

**THE CHARTER TOWNSHIP OF CHESTERFIELD
ZONING BOARD OF APPEALS**

December 9, 2015

On December 9, 2015, a regular meeting of the Chesterfield Township Zoning Board of Appeals was held at the Township Hall located at 47275 Sugarbush, Chesterfield, MI 48047.

1. **CALL TO ORDER:** Chairman Stepnak called the meeting to order at 7:00 P.M.

2. **ROLL CALL:**

Present:	Marvin Stepnak, Chairman James Klonowski, Vice-Chairman Thomas Yaschen, Secretary Carl Leonard, Planning Comm. Liaison David Joseph, Twp. Board Liaison
Absent:	Patrick Militello, <i>excused</i> Wendy Jones, <i>excused</i>

Gary DeMaster attended the meeting as the representative from the Building Department.

3. **PLEDGE OF ALLEGIANCE:**

Chairman Stepnak explained the procedures to the audience.

4. **ZBA PETITION #2015-18: Ovidiu Aldea, 50097 Dove Lane, Chesterfield, MI 48051. Requesting a variance from Sec. 76.331 (g) Fences, walls, hedges and protective barriers, all fences of any nature, type or description located in the Township shall conform to the following regulations, (b) that only decorative, non-obscuring split rail fences, 24" to 42" high shall be permitted in the front yard, location is the above address.**

Gary Sanfield, 42645 Garfield, Clinton Twp., MI 48038 addressed the board.

Mr. Sanfield stated that he was representing the homeowner of the property. He stated in short, the petitioner put these trees in front of his house which he guessed the ordinance did not allow. These are shrubs and the ordinance allows for certain fencing but not shrubs. The petitioner is asking for a variance because of the unique situation with his residence. He needs it for privacy because his house is located where two intersections come together. He explained that at night when the cars are driving in the direction of his house, the lights shine directly into his five year old son's bedroom. He stated that by putting up the shrubbery there which is a natural greenery it tends to block the light from the cars at night. Additionally, because of the fact that there is a

significant amount of traffic in front of their home due to the two streets coming together there is a lot of additional noise that the other people in the subdivision would not have. He stated that the shrubs tend to muffle the noise. The little fence they allow would not muffle the noise. He related that the petitioner's neighbors actually think the shrubbery looks better than the fencing and one of those neighbors is actually here at the meeting and he indicated that he is in favor of the shrubbery because he feels it is attractive. The petitioner is putting the shrubbery on his property and he reiterated that it is needed for privacy because his house is located where two intersections come together and that is the uniqueness of the property, and the noise. He explained that also in the summer there is a lot more dust and the petitioner cannot leave his windows open because the additional traffic in the summer causes a lot of dust that enters the residence so he is forced to keep the windows closed and run the air conditioning. He would rather keep the windows open in nice weather. He stated that he does not believe that anybody in the subdivision is objecting to the proposed variance. He reiterated that the petitioner has the approval of his next door neighbor who is sitting here and will so indicate this if they would like him to call the neighbor up.

Chairman Stepnak stated that he will ask for public comments at the end of his presentation.

Mr. Sanfield reiterated that without that shrubbery, the petitioner has no privacy with all that traffic from the other street and people driving directly toward his house. He stated for those reasons, the uniqueness of where his house is located and no objections from the neighbors, they are asking for the variance to be granted.

Mr. Leonard stated that when he pulled up it was pretty obvious that he could see the trees right when he pulled up to the house and he could just vision more and more people wanting to do that for a variety of reasons. So, he stated that if it was a matter of the light, there are shades that darken the room and the trees could be put up right against the house to block things. He could just imagine that happening all over the place and that is why there is an ordinance that does not allow fences and shrubs in those locations. He has a real problem with this right now.

Mr. Sanfield stated that shrubs against the window almost defeats the purpose of having a window. These shrubs are back far enough to allow shade but not putting it up against the window.

Mr. Leonard again brought up the darkening shades to block out the lights.

Ovidiu Aldea, 50097 Dove Lane, Chesterfield, MI addressed the board.

Petitioner stated that if he uses those shades it would be the same. He could not open the window or anything and there would be no view. He stated that they cannot look outside and people are walking around all the time and he wants privacy. He mentioned that he used to have trees in front but a tornado just destroyed, killed them.

