

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY OCTOBER 28, 2019 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 28, 2019 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Lucy Koscierynski, Board Member
Don Walker, PC Rep to ZBA
Loren Yaros, Chairman
Dan Durham, Vice Chairman
Mary Painter, Alternate Board Member
Tony Cook, Alternate Board Member

ZBA MEMBER ABSENT:

Mike Flood, BOT Rep to ZBA

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Jeff Jundt	Tim Plouhar
David Schumacher	Barb Ealy-Plouhar
Veda Schumacher	Patti Burke
Eva Glover	Tom Burke
Joe Casciaro	Barry Powers
Roland Baker	Linda Vandergraaf
Penny Shults	Debra Walton

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

Moved by Secretary Koscierynski, seconded by Board Member Cook, to approve the 09-23-2019, Regular Meeting minutes as presented. **Motion Carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2019-41, Allen & Penny Shults, 1770 Kinmount, 09-33-251-013

Two variances from Zoning Ordinance No. 78:

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

- 1) A 10-ft. side yard setback variance (east) from the required 10-ft. side yard setback for a 6-ft. privacy fence to be erected 0-ft. from the side lot line (east).

Article VI, Section 6.04 Zoned R-1 & Article XXVII, Section 27.02(A)(4)

- 2) A 40-ft. front yard setback variance from the required 40-ft. front yard setback to erect two (2) 6-ft. privacy fences 0-ft. from the front property line.

Mrs. Penny Shults the applicant, presented.

Chairman Yaros read a note from Mrs. Shults's neighbor at 4297 Cornith St., the note stated that they are in favor of the property line variance to construct a privacy fence and felt that it would look good. Another letter came from Peter and Janice Temonti at 4311 Cornith St., they are neighbors a few properties away from the subject property and stated they are aware of the variances Mr. & Ms. Shults are seeking and had no objections.

Chairman Yaros asked Ms. Shults to explain what she was looking to get.

Mrs. Shults stated that her and her husband have lived at 1770 Kinmount Dr. since 1994. They are asking to put a 6-ft. privacy fence on the property line and that it would be about 2 or 3 inches away from the property line. She commented that her neighbors had a survey done of their property and she know where the markers are. Ms. Shults said they had a fence company come out and they gave them two (2) proposals. One of the proposals was for a 4-ft. fence that would run from the garage forward to the edge of the property line. She explained the property is unique because there is an "eyebrow" piece of property that the Road Commission has abandoned and will no longer be taking care of. At some point they are hoping to have that vacated so it becomes part of their legal description. They did get an easement from the Oakland County Environmental Health when they recently updated their septic system, so part of their septic system is on that front property that has been abandoned by the Road Commission. Their property is unique because of the eyebrow piece, and where the property would end by way of legal description it extends approximately another 30 or more feet at some points on the property before getting to the road. The aerial photo they have showed where it appears to be yard which is the property that was abandoned by the Road Commission. They have about 13-ft. from the edge of the property line to their garage and they are asking that they be allowed to put a 6-ft. privacy fence on that property line, that would like to extend it as far as the ZBA will let them to the lake, which they own. They are asking to be able to put the fence in, they have heard good reviews from their neighbors, and felt it would be a great enhancement for them and the people who reside at 1760 Kinmount Dr.

Chairman Yaros said they generally don't allow a 6-ft. fence to go beyond the front of a house which, in this case, would be the south side of the property. He clarified they are looking to take the fence from that point and then back to a point 25 feet from the lake - is that what you are asking for?

Mrs. Shults replied, yes.

Chairman Yaros stated, currently your house is around 31-ft. from the property line along the "eyebrow", so they would still need a 9-ft. variance at some point.

Ms. Barbara Ealy-Plouhar, 1760 Kinmount, said she was not in favor of the variance. She believed that Al and Penny Shults should have to follow codes just like she does. She did not approve of it.

Mr. Tim Plouhar, 1825 Kinmount, stated the issue he had with it - that there is a water problem there. If they put a fence up, it will not be taken care of and the front of his garage will flood. They would have to do some landscaping to correct that issue before they could put a fence up. He then asked, who was going to maintain the fence on the side close to the property line?

Chairman Yaros noted if they a little space under it, about a couple of inches, they could trim under it.

Mr. Plouhar responded he was referring to the maintenance of the fence – won't the fence need to be maintained, who would do that?

Chairman Yaros replied, the property owner.

Mr. Plouhar then questioned how they would do that?

Chairman Yaros asked if he lived next door? Mr. Plouhar replied no but his sister did.

Chairman Yaros asked if his sister would allow them to paint the fence?

Mr. Plouhar commented that there was a big problem there, a water problem. Their water (the Shults's) comes onto the property and then exits and goes off the property onto their property, because their shed (the Shults's) is on the property line. And, again, who will maintain the fence?

Chairman Yaros said they have people put them in all the time and as far as maintenance, he hasn't seen a big problem with it.

Mr. Plouhar asked who pays to maintain it?

Chairman Yaros replied the property owner pays.

Mr. Plouhar questioned if his sister must pay for it?

Chairman Yaros replied no, the property owner that puts the fence up.

Secretary Kosciarzynski asked what side of the fence are they concerned about?

Mr. Plouhar replied the side they will be looking at.

Secretary Kosciarzynski questioned what the water problem was?

