

# CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

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

## REGULAR MEETING – MONDAY JULY 22, 2019 – 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 22, 2019 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

### **ZBA MEMBERS PRESENT:**

Lucy Koscierzynski, Board Member  
Don Walker, PC Rep to ZBA  
Mike Flood, BOT Rep to ZBA  
Mary Painter, Alternate  
Tony Cook, Alternate

### **ZBA MEMBER ABSENT:**

Loren Yaros, Chairman  
Dan Durham, Vice Chairman

### **CONSULTANT PRESENT:**

None

### **OTHERS PRESENT:**

Debra Walton                      Joe Caradonna  
Andrea Killips                    Deaette Dwyer

### **1. OPEN MEETING**

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

### **2. ROLL CALL**

As noted

Moved Trustee Flood and seconded by Secretary Koscierzynski to appoint Board Member Walker as Interim Chairman.

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

**Motion Carried 4-0**

### **3. MINUTES**

07-08-2019, Regular Meeting Minutes

Moved by Board Member Painter, seconded by Secretary Koscierzynski, to approve the 07-08-2019, Regular Meeting minutes as presented. **Motion Carried**

### **4. AGENDA REVIEW AND APPROVAL**

There were no changes to the agenda.

### **5. ZBA BUSINESS**

#### **A. AB-2019-28, Deaette Dwyer, 3676 Grafton St., 09-29-432-001**

Interim Chairman Walker read the petitioner's request as follows:

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

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

- 1) A 10-ft. rear yard setback variance (south), from the required 10-ft. rear yard setback for a 6-ft. privacy fence to remain 0-ft. from the rear lot line.

Article II: A lot Line Front: Article VI, Section 6.04 Zoned R-2 & Article XXVII, Section 27.05 (H)(2)

- 2) A 35-ft. front yard setback variance (west), from the required 35-ft. front yard setback for a 6-ft. privacy fence to remain 0-ft. from the front lot line.

Mrs. Deaette Dwyer, 3676 Grafton St. the applicant, presented.

Mrs. Dwyer stated they were there to keep their fence on the property line because they were not aware of the setback being from the lot line, they thought it was far enough back. They were also not aware that their backyard was considered a front yard. They have been there for 25-yrs. and this is the first time they have ever heard that. The fence would be in the middle of their house if they were to use the 35-ft. setbacks, so they are just requesting that it be allowed to stay where the existing 4-ft. fence was; for privacy because it is a very busy corner lot, everyone is constantly walking by and staring at them, letting their dogs come up to the fence and urinate and she has little dogs who go barking towards the fence and even though they have asked them not to they still allow their dogs to come up and her dogs get fleas. They feel like they are living in a fishbowl being the way the lot is everybody does stare at them being on a busy corner. There is a pedophile that lives across the street from them, and she has a 9-year-old granddaughter that lives with her and plays in her back yard and swims in her pool and it is disconcerting that he drives by all the time looking into the back yard. That was another reason for wanting the privacy fence up.

Trustee Flood noted that on their papers they have lived there 24 years?

Mrs. Dwyer replied almost 26 years.

Trustee Flood asked about her Practical Difficulty, and you have a corner lot, so your property actually fronts on two separate streets. Sometimes there is a difficulty there, when there are two frontages instead of one frontage. When he went out there and what he looks for is line of sight, especially on a corner lot, that these fences do not block off the intersection. When he got there, he was surprised that their property line is about 25-ft. from the edge of Queensbury so there is quite wide berth there. He also noticed that they put their fence that faces Grafton, you were smart enough to set it back away from the gas meter, you didn't enclose the gas meter and he saw that they had a water bib there too.

Mrs. Dwyer said that their spicket is behind the fence.

Trustee Flood noted that a lot of people make the mistake and enclose the gas meter then the gas people don't have access to it.

Mrs. Dwyer replied yes; they didn't want to do that to them.

