1. OPEN MEETING
2. ROLL CALL
3. MINUTES
   A. 10/10/2022, ZBA Meeting Minutes
4. AGENDA REVIEW AND APPROVAL
5. ZBA BUSINESS
      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 south.
   B. AB-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315–325 W.
      Silverbell Rd., 09-35-100-020
      The petitioner is seeking 4 variances from Sign Ordinance #153 – Section 7 Non-Residential
      Ground Signs Zoned IP
      1. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be
         located at the east entrance off W. Silverbell Road).
      2. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be
         located at the west entrance off W. Silver Bell Road).
      3. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be
         located at the east entrance off W. Silverbell Road).
      4. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be
         located at the west entrance off W. Silverbell Road).
      And, seeking 2 variances from Zoning Ordinance #78 – Zoned IP
      1. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-
         ft. from the front property (east entrance off W. Silverbell Road.).
      2. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-
         ft. from the front property line (west entrance off W. Silverbell Road.).
   C. AB-2022-43, Anton Rozhanskiy, 592 Cushing, 09-03-278-006
      The petitioner is seeking to extend the expiration date for the approved AB-2021-67 ZBA case
      variances.
6. PUBLIC COMMENTS
7. COMMUNICATIONS
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, October 10, 2022, at 7:02 pm at the Orion Township Municipality Complex Board Room, 2323 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:
Dan Durham, Chairman
Mike Flood, BOT Rep to ZBA
Don Walker, PC Rep to ZBA
Diane Dunaskiss, Board member
Joann Van Tassel, Alternate Board member

ZBA MEMBERS ABSENT:
Tony Kerby, Alternate Board member
Tony Cook, Vice-Chairman

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Mike Riddle Pete Smilanic Nancy Smilanic
Mat Dunaskiss Adam Martin

1. Open Meeting
Chairman Durham called the meeting to order at 7:02 pm.

2. Roll Call

3. Minutes
A. 09-26-22, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the 09-26-2022 minutes as presented.

Roll Call Vote was as follows: Dunaskiss, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 4-0.

4. Agenda Review and Approval

Trustee Flood moved, seconded by Board member Van Tassel, to approve the agenda as presented.

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

5. ZBA Business
A. AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 (postponed from 8/22/2022 meeting)

Board member Walker moved, supported by Chairman Durham, to recuse Board member Dunaskiss from Case AB-2022-36 due to Board member Dunaskiss’ request.

Roll Call Vote was as follows: Van Tassel, yes; Flood, yes; Walker, yes; Durham, yes. Motion passes 4-0.

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 8 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
1. A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. Revised A 1.63-ft. height variance from the required 30-ft. to build a house 31.63-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.
7. An 8-ft. side yard setback variance for retaining walls to be 0 ft. from the property lines north and south

Article XXVII, Section 27.17 (B)
8. An 5.25-ft. wetlands setback variance from the required 25 feet to build a house with a deck 19.75 feet from a wetland lake

Pete and Nancy Smilanic introduced themselves and Mike Riddle with Rison Construction, introduced himself.

Chairman Durham pointed out revisions to the plan that make it more compatible with the Township’s Zoning Ordinance.

Board member Walker asked about the Fire Marshal’s review. He asked if the letter from September 21st was the last review letter. He understands that the petitioners have been back and forth with changes but he questions the recommendation made by the Fire Marshal and if it was made when the request was 10 feet.

Board member Van Tassel stated that the zoning ordinance has more authority over what is allowed than Building Codes. The request should be viewed based on what the zoning ordinance says and she pointed out that the height was reduced which was the Fire Marshal’s concern.

Trustee Flood concurred.

Board member Van Tassel stated that there is an elevator on the south side but there is no indication that there are elevator doors.

Mr. Smilanic explained the location of the elevator doors.

Board member Van Tassel asked about the interior of the home.

Mr. Smilanic explained the interior design of the home using the displayed plan.
Board member Van Tassel asked if there were stairs on the exterior that lead from every level.

Mr. Smilanic replied yes. He pointed out the stairs using the displayed plan.

Board member Van Tassel asked if there was public water at the site.

Mr. Smilanic replied no.

Board member Van Tassel asked about the water source.

Mr. Smilanic replied that they have a sewer and a well.

Board member Van Tassel asked if the petitioner had thought about having a sprinkler system.

Mr. Smilanic replied that each floor is constructed out of concrete. He explained the construction of the home. He doesn’t think that he has a need for a sprinkler system because of the structural elements.

Board member Van Tassel commented on the other parts of the home like the mechanical room.

Trustee Flood stated that he talked to the Fire Marshal prior to the height adjustment that the petitioner made. He appreciates the fact that the petitioner reduced the height, reducing it from 40 feet to 31 feet. The practical difficulty is the elevation of the property and this was a concern of the Fire Marshal. There will be living quarters above the garage and the Fire Marshal was concerned because if for some reason the Fire Department could not access a fire from the front, they would have to put a ladder up on the rear of the house and this is where the severe drop in elevation is. This is why the 30 foot height is in the ordinance. There are stairs on the outside of both sides which will provide access as well. The Fire Department measures height a different way than Zoning Ordinance #78 does. This variance is based on Ordinance #78 criteria. He would not have been in favor of going 40 feet high and he appreciates the drop in height.

Mr. Smilanic stated that this was a good recommendation that they knew they needed to follow.

Chairman Durham commented on the letter from the Fire Marshall who still has some concerns about the variance. The International Fire Code seems to be in conflict with the local ordinance. He wishes that there could have been an agreement reached where all parties were in agreement although the Fire Marshall is much happier with the reduction in height.

Mr. Riddle stated that they worked over the last several months trying to bring the home as close to the ordinance as they could. This home’s entire back patio is flat, solid concrete and it is stable. They are also areas all of the way around the home that have stable areas to locate a ladder. He knows that there is still some concerns, but they tried to get as close as possible and based on the fire rating and working around the perimeter, this home is a lot better than other homes.

Chairman Durham asked if they heard the words “area of refuge”.

Mr. Riddle answered yes.

Chairman Durham explained “area of refuge” as it relates to fire fighting.

Mr. Smilanic pointed out the “area of refuge” using the displayed home plans.

Chairman Durham commented that he is happy to see and hear this.

Building Official Goodloe stated that the International Fire Code governs the Fire Access. The structure itself is governed by the Michigan Residential Code which only requires one main egress door for a home otherwise each bedroom has to have egress windows for sleeping areas. He would like to know where the egress windows are for the upper two levels since the main level has a front door. The issue was the road
because they are having several structures put on this road and the road is not able to carry a fire truck with an apparatus to get to the top of a 49 foot building. This was the Fire Marshall’s main concern.

Chairman Durham asked for public comment.

No public comment was heard.

Trustee Flood moved, seconded by Board member Walker, in the matter of ZBA Case, AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027 that the petitioners’ request for 8 variances from Zoning Ordinance #78 – Zoned R-3, including Article VI, Section 6.04, Zoned R-3 for 1.) A 10.25-ft front yard setback variance from the required 30-ft., to build a house with a deck 19.75-ft. from the front property line (lakeside); 2.) A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.); 3.) A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north); 4.) A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south); 5.) A 1.63-ft. height variance from the required 30-ft. to build a house 31.63-ft. high; 6.) 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%; 7.) An 8-ft. side yard setback variance for retaining walls to be 0 ft. from the property lines north and south and from Article XXVII, Section 27.17 (B), an 5.25-ft. wetlands setback variance from the required 25 feet to build a house with a deck 19.75 feet from a wetland lake be granted because the petitioner did demonstrate that the following standards for variances have been met in this case and that they set forth facts that show:

1. The petitioners showed the following practical difficulty: mainly due to the unique characteristics of this property which severely goes down from Cushing Street to the lake. The petitioner is trying to build a house that would be compatible on this property which is a permitted use for this property. There were several meetings and compromises back and forth between the petitioner and the consultants in this case to try to work it out. Most of the variances have been reduced from the original filing due to these meetings and conversations between the parties.

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: this lake lot is very difficult as it relates to its elevation, also, street access is limited to all of the houses on the street.

3. The variance is necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity based on the following facts: this is similar to a lot of lake lots in the Township – needing side yard setback variances so that a permitted use such as a house, would fit properly in the area.

4. Granting of the variance or modification will not be materially detrimental to public welfare or materially injurious to the property or to the improvements in such zone or district in which the property is located; the letter from the Fire Marshall dated 9/21/22, which they approved with comments, should be a part of this motion and made part of the record.

