

CHARTER TOWNSHIP OF HIGHLAND
ZONING BOARD OF APPEALS
APPROVED MINUTES
May 1, 2024

The meeting was held at Highland Township Fire Station #1, 1900 W. Highland Road, Highland, MI, 48357.

The meeting was called to order at 7:30 p.m.

ROLL CALL:

David Gerathy, Chairman
Michael Borg, Vice Chairman
Anthony Raimondo, Secretary
Grant Charlick
Peter Eichinger
Robert Hoffman
John Jickling
(Alternate) Mary Michaels
(Alternate) Michael Zeolla - absent

Lisa G. Burkhart, Zoning Administrator

Visitors: 8

Chairman Gerathy welcomed those present and reviewed the procedures for addressing the Board. Four affirmative votes are required to approve a variance. If a variance is approved, the applicant has one year to act upon the variance. The full Board is present and the alternate will not be voting this evening.

NEW BUSINESS:

Chairman Gerathy asked if the applicant for the first agenda item, case 24-07 was present. As the applicant was not present, and the venue for the meeting had been moved from the typical meeting location, the Board agreed to reorder the agenda and call this case later in the meeting.

2. CASE NUMBER:	24-08
COMPLAINT:	
ZONING:	R1.5 (RPUD) –Residential Planned Unit Development
PARCEL #:	11-28-152-009
PROPERTY ADDRESS:	1234 Gleneagles
APPLICANT:	Legacy Landscape – Russell Sheridan
OWNER:	Jill Hardenburg
VARIANCE REQUESTED:	A 23-foot 9.75-inch variance from the required 40-foot rear yard setback to 16-feet 2.25-inches provided, (Section 7.02.C.5.) This request is for the construction of a patio and inground pool with a waterfall feature.

Chairman Gerathy introduced the case and asked if the applicant was present and had anything else to add that was not included with the application. Jeff Hardenburg was present to speak on behalf of the property owner.

Discussion from the Applicant:

Russell Sheridan, owner of Legacy Landscape explained that the existing house is 43 feet from the rear property line, and that the setback is 40 feet, leaving no room to use the rear yard for a structure. Similar variances that have been approved previously by the Zoning Board of Appeals

Mrs. Burkhart, Zoning Administrator, explained that the setbacks had been established by the developer, who had envisioned smaller homes with the expectation that residents would use the golf course and common spaces for recreation. This left no provision for pools and similar structures. This is clearly not how the subdivision developed.

Mr. Sheridan offered that the Zoning Board of Appeals has granted numerous variances from the rear yard setback and that there are pools within the subdivision.

Discussion from the Public:

No public comment was offered.

Discussion from the Board:

Mr. Eichinger shared that he had visited the property and that the yard appears to be typical of the subdivision, where it is difficult to determine where the yard ends and the golf course begins. He noted there is an existing patio which will be pulled up and replaced by the pool. He believes the pool would be an improvement and no more intrusive than a patio.

Mr. Raimondo cited Zoning Ordinance Section 7.02.c.5 which requires that deviations from setbacks in a Planned Residential Development must be approved by the Planning Commission. He asked if this request must first be presented to the Planning Commission. Mrs. Burkhart explained that this provision applies to the original establishment of the subdivision, and that the jurisdiction remains with the Zoning Board of Appeals for individual lots. She explained that in the past, the Homeowner's Association had approached the Planning Commission for permission to allow decks and patios to encroach partially into the rear yard setback to address the prevailing development on the lots, but that no request had ever been made for swimming pools.

Mr. Raimondo asked for clarification of the plot plan.

Mr. Charlick noted that there was an artist's rendering showing the pool. He also recognized that the applicant has already obtained health department approval for the new septic system placement. He has no objections to the proposal.

Mr. Borg noted a concern about allowing pools to be placed so near the golf course, and the hazard of golf balls. He asked about liability concerns. Mrs. Burkhart explained that any liability would be sorted out by a judge. The Zoning Board of Appeals should focus on the demonstration of practical difficulty and whether the applicant has articulated something unusual about the property that justifies the variance, such as its shape, topography, or some other design constraint. Mr. Borg noted that he struggles with no expression of a practical difficulty.

Mr. Eichinger explained that this site is different than a case from the previous meeting in that it is located near a green, where patrons would be putting. He thought the risk was minimal. The

property owners offered that in their years of using their patio, they had never been hit by a golf ball and were not concerned with the risk.

Mr. Jickling stated that he has not heard any argument of a practical difficulty. He believes the concept of the Prestwick subdivision is to preserve open space, which is not furthered by approving encroachments. The desire to have more structures in one's yard is not sufficient reason to approve the variance. This suggests the owner needs to find a property large enough to accommodate those desires.

