The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 26, 2021, at 7:00 pm at the Orion Township Community Center, 1335 Joslyn Road, Lake Orion, Michigan 48360.

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

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

ZBA MEMBERS ABSENT:
None

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

OTHERS PRESENT:
Gary McHalpine Wade Sullivan Dave McCaffrey
Amy McCaffrey Justin Brantley

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

2. ROLL CALL
As noted

3. MINUTES

A. 4-12-2021, ZBA Regular Meeting Amended Minutes
Moved by Trustee Flood, seconded by Vice-Chairman Cook, to change date for AB-2021-05 postponement motion from June 7, 2021 to June 14, 2021. Motion carried
*the date of the postponement was further changed by staff, and re-advertised, to May 24, 2021.

Moved by Trustee Flood, seconded by Vice-Chairman Cook, to approve the minutes as amended; page 10 change “PC” to “ZBA”, page 12 change “flooding” to “plugging”, page 23 change “puts a question” to “call for the question”.

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Motion carried.

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

Moved by Board member Walker, seconded by Chairman Durham to approve the agenda as presented.
Motion carried.

5. ZBA BUSINESS

A. AB-99-02-2021, 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 #09-32-400-059); and 3011 Judah Rd. (parcel #09-32-400-063)

Chairman Durham read the petitioner’s request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation from 7:00 am to 7:00 pm.

Chris Cousino, representing Dan’s Excavating, introduced himself to the Board. They are here requesting a renewal of the permit to allow them to close out the permit. The site is substantially completed with only topsoil, seeding and mulching to be finished. He is working with Mr. Landis and his office on finalizing grading. This extension is to allow them to import topsoil, final grade, seed and mulch and close out the permit.

Chairman Durham asked when they would be done.

Mr. Cousino replied two to three months depending on availability of topsoil and other concerns like weather.

Mr. Landis, Township Engineer, summarized his review letter dated April 16, 2021. He reviewed the existing topo survey and proposed mining plan that was last revised April 13, 2020. The majority of the grading is completed on site. He described site conditions that he observed during his visit. The steep southern slope down to the ponds has been regraded to a maximum of 1 on 4 slope as shown on mining plan. Once the grading is complete, the applicant will need to place topsoil, seed and mulch and restore the site in its entirety. The retention area shown on the mining plan has been constructed but some fine grading still might be necessary. He stated that they will make sure the applicant has a well-defined swale along the east property line which will keep the drainage on the site. In his opinion, the applicant and submitted materials appear to be in substantial compliance with the Township ordinance and engineering standards. He recommends that the following be conditions of the approval: 1) the applicant should furnish the Township a copy of the haul route permit once it is renewed with RCOC, 2) per Section 7,
L. Ordinance 99, the applicant shall note the tracking and dust control issues will be monitored through the year, 3) per Section 10, a log of materials shall be maintained and 4) construction debris shall be removed from the recently placed fill and removed from the site. The applicant is requesting a variance for hours of operation from 7 am to 7 pm instead of the ordinance standard 7 am to 5 pm.

Chairman Durham stated that the request for this year seems to be similar to previous years. He asked if it is fair to say that this is a light duty rewrite of what had been done in previous years.

Mr. Cousino replied yes. It is a formality of the extension of time to allow them to finish the project.

Chairman Durham stated that he visited the property and there was a representative from Dan’s Excavating there. He stated that there are 100 trucks listed on the application and he asked how much it would take to fill 100 trucks.

Mr. Cousino stated that the application information was a carryover from last year. This was their request last year to expedite the closure. This was incorrectly stated on this year’s application. The 7 am to 5 pm is more than enough time for them. He is comfortable with reducing the hours to 7 am to 5 pm.

Trustee Flood stated that last year the time was 7 am to 5 pm Monday through Saturday, no Sunday work. He is glad that this is being done. It has been there 60 years.

Board member Walker stated that the applicant said 100 trucks a day and does he think that they will be finished in 2-3 months.

Mr. Cousino replied that he does not see that as being the volumes. As topsoil becomes available, they will take a reasonable amount of time to import the top soil. They do not have the availability of 100 trucks worth of material per day. He cannot give a finite number of trucks but does not want the Board to get caught up in the number. They want to close out the permit as soon as possible.

Board member Walker stated that the problem is the citizens since they anticipated that they would have been done with this already. When you look at the application and citizens read it, they think, it is just like last year but the applicant is saying that it is not like last year.

Mr. Cousino stated that it won’t be like last year because the volumes are done. The site has been filled with the exception of importing the topsoil to cap off the site and to do a final seed and much.

Board member Walker asked how many trucks a day he would guess are needed.

Mr. Cousino stated that it is difficult for him to provide a number.
Chairman Durham asked Attorney Kelly about the paperwork in front of the ZBA since it is different than what the applicant is planning to do.

Attorney Kelly stated that he doesn’t see it as a problem. There is a permit issued by the Building Department after this meeting so as long as the motion reflects the correct hours, that is what will be put in the permit.

Trustee Flood asked if they need to have a haul route from the Road Commission and all of the previous information would still have to be in the motion.

