

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, APRIL 22 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 22, 2019 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman
Dan Durham, Vice Chairman
Don Walker, PC Rep to ZBA
Mike Flood, BOT Rep to ZBA
Lucy Koscierynski, Board Member

ZBA MEMBER ABSENT:

None

CONSULTANT PRESENT:

Dave Goodloe, Building Department Official
Dan Kelly, Township Attorney

OTHERS PRESENT:

Jon Cleland-Host	Eric Bedell
Shane Burley	James S. Swoish
Dustin Kary	Gene McNabb
Katelyn Kary	Patsy Moran
Andrew Garcia	Terry Moran
Alexis Duda	Joel Altus
Susan Stec	Larry Burns
Pete Granzow	Crystal Burns
Bret Baker	Eugene McNabb
Sandra Dibble	Brenda Skrzyzcki
Katherine Young	Gary Skrzyzcki
	Jeff Antosiak

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

04-08-2019, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Secretary Koscierynski, to approve the 04-08-2019, Regular Meeting minutes as amended. Vice Chairman Durham noted for the AB-2019-09, Marc Ferguson, changes are as follows #1 name changes from Durham to Yaros at the top of the minutes, #2 Dave Goodloe was listed as a Building Inspector not a Building Official and #3 on page 8, would be changing from a 100 sq. ft. should be 676 sq. ft. variance and request #4 would be a 176 sq. ft. variance instead of a 1,236 ft. variance.

Roll call vote was as follows: Walker, yes; Durham yes; Koscierynski, yes; Flood, yes; Yaros, yes.

Motion Carried 5-0 to correct minutes.

Moved by Trustee Flood, seconded by Secretary Koscierzynski, to approve the 04-08-2019 Regular Meeting minutes as amended. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

AB-2019-06, Dustin Kary, 362 Shorewood Ct. (09-03-405-013)

Chairman Yaros read the petitioner's request as follows:

- 1.) The petitioner is now requesting to be 30" from the lot line, which would be a 30.81% coverage over the 25% so it would be a 6.81% addition variance:

Chairman, Yaros asked if there were any questions from the Board?

Vice Chairman, Durham asked if they had made any changes yet pending whether this goes through?

Mr. Dustin Kary replied yes.

Vice Chairman Durham stated something he did see when he was at the property it was raining hard, and about ½ way down your houseline there was a downspout that was dumping water onto your neighbor's property, not certain that is allowed.

Mr. Dustin Kary asked onto his neighbor's property?

Vice Chairman Durham said right, and he doesn't believe that you're are supposed to redirect water to another property.

Building Official Goodloe answered that is correct.

Mr. Kary stated if you look at the parkway the whole issue is the grading of their parkway it drives water into his property, which is why you would have seen the hole right there. Now it is repaired and now he must backfill that area, so it is a result of grading towards his property. Not sure if you are just focusing on my side and not their side, but both sides have grading water.

Vice Chairman Durham replied that it looked temporary to him, like it was something they were doing until they could do something else. The only point he wanted to make is that is not something that can be allowed to continue, not sure how you are going to handle it; you are on a very narrow parcel it slops down the street in one direction and sharply towards the lake in the other direction.

Mr. Kary stated it might be a matter of inches or a foot, they will correct it.

Trustee Flood said it looks like they dug out the nearest foundation and they were waterproofing that and trying to divert the water away from where they had excavated. Generally, in those cases you want to get your neighbors permission, to see if it is ok with them. He saw that they had the string on there for your lot line, on the side of the deck, the orange string; that is your lot line, right?

Mr. Kary replied yes.

Trustee Flood added and the yellow string on the deck?

Mr. Kary answered he put a yellow rope there, and it had some red flags there that came off.

Trustee Flood said when he was out there, there was nails with yellow rope, is that how far you are going to cut the deck back off the lot line?

Mr. Kary replied yes sir.

Trustee Flood stated it looked like it was about ½ way between steps?

Chairman Yaros replied he is proposing 30".

Trustee Flood said before it was 3".

Chairman Yaros asked if there was anyone here to speak to this matter?

Mr. Charles Peterson, on behalf of his parents, 350 Shorewood, commented that going back to Mr. Flood saw today, that was new about 4PM, Kennedy Survey was out doing their preliminary survey findings for his parents, so he doesn't believe Mr. Kary was aware that is there currently. Based on the PVC pipes and the dirt piles, based on that line, which is Mr. Kary's survey company, Kennedy showed us where they had marked and that his based on their line. Per that survey the dirt piles and the PVC pipes would be on his parent's property. They submitted an email with the Bing Map street view, which was taken today, and you can see that there was a tree, fence and bushes all along the side of the property, where the deck now sits. What they are really looking for is for the deck to be taken back to the original spot, which is on the other side of the retaining wall. Not sure how many feet that is within each variance, but that is what they are requesting, and since there is now decking on the entire east side of the house, even without the variance, there is more decking than there was before. His family does not understand what the hardship is.

Chairman Yaros stated Mr. Kary is proposing 30" from the property line, 2 ½ feet; would that be on the other side of the wall?

Mr. Peterson replied he doesn't believe it would be.

Chairman Yaros said so you are saying that your family would like it to be beyond that?

Mr. Peterson said yes where the deck previously was on the other side of the wall.

Trustee Flood asked they wish the deck to be on the other side of that retaining wall?

Chairman Yaros replied yes, that is what they are asking.

Trustee Flood commented the line runs right over the middle of the retaining wall.

Chairman Yaros stated yes, it is on an angle and was excavated on the other side. When he was there, he just saw a tarp, the tarp was covering everything that wasn't deck, so really couldn't see too much.

Chairman Yaros said the variance would be for 3 ½ feet and 30.81% coverage would be 5.81% to request from the petitioner.

Chairman Yaros asked the petitioner to come back up.

Mr. Kary asked the 5.81% is not pertaining strictly to this portion of the deck?

Chairman Yaros said from the Building Department total lot coverage 15,096.97 sq. ft. which is 30.81% for everything, that includes the new deck, porch, back deck, garage and the house.

Mr. Kary said ok he just wanted to be clear because the other variance was for an addition and was used for building a deck.

Chairman Yaros replied this took into consideration the 30" off the lot line.

Mr. Kary wanted to reiterate, this is a preexisting deck, you have pictures in your packet from 2000, where that deck was already in existence, there is an aerial shot. You can see big white area all the way around the house that is deck.

Chairman Yaros said he can see a back deck but can't see a side deck at all.

Mr. Kary stated when he bought the house, that was used as access to the backdoor, so without the portion of the deck they wouldn't have access, not to mention that it was preexisting.

Vice Chairman Durham said he had in his notes that he made when he was onsite that if you follow the cement down you would be losing a slice off your deck, but it would save you a lot of trouble. Is that much deck a deal breaker in your mind? It should allow you access around the side to the back where you are going to have a deck.

Mr. Kary questioned what would allow him to have access; not to have a deck there at all?

Vice Chairman Durham replied if you took that piece off and if you follow that wall, you should still be able to use what is left to get around back to get to the back of the house.

Mr. Kary answered yeah if you use the yellow line that is where he would be cutting to, that would be almost to the end of the wall. They are going to have put posts on the other side of the wall and that is where it is going to go to. He had said 2 ½ feet but really, they are going on the other side of the wall, that is where his posts are going.

Vice Chairman Durham showed the map and asked about the new deck line.

Mr. Kary said yes, that is what he is asking for, but it will probably be closer to the house.

Vice Chairman Durham asked is that an expansion over what was there before?

Mr. Kary replied no.

Trustee Flood said putting the deck 3" off the neighbor's line, there is no deck in this Township built that way; they deal with fences that close. For him to go out and look at that deck he must stand on the neighbor's property and need to get permission from them. They had built a deck off the neighbor's property, which they intruded on their private property, which is not right. These lake lots, is why we have these ordinances because these houses are jammed in there and 10 ft. is not unreasonable between the distance on the property lines. The fire department and emergency vehicles need access to get into there, and they look at this seriously when they grant these variances. He doesn't believe it is unreasonable for the neighbor next door, which their property is the one being encroached on. The neighbor said they had no problem if they keep that deck parallel with the wall, and don't believe that it is an unreasonable request.

Chairman Yaros asked the 30" you show the line on the wall right, that is where the line goes along the wall?

Mr. Kary replied right.

Chairman Yaros said but you are saying that you would be behind the wall?

Mr. Kary stated they would have to put posts down, the whole reason they went on the other side of that wall was because they had to put posts in. Before they did anything, there was a concrete slab underneath the deck which the posts were screwed into. After he demoed the concrete slab so he could get posts in the ground, well he didn't have that option before he demoed it and it was in the middle of December, you can't demo concrete in December. The posts would go on the other side of the wall, that is where the deck is going to be.

Building Official Dave Goodloe said that make sense, the reason he put it on this side originally was because that was the only place, he could put the posts.

Chairman Yaros stated the posts and the deck will be no closer than the north side of the wall.

Trustee Flood said he would like to have numbers.

Chairman Yaros asked if they say 3-ft. would that work? That would put it on the other side of the wall.

Mr. Kary said that would work.

Trustee Flood stated that was his biggest concern was the neighbor.

Chairman Yaros said ok there will be a 3-ft variance and the deck would be no closer than 36" from the property line. It would be a 6% variance over the allowed 25% for coverage and a 3-ft. variance from the allowed 6-ft. The lot coverage would be 31% instead of 30.87%.

Mr. Peterson stated if it is on the other side of the wall, they will be happy with that. They are not looking in any dispute with the neighborhood.

Vice Chairman Durham stated inches, means things, and would be very careful to communicate that to your contractor to let them know that they are sure they know where they are before they do anything else that brings you back here.

Mr. Kary replied he is not understanding.

Vice Chairman Durham asked you are not your own contractor, correct?

Mr. Kary said no.

Vice Chairman Durham said he would let the contractor know what you have been through here if you are successful and make sure they know that they must adhere strictly to measurements. There is no wiggle room at all, there are no leaning posts there is no nothing, because the Building Department will be on top of this with inspections on a regular basis until it is done.

