

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
June 10, 2021**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, June 10, 2021 via electronic remote access.

Vice-Chairperson, Vicki Welty called the meeting to order at 7:08 pm.

ROLL CALL:

Members Present: Vicki Welty - Canton Township, MI; Mi; John Badeen - Canton Township, MI; Gregory Demopoulos - Plymouth, MI

Staff Present: Patrick Sloan, Community Planner

APPROVAL OF MINUTES FOR THE MAY 13, 2021 MEETING

Motion by Greg Demopoulos, supported by John Badeen to accept the minutes as presented.

Ayes: All on roll call vote.

ACCEPTANCE OF AGENDA FOR June 10, 2021

Motion by Greg Demopoulos, supported by John Badeen to accept the agenda as presented.

Ayes: All on roll call vote.

Vice-Chairperson, Vicki Welty, explained that there are 3 Zoning Board of Appeal's members in attendance, which is a majority. All three Board Members will have to vote in favor of an item in order to pass a variance. She stated that at any time if an applicant feels that they would like to wait for a future meeting until all Board Members are present, they will have the opportunity to do so.

AGENDA ITEMS

- 1. Applicants, Michael and Shannon Lowe, homeowners for property located on the west side of Weathersfield Way, between Warren Road and Hanford Road. Property address is 6699 Weathersfield Way, Zoning R-4. Appealing Section 78.131(4)(b) of the Code of Ordinances, which states corner lots fences shall not extend into the required front yard areas. Parcel ID 034-01-0927-000 (Building)**

Shannon Lowe stated that when she moved into their home in 2013 she had put up a shorter picket fence. Last year she decided to replace that fence with a new fence, that was placed at a similar distance. She did not know that a permit was required. She stated that she used several other properties for reference as to where she could place the fence. She provided a list of 18 properties in their subdivision that have similar placement with the fence that comes right to the sidewalk or less than the 25 feet. She received an ordinance notice, and applied for a permit.

Some time passed during COVID and she did not hear anything until she received a 2nd notice for the violation. She talked to the Building Official, Mr. Creamer, who explained to her where the fence needs to be placed. She stated that there are trees blocking where Mr. Creamer said she could put the fence. It would only leave her approximately 5 ft. on that side yard if she ran the fence off the back of the house where the ordinance states it needs to go. She then decided to file for an appeal to leave the fence where it is at.

Patrick Sloan, Community Planner, read from Mr. Creamer's report. The Ordinance Division noticed a new fence that was installed in a front yard setback and started enforcement action. The fence permit was rejected due to the location of the fence in the front yard setback and front easement. Many of the fences that were noted by the homeowner in the subdivision do not have the same circumstances as the subject property. Some were approved many years ago, possibly decades prior. Some of the other fences noted did not have permits pulled at all. The subdivision regulations also do not allow for a fence in that location. There was no Homeowner's Association approval letter submitted with the application. However, Canton Township received a letter from the Homeowner's Association just prior to this meeting, letter dated June 2, 2021, in which the HOA recommends denial of this appeal. The letter cites section 9 of their Covenants and Restrictions and their grounds for not supporting the variance.

Michael Lowe states that they were unaware that in was in the HOA Bylaws.

Shannon Lowe feels that they are being singled out as they have seen similar fences go up after theirs.

Ms. Welty asked if Township offices were closed during COVID.

Mr. Sloan responded that the Building Department was operating and processing permits throughout COVID but there may have been some delays due to permit volume and staffing. The Building Department did receive their application and the application was rejected.

Mrs. Lowe stated that she never received anything saying the permit was rejected, the only communication she received were emails and maps from Mr. Creamer suggesting what they should do. She questioned if his emails saying the fence is not allowed is considered a rejection. She did not receive a formal rejection.

Greg Demopoulos noted that Mr. Creamer's report stated that the homeowner was notified multiple times that the fence did not conform and they would need a variance for it to be allowed where it was installed. He doesn't believe that it matters whether it is a formal or verbal notice, it was still communicated and that's why they're here today.

Ms. Welty questioned if the Homeowner's Association's covenants supersede the Zoning Board of Appeals.

Mr. Demopoulos said the HOA has the ability to get an injunction in circuit court. It would be a civil route. So, he said, "yes", even if the Zoning Board of Appeals would approve it, then the homeowners would have to convince the HOA that they're allowed to have it.

Mrs. Lowe does not see why the HOA doesn't have a problem with the other 18 properties in her subdivision with similar fences. She said that she feels the fence is not in a front yard, but in her side yard setback.

Mr. Demopoulos stated that the Zoning Ordinance treats corner lots as having two front yards.

Ms. Welty then asked if their existing trees are considered a practical difficulty.

