CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
***** MINUTES *****
REGULAR MEETING – MONDAY, September 26, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, September 26, 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:
Lynn Harrison, Planning and Zoning Specialist

OTHERS PRESENT:
Ed Gergosian           Kathleen Jacob
Rick Morrow            Judy Nickerson
Brenda Skrzucki        Michael Pudalsk
Joey Altus             Cindy Jacob
Eugene McNabb

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

2. ROLL CALL

3. MINUTES

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

   Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 08-22-2022 minutes as presented.

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

4. AGENDA REVIEW AND APPROVAL.

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

   Vote was as follows: Cook, yes; Flood, yes; Dunaskiss, yes; Walker, 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

Board member Dunaskiss recused herself from this case as she has a financial interest in this case.

Trustee Flood moved, seconded by Vice-chairman Cook, to approve the recusal of Board member Dunaskiss because of her conflict of interest and that she should come back to sit on the Board when this case is done.

Vote was as follows: Walker, yes; Cook, yes; Flood, yes; Durham, yes. Motion passes 4-0.

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. Revised A 1.63-ft. height variance from the required 30-ft. to build a house 31.63-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).

Mat Dunaskiss provided a statement. He stated that since the last time that the Board met, they have made significant changes. The lot is all staked and given the unique characteristics of the home being made out of concrete, he felt that the Board would probably have questions for Dave Goodloe. Since Mr. Goodloe cannot be at this meeting, he suggested that the case be postponed two weeks so they could make a complete presentation at that future date, October 10, 2022.

Trustee Flood moved, seconded by Vice-chairman Cook, in the matter of AB -2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 at the applicant’s request, due to numerous circumstances, to postpone this case until October 10, 2022.

Vote was as follows: Flood, yes; Walker, yes; Cook, yes; Durham, yes. Motion passes 4-0.

Board member Dunaskiss returned to the Board.
B. AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs

1. A variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft.

No applicant appeared for this case.

Board member Walker moved, seconded by Board member Dunaskiss, to move this case to the end of the agenda since the applicant is not here at this time in case of weather or traffic issues.

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

C. AB-2022-38, Kathleen Jacob & Richard Morrow, 454 Shorewood Ct., 09-03-405-007

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-3

Article VI, Section 6.04

1. An 8.42-ft. side yard setback variance from the required 10-ft. for a second story addition to be 1.58-ft. from the property line (northeast).

2. An 8.42-ft. side yard setback variance from the required 10-ft. for a deck addition to be 1.58-ft. from the property line (northeast).

3. A 2.17-ft. side yard setback variance from the required 10-ft. for a porch to be 7.83-ft. from the property line (northwest).

Mr. Morrow and Ms. Jacob introduced themselves and summarized the variance request for setback variances to construct an addition to their 600 square foot home. They presented signatures from the neighbors within 300 feet of their property approving their request. Ms. Jacob provided pictures to the Board showing other variances that were approved.

Ms. Jacob explained the aerial that she handed out showing other homes in the area that have variances.

Trustee Flood stated that the Fire Marshall has no concern with the variance request. The lake lot has a practical difficulty due to the shape of the lot.

Chairman Durham asked what the ending square footage would be.

Mr. Morrow answered that the home is currently 602 square foot and they are proposing to add approximately 700 square feet.

Chairman Durham confirmed that it is a modest size.

Ms. Jacob explained the setback variances requested.

Mr. Morrow stated that the house was built in 1941 and they are not changing the footprint.
Trustee Flood confirmed the approval from the neighbors that the Board members received.

Vice-chairman Cook asked if you are facing the home, the addition is on the right side.

Ms. Jacob stated that the 8 foot variance on the side is for the extension of the existing porch.

Trustee Flood stated that they are not asking for a setback variance on the water side.

Chairman Durham commented that this applicant is going from really small to moderate. The neighbor support is important. He read the addresses that were provided to the Board members in support of the variances: 445 Sherwood Court, 362 Sherwood Court, 406 Sherwood Court, 512 Fernhurst Court, 384 Sherwood Court, 350 Sherwood Court and 422 Sherwood Court.

