1. OPEN MEETING
2. ROLL CALL
3. MINUTES
   A. 06/13/2022, ZBA Meeting Minutes
4. AGENDA REVIEW AND APPROVAL
5. ZBA BUSINESS
   A. AB-2022-19, Terri Chapman, 2740 Judah Rd., - Applicant Withdrew Request
   B. AB-2022-20, Ronald Gentry, 1031 Elm Ave., 09-15-126-003
   (Postponed from the May 23, 2022, ZBA Meeting)
      The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned SE
      Article V, Section 5.04
      1. A 40-ft. front yard setback variance from the required 40-ft. to construct a pole barn 0-ft. from
         the front property line along Elm Ave.
      2. A 1,000-sq. ft. variance above the allowed 1,400-sq. ft. maximum floor area of all detached
         accessory buildings to build a 2,400-sq. ft. pole barn.
      3. A 2,300-sq. ft. variance above the allowed 1,900-sq. ft. maximum floor area of all accessory
         buildings to build a 2,400-sq. ft. pole barn in addition to a 1,800-sq. ft. attached garage.
      The petitioner is seeking 2 variances from Zoning Ordinance #78 - Zoned R-1
      Article XXVII, Section 2702(A)(4) & Article XXVII, Section 27.05(H)(2)
      1. A 10-ft. side yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft.
         from the side property line to the south.
      2. A 10-ft. rear yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft.
         from the rear property line to the west.
   D. AB-2022-24, Jarle and Sissel Amundsen, 90 Shorewood Ct., 09-03-405-034
      The petitioner is seeking 4 variances from Zoning Ordinance #78
      Article VI, Section 6.04, Zoned R-3
      1. A 9.5-ft. front yard setback variance from the required 30-ft. to build a new home with attached
         garage 20.5-ft. from the front property line (roadside).
      2. A 4-ft. side yard setback variance from the required 10-ft. to build a new home with attached
         garage 6-ft. from the side property line (south).
      3. A 3-ft. side yard setback variance from the required 10-ft. to build a new home with attached
         garage 7-ft. from the side property line (north).
      4. A 1.87% lot coverage variance from the allowed 25% for a total lot coverage of 26.87%.
   E. AB-2022-26, ZBA By-Laws

6. PUBLIC COMMENTS
7. COMMUNICATIONS
   A. Memo from Planning & Zoning Specialist

8. COMMITTEE REPORTS
9. MEMBER COMMENTS
10. ADJOURNMENT

In the spirit of compliance with the Americans with Disabilities Act, individuals with a disability should feel free to contact Penny S. Shults, Clerk, at (248) 391-0304, ext. 4001, at least seventy-two hours in advance of the meeting to request accommodations.
The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, June 13, 2022, at 7:00 pm at the Orion Township Community Center, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Tony Cook, Vice-Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member

ZBA MEMBERS ABSENT:

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Tim Damico        Jeff Guy

1. OPEN MEETING
Chairman Durham called the meeting to order at 7:00 pm.

2. ROLL CALL

3. MINUTES
A. 05-23-2022, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Chairman Durham, to approve the 05-23-2022 minutes as presented.

Motion Carried

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Chairman Durham, to approve the agenda as presented.

Motion Carried

5. ZBA BUSINESS

Chairman Durham read the petitioner's request as follows:

Per Zoning Ordinance #78, Article 30, Section 30.11, F, 1, b: the petitioner is requesting a Temporary Use Permit for Open Air Business, to sell consumer fireworks from a tent June 20, 2022 - July 5, 2022.
Mr. Jeff Guy introduced himself to the Board and summarized the variance request.

Chairman Durham read a letter from the property owner supporting the use of his property for this use.

Mr. Guy confirmed the timing of the tent activities. He commented on the insurance certificates received and also that he is not just going to sell fireworks, he is also going to teach safety. They will follow all guidelines and the plan submitted. He will have a U-Haul on site for storage. They are using a power pack for power and also a backup generator. He explained how the power would be used.

Chairman Durham asked if a permit was received for the generator.

Building Official Goodloe confirmed that a permit is not needed for the generator but the petitioner will have to fill out an inspection form to meet the requirements of the Building Department and the Fire Department.

Trustee Flood asked that a contact person and phone number should be in the motion. The Fire Department has to approve the set up.

Mr. Guy concurred.

Trustee Flood asked if there was going to be barricades around the setup.

Mr. Guy explained how the area would be coned off.

Board member Walker commented that in using orange cones, everyone can walk between the cones.

Mr. Guy explained that they cannot have solid barricades in case of a fire, it would be a hazard. There also is not fence used. The back of the tent is closed and the sides are closed until the second half of the day when they opened it up. This area would be an exit as well as the front would be an exit.

Chairman Durham expressed some concern about a pedestrian leaving when someone was driving by.

Mr. Guy suggested an alternative set up.

Vice-chairman Cook asked about the other person’s name on the application. He asked if the petitioner was experienced or if this was something new.

Mr. Guy answered that the battery packs are new. They are trying to not use the generator.

Vice-chairman Cook commented on the apartments that are right behind the location and since they will be using the battery packs, they will have none of the noise of a generator.

Mr. Guy concurred.

Vice-chairman Cook asked if they have tested the battery packs.

Mr. Guy replied that they have been testing it at their store and it has worked great. The battery packs last almost 8 hours.

Vice-chairman Cook asked what they would do for the remaining 4 hours because the hours are 10 am to 10 pm.

Mr. Guy answered that he thinks it will last but suggested that they can put the generator on early and put the battery packs on at night.

Vice-chairman Cook asked if Mr. Damico would be there the entire time the location was open.
Mr. Damico answered yes. They are open from June 20th to June 22nd because they have more than one tent going up in other places. They have to have the window open because they don’t know exactly what date the tent is going up.

Mr. Guy answered that Mr. Damico will be there every day.

Trustee Flood moved, seconded by Board member Dunaskiss, in the matter of ZBA case AB-2022-22, XL Fireworks, that the petitioner’s request for a temporary use permit from Zoning Ordinance #78, Article 30, Section 30.11, F, 1, b: to open and run an Open Air Business, to sell consumer fireworks from a tent June 20, 2022 - July 5, 2022 be granted because the petitioner would be specifically using the property for a permitted use and they have demonstrated that they will be complying with the conditions of an Open Air Business.

Conditions of approval are as follows:

1. The Ordinance requires that there be no other Open Air Businesses within one mile and there are none. The applicant will provide a phone number to the Building Department of a contact person that can be reached any time of day or night. The hours of operation will be 10:00 am to 10:00 pm from June 20, 2022 – July 5, 2022. Articles will be secured in a U-Haul trailer which will be removed off of the premises every evening. There is no need for a pod for storage. The petitioner will provide the Township with a copy of the liability insurance listing Orion Township as an additional insured and a certificate holder. The petitioner will provide the Township with a copy of the Michigan Department of Licensing and Regulatory Affairs Consumer Fireworks License. The Fire Department approval is required before opening. The petitioner must provide a $1,000.00 cash bond for re-inspection of the site once the operation has been removed.

Board member Dunaskiss asked if the petitioner provides a 24 hour phone number to the Oakland county Sheriff’s Department and to the Fire Department.

Mr. Guy replied that they usually don’t, but will if it is required.

Building Official Goodloe answered that usually the Building Department has all of the information.

Vice-chairman Cook asked about signage.

Trustee Flood replied that there is nothing in the ordinance about that; this is a whole separate issue.

Mr. Guy stated that they are going to hang a banner in the tent and will have yellow fireworks signs in the front.

Roll Call Vote was as follows: Cook, yes; Dunaskiss, yes; Walker, yes; Flood, yes; Dunaskiss, yes. Motion passes 5-0.

6. PUBLIC COMMENTS

7. COMMUNICATIONS

8. COMMITTEE REPORTS

Vice-chairman Cook asked if there was any feedback from the planting/tree committee. Board members discussed landscaping in the area.

9. MEMBER COMMENTS

Board member Walker commented on the fact that Oxford does not have a tree ordinance.
10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 7:26 pm.

Vote was as follows: Durham, yes; Cook, yes; Flood, yes; Dunaskiss, yes; Walker, yes.
Motion passes 5-0.

Respectfully submitted,

Erin A. Mattice
Recording Secretary
TO: The Charter Township of Orion Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: June 14, 2022
RE: Case location for ZBA Meeting 06/27/2022

Below are the locations of the ZBA cases for the June 27, 2022, meeting.
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: June 15, 2022
SUBJECT: Staff Report for AB-2022-19, Terri Chapman, 2740 Judah Road

The applicant requested their case be postponed at the 5/23/2022 ZBA Meeting to the meeting on June 27th. On June 13, 2022 the applicant submitted the attached email requesting to withdraw their case.

Please contact me if you have any questions.
Lynn Harrison

From: Terri Chapman <tc@signalgroupllc.com>
Sent: Monday, June 13, 2022 11:04 AM
To: Lynn Harrison; Samantha Timko
Cc: Jerry Chapman; Tim McPherson
Subject: Re: 2740 Judah Road Variances

Good morning. At this time, we would like to withdraw our request for the variance. You may take us off the agenda. Thank you for your time.

Sincerely,
Terri Chapman

From: Lynn Harrison <lharrison@oriontownship.org>
Sent: Monday, June 13, 2022 8:56 AM
To: Terri Chapman <tc@signalgroupllc.com>; Samantha Timko <stimko@oriontownship.org>
Subject: 2740 Judah Road Variances

[External] -
Good morning, I will be preparing the packet for the June 27th meeting tomorrow, June 14th, and will need the requested information below as soon as possible. Please let me know your intent and if you will be submitting revised plans and the authorized information.

If you would like to discuss your options, please give me a call.

Thank you,

Lynn Harrison
Specialist
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5001
W: www.oriontownship.org

From: Lynn Harrison
Sent: Wednesday, June 8, 2022 12:34 PM
To: tc@signalgroupllc.com; Timothy McPherson <atc613@yahoo.com>
Subject: 2740 Judah Road Variances

Terri & Tim, the ZBA Case for the above property was postponed from the May 23, 2022 ZBA meeting to the June 27th ZBA meeting. Please send me any additional information you wish to provide to the ZBA members to support your request or new plans if you are going to change the size.
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: June 16, 2022

SUBJECT: Staff Report for AB-2022-20, Ronald Gentry, 1031 Elm Ave., 09-15-126-003

The applicant requested his case be postponed at the 5/23/2022 ZBA Meeting to the meeting on June 27th. Attached are the minutes from that meeting.

The applicant has requested to reduce the size of the proposed pole barn from 40’ x 60’ (2,400-sq. ft.) to 35’ x 55’ (1,925-sq. ft.).

Therefore, the variances requested would be reduced as follows:

1. A 40-ft. front yard setback variance from the required 40-ft. to construct a pole barn 0-ft. from the front property line along Elm Ave. (request is the same)

2. A 525-sq. ft. variance above the allowed 1,400-sq. ft. maximum floor area of all detached accessory buildings to build a 1,925-sq. ft. pole barn (variance reduction of 475-sq. ft.).

3. An 1,825-sq. ft. variance above the allowed 1,900-sq. ft. maximum floor area of all accessory structurers to build a 1,925-sq. ft. pole barn in addition to an 1,800-sq. ft. attached garage (a variance reduction of 475-sq. ft.)

Please note there may have been some confusion at the last meeting regarding Elm Ave. and its access to the lake. The Elm Ave. lake access is not on the applicant’s property, it is part of the neighboring subdivision. The proposed pole barn will be contained on the applicant’s property and will potentially cover a section of the applicant’s “west” driveway off of Elm Ave. The pole barn is proposed to be 0-ft. from the applicant’s property line along Elem Ave.

Please contact me if you have any questions.
Lynn Harrison

From: rngntry@aol.com
Sent: Wednesday, May 25, 2022 7:36 AM
To: Lynn Harrison
Subject: 1031 Elm Ron Gentry Variance

Lynn
Good Morning, I am asking for a reduction in my original size of the Pole Barn, from 40' by 60' to 35' by 55' this will also bring the building back a few feet from my property line.
Please let me know if this is what you need.
Ron Gentry
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: June 16, 2022

RE: AB-2022-20, Ronald Gentry, 1031 Elm Ave., 09-15-126-003

I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-20, Ronald Gentry, 1031 Elm Ave., 09-15-126-003, I move that the petitioner’s request for:

3 variances from Zoning Ordinance #78 – Zoned SE

Article V, Section 5.04

1. A 40-ft. front yard setback variance from the required 40-ft. to construct a pole barn 0-ft. from the front property line along Elm Ave.

Article XXVII, 27.02(8) - Lot size over 2.5 acres

2. A 525-sq. ft. variance above the allowed 1,400-sq. ft. maximum floor area of all detached accessory buildings to build a 1,925-sq. ft. pole barn.

3. A 1,825-sq. ft. variance above the allowed 1,900-sq. ft. maximum floor area of all accessory buildings to build a 1,925-sq. ft. pole barn in addition to an 1,800-sq. ft. attached garage.

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

Please be specific how the petitioner meets this criteria

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-20, Ronald Gentry, 1031 Elm Ave., 09-15-126-003, I move that the petitioner’s request for:

3 variances from Zoning Ordinance #78 – Zoned SE

Article V, Section 5.04

1. A 40-ft. front yard setback variance from the required 40-ft. to construct a pole barn 0-ft. from the front property line along Elm Ave.

Article XXVII, 27.02(8) - Lot size over 2.5 acres

6. A 525-sq. ft. 1,000-sq. ft. variance above the allowed 1,400-sq. ft. maximum floor area of all detached accessory buildings to build a 1,925-sq. ft. 2,400-sq. ft. pole barn.

7. A 1,825-sq. ft. 2,300-sq. ft. variance above the allowed 1,900-sq. ft. maximum floor area of all accessory buildings to build a 1,925-sq. ft. 2,400-sq. ft. pole barn in addition to an 1,800-sq. ft. attached garage.

Please be specific how the petitioner does not meet this criteria

be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
DOCUMENTS FROM THE MAY 23, 2022, ZBA MEETING
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: May 11, 2022

SUBJECT: Staff Report for AB-2022-20, Ronald Gentry, 1031 Elm, 09-15-126-003

The applicant is requesting to add a 2,400-sq. ft. pole barn to his property 0-ft. from the property line to the north.

The property has 2 front yards – W. Clarkston Road and Elm Ave. Therefore, it has 2 front yard setbacks of 40-ft. each.

The applicant has indicated that Elm Ave., although it appears on the plat map as a road, there is never any vehicle activity on it.

Also, as the maximum floor area of all detached accessory buildings will be exceeded and the maximum floor area of all accessory building will be exceeded – both will need variances.

Per a question by the Fire Marshal – it appears there is a road or path from Elm Ave. onto the applicant’s property to the west. The applicant explained that this part of a circular driveway that goes around the house.

Please contact me if you have any questions.
NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT
Name: Ronald E Gentry
Address: 1031 Elm
Phone: 248-495-0777
Email: rnegentry@aol.com

PROPERTY OWNER(S)
Name (s): Ronald E Gentry
Address: 1031 Elm
Phone: 248-495-0777
Email: rnegentry@aol.com

CONTACT PERSON FOR THIS REQUEST
Name: Ron Gentry
Phone: 248-495-0777

SUBJECT PROPERTY
Address: 1031 Elm
Sidewell Number: 09-15-126-003
Total Acreage: 6
Length of Ownership by Current Property Owner: 11 Years, 0 Months

Does the owner have control over any properties adjoining this site? NO

Zoning Ordinance
Allowance/Requirement
Deviations requested
RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request:
   To build a garage to the north of my property 40' x 60' a 2400 square ft

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.
   I cannot access 4 acres of my land and no access to the lake, this is because of the Wetlands.
   I will want to park my 45' Motorhome and my 25' Boat inside.

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township:
   This will not harm others in my area; I will build to the code and safety regulations.

4. Explain how the request is/is not consistent with other properties in the immediate area, please cite examples if possible:

5. Describe how the alleged practical difficulty has not been self-created.

6. The topography of said land makes the setbacks impossible to meet because:

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.
   A road that cannot be used sitting on the north side of my property.
Case #: ____________

8. Have there been any previous appeals involving this property? If so, when?  
   No

9. Is this request the result of a Notice of Ordinance Violation?  
   Yes  No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant:  
   Ronald E. Gentiy  
   Date: 4-22-2012

Print Name:  
   Ronald E. Gentiy

Signature of Property Owner:  
   Ronald E. Gentiy  
   Date: 4-22-2012

Print Name:  
   Ronald E. Gentiy

If applicable:  
   The property owner, hereby give permission to _______________ to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property:  
   Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure:  
   Total Square Footage of Accessory Structure(s):  

Description of variance(s):

Date Filed:  
   Fee Paid:  
   Receipt Number:  

20
Ab-2022-20  1031 Elm  09-15-126-003
6.089 Acres  265, 236.84°  2080 = 53,047.37

Zoned SE

Has 2 front yard setbacks - Clarkston Rd & Elm Ave.

