The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 22, 2022, at 7:07 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

**ZBA MEMBERS PRESENT:**
- Dan Durham, Chairman
- Mike Flood, BOT Rep to ZBA
- Don Walker, PC Rep to ZBA
- Diane Dunaskiss, Board member
- Tony Kerby, Alternate Board member
- JoAnn VanTassel, Alternate Board member

**ZBA MEMBERS ABSENT:**
- Tony Cook, Vice-Chairman

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

**OTHERS PRESENT:**
- Tom Williams
- David Plunkett
- Bruce Calhoun
- Mike Riddle
- Pete Smilanic
- Nancy Smilanic
- Mat Dunaskiss
- John Trost
- Robin Darnah
- Marty Darnah
- Alfred Vuktilaj
- Monica Carter
- Phyllis Sleight
- Scott Gabnif
- Georgette Dib

1. **OPEN MEETING**

   Chairman Durham called the meeting to order at 7:07 pm.

2. **ROLL CALL**

3. **MINUTES**

   A. **08-08-22, ZBA Regular Meeting Minutes**

   Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 08-08-2022 minutes as presented.

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

4. **AGENDA REVIEW AND APPROVAL**

   Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as amended, moving Case AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 to #A under 5. ZBA Business.

   Vote was as follows: Flood, yes; Walker, yes; Kerby, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

5. **ZBA BUSINESS**
A. **AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027**

Chairman Durham explained that Board member Dunaskiss recused herself from this case and Ms. Joann VanTassel will replace her on the Board during the hearing of this case.

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 8 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
1. A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. A 10.18-ft. height variance from the required 30-ft. to build a house 40.18-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)
7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.

Article XXVII, Section 27.17(B)
8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

Trustee Flood moved, supported by Chairman Durham, that in the matter of ZBA case AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027, to postpone until the September 26, 2022, ZBA meeting at the petitioner's request.

Roll Call Vote was as follows: Kerby, yes; Flood, yes; Van Tassel, yes; Walker; yes; Durham; yes. Motion passes 5-0.

B. **AB-2022-23, Tracey Guaiana, 1150 Hemingway, 09-15-201-028**

The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-1

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. for a 6-ft. privacy fence to be 0-ft. from the side property line to the south.
2. A 10-ft. rear yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the rear property line to the west.

Chairman Durham confirmed that the applicant requested to be postponed until October 24, 2022.

David Plunkett, Attorney, representing Tom Williams who owns property adjoining the petitioner. He expressed frustration about the extension of this case and the fact that the petitioner gets to keep the fence up which is in blatant violation of the zoning ordinance with a portion of the fence on his client’s property and needs to be removed. They have asked the petitioner to remove the violating portion of the fence. This is a costly and a frustrating situation.
Chairman Durham commented that the ability to extend a case is within the Board’s discretion according to the Board’s By-Laws. He stated that with the information submitted, he would have been uncomfortable hearing this case this evening.

Building Official Goodloe stated that if the fence is not approved by the Board, they will ask them to cut it down to 4 feet and not to remove it. The property line dispute is a civil matter between the two property owners.

Board member Dunaskiss moved, seconded by Board member Kerby, in the matter of ZBA case AB-2022-23, Tracey Gualiana, 1150 Hemingway, 09-15-201-028 that the case be postponed to October 24, 2022, due to health issues.

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

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

Chairman Durham read the petitioners 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. Vuktilaj introduced himself and summarized the variance request. He provided pictures to the Board members.

Chairman Durham asked if any changes have been made to the request.

Mr. Vuktilaj explained the location of easements on the property.

Chairman Durham commented on the corner clearance issue being at the corner of Starlight Trl and Bald Mountain Road.

Mr. Vuktilaj stated that everything can be seen.

Chairman Durham asked about being able to see the cars. He visited the site, and he disagrees. He stated that it is hard to compare this case with neighbors since he does not know what the rules were when other fences were put up. He reiterated that he does not know the history of every neighbor’s fence.

Board member Dunaskiss stated that every case is unique, and this Board does not know the reasons behind every approval and the practical difficulty of each case. For this case, the Board is not seeing a practical difficulty, or a reason why it is necessary to have a 6-foot fence other than it is the petitioner’s desire to have a 6-foot fence. She does not see the practical difficulty in this case.
Mr. Vuktilaj stated that he doesn’t understand why, he can see 6-foot fences throughout his neighborhood, but he cannot have a 6-foot fence.

