

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY, NOVEMBER 26, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, November 26, 2018, at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

### ZBA MEMBERS PRESENT:

Loren Yaros, Chairman  
Mike Flood, BOT Rep to ZBA

Don Walker, PC Rep to ZBA  
Mary Painter, Alternate

### ZBA MEMBER ABSENT

Dan Durham, Vice Chairman  
Lucy Koscierzynski, Board Member

### CONSULTANT PRESENT:

Dave Goodloe, Building Official

### OTHERS PRESENT:

|                      |                   |
|----------------------|-------------------|
| Christopher Kolinski | Dan MacLeish, Jr. |
| Jeff Gower           | Rino Sauve        |
| Sue Gower            | Sgt. Zehnpfenning |
| Mark Schmansky       | Elizabeth Broquet |
| Dan MacLeish         | Douglas Broquet   |
| Lynn Harrison        |                   |

### 1. OPEN MEETING

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

### 2. ROLL CALL

As noted

### 3. MINUTES

10-22-2018, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Board Member Walker, to approve the 10-22-2018, Regular Meeting minutes as presented. **Motion carried**

### 4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 5. ZBA BUSINESS

A. AB-2018-39, Christopher M. Kolinski/CTK Group, LLC, 810 Pine Ave, 09-10-376-002

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting two variances from Zoning Ordinance No. 78

1. Article 27, Section 27.01.C.a: A 9' lot width variance from the required minimum 50' lot width.
2. Article 6, Section 6.04, Zoned R-3: A 23' front yard setback variance from the required 30' front yard setback to build a home 7' from the front property line (North).

Christopher Kolinski, the petitioner, was present; 3650 Greentree Rd., Bloomfield Hills.

Chairman Yaros noted that the lot in question is very narrow. Mr. Kolinski replied, that is correct.

Chairman Yaros clarified that one of the setbacks requested is for the side yard on the north side but because the property fronts on two roads (Pine Ave. and the road for the boat launch), that setback has to comply with a front yard setback. Chairman Yaros then explained the 9' lot width variance from the 50' lot size is what is crucial here.

He asked Mr. Kolinski what size home was he going to build on the property? Mr. Kolinski answered that based on the lot requirements as well as restrictions based on septic, he plans on building either a 1,400 or 1,800 sq. ft. home. Chairman Yaros also informed the petitioner that he is limited to 25% lot coverage; to the water's edge. Mr. Kolinski said he knew that. There was then some discussion regarding the property that goes into the water. Building Official Goodloe clarified that the building size can be 1,725 sq. ft. max. Mr. Kolinski replied, "of the first floor, that is correct".

Chairman Yaros asked if the home will have multiple floors? Mr. Kolinski said that was what he was planning.

Trustee Flood asked if a house used to be there? Mr. Kolinski said there was prior to his ownership. Building Official Goodloe said the Building Department actually tore it down.

Board Member Painter asked if the home will be his or was he planning to "flip it"? Mr. Kolinski answered that the original intent was to buy it and build a home for a family member but that has changed. He is now planning on building a home for someone else.

Board Member Walker asked Mr. Kolinski when he purchased the property? Mr. Kolinski replied, in July of this year.

Building Official Goodloe explained that the second variance request will be predicated on the first request being granted. Therefore, should there be two motions? Chairman Yaros believed that wouldn't be necessary. If the first request is denied, the second request would be irrelevant.

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

Trustee Flood read the letter in the packet from the neighbors to the north who were in favor the variance request. He also noted that looking at the stakes, it appears the home will be in line with the garage next door which looks to be about 1 ft. off the lot line.

Chairman Yaros explained that if the lot width was between 50 ft. and 54 ft., the side yard set would be 6 ft. Being that the lot width is less than 50 ft., the applicant is being held to the 10 ft. side yard setback.

Building Official Goodloe added that the north property line abuts a road used for access to the lake. Because of that, did not believe there would be a site distance issue.

Trustee Flood and Chairman Yaros indicated they had concerns about granting the 9 ft. lot width variance; it makes for a small lot, 41 ft. However, there was a house on the property before however it was slightly more than 1,000 sq. ft.

Chairman Yaros commented that he would have liked to have seen a site plan for the house Mr. Kolinski planned on building. It is hard to grasp the situation without one.

