

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY, JUNE 11, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, June 11, 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  
Tony Cook, Board Member

### ZBA MEMBER ABSENT

Lucy Koscierzynski

### CONSULTANT PRESENT:

Dave Goodloe, Building Official

### OTHERS PRESENT:

Ryan Skalneke  
Deborah Jones  
Christine Stephens  
Brenda Hauxwell  
Rob Cavanagh  
MaryAnne Cavanagh

Tim Hauxwell  
Greg Haase  
Sheryl Haase  
Dwayne Truscott  
Cathi Truscott  
Linda LaCroix

Todd Rachel  
Eric Wold  
Bob Alexander  
John Mac Millan  
Lynn Harrison

### 1. OPEN MEETING

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

### 2. ROLL CALL

As noted

### 3. MINUTES

#### May 14, 2018 Regular Meeting Minutes

Moved by Trustee Flood, seconded by Vice Chairman Durham, to approve the May 14, 2018 Regular Meeting minutes as presented. **Motion carried**

### 4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 5. ZBA BUSINESS

#### AB-2018-17, Ryan Skalneke 415 Shady Oak St., 09-10-254-037

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 2 variances from Zoning Ordinance No. 78, Article 6, Section 6.07, District: R-3

1. A .65' side yard variance to allow an addition to be built 9.35' from the allowed 10' side yard setback (South).
2. A 5.9' front yard variance to allow a 1<sup>st</sup> & 2<sup>nd</sup> Floor addition above the existing Basement Garage be built 24.1' from the allowed 30' front yard setback.

Mr. Ryan Skalneke, 415 Shady Oak St., presented.

Chairman Yaros commented that basically Mr. Skalneek is not changing the footprint at all. Mr. Skalneek responded, exactly. Chairman Yaros added, that he is just going up from what is there and not going anymore into the side yard, front yard or rear yards. Mr. Skalneek said they are not expanding the footprint at all. It was his understanding that the footprint of the house is what they need the variances for.

Mr. Skalneek said he talked to all three of his neighbors and submitted a petition with their signatures indicating that they approved what he was wanting to do. (A copy of the petition was obtained and put in the petitioner's file). Chairman Yaros read the petition into the record.

Vice Chairman Durham asked if there was home directly across from his house where the view of the lake might be impeded by the height of his house? Mr. Skalneek said, no.

Board Member Walker asked Mr. Skalneek when the house was built? Mr. Skalneek responded he believed it was built in 1991 and he purchased it in 2010. Board Member Walker then asked if variances were granted when the house was built? Mr. Skalneek said he did not know.

Debbie Jones, 1581 Harwood, Oxford, Mr. Skalneek's architect. She answered there were 3 different dates that variances were granted. The last being in 1993 – 4 ft. for each side yard and 5' for the front yard to construct the garage and house. Ms. Jones explained that typically even if there is a variance for side yard or front yard, if the encroachment is being expanding upon, it has been her experience, the owner has to go back to the ZBA and ask for an additional variance to increase that encroachment.

Chairman Yaros said it was his understanding that the Township wasn't sure if the granted variances would cover the addition Mr. Skalneek wants to add. This request will cover that and it will be on record. He reiterated that Mr. Skalneek will not be increasing the size as far as the footprint and will not be cutting anyone visually off from the lake.

Trustee Flood clarified that the house with the addition will be on the same foundation and Mr. Skalneek is just building straight up. Mr. Skalneek said, "just going straight up".

Board Member Cook commented he was grateful for the clarification. He doesn't like when a structure is non-compliant but the fact that variances were granted, makes him more comfortable with the presentation.