Mr. Plouhar answered the people that owned the property before Al and Penny took the water and ran it to their property and beyond their shed so that they didn't have to hassle with the shed. The water is supposed to go down the property line but they took it and ran it across the property so that it did not go across the property line and hit the shed.

Vice Chairman Durham questioned where the water was coming from?

Mr. Plouhar replied, from anywhere. Their water runs over to the property and then it runs back across over onto their property.

Vice Chairman Durham asked in the summer, is the water not absorbed into the grass?

Mr. Plouhar replied no; when there is a heavy rain it does not absorb into the grass. It is water coming down the road, but it does cross the property lines.

Vice Chairman Durham questioned if they put culverts in or something to do that?

Mr. Plouhar replied no; it just runs off. If the fence gets put up there that is going to stop that runoff.

Chairman Yaros asked Mrs. Shults to explain about the water.

Mrs. Shults stated that she had sent pictures to the Building Department regarding the water issues. Recently, the property owner at 1760 dug some type of ditch from the front of the property so that the water would move on by, it comes down the road. They live at the bottom of the hill and the water drains through the road. The Road Commission doesn't always come out and maintain the road, sometimes it rains heavy and it just goes right past the property and generally will go down to the lake on other side of the road at Cornith. On occasion, when the neighboring property lets that berm go and it goes flush, water will drain into their property. When they maintain it and when they dig that ditch into the front of their property, it runs right past it. They had pictures and the Building Department can speak to that. They have no agreement or easements that would allow an adjacent property owner to drain their stormwater onto their property. They watched on several occasions when they would broom the water from their driveway onto their property which included cigarette butts, woodchips and a lot of other debris. She has checked the ordinance and other departments and they cannot drain their stormwater onto another person's property. The Road Commission doesn't have an easement and has formally abandoned that property. The adjoining property owner, Barb Ealy, signed the abandonment process - they agreed to it.

Building Official David Goodloe stated that there were some water issues between the two properties. He hasn't seen where it ran down the center of the property, he just saw evidence of some water coming from one property to the other. He stated he didn't know where the property line was and how it drained from that spot forward and that was during heavy rain. There are some water issues there that could use some addressing.

Vice Chairman Durham stated, in her information she spoke about being able to better move her boat back and forth from the garage to the lake; the house sits crooked on the lot. He asked with the fence being up, will they still be able to do what it is that they want to do with the boat?

Mrs. Shults replied, yes; they have test run that, and they are confident that they will be able to get the boat through there.

Vice Chairman Durham clarified that Ms. Shults noted that they know where the stakes are for the property line on that side. Mrs. Shults said; yes.

Vice Chairman Durham questioned the rocks that somebody placed along that property line, they are not going to prevent them from getting to the property line?

Mrs. Shults replied that those rocks are entirely on the adjacent property, 1760 Kinmount. They do have a small raised garden they put in a couple years ago and they do need to take that garden out, it is about 2-ft X 4-ft. high by approximately 15-ft.

Chairman Yaros asked if that was the other fence that is there.

Mrs. Shults answered, no; they did remove two sections of fence that they received a warning violation notice for. She explained that her husband and her put in a privacy fence and some arborvitae and had permission from the property owner to place those there. They had placed two others but then they objected and didn't want them there.

Vice Chairman Durham said there is a small piece behind the shed that used to screen a dog kennel, is that still there?

Mrs. Shults said that it was still there.

Vice Chairman Durham questioned if that was the second fence that was referenced in their application?

Mrs. Shults replied no; she didn't put that fence on there, she forgot to put it on or didn't think that was a problem. They don't have 10-ft. back there either so they would need permission if they kept that part. The kennel has been removed, now it just affords them some privacy back there.

Mrs. Shults said they maintain their property very well and her husband and her fully intend to maintain the fence.

Vice Chairman Durham noted that if they elevate it a little bit, it shouldn't block anybody's water from going anywhere.

Mrs. Shults said she is not in favor of them draining their stormwater onto their property.

Vice Chairman Durham stated, to address this specific problem that was brought up tonight, a stockade fence will not stop water from going where it wants to go - correct?

Mrs. Shults commented on the neighbor's stormwater and that they would file a complaint with the Township if they had to. A fence would not stop the stormwater from going where it want to, the ordinance requires homeowner to manage their own stormwater.

Board Member Cook commented on one of the property stakes. He said when he visited the property he went to the top of the hill and looked at how far out it would go and it basically would line up with the bush that is currently there. He noted that the reasoning on the application did not make sense to him until he walked the property and got a better understanding.

Chairman Yaros asked about the other piece of fence down by the dog kennel.

Ms. Shults said if they don't do something about it or don't get a variance it is likely they will receive another violation. It is 6-ft., it is one section, it was originally put up to give some privacy for their hunting dog. It is not on the property line, but it is not 10-ft. from the property line, more like 6-ft. or less; probably 5-ft. X 8-ft.

Chairman Yaros asked, regarding the other variance, it was noted that they don't generally allow 6-ft. fences beyond the front the of house. Chairman Yaros questioned if that would be the request - to the front of the house?

Mrs. Shults replied yes; that is the garage.

Chairman Yaros noted she will need a 9-ft. variance for that.

Board Member Cook wanted clarification, right now they are still using the eyebrow as the limit of the property line, not all the way to the road.

Mrs. Shults replied, correct.

Chairman Yaros noted their house is 31-ft. from the ROW and it is supposed to be 40-ft. back that is the 9-ft. variance.

