

**CHARTER TOWNSHIP OF CANTON  
ZONING BOARD OF APPEALS  
April 14, 2022**

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, April 14, 2022, at the Township Administration Building located at 1150 S. Canton Center Road, Canton Township, Michigan 48188.

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

**ROLL CALL:**

Members Present: Vicki Welty, John Badeen, Alan Okon, Clarence Lee, Greg Demopoulos.

Members Absent: Aaron Tassell

Staff Present: Vidya Krishnan, Senior Principal Planner, McKenna Associates

**ACCEPTANCE OF AGENDA FOR April 14, 2022**

Motion by John Badeen, supported by Greg Demopoulos to accept the agenda with one correction to be made. The Approval of Minutes says it is for January 13, 2021 should be January 13, 2022.

Ayes: All

Nays: None

**APPROVAL OF MINUTES FOR THE January 13, 2022 MEETING**

Motion by Greg Demopoulos, supported by John Badeen to accept the minutes as presented.

Ayes: All

Nays: None

\*See below for topic of reopening the approval of the minutes.

Vicki Welty explained the procedures of the Zoning Board of Appeals to the audience.

1. Applicant Rory Lafferty, for property located at 759 Cherry Stone Dr., located on the east side of Cherry Stone Dr. and west of Cherry Wood Ln. (Parcel ID 71- 085-08-0052-000), Zoning is MR, Multiple Family Residential. Proposal is to install fence within a required front yard setback on a corner lot. Appealing the following sections of the Zoning Ordinance: Section 78-129(h) location and Section 78-131(4)(a)(b) Corner lots (front yard setback). Definition of a required front yard area noted in Section 78-121.

Mr. Rory Lafferty of 759 Cherry Stone Drive is asking for a variance to the Canton Township fence ordinance. He noted that his Home Owner's Association recently updated their bylaws. The HOA board mistakenly thought that their bylaws superseded the Township Ordinances. They put in the bylaws to

allow fences in the corner lots as approved by their Board. Mr. Lafferty feels that this makes this a unique case because not only did his HOA board approve this fence but all 61 houses in his neighborhood had the chance to weigh in on the fence bylaw changes, and it was passed overwhelmingly. Also, the HOA states that fences can only be 4 feet tall, black wrought iron fences. He was approved by his board to have the fence sit back 11 1/3 feet, as not to go up to the curb for safety reasons.

Vicki Welty noted that two letters in support of this variance were submitted to the Zoning Board. Tom Moore of 754 Cherry Stone Drive wrote in support of the variance request. Mark Wheeler, President of Hampton Estates Homeowner's Association Board of Directors, also submitted a letter to affirm the HOA's support of the zoning variance requested by Mr. Lafferty.

Vidya Krishnan, Planning Consultant for Canton Township, stated that the Township received a request from Mr. Lafferty whom resides at 759 Cherry Stone Drive. The property is zoned MR, Multiple Family Residential and is located in the Hampton Estates Subdivision. The proposal requires two variances from the Fence Ordinance. Chapter 78, Article V, Subsection 129(h); to construct a fence along the front lot line of a corner lot, within the required front yard setback, when the Ordinance states that no fence shall be constructed in a required front yard area except on a cul-de-sac or along a Township approved passage way to a private park. Chapter 78, Article V, Subsection 131(4)(b), to construct a fence within the required front yard setback of a corner lot when the Ordinance states that fences constructed on corner lots may be erected to a height of six feet and shall not extend into the required front yard. Ms. Krishnan explained that the Ordinance has several standards based on the Michigan Zoning Enabling Act. She summarized each standard in brief, followed by her review.

- 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 northeast corner of Cherry Stone Drive (site has frontage to the west and south on Cherry Stone). The applicant proposes to install a decorative fence made of aluminum or wrought iron, not to exceed 4 ft. along the south side of the lot, placed 11.33 ft. from the curb, attaching to the rear wall of the dwelling, to create an enclosed rear yard. Per GIS and survey maps, the curb line is also the property line.

Per the applicant, the Association Bylaws were amended in 2021 to allow for decorative fences on corner lots within the setback area provided the fence was constructed of black aluminum or wrought iron and did not exceed 48" in height. The applicant also states that the proposed fence received association approval. A copy of the bylaws amendment has been submitted.