Board member Dunaskiss moved, seconded by Trustee Flood, in Case AB-2022-38, Kathleen Jacob & Richard Morrow, 454 Shorewood Ct., 09-03-405-007, that the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-3, Article VI, Section 6.04 including an 8.42-ft. side yard setback variance from the required 10-ft. for a second story addition to be 1.58-ft. from the property line (northeast), an 8.42-ft. side yard setback variance from the required 10-ft. for a deck addition to be 1.58-ft. from the property line (northeast) and a 2.17-ft. side yard setback variance from the required 10-ft. for a porch to be 7.83-ft. from the property line (northwest) be granted because the petitioner did demonstrate 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 difficulty: the wedge shaped lot makes it very difficult to conform to the setbacks to even build an addition to make a modest home.

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: this home was built in 1941 and was probably built as a cottage and is extremely small as a home, 600+ square feet. This addition will create a modest sized home.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: they are adding a bedroom and in order to enjoy this home, they need an additional bedroom and to make additional space to make this a livable space.

4. The 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.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets. 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, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Trustee Flood asked for public comment.

No public comment was heard.

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

Chairman Durham read the petitioner's request as follows:

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 property line to the west.

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

Mr. Mike Adams introduced himself to the Board and summarized the variance request to retain an existing fence on his property.

Chairman Durham asked about the encroachment of the driveway.

Mr. Adams stated that the homeowner that was in the neighboring lot when he purchased the home told Mr. Adams that it was encroaching and he would move the driveway back over to the appropriate property. Then, this lot was sold to someone else and he heard nothing else about the fence.

Chairman Durham asked if Mr. Adams had spoken to the current property owner about moving the fence because this is something that could be explored.

Mr. Adams stated that the driveway is on his property but he has not approached the property owner.

Chairman Durham stated that the zoning is R-1 and this makes him wonder why construction equipment is being stored there. He asked when the fence went up.

Mr. Adams stated that it has been a work in progress, it started in the summer of 2022.

Chairman Durham asked about the low area in the swamp.

Mr. Adams replied that it is an everyday swamp and it is not regulated and he has never seen it fully dried up.

Board member Walker stated that he did not drive on the property because of all of the existing signage. He noticed that the fence is erected on both sides of the property. He asked if it goes back to the back of the property.

Mr. Adams replied yes, almost.

Trustee Flood asked what was the practical difficulty and why would a 4 foot fence not work in this case.

Mr. Adams replied that there is a situation with topography because the house sits higher and if it was 4 foot, it would not be sufficient.
Trustee Flood stated that he doesn’t see the practical difficulty in this case. He confirmed that the applicant has owned the property for two years.

Vice-chairman Cook stated that although the applicant is in violation, he appreciates the good side of the fence facing out. He commented on his walk through the property. He asked if Mr. Adams had noticed erosion issues. This has nothing to do with the height but the fence is affecting the natural flow of water.

Mr. Adams stated that they did have a surveyor come out to determine where the house would sit and they have not yet had final grade on the property.

Chairman Durham asked for public comment.

Mr. Gary Skrzucki commented that people usually come to the Board to ask for permission but Mr. Adams just went and put up a fence structure consisting of 5 different kinds of fencing materials. The applicant brought in truckloads of sand and stripped all vegetation from the hill and around the pond. There is a regulator for the pond and it is on his property. Mr. Adams has not met the neighbors and has not taken any interest in what anyone has to say. He doesn’t want to look at an eyesore and described the neighborhood and properties that he owns. The wildlife cannot get through because now there is a border fence. He is asking that the motion be denied.

Chairman Durham asked if DNR has ever been involved in the regulation of the pond on the property.

Mr. Skrzucki stated that the pond has been on the property for 25-30 years. He described the regulator that is on his property. He described the lake that the property is located on. The fence is an abomination.

Mrs. Skrzucki explained her history of living on the property.

Chairman Durham stated that this case is not the only case of someone coming in after the fact.

Ms. Judy Nickerson explained her history with her property. She noticed the fence going up without any discussion or explanation. She explained the erosion that is happening now on her property. The fence in question is allowing a lot of erosion onto her property and she explained. This is the first time she is seeing the neighbor putting up the fence. She described concrete on her property which she doesn’t want there. She asked that the variances be denied. She described construction vehicles that are on the subject property. She expressed her other concerns about erosion and development of this lot.

Chairman Durham stated that the only thing that the Board is considering is a 6 foot fence on the property line.

