

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
******* MINUTES *******
REGULAR MEETING – MONDAY, November 22, 2021 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, November 22, 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
Mike Flood, BOT Rep to ZBA
Tony Cook, Vice-Chairman
Diane Dunaskiss, Board Member
Tony Kerby, Alternate

ZBA MEMBERS ABSENT:

None

CONSULTANT PRESENT:

David Goodloe, Building Official

OTHERS PRESENT:

Barbara Schalk	Tim Petersen	Brian Luck
Mel Kendziorski	Richard Benoit	Tina Benoit
Dawn Wallin	Debbie Wylin	Sue Kepsel
Meg Galuaidi	Rick Knoth	Joe Fleming
Matt Knoth	Andy Solina	Seam Audish

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

A. 10-25-2021, ZBA Regular Meeting Amended Minutes

Moved by Board Member Walker, seconded by Chairman Durham, to **approve** the minutes as presented.
Motion carried.

B. 10-11-2021, ZBA Regular Meeting Amended Minutes

Moved by Board Member Walker, seconded by Chairman Durham, to approve the minutes as presented.
Motion carried.

4. AGENDA REVIEW AND APPROVAL.

Moved by Board Member Dunaskiss, seconded by Trustee Flood to approve the agenda as presented.
Motion carried.

5. ZBA BUSINESS

A. AB-2021-60, Fastsigns of Birmingham (Silver Spruce wall signs), 3901 S. Lapeer Road, 09-26-452-017

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 1 variance from Sign Ordinance #153 – Zoned PUD Section 7, Non-Residential Wall Signs

1. A variance for 4 additional wall signs for a total of 5 wall signs totaling 98.23-sq. ft.

Board Member Walker moved, and Trustee Flood supported, to move Item A, Fastsigns, to the last item under New Business to allow the petitioner time to present at this meeting. Motion carried.

B. AB-2021-55, Tim Petersen, Vacant Parcel, #09-20-256-012, East of 2585 Browning (postponed from 10/11/2021 Meeting)

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.
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. Peterson introduced himself to the Board. He summarized the changes that he made since the last meeting and the variances requested.

Chairman Durham asked about the statement asking if the Board would approve something that was on a plat from 1979 recorded deed. He asked if this falls into the request for variances. If the petitioner is successful with the variances, would he be successful with everything.

Mr. Peterson replied that he thinks so. He is asking for less now.

Chairman Durham asked the petitioner if he thinks the neighbors that were here before are still opposed.

Mr. Petersen explained his interaction with the neighbors.

Chairman Durham stated that the Board isn't here to say what the house should look like; they are here to look at the boundary lines that exist on the property.

Vice-chairman Cook agreed with Chairman Durham. The Board is looking at the rules of the zoning and the covenants are a separate matter since they consider the Township's zoning only. He asked about the petitioner's comment that he is not going to build now. The Board is being asked to vote on something that the petitioner is not going to do.

Mr. Petersen stated he has not decided for sure.

Vice-chairman Cook asked if the petitioner wanted the Board to vote on what was presented.

Mr. Petersen replied yes.

Chairman Durham asked if the variances being asked for are the same as the last meeting.

Mr. Petersen replied yes.

Board Member Kerby confirmed that they are.

Building Official Goodloe stated that the covenant that the petitioner referred to in his presentation is the Master Deed of the plat from 1979. He stated that the petitioner may want to ask an opinion as to whether or not this Master Deed was approved by the Township. He explained how the setbacks were described in the covenant.

Mr. Petersen commented on the setbacks of other houses in the neighborhood.

Board Member Kerby stated that he would like to request that they get a legal opinion as to whether the setbacks are binding or whether they use current Township ordinances.

Chairman Durham stated that this would push it back.

Building Official Goodloe stated that if they find that the Master Deed is binding then the variances being asked for are irrelevant because they are all in compliance of the deed. This is why Mr. Petersen is asking for a vote tonight and then he will follow up.

Mr. Petersen agreed.

Board Member Walker stated that he doesn't understand what this has to do with the third request for a variance. The Board doesn't need a legal opinion on this request.

