

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, OCTOBER 22, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 22, 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 Koscierynski, Board Member

ZBA MEMBER ABSENT

None

CONSULTANT PRESENT:

Dave Goodloe, Building Official

OTHERS PRESENT:

Mark Kellenberger
Amber Lee Haggadone
Dan Herold
Gary Skrzyzcki
Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

10-8-2018, Regular Meeting Minutes

Moved by Board Member Koscierynski, seconded by Board Member Walker, to approve the 10-8-2018, Regular Meeting minutes as presented. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2018-36, Daniel M Herold, 3399 Elmy Dr., 09-32-102-005

Chairman Yaros read the petitioner's request as follows:

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

Article 6, Section 6.04, District R-2:

1. A 10' side yard variance from the required 10' side yard setback on the East & West property lines to allow a 6' privacy fence to be built 0' from the side property lines.

Article 27, Section 27.02.A.4:

2. A 10' rear yard variance from the required 10' rear yard setback from the rear property line to allow a 6' privacy fence to be built 0' from the rear property line.

Mr. Herold, 3399 Elmy, the petitioner, presented.

Chairman Yaros commented that when he visited the property he noticed the chain link fence that was there. He then asked Mr. Herold why he needed a 6' privacy fence?

Mr. Herold replied, that the neighbor behind him has dogs that are highly reactive. They come to the fence and bark and demonstrate their authority towards his dogs. His dogs, then, do the same thing. This behavior has caused some friction because of the noise. It was his opinion that if he erects a privacy fence along the back and extend it up the sides a little bit, the dogs won't be able to see each other and therefore won't be reacting to each other.

Chairman Yaros clarified that it is his (Mr. Herold's) rear lot line that needs to be protected so the dogs can't see each other; but he doesn't really need the fence to go up the sides. Mr. Herold responded he would like the privacy fence to go up the sides of his property a little for aesthetic reasons.

Chairman Yaros asked Mr. Herold how far up the sides was he planning on going? Mr. Harold said, about 16' or two 8' panels on each side. Mr. Herold explained that the properties to the rear of his are not exactly adjacent so there will be a space where the dogs would still be able to see each other. He is trying to mitigate any annoyances with his neighbors.

Trustee Flood commented that he is familiar with the property, his mother used to own the house next door. He then clarified that the neighbor next to the petitioner has a privacy fence and that he (the petitioner) would like to extend the fence further up the west property line. Mr. Herold concurred; about 16' along the west and east property lines towards the back of the house (from the rear property line north).

Mr. Herold replied that he will defer to the Board regarding any modifications they would like to make to his request. Trustee Flood then noted when he was in Mr. Herold's neighborhood he saw privacy fences and one fence that had very nice-looking vinyl slats; the majority of the fences were chain link, 4' fences on the property line.

Vice Chairman Durham asked Mr. Herold if he could add the vinyl slats Trustee Flood spoke of to the chain link fence that is already there and accomplish the same thing? Mr. Herold replied that he can't answer that question. If he does that and it does not work and the dogs can still see each other, then he would have to come back to the ZBA. Mr. Herold then said he believes that type of fencing is no longer available. Mr. Herold also believed that even if he was able to install that type of fence, the dogs would still be able to see each other through the slats.

Chairman Yaros asked Mr. Herold how big his dogs were? Mr. Herold replied that he has a Golden Retriever and an Australian Shephard. He added that both of them are not neutered and when confronted, will not back down. He commented that barking dogs cannot be pleasant for anybody.

Trustee Flood noted that when he visited the property he saw the dogs. He said he has no problem allowing a privacy fence along the back property line. He said, however, that he would like Mr. Herold to put the "good side" of the fence facing the neighbor. Mr. Herold said that was his intention. Trustee Flood then said the ZBA looks at each case individually and that Mr. Herold has enough room to put a privacy fence 10' off the property lines. Mr. Herold agreed, however, he would then have to auger posts which would cost much more money. He noted that he spoke to a Building Inspector who told him he could use horseshoe clamps to affix the stockade fence to the chain link fence.

Trustee Flood reiterated that he does not have a problem with a privacy fence along the rear property line, it's the side property lines he has a problem with and how it would look with just two panels going

up each side. Mr. Herold said he understands, the most important thing to him is the rear fence line along his neighbors on Pasadena – that there is some type of vision obstruction between them.

Chairman Yaros agreed.

It was Building Official Goodloe's opinion that the petitioner didn't really have any practical difficulty that requires the side yard setback variances.

Mr. Herold said the feeling he is getting is that the Board is just going to grant the rear yard variance. He therefore amended his request to eliminate the 10' variance for the east and west property lines and to only ask for the 10' rear yard variance.

Vice Chairman Durham asked Mr. Herold if he ever thought of using bark collars? Mr. Herold said that he used one in the past and it caused one of his dogs to have a seizure.

