The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, December 12, 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:**
- None

**CONSULTANT PRESENT:**
- Lynn Harrison, Planning & Zoning Specialist

**OTHERS PRESENT:**
- John Maynard
- Justin Brooks
- Gary Jensen
- Allison Iversen
- Jon Iversen
- Adam Martin
- Jason Gault

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

2. **ROLL CALL**

3. **MINUTES**
   A. 11-28-22, ZBA Regular Meeting Minutes

   Board member Walker moved, seconded by Chairman Durham, to approve the 11-28-2022 minutes as presented.

   Motion Carried

4. **AGENDA REVIEW AND APPROVAL.**

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

   Motion Carried

5. **ZBA BUSINESS**
   A. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024
      (Postponed from 8/8/2022 & 10/10/2022 meetings)

   Chairman Durham read the petitioner's request as follows:
The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Adam Martin introduced himself and asked to be postponed until the second meeting in February 2023.

Chairman Durham asked if they are doing the proper thing by loading the case dockets with items that won’t move and use spots that could be used by other residents who now cannot be on the agenda because they are full.

Board member Dunaskiss stated that this petitioner could not go out past 60 days so that is why they are at this meeting. For this case, they did not choose to be on this agenda but because of the Township's rules, they were put on tonight's agenda.

Vice-chairman Cook stated that when Mr. Martin appeared before the Board at the prior meeting, he did want a later meeting.

Chairman Durham reiterated his question as to whether the agenda for the second meeting in February would be clogged up for another person that wants to come in if they move all of these cases to that meeting.

Vice-chairman Cook answered yes. In this case, it is such a unique situation because they are waiting for the Homeowner's Association response but he agrees that it does clog up the case log, but there are mitigating circumstances.

Trustee Flood asked why they want to postpone until February.

Mr. Martin stated that they believe they have a practical difficulty, but it is not the most ideal one. They are trying to work with the individuals that they were asked to work with. They want to see this go through the proper channels and find a solution to not just this, but a couple of other things that have come up during conversations. They do not want to lose what little bit they have by requesting it and potentially having it denied. They have already agreed that if they go into February, they will not postpone further. They will present the practical difficulty and leave it up to the Board.

Trustee Flood asked if he has had time to discuss this with the HOA.

Mr. Martin stated that there were two conversations and they have been brief. More questions have come up than answers during each of these conversations.

Vice-chairman Cook asked if during the conversations with the HOA, has it been for an overall solution or for these individual lots.

Mr. Martin replied both. The question has come up if this should be offered to everyone that meets the main road. The question has come up if they are even allowed to change the plan for their neighborhood as per the by-laws.

Board member Walker stated that he has found this entire fence dilemma the most disconcerting thing that he has ever dealt with on this Board, and he explained. He agrees with the postponement.

Trustee Flood stated that the motion should state that this will be the last appearance before the Board in February if this request is granted.
Chairman Durham asked Mr. Martin if he also speaks for Mr. Backus and Mr. Humbert regarding the postponement.

Mr. Martin stated that he has not talked to Mike Humbert, and Ken Backus is still in Florida dealing with a situation. He can only speak for Ken and himself.

Chairman Durham asked for public comment.

No public comment was heard.

Board member Dunaskiss moved, seconded by Board member Walker, that in the matter of AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024, the petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd., a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east and a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west be postponed per the Petitioner’s request until a date certain with that date being February 13, 2023.

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

B. AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013
(Postponed from 8/8/2022 & 10/10/2022 meetings)

Chairman Durham read the petitioners request as follows:

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

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Petitioner was not present.

Vice-chairman Cook asked if there was any communication from the applicant. He asked Mr. Martin if Mr. Backus asked Mr. Martin to represent him.

Mr. Martin replied yes. At the close of the last meeting, they had a conversation about representing him. He understands that the Board probably wants something in writing verifying this though.

Chairman Durham replied that he does not know.

Ms. Harrison concurred with Mr. Martin. The Township should be provided something in writing.

Board member Walker stated they postponed the last case because the Petitioner asked them to. No one for this case is asking the Board to postpone.

