

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY FEBRUARY 10, 2020 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, February 10, 2020, at 7:00 pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Lucy Koscierzynski, Board Member
Tony Cook, Board Member Alternate

ZBA MEMBER ABSENT:

Loren Yaros, Chairman
Dan Durham, Vice-Chairman

CONSULTANT PRESENT:

None

OTHERS PRESENT:

William Cooper	Donald Sheft
Jay Carl	Chris Williams
Suzy Hahn	Chris Kelly
Todd McCoy	Darryn McCoy
Debra Walton	Christine LaFond

1. OPEN MEETING

Board Member Walker called the meeting to order at 7:00 pm.

Motion carried to appoint Don Walker, as Acting Chair due to the absence of the Chairman and Vice-Chairman.

All were in favor.

Acting Chairman Walker noted there were only 4-members out of the 5-member board present. Chairman Walker 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.

2. ROLL CALL

As noted

3. MINUTES

A. 1-13-2020 ZBA Regular Meeting Minutes

Moved by Trustee Flood, seconded by Secretary Koscierzynski, to approve the 1-13-2020, Regular Meeting minutes as presented. **Motion Carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2020-03, Christopher Williams, 348 Gan Eden, 09-02-226-006

Acting Chairman Walker read the petitioner's request as follows:

The petitioner is requesting one (1) variance from Zoning Ordinance 78:

Article VI, Section 6.04 Zoned R-1:

- 1) A 7-ft. side yard setback variance from the required 10-ft. side yard setback for a shed to be built 3-ft. from the side property line (east).

Mr. Christopher Williams, 348 Gan Eden, the applicant, presented.

Mr. Williams stated they petitioned to purchase a shed and place it on their lot. They determined that the shed does not require a permit because of the size of the shed, but did require a deviation from the setback from the property line where they want to place the shed. Normally the setback is 10-ft. and they are requesting that setback be reduced by 7-ft. so that they are 3-ft. from the property line. They are asking for an adjustment to that setback.

Mr. Williams added that homes in the area have similar placements of sheds. There are four homes in a row that have sheds with very similar placement. The shed, if they were to follow the required setback, would block the view to the front of the house. Where the house is situated, they have close proximity on the west side and his concern was if he was to place his shed blocking the east side, an emergency vehicle might have difficulty maneuvering around their home to access the backside of the home or to the waterfront. He wanted to make sure that the easement is wide enough for a vehicle to pass between the home and the shed. If the shed was placed where the 10-ft. setback is it would be very difficult to maneuver around that with an emergency vehicle. He also didn't feel aesthetically it would look very nice to look out the window and see a shed. He has also had acceptance from his neighbor on the side of the house where the shed would go. He submitted in the packet a letter that she (the neighbor) is fine with the shed being 3-ft. from the property line. This is a one acre property so there is room to do this. Because of where the house is placed on the property, that is why they must have the shed that close to the property line - so an emergency vehicle can get to the back of the house if needed. He also noted they may be redoing their driveway in front of the house and the shed may impede that plan for the future. It is a professional constructed shed by Tough Shed purchased from Home Depot. The height does not exceed the height of a home which is a ranch, and it is similar to the sheds in the area. It is a 16x12-ft. shed with a roof and is professionally painted to match the décor of their house and the neighboring houses.

Acting Chairman Walker asked if the neighbor he was referring to was Leslie Cole? Mr. Williams replied, that is correct. Acting Chairman Walker noted that they had a letter from Ms. Cole in their packet. Mr. Williams stated that Ms. Cole resides in Florida in the winter. When they moved into the property, they met her and told her of their plans and then it was suggested that they get a written confirmation that she is ok with their placement.

Acting Chairman Walker read the letter into the record dated January 20, 2020. Ms. Cole said in her letter she had no issues with the placement of the shed 3-ft. from the property line.

Secretary Koscierzynski noted that when she went to their home she saw the stakes where the proposed shed would be. She restated that the neighbor is ok with this and that there are arborvitaes there so it will block the view for her.

Trustee Flood said that he appreciated that they had the stakes out there because it makes it easy to see what they are looking at. He mentioned all the other dimensions, they meet the front yard, the rear yard, and the west side setbacks, this is on the east side.

Trustee Flood stated that the Practical Difficulty is they want to keep a lane available to get emergency vehicles through. Mr. Williams replied that this correct. Trustee Flood noted that on the west side they are right up against the other house.

Mr. Williams said that he did include that in his packet and was one of his concerns when buying the home. He was surprised that the house was approved to be that close to the setback on that side for that reason. He wanted to include those documents showing that it was approved and is part of the property and was part of the real estate deal. That was his concern putting a shed blocking that side because you can walk through on the other side but you would never be able to drive a vehicle between his house and the other house on the other side. The documentation was included in the packet regarding that settlement.

Trustee Flood noted that the floor area and the total lot coverage meets all the parameters too.

Board Member Cook asked if they were planning on putting in the drive at the same time? Mr. Williams replied, no, they are not. Board Member Cook asked what roughly the time frame was? Mr. Williams replied, when they have more money.

Board Member Cook noted in the application it asks what the Practical Difficulty is, and if it was self-created - Mr. William's response was that "he did not have any control over the property lines". Mr. Williams asked what the question was? Board Member Cook replied that in terms of Practical Difficulty when they purchased the home, the property lines were there, so they are saying it was not self-created because they don't have control over where there are, but they did have control of purchasing the home. Mr. Williams replied, that is correct.