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

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA case AB-2018-17, Ryan Skalneek 415 Shady Oak St., 09-10-254-037, the petitioner is requesting 2 variances from Zoning Ordinance No. 78, Article 6, Section 6.07, District: R-3, 1) a .65' side yard variance to allow an addition to be built 9.35' from the allowed 10' side yard setback (south), and 2) a 5.9' front yard variance to allow a 1<sup>st</sup> & 2<sup>nd</sup> floor addition above the existing basement garage to be built 24.1' from the allowed 30' front yard setback, **be granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that he set forth facts which show that in this case:

1. The petitioner does show the following Practical Difficulties: in that he is building up and not out; he is not changing the footprint of the property whatsoever and, therefore, is not related to the general conditions in the area of the property.
2. There are exceptional or extraordinary circumstances or conditions applicable to the property that do not apply generally to other properties in the same district or zone: again, he is building up and not out.

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts: indication of support by surrounding neighbors who had no objections to the petitioner's request.

therefore, move that the petitioner's request be granted.

Board Member Walker amended the motion, Chairman Yaros re-supported, to add the fact that there were variances granted previously and this is clarification allowing the petitioner to build up on the existing structure.

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

**Motion Carried 5-0**

AB-2018-18, Unity Church, 3070 S. Baldwin, 09-29-101-020

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, for an open-air market to be erected in a front yard on Wednesdays (1:00 PM to 7:00 PM), and Saturdays (10:00 AM to 4:00 PM) from the approval date to October 27, 2018.

Ms. Linda La Croix, the petitioner, presented. Ms. La Croix said they are looking to have an open-air market for the community to come out and shop. They have home vendors who like to come out and sell their goods there. She is hoping to get more customers which would then generate more vendors. She noted that as long as the vendors want it, she will continue setting it up.

Board Member Walker commented that he passes by their entrance every year when he tries to visit the market. Ms. La Croix said she hears this all the time, unfortunately. She noted that with the eventual road widening, they would like to try and get their own driveway off Baldwin Road; using the same drive as Dollar General is sometimes hazardous.

Trustee Flood commented that he was glad to see the pot hole filled in; Ms. La Croix agreed. He also noted that the Township Board granted the church a waiver for the Temporary Use Permit fees at their May 7<sup>th</sup> meeting because it is a non-profit organization. He added that a letter was received from Shirley Mitchell, 3317 Baldwin Road, who supported the request for this open-air market. He clarified that the vendors will use pop-up tents, no electricity will be provided, parking will be in the church's parking lot, and it will be open only during daylight hours; daylight until dusk.

Board Member Cook noted that it in the application, restrooms would be available for vendors only. Was there a reason why they couldn't provide restrooms for shoppers? Ms. La Croix said that generally they do not have anyone in the church when the market is open; when people visit the market, they are only there a short time. He then asked if she had ever considered a porta-potty? Ms. La Croix responded, she could but she does not charge any of the vendors for being there so the cost for one would be the responsibility of the church.

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

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of AB-2018-18, Unity Church, 3070 S. Baldwin, 09-29-101-020, the petitioner is requesting a Temporary Use permit from Zoning Ordinance No. 78, Article 30, Section 30.11, F-1, (b) Temporary Use Permit for Open Air Business for an open air market to be erected in the front yard on Wednesdays (1:00pm to 7:00pm), and Saturdays (10:00am to 4:00pm) from the approval date to October 27, 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 with the conditions of approval as follows:

- they will be open on Wednesdays from 1:00pm to 7:00pm and Saturdays from 10:00am to 4:00pm, starting on Wednesday, June 12, 2018 until October 27, 2018;
- and the Township Board granted a waiver of the Zoning Board of Appeals Temporary Use Permit fees at their Board Meeting on May 7, 2018;
- further, the vendors will be using pop-up tents that require no electricity, they will be put up and taken down the same day, restroom facilities will be available for the vendors, parking will be in the church parking lot only, the area will be cleaned up every day, and there has been no problems reported to Ordinance Enforcement pertaining to this set up.

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

**Motion Carried 5-0**

AB-2018-19, Robert Cavanagh, 893 Indianwood, 09-03-252-010

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 2 variances from Zoning Ordinance No. 78 Article 27, Section 27.02. A.8. (Over 2.5 Acres).

