



Zoning Board of Appeals Regular Meeting Minutes, Monday, May 14, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, May 14, 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; Mark Crane, TB Rep. to ZBA; Don Walker, PC Rep. to ZBA; Dan Durham

CONSULTANT PRESENT: Tom Berger, Township Building Official

OTHERS PRESENT: Michael Mahan, David Barkeley, Eric Peplowski, Kevin Vaughn, Monica Watson, David Riesch, Mr. & Mrs. Kevin Brown, Donald Mock, Kathy Kalugar, Gene McNabb, Jr., Eugene McNabb, Curtis Clarno, Phoebe Schutz

1. **OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** All members were present, except Don Walker.
3. **MINUTES:** Moved by Board Member Crane, supported by Board Member Durham to approve the April 23, 2012, regular meeting minutes as presented. **Motion carried 4-0** (Walker was absent).
4. **AGENDA REVIEW AND APPROVAL:** No changes were made to the agenda.

Board Member Walker joined the meeting at 7:02 p.m.

5. ZBA BUSINESS

A. AB-2012-05, Michael Mahan, Temporary Use Permit (Optim Eyes Plaza), 704 S. Lapeer Road: Chairman Yaros commented that the petitioner is seeking a temporary use permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer and low-impact fireworks from a tent erected in the parking lot from June 1, 2012 to July 7, 2012.

Mr. Michael Mahan, of 645 Johnson Drive, Lake Orion, commented that he is here to request a temporary use permit to sell fireworks. He also brought his partner, Mr. Eric Peplowski and his architect, Mr. David Barkeley.

Vice-Chairman Geraci noted that as of today at 4:00 p.m. he checked the LARA website and the petitioner is still not on that website as having a permit.

Mr. Mahan replied that it is pending.

Vice-Chairman Geraci inquired whether he had anything to show that he applied before the deadline.

Mr. Mahan stated that he has an email from Rhonda Howard and gave a paper to Chairman Yaros. Chairman Yaros gave the paper back to Mr. Mahan. (There is no document for the file.)

Vice-Chairman Geraci commented that he feels that the parking lot is very safe for pedestrian traffic and doesn't have any other safety concerns.

Board Member Crane inquired how they will control people from walking up and handling the fireworks, especially children.

Mr. Mahan replied that he will only be working two sides of the tent and that he and another employee will be there at all times. The fireworks will be on display, but they will be protected and that he will pay close attention to them.

Chairman Yaros read aloud a review letter from Mr. Bob Smith, Fire Marshall, dated April 27, 2012. The Orion Township Fire Department has reviewed the documentation presented and has no additional comments as long as they are within compliance of Michigan Fireworks Safety Act 256, NFPA 1124, local ordinances, and applicable fire codes.*

Chairman Yaros offered time for public comments.

Mr. Kevin Vaughn, of 4191 Maple Street, Cass City, Michigan 48726, commented that he is co-owner of Fireworks Paradise. He submitted for a temporary use permit as well that will be directly across the street from Mr. Mahan's location. He then gave members a paper (there is no copy for the file). He then gave members a few minutes to read it. His opinion is that Mr. Mahan is not approved to sell fireworks in the State of Michigan and he doesn't think he has his \$10 million liability insurance. He also noted that Fireworks Paradise has their paperwork ready. He also commented that he heard through the grapevine that Mr. Mahan is going to exercise the 1,000-foot rule in the application to try to block Fireworks Paradise from coming in and saying that they are too close to him. That is his reason for being here today.

Chairman Yaros noted that those requirements could possibly be part of a conditional approval.

Mr. David Barkeley commented that he is the architect and that they will fulfill all the requirements if they could have a conditional approval.

Vice-Chairman Geraci inquired of Mr. Tom Berger, Building Official, whether this site would be inspected before being allowed to be open for business.

Mr. Berger replied, sure as well as the Fire Marshall.

Board Member Durham commented that while he understands that it takes time to get anything from the State, he was wondering why the petitioner has not gotten his liability insurance paperwork done yet.

Mr. Mahan replied that wanted to be sure he had the approval before spending the money on all that.

Vice-Chairman Geraci inquired whether the petitioner would be willing to make any changes that the Fire Marshall and the Building Official may determine necessary after physically inspecting their site.

Mr. Mahan replied, absolutely.