Attorney Kelly replied that they have a bond and an escrow amount set aside. The motion would be to approve the permit per the conditions with the exception of what the applicant has already conceded, 7 am to 5 pm and any other concessions based on the discussion this evening.

Chairman Durham asked for public comment.

James Swoish, 2741 Judah Road, commented on his opposition to the variance request based on the length of time for the project and it still isn’t finished.

Chairman Durham commented that he understands Mr. Swash’s concerns. He has been on the site for many years in a row and it is now to the point where it is nearly done. He stated that the Board wants it to be done too.

Mr. Terry Moran, 2740 Judah Road, expressed concern that the project is still continuing. He agreed with Mr. Swash’s comments. He asked why they should believe the Board now that the project is almost done since they have said it before.

Chairman Durham reiterated the fact that when he visited the site, he personally viewed how far along the project was and how close it is to completion.

Mr. Moran stated that he doesn’t care what happens to the site; he wants it shut down and doesn’t want any more trucks back and forth. The Board has never made any attempt to restrict the types of trucks going in and out. Mr. Moran continued expressing his frustration at the length of time the project has taken.

Mr. Eugene McNabb, 2981 Judah, asked if Ordinance 99 was a legal document and if the permit issued in 1998 was a legal document? He asked if what the court handed down to the Township in reference to how to operate the pit is a legal document?

Trustee Flood stated that the Township is currently in litigation and his advice is to express “no comment” and leave it up to the Township Attorney, Dan Kelly, because it is a pending matter.

Attorney Kelly concurred.

Mr. McNabb commented that the permit is still enforced and during 2021, the Township requested what the pit consists of which consisted of 9-14. They paid OHM $4,800 to prove what
the pit was and OHM said it was 9-14 and this is the permit. Trustee Flood seconded the motion so he is aware of the situation. Now, how can they renew a permit if they do not have a permit and they are not following through with the original permit anyway? He doesn’t care if it is in court or not because the Board’s obligations are separate. The Board’s obligation is to follow the permit as a governing body and lot 9 and 10 is on that permit. He read a portion of the permit which said that all property owners have to sign in order for the property owner to get a permit. He stated that his property is on this permit so legally the property owner cannot be given a permit without my signature and if they do, this is a violation of the law. He asked if someone puts something down on a permit, does the Building Department have the ability to say they are not going to enforce what the ZBA says. OHM says there was no written violation on the pit and this is right. But, in the litigation that is currently being considered, two inspectors are being charged for not taking care of violations. This meeting today is not in court. OHM showed a picture of where the culvert is. Three sides of this culvert is 5 foot high and the material on both sides of the culvert is material that has been pushed onto the pit from his property. He stated that there are two different ordinances, a land ordinance that says it has to be a 4:1 grade and it is not there. Ordinance 99 also says it has to be a 4:1 grade. So, this cannot be approved based on two ordinances. He described the placement of the culvert and his concerns about the grading around the culvert. He stated that his property has been on the permit all of these years and none of the Board members have even walked on his property. He stated that in 2008, the ZBA took off his property illegally and this mistake has never been corrected for all of these years. In 2021, the permit included his property and this is the permit that they are working on renewing at this meeting but they cannot renew it because he has not signed it. This has nothing to do with current litigation. He described the site conditions. It is a disgrace that the Township is more concerned with Dan’s and free dirt than the people that live there. They are talking about how nice the property is but are not considering his property which is in worst shape than the pit is.

Gene McNabb, Orion Township, provided a list of questions for the Board members. He expressed some concerns about the topography and drainage. His father’s property becomes a mud pit every time it rains and this needs to be addressed. He has brought it up for the past three years and nothing happens. He asked if the items in the OHM report are conditions of the permit or an OHM recommendation.

Engineer Landis replied that this is up for the Board to decide.

Chairman Durham asked if the haul permit expires, would the applicant have to renew it.

Applicant replied yes.

Mr. McNabb asked if they were going to run trucks from both ends of the road from Baldwin and Joslyn to alleviate the trucks all coming in one way. In the conclusion of OHM’s report, there is a statement about taking pictures of all trucks which has never been done and they are still concerned about what is in that pit. He asked about the culvert and where it drops off to his father’s property and if the nearby retention pond will pipeline onto his father’s property. Mr. McNabb provided a copy of written questions to Chairman Durham and proceeded to read the questions on the document.
Chairman Durham asked for any additional public comment.

No additional public comment was heard.

Chairman Durham asked the applicant about the haul route.

Mr. Cousino stated that it was consistent with years past where it has come off Baldwin Road.

Chairman Durham stated before they also went all of the way to Joslyn Road when Baldwin Road was under construction. He asked other Board members for their knowledge about the haul route.

Trustee Flood stated that last year they put in the motion Joslyn and Baldwin but the Road Commission has the final say on the haul route.

Chairman Durham asked the applicant if he had any comment about the issues being expressed tonight.

Mr. Cousino stated that he understands the residents. As far as shutting it down, they are at the point where they have to stabilize the site. If they don't stabilize the site, they will have soil erosion issues. They are applying for a renew of the existing permit. He is aware of the potential conditions and they are able to comply with the conditions outlined in the OHM report.

Vice-Chairman Cook asked how many yards of topsoil they will have to bring in.

