CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
***** MINUTES *****
REGULAR MEETING – MONDAY, April 25, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 25, 2022, at 7:00 pm at the Orion Township Community Center, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Tony Cook, Vice-Chairman
Diane Dunaskiss, Board member
Mike Flood, BOT Rep to ZBA

ZBA MEMBERS ABSENT:
Don Walker, PC Rep to ZBA

CONSULTANT PRESENT:
David Goodloe, Building Official
Mr. Kelly, Township Attorney
Mark Landis, Township Engineer

OTHERS PRESENT:
Gene McNabb
Eugene McNabb
Marc McClintock
Chris Cousino

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

2. ROLL CALL

3. MINUTES
A. 04-11-2022, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 04-11-2022 minutes as presented.

Roll call vote was as follows: Cook, yes; Flood, yes; Dunaskiss, yes; Durham, yes. Motion passes 4-0.

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

Roll call vote was as follows: Cook, yes; Flood, yes; Dunaskiss, yes; Durham, yes. Motion passes 4-0.

5. ZBA BUSINESS

A. AB-99-02-2022, Dan's Excavating Inc.; 2985 Judah Rd. (parcel #09-32-400-056); and unaddressed land that is that portion of lot 11 of Mt. Judah Farms south of 2985 Judah Rd. excluding the portion of lot 11 of Mt. Judah Farms that is part of Breckenridge Orion
Condominium (parcel #09-32-400-096; and unaddressed land that is one (1) parcel west of 2985 Judah Rd. (parcel #09-32-400-095); and 3011 Judah Rd. (parcel #09-32-400-063).

Mr. Chris Cousino, representing the applicant, introduced himself to the Board members. He stated that they are requesting the closure of this permit and he summarized the variance request. He reviewed Mr. Landis’ report and has no further questions about it.

Chairperson Durham asked if the silt fence was gone.

Mr. Cousino replied no; Mr. Landis had requested that this be removed as part of the full close out.

Mr. Landis, OHM, summarized his review report dated April 21, 2022. The closure packet did include a mining closure plan last reviewed December 6, 2021. The plan reflects the current condition of the site. There is no proposed earth work associated with this application and he commented on the site work that has been done in preparation. The silt fence that is out there is no longer needed so they are asking that it be removed as a condition of close out. The steep southern slope has been regraded to an approximate slope of 1:4 and there were minor drainage swales established along the easterly property line and one from the retention pond toward Judah Road. Since the grading operations are complete, the applicant is not proposing to renew their haul route permit. The Road Commission will now be maintaining Judah Road without the assistance of the applicant. The applicant has established and constructed a retention pond that has been sized to accommodate two 100 year storms on the site. He described a culvert on the site which picks up some small off site drainage area to the east. There is also a route established that would carry water to Judah Road from the pond to prevent water from backing up through the culvert off site. In conclusion, it is their opinion that the application and materials submitted are in substantial compliance with the Township ordinance and engineering standards and they recommend the following items be a condition of approval: all silt fence shall be removed from the site and vegetation be established within the newly mulched blanketed areas.

Trustee Flood confirmed that the applicant is not going before the Road Commission to renew the haul permit.

Mr. Landis replied that this is his understanding.

Trustee Flood commented that the people on Judah Road are tired of the trucks ruining their summer and will be pleased about this.

Chairman Durham asked Building Official Goodloe if there is anything that the Board should be aware of that has not already been discussed.

Building Official Goodloe replied not that he is aware of.

Chairman Durham asked for public comment.

Eugene McNabb, 2981 Judah, provided pictures to the Board. He commented on the positioning of the culvert and how it was installed in the wrong place. He commented on his property and the subject property and the issues with drainage that he has experienced.

Chairman Durham asked for information about “the pit”.

Mr. McNabb stated that the whole area is “the pit”. He explained the second picture showing that there were more than three people on a walk through and according to the attorney, whenever there is more than three people on a walk through, there should be an open meeting. He was not notified and he was not there.
Chairman Durham stated that he can only comment on the 9:00 am pit walk. He stated that he was there, Board member Dunaskiss was there and a representative from OHM was there to answer questions. There were only two board members there.

