

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

## \*\*\*\*\* MINUTES \*\*\*\*\*

### REGULAR MEETING – MONDAY, JANUARY 22, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, January 22, 2018 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

#### **ZBA MEMBERS PRESENT:**

Dan Durham, Vice Chairman  
Don Walker, PC Rep to ZBA  
Tony Cook, Alternate

#### **ZBA MEMBER ABSENT**

Loren Yaros, Chairman  
Mike Flood, BOT Rep to ZBA  
Lucy Koscierzynski, Board Member

#### **CONSULTANT PRESENT:**

David Goodloe, Township Building Official

#### **OTHERS PRESENT:**

Tom Blust	Eugene McNabb	Mark Averill
Josh Yates	Brian Renaud	Donni Steele
Luke Ferguson	Bruce & Darlene King	Lynn Harrison

#### **1. OPEN MEETING**

Vice Chairman Durham called the meeting to order at 7:00pm.

#### **2. ROLL CALL**

As noted

#### **3. MINUTES**

##### **01-08-2018, Regular Meeting Minutes**

Moved by Board Member Walker, seconded by Board Member Cook, to approve the 01-08-2018 Regular Meeting minutes as presented. **Motion carried**

#### **4. AGENDA REVIEW AND APPROVAL**

There were no changes to the amended agenda.

Vice Chairman Durham noted there were only 3 members out of the 5 member board present tonight however that does constitute a quorum. He explained that in order for a motion to pass it will have to be unanimous. Vice Chairman Durham commented that in the past, applicants have been allowed to request a postponement until a full Board is available; he offered that option to the applicants.

#### **5. ZBA BUSINESS**

##### **AB-18-03: Board of County Road Commissioners for the County of Oakland, 3900 and 3910 Baldwin Road, 09-29-301-038, 09-29-301-029, 09-29-301-034, requesting a variance from Zoning Ordinance No. 78, Article 6, Section 6.03.C.3**

Vice Chairman Durham read the applicants' request as follows:

To allow the Church to continue operating in its long-standing location

Mr. Brian Renaud with Foster Swift, attorney for the applicant, commented that they would like to proceed.

Mr. Renaud explained that the church in question (Gingelville Community Church) is on the corner of Baldwin and Gregory Roads and has been there for a long time. He also noted that prior to tonight, the church had a legal non-conforming use in that it did not meet the required front yard setback of 40 ft. Meanwhile the Road Commission has plans to widen Baldwin Road and to build a roundabout at that location. Mr. Renaud then introduced Mr. Tom Blust, the Director of Engineering for the Road Commission.

Mr. Renaud said the Road Commission has taken a highway easement that goes along the eastern border of the church property. The church property is comprised of 3 different parcels – parcel 15 which is the church proper, parcel 17 which the church parsonage is on and parcel 16 which is a parking lot between the two buildings. What they are dealing with tonight is just parcel 15 and the location of the church relative the new right-of-way line that will result from the widening of Baldwin Road.

Again, the church has been in its present location for decades and it was his understanding that it wants to remain in this existing building. The applicant is asking, because the church is already not in conformity with the zoning ordinance and that nonconformity will be increased with the widening of the road, that their request be granted. The road will be closer to the church than it is now however this road widening project has been engineered between the Township, the Road Commission for Oakland County and MDOT who will all be paying a portion of the project.

As part of the variance request application, Mr. Renaud went over the following criteria:

- Regarding the nature of the request – he covered that in his opening comment.
- Describe how the request results from special or unique circumstances particular to the property – the Road Commission created the circumstance by virtue of their construction project.
- If the appeal is granted, explain how the variance will not be materially detrimental to public health, safety and welfare or other properties in the Township – the proximity of the church to the newly expanded Baldwin Road right-of-way has been determined to be safe by the Road Commission and by MDOT in conjunction with the Township. He noted there is a safety path that has been created on both sides of the road that was not there before that was requested by the Township. Accordingly, they will build in conjunction with that which naturally will make things a little bit closer to the church; not cars but pedestrian traffic.
- Explain how it is or is not consistent with other properties in the immediate area – the church along with other properties on Baldwin Road will have some reduced front yard setbacks as a result of the road widening. Again, this is an engineered collaborative project and its impact is trying to be minimized.
- Describe how the alleged practical difficulty has not been self-created – Mr. Renaud reiterated that the church did not create this situation and that the road widening is a public project.

