

.CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

******* MINUTES *******

REGULAR MEETING – MONDAY, MARCH 11, 2019 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, March 11, 2019 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
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA

ZBA MEMBER ABSENT:

Lucy Koscierszynski, Board Member

CONSULTANT PRESENT:

Dave Goodloe, Building Department Official

OTHERS PRESENT:

Dustin Kary
Ken Beaty
Eugene McNabb
Gjeto Kalaj
Lynn Harrison
Debra Walton

1. OPEN MEETING

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

2. ROLL CALL

As noted

3. MINUTES

02-25-2019, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Vice Chairman Durham, to approve the 02-25-2019, Regular Meeting minutes as presented. **Motion carried**

4. AGENDA REVIEW AND APPROVAL

There were no changes to the agenda.

5. ZBA BUSINESS

A. AB-2019-06, Dustin Kary, 362 Shorewood Ct., 09-03-405-013

Chairman Yaros read the petitioner's request as follows:

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

Article 27, Section 27.01 (C)(1)(b), Lot Width 50 to 54 feet:

1. A 5.7-ft. side yard setback variance, from the required 6-ft. side yard setback, to build a deck 3" from the side property line (south)

Article 6, Section 6.04, District R-3

2. A 6.99% variance above the allowed 25% lot coverage for a total lot coverage of 31.99%.

Mr. Dustin Kary, 362 Shorewood Ct., the applicant was present.

Chairman Yaros asked Mr. Kary to explain why he needed the variances. Chairman Yaros then stated, first of all you were here before for variances and you did not use them, is that correct? Mr. Kary stated unfortunately, yes, he did not qualify for the loan that he needed to get the construction done - he was about \$30,000 short. Chairman Yaros stated, those have all expired. Mr. Kary replied, that is correct. Chairman Yaros then asked for him to go ahead.

Mr. Kary stated that when they purchased the property back in June 2017 and moved in, they had a deck already existing there. After living there for some time, he had checked out one section of the deck because they have a retaining wall that's not doing so well, and among checking the retaining wall and the deck, he found that basically there was nothing that was holding up the deck, it was kind of just on these screws that were screwed into the cement, it wasn't safe at all. What he did basically was remove the unsafe section of the deck and replace it with new decking material - new posts and everything.

Chairman Yaros asked Mr. Kary, so the drawing that you submitted, you're showing the deck over the top of the retaining wall? Mr. Kary replied, yes. Chairman Yaros asked, so you actually built a deck over the top of the retaining wall? Mr. Kary replied, no, there were posts on the other side of the retaining wall, posts that go into the ground, so it is not sitting on the retaining wall. Chairman Yaros replied, but the retaining wall is underneath your deck for that portion? Mr. Kary replied, yes.

Chairman Yaros asked if there were questions from the Board?

Vice Chairman Durham asked Mr. Kary if he was familiar with variances - because he was here before? Mr. Kary answered, yes. Vice Chairman Durham asked Mr. Kary, why then wouldn't you have known your preexisting deck would have been nonconforming? When you removed the non-conformity and put a new deck in, the new deck had to come up to current standards. That is where your problem is. You were unaware of all of that? Mr. Kary answered, yes, he was not aware that he would need variances to replace a deck or something if it was unsafe. Vice Chairman Durham then asked Mr. Kary, the nonconformity never came up at your last meeting? Vice Chairman Durham then stated he was at the last meeting, however, that was a year ago and did not remember if that language came forward at that time. Mr. Kary stated, for the house, it needed variances because it was too close to the street, in his mind, a deck and a house were one in the same. He didn't understand exactly what was considered a house and what was considered a deck. He is learning there is a lot of different rules of what is a structure and what is not a structure. Vice Chairman Durham then stated, he does not mean to verbally abuse him but one phone call would have saved him a lot of trouble.

Chairman Yaros stated, we have correspondence from 350 Shorewood Ct., Bill, Shelly and Charlie Peterson, it says: "Mr. Kary's recently built deck is on our property line. Mr. Kary never applied for a permit to build the deck - is it up to code? Are the support posts for said deck set at the required depth? More importantly, Mr. Kary has compromised the retaining wall that has been in place between our homes for the 30 years we have lived there. Requesting that the Board postpone Mr. Kary's variance request while we dispute the property lines. Also, we are requesting that if he is required to remove the deck, that you also require him to restore, to its original status, the retaining wall that was compromised when he built the deck. In fact, the retaining wall was understood and maintained by ourselves and all past home owners of 362 Shorewood Ct. as being the existing property line. That is one of the basis for their property line dispute. Also, when Mr. Kary didn't like the results of the surveyor's stake placements for his property, he simply moved them. We will be retaining our own survey company and having our lawyers submit the proper documents of which Mr. Kary will be receiving copies of. We have always been respectful of Mr. Kary. We made it clear that we will cooperate and welcome any property improvements as long as guidelines were in place. Since Mr.

Kary never acquired the proper permits, it seems to me that he is doing the process backwards by building the deck then asking for permission.”

