

**The CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
March 14, 2024**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, March 14, 2024, 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: Clarence Lee, Greg Greene, Mark Quimby, Tareq Rahman, Aaron Tassell

Staff Present: Patrick Sloan - Community Planner

ACCEPTANCE OF AGENDA FOR MARCH 14, 2024

Motion by Aaron Tassell to approve the agenda. Supported by Greg Greene.

Ayes: All (5-0)

Nays: None

APPROVAL OF MINUTES FOR THE JANUARY 11, 2024 MEETING

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

Ayes: All (5-0)

Nays: None

GENERAL CALENDAR

1. Application 042-ZBA-8120. Applicant, Jodi Flavell, for property located at 6739 Burnham Dr., Canton, MI 48187, which is located at the southwest corner of Ardsley Dr. and Burnham Dr. (Parcel ID 042-01-0160-000). Zoning is R-5, Single Family Residential. Applicant requests a variance from Section 79-129(h), Section 78-131(4)(a), and Section 78-131(4)(b) of the Code of Ordinances to allow for a fence to be constructed in a required front yard setback.

Patrick Sloan, Community Planner, noted that he received six letters from neighbors all in support of the fence variance application. Letters were received from Dennis Matthews, Sue Glebe, Jamie and Stephanie Boyd, Paul and Sara Schrauben, and Patrick and Adrienne Burke. Mr. Sloan summarized his Staff Report dated for the March 14th, 2024 Zoning Board of Appeals Meeting. This proposal is to install a 4-foot-high chain link fence to enclose the rear yard as well as a portion of the side front yard at 6739 Burnham Dr. He stated that this is a corner lot, so the side along Ardsley Rd. is also considered a front yard for zoning purposes. For the last two years, the Planning Commission has been reviewing the fence ordinance. At the last Planning Commission meeting on March 4, 2024, it held a public hearing and recommended approval. Those recommendations will go to the Board of Trustees later this month for its First Reading, and hopefully, in April for the Second Reading and then hopefully adoption. Based on the current ordinance, it was difficult to find a practical difficulty for any fence in a front yard setback of a corner lot. Sloan said that the Planning Staff tried to blend some of the findings of the circumstances of the current case and what the adopted recommendations of the Planning Commission are in terms of proposed regulations of the fence ordinance. There is a limited amount of fencing that is recommended in the proposed ordinance in a front yard setback

area. The recommended ordinance would allow a 4-foot-high decorative fence in part of the setback area. The recommended ordinance states that this 4-foot fence must be a decorative or ornamental style fence within a front yard setback and it can only be from the rear lot line to the rear corner of the house. Staff's recommendation is to approve variances from Section 79-129(h), Section 78-131(4)(a), and Section 78-131(4)(b) of the Code of Ordinances, subject to the following conditions:

1. The fence in the front yard setback along Ardsley can only be located westward of the rear (*northwest*) corner of the house, so that the fence is not within the front-yard setback between the house and Ardsley;
2. The fence shall be limited to a height of 4 feet.
3. The fence in the front yard setback along Ardsley must be decorative in nature (not chain link or cyclone) and at least 50 percent transparent (per the proposed Zoning Ordinance definition); and
4. The fence shall be set back at least 1 foot from the sidewalk along Ardsley.

Quimby believes that there have been other variances that were previously approved where the fence came forward more than just to the rear corner of the house on corner lots. He said that with the Planning Commission's recommendation they would not be able to fence in the large grass area on the side of their house. He thought that the new ordinance would give more leniency to that.

Sloan said that many of the cases that the ZBA has seen this was along the side yard of the house, where it is next to another house, not along the street (i.e., in the front yard setback area). In some of those cases, the ZBA has allowed the 6-foot-high fence to come in front of the rear corner along a side yard, often to enclose a side entry door on a garage. One of the items in the proposed ordinance would allow for 6-foot-high fences to go into the side yard but be at least 15 feet behind the corner of the house.

Quimby said that he is a little surprised to hear that the proposed ordinance is limited to the back corner of the house, since there is so much area in the side street yard.

Sloan said that the other type of corner lots are those adjacent to a major thoroughfare like Sheldon Rd. or Warren Rd. where the house is at the corner of their main street/subdivision entrance street and a major road. The new ordinance would allow for a 6-foot-fence in the front yard setback along the major thoroughfare within a certain area, but not within 15 feet of the front corner of the home. Previous variances have been granted for 6-foot-high fence for homes along those major roads. He stated that the Planning Commission discussed these issues and noted that these are still front yards. On these types of corner lots that are adjacent to minor roads on both sides, the Planning Commission was cautious about allowing fencing in a front yard setback area because of the visual impact on the neighbors and the community.

Quimby said that he doesn't disagree with the 4-foot or that it must be decorative, but he thinks that in this case their back yard is a very skinny rectangle and that may be a practical difficulty.