Mr. Kolinski responded that up to about 2 weeks ago, he was planning on building a 1,000 to 1,200 sq. ft. ranch. That has changed and the person he was going to build the house for is no longer going to buy the property from him. He plans on building a 24 x 50 sq. ft. footprint, two-story home, which would be well under the 25% lot coverage requirement. Further, due to the septic on the property, it limits him from building anything bigger or closer to the water. He noted he has already submitted a septic plan to

Oakland County for a two-bedroom home – 24 ft. wide (based on the variance requested) by 50 ft. That would be about the same size as the previous home. There was some confusion about the survey drawing submitted with the packet. Mr. Kolinski explained that the letters “PR” stood for proposed house, not previous house.

Chairman Yaros commented that he personally did not have a problem with a home being 30 ft. off the main road and because it would be in line with the neighbor’s garage, also, there are other house in that area on 41 ft. lots.

Mr. Kolinski concurred. There are four other properties on that street that are all 41 ft. wide on the water with single family homes on them – 816 Pine Ave., 820 Pine Ave., 832 Pine Ave, and 836 Pine Ave.

Board Member Painter agreed but noted those were built prior to current zoning ordinance requirements.

Chairman Yaros commented that one of the factors the ZBA looks at is safety and he did not see a problem with that here – there will be 10 ft. on one side and 7 ft. on the other. He also noted that he was now more comfortable knowing the house will be 24 x 50.

Building Official Goodloe informed the ZBA members that the original house also had a garage.

Board Member Walker asked Mr. Kolinski if he intended to have a garage? Mr. Kolinski replied that he intends on having some type of attached garage and it will be within that 24 x 50 footprint.

Board Member Painter felt there should have been more information provided – perhaps a drawing of the house and where the garage will be; it would have better helped her to make a decision.

Trustee Flood asked if it was his intention to have the living quarters above the garage? Mr. Kolinski said he is currently working with a couple different floor plans – one has one-car garage with approximately 800 sq. ft. on the first level and depending how much he wants go over on the second level; 1,600 sq. ft. total. Some of the other floor plans actually provide a two-car garage in the front and about 700 sq. ft. on the first floor with all the bedrooms on the second floor.

Chairman Yaros asked the Board Members if either of them had an issue with a 7 ft. side yard setback; a 3 ft. variance. They did not. The concern was granting the 9 ft. lot width variance. Chairman Yaros noted that there are other homes that are on 41 ft. lots.

Trustee Flood clarified that the practical difficulty in this case is the lot width.

Mr. Kolinski concurred, that there is a boat access road along the north property line so there should be plenty of room to get to the back of the property for emergency services.

Chairman Yaros asked who owned the fence? Mr. Kolinski said there is chain link fence that separates the property from the neighbor to the south and a combination of chain link and wooden privacy fence on the north side.

Moved by Trustee Flood, seconded by Chairman Yaros, that in the matter of ZBA case # AB-2018-39, Christopher M. Kolinski/CTK Group, LLC, 810 Pine Ave., 09-10-376-002, that the petitioner’s request for 2 non-use variances from Zoning Ordinance No. 78; 1) Article 27, Section 27.01.C.a: a 9’ lot width variance from the required minimum 50’ lot width, and 2) Article 6, Section 6.04, zoned R-3: a 23’ front yard setback variance from the required 30’ front yard setback to build a home 7’ from the front property line (north); **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: that this is a lake lot that is non-conforming and is only 41' wide, in order to build a house on the property, which is a permitted use, will require the 9' variance from the required minimum lot width; 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: in this case, many of the lots in the area are of the same length and width, being an old platted sub on Elkhorn Lake; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity; granting the variances or modifications will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone; additionally there was a letter in the packet from the neighbor to the north in favor of the variance requests, and allowing a house there would most likely increase property values in the area; further, based on the following findings of facts: granting the variances would not impair an adequate supply of light or air to adjacent property; unreasonably increase the congestion in public streets; would not increase the danger of fire or endanger public safety due to: the petitioner will have to build the home to current building codes and standards; it would not unreasonably diminish or impair established property values within the surrounding area; or, in any other respect, impair public health, safety, comfort, morals, or welfare of inhabitants of the Township.

Trustee Flood amended the motion, Chairman Yaros re-supported to include that the 23' front yard setback variance is needed because the northern property line abuts a road used for a boat launch and therefore the petitioner is held to a front yard setback from that property line, if that property line was held to a side yard setback of 10', the variance needed would only be for 3' or 7' from the north side yard property line.

