

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
February 9, 2023**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, February 9, 2023 at the Township Administration Building located at 1150 S. Canton Center Road, Canton Township, Michigan 48188.

Meeting began at 7:00 p.m.

Mark Quimby led the Pledge of Allegiance to the Flag.

ROLL CALL:

Members Present: Greg Demopoulos, Greg Greene, Clarence Lee, Mark Quimby, Tareq Rahman

Members Absent: Alan Okon, Aaron Tassell (prior notice given for both)

Staff Present: Patrick Sloan, Community Planner

ACCEPTANCE OF AGENDA FOR FEBRUARY 9, 2023

Motion by Greg Demopoulos, supported by Greg Greene to accept the agenda.

Ayes: All (5-0)

Nays: None

APPROVAL OF MINUTES FOR THE JANUARY 12, 2023 MEETING

Motion by Tareq Rahman, supported by Greg Greene to approve the minutes.

Ayes: All (5 - 0)

Nays: None

GENERAL CALENDAR

1. Application 056-ZBA-7634. Applicants, Kelsey and John Knie, for property located at 200 Shana Dr., which is located on the north side of Cherry Hill Rd. between N. Lilley Rd. and N. Haggerty Rd. (Parcel ID 056-03-0035-000), Zoning is R-5 Single Family Residential. Requesting three (3) variances from the Code of Ordinances: Section 78-129(h), fence in a front yard setback; Section 78-131(4)(b), corner lot fence in a front yard setback area; and Section 2.09(A)(4) of the Zoning Ordinance, fence in the unobstructed triangular sight area.

Patrick Sloan, Community Planner, summarized the Staff Report dated for meeting on February 9, 2023. He showed a Google Street View image of the property and described the 25' clear vision zone at the road intersection. This part of the Zoning Ordinance is a public safety issue and something the Planning Division would rarely recommend approval for. All changes to fences must be in compliance with the ordinances. According to the ordinances, fences cannot be placed in front yard setbacks. Staff recommends maintaining the 25 ft. clear vision triangle, since it is a safety standard. They also recommend approval of the variance along the portion of Cherry Hill Road, with exception of the area in the clear vision triangle. Staff does not recommend approval of the 6-foot-high fence along Robyn because it would create a fortress-like effect as one enters the subdivision. Mr. Sloan stated that if the applicant wished to revise the plans and propose something similar to what they have now, but more decorative and aesthetically pleasing, that's something they would look at in lieu of a 6-foot high solid fence that they are proposing. If they wish to do that, Staff would recommend tabling the pending request.

Greg Greene asked Mr. Sloan to confirm that this house has 3 front yards, and that Planning Staff only

recommends approval of the fence along Cherry Hill Rd.

Patrick Sloan said that, yes, there are three front yards, and staff recommends approval of the variance on the Cherry Hill Rd. side up to the 25-foot clear vision zone. He explained that the Fence Ordinance exists separate from the Zoning Ordinance. The Fence Ordinance states that any changes have to comply with the ordinance and that applies to non-conforming fences.

Greg Greene said that the cyclone fence can come down, but it cannot be replaced as is.

Patrick Sloan said that is correct.

Mark Quimby clarified that they could replace it but it would have to be 25 feet from the property line. He asked Mr. Sloan if the Planning Commission has discussed allowing a four-foot in the setback on the side street. Patrick Sloan said that will be one of the next things that the Planning Commission looks at, but there are not yet any recommendations from the Planning Commission on that portion of the ordinance.

Clarence Lee asked if what Patrick was pointing out on the illustration was about 25 feet.

Mark Quimby said that the house itself has about a 25-foot setback.

Clarence Lee notes that the reason for this 25-foot clear vision triangular area is for safety. It only takes one safety-related event to cause us to reconsider any variance within this triangular area. You can't have blind spots at corners.

Greg Greene asked if they move the fence to the 25-foot setback, would they still need the clear vision triangle.

Patrick Sloan said if they move it to the 25-foot front yard setback line, that will meet the front yard setback requirements and provide for the required clearance.

Tareq Rahman asked if the fence that they have now was done before the ordinance was in place, or if the ordinance has changed.

