CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
***** MINUTES *****
REGULAR MEETING – MONDAY, November 28, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, November 28, 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
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member
Tony Cook, Vice-Chairman

ZBA MEMBERS ABSENT:
Mike Flood, BOT Rep to ZBA

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Jon Stine
Jeff Hansen

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

2. ROLL CALL

3. MINUTES
A. 11-14-22, ZBA Regular Meeting Minutes

Board member Dunaskiss moved, seconded by Board member Walker, to approve the 11-14-2022 minutes as presented.

Motion Carried

4. AGENDA REVIEW AND APPROVAL

Board member Walker moved, seconded by Chairman Durham, to approve the agenda as presented.

Motion Carried

Chairman Durham explained that to have a case approved this evening with one member absent, there would have to have three votes to approve to approve the motion.

5. ZBA BUSINESS

A. AB-2022-48, Jonathan Stine, 2025 Bald Mountain Rd., 09-24-100-008

Chairman Durham read the petitioners request as follows:
The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-1

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 40-ft. front property line setback variance from the required 40-ft. for a 6-ft. fence to be 0-ft. from the intersection of the front and side property lines (west).
2. A 10-ft. side property line setback variance from the required 10-ft. for a 6-ft. fence to be 0-ft. from the side property line (west).
3. A 10-ft. rear property line setback variance from the required 10-ft. for a 6-ft. fence to be 0-ft. from the intersection of the rear and side property lines (west).

Mr. Jon Stine introduced himself and summarized the variance request to put a 6 foot fence up along the rear of his property. He explained that the adjoining neighbor has a fence up that goes 15 feet into his property.

Chairman Durham asked why there is no fence there now and there is a gap.

Mr. Stine replied he does not know; he has only owned the home for a short time. He stated that currently what is there is an old, rickety fence that is in disrepair and needs to be replaced. He also has two grandchildren and they purchased the property thinking that they could enclose the property for his dogs and his grandchildren.

Chairman Durham asked why a 4 foot fence is not sufficient.

Mr. Stine stated that the 4 foot would not be sufficient for his dogs, it would look better because it would have continuity to what is already there and the adjoining subdivision does not allow chain link fences and the neighbors do not want to look at a chain link fence. He would like to put in a nicer looking continuation of a fence that is already in place. If the verdict is no, he will be forced to put up a chain link fence.

Board member Dunaskiss asked why he wouldn’t put a 4 foot fence on the side where the current wood fence is.

Mr. Stine replied he could. He would be paying much more for a wooden pre-fab fence. He would refuse to pay the money to cut them down to 4 feet. He explained the location of the proposed fence. He would like to save money with a chain link fence, but he doesn’t think it would look good.

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

Ms. Amber Rushlow, neighbor, explained where her property and existing fence are located in reference to the petitioner’s property. She wanted to hear the clarification of the proposed plan and that is why she came this evening. Her subdivision does not allow chain link fences and now there is a possible chain link fence proposed right along her property and she is disappointed by this. There is an easement between the houses but when the easement was cleared, the house was apparent and she does not want to see a chain link fence. She explained the existence of the existing fence. She is not excited about a fence, but she would rather this than a chain link fence. She talked to another neighbor who agreed with her. Her back yard is not very deep so she doesn’t want the fence because it will fence her in.

Chairman Durham asked if she felt that she would look through a chain link fence instead of at a wooden fence.

Ms. Rushlow stated that they will look over the fence anyway because of the topography of the property. The applicant’s dogs bark if they can see them and it will stop that. Also, when they are in the yard, there would be more privacy. She thinks the wood fence would look better.

Chairman Durham asked Ms. Rushlow if her house was part of the original build.
Ms. Rushlow replied that her house is the last phase. She explained that most of the fence was knocked down during a recent tornado.

Board member Dunaskiss stated that a portion of Ms. Rushlow’s property abuts the park.

Vice-chairman Cook asked Ms. Rushlow how she controls her dogs when they are out in her yard.

Ms. Rushlow replied that they have an electric fence.

Vice-chairman Cook asked Ms. Rushlow if when the fence stops, is there a gap or does it just end along the backyard.

