

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, MARCH 13, 2017 - 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, March 13, 2017 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman
Don Walker, PC Rep to ZBA

Mike Flood, BOT Rep to ZBA
Tony Cook, Alternate

ZBA MEMBER ABSENT:

Dan Durham, Vice Chairman
Lucy Koscierzynski, Board Member

CONSULTANT PRESENT:

David Goodloe, Township Building Official

OTHERS PRESENT:

Scott Reynolds
Wendy Pemberton
Craig Armstrong
Michael Peash
Antonino Giuliano
Elizabeth Giuliano

John Rospierski
Ellen Rospierski
Nancy McDevitt
Bob Muns
Fran Wolbert
John Wolbert

William Scheuber
Diane Scheuber
Gene McNabb
David Brennan
Lynn Harrison

1. OPEN MEETING

Chairman Yaros called the meeting to order at 7:05pm.

2. ROLL CALL

3. MINUTES

02-13-2017, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Board Member Walker, to approve the 02-13-2017 Regular Meeting minutes as presented. **Motion carried.**

5. AGENDA REVIEW AND APPROVAL

Board Members agreed to move AB-2017-05 up before AB-2017-04. The Board was waiting for an alternate member to hear case AB-2017-04.

6. ZBA BUSINESS

B. AB-2017-05, David Brennan & Lesle Cole, 978 N. Long Lake Boulevard, Sidwell #09-01-259-015

Chairman Yaros read the petitioners' request as follows:

The petitioner is requesting three variances from Zoning Ordinance No. 78:

1. Article XXVII, Section 27.01, C, 1, b: Lot Width 60 to 65 ft. requesting a 0.7 ft. variance from the allowed 7.5 ft. side yard setback, build a home 6.8 ft. from the side property line (easterly).
2. Article XXVII, Section 27.17, B, All structures or buildings, requesting: a 0.7 ft. variance from the allowed 7.5 ft. wetland setback to build a house, 6.8 ft. from the lake (easterly).
3. Article XXVI, Section 26.01, R-3, Maximum Lot Coverage by All Buildings: requesting a variance of 1.2% beyond the allowed 33.8% lot coverage to build a 2,264 sq. ft. house

(including attached garage), a 56 sq. ft. front porch, and a 326 sq. ft. deck resulting in 35% lot coverage.

Mr. David Brennan, 978 N. Long Lake Blvd., was present and introduced his architect, Mr. Scott Reynolds who explained the case.

Mr. Reynolds noted this project was previously heard by the ZBA on April 11, 2016 and was under a different architect. Mr. Reynolds commented the reason they are here now is because a couple of things needed to be corrected.

Mr. Reynolds pointed out that lot coverage was calculated incorrectly because the front porch and rear deck had not been included and noted that the house is still the same size, 1,520 sq. ft.. He said those two items are now on the survey drawings provided by Kennedy Engineering

Also, the original request in 2016 was for a 7.5 ft. easterly side yard setback. Kennedy's survey showed that should be corrected to 6.8 ft. Mr. Reynolds added that 7.5 ft. is to the currently platted lot line that existed on the original plats and that it is actually 12 ft. to the water's edge. Mr. Reynolds said that Mr. Brennan does have this information and is going through the process of revising the property's edge with the County.

As it stands, they are requesting an easterly side yard setback of 6.8 ft. which at the end will actually be 12 ft. from the water's edge. Chairman Yaros clarified that the request is not to create an additional .7 ft. variance but to correct the variance granted in 2016 from 7.5 ft. to 6.8 ft.? Mr. Reynolds replied correct, the house is actually 6.8 ft. from the existing property line.

Board Member Walker asked was this a clerical error and was that what brought this about? Mr. Reynolds said essentially two items occurred. One pertained to lot coverage - there was a deck and a porch that were not considered in the total lot coverage in 2016. The second pertained to the setback condition – the house hasn't changed and is a modest two-bedroom, 1,500 sq. ft. home with an attached garage.

