The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 14, 2023, 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
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member
JoAnn VanTassel, Alternate Board member
Tony Kerby, Alternate Board member

ZBA MEMBERS ABSENT:
Mike Flood, BOT Rep to ZBA
Tony Cook, Vice-Chairman

CONSULTANT PRESENT:
Lynn Harrison, Planning & Zoning Specialist

OTHERS PRESENT:
Kevin Deters   Mary Ellen Madary   Dan Gatfield
Paul Cassese   John Farkas        Jim Niestroy
Lily Eifstrom  Traci Anderson     Maureen Hudson
Ken Hudson

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

2. ROLL CALL

3. MINUTES

A. 07-24-23, ZBA Regular Meeting Minutes

Board member Kerby moved, seconded by Board member Walker, to approve the 07-24-23 minutes as presented.

Motion Carried 5-0

4. AGENDA REVIEW AND APPROVAL

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

Motion Carried 5-0
5. **ZBA BUSINESS**

A. **AB-2023-17, Metro Detroit Sign for Sleep Number Bed, 4956 S. Baldwin Road, 09-32-377-057**

Chairman Durham read the petitioner’s request as follows:

The applicant is seeking 2 variances from Zoning Ordinance #153 – Non-Residential Wall Signs Zoned BIZ

1. A variance for 2 wall signs above the 1 allowed for a total of 3 wall signs (south elevation, west elevation & east elevation).

2. A 66.66-sq. ft. variance above the allowed maximum square footage of 200-sq. ft. for 3 signs totaling 266.66-sq. ft. (south elevation = 94-sq. ft., west elevation = 86.33-sq. ft., east elevation = 86.33-sq. ft.).

Mr. Kevin Deters introduced himself and summarized the variance request. The south sign is critical because it would be visible from Brown Road and the sign is critical on the west side since this is the major thoroughfare of Baldwin side. The square footage is significant but the size of the letters is small with the circular logo in the middle. The Aspen Dental building, which is one building north, has a sign on the southeast and the west elevation too.

Chairman Durham asked if the petitioner understood the problem with the site being slowing traffic down to get people into the front of the site.

Mr. Deters stated that having signage on Baldwin Road would be an asset to traffic on Baldwin.

Board member VanTassel stated that using the Huntington Bank driveway to turn into the business makes sense and reduces curb cuts. The stores in this area all come in off of Georgia which is the street to the east. It is possible for people to leave the site and come out onto Baldwin Road.

Mr. Deters replied that this is the only entrance.

Board member Dunaskiss asked what was the signage at that entry point off of Brown Road.

Mr. Deters replied that you could not enter from Brown Road, and he described where the proposed signage would be seen from.

Chairman Durham asked if there was a shared driveway agreement with Huntington Bank.

Mr. Deters replied no, not that he knows of. The company that he works for is a national sign company and they don’t have anything to do with the ground sign.

Ms. Harrison commented that there is a shared agreement.

Board member Kerby stated that they have communication from the Fire Marshall who has no issues with the request.

Board member Walker asked the size of the sign on the east wall.

Mr. Deters replied is 86.33 square feet which is the same as the west side. The sign on the south is proposed to be 94 square feet.

Board member VanTassel moved, seconded by Board member Dunaskiss, that in the matter of **ZBA Case AB-2023-17, Metro Detroit Sign for Sleep Number Bed, 4956 S. Baldwin Road, 09-32-377-057**, that the applicant's request for 2 variances from Zoning Ordinance #153 – Non-Residential
Wall Signs Zoned BIZ including a variance for 2 wall signs above the 1 allowed for a total of 3 wall signs (south elevation, west elevation & east elevation) and a 66.66-sq. ft. variance above the allowed maximum square footage of 200-sq. ft. for 3 signs totaling 266.66-sq. ft. (south elevation = 94-sq. ft., west elevation = 86.33-sq. ft., east elevation = 86.33-sq. ft.) be granted for plans date stamped June 13, 2023 because the petitioner did demonstrate the following standards for variances have been met in this case and they set forth facts that show:

1. The petitioner did demonstrate a practical difficulty unique to the property in that the ability to get to the store is limited to the lack of curb cuts on Baldwin Road and must therefore use the driveway that serves Huntington Bank in order to access the parking lot which is to the rear, or the east of the store.

