

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
July 8, 2021**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, July 8, 2021 at the Township Administration Building located at 1150 S. Canton Center Road, Canton Township, Michigan 48188.

Chairman James Cisek called the meeting to order at 7:00pm and led the Pledge of Allegiance to the Flag.

ROLL CALL:

Members Present: James Cisek, Vicki Welty, Craig Engel, Greg Greco, John Badeen

Staff Present: Patrick Sloan, Community Planner

Robert Creamer, Building Official

ACCEPTANCE OF AGENDA FOR July 8, 2021

Motion by Vicki Welty, supported by John Badeen, to accept the agenda as presented.

Ayes: All

APPROVAL OF MINUTES FOR THE June 10, 2021 MEETING

Motion by John Badeen, supported by Vicki Welty, to accept the minutes as presented.

Ayes: All

Chairman Cisek explained the procedures of the Zoning Board of Appeals to the audience.

AGENDA ITEMS

- 1. Applicant Kevin Deters with Metro Detroit Sign, for property address 44444 Ford Rd. located on the north side of Ford Road between Sheldon and Canton Center N. Roads, Zoning C-2 Central Business District Overlay. Appealing Articles 6A.06 Non-Conforming Signs; 6A.11 #20 Signs Prohibited in all Districts; 6A.15 Ground Signs Permitted in all Commercial and Industrial Districts of the Zoning Ordinance. Parcel ID 039-99-0026-705 (Building)**

Mr. Paul Deters with Metro Signs and Lighting at 11444 Kaltz Rd., Warren, Michigan approached the podium. He started by stating that there was a bit of a misprint in the write-up for today's meeting. Kohl's and Sephora did not merge. The relationship between the two is that Sephora will be taking a significant amount of space in many Kohl's locations. Kohl's granted

them a significant amount of signage as well. Tonight's request is to modify the existing two already non-conforming ground monument signs. These signs are to establish a Sephora presence to help bring more traffic into the store. The signs will remain the exactly as they are, no size difference. There will just be a color change to black and add Sephora's name just below Kohl's name.

Mr. Rob Creamer, Canton Township Building Official, stated that Kohl's is requesting to install two new sign face changes on two existing non-conforming ground signs. The new faces will have two names on them which is in conflict with 6A.11.20 which prohibits ground signs that identify more than one business/brand. The existing non-conforming signs are also both too large at 50 sq. ft. when 24 sq. ft. maximum is allowed per 6A.15. Also, only one ground sign for each developed site is allowed per 6A.15. Mr. Creamer understands that they only want to replace the faces of the signs, there are three issues that arise here that are in conflict with the current ordinance that would not allow this to be permitted by the Building Department, which are in his staff report. The spirit of the ordinance is to bring all existing non-conforming signs into compliance, not find ways around the ordinance to keep them in non-compliance. Allowing additional signage for some businesses will promote finger-pointing at these non-conforming signs.

Motion by Vicki Welty, supported by Greg Greco, to open the Public Hearing. Ayes: All

No audience members wished to speak.

Motion by Vicki Welty, supported by Greg Greco, to close the Public Hearing. Ayes: All

Ms. Welty stated that when she was on the Sign Amendment Committee many years ago, it was their recommendation to try to get rid of all the signs that were nonconforming and there was a dispensation given to any signs that just wanted to be refaced and were not conforming. There have been many over the past years where they said that as long as you keep the sign as is, you can re-face it. Amoco at Cherry Hill and Canton Center is one example, as well as some of the hotels along I-275.

Mr. Badeen asked how is "refaced" defined.

Mr. Cisek said that refaced is changing out the face or panel of the form without changing the design or shape of the sign.

Mr. Badeen asked is this proposal considered a reface?

Ms. Welty noted that previously it didn't matter that the sign was changing from one brand to another. As long as you keep the case, you can change the face; but if you wish to change the case, then you would have to become conforming. The difference in this case, they are wanting to put two names or businesses on the sign.