Mr. Reynolds the two scenarios on the plans and told the Board they are planning an adhering to scenario 2 which involves removal of the shed.

Board Member Walker commented that normally the ZBA does not like to grant variances to a property that has already received a variance or variances however this request is for .7 ft.. Mr. Reynolds reiterated that essentially the house is in the same location and it comes down to the fact that additional information is being presented for clarification for when the new seawall is actually documented with the County.

Mr. Reynolds also explained that initial information from 1924 showed that all those lots ran to the water's edge and now those lots have varying conditions. The petitioners are essentially asking to keep things exactly as they are now and revise the requested variances asked for at the April 11th meeting based on the recent survey. Mr. Reynolds noted again that they were not the original architect on this project and when they took over, wanted to make sure everything was recorded correctly.

Mr. Reynolds commented that the new drawings that were based on the current survey spells out the lot coverage, the size of the deck, the size of the front porch and how big the house is.

Chairman Yaros read the letter received from Bruce Hall, the property owner two lots west of the subject property. Mr. Hall supported the new construction and the small variances requested.

Trustee Flood clarified that in the new document has it noted that the shed would be taken out and that would be a condition of the motion if the request is granted. Mr. Reynolds said, correct, the total lot coverage is proposed at 2,646 sq. ft., a total lot coverage of 35% being that the lot is 7,550 sq. ft..

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

Moved by Trustee Flood, supported by Chairman Yaros, that in the matter of ZBA case AB-2017-05, David Brennan and Lesle Cole, 978 N. Long Lake Blvd., Sidwell #09-01-259-015, the petitioner is requesting a non-use variance from Zoning Ordinance No. 78; 1) Article XXVII, Section 27.01, C, 1, b: Lot Width 60 to 65 ft. requesting a 0.7 ft. variance from the allowed 7.5 ft. side yard setback, to build a home 6.8 ft. from the side property line (easterly), 2) Article XXVII, Section 27.17, B, All structures or buildings, requesting: a 0.7 ft. variance from the allowed 7.5 ft. wetland setback to build a house, 6.8 ft. from the lake (easterly), and 3) Article XXVI, Section 26.01, R-3, Maximum Lot Coverage by All Buildings: requesting a variance of 1.2% beyond the allowed 33.8% lot coverage to build a 2,264 sq. ft. house (including attached garage), a 56 sq. ft. front porch and a 326 sq. ft. deck resulting in 35% lot coverage; be granted because the petitioner did demonstrate that practical difficulties exist in this case and set forth facts which show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome based on the following finding of fact: the petitioner was here on April 11, 2016 and is only adjusting the original request for .7 more feet, these are old lake lots that were zoned most likely in the 1920s and the petitioners are trying to replace an original cottage with a new structure that will meet all new building requirements and codes; granting the variances requested would do substantial justice to the petitioner as well as other property owners in the area or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners based on the following: a letter was received from a neighboring property owner, Bruce Hall, who was in agreement with the petitioners' request; the petitioners' plight is due to the unique circumstances of the property based on the following: these are long narrow lake lots, 55 ft. in front and 65 ft. in the rear; the problem has not been self-created based on the following findings of fact: the petitioners are replacing an old cottage with a new cottage; further, that the variances be granted on the condition that the existing shed be removed from the property.

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

Motion Carried 3-0 (Durham and Kosciuszynski absent)

A. AB-2017-04, Edwin Anthony Homes, 1741 Berwick Ln., Sidwell #09-04-426-051

Chairman Yaros recused himself being that he was not present when the case was originally heard at the February 13, 2017 meeting. Board Member Cook arrived and took his place on the dais; he was one of the members at the original hearing. Trustee Flood led the discussion and read the petitioners' request as follows:

The petitioner is requesting a variance to alter the total combined side yard setback of a unit in an existing Planned Unit Development. Requesting a 13.25' variance from the required total combined side yard setback of 30' to build a home 6.9' from the northeast property line and 10' from the southwest property line for total a combined side yard setback of 16.75'.

