



Zoning Board of Appeals Regular Meeting Minutes, Monday, June 11, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, June 11, 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; Don Walker, PC Rep. to ZBA; Dan Durham, Board Member; Mary Painter, Alternate

CONSULTANT PRESENT: Thomas Berger, Building Official

OTHERS PRESENT: Tom Tracy, Edward McCue, Judy McCue, Eugene McNabb, Eugene McNabb, Jr., Donald E. Mock, Karen Birdie, Carl Cyrowski, 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 May 29, 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-2012-09, Freebies Fireworks/Tom Tracy, Temporary Use Permit, 3677 S. Lapeer Road, Sidwell #09-26-451-002: Chairman Yaros noted that the petitioner is seeking a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer fireworks from a tent erected in the parking lot from June 21, 2012 – July 5, 2012.

Chairman Yaros overviewed review correspondence received from Mr. Robert Smith, Acting Fire Chief, dated June 7, 2012*. The Orion Township Fire Department has reviewed the documentation presented and it appears the petitioner has satisfied the requirements as required previously.

Mr. Carl Cyrowski, of 3912 Silver Valley, commented that he is the President of the Lake Orion Fireworks Association and that he is helping the petitioner (since the petitioner lives out of state) with getting a location here to sell his fireworks. He noted that the subject site for this temporary use is owned by Ms. Suzanne M. Turpen, of Alhi Development Company, and that he has a letter from her that authorizes Mr. Cyrowski to represent her at the meeting, which he gave to the Recording Secretary*.

Mr. Tom Tracy, of 1919 Wells, Fort Wayne, Indiana 46808, (petitioner) noted that he has the State permit.

Vice-Chairman Geraci noted that when you applied for the license, you signed an affidavit that states that you're going to comply with the National Fire Protection Association 1124, the rules and regulations. He then informed Mr. Tracy that he has not met all the rules and regulations for the tent

and went through the list that he had printed from the website. The tent cannot be on the grass. The site plan should be to scale that shows at least three entrances/exits at 44" in width, barricades, buffer zone around the tent itself, and 30 feet to dry grass, brush, and combustible debris. He asked whether they had thought about moving tent to the asphalt.

Mr. Tracy noted that he would move the tent to the asphalt and that they could have the parking on the grass. Also, that they could put four entrance/exits in the tent.

Vice-Chairman Geraci noted that this list of requirements are what you agreed to when you signed for your license and this is what our motions are contingent upon with the Fire Marshall and the Building Department verifying that the requirements have been met.

Mr. Tracy and members discussed where the tent could be relocated to have 20 feet from the building and have a ten-foot buffer.

Vice-Chairman Geraci noted that Mr. Tracy could go online to get the list of regulations to use while revising the site plan.

Board Member Durham noted that the lawn is overgrown.

Mr. Tracy commented that he will have the lawn cut before he sets up there.

Board Member Painter inquired whether they would block off the area that goes around the building and is concerned about traffic going through there.

Mr. Tracy replied that they will barricade that off.

Vice-Chairman Geraci noted that the parking will be on the east behind the building and to the north.

Mr. Tracy noted that the temporary banner sign will be placed on the side of the tent.

Board Member Walker commented that his concerns have been addressed and that as long as the applicant abides by the law, he has no problem with it.

Chairman Yaros offered time for public comments. None were given.

Mr. Tracy noted that their hours of operation will be from 10:00 a.m. to 7:00 p.m. until the week of July 4th then they will stay open until 10:00 p.m.

Vice-Chairman Geraci commented that they may operate from 10:00 a.m. to 10:00 p.m.

Moved by Vice-Chairman Geraci, supported by Board Member Painter regarding case AB-2012-09, Freebies Fireworks/Tom Tracy, Temporary Use Permit, with the temporary leased site located at 3677 S. Lapeer Road, Sidwell #09-26-451-002, 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 20-foot by 80-foot tent erected in the parking lot from June 21, 2012 to July 5, 2012 from the hours of 10:00 a.m. to 10:00 p.m. with no sales made to anyone under the age of eighteen, **be granted under these conditions:** 1)the petitioner must be within compliance of the Michigan Fireworks Safety Act 256, the