Board member Dunaskiss reiterated the fact that there isn’t a practical difficulty.

Chairman Durham asked for public comment.

Phyllis Slate stated that with the fence, when she pulls out to leave her property, she cannot see if there is traffic or not. It is a one vehicle street so there is a difficulty there and when she is coming home, she cannot see around the corner. There are young children in the neighborhood that are very difficult to see because of the fence and she drives at a slow speed. The man that is asking for the fence has a construction business, why he put up a fence without approval, she does not know. Even after someone came out and asked him to stop (putting up the fence), he continued. After the last meeting, the petitioner put up even more fencing. When the prior landowner asked for a variance, it was denied, and she doesn’t know why this would be different tonight.

Mr. Vuktilaj stated that he doesn’t know why she says she cannot see when she drives (down the street because of the fence) because there are trees also there. He stated that even with a 4-foot fence, you can see nothing because it is a one lane street. He commented on the bushes that are in front of the property and how the neighbor did not want him to cut them down. A 4-foot fence is ugly, and he does not like the appearance of that type of fence.

Chairman Durham stated that if it is a 4-foot fence, it is allowed, and the Board has no position on it. He does not see a practical difficulty in this case. The 6-foot fence makes it look like a compound and is everything that he does not like about 6-foot fences. He commented on his visit to the property.

Mr. Vuktilaj stated that he will put up a 4-foot fence then.

Chairman Durham stated that whatever the petitioner does, it should be within the boundaries of the ordinance.

Trustee Flood stated that the petitioner filed the petition on June 1st, and he has owned the property for two months, so he is new to the community?

Mr. Vuktilaj stated that he lived in Lake Orion since 2015 but this property is new for him.

Trustee Flood stated that he has to abide by the ordinance. The petitioner is allowed a 4-foot fence.

Mr. Vuktilaj stated that he has nothing to do with the previous neighbor.

Trustee Flood stated that he installed the fence illegally and the Board has to make a ruling. He is not in favor of a stockade fence on the lot line. He can put up the fence if he abides by setback requirements. He cannot put it on the lot line without a variance.

Mr. Vuktilaj stated that he based it on the neighborhood because he lives there.

Building Official Goodloe stated that the neighbor did receive a variance.

Board member Dunaskiss stated that it is a lovely piece of property, and she knows the petitioner has children that he is concerned about. The 4-foot fence is sufficient to keep the children safe.

Mr. Vuktilaj stated that the dogs in the neighborhood can jump a 4-foot fence.

Board member Dunaskiss stated that he would need to address that with the owner of the dog.

Mr. Vuktilaj stated that he is afraid for the safety of his children. There is nothing special about a 4-foot fence.
Board member Dunaskiss moved, seconded by Board member Kerby, that in the matter of ZBA case AB-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007 that the petitioner’s request for five variances from Zoning Ordinance #78 – Zoned R-1, including Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) for 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) and a variance from Article XXVII, Section 27.03(G)(2) for corner clearance requirement variances to erect a 6-ft. fence at the intersection of a driveway and a road right-of-way (north & south) be denied because the petitioner did not, in this case, demonstrate that the following standards for variances have been met:

1. The petitioner did not demonstrate a practical difficulty that is relevant to the property itself.
2. The petitioner did not demonstrate any unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.
3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property owners.
4. The granting of the variance or modification could be detrimental to the surrounding area by possibly limiting visibility to oncoming and going traffic.

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

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

Chairman Durham read the petitioner’s 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. Dib introduced herself. She stated that she had a survey done and knows where the property line is. They learned that the fence located in the rear of the property is on her property. The property line is behind the neighbor’s fence. She explained the location of the stakes.

Chairman Durham stated that he would like Building Official Goodloe to review the survey results and if the rear variance request needs to be taken off, he should instruct the Board.

Building Official Goodloe stated that they would still need that variance for the 10 foot if they want to connect to the fence in the rear.

Chairman Durham asked Ms. Dibb to reiterate the reasons for the variance request on the east side.
Ms. Dibb reiterated her concerns about the dogs, neighbors, and the need for privacy. They were trying to get as close to the neighbor’s property line as possible so there wasn’t a gap. They cannot go on the property line because there are too many trees and a utility pole. She stated that they would like to put the fence where it was staked last time which is about 4-5 feet from the property line.

