

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, APRIL 9, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 9, 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:

John Vidican
Michael Dufty
Greg Haase
Sheryl Haase
Brian Kelly

John MacMillan
Kim Long
Samantha Barbien
Rob Turnbull
Dale Long

Rob Cavanagh
Dennis M. Rauss
Don Ritenburgh
Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

03-26-2018, Regular Meeting Minutes

Trustee Flood noted a correction on page 3 at the top regarding the motion amendment. It was Vice Chairman Durham who amended the motion and Trustee Flood who re-supported.

Moved by Trustee Flood, seconded by Chairman Yaros, to approve the 03-26-2018 Regular Meeting minutes as amended. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2018-08: Greg Haase, 552 Fernhurst Court, 09-03-254-037

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 5 variances from Zoning Ordinance No. 78:

Article 6, Section 6.07, District: R-3

1. A 12 % lot coverage variance above the allowed 25% to build a new home and deck/stairway and allow a 37% lot coverage.
2. A 4% lot coverage variance above the previously granted 32% lot coverage to build a stairway from the deck for a 36% lot coverage

3. A 12.4' rear yard setback variance from the required 35' rear yard setback to build a deck 22.6' from the rear property line.

Article 27:

4. Section 27.01.C.1.b: A .54' side yard setback variance (south side) from the required 6' side yard setback to build a home 5.46' from the side property line (south).
5. Section 27.05.H: A 6' side yard variance to allow a 6' tall privacy fence on the south property line.

Mr. Greg Haase, 3610 Kings Point Dr., Troy, the applicant presented. Mr. Haase explained that he had previously been before the ZBA, roughly two years ago, to request variances (to build a new house on this property). At that meeting one of his neighbor's (Mr. MacMillan) voiced his opinion that he had concerns with the building of Mr. Haase's house and threatened a potential lawsuit.

Mr. Haase had a picture, which he presented to the Board, showing that Mr. MacMillan's deck and ramp extends onto his property. Since the meeting in 2015, Mr. MacMillan filed a lawsuit against Mr. Haase.

Mr. Haase said they went to court and Mr. MacMillan lost his case and was told he had to remove the deck, ramp and a shed. Mr. MacMillan appealed, lost again and now is taking the case to the Michigan Appeals Court.

Due to the above, some of the variances Mr. Haase is asking for today are potential variances in the event that the Michigan Appeals Court rules against him. Those potential variances relate to the side yard setback request – "A .54' side yard setback variance (south side) from the required 6' side yard setback to build a home 5.46' from the side property line (south)". Mr. Haase explained that because Mr. MacMillan is encroaching on his property, the side yard setback would be 5.46' if he were to lose the court case. If Mr. Haase wins the case, he would not need this variance. *It was noted that the variances were mis-numbered on the agenda, there were two #3s under Mr. Haase's case. Under Article 27: #3 should have been #4 - the language remained the same.*

Chairman Yaros clarified with Mr. Haase that he was granted more variances than what he was presenting tonight – an 18' variance from the front yard setback to be 12' from the road; a 25.2' rear yard setback (lake side); and a 2 ft. variance to be 28 ft. from the north side. Mr. Haase explained there is a fireplace that sticks out a little bit on that side and why that side needs a variance. Mr. Haase also noted that he has a side-entrance garage which required a variance of 2 ft. and his neighbor on that side (north) was ok with that.

Mr. Haase commented on the lot coverages that were noted on tonight's agenda – those figures were in the event Mr. Haase should lose the Michigan Appeals case. If he doesn't lose, those numbers would be less – lot coverage would be 34.88% which includes his future rear deck stairs.

Chairman Yaros clarified that Mr. Haase was granted 32% lot coverage and if he loses the lawsuit, he would be asking for 37% lot coverage from the 25% allowed.

It was noted that if variances #1, #4 and #5 are granted than #2 would be irrelevant.

Mr. Haase pointed out on the plans the yellow line that goes where the yard setback is, there is only a small portion of the deck that extends past the setback line, a little triangular piece. Due to the topography of the land which drops down about 10 to 12 ft. from where the stairs would be to where the back of the deck is. In order for him to get steps in there, he has to do turnaround steps and have them

come back towards the house. Chairman Yaros concurred that there is quite a bit of elevation change between the front and the back.

Chairman Yaros told the Board that if there is a motion or motions for approval, they will need to include the fact there is a pending lawsuit and the specific variance amounts would be dependent on that outcome.

Vice Chairman Durham commented that he personally has never seen anything like this; there is a lot of “moving parts” here. No matter what happens here, the Board won’t be certain where the house is going to go; they won’t know who wins the case or who loses the case. People who normally come in know specifically what they want and not, “I want this incase I don’t get that”.

Chairman Yaros said one of the problems, as he understands it, is this has been going on since 2015. The reason Mr. Haase hasn’t requested these current variances is because the variances granted in 2015 are still applicable and have not expired because of the pending court case.

Vice Chairman Durham commented that unless it starts to look that Mr. Haase may “burn through” this year’s building season, is there anything to be lost by waiting for the outcome (of the lawsuit) and then coming back with hard numbers?

Board Member Koscierzynski had the same concern, what they are looking at tonight is already based on an appeal. What we do tonight - is it going to matter? Mr. Haase responded that he had spoken to the Planning & Zoning Department (not the Building Department) who had talked to the Township Attorney and what he needed to do was to request these variances in the event he loses the lawsuit; then these would be the variance requirements he would need to build his house. Chairman Yaros said, this is only if the Board grants the additional variances which are over and above what was asked for originally (in 2015).

Board Member Walker asked, this is in the Appeals Court now? Mr. Haase said it has been with them for about 8 months or so; it was his understanding that the Appeals Court is very slow and when it will be heard was out of his control. Mr. Haase reiterated that he has already won two lawsuits against Mr. MacMillan so far. It was Mr. Haase’s opinion that Mr. MacMillan built his deck and ramp illegally and made that statement under oath. Mr. Haase said that Mr. MacMillan disclosed that he did not pull permits for the deck and ramp. Mr. Haase said he presented the Board with aerial pictures that show when the deck and ramp were built as part of his presentation in 2015. Regarding the 15-year statute of limitations to have that land granted to him, it has only been about 8 or 9 years that those have been “up there”. Mr. Haase believed he has undisputable evidence.