Roll call vote was as follows: Flood, yes; Walker, yes; Painter, yes; Yaros, yes. **Motion Carried 4-0**

B. AB-2018-40, Todd Garris, 310 Pine Lake Lane, 09-05-400-012

Chairman Yaros read the petitioners request as follows:

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article 5, Section 5.04, Zoned SF:

A 16' side yard setback variance from the required 20' side yard setback to build a retaining wall 4' from the South property line.

Todd Garris, 310 Pine Lake Lane, the petitioner, presented.

Chairman Yaros disclosed that Mr. Garris is a Township Planning Commissioner however that has nothing to do with this variance request.

Board Member Walker and Trustee Flood also disclosed that they are members of other Township bodies but have no interest or monetary gain from acting on this case.

Chairman Yaros explained the request is for a retaining wall that Mr. Garris needed to hold up his driveway and garage. His lot slopes to the south and the property needed to be built up in order to build the house. Chairman Yaros added that normally these walls are inspected by the Building Inspector and don't require variances, however in this case, because the wall is close to a property line, a variance is required. He noted that the wall and a fence on top of the wall are already in place. Mr. Garris indicated that they were.

Chairman Yaros commented that he personally does not have a problem with the request, the house is in a rather secluded area. Chairman Yaros did ask, however, that Mr. Garris consider getting a bigger address sign; it was difficult to see and he passed the location twice.

Trustee Flood said when he was there, he noticed the elevation change appears to be about a 30-40'. Mr. Garris commented that probably from the water to the top of the drive, it is close to 30'. Trustee Flood commented, that the hardship in this case is the topographical slope of the land. Trustee Flood concurred with Chairman Yaros that the property is secluded and there would be no site line issues.

Board Member Painter noted that on Mr. Garris's application, he did not answer questions #2, #4, or #6; because of that, she felt the application wasn't fully filled out. Mr. Garris replied that he believed he had answered those questions when answering other questions or in this case, they were irrelevant. He noted that because of the slope and topography of the land, without a retaining wall, there could be no driveway and therefore no entrance to the garage.

Building Official Goodloe noted that the garage is side entry and in order to make the turn into the garage, the ordinance requires a 30 ft. space.

Chairman Yaros commented that usually the Zoning Board Members get to see the property and conditions before a structure happens – they did not get to see that slope or those conditions in this case; it makes the decision tougher.

Building Official Goodloe said part of the blame is the Building Department's, they should have caught the need for a variance for the retaining wall when they reviewed Mr. Garris's building plans. He commented that Mr. Garris probably didn't know he needed a variance for the wall to be closer to the property line; Mr. Garris has been very cooperative during this process.

Chairman Yaros asked Mr. Garris if he trusts the retaining wall? Mr. Garris replied, absolutely, and explained the measures he took to make sure there was proper drainage and that water would not run onto his neighbor's property.

Chairman Yaros asked if there was anyone here 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-2018-40, Todd Garris, 310 Pine Lake Lane, 09-05-400-012, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, Article 5, Section 5.04, zoned SF: a 16' side yard setback variance from the required 20' side yard setback to build a retaining wall 4' from the south 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 Practical Difficulty is the landscape and slope of the property; the following are exceptional or extraordinary circumstances or conditions applicable to the property: the petitioner did build the wall without seeking a variance but did not know he needed one; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone: the petitioner wouldn't want the land to shift or have something fall down; granting the variance does not impair an adequate supply of light or air to adjacent property; it does not unreasonably increase the congestion in public streets because the property is on a private road tucked back out of the way; it does not increase the danger of fire or endanger public safety; it does not unreasonably diminish or impair established property values within the surrounding area; or, in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitant of the Township.

Board Member Walker amended the motion, Chairman Yaros re-supported, to add that having a side entry garage requires a maximum 30' distance from the property line and one of the reasons needed for the retaining wall.

Roll call vote was as follows: Painter, yes; Flood, yes; Walker, yes; Yaros, yes. **Motion Carried 4-0**

AB-2018-41, JDT Company/Infinity Homes, 109 Crosbie Ct, 09-04-301-073

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 7.3' deck rear yard variance from the required 20' deck rear yard setback to build a deck 12.7' from the rear property line.

