

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, APRIL 10, 2017 - 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, April 10, 2017 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

Don Walker, PC Rep to ZBA

Lucy Koscierszynski, Board Member

ZBA MEMBER ABSENT:

Mike Flood, BOT Rep to ZBA

CONSULTANT PRESENT:

David Goodloe, Township Building Official

OTHERS PRESENT:

Richard Koscierszynski

Jennifer Hill

Allan McMillin

Brandon McMillin

Aurora McMillin

Sgt. Darrin Zehnpfenning

Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

3. MINUTES

03-27-2017. Regular Meeting Minutes

Moved by Vice Chairman Durham, seconded by Board Member Walker, to approve the 03-27-2017 Regular Meeting minutes as presented. **Motion carried.**

5. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

6. ZBA BUSINESS

A. AB-2017-08 Allen Chika/Iven Sharrak, 3865 S. Baldwin Rd., Sidwell #09-29-326-016

Chairman Yaros read the request as follows:

The petitioners are requesting two variances from Sign Ordinance No. 138, Section 8, Schedule B, GB-2:

1. A variance to allow five additional wall signs (3 on the fuel pump canopy and 2 on the front of the store), to install a total of six wall signs.

2. A 508.89 sq. ft. variance above the allowed 12 sq. ft. area of a wall sign, to install a total of 520.89 sq. ft. of wall signage.

The applicant was not present.

Chairman Yaros called the next case and said they would go back to ZBA case #AB-2017-08 if the applicant comes in.

B. AB-2017-09 Board of County Road Commissioners of the County of Oakland. Interpretation Request

Chairman Yaros disclosed that he was retired from the Road Commission but believed he could be un-bias in this case and that he probably would know the most about road right-of-ways. He would however recuse himself if the ZBA Members would like him to. The members present were ok with Chairman Yaros not recusing himself. Ms. Hill, the applicant's representative, also did not have a problem with Chairman Yaros hearing and acting on the case.

Chairman Yaros read the request as follows:

The petitioner is seeking interpretation of Section 33.01 (C), related to the meaning and application of the term "future right-of-way of Baldwin Road" as applied to the Gingellville Village Center Overlay District.

Ms. Jennifer Hill was present and represented the Board of County Road Commissioners of the County of Oakland.

Chairman Yaros read into the record section 33.01(C) of Zoning Ordinance No. 78 as follows:

Unless otherwise zoned, commercial or office uses shall not extend more than five hundred thirty-five (535) feet beyond the future right-of-way of Baldwin Road. Parcel areas deeper than three hundred (300) feet shall be reserved for residential uses.

Chairman Yaros clarified that Ms. Hill was here tonight for clarification on this section. Ms. Hill responded, yes.

Chairman Yaros asked Ms. Hill what part of the Section he read were they unclear on? He explained that if someone comes to the Building Department and asks how far back is the commercial property, how far back could they go? The Building Department would say 535 ft. - what it is at the time.

Ms. Hill agreed, but the confusion lays with what actual road right-of-way measurement the Township would be using. In her opinion there were two. One is the original plan that was adopted by the Road Commission and now there is a second proposed plan provided by the Road Commission that was also adopted by the Township in its Master Plan for the Baldwin Road Redevelopment project. However the ordinance actually refers to the original plan by the Road Commission (Map 15 on page 4-6 of the Township Master Plan adopted September, 2015). She noted that In the Gingellville district there is a proposed plan by the Road Commission that is supposed to start in 2017/2018 (depicted on page 4-10 of the Township Master Plan adopted September, 2015) that will have a larger right-of-way - this is where the confusion lays.

Chairman Yaros then said, in 2018 if someone comes into the Building Department and wants to build a commercial property, how far back can they go and from where? He pointed to the right-of-way location on Map 15 in the Township Master Plan, that is where it would be measured from - if someone were to come in today, the right-of-way on Map 15 would be used.

Ms. Hill stated, though, that at this point the Township has adopted both (Map 15 and *Figure 12*) and that is where there is confusion. It (the right-of-way) could be interpreted using the proposed plan (*Figure 12*) or the current plan (Map 15) which has a smaller right-of-way. She felt it better if she referred to the two plans as Plan 1 (Map 15) and Plan 2, the proposed plan with the larger right-of-way (*Figure 12*). She just wants to make sure it is very clear. She asked if something could be put in writing, what they are looking for. She commented that if it is made clear in the minutes, that would be sufficient.

