

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY, APRIL 23, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 23, 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  
Lucy Koscierszynski, Board Member

### ZBA MEMBER ABSENT

None

### CONSULTANT PRESENT:

Mark Landis, OHM Engineer  
David Goodloe, Township Building Official  
Al Daisley, Ordinance Enforcement Officer

### OTHERS PRESENT:

Pete Granzow  
Jason Jackson  
Don Silvester

Brett Baker  
Eugene McNabb  
Gene McNabb

Mark Peyerk  
Brad Smith  
Lynn Harrison

### 1. OPEN MEETING

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

### 2. ROLL CALL

As noted

### 3. MINUTES

#### 04-09-2018, Regular Meeting Minutes

Moved by Board Member Koscierszynski, seconded by Board Member Walker, to approve the 04-09-2018 Regular Meeting minutes as presented. **Motion carried**

### 4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 5. ZBA BUSINESS

#### AB-2018-12: Brad Smith, 4115 Morgan Rd., 09-31-376-013

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting a variance from Zoning Ordinance No. 78:

1. Article 5, Section 5.07, District SF:
  - i. A 15' side yard variance to allow a detached garage to be built 5' from the required 20' side yard setback.

Brad Smith, 4115 Morgan Road, the petitioner presented.

Chairman Yaros said that when he first looked at this, it is a Suburban Farms area but Mr. Smith's lot basically is like an R-1 lot in the middle of Suburban Farms. Chairman Yaros originally thought that requesting a 5 ft. side yard setback from the required 20 ft. side yard setback was a lot but then after

looking at the property, there is a private road or driveway next to it; nothing is ever going to be built there. Mr. Smith's other neighbor is way in the back. Chairman Yaros said he personally did not have a problem with the request and would rather Mr. Smith save the tree; Mr. Smith is limited to where the proposed garage can go because of the septic field (and the mature trees).

Vice Chairman Durham said his comment had nothing to do with the request but suggested Mr. Smith put some type of addressing by the road, the property was difficult to find. Vice Chairman Durham noted that Mr. Smith has a nice clean parcel, what does Mr. Smith plan on doing with this big of a barn?

Mr. Smith replied, he enjoys "toys" and wood working. Mr. Smith commented that his shed is full of tools. He enjoys wood and is going to make himself a tool room so that he can build some stuff.

Board Member Koscierynski said she was out there today and thanked Mr. Smith for staking the location out. She asked if there is a house being built behind him? Mr. Smith said that was correct. Board Member Koscierynski commented that Mr. Smith has a nice long driveway.

Trustee Flood said that he also had a hard time finding the property and appreciated him staking out the location (of the proposed garage).

Board Member Walker said he had no issue with this except for a hardship. What was Mr. Smith's hardship for having to put the garage so close to the property line? Mr. Smith replied that he tried to maximize the square footage of the barn based on the total square footage of the house, shed, garage, etc.; 560 sq. ft. is just under the maximum he could go. He wanted to utilize those dimensions. If he were to build more towards his house, 4 more feet, it wouldn't leave him any room for a gate. He wants to put a 4 ft. gate to the left, which he tried to depict on the drawings, so that he would still have access to the backyard. If he were to build it any further back, the barn would get pretty close to the large maple tree. The only other place to put it would be in the middle of the backyard but his septic field is there.

Trustee Flood noted that if it wasn't for him wanting to build the barn so close to the lot line, he wouldn't need a variance and would have to come before the ZBA. However, the location of the septic field is a big issue; you can't build on top of a septic field. In his opinion, this is Mr. Smith's hardship. Chairman Yaros agreed.

Chairman Yaros also commented on a tree on Mr. Smith's property. It would be hard to replace a tree that nice. Mr. Smith said he has two of those on each side of the property and does not want to lose them.

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

Moved by Board Member Koscierynski, seconded by Chairman Yaros, that in the matter of ZBA case #AB-2018-12, Brad Smith, 4115 Morgan Rd., 09-31-376-013, the petitioner is requesting a variance from Zoning Ordinance No. 78, Article 5, Section 5.07, District SF: i) A 15' side yard variance to allow a detached garage to be built 5' from the required 20' side yard setback, be **granted** because the petitioner demonstrated that practical difficulties exist in this case and set forth facts which show that in this case, compliance with the strict letter of the Ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the Ordinance unnecessarily burdensome based on the following findings of fact: it is not going to interfere with any neighbors because of where the property is and because it will be on several acres; 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: the petitioner is not going to interfere with anyone else, it will not interfere with the septic field,

trees won't be torn down, there aren't any neighbors against this; the petitioner's plight is due to the unique circumstances of the property based on the following findings of fact: where the house is located and the fact it is a large property; and the problem is not self-created based on the following findings of fact: it won't interfere with anything.

Board Member Koscierynski amended the motion, Chairman Yaros re-supported, to add that the parcel is next to a piece of property that is actually a driveway to house behind and won't be built on.

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

**Motion carried 5-0**

**AB-2018-13: Don Silvester, 220 Schorn Rd., 09-01-328-080**

Chairman Yaros read the petitioner's request as follows:

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

1. Article 27, Section 27.02. A.5:
  - i. A 2.58' height variance above the principal structure height of 12.75' to build a detached garage 15.33' in height.
2. Article 27, Section 27.02. A.8. (Up to ½ acre):
  - i. A 194 sq. ft. variance above the allowed 750 sq. ft. Maximum Floor Area of Detached Accessory Buildings, to build a detached garage 720 sq. ft. resulting in the Maximum Floor Area of Detached Accessory Buildings to be 944 sq. ft.

Don Silvester, 220 Schorn Road, the petitioner, presented.

Chairman Yaros asked Mr. Silvester to explain why there is a door wall and a deck on the proposed detached garage, will people be living in it? Mr. Silvester replied, no, there is a 4 ft. deck but there won't be anyone living in it - it will be his wife's art and painting space.

