



Zoning Board of Appeals Regular Meeting Minutes, Monday, November 12, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, November 12, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Joe Geraci, Vice-Chairman

Neal Porter, Board of Trustees (BOT) Rep. to ZBA

Mary Painter, Alternate

Don Walker, PC Rep. to ZBA

Dan Durham, Board Member

ZBA MEMBER ABSENT:

Loren Yaros, Chairman

CONSULTANT PRESENT:

Thomas Berger, Building Official

OTHERS PRESENT:

Joyce Forner

Mary Rodgers

Beth Donetti

Steve Gaymer

Chuck DePalma

David Spolyar

George Kosiba

Robert Chevrier

Dale Rodgers

Wes Herrick

Kathryn Gaymer

Dennis Lambert

Donald Spolyar

Phoebe Schutz

Martha Brawner

Gene McNabb

Eugene McNabb

Nick Trifon

Alan Gott

Sharon Kosiba

1. OPEN MEETING

Acting Chairman Geraci called the meeting to order at 7:00 p.m.

2. ROLL CALL

Loren Yaros was absent.

3. MINUTES

Moved by Board Member Porter, supported by Board Member Walker to approve the October 22, 2012 regular meeting minutes as presented. **Motion carried 5-0.**

4. AGENDA REVIEW AND APPROVAL

No changes were made to the agenda.

5. ZBA BUSINESS

A. AB-2012-24, Signs by Crannie, Inc./Nick Trifon, 255 E. Scripps Road/First Baptist Church of Lake Orion Sign, Sidwell #09-14-400-017

Acting Chairman Geraci commented that the petitioner is seeking three variances from Sign Ordinance No. 138: 1)Section 8, A, Zoning District R-1, one ground sign per institutional establishment, Maximum Height ~ requesting a two-foot variance, over the allowed six feet in maximum height, to install a ground

sign eight feet tall; 2)Section 8, A, Zoning District R-1, one ground sign per institutional establishment, Maximum Sign Area -requesting an 11.06-square foot variance, above the allowed 35 square feet, to

install a ground sign totaling 46.06 square feet; and, 3)Section 5, A, requesting a variance to install a 25.44-square foot LED message center within a ground sign.

Mr. Nick Trifon, of Signs by Crannie, Inc., 4160 Commerce Drive, Flushing, Michigan, 48433, was present and representing the petitioner, First Baptist Church of Lake Orion.

Acting Chairman Geraci inquired whether the original base would be used for the new sign.

Mr. Trifon replied, yes.

Acting Chairman Geraci commented that he believes that for not being on a main thoroughfare, the existing sign is too tall and that the LED on the new sign is usually for a high traffic area.

Board Member Painter inquired whether there would be anything flashing or moving on the sign.

Mr. Trifon replied that whatever the Board stipulates for the sign, it can be programmed to do that. Six to eight-inch letters would be about as small as you'd want to go on a road with the traffic going about 25 mph to 30 mph, so that people can read the sign easily as they go by. For three rows of letters on the sign, that would be eight-inch tall letters. The church wants to be able to display messages for the church services, the school, and events they may have there. They believe that the size of the sign is needed to make it simpler for people to find the church and to read the messages.

Acting Chairman Geraci noted that the sign is not the type that flashes.

Board Member Durham inquired what the intent of the large sign was since the road is flat and clear.

Mr. Trifon noted that they want it to communicate with people passing by as well as their church members. It would be more attractive of a sign. Also, the fact that they could change the message electronically and not have to go out there and physically change plastic letters.

Board Member Durham inquired whether it would cause light pollution into the subdivision across the street from the church.

Mr. Trifon replied that the sign has a dimming feature to use at night. He commented that the church has stated that they would program the sign to shut off completely during overnight.

Board Member Porter noted that it would be a must for the church to shut the sign off during the overnight hours.

Acting Chairman Geraci noted that he understands that they want to keep the existing base, but that the overall size of the sign is large for the location.

Mr. Trifon replied that the reason for the size is so that they will be able to put their entire message on the sign, on one screen, without having to make it change while people are driving by.

Acting Chairman Geraci noted that members could postpone this case and Mr. Trifon could go back to the petitioner to inquire if they'd like to revise the sign before action is taken on it.

Mr. Trifon noted that he would like to know what the concerns are and that he would agree to postpone this to get with the petitioner about a possible revision of the sign plans. The sign consists of three modules and he could ask the church if they would consider having just two modules.