Facts and Findings

The proposal is consistent with the character of the subdivision.

The proposal represents an improvement to the property and neighborhood

Motion:

Mr. Eichinger made a motion in Case #24-08, 1234 Gleneagles, parcel # 11-28-152-009, to approve a 23-foot 9.75-inch variance from the required 40-foot rear yard setback to 16-foot 2.25-inches provided for a 30 foot by 15 foot inground pool with a 3 foot by 1 foot by 32 foot raised waterfall feature and a 13-foot 9.75-inch variance from the required 30-foot rear yard setback to 16-foot 2.25-inches provided. This request is for a variance from Section 7.02.C.5. of the zoning ordinance. Mr. Hoffman supported the motion.

Roll Call Vote: Mr. Borg-no, Mr. Eichinger-yes, Mr. Raimondo-no, Mr. Jickling-no, Mr. Charlick-yes, Mr. Hoffman-yes, Mr. Gerathy-no (3 yes votes, 4 no votes). The motion failed.

Mr. Hardenburg asked for an explanation of practical difficulty. Mr. Gerathy asked the Zoning Administrator to explain practical difficulty in general terms.

Mrs. Burkhart explained that in a township, the standard of approval is based on a showing of practical difficulty. A practical difficulty is based on something unique about the property—its shape, size, topography, or some other factor. Hardship is a different standard, and the term sometimes slips into our language, although it should not be discussed as part of these findings. She noted that sometimes the practical difficulty described by the applicant is not sufficient to justify the magnitude of the variance requested and will result in a no vote. There are opportunities for an applicant to present an alternate proposal to the Zoning Board of Appeals, or for a party who is aggrieved by the actions of the Zoning Board of Appeals to seek relief from the courts.

Mr. Hardenburg expressed his concern that this decision leaves him with few options to improve his property. He was advised that the case is now closed, and he should contact the Planning Department during office hours to discuss next steps.

1. CASE NUMBER: 24-09
COMPLAINT:
ZONING: R1.5 (RPUD) –Residential Planned Unit Development
PARCEL #: 11-22-280-000
PROPERTY ADDRESS: RCOC Road Right-of-Ways at Joshua Dr & Harvey Lake Rd
APPLICANT: Pamela McCormick
OWNER: Highland Valley Subdivision HOA
VARIANCE REQUESTED: A 10-foot variance from the required 10-foot road right-of-way setback to 0-feet provided; and

(Table 14.2)

A 2-foot variance from the required 4-foot maximum height of sign to 6-feet provided; and

(Table 14.2)

A 2-foot 2-inch variance from the required 6-foot maximum height of decorative elements of a sign to 8-feet 2-inches provided.

(Section 14.07.I.8.)

This request is for the construction of a new subdivision freestanding sign.

Chairman Gerathy introduced the case and asked if the applicant was present and had anything else to add that was not included with the application. Pamela McCormick was present to speak on behalf of the Homeowners Association

Discussion from the Applicant:

Ms. McCormick introduced herself as a resident of the Highland Valley Subdivision and member of the Homeowner's Association Board. She represents the Grounds Committee.

Ms. McCormick provided a packet of information. The HOA is pursuing the variance requests due to their perception of safety concerns as a practical difficulty in complying with the ordinance. She offered photographs showing the ongoing intrusion of the brush line into clear vision zones. She has approached the Road Commission for Oakland County about the concern, and they have no plans to address the issue. The HOA has taken it upon themselves to clear the grasses and weeds but are unable to hold back the growth of the small trees that block the sightlines.

Ms. McCormick noted that motorists must creep into the intersection to see beyond the brush to exit with clear view of traffic from the north, and that the current subdivision sign is nearly invisible until the southbound motorist is almost too close to the street to slow and enter safely.

She summarized that the sign location is no longer appropriate given the condition of vegetation and maintenance from the Road Commission. They believe their request is reasonable and adequate but not overreaching. She noted that they have already obtained permission from the Road Commission for Oakland County and explained that the proposal meets the County's standards for setback from the road right-of-way and from the clear vision triangle. She also noted that she has submitted letters from Jay Pistana, president of the HOA and the Casey Walbridge, Secretary of the HOA.

Ms. McCormick explained that she personally spends 6 to 8 hours per year hand clearing the vegetation and noted that the vines are aggressive growers that reach out to the edge of the road.

Discussion from the Public:

Ms. Michaels commented that the high speed of traffic on Harvey Lake Road was a poor argument, and that people rely on GPS to find sites. While sympathetic to the concern for sight distance and the burden placed on the HOA due to the Road Commission's decision not to spend resources clearing vegetation, but she noted that many property owners have taken on the responsibility of clearing vegetation at their own properties.