Sloan was not sure when this fence was installed.

John Knie just purchased this home at 200 Shana this past summer. He does not know when the fence was built. He said that his fence sits over 30 feet from Cherry Hill Rd. His fence contractor said that with a 10-foot corner cut back, they would have enough sight line. He said that the overgrowth behind the fence obstructs the sight line anyway. He would be willing to clear it in order to get a 10-foot setback. The reason they bought this house was for the yard. They have 2 dogs, and a young child. Having this yard was their dream. By moving the fence to line up with the house, he will be losing 2,000 sq. ft. of his yard. He said that they would be willing to change the proposed 6-foot fence along Robyn to a matching 4-foot decorative vinyl fence if it could stay in the same location as the current fence. He said they would also be willing to keep the fence 4 foot in the corner then angle up to a 6-foot to increase the sight line.

Mark Quimby asked Patrick Sloan to clarify how high something can be in the clear vision zone.

Patrick Sloan said that the clearance is the area over 30" in height.

Mark Quimby said that he would be supportive of keeping the fence where it is along Robyn as he doesn't want to take away people's yard. But he also understands that the 6-foot privacy fence can fortress like. He asked what Planning staff meant by requesting a 4-foot fence to be semi-transparent.

Patrick Sloan said that they are recommending this fence to be 4-feet tall, decorative, and 50% transparent, something like a traditional picket fence.

Mark Quimby asked if that would keep an animal in.

Patrick Sloan said that there may be some possible options using thinner wrought iron, or other possible decorative chain link.

John Knie asked if he could replace everything with 4-foot chain link fence, except within the triangular clear vision area, then plant 6-foot bushes inside and still comply.

Patrick Sloan said that there is still the issue of the fence in the front yard setback along Robyn.

Mark Quimby said that as soon as you pull that fence down, you must comply with the current ordinances.

John Knie said that his wife would really like the 6-foot fence for privacy and security, but John said he would be willing to put in the 4-foot fence along the Robyn side.

Greg Greene said that if you get approval to put the 4-foot fence on the property line, you would still need to keep the 25-foot triangular visibility setback clear.

Mark Quimby asked what size the fence can be in the clear vision zone. Sloan replied with the standards of the Zoning Ordinance. Sloan noted that many people plant large bushes along the sidewalk for additional screening where fences are not permitted. As long as the landscaping is maintained, the ordinance doesn't prohibit vegetation in this manner.

Greg Greene said that if they rule on something today, it could be in non-compliance or compliance after the Planning Commission votes on a new Fence Ordinance. He asked if this is something we should table until the Planning Commission votes.

Patrick Sloan feels that the application should be acted upon without waiting for amendments to the Fence Ordinance, especially if the applicant is willing to make modifications to the plan. There is currently no timetable on when amendments to the Fence Ordinance may be adopted. Today, the Fence Ordinance does not allow reconstruction of any non-conforming fences. He is not sure if that will change with any potential amendments to the Fence Ordinance.

Clarence Lee wanted verification of where the fence would meet on Robyn with the 25-foot clear vision triangle.

Mark Quimby said that the variance request is to keep the fence along the sidewalk. That would need to be decided upon tonight based on the current proposal.

John Knie asked how he has three front yards.

Mark Quimby said that is because the Zoning Ordinance states any yard that abuts a road is considered a front yard. He explained that the applicant will have the choice to table this variance application request and come back with different plans. If the ZBA votes tonight, a decision will be made. Quimby also stated that he is still struggling with how to address the transparency of the Robyn Rd. fence.

Patrick Sloan would rather see a 4-foot transparent fence instead of a 4-foot solid decorative fence at the entrance of the subdivision for visibility and aesthetic purposes.

Greg Greene asked if chain link fences are in non-compliance with the ordinance.

Patrick Sloan does not see anything in the fence ordinance that specifically calls out chain link as a prohibited material.

Motion by Greg Demopoulos supported by Greg Greene, to open the Public Hearing at 7:40 pm.

