

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY, OCTOBER 8, 2018 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 8, 2018, at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

### ZBA MEMBERS PRESENT:

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

Lucy Koscierzynski, Board Member  
Tony Cook, Alternate

### ZBA MEMBER ABSENT

Loren Yaros

### CONSULTANT PRESENT:

Dave Goodloe, Building Official

### OTHERS PRESENT:

Toufic Saati	James Kuntz
Jerry Schram	Alan Smith
Marilyn Schram	Iden Kalabat
Ray Vellucci	Anthony Denhe
Robyn Kuntz	Rob Denhe
Lynn Harrison	

### 1. OPEN MEETING

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

### 2. ROLL CALL

As noted

### 3. MINUTES

9-24-2018, Regular Meeting Minutes

Moved by Board Member Koscierzynski, seconded by Board Member Walker, to approve the 9-24-2018, Regular Meeting minutes as presented. **Motion carried**

### 4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

### 5. ZBA BUSINESS

A. AB-2018-33, Ray Vellucci, 190 Schorn Rd., 09-01-328-081

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

The petitioner is requesting two (2) variances from Zoning Ordinance No. 78:

Article 6, Section 6.04, District R-3:

1. A 10' side yard variance from the required 10' side yard setback on the North and South property lines to allow a 6' privacy fence to be built 0' from the side property line.

Article 27, Section 27.02.A.4:

2. A 10' rear yard variance from the required 10' rear yard setback from the rear property line to allow a 6' fence to be built 0' from the rear property line.

The petitioner, Mr. Ray Vellucci, 190 Schorn Road, presented. Mr. Vellucci explained he would like to put up a 6' privacy fence on 3-sides of his property. Vice Chairman Durham clarified there is a 4' fence on a small piece in the back now? Mr. Vellucci responded, that was the neighbor's. Mr. Vellucci said that he does not have a fence up now; he had a chain link fence but has removed it.

Chairman Durham asked Mr. Vellucci why he needs the fence. Mr. Vellucci commented that he has dogs and they bark at the neighbors. He added that he contacted several of his neighbors and they signed a statement that indicated they had no issue with him putting up a 6' fence (a copy was provided for the file).

Board Member Koscierynski said she drove by the property and does not have a problem with the request.

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

Vice Chairman Durham said he is not a "fan" of privacy fences because if there are too many of them, the neighborhood starts to look like a "compound". Vice Chairman Durham commented that when he visited the property, he was trying to determine if the petitioner wanted the fence so that he wouldn't have to look at something in particular. Mr. Vellucci replied that really was not the case.

Board Member Koscierynski clarified with Mr. Vellucci that he wants the fence to keep his dogs in the yard and for privacy? Mr. Vellucci indicated, yes.

Moved by Board Member Koscierynski, seconded by Board Member Walker, that in the matter of ZBA case #AB-2018-33, Ray Vellucci, 190 Schorn Rd., 09-01-328-081, to **grant** the petitioner's request for two (2) non-use variances from Zoning Ordinance No. 78; Article 6, Section 6.04, District R-3: a 10' side yard variance from the required 10' side yard setback on the North and South property lines to allow a 6' privacy fence to be built 0' from the side property line; and Article 27, Section 27.02.A.4: a 10' rear yard variance from the required 10' rear yard setback from the rear property line to allow a 6' fence to be built 0' from the rear property line; **be granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case: the petitioner did show the following Practical Difficulty: he wants more privacy and needs the fence because of the dogs he has; the following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: the petitioner needs more privacy, an extraordinary circumstance does not apply; the variances are necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts: there were no objections from eleven (11) of the petitioner's neighbors, the fence will be used for two reasons – privacy and to contain his pets; the granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings: the fence will not hinder access to emergency vehicles being able to get in or out, it will not cause any safety issues; further, based on the following findings of fact: granting of this variance will not impair an adequate supply of light or air to adjacent properties; will not unreasonably increase the congestion on public streets; will not increase the danger of fire or endanger public safety; and will not unreasonably diminish or impair established property values within the area.

Discussion on the motion:

Vice Chairman Durham asked the petitioner to help him understand the practical difficulty here, what is particular with his property that makes him need what he is asking for? Mr. Vellucci replied that he wants to put it (the fence) up because he can see into the neighbor's house behind him and

the neighbor to the south has a good size dog – he wants to keep everyone’s dogs at peace. He also said that his wife is at home by herself while he works nights and wants the fence for security.

Roll call vote was as follows: Flood, yes; Kosciuszynski, yes; Walker, yes; Durham, no.

**Motion Carried 3-1**

**B. AB-2018-34, Orion Hospitality Group, LLC, 95 Brown Rd./4978 Huston Dr., 09-32-378-069, 09-32-378-070, & 09-32-378-073**

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

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article 34, Section 34.03.B (Use Group C):

1. A 20.65’ front yard variance from the required 40’ front yard setback to build a hotel 19.35’ from the front property line (Huston Dr.).