Mr. Renaud noted there is a statute, part of the Uniform Condemnation Procedures Act, which is binding on all public agencies that have condemnation authority and lists a set of procedures they have to follow when doing a condemnation – things they have to do in court and prior to the condemnation such as having contact with the owner and making an offer of just compensation that will be held in escrow.

Section 4 of the statute says that if the acquisition of a portion of a parcel leaves the remainder in non-conformity with the zoning ordinance, the agency before or after that acquisition may

apply for a zoning variance for the remainder of the parcel. That is the request that is before the Board tonight.

Another part of that statute says that determining whether to grant the zoning variance, the governmental entity shall consider the potential benefits of the public use for which the property would be acquired in addition to the criteria that is applicable under the relevant zoning statute, ordinance or regulations. The ZBA needs to consider not only its own ordinance requirements but also the potential benefits of the public use for which it (the property) would be acquired.

If a variance is granted under this subsection, the property shall be considered by the governmental entity (the Township) to be in conformity with the zoning ordinance for all future uses with respect to that particular non-conformity for which the variance is granted - as long as it is a church, it's a continuing variance; it runs with the land.

Another factor they look at is whether the topography of the land makes setbacks impossible to meet. Again, they (the Road Commission) is moving the road closer to the church property. There really isn't a topography issue here, it's more of a practical issue.

- Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose – if the church doesn't receive the requested variance, it would prevent it from operating in the location that it has been operating in for decades.

Vice Chairman Durham asked, after reading information in the packet, that oil and gases leases had been let for this or have been sold to somebody, will this affect the project? Mr. Renaud replied, no. There are no oil and gas leases that burden the property right now and they are only taking a strip of land that cuts along the front of the church property.

Board Member Cook commented that some of the parcels noted on the map that was provided were "full take" yet the structure on them were further away from the road than the church. He asked how that decision is determined?

The response was that engineering determines where the road will be relative to things like parking, ingress and egress access and to buildings themselves - if the project would cause the residual value of a property useless. It was noted that Gingelville Autobody was a full take because it would have ended in the middle of a roundabout. The determination is mostly due to engineering and the before and after anticipated condition of the property - whether the property can continue to operate, whether it is a home, church or business.

Board Member Cook said the two properties he was referring to were parcels 77 & 78, directly across from the church. He then asked if the property owners have the option to say they would like to sell or they would like to get a variance, how is that decision made?

The Uniform Condemnation Procedures Act says that an agency declares a taking and then is required to offer just compensation for that taking. Mr. Renaud commented that you cannot take private property for public purposes without paying just compensation. The answer to Board Member Cook's question is, no. The property owner has the ability to be compensated either through a negotiated settlement or to contest to the amount being offered; whether for partial or full taking.

The reason for this variance is in part to mitigate the damages to the property and in part to mitigate the unnecessary expenditure of public funds. In any case, they have to fairly compensate the owner.

Mr. Blust added that because of hill cuts and in order to provide proper grading, the properties Board Member Cook referred to were being taken in full because of where the grading limits were set. Also,

during the environmental assessment process, they identify potential properties for total take. If a property owner expresses they would like to stay, they will try to work with them to make that happen.