Mr. Kary asked if he could respond to the letter? Chairman Yaros stated, sure, go ahead. Mr. Kary stated that his stakes are still out there, they are marked in pink, they have been out there since last year. He was not sure about pulling the stakes out. His other neighbor on the other side, had wood stakes, he never removed those, he has put some in the sand, where they are at, and they are still there, so as far as pulling stakes out, that is an out and out lie. If anyone pulled out any wood stakes, they were not pulled out by him. The metal stakes, however, are still there they have their marks, it just doesn't make sense to him. As far as maintaining the wall, the wall was not built correctly which is why it was falling over. There were no “dead-man anchors” in the wall and you can visibly see that it is falling over. So, short of him paying out of pocket for however much it cost to build a wall, \$20,000 or \$30,000 along that whole side - he doesn't have \$20,000 or \$30,000 to throw on a wall. He was trying to do something to save what he has. “So, asking me to maintain a wall that now they are saying that they built - essentially, that is what he was getting from what he was hearing.” “Not to mention the driveway they have. If you look at the aerial shots on Oak.Gov, back in 1990, that driveway was built. Now that driveway is pushing water onto his property, so they did in-fact probably build that wall.” Which is now causing problems for Mr. Kary. All he is trying to do is rebuild a deck that is already existing, is already in. If you look at the Oak.Gov aerial shots, that deck was already there. He had the property line marked, he has had a surveyor come out three different times to insure, that he was within the property line. He had a string drawn and it is three inches from that, he has paid his builder, multiple times to cut it back to the right lengths. Mr. Kary stated that he is not trying to take their property, he is just trying to replace what was already there – it is in the aerial shot.

Chairman Yaros asked, are you in a current dispute with the neighbor? Mr. Kary replied, “no, he wasn't aware that they had an issue.”

Chairman Yaros then stated, there was also correspondence from John Bettin: “It is admirable that the applicant is concerned with the structural safety of the newly constructed deck, but applicant's concern for safety arose only after he was advised by the Township that a permit was required for the deck. As such, it is unclear the applicant satisfied all necessary codes with respect to the safety of the deck.” Chairman Yaros then added, the Township will make sure that is happening. It is also worth noting that the applicant did not replace the former deck with another deck similar in size and design, but, in fact, expanded the size and design of the deck, adding the stairs to the north side of the deck. Moreover, the applicant's intent for building the new deck was not merely for safety reasons. The applicant desires to expand the square footage of his overall structure with the intent of selling the property for personal gain. Please note that the property line is approximately one or two feet to the south of the position of the existing brick wall and fence. Applicant is aware of these stake positions.”

Chairman Yaros asked Mr. Kary, is the deck the same as you took out? Mr. Kary replied, it is actually within the property lines, but before it was exceeding the property line, now he has brought it back.” Chairman Yaros asked, what about the stairs, do you have stairs too, that wasn't part of the original deck? Mr. Kary replied, previously he had bricks around the area that made a porch, and so all that is causing water issues so he put a deck where the porch was, which is what he was told, “by upstairs”, that was counted as the footing of the house so he didn't ask for a variance for that because he needed stairs to go down. Mr. Kary stated, the stairs are in the permit plan.

Chairman Yaros asked Mr. Kary to take a seat and asked if there was anyone here to speak to this matter?

Mr. Charles Peterson, 350 Shorewood, commented that they are to the south of the disputed encroachment. Mr. Peterson stated he did not know the process or if this was where he could “air out neighborhood dirty laundry”. Chairman Yaros stated no, we are only interested in finding facts out

about the deck. Mr. Peterson stated, there really has been a whole lot of drama in the neighborhood relating to this but figured that they don't want to hear about that. However, he is definitely standing up here in fear of retaliation because of what has happened with some of the other neighbors. The bottom line, why they are here, is the positioning of the property and space of property on Shorewood, specifically that stretch of street - a) homes are very close together, property lines are very important to maintain, b) zoning regulations are established to keep this consistent and to spare the already tight property lines, c) this is a simple matter where the zoning variance should have been applied for upfront, the entire circumstance would have been completely avoided had the rules been followed as intended. Dustin (Mr. Kary) willingly neglected to follow the rules due to the fact that he would not get permission to build so close to the property line. An approach of "ask for forgiveness later" should not be rewarded with a variance being granted. If this variance is granted, then a potentially dangerous precedence will be set for current and future land owners around the lake. If a complete disregard for zoning regulations and process is passed favorably for Mr. Kary, then there will be no end to the number of residents that could potentially circumvent the entire zoning process - build as they please and then ask for forgiveness later. If in this situation they cite this particular case, there would be no legal leg for the Township to stand on, for not granting an easement or variance. It may go without saying that this ruling could/would cause residents to completely disregard property lines and all zoning regulations.

Chairman Yaros asked Mr. Peterson, was there a deck there before? Mr. Peterson replied, not where it currently is. Chairman Yaros asked, where was the deck? Mr. Peterson replied, it was behind the house and much smaller. Chairman Yaros asked, was it not on the side of the house where it is now? Mr. Peterson replied, no definitely not. Mr. Peterson added, you can see where the retaining wall was removed and the bricks are stacked so he could bring the deck further over. Building Official Goodloe asked Mr. Peterson, did it extend over the retaining wall originally? Mr. Peterson replied, previously, no, because you could enter from the side of the property. Before Mr. Kary moved there, the original deck could be entered from the side of the property and there was a staircase going down to the lake and a deck to the back of his house. The owner before Mr. Kary cut that off and there was only access to the back of the house and the stairway down. Mr. Kary cut that off and extended the deck all the way south to where it currently sits - what he believed was their property. Mr. Peterson stated, "maybe he was off, he hadn't gotten a survey, he didn't realize that he would be thrown into this." His parents, Mr. Peterson's, are actually in Florida taking care of family health issues and none of this was discussed with them. They came home to find a deck in what they thought was their yard and now here we are.