Setbacks:
Front setback 40' Clarkston Rd. OK  0-ft Elm Variance 40-ft.
Rear yard setback 40' OK
Wetland setback 25' OK
Side yard 20' OK

Lot Coverage

House
Attached garage 993-1,800
Deck 286

proposed Pole Barn 2,400 (40x60)
Porch 84

Max. floor area of all detached accessory Structures
1,400

Max. floor area of all accessory Structures
1,900°

proposed Pole Barn 2,400
Attached garage 993

proposed Pole Barn 2,400
Attached garage 993, 1,800

1,493° 2,300

Variance
6. Household animal enclosures, dog runs, central air conditioning units, heat pumps, and other mechanical system components that could, or are likely to, produce noise, odor, or other nuisances shall not be located adjacent to an adjoining property owner’s living or sleeping area where windows and/or doors would be exposed to the nuisance.

It is the intent of these provisions to place the responsibility of abating or controlling nuisances on the owner of the lot where the nuisances are produced, rather than on the adjoining neighbors.

7. Accessory buildings or structures are not to be used for commercial operations other than home occupations, as defined in Article II, Section 2.01.

8. The total of all accessory buildings or structures in a single-family residentially zoned district or on a parcel used for a single-family dwelling, except as modified in Paragraph 9, shall not exceed the following (amended 11.28.83):

<table>
<thead>
<tr>
<th>LOT SIZE</th>
<th>MAXIMUM FLOOR AREA OF DETACHED ACCESSORY BUILDINGS</th>
<th>MAXIMUM FLOOR AREA OF ATTACHED ACCESSORY BUILDINGS</th>
<th>TOTAL MAXIMUM FLOOR AREA OF ALL ACCESSORY BUILDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1/2 acre</td>
<td>750 sq. ft.</td>
<td>75% of the principal structure</td>
<td>1,150 sq. ft.</td>
</tr>
<tr>
<td>1/2 to 1 acre</td>
<td>900 sq. ft.</td>
<td></td>
<td>1,300 sq. ft.</td>
</tr>
<tr>
<td>1 to 2.5 acres</td>
<td>1,000 sq. ft.</td>
<td></td>
<td>1,500 sq. ft.</td>
</tr>
<tr>
<td>Over 2.5 acres</td>
<td>1,400 sq. ft.</td>
<td></td>
<td>1,900 sq. ft.</td>
</tr>
</tbody>
</table>
* Includes the combined floor area of each story of the structure.

9. The total area of all accessory buildings or structures on a single-family residentially zoned parcel shall not exceed the above noted area, except in the following cases after consideration and approval by the Zoning Board of Appeals (amended 11.38.85 06.15.15):

a. On single-family residential lots, a variance may be sought to permit increased accessory building, structure or use, provided all of the following conditions are met:

i. The accessory building or structure is aesthetically compatible with, and constructed of the same color as the principal residential building or structure.

ii. The accessory building or structure, as well as the principal residential building or structure, can be accommodated on the parcel and together cover no more than twenty percent (20%) of the lot area in the Suburban Farms (SF), Suburban Estates (SE), or Suburban Ranch (SR) Zoning Districts or twenty-five percent (25%) of the lot area in the Residential 1, 2, or 3 (R-1, R-2, R-3) Zoning Districts.

iii. The principal residential building or structure contains at least the minimum floor area of living space as required for the specific zoning district and as set forth in the specific zoning district of this Zoning Ordinance. (amended 07.16.18)

iv. The accessory building or structure is used for the indoor storage of items that are permitted to be stored in a rear or side yard, but that could be unsightly if such were done.

b. On parcels of more than five (5) acres in size used for agricultural purposes, a variance may be sought from the Zoning Board of Appeals to permit additional accessory buildings or structures for the purpose of storing agricultural implements, equipment, products, livestock, and similar items.
### Section 5.04 – Area and Bulk Requirements

(AMENDED 01.05.87, 02.17.94, 02.07.95, 07.16.18)

Please see the Matrix Chart in Section 5.01 for variations to these requirements by use.

<table>
<thead>
<tr>
<th></th>
<th>SF</th>
<th>SE</th>
<th>SR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Lot Area</strong></td>
<td>2.5 acres or 108,900 sq. ft. of gross area</td>
<td>1.5 acres or 65,340 sq. ft. of gross area</td>
<td>30,000 sq. ft. or gross area</td>
</tr>
<tr>
<td><strong>Minimum Width of Lot</strong></td>
<td>165 ft.</td>
<td>165 ft.</td>
<td>120 ft.</td>
</tr>
<tr>
<td><strong>Minimum Lot Setbacks</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard*</td>
<td>40 ft.</td>
<td>40 ft.</td>
<td>40 ft.</td>
</tr>
<tr>
<td>Each Side Yard**</td>
<td>20 ft.</td>
<td>20 ft.</td>
<td>20 ft.</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>40 ft.</td>
<td>40 ft.</td>
<td>40 ft.</td>
</tr>
<tr>
<td><strong>Minimum Floor Area/Unit</strong></td>
<td>1,200 sq. ft.</td>
<td>1,200 sq. ft.</td>
<td>1,500 sq. ft.</td>
</tr>
<tr>
<td><strong>Maximum Lot Coverage</strong></td>
<td></td>
<td>20% - all structures</td>
<td></td>
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<tr>
<td><strong>Total Maximum Floor Area of All Accessory Buildings</strong></td>
<td>See Section 27.02, A, 8</td>
<td></td>
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</tr>
<tr>
<td><strong>Height of Structures</strong></td>
<td>Habitable structure - 2 stories, up to 30 feet. Any existing structures higher than this maximum shall remain conforming to Zoning Ordinance requirements in reference to height.</td>
<td></td>
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</table>

* Where the front setbacks of two (2) or more principal structures in any block (in the case of platted properties) or within three hundred (300) feet (in the case of unplatted properties) in existence at the time of passage of this Ordinance, within the district zoned and on the same side of the street, are less than the minimum front setbacks required herein, then any building subsequently erected within said block (or three hundred (300) feet) shall not be less and not be greater than the average depth of the front setbacks of the existing structures.

** Where a garage door or opening faces a side lot line, said side lot setback shall be thirty (30) feet.

### Section 5.05 – Sign Regulation

(AMENDED 10.08.98, 02.21.06)

All signs shall comply with the standards set forth in Orion Township Sign Ordinance No. 153.

### Section 5.06 – Tree Preservation Regulations

(AMENDED 08.03.00)

The tree removal permit requirements apply to developments in this District, according to the terms of Section 27.12.

### Section 5.07 – Wetland Setbacks

(ADDED 09.17.07)

The wetland setback requirements apply to developments in this District, according to the terms of Section 27.17.
Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Courtney Keisman <ckeisman@oriontownship.org>
Sent: Monday, May 9, 2022 2:30 PM
To: Jeff Williams <jwilliams@oriontownship.org>
Cc: Robert Duke <rduke@oriontownship.org>; John Pender <jpender@oriontownship.org>
Subject: RE: ZBA Documents for the May 23, 2022 ZBA Meeting

Hello Jeff.

Lynn contacted the applicant regarding the road that goes behind the home for case AB-2022-20. He told her that it is a continuation of his driveway. If you have any further questions, please let me and/or Lynn know.

Thank you,

Courtney Keisman
Clerk III
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5003
W: www.oriontownship.org

From: Jeff Williams <jwilliams@oriontownship.org>
Sent: Monday, May 9, 2022 1:50 PM
To: Courtney Keisman <ckeisman@oriontownship.org>
Cc: Robert Duke <rduke@oriontownship.org>; John Pender <jpender@oriontownship.org>
Subject: RE: ZBA Documents for the May 23, 2022 ZBA Meeting

Can you provide any information on the road that goes behind the home for case AB-2022-20? Is it a driveway, is it a private road? Please let me know.

I have reviewed case 19 and have no concerns with that one.
From: Courtney Keisman <ckeisman@oriontownship.org>
Sent: Monday, May 9, 2022 11:30 AM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: ZBA Documents for the May 23, 2022 ZBA Meeting

Mr. Williams,

Hello Jeff. Attached is 2 ZBA cases that needs to be reviewed by you for the May 23, 2022 ZBA Meeting.

Thank you,

Courtney Keisman
Clerk III
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5003
W: www.oriontownship.org
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: June 15, 2022
SUBJECT: Staff Report for AB-2022-23, Tracey Guaiana, 1150 Hemingway

There is an existing 6-ft. fence on the north side of the applicant’s property which meets the required 10-ft. side yard setback.

There is also an existing 6-ft. fence on the applicant’s property line to the south in which a Violation Notice was issued for by the Township. My research could not find that a variance was obtained for that fence to be located on the property line. Therefore, the applicant is seeking a 10-ft. side yard setback variance so that the 6-ft. fence can remain on the property line.

The applicant is also asking for a variance to add a 6-ft. fence along the rear property line 0-ft. from the property line.

The applicant has provided court documents related to disputes between her and her neighbor at 1136 Hemingway Rd. In the “Mutual Release Agreement” on page 2 – reference is made to the 6-ft. fence along the property line to the south however a variance is still required from the Township for the fence to remain.

The applicant has provided several photos which are included in the packet to aide in her request for the variances.

Also, in the packet is an email dated June 1, 2022 from David Plunkett opposing the variances.

Please contact me if you have any questions.
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: June 14, 2022

I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-23, Tracey Guainia, 1150 Hemingway, 09-15-201-028, I move that the petitioner’s request for:

2 variances from Zoning Ordinance #78 - Zoned R-1

   Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

   1. A 10-ft. side yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the side property line to the south.

   2. A 10-ft. rear yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the rear property line to the west.

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

   Please be specific how the petitioner meets these criteria

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

   ____________________________________________
   ____________________________________________
   ____________________________________________

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

   ____________________________________________
   ____________________________________________
   ____________________________________________

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:

   ____________________________________________
   ____________________________________________
   ____________________________________________
4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-23, Tracey Guiana, 1150 Hemingway, 09-15-201-028, I move that the petitioner’s request for:

2 variances from Zoning Ordinance #78 - Zoned R-1

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)

1. A 10-ft. side yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the side property line to the south.

2. A 10-ft. rear yard setback variance from the required 10-ft. for a 6-ft. privacy fence to be 0-ft. from the rear property line to the west.

Please be specific how the petitioner does not meet these criteria be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
Charter Township of Orion Zoning Board of Appeals
Application for Appeal - Single Family Residential

NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT
Name: Tracey Guarino
Address: 1150 Hemingway
Phone: (313) 318-4052
Fax:
Email: TLG.1969@comcast.net

PROPERTY OWNER(S)
Name(s): John Rife & Tracey Guarino
Address: 1150 Hemingway
City/State/Zip: Lake Orion MI 48360
Phone: (313) 318-4052
Cell: (313) 460-2465
Fax:
Email: Same

CONTACT PERSON FOR THIS REQUEST
Name: Tracey Guarino
Phone: (313) 318-4052
Email: TLG.1969@comcast.net

SUBJECT PROPERTY
Address: 1150 Hemingway
Sidwell Number: 09-15-201-028
Total Acreage: 1.32
Length of Ownership by Current Property Owner: 8 Years, 10 Months

Does the owner have control over any properties adjoining this site? NO
Zoning Ordinance Allowance/Requirement
Deviation requested

Page 2 of 4
Version 1/4/2022
Case #:

**RESIDENTIAL VARIANCE**

1. Describe in detail the nature of the request.  
   Picket fence to be put on property

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.  
   Court order to put up fence, PPO was put on neighbor, civil court cases, barbed wire installed by neighbor, overgrown grass

3. If the appeal is granted, please explain how the variance will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township:  
   My animals will not be caught in barbed wire, visiting children, no foul fingers given by neighbors, our safety will be much better.

4. Explain how the request is not consistent with other properties in the immediate area, please site examples if possible:  
   The neighbors are causing problems for my family, I can not speak for others

5. Describe how the alleged practical difficulty has not been self-created.  
   I placed a pad on a neighbor due to harassment. I have called the police and city about barbed wire. I am not causing issues

6. The topography of said land makes the setbacks impossible to meet because:  
   Set backs are met

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.  
   Please read attached papers from the court
Case #: 

8. Have there been any previous appeals involving this property? If so, when? 
   Yes by Oakland Co courts

9. Is this request the result of a Notice of Ordinance Violation? □ Yes □ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant: 
   Tracey Guarana

Print Name: Tracey Guarana

Date: 5/12/2022

Signature of Property Owner: 
   [signature]

Print Name: [signature]

Date: [signature]

if applicable: I the property owner, hereby give permission to [signature] to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: 

Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure: 

Total Square Footage of Accessory Structure(s): 

Description of variance(s):

Date Filed: 

Fee Paid: 

Receipt Number: 

Page 4 of 4

Version 1/4/2022
AB: 2022-22, Tracy Guadiana, 1150 Hemingway, 09-15-201-028, Zoned R-1, 1.318 acres, 57,412.08^2, 25% = 14,353.02^2

Lot coverage not an issue.

Front yard setback - OK

Side yard setback (north) - OK

Side yard setback (south) - Needs to be 10’ variance for 10’ to be 0’ from the property line.

Rear yard setback (west) needs to be 10’ variance for 10’ to be 0’ from the property line.

* Verify that the fence is not going all the way to the front property line.

The fence on the south property line already exists and received a violation from ordinance enforcement.

Also, the applicant has gone to court and court documents indicate the fence can stay.
Article XXVII

General Provisions

27.05 Landscaping, Fences and Walls

1. Location and Purpose. Entranceway structures shall be permitted in any required yard area for the purpose of indicating the entrance to a subdivision, multiple-family development, mobile home park, industrial park, office park, or similar planned development containing several buildings that are related in purpose.

Entranceway structures shall be subject to the provisions concerning corner clearance, set forth in Section 27.03.

2. Construction and Design. Any entranceway structure shall be constructed of permanent, durable materials and shall be designed so as to be compatible with the architecture of surrounding development.

3. Site Plan. Prior to issuance of a building permit for any entranceway structure, a site plan shall be submitted to the Planning Commission for review and approval. The site plan shall include an elevation drawing and a cross-section of the proposed structure. The site plan shall show the relationship of the entranceway to the right-of-way of the intersecting roads and/or driveways.

II. Residential Fence and Wall Regulations.

Where permitted or required in this Ordinance, fences and walls in residential districts shall be subject to the provisions set forth in this section:

1. Lot Enclosures. Fences and walls used to enclose a lot shall be no higher than four (4) feet in height and shall be located on the lot line.

2. Privacy or Decorative Fences and Walls. Fences and walls erected primarily for privacy or decoration shall not be located within any required yard setback area and shall not exceed six (6) feet in height.

3. Corner Clearance. No fences or walls shall be erected, established or maintained on any corner lot so as to obscure the view of drivers in vehicles approaching the intersection. All specifications concerning corner clearance as set forth in Section 27.03 shall be complied with.

4. Large Lots Excluded. Fences and walls shall be excluded from the provisions of this section if such lots have an area of more than two (2) acres, have frontage of at least two hundred (200) feet, and are not part of a recorded plat.

5. Fences Enclosing Public Areas. Fences, walls or other protective barriers that enclose parks, playgrounds, or other public landscaped areas shall not exceed ten (10) feet in height. The Planning Commission may authorize a fence, wall, or protective barrier of additional height, with or without barbed wire, where necessary, to protect public utility or municipal installations in a residential district.

6. Wall Specifications. Walls shall be erected on a concrete foundation which shall have a minimum depth of forty-two (42) inches below grade. The foundation shall be at least four (4) inches wider than the wall to be erected.

7. Fence Specifications. Fences constructed of chain link, wood, vinyl or other similar materials are permitted. Posts shall be sunk into the ground at least three (3) feet.

8. Barbed Wire Prohibited. Barbed wire, spikes, nails, or any other sharp-pointed intrusions shall be prohibited on top or on the sides of any fence, wall, or protective barrier, except that barbed wire cradles consisting of no more than three (3) strands of wire may be placed on top of fences enclosing public utility buildings.

Revised 05/21/20

Charter Township of Orion Zoning Ordinance 78

Page 27 - 35
construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofore existing building.

K. Administrative Nonconformities.

A structure or use which is administratively nonconforming shall remain nonconforming until special approval has been granted pursuant to application submitted to the proper authority. Where special approval has been granted, such a structure or use shall be deemed conforming. However, where special approval has been denied, such structure or use shall be considered nonconforming on the basis for which the application for special approval was denied.

L. Change in Tenancy or Ownership.

In the event there is a change in tenancy, ownership or management of an existing nonconforming use or structure, such nonconforming use or structure shall be allowed to continue pursuant to the terms of this Ordinance regarding such nonconformities.

M. Special Exceptions.

Any use for which a special exception is permitted, as provided in this Ordinance, shall not be deemed a nonconformity.

Section 27.02 – Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.04)

1. An accessory building, structure or use shall not be located on a parcel unless there is a principal building, structure, or use already located on the same parcel of land.

2. An accessory building or structure shall not be constructed prior to the commencement of construction of the principal building or structure or the establishment of the principal use.

3. A building, structure or use which is accessory to a single-family dwelling and attached to it shall, for the purposes of location and setbacks, be considered part of the principal building.