Mr. Kary said if you are talking as far as the posts, he will be the one that takes care of that.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of ZBA case # AB-2019-06, Dustin Kary, 362 Shorewood Ct., #09-03-405-013, the petitioner's requesting two (2)

variances from variance from Zoning Ordinance 78: Article 27, Section 27.01 (C)(1)(b), Lot Width 50 to 54 feet: 1.) a 3-ft. side yard setback variance from the required 6-ft. side yard setback to build a deck 3-ft. from the side property line to the south: Article VI, Section 6:04, zoned R-3: 2.) a 6% variance above the allowed 25% lot coverage for a total lot coverage of 31% be **granted** because the petitioner in this case demonstrated that the following standards for variances have been met in this case and set forth facts which do show that in this case: he has Practical Difficulty: he is working with an oddly shaped small lot; he is going to, based downsizing from his previous request to this one, essentially going to be duplicating a preexisting non-conformity that was there when he built the house; he is upgrading the deck and has scaled it back and he will still be allowed to use it; neighbors have been present the neighbor that is most intimately involved with anything that goes on stated that as long as he gets it to the north side of the retaining wall, which he stated that he will, they will be happy with it; it is due to a unique circumstance of the property, the shape, the topography; the following are exceptional or extraordinary circumstances or conditions; the houses are crammed in like sardines in a can on lots of all different shapes that predate any of us being alive; the variances are necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zone based on the following facts: if you look in that area up and down you see all types of things similar to this; granting of the variance or modification will not materially be detrimental to the public welfare, or injurious to property or improvements, as stated there is one neighbor that is going to be closing impacted by this and if the variance goes through as stated, he has stated that they will be ok with it; based on the following facts: there would not be an impair an adequate supply of light and air; will not unreasonably increase the congestion on public street; would not increase the danger of fire increase; it would not unreasonably diminish or impair established property values; or, in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Chairman Yaros asked if there was any further discussion? There was not.

Roll call vote was as follows: Flood, yes; Durham, yes; Walker, yes; Yaros, yes.

Motion Carried 4-0

AB-2019-11, Shane Burley, 515 Bellevue, (09-11-303-004)

Chairman Yaros read the petitioner's request as follows:

The petitioner is requested 2 variances from Zoning Ordinance 78, Article VI, Section 6:04, zoned R-3:

1. a 5.64-ft. rear yard setback variance, from the required 10-ft. side yard setback to add a detached garage 4.36-ft. from the rear property line, which is the street.
2. a 4.3% lot coverage variance, above the allowed 25% maximum lot coverage, for a total lot coverage of 29.3%

Chairman Yaros asked the petitioner to come forward.

Chairman Yaros said the variance is 10-ft. from the rear yard which is the street in this case, and he doesn't know how anybody could back out, you have 2 curves, you have curve to one side you have a curve to the other side of the road, how can anybody back out to see anything?

Mr. Shane Burley stated he was the architect representing the owners on this project, they currently do use the concrete area as parking.

Chairman Yaros said he understands, he was talking about the neighbors. You have 4 ½ feet, how are you going to see around a garage?

Mr. Burley replied the piece of property is interesting because they have a Township line, that bisects the property. There is a corner triangle that is cut off, so the variance, the 4-ft. is not from the road it is from where the property line is with respect to the Township. They still have the 2 other parcels, that completes it, so it is not 4-ft. from the neighbor's property, if you look at the site plan, they are still maintaining the 10-ft. setback with respect to the roads.

Chairman Yaros said he looked at it, and he sees the 10-ft., how does someone see to the north, he just thinks it is dangerous.

Secretary Kosciuszynski stated she went there, and she gets concerned with these houses that are close together, this isn't the first case before them that they had to deal variances in neighborhoods where the houses are maybe a few feet apart. The road is very narrow, and the houses are very close together, and had to see the address from the mailbox. She is concerned because it is such a small area, and is it ok for the Fire Department to get in there?

Vice Chairman Durham stated one of the neighbors was concerned about being able to see past the garage. He walked over into the neighbor's driveway and stopped at the end of row of arborvitaes, he couldn't see past the arborvitaes to do any backing out anyway. So, the trees are ok the garage isn't, he certainly understands where they are coming from, but it is not going to materially impact that road, the road is what it is. It is going to sit back from the houses to the point where he doesn't necessarily see fire or EMS being an issue. He was curious to see why the trees were able to be seen through, but the garage wouldn't be.

Chairman Yaros said you can see through between trees, but this is a wall. This is going to be 10-ft. and his truck is over 20-ft. long, so you got 10-ft sticking out into the road, pulling out of a garage. One thing that they have always been tough on is safety.

Trustee Flood stated the number one issue on any of these setbacks is line of site. It doesn't matter if it is a building a sign, whatever. What he didn't like when he went to the property was, he didn't see one thing staked out where the property line was, he had to take a guess. He is aware that Mary Painter is real, touchy on that. The other properties he went to today everything was marked and strung. The arborvitaes, he knows for a fact, they have had other situations like this where they are tight and people have put in carports, you have your cover, but you can see through them. They would most likely have to get a variance for that too. He could not approve something like this because of the line of site, and it is a safety issue with him on this case.

Chairman Yaros noted they had received a letter from Fredrick and Annette Fieber at 511 Bellevue Ave.: that the garage would create a safety issue for them when backing out of their driveway onto Bellevue. The length of their primary vehicle 8-ft. from the rear bumper to the driver's seat. They would have to back their vehicle several feet onto Bellevue before they would be able to see around the garage. They don't think that this safety risk is acceptable, and the mandatory 10-ft. setback would provide them with enough clearance.

Vice Chairman Durham stated he had not thought at all about carports, but that would get the vehicles undercover and they can be seen through. There would be a block there, but there are other blocks there; but does that mean they should entertain another one? Probably not. Carports would be a good solution.

Chairman Yaros said it would be a good solution. There have been other variances on this property already granted, for a deck and some other things. They are starting to talk about some serious coverage on this little property. It is an interesting parcel, but there have been other variances granted.

Fredrick Fieber, 511 Bellevue Ave., stated he wrote the letter that was read. He does have a safety concern that this would cause for them. With any standard full-size truck with an 8-ft. bed, if you have anything less than 8-ft. to be able to see around you are going to have to back out your vehicle partially into the road before you can see, so it creates a serious safety issue. With respect to the arborvitaes, they are there, and they would like to take them down. They haven't really been a problem there because they are sparse enough so you can see through them, and if they were challenged on it, they would have no problem with taking them out. Some of them are starting to die out a bit. The road is angled there too, so it wasn't clear if the proposed garage would be angled, that would make it even harder to see, if it was anything less than the standard 10-ft. setback. Not opposed to them building a garage but would like them to keep it to code.

Commissioner Walker said that even talking about a carport without it being staked out, they don't know where it is, and would find it difficult to entertain even if the petitioner were to amend their request to that, today, without knowing where it was going to be.

Chairman Yaros asked for the petitioner to come forward.

Mr. Burley wanted to clarify the property was painted in terms of where they were looking for the garage outline. Not sure what day they showed up, but the owners did it probably Wednesday or Thursday of last week.

Vice Chairman Durham asked the little pink dots?

Mr. Burley replied correct.

Vice Chairman Durham said if he wouldn't have stepped one of the pink dots, he would not know what they were.

Trustee Flood said the dots must have washed off with the rain. He stated that he was there on 4/22/19 and they were gone.

Mr. Burley replied the owners are open to the idea of a carport as well. Depending on the outcome of today, they will be willing to amend if needed.

Chairman Yaros asked if postponing it until you can clarify exactly what they want or what the request is, or do you know what the exact request is?

Mr. Burley stated they would be doing a two car, carport as well. They can get it within footprint if it is something that you would want, an elevation or an idea of what it looks like on the site, they would be happy to provide that.

Secretary Kosciuszynski asked what is the Practical Difficulty?

Mr. Burley replied the Practical Difficulty stems from a couple of things, one is the small site. One of the variances that they are asking for is the setback variance, but that is due to the Township line running through the property, that was not self-imposed. Lot coverage is always a concern, they have included a portion of the boathouse that is on the property, they have included the hardscape walk, the deck that continues in order to access the lake from the front of the house all the way to the back. They are asking for a 4.3% in terms of size. If you could factor in the triangle parcel, that is not under the jurisdiction of the Township, but it is property that they believe would contribute towards the amount of buildable area.

Trustee Flood asked Building Official Goodloe, do you know for a fact if it was a carport that these numbers would be the same?

Building Official Goodloe replied no, the carports typically vary in size.

Trustee Flood stated he wanted to see where the carport would be going, so he can get the site lines setup.

Chairman Yaros said then the neighbor can look at it that way and it gives everyone a chance to overlook it.

Trustee Flood stated they can take a vote exactly how it is right now or request a postponement and bring it back. Would he have to repost again for this?

Building Official Goodloe stated it is not a garage and is not considered an accessory structure at this point because it is a carport it might come into a different bit of a play.

Attorney Dan Kelly stated it sounds like it would be, he hasn't really looked at it, but it sounds like it would be.

Building Official Goodloe said our ordinances are a little different on carports rather than a garage, not 100% sure but he wouldn't feel comfortable.

Trustee Flood stated so this wouldn't be a postponement then, it would have to be a reapplication. We would have to take a motion on how it stands now.

Commissioner Walker asked if a motion somehow impact, if they come back for a carport? What are they going to say in the motion, and would they have to worry about how the carport would be built; and for what reason are they turning it down?

Chairman Yaros replied site distance, he wouldn't vote for this because of the site distance and the safety factor.

Building Official Goodloe said there would be a fee.

Trustee Flood said they can't do anything about the fees that is up to the Township Board.

Attorney Kelly said he could withdraw and doesn't see that the fact that he is turned down for a garage is going to make much of a difference to this Board as it relates to a carport. You could withdraw and you are going to still going to have the same process after tonight, you will have to refile asking for a carport.

Mr. Burley asked and if he choose not to withdraw, then the decision is binding?

Attorney Kelly replied then they will vote on a motion tonight.

Mr. Burley questioned with regards to the garage.

Chairman Yaros stated that is correct.

Mr. Burley asked if he does withdraw it would be the whole process again in terms of 30-day notice and application fee?

Attorney Kelly answered the carport is going to require a new process no matter what, whether you withdraw or not.

Trustee Flood stated the other option is if he gets denied it is going to be the same as if it was a withdraw, if it went that way.