Vice Chairman Durham asked Mr. Peterson, right at the beginning you mentioned provocative words like retaliation and things of that nature, have you felt the need to file a police report? Mr. Peterson replied, no, I personally have not. We as neighbors have always tried to be cordial and neighborly. They have lived on their street for around 30 years and have always gotten along, everyone has been great neighbors and as of late, things have changed and I don't know why. but apparently Father John had some issues with Mr. Kary and Mr. Kary made some requests of him. Father John told him no problem just as long as you get a permit. Mr. Kary didn't like that and the next thing you know cops are showing up at Father John's door.. Vice Chairman Durham then asked him, let's not stray to far, we are going to hold it to that, we don't want hearsay. Mr. Peterson added, this is what he has heard, and it makes him nervous.

Trustee Flood asked, in the packet we got, are those pictures you supplied? Mr. Peterson replied, yes.

Chairman Yaros asked Mr. Peterson, what you are telling us is you used to be able to walk along the south side of the building and walk all the way back, there was no deck there? Mr. Peterson replied, there was previously, probably six or seven years ago, an entrance from the south side of the property onto the deck which immediately dropped down a staircase and went around the back of the house. It never extended all the way south as far as it does currently. Chairman Yaros then asked Mr. Peterson,

it was attached to the house , right? Mr. Peterson replied, it was attached to the house, correct. Mr. Peterson stated that he could probably supply more pictures, he would have to go through some old family photos to see if the deck was there, or the fence that used to be there, or the row of trees that were there. Chairman Yaros stated, "well, it looks like even in your pictures, the deck off the back of the house has been there awhile, those timbers look older. The back deck has been there awhile and it looks like something was attached to the side of the house- maybe not all the way out, but something was there. Mr. Peterson replied, ya, definitely. Chairman Yaros asked, but you don't know how far from the house? Mr. Peterson replied, it probably extended four or five feet from the house. Chairman Yaros asked if there were any other questions from the Board for Mr. Peterson? None of the Board members had any other questions for Mr. Peterson.

Chairman Yaros asked, if anyone else would like to speak to this matter?

Trustee Flood asked Mr. Peterson, is it my understanding you have this in litigation? Mr. Peterson replied, no, we didn't realize this was an issue, but that is the direction it is headed.

Chairman Yaros asked, referring to Mr. Peterson's letter, are you going to retain your own survey company to check your lot line? Mr. Peterson replied, he believed that he would need to, he doesn't know the process here but it seems that he was in a "pickle" and there was going to be a neighborhood issue.

Building Official Goodloe asked, did you write that letter? Mr. Peterson replied, my mother did. Building Official Goodloe then asked, and she is the property owner. Mr. Peterson replied, yes.

Chairman Yaros asked Mr. Kary how far was the original deck over from the house? Mr. Kary replied, it is there in the aerial shot. Originally when we had a stop work order placed, he had cement underneath the deck which needed to be removed. In order to get posts into ground to support that, they have to be 42 inches in the ground which required him to put posts on the other side of the wall. It literally goes right over the wall where it was, it was not like he was stretching it all the way to the property line. Mr. Kary stated he has spent money "cutting it back, he has spent money getting a survey." The survey lines have been there, the poles have been there, they are marked in pink. Mr. Kary stated he was not sure, it has been there for awhile it is not like a new thing. Mr. Kary stated that Mr. Peterson's mom did talk to him and said that she was surprised by the lines, so then he had a second surveyor come out. He had Kennedy (surveying company) come out and he also had another guy (surveying company) come out, so he has paid two different surveyors to do this stuff, to make sure he was doing it the right way. Mr. Kary then added, he had approached John when he first moved in and he told John that he has three dogs would like to take the fence down, and at his cost, would build a new fence. He would build it on the property line and would be getting a survey. He has since threatened me with court and all this other stuff. All I really wanted to do was to repair the fence that was there. He didn't have an issue with going to the property line. That is why he had gone out of his way to pay for the surveyor, none of the other neighbors have paid for a survey. He is not trying to take anyone's property, he is just trying to make sure that his dogs can stay in his backyard and trying to replace a deck that is there.

Chairman Yaros then asked, what is the dimension from the property line to the corner of your back deck? Building Official Goodloe added , how wide is the deck? Mr. Kary asked, on that section? Chairman Yaros said , from the property line over to the house and over to your back-deck. Mr. Kary replied, to the house is going to be about 7-feet, or 6 1/2-ft. Chairman Yaros asked, the closest point of your back deck to the water, what is the distance from that corner to your lot line? Mr. Kary replied, 3" or more like 4" but he had asked for three. Chairman Yaros asked, so how wide is the deck, that is the question? Mr. Kary asked, the whole deck in the back? Building Official Goodloe asked, from the house out? Mr. Kary stated, 6 to 7 feet because it goes at an angle. As it goes back, you start losing feet. It might actually be less than 6-feet. He knows that at the front where the wall starts, it is about

