

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
October 13, 2022**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, October 13, 2022, at the Township Administration Building located at 1150 S. Canton Center Road, Canton Township, Michigan 48188.

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

ROLL CALL:

Members Present: John Badeen, Clarence Lee, Alan Okon, Mark Quimby

Members Absent: Aaron Tassell

Staff Present: Vidya Krishnan, McKenna Associates

ACCEPTANCE OF AGENDA FOR October 13, 2022

Motion by Mark Quimby, supported by Alan Okon to accept the agenda.

Ayes: All

Nays: None

ELECTION OF CHAIR

Motion by Mark Quimby, supported by Alan Okon to nominate John Badeen as Chairperson for tonight's meeting.

Nomination Accepted by John Badeen

Ayes: Clarence Lee, Alan Okon, Mark Quimby

Abstain: John Badeen

Nays: None

John Badeen noted that the Vice Chair would need to be nominated and appointed at the next meeting. There was additional discussion about the Secretary position.

APPROVAL OF MINUTES FOR THE AUGUST 25th, 2022 MEETING

Motion by Alan Okon, supported by Mark Quimby to approve the minutes.

Ayes: All

Nays: None

APPROVAL OF MINUTES FOR THE SEPTEMBER 8, 2022 MEETING

Motion by Mark Quimby, supported by Alan Okon to approve the minutes.

Ayes: All

Nays: None

GENERAL CALENDAR

1. Applicant Ronald Denstedt for property located at 6800 Woonsocket St., which is located at the northeast corner of Woonsocket St. and Republic Dr. (Parcel ID 037-03-0037-000), Zoning R-5, Single Family Residential. Requesting a variance from the following sections of the Township Code of Ordinances: 1) Section 78-129(h) – front yard setbacks; 2) Section 78-131(4)(b) - front yard setback of corner lot; and 3) Section 2.09(A)(4) of the Zoning Ordinance - unobstructed sight distance.

Ronald Denstedt resides at 6800 Woonsocket Drive. He stated his current fence has been there about 25 years and is in need of repair. This fence is proposed to replace the original fence using the same footprint. He has roads on three sides of his house. He says that the ordinance states that his fence must be 25 feet off of Republic Dr. This means that he would not even be able to use the side entry door to his garage. He would also have to move his air conditioner and tear up his concrete patio to put in fence posts. There are three other houses at that intersection that have the same footprint of fences. He stated that he was also told that from Woonsocket St. his fence could only be 4 ft tall. He would request that the fence be 6 ft. tall all the way around. He passed out pictures to the Board Members.

Mark Quimby asked where the blue line comes from.

Ronald Denstedt said that the blue line is the ordinance where the Township wants his fence to go.

Vidya Krishnan, Canton Township Planning Consultant from McKenna, confirmed that this house is a triple frontage lot and they are requesting a variance on the setback.

Mark Quimby asked if it matters that the ordinance doesn't reference that part of the ordinance.

Both John Badeen and Vidya Krishnan said it is referenced with the front yard setback and referenced in the summary of the review letter.

Clarence Lee noted some concerns with the visibility when backing out of the driveway as well as the corner sight line.

Ronald Denstedt noted that he has a DTE transformer and a storm drain in that corner.

Vidya Krishnan summarized the review letter, dated September 30, 2022. Ms. Krishnan confirmed that the corner clear vision zone is noted in the ordinance where nothing can be constructed in that corner that exceeds 30 inches in height. That issue is listed in variance # 3. Ms. Krishnan stated that the Zoning Ordinance has specific standards based on the Michigan Zoning Enabling Act. She briefly discussed each criterion.

1. **Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would create practical difficulties, unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome. The showing of mere inconvenience is insufficient to justify a variance.** The subject site is

