

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

REGULAR MEETING - TUESDAY, MAY 28, 2013

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Tuesday, May 28, 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
Mary Painter, Board Member Alternate	

ZBA MEMBER ABSENT:

Lucy Koscierzynski

CONSULTANTS PRESENT:

Tom Berger, Building Official
Tammy Girling, PC/ZBA Coordinator

OTHERS PRESENT:

Brian Whitaker	Tim Lee	Stephen Rawa
Robert Smith	Eugene McNabb	Gene McNabb, Jr.
Burkhard Garske	Phoebe Schutz	

1. OPEN MEETING

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

2. ROLL CALL

Mary Painter served as alternate in Lucy Koscierzynski's absence.

3. MINUTES

Moved by Board Member Flood, supported by Board Member Walker to approve the May 13, 2013 regular meeting minutes as amended. The amendment is to paragraph three on page four regarding the fireworks distance and that comment was made referencing the Township Attorney's letter, dated May 13, 2013, regarding temporary fireworks permits that was brought to the Board of Trustees on the May 20, 2013 regular meeting. **Motion carried 5-0.**

4. AGENDA REVIEW AND APPROVAL

No changes were made to the agenda at this point.

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). This case had been postponed from the last regular meeting on May 13, 2013, because members had requested measurements.

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Mr. Burkhard Garske, of 3209 Sandoval Drive, commented that he came up with six-foot and eight inches for the real measurements.

Chairman Yaros commented that to review of what happened at the last regular meeting on this, it was up in the air and was squared off for appearance's sake and for usability because otherwise it would have had to have been at an angle. Due to the configuration of the house on the lot, they followed the lines of the side of the house and there is plenty of room there for emergency services to get through if they need to get through to the back yard.

Chairman Yaros asked if there were any questions by members and also offered time for public comments on this case. No comments were given.

Motion carried by Board Member Walker, supported by Chairman Yaros regarding case AB-2013-06, Burkhard Garske, 3209 Sandoval Drive, Sidwell #09-20-132-007, with the petitioner requesting a variance from Zoning Ordinance No. 78 to construct a: 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) and that Mr. Garske was here last time and we weren't sure of the measurements. He went back and took the measurement and with regard to how the house is situated, compliance with the strict letter of the law of the ordinance would unreasonably prevent the petitioner from using the property for its permitted purpose or would render conformity with the ordinance unnecessarily burdensome based upon the construction of the house and the angle of that deck. Therefore, and also the problem was not really self-created in that he indicated the last time that he was here that this was while he was away and that all this occurred during his absence. I move that the petitioner's request for the non-use variance **be granted**, because he does demonstrate that practical difficulties exist in this case as set forth. Roll call vote was as follows: Painter, yes; Flood, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

**B. ~~AB-2013-09, Shirley M. Swoffer, 1224 W. Silverbell Road, Sidwell~~
~~#09-27-301-012~~**

Chairman Yaros noted that the petitioner is seeking two variances from Zoning Ordinance No. 78, to construct an attached garage and sunroom: 1) Article V, Section 5.18, Minimum Lot Setbacks, Each Side Yard, requesting a 4-foot side yard setback variance from the required 20-foot side yard setback (east side) to construct an attached garage; and, 2) Article V, Section 5.18, Minimum Lot Setbacks, Rear Yard, requesting a 3-foot rear yard setback variance from the required 40-foot rear yard setback to construct a sunroom.

Ms. Swoffer was not present.

Moved by Board Member Painter, supported by Board Member Flood that since the petitioner is not yet present, to move this case to agenda item 5,E, in case she arrives later during the meeting. **Motion carried unanimously.**

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C. AB-2013-10, Stephen Rawa, Temporary Use Permit, 511 Brown Road, Sidwell #09-32-400-065

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 a parking lot from June 5, 2013 to July 7, 2013.

Mr. Stephen Rawa, of 780 Joslyn Road, Lake Orion, was present.

Vice-Chairman Durham inquired what the hours of operation will be; whether they would have overnight security on the site; and, whether they will be using the building on the site.

Mr. Rawa noted that they would be from 10:00 a.m. to 9:00 or 9:30 and probably less hours on Sundays. They will have security on the site twenty-four hours a day and that they would be in their vehicles at night. Also, that they will not be using the building for anything at all.

Board Member Flood inquired how he would secure the fireworks when they're not there.

Mr. Rawa replied that sidewalls will be on permanently and then at night he will put walls on the end and also security will be there.

Mr. Thomas Berger, Township Building Official, noted that last year there were numerous locations for fireworks sales in our community and they had security guards to watch their products and they slept and their goods were stolen in the middle of the night. He inquired whether the petitioner would consider having a much safer way to secure their products in a POD type of storage unit that they could rent temporarily and have that on-site.