6 1/2-feet. Chairman Yaros stated, just scaling it looks like about 9-feet on the drawing. Mr. Kary stated that when he drew those he basically took a line and marked from the two corners, it is hard to mark a line through trees, so he maybe off by about half a foot. Since then he has had his builder come back and cut it twice and had a surveyor come back and put marks in the deck to show where a foot is from the property line. He went off of that. Building Official Goodloe stated that it looks like about 9 or 10 feet if we scale it down in the picture. Building Official Goodloe stated he sees that the property line, if there is a dispute, it shows nine seven three on this front corner, and if you scale it back you are looking about nine seven three, so if the deck is over nine feet, if it is not then it seems to be not on the property line. Mr. Kary then stated, so if you start at the front property line all the way by the street, you are talking about almost having fourteen feet where the marker is, now they might dispute it and maybe change it because their survey has different results. Mr. Kary then stated, the lines are the lines like I was saying I am just trying to replace my deck. If they find out later that it's their property then fine, he will cut a portion off, he doesn't have a problem with that.

Chairman Yaros asked Mr. Kary, do you have a drawing of your deck, just your deck on the side of your house that you built, do you have a drawing of that? Mr. Kary replied, that he did in the permit, ya. Chairman Yaros asked, do you have it with you? Mr. Kary stated he thought that it was part of the packet. Building Official Goodloe asked that is the only drawing that we have, correct, we don't have the actual dimensions of the deck? Chairman Yaros stated, we only have the surveyor's drawing but it doesn't call out the width of the deck. Building Official Goodloe stated, that is neither here nor there because that is something that will be for litigation if it gets to that point. Mr. Kary stated, "that it gets smaller as it goes back. Like I said, the very front by the street is 14-feet and then that one part you are looking at is 9.73 so you lose about 4" every foot, every foot you go back, I am losing 4" , right, so you are going closer to my house 4" for every foot."

Chairman Yaros asked how hard would it be to cut the deck back a little, and how far back is your footings from the end of your deck? Mr. Kary replied, "the footings are just outside the wall, the deck ends literally right on the beam that is on top of the footing. They are literally on the other side of the wall and then the deck ends right there. They even actually cut some of that beam to make sure that it was 4" back."

Building Official Goodloe asked, did you apply for the permit for the retaining wall? Mr. Kary replied, no, he is going to take it down, he was not aware that it was an issue, he was just trying to hold the wall there, so he is going to cut it down to 4-feet. Building Official Goodloe stated, that the retaining wall is actually block, correct, on the south side? Chairman Yaros stated, yes, he saw that, "right there is the top of it." Building Official Goodloe stated, ya it was taken down and then rebuilt. Mr. Kary replied, no, we did not take any retaining wall down, the preexisting retaining wall is still there. He just put something there because he wanted to keep that section from falling over, it is leaning pretty good. Chairman Yaros asked, so that is still there right now, the retaining wall. Mr. Kary replied, ya, the preexisting retaining wall is all still there, he just put up another section trying to hold it from falling back and that section is on the inside.

Chairman Yaros asked, so your footings now are on the other side of the retaining wall between the retaining wall and the concrete drive, is that correct? Mr. Kary replied, ya, their driveway and the retaining wall, but it is literally the retaining wall footing.

Chairman Yaros asked if there were any questions by the Board?

Board Member Walker asked, you were in-front of us, looks like about a year ago and we granted you variances for your buildings? Mr. Kary replied, yes.. Board Member Walker asked, and now you are saying you did not utilize those, is that correct? Mr. Kary replied, correct, he did not get the financing, he needed for that. Board Member Walker asked, and do you have any intentions of renewing those applications if you could? Mr. Kary replied, given the market conditions and he has a baby on the way,

just given his situation, maybe in the future, but in the short term, in the next year or two, probably not. Board Member Walker asked, but you knew that you needed to get variances for those issues, is that correct? Mr. Kary replied, correct, because he was adding on to his house, he was doing a whole house addition. Board Member Walker stated, ya, I attended that meeting, I voted for you at that meeting. I am asking you a different question now, so you are still planning on maybe doing that even though you would have to come back again? Mr. Kary replied, not in the foreseeable future. Board Member Walker asked, do you ever plan on to do that, at this time? Mr. Kary replied, at this time, probably not. Board Member Walker asked, why didn't you ask for a variance with regard to this deck? Mr. Kary replied, again, he was not aware that a house and deck are the same kind of structure. Board Member Walker said, I didn't ask you why you didn't think you had to get a variance for a deck? Mr. Kary replied, because it was already preexisting there, I felt like I was just replacing something for safety reasons. Board Member Walker asked, how about the retaining wall, did you get a permit for that? Mr. Kary replied, he did that when he came in to apply for the permit, he asked if he could have this wall, he guessed he would have to cut it back to code. Mr. Kary added, but something needs to be there to help hold that preexisting retaining wall that is falling over.

Building Official Goodloe stated, when you came in for that retaining wall, the drawing you gave us was examined by our structural engineer and he determined that it would fail. Mr. Kary replied, right. Building Official Goodloe stated, so that is why he rejected the permit and now you just want to tear it down, right? Mr. Kary replied, right.

