The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 10, 2022, at 7:02 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
- Joann Van Tassel, Alternate Board member

**ZBA MEMBERS ABSENT:**
- Tony Kerby, Alternate Board member
- Tony Cook, Vice-Chairman

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

**OTHERS PRESENT:**
- Mike Riddle
- Pete Smilanic
- Nancy Smilanic
- Mat Dunaskiss
- Adam Martin

1. **OPEN MEETING**
Chairman Durham called the meeting to order at 7:02 pm.

2. **ROLL CALL**

3. **MINUTES**

A. **09-26-22, ZBA Regular Meeting Minutes**

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 09-26-2022 minutes as presented.

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

4. **AGENDA REVIEW AND APPROVAL**

Trustee Flood moved, seconded by Board member Van Tassel, to approve the agenda as presented.

Roll Call Vote was as follows: Van Tassel, yes; Walker, yes; Dunaskiss, yes; Durham, yes; Flood, 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 (postponed from 8/22/2022 meeting)

Board member Walker moved, supported by Chairman Durham, to recuse Board member Dunaskiss from Case AB-2022-36 due to Board member Dunaskiss’ request.

Roll Call Vote was as follows: Van Tassel, yes; Flood, yes; Walker, yes; Durham, yes. Motion passes 4-0.

Chairman Durham read the petitioner’s 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%.
7. An 8-ft. side yard setback variance for retaining walls to be 0 ft. from the property lines north and south.

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

Pete and Nancy Smilanic introduced themselves and Mike Riddle with Rison Construction, introduced himself.

Chairman Durham pointed out revisions to the plan that make it more compatible with the Township’s Zoning Ordinance.

Board member Walker asked about the Fire Marshal’s review. He asked if the letter from September 21st was the last review letter. He understands that the petitioners have been back and forth with changes but he questions the recommendation made by the Fire Marshal and if it was made when the request was 10 feet.

Board member Van Tassel stated that the zoning ordinance has more authority over what is allowed than Building Codes. The request should be viewed based on what the zoning ordinance says and she pointed out that the height was reduced which was the Fire Marshal’s concern.

Trustee Flood concurred.

Board member Van Tassel stated that there is an elevator on the south side but there is no indication that there are elevator doors.

Mr. Smilanic explained the location of the elevator doors.

Board member Van Tassel asked about the interior of the home.

Mr. Smilanic explained the interior design of the home using the displayed plan.
Board member Van Tassel asked if there were stairs on the exterior that lead from every level.

Mr. Smilanic replied yes. He pointed out the stairs using the displayed plan.

Board member Van Tassel asked if there was public water at the site.

Mr. Smilanic replied no.

Board member Van Tassel asked about the water source.

Mr. Smilanic replied that they have a sewer and a well.

Board member Van Tassel asked if the petitioner had thought about having a sprinkler system.

Mr. Smilanic replied that each floor is constructed out of concrete. He explained the construction of the home. He doesn’t think that he has a need for a sprinkler system because of the structural elements.

Board member Van Tassel commented on the other parts of the home like the mechanical room.

Trustee Flood stated that he talked to the Fire Marshal prior to the height adjustment that the petitioner made. He appreciates the fact that the petitioner reduced the height, reducing it from 40 feet to 31 feet. The practical difficulty is the elevation of the property and this was a concern of the Fire Marshal. There will be living quarters above the garage and the Fire Marshal was concerned because if for some reason the Fire Department could not access a fire from the front, they would have to put a ladder up on the rear of the house and this is where the severe drop in elevation is. This is why the 30 foot height is in the ordinance. There are stairs on the outside of both sides which will provide access as well. The Fire Department measures height a different way than Zoning Ordinance #78 does. This variance is based on Ordinance #78 criteria. He would not have been in favor of going 40 feet high and he appreciates the drop in height.

Mr. Smilanic stated that this was a good recommendation that they knew they needed to follow.

Chairman Durham commented on the letter from the Fire Marshal who still has some concerns about the variance. The International Fire Code seems to be in conflict with the local ordinance. He wishes that there could have been an agreement reached where all parties were in agreement although the Fire Marshal is much happier with the reduction in height.

Mr. Riddle stated that they worked over the last several months trying to bring the home as close to the ordinance as they could. This home’s entire back patio is flat, solid concrete and it is stable. They are also areas all of the way around the home that have stable areas to locate a ladder. He knows that there is still some concerns, but they tried to get as close as possible and based on the fire rating and working around the perimeter, this home is a lot better than other homes.

Chairman Durham asked if they heard the words “area of refuge”.

Mr. Riddle answered yes.

Chairman Durham explained “area of refuge” as it relates to fire fighting.

