

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY, FEBRUARY 12, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, February 12, 2018 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

### ZBA MEMBERS PRESENT:

Dan Durham, Vice Chairman  
Mike Flood, BOT Rep to ZBA  
Don Walker, PC Rep to ZBA

Lucy Koscierzynski, Board Member  
Tony Cook, Alternate

### ZBA MEMBER ABSENT

Loren Yaros, Chairman

### CONSULTANT PRESENT:

Dan Kelly, Township Attorney  
David Goodloe, Township Building Official

### OTHERS PRESENT:

Gary Rutledge	Tom Reiss	Paul Smielewski	Tim Kniveton
Josh Yates	Toufic Saati	Sandy Swearingen	Gregory Seeloff
Alan Ackerman	Tom Blust	Ruth Kniveton	Lynn Harrison
Brian Renaud			

### 1. OPEN MEETING

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

### 2. ROLL CALL

As noted

### 3. MINUTES

#### 01-22-2018, Regular Meeting Minutes

Board Member Cook noted two grammatical errors.

Moved by Board Member Koscierzynski, seconded by Board Member Walker, to approve the 01-22-2018 Regular Meeting minutes as amended. **Motion carried**

### 4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 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

Trustee Flood disclosed that in this case he believed he did not have a Conflict of Interest for the following reasons: although he is a life-long resident of the Township and Gingelville, he does not have a professional or monetary interest in the Gingelville Church nor does he have an ownership interest in the property. Further, neither he nor his wife attend the church and they will not personally benefit from a decision in anyway.

Moved by Board Member Walker, seconded by Vice Chairman Durham that the Board finds that there is no Conflict of Interest with regard to Trustee Flood's participation in this matter.

Roll call vote was as follows: Walker, yes; Cook, yes, Koscierszynski, yes, Durham, yes.

**Motion Carried 4-0** (Flood abstained)

Vice Chairman Durham briefly recapped what occurred at the January 22<sup>nd</sup> meeting regarding this case.

Brian Renaud, representing the Road Commission, concurred with Vice Chairman Durham's recap.

Vice Chairman Durham asked Mr. Renaud if anything has changed?

Mr. Renaud responded, no, nothing has changed. He did however make a point he felt was not made clear at the January 22<sup>nd</sup> meeting. The location of the redesigned road is set through a design process that was engaged in by the Road Commission, the Township, MDOT and by affective neighbors. This process occurred as early as 2010 through 2013 where the physical location of the new right-of-way line to the church was established. He commented that church representatives participated in a vetting process that had to do with the design of the road project. Church representatives were at a number of public meetings conducted relative to the design and provided input. This was done prior to what is known as an "environmental assessment" which looks at the impact on neighborhoods, noise, pollution, increase or decrease in traffic, etc. This assessment resulted in finding "no significant impact (FONSI)". It is upon that FONSI that the project then goes forward and offers are made to affected property owners. Some settle upfront without having going to court, others reserve the right to pursue damages in court. This is where they are at tonight. The church ultimately stipulated to the possession of the parcels - the Road Commission's easement interest based on the plans that were part of the MDOT process. In that stipulation, they (the church) also preserved their right to pursue damages in court – "this is not a money hearing". Mr. Renaud said he believed they had concurrence up until the last minute - that this was going to be agreed upon by both parties. In his opinion, at the last minute they received notification that the church did not agree with them. That there were safety issues and "they want a new church" – that is a money issue that will ultimately be decided in court. What they are here to look at tonight is the Zoning Ordinance and whether this request complies and in turn, whether the statutory requirement that the Zoning Board also considers the public effects of this project.

Mr. Renaud then introduced Tom Blust, the Director of Engineering for the Road Commission.

Vice Chairman Durham asked Mr. Renaud, in his opinion, that whatever is decided tonight, if it will have an impact on what is decided upon in court? Mr. Renaud responded that all the church's rights are preserved pursuant to the Order of Possession that was entered with the court; their right to pursue damages of whatever kind.

