The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, January 25, 2021, at 7:00 pm at the Orion Township Community Center, 1335 Joslyn Road, Lake Orion, Michigan 48360.

*Please note this meeting was done virtually via a “Go to Meeting” #914-793-997*

**ZBA MEMBERS PRESENT (Board Member Location):**
- Dan Durham, Chairman (Lake Orion)
- Don Walker, PC Rep to ZBA (Orion Township)
- Mike Flood, BOT Rep to ZBA (Orion Township)
- Tony Cook, Board Member
- Derek Brackon, Board Member (Orion Township)

**ZBA MEMBER ABSENT:**
None

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

**OTHERS PRESENT:**
Levi Bendixen

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

2. **ROLL CALL**
   As noted

3. **ELECTION OF OFFICERS**
   (Item moved under Public Comments 7a)

4. **MINUTES**
   A. 12-14-2020, ZBA Regular Meeting Minutes
   Moved by Trustee Flood, seconded by Board Member Walker, to approve the minutes as presented.
   Motion Carried

5. **AGENDA REVIEW AND APPROVAL**
   There were no changes to the agenda.

6. **ZBA BUSINESS**
   A. AB-2020-41, Levi Bendixen, 4614 Jamm Rd. 09-33-401-006
   Chairman Durham read the petitioner’s request as follows:

   The petitioner is requesting 1 variance from Zoning Ordinance #78:

   Article VI, Section 6.04, Zoned R-3

   1) A 3-ft. side yard setback variance from the required 10-ft. to build a home addition 7-ft. from the side property line (north).
Mr. Levi Bendixen, the applicant, was present via the GoToMeeting program.

Chairman Durham stated that the applicant was not currently living on the property, correct? Mr. Bendixen replied correct. Chairman Durham asked if he had ever lived there? Mr. Bendixen replied no. Mr. Bendixen stated that the original foundation was leaking water and so they put in drain tile and gravel all around the house. He said that there was also radon present and they will be putting in a sump pump with the drain tile to take care of the radon.

Chairman Durham asked if he was to look at his house from the front of the road, he is looking to build on the back right corner of the house? Mr. Bendixen replied correct. Mr. Bendixen added that they are looking to build on to the back right corner and up a story, so it would be a two-story house. Chairman Durham asked if he wanted to use the same footprint? Mr. Bendixen replied yes, the second story would be the same footprint, plus the addition on the back right of the house. Chairman Durham said he wouldn’t be any closer to the neighbor? Mr. Bendixen replied correct, they wouldn’t be any closer to them. Chairman Durham asked if he had done the calculations about the weight of the second story? Mr. Bendixen replied yes, they had an engineer out, and he looked at the soil, and they approved their initial blueprint, but was waiting on this variance before they have a final blueprint drawn up. Chairman Durham stated that he saw copies of an email that went back and forth between him and his neighbor, to the north. He stated that the neighbor didn’t have any issues with what he was doing. Mr. Bendixen said that he knew he was late to the game on this, he kind of dropped the ball. He felt weird going to the neighbor to ask something, but he went there and asked if they would sign a letter. They had already said they would but said he should have gotten this to the Board a lot sooner. Mr. Bendixen read the letter, and it stated that the neighbor had no issues with the request, and the neighbor offered to sign the letter. Mr. Bendixen showed the letter on GoToMeeting of the signature of the neighbor.

Chairman Durham stated that Mr. Bendixen’s home is what they call a pre-existing non-conformity. He added that by the rules they are not supposed to enlarge a non-conformity. He asked if his desire to add on is why he was there? Mr. Bendixen replied right.

Board Member Walker asked when he purchased the home? Mr. Bendixen replied back in October. Board Member Walker asked what his intent was when he purchased the home? Mr. Bendixen replied to move in with his family. Their intent from the beginning was to build a second story on the house. He had his brother-in-law come out and look it over, he is a builder. He didn’t realize until December that it needed a variance to do that.

Trustee Flood said that he noticed in their packet from the Planning & Zoning Department it said that the house back in 1958 was moved onto its current location and that was before the current ordinance on the setbacks. He noticed on the gentlemen’s sketch, and looking at it out there, is that the current house is already not compliant with today’s existing ordinance. The Practical Difficulty is that he wants to square the house up in the northwest corner before he puts the addition on, he believed it was a 22x12 foot addition and felt it was within the same line as the current house, and would not be any closer to the setback that is currently there.

