

**CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS**

**\*\*\*\*\* MINUTES \*\*\*\*\***

**REGULAR MEETING - MONDAY, JULY 22, 2013**

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 22, 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:**

Thomas Berger, Building Official

**OTHERS PRESENT:**

Damon L. Garrett	Ryan Schultz	Fred Rafou
Matt Gibb	Mac Gonzales	Judith Gonzales
Jasmine Gibson	Randy Johnson	Don Rush
Marvin Arnold	Gene McNabb	Eugene McNabb
David Clifford	Lee Richmond	Jessie Richmond
Terry (no last name given)	Darrell Eickholdt	Pauline Eickholdt
Charlie Ingram	Brian Gobber	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 Vice-Chairman Durham to approve the July 8, 2013 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-2013-14-A, Fred Rafou, Sonic Restaurant, Sidwell #09-32-377-072**

Chairman Yaros commented that the petitioner is seeking two variances from Zoning Ordinance No. 78 to build a Sonic Drive-In/Drive-Thru Restaurant: 1)Article 34, Section 34.02, B, Use Group B, Minimum Side Yard, requesting a 10-foot variance from the required 20-foot side yard setback to build a restaurant ten feet from the north property line; and, 2)Article 34, Section 34.02, B, Use Group B, Minimum Side Yard, requesting a 4.45-foot variance from the required 20-foot side yard setback to build a drive-in canopy 15.55 feet from the south property line.

Mr. Damon L. Garrett, Operations Manager, Metro Consulting Associates, LLC, 45345 Five-Mile Road, Plymouth, Michigan 48170, was present and gave a brief history of the project and the revisions they have made to the plans. These plans are the latest that were brought before the Planning Commission on June 19, 2013. He also commented that although they made revisions, they were still unable to avoid the setback variance to the north and to

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the south. He also noted regarding the cross-access drive for Sonic on the northern property line will connect with Taco Bell's southern property line, which was a condition of the Taco Bell site plan approval.

Vice-Chairman Durham inquired about wetlands, tree preservation, landscaping, and berms to deaden the sound.

Mr. Garrett noted that these issues were resolved during site plan review with the Planning Commission. Also, that evergreen trees will be used to screen.

Board Member Flood noted that his main concern was, too, that the Fire Chief was satisfied with the 10-foot width of the cross-access drive on the north side.

Board Member Walker inquired about what specifically they have agreed to do regarding the trees.

Mr. Garrett replied that the developer was amicable to placing trees there, but he was prepared to place additional trees if an easement was granted by the Gonzales' if they wanted additional trees on their property in that corner. He does not know where they are currently in that process.

Chairman Yaros read aloud email correspondence received from Jessica and Gary Mardlin, of 4830 Georgia Drive, dated July 16, 2013, in opposition to the proposed Sonic Restaurant\*.

Chairman Yaros offered time for public comments on this case.

Mr. Dave Clifford, of UAW Legal Services, introduced Mr. and Mrs. Macedonio Gonzales and noted that they asked him to be present tonight. He is representing the Gonzales' and he noted that they have filed an appeal of the Planning Commission's approval, which will be before the ZBA on August 12, 2013.

Mrs. Judith Gonzales, of 4884 Georgia Drive, commented that the site is a very small and unique piece, which was self-created, because the Scypinski's did sell a portion to Taco Bell, which leaves a very unusual shape. She then noted the negatives of living next to the Taco Bell now with all the endless noises. They cannot even use their back yard anymore because of all the noise. She asked that the Township consider their interest in the decision-making.

Mr. Mac Gonzales, of 4884 Georgia Drive, commented that Mr. Scypinski has four lots left there and Mr. Grass and Mr. Phillips have a total of five lots and if they are approved sometime in the future, then there would be one house left, which would be theirs.

Ms. Jasmine Gibson, of the Lake Orion Taco Bell at 485 S. Baldwin Road, introduced Terry (her last name was not provided), the store manager at that location. She then noted that Taco Bell did not agree to share a parking lot for the entrance and exit of Sonic's customers. She noted that their parking lot is already very tight.

