



Zoning Board of Appeals Regular Meeting Minutes, Monday, December 10, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, December 10, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT: Loren Yaros, Chairman; Joe Geraci, Vice-Chairman; Mike Flood, Board of Trustees (BOT) Rep. to ZBA; Don Walker, PC Rep. to ZBA; Dan Durham, Board Member

CONSULTANT PRESENT: Thomas Berger, Building Official

OTHERS PRESENT: Fred Hengel, Steve Sanders, Gene McNabb, Jr., Martha Brawner, Eugene McNabb, Mark Latshaw, Valerie Kryes, Bruce MacDonald, Pat Conroy, Phoebe Schutz

1. **OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.

2. ROLL CALL

All members were present.

3. MINUTES

Moved by Vice-Chairman Geraci, supported by Board Member Walker to approve the November 12, 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

Chairman Yaros 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 1.5-foot variance, over the allowed six feet in maximum height, to install a ground sign 7.5 feet tall; 2)Section 8, A, Zoning District R-1, one ground sign per institutional establishment, Maximum Sign Area ~ requesting a 5.56-square foot variance, above the allowed 35 square feet, to install a ground sign totaling 40.56 square feet; and, 3)Section 5, A, requesting a variance to install a 19.94-square foot LED message center within a ground sign.

Mr. Nick Trifon, of Signs by Crannie, Inc., 4160 Commerce Drive, Flushing, Michigan 48433, (representing First Baptist Church of Lake Orion), noted that they have reduced the size of the proposed sign and it is actually a couple of square feet smaller than the existing sign, which is what the board asked them to do to compromise at the previous meeting.

Chairman Yaros agreed that the proposed sign is considerably smaller than the existing sign.

Vice-Chairman Geraci noted that the petitioner did a very good job of re-organizing the sign and is still

using the same base of the existing sign. He has incorporated everything that they had talked about at the last meeting into this sign and he has no issues with what they are proposing on this sign.

Board Member Durham noted that he would want to see that there is a note on the plans stating that the sign will be turned off at specified hours.

Mr. Steve Sanders, Assistant Pastor of First Baptist Church of Lake Orion, agreed that the sign would be turned off from 9:00 p.m. to 5:00 a.m.

Board Member Flood noted that the petitioner has complied with all that was requested of them and that he agrees with the hours that the sign can be turned on.

Chairman Yaros offered time for public comments on this case.

No comments were given.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-24, Signs by Crannie, Inc./Nick Trifon, 255 E. Scripps Road/First Baptist Church of Lake Orion Sign, Sidwell #09-14400-017, 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 1.5-foot variance, over the allowed six feet in maximum height, to install a ground sign 7.5 feet tall; 2)Section 8, A, Zoning District R-1, one ground sign per institutional establishment, Maximum Sign Area ~ requesting a 5.56-square foot variance, above the allowed 35 square feet, to install a ground sign totaling 40.56 square feet; and, 3)Section 5, A, requesting a variance to install a 19.94-square foot LED message center within a ground sign, **be granted with the following conditions:** 1)because the petitioner has demonstrated that practical difficulties exist, the LED section of the sign will not flash nor will it have rolling script; and, 2)the LED portion of the sign will be off from 9:00 p.m. to 5:00 a.m. The petitioner has established 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 because the new sign is similar in size to the current sign that is being replaced. The petitioner has established that granting the variance requests will not be a detriment to public safety or welfare and would do substantial justice to the petitioner as well as the other property owners in the district because this type of signage is now the norm for said properties. The petitioner has established that the need for the variance was not self-created, because the LED upgrade and utilization of the current base is consistent with signage of today. The petitioner has established that the granting of the variance will not impair the intent or purpose of the ordinance, nor will it set a precedent. Roll call vote was as follows: Geraci, yes; Flood, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-28, Bruce MacDonald, Vacant Lots 36 & 37 on Heights Road, Sidwell #09-11-303-020

Chairman Yaros commented that the petitioner is seeking six variances from Zoning Ordinance No. 78, Article XXVII, Section 27.04, C, 2, c, i: 1)a variance to store recreational vehicles on a residential parcel that does not contain a principal use; 2)a variance from the required paved or gravel surface for the storage of recreational vehicles; 3)a variance to store three additional recreational vehicles above the allowed one recreational vehicle; 4)a 5-foot rear yard setback variance to store recreational vehicles five feet from the rear property line; 5)a 5-foot side yard setback variance on the west and east sides to store

recreational vehicles five feet from the side (west and east) lot lines; and, 6)a 10-foot front yard setback variance in order to store recreational vehicles ten feet from the road's edge.