Ms. Rushlow explained that the current fence stops at her yard. It does not continue further down. Once you get past her yard, it is all Bald Mountain behind her house.

Vice-chairman Cook asked Ms. Rushlow if she was concerned about keeping her dogs in her yard, or is she primarily concerned about the neighbor’s dogs.

Ms. Rushlow stated that if the dogs cannot see her, she feels like they would not bark as much. They used to not be able to see the applicant’s home because there was 30 feet between the houses that was wooded. When the applicant moved in, they cleared the woods out and now you can see through.

Vice-chairman Cook stated that when dogs cannot see, they have a tendency to bark more.

Ms. Rushlow stated that the dogs can see her in her house and the dogs bark at her. Her dogs cannot go to the line because the electric fence stops them.

Vice-chairman Cook asked if she has approached the HOA to extend the fence.

Ms. Rushlow stated that if it was her property, it would not be allowed because they are not allowed to have fences.

Board member Walker stated that the applicant wants the fence so it blends in with the rest of the fence.

Mr. Stine answered yes.

Board member Walker stated that the ordinance does speak to things like that, it talks about practical difficulties and self-created things. He is having a hard time seeing the ordinance standards in this request.

Mr. Stine stated that regarding clearing things out between the properties, they did not take any trees down unless it was dead. They had vines between their properties that were going across the canopy and drooping down and these vines were choking out the existing trees. So, they either yank those down or not and nature would end up killing all of the trees. They want to keep as much of a nature barrier between their homes but in doing so, they needed to maintain the nature. They cannot do this behind them in the park, but they could in the area between their house and the neighbors.

Chairman Durham read a communication that the Board received from a neighbor, Phyllis Slight who expressed concerns about the requested variance.

Mr. Stine stated that his property is 100 feet by 200 feet so it is long and skinny. He described where Ms. Slight’s property is in relation to his.

Chairman Durham stated that the application asks the applicant if the situation is self-created, and this applicant responded yes. The applicant also said in his application that he is able to meet the setbacks as per ordinance.
Mr. Stine stated that he didn’t understand the wording of the application and how it related to him and he explained. He is asking instead of installing a 4 foot chain link fence, to continue what is there now. He did not receive any coaching from staff and didn’t understand how the questions related to him.

Chairman Durham stated that the Board is discouraged from giving variances unless there is a very particular set of circumstances and he explained the Board’s role in granting a variance. He doesn’t see anything in this applicant’s situation that is not self-created so he would have difficulty supporting the request.

Mr. Stine stated that he can put up a chain link fence which would be disappointing for both parties involved and he reiterated his reasons for asking for a variance.

Chairman Durham stated that this neighborhood has been the source of a lot of fence controversy.

Mr. Stine concurred.

Ms. Rushlow agreed with Mr. Stine in not wanting a chain link fence in her backyard because there is no way that this is good for the property values. She pays HOA dues every year and now she is going to have a chain link fence in her back yard; this is not fair. She can deal with looking at a privacy fence but she doesn’t want to look at a chain link fence in her back yard. If she wanted to look at a chain link fence, she would not have moved to the subdivision that she did. Only her property has this situation with being butt up against another house.

Board member Walker stated that the Board is not suggesting that the applicant put up a chain link fence. The fact is, they could put up a 4-foot fence without a variance. He described the alternative of having a 4 foot fence right on the property line.

Board member Dunaskiss moved, seconded by Vice-chairman Cook, in case AB-2022-48, Jonathan Stine, 2025 Bald Mountain Rd., 09-24-100-008 that the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-1, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 40-ft. front property line setback variance from the required 40-ft. for a 6-ft. fence to be 0-ft. from the intersection of the front and side property lines (west), a 10-ft. side property line setback variance from the required 10-ft. for a 6-ft. fence to be 0-ft. from the side property line (west) and a 10-ft. rear property line setback variance from the required 10-ft. for a 6-ft. fence to be 0-ft. from the intersection of the rear and side property lines (west) be denied because the petitioner did not demonstrate the following 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 defined as unique characteristics of the property and not related to general conditions in the area of the property. A 4 foot fence, whether it be wood construction or chain link construction, would be sufficient and a 6 foot fence is not required.

