

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS
******* MINUTES *******
REGULAR MEETING – MONDAY, FEBRUARY 25, 2019 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, February 25, 2019 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Dan Durham, Vice Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA

Lucy Koscierzynski, Board Member
Tony Cook, Alternate

ZBA MEMBER ABSENT:

Loren Yaros, Chairman

CONSULTANT PRESENT:

Dave Goodloe, Building Department Official

OTHERS PRESENT:

Greg Bono
Jeremy Symons
John Bettin
Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

02-11-2019, Regular Meeting Minutes

Moved by Secretary Koscierzynski, seconded by Board Member Walker, to approve the 02-11-2019, Regular Meeting minutes as presented. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2019-03, Jeremy Symons, 3369 Mahopac, Dr., 09-20-151-040

Vice Chairman Durham read the petitioner's request as follows:

The petitioner is requesting 1 variance from Zoning Ordinance 78, Article VI, Section 6.04, Zoned R-3:

1. a 5-ft. side yard setback variance from the required 10-ft. side yard setback to build a second story 5-ft. from the side property line (west)

Mr. Jeremy Symons, 3369 Mahopac Dr., the petitioner, presented. Mr. Symons explained there is a second story on the home already but due to framing issues, the roof has sagged over the years and wants to correct that. He purchased the home about a 1 ½ years ago. He didn't realize when he purchased it that the house was only 5-ft. from the property line, ordinance requires a 10-ft. setback.

Vice Chairman Durham asked Mr. Symons if he planned on changing the footprint? Mr. Symons replied, no, he is just going to build straight up over the existing footprint; he would not be encroaching into the setback any further or building it any higher than the second story already is.

Board Member Cook asked if Mr. Symons planned on adding garage space at some point? Mr. Symons responded that he hasn't thought that far ahead but believes there would be enough room on the side to build a two-car garage within setbacks.

Trustee Flood noted that in the packet was a letter from the neighbor next door to the subject property (to the west). That neighbor, Samuel and Rebecca Gay, 3375 Mahopac, had no objections to the remodeling plans and acknowledged they know that the house is only 5-ft. from the property line.

Vice Chairman Durham asked if there was anyone here that wanted to speak to this matter, there was not.

Moved by Secretary Koscierynski, seconded by Board Member Walker, that in the matter of ZBA case #AB-2019-03, Jeremy Symons, 3369 Mahopac Dr., 09-20-151-040, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78: Article VI, Section 6.04, Zoned R-3: a 5-ft. side yard setback variance from the required 10-ft. side yard setback to build a second story 5-ft. from the side property line (west), be **granted** because the petitioner did demonstrate that the following standards for a variance has been met in this case in that he set forth facts which show that in this case the following Practical Difficulty: the house was built about 89 years ago and the other houses in the area are newer and the petitioner would like to upgrade his home; 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 house is older than the other ones in the area, the petitioner wants to upgrade and update it so that it looks more modern and more like the other houses; 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 house is old and needs to be upgraded.

Secretary Koscierynski amended the motion, Board Member Walker re-supported, to include that the petitioner has indicated that the addition of the second story will be over the same footprint as the house is now and will not be built any higher than it is now.

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

B. AB-2019-04, Pomeroy Senior Living, Villas (09-14-400-023)

Vice Chairman Durham read the petitioner's request as follows:

The petitioner is requesting 1 variance from Zoning Ordinance 78, Article VII, Section 7.04 (E)(2), Zoned RM-1:

1. a 40-ft. rear yard setback variance from the required 75-ft rear yard setback to construct the Villas 35-ft. from the rear property line

Mr. Robert Sellman with Pomeroy Living and Mr. Greg Bono with PEA presented. Vice Chairman Durham noted that the project went to the Planning Commission and was denied because of the need for this variance. He asked the petitioners to explain what has occurred up to this point.

Mr. Bono said the whole project received original site plan approval in 2014 with the footprint for a future development, the Villas. Since that time, the owner has been interested in updating the product – to incorporate more functionality to these units. They now have front facing front doors and two-car garages. These changes resulted in the shifting of the building pad locations. While this was

happening, the Township zoning ordinance was amended changing the rear setback requirements for this zoning district. The setbacks were originally based on building height. Now that they have come back to amend the site plan, the units have to comply with the new rear yard setback which is 75-ft.

