

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

### REGULAR MEETING – MONDAY, MARCH 26, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, March 26, 2018 at 7:00pm 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

Don Walker, PC Rep to ZBA  
Lucy Koscierszynski, Board Member

#### **ZBA MEMBER ABSENT**

None

#### **CONSULTANT PRESENT:**

David Goodloe, Township Building Official

#### **OTHERS PRESENT:**

Gary Rzewnicki	Dustin Kary
Nick Dixon	Audrey Rocco
Heather Dixon	Lynn Harrison
Katelyn Kary	

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

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

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

As noted

#### **3. MINUTES**

##### **02-26-2018, Regular Meeting Minutes**

Moved by Vice Chairman Durham, seconded by Board Member Koscierszynski, to approve the 02-26-2018 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**

Chairman Yaros 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 and his wife Katelyn, 362 Shorewood Ct, the applicants were present.

Chairman Yaros said he had a hard time determining where the road was on their plans. Mr. Kary said that the left corner of their house is actually in the road and the other corner is about 2 ft. away from the road.

Vice Chairman Durham clarified that the road is a County Road. Mr. Kary concurred.

Vice Chairman Durham then clarified that it is their intent to turn the garage that is now living space back into a garage. Mr. Kary said, yes, a new garage will be built further back on the property with living space on top.

Trustee Flood commented that it was his understanding that the Karys were told they had parking space across from their house or beside it but they actually did not. Mr. Kary said they were told that and that it has now become a legal matter.

Trustee Flood commented that he appreciated them staking the property.

Vice Chair Durham asked if they will have to put the back portion on pilings, they will be close to the lake? The applicant responded he was not sure. Building Official Goodloe stated that the applicant would be required to provide a soil test when applying for a building permit.

Trustee Flood stated that they will have to meet all building codes.

Building Official Goodloe stated that the existing foundation will also have to be considered.

Board Member Koscierynski asked Mr. Kary if the additional time was helpful. He responded that it was.

Chairman Yaros mentioned that the applicant was seeking a lot of variances, they must have some very unique circumstances; 12% variance for lot coverage is a lot. Mr. Kary responded that it is not fair they are being held to the same standards as properties that are larger.

Board Member Walker clarified that the Zoning Board of Appeals is not holding him to the same standard as everybody else. They are holding him to the standards of the Township Ordinance. The Ordinance says certain things whether your property is bigger or smaller than everyone's.

Chairman Yaros asked if there were any more comments? There were not. He then asked for a motion.

Moved by Vice Chairman Durham, seconded by Trustee Flood, that in the matter of ZBA case AB-2018-04, Dustin Kary, 362 Shorewood Court, 09-03-405-013, 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 also 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); in this case be it moved that these non-use variances **be granted** because the petitioner did demonstrate that practical difficulties exist in this case, they set forth facts that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner to use the property for a permitted purpose or would render conformity with the Ordinance unnecessarily burdensome, they have a very small lake lot and are hemmed in by both sides and are limited to what they can do, currently they have no space for parking and the narrow road requires cars to be parked off the road for safety and traffic flow of the people in the neighborhood, there are no issues with the neighbors; the approval will give substantial justice to the petitioner as well as to other property owners in the area for the above reasons; the petitioners' plight is due to unique circumstances of the property based on the following facts: the topography is unique and the petitioners are trying to do the most they can with the property; the off-street parking is an important issue and is not a self-created issue and the petitioner is attempting to work with what he has.

Motion Amended by Vice Chairman Durham, re-supported by Trustee Flood to add that the original garage space must be reconverted back into a garage from living space, which demonstrates a hardship in this case.0

Roll Call Vote: Flood, yes; Koscierzynski, yes; Walker, yes; Durham, yes; Yaros, yes.

**Motion Carried: 5-0**

**AB-2018-06: Gary Rzewnicki, 1456 Kempster St., 09-10-307-032**

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article 5, Section 5.29, District: SR

1. A 10' side yard variance to allow a new home to be built 10' from the allowed 20' side yard setback.

Chairman Yaros thanked the applicant for the drawing/survey.

