

CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, MARCH 27, 2017 - 7:00PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, March 27, 2017 at 7:00pm at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman
Dan Durham, Vice Chairman
Don Walker, PC Rep to ZBA

Mike Flood, BOT Rep to ZBA
Lucy Koscierynski, Board Member

ZBA MEMBER ABSENT:

None

CONSULTANT PRESENT:

Dan Kelly, Township Attorney
Jim Stevens, Township Engineer
David Goodloe, Township Building Official

OTHERS PRESENT:

Jason Jackson	Eugene McNabb
Richard Koscierynski	Gene McNabb
George Kosiba	Sgt. D. Zehnpfenning
Sharon Kosiba	Lynn Harrison

1. OPEN MEETING

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

2. ROLL CALL

3. MINUTES

03-13-2017, Regular Meeting Minutes

Moved by Trustee Flood, seconded by Board Member Koscierynski, to approve the 03-13-2017 Regular Meeting minutes as presented. **Motion carried.**

5. AGENDA REVIEW AND APPROVAL

6. ZBA BUSINESS

A. 397 Brown Rd., lot 22 of Highland Farms (parcel number 09-32-400-030), lots 23 through 27 of Highland Farms (parcel number 09-32-400-067) excluding the south 275 feet of lots 18 and 19, of Highland Farms (parcel number 09-32-400-083), lot 17 of Highland Farms (parcel 09-32-400-084)

Chairman Yaros read the request as follows:

A request to close out Ordinance No. 99 permit AB-99-03 for sand and gravel mining, earth excavation, and /or filling and earth balancing.

Chairman Yaros explained this is a request to close the permit because the site was purchased and is now owned by Menard's Inc.. He noted too, that the Menard's site plan has received conditional approval from the Township Planning Commission.

He asked for questions from the Board; there were none at this time.

Chairman Yaros then asked Engineer Stevens to go over his review dated March 14, 2017.

Engineer Stevens concurred that Menard's did receive final site plan approval and are in the process of submitting final engineering plans. From there they obtain permits and go through the construction process. He noted that OHM has received and reviewed the final grading plan which is consistent with the approved site plan. He highlighted the final grading plan as it relates to the final grading plan that was on file as part of Pontiac Sand Gravel's submittals:

- The grading for the Menard's site will slope down from the north property line and the west property line at a 3:1 slope for a finished floor elevation of about 1026. On the previous submittal, that area on the site was about 1040 - about 14 ft. difference.
- He reiterated that the site plan was approved by the Planning Commission and that it did meet the requirements of the Township with regards to utilities, drainage, grading, etc..
- The plans are in the process of receiving final engineering approval and OHM has reviewed the final grading plans and found them to be in substantial compliance.
- Also as part of the construction process, the applicant is required to submit a Performance Guarantee Bond to ensure that site improvements and work will be done. Menard's has posted a 1.2 million dollar guarantee to ensure the completion of site improvements such as grading, paving, etc..

Chairman Yaros said he noticed on the west side of the property there is a retention pond – he asked if that was also 3:1? Engineer Stevens responded, yes and that the pond portion will be fenced off per Township standards. Chairman Yaros also clarified that the two outlots in the front will be at about 1030. Engineer Stevens indicated, yes.

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

Eugene McNabb, 2981 Judah Road, commented that Bob Warren and Dan, in their permit applications over the years, have wanted to lower the pipeline there and take the material out. He noted that if that is ever done, Menard's would have to get permission to flatten their land out there and would then gain 200 ft.. There is a hill/mound there now which will probably be there from now on - removing it would be an advantage to Menard's, the Township and to whoever removes it. Chairman Yaros commented that was a good point but should have been addressed with the Planning Commission. Mr. McNabb replied that it has already gone to the Planning Commission, gotten approval and that he was never notified. It was his opinion it was done improperly. Mr. McNabb said he had another problem with the 3:1 grade on the west south corner of his property. He doesn't know how they will make that grade at 3:1; that they had crossed the property line and removed dirt from his property. He commented that fact doesn't appear on the recent drawing but does show on the drawing that Mr. Kosiba turned in. Mr. McNabb said this Board is an independent body of the Township and that Attorney Kelly and the Township have no more authority over it than he does. He added that the ZBA cannot issue, cancel or enforce permits; they can only rule on ordinances. Also the ZBA cannot settle an ordinance issue unless the owner of the property requests it - Menard's should be trying to get a variance on that grade. He believed that the "book work" on this was not done very well. He commented that he does not have a problem with Menard's but the only reason it is moving forward is because the Township wants it to – "that it was a done deal and he was wasting his time being here". The ZBA is independent from the Township and is supposed to look at everything from both sides however it doesn't because they've been appointed by the Township and the Township pays their wages.

George Kosiba asked if this will release his money? Chairman Yaros replied that if the request is granted, yes.