2. The petitioner did demonstrate unique or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: this property sits lower than the surrounding businesses. The Aspen Dental height, which is immediately north of this site, towers above this proposed store. As Baldwin proceeds north after Brown Road, it is going north all of the way until it gets past the development north of Jordan Road.

3. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by others in the same zone or vicinity based on the following facts: because of the traffic that proceeds in this area on Baldwin Road, the additional signage is needed so that somebody looking for this business, who is not familiar with the location, isn’t searching for it. With the three signs, it is visible. Having one on the west elevation facing Baldwin Road makes the location of the store visible to cars southbound on Baldwin Road who have the ability to make a U-turn at the traffic light and return to the site.

4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: the other businesses in this area have the additional signage as the petitioner is requesting.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties; this business sits lower than surrounding properties. It would not unusually increase congestion on the public streets; this is a busy street as it is and there are three lanes. There is also not going to be an increase of fire or public safety. It is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Dunaskiss, yes; VanTassel, yes; Walker, yes; Kerby, no; Durham, yes. Motion passes 4-1.

**B. AB-2023-19, Northern Sign Co. for Sleep Number Bed, 4956 S. Baldwin Road, 09-32-377-057**

Chairman Durham read the petitioner’s request as follows:

Variance from Sign Ordinance #153 – Non-Residential Ground Signs Zoned BIZ

1. A 15-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 15-ft. from the road right-of-way.

And 1 variance from Zoning Ordinance #78, Article XXXIV, Section 34.03 (B)

2. A 25-ft. front yard setback variance from the required 40-ft. for a ground sign to be 15-ft. from the front yard property line.

Ms. Mary Ellen Madary, Northern Sign Co., introduced herself and summarized the variance request.
Chairman Durham asked how far the sign would be from the road.

Ms. Madary replied 15 feet.

Chairman Durham asked why the additional signage is needed beyond the additional signage approved in the agenda item prior.

Ms. Madary stated that she doesn’t have an answer. Her company is only doing the pedestal.

Board member Dunaskiss stated that the main entrance to the business is a shared driveway and the monument sign that they are asking for approval of is in the center of the building. She asked if there is signage at the driveway entrance.

Ms. Madary replied none is being proposed.

Board member Dunaskiss suggested that to avoid confusion, a sign directing a visitor should be at the access drive into the business.

Board member Kerby stated that they now have a sign on the building, do they need two signs in the same location.

Chairman Durham commented that because the former variance passed, the business now has signs on all three sides of the building.

Board member Kerby stated that he is not seeing a practical difficulty.

Board member VanTassel stated that she needs to speak against this variance for a monument sign. She checked along Baldwin Road and there are only five businesses in a two-mile stretch which have monument signs. One is Baldwin Commons across the street, and she described this sign. The only monument sign in this area is the Taco Bell sign and she described that sign. Taco Bell is the only one in the area that has a curb cut. She also has a problem with this sign because north bound Baldwin is going up a hill in this area. The sign proposed is a 6-foot sign and her concern is with north bound traffic, a monument sign in this area might not impede sight in this direct area for people in tall pickup trucks, but for people who drive lower height vehicles, they are not going to be able to see past this sign. She commented on the ineffectiveness of the Lazy Boy sign in the area. She agreed with Board Member Dunaskiss’ suggestion of having a sign at the Huntington Bank driveway which is more of a direction sign because this would serve traffic better and the business better.

Ms. Madary stated that the directional sign suggestion is valid.

Chairman Durham and Ms. Harrison commented on the options for the petitioner.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Ms. Madary asked for clarifications on her options.

Chairman Durham commented on the petitioner’s options.

Board member Kerby stated that at the next presentation of this request, he would have to hear why they need two signs on the same side of the building.

Ms. Madary stated that before the former variance was approved, she was not fighting against another sign.
Board member Kerby stated that the two cases were separated for that reason.

Ms. Harrison suggested that the petitioner looks at directional signs because those are allowed.

Board members discussed the options for the petitioner.