Attorney Kelly added he has appeal rights to the circuit court if it is denied, by withdrawing he is giving those up.

Mr. Burley replied they should proceed.

Moved by Secretary Koscierynski, seconded by Vice Chairman Durham, that in the matter of ZBA case #AB-2019-11, Shane Burley, 515 Bellevue, 09-11-303-004, that the petitioner's request for variances from Zoning Ordinance No. 78: Article VI, Section 6.04, zoned R-3: a 5.64-ft. rear yard street setback variance, from the required 10-ft. rear yard setback, to add a detached garage 4.36-ft. from the rear property line to street.; a 4.3% lot coverage variance, above the allowed 25% maximum lot coverage, for a total lot coverage of 29.3%, be **denied** because the petitioner did not demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case: the petitioner does not show Practical Difficulty: due to the small site; the following are not exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to the other properties in the same district or zone: the street is very narrow and the houses tight; the variance is not necessary for the preservation and enjoyment of substantial property right possessed by other properties in the same zone or vicinity based on the following fact: because this is not necessary for any enjoyment other than maybe putting cars in there; the granting of this variance or modification will 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 because of the following findings or facts: the site distance and the small space; based on the following findings of facts, granting these variances would: impair an adequate supply of light or air to adjacent property – it is the site distance the arborvitaes are there now; it would unreasonable increase congestion in public streets; due to the fact that this garage would be too close to the street; unreasonably diminish or impair established property values with the surrounding area: due to the 2 car garage being too close to the street; or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township: it is too much of a tight squeeze.

Discussion on motion:

Vice Chairman Durham will support if the motion maker will agree to clarify, the site lines and the ability to be able to see down the street to safely enter the road. It would be the neighbor immediately to the north as well as the petitioner themselves, would have to physically back into the road to make sure that anything was coming.

Secretary Koscierynski agreed.

Roll call vote was as follows: Durham, yes; Walker, yes; Flood, yes; Koscierynski, yes; Yaros, yes; yes.

Motion Carried 5-0

AB-2019-12, Andrew Garcia, 890 Buckhorn Dr., (09-11-454-007)

Chairman Yaros read the petitioner's request as follows:

The petitioner's is requesting 1 variance from Zoning Ordinance 78, Article VI, Section 6:04, zoned R-3:

- 1.) a 6.8-ft. side yard setback variance on the south side, from the required 10-ft. side yard setback, to add a deck 3.2-ft. from the south side of the property line

Chairman Yaros asked the petitioner to come forward.

Chairman Yaros asked maybe you can explain to us why you want to do this variance.

Mr. Andrew Garcia replied when they first bought the house there was no backyard so he had to compromise, so he is trying to get livable space on the outer part of the house so they can enjoy the lakefront view and to have a place to spend some time outside.

Chairman Yaros asked the reason you can't built it on the one side is because there is a driveway easement right there?

Mr. Garcia replied the driveway is on the northside of the house and they are proposing off the south end of the house, and from the south part of the property line to the north part of the property line behind them is 10-ft., 9-in.

Chairman Yaros stated they have a letter from William Wilsher at 915 Buckhorn, he is in favor of the variance. Is there anyone here to speak to this matter?

John Cleland-Host, 895 Buckhorn, he also submitted a letter, stated that he has looked at the plans and said it looked reasonable, it doesn't seem to impede anything, and is a reasonable request.

Trustee Flood read the letter from Mr. Cleland-Host and he was in favor of the variance.

Trustee Flood stated the driveway is adjacent to the easement to the house immediately behind you.

Mr. Garcia said the neighbor's driveway is technically on his property line, the new driveway that has a curvature to it, that is their driveway.

Trustee Flood asked so that is where the back-deck will be going in-front of?

Mr. Garcia said yes in front of their lot.

Trustee Flood stated what he liked about it was there was plenty of room between your deck and the property line and the arborvitaes for the fire department or anyone to get around there easy.

Mr. Garcia commented he was in healthcare and if someone was in a wheelchair or something, he wanted to allow enough access to get through there.

Chairman Yaros added it is a double frontage lot.

Secretary Kosciuszynski said she liked how they had staked it out.

Trustee Flood asked what the Practical Difficulty in wanting to build a deck?

Mr. Garcia replied the fact that they can't feasibly make a 9-inch deck, staying within a 10-ft. parameter.

Trustee Flood questioned if they had a door wall?

Mr. Garcia answered they had a glass sliding door that they want to be able to utilize.

Trustee Flood said you can't use the door then.

Mr. Garcia said they would have to jump down to the ground right now.

Vice Chairman Durham questioned what the distance from the sliding door to the back-property line?

Mr. Garcia replied 10ft., 9in.

Moved by Commission Walker, seconded by Trustee Flood, that in the matter of ZBA case #AB-2019-12, Andrew Garcia, 890 Buckhorn Dr., 09-11-454-007, the applicant is requesting 1 variance from Zoning Ordinance 78, Article VI, Section 6.04, Zoned R-3: 1) a 6.8-ft. side yard setback variance from the south side, from the required 10-ft. rear yard setback, to add a deck 3.2-ft. from the side property line south be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case: the following Practical Difficulty: due to the unique characteristics of the property, in that it is a 2-front-sided property and there is a driveway on the other side and there is a droppage from the door wall to the ground; they are not related to the general conditions in the area of the property; the following are exception or extraordinary circumstances or conditions applicable to the property that do not apply generally to other properties: because of the shape of the property and it is a double front property; further that the granting of this variance would not materially be detrimental to the public welfare or materially injurious to the property; in addition there were support from two neighbors and there was no opposition from any neighbors; there is no increase in dangers of fire or endanger to the public safety or in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Durham, yes; Walker, yes; Flood, yes; Kosciernzynski, yes; Yaros, yes; yes.

Motion Carried 5-0

AB-99-01-2019: Bob Warren Trucking, Inc., Lot 28 of Highland Farms (parcel #09-32-400-024), Lot 29 of Highland Farms (parcel #09-32-400-022), Lot 30 of Highland Farms (parcel #09-32-400-021), and a 7.5-acre parcel (parcel #09-32-400-058):

Chairman Yaros read the petitioners request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, each excavation, and/or filling and earth balancing.

Chairman Yaros stated the petitioner didn't make it.

Chairman Yaros noted he was still going to go with the information from the engineers on this.

Engineer Landis stated he was going to summary the letter from April 8th. The topographic survey is already on file dated 6/16/2016. They also noted that this property is under Site Plan application for residential development, currently under the review of the Township. The current site conditions were like the finding of last year. There is currently no mining activity taken place on the site, however, the application does state that there is a possibility for mining. There is an existing retention pond on the south side of the site. The pond acts to retain a portion of the stormwater run-off and is there understanding it is used during hauling and crushing operations for dust control. It appears that sometime in the past the applicant likely pumped the pond down towards Brown Rd. causing some erosion and wanted to remind the applicant that prior to doing so they need to obtain a permit from the RCOC. Overall it is their opinion that the current application and materials as submitted are in substantial compliance with Ordinance 99 and they had a hand full of comments for the applicant to address.

Chairman Yaros stated one of the things they did see was the erosion down by Brown Rd. from the pumping that was going on, which is something they need to stay on top of because that needs to be cleaned up off the road, because it creates a hazard.

Chairman Yaros asked the Board what they wanted to do without the petitioner there?

Vice Chairman Durham questioned if they were able to physically access the site?

Chairman Yaros stated to go into the building in the back, no the gates were not open.

Vice Chairman Durham said they had to turn off at the trailer, there was an outhouse too and not sure what they were doing there.

Chairman Yaros said he saw the trailer, but they couldn't get in there the gate wasn't open.

Vice Chairman Durham said normally in past years they have been able to access the site and look around and see things from that side. That with no representation here tonight, makes it hard to move one way or the other.

Secretary Kosciuszynski asked Dan Kelly, since they were not able to see anything because the gate was locked, are they even in a position to vote on this?

Attorney Kelly replied he was not sure if the engineers were able to access it. The fact that the applicant is not here, or even the fact you haven't been able to see something should only affect you if in fact that effects your decision. Yes, it is a legitimate to deny it on the grounds that they didn't have access to the property.

Engineer Landis said they were not able to physically walk on the property, but there is a chain link fence that allowed them to see through it. The conditions they saw is pretty much the same as they saw last year. Having no reason to get access did not foresee as an issue, but certainly can understand the concerns.

Chairman Yaros noted one of the issues is, is there anyone living in the trailer?

Commissioner Walker stated you could see that entire property if you went up the hill.

Chairman Yaros added it was stated that it is not really any different, they are not mining, they could see that, there are no big stock piles, they didn't see any oil laying around on the ground. Plus, he owns the land that the crushers are on too, it is all part of the parcel.

Trustee Flood said regardless if the permit is renewed, they must abide by all the conditions that are stipulated in the motion and follow the same guidelines with the bond and the insurance, and all the concerns addressed here by OHM. If those conditions are not met, our code enforcement has authority to revoke the license.

Vice Chairman Durham noted he likes it better when there is an applicant standing there, speaking on the record stating that they understand all of this and intend to abide by it.

Chairman Yaros stated the big thing for him was pumping water on down to the road, if there was someone here to talk to, so they could explain what they do or don't want to see, which makes it tougher and they can't even postpone because there is nobody here to make the request.

Trustee Flood asked if they had the option to postpone this ourselves without the applicant here?

Attorney Kelly replied yes.

Mr. Pete Granzow, Pontiac Crushed Cement, stated that they have not been pumping anything on the road. That is just washout from the rain.

Chairman Yaros said they need to intercede on that and eliminate the washout somehow, because it is washing out to Brown Rd.

Mr. Granzow said they have been keeping it clean, in the spring it is tough to keep up with it. He can't speak for Jack.

Trustee Flood noted he was looking at the application and he doesn't have anyone designated to speak for him.

Chairman Yaros asked the Board what they wanted to do?

Moved by Trustee Flood, seconded by Secretary Koscierny, that in the matter of ZBA case #AB-99-01-2019: Bob Warren Trucking, Inc, Lot 28 of Highland Farms (parcel #09-32-400-024), Lot 29 of Highland Farms (parcel #09-32-400-022), Lot 30 of Highland Farms (parcel #09-32-400-021), and a 7.5-acre parcel (parcel #09-32-400-058) be **postponed** until May 13th due to the applicant not being present to answer questions and also having no access to the site, and they would like to see the engineer and the code enforcement have access to the site.

