

CHARTER TOWNSHIP OF CANTON
ZONING BOARD OF APPEALS
June 13, 2024

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, June 13, 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, Jr., Greg Greene, Mark Quimby, Tareq Rahman, Aaron Tassell

Staff Present: Patrick Sloan - Community Planner

ACCEPTANCE OF AGENDA FOR June 13, 2024

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

Ayes: All (5-0)

Nays: None

APPROVAL OF MINUTES FOR THE May 9, 2024 MEETING

Motion by Aaron Tassell to approve the minutes. Supported by Clarence Lee.

Ayes: All (5-0)

Nays: None

GENERAL CALENDAR

1. Application 061-ZBA-8274. Applicants, Tower Engineering Professionals and Volta, for property located at 1905 N. Canton Center Rd., Canton, MI 48187, which is located on the west side of N. Canton Center Rd. and south of Ford Rd. (Parcel ID no. 061-99-0003-704). The property includes Kroger and is zoned C-2, Community Commercial and CBD, Central Business District Overlay. Applicant requests a variance from Section 6A.11(1), (4), and (23) of the Zoning Ordinance to allow signs that are animated and include moving light.

Patrick Sloan, Community Planner, summarized his staff report dated for this June 13, 2024.

ZBA members had questions about the request and the staff analysis. Sloan stated that we are dealing with a changeable message sign that is visible from a sidewalk. In response to screens that are on gas pumps, it is questionable if the screen on a gas pump is even defined as a sign per the Zoning Ordinance definition since it cannot be seen from a sidewalk or adjacent road. He noted that the changeable message signs proposed are prohibited by the Zoning Ordinance. If the signs were not changeable, it would be considered more of a ground sign or other type of static sign permitted on a site in accordance with Article 6A of the Zoning Ordinance.

Tassell asked why schools and the Township Administrative Building can have the changeable message signs.

Sloan said that when it comes to public schools and public charter academies, their zoning standards

are under the jurisdiction of the Michigan State Superintendent. Therefore, public schools are not subject to the local zoning ordinances, including sign standards. Sloan noted that he is not sure of the circumstances with the sign in front of the Administration Building or when it was approved.

Quimby stated that the application submitted doesn't even address the minimum standards for practical difficulty. He is having a difficult time understanding when this variance is applicable and when it is not.

Sloan noted that the sign definition in Article 6A of the Zoning Ordinance states that a sign is a structure which includes the name, identification, image, description, display or illustration which is affixed to or painted directly onto a building, structure or parcel of land, and which draws attention to a product, place, activity, service, event, attraction, institution, organization, or business that is visible from any street, right-of-way, sidewalk, alley, park or other public property. The last part of the definition states where it is visible from, in this case from the sidewalk of the building. Based on the visibility of these changeable message signs, this definition classifies them as signs according to the Zoning Ordinance. There are separate provisions in the Zoning Ordinance that pertain to use, including provisions for signs on a gas pump. With other types of LED signage like the one in front of the Township Administration Building, there are special exceptions in a separate article of the Zoning Ordinance for Township uses. However, Sloan did not know if the sign in front of the Township Administration Building was approved under those circumstances, or if it preexisted the current sign ordinance. Some illuminated signs have been permitted for gas station land uses for static messages.

Quimby asked if they would even need a variance if they were not visible from any sidewalk next to the store. He would like to understand what is actually prohibited.

Sloan said that one of the things that they look at is what the lines of sight are and where a sign is visible from. Section 1.03 of the Zoning Ordinance has a slightly different definition of a sign but doesn't state where it's visible from. These two definitions of "Sign" taken together classify the changeable message signs as a "sign."

Quimby said that the issue is not just that it is a changeable message, but it could still distract people walking out of the store.

Tassell said that he is also thinking about the huge changeable menu boards at McDonalds. He said that the gas stations pumps are really only seen by the person at the pump and doesn't think that they even turn on until you're at the pump. But this situation concerns him because of a safety issue because it is broadcasting into the parking lot. He does not feel that the practical difficulty standard has been met.