Chairman Yaros asked, that retaining wall was existing when you bought the property? Was that original? Mr. Kary replied, he has a preexisting retaining wall that goes almost all the way back to the lake and the first section of it is where he had the deck, so his thoughts were since he had a deck here, he probably needs to have some kind of thing keeping this section of the retaining wall from falling over, so he added his own wall. He put rebar in and did what he thought he could do within his power, to save it from falling over and thought that maybe later down the road he would cut the rest of the wall off. If it is going to fall over anyways, it will take some pressure off this small section. Essentially now there are two walls just underneath the deck there, but that was his purpose, he did not replace any wall.

Vice Chairman Durham asked Mr. Kary, do we have a specific property line measurement, do we know where this deck and retaining wall is in relationship to the property line between those two? Building Official Goodloe replied the survey you have does show the retaining wall that bows-in, so he does have some room, according to that survey which is stamped by a licensed surveyor. That retaining wall bows-in so he could extend over that with his variance, now how far he couldn't tell, but he does own on the other side of that retaining wall per the survey.

Vice Chairman Durham stated his real concern is getting involved in a lawsuit among neighbors with regards to grating a variance and was not crazy about that. Mr. Kary replied, that he is ok if they want to get a survey done, he is fine with that but asked that they not force him to rip out the deck in the mean-time. If they want to get a survey and find out that it is closer - if they want the surveys he will give them to them, if they want to get their own survey that is fine. There is no need to go to court over that, he will abide by whatever lines are found, he just doesn't want them to make him tear stuff down that is already existing.

Building Official Goodloe asked that the deck not be used because they haven't inspected the posts yet he believed. And the fact that they are on the failing side of a retaining wall is concerning, but he doesn't have a problem with that, just the use of the deck should be limited because it was not approved.

Chairman Yaros added, if there is a dispute and the neighbor wants to get a survey, we can postpone our final vote until the survey is done and, if it in-fact follows the survey that Mr. Kary has and it is the same, then we will vote with that in mind. Vice Chairman Durham asked Building Official Goodloe, this

gentleman mentioned a stop-work order being placed, was that strictly for the deck and retaining wall? Building Official Goodloe answered, it was for the deck only.

Trustee Flood stated, they are asking for a deck to be 3" off the lot-line. He knows that some decks throughout the Township, go into setbacks, but we are talking several feet, not inches. Chairman Yaros stated this is probably the closest they have ever seen someone wanting to put a deck that close to the lot line, but as one neighbor mentioned, these lots are not very big, not only is he asking for permission to put the deck there, but we have to give a lot coverage variance of 6%. We had granted the lot coverage of 11% before so that probably isn't a real big deal because it is less than if he had done the house.

Vice Chairman Durham asked Chairman Yaros, are we looking at offering the applicant the opportunity to have this postponed to a later time? Vice Chairman Durham added, the only point I would make to the applicant is he is one vote and he cannot support this. More information would be better for Vice Chairman Durham speaking for himself. Chairman Yaros added, yes, for what we have seen right now.

Chairman Yaros asked Mr. Peterson, are you going to get a survey? Mr. Peterson replied that his family wants to appeal any approval to the fullest extent of their legal right because of the way the yard is laid out and because of the way the whole story unfolded - there is a lot more that he was hearing now.

Mr. Peterson commented there is just a lot more to this than simply what is being stated and he didn't come as prepared as he probably should have or knew he needed to be, he wasn't aware that a final decision would be made today. Mr. Peterson stated that he was never furnished with the two surveys and if there was one survey, why do you need a second survey? Chairman Yaros stated that this was not unusual. Mr. Peterson then stated, ok, but he has not been furnished with any of them and it was kind of convenient that this deck was installed while his family was dealing with a family health matter out of state. He didn't know if they had talked to the Building Department, but they are well aware of what is going on, on that street? Chairman Yaros stated, this is the Building Department indicating Building Official Goodloe. Mr. Peterson stated that it has been crazy with constant construction and if you are familiar with the street, from the lake side there has been a retaining wall since before he moved in there and he believes that it has been refurbished or restructured throughout time by different neighbors, and the way the yards are laid out, his side yard has almost always been driveway for the two houses. Whether it be his driveway and their driveway and the vehicles park there. Mr. Kary told him that he plans on listing his house in April and wants to get \$650,000 and what appears to him is he is trying to get as much land and as much square footage as he can. Chairman Yaros stated that is hearsay, what he is concerned about, he doesn't have a problem with the survey because it is from a registered land surveyor and it is stamped but they have to go by what is in front of them, facts. The fact is he has a registered survey. Mr. Peterson stated that he is fine with the facts as well and if the survey says what it says, but do we really need to grant a variance that goes feet beyond the Building Code? He can see a couple of inches, a foot, two foot, but really does he need to go five feet over the variance into what we thought was our yard? So now his three dogs has access to his driveway and can jump on his mother like they did the other day? Chairman Yaros stated, so you don't necessarily begrudge the guy having a deck on the side, you more or less just don't want it all the way over to the edge of the property? Mr. Peterson replied, ya, we don't care before when it didn't go onto the driveway, and now it does -where the previous retaining wall was, a portion of it has been removed so that the deck can extend all the way south as it does.