1. A 13.5% of the Principal Structure variance above the allowed 75% of the Principal Structure Maximum Floor Area of Attached Accessory Buildings to build an attached garage's maximum floor area to be 88.5% of the principal structure.
2. A 1,368.3 sq. ft. variance above the allowed 1,900 sq. ft. allowed for the Total Maximum Floor Area of All Accessory Buildings for Over 2.5 Acres to build a 2,424.5 sq. ft. attached garage for a Total Maximum Floor Area of All Accessory Building of 3,268.3 sq. ft.

Mr. Rob Cavanagh, 100 Evergreen Trail, presented. Mr. Cavanagh introduced his wife, MaryAnne, and noted they are the owners of 893 Indianwood Road.

Chairman Yaros asked Mr. Cavanagh to explain why he needs the variances and why he needs such a big structure.

Mr. Cavanagh replied his request is for the square footage of the garage only. He commented that the property is unique – it is a 10.55-acre parcel and there is only a handful of those still existing in the Township. He explained that over the last year of owning it, he's heard the history of the property and has gone in and cleaned it up. He brought some equipment – a backhoe and tractors to maintain the property. He told the Board Members that his hobby is automobiles and boats and he wants to build one structure to suit his family and where he could keep his trailers, backhoe, tractors and motorcycles; to be able to keep those within a garage facility.

Chairman Yaros commented that Mr. Cavanagh stated that the variances are for an attached garage only however he actually needs to ask for the covered area in front which is accessory building. He therefore has more accessory building than just a garage. Mr. Cavanagh replied, correct.

Chairman Yaros said the garage is 2,424 sq. ft. and the Total Accessory Building variance requested is 3,238 sq. ft. Mr. Cavanagh commented that there is an old wellhouse on the property that has been there for fifty years. Instead of ripping it out, he sees some value in it and wants to put some new truces on it which were submitted on the plans. It will stay the same height and the same size and he

also wants to put a new garage door on it. Therefore 830 sq. ft. of the requested variance is for that old existing building there.

Chairman Yaros asked if that wellhouse was included in the 3,268 sq. ft.? Mr. Cavanagh said that it was. Mr. Cavanagh commented that the wellhouse will stay where it is currently, in the southwest corner of the property.

Chairman Yaros then clarified that Mr. Cavanagh has attached accessory and detached accessory. Mr. Cavanagh replied, correct.

Vice Chairman Durham asked why Mr. Cavanagh was building so far back, he did understand there are some wetlands on the property, but there is a big spot right on Indianwood where he could build?

Mr. Cavanagh responded, for privacy. There is high ground there and they would like to be able to look across the property and see some of the wildlife that is there; it is the most beautiful part of the property.

Vice Chairman Durham then talked about the equipment. He realizes it is a big piece of property, but it has been leveled and straightened out back when there was something else on it, then that was taken down and apparently finished again. He was curious about the amount of land moving equipment and the need for it. Mr. Cavanagh said the only land moving piece of equipment is the backhoe and then he has a tractor that has a back plate for pushing snow and fine grading; “one is his hammer and one is his scalpel”. He noted that he will be the contractor on the home build and plans on building and digging the foundation himself and setting the final grade; which is on the drawings.

Vice Chairman Durham asked if he plans on maintaining ownership of the backhoe after the house is built? Mr. Cavanagh responded, he believes there will be a period of time afterward but eventually would want to get rid of it.

Trustee Flood said, before, this property was zoned Residential Multiple, now it is zoned R-3 which is compatible with the area surrounding it. The 10.55 acres is unique, usually that is (something that size) zoned Suburban Farms or Suburban Ranch.

Chairman Yaros asked if lots could be broken off of the front? Mr. Cavanagh commented that when he purchased the property, the real estate sign said that it was split able, however he has no plans to do that.

It was commented there is sewer to the property.

Board Member Cook asked, when he purchased the property, what was it zoned, did the rezone occur after the purchase? The response was it was rezoned prior to the purchase.