located at the northwest corner of Morton-Taylor Road and Republic Drive intersection and currently has a 6' tall wood privacy fence extending along the length of Morton-Taylor Road and along Republic Drive to connect to the rear wall of the dwelling. The applicants propose to replace the "*existing fence with a new fence in same placement as old fence with some improvements to sight lines for driveway*". The plot plan notes the proposed fence as a 6' wooden fence. Per the applicant, the fence is "worn out" and replacing the fence *should improve neighborhood character*. The existing fence is non-conforming and the applicant proposes to replace it with a new non-conforming fence. While we understand the need to separate the yard space from a major thoroughfare such as Morton Taylor Road, there is no justification for the fence along Republic Drive. The applicant's justification in requesting the variances is that the fence has been in place for 25 years, so a new fence should not be an issue. An existing non-conformity is not a justification for replacement with a new non-conforming structure. While we support the request for a fence along the property line abutting Morton-Taylor Road as a safety measure and an existing precedent along most major thoroughfares within the Township, the fence along Republic Drive, especially located within the 25-foot triangular clear vision corner, is not acceptable. Traffic and pedestrian safety is an important consideration while maintaining the street intersections clear of any obstructions. Just because there have been no accidents or other pedestrian mishaps is no guarantee that it will remain so in the future.

2. **That a variance would do substantial justice to the applicant, as well as to other property owners.** The replacement of an existing non-conforming fence with a new non-conforming fence would provide substantial justice to the applicants by allowing them to have a larger fenced yard space but would set an undesirable precedent for replacement of non-conforming fences. The ZBA has recently heard numerous requests for variance from fence provisions. The Township Staff discussed the matter with the Planning Commission at its meeting held on October 3, 2022, and the ordinance language will be presented at the November 14, 2022 Planning Commission meeting. Allowing for fences along the property line abutting a major roadway/street is being considered in the new ordinance text; however, allowing for fences 6-foot high fences along the secondary street property line and within the clear vision corner is not recommended.
3. **The requested variance or appeal can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.** As noted above, the Township has had issues with corner lot fences for a while, resulting in the Zoning Board of Appeals recently requesting the Planning Commission to look into this issue. However, allowing for 6 ft. tall fences to be located within a clear vision corner intended to protect and promote pedestrian and vehicular safety is contrary to the spirit of the Zoning Ordinance.
4. **There are exceptional or extraordinary circumstances.** There are no exceptional or extraordinary circumstances or conditions associated with the request for variances. The challenge faced by the applicant is common to all corner lots within the Township. The issue is currently under consideration by the Planning Commission.

5. **A variance is necessary for the preservation and enjoyment of a substantial property rights.** The desire to have a fenced in yard for containment of pets and privacy is not an unreasonable request; however, the installation of a 6 ft. tall fence along both front yards creates a fortress like appearance. This matter needs to be addressed for all single-family dwellings Township-wide. The location of the fence within the clear vision corner area, however, is an issue of concern for public safety and welfare.
6. **The granting of a variance or appeal will not be materially detrimental to the public welfare or materially injurious to other nearby properties or improvements.** The proposed variance is likely to be materially injurious to the nearby properties. By blocking the corner area, the proposed fence will limit the sight distance for vehicles exiting the neighborhood, and also impedes the vision of cyclists and pedestrians on the sidewalk along Morton Taylor.
7. **The granting of a variance or appeal will not increase the hazard of fire or flood or endanger public safety.** The granting of the variance for placement of fence within the clear vision corner in this case is likely to endanger public safety.
8. **The granting of a variance or appeal will not unreasonably diminish the value of surrounding properties.** The variances requested are not likely to diminish or impair property values in the neighborhood.
9. **The granting of a variance or appeal will not impair public health, safety, comfort, morals, or welfare.** The variances requested are not likely to impact public comfort, morals, but can have an impact on public safety.
10. **The granting of a variance or appeal will not alter the essential character of the neighborhood.** There are several corner lots within the subject neighborhood. The interior corner lots mostly appear to comply with all provisions of the fence ordinance. There are a few other non-conforming properties, including the neighbor on the south side of Republic Drive. Approval of the proposed fence would encourage others to ask for similar variances, perpetuating and extending the life of non-conforming structures.
11. **The granting of a variance or appeal will not impair the adequate supply of light and air to adjacent property or increase congestion on public streets.** The granting of the variances will not impair the adequate supply of light and air to the adjacent properties.
12. **In deciding upon an appeal from an action taken by an administrative official or body, the zoning board of appeals shall determine if the administrative official or body has made an error in any order, requirement, decision, or determination in the enforcement and/or interpretation of the zoning ordinance.** This standard is not applicable.