Chairman Yaros commented that if the Board grants 37% lot coverage, the motion should also include a lesser amount - Mr. Haase is asking for 37% but would cover a lesser amount of 34.88% depending on the lawsuit; therefore 37% would cover everything.

Trustee Flood clarified that variances were granted about 2 years ago however nothing has been done on the property because of the pending lawsuits? Mr. Haase responded, that was correct. Trustee Flood then said, in the same context, he doesn’t see Mr. Haase doing any of this until the lawsuit is settled. Why would he want to build smaller if he could build bigger?

Mr. Haase said he wouldn’t be building smaller, he is building the same house. The side yard setback variance of .54 ft. to be 5.46 ft. from the south property line will not cause him to have to build a smaller house. Trustee Flood asked if Mr. Haase if he will do anything if he should be granted these variances tonight, would he start digging tomorrow? Mr. Haase responded he would plan on starting to dig as soon as the frost lifts. Trustee Flood then said, depending on the outcome of the lawsuit – Mr. Haase might have to tear something down. Mr. Haase said, no, if he is granted the variance to the side yard

setback which is 5.46 ft., that would give him the setback he needs to build the house; instead of being 6 ft. from the property line, the house would be 5.46 ft. from the property line. The house and the footprint...everything stays exactly the same. Exactly how it was presented at the first meeting (in 2015). Nothing changes to the footprint.

Chairman Yaros said, however, there is a change and that is to the deck. Mr. Haase said the only reason the deck went up (the size) is because of the stairs, the stairs were not included in the original variance request and why he is coming to Board today with that as one of his requests. It causes him a rear yard setback variance, he will be going closer to the lake as well as increasing the lot coverage - he has no choice because of the topography of the land to do it any other way. Chairman Yaros said he probably could but he would then lose some of the deck.

Board Member Walker asked what has changed, why didn't he ask for these variances the last time he was here? Mr. Haase responded that the last time he didn't have a design for the steps, he didn't know how he was going to do the steps. What had changed between the last time and this time is they put the steps on the print where they were not on the print when he originally asked for the variances and why the plans show two different yard setbacks – the 25.2 ft. was from the corner of the deck to the lake. Now that they added the steps, there will be a 22.6 ft. setback from the nearest portion of the steps to the back of the property. He is not asking for 22.6 ft. for the whole property, it is just for the little triangular piece of the deck and the stairs that are shown outside of the yellow line on his plans. Chairman Yaros clarified he had the deck on the original plant but now has added the stairs which adds to the rear yard setback. Mr. Haase said, "and lot coverage". Mr. Haase said he will not obstruct any of his neighbors' views of the lake.

Chairman Yaros asked if there was anyone here that would like to speak to this matter?

The attorney for Mr. MacMillan, Dennis Rauss, 101 W. Big Beaver Rd., Troy, spoke. Mr. Rauss said he was here with Mr. MacMillan because they wanted to hear what was said and to answer any questions. Since he has heard what Mr. Haase has said, he wanted to give the Board some background. He stated that he has handled this case from day 1 but was not here in 2015 when the first variances were sought but has read the minutes. He is the attorney that handled the lawsuit referenced by Mr. Mr. Haase. The case was filed after the first variances were granted but had nothing to do with those variances and they are not claiming whether those should have been granted. Mr. Rauss believed that at that 2015 meeting, Commissioner Walker said if the boundary is changed by the lawsuit, Mr. Haase would have to come back and get new variances. The case was assigned to a judge at Oakland Circuit Court and was resolved. There was only one trial, one ruling. They lost at the trial court and the case is currently on appeal to the Michigan Appeals Court. Contrary to Mr. Haase, they have the opposite hope that the appeals court will reverse the judge's decision about the location of the boundary which is on the south side of Mr. Haase's property next to Mr. MacMillan's house who has lived there for 25 years. It is a claim of adverse possession; the trial court did not agree that their facts supported that claim. Mr. Rauss disagreed, and the Appeals Court will decide that. It has lingered in the Appeals Court. All the briefs are in and he expects the case to be scheduled for oral arguments sometime within the next two or three months and then shortly thereafter, resolved. If Mr. MacMillan wins and it goes back, it might linger some more in circuit court. The bottom line, in his opinion, this is premature. It was clearly said the first time if there is a lawsuit and the boundary is changed, they would have to come back. This house has sat empty for many years, Mr. Haase does not reside there and never has. Mr. Rauss said they are also under an order, a "Stay Order", which the judge granted. This basically says none of the rulings the judge made will go into place until after all the palliate remedies are exhausted. What that means is, Mr. Haase cannot touch the boundary, he can't do anything about forcing or asking Mr. MacMillan to remove the alleged encroachments which are primarily a deck on the side of the house, a ramp or stairs to the ground, and a shed that encroaches down by the water. Those things have been in existence ever since Mr. MacMillan has lived there. There never was any illegal building, that has never been any findings of illegality by any authority. They contended that the trial court and