Board member Kerby suggested that the store owner should come to the meeting to explain why they need the sign.

Board member Kerby moved, second by Board Member Walker, that in the matter of ZBA Case AB-2023-19, Northern Sign Co. for Sleep Number Bed, 4956 S. Baldwin Road, 09-32-377-057 that the applicant’s request for 2 variances from Sign Ordinance #153 – Non-Residential Ground Signs Zoned BIZ for 1) a 15-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 15-ft. from the road right-of-way, and 1 variance from Zoning Ordinance #78, Article XXXIV, Section 34.03 (B) for a 25-ft. front yard setback variance from the required 40-ft. for a ground sign to be 15-ft. from the front yard property line, be denied for plans date stamped July 6, 2023 because the petitioner did not demonstrate the following standards for variance having been met in this case:

1. The petitioner did not demonstrate a practical difficulty unique to the property: the difficulty of signage has been addressed. There will be three signs on this building; one on the east, south and west side and the monument sign in question does not add any clarity to the entrance or exit of the building; it is just additional signage.

2. The petitioner also did not establish a unique or extraordinary circumstance or condition applicable to the property involved that did not apply generally to other properties in this same district or zone because of a lack of monument signs in this area because of the nature of these properties.

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on; there are three signs on this building which follows the pattern of other buildings in this area and therefore does not require the addition of a monument sign.

4. Granting the variances or modification would be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: a sign closer to the road could cause a visual impairment to those driving along Baldwin Road and thereby cause a public safety hazard.

Roll call vote was as follows: VanTassel, yes; Walker, yes; Kerby, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

C. AB-2023-20, Bill Carr Signs for Dort Financial Credit Union, 831 Brown Rd., 09-33-351-029

Chairman Durham read the petitioner’s request as follows:

The applicant is seeking 13 variances from Sign Ordinance #153, Zoned BIZ

1. A variance to allow 4 additional wall signs on the building, above the 1 allowed for a total of 5 wall signs on the building, totaling 113.35-sq. ft. (3 on the south elevation totaling 68.94-sq. ft., and 2 on the east elevation totaling 44.41-sq. ft.).
2. A variance to allow 4 ATM wall signs.
3. A 12.56-sq. ft. variance above the allowed 1.40-sq. ft., for a 13.96-sq. ft. wall sign on the right side of the ATM machine.
4. A 7.08-sq. ft. variance above the allowed 0.79-sq. ft., for a 7.87-sq. ft. wall sign on the front side of the ATM machine.
5. A 12.56-sq. ft. variance above the allowed 1.40-sq.ft., for a 13.96-sq. ft. wall sign on the left side of the ATM machine.
6. A 14.3-sq. ft. variance above the allowed 1.59-sq. ft., for a 15.89-sq.ft. wall sign on the back side of the ATM machine.
7. A variance to allow 12 VTM machine wall signs – 3 machines with 4 signs each.
8. A 12.56-sq. ft. variance each above the allowed 1.40-sq. ft. each, for a 13.96-sq. ft. wall sign on the right side of 3 VTM machines.
9. A 7.08-sq. ft. variance each above the allowed 0.79-sq. ft. each, for a 7.87-sq. ft. wall sign on the front side of 3 VTM machines.
10. A 12.56-sq. ft. variance each above the allowed 1.40-sq.ft. each, for a 13.96-sq. ft. wall sign on the left side of 3 VTM machines.
11. A 14.3-sq. ft. variance each above the allowed 1.59-sq.ft. each, for a 15.89-sq.ft. wall sign on the back side of 3 VTM machines.
12. A variance for 3 Directional Signs above the 4 allowed for a total of 7 Directional Signs.
13. A 3-sq. ft. total variance, for 3 Directional Signs, above the allowed 6-sq. ft. (2-sq. ft. per each sign) for a total of 9-sq. ft.

Mr. Jim Niestroy introduced himself as representing the petitioner and summarized the variance request. He provided a handout showing a closeup of the site to the Board members.

Chairman Durham stated that he understands some of the concerns: the building does sit back and it has been vacant for a long time and the need for the wall signs on the building. However, once they are on the property, the need for signs goes down. It seems like a high number of signs being requested on the site.

