

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
******* MINUTES *******
REGULAR MEETING – MONDAY, September 27, 2021 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, September 27, 2021, at 7:00 pm at the Orion Township Community Center, 1335 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT (Board Member Location):

Dan Durham, Chairman
Don Walker, PC Rep to ZBA
Tony Cook, Vice-Chairman
Diane Dunaskiss, Board member
Tony Kerby, Alternate

ZBA MEMBERS ABSENT:

Mike Flood, BOT Rep to ZBA

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Linda Moran	Mark Muench	Bryce Albert	Becky Albert
Gary Quesada	Julie Dalym	Ken Zmijewski	Steven Wargo

1. OPEN MEETING/PLEDGE OF ALLEGIANCE

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

2. ROLL CALL

As noted

3. MINUTES

A. 9-13-2021, ZBA Regular Meeting Amended Minutes

Moved by Board member Walker, seconded by Board member Dunaskiss, to **approve** the minutes as presented.

Motion carried.

4. AGENDA REVIEW AND APPROVAL.

Moved by Board member Dunaskiss, seconded by Board member Walker to **approve** the agenda as presented.

Motion carried.

5. ZBA BUSINESS

A. AB-2021-41, Orion Storage, 1761 W. Clarkston Rd., 09-16-226-001, & .648 acres of 09-16-200-002 (postponed from the 7/12/2021 ZBA meeting)

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 6 variances from Zoning Ordinance #78 – Zoned LI Article XVI, Section 16.04 – Area and Bulk Requirements

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1. A 20-ft. side yard setback variance, from the required 25-ft., for a building to be 5-ft. from the property line (east).
2. A 12.52-ft. side yard setback variance, from the required 25-ft., for a building to be 12.48-ft. from the property line (west).
3. A 7.2% lot coverage variance, above the allowed 30%, for a total lot coverage of 37.20%.

Article XVI, Section 16.03(C)(3)

4. A 15-ft. off-street parking setback variance, from the required 20-ft., for parking to be 5-ft. from the property line (east).

Article XVI, Section 16.03(D)(2)

5. A 39-ft. greenbelt width variance, from the required 50-ft., for the greenbelt width to be 11-ft. (south).
6. A 37.52-ft. greenbelt width variance, from the required 50-ft., for the greenbelt width to be 12.48-ft. (west).

Mr. Gary Quesada introduced himself to the Board. He explained the issues from the last meeting and how they were resolved. If the request is approved by the ZBA, they do not have to go back to the Planning Commission. He stated that there are six variances being asked for; the attorney agreed with staff that #7 and #8 are eliminated.

Chairman Durham asked about the location of the property line.

Mr. Quesada replied that they believe it is mostly along the fence line. They did have the property surveyed for the civil and they do not have a problem re-surveying it. They have been working with the Polly Ann Trail personnel regarding the property line. The fence will be removed and they will back off of the property line and place landscaping in this area.

Chairman Durham asked if the parking would be inside of the fenced area to the west of where the fence is now.

Mr. Quesada replied yes. The parking lot will be away from where the fence is now.

Chairman Durham asked for public comment.

Linda Moran, Polly Ann Trail Manager, introduced herself to the Board. She noted that they have been working with Mr. Quesada. They have met several times and they have listened to their concerns and they have made adjustments. They are not opposed to the project and their concerns were completely satisfied.

Vice-chairman Cook asked if he could speak to the owner, Kenneth Zmijewski. He stated that they have had other projects where there were verbal agreements and then the business was sold. He asked if there is anything in writing regarding the agreements that have been made between himself and the Polly Ann Trail.

Mr. Zmijewski replied that he has no intention of selling the property. The only adjustment that they are making to their plan is shifting shrubs from one location to another location and this should satisfy the Polly Ann Trail staff. He has no problem putting these changes in writing. He explained his history in the community.

Chairman Durham stated that the Board is in receipt of a letter from Lake Orion Community Schools which says they support this project as designed. He asked if the hydrants are coming down to the business as part of a street project.

Mr. Quesada answered no. He described the location of the hydrant as approved by the Fire Department.

