

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

A meeting of the Zoning Board of Appeals of the Charter Township of Canton was held Thursday, July 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, Alan Okon, Clarence Lee, John Badeen, Aaron Tassell

Staff Present: Patrick Sloan, Community Planner

ACCEPTANCE OF AGENDA FOR July 14, 2022

Motion by John Badeen, supported by Clarence Lee to accept the agenda.

Ayes: All

Nays: None

APPROVAL OF MINUTES FOR THE June 9, 2022 MEETING

Motion by Clarence Lee, supported by Aaron Tassell to accept the minutes.

Ayes: All

Nays: None

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

Patrick Sloan confirmed that the first agenda item does not need to be taken off of the table since it was approved on tonight's agenda.

1. Applicant Debra Christian (applicant) for property located at 42364 Glencove Ct., which is located west of Lilley Road between Palmer Rd. and Cherry Hill Rd. (Parcel ID 091-01-0106-000), Zoning R-5. Requesting a variance from the following section of the Township Code of Ordinances: Section 78-131(4)(a). Fences or walls constructed or installed between lots shall not exceed a height of six feet above the average grade of the two adjoining lots and shall not extend closer to the front lot line than the rear building line of the building thereon, or to the rear building line of the adjoining lots. Fences or walls constructed or installed between lots may be extended up to, but not into, the required front yard area provided they do not exceed four feet above the average grade of the two adjoining lots. (tabled from June 9, 2022)

Applicant Debra Christian resides at 4835 Napier Ct, Plymouth Mi. She is the property owner at 42364 Glencove Ct.. She read a letter from her son, Brian Christian. After talking to Vidya Krishnan, Planning Consultant at McKenna, he fully understands and appreciates for recommendation for a reduced variance to be granted. This will accommodate 99% of his concerns, he would still ask Zoning Board to grant the

full variance for a few reasons. Due to possible changes in the future to the fence ordinances, he would need three permits for his fence. If he were to proceed with the reduced variance recommendation, he would need to tear down 12 feet of new 4' high cedar fencing and replace it with 6' high fencing when the ordinance changes. He would also like to note that there is already a 6' high existing privacy fence connecting his and his neighbor's home on the east side of the property line.

Patrick Sloan noted that the public hearing for this agenda item was held at the previous June 9, 2022 Zoning Board of Appeals meeting. There were no public comments at this meeting. The public hearing has been concluded. There is no requirement to have another public hearing.

Patrick Sloan stated that Vidya Krishnan, the Township's Planning Consultant, reviewed this appeal and prepared a recommendation letter. The consultant's recommendation is approval for a reduced variance that allows for a 6' high privacy fence to align with the rear wall of the dwelling on the subject site. Mr. Sloan showed the plot plan that was submitted. He stated that the ordinance allows the 6' fence along the property line until it is even with the rear corner of either the neighbor's house or the owner's house, whichever is farther back, at which point the fence would then need to be lowered to the 4' height until it reaches the front yard setback. The recommendation of the planning consultant is to allow a 6' fence to the point of the owner's (Christian's) rear corner of his house. Anything forward from that point would be 4' and must comply with the ordinance. The reasons for this are stated in the analysis report. Part of this is that this particular part of the ordinance is dependent on not just what the owner does on his own property but also where the neighbor's building is situated. If there the neighbor's house sits farther back, or if the neighbor puts an addition on the back of his house this would create a non-conformity on someone else's property even though they did nothing on their property to create the non-conformity. Neither did the Township create the non-conformance by approving a variance or amending the ordinance. This is why the Township recommends to allow the 6' fence be allowed up to the back corner of the subject applicant's property, then anything forward of that would comply with the ordinance.

Patrick Sloan stated that the purpose this ordinance is to allow the 6' in the rear for privacy, but dropping down to 4' in the side to give off less of a fortress-like appearance. It is mostly for the visual character, and allows for more light and air between the houses.

Vicki Welty asked if the fence is already in place.

It was stated that the 6' fence is currently installed to the back of the adjacent property's house.

Alan Okon asked how far from the back of the house to the gate?

Patrick Sloan said that according to the provided plot plan, it would be about 11'.

Alan Okon said he does not have a problem with the fence being 6' to the middle of the house.