The applicant has provided no justification based on Ordinance standards, except to note that the fence will not pose a public safety issue. The subject site is located in the MR district but was approved as part of a mixed residential development with attached and detached units. Compliance with the Ordinance standards would result in a significantly smaller fenced in rear yard.

- 2) That a variance would do substantial justice to the applicant, as well as to other property owners in the district, (the ZBA, however, may determine that a reduced relaxation would give substantial relief and be more consistent with justice to others).** The applicant's proposal to install a 4' tall decorative fence is not averse to the interest of other property owners and would provide substantial justice to the applicant by allowing them to have a larger fenced rear yard.

Based on the applicant's statement it appears that the Association has decided to allow such fences on other corner lots within this residential development.

- 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.** 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. The Planning Commission is currently working with Township Staff to create a draft ordinance that would acknowledge the challenges faced by corner lots and possibly make some accommodations for allowing fences within front yards for corner lots. The ZBA has previously granted variances for the replacement of existing nonconforming fences. The issue is currently under consideration by the Planning Commission.
- 4) There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district. The conditions resulting in a variance request cannot be self-created.** There are no exceptional or extraordinary circumstances or conditions associated with the subject property. The challenge faced by the applicant is common to all corner lots within the Township.
- 5) A variance is necessary for the preservation and enjoyment of a substantial property rights possessed by other property owners in the same zoning district.** The desire to have a fenced in rear yard for containment of pets and privacy is not an unreasonable request; however, the matter needs to be addressed for all single-family dwellings Township wide.
- 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 not likely to be materially injurious to the nearby properties.
- 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 in this case is not likely to endanger public safety.
- 8) The granting of a variance or appeal will not unreasonably diminish or impair the value of surrounding properties.** The variance requested is 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 variance requested is not likely to impact public health, safety, comfort, morals, or welfare.
- 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. Granting of the variance will definitely set a precedent for similar requests but is not likely to detrimentally affect the character of this neighborhood because of the stipulations adopted by the Association on the fence type and design, as stated by the applicant.
- 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 variance will not impair the adequate supply of light and air to the adjacent properties.

Ms. Krishnan continued to say that the fence proposed by the applicant with limitations on its height, design and placement on a corner lot within an internal private road, as approved by the Homeowner's Association, is not likely to have any adverse impacts. The ZBA has already established a precedent for approving corner lot fences on numerous occasions. The proposed 4-foot height and decorative style are part of considerations for a draft text of a new ordinance.

Ms. Krishnan recommends that the ZBA can act to approve the requested variances based on the findings of fact listed below or alternatively, the ZBA can wait for the Planning Commission to consider new regulations which will address the corner lot fence issue and possibly render the need for a variance unnecessary: She recommends that the Board approved the two variances requested based on the following findings.

1. Strict compliance with the ordinance standards would allow for a small fenced in rear yard limiting the use of significant portion of the lot.
2. Per the applicant the proposed fence design and location limits have been established by a recent amendment to the HOA bylaws.
3. The variances would provide substantial justice to the applicant and is not averse to the intent of the Township Ordinances.
4. The proposed fence will not impede line of sight or affect traffic movement on abutting streets.
5. The proposed fence is not likely to create any issues for health, safety and welfare.
6. The variances are likely to set a precedent; however, the design proposed is in keeping with new draft regulations that will be considered by the Planning Commission.
7. The Planning Commission will shortly be considering an amendment to the fence Ordinance to address the issue of fences on corner lots.

**Motion by Alan Okon, supported by Greg Demopoulos, to open the Public Hearing. Ayes: All Nays: None**

No one from the public wished to speak.

**Motion by John Badeen, supported by Alan Okon, to close the Public Hearing. Ayes: All Nays: None**

Mr. Okon appreciates that fact that Mr. Lafferty got the letter from the president of the HOA Board of Directors.

**Motion by John Badeen to approve the variance for the reasons stated on the record by Ms. Krishnan. Supported by Alan Okon. Ayes: All Nays: None**

**Variance is Approved.**

\*John Badeen noticed that there was a mistake in last month's meeting minutes. He said that to his recollection of the last meeting (January 13, 2022) is that when Ms. Krishnan had recommended the ZBA adopt a resolution to recommend to the Planning Committee to reevaluate the fences, that his suggestion

was that it goes on the next month's agenda. He was concerned about the Open Meeting Act requirements and posting it as an item of business. He stated that there was a motion made Vicki Welty and seconded by him to place a recommendation to the Planning Commission to evaluate the Fence Ordinance and setback rules on next month's agenda. The minutes were typed up incorrectly stating that Ms. Welty's motion was for the Planning Commission to evaluate the Fence Ordinance.