Board Member Walker asked Mr. Herold how long he lived in this house and how old were his dogs? Mr. Herold replied, since June and the Golden Retriever is 6 and the Shepherd is 5. Board Member Walker said, then, that their behavior is probably not going to change.

Mr. Herold said, no, and is not trying to place blame and is willing to incur the expense to hopefully rectify the problem.

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

Trustee Flood asked Mr. Herold if he knew who owned the existing fencing? Mr. Herold said he didn't know. He explained that it is his intension to put up a new stockade fence, drill holes through it and use horseshoe clamps to attach the stockade fence to the fence poles on his property. The plan is not to have to put poles in.

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA case # AB-2018-36, Daniel M Herold, 3399 Elmy Dr., 09-32-102-005, the petitioner has requested to **amend** his request and withdrew the two 10' side yard setback variances and to continue to ask for the 10' rear yard setback to allow a 6' privacy fence to be built 0' from the rear property line; **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: the petitioner does show the following Practical Difficulty: there is existing fencing there, there is some privacy fencing by the neighbors, also, the dogs seem to be causing a stir and perhaps this fence would alleviate the problem for all the neighbors; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: the dogs are elderly and one of the dogs has an illness - a practical difficulty; 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: the aforementioned - the dog issues; therefore based upon these findings of fact, the granting of this variance would not impair an adequate supply of light and air or unreasonably increase the congestion in public streets; would not increase the danger of fire or endanger public safety; therefore would ask that this petitioner's request, as amended, be approved.

Board Member Walker amended the motion, Chairman Yaros re-supported, to add the fact that the petitioner amended his original request and approval is for the rear yard setback only, the petitioner withdrew the request for the side yard setback variances.

Roll call vote was as follows: Flood, yes; Kosciuszynski, yes; Walker, yes; Durham, no; Yaros, yes.

Motion Carried 5-0

B. AB-2018-37, Lee Haggadone, 816 Vernita Dr., 09-10-377-013

Chairman Yaros read the petitioner’s request as follows:

The petitioners are requesting a variance from Zoning Ordinance No. 78, Article 27, Section 27.01.C.b:

1. A 2.67’ side yard variance from the required 8’ side yard setback to rebuild a home 5.33’ from the South side yard.

The petitioners presented.

Chairman Yaros said it is his understanding that the former house burnt down and they are going to rebuild on that footprint. The petitioners concurred; however, the house will be a little bit bigger – extending more towards the back. The side dimensions will remain the same.

The petitioners presented signatures and addresses from surrounding neighbors who supported their request (a copy of the signatures was provided for the file). Those addresses were:

825 Vernita	867 Vernita	957 Vernita	839 Vernita
839 Vernita	872 Vernita	830 Vernita	831 Vernita
844 Vernita	895 Vernita	774 Vernita	863 Vernita
858 Vernita	900 Vernita	811 Vernita	

Chairman Yaros commented he doesn’t have a problem with the request; they are not getting any closer to the side property lines than the former house already was.

Trustee Flood asked the petitioners how long they’ve owned the house, it was not noted on the application? The petitioners responded, since January or February of this year.

Vice Chairman Durham asked if they owned the house that burned? They replied, no, the house burned down in April of 2017.

Trustee Flood commented, this has no bearing on the request, but asked if they plan on having a garage? The petitioners replied, if they do, it won’t be for several years and it wouldn’t be attached.

Board Member Koscierynski clarified the practical difficulty is that the former house burnt down and they want to put a new house where that one was on the property. Building Official Goodloe added, that is where the current foundation is. Chairman Yaros noted, too, that other houses in the area are pretty much located in the same area on the lots.

Chairman Yaros asked if there was anyone here 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-2018-37, Lee Haggadone, 816 Vernita Dr., 09-10-377-013, that the petitioners’ request for a non-use variance from Zoning Ordinance No. 78, Article 27, Section 27.01. C.b: a 2.67’ side yard variance from the required 8’ side yard setback to rebuild a home 5.33’ from the south side yard; be **granted** because the petitioners did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case: the following practical difficulty: the former house burnt down and left a slab; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: N/A; 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: the petitioners are building a house that will look like the rest of the houses in that

neighborhood; the granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located because the petitioners are building the house exactly like it was with the exception of the variance.

Board Member Koscierynski amended the motion, Chairman Yaros re-supported, to include that utilities are already in place for a new house and the petitioners want to rebuild a house in that location so they have access to the backyard.

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

Motion Carried 5-0

AB-2018-38, Mark Kellenberger/ALDI, 465 Brown Rd., 09-32-400-084

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting a variance from Sign Ordinance No. 153, Section 7 Ground & Wall Signs in Non-Residential Zoned Areas, Ground Sign: District: BIZ-C:

Mark Kellenberger presented.

Chairman Yaros asked why they need two wall signs?

