sec. 20.4(K)(1) for 50 clients in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, Michigan; based on the finding that the request meets the seven standards of the ordinance and because the Appletree PUD had only 75 square feet per child and the neighboring communities have similar or less requirements; and with the following conditions:

- 1. This variance approval is expressly contingent upon any special land use approval (or amendment to an existing special land use permit) for the property being approved by the Township Board.**
- 2. This variance is expressly contingent upon final site plan approval for the property by the Planning Commission.**
- 3. This variance is expressly contingent upon the fencing and screening being provided as per the special use standard in Sec. 20.4(K).**

It was clarified that the requirement is 100 square feet per client with 5,000 square feet for 50 clients.

Yeas: D. Dale Mohr, Carl DeVree, Joyce Weise, John Fanthorpe

Nays: Greg Honderd

MOTION CARRIED.

#100428-03 - Adjournment

Moved by D. Dale Mohr, seconded by John Fanthorpe, to adjourn the meeting at 9:00 p.m.

MOTION CARRIED UNANIMOUSLY.