Quimby added that in looking at the design of this, people walking and driving by will be able to see these. This could be distracting. He thinks that what it comes down to is their job as a Board. If this request is against an Ordinance, there are legal standards that must be met to determine if a variance is warranted. Staff does not believe that this has met the practical difficulty standards and other standards to approve the variance.

Sloan stated that if a decision is made by the Zoning Board of Appeals that the applicant wants to appeal, the appeal would be through circuit court. He also noted that at IKEA, the electric vehicle chargers have a very small screen that the customer interacts with. In this case at Kroger, if the charger didn't exist and they take the EV charger out of the equation and they just wanted to apply to put this LED sign in the parking lot, that is essentially what this request is. We don't know how people are being charged for the electricity, and the advertising could be pure profit. How much they charge and where the money goes is

not for the Board or for staff to decide, but it is an economic and financial matter that is raised here as a reason for the variance request.

Ben Herrick of 420 Timberlea Blvd, Rochester Hills, MI 48309 is with Faulk & Foster Real Estate. He stated that they are here today about the signs, not the EV charging stations. In regard to the menu boards, and gas stations, there is a special section in the Ordinance. There is a special section in the Ordinance for almost everything, except EV charging stations. It is known we are going to need more EV charging stations in the future. More people are driving and buying electrical vehicles. One way to have more EV chargers is to have private companies come in and install more of them. Volta is paying Kroger for the use of their space. These display boards are highly programable. They can be programmed to be static every 8 seconds. The brightness can be changed. They are open to all sorts of limitations.

Quimby stated that the economic argument is not applicable to what the Board is legally charged to do. What he is looking for, if the applicant wants the Zoning Board of Appeals to rule differently than what the Staff Report is recommending, is for Mr. Herrick to articulate why the request complies with the minimal legal standards of granting a variance stating in the Zoning Ordinance. The biggest standard is whether there is a practical difficulty. Mr. Quimby feels that these are signs in the middle of the parking lot, which is different than the other examples given.

Green confirmed that they are dealing with a tower that has potential signage on both sides of it. He asked if the Board has the ability to dictate terms of an exception and make an approval based on those terms or is this just a “yay” or “nay” situation that is based on what is already in the Ordinance.

Sloan said that conditions are allowed to be applied to a variance. Those conditions must be related to something that ensures compliance to the Zoning Ordinance and/or promotes public health safety welfare.

Quimby said that this is a two-step process. First, the ZBA must determine whether a request qualifies for a variance, and then the ZBA is allowed to put conditions if approved. So, if the applicant doesn't meet the minimum standards of practical difficulty, the Zoning Board of Appeals is not any position to give a variance at all. If the applicant meets the standards of the Zoning Ordinance required to obtain a variance, then the ZBA needs to decide whether to adopt conditions of approval at that time. So, as presented to us now, the applicants need to make an argument as to the practical difficulty. Quimby explained that if a decision is made today to not approve the variance, then the case is closed. The other options would with to withdraw the application and reapply when have may more information, or to postpone action pending additional information.

Herrick stated that he would like to come back with a better plan that aligns with the feedback that he is hearing.

Motion by Clarence Lee, supported by Tareq Rahman, to open the Public Hearing at 7:44 pm.

Ayes: All (5-0)

Nays: None

No one in the audience wished to speak.

Motion by Clarence Lee, supported by Aaron Tassell to close the public hearing at 7:44 pm.

Ayes: All (5-0)

Nays: None

Quimby stated the applicant has put forth the desire to postpone the application based on the feedback received from the Zoning Board of Appeals.

Motion by Clarence Lee to postpone this variance request.

Supported by Aaron Tassell.

Ayes: All, (5-0)

Nays: None

Variance application is postponed.

2. Application 036-ZBA-7912. Applicant, Timothy Liegey, for property located at 1864 Gorman Rd., Canton, MI 48187, which is located on the east side of Gorman Rd., south of Ford Rd. (Parcel ID 036-01-0008-000). Zoning is R-3, Single Family Residential. Applicant requests a variance from Section 2.24(A) of the Zoning Ordinance for grading and a driveway within the required 25-foot setback from a wetland.