Chairman Yaros asked if anyone else would like to speak to this before they vote.

James Swoish, 2741 Judah Rd. asked is the lots on Judah Rd.

Chairman Yaros replied no these are the lot on Brown Rd.

Roll call vote was as follows: Koscierny, yes; Walker, yes; Durham, yes; Flood yes; Yaros, yes;
Motion Carried 5-0

AB-99-02-2019: Dan's Excavating Inc.; 2985 Judah Rd., the north 535 feet of lot 11 of Mt. Judah Farms (parcel #09-32-400-056), Lot 11, except the north 535 feet of Mt. Judah Farms (parcel #09-32-400-057), Lot 12 and the southerly 588 feet of Lots 13 & 14, excluding the southerly 588 feet of Mt. Judah Farms (parcel #09-32-400-063):

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of Ordinance No. 99 permit for sand and gravel mining, each excavation, and/or filling and earth balancing.

Chairman Yaros asked the petitioner to state his name.

Mr. Brett Baker, Dan's Excavating

Engineer Landis stated he would read the summary from the letter from April 8th. As was noted the application included a new mining plan dated January 22, 2019. The applicant is continuing to make progress with filling in the pit to the south. At the time of their site visit a small section of the perimeter fence in the northeast corner was removed due to current operations, but they understand the section of the fence will be relocated further inside the site as noted on the survey, once that work is completed. The new mining plant includes fill from the top of the gas main easement, down midway to Judah Rd. at maximum slop recommended of 1:4. The plan includes the creation of an on-site retention pond for

storm water management near the northern end of the site. This pond is necessary since the existing pit towards the south is nearly filled in. The proposed grading down from the gas-main easement has yet to be completed and approximately the easterly 1/3 of the retention pond has already been constructed. Overall, it was their opinion that the application and materials as submitted are in compliance with Township Ordinance No. 99, they did have a few comments in their conclusion for the applicant to address.

Chairman Yaros said you can go ahead and read your conclusions.

Engineer Landis replied 1) Install a safety fence in the northeast section of the site until 2019 restoration work is completed and is noted on the survey. 2) The applicant shall furnish to the Township a copy of the Haul Rout permit renewal with the Road Commission for Oakland County for Judah Rd. The current permit is set to expire on 6/1/2019. 3) The approximate start date and end date of any intense activity, if applicable, occurring on the site for the year should be included in the application and/or notice given to the Township prior to high periods of activity. 4) Per Section 7, Item L of Ordinance 99, the applicant shall note that tacking of material and dust control issues will be monitored and improvements may be required throughout the permit year. 5) Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the applicant to document all fill is "Suitable Fill Material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

Chairman Yaros added the applicant has requested a variance in the hours of operation from the allowable 7:00 a.m. to 5:00 p.m. to be extended to 7:00 a.m. to 7:00 p.m.

Chairman Yaros asked if there were questions from the Board?

Trustee Flood questioned if it was 7:00 a.m. to 7:00 p.m. is that coordinating again with the completion of the Walden Rd. widening?

Mr. Baker replied they have always asked for the 7:00 a.m. to 7:00 p.m. time frame.

Trustee Flood said as far as last year it had to do with the road widening.

Secretary Kosciuszynski stated that a couple of years ago they gave them 7:00 a.m. to 5:00 p.m.

Mr. Baker stated he believed that last year it went back to the 7:00 a.m. to 7:00 p.m. It comes down to the last trucks of the day trying to make it there, to dump that last load before they go to their parking spot for the evening.

Vice Chairman Durham asked if they are going to have to continue to run all your traffic off Joslyn?

Mr. Baker replied he doesn't know, that is up to the Weigh Master, it always has been, he always wanted us to come off of Joslyn, but that was because it wasn't safe to enter Baldwin with trucks, but now with the traffic circle is there, it might be. They didn't think that they breached that subject with the Weigh Master yet.

Vice Chairman Durham said it is something that would cause the neighbors down stream to breath a sigh of relief if they thought they weren't getting ever single truck.

Mr. Baker agreed that would be a lot easier coming off Baldwin too.

Vice Chairman Durham questioned how many trucks a day?

Mr. Baker replied it was 100 trucks a day, he didn't think that it ever reaches that amount.

Vice Chairman Durham asked regarding the work trucks for the Baldwin construction, is it feasible to say that you are going to be opening the gates and storing some of them in a secure area at night?

Mr. Baker replied yes.

Trustee Flood said he believed last year, Bob Warren stated it, that the pit has been in operation for over 50 years, this pit is not something new on that road. He will be glad when it finally gets closed.

Mr. Baker said it is getting close. There is no longer a hole there.

Secretary Kosciuszynski asked what do you mean when you say close?

Mr. Baker replied probably a couple years. This last year, they put a lot of dirt in there, if they have another year like that it will fill up quick.

Chairman Yaros asked if there was anyone here that would like to speak to this matter? Please state your name and address.

Mr. Eugene McNabb 2981 Judah Rd., stated every member on this Board will admit that his property is on the Ordinance 99, from when it first started till now. It has never been taken off, he will prove that his property is on that permit and he wants it taken care of. The handout that was just given to the Board, that is Dan's Attorney, and if you look at the bottom, he states that his property is part of the plan. In 1996-1999 Dan leased that property from Bob Warren, it started out as Ordinance 40. When the Ordinance 99 came in Bob Warren was doing very little if any mining at all. Dan's took over the permit, he knew that permit was there when he took over that operation in 1998. In 1999, Mark the son of Dan bought that property. The piece of paper that is in your folder, Mark said that he will follow the map that was made in 1998, and that he will abide by that. If you know what that map looks like, his property is on there and is marked as leased. Then he was under oath and Bret Baker was under oath and he had the map that was presented under oath, and that shows his property and the lawyers agreed that his property was on that permit, Bret Baker was there, and he has it as Exhibit #1 map. Then he has another map that says that the level of that pit will not exceed 1,060, that is under oath. That was taken under oath in Dan Kelly's office. Dan knows that his property was on that permit because that was part of the argument of that permit. Later, under oath in 2012, the Board requested a map to be made of Dan's pit. On that map, and Michael Flood seconded it to make the map, it came out the fact that 9, 10, 11, 12, 13 & 14 are part of Dan's pit. His property is listed on that map that was made by the main board of this Township. It went to court again, and during the court he couldn't tell Dan or the Township how to run that pit at all, that is what the Court of Appeals said for the State of Michigan. The Court of Appeals did say that they couldn't have any water run on my property, and they said that the entire pit has to be leveled off at 1,060 and they have to have a certified drawing or map to prove to the court system that it is leveled off at 1,060. So here you are dibbling in this other kind of stuff that has no bearing on what the Court of Appeals said. He has told this Board, how many times in the past that they were going down the wrong road, every time they said they had to go by what is in front of them, well has got what is in front of them, right now. He has a small map that he gave the Board that shows 9, 10, 11, 13 & 14 is far as the pit and that was made in 2012. Dan Kelly knows that if this is not taken care of at the 1,060 level, he has recourse through the court system and it also says that the 1,060 is final. You should talk to your Attorney before you make your decisions.

Mr. Larry Burns, 2800 Judah Rd., said that he would be opposed to them being open until 7:00 p.m. He would like to know who it is that maintains Judah Rd., the condition of it.

Chairman Yaros replied, it is a County road.

Mr. Burns asked so the County must take care of it, Dan has no responsibility.

Chairman Yaros stated he would have to get a Haul Rout from the County Road Commission they issue it.

Mr. Burns questioned so they call they call the Road Commission to grade that road?

Chairman Yaros replied that if they don't maintain it then the Township will call, and the Road Commission will come over and charge them for it. They must renew it because it expires June 1st with the County, then they must renew as part of their proceedings.

Trustee Flood asked are they not supposed to put chloride down when it gets too dusty?

Chairman Yaros said they have in the past.

Ms. Sandra Dibble 2281 Judah Rd., said that on several occasions there has been trucks sitting outside at 6:45 a.m. running, parked back to back and that should not be allowed. 100 trucks a day, if you lived on that road, you couldn't have your doors or windows open because the dust is just horrible. They have double tandems non stop going back and forth. If she was to sit there and count them, she bets that there would be more than 100; you guys don't experience what they experience, 5 p.m. is late enough for those trucks to be going up and down that road. The last 6 months or so prior to winter, when they come by and plow the road, they are making a gully along all our houses and so now there is standing water constantly up 4-5 houses, and it is just slopping down. She had her driveway done last year and they are taking part of that away. Her road is like swiss cheese on a regular basis.

Chairman Yaros stated he would call the County Road Commission on that. They are supposed to bring it up and then flatten it back down, and they are not doing that. They are digging out your material to do it.

Mr. Jim Swoish, 2741 Judah Rd., said he wanted to say thank you for making his life miserable the last 2 years. The 100 trucks a day is out of control, there is no end in sight for any of this. He wants to know what is in that pit, what are they dumping, is it, contaminated road soil?

Code Enforcer Al Daisley replied there is no contamination in there what so ever.

Mr. Swoish asked what about all the tires that are buried there?

Code Enforcer Daisley said there are no tires buried there either.

Mr. Swoish said they are there. He is worried about the contamination because they are all on wells, and he is worried about what they put in there. They took out nice clean gravel, they are going to dump road waste. You should call it a landfill because that is what it is. He would say that 8:00 a.m. to 2:00 p.m. would be a good time for the trucks to run, he works a lot, on Saturdays he doesn't want to have trucks running at 6:30 a.m. which they do until 7:30 p.m. He has his dinner and it is bouncing on his table as those trucks go down the road. It has been like that for years you people don't care about it. They have no care on how they feel on the road, he knows it is a business, but there is no end to it at all and he is fed up with it. He must go to Lansing to object to his tax bill because these trucks are just ripping his house apart. He has cracks all over his house. He says no.