Chairman Durham asked Ms. Harrison if it would be improper for the Board to act. Ms. Harrison stated that the Board can act either way. They can postpone or make a decision on the case.
Board member Dunaskiss stated that because at the previous meeting when the group appeared, they were only setting the date for tonight because they could not set a date in 2023 yet. It is her feeling that the other two Petitioners are assuming that this is why they are on the agenda tonight, to postpone, because that is what they said they were going to do. They have done this in the past.

Chairman Durham commented on the postponement.

Chairman Durham asked for public comment.

No public comment was heard.

Vice-chairman Cook moved, seconded by Board member Dunaskiss, in the matter of ZBA Case # AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 that the petitioner’s request be postponed until the February 13, 2023 meeting in light of the petitioner originally asking that he be postponed until the second meeting in February 2023 at his previous appearance.

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

C. AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012

Vice-chairman Cook moved, seconded by Board member Dunaskiss, in the matter of ZBA Case # AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 that the petitioner’s request be postponed until the February 13, 2023 meeting in light of the petitioner originally asking that he be postponed until the second meeting in February 2023 at his previous appearance.

Vice-chairman Cook stated that this case is unique because this petitioner did not come to the previous meeting on October 10, 2022, although he did come to the August 8, 2022 meeting. The petitioner is not present at tonight’s meeting and no correspondence was received.

Chairman Durham asked Vice-chairman Cook why this Petitioner was postponed in October.

Vice-chairman Cook replied that he does not know because he did not attend that meeting. The minutes of the October 10, 2022 meeting reflect that this Petitioner did not attend.

Vice-chairman Cook moved, seconded by Trustee Flood supported, that in the matter of ZBA case AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012 that the petitioner’s request for three variances from Zoning Ordinance #78 – Zoned R-2, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) including a 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd., a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east and a 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west 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 that show:
1. The petitioner has not presented any practical difficulties the initial two times that this case was before the board and postponed, nor is he present tonight.

2. The petitioner has not demonstrated 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.

3. The petitioner has not presented anything that shows that the variances are necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity.

4. The petitioner has not presented any information relating to congestion, danger or any other thing that might be able to allow the Board to vote on this case. The primary reason for presenting this is that the Petitioner was not at the previous meeting on October 10, 2022 nor are they here on December 12, 2022. No notice was provided, no representation was granted to any other individual to represent them.

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

D. AB-2022-50, Jonathon & Allison Iversen, 481 Parkview Ct., 09-12-376-002

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from Zoning Ordinance #78

Article VI, Section 6.04 - Zoned R-1

1. A 7.1-ft. front yard setback variance from the required 40-ft. for an attached garage to be 32.9-ft. from the front property line.

Mr. Jon Iverson and Ms. Allison Iverson introduced themselves to the Board and summarized the variance request. He stated reasons why he feels his case qualifies for the variance. They are trying to match the existing front of their house. The front of their house is already within the 40 foot setback. They considered another design for the new addition that would be within the setback and found the design to be uninspired. They spoke to the neighbors around them and the neighbors are on board with the plan. They live on a private road which is an easement itself.

Chairman Durham thanked the Petitioner for putting pink flags up to identify the proposed area. What the Petitioner wants to do is minor and will have little effect on other people. The Fire Marshall has looked at the plan and has no issues with it.

Board member Walker stated that this is the first time he has visited this area. There was no variance received for the home and this is not increasing an already existing non-conformity.

Vice-chairman Cook asked if the petitioner had recently had the property surveyed.

Mr. Iverson replied yes. He commented that the property is shaped like a trapezoid and he meant to point that out.

Vice-chairman Cook asked if the neighbor with the greenhouse had to get a variance.

Trustee Flood stated that he also appreciated the flags placed on the property. He stated that he likes the fact that the petitioner is not making it more nonconforming. He asked about the proposed attached garage.
Mr. Iverson stated that the new attached garage would match the existing front of the house and he commented on the placement of the house on the property.

Vice-chairman Cook asked if the petitioner had considered locating the structure 10 feet back on the concrete pad.

Mr. Iverson replied that they would need to put a new driveway down anyway and he doesn't like the idea of the garage being flush with the back of the house.

Chairman Durham asked for public comment.

No public comment was heard.

