

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, FEBRUARY 26, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, February 26, 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:

David Goodloe, Township Building Official

OTHERS PRESENT:

John Bettin	Patrick Stieber
Dustin Kary	Tony Jenninings
Katelyn Kary	Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

02-12-2018, Regular Meeting Minutes

Moved by Board Member Koscierzynski, seconded by Trustee Flood, to approve the 02-12-2018 Regular Meeting minutes as presented. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

AB-2018-04: Dustin Kary, 362 Shorewood Court,09-03-405-013

Vice Chairman Durham read the applicants' request as follows:

The petitioner is requesting three (3) variances from Zoning Ordinance No. 78, Article 6, Section 6.07, District: R-3

1. A 6' 10" rear yard variance, from the allowed 35', to build an addition 29' 2" from the rear property line (lake side).
2. A 11.6% lot coverage variance, beyond the allowed 25%, to build a 453.33 sq. ft. addition which results in 36.6% lot coverage.
3. A 27' 6" front yard variance, from the allowed 30' to allow the construction of a second story over the first story 2' 6" from the front property line.

The petitioner is requesting two (2) variances, from Zoning Ordinance No. 78, Article 27, Section 27.01.C.1.b

1. A 1'6" side yard variance, from the allowed 6', to build an addition 4' 6" from the side property line (north side).
2. A 1' side yard variance, from the allowed 6', to allow the construction of a second story on the current home 5' from the side property line (south side).

Mr. Dustin Kary, 362 Shorewood Ct, the applicant was present. He introduced his wife, Katelyn Kary.

Mr. Kary explained that they actually had stakes in the back but had a problem with the surveyor, Kennedy Surveying. It was Mr. Kary's opinion that the surveyor did not want to do his job. Further, the surveyor came onto his property without consent and pulled out the property stakes he had placed. Mr. Kary said they are trying to get another surveyor to come out. Mr. Kary said that is why there were no stakes when the Members visited.

Mr. Kary said they are planning on going (building) over the existing foundation that was originally put there in 1918 or so. They are just going to go straight up from there. He noted that the 1' 6" request from the street side, the street was "grandfathered" in; the street was put in after the house was built. He indicated that his neighbor that was here tonight may also have the same issue; the houses come up pretty much to the street.

Mr. Kary noted that when they bought the house they thought they had parking. They now have issues with neighbors because they have to park across the street. He explained that the previous owner built a room into the garage to increase the square footage of the home. The previous owner told the Karys that there was parking on the side of the house however they are being told that space is not theirs. Therefore, what they want to do is build a garage at the back of the house.

Vice Chairman Durham asked if a variance for the new garage was on tonight's agenda? Mr. Kary said, it was. Vice Chairman Durham then asked where Mr. Kary was planning on putting the garage? Mr. Kary responded where the transformer was that Vice Chairman Durham had commented on. Vice Chairman Durham inquired if Mr. Kary has enough property on that side of the house? Mr. Kary said, yes. Vice Chairman Durham asked how far over from the house does he own - looking at the front of the house to the left? Mr. Kary responded that from the survey they did, they have about 1 ½ ft. from the front corner, then the property goes on an angle, by the time it gets to the back of the house, there is about 5 ft. and then continues on at an angle; it increases in square footage as it gets further back. The opposite side of the house is at the same angle.

Vice Chairman Durham asked if Mr. Kary had a builder look at this, if so, do they feel the foundation will carry the weight of the proposed addition above? Mr. Kary responded, yes to both questions. Vice Chairman Durham commented then when he was there, it (the foundation) looked old.

Board Member Walker asked when did the Kary's buy the house? Mr. Kary replied, June 30, 2017. Board Member Walker then clarified "and you didn't realize you didn't have any parking"? Mr. Kary responded that they were told they had parking on the side lot and according to Kennedy's survey, they have 4 ½ feet on that side - they have 8 ft. at the one corner and then it gradually decreases; by the time you get to the back of the property, it is about 6 ft. The problem is, again, getting a surveyor out there. It took him 3 months just to get Kennedy there and then they didn't want to finish the job. Mr. Kary asked if the Board would like to see the letter he received from Kennedy when they sent them back their money. Mr. Kary reiterated that weeks later (after placing the stakes), Kennedy out and pulled the stakes.

Board Member Walker then asked, didn't the mortgage company do a survey? Mr. Kary said the mortgage company has the survey from the Township and did not do a separate survey. Mr. Kary repeated that they tried to get their own survey via Kennedy Surveying.