the Appeals Court of appeals determine that Mr. MacMillan is entitled to have the boundary line relocated to the boundary that he recognize and existed for 25 years; this is what is in the court. Mr. Rauss said he doesn't know why Mr. Haase can't wait, it shouldn't be too much longer. The other main issue involving the south boundary line between Mr. Haase and Mr. MacMillan is that Mr. Haase is asking for a variance for a large fence. Chairman Yaros explained that a 6 ft. fence cannot be built within 10 ft. of a property line without a variance. Mr. Rauss commented that Mr. Haase never asked for a fence before and there is no fencing there now, it is all open. His point was that Mr. Haase has changed the plans since the lawsuit, he is now butting or pushing everything up against Mr. MacMillan's property. The garage will be over there now, the whole side of the house is going to be there - it encroaches all up and down and there has never been a fence. It was Mr. Rauss's opinion that Mr. Haase was trying to send some sort of message with the fence. Chairman Yaros said, to clarify what the request is – they are not really involved in so much as the deck on the other side of the house or the stairs or the lot coverage, what they are interested in is the south side of the property where Mr. Haase has requested a .54 ft. variance to build a home 5.46 ft. from the "new" property line if that comes into effect with the lawsuit. Mr. Rauss said that was not totally correct, if Mr. Haase wins and the boundary is located where he says it goes, there will only be about 3 or 4 ft. from the side of the house based on the drawings his architect prepared. It was Mr. Rauss's opinion that Mr. Haase misrepresented to the Board that it is only going to be a variance issue if he loses the lawsuit – that is not true. It will always be an issue. The point is, there would probably be more room if Mr. Haase moved the whole footprint further to the north. It would then take all the south side variance issues out. The point he wanted to make is the lawsuit is pending, the appeal is almost over, they have a stay from the circuit court judge that says they cannot touch anything there. They cannot do anything that is in that disputed area on either side. Mr. Haase wouldn't be able to build the fence even if he got the variance, it would in the disputed area. Mr. Rauss said he anticipates appeals to usually take 12 to 18 months and this appeal is now a little over a year old, he believes they are on track for a resolution.

Chairman Yaros asked the Board if they had any questions for Mr. Rauss or Mr. MacMillan?

Vice Chairman Durham asked Mr. MacMillan if he had a current survey for his property? Mr. MacMillan responded, only the survey he got when he purchased the house, the mortgage survey. Vice Chairman Durham then asked if that indicates if the boundaries are where he thinks they are? Mr. MacMillan said, yes.

Chairman Yaros asked if the court requested a regular survey, from a registered surveyor? Mr. Rauss responded, that it was a weird trial. Mr. Haase had a survey done around 2014 and surveys are what usually causes boundary disputes. Chairman Yaros said the survey he had was from Keift Engineering, a registered land surveyor, and that it was signed. Mr. Rauss said there was no prior one ever. There was a mortgage report, other surveys and the judge didn't allow those into evidence at the trial. The judge said the boundary should be in another area based on surveys he obtained, he had a mortgage survey which is not a boundary survey. Mr. MacMillan also had a drawing done by an architect; he was going to remodel his house several years ago which would need some variances. Mr. MacMillan changed his mind and it was never done.

Mr. MacMillan said he wasn't sure where the fence would be that Mr. Haase was requesting. Chairman Yaros commented that Mr. Haase was requesting it on the property line – if he loses. Building Official Goodloe said it is on the south property line. It was believed then, that the fence would go through where Mr. Haase's deck and steps would be; which makes this seem even more premature. Especially since the judge said they can't touch that area.

Chairman Yaros asked Mr. Haase where the privacy fence was going to go? Mr. Haase said, wherever the property line is granted after the lawsuit is over, that is where he is planning to put it. If he loses the lawsuit, then it will go 5.46 ft. from the property line.

Chairman Yaros said he too has the opinion that there is just too many “if comes”, etc.

Trustee Flood commented that the other variances were granted because they determined there was a hardship based on the property’s topography. Now there is a dispute in court as to where the property lines are, which has nothing to do with this Board. However, the Board does need to take that into consideration. Trustee Flood said that since he has served on this Board, he has never had to make a rendering on something that is involved in a court case – “if or and or”, on any variances. He said he was not comfortable at all granting any type of variance unless he knows 100% exactly what he is granting - for the relief of all the residents in the community.

Chairman Yaros asked Building Official Goodloe, would the Building Department hold this in advance until whatever the resolution is from the court? Building Official Goodloe responded, yes, they cannot make an assumption. If Mr. Haase comes in with a plot plan and it shows the house to be 5.46 ft. off the property line, they will require an as-built when the house is finished and if it is not, Mr. Haase will have to take it down. In his opinion, everything would be contingent on the court case.

Trustee Flood asked if Mr. Haase could request a postponement until the court case is cleared up? Mr. Haase, said he has waited two years already for this build; building costs have gone up, lumber has gone up, interest rates are going up – he does not want to wait any longer to start the build. Mr. MacMillan has delayed him over two years, he is pleading with the Board Members to grant him worst-case scenario variances. If he loses the lawsuit, the 5.46 ft. side yard variance is the only one that concerns Mr. MacMillan. He would still be within the building variance to build the house on that side. Mr. Haase said if he loses and the Board grants him the .6 ft. (6”) variance, he would still be within his right to build the house - he cannot build the house unless he gets that variance.

Trustee Flood said if Mr. Haase loses the lawsuit, the previous variances that were granted by this Board are still in affect? Mr. Haase said he was told that the Township’s attorney said all he would have to do is show them a copy that the lawsuit was still in progress and that all his variances that were previously granted would be “grandfathered” to him.

Trustee Flood commented, so then if Mr. Haase wants to do what he presented tonight, and he wins the lawsuit, he would have to come back to the ZBA again and go through this whole process again. Mr. Haase said, if he wins the lawsuit, the only relevant request today would be where the deck steps will be from the rear setback and he would still need a lot coverage variance. Trustee Flood said, and what about the fence? Mr. Haase responded that according to the Township, he can build a 4 ft. tall fence on the property line and he is asking for 2 ft. (the fence to be 6 ft.) which requires a variance. It is not the fact that he is building the fence on the property line but instead of a 4 ft. fence, he wants to build a 6 ft. fence.

Chairman Yaros said the problem he had was that he doesn’t know what the judge is going to say. He may change the property line to something totally different. The Board does not know what that will be. The only thing Chairman Yaros would be comfortable with is increasing the lot coverage because of the stairs to the deck; he doesn’t have a problem with that. Not having those stairs poses a safety factor and would be a hardship, especially because of the topography there. At this point, it was his opinion, the variances for the added deck stairs are the only things Mr. Haase should be asking for.