Mr. Gene McNabb Jr., Orion Twp., stated he had a question for the engineer. On your conclusions under section 5, that is not what the Ordinance says. You have in the report if the building official asks for pictures, they are supposed to be taking a picture of ever truck that goes in there, so they don't get contamination. The Building Official and the Code Enforcement guys are not experts on soil. The Township Ordinance was changed because of the pictures my dad produced, they changed the Ordinance and made it tougher and for years he has been arguing to get the Building Director to enforce the Ordinance as it is written, he refuses. He is the problem, call your Supervisor. There were a few comments made he wanted to clarify. Somebody on the Board said, "that is why they have Ordinances to correct problems", he just wishes that they would enforce them. Another comment was made, "that pit has been there for 50 years", that doesn't make it ok. He has watched the Board Meetings and has come to the Zoning Board meetings, things change all the time, noise Ordinances, shooting Ordinances, all this stuff changes, just because something has been there for 50 years doesn't mean that it needs to operate it like it was 50 years ago. What is the new fill plan? His dad got a topographical map of the Site Plan that was available at the time. Did they change it? His understanding is that they are going to start filling from the top of the hill, half way to Judah Rd.

Engineer Landis replied as required in the Ordinance the applicant is required to renew the plan every 6-7 years; at the last meeting, last year there was a request by the ZBA to have the applicant provide an updated plan to reflect the required fill to meet Township Ordinances for the final restoration of the site, which would include; filling from the gas main easement down at a 1:4, and because they are filling the southern pit, they need to also properly manage the stormwater, which is why they are creating a detention basin towards the front to actually retain all of the stormwater on site.

Chairman Yaros added which wasn't on the original.

Engineer Landis said was correct, it was an evolving plan, as necessary. In this year's application the plan he is referring to that is what is included.

Mr. Gene McNabb commented so there is a new fill plan, they are going to fill up against the hill and half way to Judah Road?

Chairman Yaros responded on a 1:4.

Mr. Gene McNabb replied that is what the Ordinance says, that is perfect, that is what they adhere to; but when they fill 1:4 from their property line, now you are going to have a mound that his going to encroach and have more run-off on his father's property. He hasn't seen the plan so he can't speak to the plan.

Mr. Gene McNabb added there was an issue with run-off, has anyone got a copy of the report that Tim London probably generated because of the calls that they complained about; the massive water pooling on the back of his father's property. He knows that there is a picture in their packet.

Mr. Gene McNabb said they called a couple of times and they were right on it.

Building Official Goodloe noted the ground was frozen; and there was a culvert that appeared to be blocked.

Mr. Gene McNabb stated what the issue is before there was a berm there, that man made berm that is now gone; so the culvert was put in there by orders of the Zoning Board, because the water was running around that berm and running on to his father's property, which it should have never done, but the Zoning Board said the only course of action was to install a culvert pipe. The culvert pipe doesn't work, the berm is gone now, and the water still comes over on his property. If you look at the elevations on the map, he didn't know what the elevation is at the culvert pipe, but if that pond gets full it is going

to flow back onto the pipe onto the property, it isn't working. Why don't they put a culvert pipe on their own property, so the water doesn't get to his father's property?

Chairman Yaros they will have to have the engineers look at this.

Engineer Landis said the new plan does take into consideration some off site drainage from Mr. McNabb's property. That drainage is picked up by the culvert and is accounted for in the sizing of the retention pond. They had the applicant take into consideration the invert of that culvert coming into the retention pond, so that the proposed storage elevation, which is two, 100-year storms, is below the invert of the culvert, so they don't foresee an issue with the back-up. In addition, they have asked for them to create an overland relief route, which if the pond were to back-up it would eventually spill back out into Judah Road, that is all part of the plan that they reviewed.

Mr. Gene McNabb asked if there is a plan that he can get where it shows a culvert in a different spot? Is that culver staying there? Is the water still going to run on his father's property?

Chairman Yaros stated they are talking about building the pond to be able to take two, 100-year storms.

Engineer Landis said that is correct, the culvert is not proposed to be moved from its current location.

Chairman Yaros replied the retention pond will be bigger to handle whatever water that is with the run-off.

Mr. Gene McNabb asked so if the culvert pipe is staying where it is, the water should not run on the lot next door to access a culvert that is on his property. It shouldn't do it.

Mr. Gene McNabb added the enforcing of what comes in and out of there, the dirt, it specifically spells out in Ordinance No. 99 what is supposed to happen, they are to keep a daily log of all the trucks that go in and out of there, they are supposed to take a picture of every truck load that comes in and out of there. He has been to the Building Directors office three times trying to get that taken care of, he refuses, he had a meeting with the Supervisor, Building Director and the Code Enforcement. The Supervisor told him that they will start taking pictures. He had another meeting with Dave, and he told him that he is not going to obey his orders, he is not going to take pictures. They have a right to know what is in there. For the last 5 years they have not taken a picture.

Mr. Gene McNabb continued saying the Building Director went as far as to say he will do half of it, which is a piece of paper that Dan's Excavating generates and emails to him and where the trucks are eligibly come from. Everyone is complaining about the trucks, you must think about it a little farther, that 100 trucks a day, that is 200 trucks by your house. They go in and they come out; do the math, that is potentially a truck every 6 minutes. It is a residential street they lowered the hours from 7a.m. – 7p.m to 7a.m. – 5p.m. one year because a few neighbors complained. The next year, which was last year, none of the neighbors showed up, except for him and his father, so they looked in the crowd and said, "well nobody is complaining about it, so they are going to go from 7a.m-7p.m. He hopes this gets resolved soon, and he is sure that Mr. Kelly knows where this is going.

Building Official Goodloe said when he first took this position, there was never photo logs taken. Typically, Al Daisley would go out 3-4 times per week to look at the piles and see what is going in there. He trusts that process and he trusted Al's judgement. Recently he did email the applicant and requested that he does maintain those logs, and if they don't then they are getting charged for Al's time out there. He has also charged them for the time that the Code Enforcement spent on the soil erosion issue with Mr. McNabb's property. They are taking measures to ensure that the fill is safe, and they always have. When you have a 50-year train it is hard to get it turned around, but they have been working diligently at it and feels they are on right track. Like Mr. McNabb said eligibly where the truck

came from; not sure what a photo is going to tell you about soil, but you could take the same photo of one mound of soil 15 different ways, he has a guy out there with their boots on the ground looking at it, he felt better with that. He has requested that they do start sending photos and they are charging for the time it doesn't seem to him that they don't want Al out there looking at this property and making sure what they are dumping or what they are putting in there.

Mr. Gary Skrzyzcki, 2735 Judah Road, said they are about seven lots down from going east down Judah Rd. from the area that they are filling in. Their backyard extends all the way back to Menards, and they are open to that area. When he hears numbers, being an engineer, he starts thinking what type of controls are being put in place. For example, there was a comment made about dust control, what type of method is going to be put in place, for dust control, what is the standardized method for dust control, what is the acceptable practice for dust control? When people throw out general terms like that, they need to understand that there should be specifications and regulations on what that means. How is dust control going to be controlled because last year they couldn't open their windows at all. He would wash his car and literally an hour later it was dirty. He understands that this hole is going to get filled, and you have a lot of people upset about it, they are going to get that hole filled because someone has got prime real estate there that they want to build on. Until they get to that point what controls are going to be put in place? Is there a State regulation for dust control and what does that mean?

Chairman Yaros replied from his experience the standard is four applications and a Township per year, that is a standard for a class "B" county gravel road. When they have a Haul Rout, if they get a complaint a lot of times their trucks are somewhere else, because they do the whole county, so then a private contractor would come and spread calcium chloride on the road, and they would be charged for it. There really is no standard beyond the four applications which is the normal.

Mr. Skrzyzcki stated he brought up a whole other subject that he wants to talk about. They are talking about the road they are driving on he is talking about when they are dumping the gravel in the yard. They get dust turned up, when they tear down a house in Detroit, they have someone with a fire hydrant or hose, they are spraying it down because they want to keep all the dust controlled. What is the standard practice in the yard that is defined by the County, State and Township for dust control?

Building Official Goodloe replied that is in the soil erosion and sedimentation for the property itself. He can't speak on the County road. When they are driving their trucks that needs to be watered down so that it doesn't put any air-born dust in the air.

Mr. Skrzyzcki questioned if they have anyone on site that is spraying the dirt as it is pouring out of the truck to keep that down?

Building Official Goodloe stated typically yes.

Mr. Skrzyzcki said be careful if you say yes because he can walk up the hill and watch all this.

Building Official Goodloe said when they get a complaint about dust, they get on the phone and they call the contact.

Mr. Skrzyzcki stated that he wanted his neighbors to understand that as well. The next subject regarding the four standard applicants for chloride applications. He understands that the County manages the road, but the Township defines it based on the traffic. That road, would typically see the amount of maintenance that is requires per year and what that is?

Chairman Yaros replied he would say no.

Mr. Skrzyzcki said so they would have to go to the County and say based on the traffic on that road. If there are 50 residents, he would hope they would think, they have 50 residents, you have 200 cars driving at least twice a day down the road, you can do the math, axels weight and wear and tear, they are going to grade this road once every three months. If they have a 100-trucks coming in and 100 trucks going out, he has increased my axel weight and wear and tear on the road, he can exponentially say he is getting three months, worth of traffic in three weeks. If he based calculations on every three months, based on the current, that he should be grading that road every three weeks; because he has exceeded the capabilities of that road, and now it is grading it to the point it is not safe. He just wanted to tag on the safety issue here.

Chairman Yaros replied they mentioned the Haul Rout from the county, and you get a Haul Rout because you have exceeded the normal traffic amount. The Haul Rout gives permission to the entity watching, in this case the Township, saying it is dusty out there, you guys must provide some dust control.

Mr. Skrzyzcki stated when he hears controls, he thinks is he going to test something every three hours, 30 hours every three weeks whatever it may be. That is why he is asking these questions. They talk in generalities, people say 100 trucks, how do they know it is 100 trucks? Ok you are going to hire someone to sit in a car and sit there with a clicker? That would be cost, and you would have to say to Dan you have to pay for this, he is not going to pay someone to sit there and count cars. He is going to be mad because they are going to say, how do they know that this going to be there? He just wants to vocalize his concerns and where do they have to take this? Where do they have to take this to really understand how they are affecting the citizens that live on this road. Last request he would like to make is no trucks after 5p.m.

