1. OPEN MEETING
2. ROLL CALL
3. MINUTES
   A. 08/08/2022, 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 west.
   B. AB-2022-25, Armando Vukilaj, 2005 Bald Mountain Rd., 09-24-100-007
      (Postponed from 7/25/2022 ZBA meeting)
      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).
      The petitioner is seeking 4 variances from Zoning Ordinance #78 - Zoned IP
      Article XVIII, Section 18.03(I)(1)(2)
      1. A variance to allow a covered trash receptacle (dumpster) to be located in the side yard, north,
         rather than the required rear yard.
      2. A variance to omit the required masonry brick type walls and the opaque lockable gate around
         the covered trash receptacle (dumpster).
      Article XXVII, Section 27.19 (B)(2)(3)(4)
      3. A variance to allow accessory/outdoor storage to be located in the side yard, east, rather than the
         required rear yard.
      4. A variance to omit the required 8-ft. chain link fencing and screening around the
D. AB-2022-35, 3850 Joslyn Road, 3850 Joslyn Road, 09-28-376-031
The petitioner is seeking 15 variances from Zoning Ordinance #78 - Zoned GB
Article XIV, Section 14.02(A)
1. A 66-ft. setback variance, from the required 100-ft. from residential property, to build a building
with a drive-thru 34-ft. from the west property line.
2. A 32-ft. setback variance, from the required 50-ft. from residential property, for a drive-thru
maneuvering lane to be 18-ft. from a residential property.
Article XXVII, Section 14.03(C)(3)
3. A 22-ft. side yard setback variance, from the required 30-ft. along residential property, for
parking spaces to be located 8-ft. from the north property line.
Article XIV, Section 14.03(I)(1)
4. A variance to allow a covered trash receptacle (dumpster) to be located in a side yard (north).
Article XIV, Section 14.03(J)(1)
5. A variance to allow a loading & unloading area to be in a side yard adjacent to residential
property.
6. A variance to allow a loading & unloading area to be in a front yard (Hammerslea Road).
Article XIV, Section 14.04
7. A 2.42-ft. building height variance, from the maximum height limit of 25-ft. for the building to
be 27.42-ft. high.
8. An 18-ft. side yard setback variance from the required 20-ft. for a structure (propane tank) to be
2-ft. from the side property line (north).
Article XXVII, Section 27.04
9. A 24-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt
to be 6-ft. along the north property line.
10. A 25-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape
greenbelt width to be 5-ft. along the west property line.
Article XXVII, Section 27.04(A)(4)
11. A 20-ft. greenbelt width variance, from the required 20-ft. greenbelt between road right-of-way
and parking, for a 0-ft. greenbelt along the south & east sides.
Article XXVII, Section 27.05(A)(4)
12. A variance of 7 trees from Joslyn Road & 7 Trees from Hammerslea Road to have 0 trees
along the road right-of-ways of Joslyn Road and Hammerslea Road.
Article XXVII, Section 27.05(A)(6)
13. A variance to omit 2 required trees from the interior landscaping requirements of 1 tree per
200-sq. ft. of interior landscape space.
14. A 66-sq. ft. variance for interior landscape areas, from the required 400-sq. ft., to have 334-sq.
ft. of interior landscape areas.
15. A 6-ft. variance from the required 10-ft. for interior landscape area to be 4-ft. wide.
E. AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of
576 Cushing St., 09-03-278-027
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).

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.
TO: The Charter Township of Orion Zoning Board of Appeals  
FROM: Lynn Harrison, Planning & Zoning Coordinator  
DATE: August 11, 2022  
RE: Case location for ZBA Meeting 08/22/2022  

Below are the locations of the ZBA cases for the August 22, 2022 meeting. Items A, B & C are coming back from previous meetings so I did not put them on the map.
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.
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 Guiana, 1150 Hemingway, 09-15-201-028, I move that the petitioner’s request for:

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

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

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

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

Please be specific how the petitioner does not meet these criteria

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

1. The petitioner did not demonstrate Practical Difficulty because:

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

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

_______________________________________

_______________________________________

_______________________________________

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

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

_______________________________________

_______________________________________

_______________________________________

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

_______________________________________

_______________________________________

_______________________________________

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

_______________________________________

_______________________________________

_______________________________________

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

_______________________________________

_______________________________________

_______________________________________

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

_______________________________________

_______________________________________

_______________________________________
August 10, 2022

By Email (lharrison@oriontownship.org)

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

Re: Application for Appeal – 1150 Hemingway
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.