Pastor Josh Yates, the Pastor of Gingelville Community Church, noted that originally, they were asked to sign the variance request as a concurring applicant and he felt he could not do that without full church Board approval. It was determined that they had some safety concerns with the variance request so therefore did not want to apply in concurrence. Pastor Josh commented that they also talked through the difference between a variance and a full take and it had been stated that they wish to remain in their building and on their property. They love the location of the property but also have very big concerns about the proximity of the building to the road. He then read a prepared statement by himself and the Chairman of the Elders. He gave a copy of that statement to each of the Board Members. The statement contained the following: *That Gingelville Community Church is willing to continue operating in the existing building understanding the significant cost to the Road Commission and the Township should occupancy of the building in such close proximity to the road be denied. However, they feel it is their responsibility to inform the Township that a suitable resolution of issues of safety and operability of the building have not yet been arrived at between the church and the Road Commission. While issues of operability are beyond the scope of this meeting, the issues of safety are relevant. They were concerned about the range snow and ice could be thrown from a passing snow plow and possibly breaking through one of their windows and causing injury. They also expressed concern about the design of their building, that if it were hit by a car in a particular location, it could collapse the entire building towards the road. The statement noted that they are confident that some form of remediation can be found to reduce the risks but have so far received no comment from the Road Commission. That they have no way of knowing how the pending legal action between the church and the Road Commission will come out or what solution the court will decide what is sufficient. Their desire is to go on record making everyone aware of the situation and potential issues. The bottom line is safety – they are looking at the structure of their building, possibly snow and ice going through a window and the proximity of the walkway to the road. The walkway will be butted right up against the road.*

Pastor Josh commented that it was his understanding that 2015 plans showed the walkway going directly through the church and the building was indicated for a full take. Somewhere between that time and where it stands today, plans were made to go around the church rather than to take the building.

Vice Chairman Durham asked about the possibility of someone running off the road. Pastor Josh replied they did explore the possibility of putting in some type of decorative wall however there is not enough room between the outside of the building and the property they own upfront.

Vice Chairman Durham asked if they have gone to the Road Commission and asked how they would prevent this from happening? Pastor Josh said he believed their lawyer has had that conversation with the Road Commission. Vice Chairman Durham then asked Pastor Josh if he knew what the church would want in a “perfect world”? Pastor Josh replied, as he looks at how the road comes together right around the church, and it does make sense to him to keep the road wide all the way through so that traffic can flow well, in a “perfect world” they would love to be able to build a building at the back of their property. Pastor Josh said they understand that cost could be very detrimental to the project. He also noted that their lawyers have had sound studies and some other studies done. He reiterated they would like to build on the back of their property and to see the property upfront re-purposed.

Board Member Walker questioned if they were fighting the condemnation proceedings? Pastor Josh replied that to his understanding, they were given an offer which they felt was insufficient and at this point they are now in legal proceedings. The Road Commission is making their case and they are making theirs and waiting for a date to be able to go before the judge to determine what the outcome of that will be. He said he understands that is beyond the scope of this case but they do have other concerns as well.

Board Member Cook asked what this variance would do, if granted? Would they still operate but if the pending court case comes out on the affirmative side for them, would their building potentially come down anyway? Pastor Josh responded, it depends and was not sure what amount is being asked for but believes that is what the court case is about.

Eugene McNabb, 2981 Judah, commented that a few years back the road was widened in front of his store leaving it about 25 ft. from the front of his building. Since that widening a car did run off the road and into the front of his store and it had to be rebuilt at his expense. He also noted that now people coming out of the side street have a hard time pulling out onto Baldwin Road because they can't see down the road. Also, if there is a fresh snow fall that is wet, the plow will come down fill his sidewalk and throw snow all over his windows. There will also be a safety factor there for drivers, for people walking down the street and for people in the church. Personally, he felt the State, the County and Orion Township should get their heads together and build them a new church equal to what they have or better. This is the only solution or they will have problems for years.

Mr. Renaud brought the Board Members up to date on the status of the condemnation proceedings in this matter and also how one works. In this matter, the proceeding is about "how much is just compensation". Some of the issues in this matter that need to be considered are insulation from noise and traffic interference, among a few other things. The judge put this case on hold so the variance matter could come before the Zoning Board. He also noted that when the church is ready for a new sign, that will have to come before the ZBA as well. Mr. Renaud commented that both the church and their client have engaged an acoustic engineer and an architect to estimate how much it will cost to fix any outside noise issues. Mr. Renaud said there is a provision in the statute that says they can come before the ZBA and get this variance so that, on one hand, they can mitigate the amount of damages that will be incurred. On the other hand, they can mitigate the expenditure of public funds to the extent that is reasonable. There has been no failure on the part of either party to trade information.

