

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

******* MINUTES *******

REGULAR MEETING - MONDAY, MAY 13, 2013

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, May 13, 2013 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman	Dan Durham, Vice-Chairman
Mike Flood, BOT Rep. to ZBA	Don Walker, PC Rep. to ZBA
Lucy Koscierzynski, Board Member	

CONSULTANTS PRESENT:

Tammy Girling, PC/ZBA Coordinator

OTHERS PRESENT:

Mike Mahan	Dianna Oliver	Jim Oliver
Don Hickmott	Eugene McNabb	Gene McNabb, Jr.
Harold Flood	Jack Warren	Lois Fons
Burkhard Garske	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 Board Member Flood, supported by Board Member Walker to approve the April 8, 2013 regular meeting minutes as presented. **Motion carried unanimously.**

4. AGENDA REVIEW AND APPROVAL

No changes were made to the agenda.

5. ZBA BUSINESS

A. AB-2013-06, Burkhard Garske, 3209 Sandoval Drive, Sidwell #09-20-132-007

Chairman Yaros noted that the Petitioner is seeking a variance from Zoning Ordinance No. 78, to construct a deck: 1) Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard -- requesting a 4-foot side yard setback variance from the required 10-foot side yard setback (east side).

Mr. Burkhard Garske, of 3209 Sandoval Drive, was present.

Chairman Yaros commented that the big question he has is that the petitioner had a plan that showed the deck at an angle that met the requirements, but when it was built, it was built bigger and squared off.

Mr. Garske replied that that is correct. He also noted that he was not physically there when the deck was built, because he was on a business trip and there was some miscommunication between the inspector and the builder

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as far as what inspection was actually passed. He provided a letter of support from his homeowners' association with his application. The deck is further back on the lot than it was planned, so the back post was initially supposed to be seven feet away and also now they're both rectangular. Technically it could be done, but from an appearance perspective, they'd like to stay with the uniformity of the design of the rest of the house.

Board Member Flood asked if he was going to 45 or mitre the corners.

Mr. Garske noted that yes he will and it will be the same as the rest of the decks in the back of the house.

Board Member Flood noted that he is asking for a four-foot variance, so he will have a six-foot clearance there then.

Mr. Garske noted yes, but only on the back corner and it's an estimate. It may actually be three feet or 2-1/2 feet.

Vice-Chairman Durham inquired where the letters from neighbors were.

Mr. Garske noted that they were included in his application and showed members in the packet.

Board Member Walker inquired how this need for a variance happened.

Mr. Garske noted that there was miscommunication between the inspector and the builder.

Chairman Yaros noted that the post itself could actually be about nine or ten feet away from the lot line, because it's a foot back from the end of the deck. If the fire department would need to get through there, there is the opening there and the deck is quite high up in there air, so he doesn't think that would be a problem.

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

Vice-Chairman Durham inquired whether the petitioner hired a contractor to build this project; inquired whether the contractor pulled the permit; and, whether the contractor called for the rough inspection.

Mr. Garske replied yes to all three questions and also that the inspection failed when the inspector came out.

Vice-Chairman Durham noted that if the petitioner is not successful here tonight, it's reasonable that the petitioner would have recourse with his contractor.

Mr. Garske noted, that is correct.

Chairman Yaros noted that the real problem is that the board doesn't know exactly where it is from the lot line. Theoretically the post could be within the ten feet. We're being asked to vote on a variance where you really don't even know what you need, because you added a little bit more

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in there for a cushion. We need to know exactly what you really need. We have to know what is being asked for and what we're looking at.

Mr. Garske noted that four feet would be the maximum and he stated that it doesn't oblige him to build four feet and he thinks it is less than four feet. He asked for a little more as a buffer to be sure he asked for enough of a variance. He wants to finish off the deck the way it's built right now.

Chairman Yaros again noted that they need to know the exact request.

Board Member Walker noted that a four-foot variance seems like a great deal on the side even if the fire trucks could get through there, but a 1-1/2 feet, maybe not so much.

Chairman Yaros inquired whether the petitioner could come back with an exact number against the property line.