Vidya Krishnan added that, in addition to the general criteria, there are specific standards related to

variances which is basically a summary of what was previously presented. As requested by the Zoning Board of Appeals, the Planning Commission will shortly revisit the fence ordinance and address concerns with regard to fences on corner lots. The fence proposed by the applicant with screening from a major street is understandable and part of the recommended change to be considered; however, allowing for a fence along a second street while blocking the clear vision corner which is imperative for safety of vehicles and pedestrians is not supported. The MZEA (Michigan Zoning Enabling Act) advocates for the elimination of non-conformities. Replacing one non-conforming structure with another equally non-conforming structure is not recommended. Therefore, the Township recommends that the ZBA take the following actions:

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 Morton-Taylor 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 Republic Drive. 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;
3. Deny the requested variance from Section 2.09(4) to install any fencing within the clear vision corner area.

Vidya Krishnan noted that these recommendations are based on the seven findings of fact as stated in the review letter dated September 30th.

John Badeen asked what is the definition of a clear vision corner.

Vidya Krishnan said that the clear vision corner is a corner at an intersection of two streets 25 ft. from where the two right of ways intersect and the triangle formed. No object can be more than 30 inches high within that 25 ft. triangle in the corner. That is also the Institute of Transportation Engineers standard definition for a clear vision corner.

John Badeen asked if that means the fence would have to drop down to 30 inches at the corner.

Vidya Krishnan said that yes, or more likely the 6 ft. high fence would be angled at the corner, and leave the corner open.

Additional discussion took place between Board members and consultant regarding the DTE transformer and the clear vision corner.

Motion by Clarence Lee supported by Alan Okon, to open the Public Hearing at 7:28pm

Ayes: All

Nays: None

No one in public wished to speak.

Motion by Alan Okon, supported by Clarence Lee to close the public hearing at 7:28pm

Ayes: All

Nays: None

Clarence Lee noted that right now the recommendation is to not allow the fence along Republic Rd. and the Planning Commission is going through a study right now and that they may actually allow that fence in the future.

Mark Quimby wanted to confirm that if this appeal is voted on tonight and is denied, can the applicant reapply if ordinances change.

Vidya Krishnan said that if a variance is denied they cannot reapply for the exact same variance for one year.

John Badeen said that the applicant has up until the time they vote on this appeal to request that we table his application for a future meeting.

Mark Quimby asked what is the timeline for Planning Commission in regards to reviewing the fence ordinance.

Vidya Krishnan stated that the draft is up for discussion at the Planning Commission meeting on November 14, 2022.

John Badeen said that it will have to come out of the Planning Commission and then go to the Board of Trustees and that the Board could remand the ordinance, amend it, reject it, or adopt it. There is not a firm timeline. It could be several months. If the applicant chooses to table this application before the vote, then we can do as such.

Alan Okon stated he has no problem with replacing the fence as is.

Clarence Lee noted his greatest concern is the blind spots with high fences. Neighborhoods change over the years. Just because there haven't been any issues yet doesn't mean that there won't be one in the future.

Mark Quimby said he doesn't like the option of no fence nor does it make sense at the current Ordinance line. He understands that replacing a non-conforming structure with a non-conforming structure will never conform. To him that is just bad policy. He also understands that by complying with the ordinance, it is going to feel like taking a loss for the applicant to have a certain amount of fenced yard and then to comply with the ordinance and make the fenced-in yard area much smaller. He doesn't feel that he can support a lack of the clear vision line.

John Badeen stated he is generally in favor of allowing people to use their property as they will as long as it doesn't harm others. This \$13,000 fence would improve the neighborhood. He has a concern for the clear vision triangle. He stated that maybe starting at 10 ft. back from each corner to create the angle would give drivers and pedestrians a bit more warning without depriving the applicant the use of a huge portion of his back yard.

Vidya Krishnan said that you can grant a variance less than what has been notified.

Mark Quimby stated he has a concern that the 25 ft. sight line is that way because of recommendations from the Institute of Transportation Engineers and he feels it is odd that they just choose a number that is less than that.

John Badeen said that could just say zero.

Board members had additional discussion about the clear vision triangle and the setback requirements for fencing on corner lots in the R-5 district.

Ronald Denstedt noted that his house is 22 feet from the fence.

