

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, SEPTEMBER 10, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, September 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

Don Walker, PC Rep. to ZBA

Dan Durham, Member

(Tony Cook, Alternate, was present for the Closed Session Meeting only)

Joe Geraci, Vice-Chairman

Neal Porter, TB Rep. to ZBA

CONSULTANT PRESENT:

Thomas Berger, Building Official

(Dan Kelly, Township Attorney, was present for the Closed Session Meeting only)

OTHERS PRESENT:

Serafino Lini

Gene McNabb, Jr.

Melissa Schrah

Ed Eckler, Sr.

Steve Holder

Joe Sena

Eugene McNabb

Dick Peters

Ed Eckler, Jr.

Phoebe Schutz

Shelly Sena

Nicholas Schrah

Norma Peters

Shelly Ryckman

1. OPEN MEETING

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

2. ROLL CALL

All members were present, except Neal Porter.

3. MINUTES

Moved by Vice-Chairman Geraci, supported by Board Member Walker to approve the August 13, 2012 regular meeting minutes as presented. **Motion carried 4-0** (Porter was absent).

4. AGENDA REVIEW AND APPROVAL

Moved by Vice-Chairman Geraci, supported by Chairman Yaros to approve the agenda as amended to include a Closed Session Meeting. Roll call vote was as follows: Geraci, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 4-0** (Porter was absent).

5. CLOSED SESSION – PENDING LITIGATION

Attorney Dan Kelly was not yet present.

6. ZBA BUSINESS

A. AB-2012-17, Nicholas and Melissa Schrah, 901 Wildbrook Lane, Sidwell #09-02-228-003

Chairman Yaros noted that the petitioner is seeking relief from Zoning Ordinance No. 78, Article VI, Section 6.07, Zoning R-1, Minimum Lot Setbacks, Each Side Yard: seeking a 10-foot side yard setback variance, from the required 10 feet, for a deck (existing) with a zero side yard setback.

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Nicholas and Melissa Schrah, of 901 Wildbrook Lane, were present.

Mr. Schrah noted that when they bought this property, they had no idea that the deck was on the neighbor's lot. If they had to comply with the 10-foot setback requirement, it would take off a large portion of their deck.

Chairman Yaros inquired how much could they get off the property line without destroying the integrity of the deck.

Mr. Schrah commented that it is an octagon shape and if they removed any more of that, they'd have to take that whole area off completely.

Board Member Durham inquired whether there was a mortgage survey done when they purchased their home.

Mr. Schrah replied, no it wasn't required.

Board Member Durham stated, so you have no idea where the real lot line was.

Mr. Schrah replied, correct.

Board Member Porter joined the meeting at 7:07 p.m.

Board Member Durham inquired how much of the deck Mr. Schrah has taken off.

Mr. Schrah replied that it was 16 inches.

Vice-Chairman Geraci inquired, so if you take the decking off, there's no way to reconfigure it leaving the stringers with the posts?

Mr. Schrah stated, where we have it right now, yes that's correct.

Board Member Durham inquired how the new neighbors feel about this situation.

Mr. Schrah stated, he has asked us to move it off his property and is pretty adamant about it, but we haven't spoken about the variance.

Chairman Yaros offered time for public comments on this case.

Mr. Serafino Lini, of 877 Wildbrook Lane, commented that he owns the property immediately to the west of the subject site. He is opposed to granting the full 10-foot side yard setback variance for the following reasons: 1)It would create a negative impact on marketing both his property as well as the petitioner's property. In the event of a sale, this condition would have to be disclosed; 2)It is a concern of potential disputes between current or future owners by having the deck right up to the property line; and, 3)By having the deck up to the property line they would have no access from the front to the back yard unless they cross over the deck. The deck used to encroach on his property about 16 inches. They did cut most of it, but now it is still encroaching by a couple of inches. He gave members his recommendation to grant the petitioner about a 4-½ feet, which would allow them to keep the main deck, but not the additional step-up deck. If the Board should grant the 10-foot setback variance, at the

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very least he would ask for a couple of conditions put on the approval: 1) That the variance would terminate in the event that the deck would be re-built or remodeled by 30% or more; 2) That the variance should only apply to the existing deck and not to any additional deck or re-building or addition to the existing deck; 3) The petitioner must secure and submit to Orion Township and to Mr. Lini a professional survey as proof that the deck no longer encroaches on his property.