4. A building, structure or use which is accessory to a single-family dwelling and detached from it shall meet the same front and side yard setback requirements as the principal structure, as set forth in the applicable zoning district of this Ordinance. However, the minimum rear yard setback shall be ten (10) feet for all detached accessory buildings. All accessory buildings and structures shall be included in the computation of total maximum area of all accessory buildings, and together with the principal building or structure shall not exceed the percentage of lot coverage requirements. (amended 07.16.18)

5. Detached accessory buildings or structures in non-residential districts shall conform to the height requirements for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. However, detached accessory buildings or structures in non-residential districts that exceed the height of the principal building or structure, as constructed, shall not be located in the front yard. (amended 07.16.18)

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal building or structure as constructed. However, the height of a detached accessory building or structure may exceed the height of the principal building or structure, if said accessory building or structure is located at least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall the height of a detached accessory building or structure exceed the maximum height requirement for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. (amended 07.16.18)
Gate to our yard w a pool
Police having to be called.

Stated he was going to ram our fence down.
**STATE OF MICHIGAN**  
**JUDICIAL CIRCUIT**  
**COUNTY**

**PERSONAL PROTECTION ORDER (NONDOMESTIC) **

**CASE NO.** 19-879144-PH

**KAMESHIA D. GANT**

---

**Petitioner's name**  
**TRACY LYNN GUIANA**

**Address and telephone no. where court can reach petitioner**  
**1150 HEMINGWAY RD**  
**LAKE ORION, MI 48360**  
**313-318-4052**

**Respondent's name, address, and telephone no.**  
**THOMAS MARTIN DARNALL**

**Address and telephone no. where court can reach respondent**  
**1136 HEMINGWAY RD**  
**LAKE ORION, MI 48360**  
**UNKNOWN**

---

**FULL NAME OF RESPONDENT (TYPE OR PRINT)**  
**THOMAS MARTIN DARNALL**

**HEIGHT** 6'0"  
**WEIGHT** 220  
**RACE** W  
**SEX** M  
**DATE OF BIRTH OR AGE** 59 YEAR OLD  
**HAIR COLOR** BRO  
**EYE COLOR** GREY  
**OTHER IDENTIFYING INFORMATION**

*These items must be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful.*

**Date:** 2/18/2020  
**Judge:** KAMESHIA D. GANT  
**Bar no:** P 69425

1. This order is entered  
- [x] without a hearing.  
- [ ] after a hearing.

**THE COURT FINDS:**

- [x] 2. A petition requesting an order to restrain conduct prohibited under MCL 750.411h and MCL 750.411i and/or MCL 750.411s has been filed under the authority of MCL 600.2950a.
- [x] 3. Petitioner requested an ex parte order, which should be entered without notice because irreparable injury, loss, or damage will result from delay required to give notice or notice itself will precipitate adverse action before an order can be issued.
- [x] 4. Respondent committed the following acts of willful, unconsented contact: (State the reasons for issuance.)

3 OR MORE WILLFUL, UNCONSENTED ACTS OF HARRASSMENT & TRESPASSING ON PRIVATE PROPERTY

**IT IS ORDERED:**

5. **THOMAS MARTIN DARNALL** is prohibited from

   - [x] a. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to
     - [x] following,  
     - [ ] appearing at the workplace or the residence of the petitioner,  
     - [ ] approaching or confronting the petitioner in a public place or on private property,  
     - [ ] entering onto or remaining on property owned, leased, or occupied by the petitioner,  
     - [ ] sending mail or other communications to the petitioner,  
     - [ ] contacting the petitioner by telephone,  
     - [ ] placing an object on or delivering an object to property owned, leased, or occupied by the petitioner,  
     - [ ] threatening to kill or physically injure the petitioner.
   - [ ] b. posting a message through the use of any medium of communication, including the Internet or a computer or any electronic medium, pursuant to MCL 750.411s.

- [x] 6. Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than $500.00.

- [x] 7. **This order is effective when signed, enforceable immediately, and remains in effect until 2/18/2021**

   *This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than the state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.*

- [x] 8. The court clerk shall file this order with **O.C.S.O/ COUNTY CLERK** who will enter it into the LEIN.

- [x] 9. Respondent may file a motion to modify or terminate this order. For ex parte orders, the motion must be filed within 14 days after being served with or receiving actual notice of the order. Forms and instructions are available from the clerk of court.

- [x] 10. A motion to extend the order must be filed 3 days before the expiration date in item 7, or a new petition must be filed.

---

**A TRUE COPY**  
**LISA BROWN**  
**Judge**

**KAMESHIA D. GANT**  
**Deputy**
CERTIFICATE OF SURVEY
CLARKSTON-HEMINGWAY ACRES
SECTION 15, T4N, R10E, ORION TOWNSHIP
OAKLAND COUNTY, MICHIGAN

Paragraph A

Units: International Feet

Record Documents:
Pat, Clarkston-Hemingway Acres, Lib 64 of Plats - Page 7
Survey of Parcels A thru G, Huston Kennedy, Unrecorded

The Relative Positional Precision (RPP) is defined as the length of the semi-major axis of the error ellipse at a 95% confidence level at each point and how it relates to every other point in the survey. A correctly weighted Least Squares adjustment was performed on the survey network to obtain these values. This table only lists points that have been permanently monumented in the survey. The points in the table correspond to the Point Labels on the map. Points outside the network such as traverse points and temporary points have been omitted. The allowable RPP is from the 2018 ALTA standards. This information is supplied pursuant to the requirements of the Certified Survey Act 132, P.A. 1970, as amended, Sec. 3(1)(b)(6).

 Adjustment Summary

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Prepared For: Ernest Osterhout
3355 Bayless Drive
Oxford, MI 48371

Terry R. Campbell, P.S. No. 56806

LEGEND

- FOUND CAPPED IRON
- SET CAPPED IRON
- FOUND IRON
- FOUND CONCRETE MONUMENT
- (R) RECORD (M) MEASURED

Copyright 2010 by Terril R. Campbell, P.S.

Campbell
Surveying Engineering, Inc.
10051 E. Highland Road, Suite 29
Howell, Michigan 48843
(810) 244-8843

Sheet 2 of 2

SCALE: 1" = 100'

Register of Deeds
Stamp & File Number

Symbol Legend
WARRANTY DEED

Drafted By: Curphey & Badger Law Jennifer Soltz 28100 US Highway 19 North, Suite 300 Clearwater, Florida 33761

Return to and mail tax statements to: JOHN RIFE 1150 HEMINGWAY ROAD LAKE ORION, MI

Customer Reference Number NST13109848360

Property Tax ID#: 09-15-201-028

Date September 16, 2015

THE GRANTOR, VITO F. GUIAIANA, a married man, MARY GUIAIANA, a married woman, whose post office address is 1150 HEMINGWAY ROAD, LAKE ORION, MI 48360, conveys and Warrants to JOHN RIFE, TRACEY GUIAIANA, Husband & Wife, Tenants by the entirety with rights of survivorship whose address is 1150 HEMINGWAY ROAD, LAKE ORION, Grantee48360MI.

(Wherever and wherein the terms "GRANTOR" and "GRANTEE" shall include all the parties to this instrument and the heirs, legal representatives and assignees of individuals, and the successors and assignees of corporations.)

"SEE COMPLETE LEGAL ATTACHED AS EXHIBIT "A"

That for and in consideration of $0, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE, unto the Grantee, the real property with the post office address: 1150 HEMINGWAY ROAD, LAKE ORION, MI 48360 the following described premises situated in the County of OAKLAND, State of Michigan:

This conveyance is made expressly subject to all easements, conditions, restrictions and agreements of record applicable to the property hereby conveyed
KNOW ALL PERSONS BY THESE PRESENTS: That John Rife married man whose address is 1150 Hemingway Rd Lake Orion MI 48360 Quit Claim(s) to Tracey Guariana and John Rife whose address is 1150 Hemingway Rd Lake Orion MI 48360 the following described premises situated in the Township of Lake Orion County of Oakland THN, R10E, sec 15 Clarkston - Hemingway Acres Parcel "A" part of Lot 11 Beg at NE Lot CoR, TH S 89° 53'-00" W 435 Ft, TH S 132 Ft, TH N 89° 53'-00" E 435 Ft, TH N 132 Ft, TO Beg 09° 15'-20" 028" Commonly known as: 1150 Hemingway Rd Lot 11 for the full consideration of None Tax I.D. Number: Dated this 12 day of September 2014 Signed by: John Rife

STATE OF MICHIGAN COUNTY OF Oakland

The foregoing instrument was acknowledged before me this 12th day of September 2014 by John Rife

My commission expires 7/29/20 Notary Public County, Michigan Drafted by Tracey Guariana Address 1150 Hemingway Rd Lake Orion MI 41360

After recording return to: Counter Customer

Lisa M. Sawadee
Notary Public, Genesee County, Michigan
Acting in Oakland County
My Commission Expires: July 29, 2020
Bader
t guys still being an ass! I'll be in June to visit. Let's have a party
Like Reply

Robin Trafton Darnall
Pat Bader sounds great! It's actually 2 of our neighbors
23m Like Reply

Pat Bader
Robin Trafton Darnall I'll be extra loud! Add tequila and I'll dance on their porches! 😃
23m Like Reply

Robin Trafton Darnall
Pat Bader lol
19m Like Reply

Pat Bader
Robin Trafton Darnall

5 hrs •

it's not one neighbor it's the other. The thing that really gets me is when they both moved in we were very welcoming. I guess we should have been jerks. 😒😒😒😒

7 Comments

Pat Bader

That guy still being an ass! I'll be there in June to visit. Let's have a loud party

Robin Trafton Darnall

Pat Bader sounds great! It's actually 2 of our neighbors

View 3 more replies

Write a comment...
2014 Before we bought home
Trash tossed into my yard!
People in our yard we do not know
Improper gesture (Blacked out)
more. TRASH
Trash on my property
Adult diapers
Charter Township of Orion
2525 Joslyn Rd. Lake Orion, Mi. 48360
248-391-0304, Ext. 6005

NOTICE OF ORDINANCE VIOLATION

04/28/2022

Violation Address: 1150 HEMINGWAY RD    Sidewell: 0-09-15-201-028

Property Owner of Record:
RIFE, JOHN
1150 HEMINGWAY RD
LAKE ORION, MI  48360-1228

This is to inform you that the above referenced property is in Violation of the following Orion Township Ordinance(s). RESIDENTIAL FENCE ORD #78, ARTICLE XXVII, SECT. 27.05 (H). FENCES NOT IN COMPLIANCE WITH THIS SECTION ARE PROHIBITED. Violation: Six-foot fence installed on the property without the required variance from the Orion Township ZBA. Apply for and be granted a variance, reduce fence height to 4'-0" or removed the fence.

FAILURE TO CORRECT THE ABOVE VIOLATION ON OR BEFORE

05/09/2022

WILL RESULT IN AN IMMEDIATE ENFORCEMENT ACTION

Note: Issuance of a Citation will require your appearance in the 52nd-3rd District Court to answer the complaint. Penalties for each conviction may result in a fine of up to $500.00 and an injunctive relief may be requested. Any action taken by the Township to correct the above violation may result in fees being charged as a Lien against the Real Estate. You have the right to appeal this violation.

Kirk Larson
CODE ENFORCEMENT OFFICER
BADGE #76-25
Debra Walton

Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>
Sent: Monday, June 6, 2022 12:27 PM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: Residential ZBA Documents for the June 27, 2022, ZBA Meeting

Attached are two ZBA residential cases that needs to be reviewed by you for the June 27, 2022, ZBA meeting.

For AB-2022-24 the first sheet of the application got cut off, it reads “25% Max Lot Coverage”.

Thanks,

Debra Walton
Clerk
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5002
W: www.oriontownship.org
MUTUAL RELEASE
AGREEMENT

THIS MUTUAL RELEASE AGREEMENT is made between Thomas M. Darnall and Robin E. Darnall, Husband and Wife, hereinafter referred to as the Plaintiffs and John Rife and Tracey Guaiana, Husband and Wife, hereinafter referred to as the Defendants.

RECITALS

WITNESSETH:

WHEREAS, a dispute has arisen between the parties with respect to The respective rights and obligations attendant to a certain easement as more fully and particularly described in a pending lawsuit ( Case No. 2020-178816- CH); and

WHEREAS, the parties are desirous of memorializing their agreement and understanding for the resolution of such dispute, NOW THEREFORE,

AGREEMENT

IN CONSIDERATION of the promises, covenants, terms and conditions hereinafter set forth it is mutually agreed as follows:

1. CONSENT JUDGMENT. Each of the parties shall by their respective attorneys execute, deliver and have entered a Consent Judgment in the attached form and content suitable for recording with the Oakland County Register of Deeds confirming quiet title to the easement in the Plaintiffs and providing for the continuation of the described easement for purposes of ingress and egress and public utilities subject to maintenance of same in passable condition without ruts, snow, ice or accumulation of water by Plaintiffs as to that portion of same within the easement on Defendants’ property; and
A. Allowing for maintenance by Plaintiffs as needed, should snow accumulation necessitate clearance, plowing such accumulation to the north side of the improved and traveled driveway, and to cure ruts, fill holes, or repair surface conditions. But for the instance of a failure by Defendants to cure the impediment of water flow as described in ‘B’ below, Plaintiffs shall not significantly alter the existing grade of the easement. Plaintiffs shall, in the course of such maintenance preserve the existing grass belts on either side of the improved driveway and should such grass belts be disturbed, repair the same; and

B. Providing that Defendants shall cure on or before June 1, 2021 and thereafter maintain the surface water flow in a southerly direction across the easement at the westerly 145’ of Defendants’ property by such means and with such methods as they may choose; and

C. Providing that should Defendants fail to cure such surface water flow Plaintiffs, upon 30 days written notice without cure by Defendants, may undertake the cure by means of elevating the topography of the easement so as to exceed any impediment on Defendants’ property outside the easement; and

D. Providing for the removal of Defendants ‘slow’ sign and prohibiting the placement of objects within said easement; and

E. Allowing for the continuation of Defendants fence at its present location as appears from the attached survey for a period ending April 1, 2022;

F. Providing for the removal of the said fence and allowing for its replacement with a privacy fence by Defendants along the southerly line of the easement on or before April 1, 2022; and

G. Limiting the speed of motor vehicles traversing said easement to not more than 20 mph and allowing Defendants to install a posted sign outside or at the edge of the easement notifying users
of such speed limit; and

H. Prohibiting the trespass by Plaintiffs outside of the described easement upon Defendants' property; and

I. Enjoining the Defendants from impeding the natural flow of surface water or interfering, impeding, or disrupting the use and/or maintenance of the easement for ingress, egress and utilities Arranging any cameras or motion detection devices that cause bright lights from shining in such way as to obscure vision; and

J. Providing that in the instance of enforcement proceedings the prevailing party should be entitled to costs and attorney fees so incurred; and

K. Retaining jurisdiction in the Court for enforcement; and

L. Dismissal of all claims for damages; and

M. Discharging the Notice of Lis Pendens filed in said case.

2. **MUTUAL RELEASE.** Each of the parties hereto for themselves, their heirs, personal representatives, successors and assigns does hereby release, discharge and forgive the other and their heirs, personal representatives, shareholders, officers, directors, employees, agents, and attorneys from any and all liability, debts, obligation or cause of action of any kind or nature whatsoever from the beginning of the world to the date hereof.

3. **NO ADMISSION.** Neither the execution of this Agreement nor the act of settlement shall constitute or be construed as an admission of liability, responsibility or obligation on the part of any party hereto. Rather, this is a negotiated resolution of disputed claims entered into in light of the economics and uncertainties of litigation.

5. **COVENANT NOT TO SUE.** Each of the parties promise and agree not to sue or initiate
any claim, process or procedure against the other with respect to the matters herein described. The
filing of a copy of this Agreement with any Court or agency in which any suit, claim, process or
proceeding shall be initiated in violation of this agreement shall be sufficient grounds for the
dismissal.

IN WITNESS WHEREOF each of the parties have signed this Agreement on the day and
date set opposite their respective signature.

PLAINTIFFS

Dated 3-25-2021

By ____________________________

Thomas M. Darnall

Dated 3-25-21

By ____________________________

Robin E. Darnall

DEFENDANTS

Dated __________________________

By ____________________________

John Rife

Dated __________________________

By ____________________________

Tracey Guiana
STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DARNALL, THOMAS, M,
Plaintiff

V

RIFE, JOHN, C
Defendant

NO. 2020-178816-CH
HON. JEFFERY S. MATIS

ORDER REGARDING MOTION

Motion Title: MOTION BY PLAINTIFF/COUNTER-DEFENDANTS TO REOPEN CASE AND FOR AN ORDER OF CONTEMPT

The above named motion is: Denied

☑ For the reasons stated on the record..

In addition: This motion is DENIED for the reasons stated on the record on April 27, 2022.

Dated: 4/27/2022

HON. JEFFERY S. MATIS
CIRCUIT COURT JUDGE
STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  

THOMAS M. DARNALL and  
ROBIN E. DARNALL,  
Plaintiffs/Counter-Defendants  

v.  

