

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, MAY 14, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, May 14, 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:

Al Daisley, Ordinance Enforcement Officer

OTHERS PRESENT:

Angelique Thomas	Ed Thompson
Violet Gjolaj	Don Riteubuugh
John Vidican	Carl Cyrowski
Andrew Garrett	Samir Shango
Rhonda Geldhof	Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

04-23-2018, Regular Meeting Minutes

Moved by Board Member Koscierszynski, seconded by Vice Chairman Durham, to approve the 04-23-2018 Regular Meeting minutes as presented. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

AB-2018-10: 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 feet 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 recused himself from acting on the case. It was noted that the Members moved at the April 9, 2018 meeting to allow Chairman Yaros to recuse himself as he lives in the petitioner's neighborhood.

Vice Chairman Durham noted that some updated information regarding this case had been received from Planning & Zoning Coordinator Frey in a memo dated May 11, 2018. The memo explained that Hi-Hill Village Homeowners Association approved Mr. Vidican's revised plans for a smaller garage and an unenclosed breezeway that attaches the garage to the house. It was noted that the request is still for a 92 sq. ft. variance for a Total Maximum Square Footage of 1,242 sq. ft. Also, although the proposed garage was lessened in height, it would still need a variance of 1.48 ft. even though it would be the same height as the home because of midpoint measurements between the home and the proposed garage.

Vice Chairman Durham then read into the record a letter from the Hi-Hill Architectural Committee dated stamped received May 10, 2018. Mr. David Miller, President of the Committee, explained that the Committee proposed the following changes and would consent as long as certain deed restrictions were met: 1) the structure must not be taller than the current home, and 2) the structure must have a breezeway connecting it to the current home. Presuming these restrictions are met, the slope of the roof will not be called into question by the Board. As for the 10 ft. setback requirement, the committee will defer to the Township's expertise.

Vice Chairman Durham asked Mr. Vidican if he was happy with the revised plans? Mr. Vidican replied that he had no issues and spent a lot of time with the Architectural Review Committee and the Township's Planning Department. He believed they have all come to a consensus – everything, as he is aware, is acceptable to both parties.

Trustee Flood clarified that the peak of the house is at 15.6 ft. and the peak of the proposed garage would also be 15.6 ft. Mr. Vidican said that was correct. He noted that he removed the planned storage above the garage and dropped it (the height) down.

Vice Chairman Durham commented that from his perspective, he is still having a problem identifying what the practical difficulty is here; something that has to be considered when allowing or not allowing variances. Was there something particular to this property that would prevent him from using it for a lawful purpose if he did not get the variances he was seeking? Vice Chairman Durham said he understands about the side-entrance garage, but looking at the property, has trouble coming up with a practical difficulty.

Mr. Vidican explained that he needs the 7 ft. variance so that he and his wife will be able to pull straight into the garage – otherwise they would have to "jog over". Also, there would then be a 10 ft. space that will have no use. The biggest thing is being able to drive straight in backing straight out. If he were to adhere to the 10 ft. setback, it would create another problem.

Vice Chairman Durham commented that the 10 ft. space Mr. Vidican referred to as being of no use, is the required setback and is in the Ordinance for a reason. It was Vice Chairman Durham's belief that this is a "convenience issue". Mr. Vidican replied, that if it were over 10 ft., he would agree. Mr. Vidican said that if a variance was not granted from the 10 ft. requirement, he would have to revisit the whole thing and possibly not do it.

Board Member Walker said nothing has been resolved with regard to the deed restriction, is that correct? Mr. Vidican said, that was incorrect, he has complied with the Architectural Committee and noted the letter from them. Board Member Walker then asked if the Architectural Review Committee can remove a deed restriction?

Trustee Flood said the way he understands the original request, was that the deed restriction requires that there be an attached breezeway and the height of the structure could not be higher than the peak of the house. Mr. Vidican has brought that down and in Trustee Flood's opinion, met both those deed restrictions.

Board Member Koscierynski interpreted the letter that the Architectural Committee would be ok with the proposed structure as long as the restrictions were met – a presumption that the restrictions would be met - with a breezeway and the reduced height.

Vice Chairman Durham asked Mr. Vidican if the pictures in the packet were his. Mr. Vidican replied they are pictures of examples of a similar home that has a breezeway and almost exactly what he is proposing to do. Vice Chairman Durham commented that he also drove around the neighborhood and explained that when they see these examples, they don't know what the rules were when they were put in or when they went in – it may have been compliant at the time.