Board Member Cook asked Mr. Plouhar to come back up for additional questions.

Board Member Cook questioned the discussion on the fence and maintaining it and that he was aware of how they maintain their home - was he comfortable with what was just discussed?

Mr. Plouhar replied, not really, he doesn't see why the fence must be put up on the property line.

Board Member Cook commented, based upon what was addressed, the two issues that were brought up, they were both addressed.

Mr. Plouhar said he must take care of the water that comes onto their property off her property and run it down the property line.

Board Member Cook said that they are both responsible for their own water.

Mr. Plouhar added it didn't sound like that, she is telling them that her water doesn't run onto their property. The water that runs off her roof and gutter on that side of their house runs onto their property.

Board Member Cook stated that property is higher.

Mr. Plouhar said no it is not, 1760 is lower.

Building Official Goodloe said that the ordinance reads you can discharge onto your own property, but after that, the natural lay of the land takes over. The key is to not have runoff velocity, it is too slow it down so it cannot cause erosion. They can't direct it fully, but most people will run a gutter off onto their property and people interpret that as directing it toward their property, when they are just getting it away from their home. Chairman Yaros stated, it runs to the lake.

Mr. Plouhar said, as soon as they put the fence up, that will go away and reiterated the issue with how the water is being directed. They had this issue with Penny before, about the water and that it is going to run to their shed.

Mrs. Shults presented to the Board a picture showing that her property was lower than the neighbors.

Mrs. Shults said that they don't want their property water draining onto their property. They have asked them to stop and they have dug a ditch and when they blocked the ditch that was on their property, they undug it again.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of ZBA case #AB-2019-41, Allen & Penny Shults, 1770 Kinmount, 09-33-251-013, the petitioners are requesting three variances from Zoning Ordinance #78: Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2): a 10-ft. side yard setback variance (east) front of the house to within 25-ft. of the lake to erect a 6-ft. privacy fence 0-ft. from the property line to the (east); and Article VI, Section 6.04 Zoned R-1 & Article XXVII, Section 27.02(A)(4); two 6-ft. fences 0-ft. from the property line; and for a 5-ft. distance variance for a piece of existing 8-ft. run stockade fence 6-ft. in height to get it back off the property line to fall within the ordinance guidelines 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 petitioners showed the following Practical Difficulty: the shape of the lot, the fact that the house sits cockeyed on it, it is narrow in comparison to everyone around them, it slopes quickly off to the back and if they put a fence in, they have stated that they will elevate it slightly off the ground, there is a groundwater issue in the area, they don't seek to aggravate that by putting a fence in; the following are exceptional or extraordinary circumstances: the shape of the lot and the falloff of the lot and there is a lake down at the bottom; the variances are necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts: they have one of the most narrow lots on that side of the road, their house is in an excellent state of exterior repair and there is no reason to believe that the fence won't be kept the same, they can go out into their backyard more easily and privately; the granting of the variance will not be materially detrimental to public welfare or materially injurious to the property or improvements in

such zone or district based on the following findings: it is a wooden stockade fence, it is going to be elevated off the ground so that it will not interfere with the flow of ground water, the ground water that was flowing the day before the fence goes in will be flowing the day after in the same basic way; it will do nothing to impair light or air to any adjacent properties; it will not be a source of public safety concerns, it has nothing to do with the street; it will not unreasonably diminish or impair established property values within the surrounding area.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add that the 8-ft. length of the 6-ft. fence existing behind the shed will be approximately 5-ft. from the property line, it is existing and has been there; the reason for the 9-ft. variance is that the house is 31-ft. instead of 40-ft. from the ROW. The reason for the front variance is that there is an eyebrow that was put in even though apparently it has been abandoned, normally if that went straight across like their west property line does, there would be no need for any variance there.

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

Motion Carried 5-0

B. AB-2019-42, Eva Glover, 2522 Liter, 09-29-431-012

The petitioner's request was as follows:

Two variances from Zoning Ordinance #78:

Article VI, Section 6.04 Zoned R-2 & Article XXVII, Section 27.02(A)(4)

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

Article XXVII, Section 27.02(A)(5)

- 2.) A 3.5-ft. variance above 7.5-ft. mid-point measurement of the principal structure, to build a detached garage that measures 11-ft. to its mid-point.

Ms. Eva Glover, 2522 Liter, the applicant, presented.

Chairman Yaros stated looking at where the garage is, he understood why they would want to move it because it is a terrible angle to try to park.

Chairman Yaros questioned the 11-ft to the mid-point it doesn't seem that high, is the house that much lower? Ms. Glover replied that they are just like every house in the neighborhood.

Building Official Goodloe stated it was to the mid-point of the roof rather than the peak.

Chairman Yaros thought the house should be 11-ft.? It is a standard home over in that area.

Ms. Glover stated that they could have miscalculated, it was confusing to her.

Chairman Yaros asked the Building Official Goodloe to calculate.

Ms. Glover replied they sent in their drawings and their measurements and she thought that between the two of them, as a group, that is what they came up with.

Mr. Casciaro noted that it seemed high to them, it is a standard 6/12 truss on a 9-ft. wall. He wants to go 9-ft. on the garage to give more space and storage.

Building Official Goodloe said that it would make the mid around 12-ft. but didn't think that the mid-point of the house is 7.5-ft.