Secretary Kosciuszynski asked what they would be using the shed for? Mr. Williams replied everything that is in their garage, gardening tools, and lawnmowers. They went from a colonial where they had a basement, garage, and storage, and now they have no garage and no storage. Most of their stuff is in their garage, and they have boat supplies, but nothing commercial.

Secretary Kosciuszynski asked what the Practical Difficulty was again? Acting Chairman Walker stated that the Practical Difficulty would be the safety factor.

Moved by Secretary Kosciuszynski, seconded by Acting Chairman Walker, that in the matter of ZBA case #AB-2020-03, Christopher Williams, 348 Gan Eden, 09-02-226-006, the petitioners request for one (1) variance from Zoning Ordinance No. 78, Article VI, Section 6.04, Zoned R-1: 1) a 7-ft. side yard setback variance from the required 10-ft. side yard setback for a shed to be built 3-ft. from the side property line (east), be **granted** because the petitioner has demonstrated 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 Difficulty defined due to the unique circumstances of the property and not related to general conditions in the area of the property: which is the concern of the emergency vehicles that need to come through; 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 house is situated is precarious and he only has the one side to put the shed, the other side he can't do anything with; 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 facts: they need their space and there is no other place to put it and because the size of their home and lack of storage; granting 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 findings: he is seeking a 16x12, 192-sq. ft., shed, his closest neighbor is fine with this; further, based on the following findings of facts, the granting of this variance would not: impair an adequate supply of light and air to adjacent properties; it will not unreasonably increase the congestion in the public streets; it will not increase the

danger of fire or endanger the public safety: the way they are situating the shed is so that emergency vehicles will be able to get in and out; it will not unreasonably diminish or impair established property values with the surrounding area: if anything the shed will increase the property values, there are several other houses in that area that have sheds; 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: Cook, yes; Koscierzynski, yes; Flood, yes; Walker, yes.

Motion Carried 4-0 (Yaros and Durham absent)

B. AB-2020-05, Christopher Kelly, 344 Heights, 09-11-326-009

Acting Chairman Walker read the petitioner's request as follows:

The petitioner is requested two (2) variances Zoning Ordinance No. 78:

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

1.) A 10-ft. lot width variance from the required minimum 50-ft. lot width.

Article VI, Section 6.04 Zoned R-3

2.) A 7-ft. side yard setback variance from the required 10-ft. side yard setback for a freestanding deck to be built 3-ft. from the side property line (southwest).

Mr. Christopher Kelly, 344 Heights, the applicant was present.

Mr. Kelly stated that to enjoy his lake property and his family's quality of life on the lake, he was requesting approval for the two (2) variances noted on his application. Specifically, he is requesting the approvals to allow him to build a 160 sq. ft. freestanding deck, on a lot less than 50-ft. and within 3-ft. of the existing property line. The proposed deck would be built on the southeast side of the existing cottage. The proposed deck would better allow his family and friends to enjoy the lake experience that they purchased the property for. The requested variances are required to overcome the Practical Difficulties created by the small traditional size lake lots. Theirs, when they purchased it, was an existing lot with predefined boundaries and very small style lake lot. The cottage is small, approximately 850-sq. ft., and the small dwelling makes it difficult to gather family and friends - inside as well as outside on the existing deck. The placement of the existing deck is not desirable as there is not any sun exposure until about 2 or 3 pm when the sun clears the top of the house. The placement of the proposed deck does allow them to address those Practical Difficulties. He felt that it was important to note if the variances are approved that the proposed deck would be within the footprint of the existing cottage. It would be no closer to the property line than the existing dwelling is now. The proposed deck sizing and placement of the lot is consistent with similar properties on Lake Orion. The proposed deck allows him to utilize "dead space". The proposed deck does offer a 3-ft. buffer to the property line as opposed to laying a patio that could run right up to the property line. He did feel it offered a nice 3-ft. buffer, consistent with the existing dwelling. He was aware of the one concern expressed by one of his neighbors and he had offered to investigate that and the possibility of a privacy fence.

Acting Chairman Walker asked when he purchased the property? Mr. Kelly replied, in June of 2018.

Secretary Koscierzynski asked what was his Practical Difficulty? Mr. Kelly replied that the existing lot is small and the dwelling is small and he wants to be able to utilize the property to its fullest potential. They have a family of five (5) - they can't gather indoors and the existing deck can only hold about 3 to 4 people.

Acting Chairman Walker asked how wide was the lot? Mr. Kelly replied, 40-ft. in the front and 42-ft. in the back.

Acting Chairman Walker noted that the width of the lot is not even 50-ft., which is the minimum. Trustee Flood noted that these lots are not conforming. Acting Chairman Walker said it is not his fault that the lot is not wide enough.

Trustee Flood noted that this is a deck expansion because there is an existing deck across there already. The 8-ft. bump out 20-ft. long towards the lake and is parallel with his house. Mr. Kelly stated they are trying to maintain the same footprint of the dwelling. Trustee Flood noted that the house is that far from the lot line.

Secretary Kosciuszynski read through the letters, stating that one (1) person was opposed and seven (7) people were in favor.

Acting Chairman Walker asked who were the two (2) neighbors on either side? Mr. Kelly replied that they were both there, Mr. Hersbrook and Mr. McCoy.