Mr. McNabb stated that Trustee Flood was there at the meeting.

Trustee Flood stated that he was there with Tony Kerby and Mr. Goodloe. There were not three Board members there at the same time. He stated that there was not a quorum present in his party.

Chairman Durham asked if there was anything additional.

Mr. McNabb commented on Ordinance #40 in 1997 and the ordinance update in 1998 regarding regulating the pit. He also commented on historical details about the gravel pit.

Chairman Durham stated that the Board’s decision tonight is regarding the ordinance and conditions as they exist today. He notified Mr. McNabb that he would have five more minutes to speak.

Mr. McNabb commented that it is up to the Board how long he speaks. He stated that he is challenging the Board on that question.

Trustee Flood stated that Chairman Durham is following the by-laws of the Board.

Mr. Kelly answered yes.

Chairman Durham concurred.

Mr. McNabb asked Chairman Durham to find the map that came from the Township.

Mr. McNabb asked why his property was on that map.

Chairman Durham replied that he doesn’t see where it stops and starts.

Mr. McNabb replied he can see it on the map. He continued commenting that they are using his property today according to this map.

Chairman Durham stated that this is under current litigation and the Board cannot speak to a matter that is being litigated.

Mr. McNabb stated that he is going from the map; he is not talking about the court. His property is being used according to the map. He commented on the lots included in the map.

Mr. Gene McNabb, Orion Township, commented that Chairman Durham is being hostile. He commented that he asks questions and never gets answers. He asked why the pictures were not put on the screen for everyone to see. He requested a report from OHM and they got an answer that there was no report available and obviously there was a report. They could not look at it prior to the meeting. He asked what the elevation was upon closure.

Mr. Landis stated that the elevation of the property varies and he explained. There is not a consistent 10:60 across the site.

Mr. McNabb asked what the closure of the pit does.

Chairman Durham stated that when the pit application is closed, Dan’s does not reestablish their haul route and all the sand and mining will be done and the truck traffic will be gone.
Mr. McNabb stated that the pit gets closed and they sell the property and there will some rulings made. He asked where they go after that. He asked if it gets put in holding until all of the proceedings are over.

Chairman Durham stated that if the Board votes to close the application, it will move on and further measures may end up back with the Zoning Board of Appeals as necessary.

Mr. McNabb asked when the haul permit expires. He asked if one of the requests was an extension to allow them to complete items. If they are extending it and the haul permit has expired, that is another issue. He asked when the application is closed out, it will be conducted as a residential piece of property.

Chairman Durham replied that this is his understanding.

Building Official Goodloe stated that once it is closed out, it is residential property and will be held to standards as any other resident.

Mr. McNabb confirmed that there would be no commercial activity.

Chairman Durham replied no and clarified mining or hauling and truck traffic.

Mr. McNabb stated that it is not as favorable for Dan’s Excavating and the Township as it used to be. He cautioned the Board to put some safeguards with the property. If they sell the property, they get rid of liability and no longer can go on the property and fix it.

Trustee Flood moved, and Board member Dunaskiss supported, in the matter of AB-99-02-2022, Dan’s Excavating Inc.; 2985 Judah Rd. (parcel #09-32-400-056); and unaddressed land that is that portion of lot 11 of Mt. Judah Farms south of 2985 Judah Rd. excluding the portion of lot 11 of Mt. Judah Farms that is part of Breckenridge Orion Condominium (parcel #09-32-400-096); and unaddressed land that is one (1) parcel west of 2985 Judah Rd. (parcel #09-32-400-095); and 3011 Judah Rd. (parcel #09-32-400-063) to approve the Dan’s Excavating and CP Ventures application for closure of Ordinance #99 Balancing and Excavation Permit for 2985 Judah Rd. (parcel #09-32-400-056); and unaddressed land that is that portion of lot 11 of Mt. Judah Farms south of 2985 Judah Rd. excluding the portion of lot 11 of Mt. Judah Farms that is part of Breckenridge Orion Condominium (parcel #09-32-400-096); and unaddressed land that is one (1) parcel west of 2985 Judah Rd. (parcel #09-32-400-095); and 3011 Judah Rd. (parcel #09-32-400-063) and direct the Township administrator and engineer secure completion of all ordinance requirements for the proper restoration and close out of the permit consistent with the approval plan and when appropriate, direct the Township administrator to terminate or release any applicable bond or other security. This is conditioned on the OHM letter dated April 21, 2022, all silt fences shall be removed from the site and vegetation established within the newly mulched blanketed areas.

