

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY JANUARY 13, 2020 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, January 13, 2020, at 7:00 pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Dan Durham, Vice-Chairman
Mike Flood, BOT Rep to ZBA
Lucy Koscierzynski, Board Member

ZBA MEMBER ABSENT:

Loren Yaros, Chairman
Don Walker, PC Rep to ZBA

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Michael Devlin
Debra Walton
David McCarius

1. OPEN MEETING

Vice-Chairman Durham called the meeting to order at 7:00 pm.

2. ROLL CALL

As noted

3. ZBA ELECTION OF OFFICERS

Moved by Vice-Chairman Durham, seconded by Secretary Koscierzynski, to nominate and re-elect Loren Yaros for the Chairman position for 2020, nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

Moved by Secretary Koscierzynski, seconded by Trustee Flood, to nominate and re-elect Dan Durham for the Vice-Chairman position for 2020, the nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

Moved by Vice-Chairman Durham, seconded by Trustee Flood, to nominate and re-elect Lucy Koscierzynski for the Secretary position for 2020, the nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

4. MINUTES

Trustee Flood noted that the counts were incorrect on case AB-2019-49, Anton Rozhanskiy.

Moved by Secretary Koscierzynski, seconded by Trustee Flood, to approve the 12-09-2019, Regular Meeting minutes as amended. **Motion Carried**

5. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

Vice-Chairman Durham noted there were only 3 members out of the 5-member board present tonight however that does constitute a quorum. He explained that for a motion to pass it will have to be

unanimous. Vice-Chairman Durham commented that in the past, applicants have been allowed to request a postponement until a full Board is available; he offered that option to the applicants.

6. ZBA BUSINESS

A. AB-2020-01, Michael Devlin, 805 Pine Tree Road West, 09-10-208-021

Vice-Chairman Durham read the petitioner's request as follows:

The petitioner is requesting four variances from Zoning Ordinance 78:

Article XXVII, Section 27.01 (C)(1)(a):

- 1) A 22-ft. lot width variance from the required minimum 50-ft. lot width
- Article VI, Section 6.04 Zoned R-3
- 2) A 5.67-ft. side yard setback variance (south) from the required 10-ft. side yard setback for a deck to be built 4.33-ft. from the side lot line (south).
 - 3) A 2-ft. side yard setback variance (north) from the required 10-ft. side yard setback for a deck to be built 8-ft. from the side lot line (north).
 - 4) A 6% lot coverage variance above the allowed 25% lot coverage for a total lot coverage of 31%

Mr. Michael Devlin, 805 Pine Tree Road West, presented.

Vice-Chairman Durham asked if the deck that he intended to put up would be raised or on the ground? Mr. Devlin replied that it would be raised, there will be a slight step off of the house; they will build it to code.

Vice-Chairman Durham questioned if the area of the deck was the roped area in his backyard? Mr. Devlin replied, yes; but will probably come inside of that because he wanted to make sure that from the roped area to the back of the steps going down, it was 3-ft., it is 4-ft. going down the first step and that there was enough room that people could go down. He thought he would bring it in a ½ foot to one (1) foot.

Mr. Devlin added that they had just replaced their seawall and their retaining wall after buying the house in April 2018. They had a lot of people tripping and falling over the uneven landscaping, and the seawall because there were steps into the water. The seawall had steps that were one foot higher than the other. They had five (5) people fall and they could not deal with the liability. The landscaping is safe now, so now they want to upgrade it.

Secretary Koscierzynski read letters from residents, 1 was opposed and 4 residents were not opposed.

Secretary Koscierzynski asked about the memo from Planning & Zoning Coordinator Lynn Harrison, regarding the 3-ft. strip of land between the property and the property to the south. At this point, it is not known who owns that strip of land. The setback distance was taken from Mr. Devlin's property line as indicated on the plat map but did not include that 3-ft. strip.

Mr. Devlin gave the board members a picture showing that arborvitaes are growing along his property.

Mr. Devlin stated when they bought the house the real estate agent could not tell them who owned the 3-ft. strip of land. When the Kelly Subdivision was created in 1917, the deed showed that they had 3-strips of land between houses in three spots, within the 69-home subdivision. There were 3 docks 5-ft. wide by 30-ft. out into the water. Those were supposed to be permanent landing docks. The original deed called for 2-ft. on each side of the property and then a permanent dock. The county or the township did not know who owned the 3-ft. He went to Mapping and Planning and met Debra Firestone the Mapping & Planning Supervisor who works for Oakland County. She stated that they had nothing