Chairman Yaros stated that the mid-point of their house is only 7.5-ft above the ground, that is what it says.

Ms. Glover said they told her to send in her measurements and then they would figure it out, they sent her a diagram and they measured their roof and then they looked at the drawings, but it was confusing.

Mr. Casciaro stated his calculation on that was probably wrong on that 7.5. He misunderstood what they were asking.

Chairman Yaros stated the mid-point is the mid-point of the triangle.

Building Official Goodloe noted it is the mean height of the house.

Mr. Casciaro stated that 11-ft. sounds correct.

Building Official Goodloe said it would be 3 ½ above the 11-ft. to 14 ½-ft.

Chairman Yaros said that they would still need 3 ½ variance.

Vice Chairman Durham said that when he went down and looked at the site, in that area they have smaller houses. He was glad to see that someone wanted to put a building in so that they can keep what they have in order and improve their property.

Ms. Glover said she knew it was 5-ft., and they take pride in their home. They could move, they love Lake Orion, she has one graduated from Lake Orion and she has one at the high school, their family is in Lake Orion, they love their neighbors.

Chairman Yaros added as far as the garage goes on the overhead you can see numerous garages because most of the homes are build to the 10-ft. line. A lot of the garages are 5-ft. or 1-ft.

Ms. Glover said, they spoke to their neighbor and he didn't feel his was even 5-ft. She knew that people don't build a lot in their neighborhood anymore, but it is their home, and they have a child in a wheelchair. They just got a grant for an adaptive bike from MORC. They want to put in a garage for him, he has graduated and is home all day. They want to make it so he can go out the back yard. He can't move in their home in a wheelchair, so they are trying to make it easier instead of carrying him out the front door.

Mr. Casciaro stated taking him to the park is great; but during the day when Ms. Glover is home, just so he can get out and move around.

Ms. Glover said she wants to get him outside. He is little and his equipment is big, and it takes space and storing it.

Board Member Cook stated when he went out to the house, they looked at where it was and some of the things that were going on with the neighbors. They talked about building the garage and the process that they had in mind. He felt the layout they have, the reason they want to do it, the reason they moved it over to 5-ft. verses where it should be, goes back to the house and the layout. The other reason he went out was because when he read the application it didn't make sense; but when he went out there and the spoke about the height, he figured it out.

Moved by Secretary Koscierzynski, seconded by Yaros, in the matter of ZBA case #AB-2019-42, Eva Glover, 2522 Liter, 09-29-431-012, I would move that the petitioner's request for variances from Zoning

Ordinance #78, Article VI, Section 6.04 Zoned R-2 & Article XXVII, Section 27.02(A)(4); a 5-ft. side yard setback variance (west) from the required 10-ft. side yard setback to build a detached garage 5-ft. from the west property line; Article XXII, Section 27.02(A)(5); a 3.5-ft. variance above the existing mid-point measurement of the principal structure, to build a detached garage, 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, the following Practical Difficulty: the lot size, the disabled child needing to get around, the terrible angle of the garage and trying to navigate a vehicle; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not generally apply to other properties to the same district or zone: the house is small and she needs the extra space to move her child around; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zone or vicinity based on the following findings of facts: she is willing to spend all this money to do this, the house will be an improvement to the neighborhood; the granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following facts: she is not asking for anything major just some extra space in the garage for her son to move around.

Secretary Koscierzynski amended the motion, Chairman Yaros re-supported, to add that the garage is being moved 5-ft. closer to the lot line so that the cars can access between the house and the property line to be able to get in the garage, the angle was not right at 10-ft.

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

Motion Carried 5-0

C. AB-2019-40, Jeff Jundt, 3151 Crooked Lake Dr., 09-26-151-030, Re-Hearing

Chairman Yaros read the petitioner's request as follows:

The petitioner has requested a rehearing, and is seeking two variances from Zoning Ordinance No. 78, Article XXVII, Section 27.02(A)(8) Buildings, Structures, and Uses, for a lot size over 2.5 acres:

- 1) A 2,346.77 sq. ft. variance above the allowed 1,400 sq. ft. maximum floor area of detached accessory building to build a 3,746.77 sq. ft. detached garage.
- 2) A 2,665.77 sq. ft. variance above the allowed 1,900 sq. ft. total maximum floor area of all accessory building to build a 3,746.77 sq. ft. detached garage in addition to an existing 819 sq. ft. attached garage.

Mr. Barry Powers, council retained by Mr. Jundt, presented.

Mr. Powers stated Mr. Jundt was there was well to give whatever testimony the Board may find helpful. Also present was Roland Baker who was prepared to give testimony, consistent with a letter or a text message that was attached to the application.

Mr. Powers said the nature of Mr. Jundt's residential property is the appropriate starting point because of the unique characteristics of the land and the size and dimension of the property. The main cross road that serves the parcel is Waldon Rd. and down from there from a north/south way is called Crooked Lake Dr. but it really is just a very long driveway that serves two parcels, Mr. Jundt's parcel and then Mr. Bakers. There are not any other residences or occupants in the area. The first point is the 6-acre size parcel it is a large piece of property. Second it is tucked in the back of a wooded area behind a pond and it butts up to wetlands to the southwest area. Third, it is around the curve of the driveway and you will not see any part of the parcel.