Vice-chairman Cook asked about the establish vegetation part of the motion.

Mr. Landis commented that he is referring to the mulch blankets which have straw and hay woven into them and they are made to protect the newly established vegetation underneath them. Those areas are what were referred to in OHM’s letter. The established vegetation has not grown up through them yet. This is a condition that they were asking for.

Trustee Flood stated that this condition was in the OHM letter and that he referred to in his motion.

Roll call vote was as follows: Dunaskiss, yes; Cook, no; Flood, yes; Durham, yes. Motion passes 3-1.
B. AB-2022-13, Marc McClintock, Vacant Parcel 1 Parcel north of 484 Cushing Street, 09-03-278-031

Board member Dunaskiss stated that she would like to recuse herself from the case because she is within 300 feet.

Trustee Flood moved, supported by Chairman Durham, to recuse Board member Dunaskiss from this case because she is within 300 feet of the subject property.

Vote was as follows: Cook, yes; Flood, yes; Durham, yes. Motion passes 3-0.

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3

1. A 3-ft. front yard setback variance from the required 30-ft to construct a new home with an attached garage 27-ft. from the front property line (road side).

2. A 4-ft. side yard setback variance from the required 8-ft. to construct a new home with an attached garage 4-ft. from the side property line (north).

3. A 9.62% lot coverage variance above the allowed 25% for a total lot coverage of 34.62%.

Mr. Marc McClintock introduced himself to the Board and explained the variance request.

Chairman Durham commented that it was if the applicant was trying to fit a large house on a small lot instead of trying to build a smaller house to fit the lot he has.

Mr. McClintock stated that he is trying to build a 2700 square foot home which is consistent with homes in the area. He has preliminary plans for the home.

Trustee Flood asked if he is lot 1 or lot 4.

Mr. McClintock answered lot 4. He is the one just south of the road to the island.

Trustee Flood asked if the road was an easement or part of the property.

Mr. McClintock answered he doesn’t own the road.

Trustee Flood commented that the lake lots are tough and every house on the road has a garage that is close. The 4 foot setback would abut the easement. The Fire Marshall's letter has no concern with this request. This is not self-created because those lots were created a long time ago and the petitioner wants to build something to today’s standards. The practical difficulty is the lake lot and the fact that it is nonconforming.

Mr. McClintock stated that he choose to keep the 8 foot on one side. There is a property on this side and he wanted to leave room in case this area needs to be serviced. The 3 foot setback is smaller than some requests. He pointed out other properties which have variances.
Vice-chairman Cook asked about question #7 on the application. He asked what came first, the property or the plan.

Mr. McClintock replied the property, the plan is in motion.

Trustee Flood asked if the petitioner was aware that he would have to have a unanimous vote in order to pass a variance and if not, he has the opportunity to postpone the case until he has a five member board.

Mr. McClintock stated he knows that other variances which are larger than what he is asking have went through.

Trustee Flood answered that each case is individual and this request is not out of line.

Building Official Goodloe referred to the plot plan drawing, page 7. One concern he has is when you build so close to each other, when you transfer a footing, it goes out on a 45 degree angle. Sometimes there can be a compromising of each other’s footings. He is concerned about the grade of the property and where the water is going to go and he explained.

Chairman Durham confirmed the location of the lot. He asked Building Official Goodloe if he was talking about water on the structure.

Building Official Goodloe replied yes but typically they do not have a water runoff plan. The code says you have to run your property 6 inches and 10 feet.

Chairman Durham asked the petitioner if he ever heard that the lot was not buildable.

Mr. McClintock answered no.