NFPA 1124, local public safety ordinances, and applicable fire codes; 2)the Orion Township Building Department and/or Fire Department must sign off on the site plans submitted to the Township Building Department on May 25, 2012 before opening for business to the public; 3)the Orion Township Building Department and/or Fire Department can change the setup if there is an issue pertaining to the parking, ingress/egress, public safety, and the NFPA 1124; 4)the petitioner must provide to the Township before June 21, 2012 a valid consumer fireworks certificate from LARA, which must have been applied for no later than April 1, 2012 and issued by the State of Michigan pursuant to MCL28.454; 5)the petitioner must show proof before June 21, 2012 that each retail location has been added and has additional insured on the liability policyholder of the host retailer or public liability and public liability insurance coverage of the property owner in the amount of no less than \$10 million per occurrence as required by MCL28.455; and, 6)the grass on the site is to be cut before the setup and the parking is to be changed to be localized to the east and north of the parking asphalt. 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 of Public Act 256 of 2011. The petitioner has established that granting the variance request will not be a detriment to 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; Painter, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-10, Edward McCue, 2587 Armstrong Drive, Sidwell #09-20-479-012: Chairman Yaros noted that the petitioner is seeking relief from Zoning Ordinance No. 78, Article 6, Section 6.07, Zoning R-2, Minimum Lot Setbacks, Rear Yard: requesting a variance of 10 feet from the required 35-foot rear yard setback, to construct an addition to the home.

Mr. Edward McCue and Mrs. Judy McCue, of 2587 Armstrong Drive, were present. They then noted that the variance request should actually be five feet, but they put ten feet on their application because the Building Department wasn't sure where the measurements should be taken from, so he put ten on the application to be sure that they had enough.

Mr. Thomas Berger, Building Official, noted that they do not have to include the pavers, so they would actually need to request five feet.

Mrs. McCue commented that this is an existing patio, but they're adding a roof over it.

Chairman Yaros noted that this is more of a technicality, because they already have the deck and it's just a matter of putting the top on that requires the variance to make it legal.

Vice-Chairman Geraci commented that the roof ties into the house and it is non-heated and it's not even enclosed and is still an open-air deck with a roof. So, it's a technicality of what's an addition and what's not an addition.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-10, Edward McCue, located at 2587 Armstrong Drive, Sidwell #09-20-479-012, request for a non-use variance seeking relief from Zoning Ordinance No. 78, Article 6, Section 6.07, Zoning R-2, Minimum Lot Setbacks, Rear Yard: requesting a variance of five feet from the required 35-foot rear yard setback, to construct an addition to the home, which in reality is an open-air deck with a roof being attached to the

home, **be granted**, 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 or would render conformity with the ordinance unnecessarily burdensome, because I'm looking at this as a technicality and that it is still a deck with a roof that is not enclosed or heated and it cannot be considered living space. The petitioner has established that granting the variance request will not be a detriment to public safety or welfare and would do substantial justice to the petitioner as well as other property owners in the district, because this is pretty consistent with the neighborhood that he is in. The petitioner has established that unique circumstances exist regarding the property in reality because it is more consistent to Section 27.03, Yard and Bulk Requirements, 3,B,2, Decks, shall not be installed any closer than 20 feet to the rear lot line. The petitioner has established that the need for the variance was not self-created, because he is compliant with the deck under Section 27.03, 3,B,2, of meeting that 20-foot setback requirement. The petitioner has established that the granting of the variance will not impair the intent or purpose of the ordinance nor will it set precedent. Roll call vote was as follows: Painter, yes; Durham, yes; Walker, yes; Geraci, yes; Yaros, yes. **Motion carried 5-0.**

C. AB-2012-11, USA Fireworks/Donald E. Mock, Temporary Use Permit (Lake Orion Plaza), 1025 S. Lapeer Road, Sidwell #09-14-226-001: Chairman Yaros noted that the petitioner is seeking a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer fireworks from a tent erected in the parking lot from June 23, 2012 to July 6, 2012.

Mr. Donald E. Mock, Regional Director for USA Fireworks, of 295 Oakbridge Drive, Rochester, Michigan 48306, was present.

Chairman Yaros commented that the aisleway in the parking lot where an exit for the tent is proposed to be set is a high-traffic aisleway. He would like to see the exits on the side and the aisleways each side of that blocked off so that people can't come out of the tent and walk into that aisleway. It would be better for them to park either north or south of your tent rather than west of your tent, which would be right in that aisleway. He has no problem with that location as long as it is barricaded off and there is no exit into that traffic aisleway to the west of the tent.

Mr. Mock noted that he agrees with that and will have the plan revised to reflect that.

Chairman Yaros also noted that the plan does not show dimensions and barricades that are required.

Mr. Mock gave members a drawing that he says has been revised to show the dimensions and barricades.

Chairman Yaros noted that this is regarding the Acting Fire Chief's letter and inquired whether he received a copy of that letter.

Mr. Mock stated that he did not receive a copy of that letter.

Chairman Yaros noted that the Acting Fire Chief is concerned that there is no indication that the petitioner has proper insurance coverage, so you'll have to have that to meet the law.

Mr. Mock commented that he submitted it, but he couldn't get it to him specifically.

Chairman Yaros read further, of the Acting Fire Chief's letter, that if the site plan is resubmitted for review before the date of the said hearing, the Fire Department will review and be able to proceed with their opinion regarding the temporary use permit.