So he stated either he plant these evergreens or shrubs or put in other big trees to get some privacy.

Mr. Klonowski stated that he agreed with Carl and he thinks there are going to have problems further down the road with many people who may have similar circumstances.

Mr. Sanfield stated that the only people that might have similar circumstances are if they have two intersections that come together in front of their residence with the light pointing directly into the house.

Mr. Klonowski stated that there could be a corner and when a car turns the light goes into a home.

Mr. Sanfield stated why not look at it on a case by case basis. He commented that may be true, but they should address the situation as it arises. This situation should be addressed as to the merits of the case.

Chairman Stepnak reminded the board that each petition is handled on its own merits.

Mr. Joseph stated that he has these in the rear of his property and they get quite high so the spacing that they have there...he is not an arborist, but they are not there yet. He explained that these shrubs can get quite high and fill out so there will be a complete wall. He stated that it looks like there may be two feet between each plant at this point but each plant grown 12 inches and now the petitioner has a wall and what is the petitioner's intention with regard to the height?

Petitioner replied that the company that planted them stated that basically he is going to trim and maintain them at 5' 8" every time that is required and he will keep them in good shape. Petitioner made an additional comment that was inaudible.

Mr. Sanfield stated that in other words the petitioner is going to maintain them.

Mr. Joseph stated that his other comment in regard to their ordinance and he is reading this and in essence it would be considered a fence. He explained in terms of the reason the fence is not going to the sidewalk and there needs to be a setback. He added that there would be a safety concern such as kids riding bikes if a handlebar catches the fence. He commented that they would not have that here.

Petitioner stated that every car that wants to make a right turn or left turn in front of his house is right in front of his garage, they come, they stop, people looking right in front and if I have the garage open everybody sees the garage right where they are in his driveway. So, he added that he needed some kind of privacy; it would either be this or some bigger trees like every other neighbor has.

Mr. Joseph asked Mr. DeMaster if in regard to the concern from a safety standpoint does he see this as causing any safety concerns?

Mr. DeMaster stated he had many concerns there is the safety concern and also the possibility of people hiding behind the fences. This would also detract from the open areas in the front yard. He mentioned that privacy is intended for the back yard and these types of trees are often used for privacy in the back yard.

Mr. Joseph asked for clarification on the ordinance as to when plants or greenery in the front yard would be considered a fence?

Mr. DeMaster replied when the trees are plant so close together so they are used as a fence and clearly used to border the property.

Mr. Joseph asked if they had anything in the ordinance that lays out the layout in other words do they have to be in an exact line? He stated that this has been interpreted as a fence.

Mr. DeMaster stated that when shrubbery is being used as a fence, it is considered a fence. He mentioned that as Mr. Leonard brought up if the petitioner really wanted to block the area, he could put some landscaping in the front yard and it does not need to be right up to the window, but in a couple of sporadic areas. He remarked that this is clearly being used as a fence.

Mr. Joseph stated that the petitioners are declaring this as a fence.

Mr. Sanfield stated that they were not calling it a fence. They are shrubs to minimize noise, dust and dirt caused by excessive traffic and for privacy. So they are being used for three purposes. He thought that shrubs would be more desirable from an esthetic standpoint than that short metal fence.

Mr. Joseph stated that they had not addressed the height. He asked the petitioner if he planned to have the shrubs grow together to form a complete barrier?

Petitioner stated no the trees will be kept at the same size they are now.

Mr. Sanfield stated that the petitioner already had a landscape company to maintain the trees to the same shape they are in now at 5'8" tall and they would not be any wider than they are now. He reiterated that they would be maintained in their present form and it is not their intent to have them grow together and block the whole front as a fence.

Mr. Joseph asked if they knew the distance between those plants right now?

Petitioner replied there is about 1 ½ to 2 feet between them right now. They have been up about 4 to 5 months now and they have not grown at all.

Mr. Yaschen stated that all his questions have already been answered.

Mr. Yaschen then read a letter from Darrell and Debra Ledford at 27128 Robin Drive that was against the board granting variance # 2015-18. The letter was retained for the ZBA records.

Mark Wampler, 50085 Dove Lane, Chesterfield, MI addressed the board.