Applicant replied 2.5 to 3 inches over the site; 10,000 to 15,000 yards would be the estimate.

Vice-Chairman Cook stated that they have enough trucks but the question is where are they going to get the topsoil?

Mr. Cousino replied yes, it is availability.

Vice-Chairman Cook commented that there is a site at Silverbell and M-24 that sell topsoil and there is another one on Brown Road.

Mr. Cousino replied that now he knows.

Vice-Chairman Cook stated that if the permit was issued for a seven month period, that would be sufficient to get the project done.

Mr. Cousino replied that he hates to bring up constraints. They experienced shut downs due to COVID-19 last year and he would prefer not to be under constraints. They have showed good faith in getting to the point they did last year. He wants it done and they are motivated to get it done and he doesn’t see any reason why they couldn’t get it done within that timeframe but they never know what tomorrow brings.
Vice-Chairman Cook asked if they were still not completed in 2022 and they were again before this Board, would it then be an appropriate time to ask the reasons why not.

Mr. Cousino answered yes.

Vice-Chairman Cook stated that he doesn’t understand why they could not commit to 7 months since they have the equipment and they have accessibility to topsoil.

Mr. Cousino replied they have not imported material in quite some time and they need to work with OHM to establish the final grades before they can topsoil.

Vice-Chairman Cook asked Engineer Landis if a shorter window than 12 months acceptable.

Engineer Landis stated that the applicant has provided an as built survey but they haven’t had an opportunity to review it yet. Pending this review, they would then give the go ahead for topsoil of the site. He anticipates that this will take place before winter but he cannot commit to that. He thinks that everything could be done by the end of this year.

Attorney Kelly replied that it is an annual permit and the permit if issued, says that there will be no impact to the health and safety of the residents. He stated that he does not think there is a basis for the Board to reduce the annual permit from 12 months to 7 months. If they are going to issue it for 7 months, then it should apply for 12 months. The Board can put conditions on the permit and there is no authority in the ordinance to grant anything less or more than that time.

Board member Walker asked how do they put pressure on the Road Commission so that they just came from Baldwin because that appears to alleviate some issues. It would eliminate the impact on some of the residents.

Attorney Kelly stated that they are at a point where there is no filling going on; it is just the topsoil which is to the benefit of the Township to get this closed. Whatever number of trucks is necessary, that is all that is happening and the quicker they get that done, the quicker they get it closed down. If the applicant can come off of Baldwin and this is more acceptable, he should consider that. The permit being granted this year is in the benefit of the Township and the residents.

Chairman Durham asked Engineer Landis if he feels they are motivated to make this happen.

Engineer Landis replied yes. They have been working separately on a close out plan and have worked with surveyors to show that it is in conformance with the mining plan. They are checking to make sure there is sufficient drainage and that their design does not promote backup in the culvert.

Secretary Brackon asked the applicant if he could concede that the trucking routes would only be Baldwin.
Mr. Cousino stated that it is conditioned upon the Road Commission but they will bring it up and make the proposal of exclusive access off of Baldwin Road to them.

Secretary Brackon asked about the number of trucks. Would the applicant be willing to reduce that?

Mr. Cousino stated that he would prefer not to cap it.

Secretary Brackon asked if they would have 100 trucks.

Mr. Cousino stated that he doesn’t see a scenario where they would have as many as 100 trucks. They are not producing that volume of material to need 100 trucks.

Secretary Brackon asked then why not concede fewer trucks.

Mr. Cousino replied that it is a dartboard number that is not relevant. It is more a case of trying to complete the project and getting it wrapped up.

Vice-Chairman Cook stated that they are talking roughly 340 trucks to get 10,000 yards of topsoil there. No matter what the Road Commission says about accessibility, the company can say that they will only come off of Baldwin Road. Is this something he could concede?

Mr. Cousino replied yes, as long as it is an option approved by the Road Commission.

Board member Walker referred to the list of questions given to the Board by Mr. McNabb. He asked if the Engineer could address them.

Engineer Landis stated that regarding the slope, the as built survey that was provided does show that the site has been graded to a 1 on 4 slope. At the extreme east property line, it is 1 on 3. To match that, at some point you have to have 1 on 3 on your site. There is a very small portion of the applicant’s site that is 1 on 3 where it ties into the grades at the property line.

Chairman Durham asked who was going to do the final survey.

Engineer Landis replied that this is up to the applicant to provide this.

Trustee Flood stated that the Road Commission and Weighmaster determined the haul route.

Engineer Landis referred to the list of Mr. McNabb’s questions and stated that he could not answer any of the other questions.

Chairman Durham stated that it is his opinion that it would be a mistake to shorten the permit’s length because what if they get a month of rain, etc. He would personally have a difficult time supporting any more extensions of this permit. He urged the applicant to do what it takes to make this happen.
Mr. McNabb stated that to close a pit, the applicant must adhere to a 4 to 1 slope which is in the ordinance. In the corner of the property, they cannot achieve a 4 to 1 slope and he is concerned about that. This is not the proper procedure to close the pit. As a citizen, what is the recourse to make sure that the applicant adheres to the proper closing procedure per Ordinance 99.

Vice-Chairman Cook asked Engineer Landis if this information was correct about the slope needed to close the permit.