Patrick Sloan, Community Planner, summarized the staff report dated for this June 13th, 2024 Zoning Board of Appeals meeting. He noted that the applicant applied for the variance at the September 14th, 2023 Zoning Board meeting. The applicant had proposed a retaining wall within the wetland setback area. The Zoning Ordinance requires that all wetlands have a 25-ft. setback buffer in which there can't be any structures, grading, or soil disturbance. At the September 14th, 2023 meeting, the Zoning Board of Appeals postponed the application pending the receipt of revised plans that are more specific to the exact request. The original plans were hand-drawn based on what was known at that time. The applicant has since had the plans drawn by a civil engineer including a survey, scaled drawing, topography, wetland boundary, and precise size and location of the structures. The proposed site is on Gorman Road, which is a gravel road on the south side of Ford Rd. and west of Canton Center Rd. The subject site is a vacant property. Mr. Sloan showed the location of the subject property on the overhead screen. There are wetlands across the entire frontage of the property. The applicant has obtained a permit from the Michigan Department of EGLE to fill in a portion of the wetland area to construct the driveway. The house itself is not in the 25 ft. buffer except for the driveway. There is some proposed grading within that setback to achieve having the grade of the house high enough. There is some grading proposed on the setback on the north to help slope to the wetland as opposed to putting in a retaining wall. There is also a 30' x 60' proposed pole barn in the rear of the site and also some grading around that building to slope to the wetland. The pole barn structure is at least 25 ft. to the wetland boundary. Mr. Sloan summarized the findings of Section 27.05(D)(3) of the Zoning Ordinance as listed in the Staff Report. Based on these findings, staff believes that there is a practical difficulty based on the site features of the wetlands. Based on the analysis, staff believes the standards of Section 27.05(D)(3) of the Zoning Ordinance have been met to approve the requested variances from Section 2.24(A) of the Zoning Ordinance to allow the proposed driveway and grading associated with the home and the pole barn to encroach into the required 25-foot setback from a wetland, as illustrated on the submitted plans of April 1, 2024 and as described in this staff report.

Greene asked if there are going to be retaining walls along the driveway, or if that is a mistake on the plans.

Sloan said that there are retaining walls along the driveway, and if EGLE allows them as part of their permit, then they would be approved in accordance with EGLE's permit.

Quimby said that there used to be retaining walls around the building, and those were removed. He also said that he appreciates the details of these new plans.

Applicant, Timothy Lifegey of 1795 Woodstock Ave., Canton MI 48188, wanted to clarify that the retaining wall along the driveway was added by the engineer because EGLE only allows a 16-foot-wide base for the driveway. The retaining wall is to make sure that the driveway can't be expanded beyond that 16 feet into the wetland.

Quimby asked if there would be a culvert at the end of the driveway.

Liegey said yes, it was part of the EGLE permit.

Motion by Greg Greene to adopt the model motion and findings prepared by Planning Staff in its June 14th, 2024 report to approve the variance from §2.24(A) of the Zoning Ordinance to allow the proposed driveway and grading associated with the home and pole barn on parcel 036-01-0008-000 at 1864 Gorman Rd. to encroach into the required 25-foot setback from a wetland as illustrated on the submitted plans of April 1, 2024 and described in the staff report, based on the application meeting the standards of §27.05(D)(3) of the Zoning Ordinance, as noted in the Staff Analysis.

Supported by Clarence Lee.

Ayes: All (5-0)

Nays: None

Variance is approved.

Greene noted that after listening to the first agenda item that there may be some need to investigate some Ordinance terminology when it comes to signage as technology is changing.

Sloan stated that they are in the process of reviewing the signage standards of the Zoning Ordinance. Although the current Zoning Ordinance addresses LED signs, the proposed ordinance that staff is working on will have better definitions.

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

Ayes: All, (5-0)

Nays: None

Meeting adjourned at 8:22 pm.

Alison Eisenbeis, Recording Secretary