Ms. Michaels commented that the Zoning Board of Appeals has never granted a zero-setback request. Mr. Gerathy could not verify that. Ms. McCormick pointed to her picture of the Prestwick

sign, which is clearly larger than the ordinance allows and appears to be at the edge of the right-of-way. Mrs. Burkhart noted that variances had been granted for the Prestwick sign, but not a zero setback, and that staff is investigating whether the sign was actually placed as proposed on the plan, or whether a mistake was made in the execution.

Discussion from the Board:

Mr. Gerathy asked about the dimension of 14 feet-8 inches on the plot plan and asked what point of the sign it referred to. Ms. McCormick explained that it was a measurement to the first column.

Mr. Raimondo agreed that the sign should be upgraded. He has visited the site and noted that the subdivision was an open space design. He noted that the required 10-foot setback was reasonable, and that he does not agree with a zero setback. He did not see safety as a practical difficulty and thought the placement of the sign might actually create a different safety issue. He thought allowing the signs to creep closer to the right-of-way might actually alter the essential character of the community. He appreciated the applicant's efforts in collecting examples of other signs in the community, but thought it was appropriate to uphold the sign ordinance.

Mr. Eichinger thought it might be appropriate to separate the three variance requests, as members might feel different about the separate elements. Mr. Borg agreed, since there are also multiple elements involved.

Mr. Eichinger noted that his company was currently building the 4th Oak Point Subdivision sign in twenty years. He noted that the sign was placed too near to the road right-of-way and had been subject of multiple collisions. He noted that this presents yet another safety concern. Mr. Gerathy thought the proposed sign was actually still well off the roadway and he thought that risk was minimal.

Ms. McCormick noted that there is a utility pole between the road right-of-way and the proposed sign.

Mr. Hoffman thought that the sign was important for navigation and that not every motorist relies on GPS. He noted that the township should rely on the Road Commission for Oakland County to evaluate the safety concerns. He thought the new sign would improve safety and enhance the neighborhood.

Mr. Charlick asked about the significance of the pillar. Since it is a decorative architectural element, and not part of the sign, he wondered if this column was essential or somehow significant to the neighborhood. He noted that if the column could be eliminated, the setback would be three feet further from the road, and the sign would actually be more visible.

Alex Parker, also representing the HOA, noted that even with GPS, visitors overshoot the subdivision. He pointed out the geometry of the road approach includes a full turn lane, acceleration and deceleration lanes. Even with a zero setback from the Harvey Lake right-of-way, the sign is still a significant distance from the travelled roadway. He thought that if the sign were redesigned to eliminate the column, they would need a larger and taller sign. Mr. Charlick disagreed.

Mr. Borg agreed with Mr. Charlick that the posts actually interfere with the visibility of the sign.

Mr. Gerathy offered the applicant an opportunity to redesign the sign to address the comments raised

this evening and come back in two weeks for a decision.

Ms. McCormick asked if the Board could give her some idea what would be reasonable as a setback. Mr. Charlick advised that the sign seemed to be acceptable to most board members, but the column seemed unnecessary. Eliminating the column would set the sign three feet from the right-of-way.

Mr. Raimondo asked if the applicant could return with a better site plan, perhaps with engineered detail. Mr. Hoffman thought it was unnecessary to involve an engineer, as there was sufficient information.

Ms. McCormick agreed that the case should be tabled until the June meeting to give her committee time to come back with another proposal.

Motion:

Mr. Raimondo moved to table Case 24-09 for the Highland Valley subdivision sign to June 5, 2024, to give the applicant an opportunity to render a new sign proposal which presents a minimum setback variance.

In discussion with the applicant regarding the HOA meeting schedule, it seemed that more time would be advisable. Mr. Raimondo amended his motion to table Case 24-09 to June 19, 2024. Mr. Borg supported. The motion carried unanimously by voice vote.

Chairman Gerathy recalled Case 24-07. He introduced the variance requests. The applicant, Nicholas D'Abate, was present to address the board.

- CASE NUMBER: 24-07
COMPLAINT:
ZONING: LV – Lake and Village Residential District
PARCEL #: 11-10-128-008
PROPERTY ADDRESS: Vacant corner at Meribah St and Johnson St
APPLICANT: Nicola D'Abate
OWNER: Nicola & Silvia D'Abate
VARIANCE REQUESTED: A 5-foot variance from the calculated 30-foot front yard setback to 25-feet provided for a covered front porch.
(Section 9.02.B.a.)
A 38.8-foot variance from the calculated 65-foot ordinary high water mark setback to 26.2-feet provided for a new house and attached garage.
(Section 9.02.D.)
A 48.8-foot variance from the calculated 65-foot ordinary high-water mark setback to 16.2-feet provided for an uncovered second story rear deck.
(Section 9.02.D.)
This request is for the construction of a new house with attached garage, covered front porch, and uncovered second story rear deck.