Engineer Landis replied that he would have to read the exact language of the ordinance but it is common practice to match existing grades at property lines.

Chairman Durham stated that this is why he asked about the final survey requirements.

Engineer Landis replied that the applicant’s engineer and surveyor who are licensed would prepare those documents.

Trustee Flood moved in Case #AB-99-02-2021, Dan’s Excavating Inc., 2985 Judah Road, (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 #09-32-400-059); and 3011 Judah Rd. (parcel #09-32-400-063) to grant renewal of an Ordinance 99 Permit for sand and gravel mining, earth excavation and or filling and earth balancing with the hours of operation from 7:00 am to 5:00 pm Monday through Friday and 7:00 am to 5:00 pm Saturday, no operations on Sundays or Holidays, because that is the renewal of a permit to finally get this permit completed and closed out per Ordinance 99 of the filling and earth balancing. The number of vehicles are restricted to 100 vehicles per day as has been on the annual permit and the Board is requesting that the Oakland County Road Commission and Weighmaster allow at least 50/50 entrance and exits on both Joslyn Road and Baldwin Road.

Chairman Durham read a letter opposing the variance from Linda Lovins, 3165 Judah Road, because of concerns regarding noise from the trucks, trucks damaging the gravel road, dust being stirred up by trucks and safety concerns about the trucks going too fast where children walk to and from the bus stop.

(continued Motion by Trustee Flood)
Applicant shall address condition 1-4 as presented in the OHM review letter dated April 16, 2021. Applicant must keep bonds current. Applicant must obtain updated haul route from the Road Commission which expires in June 2021 and provide a copy to the Township. Seconded by Board member Walker.

Trustee Flood amended motion to say, applicant would only use access from Baldwin Road if the Road Commission and the Weighmaster agree. If this is not agreed upon, applicant will have a haul route with 50/50 entrance and exits on both Joslyn Road and Baldwin Road. Also, applicant must continue to carry the insurance currently in existence.
Roll call vote was as follows: Durham, yes; Walker, yes; Brackon, yes; Flood, yes; Cook, yes. Motion Carried 5-0.

B. AB-2021-03, Justin Brantley, 2191 Pondview, 09-04-126-022 (postponed from 3/22/2021 meeting)

Chairman Durham read the petitioner’s request as follows:
The petitioner is requesting 3 variances from Zoning Ordinance #78.

Article V, Section 5.04, Zoned SE
   1) A 10-ft. side yard setback variance from the required 20-ft. to build a pole barn 10-ft. from the side property line (west)

Article XXVII, Section 27.02 Lot size 1 to 2 Acres
   2) A 773-sq. ft. variance above the allowed 1,000-sq. ft. Maximum Floor Area of all Detached Accessory Buildings, to build a 1,200-sq. ft. pole barn in addition to a 573-sq. ft. above ground swimming pool.

   3) A 937-sq. ft. variance above the allowed 1,500-sq. ft. Maximum Floor Area of all Accessory Buildings to build a 1,200-sq. ft. pole barn in addition to a 664-sq. ft. attached garage and a 573-sq. ft. above ground swimming pool for a total Maximum Floor Area of all Accessory Buildings of 2,437-sq. ft.

Mr. Justin Brantley introduced himself to the Board members. He stated that he moved the building between two banks of trees but will not be able to be viewed by the neighbors.

Trustee Flood complemented the petitioner because he reduced the barn by one half and eliminated the setback variance request. He appreciates him working with the Board.

Vice-Chairman Cook asked if he has spoken to the neighbors located to the south whose deck will overlook the new structure.

Mr. Brantley stated that he spoke to the property owner’s son.

Chairman Durham commented that the applicant has appeared to work with the Board’s comments and his neighbors to make this work.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Board member Walker moved in the matter of AB-2021-03, Justin Brantley, 2191 Pondview, 09-04-126-022 to approve the following variances: Two variances from Zoning Ordinance #78, Zoned SE, Article XXVII, Section 27.02 Lot size 1 to 2 Acres as follows:
A 173-sq. ft. variance above the allowed 1,000-sq. ft. Maximum Floor Area of all Detached Accessory Buildings, to build a 600-sq. ft. pole barn in addition to a 573-sq. ft. above ground swimming pool.

A 337-sq. ft. variance above the allowed 1,500-sq. ft. Maximum Floor Area of all Accessory Buildings to build a 600-sq. ft. pole barn in addition to a 664-sq. ft. attached garage and a 573-sq. ft. above ground swimming pool for a total Maximum Floor Area of all Accessory Buildings of 1,837-sq. ft.

The petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts that show the petitioner does show the following practical difficulty: the petitioner was before the Board some time ago with a larger request and the petitioner listened to the Board comments and came back and modified his request. The lot is a large lot zoned SE, 1-2 acres, it is located in an area where the neighbors were not happy with the placement originally resulting in the petitioner moving the structure and everyone now seems to be happy with the revised plans. The following are exceptional and extraordinary circumstances or conditions applicable to the property that do not involve properties in that same district or zone: it is an extremely large property and the way it is positioned, this placement fits into a better scheme of things. The variance is necessary for the preservation and enjoyment and substantial property right possessed by other properties in the same zone and area and the granting of this variance or modification will not be materially detrimental to the public welfare because where it is situated is off the beaten path. The granting of this variance would not impair and adequate supply of light and air to adjacent property, and would not unreasonably increase the congestion of public streets or increase the danger of fire or endanger public safety, or any other impairment of the public health, safety, comfort, morals or welfare of the inhabitants of the township. Supported by Chairman Durham.

