

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, MAY 8, 2017 - 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, May 8, 2017 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
Mary Painter, Alternate

ZBA MEMBER ABSENT

Loren Yaros, Chairman

CONSULTANT PRESENT:

David Goodloe, Township Building Official

OTHERS PRESENT:

Antonino Giuliano	Leonard Crum
Harold Flood	Donni Steele
Bob Muns	John Rospierski
Wendy Pemberton	Ellen Rospierski
Michael Peash	Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

3. MINUTES

04-24-2017, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Board Member Koscierzynski, to approve the 04-24-2017 Regular Meeting minutes as presented. **Motion carried.**

5. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

6. ZBA BUSINESS

A. AB-2017-11, Leonard Crum, 2490 Toby Rd., Sidwell #09-29-476-015

Vice Chairman Durham read the request as follows:

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

1. Article VI, Section 6.07, R-2, requesting: a 3 ft. variance from the required 10 ft. side yard setback to allow a detached garage to be built 7 ft. from the side property line (northwest).

2. Article XXVII, Section 27.02, 4, requesting: a 3 ft. variance from the required 10 ft. rear yard setback to allow a detached garage to be built 7 ft. from the rear property line.

Mr. Leonard Crum, 2490 Toby Road, the petitioner, presented.

Vice Chairman Durham clarified with Mr. Crum that from visiting the site, he is looking to put a small two-car garage in the back corner of his property. Mr. Crum responded, yes.

Trustee Flood said he visited the site today and noted that the subdivision was built in the late 50s or early 60s. He told Mr. Crum that he appreciated him putting his time, money and effort into remodeling the old house and trying to update the look of the neighborhood. The current single-car garage there now is an old 1960's style. Trustee Flood noted the lot is nice and is deep. He asked Mr. Crum to explain why he needs this additional structure.

Mr. Crum said originally the stuff in his yard that is now covered by a tarp was stored in a temporary shed which blew down about a month ago. He is asking for the detached garage to store his ATVs, tractor and other things in. Mr. Crum clarified that the old shed is gone and that he plans on putting the new structure in its place however it will be slightly bigger.

Vice Chairman Durham asked Mr. Crum if the neighbors on either side of him had any issues with what he is trying to do? Mr. Crum said, no, and has talked to them about it multiple times.

Board Member Painter commented that she visited the site but could not see into the yard because the gate was closed. She told Mr. Crum that the house really looks nice. She then asked about the fence and if it was new? Mr. Crum said he just replaced the wood, there had always been a fence there. Board Member Painter then requested that Mr. Crum put back up the address numbers on the house. Mr. Crum apologized, the house was being resided and he wasn't aware they had not been put back up.

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

Building Official Goodloe asked Mr. Crum what the roof pitch will be on the requested detached garage, he was concerned about it being taller than the principal structure would be an ordinance violation? That dimension was not on the plans. Mr. Crum concurred that the walls are 12 ft. high and believes it will be 13 ft. total to the peak. Building Official Goodloe then asked Mr. Crum if he plans on having anything up above in the garage? Mr. Crum said, no. Building Official Goodloe asked if the building will be 16 ft. wide and if the trusses will be going from side to side? Mr. Crum said, he believed so. Building Official Goodloe then said with that information, he doesn't believe the garage will be taller than the house. Mr. Crum recalled that the owner of the building company told him it would be 13 ft. to the mid-point. Vice Chairman Durham told Mr. Crum to make sure with the building company that the structure does not go above 13 ft..

