

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY JULY 27, 2020 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 27, 2020, at 7:00 pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

Please note this meeting was done virtually via a “Go to Meeting” #914-793-997

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman
Dan Durham, Vice-Chairman
Don Walker, PC Rep to ZBA
Lucy Koscierzynski, Secretary
Mary Painter, Board Member

ZBA MEMBER ABSENT:

Mike Flood, BOT Rep to ZBA

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Shaun Lewis
Pedro Montes
Michael Graft
Scott Leigh
Stephanie Decker

1. OPEN MEETING

Chairman Yaros called the meeting to order at 7:00 pm.

2. ROLL CALL

As noted

3. MINUTES

A. 6-22-2020, ZBA Regular Meeting Minutes

Moved by Secretary Koscierzynski, seconded by Commissioner Walker, to **approve** the minutes as presented. **Motion Carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2020-12, Shaun & Lindsey Lewis, 1398 Goldeneye, 09-25-401-026

Chairman Yaros read the petitioner’s request as follows:

The petitioner is requesting 3 variances from Zoning Ordinance No. 78:

Zoned SC Bald Mountain Executive Lot 26

1. A 4-ft. rear yard setback variance from the required 20-ft. to build a deck 16-ft. from the rear property line.
2. A 15-ft. rear yard setback variance from the required 35-ft. to build a roof over a portion of deck 20-ft. from the rear property line.

3. A 3.43% variance above the Maximum Lot Coverage allowed of 25% for a Maximum Lot Coverage of 28.43%.

Shaun Lewis, the applicant, was present via the GoToMeeting program.

Chairman Yaros asked if the applicant built the home? Mr. Lewis replied yes.

Chairman Yaros noted that the applicant has built a new house, in a new sub, and has built to the maximum lot line. Chairman Yaros asked the applicant why did he build the house all the way back to the lot line, knowing that they would need a deck for a door wall? Mr. Lewis replied that they did not get to choose the location of the house on the lot. They had taken over an existing subfloor, it was a spec home. They had control of the building from the subfloor up. The builder had already built their sub floor right to the rear setback line.

Chairman Yaros stated that he looked at a lot of the houses that have these little sunrooms on the back decks, and they are all within the property lines. He wondered why the builder built the home right to the lot line? Mr. Lewis replied that he didn't know. He added that when they did notice it, initially, and they asked the builder about it, they brushed it off stating that it shouldn't be a problem. They have an elevated doorway, so they have to walk out onto a deck. They found out later that they had to get approvals to be able to do that. Chairman Yaros said they were wrong the Board doesn't have to give it.

Chairman Yaros recognized that because of the door wall, they need a deck. He questioned why do they need the covered area? Mr. Lewis replied that they are looking for something that is shaded when they are outside. They were not going to have walls on the structure but they want to create a shade area, so their family could hang out, they don't have much shade in the area. It was important for his family to hang out without being exposed to the sun.

Chairman Yaros stated that they could do that with an automated awning if that is all they are looking for is shade. Mr. Lewis said that he understood that but wanted to be more in line with the properties in the area, and something that is long-lasting.

Secretary Koscierynski asked the other Board Members if the Practical Difficulty can be that they can't really use their patio door without a deck. Chairman Yaros replied yes, that would be a Practical Difficulty, for a deck. With a deck, they can go 20-ft. off the lot line, not to 35-ft. with a covered structure.

Secretary Koscierynski said that she drove around, and she saw one house with a deck that was totally enclosed like a sunroom. She noted that a lot of the houses there have decks with roofs or something like that.

Chairman Yaros noted that none of those homes needed a variance, so they must have been within the lot line.

Secretary Koscierynski said that Pulte has put these people in a position where they have to do this.

Mr. Lewis commented that their neighbor directly behind them, they built out the same structure that they are looking at, they are the neighbor that enclosed all four sides there. They requested it and got an approval on that variance last year. They were in the same position where they couldn't extend out.

Vice-Chairman Durham noted that there are dimensional issues that were part of a consent judgment. He asked how does that affect this gentleman's need for a variance? Building Official Goodloe replied that he was not aware of the consent judgment. He noted that the whole thing is about the roof, the

deck is typically allowed to encroach. Is the roof, and is that going to be an issue for the setback and rear? If it didn't have a roof it basically would almost be compliant. If other ones in the area are pretty similar, the location of it was put right there by Pulte, knowing that they would need a deck in the future so, it is almost a foregone conclusion. He was not 100% brought up to speed on the consent judgment, the Planning & Zoning Director Tammy Girling handles all the developing details.