JOHN RIFE and  
TRACEY GUAIANA,  
Husband and Wife,  
Defendants/Counter-Plaintiffs  

Case No. 2020-178816-CH  
Honorable Jeffery Matis  

JAMES R. PORRITT, JR. (P23222)  
Porritt Law Firm  
436 S. Broadway, Suite C  
Lake Orion, Michigan 48362  
(248) 693-6245  

PAUL H. HUTH (P31986)  
EMILY M. SULLIVAN (P81376)  
Huth Lynett  
645 Griswold, Suite 4300  
Detroit, MI 48226  
(313) 965-5500  

CONSENT JUDGMENT AND DISCHARGE OF LIS PENDENS  

At a session of said Court held at the courthouse in the  

City of Pontiac, said County and State on March ____, 2021  

Present: Honorable Jeffery Matis, Circuit Judge  

THIS MATTER having come before the Court upon the Complaint and Counter Complaint filed herein and the parties having indicated their assent and agreement to the entry of this Consent Judgment and the court being otherwise fully informed in the premises, NOW THEREFORE;
QUIET TITLE

IT IS ORDERED AND ADJUDGED that Plaintiffs as owners in fee simple of the Plaintiffs’ Property described below have clear title to a non-exclusive easement for ingress, egress and utilities over the northern thirty (30’) feet of Defendants’ Property described below and such title is forever quieted in Plaintiffs, their successors and assigns and the rights attendant to said easement, inclusive of maintenance thereof, are valid against Defendants and all persons claiming under the Defendants and that any rights, claims or interests of Defendants inconsistent with, restrictive of, or contrary to said easement and the rights attendant thereto are cut off, and said easement and the rights attendant is appurtenant to Plaintiffs’ Property as the dominant estate and runs with the land and Defendants’ Property, as servient estate, is subject to the same and such easement and the rights attendant thereto runs with Defendants’ Property; to wit:

Plaintiffs’ property:

PART OF LOT 11, CLARKSTON- HEMINGWAY ACRES, ACCORDING TO THE PLAT THEREOF ASRecorded in Liber 64, Page 7 of Plats, Oakland County Records; being more particularly described as commencing at the northeast corner of said Lot 11; thence south 89 degrees 53 minutes 00 seconds west 870.00 feet along the north line if said Lot 11 to the point of beginning; thence proceeding south 89 degrees 53 minutes 00 seconds west 479.90 feet along the north line of said Lot 11 to the northwest corner of said Lot 11; thence south 00 degrees 21 minutes 40 seconds west 132.00 feet along the west line of said Lot 11 to the southeast corner of said Lot 11; thence north 89 degrees 53 minutes 00 seconds east 480.73 feet along the south line of said Lot 11 to a point; thence north 132.00 feet to the point of beginning, subject to and together with all easements, conditions, restrictions and agreements of record, inclusive of this consent judgment, and

A Private Road Easement for ingress and egress with public utilities over, across and under a 30 foot wide strip of land described as part of LOT 11 of Clarkston -Hemingway Acres as recorded in Liber 64 of Plats, on Page 7, Oakland County Records, said Easement being described as beginning at the Northeast corner of said LOT 11; thence S 89°53′00″ W along the North line of said LOT 11, 970.00 feet; thence South 30 feet; thence N 89°53′00″ E parallel with said North line of said LOT 11 970.00 feet to the East line of said LOT 11; thence North along the East line of said LOT 11, 30 feet back to the Point of Beginning.

Tax Parcel No. 09-15-201-026

Defendants’ Property:

LOT 11, EXCEPT THE EAST 870 FEET, CLARKSTON -HEMINGWAY ACRES, ACCORDING TO THE RECORDED PLAT THEREOF AS RECORDED IN LIBER 64, PAGE 7 OF PLATS, OAKLAND COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT NORTH EAST LOT CORNER; THENCE SOUTH 89 DEGREES 53 MINUTES 00 SECONDS WEST 435 FEET; THENCE SOUTH 132 FEET; THENCE
NORTH 89 DEGREES 53 MINUTES 00 SECONDS EAST 435 FEET; THENCE NORTH 132 FEET TO BEGINNING. SUBJECT TO ALL EASEMENTS, CONDITIONS, RESTRICTIONS AND AGREEMENTS OF RECORD APPLICABLE TO SAID PROPERTY, INCLUSIVE OF THIS CONSENT JUDGMENT.

Tax Parcel No. 09-15-201-028

DISMISSAL OF COUNTER COMPLAINT

IT IS FURTHER ORDERED that the Counter Complaint filed herein is dismissed with prejudice and without costs to either party.

MAINTENANCE OF PRIVATE ROAD EASEMENT

IT IS FURTHER ORDERED that Defendants herein as owners in fee simple of Defendants' Property described above may post a speed limit sign of 20 MPH upon Defendants' Property outside or at the edge of the Private Road Easement or upon their relocated fence bordering said Private Road Easement and Plaintiffs shall abide by such speed limit;

IT IS FURTHER ORDERED that Defendants shall be and hereby are enjoined directly or indirectly, whether alone or in concert with others from blocking, interfering with, hindering or obstructing access over, across or through the above described Private Road Easement inclusive of the placement of objects, fencing or structures within said Private Road Easement and from damming, blocking or hindering the flow of surface water from said Private Road Easement across Defendants' Property so as to cause the backing up of water upon the same;

IT IS FURTHER ORDERED that Defendants shall be and hereby are enjoined from arranging any cameras, lights or motion detection devices in such manner as to cause bright lights from obscuring vision of users of the Private Road Easement;

IT IS FURTHER ORDERED that Defendants shall cure the existing water drainage obstruction upon the Private Road Easement by smoothing the drainage course or raising the level of the Private Road Easement with suitable materials so as to relieve the backed up water flow on or before June 1, 2021; and in the absence of Defendants having completed such cure on or before such date Plaintiffs upon 30 days written notice without cure, shall be free to raise the level of the Private Road Easement by such means as they deem appropriate;

IT IS FURTHER ORDERED that Defendants shall remove, relocate or replace their 'slow sign' by April 1, 2021, and their existing fence to a location along or outside the southern boundary of said Private Road Easement on or before April 1, 2022;

IT IS FURTHER ORDERED that Plaintiffs shall have the right to maintain, repair and restore said Private Road Easement so as to keep the same in passable condition without ruts, holes, snow, ice or accumulated water upon an 'as needed' basis; Provided, however, that Plaintiffs shall place snow removed or plowed from the improved, traveled driveway to the north side of said driveway and shall leave intact the grass belts on either side of the improved gravel driveway.
and, should such grass belts be disturbed in the course of such maintenance restore the same and Plaintiffs are enjoined from trespassing or entering upon Defendants’ Property outside the described Private Road Easement. IT IS FURTHER ORDERED that a certified copy of this Judgment may be recorded at the office of the Oakland County Register of Deeds and jurisdiction is preserved in this Court for the enforcement of this Judgment and that in the instance of enforcement proceedings the prevailing party shall be entitled to recovery of actual costs and attorney fees.

DISCHARGE OF LIS PENDENS

IT IS FURTHER ORDERED that the Notice of Lis Pendens recorded January 29, 2020 in Liber 53772, Page 150, Oakland County Records, pertaining to Defendants’ property, described above and erroneously referenced therein as Tax Parcel No 09-15-201-207 shall be discharged, canceled, rescinded and held for naught.

This Judgment disposes of all outstanding pending claims and disposes of the case.

Approved as to Content

And for Entry:

Jeffery Matis, Circuit Judge

James R. Porritt, Jr (P23222)
Attorney for Plaintiffs and Counter Defendants

Paul H. Huth (P51986)
Attorney for Defendants and Counter Plaintiffs
From: Paul H. Huth
Date: 3/19/2021 5:51:37 PM
To: fmg 1969
Subject: settlement

It looks like they are agreeable to a speed limit sign on your fence. I will confirm the speed limit. They want you and I think you plan to have the privacy fence up by August.

Paul H. Huth
645 Griswold Street, Suite 4300
Detroit, Michigan 48226
(313) 965-5500
REVISED MUTUAL RELEASE AND JUDGMENT

JIM PORRITT <jrporritt@aol.com>
Wed 3/24/2021 2:38 PM
To: huthlaw@hotmail.com <huthlaw@hotmail.com>


Paul:
I have gone through my notes of our conversation as well as the handwritten notes you gave to me (to the extent I could decipher them) and prepared the attached revised versions. They do not precisely follow your wording, but I believe they accurately reflect what we have discussed.
First as to the MUTUAL RELEASE I changed the numbering to letters in describing the points to be included in the Consent Judgment

MUTUAL RELEASE -
At the bottom of page 1, you had objected to the language "through the depth of" and I substituted "as to the portion of same within the easement on Defendants' property" I did not insert "improved easement", because the easement is not limited to the improved portion.
Section 'A' - I did add 'fill holes' and added language about not significantly altering the existing grade. I did allow an exception if your clients fail to cure the water flow issue. I also added language about preserving the grass belts.

Section 'B' - I understand that you wish to make the obligation to maintain the water flow a continuing obligation. I believe I worded it so as to carry that out, but we still needed a deadline for the initial remedy in order to allow for a trigger for my clients to take measures themselves. Because we specifically discussed objections to any notion of trying to reverse the flow to the north side, I added 'southerly direction'. So if your clients wish to create a swale or trench to direct the flow towards the back of their property, that will be okay.

Section 'C' - You have wanted to substitute 'accumulation' for 'flow'. At any given time the easement may be dry and without accumulation at all. Our concern is that when it does rain or melt, that the 'flow' already be present such that the accumulation does not occur. I did remove the word 'restoration'.

Section 'D' - I took care of the grass belts in 'A'.

Sections 'E' and 'F' - These deal with the removal and replacement of the fence. I did not prescribe the type of fence your clients would replace with.
STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THOMAS M. DARNALL and
ROBIN E. DARNALL,

Plaintiffs,

v.

JOHN RIFE and
TRACEY GUAIANA,
Husband and Wife,

Defendants.

Case No. 2020-178816-CH
 Hon. Jeffrey S. Matis

JAMES R. PORRITT, JR. (P23222)
PORRITT LAW FIRM
Attorney for Plaintiffs
436 S. Broadway, Suite C
Lake Orion, Michigan 48362
(248) 693-6245

PAUL H. HUTH (P31986)
EMILY M. SULLIVAN (P81376)
HUTH LYNETT
Attorneys for Defendants
645 Griswold, Suite 4300
Detroit, MI 48226
(313) 965-5500

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

In response to Plaintiffs' motion for temporary restraining order and preliminary
injunction, Defendants state:

INTRODUCTION

This is a dispute between neighbors over an alleged easement. Thomas Darnall and
his wife Robin sued John Rife and his wife Tracy Guaiana seeking an order requiring
Defendants to remove a berm and fencing along the side of their property. Plaintiffs also filed
a motion for a preliminary injunction seeking the same relief.

STATEMENT OF FACTS

Plaintiffs, Thomas and Robin Darnall have sued their neighbors, John Rife and Tracey
Guaiana, over an alleged easement. The parties live on Lot 11 of the Clarkston-Hemingway
Subdivision in Lake Orion. Lot 11 contains three parcels. Defendants live on Parcel A, and
Plaintiffs live on Parcel C.

In May of 2014, Rachel Noel and Wilma Darnall conveyed the property located at
1150 Hemingway in Lake Orion ("Parcel A") to John Rife and Vito F. Guaiana by warranty
deed. (Exhibit A—Warranty Deed dated May 23, 2014). John and Vito quitclaimed Parcel A
to John and his wife Tracey Guaiana. (Exhibit B—Quit Claim Deed dated September 12,
2014).

The existence and dimensions of Plaintiffs’ alleged easement is unclear from the chain
of title. Plaintiffs have not attached a copy of the easement to the pleadings. Defendants’
warranty deed and quit claim deed do not reserve or reference a driveway easement.
Plaintiffs own Parcel C pursuant to a quitclaim deed (Exhibit C) from Thomas M. Darnell to
himself and Robin Darnell. The Darnell’s quit claim deed also does not reserve or reference
a driveway easement. The document recorded at Liber 64, Page 7 referenced in earlier deeds
is the recorded plat map. Defendants have contacted their title company and are working to
obtain an independent survey.

Two years ago, Defendants erected a fence along the edge of Parcel A to prevent
damage caused by those driving to and from Parcel C. They also put up a small sign reminding
others to drive slowly.
Until recently, Plaintiffs did not complain about the fence. That changed when Mr. Darnell started ripping Defendants’ sign out of the ground and throwing it at their vehicles and home. Mr. Darnell also began ramming the fence with a large tractor. Mr. Darnell also attempted to use his tractor to widen the driveway, which has caused flooding on the premises. (Exhibit D—Affidavit of John Rife and Tracey Guaiiana). Defendants reported the damage to the police and sought a personal protection order. (Exhibit E—Personal Protection Order). This litigation followed.

ARGUMENT

Plaintiffs’ motion should be denied. A preliminary order requiring removal of the fence and berm does not preserve the status quo. It will grant Plaintiffs the exact, final relief sought in their complaint prior to a hearing on the merits. Moreover, Plaintiffs have not demonstrated that they will suffer irreparable harm without an injunction or that they will likely succeed on the merits. In contrast, an injunction will deeply harm Defendants. It will require them incur, without an opportunity to respond to the complaint, the considerable expense of removing the fencing and berm that were on their property without complaint for over two years. Accordingly, preliminary relief is inappropriate, and Plaintiffs’ motion should be denied.

I. A PRELIMINARY INJUNCTION MAY NOT ISSUE WHERE IT WILL DISTURB THE STATUS QUO AND GRANT PLAINTIFFS FINAL RELIEF PRIOR TO A DECISION ON THE MERITS.

Injunctive relief is an extraordinary remedy.\(^1\) The purpose of preliminary relief is to maintain the status quo, so that upon the final hearing the rights of the parties may be

\(^1\) *Michigan State Employees Ass’n v Dep’t of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984).
determined without injury to either.\textsuperscript{2} The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, non-contested status which preceded the pending controversy.\textsuperscript{3} A preliminary injunction is inappropriate if it will grant one of the parties all the relief requested prior to a hearing on the merits.\textsuperscript{4}

The preliminary relief Plaintiffs seek will significantly alter the status quo. The purpose of a preliminary injunction is to preserve the status quo pending a final hearing on the parties' rights. The status quo which is to be protected is the "last actual, peaceable, non-contested status which preceded the pending controversy."\textsuperscript{5}

A preliminary injunction that changes the status quo or grants a party all relief sought in the complaint is an abuse of the trial court's discretion.\textsuperscript{6} In Michigan First Credit Union v Palace Sports & Entertainment, Michigan First sued Palace Sports for breach of a sponsorship agreement. The agreement gave Palace Sports the right to terminate the sponsorship agreement if the Pistons stopped playing home games at the Palace. However, if Palace Sports terminated the agreement, it agreed to negotiate in good faith with Michigan First regarding a new agreement for comparable sponsorship opportunities.\textsuperscript{7}

Palace Sports terminated the sponsorship agreement after the Pistons moved to Little Caesars Arena. Michigan First sued Palace Sports and sought an injunction requiring Palace Sports to continue to provide it with sponsorship opportunities. On motion by Michigan

\textsuperscript{2} Deckert v Independence Shares Corp, 311 U.S. 282 (1940), In re De Lorean Motor Co., 775 F.2d 1223, 1229 (6th Cir 1985).

\textsuperscript{3} Steggle v Nat'l Discount Corp. 326 Mich 44, 51; 29 NW2d 237 (1949).


\textsuperscript{5} Psychological Servs of Bloomfield, Inc. v Blue Cross & Blue Shield of Mich, 144 Mich App 182, 185; 375 NW2d 382 (1985).

\textsuperscript{6} Michigan First Credit Union v Palace Sports & Entertainment, 2018 Mich App LEXIS 388, 2018 WL 1072639.

\textsuperscript{7} Id. at 2.
First, the trial court issued a preliminary injunction requiring Palace Sports to continue to provide Michigan First with the same sponsorship opportunities provided for in the terminated agreement.\textsuperscript{8}

The Court of Appeals vacated the preliminary injunction. It held that the trial court abused its discretion because the injunction changed the status quo rather than preserving it during the pendency of the litigation.\textsuperscript{9} The status quo was Palace Sport’s termination of the sponsorship agreement. Following the termination, the agreement obligated the Palace to negotiate with Michigan First in good faith regarding comparable sponsorship opportunities. The trial court’s preliminary injunction went much further. It required the Palace to continue to provide the same sponsorship opportunities to Michigan First. In issuing the injunction, the trial court not only altered the status quo, it also granted impermissibly granted Michigan First the entire scope of relief it was seeking.\textsuperscript{10}

In this case too, a preliminary injunction requiring removal of the fence and berm would drastically alter the status quo. For two years, Plaintiffs lived peaceably alongside the fence and berm. For two years tractors, school buses, and Mr. Darnall’s DTE work truck have routinely driven down the driveway to Plaintiff’s home. (Exhibit D —Affidavit of Tracey Guaiana). This was the “last actual, peaceable, non-contested status” which proceeded Plaintiffs ramming Defendants’ fence with a tractor and ripping Defendants’ caution sign from the ground and hurling it at Defendants’ home. Requiring Defendants to tear down the fence and remove the berm would impermissibly alter the status quo prior to a decision on the merits.