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

C. AB-2021-10, Gary McHalpine, 2710 Wareing Dr., 09-20-376-010 (postponed from 4/12/2021 meeting)

Chairman Durham read the petitioner’s request as follows:
The petitioner is requesting 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0- ft. from the property line along Baldwin Rd.
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.
Mr. Gary McHalpine introduced himself to the Board members. He provided a history of living in this neighborhood. He stated that Baldwin Road has become a major artery and the noise levels have increased. The purpose of the fence is to temper the noise coming from Baldwin Road and also there is a safety path between the road and his lot. The fence would provide some privacy from the safety path.

Chairman Durham commented that there will be no fences between houses.

Mr. McHalpine concurred.

Trustee Flood commented that Mr. McHalpine has been here 53 years and he has seen a lot of changes in this area.

Chairman Durham asked for public comment.

No public comment was heard.

Trustee Flood moved in Case AB-2021-10, Gary McHalpine, 2710 Wareing Dr., 09-20-376-010 to approve the petitioner’s request for the 3 non-use variances from Zoning Ordinance #78 – Zoned R-2 as follows:

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Baldwin Rd.
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.

This variance is granted conditioned upon the setback variances from the property lines to the north and south of said property strictly for the 6 foot privacy fence that will run alongside Baldwin Road and existing safety path only. Because the petitioner did demonstrate that the following standards for variance have been met in this case and set forth facts show a unique characteristic of this property is having two front yards, one facing on Wareing Drive and one facing Baldwin Road, widening of Baldwin Road and the complete connection of the safety path system starting south of I-75 and running north to Indianwood Road. The following are exceptional extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone. Throughout the last several years traffic volume and admitted road noise has tremendously increased due mainly to the residential expansion and increase both to the south and north of this older well-established subdivision community. The variances are 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 findings of fact. Due to the above previously mentioned findings of fact, the property owner can no longer enjoy peace, tranquility as well privacy and safety that they once possessed. The granting of the variance and 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 of fact, the Keatington Home Owner’s Association Architectural Review letter date stamped received March 10, 2021 has formally accepted proposal with the exceptions as noted: ZBA Approval of requested variances and fence to be constructed of the same material and style, shadowbox, as previously approved fencing along Baldwin Road only. Further, based on the following findings of fact, the granting of this variance would not impair an adequate supply of light or air to adjacent property, in fact, installation of this style of fence will protect the subject property owner from vehicle headlights on Baldwin Road spilling onto his property and for his privacy. The granting of this variance would not unreasonably increase the congestion of public streets or increase the danger of fire or endanger public safety, unreasonably diminish or impair established property values within the surrounding area or any other respect, or any other impairment of the public health, safety, comfort, morals or welfare of the inhabitants of Orion Township. Supported by Vice-Chairman Cook.

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

D. AB-2021-11, Dave McCaffrey, 252 Shady Oaks, 09-10-209-001

Chairman Durham read the petitioner’s request as follows:
The petitioner is requesting 6 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
   1. A 2.6-ft. side yard setback variance from the required 7-ft. to build a home addition 4.4-ft. from the side property line (east).
   2. A 1-ft. rear yard setback variance from the required 35-ft. to build a home addition 34-ft. from the rear property line.
   3. A 2.6-ft. side yard setback variance from the required 7-ft. to add a future deck 4.4-ft from the side property line (east).
   4. A 12.74% lot coverage variance above the allowed 25% for a total lot coverage of 37.74%

Article XXVII, Section 27.03
   5. A 5.5-ft. shoreline setback from the required 20-ft. to add a future deck 14.5-ft. from the shoreline (to the west)

Article XXII, Section 27.17
   6. An 8.9-ft. wetland setback variance from the required 25-ft. to build a home addition 16.1-ft. from a wetland (to the west).

Mr. Dave McCaffrey introduced himself to the Board. He is looking to put a home addition onto a small 1940’s cottage that he would like to use as a family home.

Chairman Durham commented on visiting the site and the limited parking area.
Mr. McCaffrey stated that his neighbors are very accommodating.

Chairman Durham asked what part of the structure is being removed. He asked if it was the cutout portion on the lake side.

Mr. McCaffrey replied yes; it is not structurally safe and needs to come down.

Vice-Chairman Cook asked if currently he only has one parking space.

Mr. McCaffrey replied yes, courtesy of his neighbor.

Wade Sullivan, neighbor living at 270 Shady Oaks, introduced himself to the Board. He stated that this is all common parking at the end of the cul-de-sac.

Vice-Chairman Cook asked if the shore line was addressing the existing paver patio.

Mr. McCaffrey stated that on the north side of the house where the structure they are going to knock down, this is where the addition is going and the deck will be going off that addition.

Vice-Chairman Cook asked where the second deck was going.

