

**CHARTER TOWNSHIP OF NORTHVILLE**  
**Zoning Board of Appeals**  
**September 21, 2022**

**DATE:** September 21, 2022  
**TIME:** 7:00 pm  
**PLACE:** Northville Township Hall  
44405 Six Mile Road

**APPROVED:** November 16, 2022

**CALL TO ORDER:** 7:02 pm

**ROLL CALL:**

**Present:** Brian Doren, Milan Gandhi (arrived 7:06 pm), Joseph LoPiccolo, Christopher Roosen, Paul Slatin, Paul Smith, Thomas Stroup

**Excused:** None.

**Staff:** Jennifer Frey, Township Planner

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

**Approval of Minutes:**

Zoning Board of Appeals – July 5, 2022  
Zoning Board of Appeals – July 20, 2022

**MOTION by LoPiccolo, support by Stroup, to approve the minutes from the Zoning Board of Appeals meetings of July 5 and July 20, 2022.**

Voice Vote:           Ayes: All  
                              Nays: None

**Motion approved unanimously.**

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

**Petitions:**

**1. PZON22-0011**

Property Owner:	<b>Thomas VanNocker</b>
Location:	41289 Stone Haven Rd.
Request:	To allow a 7' tall/22' long screen fence as part of a pool enclosure
Action:	Approve, Approve with Conditions, Postpone, Deny

Thomas VanNocker, property owner, was present on behalf of the petition.

Member Gandhi arrived at 7:06 pm.

Mr. VanNocker understood that the two issues were for the height of the fence and a vision obstruction of more than 50%.

- He had provided pictures that hopefully showed that the green screening met the see-through standard. He was not sure how to measure it. If it did not meet the standard, he asked for an exception or variance hardship.
- There was a section of the fence or screening that he had erected earlier in the year which was about seven feet tall. He asked for an exception or variance for the height.
- Part of the reason he had erected that section related to the grade where the neighbor directly behind him could see into the pool. The grade did not provide a lot of privacy.
- His eighteen-year-old son is severely autistic and stands about 5'9". He has sensory issues that are amplified by stress, anxiety and/or fear.
- The higher fence and matting provided his son with the enclosed type of feeling needed to limit sensory overload and which provided his son some comfort.
- The screening also provided a level of privacy as, despite his best efforts, his son would often take off his swimsuit when walking around the pool area.
- The privacy was both for his son and for their neighbors.

Responding to questions from the Board, Mr. VanNocker provided further information:

- The pool had been in place since 2012 and prior to erecting the fence, he had used landscaping to serve the same purpose as the fence.
- Over the last four or five years, the arborvitae were dying faster than he could put them in and he could not keep up with it physically or financially.
- He had participated in brief conversations with his landscapers about the issue, but the arborvitae were only insured for one year. Typically, the arborvitae last about a year. That might have something to do with the proximity to the cement and that it was facing a south facing wall.
- The screening was a dark green, the same color that the arborvitae had been. Aesthetics was not a concern as it blended in with the surrounding vegetation and trees in the area.
- There was a safety fence around the pool that was four feet tall and the screening was seven feet.
- His neighbor to the west also had screening for his pool.
- He would commit to the upkeep of the screening.

Responding to a question from Member Roosen, Township Planner Frey stated that the Board could put conditions on an approval, such as the variance being good for a year. If a condition required it, the petitioner would need to come back to the ZBA in the future, but otherwise variances typically run with the land.

Member Doren noted that the fence/screening violated the deed restriction as well as the ordinance and that the petitioner had not received the approval of the HOA. His understanding of deed restrictions was that they took precedence over the ordinance. Under those circumstances, he would not be able to support the petition. He might be amenable to the screening material on the lower portion of the fence.

Mr. VanNocker acknowledged that he had received a notification from his HOA. His presumption was to work with the Township first.

Responding to a question from Member Gandhi, Township Planner Frey stated that it appeared as if the original fence was in compliance, meeting the height and openness requirements. While she would have to check to see if a permit was on record, at the time the fence likely would have been required with the pool. According to the ordinance, the screening was treated as a fence and was not permitted due to the height and the material used.

Mr. VanNocker stated that the screen did not have the same physical makeup as the fence and was not permanent in nature.

Chair Slatin opened the public hearing at 7:20 pm.

Bob Veres, Treasurer for the Homeowners Association Board for Northville Colony Estates 3, 4, and 5, spoke against the petition and provided the following information:

- At the time that Mr. VanNocker purchased the property, the property restrictions were in effect and recorded against the property.
- The fence was in violation of subdivision-governing building and use restrictions, including no HOA Board approval, exceeding a four-foot maximum height, and the fence was non-ornamental. It did not conform to subdivision appearance norms or enhance the aesthetics. It did not enhance the financial value of surrounding homes. Rather, a real estate professional cited negative aspects on property offering prices.
- A detailed review was provided to the Board including the building and use restriction sections. A HOA violation was issued in May 2022.
- Another privacy option was available to the petitioner. Other residents had invested in landscaping. Unfavorable soil conditions could be addressed by professionals.
- The HOA Board actively enforced fence violations. Approving the petition would not prevent the HOA from taking the next step of enforcing the legal and binding building and use restrictions.
- An approval from the ZBA Board would set an unwelcome precedent encouraging future waiver requests.
- The rationale provided to the HOA Board differed from the rationale presented to the ZBA, and was a request to "limit the amount of time my family has to see" their neighbor, and their neighbor see them.
- The fence was completely out of character and aesthetically unsuitable.