on the 3-ft. but would look into it for them. She sent Mr. Devlin a quick-claim deed and thought that it was a forgotten piece of land because the other two (2) strips of land within Kelly Subdivision were given back to the homeowners in 1931 for \$1. He felt that because the original owners owned it for 85 years it just got forgotten and lost in the records. Oakland County told them to file a quick-claim deed which they did. He listed Oakland County, Orion Township and he listed his neighbor on the south side. The reason that he had to list his neighbor on the south side was because they applied for a new seawall last year and the neighbor fought the new seawall, they didn't want them to put it in. The 3-ft. is part of their lot even though they don't technically own the 3-ft. yet. The DEQ thought that the Township owned it, the prior owner of the lot was able to put in a seawall, all he was doing was replacing the old seawall, and allowed him to do that. He filed the quick-claim deed because Oakland County said nothing has happened to this property in 105 years. His neighbor was fighting them on it and saying that he has a right to use it. It is going to court in March 2020 and his attorney has just asked if they could resolve it without going to trial. His wife and he have done a lot of research and have talked to the Kelly family. Lewis B. Kelly is no longer around, his son Homer is no longer around. Homer had a child Barbara that is in her 90's and they have spoken with Barbara's children and they said they don't own it they don't know anything about it. Lot number 42 has maintained that 3-ft. for 105 years now. If it wasn't for him applying to put in a new seawall in at their cost, this never would have come up and they would have granted them the 3-ft. He fully expects to get the 3-ft, because someone has to maintain it and own it. The house was built right on the property line, and when he walks around his house he is walking off of his property, technically. There is only 6-ft. between the houses. He felt that because the Township allowed them to build his house on the property line, he didn't think they knew that there was a ROW there. He has surveys from the '70s that don't show that 3-ft. ROW.

Mr. Devlin added that all the requests before them did not include the 3-ft. His house does not hit that 10-ft. yard setback anywhere.

Vice-Chairman Durham stated the request does not include the 3-ft. so the 3-ft. has nothing to do with these variances.

Secretary Koscierynski asked whatever they decide today has no bearing on that 3-ft.?

Building Official Goodloe stated that can be added in the motion as the property line stands today.

Mr. Devlin said that if they look at the survey all he is doing is going straight back. The lot goes wider as it goes toward the water.

Trustee Flood commented, regarding the neighbor at 807 Pine Tree Rd,- that he could see by the photo provided by Mr. Devlin, that his view (the neighbor's) is being completely blocked off to the south because of the arborvitaes. He asked Mr. Devlin who owned the fence?

Mr. Devlin replied that the fence is on the property line. The fence starts at the water's edge and goes up to the houses; there is no gate.

Trustee Flood asked Building Official Goodloe if he could put arborvitaes all along his property line? Building Official Goodloe replied, yes.

Trustee Flood questioned what the Practical Difficulty was?

Mr. Devlin replied that the house was built in 1989 and the lower level is only 710 sq.-ft. and that it doesn't include the exterior walls. When they take the diagram of the house, the 710-sq. ft. actually comes to 600-sq. ft. for the whole entire first floor. There is a kitchen, a powder room, laundry room and the stairs take up the whole middle of the house. The dining area is 120-sq. ft., there is a walkway to get to the door, the living room is only 156-sq. ft. - it is just a small area. What they want to do is take

the screened-in porch and make that part of the main house and enclose it in glass which is why they need to add the proposed deck. This would add 200-sq. ft. to the house.

Vice-Chairman Durham stated that the variances do not appear to be overly large. He noted the neighbor sent in a letter stating that they had some concerns but it didn't appear they knew how high the deck was going to be.

Mr. Devlin replied that he is going to take the structure he has and make it better.

Trustee Flood noted that his property is narrow at the front and then it widens as it goes down to the lake.

Mr. Devlin stated that his deck is going to be at the widest part of the property and why he is putting the stairs in the middle so there will more access around it.

Trustee Flood noted that by requesting this deck, they will not be encroaching on the property line, they will be closer to the property line than the deck will be. Adding the deck will not impede emergency personal from getting to the back of the house if need be.

Trustee Flood questioned if he would be replacing the back porch with this deck?

Mr. Devlin replied they will tear out the whole screened porch and then it will be the same size as the back porch.

Moved by Trustee Flood, seconded by Vice-Chairman Durham, that in the Matter of ZBA case #AB-2020-01 Michael Devlin, 805 Pine Tree Road West, 09-10-208-021, the petitioner's request for variances from Zoning Ordinance No. 78, Article XXVII, Section 27.01 (C)(1)(a): 1) a 22-ft. lot width variance from the required minimum 50-ft. lot width; Article VI, Section 6.04 Zoned R-3: 2) a 5.67-ft. side yard setback variance (south) from the required 10-ft. side yard setback for a deck to be built 4.33-ft. from the side lot line (south); 3) a 2-ft. side yard setback variance (north) from the required 10-ft. side yard setback for a deck to be built 8-ft. from the side lot line (north); 4) a 6% lot coverage variance above the allowed 25% lot coverage for a total lot coverage of 31% 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 petitioner does show the following Practical Difficulties due to the unique characteristics of the property: the old lake lots have been platted; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: the way the lake lot is set it is narrow at the front and expands out wider towards the lake, where other properties in that vicinity - some have it and some don't; 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: he is not incumbering anymore deck space than his surrounding neighbors; the granting of the variances 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 findings: he has four letters from adjoining neighbors that are in favor and has one letter from 807 Pine Tree Road West who is opposed due to the fact that he is blocking his view of the lake; this variance will not impair an adequate supply of light or air to adjacent property: the way the deck will be set, it is not coming out of the second story it is replacing the existing front porch and will be the same height and will not impede any setback from the lake; it will not increase congestion in public streets; it will not increase the danger of fire or endanger public safety; it will not unreasonably diminish or impair established property values within the surrounding area; it will not impair public health, safety, comfort, morals, or welfare of the inhabitants of Orion Township.

