

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
January 12, 2023**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, January 12, 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, Alan Okon, Mark Quimby, Aaron Tassell (ZBA Alternate Tareq Rahman was in the audience)

Members Absent: Clarence Lee

Staff Present: Patrick Sloan, Community Planner

ACCEPTANCE OF AGENDA FOR January 12, 2023

Motion by Greg Greene, supported by Alan Okon to accept the agenda.

Ayes: All

Nays: None

NOMINATION OF CHAIRPERSON AND VICE CHAIRPERSON

Motion by Alan Okon supported by Aaron Tassell, to nominate Mark Quimby for chairperson for the term of this year. Quimby accepts the nomination.

Ayes: All (5 – 0)

Nays: None

Motion by Alan Okon supported by Greg Demopoulos, to nominate Aaron Tassell for Vice Chairperson for the term of this year. Tassell accepts the nomination.

Ayes: All (5 – 0)

Nays: None

Secretary position will be nominated after the Zoning Board Bylaws are approved.

APPROVAL OF MINUTES FOR THE DECEMBER 8, 2022 MEETING

Motion by Alan Okon, supported by Aaron Tassell to approve the minutes.

Ayes: Demopoulos, Okon, Quimby, Tassell (4 - 0)

Nays: None

Abstain: Greg Greene

GENERAL CALENDAR

1. Application 009-ZBA-7635. Applicant, Bruce Mattarella, for property located at 44075 Candlewood Dr, which is located on the south side of Candlewood Dr. between Elmhurst St. and Warfield St. (Parcel ID 71-009-02-0241-000), Zoning is R-4 Single Family Residential. Requesting a variance from Section 78-131(4)(a) of the Code of Ordinances, to allow a 6-foot high fence to go farther forward than the rear building line and into the side yard.

Patrick Sloan, Community Planner, summarized the Staff Report dated January 12, 2023.

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. The staff letter dated January 12, 2023 analyzes each of the standards of review.

Mr. Sloan stated that Staff feels that all of the standards of Section 27.05(D) of the Zoning Ordinance have been met to justify a variance from Section 78-131(4)(a) to allow the installation of a 6-foot high fence in the west side yard of the residential property, provided the 6-foot-high fence is located at least 16.5 feet from the front of the house, as illustrated on the plans.

If the Zoning Board of Appeals chooses to grant the variance, Staff has drafted a model motion with some findings of fact that can be used as a guide. Mr. Sloan said that the finding of facts include the following:

1. Compliance with the strict letter of the Zoning Ordinance does create a practical difficulty, unreasonably prevent the use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome.
2. The variance would do substantial justice to the property owners by way of securing their property and providing privacy to enjoy their rear yard.
3. The variance will not undermine the spirit of the Zoning Ordinance and is not contrary to the residential character of the residential neighborhood.
4. There are exceptional or extraordinary circumstances or conditions that justify the variance, contrary to Section 78-131(4)(a), including the ability for the homeowner to protect and secure their home and enjoy the privacy of their rear yard.
5. The condition resulting in a variance request is not self-created, as the location of the side door in public view was the design of the development and not in the homeowner's control.
6. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same zoning district and will not alter the essential character of the neighborhood.
7. The variance will not be materially detrimental to the public welfare and injurious to other nearby properties.
8. Granting the variance will not impair the public welfare and comfort.
9. Granting a variance will not promote disorderly development in the zoning district and throughout the township.
10. The variance will not have an undesirable impact on surrounding properties and will relate harmoniously in a physical sense with adjacent land uses. The adjacent property owners are in support of the variance request, as shown in the application materials submitted.
11. Granting a variance will not further encourage property owners throughout the township to seek variances for side yard fences and will not discourage compliance with the Zoning Ordinance. Therefore, granting the proposed variance will not discourage appropriate development by establishing an inappropriate precedent.

Each variance is looked at individually based on the merits of the case and the circumstances on the subject property and the impact on surrounding properties. Based on those facts, Mr. Sloan believes that the standards of the ordinance are met for a variance.

Greg Greene asked Patrick Sloan if this situation comes up a lot and is it something he expects will come up again.

Patrick Sloan stated that many of the cases that come before the ZBA are fence cases, and most are regarding corner lot fences because the ordinance doesn't allow for fences within a front yard setback. He said sometimes it's a privacy or security issue. In this case, they have a door that goes to the side of the house and they want to both screen and secure that area. In this case they weren't proposing the fence all the way to the front of the yard, just far enough to enclose the door.