Mr. Badeen does not see a practical difficulty other than them wanting a sign and the ordinance says they can't.

Mr. Engel thinks that the fact that they are adding Sephora is basically something new. They are not changing the size of anything, and we should want to do everything we can to support our local businesses. He does not feel that this will make an impact on our community one way or the other, if they put both Kohl's and Sephora on the same sign. Mr. Engel realizes that if they want to put in new signs, they would have to conform, but in this case, they just want to reface and he would be in support of it.

Ms. Welty asked Mr. Deters if all Kohl's stores in the country are heading to this new branding.

Mr. Deters responded that yes in most cases, unless there is a standalone Sephora store in the area. Many of the Kohls stores have been around for a long time and typically the signs are maxed out. Mr. Deters have been to many cities to ask for the reface, most recently Lake Orion has approved the sign appeal. Many cities don't require permits for face changes. He continued to say that there has been a significant increase in traffic in the stores with the new Sephora.

Mr. Cisek has mixed feelings. He agrees with Mr. Badeen that there is not a practical difficulty, but, he also agrees with Mr. Engel that we need to support our stores.

Motion by Craig Engel to approve the request of the variances to allow for a face change of the 2 existing signs non-conforming signs located at 44444 Ford Rd that are not in compliance with Sections 6A.15, 6A.11.20 and 6A.06 in the Zoning Ordinance for the reason being that this is just a face change to an existing structure with no structural sign changes, and that we need to support our local merchants.

Supported by Vicki Welty. Ayes: Craig Engel, Vicki Welty, James Cisek, Greg Greco.

Nay: John Badeen

Variance is approved.

- 2. Applicant, Applicants Jon & Noreen Watson, for property address 3970 Herbey, located on the West side of Herbey between Geddes and Palmer, Zoning R-1. Appealing Article 26.02 Schedule of Regulations Agricultural and Residential Districts of the Zoning Ordinance. Parcel ID 133-02-0066-002 (Building)**

Mr. Jon Watson stated that he planned to build a 2nd pole barn on his R-1-zoned property. A side yard setback variance approval is needed to reduce the 20' setback requirement to 5'. The approval of the variance would prevent many practical difficulties and provide a better outcome for himself and his neighbors. This new barn will be used primarily for vehicle storage and lawn equipment. Mr. Watson noted that there are several factors that produce practical difficulties. If the variance is not passed he will have to extend driveway, remove establish landscaping, have an obstructed view of pond for neighbors, leave an undesirable view of neighbor's swampy area, and the barn would be less convenient for access. With the 5' setback, the distances from the barn to the nearest houses will be 210' and 175'. Mr. Watson continued to say that the this is not

a typical subdivision situation. He lives on 3 acres. There is an example of less than the 5' side yard setback adjacent to his property, with a neighbors garage located 2.8' from his SW corner. He said that would be no change to the supply of light, air or congestion and there is no change to the risk of fire, flood, or public safety. Approval of this variance won't diminish property values and there will be no change to public welfare, safety, comfort, morals or welfare to the Township. Mr. Watson stated that he lives on a dead-end street and does not have a Home Owners Association. He then reviewed photos, recent survey and satellite images with the Board. He stated that if the variance is denied and barn needs to be placed further back, then the cost to extend his driveway around the old barn would be at least \$10,000 - \$12,000. One of the main reasons he'd like to put the barn in the proposed location is to block the view of the unmowed swamp area with shoulder height grass. Mr. Watson included letters from seven neighbors within view of proposed barn, giving their consent for the location of the barn.

Mr. Creamer, Canton Township Building Official, stated that the applicant is requesting to reduce the required 20-ft. side yard setback to a 5 ft to allow for the construction of a (2nd) new pole barn. Section 26.02 of the Zoning Ordinance requires a 20 ft side yard setback for a R-1 District. This variance is requested for the additional pole barn to be installed the established side yard and the request comes out of a design preference as no hardship has been identified. The neighboring properties where this is proposed are R-2 zoning, which are much smaller parcels.