Moved by Vice-Chairman Geraci, supported by Board Member Crane regarding case AB-2012-05, Michael Mahan, Temporary Use Permit (Optim Eyes Plaza), at 704 S. Lapeer Road, Sidwell #09-11-428-011, that the Petitioner is seeking a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer and low-impact fireworks from a tent erected in the parking lot from June 1, 2012 to July 7, 2012. The hours of operation will be from 10:00 a.m. to 9:00 p.m. with no sales to anyone under the age of 18 (eighteen), **be granted with the following conditions:** 1)the petitioner must be within compliance of the Michigan Fireworks Safety Act 256, NFPA 1124, local public safety ordinances, and applicable fire codes; 2)that Orion Township Building Department must sign off on the site plan submitted to the Township on April 3, 2012 before opening to the public; 3)the Orion Township Building Department can change the setup if there is an issue that pertains to the parking ingress/egress and public safety; 4)the petitioner must provide to the Township before June 1, 2012 a valid Consumer Fireworks Certificate from the Michigan Department of Licensing and Regulatory Affairs (LARA), which must have been applied for no later than April 1, 2012 and issued by the State of Michigan pursuant to MCL 28.454; 5)the petitioner must show proof before June 1, 2012 that each retail location has been added as an additional insured on the liability policy of the host retailer or public liability and product liability insurance coverage of its own in the amount not less than \$10 million per occurrence as required by MCL 28.455; 6)the petitioner has established that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using property for a permitted purpose, would render conformity with the ordinance unnecessarily burdensome due to Public Act 256 of 2011; 7)the petitioner has established that granting the variance request will not be a detriment to the public safety or welfare and would do substantial justice to the petitioner as well as other property owners in the district, because they will be in compliance with the Michigan Fireworks Safety Act 256, NFPA 1124, local public safety ordinances, and applicable fire codes. Roll call vote was as follows: Geraci, yes; Crane, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-06, Monica Watson, 872 Laird, Sidwell #09-08-451-015: Chairman Yaros noted that the petitioner is seeking two variances from Zoning Ordinance No. 78, in order to construct a 1,200-square foot pole barn: 1)Article XXVII, Section 27.02, A, 8, Maximum Floor Area of Detached Accessory Buildings, 1 to 2.5 acres - requesting a 200-square foot variance over the allowed 1,000 square feet, to build a pole barn that will result in the Maximum Floor Area of Detached Accessory Buildings equaling 1,200 square feet; and, 2)Article XXVII, Section 27.02, A, 8, Total Maximum Floor Area of All Accessory Buildings, 1 to 2.5 acres - requesting a 324-square foot variance over the allowed 1,500 square feet, to build a pole barn that will result in the Total Maximum Floor Area of All Accessory Buildings equaling 1,824 square feet.

Ms. Monica Watson, of 872 Laird, commented that she needs this structure, because she lives in a ranch house with no basement and no attic space for storage, so it all ends up in her attached garage. They own two snowmobiles, a snow blower, a tractor with a front loader, and a four-wheeler. They are almost all out in the elements and she wants to store them in a pole barn. There is some stuff in her garage and if she could put that in the pole barn she would have more room in her garage.

Vice-Chairman Geraci noted that the hardship is supposed to have to do with the property itself as opposed to things. He inquired whether she has considered adding onto the garage.

Ms. Watson replied that she doesn't think she could because of the lotline so she could only go over ten more feet, which wouldn't give her the storage she wants.

Vice-Chairman Geraci stated, you can't really add onto the garage, because the house was shifted to the one property line and you don't have the space on that side of the house to add on, so that in itself is your hardship.

Ms. Watson replied, correct.

Board Member Durham inquired whether she will be removing the one shed with the pitched roof in the middle of the yard.

Ms. Watson replied, yes.

Board Member Durham inquired whether she would reduce the size of the pole barn to avoid having any variances.

Ms. Watson replied, yes that's a possibility. She also thought about changing half of her attached garage into living space, which she has a drawing for. She then showed it to members (there was none provided for the file). She would ask to build the pole barn first if she were to do that. Then pull the permits for that addition of living space into her attached garage and then pull the permits at the same time.

The petitioner and members discussed various calculations.

Chairman Yaros offered time for public comments.

Mr. Kevin Brown, of 901 Hidden Creek Drive, commented that they are not in favor of this large of a building, since it will obstruct their view and it is very big for their neighborhood. The homes there are roughly 1,700 square feet and this building will be a very large obstruction to have to look at. He then asked that if this is approved, that they provide some type of a landscaping buffer.

Mr. Curtis Clarno, of 852 Laird, commented that he lives next door to the subject site and he has no problem at all with this project.

Ms. Kathy Kalugar, of 953 Hidden Creek Drive, commented that she feels the same way that Mr. Brown does although she is not opposed to putting in a pole barn, but not that large of one, but they do want the petitioner to provide some type of landscaping buffer.

