

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
August 11, 2022**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, August 11, 2022, at the Township Administration Building located at 1150 S. Canton Center Road, Canton Township, Michigan 48188.

Vicki Welty called the meeting to order at 7:00 pm and led the Pledge of Allegiance to the Flag.

ROLL CALL:

Members Present: Vicki Welty, Clarence Lee, Greg Demopoulos

Members Absent: John Badeen, Aaron Tassell, Alan Okon

Staff Present: Patrick Sloan, Community Planner

ACCEPTANCE OF AGENDA FOR August 11, 2022

Motion by Clarence Lee, supported by Greg Demopoulos to accept the agenda.

Ayes: All

Nays: None

APPROVAL OF MINUTES FOR THE July 14, 2022 MEETING

Motion by Clarence Lee, supported by Greg Demopoulos to accept the minutes.

Ayes: All

Nays: None

Vicki Welty explained the procedures of the Zoning Board of Appeals to the audience. She noted that there are only three Board Members present and therefore the agenda item would have to pass unanimously to be decided. There is an option for an applicant to table the item to a future meeting if you feel having more members would help pass the variance.

1. Applicants John and Kelly Cutright for property located at 825 Revere St., which is located south of Cherry Hill Road between Denton Rd. and Ridge Rd. (Parcel ID 074-08-0011-000), Zoning RR, Rural Residential, with Cherry Hill Village Overlay. Requesting a variance from the following section of the Township Code of Ordinances: Section 78-129 (g). All borders, fences, or walls shall be constructed on the property line; provided, however, that if the applicant is unable to obtain the written, notarized consent of the adjacent property owner to construct the fence on the property line, the fence shall be constructed three feet inside the applicant's property line. The applicants propose to construct the fence on the property line without obtaining written, notarized consent of the adjacent property owner.

Kelly and John Cutright reside at 825 Revere St. They are seeking approval to install a fence on the property line. That would extend to their front porch in order to close in their backyard to secure it from a

large breed aggressive dog next door that repeatedly escapes into their yard. They would like to be able to enjoy their yard. Kelly Cutright continued to say that the way her house is set up, their side yard is actually the back yard. They would like to install a 4 ft. black aluminum picket fence to hopefully prevent the dog from coming into their yard.

Greg Demopoulos asked if they attempted to ask the neighbor to sign the notarized consent form.

Kelly Cutright said that they have not had contact with this neighbor. They have had multiple issues with their neighbors in the past about the dog as well as property damage and feel that the neighbors have been aggressive and hostile towards them. The Cutrights said they are not comfortable approaching them. All they want to do is secure their yard, protect their own family, friends and pets.

Greg Demopoulos asked Patrick Sloan if the neighbors were notified of the meeting.

Patrick Sloan said that all property owners within a 300 ft. radius of the parcel would have been mailed a written notice.

Patrick Sloan stated the applicants at 825 Revere St. are applying for a variance from the requirement in the Code of Ordinances in section 78-129 (g). This is the section of the fence ordinance that requires that the consent of an adjacent neighbor be provided if a fence will be within 3 ft. of a lot line. If notarized consent of the neighbor is not provided, the fence would have to be 3 ft. off of the property line. In some cases, consent is not possible for a host of reasons. The question here is: would relief from the standard meet the practical difficulty standards of the Zoning Ordinance? Mr. Sloan said that the Township's Planning Consultant from McKenna, Vidya Krishnan provided a letter going through the standards of Section 27.05 of the Zoning Ordinance of both the general and specific criteria. Ms. Krishnan's recommendation is to grant approval for replacement of a 4' tall black aluminum picket fence along the property line as shown on the plot plan, subject to the following conditions:

1. Submission of a staked survey locating the proposed fence and all support posts entirely within the applicant's property.
2. Providing a round or flat top picket fence, as opposed to the spiked design proposed, to meet the requirements of Section 78-129 (c).

This recommendation is based on the following findings of fact:

1. Strict compliance with the ordinance standards would unfairly burden the applicant.
2. Allowing for use and enjoyment of your property by making it dependent on the neighbor's permission is an unreasonable expectation.
3. The proposed variance would allow for enclosing the rear yard and providing protection to the homeowner without impacting the neighbor adversely.
4. The variance would provide substantial justice to the applicant and is not averse to the intent of the Township Ordinances.
5. The proposed fence will not impede line of sight or affect traffic movement on abutting streets.
6. The proposed fence is not likely to create any issues for health, safety and welfare.
7. The proposed fence will not alter the essential character of the neighborhood.
8. The issue raised with the variance will likely be reviewed by the Planning Commission in the near future.