Mr. Wampler made comments in favor of the board granting the variance.

Chairman Stepnak asked if all the board members saw the pictures presented by the petitioner?

The board members acknowledged that they had seen the photos.

Chairman Stepnak commented that the lot was 60' x 120' which is a standard lot for that area. He agreed that he saw the petitioners concern about the lights coming into the house, but unfortunately there are a lot of homes that are laid out like this in subdivisions. He reiterated that every variance that comes before the ZBA stands on its own merit. He stated that he drove by the home and is looking at the pictures that were presented and it is his feeling that this resembles a fence. The Building Department has alluded to that fact and that is their professional judgement call on that. He stated that people in the area do not expect fences to be in the front and that is not the way the subdivision was laid out. He does understand the petitioner's comments about doing some type of maintenance, however, at this point for all intensive purposes it looks like they have a fence at the front of their home.

Mr. Sanfield stated as a supposition if there were to be 50% less trees at the front would that take away from the interpretation of a fence; or if the trees were staggered.

Chairman Stepnak stated that there have been times that the board entertained some type of agreements but they are still looking at this as the concept of a fence. He stated that in his travels around the community, he does not really think he remembers that many shrubs being that close to the sidewalk; maybe on a corner lot. He explained that even if the trees are staggered, it would still look like a fence.

Mr. Sanfield commented that it seemed to him if this was such a bad situation as they are leading them to believe; he would think they would have a lot of people in the subdivision sending letters or appearing to oppose this if it was that serious of a violation or if was that offensive. He stated that if one person who lives right next door thinks it is attractive and only one person sends in a letter how egregious can this be.

Mr. Leonard commented that they very seldom see people show up for these meetings or write letters. He mentioned that years ago there was a situation where somebody wanted a variance on the waterfront to build their home closer to the road. There is usually a little give and take because the lots on the waterfront are all different shapes and sizes and things do not always fit. He explained that there was absolutely no opposition to the variance and the variance was granted. In the end, you would think a crime had been committed because everybody on the street started writing letters, calling the Township yelling and complaining about what had happened there. So, if people do not respond does not mean one thing or another.

Mr. Sanfield told a story about a situation where somebody wanted to put a cell tower in back of commercial property and so many people showed, they had to get additional chairs. His point was that if something was really bothering the neighbors they would tend to show up. The letter going out gives neighbors the opportunity and if people do not exercise their rights that is not really a meritorious argument.

Mr. Leonard explained that he has been doing this for 16 years and he has seen the room filled and he has seen the board up there and they could hear crickets. He mentioned that people are busy with their lives and don't always bother.

Chairman Stepnak related that maybe some other people would like to do this themselves and if that is the way it goes there are mechanisms in place to change and adopt the ordinances to allow that. He commented that before they only allowed two car garages and now there are three car garages. So if the majority of the people are for this, and they want to amend the Township ordinance regarding fences, that is a whole different thing.

Mr. Joseph stated that as the trustee liaison to the Zoning Board he is always looking for an opportunity to stand with the homeowner. It is their property and he wants everyone within reason to do what they want to do on their property. He has a tendency to lean in that direction. He stated that if they are calling it a fence it is very clear that it does not fit the ordinance. He does have some challenges with the definition of a fence and shrubbery. He thought the argument could be made because there is nothing in the ordinance as far as a pattern for the shrubs on the property. He stated that if several plants are lined up in a row, it lends itself as being seen as a fence. If the shrubs would be staggered they could not be defined as a barrier or a fence. He would support this petition with the caveat that the shrubs are maintained at a height of no taller than 5'8" and the 18" because he does not see non-connected shrubs as a fence. To him it is a definition as to what constitutes a fence or a barrier. He does not think they have the right to tell the petitioner where to put plants in the front yard unless they are making a line of plants that are specifically a barrier or a fence. He added that the definition is important and he reiterated that he did not have an issue with this and he would be inclined to support it given the agreement that the shrubs be maintained in perpetuity with no less than 18" between plants and the height being no taller than 5' 8".

Mr. Sanfield thanked Mr. Joseph and stated that they would maintain that.

Chairman Stepnak mentioned that they could adopt that into the motion.

Mr. DeMaster had nothing more to add from the Building Department.