Loren Yaros, 140 Hi-Hill, commented that the deed restrictions do state 10 ft. off (the side yard) but the Committee left that decision up to this Board. Mr. Yaros also said that he knows the Board in the past has granted side yard setbacks but usually for lots that are narrow and around lakes; not very often on a 100 ft. or better lot width. It was his opinion that there was room to move it back and referring to the pictures, the example is by far more than 10 ft. off. Mr. Yaros said he doesn't have any problem with the height and that Mr. Vidican went out of his way to get it to the same height as the house, and the breezeway is nice. If he could move it 10 ft. off the property line; "he would be in business".

Vice Chairman Durham asked Mr. Vidican if he would be using the proposed garage for motorhome storage, what would be going in there? Mr. Vidican replied, he probably would not store a motorhome there, he might pass one through it; he plans on parking his two cars in it in the winter. Vice Chairman Durham asked if the present garage will remain for storage? Mr. Vidican said, yes it will. If the Board should decide otherwise, he could do something else with it.

Board Member Koscierynski commented that when she visited the property, she did understand what the practical difficulty would be. Mr. Vidican has large vehicles and believed she wouldn't even be able to get her Dodge Journey in and out of his garage – it is a tight squeeze. She did say she had some concerns about the letter from the Architectural Review Committee and the stipulation, "presuming these stipulations are met". It is a "red flag" to her when a home owners association is not in favor of something.

Vice Chairman Durham said he believed the Review Committee has signed off on the plans providing the ZBA is in favor of the side yard setback.

Trustee Flood clarified the 3 requests – there is the setback request and the other two criteria have been met; a breezeway connecting the garage and the height. To him, the concern now is the 7 ft. side yard setback variance.

Vice Chairman Durham asked the Recording Secretary if there was any other resident correspondence that they did not have at the last meeting? There was not.

Brian Kelly, 3759 Hi-Dale, asked about the height of the garage door? If it is still a 10 ft. door, he has an issue with that. A 10 ft. high door in a residential community makes it look more like a commercial building rather than residential. There are no other garages in the subdivision that have that kind of profile. Vice Chairman Durham replied that it still appears to be a 10 ft. door.

Trustee Flood said he also thought about the 10 ft. door. He has a 7 ft. door on his garage and has a high-top passenger van he cannot get into it; he needs a 9 ft. high door. He believed that was not a concern of the Review Committee.

Trustee Flood commented on the site plan provided. It showed Mr. Vidican's driveway already sits over the 10 ft. setback which is not uncommon. He asked Mr. Vidican if he would have a problem not asking for the 7 ft. variance? Mr. Vidican said he would like to know if he can't get the 7 ft. variance, what would his options be? Trustee Flood replied, to adhere to the 10 ft. setback; that would also shorten the breezeway distance.

Vice Chairman Durham commented that if the 10 ft. setback is an issue with the Board and they deny the variance request for that, Mr. Vidican could still walk away with their approval to build the garage but not exactly where he wants it. Vice Chairman Durham informed Mr. Vidican that he does have the right to ask for a vote on what he is requesting and does not have to negotiate. Mr. Vidican replied that he would like to get a resolution tonight to know where he is at.

Vice Chairman Durham said he would like to see the 10 ft. setback maintained but also understands Mr. Vidican's issue with pulling in and backing out of the existing garage.

Board Member Walker asked if Mr. Vidican could "wiggle" the garage over if only a 5 ft. variance was granted? Mr. Vidican replied that he could do it but would prefer a 7 ft. variance.

Vice Chairman Durham said he also would be more comfortable with a 5 ft. side yard variance.

Moved by Board Member Kosciuszynski that in the matter of AB-2018-10, 3830 Hi Dale Dr., 09-26-478-011, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, Article 6, Section 6.07, District: R-1: 1) a 5 ft. side yard variance from the required 10 ft. side yard setback to build a detached garage 5 ft. from the side yard property line (south); 2) Article 27, Section 27.02.A. Section A.8. (Up to ½ Acre): a 92 square feet 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; and 3) Section A.5: a ~~3.54~~ 1.48 ft. height variance above the height of the principal structure of 12.02 ft. to build a detached garage 15.56 ft. in height, be **granted** because the petitioner did demonstrate that practical difficulties exist in this case in that he 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: the entrance of the garage is on the side and is very difficult for him to get vehicles in and out of the existing garage without encroaching on the neighbor's lawn; 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 finding of fact: the petitioner worked with the Board and made adjustments to the square footage and because of the unique placement of the house, it is difficult to get cars in and out of the garage; the petitioner's plight is due to the unique circumstances of the property, based on the following findings of fact: the existing garage is a side entry and not in the front; the problem is not self-created.