Mr. Rawa inquired how the Fire Chief would feel about that.

Mr. Bob Smith, Fire Chief, noted that he agreed with Mr. Berger and that he is very much in favor of the POD storage and that it would be much more secured to prevent children from being able to accidentally set them off. Regarding a waiver from the distances requirement for another location that sells fireworks, Costco sells them.

Chairman Yaros commented that Costco sells the lower grade fireworks. Also, there are no residences nearby the site, mostly businesses. He asked Mr. Rawa if he would consider getting a POD storage unit for the site.

Mr. Rawa stated, yes.

Board Member Painter inquired who would be the person in charge of the site for the Township to be able to contact 24 hours a day and be accountable for any problems.

Mr. Rawa replied that it would either be his daughter or himself.

Chairman Yaros noted that the Township and the emergency responders should have Mr. Rawa's phone number to be able to contact him at any time needed.

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Mr. Berger noted that he and Chief Smith visited the fireworks sales sites together last year so that they would both know what was going on. Last year the vendors at those sites got the permits, but the people that were working at the sites weren't aware of what the requirements were for the site, so they had to guide them through each one individually. He would prefer that either Mr. Rawa or his daughter would be on-site at all times and that they'll have a contact person.

Chairman Yaros offered time for public comments.

Mr. Eugene McNabb, Jr., 680 Silverbell Road, inquired whether there are limits as to how many fireworks they could store in the POD storage unit.

Mr. Berger noted that yes there are limits for the storage.

Board Member Flood commented that he is concerned about waiving the 1,000-yard requirement. Also, that Costco's fireworks are low-impact, such as, sparklers, but this petitioner will be selling the high-impact fireworks. In using the POD, he believes the State permit says less than 500 pounds of fireworks.

Mr. Rawa stated, you could go up to 500 pounds. I would seriously doubt that I would have that much on hand. He then noted that, that is the limit on his license.

Chairman Yaros noted that he believes that they should waive the 1,000-yard requirement because it is a different type of product.

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-2013-10, Stephen Rawa, Temporary Use Permit, 511 Brown Road, Sidwell #09-32-400-065, 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 a parking lot from June 5, 2013 to July 7, 2013. I would move that this request **be granted with conditions**. The petitioner has demonstrated that this is going to be a temporary situation and is not going to be something that hits the practical difficulty as much as it's going to be a short-term temporary use. The conditions are as follows: 1)the petitioner has agreed to provide a POD storage unit on the subject site to secure the fireworks during non-hours of operation; 2)the petitioner has stated that the hours of operation will be from 10:00 a.m. to 9:30 p.m.; 3)members will waive the 1,000-yard requirement for temporary use permits as stated in the zoning ordinance, which is the distance in between the sites for two reasons: a)the temporary use would be an open air type operation and the one across the street sells a lower impact fireworks than the one being requested by the petitioner and it would be a closed box operation. Granting the request would do substantial justice to the petitioner and would not harm the property owners in the surrounding area. The problem is not self-created and it is temporary in nature. Roll call vote was as follows: Durham, yes; Walker, yes; Painter, yes; Flood, yes; Yaros, yes. **Motion carried 5-0.**

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D. AB-2013-11, USA Fireworks, Temporary Use Permit, 1025 Lapeer Road (Lake Orion Plaza), 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 a parking lot from June 22, 2013 to July 7, 2013.

Mr. Brian Whitaker, of 3174 Walnut Street, Dearborn, Michigan 48124, was present. He noted that having a POD storage unit would not be an issue with them.

Chairman Yaros noted his concern of the safety of children and other pedestrians in that particular area of the parking lot and asked how the petitioner would be securing that area from vehicles running into the tent area.

Mr. Whitaker noted that they will use 2" x 4" boards on sawhorses with a ten-foot barrier. Also, that they will have three openings to the tent.

Board Member Painter inquired who would be in charge of this site.

Mr. Whitaker noted that they have a store manager and they have a security person that will alternate, so their hours of operation are from 10:00 a.m. to 9:00 p.m. and after 9:00 p.m. the security person would come and would stay inside the tent.

Board Member Painter inquired whom they would employ.

Mr. Whitaker noted that it would be local people and that he is the director for Michigan in charge of all the stores in the state and from there they have regional managers. There are about 40 stores in Michigan this year.

Board Member Painter noted that it would be to the petitioner's benefit to make sure that the people that are working with him understand because it's very frustrating for complaints to come in and to talk to someone there that doesn't know anything about it.

Mr. Whitaker noted that they have a full training program this year and that they've learned from their mistakes last year.

Vice-Chairman Durham inquired how much greater than 500 pounds of fireworks they will have.

Mr. Whitaker replied, not much greater. We'd be looking at about 1,000 to 1,500 pounds of fireworks roughly at any one time.