5. Granting this variance would not impair an adequate supply of light or air to adjacent properties, it would not unusually increase congestion on public streets. By building this type of structure with a two-story garage giving relief the road - it would keep cars off of the street. There is also not going to be an increase of fire, or endanger public safety - referring to the Fire Marshall’s letter dated 9/21/22 which approved with comments. Granting of the variances will not reasonably diminish or impair established property values within the surrounding areas, it will in fact improve property values, or in any other respect, impair public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Roll call vote was as follows: Van Tassel, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 4-0.
Board member Dunaskiss re-joined the Board.

B. AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024 (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05 (H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Adam Martin introduced himself and summarized the variance request. He requested a postponement until the end of February 2023 to give them a chance to speak to the HOA and see what other options are available.

Building Official Goodloe stated that the dates are not set yet for 2023 until they are voted on in December 2022 and suggested that they move the petitioner to a date that is known.

Mr. Martin stated that with the holiday season, he doesn’t think a lot of movement will happen with the HOA.

Chairman Durham stated that the Board cannot give the petitioner a date, but will take note that he would like a date in 2023.

Mr. Martin stated that he is flexible on when he comes back. He stated that they might be able to find an option so they would not need a variance and they would be able to cancel.

Board member Walker asked if there was anything in the by-laws that would allow the petitioner to come back.

Building Official Goodloe stated that if they do not have a date certain, the Township will charge the re-advertise fee. He suggested that the petitioner take the date of November 28, 2023. The Board could possibly set the 2023 dates at that meeting.

Board member Van Tassel asked about the rear setback variance request.

Mr. Martin stated that they have a practical difficulty because their property borders both Saturn Drive and Waldon Road so he is forced to observe two front yards.

Board member Van Tassel asked about the application asking for a 6 foot fence along the back of the property, not along the fence. She asked what the petitioner is seeking.

Board member Dunaskiss stated that the petitioner is erecting the fence along the rear of the property but it will extend 10 feet on each side so it goes to the property line.

Board member Van Tassel stated that the rear property line does not stop 10 feet from the side, it goes the entire way.

Board member Dunaskiss stated that if he was building a 4 foot fence, he could take it all of the way to the sides but since he is building a 6 foot fence, he would need to stop it 10 feet from each side.
Trustee Flood stated that this is the way the ordinance is written and interpreted.

Building Official Goodloe stated that the last meeting in 2022 is December 12th.

Board member Dunaskiss moved, seconded by Chairman Durham, that in the matter of ZBA Case AB-2022-30, Adam Martin, 2936 Saturn Dr., 09-20-453-024 that per the petitioner’s request, this matter be postponed until the meeting on December 12, 2022. At that time, there might be a request to postpone to a date certain but the Board does not have established meeting dates for 2023 yet.

Roll call vote was as follows: Walker, yes; Van Tassel, yes; Flood, yes; Dunaskiss, yes; Durham, yes. Motion passes 5-0.

C. AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. 00A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

Mr. Backus introduced himself and stated that he was there in support of the others on the agenda asking for variances for a fence.

Chairman Durham asked if anything had changed since the petitioner was here before.

Mr. Backus replied no. He has a lot of people that cut through his yard. He is the last house at the canal and his property is ideal to cut through from Waldon to Walmsley Circle. He would like to stop this. Since he has built the house, there have been a lot of changes that have created a lot of noise along Waldon Road and he explained. This fence would help block this noise. He has had things stolen from his yard too and he would like to have a nicer fence like they put up along Baldwin Road.

Chairman Durham asked if his property has the entire area cut back and has arborvitae planted.

Mr. Backus replied no. He has let all of the brush grow up. He is aware that he can have a 4 foot fence without a variance but feels that a 6 foot fence would be a lot better to address his concerns. He doesn’t like the idea of having all different types of fences.

Board member Van Tassel stated that the aerial photograph indicates that 35 feet of the property is parallel with Waldon Road. There is also a piece of the property that is at an angle to that which is about 60 feet which he is not asking for any fencing for. If the petitioner’s concern is for people cutting through, this 60 feet would still be open allowing that.

Mr. Backus stated that he doesn’t hear very well and doesn’t understand what she is saying.

Board members and Mr. Backus discussed the property lines of the subject lot.
Board member Van Tassel stated that wood is a hard surface that sound will bounce off of. She suggested that they plant arborvitae along the property line which will absorb the sound. They will grow and will do a good job of absorbing noise.

Trustee Flood stated that this is a Homeowner’s Association concern because they are replacing an original split rail fence that was along the roadway. The 4 foot shadowbox fence will solve the problem. The HOA should take care of this for the residents. There was a site plan made up for this development.

Board member Walker stated that the case right before Mr. Backus postponed his case so they will have time to come up with a solution. Mr. Backus has the right to postpone or the Board can vote on this case.

Building Official Goodloe stated that the Fence Committee is looking to address the two front yard issue.

Chairman Durham stated that it is going to take change by the HOA to correct this problem.

Mr. Backus indicated that he would like to postpone his case to December 12, 2022.

Board member Dunaskiss moved, seconded by Trustee Flood, that in the matter of ZBA Case AB-2022-31, Ken Backus, 2911 Walmsley Circle, 09-20-452-013 that per the petitioner’s request, this matter be postponed until the meeting on December 12, 2022.

Roll call vote was as follows: Flood, yes; Walker, yes; Dunaskiss, yes; Van Tassel, yes; Durham, yes. Motion passes 5-0.

D. AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012 (postponed from 8/8/2022 meeting)

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-2

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 35-ft. front yard setback variance from the required 35-ft. to erect a 6-ft. privacy fence 0-ft. from the property line along Waldon Rd.
2. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
3. A 10-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the side property line to the west.

No petitioner was present.

Board member Dunaskiss moved, seconded by Trustee Flood, that in the matter of ZBA Case AB-2022-32, Mike Humbert, 2917 Walmsley Circle, 09-20-452-012 that this matter be postponed until the meeting on December 12, 2022 due to the fact that the petitioner was not present.

Roll call vote was as follows: Dunaskiss, yes; Van Tassel, yes; Walker, yes; Flood, yes; Durham, yes. Motion passes 5-0.

6. PUBLIC COMMENTS
7. COMMUNICATIONS
8. COMMITTEE REPORTS
9. MEMBER COMMENTS

Board member Van Tassel commented on the postponing of the last case and the variances requested during this meeting.

Board members and Building Official Goodloe discussed the rear property line fence variance request and offered historical comments regarding variances in the Township.

Chairman Durham and Board member Walker commented on the legal opinion that was offered for the first case and as to the Board acting “slight and capricious.”

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:23 pm.

Vote was as follows: Durham, yes; Dunaskiss, yes; Flood, yes; Van Tassel, 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: October 14, 2022
RE: Case location for ZBA Meeting 10/24/2022

Below are the locations of the ZBA cases for the October 24, 2022 meeting.
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: October 12, 2022
SUBJECT: Staff Report for AB-2022-23, Tracey Guaiana, 1150 Hemingway - 10/24/2022 ZBA Meeting

The applicant’s case was sent back to the Planning & Zoning Department at the June 7, 2022 meeting for clarification and was scheduled to return to the ZBA meeting on August 22, 2022. The applicant notified the department that she was ill and would not be able to attend the August 22nd meeting. The ZBA Board postponed the hearing to this date, October 24, 2022.

The BoardBook packet has all the documents that have been provided for this case to date.

Please let me know if you have any questions.
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – August 22, 2022

A. AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027

Chairman Durham explained that Board member Dunaskiss recused herself from this case and Ms. Joann VanTassel will replace her on the Board during the hearing of this case.

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 8 variances from Zoning Ordinance #78

Article VI, Section 6.04, Zoned R-3
1. A 10.25-ft front yard setback variance from the required 30-ft. to build a house with a deck 19.75-ft. from the front property line (lakeside).
2. A 17-ft. rear yard setback variance, from the required 35-ft., to build a house 18-ft. from the rear property line (Cushing St.).
3. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (north)
4. A 1-ft. side yard setback variance from the required 8-ft. to build a house 7-ft. from the side property line (south).
5. A 10.18-ft. height variance from the required 30-ft. to build a house 40.18-ft. high.
6. 14.85% lot coverage variance from the required 25% for a total lot coverage of 39.85%.

Article XXVII, Section 27.02(A)(4)
7. 8-ft. side yard setback variances for retaining walls to be 0-ft. from the property lines, north & south.

Article XXVII, Section 27.17(B)
8. A 5.25-ft. wetland setback variance, from the required 25-ft., to build a house with a deck 19.75-ft. from a wetland (lake).

Trustee Flood moved, supported by Chairman Durham, that in the matter of ZBA case AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027, to postpone until the September 26, 2022, ZBA meeting at the petitioner’s request.

Roll Call Vote was as follows: Kerby, yes; Flood, yes; Van Tassel, yes; Walker; yes; Durham; yes. Motion passes 5-0.


The petitioner is seeking 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.