Vice-Chairman Geraci noted that he would agree to a compromise of a 5-foot setback if the owner of the deck is interested in amending his variance request to that.

Mr. Schrah commented that he would amend that to five feet.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-17, Nicholas and Melissa Schrah, located at 901 Wildbrook Lane, Sidwell #09-02-228-003, that the petitioners are seeking relief from Zoning Ordinance No. 78, Article VI, Section 6.07, Zoning District R-1, for a five-foot side yard setback variance from the required ten-foot for an existing deck, for a five-foot west side yard setback to fix an existing deck and only for that deck, **be granted**, because the petitioner has established that practical difficulty exists. 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 deck existed at the time of purchase. The petitioner has established that the proposed variance would not be a detriment to public safety and welfare, nor unreasonably impair or diminish the petitioner or the other owners in the district, because this is a fair compromise to access the rear yard. The petitioner has established that unique circumstances regarding the shallowness or shape of the subject property due to the irregular pie shape and elevation of said property. The petitioner has established that the need for the variance was not self-created, because the deck existed at the time of purchase and neither the realtor nor the title company, were aware of this issue. The petitioner has established that even with the granting of the variance, the spirit of the ordinance will be observed, public safety secured, and substantial justice done.

Board Member Porter inquired whether the Board should require a survey to prove exactly where the property line is located.

Vice-Chairman Geraci noted that it is currently staked out. The gentleman that's building the house next-door has stakes in the ground.

Chairman Yaros noted that he's sure that new house being built would have a survey, so they know where his line is. He then inquired of Mr. Lini (neighbor) whether the five-foot setback would be sufficient for him.

Mr. Lini replied yes.

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

Moved by Vice-Chairman Geraci, supported by Chairman Yaros to recess the regular meeting for members to leave the meeting room to go to their Closed Session Meeting regarding pending litigation at 7:18 p.m. Roll call vote was as follows: Durham, yes; Walker, yes; Geraci, yes; Porter, yes; Yaros, yes. **Motion carried 5-0.**

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Moved by Board Member Porter, supported by Chairman Yaros to reconvene the regular meeting at 7:40 p.m. Roll call vote was as follows: Walker, yes; Geraci, yes; Porter, yes; Durham, yes; Yaros, yes. **Motion carried 5-0.**

Moved by Board Member Porter, supported by Chairman Yaros for the Township Attorney to proceed as he was directed in the Closed Session Meeting regarding pending litigation. Roll call vote was as follows: Geraci, yes; Porter, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-18, Edward R. Eckler, Sr., 1001 McClellan Street, Sidwell #09-01-409-027

Chairman Yaros noted that the petitioner is seeking relief from Zoning Ordinance No. 78, Article VI, Section 6.07, Zoning R-3, Maximum Lot Coverage: requesting a 5.22% variance over the allowed 25% in Maximum Lot Coverage for a pool (existing) that will result in Maximum Lot Coverage equaling 30.22%

Mr. Edward R. Eckler, Sr., of 1001 McClellan Street, was present. He noted that he was not aware, before receiving a warning notice from the Township Ordinance Officer, that having an above-ground swimming pool 48" or taller required a permit. He has had a 48' x 16' pool in the same location for four years and nothing was ever said. Now he put up a metal-sided pool and he now has to have a permit. Now that he has used too much square footage for his living space, he has to ask for a variance. He is on a fixed budget and these fees for a total of over \$400, he has already over extended his annual budget. His wife has a medical condition of which her doctor has prescribed exercise in the water for her physical therapy and to relieve her pain. This pool was given to them and so far this year has cost them a total out of the pocket of \$1,675. If he had known about the Township ordinance requirements, he probably would've had second thoughts about re-installing a pool that he has had for the past four years. He asked that members accept the requested variance and also amend the required fees of \$200. He would be glad to pay a small documentation fee. He is 68 years old and has resided at this address for 45 years. He is on a fixed budget and would appreciate any discount that members may see fit. He then reviewed a petition in support of their case that many neighboring residents have signed including the four abutting properties to his property. The bottom line is that they would like to keep the pool.

Chairman Yaros and Mr. Eckler discussed that he is willing to remove some of the sheds from his property. One is a 64-square foot shed out by the road. There is also a metal shed by the garage that he is willing to get rid of. That would make the variance request less.