Motion Discussion:

Mr. Vidican commented that the height variance should be 1.5¾ ft. It was noted in the Planning & Zoning Coordinator's memo dated, 5/11/2018, that the height variance is 1.48 ft.

Vice Chairman Durham clarified that the height of the garage was 12.02 ft.? The Planning & Zoning Coordinator's memo stated that the proposed garages' midpoint was 13.5 ft. Mr. Vidican responded, the garage total height is 15.6 ft. which is the same as the house.

Trustee Flood commented that the building department measures from the midpoint of a structure, not to the top. Mr. Vidican said he came to terms with the Planning & Zoning Department on the height so that it matches the existing principal structure.

Board Member Koscierynski amended the motion to read the request for item 3 to be - 3) Section A.5: a 1.48 ft. height variance above the height of the principal structure of 12.02 ft. to build a detached garage 15.56 ft. in height.

Discussion on the amended motion:

Mr. Vidican noted that the height variance should be 1.48 ft. above the height of the principal structure of 12.02 ft. to build a detached garage 15.5 ft.

There was discussion on what the total height of the proposed garage would be versus the midpoint, and how the motion should read.

Vice Chairman Durham clarified that the houses' midpoint is 12.02 ft. and the garages' midpoint is 13.5 ft. leaving a variance request of 1.48 ft. Mr. Vidican said the 13.5 ft. is the midpoint of the garage, the total height however is 15.6 ft.

Board Member Koscierynski amended the motion, Board Member Walker re-supported the motion to read - 3) Section A.5: a 1.48 ft. height variance above the height of the principal structure's midpoint of 12.02 ft. to build a detached garage 15.56 ft. in total height.

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

Motion failed 2-2 (Yaros was recused)

Trustee Flood commented that he was not in favor of the motion because he wants the petitioner to adhere to the 10 ft. side yard setback which would then meet part of the deed restrictions for that subdivision.

Vice Chairman Durham said the petitioner did work with the Board however he was confused what the overall total height of the proposed garage will be. Trustee Flood showed him the measurements on the revised plans for the garage and those of the house. The variance is for the difference in midpoints.

It was noted that for a new motion to approve, the request would have to be modified. Mr. Vidican agreed to lower the roof by 1 inch.

Moved by Board Member Koscierynski, seconded by Vice Chairman Durham, that in the matter of AB-2018-10, 3830 Hi Dale Dr., 09-26-478-011, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, Article 6, Section 6.07, District: R-1: 1) a 5 ft. side yard variance from the required 10 ft. side yard setback to build a detached garage 5 ft. from the side yard property line (south); 2) Article 27, Section 27.02.A. Section A.8. (Up to ½ Acre): a 92 square feet 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; and 3) Section A.5: a 1.48 ft. height variance above the height of the principal structure of 12.02 ft. to build a detached garage 15.56 ft. in height but to reduce the roof height request by 1 inch; **be granted** because the petitioner did demonstrate that practical difficulties exist in this case in that he 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: the petitioner has worked with the Board to reduce the measurements, because the garage door opens on the side near the house and the width of the driveway, it is very difficult for the family to get their cars in and out of the garage; 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 finding of fact: the width of the driveway and the way that the garage is accessed, it is difficult for the petitioner to get cars in and out of the garage and he has worked with the Board regarding the measurements; the petitioner's plight is due to the unique circumstances of the property, based on the following findings of fact: the existing garage is a side entry and not front facing the street; the problem is not self-created.

Board Member Koscierzynski amended the motion, Vice Chairman Durham re-supported, to add to the motion that the garage will be connected to the house with a breezeway.

Roll Call Vote: Durham, yes; Walker, yes; Flood, no; Koscierzynski, yes. **Motion carried 3-1** (Yaros was recused)

Chairman Yaros rejoined the meeting.

AB-2018-15: Shango's Fireworks, 3890 Joslyn 09-28-377-011

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 5, 2018 – July 5, 2018.