David E. Plunkett

cc: Thomas Williams
EX. A
June 1, 2022

By Email (lharrison@oriontownship.org)

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

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

Dear Zoning Board of Appeals:

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

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

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

There is no court order requiring that the Applicant put up the fence at issue. There is a Consent Judgment and Discharge of Lis Pendens dated March 29, 2021, which, among other things, required the Applicant to remove, relocate or replace a fence from within a private road easement on the other side of her Property (the north side), not the side of the Property on which the fence at issue is located (the south side). (Ex. 1, Consent Judgment and Discharge of Lis Pendens in Darnall and Darnall v. Rife and 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

v.
JOHN RIFE and
TRACEY GUAJANA,

Husband and Wife,

Defendants/Counter-Plaintiffs

Case No. 2020-178816-CH
Honorabale Jefery Matis

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: Honorabale Jefery 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;

[Signature]
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 00 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.

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 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 PENDING

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: 3/25/2021

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 Clarkston-Hemingway Acres as recorded in Liber 64 of plats, on Page 7, Oakland County public records. Said Easement being described as beginning at the Northeast corner of said Lot 11; thence S69°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.

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

Adjastment Statistical Summary

<table>
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<tr>
<th>Measurements</th>
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<th>Observations Count</th>
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The Chi-Square Test at 0.00% Level Passed
Lower/Upper Bounds (0.883/1.117)

Relative Positional Precision Table

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

Legend

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

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

Original Signature: Terry R. Campbell
P.S. No: 60806

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

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This material is protected by copyright and may not be reproduced in whole or part, distributed, or transmitted in any electronic format without prior written permission from Campbell Surveying Engineering, Inc.
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 5273 Page(s) 3806 - 3807.
In testimony whereof, I have set my hand and placed the seal of REGISTER OF DEEDS this 30th day of March, 2021.

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.

[Signature]

David E. Plunkett
EXHIBIT 3
Meeting Documents from June 27, 2022 ZBA Meeting
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: (313) 318-4052
Email: TLG1969@comcast.net

PROPERTY OWNER(S)
Name(s): John Rife & Tracey Guarana
Address: 1150 Hemingway, Lake Orion, MI 48360
Phone: (313) 318-4052
Email: Same

CONTACT PERSON FOR THIS REQUEST
Name: Tracey Guarana
Phone: (313) 318-4052
Email: TLG1969@comcast.net

SUBJECT PROPERTY
Address: 1150 Hemingway Lot
Sidwell Number: 09-15-291-028
Total Acreage: 1.32
Length of Ownership by Current Property Owner: 8 Years, 0 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, over length grass.

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

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

5. Describe how the alleged practical difficulty has not been self-created. I placed a 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.
8. Have there been any previous appeals involving this property? If so, when? \(\text{Yes by Oakland Co courts}\)

9. Is this request the result of a Notice of Ordinance Violation? \(\Box\) Yes \(\Box\) 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: \(\text{Tracey Guariana}\) Date: 5/12/2022

Print Name: \(\text{Tracey Guariana}\)

Signature of Property Owner: \(\text{[Signature]}\) Date:

Print Name: \(\text{[Signature]}\)

if applicable:

I the property owner, hereby give permission to \(\text{[Permission]}\) to represent me at the meeting.

OFFICE USE ONLY

Zoning Classification of property: \(\text{[Classification]}\) Adjacent Zoning: N. S. E. W.