Board Member Walker clarified there has been no judgement entered on the condemnation proceeding itself? Mr. Renaud replied there has been a judgement of possession, they have legal title to the highway easement and a temporary easement for staging and construction. Board Member Walker then said after reading the file in preparation for this meeting, it appeared that the Pastor was agreeing with them but he was now surprised to hear that he is not.

Mr. Renaud said that on December 21<sup>st</sup> they sent over to the church council a copy of the two zoning applications (one for this variance and one for the sign variance) and asked if the dimensional variance was ok to file. The emailed response said they were and to meet with Pastor Josh to get his signature. Pastor Josh stated that there was some trepidation on his part because he is not on the church board/council and didn't know if he had the authority to sign it and that it should be the Chief Elder, Mr. Rutledge.

Mr. Renaud said then on Friday, late in the day, they got the amended agenda with the concurrence removed. What he is hearing tonight is, yes, they are willing to do it but they have some safety issues they are concerned with. Until last Friday, Mr. Renaud believed that everyone was in agreement with the variance request. He said that getting the variance doesn't obviate their requirement to pay them just compensation.

Board Member Walker asked that if granting or denying this variance would have some impact on the amount they would have to pay for the property? Mr. Renaud said, yes. Board Member Walker said that was what he was uncomfortable with. Mr. Renaud said however that granting the variance would not change the physical environment. The statute says, when considering a variance, the governmental entity having jurisdiction shall consider the potential benefits of the public use for which would be acquired in addition to those that are set forth under the zoning statute. Mr. Renaud said they go

Zoning Boards all the time and ask for this sort of thing, sometimes they are granted and sometimes they are not. This Board needs to look at the zoning statute ordinance and the reasons for granting or denying a variance – on one hand, the public benefit.

Mr. Blust reiterated that what they are here for today is that they can keep the building where it is by getting this variance. Mr. Blust commented that tonight Pastor Josh indicated they would like to have their building in the back and it was also indicated they wanted the building to stay where it was. During the course of the environmental assessment, it was determined that it could in fact stay where it was - one of the requests they had at the time. Therefore, that was why the plans were laid out this way.

Mr. Blust then addressed the safety concerns and commented that the Road Commission's number one priority is safety. This project is being brought forth as a safety and congestion project and what drove the environmental assessment and the widening of Baldwin Road. This particular portion of road by the church will be a low speed corridor where there will be 3 or 4 roundabouts placed. They anticipate the speeds will be somewhat less than it is now - in the 30 to 35mph range. He explained the roundabouts are geometrically engineered so that it will be uncomfortable to drive more than about 25mph through them. Even though the speed is slower, travel time from one end of the corridor to the other will be quicker. The church building is proposed to be almost 29 ft. from the road. The "clear zone" is about 12 ft. so 29 ft. is 2 ½ times their "clear zone", a national standard. Mr. Blust does not believe there is any danger at all of proximity of the road to the church building. When asked, he explained that a clear zone is the standard term for the off side of the road and how much they have to clear for fixed objects, trees, buildings, large boulders, etc.

Vice Chairman Durham then asked, in Mr. Blust's opinion, there then won't be any high-speed snow plows going through the roundabouts? Mr. Blust replied, he cannot envision snow plows getting anywhere near the speed that is there now, they will have to slow down to go through the roundabouts. Mr. Blust then offered that if it becomes an issue, they (the Road Commission) can call the snow plow driver and ask them to slow down when they get by the church.