Chairman Yaros asked if the consent judgment was concerning the deck or the cover? Vice-Chairman Durham stated that the consent judgment states that the dimensions of the consent judgment are, the front yard setback is 30-ft., the rear setback is 35-ft., and the west side yard setback is 5-ft and the east side yard setback is 25-ft., that is what is dictated in Ordinance #78.

Chairman Yaros said he did not have a problem with the deck. He questioned if they are talking about a covering, then they are talking about 35-ft. They are talking about a 15-ft. rear yard setback instead of the 4-ft. He stated to him, a brand-new house, and a brand-new sub, they are asked to grant a 15-ft. variance for a covering, when they can do a canopy and get the 4-ft. rear yard setback, and put the 16-ft. deck on. If they want shade, they can get awning. Then they don't have to go in with 15-yards, with the whole subdivision, because they don't know how many of these homes are in there.

Chairman Yaros said he thought it was a shame that the builder builds it to the lot line, then forces people to come before them for a variance. If they would have built it within the lot line, they wouldn't need it.

Board Member Painter said that is something that has bugged here for the last 20-years. They are put in this position of correcting someone else's mistakes. She didn't know whom it needs to start with? Maybe the Planning Commission when they start planning the subdivisions in the first place. It has been a problem forever. She didn't see how they continue to get away with something like this and then have the resident have to come and ask for a variance.

Building Official Goodloe noted that the consent judgment sets the set-backs. They were looking for a 12-ft. deck to be on these properties. Because they are able to encroach into the rear yard setback 15-ft.

Board Member Walker stated that in the consent judgment, it seemed to him that it was in there for the entire subdivision. He asked if this was the old Bald Mountain Golf Course? Chairman Yaros replied yes.

Board Member Walker said those setbacks are within that consent judgment. Chairman Yaros said that it does not change the request.

Board Member Walker noted that as long as he has been on the Board, they have never allowed someone to put a roof on a deck.

Chairman Yaros said the only problem he had was granting the 15-ft. for a roof. If they grant this variance, they will have everyone asking for this, and it defeats the whole variance.

Secretary Koscierzynski commented that if they grant this everyone in the neighborhood is going to want this. If the petitioner would work with them, and if he put in an awning, then it doesn't need to come before the board.

Secretary Koscierzynski asked if the petitioner would be willing to remove the 15-ft. rear yard setback variance and just put in an awning? Mr. Lewis replied that the roof portion is a very important aspect of it. They hoped that eventually, they could have some sort of screen or something to protect them from bugs and stuff in the area. There are a lot of ticks in the area, so they were hoping that they could do

that at some point. Just doing the awning would not allow for them to do that, as well as, it doesn't really feel like it coincides with the look in the area. The neighbor directly behind them, they went before the board last year, they are on Mallard Lane for the same position that they were in. They both back up to common area so there is not a house directly behind them that would affect. He thought most of the houses in the area back up to other houses, so they don't have that same situation as they do. In their situation, that roof structure would be important.

Chairman Yaros asked Building Official Goodloe if the 3.43% variance, for Maximum lot coverage, is that because of the covered deck, correct? Building Official Goodloe replied that is because of the deck in general. He said that the roof does not matter. Chairman Yaros asked if they would still need the variance even if they pulled off the cover of the deck? Building Official Goodloe replied, correct.

Moved by Vice-Chairman Durham, seconded by Secretary Koscierzynski, that in the matter of AB-2020-12, Shaun & Lindsey Lewis, 1398 Goldeneye, 09-25-401-026, I would move that the petitioner's request for three variances from Zoning Ordinance No. 78, Zoned SC Bald Mountain Executive Lot 26, 1) a 4-ft. rear yard setback variance from the required 20-ft. to build a deck 16-ft. from the rear property line, 2) a 15-ft. rear yard setback variance from the required 35-ft. to build a roof over a portion of deck 20-ft. from the rear property line, 3) a 3.43% variance above the Maximum Lot Coverage allowed of 25% for a Maximum Lot Coverage of 28.43% **be granted** because the petitioner did demonstrate that the following standards for variances have been met in this case: and he did show he has several factors; there is a door on a second floor that he wants to build his deck in front of; he did not spec the house back to the lot line, that was done by someone else, and he got stuck with it; he does back up to a common area, and it is 20-ft. from the lot the line still, after this is done; he has a small lot with a lot of house and the house was basically built to lot, right out; the following are exceptional or extraordinary circumstances: his lot, his house, and where his house was dropped, and the fact he has a door to nowhere on the second floor; he wants to put in a deck, and it would be a reasonable expectation to want a small roof, he does not propose to cover the whole thing; the following are exceptional or extraordinary circumstances or conditions: he had covered those; the granting of the variance or modification will not be materially detrimental to the public welfare, safety, it will not be injurious to anything; it will not impair anything or cause great danger to other structures or any citizens; further based on the findings of facts granting this variance will not: impair anything or congest public streets, it would stay just the way it is.