Greg Greene added that the most important element to this whole thing is the letter from Ms. Kelley and she was in favor of it.

Applicant, Bruce Matterella, of 44075 Candlewood stated he is asking for this variance to secure their back door and noted he has had issues of people coming into his garage via that side door. He also has a pool in the backyard and he wants to keep others safe. He submitted pictures with the application that show that the fence is set back so far from the front of the house.

Motion by Greg Demopoulos supported by Aaron Tassell, to open the Public Hearing at 7:13 pm

Ayes: All (5-0)

Nays: None

No one in the audience wished to speak on this variance request.

Motion by Greg Demopoulos, supported by Greg Greene, to close the public hearing at 7:14 pm

Ayes: All (5-0)

Nays: None

Motion by Alan Okon to grant the variance request from Section 78-131(4)(a) to allow the installation of a six foot high fence in the west side yard at 44075 Candlewood Dr. for the purpose of securing and protecting their property with the condition that the six foot high fence be located no closer than the 16.5 feet from the front of the house, as illustrated on the plans and based on the required standards of Section 27.05(D) of the Zoning Ordinance and adopting by reference the 11 findings that are listed on the Staff report for this item.

Supported by Greg Demopoulos.

Ayes: All (5-0)

Nays: None

Variance is approved.

2. Application 141-ZBA-7636. Applicant, Jeff Gossett, for property located at 39571 Michigan Avenue, which is located on the south side of Michigan Ave. between I-275 and Hannan Rd. (Parcel ID's 71-141-99-0013-000 and 71-141-99-0012-000), Zoning LI - Light Industrial. Requesting a variance from Section 7.02(F) of the Zoning Ordinance, setback of storage tanks for flammable liquid material (fuel tanks) above ground.

Alan Okon has recused himself for Agenda Item # 2 since he is on the Planning Commission and voted on this issue at the previous night's Planning Commission meeting.

Patrick Sloan stated that ZBA alternate member Tareq Rahman is in the audience and Mr. Rahman was recently appointed as an alternate to the Zoning Board of Appeals.

Patrick Sloan noted that Planning Commissioner Okon is also a ZBA member and he serves the dual role. The Michigan Planning Enabling Act doesn't allow a Planning Commission member to vote twice on the same issue, and on January 11, 2023, S & J Asphalt received a recommendation of site plan approval from the Planning Commission, subject to a number of conditions. One of those conditions is that the applicant has to obtain a variance for the setback of storage tanks for flammable liquid materials or comply with the Zoning Ordinance. Commissioner Okon has voted on that as a Planning Commissioner which makes him ineligible to vote on the variance application for the fuel tank location.

Alan Okon left the room and Tareq Rahman joined the board.

Patrick Sloan, Community Planner, summarized the January 12, 2023 Staff Report. Based on the findings in the letter, Staff recommends approval of the variance request, as the standards of Section 27.05(D) of the Zoning Ordinance have been met to justify a variance from Section 7.02(F) to allow the above ground fuel tanks to be located less than 150 feet from the eastern lot line provided the enclosure and drain system underneath are installed and maintained per the submitted plans.

If the Zoning Board of Appeals chooses to grant the variance, Staff has drafted a model motion with some findings of fact that can be used as a guide. Mr. Sloan said that the finding of facts include the following:

1. Strict compliance with the required 150-foot setback for the proposed above ground fuel tanks creates a practical difficulty, unreasonably prevent the use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome.
2. The variance would do substantial justice to the applicant and other property owners in the district.
3. The variance can be granted in a manner that the spirit of the Zoning Ordinance will be observed and public safety and welfare secured.
4. The site size (i.e., width of less than 300 feet) and land use (paving contractor 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. The condition resulting in a variance request is not self-created due to the existing width of the site.
5. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the LI district that have above ground fuel tanks for their business use and will not alter the essential character of the neighborhood.
6. The variance will not be materially detrimental to the public welfare and will not be injurious to other nearby properties. Approval would not provide the applicant a benefit not available to similar owners and it will not negatively impact the visual character of Michigan Ave.
7. Granting the variance is not expected to increase the hazard of fire or flood or endanger public safety.
8. Granting the variance is not expected to impact the value of surrounding properties.
9. Granting the variance is not expected to impair public health, safety, comfort, morals, or welfare
10. The granting of the variance will not impair the adequate supply of light and air to adjacent property or increase congestion on public streets.
11. The variance is in harmony with the surrounding land uses (which are vacant and zoned LI) and will promote orderly development in the zoning district by being located outside of the vehicle circulation area.
12. Granting the variance is not expected to cause dust, noise, fumes, vibration, smoke, lights, and other undesirable impacts on surrounding properties.
13. Granting a variance is not expected to interfere or discourage the appropriate development, continued use, or value of adjacent land or buildings.