Trustee Flood added that he noticed when going through that neighborhood there is a ton of these fences up all over the neighborhood. When he was sitting on Queensbury, he looked to the neighbor to the left the neighbor to the west, they have a 6-ft. fence sitting inside their 4-ft. fence all along the same road.

Trustee Flood said that he noticed that they left a bunch of posts sticking up in the air from the fence and they have things hanging off of them.

Mrs. Dwyer said she did that on purpose for her birdhouses and bat house, the bat house has to be high enough in the air to come by because she likes creatures.

Trustee Flood said that the two post they have are separate from their fence. They have two other posts that are separate from their post. About 6 of the fence posts are still up on the west side and you have one on the southside that sticks up above the fence.

Mrs. Dwyer replied yes; she has birdhouses and windchimes and a bat house put up higher than the fence.

Board Member Painter stated that she stopped in the office today and asked about the poles sticking up and they say that if it is attached to the fence that is part of the fence and that takes it higher than the 6-ft., so, you can't have those. All those posts that are higher than the fence are they attached?

Mr. Bradley Dwyer stated that those posts can be removed if that is an issue. He would love to keep the one that has the bat house.

Mrs. Dwyer said that the bat house is not attached to the fence.

Mr. Dwyer stated if they want the other ones if they want them removed, they will cut them down to fence level. They left those higher for the intensions for yard art.

Board Member Painter commented that she understands but it is part of the fence is not legal and then and if the higher posts are not legal either if they are attached because it adds to the height.

Mrs. Dwyer said they can take those down even with the fence.

Board Member Kosciuszynski said that she was over there today and had a nice conversation with Mr. Dwyer and they also have some issues with the neighbor right next to them and it is important for them to have the privacy fence. She doesn't have a problem with it at all.

Board Member Painter noted that the privacy fence is on the other side from the neighbor that they are having a problem with.

Board Member Cook stated that he thought that the neighbor behind them might have a little bit of an issue, but they are not here tonight. Do we have any correspondences?

Mrs. Dwyer replied that she brought one with her from the neighbor across the street. The neighbor behind her is a renter and she spoke with the man that owns the house and he gave verbal permission that he didn't have any problem with it what so ever.

Board Member Cook questioned that he noticed across the back they go so far with the 6-ft. fence and then it stops and then it goes to a 4-ft. chain-link fence, why was that?

Mrs. Dwyer answered that she didn't want to block off the area for the people next door. She could continue to go back but it is also she didn't want to block anything off for the guys that needed to get to the electric pole and she didn't it to be an issue. Eventually the neighbor said they wanted to put up a privacy fence up, if they end up buying the house.

Board Member Cook noted that she had mentioned that there were pictures available, he drove around the neighborhood, but are there any particular pictures that she had that she wanted to present as part of her submission?

Mrs. Dwyer explained that she didn't have any pictures printed off but she has them in her phone if they would like to look at them.

Board Member Cook noted that he was also surprised from the distance from the street. The front yard setback is not an issue but he had more trouble with the number of pick-up trucks and seeing around them. At the time he wasn't sure if they had guests but there were 3 pick-ups there and that was blocking his line of sight.

Mrs. Dwyer stated that they both have white pick-up trucks, hers is usually in the backyard and his is usually parked up in the driveway and then her son parks his little green car right there in the front, but her other son comes over has a black truck, he comes over at night to see his daughter.

Board Member Cook said that from the standpoint of the fence itself it wasn't what he thought it would be so the way they constructed the fence other than what they have said about the height of the posts, that is his only issue with it.

Mr. Dwyer stated that the posts he can easily remove. The extra trucks in the front when he had passed by, he has a pick-up, his wife has a pick-up and his son has a pick-up, if all three were in the front yard they were probably doing something in the backyard and they needed the space.

Board Member Cook explained that he was just comparing the two. The fence was noted the issue with the line of sight was something that is movable which is the trucks.

Interim Chairman Walker questioned how long have they lived there?

Mrs. Dwyer replied 25 years.