Chairman Yaros stated, it is up to you Members of the Board what do you want to do? Building Official Goodloe stated, I think that the question here is, are you comfortable with the 3" , because the survey shows it where it is? Trustee Flood replied that he was comfortable with the survey. Building Official Goodloe stated, is there hardship here? Trustee Flood replied that he has never approved a deck being that close to a property line, he has dealt with fences within the property line, but a deck is a

different story. Chairman Yaros stated, that he has had people go down to 3-ft. or 4-foot wide so at least they have some deck on the side, this is a fairly large addition on the side of the deck and it goes within 3", we have never ran into anything that close to a lot line. Regardless if there was one there before. Mr. Kary said, an aerial shot shows there was. Chairman Yaros stated, he was looking at the aerial shot and I couldn't tell. Mr. Kary replied, he could go onto Oak.Gov and pull up the shots that is how he knew when a driveway was built, that is how he knew when this existing wall was built. Mr. Kary added, you can backtrack this stuff through time, just with the aerial shots. Mr. Kary stated when he got these surveys done, Mr. Bettin on the other side, has now increased his property size by feet, and so I am not going to encroach, he is giving him more property essentially is what he has done. Mr. Kary stated that he cannot give property on both sides, the lines that you guys have on the Township website were off and that is what caused this whole issue because no one wanted to pay for a survey and get it done. So, he got a survey and got it done and Mr. Bettin had the same person come out and got the same person come out and got it done on his side and so now we are in agreement that this is his line. He is not going to encroach on his and so there has been no dispute since he got his survey. His property is what it is.

Chairman Yaros asked Mr. Kary to step forward to view the survey Chairman Yaros had. Chairman Yaros asked him, "is this the portion we are looking at?" Mr. Kary replied that these lines are off. Chairman Yaros said he was not worried about that, but this is what we are looking at? Mr. Kary replied, correct. Mr. Kary replied, so the lines shift "this way", he actually owns, according to the survey, two feet back "here", almost to the corner of his house, this is the side we are talking about, the south side. Chairman Yaros asked, where is the deck on that side? Mr. Kary stated, "that is why I provided the other aerial shot." Chairman Yaros stated he didn't see any other aerial shot. Mr. Kary asked if the Oak.Gov aerial shot was in there? Chairman Yaros stated, no, we did not get that, all we have is this "one right here" and it really doesn't show it. Mr. Kary stated that he provided a 2005 aerial shot from Oak.Gov., he wasn't sure why it wasn't in there, he had turned it in with the packet. Mr. Kary stated that he could email it tonight to somebody. He just needed to go online and print it out. Chairman Yaros stated that we have the survey, we are just going to have to go with the survey.

Vice Chairman Durham asked, "Mr. Kary I think you are starting to get a feel for what is going on here by listening to the cross talk." "Is there anything that you can do to this deck, reduce it, do something to make this situation better, just you, from your end?" "If you go home, get the proper permits, can you do something that will give us a little more latitude, or are you locked in solid?" Mr. Kary replied, he was saying that he hasn't done anything more than 4 or 5-feet from the property line, he was essentially getting rid of the whole walk from the driveway, that is what he was talking about - that has already been preexisting, what he bought the house with. Vice Chairman Durham stated, "with all due respect, it is just, can you do something with this situation that is there now, to give us a little more to discuss if you come back at a later time, or are you locked in solid and it is what it is?" Mr. Kary replied, what that would be? Vice Chairman Durham replied, "I don't know, it is your house and your property." Vice Chairman Durham stated that he was there for a few minutes and looked at it, he didn't know what Mr. Kary could possibly do? He knew that Mr. Kary had builders on-site the day he was there, maybe they can help. Mr. Kary replied, "they (the builders) have been helping me, they have cut it back twice." It was his opinion, cut it back 4- feet or just not have a deck there. Vice Chairman Durham asked again, can you give us something to make this situation better? Vice Chairman Durham stated, "I am not telling you to throw the deck in the lake or anything of that nature, is there anything you can do or are you locked down solid, simple question?" Mr. Kary replied, he is open to suggestions. Chairman Yaros asked, can you cut it back 2-feet? Mr. Kary replied, and then repost everything? Chairman Yaros answered, yes. Mr. Kary replied, he could but it would cost him a lot of money that he felt was already there. He feels that it is an unfair financial hardship – that he had the property and "it was already preexisting".

Building Official Goodloe stated that you basically have two options: a) you can get the vote tonight and then the Boards decision is final. If you wanted to come back for a lesser variance, you would have to

pay the fee and reapply. Option b) You can postpone and think about how you want to move forward, if you want to compromise or anything, if that is the case then you can postpone to a later date and not have to reapply, do you understand? Mr. Kary replied yes, he understood. Chairman Yaros said you are taking a chance that it will be turned down tonight and then you would get no deck. Mr. Kary replied that he can see where this might be going, but to him the financial hardship of it, this was already there when he bought the house and he is just trying to replace something that was unsafe. He is not trying to steal anyone's property, he has given property on one side, it is not about stealing, he wasn't aware "they" had an issue with this, he didn't know that they were gone for the past few months. Chairman Yaros stated, regardless, the Building Department brought up a good point, you've got two choices: we can vote on it and accept the vote whatever it is, or we can postpone it and you can come up with an alternative that would be better and maybe talk to your neighbors - something better for everybody and then come back and it won't cost you an additional. We (the ZBA) can do anything you want, is that what you want us to do? Mr. Kary stated he has discussed this with the neighbors. At first, when they said the wall was theirs, he was fine with that, but when he got the survey he found out that it is something different. In his mind he is thinking that if the wall is yours you have to maintain it, it is falling over on my property, asking me to pay for a wall, it is probably not going to happen either way, he didn't expect them to shell money to fix the wall either, this is a big deal. Yes, he would be willing to do whatever he needs to do to try to fix the situation. Mr. Kary said he doesn't feel like he should be punished for something that was already preexisting.

