

**CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
December 14, 2023**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, December 14, 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 Greene, Clarence Lee, Mark Quimby, Tareq Rahman, Aaron Tassell

Members Absent: Alan Okon

Staff Present: Patrick Sloan - Community Planner

ACCEPTANCE OF AGENDA FOR DECEMBER 14, 2023

Motion by Greg Greene to approve the agenda. Supported by Tareq Rahman.

Ayes: All (5-0)

Nays: None

APPROVAL OF MINUTES FOR THE NOVEMBER 9, 2023 MEETING

Motion by Tareq Rahman to approve the minutes. Supported by Aaron Tassell.

Ayes: All (5-0)

Nays: None

GENERAL CALENDAR

1. Application 010-ZBA-7991. Applicant, Edmond Hasimllari, for property located at 44805 Joy Rd., Canton, MI 48187, which is located at the south side of Joy Rd. between Sheldon Rd. and Canton Center Rd. (Parcel ID 010-99-0003-701), Zoning is MR, Multi-Family Residential. Applicant requests variances from the following sections of the Zoning Ordinance: Section 26.02 to construct a building within the minimum side yard setback; and Section 4.01(C)(6) to reduce the number of required parking spaces from 12 to 11.

Patrick Sloan, Community Planner, summarized his Staff Analysis Report dated for the December 14, 2023 Zoning Board of Appeals meeting. He stated that the applicant is proposing to construct a 5-unit attached residential development at 44805 Joy Rd. The site plan will be reviewed by the Planning Commission at a future meeting to determine compliance with all the Zoning Ordinance standards. There are two (2) Zoning Ordinance standards that the current plans do not comply with. The first being that the development is located within the side yard setbacks. The applicant requests relief from Section 26.02 to construct a building within the minimum side yard setback of 60 feet. The property is 140 ft. wide and 303 ft. deep. Based on the plans submitted, the building envelope is not large enough to construct residential buildings. The width and depth of the property and the 60 ft. required side yard setback leaves an allowable 20 ft. wide buildable area on the property. There is a practical difficulty because there is not a sufficient envelope to construct a permitted use on the property. The side yard setback of 30 ft. is proposed on the west side and 59.2 is proposed on the east side. Mr. Sloan stated that the second variance requested is from Section 4.01(C)(6) of the zoning Ordinance stating that the project as designed is not in compliance with the numerical parking requirements for the residential

use. The applicant requests to reduce the minimum number of parking spaces from 12 to 11. The submitted plans show 11 spaces for 5 units. The requirement is that there must be 2 spaces per unit, plus there must be a certain percentage of spaces for visitor parking. Sloan stated that according to the Institute of Transportation Engineers Parking Generation (6th Edition), the 85th percentile of parking demand for multifamily housing (low-rise) not near rail transit is 1.59 spaces on a weekday which is less than the required 2 spaces per unit in the Zoning Ordinance.

Based on Staff's review of the variance standards of Section 27.05(D)(1) and (D)(2) of the Zoning Ordinance, Staff finds that the criteria have been met for the proposed side yard setback as well as the number of parking spaces being reduced from 12 to 11.

Greene asked if this property was originally part of the Lincolnshire Apartments that surrounds it. He asked if this area could have been part of the open space for Lincolnshire.

Sloan said that he did not review the Lincolnshire development plans, but if this was part of its open space, it would typically be located on the same parcel. This is a separate parcel.

Greene asked if this has gone before the Planning Commission yet. It seems to him that the dumpster location is the biggest problem in developing 12 spaces.

Sloan said that the other location for the dumpster could be along Joy Rd.; however, he would probably advise against that because of how visible the dumpster enclosure would be from Joy Rd.

Artur Kokaj resides at 2298 Yasmin Drive, Commerce Township, MI 48382. He is the architect for the project and principal at Arco Design and Associates and is representing Edmond, the property owner. This project was originally approved in 2001 with the same setbacks. When Edmond bought it, he did not realize that he would have to go through all of the same approval processes again. The owner wanted to know if a dumpster would be required.

Sloan said that from a Planning Division standpoint, a dumpster or rolling totes would be required.

Motion by Greg Greene, supported by Tareq Rahman, to open the Public Hearing at 7:13 pm.

Ayes: All (5-0)

Nays: None

No one in the audience wished to speak.

Motion by Aaron Tassell, supported by Greg Greene to close the public hearing at 7:13 pm.

Ayes: All (5-0)

Nays: None

Clarence Lee asked if they would need to eliminate the parking space if they don't need a dumpster.

Greene asked if they can have rolling carts if they don't have a dumpster. There are no garages.

Sloan said that it is possible that arrangements could be made to use the dumpsters at Lincolnshire if a dumpster enclosure is not constructed on the property.

Greene still has an issue with the number of parking spaces. He feels that most times if it's a household with 3 people, they will have 3 cars, and 4 people will have 4 cars, etc. The fact that there is not another area for parking could be a concern.

Rahman asked what the parking requirement of the Zoning Ordinance is. Quimby said that the Zoning Ordinance states that they must have 12 spaces. Quimby feels that it is the ZBA's job to determine if there is a practical difficulty to warrant 1 fewer parking space.