Acting Chairman Geraci suggested decreasing the text to six-inch letters and also commented that the whole sign itself is not proportional to the location.

Mr. Trifon stated, what I want to do is to be clear with my customer and say if we reduce the size of the top module, which we'd probably want to reduce some of the text copy, we could do that and then keep the EMC the same size or we can keep the top module the same and then reduce the EMC and that may be the option that they would want to do or take a look at. Would that be more favorable to the Board?

Acting Chairman Geraci replied, yes. The top module would be lit and the ground lights would be removed?

Mr. Trifon replied, yes. They'll have to run another circuit out there for that.

Acting Chairman Geraci noted that he does like the address numbers placed on the sign as they have it, but it's just the overall size of the sign is too large.

Mr. Trifon noted, they would probably eliminate about eight or nine square feet and that would probably get it closer to being in compliance. Is the height ok? If it were lower it would create a visibility issue. The existing sign is not in compliance with the sign ordinance and that's why I'm asking.

Acting Chairman Geraci stated, give us the dimensions of the existing sign, so that we know a comparison and also state in there that after 10:00 p.m. that sign goes off.

Mr. Trifon stated, I can put that in the paperwork. The next meeting will be December 10th?

Acting Chairman Geraci stated, December 10th.

Moved by Board Member Painter, supported by Board Member Porter regarding case AB-2012-24, Signs by Crannie, Inc./Nick Trifon, 255 E. Scripps Road/First Baptist Church of Lake Orion Sign, Sidwell #09-14-400-017, to **postpone** this case until the December 10, 2012 regular meeting and that the petitioner will need to contact the Planning/Zoning Coordinator regarding when to have the information submitted to the Township. Roll call vote was as follows: Painter, yes; Porter, yes; Durham, yes; Walker, yes; Geraci, yes. **Motion carried 5-0.**

B. AB-2012-25, Robert Chevrier/Joyce Forner, 1230 Miller Road, Sidwell #09-01-476-002

Acting Chairman Geraci commented that the petitioner is seeking two variances from Zoning Ordinance No. 78 in order to build an attached garage: 1)Article XXVII, Section 27.01, C, 1, b, Lot Width 60 to 65 feet -- requesting a six-foot variance from the required eight-foot side yard setback to construct an attached garage two feet from the side lot line (east); and, 2)Article VI, Section 6.07, Zoning

R-3, Minimum Lot Setbacks, Front Yard ~ requesting a three-foot front yard setback variance from the required 30-foot front yard setback, to install an attached garage 27 feet from the front lot line.

Mr. Robert Chevrier, of 3670 Indian Lake Road, Oxford, Michigan, was present.

Ms. Joyce Elaine Forner has submitted correspondence, dated September 30, 2012, in which she explains that she is allowing Mr. Robert Chevrier to be her builder as well as to represent her before the ZBA*

Acting Chairman Geraci inquired why they couldn't put the garage and still attach it.

Mr. Chevrier noted that there is a very large tree, which could be moved, but there are also power lines that come right from that corner of that lot and there are two drops coming right through the yard.

Board Member Painter inquired why it's not even with the house.

Mr. Chevrier replied that the side door that currently comes out of the house is about 14 feet from the front and they wanted to bring that up so when the car noses into the garage, there would be a little relief at the doorway there. Also, the house next door is about 27 feet or maybe even a little closer to the road, so they tried to keep it right there and not encroach any more on the road.

Board Member Durham inquired whether he knows how the neighbor on the garage side feels about the building going in.

Mr. Chevrier replied that they have no problem with it and in fact they even told them that they could take their fence down during construction.

Acting Chairman Geraci commented that the two-foot (east) side yard would be narrow, but it is tough not to have a garage at all and that the petitioner is only asking for a one-car garage.

Acting Chairman Geraci offered time for public comments on this case.

Ms. Mary Rodgers, of 1205 Miller Road, commented that they live directly across the street from the subject site and that she is in support of this variance request, which would be much safer for Ms. Forner. She noted that it would also add value to the whole neighborhood.