Chairman Yaros stated you came here for us to grant a variance, we are just asking you if you want us to postpone it and come up with maybe a lesser request or some other alternative and to maybe get with your neighbors and talk it over and come back, or we can take a vote tonight. Mr. Kary replied, yes, I will postpone it, but what is a reasonable request? Chairman Yaros stated, well probably I would say if it is 10-feet wide, if you would take 3-feet off of it, it would then be 7-feet wide, but I don't really know how wide it is. Mr. Kary replied, it is about 7-foot at the front and then at the back, it is less.

Chairman Yaros stated that it looks the same on "here" but you can't tell, so we need those dimensions. The Building Department would absolutely need the dimensions of the deck. There are a lot of alternatives here, but I think you know what the alternative is if we vote tonight. Mr. Kary replied, right. Chairman Yaros stated that you have to have three votes. Mr. Kary replied, OK. Chairman Yaros asked Mr. Kary would you like to postpone it? Mr. Kary replied, sure.

Trustee Flood stated we have two dates, April 8th or April 22nd? Mr. Kary replied that his wife is due April 5th so if he could do April 22nd. Chairman Yaros said, no problem, we can postpone it until April 22nd. We need a Motion for that.

Moved by Trustee Flood, seconded by Board Member Walker, that in the matter of ZBA case #_AB-2019-06, Dustin Kary, 362 Shorewood Ct., 09-03-405-013, at the applicants request, to postpone the case until the April 22, 2019 meeting for the applicant to bring back other information.

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

B. AB-2019-07, Gieto Kalaj (Cal's Auto Wash), 4036 S. Baldwin Rd., 09-32-101-033

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting 3 variances from Sign Ordinance 153:

Section 7, Non-Residential Zoned Areas, Wall Signs: GB/Gingelville Village Center Overlay:

1. A variance to allow 2 additional wall signs (north elevation), to install a total of 3-wall signs (north elevation).
2. A 29.4 sq. ft. variance, above the allowed 56.1 sq. ft. of wall signage, to install a total of 85.5 sq. ft. of wall signage.

Section 7, Non-Residential Zoned Areas Ground Signs, GB/Gingellville Village Center Overlay:

3. A 15-ft. road right-of-way setback variance from the required 30-ft to allow a ground sign to be built 15-ft. from the road right-of-way.

Chairman Yaros stated he understands and it is obvious that one of the variances for the ground sign is because of the road. Mr. Kalaj stated that he is fairly new to the area, there used to be a ground sign there and a variance for its location was approved. His understanding was the only thing different is now he wants to add LED to it. The digital LED will help people see when they are open and when they are closed. He believed that the location variance was already approved.

Chairman Yaros stated, he didn't remember that application. Trustee Flood stated that the Road Commission came in and requested that back on September 24th as part of the Road Commission deal.

Chairman Yaros then asked, the signs you want on the wall location are going to be at the entrance of the car wash, right? Mr. Kalaj replied ya, two of them have been there for years. Chairman Yaros asked, "so you want one additional over the two that are already there? Mr. Kalaj stated, ya, that way you can see the building from the south side, many friends and neighbors have said they were not sure what was in that building. Building Official Goodloe said he agreed. Trustee Flood stated that he thinks it would be great, since they have widened the road, that entrance is hard to see. One thing he liked is that he is increasing the distance further off the road than what we granted the Road Commission originally, we are going to gain about 9-feet. Chairman Yaros stated that it was fifteen feet, that is significant and will be safer. Chairman Yaros said he did not have a problem with this and asked if there was anyone that would like to speak to this matter?

Vice Chairman Durham asked Mr. Kalaj, "you have mentioned that it will have LED, will it move, change or rotate?" Mr. Kalaj replied that he thought he could make it change and change it so that it doesn't rotate - it was programmable. Mr. Kalaj said he hasn't seen it yet, to be honest with them. Trustee Flood stated that the new sign ordinance addresses all that. Chairman Yaros asked, "this has all been addressed?" Mr. Kalaj stated, "the guy two doors down from him has one and he can change the programming and the writing on it - he knows that he can do at least that with it." Chairman Yaros stated that he knows that the intensity of it is really governed close. Building Official Goodloe stated, that the Township cannot govern the content, only the light illumination.

Chairman Yaros asked if there were any other questions? There was not.