Mr. Eric Bedell, 2671 Judah, stated they had mentioned on some of the other properties that you do site visits, not just one of you but a lot of you, so just curious how often you do visits on Judah Rd. itself?

Code Enforcement Daisley replied three times per week at least.

Mr. Bedell questioned just one of you?

Code Enforcement Daisley answered himself.

Mr. Bedell asked what are the hours that they are supposed to operate as they stand now.

Chairman Yaros answered 7a.m.-7p.m. is what their request is, 7a.m.-5p.m. by ordinance.

Mr. Bedell inquired today what is the time they are allowed to do?

Chairman Yaros replied 7a.m.-7p.m. 6 days a week.

Mr. Bedell questioned what kind of standards could they hold up to, no one is going to count cars, but they are constantly going to be breaking the rules either with time or with the number of cars, what are they supposed to do? What is the point of standing here and talking about it if they are not going to enforce these things?

Building Official Goodloe said you would have to contact us at the Township.

Mr. Bedell stated this why he was there, he is contacting you today.

Building Official Goodloe stated they did not get one complaint regarding after hours.

Mr. Bedell stated he just moved to Judah Rd. he is a new resident. How are you going to enforce the rules that they are trying to imply today? The gentleman that spoke for Dan's was talking about time, he is talking about time. If they are going to be 7a.m. – 7p.m. how do, they know that the last truck is not going to roll in at 7:05p.m.? Not just once but multiple times, what kind of standards are they are being upheld to?

Chairman Yaros said they haven't agreed on 7a.m.-7p.m. this year, that is why they are here for the new permit. The current is 7a.m.-7p.m., 7a.m.-5p.m. is the Ordinance. Do you want 7a.m.-5p.m. or 7a.m.-7p.m.?

Mr. Bedell said that he would like 7a.m.-5p.m. but my question is regardless of the time, whether it be midnight, if they go over their allotted time what is the repercussions for their actions?

Code Enforcement Daisley said they must have a complaint first and they have had no complaints.

Mr. Bedell questioned how one would file an official complaint if this does not serve as one.

Code Enforcement Daisley replied call the Township.

Building Official Goodloe said to call the Building Department and you can talk to the Code Enforcer, if they are running past the time, they can be fined, it is right in the Ordinance.

Mr. Bedell inquired that the other gentleman mentioned the use of Baldwin Road as an alternative to Joslyn Road, is that up to the Weigh Master?

Chairman Yaros said the Weigh Master gives them the Haul Rout.

Mr. Bedell asked how would one know if that is ok'd?

Chairman Yaros responded they would have to provide a copy to Township.

Mr. Bedell questioned how would he be able to see that?

Building Official Goodloe said to fill out a FIOA request is how you would obtain something like that from the Township.

Mr. Joel Atlas, 2736 Judah, stated if any of you guys lived on Judah Rd. there is no way you would approve longer hours than what they already have. He is totally against 7a.m.-7p.m., he doesn't think that they should be able to run on Saturdays, or 7a.m. in the morning. He doesn't see why they should run that early. Not too many people work a 12-hour day, he doesn't. He has had times where he can't back out of his driveway, there are trucks lined up all the way down. He can't keep his windows open in the house in the summer. He can't keep his car clean. He is hesitant to have people over on the weekends to have a diner or a BBQ because of the noise. He lives 150-ft. off the road and his house shakes when the trucks come by, the windows rattle. He doesn't understand what Dan's Excavating does for Orion Township. They have approximately 75 homes on Judah, 300-400 people in those homes. Every year you have a hand-fill or more that come and complain about the same thing. He doesn't know why 300-400 people should be put aside so Dan can run trucks in and out of there. They pay a lot of money in taxes. He has lived on Judah Rd. for almost 30 years, since 1992, even back then he was told that it was almost full it will be done soon. That is what the real estate agent told them when she sold him the house. He doesn't see the value, Dan's Excavating doesn't bring any money to Orion Twp. They probably pay a few dollars in property taxes, he doesn't know what they pay, he can guarantee that they pay a lot more or the 75 residences every year their taxes go up, but their quality of life is going down. Every year they complain about it, nothing ever changes. He doesn't understand it.

There is not going to be one person on that road that is going to speak for Dan's Excavating. There would not be one person that would say "yeah it's ok, I don't mind the trucks", not one person. It makes no sense to him.

Mr. Eugene McNabb, 2981 Judah said he wanted to correct two statements. The one person said prime real estate when they are done. They dug 80-ft. deep, never compacted it and he used to give them pictures of the junk that was thrown in that pit, and the ones that have been on the Board a long time know that you have pictures stored that has junk in it. It is not prime real estate at all it is junk. It has material and lead in it because it came off the side of the road, nobody has corrected that. The second thing was stated was the fact that one time, Ordinance No. 99 said they had to have civil engineer, registered engineer for the State of Michigan check that pit continually to make sure what went in and out of that pit. Mr. Kelly was on that Board one night and he said, they can get around that they will fix it where you take pictures of every vehicle and where it was at the time. They changed Ordinance No. 99 and it is in Ordinance that they must take the pictures, and they are not even doing that today.

Terry Moran 2740 Judah Rd. stated he has been there since 1980 and the trucks have been running almost continually for nearly 40 years that he has been there. The dust is a pain and the conditions of the road, the shaking of the house. What really bothers him is the noise; has anyone ever stood next to one of those gravel-trains and listened to the roar of those? All day long, day after day for 40 years; how would that affect you? Would that drive you nuts? His house is about 60-ft. from the road. You can keep all the windows closed, put some plugs in your ears and you still hear them. What do you think that does for property values? Why is it that 75 residences are being persecuted by that truck traffic? Is it that important that Dan has a pit in the center of a residential street? Can't that be done away with now? They have been promised year after year, it is only going to be another year or three, he has heard that for 20 years. No one can give us a date. He wants to see the truck traffic stop, now, they have had enough.

Mr. Dan Dewey 2511 Judah noted this morning at 7a.m. he heard this noise that he forgot to remember what the noise was. What is that, it is a big engine moving slow, but there is metal rattling. He forgot that because today was opening day for the pit. He looked out and saw this guy he wasn't even doing 5 miles per hour he was the first one coming up the road like he is trying to hide. The pit started in 1958. It starts over on Baldwin and goes across to Joslyn, and where is it all going, I-75 and now where is it coming from I-75, slightly used. When Mr. McNabb was much younger, and so was he, he delivered his paper and that was 61 years ago, there were 24 houses on the road. Then it started and it was going out, and everyone realized that they can only take so much, only because the pipeline was on top of it. If the pipeline wasn't there, you could look straight across to Brown Rd., so they just all got used to it. It never dawned on us that they were going to bring stuff back in, because it was a pit, when you got up on top it was serious pit down there. It was all legal, they bought it from Warren, his dad and mother had it. Now they have several things going on, McNabb's property must be dealt with, that appears to be the one main issue property wise; the Ordinance if it could be change would be nice. There must be at least 100 trucks going in and going out. He did give them credit that over 90% of the truckers go slow and get out of the way if you are on the road. The dust is another thing. Once in awhile you get a cowboy who figures they can go 45 MPH the whole road. After one of the other guys tells him that he is getting paid by the hour, so he calms down. They are so used to it and they do want it to end, and then they hear two years and they all hang our heads. He does envy the part that none of them live on Judah Rd. because they can't put it into words it is just continual it doesn't end, six days a week 7a.m.-7p.m., then Sunday you don't notice because it is not there, you can hear the birds again. It is all legal and it seems to be two areas, McNabb's property and if they somehow find a way to change the Ordinance. They live with it because they know that they must live with it and after 60 years, then you hear two more years. The rumor started last summer that maybe it is time to close it. He wasn't sure where that rumor started, but it was a nice rumor. They must allow it if they comply with the Ordinance, you have to say go ahead. 7a.m.-5p.m. or 7a.m.-7p.m. seems to be the only variable.

Mr. Jeff Antosiak 2760 Judah Rd. said he had missed the first few minutes of the meeting. He has lived on Judah Rd. for 29 years and he came and spoke regularly to the ZBA for the first few years, and heard the same things over and over again, and like most of his neighbors they got tired of it and that is probably why attendance fell off quite a bit, after awhile it falls on deaf ears you just don't keep speaking. He wasn't sure where the 100 trucks per day came from, is that in the permit? They are limited to 100 in and 100 out, and if they are in excess of that, he complains to Building Department, Ordinance Enforcement?

Building Official Goodloe thought the 100 trucks were just an estimate, not an actual running number?

Engineer Landis replied he believes he is correct, that it is an estimate.

Mr. Antosiak said the estimate is not binding it could be 400 trucks. When he first came in years ago, Bob Warren truck permit was for 10 trucks a day and they would see 200-300 trucks going in and out. When I brought that up and they said that they had never heard anything like that. Bob said well he is only using 10 trucks, nothing happened, they changed the permit and it went up. The guys driving the trucks, they are doing great, 10 miles an hour and most are very courteous. Like Mr. Dewy said there is the occasional cowboy 45-55 miles an hour. He doesn't think anything is going to change here until it is filled. If they were to say let's make it go away, Dan's will sue the Township, they have bigger pockets than the Township does, they just need to get it filled as soon as possible. How do they change the Haul Rout now that they have these fabulous round-a-bouts? There is no issue with them going out on Baldwin and so rather than them driving $\frac{3}{4}$'s of a mile on their poor road they can just drive $\frac{1}{4}$ of a mile out to Baldwin. Who controls the Haul Rout, Oakland County?

Chairman Yaros replied yes.

Mr. Antosiak asked if they talk to Oakland County and see how that is changed, then they bring that back to the Township?

Chairman Yaros said they will check on that.

Mr. Antosiak questioned how do they hear back on that?

Chairman Yaros replied he doesn't control the Weigh Master.

Mr. Angosiak asked is the Weigh Master who controls the Haul Rout?

Chairman Yaros said yes. Can they make a request to the Weigh Master to request a Haul Rout to be change to Baldwin?

Code Enforcement Daisley stated the problem they are going to run into is that Baldwin phase one is not finished yet from Brown Rd. to Gregory, that is phase one. Phase two will go into effect after phase one is completed, so that would weigh a lot on the Weigh Master's decision.