Ms. Watson commented that in the summer the trees make a nice buffer, but in the winter she understands the neighbors' concerns for a buffer. She doesn't believe it would be a hindrance, though, since they have two-story homes that are higher up, but it wouldn't be a problem for her to put in some pine trees or evergreens that would screen all year around.

Vice-Chairman Geraci stated, your main goal here is that at the outcome you have a garage that's usable and take your current garage and turn it into living space.

Ms. Watson replied, correct.

The petitioner and members again discussed calculations.

Mr. Berger stated, what I would want to see is an interior finish permit to do the habitable living space in conjunction with applying for a detached accessory building and permitting both of them at the same time. Only relative to the fact that they could start one later, but they would already have the permit in hand if you're talking about doing a contingency as such, so from the Building Department's point of view we have that to go back to within the interior portion of it rather than waiting to have the construction of a detached facility. If that's going to be something that's going to be interpreted as a conditional component, I'd like to see it something similar to that.

Ms. Watson stated, so I would pull the permit for the additional living space at the same time I pull the permit for the pole barn.

Mr. Berger stated, yes only because what it would mean to me is all the information that would be in place to produce the habitable space from the existing garage component with the fire-rated wall and all the rest, would all be approved at that point in time so the plans would be in compliance at the same time a detached accessory building is also securing the permit. I'd rather have them both simultaneously, or whatever the Board is considering.

Board Member Crane noted that doing it that way would sort of minimize the variance. He appreciates the neighbors' concerns, but without a variance, the petitioner could build a 1,000-square foot building. He then asked the petitioner if she is offering to provide the evergreens for a buffer as a condition of approval.

Ms. Watson replied that if she had to she would, but she doesn't know what kind.

Board Member Durham suggested amending the zoning ordinance to avoid these types of variance requests.

Mr. Berger agreed.

Board Member Walker noted that he still does not see where there is a hardship. In previous cases this Board has said that having lots of stuff is not a hardship. The petitioner currently could build a large accessory building without a variance and would have ample storage.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-06, Monica Watson, of 872 Laird, Sidwell #09-08-451-015, that the petitioner is seeking two non-use variances from Zoning Ordinance No. 78, in order to construct a 1,200-square foot, 30' x 40' pole barn: 1)Article XXVII, Section 27.02, A, 8, Maximum Floor Area of Detached Accessory Buildings, 1 to 2.5 acres - requesting a 200-square foot variance over the allowed 1,000 square feet, to build a pole barn that will result in the Maximum Floor Area of Detached Accessory Buildings equaling 1,200 square feet; and, 2)Article XXVII, Section 27.02, A, 8, Total Maximum Floor Area of All Accessory Buildings, 1 to 2.5 acres - requesting a 60-square foot variance over the allowed 1,500 square feet, to build a pole barn that will result in the Total Maximum Floor Area of All Accessory Buildings equaling 1,560 square feet, be **granted**, due to the change in the additional 288-square foot living area from the existing garage and that the two permits will be applied for simultaneously, because the petitioner has demonstrated that practical difficulties exist. 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 that would render conformity with the ordinance unnecessarily burdensome. Because it is similar in size to the neighboring property's pole barn and is not unique to the area. Future considerations are given

toward the petitioner because of the potentially changing the current living space into the current garage to make more room. The petitioner has established that granting a variance request would not be a detriment to the public safety or welfare and would do substantial justice to the petitioner as well as other property owners in the district because of the 320-foot depth of the property backing up to the park it will not look out of place and blend in with the neighborhood. They will also remove the current shed. The petitioner has established that the unique circumstances exist regarding the area of the subject property because of the existing house as shifted on the property and makes it impossible to add onto the existing garage. The petitioner has established that the need for the variance is not self-created due to the location of the current structure. The petitioner has established that granting the variance will not impair the intent or purpose of the ordinance nor will it set precedent. Roll call vote was as follows: Crane, yes; Durham, no; Walker, no; Geraci, yes; Yaros, yes. **Motion carried 3-2.**

6. PUBLIC COMMENTS: Mr. Eugene McNabb and Mr. Eugene McNabb, Jr. commented regarding the dust problem and fill material at a gravel and mining site in the Township as well as suggesting to amend Ordinance No. 99. They also gave members some papers (there were none received for the record).

7. COMMUNICATIONS: None.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: None further.

10. ADJOURNMENT: Moved by Board Member Crane, supported by Board Member Durham to adjourn at 8:09 p.m. **Motion carried unanimously.**

* on file