Mr. Watson said that he considers an additional \$10,000 – \$12,000 for an additional driveway to be more than just an inconvenience.

Ms. Welty said that she wished she could take that into consideration, but there are only two reasons to grant a variance, unusual circumstances and practical difficulties.

Motion by Vicki Welty, supported by Craig Engel, to open the Public Hearing. Ayes: All

Mr. Gene Kaminski lives at 44694 Geddes. He property contains the swamp area that backs up to Mr. Watson's side property. He said that Mr. Watson has an idea to get rid of the swamp area. He said that the he would not be bothered by the view of the proposed barn. He sees no downside to this proposal.

Mr. Badeen asked if building the pole barn will alleviate the run off into the swamp.

Mr. Kaminski said that they will do something like trench it out to alleviate the problem.

Mr. Cisek doesn't think that this is the issue today. He stated that they are just looking at the variance of the pole barn.

No other public comments were made.

Motion by Vicki Welty, supported by Craig Engel, to close the Public Hearing. Ayes: All

Mr. Cisek sees a few issues with this. The R-1 has a lot of property and doesn't see why this barn needs to be so close to the property line. Therefore, he does not see a practical difficulty.

Mr. Badeen feels that the practical difficulty could be this flooding in the neighbor's lawn which could get worse. He would be okay approving the variance contingent on the water remediation plan.

Ms. Welty believes that there are some unusual circumstances here, being that it's a dead-end road. Looking at the pictures, the swamp area is a big problem. She would like to see if that could be put into the variance.

Mr. Cisek is not sure if a variance could include that they need to do something to someone else's property.

Mr. Engel said he agrees with John Badeen that if there is a remediation plan to put a pump on the applicant's property, it would be a benefit to the community. If we could work the plan in, it would help 2-3 neighbors.

Mr. Greco agreed.

Mr. Creamer advised that if the ZBA is leaning towards approving this, that there will need to be some approval from the Engineering Division beforehand. Any change in land needs to be approved by Engineering. Any time you take water from a property, the Township would need to see and approve where it is going.

Mr. Badeen feels like the motion would need to state that the pumping water project needs to be approved and completed for there to then be the variance to build the barn. If those two steps don't happen, then the variance is void.

Mr. Sloan, Canton Township Community Planner, does not know if that could be a valid condition to have an off-site improvement on someone else's property. That brings up some legal concerns, not just if ZBA can lawfully do it, but also having 2 property owners have some sort of legal agreement. All of this may need to be reviewed by the Township Legal Counsel. Mr. Sloan would recommend that this matter be tabled/postponed to allow the Township Attorney and Engineer to review the documentation to see if this type of agreement would be lawful.

Motion by Craig Engel, supported Greg Greco, to table this item. Ayes: All

Appeal is tabled.

3. **Applicant, Ian Lee, for property located at 50201 Cherry Hill Road, located on the south side of Cherry Hill Road between Ridge Road and Denton Road, Zoning Cherry Hill Village Overlay District with an underlying RA zoning. Variance request from Article 6, Section 6.09.C.1 (lot area and lot width) of the Zoning Ordinance. Parcel ID 073-99-0005-001 (Planning). *This item was tabled/postponed at May 13, 2021 ZBA meeting after the public hearing.***

Motion by Vicki Welty, supported by Craig Engel to remove this item from the table.

Ayes: All

Mr. Ian Lee explained that he lives on a double lot and he is looking to split the lot in order to sell the empty lot separately. He would also like to sell his house, as he is looking to move. He stated that if he split his lot, then the lots would be too small based on this section. He is appealing that neighboring homes are smaller. As discussed at the previous meeting, to bring his house up to Cherry Hill standards is not something he can afford to do. It is a 1950's home and would be a lot of work to get up to the Cherry Hill Village Standards.