The petitioner has resubmitted building plans showing a 9.25 ft. variance from the required total combined side yard setback of 30 ft. to build a home 6.9 ft. from the northeast property line and 14 ft. from the southwest property line for a total combined side yard setback of 20.75 ft.

John Rospierski with Edwin Anthony Homes presented.

Trustee Flood asked what the difference was between the plans presented tonight and the plans from the February 13th meeting? Mr. Rospierski responded that the difference was they took the Board's recommendation on a compromise to rework the plans to allow for further space between the units. They also met with the Township's Building Official and Planning & Zoning Director to clarify facts. From that meeting they came up with this proposal requesting a variance be granted to relieve the practical difficulty caused by the unique conditions present on this lot.

Trustee Flood noted the petitioners submitted new documentation that was date stamped received February 27th. Mr. Rospierski said, yes. It was Trustee Flood's opinion that information clarified a lot - more than their original presentation.

Board Member Cook agreed and said things were a lot clearer now.

Trustee Flood commented that one of the things that needed understanding was between the document from 1987 and the County prints from 1990. It was noted the Township Building Official and the petitioners agreed to base their plans on the 1987 documents.

Board Member Walker asked, other than shortening the garage, what else did they do? Mr. Rospierski said they did some additional research for clarification of their practical hardship and, in his opinion, an important part of what helped cause this difficulty. He explained that the way the existing homes were built and that people often think that a ranch home has a big house envelope, that they are building a large oversized home. However, the homes to the east and west of the subject property, are colonials or a story and half, and according to County records their first floor living space area is about 2,686 to 2,700 sq. ft.. The home the petitioners want to build would be significantly smaller, about 2,412 sq. ft.. Due to the steepness of the lot on the west side, there is a 7 ft. drop within 40 ft. of grade, and with the location of the utility pediments and the fire hydrant on the east side, it makes it difficult to place the home.

Another thing Mr. Rospierski thought was important to note was lot coverage ratios. The home to the east of the subject property has a lot coverage ratio of 25% and the home to the west has a lot coverage of 20% - they are proposing on the lower end of that scale at a .21. Therefore now on the west side of the lot between the houses there will be 19.6 ft. instead of the 15 ft. that was previously proposed. In his opinion, a significant difference in shortening the width of the garage.

Mr. Rospierski also commented there was a letter campaign prior to the last meeting by one of the neighbors abutting the subject property that he received late in the day of that meeting and didn't have the proper time to investigate those or present. It appears the homeowners that wrote the letters may not be aware of it but after research of this small development, there are 30 homes that do not meet setback requirements. Because of this, it has caused a practical difficulty; especially with those that are on either side of the subject property. It has made it difficult for the petitioners' home to now meet required setbacks. He added that many of the homeowners that wrote the letters, who he thought may not be aware of it, their own homes were in violation. Because of this practical difficulty, they are trying to solve it in the best way possible - they are trying to compromise with the size of the house accordingly.

Trustee Flood asked on the original print, weren't they asking for a front entrance garage? Mr. Rospierski responded that they are not allowed a front entrance garage, that they had proposed a courtyard entrance. Additionally, if the total side yard setback of 30 ft. was adhered to, when looking at the rear of those homes and how close they were built on each side, it would leave an extremely narrow home that would not be in characteristic with any of the other homes in the subdivision; it would not fit within what was established throughout the subdivision. He commented that the home that was designed for this specific lot was of a beautiful design and was not over or under built.

Trustee Flood clarified that he could see on the prints that they removed 4 ft. from the garage that was 10 ft. from the lot line and is now 14 ft. from the line, and that the petitioners have agreed to base their plans on the setbacks in the 1987 PUD Agreement. Mr. Rospierski explained that originally setbacks were supposed to be a total of 20 ft. and Mr. Aldridge, the owner of the Indianwood Country Club, wanted to be able to establish side entry garages so he requested 30 ft. setbacks to be able to push 5 ft. to one side - that was done after those lots were designed. He commented that unfortunately his clients came into a “pinch point” being their lot is one of the last in the subdivision.