14. Granting the variance will relate harmoniously with adjacent land uses, which are zoned LI and vacant.

Mark Quimby asked Patrick Sloan about the purpose of the 150-foot setback. Is it a health and safety requirement?

Patrick Sloan answered that it was probably the original intent to have a separation distance in case if there was a fire, there would be a safety buffer distance. It could also be to allow wide circulation areas around the tanks and/or a buffer for spill containment.

Mark Quimby asked if the Fire Department looks variance requests and if there are concerns with the tanks being located on the property line.

Patrick Sloan stated that the Fire Department reviews site plans before being reviewed by the Planning Commission. The Development Review Committee consists of the Planning Division, Engineering Division, Building Division and Fire Department. The Fire Department has looked at the plans and there weren't any objections. The Fire Department will also review the plans during the building permit review.

Greg Greene noted concerns that the 150-foot rule exists for a reason, such as in case of fire or explosion. He expressed concerns about the container being able to contain an explosion and the need to be safe.

Aaron Tassell questioned whether or not the 150-foot setback rule applied to underground fuel storage as well and if it was underground there would be no variance.

Patrick Sloan said that the setback rule applies to the above ground tanks. Gas stations are not required to be 150 feet with their tanks.

Tareq Rahman asked if both sides of the property are vacant and what happens if that property gets developed? What if the neighbor has objections?

Patrick Sloan said that if someone occupies the adjacent property, the location of the fuel tanks would be an existing condition. The adjacent neighbor wouldn't be required to meet any setbacks beyond what the Zoning Ordinance would require of them. They would be moving to a site where the adjacent site had a variance for its tank setback.

Aaron Tassell asked if there a requirement or a setback requirement for adjacent buildings to fuel tanks.

Patrick Sloan stated he does not think that there is.

Tareq Rahman asked if there any requirement for the wall to be certain height and certain depth.

Patrick Sloan stated that the proposed wall is an eight-foot-high wall and the masonry will be 14 inches deep. It will be cinder block and brick on the outside. The west side will have a gate.

Greg Greene said that the gate is even less substantial than brick and block when it comes to an explosion.

Mark Quimby asked about the review by the Planning Commission.

Patrick Sloan provided a summary of what the Planning Commission discussed during its meeting on January 11, 2023.

Dominic Maltese, with D.J. Maltese Construction Corp. at 412 N Main St, Plymouth MI is the builder for the owner. He stated that he also did the fuel project for McMahon Helicopter too. He said that this is a crucial part of the company's business because they use it for fueling their equipment and that they have wide equipment for paving, which makes it hard to fuel at gas stations. He noted that they are installing an eight-foot-high wall that will be solid concrete filled. The open side will face west which would be his whole property, almost 200 feet.

Mark Quimby asked about uses for the southern part of the property.

Dominic Maltese said that the southern part of the property has about 80 pieces of equipment and there's no way to move equipment around to try to put the fuel tanks further to the back. It would be an injustice to the owner. The owner has been there for 34 years and has never had any safety issues.

Tareq Rahman asked if the company has been there for 34 years, what's changing now.

Dominic Maltese explained the updates being made to the property that will aid his business.

Greg Greene noted that the Staff report states that beneath the containment area will be a drain system for spill control and asked if that system will contain toxic liquids.

Dominic Maltese provided details on the containment area underneath, including design, storage, and removal processes.

Motion by Greg Demopoulos supported by Greg Greene, to open the Public Hearing at 7:42 pm

Ayes: All (5-0)

Nays: None

No one in audience wished to speak on this variance.

Motion by Greg Greene, supported by Tareq Rahman, to close the public hearing at 7:43pm

Ayes: All (5-0)

Nays: None

Greg Greene stated that he felt the public safety criteria is being met.

Mark Quimby noted his questions have been answered and is in favor of the variance.