James Floss expressed concerns about the variance request. He stated that the fence is hideous looking and doubts if it will make it through the winter. Every Sunday morning there is semi-automatic firing going on and he has called the police about the shooting. He is against the variance request.

Chairman Durham asked what the sheriff found out.

Mr. Floss replied that they didn’t stop. They would drive down the road and the shooting would stop.

Gene McNabb stated that the gunshots are coming from his father’s property and the sheriff’s department said there are no issues with it. He has concerns about the amount of fill coming into the subject property and he explained how much fill is allowed by ordinance. He has concerns about the applicant’s treatment of the pond in the back and he approached the Board with pictures. He also has a concern about the
applicant’s fence being on his property. He referred to the pictures that he provided and how they showed his concerns.

Eugene McNabb expressed his concerns about the development of the subject property.

Tim Finney expressed his opposition to the variances requested because it would disrupt the natural patterns and abundance of wildlife.

Trustee Flood stated that the concerns expressed by the public are civil matters. He confirmed the request that is before the Board and he outlined the options for the applicant as per ordinance. The Board has nothing to do with what or how the fence is constructed.

Board member Walker asked Mr. Adams if he intends on living on this property. Mr. Adams replied yes.

Vice-chairman Cook asked the applicant about his comment in the application as to that he thought it was okay to put up a 6 foot fence. He asked the applicant why he thought it was okay.

Mr. Adams replied that he talked to someone in zoning and planning before they do anything, and after the discussion, he thought the biggest issue was the distance from the road. This is why they have the wrought iron on the road side.

Vice-chairman Cook moved, Supported by Trustee Flood, in Case AB-2022-39, Michael Adams, 2901 Judah Rd., 09-32-400-007, that the petitioner’s request for 2 variances from Zoning Ordinance #78 – Zoned R-1, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the west and a 10-ft. side yard setback variance from the required 10-ft., for a 6-ft. privacy fence to be 0-ft. from the property line to the east be denied because the petitioner did not 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 not show practical difficulty. In terms of the practical difficulty - there are unique things about the property but there is nothing unique about the applicant needing a 6-foot fence.

2. The following are not 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: this is an area where most of the lots are long and deep, covered in woods, and there are a variety of topographic heights that vary throughout that entire district of Judah.

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 the following facts: Mr. Adams did mention that there is a pole that he could see, but there is no particular eyesore that describes the need for a 6-foot fence.

4. The granting of the variance or modification will 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 upon the fact that they have had some discussion that has nothing to do with the fence height but there are some concerns about erosion and water and other materials running off the property.

5. Granting this variance would impair an adequate supply of light or air to the adjacent properties, it would not unusually increase congestion on public streets. There was also some concern about endangering public safety by having the fence there. The variance 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: Walker, yes; Dunaskiss, yes; Flood, yes; Cook, yes; Durham, yes. Motion passes 5-0.

E. AB-2022-40, Courtney Markoff, 805 Merritt, 09-11-351-004

Chairman Durham read the petitioner’s request as follows:

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

Article XXVII, Section 27.01(C)(1)(b)

1. A 2.92-ft. side yard setback variance from the required 8-ft., for a house addition with an attached garage to be 5.08-ft. from the property line to the north.

Mr. Ed Gergosian introduced himself and summarized the variance request for a two car attached garage.

Trustee Flood commented that the Fire Marshall has no issues with the request. This lot meets the lot coverage, etc. in the ordinance and the only request is the setback.

Vice-chairman Cook asked the height of the structure and he asked if Mr. Gergosian was the builder.

Mr. Gergosian replied that he doesn’t know the height and no, he is the business manager for Ms. Markoff. He described what his company does.

Vice-chairman Cook asked about the exterior of the building.

Mr. Gergosian replied that Ms. Markoff will make sure that the design will fit the neighborhood.

Vice-chairman Cook asked about the existing gate that is not very well maintained.

Mr. Gergosian replied that the gate will go away.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Trustee Flood asked how old the house is.

Mr. Gergosian replied late 1950’s or 1960’s.

Vice-chairman Cook commented that the property was purchased in the last two years.

Mr. Gergosian agreed.