Sloan noted that corner lots come in all different shapes and sizes, and it is difficult to write one standard that applies to all corner lots. They reviewed several dozens of different corner lot examples, and there was not an easy way to do it. For over 20 years, fences haven't been allowed in the front yard setback at all, so the proposed ordinance is an improvement for many corner lot owners. The minimum front yard setback is usually 25 ft., and this house was conforming at the time it was built.

Applicant, Jodi Flavell, resides at 6739 Burnham Dr. She distributed some photos for the ZBA Members to view homes in her neighborhood with corner fences. She noted that there are no decorative fences in the neighborhood. There are chain link, vinyl, and wooden fences. She's not sure if a decorative fence would keep her dog in. She would just like to use her side yard. Her neighbors signed the agreement form.

Quimby stated that they cannot use the preexisting conditions that existed in the neighborhood as a definitive factor to approve non-conformance.

Flavell asked that since the new ordinance about decorative fences is not in place yet, could she please put in a chain link.

Quimby stated that the current ordinance would not allow a fence there at all. It would need to meet the required 25-foot front yard setback.

Greene stated that the Planning Commission will ultimately come up with the verbiage that will help the ZBA in the future. He would not like to make a decision today that would go against what we ultimately come up with as a Township.

Sloan said that the Planning Commission had a public hearing on the proposed fence ordinance and recommended adoption of it. The conditions of approval in staff's review letter recommendation are consistent with the Planning Commission's recommendation.

Flavell noted that the term "decorative" is very subjective.

Quimby is not struggling as much with the decorative part as he is with the placement of the fence.

Sloan said that the purpose of that requirement is if the fence is in the front yard setback, to not have it at that front wall of the house so that it doesn't take away from the façade of the house or enclose the front yard within the front yard setback. They also looked at how this could look long term with hundreds, possibly thousands of homes in the Township.

Greene asked if with this new proposed ordinance, there was any consideration about enclosing a side entrance as an exception to the distance rule.

Sloan said that it was mentioned for non-corner lots where they would allow a 6 ft. high fence in a side yard up to 15 feet behind the front corner of the home on that side. Sloan and ZBA members discussed this in more detail.

Flavell say that she understands what everyone is saying but feels that a decorative fence would stick out more in this neighborhood.

Motion by Greg Greene, supported by Aaron Tassell, to open the Public Hearing at 7:38 pm.

Ayes: All (5-0)

Nays: None

Mark Riddell of 6865 Ardsley Rd stated that he is in favor of allowing her to put a fence in the yard as proposed.

Motion by Clarence Lee, supported by Aaron Tassell to close the public hearing at 7:39 pm.

Ayes: All (5- 0)

Nays: None

Lee stated that they have two driveways which is very unusual. He understands what Mr. Sloan is saying about the ordinances. Therefore, if one thing is approved, it may set a precedent.

Greene said no matter what they decide, it seems like there is going to be a nonconformance.

Quimby said that they are not bound by where the Township is going to go with this ordinance amendment since the process is not complete.

Greene feels that with the general layout of the fence, they should be able to enclose the side garage door. Every case is different and that's why the ZBA exists, to measure those exceptions.

Rahman states that he is undecided on this one.

Tassell thinks that there needs to be a one-foot set setback on Ardsley. He is comfortable with keeping it as proposed at 4 feet. He is still uncertain about whether it should be decorative or cyclone.

Quimby feels like they should be able to enclose their side entry door. He asked if there is a practical difficulty here. He said it is a unique property with a very narrow backyard and a double driveway and feels that approving it would not set a precedent. He does not like the idea of approving a chain link fence, knowing that is not the direction that the Township is heading for fences in these types of front yard setbacks.

Sloan said that nobody from the public showed up for the public hearing with the Planning Commission. There are many people waiting for the new fence ordinance to be adopted before they apply for their fence permits. Right now, there is no fence allowed in a front yard setback. If that were to change, he would still recommend a decorative fence. A fence in a front yard setback is impactful to the aesthetics of the neighborhood and to the aesthetics of the house.

Lee asked who decides what a decorative fence is.

Sloan said that there will be a definition in the ordinance of what a decorative fence is. Sloan read the proposed definition in the ordinance recommended by the Planning Commission.

Additional discussion took place

Motion by Aaron Tassell to approve the variances from Section 79-129(h), Section 78-131(4)(a), and Section 78-131(4)(b) of the Code of Ordinances based on the findings of fact in the model motion prepared by Planning Staff in its March 14, 2024 Staff Report subject to the following conditions:

- 1. The fence may encroach the front yard setback no more than 1 foot east of the garage side door.**
- 2. The fence shall be limited to the height of 4 feet.**
- 3. The fence must be decorative in nature and at least 50 percent transparent (based on the ordinance definition recommended by the Planning Commission).**
- 4. The fence shall be set back at least 1 foot from the sidewalk along Ardsley.**

A question arose by ZBA members if 1 foot is enough room next to the side door.