Mr. Dibb explained the reasons for the proposed location of the fence. It will be located exactly where it is staked. It is in front of the condenser that is existing. He confirmed the proposed location of the fence.

Chairman Durham asked for public comment.

Monica Carter asked about the proposed location of the fence.

Chairman Durham stated that the request is to come to the property line. The property line has been established by a survey.

Ms. Carter explained her property lines.

Building Official Goodloe stated that the survey shows the fence is right on Ms. Carter’s property line.

Chairman Durham stated that the Board is ruling on a 6-foot fence on a property line. If there is a property line dispute, it will be a civil matter.

Ms. Carter expressed her concerns about the request including who will be responsible for maintenance of the property between the fences.

Chairman Durham asked Mr. and Mrs. Dibb about the maintenance of the area between the fences.

Mr. and Mrs. Dibb stated that they would maintain the 4-foot gap between the fences; it is their property.

Board member Kerby asked about the exact setback request.

Ms. Dibb stated that when they came to the Board last time, they were not sure where the property line was and they have since paid for a survey and this changed their request.

Building Official Goodloe stated that the Board can consider a lesser variance at the petitioner’s request.

Mr. and Mrs. Dibb confirmed that they are asking for a 7-foot side yard variance.

Ms. Allison Carter stated that the neighbor has not had a yard for 7 years and they do not maintain the trees in their yard even though the petitioner says they are going to maintain the property between the fences. She commented on past history with the petitioner.

Building Official Goodloe stated that typically there is a 10-foot side gap between fences.

Mrs. Dibb asked if they are not granted a 7-foot variance, they can still put up the fence 10 foot from the property line.

Chairman Durham answered yes.

Board member Walker moved, seconded by Trustee Flood, that in the matter of ZBA Case ZBA-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023 that the petitioner’s request for 2 variances from Zoning Ordinance #78 from Zoning Ordinance #78 – Zoned R-3, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) for 1. 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 to the east and 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 be denied because the petitioner did not demonstrate the follow standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner did not demonstrate any practical difficulties that ran with the property itself.

2. The petitioner did not 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.

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


Chairman Durham read the petitioners request as follows:

The petitioner is seeking 4 variances from Zoning Ordinance #78 – Zoned IP Article XVIII, Section 18.03 (I)(1)(2)

1. A variance to allow a covered trash receptacle (dumpster) to be located in the side yard, north, rather than the required rear yard.
2. A variance to omit the required masonry brick type walls and the opaque lockable gate around the covered trash receptacle (dumpster).

Article XXVII, Section 27.19 (B)(2)(3)(4)
3. A variance to allow accessory/outdoor storage to be located in the side yard, east, rather than the required rear yard.
4. A variance to omit the required 8-ft. chain link fencing and screening around the accessory/outdoor storage.

Mr. Andrew Russo introduced himself and summarized the variance request. The building is off of Premier Drive. There is no usable rear yard there and he described the topography. They have recently taken over the entire building. They have outgrown the building now and he described the building’s location. He explained the development of their next location. He stated that they had a visit from the Fire Marshall because the FDC has to be visible from the street and they started following the process.

Chairman Durham asked if strict adherence to the ordinance would not allow them to do business in that building.

Mr. Russo concurred.

Board member Walker stated that this applicant was in front of the Planning Commission and were denied because of the variance issues. That is why they are in front of the Board now.

Mr. Russo concurred. They are not here to put up fences.

Trustee Flood stated that he is familiar with Premier Drive and he provided history about variances granted in this area. He stated that what makes it confusing is that there is a dumpster and an enclosure currently on the property. He asked if they are talking about the compactor, etc.

Mr. Russo confirmed that they cannot use a flip top dumpster because they cannot be picked up and they must use a roll off.
Trustee Flood commented that they are addressing the compactor, the roll off for the compactor and the flip top also, not the existing dumpster. He asked if when they move, if the compactor is going with them.

Mr. Russo replied he does not know; this has been in place since they occupied the building.

Trustee Flood stated that any variances granted stay with the building.

Mr. Russo stated that he has a letter to that effect from the owner of the property saying that he understands that. He stated that he is not aware of a variance that was granted for the compactor. They are also asking for a variance for the A-frames outside that house the stone slabs. They are asking to be able to store the stone slabs outside and not have an enclosure around them. He explained why it is not economically feasible to put up the enclosure.

Trustee Flood stated that money is not object on these variances. If they grant a variance, it will stay with the property.