**Motion by Mr. Badeen to reopen the question of the approval of the January 13, 2022 meeting minutes, supported by Greg Demopoulos. All Ayes.**

Ms. Welty stated that the minutes from the January 13, 2022 should reflect that there should be a resolution to formally ask the Planning Commission look at the fence ordinance added to the next month's Zoning Board agenda.

**Motion by John Badeen to have the record reflect that there should be a resolution to formally ask the Planning Commission look at the Fence Ordinance added to the next month's Zoning Board agenda, Supported by Vicki Welty. All Ayes.**

Ms. Welty noted that it was not since that item was not added to tonight's agenda, to please add an agenda item to have a resolution to formally ask the Planning Commission to look at the Fence Ordinance for corner lots on the next month's agenda.

2. Applicant Emily Zambuto, for Canton Renewables, LLC located at 4345 South Lilley Road, on the east side of S. Lilley and south of Michigan Ave. (Parcel ID 71-137-99-0013-703), Zoning is GI, General Industrial. Appealing the following section of the Zoning Ordinance: Section 26.04, which limits the height in the GI zoning district to 45 ft. Equipment is proposed at a height of 60 feet.

Amy Staszal representing Canton Renewables, LLC located at 4345 South Lilley, Canton. They are proposing to install a thermal recuperative oxidizer (TRO) that has a stack height of 60 feet above grade and a diameter of 46 inches. The TRO is the most efficient option. It would result in the least amount of natural gas that is used in the process, therefore reduces the over natural gas usage and reduces greenhouse gas emissions. She is asking for the variance to get the increased stack height.

Ms. Krishnan Planning Consultant for Canton Township, noted that the request is for a height variance for a piece of equipment called a thermal recuperative oxidizer which is part of the landfill's gas recovery facility associated with the Sauk Trail Hills Landfill. The site is zoned as GI, General Industrial. The variance required is from Appendix A; Article 26.00 Schedule of Regulations; Sub-section 26.04 Industrial Districts, GI district. The maximum building height permitted is 45 feet. 60 feet equipment height is proposed. A variance of 15 feet is being requested. Ms. Krishnan noted that there are several factors to be considered according to the Township Zoning Ordinance and the Michigan Zoning Enabling Act. She summarized each factor followed by her review of the proposal with regard to compliance.

- 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 on the south side of Michigan

Avenue contiguous with the landfill. The applicant is proposing to install a new Thermal Recuperating Oxidizer (TRO) unit which incorporates two heat exchangers, resulting in minimal fuel consumption and recovery of waste heat. Compliance with the Ordinance standards is not feasible since it is a piece of mechanical equipment which is designed to function optimally and is not a structure that can be reduced to desired size and shape. The landfill generates significant methane gas and harnessing the energy generated by the gas is beneficial to the community and environmentally desirable. The proposed TRO equipment is not an additional fire emitting stack.

- 2) **That a variance would do substantial justice to the applicant, as well as to other property owners in the district, (the BZA, however, may determine that a reduced relaxation would give substantial relief and be more consistent with justice to others).** The applicant's proposal to install a taller than permissible structure is not averse to the interest of other property owners and would provide substantial justice to the applicant by allowing them to install equipment that would help the facility function optimally.
- 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.** Approval of the variance would not be contrary to the spirit of the ordinance. While height limitations for structures in various districts are put in place to prevent a proliferation of taller structures affecting light, view and air for abutting properties, the variance requested by the applicant for the structure's height is not likely to have any such adverse impacts.
- 4) **There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district. The conditions resulting in a variance request cannot be self-created.** The use of the subject site is uncommon. The equipment associated with harnessing energy from a landfill is not used in most other industries. The exceptional circumstances associated with the property are the location of a landfill on it which generates methane gas that is being harnessed for energy. The need for new equipment for optimal functioning of the site is not just a need, but a necessity.
- 5) **A variance is necessary for the preservation and enjoyment of a substantial property rights possessed by other property owners in the same zoning district.** The variance is necessary for the upgrade of equipment on the site and its optimal functioning. Since the use is uncommon, the applicant is not being granted special property rights that are not available to other property owners in the GI district.
- 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 not likely to be materially injurious to the nearby properties.
- 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 in this case is not likely to endanger public safety.
- 8) **The granting of a variance or appeal will not unreasonably diminish or impair the value of surrounding properties.** The variance requested is 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 variance requested is not likely to impact public health, safety, comfort, morals or welfare.