Mr. Niestroy answered that they are trying to grab the tenants at the Mattress Firm and the car wash.

Board member Dunaskiss commented on her visit to the site and how it was difficult to see going west on Brown Road. Since the building is set back far, there are a lot of buildings in front of them. She asked if they were planning on having a monument sign.

Mr. Niestroy replied that they are using the existing monument sign that is there.

Board member VanTassel commented on the road conditions in this area. There is a lane entrance and a traffic light at the bank entrance. The site is faced with a Township created practical difficulty because the mattress store and car wash block this subject site building and she explained. She thinks the requests are reasonable.

Board member Walker stated that once the customer is in the driveway, they have them because they do not share the building. The petitioner says that the VTM is the wave of the future but every bank that he goes in there are less and less drive-up ATMs and no drive-up tellers. He asked if Dort was different from other banks.

Dan Gatfield, Dort Financial Credit Union, introduced himself stated that this bank is different. This site will not have tellers inside of the buildings. There will be personnel inside to help with loan services, account, etc. but the actual teller services are based out of Grand Blanc. The VTM machines are a glorified ATM, but they have additional functionality and he explained. They want to keep a consistent look and feel for all of their newer buildings and this is what they are trying to do here.

Board member Walker asked if there were no customers going inside.

Mr. Gatfield replied yes, customers will be going inside the building and he explained.

Board member Walker stated that he is confused by all of the directional signs being requested.
Board member Kerby stated that the petitioner bought this property knowing the site layout, so he doesn’t see a Township created hardship. He is trying to find a practical difficulty.

Mr. Niestroy stated that the other difficulty is Brown Road and it is a negative because the building is set back so far and traffic on Brown Road is moving at 45 miles per hour. This makes it difficult to see the building and turn into it safely.

Board member Kerby confirmed that they are utilizing the existing monument sign on site.

Mr. Niestroy replied yes. The petitioner choose to go for more wall signage and give up the choice to go for a variance for the monument sign to go closer to the road.

Chairman Durham asked for public comment.

No public comment was heard.

Mr. Niestroy stated that they will give up sign #2, the logo sign, on the east elevation.

Ms. Harrison stated that this would correspond to the first, #1, variance request. They are getting rid of the oval sign portion. She stated that they would subtract that signage from the total of 441 square feet, each are 15.72 square feet and they are getting rid of both.

Board member Dunaskiss asked if they are requesting signage on the back of the ATM.

Ms. Harrison replied that this is the color banding, this counts toward the total signage.

Board member Kerby commented that now that he understands where the total is coming from, he is not as concerned.

Chairman Durham stated that because the petitioner is willing to reduce the wall signage, that shows a willingness to work with the Board, which is something they appreciate.

Ms. Harrison confirmed that they would reduce it to 3 total wall signs. She conferred with Mr. Niestroy to confirm number of signs and square footage requested. She stated that request #1 would now be, a variance to allow 2 additional wall signs on the building, in addition to the one allowed, for a total of 3 wall signs totaling 85.06 square feet. One on the south elevation, 28.69 square feet and one of the east elevations.

Chairman Durham read the proposed variance changes: #1 A variance to allow 2 additional wall signs on the building above the one allowed for a total of 3 wall signs on the building totaling 83.06 square feet. One on the south elevation, 28.69 square feet and one on the east elevation totaling 28.69 square feet. Everything else remains the same.

Board member VanTassel asked about the drawing in the packet which says that they are removing the ground sign and the petitioner said they are keeping the ground sign.

Mr. Niestroy replied that they are keeping the existing ground sign and the proposed new ground sign in the packet is null and void.

Board member Walker asked if there was a person in the VTM.
Mr. Gatfield explained the functionality of the VTM machine.

Chairman Durham asked if there was cash in the VTM machine.