Building Official Goodloe commented that the Board could put a time limit on the variances granted and he explained.

Chairman Durham commented that they could also put it to the end of occupancy.

Board member Kerby suggested that the variances with a time limit would not be permanent.

Building Official Goodloe concurred.

Trustee Flood stated that they do not want the compactor inside because they catch on fire.

Building Official Goodloe stated that they also do not want outdoor storage.

Trustee Flood suggested that they put a rolling gate across the whole front.

Mr. Russo stated that the Fire Marshall already denied any type of fencing covering the FDC.

Chairman Durham asked where the FDC is located.

Mr. Russo explained where the FDC is located. He explained why the fencing was not appropriate.

Chairman Durham commented on the expected visibility of a fire hydrant and why this is important.

Trustee Flood stated that they have storage in this area which is hindering them.

Chairman Durham asked if there was public comment.

Mr. Russo stated that the adjoining neighbor came to his property and asked about the variance request. The neighbor declined to come to this meeting because they did not want to waste time.

Trustee Flood asked what the intended time frame is.

Mr. Russo stated that they are actively working on the site plan and then they will be coming forward with plans for the new site. They are expecting a maximum of two years. It is difficult to come up with a time frame based on the unknown availability of materials, etc. He would accept a time frame of a one-year variance knowing that he would have to come back if needed.

Board member Walker reiterated that the new building is located in the Township too.
Chairman Durham commented on his site visit, and he stated that they are asking for minor variances to allow their business to continue. He doesn't see any issue with the request.

Board member Kerby stated that his biggest concern was outdoor storage with no fencing. He would be okay with a limited time frame for the variance request.

Board member Walker moved, seconded by Board member Kerby, that in the matter of ZBA Case AB-2022-34, BACA Systems, 101 Premier Dr., Sidwell #09-35-451-001, that the petitioner's request for 4 variances from Zoning Ordinance #78 – Zoned IP, Article XVIII, Section 18.03 (I)(1)(2) including:
1. A variance to allow a covered trash receptacle (dumpster) to be located in the side yard, north, rather than the required rear yard, 2. A variance to omit the required masonry brick type walls and the opaque lockable gate around the covered trash receptacle (dumpster) and from Article XXVII, Section 27.19 (B)(2)(3)(4) including: 3. A variance to allow accessory/outdoor storage to be located in the side yard, east, rather than the required rear yard and 4. A variance to omit the required 8-ft. chain link fencing and screening around the accessory/outdoor storage be granted because the petitioner did demonstrate that the following standards for variance have been met in this case and that they set forth facts that show:

1. The petitioner does show the following practical difficulty: this practical difficulty is related to the property because of its unique characteristics, and it is not related to general conditions in the area.

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 indicated that because of the shape of the property and the FDC and various other requirements, these variances would be necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity.

3. The granting of 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. In addition, one of the terms of the granting of the second two variances will be for a period of one year and if, at the end of that one year, the petitioner has not completed their business at this location and moved on to the next location, the petitioner must come back to the Zoning Board of Appeals to either renew, or get new variances in one year which would tie into the requirements that they were asked to do by the Planning Commission.

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

F. AB-2022-35, 3850 Joslyn Road, 3850 Joslyn Road, 09-28-376-031

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 15 variances from Zoning Ordinance #78 – Zoned GB Article XIV, Section 14.02(A)

1. A 66-ft. setback variance, from the required 100-ft. from residential property, to build a building with a drive-thru 34-ft. from the west property line.
2. A 32-ft. setback variance, from the required 50-ft. from residential property, for a drive-thru maneuvering lane to be 18-ft. from a residential property.

Article XIV, Section 14.03(C)(3)
3. A 22-ft. side yard setback variance, from the required 30-ft. along residential property, for parking spaces to be located 8-ft. from the north property line.
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Article XIV, Section 14.03(I)(1)
4. A variance to allow a covered trash receptacle (dumpster) to be located in a side yard (north).

Article XIV, Section 14.03(J)(1)
5. A variance to allow a loading & unloading area to be in a side yard adjacent to residential property.
6. A variance to allow a loading & unloading area to be in a front yard (Hammerslea Road).

Article XIV, Section 14.04
7. A 2.42-ft. building height variance, from the maximum height limit of 25-ft., for the building to be 27.42-ft. high.
8. An 18-ft. side yard setback variance from the required 20-ft. for a structure (propane tank) to be 2-ft. from the side property line (north).