Moved by Board Member Kosciuszynski, seconded by Vice Chairman Durham, that in the matter of ZBA case #AB-2017-11, Leonard Crum, 2490 Toby Road, Sidwell #09-29-476-015, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, Article VI, Section 6.07, R-2, requesting: a 3 ft. variance from the required 10 ft. side yard setback to allow a detached garage to be built 7 ft. from the side property line (northwest), and Article XXVII, Section 27.02, 4, requesting: a 3 ft. variance from the required 10 ft. rear yard setback to allow a detached garage to be built 7 ft. from the rear property line; **be granted** because the petitioner did demonstrate that practical difficulties exist in this case in that they set forth facts which show that in this case 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 house was built in the 1950s, the petitioner is putting a considerable amount of money into remodeling the home and he needs the garage space remodeled as well; granting the variance request would do substantial justice to the petitioner as well as to other property owners in the area and there is not a lesser relaxation than that relief applied for that would give substantial relief to the property involved and be more consistent with justice to other property owners based on the following: the garage currently there is old; the petitioner's plight is due to the unique circumstance of the property based on the following: the home was built in the 1950s; the problem is not self-created based on the following: the house is older and needs to be remodeled.

Board Member Koscierzynski amended the motion, Vice Chairman Durham re-supported to add to the motion that the overall height of the detached garage cannot exceed the overall height of the primary structure.

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

B. AB-2017-12, Edwin Anthony Homes, 1741 Berwick Ln., Sidwell #09-04-426-051

Vice Chairman Durham read the 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 6' variance from the required total combined side yard setback of 30' to build a home 5' from the northeast property line and 19' from the southwest property line for total a combined side yard setback of 24'.

Mr. John Rospierski, Edwin Anthony Homes, presented.

Vice Chairman Durham asked Mr. Rospierski if he represented the company each time this property was before the ZBA? Mr. Rospierski responded, yes.

Vice Chairman Durham, being that he was not in attendance at the second meeting, asked Mr. Rospierski what occurred at that meeting? Mr. Rospierski explained there wasn't a full Board at the time, that they had come back with a plan to alter the width of the subject house and their request was denied. Since that time, they "went back to the drawing board" and shortened the house even more - significantly.

Board Member Koscierzynski asked what Mr. Rospierski meant when he said "significantly"? Mr. Rospierski said they shortened the width of the house by 9 ft. and will now be complying with the setbacks on 3 sides. They shortened the west side of the house where the garage is by 9 ft. allowing 19 ft. to the property line and 24 ft. to the next structure, the house. He explained though that the 24 ft. stretch between the houses is about a 12 ft. run, it doesn't carry down the whole property line, just a small section of it.

Mr. Rospierski said they have also accomplished a couple of other things as well, one being the lot coverage ratio. The neighbor on the west side of the subject property has a 20% lot coverage ratio. It is a two-story home with a first floor square footage of 2,686 sq. ft., the overall square footage of the house is 3,030 sq. ft.. The house to the east, Lot 47, has a lot coverage ratio of 25%. The house is 3,447 sq. ft. of which the first floor is 2,721 sq. ft.. The house they are proposing is 2,412 sq. ft. with a lot coverage ratio of 19%. Looking at the houses on either side and the volume they take up on the lots, the proposed house will be less than either of them in relation to proportion of land size to house size.

Vice Chairman Durham noted the emails received regarding this case and that these emails were on file at the Township:

Diane & William Sheuber, 1733 Berwick Ln.; opposed
John & Fran Wolbert, 233 Kirksway; opposed
William McDevitt & Nancy Carty, 1784 Berwick; opposed
Donni Steele, 262 Kirksway; opposed
Bob Muns, 152 Kirksway; opposed
Keith & Mary Ellen Marion, 282 Kirksway; opposed
Christina & John Carmany, 64 Tweed Ln., opposed

Mr. Rospierski asked to respond to these emails. He noted he stopped in at the Planning & Zoning Department this morning and asked how many neighbors had come in and requested information for this case; the response was, one. He asked this because he wanted to find out what kind of research they were doing to attain the proper facts before writing these emails; only one had actually come into the Township and requested information. Mr. Rospierski didn't believe this was fair, his client's side wasn't able to be fully presented in an un-bias way.