Motion by John Badeen, supported by Alan Okon, to open public comment to allow Debra Christian to speak again.

Ayes: All

Nays: None

Debra Christian wished to speak again. She thought that the neighbor to the west sent in a letter and she stated that the neighbor to the east has a 6' fence, and they just wanted to emulate that and do the same.

Motion by John Badeen, supported by Alan Okon to close the public comment.

Ayes: All

Nays: None

Discussion continued amongst the Board in regards to the current location of the fence and neighbor's fences, and if approving this would set a precedent. It was questioned if the 6' fence switching down to a 4' fence may create bigger sight line blight.

Patrick Sloan said that this ordinance encourages the 6' gate to be at the back corner of the property to keep the side yard open and be more visible from the street and to see the side elevation of the home. He noted that we can't assume what changes may be made in the future to the fence ordinance. This ordinance change will have to be recommended by Planning Commission and approved by the Township Board. They will be the ones to decide if in the future we will allow the 6' fences in the side yards, township wide.

Motion by Alan Okon, supported by John Badeen, to approve the plan as presented allowing the 6" wall privacy fence and 6' high gate, based on the Planning consultant's report and the existing 6' high fence in the side yard on the opposite side of the house.

Ayes: Lee, Okon, Welty, Badeen

Nays: Tassell

Variance is approved (4-1).

2. Applicant Linda Ciciotti (applicant) for property located at 4133 Brookside, which is located east side of Brookside between Sawyer and Weston. (Parcel ID 121-01-0112-000), Zoning R-3. Requesting a variance from the following section of the Zoning Ordinance: Section 2.03(E)(2), which requires a pool to be a minimum distance of 4 feet from a building wall.

Vicki Welty noted that three letters were submitted all in support of granting this variance. The letters are from: Nicholas Pfund, Grandview Estates HOA Portfolio Manager; Pamela Landon, Neighbor at 4151 Brookside; and Paul Roop, Neighbor at 4119 Brookside.

Linda Ciciotti at 4133 Brookside and representative spoke in regards to this project. They lived in Canton since 1998. They started this project in February 2021 with phone calls to the Township when they learned that the Township treats hot tubs and pools alike. She believes that they are quite different and separate rules should be drawn up for clarification. The hot tub sits on a raised deck and half of it sits against a perimeter wall. She stated that the Township's requirements for a swimming pool, they were given clear information that neither a fence, nor gate nor alarm are needed for the hot tub with a locking cover. Since they did not know if a 4' distance was needed for a hot tub, they submitted the permit application for their deck with diagrams of the hot tub drawn on it. They received written approval from the HOA and the Township in regards to the construction of the deck and location of the hot tub, so they thought. The HOA and surrounding neighbors have no objection to the hot tub as stated in their emails. Only one and a half feet of the hot tub's right perimeter extends below their bedroom window. No part of the window can be accessed with the hot tub's locking cover is up. Half of the hot tub complies with the

ordinance as it is greater than the 4' distance. They are willing to replace the bedroom window with tempered glass as suggested by Mr. Creamer, Building Official of Canton Township. It took 6 men and machinery to move the 1,000 lb. hot tub before the security fence was installed and the staircase was built. They were told that a crane may be necessary to move the hot tub over the house which could cause dangers to persons and/or property. This would also be a great expense to expand the deck. And that no further recommendation to extend the security fencing be put upon them. They respectfully ask the Board to grant the request for the variance.

Patrick Sloan stated that Vidya Krishnan, Planning Consultant for the Township, reviewed the application and recommends approval of the variance of the hot tub as located on the plans with the recommendation of the applicant replacing the window abutting the hot tub with a shatterproof tempered glass. He read the 6 criteria applicable to variances as noted on Ms. Krishnan's report.

John Badeen asked what are the other building code requirements that may be an issue.

Patrick Sloan said that the only Building Code he is aware of is related to safety and the recommendation from the Building & Inspection Services Division for the tempered glass.

The homeowner wanted to make sure that with approving this variance that they will not need to extend the height of the fence.

Patrick Sloan stated that this variance was only looking at the location of the hot tub and the distance from the house.

Board asked where did the mention of a required 6 ft. high fence come home.