Mr. Sloan stated the variances are from Section 6.09(C)(1) (lot area) of the Zoning Ordinance, which requires a minimum lot area of 30,000 sq. ft. and minimum lot width of 120 feet for existing single-family residences in the Cherry Hill Village Overlay District. The applicant proposes to split a lot that is currently 17,250 sq. ft. and 150 ft. wide so that the resulting lot with the existing home will be 8,625 sq. ft. and 75 ft. wide. He explained how the current lot area is 17,250 sq. ft. (115' x 150') and contains an existing single-family home on the west side of the lot. The applicant proposes to split the east half of the lot, thus creating two (2) parcels with a lot area of 8,625 sq. ft. each (75' x 115' each). The lot is located in the Cherry Hill Village Overlay District with an underlying zoning of RA, Rural Agricultural. Section 6.09(C)(1) of the Zoning Ordinance permits the following use in the Cherry Hill Village Overlay District: "Single-family residences existing at the time of adoption of this ordinance shall be considered principal permitted uses and structures as of right and lots shall be a minimum of 120 feet in width and 30,000 square feet in area, subject to the setback and height requirements of the R-2 single-family residential district." The single-family residence on the site existed prior to the adoption of the Cherry Hill Village Overlay District. Although the subject lot is 17,250 sq. ft., it is a legal nonconforming lot that may continue being used at its current size for residential use in accordance with the Zoning Ordinance. Similar conditions for lot area and lot width exist for several other pre-existing lots in the Cherry Hill Village Overlay District that have continued their residential use since the adoption of the Overlay district. These existing lots can be found along Cherry Hill Road and Ridge Road.

Mr. Sloan continued to discuss Section 3.05 of the Zoning Ordinance which addresses nonconforming lots of record, and it states that a nonconforming lot may be used for a use permitted in the district in which it is located. Section 3.05 also states that in any district in which single-family dwellings are permitted, notwithstanding other provisions of the ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record even though such single-family lot fails to meet the applicable requirements for area or width, or both, subject to compliance with setbacks and other related requirements.

Mr. Sloan said that while the Cherry Hill Village Overlay District allows new lots as small as 32' wide x 85' deep, the smaller lots must comply with the design standards of the District and they should not be created at the expense of increasing the nonconformity of existing lots. The current house at 50201 Cherry Hill Road does not comply with the design standards of the Overlay District. The intent of Section 6.09(C)(1) of the Zoning Ordinance is to allow existing houses to remain on larger lots under the R-2 zoning standards. For a conforming lot split to be attainable for the subject property, the existing house would be required to comply with the design standards of the Overlay District. Mr. Sloan noted that at the meeting on May 13, 2021,

the ZBA held a public hearing, deliberated on the application, and tabled the item to allow the applicant and staff to review elements of the Overlay District Design Guidelines that could be implemented on the subject site. Staff provided the Design Guidelines to the applicant and staff suggestions included adding a front porch and other potential architectural modifications to the existing structure to comply with the Design Guidelines (e.g., siding, windows, roof style). However, it is the responsibility of the applicant to formally propose any changes pursuant to the Design Guidelines. On June 21, 2021, Mr. Lee replied that he will maintain his original proposal with no proposed changes.

Mr. Sloan said that in the applicant's materials, Mr. Lee claims that the following 3 lots nearby are nonconforming: 50015 Cherry Hill Rd., 50257 Cherry Hill Rd., and 50305 Cherry Hill Rd. However, 2 of these lots comply with the Design Guidelines and the other lot is an existing residential lot that has continued its use since before the adoption of the Cherry Hill Village Overlay District. Mr. Sloan showed an aerial photo of Mr. Lee's street and individual photos of some of the neighboring homes mentioned above.

Mr. Engel asked about the empty lot between 50201 and 50015 Cherry Hill. He wanted to verify that this was the property in question.

Mr. Sloan confirmed that area is the applicant's property that he is wishing to split. He continued to say that there is enough area to split the lot from a physical standpoint, but that is not the reason they are in front of the ZBA today.

Mr. Engel asked if the two homes recently built at 50015 Cherry Hill and 50257 Cherry Hill were previously vacant lots, or were old homes there that were demolished.