Trustee Flood stated that if a variance is granted, it goes with the land and will always remain with the land - those setbacks. This is a deck and if somewhere down the road someone thinks they can put a room there this is not what this variance is for. Acting Chairman Walker said if they sell, the variance goes with the land and it stays there, whatever they do for Mr. Kelly for the land, stays with the land.

Acting Chairman Walker noted there was just one (1) negative letter. Mr. Kelly said yes and that he has been in communication with that neighbor, Mr. Hersbrook, via text and email. He is aware of his concerns and did express his desire to try and reach some sort of agreement such as possibly a privacy fence, however understands anything that close would still require a variance.

Board Member Cook noted that Acting Chairman Walker asked about the neighbors that supported this, and he, the petitioner, replied that the people on both sides of him were here? Mr. Williams replied that he believed that Acting Chairman Walker said were the neighbors here, he did not want to speak for them. His immediate neighbor on the southside, Mr. Hersbrook, is on record as opposing it. He is trying to, through communications with Mr. Hersbrook whether it be a fence or some other method, to address those concerns.

Mr. Todd McCoy, 340 Heights Rd., said he is the immediate neighbor to the right of the home. Now that he understood that this variance goes with the home, he has several problems with this. One is that it does block his view once it comes 5-ft. past the existing deck. Two - there is hardly any parking there, so with all these added people, where are they going to park and was concerned about added noise. If petitioner can go 3-ft. that way towards the property line, he can then come 3-ft. towards his property line when he sells or whoever gets this next. He said this is a permanent residence and it is not a cottage for him. He noted that all the other people that were in favor of this were not anywhere near this house, they are on the other side of the lake and didn't know how they should have any impact on this.

Mr. Eric Hersbrook, 348 Heights Rd., said he is the resident that is most affected by this deck because he is the neighbor on the side that the deck will be built on. The cottages/houses are very close together and that not being bad enough, when you start adding a deck that is going to go straight out towards the lake, that is going to make the properties feel like they are right on top of each other. The property line where the house ends will be extended towards the lake also, so it is almost like an addition. If the petitioner sells the place, it is there to stay and they have had quite a few turnovers with that house in the last 5-10 years. Another one of his big concerns is with potential parties and noise.

Mr. McCoy added if he was to put up a privacy fence it would block his view of the lake even greater. If he is granted the variance of 3-ft. today, he could potentially put up a fence 3-ft. from the house.

Board Member Cook asked if he and Mr. Hersbrook were in negotiations about a fence? Mr. Kelly said that he had offered that. Board Member Cook asked if he had made any progress with that? Mr. Kelly replied that they had not yet. He felt he would have to see what the best approach would be. Like Trustee Flood had said, if it was a privacy fence over 4-ft. tall then he would end up back here with another variance request for a 6-ft. privacy fence right on the property line. The intent would not be to run a fence or any sort of privacy screen or arborvitaes, it would be down the full length of the property line, but he could run the arborvitaes. That is not his intent, the intent is to try to find some happy medium with everybody and whatever privacy or screening barrier would just be the footprint of the deck, he would not even see going the full 20-ft.

Acting Chairman Walker asked if the height of the deck was 36"? Mr. Kelly replied, yes, the elevation would be consistent with the existing deck which is 36". Acting Chairman Walker wondered how that would impede anyone's view of the lake if something was 36" high?

Trustee Flood asked Mr. Kelly why he was going past his existing deck? Mr. Kelly replied just to get a bigger footprint. Trustee Flood said he could cut it off even with the other deck and then it would not be intruding any further down blocking the view of the lake. Mr. Kelly said the intent was to better utilize the existing space. There is a large diameter tree on the lot and so he would be mowing one strip of grass. Trustee Flood said it was about 5-ft. and it would be even with the existing deck on the rear right now. Mr. Kelly said he understood but would like to have the full length of the deck for better enjoyment of the property.

Acting Chairman Walker said that whatever they say up there are suggestions and he was thinking that if the deck that he has requested is changed maybe the neighbors would not be as upset with the deck. Mr. Kelly replied that his understanding of this process is whatever is approved he can't go bigger but he could go less as far as the size. He can't go any closer but he could go up to the 3-ft. He would not be in favor of reapplying for another \$200 and go through the process to find a revised plan to go smaller. Acting Chairman Walker noted that there are four (4) people here and he needs Three (3) votes. Mr. Kelly said he could modify the request and reapply and pay the \$200 fee and come back with a modified plan. Acting Chairman Walker noted that he could change his request today and he was not promising if even that would work but was trying to make everyone happy.

Secretary Koscierzynski stated that when she drives down Heights, the houses in that area are very small and there is very little parking. They have to take into consideration because of the way that the neighborhood is. He has two neighbors there that are against it because they are so close. Mr. Kelly replied that there is lake access, so people would be coming over via boat and not necessarily with automobiles.

Board Member Cook said if he was to shorten the deck by 5-ft., the deck would still be 24-ft. across and 15-ft. deep at the farthest point so either 8-ft or 15-ft. total deep. As Acting Chairman Walker said, if he wants to modify what was submitted, he can do that now or if he could postpone at no additional cost. Mr. Kelly asked if they could pose this to the neighbors? Acting Chairman Walker replied, sure.