Mr. Sam Shango, 3890 Joslyn Road, presented.

Chairman Yaros said he looked at the layout and in the past, they have granted firework sales where there they only had 24-hour surveillance and the Township experienced problems with that. Mainly now, petitioners have been using PODS to store their material onsite and can lock it up. That has seemed to cure the problem.

Mr. Shango responded he owns a local business, Star Market, just south of the Township Hall. It was noted that he put a new roof on it and has been enhancing it.

Mr. Shango said he uses security guards at all of his locations, he has 7 locations, and there have been no problems. Also, he has cameras all over outside of his businesses. Chairman Yaros asked, where do the security guards stay? Mr. Shango said they stay inside the tents – they sleep inside the tents every night at all his locations. Since fireworks were legalized, he has had no problems.

Vice Chairman Durham said he looked at the site and at the overheads that were provided. He clarified that the tent is going to be on the grass, correct? Mr. Shango said some of it will be on the grass and some of it will be on the parking lot. Vice Chairman Durham asked if he was going to pull power for this from the sign? Mr. Shango said, no, he has generators for all his locations. The generator will stay back away from the tent and will use extension cords. He commented that when he gets inspected, that is the first thing that is checked. Vice Chairman Durham asked how far away from the tent will the generator be? Mr. Shango replied that parking has to be 10 ft. away which is a State rule. The generator has to be 20 ft. from the tent and he will only use one extension cord to run it – he will just need power to run the cash register inside the tent plus some lights if needed. He noted they plan on closing at 10pm.

Vice Chairman Durham said that on the overhead he sees some circles with “10s” by them, are those for traffic impact? Mr. Shango said, yes, that is required by the Fire Department in Orion Township. They want him to have barricades around the tent. Mr. Shango added that around that there will be lines to protect the tent from any traffic going through it. Vice Chairman Durham commented that he expects there will be a lot of traffic making a horseshoe around that.

Vice Chairman Durham said he was concerned about the hours of operations.

Vice Chairman Durham spoke about the PODs. He said they was something that was put in place based on what this Board felt was appropriate. He, personally, has not voted for a site that did not have POD in quite some time.

Board Member Koscierynski said there has been problems in the past with suppliers just closing the tent and leaving the fireworks there. There was also an instance where someone watching the tent was barbecuing close to it. She believes that is why the ZBA decided to ask that firework sits have PODs – not only to protect the business person but to also protect the community. She found it hard to believe that fireworks weren’t stolen when there was no POD and the tents left stocked overnight.

Mr. Shango replied, this hasn’t happened at any of his locations because the security guys sleep inside the tent and he has had no issues with that. They lock the tents every night. Mr. Shango explained he has had the same security since fireworks were legalized.

Board Member Koscierynski asked if the Township requires PODs? It was noted they are not required.

Mr. Shango commented that at one of his locations, the municipality requires a security guard instead of the use of a POD.

Chairman Yaros asked if there will be bathrooms available for the security guards? Mr. Shango said yes, there are some in the party store. Chairman Yaros said one of the problems they had is when someone leaves to go to the bathroom and one of the reasons they ask for a POD.

Chairman Yaros asked if someone is allowed stay 24-hours in a tent on commercial property? Ordinance Enforcement Officer Daisley said, yes.

Chairman Yaros then asked if the Building Department had any problems with this corner? Ordinance Enforcement Officer Daisley said, as far as code enforcement, no.

Chairman Yaros read a letter from 2262 Hammerslea. The letter noted that this is a residential area and they already have a burden of traffic from the existing gas station and party store. The side street has serious problems with chuck holes and being that it is a through street for the subdivision. Children often play in the street on their way to school. The letter also asked who would pay for fire and police to guard this location. They were opposed to the request and it was signed by Gerald Garrett.

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

Mr. Andrew Garrett, 2262 Hammerslea, commended Mr. Shango on what he as done to the party store already to try and enhance it. He commented that he has looked at the property for a year and a half at truces that just sat there; currently behind the store there is a lot of trash; and the street is riddled with chuck holes. He understands that construction takes time but picking up trash does not. He was concerned about his children walking back and forth to school every day due to the traffic in the neighborhood and people ignoring the speed limit and Stop signs. He gave his background as a retired

firefighter. He agreed that PODs are great for locking up materials at night but they wouldn't stop the explosives from going off and he literally live across the street, the tent would be within 250-300 ft. of his house. He noted that most roadside tents require a 500 ft. limit for open flame – by grilling on his property, will he be endangering Mr. Shango or his own neighborhood? Mr. Garrett then noted that there is a fireworks store on Joslyn Road 1.4 miles away, why does there have to be one here on the side of party store in a neighborhood filled with these concerns?

