

CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
September 9, 2021

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, September 9, 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, Greg Greco, Craig Engel, Greg Demopoulos

Staff Present: Robert Creamer, Building Official: Patrick Sloan, Community Planner

ACCEPTANCE OF AGENDA FOR September 9, 2021

Motion by Greg Demopoulos, supported by Craig Engel, to accept the agenda as presented.

Ayes: All

APPROVAL OF MINUTES FOR THE August 12, 2021 MEETING

Motion by Vicki Welty, supported by Greg Greco, to accept the minutes as presented.

Ayes: All

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

AGENDA

1. Applicant, Ryan Busse, homeowner at property address 43711 Leeann, located on the north side of Bannockburn between Leeann and Southampton. Zoning R5.
Appealing to install a hot tub/pool in a front yard area in conflict with Section 2.03 E (1) of the Zoning Ordinance front yard setbacks for pool on a corner lot. Parcel ID 037-02-0267-000 (Building)

Mr. Ryan Busse, homeowner at 43711 Leeann wants to get approval for installing a hot tub behind their fence. When they moved into the house a few years ago, there was an old storage tent in that area. There is an existing fence surrounding the area.

Mr. Robert Creamer, Building Official, stated that the homeowner is requesting a variance to allow for a hot tub/pool to be placed in the front yard setback in violation of Section 2.03 E (1) which states in the case of a corner lot, the hot tub shall not be located within the required yard space as

measured from the lot line that abuts the side street. Upon looking into the situation, this is a relatively new home purchase. The newer board-on-board fence installed in the front yard setbacks has no approvals or permit from the previous owner. The homeowner wants to install a hot tub as pictured in his drawing, which is in the front yard setback. The ordinance also states it must be 4 feet from any non-property line fence and the house walls, and 5 ft. from the property line. To approve the pool/hot tub location, you would also have to approve the fence which violates Section 78-131 (4) b, fences on corner lots.

Mr. Craig Engel asked if anyone knows how old the fence is.

Mr. Creamer said it looks fairly new, but no permit was pulled so he does not know when it was installed.

Mr. Busse stated that the previously homeowner put up the fence, but he does not know when.

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

Three audience members, Roger Huber of 43726 Leeann, Richard Conway of 43721 Bannockburn, and James Mitchell of 43735 Bannockburn all spoke in favor of the Busse's being allowed to install their hot tub in the front yard setback area. There were no objections.

Mr. Busse added that he feels that the reason the ordinance exists is so you don't install a pool in your front yard. He feels that his proposal still fits with that.

Mr. Engel asked, "How big is the hot tub that you are proposing?"

Mr. Busse said it is 8 foot square. It will not be seen above the fence.

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

Mr. Cisek sees no issues with this variance.

Motion by Vicki Welty to approve the requested variance of Section 2.03 E (1) for a pool/hot tub to be located in the required in the front yard setback located at 43711 Leeann Lane and to approve the fence which violates the Section 78-131 (4) b fences on corner lots due to the findings that the fence has been there and been replaced many times and that the hot tub inside the fence will not be a detriment to the neighborhood or the neighbors.

Supported by Greg Greco. Ayes: All

Variance is APPROVED.

2. Applicants, Leigh and Ryan Young, homeowners at property address 6109 Gloucester, located on the north side Westminister Way between Sheldon Rd. and Gloucester Dr., Zoning R-5. Appealing to install a fence on a lot line of a corner lot in conflict with Fences, Borders, and Walls Section 78-121 (h) and Section 78-131 (4) (b) fences on corner lots. Parcel ID 71-040-01-0782-000 (Building)

Leigh Young, homeowner at 6109 Gloucester, stated that they are trying to replace a 4 ft. chain link fence with a 6 ft. privacy fence to help increase the safety and security of their family. The privacy fence will help decrease the noise of vehicles on Sheldon Road. She states it will also help decrease the chance of theft from the property. Also, the privacy fence would stop passer-byes from looking into the backyard while their child is playing. Their house is located on the corner of Sheldon Rd. and Westminister Way. The existing fence is non-conforming. If we had to install a fence that is in conformance, they would lose 1/3 of their backyard. She believes that replacing the old chain link fence would improve the aesthetics and increase the property value.

Ms. Welty has some concerns about the fence going right up to the driveway, mainly the sight line if someone is walking/biking on the sidewalk and car is pulling out of the drive way.