Mr. Sloan was not certain but the lots were vacant in 2015 based on aerial photos at that time.

Mr. Engel asked if a new home was built on the applicant's vacant parcel, would there need to be a curb cut on Cherry Hill or would access be gained through the alley?

Mr. Sloan said that Wayne County would determine if the curb cut is allowed on Cherry Hill Rd. and he would have to check to see if that alley to the south allows legal access to everyone.

Mr. Lee said that one of the design standards in Cherry Hill Village is needing a rear facing garage, so a new house would need to access through the alley.

Mr. Sloan stated that if the proposed variances are granted to allow the current lot to be less conforming with respect to lot area and lot width, a precedent would be created for owners of other similar residential lots in the Cherry Hill Village Overlay District to also propose variances to divide their parcels. There are several parcels in the Cherry Hill Village Overlay District where there is a single-family residence that existed at the time of adoption of the Cherry Hill Village Overlay District; therefore, granting the lot area and lot width variances to 50201 Cherry Hill Road may encourage similar owners in the Overlay District to seek the same variances under similar circumstances, thus undermining the intent of having Section 6.09(C)(1) at all. The determination of whether Section 6.09(C)(1) is appropriate should rest with the Planning

Commission and Township Board, which were responsible for the original adoption of Section 6.09(C)(1) and have the right to formally initiate amendments to the Zoning Ordinance.

Mr. Sloan stated that for a variance to be granted, the request must meet all of the standards of review of Section 27.05(D) of the Zoning Ordinance pursuant to the Michigan Zoning Enabling Act (P.A. 110 of 2006). Based on the review of the application, the request does not meet the standards of Section 27.05(D). Because the standards of Section 27.05(D) of the Zoning Ordinance have not been met, as noted above, the Township's recommendation is to deny the request for the lot area and lot width variances.

Motion by Vicki Welty, supported by Greg Greco to open the Public Hearing. Ayes: All

No one was present in the audience.

Motion by Vicki Welty, supported by Greg Greco to close the Public Hearing. Ayes: All

Ms. Welty feels that it's pretty clear from the last meeting that if the design standards aren't met, the variance isn't going to approved.

Mr. Badeen is a bit disappointed since the ZBA members gave the applicant some time to gather more information. He was hoping to have some details about the alley and the costs to bring the house up to Overlay District Code. He feels that nothing has changed since the last meeting. Mr Badeen would not be in favor of granting the variance.

Motion by Vicki Welty, to deny the request for a for a lot area variance and lot width variance on tax parcel no. 71-073-99-0005-721 (50201 Cherry Hill Road) because the variance requests do not meet the following required standards of Section 27.05(D) of the Zoning Ordinance:

1. Compliance with the existing lot area and lot width requirements does not create a practical difficulty, unreasonably prevent the use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome, as the site has continued to be used for a residence since before development of the Cherry Hill Village Overlay District and is permitted to continue the use in accordance with the Zoning Ordinance;
2. Granting the requested variance would not do substantial justice to other existing property owners in the Cherry Hill Village Overlay District who have complied with the Zoning Ordinance to either maintain their existing lot area or redevelop in accordance with the design standards of the Cherry Hill Village Overlay District;
3. The requested variance cannot be granted in such a fashion that the spirit of the ordinance will be observed, as Section 6.09(C)(1) was written and adopted to apply to the applicant's site and other existing single-family residential sites in the Overlay District.
4. There are not exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district, as there are several parcels in the Cherry Hill Village Overlay District where there is a single-family residence that existed at the time of adoption of the Cherry Hill Village Overlay District.

5. The variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same zoning district, especially by other owners of single-family residences that existed prior to the adoption of Section 6.09(C)(1) of the Zoning Ordinance.

Supported by Craig Engel. Ayes: All

Variances are denied.

Motion by Craig Engel to adjourn meeting. Supported by John Badeen. Ayes: All.

Meeting adjourned at 8:06 pm

Alison Eisenbeis, Recording Secretary