Motion by Mr. Joseph to approve ZBA Petition # 2015-18 with the added provision that the homeowner in perpetuity maintain the plants with a height of no greater than 5' 8" and a space between the plants of no less than 18".

There was no Support for the Motion

Motion was Denied due to lack of support.

Chairman Stepnak asked for another motion on the Petition.

Motion by Mr. Klonowski to deny Petition # 2015-18. The petition is in clear violation of Section 76.331 (b). Trees are not allowed to be used as a fence in the front yard.

Supported by Mr. Yaschen

Ayes: Klonowski, Yaschen, Stepnak and Leonard

Nays: Joseph

Motion Granted

Mr. Leonard commented that there were a number of ways that this could have been worked out without the variance and that was why he voted no.

Chairman Stepnak stated that the reason he voted to deny is because it does resemble a fence and the parcel that the petitioner has is not unique and different from other properties in the community because there are many situations in the community where the road runs into a property. He stated that there was no practical difficulty established for this variance and it violates our ordinance on this issue.

Mr. Sanfield asked if the petitioner wanted to modify the shrubs and bring in new pictures showing a different arrangement would that be an issue?

Chairman Stepnak replied that the petitioner could always file for a variance, however, he suggested that if they wish to go see the Building Department, they are open every day, Monday thru Friday. He encouraged the petitioner to meet with Mr. DeMaster or one of the inspectors so they could talk about what to do in the area and that may save him the cost of filing for another variance.

Mr. Sanfield asked if the meeting was recorded?

Chairman Stepnak replied yes.

Mr. Sanfield asked if he needed a transcript of the proceedings, he could get a copy of that correct?

Chairman Stepnak answered yes and was told to contact the Clerk's Office for a copy of the recording or the minutes.

Mr. Sanfield stated that he may want a transcript if they chose to go to Circuit Court.

Recording Secretary asked the petitioner if he wanted an audio copy of the proceedings or a copy of the minutes?

Mr. Sanfield stated that he would prefer a transcript of the proceedings.

Chairman Stepnak stated that would have to be requested from the Clerk's Office and the proper paperwork would have to be filled out.

He asked if the Clerk was in the office at that time?

Chairman Stepnak stated that they are not there at this time and he reiterated that if the petitioner chose he could contact the Building Department as far as the proper placement of the trees.

Mr. Joseph thought the petitioner did present a satisfactory hardship because of the uniqueness of his property specifically because the street in essence dead ends at this home. He realizes that there are homes in subdivisions across the Township with this problem and he would encourage each one of those homeowners to come forward and make the same request as this petitioner. He then stated that he does not know if the Township is on the firmest of ground in regard to the placement of the shrubbery and he does not know when a fence becomes a fence when the plants are not connected. The petitioner indicated a willingness to maintain distance between the shrubs and he has a hard time arguing the fence. He respects the other board members who have interpreted this very strictly, but he reiterated that he does not see this as a fence. In this case he thought the petitioner met the burden and showed uniqueness and difficulty with this property and he laid out the practical reasons with regard to the lights, noise and the plants remedies that. So he voted to support because the petitioner agreed to maintain that space and that was why he voted no on the denial. In regard to the petitioner's request for the recording and he understood that once the minutes were approved the recording is no longer available. He asked or does the recording stay in place forever?

Recording Secretary stated that if the petitioner would like a copy of the actual recording he should request it.

Mr. Sanfield stated that as part of the record he was requesting that the recording be maintained for 180 days which is a general right of law when it pertains to these types of meetings.

Chairman Stepnak stated that the petitioner should contact the Clerk's office and that they are aware the petitioner may be requesting it.

Mr. Sanfield just wanted them to be aware that they should not destroy any recordings until they comply with the time requirements so they have enough time to digest whether they want to take this matter to the judicial level. There are administrative laws as far as how long records have to be made available and he wants to make sure his client's right to an appeal to the Circuit Court is preserved and you cannot destroy it because they told him to go across the hall.

Chairman Stepnak stated that he understood.

Recording Secretary stated that she would let the Clerk's Department know that the petitioner may request a copy of the recording, however, the petitioner should contact them.

Mr. Joseph stated that he would send an email to the Clerk and the Township Attorney to let them know the petitioner may be taking this to court and request that a copy of the audio be maintained.