Moved by Board Member Painter, supported by Board Member Walker regarding case AB-2012-25, Joyce Forner, 1230 Miller Road, Sidwell #09-01-476-002, that the petitioner is seeking two variances from Zoning Ordinance No. 78 in order to build an attached garage: 1)Article XXVII, Section 27.01, C, 1, b, Lot Width 60 to 65 feet ~ requesting a six-foot variance from the required eight-foot side yard setback to construct an attached garage two feet from the side lot line (east); and, 2)Article VI, Section 6.07, Zoning R-3, Minimum Lot Setbacks, Front Yard ~ requesting a three-foot front yard setback variance from the required 30-foot front yard setback, to install an attached garage 27 feet from the front lot line, **to grant the petitioner's request**, because the petitioner did demonstrate that practical difficulties exist in this case and that she set forth facts, which show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome based on the fact that there is not a lot of room there and that she has trees and electrical power lines in the backyard so she's unable to put the

garage in the back area. Granting the requested variances would do substantial justice to the petitioner and to the other property owners in the area. The petitioner's plight is due to the unique circumstances of the property and that the problem is not self-created. Roll call vote was as follows: Porter, yes; Durham, yes; Walker, yes; Painter, yes; Geraci, yes. **Motion carried 5-0.**

C. AB-2012-26, Martha L. Brawner, 35 Schorn, Sidwell #09-01-327-036

Acting Chairman Geraci commented that the petitioner is seeking three variances from Zoning Ordinance No. 78: 1)Article VI, Section 6.07, Zoning District R-3, Minimum Lot Setbacks, Rear Yard & Article XXVII, Section 27.03, C, 3, a - requesting a 25-foot rear yard setback variance from the required 32-foot rear yard setback, to install stairs on the outside of the attached garage seven feet from the rear property line; 2)Article XXVII, Section 27.05, H - requesting a variance to install a five-foot fence on the north and east property lines; and, 3)Article XXVII, Section 27.05, H - requesting a variance to install a six-foot fence on the west property line.

Ms. Martha Brawner, of 35 Schorn, noted that the variance for the rear yard setback should be 8.5 feet instead of 7 feet from the rear property line. There will be an outside exit that won't be used for a common entrance and will have a solid steel dead-bolted door up there where there's a window, as an emergency exit. The entrance is currently in the garage. There was a previous variance in 1992.

Acting Chairman Geraci noted that in the meeting minutes from November 23, 1992 it was not addressed whether that space above was considered to be living space. Are these stairs a code requirement for that second story?

Mr. Tom Berger, Township Building Official, replied that for a single-story residence, you are only required to have one exit from the home.

Acting Chairman Geraci inquired why she needs the outdoor stairs to the room over the garage.

Ms. Brawner replied that she uses it for a place to store her things ever since her basement flooded and she would feel safer to know that there was an emergency exit if something happened where she couldn't get out through the garage.

Acting Chairman Geraci noted that there are already several variances on this property. He inquired what types of fences she is requesting.

Ms. Brawner noted that it was going to be a 5-foot in height cyclone fence around the perimeter of the property and it was going to be a 6-foot in height privacy fence in the back yard and the side lot lines. She noted that a neighbor told her that he didn't have a problem with a fence, but wanted the old bushes to be removed first.

Board Member Durham inquired what exactly she is using the space above the garage for.

Ms. Brawner replied that she is using it for storage for her computers and books, but it is not an office.

Board Member Durham noted that he has not seen anyone request a secondary means of egress unless there was significant time spent up there by someone doing something.

Ms. Brawner replied that she uses it for a place to study. She also noted that it is a finished room.

Board Member Painter inquired how she currently exits the room above the garage.

Ms. Brawner replied that she comes down inside the garage and then through a steel door into the kitchen.

Acting Chairman Geraci offered time for public comments on this case.

Mr. Steve Gaymer, of 655 Miller Road, noted that he lives across Schorn from the petitioner. He has some concerns: 1) the fence goes in front of the house, which she's legal to do. The 5-foot fence he can't support and it will look like a big dog pen and would only be about eight feet from the road. The 4-foot fence would be good. He is also concerned about their having cars underneath a structure like that and is also wondering if that structure meets the code requirements. He would also rather see her use the same materials for all the fencing rather than different kinds. He is also concerned about having the outdoor stairs.

Mr. Dennis Lambert, of 599 E. Flint Street, commented that he lives directly behind the petitioner's garage where she wants to put the outdoor stairs and the 6-foot in height fence. He is concerned that with the stairs going up to the space above the garage that she will turn that into a living space up there and then rent it out. He already had an issue with a renter that she had there last year that came onto his property smoking and leaving cigarette butts in his yard. A 6-foot tall privacy fence is going to leave him only about a foot between his fence and her fence, which will make it very difficult to maintain. He doesn't see the need for a 6-foot privacy fence back there or for the outdoor stairs.