Dan MacLeish, Jr., with JDT, LLC, introduced himself, Rino Sauve with Infinity Homes, and Dan MacLeish, Sr.

Mr. MacLeish, Jr. explained they will have the home sold if they can get this variance for a deck approved. Due to the natural topography in the neighborhood, they need to seek a variance for the deck.

Chairman Yaros commented the deck shown on the plans they received appears to be over the patio. Mr. MacLeish, Jr. said, that it is.

Chairman Yaros noted that recently the Township Board agreed to amend the PUD Agreement for this development to allow residents to be able to come before the ZBA to seek variances.

Board Member Painter asked Mr. MacLeish, Jr. if "he started this whole area"? Mr. MacLeish, Jr. replied that when they bought it, it had already been site plan approved. Then, as they were building, found out about the decks and the rear yard setback requirement.

Board Member Painter also said it would have been nice if they had staked it – so they could see how far the deck would be going out.

Mr. MacLeish Jr. asked to approach the Board and handed them a color rendering of their proposal\*.

Trustee Flood noted after seeing the rendering, he now knows where the stairs are going to go; which was one of his concerns.

Building Official Goodloe commented that if they were to meet the 20' setback requirement, it would only allow for a deck that is 2½ ft.

Chairman Yaros asked if there was anyone here that would like to speak to this matter.

Elizabeth Broquet, 152 S. Newman, commented that once this is approved, will these (variances) continue being approved for the rest of the homes being built? The lots are small; couldn't they have figured this out - to make houses and decks fit within what they have to work with.

Chairman Yaros replied that the ZBA looks at each request individually – some lots are bigger and some are smaller. This one only has 20 ft. to the rear property line. The house isn't huge and a 10 ft. deck is not huge. He indicated that he will, however, raise that question with the petitioner.

Mr. MacLeish, Jr. commented that the neighbor that just spoke lives behind the property in question, it goes – their farm (the Broquets), Newman Road, homes already built, then Crosbie Ct. He also noted there was a petitioner that sought a variance for deck that actually backed up to Newman Road. Along Crosbie Ct. there could possibly be a couple more. As far as the square footage, this is the smallest square footage allowed that meet the association's requirement. They would have tried to work around the need for a variance but what they are proposing is the smallest house they can build.

Mr. MacLeish, Sr. added that looking at the site plan for this development, the home that would look out onto this property and deck – they added trees along the back of it so that it would obscure the view.

Building Official Goodloe clarified that this house will have a walk-out, the only way the occupants can get down to the backyard from the main level would be via deck.

Mr. Sauve commented that in some cases in this development, the deck is pretty much the backyard. It is a beautiful subdivision with rolling topography. The MacLeish's, with the landscaping, tried to keep the integrity of the development by keeping the natural woodlands and terrain with retaining walls where needed.

Mr. MacLeish Jr. added they did not want to try and masquerade the site and make it all flat. They opted to do it the way it is and incurred a lot of expense to add retaining walls throughout the development.

Mr. Sauve explained it is a bit of trade-off – it is an impressive sub. Yes, residents would be buying a smaller footprint but included with that is the natural beauty of the subdivision and the golf course.

Chairman Yaros said, for the record, this house will have a side garage entrance that, again, requires 30 ft. - that takes up a lot of room. There will still be 15 ft. from the "other side" so there should be no problem with the side yard setbacks or the front yard setback, the variance is strictly need for the deck in the back.

Doug Broquet, 152 S. Newman, was concerned that if this is approved, then at what time would the ZBA not approve (a variance). He noted that he has seen wetlands filled in and the developer trying to expand lot sizes - trying to build the biggest house they can on tiny lots. Now, that's not big enough so they are coming in and asking for variances so they can expand. They keep trying to push out and push out and these tiny lots. Why don't they just build a house that fits on the lot and make allowances for a deck from the start. Mr. Broquet noted he wrote a letter to the ZBA back when another homeowner wanted to add a deck, even though it was a small deviation, that deck is now closer to the fence. In his opinion, they (the ZBA) now cannot turn anybody down. How can they approve one and then not the neighbors on either side that may want the same thing? If someone wants a deck, include it into the plan of the house so that a variance won't be needed; make the house and deck fit the lot in the first place. There are way too many lots in areas that should have never been built on in the first place. When will it stop?