Patrick Sloan stated that the Planning Commission will be considering amendments to the Fence Ordinance in the coming months. They hope to have it on the Planning Commission's agenda in the next couple of months.

Motion by Greg Demopoulos, supported by Clarence Lee, to open public hearing.

Ayes: All

Nays: None

Matt Miller resides at 863 Revere. He is the HOA President. He spoke to the Cutright's neighbors. The neighbors told Mr. Miller that they submitted a letter to address this issue.

Vicki Welty stated that the Zoning Board of Appeals did not receive any letters in regards to this agenda item.

Matt Miller said that he could provide an email from the Cutright's neighbor that states that they agree to anything that is needed to get this approved and that they are okay with the fence being on the property line.

Motion by Greg Demopoulos, supported by Clarence Lee to close the public comment.

Ayes: All

Nays: None

Vicki Welty asked the Cutright's if they were aware of the two conditions mentioned in the Planning Consultant's recommendation.

John Cutright asked that if they have the survey done, what happens if they find out that the neighbor's existing privacy fence is on their (the Cutright's) side of the property.

Greg Demopoulos stated that that would be a civil matter.

Patrick Sloan noted that it is a good practice to have a survey to make sure the fence is on the correct side of the property line so there are no future disputes and there will be something of record on file.

Motion by Greg Demopoulos to approve the requested variance for construction of a 4 ft. tall black aluminum picket fence located on the property line as shown on the plot plan subject to the following conditions. First, submission of a staked survey locating the proposed fence and all support posts entirely within the applicant's property will be required, and second, providing a round or flat top picket fence, as opposed to the spiked design proposed, to meet the requirements of Section 78-129 (c). because

- 1. Strict compliance with the ordinance standards would unfairly burden the applicant.**
- 2. Allowing for use and enjoyment of your property by making it dependent on the neighbor's permission is an unreasonable expectation.**
- 3. The proposed variance would allow for enclosing the rear yard and providing protection to the homeowner without impacting the neighbor adversely.**
- 4. The variance would provide substantial justice to the applicant and is not averse to the intent of the Township Ordinances.**

5. **The proposed fence will not impede line of sight or affect traffic movement on abutting streets.**
6. **The proposed fence is not likely to create any issues for health, safety and welfare.**
7. **The proposed fence will not alter the essential character of the neighborhood.**
8. **The issue raised with the variance will likely be reviewed by the Planning Commission in the near future.**

Supported by Clarence Lee

Ayes: All

Nays: None

Variance is approved.

2. Applicants Patrick and Lisa Lyons for property located at 1020 Terrell Ct., which is located west of Lilley Rd. and south of Saltz Rd. (Parcel ID 053-04-0263-000), Zoning R-5, Single Family Residential. Requesting variances from the following sections of the Township Code of Ordinances: Section 78-129(h) for a fence located in a front yard setback area; Section 78-131(4)(b) for a fence on a corner lot located in a front yard setback area; and Section 2.09(A)(4) of the Zoning Ordinance for a fence located in a required 25-foot clear vision triangular area.

Patrick and Lisa Lyons, who reside at 1020 Terrell, would like to replace the existing old wooden fence exactly where it sits with a vinyl fence. The fence was there when they moved in in 1990. They live on a corner lot. The fence goes along Redfern Rd. and across the back of the house which is along Lilley Rd. In the southeast corner, there are two brick pillars with a gate in between that was built when the house was constructed. If they have to move the fence in they would lose a large portion of the backyard useable space and they would just have the two brick pillars standing there with no fence attached. They would just like to replace the existing fence with a newer and nicer product.

Patrick Sloan stated that the applicant living at 1020 Terrell Ct applied for a variance from the fence ordinance. Section 78-127 of the fence ordinance deals with non-conforming fences and states that for any non-conforming fence, any change to the non-conforming fence can only be made to make the fence more conforming. It was written with the intent that all fences will ultimately comply with the ordinance. When staff reviewed the application, they noted that there are actually three sections of the ordinance that apply to this case. One is related to fences that sit in a front yard setback area. That applies to any front yard whether it is a corner lot or not. The second request which is Sec. 78-131(4)(b) deals with fences on a corner lot. The ordinance states that fences on corner lots can't be located in a required front yard setback area. The third variance request is from Section 2.09(A)(4) of the Zoning Ordinance that prohibits structures located within a 25 ft. vision triangular area where two roads meet. In this case it is the right-of-way of Lilley Road and the right-of-way of Redfern Rd. This is not just for fences, but for all structures, buildings and even certain landscaping. This is a public safety standard. If drivers are making a left on to Lilley Rd, it is a visual obstruction, or even pedestrians are going down either sidewalk, they can't see around the corner. After reviewing the application, the Township staff and our Planning Consultant, McKenna, do not see a practical difficulty for the clear vision zone variance. The next item is the fence with in the front yard as it applies to the Lilley Rd. right-of-way. Staff and McKenna does find that a practical difficulty is met for that fence because it's very common that the rear of properties are

