The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 24, 2023, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

**ZBA MEMBERS PRESENT:**
Tony Cook, Vice-Chairman  
Don Walker, PC Rep to ZBA  
Diane Dunaskiss, Board member  
JoAnn VanTassel, Alternate Board member  
Tony Kerby, Alternate Board member

**ZBA MEMBERS ABSENT:**
Dan Durham, Chairman  
Mike Flood, BOT Rep to ZBA

**CONSULTANT PRESENT:**
David Goodloe, Building Official

**OTHERS PRESENT:**
Alex Castillo  
Dennis Castillo

1. **OPEN MEETING**
Vice-Chairman Cook called the meeting to order at 7:00 pm.

2. **ROLL CALL**

3. **MINUTES**

A. **06-26-23, ZBA Regular Meeting Minutes**

Board member Walker moved, seconded by Board member Kerby, to approve the 06-26-23 minutes as presented.

Motion Carried 5-0.

4. **AGENDA REVIEW AND APPROVAL.**

Board member VanTassel moved, seconded by Board member Dunaskiss, to approve the agenda as presented.

Motion Carried 5-0.

5. **ZBA BUSINESS**

A. **AB-2023-18, Cynthia Surmann, 2545 Freeman, 09-23-431-003**
Vice-chairman Cook read the applicant’s request as follows:

The applicant is seeking 3 variances from Zoning Ordinance #78 – Zoned R-1

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

1. A 35-ft. rear yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the east.

2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the north.

3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the south.

Vice-chairman Cook stated that there was an error in the first line and instead of a “35-ft. from the rear yard” it should have read, “10-ft. rear yard setback from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the east.”

Ms. Surmann introduced herself to the Board and summarized the variance request. If they had to move the fence in to the setback line, they would have to remove part of the shed and inground pool that are existing. There is a business in the backyard on the north side with a lot of foot traffic, so they are adding the fence for privacy. They have two dogs and need the fence to keep them contained in their own yard.

Vice-chairman Cook asked if her dog has jumped the fence.

Ms. Surmann replied not yet, but they have not let the dog out without a harness.

Board member Dunaskiss commented that the applicant is going to put up a plastic fence. She asked if the dog jumped the fence or climbed the fence.

Ms. Surmann replied that the dog jumps the fence.

Board member Dunaskiss asked if she has considered an electronic fence.

Ms. Surmann replied that it is too late for this dog; he is already five years old.

Board member Dunaskiss asked if she has talked to her neighbors about the proposed fence.

Ms. Surmann replied yes; she provided a letter from her neighbor. Her other neighbor brought in a letter last week to the Township.

Vice-chairman Cook commented that there is a letter in the Board packets from Susan Waldron, neighbor, in support of the fence.

Ms. Surmann provided a letter from the neighbor on the opposite site.

Vice-chairman Cook commented that this letter is also in support of the proposed fence.
Board member VanTassel asked if the current chain link fence goes all of the way to the road and if not, how far does it go.

Ms. Surmann replied that no it does not. The fence goes around the back.

Board members commented on the location of the existing fence.

Ms. Surmann replied that if she was to continue this fence, they would have small access to the backyard.

Board member VanTassel asked if the fence and pool were existing when they purchased the home.

Ms. Surmann replied yes.

Board member Dunaskiss stated that one of the reasons that the applicant explained in the application for needing the 6-foot fence is that they have a pool.

Ms. Surmann replied that the fence is also a reason to keep children out of the pool area. She is concerned about safety around the pool.

Board member Kerby stated that the Board gets a lot of these requests and each one is looked at regarding to practical difficulty and whether it is self-created. All three of the reasons listed by the applicant do not meet the standard for variances. The pool has been in existence and has a 4-foot safety fence around it. The shed has been there too. He understands the issues with the dog, but this is a self-created issue, not one that meets the practical difficulty standard.

Ms. Surmann stated that she also has a neighbor that has a home business that has foot traffic all day long.

Board member Kerby stated that this is not a practical difficulty in his opinion. He did see that some of the other properties around them have a 6-foot fence and according to the ladies in the office who looked up these properties, none of them have a variance to put up a 6-foot fence.

Board member Dunaskiss stated that there is quite a lot of greenery to act as a barrier and to create some privacy. She asked if the applicant has considered putting up more greenery to provide more privacy.

Ms. Surmann replied that there is no vegetation on the business side of the fence, but no. When they purchased the home, they asked if they could put up a fence and they were told yes. They went through Lowe’s and when Lowe’s called the Township to get a permit, they were told they did not need a permit. When the installation guy came out from Lowes to install the fence, she found out that they had to come to the Zoning Board of Appeals for a variance. She stated that she is not going to install it without permission and wanted to do it the right way.