Ayes: All (5-0)

Nays: None

Steven Garrett of 3301 Roosevelt Street in Dearborn is a local contractor that installs fences. He understands why the limitations on the height of the fence at the corner is important. He discussed the different types of transparency fences. He suggested maybe putting in a 4-foot high decorative fence a few feet off the sidewalk that will allow them to plant some landscape shrubs between the sidewalk and fence which will soften the fence.

Marian Nicholson resides at 328 Shana Drive. She has lived there for 30 years, drives past this fence every day. She believes that the chain link fence has been there for at least 30 years. She would have no problems with a 4-foot fence along Robyn and a 6-foot along Cherry Hill.

Motion by Clarence Lee, supported by Greg Greene, to close the public hearing at 7:47 pm

Ayes: All (5-0)

Nays: None

Greg Demopoulos would agree with Planning Division's recommendation regarding all 3 requested variances, which would be consistent with prior decisions.

Greg Greene said that can see both sides. He can understand the petitioner wanting to claim his yard space and he also understands the Township's reasoning for having the 25-foot setback. He does not like the three front yards and feels that that is also something that the Planning Commission should take a look at. He doesn't see the ZBA solving anything tonight and feels that the applicant should wait until the new Fence Ordinance is approved by the Planning Commission.

Mark Quimby wanted to clarify that if a variance is approved tonight, will that be invalidated if and when the Planning Commission and Township Board approve the new Fence Ordinances?

Patrick Sloan said an amendment to the Fence Ordinance would not make the fence nonconforming if it has prior variance approval for the item(s) that would otherwise be nonconforming based on the Fence Ordinance.

Mark Quimby is fine with the fence on Cherry Hill Rd.. In regard to the 25-foot clear vision area, he doesn't believe that the ZBA will grant that variance. As far as the fence and where it is now on Robyn, he would probably support keeping the fence where it is now if it is 4-foot and 50% transparent.

Tareq Rahman thinks that withdrawing or amending the application is probably the better option choice. This fence will be up for quite a few years, if approved.

John Knie requested to defer the application at this time in order to submit revised plans for future consideration by the ZBA.

Motion by Greg Demopoulos to table this variance request pending receipt of revised plans per the applicant's request.

Supported by Greg Greene.

Ayes: All (5-0)

Nays: None

Variance is tabled to a later date upon receipt of revised plans.

2. Application 069-ZBA-7646. Applicant, Mohamed Fawaz, for property located at 50465 Breckenridge, which is located on the south side of Breckenridge Rd. between Napa Dr. and Wolfcreek Dr. (Parcel ID 069-03-0201-000), Zoning R-3 – Single Family Residential. Requesting a variance from Section 2.03 (D)(3) – Detached accessory structure located in front of the building line of the principal structure, and Section 2.09 (A)(3)(b) – Roofed patio located within the minimum rear yard 25' setback. A variance of 18' into the rear yard setback on the south side is proposed – a setback of 7'.

Tareq Rahman disclosed that he lives in this subdivision, but he does not know the applicant and is not within the public notice mailing area. He does not have a conflict of interest in this matter and his residency in the same development does not affect his opinion in any way.

Mark Quimby doesn't see that as a conflict. He then added that a letter and photos of proposed pavilion and other structures at nearby homes were received that day from the applicants.

Patrick Sloan, Community Planner, summarized the Staff Report dated for meeting on February 9, 2023. The applicant is proposing to construct detached accessory structure at the rear of the subject property, which extends in front of the building line of the principal structure. The other variance is to construct a roof patio in the minimum rear yard 25-foot setback. There is a setback of 7 feet proposed for that roofed structure which is a variance of 18 feet. He showed an aerial image of the property and explained that this property doesn't have any adjacent neighbors to the west and south who are impacted. The site has common open space to the west and south. This lot is unique because it narrows as it goes from north-to-south towards the back, and it has two front yards. There is currently a patio that is 7 feet from the rear lot line to the south. There is a minimum required setback of 25 feet to the rear lot line. The requested variance is 18 feet. Mr. Sloan stated that Staff recommends approval based on the narrowness and shallowness of the lot. The other variance request is to construct a detached accessory structure located in front of the building line on the principal structure. The recommendation is for approval for variances from Section 2.03(D)(3) and Section 2.09(A)(3)(b) of the Zoning Ordinance to construct a detached accessory structure located in front of the building line of the principal structure on the west side of the lot and seven (7) ft. from the rear lot line on the south side of

the lot as illustrated on the plans based on the required standards of Section 27.05(D) of the Zoning Ordinance as listed in the report.