\textsuperscript{8} Id. at 3.
\textsuperscript{9} Id. at 17.
\textsuperscript{10} Id. at 19.
The preliminary injunction Plaintiffs seek will also grant Plaintiffs all the relief requested in their complaint. "A preliminary injunction will not be issued if it will grant one of the parties all the relief requested prior to a hearing on the merits."\textsuperscript{11}

In this case, Plaintiffs request a temporary restraining order:

immediately enjoining and restraining Defendants...from blocking, interfering with, hindering or obstructing access over, across, or through the above described driveway and ordering removal of any and all fencing within the area of the described easement and the removal of the berm along the side of the easement.\textsuperscript{12}

For final relief Plaintiffs request:

That this Court enter its Order and Judgment permanently enjoining and restraining the Defendants \textit{according to the terms and conditions set forth above.} (emphasis added).\textsuperscript{13}

As in \textit{Michigan First}, the preliminary relief Plaintiffs seek is far too broad. They seek a temporary restraining order that will grant them the exact, final relief requested in their complaint. Preliminary relief that grants a party all the relief requested prior to a hearing on the merits is improper as a matter of law and will not be granted.\textsuperscript{14} Accordingly, Plaintiffs' motion should be denied.

\textbf{II. A PRELIMINARY INJUNCTION IS INAPPROPRIATE WHERE PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM IN THE ABSENCE OF RELIEF.}

A preliminary injunction is an extraordinary remedy that should issue only when justice requires.\textsuperscript{15} A party requesting preliminary injunctive relief must show that it will

\textsuperscript{11} \textit{Fancy v Egrin}, 177 Mich App 714, 720; 442 NW2d 765 (1989)(emphasis added).

\textsuperscript{12} Verified Complaint to Quiet Title and for Injunctive Relief, Page 4, Paragraph A.

\textsuperscript{13} \textit{Id.} at Paragraph C.

\textsuperscript{14} \textit{Fancy}, 177 Mich App at 720.

suffer irreparable harm in the absence of injunctive relief. 16 An injury is irreparable if it is “an injury for which there is no legal measurements of damages or for which damages cannot be determined with a sufficient degree of certainty.” 17

Plaintiffs will not suffer imminent, irreparable harm in the absence of an injunction. The fence and berm have been on the property without incident for over two years. Plaintiffs have not provided evidence of a single occasion where vehicles, including emergency vehicles, were unable to access Parcel C. Rather, large tractors, DTE work trucks, and school buses regularly use the driveway. Moreover, the maximum driveway width required for Lake Orion emergency vehicles, such as fire trucks and ambulances, to safely access a property is 9 feet. (Exhibit F—Memo from Assistant Fire Chief, John Pender). Defendants’ fence, which runs closely alongside the border of the driveway, allows more than enough room for passage by emergency vehicles.

Plaintiffs have lived with the fence for two years without suffering an irreparable loss. The photos attached to Plaintiffs’ affidavit are six years old. These photos do not demonstrate that the driveway in impassable or that Defendants caused any flooding. Plaintiffs have not suffered an irreparable injury in the six years Defendants have lived on Parcel A, and they have presented no evidence that irreparable injury will occur during the pendency of this litigation. Accordingly, they do not require the extraordinary protection of injunctive relief.

Defendants; however, will be harmed by issuance of an injunction. Defendants were served with the complaint one week ago. A preliminary injunction will require them to incur the considerable expense of removing the fencing and berm without the benefit of a hearing.

on the merits or an opportunity to respond to the complaint. Moreover, issuance of a preliminary injunction in this case erodes the public's interest in the authority of courts to render meaningful judgments. Preliminary relief, therefore, is inappropriate in this case, and Plaintiffs' motion should be denied.

CONCLUSION

Preliminary injunctive relief is inappropriate in this case. Requiring Defendants to remove the berm and fencing that have been on their property for years drastically alters the status quo. This is impermissible where Defendants were served with the complaint only one week ago and the court has yet to consider the merits of the parties' claims. Moreover, issuance of Plaintiffs' requested injunction would impermissibly grant Plaintiffs all the relief sought in their complaint. Plaintiffs will not suffer irreparable harm in the absence of an injunction. Plaintiffs' motion, therefore, should be denied.

Respectfully Submitted,

Dated: January 31, 2020

/s/

PAUL H. HUTH (P31986)
EMILY M. SULLIVAN (P81376)
HUTH LYNETT
Attorneys for Defendants
645 Griswold St., Ste. 4300
Detroit, MI 48226
(313) 965-5500
KNOW ALL PERSONS BY THESE PRESENTS: That Rachel V. Noel, a woman and Wilma E. Darnall, a woman, as joint tenants whose address is 1150 Hemingway Rd. Lake Orion, MI 48360 Convey(s) and Warrant(s) to John Rife, a married man, and Vito F. Gualana, a married man whose address is 893 Sherry Dr., Lake Orion, MI 48362 the following described premises situated in the Township of Orion, County of Oakland, and State of Michigan to-wit:

Part of Lot 11, Clarkston Hemingway Acres, according to the recorded plat thereof as recorded in Liber 64, page 7 of plats, Oakland County Records, described as follows: Beginning at North East lot corner; thence South 89 degrees 53 minutes 00 seconds West 435 feet; thence South 132 feet; thence North 89 degrees 53 minutes 00 seconds East 435 feet; thence North 132 feet to beginning.

Commonly known as: 1150 Hemingway Rd., Lake Orion, MI 48360
Tax Parcel # 09-15-201-028

for the consideration of: One Hundred Fifty Eight Thousand and 00/100 Dollars ($158,000.00)

subject to existing building and use restrictions and easements and rights of way of record.

Dated: May 23, 2014

Signed and Sealed:

Rachel V. Noel

Wilma E. Darnall
EXHIBIT B
KNOW ALL PERSONS BY THESE PRESENTS: That John Rife married man
whose address is 1150 Hemingway Rd. Lake Orion, MI 48360
Quit Claim(s) to Tracey Guniana and John Rife
whose address is 1150 Hemingway Rd. Lake Orion, MI 48360
the following described premises situated in the Township of Lake Orion
County of Oakland
TH N 115, sec 15, Clarkston - Hemingway Acres
Parcel "A", part of Lot 11, BGC at NE Lot Corner,
TH S 89.5300 W 435.47, TH S 132.47, TH N 89.5300
E 435.47, TH N 132.47, TO BGC 09.15-201-028
Commonly known as: 1150 Hemingway Rd Lot 11
for the full consideration of None

Tax I.D. Number: 
Dated this 12 day of September 2014
Signed by: John Rife

STATE OF MICHIGAN
COUNTY OF Oakland

The foregoing instrument was acknowledged before me this 12th day of September 2014
by John Rife
My commission expires
Instrument Drafted by Tracey Guniana
After recording return to: Lisa M. Savado

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management
practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm
Act.
EXHIBIT B
KNOW ALL PERSONS BY THESE PRESENTS: That John Rife married man whose address is 1150 Hemingway Rd Lake Orion MI 48360

Quit Claim(s) to Tracey Guarnara and John Rife whose address is 1150 Hemingway Rd Lake Orion MI 48360

the following described premises situated in the Township of Lake Orion and State of Michigan, to wit:

THN, R10E, sec 15 CLARKSTON - HEMINGWAY ACRES Parcel "A" part of Lot 11 BCB at NE 1st Cnr, Th 389.53.00 W 435.54, Th 3 132.00 W 435.54, Th 3 132.00, To Beg 09-15-201-028

Commonly known as: 1150 Hemingway Rd Lot 11

for the full consideration of None

Tax I.D. Number:

Dated this 12th day of September 2014

Signed by: John Rife

STATE OF MICHIGAN
COUNTY OF Oakland

The foregoing instrument was acknowledged before me this 12th day of September 2014 by John Rife

My commission expires 7/29/2020

Notary Public County, Michigan
Business Address 1150 Hemingway Rd Lake Orion MI 48360

Drafted by Tracey Guarnara

After recording return to County Customer

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

OK - LG
Laurens Title Insurance Corporation

KNOW ALL MEN BY THESE PRESENTS: That Thomas M. Darnall, a married man,

whose address is
1150 Hemingway, Lake Orion, Michigan 48360

Quit Claim(s) to
Thomas M. Darnall and Robin E. Darnall, husband and wife,

whose address is
1150 Hemingway, Lake Orion, Michigan 48360

the following described premises situated in the Township of Orion

County of Oakland

and State of Michigan, to-wit:

Lot 11, except the East 870 feet of CLARKSTON-HEMINGWAY ACRES SUBDIVISION,
as recorded in Liber 64 of Plats, Page 7 of Oakland County Records. Being
more particularly described as beginning at the Northeast corner of said
Lot 11; thence South 89°53'00" West 870.00 feet along the North line of said Lot
11 to the point of beginning; thence proceeding South 89°53'00" West 479.90 feet
along the North line of said Lot 11 to the Northwest corner of said Lot 11;
then South 00°21'40" West 132.00 feet along the West line of said Lot 11 to
the Southwest corner of said Lot 11; thence North 89°53'00" East 480.73 feet along
the South line of said Lot 11 to a point; thence North 132.00 feet to the point
of beginning.

Lot 11

for the full consideration of less than $50.00. Tax exempt pursuant to MCLA 207.505(a).

Dated this 22nd day of July, 1992

Witness:

Jeffrey S. Drury

Dean D. Longley

Thomas M. Darnall

Signed and Sealed:

________________________________________________________________________

STATE OF MICHIGAN

COUNTY OF ____________

The foregoing instrument was acknowledged before me this

by Thomas M. Darnall, a married man.

My commission expires

Instrument Drafted by: Mark H. Griffin

Notary Public

Address: 110 Miller, Suite 300, Ann Arbor, MI 48104

Recorded Fee $9.00

State Transfer Tax N/A

When recorded return to: Grantees

Send subsequent tax bills to: Grantees

Tax Parcel 13-15-201-026

O.K. 78
STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THOMAS M. DARNALL and
ROBIN E. DARNALL,

Plaintiffs,

v.

JOHN RIFE and
TRACEY GUAIANA,
Husband and Wife,

Defendants.

Case No. 2020-178816-CH
Hon. Jeffrey S. Matis

JAMES R. PORRITT, JR. (P23222)
PORRITT LAW FIRM
Attorney for Plaintiffs
436 S. Broadway, Suite C
Lake Orion, Michigan 48362
(248) 693-6245

PAUL H. HUTH (P31986)
EMILY M. SULLIVAN (P81376)
HUTH LYNETT
Attorneys for Defendants
645 Griswold, Suite 4300
Detroit, MI 48226
(313) 965-5500

AFFIDAVIT OF JOHN RIFE AND TRACEY GUAIANA

JOHN RIFE and TRACEY GUAIANA, being duly sworn, state that the following is true and accurate to the best of our personal knowledge:

1. Since 2014, we have lived at the property located at 1150 Hemingway Road in Lake Orion, Michigan.

2. Our deed to the property does not describe an easement.

3. We erected a fence along the outer edge of our property in 2018.

4. Since erecting the fence, we have witnessed the DTE truck driven by Defendant Thomas M. Darnell traverse the driveway unimpeded on numerous occasions. We are not aware of any instance in which Mr. Darnell’s DTE truck could not traverse the driveway.
5. Since erecting the fence, we have witnessed emergency vehicles traverse the driveway unimpeded on numerous occasions.

6. We are not aware of any instance in which emergency vehicles could use the driveway to access Plaintiffs’ home.

7. We have witnessed school buses regularly use the driveway to access Plaintiffs’ property.

8. The photographs attached hereto as Exhibit A accurately depict Plaintiffs’ tractor parked horizontally in the driveway.

9. Plaintiffs did not complain about the fencing or berm until recently when Thomas Randall began ramming our fence and digging up the sides of the driveway with a large tractor and chucking our caution sign at our vehicles and home.

10. Plaintiffs’ attempt to widen the driveway with his tractor has caused flooding on the driveway and our property.

11. We have sought a personal protection order to prevent Mr. Darnell from damaging our home and personal property.

/s/ John Rife

/s/ Tracey Guiana

Signed and sworn to before me on February 3, 2020 by John Rife and Tracey Guiana.

/s/ Sharon Dominguez

Sharon Dominguez, Notary Public
State of Michigan, County of Wayne
My commission expires July 14, 2022
EXHIBIT A
bedroom window
Jan 29, 2020 3:46:39 PM
EXHIBIT E
**PERSONAL PROTECTION ORDER**

**6TH JUDICIAL CIRCUIT**

**OAKLAND COUNTY**

**PERSONAL PROTECTION ORDER (NONDOMESTIC)**

<table>
<thead>
<tr>
<th>Petitioner's name</th>
<th>Respondent's name and telephone no.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRACEY LYNN GUAIANA</strong></td>
<td><strong>THOMAS MARTIN DARNALL</strong></td>
</tr>
<tr>
<td><strong>Address and telephone no. where court can reach petitioner</strong></td>
<td><strong>Address and telephone no. where court can reach respondent</strong></td>
</tr>
<tr>
<td>1150 HEMINGWAY RD. LAKE ORION, MI 48360 313-318-4052</td>
<td>1136 HEMINGWAY RD. LAKE ORION, MI 48360 UNKNOWN PHONE NUMBER</td>
</tr>
</tbody>
</table>

**Full name of respondent (type or print)**

<table>
<thead>
<tr>
<th>Height</th>
<th>Weight</th>
<th>Race</th>
<th>Sex</th>
<th>Date of Birth or Age</th>
<th>Hair color</th>
<th>Eye Color</th>
<th>Other identifying information</th>
</tr>
</thead>
<tbody>
<tr>
<td>5' 1&quot;</td>
<td>220</td>
<td>W</td>
<td>M</td>
<td>59 YEARS OLD</td>
<td>BRO</td>
<td>XXX</td>
<td></td>
</tr>
</tbody>
</table>

*These items must be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful.*

**Date:** NOV 25 2019

**Judge:** KAMESHIA D. GANT

1. This order is entered [ ] without a hearing. [ ] after hearing.

**THE COURT FINDS:**

☑ 2. A petition requesting an order to restrain conduct prohibited under MCL 750.411h and 750.411i and/or MCL 750.411s has been filed under the authority of MCL 600.2950a.

☑ 3. Petitioner requested an ex parte order which should be entered without notice because irreparable injury, loss, or damage will result from the delay required to give notice or notice itself will precipitate adverse action before an order can be issued.

☐ 4. Respondent committed the following acts of willful, unconsented contact: (State the reasons for issuance.)

☐ 3 or more willful, unconsented acts of harassment & trespassing on private property.

**IT IS ORDERED:**

5. **Thomas Martin Darnall**

☐ a. Stalking as defined under MCL 750.411h and MCL 750.411i., which includes but is not limited to:

☐ following or appearing within sight of the petitioner.

☐ appearing at the workplace or the residence of the petitioner.

☐ approaching or confronting the petitioner in a public place or on private property.

☐ entering onto or remaining on property owned, leased, or occupied by the petitioner.

☐ sending mail or other communications to the petitioner.

☐ contacting the petitioner by telephone.

☐ placing an object on or delivering an object to property owned, leased, or occupied by the petitioner.

☐ threatening to kill or physically injure the petitioner.

☐ purchasing or possessing a firearm.

☐ other: Third party contact

☐ b. Posting a message through the use of any medium of communication, including the Internet or a computer or any electronic medium, pursuant to MCL 750.411s.

6. Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than $500.00.

7. **This order is effective when signed, enforceable immediately, and remains in effect until NOV 25 2020.**

This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than this state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

8. The court clerk shall file this order with O.C.S.O./COUNTY CLERK who will enter it into the LEIN.

9. Respondent may file a motion to modify or terminate this order. For ex parte orders, the motion must be filed within 14 days after being served with or receiving actual notice of the order. Forms and instructions are available from the clerk of court.

10. A motion to extend the order must be filed 3 days before the expiration date in item 7 or a new petition must be filed.

**Date and time issued:** NOV 25 2019

**CC 380 (3/12) PERSONAL PROTECTION ORDER (NONDOMESTIC)**
OAKLAND COUNTY SHERIFF CIVIL DIVISION

RECEIPT FOR PAYMENT

REC. FROM: TRACY GUAIANA
ADDRESS: 1150 HEMINGWAY RD APT/STE
CITY/STATE: LAKE ORION MICHIGAN ZIP: 48350
PHONE #: 313-318-4052

* ABOVE NOTED PARTY IS RESPONSIBLE FOR FILING PAPERWORK WITH THE COURT

IN THE MATTER OF: GUAIANA V. DARNALL
PLEADINGS:

SERVICE UPON:

FIRST/PRIORITY COMPANY NUMBER STREET CITY SDP FEE MILEAGE REFUNDSERVICE DATE TIME
THOMAS DARNALL 1136 HEMINGWAY RD LK ORION NC $26.00 $23.95 $0.00 11/25/19

SERVE BY: PPO

REQUESTING PRE-PAID MILEAGE: YES

NOTES/COMMENTS (OFFICE USE ONLY):

V.S. - LEFT COPY w/ máy

PROCESS SERVER LOG

100
1. I SERVED A COPY OF
   - Petition for Personal Protection Order/Stalking
   - Verified Statement
   - Notice of Hearing
   - Personal Protection Order/Personal Protection Order Stalking
   - Motion and Order to Show Cause for Violation of a Personal Protection Order
   - Motion to Modify/Extend/Terminate Personal Protection Order
   - Petition/Order Appoint Next Friend
   - Order Modify/Extend/Terminate Personal Protection Order
   - Order Deny/Dismiss Personal Protection Order
   - Other

   THOMAS MARTIN DARNALL

   NAME OF PERSON SERVED

   [Signature]

   DAY, DATE, TIME

   24.8 - 802 - 2040

   COMPLETE ADDRESS WHERE PERSON WAS SERVED

2. by
   - ☐ personal service or
   - ☐ registered mail, restricted delivery (copy of return receipt attached):
     ☐ Respondent was verbally notified by ☐ law enforcement officer ☐ clerk of the court of:
     * the existence of the Personal Protection Order,
     * the conduct prohibited by the Personal Protection Order,
     * the penalties for violating the Personal Protection Order and
     * where the respondent can obtain a copy of the Personal Protection Order.