Mrs. Young noted that on the proposed fence design the fence will be the sight line will be at 10 ft.

Mr. Cisek said that the line of sight for road intersection corners is 25 ft. not 10 ft.

Mr. Creamer, Building Official, stated that the homeowner is requesting a variance to install a new 6 ft. privacy fence in lieu of the 4 ft. chain link fence that exists within a front yard setback on a corner lot, in violation of Section 78-131 (4) b, fences of corner lots. An existing 4ft. chain link house exists and was permitted under a previous ordinance. With the design the homeowner has provided with exiting out of the driveway and the other similar properties in the area with the same situation, that have fences in these locations. Mr. Creamer sees no issue with the proposal, other than he would like to see something the matches the fence on the rear of the property.

Mr. Engel asked what the rear fence looks like and could it be matched.

Mr. Creamer said that it is a weathered wood fence in good condition.

Mrs. Young said they could potentially match it but it would really depend on cost and availability of products. The tried to get a tan vinyl but it was not available.

Mr. Sloan, Community Planner, added that in regards to corner lots, we are starting to see more fences and fence requests at the ZBA, and there will continue to be more fence applications, for both new and replacement fences on corner lots. He would like to caution the ZBA on the impact on precedent, both the precedent of adding anything new to a corner that would continue or increase a non-conformity as well as to grant new variances. In this case, it was a previous fence that was approved; however, the Fence Ordinance was since amended for a reason, which is so we don't have fences in front yards.

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

No public comments were made.

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

Mr. Cisek noted that The Zoning Board received a letter from Colin and Jennifer Macleod of 44170 Westminister Way in support of the Young's request.

Mr. Engel asked what is the problem with fences of this type? Is it the 4 ft. fence that is the problem. Is it the opaqueness of the fence, or is the 6 ft. height?

Mr. Sloan said that the Michigan Zoning Enabling Act allows for non-conformities, but is also states that the elimination of non-conformities is a public purpose. This previous fence was approved when it was installed, but the ordinance changed. As a result, it became a legal non-conforming structure. He said that an owner may maintain a nonconforming structure and keep it as-is, but you can't change it in any way.

Mr. Demopoulos would have no problem with a 4 ft fence.

Mr. Cisek noted that because it's a corner, you have to have a 25' corner for visibility. He does not think the plans can be approved as drawn.

Mr. Engel says that there are a lot of corner homes in Canton with fences exactly as these homeowners are proposing. This homeowner has already been approved for the rear fence. He asked if the Zoning Board of Appeals can make them cut back the fence that was already approved? Mr. Engel has never seen a fence in Canton cut back for the 25-ft. visibility. He says that if this is a safety issue, then we need to have an Ordinance Officer go to every corner house with a fence and have them cut their fences back to the 25 ft. line of sight.

Mr. Cisek says that they can't approve this one just because there are other non-conforming fences out there.

Mr. Sloan stated that there are some fences that have been approved, some fences have been built without permits and those are the ones that should be enforced. Those are non-conformities that we hope in time will be eliminated in accordance with the ordinances. He said that there is a part of the Zoning Ordinance that states there must be a 25-ft. triangle area for visibility or drivers and pedestrians at road intersections.

Ms. Welty is more concerned with the sight line at the driveway and isn't sure if the 10 ft. is enough.

Mr. Engel questions if this a safety issue or not. If it is about safety, then Ordinance Enforcement should go to every house in Canton that has a fence like this and make them comply.

Mr. Creamer said it is the fact that they are coming in to change the fence now, that we can have them bring it up to the current code.

Motion by Vicki Welty to deny the requested variance to section 78-131 (4) b to install a fence within the front yard setback of a corner lot because it does not comply with the Township ordinances and in this case the plans would have to be different than what's in front of the ZBA this evening.

Supported by Greg Demopolous.

Ayes: James Cisek, Vicki Welty, Greg Demopolous

Nays: Craig Engel, Greg Greco

Variance is Denied.