Article XXVII, Section 27.04
9. A 24-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 6-ft. along the north property line.
10. A 25-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 5-ft. along the west property line.

Article XXVII, Section 27.04(A)(4)
11. A 20-ft. greenbelt width variance, from the required 20-ft. greenbelt between road right-of-way and parking, for a 0-ft. greenbelt along the south & east sides.

Article XXVII, Section 27.05(A)(4)
12. A variance of 7 trees from Joslyn Road & 7 trees from Hammerslea Road to have 0 trees along the road right-of-ways of Joslyn Road and Hammerslea Road.

Article XXVII, Section 27.05(A)(6)
13. A variance to omit 2 required trees from the interior landscaping requirements of 1 tree per 200-sq. ft. of interior landscape space.
14. A 66-sq.ft. variance for interior landscape areas, from the required 400-sq. ft., to have 334-sq. ft. of interior landscape areas.
15. A 6-ft. variance from the required 10-ft. for interior landscape area to be 4-ft. wide.

Bruce Calhoun, Creekwood Architecture, introduced himself as representing the owner and he explained the variances requested for redevelopment of the facility. They would be improving the site not only with the looks of it but also added environmental protection. He explained the proposed building and planned leased space.

Chairman Durham asked about the location proximity to residential property.

Mr. Calhoun explained the location of a 6-foot masonry wall that is planned and the vegetation that is planned.

Chairman Durham asked if they planned to continue to fill propane at this location.

Mr. Calhoun answered yes. He continued with the explanation of the building’s location on the site. He explained the parking and dumpster variances requested. Mr. Calhoun continued his overview presentation with an explanation of the additional variances requested.

Trustee Flood asked how long Mr. Ford has owned the property.

Mr. Calhoun stated that he has been working on the site plan with him for over three years.

Trustee Flood stated that this date was omitted on the application.
Mr. Calhoun stated that this was probably his fault because he didn’t know.

Trustee Flood stated that when he sees 15 variances, it means they are trying to shove 10 pounds of potatoes into a 5-pound sack. He knows that they have to abide by today’s ordinance. The areas surrounding this site are older residential areas. He does not have a problem with the green belt and things like that. However, he does have a problem when they stretch the setbacks from the residential properties. He does not like the propane tank next to the residential area.

Mr. Calhoun stated that there was neighbor concern about possible run off into the lake and they assured the neighbors that they would be protecting the area. The retention would be on the south side of the site, and he explained the existing slopes and planned system upgrades including underground storage.

Chairman Durham asked for public comment.

Scott Gabriel stated that his concern was having a propane tank that close to a residential area, and he also had concern with the drive thru because of the noise generated by a drive thru. Also, the noise and light will go over a 6-foot wall. He suggested that they eliminate the drive thru.

Rich Wong expressed his concerns with the variances requested including additional noise that would be generated by a drive thru.

Board member Kerby stated that he has a problem with the propane tank being so close to a residential zone. This is not in the best interest of public safety. The drive thru and the parking can be very noisy. They will see the lights and hear the noise over a 6-foot wall. He has an issue with the propane tank and the drive thru.

Board member Dunaskiss stated that if he is granted a drive thru, does the owner have an idea of hours of operation for the drive thru.

Mr. Calhoun stated that the hours of operation would depend on the business and would go back to the Planning Commission. At other locations, there is a Tropical Smoothie, and this seems likely. The owner has never gotten a coffee shop for his other locations.

Chairman Durham agreed with the concerns about the propane tank. There is a chance that it could impact the safety of the people in the area. He is also having a problem with the existence of a drive thru. He agreed with Trustee Flood as to proposed overcrowding of the site.

Mr. Calhoun stated that the car headlights going through the drive thru will be aimed at the wall and then turning. He had originally proposed trees to screen along the wall, but the Planning Commission felt that this would put an extra burden on adjoining property owners, so they switched to arborvitae. There are options on the menu boards to make them touch screen and there are decibel levels required as per ordinance.

Chairman Durham stated that this would help a lot because you cannot control the noise in the drive thru lane.

Mr. Calhoun stated that the Planning Commission will rule on eliminating the speaker.

Chairman Durham reiterated that the applicant needs to get through these variances to even get back to the Planning Commission.

Board members discussed putting conditions on the variance approvals and the Planning Commission response.

