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

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

ZBA MEMBERS ABSENT:

CONSULTANT PRESENT:
- David Goodloe, Building Official

OTHERS PRESENT:
- Georgette Dib
- John Tront
- Alfred Vuktilaj
- Phyllis Sleight
- Bill Schmitz
- Monica Carter

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

2. ROLL CALL

3. MINUTES

A. 06-27-22, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Chairman Durham, to approve the 06-27-2022 minutes as amended changing: Item 3, paragraph 3, change “size” to “siding”; Item 3, paragraph 4, change “was he” to “would he be”; page 4, last line, change “July 27, 2022” to “July 25, 2022”. Motion carried.

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the agenda as presented. Motion carried.

5. ZBA BUSINESS

A. AB-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007

Chairman Durham read the petitioner’s request as follows:
The petitioner is seeking 5 variances from Zoning Ordinance #78 – Zoned R-1 Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 40-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 0-ft. from the road right-of-way line along Bald Mountain Road (west).
2. A 37-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 3-ft. from the front property line along Starlight Trl (north).
3. A 37-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 3-ft. from the front property line along Starlight Trl (east).
4. A 7-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 3-ft. from the side property line (south).

Article XXVII, Section 27.03(G)(2)
5. Corner clearance requirement variances to erect a 6-ft. fence at the intersection of a driveway and a road right-of-way (north & south).

Mr. Alfred Vuktilaj introduced himself and summarized the variance request.

Chairman Durham stated that this property was part of a variance request in the past.

Board member Dunaskiss asked why a 4-foot fence would not work.

Mr. Vuktilaj stated that it is not tall enough to keep his kids safe. The high school is very close, and he pointed out the reckless and fast driving that occurs in this area. He wants the 6-foot fence to provide safety and privacy.

Board member Dunaskiss asked the petitioner about the wildlife mentioned in his application.

Mr. Vuktilaj answered he has no concerns about wildlife.

Mr. Vuktilaj provided photos to the Board members.

Vice-chairman Cook stated that he doesn’t know where the confusion occurred about getting the permit before starting. The petitioner knew he could put up a 4-foot fence without a permit.

Mr. Vuktilaj stated that he found out a 4-foot fence was allowed when the inspector visited his property and told him. The inspector told him that a 6-foot required a permit.

Vice-chairman Cook stated that usually, an approved fence is a different style of fencing than what is being put up currently. In looking at the layout, there might be a way to compromise what the applicant wants as opposed to what is being asked for.

Chairman Durham asked if the applicant hired a professional fence installer for this fence.

Mr. Vuktilaj replied he hired a local guy.

Chairman Durham asked how much is finished.

Mr. Vuktilaj replied it is half done. He asked his neighbors first and no one complained. One neighbor came to him and said she didn’t want the fence there because of the view so he did not put something on her side.

Trustee Flood stated that the applicant is allowed to put up a 6-foot fence as long as it conforms to the setback requirement. The applicant is asking for setback requirements that everyone else has to conform to. The applicant is asking the Board to waive the setback requirements. He provided details about the past actions of the Board regarding fencing. He summarized the ordinance fencing requirements. This
request is out of line with the Township requirements and the request that is being asked for is exactly what the Township is trying to avoid. The Board has to abide by the ordinance, and he is not in favor of the request.

Mr. Vuktilaj stated that if he moves the fence to the setback lines, he will have no property left and he explained.

Trustee Flood stated that the applicant has additional front yards, and this must be addressed in the ordinance. He is not happy that this has not been addressed by the Township. He pointed out a 6-foot fence that is part of the Roundtree Subdivision and it meets ordinance.

Board member Walker asked when the applicant bought the property.

Mr. Vuktilaj replied 3 months ago. He reiterated his safety concerns regarding his children.

Board member Walker asked if the school and the neighbors were there when he purchased the house.

Mr. Vuktilaj replied yes.

Board member Walker reiterated that the applicant could put up a 4-foot fence.

Mr. Vuktilaj replied that he knows that.

Board member Walker stated that he doesn’t see a practical difficulty.

Mr. Vuktilaj reiterated his safety concerns regarding his children and a 4-foot fence.

Chairman Durham asked for public comment.