Mr. McCaffrey stated that there is only one deck. Since the water surround the deck, they had them measure from both ways.

Chairman Durham asked if the wetlands were regulated.

Mr. McCaffrey replied no.

Vice-Chairman Cook asked if they started construction at one time.

Mr. McCaffrey stated that they tore all of the siding off so he could put the corner post up. He confirmed that he pulled a permit for this work.

Board member Walker asked how long he has lived there.

Mr. McCaffrey replied that they purchased the cottage in May 2019. Currently they are using it as a cottage and hoping to convert it to their principle residence.

Board member Walker asked if the current square footage was 700 and it would go to about 1400 square feet.

Mr. McCaffrey replied yes.

Chairman Durham asked for public comment.
Mr. Sullivan commented that he is in favor of the project and proposed variances. The petitioner has done a good job cleaning up the yard, the existing home and the site in general.

Chairman Durham commented on past projects and how those were accomplished.

Vice-Chairman Cook asked if Mr. Sullivan was on the left or the right when you are facing the home.

Mr. McCaffrey replied that he is on the south side.

Secretary Brackon asked if Mr. Sullivan was doing the construction.

Mr. Sullivan replied no; he may be assisting but he will not be the primary contractor on the job.

Secretary Brackon moved in ZBA Case #AB-2021-11, Dave McCaffrey, 252 Shady Oaks, 09-10-209-001 to approve the petitioner’s request for 6 variances from Zoning Ordinance #78 as follows:

Article VI, Section 6.04, Zoned R-3
1. A 2.6-ft. side yard setback variance from the required 7-ft. to build a home addition 4.4-ft. from the side property line (east).
2. A 1-ft. rear yard setback variance from the required 35-ft. to build a home addition 34-ft. from the rear property line.
3. A 2.6-ft. side yard setback variance from the required 7-ft. to add a future deck 4.4-ft from the side property line (east).
4. A 12.74% lot coverage variance above the allowed 25% for a total lot coverage of 37.74%

Article XXVII, Section 27.03
5. A 5.5-ft. shoreline setback from the required 20-ft. to add a future deck 14.5-ft. from the shoreline (to the west)

Article XXII, Section 27.17
6. An 8.9-ft. wetland setback variance from the required 25-ft. to build a home addition16.1-ft. from a wetland (to the west).

The petitioner did demonstrate that the following standards for variance have been met in this case in that they set forth facts which show that:

1. The petitioner does show the following practical difficulty; as demonstrated in the Board materials and in what the petitioner describes, the shape of the lot, the fact that it is a lake front property that he is trying to improve and the fact that wetlands exist.

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: it is a nonconforming lot, petitioner has phenomenal neighbors, the shape of the
lot, the fact that there exists wetlands on the property and it is lakefront require the need for the variance.

3. The variance is also necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity. As the petitioner described he is trying to make this is primary residence as opposed to just a cottage, the petitioner has 3 children and the improvement in the property is going to make it look nicer increasing the property values of all of the neighbors in the area and helping the Township.

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 improvement in such zone or district in which the property is located based on the following findings: as we have heard in the testimony, the cleanup that the petitioner has already done and proposed to do is going to make the property much nicer, there is not going to be any destruction of the wetlands which are currently there which should not affect the water table, any of the plants or grasses in the wetlands area, any of the animals or other ecosystems that exist in the wetlands area will not be affected.

5. Based on the following findings of fact, granting this variance would not impair an adequate supply of light and air to the adjacent property, it would not unusually increase congestion in the public streets given the fact that he is at the end of the road that goes into Lake Orion. There is also not going to be an increase of fire, or endanger of the public safety, there is not going to reasonably diminish or impair established property values within the surrounding area, in fact, to the contrary. This will more likely than not increase property values of everyone around and the neighbors support this construction. Granting this variance will not impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township.

Supported by Trustee Flood.

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

E. AB-2021-12, Meijer Inc., 1025 S. Lapeer Rd., 09-14-226-008 & 09-14-112-001

Chairman Durham read the petitioner’s request as follows:
The petitioner is requesting 6 variances from Zoning Ordinance #78 – Zoned GB

Article XIV, Section 14.02 (A)(1)
   1. A 37-ft. setback variance from the required 100-ft. for a drive-thru pharmacy use to be 63-ft. from a residential property line.
   2. A 50-ft. setback variance from the required 50-ft. for a circulation lane for a drive-thru pharmacy to be 0-ft from a residential property line.

Article XIV, Section 14.04

Article XXVII, Section 27.16(B)(1)(a)(i)
4. A variance from this ordinance section to allow the east façade (323-ft.) and the south façade (211-ft.) to be greater than 100-ft. without a recess or projection.

Article XXVII, Section 27.16(C)
5. A 23% variance above the allowed 60% of off-street parking area located between the front façade and an abutting street for a total of 83%.
6. An 18-ft. setback variance above the minimum required 50-ft. for truck docks to be 32-ft. from a residential property.

The petitioner is also seeking 4 variances from Sign Ordinance 153 – Zoned Non-Residential; GB

7. A 30-ft setback variance from the required 30-ft. for a ground sign to be 0-ft. from the road right-of-way.
8. A 100.21-sq. ft size variance above the allowed 200-sq.ft. for a wall sign to be 300.21-sq. ft.
9. A variance for 5 wall signs above the allowed 1 wall sign for a total of 6 wall signs.
10. A 239.44-sq. ft. size variance above the allowed 200-sq. ft. for a total square footage of all wall signs to be 439.44-sq. ft.