Interim Chairman Walked stated that they didn't get a permit for this fence.

Mrs. Dwyer responded that she really didn't know that they needed one, because there is no association there because it was far enough off the road. When she called and asked about how far off the property line, and she was under the impression that their property went to the road, but it is actually where the gate was.

Mr. Dwyer stated that it was a misunderstanding of the frontage of having two front yards. It was 35-ft. and they didn't realize they needed to do it for the back.

Interim Chairman Walked questioned when did their privacy issues resurrect themselves if they have been there for 24 years without a fence.

Mr. Dwyer explained that before that they had multiple pine trees that blocked those, the pine trees became an issue with needles and they got rid of those in the last two years.

Mrs. Dwyer added that it has gotten very busy around the neighborhood.

Mr. Dwyer said that with Baldwin and Maybee being closed now it is really busy.

Mrs. Dwyer noted more people with more children, more animals and a lot more people walk their dogs and ride their bikes and it is like they live in a fishbowl literally with it facing that way. Everybody that drives or walks by stares at them.

Interim Chairman Walker asked if there were any questions for anyone in the audience?

There was not.

Moved by Secretary Koscierzynski, seconded by Trustee Flood, that in the Matter of ZBA case #AB-2019-28 Deaette Dwyer, 3676 Grafton St., 09-29-432-001, the petitioner's request for variances from Zoning Ordinance No: 78, Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2) 1) a 10-ft. rear yard setback variance (south) from the required 10-ft. rear yard setback for a 6-ft. privacy fence to remain 0-ft. from the rear lot line. Article II: A. Lot Line Front; Article VI, Section 6.04 Zoned R-2 & Article XXVII, Section 27.05(H)(2) 2) a 35-ft. front yard setback variance (west), from the required 35-ft. front yard setback for a 6-ft. privacy fence to remain 0-ft. from the front lot line be **granted** because the petitioner did demonstrate that the following standards for variances have been met in this case in which they set forth facts which show that in this case: the petitioner does show Practical Difficulty due to the unique circumstances of the property and not related to general conditions in the area: they are on a corner lot which means they have two separate front yards; 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: there is safety issues, the fence does not cover any gas meters; the house is on a corner; the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity base on the following findings of facts: the house is on corner and another thing that needs to be noted is that the sight from the corner you can see fine the fence doesn't have any sight distance issues; the granting of this variance or modification will not be materially detrimental to the 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: no one in the neighborhood is against this; further based on the following findings of facts, the granting of this variance would not: impair an adequate supply of light and air to adjacent property due to the 6-ft. fence: that is not even an issue in this case; unreasonably increase the congestion in public streets: there is not increase congestion due to the fence; increase the danger of fire or endanger the public safety due to: the fence is exactly 6-ft. tall; unreasonably diminish or impair established property values within the surrounding area due to: that is not an issue with this; or, in any respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to: it needs to be noted that those post need to be removed.

Secretary Koscierzynski amended the motion, Trustee Flood re-supported, to include the clarification on the posts being removed, the posts must be cut down to not exceed the height of the fence. These are the support posts that are attached to the fence.

Roll call vote was as follows: Cook, yes; Painter, no; Flood, yes; Koscierzynski; yes, Walker, no.

**Motion Carried 3-2**

**B. AB-2019-29, Andrea Killips, 1359 Viefield Dr., 09-01-231-009**

Interim Chairman Walker read the petitioner's request as follows:

The petitioner is requesting 3 variances from Zoning Ordinance No. 78:

Article XXVII, Section 27.01(C)(1)(b), Lot Width 60 to 65 feet & Article XXVII, Section 27.05(H)(2)

1. An 8-ft. side yard setback variance (west) from the required 8-ft. side yard setback for a 6-ft. fence to be erected 0-ft. from the side lot line (west).

2. An 8-ft. side yard setback variance (east) from the required 8-ft. side yard setback for a 6-ft. fence to be erected 0-ft. from the side lot line (east).