**10) The granting of a variance or appeal will not alter the essential character of the neighborhood.** The site is located next to the Sauk Trail Landfill and in the vicinity of mostly other industrial uses. The site has lots of equipment and machinery and the granting of a variance for the height of one structure with a 46” diameter is not likely to alter the existing character of the neighborhood.

Ms. Krishnan continued to say that based upon her review of the specific criteria she believes that the proposed height variance that is being requested also meets all of the specific criteria in order to determine whether the variance needs to be granted. It is the recommendation that the Zoning Board of Appeals approve the requested variance for the requested height of the structure at Canton Renewables, located 4345 S. Lilley Rd. The recommendation is based on the eight findings of fact listed in the McKenna letter, dated April 4, 2022.

Mr. Okon asked what color the pipe will be.

Ms. Staszal responded with a standard gray color.

**Motion by John Badeen, supported by Greg Demopoulos, to open the Public Hearing. Ayes: All**

No one from the audience wished to speak.

**Motion by John Badeen, supported by Alan Okon, to close the Public Hearing. Ayes: All**

Mr. Badeen asked if there will be any flame release.

Ms. Staszal said that no there will not be.

**Motion by Greg Demopoulos to approve the variance as presented for the reasons set forth on the record by the Planner.**

**Supported by John Badeen. Ayes: All Nays: None**

**Variance is approved.**

3. Applicant Carole Beck, for property located at 50037 – 500067 Monroe St., located on the south side of Monroe St. between Roosevelt St. and Filmore St. (Parcel ID 71-074-03-0000-000), Zoning is Cherry Hill Village Overlay, with underlying zoning of RA. Application is an appeal of a Planning Commission decision (074-SFP-7079) pursuant to Section 27.05 of the Zoning Ordinance.

Mr. Alan Okon abstained from participating on this issue since he is also on the Planning Commission. He stepped down from the Board's podium.

Mr. Paul Talwar and his wife Inderjeet Talwar live at 561 Roosevelt. They approached the podium on behalf of Carole Beck, of 591 Roosevelt, who teleconferenced into the meeting. Each Board Member received an information packet that Mr. Talwar presented and references by page number during his address to the ZBA. He noted that the owners of the condos at Lot 101 want an ingress/egress onto Roosevelt St. The owners of the house on lot 102 (590 Roosevelt) would like to have use of the full width of their driveway. Mr. Talwar stated that Carole Beck of Lot 149 (591 Roosevelt) would like to preserve the sidewalk and landscaping as it was approved in 2001. Carole and her husband, Ken, purchased their property based on the way it was presented to her in the Cherry Hill Site Plan. Mr. Talwar said that in the application that was presented this was listed as a "restoration" of the original plan. He said that this ingress/egress was never in the original plans. Closing the driveway behind Lot 102 will add more traffic to Roosevelt St. He stated that there will be more limited clear sight distance which could create a safety issue. The south east corner of McKinley and Roosevelt is a bus stop, so many children use this sidewalk. He noted that the owners of Lot 101 and 102 purchased their homes with the current egress. Mr. Talwar respectfully requests that you protect pedestrian safety, the owners accept their choices of the property the way it was planned, and that CHV honor the original design of the plan as it was approved in the original 2001 design. If this driveway were built, it would increase traffic, cause safety concerns and possibly decrease property values in the area.

Carole Beck, 591 Roosevelt, stated that she has lived in Canton since 1978. She chose this home in CHV because of the large front porches and drives with garages in the back of the homes. She would be very disappointed if she had to live across the streets from an ingress/egress that hasn't been there for the last 19 years. Ms. Beck feels that the owners of the condos as well as the neighboring home both knew of the egress situation when they purchased their homes. She does not know why the owners of 590 Roosevelt feel that they need to park two cars in their driveway. She doesn't know why they can't use their garage.

Ms. Welty stated that a letter was submitted to the Board of Appeals from Thomas and Kelly Vassas, 620 Roosevelt St, that states the pros outweighs the cons and they are in favor of making this change.