Chairman Durham confirmed that the applicant requested to be postponed until October 24, 2022.

David Plunkett, Attorney, representing Tom Williams who owns property adjoining the petitioner. He expressed frustration about the extension of this case and the fact that the petitioner gets to keep the fence up which is in blatant violation of the zoning ordinance with a portion of the fence on his client’s property and needs to be removed. They have asked the petitioner to remove the violating portion of the fence. This is a costly and a frustrating situation.
Chairman Durham commented that the ability to extend a case is within the Board’s discretion according to the Board’s By-Laws. He stated that with the information submitted, he would have been uncomfortable hearing this case this evening.

Building Official Goodloe stated that if the fence is not approved by the Board, they will ask them to cut it down to 4 feet and not to remove it. The property line dispute is a civil matter between the two property owners.

Board member Dunaskiss moved, seconded by Board member Kerby, in the matter of ZBA case AB-2022-23, Tracey Guiana, 1150 Hemingway, 09-15-201-028 that the case be postponed to October 24, 2022, due to health issues.

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

C. AB-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 5 variances from Zoning Ordinance #78 – Zoned R-1

Article XXVII, Section 27.02(A)(4) & Article XXVII, Section 27.05(H)(2)
1. A 40-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 0-ft. from the road right-of-way line along Bald Mountain Road (west).
2. A 37-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 3-ft. from the front property line along Starlight Trl (north).
3. A 37-ft. front yard setback variance from the required 40-ft. to erect a 6-ft. privacy fence 3-ft. from the front property line along Starlight Trl (east).
4. A 7-ft. side yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 3-ft. from the side property line (south).

Article XXVII, Section 27.03(G)(2)
5. Corner clearance requirement variances to erect a 6-ft. fence at the intersection of a driveway and a road right-of-way (north & south).

Mr. Vuktilaj introduced himself and summarized the variance request. He provided pictures to the Board members.

Chairman Durham asked if any changes have been made to the request.

Mr. Vuktilaj explained the location of easements on the property.

Chairman Durham commented on the corner clearance issue being at the corner of Starlight Trl and Bald Mountain Road.

Mr. Vuktilaj stated that everything can be seen.

Chairman Durham asked about being able to see the cars. He visited the site, and he disagrees. He stated that it is hard to compare this case with neighbors since he does not know what the rules were when other fences were put up. He reiterated that he does not know the history of every neighbor’s fence.

Board member Dunaskiss stated that every case is unique, and this Board does not know the reasons behind every approval and the practical difficulty of each case. For this case, the Board is not seeing a practical difficulty, or a reason why it is necessary to have a 6-foot fence other than it is the petitioner’s desire to have a 6-foot fence. She does not see the practical difficulty in this case.
Hello,
This is Tracey Guaiana I am requesting a ZBA meeting date change please.
The reason for this request is my family members and myself have unfortunately contacted Covid. I feel it would not benefit the members of the ZBA if I or anyone in my family showed up contagious. I'm very sorry for the inconvenience. I would like to change the date to the meeting on October 24th, 2022.

Thank you for your time,
Tracey Guaiana
1150 Hemingway
Lake Orion

Sent via the Samsung Galaxy S10+, an AT&T 5G Evolution capable smartphone
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: August 3, 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 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.

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 Guaiana, 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:
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: August 9, 2022

SUBJECT: Staff Report for AB-2022-23, Tracey Guaiana, 1150 Hemingway

At the June 27, 2022 ZBA Meeting, this case was sent back to the Planning & Zoning Department for clarification.

The applicant came into the department and after discussion, I believe there was a misunderstanding as to where the applicant was purposing a 6-ft. fence on the property. The applicant clarified that the variance being requested is only for a 6-ft. fence along the south property line ending at the rear property line to the west. As the fence is proposed to end at the rear property line, it also needs a variance to be on the property line otherwise the fence would have ended 10-ft. away from the property line. The applicant does not intend to run a 6-ft. fence along the rear property line – see attached updated aerial view.

The variances requested remain the same.

It is suggested that if there is a motion to approve, that there be a condition in the motion that the fence has to end at the rear, west, property line and cannot extend along the rear, west, property line.

Please let me know if you have any questions.

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 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.

Ms. Tracey Guaiana introduced herself and summarized the variance request. She wants to put up a privacy fence because of the dust and the problems that she is having. She provided court documents to the Board members.

Chairman Durham stated that she was warned by ordinance enforcement.

Ms. Guaiana concurred.

Chairman Durham stated that if the petitioner goes all the way to the property line, that would cause the need for a variance and that is why the ordinance officer was informed.

Board member Dunaskiss asked if the fences were on both sides of the house and going back.

Ms. Guaiana answered yes.

Board member Dunaskiss stated that the paperwork says to the south and the west and that would make them perpendicular.

Ms. Guaiana replied that they are down the south and the north side.

Board member Dunaskiss asked if fencing was going along the back.

Ms. Guaiana replied no.

Chairman Durham commented that with the number of cars in and out of there, it would raise concern for him for the clear sight angle along the easement that is there. He did not understand that the petitioner meant north and south side.

Board member Dunaskiss asked about the starting of the fence.

Ms. Guaiana replied it is going from the back all of the way down on both sides.

Board member Walker stated that he doesn’t know if they can hear this because it was not advertised correctly.

Chairman Durham concurred.

Building Official Goodloe replied that if it is along the south and north, it was advertised incorrectly.

Chairman Durham commented that this would have to be re-advertised correctly.

Building Official Goodloe replied July 25th is the next meeting.
Ms. Guaiana replied she is available on that day.

Building Official Goodloe stated that they don't need a date certain since it is going to be re-advertised.

Chairman Durham advised the petitioner to contact the Planning Department for the next steps.

Trustee Flood moved, and Vice-chairman Cook supported, in the matter of AB-2022-23, Tracey Guaiana, 1150 Hemingway, 09-15-201-028 due to an unusual circumstance of not having the correct location advertised for the direction of the proposed fence, the Zoning Board of Appeals has determined that this case should be sent back to the Planning Department for further scrutiny.

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

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

Chairman Durham read the petitioner's request as follows:

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 an 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 an 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 an 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%

Ms. Deborah Jones, the Architect, introduced herself as representing the petitioners in this case. She explained the variance requested. The existing house, garage, and shed will be torn down. The existing lot is difficult because the road sweeps around the property and once you apply the setbacks, the buildable area is reduced. The front setback variance is being reduced by almost 5 feet of what it is now. On the south side, the proposed is a 6-foot side yard and the existing house is 8.6 feet from this line. The existing shed is 2.2 feet which will be removed. The existing deck encroaches on the neighbor's property, but they are proposing to demolish it which would be improving this situation. There are no variances requested on the rear yard, but the proposed house will have a covered deck that extends just to where the existing house sits now. The lakeside yard will be enlarged. The side yard on the north is proposing a 3-foot variance and the existing house on that side is 7'3" to 8'4" so this will be similar to where it is now.

Vice-chairman Cook thanked her for marking the plan so accurately. This is an improvement. He asked about the several large trees that exist on the property.

Ms. Jones replied these belong to the property to the south.

Vice-chairman Cook asked if this was a vacant property next to him.

Mr. Amundsen replied that there is a vacant lot there.

Ms. Jones replied that there are three lots to the south which are all challenging to build on.

Mr. Amundsen and Ms. Jones explained the access to his property.

Chairman Durham asked if the houses there were on sewers.
Documents Received from David Plunkett

August 10, 2022
August 10, 2022

By Email (harrison@oriontownship.org)

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

Re: Application for Appeal – 1150 Hemingway
August 22, 2022 ZBA Hearing

Dear Zoning Board of Appeals:

This letter relates to the Application for Appeal submitted by Tracey Guaiana (“Applicant”) on May 12, 2022 (“Application”), and the amendment to the Application submitted on June 29, 2022 (“Amendment”), regarding 1150 Hemingway in Lake Orion (“Property”). This letter supplements my June 1, 2022, letter regarding the Application. I will try not to repeat points made in the June 1 letter, but please review that letter, which is attached as Exhibit A.

I represent Tom Williams, who owns the property located at 1160 Hemingway, which is immediately to the south of the Property. He also owns 1180, 1198 and 1212 Hemingway. On behalf of Mr. Williams, we continue to oppose the ZBA granting the variances requested in the Application and the Amendment because they (1) do not satisfy the standards for granting a variance and (2) are filled with misrepresentations and misleading statements, which I address below and in my June 1 letter.