Chairman Yaros then asked why he needed that tall of a building and that much storage? Mr. Silvester replied he doesn't have a basement; there is an addition with a basement but the rest of the house is on a crawl space. What was the garage on the house, is actually the master bedroom. Originally the house was a 960 sq. ft. bungalow, an addition was added to take the total square footage of the house to 2,500. Although there is a small basement in the back, there isn't any storage. He has five kids and the attic is full.

Mr. Silvester noted the two sheds on the property and that they were both temporary. They have no footings and are on deck blocks and platforms because of the way the property slopes. He said he would take down the shed that is 80 sq. ft. once the garage is built. Everything that is in there will go in the new garage.

Chairman Yaros asked if the 80 sq. ft. shed was included in the variance calculation for maximum floor area of detached assessor buildings? Mr. Silvester thought that it was. Mr. Silvester explained that he went to the Planning & Zoning Department for a height variance and thought the property was just over half an acre however it is just under that. Because of the lesser acreage, he was allowed less floor area than he thought. The garage that the Planning & Zoning Coordinator calculated was 720 sq. ft. because of the proposed deck. Mr. Silvester offered that if the deck is an issue, he would remove it.

Vice Chairman Durham asked why Mr. Silvester needed the excess height? Mr. Silvester said that was so he could get a full height ceiling in the top which his wife would use as her art space. Vice Chairman Durham clarified that he is going to have a two-level garage then? Mr. Silvester said, yes. Vice

Chairman Durham asked, then the bottom will be for storage? Mr. Silvester said he was hoping to park a car in there.

Vice Chairman Durham commented that Mr. Silvester has a lot of stuff on his property, will some of that go away? Mr. Silvester said, the majority of it will. He noted that both of the sheds on the property are full and he also has a lot of wood working tools. It was noted if the 80 sq. ft. shed is removed, the variance request would be smaller. Chairman Yaros and Building Official Goodloe looked at Mr. Silvester's file for the variance calculations.

Chairman Yaros came to the conclusion that the variance figures did include the sheds but not the second floor of the detached garage. He came up with an actual calculation of 939 sq. ft. if Mr. Silvester gets rid of the 80 sq. ft. shed. Keeping the 144 sq. ft. shed would give him a total maximum floor area of detached accessory buildings of 1,083 sq. ft.; allowed is 750 sq. ft. Therefore Mr. Silvester would need a 333 sq. ft. variance above the allowed 750 sq. ft. maximum floor area of detached accessory buildings to build the proposed detached garage and to keep the 144 sq. ft. shed.

Mr. Silvester agreed with the revised calculations and that would be his request.

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

Chairman Yaros clarified the variance requests - using the square footage of the proposed garage, both stories, and the 144 sq. ft. shed would be 333 sq. ft. over the allowed 750 sq. ft. maximum floor area of detached accessory buildings for a total of 1,083 sq. ft. of maximum floor area of detached accessory buildings; and a 2.58 ft. height variance above the principal structure height of 12.75 ft. to build a detached garage 15.3.3 ft. in height.

Chairman Yaros said he still had a problem with the requested height variance; it will make the building look like an eyesore.

Board Member Koscierynski noted a similar variance request for building height and the Board had concerns about that one as well.

Chairman Yaros commented that Mr. Silvester's yard is lower than the front. Mr. Silvester agreed and said it is probably about 2½ to 3 ft. lower. The garage won't appear that it is taller and tried to show that in his pictures.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of ZBA case AB-2018-13, Don Silvester, 220 Schorn Rd., 09-01-328-080, the petitioner is requesting 2 variances from Zoning Ordinance No. 78: 1. Article 27, Section 27.02. A.5: i) A 2.58' height variance above the principal structure height of 12.75' to build a detached garage 15.33' in height and 2. Article 27, Section 27.02. A.8. (Up to ½ acre): i) A 333 sq. ft. variance above the allowed 750 sq. ft. Maximum Floor Area of Detached Accessory Buildings, to build a detached garage 720 sq. ft. resulting in the Maximum Floor Area of Detached Accessory Buildings to be 1,083 sq. ft.; it is understood that there is an 80 sq. ft. shed on the property that will be removed as part of this approval if so given; it was moved in this case that the request **be granted** because the petitioner did demonstrate that practical difficulties exist in this case: the lot size is right at the border between one allowable accessory building size and another, the petitioner is was going to be on the larger side but the acreage fell on the smaller side, the petitioner has a large need for storage, there is not a garage on the property currently, and by the look of the items that were there on the property, storage will be a good thing, it will help clean up the area and make the property more visually pleasing; compliance with the strict letter of the Ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the Ordinance unnecessarily burdensome; granting the variance request would do substantial justice to the petitioner as well as to other property owners in the area, they would not be negatively affected by this, there were no public comments tonight; 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 petitioner needs the height, the structure will be used for a two-floor purpose, storage below and an art studio above; the petitioner's plight is due, in part, to the unique circumstances of the property based on facts brought forth earlier; and the problem is not self-created based on the following: the facts that were brought forth earlier, the property is not a large size, the house is short on storage and storage will help make the property look better.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add that the backyard where the building is going is lower than the house so that the appearance won't be so bad for the neighborhood because they will look about even; also, the petitioner stated that there will be no one living in the upper area of the detached garage.

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

**Motion carried 5-0**

**AB-2018-14, Tim Lee, USA Fireworks, Inc., 1025 S. Lapeer Rd., 09-14-226-008**

Chairman Yaros read the petitioner's request as follows:

Per Zoning Ordinance No. 78, Article 30, Section 30.11.F.1.b: the petitioner is requesting a Temporary Use Permit for Open Air Business, to sell consumer fireworks from a tent June 16, 2018 – July 7, 2018.