Board Member Kerby stated that he would request a legal opinion on the setbacks only, not the third request.

Chairman Durham stated that when the Township attorney comes back with his opinion, they would have a hard starting point.

Board Member Kerby moved, and Chairman Durham seconded, that the Board asks the Township Attorney to look at the Master Deed and render his opinion on the deed restrictions and how it applies to this case.

Board Member Walker suggested that they ask for public opinion.

A resident asked if they could address the third variance request. She provided history on her case with the Zoning Board regarding extending their sun porch in which they were denied because the square footage would exceed the amount for their lot.

Dawn Wallen stated that she opposes the third variance request because it is too large for the neighborhood.

Barb Schalk stated that she submitted a four page speech at the last meeting. She is opposed to the variance request. She did submit information regarding the houses that make up sub #7 and the years that they were built. She also summarized how many three car garages and she provided details on the garage sizes in the neighborhood.

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Rick Knoth asked about the variance request that is next on the agenda as compared to the lot size and variance request being requested by Mr. Petersen. He has never seen a garage with four double sized doors. This variance request for the accessory structure will not fit the neighborhood.

Chairman Durham suggested that they split the variance requests, the setback request and the size request. He asked if the petitioner will have to come back for the size variance request once the attorney's opinion comes back.

Board Member Kerby stated that they could vote on the third variance request which is the accessory building size but he doesn't know if they are allowed to.

Trustee Flood stated that his experience has been if the applicant wants to remove something, this is up to the applicant, not the Board.

Board Member Walker agreed.

Trustee Flood stated that he heard the applicant ask for a vote on what is being presented but there is a motion on the floor.

Chairman Durham stated that he is concerned about getting an attorney's opinion on the first two variances and not hearing again about the size of the garage. This needs to come back to the Board unless it is going to be voted on tonight.

Building Official Goodloe stated that he would refer to the applicant as to whether or not he wants to remove it.

Roll call vote was as follows: Durham, yes; Cook, no; Flood, yes; Kerby, yes; Walker, no. Motion passes 3-2.

Chairman Durham stated that they still have the size issue to deal with.

Board Member Kerby stated that they can vote on the third request and the petitioner can wait on the legal opinion regarding the first two.

Board Member Walker stated that it is up to the petitioner

Mr. Petersen stated that the building cannot be built without the variances

Board Members explained the options to Mr. Petersen.

Building Official Goodloe stated that they can have the attorney's opinion back by January 10, 2022.

Board Member Kerby moved, Board Member Walker supported, to postpone Case # AB-2021-55, Tim Petersen, Vacant Parcel, #09-20-256-012, East of 2585 Browning to a date certain, January 10, 2022.

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

C. AB-2021-61, Tyler Downie, 4745 Jamm Rd., 09-33-426-017

Chairman Durham read the petitioner's request as follows:

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

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 (south).
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line.

Mr. Downie introduced himself to the Board and summarized the variance request. The request is primarily to keep the neighbor's dogs in their own yard and out of the subject property.

Chairman Durham asked how the neighbors feel about the fence.

Mr. Downie stated that he talked to them about it and they were supportive.

Chairman Durham asked how tall the gate is next to the garage.

Mr. Downie replied he does not know.

Chairman Durham stated that if the gate stays there, no one will see the fence.

Board Member Walker asked if the petitioner had reported any of the dog incidents to animal control at the Township.

Mr. Downie replied no.

Chairman Durham stated that the Board hears these requests often. He asked if any other measures, like underground fences, have been looked at. He asked how many dogs the neighbors have.

Mr. Downie replied two and they are Rottweilers.

Chairman Durham stated that there are other ways to fix this but he understands how calling animal control affects the neighborhood.

Board Member Dunaskiss stated that there are wireless systems that do not require installation to prevent animals from leaving their property.

Board Member Walker stated that he could put up a four-foot fence without going in front of the Board.

Mr. Downie stated that there is already a four-foot fence and the animals jump it.

Board Member Walker stated that he could also move a fence of this height off of the property line but the petitioner does not want to do that.

Vice-chairman Cook stated asked if the neighbors installed the existing chain link fence.