Board member Dunaskiss moved, and Board member Walker supported, in the case of AB-2021-41, Orion Storage, 1761 W. Clarkston Rd., 09-16-226-001, & .648 acres of 09-16-200-002 to grant the petitioner's request for 6 variances from Zoning Ordinance #78 – Zoned LI, Article XVI, Section 16.04 – Area and Bulk Requirements including: a 20-ft. side yard setback variance, from the required 25-ft., for a building to be 5-ft. from the property line (east), a 12.52-ft. side yard setback variance, from the required 25-ft., for a building to be 12.48-ft. from the property line (west) and a 7.2% lot coverage variance, above the allowed 30%, for a total lot coverage of 37.20%. From Article XVI, Section 16.03(C)(3), a 15-ft. off-street parking setback variance, from the required 20-ft., for parking to be 5-ft. from the property line (east). From Article XVI, Section 16.03(D)(2), a 39-ft. greenbelt width variance, from the required 50-ft., for the greenbelt width to be 11-ft. (south) and a 37.52-ft. greenbelt width variance, from the required 50-ft., for the greenbelt width to be 12.48-ft. (west). Zoning Ordinance #78 – because the petitioner has demonstrated that the following standards for variance have been met in this case and they set forth facts in this case that show:

1. The petitioner does show the following practical difficulties; due to the characteristics of this property, the variances make sense and the efforts to work with the Polly Ann Trail staff and the community are appreciated.
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 shape of the property, the location of the property and close proximity to the Polly Ann Trail contribute to the need for these variances.
3. The variances are also necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the following findings of fact: the petitioner has made accommodations to make sure that the Polly Ann Trail and the School District are on board with this project and that their interests have been met. A letter was received from the School District stating their support of the project.
4. The granting of the variances or modifications will not be materially detrimental to the public welfare or materially injurious to the property or to the improvement in such zone or district in which the property is located based on the following: there will be no detriment.
5. Based on the following findings of fact, the granting this variances would not impair an adequate supply of light or air to the adjacent property, it would not unusually increase congestion on public streets. There is also not going to be an increase of fire, or endanger of the public safety, and is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impact public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Durham, yes; Dunaskiss, yes; Cook, yes; Walker, yes. Motion passes 4-0. (Flood, absent)

B. AB-2021-54, Bruce Albert, 900 Walnut St., 09-10-380-014

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 6 variances from Zoning Ordinance #78 – Zoned R-3

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 20-ft. front yard setback variance from the required 30-ft. to erect a 6-ft. fence 10-ft. from the front property line on the southeast side (road side).
2. A 20-ft. front yard setback variance from the required 30-ft. to erect a 6-ft. fence 10-ft. from the front property line on the northwest side (road side).

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3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. fence 0-ft. from the side property line (southeast).
4. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. fence 0-ft. from the side property line (northwest).

Article XXVII, Section 27.17 (B)

5. A 20-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. fence 5-ft. from a wetland (southeast).
6. A 20-ft. wetland setback variance from the required 25-ft. to erect a 6-ft. fence 5-ft. from a wetland (northwest side).

Mr. Albert introduced himself to the Board. He stated that after speaking to the neighbor, he no longer wanted to install a 6 foot fence and now wants to install a 4 foot fence at the same setbacks. The fence would be erected on his side of the property line. He has confirmed with the neighbor and survey where the property line is located.

Chairman Durham confirmed that the 6 foot fence is now reduced to 4 foot.

Mr. Albert answered yes.

Building Official Goodloe stated that only the wetland variances would be applicable. The petitioner does not need a variance to erect a 4 foot fence on a property line.

Board member Walker confirmed that the petitioner does not need variances 1-4.

Chairman Durham stated that they are withdrawing the first four variance requests since they are not necessary with the reduction of a fence from 6 foot to 4 foot.

Mr. Albert stated that there is a chain link fence there now and this new fence will follow this fence line. The neighbor owns the chain link fence.

Chairman Walker stated that the Board received a letter from Kate Urdman that supports the variance request.

Board member Kerby stated that he would like to hear from Mr. Wargo regarding the wetlands setbacks.

Steve Wargo introduced himself to the Board and stated that he is the neighbor on the southeast side. There currently is a chain link fence and he explained the location of that fence. He stated that he paid for a survey and also had the line staked. The fence was put up by the previous owner of his property and he explained why the fence was installed. The fence does not go all of the way to the lake but it gets close. He would like to see the ordinances stay in place because he enjoys the birds and wildlife. The proposed fence would go on the other side of the chain link fence and he would want no ownership of that fence.

Chairman Durham asked if he has a concern that the proposed fence is going to go on his property.

Mr. Wargo answered no. It was staked so it is clear. He used the same surveyor as Mr. Albert. His only issue is the wetlands.

Board member Dunaskiss stated that the current chain link fence is about 5 feet from the wetlands.

Mr. Wargo replied he could drive a lawnmower tractor through there, but not too far.

Board member Dunaskiss asked if Mr. Wargo has any issue with the current chain link fence.

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Mr. Wargo stated that he is leaving it up to the Board. He stated that it is very congested with overgrowth. He is okay with the decision of the Board.