In addition to the deficiencies of the Application and the Amendment, the ZBA needs to be aware that my client has had his property at 1160 Hemingway surveyed and at least ten (10) feet of the six-foot privacy fence that the Applicant installed on the south side of her Property encroaches on Mr. William’s property and must be removed immediately. The Applicant installed a fence in violation of the Township Zoning Ordinance, without a variance, and she installed a portion of it on my client’s property.
The next issue that I need to address is the location of variances that the Applicant is seeking. The Board members may recall (1) that the Application stated she was seeking variances for a fence on the south and west (rear) side of her Property, (2) that she stated at the June 27 meeting that she was instead seeking variances for fences on the south and north side of the Property and (3) that the ZBA concluded that a revised notice needed to be published so that the notice matched the variances sought. However, the Amendment states only: “Amend app 6ft fence to go along S. side of property.” It is my understanding that the Applicant is only seeking a variance for the fence she already installed on the south side of the Property (and on my client’s property), but that fence would require two variance because it does not comply with the setback requirements from the south or the west lot lines of the Property.

I addressed in my June 1 letter the fact that the court documents from the Easement Litigation (as defined in my June 1 letter) submitted by the Applicant relate only to the north side of the Applicant’s Property and have nothing to do with the south side of the Property or the variances now being sought. I understand that this point may be confusing because those court documents relate to an easement that is on the north side of the Property, but reference the “southerly line of the easement.” That easement is on the north side of the Property, which is not at issue here. It appears that even Ms. Harrison may have been confused about this issue because she wrote in her June 15, 2022, Staff Report that “[t]he 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.” Ms. Harrison’s notes that were included at page 41 of the ZBA packet for the June 27 meeting also state: “Also the applicant has gone to court and court documents indicate the fence can stay.” Again, the court documents reference the south side of the easement, not the south side of the Property.

The ZBA should deny the requested variances because the Applicant has provided no justification for the variances. She has not shown that there are special or unique circumstances particular to her Property that would justify the requested variances. She has not shown that the variances requested are consistent with other properties in the surrounding area. She has not shown that a practical difficulty exists that would prevent her from installing a fence consistent with the setback requirements. She has not shown that the topography of the land makes the required setbacks impossible to meet.
The only thing the Applicant has shown the ZBA is that the Oakland County Circuit Court required her to move a fence from within an easement to outside of the easement on the other side of the Property, which fence I understand already exists and does meet the setback requirements.

Sincerely,

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

[Signature]

David E. Plunkett

cc: Thomas Williams
EX. A
June 1, 2022

By Email (iharrison@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(11), 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 Guaiana, 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 QUAIANA,

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)
Huth Lynet
645 Griswold, Suite 4300
Detroit, MI 48226
(313) 565-5500

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 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,

34
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 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 OF 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 485 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 belt 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 Libur
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

/s/ Jeffery S. Matis

Jeffery Matis, Circuit Judge

And for Entry

James R. Porritt, Jr (P23222)

Attorney for Plaintiffs and Counter Defendants

Paul H. Huth (P31986)

Attorney for Defendants and Counter Plaintiffs
CERTIFICATE OF COPY OF RECORD
STATE OF MICHIGAN, COUNTY OF OAKLAND
LISA DROWN, Register of Deeds for Oakland County, certify that the attached copy is a true and correct transcript of the original record in
Libor 53273 Page(s) 800 - 807.
In testimony whereof, I have set my hand and placed the seal of REGISTER OF DEEDS this 5/20/21.

By: Marie Sawade
Deputy
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.

David E. Plunkett
Charter Township of Orion
Planning Division
2323 Joslyn Rd., Lake Orion MI 48360
P: (248) 391-0304 ext. 5001; Fax (248) 391-1454

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.
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 Guarana
Address: 1150 Hemingway, Lake Orion, MI 48360
Phone: (33) 318 4052 Cell: Fax: 
Email: T. L. G. 1969 @ comcast.net

PROPERTY OWNER(S)
Name(s): John Rife & Tracey Guarana
Address: 1150 Hemingway, L. O., MI 48360
Phone: (313) 318 4052 Cell: (313) 460 2165 Fax: 
Email: Same

CONTACT PERSON FOR THIS REQUEST
Name: Tracey Guarana Phone: (313) 318 4052 Email: T. L. G. 1969 @ comcast.net

SUBJECT PROPERTY
Address: 1150 Hemingway L. O. Sidewell Number: 09-15-201-028
Total Acreage: 1.32 Length of Ownership by Current Property Owner: 8 Years, ___ 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, overlong grass.

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: 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/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 ppo 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 Guaiana
Date: 5/12/2022

Print Name: Tracey GUAIANA

Signature of Property Owner:  

Date: 5/12/2022

Print Name:  

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:  

Page 4 of 4
Version 1/4/2022
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.

H. 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.
Article XXVII

27.01 Nonconformities

construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofor 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)
AB:2022-22, Tracy Guadiana, 1150 Hemingway, 09-15-201-028 Zoned R-1 1.318 acres
57,412.08° 25° = 14,353.02°
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
The fire department has reviewed the proposed documentation and has no concerns at this time.

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,

Debra Walton
Clerk
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5002
W: www.oriontownship.org
Documents Submitted by Ms. Guaiana

With Original Application

Date stamped May 12, 2022
Police called to scene where police were going to fence down out fence down.

Be cautious he was shooting to swing.
Driving on our lawn
STATE OF MICHIGAN
JUDICIAL CIRCUIT
OAKLAND COUNTY

PERSONAL PROTECTION ORDER
(NONDOMESTIC)

CASE NO.
19-879144-PH

KAMESHIA D. GANT

Court address
1200 N. TELEGRAPH ROAD, PONTIAC, MI 48341

Court telephone no.
2489759511

ori-630015J

A

Petitioner's name
TRACIE LYNN GUIANA

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

CASE NO.
19-879144-PH

KAMESHIA D. GANT

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

B

Full name of respondent (type or print)
THOMAS MARTIN DARNALL

Driver's license number (if known)

Date: 2/18/2020

Judge: KAMESHIA D. GANT

Bar no.
P 69425

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 MCL 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 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 HARRASSMENT & TRESPASSING ON PRIVATE PROPERTY

IT IS ORDERED:
☐ 5. THOMAS MARTIN DARNALL

Full name of respondent

a. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to
☑ following 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.
☑ other: THIRD PARTY CONTACT; RESP. MAY USE EASEMENT FOR PASSAGE, UTILITIES & MAINTENANCE

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 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 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.

2/18/2020

Date and time issued

A TRUE COPY

LISA BROWN

Judges

MCL 600.2950a, MCR 3.705, MCR 3.706

By

KAMESHIA D. GANT

19-879144-PH
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 ____________________________

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

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

"SEE COMPLETE LEGAL ATTACHED AS EXHIBIT "A"

That for and in consideration of $ ____________________________ 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 Guaranna 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 110, R10E, sec 15 Clarkston - Hemingway Acres Parcel "A" part of Lot 11 Bbg 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 Bbg 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 7/29/2020

Lisa M. Sawadee Notary Public, Genesee County, Michigan Acting in Oakland County My Commission Expires: July 28, 2020

Instrument Drafted by Tracey Guaranna

After recording return to: County Customer
2014 Before we bought home
People in our yard we do not know
Improper gesture (Blacked out)
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  
Complaint #E-22-067  
Sidwell: O-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  

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MUTUAL RELEASE
AGREEMENT

THIS MUTUAL RELEASE AGREEMENT is made between Thomas M. Damall and Robin E. Damall, Husband and Wife, hereinafter referred to as the Plaintiffs and John Rife and Tracey Guanana, 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-CI); 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 SUITE.** 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 3-25-21
By
Thomas M. Darnall

Dated 3-25-21
By
Robin E. Darnall

DEFENDANTS

Dated
By
John Rife

Dated
By
Tracey Guaiana
STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DARNALL, THOMAS, M,
Plaintiff

V

HON. JEFFERY S. MATIS

RIFE, JOHN,
Defendant

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

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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)
Huth Lynett
645 Griswold, Suite 4300
Detroit, MI 48226
(313) 965-5500

EMILY M. SULLIVAN (P81376)

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 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 SOUTHWEST CORNER 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

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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

83
From: Paul H. Huth
Date: 3/19/2021 5:51:37 PM
To: the 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 7:38 PM
To: huthlaw@hotmail.com <huthlaw@hotmail.com>

2 attachments: 3.0 KB


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 GUIAINA,
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.


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 Guiana). 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. The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, non-contested status which preceded the pending controversy. A preliminary injunction is inappropriate if it will grant one of the parties all the relief requested prior to a hearing on the merits.

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."

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. 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.

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

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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.\(^8\)

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.\(^9\) 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.\(^10\)

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.

\(^8\) \textit{id.} at 3
\(^9\) \textit{id.} at 17.
\(^10\) \textit{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.”

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.”

For final relief Plaintiffs request:

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

As in 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. Accordingly, Plaintiffs’ motion should be denied.