Mr. Haase said he needs the side yard variance to the south. The Building Department said that for him to pull a building permit, he must have that setback variance granted. They will not allow a building permit to be issued and was one of the reasons he came before the Board tonight. He noted that he made the Building Department aware that there was a lawsuit going on and that his neighbor, Mr. MacMillan, was claiming rights to some of his property. That is when he had his architect come in and show the .6 ft. (6”) setback to the side yard.

Building Official Goodloe clarified that Mr. Haase has been dealing with the Planning & Zoning Department and not the Building Department.

Trustee Flood asked if Mr. Haase had to re-file and pay another fee to bring this here tonight? Mr. Haase said, yes, it was \$200. Trustee Flood then explained that if Mr. Haase chooses to postpone pending the court case and brings this back again, would that fee be waived? Chairman Yaros said if it is postponed, yes.

Building Official Goodloe asked, if this is his property right now, why is the Board talking about a court case? Why doesn't the Board use what the property line is now? The issue is between the court and these two property owners. When the Building Department gets a survey, they look at where the property lines are. Why is the Board looking at what is potential, why don't they look at what was presented? It was his opinion the Board should go by what the survey shows.

Board Member Walker said, that is not what Mr. Haase is asking for. He is asking for "one from column A or one from column B". In all his years of being on the Board, he has never heard of such a thing. Petitioners come in and ask for variances for "this, that and that". Mr. Haase doesn't have that, he has a variance for this, that and that if he wins and variances for this, that and that if he loses.

Mr. Haase asked if he was granted the variance to the side yard setback of the 5.46 ft. and he was to build further away from the property line than that, would that be an issue with the Building Department? If he wants to build 5.46 ft. from the property line and eventually he ends up building 6 ft. from the property line, is that a problem? Building Official Goodloe responded, not at all. Mr. Haase said that is all he is asking here. He is just asking that if he gets the 5.46 ft. granted then he doesn't have a problem - if he wins or loses the lawsuit. Building Official Goodloe said that Mr. Haase has to realize that if he is granted a 5.46 ft. variance and he wins the lawsuit, he could build 5.46 ft. (from the property line determined by the judge) and then encroach more onto what Mr. MacMillan believes is his property. Mr. Haase said even if he wins, he is not going to change the position of the house, the house will stay in the same place. Building Official Goodloe said he understands that but when the Building Department does something, it is in "black and white" it is not in "if I'm not going to do it or I am going to do it". If the ZBA grants him the variance to be 5.46 ft. from the side property line and he wins the case, he you can go 5.46 ft. from the south property line. Building Official asked if what is being argued over is 2 ft.? Mr. Haase said, ".6".

Vice Chairman Durham said his biggest concern is that they may inadvertently blunder into something, involving the south property line, that may be contrary to what the court sets down. He doesn't want to jump blindly into this. When the facts are in, Mr. Haase obviously has a wonderful desire to live there, hopes he can in the way he wants to. But because there are still some facts out there, he was concerned.

Mr. Haase asked to add one other thing - a question was asked of Mr. MacMillan's attorney about other surveys that were performed. He had presented those surveys to the Board at the first variance meeting. There were two surveys he requested from the Township; the Township has those two drawings and both do not show a deck or a ramp on Mr. MacMillan's property. So he has two surveys that he had done, one was in 2010, that do not show the deck or ramp; neither one of them shows encroachment onto Mr. Haase's property. Mr. MacMillan is under oath saying he built them without a permit. Chairman Yaros said that is not... our problem is granting something that...Mr. Haase interjected and said, they lied to the Board. Chairman Yaros said, that court could still change that property line and that is the problem he has. The Board doesn't know what the final ruling will be. Mr. Haase responded that the worst-case scenario here is .6 ft. (.6").

Chairman Yaros explained to Mr. Haase, that the Board can vote on what he is asking for tonight or he can ask for something else. He asked Mr. Haase what is his request? Mr. Haase said at this point and

time, the fence itself, if that is an issue, will take that off the request but he will still need a .6 ft. (6") variance from the side yard setback, a variance for lot coverage and a variance for the rear yard setback for the deck and stairs. Mr. Haase said if he is granted the .6 ft. (6"), he can pull a building permit and can start building the house.

Board Member Koscierzynski clarified that even if Mr. Haase loses the court case and he is granted the .6 ft. (6") variance, he is not changing the location of the house, the house is staying exactly where it was. Mr. Haase responded that Mr. Rauss said that the blueprints changed, the blueprints never changed, they are the same prints that were presented to the Board the first time; the same prints that were presented today. Nothing has changed to the footprint of the house.

Chairman Yaros commented that the only thing in dispute is the south property line with the court. The court is the one that will determine that south property line, correct? Mr. Haase said, yes. Chairman Yaros said either it will stay what he has it or it will change to something else. His question still was, does Mr. Haase want them to vote on this or postpone it?

Mr. Haase responded that he has to have a vote, he has a builder lined up, contractors lined up - everything is ready to go. He needs a building permit and needs the .6ft. (6") variance granted.

Vice Chairman Durham noted that Mr. Haase has heard what has been said tonight, he has been able to gage the "temperature" of the Board. Hopefully he has thought ahead to what a hard denial may do to him if that in fact is what happens. If he is denied, how badly is it going to alter the plans he has? If he asks for a vote, that is the chance he is taking. Mr. Haase said, he would have to move the house over .6 ft (6") and then have to ask for a new variance for the side setback for the side-turned garage because he would then be .6 ft. (6") closer to that side of the property line and may affect .6 ft (6"), or something, of the placement of the deck steps. It would move the house .6 ft. (6") over to the left.

Vice Chairman Durham said, personally, that he apologizes that .6 ft. (6") has caused such a miserable mess and that Mr. Haase is jammed up like this but he can't do anything about it. Vice Chairman Durham was sorry that .6 ft. (6") could not have been agreed upon. Vice Chairman Durham reiterated that Mr. Haase be aware of what he is asking for.

Board Member Koscierzynski asked what are the chances of the two of them settling this out of court? Mr. Haase responded, there is no chance. She noted that this case is really complicated.