Vice Chairman Durham asked Mr. Cavanagh how much of the things he has could be stored off-site if he had a place to put them? Vice Chairman Durham clarified that this is a huge building and, personally, if the position of the home was going to be in his line of sight, he would be concerned. He was curious if there was a “Plan B”? Vice Chairman Durham commented that as Mr. Cavanagh may know, there is some resistance (by the neighbors) here, he wanted to know if there was anything Mr. Cavanagh could do to help alleviate that? Mr. Cavanagh responded that looking at his calculations, the first-floor square footage including the garage space is 3,456 sq. ft. and the height of it is within the Township’s zoning requirement of 30 ft., therefore it is not too tall. Also, when you think about a 3,500 sq. ft. ranch, yes, that would be a big home, but that is still within the Township R-3 allowable residence size that can be built; that actually includes the garage, inside, that is 3,456 sq. ft. Mr. Cavanagh said he has offered to put in a berm and to plant trees on top of that which he noted is on the site plan.

Again, the number one reason he picked that location for the house was for privacy and he plans on doing that with grading and putting in some trees. There should be no line-of-sight objections that he can think of and took he took that into consideration.

Vice Chairman Durham asked how tall of trees was he thinking of putting on the berm? Mr. Cavanagh said he could put in 4 ft. pine trees.

Chairman Yaros commented that he was trying to come with the numbers Mr. Cavanagh provided. Building Official Goodloe asked, is the garage for the first floor 2,592 sq. ft.? Mr. Cavanagh said, correct. The outbuilding (wellhouse) is 830 sq. ft. Mr. Cavanagh again said, correct. Chairman Yaros commented that what Mr. Cavanagh is asking for is a total of 3,268 sq. ft. and Building Official Goodloe coming up with a number of 3,422 sq. ft. Mr. Cavanagh replied that when he filled out the application, he asked for a variance of 1,470 sq. ft. After discussing the calculations, Chairman Yaros and Building Official Goodloe suspected that the covered porches were not included in the variance request.

Chairman Yaros asked if there was anyone here that would like to speak to this matter? He noted the Board Members received a document just before the meeting titled "*Memorandum of Fernhurst Road Residents Opposition to Petition for two Variances from Zoning Ordinance Number 78 Article 27, Section 27.02 Known as Petition AB-2018-19 Robert Cavanagh, 893 Indianwood, 09-03-252-010*". He therefore expected there were people here tonight that would like to speak.

Brenda Hauxwell, 616 Fernhurst Ct., commented that her house would be pretty much in front of the proposed building and then commented on few things that were brought up tonight. She did not believe the outbuilding Mr. Cavanagh spoke of redoing was part of the numbers Chairman Yaros and Building Official Goodloe were coming up with; it is two separate buildings. The outbuilding already exists and has been there for years. Mr. Cavanagh is planning to upgrade it; it was the old well pump house. Regarding the property being unique – it was her opinion that it was not so unique that someone would need such a large building, there is enough space to conform to ordinance. She concurred it is a huge building with porches. On the site plan, it actually shows that the square footage with the porches is 5,000 sq. ft. She commented that she doesn't mind the huge building, her concern was it being 35 ft. off Fernhurst Ct. across from her front door. She would like Mr. Cavanagh to put it somewhere else on his 10.55-acre lot, especially if he truly wants privacy. Where he plans on putting the house will back up to all the neighbors. Because of this fact, she believed Mr. Cavanagh probably does want to split it. It was her opinion, it (the proposed house) was non-conforming to the neighborhood. It is huge and only 35 ft. off the existing road. She explained it was her understanding that the road was supposed to be increased to 50 ft. which does not show up that way on Mr. Cavanagh's surveys or plans. She agreed this that is an "A++" plan and believes there is some resolution that can be done. One of those could be to move the building back off the road so that Fernhurst can be widened; it is washed away, in some places it is barely 10 ft. and related it to a two-track. She explained that garbage trucks have to back-up the road to collect the garbage because they cannot go down it and turn around. She explained that when the Township owned it, they had some leeway to park their cars off the road; they do not have that anymore. They literally have cars parked in the middle of the road and she was concerned a fire truck would not be able to get down it; it is dangerous. If the petitioners truly want privacy, maybe they should build more back into the woods; they surely have enough property to do that. She reiterated that the porches were not included in the calculations. She also said that 35 ft. off the road will not sustain a berm with 4 ft. trees. There is a road that is eroding, there is a ditch, the water washes it away and then he wants to put a berm there; he is going to want to cut the grass back there – "what kind of berm are we talking"? Again, she did not believe the uniqueness of the property requires the variances requested, there is plenty of room on the property to do what he wants. She commented that she doesn't know if a pole barn style house would eventually be a detriment to her lakefront home. Ms. Hauxwell said she knows that being 35 ft. off the road is allowed within the district and a variance is not needed for that but still objects and talked about those objections above. She said if there is a resolution and everyone wants to live happily and peacefully together, "build the biggest house you