Jason Jackson, Indianapolis, IN, presented.

Chairman Yaros commented that they have been in this area before, in front of the Kmart building on Lapeer Road. Mr. Jackson said, yes, this will be the fourth or fifth year. Chairman Yaros complimented him on the drawings and pictures he submitted for the packets – noting the car routing paths and the location of the barricades. Mr. Jackson said, "they get better every year".

Vice Chairman Durham asked if Mr. Jackson was personally involved last year, was he the one that came in for the permit? Mr. Jackson responded, yes. Vice Chairman Yaros said he then should be familiar with what this Board expects and will be asking for. Mr. Jackson said that he was.

Board Member Koscierynski noted the letter from the Fire Marshal dated April 4, 2018 stating that he has reviewed the documents and as long as they are in compliance with 2015 International Fire Code, he did not have any additional comments. Board Member Koscierynski clarified that they will rent a POD and that their insurance is in order. Mr. Jackson said, yes, and that he gave the Recording Secretary an updated copy of the license and the insurance information. She then asked if the Township received any complaints last year? The response from the Building Official and the Ordinance Enforcement Officer was, no, they run a good operation and they have no issues with them.

Trustee Flood said there was also a letter in the packet from the owner of the plaza giving USA Fireworks permission to operate there. Trustee Flood then said he believed the property owner's address on the application was incorrect – instead of 596 N. Lapeer Rd., it should be 1025 S. Lapeer Rd.

Trustee Flood then clarified, as in previous years, they will provide a contact phone number to the Building Department and pay the required bond. Another thing, as in previous years, under no circumstances is public allowed in the tent until they have obtained the fire department's approval. Mr. Jackson said, absolutely.

Trustee Flood asked what the hours of operation will be? Board Member Koscierynski responded that in the packet information, the hours requested are 9am to 10pm. Mr. Jackson concurred, from June 16, 2018 until July 7, 2018. Mr. Jackson also agreed that no one would be staying overnight on the property and the POD or PODs would be locked up when the last person leaves.

Board Member Koscierynski informed Mr. Jackson that they will probably have more space there this year because Hollywood Market is no longer there.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case #AB-2018-14, Tim Lee, USA Fireworks, Inc., 1025 S. Lapeer Rd., 09-14-226-008, per Zoning Ordinance No. 78, Article 30, Section 30.11.F.1.b: the petitioner is requesting a Temporary Use Permit for Open Air Business, to sell consumer fireworks from a tent June 16, 2018 – July 7, 2018, **be granted** because the petitioner would be using the property for a permitted purpose and demonstrated they will be complying with the required conditions for an Open Air Business; the conditions of approval are as follows:

- the petitioner will be open seven (7) days a week from June 16, 2018 through July 7, 2018, the hours of operation will be 9:00am to 10:00pm;
- the petitioner has paid a security bond to the Township;
- the petitioner has provided the proper insurance and state licensing to the Planning & Zoning Department;
- there will be a POD(s) provided on the property and, as shown in the photos, barricades for the flow of traffic, a phone number for the person who will be running the operation will made available to the Building Department;
- in addition, there is a letter in the packet from the owner of the property who has agreed to lease the property to the petitioner;
- and, there is a letter from the Orion Township Fire Marshal stating that no public in the tent until it has been properly inspected and approved.

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

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

**Motion carried 5-0**

**AB-99-01-2018: Bob Warren Trucking, Inc. Lot 28 of Highland Farms (parcel # 09-32-400-024), Lot 29 of Highland Farms (parcel # 09-32-400-022), Lot 30 of Highland Farms (parcel # 09-32-400-021), and a 7.5-acre parcel (parcel # 09-32-400-058)**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Jack Warren of Bob Warren Trucking, presented. Mr. Warren began by thanking the Board for allowing them to call in, when needed, for extended hours. There were a couple of times last year they needed to do that and the Township was accommodating.

Chairman Yaros noted there was a notice from Mark Landis, OHM Engineer, that they were pumping unfiltered storm water directly on to Brown Road and the Road Commission stopped them; that they may need a plan to properly maintain stormwater runoff on the site. Mr. Warren said he was aware of that and explained that the retention pond overflowed, that they will have to dig that out and noted that during the walk-thru.

Engineer Landis went over his review dated March 23, 2018 that was comprised from the materials that were submitted and the site walk.

He noted that there were several pieces of construction equipment being stored on the site that was located in either a pole barn/garage or in parking area surrounded by fence, and currently there is no mining taking place on the site. The application stated there is a possibility for the mining of 30,000 to 40,000 yards for removal and a potential of 5,000 yards of fill. At the time of the visit, the site was in good condition.

In regards to the drainage, it was thought that the pond on the site had no outlet, but with Menards under construction it became apparent that pond actually had an underdrain that went into the Menards site. That drainage was cut off as part of that construction. It became apparent by this recent event that there wasn't enough storage room available between the ponds on the site, he asked that the petitioner provide documentation as to how they are going to properly manage their stormwater.

In conclusion, it was OHM's opinion that the petitioner was in substantial compliance with Township Ordinance, No. 99, the Township's engineering standards and recommended the following items be conditions of an approval: the petitioner provide documentation to the Township as to procedures to properly manage stormwater for the site, and;

1. Menards Corporation is currently under construction. Their Final Revised Grading Plan which is consistent with their approved site plan, has proposed grades matching existing grades along the common property line. Final grades for the Bob Warren Trucking site may need to be adjusted from what is currently shown on the topographic survey on file.
2. Coordination is needed with Dan's Excavating site to the north to ensure final grades at the property line are coordinated. Topsoil will be necessary to reestablish sufficient vegetation on site.
3. Miscellaneous debris should be properly disposed of off-site.
4. The water level in the pond(s) should be monitored throughout the year. Cleanout of accumulated sediment is needed to promote infiltration.
5. Per Section 6 of Ordinance 99, the petitioner shall address the bond/guarantee and insurance information with the Township if this has not already been done.
6. Per Section 7, Item L, the petitioner shall note that the tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.
7. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is "Suitable Fill Material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

Chairman Yaros asked about the 30,000 to 40,000 yards of material that might be removed, are they planning on doing some mining? Mr. Warren replied that he just keeps that on the application; he believed they took about 3,000 yards of topsoil off and maybe a couple thousand that they rerouted the water through. They will also be doing some more digging in the pond to make that bigger and take the sediment out.