Board Member Cook commented that stake wise, when Board Members visit a site that is something they look for, to get an idea of what the dimensions will be of what is planned to go on there. He said regarding the garage piece, when Mr. Kary mentioned it, he didn't realize that piece until he got to the last page of the packet information. It wasn't included on Mr. Kary's sketches which just accounted for the upper level space on the house. Not until the last page does it show a variance for the garage itself. Board Member Cook said he was a little confused. Board Member Cook showed Mr. Kary what he was looking at.

Mr. Kary explained the space Board Member Cook thought was a garage was actually living space; the first 6 ft. is shed and then there is wall and the rest is a bedroom.

Mr. Kary went on to talk about some of the issues he had with one of his neighbors. One being the neighbor put a swing on the Kary's property saying the property was theirs. Vice Chairman Durham commented that it sounds like this may be a neighborhood dispute, however tonight they are here to talk about the drawings in front of them.

Trustee Flood pointed out the attorney letter that was provided which indicated there was some "accretion" of land in this case from the gradual recession of the water's edge and therefore for the purpose of determining the variance request, the appropriate measurement and calculation for setback and lot coverage should go by the water's edge and not the 1903 plat.

Vice Chairman Durham asked that when doing the drawings, did Mr. Kary take the back lot line as the water's edge? Mr. Kary said, yes. Vice Chairman Durham clarified, then, that there is no disagreement there. Mr. Kary concurred.

Mr. Kary commented that relative to the R-3 zoning, one of the district requirements was a minimum of 8,400 sq. ft. lots. Their property, even to the water's edge, is only 5,800 sq. ft. There is also a maximum of 25% lot coverage and their lot has to adhere to the same criteria as lots that are substantially over 8,000 sq. ft. In fact, currently they are already over the maximum lot coverage at 26%.

Vice Chairman Durham responded that there have been many cases before them pertaining to lots that are sub-standard by today's standards around those lakes.

Building Official Goodloe clarified that they did not get a survey of the property. Mr. Kary said they did get a survey but never received the paperwork. Building Official Goodloe then asked if Mr. Kary feels confident in the numbers he is presenting, if the variances are approved tonight, the numbers will come in correct? Mr. Kary said, yes, those numbers were based off what he got from the Township. According the survey he had done, on the north side, "its" further than the setback. Building Official Goodloe noted that if Mr. Kary's request is successful tonight, the Building department will ask for an "as-built" when the project is completed - to show where the house is on the property.

Board Member Walker asked Mr. Kary if he has an architect? Mr. Kary said, no, that he knows auto-cad but will eventually hire an architect. When asked, Mr. Kary said that he didn't draw up these plans, he paid a licensed builder to draw them up. Board Member Walker then asked if Mr. Kary took the measurements himself? Mr. Kary said, he has taken them himself, took them again with a builder and took them with his wife. Regarding the documents submitted, Mr. Kary said the measurements on them were taken by the builder.

Vice Chairman Durham said he understands that Mr. Kary tried to get a survey and it fell through, does he plan on hiring another surveyor? Mr. Kary said, yes, but is having an issue finding one to come out to Lake Orion. Vice Chairman Durham then asked, if Mr. Kary is successful tonight, would he agree to have the "permit drawn" with the numbers from his private surveyor? Mr. Kary said, yes. Again,

Building Official Goodloe said the building department will ask for an as-built for the project. Building Official Goodloe wanted Mr. Kary to be aware that if “it” comes in under, Mr. Kary would have to come back before the ZBA.

Mr. Kary asked if the Board could give him any referrals for a surveying company? They could not, that the Township does not endorse anybody.

Vice Chairman Durham asked if there was anyone from the public that would like to speak?

Mr. John Bettin, 376 Shorewood Ct., the neighbor to the north, spoke. He thought that the 1’ 6” variance was on the road side which is already tight. However, it is now his understanding that the variances the Karys want it is for the new construction in the front. As Mr. Kary had said, the property goes on an angle. Mr. Bettin asked, if his understanding was correct, the property is 4’ 6” from the property line and with the requested 1’ 6” variance, the Kary’s will be within 3 ft. of the property line? Building Official Goodloe said, no, the distance from the property line would be 4’ 6” if granted.