want, just put it in the middle of the property and off the road a little bit more”. Her and her neighbors are concerned about Fernhurst Road. They thought 20 additional feet was going to be added to it but that is not showing up in any surveys – that fact was in the Township Board minutes back in 2014. She actually went to the Road Commission to inquire about it and they couldn’t find where a Resolution was sent to them from the Township regarding this matter.

Trustee Flood asked if Ms. Hauxwell checked the Township Clerk’s office? Ms. Hauxwell said she had and they couldn’t find anything either. She noted that she did fill out a FOIA requesting all the information on this property and received the minutes from 2014 meeting but received nothing about a Resolution to the Road Commission. Trustee Flood said someone must have “dropped the ball, that is not right” and that he would check into it himself.

Ms. Hauxwell said there were some other objections in the memo she handed out, the Board Members could read those however, would like to let someone else speak.

Greg Haase, 3610 Kings Point Dr. Troy, also owns property on Fernhurst. He stated that his objection is not to the structure or the variances, he has the same concern with the position of the house close to the road. He noted that he was part of the committee that worked with Supervisor Barnett in getting Mr. Cavanagh to agree to add 20 additional feet to the road prior to the sale of that parcel or parcels to a future buyer. Part of that sale also included the front of the property on Indianwood being granted as a parking area for the trail that comes through that area; that was supposed to happen prior to the sale of it. He is very concerned with the condition of Fernhurst. It is so thin and is hard to get through especially with cars parking on it. He believed no one would have any objections if the house was moved further away from the street so that at a future date the road could be improved and allow them to have some parking along the street. He reiterated his objection was to the location of the house to the road and not to the actual variances requested.

Todd Rachel lives across the street from the Fernhurst property. He welcomed the Cavanaghs to the neighborhood and looks forward to having a friendly relationship with them and having a positive structure there – estate looking. Being across the street on Indianwood and not know how high the “pole barn” is going to be, he heard 30 ft., he would like to be assured that he wouldn’t be able to see that from Indianwood Road. He believed that would be possible because of all the trees there. Having a hobby of boats and cars is welcomed to the neighborhood but doesn’t want to see a lot of boats and cars for sale along the front of the road and asked Mr. Cavanagh to honor that. He again welcomed the Cavanaghs to the neighborhood.