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. A party requesting preliminary injunctive relief must show that it will

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12 Verified Complaint to Quiet Title and for Injunctive Relief, Page 4, Paragraph A.
13 Id. at Paragraph C.
14 Fancy, 177 Mich App at 720.
suffer irreparable harm in the absence of injunctive relief. 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.”

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.

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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
EXHIBIT A
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

whose address is 1150 Hemingway Rd Lake Orion MI 48360

Quit Claim(s) to Tracey Guarina 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, RGE, sec 15 CLARKSTON - HEMINGWAY ACRES

Parcel "A" part of Lot II BGC 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 BGC 09-15-201-028

Commonly known as: 1150 Hemingway Rd Lot II

for the full consideration of None

Tax I.D. Number:

Dated this 12th day of September 2014

Signed by:

[Signature]

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

Instrument Drafted by

[Name]

Return To:

Note:

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, odor, 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 48366
Quit Claim(s) to Tracey Guriana and John Rife
whose address is 1150 Hemingway Rd Lake Orion MI 48366
the following described premises situated in the Township of Lake Orion
County of Oakland
Township of Lake Orion
the following described premises situated in the Township of Lake Orion
County of Oakland
TH, R1E, sec 15 CLARKSTON - HEMINGWAY ACRES
 Parcel "A" part of Lot II 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 15 201 028
Commonly known as: 1150 Hemingway Rd Lot II
for the full consideration of None
Tax I.D. Number:
Dated this 12th day of September 2014
Signed by:

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
2/19/2020
Instrument Drafted by
Tracey Guriana
After recording return to
Lisa M. Savoie
Notary Public, Genesee County, Michigan
Acting in Oakland County
My Commission Expires: July 28, 2020

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management
practices which may generate noises, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm
act.
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 commencing 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; thence South 09°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 480.75 feet along the South line of said Lot 11 to a point; thence North 132.00 feet to the point of beginning.

Lot 107

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:


Signed and Sealed:


STATE OF MICHIGAN

COUNTY OF Washtenaw

The foregoing instrument was acknowledged before me this 22nd day of July, 1992, by Thomas M. Darnall, a married man.

My commission expires

Instrument Drafted by Mark W. Griffin

Recording Fee $9.00

State Transfer Tax N/A

Tax Parcel No. 10-15-201-026

Q.T.K. 78
EXHIBIT D
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
bedroom window
Jan 29, 2020 3:46:39 PM

0:02

1:07
EXHIBIT E
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 750.411l 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 750.411l, which includes but is not limited to:

☐ following 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: 

☐ posting a message through the use of any medium of communication, including the Internet or a computer or any other 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 .

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.
1. I SERVED A COPY OF

- Petition for Personal Protection Order/Stalking
- Verified Statement
- Notice of Hearing
- Personal Protection Order/Personal Protection Order
- 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

2. THOMAS MARTIN DARNALL

- NAME OF PERSON SERVED
- DAY, DATE, TIME
- COMPLETE ADDRESS WHERE PERSON WAS SERVED

3. 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.

4. 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:

- [X] A sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCL 2194.2194).!

SPECIAL DEPUTY COOK #2194

NAME OF PERSON COMPLETING SERVICE (Type or Print)

Notary Public

SUBSCRIBED AND SWORN TO BEFORE ME

Date

Signature:

My commission expires:

Date

Signature:

County, Michigan

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)
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
Documents Received from David Plunkett

June 1, 2022
June 1, 2022

By Email (jharrison@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 Guiaiana (“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 Guaiana, 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.

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  

Case No. 2020-178816-CH  
Honorable Jeffery Matis

v.

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

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 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 Libe 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

/s/ Jeffery S. Matis

Jeffery Matis, Circuit Judge

And for Entry

James R. Porritt, Jr (P23222)

Attorney for Plaintiffs and Counter Defendants

Paul H. Huth (P31986)

Attorney for Defendants and Counter Plaintiffs
Easement Description:
Situated in the Township of Orion, Oakland County, Michigan described as:
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 Clarkson-Hemingway Acres as recorded in Liber 84 of plats, on Page 7, Oakland county public records. Said Easement being described as beginning at the Northeast corner of said Lot 11; thence S89°53'00"W along the North line of said Lot 11, 970.00 feet; thence South 30.00 feet; thence N89°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 said East line of said Lot 11, 30.00 feet back to the Point of beginning.

---

Notes:
This is a retracement survey of an unrecorded Huston Kennedy survey provided by client.
See sheet 2 for easement detail across Parcel A and relative positional precision table.
Prepared for: Ernest Darnell
3355 Bayless Drive
Oxford, MI 48371
CERTIFICATE OF SURVEY
CLARKSTON-HEMINGWAY ACRES
SECTION 15, T4N, R10E, ORION TOWNSHIP
OAKLAND COUNTY, MICHIGAN

Adjustment Statistical Summary

| Iterations | = 2 |
| Number of Stations | = 16 |
| Number of Observations | = 185 |
| Number of Unknowns | = 45 |
| Number of Redundant Obs | = 140 |

The Chi-Square Test at 5.00% Level Passed Low/Upper Bounds (0.0033:1.117)

Relative Positional Precision Table

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<th>C</th>
<th>D</th>
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</table>

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

1. Terry R. Campbell, hereby certify that I have surveyed the above mapped and described property, and that the data complies with section 3 (p) of Act 132, P.A. 1976.

2. The Relative Positional Precision (RPP) is the length of the semi-major axis of the error ellipse at a 55% confidence level at each point and how it relates to every other point in the survey. A properly 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 standard. This information is supplied pursuant to the requirements of the Certified Survey Act 132, P.A. 1970, as amended. Sec. 3 (1) (a) (ii).

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

Campbell Surveying Engineering, Inc.
Professional Surveyors Services
10053 E. Highland Road, Suite 29 www.campbellse.com
Howell, Michigan 48843 (989) 350-1185
© 2011 Campbell Surveying Engineering, Inc.
REPRODUCTION IN ANY FORM WITHOUT WRITTEN PERMISSION PROHIBITED
CERTIFICATE OF COPY OF RECORD
STATE OF MICHIGAN, COUNTY OF OAKLAND

LISA BROWN, 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) 8060-8061.

In testimony whereof, I have set my hand and placed the seal of REGISTER OF DEEDS this 5th day of March, 2021.

By: Marie Sawade
Deputy

127
May 5, 2022

By FedEx

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.

David E. Plunkett
EXHIBIT 2
EXHIBIT 3
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: October 14, 2022

SUBJECT: Staff Report for AB-2022-42, Timothy Foley (Orion Commerce Signage)

The petitioner is proposing to replace 2 existing ground signs at the Orion Commerce Center located at 315-325 W. Silverbell. The proposed new signs will replace the existing signs located at the east and west entrances to the center.

Both signs need variances for height and for the front yard setback for a structure in the IP Zoning District (both signs will meet the required road right-of-way setback).

Both signs are setback 30-ft. from the road right-of-way – the requirement is 20-ft. Therefore, the sign area may be increased by 1-sq. ft. per-side for each 2-ft. the sign is set back beyond the minimum required setback (road right-of-way). So, in this instance, an 8-ft. sign can be 35-sq. ft. instead of the allowed 30-sq. ft.

Also, when calculating sign area, the base shall be excluded from the calculation of sign area for a distance of 30” above grade. This applies to sign area only – not to height.

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: October 13, 2022

RE: AB-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315–325 W. Silverbell Rd., 09-35-100-020

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.

The variance language listed was verified by the petitioner/applicant and 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 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-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315–325 W. Silverbell Rd., 09-35-100-020, I would move that the petitioner’s request for:

4 variances from Sign Ordinance #153 – Section 7 Non-Residential Ground Signs Zoned IP

1. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the east entrance off W. Silverbell Road).
2. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the west entrance off W. Silver Bell Road).
3. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the east entrance off W. Silverbell Road).
4. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the west entrance off W. Silverbell Road).

And, seeking 2 variances from Zoning Ordinance #78 – Zoned IP

1. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property (east entrance off W. Silverbell Road.).
2. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property line (west entrance off W. Silverbell Road.).

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:

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-2022-42, Timothy Foley (for Orion Commerce Center Ground Signs), 315–325 W. Silverbell Rd., 09-35-100-020, I would move that the petitioner’s request for:

4 variances from Sign Ordinance #153 – Section 7 Non-Residential Ground Signs Zoned IP

1. A 2.17-ft. height variance above the allowed 8-ft. for a ground sign to be 10.17-ft. tall (to be located at the east entrance off W. Silverbell Road).
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4. A 24.21-sq. ft. variance above the allowed 35-sq. ft. for a ground sign to be 59.21-sq. ft. (to be located at the west entrance off W. Silverbell Road).