Vice Chairman Durham responded that this information could have been disseminated through a homeowners association, house to house etc.. He felt it would be a mistake to assume the writers of these emails were not informed. However, as being a Board Member of the ZBA, there are things they are required to look at before rendering a decision - nowhere does it say "that the neighbors must all like it". He personally considers the tone of the people who reside in the area.

Trustee Flood commented he was present each time this subject came before the ZBA and has a lot to say. He asked to reserve time for his comments after the public has had a chance to speak.

Board Member Painter asked the petitioner from the first time they were, exactly how much have they cut out? Mr. Rospierski said, 9 ft. from the width of the building. Instead of being 13 ft. from the one side, they are now 19 ft. to the property line and 24 ft. to the neighboring house.

Board Member Koscierzynski commented that from her standpoint, it does matter what the neighbors think. She said she does understand the petitioner's concern on how they got that information, however when it comes to a person's home, it is their everything and are very protective of that.

Mr. Rospierski commented that he agrees and prior to pulling permits, they personally reached out and met with the adjoining neighbors on either side and attended a homeowners association meeting to explain their plans. He realizes this is an established community and there hasn't been a new home built in it for over 20 years. He has compassion for the neighbors and agreed their homes are big investments, but not only for them but for his client as well. He said they have a beautiful plan from an award winning architect; in his opinion, it will increase the property values of the houses around it and enhance the subdivision.

Mr. Richard Ostroske, 1753 Berwick Ct., agreed they are protective of their neighborhood; they value their homes; to be told a home is going to be built that will beautify his home and increase its value – he disagrees. He sees this home as something that is going to be "squeezed" in between two homes; he is not saying that something cannot be built there, but that it should be a 1½ or two-story home – they could get the square footage they want. He is totally against it and most of his neighbors are too. This is the third time this has been here and the third time they are opposing it. The petitioner keeps chipping away at it and moving closer to Mr. Shueber's house. He reiterated that he is opposed.

Board Member Painter asked which house is Mr. Ostroske's? His address is 1753 Berwick, the house to the east.

Ms. Donni Steele, 262 Kirksway, concurred that she did send an email and is opposed to the petitioner's request. She commented that she doesn't believe it is fair to the public or the ZBA members to have to come here three times. When a variance is denied, it is denied and she compared it to a teenager requesting permission from a parent until eventually they get their way. She believed that some of these issues could have been handled up front at the beginning before they bought the lot and developed plans – it would have saved them and the neighbors a lot of time.

Trustee Flood noted that this being the third time this has been before them and there were some new members on the Board that weren't at the first 2 meetings, he gave the following comments:

The first time the case was before the Board, it was postponed at the request of the applicant because there was question regarding which document included in the meeting packet to go by regarding setbacks. It was determined that the document the ZBA should be looking at was the 1987 document that was on file at the Township which had not been updated with the County.

He noted that being a member of the Zoning Board of Appeals, they take each case very seriously. They listen to resident concerns, not put human emotions into anything and base all their findings on specific Findings of Fact.

Anything the ZBA rules on can be appealed to Oakland County Circuit Court. Also, the law states that property owners have the right to come before the ZBA to re-appeal a case as long a difference was made to the request. In this case, the petitioner shortened the variance request - this Board always asks, "if there is a lesser relaxation than that relief applied for?"

The request was denied last time because some Board members believed the petitioner could come up with a lesser footprint on the property. The petitioner has come back with an adjustment taken from what this Board said. He further noted that he did a lot of research on this case.

Speaking as only one voting member of this Board, he judges each petitioner's request for a non-use variance based on four (4) criteria one being the petitioner must meet and show proof of practical difficulty. Each case is judged on its own merit - i.e., in 2016 alone, this Body reviewed and rendered their decision on 34 various setback variances. This represents 46% of the total cases that came before this Body in 2016.

Trustee Flood noted the difference between the two previous petitioner's requests below and said he appreciated the petitioner's detail and information in the documents they provided and he also likes it when petitioners stake their property.