Mrs. Darryn McCoy, 340 Heights, Road, asked if they give a variance on one side for the 3-ft. will that run with the land for both sides of his property, the north and the south or just the south? She said that she and her husband are not opposed to the existing deck where it is already, but there is a cove that tucks back, it is nice to watch the cars but it would block it on one side if it did jet out more. They didn't want the deck to jet out 5-ft., they don't care that it goes 3-ft. off his property line and understood that he could put a patio in. She wanted to know if it was going to be on the south side only that 3-ft.?

Secretary Koscierzynski said that it is the southwest. Mrs. McCoy asked it would only be to the southwest it would never be permitting the next owner to do it to the northeast? Acting Chairman Walker replied they would have to come back and ask for that and he couldn't guarantee anyone would do that but did not think the Board would grant that type of request on top of this request.

Mrs. McCoy noted that it would be nice if he utilized that section of that land because there is no other use for that part of his land since it is so small. They can't go between the houses anyway.

Mr. Kelly questioned the suggestion was to take the 5-ft. past the existing deck so it would be a reduction of 40 sq. ft., it would still be 8-ft., it would still be 3-ft. from the property line. Mr. Hersbrook noted that it would still be the same distance to his house.

Mr. Hersbrook was confused and didn't understand what the change was. Trustee Flood stated that the 3-ft. variance would still be applicable but they could put a condition on it that the deck cannot exceed past the existing deck. Mr. Hersbrook questioned that he would not go longer toward the lake? Trustee Flood said correct; the condition of the variance, if approved, he would have to stop right there. Mr. Hersbrook said that was still close. Trustee Flood noted that the house is that close now? Mr. Hersbrook replied yes, and that would be an extension of his house. Trustee Flood said it would be an extension of a deck, not a room. Mr. Hersbrook said not a room right, but there will still be people that close, that was his concern.

Acting Chairman Walker asked Mr. Kelly if he would like to keep the request the same as it was when they started or did he want to change it? Mr. Kelly replied that he would amend his request so that the new deck would be the same distance from the house as the existing deck is.

Mr. Hersbrook asked if the amendment he is going to be making would change one variance and not the other? Acting Chairman Walker replied no, both variances would have to be granted but his request is going to be the same variance but shortening up the deck. Mr. Hersbrook asked it will be closer to the house but still the same distance from the property line? Acting Chairman Walker answered that it will be the same width, the same 3-ft. that the house is already there, it will go out 5-ft. less toward the lake than the original request.

Board Member Cook asked, based upon what he has amended the motion to be, will discussion continue about adding some potential privacy - arborvitae or some type of privacy barrier? Mr. Kelly said yes, he felt they could come up with something that would be agreeable to all three parties.

Trustee Flood noted that if they plant vegetation, they wouldn't need a variance, it could go along the property line. A variance would be needed for a privacy fence.

Moved by Board Member Cook, seconded by Acting Chairman Walker, that in the matter of ZBA case AB-2020-05, Christopher Kelly, 344 Heights, 09-11-326-009, I would move that the petitioner's request for two (2) variances from Zoning Ordinance 78, Article XXVII, Section 27.01(C)(1)(a): 1) a 10-ft. wide variance from the required minimum 50-ft. lot width; Article VI, Section 6.04 Zoned R-3: 2) a 7-ft. side yard setback variance from the required 10-ft. side yard setback for a freestanding deck to be built 3-ft. from the side property line (southwest) side be **granted** because the petitioner demonstrated that the following standards 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: the placement of the home on the smaller lot hinders the usage of the home based on the size of the existing deck; 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: the way the property was built it has an unusual shape on both sides where it has a center piece that jets out, in addition to having a rather large maple tree that has been there for quite a while; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity base on the fact:

most of the decks in the area are sizably larger in addition to the fact that it is a lot lake facing lot; 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 which the property is located based on the following: **the petitioner has agreed to modify his request from the original 160-ft. changing it to 120-ft. and he will be ending the deck to be in line with the existing deck;** further, based on the following findings of facts, the granting of this variance would not: impair an adequate supply of light and air to adjacent property; does not provide unreasonable increase in congestion in public streets due to the fact that: many of the guests will arrive by boat and they also have the sheriffs department will take care of any traffic issues; it will not provide an increase of danger or fire or endanger the public safety; it would not unreasonably diminish or impair established property values within the surrounding area; or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Board Member Cook amended the motion, Acting Chairman Walker re-supported to include that the freestanding deck will not extend past the edge of the house towards the side yard property line so he will not be increasing the non-conformity and the square foot should end up being 160 sq. ft. and 120 sq. ft.

AB-2020-04, Outdoor One Communications LLC, 09-35-100-019

Acting Chairman Walker read the petitioner's request as follows:

The petitioner has requested five (5) variances from Sign ordinance 153:

Section 8 – Billboard Signs:

- 1) A 2,414-ft. distance variance from the required 2,640-ft. from an existing billboard (*north of Aladdin Heating & Cooling*) to be 226-ft. from an existing billboard.
- 2) A 1,040-ft. distance variance from the required 2,640-ft. from an existing billboard (*south of Kay Industrial Drive, north of Northpointe Dr.*) to be 1,600-ft. from an existing billboard.
- 3) A 404.4-ft. distance variance from the required 2,640-ft. from an existing billboard (*Kensington*) to be 2,235.6-ft. from an existing billboard.
- 4) A 312-ft. distance variance from the required, 1,500-ft. from a residentially zoned area to be 1,188-ft. from the nearest residential property.
- 5) A 10-ft. side yard setback variance from the required 25-ft. side yard setback to erect a billboard 15-ft. from the side property line (south).