Christine Stephens, 2315 Stanton Road, noted her property is not adjoining to the subject property but has been working with residents on this issue. Ms. Stephens apologized that the document handed out tonight did not get to them in advance. She said the important thing she feels procedurally this Board needs to be aware of is there is a subsequent contract to the original offer to purchase this property on November 8, 2016. In that contract there were certain provisions and agreements that Mr. Cavanagh made with the Township of Orion relative to his purchase of the property. The first was donating a portion of that property back to the Township for a bike trail. The second was cleaning up the property including garbage, trash and abandoned vehicles within one year of closing. He purchased the property in April of 2016 and in 2017, that hadn’t been accomplished. Her other concern, hearing Mr. Cavanagh speak about maintaining/upgrading or utilizing the well house, when looking at the contract from November of 2016, it was agreed that he would plug those wells. They would not be put into use and he would also do that within one year of the purchase of the property; therefore, that should have been done in 2017. The other issue she had, was in the contract Mr. Cavanagh was to pay for a split of the property for donated Parcel B (Exhibit H in the memorandum). Upon information, she believed that had not been accomplished. It was her opinion that Mr. Cavanagh was coming forward to this Board with “unclean hands”. He hasn’t met the criteria of his purchase agreement and subsequent contact relevant to his obligations to the Township. Secondly, Ms. Stephens brought up the issue noted by Ms.

Hauxwell about 20 ft. being added to Fernhurst. – Mr. Cavanagh is looking to lay his footings 35 ft. off what he thinks is the center of the road, the road however should be 30 ft. wide (with the 20 ft. addition), it is currently only 10 ft. wide. Chairman Yaros commented that he will be 35 ft. off the property line. Ms. Stephens said correct, but where is that property line? The road has eroded to 10 ft., the area where he is measuring from. The road should be 30 ft. and according to the Township's meeting minutes in 2014, there should have been additional 20 ft. of Mr. Cavanagh's parcel granted to the residents of Fernhurst to make that a 50 ft. road. If Mr. Cavanagh is putting his footings in, where is he measuring from? She said they really need to have an as-built survey done before he puts any footings down because she believes he is measuring from the center of the 10 ft. road – this is a real problem as far as the setback requirements required. Also, looking at the basis of the objection of the residents, it is important to note that she doesn't believe he has met the criteria for the variances from the Zoning Ordinance. Specifically, on the bottom of page 5 of their document – Mr. Cavanagh was asked to explain why this property was unique or special that required him to build this 3,000 sq. ft. pole barn with a residence situated on top of it. His response was, "the property is unique, it is 10.55 acres". That doesn't explain special or unique circumstances as to why he requires variances from the zoning ordinance. Under the ordinance he could have an additional outbuilding that could fall within the appropriate square footage of the ordinance where he could store his equipment. Just saying it is a unique 10.55-acre parcel doesn't indicate that there is need for a variance. He has other portions of the property that he could build an outbuilding on. She was also concerned about his representation this evening that he doesn't intend to split the property. Looking at the original offer to purchase, he talked about splitting the remainder of the property into 2.5-acre parcels. If he has changed his mind, she was not aware of it. There was nothing in the Township record from her FOIA request to indicate that he had changed his mind. In paragraph 3 of the petition/application, it requires that the petitioner state how the variance will or will not be materially detrimental to the abutting property owners - if you look at the properties located on Fernhurst, these are beautiful lakefront homes. He is building a pole barn with a residence on top. It is a non-conforming structure and believes it will adversely impact the values of the homeowners on Fernhurst. Paragraph 4 of the petition/application asks how the request is or is not consistent with other properties – again, the homes that are lining Fernhurst are all lakefront homes. They are all beautiful homes which maybe one or two attached or detached garages. Building a 3,000, counting the porches, 5,000 sq. ft., building within 35 to 50 ft. of these lakefront homes is not consistent with the area. Paragraph 5 of the petition/application asks how the difficulty has not been self-created. Mr. Cavanagh's response was that the property was abandoned 40 years ago and a lot of dumping was done on it so he purchased a backhoe, tractor and tools to clean up and maintain the 10.55 acres. Ms. Stephens said the reason for the variance he is requesting is a self-created issue. He knew when he purchased the property, looking at the addendum to the purchase offer back in 2016, that "old condominiums were buried there, other debris has placed on the property, it wasn't appropriately cleaned and it wasn't appropriately filled when they collapsed the condominiums. He knew he would have to purchase and or rent equipment to clean it up. It was her opinion that is why he got a \$215,000.00 parcel for \$9,2500.00 from the Township. The Township actually suffered a financial lose in selling the property to Mr. Cavanagh because of the detrimental nature of the property. Mr. Cavanagh has purchased the equipment and is will be great if does eventually follow through on the November contract and clean up the property and cap off the well heads like he was supposed to do; but that doesn't mean he needs a 3,000 sq. ft. building. Particularly because he said tonight that he may eventually get rid of the backhoe. There does not need to be a 3,000 sq. ft. building for that property. Paragraph 7 of the petition/application, it asks how strict compliance with the ordinance would prevent him from using the property for a permitted purpose or not be unnecessarily burdensome. His response was, the neighbors will have to look at all of my equipment in the yard - that is the reason he gives for needing a variance. She would suggest to this Board that, again, he could store that equipment off site, sell it when done using it and build an appropriate outbuilding in compliance with the zoning ordinance which wouldn't require the neighbors to look at it. She noted all of the residents who signed the document/petition are all Fernhurst residents. They are asking that the zoning variances be denied.