Mr. Haase said if he is granted the variance of .6 ft. (6"), then it is irrelevant on the build of his house. Even if he loses, the foot print doesn't change, everything is exactly the same.

Vice Chairman Durham asked, if that .6 ft. (6") is meaningless and won't alter his plans, why does he want it? Mr. Haase explained, because there is a side yard setback of 6 ft., if he loses, the request he would be asking for is 5.46 ft. to the property line. If he is granted the 5.46 ft., the foot print of the house never changes, it will still go in the same exact place, he would be losing .6 ft. (6") to the edge of the property line.

Chairman Yaros clarified then, Mr. Haase's request is for 37% lot coverage to cover the deck and the stairs, to be 22.6 ft. from the rear property line, and a .54 ft. south side yard setback variance to be 5.46 ft. from the side property line. If this is granted, then anything that happens after this is going to be up to him to adjust. Mr. Haase said he wouldn't have to adjust anything.

Chairman Yaros clarified further that they are going to remove the request from Section 27.05.H for a 6 ft. side yard variance to allow a 6 ft. tall privacy fence on the south property line. Mr. Haase said he would be willing to come back for that. The request right now is for 37% lot coverage, the deck stairs to

be 22.6 ft. from the rear property line and a .54 ft. variance to be 5.46 ft. from the south side property line. Mr. Haase said, yes.

Building Official Goodloe said it was his opinion the Board should take the court out of this. They are considering a .6 ft. (6") variance wherever the property line is. Assuming the property line moves, Mr. Haase can still build it there. Chairman Yaros again noted the signed document from a reputable surveying firm that was provided.

Mr. Rauss explained, if Mr. McMillan wins, and the Appeals Court reverses decisions all the time, Mr. Haase is not talking about a .6 ft. (6") setback issue anymore, it is going to be less than 4 ft. because looking at the drawing, the black line is the boundary surveyor's line, the 5.46 ft. is from the line they claim is right to the side of their proposed house. Chairman Yaros said again that he has an engineered survey. Mr. Rauss said Chairman Yaros was not reading it properly. The side yard setback, if they win the lawsuit, will be approximately 3 ft. because the boundary line that has been asked for from the court runs halfway down the spot between the proposed 5.46 ft. area from house to the property line. It is going to change dramatically if Mr. Haase wins, there will only be about a 3 ft. setback. Why can't Mr. Haase wait, the court will tell him shortly whether he wins or Mr. MacMillan wins. It is not going to be 5.46 ft. if he loses, it is going to be less than 4 ft.

Mr. Haase commented on the picture he handed out tonight of Mr. MacMillan's deck. In the lawsuit, it is noted that Mr. MacMillan is to maintain the property on the side of the house, in Mr. Haase's opinion there has been no maintenance there at all.

Chairman Yaros repeated the request which is now for 37% lot coverage, a 12.4 ft. rear yard setback variance to allow deck stairs 22.6 ft. from the rear property line, and a .54 ft. side yard setback variance from the required 6 ft. setback requirement to build a home.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case AB-2018-08, Greg Haase, 552 Fernhurst Ct., 09-03-254-037, the petitioner is requesting three (3) non-use variances from Zoning Ordinance No. 78: 1) Article 6, Section 6.07, District: R-3, a 12% lot coverage variance above the allowed 25% to build a new home and deck/stairway for 37% lot coverage; 2) a 12.4 ft. rear yard setback variance from the required 35 ft. rear yard setback to build a deck 22.6 ft. from the rear property line; and 3) from Article 27, Section 27.01.C.1.b: a .54 ft. side yard setback variance (south side) from the required 6 ft. side yard setback to build a home 5.46 ft. from the side property line (south) 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: in 2015 the ZBA granted variances for this property and subsequently a lawsuit has been filed by the next door neighbor; denying the variance would not do substantial injustice to the petitioner as well as to other property owners in the area and 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: in this dispute, there is a court case pending that has gone up to the Appeals Court and it is the south property line in question here, this body has to deal with actual facts and figures and there is a dispute between the two parties where that south boundary line is; it is determined that the petitioner's plight is not due to unique circumstance of the property based on the following findings of fact: technically it is topographical but in this case, the petitioner is asking for additional variances from the south property line.

Trustee Flood amended the motion, Chairman Yaros re-supported, to include that the petitioner was offered the opportunity to postpone this action or take it to a vote and the petitioner decided he wanted a vote; the petitioner did remove the request for a 6 ft. side yard variance to allow a 6 ft. tall privacy fence on the south property line.

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

Motion Carried: 5-0

AB-2018-09: Nicole Beardslee, 384 Shorewood Ct., 09-03-405-011

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 2 variances from Zoning Ordinance No. 78:

Article 6, Section 6.07, District: R-3:

1. A 1.7% lot coverage variance above the allowed 25% to build an attached garage and allow a 26.7% lot coverage

Article 27, Section 27.01.C.b:

2. A 4.5' side yard setback variance from the required 8' side yard setback to build an attached garage 3.5' from the side property line (north)

Mr. Rob Turnbull, 384 Shorewood Ct., represented the petitioner and provided a letter from Ms. Beardslee authorizing him to do so.

Chairman Yaros said his question was, this building is only 2.5 ft. from the next-door neighbor, when looking at the drawing and the property, the petitioner is already close to the neighbor, basically 3 ft. and the proposed addition will close off a good portion. He asked Vice Chairman Durham, who knows a lot about the fire department, "don't they need some room to get behind the homes"? Vice Chairman Durham replied, a minimum of 5 ft to move in men and equipment. Chairman Yaros said there would be about 8.8 ft. Vice Chairman Durham said it would be tight but doable.

Trustee Flood said he had the same concern.

Chairman Yaros said there are already houses there that are close together, we are going to add more here and make it even closer.

Chairman Yaros asked Mr. Turnbull, "were these original footings" (of the house)? Mr. Turnbull said, yes.

Chairman Yaros commented that he is not so much concerned about the lot coverage as he is about getting people back there if there is a fire.