Mr. Sloan does not believe that it is. It is considered vegetation and it is self-created. There are remedies. The fence could go around the trees to be in a conforming area. Trees can be transplanted.

Mr. Lowe said that the trees are about 20 ft. tall and can not be removed or transplanted easily. Also, they've been planted there for years, before they moved in.

Mrs. Lowe's biggest concern is that they had a fence there for six years and that no one said anything about that fence. If they did cut the trees down, it would give them only 5 ft. in the side yard. Neighbors have had no issues about their fence. They have dogs which is one of the reasons that they need the taller fence because he can jump the fence.

Motion by John Badeen , supported by Greg Demopoulos to open the Public Hearing.

Ayes: All on roll call vote.

No one from the audience wished to speak.

Motion by Greg Demopoulos, supported by John Badeen to close the Public Hearing.

Ayes: All on roll call vote.

Ms. Welty mentioned that they have had many fence variances come before them, and most have been denied. She does not see any reasons for this one to go against the ordinance.

Mr. Demopoulos stated that unfortunately this is the problem that happens when permits don't get reviewed before construction. The contractor or applicant should not have put the fence up without a permit.

Mr. Badeen said that he is leaning in favor of granting the variance since they've had the fence in the same location for 8 years and they have dogs and significant vegetation. He believes that the Sunflower Subdivision is old enough that had this fence been put in from day zero, it would have been grandfathered in. He would be in favor of granting the proposed variance.

Mr. Sloan showed two aerial photos of the different fence locations on the property from Nearmap. The first photo dated July of 2020 showed the preexisting fence. That fence goes along the south side part of the north front yard and there is some encroachment into the front yard along the northern street. Looking at the current fence (aerial photo from September 2020) the fence is pushed out much farther to the sidewalk and farther to the western lot line. It encroaches into a much larger front yard area along the northern line. There are some trees to the north of the house, but the old fence already goes around them. Looking at the photos, the trees don't really seem to be a factor.

Mr. Badeen stated that there is a significant step out in the location of the new fence, and given that, he would change his position be against granting the variance.

Motion by Greg Demopolous to deny the request of the variance on the basis that there is no showing of unique circumstances or practical difficulties.

Supported by John Badeen. Ayes: All on roll call vote.

Variance is denied.

2. **Applicant, A. Hartmann, representative of DJ Maltese Construction, for property located on the east side of Lilley Road between Joy and Warren Roads. Property addresses are 8120 & 8170 Lilley Road N, Zoning LI. Variance request from Section 7.02(F) of the Zoning Ordinance, which requires above ground storage tanks to be located 150 from all property lines. Parcel ID 71-005-99-0006-000 and 71-005-99-0007-000 (Planning)**

Mr. Al Hartmann from DJ Maltese Construction, on behalf of Aerial Assets is speaking in regards to a new hangar facility at the noted location. The variance they are pursuing is for an above ground fuel storage tank for helicopters that they will be servicing and selling at this facility. The ordinance states that the tanks must be 150 ft. away from the lot line. He is proposing to put it in the southeast corner of the lot which is only bordered by the airport property. Currently there are no structures there, only open field. If they were to abide by the 150 ft. setback in all directions, it would put the tank right in the middle of the building.

Mr. Sloan, Community Planner, noted that there's the 150 ft. setback because if the liquid in the tank is flammable, like is proposed, the ordinance has a general standard that those above ground fuel tanks be 150 ft. from lot lines. In this case, the only bordering properties are owned by MDOT, which is the airport to the east and land that supports the airport to the south. This is one of the reasons that staff supports approval. The application was also previously granted special land use approval for the airport related business use. Mr. Sloan's recommendation is approval based on the finding of the practical difficulty and variance standards noted in his staff report.

Mr. Badeen asked where exactly is the tank being place.

Mr. Sloan showed on the screen where they propose to build the fuel tank on the southeast corner. It is between the airport and the hangar.

Mr. Badeen asked why the tank couldn't be placed father north to at least meet the south boundary set back.

Mr. Hartmann said that that location is basically the taxi way, the entrance into the hangar.

Motion by Greg Demopoulos, supported by John Badeen to open the Public Hearing. Ayes: All on roll call vote.

Nick McMahon with Aerial Assets, LLC stated that they are leasing space from MDOT. The airport is going to join their taxiway and put in more ramp areas as well. He stated that they have their blessing to potentially sell fuel. The tank is set in a strategic location near the ramp area. They would like the tank to be on their land instead of have to lease more property just to move the tank 20 feet. The property on two sides of Aerial Assets property is vacant land with a 20-year minimum federal requirement to keep it as airport property. No one can ever build on it.