Mr. Jay Carll, the applicant presented

Mr. Carll stated that there are two (2) billboards that are on the subject property, at the request of the property owner, they will be taken down. Mr. Carll showed pictures to the Board of the existing billboards. He noted the two (2) existing billboards have 16 nonconformities with the current sign ordinance. They would be reducing that down to five (5). They are hoping that it would be something that would be establishing precedence that they would be happy with. If someone else came along with two (2) other signs.

Acting Chairman Walker asked if they propose to take those two (2) signs down? Mr. Carll replied, yes. Acting Chairman Walker questioned if they were all on his client's property? Mr. Carll answered, yes. Acting Chairman Walker asked if their client had agreed to take them down? Mr. Carll replied, yes.

Mr. Carll showed the Board a picture of the new billboard. He said they take and put stone cladding over the steel columns and encase the top of the structure. It is an LED type sign and they do have

requirements in the Ordinance that regulate LED's. Mr. Carll showed the Board a picture of what an uncontrolled LED looked like and then what a controlled LED looked like. Theirs is like the one that is controlled. It is in a constant state of adjustment that it does on its own. They are very secure; their manufacturer has never been hacked. The light controls that exist happen automatically, anything that might be functioning improperly with it communicates directly to the manufacturer, the manufacturer then communicates with them if there are any type of issues going on at all. If there are any sort of issues that would cause the sign to blink or create motion the sign will shut down so that won't occur. They are offering, as well as the improvements they are making, to give the Township 8 weeks' worth of advertising. They also have the one on Baldwin Rd. that the Township uses fairly frequently. He noted that staff had sent them throughout the last couple of years quite a few adds that they put up for the Township. They did present this to staff first to make sure that staff was on board with the idea and concept of what they wanted to do and that they weren't going against the wishes of the Planning Department and the administration, and they did lend their support to what they were doing. They think it improves quite a bit aesthetically within the Township. He said that Don Sheft can run through the points of qualification relative to the criteria that they have.

Mr. Don Sheft, is general counsel for Outdoor One Communications. He typed up a proposed finding of fact to the extent that they would like to be adopted with a motion for approval. According to the Michigan Court of Appeals, there are generally three (3) legal criteria that court will look at when examining the satisfactory nature of a variance, in terms of Practical Difficulty. The First is the general purpose and intent of the ordinance and to look at whether strict compliance is unnecessarily given the circumstances for which the proposal is brought. In this case, unlike many applicants, they are bringing a proposal to reduce nonconformity within the Township amount, by 68%, they are reducing the total billboard footprint on the subject property by 50%. In terms of the general welfare, they are offering time to the Township to communicate with the citizens regarding community activities. Their boards are also connected to the FBI system, the Amber Alert system, Emergency Weather Alerts, things of that nature which necessarily improves the safety of the general vicinity community. The second factor is whether or not the variance will do substantial justice to the applicant as well to the other property owners. The ends of justice as they see it are served if nonconforming uses can be voluntarily be reduced, while aesthetically improving the general area. Going back to his previous point is that from the nonconformity perspective that is being significantly lowered in term of aesthetics the character of the board that would be going up to replace one of the nonconforming boards is monumental for that major thoroughfare and thought it would add beauty and character to that area as opposed to what is currently there at the moment. The final factor is given the benefits proposed in the conditional variance request does give rise to unique circumstances that would advance the spirit of the zoning ordinance. If there ever was a unique circumstance two (2) billboards on one property, each of which are nonconforming giving rise to 16 discrete nonconformities being reduced by 68% is quite a unique and rare situation for any community. Often, communities will hire consultants to come up with elaborate regulatory schemes and pay them 10's of thousands of dollars to create ordinances where the billboard footprint is being reduced in the community but on the other hand, the aesthetics are being improved so they trade two for one kind of deals. Here they are voluntarily coming to the community and offering that up. From a legal perspective, they thought that they have satisfied the criteria that are required of them and they think by in large it is an enhancement to the community.

Mr. Carll said that one of the things he wanted to point out is that one of the variances they requested was for a side yard variance. What they want to be able to do, looking at the property from a long-term standpoint, is if and when it gets developed, they would have an area underneath to landscape. If they were 25-ft. in from the side yard, it would put them in an area that might be difficult to landscape around the bottom of. What they would propose to do initially since its undeveloped land is to plant some arborvitaes, smaller growth evergreens that would remain, foliage, all year long, then if and when it gets developed, they would enhance it further with small shrubberies and things of color that would bloom in the spring and summer.

Acting Chairman Walker asked, regarding the first variance, it is a huge, is that because of the Aladdin sign across Lapeer Road? Mr. Carll replied, it is.

Mr. Carll noted that they will be going into the same footprint except a little bit further away from the road than the current sign. They would be set further back than what the existing sign is and then further away from the property line than the existing sign.

Acting Chairman Walker questioned the second variance, is that because of the Kay signs, also on the other side of Lapeer? Mr. Carll replied, right.

Acting Chairman Walker said that he didn't even realize the two (2) signs that they were talking about were even there. He asked if they were nonconforming and when were they put up? Mr. Carll said they have been in place for a long time. There are 16 nonconformities associated with the signs that are currently there. Acting Chairman Walker said they are hideous.