Ms. Ashley Mack, Real Estate Manager, Meijer, introduced herself and Jason Vandercote, Engineer, to the Board members. She thanked the Board for their time and consideration. This variance is for a brand new Meijer store to be located in the Township. They identified this location because of positive demographic and economic factors in addition to the overall site access, existing utilities. The proposed use is consistent with the Township’s Master Plan. The new store will be approximately 90,000 square feet which is smaller than the typical Meijer superstore. Ms. Mack provided a PowerPoint presentation providing details about the proposed store.

Mr. Vandercote provided an outline of the requested variances through an electronic presentation presented to the Board.

Chairman Durham asked about the comment, “cross easement not recorded.” He stated that it was coming out of the Dairy Queen and making a left turn onto Clarkston Road.

Mr. Vandercote stated that the seller of the property is retaining the northern half and selling the petitioner the southern half. There are two separate parcel numbers, but the seller owns both parcels. He believes the sign that Chairman Durham is referring to reflects one of the two east to west driveways by the Dairy Queen. The northern one allows traffic for everyone in the plaza and the southern one is supposed to be just for the accompanying tenant spaces. He doesn’t know this for a fact because he hasn’t examined the parcel being retained by the seller closely.

Chairman Durham asked if all of the parking is owned by one entity.
Mr. Vandercote replied in the current configuration, yes, but in the proposed configuration, no. Meijer is going to be acquiring the property and providing their own parking.

Chairman Durham asked what is going to happen when they have too many shoppers’ cars for their existing parking lot.

Ms. Mack stated that they enter into an operating easement agreement where they agree that they will not go after the other business patrons which are parked in their parking lot but also, they do not want that to be a frequent agreement so it is put into the agreement that is recorded. The intent is that Meijer will self-park and the other businesses will self-park. If there is overlap on a short-term basis, they acknowledge that this may happen and it is not enforceable.

Mr. Vandercote stated that with the format being grocery only, they do not anticipate getting the Black Friday, Christmas and Easter peaks that you would normally see in a supercenter format.

Chairman Durham asked about light leaking off of the property.

Mr. Vandercote replied that they will not have light leaking off of the property. The Planning Commission has asked them to update the photometric plan as part of the conditions of approval.

Chairman Durham asked if the loading and unloading of trucks will project any noise down Clarkston Road and the location of the dumpsters.

Mr. Vandercote replied that the loading docks will be equipped with whisper units. This allows them to quite the noise of the loading docks. He showed on the plans where the trash receptacle will be located. The Planning Commission asked them to install a screen wall in conformance with the ordinance for the revised site plan submittal and they agreed to do that.

Secretary Brackon asked if the traffic study was waived by the Planning Commission based on the Kmart that used to exist there and thinking that the traffic that went to Kmart for 20 years will be the same traffic that will go to this new Meijer.

Mr. Vandercote replied mostly yet. The Planning Commission evaluated the change in traffic from the change in square footage of the Kmart store to the square footage of the proposed Meijer store. And with the increase in square footage, it fell well below the threshold where the Planning Commission would normally require a traffic impact study. The purpose of the traffic impact study is normally to provide any mitigating traffic improvements needed for the site. Because this site has 5 different ingress and egress points with signalized access, there is very little that they can or would do to improve the traffic circulation. It is ultimately up to MDOT as to how the driveways are permitted and approved for the new store.

Secretary Brackon stated that this theory says that the same number of people who visited the Kmart are the same number that will visit the Meijer and that is not true. It also presupposes that all of the entrances are going to be used equally which is not going to happen. The main entrance is signalized and the cutout is going to become filled and will overfill out onto M-24 throughout the day.
Mr. Vandercote stated that he understands the concern but MDOT will be making sure that this does not happen.

Secretary Brackon asked Board member Walker about the Planning Commission’s findings.

Board member Walker stated that as they analyzed it, with the help of the Engineer, they said that the store was going to be about the same size. The Commission felt that people shop much less now and many time orders are called in or delivered. The Commission felt that there was enough ingress and egresses to satisfy their concerns.

Vice-Chairman Cook asked how 90,000 square feet would compare to a typical grocery store.

Ms. Mack stated that it would be bigger than a Fresh Thyme but it would fall in line with the typical grocery store size. It is geared more towards the quick shopper.

Vice-Chairman Cook asked if they have a specific entrance that is designed for shoppers coming to pick up order.

Ms. Mack stated that there is a pickup area on the side of the building and they also have Shipt delivery. Those customers are going to get used to the store layout. They will also have an App that will allow shoppers to go through the line much faster. They anticipate that the typical parking turn around to be much quicker than the typical supercenter store.

Mr. Vandercote commented that they will have a higher parking turn around and the shoppers will not be parked in the parking spaces nearly as long. They have five points of ingress and egress and if one becomes congested, the traffic will find the more efficient route.

Vice-Chairman Cook asked about the location of the compactor.