Chairman Yaros noted that he understands how important the swimming exercise is for the patient's circulation. Also, with the double-corner lot, that's about the only location it can be placed. He has no problem with this if that temporary shed will eventually be removed and they remove the other shed.

Board Members Porter and Walker are in favor of working with the petitioner so they can keep their pool.

Chairman Yaros offered time for public comments.

No comments were given.

Moved by Board Member Walker, supported by Board Member Porter regarding case AB-2012-18, Edward R. Eckler, Sr., located at 1001 McClellan Street, Sidwell #09-01-409-027, that the petitioner is seeking relief from Zoning Ordinance No. 78, Article VI, Section 6.07, Zoning R-3, Maximum Lot

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Coverage: requesting a 4% variance over the allowed 25% in Maximum Lot Coverage for a pool (existing) that will result in Maximum Lot Coverage equaling 29%, **be granted**, because the petitioner has demonstrated the practical difficulties that exist and 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 upon the following facts: 1) That there are two sheds on the property and one 48-square foot shed that is closest to the road belongs to his daughter and is on a skid and will be removed when she is ready for it and the 64-square foot shed next to the garage will be removed also, which would be a total of 112 square feet; 2) Granting this variance request would result in substantial justice for the petitioner as well as the other properties in the area and that the relief granted would improve the property involved and be consistent with the other property owners; and, 3) Also, with regard to the petitioner's wife's health issues. Roll call vote was as follows: Porter, yes; Durham, yes; Walker, yes; Geraci, no; Yaros, yes. **Motion carried 4-1.**

C. AB-2012-19, Joseph and Shelly Sena, 549 James Lane, Sidwell #09-09-327-006

Chairman Yaros noted that the petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1) Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Maximum Floor Area of Detached Accessory Buildings -- Requesting a 596-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,000 square feet, in order to construct a 1,596-square foot detached accessory building that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,596 square feet; and, 2) Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Total Maximum Floor Area of All Accessory Buildings -- Requesting a 740-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,500 square feet, in order to construct a 1,596-square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,240 square feet.

Joseph and Shelly Sena, of 549 James Lane, were present. Mr. Sena noted that they want a barn on their property to store a lot more of their stuff that has accumulated that is out in their yard. He restores farm tractors and wants to have a workshop in the barn as well. He has boats, four-wheelers, and stuff like that and they want to be able to move a couple of their cars into the garage and they have two older children that still live at home. About 396-square foot of it is an awning or lean-to. The actual structure itself they're looking for is 30'x40', that's the floor, and then they wanted a side to come off the end, and they were advised that they had to include that as part of the square footage.

Chairman Yaros inquired whether they have to have that lean-to or would the 30'x40' be enough.

Mr. Sena noted that they wanted that for something over the entrance door, so there would be a little bit of shade and the door would be protected. So, he could cut back on that.

Mrs. Sena noted that it was meant for protection from snow and ice.

Vice-Chairman Geraci inquired why they aren't putting the building right at the end of the driveway.

Mr. Sena replied that they put it off to the side so that there would be a way for emergency vehicles to get back there. With it off to the side, there would be room for anything to reach his back yard. Also, they didn't want to move their flower bed and sprinkler system.

Vice-Chairman Geraci inquired whether they have a septic field.

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Mr. Sena replied, yes it's toward the middle to the south side of their house is where the septic tank lies. It's where the garage sticks out and then there's the deck and it's to the south of the deck's steps on the farther side of the yard.

Chairman Yaros overviewed correspondence received by John and Rachelle Sloat, of 713 Knibbe Road and 2132 Cole Road, dated September 10, 2012, in opposition to the proposed variance request*.

Chairman Yaros overviewed correspondence received by Kurt Jacobsen, of 693 Knibbe Road, dated September 10, 2012, in opposition to the proposed variance request*.

Vice-Chairman Geraci noted that he believes that the awning is excessive for covering the door and that he believes that the size of the building they are requesting is kind of an unusual size. He would like to see it as a more standard size.

Chairman Yaros inquired about the awning.

Mr. Sena noted that the awning is now at 24', but he would make it 16' and that would take away 24'x8', which would be approximately 196 square feet off the total square footage of the barn.

Members discussed re-calculating the dimensions.