Responding to questions from the Board, Mr. Veres stated:

- The HOA was also opposed to the screening on the lower portion of the fence.
- After being made aware that a neighbor also had the lower screening, a notice of violation was issued.
- They had not measured the fence.

The public hearing closed at 7:30 pm.

Chair Slatin said that the State required the Board to look for hardships and practical difficulties

associated with the lot and the land. Variances were tied to those kinds of difficulties, such as drainage ditches going through a yard, the elevation or grade of the land, or the land backing up to a strip mall. This was a standard lot in Colony Estates with no practical difficulties due to the lot. There was nothing that would allow the Board to grant the petition. They couldn't start a precedent for the reasons presented.

Chair Slatin shared the correspondence that had been received, which included:

- The official letter from the HOA opposing the petition.
- Gary and Karen Ostrowski, 41288 Rayburn Drive, opposed the petition.
- Vincent and Elizabeth White, 41304 Rayburn Drive, opposed the petition.
- Gary Browne, 41297 Stone Haven, supported the petition.
- Stephen Fabinski, 41191 Knightsford Road, opposed the petition.

Member Roosen noted that swimming pool usage in Michigan was seasonal. Perhaps the petitioner could explore the idea of taking down the screening when the pool closed and only having it up when the pool opened. There were still the issues already discussed, but perhaps a compromise could be found.

**MOTION by Doren, support by LoPiccolo, that the Zoning Board of Appeals deny Petition PZON22-0011, for Thomas VanNocker, at 41289 Stone Haven Road, to allow a 7' tall/22' long screen fence as part of a pool enclosure.**

Member Doren noted that the mesh screen fabric violated the ordinance requirement to not obstruct vision by more than 50% and that the seven-foot-tall portion extended above the existing swimming pool fence enclosure where a maximum fence height of 54 inches was allowed, for a distance of approximately twenty-two feet.

The motion was based on the fact that the homeowner had not met any of the criteria set out in the ordinances for granting variance requests. As the chairman had noted, those exceptions had to apply to the land and not to personal circumstances. Additionally, the HOA was opposed to the request and had pointed out that the fence was in violation of the deed restrictions.

Responding to a question from Member Roosen, Township Planner Frey explained that the 50% visibility referred to the space between vertical pieces of a fence.

Chair Slatin thought that if the petitioner could work with the HOA to come up with a replacement fence that was a small variance, perhaps there would be support for that in the future. However, at this time he did not see any option but to support the motion.

Roll Call Vote:           Ayes: Doren, Gandhi, LoPiccolo, Roosen, Smith, Stroup, Slatin  
                                  Nays: None.

**Motion to deny approved 7-0.**

**2. PZON22-0012**

Property Owner:           **Reputation First Title Agency**

Location: 39700 5 Mile Rd.  
Request: To allow a 6' tall/24' long solid fence to screen dumpsters on adjacent property.  
Action: Approve, Approve with Conditions, Postpone, Deny

Richard Binder, 17405 Hart Avenue, Huntington Woods, from General Contracting LLC, and Kimberly Tortora, 4000 Commerce, property owner, were present on behalf of the petition.

Mr. Binder provided the following information:

- The hardship or practical difficulty was both exceptional and peculiar to this property, which had conditions that did not generally exist throughout the Township.
- The purpose of the proposed taller, solid fence was to screen the dumpsters on the adjacent property.
- The dumpsters were non-conforming as they were in front of the building and were not enclosed. The situation was not typical of other non-residential properties, as typically dumpsters are located in the side or rear yard and enclosed by a masonry wall.
- The hardships and practical difficulties that would result from a failure to grant the variance included substantially more than mere inconvenience or inability to attain a higher financial return.
- The variance would result in substantial justice being done and would not be contrary to the public purpose and general intent of the ordinance.

Member Doren thought that there was a simple fix. As the dumpsters were nonconforming, the Township could have the property owner move the dumpsters.

Township Planner Frey said that she had offered to address the possibility of moving the dumpsters.

Mr. Binder stated that they had talked to the Building Department and were told that the location was now set by precedent and nothing could be done. Ms. Tortora had code enforcement out to view the dumpsters and they said that they couldn't make the owner move the dumpsters.

Chair Slatin wondered if the dumpsters were nonconforming or if it would be more properly termed a violation.

Township Planner Frey stated that it was a very old site and the Township would not approve the dumpsters in their current location today, making them nonconforming.