Gene McNabb, Orion Township, asked about the Planning Commission and if people are supposed to be notified when they hold a public hearing - when they talk about site plans or something similar? If so, why weren't they notified? Attorney Kelly answered that it was a conceptual approval and there will be a site plan process that will follow out in the future. Mr. McNabb was concerned that if the mining permit is removed and something happens to the site plan, what will happen to the property then? Attorney Kelly responded that the site plan that was submitted has been conceptually approved as well as the financial guarantee. From the Township's perspective, they require the financial guarantee in order to release back Mr. Kosiba's guarantee. Also, the financial guarantee from Menard's will ensure that the property will be put back to the level that it needs to be at. The Township has received that money from Menard's and is why the ZBA is being asked that the 99 Permit be released. It was noted that the financial guarantee from Menard's was much greater than what the Township is holding of Mr. Kosiba's. Mr. McNabb then said as he understands it, if for some reason Menard's doesn't go through with their plans, the site has to be fixed per what ordinance – Ordinance 99? Attorney Kelly said it would be to whatever is on the plans that Menard's submitted - they have to bring it back to that level and the Township can use the financial guarantee to do that. Mr. McNabb then asked what the grade around the pond will be? Engineer Stevens replied the slope will be 3:1 and that a fence will be done to meet Township Ordinance. It was Mr. McNabb's opinion that because that grade will be so steep, it will be a safety issue. Someone could roll down that hill and get hurt whether there is water at the bottom or not. Mr. McNabb noted he looked at the paperwork for this case this morning at the Township and asked what the hardship or practical difficulty was for getting this permit removed from the property? Chairman Yaros replied that it is going to be taken over by Menard's with a greater guarantee. Mr. McNabb said that wasn't necessarily true, currently the property is governed by Ordinance 99 where the guarantee is "just money in the bank" that could be eaten up Township attorneys and the Township would end up with a big mess there. Mr. McNabb said he did not understand why they need a 3:1 slope, they could bring the building further forward on the property and adhere to the 4:1 slope. To have a 3:1 slope at the back of his father's property will cause his father an undue hardship down the road when he tries to sell it. It was Mr. McNabb's belief that all this was for a Baldwin Road and Brown Road tax abatement of which Menard's and Baldwin Square are the biggest contributors. He said although he knows where this vote is going, there are a lot of things that need to be considered and again, they were not notified of any Planning Commission meeting and that was wrong.

Engineer Stevens commented he pulled up the minutes from the May 18, 2016 Planning Commission meeting where Menard's site plan received contingent approval and it was noted that Mr. McNabb was in attendance and made comment.

Moved by Trustee Flood, seconded by Chairman Yaros, that based on the findings of fact of having reviewed the report of the Township engineer dated March 14, 2017, having taken into consideration the purpose and enforceability of Township Ordinance 99, having recognized that the permitted property has been sold and purchased for a development for which there has been Township approval of a conditional site plan and payment of the requested financial guarantees, having received the engineers determination that the site plan and grading plan are in substantial compliance with Township Ordinances and engineering standards; to **close** the Pontiac Sand and Gravel Ordinance 99 Permit and to authorize the refund/release of all financial guarantees being held by the Township.

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

Motion Carried 5-0

B. AB-2017-06, Tim Lee, USA Fireworks/Lake Orion Plaza LLC, 1025 S. Lapeer Rd. Sidwell # 09-14-226-001 and # 09-14-226-008

Chairman Yaros read the petitioner's request as follows:

Per Zoning Ordinance No. 78, Article XXX, Section 30.11, F, 1, b: the petitioner is requesting a Temporary Use Permit for Open Air Business, to sell consumer fireworks from a tent June 16, 2017 – July 7, 2017.

Jason Jackson represented the applicant, USA Fireworks. He said he has been before the ZBA the past couple of years for the same request.

Chairman Yaros noted that he understands there hasn't been any problems so far with this company.

Board Member Koscierzynski concurred and read the memo from Fire Marshall Williams dated February 16, 2017 whereas he had reviewed the applicant's documentation and as long as they are within compliance with local ordinances and Building and Fire codes, he had no further requirements. She also recalled that she didn't hear of any complaints from last year and they complied with everything the ZBA asked for.

Chairman Yaros asked if there was a letter giving him permission from the owners? It was indicated there was one in the packet. He also clarified that the Township has their current liability insurance. Mr. Jackson replied that the insurance expires in May and they will send the Township a new one when it is renewed.

Chairman Yaros said it appears they are submitting the same plans as they used last year and asked how it worked out for them? Mr. Jackson said it went well and that being able to have storage onsite saved them across the board; not only in Michigan but with their other stores as well.

No one from the audience had any questions or comments.

Trustee Flood said that he found everything to be in compliance. He informed Mr. Jackson that he will need to have everything like before – wooden barricades, a POD for storage and that there will be no one staying overnight. Trustee Flood also clarified the date and hours of operation as: June 16, 2017 through July 7, 2017 from 9am to 10pm.

Trustee Flood also made it clear that no one from the public can enter the tent until the fire department and code enforcement has finalized their inspections. Mr. Jackson said, yes and that they have initiated that as a company policy. Trustee Flood added that the Township will need a key contact person with a phone number. Mr. Jackson said that information is in the packet and that they will let the Township know once they hire a regional person.