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1. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property (east entrance off W. Silverbell Road.).
2. A 20-ft. front yard setback variance from the required 50-ft. for a ground sign to be located 30-ft. from the front property line (west entrance off W. Silverbell Road.).

be denied because the petitioner did not 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:

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

2. The following are not 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 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 - Commercial

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 $500.00 for a commercial 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: Timothy Foley
Address: 37037 Schoolcraft
Phone: 734-542-4800
Fax: 734-542-4070
Email: McVital@AOL.com

PROPERTY OWNER(S)
Name(s): Orion Commerce Center / Ashley Capital
Address: 315-325 Silverbell
Phone: 734-637-5018
Fax: 734-394-1520
Email: SignAndArt@SBCGlobal.net

CONTACT PERSON FOR THIS REQUEST
Name: Timothy Foley
Phone: 734-637-5132
Email: SignAndArt@SBCGlobal.net

SUBJECT PROPERTY
Address: 315-325 Silverbell
Sidewall Number(s): 09-35-100-020

Total Acreage: ___________ Length of Ownership by Current Property Owner: ___________ Years, ___________ Months

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

Ordinance Allowance/ Requirement ____________________________________ Deviation requested

List additional ordinance requirements and deviations on a separate page

Page 1 of 3
Case #: ____________________

COMMERCIAL VARIANCE

1. Describe the nature of the request. We are requesting to remove existing monument signs. We would like to install new signs that will have tenant names.

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. This is a large 14 tenant Industrial Center. No other sites are close to this site.

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: We need to solve semi truck traffic and customer wayfinding issues.

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

5. Describe how the alleged practical difficulty has not been self-created. We did try to use approved signs but traffic and wayfinding issues are still a problem.

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.
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: 9-22-22

Print Name: ________________________________

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

Signature of Property Owner: ________________________________
(must be original ink signature) ________________________________
Date: ________________________________

Print Name: ________________________________

Kimberly Parisek, Property Manager, Agent for Owner

OFFICE USE ONLY

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

Total Square Footage of Principal Structure: ____________ Tota

Description of variance(s):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Date Filed: ________________________________ Fee Paid: ____________ Receipt Number: ________________________________
LED ILLUMINATED DOUBLE SIDED GROUND SIGN. ALUMINUM SIGN CABINET WITH RADIUS SIDES. ALUMINUM REVEAL. REMOVABLE PANELS HAVE ROUTED FACES. PUSH THRU ACRYLIC LETTERING ON HEADER AND FOOTER PANELS. WHITE LED. INCLUDES (7) 6"X60" TENANT PANELS ON EACH SIDE. DECORATIVE LANDSCAPE BRICK SURROUND WITH CAPS.

All electrical to be UL Listed and Labeled

**SQUARE FOOTAGE**
- 58

**ADDRESS:**
- 315-325 SILVERBELL ROAD

**CLIENT:**
- ORION COMMERCR CENTER

**ASHLEY CAPITAL**

**DATE:**
- 09/21/22

**VITAL SIGNS**

SIGN MANUFACTURER
- 37037 Schoolcraft, Livonia, MI 48150
- 734-542-4800 (o) 734-542-4070 (f)
- mcnvital@aol.com

**UL LISTED**
SITE PLAN
ORION COMMERCE CENTER
An Ashley Capital Development
315-325 W. Silverbell Road
Lake Orion, Michigan 48359
Site Acreage 60.9

SIGN #1
Existing signs to be removed.
New signs installed to same location

SIGN #2
Existing signs to be removed.
New signs installed to same location

F individually C allows the site to have 2 Grand Signs
I need the distance from the front property line along Silverbell Road to the ground sign to the west.

I need the distance from the front property line along Silverbell Road to the ground sign to the east.
Lynn Harrison

From: Timothy Foley <signandart@sbcglobal.net>
Sent: Monday, September 26, 2022 11:19 AM
To: Lynn Harrison
Subject: Re: Orion Commerce Center Ground Signs
Attachments: scan_lharrison_2022-09-26-10-06-13.pdf

Lynn

The distances for the set back for both signs is 30 feet.

Tim

Sent from my iPhone

On Sep 26, 2022, at 7:09 AM, Lynn Harrison <lharrison@oriontownship.org> wrote:

Tim, please provide the following information for the two ground signs:

- I need the distance from the front property line along Silverbell Road to the ground sign to the west (see attached)
- I need the distance from the front property line along Silverbell Road to the ground sign to the east (see attached)

I need this information as soon as possible as the signs will need to go to the ZBA for square footage deviations and possibly front yard setback deviations – the deadline to get the public hearing notice to the paper is this Thursday for the October 24th ZBA meeting so I need to work up the language for the variances and get your approval by then.
Section 18.04 – Area and Bulk Requirements (Applies to Principal and Accessory Uses)

Please see the chart in Section 18.01 for variations to these requirements by use.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>IP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Yard Setback</td>
<td>50 ft.</td>
</tr>
<tr>
<td>Rear Yard Setback</td>
<td>50 ft. *</td>
</tr>
<tr>
<td>Side Yard Setback</td>
<td>20 ft. on each side *</td>
</tr>
<tr>
<td>Minimum Lot Area for Total Industrial Park</td>
<td>20 acres</td>
</tr>
<tr>
<td>Minimum Lot Area for Each Principal Structure or Use Within Industrial Park</td>
<td>2 acres</td>
</tr>
<tr>
<td>Maximum Lot Coverage</td>
<td>35%</td>
</tr>
<tr>
<td>Maximum Heights of All Structures</td>
<td>40 ft. *</td>
</tr>
<tr>
<td>Minimum Clear Space Around Structures</td>
<td>15 ft.</td>
</tr>
</tbody>
</table>

*Within the Lapeer Road Overlay District, building height shall not exceed fifty (50) feet. However, if a building exceeds forty (40) feet in height, rear yard and side yard setbacks shall increase by ten (10) feet for a total of thirty (30) feet side yard and sixty (60) feet rear yard.*

*Amended 06.13.96, 05.22.97, 09.02.14*
### Non-Residential Zoned Areas

**Ground Signs**

These requirements shall govern sign use, area, type, height, numbers, and setbacks, in addition to requirements elsewhere in this Ordinance.

Ground signs shall be subject to all the standards of either Alternate A or Alternate B.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>RB</th>
<th>GB</th>
<th>DP</th>
<th>LT</th>
<th>IC</th>
<th>FFY</th>
<th>SP-1</th>
<th>SP-2</th>
<th>RCO C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of signs</td>
<td>1 per zoning lot, 1 multi-tenant sign or 1 shopping center sign</td>
<td>1 per zoning lot, 1 multi-tenant sign or 1 shopping center sign</td>
<td>1 per zoning lot or 1 multi-tenant sign</td>
<td>1 per zoning lot or 1 multi-tenant sign</td>
<td>1 per zoning lot or 1 multi-tenant sign</td>
<td>1 per zoning lot or 1 multi-tenant sign</td>
<td>1 per zoning lot</td>
<td>1 per zoning lot</td>
<td>1 per zoning lot</td>
</tr>
<tr>
<td>Sign area Alternate A: overall height up to 6 ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>50 sq. ft. per side; maximum 100 sq. ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>50 sq. ft. per side; maximum 100 sq. ft.</td>
<td>50 sq. ft. per side; maximum 100 sq. ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>50 sq. ft. per side; maximum 100 sq. ft.</td>
<td>N/A</td>
</tr>
<tr>
<td>Sign area Alternate B: overall height over 6 ft up to 8 ft.</td>
<td>32 sq. ft. per side; maximum 64 sq. ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>30 sq. ft. per side; maximum 60 sq. ft.</td>
<td>30 sq. ft. per side; maximum 60 sq. ft.</td>
<td>30 sq. ft. per side; maximum 60 sq. ft.</td>
<td>30 sq. ft. per side; maximum 60 sq. ft.</td>
<td>20 sq. ft. per side; maximum 40 sq. ft.</td>
<td>40 sq. ft. per side; maximum 80 sq. ft.</td>
<td>25 sq. ft. per side; maximum 50 sq. ft.</td>
</tr>
<tr>
<td>Setback shall be measured at existing ROW or as reqd by RCO C</td>
<td>20 ft. from ROW</td>
<td>30 ft. from ROW</td>
<td>20 ft. from ROW</td>
<td>20 ft. from ROW</td>
<td>20 ft. from ROW</td>
<td>20 ft. from ROW</td>
<td>30 ft. from ROW</td>
<td>30 ft. from ROW</td>
<td>20 ft. from ROW</td>
</tr>
<tr>
<td>Footnotes</td>
<td>3, 5</td>
<td>3, 5, 6</td>
<td>3, 5</td>
<td>3, 5</td>
<td>3, 5</td>
<td>3, 5, 7</td>
<td>3</td>
<td>3, 5, 6</td>
<td>3, 5</td>
</tr>
</tbody>
</table>

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3 The sign area may be increased by one (1) square foot per side for each two (2) feet by which the sign is set back beyond the minimum required setback, provided that the resulting sign area is not more than three (3) times the sign area permitted in the district and is not greater than one hundred and fifty (150) square feet.

