

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
******* MINUTES *******
REGULAR MEETING – MONDAY, October 11, 2021 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 11, 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
Mike Flood, BOT Rep to ZBA
Tony Kerby, Alternate

ZBA MEMBERS ABSENT:

Diane Dunaskiss, Board member

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Mat Dunaskiss	Diane Dunaskiss	Mark Muench
Richard Benoit	Trina Benoit	Dave and Sue Kepsel
Pam & Bob Brenner	Deb Wylin	Audrey Sobia
Barbara Schalk	Dan VanHouzen	Dave Dirven
Tim Petersen	Joe Latozas	Mike Riddle
Dawn Wallin	Matt Knoth	Rick Knoth
Steve Ova		

1. OPEN MEETING

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

2. ROLL CALL/PLEDGE OF ALLEGIANCE

As noted

3. MINUTES

A. 9-27-2021, ZBA Regular Meeting Amended Minutes

Moved by Board member Kerby, seconded by Vice-Chairman Cook, to **approve** the minutes as presented.

Motion carried.

4. AGENDA REVIEW AND APPROVAL.

Moved by Trustee Flood, seconded by Chairman Durham to approve the agenda as presented.
Motion carried.

5. ZBA BUSINESS

A. AB-2021-50, Mike Riddle, Vacant Parcel 2 Parcels South of 576 Cushing St., 09-03-278-027.

Chairman Durham read the petitioner's request as follows:

The petitioners are seeking to extend the expiration date for the approved AB-2020-08 ZBA case variances.

Mr. Mike Riddle introduced himself to the Board. He asked if they could table this request and move it to the following meeting.

Chairman Durham replied that they do not have any availability until November 22, 2021.

Mr. Riddle stated that he would like to table the request. He asked if they table it, will he get an extension. He would like the exact same thing that he had before. He doesn't know if this is an extension or a new variance.

Chairman Durham stated that if he decides to try for a new variance, he risks being denied.

Building Official Goodloe stated that if the variance is not extended, he will have to apply for a completely new variance.

Vice-chairman Cook asked if it was a new request on the second lot.

Mr. Riddle stated that at the prior meeting when this was tabled, he started with lot 1, this is on the agenda. He stated that they would also like to talk about lot 2 but they want to push it out to the following meeting. Lot 1 is an extension and is C. on the agenda.

Vice-chairman Cook stated that he, Mr. Riddle, needs to think about why he, Mr. Riddle, needed to submit a new application for lot 1 and then apply that to lot 2. Lot 1 was denied for an extension.

Mr. Riddle stated that he understood part of that denial was the fact that they were under the impression that they were coming back to get what they had before opposed to show everything that they had presented before.

Vice-chairman Cook urged the petitioner to take the minutes into account when he looks at presenting lot 2. The Board denied the extension for lot 1 and he now has a new application for lot 1 which they will hear tonight as a separate application. Apply this same logic to lot 2.

Mr. Riddle stated that he would like to withdraw the current application.

Vice-chairman Cook moved, and Board member Kerby supported, in the matter of ZBA Case AB-2021-50, Mike Riddle, Vacant Parcel 2 Parcels South of 576 Cushing St., 09-03-278-027 that the petitioner's request to withdraw the petition to extend the expiration date for AB 2019-23 be accepted by the Board.

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

B. AB-2021-55, Tim Petersen, Vacant Parcel, #09-20-256-012, East of 2585 Browning

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-2

1. A 9.73-ft front yard setback variance from the required 35-ft. to build a house 25.27-ft. from the front property line.

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2. A 12.85-ft. rear yard setback variance from the required 35-ft. to build a house 22.15-ft. from the rear property line.

Article XXVII, Section 27.02 (A)(8) Buildings, Structures, and Uses, for lot size up to ½ acres

3. A 1,146-sq. ft. variance from the allowed 1,150-sq. ft. total maximum floor area of all accessory buildings to construct a 1,484-sq. ft. attached garage and an 812-sq. ft. attached accessory building for a total of 2,296-sq. ft. total maximum floor area of all accessory buildings.

Mr. Petersen introduced himself and his architect, Joe Latozas, to the Board and explained the variance request and his history of owning the property.