Chairman Yaros then asked what the 5,000 yards of possible fill was? Mr. Warren commented that he doesn't receive 5,000 yards, maybe a load here and there; they have to keep the permit for the Crusher

to piggyback off them. Mr. Warren then explained that the equipment along the fence still belongs to George.

Chairman Yaros asked Mr. Warren if he understood that his grading plan has to be revised to match the existing Menards grading plan they have now. Engineer Landis said, they have the existing grades and then they have the proposed finished grades and the proposed finished grades indicated that the site is basically just a “sheet flow” directly towards Menards. Chairman Yaros added they will have to revise the prints and drawings to show the new elevations.

Mr. Warren then corrected a statement earlier that there is a drain from their pond to Menards, he said they do not. The pond overflowed and went down into Menards.

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

Eugene McNabb, 2981 Judah, handed Chairman Yaros a map and asked him who owns the permit for the mining – “Bob Warren owns the permit?” Is he responsible for Dan’s? The permit has never been taken out of Bob Warren’s Trucking, he owns the permit and told Chairman Yaros to look at the bottom corner of the map. In 09’ it has Baker’s signature on it and that is the permit – “that’s court under oath”. Chairman Yaros asked what that has to do with Jack Warren? Mr. McNabb said, “if he owns that permit, that permit covers his property and Dan’s Excavating property”. Chairman Yaros commented that he didn’t understand what this has to do with Jack Warren or what the parameters were - that the property was split when Jack’s dad passed away; that would be something that needs to be referred to the Township Attorney. Mr. McNabb asked again, “would you say that is Jack Warren’s permit?” Chairman Yaros said, no, he would say it was Bob Warren’s permit when he was alive. Mr. McNabb said, “it is still under Trucking and he inherited it.” Mr. Warren answered that it is not anybody’s business what he inherited from his father.

Mr. McNabb asked again, “what does the permit say?” Chairman Yaros said what he is looking at is a map. Mr. McNabb said, correct, and that was the permit. Chairman Yaros said apparently the map was an exhibit in a court case in 09’.

Chairman Yaros reminded the Board that whoever makes a motion, they will have to mention the conclusions from the Engineer’s review if the motion is for approval.

Moved by Board Member Koscierzynski, seconded by Chairman Yaros, that in the matter of ZBA case #AB-99-01-2018, would move that the petitioner’s request for the renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing **be granted** because the petitioner has done everything the Township has asked, ZBA members went there and walked through, OHM noted in their conclusion on the last page, that the petitioner was in substantial compliance with Township Ordinance No. 99 and Township engineering standards; the following items are conditions of this approval: numbers 1 through 7 of the conclusion in the Engineer’s review letter signed by Mark Landis and dated March 23, 2018; that the hours of operation will be Monday through Saturday, 7:00am to 5:00pm; and that the petitioner’s bond/guarantee and insurance information is up to date.

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

**Motion carried 5-0**

Vice Chairman Durham commented that he does not live far from there and passes the operation a lot. They have been, in the past year, doing a decent job with dust but not so much with mud. Engineer Landis said that it kind of consists of recycled asphalt right now. They could probably go with heavier, larger crushed concrete or stone - that would possibly help. Mr. Warren said that Pontiac Crushed Cement put a mud mat in last year that might have to be redone. Board Member Koscierzynski

commented that this issue is covered in item #6 of the conditions and that this condition is to be monitored. Mr. Warren commented that Ordinance Enforcement Officer Daisley does a good job of letting them know when that needs to be taken care of.

**AB-99-02-2018: Dan's Excavating Inc.; 2985 Judah Rd., the north 535 feet of Lot 11 of Mt. Judah Farms (parcel # 09-32-400-056), Lot 11, except the north 535 feet of Mt. Judah Farms (parcel # 09-32-400-057), Lot 12 and the southerly 588 feet of Lots 13 & 14 of Mt. Judah Farms (parcel 09-32-400-055), and 3011 Judah Rd. Lots 13 & 14, excluding the southernly 588 feet of Mt. Judah Farms (parcel # 09-32-400-063)**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Brett Baker with Dan's Excavating, presented.

Chairman Yaros commented that he and Vice Chairman Durham walked the site and noted they still have a considerable area to fill. Mr. Baker said, correct, and that it could end up this year - it is getting closer to the end and time to get a new grading plan. He intends to have that done in the next few months. Chairman Yaros added they drove to "the top" and looked down and the fences looked all right.

Engineer Landis went over his review dated March 23, 2018. He noted that significant progress has been made since last year in regards to filling in the previously mined sand and gravel pit area to the south. It does not appear that any mining is taking place however there are some stock piles on site which he understands may be utilized for the Baldwin Road reconstruction project.

There is a need for them to provide a revised grading plan to show what is going to take place above the 1060 contour and also, he recommends that the grade coming down off the slope in the back be shown at a 1:4 slope. At the time of his visit, the site was in good condition however he did not that the concrete driveway coming in off of Judah Road was covered with material, that needs to be cleared and maintained on a regular basis. Also, the culvert that channels drainage from the east had the downstream end blocked, that needs to get cleaned out to ensure positive drainage.