Mr. Kellenberger explained they are introducing a new elevation that has one soffit with a canopy, both walls signs will be located there. The new elevation has a slanted roof with raised ceilings on the inside. The bulkhead canopy will serve as the focal point - the slanted roof comes up and will be framed with the two wall signs. It was his opinion that the building will not be out of character with anything already there. He noted that some of the buildings, even on the Orion side, have multiple wall signs. The two wall signs they are proposing are each 75 sq. ft., still under the allowable wall signage of 200 square feet. The company wants brand identity; this is the first ALDI in the area outside of the Pontiac/Waterford location.

Chairman Yaros commented the ZBA members are "kind of new" to the developments coming into the BIZ district. The ZBA has been looking at each one as they come before them. He complimented Mr. Kellenberger on the drawings, likes the location of the building on the lot, and that it will be amongst all other commercial uses. He has no problem with the request.

Board Member Koscierynski noted that Mr. Kellenberger provided a list of businesses in the area that have more than one wall sign.

Vice Chairman Durham asked Mr. Kellenberger to explain the placement of the building – which direction will the building face? Mr. Kellenberger replied that the doors will face to the east; the building is set up on the west side of the outlot, kind of into the grade that comes down from the western drive; the doors and the entryway will face east into the parking lot. There will also be an open vestibule that is all glass. There will be a building face along Brown Road and one along the parking lot.

Vice Chairman Durham asked what kind of visibility will there be for people heading east on Brown Road? Mr. Kellenberger said, it will be very minimal. The wall sign along the front wall would be it. They are trying to work out the details for a ground sign that will share the Menards sign. People going west on Brown should be able to see the front of the store as they approach it.

Trustee Flood asked about the practical difficulty – why they need an additional sign? Could it be so they will be seen better from I-75 and the new 5-lane road? Mr. Kellenberger replied, absolutely.

Per a question by Board Member Koscierzynski, Mr. Kellenberger reiterated that this a brand-new design; they have one under construction in Livonia, this one, one planned in Rochester, and one in-line for construction in Bloomfield. He noted they are also planning on remodeling and renovating all the existing stores to pull these new design elements into those.

Trustee Flood clarified that the site plan was already approved by the Planning Commission. Mr. Kellenberger concurred. Trustee Flood then asked what their timeline was? Mr. Kellenberger said they are looking to possibly land balance some stuff yet this fall, but if not, anticipates sometime in April.

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

Moved by Vice Chairman Durham, seconded by Trustee Flood, that in the matter of ZBA case #AB-2018-38, Mark Kellenberger/ALDI, 465 Brown Rd., 09-32-400-084; that the petitioner's request for a non-use variance from Sign Ordinance No. 153, Section 7 Ground & Wall Signs In Non-Residential Zoned Areas, Ground Sign: District: BIZ-C: the petitioner is asking for a variance to allow one wall sign over the one allowed to install a total of two wall signs; be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case; they do have some practical difficulty – the shape of the site; the direction in which the building will be pointed; visibility for the business, solely at this time, will be these two signs; they are a new business in the area and need to be seen and the Township needs them to be seen so they are ultimately successful; the following are exceptional or extraordinary difficulties: that the site from one end – people will be coming down a steep hill and need to be able to see the store; the variance is necessary for the preservation and enjoyment of a substantial property right: so that the business can be situated on the site how the developer wants it; granting of this modification will not be materially detrimental to public welfare or to any property in the area – there will be no public safety impact and it is a standalone building; granting of this variance would not impair anything – public safety, air or light, would not unreasonably increase congestion in public streets other than what has already been planned for; this will not increase any danger to the public; it would not unreasonably diminish or impair established property rights or values of anyone in the area; or unreasonably diminish or impair public health, safety, comfort morals of the inhabitants.

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

6. PUBLIC COMMENTS

Gary Skrzyzcki, 2735 Judah Road, commented that he and his wife live behind Menards, he asked who they could speak with to understand what future development looks like in that area? It was noted that at this time Judah Road is still zoned residential and suggested they attend Township meetings and/or look at meeting agendas on the Township website for future developments. There was also brief discussion on Bob Warren's Trucking/Dan's Excavating and concern about the pipeline that runs along there. Mr. & Mrs. Skrzyzcki was then asked about Menards and if they have any issues living behind them.

7. COMMUNICATIONS

Memo from Planning & Zoning Coordinator Frey dated October 16, 2018, Dates which cases can be postponed to.

Memo from Planning & Zoning Coordinator Frey dated October 16, 2018, regarding canceling the November 12, 2018 meeting due to lack of agenda items.

Moved by Board Member Koscierzynski, seconded by Chairman Yaros, to cancel the November 12, 2018 ZBA Meeting due to lake of agenda items. **Motion carried**

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Trustee Flood reminded people to vote.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Yaros, to adjourn the meeting at 8:00pm.

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

November 26, 2018

Zoning Board of Appeals Approval