Board Member Walker, as indicated earlier, said there are only 3 board members here tonight and they (the applicant) were given the opportunity to come back in front of a full board however they decided to go forward tonight. At first, he thought it was ok because he believed the church was with them and now he thinks they might not be. Mr. Renaud said he still thinks they are together but the church has some safety concerns which are legitimate and believes have been answered. Since this change (in the application/agenda) came to him late Friday, he has not had the opportunity to talk with church council as to their change of heart, if that is the case. Because of this possible "change in heart" he thought it would be a good idea to adjourn and talk to them and come back. Vice Chairman Durham said they do have that option or the board can vote on precisely what is before them tonight. Mr. Renaud asked to confer with Mr. Blust.

After their brief discussion, Mr. Renaud asked to defer a vote tonight and to come back to the February 12<sup>th</sup> meeting.

Vice Chairman Durham asked Mr. Blust, assuming he did the engineering for this, was adequate road run-off protection engineered into the project, per his experience and licensing? Mr. Blust responded, absolutely. Vice Chairman Durham clarified that Mr. Blust worked hard to get that licensing and wouldn't deliberately "throw it out the window". Mr. Blust responded, true.

Pastor Josh clarified that from the beginning when they saw the variance application, their concerns were brought up immediately by himself and their lawyer however their lawyer "that these things usually get approved anyway so why even try". As for the delay in receiving a signature from them, they didn't have a full board meeting until the Monday before the application was amended. The board felt like they needed to talk to the lawyer a little more. They then approved to act in the best interest of the

church and to not be in concurrence with the Road Commission with this request. Pastor Josh wanted to make it known that they did get the information to them. From the beginning, the church felt they could not sign the application because ultimately, they would be saying something they don't believe in, they had some concerns.

Pastor Josh commented that he feels they need to have a discussion to find out if this is going to be mitigated. The bottom line for their church has always been they want to be a good neighbor but the road is getting close to the church and they are concerned and feel like the Road Commission is coming in and saying, "the road is safe, trust us". As indicated, whether or not they get this variance, could determine the type of compensation they might receive in the court case. The church doesn't want to be a bad neighbor but they have big concerns - they are not viewing this as a way to get "all this money to build a church" but they don't want to see our community hurt in anyway either. They believe the road should come in and the want to be reasonable - that is their goal and just want to be treated fairly.

Chairman Durham noted that the dollars they owe him or what they are willing to except is not his concern, his concern was what was brought before them tonight and how it applies to the law and to the zoning ordinance.

Pastor Josh said he understands that and why he wanted to present their safety concerns.

Luke Ferguson, 3426 Gregory Road, commented that during the discussion it was brought up that there was some "full takes" on the other side of the road, why couldn't the road move over more in that direction since there is nothing going on those lots? The road already does not go straight. He also asked about the "ideal entry angle" for a roundabout, has it been optimized and the curve moved in a fashion that would give the church extra additional 10 or 15 feet to help the church yet not create a need for anything else to change?

Mr. Blust replied that is a question they struggled with and had actually tried to do, what Mr. Ferguson had asked and they did move it as far away as they could from the church. Mr. Blust explained that as you come into the roundabout, they want to geometrically reduce the speed so typically the lane will swing out a little to the right and then come back in towards the middle. Then at the last minute there will be a little bit of a curve to make the transition into the roundabout - more of a yield. They moved it as far east as they could to still get that reverse curvature going in and slowing speeds down. They couldn't go any further to the east because of the grades at the "old" school's entrance. He noted that if they can avoid a "total take", that is what they try to work with and what was requested there.

Mr. Renaud requested the ZBA to postpone the hearing so they can try and address some of these issues – what will be required of engineering to mitigate these concerns however that will probably take more than two weeks. He added that they do have to go back to court unless they can resolve the concerns. In which case they might not even have to come back here, but they are not at that stage yet. He said they are not trying to keep the church from getting money. They have two differences of opinion as to how much engineering and retrofitting has to be done in order to mitigate safety issues on the one hand and mitigate some sound issues on the other. The court wants in to check on their progress.