Tassell then amended Condition # 1 to state that the fence may encroach the front yard setback no more than 2 feet east of the garage side door.

Amended Motion by Tassell, supported by Rahman.

Ayes: All, (5-0)

Nays: None

Variance is Approved with Conditions.

2. Application 038-ZBA-8131. Applicant, Playground Daycare, LLC, for property located at 6512 N. Canton Center Rd., Canton, MI 48187, which is located on the east side of N. Canton Center Rd. between Hanford Rd. and Warren Rd. (Parcel ID 038-99-0010-703). Zoning is C-2, Community Commercial. Applicant requests a variance from Section 6.02(E)(4) of the Zoning Ordinance to permit a child-care center building to be less than 25 feet from the side lot line to the south.

Patrick Sloan, Community Planner, summarized his Staff Analysis Report Dated for the March 14, 2024 Meeting. The project sponsor proposes to put a childcare center in an existing building at 6512 N. Canton Center Rd. The building setback was built to meet the Zoning Ordinance standard at the time it was developed. For daycare facilities, there is a land use standard in the Zoning Ordinance that requires the minimum side yard setback for daycare buildings to be at least 25 feet. The southern lot line of this parcel is the side lot line. The building was developed with an encroachment of anywhere from 7'-8" in the southwest corner to 5'-10" in the southeast corner. The reason for the 25' side yard setback is because it could be next to a neighborhood, or a high traffic road. In this case, the neighbor to the south is a commercial office building and the rear of this building faces the rear of the subject building. The impact to the neighbor to the south is almost non-existent. In the Staff Analysis, they went through Section 27.05(D)(2) of the Zoning Ordinance and list the findings of fact in the Zoning Ordinance. They find that the practical difficulties of the Zoning Ordinance are met. The Planning Division's recommendation would be to approve the variances as requested. The variance request proposed is largely due to the following:

1. The subject property has an existing structure that was built for a different use and was not constructed to meet the development requirements for a childcare center. The existing structure does meet the required 15 ft. side yard setback for commercial and office buildings in the C-2 zoning district.
2. The subject property abuts a multi-tenant commercial office building to the south and the encroachment into the side yard setback on the subject property does not impact the neighbors. The main entrances for each building do not face each other and the redevelopment of the subject property for a childcare center would not likely impact the tenants to the south.

Sloan stated that Staff's recommendation is approval. He also noted that the applicant has also applied for Site Plan Review. During the review of the site plan, staff found two (2) more items that will need variance requests, so the applicants will be back again next month for those items.

Lee asked where the play area will be located.

Quimby said it is noted on the site plan, page 30 of the packet.

Project Representative, Barb Potter, of 630 Terrace Lane, Ypsilanti, MI 48198 is the architect on this project. Said that Mr. Sloan covered most of everything. There are no windows on the south side of the building, just an emergency egress and she also noted there is a pediatric clinic in the building to the south, so the uses are compatible. She confirmed that the playground is to the east of the building.

Greene asked when the building was built.

Potter noted that the original building was built in the 1950's. The addition was built in the 1990's. The addition is the portion on the south side of the building. When the addition was built, it complied with the 15-foot set back rule, because it was not a daycare.

Greene asked if there are other situations like this where the use has changed.

Sloan noted that there have been some recent variance requests from gas stations on corner lots, which have different setbacks based on the gas station use. He clarified that the ZBA can't grant use

variances but can consider dimensional setbacks that are related to a use.

Lee asked what the previous use of the building was.

Potter said that it was a tax/accounting office, and before that it was retail. The building is about 3,300 square feet.

Motion by Greg Greene, supported by Clarence Lee to open the Public Hearing at 8:10 pm.

Ayes: All (5-0)

Nays: None

No one in the audience wished to speak.

Motion by Aaron Tassell, supported by Clarence Lee to close the public hearing at 8:11 pm.

Ayes: All (5-0)

Nays: None

ZBA members deliberated on the request.

Motion by Clarence Lee to approve the variance based on the model motion and findings of fact as prepared by Planning Staff in its March 14, 2024, Staff Report.

Supported by Aaron Tassell.

Ayes: All (5-0)

Nays: None

Variance is approved.

MISCELLANEOUS:

3. Discussion –Zoning Ordinance Amendments – Zoning Board of Appeals and Fences

Sloan stated that he already gave his update on the fence ordinance earlier in this meeting. He stated that the amendments for ZBA and Appeals have been approved by the Board and will go into effect prior to the next meeting. Sloan mentioned that there is a budget for continuing education for ZBA members and to reach out to him if interested.

Greene thanked Patrick Sloan and the Planning Staff for all their hard work to prepare for both Planning Commission and Zoning Board of Appeals meetings.

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

Ayes: All, (5-0)

Nays: None

Meeting adjourned at 8:26pm.

Alison Eisenbeis, Recording Secretary