Mr. Rzewnicki, the applicant presented. He stated that his property is 2.13 acres and the side yard setback is 20 feet; the buildable area is a lot less. He is trying to build the home on top of the hill and will cut the hill off. He had boring samples done and was told that if the home could be placed the furthest north and west, he would be on the best soil possible. He was worried that three corners of the home would be on good soil and one would be on bad soil that would require pilings. He is okay with the pilings but is worried about the "difference".

Chairman Yaros commented on how oddly shaped the lot is. It is wide in areas that can't be built on and narrow in areas that can be used.

Mr. Rzewnicki commented that the road takes a twist and he is required to be 40 feet from it and puts the home further back.

Chairman Yaros commented that there is enough room to build.

Board Member Walker commented that it was difficult to find the home.

Trustee Flood stated that the applicant only requested one variance which is the side yard due to the Geo-Technical Group borings. Their recommendation suggested the home be built as far north and west as possible.

Chairman Yaros stated that another thing is the property is zoned SR which requires a 20 ft. setback. If it was in R-1, 2 or 3, it would be 10 ft. The soil borings prove a major hardship and he did not have a problem with the request.

Mr. Rzewnicki commented that the hill will be cut done as far as possible to drop the grade to 4:4 or 4:3.

Audrey Rocco, 1462 Kempster Rd. Ms. Rocco stated that she lives on the other side of the hill. She has an issue that the home will be built 10' from her lot line. She said they wanted to build a bigger home but kept it within the building envelope. Concerned about cutting into the hill and then keeping the hill up with a retaining wall which would make him even closer to her property, and then possible damage to the tree roots which could kill them. She stated that Jerry Moon, the previous owner, had one large lot then broke it up and sold it. She reiterated her concern that Mr. Rzewnicki has a large piece of property yet will be building the home close to hers.

Chairman Yaros asked how close her home was to the property line? She responded that her garage was 20 ft. from the property line. Chairman Yaros then said there would be 30 ft. between the two homes.

Vice Chairman Durham asked Ms. Rocco if the trees were planted by her or where they there when she built her home? She responded that they have been there for years but that she did plant about 10 evergreens there.

Board Member Walker asked when Ms. Rocco built her home? She responded she had been there about 22 years.

Chairman Yaros asked if there were any other comments.

Mr. Rzewnicki commented that the grade will be 4-5 feet and will have 10 feet to keep it. The embankment will be “stoned up” and doesn’t believe he will need a retaining wall.

Chairman Yaros then followed up by asking how many trees was Mr. Rzewnicki planning on taking out? Mr. Rocco stated earlier that the only place he could build was on the hill. Mr. Rzewnicki commented that the trees in question are on his property where he is going to build; there are four large ones and six little ones which most are dead.

Building Official Goodloe asked if the ones with red tape are coming down? The applicant responded yes, they will be removed.

Vice Chairman Durham asked if Mr. Rzewnicki would be agreeable to some arborvitaes there? Mr. Rzewnicki said there are some there now that will remain. Is trying to “hold the houses back the same”, getting into the embankment will help him.

Building Official Goodloe asked if there would be a basement, if so, would that then retain the earth? The applicant responded that the basement would retain the whole thing all the way up. The finished floor will be 4 ft up to the top of the grade; right now, it is at 1,004. The slope will be less than 45 degrees. Building Official Goodloe stated that the applicant may require a fence along his property line then, if it is higher than 30” off grade. He wanted to make sure Mr. Rzewnicki was aware of that; and that they would talk about the need for a retaining wall during the building permit process.

Trustee Flood commented that the only thing the Board should be discussing is the one set back, all other discussions are not applicable and are a building department issue. He further commented that both properties are zoned for 20' side yard setbacks which would be a total of 40' between the two homes. The applicant is asking to build his home 10' from the property line therefore a distance of 30' between the homes.

Building Official Goodloe stated that he only wanted to mention the questions about the grade due to the unique characteristics and what it would look like.

Trustee Flood then commented that without the variance the applicant would have to put pilings down. Chairman Yaros commented that he may have to do that anyway; but the question is the slope.