Board Member Koscierynski read the memo from Fire Marshal Williams dated April 23, 2018 that stated as long as they are in compliance with the 2015 International Fire Code they do not have any additional comments except that they need to contact the Fire Department once the tent is constructed to request an onsite inspection before the sale of fireworks begins.

There was also an email in the packet dated, April 27th, from Jay and Cardell Mason who live at 2453 Flintridge. There were opposed to the request due to the noise fireworks cause and possible vandalism in the surrounding neighborhood.

Mr. Carl Cyrowski commented that he has been a businessman in real estate in Orion Township since 1987 and a member of the Chamber of Commerce. He said they have always supported local businesses and Mr. Shango has been an asset to this community; he has taken a store that was in poor repair and has increased the value of it tax wise and beauty wise. In his opinion, Mr. Shango runs a great business. He agreed there is a fireworks store down the street but Mr. Shango is a local businessman and the Chamber of Commerce supports him. Mr. Cyrowski said he believes that Mr. Shango has conformed to the Ordinances and he will rely on the Ordinances to do the job correctly; he reiterated that the Chamber supports him personally as well as business wise; he will do a great job for the community as he has. Mr. Shango has also shown support for the Lake Orion Fireworks Association; it is an asset to the community to have businessmen who support them and do their job correctly.

Ordinance Enforcement Officer Daisley commented that any road concerns need to be addressed with Oakland County and as for the remodeling of Star Market, Mr. Shango has met all the needs and has stepped forward to do other needs in the community. It was his opinion approving this request would be a benefit to the community. Ordinance Enforcement Officer Daisley said he does code enforcement for the Township which Mr. Shango has abided by.

Vice Chairman Yaros asked about the trash. Mr. Shango responded that he has a container coming in and does not have as much trash as he once had. He commented that he is working on the sidewalk now and trying to make that level; he has to do things step by step.

Vice Chairman Yaros addressed the concern about more traffic. He believed if there was any increased traffic, it would be along Joslyn Road. He also said he can see resident concerns about living so close to where firework sales would be.

Trustee Flood commented the problem with some mixed-use developments - some of the older ones are a lot closer to residential uses; now the Township likes them a little further apart. In this case, they have to go by what State law allows and what the Ordinance allows. Ordinance criteria is that this is in a commercial development, if it meets all the requirements, it is in compliance. Trustee Flood added that Mr. Shango will also have to meet all the requirements of the Fire Department, post a \$1,000 cash bond, the insurance must be up to date, and he must have a license from the State of Michigan which needs to be submitted to the Building Department. These are the guidelines the Township follows for all firework sales.

Mr. Shango commented they have signs on all their tents, on all four sides, that says, "Fireworks Discharge within 300 ft.". The State of Michigan requires that.

Chairman Yaros said one of the requirements the Township also has is that Mr. Shango has to submit to the Fire Department and the Building Department a phone number they can call in case of an emergency.

Mr. Garrett, 2262 Hammerslea Road, was concerned about the discharge of fireworks within 300 ft., does that mean he cannot set off fireworks in his front yard this year? He lives directly across the street. He believes this is wrong for the community for one month.

Trustee Flood explained that when considering approval for this request, he has to determine that Mr. Shango is complying with State law and Township Ordinances. At this point he did not see any instances where Mr. Shango was not meeting either of those.

Board Member Walker asked if the security guards will be armed? Mr. Shango said yes, with guns and they are licensed by the State and the one that will be working at this site is a retired State Police Officer. Board Member Walker clarified they will be spending the night in the tent? Mr. Shango said, yes.

Board Member Walker asked how much trash is there behind the store? Mr. Shango replied not as much as he used to have. He said he has a 20 ft. roll-off coming in that should be able to handle what is left. He promised he could have it done by the end of the week.

Trustee Flood reminded the Board that the Township does not allow motorhomes or campers to be parked on the site for security to stay in. Mr. Shango agreed.