Chairman Yaros suggested that she reads the meeting minutes that approved Taco Bell, because it did include an agreement that there would be a shared drive for access management.

Ms. Gibson noted that she would contact the Township to get the minutes.

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Mr. Matthew Gibb, Deputy Oakland County Executive of Economic Development, commented that Chairman Yaros is correct that when the Taco Bell was approved it was contingent upon cross-access and those agreements were drafted. He is here to speak on behalf of Sonic as well as Starbucks. Oakland County is trying to attract retail from a national scale into Oakland County that will be able to employ people on a different demographic scale in age as well as in financial demographic as well. He then briefly reviewed Planning Commission and Zoning Board of Appeals procedures. On behalf of Oakland County, they believe that these types of investments are exactly the thing Orion needs to continue to build this area. For the two variances being requested, they believe that they're fair and sound that the 10-foot on the north, there is a practical difficulty designed by the cross-access and Taco Bell should definitely go look back into the records. They agreed to provide that cross-access easement for that circulation. He then noted that he would encourage the board, as difficult as it may be, to move this process forward for the investment here in Orion.

Mr. Darrell Eickholdt and Mrs. Pauline Eickholdt, of 4834 Georgia Drive, inquired about ZBA procedures. They also noted that they don't feel that the Township is looking out for the Township residents' best interest.

Chairman Yaros explained briefly about ZBA procedures and asked them to state what their concerns are.

Mr. and Mrs. Eickholdt noted that their concerns are: the garbage from Taco Bell and the rats it has drawn; the excessive noise levels; their water wells' water levels have dropped in the area, which has caused them to lose water pressure; that the site is too small for everything they want to put on it and that they should buy additional property behind it so they won't need the variances.

Mr. Garrett commented that their hours of operation would be less than Taco Bell's from 6:00 a.m. to 12:00 a.m., so the 1:00 a.m. to 3:00 a.m. thing that happens next door, we won't be doing that. Also, the ingress/egress recorded document that he forwarded to Taco Bell, he just gave to Ms. Gibson.

Chairman Yaros noted that the problem he has right now is that there is a request to appeal the Planning Commission's decision on the Sonic site plan, which will be at the August 12, 2013 regular meeting. Personally, he doesn't have a problem with the 10-foot side-yard setback variance request and as far as the canopy, he doesn't think that would affect anyone. However, there is an appeal and we've never had this situation come up before the ZBA where there is an appeal scheduled for a future date and they're asking for a decision on this earlier date. His opinion is to postpone until after the appeal has been heard.

Vice-Chairman Durham agreed.

Board Member Walker also agreed.

Chairman Yaros noted that they need an attorney's opinion to verify how to proceed.

Board Member Koscierynski thanked the property owners of surrounding properties of the subject site that came tonight to voice their concerns.

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Mr. Fred Rafou, of 2064 Long Lake Shore Drive, West Bloomfield, Michigan, commented that he is the developer and the only issue he has with this is time. He is concerned that if this is postponed, it will hold up his project. He asked that members take action on it tonight.

Chairman Yaros noted that he will get an attorney's opinion to determine whether both the Gonzales' appeal and these variance requests could both be placed on the August 12, 2013 regular meeting agenda.

Mr. Gibb explained the appeal procedures and he also agreed that members should obtain an attorney's opinion before proceeding. The appeal of the Planning Commission decision comes to this board. If you accept the appeal as valid, you would refer the matter back to the Planning Commission. That's the concern of time. You don't grant any relief from the appeal other than you can say we are going to deny the appeal and move forward. Or, you could grant the appeal as having merit and refer it back to the Planning Commission. It's a mechanism for a third party to have reconsideration of the Planning Commission's decision.

Chairman Yaros inquired, but it could be granted and then these variances could be another part of that same agenda?