Mr. Smilanic pointed out the “area of refuge” using the displayed home plans.

Chairman Durham commented that he is happy to see and hear this.

Building Official Goodloe stated that the International Fire Code governs the Fire Access. The structure itself is governed by the Michigan Residential Code which only requires one main egress door for a home otherwise each bedroom has to have egress windows for sleeping areas. He would like to know where the egress windows are for the upper two levels since the main level has a front door. The issue was the road
Chairman Durham asked for public comment.

No public comment was heard.

Trustee Flood moved, seconded by Board member Walker, 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 that the petitioners’ request for 8 variances from Zoning Ordinance #78 – Zoned R-3, including Article VI, Section 6.04, Zoned R-3 for 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 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%; 7.) An 8-ft. side yard setback variance for retaining walls to be 0 ft. from the property lines north and south and from Article XXVII, Section 27.17 (B), an 5.25-ft. wetlands setback variance from the required 25 feet to build a house with a deck 19.75 feet from a wetland lake be granted because the petitioner did demonstrate that the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioners showed the following practical difficulty: mainly due to the unique characteristics of this property which severely goes down from Cushing Street to the lake. The petitioner is trying to build a house that would be compatible on this property which is a permitted use for this property. There were several meetings and compromises back and forth between the petitioner and the consultants in this case to try to work it out. Most of the variances have been reduced from the original filing due to these meetings and conversations between the parties.

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 lake lot is very difficult as it relates to its elevation, also, street access is limited to all of the houses on the street.

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: this is similar to a lot of lake lots in the Township – needing side yard setback variances so that a permitted use such as a house, would fit properly in the area.

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; the letter from the Fire Marshal dated 9/21/22, which they approved with comments, should be a part of this motion and made part of the record.

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. By building this type of structure with a two-story garage giving relief the road - it would keep cars off of the street. There is also not going to be an increase of fire, or endanger public safety - referring to the Fire Marshal’s letter dated 9/21/22 which approved with comments. Granting of the variances will not reasonably diminish or impair established property values within the surrounding areas, it will in fact improve property values, 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: Van Tassel, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 4-0.
Board member Dunaskiss re-joined the Board members.

B. **AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024** (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
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. Adam Martin introduced himself and summarized the variance request. He requested a postponement until the end of February 2023 to give them a chance to speak to the HOA and see what other options are available.

Building Official Goodloe stated that the dates are not set yet for 2023 until they are voted on in December 2022 and suggested that they move the petitioner to a date that is known.

Mr. Martin stated that with the holiday season, he doesn't think a lot of movement will happen with the HOA.

Chairman Durham stated that the Board cannot give the petitioner a date, but will take note that he would like a date in 2023.

Mr. Martin stated that he is flexible on when he comes back. He stated that they might be able to find an option so they would not need a variance and they would be able to cancel.

Board member Walker asked if there was anything in the by-laws that would allow the petitioner to come back.

Building Official Goodloe stated that if they do not have a date certain, the Township will charge the re-advertise fee. He suggested that the petitioner take the date of November 28, 2023. The Board could possibly set the 2023 dates at that meeting.

Board member Van Tassel asked about the rear setback variance request.

Mr. Martin stated that they have a practical difficulty because their property borders both Saturn Drive and Waldon Road so he is forced to observe two front yards.

Board member Van Tassel asked about the application asking for a 6 foot fence along the back of the property, not along the fence. She asked what the petitioner is seeking.

Board member Dunaskiss stated that the petitioner is erecting the fence along the rear of the property but it will extend 10 feet on each side so it goes to the property line.

Board member Van Tassel stated that the rear property line does not stop 10 feet from the side, it goes the entire way.

Board member Dunaskiss stated that if he was building a 4 foot fence, he could take it all of the way to the sides but since he is building a 6 foot fence, he would need to stop it 10 feet from each side.
Trustee Flood stated that this is the way the ordinance is written and interpreted.

Building Official Goodloe stated that the last meeting in 2022 is December 12th.

Board member Dunaskiss moved, seconded by Chairman Durham, that in the matter of ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024 that per the petitioner’s request, this matter be postponed until the meeting on December 12, 2022. At that time, there might be a request to postpone to a date certain but the Board does not have established meeting dates for 2023 yet.

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

C. AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. rear 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. 00A 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. Backus introduced himself and stated that he was there in support of the others on the agenda asking for variances for a fence.

Chairman Durham asked if anything had changed since the petitioner was here before.

Mr. Backus replied no. He has a lot of people that cut through his yard. He is the last house at the canal and his property is ideal to cut through from Waldon to Walmsley Circle. He would like to stop this. Since he has built the house, there have been a lot of changes that have created a lot of noise along Waldon Road and he explained. This fence would help block this noise. He has had things stolen from his yard too and he would like to have a nicer fence like they put up along Baldwin Road.

