

**CHARTER TOWNSHIP OF NORTHVILLE**  
**Zoning Board of Appeals**  
**November 18, 2020**

**DATE:** November 18, 2020

**APPROVED: December 16, 2020**

**TIME:** 7:00 p.m.

**PLACE:** Meeting held remotely via video/teleconference

Due to the COVID-19 pandemic, as authorized under the Open Meetings Act, MCL 15.261, ET SEQ., AS AMENDED by Senate Bill 1108 (2020), members of the public body and members of the public participating electronically were considered present at the remote meeting and could participate as if physically present, as outlined on the Township website and posted per Open Meeting requirements.

**CALL TO ORDER:** The meeting was called to order by Chair Slatin via video/teleconference at 7:01 p.m.

**ROLL CALL:**

**Present:** Brian Doren, Eric Lark, Joseph LoPiccolo, Gary Sixt, Paul Slatin, Paul Smith.

**Excused:** Symantha Heath.

**Staff:** Jennifer Frey, Township Planner

Township Planner Frey confirmed that all property owners within 300 feet of tonight's petitions had been notified.

**Approval of Minutes:**

Zoning Board of Appeals – September 16, 2020

**MOTION by Doren, support by Smith, to approve the minutes from the Zoning Board of Appeals meeting of September 16, 2020.**

Roll Call Vote: Ayes: Doren, Lark, LoPiccolo, Sixt, Slatin, Smith

Nays: None

**Motion approved 6-0.**

Chair Slatin made standard introductory remarks explaining the role of the ZBA and the formal procedures of the meeting. Chair Slatin noted that four votes would be required to pass any motion. He also noted that all variance requests approved would be valid for one year.

**Petitions:**

**1. PZON20-0014 Peter and Mary Ann Smith, property owners**

Location: **42045 Banbury Road (77-053-02-0103-000)**

Request: A variance request to Article 18, Schedule of Regulations to allow a 21.6'

rear yard setback where a 50' setback is required.

Zack Ostroff, 2640 Water Oaks Drive, West Bloomfield; Jamie Craig, Renaissance Restorations, 211 E. Merrill Street, Birmingham; and Peter and Mary Ann Smith, property owners, were present on behalf of the petition.

Mr. Ostroff designed the addition and had tried to conform with all setbacks. The nature of the corner lot with two front setbacks and the shape of the lot in the back made it difficult to do anything while meeting the 50' setback. The modest proposed addition was on the east portion of the house. It was virtually impossible to add on to the west side of the house and be in conformance. All other criteria were met and no other variances for lot coverage or other setbacks were needed.

Mr. Craig noted that this was a very unusually shaped lot because it was a corner lot with two front setbacks. Therefore, the homeowners had a hardship. The Smiths needed the addition to accommodate Mrs. Smith's parents moving in.

Responding to questions from Member Doren, Mrs. Smith confirmed that they had submitted documentation to the Township regarding the Homeowners' Association's approval.

Township Planner Frey had not yet seen the HOA approval and it was not in the packet for the Board. She would confirm that the Township had received that documentation.

Member Doren said that the 50' setback was not a concern for him because these houses were developed with a 35' setback. The Board had previously allowed extensions of nonconforming setbacks on these lots. It did not appear that the proposed addition exceeded the 35' setback on the east side of the property.

Mr. Ostroff noted that they were in line with the garage and that the east side was flush with the 35' setback. Responding to a question from Member Doren, he stated that the total dimension of the proposed addition was 17.9 feet by 25 feet.

Member Doren thought that if they built out to the 35' setback on the south side, the addition would be about 17 feet by 14 feet.

Mr. Ostroff noted the angle of the lot line, causing any addition to be considerably smaller if they maintained the 35' setback.

Member Smith said that regardless of the two front yards, the variance request was for the back yard on the south side; 21.6' was a considerable variance.

Township Planner Frey confirmed that the property maintained the 35' setbacks along the two front yards. The encroachment was on the south property line. Currently a 50' setback would be required. A 35' setback was required at the time of construction. Responding to a question from Member Smith, she confirmed that the existing sunroom went to the 35' setback line.

Mr. Ostroff maintained that the hardship was created by how the south leg of the lot line tapered. The property was not rectangular which made it difficult to get a substantial addition. While they were not trying to create an enormous space, a 17-foot by 14-foot space would be considerably smaller due to wall thicknesses etc. and would not give much space.

Member Doren asked what the minimum dimension the petitioner would feel comfortable with if the Board had trouble with the size of the extension into the rear setback. He wondered if there was any hope of accommodating concerns by decreasing the size of the encroachment.