Chief Smith noted that last year was a learning curve since it was the first year Michigan allowed fireworks sales and hopefully the petitioner learned from it. Also, that if a motion is made, he informed them that in NFPA 7.3.22, it specifies that these people need to be trained in the product and what to do with the product, how to handle the product, he asked that, that be put into the motion.

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Mr. Berger commented that when he and Chief Smith were at that site last year, the people that were there were just using yellow tape as a perimeter for protection around the tent. This year he wants to know exactly what the barricade materials will be and how it will be attached since last year they were continually being moved from their approved locations. He wants it clearly known that these are serious problems that occur and then Township staff has to go out to check on, on a continuous basis during these times that the temporary uses are in effect, which took quite a lot of the man hours away from other Township business. Last year the yellow tape was not appropriate and he had to actually guide them and tell them where to go to buy the product they needed to help the safety of the perimeter than what they had. The petitioner needs to be clear about the materials he will use for a barrier around the tent and how it will be secured. Where the tent is proposed to be located, there is full traffic all the way around the tent. As it is proposed, traffic could drive right into the tent since it is right out in the middle of the parking lot rather than being along the edge of the lot. He also noted regarding the heavy amount of traffic in that parking lot, which also includes additional cut-through traffic from nearby sites that are joined with a back driveway. There must be good barricades in the buffer area that are well identified and that the perimeter must be maintained.

Chief Smith noted that the yellow tape is not a good barricade since it loosens with the wind and blows away. The petitioner needs to call the fire department before they open for sales, so they can go out and take a look and make sure they have their barricades up and everything. Last year, they didn't have their barricades up when they were all set up. Part of the reason for the barricades is to keep drivers from running into the people and the product in the tent. The petitioner must understand that they need to call him before they open for sales, so he can go out there to inspect the site and if any changes need to be made to modify the barricading, they can do that before they bring the product into the tent, to avoid the risk of someone running into it.

Board Member Walker noted that he is concerned whether the petitioner has addressed and resolved the concerns that Chief Smith listed in his memo to Ms. Tammy Girling, Planning/Zoning Coordinator, dated April 26, 2013*.

Chief Smith noted that he talked with Mr. Lee and he takes Mr. Lee at his word that he's going to abide by it. He then suggested not allowing violations to keep going on and if they don't actually do what they say they will do. There needs to be a 24-hour contact phone number given to the Township Building Department, the Fire Department, and the Sheriff's Department.

Lieutenant Toth, of the Orion Sheriff Department Station, noted that most of the complaints last year, other than the ones from residents living in the subdivisions, the ones that they had at the commercial sites mostly had to do with folks that were setting off fireworks near the sites. The officers feel from a public safety standpoint, that when they go out there and they're really not sure how many pounds of fireworks are on those locations and they are looking at how close to the roadways and the types of vehicles and are there tanker trucks and how close the overhead power

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lines are to the site as well as the infrastructure and things like that. He agreed that the POD type of storage unit would help to protect that product when they have that many pounds of product. These types of stands selling fireworks are very different from other temporary uses like flowers and Christmas trees. He also noted that 1,000 to 1,500 pounds of fireworks can do a lot of damage accidentally, so when you are considering the fireworks sales requests for temporary use permits, consider the location and proximity to roadways and people in vehicles and things like that. That would make us all feel a lot better.

Mr. Tim Lee, of USA Fireworks, commented that he did speak with Chief Smith and they did discuss the barricades by having 2" x 4"'s going in the perimeter and painting them orange, so they're more visible. They've contracted with a lawn care company to come by and pick up their trash at the beginning and at the end. The manager, who is a school teacher, and her husband will be running the tent for them this year. He noted that he loves the POD storage unit idea. He also noted that this year they have a handout to give to the customers along with their fireworks outlining some of the regulations and safety information. They typically put about 1,200 pounds of fireworks in the tents.

Chairman Yaros commented that the petitioner has shown a 10-foot buffer around the tent, so you're going to have to have some type of a solid buffer around the tent for this ten-foot buffer area. Rental barricade companies have many different types of barricades available. They need something substantial to hold up in the wind. They also need to call the Fire Chief to come out to inspect the site prior to opening as well as completing the training of all the people working there prior to opening for business.

Mr. Lee noted that they do all their training at a permanent location in Lincoln Park and they are trying to get a State Fire Marshall to work with their training class, but the Fire Marshall hasn't gotten the ok to do that yet. He also noted that he will provide three 24-hour contact phone numbers of local people to the police, fire, and building departments. He also agreed to provide a POD storage unit on-site to store the fireworks in.

Ms. Tammy Girling, Planning/Zoning Coordinator, commented that she ran a quick analysis of the distance between the applicant and an existing permanent fireworks establishment on our GIS system and came up 370 feet, which would be about 123 yards between the two.