Regarding informational material date stamped April 7, 2017, the northeast property line setback was adjusted to 5 ft. from the prior request of 6.9 ft.. The 5 ft. setback fully complies with the 1987 PUD Agreement setback requirements to provide for side entry garage entrances.

Tonight, May 8, 2017, the southwest side yard setback variance request from 1987 PUD Agreement requirement of 25 ft. was reduced to 19 ft. (a 6 ft. variance). This is what he is focused on tonight. The previous southwest side yard variance request on February 13, 2017 was a 10 ft. (a 15 ft. variance). On March 13, 2017, a lesser variance was requested of a 14 ft. setback (an 11 ft. variance). Therefore the petitioner has gone from requesting to be 10 ft. from the property line to being 19 ft. from the property line.

As a result of being denied the variance request as presented at the March 13, 2017 meeting, the petitioner has resubmitted a lesser variance request as was stated in the minutes of the approved March 13, 2017 minutes by Board members who were hoping to have seen a bigger concession. At the time, I (Trustee Flood) also shared fellow Board members' view in this case.

Trustee Flood then went over the information Mr. Rospierski provided for the Board packets tonight:

Table 1: Reasons for Practical Difficulty. The petitioner's difficulty is not self-created. The referenced 1987 developer's letter to the Planning Commission requesting adjusting side yard and total combined side yard setback footage to meet the amended PUD Agreement's

subsequent mandatory side entry garage entrance. The current PUD Agreement regarding St. Andrews Estate development (as on file with the Oakland County Register of Deeds) is and was the sole responsibility of the developer to update the 1987 approved amendment, not the petitioner's.

Subsequently, there are existing homes within the PUD development that were built and approved by the Township Building Department's permitting process that were built not meeting the requirements of the 1987 letter per records on file with the Oakland County Clerk's Register of Deeds. Trustee Flood said he asked the Planning & Zoning Department if any of the people in that neighborhood who built outside of the requirement had requested a ZBA variance? There were none. Each of those homes were approved by the Township's Building Department when they issued permits and the Certificate of Occupancy. After contacting the Township Attorney, he was told that because the Township issued permits and a C of O, those homes are not non-conforming. In his opinion, this petitioner is the only ones being subject and held to a higher standard.

Table 2: Size Comparison of Adjacent Homes. Substantial justice would be achieved for the petitioner as well as other property owners and especially the two adjacent properties located at 1733 and 1753 Berwick Lane.

The petitioner provided a chart that showed compatible square footages to the proposed house and garage in relationship to existing adjacent properties. In his opinion, if they built a lesser home there, it would decrease the value of the adjoining homes. The chart provided data (in comparison) that the proposed subject house and garage will be slightly less in square footage than adjoining homes.

Table 3: Lot Coverage Ratio Comparison of Adjacent Homes:

The chart (per Oakland County Records) provided data that showed the subject's proposed custom built ranch house with attached side entry garage total square footage and lot coverage is compatible and slightly less than the two adjacent homes that border the petitioner's empty property.

Practical difficulties unique to the petitioner's property, reviewing the petitioner's additional materials, were as follows:

- An aerial view of the subject properties
- 1741 Berwick Lane architect four elevation views
- The north half of St. Andrews Site Plan Building Envelopes
- 1733 and 1753 Berwick Lane Oakland County site plans
- 1741 Berwick Lane Site Plan by Kieft Engineering, Inc.

Trustee Flood went on to address the findings of fact as detailed on the Kieft Engineering, Inc. site plan (with tree survey) for the petitioner's proposed development:

The petitioner's property has been and continues today to be encroached upon by the two adjoining neighboring properties.