Trustee Flood noted that the ZBA judges each case on its own merit regardless of what may have happened in the past. He noted that side yard setback variance requests are not uncommon but are usually for homes that are already built and want to expand; this request is for a vacant lot.

Trustee Flood read the names, addresses and their position on the request from letters received after the February 13th meeting:

Diane & William Scheuber, 1733 Berwick Ln.; opposed
Donni Steele, 262 Kirksway Ct.; opposed
Bob Muns, 152 Kirksway; opposed
William Sanger, 1761 Berwick Ct.; opposed
Keith & Mary Ellen Marion, 282 Kirksway Ct.; opposed
Warren Brown, 202 Kirksway Ln.; opposed
Christina & John Carmany, 64 Tweed Ln.; opposed
John & Fran Wolbert, 233 Kirksway Ln.; opposed
Richard A. Ostroske, 1753 Berwick Ct.; opposed

Trustee Flood asked if anyone from the public wanted to speak to this matter.

William Scheuber, 1733 Berwick, commented he would be speaking on behalf of himself, his wife and Mr. Ostroske who could not be here. He noted they are still opposed to the plans and referred to the comments he made at the last meeting. The 4 ft. increase on the side yard setback continues to leave a 31% variance from what is required by the ordinance. He pointed out that their objection to a ranch is not because of the belief that it would be a big sprawling structure, it's because it would occupy a large footprint in comparison to the size of the yard. A practical difficulty means, in his opinion, that a reasonable house cannot be built on the lot because of existing conditions. A house can be built of this size, it just needs to be two stories. That would significantly reduce the variance or perhaps even eliminate the need altogether. This is the reason they object to a ranch on this property. He noted the petitioner made considerable points on how a ranch is permitted and he agreed, one just can't fit on this lot with the setbacks that are there. Mr. Scheuber agreed with Trustee Flood that conditions today are the conditions today, most of these houses were built 20 years ago. He said he does live in one of the houses that don't meet setbacks but he was not the builder and there is nothing they could do about it now. This request can be dealt with and urged the ZBA do to so.

Donni Steele, 262 Kirksway Ct., commented that it was her opinion that because things weren't done correctly in the past, it is something that shouldn't be brought forward and should be taken on a case by case study. As the Township moves forward, things should be done correctly so it doesn't perpetuate consistent problems of what was done in the past. Moving forward it would be nice to stick to the setbacks and the rules that are set in place. Had all this information been found out before the petitioners brought the lot, it would have saved everybody a lot of aggravation.

Elizabeth Giuliano, 15876 Boras Dr., Macomb, said her and her husband own the subject property. She commented that she appreciates the opportunity for this case to be heard again and that the last thing they wanted to do was confuse people. She was glad their paperwork was more

understandable. On a personal level she was disappointed they are not being welcomed into the subdivision; they really love Orion Township, they have lived here previously and why they want to build here now; this has been an unpleasant surprise and they are taking care of it as well as they can. She believed that they did do a lot of research to prove that they are trying really hard to comply with a subdivision that was built over 30 years ago; even though theirs would be one of the last homes built, they put a lot of time and effort into their plan and making it work for everybody and have compromised; maybe it is not the house everybody wants however everybody was able to build the house they wanted; again, they have done a lot of research and appreciated being able to come here and prove their point and hope for open ears and to be able to get this going. She thanked the Board for listening.

Trustee Flood made reference to a subject at the last Board of Trustees meeting regarding the Turnberry subdivision where certain lots were not allowed to seek a setback variance for decks or patios per the PUD Agreement. Also, there are a lot of different zonings within the Township and setback requirements - they deal with a lot of these. In regards to this case, if they combine the two setbacks, it equals almost 20 ft. which is allowable between homes in some districts.

Board Member Cook clarified with Building Official Goodloe that it was agreed with the petitioners to use the 1987 information. Building Official Goodloe said their house would be within the building envelope but would still need to meet setbacks within that envelope.