Motion by Greg Demopoulos to approve the request for 148'-10" variance from Section 7.02(F) to allow the above ground fuel tanks to be located 14" from the eastern lot line, with the condition that the enclosure and drain system underneath are installed and maintained per the submitted plans, based on the staff analysis and the required standards of Section 27.05(D) of the Zoning Ordinance as listed as 1 – 14 on page 6 of 6 of the Staff Report as findings of fact.

Supported by Aaron Tassell.

Ayes: All (5-0)

Nays: None

Variance is approved.

ZBA Member Alan Okon rejoined the Board. Tareq Rahman returned to the audience.

3. Application 134-ZBA-7638. Applicant, Murray Powelson Jr., for property located at 4640 S. Sheldon Rd, which is located on the west side of S. Sheldon Rd. between Michigan Ave and Van Born Rd. (Parcel ID 71-134-99-0006-000), Zoning R-5 Single Family Residential. Requesting a variance from Section 2.03(D)(1) of the Zoning Ordinance, floor area of accessory structure.

Patrick Sloan, Community Planner, summarized the Staff Report dated January 12, 2023. Based on analysis contained in the Staff Report and other findings that are listed in the staff letter, Staff's recommendation is denial of the variance requests based on those criteria.

If the Zoning Board of Appeals chooses to deny the variance, Staff has drafted a model motion with some findings of fact that can be used as a guide. Mr. Sloan said that the finding of facts include the following:

1. Compliance with the strict letter of the Zoning Ordinance 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.
2. The variance would not do substantial justice to other property owners in the district or the township at large, especially those property owners who constructed detached accessory structures in compliance with Section 2.03(D)(1).
3. The variance will undermine the spirit of the Zoning Ordinance and is contrary to the developed character of Canton's residential neighborhoods.
4. There are no exceptional or extraordinary circumstances or conditions that justify the variance. The homeowner/applicant may construct a detached accessory structure in accordance with maximum floor area and all other requirements, as noted in the Zoning Ordinance.
5. The condition resulting in a variance request is self-created as the request is based on the desire of the homeowner/applicant for a larger building without justification for a variance based on the criteria.
6. The variance is not necessary for the preservation and enjoyment of a substantial property rights possessed by other property owners in the same zoning district and will alter the essential character of the neighborhood. Other property owners in the township have constructed detached accessory structures in compliance with the maximum floor area requirements. The applicant may continue to use and enjoy the property with a detached accessory structure that complies with Section 2.03(D)(1).
7. The variance will be materially detrimental to the public welfare and injurious to other nearby properties. Approval would provide the applicant a benefit not available to similar owners.
8. Granting the variance will impair the public welfare and comfort because other property owners in the neighborhood and township have constructed detached accessory structures in compliance with Section 2.03(D)(1).
9. Granting a variance will promote disorderly development in the zoning district and throughout the township, as all residential and agricultural districts restrict the maximum permitted floor area of detached accessory structures. Granting the variance for the subject property without meeting the required standards of review will promote disordered development.
10. The variance will have an undesirable impact on surrounding properties and will not relate harmoniously in a physical sense with adjacent land uses. Other property owners have either

complied with the maximum floor area requirements for detached accessory structures or will be expected to comply in the future if they apply for a permit.

11. Granting a variance will encourage property owners throughout the township to seek variances to exceed the maximum floor area for detached accessory structures and discourage compliance with the Zoning Ordinance. Therefore, granting the proposed variance will discourage appropriate development by establishing an inappropriate precedent.

Aaron Tassell asked if there is anything stopping the owners from building two smaller buildings instead of the one larger structure.

Patrick Sloan stated that the maximum floor area applies for the total of all accessory structures, including sheds, garages, etc.

Greg Demopoulos wanted to verify that the variance is about 700 square feet zoned R-5 single family residence.

Patrick Sloan confirmed the total variance being requested.

Greg Demopoulos asked if there is a business going on there.

Patrick Sloan is not aware of a business on the site.

Greg Greene and Mark Quimby both mentioned that they noticed a lot of vehicles on the property to the south.

Murray Powelson owns the property at 4640 South Sheldon and 4678 South Sheldon. He noted he has a hobby of old classic cars and explained the reasons he is asking for the variance for the detached accessory structure. Mr. Powelson stated that there is another property on Warren Rd. that built a new structure on a smaller lot and questioned how the Warren Rd. property was approved.

Mark Quimby asked Mr. Sloan about the details of the Warren Rd. property and if any variances were received.