2. The following are not 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; other than the fact that the appearance of a 6 foot fence next to a 4 foot fence, this is not a practical difficulty or a circumstance that would warrant a 6 foot fence in addition to what is currently there.

3. The variance is not 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 public welfare.
The applicant has not demonstrated that there is a practical difficulty or a unique characteristic of the property in which the resident that would warrant the construction of a 6 foot fence on the property line, a 4 foot fence is available to the applicant either chain link or wood construction.

This application is date stamped October 17, 2022.

Board member Walker commented that both the applicant and the neighbor make a good argument for preserving the look and they have no doubt that it would look better as it was requested. However, this is not a criterion that the Zoning Board of Appeals have any authority to use.

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

B. AB-2022-49, Jeff Hanson, 3936 Maybee Rd., 09-30-200-037

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from Zoning Ordinance #78 – Zoned SF

Article XXVII, Section 27.02 (A)(8) Buildings, Structures, and Uses
1. A 556-sq. ft. variance above the allowed 852-sq. ft. (75% of the principal structure) for an attached accessory structure to be 1,408-sq. ft.

Mr. Jeff Hanson introduced himself and summarized the variance request to build a pole barn with an attached breezeway to attach it to the house.

Chairman Durham stated that he is glad the applicant removed the other garage so there is no problem with number of accessory structures. He asked what it will look like.

Mr. Hanson provided a sketch of the proposed building to the Board members. The existing home does not have any room for a mudroom area so this variance would give them that.

Chairman Durham stated that the Fire Marshall weighed in on this case and the previous case and he has no issues with the variance request.

Mr. Hanson commented that the metal roof will be Amish constructed.

Chairman Durham asked where the Amish work force comes from.

Mr. Hanson replied Brown City.

Vice-chairman Cook asked the applicant about #5 question on the application that the applicant did not answer.

Mr. Hanson stated that it was no self-created because the house never had a garage that was attached to the house, and he is trying to make it that way.

Board member Dunaskiss confirmed that the garage is a one-story structure with storage in the attic area. She asked why the applicant did not build an attached structure from the beginning.

Mr. Hanson replied that he went back and forth with the design, and it probably had to do with square footage. He decided to try to see if they can attach it with the breezeway.

Chairman Durham stated that this addition would not have any effect on anybody other than the applicant.
Board member Walker moved, and Vice-chairman Cook supported, in case AB-2022-49, Jeff Hanson, 3936 Maybee Rd., 09-30-200-037 that the petitioner’s request for 1 variance from Zoning Ordinance #78 – Zoned SF, Article XXVII, Section 27.02 (A)(8) Buildings, Structures, and Uses for a 556-sq. ft. variance above the allowed 852-sq. ft. (75% of the principal structure) for an attached accessory structure to be 1,408-sq. ft. be granted because the petitioner did demonstrate the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner does demonstrate a practical difficulty: due to the unique characteristic of the property, 4 acres, 138’ X 1300’, and is a long and narrow lot.

2. The petitioner did 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: the ordinance calls for 1,400 square feet for 2.5 acres and there has been discussion by the Board of Trustees to change this to increase the 2.5 acre value. In this case, it is an acre and a half larger than the largest amount in the ordinance.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity.

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.

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 according to 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.

This application and plans associated with this case are date stamped October 27, 2022.

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

6. PUBLIC COMMENTS

7. COMMUNICATIONS
   Chairman Durham commented that the Computer Safety Training needs to be completed by each Board member.

8. COMMITTEE REPORTS

9. MEMBER COMMENTS
   Board member Walker commented on the successful Library Silent Auction.

   Chairman Durham stated that he will not be attending the meeting in December. He thanked the Board members and Building Official Goodloe for their support throughout the year.
10. **ADJOURNMENT**

Moved by Vice-chairman Cook, seconded by Chairman Durham, to adjourn the meeting at 7:56 pm.

Motion carried

Respectfully submitted,

Erin A. Mattice
Recording Secretary