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

3. A 10-ft. rear yard setback variance (north) from the required 10-ft. rear yard setback for a 6-ft. fence to be erected 0-ft. from the rear lot line (north).

Ms. Andrea Killips, 1359 Viefield Dr., the applicant presented.

Ms. Killips stated that her and her fiancé Chance Randell just purchased the home June 18, 2019. They are asking that they be allowed to put a 6-ft. privacy fence on the property line instead of going in

8-ft. on the sides and then 10-ft. on the back. They ask that because they two very hyper and high energy dogs, one being a husky and the other one is an australian shepherd. Her husky like most huskies is very sneaky and likes to run, and has jumped 4-ft. fences before and they have lost her a couple times in the north because she has jumped those fences. They do currently have a 6-ft. fence on their property line or close to it that the seller had put up, she was sure that they had seen that when they came out. She just wanted to note that she did not put that put the house came like that. They have seen other dogs in their backyard since they have been there, just wandering, and she is not sure where they are coming from. She did talk with the neighbors the two on the sides and the one in the back and let them know that they are putting a fence up and they didn't have an issue with it being 6 or 4-ft.

Interim Chairman Walker questioned when they bought the house?

Ms. Killips replied June 18<sup>th</sup>.

Interim Chairman Walker noted that in the application that she was told by the seller.

Ms. Killips replied she did, and she realizes that, they are first time homeowners, that they should have looked into the ordinances, but she did state that it won't be an issue. She is not putting blame on her they should have looked into it. That is why she went to see if there was already a survey done. She did get a survey done completed, they didn't think it would be done that fast, but it was completed last Wednesday. So, they went down here to check out to see if there was already a survey done to see where their property lines were and that is when they found out that they couldn't put a 6-ft. fence, it had to be either 4 or 8-feet in.

Board Member Painter asked that the two that the people put up that they purchased the home from it that over by the shed area?

Ms. Killips replied yes there is one by the shed and then across from it.

Board Member Painter questioned if they put both of those up or did, they put one of them in?

Ms. Killips answered no; they didn't put any fences up.

Board Member Painter stated that she could see the posts looking into her backyard on the right- hand side, but on the other side she couldn't see.

Ms. Killips stated it is very wooded. It runs parallel from there, it was kind of hidden, but there was kind of a big electrical pole it was right next to that.

Board Member Painter noted that the neighbors to the left-hand side are way down the hill.

Ms. Killips said that, that neighbor did come over and let them know that they got the letter and they said as long as they get a survey done, which they did and she let them know that, they didn't mind.

Board Member Painter added that the closest neighbor is just the one right next door.

Ms. Killips stated that they rent as well.

Trustee Flood said that looking at that property the way that it is set up on the east side if they were looking right at there house on the right-hand side, they don't have a whole lot of room there between the neighbor and their house.

Ms. Killips replied correct.

Trustee Flood stated that the gas meter is right in that front corner too.

Ms. Killips answered right.

Trustee Flood said he saw where they had the little stakes, that is where they would like to have the fence start, correct?

Ms. Killips stated that she was talking to her fiancé about that and he made a good point when he was talking with the women before her about how their meter is right there. She has a question for them, if they put like a gate there, are they allowed to enter the gate?

Trustee Flood replied that he can't answer for the utility company.

Ms. Killips said they would be willing to move it back if that makes more sense.

Building Official Goodloe said that he would doubt that they would enter it. They are allowed to, but thinks they would have an issue with it.

Trustee Flood added what he was looking at on the east side, it doesn't look like they use too much of the east side yard. It looks like they are using most of their backyard.

Ms. Killips replied yes; they had talked about how they might want to go back a little bit because the meter.

Trustee Flood said that instead of coming up to the front of the house, it would make more sense to start at the back of the house. He is not really in favor of the 6-ft. fences. Right now, they are not supposed to legislate, setbacks are what they are looking at here. He doesn't see any reason for the fence to be any more than from the back of the house back to the rear property line. They already have two existing on the west side.