Board Member Cook asked again about the survey – he said he realizes Mr. Kary trusts the numbers he provided and they are based on what the Township provided, but a survey would probably be the best thing to have. Also, based upon not seeing the stakes, he would not be comfortable moving forward with this in the affirmative. It was his opinion that a survey would be a key point to what they (the Karys) are asking for.

Board Member Walker said he was not happy with what was presented tonight and asked if the Karys went inside the house before they bought it and if they knew what looked like a garage was not a garage? Mr. Kary said they did go in the house but where told they would have parking alongside the house by the real estate agent and the broker, that there was one parking space there which they found out later they do not have. Mr. Kary reiterated the difficulty he is having finding a surveyor to come out. He referenced a letter he received from Kennedy who disputes the fact that the Karys own the accredited land and that they only own the land shown on the plat from 1918.

Board Member Koscierynski suggested that the request be postponed, if the applicants are willing, until they can get a survey. Building Official Goodloe commented that if that is the direction, the case would have to be postponed to a date certain. Board Member Koscierynski concurred with Board Member Cook that without stakes, it is hard to make a decision.

Vice Chairman Durham said if they applicants want, they could postpone until the March 26th meeting. He recapped where the Board was coming from: The Karys can ask to have a vote on what they presented tonight however if it is denied, they have to come back with a different approach. They will not be able to come back with the same request.

Mr. Kary asked to be postponed until the March 26th meeting and if he could get a copy of the meeting recording for surveying purposes? Mr. Kary again said he believes Kennedy was not allowed to come onto his property and remove the stakes, he wants something to prove that he has incurred a hardship.

Building Official Goodloe said if he knows where one of the corner stakes is, he could run a string from corner to corner. The Board Members want to know from the property line where the proposed new structure will be; it will be the Building department’s business to make what is being proposed is built correctly. Board Members want a visual of where something is going relative other properties. Mr. Kary said it was his intention to give the Township an actual survey.

Vice Chairman Durham said he would appreciate it if Mr. Kary would try and improve the drawings he provided. He didn’t need to have it professionally done but if he could make them easier to read.

Recording Secretary Harrison commented that she believed the Board Members also want to see stakes where the Karys plan on putting the garage as well. Vice Chairman Durham suggested that once they have their property staked, to spray paint around the stakes in case they come out.

Moved by Board Member Koscierynski, seconded by Board Member Cook to postpone AB-2018-04, Dustin Kary, 362 Shorewood Court, 09-03-405-013, for the above noted variances, until the March 26, 2018 ZBA Regular Meeting.

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

Motion Carried 5-0

Ms. Kary asked if the plans they redo have to go to the Planning & Zoning Department or can they just bring them to the meeting on March 26th? It was noted they need to submit them to the Planning & Zoning Department prior to the meeting.

AB-2018-05: Admiral Real Estate, LLC, 799 Lapeer Rd, 09-11-477-033

Vice Chairman Durham read the petitioner's request as follows:

The petitioner is requesting nine (9) variances, from Sign Ordinance No. 153, Section 7, Non-Residential Wall & Ground Sign, GB

1. A variance allowing seven (7) additional wall signs above the allowed one (1) per establishment.
2. A 74.77 sq. ft. variance above the allowed 13.88 sq. ft. to construct an 88.65 sq. ft. wall sign on the North facing canopy.
3. A 74.77 sq. ft. variance above the allowed 13.88 sq. ft. to construct an 88.65 sq. ft. wall sign on the South facing canopy.
4. An 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Southeast facing canopy.
5. An 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Southwest facing canopy.
6. An 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Northeast facing canopy.
7. An 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Northwest facing canopy.
8. A 32.6 sq. ft. variance above the allowed 6.05 sq. ft. to construct a 38.65 sq. ft. wall sign on the West facing canopy.
9. A 32.6 sq. ft. variance above the allowed 6.05 sq. ft. to construct a 38.65 sq. ft. wall sign on the East facing canopy.

Mr. Patrick Stieber, 33650 Giftos Drive, Clinton Township, MI, presented.

Vice Chairman Durham said they come across things similar to this a lot – restaurants, gas stations, etc. - businesses that come in with corporate sign requirements. However, nobody in Lake Orion has ever come before them with anywhere near what they are asking for tonight. Vice Chairman Durham said they like the spirit of compromise and because of the magnitude of what the petitioner is asking for, he would not be in favor of the requested variances.