3. Applicants, Scott and Susanne Glover, homeowners at property address 44394 Harsdale, located on the north side of Harsdale between Cherry Hill and Saltz Roads. Zoning R-5. Appealing to install a fence on the lot line of a corner lot in conflict with Section 78-129 (h) and Section 78-131 (4) b, fences on corner lots. Parcel # 060-04-0035-000 (Building)

Scott Glover, homeowner at 44394 Harsdale, just bought this house in 2018 which has a fence about 30 years old. He received quote of over \$8,000 to replace the fence. In June, there was a man standing or hiding along the corner area of the fence watching the kids play at the park. It was at that time he decided to replace the fence, and move it out 2 ft. to make in in line with the neighbor's fence. Mr. Glover did not know he needed a permit since he was the homeowner, until an Ordinance Officer told him. He applied and paid for a permit, then was told that that his new fence was not in compliance with the ordinance.

Mr. Creamer stated that the applicant is requesting a variance to install a fence in a front yard setback in violation of Section 78-131 (4) b, fences on corner lots. In 1991, the then owner applied for a variance to install a fence in the same front yard setback, and that was denied by the Zoning Board of Appeals. She then obtained a permit to install a fence from the corner of the home, going north to the rear lot line, which was allowed. In 2001, another owner applied for a permit for the in-ground pool. No permit for a fence was approved, however, a fence was installed and from the pictures it did not conform to the to the Ordinance. There is no final inspection of record for the pool permit. Recently, one of our Ordinance Officers discovered this fence was built without a permit, which has led to this variance request. This new fence that was built does not comply with the Ordinance, and will not be approved as constructed, as it is not a mirror image fence with the same appearance on each side, as required. The location for the fence for the variance is the same as most homes on Sheldon Rd. The rear fence that is attached to the original chain link fence is not allowed per the Township Ordinance. In some areas of the back yard there are three fences back-to-back-to-back, which is not allowed. Only one fence is allowed by Township Ordinance. He does not see a problem with the location. If this is to be approved, Mr. Creamer would like it

on the record that the style must conform to Township Ordinances, and in the future any repairs to the rear fences he would like them to comply with the Township Ordinances.

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

No other comments were made.

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

Mr. Cisek does see a problem fence matching the other fences, but the chain link post does bother him and wondering at what point the chain link fence need to be taken care of.

Board Members discussed the locations of the home and the reasons that this fence location was OK but the previous corner fence was not.

Mr. Creamer mentions that this house has a side yard that borders Sheldon Rd., but it does not go to the street and does not cause any sight line issues.

Ms. Welty stated that this house does not have the sight line issues. She hears what Mr. Sloan is saying about that why have an Ordinance and as a Board they need to really look at the Township Ordinances with these corner lots, because sometimes the ZBA approves them and sometimes they do not.

Mr. Cisek feels that homes on Sheldon Rd are a bit different due to the heavy traffic and need more privacy. In this case, Mr. Cisek doesn't see an issue with this request.

Questions arose about the chain link fence in the rear. There are three fences all together. A chain link in the middle with two wooden fences attached to each side. Who owns the chain link fence? When should that chain link fence come down? Who is responsible?

Mr. Sloan stated that non-conforming structures may not be rebuilt according to Township ordinances. If a variance is granted, variances can be granted with conditions, including removing a non-conformity. It really depends on what the Zoning Board of Appeals wants to do in this case.

Mr. Demopolous suggested a motion that says we will grant to variance, if the homeowner agrees to get a survey and if the chain link is on his property, he is required to remove it.

Mr. Glover said that the chain link fence is not the issue today. That is not what he was cited on.

Mr. Cisek said that is part of the issue, because that is a problem that the ZBA seems to have.

Mr. Demopolous said that maybe we should table this for more information.

Mr. Cisek doesn't know if there is a fix for this chain link fence today.

Motion by Craig Engel to approve the requested variance to Section 78-131 (4) b to install a fence within the front yard setback on the corner lot located at 6109 Harsdale Dr. and in

addition the fence must have a mirror image the inside facing the homeowner's lot and the outside facing the street must be the same.

Supported by Greg Greco.

Ayes: Jim Cisek, Vicki Welty, Craig Engel, and Greg Greco

Nay: Greg Demopolous

Variance is Approved.

Leigh and Ryan Young (agenda item #2) came back into meeting asking if their case could be reopened or tabled. After Zoning Board of Appeals Members discussed with staff members, it was decided not to reopen, instead consult with the Township Attorney and possibly look at the case again at a future meeting.

Motion by Vicki Welty to adjourn meeting. Supported by Craig Engel. Ayes: All.

Meeting adjourned at 8:29pm

Alison Eisenbeis, Recording Secretary