In conclusion, the petitioner seems to be in substantial compliance with Ordinance 99 and the Township engineering standards. They recommend the following items be conditions of an approval:

1. Proposed final grades for the entire site need to be shown on the survey. In particular, the steep slope that exists to the north of the pipeline down to the current water surface should be shown to be regraded to a recommended 1:4 slope; the petitioner indicated he would be providing that in the next two to three months.
2. The grades for the ditch on the east side of the site shall be adjusted to expose the downstream end of the culvert and to prevent standing water.
3. The petitioner shall furnish to the Township a copy of the updated haul route permit renewal with the Road Commission for Oakland County for Judah Road. The current permit is set to expire on 6/1/2018.
4. The approximate start date and end date of any intense activity, if applicable, occurring on the site for the year should be included in the application and/or notice given to the Township prior to high periods of activity.
5. Per Section 7, Item L of Ordinance 99, the petitioner shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.

6. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is “Suitable Fill Material” as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

It was also noted that the petitioner is requesting a variance for hours of operation from the standard 7am to 5pm to 7am to 7pm. It was noted that last year the hours of operation were 7am to 5pm.

Mr. Baker said that the hours of 7am to 7pm were not granted last year which put a crimp in their schedule because the last trucks of the day come in typically around 5:00pm. They would like to be able to dump those last loads before the trucks go home for the night. The hours of 7am to 7pm is very important to them however he doesn't anticipate anyone be working there until 7pm but if a truck comes in at 6pm, they would like to be able to dump it.

Trustee Flood asked if they would compromise – 7am to 6pm? Mr. Baker said, its better but for years and years they were granted 7am to 7pm and wasn't aware of any complaints this past calendar year. He explained the road was dusty today because the County graded it. They have since contracted a firm to help them with that. Trustee Flood said that the hours were 7am to 5pm because that is a residential neighborhood. Mr. Baker said he is aware of that but they are also trying to get the hole filled in. Again, Mr. Baker said he would like the hours to be 7 to 7.

Vice Chairman Durham asked, as with the prior petitioner, if they need to run later, could they contact the Building Department to let them know that? Mr. Baker said that is usually for special projects but if the Build Department doesn't mind being contacted everyday...they could do that but didn't feel it was necessary. Trustee Flood commented, though, that the Ordinance says these calls can't be continuous; that would be the problem. Building Official Goodloe asked if they were anticipating a busy year? Mr. Baker replied, it is busy every year. Mr. Baker said it could be they never get a truck in after 5:00 but unless the extended hours are granted, there is not that opportunity – things happen quickly in construction. Building Official Goodloe commented their trucks do drive very slow and courteously down that road; they do a good job.

It was asked if there had been any complaints? Building Official Goodloe replied he only had complaints on the dust today and that was because the Road Commission had just graded it. Ordinance Enforcement Officer Daisley said as soon as he was notified of the complaint he called Dan's and they had people on the way to take care of the situation – they do work with the Township.

Mr. Baker said a couple other things to note – the mud and stuff that was on the concrete driveway is all gone. The 1 x 3 that is there has all been touched up and regraded and the ditch has been cleaned out.

Chairman Yaros asked if they plan on storing any equipment there? Mr. Baker said, there could be because of the Baldwin Road job, and there is typically a dozer there.

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

Eugene McNabb, 2981 Judah. Chairman Yaros asked about the envelope Mr. McNabb gave the members that contained information on Dan's Excavating? Mr. McNabb said those documents will show that his property is supposed to be on “that map”. Mr. McNabb explained that in 2008 this Board eliminated Lot 10 from the permit – it wasn't Dan's that asked for it to be removed, it was this Board. Mr. McNabb then handed out copies of the ZBA minutes from the May 29, 2001 meeting, the petitioner was utilizing plans previously prepared by Joseph Bishop RLS and stamped received by the Township on May 11, 1998 for the Warren mining operations, those plans included lot 10, 11, 12, 13 & 15 of Mt.

Judah Farms and noted that the operation also involved lot 19 of Mr. McNabb's which "they" expect will still need to be restored as part of this site. Mr. McNabb said this document shows the Board that Dan is supposed to follow that map however Chairman Yaros said it was no good. Mr. McNabb stated, "that is the map that he is supposed to follow in his mining procedures."

There was also a map that was drawn up by OHM from 2012. Mr. McNabb commented that at the meeting last year he mentioned this map and Trustee Flood said the Township didn't know anything about it however Trustee Flood seconded the motion. Mr. McNabb said the map that OHM made is right. Chairman Yaros responded that this was discussed last year with the Township Attorney, and the Board was told to go with what they had at that time – he didn't know of anything that has changed.

Mr. McNabb stressed that his property is still on the permit, it was supposed to be on the permit and the Board took it off. It was Mr. McNabb's opinion that the permit was no good anyway and it shouldn't be voted on. Mr. McNabb then asked Chairman Yaros to read what the petitioner is asking for. Chairman Yaros read, "AB-99-02-2018: Dan's Excavating Inc.; 2985 Judah Rd., the north 535 feet of Lot 11 of Mt. Judah Farms (parcel # 09-32-400-056), Lot 11, except the north 535 feet of Mt. Judah Farms (parcel # 09-32-400-057), Lot 12 and the southerly 588 feet of Lots 13 & 14 of Mt. Judah Farms (parcel 09-32-400-055), and 3011 Judah Rd. Lots 13 & 14, excluding the southerly 588 feet of Mt. Judah Farms (parcel # 09-32-400-063) and is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing." Mr. McNabb said he is 200 to 300 feet into the 588 ft. that he is not supposed to be in yet the Board will vote on giving him the permit knowing he had mined area from the back part of Mr. McNabb's property line to where Dan's is moving dirt. He (Dan's) went into the 588 ft. that he was not supposed to touch; he is filling it in right now. Chairman Yaros asked Engineer Landis to look at that when they submit a new grading plan. Engineer Landis said that he would.