Trustee Flood explained that this is what is happening with these canopies, referring to the design in the packet, all the blue and red striping is considered signage. This is why the numbers get skewed. He noted the Board had the same situation with Speedway on M-24 and the new Marathon station (the

old Clark station) on Baldwin Road. When all that paint is added up, it takes almost all the allowed square footage away. The way the Sign Ordinance is written, that (color) is considered part of the sign.

Board Member Koscierynski asked the other Board Members where the gas station was that just came in? It was the Marathon station on Baldwin. She then reiterated that a lot of these kind of requests come before them – signage that is required by corporate standards. She agreed with Vice Chairman Durham that this request is a lot however likes it when business want to spend money and make things look nicer.

Vice Chairman Durham commented that he was sitting in the parking lot facing north when he visited the site and it occurred to him that the signage on the east end and the ones on either corner of the canopy will not be visible by anybody. To the east is an old restaurant and no traffic, maybe that is something they could give up without interfering with visibility up and down M-24.

Mr. Stieber said he understands Vice Chairman Durham's concern. He then explained that Admiral has been involved in a reimage program in Michigan with about 50 locations switching to Marathon. He said they submitted for sign permits and thought it was just for the Marathon copy on the canopies – the striping was current and already there. He said he has never heard of striping being included in sign sq. footage – he thought they were submitting for signage that was actually under square footage requirements. The Marathon words themselves are only 11.69 sq. ft.

Mr. Stieber said the Township then got back to them and informed them of the situation – the sign is everything including the stripes. In his opinion the stripes are part of the architectural enhancement of the corporate branding – not signage, just paint stripes on the canopy. He noted that striping is a very important to the station's identification. Having this branding on the canopy with these colors is important, just having the colors alone and eliminating the letters would be something they would rather have if it came down to it. They (corporate) didn't really think that the striping would be an issue. Mr. Stieber said they have been involved in 50 of these reimagining within the State and this is the first one that where these variance issues have come up. Everyone involved in this project was surprised and thought the proposed signage was under square footage requirements; meeting code.

Mr. Stieber said he believes there is a hardship in this case being the lack of identification – having the branding on the canopy as it is shown will give them the identification they need. He said he understands Vice Chairman Durham's comment about the east side of the canopy – it was included on that side for symmetry reasons.

It was also Mr. Stieber's opinion there would be no detrimental affect to the surrounding area. Looking at the Admiral canopy, it has the same striping around the entire thing and the only thing Marathon is doing is changing the size of the stripes per the new corporate branding. It is existing that way and, yes, they are modifying that a little bit and adding the lettering - which he thought were the signs.

They are here tonight to get the Board's feedback on the request and understands Vice Chairman Durham's concern about approving a variance of this magnitude however they do not agree it is a variance of that magnitude. They don't agree that the striping should be included as signage.

Vice Chairman Durham commented that there is a Marathon sign on M-24 that can be seen from at least a ¼ mile in either direction. Mr. Stieber agreed, but having the additional signage on the canopy is definitely something that is very important to the business and important to the branding. He noted that if the canopy were a solid color, that wouldn't be included in the square footage calculation of the sign but because it is stripes, it is counted in the signage square footage.

Board Member Walker noted a couple of years ago when this started "showing up" in the Township, he thought these requests were crazy and why would someone need all these things? About that same

time, he took a trip to Ohio and began noticing many of the gas station signs and they all look like what is being requested tonight. He once was very much against these signage variance requests but is beginning to change his mind – this is the way it is done in the gas station industry. He can understand why Mr. Stieber thinks the striping shouldn't be considered part of a sign, but can also see why the Township see it as part of the sign – because the ordinance calls it a sign.

Board Member Walker then asked about the signs on the building? Mr. Stieber said the existing building has some signs on it now, they would be willing to remove them if they have to, to keep the canopy as proposed, it is that important. Mr. Stieber said they want to work with the Township, the building signs are secondary compared to getting the branding on the canopy.

Vice Chairman Durham asked Mr. Stieber how he would feel about losing the “Marathon” on the west face, the one that points directly at M-24? Being there will be two on the corners that traffic will see. Mr. Stieber said he agreed and that would be something they would be willing to give up. In the request, it would be referring to #8. Mr. Stieber said losing the lettering, in his opinion, wouldn't hurt anything but for consistency around the canopy, the striping should remain, especially the way the canopy is angled.

Trustee Flood concurred, he liked the idea of them removing the lettering from that side of the canopy, on the Lapeer Road side.

Vice Chairman Durham clarified that there is no lettering on the east side, that it is all striping. Mr. Stieber said that was correct.