Mr. Garske noted that he knows that it's ten feet at the end of the property, but he doesn't know exactly where it starts in the front.

Chairman Yaros noted that you just take the median.

Mr. Garske noted that he will do what he needs to, to get the numbers that are needed.

Chairman Yaros suggested that they postpone action on this case until you do have the information the board needs to make a decision. He would have a lot less problem with this request if it were 1-1/2 feet than if it were four feet that they're actually looking at. He suggested running a string along the property line and drop a plumb bob at the end of the porch and measure the distance.

Moved by Board Member Flood, supported by Chairman Yaros regarding case AB-2013-06, Burkhard Garske, 3209 Sandoval Drive, Sidwell #09-20-132-007, that the Petitioner is seeking a variance from Zoning Ordinance No. 78, to construct a deck: 1) Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard -- requesting a 4-foot side yard setback variance from the required 10-foot side yard setback (east side), **to postpone action on this case until the May 28, 2013 regular meeting** and that the petitioner shall come back with the exact variance measurements that members need to make a decision. Roll call vote was as follows: Koscierzynski, yes; Flood, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2013-07, Mike Mahan, Temporary Use Permit (New Beginnings Church), 985 N. Lapeer Road, Sidwell #09-02-126-007

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 and low-impact fireworks from a tent erected in the front yard from June 7, 2013 to July 7, 2013.

Mr. Mike Mahan, of 645 Johnson Drive, Lake Orion, Michigan 48362, was present.

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Chairman Yaros read aloud review correspondence received from Mr. Bob Smith, Fire Chief, dated May 7, 2013, which noted that the fire department 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*. He suggested that the petitioner place some "NO PARKING" signs along the shoulder of the road right in front of the location so that people don't just pull over there and park and run up there. There will be plenty of room by the church for their parking.

Mr. Mahan noted that he will place some cones along there and no parking signs to keep people from parking on the shoulder of the road.

Board Member Flood inquired, *referencing the Township Attorney's letter, dated May 13, 2013*, whether Mr. Mahan was aware that the site should be at least a mile from another site being used to sell fireworks. (*Italics denote amendment to the minutes as requested by Board Member Flood at the May 28, 2013 regular meeting*).

Mr. Mahan replied that he is aware of that. He has two tents and one is at the other end of town. The only thing he is waiting for is the ZBA's decision tonight before he buys his insurance and his fireworks, but he does have his permit from the State of Michigan already.

Vice-Chairman Durham inquired what the hours of operation would be.

Mr. Mahan replied that they would be from 10:00 a.m. to 11:00 p.m. on Monday through Saturday and from 12:00 p.m. to 10:00 p.m. on Sunday. He will have lights strung at the tent and already has an electrical source out there.

Vice-Chairman Durham noted that it may take safety cones as well as a staff person to keep people from pulling onto that shoulder. If you're going to be successful here, in his opinion, it will be incumbent on you to actively keep people from doing that, because somebody suddenly pulling back onto M-24, could be a bad situation. He asked if anyone would be staying at that site overnight or would they pack it all up at night.

Mr. Mahan replied that he will have people stay there overnight in the tent on an air mattress.

Board Member Flood noted that correspondence was received from Mr. Edward Piquette, of 990 Manitou Lane, Lake Orion, Michigan 48362, dated May 1, 2013, in opposition to this temporary use permit request*.

Chairman Yaros noted that correspondence in opposition to this temporary use permit was received from Mr. Damir Sugar, condo owner and President of Hills of Oxford Condominium Association, dated May 6, 2013*.

Chairman Yaros overviewed correspondence from Mr. Bob Smith, Fire Chief, dated May 7, 2013, regarding temporary tent sales for fireworks noting concerns of the 2012 sales*.