Board Member Walker asked if the picture in the packet was what the house was going to look like? The applicant responded, yes. Board Member Walker asked how large the home would be and due to the report, the applicant can't move the house somewhere else? The applicant responded the home was 2,500 sq. ft. and he wouldn't build it if he had to maintain the 20 ft. setback.

Audrey Rocco, 1462 Kempster Rd., asked that being the property has been for sale for the last year and Mr. Rzewnicki hasn't been able to sell it, would he actually be living there after the house is built?

Chairman Yaros asked Mr. Rzewnicki if he would be living in the home? Mr. Rzewnicki stated that the home would be his permanent address.

Jennifer Smith, address unknown. Was curious that there is property available where the house can be built however that area is an inconvenience or would require more of an effort, isn't that the property owner's issue. She didn't believe that someone should be allowed a variance when others had to build to meet the ordinance.

Chairman Yaros responded that the Zoning Board of Appeals looks at each case individually. The Board has to look at what is in front of them. The current applicant has an unusual lot and if there is a problem that can be rectified, that is why the Zoning Board is here.

Moved by Board Member Koscierszynski, seconded by Chairman Yaros, that in the matter of ZBA case AB-2018-06, Gary Rzewnicki, 1456 Kempster St., 09-10-307-032, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, Article 5, Section 5.29, District: SR 1) a 10' side yard variance to allow a new home to be built 10' from the allowed 20' side yard setback be **granted** because the petitioner has demonstrated practical difficulties exist in the case and have set forth facts that show that the compliance with the strict letter of the Ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose and would render conformity with the Ordinance unnecessarily burdensome based on the following: the results of the soil test borings from Hartlee Geo Technical Group; granting the variance would do substantial justice to the petitioner as well as to other property owners in the area and there is not a lesser relaxation than that relief applied for that would give substantial relief to the property involved and be more consistent with justice to other property owners based on the following: the basement will hold up the earth so there will not be the need for a retaining wall, the property is on a hill; the petitioner's plight is due to the unique circumstance of the property based on the fact it will be on a hill; and the problem is not self-created.

Roll Call Vote: Durham, yes; Flood, no; Koscierszynski, yes; Walker, yes; Yaros, no.

**Motion carried 3-2**

**AB-2018-07: Heather (Wilsher) Dixon, 682 Pleasant Ridge, 09-12-303-003**

The petitioner is requesting a variance from Zoning Ordinance No. 78. Article 27, Section 27.02. A.5.:

1. A variance to build a detached garage (14'3") which is 1' 9" taller than the principal structure (12' 6")

The petitioner is requesting 2 variances from Zoning Ordinance No. 78. Article 27, Section 27.02. A.8. (Up to ½ Acre):

1. A 248 sq. ft. variance above the allowed 1,150 sq. ft. total maximum floor area of all accessory buildings for lots up to ½ acre, to build a detached garage that would bring the total maximum floor area of all accessory buildings to 1,398 sq. ft.
2. A 312 sq. ft. variance above the allowed 750 sq. ft. maximum floor area for detached accessory buildings up to ½ acre, to build an 864 sq. ft. garage that would then bring the total detached accessory building square footage to 1,062 sq. ft.

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article 6, Section 6.07 District R-3:

1. A 10' front yard setback variance from the required 30' to build a detached garage 20' from the property line (Summer Ave.)

Heather and Nick Dixon, 682 Pleasant Ridge, the applicants were present. Ms. Dixon presented a letter to the Zoning Board of Appeals.

Chairman Yaros read the letter of approval by John Hart, 635 Pleasant Ridge.

Chairman Yaros asked why the garage could not be built closer to the house from Summer Ave? The houses are all in line on Summer Ave. The applicant responded that she was concerned about the sewer line that comes out from the back of the house and then turns and goes out to Pleasant Ridge. It would run in between where the proposed garage is and where the house is. Because it is the original sewer line, has concerns about all the original maple trees in the area and their tree roots getting into that line and it eventually needing to be replaced. In the current proposed location, it would be easier to get equipment in to make that replacement.

Chairman Yaros asked what the current distance was between the house and proposed garage? The applicants responded they were not sure.