Homeowner said that an inspector stated that possible need to extend the fence another 3 ft. surrounding the hot tub. That is why he is requesting the Board to also that if they grant this variance, that there will not be a further requirement to extend the fence.

Vicky Welty asked if the location was the only variance requested.

Patrick Sloan said that the "location requirements for pool" was the only item listed on the application as being appealed. If there's an issue with the fence height, that would have to be a separate variance. That was not part of the public notice that was sent out. Sloan recommended that the applicants speak with the Building & Inspection Services Division to determine if any additional variances are required or if the fencing requirement discussed only applies to swimming pools.

Motion by John Badeen, supported by Alan Okon, to open the Public Hearing.

Ayes: All

Nays: None

No one from the audience wished to speak.

Motion by Alan Okon, supported by John Badeen to close the Public Hearing.

Ayes: All

Nays: None

John Badeen doesn't have a problem with this. He believes that the Zoning Board of Appeals can override the denial of a Building Permit.

Patrick Sloan explained that if it's related to a Zoning Ordinance requirement, then the Zoning Board of Appeals can overrule the denial of the permit via an appeal. But if there is something separate that is in the Building Code separate from the Zoning Ordinance, that would be appealed through the Building Board of Appeals.

Motion by John Badeen to approve the variance requested for the self-fencing hot tub that is on top of the deck to have a four ft. variance from the four ft. set back rule because of the practical difficulty that is described in the Planning consultant's review letter.

Supported by Alan Okon.

Ayes: All

Nays: None

Variance is approved (5-0).

Homeowner asked to clarify that they can now hook up the hot tub and there are no further requirements that they put up the 3 ft. fence on top of the current 3 ft fence.

Vicky Welty said that there is no requirement that Zoning Board of Appeals knows of. At this point, there is no variance in front of them to look at.

John Badeen added that they will still be subjected to final inspection of the permits.

Patrick Sloan recommended that they talk to the Building Division about that.

3. Applicant Dennis and Cynthia Johnson (applicant), for property located at 2063 Woodmont Dr West., located on the north side of Woodmont between Century Ct. and Palmer Rd. (Parcel ID 106 01 0058 000) Zoning R-5. Requesting a variance from the following section of the Township Code of Ordinances: Section 78-131(4)(a). Fences or walls constructed or installed between lots shall not exceed a height of six feet above the average grade of the two adjoining lots and shall not extend closer to the front lot line than the rear building line of the building thereon, or to the rear building line of the adjoining lots. Fences or walls constructed or installed between lots may be extended up to, but not into, the required front yard area provided they do not exceed four feet above the average grade of the two adjoining lots.

Dennis Johnson Jr, residing at 2063 W. Woodmont, is the son of Dennis and Cynthia Johnson. They are seeking a variance to make their entire rear fence 6 ft. tall. They already have a fence in place that the received approval for ages ago. Since that fence was built the neighbors built an addition. They just want to replace their fence as is.

Patrick Sloan stated that this request is similar to the first agenda item. The applicant's neighbor home sits further back than the applicant's house. If the neighbor's addition was built after the original fence was put up than this would be a case of a non-conformity being created on the lot without the lot owner or

the ordinance changing. This is very rare. Essentially, the rear corner of our neighbor's house will affect what you can do on your property. This is a very small area, just the distance of the rear corner of the neighbor's to the rear corner of the applicant's property. The recommendation from our Planning Consultant is to approve the variance based on the reasons listed on the Planning Consultant's report.

Motion by Alan Okon, supported by John Badeen, to open the Public Hearing.

Ayes: All

Nays: None

Bill Pruitt owner at 2035 Woodmont has lived next door to the Johnsons since 1986. He saw the plans for the fence and has no objections. It is beautiful.

Motion by John Badeen, supported by Alan Okon to close the Public Hearing.

Ayes: All

Nays: None

Motion by John Badeen to approve the variance as requested for the reasons stated in the Planning consultant's review letter.

Supported by Alan Okon.

Ayes: All

Nays: None

Variance is Approved (5-0).

Motion by John Badeen to adjourn meeting. Supported by Alan Okon.

Ayes: All.

Nays: None

Meeting adjourned at 7:54 pm.

Alison Eisenbeis, Recording Secretary