Tony Giuliano, owner of the subject property, noted that in their conversations there was a lot of clarification that they would come to this meeting using 1987 as the rule; collectively in that room (during his meeting with the Township), it was kind of a said there were 30 homes built in that subdivision without having to apply for variances; he noted the 1987 document and pointed out there had been a revision made to that plan but they are not being asked to adhere to the 1990 document. That there have been homes built in this subdivision past 1987 - in 1990, 1995, 1998 and up until 2000 that were not held to the standards he, his family and their builder are being held to today. He has accepted that. He hopes that the ZBA will take that into consideration.

Board Member Cook asked that if they were to use the 1990 document, the petitioners would be compliant? Building Official Goodloe said, yes, but it was agreed to use the 1987 document; the 1990 document was Oakland County's not the Township's.

Moved by Board Member Cook, supported by Board Member Walker, that in the matter of ZBA case AB-2017-04, Edwin Anthony Homes, 1741 Berwick Ln., Sidwell #09-04-426-051; the petitioners' request for a non-use variance from Zoning Ordinance No. 78 where they are requesting a 9.25 ft. variance from the required total combined side yard setback of 30 ft. to build a home a 6.9 ft. from the northeast property line and 14 ft. from the southwest property line for a total combined side yard setback of 20.75 ft. be **denied** because the petitioner did not demonstrate that practical difficulties exist in this case and that they set forth facts which show that their intent was not malicious because they were basing their plans on a 1990 standard however the information they should have been using was the 1987 standard based upon an Orion Township ordinance; compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome based on the following: the difficulty is that the petitioners came to the ZBA in good faith and worked with them but based upon the standard, in order to move forward in a correct manner, this decision was based upon the 1987 ordinance so granting the variance would do substantial injustice to the petitioners as well as to other property owners in the area or that a lesser relaxation of that relief applied for would give substantial relief to the owners of the property involved and be more consistent with justice to other property owners based on the following: there were some changes, originally the properties were going to be 20 ft. apart and then it was shifted to allow a total of a 30 ft. side yard back which meant that homes were shifted after the lots were laid out, this subjected this lot to smaller

conformity options and the fact they have other options where they could build up as opposed to out; the petitioners' plight is due to unique circumstances of the property based upon what was previously noted in terms of changes in the lot lines and changes that were granted without variances being sought by the previous builder; the problem is not self-created because the petitioners relied upon information that unfortunately was correct; further, the petitioners had done great research and that there probably are some homes in that small community that do not conform to setback requirements but it is not the ZBA's purview to go back and change things that have happened erroneously for the last 25 years.

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

Motion Carried 3-0 (Durham and Kosciuszynski absent)

Board Member Walker commented that he has been on this Board for a long time and this was one of the most difficult votes for him because he can see both sides. He was however disappointed that they came back with only a 4 ft. reduction, he was hoping for a bigger concession.

Chairman Yaros rejoined the meeting.

7. PUBLIC COMMENTS

Gene McNabb, Orion, commented that he is aware that on the next meeting agenda is something regarding the property on Brown Road, he requested the Board Members to review the meeting from April 25, 2016 for some background information of what was said and how things were supposed to go. He also asked if the Township Attorney would be at that meeting? Chairman Yaros responded, that he would and so would the Township Engineer.

8. COMMUNICATIONS

Memo regarding Ordinance 78 updates.

9. COMMITTEE REPORTS

None

10. MEMBERS' COMMENTS

Board Member Cook commented that it has been an interesting day and is glad to be here.

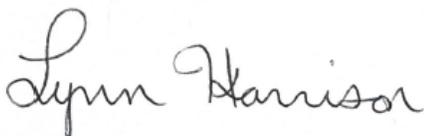
Trustee Flood concurred this was a difficult case and noted the Ordinance 99 projects will be on an upcoming agenda.

11. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Yaros to adjourn the meeting at 7:49pm.

Motion carried unanimously.

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

March 27, 2017
Zoning Board of Appeals Approval