Chairman Yaros estimated that the proposed garage was about 20 ft. The applicants agreed with that estimate. He then asked where the sewer line was located? The applicants stated they have an idea from the information they got from the Township.

Mr. Dixon stated there is a beautiful maple there that if it gets 10 ft. closer to the house, it would obstruct the driveway.

Chairman Yaros asked if the opening for the garage would be on the Pleasant Ridge side? The applicants confirmed that the opening would be on Pleasant Ridge, similar to the driveway from the house.

Chairman Yaros stated that he doesn't see the hardship of needing a 10 ft. variance. He then stated he can understand the rest of the request because they want to put a lift in the garage. The garage is not too large for the size of the lot. Chairman Yaros stated again he had a problem with the alignment of the houses and that everyone would be looking at the garage sticking out 10 ft. closer to Summer than the rest of the house.

Mr. Dixon commented, though, that everyone on the street has a different style house, steps, porches, etc. Chairman Yaros replied those differences pertain to the houses not the garages.

Trustee Flood concurred with Chairman Yaros regarding how close the garage would be to Summer.

Ms. Dixon stated the homes all are on an angle due to the road. The houses are all staggered but are all the equal distance from the road.

Trustee Flood stated he would be more comfortable knowing where exactly the sewer line was.

Chairman Yaros stated that he would be comfortable with the garage being 5 ft. closer to the home.

Trustee Flood stated that the property has two frontages. The applicants agreed.

Trustee Flood asked if there was an easement regarding the sewer?

Chairman Yaros responded that he didn't believe there was an easement. The applicant concurred. Chairman Yaros then asked if they should be able to find where the line goes into the house?

Building Official Goodloe said they should be able to find it.

Chairman Yaros then asked the applicants if they had "Miss Digged" the property? The applicant said they had but nothing came up.

Chairman Yaros said again he would be more comfortable if the garage was moved 5 ft. closer to the house.

Vice Chairman Durham said that history shows that if applicants are willing to work with the Zoning Board and minimize the variances, they sometimes have better luck. Vice Chairman Durham then asked the applicants what the purpose of the lift was for in a residential area?

The applicant responded that it is for maintenance on his classic car. Vice Chairman Durham followed up that it wouldn't be used for commercial work? The applicant said they would not use it for commercial work. The height of the garage is to accommodate the height of the lift. Vice Chairman Durham stated that a flag went up when someone wants commercial grade equipment in a residential zone, but they have stated it is for personal use.

Chairman Yaros asked if they make a shorter lift? The applicant responded that they don't.

Ms. Dixon stated that they would be open to working on the setback variance if it is the only hold back. Chairman Yaros stated, "he is only one vote".

Trustee Flood concurred with Chairman Yaros that he doesn't mind the size of the building but has concern about how close it would be to Summer Ave. He stated he would like it to be in line better with the other homes on Summer Ave.

Mr. Dixon asked if they could do 8 ft. as someone had previously mentioned? The Board Members concurred that they did not mention they would be ok with 8 ft.

Board Member Walker asked the other Board Members if it would help to know where the sewer line was?

Mr. Dixon commented that the tree is a concern about how far the garage can go closer to the house.

Trustee Flood asked if 5 ft. would work for the applicants? The applicants stated that 5 ft. would work.

Vice Chairman Durham asked Building Official Goodloe if the property does have two front yards and, if so, does that impact the building department? Building Official Goodloe responded, no.

Chairman Yaros commented on how normal two-front yard cases are. He also mentioned that moving it 5 ft. closer to the house allows for better sight distance on the corner.

Trustee Flood said that if the applicant were to agree to a 5 ft. variance, it would make the garage 25 ft. from the property line.

Board Member Koscierynski commented that she would like to put on record the 6 letters from neighbors who were not opposed to the variances:

Loren & Val Delcalise, 164 Summer St.  
Al Robnaptic, 167 Summer  
Gene Whitford, 675 Pleasant Ridge  
Ashely Carpenter, 690 Pleasant Ridge  
Marvin Bar  
Rick Vontris, 689 Pleasant Ridge

Chairman Yaros asked for any comments from the public. There were none.