Mr. Angosiak said that Gregory is north of Judah. Most of the trucks are coming from I-75, everything up to Judah has been completed.

Code Enforcement Daisley replied no it is not complete yet. They still must put safety paths in.

Attorney Kelly stated they don't control the roads, nor does the ZBA. There is a lot of issues with the roads, but the chair is correct those comments should be directed to the Road Commission and the County who sets the roads, they don't have any control over them.

Mr. Angosiak asked if it is the County that is going to control the Haul Rout, is the Township going to follow up on this or is it up to the citizens on Judah Rd.?

Attorney Kelly replied the Building Department may make a request, but the Road Commission has their own processes for how they control haul roads how they manage, maintain and repair existing County roads.

Mr. Angosiak questioned if they would listen to an ordinary citizen to make the request or does it have to come from a Township?

Attorney Kelly answered he isn't sure they are going to listen to the Township either, they make their own decisions based upon their own standards that he doesn't know, nor does this Board know, so that is the issue, it is the County.

Mr. Angosiak stated if he follows up with the County and they say that the request must come from the Township, who would I speak with the Township to initiate the request to change the route?

Attorney Kelly replied whom ever the County tells you to talk to.

Ms. Patsy Moran 2740 Judah asked are they taking dirt out of the pit too?

Code Enforcement Daisley answered no.

Ms. Patsy Moran questioned why it is taking them from 1958 to now with 200 trucks a day going up and down that road to fill that hole? It shouldn't have taken 50 years to fill that hole.

Code Enforcement Daisley replied it depends on where Dan is gets the dirt and how much they have.

Ms. Moran asked what does that mean?

Code Enforcement Daisley said they have different construction sites that may be further away.

Ms. Moran inquired why does it take that long to fill that hole?

Code Enforcement Daisley replied it depends on where the dirt is coming from.

Ms. Moran questioned if there are 100 trucks a day are going down there with a load, 6 days a week for 12 hours a day, why is it taking this long to fill it?

Chairman Yaros answered it is a matter of the size of the hole the cubic yards to take the fill by the number of cubic yards they had to fill it. It was a big hole, and they have by Ordinance to do a 1:4 from the back-top slop, so they have additional material to bring in to create that slop. It is a matter of size of area by the number of trucks coming in bringing so much tonnage.

Ms. Moran asked if that slop is an indication they are heading toward completion of filling?

Chairman Yaros replied absolutely.

Commissioner Walker added he has been on the Board for a long time. The first time he went out to the pits, he was thunderstruck by how deep that was. He told his friends that he had just left the surface of the moon. You couldn't believe, how unbelievably large it was. He knows that you all have heard that it is getting there. Now there is almost no pit, it is almost level, now that is why they are

worrying about the slop now, because it is almost filled, 90-95% of that is filled. If they can't get the Weigh Master to change the Haul Rout, if it is ok with them to just spin it off Baldwin now that Baldwin, and being almost completed, would make so much more sense. He does believe that it will be filled very shortly.

Mr. Terry Moran, questioned if there was anything that the Board can do to expedite the change in route?

Commissioner Walker answered if they could do it, he felt that the Board would do it.

Mr. Moran said that a phone call from the Board would carry a lot more weight than it does from Terry Moran.

Secretary Kosciuszynski replied no. She wanted everyone to know that, she may not live on Judah Rd. and has been on the Board for seven years and she does understand and cares what a home means to a person. Her home is a place of refuge and peace. They do care, but you must understand they have parameters of the law that they must abide by. What she wanted to ask the Board Members to do is do something about the hours of operation. She has Asma and doesn't know what she would do with the dust issue either. To the extent that you understand that they do care about them. They may not be able to do what you want them to do for you, but they do care.

Chairman Yaros said he spoke with the Building Department and they are going to make a call and see what the Haul Rout is currently and if there is maybe a change.

Mr. Moran said that he doesn't want to punish those guys but for 40 years they have been taking 98% of the traffic. Whatever you can do.

Comment from public, stated they could solve this problem pretty quick if they took the dirt that they stock piled on Columbia St. in Pontiac and brought that over instead of diverting it to drop it there, they could fill that pit in this week, with the amount of dirt that they have stock piled in Pontiac in their main yard. Not sure why they are diverting it there just to keep it open.

Ms. Katherine Young 2671 Judah Rd., asked Code Enforcement Daisley that he had said previously that there are no contaminants into the pit, and wants to know how he proves that?

Code Enforcement Daisley replied because there is nothing in the dirt piles.

Ms. Young asked how do you know that there is nothing in there?

Code Enforcement Daisley said they don't test the dirt they look at the dirt.

Ms. Young replied so you don't test it, yet you know what is in it?

Code Enforcement Daisley replied that if there is no hazardous material hanging out of the dirt.

Ms. Young asked why is there no test done on it? This is going into our soil and water.

Trustee Flood said that it was not in the Ordinance, it is not part of the law.

Ms. Young questioned how can it be in the Ordinance? This is people's lives that you clearly don't care about. She lives there and it makes her not want to live here anymore. She loves the area and Orion Twp., but she is so disappointed that this is what they have. She wants to know what is going in there. She feels she has a right to know.

Trustee Flood replied the Ordinance states what material can go in there.

Ms. Young said there is a difference, what can go in and what is going in.

Trustee Flood stated they did soil borings years ago. The Ordinance states what can go in that pit. Read the Ordinance it tells you. They did soil borings to make sure that Ordinance was not being violated.

Ms. Young stated she wanted to know who is held accountable for what is going into the pit? It seems like no one cares.

Building Official Goodloe responded if they didn't care they would just accept a photo, but they send people out there all the time to make sure they are looking at the soil three times per week.

Ms. Young asked someone looks at that soil three times a week?

Building Official Goodloe replied yes, you can FIOA the records and AI is out there three times a week, and now it is on their dime. They plan on bringing the full Ordinance to bear on the financials to get them to motivate them to close that pit.

Ms. Young commented you understand if they don't say anything, nothing changes.

Building Official Goodloe replied this is the most people he has seen at one of these meetings, and he has only been here for three years.

Ms. Young said they are new residents as of July of 2018 and they are here.

Building Official Goodloe added he has had never had a complaint about after hours, he has had two complaints about dust last year.

Ms. Young stated she would like to believe that it is going to end soon but based on everyone that has been here all this time it doesn't appear that is the case. That is all you have been saying for all these years and it is clearly not true, but she would like to believe that it is ending in a year or two. These are citizens of your Township and you are putting some fat cat over them.

Secretary Kosciernzynski said she did believe that five or six years ago, before Dave Goodloe came, they had someone go out there and tested the pit.

Trustee Flood said this pit has been in operation for 60 years, Bob Warren took out millions of yards of dirt out of there, when they built I-75, that is what that whole pit was dug for I-75 to be built. The Ordinance says, when you take something out of the earth, you must put it back in and balance it off. There is no more mining going on in there.

Chairman Yaros noted the consensus here is, and he can only speak for himself, he doesn't think he can vote for 7a.m.-7p.m., 7a.m.-5p.m. is going to be tough.

Mr. Baker stated that he pretty much gathered that.

Trustee Flood said their concern last year was, these guys had the contract with the widening of Baldwin Rd., if they want to hold up the widening of Baldwin Rd. so it is going to halt the project up.

Chairman Yaros said there are alternate dump sites that contractors have, so he would rather balance the fact that the residence must listen to the trucks past 5p.m., those guys can find an alternate site.

Trustee Flood stated it is up to us if you want to put it to 7a.m.-7p.m. but wanted to give the alternative if it holds up the Baldwin Rd. construction, then they will know what caused the hold-up of Baldwin Rd. construction.

Chairman Yaros asked how many trucks do you think they have out there?

Mr. Baker replied he didn't have a clue.

Building Official Goodloe said he has the logs on the trucks but would have to go back and look. There is a log for each month how many truck loads go in to the pit.

Chairman Yaros questioned do they have an Ordinance on the maximum amount?

Building Official Goodloe said no it goes by the hours of operation.

Trustee Flood added that someone made a comment that is valuable property, that is zoned residential. It is outside of the Brown Rd. (BIZ) zone. It is not commercial.

Mr. Baker said they plan to do anything with it, other than it is four lots and that is all it ever will be.

Chairman Yaros stated all they can do is follow whatever our legal advice is as far as what the Ordinance states, and what the request is, and the lots effected. He is not going to go beyond that because he has not been given any legal opinion to change it.

Vice Chairman Durham stated having heard the residents' concerns he resents the fact that they don't care, because they do. As other Board Members have stated our ability to do what the residents want, is limited by law. He is not pretending to know what any of you go through living on that road, he doesn't live on that road, he lives not far away, but upwind, he wouldn't begin to know what you go through there and wouldn't try to minimize it at all. Commissioner Walker mentioned that in the years that he has been going to that pit-site this is the very closest it has been. He walked back to what was a bomb crater to the depth of two of these rooms, and said where did the hole go? They said that it has been filled in. They are working on it the end is coming. He doesn't work for the Township, but he does have some background in ordinance work in another area in the County. Questions like, who keeps track of the trucks, or what if someone is there 10 minutes after 7p.m. Whoever the ordinance person is when they respond out there, they have to have evidence, that they have seen that they can document and that they can prosecute to get anything done. If he went out and slapped a ticket on somebody, based on your evidence, and it went to court and the judge says where is your evidence and he says they said so, he would respond, thanks for coming go on home. They must be reasonable near the cut-off time be at 5p.m. or 7p.m. and he will say he would be in more favor of 5p.m. by far then by 7p.m. They have outlined dust control measures, there are remedies that you folks can get within limits, but what he would want more than anything in the world, is for them to get done, leave and never come back again. That is what they are doing, they are not making money off this, other than having a place to dump their dirt. They are filling that hole in and when they close that gate and lock it for the final time, you win, and that is where they are headed.