5. **ZBA PETITION #2015-19: Alexander Charow, 32241 Hickock, Chesterfield, MI 48047. Requesting a variance from Sec. 76.331 Agricultural and Residential districts, (a) Fences in other than the A-1, no fences shall be erected along the dividing lot or parcels of land in excess of six feet. Request located at the above address.**

Teresa Charow, 32241 Hickock, Chesterfield, MI addressed the board.

Ms. Charow stated that they were requesting a fence to be over six feet tall. She stated that her husband is 6' 4" and their neighbor is also over 6' tall and they are requesting a fence for privacy. She stated that they also have a nice wooded area in back and the fence would not run the extent of their property line. The fence would run between the two houses. She mentioned that the neighbor's home is a second story and looks into their kitchen window. The fence would not be in the front of the yard it would be located about half way back between the two houses and it would go to the back of the house and a little further because they both have a back porch which they like to use and it is right next to their back porch on the same side.

Alexander Charow, 32241 Hickock, Chesterfield, MI addressed the board.

Petitioner stated that the porches are raised and the fences would be put in a lower section where the lots meet.

Ms. Charow stated that they tried to grow trees and shrubs there but they are dying because it is so wet back there.

Mr. Yaschen asked Mr. DeMaster of the Building Department what was the major concern?

Mr. DeMaster stated their concern is that it is a 10' 8" fence. The ordinance states 6' and the entire Township adheres to that. He added that there is no 10' fence anywhere.

Ms. Charow asked if there was a compromise?

Chairman Stepnak replied that was why the petitioner was here.

Ms. Charow stated that it was not a commercial property next to them.

Chairman Stepnak stated that the reason the petitioners were here is the height of the fence. Normally, they could just go in, pull a permit for a fence and put it up. The problem is that the fence is taller and there is nothing like this in the community.

Ms. Charow asked if they had to offer the board reasons for requesting this fence?

Chairman Stepnak replied yes. He told the petitioner that they needed to know the reason they were requesting this taller fence.

Ms. Charow asked if the board members had a chance to read all the information she presented in her request?

Mr. Yaschen replied that they read the information, but businesses and things of that nature does not really justify a practical difficulty according to the ordinance. He asked why they need 10'.

Ms. Charow stated in order to cover the large size boats, mobile home and the neighbor's pool deck. She mentioned that when the neighbors stand on their raised pool deck they have no privacy.

Mr. Yaschen stated so they do not want to look at these things.

Ms. Charow replied that 6' doesn't even cover her husband's eyes. She reiterated that the neighbors have a second story home and it looks right down into the property.

They are not requesting a fence the whole length of the property; the fence would just be between the two houses and just past their back porch.

Mr. Yaschen had no further questions.

Mr. Leonard stated that he was having some problems with this too and so he would like to pass right now.

Mr. Joseph stated that if the petitioners paid any attention to the previous request they would know that every petition the board gets, he investigates thoroughly as to how he can advocate for the homeowner being allowed to do something on their property. However, he is out of ideas on this one.

Ms. Charow stated that she tried growing trees, but they died.

Mr. Joseph stated that if the trees did grow, they would call it a fence. The only hardship which he would love to have is the petitioner being 6' 4". He does not know how to support them on this and he desperately tried. He explained there is not another 10' fence in the Township and he cannot support the petition. The fence is too high and really out of line with the rest of the Township.

Ms. Charow asked what about an 8' fence as a compromise?

Mr. Joseph stated that the difficulty he runs into is that he does not like the Let's Make a Deal scenario. He stated that the petitioner could always come back.

Ms. Charow asked if there would be another fee?

Chairman Stepnak replied yes.

Mr. Joseph stated that 10' is just too high for a fence and he does not know that 8' would really change his mind. He does not think there are 8' fences in the Township either. He thought they would be in a commercial area with that maybe like something Wal-Mart would use for their parking lot.

Mr. DeMaster stated that Wal-Mart's fences are 6' tall.

Mr. Klonowski explained that when granting a variance, they are not looking for personal items, they are looking at what is the practical difficulty on the property and that is what the board has to look at.

Petitioner replied that the practical difficulty is that besides their porches being raised and the property line where the fence would be going is a valley and already lower from the rest of the ground. A 6' fence theoretically would look like a 4 or 5 foot fence.