The petitioner, Iden Kalabat with Kalabat Engineering, presented on behalf of the owner – Orion Hospitality Group; 31333 Southfield Rd., Ste. 250. Mr. Kalabat explained they were recently denied by the Planning Commission for site plan approval because of a greenbelt deficiency that needed approval by the ZBA. He said they are requesting a waiver from the front yard setback on Huston Dr. What is unique about this property is that it has two front yard setbacks being it is a corner lot. He noted that the front yard setback, per the Ordinance, along Huston Drive is 40 ft. They are asking for a waiver of that down to 19’ 4.5”. Mr. Kalabat then compared that to the setback if the property along Huston Dr. was considered a side yard which would then be 20 ft. or a variance of 7.25”.

Vice Chairman Durham asked, is this too much building for too small of a piece of property? Mr. Kalabat replied, no. Actually, they condensed the building size from the original hotel proto type so that it would be more characteristic of this lot. He noted that the BIZ zoning district is set up to allow for advanced commercial development to come into a predominately residential neighborhood.

Mr. Kalabat explained that another unique restricting factor is although the district is currently zoned for commercial development, there are still a number of residential uses. This being the first development in this designated area of the Township, it had to deal with some residential setbacks. If it is the intent of the Township to continue developing commercial uses on these properties, eventually residential setbacks will no longer be applicable. Because there are still residential areas around the hotel, some of the required buffering and set backs are pushing the building closer to Huston Drive – a unique characteristic of the site and trying to develop it under these conditions.

Vice Chairman Durham clarified that they altered the building as best they could to fit the property.

Board Member Walker said that he recollects from the Planning Commission meeting, there were a number of issues that they were able to work though, this was the only one left. He then asked, wasn’t there also some parking involved?

Mr. Kalabat replied, originally when they went to the Planning Commission, there were 4 on-street parking spaces. He pointed out the small portion of the building that would be encroaching on the setback - where the 4 parallel parking spaces were; those were eliminated. He commented, that as a way to soften the reduced setback area - they eliminated the paving and the parking that was proposed and replaced it with landscaping and trees.

Vice Chairman Durham said he appreciates the fact they did what they have done. Too many times, especially in commercial areas, developers come in and say they have to build a specific way because that is how “corporate says it has to be”.

Vice Chairman Durham asked if there was anyone here to speak to this matter?

Alan Smith, 4989 Huston Dr., directly across from the development. Mr. Smith wanted to make sure that it (the development) will not affect the street (Huston) and was concerned because his house was already close to Huston Drive. He asked if they are going to put up any screening? He noted that he realizes this is still in the planning stages and that eventually his house will be sold but wanted to know what happens in the meantime; he has to deal with it. Trustee Flood responded, that his question would have been handled by the Planning Commission. Mr. Smith said, however, that the setback variance will put the hotel closer to Huston Drive. Trustee Flood clarified that the hotel will be 19-20 feet from the road right-of-way, not the road itself.

Mr. Kalabat responded to Mr. Smith's concerns. He explained that the road right-of-way there is narrow and they are proposing, and were approved, to repave a portion of the road. Therefore, they will be improving the road right-of-way. They do have extensive landscaping along there which was reviewed by the Planning Commission; they are proposing heavy, dense landscaping and screening. He noted that the other unique challenge with the site is that there is about a 20 ft. grade difference from the north end to south end of the property. There will be landscape retaining walls towards the north end of the property. Again, they have a lot of screening along Huston Dr. and pointed that out on the site plan he had displayed. He noted there is also screening all along the frontage of the building with landscaping and trees. There will be a landscape knee wall detail consistent with the Brown Road street scape designs.

Building Official Goodloe commented that this a typical "two-front" lot. Trustee Flood added, another practical difficulty, plus the fact that this is in the BIZ district and there are residential homes still there.

Trustee Flood asked that if they get this variance, do they have to go back to the Planning Commission? The response was no, if they are granted the variance, the site plan will be deemed approved.

Board Member Cook asked about the right-of-way and what the actual distance was? Building Official Goodloe said 30 ft.; Mr. Kalabat concurred.