Board Member Walker said his concern was the same as previously mentioned. He questioned, "8.8 ft. is enough"? Vice Chairman Durham replied, "if you are careful".

Vice Chairman Durham asked the Building Official, "you don't have to fire-stop until you get to 5 ft., correct"? Building Official Goodloe said yes, a fire rated assembly.

Chairman Yaros commented that they do have area for parking in front, they have 23 ft. on one side and a little bit greater on the other. Going out there, the only thing he saw was a lot of big rocks; why are the rocks there? Mr. Turnbull responded, for landscape. It was Chairman Yaros' opinion that they have more room than anybody down there, as far as parking in front of the house; it is a good size area.

Board Member Walker asked Mr. Turnbull why they need a structure this large? Mr. Turnbull replied, it is a garage and they don't have any other out buildings on the property. It is basically a one-car garage. Board Member Walker clarified then that the purpose is to store a vehicle in it? Mr. Turnbull said, a vehicle, a boat, whatever he can get into it.

Trustee Flood commented that Vice Chairman Durham answered his question, that there will be enough room for the fire department to get back in there. Being the structure is proposed to be 12 ft. wide, that is about as narrow as you can go for a garage.

Chairman Yaros asked if there was anyone here to speak to this matter? There was not.

Moved by Board Member Walker, seconded by Trustee Flood, that in the matter of ZBA case AB-2018-09, Nicole Beardslee, 384 Shorewood Ct., 09-03-405-011, that the petitioner is requesting two (2) non-use variances from Zoning Ordinance No. 78: 1) from Article 6, Section 6.07, District: R-3: a 1.7% lot coverage variance above the allowed 25% to build an attached garage and allow 26.7% lot coverage, and 2) Article 27, Section 27.01.C.b: a 4.5 ft. side yard setback variance from the required 8 ft. side yard setback to build an attached garage 3.5 ft. from the side property line (north) be **granted** because the petitioner has demonstrated practical difficulties exist in the case: the first request is only for a 1.7% lot coverage variance over the allowable 25% and the 4.5 ft. side yard setback variance would not impede required emergency personnel from getting back there in case of a fire; granting the variance would do substantial justice to the petitioner as well as to other property owners in the area and the petitioner's plight is due to the unique circumstance of the property and the problem is not self-created.

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

Motion carried 5-0

AB-2018-10: John Vidican, 3830 Hi Dale Dr., 09-26-478-011

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 3 variances from Zoning Ordinance No. 78:

Article 6, Section 6.07, District: R-1:

1. A 7' side yard variance from the required 10' side yard setback to build a detached garage 3' from the side yard property line (South)

Article 27, Section 27.02.A.:

2. Section A.8 (up to ½ acre): a 92 square foot variance above the allowed 1,150 Total Maximum Square Footage of All Accessory Buildings to build a 750 square foot detached garage for a Total Maximum Square Footage of 1,242
3. Section A.5: A 3.54' height variance above the height of the principal structure of 12.02' to build a detached garage 15.56' in height.

Chairman Yaros asked to recuse himself from acting on this case. He is a resident of this subdivision and believed he would be partial in this case.

Moved by Trustee Flood, seconded by Board Member Walker, to recuse Chairman Yaros from acting on this case.

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

Motion carried 4-0

Mr. John Vidican, 3830 Hi Dale, the petitioner, presented. He explained that he purchased the home about 1 ½ years ago and has discovered that parking in the garage is difficult. It is a side entry garage and he and his wife have to make a hard 90 degree turn to get in it. It is very difficult to get in and out and they don't like it. In addition, they want to get more storage. With the design he presented, they can drive straight in and pull straight out with no issues. He said that he has talked to all his neighbors and they have no issues with it and submitted letters and emails stating so. His neighbor to the south where is asking for the 3 ft. variance, he had a letter from him and he is fine with it. Mr. Vidican said he would still have less than the 25% lot coverage; according to calculations he would be allowed to build

up to 866 sq. ft. however he is asking for less than that; 750 sq. ft. which is the maximum detached allowable square footage. Regarding the height, he is only asking for less than 20 ft. and according to R-1 zoning, he could get up to 30 ft. It was his opinion that he was not asking for much. They need a bigger garage to park in and little extra storage.

Vice Chairman Durham said, part of what they have to look at is whether there is a practical difficulty and that can be defined as something particular to the property that prevents him from doing what he could otherwise do. He asked Mr. Vidican if he would say that the practical difficulty in this case was a convenience issue? Mr. Vidican replied, not really, it is very difficult to get in the current garage without causing a lot of trouble for them every day.

Trustee Flood commented that the Board received numerous letters and read them into the record as follows:

Jason & Sara Rosell, 3825 Hi Dale Drive, approved of the request
Ken Follis, 3842 Hi Dale, approved of the 3 ft. side yard setback
Bryan R. Johnson, 3833 Hi Dale, approved of the request
David & Celia Johnson, 3818 Hi Dale, approved of the request
Ron Stoll, 3718 Hi Dale, were opposed
Tracy Cornacchia, 3805 Hi Dale Dr., was opposed

It was noted there was also a letter from the Hi-Hill Village Association's President, Mr. Don Ritenburgh, dated April 4, 2018. The letter indicated that the Hi Hill Architectural Review Board had not received an application for approval for this project. Typically, they expect to approve a project prior to it going to the Township. It was their understanding that there were several aspects that were not in compliance with the deed restrictions. They also had concerns about the square footage of the garage in comparison to the square footage of living area, the exterior finish surface materials, and the landscaping/grading.

Trustee Flood noted that they have had requests in Hi Hill Village and there are other subdivisions in the Township where residents have to go through reviews with their homeowner's association. To him, it makes a difference whether the petitioner went through the process and got the approval of the Review Board.

Board Member Kosciuszynski asked if the ZBA can approve something that the Architectural Review Board has not looked at?

Vice Chairman Durham said it was his opinion that if they take that into consideration and there are any issues generated by it, that would be between Mr. Vidican and the homeowner's association.