Ms. Phyllis Sleight stated that she doesn’t know why the applicant has a concern with his children playing in the yard. The neighbor of the applicant has small children, and they play in the yard. Sometimes the neighbors play in the yard, and she doesn’t mind. The fence that is being put up is an eyesore and she does not approve of it. She told him this before he put it up and she commented that a 4-foot fence would be sufficient.

Mr. John Stein stated that when he moved in, in December 2020, there was already a 6-foot privacy fence between the neighbor’s house and his house. There is no sight line issue and visually, he does not have a problem with the request. The applicant took the old fence down and put up the new fence to replace it.

No further public comment was heard.

Chairman Durham commented that he doesn’t care for the compound look of the fence being installed by the applicant. He also has a problem with the variance request at the corner because of corner clearance and thinks that this would be a mistake. He described the options for the applicant.

Board member Dunaskiss stated that the neighborhood is a place where the children grow up knowing what it means to live in a neighborhood and she described aspects of this including respecting neighbors, etc. The fencing to keep the children in the yard is a reasonable request but can be accomplished with a 4-foot fence. Even 6-foot fences have gates and if a child wanted to, he or she can exit using the gate. Since the applicant moved into a neighborhood, he needs to respect the idea of the neighborhood and accept the fencing that is allowed. This case does not present an unusual circumstance.

Trustee Flood asked Building Official Goodloe if the applicant’s request is denied, does it mean the fence would need to be removed?
Building Official Goodloe replied yes or cut it down to 4 feet.

Chairman Durham asked the applicant how he would like to proceed.

Mr. Vuktilaj asked if the request is not granted, can he plant trees inside the 4-foot fence to create privacy?

Board member Walker answered yes. He asked the Board members about the corner clearance request.

Chairman Durham asked the applicant if he had spoken to the Fire Department regarding the request.

Mr. Vuktilaj replied that they did not have a problem with it.

Trustee Flood stated that he read in the Fire Department report that they were concerned with the gate and having access to the property.

Mr. Vuktilaj replied that he was going to install a gate that was pushed in and out so it would be easy.

Building Official Goodloe provided details regarding the corner clearance.

Chairman Durham asked if the request was based on the applicant's drawings or an inspection.

Building Official Goodloe answered that it was based on the applicant’s drawings and information provided to the Planning Department. He showed the applicant the corner clearance request that is being asked for.

Board member Walker stated that if the applicant postponed it and figured it out and agreed to cut down the fence to four feet, he would not have to come back.

Vice-chairman Cook stated that there would still be confusion on the corner clearance. If the Board votes on it now, it is a yes or no. If it is postponed, then the applicant can meet with the Building Official and they can decide about the corner clearance.

Chairman Durham explained the applicant’s options to him. He stated that they could postpone until August 22, 2022.

Trustee Flood stated that if it is postponed, it does not have to be re-advertised and re-noticed.

Board member Dunaskiss moved, and Trustee Flood supported, in Case # AB-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007, that the petitioner’s request for five variances be postponed at the request of the applicant until August 22, 2022.

Roll Vote was as follows: Durham, yes; Flood, yes; Walker, yes; Cook, yes; Dunaskiss, yes. Motion carried 5-0.

B. AB-2022-27, J.S. Brown Road, LLC (Mattress Firm Wall & Ground Sign), 851 Brown Rd., 09-33-351-036

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 2 variances from Sign Ordinance 153 – Zoned BIZ

1. A variance for 1 additional wall sign above the 1 allowed for a total of 2 wall signs totaling 117.26 sq. ft.
2. A 12-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 18-ft. from the road right-of-way.

and, 1 variance from Zoning Ordinance #78; Zoned BIZ

3. A 22-ft. front yard setback variance from the required 40-ft. for a ground sign to be 18-ft. from the front property line (Brown Road).

Mr. Bill Schmitz, representing J.S. Brown Road and Mattress Firm, introduced himself to the Board.

Chairman Durham asked if Mattress Firm was a franchise.

Mr. Schmitz replied yes, it is a corporate sign set up.

Chairman Durham described the property as a small parking lot, a building that sits, back and a narrow driveway.

Mr. Schmitz concurred.

Trustee Flood stated that the east side faces Joslyn Road. The applicant is asking for an additional sign to be on the building facing Brown Road to the south. Someone traveling on Brown Road will not see the sign. The Planning Commission made the applicant put a berm in front of the property and this is why the monument has to be moved. He commented that the applicant would need to stay behind the safety path.