Board member Walker asked if someone was running a business out of their home in a neighborhood, is this permitted.

Building Official Goodloe stated that a home occupation can be run out of a home but there are standards that have to be followed and he summarized those standards.

Board member Walker asked the applicant how deep and how big the pool is.

Ms. Surmann replied that it is 32’ by another dimension that she is not sure of. It is an inground pool and goes up to 9 feet.
Building Official Goodloe commented on the fence location.

Ms. Surmann stated that if they moved it in 10 feet, they would have to remove the shed. The shed is almost to the back part of the fence and they would also have to remove part of the pool. The shed was present when they bought the house.

Vice-chairman Cook stated that Ms. Surmann provided photos of other houses with fences in her neighborhood.

Building Official Goodloe stated that frequently these structures were put up before the ordinance was in effect.

Board member Kerby concurred.

Board member VanTassel stated that she doesn’t think so since the Ordinance was adopted in 1984.

Board member Dunaskiss stated that there are a lot of dogs out there that can jump a fence. There are other alternatives regarding the dogs. She stated that since she is the owner of the dog, she is responsible for her own dog.

Ms. Surmann stated that she is doing that. She is trying to protect her neighbor’s dogs.

Board member VanTassel asked if she considered an electric fence.

Ms. Surmann stated that she did consider it but she is not okay with this.

Board member VanTassel explained her experience with an electric fence and her dog.

Ms. Surmann stated she feel that it would be too hard for them.

Board member Kerby stated that the applicant does have a unique situation since the shed and pool were already there and the fence cannot be located 10 feet back but does this meet the standard.

Vice-chairman Cook stated that the Fire Marshall had no issues with the request. He asked if there was public comment.

No public comment was heard.

Board member Walker stated that he is only persuaded by the safety issue with the pool and asked if this could be a practical difficulty.

Building Official Goodloe commented on the pool’s existence in this case. The code says 48 inches for a fence around a pool.

Vice-chairman Cook explained how the Board looks for practical difficulty in each case.

Board member Kerby stated that he agrees with what the applicant wants to do but the Board is charged with finding that the variance request meets ordinance standards and he explained.
Board member VanTassel stated that there is practical difficulty with putting in a 6-foot fence, where a 6-foot fence is allowed, it would not provide protection from the pool. They inherited it when they bought the property. She asked if the other Board members visited the property two doors north.

Board members and Building Official Goodloe discussed neighboring homes and their existing fencing.

Board member Kerby moved, seconded by Board member VanTassel, that in the matter of ZBA Case AB-2023-18, Cynthia Surmann, 2545 Freeman, 09-23-431-003 that the applicant’s request for 3 variances from Zoning Ordinance #78 – Zoned R-1, Article XXVII, Section 27.02 (A)(4) & Article XXVII, Section 27.05 (H)(2) amended as follows: 1) a 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the east, 2) a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the north, and 3) a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the south be granted because the applicant did demonstrate the following standards for variances have been met in this case and they set forth facts that show:

1. The applicant did demonstrate a practical difficulty unique to the property in that they inherited property that has a pool and an existing shed which would prevent them from following the required setbacks.

2. The applicant did demonstrate unique or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: the pool and the shed in existence, a lot of properties do not have these issues, it would be an inherited difficulty, not one of their own creation.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following facts: they are a conscientious couple that are looking to establish a permanent home and they would like peace of mind in making sure that their property is safe to others and themselves specifically in regards to the pool so that they make sure nobody gets in the pool.

4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: there are none.

5. Granting these variances would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets. There is also not going to be an increase of fire or public safety. The Fire Marshall has no concerns with the variances. It is not going to reasonably 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.

The variances shall be granted as long as the homeowner obtains the appropriate permit if applicable. The applicant brought a number of reasons forward for the variances which include a dog, the neighbor having a home occupation and the Board has considered all of those alternatives and rejected them all and are proceeding forward specifically the motion above.

Board member VanTassel commended the property owner on coming forward and seeking proper variances and permits, other improvements have been done to date by people who the Planning Department could not find any record of variances received for 6 foot fences.
Roll call vote was as follows: Kerby, yes; Walker, yes; VanTassel, yes; Cook, no; Dunaskiss, no. Motion passes 3-2.

6.  PUBLIC COMMENTS
    None heard.

7.  COMMUNICATIONS
    None.

8.  COMMITTEE REPORTS
    None.

9.  MEMBER COMMENTS
    None.

10. ADJOURNMENT
    Moved by Board member Kerby, seconded by Board member VanTassel, to adjourn the meeting at 7:34 pm.

Motion Carried 5-0.

Respectfully submitted,

Erin A. Mattice
Recording Secretary