Vice Chairman Durham asked what the Township's normal hours of business are? Ordinance Enforcement Officer Daisley said, typically it is 8am to 10pm.

Mr. Shango said he would like to be open starting June 12th or 13th until July 5th.

Vice Chairman Durham spoke to the matter of asking petitioners to voluntarily have a POD on site to secure the fireworks at night; when they did, it made security trouble free. He commented he would be disappointed if they "back-stepped" now and allowed only a security guard.

Chairman Yaros commented, however, the other tents were put up in areas that had no relation with the owners of the business where they were located. This tent will be operated by the owner of the site that the tent will be in front of. Mr. Shango said he would actually leave a key for the security guard so he could use the restroom.

Board Member Kosciuszynski commented that this is unique in comparison to other firework sales sites.

Vice Chairman Durham asked Mr. Shango about the cameras he spoke of earlier, who will be monitoring those at 3am? Mr. Shango said he can access them through his cell phone.

Trustee Flood commented on discharging fireworks within 300 ft. of the store. He noted that people are legally only allowed to shoot fireworks off the day before, the day of and the day after the holiday.

Moved by Trustee Flood, supported by Chairman Yaros, that in the matter of AB-2018-15: Shango's Fireworks, 3890 Joslyn Road, 09-28-377-011, would move that the petitioner's request for a Temporary Use Permit from Zoning Ordinance No. 78, Article 30, Section 30.11.F.1.b: the petitioner is requesting a Temporary Use Permit for an Open Air Business to sell consumer fireworks from a tent June 12, 2018 – July 5, 2018; be **granted** because the petitioner would be using the property for a permitted purpose

and the petitioner demonstrated they will be complying with the required conditions for an Open Air Business; the conditions for approval are as follows:

- the date of operation shall be June 12, 2018 through July 5, 2018; the hours of operations will be 8:00am to 10:00pm, seven (7) days a week;
- the petitioner must supply a \$1,000.00 cash bond;
- must also supply the Building Department with a current insurance policy;
- a phone number to the building department for a key contact;
- and a copy of their State License

further, received was a memo from the Orion Township Fire Marshal dated, April 23, 2018, there is to be no public allowed or sales to the public allowed until the operation has had a final inspection and it has been authorized; the petitioner is in full compliance with the ordinance, there are no other fireworks sales within one (1) mile of this operation; the petitioner is in a commercial zoned venue which meets ordinance; the petitioner did state that he would work with the Building Department and the Code Enforcement Officer on cleaning up the back area of the store; and noted the letter from Mr. Gerald Garrett and the email from Judy and Cardell Mason who were opposed to the sales.

Trustee Flood amended the motion, Chairman Yaros re-supported, to add to the motion that the petitioner has met the checklist for Temporary Use Permit Application from the Township of Orion which includes the need for fire extinguishers and measurements between display – all the criteria that is in the Ordinance.

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

Motion carried 4-1

AB-2018-16: Kola & Violet Gjolaj, 2219 Turnberry Ct. 09-04-301-055

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting a variance to encroach into the setback of a unit in an existing Planned Unit Development. Requesting a 5 ft. rear yard variance from the required 20 ft. rear yard setback to build a deck 15 ft. from the rear property line.

Chairman Yaros said he ran into the petitioner when he visited the site and has since found out that the Township allows residents within this PUD development to come to the ZBA to ask for a variance so they can add a deck to their home. He commented that the petitioner has a door wall in their kitchen they have not been able to use since 2009. In his opinion, he did not see a problem with the request. It is a minimal deck, 10 ft.

Vice Chairman Durham clarified that he read in the packet that the homeowner's association is on-board with what they are trying to do? Ms. Gjolaj said, that was correct and the homeowner's association vice president was with her tonight, Ms. Angelique Thomas.

Vice Chairman Durham asked if the stairs coming down from the deck will not increase the variance request? Ms. Gjolaj responded, they will not. They are coming in shorter than the deck.

Vice Chairman Durham said the only thing that concerned him regarded the people that were straight behind her, was she aware if the have any issues with this? Ms. Gjolaj commented that there was a proxy vote of the neighbors and that particular neighbor signed it; she was not sure why they may have an issue with it now.

Trustee Flood commented that something similar has come in once before. He recalled it was on Crosbie.