Chairman Durham asked for public comment.

No public comment was heard.

Trustee Flood moved, and Board member Walker supported, in the matter of AB-2022-27, J.S. Brown Road, LLC (Mattress Firm Wall & Ground Sign), 851 Brown Rd., 09-33-351-036 in which the petitioner is seeking 2 variances from Sign Ordinance 153 – Zoned BIZ: 1. A variance for 1 additional wall sign above the 1 allowed for a total of 2 wall signs totaling 117.26-sq. ft., 2. A 12-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 18-ft. from the road right-of-way and, 1 variance from Zoning Ordinance #78; Zoned BIZ for a 22-ft. front yard setback variance from the required 40-ft. for a ground sign to be 18-ft. from the front property line (Brown Road).be granted because the petitioner did demonstrate that the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does show the following practical difficulties: the applicant needs the signage facing Brown Road so he can have vision not only from Joslyn Road on this busy corridor which makes common sense and since the ordinance is restricted to one, the applicant has to come before the Zoning Board of Appeals to get this permission. Another practical difficulty is that a berm was required to be installed and the applicant has to move the monument sign out to where it can be seen along the busy corridor. It will not impede line of sight and will still be in line with most of the signage along Brown Road and it will be behind the safety path.

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: the applicant is having the same problems as other facilities that have been built in this area in getting their signage closer to the road to be seen and also have signage on the building to be seen.

3. The variance is also necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity: the applicant needs the same variance granted as other businesses that have been granted variances along that corridor.
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: in fact, this will be very helpful for people to find this location, especially going west to east along Joslyn Road. This signage in this area is needed.

5. The granting of this variance will not impair an adequate supply of light or air to the adjacent properties, it would not unusually increase congestion on the public streets, in fact, it will assist the congestion in this area. There is also not going to be an increase of fire or endanger public safety and is not going to reasonably diminish or impair established property values within the surrounding area, in fact, it may raise them, or in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

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

C. AB-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-3 Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. 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 east.
2. 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 south.

Ms. Georgette Dib and Mr. John Tront introduced themselves. Ms. Georgette Dib summarized the variance request for a 6-foot fence on the property line because the neighbors’ dogs go over the current fence.

Chairman Durham asked if the neighbors try to control their dogs.

Ms. Dib replied sometimes. She has seen both of the dogs jump over the fence.

Chairman Durham asked if animal control has been involved.

Ms. Dib replied yes, and she did submit the report.

Trustee Flood asked who owns the fence on the south side.

Ms. Dib replied two neighbors. This fence runs all along the rear yard. She stated that she wants the fence on the side.

Trustee Flood asked about the string and stakes that are out on the property.

Ms. Dib stated that they are locating the fence in front of the air conditioner. She confirmed that the utilities would also be on the outside of the fence.

Mr. Tront confirmed that the utilities could be serviced.

Ms. Dib confirmed that the neighbors have a fence on the property’s west side; it is a 6-foot fence.

Board member Dunaskiss asked about the fence on the neighbor’s property that has the dogs.
Ms. Dib answered that the neighbors have a chain link fence all of the way around their property.

Board member Dunaskiss asked what the recommendation was from animal control.

Ms. Dib stated that animal control went to the house, and nobody answered, and they left a note on the neighbor’s door. When she requested a copy of the report, she recalled the report details.

Trustee Flood asked what would keep the dog from jumping the fence and coming around the fence and going through the gap.

Ms. Dib stated that they also want the 6-foot fence for privacy because the neighbors are combative when they are out in their yard. They have had the police called because of leaves. The trees and leaves that are the problem are not even in their yard. The utility pole is on the neighbor’s property. If they can put the fence on the property line, they would avoid ever going to that side of the fence.

Trustee Flood asked about the house building.

Mr. Tront provided details about the house construction.

Board member Dunaskiss stated that her concern with the 6-foot fence is the stockade look. The dog is still a problem for the neighborhood.

Ms. Dib described the topography of the property which allows the dogs to easily jump the fence on their side.

Chairman Durham asked if the neighbors that they have a problem with have issues with other neighbors.

Ms. Dib replied she does not know.