Mark Quimby noted that there is already a patio in this area. He asked if this was allowed.

Patrick Sloan said that patios have been approved in front yard areas.

Greg Greene asked about the corner of the house on the west side only being 16' 7/8" from the side of the house. He asked if that was a variance.

Patrick said that there is a minimum required side yard setback of only 5 feet.

Greg Greene asked if anyone can ever build in the wooded common space to the west. He also asked if that was part of the 25% open space for the entire subdivision.

Patrick said that is correct.

Greg Greene said that a lot of these new subdivisions, the proportion of the building to available property is large due to larger buildings on smaller lots. This doesn't leave a lot of outbuilding space. He said that this is like a pole barn. It is large, being 24' x 24'. He does not believe that many of the homes in this area could put this in their yard. He is inclined to be against this variance request application. He does not feel there is any overall benefit to the neighborhood.

Steven Garrett of 3301 Roosevelt Street in Dearborn is here to represent the owners of 50465 Breckenridge. He stated that he has the HOA approval letter as well as the Building Division approval of the patio plans with footings that are under the patio, anticipating the open pavilion with no walls. There are other neighbors in the same subdivision that have put pavilions up. He said that this structure will not be in the 25-foot front yard setback area. He noted that the Zoning Ordinance doesn't allow the detached structure to be within 10 feet of the house.

Clarence Lee confirmed that the HOA has approved this. He then asked if the applicant knows if the other neighbors who have pavilions needed to get a variance.

Steven Garrett does not know that answer.

Greg Greene asked if there was any thought to just making this building smaller.

Steven Garrett said that since they had the approval of HOA and the patio was approved with footings, they envisioned that the proposed structure was going to be allowed.

Greg Greene is glad that they got the HOA approval, but thinks they should gotten the variances prior to pouring the concrete.

Steven Garrett said that even though the structure wasn't listed on the permit to be constructed, it was on the schematic that was submitted to the ZBA. During the design, the plan accounted for the setbacks off the road sides. This is a structure without walls. If it was a square lot, there wouldn't even be this issue.

Mark Quimby asked if the structure could have been built closer to the western woods. He said that because they put in the footings and now asking approval for the structure is a self-created condition.

Greg Demopoulos said he understands why the applicants built the structure the way they did. They put in a patio and didn't want to have to tear it out later to put the footings in afterward.

Mark Quimby said that this is a very unique property.

Tareq Rahman asked if there is any limit on the size that the patio can be.

Patrick Sloan said that the size limits only apply to enclosed or roofed structures, provided the setbacks and other standards of the Zoning Ordinance are met.

Greg Greene asked if the patio has to comply with the rear yard setback.

Steven Garrett believes that only applies to structures.

Motion by Greg Demopoulos supported by Clarence Lee, to open the Public Hearing at 8:26 pm

Ayes: All (5-0)

Nays: None

No one in audience wished to speak on this variance.

Motion by Clarence Lee, supported by Greg Demopoulos, to close the public hearing at 8:26pm

Ayes: All (5-0)

Nays: None

Mark Quimby feels that this is a very unique lot. He thinks that the Planning staff recommendations are sound. He does not feel the variances will cause any issues with the overall aesthetic of the neighborhood. He is in favor of it.

Clarence Lee agreed.

Tareq Rahman disagreed. He feels that the owner built the patio with the intention of building the structure on top and they did not get the proper approvals at that time.

Mark Quimby feels that the order in which they chose to do this not relevant in the matter in front of them tonight in terms of what they're voting on.

Greg Greene said that this will affect the entire neighborhood.

Greg Demopoulos would agree with the Planning Division's recommendations.