Motion by Greg Demopoulos, supported by John Badeen to close the Public Hearing.

Ayes: All on roll call vote.

Mr. Demopoulos has no problem with this request.

Mr. Badeen stated that given the vacant land around it, and Mr. McMahon's representations regarding its usage, he has no problems with it.

Ms. Welty has no problems with it either.

Motion by Greg Demopoulos to approve the request for a variance of up to 125 feet from the minimum setback of Section 7.02(F) of the Zoning Ordinance on the south and east sides of the site on tax parcel nos. 71-005-99-0006-000 & 71-005-99-0007-000 as stated in the application because the variance request meets the standards of Section 27.05(D) of the Zoning Ordinance, which are stated in the analysis and summarized as follows:

1. Compliance with the required 150-foot setback for the proposed above-ground fuel tank creates a practical difficulty and unreasonably prevents the use of the property for a permitted purpose because the lot has an approved Special Land Use for an Airport-Related Business but is less than 300 feet deep;
2. Granting the requested variance for the above-ground fuel tank would do substantial justice to the applicant and other property owners in the district because any uses adjacent to Mettetal Airport that have a Special Land Use for an Airport-Related Business may need to have their fueling operations less than 150 feet from the Mettetal Airport parcels;
3. Because the site is designed to comply with all other requirements of the Zoning Ordinance (with the exception of a building architecture modification that is under review by the Planning Commission), the requested variance can be granted in a manner that the spirit of the Ordinance will be observed and public safety and welfare secured;
4. The site size (i.e., depth less than 300 feet) and proposed use (approved Special Land Use for an Airport-Related Business) create exceptional or extraordinary circumstances or conditions applicable to the property involved and to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district;
5. Based on the application and the plans submitted, the granting of the variance will not be materially detrimental to the public welfare or materially injurious to other nearby properties or improvements, is not expected to increase the hazard of fire or flood or endanger public safety or health, will not alter the essential character of the neighborhood, will not impair the adequate supply of light and air to adjacent property or increase congestion on public streets, and is not expected to diminish or impair the value of surrounding properties.

Supported by John Badeen. Ayes: All on roll call vote.

Variance is granted.

3. **Applicant, Scott Barbat, representative of Barbat Organization, for property located at the northeast corner of Ford Rd. and Haggerty Rd., Zoning C-4. Property address is 41350 Ford Rd., Zoning C-4 in the Central Business District Overlay. Variance requests from the following sections of the Zoning Ordinance: Section 6.02(C)(1) Maximum Building Coverage; Sections 6.02(C)(1) & 6.10(D) Minimum Lot Area; Section 6.10(D) Minimum Side Yard Building Setback; Section 6.10(E)(7) Minimum landscape buffer setback. Parcel ID 71-047-99-0006-001 (Planning)**

Mr. Eric Williams with Stonefield Engineering and Design stated that they were previously in front of this Board in February of 2021. Since then, they received some further feedback from MDOT and had to re-evaluate to the site layout. They learned that MDOT is requesting 26 ft. of property to be dedicated to their use for the upcoming project along Ford Rd. The major change to the site plan that was presented before is the removal of the drive through area. In regards to variances they are seeking tonight, the maximum building coverage was granted in February, but due to the reduction in land area, he is requesting tonight to seek an increase in that variance. The requirement is 10% of the lot coverage that would only allow them to have a building totaling 3,400 sq. ft. This includes the building as well as the canopy for the gas station. A lot coverage variance was previously granted for the gas station at the southeast corner of Ford Rd. and Lilley Rd. He is only requesting similar relief. The next variance is for the landscape buffer along Ford Rd. This arises from MDOT's request to reduce the property by approximately 13%. Mr. Williams noted that they will meet all of the landscape requirements, even though the landscape area is reduced by five feet. He also added that they received site plan recommendation for approval last Monday night (June 7, 2021) from the Planning Commission. The last variance is for the minimum side yard setback along the northern property line. There is a cross access drive that runs north-south across the site to connect into the hotel properties. The 10 ft. setback will allow them to maintain a viable project and allow for landscaping and a buffer for safety and access to that side of the building. Mr. Williams believes that a similar variance was also granted at the Ford Rd. and Lilley Rd. project. He mentioned that a section in the Zoning Ordinance where a property is developed as part of a larger shopping center, there is the ability to reduce this set back. Even though this project isn't part of a shopping center, it meets the same intent of that waiver in providing cross access to the roadways.

Mr. Badeen asked if MDOT was asking for a 30 ft. right-of-way.

Mr. Williams said that is correct. They are trying to design the site plan in a way to accommodate the future expansion.