Board Member Brackon asked the applicant if the variance was not granted would they still build the second-story onto the house? Mr. Bendixen answered he didn’t know. He said it would be pretty tough. He thought they might be able to build another concrete wall in the basement to be like a new foundation. He added that it definitely would make things a lot easier to keep the current foundation, and it would make him and his wife feel better about spending a couple of months working on the current foundation. He didn’t know if that answered the question. He said they might look at another way to build a second story, and move it over, have the second wall of the second story come with 10-ft. of the line, but didn’t know how they would do that.
Chairman Durham asked Building Official Goodloe if the applicant is not successful with getting the variance, can they build on top of the house? Building Official Goodloe replied that they could build the second story they would just have to adhere to the setbacks.

Board Member Cook questioned the south side of the property closest to the chimney by the driveway, he noticed that they dug down a little further. He asked if they were planning on putting in an egress there? Mr. Bendixen replied no. That was all for the waterproofing in the basement. He added that he has been doing the work himself, renting the excavator, and ran out of time before the frost set in.

Board Member Cook stated that he was asked this question earlier about the width of the addition on the back, the additional of 12-ft. He asked if the holes there are for the footings that they have out there? He added that they go out about 16-ft. so he was trying to make sure that he understood. Mr. Bendixen said that the holes were was from when they had the septic inspector out and the Oakland County Health inspector out and they were trying to see where the septic field was. Those holes were kind of exploratory. He added that the addition would just be filling in that corner. The house is an “L” shaped now and they just want to fill in that corner. Board Member Cook asked if they were going to leave the existing bump-out that is already there, and basically, the house would be level across the back, correct? Mr. Bendixen replied correct, it would be like a rectangle. Board Member Cook asked if he would build the second story on top of that entire piece? Mr. Bendixen replied right. Board Member Cook asked what his plans were for the existing garage because now they would have maybe 2-ft. between there? Mr. Bendixen replied that the distance between the house and the garage would remain the same. Board Member Cook asked if the existing addition that is on the house, would not move at all, you are not adding 12-ft. on the back of that? Mr. Bendixen no, the original house with a little addition off the back. They would keep that footprint on that side by the garage, they would just extend it over so that the backline of that would follow over to the north. Board Member Cook asked if he had talked to his neighbor about the limb from the maple tree that is directly over the garage and would be over their addition also? Mr. Bendixen replied no, he said he didn’t notice that. Board Member Cook thought that he may want to address that if he was approved. He said it went right over the garage if they are standing on the driveway looking down.

Board Member Walker asked if they heard back from the Fire Marshal? Chairman Durham replied that they have a notice in the packet that he had no issues.

Board Member Walker asked what the “emergency vehicle road only” posted on his street? He was afraid that he was going to get a ticket driving down that road. Mr. Bendixen stated that there has been a fair amount of traffic through there. Mr. Bendixen understood that it was supposed to be a dead-end street, but people take that emergency route often. Trustee Flood said it was just lacking the emergency gate.

Mr. Bendixen stated that he wanted to mention, that from what he could see from the zoning maps, most of the houses on the street are closer than 10-ft. from the lot lines. He didn’t know if looking at the houses in the area made a difference, but it seemed like most of them were pretty close to the lot lines. Chairman Durham said that they hear that quite often but they don’t know what the rules were who was enforcing the rules then. He added that was then and this is now, and they have to go with what they have to work with today.

Moved by Board Member Walker, seconded by Trustee Flood, that in the matter of ZBA case #AB-2020-41, Levi Bendixen, 4614 Jamm Rd., 09-33-401-006, I move that the petitioner’s request for 1 variance from Zoning Ordinance #78: Article VI, Section 6.04, Zoned R-3; 1) a 3-ft. side yard setback variance from the required 10-ft. to build a home addition 7-ft. from the side property line (north) 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 that the petitioner does show a Practical Difficulty in this matter: the home was moved there 1958, and even thought they are going to
apply the present zoning requirements, these kinds of things were unknow in 1958; 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: they intend to build an addition including a second story on the house; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners: in that they have their homes situated presently as they see fit; the granting of the variance or modification will not be materially be detrimental to the public health or materially injurious to the property or to improvements in such zone or district in which the property is located: the petitioner has informed them that the only neighbor that has contacted him about it does not object to this; further, the granting of this variance would not: impair an adequate supply of light or air to the adjacent property; it would not unreasonably increase the congestion in the public streets; it would not increase any fire danger or endanger any public safety: because the fire marshal indicated that he didn't have a problem with this; it would not diminish or impair established property values within the surrounding areas: it may increase property values if the house looked different and was more sturdy; it would not in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants; he asked the petitioner to be sure that this addition and the second story pursuant to the request from the Planning & Zoning Coordinator that it would not extend any farther to the north, in the existing hole.