Chairman Durham commented that the petitioner has a lot of stuff and needs a place to put it. He stated that if the house was built, it would elevate the neighborhood. He was surprised about the neighbors that were against the proposal.

Vice-chairman Cook stated that the petitioner mentioned that if it was not approved, it would be a smaller home and/or two homes. He asked for clarity.

Mr. Petersen stated that there can only be one house and the only thing that fits is the minimum size to the restrictions because there is not room for anything else. He provided a drawing showing the proposed home and if they have to abide to the R-2 zoning restrictions.

Board member Walker commented that the petitioner lives across the street and currently has a garage; he asked how big the garage is.

Mr. Petersen replied 24 ft by 22 ft.

Board member Walker asked if there were any additional accessory structures on the property.

Mr. Petersen replied no, it is not allowed.

Board member Walker commented that the difficulty is primarily the petitioner's wife's medical condition. He asked if it was his intention to build the house across the street as an inhabitable home and who would live in it.

Mr. Petersen replied yes. He might rent it for a while; he is considering having his daughter move in. The current house is 5700 square feet and three levels and he is finding it increasingly more difficult to navigate the stairs. The house that he is proposing has an elevator.

Chairman Durham asked who could afford rent on a house like that.

Mr. Petersen replied Ken Eaton who is a friend of his and currently lives in Rochester Hills.

Trustee Flood commented that without the first two variances, the petitioner could not get the third. He provided history of the Keatington subdivision. He has no problem with the first two variance requests. He stated that the problem that the neighbors have seem to be with the third variance request which is the garage.

Board member Walker asked if he would reduce the size of the house.

Mr. Petersen replied that he would consider anything, but he wants to make sure it meets their needs.

Board member Walker asked if the petitioner tried to talk to his neighbors about the proposal.

Mr. Petersen stated that he arranged an open meeting at his house and two people showed up. He has neighbors who support his proposal and commented on the neighbor next door who supports his request.

Chairman Durham asked if there was public comment in this case.

Barbara Schalk, 2590 Browning Drive, commented on why she does not support the variances being requested. She submitted a petition which was signed by 32 homeowners expressing their opposition to the variances being requested. She stated that the six car garage is not in harmony with the character of the neighborhood and the plan is unattractive. The need for the variances is self-created and not unique to the characteristics of the property and does not meet the standards for variances. The petitioner has other options to suit his needs. The size of the proposed structure is excessive and out of character for the size of the lot and homes in the neighborhood. The setbacks should not be granted because the applicant should design the home to suit the property. The presence of this large garage would leave it open for commercial use.

Chairman Durham asked if most of the houses in the subdivision were built around the same time.

Ms. Schalk replied no and she provided history of the building of the homes.

Chairman Durham asked about the concern about noise.

Ms. Schalk stated that there is nothing to stop all garage bays being open at one time and cars make noise when you work on them.

Debbie Wylin, 2398 Eaton Gate, expressed her concerns about the proposed variances. She stated that it would negatively affect the openness and the friendliness of the neighborhood. She stated that they are an open community without fences but the petitioner will be right on the property line and doesn't match the neighborhood.

Sue Kepsel, 2406 Eaton Gate, expressed her concerns about the proposed variances. She asked what will happen to this property when the current owners are no longer with us. There is nothing to prevent a body shop coming into this structure or another commercial business.

Chairman Durham commented that the Township does employ ordinance officers for zoning and land use issues.

Ms. Kepsel commented on the existence of a group home in the neighborhood.

Dave Kepsel, 2406 Eaton Gate, expressed his concerns about the proposed variances. He pointed out the deed restrictions in Keatington Shores that these variances are against. He commented on the presence of the group homes. He read from the deed restrictions of Keatington Shores.

Chairman Durham asked Building Official Goodloe if the Board deals with HOA deed restrictions.

Building Official Goodloe stated that the HOA signed off on the project so he assumes that they did their due diligence. The Township doesn't regularly enforce deed restrictions.