Ms. Vidya Krishnan, Planning Consultant for Canton Township, stated that she was not present at the Planning Commission meeting, but she will do her best to summarize. On February 7, 2022 at the Planning Commission meeting the Planning Commission received a request from the residents of Unit 101 and 102 to open up the connection onto Roosevelt Street. The original Cherry Hill Village plan did not have that access. At the time there was a concern because Unit 102 is unable to park in their driveway due to the DTE transformer or equipment box with utility easements installed in that area. This makes navigation around that corner very difficult. Based upon that presentation, knowing how difficult it would be for DTE to move a generator of that size, and the opportunity for a new access to a secondary street for the units, it is believed that the Planning Commission made a decision to amend the original plan to allow for the new access onto Roosevelt. Subsequent to that, the Township received a request from Ms. Beck and the Talwars challenging that Planning Commission's decision. The Zoning Ordinance does have a provision where the Zoning Board of Appeals can hear a challenge of a decision or an interpretation made by the Planning Commission. Ms. Krishnan noted that the applicants summarized their concerns. They stated that the owners of Unit 101 and 102 purchased the lots as they were configured in the original Cherry Hill Village (CHV) plan. Therefore, they are challenging the Planning Commission's decision to allow the amendment and would like the Zoning Board of Appeals to reverse it. It is the Township's Community Planner, Patrick Sloan's recommendation to the ZBA based on all of the information received tonight from the Applicants and all other residents affected by this, that this item be remanded back to the Planning Commission for reconsideration.

Ms. Krishnan asked if Mr. Talwar was present at the Planning Commission meeting.

Mr. Talwar stated that he was not.

Mr. Demopoulos asked, "What is the burden of proof which is standard of review?"

Ms. Krishnan said that the Planning Commission has made their decision and this would be called an administrative appeal, according to the Ordinance. Any aggrieved party in the township can appeal a decision that is made by the Planning Commission. Currently who is considered an aggrieved party is a case under review by the State Supreme Court. Until the State Supreme Court rules on that, we must accept any challenges. It is Ms. Krishnan's understanding is that it has not been determined who was required to receive notices and who actually received the notices of the Planning Commission meeting.

Mr. Badeen asked if Ms. Beck received a notification of Planning Commission meeting.

Ms. Beck did not.

Ms. Welty noted from Mr. Sloan's recommendation that if new information is presented that the Planning Commission did not have available to it, the appeal should be remanded back to the Planning Commission for consideration of the new information.

Mr. Badeen asked Recording Secretary, Alison Eisenbeis, if she is aware if notifications are sent out to neighbors for the Planning Commission meetings.

Ms. Eisenbeis stated that she was unaware if letters are sent out for the Planning Commission meeting at which the driveway was approved. That is handled by the Township's Planning Division. Ms. Eisenbeis works in the Building and Inspections Division.

**Motion by John Badeen, supported by Greg Demopoulos, to open the Public Hearing. Ayes: All**

Ms. Kathy and Jonathan Johnson of 590 Roosevelt St., the home that is mostly affected by this (Unit 102). Mrs. Johnson handed out some photos. The largest concern they have is the safety of her family pulling out of the driveway. From her garage door to where the drive of the alley for the condos, is only four feet. As she is pulling out of her driveway, the front of her car is still in the garage while cars are crossing through. Several times she said she has almost been hit from cars coming from the condos. She noted she can't even fit two cars in her driveway. In order for her husband to park his one truck in the driveway, he must park partly on the grass so he doesn't get hit by cars pulling in and out of the driveway. They are also concerned for the value of their home.

Mr. Johnson stated that when looking at the site plan he could actually park his truck on the side of the driveway near the condos, however this would cause the homeowners of the condos to have to get very close to the transformer and possibly drive on the grass.

Mrs. Johnson said that on trash day, six homes' trash is placed by the transformer. People are constantly driving on their grass to avoid hitting the trash. Her largest concern is their safety. She would really like to see that entrance to the condos closed off, so they can have full use of their driveway. She does not see why it would be an issue to have the egress come out to Roosevelt St. There are many egresses coming in and out onto streets. She does not see it being an issue with school busses.

Mr. Johnson said that 20 years ago he is not sure if the transformer was in the spot. He would want to respect the decision of the Planning Commission if they feel that this is a more efficient way to handle things in the sub.