Board Member Durham inquired, would taking the size of the proposed building down to the point where you wouldn't even need to be here, would that make the building so small that it would not be usable?

Mr. Sena replied, I wouldn't say not be usable, it would still leave me short-handed, because the building would have to go down to 24'x36' and I would still be before you asking for an 8-foot variance, because the size of my existing garage is at 644 square feet and I have 1,500 square feet allowable, and that brings it down to 856 square feet and 36'x24' is 866' or something like that. It wouldn't allow me to put in everything that is currently causing me not to be able to use my garage.

Chairman Yaros inquired whether he could live with the 35'x30' with 64 square feet for the awning, which would be 1,114 square feet.

Mr. Sena replied that Pioneer Building generally build them in 8-foot sections. It would be more costly to have the pieces cut down. The standard-sized kits come in 30'x40', 30'x48', 32'x30', etc., so he would still need a variance for them. His house sets below the street level and the building would not present an eyesore to anyone else. He noted that his neighbors, one is next-door to him and the other is across the street, have no problem with it.

Chairman Yaros overviewed correspondence received from Christian W. Berryer, of 548 James Lane, dated August 2, 2012, in support of the proposed variance request*.

Chairman Yaros overviewed correspondence received from Craig Marshall, of 535 James Lane, dated August 6, 2012, in support of the proposed variance request*.

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

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Mr. Sena noted that his daughter is in 4-H and they are going to get a 32-foot long trailer. The problem is that if you have a pole barn that is 32' they won't be able to shut the door. The guy at Pioneer said that they can make it any size, but it will cost more to cut it down.

Chairman Yaros inquired whether he would like to postpone this and look into that a little further about a 30'x35' and see if that would work. He also noted that he doesn't have a problem with giving the 64' for the awning. They need to decide what the practical difficulty is here.

Mr. Tom Berger, Township Building Official, inquired what type of building is a Pioneer building.

Mr. Sena replied that it's a metal building, Pioneer Pole Buildings is what they're called. The company is based in Lapeer, Michigan. The frame and posts are wood, but the rest is metal.

Mr. Berger explained how the materials can be cut to build whatever size you need.

Chairman Yaros noted that he wouldn't have any problem voting for a 30'x38' if that would work for you, which is pretty close.

Mr. Sena stated, we would be willing to do that.

Moved by Vice-Chairman Geraci, supported by Board Member Porter regarding case AB-2012-19, Joseph and Shelly Sena, of 549 James Lane, Sidwell #09-09-327-006, that the petitioner is requesting two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Maximum Floor Area of Detached Accessory Buildings -- Requesting a 140-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,000 square feet, in order to construct a 1,140-square foot detached accessory building that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,140 square feet; and, 2)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Total Maximum Floor Area of All Accessory Buildings -- Requesting a 284-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,500 square feet, in order to construct a 1,140-square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 1,775 square feet, **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 permitted property and would render conformity with the ordinance unnecessarily burdensome, because a 30'x38' pole barn would be more standardized and stay within reason to the ordinance. 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. The petitioner has established that the area of the subject property, because of the drastic elevation change from the road to the garage does not allow an addition to his current garage. The petitioner has established that the need for the variance is not self-created, because of the more standardized pole barn to be used. 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: Durham, no; Walker, no; Geraci, yes; Porter, yes; Yaros, yes. **Motion carried 3-2.**

7. PUBLIC COMMENTS

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented that he is confused about the difference between the terms "hardship" and "practical difficulty" as used by the ZBA. Also, that in a case tonight the petitioner wanted to have more room to store stuff.

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8. COMMUNICATIONS

Chairman Yaros thanked the Recording Secretary for the Board of Trustees and the Planning Commission meeting minutes that are in the meeting packets for members' information.

9. COMMITTEE REPORTS

None.

10. MEMBERS' COMMENTS

Board Member Durham suggested that perhaps a text amendment needs to be considered for the accessory buildings to eliminate the need for these types of variances.

Board Member Walker noted that he will bring that up with the Planning Commission.

11. ADJOURNMENT

Moved by Chairman Yaros, supported by Board Member Porter to adjourn at 8:26 p.m. **Motion carried 5-0.**

Respectfully submitted,

Phoebe Schutz
PC/ZBA Recording Secretary
Charter Township of Orion

Zoning Board of Appeals Approval Date

* Attachment