Chairman Yaros commented that the Township has adopted the current Master Plan (the Master Right-Of-Way Plan For County Roads). Ms. Hill also believed that because the Orion Township

Master Plan has adopted and the proposed project to expand Baldwin Road in the Gingelville Overlay District was in that plan, that it was also adopted. Chairman Yaros agreed the “Master Right –Of-Way Plan For County Roads” was adopted by the Township but it did not really adopt the future right-of-way plan Ms. Hill is referring to as Plan 2 or *Figure 12*, the project plan for the widening of Baldwin Road in the Gingellville Overlay district.

It was Ms. Hill’s opinion that by adopting the Township Master Plan, her assumption and interpretation was, the Township was also adopting the wider right-of-way or *Figure 12 – Baldwin Road Redevelopment Project* on page 4-11.

Chairman Yaros noted Map 15 titled “Master Right-of-Way Plan for County Roads” on page 4-8 of the Township Master Plan and the ZBA members looked for something in writing that might explain the two references (Map 15 and *Figure 12*). Ms. Hill said she believed that explanation was on page 4-10 of the Township Master Plan in the last paragraph that reads, “The Baldwin Road reconstruction project will take place in two phases, and includes widening the road from two to four lanes and constructing five roundabouts. Phase I of the Baldwin Road project is illustrated in Figure 12 on the following page.”.

Building Official Goodloe asked if it does extend (the right-of-way), 535 ft. extends with it? Ms. Hill responded they are not advocating one position or the other.

Chairman Yaros commented that if in fact the Township adopted this plan and that is the current future right-of-way (Map 15), then 535 ft. would be from there (the right-of-way on that map). If that was what was adopted, the ordinance states, “unless otherwise zoned commercial or office uses shall not extend more than five hundred thirty-five (535) feet beyond the future right-of-way of Baldwin Road.”.

Board Member Koscierynski said, so that we are clear, everyone is looking at the 2015 Charter Township of Orion Master Plan that was adopted September, 2015. Board Members and Ms. Hill agreed. Chairman Yaros clarified that Map 15 of that plan is what the Building Department would use to determine where 535 feet starts.

Ms. Hill explained that the reason they are here is because they are involved in a condemnation proceeding and they are trying to get an evaluation of a piece of property that would affect how much the property is worth and where it can be development. The scenario they are looking for, if someone were to come into Building Department and was seeking a building application as of today’s date, based on the ordinance as well as the Master Plan, where would the right-of-way line be? Chairman Yaros clarified from her scenario – what she was asking was what future right-of-way line would the Building Department use if something came in today? Ms. Hill concurred.

Chairman Yaros said in his opinion, the September, 2015 Master Plan that was adopted - what is in there would be the future right-of-way. Board Member Koscierynski agreed.

Board Member Koscierynski said she read the application and supporting documents 3 times and was somewhat confused why there needed to be clarification, she believed it was clear.

Vice Chairman Durham clarified that when Ms. Hill presented, she said there was a difference in future right-of-ways but didn’t mention any figures – did she know what the difference was? To him the words, future right-of-way, speaks to the fact that it hasn’t been determined for certain. Therefore they (the Board of County Road Commissioners) were looking for an amount of depth that would be allowed? Ms. Hill said, right. Vice Chairman Durham believed the Master Plan calls for it to be 535 ft. from where the right-of-way lands; the right-of-way is kind of a moving target depending on what goes on. He wasn’t even certain the engineers know where the right-of-way is at this very minute.

Chairman Yaros said what they submitted in their application was Map 15 which is the current Master Road Right-Of-Way Plan for County Roads. Chairman Yaros then explained where to find that in the documentation. Ms. Hill said this is where the confusion lays - in the ordinance it looks like it refer to that plan (Map 15) but in the Master Plan that has been adopted by the Township, it refers to *Figure 12* - the proposed project plan.

Chairman Yaros said, that is says Orion Township Master Plan September, 2015, in it is the "Master Right-Of-Way Plan For County Road" which shows 150 ft. on Baldwin Road - that is the current master plan that was adopted on September, 2015? Ms. Hill responded, no, what was adopted in 2015 was the proposed project as part of the Township's plan, *Figure 12*.

Chairman Yaros responded but this, the Master Right-of-Way Plan for County Roads, is part of the Orion Township Master Plan, that is what is current for County roads, correct? Ms. Hill said she would have to research exactly what that document was.

Again, it was Chairman Yaros' opinion, regardless of what the Township adopted, the Master Plan provided in their documents, it didn't matter - if they came in tomorrow and asked where they could build, how far back, it would be 535 ft.. Ms. Hill then asked, from which right-of-way line? Chairman Yaros said, from the future right-of-way line. Ms. Hill said that is where they need clarification, is it from the proposed project (the Baldwin Road Redevelopment Project) right-of-way line or the Master Right-Of-Way Plan for County Roads? She asked Chairman Yaros what the title was of the document he was referring to? Chairman Yaros responded, the Master Right-of-way Plan for County Roads in the Township's Master Plan; therefore that must be the current one. He clarified it is not the (*Baldwin Road Redevelopment*) project one.

