The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 24, 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  
Mike Flood, BOT Rep to ZBA  
Don Walker, PC Rep to ZBA  
Diane Dunaskiss, Board member  
Tony Cook, Vice-Chairman

**ZBA MEMBERS ABSENT:**

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

**OTHERS PRESENT:**
Rick Rassel  
Timothy Foley  
Tracey Guiana  
Anton Rozhanskiy  
Tom Williams  
Kimberly Parisek

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

2. **ROLL CALL**

3. **MINUTES**

   A. 10-10-22, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Board member Walker, to approve the 10-10-2022 minutes as presented.

Vote was as follows: Cook, yes; Dunaskiss, 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 presented.

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

5. **ZBA BUSINESS**

   (Returned to the Planning & Zoning Department for more information at the 6/27/2022 Mtg.)  
   (Postponed from the 8/22/2022 meeting)

Chairman Durham read the petitioner’s request as follows:
The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-2

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.

Ms. Tracey Guaniana introduced herself to the Board members and summarized the variance request. She described the need for the fence including safety concerns for animals and for children.

Board member Dunaskiss asked if she has tried to speak to the neighbor regarding the overgrowth that the petitioner described coming over onto her property.

Ms. Guaniana answered that it turns into an argument.

Vice-chairman Cook asked where the pictures were taken.

Ms. Guaniana replied that they were taken from her property looking down. The trash is located on the neighbor’s property.

Vice-chairman Cook asked if a survey has been done.

Ms. Guaniana replied yes; it was the middle of last summer. The picket fence has been up since then.

Vice-chairman Cook asked about the existing fence that is up.

Ms. Guaniana replied that the orange fence is still there; it is on the property line. The picket fence starts at the end of her home.

Board member Walker stated that the petitioner indicated there were safety concerns regarding her nieces and nephews. He asked for explanation as to why a 4 foot fence would not keep children safe.

Ms. Guaniana replied that a 4 foot fence would keep children safe but the weeds would billow over it. She needs to go out weekly and cut the weeds that come through the existing fence since 2014. These issues have been there since she moved in. The neighbors lived there when she moved in.

Chairman Durham asked what type of land is on the other side where the weeds come from.

Ms. Guaniana answered that it is wild and not maintained and she would expect it to be maintained.

Trustee Flood stated that the petitioner was ticketed by the ordinance officer in April 2022. The ticket is still outstanding and is still on record as a violation. He agreed with Board member Walker in that a 4 foot fence would be sufficient. There is Code Enforcement available for the weeds.

Board member Dunaskiss asked if she has had contact with the Township regarding the weed ordinance violation.

Ms. Guaniana replied that she has made numerous complaints, and nothing has been done. She also stated that Kirk came out accompanied by another man. She never heard anything else about it and the weeds are still growing.

Board member Dunaskiss asked if they indicated to the petitioner that this was a weed ordinance violation.

Ms. Guaniana replied that she was told it was a violation, but they are still growing.
Chairman Durham asked if Building Official Goodloe was aware of any weed violations on the neighboring property.

Building Official Goodloe replied that not enough to discuss it during this meeting.

Mr. Richard Rassel, Attorney, stated that he is there representing Tom Williams who is the neighbor directly to the south. He stated that there are two letters in the ZBA packets from David Plunkett, his partner that were written on behalf of Mr. Tom Williams. One letter was presented in June and the other was presented in August.

Board member Walker stated that his son is a partner in the same firm as Mr. Rassel and Mr. Plunkett and he is concerned that there is a conflict of interest. He asked the Board for permission to recuse himself.

Trustee Flood moved, seconded by Vice-chairman Cook, to recuse Board member Walker from this case due to the conflict of interest with Mr. Walker's son working at the same law firm as Mr. Rassel and Mr. Plunkett. Board member Walker should be recused from this case and shall return when this case is completed.

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

Building Official Goodloe commented on several violations for the property over the last several years including junk vehicles, barbed wire fence and garbage. There are no outstanding violations.