Trustee Flood amended the motion, Vice-Chairman Durham re-supported, to include the variance is to be measured from where the lot line is currently at.

Roll call vote was as follows: Flood, yes; Koscierynski, yes; Durham; yes.
Motion Carried 3-0 (Yaros and Walker absent)

B. AB-2020-02, Signs by Crannie, 1240 s. Lapeer Rd., 09-14-201-026

Vice-Chairman Durham read the petitioner's request as follows:

One (1) variance from Sign Ordinance #153:

- 1.) A variance to allow 1 (one) additional wall sign to install a total of 2 (two) wall signs.

Mr. David McCarius, from Signs by Crannie, representing Michigan Eye Institute, 1240 Lapeer Rd., presented.

Mr. McCarius stated that the property owner is Michigan Eye Institute and McClaren rents from them. They have decided to split the building in half, Michigan Eye Institute taking the north side and McClaren moving over to the south side. They want to be able to identify their business so they want a wall sign. They do have part of the monument sign out front which is hard to see. All they are putting in is pin mounted letters or individual letters on the building, back-lit.

Vice-Chairman Durham asked if they were taking the banner sign down? Mr. McCarius replied, yes.

Vice-Chairman Durham questioned how much bigger is the signage they are proposing than the one that is there? Mr. McCarius answered just under 40-sq. ft.

Vice-Chairman Durham asked why they are looking to go bigger? Mr. McCarius said they are not looking to go bigger.

Vice-Chairman Durham said they are a long way off of the road. He didn't see the monument sign, GPS told him he was close and he pulled in. The way the building is set way back in the parking lot there are sightline issues from the road.

Mr. McCarius stated that the sign will be backlit so it will not be bright, it is LED lighting so it is brighter than a florescent light.

Vice-Chairman Durham said, when you go from one (1) tenant to two (2) they will need two (2) signs.

Trustee Flood said that Lapeer Rd. is 55 MPH and it is hard to see when driving by. They are asking for two (2) signs because there are two (2) separate businesses in there. The signage meets all the requirements of the ordinance for the size.

Moved by Secretary Koscierynski, seconded by Trustee Flood, that in the matter of ZBA case #AB-2020-02, Signs by Crannie, 1240 S. Lapeer Rd., 09-14-201-026, the petitioner's request for a variance from Sign Ordinance No. 153: Section 7 Non-Residential Zoned Area Wall Signs Zoned RB: 1) a variance to allow one (1) additional wall sign to install a total of (2) two walls signs, be **granted** because the petitioner did demonstrate that the following standards for a variance have been met in this case in that they set forth facts which show that in this case: the petitioner does show the following Practical Difficulty is that they are on Lapeer Rd., at a minimum people travel 55 MPH and it would be very difficult for their business to prosper without people seeing it; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply to other properties in the same district or zone: this is a business that needs to prosper in Orion Township; 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: a lot of the businesses on Lapeer Rd. have LED lighted signs; the granting of the variance or modification will not be materially detrimental to 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 of facts: the sign will be visible to motorists and it is a business that needs to be seen; further, based on the following findings of facts, it would not impair an adequate supply of light or air to adjacent property; it would not unreasonably increase the congestion in public streets; it would not increase danger of fire or endanger public safety; it would not unreasonably diminish or impair established property values within the surrounding area; or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Secretary Koscierynski amended the motion, Trustee Flood re-supported, to include that one of the Practical Difficulties is going from one business to two businesses and that this signage meets all the requirements of the ordinance.

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

Motion Carried 3-0 (Yaros & Walker absent)

7. PUBLIC COMMENTS

None

8. COMMUNICATIONS

Memo from Planning & Zoning Coordinator Harrison dated December 26, 2019, regarding the Zoning Board of Appeals Handbook.

Memo from Planning & Zoning Coordinator Harrison dated January 10, 2020, regarding possibly canceling the January 27, 2020 meeting due to lack of agenda items.

Moved by Trustee Flood, seconded by Vice-Chairman Durham, to cancel the January 27, 2020 meeting due to lack of agenda items. **Motion Carried**

Memo from Planning & Zoning Coordinator Harrison regarding ZBA Appointments

Memo from Planning & Zoning Coordinator Harrison dated January 10, 2020, Dates which cases can be postponed. Information only.

9. COMMITTEE REPORTS

None

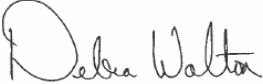
10. MEMBERS' COMMENTS

None

11. ADJOURNMENT

Moved by Board Member Koscierynski, seconded by, Trustee Flood, to adjourn the meeting at 7:50 pm. **Motion Carried**

Respectfully submitted,



Debra Walton
PC/ZBA Recording Secretary
Charter Township of Orion

February 10, 2020

Zoning Board of Appeals Approval