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-2013-11, USA Fireworks, Temporary Use Permit, 1025 Lapeer Road (Lake Orion Plaza), Sidwell #09-14-226-001, 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 a parking lot from June 22, 2013 to July 7, 2013, that this request **be granted with conditions**. There are practical difficulties in that this is just a temporary operation and it is subject to a short time frame. There would be some strict regulations put in and what I have here is that we would choose to waive the 1,000-yard requirement between operations ordinance language. The

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petitioner shall also provide three 24-hour contact phone numbers for use by the fire department, police department, and the building department if they would need to contact someone in authority of the site. The petitioner shall have barricades of at least ten feet around the tent and of a substantial type of barricades and leaving the decision of the type of solid barricades (suggested 2"x4"'s painted orange) to the fire or police department authorities. The petitioner shall secure the fireworks in a POD type storage unit on-site through the nights. The petitioner may provide extra security on the site if they so choose. The personnel shall be trained per the NFPA 7.3.22 regulations for fireworks to the Fire Chief's satisfaction. The petitioner shall place a telephone call to both the Building Official and the Fire Chief prior to opening for business, so that the proper inspections can be made. The hours of operation shall be from 10:00 a.m. to 9:00 p.m. seven days a week. Roll call vote was as follows: Walker, no; Painter, yes; Flood, no; Durham, yes; Yaros, yes. **Motion carried 3-2.**

E. AB-2013-09, Shirley M. Swoffer, 1224 W. Silverbell Road, Sidwell #09-27-301-012

Chairman Yaros noted that the petitioner is seeking two variances from Zoning Ordinance No. 78, to construct an attached garage and sunroom: 1) Article V, Section 5.18, Minimum Lot Setbacks, Each Side Yard, requesting a 4-foot side yard setback variance from the required 20-foot side yard setback (east side) to construct an attached garage; and, 2) Article V, Section 5.18, Minimum Lot Setbacks, Rear Yard - requesting a 3-foot rear yard setback variance from the required 40-foot rear yard setback to construct a sunroom.

Ms. Shirley M. Swoffer, of 1224 W. Silverbell Road, was present and apologized for being late.

Chairman Yaros noted that this is a small lot in a large parcel zoning district, basically what would normally be like a R-1 (Single-Family Residential-1) zoning district sized lot in a SE (Suburban Estates) zoning district, so you have these 20-foot requirements and if you were in a regular residential zoning that has smaller requirements, you wouldn't even be here. He has no problem with this request.

Chairman Yaros offered time for public comments on this case. No comments were given.

Board Member Painter inquired who owns the fence.

Ms. Swoffer noted that she is the owner of the fence.

Moved by Vice-Chairman Durham, supported by Board Member Flood regarding case AB-2013-09, Shirley M. Swoffer, 1224 W. Silverbell Road, Sidwell #09-27-301-012, that the petitioner is seeking two variances from Zoning Ordinance No. 78, to construct an attached garage and sunroom: 1) Article V, Section 5.18, Minimum Lot Setbacks, Each Side Yard, requesting a 4-foot side yard setback variance from the required 20-foot side yard setback (east side) to construct an attached garage; and, 2) Article V, Section 5.18, Minimum Lot Setbacks, Rear Yard, requesting a 3-foot rear yard

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setback variance from the required 40-foot rear yard setback to construct a sunroom, that the petitioner's request **be granted**, because the petitioner did demonstrate that practical difficulties exist in this case and she set forth facts that do show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted use or would render conformity with the ordinance unnecessarily burdensome based on the following: 1)the petitioner has a small lot and the topography does not allow expansion without the variances requested; 2)granting the variances would do substantial justice to the petitioner as well as to other property owners in the area; 3)there are no reasonable alternatives if the petitioner wishes to expand; 4)the petitioner's plight is due to unique circumstances of the property based on solely the size and topography; 5)the problem was not self-created for the reasons previously stated; and, 6)that this is in a Suburban Estates (SE) zoning district, which normally has large-sized lots, however, this particular lot is a size that is normally within a Single-Family Residential-1 (R-1)zoning district where the setback would only be ten feet and a variance would not be needed. Roll call vote was as follows: Painter, yes; Flood, yes; Durham, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

6. PUBLIC COMMENTS

None further.

7. COMMUNICATIONS

None further.

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

Board Member Flood noted that since the new fireworks laws went into effect, the Township ordinances need to be updated to reflect that to support the emergency personnel and Building Department to ensure compliance.

10. ADJOURNMENT

Moved by Board Member Flood, supported by Vice-Chairman Durham to adjourn at 8:09 p.m. **Motion carried unanimously.**

* Attachment