Mr. Mock commented that he got his revised plan from the surveyors on Friday.

Chairman Yaros stated that members did receive their State certificate.

Vice-Chairman Geraci commented that he also needs to have a minimum of three entrance/exits to the tent. Also, you need to have a 10-foot buffer outside the exits.

Mr. Mock stated that he will revise the drawings to show at least three entrance/exits and that their plan is to have four small sawhorses as barricades and to use caution tape with it. They will be using a generator for electricity and it will be twenty feet from the tent, which is 2.2 parking spaces because they're nine feet wide, so their footprint will be eighteen parking spaces, which is two rows next to each other of nine spaces each.

Board Member Painter noted that they will have to measure the area since there is no longer any paint left that is marking the parking spaces. She then inquired exactly where the third entrance/exit will be located.

Mr. Mock and members reviewed the plan and had a discussion about it (not audible).

Board Member Walker had no questions.

Board Member Durham noted the importance of making certain that no one pulls the generator under the tent if it should rain and inquired what the plans are for storing fuel for the generator.

Mr. Mock stated that they would not drag the generator into the tent and that five gallons will be stored in the operator's car.

Chairman Yaros offered time for public comments. No comments were given.

Vice-Chairman Geraci inquired about hours of operation.

Mr. Mock agreed to 10:00 a.m. to 10:00 p.m.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-11, USA Fireworks/Donald E. Mock, Temporary Use Permit (Lake Orion Plaza), temporary leased site located at 1025 S. Lapeer Road, Sidwell #09-14-226-001, requesting a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer and low-impact fireworks from a 20-foot by 40-foot tent to be erected in the parking lot from June 23, 2012 to July 6, 2012 from the hours of 10:00 a.m. to 10:00 p.m. with no sales to anyone under the age of eighteen, **be granted under these conditions:** 1)the petitioner must be compliant with the Michigan Fireworks Safety Act 256, NFPA 1124, local public safety ordinances, and applicable fire codes; 2)the Orion Township Building Department must sign off on the revised site plan submitted on May 24, 2012 before opening to the public; 3)the Orion Township Building Department and Fire Department can change the setup if there is an issue pertaining to parking, ingress/egress, public safety, and the NFPA 1124 regulations; 4)the

petitioner must provide to the Township before June 23, 2012 a valid consumer fireworks certificate from LARA, which must have been applied for no later than April 1, 2012 and issued by the State of Michigan pursuant to MCL28.454; and, 5)the petitioner must show proof before June 23, 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 MCL28.455. The petitioner has established that with 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 of Public Act 256 of 2011. The petitioner has established that granting the variance request 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 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: Durham, yes; Walker, yes; Geraci, yes; Painter, yes; Yaros, yes. **Motion carried 5-0.**

D. AB-2012-08, USA Fireworks/Donald E. Mock, Temporary Use Permit, 1290-1298 S. Lapeer Road, Sidwell #09-14-201-021: Mr. Donald E. Mock, Regional Director for USA Fireworks, of 295 Oakbridge Drive, Rochester, Michigan 48306, was present and handed out drawings that he stated are revised according to what was discussed at the last meeting on May 29, 2012.

Chairman Yaros noted that the petitioner is seeking a Temporary Use Permit, per Zoning Ordinance No. 78, Article 30.11, F, 1, to sell consumer fireworks from a tent erected in the parking lot from June 23, 2012 to July 9, 2012. This case was postponed from the May 29, 2012 regular meeting to provide the petitioner time to submit revised drawings with the changes as discussed at the last meeting, however, you are just now presenting the revised drawings that should have been submitted in time to include in members' meeting packets so that they could have had the plans to refer to when revisiting the site before the meeting. He also believes that this is not a good location for this temporary use. It is a tight site and really is not large enough to handle the additional traffic this use would bring.

Mr. Mock noted that the tent is fifty feet away from the building in the existing location. It's 184.8 feet away from the former Arby's. It's 14.3 feet from the end of the tent to the beginning of the exit. It does comply with the 10-foot buffer zone. He believes that it is safe. He also noted that he brought his attorney here tonight, Ms. Karen Birdie, and that she is well-versed in NFPA 1124.

Ms. Karen Birdie (since Ms. Birdie did not sign in, the correct spelling of her name is not known and there was no address provided. Mr. Mock stated that she is their attorney) commented that she is here on behalf of USA Fireworks and noted that the list of requirements on the website is just the highlights that are required and that they are following the NFPA 1124 requirements. She commented that this plan has been reviewed by the State of Michigan in accordance with NFPA 1124 requirements, they then issue the certificate and the fact that he has an approval certificate tells you that they are approving this location of this tent. She stated that the 14.3 feet from the tent to the entrance/exit is well within NFPA 1124. He would also have the barrier coned off with the tape that would run around it.