Trustee Flood commented that he is strictly focused on the setback variance request. He asked where the existing road is today, would the widened Baldwin Road be any closer to the church? Mr. Renaud said he believed the road right-of-way would be closer and part of that is the safety path which was part of the vetting process.

Trustee Flood clarified that the Ordinance calls for a 40 ft. setback in this area. They are asking for a 30 ft. variance or in his opinion, a 75% reduction to the setback? Mr. Renaud felt that was about right.

Mr. Blust commented that, yes, the road would move closer. Currently the building is about 48.5 ft. from the edge of the "traveled way" (the white line) and it will be 28.7 ft. The right-of-way line at the northeast corner will actually get within about a foot in order for them to weave a safety path in. The road will be more like 9 ft. out in front of the building and then comes back in about 4 ft. near the south corner of the building.

Board Member Cook asked about the renderings Pastor Josh said he had seen that had the road going through the church, what was he referencing? Mr. Blust responded, that early drawings indicated that they may take the church itself. It was his recollection that the church wanted to stay, that there was some issues with the land. The church was planning to stay as far as he knew and why they moved the road to the east as far as they could. They did everything they could to accommodate keeping the church where it was.

Mr. Gary Rutledge, Chairman of the Elder Board of Gingelville Community Church, commented that the earliest presentation regarding the road widening; at that time the right-of-way ran about 8 ft. into the church. From the church's standpoint, they thought that the church was going to be taken. He noted that the church is not a historical building and therefore was not upset about its taking. As to the direction at the January 22<sup>nd</sup> meeting, he believed there is no common perspective. This is an adversarial condition. He said the Road Commission came to them and asked them to sign a document that said they completely agree with them; on everything the Road Commission was proposing. Mr. Rutledge clarified that has never been the case. They (the church) have been presenting issues with respect to the relationship of the building to the road since 2013. The road is very close to the building, 8 to 9 ft. is the farthest or the most property they will have between the building and the right-of-way. There is about 25% of the building that may actually only be about a foot away from the right-of-way. He noted, however, he hasn't seen anything with measurements that relate to the building. Mr. Rutledge commented they have already spent a huge amount of money to prove that the original analysis may have been flawed and that the Road Commission continues to spend money to counter their research.

Mr. Rutledge said their major concern with the Road Commission is irrelevant to this Boards' consideration - the ones that have to do with safety. The church is concerned about the safety of their people as well as their neighbors due to the proximity of the road. At the last meeting the Road Commission stated that the vehicle run off would not be a problem because there was more than the 12 ft. "clear zone" from the side of the road to their property and that was federal mandated clear space. Mr. Rutledge then referenced a comment made by Mr. McNabb at the last meeting that a car crossed 25 ft. of his property and destroyed the front of his building. He then noted that due to the construction of the church, should a car exit the road, that car would proceed into the building. They have expressed concerns that because of the way the building is supported, it leads to the possibility of series damage. The worst case being a total collapse should impact be at the right point.

Mr. Rutledge said they have expressed concern that snow plows will throw ice and snow against the windows of the building which could potentially go through the windows. He again referenced a comment by Mr. McNabb who said he experiences exactly that with the 25 ft. setback he has from the road. When this was mentioned at the January 22<sup>nd</sup> meeting, Mr. Blust said they would ask the snow plow drivers to slow down in front of the church – he (Mr. Rutledge) doubts the effectiveness of that as a long-term solution.

Mr. Rutledge said the Board has three options – to approve the variance which would be cheaper for the Township and the Road Commission; they could approve the variance with restrictions; or they could deny the variance. If it is denied, the Road Commission could then appeal the decision and then it would be argued in the courts. Denying the variance does not automatically mean they will get a new church and that is not what they are trying to do. Currently they have 20,000 sq. ft. of useable, safe, ministry space. When this is all said and done, they want to have 20,000 sq. ft. of safe, useable, ministry space. It was his opinion that the court would be the best place to weigh the issues, claims, analyses, etc. Mr. Rutledge assured the Board that when this is all said and done, Gingelville Community Church will continue to function from this location in some way and serve the community to the best of its ability.