Mr. Bruce Mac Donald, of 6834 Oakhills Drive, Bloomfield Hills, Michigan 48301, noted that he is a co-owner of Vacant Lots 36 and 37 on Heights Road with Mr. Fred Hengel, of 6430 Pine Valley Road, Clarkston, Michigan 48346, who is also present. He then apologized that they were not aware that they were violating the zoning ordinance prior to receiving the citation.

Mr. Hengel noted that Mr. Pat Conroy is also present and that they asked him to represent them here tonight (however, the Planning and Zoning Department has no prior knowledge of Mr. Conroy or his address or information whatsoever for the file).

Mr. Pat Conroy, of Conroy Associates, noted that they are landscape architects and land planners. He noted regarding the first variance request that one parcel will never have a principal use since it is a common space that is owned by all four property owners on the island and he asked that the board waive that as a principal use. Regarding the second variance request, the site also serves as a drainage course for all the properties to the south as it comes down the slope and enters into Lake Orion. The third variance request, again, it's a common area used by all the property owners. He then distributed a drawing*, which shows that using the new setbacks of ten feet off the side, the rear, the lakefront, and the ten feet on the west, along with the 20 feet off the street, they can store vehicles within that side yard setback. He also noted that due to the above information, this is a unique situation that they have there, so he believes that this would not set a precedent.

Chairman Yaros noted that since the lots are being used for the boats to service the lots on the island, they actually do have a principal use, which are the lots on the island. He then inquired whether the vacant lots are legally tied to the lots on the island.

Mr. Hengel replied that they are legally tied to the lots on the island as shown in the deed included in members' packets, which states in the first paragraph that describes the property on shore. Even though it states that in the deed, it is not secured to the deed and could be sold separately by any one of the four cottages. So, they will contact the original attorney that worked on this in 1988, who is still practicing here in Lake Orion, and will ask him to modify the deeds to place a restriction on each one of the four island deeds that says that the one-quarter interest cannot be sold separate from the parcel on the island and then it will be irrevocably tied for all time to the island property. Also, there is another small issue on the northwestern boundary of Lot 37 where the next-door neighbor attempted to extend a fence line and there was another court decision there, which as it turned out was never registered in the deed, so we have to go back and revisit that deed as well and if there are any legal things that we need to do to secure the two properties together there, we will also do that and provide the board with a copy of that.

Chairman Yaros noted that the drawing that the petitioner submitted to members tonight meets the setbacks. However, his concern is setting a precedent of allowing storage that is not tied to a principal use. If you can legally get it tied to the principal use of the island, then he believes that requirement would be met.

Mr. Hengel noted that he will pursue that with Mr. Paul Bailey and will report back to the Township.

Mr. MacDonald overviewed the history of the vacant parcels.

Board Member Walker noted that his concern is that it is not tied to a principal residence now.

Mr. Hengel noted that it is tied to it now, but it could be split as it shows in one of the documents here that the language also includes an undivided one-quarter interest and then describes that parcel. He then stated that he will have their attorney go back and put a clause restriction, just as you would do if you had a mortgage on your property and put a deed restriction in so that the property cannot be separated from the island property. Also, there was a discrepancy between their deeds and the Township's information. Since then, the Township has agreed that they do own the property and using that, they can move the boats and meet all of the easements and there shouldn't be a problem.

Vice-Chairman Geraci commented that if they put a hold on this for 120 days, let them get their paperwork in order, clear up all the issues with the deed restrictions, and if they don't need to come back, then we won't come back and make any rulings.

Chairman Yaros commented that once you tie this in legally to the property where you now have a residence and you meet the setbacks, there is really no reason for a variance at that point.