Board Member Cook said he believes he knows why the previous owner put that one section up facing the neighbors house to the north of them. If it always looked like it does, he sees why they put it exactly where it is.

Ms. Killips noted that the previous owner did state that as well to her before they bought it.

Board Member Cook added that in terms of anyone around them, he doesn't see how in this particular case the fence would be a hinderance to anyone, the only thing is the access to the meters. He had experience with the gas companies, in a previous home that he owned where as long as the gate was unlocked, they would access and go in and do what they needed to do. That was a case where it was a chain-link and so they could see so it might be a little different with a privacy fence. In terms of the way it is laid out he was wondering where they parked?

Ms. Killips said that is difficult as well, and was thinking about putting something out in the front because there really is no parking. It was listed with a garage and it didn't have garage.

Interim Chairman Walker asked if there were any other questions from the board?

There were none.

Interim Chairman Walker asked if there were any public comments?

There were none.

Moved by Board Member Cook, seconded by Board Member Painter, that in the matter of ZBA case AB-2019-29, Andrea Killips, 1359 Viefield Dr., 09-10-231-009, I would move that the petitioner's request for the variances from Zoning Ordinance #78: Article XXVII, Section 27.01 (C)(1)(b), Lot Width 60 to 65 feet & Article XXVII, Section 27.05(H)(2) 1) an 8-ft. side yard setback variance (west) from the required 8-ft. side yard setback for a 6-ft. fence to be erected 0-ft. from the side lot line (west) and 2) an 8-ft. side yard setback variance (east) from the required 8-ft. side yard setback for a 6-ft. fence to be erected 0-ft. from the side lot line (east) 3) Article XXVII, Section 27.02 (A)(4) & article XXVII, Section 27.05(H)(2): a 10-ft. rear yard setback variance (north) for a 6-ft. fence to be erected 0-ft. from the rear lot line (north) 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 Difficulties: due to the unfortunate word of the prior owner, they were under the impression that they could erect a fence and due to the two panels that were currently in the yard prior to them actually purchasing the home; the following are exceptional or extraordinary circumstances or conditions applicable to property involved that do not apply generally to other properties in the same district or zone: there is a dead-end street that is heavily wooded for the neighbor to the south of them and no other neighbors have come forth to say anything about it on the other sides to the east or north side of the property; 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: they do own pets and are currently attempting to enjoy the yard, in addition to that the property of the neighbor to the north is not detrimentally impacted and there is approximately 5-ft. between the fence and the driveway of that neighbor; the granting of the variance or modification will not be materially detrimental to the 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 property is the last house on the block and so it is not going to have a concern for lines of sight but it will allow them to properly fence their animals based upon the breed types they have; further, based on the following findings of fact, the granting of this variance would not: impair an adequate supply of light and air to adjacent property due to the fact that: the majority of the trees in the area are right over their property and so they might be taking those out to improve the light supply; it would not unreasonably increase the congestion in public streets due to the fact that: it is a dead-end street; would not increase the danger of fire or endanger the public safety due to: being a dead-end street; would not unreasonably diminish or impair established property values within the surrounding area due to the fact: that they didn't discuss materials but they need to see what they will potentially be putting up; it would not in any other respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to: they are new to the area and they are going to be good neighbors.

Amended by Board Member Cook, re-supported by Board Member Painter, request that the good side of the fence is facing the outside and by good side meaning not where the rough stuff is. Also, if the petitioner would agree to make sure that there was access for the public utility companies and perhaps the Township because they need to get back in there, to somehow make it accessible for them to get through there when they build their fence.

Discussion on the Motion:

Board Member Painter said that they did have the finished side on the outside anyway.

Board Member Painter asked if they were going to continue with that same material?

Ms. Killips replied yeah; they would continue with the same material and keep the good side on the outside.



Board Member Cook stated to consider the utility's because it is a privacy fence and that could lead to other issues if they can't get to it because they have animals and once an animal is noted it is put in the record for the property and so it may cause issues down the road where they don't even stop.