3. a. Being 1st duly sworn, I am:
   - ☐ A legally competent adult who is not a party or an officer of a corporate party:

   PLEASE HAVE FORM NOTARIZED

   or

   b. I am:

   XXX A sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104(A)(2)).

   SPECIAL DEPUTY COOK #2194

   NAME OF PERSON COMPLETING SERVICE (Type or Print)

   [Signature]

   Subscribed and sworn to before me on ____________ Date ____________ Signature: ____________ County, Michigan

   My commission expires: ____________ Date ____________ Signature: Notary Public

COMPLETE ONLY IF YOU CAN'T FIND THE PERSON
   ☐ After diligent search and inquiry, I have been unable to find and serve the respondent/petitioner. I have made
   the following efforts in attempting to serve process:

   ___________________________________________________________________________

   ___________________________________________________________________________

   ACKNOWLEDGMENT OF SERVICE
   I acknowledge that I received a copy of the documents checked off in Number 1 (above):

   Day, date, time

   ____________ Signature ____________

   Ppo-pro 1 (12/10)
EXHIBIT F
February 3, 2020

To Whom it may concern,

As a follow up to our phone conversation, a clear path of 9’ (feet) wide and 10’ (feet) 4” (inches) in height should be maintained. This will allow emergency vehicles to access.

Any further questions, I can be reached at 248-391-0304 ext 2002 or email at jpender@oriontownship.org

John Pender, Assistant Fire Chief
Orion Township Fire Department
June 1, 2022

By Email (lharrison@oriontownship.org)

Zoning Board of Appeals
Charter Township of Orion
Orion Township Municipal Complex
2323 Joslyn Road
Lake Orion, MI 48360

Re: Application for Appeal – 1150 Hemingway
June 27, 2022 ZBA Hearing

Dear Zoning Board of Appeals:

This letter relates to the Application for Appeal (Single Family Residential) ("Application") submitted by Tracey Guiana ("Applicant") on May 12, 2022, regarding 1150 Hemingway in Lake Orion ("Property"). We represent Tom Williams, who owns the property located at 1160 Hemingway, which is immediately to the south of the Property, as well as 1180, 1198 and 1212 Hemingway. On behalf of Mr. Williams, we oppose the Zoning Board of Appeals ("ZBA") granting the variance requested in the Application. The Application does not come close to satisfying the standards for granting a variance.

The Application is filled with misrepresentations, starting with the Applicant’s description of the request, which is: “Picket fence to be put on property.” (Application, ¶ 1) The Applicant is not seeking to put a “picket fence” on the Property; she already has installed a six-foot privacy fence on the lot line of the Property (and over the lot line, see below) in violation of the Charter Township of Orion Zoning Ordinance, Article XXVII, Section 27.05(H), Residential Fence and Wall Regulations, which states at subsection 1: “Lot Enclosures. Fences and walls used to enclose a lot shall be no higher than four (4) feet in height and shall be located on the lot line.”

In response to the requirement that the Applicant describe the “special and unique circumstances particular to the property, which are not applicable to other properties in the surrounding area,” the Application states as follows: “court order to put up fence, PPO was put on neighbor, civil court cases, barbed wire installed by neighbor, overlength grass.”
(Application, ¶ 1). We will address these claimed special circumstances in the order stated in the Application, but the Applicant has not made the required showing to justify the ZBA granting a variance.

There is no court order requiring that the Applicant put up the fence at issue. There is a Consent Judgment and Discharge of Lis Pendens dated March 29, 2021, which, among other things, required the Applicant to remove, relocate or replace a fence from within a private road easement on the other side of her Property (the north side), not the side of the Property on which the fence at issue is located (the south side). (Ex. 1, Consent Judgment and Discharge of Lis Pendens in Darnall and Darnall v. Rife and Guiana, Case No. 2020-178816-CH, Oakland County Circuit Court (“Easement Litigation”); submitted in unentered form with the Application) The Easement Litigation was a lawsuit brought by Thomas and Robin Darnall, the owners of 1136 Hemingway, which is located behind the Applicant’s Property to the west, against the Applicant and John Rife, the co-owner of the Property. The Darnalls use the private road easement located on the north side of the Applicant’s Property to access their property.

The Applicant also submitted a Mutual Release Agreement from the Easement Litigation. The Applicant has directed the ZBA’s attention to language in the Mutual Release Agreement stating that a privacy fence would be installed “by Defendants along the southerly line of the easement on or before April 1, 2022.” Again, the easement is to north of Applicant’s Property. The fence contemplated by the Agreement was to be on the north side of Applicant’s property (“the southerly line of the easement”). The fence at issue is on the south side of the Applicant’s property. The Applicant is attempting to mislead the ZBA.

The next “special and unique circumstance” cited by Applicant is “PPO was put on neighbor.” The Applicant has never obtained a personal protective order (“PPO”) against Mr. Williams, the owner of the property adjacent to the fence at issue. It is our understanding that the Applicant may have obtained a PPO against Mr. Darnall, but he lives on the other side of the Property and the existence of a PPO is wholly irrelevant to whether the ZBA should grant a variance in any event.

Applicant’s reference to “civil court cases” appears to relate to the Easement Litigation, which is addressed above. There is no court case relating to the fence at issue or any court order requiring that a fence should be installed in violation of the Township Zoning Ordinance.

The next claimed “special and unique circumstance” is “barbed wire installed by neighbor.” There was previously a barbed wire fence installed on the lot line, but that fence has been removed and has no relevance to the Applicant’s request for a variance. It is not clear why
the Applicant believes “overlength grass” is a special or unique circumstance supporting her Application.

The ZBA also should be aware that Mr. Williams paid to replace the barbed wire fence with orange snow fence that was properly placed on the lot line. The Applicant and/or Mr. Rife removed the snow fence and the associated posts and discarded them in nearby weeds without ever consulting Mr. Williams. On behalf of Mr. Williams, we sent a letter on May 5, 2022, to Mr. Rife addressing the unauthorized removal of the fence posts, as well as the fact that a portion of the fence encroaches on Mr. Williams’ property (see below). (Ex. 2) Mr. Rife has not responded to the May 5 letter.

In response to questions 7 and 8 on the Application, Applicant once again refers to the ZBA to the Easement Litigation, which involved a private road easement on the other side of the Property. Nothing about that case or the Consent Judgment entered in that case relates in any way to how strict compliance with the ordinance at issue creates a practical difficulty, unreasonably prevents Applicant from using the Property for a permitted purpose or is unnecessarily burdensome.

Not only has Applicant completely failed to show that she is entitled to a variance for the fence at issue, but a portion of the fence was installed on Mr. Williams’ property, not on the lot line. Mr. Williams caused a survey to be performed on May 23, 2022, to determine exactly how much of the fence was installed on his property. We believe it is approximately 50 feet of the fence. We expect to supplement this letter with the survey showing the encroachment prior to or at the ZBA hearing scheduled for June 27, 2022.

Moreover, the Applicant installed the fence at issue with the finished side facing the Applicant’s Property and the opposite side with posts and rails facing Mr. Williams’ property. (Ex. 3, photos) It is accepted practice to install fences, particularly in residential neighborhoods, with the finished side facing out toward neighboring properties. That is one more reason that the ZBA should not allow the fence at issue to remain in its current height (which violates the Zoning Ordinance), position (partially on Mr. Williams’ property) and orientation.
Sincerely,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

David E. Plunkett

cc: Thomas Williams
EXHIBIT 1
STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  

THOMAS M. DARNALL and  
ROBIN E. DARNALL,  
Plaintiffs/Counter-Defendants  

v.  

JOHN RIFE and  
TRACEY GUAIANA,  
Husband and Wife,  
Defendants/Counter-Plaintiffs  

Case No. 2020-178816-CH  
Honorable Jeffery Matis  

JAMES R. PORRITT, JR. (P23222)  
Paul H. Huth (P31986)  
Porritt Law Firm  
EMILY M. SULLIVAN (P81376)  
436 S. Broadway, Suite C  
Huth Lynett  
Lake Orion, Michigan 48362  
645 Griswold, Suite 4300  
(248) 693-6245  
Detroit, MI 48226  
(313) 965-5500  

CONSENT JUDGMENT AND DISCHARGE OF US PENDENS  
At a session of said Court held at the courthouse in the  
City of Pontiac, said County and State on March 29, 2021  

Present: Honorable Jeffery Matis, Circuit Judge  

THIS MATTER having come before the Court upon the Complaint and Counter Complaint  
filed herein and the parties having indicated their assent and agreement to the entry of this  
Consent Judgment and the court being otherwise fully informed in the premises, NOW  
THEREFORE;
QUIET TITLE

IT IS ORDERED AND ADJUDGED that Plaintiffs as owners in fee simple of the Plaintiffs’ Property described below have clear title to a non-exclusive easement for ingress, egress and utilities over the northern thirty (30’) feet of Defendants’ Property described below and such title is forever quieted in Plaintiffs, their successors and assigns and the rights attendant to said easement, inclusive of maintenance thereof, are valid as against Defendants and all persons claiming under the Defendants and that any rights, claims or interests of Defendants inconsistent with, restrictive of, or contrary to said easement and the rights attendant thereto are cut off, and said easement and the rights attendant is appurtenant to Plaintiffs’ Property as the dominant estate and runs with the land and Defendants’ Property, as servient estate, is subject to the same and such easement and the rights attendant thereto runs with Defendants’ Property; to-wit:

Plaintiffs’ property:

PART OF LOT 11, CLARKSTON-HEMINGWAY ACRES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 64, PAGE 7 OF PLATS, OAKLAND COUNTY RECORDS; BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 89 DEGREES 53 MINUTES 00 SECONDS WEST 870.00 FEET ALONG THE NORTH LINE IF SAID LOT 11 TO THE POINT OF BEGINNING; THENCE PROCEEDING SOUTH 89 DEGREES 53 MINUTES 00 SECONDS WEST 479.90 FEET ALONG THE NORTH LINE OF SAID LOT 11 TO THE NORTHWEST CORNER OF SAID LOT 11; THENCE SOUTH 00 DEGREES 21 MINUTES 40 SECONDS WEST 132.00 FEET ALONG THE WEST LINE OF SAID LOT 11 TO THE SOUTHEAST CORNER OF SAID LOT 11; THENCE NORTH 89 DEGREES 53 MINUTES 00 SECONDS EAST 480.73 FEET ALONG THE SOUTH LINE OF SAID LOT 11 TO A POINT; THENCE NORTH 132.00 FEET TO THE POINT OF BEGINNING, SUBJECT TO AND TOGETHER WITH ALL EASEMENTS, CONDITIONS, RESTRICTIONS AND AGREEMENTS OF RECORD, INCLUSIVE OF THIS CONSENT JUDGMENT, AND

A Private Road Easement for ingress and egress with public utilities over, across and under a 30 foot wide strip of land described as part of LOT 11 of Clarkston-Hemingway Acres, as recorded in Liber 64 of Plats, on Page 7, Oakland County Records, said Easement being described as beginning at the Northeast corner of said LOT 11; thence S 89’53’00” W along the North line of said LOT 11, 970.00 feet; thence South 30 feet; thence N 89’53’00” E parallel with said North line of said LOT 11 970.00 feet to the East line of said LOT 11; thence North along the East line of said LOT 11, 30 feet back to the Point of Beginning.

Tax Parcel No. 09-15-201-026

Defendants’ Property:

LOT 11, EXCEPT THE EAST 870 FEET, CLARKSTON-HEMINGWAY ACRES, ACCORDING TO THE RECORDED PLAT THEREOF AS RECORDED IN LIBER 64, PAGE 7 OF PLATS, OAKLAND COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT NORTH EAST LOT CORNER; THENCE SOUTH 89 DEGREES 53 MINUTES 00 SECONDS WEST 435 FEET; THENCE SOUTH 132 FEET; THENCE
NORTH 89 DEGREES 53 MINUTES 00 SECONDS EAST 435 FEET; THENCE NORTH 132 FEET TO BEGINNING. SUBJECT TO ALL EASEMENTS, CONDITIONS, RESTRICTIONS AND AGREEMENTS OF RECORD APPLICABLE TO SAID PROPERTY, INCLUSIVE OF THIS CONSENT JUDGMENT.

Tax Parcel No. 09-15-201-028

DISMISSAL OF COUNTER COMPLAINT

IT IS FURTHER ORDERED that the Counter Complaint filed herein is dismissed with prejudice and without costs to either party.

MAINTENANCE OF PRIVATE ROAD EASEMENT

IT IS FURTHER ORDERED that Defendants herein as owners in fee simple of Defendants’ Property described above may post a speed limit sign of 20 MPH upon Defendants’ Property outside or at the edge of the Private Road Easement or upon their relocated fence bordering said Private Road Easement and Plaintiffs shall abide by such speed limit;

IT IS FURTHER ORDERED that Defendants shall be and hereby are enjoined directly or indirectly, whether alone or in concert with others from blocking, interfering with, hindering or obstructing access over, across or through the above described Private Road Easement inclusive of the placement of objects, fencing or structures within said Private Road Easement and from damming, blocking or hindering the flow of surface water from said Private Road Easement across Defendants’ Property so as to cause the backing up of water upon the same;

IT IS FURTHER ORDERED that Defendants shall be and hereby are enjoined from arranging any cameras, lights or motion detection devices in such manner as to cause bright lights from obscuring vision of users of the Private Road Easement;

IT IS FURTHER ORDERED that Defendants shall cure the existing water drainage obstruction upon the Private Road Easement by smoothing the drainage course or raising the level of the Private Road Easement with suitable materials so as to relieve the backed up water flow on or before June 1, 2021; and in the absence of Defendants having completed such cure on or before such date Plaintiffs upon 30 days written notice without cure, shall be free to raise the level of the Private Road Easement by such means as they deem appropriate;

IT IS FURTHER ORDERED that Defendants shall remove, relocate or replace their ‘slow sign’ by April 1, 2021, and their existing fence to a location along or outside the southern boundary of said Private Road Easement on or before April 1, 2022;

IT IS FURTHER ORDERED that Plaintiffs shall have the right to maintain, repair and restore said Private Road Easement so as to keep the same in passable condition without ruts, holes, snow, ice or accumulated water upon an ‘as needed’ basis; Provided, however, that Plaintiffs shall place snow removed or plowed from the improved, traveled driveway to the north side of said driveway and shall leave intact the grass belts on either side of the improved gravel driveway
and, should such grass belts be disturbed in the course of such maintenance restore the same
and Plaintiffs are enjoined from trespassing or entering upon Defendants' Property outside the
described Private Road Easement.

IT IS FURTHER ORDERED that a certified copy of this Judgment may be recorded at the office of
the Oakland County Register of Deeds and Jurisdiction is preserved in this Court for the
enforcement of this Judgment and that in the instance of enforcement proceedings the
prevailing party shall be entitled to recovery of actual costs and attorney fees.

DISCHARGE OF LIS PENDENS

IT IS FURTHER ORDERED that the Notice of Lis Pendens recorded January 29, 2020 in Uber
53772, Page 150, Oakland County Records, pertaining to Defendants' property, described above
and erroneously referenced therein as Tax Parcel No 09-15-201-207 shall be discharged,
canceled, rescinded and held for naught.

This Judgment disposes of all outstanding pending claims and disposes of the case

Approved as to Content
And for Entry

James R. Porritt, Jr (P23222)
Attorney for Plaintiffs and Counter Defendants

Paul H. Huth (P31986)
Attorney for Defendants and Counter Plaintiffs

/s/ Jeffery S. Matis
Jeffery Matis, Circuit Judge

yw
CERTIFICATE OF SURVEY
CLARKTON-HEMINGWAY ACRES
SECTION 15, TAN, R10E, ORION TOWNSHIP
OAKLAND COUNTY, MICHIGAN

Patterns:
- Gravel Drive
- Force

Parcel A

Units: International Feet

Record Documents:
- Plat, Clarkson-Hemingway Acres, Liber 54 of Plats - Page 7
- Survey of Parcels A thru C, Huston Kennedy, Unrecorded

The Relative Positional Precision (RPP) is defined as the length of the semi-major axis of the error ellipse at a 95% confidence level at each point and how it relates to every other point in the survey. A correctly weighted Least Squares adjustment was performed on the survey network to obtain these values. This table only lists points that have been permanently monumented in the survey. The points in the table correspond to the Point Labels on the map. Other points in the network such as traverse points and temporary points have been omitted. The allowable RPP is from the 2016 ALTA standards. This information is supplied pursuant to the requirements of the Certified Survey Act 132, P.A. 1970, as amended, Sec. 3 (1) (a) (ii).