Mr. Binder reported that they were told by the Building Department that it was not a violation, which was why nothing could be done.

Member Smith had visited the site and it was clear to him that the dumpsters were put in the current location for convenience. However, on the east side of the property, there was room that was sheltered away from anyone and towards the freeway that could be used as an alternative location for the dumpsters. He found it very surprising that the Township wouldn't be able to do anything about the location of the dumpsters as there was no permanent structure

that would need to be moved.

Chair Slatin noted that dumpsters were required to have some sort of screening.

Member Doren was inclined to support the petition. However, he wanted to first explore the option of moving the dumpsters.

Township Planner Frey reminded the Board that they could table the petition in order to get more information and explore moving the dumpsters.

Mr. Binder stated that they wanted everything to look nice for their opening. He wondered if the Board could grant the variance subject to the fact that the dumpsters weren't moved within two weeks.

Responding to a question from Member Doren, Mr. Binder confirmed that if the dumpsters were moved, they would not build the fence.

Member Doren stated that he would not have a problem with a conditional approval.

Member Smith agreed with the possibility of a conditional approval. He wondered if they could have Oasis, the owner of the dumpsters, put a fence around the dumpsters. Out of fairness, they could try to not put the burden on the new property owner.

Township Planner Frey stated that she would investigate both options.

Mr. Binder said that they wanted to stay on good terms with their neighbor and were willing to bear the cost of the fence.

Member Doren said that was clear from the petition to build the fence. The record would show that he had prompted the discussion regarding moving the dumpster.

Responding to a question from Member LoPiccolo, Township Planner Frey thought that the approach would be to move the dumpsters to a location that met the ordinance and be screened. It would need to be behind the front of the building or on the side of the building. It appeared there would be room on site to minimize the location of the dumpsters. It was a very large site with a very large parking lot.

Member Smith noted that the area tucked away by the freeway would be accessible to trucks and there was plenty of room.

Member Stroup wondered if the bar next to Oasis was on the same property or had the same owner.

Township Planner Frey confirmed that they were two separate parcels, so they would try to get the dumpsters into a more conforming situation, but they wouldn't burden someone else with unsightly dumpsters.

Member Smith stated that he had not seen any other dumpsters and assumed that the dumpsters in question served both Oasis and the bar and he assumed that the bar had most of the waste.

Chair Slatin opened the public hearing at 7:53 pm. Seeing nobody come forward to speak, he closed the public hearing at 7:53 pm.

Township Planner Frey confirmed that no correspondence had been received regarding the petition.

Member Doren understood that the petitioner was under some degree of urgency with the opening of the business, so he didn't think that the Board should table the matter. He would be willing to consider a conditional approval with a two-week delay to give the Township an opportunity to explore the possibility of having the dumpsters moved.

Responding to a question from Member Roosen, Ms. Tortora confirmed that they were getting ready to open and that she would be moving in at the end of October.

**MOTION by Doren, support by LoPiccolo, that the Zoning Board of Appeals approve Petition PZON22-0012, for Reputation First Title Agency at 39700 5 Mile Rd. to allow a 6' tall/24' long solid fence to screen dumpsters on adjacent property, with the following condition:**

- **The petitioner delays the erection of the fence for at least two weeks to give the Township an opportunity to explore the possibility of moving the dumpsters on the adjacent property or bringing those dumpsters into compliance with Township ordinance. In the event that the dumpsters can be moved, the petitioner has committed to the Board that they would not erect the fence. If the dumpsters are not able to be brought into compliance, the petitioner would then be permitted to proceed with the erection of the fence.**

Member Smith saw the position of the dumpsters as a temporary one because there was no pad that they sat on or any sort of structure around the dumpsters. There was nothing that would keep the dumpsters in that designated spot.

The Board briefly discussed the exact location and length of the fence on the provided schematic.

Roll Call Vote:           Ayes: Doren, Gandhi, LoPiccolo, Roosen, Smith, Stroup, Slatin  
                                  Nays: None

**Motion approved 7-0.**

Responding to a question from Member Doren, Township Planner Frey said that that while the Township could request a petitioner first go to their HOA before requesting a variance, the Township could not compel them to do so.

## **Other Business**

None

**Department Reports.**

**Jennifer Frey, Township Planner**

- No October ZBA meeting
- Master Plan update

**Christopher Roosen, Board of Trustees**

- Demolition project at Legacy Park proceeding
- Water tower is moving forward
- Audio system upgrade in process

**Milan Gandhi, Planning Commission**

- August meeting summary

**Public Comments**

Linda Malec, 20557 Wintergreen Circle, spoke regarding the Master Plan project, relative to communication between the Township and the community, the possibility of resource sharing with neighboring communities, and meeting times.

**Adjournment:**

**MOTION by LoPiccolo, support by Stroup, to adjourn the September 21, 2022 Zoning Board of Appeals meeting at 8:20 P.M.**

Voice Vote:           Ayes: All  
                              Nays: None

**Motion approved unanimously.**