Mr. Powers noted the importance of the size of the parcel and that it requires maintenance to keep its nature and intended the way it was when it was bought. Mr. Jundt can't get a walking lawnmower and walk the premises for the mowing, so he needs a tractor, it is a small vehicle, a John Deere lawn tractor. He also needs a second John Deere lawn tractor with a tiller to keep the land well maintained. When there is snow and ice in the wintertime the responsibility falls on Mr. Jundt's shoulders to clear that entire Crooked Lake Dr. He has no legal right to compel Mr. Baker to clear his side to the north, so from time to time he must do the whole driveway. The lawn mowers are two pieces of equipment that are necessary. He has two ATV's which are necessary because if he wants to enjoy his 6 acres of the premises, he really does need a vehicle to get around. One is to be used for recreational purposes and the other one is to be used to clear vegetation and for other general land maintenance. Right there they have four large vehicles that he must have. He also has a bobcat, that is something that can move land at 360 degree angle up and down and that is needed for snow removal. These are necessities of keeping the land safe and clear for the primary purpose of Mr. Jundt's own use. The access is required for mail delivery and emergency vehicles. If something should happen in his house, a guest has a heart attack and he has to rely on getting out there with a shovel just to do a couple of ruts to get his mustang through and that may not be big enough for ambulances.

Mr. Powers added the situation of the building he proposes to build which is known as a 40X64 foot gambrel style garage is set off even farther away from the road, so you can barely see his house. There is even less of a chance that they would be able to see what he intends to build. He would go farther back but there are wetlands back there that keep that from happening.

Mr. Powers stated the standards on this had to start with that this is a dimension variance and not a use variance. In the case of a dimension variance the only question is the extent to which it is necessary or helpful to overcome this Practical Difficulty for Mr. Jundt to enjoy his residential property. This is Mr. Jundt's second time here, he was here on August 12th and two things that jumped off of the minutes of the meeting; the first is this Board may have been thinking that the standard in the case is a hardship which is a higher standard for an applicant to demonstrate rather than the Practical Difficulty standard. In the minutes the word hardship is mentioned four times. The word Practical Difficulty is only mentioned two times so there is substantial evidence to suggest that perhaps either subconsciously or indirectly the different standard is being applied. In the minutes Chairman Yaros asked "what the hardship is that he needs to have a 64-ft. long outbuilding". Later Chairman Yaros stated that "one of the criteria for them to grant variances is a hardship" and "In such a case the hardship is that you have a lot of vehicles according to you". If that was the basis for the decision last time then the Board may have been misled by that. The correction of that would be material and the correction of that misguidance would command an opposite result.

Mr. Powers added they are there with new evidence, he felt from Mr. Jundt's standpoint he focused on the fact that he and his father have an extensive mustang collection and collector car collection with a Model T, much of which is being housed in South Dakota. That was all he had focused on when making the presentation. The flaw in that analysis is that he focused on that instead of on that even if he had gotten that variance just for the cars, he still would have needed it anyway for the utility vehicles. When they analyzed it again, he would say he would have a hard-enough time with his new configuration and getting all these things in there he would not be even be able to add those cars to it. He realized that having these things out in the yard and cluttering the premises and the aesthetics is one of the major reasons he wants to have those housed but it is not the major reason. The major reason is if you leave these things out it is going to affect the mechanical operation and how they maintain these things and to just to keep these vehicles safe and have some longevity, they need to be protected from the elements.

Mr. Powers stated one of the comments made at the last hearing was that this is really, self-created hardship. First, it is not a hardship that is the standard but second to the extent that the analysis that he was employing last time was strictly focused on his hobby. That hobby may have been of his own making, get another hobby or figure something else out. This no longer applies, it is no longer a

hardship or a Practical Difficulty of his own making it is one of the natures of living in Michigan, having to maintain a large parcel of property. The other Practical Difficulty is if he doesn't get the variances and he wants these machines, he is going to have to store those in a storage facility off the premises. When somebody buys land and they are going to have 6 acres that should be more than enough land for him to keep these from the elements. He has two pick-up trucks and a 21-ft. boat, he asks that this be considered as part of the reason why he needs the space. The three-car attached garage is small it will not accommodate any of these things. They did a basic outline of how he might situate these things and how this would fill everything up. With all of his machines, plus the lift he is already to full capacity. There is no way that anyone of these so-called collection cars could fit in there.

Mr. Powers said further new evidence is that like cases should be treated alike and the importance of precedence and not discriminating between people once a case is already decided unless there is a substantial reason to distinguish the new case from the old case. Since the last time Mr. Jundt appeared before them, they did more investigation and they have determined that there has been a prior granting of a dimension variance on a Practical Difficulty grounds, not in just one other case but in four other cases. They have the testimony attached of Mary Ann Zamecki, 393 Walden Rd., she is the next closest next-door neighbor in relation to Mr. Baker being the closest next-door neighbor, and she endorses the application and wants Mr. Jundt to have it. Ms. Zamecki was granted the same size building 40X60 for purposes of storing horses and now she no longer has horses and is now used by her to avoid clutter. 455 Walden there is a 40X60 structure. On 625 Waldon there is a 40X120 structure, which has 2x's the space for the footprint that Mr. Jundt is asking for. There is a 30X50 building that was granting a variance near 3155 Waldon Ridge almost due west of his property. There is a basis in the precedent that at least four times before other people in like circumstances have asked for this and they know the dimension variance, but they don't know the land use. Under the principle that like cases be treated alike they see no reason at least on the dimension side of it in Mr. Jundt's case is any different than those that have been granted. They know of no reason why Mr. Jundt might be singled out in this case not to get it when others have gotten it without any substantial reason to justify such a different treatment.