Mr. Ostroff said that they had already cut back on the size of the addition after discovering that they would need a variance. It was basically an in-law suite and they were pretty much at minimums. They were trying to be semi-barrier free and so they needed a certain distance for the bathroom. They wanted a space that was comfortable. The bedroom was 11 feet 8.5 inches from north to south. It was not an enormous suite.

Member Smith appreciated the purpose and need for the addition, but also recognized that it was a significant variance, and was a large variance even from the historical setback of 35'.

The Board discussed the plot drawing and historical vs. current setback requirements. They also discussed the nature of the corner lot.

Township Planner Frey clarified that a corner lot had two front yards and when building a new house on a corner a choice was made about which would be the rear yard and which would be the side yard. The side yard, in this case, had a 17.9' setback and the rear yard, towards the south property line, had a 35' setback.

Member Lark asked if the petitioner's disadvantage was that they had only one side yard.

Township Planner Frey agreed that it was a disadvantage compared to an interior lot but noted that all corner lots had the same scenario.

Mr. Ostroff said that side yard requirements were a lot smaller than front yard requirements. There was no room for expansion within the 35' setback on the south side.

Member Smith clarified that being a corner lot did not have anything do with the hardship because the 35' setback was adhered to on both front yards. However, the rear line was at issue. The sunroom was already at the 35' line, which was generally not a problem. However, this request was for a large encroachment.

Township Planner Frey noted that the Board typically saw requests for expansion of nonconforming setbacks in this neighborhood. Because the proposed addition encroached even further into the setback, different criteria were used and therefore they needed a traditional dimensional variance and needed to meet those standards.

Mr. Ostroff stated that if the south lot line had been rectangular, a variance request would not be needed. However, the lot line cut back significantly as it moved east. He noted that the applicants were well below the allowed lot coverage.

Member Doren thought that even if the south lot line was straight, the addition would exceed a 35' setback.

Mr. Ostroff noted that the south property line cut in at least 10 to 15 feet. If it wasn't for the slanted property line, they would be very close to meeting the 35' setback.

After looking at the plot plans in the subdivision, Township Planner Frey thought that corner lots were about 50/50 in being rectangular or more angular, similar to this lot. The lot across the cul-du-sac had even more of an angle.

Mr. Ostroff said that there was no practical room for expansion. If they moved to the west of the sunroom, they might have 1 or 2 feet more, but it would end up being around a 10-foot addition.

Member Smith felt the variance was very large. Was there any consideration for reconfiguration? Perhaps the addition could take some of the space currently being used by the sunroom? Could something be done to try and shrink the variance?

Mr. Ostroff stated that the petitioners wanted the space. They could perhaps take off 18" and perhaps expand a little further towards the west.

Member Doren wondered about putting the addition on the other side of the sunroom.

Mr. Ostroff stated that it would not provide much more space and he noted some of the difficulties of building on the west side, including a doorwall and kitchen. The house was two stories on that side which would create further difficulties with windows and the roof. It made more sense to build on the east side where the structure was one story and therefore would be easier to tie into the roof.

Chair Slatin opened the public hearing at 7:28 p.m.

Bob Dreslin (phonetic), Mrs. Smith's father, spoke on behalf of the petition. The addition was for him. They had looked it over every way that they could and they had come up with a reasonable design that would have minimal interference with the property and area.

Chair Slatin closed the public hearing at 7:30 p.m. and brought the matter back to the Board.

Chair Slatin recognized that the following correspondence had been received regarding the petition:

- Richard Henningsen, 42117 Banbury Drive, opposed the variance request.
- Anil Kumar, 42021 Banbury Court, had no concerns with the variance request and was happy with the improvement.
- Maryann Fischer, 42026 Banbury Road, supported the variance request.

The Board discussed the location of the residents who corresponded regarding the petition.

Responding to a question from Member Doren, Mr. Smith noted that the addition would have a separate entrance on the east side.

Mrs. Smith said that there would also be an entrance through the sunroom to the main house. Her parents were living with them now and stairs were difficult for them at their age. The situation with COVID made it especially important to take care of them and have them in the house.

Member Doren's biggest concern was the extent of the encroachment. The Board had previously approved extensions of nonconforming setbacks that complied with the original 35' setback. Within his recollection, none had encroached to this extent.

Mr. Ostroff said it was very difficult, from a design perspective, to comply with the setbacks. Currently, they had 15% lot coverage where 25% was allowed. If they stayed within the setbacks, they would never come close to hitting 25%. Even with the proposed addition they would only be at 18% lot coverage. The angle on the south side created a hardship.