Chairman Stepnak stated that since the fence is just for a small piece of property it looks to him as though this fence would be acting as a barrier and that is not the purpose of the ZBA sitting up here.

Public Comments:

Bruce Detloff, 48060 Callens, Chesterfield, MI addressed the board.

Mr. Detloff stated that he understood why the petitioners have been having problems with their neighbors. He complained that they were causing flooding on his property.

Mr. Joseph asked if Mr. Detloff was complaining about the petitioners or someone else?

Mr. Detloff complained that the petitioner's neighbors have caused a lot of trouble.

Chairman Stepnak verified so the neighbor they are trying to block is causing all the trouble.

Mr. Detloff replied yes. He then stated that good fences make good neighbors, but what the petitioners are proposing is a wall. He doesn't want the fence, but he wanted the board to know that these people are in a hard spot.

Rob Pelliccia, 48640 Callens, Chesterfield, MI 48047 addressed the board.

Mr. Pelliccia stated that he has had the same problems with flooding on his property with the barn. He made other comments about that neighbor. However, he was against the board granting the variance for the petitioners because he does not think a wall will be a solution.

Mr. Yaschen read a letter from Emilio & Grace Mastronardi that was against the board granting the petition.

Chairman Stepnak cautioned the board to leave public attacks out of their decision and they are only dealing with the fence this evening. He stated that he realizes that the petitioners are concerned and knows they want to enjoy their space, but this is something they really have a difficulty with. He suggested that the petitioners talk to Mr. DeMaster and see if he can come up with a plan and work it out instead of filing a new petition.

Mr. Leonard mentioned that the paperwork states a lot of personal stuff with running a business, selling dogs, campers and other complaints. He is not sure if Mr. Joseph as the Township Trustee could bring this back to the Township for consideration as to whether they are allowed to run a business. He mentioned that when the board grants a variance, they stipulate that no businesses are to be run out of the garage.

Chairman Stepnak mentioned that the Township has Zoning Enforcement officers that work under the Building Department and complaints can be filed with them.

Mr. DeMaster commented that there are some types of businesses that can be run out of a home.

Mr. Joseph stated that his concern was that the petitioners have been victims of a bad neighbor. He explained that all the people in the community have to live under the same rules, so if people are not living under the rules, they should try to do what they can to assist the residents. He commented that it is a delicate balance to hear that the petitioners have to come forward to build this fence to block out a bad neighbor. If that neighbor is not living under the rules it is not right and he will mention it to the Supervisor and the Building Department is quite quick in getting out when there are problems. He stated that maybe the petitioners should make their specific concerns known and they should try to do what they can to assist them.

Ms. Charow is concerned that maybe they are making a bigger enemy if they go ahead and file complaints about the businesses the neighbor is operating.

Mr. Leonard stated that the neighbor is already aware because he received the paperwork.

Chairman Stepnak stated that if the neighbor is violating the rules, he is violating the rules.

Mr. Joseph stated that when they grant a variance it is for the property so the hardship has to be associated with the property because that is the permanency of the community. He explained that residents and neighbors come and go but when they make a decision to try to fix something between neighbors, they go outside of the scope of the law. He mentioned that if the petitioner's neighbor is doing something that is against the rules the Township needs to get on that.

Motion by Mr. Joseph to deny Petition # 2015-19 as the fence would exceed the Township ordinance regarding height.

Supported by Mr. Leonard

Ayes: All

Nays: None

Motion Granted

6. **OLD BUSINESS:**

There was no old business.

7. **NEW BUSINESS:**

There was no new business.

8. **APPROVAL OF MINUTES FROM PRIOR MEETING:**

Motion by Mr. Yaschen to approve the minutes from the November 25, 2015 meeting.

Supported by Mr. Joseph

Ayes: All

Nays: None

Motion Granted

9. **COMMENTS FROM THE FLOOR:**

The board members and Mr. DeMaster all wished everybody Merry Christmas.

10. **ADJOURNMENT:**

Motion by Chairman Stepnak to adjourn at 8:25 PM

Supported by Mr. Leonard

Ayes: All

Nays: None

Motion Granted

Thomas Yaschen, Secretary

Grace Mastronardi, Recording Secretary