Discussion on the motion:

Board Member Brackon questioned if that went all the way up and not just at the base? Board Member Walker replied correct.

**Roll call vote was as follows:** Flood, yes; Durham, yes; Brackon, yes; Cook, yes; Walker, yes. Motion Carried 5-0

**B. DISCUSSION ON HEDGES ARTICLE**

Discussion only.

Board Member Walker stated that he saw the article in the November 2020 Smithsonian Magazine. He added that in the United Kingdom, Scotland, Wales, Ireland, and England, they don't allow fences or very rarely allow fences to be built. They see lots of requests in the Township for bigger fences than the current ordinance allows. He thought that fencing was going to be on the Master Plan agenda. The hedges are an alternative defense to fences. The hedges can be so high and there would be no limit. The density of the shrubs, many of them children can't get through. He was going to get it on the Master Plan agenda so they can discuss it.

Trustee Flood felt the fences were getting out of control. People keep coming back over and over again maybe there is something they need to look at in the ordinance.

Chairman Durham stated that a lot of people want a 6-ft. fence because they have a problem with the neighbor, instead of working it out with the neighbor. He was not in favor of them and he doesn't like the compound look.

Board Member Cook said that based upon some of the complaints about them saying that the bushes don't grow well, they grow too slow, he thought it would be interesting if the Township were to investigate, maybe buying some seedlings and planting them either at the back of the dog park or some section and that they would be available to the residents. If the Township could get them small and then sell them at 6-ft. for the cost of a seedling.
**C. 2020 ANNUAL REPORT**
Moved by Trustee Flood, seconded by Chairman Durham, to receive and file the 2020 ZBA Annual Report and to forward a copy to the Township Board.

**Roll call vote was as follows:** Cook, yes; Brackon, yes; Flood, yes; Walker, yes; Durham, yes. **Motion Carried 5-0**

**7. PUBLIC COMMENTS**
None

**7A. ELECTION OF OFFICERS**
Moved by Trustee Flood, seconded by Chairman Durham, to nominate Derek Brackon for the Secretary position for 2021, the nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

Moved by Board Member Cook, seconded by Board Member Walker, to nominate and re-elect Dan Durham for the Chairman position for 2021, nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

Moved by Board Member Cook, seconded by Board Member Walker, to nominate Tony Cook for the Vice-Chairman position for 2021, nominations were closed and a unanimous ballot was cast. **Motion carried unanimously.**

**8. COMMUNICATIONS**

Memo from Planning & Zoning Coordinator Harrison dated January 14, 2021, Dates which cases can be postponed. Information only.

Memo from Planning & Zoning Coordinator Harrison dated January 14, 2021, regarding ZBA Appointments.

Memo from Planning & Zoning Coordinator Harrison dated January 14, 2021, regarding possibly canceling the February 8, 2021, ZBA meeting due to a lack of agenda items.

Moved by Trustee Flood, seconded by Chairman Durham, to cancel the February 8, 2021, ZBA meeting due to a lack of agenda items. **Motion Carried.**

**9. COMMITTEE REPORTS**
None

**10. MEMBERS’ COMMENTS**
Chairman Durham said he hoped that the virtual meetings end soon and welcomed Secretary Brackon.

Trustee Flood welcomed Secretary Brackon and the new alternate Board Member Kerby. He thanked Lucy Koscierzynski for her dedication for the years that she served on the ZBA.

**11. ADJOURNMENT**
Moved by Trustee Flood, seconded by Chairman Durham to adjourn the meeting at 7:40 pm. **Motion Carried.**
Respectfully submitted,

Debra Walton  
Planning & Zoning Coordinator  
Charter Township of Orion  

February 22, 2021  

Zoning Board of Appeals Approval