Moved by Trustee Flood, supported by Board Member Walker, that in the matter of ZBA case # AB-2018-34\_Orion Hospitality Group, LLC, 95 Brown Rd./4978 Huston Dr., 09-32-378-069, 09-32-378-070, & 09-32-378-073; the petitioner is requesting a variance from Zoning Ordinance No. 78, Article 34, Section 34.03.B (Use Group C): a 20.65' front yard variance from the required 40' front yard setback to build a hotel 19.35' from the front property line (Huston Dr.); be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case: the petitioner does show the following Practical Difficulty: it is unique because the development is considered to have two front yards because it is on the corner of Brown Road and Huston Drive, also, the development is in the BIZ District; 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: again, this is in the BIZ District and one of the first developments along Brown Road where there are still residential homes; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts: this is a commercial development replacing a residential house which is compatible with the BIZ District; the granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings: the modification will actually be an improvement to the property; further, based on the following findings of facts: granting the variance would not impair an adequate supply of light and air to adjacent property; would not unreasonably increase the congestion on public streets; would not increase the danger of fire or endanger public safety; would not unreasonably diminish or impair established property values within

the surrounding area, it would actually raise property values; or, in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Cook, no; Flood, yes; Koscierzynski, yes; Walker, yes; Durham, yes.  
**Motion Carried 4-1**

AB-2018-35, MRDJ/RCOC, 4036 S. Baldwin, 09-32-101-033

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

The petitioner is requesting a variance from Zoning Ordinance No. 78, Article 14, Section 14.03.D.2, District: GB:

1. A 9.2' greenbelt width variance from the required 20' greenbelt width requirement to allow the greenbelt to be 10.8' from the Baldwin Rd. Right-of-Way.

Mr. Toufic Saati with Foster Swift was present on behalf of the Oakland County Road Commission. Mr. Saati explained they are here today to request a variance for the greenbelt. The current greenbelt has been eliminated due to the widening of Baldwin Road. He commented that the pictures in the packet depict that at least 70% of the "top portion" of the greenbelt has been eliminated and about 30% of the "bottom" portion. He reiterated that this was in no way the fault of the property owner.

Vice Chairman Durham noted that this property has been before them before for other issues. He concurred that the building hasn't changed and that occupancy hasn't changed – the only thing that has changed is the property in front (the greenbelt).

Trustee Flood commented that they were before them at the last meeting for a sign variance.

Mr. Saati said there is nothing the property owner can do; the road is as far as it can be and that there is also a bike path there. He pointed out, too, a portion of property that is proposed to be deeded to the Township for a pocket park.

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

Moved by Trustee Flood, seconded by Vice Chairman Durham, that in the matter of ZBA case # AB-2018-35, MRDJ/RCOC, 4036 S. Baldwin, 09-32-101-033; the petitioner is requesting a variance from Zoning Ordinance No. 78, Article 14, Section 14.03.D.2, District: GB: 1. a 9.2' greenbelt width variance from the required 20' greenbelt width requirement to allow the greenbelt to be 10.8' from the Baldwin Rd. Right-of-Way; **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 need is due to the widening of Baldwin Road; 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: again, the variance is due to the widening of Baldwin Road; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following: so that the business can stay intact and has been there forever; granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located.

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

**6. PUBLIC COMMENTS**

Robyn Kuntz, Georgia Drive, commented that she could not see the site plan the petitioner kept referring to during the Brown Road Hyatt House case, she wanted to know if the plans will affect residents on the south side of Georgia Dr. Building Official Goodloe responded the variance would not affect them, the developer meets all the site plan requirements on that side.

**7. COMMUNICATIONS**

Memo from Planning & Zoning Coordinator Frey dated October 1, 2018, Dates which cases can be postponed to.

**8. COMMITTEE REPORTS**

None

**9. MEMBERS' COMMENTS**

Trustee Flood commented that the Township Board agreed to the sale of 313 Brown Road to Pulte.

Building Official Goodloe commented on the motion options provided by the Planning & Zoning Coordinator; those are guidelines. If the motion includes all those facts, he didn't believe the motion options had to be read verbatim.

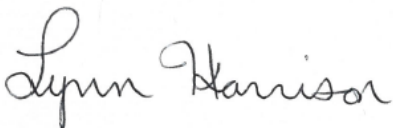
Board Member Cook asked about the site plan they received for the Hyatt House, was he to assume that the Planning Commission already addressed the parking space issue? He also asked which properties around that development were owned or sold by the Township, and if that area is zoned BIZ and not residential specifically? He then clarified that the safety path will be paid for by the developer.

Vice Chairman Durham commented on the BIZ District - there are quite a few remaining residents in there that are being "squeezed" from three directions, he hopes the Township is aggressively working with developers to facilitate helping those residents sell their property so they can get out of there. He realizes that area will be redeveloped and hopes those residents are accommodated to the best of the Township's ability.

**10. ADJOURNMENT**

Moved by Board Member Koscierzynski, seconded by Vice Chairman Durham, to adjourn the meeting at 7:44pm.

Respectfully submitted,



Lynn Harrison  
PC/ZBA Recording Secretary  
Charter Township of Orion

October 22, 2018  
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Zoning Board of Appeals Approval