Building Official Goodloe said if Mr. Vidican came in for a building permit, it would be ok, the Building Department doesn't look at deed restrictions; it is not required but he does like to be informed about them.

Trustee Flood commented that it has been his experience that sometimes they agree with the associations and sometimes they don't. The ZBA can make any decision they so choose and the petitioner or a resident has the right to appeal that decision.

Board Member Walker said the biggest concern he has is the deed restriction; more so than the homeowner's association. He does not feel comfortable trying to "trump" a deed restriction. Board Member Walker asked Mr. Vidican if any other detached garages had been built in that subdivision?

Mr. Vidican said there was and noted the address was on the application.

Board Member Koscierynski said when she visited the site, she saw the problem and agreed it is a very difficult situation and had trouble getting her car in and out of there. However, now she was concerned about what the Hi Hill Architectural Review Board is saying.

Mr. Vidican said he had an email from Don Ritenburgh that stated he was aware of Mr. Vidican's plans. Mr. Vidican did bring the site plan to him. He explained the reason he hadn't approached the Review Board is because he doesn't know what to give them. If he doesn't have a plan for a certain size, he doesn't want to pay an architect to design something that is going change and pay for it twice. Once he understands where this Board is at, then he can go ahead and proceed with plans. The Review Board will be well informed, as stated in Mr. Ritenburgh's letter, everything has to be submitted to them and he understands that. But at this point, he does not know how big it is going to be, what it is going to look like because he is at this point right now; whether the variances will be granted.

Vice Chairman Durham asked, so you get your variances tonight and you know what it is going to be and the Review Board says no, where will you be? Mr. Vidican said, then he would have to work with them. Vice Chairman Durham said that he doesn't, once a variance is granted it goes with the property for the life of the property. Mr. Vidican said he is not here to upset the association and said that he is actually the Vice President of the association.

Vice Chairman Durham said he did notice one thing on the plans and when he visited the site, he is concerned about the structure being over the height limit. The Township generally enforces the ordinance that no structure is to be taller than the principle structure for a reason. He saw that the garage will be down somewhat beyond the level of the current driveway, but he still is concerned, as he suspects some of the neighbors are, about something that is going to be higher and possibly easier seen from the street. Mr. Vidican said that it will be lower than his neighbor's house to the north. Mr. Vidican explained the reason it is that high is so that he can get more storage above.

Trustee Flood noted that Mr. Vidican has lived there for about 18 months and that subdivision has been there for a long time, has been abused and has quite a history. Trustee Flood said he would feel better knowing that Mr. Vidican went to the Architectural Design Review Board. They are the ones that will address that fact if the plans are compliant with the deed restrictions. If Mr. Vidican had gotten their approval, that would weigh heavily with him. Mr. Vidican reiterated that he didn't want to pay an architect for plans and then pay again to possibly have them changed. Trustee Flood commented that money cannot be the hardship here.

Board Member Walker commented he suspects that Mr. Vidican is not the only one in that subdivision with this type of issue. He has visited the subdivision and sometimes it is difficult getting up a drive and into the garage and back out.

Board Member Koscierynski asked Mr. Vidican what he thought about getting the approval of Hi Hill Village Architectural Review Board before their action? Mr. Vidican said he has no issues with that. He then asked about the email he received from Don Ritenburgh being read into the record. Trustee Flood read the email that was dated March 8, 2018 in which Mr. Ritenburgh said he received the site plan and would forward it to the Hi Hill Architectural Review Board for consideration. The email asked that a building materials list, construction blueprints, letters from surrounding neighbors acknowledging support as well as Township variance approval be submitted once approved.

Trustee Flood commented that he understands the email to say that Mr. Vidican has to get the variances first before they will review this. To him that is putting the "cart before the horse".

It was asked if there was anyone here to speak to this matter?

Loren Yaros, 140 Hi Hill, commented that Hi Hill's has a restriction that does not allow detached garages. The only garages that are in that subdivision happen to be in the Hi Hill sub on top of the hill and is a separate subdivision; Hi Hill #3. If you look at the aerial of the subdivision around Mr. Vidican, you will find no detached garages. The only detached garage that was ever in front of the ZBA was a pool changing room. There have been a lot of requests for additions on attached garages, to make them larger, to change them from side to front, etc. Generally, it was his understanding that there has to be a hardship, the hardship generally runs on setbacks when someone has a small lot – around lakes, villages, etc. However, here they are 100 ft. lots, they are wide and there is lots of room. He suggested that Mr. Vidican make the garage on his house bigger. There are building restrictions in there that say you cannot have a detached garage. For 44 years, pretty much everybody has followed that. He does not want to see it change.

Brian Kelly, 3759 Hi Dale Drive, has lived in the subdivision for over 40 years and knows personally the people who have lived in that house before the Vidicans. He noted there has been two or three additions to that home but there hasn't been anything done on the driveway side. The people that lived there before dealt with the same problem Mr. Vidican has. From his perspective, he understands the challenge but realizes that Mr. Vidican has a lot of room to work with, he doesn't have to build next to the property line, 3 ft. from that property line. He doesn't have to make the building 19 ft. tall and doesn't have to have a 10 ft. high garage door. The whole appearance of the garage he wants to build is not a like a two-car garage, in his opinion. He may have intentions of parking a big RV in there or something like that; it will be 24 x 30. In that subdivision, they allow a maximum of 750 sq. ft. for garage space whether it is attached or detached. If it is detached, it must be attached to the home with a breezeway, it is not a stand-alone garage. The deviations that he is asking for would be contrary to the objectives of the subdivision in terms of the way it will be presented from street and from the other homes in the area.

Don Ritenburgh, 3641 Bald Mountain Road, president of the subdivision home owners' association. Mr. Vidican did show him the site plan and he told him that it does have to go before the Architectural Review Board. Once Mr. Ritenburgh met with the Board, their expectation was that they would see it in advance and their understanding was they would have to stamp it approved before a building permit would be issued; maybe that is not the case. The Board did look at what was in the public hearing notice and had some concerns. They mentioned the deed restriction particularly mentions no detached garages. He said he was aware of one other detached garage in the subdivision - the property is within the subdivision footprint however it isn't part of the subdivision, it was the original farm house.