Mr. Tront and Ms. Dib explained the issues with the neighbors.

Board member Dunaskiss asked if the neighboring house was a rental property.

Ms. Dib replied yes.

Board member Dunaskiss asked if the property owner was aware of the problem with the dogs.

Ms. Dib answered that she did not know.

Chairman Durham asked if they were keeping paper copies of animal control documents.

Ms. Dib replied yes.

Chairman Durham stated that there is a need that will solve the petitioner’s issues but wonders if this solves all of the issues.

Ms. Dib commented on privacy issues with the neighbors.

Vice-chairman Cook stated that his concern is the existing 4-foot fence now becomes a step to clear the new 6-foot fence and they would still get into the yard. Also, the dog jumping the fence and coming around the side also points out that it may solve the petitioner’s problem but doesn’t solve the problem for the neighborhood.

Ms. Dib stated that she knows it is an issue for the neighborhood.
Vice-chairman Cook reiterated that eventually, they will figure out how to jump the fence. He asked about the date of the report.

Ms. Dib answered that they do not hang out outside anymore. They have avoided the confrontation.

Chairman Durham asked if untrained dogs were more sight jumpers.

Vice-chairman Cook stated that they will start to bark more, and they will go back to their old habits of clearing the 4-foot fence.

Board member Walker asked if animal control keeps records on these dogs.

Ms. Dib answered when she called, she could only get the report of when she called.

Chairman Durham asked for public comment.

Ms. Monica Carter stated that she is the neighbor with the dogs. She does not have a problem with the fence. She has a problem with how far back they want to put the fence onto their property. According to the survey, there will be a 4-foot gap between the current fence which has numerous holes in it. She is concerned that her grandson will get caught between the fences. Her fence is on the property line according to the survey. The stakes that they have are 4 feet from the property line. She provided pictures to the Board members and explained them.

Chairman Durham asked if she still has the dog that has been talked about.

Ms. Carter replied that it is her daughter’s dog. The dog is now 9 years old and no longer jumps the fence. There is another dog on another street that looks like this dog that is roaming the neighborhood.

Ms. Allison Carter confirmed that this other dog roams the neighborhood.

Chairman Durham stated that it is a potential lawsuit every time the dog gets out; he asked Ms. Carter if she was aware of this.

Ms. Carter replied yes; most of the time the dogs are in the house. They use shock collars for the dogs. They confirmed the presence of another dog.

Ms. Allison Carter stated that her dog is a pit bull mix dog, and she doesn't jump the fence.

Ms. Carter confirmed the poor nature of the existing fence. She owns the home and has lived there for 19 years. She provided details about the history of the inhabitants of the house next door. Mr. Tront has owned the home for 7 years with no yard and now they want to put up a privacy fence on the property line, but it is not. She has a concern with security.

Chairman Durham commented that he doesn't know why someone would give away 4 feet of their property.

Ms. Carter replied that there are two trees that the petitioner has to cut down.

Board member Dunaskiss asked how many reports have been made on the dog.

Ms. Carter replied only the ones that have been made by the neighbors. She described issues that they have had with the neighbors.

Vice-chairman Cook stated that there is a utility pole there.
Ms. Carter replied that there is enough room between the utility pole and the fence that is currently there for the privacy fence, and she explained.

Vice-chairman Cook asked who owns the fence that Ms. Carter is complaining about having holes.

Ms. Carter replied that she doesn’t know. It was there when she moved in.

Vice-chairman Cook asked if they ever had a conversation about planting arborvitae.

Ms. Carter replied no, and she would not have a problem with plantings.

Board member Walker commented on the complexities of this case. This appears to be more of a neighborhood issue rather than a fence issue and suggested that arborvitae might be a solution.

Board member Dunaskiss stated that the petitioner is asking to put the fence on the property line, but Ms. Carter says it is not on the property line.

Ms. Carter confirmed the survey that she has.

Building Official Goodloe stated that much of this is irrelevant. They are looking to see if there is a practical difficulty to build a fence.

Trustee Flood stated that the request is to put the fence on the property line but now there is a dispute about the property line’s location. He does not want to grant a variance that is not correct.

Building Official Goodloe stated that the location of the property line needs to be solved in civil court. They are just determining if it can be located on the property line.