Acting Chairman Walker asked what kind of information is going to be on the sign? Mr. Carll replied that they deal a lot with local advertisers. They do have regional and national advertisers but a lot of local advertisers because of the time constraints of the type of sign that is currently there they have to rent them for long periods because of the production costs. With the LED's they can rent them for much shorter periods which allow for local businesses than to work it into their budget because they don't have to commit for the long term.

Acting Chairman Walker asked if they are similar to the billboards on I-75 by the University? Mr. Carll replied, size-wise, it will be smaller than what is existing, the one there is 50' long and 15' high so they would be reducing the actual size of it to what is allowed by ordinance.

Acting Chairman Walker questioned the LED brightness - they know what is required by the Township Sign Ordinance and they will be sure that it will not exceed those lumens? Mr. Carll replied, yes, and they are also overlaid on top of what the Townships regulations are governed by the State with the same regard. They have regulations regarding hold-time, meaning how quickly the ad rotates. They also have brightness controls just like the Township's ordinance does. The sign that they would be proposing would be under full control and it is in a constant state, so if it becomes cloudy the sign adjusts, so it is in a constant state of adjustment all day long.

Secretary Koscierzynski asked if they had the one on Baldwin by the Starbucks? Mr. Carll replied, yes, he said that it would be very similar in look and nature.

Board Member Cook asked about the eight (8) weeks of advertising for the Township that would be available, what would that look like - two (2) weeks per quarter? Mr. Carll replied that it is on an annual basis. The one on Baldwin Road, they offered it there as well and over the last year have exceeded it, which is fine as long as there is space available. If they had used up those eight (8) weeks they would accommodate more, but it is guaranteed that the Township will get eight (8) weeks throughout the year. The way the Township has utilized that in the past has been in periods of a week at a time, advertising different events that the Township has going on. The Supervisor has appointed somebody that is in charge of putting the art together and getting those designs to them and then they get them to the sign immediately.

Board Member Cook asked what the actual height of the sign will be? Mr. Carll replied, he believed it was 25-ft. which is what the code allows for. Board Member Cook questioned if that is the overall height? Mr. Carll answered 25-ft. from grade to the top.

Board Member Cook asked in terms of their pixels, they have been talking about lumens and about uncontrolled LED's, what is the pixel placement? Mr. Carll answered 19mm. Board Member Cook asked if that was a high resolution? Mr. Carll replied for this application, yes.

Board Member Cook asked in terms of their transition time between ads? Mr. Carll replied 10 seconds. Board Member Cook asked what the time was between transitions? Mr. Carll replied instantaneous, less than a second which is also a State requirement as well. Board Member Cook said he had read something that said that they have a shorter hold time and he wanted to make sure what they were asking for today? Mr. Carll said, no, they are not seeking any sort of relief there at all.

Acting Chairman Walker asked, regarding the fourth request, where is the residential property in proximity to their sign? Mr. Carll replied that it was on Silverbell and is not in the line of sight, so it is to the north and east. Acting Chairman Walker said he did not want the sign to be offensive to someone who lives there. Mr. Carll stated that is one of the greatest improvements from the nonconformity, the second sign on this parcel is 320-ft. closer to residential than they will be. Acting Chairman Walker noted that that sign is not flashing. Mr. Carll replied no, their sign doesn't flash, but LED's are directional in terms of the light transmission. With what is currently there you get what they call light trespass, where it just tends to flare out. With controlled LED's they don't get light trespass and lighting upon the ground and it is directional in terms of its nature.

Trustee Flood said that he is familiar with the sign at Baldwin and I-75, he is glad that they have the new sign ordinance in place to handle all of these EMC's. Trustee Flood stated that this was coming before them all the time and they were having to legislate all this, now it is all locked. Mr. Carll noted that they worked with the administration on the regulations that they have in place. Trustee Flood said he like the aesthetics, and the brick and the stone and he liked the idea of getting the old signs out of there. Trustee Flood said that as far as what they put on their billboard sign, there are new laws on that from the Supreme Court. The EMC is handled through our ordinance. It is nice that they are going to do that but he is focused on the non-use variance, to him it would be a use variance. When he first saw the variances; he was surprised, these are existing nonconformities. They are trying to reduce it down almost 70%. Trustee Flood asked if the old signs would come down first? Mr. Carll replied yes; it is an MDOT requirement as well. Trustee Flood questioned if they had to pull an MDOT permit for this? Mr. Carll answered yes. Trustee Flood added that if you go and look at the ordinance under the EMC signs, there is no flashing.

Board Member Cook stated regarding the 10-ft. side yard setback, the reason that they gave for wanting that was landscaping around the bottom. When he looked at the other sign that they presented to them and there is no landscaping around that. The way they have done it aesthetically speaking it looks nice the way it is. Mr. Carll replied it is, he referenced the billboard that they did in Farmington Hills, they took the old board down and incorporated the size of that board to this board and then the retention area they completely cleaned up, because it was all overgrown, it had a chained linked fence, and they wanted the aesthetics of the surrounding billboard structure to be improved as well. Currently, because of the way the property is situated, not being developed or is a field, they would clear the area up around the sign and plant stuff they can see. Once the property gets developed then they would put a landscaping plan together that would coordinate with the landscaping on the site but then would be visible to people driving by. If they put small flowering type plants now, they would not see it. Board Member Cook said he understood that; what he is trying to do is to reduce the number of variances that they are asking for. If they were to stay within the guidelines for the side yard setback, other than landscaping, what would be the negative impact? Mr. Carll stated that potentially putting it into an area that could be used for retention or parking, he was not sure what that might be, and that was the concern.