Mr. Powers stated the law says that municipalities have three general areas of jurisdiction, to ensure safety, the morals of the community and the esthetics. If you look at the ordinance language that is defined as esthetics, public welfare and cause of injury or property or impairment of the use of land with others in the district. If he had to make a case against Mr. Jundt, he would be hard pressed to show that there was an esthetic problem with what he proposes to do because nobody is going to see it at all. If somebody wanted to go back there, they would see is clutter and vehicles sitting around. If he is granted a variance what they will see is a beautiful building that is not inconsistent with the other buildings in the area. Esthetics is certainly not a reason for this Board to have any hesitation in granting this variance. The public welfare or the morals, there is nothing that he is going to do in terms of creating extra noise or nuisance in the neighborhood or anything other than the normal enjoyment of the land. Cause of injury to other property or impairment to any parcels in the district; certainly not. If he could pick and choose between some parts of the decision made in the minutes and try to set aside other parts, then he would note with the permission of this Board that there has been a conclusive determination last time "the granting of the variance or the modification will be materially detrimental to the public, this doesn't apply in this case, there is nothing detrimental". He wanted to start with that finding and reaffirm that. They need to look at the extent to which this is part of a citizen's fundamental right to hold and enjoy property in the United States, State of Michigan and Orion Township. Going back to the nature of the land and the size, it is more akin to farmland or parkland. He could understand when this ordinance was passed if there was a concern about buildings like this going up in a subdivision or in a more crowded dense area that would be a factor but that is not in play whatsoever.

Mr. Powers added going through the standards they need to have justification for more specific findings that they have shown that there are special conditions owing to which a literal enforcement of the provisions of this ordinance would involve Practical Difficulties within the meaning of the ordinance.

They demonstrated the special conditions are needing equipment for snow removal, vegetation removal, this is what is the bare necessity to manage that. The land being situated out of the way behind a curve with the proposed structure being even farther out of the way, the need to clear the entire driveway for both residences along Crooked Creek. The normal enjoyment of life and enjoyment of property goes to this type of use, otherwise he would have to store the property off site and pay for that. Extraordinary circumstances or conditions applicable to the property involved or intended use of the property do not generally apply to other properties, he would submit that the size of the land requiring these machines puts that in an exceptional circumstance. Such variance is necessary for the enjoyment of a substantial property right possessed by other people in the same zone or vicinity; when person wants to buy land they realize that they are going to need not only enough land for the head of the household, but they are going to have teenagers that could have 3 or 4 cars that they are going to have parked, plus yours and the spouses. If you want to live in today's society it is not like living in Manhattan, you need a car to get around. That is what he felt is the enjoyment of real property ownership. The granting would not be materially detrimental to the public welfare, they already got that finding and there is nothing new in the record that should upset that finding. Looking further under section 30.07 will that impair an adequate supply of light and air to adjacent property: that is not a factor; unreasonably increase the congestion: that is not a factor; increase danger of fire: no on the contrary that will increase the ability to fight fire; unreasonably diminish or impair established property values: no that would not have any effect on that: if somebody wants to come in and he sees that five other people in the area have been able to enhance the usage of the property by having a decent size garage that might increase values in the neighborhood; in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township: he didn't feel there was any concern there. Near the end of section 30.07 there are four other items and the Board is counseled by the ordinance and it has responsibilities concerning modification of automobile parking space requirements where such modification is consistent with the purpose and intent of such requirements. If you have a five-bedroom house you have to assume that it is going to have two adults and at least four other people living there, so that is possibly six cars at any given time for minimum parking requirements, plus the expectation that they would have a visitor at the house. There must be a place to put all these cars without having to make it a parking lot. He felt the ordinance and the statute cries out to allow this variance and not to stand in the way of it. He asked if he could have permission as to ask Mr. Baker to state for the record how he feels. If Mr. Jundt wants to supplement or correct anything he said, he asked that he can do that.

Chairman Yaros asked how many training sessions of the Zoning Board of Appeals have you been to? Mr. Powers replied that he practiced the law of appellate advocacy for 32 years.

Chairman Yaros said that is not what he asked, he asked how many training sessions Zoning Board of Appeals has he been to? Mr. Powers answered that he attended law school. Chairman Yaros said that is not a training session for the Zoning Board of Appeals. The point he was making was when he mentioned hardship, that is one of the things that they mention there is if it is a hardship.

Chairman Yaros added precedent, they don't look at precedent, they look at each individual case, they listen to what the person has to say, and they decide. The Board are citizens just like Mr. Jundt is a citizen. He is not part of the Township he is just a citizen sitting on this Board and he listened to Mr. Jundt and what he had to say. At that time, they asked the Mr. Jundt what he needed the building for, and he said he had cars in other states and him and his dad worked on them. There is nothing wrong with that, but do they need a 65X40 building to do that and that is what they were basing it on. It has nothing to do with the other five buildings that you mentioned because they look at each individual case. Some of those cases had 20-acres that they had mentioned, which would be different than 6-acres. There were other reasons those were granted other than that.