The Board then looked through various materials Mr. McNabb gave them. Mr. McNabb said the Board is voting on renewing a permit that was based on the map that was provided in 1998 and said, "he did not know why the Board holds these renewal meetings." Mr. McNabb commented that he has a letter from his (Dan's) attorney that says his lot is supposed to be on there – he wanted to know why his property is not on the permit? Trustee Flood said they would have to refer that question to the Township attorney. Chairman Yaros said they will be acting on the exact same thing that was presented to them last year. Mr. McNabb commented that when a piece of property is taken off a permit, it is up to the Building Department to make sure whatever is taken off is finished, it is not finished. If lot 10 was finished and taken care of, then it can be taken off. It was his opinion that instead of postponing action and finding out what is wrong, the Board will approve the renewal because they are under pressure from the Township.

Mr. McNabb then asked where the retention pond is going to be? Chairman Yaros said that should be on the final plans which Mr. Baker said he would provide in the next 2 to 3 months.

Mr. McNabb commented that he talked to someone in the Building Department and asked them which map is accurate - the one the Township had OHM draw up or the one that Dan submitted? The person in the Building Department said, the one that Dan submitted. Mr. McNabb then asked, "so why was that map (from OHM) ever put in front of the Board if it wasn't accurate?" Mr. McNabb asked why lot 9 & 10 are sitting there and nobody is working on them? Chairman Yaros responded, because they are not part of the permit. Mr. McNabb disagreed, they are part of the permit. There was then some discussion on the OHM map Mr. McNabb provided. Chairman Yaros concluded that Mr. McNabb's issues can not be resolved here. It was Mr. McNabb's opinion he was wasting his time here, that the Board is supposed to be following the Ordinance and they are not, that they are being pressured by the Township.

Gene McNabb, Orion Township, commented that just because something is in front of the Board doesn't mean it is the right thing. He then addressed the petitioner's driveway. The Engineer spoke about the driveway being loaded up with mud - it is cleaned off now. His issue with that driveway was that it angles out to Judah Road, they (Dan's trucks) will be going to Baldwin Road – the trucks will have to turn on top of that hill. It was his understanding that the Road Commission won't give them a permit for that driveway because of the angle it comes out at. He explained that when a truck comes out of there it creates a berm and the sight distance is horrendous there. Another issue with the angled driveway is that the concrete is not wide enough to be a mud mat if the trucks are going to make the swing and go to Baldwin Road. He showed the Board a picture and reiterated this is a dangerous issue.

Mr. Gene McNabb then noted that Baldwin and Judah Roads will be closed for the road improvements so everybody will be going from Judah to Joslyn - another series issue and the trucks will rut up the road. The mud mat needs to be addressed and the berm knocked down created by the trucks.

Regarding the number of trucks per day, 100, that puts a truck in front of a house every 3 minutes. He commented that there is big thing currently in the Township about trash haulers – Judah Road deserves the same safety consideration. Mr. Gene McNabb commented that not a lot of residents come to these meetings because they are not within the 300 ft. notice range. There are approximately 60 homes on Judah using that road plus 100 trucks. Judah Road is going to be one-way – therefore this is a different scenario than last year. He noted the hours of operation were 7 to 5 three years ago then it went to 7 to 7 and then back to 7 to 5. He was concerned that they never get any violations because they are never looked at.

Mr. Gene McNabb asked, what is allowed to be done on that property, what does the permit grant them to do? Building Official Goodloe replied, mining, earth excavating, filling, and earth balancing. Mr. Gene McNabb said that they are staging vehicles there and sub-leasing the property is not allowed, correct? Building Official Goodloe replied, no, not necessarily – it was his opinion that its his property, he can park vehicles there. Mr. Gene McNabb said this matters to him because the hours were 7 to 5 and when the trucks would come back in, people would stand around and talk creating a nuisance – what is going to happen after 7:30 – 8:00 at night?

Mr. Gene McNabb asked who covers the Township inspections that are done? He said that it should be covered by the permit - any reinspection fees or inspection fees will be covered by the permittee. The Board interpreted that the inspections were being done for code enforcement reasons. Building Official Goodloe said one of the reasons they don't get violations is because they are very cooperative.

Mr. Gene McNabb then handed out copies of Ordinance 99 that had been revised in April, 2015. He explained the reason it was revised was to alleviate issues and complaints by his family pertaining to Section 3 on page 2 – the definition for “Filling”, it had been revised. Then in Section 10 on page 8, under Requirements of Filling – it speaks about no asphalt, no hazardous materials, but under #4 it says, “the permittee will endure all the costs”. That was added because there was some question as to who paid for things when they needed to be done. When you go to a. it says, “maintain a log of material and one photograph of each truckload...”, then in i., “The permittee will forward to the Township Building Department copies of all logs and photographs on a monthly basis or earlier if requested by the Building Official...”. In the old Ordinance under that Section there wasn't anything in there about pictures or log books because there had been a problem with possible fill being used that shouldn't. He then referred to his FOIA request requesting the those logs which he received. He showed the ZBA Members those logs and commented the Building Official Goodloe maybe able to understand them but will the next Official? Building Official Goodloe said that he doesn't request pictures, he has someone out there all the time seeing what is going in there. Mr. McNabb said he didn't understand why Building Official Goodloe didn't want pictures. Mr. McNabb then mentioned minutes from previous years and read one of the motions that stated, “...also, all aspects of Ordinance 99 must be complied with...” “the

petitioner shall note that tracking of material and dust control...” “the petitioner shall track material and dust control”, that was in 2015. Also, in 2015, the minutes from April 17, 2015, regarding the mud mat – Attorney Kelly replied, to apply to all parts of the Ordinance”. Mr. McNabb questioned, what is the difference between the mud mat and pictures? They are still putting stuff in there that shouldn’t be put in there that the Township changed the Ordinance to correct. It was his opinion that the Building Official doesn’t have the right to decide he doesn’t need pictures – he is to enforce, not to change. Building Official Goodloe disagreed, he believed the pictures could be requested by him if necessary.