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Moved by Board Member Koscierzynski, supported by Chairman Yaros regarding case AB-2013-07, Mike Mahan, Temporary Use Permit (New Beginnings Church), 985 N. Lapeer Road, Sidwell #09-02-126-007, 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 front yard of the New Beginnings Church from June 7, 2013 to July 7, 2013. The hours of operation will be from 10:00 a.m. to 11:00 p.m. on Monday through Saturday and from 12:00 p.m. to 10:00 p.m. on Sunday, **be granted** because 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. Also, that the petitioner has agreed to guard against anybody parking on the shoulder of Lapeer Road (M-24). Also, to include all items as stated in correspondence received from Mr. Robert Smith, Fire Chief, dated May 7, 2013*. Roll call vote was as follows: Flood, yes; Durham, yes; Walker, yes; Koscierzynski, yes; Yaros, yes. **Motion carried 5-0.**

C. AB-2013-08, James & Dianna Oliver, 3740 Gregory Road, Sidwell #09-30-400-024

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 over 2.5 acres, Maximum Floor Area of Detached Accessory Buildings -- Requesting a 744-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,400 square feet, in order to construct a 1,440-square foot detached accessory building that will result in the Maximum Floor Area of Detached Accessory Buildings equaling 2,144 square feet; 2)Section 27.02, A, 8, Lot Size over 2.5 acres, Total Maximum Floor Area of All Accessory Buildings -- Requesting a 728-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,900 square feet, in order to construct a 1,440-square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,628 square feet.

Mr. James Oliver, of 3740 Gregory Road, was present. He has 15 acres of farm land and enjoys growing their vegetables and canning. He also enjoys inventing farming equipment. He noted that this will not be large enough to contain all of his equipment, but it would help a lot. The building would be located 340 feet back from the road in a wooded area. He planted 3,000 trees back there. He will have to cut down two trees because they're dead, but the rest of the trees will remain there and will provide screening.

Board Member Flood noted that all his neighbors signed a petition that they are in support of this project. Also, that Mr. Hickmott is here tonight to support this project.

Vice-Chairman Durham inquired where the petitioner has been keeping his equipment up until now.

Mr. Oliver noted that he keeps one at his neighbor's garage and one at his son's home.

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Vice-Chairman Durham inquired what he uses the small building for at the west side of the property right behind the house.

Mr. Oliver noted that he and his family can cucumbers and tomatoes in that building. There is a stove, refrigerator, a table, and some countertops to work to do the canning on. They also use it to store their lawn furniture in the winter.

Vice-Chairman Durham noted that it sounds that they do have a use for that building. He had asked about it because if that building was of no use to them, perhaps that could come down and shrink the total variance that you're asking for.

Chairman Yaros offered time for public comments on this case.

Mr. Don Hickmott, of 3731 Gregory Road, commented that he has lived across the street from the Olivers for thirty-some years. Mr. Oliver's equipment and tractors need to be at their home where he can maintain and take care of them. He and the neighborhood are in support of this project.

Moved by Board Member Walker, supported by Board Member Flood regarding case AB-2013-08, James & Dianna Oliver, 3740 Gregory Road, Sidwell #09-30-400-024, that the Petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size over 2.5 acres, Maximum Floor Area of Detached Accessory Buildings -- Requesting a 744-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,400 square feet, in order to construct a 1,440-square foot detached accessory building that will result in the Maximum Floor Area of Detached Accessory Buildings equaling 2,144 square feet; 2)Section 27.02, A, 8, Lot Size over 2.5 acres, Total Maximum Floor Area of All Accessory Buildings -- Requesting a 728-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,900 square feet, in order to construct a 1,440-square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,628 square feet, **to grant this request**, because the petitioner has demonstrated that practical difficulties exist in this case in that when you review the ordinance, the ordinance goes up to a half-acre, the total maximum amount of floor area of all accessory buildings on a half-acre is 1,150 square feet. It's my view that when all of this was taken into consideration, the fact that there were still farms out there, was not taken into consideration, so to have a top end of only 2-1/2 acres seems that would create an undue hardship for the petitioner and the problem is not self-created. Roll call vote was as follows: Durham, yes; Walker, yes; Koscierzynski, yes; Flood, yes; Yaros, yes. **Motion carried 5-0.**

D. AB-99-02-2013, Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of lot 11 of Mt. Judah Farms (parcel number 09-32-400-056), lot 11, except the north 535 feet, of Mt. Judah Farms, (parcel number 09-32-400-057), lot 12, and the southerly 588 feet of lots 13 & 14 of Mt. Judah Farms (parcel number 09-32-400-055) and 3011 Judah Road, lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (parcel number 09-32-400-063)

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Chairman Yaros noted that the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation 7:00 a.m. to 7:00 p.m. and fencing of working areas.