Motion by Clarence Lee, based on the model motion prepared in the staff report, to approve the request for variances from Section 26.02 of the Zoning Ordinance to allow construction of a building within the minimum side yard setback on the subject property (30 feet from the west side lot line and 59.2 feet from the east side lot line), and Section 4.01(C)(6) of the Zoning Ordinance to reduce the number of required parking spaces from 12 to 11 on parcel 010-99-0003-701 at 44805 Joy Rd., as illustrated on the plans and described in the Staff Analysis, based on the following required standards of Section 27.05(D) of the Zoning Ordinance as stated in the staff report.

Supported by Aaron Tassell.

Ayes: Lee, Quimby, Rahman, Tassell

Nays: Greene

Variance is approved (4-1).

2. Application 093-ZBA-8016. Applicant, Paul and Nancy Slavin, for property located at 39727 Cheviot Rd., Canton, MI 48188, which is located on the south side of Cheviot Rd. (Parcel ID 093-02-0290-000). Zoning is R-5, Single Family Residential. Applicant requests a variance from Section 78-129(g) of the Code of Ordinances to construct a fence within 3 feet of a lot line without the written, notarized consent of the adjacent property owner.

Patrick Sloan, Community Planner, summarized the Staff Analysis Report dated for the December 14, 2023, ZBA meeting. The applicant is requesting to install a 6 ft high privacy fence along the west property line, extending from the rear of the building line to the rear property line within three feet of west lot line without the written, notarized consent of the adjacent property owner. Section 78-129(g) of the Code of Ordinance states *"All borders, fences, or walls shall be constructed on the property line; provided, however, that if the applicant is unable to obtain 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 applicant has noted two reasons for the request: One is for security and privacy of their property; the second reason is that the neighbor to the west of the subject property does not consent to replacing the existing chain link fence along the shared property line within 3 feet of the lot line. The applicant provided a statement from the neighbor noting the opposition of the removal of the existing chain link fence and privacy fence replacement along the shared property line or within 3 feet of the lot line. Mr. Sloan noted that the location of the existing driveway prohibits the applicant from placing the 6 ft. privacy fence 3 ft. from the lot line. Staff finds the circumstances of the variance are unique to the specific property because the driveway on the subject property extends along the west property line from the roadway to the rear of the property at the garage. The location of this existing driveway prohibits the applicant from placing the 6 ft. high fence three feet from the subject property from the lot line. Mr. Sloan noted some of the findings in accordance with Section 27.05(D) as listed in the Staff Analysis Report dated for this December 14, 2023 meeting. Staff finds that the applicants have shown a practical difficulty in terms of locating the fence on their property and within 3 ft. of the lot line, provided that the subject owners locate the fence on their property and do not impact the neighbor's property as a result. The current provision that requires notarized consent and the 3 ft. distance is unique. Most communities do not have a provision like that, though some communities do. Over the last several months, staff has been in the process of working with the Planning Commission on proposed changes to

the fence standards in the Code of Ordinances. In the most recent version of the proposed changes to the fence ordinance standards, Staff has removed the requirement to have the neighbor's notarized consent if the subject fence is not located on the lot line. Planning Staff recommends approval of the variance from Section 78-129(g) to permit the installation of a 6 ft. high fence within three ft. of a lot line without written notarized consent of the adjacent property owner, provided the fence complies with all other fencing regulations in the Zoning Ordinance.

Tassell asked how far off the property line the proposed fence will be. Quimby said that he was wondering the same thing. He believes that this request is not for a specific number of feet, but just that the fence will be installed on the subject property own property.

Sloan stated that the request would be just for waiving the consent requirement from the neighbor. The sketch submitted, drawn by their fence contractor, shows the fence installed just inside the lot line on the applicant's property. The plan does not give an exact distance from the lot line. There are going to be cores drilled along the driveway to get the posts in.

Tassell's main concern is the maintenance of their yard on the other side of the fence.

Quimby said that there would not be any maintenance if the fence is right along the property line. They are not going to tear down the existing chain link fence, they are going to core into their driveway.

Greene's concern is how maintenance is achieved on the other side of the fence without trespass.

Quimby noted that there may be vegetative debris or other debris that get caught between the vinyl fence and the chain link fence which may be unsightly. However, if the neighbors would just agree to the new fence there, there would just be one fence there, and this would not be a concern.

Greene wonders if they are creating an undesirable situation, with the opportunity to just put up a fence regardless of the neighbor's consent or lack thereof.

Quimby feels that the main issue before them is if there is a practical difficulty. It seems like the practical difficulty is the existence of the driveway.

Sloan said that the existing driveway was on the ariel images at least back to 2001, which is the earliest image he has. Most likely when the house was built, the driveway was installed exactly where it is. In a lot of the older subdivisions, the driveways do go up to the side lot line. If they had to put the fence 3 ft. in, it would be blocking use of the driveway.

Rahman wanted to confirm that the blue line on the diagram is the existing fence.

Quimby stated that they are proposing to put the new fence abutting the existing fence, so there may be a few inches of a gap.