Mr. Vandercote pointed the location out on the plan and also pointed out the buy online pickup location.

Trustee Flood commented on the construction of the original Kmart in this location. He asked the petitioner about the practical difficulty. He commented that they are taking down an old facility and update it with a compatible building in size. Some of the setbacks are set by the Fire Department to allow them to get their equipment around the building. He looked at the site in reference to where the monument sign is going to go and it will not block the line of sight.

Mr. Vandercote stated that they did talk to the Fire Chief about the access around the building. The Fire Chief approved it and is excited about it because it gives him a much better circulation route around the Planet Fitness and the plaza to the north.

Chairman Durham asked for public comment.

No public comment was heard.
Vice-Chairman Cook asked about the hours of operation.

Ms. Mack replied 6:00 am to 11:00 pm initially.

Vice-Chairman Cook moved ZBA AB-2021-12, Meijer Inc., 1025 S. Lapeer Rd., 09-14-226-008 & 09-14-112-001 to grant 6 variances from Zoning Ordinance #78 – Zoned GB as follows:

Article XIV, Section 14.02 (A)(1)
1. A 37-ft. setback variance from the required 100-ft. for a drive-thru pharmacy use to be 63-ft. from a residential property line.
2. A 50-ft. setback variance from the required 50-ft. for a circulation lane for a drive-thru pharmacy to be 0-ft from a residential property line.

Article XIV, Section 14.04

Article XXVII, Section 27.16(B)(1)(a)(i)
4. A variance from this ordinance section to allow the east façade (323-ft.) and the south façade (211-ft.) to be greater than 100-ft. without a recess or projection.

Article XXVII, Section 27.16(C)
5. A 23% variance above the allowed 60% of off-street parking area located between the front façade and an abutting street for a total of 83%.
6. An 18-ft. setback variance above the minimum required 50-ft. for truck docks to be 32-ft. from a residential property.

The petitioner is also seeking 4 variances from Sign Ordinance 153 – Zoned Non-Residential: GB
7. A 30-ft setback variance from the required 30-ft. for a ground sign to be 0-ft. from the road right-of-way.
8. A 100.21-sq. ft size variance above the allowed 200-sq.ft. for a wall sign to be 300.21-sq. ft.
9. A variance for 5 wall signs above the allowed 1 wall sign for a total of 6 wall signs.
10. A 239.44-sq. ft. size variance above the allowed 200-sq. ft. for a total square footage of all wall signs to be 439.44-sq. ft.

The petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth fact that showed:

1. Petitioner does show the practical difficulties that the site itself, some exceptions have been made in order to accommodate the store by reducing size from their normal footprint cutting the square footage down to 9,000 square feet and being only a grocery store. They came into the community in order to fit the property itself.
2. 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: this is an existing facility that was used previously for a big box store and the petitioner is only buying 50% of the property of the plaza where that existing store is.

3. The variances are necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zone or vicinity based on the following fact: there is no impact on the areas because what they are doing is operating solely in the footprint of what they are purchasing and have taken into account property rights of the residential home owners by installing items in their truck loading docks like whisper quiet technology and they have also taken into account lighting and have also taken into consideration that as the store grows, there may be need to create parking easements with the other owners of the adjacent properties.

4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to property or to improvements as such zone or district in which the property is located based upon the following fact. Although the parking is below what the ordinance does say, due to the changes in our society where people are shopping faster, more people are placing orders and they have a place where pickups can be done, and drive up pickup can happen for their pharmacy orders, it will not be detrimental to the public welfare or injurious in any way to adjacent property owners.

5. Based on the following findings of fact, this variance will not impair an adequate supply of light or air to adjacent property owners and will not reasonably impact congestion of traffic due to the conditions given above such as people shopping online and utilization of delivery services. Variances will not increase the fire danger or endanger the public safety as per support of the Public Safety officials and building officials.

Supported by Trustee Flood, with the addition of #6 below. Vice-Chairman Cook agreed with the addition.

6. The granting of the variance is not going to reasonably diminish or impair established property values within the surrounding area, in fact, to the contrary. Granting this variance will not impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township.

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

Vice-Chairman Cook asked if they would consider installing electronic charging vehicle stations.

Mr. Vandercote stated that typically the charging stations are done where there are gas station sites. This property was not large enough to accommodate a gas station. Sometimes these stations are added later, but it is not proposed at this time.
6. **PUBLIC COMMENTS**
   None

7. **COMMUNICATIONS**
   A. Date Certain Memo
   B. MAP Virtual Zoning Board of Appeals Workshop

8. **COMMITTEE REPORTS**
   None

9. **MEMBERS’ COMMENTS**
   Trustee Flood stated that there are 10 cases on the next meeting and there are only supposed to be 5. Chairman Durham stated that he was consulted and he agreed with the 10 cases. He was afraid that if they didn’t hear all of them, they would continue to get jammed up into the summer.

   Trustee Flood, Chairman Durham and Board member Walker commented on the Dan’s Excavating case.

10. **ADJOURNMENT**
   Moved by Chairman Durham, seconded by Vice-Chairman Cook to adjourn the meeting at 9:54 pm.

   Respectfully submitted,

   Erin A. Mattice
   Recording Secretary