Chairman Yaros asked Mr. Cavanagh to come back up to the microphone.

Chairman Yaros reiterated there is a problem, Building Official Goodloe came up with an amount of 4,646 sq. ft. for the total size rather than 3,268. Building Official Goodloe explained there is the wellhouse which is 830 sq. ft., the garage which is 2,592 sq. ft. and then the porches which should have been included which roughly comes up to the 4,646 sq. ft. It was Chairman Yaros's opinion that the Board should postpone this until the exact request is determined. Secondly, he would like information as to what happened to the 20 ft. addition to the road and some of the other issues that were brought up. Trustee Flood agreed. Chairman Yaros commented that the Board really needs to know what took place. He asked Mr. Cavanagh if all the agreements in the purchase agreement were met? Mr. Cavanagh responded he was taken aback by what he just heard and the lack of any type of evidence or proof that was given. He has proven with prints and surveys exactly where the building is positioned relative to the property line, not the center of the road. He addressed the comment about the 2.5-acre splits, he did not know where Ms. Stephens got that information. Mr. Cavanagh said that the building department has looked at the surveys, they have scaled it out and his credibility is on the 35 ft. where it's at. Again, regarding the splits, Mr. Cavanagh began to address Ms. Stephens about some of her claims, Chairman Yaros quickly brought the meeting back to order and asked Mr. Cavanagh to address the Board. The split was for the Township, he donated .52 acres back to the Township to put in a bike path trailhead whenever they want. That was a condition of the purchase, part of his offer. Something he knew the Township had a vision for.

Mr. Cavanagh then explained the concept of "barn homes" which is a barn home. He has documentation of these kinds of homes and he referred to the TV station, HGTV. These homes are very popular right now.

Building Official Goodloe asked Mr. Cavanagh how many square feet is the proposed footprint - the roof footprint? Mr. Cavanagh responded, 3,456 without the covered porches on the side. Chairman Yaros believed that needs to be included as part of the accessory calculation. Building Official Goodloe agreed. Chairman Yaros said that is why he believes they need to get a clarification of exactly what the request is for. What is before them now is not what Mr. Cavanagh really wants. In addition, Chairman Yaros would like clarification if the Township is ok now with the conditions of the agreement.

Trustee Flood said his concern was the side yard setback off of Fernhurst, where the property line actually is from the road - is it from the current 10 ft. or should it be from the expansion of 20 ft. that was supposed to be donated from this property. The question being, where is that property line?

Chairman Yaros gave Mr. Cavanagh the option that the ZBA could vote on his request tonight however they wouldn't know exactly what they are voting on. Building Official Goodloe said, according to his calculations, the request would increase with the addition of the covered porches which he believed would require the request to be re-noticed. Not knowing if the numbers are correct and if the request needs to be increased, a Date Certain could not be given because of public hearing notification obligations. Trustee Flood suggested Building Official Goodloe may want to get with the Township attorney regarding this matter.