Roll call vote was as follows: Flood, no; Cook, yes; Koscierzynski; yes; Painter, yes; Walker, yes.

**Motion Carried 4-1**

C. AB-2019-31, Baldwin Square Townhomes, 4680 Georgia Dr., 09-32-376-003

Interim Chair Walker read the petitioner's request as follows:

The petitioner is requesting variances from Zoning Ordinance No. 78: Article VII, Section 7.04(E)(3)(c); Zoned RM,

1. A 30-ft. variance from the required 50-ft. setback from rear of building to side of building to construct 2 decks on building 10.

Mr. Joe Caradonna, 2145 Crooks Rd., Troy, MI 48084 the petitioner, presented.

Interim Chair Walker stated that because he does know something about this because of his visit to the Planning Commission as he recollects this is the last part of his puzzle to complete the approval of this project so they can go forward; is that correct?

Mr. Caradonna replied that is correct; building 10 which is the one and building 7 are both slated to be completed in August. To reiterate what they spoke about at Planning Commission was on the original drawings their engineer had just delineated patios not knowing how the topography was going to be so steep at that time they assumed they could do all the patios. They did 87 with concrete patios but in this particular case, he was sure someone had visited the site, the grade falls off such that the patio would have nearly 15 steps to get from the backdoor onto the concrete patio. It does back up to a wall from another unit, it is a side yard and he did believe that there was a change in the zoning district that had made it stricter the zoning ordinance that is applied here. They are going to do a very nice deck; this is a rental community these are not condos for sale and they plan to have it for a long time so they hope just to make their residents happy and make it look nice.

Board Member Painter questioned when they set the plans all up with the building committee can't they move the dirt around, how did that get so different from all the other with the topography.

Mr. Caradonna replied that when they did the site plan it is not typically the construction documents. Their engineer had simply shown a square dot where their patios were going to go, he didn't designate concrete or wood and they didn't know what they were going to do yet. So, you get your site plan approval prior to doing engineering approval at which time when they do the engineering approval and the building permit plans, is when they actually get to see the grades and the topography on the site. At the time they may have known they needed wood decks but in 2015 or 2016 when they received their site plan approval those would have been allowed to be built, they could have done it under the previous ordinance. They didn't think that they needed to worry about that at the time. Being the last building of course on the project they ended up having to come in and ask for this variance to complete it.

Board Member Painter asked so they couldn't have gone in as they were putting this building up and just push the dirt down to fill in.

Mr. Caradonna stated that the engineering department sets the grades and certain pitches, sewers and manholes. He wished it would be as easy just to move the dirt because that would be a less expensive option for him.

Board Member Painter stated that she was curious because she really didn't know.

Mr. Caradonna replied that was a great question.

Board Member Painter said that she thought that it was a nice site. She had never driven around in there before.

Mr. Caradonna stated thank you they are very proud of it; it has been a long time coming. This was a former gravel pit so the topography was very difficult to work with it had a 40-ft. fall from the back to the front and they fought every bit of that building the site.

Trustee Flood commented that he wanted to be perfectly clear their practical difficulty was the uniqueness of the topographical where this one building is situated and all that property through there.

Mr. Caradonna replied yes.

Trustee Flood added that all the buildings and patios they built these are the two that came up.

Mr. Caradonna replied yes; and because this building overlaps a side yard where if the building was just over a little more it would be a rear yard setback and they would be fine but it somehow ended up that where they are next to each other. If it was rear to rear, they would have been fine but because it is a rear to side, but they are conscience on that side of the building doesn't have really any windows other than second floor bedrooms, he doesn't believe it is impeding anybody even in that rental unit.

Trustee Flood asked this has no bearing on this case but just observing he noticed that they are going to put the final asphalt coat on when you get all the construction done?

Mr. Caradonna replied they just scheduled that today, the trades are all busy right now with the road construction but they are hoping to have final asphalt in the next couple weeks.