Mr. Rassel described the property that Mr. Williams' owns and the history of the ownership. There is a 6 foot privacy fence that has been installed along the property lines of the property in question. The application says that a court order is responsible for the location of the fencing which is not true. There has been a misrepresentation of this order since the beginning when this application was submitted. There is a March 2021 Consent Judgment that deals with property owned by the Darnells at 1136 Hemingway that has to do with the relocation of a fence on the north end of the applicant's property. The entire justification for the location of this fence on the southern part of the applicant's property has been incorrect from the beginning. The applicant has no basis for a hardship, no practical difficulty, no unique circumstances and has not attempted to demonstrate that she meets the four requirements for the granting of a variance. The ordinance states that a 4 foot fence can be located on the property line while a 6 foot fence has to be located 10 feet back. In order to locate the fence on the property line, the applicant must establish a practical difficulty and he explained. The private matters between the neighbors is unfortunate, but the location of the fence will need to be determined by a civil proceeding. This is not for this Board to determine. The entire misrepresentation is that it was resulting from a prior consent judgement of the Oakland County Circuit Court relative to an easement located along the north end of the applicant's property. He does not believe there is any applicable law that would say that the applicant has met any standard for the granting of a practical difficulty. Mr. Williams and the Darnells are opposed to the 6 foot privacy fence that the applicant installed without permission and this is the subject of an ongoing code enforcement investigation and it should be remedied by the Township ordinance officials.

Board member Dunaskiss asked if Mr. Rassel's client has done anything to the property in response to anything that the ordinance officers have discussed with him.

Mr. Rassel answered no. Mr. Williams has not been cited for any ordinance violations. He described the topography of the property.

Vice-chairman Cook asked if the Code Enforcement officers have spoken to Mr. Williams about the weeds.

Mr. Rassel answered no.

Vice-chairman Cook stated that 1160 is a vacant piece of property. If it is vacant, what is the problem with having a fence up, 4 foot or 6 foot, since it is not maintained currently.
Mr. Rassel stated that it changes the character of the surrounding area. It imposes a fence that violates the Township ordinance and was put up along Mr. Williams’ border. They are trying to focus on the fact that the applicant does not have the basis to establish a unique circumstance that demonstrates a practical difficulty.

Vice-chairman Cook stated that a 4 foot fence is still an option.

Mr. Rassel answered that they understand that.

Mr. Tom Williams introduced himself to the Board. He made a correction in that the address of 1160 does have a home and there is also a home on 1180 and 1198. When he bought 1212, there was a house on it and he had to tear it down. This is a 40 acre parcel and he described the property’s dimension. It would be impossible for him to have weed control on such an immense property. It is wetlands and he cannot do anything with it.

Chairman Durham stated that this appears to be a property dispute between neighbors with large properties that should not run into conflict with one another and he is having trouble understanding how this evolved to this point.

Mr. Tom Williams stated that he owns all of the property along the petitioner’s southern property line. He went up there one day and there was a picnic table, umbrella, dog cage all on his property. He pushed the items back off of his property. They continued to move the items back and mow the property. He wanted them to stop mowing his property so he got a survey and put up a barbed wire fence. The Oakland County Sheriff came out and told him that he needed to take the barbed wire down because he did not know it was illegal in Oakland County. He asked about a plastic snow fence and the Sheriff told him that was okay. He got it surveyed and put up a snow fence. The neighbors then pulled out the stakes that he paid a crew to put in and put this privacy fence over on his property. He doesn’t care about a 6 foot fence but he cares about stuff being put on his property on which he pays taxes. He is trying to resolve it through attorneys and will next go to court and they will win because he has surveys that establish the property lines. He has had the property surveyed four times and still the petitioner has pulled up stakes and thrown them away. The area is a swamp and is black peat and soft ground.

The petitioner commented that the variance requests are not for anything on the north.

Vice-chairman Cook asked if the petitioner mowed the section that Mr. Williams was talking about.

The petitioner replied yes.