Mr. Brett Baker, (the petitioner) of Dan's Excavating, Inc., 12955 23-Mile Road, Shelby Township, Michigan 48315, was not present.

Chairman Yaros noted that at the April 8, 2013 regular meeting, there was a motion made to postpone action on this case until the May 13, 2013 regular meeting with conditions: 1)that we get the report back from Orchard, Hiltz, & McCliment, Inc. (OHM) for the Fill Analysis; and, 2)that the 12-inch culvert has been installed by the applicant at the same time as the soil testing.

Chairman Yaros overviewed correspondence received from Supervisor Barnett, dated May 13, 2013, in which he clarified that the Township would not be paying any of the fees for OHM to do a special inspection of the site*.

Chairman Yaros noted that neither is the inspection of the site completed nor is the culvert installed. Since the petitioner has not complied, the permit is not going to be renewed.

Chairman Yaros offered time for public comments on this case.

Mr. Gene McNabb, Jr., of 680 E. Silverbell Road, commented that there are culverts laying out on the site, but they have not been installed. He doesn't believe that Mr. Baker has done any soil analysis as the Board requested at the last meeting.

Chairman Yaros thanked him for the information on lead contamination in soils.

Mr. Gene McNabb, Jr. then inquired what the process will be to get that site cleaned up.

Chairman Yaros noted that with the permit expiring on May 15, 2013, if the petitioner wants to apply for a new permit, he will have to go through a new process through the Planning Commission.

Mr. Eugene McNabb, of 2981 Judah Road, commented that he had brought in that information on soil contamination. He then told some of the history of the site.

Moved by Board Member Flood, supported by Chairman Yaros, regarding case AB-99-02-2013, Dan's Excavating, Inc., 2985 Judah Road, the north 535 feet of lot 11 of Mt. Judah Farms (parcel number 09-32-400-056), lot 11, except the north 535 feet, of Mt. Judah Farms, (parcel number 09-32-400-057), lot 12, and the southerly 588 feet of lots 13 & 14 of Mt. Judah Farms (parcel number 09-32-400-055) and 3011 Judah Road, lots 13 & 14, excluding the southerly 588 feet, of Mt. Judah Farms (parcel number 09-32-400-063), the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing with the hours of operation 7:00 a.m. to 7:00 p.m. and fencing of working

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areas, **that this request be denied**, because the petitioner did not demonstrate that practical difficulties exist in this case and the petitioner did not show up for tonight's meeting, nor fulfill the requirements of the ZBA's request to install the 12-inch culvert and the soil sampling with the Township's engineering firm and that this be sent forward to the Building Department and the Township Supervisor's office for further consideration if a permit is to be forthcoming before this Board in the future. Also, that all aspects of Ordinance No. 99 must be complied with at this point. Roll call vote was as follows: Walker, yes; Koscierzynski, yes; Flood, yes; Durham, yes; Yaros, yes. **Motion carried 5-0.**

6. PUBLIC COMMENTS

Mr. Eugene McNabb, of 2981 Judah Road, noted that the water problem that Dan's Excavating, Inc. caused that builds up on his property is under another ordinance and he requested relief from that water that builds up and that it is not covered under Ordinance No. 99. He wants it taken care of so that his property will drain where it drained before.

7. COMMUNICATIONS

Included in tonight's meeting materials.

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

Board Member Walker noted that the Baby Dragons will be for sale in the next couple of weeks.

Board Member Flood offered condolences on behalf of the Township to Mr. Eugene McNabb on the loss of his beautiful wife, Louise, and Mr. Gene McNabb, Jr. on the loss of his mother.

10. ADJOURNMENT

Moved by Board Member Flood, supported by Chairman Yaros to adjourn at 7:57 p.m. **Motion carried unanimously.**

* Attachment