Vidya Krishnan confirmed that the Zoning Ordinance shows the front yard setback is 25 ft. and rear yard is 35 ft.

Motion by Alan Okon to approve the variances requested to allow a 6 ft. privacy fence to be placed along the Morton Taylor Road frontage of Woonsocket and Republic Drive.

No one seconds it.

Motion fails for lack of support.

John Badeen said that still before them is item number one on the calendar. He asked if there is a motion regarding the application.

Mark Quimby asked if they can approve just parts of the appeal? And what happens to the items not approved?

John Badeen said that the application has to be resolved tonight. They are either denying some and granting some or modifying what's proposed with such a modification that resolves what is pending.

Mark Quimby said he has some concerns about the less than a 25 ft. setback. He doesn't feel that there is a lot of clarity there.

Vidya Krishnan said that she will take the ZBA's discussion back to staff about the 10 ft. reduced setback to see if that is something they would consider putting in the new ordinance.

Mark Quimby said he would also like Ms. Krishnan to ask about the 6 ft. fence along Republic. The notion is this fortress-like effect, and he asked if that is just an aesthetic desire of the Township.

Vidya Krishnan said this is the goal to create a neighborhood appearance and not a fortress like appearance. She said that staff is proposing a draft to the Planning Commission to allow some kind of fence along the secondary street, but it is still being drafted.

John Badeen asked if there is another motion. Being the chair, he is unable to make motions.

Vidya Krishnan said that the Board can also choose to table it, pending the Planning Commission ordinance discussion.

Mark Quimby said that he would be in support of the fence along Morton Taylor, the 25 ft. clear vision line, and a 6 ft. fence probably at the 12 ft. easement, but he doesn't like the idea of the ZBA making up zoning policy.

John Badeen said it's not necessarily making a zoning policy as the Zoning Enabling Act specifically allows them to make modifications. In this case, the fence has been there since the house was built and there's been a significant investment in landscape in the back yard. These are things that the ZBA can take into consideration.

Motion by Mark Quimby to approve the 6 ft. tall fence along Morton Taylor with the 25 ft. sight line clearance, and a 12 ft. easement on Republic Drive.

Discussion continued to verify what exactly the motion meant.

John Badeen restated the motion to allow a 6 ft. fence along Morton Taylor up until the 25 ft. vision line, allow a 6 ft. fence from the house and around to the edge of the 12-foot wide easement, and a 6 ft. fence along Republic Drive until the portion where it will encounter the 25 ft. clear vision line at which point the vision line would become the boundary of the variance.

Clarence Lee supported the motion but then immediately asked to clarify where the 6 ft. fence on Republic is located.

John Badeen noted that the motion includes pushing the fence along Republic back to the 12 ft. easement line.

Clarence Lee withdrew his second.

Motion fails for lack of support.

Motion by Alan Okon to table the application to give the applicant some time to wait for the Planning Commission to approve a new fence ordinance, or the applicant can come back to the Board with some modifications of what is being proposed. The Board seems to have a lot of mixed feelings on it.

Ronald Denstedt asked if there was a time limit on when he can come back and if there will be additional fees.

John Badeen said there is no time limit, the applicant would just reach out to the Planning Division when he would like to go back on the agenda.

Vidya Krishnan said that there is no additional fee.

Seconded by Mark Quimby.

Ayes: Alan Okon, Clarence Lee, Mark Quimby

Nays: John Badeen

Motion Carries. This calendar item has been tabled to the discretion of the applicant.

2. Review Proposed Bylaws

John Badeen said that since this is a general calendar item, there will need to be a public hearing.

Motion by Mark Quimby supported by Alan Okon, to open the Public Hearing at 8:06pm.

Ayes: All

Nays: None

No members of the public present.

Motion by Alan Okon, supported by Mark Quimby to close the public hearing at 8:06pm.

Ayes: All

Nays: None

Alan Okon noted that a lot of this is set up on a calendar year, but the terms are not. Not everyone's terms end in December.

Vidya Krishnan stated she believes that the terms could be adjusted to match the bylaws.

Mark Quimby asked how are the terms appointed.

John Badeen noted that person that Mark Quimby replaced on the Board was appointed in August several years ago, and her term expired at the end of this past August. This is determined by the Township Board.