Mr. Downie stated that he moved in earlier in the year and it was existing.

Vice-chairman Cook asked if the neighbors were okay with him taking it down.

Mr. Downie replied that he talked to the neighbors and they were okay with taking it down.

Vice-chairman Cook asked about the fence on the northern side of the lot. He asked if the petitioner thought about cutting the poles off and making it neater.

Mr. Downie stated that it was existing.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Vice-chairman Cook asked why the petitioner did not report the animal incidents.

Mr. Downie stated that they like their neighbors and they like the dogs; they just don't want them in their yard. He has a Great Dane and Lab mix dog.

Vice-chairman Cook asked if there had been any other incidents besides the occasional dog incidents.

Mr. Downie stated that his dog does not get along with other dogs so that is why it is an issue for the other dogs to come into his yard. He cannot let his dog out in the backyard because there is the chance that the other dogs might jump the fence.

Board Member Walker moved, and Trustee Floor supported, in Case # AB-2021-61, Tyler Downie, 4745 Jamm Rd., 09-33-426-017 that the petitioner's request for two variances from Zoning Ordinance #78 – Zoned R-3 Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) for: 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 (south) and 2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line 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 in this case that show:

1. There is no practical difficulty. The petitioner has indicated that there have been no incidents with the dogs next door. Practical difficulty goes to the fact that there is nothing particular to this property and is like every other property in this Township. Every neighbor could have a dog that they are not fond of, but this does not meet the practical difficulty and the granting of this variance would be detrimental to the public welfare for that reason.

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

D. AB-2021-62, Brian Luck, 190 Eastview St., 09-12-201-028

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)(8) – Lot Size 1 to 2.5 Acres

1. A 440-sq. ft. variance above the allowed 1,000-sq. ft. maximum floor area of all detached accessory buildings to build a 1,440-sq. ft. detached garage.
2. A 576-sq. ft. variance above the allowed 1,500-sq. ft. maximum floor area of all accessory buildings to build a 1,440-sq. ft. detached garage in addition to an existing 636-sq. ft. attached garage.

Mr. Brian Luck introduced himself and summarized the variances requested. He explained the construction of the proposed accessory building.

Chairman Durham stated that he understood the comments about the neighbors behind him. He asked about the obligation of taking care of the private road.

Mr. Luck explained how the neighbors all share the responsibility of this road area.

Chairman Durham asked what type of equipment the petitioner has that he needs to store.

Mr. Luck explained all of the equipment that he currently has and wants to store in the proposed building.

Trustee Flood stated that the area is just over one acre. There is no setback requirement. The lot coverage is acceptable so there are two variances being requested. He doesn't see these variances as being overbearing and he understands the practical difficulty as taking care of his one acre and also maintaining the section of a private road. He confirmed that the petitioner is tearing down an existing 400 square foot shed.

Mr. Luck explained that the shed was only 8' X 10" and he is planning to give it to his neighbor if that is allowed.

Building Official Goodloe confirmed that anything under 200 square feet does not require a permit.

Trustee Flood confirmed that the 400 square feet wasn't in the calculations for square footage allowed.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Board Member Dunaskiss moved, and Trustee Flood supported, in Case # AB-2021-62, Brian Luck, 190 Eastview St., 09-12-201-028 to approve the petitioner's request for two variances from Article XXVII, Section 27.02(A)(8) – Lot Size 1 to 2.5 Acres for: a 440-sq. ft. variance above the allowed 1,000-sq. ft. maximum floor area of all detached accessory buildings to build a 1,440-sq. ft. detached garage and a 576-sq. ft. variance above the allowed 1,500-sq. ft. maximum floor area of all accessory buildings to build a 1,440-sq. ft. detached garage in addition to an existing 636-sq. ft. attached garage. The petitioner did demonstrate that the following standards for variances have been met in this case and that they set forth facts in this case that show in this case:

- 1. The petitioner does show the practical difficulty of safely and properly storing machines necessary to maintain his property, the private road that he lives on, and to assist neighbors in those efforts.**
- 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: it is a large piece of property that does require a great deal of equipment for maintenance and the private road does need to be maintained by the residents in the area.**
- 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.**
- 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.**
- 5. The granting of this variance will not impair an adequate supply of light and air to the adjacent property, it would not unusually increase congestion on the 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 the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.**

It is understood that as part of this approval, the existing shed will be removed.