Mr. Sauve answered that when they came in and purchased the development, they had to get their plans approved by the Association and the MacLeishs. There are some bigger homes in the sub, but because their homes are considerably smaller, they had some "differences" with the Association. In some cases, their homes are right at the minimum square footage allowed. There was then discussion on having to have side entry garages which also minimizes the size of the home they can build on certain lots.

Chairman Yaros repeated that the ZBA looks at each case individually.

Building Official Goodloe added that the need for the variance is also predicated by the grade of the property.

Trustee Flood noted that when the Homeowners Association came before the Township Board to ask that the stipulation in the PUD Agreement that did not allow for variance requests be rescinded, he voted no. The request did pass and since that time (about a year and half), there has already been two cases before ZBA.

Elizabeth Broquet, 152 S. Newman, commented that the developer here tonight stated they put in pine trees so that neighbors won't be able to see this deck and some of the others. However, she can see

the decks from the front porch of their home. She inquired again, is this going to happen every time a homeowner wants to build a deck on their home?

Mr. Sauve added that they do not include decks on their home plans, they are unaware when a purchaser comes in if they are going to want one or not. This is a special case, this is something the potential homeowners required as part of the sale. The house has a walk-out with about a 10 ft. drop off - the backyard would be most useable on their deck.

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA case # AB-2018-41, JDT Company/Infinity Homes, 109 Crosbie Ct., 09-04-301-073, that the petitioner's request for a variance to encroach into the setback of a unit in an existing Planned Unit Development; requesting a 7.3' deck rear yard variance from the required 20' deck rear yard setback to build a deck 12.7' 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 Practical Difficulty is the slope downward of the property and the natural topography; 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: originally the PUD Agreement did not allow homeowners to seek variances, the Homeowners Association came to the Board of Trustees and petitioned the Board to allow residents to ask for variances which was approved altering the PUD Agreement, although there have been setback variances recently approved for decks, each case is predicated upon their own individual set of circumstances, what dictates that in this situation is the topography of the lot and the fact they are only looking for a 7 ft. variance from the property line; granting this variance would not impair an adequate supply of light or air to adjacent property; it would not unreasonably increase the congestion in public streets; it would not increase the danger of fire or endanger public safety; it would not unreasonably diminish or impair established property values; or, in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Board Member Walker amended the motion, Chairman Yaros re-supported, to add that the petitioners have stated this is the minimum house size they can build that meets the subdivision's minimal size, the slope of the property slopes down quite a distance from the walk-out basement and 30 ft. of the property is needed for the side entrance garage which is a subdivision requirement.

Roll call vote was as follows: Walker, yes; Painter, no; Flood, yes; Yaros, yes. **Motion Carried 3-1**

D. 2019 Zoning Board of Appeals Regular Meeting Dates Resolution

It was noted that regarding the tentative regular meeting on Monday, May 27, 2019, the Township will be closed in observance of Memorial Day. It was the consensus of the Board to move that meeting to Tuesday, May 28, 2019, and to eliminate the regular meeting that would fall on Monday, December 23, 2019.

Moved by Board Member Painter, seconded by Trustee Flood, to approve the 2019 ZBA Meeting Dates Resolution as revised moving the Monday, May 27, 2019 regular meeting to Tuesday, May 28, 2019 and eliminating the Monday, December 23, 2019 regular meeting. **Motion Carried**

**6. PUBLIC COMMENTS**

None

**7. COMMUNICATIONS**

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

Chairman Yaros noted that per Planning & Zoning Coordinator Frey's memo dated November 15, 2018 there are no applications for the December 10, 2018 meeting and the Board should consider cancelling it.

Moved by Trustee Flood, seconded by Vice Chairman Yaros, to cancel the December 10, 2018 ZBA meeting due to the lack of agenda items. **Motion Carried**

**8. COMMITTEE REPORTS**

None

**9. MEMBERS' COMMENTS**

Board Member Painter commented she feels it is important that all petitioners stake their property indicating where the structure(s) in question is proposed to go. The other Board Members concurred.

Trustee Flood wished everyone Happy Holidays and noted that this Saturday is the Lighted Parade.

**10. ADJOURNMENT**

Moved by Board Member Painter, seconded by Chairman Yaros, to adjourn the meeting at 8:06pm.

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

January 14, 2019  

---

Zoning Board of Appeals Approval