Member Doren understood the difficulty, which was one of the reasons they were discussing the original 35' setback rather than the current setback requirement of 50'. The houses were built on these lots and while the 50' setback would be problematic he was concerned about minimizing the degree of encroachment. He wondered what difference would be made to the size of the addition if the south property line were parallel to the north property line and there was a 35' rear setback.

The Board and the petitioners discussed the scenario.

Township Planner Frey noted that the scenario would account for any hardship caused by the angle of the south property line.

Mr. Ostroff felt that the proposed addition would meet the 35' setback within the scenario.

Member Smith was unsure if the addition would meet the 35' setback although he felt it would be fairly close.

Member Doren stated that it would be nice to know the exact dimensions in the scenario.

Mr. Ostroff stated that he had quickly completed some calculations and that if the south property line were parallel to the north property line, they would have a 33.4-foot setback with the current addition. If they took off 18 inches, it would be very close to 35'.

Responding to a question from Member Lark, Township Planner Frey discussed previous Board action on corner lots in the area. She could not recall any with this type of scenario. Other petitions had included the expansion of a nonconforming side yard setback and some were additions in the back that were adjacent to a common area.

Chair Slatin said that the corner lot was only relevant when the issue was with a setback into one of the front yards. That was not the case in this situation.

Members Smith and Lark agreed but Member Lark felt that it might be an issue because it was a non-rectangular corner lot.

Chair Slatin felt that the same issue would occur if it wasn't a corner lot.

Mr. Ostroff stated that they were bound by both setbacks and lot coverage. While he agreed that the problem was not primarily because it was a corner lot, the nature of the corner lot made it more difficult because there was less buildable space. This property had a 35' setback where interior lots would have two side yards with 15' setbacks. That was a 20 foot difference.

Township Planner Frey clarified that on an interior lot, current ordinances would set both side yard setbacks at 15'. However, in this neighborhood, many were built with side yards setbacks of 10 or 11 feet.

Member Smith wanted to see a reduction of the variance. He felt that this would be a historical variance in size and might be seen as a precedent.

Mr. Ostroff wondered if it would make a difference if they made the concession of 18" so that the addition was 35' from the projected south property line previously discussed.

Mrs. Smith asked how that would change the square footage in the bedroom and bathroom.

Mr. Ostroff stated that no space could be taken from the bathroom. They might have to reduce the closet slightly. Reducing the addition by 18" would take 26 - 27 square feet off.

Mrs. Smith felt that was a lot of space that would be affected. She didn't feel that there were many other similar lots because there were not that many courts. There was a similar addition nearby that was aesthetically pleasing and matched the neighborhood. She didn't understand why the 18" would be such a big deal. They had an odd lot and they were trying to make a better home. Their homeowners' association commented on how they loved improvements in the neighborhood. Their immediate neighbors were happy with the addition. There was not much they could give up, but maybe a little if it would help.

Member Smith explained that the Board had certain criteria that they needed to base their decisions on. One of those was hardship. He could justify saying that the lot had a hardship due to the angle of the south property line. If that line was projected straight down to Banbury Court, a minimum change of 18" inches could help justify granting the variance because it would honor the 35' setback that would be in place if the yard was rectangular.

Township Planner Frey looked at an overview of the wider neighborhood and she looked at the corner lots in cul-de-sacs. There were more corner lots that were rectangular than there were corner lots with angles like this one.

Mr. Ostroff stated that when he looked at the parcel map, he thought that this lot seemed to be unique. He didn't see any other lots like this one. This lot had five legs and most had only four legs to the shape of the lot. This was a unique situation.

Mr. Craig stated that, as a contractor, he didn't run into shapes like this very often. The combination of the very unique shape and the two front yards provided a hardship. If they had a different lot in the subdivision, they wouldn't even need to have this conversation.

Mrs. Smith stated that the request wouldn't set a precedent because there were not a lot of other lots that would be in the same position. She felt that there wouldn't be people asking for the same thing in the future.

Township Planner Frey agreed that there would not be a lot of other similarly situated lots. However, there was an obviously similar house across the street that had an even greater angle.

Member Doren expressed concern about allowing a 21-foot setback as opposed to the originally platted 35' setback.

Chair Slatin reminded the petitioners that the ordinances applied to every property in Northville Township. If the Board granted this variance, they would be granting a 21.6' encroachment on a nonconforming property.

Township Planner Frey noted that the same ordinances also applied to every corner lot, whether the lots were conforming or nonconforming properties.

Chair Slatin agreed. He felt that anyone in the Township that had either a nonconforming situation or a corner lot would feel that they could also have a similar variance. That was one of the challenges the Board faced as they decided on variance requests.