Vidya Krishnan said that they like to have the terms staggered so that the entire Zoning Board of Appeals doesn't expire at once.

John Badeen asked about the roles and responsibilities of the ZBA. On page seven, in regards to Section five, Role and Responsibility A, he would add in a sub iv to "authorize all other duties as provided or authorized by law". On page eight, under "conflict of interest", sub ii, change "shall" to "may", or perhaps add the word "Intentional" in front of "Failure".

Mark Quimby asked in regards to conflict of interest, what is the threshold?

John Badeen said that Township Clerk Michael Siegrist is the Ethics Officer of the Township and he would be the one to ask.

Mark Quimby mentioned that he read in the manual that if there was a conflict of interest he would need to leave the room because his presence could be considered a conflict of interest.

John Badeen said no, he believes that you could sit in the audience.

John Badeen noted that also under the "Conflict of Interest" sub iii, he thinks they should take the whole section and say "as defined by the Canton Township Code of Ordinance", just like B says. He is not sure why they have to add additional stipulations to conflict of interest some of which overlap, some of which don't.

Mark Quimby asked why is sub iii there. Is it required by the standards of the organization that this is drafted from?

John Badeen said he doesn't think that there are any technical requirements.

John Badeen said that in Section six "Standards of Conduct", C, Removal from Office, "A ZBA member may be removed from office by the Township Board for misfeasance, malfeasance, or nonfeasance". He would add language onto the end of that sentence of "after referral of the matter by the Zoning Board of Appeals." He continued, that the ZBA should clean up their own house first before kicking it to the Board.

Mark Quimby asked if that might create a situation where the Township for some reason wanted to remove somebody, but they can't because the Board's not in agreement.

John Badeen said not technically, but it would at least slow it down.

Mark Quimby said that it seems like the ZBA should deal with the issue first.

John Badeen said the ZBA is intended to be an independent body even though we are appointed by the Board of Trustees, and adopting these bylaws as proposed essentially deprives us of our independence.

Alan Okon had a few comments as well. He said that on page six under the "Role of Secretary", C – Receive all communications, petitions, and reports to be addressed by the ZBA. Alan Okon asked if that is referring to the packet that they all receive? Or will it include the public notices?

Vidya Krishnan said that she will confirm with Patrick Sloan, Community Planner, what he would like in the packet vs. what is sent to just the secretary.

John Badeen said he thinks that the issue is that this was probably taken from a much smaller municipality and here all of the secretary duties are handled by Township staff. Alison Eisenbeis, the recording secretary, typically handles these duties. So, he said he thinks that we need to redraft this section to actually fit our reality. In his time on the Zoning Board of Appeals, he thinks maybe twice the secretary needed to sign something since they are the record keeper.

Mark Quimby said he was also confused on the role of the Secretary since the minutes are actually taken by staff then presented to the ZBA for review and approval. He was not clear on what the Secretary actually does.

Alan Okon said on page four, "Continued Education". He feels that two hours annually may be too much. It feels it good to have continuing education for people to understand and learn new laws. Maybe one hour would suffice. He also asked if this would be in addition to the Planning Commission education that he already receives.

John Badeen mentioned that those seminars are not cheap and this does not provide for the reimbursement.

Alan Okon said that instead of continued education classes or seminars he would rather see time with the Planning Division to learn more information on the Township and the history of the ordinances.

Mark Quimby agreed with Alan Okon. He also noted that Patrick Sloan clearly stated that the costs of training will be covered by the Township, but the bylaws don't reference that.

Vidya Krishnan said that the bylaws don't generally reference who pays for training. It just talks about the training and the Township typically covers the cost. The reason they talk about continuing education is because laws change, for example the sign ordinance had to be fully revamped because of a Supreme Court decision of content neutrality of signs. Marijuana laws also keep changing. Basically, continuing education will update you on how municipalities get sued and as a result what are the rulings.

John Badeen said that if you are going to require trainings then the requirement should only be in effect while they're paid for by the Township. That should be noted in the bylaws.

Vidya Krishnan said that she will have that clarified and the ZBA members will not be required to pay for training

Motion by Alan Okon to adjourn meeting. Supported by Mark Quimby.

Ayes: All.

Nays: None

Meeting adjourned at 8:24 pm.

Alison Eisenbeis, Recording Secretary