1753 Berwick Lane (southwest property line which the petitioner is requesting relief from) was built in 1989 has maintained approximately 20 ft. to 25 ft. of the petitioner's property due to the clear cutting of all the trees and vegetation beyond 1753 Berwick Lane legal side yard setback property line. Most likely the clear cutting of the trees and removal of all vegetation on the petitioners 1741 Berwick Lane property took place during the construction and Township permitting of 1753 Berwick Lane in 1989. It was his opinion while performing his due diligence

during the site walk and property review of this case, viewing from the front of Berwick Lane gave him the false pretense that because of the petitioner's property having been cleared of all trees and vegetation and the grass having been well maintained, the property line of the existing home at 1753 Berwick Lane, which is not the case. The documentation provided by the petitioner and the proper legal surveying and survey staking of the property along with staking of proposed building site, dramatically corrected his major personal visual misconception of the property lines.

Regarding 1733 Berwick Lane adjacent northeast property:

- Built in 1996
- Kieft Engineering, Inc. Site Plan for the petitioner's 1741 Berwick Lane property provides legal documentation that the petitioner's property has been and is currently illegally encroached upon
- Numerous lineal feet of "Cutstone Path" landscaping patio stone had to be removed from the petitioner's property which had been illegally and grievously located on the petitioner's property
- Existing today along the same property line exists (in fact over the legal defined property line) neighboring 1733 Berwick Lane's asphalt driveway intrudes 1 ft. over the property line unto the petitioner's property. The findings of fact in this case also demonstrates numerous violations regarding 1733 Berwick Lane not adhering to the 5 ft. side yard setback PUD Agreement requirements per the installation of a patio, patio pathways and placement of the asphalt driveway.

Per the Township attorney, there is an "adverse domain" property law, that if you maintain some ones property after so many years, you can claim that portion as your property. Or in this case, an easement would have to be granted for 1733 Berwick to allow their driveway to be on the petitioner's property.

Because of these numerous finding of fact related to this case, Trustee Flood said he was prepared to make a motion when appropriate.

Vice Chairman Durham thanked Trustee Flood for this information and that it was well presented. He asked Trustee Flood if it was his experience, common for a long vacant property to be "squeezed in" by somebody? Trustee Flood said, yes. It just is a matter of the new property owner squeezing back. There were some, if not many, of the home in that development that didn't strictly adhere to the PUD Agreement as far as their placement on the property? Trustee Flood responded that according to the Oakland County Register of Deeds, information that the petitioner supplied, that is correct. Vice Chairman Durham asked if there has only been one PUD Agreement for that entire sub for as long as it has been present? Trustee Flood said, correct, that he knew of. Vice Chairman Durham then asked who allowed it to happen? Trustee Flood replied that the Township allowed it to happen by issuing the building permits and Certificates of Occupancy - the Building Department was satisfied that all the requirements had been met. When asked, Building Official Goodloe commented they request an "As Built" from the developer during the time of the rough inspection. Building Official Goodloe said he believed that most of the problems with this sub resulted because of the side entry garages. That is the only thing that is encroaching in this case. Mr. Rospierski commented that the proposed house, not the garage, is about 28 ft. or 29 ft. from the property line. Building Official Goodloe noted a document from 1987 that was signed by the developer and that was changed, the offsets were smaller, the offsets were increased to allow for side entry garage, the language was that they will maintain 25 ft. in between houses, which in his opinion, was the correct terminology for what they were trying to accomplish.

Mr. Ostroske, 1753 Berwick Ct., commented that many of them were told where to put their houses by Mr. Aldridge, he was the developer at the time - they didn't have a choice. He wanted his house further over to the right however Mr. Aldridge said, "no, I want it to go here". He referenced another neighbor whose lot was 17 had paid to have his house staked out but Mr. Aldridge told him too, where the house was going to go. They did not apply for variances to allow the houses to be built where they are, they were but where Mr. Aldridge told them to put them. Mr. Ostroske then said he didn't know he had encroached on the petitioner's property, he thought he was cutting his property along the side of his house until he found out where the property line really was.

Trustee Flood said he wasn't trying to accuse the neighbors of anything and commented that is a beautiful development. No matter what happens here, they want people to get along and be good neighbors. There are so many discrepancies in that development, it was Mr. Aldridge that made these decisions and the Township went right along with it.