along major roads have these privacy fences. We do find that that is a reasonable request to give privacy from the road and shield from noise from Lilley Rd. The Township staff and McKenna recommend approving that variance to allow the fence along Lilley Rd, except that 25' clear vision triangle. The last variance the was reviewed is the fence located with in the front yard setback area along Redfern Rd. There are a number of corner lots that are in a similar situation where the entrance of a subdivision is a corner lot. Having a 6 ft. fence along that entrance gives a walled off appearance. If every corner fence in the Township was allowed to rebuild their fence as is, the section of the ordinance for nonconforming fences would have no effect. There is nothing new or unique with this lot that would warrant a fence in the front lot along Redfern Rd. The Planning Commission will be looking into the fence ordinance in the next few months. In the meantime, we are working with the ordinances that are currently in place which doesn't allow fences within the front yard setback on corner lots and an ordinance that doesn't allow reconstruction of nonconforming fences. For that reason, the Township staff and McKenna do not recommend the approval of the variance of fence in the front yard setback along Redfern. The applicant may wish to table this for a few months until the Planning Commission reviews the fence ordinance and makes recommendations on any amendments.

Mr. Sloan stated that the recommendation from the Planning Consultant is to: 1. Approve the variance from Section 78-129(h) to allow for a 6-foot-tall privacy fence to be placed along the site's Lilley Road frontage; 2. Deny the request from Section 78-131(4)(b) to install a 6-foot high fence in the front yard setback of Redfern. The applicant may choose to request to table the application until the upcoming fence ordinance amendment process has completed at which time new regulations may be adopted; and 3. Deny the requested variance from Section 2.09(A)(4) of the Zoning Ordinance to install any fencing within the clear vision corner area. This recommendation is based on the following eight findings of fact:

1. Strict compliance with the ordinance standards along Lilley Road would prevent the property from have any private 'rear yard' space, but does not prevent the use of the yard space adjacent to Redfern without a variance.
2. Approval of variance for the fence along Lilley Road would provide substantial justice to the applicant and is not averse to the interest of other property owners.
3. The existing non-conforming fence with the clear vision corner and along Redfern affords the applicants a privilege that is not given to the other dwellings in the neighborhood.
4. Approval of a privacy fence along Redfern and within the clear vision corner is contrary to the spirit and intent of the ordinance and poses a risk to pedestrian and vehicle safety.
5. A privacy fence along Redfern and within the corner area will likely impede line of sight and affect traffic movement on abutting streets.
6. Fences within the clear vision corner are likely to create public safety concerns.
7. Existing nonconformities are not a justification for approval of new nonconformities.
8. The Planning Commission will shortly be considering an amendment to the fence Ordinance to address the issue of fences on corner lots. Fences within the clear vision corner are not under consideration, but allowing limited fences in the secondary street side of corner lots will be under consideration. Therefore, the applicant may choose to request to table the application until the upcoming fence ordinance amendment process has completed.

Motion by Clarence Lee, supported by Vicky Welty, to open the Public Hearing.

Ayes: All

Nays: None

Patrick Lyons wanted to note that his fence is not in the front yard but it starts in the rear yard at the back of the house.

Vicki Welty confirmed the placement of the fence as shown on the provided plot plan.

Patrick Sloan stated that the ordinance states that corner lots have two front yards. The front yard along Terrell and the front yard along Redfern. This is for all corner lots in the Township. The fence inspector would have received the plans and seen that this is a corner lot with two front yards. The fence would need to be placed out of the front yard setback along Redfern. The fence would be required to start at the southeast corner of the house and run parallel along Redfern along the front yard setback line.

Doug Stamper resides at 42455 Redfern Drive. He has lived there for 30 years. He stated that the biggest problem he said that there has never been an accident problem there. The biggest problem is there is everyone going through this sub and then coming out at Saltz. He said that people speed through there but they've never had a traffic issues. He believes that his is pretty much the standard, and all his neighbor wants to do is replace the fence and make it better. He feels there should be an exception made to this ordinance in this case.