Mr. Gatfield replied yes.
Board member Kerby moved, seconded by Board member Dunaskiss, that in the matter of ZBA Case AB-2023-20, Bill Carr Signs for Dort Financial Credit Union, 831 Brown Rd., 09-33-351-029 that the applicant's request for 13 variances from Sign Ordinance #153, Zoned BIZ including: 1) variance to allow 2 additional wall signs on the building, above the 1 allowed for a total of 3 wall signs on the building, totaling 85.06-sq. ft. (1 on the south elevation totaling 28.69-sq. ft., and 1 on the east elevation totaling 28.69-sq. ft.), 2) A variance to allow 4 ATM wall signs, 3) A 12.56-sq. ft. variance above the allowed 1.40-sq. ft., for a 13.96-sq. ft. wall sign on the right side of the ATM machine, 4) A 7.08-sq. ft. variance above the allowed 0.79-sq. ft., for a 7.87-sq. ft. wall sign on the front side of the ATM machine, 5) A 12.56-sq. ft. variance above the allowed 1.40-sq.ft., for a 13.96-sq. ft. wall sign on the left side of the ATM machine, 6) A 14.3-sq. ft. variance above the allowed 1.59-sq. ft., for a 15.89-sq.ft. wall sign on the back side of the ATM machine, 7) A variance to allow 12 VTM machine wall signs – 3 machines with 4 signs each, 8) A 12.56-sq. ft. variance each above the allowed 1.40-sq. ft. each, for a 13.96-sq. ft. wall sign on the right side of 3 VTM machines, 9) A 7.08-sq. ft. variance each above the allowed 0.79-sq. ft. each, for a 7.87-sq. ft. wall sign on the front side of 3 VTM machines, 10) A 12.56-sq. ft. variance each above the allowed 1.40-sq.ft. each, for a 13.96-sq. ft. wall sign on the left side of 3 VTM machines, 11) A 14.3-sq. ft. variance each above the allowed 1.59-sq. ft. each, for a 15.89-sq.ft. wall sign on the back side of 3 VTM machines, 12) A variance for 3 Directional Signs above the 4 allowed for a total of 7 Directional Signs and 13) A 3-sq. ft. total variance, for 3 Directional Signs, above the allowed 6-sq. ft. (2-sq. ft. per each sign) for a total of 9-sq. ft. be granted for the plans date stamped July 12, 2023 and as amended August 14, 2023 because the petitioner did demonstrate the following standards for variances have been met in this case and they set forth facts which show that in this case:

1. The petitioner did demonstrate a practical difficulty: the unique nature of the lot itself with the building being set further back and with the addition of newer technology than when this building was originally built with the advent of the ATMs and VTM machines requiring some additional signage to clarify those makes this a unique situation to this property that would qualify it for the variances.

2. The petitioner did demonstrate unique or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: the unique positioning of the property, the location on Brown Road and the fact that the petitioner was able to work with the Board to come to an agreement that was more beneficial to both parties.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following facts: it will increase traffic flow in the area thereby increasing business to other businesses in the area and the Township is always looking for other businesses to approve.

4. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: with the additional signage, in and out will be easier and people will know where to go within the property and it will advertise what the property now is.

Roll call vote was as follows: Kerby, yes; Walker, yes; Dunashkiss, yes; VanTassell, yes; Durham, yes. Motion passes 5-0.

D. AB-2023-21, Paul Cassise, 938 Holliday Dr., 09-01-458-037

Chairman Durham read the petitioner’s request as follows:

The applicant is seeking 3 variances from Zoning Ordinance #78 – Zoned R-3
Article XXVII, Section 27.05 (H)(2)

1. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the south.
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 east.
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 west.

Mr. Paul Cassise introduced himself and summarized the variance request. He apologized to the Board for not following the process with the fence building.

Chairman Durham asked why he needs a 6 foot privacy fence.

Mr. Cassise answered that he was replacing the prior 6 foot privacy fence. This began back in March 2023 and they wanted to do a memorial garden in the yard. There was a chain link fence and a privacy fence on his property with a gap in between them. There was a large box elder tree that was growing over the neighbor’s shed and he had that removed. When he removed the fence to cut down the tree, he realized what poor shape the fence was in. Before he planted the memorial garden, he wanted to put up a new fence so it would look nice. He moved the fence back to the property line according to a survey that he had done. He was putting the new fence on the old fence line and he provided pictures to the Board Members. He installed the original 6 foot fence in 2001.

Chairman Durham asked if there was a variance obtained for the fence installation.