Trustee Flood stated that this is why they might want to require a survey. They do not want to see a 4-foot fence next to a 6-foot fence. He doesn’t think that this is fair to keep addressing this.

Ms. Carter stated that she doesn’t have a problem with it being on the property line because then she can take the broken one down.

Chairman Durham asked Mr. Tront if he got a survey.

Mr. Tront replied that he does not have a $2,000 survey.

Ms. Dib stated that Monica Carter does not live at the property; she may own it, but her daughter lives there.

Chairman Durham confirmed that the Property Gateway aerial does not clearly define property lines. If Ms. Dib doesn’t have a survey, how does she know where the property line is?

Ms. Dib replied that they are going off what they were given by the Township.

Chairman Durham replied that until she has paper in her hand that clearly shows where her property boundaries are, they cannot discuss it.

Ms. Dib commented that she does not need a permit to plant arborvitae.

Building Goodloe answered that this is correct.

Ms. Dib asked how she knows where the property line is for planting if she doesn’t go and get a survey done.
Chairman Durham asked that he doesn't know how she would know.

Ms. Dib asked if she would have to take a fence down if it was found to be on her property. The neighbors on the other side did this and she is fine with it.

Trustee Flood clarified that the GIS aerial is not a legal document. They need to get a survey to prove it. This is just a satellite view and is just an estimate.

Chairman Durham asked the Board members if they were satisfied with the documents in front of them.

Board members discussed the variance request and the documentation provided.

Trustee Walker asked if the arborvitae would take the place of the fence.

Petitioner answered no.

Board member Dunaskiss asked if they wanted the arborvitae and the fence.

Petitioner replied that she wants both and they explained.

Building Official Goodloe commented that you cannot park an RV in a side yard setback.

Chairman Durham commented on the fact that they do not know where the property line is.

Building Official Goodloe reviewed the measurements with the petitioner and provided them with approximate dimensions that they can use. He suggested that they could also find the metal stakes to know for sure.

Chairman Durham suggested that they postpone the case until exact information is received.

Vice-chairman Cook stated that the petitioner came up with different solutions including arborvitae.

Ms. Dib replied that they would still have the issues.

Vice-chairman Cook stated that there is still a vote that needs to take place for a 6-foot fence even if they find the stakes.

Petitioner asked for a postponement until August 22, 2022.

Trustee Flood stated that he will support postponement. If the petitioner finds that their neighbors are correct, and it is the property line where the cyclone fence is located, he likes the idea of removing the fence and not having a fence next to a fence. He hopes that the neighbors can work together. The Township has to take control of the problem. He suggested that they have a legal agreement as to who will take care of the fence and who will maintain it. The only way to make a record of it is to put it on the deed.

Ms. Carter reiterated that she does not have a problem with the fence. She does not know if there are going to be stakes to locate the property line. She stated that having two fences will look ridiculous and asked who was going to maintain arborvitae.

Chairman Durham stated that the neighbor always has remedies outside of this room and that would be through the court system.

Board member Dunaskiss moved, and Trustee Flood supported, in the matter of Case AB-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023 that the petitioner's request for variances from
Zoning Ordinance #78 – Zoned R-3 be postponed until August 22, 2022, at the request of the applicant.

Roll Call Vote was as follows: Walker, yes; Durham, yes; Flood, yes; Cook, yes; Durham, yes. Motion carried 5-0.

D. AB-2022-26, Proposed Amended ZBA By-Laws

Trustee Flood commented on an edit that needed to be made.

Trustee Flood moved, and Chairman Durham supported, to adopt the amended ZBA By-Laws that were adopted May 16, 2022, and amended per the date drafted June 15, 2022, and forward to the Township Board for approval.

Roll Call Vote was as follows: Dunaskiss, yes; Cook, yes; Flood, yes; Walker, yes; Durham, yes. Motion carried 5-0.

6. PUBLIC COMMENTS

7. COMMUNICATIONS

8. COMMITTEE REPORTS

9. MEMBER COMMENTS

Chairman Durham stated that he appreciated the Board's support.

Trustee Flood stated that he will put the fencing ordinance on an upcoming Township Board meeting’s agenda so they can work toward a resolution.

Board members and Building Official Goodloe commented on the fence ordinance.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:54 pm. Motion carried.

Respectfully submitted,

Erin A. Mattice
Recording Secretary