Mr. Eugene McNabb, 2981 Judah; asked, “who gave the other contractor the right to use “that” as a storage pit all summer and be there past 5:00pm?” Ordinance Enforcement Officer Daisley said those were Dan’s Trucks. Mr. McNabb replied that was his point, there was stuff going on there past 5:00pm, if he (Dan) is given until 7pm, it will be 8 before they get out. Also, it was his opinion that Dan doesn’t have the right to store equipment in that pit, that is in the Ordinance.

Chairman Yaros said, if there are trucks coming off Baldwin Road, they may need to revise the approach a little so a berm won’t be created. Mr. Baker said they were in and out of there all year, coming off of Baldwin; if a berm is created, they will grade it out. It is a temporary situation, 99% of the time, the traffic all goes east.

Board Member Walker commented that was his concern too. He asked Mr. Baker if he was asked, would he widen that approach? Mr. Baker said, if it is necessary, however the approach that is there is exactly what is called for in the Ordinance.

Vice Chairman Durham said the trucks that are reportedly being stored there, are they working the project on Baldwin? Mr. Baker said, yes. Vice Chairman Durham clarified then, so the guys drop them off and pick them up in the morning, they are there overnight only and the situation is not long term? Mr. Baker said, correct. The trucks being there would then be open to whether they are being “stored”.

Vice Chairman Durham then asked about the pictures that appear to show rocks, concrete and other things being dumped, is that stock pile material that will be going back into the construction on Baldwin at some point? Mr. Baker said, yes, sometimes there is not enough room on Baldwin to drop a load of stone so they will drop it on their site and then later come back, bit by bit, and put it on the project. It was Vice Chairman Durham’s opinion he would rather not have trucks parked on the shoulder until the next morning and would prefer they be warehoused someplace. He then agreed with Mr. McNabb that 100 trucks a day is incredible. They (Dan’s) will really have to be on top of their game to do the best they can by the neighbors.

Building Official Goodloe commented to address some of the points made by the McNabbs - if the Board would like him to get a log of photos, although he does not see the need for it, he has a guy out there looking at what is going on rather than photographing everything. He gets the logs just to see kind of what goes in there and where it is coming from. He interpreted the Ordinance as saying, “if requested by the Building Official”. Chairman Yaros asked Ordinance Enforcement Officer Daisley, when he goes out there and he sees something questionable, would he take a picture of it? Enforcement Officer Daisley said he would.

Trustee Flood asked how long has this pit been in operation? Mr. Baker replied he didn’t know but it was well before 1998. Mr. Warren, said since 1968.

Vice Chairman Durham responded to Build Official Goodloe, that personally, he has never seen in his time here, any reason to believe that the Building Official needs any outside direction to do his job, he has not asked for anything he has not gotten. The Building Official should continue to do his job the way he believes his job needs to be done and doesn’t believe he needs any direction from him.

Chairman Yaros reminded the Board that whoever makes a motion and if it is for approval, to include the 90-day period to get the topo map revision done.

Board Member Koscierzynski commented she understands the dilemma about extending the hours however she is concerned that the business is in a residential area. Extending the hours, in her opinion, might cause a problem.

Vice Chairman Durham asked for a specific date the revised topo needs to be submitted by. It was decided by, August 1, 2018.

Vice Chairman Durham asked what the penalty would be if they do not provide the new grading plan by the determined date? It was noted they would be in violation of the permit and then what happens would be up to the Building Department,

Jack Warren, Bob Warren Trucking, commented that their (Dan's) hours were always 7am to 7pm but last year it was changed to 7am to 5pm, he believed, because of neighbor turnout at the meeting. He noted that Baldwin Road construction goes on from 7am to 6-6:30pm. It was his opinion Dan's should be allowed the requested hours, holding them to 7 to 5 may prolong the Baldwin Road project.

Board Member Walker clarified that the haul route will end at Dan's place? Mr. Warren said, yes.

Mark Peyerk, S. Rockwood, MI, with Dan's Transport, commented that Ordinance Enforcement Officer Daisley called him at 2:02pm stating he had received complaints about the dust. That morning the road had not been graded; sometime mid to late morning, it had. At 2:06pm, he had chloride scheduled for the next morning and at 6:13pm there was water going down on the road from a water truck.

Board Member Koscierzynski clarified with the Building Department the hours of construction on Baldwin Road. It was noted that some Ordinance requirements were waived, such as for noise and dust, for the purpose of this construction. It was suggested their hours of operation be per the request, 7am to 7pm. Board Member Koscierzynski, after hearing the reasons, agreed with that request.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of ZBA case #AB-99-02-2018, Dan's Excavating, 2985 Judah Road, the north 535 feet of Lot 11 of Mt. Judah Farms (parcel # 09-32-400-056), Lot 11, except the north 535 feet of Mt. Judah Farms (parcel # 09-32-400-057), Lot 12 and the southerly 588 feet of Lots 13 & 14 of Mt. Judah Farms (parcel 09-32-400-055), and 3011 Judah Rd. Lots 13 & 14, excluding the southernly 588 feet of Mt. Judah Farms (parcel # 09-32-400-063), the petitioner is requesting the renewal of an Ordinance 99 permit for Sand and Gravel Mining, Earth Excavation and/or Filling, and Earth Balancing, would move that in this case the petitioner's request for the permit renewal **be granted** because there is work going on west of there, a major municipal road; he urged that the petitioner be granted their renewal because they are aware they have got dust control issues to maintain, and they are in substantial compliance per OHM; renewal be granted with the following conditions:

- their hours of operation will be 7:00am to 7:00pm, if there is any reason they need anything beyond that, they need to contact the Township and let them know;
- OHM's review concluded they are in substantial compliance with Ordinance 99 standards and put forth conditions for approval that had been read into the record at the beginning of this case;
- their bond/guarantee and insurance information are up to date;
- they are aware they are in a bad situation dust wise and are going to have to do something;
- they are looking at 100 vehicles a day which is a large amount but a certain number of those will be generated by the Baldwin Road project;

- there have been items brought up by the public, certainly some of which need to be referred and have previously been referred to Township legal people, a lot of what has been brought up and questions that have been asked are beyond the purview of this Board and will be referred to attorneys for some type of decision at a later time;
- by August 1, 2018, the Township needs to receive an updated topographical map/grading plan for the entire pit to be completed, if it looks like there is going to be any type of issue beyond that date, they need to get ahead of the problem and let the Building Department know well prior;
- there were some corrective measures on the Engineer's review which a representative from Dan's stated a lot has already been taken care of, he urged them to move forward as quickly as possible doing as much of it as they can prior to the expiration of the current permit.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add that Dan's Excavating will look at widening the approach for trucks coming off of Baldwin Road and addressing mud mat concerns as needed.

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

**Motion carried 5-0**

**AB-99-04-2018: Pontiac Crushed Cement; Lot 30, excluding the south 400 feet of Highland Farms (parcel # 09-32-400-021), Lot 29, excluding the south 400 feet of Highland Farms (parcel # 09-32-400-022), and a 7.5-acre parcel (parcel # 09-32-400-058):**

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing.

Pete Granzow, Pontiac Crushed Cement, presented.

Engineer Landis went over his review dated March 23, 2018. The site generally appeared the same as last year; it was well maintained and clear of debris and there was no mining taking place. There is broken concrete and asphalt materials being hauled into the site for future crushing and crushed materials being removed. In conclusion, he recommended the following items be addressed in a motion for approval:

1. The water level in the pond should be monitored throughout the year. Cleanout of accumulated sediment will be needed to promote infiltration.
2. Per Section 6 of Ordinance 99, the petitioner shall address the bond/guarantee and insurance information with the Township, if not already done so.
3. Per Section 7, Item L, the petitioner shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.
4. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the petitioner to document all fill is "Suitable Fill Material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

Chairman Yaros asked the Building Department and Mr. Granzow if they had any complaints about noise? The Building Department representatives responded, no. Mr. Granzow said they didn't crush that much last year. Chairman Yaros said there looks to be some material there now that needs to be crushed. Mr. Granzow agreed and said it is only about a couple of weeks' worth of work.

Vice Chairman Durham stated that he passes by that area often but doesn't live as close as some of the people on Judah Road, if they are not generating complaints and with that hill, he would not know their operation was back there except for the sign. In his opinion the operation was that well run.

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

Board Member Koscierynski asked Mr. Granzow what hours of operation was he looking for? Mr. Granzow said 7am to 5pm would be fine.

Moved Board Member Walker, seconded by Trustee Flood, that in the matter of ZBA case #AB-99-04-2018: Pontiac Crushed Cement, Lot 30, excluding the south 400 feet of Highland Farms (parcel # 09-32-400-021), Lot 29, excluding the south 400 feet of Highland Farms (parcel # 09-32-400-022), and a 7.5-acre parcel (parcel # 09-32-400-058); the petitioner is requesting renewal of an Ordinance No. 99 permit for sand and gravel mining, earth excavation, and/or filling and earth balancing; to move that the petitioner's request for renewal of the Ordinance 99 permit **be granted** because according to the information supplied, the petitioner has submitted a packet including an application with a check list of responses and ownership information; a topo survey is on file dated June 16, 2016; their submittal was received and complies with Township engineering standards; OHM has indicated that in their opinion, the current application materials as submitted are in substantial compliance with Township Ordinance 99 and Township engineering standards and had noted four (4) recommendations which had been read into the record by Engineer Landis; the petitioner is not requesting any variances and the hours of operation will be 7:00am to 5:00pm, Monday through Saturday; therefore he asked that the request be granted.

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

**Motion carried 5-0**

## **6. PUBLIC COMMENTS**

Eugene McNabb, 2981 Judah, commented that one of the pits was being used as a pistol range and he had to call the County; also, it was his opinion that when it was commented that some things have to be referred to the attorney, the attorney has nothing to do with deciding what the Ordinance is, that is the job of the ZBA.

Gene McNabb, Orion Township, commented that regarding mention of the Board waiving some Ordinance requirements such as for noise, dust and work hours, it was his opinion that pertained to the Baldwin Road construction and it being commercial however Judah Road is residential; in the minutes packet, on the last page of the meeting on April 24, 2017, Vice Chairman Durham requested that Attorney Kelly address Lot 10, it was his belief that never happened, he didn't know why things don't get followed up on, if it had, they would have answers for this meeting – things aren't working like they probably should.

## **7. COMMUNICATIONS**

None

## **8. COMMITTEE REPORTS**

None

## **9. MEMBERS' COMMENTS**

Board Member Koscierynski thanked the Planning & Zoning Clerk for her coordination of the packets.

Trustee Flood commented that he respects the McNabbs' comments, everyone is entitled to their opinion – however to protect the Township and taxpayer responsibility, sometimes legal counsel needs to be referred to.

**10. ADJOURNMENT**

Moved by Trustee Flood, seconded by Board Member Koscierzynski, to adjourn the meeting at 9:08pm.

**Motion carried.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

May 14, 2018  
Zoning Board of Appeals Approval