Mr. Gibb replied, the second procedure, regardless of what you're going to do with the appeal, if you feel that you'd like to get an attorney to confirm this, which he would like members to do that too, no offense to Sonic, but for their consideration of time, because they have that matter pending, so that they don't get put into the Enabling Act requirement of additional public notice time for future meetings, you could make a motion tonight to postpone action leaving this matter open until August 12, 2013 and put in your motion that it will be for consideration of decision, but you need to say, without further public comment, so you can adopt the public comments from today at that time as your public comment. So, it's important for your motion to be complete if you're going to move everything to August 12<sup>th</sup>. Procedurally, your clerk can place the appeal first on your agenda, depending on how you vote on that, if you vote to deny the appeal, you could move immediately to consideration of the variances that are before you tonight, but it's important that you preserve the public record to the 12<sup>th</sup> within your motion if you choose to do that, otherwise your effort to save the time is frustrated because you'll have to re-notice it.

Chairman Yaros noted that they should also include in the motion that we want the Township Attorney to review this for members' consideration.

Mr. Gibb commented that it would be his recommendation in his capacity as Deputy County Executive that you would ask the Township Supervisor to allow the Township Attorney to be present at the meeting in case there are questions regarding the procedural aspect of the appeal. Because that is pending, Sonic will not suffer time lost, so long as the ZBA postpones the matter carrying over the public record for consideration at the August 12, 2013 regular meeting and then you'll be covered to be able to decide both things at the same time.

Moved by Board Member Walker, supported by Chairman Yaros regarding cases AB-2013-14-A and AB-2013-14-B, Fred Rafou, Sonic Restaurant and Signs, Sidwell #09-32-377-072, **to postpone until the August 12, 2013 regular meeting.** Because of the nature of the motion it is important to include

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the second case, AB-2013-14-B at the same time, where the petitioner is requesting four variances from Sign Ordinance No. 138 to provide signage for a Sonic Drive-In/Drive-Thru Restaurant. It's my understanding that there is an appeal that has been filed regarding the actions of the Planning Commission that must come before this board for judgment on August 12, 2013. In order not to delay matters for the petitioner, I would put in my motion that we would have Mr. Dan Kelly, the Township Attorney, at that meeting and also to obtain an opinion from Mr. Kelly regarding both the appeal and also our postponement of these matters for the August 12, 2013 regular meeting. Because of the petitioner's urgency with regard to the timelines of his case, that we have it all heard on August 12<sup>th</sup> and also if it's legal, we will not have a notice sent out to the public prior to the August 12<sup>th</sup> meeting, so we could have the entire matter decided on August 12, 2013.

Chairman Yaros asked to amend the motion that since this board is allowed to postpone this until that date of August 12, 2013 without further notification and without further public comment, but I want all the public comment that was here today and all the concerns because it will be addressed at the next meeting also.

Board Member Walker agreed to amend the motion.

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

**B. AB-2013-14-B, Fred Rafou/Sonic Restaurant Signs, Sidwell #09-32-377-072**  
See motion above.

**C. AB-2013-13, Northern Sign Company, Inc., 4960 S. Baldwin Road, Starbucks Coffee Signs, Sidwell #09-32-351-005**

Chairman Yaros commented that the petitioner is seeking eight variances from Sign Ordinance No. 138: 1)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Height, requesting a 17-foot height variance from the allowed eight feet in sign height to install a 25-foot tall ground sign; 2)Section 8, B, Zoning District GB-1, Ground Sign, Setback, requesting a 30-foot road right-of-way setback variance from the required 30-foot setback for a ground sign that is set back zero feet from the road right-of-way; 3)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Area, requesting a 21.1-square foot variance from the allowed 32 square feet to install a 53.1-square foot ground sign; 4)Section 3, Directional Sign, requesting a 1.54-square foot variance above the allowed two square feet, to install a 3.54-square foot (Thank You/Exit) directional sign; 5)Section 3, Directional Sign, requesting a 1.54-square foot variance above the allowed two square feet, to install a 3.54-square foot (Drive-Thru) directional sign; 6)Section 3, Directional Sign, requesting a 3.5-square foot variance, above the allowed two square feet, to install a 5.5-square foot (Clearance Bar) directional sign; 7)Section 8, B, Zoning District GB-1, Wall Sign, Maximum Number of Signs, requesting a variance for three additional wall signs above the allowed one wall sign for a total of four wall signs; and, 8)Section 8, B, Zoning District GB-1, Wall Sign, Area, requesting a variance of 50.39 square feet, above the allowed 40 square feet, to install wall signs totaling 90.39 square feet. The petitioner is also seeking one variance from Zoning Ordinance No. 78: 1)Article 27, Section 27.03, G, 2, requesting a 1-foot x 10-foot variance from the

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required 10-foot x 10-foot corner clearance to install a ground sign (structure) within the required corner clearance.