Adjustment Statistical Summary

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Observation Count, Sum Squares, Error of Stations, Factor of Observations

| Angles | 0 | 0.557 | 1.041 |
| Distances | 9 | 6.990 | 1.007 |
| Zanzas | 9 | 10.388 | 1.235 |
| GPS Dates | 159 | 105.496 | 0.938 |

Total: 185 123.341 0.961

The Chi-Square Test at 5.00% Level Passed

Measured

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Prepared For: Ernest Damoll
3355 Bayless Drive
Oxford, MI 48371

Campbell Surveying Engineering, Inc.
Professional Surveying Services
10051 E. Highland Road, Suite 29 www.campbellse.com
Howell, Michigan 48843 (810) 390-1189

LEGEND
- FOUND CAPPED IRON
- SET CAPPED IRON
- FOUND IRON
- FOUND CONCRETE MONUMENT
(R) RECORD (M) MEASURED

Copyright 2016 Campbell Surveying Engineering, Inc.
Reproduction in whole or any portion without permission prohibited
CERTIFICATE OF COPY OF RECORD
STATE OF MICHIGAN, COUNTY OF OAKLAND
\[Signature\], Register of Deeds for Oakland
County, certify that the attached copy is a true and
correct transcript of the original record in
Liber 53273 Page(s) 8160 - 8167.
In testimony whereof I have set my hand and placed
the seal of REGISTER OF DEEDS this \[Date\]
day of \[Month\], \[Year\].

\[Signature\]
Deputy

Marie Sawade
EXHIBIT 2
May 5, 2022

By Fed Ex

John Rife
1150 Hemingway
Lake Orion, MI 48360

Re: Fence on Property Line with 1160 Hemingway

Dear Mr. Rife:

I represent Tom Williams, who owns the property located at 1160 Hemingway adjacent to your property. I know that the Charter Township of Orion issued you a Notice of Ordinance Violation on April 28, 2022, regarding the fence installed on or near the property line between your property and Mr. Williams' property. I am writing to advise you that in addition to your fence being in violation of the Township Ordinance section referenced in the Notice of Ordinance Violation, approximately fifty (50) feet of the fence encroaches on Mr. Williams' property. We demand that you immediately remove the portion of the fence that is on Mr. Williams' property.

Moreover, it is my understanding that whoever installed your fence removed certain posts Mr. Williams installed along the property line between your properties and discarded the posts in adjacent weeds. You had no right to remove those posts. We demand that you immediately replace the posts that you removed or caused to be removed.

If you do not take the actions demanded in this letter, Mr. Williams will pursue relief in court, including damages and injunctive relief.

Sincerely,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

David E. Plunkett
EXHIBIT 3
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: June 15, 2022
SUBJECT: Staff Report for AB-2022-24, Jarle and Sissel Amundsen, 90 Shorewood Ct.

The applicants are seeking variances to construct a new home on the property known as 90 Shorewood Ct. All existing buildings will be removed, the pavers at the rear of the property will remain.

The applicants have declared the roadside as the front yard.

As depicted on the plans, Shorewood Ct. wraps around the property to the south. The front yard setback is being measured from the closest point of the attached garage to the front property line to the south which measures 20’-7 ¼”. The applicant has requested that the deviation from the required 30-ft. setback be 9.5-ft.

The side yard setback further south is being measured from the closest point of the covered deck to the property line which is 6-ft. Note that decks that are covered with a roof that extends from the house is considered part of the house.

The side yard setback to the north is 7-ft. You will note that there is a 2-ft. protrusion on that side which is a chimney. Per the Zoning Ordinance, chimneys can protrude 24” into a side yard setback.

The total footprint of the house, attached garage, covered porch, deck, and deck stairs total 2,973-sq. ft. which is 1.87% above the allowed 25% lot coverage maximum.

The attached garage does not exceed the maximum floor area of 1,150-sq. ft. and the rear setback for the house and covered deck are met.

Please contact me if you have any questions.
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: June 14, 2022


I am providing motion options for the above-mentioned case.

Please consider and deliberate on each of the criteria listed which the applicant should meet in order for their request to be approved. These are known as the Findings of Fact and need to be included in a motion for either approval or denial. Any additional Findings of Facts should be added to the motion. Also, if more information is needed, a motion to postpone would be in order.

The variance language listed was advertised to the public. As a reminder - due to the language being advertised, the ZBA may lessen the requested deviation(s) but cannot grant more than what was advertised.

** If motion is to approve, conditions can be added to the motion if appropriate. If the variances are modified, use the modified numbers in the motion. **

If you have any questions regarding the case, please give me a call at the Township ext. 5001.
SAMPLE MOTION FOR

APPROVAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-24, Jarle and Sissel Amundsen, 90 Shorewood Ct., 09-03-405-034, I move that the petitioner’s request for:

4 variances from Zoning Ordinance #78

Article XI, Section 6.04, Zoned R-3

1. A 9.5-ft. front yard setback variance from the required 30-ft. to build a new home with attached garage 20.5-ft. from the front property line (roadside).
2. A 4-ft. side yard setback variance from the required 10-ft. to build a new home with attached garage 6-ft. from the side property line (south).
3. A 3-ft. side yard setback variance from the required 10-ft. to build a new home with attached garage 7-ft. from the side property line (north).
4. A 1.87% lot coverage variance from the allowed 25% for a total lot coverage of 26.87%.

be granted because the petitioner did demonstrate that the following standards for variances have been met in this case in that they set forth facts which show that in this case:

Please be specific how the petitioner meets these criteria

1. The petitioner does show the following Practical Difficulty (Defined: Due to unique characteristics of the property and not related to general conditions in the area of the property):

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone:

3. The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would not:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
SAMPLE MOTION FOR

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-24, Jarle and Sissel Amundsen, 90 Shorewood Ct., 09-03-405-034, I move that the petitioner’s request for:

4 variances from Zoning Ordinance #78

Article XI, Section 6.04, Zoned R-3

1. A 9.5-ft. front yard setback variance from the required 30-ft. to build a new home with attached garage 20.5-ft. from the front property line (roadside).

2. A 4-ft. side yard setback variance from the required 10-ft. to build a new home with attached garage 6-ft. from the side property line (south).

3. A 3-ft. side yard setback variance from the required 10-ft. to build a new home with attached garage 7-ft. from the side property line (north).

4. A 1.87% lot coverage variance from the allowed 25% for a total lot coverage of 26.87%.

Please be specific how the petitioner does not meet these criteria be denied because the petitioner did not demonstrate that the following standards for variances have been met in this case:

1. The petitioner did not demonstrate Practical Difficulty because:

2. The petitioner did not establish unique or exceptional circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zoning because:

3. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone or vicinity based on the following facts:
4. The granting of the variance or modification will be materially detrimental to the public welfare or materially injurious to the property or to improvements in such zone or district in which the property is located based on the following findings:

Further, based on the following findings of facts, the granting of this variance would:

1. Impair an adequate supply of light and air to adjacent property due to:

2. Unreasonably increase the congestion in public streets due to:

3. Increase the danger of fire or endanger the public safety due to:

4. Unreasonably diminish or impair established property values within the surrounding area due to:

5. Or, In any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
Charter Township of Orion Zoning Board of Appeals
Application for Appeal - Single Family Residential

NOTICE TO APPLICANT:
The following application must be completed and filed with the Township at least thirty days prior to a scheduled ZBA meeting in order to initiate an appeal. There is a non-refundable fee of $250.00 for a residential application.

Regular meetings of the ZBA are held on the second and fourth Mondays of each month at 7:00 p.m. at the Orion Township Hall, 2323 Joslyn Road, Lake Orion, Michigan 48360. A minimum of three cases are required in order to hold a meeting with a maximum of five. The applicant or a representative with written permission from the property owner must be present at the meeting.

PROOF OF OWNERSHIP MUST BE INCLUDED WITH THIS APPLICATION. Acceptable forms of documentation include: Warranty Deed, Quit Claim Deed, Land Contract, or Option to Purchase with a Copy of the Warranty Deed.

APPLICANT

Name: JARLE AND SISSEL AMUNDSEN
Address: 90 SHOREWOOD CT City/State/Zip: LAKE ORION, MI 48
Phone: ___________ Cell: 248-318-4798 Fax: ___________
Email: JARLE. AMUNDSEN@US.ABB.COM

PROPERTY OWNER(S)

Name(s): JARLE AND SISSEL AMUNDSEN
Address: 90 SHOREWOOD CT City/State/Zip: LAKE ORION, MI 48
Phone: ___________ Cell: 248-318-4798 Fax: ___________
Email: JARLE. AMUNDSEN@US.ABB.COM

CONTACT PERSON FOR THIS REQUEST

Name: JARLE AMUNDSEN Phone: 248-318-4798 Email: JARLE. AMUNDSEN@US.ABB.COM
DEBORAH JONES AIA 248 821 8497 DIJONES@DLJONESARCH.COM

SUBJECT PROPERTY

Address: 90 SHOREWOOD COURT Sidewalk Number: 09-03-465-034
Total Acreage: 2.17 Length of Ownership by Current Property Owner: 11 Years, 3 Months

Does the owner have control over any properties adjoining this site?

NO

Zoning Ordinance
Allowance/Requirement #78 ARTICLE VI
SECTION 6.04

Deviation requested
- 5’ (NORTH) AND 4’ (SOUTH) VARIANCE TO REQUIRED SIDE YARD SETBACK
- 9.5’ VARIANCE TO 30’ REQUIRED FRONT YARD SETBACK
- 4.4’ VARIANCE TO REQUIRED MAXIMUM LOT COVERAGE
Case #:  

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request.  
   1.) 5' VARIANCE TO 10' REQUIRED SIDEYARD SETBACK (NORTH)  
   2.) 4' VARIANCE TO 10' REQUIRED SIDEYARD SETBACK (SOUTH)  
   3.) 9.5' VARIANCE TO REQUIRED 30' FRONT YARD SETBACK  
   4.) 4.9% VARIANCE TO REQUIRED 25% MAXIMUM LOT COVERAGE.

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area.  
   THE LOT IS ODDLY SHAPED, AS A RESULT WHEN THE REQUIRED SETBACKS ARE APPLIED THE BUILDABLE AREA ODDLY SHAPED AND MINIMAL.

3. If the appeal is granted, please explain how the variance will/will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township:  
   THERE IS NO REASON WHY GRANTING THE REQUESTED VARIANCES WOULD BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND WELFARE, OR TO OTHER PROPERTIES OR IMPROVEMENTS IN THE TOWNSHIP.

4. Explain how the request is/is not consistent with other properties in the immediate area, please cite examples if possible:
   MANY OF THE PROPERTIES ON SHOREWOOD CT. HAVE STRUCTURES LESS THAN 10' FROM SIDE AND 30' FROM FRONT PROPERTY LINES.  
   5. OF THE 16 PROPERTIES DIRECTLY NORTH ARE NO MORE THAN 7.5' FROM THE FRONT PROPERTY LINE AND ALL SIX HAVE AT LEAST ONE SIDE YARD LESS THAN 10'.

5. Describe how the alleged practical difficulty has not been self-created:
   THE ODDLY SHAPED LOT IS EXISTING. SEVERAL PROPERTIES ON SHOREWOOD CT. APPEAR TO HAVE IN EXCESS OF 25% LOT COVERAGE.

6. The topography of said land makes the setbacks impossible to meet because:
   N/A

7. Describe how strict compliance with the ordinance unreasonably prevents the owner from using the property for a permitted purpose, or to be unnecessarily burdensome.
   IF NO RELIEF FROM THE REQUIRED SETBACKS AND LOT COVERAGE MAXIMUM IS GRANTED, THE PROPERTY WILL BE ESSENTIALLY NOT BUILDABLE DUE TO SMALL AND ODDLY SHAPED BUILDABLE AREA.
Case #: ________________________________

8. Have there been any previous appeals involving this property? If so, when? ________________________________

9. Is this request the result of a Notice of Ordinance Violation? ☐ Yes ☑ No

I/We, the undersigned, do hereby request action by the ZBA on the variance or specified matter above, in accordance with Sections 30.06, 30.07, 30.08, 30.10, and 30.11 of the Zoning Ordinance. In support of this request the above facts are provided. I hereby certify that the information provided is accurate and the application that has been provided is complete. As the property owner (or having been granted permission to represent the owner as to this application), I hereby grant the Zoning Board of Appeals members permission to visit the property, without prior notification, as is deemed necessary.

Signature of Applicant: (must be original ink signature) ________________________________ Date: 5/19/2022
Print Name: JAREE AMONOSEN ________________________________

Signature of Property Owner: (must be original ink signature) ________________________________ Date: 5/19/2022
Print Name: JAREE AMONOSEN ________________________________

If applicable: I the property owner, hereby give permission to ________________________________ to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: ________________________________ Adjacent Zoning: N. S. E. W. ________________________________

Total Square Footage of Principal Structure: ________________________________ Total Square Footage of Accessory Structure(s): ________________________________

Description of variance(s):

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

Date Filed: ________________________________ Fee Paid: ________________________________ Receipt Number: ________________________________
AB-2022-24 Jarle & Sissel Amundsen, R-3
90 Shorewood, 09-03-405-034
.254 acres 11,064.24  2,766.06 = 25%

Grave is in front yard
The road side is the front yard

Variance Front yard setback to closest point of
Garage 20' - 7 1/4"

Variance Side yard setback South 6'
  to deck?

Variance Side yard setback North 7 1/8'
  Chimney

A Rear setback from edge of stairs?

Side yard
Retard setback 6' ?  Determined this
does not apply

Deck stairs more than 20' from
  rear property line  OK

Rear of house to rear property line 31'

List variance for deck & House
No - because roof line over deck is part of the house
Lot coverage

House 1,565
Garage 939
Graded Rych 65
Deck 34.2
Stairs 42

2973  2973 / 11064.25

Variance 187

Chimneys can project into side yards 24"

Attached Accessory Structure May 1,150
Attached garage 939

Living Space above garage
Article XXVII  

27.03 Yard and Bulk Regulations

The following projections shall be permitted when located in the required yards as specified:

1. In all yards. Awnings and canopies; steps four (4) feet or less above grade which are necessary for access to a permitted building or for access to a zoning lot from a street or alley; chimneys projecting twenty-four (24) inches or less into the yard; approved free-standing signs; arbors and trellises; flagpoles; window unit air conditioners projecting not more than eighteen (18) inches into the required yard; and fences or walls, subject to applicable height restrictions.

2. In front yards. Open, paved terraces not over three (3) feet above the average grade of the adjoining ground and not projecting farther than ten (10) feet beyond the building, but not including roofed-over terraces or porches; one-story bay windows and other architectural features projecting three (3) feet or less into the yard; and, overhanging eaves and gutters projecting three (3) feet or less into the yard.

3. In rear yards.
   a. Balconies; fallout shelters; breezeways; open porches; one-story bay windows and other architectural features projecting three (3) feet or less into the yard; and, overhanging eaves or gutters projecting three (3) feet or less into the yard.
   b. Decks may be permitted to project into a required rear yard when the following conditions are met: (amended 06.15.87, 02.06.97)
      i. In no instance shall a deck surface be more than fourteen (14) feet above ground level.
      ii. Decks shall in no instance be closer than twenty (20) feet to a rear lot line.
      iii. A deck shall be not fewer than twenty (20) feet to the shoreline of a lake or ten (10) feet to the edge of a regulated wetland.
      iv. Setbacks for decks shall be measured from the leading edge of the deck surface.

4. In side yards. One-story bay windows and other architectural features projecting into the required yard by not more than two (2) inches for each one (1) foot width of side yard; and, overhanging eaves and gutters projecting eighteen (18) inches or less into the yard.

D. Required Yards - Existing Buildings.

No yards, now or hereafter provided for a building existing on the effective date of this Ordinance, shall subsequently be reduced below, or further reduced if already less than, the minimum yard requirements of this Ordinance for equivalent new construction.

E. Location of Required Open Space.

All yards and other open spaces allocated to a building or group of buildings shall be located on the same zoning lot as such building or group of buildings.

F. Variances to Yard Regulations.

The Zoning Board of Appeals may modify yard regulations by granting a variance for individual cases where literal enforcement of the provisions of the Ordinance would not be reasonably possible or would result in unnecessary hardship. Examples where such variances from yard regulations would be appropriate include:

1. A planned development in a multiple-family district;

2. Cases where the applicability of the regulations on lots existing and of record at the time this Ordinance became effective cannot be determined;
Section 6.04 – Area and Bulk Requirements (amended 01.05.87, 02.17.01, 02.07.03, 07.16.18)

Please see the Matrix Chart in Section 6.01 for variations to these requirements by use.