Mr. Cassise replied no. He received letters from neighbors opposing the new fence installation.

Board Member VanTassel provided historical information about this neighborhood. She visited the neighborhood and most of those yards have a 6 foot fence from the house to the rear yard so what he is asking for is what she observed in the neighborhood.

Chairman Durham asked if the petitioner was aware that a 4 foot fence could be put up with no variance.

Mr. Cassise replied yes. This wouldn’t match the rest of the yard. Also, the house behind him is in a state of disrepair and he is trying to hide it.

Chairman Durham asked for public comment.

Ms. Traci Anderson introduced herself and said that she is not opposed to the privacy fence. She is opposed to the fact that her fence was removed without permission and she explained that she doesn’t have a fully enclosed and fenced yard anymore. She would like her fence to be put back up. They are trying to put up the new fence where her old fence was.

Chairman Durham stated that the only review for this Board is the setback for the fence.

Ms. Traci Anderson stated that she is opposed to a 0 foot variance because if this was granted, it would be impossible for her to put her fence back up the way it was.

Chairman Durham reiterated that if this variance is granted as written, she will not be able to put her fence back up.

Ms. Anderson replied no. She provided pictures to the Board. She added that the chain link fence she had was 4 foot.

Board Member Dunaskiss asked what is practical for the distance between the two fences and how would that area be maintained.
Ms. Anderson stated that she wouldn't mind if there was inches in between.

Mr. Cassise stated that he spoke to Ms. Anderson weeks ago and offered several times to install the chain link fence. Last time they spoke, Ms. Anderson said she didn’t want the chain link fence back and asked how much it would be to continue the 6 foot privacy fence around her yard. After the survey was done, it was determined that the chain link fence was on his property. He is amendable to moving the fence back 3 inches. He will also re-install the chain link fence.

Board Member Kerby reiterated that this variance is to replace a 6 foot fence that the petitioner put up several years ago which he did not obtain a variance for.

Mr. Cassise agreed.

No further public comment was heard.

Chairman Durham stated that the Board needs to decide if they are willing to grant a variance with a pending civil suit going on with these two neighbors.

Board Member Walker stated that the petitioner is willing to move the fence off of the property line 3 inches and it sounds like the neighbor would agree with that.

Board Member Kerby asked if they would be erasing evidence for a possible civil suit if they grant a variance.

Board Member VanTassel stated that this would be a civil suit between the two neighbors.

Chairman Durham asked Ms. Anderson what she would like to happen.

Ms. Anderson stated that she would like her fence put back up just like it was and beyond that, it doesn’t matter to her.

Chairman Durham read letters from neighbors supporting the variance request.

Board Member Kerby commented on the practical difficulty and asked Mr. Cassise to describe the practical difficulty.

Mr. Cassise replied that without the variance request, on one side of the house he will have 3 feet and on the other side of the house he will have 5 feet between the house and the garage so he would have limited access.

Board Member Kerby asked why the 4 foot fence wouldn't work.

Mr. Cassise replied that all of the other fencing is 6 foot around his entire yard. He has dogs and they could jump the fence.

Board Member Kerby commented on the behavior of dogs and how they have to be trained. This neighborhood looks like a stockade and he doesn’t see a practical difficulty.

Chairman Durham commented on his experience with a 6 foot privacy fence.

Board Member VanTassel asked when the 6 foot fences in this neighborhood were approved.

Mr. Cassise replied 2010 was the last one.
Board Member VanTassel asked if they could find out what the thinking was when these fences were approved.

Ms. Harrison replied that this would have to be researched.

Board Member VanTassel suggested that they find out what the Township records show. There was a note that some of them got variances and what was the compelling reason at that time.

Chairman Durham asked if she wanted them to do research and not act tonight.

Board Member VanTassel explained why she would want further information.

Chairman Durham stated that they have a situation and it appears that they have parties that will agree to a solution. He doesn’t know if they would be serving the residents by making them wait.

Mr. Cassise stated that he would like a vote tonight.