Mr. Bill Cooper stated that of the five (5) variances that they are requesting he believed all but one (1) of them are an improvement of the current variance. The current sign, the larger of the two (2), is

actually on the property line right now. They are asking for a variance but they have moved it back 20-ft. The side yard setback was increased that distance between the side yard, it is 15-ft. and right now he thought it was 8-ft. they have almost doubled the side yard but it is still within the window. Board Member Cook asked if the smaller sign with the support of the posts, would be in line with the existing sign? Mr. Carll said that they would be further out. Mr. Cooper noted that one is also along the property line, and thought it was about two (2) or four (4)-ft. back.

Board Member Cook questioned that in the findings of facts in regards to public safety. Anytime they put in something that is a visual attractant they run the potential just by definition for having people look at it because they are going to have people view it from both the north and south side of M24. How do they position this to say that there is no potential for endangering the public? Mr. Carll said that the feds did an extensive study on LED's because they wanted to make sure on interstates and state-funded roads that these were not issues. The study concluded that the signs are not more distracting than any other sign that is out there. They can have a modern building with some cool features on the front of the building that draws just as much attention as what a sign does. The federal study concluded that they are not a distraction. Board Member Cook said that that study was on signs that were how tall? Mr. Carll replied all different types; what they did was measured eye movement of individuals who didn't know what they were being measured for in controlled environments where they were in a presentation room where they are going down the road and did not know specifically they were being interviewed for and it measured their eye movements in terms of what they looked at as they were going down the road. They were told to be as though they were driving the car going down the road. A lot of cities and states held back on regulation until that study was released, and it was released about five (5) years ago, it was very extensive and took many years, there was no influence by the sign industry it was all done independently by the federal government. Board Member Cook said that he might have read a different study than what he read. The one that he read had heights of 35-ft. and they are at 25-ft. and that was his concern of people being at that stoplight and seeing through that intersection, and only because of the height of what they are doing versus the study that he read. Mr. Carll said he was not familiar with what he was referring to in terms of the study and dealing with height. They wanted to make it conform as much as they could to what the requirements were. He assumed that the individuals that put together their sign ordinance considered everything. Mr. Sheft stated that the study they were referring to was the Department of Transportation Federal Highway Administration study released in January 2014.

Secretary Koscierzynski stated that she didn't think that their sign that they are proposing is any more distracting than some of the signs on Lapeer Rd. now. She stated that some of the signs they have now are very distracting. She thought because of the height and the way they are positioned and the speed that the cars are going on M24. She knows that it is the trend to have these signs and she didn't like them at first and they are distracting at night. Board Member Cook said that he doesn't want a redo of what they already have in place. Secretary Koscierzynski said that the one sign on Baldwin just because of where it is at, and that intersection has so many stores, she didn't feel that it was that distracting, because there is so much going on over there, it is just another lighted sign going up. She liked those because they are less distracting in her opinion. Mr. Carll said that as an industry they are certainly in favor of their regulations that they have in an ordinance because the uncontrolled signs give them a bad name, when they have theirs that are in control and the hold times are longer. The brightness is a big distraction. Secretary Koscierzynski stated that the other thing is that anyone willing to make things look nicer, those signs over there now, and she never had noticed how ugly they are, and in the middle of summer with all the grass they are hideous.

Board Member Cook said he passes those signs every day and his concern is that intersection. He understood the aesthetics but didn't want the light pollution or the light distraction because that is a major intersection and is already congested. Mr. Carll noted that they do comply with the intersection setback, which is new to this ordinance before there wasn't an intersection setback regarding billboards.

Mr. Sheft said that the north board that they are taking down is in violation of that intersection so to the extent that there is a concern about intersection distraction they are moving the needle not just as an improvement but into full compliance on that one.

Acting Chairman Walker asked why as a Township, have they allowed those to be there if they were nonconforming? Trustee Flood replied they were grandfathered in. Mr. Carll said that the previous ordinance differed from the State's, so whatever the state allowed is what the previous ordinance allowed. Trustee Flood said that he believed that a year ago they updated the laws on the billboards. Mr. Carll said that they worked with staff on those changes for some industry recommendations. They don't want to see them stacked on top of each other it gives the industry a bad name. Trustee Flood said that his understanding from the Planning & Zoning Department is that they just went ahead and updated it when the State updated their ordinance, they just followed the State law. Mr. Carll said that the Townships are a little more extensive and thought that in areas that they are well served like distances between signs, residential setbacks the State doesn't have any. They do have to pull a State permit as well.

Trustee Flood said regarding Board Member Cooks concern about that corner, that is the worse corner in the Township for traffic accidents. The sign at I-75 and Baldwin on the other side of the Township, if this one turns out as well as that one, he would be impressed, it is not distracting or anything.