Roll call vote was as follows: Walker, no; Durham, yes; Koscierzynski, yes; Painter, no; Yaros, no.
Motion failed 2-3

B. AB-2020-13, Michael Graft/Wildfire Signs, Bald Mountain Regional Medical Complex, 1375 S. Lapeer Rd., 09-14-251-004

Chairman read the petitioners request for 1 variance from Sign Ordinance 153: Non-Residential Ground Sign Zoned RB:

1. A 10-ft. road right-of-way setback variance from the required 20-ft. to erect a ground sign 10-ft. from the road right-of-way.

Michael Graft the applicant, was present via the GoToMeeting program.

Chairman Yaros stated that he could not see the sign that is there now at all, and drove by it the first time.

Board Member Painter said that the shrubs and trees along the road really hinder seeing the sign. She thought that some of the shrubs could be toned back. She added that the sign should be moved someplace where there is better viewing from the road.

Chairman Yaros said that he got out and looked at the sign, but those trees still shaded it so much. It was so dark you could not see it.

Board Member Painter said that there was a shrub down farther north that just was practically out to the sidewalk, which really cut down on the vision to see the sign.

Board Member Walker stated that they were saying exactly what he had been thinking.

Vice-Chairman Durham questioned if the sign would be too close to the sidewalk where they proposed it? He saw a need for moving it and felt it was useless where it was at.

Chairman Yaros asked how far it was off the sidewalk?

Mr. Michael Graft the petitioner from Wildfire Signs replied 10-ft. Chairman Yaros questioned if it was 10-ft. off the bike path? Mr. Graft. Replied yes. Chairman Yaros replied that should be enough.

Moved by Secretary Koscierynski, seconded by, Chairman Yaros, that in the matter of ZBA case #AB-2020-13, Michael Graft/Wildfire Signs, Bald Mountain Regional Medical Complex, 1375 S. Lapeer Rd., 09-14-251-004, I would move that the petitioner's request for a non-use variance from Sign Ordinance 153: Non-Residential Ground Sign Zoned RB: 1) a 10-ft. road right-of-way setback variance from the required 20-ft. to erect a ground sign 10-ft. from the road right-of-way, **be granted**, because the petitioner has demonstrated that Practical Difficulty's exist in this case, that set forth facts which show that the Practical Difficulty in this case: people driving down Lapeer road can't see the sign with all the shrubs; and doing whatever they can for businesses to succeed in the community; the following are exceptional, or extraordinary circumstances, or conditions that are applicable to the property involved that do not apply generally to other properties in the same district or zone: there are a lot of shrubs in the area and the sign is necessary for their business growth; the following are exceptional or extraordinary circumstances or conditions that are applicable to the property involved that do not apply generally to other properties in the same district or zone: with the amount of businesses on Lapeer Rd. and signs that are visible, it is really needed on Lapeer Rd.; the granting of this variance or modification will not be materially detrimental to the public welfare, materially injurious to the property, or to improvements in such a zone or district in which the property is located based on the following findings of facts: the sign will be far enough back on Lapeer Road so that people will see it; there isn't anything about this that is a problem.

Discussion on the motion:

Board Member Painter said that it was a good motion to make. Also, for security, the people driving down M24, slow traffic looking for signage that they can't see.

Chairman Yaros stated that the sign shows the address, with nice big letters.

Roll call vote was as follows: Durham yes; Walker, yes; Painter, yes; Koscierynski, yes; Yaros, yes.
Motion carried 5-0

AB-2020-14, Pedro Montes, 3463 Chalice, 09-28-301-002

Chairman Yaros read the petitioner's request for 1 variance from Zoning Ordinance No. 78: Zoned R-2, Article VI, Section 6.04

- 1) A 5-ft. side yard setback variance from the required 10-ft. to build a detached garage 5-ft. from the side property line (west).

Mr. Pedro Montes, the applicant, was present via the GoToMeeting program.

Chairman Yaros stated that they have had a few of these requests in the past. There is just not enough room to make the angle if they don't pull it closer to the fence. They can't get a vehicle because the yard is not that deep to pull it back far enough to make the angle.

Chairman Yaros stated that there was one neighbor that sent a letter in at 3445 Chalice, saying that they have no problem with it.

Board Member Painter thanked the applicant, she felt that they put signage up, so they could see exactly what he wanted to do. By looking at it, as well, as seeing it in the application.