Mr. Tom Berger, Township Building Official, noted that once they have that recorded, they'll have a Lieber and a page number and then bring that in to show proof that it has been tied together.

Chairman Yaros offered time for public comments on this case.

No comments were given.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-28, Bruce MacDonald, Vacant Lots 36 & 37 on Heights Road, Sidwell #09-11-303-020, request for six variances from Zoning Ordinance No. 78, Article XXVII, Section 27.04, C, 2, c, i, **be postponed for 120 days and also the violation that was written on Thursday, October 25, 2012 also be held for that same period of time** to allow ample time for the petitioner to get the proper paperwork tying these lots to the island and showing principal structures and to let the petitioner and the Building Department take it from there before they may feel the need to come back to the ZBA for any issues regarding the zoning. Roll call vote was as follows: Flood, yes; Durham, yes; Walker, yes; Geraci, yes; Yaros, yes. **Motion carried 5-0.**

C. AB-2012-29, Township-Initiated Interpretation of Sign Ordinance No. 138, Brown Road Innovation Zone (BIZ) Zoning District Regarding 717 Brown Road, Sidwell #09-33-351-035

Chairman Yaros commented that the petitioner is seeking an interpretation of Sign Ordinance No. 138 regarding size, the number of signs, and the road right-of-way setback allowed for signs at 717 Brown Road, Sidwell #09-33-351-035 (BIZ zoning district), for a drive-thru restaurant.

Mr. Mark Latshaw, of Checkers Drive-Thru Restaurant, 717 Brown Road, was present.

Chairman Yaros commented that this site is actually located within the BIZ zoning district. However, he believes that since the BIZ zoning district is not addressed in the sign ordinance and that drive-thru restaurants are only allowed in a GB-1 zoning district, then that is the zoning district that should be used for signage requirements in Sign Ordinance No. 138.

Mr. Tom Berger, Township Building Official, commented that he agreed and noted the importance of making this determination for the BIZ zoning district. He also noted that the entire sign ordinance needs to be revised and updated.

Chairman Yaros agreed that a drive-thru restaurant needs to be considered as in a GB-1 zoning district.

Board Member Durham also agreed.

Board Member Flood commented that it is not the petitioner's fault that the sign ordinance was not updated when the BIZ zoning district was created.

Board Member Geraci noted that he believes that the Township Board should be making the interpretation of the sign ordinance on this issue.

Board Member Walker inquired how long it would take to go to the Township Board for an interpretation.

Board Member Flood replied that it would take a few weeks to be put on the meeting agenda and then it's possible that they may want an attorney opinion, so it could take quite a while longer. He also noted that he interprets this as that we're just strictly being asked what the interpretation is for the BIZ zoning district since it is not included in the sign ordinance. It's an interpretation without setting policy.

Moved by Board Member Flood, supported by Chairman Yaros regarding case AB-2012-29, Township-Initiated Interpretation of Sign Ordinance No. 138 regarding the Brown Road Innovation Zone (BIZ) Zoning District regarding 717 Brown Road, Sidwell #09-33-351-035, that our interpretation of Sign Ordinance No. 138 pertaining only to this particular site is that since it is a drive-thru restaurant and that currently the sign ordinance does not include or address the BIZ zoning district, then it is interpreted that this case falls under the General Business-1 (GB-1) zoning district portion of the sign ordinance. Also, that a request to amend Sign Ordinance No. 138 to include the Brown Road Innovation Zone (BIZ) zoning district shall be forwarded to the Township Board of Trustees. Roll call vote was as follows: Durham, yes; Walker, yes; Geraci, no; Flood, yes; Yaros, yes. **Motion carried 4-1.**

6. PUBLIC COMMENTS

Public comments were heard.

7. COMMUNICATIONS

Board of Trustees meeting minutes for members' information.

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

Vice-Chairman Geraci noted the importance of updating the sign ordinance regarding the BIZ zoning district and also LED lighting needs to be added.

10. ADJOURNMENT

Moved by Board Member Walker, supported by Board Member Durham to adjourn at 8:19 p.m.

Motion carried unanimously.

* on file