Vice-chairman Cook asked Mr. Williams if they were okay with the petitioner mowing the area to get the weeds back from their property but not allowing anything on it.

Mr. Williams replied no, they need to mow their own property.

Chairman Durham explained that he is not able to see practical difficulty in this case. He does not see the weeds as being something this Board considers.

Trustee Flood asked the petitioner if she knew that she is allowed a 4-foot fence on the property line without variance.

Ms. Guaniana replied yes.

Trustee Flood asked the petitioner if she knew that she is allowed a 6-foot fence if she brings it to the setback line of 10 feet.
Ms. Guaniana replied that she did not know that. She asked how she would clean the 10 foot behind the fence.

Trustee Flood replied that she would have to get behind it, but she could clean it out because it is her property.

Vice-chairman Cook moved, seconded by Trustee Flood, that in the matter of ZBA Case AB-2022-23, Tracey Guaniana, 1150 Hemingway, 09-15-201-028AB-2022-38, that the petitioner’s request for 2 variances from Zoning Ordinance #78 – Zoned R-2, 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 side property line to the south and 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 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 a practical difficulty: when they discussed the various evidence that was presented, it does not meet the standard in terms of the reasons that were given that a 4-foot fence or a 6-foot fence moved in 10 feet would not solve those difficulties.

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 because they did not present anything that was unique from a topographic standpoint.

3. The variance is not 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 do have a substantial amount of yard they can utilize and the areas mentioned where the topography slopes off, the petitioner stated that was not her property, it is the neighbor’s property.

4. Granting of the variances or modification 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 fact that there is nothing topographic or unique to the property that would require a 6-foot fence.

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, based on the report from the Fire Marshall. It 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. The applicant should know and understand that this does not preclude her from putting up a 4-foot fence and/or moving a 6-foot fence in as long as the setback is met.

Board member Dunaskiss commented that the weeds are extremely high, and they would grow over the 4-foot fence. She is sorry that there is not a more amenable solution to this problem.

Roll call vote was as follows: Cook, yes; Dunaskiss, no; Flood, yes; Durham, yes. Motion passes 3-1
B. **AB-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315-325 W. Silverbell Rd., 09-35-100-020**

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 4 variances from Zoning Ordinance #153 – Section 7 Non-Residential Ground Signs Zoned IP:

1. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the east entrance off W. Silverbell Road).
2. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the west entrance off W. Silverbell Road).
3. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the east entrance off W. Silverbell Road).
4. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the west entrance off W. Silverbell Road).

And, seeking 2 variances from Zoning Ordinance #78 – Zoned IP:

1. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property (east entrance off W. Silverbell Road).
2. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property line (west entrance off W. Silverbell Road).

Mr. Tim Foley introduced himself and summarized the variance request for placement of signage.

Chairman Durham commented that there are 14 tenants in the building.

Mr. Foley concurred.

Trustee Flood commented on his familiarity with this site and provided some historical information. He stated that he sees the practical difficulty due to the speed of the cars on the roadway. Also, GM is moving their plant right up to the roadside and the property to the east is being developed as an industrial park.

Mr. Foley stated that when truck drivers can locate the business, it makes it much easier and safer.

Trustee Flood stated that addresses need to be on the ground sign.

Mr. Foley confirmed that the addresses will be present on the signs.

Board member Walker asked if there were any wall signs.

Mr. Foley replied no. They want to remove the existing signs and replace them with something slightly taller to accommodate the tenant names.

Vice-chairman Cook commented that the proposed signs are much more attractive.

Board member Walker commented on all the driveways in the parking lot.

Chairman Durham asked if there was public comment.