Discussion from the Applicant:

Mr. D'Abate had no additional information to present to the Board. Mrs. Burkhart explained that Mr. D'Abate had worked with the township for several years to develop an acceptable plan. She explained that the wetlands shown on the site is vernal, and does not hold water at all times of the year. He explained that he had approached the Planning Commission in the past as part of the church site plan for extending the parking lot, but that plan had been denied and he shelved his residential development plans.

Mrs. Burkhart addressed the question about the vacant roadway to the east. She explained that there is a process to vacate and abandon the right-of-way. It involves petitions to the Road Commission for Oakland County, as well as an action from the Township. Typically, the vacant and abandoned right-of-way is divided between adjacent neighbors and the area can be added to their lots. Mr. D'Abate has not followed through with petitions yet, even though the neighbors were amenable to the action in the past.

Mr. D'Abate explained that blighted conditions such as abandoned cars are not his, but that he is financially liable to have them hauled away. He stated that now is the time to develop the lot and limit that liability by building a new home. The market warrants the attention now.

Discussion from the Board:

Mr. Charlick asked for clarification of how far the house from the north is from Meribah. It was hard to tell from the aerial, but it seemed it was only about 20 feet from the right-of-way. Mr. Charlick noted that most of the neighborhood seemed fairly close to the right-of-way.

Mr. Jickling recalled that a similar variance had been considered in the neighborhood recently. He was sympathetic to the variance on the highwater setback. He wondered if this area flooded frequently. Mr. D'Abate explained that the engineer had determined the highwater mark.

Mr. Charlick asked if the site required an engineered septic system. Mr. D'Abate noted that a conventional system is allowed due to the high permeability of the soil.

Mr. Raimondo offered the following:

Facts and findings

There are exceptional characteristics of the parcel that make compliance with dimensional requirements very difficult.

The applicant has held the property for many years and has developed a reasonable plan.

There seems to be no plan to ever extend the vacant Johnson Road.

The "pond" is seasonal and the variance from the rear setback of the highwater mark is reasonable.

Mr. Charlick asked why the house was pushed closer to the house on the west, rather than to the road. Mr. D'Abate explained that it was due to design constraints on the septic system.

Motion:

Mr. Raimondo offered a motion in Case 24-07, for vacant property at the corner of Meribah and Johnson Streets, parcel 11-10-128-008 for a 5 foot variance from the calculated front yard 30 A 5-foot variance from the calculated 30-foot front yard setback to 25-feet provided for a covered front porch under Section 9.02.B.a.; a 38.8-foot variance from the calculated 65-foot ordinary high water mark setback to 26.2-feet provided for a new house and attached garage under Section 9.02.D.; and a 48.8-foot variance from the calculated 65-foot ordinary high-water mark setback to 16.2-feet

provided for an uncovered second story rear deck under Section 9.02.D. This request is for the construction of a new house with attached garage, covered front porch, and uncovered second story rear deck, consistent with the facts and findings as discussed. Mr. Borg supported the motion.

Roll Call Vote: Mr. Borg-yes, Mr. Eichinger-yes, Mr. Raimondo-yes, Mr. Jickling-yes, Mr. Charlick-yes, Mr. Hoffman-yes, Mr. Gerathy-yes (7 yes votes, 0 no votes). The motion succeeded and variance requests are approved.

Mrs. Burkhart reminded the Chairman that the applicant was not present at the beginning of the meeting and did not hear the instruction regarding when the minutes would be approved and building permit applications could be submitted. Mr. D'Abate expressed a desire to begin construction much sooner than that timeline would permit. He has an aggressive schedule and is available now.

Mr. Raimondo offered a motion to authorize a record of final determination so that the applicant could get started with the project. Mr. Hoffman supported the motion which carried by unanimous voice vote.

CALL TO THE PUBLIC:

No public remained.

MINUTES:

Mr. Jickling offered a motion to approve the minutes of April 17, 2024, as corrected. Mr. Hoffman supported the motion which carried by unanimous voice vote.

DISCUSSION:

Mrs. Burkhart reminded the Board that it is very important to articulate for the record what the practical difficulty is or why there is no practical difficulty. She expanded on the process for appealing a decision of the ZBA to the circuit court.

ADJOURN:

Mr. Raimondo made a motion to adjourn the meeting at 8:45. Mr. Hoffman supported the motion which carried by unanimous voice vote.

Respectfully submitted,

Anthony Raimondo
AR/ejc