Vice Chairman Durham asked Mr. Ritenburgh, in his opinion, if the deed restriction against a detached garage is going to stop this? Is it a deal breaker? Mr. Ritenburgh said, yes, he believed it would.

Vice Chairman Durham commented that this configuration, it appears it is tailored made for an RV. He asked Mr. Vidican what he planned on putting in it? Mr. Vidican responded, his two vehicles.... Vice Chairman Durham then asked what was he going to do with the vacant attached garage, his available storage space will go up dramatically. Vice Chairman Durham asked Mr. Vidican if he was renting space outside somewhere and then would bring them here to store? Mr. Vidican said, no, he has a log splitter, a trailer, an ATV and two cars. Vice Chairman Durham said he is just trying to get an idea why Mr. Vidican needs this especially because of where it is and high it is. Vice Chairman Durham said he does see that Mr. Vidican has some support and an equal number of people who would like not to see it in the subdivision, in all probability, it will be denied. Mr. Vidican said, he would like to work with them.

Board Member Koscierynski asked if it might be a good idea for Mr. Vidican to postpone this and get approval first from the Hi Hill Architectural Review Board? In her opinion, she was not so sure about this once she read the letter from them. It would be nice for him to have their approval. Mr. Vidican responded and had no issue with that. It was noted however there was a possibility he could get

denied. Mr. Vidican said he understood and wants to make sure everyone is happy as much as he can. If that is what it takes, he will go before the Review Board.

Vice Chairman Durham asked if the building will be pre-engineered? Mr. Vidican said he plans on “stick” building it with a full foundation, slab, not a pole barn and wants to insulate it so he can work in it.

Vice Chairman Durham told Mr. Vidican that he has had a chance to gage the “temperature” of the Board and has the right to ask for a vote on what he is requesting or to ask to be postponed to a date certain. The Board and Mr. Vidican discussed future meeting date options and Mr. Vidican agreed to come back to the Board at the May 14, 2018 meeting. He said he will get with the Hi Hill Architectural Board to see what they have to say in the meantime.

Moved by Board Member Koscierzynski, seconded by Trustee Flood, that in the matter of ZBA Case #AB-2018-10, John Vidican, 3830 Hi Dale Dr., 09-26-478-011, that the petitioner’s request for a non-use variance from Zoning Ordinance No. 78, the petitioner is requesting postponement until the May 14, 2018 meeting.

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

Motion Carried 4-0

AB-2018-11: Michael Dufty, 677 King Cir., 09-10-283-014

Chairman Yaros returned to the dais and read the petitioner’s request as follows:

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

1. A 2.66’ side yard setback variance (east side) from the required 10’ side yard setback to build an addition 7.34’ from the property line.
2. A 2.27’ side yard (west side) variance from the required 10’ side yare setback to build an addition 7.73’ from the side property line.
3. A 3% lot coverage variance above the allowed 25% to build an addition and allow for a 28% lot coverage

Michael Dufty, 677 King Cir., the petitioner, presented.

Chairman Yaros explained that Mr. Dufty wants to build an addition towards Heights Road; he is actually between King Circle and Heights Road. However, looking at the drawing he submitted, he is not actually going any closer than, actually less closer, than his house already is; the house is closer to the lot line than this addition will be. Mr. Dufty said, correct, but was told he needs the variances as the result of his lot being so narrow. Mr. Dufty said he is trying to solve some dangerous situations with the existing house which is 100 years old. Getting into the house, you could almost fall into the basement; the basement is 5’ 4”, someone could break their neck.

Board Member Walker stated that when he visited the site, he spoke to a neighbor who lived across the street. The neighbor had nothing but good things to say about the Duftys. That they are working hard inside the house and doing a great job fixing up the whole thing.

Mr. Dufty said they want to bring it up to code and make it look nice, it will be their home.

Board Member Koscierzynski commented that she lives close to there and the area is very different. She appreciates them putting this much effort and money into bringing the house up to speed. The houses there are all over; what they are doing is a good thing for the neighborhood.

Chairman Yaros asked if there was anyone here to speak to this matter? There was not.

Moved by Vice Chairman Durham, seconded by Trustee Flood, that in the matter of ZBA case #AB-2018-11: Michael Duffy, 677 King Cir., 09-10-283-014, the petitioner is requesting 3 variances from Zoning Ordinance No. 78: Article 6, Section 6.07, District: R-3: 1) A 2.66 ft. side yard setback variance (east side) from the required 10 ft. side yard setback to build an addition 7.34 ft. from the property line, 2) A 2.27 ft. side yard (west side) variance from the required 10 ft. side yard setback to build an addition 7.73 ft. from the side property line, and 3) A 3% lot coverage variance above the allowed 25% to build an addition and allow for 28% lot coverage be **granted** because the petitioner has demonstrated practical difficulties exist in the case: they have a house that is over 100 years old and has some issues, it is sandwiched between two streets, basically not accessible from the one side and they are looking to get some additional space to live, the variances they are requesting are not large and will not move the house any closer to the side yard than it already is and it will be an improvement to the neighborhood; strict compliance with the letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose due to the following: topographically, the lot is what it is, it has a fall-off to the front, it narrows to the back and they are working the best they can to make it better; approving the variance request would do substantial justice to the petitioner; granting the variance would not have any negative affect on any of the other neighbors; the petitioner's plight is due to the unique circumstances of the property and is not self-created.

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

Motion Carried: 5-0

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

None

8. COMMITTEE REPORTS

None

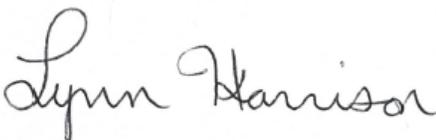
9. MEMBERS' COMMENTS

None

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Yaros, to adjourn the meeting at 8:42pm. **Motion carried.**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

April 23, 2018

Zoning Board of Appeals Approval