Mr. Roland Baker, 3121 Crooked Lake Rd., said that he lives in the neighborhood. He was encouraged being a citizen of Orion Township, listening to this Board reason like they did in so many of these cases, the fairness was obvious, so whatever they decide about Jeff today is going to be fair.

Mr. Baker stated a year ago he had a heart attack, and Mr. Jundt has been an amazing neighbor. His mower is not a mower it is a tractor. They have approximately a quarter mile of a driveway that only they share, he is the only neighbor that he has. In the summer you can see the top of his house, in the winter he can see it better because the foliage is gone. He mows that strip; he has used his bobcat to help him move dirt when it became extremely difficult for him to wheelbarrow it or shovel it anymore. If this barn will help him store the implements that he has he can't think of anybody that he would support more. It is not going to be visible to anybody probably not even to him. Driving there he passed some homes on Waldon Blvd. some of them have a lot of cars setting out. What was said earlier in one of the cases, they were applauded for building a garage to get things ascetically, and this is what he is trying to do. He is the neighbor if anybody would have a fuss it would be him. If he builds that it will only enhance his life and the community because nobody is going to see it.

Chairman Yaros said that this is a totally different presentation then they had. The slant to this is different, the purpose is different. Some of the stuff is basically how many toys do you need, but you need stuff to maintain a large parcel. As far as the driveway goes a snowplow will do that.

Chairman Yaros asked if he was going to put his trailer in the garage?

Mr. Jundt replied that the trailer would be parked behind it, but it will not be seen by anybody.

Chairman Yaros stated that he currently has an 800 sq. ft. garage now. Normally most garages are 420 sq. ft. and are 22X24. When he was out there the other day, he only noticed the bobcat and a pick-up truck. Where do you keep the tractors now? Mr. Jundt replied that he parks them under the deck in the back to keep them out of the elements.

Vice Chairman Durham asked Building Official Goodloe what size building could he put up without even coming here? Building Official Goodloe replied it would be approximately 1,100 sq. ft.

Vice Chairman Durham asked if it would be possible to put a building up and not have any conflicts with anybody? Mr. Jundt said he understood that but the things to maintain his property would not fit in that space.

Vice Chairman Durham asked council to come back up. Vice Chairman Durham said they had mentioned that there are buildings sprinkled around the Township, he had no doubt that there are and he also knows that he doesn't know what the ordinance required at the time they were put in, who the presenters were, what their Practical Difficulty was because every case is looked at individually. They laid out what they felt was necessary vehicles for the maintenance of the property. In his opinion you stretch them so thin they could see through it, but if they thought it was necessary, they will agree to disagree. He had hoped they looked at getting an ordinance change. Mr. Power replied that was something that they had contemplated; yes.

Vice Chairman Durham said that he has always been a believer, they enforce the rules live by the rules, they are everyone's rules. If they don't want the rules get the rules changed and then they will enforce the new rules. He didn't know in this case what would be easier and more cost effective. Has the Township been approached at all? Mr. Power answered not from their standpoint.

Board Member Walker questioned on the drawing of the trucks and the boat, is that drawing of a 1,400 sq. ft. building? Mr. Jundt replied 2,500 sq. ft.

Board Member Walker asked, and you can get all your stuff other than the cars in that building? Mr. Jundt answered, that is correct.

Board Member Walker questioned how many cars he had? Mr. Jundt stated that he has several. After he sat down with Mr. Power he went out and took all the measurements of the vehicles to maintain the property and when he did that and when he put it on the layout in the picture, he felt that he was going to have to minimize the car stuff. He needs to maintain the property and that is his primary objective.

Board Member Walker said one of the questions he asked the last time is if he would be willing to compromise the request at all and you said no, you wouldn't. Mr. Jundt stated that he didn't say he wouldn't he just said that he hadn't thought about it.

Board Member Walker stated that they are not his enemy. When he sees that in 2,500 sq. ft., he can put all that stuff to keep yours and your neighbors property and keep whatever you got going that would be a variance of 1,100 sq. ft. that might be something you can talk about, but when you come in asking for 4,000.

Mr. Jundt noted that is what he tried to convey last time, the reason the variance is so high is because of they are including the storage space on the second level, that is not affecting his footprint on the building. He can come back showing the building without storage and that way they are only looking at 2,560 sq. ft.

Building Official Goodloe stated that it is a gambrel style, so it has storage upstairs.

Mr. Jundt said they are including that because he has stairs going up to it. If he makes a latter go up to it instead of stairs it is no longer considered accessible.

Building Official Goodloe said that it is only a 2,560 sq. ft. so it would take out 1,746 sq. ft., so it should be around 1,100 sq. ft.

Mr. Jundt said that it is 1,152 sq. ft. of storage and unfortunately that is what is being thrown in here as a whole variance, which makes the variance seem so large.

Chairman Yaros asked if he would be willing to make it a latter. Mr. Jundt replied, yes.

Board Member Painter said she was glad to see that they are looking at something not as large. They do look at every case separately and she knew that it was overwhelming to look at exactly what he had wanted. She was prepared to talk about some of the other places that have the variances, some were from long ago. The neighbor that wrote the letter, she sat on that case when she came before them and now, she doesn't have horses and it is completely different from how it was set up in the beginning. It is very frustrating for people come in and request these large areas and then two or three years down the line they turn them into factories and set up stores where they sell stuff, or they are selling cars. She felt it was important to look at the ordinance because people come in and they want something different and it is very hard to determine why it is good to give some a variance and others not. It is a way to protect the Township as well as to have people look at the ordinances. There have been many ordinance changes as far as pole buildings and garages and felt that would be a better way to look at it. What is going to happen when you are gone someone is going to come in, and there is no control over what happens there.