Mr. Alan Gott, of 67 Schorn, commented that he lives next door to the petitioner on the north side of her lot. He believes that it appears that there was a survey done and he believes that the fence would be encroaching onto his property. He is concerned that when the fence goes up that it stays within the boundaries. He also noted that he would help her remove the existing bushes.

Board Member Walker inquired which property line that Mr. Gott is referring to.

Mr. Gott replied that it is on the north side.

Acting Chairman Geraci inquired whether the existing wood fence will be staying there.

Ms. Brawner replied, yes. She also noted that she had a pool there and she had to take it down because the pool broke and the basement flooded. Someone complained that the pool was setting there empty. She couldn't afford to repair it, so the Township told her to take it down. She also noted that she hasn't been able to get grass to grow there. Also, her knees are bad and that makes it difficult for her to walk her dogs, so she needs the tall fencing so that they can be outdoors for exercise. The Methodist Church had a man that needed a place to stay, so she rented a room to him. She noted that he did go on the neighbor's property and sat on the rocks while smoking. She told him not to go behind the house and that he could go in front of her house or take a walk to smoke. She doesn't know about the cigarette butts. She also noted that in 2009 Mr. Gott came over and told her that she was two feet onto his property, so she went and got a boundary survey (which is included in members' meeting packets). She then distributed copies of photos of her property for members' review*.

Acting Chairman Geraci noted that she is also asking for a fence on the east property line, which would require another variance, since a fence is not allowed directly on a property line and you have to back behind the corner of the house with the fence. There are no fences allowed in the front yard.

Mr. Berger commented that the setbacks for any property in any zoning district start from the property line, not from the road right-of-way. You've drawn in the fence on your boundary survey going right down the property line, which would require a variance to put the fence in that front property line. It's up to the Board whether they grant that or not. He noted that he just wanted everyone to be clear on that.

Ms. Brawner noted that she wasn't clear on that until now.

Board Member Porter inquired whether the ordinance allows a 4-foot tall fence in the front yard.

Mr. Berger replied that the ordinance allows a 4-foot tall fence on the property line all the way around, but what it cannot do is obstruct. If it were a corner lot, then there's a vision of triangular distance that you cannot obstruct a view from. There are some lots that actually have two front yards if they are fronted by two roads. However, when you want to build a fence that is taller than the allowed four feet, then it has to meet the setback requirement of the zoning district in which it is located.

Board Member Durham inquired of Ms. Brawner whether she is comfortable having the Board vote on what is in front of the Board now, because she had just said that there were parts of this that you weren't clear on until this very second.

Ms. Brawner replied that she wasn't clear on the fence. She thought she could put, with the Board's approval, a 5-foot tall fence on the property line on the east side. There's enough room there for a sidewalk if they were to run sidewalks down Schorn. On Clarkston Road there are 5-foot and 6-foot tall fences along there that go right up to the sidewalk.

Board Member Porter inquired of Ms. Brawner whether the space above the garage was done to code and whether the 5/8" drywall installed.

Ms. Brawner replied that when they attached the garage to the house they were told to put 5/8" drywall on the house side of the garage, so on the east side of the garage on the interior is all 5/8" drywall and there is an electrical permit for that garage and it was inspected for the lights and stuff. The garage is finished on the inside and has insulation on the inside walls and floor and on the ceiling and put thick drywall on there.

Board Member Porter noted that if this is an authorized living space to be used as an office above the garage that's been approved, then he has no problem with the extra door egress being put in there since that is a safety matter. If it's not an authorized living space, then he does have a problem.

Mr. Berger noted that there is habitable space and there is occupiable space. If I go down into a basement and wash my clothes, that's considered as occupied at the time I'm doing it. It's not intended to be habitable, so it's not built in a habitable condition. If what you're saying tonight is that if you're going to grant another doorway to put in because the place is going to be considered habitable space then the space should meet habitability. Occupiable space doesn't mean it's habitable space, there are two definitions in the code for that. If it's going to have a door, light and ventilation, and all the

different conditions for habitable space, then I would want the condition, if it should be approved, to read that the structure has to meet habitability.