Chairman Yaros agreed and said that it makes it easier to see and figure it out.

Moved by Board Member Painter, seconded by Chairman Yaros, that in the matter of ZBA case #AB-2020-14, Pedro Montes, 3463 Chalice, the petitioner is requesting 1 variance from Zoning Ordinance No. 78: zoned R-2, Article VI Section 6.04, 1) a 5-ft. side yard setback variance from the required 10-ft. to build a detached garage 5-ft. from the side property line (west), **be granted** because the petitioner did demonstrate that the following standards for this variance have been met in this case and that they set forth facts which show that in this case: the petitioner does show following Practical Difficulty: the petitioner needs room to put a garage in the backyard, and he needs the 5-ft. to get to the garage; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: the position of the home on the lot makes it difficult for him to get into the area where he will be constructing the garage, and to navigate the car getting in and out of that area; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone; granting of this variance will not be materially detrimental to anyone or any home in the area; the granting of this variance would not impair an adequate supply of light and air to adjacent property; It would not unreasonably increase the congestion in public streets: due to the fact that the cars would be neatly tucked behind the house; it would not increase the danger of fire or endanger the public safety, and will not unreasonably diminish or impair established property values within the surrounding area; the area where the variance is needed will allow the petitioner room to navigate his auto safely to the back of his house.

Board Member Painter amended the motion, Chairman Yaros re-supported, to include the parcel #09-28-301-002.

Roll call vote was as follows: Painter, yes; Kosciuszynski, yes; Walker, yes; Durham, yes; Yaros, yes. **Motion carried 5-0**

D. AB-2020-15, Scott Leigh/Shops on Baldwin, 3010 S. Baldwin, 09-29-101-015

Chairman Yaros read the petitioners request for 3 variances from Sign Ordinance #153, Section 7 – Non-Residential Ground Signs Zoned RB:

- 1) A 49.22-sq. ft. sign area variance above the allowed 32-sq. ft. to erect an 81.22-sq. ft. ground sign.
- 2) A 3.917-ft. sign height variance above the allowed 8-ft. to erect an 11.917-ft. high ground sign.
- 3) A 20-ft. road right-of-way variance from the required 20-ft. to erect a ground sign 0-ft. from the road right-of-way.

Mr. Scott Leigh, the applicant, was present via the GoToMeeting program.

Chairman Yaros asked if they really needed that high of a sign? Chairman Yaros thought that he wanted it that high because they the sign above the cars parked there. Mr. Leigh replied correct.

Chairman Yaros questioned if they could make the general sign smaller? Mr. Leigh replied that he is under contract with Dollar General for a specific sign size. They purchased the property in 2014, and Dollar General had their monument sign out, and so they are from prior ownership, under contract with Dollar General to repeat the same size. Their other tenants were requesting to be on the sign, and they were going to approach the Township. He decided to put this all together and approach the Township instead of them having a large representation. He is only going 1-ft. space for each tenant, and then Dollar General will have the sign that is currently contracted for them. The height of the sign was Kurschat & Company, which was commissioned from the Oakland County Road Commission to do a study. They are the ones that told them the position to put it and told them the height that it should be. Once the street was poured, and the sidewalk, they basically won the lottery with telephone poles, or power pole, they got more than anybody up and down the Baldwin strip. They have 19-20 guide wires, so with all those things compiled, even with the sign of this height, they are still restricted from passengers, street traffic, seeing the sign.

Chairman Yaros noted that they have a little island there that is built for the sign.

Chairman Yaros asked if it was going to be surrounded by cars? Mr. Leigh said that he had sent pictures to the Township. He wasn't sure if they received them, but he is 6-ft. 1-in. and was standing where the sign is going to go and they could not see him. Chairman Yaros said that he knew that they had a limited area to put the sign. There are three spots, one at each end, and one in the middle. Mr. Leigh noted that the one on the end, where Baldwin and Waldon intersect, which is where it was, they took some of his property there, and then they set the posts for the crossing. He thought that would impact people trying to make a turn, so he didn't choose that spot. They chose the middle spot because he currently had a light-posts there, so power is there. The third spot, which is by their entrance, when people are trying to pull in, or out, that would impact people getting in and out of Baldwin and may cause an accident. He chose the middle spot for those reasons. Kurschat & Co. did the study which told them where they recommended the sign and told them the height. He was just pointing out everything that was recommended by the Oakland County Road Commission and by Kurschat & Co. when they did the study.

Chairman Yaros said he didn't know that the Dollar General's original signage was that big, so they are stuck with that size. He was hoping maybe they could make it a little lower but, they can't.