5 Additional ground signs may be permitted for each zoning lot if the following conditions apply:
   a. Two (2) ground signs may be permitted on a corner lot that has at least two hundred (200) feet of frontage on each of two (2) thoroughfares or collector streets, provided that only one (1) sign is oriented toward each thoroughfare or street.
   b. Two (2) ground signs may be permitted where the zoning lot, not a corner lot, has frontage on two (2) thoroughfares or collector streets and has vehicular access via both such thoroughfares or streets, provided that only one (1) sign is oriented toward each thoroughfare or street.
   c. Two (2) ground signs may be permitted on a zoning lot that has over six hundred and fifty (650) feet of frontage on a thoroughfare or collector street.
   d. On a zoning lot with over three hundred (300) and less than six hundred and fifty (650) feet of frontage on a thoroughfare or collector street, a second ground sign equal in area to not more than seventy-five percent (75%) of the ground sign area allowed shall be permitted.

6 The following additional ground signs may be permitted:
   a. Drive-in or drive-through restaurants may be permitted two ground signs in addition to the ground signs permitted, provided that the signs are located within twenty (20) feet from the first drive-through window.
   b. Gasoline service stations may be permitted one (1) additional ground sign indicating only the price of fuel. Such sign shall not exceed twenty-four (24) square feet per side; maximum forty-eight (48) square feet.
VARIANCES NEEDED TO SOLVE WAYFINDING ISSUES

PHOTO SHOWS WHY WE NEED A 20FT SET BACK VARIANCE

PHOTO SHOWS ENTRANCE IS HIDDEN HIGH SPEED LIMIT ON SILVERBELL HAS AN EFFECT ON WAYFINDING ISSUES

PHOTO SHOWS WHY WE NEED A HEIGHT VARIANCE

PHOTO SHOWS SIGN IS COMPLETELY OBSTRUCTED
Ashley Capital Properties

Ashley Capital is under taking a new branding for all their properties. These are some recently completed signs at our other properties:

**VAN BUREN TOWNSHIP**
Sign is 7ft x 10ft sign with 2ft stone base

**CITY OF WARREN**
Sign is 10ft x 14ft sign with 2ft stone base

**CITY OF HAZEL PARK**
Sign is 7ft x 8ft sign with 2ft stone base

**CITY OF STERLING HEIGHTS**
Sign is 7ft x 8ft sign with 2ft stone base
OTHER ASHLEY PROPERTIES SCHEDULED TO BE REBRANDED

SIGN 9FT X 12FT

SIGN 10FT X 16FT
Charter Township of Orion
Planning Division
2323 Joslyn Rd., Lake Orion MI 48360
P: (248) 391-0304 ext. 5001; Fax (248) 391-1454

MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: October 12, 2022

SUBJECT: Staff Report for AB-2022-53, Anton Rozhanskiy, 592 Cushing

The applicant is asking to extend the expiration of the variances that were granted on December 13, 2021. It is up to the discretion of the ZBA how long the expiration can be extended – if extended or 1-year, the applicant can always come back for another extension. Per Ordinance #78, the “time clock” stops once a building permit is pulled.

Following are the minutes from the December 13, 2021 meeting. I have also provided the documents from the December 13th meeting which appear after the current application.

Please call if you have any questions.
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: October 13, 2022

RE: AB-2022-43, Anton Rozhanskiy, 592 Cushing, 09-03-278-006

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.

The variance language listed was verified by the petitioner/applicant and 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 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-2022-43, Anton Rozhanskiy, 592 Cushing, 09-03-278-006, I would move that the petitioner’s request for:

To extend the expiration date for the approved AB-2021-67 ZBA case variances.

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:

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-2022-43, Anton Rozhanskiy, 592 Cushing, 09-03-278-006, I would move that the petitioner’s request for:

To extend the expiration date for the approved AB-2021-67 ZBA case variances.

be denied because the petitioner did not 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:

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

2. The following are not 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 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:

   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
E. Case AB-2021-67, Anton Rozhanskiy, 592 Cushing St., 09-03-278-006

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 3 variances from Zoning Ordinance #78 – Zoned R-3, Article VI, Section 6.04, Zoned R-3
1. A 23-ft. front yard setback variance from the required 30-ft. to build a home with an attached garage 7-ft. from the front property line.
2. A 2-ft. side yard setback variance from the required 6-ft. to build a home with an attached garage - ft. from the side property line (south).
3. A 12.38% lot coverage variance above the allowed 25% for a total lot coverage of 37.38%.

Board member Dunaskiss informed the board that this property is on the same street as her residence. She does not know the owner and doesn’t have any thoughts regarding the application.

Board members confirmed that Board member Dunaskiss need not recuse herself from this case.

Mr. Anton Rozhanskiy introduced himself to the Board and summarized the variance request.

Chairman Durham asked if the current home was being removed and asked if Mr. Rozhanskiy had been before the Board before.

Mr. Rozhanskiy confirmed that the current home is being removed and he has been before the Board, but it was not for this property.

Vice-chairman Cook asked about the item on the plan.

Mr. Rozhanskiy confirmed that it is the air conditioning condenser.

Board member Dunaskiss asked if the neighbor to the south is aware of what the proposed view would be.

Mr. Rozhanskiy replied that he has not spoken to them but doesn’t think it will be an issue. There is a parking spot currently in this area.

Chairman Durham commented that the neighbor to the north has a garage that sits further in-board to the one currently on the subject property. He asked when the new one goes up, where will the footprint be.

Mr. Rozhanskiy explained where the proposed garage would be as compared to the neighbor’s garage.

Chairman Durham commented that he was concerned with the sightline for the neighbor backing out of the driveway and this proposal might make it more difficult.

Mr. Rozhanskiy replied possibly; it is a tough spot to be in but the whole goal is to put all of the vehicles inside. He could shrink it to what is there currently but it still wouldn’t meet the requirements.

Trustee Flood stated that it is tough along the lake properties.

Mr. Rozhanskiy stated that the square footage of the proposed home would be 2730 square feet. He confirmed that he has not spoken to the neighbors. He has had the property for three months. The current house has quite a few issues.

Building Official Goodloe stated that his biggest concern is the water and drainage. There has to be a plan for drainage from the gutters.
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – December 13, 2021

Chairman Durham asked if there was public comment.

Mr. Rozhanskiy’s neighbor to the north appeared. She stated that her concern is how close the house is going to be to her property.

Trustee Flood stated that the side setback to the north is 6 feet and it would not affect her to the north. This is not the side asking for the variance.

Building Official Goodloe stated that because of the proximity, it would be a fire rated wall on that side.

Trustee Flood reiterated that the Fire Chief has no concerns.

Chairman Durham asked the neighbor how it was getting out of her garage.

The neighbor confirmed that there were no sight line issues.

Vice-chairman Cook confirmed that the garage only would be 4 feet from the side.

Mr. Rozhanskiy confirmed yes.

Moved by Trustee Flood, seconded by Vice-chairman Cook, that in the matter of ZBA case AB-2021-67, Anton Rozhanskiy, 592 Cushing St., 09-03-278-006 to approve the petitioner’s request for 3 variances from Zoning Ordinance #78 – Zoned R-3, Article VI, Section 6.04, Zoned R-3 including: a 23-ft. front yard setback variance from the required 30-ft. to build a home with an attached garage 7-ft. from the front property line, a 2-ft. side yard setback variance from the required 6-ft. to build a home with an attached garage -ft. from the side property line (south) and a 12.36% lot coverage variance above the allowed 25% for a total lot coverage of 37.36% because the petitioner did demonstrate that the following standards for variance have been met in this case and have set forth facts that show that in this case:

1. The petitioner does show the following practical difficulties: due to the unique characteristics of the property and it is related to the unique characteristics of the properties in the area being 40 – 50 foot wide lake lots.

2. The following are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in this same district or zone: the existing structure will be torn down and the proposed is a new structure. A condition of this approval is that the existing structure must be torn down.

3. The variance is also necessary for the preservation and enjoyment of a substantial property right possessed by others in the same zone or vicinity based on the criteria as afore mentioned.

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 the improvements in such zone or district in which the property is located based on the following finding of these narrow lake lots. The construction will be in conformance to all Building Codes.