Mr. Sloan stated that MDOT had reviewed the proposed application and provided comment. MDOT provided an overlay to show the proposed right-of-way. This is one of the first applicants that Mr. Sloan is aware of that has received MDOT's proposed right-of-way designs and is attempting to design the project in accordance with the future right-of-way designs. The lot area will eventually be reduced if that right-of-way is acquired, therefore increasing the building coverage percentage. Gas station uses are one of the few uses in the Zoning Ordinance that has a lot coverage standard. Most uses do not have a lot coverage standard. The landscape requirement

is 25 ft. depth. They are requesting a depth of 20 ft. This is enough depth to still get the landscape requirements in. Mr. Sloan stated that there is a proposed side yard setback on the north side of 10 ft., and a setback distance of 15 ft. is the minimum. With everything being pushed northward to meet the front yard setbacks from Ford Road, the applicant is looking for relief to go from the 15 ft. setback down to a 10 ft. setback on the north side. The neighboring property north of the site is green space. Based on that, Mr. Sloan recommends approval of the three proposed variances based on the showing of a practical difficulty based on the proposed right-of-way and based on the use of the property and that the Zoning Ordinance compliance would be unnecessarily burdensome as a result, as stated in his staff report.

Mr. Badeen asked if this variance supersedes the variance received in February.

Mr. Sloan stated that the plan has changed and the proposed lot has gotten smaller. As the applicant stated, this past Monday night, the Planning Commission recommended approval of a Special Land Use and recommended approval of the site plan that is presented tonight. The previous proposed drive-through has not proceeded, and the plan has been amended. The variances this evening are now tied to this particular plan.

Ms. Welty asked if there is still a stacking requirement.

Mr. Sloan stated that there is not. They amended the application to remove the drive through, so the stacking issue goes away.

Motion by Greg Demopoulos, supported by John Badeen to open the Public Hearing.

Ayes: All on roll call vote.

No one was present in the audience.

Motion by Greg Demopoulos, supported by John Badeen to close the Public Hearing.

Ayes: All on roll call vote.

Motion by Greg Demopoulos, to approve the request for a variance of 11.3% from the maximum building coverage of Section 6.02(C)(1) of the Zoning Ordinance, a variance of 5 feet from the minimum side yard setback of Section 6.10(D) of the Zoning Ordinance on the north side of the lot, and a variance of 5 feet from the minimum front yard landscape buffer depth of Section 6.10(E)(7) of the Zoning Ordinance on the south side of the site along Ford Road on tax parcel no. 71-047-99-0006-001 as stated in the application because the variance request meets the standards of Section 27.05(D) of the Zoning Ordinance, which are stated in the analysis and summarized as follows:

1. Compliance with the required 10% maximum building coverage, 15-foot minimum side yard setback on the north side of the lot, and 25-foot minimum landscape depth along Ford Road creates a practical difficulty and unreasonably prevents the use of the property for a permitted purpose;
2. Granting the requested variances for maximum building coverage, minimum side yard setback on the north side of the lot, and minimum landscape buffer depth along Ford Road would do substantial justice to the property owner and other property owners in the district because similar uses in the CBD Overlay have been granted similar variances

under similar circumstances and the subject site will be made narrower based on the proposed right-of-way plan for Ford Road in this specific area;

3. Because the site is designed to comply with all other requirements of the Zoning Ordinance (with the exception of existing nonconformities), the requested variance can be granted in a manner that the spirit of the Ordinance will be observed and public safety and welfare secured;
4. The site size and proposed uses create exceptional or extraordinary circumstances or conditions applicable to the property involved and to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district;
5. Based on the application and the plans submitted, the granting of the variance is not expected to be materially detrimental to the public welfare or materially injurious to other nearby properties or improvements, is not expected to increase the hazard of fire or flood or endanger public safety or health, will not alter the essential character of the neighborhood, will not impair the adequate supply of light and air to adjacent property or increase congestion on public streets, and is not expected to diminish or impair the value of surrounding properties.
6. The site circulation will improve with the removal of one of the driveways from Haggerty Road and the proposed connection to the cross-access drive north of the site.
7. The proposed development will eliminate existing nonconformities for minimum open space (25% required), minimum canopy front yard setback from Ford Road (40 feet required), minimum pump island front yard setback from Ford Road (50 feet required), minimum canopy side yard setback from the north property line (30 feet required); minimum pump island side yard setback from the north property line (40 feet required); and minimum landscape setback from Haggerty Road (25 feet required).

Supported by John Badeen. Ayes: All on roll call vote.

Variations are approved.

Motion by Greg Demopoulos to adjourn meeting. Supported by John Badeen. Ayes: All on roll call vote.

Meeting adjourned at 7:58pm

Alison Eisenbeis, Recording Secretary