Trustee Flood commented that he also understands that they removed the inside stairs and second levels being that these units are for seniors. He also noted this property abuts a church property and the developments detention pond. Mr. Sellman concurred, he said they removed the stairs for safety reasons. Now days people like being on one level and not having to going up and down stairs. Mr. Bono also explained that by reducing some footprints and increasing others to make these accommodations, it all equaled out in the end.

Vice Chairman Durham asked if they were on time with the start of this construction? Mr. Sellman replied they are ready to start now.

Board Member Walker explained that the Planning Commission moved to deny the petitioner's request because of the need for this variance. It was part of the motion that if this body approves the variance, the petitioner did not need to go back to the Planning Commission, the amendment would be deemed approved with conditions. He also noted that the petitioner has been very cooperative.

Board Member Koscierynski commented that Pomeroy/Beacon Square is "state of the art, top notch". They did an excellent job with it.

Vice Chairman Durham asked if there was anyone here that would like to speak to this matter, there was not.

Board Member Cook asked, originally, did some of the Villas not have garages? The petitioner replied that they all had garages.

Moved by Board Member Cook, seconded by Trustee Flood, that in the matter of ZBA case # AB-2019-04, Pomeroy Senior Living Villas, 09-14-400-023, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78: Article VII, Section 7.04, (E)(2), zoned RM-1: a 40-ft. rear yard setback variance from the required 75-ft rear yard setback to construct the Villas 35-ft. 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 they set forth facts which show that in this case: the petitioner does show the following Practical Difficulty: due to changes in the market from when the original plan was approved in 2014, and changes made for safety reasons as well as ergonomic standards for seniors – the petitioner made changes to the entryways by moving the doors to the front of the units and by removing the stairways; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to the other properties in the same district or zone: when the development was originally approved, RM-1 was not in its current form and there was a change in the ordinance to that zoning district in order to make it better, the petitioner is now here to meet the new RM-1 standards; 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: because this is a new development, the statement does not apply.

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

Motion Carried 5-0

C. AB-2019-05, John Bettin, 376 Shorewood Ct., 09-03-405-012

Vice Chairman Durham read the petitioner's request as follows:

The petitioner is requesting 4 variances from Zoning Ordinance 78, Zoned R-3:
Article XXVII, Section 27.01 (C)(1)(a): the lot is at least fifty (50) feet in width

1. a 3.5-ft. lot width variance from the required minimum 50-ft. lot width

Article VI, Section 6.04, Zoned R-3:

2. a 29.1-ft. front yard setback variance from the required 30-ft. front yard setback to construct a home 0.9-ft. from the front yard setback
3. a 9.4-ft side yard setback variance from the required 10-ft. side yard setback to construct a home 0.6-ft. from the side yard setback (north)
4. a 6.9% lot coverage variance beyond the allowed 25% for a total lot coverage of 31.9%

Mr. John Bettin, the homeowner, and Mr. Bettin's attorney presented. Mr. Bettin explained that the project started out as a renovation but when the final plans were submitted to the Building Department, it was determined to be a rebuild. He rebuilt the home on the same footprint/foundation, nothing changed in regards to the orientation of the structure on the property.

Vice Chairman Durham clarified that the construction of the house has been completed and it is only now the petitioner was informed that he needed variances. Mr. Bettin concurred. Mr. Bettin explained that it was when he requested a final inspection to get temporary Certificate of Occupancy that he was informed about the variances. Mr. Bettin said that at every stage of the reconstruction he had gotten the appropriate approvals up until the final one.

Building Official Goodloe asked to speak to this matter. He explained he started at the Township in 2016. Standard practice in the field had been when a structure was taken down to the foundation, and build back straight up, variances weren't required. He learned since that time, through this process, that even though the petitioner was using the same foundation, the new house had to adhere to current zoning regulations. He did not want Mr. Bettin to be hindered in the future for the house being non-conforming for a mistake the Building Department made. He apologized for putting the Board in this position.