Board member Walker moved, seconded by Trustee Flood, that in the matter of Case AB-2022-50, Jonathon & Allison Iversen, 481 Parkview Ct., 09-12-376-002, that the petitioners’ request for 1 variance from Zoning Ordinance #78, Article VI, Section 6.04 - Zoned R-1 for a 7.1-ft. front yard setback variance from the required 40-ft. for an attached garage to be 32.9-ft. from the front property line be approved because the petitioner did demonstrate that the follow standards for variances have been met in this case and that they set forth facts that show:

1. The petitioner did demonstrate a practical difficulty: it is due to the unique characteristics of the property. In addition, the existing footprint is practically the same footprint as the home footprint. The petitioner is changing the existing garage into a living space and adding the new garage.

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

3. 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 or reasonably diminish or impair established property values within the surrounding area.

This application was date stamped received on November 8, 2022.

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

E. AB-2022-51, General Motors Orion Assembly, 4555 Giddings Road, 09-34-200-006 & 09-34-400-011

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 1 variance from Zoning Ordinance #78 – Zoned IC Article XIX, Section 19.04

1. A 5-ft. height variance from the maximum height of 120-ft. for structures to be 125-ft. tall.

Justin Brooks, representing Wade Trim, introduced himself to the Board as appearing on behalf of General Motors. He summarized the variance request for stacks to be placed at the GM Orion Assembly Plant.

Vice-chairman Cook asked if Mr. Brooks worked at a Flint Plant for Wade Trim.

Mr. Brooks replied no.

Vice-chairman Cook stated that he wanted to make sure there was no conflict of interest.
Mr. Brooks continued summarizing the variance request for the proposed stacks.

Chairman Durham confirmed that the EPA is requiring the stacks to be placed.

Board member Walker stated that the Planning Commission denied the site plan approval pending granting or denial of this variance. The Township Planner has signed off on everything else. This is being required by the EPA.

Vice-chairman Cook asked if there would be two RTO’s in the facility.

Mr. Brooks replied yes.

Trustee Flood stated that they already have a 250 foot smoke stack on the property attached to the power house and these two proposed stacks will be ½ the size. They also have to get permission from the FAA for anything over 70 feet.

Vice-chairman Cook asked what was unique regarding the air modeling.

Mr. Gary Jensen, Walbridge, introduced himself as Design Manager for the project. Mr. Jensen described the air modeling for the project.

Trustee Flood reiterated that if this variance is approved, the amended site plan is already approved and they do not have to go back to the Planning Commission.

Board member Walker answered yes; there are also some administrative matters that still need to be worked out.

Vice-chairman Cook moved, seconded by Trustee Flood, that in the matter of Case AB-2022-51, General Motors Orion Assembly, 4555 Giddings Road, 09-34-200-006 & 09-34-400-011, that the petitioner’s request for 1 variance from Zoning Ordinance #78 – Zoned IC, Article XIX, Section 19.04 for a 5-ft. height variance from the maximum height of 120-ft. for structures to be 125-ft. tall 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 show the following practical difficulty: this is a unique piece of property in addition to the fact that the petitioner is meeting safety standards that the height of 125 feet is necessary for the two stacks.

2. The following are 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: this is a piece of property that is 455 acres total in that it is a manufacturing facility that is unique in its own right.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: the owner is trying to utilize the property for what it was purchased for many years ago.

4. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the fact that the petitioner has been in contact with the EPA, FAA, the Planning and Zoning Board in the Township as well as the State of Michigan.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties due to the positioning of the factors away from any residential and/or other commercial properties. The variance will not increase congestion in public streets. There is also not going to be an increase
of fire or endanger public safety, or unreasonably diminish property values in the surrounding areas.

This application was date stamped received November 14, 2022.

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

6. PUBLIC COMMENTS

Trustee Flood moved, seconded by Board member Dunaskiss, to cancel the January 9, 2023 Zoning Board of Appeals meeting due to a lack of agenda items.

Motion Carried

7. COMMUNICATIONS

Chairman Durham commented on the upcoming Annual Holiday Party on December 14, 2022.

Trustee Flood commented on the appointment of a new Treasurer to replace Donnie Steele.

8. COMMITTEE REPORTS

Trustee Flood stated that there was nothing further from the Fence Ad Hoc Committee.

9. MEMBER COMMENTS

Board Members wished everyone a happy holiday.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 7:54 pm.

Motion Carried

Respectfully submitted,

Erin A. Mattice
Recording Secretary