Board Member Walker commented that his main objection to their request was that he thought he could they could do it in another way. They don't have to have a ranch, they could have gone up instead of out. He also expressed concern about them moving someplace where nobody likes them, at least at the moment. He did note however that Trustee Flood brought up a lot of good points including the "adverse possession" law.

Trustee Flood asked Mr. Giuliano how he felt about the neighbor's driveway encroaching on his property?

Mr. Giuliano said he didn't have a problem with it and originally they also had a 15 ft. patio that extended onto his property, which they removed. Mr. Giuliano also noted that the neighbor on the other side has some landscaping that goes onto his property and he does not plan on touching that either. He explained why he wanted to move to this neighborhood. As his family started to get acquainted with Lake Orion, there was one subdivision that peaked their interest and that was St. Andrews Estates. There were 3 other lots in there he could have chosen but the one that made the most sense for his family was this one, sitting in between two houses. He wanted the opportunity to become a neighbor. He has a young son and he wants him to go to school here, to be part of a private community that is safe. He responded to the negative emails and said he was 100% confident that once the house gets started and they see how beautiful it is, they will be accepted. He spent a lot of time and money to ensure they would be keeping up the integrity of the subdivision, that was the most important thing to him. He was confident that once they move in, they will find out what kind of neighbor he is, one the can count on if they need help. He wants to become part of the committee board and will fight for what St. Andrews Estates stands for. He commented that one of the reasons he wants to build a ranch is because he plans on living there for at least 40 years. St. Andrews Estates has everything he and his wife want and eventually his 3 year old son will get the advantages of living in such a beautiful subdivision.

Trustee Flood clarified that Mr. Giuliano had no problem with the existing driveway intruding on his property and also the stone and shrubs on the corner of his property. Mr. Giuliano indicated that he did not a problem with either. Trustee Flood said he also noticed there is street light pole in the front of the property.

Vice Chairman Durham noted one of the reasons Mr. Giuliano wanted a ranch was because in several years, he didn't want to have to climb stairs. Vice Chairman Durham said it would be much simpler for them if they were to build up instead of out. Mr. Giuliano also said there is the factor of budget, of what he can afford and still be able to "keep up". The proposed home is 2,411 sq. ft. which is about the median size of ranches in the subdivision. To build up and meet the setbacks, the house would be the most narrowest house in the subdivision. From the research he has done, if they built a two-story home, it would be one of the smallest if not the smallest. Regarding comments that the

proposed house would depreciate property values – he explained that a ranch per square foot is worth more than a colonial. He confirmed he does not plan on selling but for the people around him that do, the “per square foot” for his ranch would be more than some of the other homes in the subdivision.

Vice Chairman Durham commented that it was obvious Mr. Giuliano wants to be in that neighborhood or he wouldn't keep coming back and that they did come back tonight with some concessions. They have been compliant and have come back with some changes, he appreciated that.

Trustee Flood noted that ranch homes are allowed in the PUD Agreement.

Ms. Donni Steele, 262 Kirksway, responded to some comments made by Mr. Giuliano. She said that it is not that they don't want him in the neighborhood, it is just the way that this lot is and the reason why it hasn't sold in 30 years was because of its peculiarities. There are two houses that would almost come all the around the back side of where this house would be. They will be so close in the sense of the way the lot is. When someone puts in a ranch, it takes up a larger footprint - they will be that much closer to the neighbors unnecessarily. They could put in a two-story with a smaller footprint or a story and a half which would allow for a first floor master bedroom. She reiterated that the reason the lot hasn't sold is because it wouldn't accommodate a house to the standards in which the subdivision is used to. It was her opinion they are trying to put “10 lbs. of potatoes in a 5 lb. bag”. That is why the lot hasn't sold for all these years, it is not conducive to what the Giuliano's want to build. She believed that it wasn't fair that they keep coming back and telling us what they want to build regardless of what setbacks will allow.