Moved by Board Member Cook, seconded by Trustee Flood, that in the matter of ZBA case #AB-2020-04, Outdoor One Communications LLC, 09-35-100-019, I would move that the petitioner's request for five (5) variances from Sign Ordinance 153, Section 8 – Billboard Signs: 1) a 2,414-ft. distance variance from the required 2,640-ft. from an existing billboard (north of Aladdin hearing & Cooling) to be 226-ft. from an existing billboard, 2) a 1,040-ft. distance variance from the required 2,640-ft. from an existing billboard (south of Kay Industrial Dr., north of Northpointe Dr.) to be 1,600-ft. from an existing billboard, 3) a 404.4-ft. distance variance from the required 2,640-ft. from an existing billboard (Kensington) to be 2,235.6-ft. from an existing billboard, 4) a 312-ft. distance variance from the required 1,500-ft. from a residentially zoned area to be 1,188-ft. from the nearest residential property, 5) a 10-ft. side yard setback variance from the required 25-ft. side yard setback to erect a billboard 15-ft. from the side property line (south), be **granted** because the petitioner demonstrated that the following standards for variances have been met in this case that they set forth facts which show that in this case: the petitioner does show the following Practical Difficulty: the property is currently undeveloped so they have to anticipate what will potentially come there in the future and allow for any potential drainage ponds and or buildings to be constructed to get the maximum value for the property; 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: it is an undeveloped property that is going to take some existing billboards and remove those so that is unique to this particular piece of property; 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: this is a unique parcel of land in terms of it being 30-acres total without any development on it and removing the existing billboards that are there and so they will be preserving the enjoyment or the revenue stream that previously exists in an extremely nonconforming way; 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 findings: this is an undeveloped piece of property and can't compare it to the properties that currently have existing structures on them; further, based on the following findings of facts: the granting of this variance would not impair an adequate supply of light and air to adjacent properties - due to its height from the ground at 25-ft., unreasonably increase the congestion in public streets due to the facts: the lighting will be controlled and the transitions in the signs will be in aligned with the Township requirement of having a 10-second hold with a less than one second transition between each and no flashing of any sort; it will not increase the danger of fire or endanger the public safety due to the fact

that the number of lumens and foot-candles coming from this will not be a distraction to either of those based upon what has been explained to them, it will not be a distraction to those coming from either north or southbound on M24; it will not unreasonably diminish or impair established property values within the surrounding area due to: particularly the residential areas due to the fact that they will be within the Townships guideline; the petitioner will completely remove all existing billboards or billboard type signs located on parcel 09-35-100-019, removal shall be completed prior to the commencement of construction or any new installation, refurbishing or relocation of any billboard of any type as defined by Sign Ordinance #153; these variances are only for the erection of one billboard which would be double sided and does not apply to any additional or future billboards or signs not listed on this ZBA application which is AB-2020-04; maximum brightness levels for this digital billboard shall not exceed .02 (two tenths) foot-candles over ambient light levels measured at 150-ft. of the sign; certification must be provided to the Orion Township demonstrating that the sign has been preset to automatically adjust the brightness to this level or lower; reinspection and recalibration shall be annual or more often or less often at the discretion of Orion Township Officials; this annual re-inspection and recalibration will be at the applicant/owners/co-owners expense to ensure that the specific brightness levels are maintained at all times; the brightness of this digital billboard shall be measured as follows: a least 30 minutes following sunset, a foot candle meter shall be used to obtain an ambient light reading for the location, while the sign is off or displaying black copy; the reading shall be made with the meter aimed directly at the sign area at the pre-set location; the sign shall then be turned on to full white copy to take another reading with the meter at the same location; if the difference between the two (2) readings is 0.2 foot candles or less, the brightness is properly adjusted; the display or message on the billboard, of any type, may change no more frequently than once every 10 seconds, with a transition period of one second or less; the digital billboard must be installed with an ambient light monitor, which shall continuously monitor and automatically adjust the brightness level of the display based on ambient light conditions; each day a violation occurs or continues shall constitute a separate offense and shall make the violator liable for the imposition of a fine an other penalties for each day of violation occurs; the owner, co-owners or occupants of the parcel, which is in violation of a provision of this variance shall equally be responsible for a municipal civil infraction and shall be subject to the fines, costs and orders as provided herein; if said fines are levied that shall not be less than \$2,500 for each violation and further subject to costs and orders as provided by Orion Township; these conditions shall exist and run concurrent with the duration of this variance.

Discussion on the motion:

Trustee Flood added that regarding the current nonconformities, adding the billboard, will be reducing the nonconformities by nearly 70% - from 16 deviations down to 5, which he felt was a benefit to the public.

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

Motion Carried 4-0 (Yaros and Durham absent)

D. 2019 ZBA Annual Report

Moved by Trustee Flood, seconded by Secretary Koscierzynski, to receive and file the 2019 ZBA Annual Report and to forward a copy to the Township Board. **Motion Carried 4-0**

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

Memo from Planning & Zoning Coordinator Harrison, regarding the Zoning Board of Appeals book received at the January 29th APAMI Zoning Essential Meeting.

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Trustee Flood appreciated the Planning & Zoning Department keeping them up on training; the joint meeting was canceled; commented there were 22 cases last year for privacy fences; and thanked Acting Chairman Walker for conducting the meeting.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by, Board Member Cook, to adjourn the meeting at 8:55 pm.

Motion Carried

Respectfully submitted,



Debra Walton
PC/ZBA Recording Secretary
Charter Township of Orion

March 23, 2020

Zoning Board of Appeals Approval