No public comment was heard.
Trustee Flood moved, seconded by Vice-chairman Cook, that in the matter of ZBA Case AB-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315-325 W. Silverbell Rd., 09-35-100-020, that the petitioner’s request for 4 variances from Zoning Ordinance #153 – Section 7 Non-Residential Ground Signs Zoned IP including a 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the east entrance off W. Silverbell Road); a 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the west entrance off W. Silverbell Road); a 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the east entrance off W. Silverbell Road) and a 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the west entrance off W. Silverbell Road). And, for 2 variances from Zoning Ordinance #78 – Zoned IP including a 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property (east entrance off W. Silverbell Road) and a 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property line (west entrance off W. Silverbell Road) 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 petitioner does show the following practical difficulty: mainly due to the characteristics of the layout of this building and this parking lot and the two entrances. It is located along a busy and fast stretch of road with the posted speed limit of 50 miles per hour and the wayfinding for delivery of numerous semi-trucks trying to get into the complex.

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 is only replacing two existing signs and these two signs will be in the exact same place and will not be going into any roadway. The petitioner is asking for relief of their front yard setback. The signs will not be in the road right of way.

3. The variance is 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: this complex has two entrances on a very long building on a very busy commercial development and there will also be further development to the west by General Motors and to the east with another IP property being developed.

4. The granting of the variances 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 based on the findings of fact already stated in previous statements.

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, in fact this will help alleviate any backup into the street. 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.

Roll call vote was as follows: Walker, yes; Flood, yes; Dunaskiss, yes; Cook, yes; Durham, yes. Motion passes 5-0.
Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking to extend the expiration date for the approved AB-2021-67 ZBA case variances.

Building Official Goodloe stated that a ZBA variance expires after one year if you do not pull a building permit and that is why the petitioner is asking for an extension.

Board member Dunaskiss stated that this property is on the same street as her home and she received a notice of the case. She has no interest in the case but disclosed that she is within the area of notification.

Board members commented that Board member Dunaskiss will sit on the Board for this case.

Trustee Flood stated that he appreciates the fact that the petitioner came in a head of time before it expired.

Mr. Anton Rozhanskiy introduced himself and summarized the reasoning for the variance extension that is needed. He is wanting to start the project in the spring.

Trustee Flood stated that once he comes in and applies for a building permit, that is when the clock stops.

Vice-chairman Cook asked once the building permit is issued, does it have a time limit?

Building Official Goodloe replied 6 months. He commented that they are looking at allowing extensions with administrative approval.

Mr. Rozhanskiy stated that he wants to start the permitting process in the winter and begin construction in the spring.

Vice-chairman Cook stated that if he starts the process in December, that would give him the time needed.

Chairman Durham stated that he doesn’t have a problem with an extension, but they need a timeline.

Mr. Rozhanskiy replied that he would like an additional year ideally. The current variance goes until December.

Building Official Goodloe suggested extending the approval for one year from December 13, 2022, to December 13, 2023.

Board members and Building Official Goodloe discussed the proposed timeline of the extension.

Mr. Rozhanskiy reiterated how and why the extension is needed.

Trustee Flood moved, seconded by Board member Dunaskiss, that in the matter of ZBA Case AB-2022-43, Anton Rozhanskiy, 592 Cushing, 09-03-278-006 that the petitioner’s request to extend the expiration date for the approved AB-2021-67 ZBA case variances for one year which would expire on December 13, 2023.

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

7. **COMMUNICATIONS**

8. **COMMITTEE REPORTS**

Trustee Flood commented on the Fence Ad Hoc Committee activity.

9. **MEMBER COMMENTS**

Trustee Flood stated that he fully supports Donni Steele to be the 54th District Representative to the State House. He also fully supports Michael Gingell to be elected as County Commissioner. He also supports Steve Drako for his re-election to Lake Orion School Board. He also supports Michael Warren for Court of Appeals.

Chairman Durham commented on the first case of this meeting and neighbor disputes.

Board member Walker commented on the health of Loren Yaros and the upcoming Library Holiday Auction.

Vice-chairman Cook commented on the last case of this meeting.

Board member Walker commented that frequently the Board doesn't have a unanimous vote and that is a good thing.

10. **ADJOURNMENT**

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:14 pm.

Motion Carried

Respectfully submitted,

Erin A. Mattice
Recording Secretary