Mr. Renaud noted that the date for the ZBA meeting for their sign request has not been set yet however he doesn't envision what they will be asking for to be much different than what they are asking for tonight. It's a variance for the road to be where it is or not.

Mr. Blust commented that most of the issues he heard pertain to the proximity of the road, not the property line. He said the road is where it is because of the environmental assessment process - the building's location is fixed. The physical environment doesn't change, the right-of-way line does. The

additional right-of-way they need is for utilities and the 8 ft safety path project on behalf of the Township. That is really the issue, whether the church can live with the right-of-way as it is proposed.

Chairman Durham commented that for both parties, he hopes that when they go away and come back on February 12<sup>th</sup>, that everybody would remain reasonable and work for an equitable solution so the project can move forward.

Moved by Board Member Cook, seconded by Vice Chairman Durham, that in the case of AB-18-03, Board of County Road Commissioners for the County of Oakland with concurrence of Gingellville Church, 3900 and 3910 Baldwin Road, 09-29-301-038, 09-29-301-029, and 09-29-301-034, per the applicant, be postponed until the February 12, 2018 meeting so that additional discussion can occur between the two parties.

Board Member Cook withdrew the motion, Vice Chairman Durham withdrew support.

Moved by Board Member Cook, seconded by Vice Chairman Durham, that in the case of AB-18-03, Board of County Road Commissioners for the County of Oakland, in reference to 3900 and 3910 Baldwin Road, per the applicant, that this proceeding be postponed until the February 12, 2018 meeting.

Roll call vote was as follows: Walker, yes; Cook, yes; Durham, yes. **Motion Carried 3-0**

## **6. PUBLIC COMMENTS**

Eugene McNabb, 2981 Judah, asked how many times does the Building Department send someone out to inspect “that” pit? He then went through and explained a number of pictures he had of “the pit” and violations he believed were occurring. Building Official Goodloe responded that they are out there on a weekly basis. Mr. McNabb then commented that since it is a member of the Building Department that goes out there and the pit owner is not hiring an engineer from the state, then he (the owner) should be paying the Township every time they go out and inspect it. According to Ordinance it is supposed to be inspected by an engineer from the State of Michigan. The Building Department is taking responsibility for the pit being operated according to the rules of Ordinance 99. Building Official Goodloe responded that is because we (the Township) have to enforce our ordinances. Mr. McNabb noted that one of his pictures shows a pile of dirt higher than 10/60, last time he (the owner) came in it was for balancing and what he was getting the permit for; the topo he submitted said that they will not exceed 10/60. Also, there is to be no concrete or black top thrown in the pit yet he had pictures of piles of concrete and black top on the premises. Vice Chairman Durham said those materials may have been stuff they separated out. Mr. McNabb said they are not allowed to separate any kind of material in that pit; he doesn’t believe they sort anything out. It was his (Mr. McNabb’s) opinion that Dan’s Excavating is controlling the Township ordinance and this Board. Dan has never disclosed what he is going to do with the pit when he is finished. Mr. McNabb then commented on the case heard tonight and compared the Road Commission representatives to good used car salesmen; that they are lying and the Board knows it. Building Official Goodloe clarified that in the matter of inspecting Dan’s pit, that he does get monthly reports of where their dirt comes from and that code enforcement does look at it the piles on site.

Donni Steele, 262 Kirksway, thanked the Board for their service.

## **7. COMMUNICATIONS**

Memo from the Planning & Zoning Coordinator regarding the possible cancelation of the February 12<sup>th</sup> meeting because there were no cases. The above case has now been postponed to that meeting so it will now be held and not cancelled.

**8. COMMITTEE REPORTS**

None

**9. MEMBERS' COMMENTS**

Board Member Cook thanked the other Board members for reading through packet materials and asking good questions of the applicants, some people believe they are puppets and that is not the case.

**10. ADJOURNMENT**

Moved by Board Member Walker, seconded by Vice Chairman Durham, to adjourn the meeting at 8:25pm. **Motion carried.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

February 12, 2018  

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Zoning Board of Appeals Approval