Motion by Clarence Lee to approve the request for variances from Section 2.03(D)(3) and Section 2.09(A)(3)(b) of the Zoning Ordinance to construct a detached accessory structure located in front of the building line of the principal structure on the east side of the lot and seven (7) ft. from the rear lot line on the south side of the lot as illustrated on the plans based on the findings of fact as listed in the staff report, which are as follows:

1. **Compliance with the strict letter of the Zoning Ordinance creates a practical difficulty, unreasonably prevent the use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome due to the depth, shape, and narrowness of**

the lot. The lot narrows from north-to-south, making the rear yard in the south part of the lot the narrowest point of the lot. Therefore, the area in which conforming structures may be located is limited.

2. **The variances would give substantial relief to the owner of the property involved and other owners with limited lot area in the rear due to narrowness, shallowness, and shape of the lot.**
3. **The variance will not undermine the spirit of the Zoning Ordinance and is not contrary to the developed character of Canton's residential neighborhoods.**
4. **There are exceptional or extraordinary circumstances or conditions that justify the variances. Due to the corner lot and minimal rear yard, the allowable area for the homeowner/applicant to construct a detached accessory structure in accordance with all requirements of the Zoning Ordinance is very limited.**
5. **The conditions resulting in variance requests is not self-created as the request is based on the configuration of the lot located on a corner and with reduced size of the rear yard.**
6. **The variances are necessary for the preservation and enjoyment of a substantial property rights possessed by other property owners in the same zoning district and will not alter the essential character of the neighborhood. The applicant would not be able to use the full property as other property owners in the neighborhood due to the shape, narrowness, and shallowness of the lot. There is about 510 feet of association-owned woodland between the subject lot and the closest lot on the south side of Breckenridge Dr, and there is about 460 feet of association-owned woodland between the subject lot and the closest lot on the west side of Napa Dr. Therefore, this corner lot is relatively isolated and there are no impacts on adjacent neighbors.**
7. **The variances will not be materially detrimental to the public welfare and injurious to other nearby properties. Approval would not provide the applicant a benefit not available to similar owners due to the uniqueness of the subject lot and the request.**
8. **Granting the variances will not impair the public welfare and comfort.**
9. **Granting the variances will not promote disorderly development in the zoning district and throughout the township. Granting the variances for the subject property will not promote disordered development.**
10. **The variances will not have an undesirable impact on surrounding properties and will relate harmoniously in a physical sense with adjacent land uses.**
11. **Granting variances will not encourage property owners throughout the township to seek variances to construct detached accessory structures in front of the building line of the principal structure or within the required setback.**

Supported by Greg Demopoulos.

Ayes: Demopoulos, Quimby, Lee

Nays: Greene, Rahman

Variance is approved (3-2).

3. Review of Proposed Bylaws

Patrick Sloan summarized the Staff Report, dated February 6, 2023. The two major changes that have been discussed were to revise the statement that a member appointed to fill a partial term will serve the duration of that three-year term. The other change was that the Bylaws were revised to state that continuing education courses or webinars may be provided by local and regional agencies, private consultants, Township staff and other qualified trainers as determined by the Community Planner.

Patrick Sloan clarified that unexcused absences are when someone doesn't show up to a meeting without prior notification or doesn't give enough notice to contact an alternate.

Patrick Sloan responded to discussion about reappointment stating that if someone resigned, the Township Board could appoint someone for the remainder of that term then reappoint that same person for the three-year term.

Mark Quimby asked if their initial meeting about ZBA protocols would count as training.

Patrick Sloan said that it does not count as training, but more like an orientation.

Mark Quimby asked what the role of the Secretary is and whether one be appointed at the next meeting.

Patrick Sloan said that Staff performs most of these duties, but he recommends having a Secretary appointed so there is someone official on the ZBA that can do these duties if Staff is unable.

Greg Greene asked whether a ZBA member must live in Canton.

Patrick Sloan said that the Bylaws won't necessarily state that. It is noted in the Michigan Zoning Enabling Act that ZBA members must be registered electors of the community.

Motion by Greg Greene to approve the stated bylaws as presented.

Supported by Tareq Rahman.

Ayes: All (5-0)

Nays: None

Bylaws have passed

Motion by Greg Greene to adjourn meeting. Supported by Clarence Lee.

Ayes: All, (5-0)

Nays: None

Meeting adjourned at 8:46 pm.

Alison Eisenbeis, Recording Secretary