Moved by Trustee Flood, seconded by Board Member Walker, that in the case of AB-2018-07: Heather (Wilsher) Dixon, 682 Pleasant Ridge, 09-12-303-003 that the petitioner request of a variance from Zoning Ordinance No. 78. Article 27, Section 27.02. A.5.: 1) a variance to build a detached garage (14'3") which is 1' 9" taller than the principal structure (12' 6"), the petitioner is requesting 2 variances from Zoning Ordinance No. 78. Article 27, Section 27.02. A.8. (up to ½ acre), 1) a 248 sq. ft. variance above the allowed 1,150 sq. ft. total maximum floor area of all accessory buildings for lots up to ½ acre to build a detached garage that would bring the total maximum floor area of all accessory buildings to 1,398 sq. ft., 2) a 312 sq. ft. variance above the allowed 750 sq. ft. maximum floor area for detached accessory buildings up to ½ acre to build an 864 sq. ft. garage that would then bring the total detached accessory building square footage to 1,062 sq. ft; the petitioner is requesting a variance from Zoning Ordinance No. 78, Article 6, Section 6.07 District R-3: 1) a 5' front yard setback variance from the required 30' to build a detached garage 25' from the property line (Summer Ave), be **granted** because the petitioner has demonstrated practical difficulties exist in the case and have set forth facts that show that compliance with the strict letter of the Ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose and would render conformance with the Ordinance unnecessarily burdensome based on the following findings of fact: wishing to store a classic vehicle and allow a lift to be used to store and work on it which is the reason for the height adjustment; 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 than that relief applied for that 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: 6-7 letters supporting the request from neighbors were received, the uniqueness of the property which is a corner lot, and the petitioner agreed to amend the variance from the front setback on Summer Ave. down by 5 ft.; the request was not self-created.

Trustee Flood amended the motion, Board Member Walker re-supported to add that the garage will not be used for commercial use.

Roll Call Vote: Walker, yes; Durham, no; Flood, yes; Koscierynski, yes; Yaros, Yes.

**Motion Carried 4-1**

**Clarification of the Motion on AB-2018-05: Admiral Real Estate, LLC, 799 Lapeer Rd, 09-11-477-033**

Chairman Yaros stated the motion was unclear from the last meeting. He then recused himself from the discussion and vote because he was not at the meeting when this took place. He did clarify that the Board did approve 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.

Trustee Flood stated they can't deliberate on this case as it was not reposted and the petitioner wasn't here. The request is simply to clarify the motion. The material from the Planning & Zoning Coordinator, Joe Frey, explained how sign square footage is calculated and that it is taken by the length and height of the area. In a Supreme Court ruling the Board has to stay content neutral.

Chairman Yaros commented that when the ZBA grants it, the content is taken out.

Moved by Trustee Flood, seconded by Board Member Walker, to approve the clarification of the motion to mean 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 was **granted**.

Roll Call Vote: Yaros (Recused); Durham, yes; Walker, yes; Koscierynski, yes; Flood, yes.

**Motion Carried: 4-0 (1 recused)**

**6. PUBLIC COMMENTS**

None

**7. COMMUNICATIONS**

None

**8. COMMITTEE REPORTS**

Memo from Planning & Zoning Coordinator Frey dated March 26, 2018 regarding Dan's Excavating site walk

Memo from Planning & Zoning Coordinator Frey dated March 15, 2018 regarding Calculating Sign Square Footage

Memo from Planning & Zoning Coordinator Frey dated March 15, 2018 regarding Dates Which Cases Can be Postponed

**9. MEMBERS' COMMENTS**

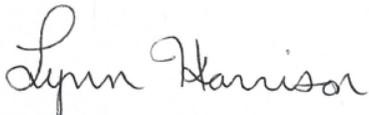
Trustee Flood welcomed Chairman Yaros back.

**10. ADJOURNMENT**

Moved by Trustee Flood, seconded by Board Member Walker, to adjourn the meeting at 7:51pm.

**Motion carried.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

April 9, 2018  
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Zoning Board of Appeals Approval