Board Member Kerby moved, seconded by Board Member Dunaskiss, in the matter of ZBA Case AB-2023-21, Paul Cassise, 938 Holliday Dr., 09-01-458-037 that the applicant’s request for 3 variances from Zoning Ordinance #78 – Zoned R-3, Article XXVII, Section 27.05 (H)(2) including: 1) A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the south, 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 east and 3) A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west be denied for plans date stamped July 13, 2023 because the petitioner did not demonstrate the following standards for variance have been met in this case:

1. The petitioner did not demonstrate a practical difficulty unique to the property: there is nothing about this lot or case that is shown to require a 6 foot fence on the property line that a 4 foot standard fence or a row of arborvitae would not handle.

2. The petitioner did not demonstrate a unique or extraordinary circumstance or condition applicable to the property involved that do not apply generally to other properties in this same district or zone: his neighbor has a 4 foot fence that seems to be working fine and several of the other locations also have lower fences therefore not showing a true practical difficulty.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following facts: his fence is not going to change the other property holders ability to make use of their land for their enjoyment.

4. The granting of the variance or modification will be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: we have an ordinance in the Township not allowing 6 foot fences without practical difficulty. Setting standards is important and we must maintain them and if the standard has not been shown to be met, they should not approve.

Roll call vote was as follows: VanTassel, no; Dunaskiss, yes; Walker, no; Kerby, yes; Durham, no. Motion fails 3-2.

Board Member Walker asked Ms. Anderson if the petitioner would back his fence off and he would repair her fence to her satisfaction, would she be amendable to that. He is trying to solve the issues that the neighbors are having tonight.

Ms. Anderson stated that she needs the fence backed off far enough to reconnect her fence like it was.

Board Member Walker concurred.
Mr. Cassise stated that he will re-install Ms. Anderson's fence where it was.

Board Members discussed possible conditions for the proposed motion.

Board Member Walker moved, seconded by Chairman Durham, that in the matter of ZBA Case AB-2023-21, Paul Cassise, 938 Holliday Dr., 09-01-458-037 that the applicant’s amended request for 3 variances from Zoning Ordinance #78 – Zoned R-3, Article XXVII, Section 27.05 (H)(2) including: 1) A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the south, 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 east and 3) A 9.5-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence .5-ft. from the side property line to the west be granted for plans date stamped July 13, 2023 because the petitioner did demonstrate the following standards for variances have been met in this case and that they set forth facts that show in this case:

1. The petitioner did demonstrate a practical difficulty unique to the property: when these lands were platted back in the 1890's they were irregular shaped, small lots and they can barely fit a home in the parcel.

2. The petitioner did demonstrate unique or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: there was a matter of a fence with a neighbor and the petitioner was willing to work with the Board and the neighbor to resolve that issue even though perhaps in a court of law, this Board has no bearing on anything that happens there. There is an agreement between the parties that they are taking into consideration when approving this variance. Compliance with the terms of the ordinance for a 10 foot setback on the south side would impair the ability to maintain his flower gardens and to maintain the landscaping and would be detrimental to the establishment of a memorial area for his wife who unfortunately has passed.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity.

4. The Building Inspectors do not inspect fences when they are completed to make sure that the petitioner installs the fence properly. The petitioner has agreed to re-install the chain link fence for Traci Anderson, 99 Detroit Blvd. S.

5. Granting these variances would not impair an adequate supply of light or air to adjacent properties, they would not unusually increase congestion on public streets. There is also not going to be an increase of fire or public safety. It is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Kerby, no; Walker, yes; VanTassel, yes; Dunaskiss, no; Durham, yes. Motion passes 3-2.

E.  AB-2023-23, John Farkas, 95 Detroit Blvd S., 09-01-458-001

Chairman Durham read the petitioner’s request as follows:

The applicant is seeking 3 variances from Zoning Ordinance #78 – Zoned R-3 Article XXVII, Section 27.05 (H)(2)

1. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the east.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the south.
3. A 30-ft. front yard setback variance from the required 30-ft. to erect a 6-ft. privacy fence 0-ft. from the intersection of the property line to the east and the property line to the north.

Mr. John Farkas introduced himself to the Board and he apologized for not getting a variance. He is next door to Mr. Cassise.

Chairman Durham asked why he needs a 6 foot fence and why does it have to be where it is proposed.