Chairman Durham commented that the petitioner needs to decide if he wants to postpone because he needs a majority vote.

Mr. McClintock offered to move the house and make 4 foot setbacks on each side. He could keep the same size house but he could shift it.

Chairman Durham asked if he was starting construction immediately.

Mr. McClintock answered no.

Chairman Durham stated that if he is going to vote on something, he would like to see it how it will be.

Trustee Flood stated that is would have to be re-noticed if it were changed.

Building Official stated that the 4 foot variance request is on the easement side. There is still a fire rating requirement on that wall.

Vice-chairman Cook explained his concerns about changing the plan this evening and asking for a vote on this changed plan. There is not a concern with time because the petitioner has indicated that he is not building immediately.

Mr. McClintock stated that he is asking for nothing different than what other homes have received in that 300 foot radius.
Chairman Durham explained the options to the petitioner.

Building Official Goodloe commented that he is now seeing discrepancies in elevations on the plans and he explained how this doesn't accurately show how the grade will look.

Chairman Durham reiterated the options to postpone to the petitioner.

Mr. McClintock asked when he could come back before the Board.

Chairman Durham provided the possible dates. He added that the petitioner should consult with the Building Department too.

Mr. McClintock stated that he would like to come back on May 9, 2022.

Vice-chairman Cook moved, and Chairman Durham supported, in the matter AB-2022-13, Marc McClintock, Vacant Parcel 1 Parcel north of 484 Cushing Street, 09-03-278-031 that the petitioner has requested that his request for seeking 3 variances from Zoning Ordinance #78, Article VI, Section 6.04, Zoned R-3 including a 3-ft. front yard setback variance from the required 30-ft to construct a new home with an attached garage 27-ft. from the front property line (road side), a 4-ft. side yard setback variance from the required 8-ft. to construct a new home with an attached garage 4-ft. from the side property line (north) and a 9.62% lot coverage variance above the allowed 25% for a total lot coverage of 34.62% be postponed until a date certain being May 9, 2022.

Roll call vote was as follows: Flood, no; Cook, yes; Durham, yes. Motion failed.

Trustee Flood moved, and Vice-chairman Cook supported, in the matter AB-2022-13, Marc McClintock, Vacant Parcel 1 Parcel north of 484 Cushing Street, 09-03-278-031 that the petitioner be postponed until a date certain being May 23, 2022.

Roll call vote was as follows: Cook, yes; Flood, yes; Durham, yes. Motion passed 3-0.

Board member Dunaskiss re-joined the Board members.

C. AB-2022-10, Amended Zoning Board of Appeals By-Laws

Chairman Durham explained that the Board has had ample opportunity to review the By-Laws.

Trustee Flood agreed.

Trustee Flood moved, and Board member Dunaskiss supported, to adopt the Amended Zoning Board of Appeals By-Laws draft dated 3/31/22 and to forward to the Township Board for approval.

Roll call vote was as follows: Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 4-0.

6. PUBLIC COMMENTS

Mr. Eugene McNabb commented on how long the Board has previously let a resident speak on an item. He also commented on the chairman's role on the Board and the request for public comment during a specific item on the agenda.
Mr. Gene McNabb expressed his dissatisfaction with the condition of Silverbell Road. He stated that the first case on this meeting’s agenda was handled in a hostile manner and the second case was handled differently. The Township needs to pass a rule treating everyone the same.

7. COMMUNICATIONS

8. COMMITTEE REPORTS

Trustee Flood updated the Board members on the last Fence Ad-Hoc meeting that was held and the next steps in the process.

9. MEMBER COMMENTS

Vice-chairman Cook commented that he drives Silverbell Road every morning.

Trustee Flood commented on the last Ordinance #99 permit that was closed this evening and how the State legislature is trying to take this ordinance over. He commented that it is an honor to serve with his fellow Board members because they have to tackle tough issues.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:27 pm. Vote was as follows: Durham, yes; Cook, yes; Flood, yes; Dunaskiss, yes. Motion passes 4-0.

Respectfully submitted,

Erin A. Mattice
Recording Secretary