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

E. AB-2021-57, James Garris, 215 N. Conklin Road, 09-01-403-014 (postponed from 10/25/2021 Meeting)

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 2 variances from Zoning Ordinance #78

Article VI, Section 6.02(N)(3), Zoned R-3

1. A 27-ft. front yard setback variance from the required 40-ft. to install an inground pool 13-ft. from the front property line along De Goff Ct.
2. A 21.5-ft. front yard setback variance from the required 40-ft. to install an inground pool 18.5-ft. from the front property line along Orion Ter.

Board Members discussed that the petitioner asked for another postponement to January 10, 2022.

Chairman Durham stated that he will not be at the January meeting and will not vote.

Trustee Flood moved, and Board Member Kerby supported, that Chairman Durham will be recused from Case #AB-2021-57 at Chairman Durham's request.

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

Trustee Flood moved, and Board Member Kerby supported, to postpone Case #AB-2021-57, James Garris, 215 N. Conklin Road, 09-01-403-014 at the petitioner's request to January 10, 2022. The Chairman has been recused formally from addressing this case.

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

F. AB-2021-60, Fastsigns of Birmingham (Silver Spruce wall signs), 3901 S. Lapeer Road, 09-26-452-017

Chairman Durham read the petitioner's request as follows:

The petitioner is seeking 1 variance from Sign Ordinance #153 – Zoned PUD Section 7, Non-Residential Wall Signs

1. A variance for 4 additional wall signs for a total of 5 wall signs totaling 98.23-sq. ft.

Mr. Sean Audish introduced himself to the Board as being the owner.

Chairman Durham stated that the building is set at an angle and the roads run across. He is asking for extra signage because there are so many sightlines, the petitioner wants the signage to be able to be seen from whatever angle it is seen from.

Mr. Sean Audish commented on the shape of the building and the location on the corner. It is an on-street sign. The signs are separated into individual signs instead of cramming everything onto one sign. He stated that this is the same setup that they have at the Rochester Hills location. It doesn't look cluttered or has too many signs but makes sense for the location and shape of the building. There will be no additional signage on the building or the windows.

Chairman Durham stated that it is important that motorists do not get confused at the intersection.

Trustee Flood pointed out that there are two entrances for this location and the location is at an angle.

Mr. Audish stated that if they did not have signage facing Silverbell, motorists would never know the location and the fact that they carry liquor, wine, and beer.

Trustee Flood reiterated that the hardship was the location and the speed of the traffic traveling on M-24. The total of the signage is still less than 100 square feet.

Board Member Walker asked what the signs would say.

Mr. Audish provided prints showing the proposed signage to the Board Members.

Chairman Durham asked if there was any public comment.

No public comment was heard.

Board Member Dunaskiss asked if there would be future tenants in the building.

Mr. Audish stated that there could be a future tenant in the drive-thru and they would need additional signage too. He stated that they would need to come back to the Board at that point.

Vice-chairman Cook asked if this petitioner would be coming back to the Board.

Mr. Audish replied that there is 3000 square feet of additional tenant space for a drive-thru.

Vice-chairman Cook commented that none of the signs say “gas” even though this is a gas station.

Mr. Audish replied that the gas prices are on the street sign; he doesn’t put this on the building.

Vice-chairman Cook asked the petitioner if he owned that gas station that was there before.

Mr. Audish replied yes.

Vice-chairman Cook stated that the petitioner said he wasn’t going to be putting signage on the windows; the station prior had lots of things on the windows.

Mr. Audish stated that this is because they outgrew the space. They only did that to hide the shelving.

Board Member Dunaskiss asked if the drive-thru was going to be food.

Mr. Audish replied yes.

Vice-chairman Cook stated that he drove around the building picturing where the signs were going to be. He thinks the signs on the side are a little too much. The most advantageous sign is on the M-24 sign with the one on Silverbell not needed because motorists could clearly see it while approaching. He is not approving the signs that say liquor.