Moved by Board Member Durham, supported by Board Member Painter regarding case AB-2012-26, Martha L. Brawner, 35 Schorn, Sidwell #09-01-327-036, that the petitioner is seeking three variances from Zoning Ordinance No. 78: 1)Article VI, Section 6.07, Zoning District R-3, Minimum Lot Setbacks, Rear Yard & Article XXVII, Section 27.03, C, 3, a ~ requesting a 26.5-foot rear yard setback variance from the required 32-foot rear yard setback, to install stairs on the outside of the attached garage seven feet from the rear property line; 2)Article XXVII, Section 27.05, H ~ requesting a variance to install a five-foot tall fence on the north and east property lines; and, 3)Article XXVII, Section 27.05, H ~ requesting a variance to install a six-foot tall fence on the west property line. I would move that the petitioner's request for non-use variances as described **be denied**, because the petitioner did not in fact demonstrate that practical difficulties exist in this case in that she set forth facts, which did not show that the ordinances are required compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using property for a permitted purpose and would not render conformity with the ordinance unnecessarily burdensome based on the following: 1)her intent is to fence her yard and the ordinance allows her to fence her yard; 2)the variances that she's requesting are for size and not for ability; 3)the petitioner's plight is not due to the unique circumstances of the property based on the following: a)she can have her fence and quite frankly I'm still unclear on the intent and the reasoning behind the stairs and the door from the second floor; 2)the problem is in fact self-created and again, based on that she can fence the yard if she would like to without any variances from us and I don't see the stairs and the egress door as being necessary. Roll call vote was as follows: Durham, yes; Walker, yes; Painter, yes; Porter, yes; Geraci, yes. **Motion carried 5-0.**

D. AB-2012-27, Donald Spolyar/David Spolyar, 445 Brown Road and vacant parcel #09-32-400-083, Temporary Use Permit, Sidwells #09-32-400-062 and #09-32-400-083

Acting Chairman Geraci noted that the petitioner is requesting a Temporary Use Permit for an Open Air Business, per Zoning Ordinance No. 78, Article XXX, Section 30.11, F, 1, in order to erect a tent and hold Christmas tree sales.

Mr. David Spolyar, of 444 Woodridge Court, noted that he and his father, Mr. Donald Spolyar, want to set up a tent for the purpose of holding Christmas tree sales. He then overviewed the drawings of the site that they had submitted for members' review.

Acting Chairman Geraci inquired whether the electric power would be coming from the house or the generator.

Mr. David Spolyar replied that it would come from the house.

Acting Chairman Geraci inquired whether there would be directional signage for the entrance and exit.

Mr. David Spolyar replied that they will have entrance and exit signs and also that they will put up cones/flags along the drive for safety with the cars going along behind the tent between that and the house. Their hours of operation will be Monday through Sunday from 10:00 a.m. to 10:00 p.m., from November 21, 2012 to December 25, 2012. There will be staff staying on-site to look after things and will stay in the house, which does have heat and restroom facilities.

Board Member Porter inquired if there are arrangements to ensure that the site is cleaned up after the sales are done.

Mr. David Spolyar stated, all sticks, stakes, tent, etc. will be removed and cleaned up within a week after December 25, 2012.

Acting Chairman Porter offered time for public comments on this case.

No comments were given.

Moved by Board Member Porter, supported by Acting Chairman Geraci regarding case AB-2012-27, Donald Spolyar/David Spolyar, 445 Brown Road and vacant parcel #09-32-400-083, Temporary Use Permit, Sidwells #09-32-400-062 and #09-32-400-083, **to grant the temporary use permit** to allow a tent to be erected to be used for Christmas tree sales from 11-21-12 to 12-25-12 with the hours of operation from 10:00 a.m. to 10:00 p.m. seven days a week. Also, that all sticks, stakes, tent, etc. will be removed and the site cleaned up within a week after December 25, 2012. Roll call vote was as follows: Walker, yes; Painter, yes; Porter, yes; Durham, yes; Geraci, yes. **Motion carried 5-0.**

6. PUBLIC COMMENTS

Public comments were heard.

7. COMMUNICATIONS

Board of Trustees and Planning Commission meeting minutes for members' information.

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

Board Member Painter and Acting Chairman Geraci wished everyone a Happy Thanksgiving Day.

10. ADJOURNMENT

Moved by Board Member Porter, supported by Board Member Walker to adjourn at 8:53 p.m. **Motion carried 5-0.**

* on file