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*In those instances where public sewers are not provided, a minimum lot area of 12,500 sq. ft. shall be provided.
** Where the front setbacks of two (2) or more principal structures in any block (in the case of platted properties) or within three hundred (300) feet (in the case of unplatted properties) in existence at the time of passage of this Ordinance, within the district zoned and on the same side of the street, are less than the minimum front setbacks required herein, then any building subsequently erected within said block (or three hundred (300) feet) shall not be less and not be greater than the average depth of the front setbacks of the existing structures.
*** Where a garage door or opening faces a side lot line, said side lot setback shall be thirty (30) feet.

Section 6.05 – Sign Regulation (amended 10.08.98, 02.21.06)

All signs shall comply with the standards set forth in Orion Township Sign Ordinance No. 153.

Section 6.06 – Tree Preservation Regulations (amended 08.03.06)

The tree removal permit requirements apply to developments in these Districts, according to the terms of Section 27.12.

Section 6.07 – Wetland Setbacks (added 09.17.07)

The wetland setback requirements apply to developments in this District, according to the terms of Section 27.17.
Article VI  Single Family Residential: R-1, R-2 & R-3

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The wetland setback requirements apply to developments in this District, according to the terms of Section 27.17.
Lynn Harrison

From: djones dljonesarch.com <djones@dljonesarch.com>
Sent: Wednesday, June 1, 2022 10:17 AM
To: Lynn Harrison
Cc: Jarle Amundsen; Sissel Amundsen
Subject: RE: Proposed variance language for 90 Shorewood Ct.

Lynn,

I agree with the proposed language except that I would like the requested front yard setback variance to be 9.5’.

As we discussed, the deck stair is more than 6’-0” from the south property line and more than 35’ from the rear property line (sea wall). The plan shows a 35’ rear yard setback from what the survey indicated as the rear property line which did not account for the Acreated Land. Thank you for your assistance, please let me know if you need anything additional.

Regards,

Deborah L Jones, AIA
DL Jones & Associates Architects, PLLC
Office: (248)236-2008
Cell: (248)821-8497

From: Lynn Harrison <lharrison@oriontownship.org>
Sent: Thursday, May 26, 2022 11:34 AM
To: djones dljonesarch.com <djones@dljonesarch.com>
Cc: jarle.amundsen@us.abb.com
Subject: Proposed variance language for 90 Shorewood Ct.
Importance: High

Ms. Jones, below is the proposed language for the variances needed to build a new house with an attached garage on the above property. Please let me know via this email whether you agree with it or if it needs to be revised. I need your response by Wednesday, June 1st in order to meet the publication deadline for the paper. First let me explain a couple of things why my proposed variances differ from yours.

Regarding lot coverage – our records show that the property is actually .254 acres or 11,064.24-sq. ft. and 25% of that is 2,766.06-sq. ft. Therefore, I came up with a lot coverage of 26.87% or a variance of 1.87%.

Regarding the variance from the north property line – a chimney is allowed to project 24” into a side yard. Therefore, I came up with a 3-ft. variance on that side instead of a 5-ft.

Also, we write our variances to the exact measurements shown on plans provided. You show the front yard setback to the closest point of the attached garage as 20’-7 ¾”.

Proposed Language:

**AB-2022-24, Jarle and Sissel Amundsen, 90 Shorewood Ct., 09-03-405-034**

The petitioner is seeking 4 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-2

1. A 9.4-ft. front yard setback variance from the required 30-ft. to build a new home with attached garage 20.6-ft. from the front property line (road side).

2. A 4-ft. side yard setback variance from the required 10-ft. to build a new home with a covered deck 6-ft. from the side property line (south).
3. A 3-ft. side yard setback variance from the required 10-ft. to build a new home with a covered deck 7-ft. from the side property line (north).

4. A 1.87% lot coverage variance from the allowed 25% for a total lot coverage of 26.87%

Just for my file and records:

Will you please let me know how far the stairs off the back of the house is from the rear property line and the side property line to the south.

Thank you,

Lynn Harrison
Specialist
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5001
W: www.oriontownship.org
The fire department has reviewed the proposed documentation and has no concerns at this time.

Jeffrey Williams, CFPS – Fire Marshal
Orion Township Fire Department - Fire Prevention
3365 Gregory Road Lake Orion, MI 48359
Fax: 248.309.6993

From: Debra Walton <dwalton@oriontownship.org>
Sent: Monday, June 6, 2022 12:27 PM
To: Jeff Williams <jwilliams@oriontownship.org>
Subject: Residential ZBA Documents for the June 27, 2022, ZBA Meeting

Attached are two ZBA residential cases that need to be reviewed by you for the June 27, 2022, ZBA meeting.

For AB-2022-24 the first sheet of the application got cut off, it reads "25% Max Lot Coverage".

Thanks,
Lynn Harrison

From: Susan Kruger <susankruger1111@gmail.com>
Sent: Thursday, June 23, 2022 1:50 PM
To: Lynn Harrison
Cc: Brian Winter
Subject: RE: AB-2022-24 for Jarle and Sissel Amundsen, 90 Shorewood CT

To Whom It May Concern:

We are writing in regards to the zoning variances that our neighbors are seeking for 90 Shorewood Ct.

We are in FULL SUPPORT of all four variances and look forward to improvements that, ultimately, would serve to raise property values for our neighborhood.

We wish the Amundsens the best!

Sincerely,
Brian & Susan Winter
150 Shorewood Ct

RECEIVED
JUN 23 2022
Orion Township
Planning & Zoning
MEMORANDUM

TO: ZBA Members

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: June 15, 2022

SUBJECT: AB-2022-26, ZBA Amended By-Laws

As explained in the memo from the Planning/Zoning Director, the ZBA Amended By-Laws were adopted by the ZBA and Township Board however an error was discovered after their adoption.

As before, at this meeting the proposed change needs to be read as follows (just the Article and Section number needs to be read, not the actual draft verbiage):

    Article VII – Rules; Section A

Please discuss the change during the meeting or let the Planning & Zoning Department know if you have any concerns or questions related to the change.

If the attached draft is acceptable or if changes are proposed, adoption or further discussion of these amended by-laws by the ZBA should occur at the next regular ZBA meeting.

A Suggested Motion Would Be:

I move that the ZBA has noted the Article and Section of the amended Zoning Board of Appeals By-Laws that contains a proposed change and to bring that draft of the amended By-Laws back for possible adoption at the next regular ZBA Meeting.
TO: The Charter Township of Orion Planning Commission  
FROM: Tammy Girling, Zoning/Planning Director  
DATE: June 15, 2022  
RE: AB-2022-26, ZBA Amendment to By-Laws

As I'm sure you recall, the ZBA By-Laws were recently amended. The proposed amended By-Laws were approved for adoption by both the ZBA and the Board of Trustees. The Planning Commission By-Laws were being updated at the same time. Unfortunately, a change proposed for PC was erroneously proposed in the ZBA By-Laws instead of the PC By-Laws.

In that the amendment was approved for adoption, another amendment must be initiated in order to remove the changed language and list it as it was prior to the amendment.

Attached please find the red-line striking the incorrect language and listing the correct addition in red. The incorrect language is proposed to be removed because of the ZBA's ability to have alternates. If you have any questions, please reach out to me.
By-Laws of the Zoning Board of Appeals
Charter Township of Orion, Oakland County, Michigan
ADOPTED MAY 16, 2022

Article I – Name

The name of this Board shall be the Charter Township of Orion Zoning Board of Appeals (hereinafter ZBA).

Article II – Purpose

The general purpose of the ZBA shall be to build and promote the efficient and coordinated development of the Township through interpretation of zoning regulations, granting variances and substantial justice to petitioners in a manner which will best promote the health, safety, and general welfare of its people.

Article III - Creation and Duties

Section A. The ZBA was created pursuant to the Township Zoning Ordinance as adopted by the Charter Township of Orion Board of Trustees on July 5, 1984, as authorized by Act 184, Michigan Public Acts of 1943, as amended.

Section B. The ZBA shall consist of five (5) members represented by, insofar as it is possible, different professions and occupations who shall be appointed in the following manner:

2. One member of the Township Board appointed by the Township Board for the period of his/her term of office as a member of the Township Board. That member shall not serve as Chairperson of the ZBA.
3. Three (3) additional members selected and appointed by the Township Board for a period of three (3) years from among the electors residing in the unincorporated area of the Township. An additional member shall not be an employee of the Township Board.

Section C. The Township Board may appoint two (2) alternate members of the ZBA for a three (3) year term. An alternate member shall sit as a regular member of the ZBA when:

1. A regular member is absent from or unable to attend a meeting of the ZBA, or
2. A regular member is unable to participate in reaching a decision on a particular case because of a conflict of interest.
Article IV - Officers

Section A. The ZBA shall have a Chairperson, Vice Chairperson, and Secretary.

Section B. The Chairperson shall preside at all meetings, appoint such committees as shall from time to time be deemed necessary with the ZBA’s approval, and perform such duties as may be delegated by the ZBA. He/she shall have a vote on all resolutions and motions of the ZBA.

Section C. The Vice Chairperson shall preside in the absence of the Chairperson.

Section D. The Secretary shall keep a record of the minutes of all meetings, a record of all transcripts, records, plans, etc. brought before the ZBA. Such duties may be performed by an employed recording secretary for the ZBA.

Section E. The ZBA may create and fill such other offices or committees as it may deem necessary.

Article V – Meetings

Section A. All meetings shall be conducted in accordance with the Open Meetings Act. No informal meetings or discussions shall be conducted. The regular meetings of the ZBA shall be held on the second (2nd) and fourth (4th) Mondays of each month at 7:00 p.m. If there are less than three (3) cases on the agenda for such meeting, the Chair shall have the option, but not the obligation, to cancel the meeting. The ZBA shall not begin discussion or take action on a new agenda item after 10:30 p.m. except by a majority vote of the Zoning Board of Appeals present. Meetings shall not extend beyond 11:00 p.m. except to complete whatever item of the agenda is under discussion at that time. However, the ZBA, by unanimous vote, may extend the meeting further to complete other agenda items. Agenda items not acted upon at the time of adjournment shall be placed on the next available agenda at the regular meeting of the ZBA as a date certain. Each regular meeting shall be limited to no more than five (5) cases unless otherwise approved by the Chairperson of the ZBA.

Section B. Special meetings may be called by the Chairperson or by two (2) or more members of the ZBA at such time and place as deemed necessary with a forty-eight (48) hour prior notification. Such notice shall include the purpose of the special meeting. Special meetings shall be posted at the Township Hall at least eighteen (18) hours prior to the beginning of said meeting.
Article V – Meetings (continued)

Section C. As provided by statute, all meetings, regular or special, shall be open to the public. All matters on the agenda shall be considered as scheduled for a public hearing, and any member of the public shall be given an opportunity to be heard on relevant matters concerning the subject of the hearing. The opportunity to present drawings, data, and any other information deemed necessary by the ZBA shall be afforded to anyone seeking to speak on a given agenda item.

Section D. For public hearings, the Township shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than fifteen (15) days before the date of the hearing.

Section E. Notice shall also be given as provided under the Zoning Enabling Act to the owner(s) of property subject of the request and all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit or spatial area shall be given notice. If a single structure contains more than four (4) dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure. Notice as set forth herein is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. Notice as set forth herein shall be given not less than fifteen (15) days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

Section F. The time allotted for the public to be heard on any separate item of the scheduled agenda or on non-agenda items shall be limited to a time of three (3) minutes, unless this time is extended or reduced by the Chair. No member of the public shall speak twice on any single subject matter unless authorized by the Chair. Should any person be unable to appear, they may submit their comments to the ZBA in writing, addressed to the ZBA Chairman, at the Township Offices.

Section G. Public comments on non-agenda items shall be taken only at the time cited under Article VII, Section C of these By-Laws.
Article V -Meetings (continued)

Section H. The ZBA shall keep a public record of its resolutions, transactions, findings, and determinations in a location within the Township Hall which shall be maintained by the Township Planning and Zoning Director or as otherwise designated by the Township Clerk.

Section I. Notice of the regular meetings for the coming year shall be approved by the ZBA at one of the regular December meetings and forwarded unto the Township Board of Trustees. Such notice shall then be posted in the Township Hall, 2323 Joslyn Road, Lake Orion, Michigan and/or on the Township’s website.

Section J. The Township Board may remove a member of the ZBA for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member absent from three (3) consecutive meetings without a valid excuse shall be reported to the Township Board for nonfeasance, at the discretion of the ZBA.

A ZBA member shall disclose any possible conflict of interest before casting a vote on a matter. Failure to disclose a conflict of interest shall constitute malfeasance in office. Once a member discloses a potential conflict of interest regarding a particular matter, he or she may be disqualified from voting on the matter upon a majority vote of the remaining members of the ZBA.

A conflict of interest exists if any member has a personal or financial interest in the matter or has an interest such that the member cannot be unbiased in the decision-making process. A Board member shall declare a conflict of interest when:

1. A relative or other family member is involved in any request for which the ZBA is asked to make a decision;

2. The ZBA member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant’s company, agency, or association;

3. There is a reasonable appearance of a conflict of interest, as determined by the ZBA member declaring such conflict.
Article VI - Election of Officers

Election of Officers of the ZBA shall be held annually at the first regular meeting of the calendar year following the appointment or re-appointment of ZBA members by the Township Board.

A. The term of office shall be one (1) year commencing immediately upon election and expiring concurrently with the appointment or re-appointment of ZBA members by the Township Board of the subsequent year. The immediate past Chair shall continue to preside at the meeting until the election of the new Chairperson is complete.

B. Should an Officer be unable to complete his term of office, a special election shall be held to fill the remainder of the term. The election shall be held at the first regular meeting after the vacancy has been confirmed by action from the Orion Township Board of Trustees.

Article VII – Rules

Section A. A quorum consists of three (3) or more members. Provided a quorum of three (3) or more members is present, a majority vote of those members present shall be necessary to approve any motion, resolution or recommendation, except for as otherwise required under State law (MCL 125.3603, et. seq.) or any Township Ordinance. A quorum must be present for the purpose of deliberating toward or rendering a decision on a ZBA matter. A quorum shall consist of a minimum of three (3) members, and an affirmative vote by not less than three (3) members shall be necessary to pass any motion, resolution, or recommendation, except for as otherwise required under State Law (MCL 125.3603, et. seq) or any Township Ordinance.

Section B. Expenditures, if any, shall be approved by a majority of the ZBA and shall require approval of the Township Board of Trustees.

Section C. Conduct of a regular meeting shall consist of the following order of business:

1) Open Meeting
2) Roll Call
3) Minutes
4) Agenda Review and Approval
5) ZBA Business
6) Public Comments
7) Communications
8) Committee Reports
9) Member Comments
10) Adjournment

Article VII – Rules (continued)

Section D. During a meeting, the following rules of procedure shall apply to consideration of any item on the ZBA agenda:

1) The Chairperson will introduce the subject.
2) The applicant will present his/her case.
3) Public comments, if any.
4) Board member questions and comments, if any.
5) Applicant response.
6) Motion made and seconded by ZBA members.
7) Chairperson restates the motion and allows for discussion by ZBA members.
8) The motion may be revised or amended following discussion by the ZBA.
9) Once the ZBA members indicated they are ready for the question, whether by positive response to the Chairperson or voting to close debate, the Chairperson asks for the roll to be called.
10) The Secretary will then poll each ZBA member for their vote on the item under consideration.

Section E. All inquiries, applications, or matters requiring official action by the ZBA shall be submitted by 9:00am at least thirty (30) days prior to the next scheduled ZBA meeting. Such submittals shall be made to the employed secretary of the ZBA.

Section F. All proceedings, decisions, and resolutions of the ZBA shall be initiated by motion, and the vote upon motions and resolutions shall be recorded.

Section G. In the event that the applicant is not present, or that sufficient data needed for the ZBA to take action has not been furnished, the ZBA shall postpone the matter to a date certain until the applicant can be present, or the required information has been submitted. Such time shall not exceed ninety (90) days from the original appearance of the business matter on the agenda. The ZBA may deny approval of the matter based upon lack of progress or for any other reason.
Section H. Meeting procedures and conduct shall be generally consistent with Robert’s Rules of Order, unless superseded by The Open Meetings Act (MCL 15.261, et seq.) or these ZBA By-Laws.

Article VIII - Adoption and Amendment

Section A. These By-Laws shall take effect upon adoption by the ZBA and approval by the Township Board of Trustees.

Section B. These By-Laws may be amended at any regular meeting by a majority vote of the members provided that proposed changes have been read at a preceding regular meeting. Amendments shall take effect upon adoption by the ZBA and final approval by the Township Board of Trustees.

Adopted this 28th day of April, 1980
Amended this 23rd day of December, 1985
Amended this 2nd day of March, 1987
Amended this 11th day of May, 1987
Amended this 12th day of January, 1998
Amended this 8th day of April, 2002
Amended this 25th day of November, 2002
Amended this 16th day of May, 2022
TO: The Charter Township of Orion Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: June 17, 2022
RE: July 11, 2022 ZBA Meeting Cancellation

Unfortunately, we only had 1 case for the July 11, 2022 Zoning Board of Appeals meeting and the ZBA By-Laws require a minimum of 3. Please consider cancelling that meeting as the 1 case has been moved to the July 27, 2022 Meeting. If you decide you would like to cancel it, please do so in a motion.

Please let me know if you have any questions.