Moved by Vice Chairman Durham, seconded by Chairman Yaros, that in the matter of ZBA case # AB-2019-07, Gjeta Kalaj (Cal's Auto Wash), 4036 S. Baldwin Rd., 09-32-101-033, that the petitioner's request for variances from Sign Ordinance 153 Section 7, None-Residential Zoned Areas, Wall Signs: GB/Gingellville Village Center Overlay, 1) a variance to allow 2 additional wall signs (north elevation), to install a total of 3-wall signs (north elevation, 2) a 29.4 sq. ft. variance, above the allowed 56.1 sq. ft. of wall signage, to install a total 85.5 sq. ft. of wall signage, and 3) Section 7, Non-Residential Zoned Areas Ground Signs, GB/Ginellville Village Center Overlay, a 15-ft. road right-of-way setback variance from the required 30-ft to allow a ground sign to be built 15-ft. from the road right-of-way, be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in that he set forth facts which show that in this case: the petitioner is a new business, the practical difficulty would be that the building never has been really "signed" as a car wash and people do not know this, as a new business he needs to get as many people to stop by as he can; the following are exceptional or extraordinary circumstances, again, the business has been there for a long time but apparently it has been poorly "signed" and the petitioner would like to upgrade that and he is asking to place the ground sign 15-ft. off the road right-of-way which will increase safety, the variance is necessary to give the petitioner the right to advertise his business to the greatest possible extent; granting the variance will not be materially detrimental to the public, it is not going to be a traffic or sight

line hazard, the illumination is spoken to in the application and is not going to be something that is going to bother people on the road; it will not impair anything to any neighboring properties; it will not unreasonably increase the congestion in public areas and will not increase the danger of fire or endanger public safety; it will only, in this case, hopefully help the petitioner get his new business up to a running start.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported, to add that the new ground sign was needed because the existing sign was removed for road construction and too, in essence, there were two original wall signs already there so the petitioner would be adding one additional for a total of three.

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

6. PUBLIC COMMENTS

Eugene McNabb, 2981 Judah, commented that Dan's Excavating has about 22 acres of property, and they are using his property as a retention pond. He then spoke about the map and the varying topography of the pit and the rest of the property, especially to the north. In the past, when they've asked for permits, and it is on their permit, that 10:60 is the elevation of the pit when it is done. He then spoke about how he believes they are going to have to that. Mr. McNabb added that according to the State of Michigan Appeals Court, it calls that area "pit site" and the main Board made a map in 2012 that says that pit is on my property. So they have to grade my property off also to 10:60, because it is part of the pitsite. The Court of Appeals doesn't say anything about Dan's property or his property, it says pit site. And according to the map, or the permit that Bob drew up, it listed his property and it says all effective property - that is the pit site you go back to the map that was made in 1998. The Court of Appeals says it has to be 10:60 when it is done and there has to be a registered certified map of that area when it is done at 10:60.

Chairman Yaros stated they were out there on Saturday for the site walk and he saw the ice, it is hard to tell this time of year because of the frozen ground, water doesn't soak in. He couldn't tell whether it (the water) would make it over to the pipe. He didn't know they were putting retention ponds in. There are 3 ponds that are going to be on that site to collect water. The water that normally flows that way would go into the pond that is there. That is the first part that is going to be restored, that section. Mr. McNabb replied, if you look at the map, those 3 ponds they are putting in are at 10:59 and the pits are supposed to be leveled off at 10:60. Not only that, the north side of the pit where they are talking about, that is already 10:64. When that drains, it is going to drain right onto my property and right onto Judah Road. It is not draining back into the retention pond.

Chairman Yaros replied that is something that the engineers are going to have to address at the meeting. He did not have the map in front of him and his map didn't show the retention ponds. He will have to look at the original map and see. Mr. McNabb suggested that the Township get ahold of the Court Order and read it, anything that you decide here would be a waste of time because the Appeals Court says what it has to be. Trustee Flood replied, we will take our advice from our Township Attorney like we have always done before, Gene. Mr. McNabb stated that Dan Kelly was there, he knows, even if he doesn't like it, he has to go by what the Court of Appeals says. Trustee Flood added, and we are going to go by the advice of our Township Attorney. Mr. McNabb stated, if he gives you the correct advice, he should because he was there. Trustee Flood replied, we will be conversing with Dan.

Chairman Yaros talked about the water again. Mr. McNabb stated, that if it was set up right, it won't run where it is not supposed to go. Mr. McNabb stated, "my property is sand there and theirs is clay, theirs won't drain so it runs onto mine then when the weather warms up, it drains into my sand. Trustee Flood stated that he remembers years ago when you brought the problem to us, we made them put that drain pipe in there. Mr. McNabb stated that drain pipe was never put in right. Trustee Flood said it helped alleviate your problem for a couple years there didn't it? Mr. McNabb replied very little. if it was put in

right it would drain from that property into the pit, but it can't drain into the pit because the pit is at 10:64 and the back of the "2985" is at 10:62. There is a foot difference there. Chairman Yaros stated that they would have the engineers look at that.

Trustee Flood stated that he believed the permit renewal meeting is April 22nd and Mr. McNabb will get a notice in the mail of that meeting.

7. COMMUNICATIONS

Memo from Planning & Zoning Coordinator Harrison dated February 15, 2019, regarding Dates which Cases Can Be Postponed To.

Memo from Planning & Zoning Coordinator Harrison dated March 4, 2019, regarding canceling the March 25, 2019 meeting due to lack of agenda items.

Moved by Trustee Flood, seconded by Vice Chairman Durham, to cancel the March 25 2019 regular ZBA meeting due to lack of agenda items. **Motion Carried**

8. COMMITTEE REPORTS

None

9. MEMBERS' COMMENTS

Vice Chairman Durham commented on the recent Ordinance 99 site walks.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Yaros, to adjourn the meeting at 8:10pm.
Motion Carried

Respectfully submitted,



Debra Walton
PC/ZBA Recording Secretary
Charter Township of Orion

4/8/19

Zoning Board of Appeals Approval