Vice Chairman Durham asked Ms. Steele, if in her opinion, was it the fact this will mean change? Some people do not like the word “change”. Ms. Steele believed that if the Giuliano's followed the setbacks, people still may not be thrilled with it, but there would probably be less opposition.

Building Official Goodloe commented that the fact that Ms. Steele referred to the property as a “peculiar lot” actually demonstrates why there is a practical difficulty in this case. The petitioner has reduced the variance request to 6 ft., it was quite a bit more. In his opinion, with a two-story home, there would be a problem with the height because of the elevation of the property – that might make it look a little odd or different. Ms. Steele responded, however, that Mr. Giuliano knew that peculiarity when he bought the lot and should have taken that into consideration at the time. Building Official Goodloe concurred but possibly when they looked around and saw that almost every house in there is non-conforming and probably saw an existing ranch close to a property line, that they could probably put one in too and picked out a nice lot where one might fit – this may have been the thought that had gone into the Giuliano's purchase. He did add though, that people should could come and check with Building Department first.

Trustee Flood concurred that there is unique characteristics to this property and why it has been vacant. There is practical difficulty with it which he will address in the motion he is prepared to make.

Mr. Ostroske commented the Giuliano's want to move into the neighborhood, it is a beautiful neighborhood and he is very proud of it. However, here are 2 or 3 houses for sale, maybe they should take a look at one of them. In Turnberry there are about 24 lots for sale, very buildable lots. He does not see this lot as a buildable, but legality, it is. They just don't want a ranch squeezed in there.

Board Member Koscierzynski commented that in her opinion, to his favor, that he was willing to work with the Township, sometimes they get petitioners that just won't budge.

Moved by Trustee Flood, seconded by Board Member Koscierzynski, that in the matter of ZBA case #AB-2017-12, Edwin Anthony Homes, 1741 Berwick Ln., Sidwell #09-04-426-051, that the petitioner's request for a non-use variance from Zoning Ordinance No. 78, for a variance to alter the total combined side yard setback of a unit in an existing Planned Unit Development; requesting a 6 ft. variance from the required total combined side yard setback of 30 ft. to build a home 5 ft. from the northeast property line and 19 ft. from the southwest property line for a combined side yard setback of 24 ft.; **be granted** because the petitioner did demonstrate that practical difficulties exist in this case in that they set forth facts which show that in this case: 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 findings of fact: pertinent information supplied by the petitioner, "Application for Appeal – Single Family Residential, date stamped April 7, 2017 and supplemental documentation date stamped April 7, 2017, as provided in Table 1. – Reasons for Practical Difficulty including an aerial view map of St. Andrews Estates Berwick Lane and Court, architect drawings for 1741 Berwick Lane consisting of two pages showing the proposed building's four sides of elevations and floor plan, the following site plan documents on file with the Oakland County Register of Deeds, the north half of St. Andrews Site Plan Building Envelopes, 1733 Berwick Lane, 1753 Berwick Court "A", 1753 Berwick Court "B" and Kieft Engineering, Inc. Site Plan parcel 09-04-426-051 - 1741 Berwick Lane; granting the variance requested would do substantial justice to the petitioner as well as to 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 findings of fact: the petitioner's vacant property, 1741 Berwick Lane, is located between two existing homes, located on the north side is 1733 Berwick Lane built 1996 and on the south side, 1753 Berwick Lane built 1989, the existing homes were custom built, not cookie-cutter style homes, the petitioner's desire is to build a custom ranch style home with attached side (courtyard) garage entrance as mandated in the PUD Agreement, the community's by-laws and PUD Agreement do not preclude a ranch style home, the proposed home is in keeping with the style, size and character of the homes in the St. Andrews Estates community as provided in Charts Table 2. - Size Comparison of Adjacent Homes and Table 3. - Lot Coverage Comparison of Adjacent Homes, according to Oakland County records provided; the petitioner's plight is due to the unique circumstances of the property, based on the following findings of fact: the front (street side) of the property is substantially wider than the rear (golf course side) of the property, the front is approximately 124.53 lineal feet, the rear is approximately 82 lineal feet, the north property line is the most prevalent running on an angle from the front of the property to the rear of the property due to Berwick Lane configuration, located on the front southeastern portion of the property are existing underground utility boxes and a fire hydrant, the front west side portion of the property has severely topographical challenges that provides for stormwater runoff adjacent to Berwick Lane, the property drops 7-feet in grade within a 40-foot distance (front to back of property) and limits the orientation of the house, garage and driveway to comply with the PUD's side-(courtyard) garage entry requirements; the problem is not self-created based on the following findings of fact: the petitioners purchased the property to build a home, the property has been vacant and undeveloped ever since the Planned Unit Development was approved in the 1980's due to the unique challenges of the property.