Sloan stated that the neighbors to the east at 39715 Cheviot have provided a notarized letter to put the fence on their lot line.

Quimby noted that there was also a letter submitted from the adjoining neighbors stating that they do not want the fence there. That can be a difficult situation. If the ZBA feels that there is a practical difficulty, then it is within the ZBA's rights to approve the variance.

Greene said that they must remember that when these ordinances are developed, they are done so with a reasoning behind them. He would like everyone to think very heavily about foregoing that.

Quimby stated that the ordinances reflects the current zoning standards of the Township, and the property as laid out would not be approved to be constructed based on where the driveway is.

Greene said that he does not like to give leverage to some people over other people. There may be a reason that that written permission was not given.

Paul and Nancy Slavin of 39727 Cheviot, Canton MI are the subject property owners and applicants. Mr. Slavin said that he would like to replace the old fence with his new fence on the property line. He offered to pay for the entire cost including removal of the existing old fence. He said that he would even be willing to pay for them to put the 5-foot section of fence all the way to the neighbor's house so it would all look cohesive.

Mrs. Slavin said that the neighbors were contacted by certified mail by the fence company. The neighbors stated that they don't want to change the scenery and the agreement doesn't specify the cost and who is responsible for the payment. Mrs. Slavin stated that they have talked to the owners, the son and daughter four different times. She noted that the existing fence is starting to come up.

Lee asked if at some time the neighbors would like to remove their chain link fence, they could do so. He could see that happening long term.

Motion by Clarence Lee, supported by Greg Greene to open the Public Hearing at 7:40 pm.

Ayes: All (5-0)

Nays: None

Sam and May, son and daughter of property owner to the east, along with their mother, reside at 39739 Cheviot. Sam stated that their mother does not want to change anything about the yard or fence. May stated that the Slavin's may put the new fence on their side of the property line only, but they do not want anyone to remove their existing fence. She said it will look ugly to not have the same fence on all three sides of their yard.

Quimby asked to clarify that Sam and May want to keep the chain link fence as it is, but they are okay with the neighbors putting up a new fence as long as it on their own side of the property line right up against the old fence.

May stated that yes, the Slavin's can put the fence on their side, as long as they don't move her fence.

Quimby asked Sloan if they are not actually objecting to the new fence, then should they continue to move forward with the variance.

Sloan also asked Sam and May to clarify if the fence on their mother's property stays the same, and if the neighbors build their 6 ft. high fence on their own property, maybe just a few inches away from their existing fence, would they be ok with that?

Sam said yes, if new fence is on their side, they are okay with that.

Sloan asked, even if it is less than three feet from the property line?

Sam said yes, as long as they don't move their existing fence.

Sloan said that the notarized form that the Township uses is a general form that states, "*I hereby give my consent to the construction of the fence on the property line.*" Since the form requires the neighbor's consent to construct the fence on a lot line, the variance is the proper process for any fence within 3 feet of a lot line because the form is unconditional (i.e., a neighbor cannot object to a fence on a lot line but consent to a fence within 3 feet of a lot line on the form).

Lee asked how long their mother has resided at this home.

Sam said about 20 years.

Sharon Zmuda of 847 Meadowlake, Canton, MI, lives two houses down from them. She is here to support the Slavin's request for a variance.

Greene's concerns have been eliminated by this recent dialog. He is okay with it.

Quimby believes that this might have been a miscommunication issue between the neighbors.

Prior to the meeting, 3 public comments were received in writing from Susan Neiheisel at 39750 Cheviot, William Simmerer at 39763 Cheviot, and Susan Simmerer at 39763 Cheviot. All 3 comments were in support of the variance.

Motion by Aaron Tassell, supported by Clarence Lee to close the public hearing at 7:50 pm.

Ayes: All (5-0)

Nays: None

Motion by Tareq Rahman to approve the request for a variance from Section 78-129(g) to allow the installation of a 6ft high privacy fence within three feet of a lot line without the written, notarized consent of the adjacent property owner, provided the fence complies with all other fencing regulations in the Ordinance, based on the required standards of Section 27.05(D) of the Zoning Ordinance as listed in the model motion in the Staff Analysis Report.

Supported by Clarence Lee.

Ayes: All (5-0)

Nays: None

Variance is approved.

3. Discussion – Proposed Zoning Ordinance Amendment – Zoning Board of Appeals

Sloan stated that in regard to the Zoning Ordinance amendment, they distributed it at the last ZBA meeting but they didn't have time to discuss it much. The Planning Commission will be holding a Public Hearing on January 8, 2024 for the proposed text amendment related to ZBA, variances, and appeals. Most of the amendments are housekeeping items, but the most significant change for the Zoning Board of Appeals is to streamline the standards of review. There will be closer to six standards instead of eighteen.

Quimby asked if the ZBA could please get an update at the next ZBA meeting. Sloan stated that he will update the ZBA on the outcome of the Planning Commission's public hearing.

Motion by Clarence Lee to adjourn meeting. Supported by Aaron Tassell.

Ayes: All, (5-0)

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Nays: None

Meeting adjourned at 7:54 pm.

Alison Eisenbeis, Recording Secretary