5. The granting this variance will not impair an adequate supply of light or air to the adjacent property, it would not unusually increase congestion on the public streets. There is also not going to be an increase of fire, or endanger of the public safety, and is not going to reasonably diminish or impair established property values within the surrounding area, or in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township. The Fire Marshall has indicated that he has no concerns regarding this proposal. The building of a new house will add to the property values.
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – December 13, 2021

Chairman Durham stated that if the Building Official has an issue with the proposed drainage on the site, he asked that the petitioner keep an open mind.

Mr. Rozhanskiy replied yes.

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

6. PUBLIC COMMENTS

7. COMMUNICATIONS

A. Date Certain Memo

8. COMMITTEE REPORTS
None

9. MEMBERS’ COMMENTS

Chairman Durham thanked the Board and wished them happy holidays.

Board member Dunaskiss thanked the Board for welcoming her.

Trustee Flood wished the Board a Merry Christmas and Happy New Year. He recognized the community of Oxford and stated that their thoughts and prayers are with this neighboring community.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham to adjourn the meeting at 8:12 pm.

Respectfully submitted,

Erin A. Mattice
Recording Secretary
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: [Handwritten Name]
Address: 592 Cushing
City/State/Zip: Lake Orion
Phone: (248) 933-1757 Cell: Fax:
Email: olaxinc@gmail.com

PROPERTY OWNER(S)
Name(s): [Handwritten Name]
Address: 592 Cushing
City/State/Zip: Lake Orion
Phone: 248-933-1757 Cell: Fax:
Email: olaxinc@gmail.com

CONTACT PERSON FOR THIS REQUEST
Name: Phone: Email: [Handwritten Name]

SUBJECT PROPERTY
Address: 
Sidwell Number: 09-03-278-006
Total Acreage: 
Length of Ownership by Current Property Owner: Years, Months

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

Zoning Ordinance
Allowance/Requirement Deviation requested
Case #: __________________

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request. Need extension of variance due to out of time. After variance drawings took some time.

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.

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:

4. Explain how the request is/is not consistent with other properties in the immediate area, please site 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.
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) 

Print Name: Anton Rozhansky 

Date: 9/23/22

Signature of Property Owner: (must be original ink signature) 

Print Name: Anton Rozhansky 

Date: 9/23/22

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: ________________
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: December 2, 2021
SUBJECT: Staff Report for AB-2021-67, Anton Rozhanskiy, 592 Cushing

The applicant is proposing to demolish the existing house and build a new house with an attached garage.

The road side of the property has been declared the front and the lake side as the rear. All setbacks for the house from the rear property line and water’s edge will be met.

As the property measures 50-ft. at the front yard setback – there is a side yard setback relaxation from 10-ft. to 6-ft.

Per the application and an email from the applicant dated 11/15/2021 – he is proposing a front yard setback of 7-ft.

Also, per email from the applicant dated 11/15/2021 – he indicates the footprint of the house will be 1,850-sq. ft. and the attached garage will be 900-sq. ft. for a total of 2,750-sq. ft. As the proposed house has a walk-out basement and the proposed decks are off the main and second levels – they are not counted towards lot coverage.

Please contact me if you have any questions.
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 $200.00 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, 2525 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: Anton Rozhanskiy
Address: 592 Cushing St City/State/Zip: Lake Orion, MI 48362
Phone: (248) 933-1757 Cell: (248) 933-1757 Fax:
Email: olaxinc@gmail.com

PROPERTY OWNER(S)
Name(s): Anton Rozhanskiy
Address: 592 Cushing St City/State/Zip: Lake Orion, MI 48362
Phone: (248) 933-1757 Cell: (248) 933-1757 Fax:
Email: olaxinc@gmail.com

CONTACT PERSON FOR THIS REQUEST
Name: Anton Rozhanskiy Phone: (248) 933-1757 Email: olaxinc@gmail.com

SUBJECT PROPERTY
Address: 592 Cushing St Sidwell Number: 09-03-278-006
Total Acreage: 0.17 Length of Ownership by Current Property Owner: 3 Years, 3 Months

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

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1. Describe in detail the nature of the request.
   **Variance #1:** The Charter Township of Orion requires 30 feet for the front setback and I am requesting 7 feet (the existing detached garage currently is 10 feet).
   **Variance #2:** The Charter Township of Lake Orion requires a minimum of 6 feet for the side setbacks and I am requesting 4 feet on the South side of the structure. The 4 feet will only be for the garage and the remainder of the home will be setback 10 feet on the South side.
   **Variance #3:** The Charter Township of Lake Orion requires a maximum of 25% lot coverage and I am requesting 36.8%.

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.
   **Variance #1:** Other properties in the surrounding area/same street are 10 feet away from the property line. Attached and detached garages.
   **Variance #2:** The lot is rather narrow (50 feet). The garage width is designed to hold multiple vehicles and a boat in order to limit potential obstruction on the narrow dirt road out front.
   **Variance #3:** This home is designed to be a multi-generational home which will house my parents who are easing into retirement as well as my own family and children.

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.
   The variances I am requesting will assist in limiting outdoor parking on the side of the home which has been how the existing structure was built. On the South side of the home there are challenges with washout and flooding because of the downward slope from the South to North. This has resulted in consistent puddling and mud compiling from the neighbors washout. By limiting outdoor parking and making the garage larger I will be able to preserve the current landscape.

4. Explain how the request is/is not consistent with other properties in the immediate area, please cite examples if possible.
   **Variance #1:** The front setback is currently (according to surveys identical to both adjacent neighbors (10 feet). My request is a front setback of 7 feet.
   **Variance #2:** The house itself will be setback 10 feet like the neighbors. The variance will be 4 feet on the South side only where the garage is located. For additional parking/boat storage
   **Variance #3:**

5. Describe how the alleged practical difficulty has not been self-created.
   Without limiting the rooms needed to house 3 generations on such a narrow lot I have done my due diligence by building up but the extra 3 feet will allow me to keep both my boat and large vehicles (due to my profession) out of the sight of the neighbors and passersby.

6. The topography of said land makes the setbacks impossible to meet because:
   Lot size is smaller than Matrix Chart in section 6.01. Minimum lot size is 8,400 sq ft and this lot is only 7,400 sq ft. Also, the minimum width of the lot is set to 70 feet and this lot is 50 foot wide.
This makes it difficult to meet the setback requirements while keeping it a comfortable structure for everyone in the family while building a dream home.

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. The home is sized for comfortable living for a multi-generational family. With a garage to house multiple vehicles and out of the narrow street. This is my dream and forever home since I was young and would like to build a dream home with minimal discomfort and restrictions.
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)  

Print Name: Anton Rozhanskij

Date: 11/12/21

Signature of Property Owner:  
(must be original ink signature)  

Print Name: Anton Rozhanskij

Date: 11/12/21

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: ____________________________
Lynn Harrison

From: Olax Inc <olaxinc@gmail.com>
Sent: Monday, November 15, 2021 12:21 PM
To: Lynn Harrison
Subject: Re: Variances for 592 Cushing St.

Lynn,
- I am completely demolishing the home.
- yes it’s 7 feet. 5.8 feet to the soffit and soffit is 1 foot so makes it 6.8 feet but rounded up to 7 feet. Will adjust the drawing prior to permits.
- deck is elevated, is deck included in the coverage as well? Lot is 7,362 sqft is what I have on my end. House is proposed to be 1,850 sqft (basement foot print) garage is 900 sqft. 1,850+900 = 2,750 sqft Which would be 37.35%
The building might shrink a little after we do final design. We designed it and paused it pending variance decision. That’s also exterior dimensions if that’s how you need it calculated.

On Mon, Nov 15, 2021 at 9:32 AM Lynn Harrison <lharrison@oriontownship.org> wrote:

Anton, I reviewed the information you provided for the variances needed for the subject property and have a couple questions:

- Are you completely demolishing what is existing on the property now and building new?
- The application states that the front yard setback to the attached garage is 7-ft. but the site plan sheet shows it at 5.8-ft. to the overhang. Per Zoning Ordinance #78, Section 27.03 (C)(2) – overhanging eaves and gutters are allowed to project three (3) feet or less into a front yard. Do you want me to write the variance for the 7-ft or the 5.8-ft.?

Regarding lot coverage:

The Site Info indicates the main floor is 1,860-sq. ft., the garage is 900-sq. ft., and the deck is 515-sq. ft. for a total of 3,275-sq. ft.

- Are you not including the square footage of the deck because it is raised in your lot coverage calculation?
- If so, then the lot coverage would be 2,760-sq. ft. (1,860 + 900) or 37.49%. The application indicates the lot coverage is 36.8%. Our records indicate the property is .169 acres or 7,361.64-sq. ft.

Please get back to me as soon as possible as I am preparing the language for the public hearing notice that needs to get to the paper this Friday, November 19th.

Thanks,