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

Board Member Koscierzynski thanked Trustee Flood for doing his "homework" and giving the Board all the pertinent information needed to make decision.

7. PUBLIC COMMENTS

There was comment from someone in the audience that was inaudible; his comment was perceived to be threatening. Trustee Flood asked that a Sherriff's Deputy be outside when the Board and those still in attendance leave.

Mr. Giuliano, 1741 Berwick Lane, thanked Trustee Flood for his research and thanked the Board for giving him this opportunity, he will be a great citizen of Orion Township.

8. COMMUNICATIONS

Vice Chairman Durham reminded the Board members of the joint meeting between the Township Board, Planning Commission and this Board on May 17th at 6:00pm.

9. COMMITTEE REPORTS

None

10. MEMBERS' COMMENTS

Trustee Flood made the following comment: I've prepared a statement of findings of fact regarding clarification and to correct an incorrect response to a question regarding the Board's deliberation on the April 24, 2017 agenda of AB-99-02-2017, Dan's Excavating, Inc., 2985 Judah Road renewal of Ord. 99 permit requesting hours of operation to be 7:00am to 7:00pm. The Boards' deliberation was questioning the petitioner's request for extending the hours of operation an additional two hours vs Ord. 99, Section 7 – Performance Standards, (J), Hours of Operation: Hours of operation shall be 7:00am to 5:00pm etc.. During the Board's deliberation, remarks by the Board concerning the operations working beyond the ordinance requirement of 5:00pm due to this operation being located in a residential neighborhood. The deliberation was discussed at length and the Chairman believed if an emergency should arise the petitioner could contact the Township Building Department and get permission to remain open longer. The Township Building Official stated "it was his belief that the petitioner could do that but permission would have to come from the Township Board" and I was asked if that was the proper procedure and I responded, correct. For the record, my response to the above question was incorrect and I request that this letter* of Member Comment be placed in tonight's meeting minutes to reflect the correct proper procedure as spelled out clearly in Township Ordinance No. 99 – Earth Balancing & Excavation, Section 7 - Performance Standards, (J), Hours of Operation – Hours of operation shall be 7:00am to 5:00pm unless otherwise specified by the Board of Appeals. No operation shall be permitted on Sundays and legal holidays. In emergency situations, this time period may be modified by the Township Building Department, provided such emergency shall not be effective for more than 72 hours.

Vice Chairman Durham asked if anyone knew who the audience member was who made the comment? No one knew.

Building Official Goodloe asked everyone watching to do there due diligence and contact the Building Department if they have an questions. They are very user friendly and will answer any question - try to avoid some of these issues. There are email addresses on the Township website and there is a Building Official tab, he will respond back to questions within 24 hours. They are here for the public.

11. ADJOURNMENT

Moved by Trustee Flood, seconded by Board Member Koscierzynski, to adjourn the meeting at 8:19pm. **Motion carried unanimously.**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

May 22, 2017

Zoning Board of Appeals Approval

* Document from Trustee Flood pertaining to his Members' Comment