Secretary Koscierzynski felt that their Practical Difficulty was where they are located. They are located in such a precarious spot that she had to drive around there twice, she finally pulled into the Dollar General to get a grasp of what is going on and while she was there determined that was their Practical Difficulty, the location of it. They need the sign, and people go by there really fast.

Chairman Yaros thought that the roundabouts probably exacerbated it too because people will be looking to figure out how to get around the roundabout. They want to grab their attention as much as you can. That is probably the only place they could do it. He agreed that the entrances would hurt sight distances.

Mr. Leigh noted that on the size, within a half-mile, up and down, Baldwin Rd. from them, there are eight other signs that are larger with smaller businesses. He said he was patterning his sign off the One Stop Truck Service sign. They have an identical sign except they have a pole, and he was going to do a brick surface instead because he didn't think that the Board would want just a pole with a sign on it. He was going to do brick up to the sign, and pattern it off of One Stop Truck Service's sign. He was not requesting a billboard, he just requesting a sign and trying to stay under the 12-ft. guidelines.

Secretary Koscierzynski thought that patterning off of the One Stop Truck Service sign would be a good thing because she remembered when they came before the Board several years ago and they actually worked with them on the height of that sign, and where it is supposed to be situated. She thought that they had some issues with trees around there.

Chairman Yaros noted that one of the problems was, and this was before the construction started, so they were trying to visualize where the construction would be, and what it would look like. So that was tough at that time. Chairman Yaros knew that he had a lot of problems to resolve, and it was not their fault. They were there and they widened the road with a roundabout right next to them which probably took more of the corner.

Board Member Painter stated that she thought that the businesses along Baldwin Road have been cheated for the last three years. Nobody knows where anything is, anymore, because of all the moving of the property. The only thing that bothered her was that Dollar General already had a sign on their building, it looks like a pretty high sign, but it is a pretty big sign too and looks like an awful lot of sign for one company. She understood that they had a contract and them. Chairman Yaros stated that they had a previous ground sign taken out, so they have to replace it.

Moved by Board Member Walker, seconded by Board Member Painter, that in the matter of ZBA case AB-2020-15, Scott Leigh/Shops on Baldwin, 3010 S. Baldwin, 09-29-101-015, the petitioner is requesting three variances from Sign Ordinance #153, Section 7 – Non-Residential Ground Signs Zoned RB: 1) a 49.22-sq. ft. sign area variance above the allowed 32-sq. ft. to erect an 81.22-sq. ft. ground sign, and 2) a 3.917-ft. sign height variance above the allowed 8-ft. to erect a 11.917-ft. high ground sign, and 3) a 20-ft. road right-of-way variance from the required 20-ft. to erect a ground sign 0-ft. from the road right-of-way **be granted** because the petitioner did demonstrate that the Practical Difficulty exist in this case, and the petitioner did show that because of the uniqueness of the property it is not related to other conditions in the area: because there was a sign there, and an existing contract with the Dollar General, they had to honor that contract; originally it seemed like a large variance, however, now they have heard an explanation; the following are exceptional or extraordinary circumstances applicable to this property that do not apply to other properties in the same district: since it is right on the roundabout, and obviously, there was no roundabout there before, which changed the dynamics; the property involved is only applicable to this property and doesn't affect any of the other properties in the area; the granting of these variances will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located; it does not impair an inadequate supply of light or air to adjacent properties; it does not unreasonably increase the congestion in public streets: it may actually help it a little bit so that the traffic flowing by can more quickly recognize where the stores are in the strip mall; it does not increase the danger of public safety; nor does it unreasonably diminish or impair established property rights, or in other respect to impair the public health, safety, comfort, morals, or welfare of the inhabitants of Orion Township.

Board Member Walker amended the motion, Board Member Painter re-supported, to add to the motion that even though this is zero feet from the lot line, it is still quite a distance from the bypass.

Roll call vote was as follows: Durham, yes; Painter, yes; Koscierzynski, yes; Walker, yes; Yaros, yes. **Motion carried 5-0**

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

Memo from the Planning & Zoning Coordinator Regarding BoardBook Premier and Future Meetings

Memo from the Planning & Zoning Coordinator Regarding Dates which cases can be postponed

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Chairman Yaros said that they need something from the Planning Commission or someone, that if a builder builds to the lot line, they have to take into consideration the decks. They can't keep allowing this.

10. ADJOURNMENT

Moved by Secretary Koscierzynski, seconded by Board Member Painter to adjourn the meeting at 7:56pm.

Respectfully submitted,



Debra Walton
Planning & Zoning Coordinator
Charter Township of Orion

August 10, 2020

Zoning Board of Appeals Approval