Chairman Yaros asked if Mr. Cavanagh could come back in 60 days? Mr. Cavanagh asked, why so long? Chairman Yaros responded that it takes time to get information from the attorney if that is needed.

Building Official Goodloe said he is not concerned about the setbacks, he was concerned about the size of the building and it possibly being over what the variance request was for.

Chairman Yaros explained that what he sees in front them is 1,368 sq. ft. above the allowed 1,900 sq. ft. for a total maximum floor area of 3,268 sq. ft. and what Building Official Goodloe is coming up with - that is not enough.

Vice Chairman Durham asked, at what point is a site plan developed? Building Official Goodloe responded, typically they get it with a Building Permit application. Vice Chairman Durham said, Fernhurst is already narrow, if this pushes it back at all with a berm or anything else, he would be very interested to see the fire department's take on their ability to service either Fernhurst or this property in the event of an emergency; they probably should sign-off any site plan that is developed.

Vice Chairman Durham commented that in his opinion, he is having a difficult time understanding the practical difficulty. He asked that when Mr. Cavanagh comes back that his application clarify why he believes he has a unique difficulty because of the property. It was Vice Chairman Durham's opinion that it is hard to have a property this size on one hand and then claim a unique difficulty on the other.

Ms. Stephens asked, procedurally, will the residents of Fernhurst receive another individualized notice when it come back to a future meeting? Chairman Yaros said they would because he believes they will find that the variance applied for will be larger which will require it to be re-noticed. It was noted that if the application is amended, a notice would go out through the same process.

Chairman Yaros again gave Mr. Cavanagh the option for a vote right now or to request a postponement. Mr. Cavanagh said he would like to postpone it, it is important that everyone gets the facts straight and he wants his neighbors to be happy.

Board Member Walker asked Mr. Cavanagh if he would consider moving the building, even somewhat, away from Fernhurst? Mr. Cavanagh said he would consider it however there is a sewer that crosses the property and the reason why he really chose the location for the house.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the case of AB-2018-19, Robert Cavanagh, 893 Indianwood Road, 09-03-252-010, the petitioner is seeking 2 variances from Zoning Ordinance No. 78 Article 27, Section 27.02. A.8. (Over 2.5 Acres); 1) a 13.5% of the Principal Structure variance above the allowed 75% of the Principal Structure Maximum Floor Area of Attached Accessory Buildings to build an attached garage's maximum floor area to be 88.5% of the principal structure, and 2) a 1,368.3 sq. ft. variance above the allowed 1,900 sq. ft. allowed for the Total Maximum Floor Area of All Accessory Buildings for Over 2.5 Acres to build a 2,424.5 sq. ft. attached garage for a Total Maximum Floor Area of All Accessory Building of 3,268.3 sq. ft., that the petitioner's request be postponed to a date down the road, there are some facts that appear somewhat cloudy, the Board is not certain exactly the amount of square footage that is going to be built, it may be different than what has been presented and the Board wants to be very sure of the facts and understand what it is they are voting on.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add to the motion that the building department clarifies the agreement attached to the purchase of the property to see if there is anything still needs be done.

**Roll call vote was as follows:** Walker, yes; Durham, yes; Flood, yes; Cook, yes; Yaros, yes.  
**Motion Carried 5-0**

Board Member Walker asked if Mr. Cavanagh had been provided with the memo/documents that was presented to the Board tonight? Mr. Cavanagh said he had not and was given one.

## **6. PUBLIC COMMENTS**

None

**7. COMMUNICATIONS**

Date Certain Memo from Planning & Zoning Coordinator Frey.

**8. COMMITTEE REPORTS**

None

**9. MEMBERS' COMMENTS**

Trustee Flood commented that the Board Members should keep the paperwork they received tonight for the future meeting where Mr. Cavanagh's case will be heard.

**10. ADJOURNMENT**

Moved by Trustee Flood, seconded by Vice Chairman Yaros, to adjourn the meeting at 8:11pm.

**Motion carried.**

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

June 25, 2018  

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Zoning Board of Appeals Approval