Board member Walker moved, and Vice-chairman Cook supported, in Case AB-2022-40, Courtney Markoff, 805 Merritt, 09-11-351-004 that the petitioner’s request for 1 variance from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.01(C)(1)(b) for a 2.92-ft. side yard setback variance from the required 8-ft., for a house addition with an attached garage to be 5.08-ft. from the property line to the north be granted because the petitioner did demonstrate the follow 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 difficulty: this variance request is due to the unique characteristics of this property and not related to the general conditions of the area of the property and the purchaser bought the property about two years ago and because of the septic and the well configurations, this is the most convenient thing to do to improve the house addition along with the attached garage.

2. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts.

3. 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.

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

F. AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs

1. A variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft.

Mr. Justin Moore, Northern Sign Company, introduced himself and summarized the variance request for increased signage due to the fact that the insurance agent at the existing agency is changing.

Trustee Flood recalled a previous variance for the front ground sign. He asked what the practical difficulty is.

Mr. Moore stated that there is an existing sign on the building now that is in disrepair and will be removed. All of the parking is at the rear of the building and the rear entrance, where the new sign is proposed to be, will be the most used entrance.

Chairman Durham asked about the window signage on the back of the building and its removal.

Mr. Moore stated that the agent information is changing.

Board member Walker asked about the existing ground sign and the proposed wall signs.

Mr. Moore stated that the ground sign will remain but will exist of just the Allstate logo. The agent is requesting that he keep the wall sign above the main entrance and the second wall sign will be on the rear of the building by the entrance.

Board member Walker asked if the only business was the Allstate business.

Mr. Moore replied yes.

Board member Walker stated that he doesn’t understand why they need another sign on the back of the building.

Chairman Durham confirmed that the monument sign will have a change of copy. The Board is only looking at the two wall signs being asked for.

Ms. Harrison replied yes.
Vice-chairman Cook asked if the sign by the door is considered a wall sign.

Ms. Harrison replied yes.

Board member Walker confirmed that it is the fact that there are two and not one.

Vice-chairman Cook asked about the new signage.

Mr. Moore answered that there is a new sign proposed to replace the existing sign. Neither of the wall signs are illuminated. He provided the existing signage plan to the Board members for clarification.

Trustee Flood stated that even with the two signs, they would still be in compliance as far as total square footage.

Mr. Moore concurred.

Chairman Durham asked for public comment.

No public comment was heard.

Vice-chairman Cook moved, supported by Trustee Flood, in Case AB-2022-37, Northern Sign Company for Allstate, 3048 W. Clarkston Rd., 09-08-376-017 that the petitioner’s request for 1 variance from sign ordinance #153 – Section 7 Non-Residential wall signs for a variance for 1 wall sign over the allowed 1 wall sign for a total of 2 wall signs totaling 19.13-sq. ft. be granted because the petitioner did demonstrate the follow 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 difficulty: the petitioner has one variance that was previously granted for the monument sign in the front and the additional sign being requested measures 1 foot, 3 inches by 2 foot, 6 inches which still keeps the total square footage under the allowable.

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: this is a business that is nestled between two residential properties and the road that it is on has a speed limit of 45 miles per hour so signage is going to be important for its visibility.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: the speed limit in this area is around 45 miles per hour and it is highly unusual where this business is located.

4. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets and, in fact, it should improve it due to making the business more visible. There is also not going to be an increase of fire, or endanger public safety, nor 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: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.
6. **PUBLIC COMMENTS**

Mr. Gene McNabb commented that the green sticker on a newly constructed fence is concerning and he explained. He asked where someone can go to get a copy of Ordinance #99 and he explained his concerns about the amount of fill dirt. The Township needs to look into who is passing out the green stickers and why they will not enforce Ordinance #99.

Mr. Eugene McNabb stated that when the previous applicant was doing the work on Judah Road, he had a dozen people out there that could not speak English. He expressed his concerns about the number of family members living in the proposed new home.

7. **COMMUNICATIONS**

8. **COMMITTEE REPORTS**

Trustee Flood commented on the Fence Ad-Hoc Committee and a presentation to the Planning Commission is the next step.

9. **MEMBER COMMENTS**

Chairman Durham stated that each member was provided a copy of the approved Zoning Board of Appeals By-Laws.

Board member Walker commented on the successful recent book sale at the Library.

10. **ADJOURNMENT**

Moved by Board member Dunaskiss, seconded by Chairman Durham, to adjourn the meeting at 8:30 pm.

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

Respectfully submitted,

Erin A. Mattice
Recording Secretary