David Butler resides at 1064 Terrell Ct., two doors down from the Lyons. He has lived there for 31 years. This is an older neighborhood. He said with in 1 mile of this home there are at least 10 – 12 homes that have exactly what the applicants are looking for. The only problem he has is the trees that are planted on the other side of the fence. They block the vision more than the fence. He said that all they want to do is replace the 35 year old fence. He supports ordinances, but feels that some ordinances are meant more for the newer, larger homes. He said the moving the fence in would decrease the property value. He 100% supports what the neighbors are asking for.

Chuck Staffeld 42460 Redfern. He states that in his opinion, there is no visual impairment at Redfern and Lilley. He said that if they don't approve this then everyone will just be looking at this old fence forever. He believes that the ordinance is silly in this case. He stated that the variance should be approved so that they get a new fence in the neighborhood.

Patrick Lyons said that in other cities you are grandfathered in if you just want to replace an existing fence with a new fence.

Motion by Greg Demopoulos, supported by Clarence Lee to close the Public Hearing.

Ayes: All

Nays: None

Greg Demopoulos said that it's important to note that as previously mentioned, for your request to pass, you need to have three votes that approve it. In the near future, the Planning Commission will be looking at this and some changes that may or may not go in your favor. But if this is voted on tonight and you are denied, it puts you in a difficult spot. If you table it, and wait to see what happens things might change.

Vicki Welty said that she has a big concern with safety. She confirmed that there is a sidewalk that runs along both Redfern and Lilley Rds. She has seen kids on corners barrel through on bikes and no one can see them. She asked Mr. Sloan about the safety piece of this, mainly the diagonal sight line at the corner.

Patrick Sloan said that this concern is the same as others that have come up in the past. About 6 - 12 months ago there was a house that backed up to Sheldon Rd. with a similar situation regarding the clear vision zone. The corner clearance visibility is not just for drivers and pedestrians but also pedestrians and pedestrians coming around the corner.

Clarence Lee stated that many neighborhoods evolve. He lives in Canton, and is HOA president of his neighborhood. Safety is a huge concern for him. Neighborhoods change over time. Now his neighborhood has so many young children. He noted that the Lyons and their neighbors have lived there many years, but things can change over time. He believes that the ordinance is intended for the future, even though long term it may be a little different.

Greg Demopoulos said that he is in favor of part of the request to allow the 6 ft. privacy fence along the Lilley Rd frontage. As far as the clear vision corner, he believes that it absolutely needs to be there. They just can't have a 90 degree right there at the corner. He would prefer that the applicant would decide to table this so the second item 78 131(4)(b) for the front yard setback on Redfern they wait to see that the Planning Commission comes up with over the next few months. He would be ok with the first one. He'd vote no on the third one. As for the second one, he thinks it would make sense to just wait.

Vicki Welty would vote yes on the Lilley Rd one. She would also vote yes on the Redfern side but not without that clear view area where we know that people will be safe. You just can't come to a 90-degree angle at that corner. She believes if they were to vote tonight, likely the Lilley Road part may pass, but she's not sure about how would all vote about the Redfern side but she is pretty sure that nobody would be in agreement with not having a proper sight line. She asked if they'd like to table this or not table it. If the clear view is disrupted by the pillars, you would have to work that out. Ms. Welty asked Mr. Sloan what the dimensions are for the clear site triangle.

Patrick Sloan said that it is 25' from the corner along Redfern and 25' along Lilley to make the clear vision triangle.

Greg Demopoulos said if you table it now, you won't have to pay any additional fees when you come back. But if you are denied today and the ordinance changes and you choose to come back still needing one of these variances, you will need to pay again.

Patrick Sloan said that they would have a few options. One would be to table it until there may be a new ordinance which could take several months. Another option may be to table it to another ZBA meeting where there may be five members or more to vote up or down on it. It would be up to the applicant when they'd like to come back on the agenda for a vote. The way that the variance is written tonight, it would be one motion; therefore, if it is not unanimous one way or the other, the ZBA may need to table it anyway if there's not three affirmative votes on whatever action may take place because it's one item.

The Applicant has asked for this to be tabled.

Motion by Greg Demopoulos to table the variance for this item until the applicant requests it to be removed from the table.

Supported by Clarence Lee.

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Ayes: All

Nays: None

Variance is tabled .

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

Ayes: All.

Nays: None

Meeting adjourned at 8:04 pm.

Alison Eisenbeis, Recording Secretary