Board Member Walker stated that the signs are to get the motorists in the first time. Once they visit the store, they know they sell liquor.

Mr. Audish replied that most people look for liquor signs to know if the store has it or not. It was important to have at the Rochester site because they didn’t have liquor signs for an extended period.

Vice-chairman Cook asked the petitioner asked where the proposed signage for the drive-thru restaurant go.

Mr. Audish explained where the proposed signage would go for the restaurant and he provided drawings. He added that signs showing that they have craft beer and fine wines are needed for the business and he explained why.

Vice-chairman Cook asked if the petitioner would amend his request to eliminate the liquor signs on the sides.

Mr. Audish replied no.

Board Member Walker stated that they are now talking about five signs with another two signs for the drive-thru. This would be seven signs for the building.

Chairman Durham asked if this petitioner would come before the Board for the drive-thru signs or would it be the tenant.

Mr. Audish replied he didn't know.

Vice-chairman Cook commented that he is looking at the total of the signage after the drive-thru signage gets added and that is why he asked if the petitioner would amend his request.

Mr. Audish replied that the signs on the side are more important than the ones in the front.

Chairman Durham commented on whether or not the Board should even look at possible signs in the future.

Board Member Walker stated that he asked because he sees that coming. He would be reluctant to grant this request and then grant two more at a future date.

Vice-chairman Cook commented that he brought it up to see if the petitioner would amend his request knowing that that future request was coming.

Trustee Flood moved, and Chairman Durham seconded, in the matter of Case # AB-2021-60, Fastsigns of Birmingham (Silver Spruce wall signs), 3901 S. Lapeer Road, 09-26-452-017 that the petitioner's request for 1 variance from Sign Ordinance #153 – Zoned PUD Section 7, Non-Residential Wall Signs for a variance for 4 additional wall signs for a total of 5 wall signs totaling 98.23-sq. ft. 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 which show that in this case:

1. The petitioner does show the following practical difficulty: due to the characteristics of the property, this being a newly approved building on a major congested area in the Township along M-24 (Lapeer Road) and Silverbell Road.

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 petitioner is requesting 5 total signs totaling 98.23 square feet where the ordinance allows up to 200 square feet.

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: along this stretch of M-24 the signage is necessary with a set speed limit in this area that it is a safety concern that people can see this signage as they travel down this road.

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 findings of fact regarding the location as previously stated.

5. The granting of this variance will not impair an adequate supply of light and air to the adjacent property, it would not unusually increase congestion on the public streets, in fact, it would probably decrease congestion knowing where the traffic is going to see this new business. 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 the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Cook, no; Flood, yes; Dunaskiss, no; Durham, yes; Walker, no. Motion fails 3-2.

Trustee Flood asked why the signage isn't approved through the PUD process and part of the PUD agreement.

6. PUBLIC COMMENTS

Tyler Downie asked why his case was denied.

Chairman Durham explained the Board's position and how practical difficulty was determined.

Board Member Dunaskiss commented on this situation with the dogs.

Building Official Goodloe stated that the petitioner should have brought up that he does not have 10 foot on this side to put up a fence 10 foot from the line.

Mrs. Downie asked if they were allowed to appeal the decision of the Board.

Trustee Flood answered yes in Oakland County Circuit Court.

7. COMMUNICATIONS

A. Date Certain Memo

Chairman Durham stated that the memo from the Zoning Department regarding the dates for the meetings in 2022 only showed one possible conflict and this was December 26, 2022. The recommendation is to only have one meeting in December 2022.

Trustee Flood moved, and Vice-chairman Cook seconded, to accept the 2022 ZBA meeting dates removing December 26, 2022 date and to forward the amended resolution to the Township Board.

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

Chairman Durham commented on the language required to recuse himself from a case and he commented that this language will be used.

Chairman Durham informed the Board Members about a holiday get-together on December 8, 2021.

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Trustee Flood wished everyone a Happy Thanksgiving.

Chairman Durham thanked the Board for their continued support.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham to adjourn the meeting at 8:44 pm.

Respectfully submitted,

Erin A. Mattice
Recording Secretary