Mr. Farkas stated that he has a flower garden and his well in this area.

Chairman Durham asked why he needs a fence.

Mr. Farkas stated that he needs privacy and he doesn’t want to look at that house in the back. He wanted to install it at the same time Mr. Cassise was putting up his.

Board Member VanTassel stated that the backyard is to the south and this is where he wants the privacy.

Mr. Farkas will not take the fence past the front of his house.

Ms. Harrison stated that #3 of the request is not needed and would need to be amended to remove this part.

Board Member Kerby asked why a 4 foot fence or row of arborvitae would not work.

Mr. Farkas replied that he is thinking about getting a dog. He has grandkids and wants them safe and he doesn’t want to look at the house in the back yard.

Chairman Durham asked if he was looking at something that a complaint would fix.

Mr. Farkas answered that he couldn’t say either way.

Chairman Durham explained ordinance enforcement.

Mr. Farkas stated that Mr. Cassise and he are trying to make it look uniform.

Ms. Traci Anderson stated that she is starting to make improvements and she explained what she is doing to the property. There are items that are sitting around and could be cleaned up in a day or two and she explained. She stated that it wouldn’t be considered a violation.

Mr. Farkas described the backyard and its poor condition. It has gone on for 8 years but he did not want to have any trouble with the neighbors.

Board Member Kerby stated that what he is asking for is reasonable. However, in this Township, they have an ordinance that requires a 6 foot to be setback 10 foot and to do something different, they need a practical difficulty.

Mr. Farkas stated that his practical difficulty would be wanting to keep his grandchildren safe because they are always over at his house.

Board Member VanTassel asked Chairman Durham if the back yard shown would be a problem for code enforcement.
Chairman Durham replied that he would ask that things be done in the yard if he were called out and observed what the pictures show. He explained the Board’s role in each case being an individual case that needs to be reviewed separately.

Board Member VanTassel moved, seconded by Chairperson Durham, in the matter of ZBA Case AB-2023-23, John Farkas, 95 Detroit Blvd S., 09-01-458-001 that the applicant's amended request for 2 variances from Zoning Ordinance #78 – Zoned R-3, Article XXVII, Section 27.05 (H)(2) including: 1) A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line to the east, 2) A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the south be granted for the plans date stamped July 13, 2023 because the petitioner did demonstrate the following standards for variances have been met in this case and they set forth facts that show:

1. The petitioner did demonstrate a practical difficulty unique to the property being the fact that it is a small yard, and he has grandchildren that visit on a regular basis and he is concerned that they have adequate space to move and play as children do.

2. The petitioner did demonstrate unique or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: in fact, other properties in this area have been granted variances for reasons that at this point are unknown.

3. The variances are necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following facts: these properties were originally platted as 30 foot lots. They have been combined and lot splits done to create lots which are 60 foot wide and 110 feet deep which once the house is placed on the property, leaves limited yard space for the enjoyment of such yards and the creating of gardens.

4. Granting the variances or modifications will not be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following findings: the majority of properties of similar size on the streets of Seaberry, Detroit Blvd. and Holiday do have 6 foot privacy fences on the property lines.

5. Granting these variances would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets, there will be no more traffic in this area than would normally be there. There is also not going to be an increase of fire or public safety. There is a memo from the Fire Marshal saying they have no concerns at this time. It is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township. The petitioner is keeping things in line with what other neighbors have done.

Variance request number 3 was removed because it would have allowed the privacy fence to go all the way to the street which was not the petitioner’s intent and has been removed from the request.

Roll call vote was as follows: Walker, yes; Kerby, no; Dunaskiss, no; VanTassel, yes; Durham, yes. Motion passes 3-2.

6. PUBLIC COMMENTS

7. COMMUNICATIONS
Board Member Walker commented on an exhibit that is available at the library currently.

8. COMMITTEE REPORTS

9. MEMBER COMMENTS
Chairman Durham thanked the Board for their consideration tonight.
10. **ADJOURNMENT**

Moved by Board member VanTassel, seconded by Board member Kerby, to adjourn the meeting at 9:34 pm.

Motion Carried 5-0

Respectfully submitted,

Erin A. Mattice
Recording Secretary