Mr. Marvin Arnold, of Northern Sign Company, 101 E. Walton Blvd., Pontiac, Michigan 48340, was present. He noted that this case had been postponed to tonight. Booklets with variance requests listed in them were distributed to members of the board, of which the Planning and Zoning Department had no knowledge of prior to this meeting and they were not reviewed by the Township as is required by Township procedures.

Chairman Yaros inquired why does the 72-inch in diameter pylon disk with drive-thru have to be so big and why do you need it?

Ms. Charlie Ingram, of 212 Helen Street, Newtonville, South Carolina, (not sure of the spelling of the name and address since she did not sign in nor is it on the application or in the case file) commented that she is with Starbucks Corporation and they need the pylon sign shown in the booklet that they brought tonight, so that when you're traveling north on Baldwin Road from Auburn Hills, there are a large amount of trees and you won't be able to see it. She also noted that when you're traveling south on Baldwin Road when you come up over that hill and then coming down you won't be able to see the monument sign. The pylon sign with the 25-foot height, you'd be able to see that and that would give drivers enough time to react to get in the proper lane to turn right into the Starbucks and to avoid a traffic jam that it probably will cause.

Chairman Yaros noted that the speed limit there is 35 mph. He inquired why they need the one-foot variance in the clearance zone.

Ms. Ingram replied that they can remove that from the variance requests.

Board Member Koscierzynski commented that the only problem she has is with the large sign that is a bit extreme.

Board Member Flood commented that he understands the problem of trying to view the signs from I-75, especially with the traffic going at high rates of speed.

Board Member Durham commented that he, too, cannot support the signage for I-75 viewing.

Mr. Matthew Gibb, Deputy Oakland County Executive of Economic Development, commented that they're dealing with some pretty big nationals that want to come to Orion Township and organizationals that they'd like to see here are looking at that corridor. They're looking at the corridor because the traffic counts that have been brought with the re-do of the mall and to the status that it's in and the fact that they've got the two hotels now are driving the attention particularly for breakfast foods. The elevations from I-75 into the areas on Brown Road and into that intersection at Baldwin Road are requiring these nationals to look at because they've got certain criteria that requires them to have certain signage to attract the visual aspect from I-75, because of the type of interchange that it is. It's different than the M-24 interchange where you're going from an interstate highway to a state highway. Whether Starbucks is entitled to the tall sign or not is discretionary for members, but what he's telling members for background purposes on this appeal application, is that they will be getting applications that will require a variance from the ordinance in this particular corridor and only here in Orion Township,

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because of the Baldwin Road interchange that's going to require the Township to consider whether pylon signs of this height because of the curve of the road that comes past Joslyn Road up toward Baldwin Road to get the national investment in this community you're going to have to consider those pylon signs. This is a little insight into the future and the fact that they are adjacent and nearby indicates that Auburn Hills went through the same criteria. Auburn Hills does not have 40-foot tall sign allowances either. I know you're not bound by what Auburn Hills did on it, but in recognition of the geography of the area, the elevations that are there, the fact that they're hidden a little bit from the view as they go both, particularly southbound on I-75, but also northbound on I-75. This corridor, from a national investment perspective requires pylon signs. You can deny it now, because it is to your discretion to deny that sign, but you're going to be hard-pressed when you're going to get national investment to come on Brown Road in that BIZ district, which is what you're trying to get. This is also a different store dynamic than the Starbucks on M-24. He encouraged members to try to fashion an approval process tonight that will allow this investment to move forward.