Board Member Painter questioned you have seven unit's in that building right?

Mr. Caradonna replied correct.

Board Member Painter stated when she looked, they had four concrete pads from the farthest going to the street there were four of them and then you are going to put two of these up there; that doesn't equal seven?

Mr. Caradonna answered that there is going to be another pad in there. They didn't want to pour that other pad right now as they were going to do construction of these two.

Board Member Painter inquired so they will be underneath the deck.

Mr. Caradonna responded that it will be closer because each one will have a little bit of grade they step, so closest to the road they will be about 5-ft. off the ground the second one will be about 3-ft. off the ground and then the patio will be closer; he was guessing on footing there but it will be staged up. The reason they left that 5<sup>th</sup> one out is because as they are building had they put it in there would be damage to it if they used their machine or drove on it with the wood, he just didn't want to have to replace that because in typical fashion these days everyone ruins the work of the guy before them and they spend more time redoing them.

Board Member Cook stated that he is just looking at it from a safety stand point. He is just trying to imagine this pad being there.

Mr. Caradonna stated that they are going to be wood decks so it is going to have a normal rail and meet all the building code requirements. It is actually the safest way because if they were to put a concrete pad in as they have done on some of the other ones, some of them have four or five steps with a rail, this one would need 10 steps. The 10 steps would take up the entire patio coming down and then they would just be on each of the steps for the patio. It is going to be normal wooden deck structure with a rail there are no stairs or anything to get out it is just for the use of that particular unit.

Mr. Caradonna added that in their packet they did submit a drawing from the architect of what the deck would look like.

Board Member Cook questioned where his GPS took him there was a corner building and it had like boulders and a patio build up is that the same location that they are talking about?

Mr. Caradonna replied that he thinks he was looking at the wrong building, this is towards the back of the site, this is actually across the street from the parking lot where the pool-house is. The ones with the boulders are towards the front of the site.

Board Member Cook asked so the address is not 4680 Georgia?

Mr. Caradonna responded that is the address that they used for the overall site plan not for the particular units in question.

Board Member Cook said that he is going to recuse himself because he has not seen it. He was looking at the address that was here and it didn't make any sense to him.

Trustee Flood stated that when he was out there coming down the grade it is about a 6-7-ft. angle and he went up to each door-well and the one door-well was up to his shoulder and he is 6-ft 6-inches tall. So, it is about a 6-ft. drop from that door-well down to the ground. They would probably put in 10-12 steps to get down there. As he came closest to the road it was up almost to his head, for that topographical. That was the only unit that he saw in there that had this situation.

Building Official Goodloe explained and also on that door if they have to put in that many steps, they have to have a 3-ft. landing on the top and then they would go down and then they would have to have a hand-rail. By the time the person would get on to their deck or patio there would not really be a patio left because the stairs would take up that much room, because they would have 3-ft. and then 10 stairs which is 10-ft. By the time you got stairs out he would back to get a variance.

Mr. Caradonna said they would need another variance for setbacks because they would be encroaching beyond the property.

Building Official Goodloe replied exactly.

Trustee Flood noted to him they would be asking for a greater variance.

Mr. Caradonna said yes it would be a more difficult variance.

Trustee Flood noted it would be getting closer to the other building.

Mr. Caradonna added that they would have to be 23-ft. out to make it useable patio, and then that patio would be in the middle of everyone for viewing.

Building Official Goodloe stated that they see these on some home where they don't realize they are upper level they have a door-wall but they have had a couple of cases.

Board Member Painter said when they plot the land, they figure it is not their problem, someone will buy it and then stick them with it.

Mr. Caradonna noted that they have learned their lesson for the future they now make sure that they check the grades and if it needs a structure that is grater than a flat patio, they show it from the initial site plan approval so they don't have to deal with this.

Building Official Goodloe commented they did amend the ordinance which he wasn't even worried about it at that time, correct?

Mr. Caradonna replied correct.