Joe Latozas introduced himself to the Board as the architect for the project. There was a comment made that there are going to be tall walls like a blockade around the site. The petitioner actually mentioned tall windows in his description. The front and rear setbacks proposed do mirror the lots on both sides. He stated that they are asking for the variance based on the neighboring properties as per the ordinance. The back of the home is in line with the neighboring home and the front of the home is in line with the neighboring home. The use of the home is regulated by the zoning ordinance and the idea that another use would come into the R-2 zoning is not an option. He commented on the deed restrictions and pointed out that this lot has the ability for a 20 foot rear setback and a 25 foot front setback as per the deed restrictions. The current zoning is R-2, not R-3 and this lot is listed as one of the exceptions in the deed restrictions.

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Trustee Flood commented that the Board has a letter from the Keatington Home Owners Association date stamped received August 31, 2021 which indicates that the proposed plan is approved for Tim Petersen. Trustee Flood read the letter into the record from Brian Curtis.

Mr. Petersen stated that many of the comments made are not true and he summarized his reasoning for wanting the proposed home.

Chairman Durham asked if there was a plan to add extra drywall to sound proof the garage.

Mr. Petersen replied that it would have 5/8's drywall everywhere because of fire code.

Chairman Durham asked if there was any way to reduce the size of the larger building and still get what he wants.

Mr. Petersen replied not right here, but they could work on it. He stated that the lot is 191 feet long and the house he is proposing is 80 feet. He commented that there is a variety of houses on this street.

Board member Kerby stated that he doesn't have a problem with the first two variance requests. The third for the accessory square footage seems to be an issue. He asked if they could move forward without that accessory building to bring it more in line with the ordinances.

Mr. Petersen replied that he would have to look at it in detail. It would change the house design.

Trustee Flood stated that he has no problem with a three car garage but five cars are excessive.

Dawn Wallin, neighbor, expressed her opposition to the excess accessory square footage being asked for. She stated that she doesn't think the HOA looked at the deed restrictions when approving this plan, they were looking at the neighborhood and she read from an email that she received.

Dan VanHouzen, 2608 Browning, commented on his history in the neighborhood and the expert building ability of Tim Petersen. He stated that they are worried about the next guy. However, the guy that buys this house is going to be a collector and there will be a large barrier to entry. He commented on a past neighbor that had a landscaping business in the neighborhood. He added that he supports the petitioner and his proposed plan.

Andy Sonja, 2393 Eaton Gate Road, provided a history of ownership of his property. He expressed his concerns about the proposed plan including the view of a wall from the back and he will not have any sunlight through to his property.

Rick Knoth, 2559 Browning Drive, provided a history of ownership of his property. He commented on a former neighbor who operated a business out of the neighborhood. His concern is not with Tim Petersen; his concern is with the next person that owns the home. He commented on the design of the home and why he is opposed to this design.

Barb Schalk commented on her involvement on the architectural control committee and how the committee operated at that time. She stated that the deed restriction says that you can run a self-employed business out of your home.

Dave Kepsel commented that the petitioner's current garage houses vehicles beneath the floor of the garage.

Mr. Petersen stated that he does not have any storage in the proposed home below grade. He commented that the back of the property is covered by 80 foot trees.

Board member Walker asked if the petitioner would be willing to cut back his request for the accessory square footage.

Mr. Petersen replied he would look at it, yes. He stated that he would not be able to cut back to 1150 square feet. He believes he meets the ordinance requirements and wants to know what he can have.

Chairman Durham stated that all of the neighborhood comment will be part of the record through the hard copies that the Board was given. He stated that he has to put weight on the neighbors' concerns but the Board also has to review based on ordinance standards. He stated that he doesn't have a problem with the variance requests.

Vice-chairman Cook stated that there are 24 neighbors that are against this. Mr. Petersen stated that he held a meeting and gave an invitation out and there were 2 that showed up. He asked the neighbors in the room if they received an invite to this meeting. He would like to know about the discussion and the information that took place at this meeting. There are a lot of heads that are shaking that did not receive an invite.

Mr. Petersen stated that on the day that the notice went out, he sent out an 11 page document explaining his position, the notice, the Board approval and the drawing to 16 of his neighbors that he had email addresses for. Nobody called regarding what he sent out; he knows that a petition was sent out and still doesn't know what is in that petition. Last Thursday, he had an opposition party and asked Barb Schalk to send out to those that were signed on the petition to see what they could work out. He stated that 2 people that showed up that were opposed and a neighbor that was for it showed up.