Vice Chairman Durham commented that he doesn't believe Mr. McNabb's scenario could be compared to this situation – a snow plow would be going much slower through the roundabouts by the church. Mr. Rutledge said that research has shown that on average a snow plow throws snow about 25 to 30 ft. However, their bigger concern is that the roundabout will be in a place where traffic is supposed to slow down. If someone is not paying attention, there will only be one place for them to go – “to church”.

Vice Chairman Durham asked when was it that Mr. Rutledge saw the plans change to what they are today? Mr. Rutledge responded, that once this design come out, they have not seen significant communication or movement from the Road Commission on their issues. The Road Commission has taken some into account relative to sound, etc.

Trustee Flood said that he is looking at this like any other variance request that comes before them. He is looking at why the Ordinance calls for a 40 ft. setback along with the fact that the setback involves one of the major thoroughfares through the Township. He commented that safety is always a factor. He is concerned about the health, safety and welfare of the public when making a decision and what the Ordinance is based on. This is what he is focused on in this case and he is not comfortable granting a 75% variance along a major thoroughfare.

Board Member Koscierzynski said she agreed. She has listened to everything tonight and safety is a big concern to her.

Vice Chairman Durham asked Mr. Blust what kind of road run-off protection have they built into the plans. Mr. Blust responded that they follow the national guidelines, the American Association of State Highway & Transportation Officials. In a setting like this, the setback from the edge of the through lane is 16 to 18 ft. In urban settings, which this is considered, it could go down to 0; however, they strive for 16 to 18 ft. and this is well beyond that.

Per a question by Vice Chairman Durham, Mr. Blust said there are no plans for guardrails or bollards in front of the church. The suggestion that it would be safer to put something up as a fixed object within the right-of-way usually has a negative impact on safety and explained why. Mr. Blust clarified that the edge of the road to the building (church) will be 28.7 ft.

Board Member Cook asked if there was another type of safety barrier they could put in (on the church property) to protect the church from a car possibly running off the road such as landscaping or bollards? Mr. Blust commented that they did consider that but there is not enough room to do so. If they did add something, it could be more hazardous to a driver. However, that is something that could be considered with approval from the Federal Highway Administration during the pending court case. Mr. Blust added that they expect this to be a low-speed environment because of the multiple roundabouts with speeds of 30 to 35 mph. The clear zone allows for recovery if a vehicle should run off the roadway. He added that the road geometrics are set and had been very finely tuned to preserve the church in its current location and to the road so that speeds will be reduced through the roundabouts.

Board Member Walker asked if they could shift the road over? Mr. Blust responded that the chances of doing that are pretty slim. They have already shifted it as far east as they could and noted the historical school that is on that side of the road.

Mr. Alan Ackerman, the lawyer for Gingelville Community Church, spoke and gave a brief history of how he became counsel for the church. He then noted that the noise study that was originally done required the Road Commission to come to the church to get a “Release” from what is called a FONSI. He believes the statute was violated. The noise there now is below a dangerous level. After the road is widened; he compared the noise to be like hearing motorcycles all the time. He reiterated that they did not sign the waiver for the noise, and leaving the church where it is would be worse for them then if it were taken. It was his opinion this would be endangering the members of the church. He commented

that what the Board has to make their determination based upon is on all safety and aesthetic features. This is not an aesthetic issue alone, it is noise and safety. Mr. Ackerman reiterated that there is one supporting pole on the east side of the church. If a car hits that, no one knows what could happen – there are people in the church all the time not to mention the children that would also be there. Mr. Ackerman then disputed the claim that the Road Commission could ask snow plow drivers to slow down in that area – that is unlikely to happen unless the church somehow gets it in writing. Mr. Ackerman said the church will also have issues with snow being thrown at the building when the safety path is being cleared. Again, Mr. Ackerman believed that the statute is being violated - the right for people to be safe. Mr. Ackerman explained that if the Road Commission loses here, they can appeal and take it to court – that is where this should go.

Board Member Walker then asked, if the Board approves the variance, doesn't the church have the same right to appeal the decision?

Mr. Ackerman responded that the chance of them appealing is "close to zero".