Mr. Ryan Schultz, of Versa Development, 25900 West 11-Mile Road, Suite 250, Southfield, Michigan 48034, commented that they are the landlord of the subject building. Due to their foliage, he believes that they do need the additional height.

Mr. Brian Gobber (The spelling of his last name is not known since he did not sign in nor is it on their application or in the case file.) commented that he is with Starbucks Corporation. He noted that their drive-thru signage is important to inform potential customers that it does have the drive-thru.

Chairman Yaros noted that their building could have two to three total possible businesses within it and you're asking for signage above what the ordinance allows for one half of a building.

Mr. Schultz commented that this store is scheduled to open on August 23, 2013.

Chairman Yaros read aloud correspondence received from Mr. David Leshock, of Auto City Service, Inc., Baldwin Crossing BP, dated June 19, 2013, in opposition to these variance requests\*.

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

Moved by Vice-Chairman Durham, supported by Chairman Yaros regarding case AB-2013-13, Northern Sign Company, Inc., 4960 S. Baldwin Road, Starbucks Coffee Signs, Sidwell #09-32-351-005, that the petitioner is seeking eight variances from Sign Ordinance No. 138: 1)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Height, requesting a 12-foot height variance from the allowed eight feet in sign height to install a 20-foot tall ground sign; 2)Section 8, B, Zoning District GB-1, Ground Sign, Setback, requesting a 30-foot road right-of-way setback variance from the required 30-foot setback for a ground sign that is set back zero feet from the road right-of-way; 3)Section 8, B, Zoning District GB-1, Ground Sign, Ground Sign Area, requesting a 17.29-square foot variance from the allowed 32 square feet to install a 49.29-square foot ground sign; 4)Section 3, Directional Sign, requesting a 1.54-square foot variance above the allowed

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two square feet, to install a 3.54-square foot (Thank You/Exit) directional sign; 5)Section 3, Directional Sign, requesting a 1.54-square foot variance above the allowed two square feet, to install a 3.54-square foot (Drive-Thru) directional sign; 6)Section 3, Directional Sign, requesting a 3.5-square foot variance, above the allowed two square feet, to install a 5.5-square foot (Clearance Bar) directional sign; 7)Section 8, B, Zoning District GB-1, Wall Sign, Maximum Number of Signs, requesting a variance for two additional wall signs above the allowed one wall sign for a total of three wall signs; and, 8)Section 8, B, Zoning District GB-1, Wall Sign, Area, requesting a variance of 42.48 square feet, above the allowed 40 square feet, to install wall signs totaling 82.48 square feet. Also, that the petitioner has removed the request for the one-foot by one-foot variance in the corner clearance area. Roll call vote was as follows: Flood, yes; Durham, yes; Walker, no; Koscierzynski, yes; Yaros, yes.

**Motion carried 4-1.**

**6. PUBLIC COMMENTS**

Mr. Gene McNabb, Jr. handed out copies of part of the April 23, 2012 ZBA regular meeting minutes to the members and commented regarding Dan's Excavating, Inc.

Mr. Eugene McNabb also commented regarding Dan's Excavating, Inc.

**7. COMMUNICATIONS**

Chairman Yaros thanked this recording secretary for the copies of the Board of Trustees' meeting minutes and the Planning Commission's meeting minutes for members' information. He then referenced correspondence received from Clerk Shults, dated July 17, 2013, noting that the Board of Trustees has scheduled a joint meeting with the Zoning Board of Appeals and the Planning Commission for Wednesday, August 21, 2013 at 5:30 p.m.\*

**8. COMMITTEE REPORTS**

None at this time.

**9. MEMBERS' COMMENTS**

Board Member Walker noted that he did bring up to the Planning Commission about needing a text amendment to enable enforcement of Ordinance No. 99 as well as who would pay for soil borings in the future and believes it will be on the next Planning Commission Meeting Agenda for discussion.

**10. ADJOURNMENT**

Moved by Board Member Flood, supported by Vice-Chairman Durham to adjourn at 9:00 p.m. **Motion carried unanimously.**

\* Attachment