Vice-Chairman Geraci inquired about the requested dimension to show the distance from the tent to the muffler shop that uses open flame torches and is still not shown on the drawing.

Ms. Birdie commented that the distance from the tent to the muffler shop exceeds fifty feet and when they talk about open flame, they are referring to an open flame out in the open and not within a building and believes that as long as you're 20 feet away from the building, the odds of anything

happening with any open flame in any of those buildings is not a risk or a threat as far as to the tent. She also believes that what they mean by open flames is that they don't want people with lighters, or smoking, flames, etc. near the tent and that the law says that you can only set off fireworks on your own property.

Board Member Walker inquired whether this plan was submitted to the Fire Marshall for review.

Mr. Mock stated, no.

Board Member Walker inquired, why not?

Mr. Mock stated, I just got it Friday.

Board Member Walker inquired, did you take it to them today?

Mr. Mock stated, no.

Vice-Chairman Geraci noted that members postponed this until today from the last meeting because you didn't have the required information and again you came in with it without going through the Building Department or without the Fire Department review and you just bring it to the meeting where we haven't had the chance to review it either.

Board Member Durham inquired whether the petitioner would consider moving the location of the tent, because he dislikes the 14.3-foot cut on the corner. While he does understand that it meets the standard, he also understands traffic movement off of high-speed roads and perhaps a smaller tent would shrink it further back. It's up to you, it's just a question.

Mr. Mock stated that he cannot get a smaller tent.

Board Member Painter noted that she looks at this as a prescription for disaster with the traffic issues and the site being so tight will hinder vehicles' maneuvering and with fireworks and a liquor store next to it.

Mr. Mock commented that he believes that they are abiding by all the standards that they are being asked to abide by.

Chairman Yaros noted that he, too, is concerned about that site being so tight. It doesn't matter what you're selling, it's the tent that this board is looking at and there is just so much happening in that area. There's a liquor store, other businesses, muffler shop, a narrow entrance coming in that narrows down to 20 feet between the tent and the other stores. He has been there when there is nowhere to park when there wasn't an additional temporary use.

Mr. Mock suggested that they may use the back parking lot.

Chairman Yaros replied that he has gone there for years and that no one ever uses the back parking lot.

Ms. Birdie suggested using directional signs to direct people to park in the rear parking lot since she believes that most people are followers. She then asked that the board approve this request so that they can prove that they can make this work.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-08, USA Fireworks/Donald E. Mock, Temporary Use Permit, 1290-1298 S. Lapeer Road, Sidwell #09-14-201-021, 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 20-foot by 40-foot flame-resistant tent erected in the parking lot from June 23, 2012 to July 9, 2012 from the hours of 10:00 a.m. to 10:00 p.m. with no sales to anyone under the age of eighteen, **be denied**, because the petitioner has for the second time not provided the site plan showing dimensions and barricades that is required by the NFPA 1124 in a timely manner for the Fire Department, Building Department, and this Board for review to render a decision. The petitioner has not 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 and can comply with the ordinance by submitting the site plan to the Building Department, the Fire Department, and the Zoning Board of Appeals within a timely manner. The petitioner has not established that the purpose of the variance will not be a detriment to public safety and welfare, nor unreasonably impair or diminish the petitioner or other property owners in the district and gives no evidence to the contrary. To this Board, public safety is of the utmost importance and the tent, the parking lot, the pedestrian and vehicle traffic, the site is too dense for what is being proposed there. The petitioner has not established that unique circumstances regarding the subject property variance relates to the user and not to the land in question as required by Section 30.07 of Zoning Ordinance No. 78. The petitioner has not established that the need for the variance was not self-created. The petitioner has not established that even with the granting of the variance, the spirit will be observed, public safety secured, and substantial justice done.

Chairman Yaros noted that he would have liked to have seen the plan before the meeting to take to the site to review. They should have had the Acting Fire Chief's review also.

Ms. Birdie inquired if they could submit this to the Fire Department and the Building Department and postpone again until the June 25, 2012 meeting.

Mr. Mock stated that he did not want to postpone until June 25, 2012.

Roll call vote was as follows: Walker, yes; Geraci, yes; Painter, yes; Durham, yes; Yaros, yes. **Motion carried 5-0.**

6. PUBLIC COMMENTS

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented regarding fill material at a gravel and mining site in the Township as well as ordinance enforcement. Mr. Berger noted that he would look into it.

Mr. Eugene McNabb, of 2981 Judah Road, spoke about his boyhood experience with fireworks.

7. **COMMUNICATIONS:** None.

8. **COMMITTEE REPORTS:** None.

9. **MEMBERS' COMMENTS:** Members and Mr. Berger discussed fireworks regulations.

10. **ADJOURNMENT:** Moved by Board Member Walker, supported by Board Member Durham to adjourn at 8:15 p.m. **Motion carried 5-0.**

* On file