Chairman Durham asked if his property has the entire area cut back and has arborvitae planted.

Mr. Backus replied no. He has let all of the brush grow up. He is aware that he can have a 4 foot fence without a variance but feels that a 6 foot fence would be a lot better to address his concerns. He doesn’t like the idea of having all different types of fences.

Board member Van Tassel stated that the aerial photograph indicates that 35 feet of the property is parallel with Waldon Road. There is also a piece of the property that is at an angle to that which is about 60 feet which he is not asking for any fencing for. If the petitioner’s concern is for people cutting through, this 60 feet would still be open allowing that.

Mr. Backus stated that he doesn’t hear very well and doesn’t understand what she is saying.

Board members and Mr. Backus discussed the property lines of the subject lot.
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – October 10, 2022

Board member Van Tassel stated that wood is a hard surface that sound will bounce off of. She suggested that they plant arborvitae along the property line which will absorb the sound. They will grow and will do a good job of absorbing noise.

Trustee Flood stated that this is a Homeowner’s Association concern because they are replacing an original split rail fence that was along the roadway. The 4 foot shadowbox fence will solve the problem. The HOA should take care of this for the residents. There was a site plan made up for this development.

Board member Walker stated that the case right before Mr. Backus postponed his case so they will have time to come up with a solution. Mr. Backus has the right to postpone or the Board can vote on this case.

Building Official Goodloe stated that the Fence Committee is looking to address the two front yard issue.

Chairman Durham stated that it is going to take change by the HOA to correct this problem.

Mr. Backus indicated that he would like to postpone his case to December 12, 2022.

Board member Dunaskiss moved, seconded by Trustee Flood, that in the matter of ZBA Case AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 that per the petitioner’s request, this matter be postponed until the meeting on December 12, 2022.

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

D. AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012 (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
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.

No petitioner was present.

Board member Dunaskiss moved, seconded by Trustee Flood, that in the matter of ZBA Case AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012 that this matter be postponed until the meeting on December 12, 2022 due to the fact that the petitioner was not present.

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

6. PUBLIC COMMENTS

7. COMMUNICATIONS

8. COMMITTEE REPORTS
9. MEMBER COMMENTS

Board member Van Tassel commented on the postponing of the last case and the variances requested during this meeting.

Board members and Building Official Goodloe discussed the rear property line fence variance request and offered historical comments regarding variances in the Township.

Chairman Durham and Board member Walker commented on the legal opinion that was offered for the first case and as to the Board acting “slight and capricious.”

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:23 pm.

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

Respectfully submitted,

Erin A. Mattice
Recording Secretary
To: Zoning Board of Appeals
From: Jeff Williams, Fire Marshal
Re: AB-2022-36, Dunaksiss Case
Date: 9/21/2022

The Orion Township Fire Department has completed its review of Application AB-2022-36 for the limited purpose of compliance with Charter Township of Orion Ordinance’s, Michigan Building Code, and all applicable Fire Codes.

Based upon the application and documentation provided, the Fire Department has the following recommendation:

Approved
X Approved with Comments (See below)
Not approved

Comments:

Granting of Height Variance: After consultation with the Township Attorney and review of the drafted attorney opinion letter received on 9/16/2022 the Fire Department has the following understanding at this time.

- Orion Township Ordinance #78 calculates the “General Height” of a structure by taking measurements from multiple areas around the building, dividing those measurements up which then gives an overall range of height. By following Ordinance #78 the applicant is seeking a 1ft 7½ inch height variance.
- Orion Township Ordinance #146 calculates height by the distance between the grade plan and the highest roof surface noted on a plan. By following Ordinance #146 / International Fire Code this gives the structure a measurement of 49½ ft in height. Per International Fire Code if this measurement exceeds 30ft in height the structure shall have an approved aerial access drive 26ft in width that is in the proximity of the structure. The intent of this drive is to allow for ladder truck access and operations in the event of an emergency. It shall be noted the applicant is seeking a height variance and proposing to build this structure on an access road has limited widths measuring 12’ wide.
- After consultation of the Township Attorney and review of the drafted opinion letter it is the fire departments understanding at this time that Ordinance #78 takes precedence over such height measurements making the structure 1ft 7½ inches out of compliance of Ordinance #78.
- With this information it shall be noted that the fire department still has areas of concern in regards life safety, property conservation and our departments inability to conduct aerial operations on an access drive that is non-compliant with International Fire Code.

If there are any questions, the Fire Department may be reached at 248-391-0304 ext. 2004.

Sincerely,

Jeff Williams
Jeff Williams, Fire Marshal
Orion Township Fire Department