Chairman Yaros asked if there was any further discussion by the Board? There was none.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case AB-09-02-2019, Dan's Excavating Inc., 2985 Judah Rd., except the north 535 feet of Lot 11, of Mt. Judah Farms (parcel #09-32-400-056), Lot 12 and the southerly 588 feet of Lots 13 & 14 of Mt. Judah Farms (parcel 09-32-

400-055), and 3011 Judah Rd. Lots 13 & 14, excluding the southernly 588 feet of Mt. Judah Farms (parcel #09-32-400-063), the petitioner is requesting the renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing **be granted** because this is a renewal of a permit to finally get this pit completed, which has been an aggravation for the residence for the past 60 years and also to meet the final permits when they get the slopes correct, as they did in their report, with the following conditions; days of operations are Monday – Saturday, no holidays or Sunday, hours of operation is 7a.m.-5p.m.; the number of vehicles they are requesting is 100 vehicles per day, and that will be controlled by the new hauling route from the Oakland County Commission that will have to be updated. The OHM Engineer's conclusion will be read into the record as follows: In our opinion, the application and supplemental materials, as submitted, appears to be in substantial compliance with Township Ordinance, No. 99, and the Township's engineering standards. They recommend the following items be conditions of the approval: 1) Install a safety fence in the north east section of site until 2019 restoration work is completed as noted on the survey. 2) The applicant shall furnish to the Township a copy of the Haul Route permit renewal with the Road Commission for Oakland County for Judah Road. The current permit is set to expire on 6/1/2019. 3) The approximate start date and end date of any intense activity, if applicable and/or notice given to the Township prior to high periods of activity. 4) Per Section 7, Item L of Ordinance 99, the applicant shall note that tracking of material and dust control issues will be monitored, and improvements may be required throughout the permit year. 5) Per section 10 of Ordinance 99, a log of each fill material load shall be maintained by the applicant to document all fill is "Suitable Fill Material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier. They also want to make sure that the bond is kept up to date and the insurance is up to date.

Motion Amended by Trustee Flood re-supported by Chairman Yaros to add that the Building Department is going to make a request to the Weigh Master to see if they can change the Haul Route to Baldwin Rd. if that is possible. Also Mr. Baker did state that they may occasionally store work trucks from the Baldwin project on the site overnight.

Chairman Yaros asked if there was any more discussion from the Board? There was not.

Roll call vote was as follows: Flood, yes; Durham, yes; Kosciuszynski, yes; Walker, yes; Yaros, yes.
Motion Carried 5-0

AB-99-04-2019: Pontiac Crushed Cement; Lot 30, excluding the south 400 feet of Highland Farms (parcel #09-32-400-021), Lot 29, excluding the south 400 feet of Highland Farms (parcel #09-32-400-022), and a 7.5-acre parcel (parcel #09-32-400-058)

The petitioner has requested a renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing, to run a crushing plant.

Mr. Pete Granzow, Pontiac Crushed Cement

Chairman Yaros stated they were going to go through things with the engineers first.

Engineer Landis stated he was going to summarize their findings and go over the conditions of their approval recommendation. This site has a Togo Survey on file and is also subject to a Site Plan review by the Township. Several stock piles of material that are to be crushed are located along the west and north sides of the site. The site generally appeared to be well maintained and clear of debris. At the time of his visit the old crushing unit was being dismantled for removal from the site, it was under their understandings from discussions that a smaller more portable unit is looking to be purchased by the applicant later this year. They talked about the drainage pond that was common to the two parcels before and to remind the applicant that any pumping of stormwater to Brown Rd. does require a permit

from the Road Commission if the erosion is due to wash out from the access road, they ask that the applicant address that as well. In conclusion it was their opinion that the current application estimated is in substantial compliance with Ordinance No. 99, and they ask that the following items be addressed: 1) A permit from the Road Commission should be obtained to discharge drainage from the retention pond to Brown Rd. 2) Proper Soil Erosion measures shall be installed to prevent erosion and sediment from leaving the site. 3) The water level in the pond should be monitored throughout the year. Cleanout of accumulated sediment will be needed to promote infiltration. 4) The application should include an estimated volume of concrete to be hauled in applicable dates. 5) Per Section 6 of Ordinance 99, the applicant shall address the bond/guarantee and insurance information with the Township, if not already done so. 6) Per Section 7, Item L, the applicant shall note that tracking of material and dust control issues will be monitored, and improvements may be required throughout the permit year. 7) Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the applicant to document all fill is "Suitable Fill Material" as defined. In additional, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier. No variances were requested.

Chairman Yaros stated you are not doing any fill, you are bringing in concrete crushing it, recycling it and taking it out is suitable sizes. Do you have an estimate when your new crusher is coming in?

Mr. Granzow replied it is at the gravel pit right now.

Chairman Yaros asked do you have an estimate of how much volume?

Mr. Granzow responded it will be like the last couple of years about 60,000-70,000.

Chairman Yaros asked how is your stock pile right there right now.

Mr. Granzow said it is very small.

Chairman Yaros asked if there was, questions by the Board?

Vice Chairman Durham asked what are the hours of operation?

Mr. Granzow replied 7a.m. – 5p.m. Monday-Saturday.

Vice Chairman Durham questioned how many trucks per day?

Mr. Granzow stated 50.

Vice Chairman Durham said he has always been impressed with that operation and it is always clean neat, and he has never seen anything that has jumped out at him in all the years that he has been going there, they are to be commended.

Chairman Yaros asked if there was anyone to speak to this? There was not.

Moved by Secretary Koscierynski, seconded by Trustee Flood, that in the matter of ZBA case #AB-99-04-2019, Pontiac Crushed Cement, Lot 30, excluding the south 400 feet of Highland Farms (parcel #09-32-400-022), Lot 29, excluding the south 400 feet of Highland Farms (parcel #09-32-400-022), and a 7.5-acre parcel (parcel #09-32-400-058) that the petitioners request of the renewal of Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing be **grated** because of the conclusions already read into the record by Mark our Township Engineer with following conditions: days of operation are Monday – Saturday 7a.m. – 5p.m.; number of vehicles per day will be

50; dust control will be taken care of; engineer comments that were already read into the record; that the bond/guarantee and insurance information is up to date.

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

6. PUBLIC COMMENTS

Mr. Eugene McNabb Sr., 2981 Judah, stated he had two statements from the Board that he wanted corrected. 1) Mike Flood said that Bob Warren dug the hole; no, Bob Warren did not dig that hole that was dug by Dan's Excavating. When Bob got out of mining, the last part of his work he was doing top soil, he had that whole area flattened out. Dan's Excavating is the one that dug the hole, and that was under Mark. 2) Dan Kelly said Dan's Excavating was doing the Township a favor by filling it in. He is already over 1,060; he had a map that Dan turned in that says the limit to fill was 1,060 in the pit. The Court Order says 1,060, they are already over 1,060. In 2008 this Board, Matthew Gibbs was on the Board that night, he took over the meeting and he is the one that took his property off of the permit, otherwise his property would still be operating on that pit. His property is still on the Ordinance No. 99 pit permit. He won't say it right now but Dan Kelly knows it is, and the Engineer for the Township knows it is, because they put out a map in 2012. He has the map that shows that OHM drew the map that you seconded. Matthew Gibbs told the Board that he was a lawyer so he could give the Board legal opinion on how to change it. This Zoning Board can not take my property off the permit. You have no authority, you have zoning and ordinances, that is all you can work on. Today you are still operating under an illegal platform. The Court of Appeals knows his property is on that permit. The Township main Board knows it is on there, yet they are still just operating on just Dan's property, and they should be operating under the permit that was issued in 1989 and they are not doing that. That night two of the Board Members got me out in the parking lot and told me that they know it was illegal but that the Township wanted that to go through, because they were working on M24 and they needed Dan to have a place to dump his material and that is how it got through. One of the Board Members that night, another one, when Gibbs wanted to change it to his way of thinking, one Board Member voted no. When the vote came in, he voted the way Gibbs said to vote. Some day this is going to get cleared up. They have to remember his property on there is supposed to be 1,060 when it is done, and they are still filling, and they are past 1,060. Dan Kelly can tell them, the Township has full authority to run that pit until those properties are taken off after it is completed and where to pile the dirt and where not to, the Township has that authority. The Township also said it has to be the court said that it has to be 1,060. They have recall rights if it is not taken care of.

Mr. Gene McNabb Jr., a few things that did not even get addressed was the water running on his father's property. He will have to have a meeting with the Building Department and see where that goes wasn't sure why that wasn't addressed. Every complaint that everybody has ever complained about, he has heard people on this Board complain about five or six garbage trucks in their area, this is a safety issue. Put yourself in our shoes, they say they all care, he knows that they are limited on what they can do. They have been providing them with pictures for years, whether it be pictures of a truck at a gate on a holiday that was closed, it never gets recourse. They probably only get so many complaints because nobody calls, everybody is tired of calling; maybe they should be the wolf and call all the time. If they call, nothing ever happens, every year you give a permit with restrictions, whether it be years ago, they were complaining about a fence down, the fence never got fixed. Two weeks before the permit was renewed, they would be up there fixing the fence, so the fence was fixed when you walked through. There just seems to be no penalty for the actions and that is all they are asking for is to hold them to the same standards that you hold everyone else and you would want someone to hold your next door neighbor to, whether he is building the deck too close, they are all inches and number, there is all kinds of numbers. This is going back to court, there is not a doubt, and it is not your job to go to court or not, they don't make decisions on lawyer, but Dan knows what is going on. Maybe he should have the fortitude to say that is wrong, this is what has been going on, they need to correct it. Now all of a sudden, they are going to get some pictures, what changed? Something changed, but what about

since 2015, when that new ordinance came out, he was the first one in his office arguing about it, he talked to the guy before him and he talked to him. There is no recourse, he doesn't blame them for not wanting to take pictures, he wouldn't want to take pictures either. There is no recourse the damage is done; what do you do? Al goes out there three times a week and he looks at dirt and takes pictures; they could dump 100 trucks a day on Tuesday, and he doesn't get out there until Thursday, where is that dirt at, he can't see it. He is not saying they are doing anything but the possibility is there and that is why the ordinance was changed and the ordinance was never followed.

7. COMMUNICATIONS

Memo from Planning & Zoning Coordinator Harrison dated April 12, 2019, Dates which cases can be postponed to.

8. COMMITTEE REPORTS

None


9. MEMBERS' COMMENTS

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Secretary Koscierzynski to adjourn the meeting at 9:51p.m.

Motion Carried

Respectfully submitted,



Debra Walton
PC/ZBA Recording Secretary
Charter Township of Orion

5/13/19

Zoning Board of Appeals Approval