Moved by Board Member Koscierzynski, seconded by Trustee Flood that in the matter of ZBA case #AB-2017-06, Tim Lee, USA Fireworks/Lake Orion Plaza LLC, 1025 S. Lapeer Rd., Sidwell #09-14-226-001 and #09-14-226-008 that the petitioner's request for a Temporary Use permit from Zoning Ordinance No. 78, Article XXX, Section 30.11, F, 1, b: the petitioner is requesting a Temporary Use Permit for an Open Air Business to sell consumer fireworks from a tent June 16, 2017 – July 7, 2017 between the hours of 9:00am and 10:00pm be **granted** because the petitioner would be using the property for a permitted purpose and the petitioner demonstrated that they will comply with the required conditions for an Open Air Business. The conditions of approval are as follows: they maintain the days and hours of operation noted above; the petitioner provides the name(s) and number(s) of the regional operator(s) once hired; special criteria required will be a storage unit, wooden barricades and current insurances; and the petitioner must supply a \$1,000.00 cash bond for re-inspection.

Board Member Koscierzynski amended the motion, Trustee Flood re-supported to include that the petitioner will provide updated insurance when the current one expires, that their State licensing for fireworks will be kept up to date and that no one from the public can be inside the premises until the proper inspections have been completed.

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

C. AB-2017-07, Pulte Homes of Michigan, LLC, 1192 Longspur Blvd., Sidwell #09-25-401-042

Chairman Yaros read the petitioners' request as follows:

The petitioner is requesting a 0.8' variance from the required 30' side yard setback (west) allow a home to be built 29.2' from the side property line (west).

Joe Skore, Pulte Homes of Michigan, 100 Bloomfield Hills Pkwy., Bloomfield, MI, presented. Mr. Skore explained that the home in question was staked accurately and that they verified that. Somewhere between the time it was staked and the footings were poured, the stakes were moved or compromised. Unfortunately the trade made a decision to pour the footings without the stakes in place. As soon as they (Pulte) realized the mistake, they came into the Township and reported it and immediately ceased work.

Chairman Yaros commented that after being out there today and seeing all the activity, was surprised this doesn't happen every day. Mr. Skore responded that actually he doesn't recall this ever happening to them.

There were no comments from the public.

Moved by Vice Chairman Durham, seconded by Board Member Walker, that in the case of AB-2017-07, Pulte Homes of Michigan, LLC, 1192 Longspur Blvd., Sidwell #09-25-401-042, the petitioner is requesting a 0.8' variance from the required 30' side yard setback (west) to allow a home to be built 29.2' from the side property line (west), that the petitioner's request be **granted**, it is so minor that it had to have happened accidentally, that they brought the error to the attention of the Township in good faith and that it did not have to be discovered by an inspector, the petitioner's request be granted because of the above reasons and practical difficulties now exist because the forms have already been poured; compliance with the strict letter of the ordinance would prevent the petitioner from using the property for a permitted purpose; granting the variance request at this time would do substantial justice and no harm to any other property owners in the subdivision because there is not much going on yet; petitioner's plight is due to a mistake; and the problem has not been self-created.

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

7. PUBLIC COMMENTS

Eugene McNabb, 2981 Judah Road, concurred that he did attend the Planning Commission meeting on May 18, 2016. He noted that at that meeting, they talked very little about the grade and it was said a 3:1 grade "would not hold water" – if material was planted on that bank, mechanical equipment would not be able to get in there to maintain it. He further commented that the grade wasn't listed at all at that meeting and that he was not notified of the meeting in March of this year.

Gene McNabb, Orion Township, in Ordinance 99, Section 10 are the requirements for filling an operation. He noted there were amendments made to that procedure and pictures and other documents were supposed to be kept of the dirt and where it came from. He said he did make a FOIA request for those pictures and log that pertained to Dan's Excavation and there were no pictures

and the only documents that he received were some inspection forms he didn't understand. He then met with Building Inspector Goodloe who told him they didn't have any pictures. Mr. McNabb was concerned about that because they were hauling all last summer – they should be shut down and the dirt inspected, removed or core samples taken. It was his opinion that they (Dan's) never have nor will they follow the rules. After speaking again to Building Inspector Goodloe, he was told they are taking pictures. Something needs to be done to that operation – the Township sets new stiffer rules and they aren't followed. He commented that a week before the walk through, his dad saw someone there fixing a fence so he knew the inspections were coming - that fence had been down for months. He is not asking for anything that is over and above what is in the ordinance.

8. COMMUNICATIONS

None

9. COMMITTEE REPORTS

None

10. MEMBERS' COMMENTS

Trustee Flood noted that the Township Board has been working on two ordinances. One was the Sign Ordinance and he asked that the ZBA members get a copy of it. The other ordinance deals with solid waste and recyclables.

11. ADJOURNMENT

Moved by Trustee Flood, seconded by Board Member Kosciuszynski to adjourn the meeting at 7:37pm. **Motion carried unanimously.**

Respectfully submitted,



Lynn Harrison
PC/ZBA Recording Secretary
Charter Township of Orion

April 10, 2017

Zoning Board of Appeals Approval