Board member Walker stated that he has never seen these many requests for one piece of property.
Mr. Calhoun commented that a lot of the requests are overlapping. He understands that the propane will not be approved. Also, he doesn’t think they need the parking that they are asking for, but the ordinance requires it. He commented on the landscaping variances requested.

Trustee Flood reviewed the checklist regarding approving a variance in reference to this site. They are trying to put too much into a small space.

Mr. Calhoun commented on the unique site and the practical difficulty. The owner is trying to stay there and improve and develop the site.

Trustee Flood moved, and Board member Kerby seconded, in the matter of case AB-2022-35, 3850 Joslyn Road, 3850 Joslyn Road, 09-28-376-031 that the petitioner’s request for 15 variances from Zoning Ordinance #78 – Zoned GB including the list below:

Article XIV, Section 14.02(A)
1. A 66-ft. setback variance, from the required 100-ft. from residential property, to build a building with a drive-thru 34-ft. from the west property line.
2. A 32-ft. setback variance, from the required 50-ft. from residential property, for a drive-thru maneuvering lane to be 18-ft. from a residential property.

Article XIV, Section 14.03(C)(3)
3. A 22-ft. side yard setback variance, from the required 30-ft. along residential property, for parking spaces to be located 8-ft. from the north property line.

Article XIV, Section 14.03(I)(1)
4. A variance to allow a covered trash receptacle (dumpster) to be located in a side yard (north).

Article XIV, Section 14.03(J)(1)
5. A variance to allow a loading & unloading area to be in a side yard adjacent to residential property.
6. A variance to allow a loading & unloading area to be in a front yard (Hammerslea Road).

Article XIV, Section 14.04
7. A 2.42-ft. building height variance, from the maximum height limit of 25-ft., for the building to be 27.42-ft. high.
8. An 18-ft. side yard setback variance from the required 20-ft. for a structure (propane tank) to be 2-ft. from the side property line (north).

Article XXVII, Section 27.04
9. A 24-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 6-ft. along the north property line.
10. A 25-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 5-ft. along the west property line.

Article XXVII, Section 27.04(A)(4)
11. A 20-ft. greenbelt width variance, from the required 20-ft. greenbelt between road right-of-way and parking, for a 0-ft. greenbelt along the south & east sides.

Article XXVII, Section 27.05(A)(4)
12. A variance of 7 trees from Joslyn Road & 7 trees from Hammerslea Road to have 0 trees along the road right-of-ways of Joslyn Road and Hammerslea Road.

Article XXVII, Section 27.05(A)(6)
13. A variance to omit 2 required trees from the interior landscaping requirements of 1 tree per 200-sq. ft. of interior landscape space.
14. A 66-sq.ft. variance for interior landscape areas, from the required 400-sq. ft., to have 334-sq. ft. of interior landscape areas.  
15. A 6-ft. variance from the required 10-ft. for interior landscape area to be 4-ft. wide.

be denied because the petitioner did not demonstrate the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does not show practical difficulty because the number of variances are self-created.

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone because for today’s standards, the applicant is trying to put in too much in a small area - mainly because of the drive thru.

3. The variances are not necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the fact that currently he is enjoying the property with a station, and he still can enjoy that property for the future.

4. The granting of the variances or modifications 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 of fact: all of the setbacks required for the drive thru, loading, and propane tank would be detrimental to the surrounding neighbors.

5. Granting these variances could impair an adequate supply of light or air to adjacent properties by not meeting setback requirements. It could increase the traffic on public streets due to the drive thru. It could increase the danger of fire or endanger public safety due to the propane tank being moved closer to a residential property. The granting of these variances could diminish or impair established property values within the surrounding area, or in other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

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

Mr. Calhoun expressed frustration that all of the variances were denied together and not taken individually. Mr. Calhoun stated that he if comes back, he would try with no drive thru and no propane. He asked, if he asked for the remainder, is there a reason to come back?

Chairman Durham suggested that the business and the neighbors be happy with the request.

Board member Kerby stated that the Board has to vote on all variances presented.

Mr. Calhoun and Board members discussed the application moving forward.

6. PUBLIC COMMENTS

Scott Gabriel thanked the Board for their professionalism.

Rich Wong thanked the Board for their involvement.

7. COMMUNICATIONS

8. COMMITTEE REPORTS

9. MEMBER COMMENTS
10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 9:15pm.

Motion passes 5-0

Respectfully submitted,

Erin A. Mattice
Recording Secretary