Vice Chairman Durham asked if anything was going to change with the pumps? Mr. Stieber said he wasn't aware of any changes. He noted there is existing copy on the building and there is nothing going to be done with that.

There was discussion by the Board Members if eliminating the wording on the west facing portion of the canopy reduces the number of variances requested from 9 to 8. It was noted that the variance requests only pertained to the signage on the canopy which is considered “wall” signage.

Trustee Flood commented that technically there would still be 7 additional wall signs above the one allowed because the striping will remain on the west facing portion of the canopy. He wanted to make it clear in the motion that the word will only be removed from that portion of canopy.

Mr. Stieber said the way he reads the request is they are allowed one wall sign but are asking for 8 and therefore need a variance to allow 7 additional - one is for the number of signs and then each of those signs has a variance for square footage. Vice Chairman Durham noted that ordinance language is what that has put them in the position they are in.

Moved by Trustee Flood, seconded by Board Member Walker, that in the matter of ZBA case #AB-2018-05, Admiral Real Estate, LLC, 799 Lapeer Rd., 09-11-477-033, that the petitioner's request for a non-use variance from Sign Ordinance 153, the petitioner is requesting eight (8) variances from Sign Ordinance 153, Section 7 Non-Residential Wall & Ground Sign, GB: 1) a variance allowing seven (7) additional wall signs above the allowed one (1) per establishment, 2) a 74.77 sq. ft. variance above the allowed 13.88 sq. ft. to construct an 88.65 sq. ft. wall sign on the North facing canopy, 3) a 74.77 sq. ft. variance above the allowed 13.88 sq. ft. to construct an 88.65 sq. ft. wall sign on the South facing canopy, 4) an 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Southeast facing canopy, 5) an 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Southwest facing canopy, 6) an 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Northeast facing canopy, 7) an 18.45 sq. ft. variance above the allowed 3.43 sq. ft. to construct a 21.88 sq. ft. wall sign on the Northwest facing canopy, 8) will be struck, the Marathon sign to come off on the west side of the road, and 9) a 32.6 sq.

ft. variance above the allowed 6.05 sq. ft. to construct a 38.65 sq. ft. wall sign on the East facing canopy; be **granted** because the petitioner did demonstrate that practical difficulties exist in this case in that they set forth facts which show that in this case compliance with the strict letter of the Ordinance would unreasonable prevent the petitioner from using the property for a permitted purpose or render conformity with the Ordinance unnecessarily burdensome based on the following findings of fact: this is a refueling station canopy and the reason for the number of variances from the square footage requirement is because of all the paint, the blue and the red paint on the canopy, is what the majority of the variances are for, there are only going to be two (2) signs on it, two (2) Marathon logos; the petitioner has agreed to take the logo off facing Lapeer Road; **granting** the variance request would do substantial justice to the petitioner as well as to other property owners in the area and there is not a lesser relaxation then the relief applied for that would give substantial relief to the property involved and be more consistent with justice to other property owners, there are no other alternatives based on the following findings of fact: with refueling stations now, this is the type of branding used just about nation-wide; the petitioner's plight is due to unique circumstances of the property based on the following finds of fact: it currently has an existing canopy and has coloring on it already, with the new Sign Ordinance and the way signs are calculated, the fact that there is any color on the structure is considered part of a wall sign.

Discussion on the motion:

Board Member Walker commented that Trustee Flood had indicated that the Board was going to deny #8 of the request, but in reality the Board is denying the word "Marathon" from #8 but still allow the color striping.

Trustee Flood amended the motion, re-supported by Board Member Walker, that "Marathon" will be taken off (from the west facing canopy) but the blue and red lines may stay consistent with the rest of the canopy.

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

Motion Carried 5-0

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

Memos from Planning & Zoning Coordinator Frey regarding the Ordinance 99 site walks

Memo from Planning & Zoning Coordinator Frey regarding possibly cancelling the March 12, 2018 meeting due to lack of agenda items.

Moved by Trustee Flood, seconded by Vice Chairman Durham, to cancel the March 12, 2018 Regular ZBA Meeting. **Motion Carried**

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Board Member Walker thanked the resident on Shorewood Ct. who was filling pot holes with mud from the side of the road.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Board Member Koscierynski, to adjourn the meeting at 8:02pm.
Motion carried.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lynn Harrison".

Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

March 26, 2018

Zoning Board of Appeals Approval