Mr. Renaud asked to address a few points he heard. It was noted by one of the church representatives that the church spent a lot of money on experts – Mr. Renaud said they (the Road Commission) were responsible for reasonable expert witness fees for any party it seeks condemnation from and he explained why that is. The mention of where the support column was for the church – that is something that should not be decided here. The only thing they are here for tonight is for the ZBA to act pursuant to the Ordinance and pursuant to the Uniform Condemnation provision that says they need to consider the public benefit in addition to whatever else is in the Ordinance.

Trustee Flood stated, being one voting member, he cannot in good conscience be in favor of the request because of the health safety and welfare of the community – granting a 75% variance. Regardless of the situation between these two parties; he is looking at why the setback is set at 40 ft.

Board Member Koscierynski commented that this is very difficult for her however appreciates all those that came forward and provided explanations. She always leans on as much information as she can get and it is an indication that people have done their homework. She too agrees with Trustee Flood and always leans towards the safety of the citizens of this community.

Moved by Trustee Flood, seconded by Board Member Koscierynski, that in the matter of ZBA case 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 to allow the church to continue operating in its long standing location, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78 be **denied** because the petitioner did not demonstrate that practical difficulties exist in this case; compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property for a permitted purpose and would not render conformity with the Ordinance unnecessarily burdensome, based on the following findings of fact: under Ordinance No. 78 section 6.03 Special Land Use, C. churches subject to the following: no building shall be closer than 40 ft. to any property; after further discussion it was agreed upon that they are asking for a 75% reduction of that 40 ft. (a 30 ft. request, leaving 10 ft. remaining); denying the variance request would not do substantial injustice to the petitioner as well as to other property owners in the area, a lesser relaxation than that relief applied for would give substantial relief to the property involved and be more consistent with justice to other property owners based on the following findings of fact: with this setback reduction, the health, safety and welfare of the public is in jeopardy based on why the Township has a 40 ft. setback from a front property line that borders a major thoroughfare which will be substantially widened; it is determined that the petitioner's plight is not due to unique circumstances of the property based on the following: this property has been in existence in this community since Gingelville was first established in the 1920s,

the existing building has met all prior Township ordinances and regulations for a permitted use up until today with the widening of this road project.

Roll call vote was as follows: Koscierynski, yes; Walker, no; Cook, no, Flood, yes; Durham, no.

**Motion Failed 2-3**

Attorney Kelly commented that because the motion failed, for the request to be approved, there needs to be a motion to that affect.

Moved by Board Member Walker, seconded by Vice Chairman Durham, that in the matter of ZBA case 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 to allow the church to continue operating in its long standing location, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78 be **granted** because the petitioner did demonstrate that practical difficulties exist in this case; there was discussion by the contrary motion maker regarding public safety, it was his (Board Member Walker's) opinion that public safety would be better served by the widening of the road, i.e. the concern for public safety of all the citizens of Orion Township, it would be detrimental to public safety if the project doesn't continue in the way it is; **granting** the variance would do substantial justice to the petitioner and the petitioner's plight is due to the unique circumstances involved.

Roll call vote was as follows: Koscierynski, no; Walker, yes; Cook, yes, Flood, no; Durham, yes.

**Motion Carried 3-2**

Vice Chairman Durham asked for Public Comment, there were none.

**2017 ZBA Annual Report**

Moved by Trustee Flood, seconded by Board Member Koscierynski, to receive and file the report and to forward a copy to the Board of Trustees.

Board Member Cook pointed out that the graph for Ordinance 153 was the same as the graph for Ordinance 138 yet the numbers were different.

Trustee Flood amended the motion, Board Member Koscierynski re-supported to receive and file the amended report and to forward to the Board of Trustees.

**Motion carried**

**6. PUBLIC COMMENTS**

See above

**7. COMMUNICATIONS**

None

**8. COMMITTEE REPORTS**

None

**9. MEMBERS' COMMENTS**

None

**10. ADJOURNMENT**

Moved by Trustee Flood, seconded by Vice Chairman Durham, to adjourn the meeting at 8:09pm.

**Motion carried.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

February 26, 2018

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Zoning Board of Appeals Approval