Cynthia Tobin lives at 50132 Hancock St. She is the sister of the applicant Carole Beck. Ms. Tobin read from an old Cherry Hill Village HOA newsletter stating that “Cherry Hill Village is Michigan’s first neotraditional neighborhood with a system of pedestrian friendly streets and miles of sidewalks and pathways that connect the entire community.” She stated that Roosevelt street is one of only two north/south streets serving CHV. The other is Constitution. Adding an ingress/egress between Lots 101 and 102 is close to the intersection of Monroe St. and Roosevelt St. close to Abigail Adams Park. Many pedestrians use this area. She stated that Carole and her husband choose this house on Roosevelt instead of another house on McKinley because McKinley has driveways and garages facing the street and this was not appealing to them. They chose Lot 149 on Roosevelt because of the view of the park and a large side yard. Ms. Tobin respectfully requests a review of the Roosevelt ingress/egress safety issue, and inherence to the original site plan approval for Lots 101 and 102.

Mary Anderson resides at 621 Roosevelt St. She is concerned about the safety of the children. There are two parks nearby, one at each end of their street. The homes don’t have large yards so all the kids go to play at the parks. She does not like when Mr. Johnson parks his truck on the street near her walkway because his truck can block the ambulance that has been to her house numerous times. She stated that everyone has problems and we have to learn to live with them. She feels that the kids’ safety at the parks are more important than where the neighbor is going to park his truck.

Inderjeet Talwar of 561 Roosevelt requested that the Planning Committee come out and visit the site. She said that there are many homes that can’t park their cars in the driveway. Many cars have to drive on the grass because the alleys are very small.

**Motion by Greg Demopoulos, supported by John Badeen, to close the Public Hearing. Ayes: All**

Ms. Welty is concerned with a few things. It doesn’t seem like people got notices and it doesn’t seem like the Planning Commission had all of the information then that the Zoning Board of Appeals has now. She feels that it is pretty clear that if they did not have all of the information, this decision should go back to the Planning Commission with this available information.

Ms. Krishnan agreed that it is important that when changing any plan that has been previously approved to make sure that all properties that are affected get a proper notification if required. She also feels that we need to find out if notices are required to be sent out. She also thinks that the Cherry Hill Village Homeowners Association should have let the homeowners know as well.

Mr. Badeen would bet that this is a De Novo Review which means they could look at everything in the record and then make a decision based on what’s in the record, but it does appear that the record also contains that the people did not receive notice, which may or may not be necessary. He feels that this is a due process issue. He’d also be in favor of kicking it back to the Planning Commission. Mr. Badeen said as a cautionary tale the De Novo Review doesn’t necessarily mean that they are going to take new evidence by putting it to the Planning Commission. Bringing up new evidence at the last minute is not something that’s going to stop an appeal from being reviewed. He is personally only in favor of this for the fact that he feels that there was a notice issue that was missed or at least people are saying was missed.

Mr. Demopoulos stated he is also concerned about the notice issue. Not everyone in the development needs to be notified, just within so many feet. He is not saying if there was proper notice or not, but we

don't know right now. He said with Mr. Sloan's request of more factual development and hearing the people speak today he would be in favor of remand back to the Planning Commission.

**Motion by Mr. Badeen to remand application no. 074-SFP-7079 to the Planning Commission for further consideration based on the new information received from the ZBA applicant, the site plan applicants, and any additional information presented during the ZBA meeting.**

**Supported by Greg Demopoulos. Ayes: All Nays: None**

Ms. Welty stated that this will go back to the Planning Commission and everyone should get a notice and have a chance to speak. Badeen clarified the procedure for the Planning Commission going forward, and stated that it is only a "potential notice issue."

#### 4. Election of Officers

Ms. Welty asked for nominations of Chair, Vice-Chair and Secretary positions.

Mr. Demopoulos stated that he should not be an officer since he is an alternate.

Greg Demopoulos nominated Vicki Welty for the Chair position.

John Badeen volunteered to be Vice Chairperson.

Clarence Lee volunteered to be Secretary.

All in Favor. Ayes: All Nays: None

**Motion by Alan Okon to adjourn meeting. Supported by John Badeen. Ayes: All.**

Meeting adjourned at 8:07 pm.

Alison Eisenbeis, Recording Secretary