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

Ed Thompson, 2206 Greenan Ct., owns the house directly behind the petitioner. He asked if he could see the plans; when out on his patio, he would be looking up at this deck and will have less privacy than he has today. He would like to see the plans to see if they are somewhat acceptable and fits the mold of the subdivision. He then commented that there is the problem with no one following HOA rules.

Chairman Yaros said that the proposed deck is 16 x10, a minimal deck as far as decks go. It will have side stairs. Ms. Gjolaj said that it will have a PVC railing.

Ms. Gjolaj commented they do have Green Giant trees between their house and Mr. Thompson's which they put in jointly. They are supposed to grow to be about 30 or more feet. They will then both have privacy.

Vice Chairman Durham asked how the petitioner got a vote through the HOA without plans?

Ms. Angelique Thomas, 74 Crosbie Ct., explained that they purposely amended the Master Deed two annual meetings ago with the help of a couple lawyers including herself. They did so to allow homeowners to make aesthetic changes to their homes, to give them more freedom, because the lot setbacks were somewhat restricting. They wanted the homeowners to have freedom to come to the ZBA and request setback variances if needed but also have the procedural ability to come to the HOA with plans. The Gjolajs did submit their plans to the Board, they had their quarterly meeting and reviewed their plans and while they do not have an aesthetic and landscaping committee, they all unamously agreed that they did comply with the aesthetic nature of the neighborhood. Additionally, the Gjolajs have historically been very compliant and their property has been very well maintained. She commented that the brick patio that is on the back of the house that will be underneath the deck they proposing was done by one of the best contractors in the State and is very aesthetically pleasing. The HOA has confidence in the Gjolaj's taste and will do right by the aesthetic requirements of the Board. Ms. Thomas explained that the subdivision consists of large homes with small lots, many of the homeowners were complaining which is what pressed them to go forward with modifying the Master Deed. She noted that many of the homes were built with second floor kitchens with large French doors, you would expect that you would be able to put a deck outside of the dining area.

Chairman Yaros commented that a copy of the PUD was included in the packet and it had different setbacks practically for each lot.

Vice Chairman Durham reminded the petitioner and the Board that any plans that are developed will have to approved by the Building Department prior to permits being issued.

Trustee Flood noted that if the variance is granted, it would stay with the land.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of AB-2018-16: Kola & Violet Gjolaj, 2219 Turnberry Ct., 09-04-301-055; the petitioner is requesting a variance to encroach into the setback of a unit in an existing Planned Unit Development, requesting a 5 ft. rear yard variance from the required 20 ft. rear yard setback to build a deck 15 ft. from the rear property line; to move in this matter the petitioner's request **be granted** because the petitioner did demonstrate that practical difficulties exist in this case being they have a door that leads to "nowhere", also being able to put a deck on the house would be beneficial and make the house look better from the rear and would allow them to use their property in a reasonable and lawful manner; compliance with the strict letter of the Ordinance would unnecessarily prevent the petitioner from using the property for a permitted

purpose; **granting** the variance request would do substantial justice to the petitioner and do no material harm, as he sees it, to other property owners in the area; there is not a lesser relaxation than the relief applied for, they are requesting what is a minimal deck on a house that size, the deck is not ground mounted, it is in the air; the petitioner's plight is due to the unique circumstances of the property, based on the following findings of fact: the lots are small and where the house is situated, they have a nice room and nice doors and no place to go; the problem has not been self-created, the house was designed and built as is and the doors where they were.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add to the motion that the house was built in 2009 and they have never been able to use the doors from the dining area.

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

Motion carried 5-0

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

There was a memo from Planning & Zoning Coordinator Frey dated May 4, 2018 about possibly cancelling the May 29th meeting due to lack of agenda items

Moved by Board Member Walker, seconded by Vice Chairman Durham, to cancel the May 29, 2018 regular meeting of the Zoning Board of Appeals because there is only one agenda item.

Motion Carried

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Board Member Walker commented that the next library book sale starts tomorrow, May 15th, and runs the entire week - it is a big fundraiser for the library.

Trustee Flood complimented the Planning & Zoning Department for doing an excellent job and getting all the documentation prepared for these meetings; also, it was a pleasure having Code Enforcement Daisley at the meeting tonight.

10. ADJOURNMENT

Moved by Board Member Koscierynski, seconded by Chairman Yaros, to adjourn the meeting at 8:40pm. **Motion carried.**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

June 11, 2018

Zoning Board of Appeals Approval