Board Member Koscierynski read into the record from the Road Commission's explanation of their request, the third paragraph which starts "The future right-of-way as shown on the current RCOC drawing indicates a future right-of-way while the new right-of-way shown on figure 12 of the Township's Master Plan depicts a much wider right-of-way. The interpretation required is which future right-of-way line is intended for the measurement of the 535 foot depth for the commercial or office development along Baldwin Road? Although a plain reading of the ordinance language may lead to an interpretation that the existing future right-of-way line is the line referenced in Section 33.01 (C), I do not believe that this interpretation is consistent with the purpose and intent of the ordinance or the Master Plan".

Chairman Yaros said he believes the intent of the ordinance is for 535 ft. from the line on the Master Right-Of-Way Plan. The Township has adopted that Master Plan so that is what they should go by. Board Member Koscierynski agreed but could understand why Ms. Hill was here.

Chairman Yaros explained Ms. Hill is asking which document will the Township go by? Ms. Hill replied, how does the Township interpret the right-of-way maps? Chairman Yaros said, the Master Plan. Ms. Hill said, therefore, from the document that is titled Master Right-of-Way Plan for County Roads which shows 150 ft..

Board Member Walker said you have to look at that along with Section 33.01 (C) for the Gingellville Village Center Overlay District where it says, "Unless otherwise zoned Commercial or Office uses shall not extend more than five hundred thirty-five (535) feet...". If you read that along with the language in the new Master Plan, that is what you would come up with.

Chairman Yaros clarified so it says, "Unless otherwise zoned commercial or office uses shall not extend more than five hundred thirty-five (535) feet beyond the future right-of-way of Baldwin Road.". That is shown on Map 15. In his opinion, that would be the one to use.

Board Member Walker said he believes Map 15 is part of the Township Master Plan, Map 15, but may not be the current one for the Road Commission.

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

Moved by Board Member Walker, seconded by Chairman Yaros, that in the matter of ZBA Case #AB-2017-09 Board of County Road Commissioners of the County of Oakland Interpretation Request, the applicant is seeking the interpretation of Section 33.01 (C), related to the meaning and application of the term “future right-of-way of Baldwin Road” as applied to the Gingellville Village Center Overlay District, the Zoning Board of Appeals interpret this request by reading Section 33.01 (C) in conjunction with the Orion Township Master Plan and recommends that this Board interprets the ordinance as indicating that the future right-of-way on Baldwin Road is to be five hundred thirty-five (535) feet.

Board Member Walker amended the motion, Chairman Yaros re-supported, to include that the five hundred thirty-five (535) feet is determined by using Map 15, Master Right-Of-Way Plan for County Roads in the Township Master Plan.

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

Motion Carried 4-0 (Flood absent)

Chairman Yaros asked if the applicant was present for ZBA Case #AB-2017-08. There was not. It was Chairman Yaros’ opinion that it seems they asking for a lot of signage, but what it is, is a lot of color. The signs are small but the colors are all the way around the pump island canopy - the colors are part of the signage. It was noted the colors are already there. It was noted too, that their other request was for two signs on the building. They are asking to replace the one that is there now that says WOW - they want to replace it with something bigger and is lit, and they want a sign for Subway. Building Official Goodloe said what makes the amount of signage look like a large amount is because of the colors around the island. Chairman Yaros asked the ZBA members what they would like to do with the application, that maybe something came up that didn’t allow the applicant to be here. Board members agreed they would like talk with the applicant before rendering a decision.

Moved by Board Member Kosciuszynski, seconded by Board Member Walker, to postpone ZBA Case #AB-2017-08 Allen Chika/Iven Sharrak, 3865 S. Baldwin Rd., Sidwell #09-29-326-016, to the April 24, 2017 ZBA meeting.

Roll call vote was as follows: Durham, yes; Kosciuszynski, yes; Walker, Yes; Yaros, yes.

Motion Carried 4-0 (Flood absent)

7. PUBLIC COMMENTS

None

8. COMMUNICATIONS

None

9. COMMITTEE REPORTS

None

10. MEMBERS’ COMMENTS

Chairman Yaros commented that regarding case AB-2017-08, the applicant could have had a serious problem and why there were not able to be present.

11. ADJOURNMENT

Moved by Board Member Koscierynski, seconded by Chairman Yaros, to adjourn the meeting at 7:30pm. **Motion carried unanimously.**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

April 24, 2017

Zoning Board of Appeals Approval