Board member Dunaskiss stated that there is no issue with the chain link fence but there is an issue with another fence in the same area.

Mr. Wargo commented that it is up to how much they want to keep complicating the issue.

Chairman Durham commented that reducing it from 6 foot to 4 foot is important.

Board member Kerby asked about the height of the fence in the wetlands.

Mr. and Mrs. Albert confirmed that it was 4 foot.

Board member Walker asked why the fence is located in this area.

Mr. Albert commented that typically on a lake the front of the house is the lake side. He stated that he wants the fence there to define the area and for care and maintenance, it will be easier for everyone.

Mrs. Albert stated that this area stays dry and in this area, they currently have a woodpile and she provided photos of this area. There are no nests in this area.

Building Official Goodloe commented that they are not putting the fence in the wetland; but it would be closer to the wetland than the ordinance allows.

Chairman Durham asked if the fence is determined to be 5 feet away, could they still maintain their property.

Petitioner replied yes. They explained how they would maintain this area.

Board member Walker asked about the location of the fence.

Mr. Albert replied that it would be along the sides with nothing in the front.

Board member Walker asked them what if they did 10 feet less on both sides of the fence.

Mrs. Albert replied that it would look odd to have the fence some of the way but not the entire length. She provided pictures of the area for the Board.

Board member Kerby stated that he is trying to determine the practical difficulty for this case.

Mr. Albert stated that where the chain link fence is now, the neighbor has to come around to maintain the foot and a half that separates them. There is a wood pile there and vegetation and they are trying to alleviate this by having a fence that is on the actual property line so that it creates a proper line so there isn't a no man's land between them anymore.

Vice-chairman Cook commented on visiting the property. He suggested that the fence should go so far and the rest of the area is planted with vegetation to get the effect that they want but have a more natural look.

Mr. and Mrs. Albert stated that the vegetation would not be enough to determine where the property line is so this is one of the reasons for the fence so it would be clear where the line is. There is vegetation all along the chain link fence. They have come to an agreement where the property line is. He has a vision for the back of this property and he would like it aesthetically pleasing.

Vice-chairman Cook commented that they could clearly define the area with vegetation. Board member Walker agreed with Vice-Chairman Cook with the vegetation.

Mr. Albert stated that it is not their intention to block views and vegetation could grow quite tall.

Board member Dunaskiss stated that it appears that the petitioner wants clarification for maintenance purposes so it is very clear.

Mr. Wargo reiterated his comments regarding the request.

Chairman Durham provided the options to the petitioner regarding voting on the request.

Board member Dunaskiss asked the distance between where the proposed fence is going and where the existing chain link fence is in the wetland area.

Petitioner replied a foot and a half.

Board member Walker stated that they are asking for an exception to the ordinance and he explained what that means.

Mr. and Mrs. Albert asked for a vote on their request.

Building Official Goodloe stated that the intent of the wetland ordinance is to prevent harm, destruction or natural features of the surrounding area. He stated that the Board might want them to reduce the request to 10 feet, for example.

Mr. Albert replied that they could reduce it to 10 feet; they will amend their request.

Board member Kerby confirmed that he does not see the hardship.

Chairman Durham asked what is different about their property as compared to properties in the area.

Mr. Albert replied that there is not a house on the other side, it is a strictly a recreational area to bring boat in and out.

Mrs. Albert replied that they do not have a beach front; they have 80 feet of cattails. There are large trees on the ends of the property.

Mr. Albert replied that there is a lot of overgrown vegetation.

Chairman Durham stated that they also have the option to postpone.

Mr. Albert stated that they would like the Board to decide tonight.

Board member Kerby moved, and Board member Walker supported, in ZBA Case AB-2021-54, Bruce Albert, 900 Walnut St., 09-10-380-014, that the petitioner's request for 2 variances from Article XXVII, Section 27.17 (B) including a 15-ft. wetland setback variance from the required 25-ft. to erect a 4-ft. fence 10-ft. from a wetland (southeast) and a 15-ft. wetland setback variance from the required 25-ft. to erect a 4-ft. fence 10-ft. from a wetland (northwest side) be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

- 1. The petitioner does not show practical difficulty due to any issues are self-created and do not meet the necessary requirement for the variances.**
- 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: there is nothing unique about the lot that prevents them from maintaining their lot in a fashion similar to everyone else in the neighborhood.**

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

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

A. Date Certain Memo

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Board member Walker commented on the recent library used book sale.

10. ADJOURNMENT

Moved by Chairman Durham, seconded by Board member Kerby to adjourn the meeting at 8:09 pm.

Respectfully submitted,

Erin A. Mattice
Recording Secretary