Mr. Sloan reviewed the Township permit database and noted a permit was granted for this pole barn on Warren Rd. in 2021, after receiving plan revisions. The Building Division issues permits for detached accessory structures, but does not believe that they needed to apply for a variance based on the Building Division's notes.

Mark Quimby noted there needs to be a practical difficulty that makes this property unique or makes the situation unique such that it doesn't do injustice to other people in similar situations who do comply with the ordinance. He stated he doesn't know that this has been addressed.

Greg Greene wanted clarification as to if the property on Warren Rd was an addition or detached building. Sloan replied that the new building is detached, but the large floor area of the principal building allowed for a larger detached accessory building.

Murray Powelson approached the Board to show pictures of the detached structure on the property on Warren Rd.

The Board reviewed the pictures provided. Mark Quimby noted that the house on Warren Rd. is quite large. If the Building Division did the calculation, then it met the Ordinance.

Murray Powelson provided additional reasoning for needing the large structure.

Greg Demopoulos asked if he could build some kind of overhangs.

Patrick Sloan said that he'd have to defer that question to the Building Division. However, the Zoning Ordinance standard is based on floor area.

Murray Powelson said that the Building Division told him that 967 square feet was the largest structure he could put on that property and was told that he could apply for a variance. He is not opposed to downsizing it a little bit.

The Board continued discussions related to the variance, possible modifications that would be in compliance with the Zoning Ordinance, and the standards of review for variance requests..

Motion by Greg Demopoulos supported by Greg Greene, to open the Public Hearing at 8:09 pm.

Ayes: All (5-0)

Nays: None

Thomas Gumola resides at 4620 Sheldon Rd. He stated that Mr. Powelson has lived there for many years and has really fixed up the properties. He wanted to know if he could add an attached garage onto the back of his house.

Mark Quimby believes that as long as it complies with the setback requirements.

Patrick Sloan said that he is not sure if there is a floor area limit for an attached structure. This variance tonight is only for detached structure.

Jack King from 4678 Sheldon Rd stated that originally this was a farm that was broken up into several lots. He has lived there since 1972. This is not a subdivision. He feels that the ordinance was meant more for subdivisions. These properties are almost an acre a piece.

Motion by Greg Demopoulos, supported by Aaron Tassell, to close the public hearing at 8:10pm.

Ayes: All (5-0)

Nays: None

Greg Demopoulos noted he is opposed to the variance request, as if they were to grant the variance request it would set a precedent. He added there may be other alternatives if he communicated with the Building Division.

Mark Quimby stated he agreed with Mr. Demopoulos. He noted others have had to revise plans to comply with the ordinance.

Greg Greene said that he can appreciate the passion that Mr. Powelson has for older cars. It's unfortunate that the ordinance just doesn't go along with him in this in this instance, and it puts the Board in a very difficult spot.

Motion by Alan Okon to deny the request for a variance from Section 2.03(D)(1) to construct a detached accessory structure that exceeds the maximum permitted floor area based on the 11 required standards of Section 27.05 (d) of the Zoning Ordinance as listed in the staff report

Supported by Aaron Tassell.

Ayes: All (5-0)

Nays: None

Variance is denied.

4. Review of Proposed Bylaws

Patrick Sloan summarized the Staff Report, dated January 12, 2023.

Mark Quimby asked about the staggered appointment dates and future transition plans.

Patrick Sloan said that they are trying to get everyone on a January 1st cycle and noted the appointment dates for ZBA members.

Mark Quimby asked about procedures for partial terms if a member resigns.

Patrick Sloan stated if a member leaves the ZBA mid-term, the new member appointed would fill the remainder of that term. Patrick Sloan noted that language can be added to clarify this procedure.

Discussions continued on new board member training, the education requirement for serving on multiple boards, opportunities for training specific to projects/variance requests in Canton Township, and possibility of being informed of Zoning Ordinance amendments adopted by the Board of Trustees.

Patrick Sloan stated that Planning staff will make revisions to the Bylaws that were discussed and then bring it back to the ZBA in February for adoption.

Alan asked if the Township Board approves the bylaws.

Patrick said the ZBA approves its bylaws.

Greg Greene asked about receiving meeting packets electronically.

Patrick Sloan said that the applicants still submit the application and materials in hard copy, but it is on the list of updates for the coming year.

Motion by Alan Okon to adjourn meeting. Supported by Aaron Tassell.

Ayes: All, (5-0)

Nays: None

Meeting adjourned at 8:50 pm.

Alison Eisenbeis, Recording Secretary