Vice Chairman Durham asked Building Official Goodloe if he received any negative response from inspectors regarding this rebuild. Building Official Goodloe said no, the petitioner has been cooperative, there have been no issues.

Trustee Flood clarified that the house has the same footprint that it had when it was originally built. Mr. Bettin replied that was correct. Trustee Flood then noted the irregular shape of the property which is probably the reason the variances are needed.

Building Official Goodloe added that when looking down the street, all the houses are right next to the road and property lines.

Secretary Kosciuszynski said that she drove the neighborhood and his house is not unique for that neighborhood – all the houses are very close to the road and very close together.

Vice Chairman Durham asked Mr. Bettin if he is successful tonight, how quickly will he be able to get the CofO and be ready to move forward? Mr. Bettin said it was his understanding that he can't get that until the outside is complete – as soon as the weather breaks, he will get started again. Mr. Bettin's attorney replied that he would at least be able to get a temporary CofO if these variances are granted.

It was Board Member Walker's opinion that the variances being requested are astronomical. A lot of time people will build their structure and then come in after the fact to ask for variances – "asking for forgiveness rather than permission". The other alternative the ZBA has is to make Mr. Bettin tear down the house and that is really not much of an alternative. Even though he is torn on this decision, will make a motion to approve.

Moved by Board Member Walker, seconded by Trustee Flood, that in the matter of ZBA case #AB-201-05, John Bettin, 376 Shorewood Ct., that the petitioner's request for a non-use variance from Zoning Ordinance No. 78: Article XXVII, Section 27.01 (C)(1)(a): the lot is at least fifty (50) feet in width: 1) a 3.5-ft. lot width variance from the required minimum 50-ft. lot width; Article VI, Section 6.04, Zoned R-3: 2) a 29.1-ft. front yard setback variance from the required 30-ft. front yard setback to construct a home 0.9-ft. from the front yard setback, 3) a 9.4-ft side yard setback variance from the required 10-ft. side yard setback to construct a home 0.6-ft. from the side yard setback (north), and 4) a 6.9% lot coverage variance beyond the allowed 25% for a total lot coverage of 31.9%, 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 did show the following Practical Difficulty: due to the characteristics of the property, the fact that there was an existing home on the footprint and the petitioner was not expanding that footprint, and was given information, perhaps by the Township, that things were ok, he (Commissioner Walker) did not believe it would be right to punish the petitioner for that; 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: other properties in the area have the same irregular shape and configuration; 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 petitioner, at no fault of his own, proceeded with the reconstruction and is all done except for the exterior and to make him tear down the home would be outrageous; further, granting these variances would not impair an adequate supply of light or air to adjacent property; would not unreasonably increase the congestion in public streets; would not increase the danger of fire or endanger public safety because it was built on the same footprint, if the fire department did not have a problem with it originally, then it shouldn't have a problem with it now; or, in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Discussion on the motion:

Vice Chairman Durham commented that it meant a lot to him that Mr. Bettin has been willing to work with Township every step of the way.

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

Motion Carried 5-0

D. 2018 ZBA Annual Report

Vice Chairman commented that it appears their biggest work load has been setback variances and then there were a few variances needed for signs.

Moved by Trustee Flood, seconded by Secretary Kosciuszynski, to receive and file the 2018 ZBA Annual Report and to forward a copy to the Township Board. **Motion Carried 5-0**

6. PUBLIC COMMENTS

None

7. COMMUNICATIONS

A. Memo from Planning & Zoning Coordinator Harrison regarding Item Postponement Dates

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Board Member Walker gave Vice Chairman Durham a copy of Planning & Zoning News, the January 2019 edition. Secretary Harrison offered to make copies of it for each of the Board Members.

Trustee Flood commented that regarding recent changes in State fireworks laws, our Zoning Ordinance 78 is compliant, however from the Township Board level, they will have to update the fireworks ordinance because dates and times have changed and fines were increased.

Board Member Cook commended Building Official Goodloe on the last case for stepping up and saying that he made an error, lets move on and make it right.

10. ADJOURNMENT

Moved by Secretary Kosciuszynski, seconded by Vice Chairman Durham to adjourn the meeting at 7:26pm. **Motion Carried**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

3/11/19
Zoning Board of Appeals Approval