Vice-chairman Cook stated that the petitioner will not answer a direct question as to whether or not he will take the extra accessory square footage into consideration.

Mr. Peterson stated that he will, but he needs time to do this.

Chairman Durham stated that the petitioner could postpone his petition and come back before the Board on November 22, 2021.

Joe Latozas asked if they could vote on the first two requests and withdraw the third.

Board members and Building Official Goodloe discussed splitting the approval of the requests.

Mr. Petersen stated that he would like comment on the first 2 and he would go to work on the third.

Chairman Durham explained why the Board would not like to split up the requests.

Board member Kerby moved, and Trustee Flood supported, in Case AB-2021-55, Tim Petersen, Vacant Parcel, #09-20-256-012, East of 2585 Browning to postpone until November 22, 2021 at the request of the petitioner. Roll call vote was as follows: Durham, yes; Flood, yes; Kerby, yes; Cook, yes; Walker, yes. Motion passes 5-0.

C. AB-2021-56, Steven Oja, Vacant Parcel #09-03-278-026, South of 576 Cushing

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 4 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3

1. A 20-ft. rear yard setback variance from the required 35-ft. to build a house 15-ft. from the rear property line (road side).
2. A 2-ft. side yard setback variance from the required 9-ft. to build a house 7-ft. from the side property line (north).
3. A 1.2-ft. side yard setback variance from the required 9-ft. to build a house 7.8-ft. from the side property line (south).

4. A 13.72% lot coverage variance above the allowed 25% for a total lot coverage of 38.72%.

Steve and Nicole Oja introduced themselves to the Board.

Mr. Mike Riddle introduced himself to the Board and summarized the variance request. He provided a video to the Board showing how they came to the variance requests that are being presented tonight. He stated that there is no problem with police and fire and they are working on increasing the parking area in front. He provided a picture of the current houses and explained how the proposed would fit within the current neighborhood parameters.

Board member Kerby asked if they were asking for 7 foot side setback and the other houses have 5 foot setbacks.

Mr. Riddle pointed out other houses in the neighborhood with 5 feet side setbacks.

Trustee Flood provided a history of this property and its presentation before the Board at a prior meeting. He believes the Board did the right thing by postponing this property and he appreciates the changes that Mr. Riddle has done.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Vice-chairman Cook moved, and Board member Kerby supported, in the matter of ZBA case AB-2021-56, Steven Oja, Vacant Parcel #09-03-278-026, South of 576 Cushing for approval of the following 4 variances: Article VI, Section 6.04, Zoned R-3 including a 20-ft. rear yard setback variance from the required 35-ft. to build a house 15-ft. from the rear property line (road side), a 2-ft. side yard setback variance from the required 9-ft. to build a house 7-ft. from the side property line (north), a 1.2-ft. side yard setback variance from the required 9-ft. to build a house 7.8-ft. from the side property line (south) and a 13.72% lot coverage variance above the allowed 25% for a total lot coverage of 38.72—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; the topography of this site requires some adjustments in normal setbacks in order to maintain a reasonable living space as well as a foundation that will be solid and last for years to come.**

- 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: similar to the other homes in the area, there are issues with the grade of the lot as well as issues with the width of the lot, as they average only 60 feet for this land.**

- 3. The variance is 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 topography and due to the narrowness of not only the lot, but also the street, requires the petitioner to reposition the home to accommodate for additional off street parking to make this safer for home occupants as well as the neighbors.**

- 4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located based on the following: the petitioner has come back to the Board taking into account what was discussed and the lot coverage has been decreased.**

- 5. Based on the following findings of fact, the granting of this variance 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 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. Roll call vote was as follows: Durham, yes; Flood, yes; Kerby, yes; Cook, yes; Walker, yes. Motion passes 5-0.

6. PUBLIC COMMENTS

Mark Muench, 11463 Clovis Point, stated that he will have a case come before the Board in 2 weeks. He asked if there was a preference to have the home farther away from the lake or farther away from the road, or does it depend on the lot itself.

Board members commented on this future case.

7. COMMUNICATIONS

A. Date Certain Memo

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Board member Kerby commented on how nice it was to have Trustee Flood back.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Board member Kerby to adjourn the meeting at 8:58 pm.

Respectfully submitted,

Erin A. Mattice
Recording Secretary