Mr. Ostroff felt that the angle of the lot was unique and provided hardship. Not everyone in those situations would have that hardship.

Mrs. Smith stated that each variance would need to be evaluated on its own merit and situation. It would be a unique situation each time.

Chair Slatin agreed and shared that the first principle the Board had was that the variance needed to be driven by the nature of the lot. The Board recognized the need to provide additional room for the petitioner's parents. But according to Michigan law, the Board was only allowed to look at the characteristics of the lot. The angle of the lot was a consideration that they had to weigh against the size of the variance requested. This was a very large encroachment. Chair Slatin further explained that there were five principles the Board had to consider. The first principle asked: What about the lot was particular? But the fourth principle was concerning in this case: the need to grant the minimum variance necessary. The Board was looking for a way to minimize the encroachment and the 18" might help satisfy that principle.

Member Smith suggested that if square footage was an issue, options could be looked at such as utilizing some of the space taken by the sunroom. He understood it would not be preferable but would be something to consider.

Mr. Ostroff wondered if the petition would be more likely to be approved if they reduced the addition by the 18".

Township Planner Frey was unsure that 18" would be the needed amount to meet a 35' setback from the projected south property line.

Member Smith wondered if there was an option of building the addition so that it encroached 10 feet on the south side and 10 feet on the east side.

Mr. Ostroff stated the current proposed addition fit in nicely. Such a change would make the building look out of place. He stated that due to the angle of the south property line, building to the east would still affect the south setback.

Chair Slatin said that if it was feasible to build the addition so that it did encroach 10 feet on the south side and 10 feet on the east side, it would reduce the encroachment into the rear yard setback. Encroachments into front yard setbacks on a corner lot were more typical. While it would require two variance requests, the overall amount of encroachment could be lower. However, such a change would require re-noticing. While a consideration, he understood it was undesirable to go through this process again. Member Doren wasn't certain that the structure would fit aesthetically, but agreed that it was an idea to try and avoid the degree of encroachment into the rear setback.

Responding to a question from Mrs. Smith, Member Doren stated that a removal of the 18" as discussed would make the petition more palatable for approval for him.

The Board held a discussion with the petitioners about the scenario where, for the purposes of this request, they considered the property as if it were a rectangle. The Board discussed how a motion would be written and they discussed with the petitioners the size of the variance request. The Board was willing to consider a variance request that used a scenario where there was a projected south property line was parallel to the north property line and had a 35' setback from the projected south property line.

Township Planner Frey indicated that they would need documentation to confirm that 18" was the necessary amount of reduction to provide a 35' setback in the given scenario.

**MOTION by Doren, support by Smith, that the Zoning Board of Appeals approve Petition PZON20-0014, at 42045 Banbury Road, a variance request to Article 18, Schedule of Regulations to allow a rear yard setback that would be 35' from the projected south property line if the south property line were parallel to the north property line, with the following conditions:**

- **Verification by a design drawing diagram submitted to Township staff that demonstrates that the proposed addition complies with the projected setback line.**
- **Written approval of the Northville Commons Homeowners' Association.**
- **All plans and buildings must meet the 2015 Michigan Residential Code and subdivision approvals.**

- **A building permit must be approved prior to the expiration of the variance approval.**

Further, Member Doren said that he based the motion on the unusually shaped lot with the angled rear yard property line and the nature of the corner lot with the two front yard setbacks.

Chair Slatin clarified that this was not an approval of the petition as written, but a smaller variance. The exact size of the variance would be confirmed by Township Planner Frey when she received the new design drawing diagram.

Roll Call Vote:       Ayes: Doren, Lark, LoPiccolo, Sixt, Slatin, Smith  
                              Nays: None

**Motion approved 6-0.**

### **Other Business**

None.

### **Department Reports**

#### **Jennifer Frey, Township Planner**

Township Planner Frey recognized and thanked Symantha Heath for her service on the Board as the Board of Trustees liaison. She provided a Township operations update and informed the Board that they would be meeting in December.

#### **Eric Lark, Planning Commission**

Member Lark informed the Board that the Planning Commission had not met in November but would be meeting in December.

### **Public Comments and Questions**

None

### **Adjournment:**

**MOTION by LoPiccolo, support by Sixt, to adjourn the November 18, 2020 Zoning Board of Appeals meeting at 8:23 P.M.**

Roll Call Vote:       Ayes: Doren, Lark, LoPiccolo, Sixt, Slatin, Smith  
                              Nays: None

**Motion approved 6-0.**