Moved by Trustee Flood, seconded by Board Member Painter, that in the matter of ZBA case #AB-2019-31, Baldwin Square Townhomes, 4680 Georgia Dr., 09-32-376-003, I would move that the petitioner's request for the variances from Zoning Ordinance #78: Article VII, Section 7.04(E)(3)(c); Zoned RM; 1) a 30-ft. variance from the required 50-ft. setback from rear of building to side of building to construct 2 decks on building 10 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 the case: the petitioner does show the following Practical Difficulty, due to the unique characteristics of the property and not related to general conditions in the area of the area of the property: being the topographical on this one certain building, these two decks are necessary to allow for the proper access between the two buildings, this is the best way to do it; the following are exceptional or extraordinary or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone: these being the townhouses that were approved by the Planning Commission and in this case here this one building needed this variance for the topographical situation they found after the grading; 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 findings of facts: these four units which will have two decks will enjoy the same as all the other units in that complex; the granting of the variance or modification will not be materially detrimental to the 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 of facts: as stated; further, based on the following findings of facts, the granting of this variance would not: impair an adequate supply of light and air to adjacent property; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety due to: this is the best way to do it again in order to keep the proper distance between the buildings so safety people can get in there; unreasonably diminish or impair established property values within the surrounding area; or, in any other respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

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

**Motion Carried 4-0 (Cook recused himself)**

## **6. PUBLIC COMMENTS**

None

## **7. COMMUNICATIONS**

None

## **8. COMMITTEE REPORTS**

Memo from Planning & Zoning Coordinator Harrison Dated July 15, 2019 regarding date certain options.

**9. MEMBERS' COMMENTS**

Board Member Koscierynski thanked the Township for the training of two days of discussion on the Open Meetings Act, and the importance of the findings of facts and to get it right.

Trustee Flood stated that the Joint Meeting in October the 6-ft. fences will be on the agenda.

Building Official Goodloe stated that the sizes of the barns, for people with 5, 6 or 7 acres and they are only able to build a 1,200-sq. ft. barn.

Board Member Koscierynski said that barns were discussed in their training there are issues with barns and what people want to do with them. A lot of the communities are having issues where they want to turn a barn into a wedding venue or into a place where people can rent it and have parties. The attorney took a lot of time to speak about it, it is an issue all over.

Board Member Painter noted that one of their fence cases tonight it was like a fort. Even for safety issue, a fire is the firetruck going to run into the fence, it is completely surrounded by fencing. One of the things she heard that was also discussed was the fact that they are granting too many variances and they need to look at them more because they are setting themselves up.

Board Member Koscierynski noted that this group apparently, they are not supposed to modify the requests at all. They did talk about that they had to be more careful granting these variances and that they are not supposed to compare to prior variances that were granted.

Board Member Cook stated that people come in and ask for forgiveness and not have a penalty. It is easy to call and ask, but even when they correct and grant someone a variance on something they already done, there is no teeth to it. When someone builds something gets a ticket and then come back, there should be some type of consequence for that.

Building Office Goodloe added if we asked the person to give a call when the fence is erected to make sure it is built where they said and how they said it was in the motion would be beneficial for them.

Board Member Cook said that do we do a fine and if it is not paid then does it become a lean on the property?

Building Official Goodloe said they do that; the ordinance states there are 3 fines, the first offence is \$60, second offence is \$90 and the third offence is \$500. Typically, they try to get compliance without trying to write those.

Board Member Flood stated that they had a case where they denied someone on a fence and that person came to the Township Board and addressed the Board and they Township attorney stated if they were dissatisfied with any ruling by the ZBA they go to Circuit Court.

**10. ADJOURNMENT**

Moved by Trustee Flood seconded by Board Member Cook to adjourn the meeting at 8:06p.m.  
**Motion Carried**

Respectfully submitted,



Debra Walton  
PC/ZBA Recording Secretary  
Charter Township of Orion



Zoning Board of Appeals Approval