Board Member Painter thought that if it had a floor, they had to include that in the sq. ft.

Building Official Goodloe replied they do; he wasn't sure and might need some clarification whether it is was accessible or not because typically it would be storage.

Board Member Painter said it would still be storage whether they had the stairway or a ladder to take it up, but the floor is still there.

Building Official Goodloe noted that there is a lot of times that they do have added trusses that they don't consider storage so if it is not accessible. The garage is a gambrel style, it doesn't exceed the height of the building it wouldn't intensify anything whatsoever of having the storage there or not and it doesn't make the footprint bigger, so it is not intensifying the request they have.

Chairman Yaros said that he would just go with the Building Departments description.

Building Official Goodloe said that he felt the applicant has a choice to whether they want to go forward with the storage or without, going forward with the storage is his choice. Whether the Board denies that or not he can always come back for a lesser variance. Mr. Jundt stated they can go forward without and that would cut all of that off.

Building Office Goodloe said that they have all the figures figured out but if he does do that note that they will be looking at that and is that something he always wants to worry about. You can come back for a lesser variance, but you can't increase it, without the upstairs considered in the storage.

Chairman Yaros asked if this was what the request was? Mr. Jundt replied, yes; that is the floorspace that he needs.

Building Official questioned if he would like to go forward with the modifications or do keep it like it is? Mr. Jundt replied no; they can move forward with the modifications, so they are just talking about just the footprint of the building itself.

Mr. Powers asked if they had to orally amend the application? Chairman Yaros replied no; they will go with what the applicant has made his request. They they now have the numbers now from the Building Department.

Building Official Goodloe read through the numbers to the applicant.

Vice Chairman Durham asked what the floor to roof height in the second level? Building Official Goodloe replied it is 22" to the midpoint of the roof, the house is 30".

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA case #AB-2019-40, Jeff Jundt, 3151 Crooked Lake Dr., 09-26-151-030, Re-Hearing, the petitioner is seeking two variances and has reduced his request from Zoning Ordinance #78: Article XXVII, Section 27.02(A)(8) Buildings, Structures, and Uses for lot size over 2.5 acres: 1) a 1,164 sq. ft. variance over the allowed 1,400 sq. ft. maximum floor area of a detached accessory buildings to build a 2,564 sq. ft. detached garage, 2) a 1,583 sq. ft. variance above the allowed 1,900 sq. ft. total maximum floor area of all accessory buildings to build a 2,564 sq. ft. detached garage in addition to an existing 819 sq. ft. attached garage, be **granted** because the petitioner did demonstrate 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 show Practical Difficulty due to the unique characteristics of the property primarily it's size, it is a 6 acre property and is not related to the general conditions in the area of the property; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other property in the same district or zone: the petitioners property is at the end of a long road and currently only has one neighbor who has come here today in support of the petitioners request; the variance is necessary for the preservation and enjoyment of a

substantial property right possessed by other property in the same zone or vicinity based on the following facts: the petitioner's acreage is 6 acres, the ordinance indicates that up 2 ½ acres is 1,400 sq. ft. so the petitioners lot is larger than the maximum considered under the ordinance even though that doesn't equate geometrically or arithmetically it seems to give the petitioners request some creditability because of the size of his property; the granting of the variance or modification will not be materially be detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district: because primarily where the property is located on Crooked Lake Dr.; it will not impair an adequate supply of light and air to adjacent property due to: size of the acreage; it will not unreasonably increase the congestion in public streets; it will not increase the danger of fire or endanger the public safety: based upon the size of the lot and the placement of the building; it will not unreasonably diminish or impair established property values within the surrounding area; and or, in any other respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of Orion Township.

Board Member Walker amended the motion, Chairman Yaros re-supported, to include that the applicant will not run a business out of this structure.

Roll call vote was as follows: Painter, no; Durham, no; Koscierzynski, yes; Walker, yes; Yaros, yes.

Motion Carried 3-2

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

- A. Memo from Planning & Zoning Coordinator Harrison regarding 2020 ZBA Meeting Calendar
- B. Memo from Planning & Zoning Coordinator Harrison regarding Postponement Dates
- C. Memo from Planning & Zoning Coordinator Harrison regarding Possible Meeting Cancellation
Being there are no agenda items for the November 25th meeting, the Board can choose to cancel it.

Moved by Board Member Walker, seconded by Chairman Yaros, to cancel the November 25, 2019 ZBA meeting due to lack of agenda items. **Motion Carried**

- D. Memo from Planning & Zoning Coordinator Harrison regarding Joint Meeting on January 8, 2020

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS


None

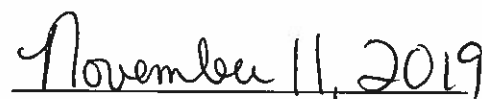
10. ADJOURNMENT

Moved by Secretary Koscierzynski, seconded by Chairman Yaros, to adjourn the meeting at 8:54pm.

Motion Carried

Respectfully submitted,


Debra Walton
PC/ZBA Recording Secretary
Charter Township of Orion


November 11, 2019
Zoning Board of Appeals Approval