Total Square Footage of Principal Structure: \(\text{[Footage]}\) Total Square Footage of Accessory Structure(s): \(\text{[Footage]}\)

Description of variance(s):

\(\text{[Description]}\)

\(\text{[Description]}\)

\(\text{[Description]}\)

Date Filed: \(\text{[Date]}\) Fee Paid: \(\text{[Paid]}\) Receipt Number: \(\text{[Number]}\)
AB: 2022-22, Tracy Guaiana, 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
Article XXVII  General Provisions

27.05 Landscaping, Fences and Walls

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

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

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

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

II. Residential Fence and Wall Regulations.

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

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

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

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

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

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

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

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

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

K. Administrative Nonconformities.

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

L. Change in Tenancy or Ownership.

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

M. Special Exceptions.

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

Section 27.02 – Buildings, Structures, and Uses

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

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

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

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

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

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

Detached accessory buildings or structures in residential districts shall not exceed the height of the principal building or structure as constructed. However, the height of a detached accessory building or structure may exceed the height of the principal building or structure, if said accessory building or structure is located at least one hundred fifty (150) feet distant and to the rear of the principal building or structure. In no case shall the height of a detached accessory building or structure exceed the maximum height requirement for the principal building or structure, as set forth in the applicable zoning district, except as specifically permitted otherwise in this Ordinance. (amended 07.16.18)
Gate to our yard w a pool
Police having to be called stated he was going to ram our fence down.
STATE OF MICHIGAN  
6th JUDICIAL CIRCUIT  
OAKLAND COUNTY  

PERSONAL PROTECTION ORDER  
(NONDOMESTIC)  
□ EX PARTE  

CASE NO.  
19-879144-PH  
KAMESHIA D. GANT  

Petitioner's name  
TRACEY LYNN GUIANA  
Address and telephone no. where court can reach petitioner  
1150 HEMINGWAY RD  
LAKE ORION, MI 48360  
313-318-4052  

Respondent's name, address, and telephone no.  
THOMAS MARTIN DARNALL  
Address and telephone no. where court can reach respondent  
1136 HEMINGWAY RD  
LAKE ORION, MI 48360  
UNKNOWN  

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

Date:  
2/18/2020  
Judge:  
KAMESHIA D. GANT  
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,  
☐ 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 BASEMENT FOR PASSAGE, UTILITIES & MAINTENANCE  

☒ b. posting a message through the use of any medium of communication, including the Internet or any 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 the 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  

CC 380  
(3/12)  
PERSONAL PROTECTION ORDER (NONDOMESTIC)  
By  

A TRUE COPY  

LISA BROWN  
Judges  

KAMESHIA D. GANT  

KAMESHIA D. GANT  

MCL 600.2950a, MCR 3.705, MCR 3.706  

Approved, SCAO  

1st copy - Law enforcement agency (file) (green)  
2nd copy - Respondent (blue)  
3rd copy - Petitioner (pink)  
4th copy - Return (yellow)  
5th copy - Return (gold/rod)
WARRANTY DEED

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

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

Customer Reference Number NST13109848360

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

Date September 16, 2015

THE GRANTOR, VITO F. 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, Grantee48360MI.

(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 $0.00, 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 recorded applicable to the property hereby conveyed.
KNOW ALL PERSONS BY THESE PRESENTS: That John Rife married man whose address is 1150 Hemingway Rd Lake Orion MI 48360
Quit Claim(s) to Tracey Guariana and John Rife whose address is 1150 Hemingway Rd Lake Orion MI 48360
the following described premises situated in the Township of Lake Orion and State of Michigan, to-wit:
THN, R1OE, sec 15 Clarkston - Hemingway Acres Parcel "A" Part of Lot 11 Beg at NE Lot Cor, TH S 89-53-00 W 435 FT, TH S 132 FT, TH N 89-53-00 E 435 FT, TH N 132 FT, TO Beg 09-15-201-028
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. Sewade
Notary Public, Genesee County, Michigan
Acting in Oakland County
My Commission Expires: July 29, 2020

Notary Public County, Michigan
Instrument Drafted by Tracey Guariana
Return To: Counter Customer
After recording return to: 1150 Hemingway Rd Lake Orion MI 48360
Replies

Bader
t guy still being an ass! I’ll be in June to visit. Let’s have a party
Like  Reply

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

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

Robin Trafton Darnall
Pat Bader lol
19m  Like  Reply

Pat Bader
Robin Trafton Darnall

5 hrs

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

7 Comments

Like
Comment

Pat Bader

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

Robin Trafton Darnall

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

View 3 more replies

Write a comment...
2014 Before we bought home
Trash tossed into my yard.
People in our yard we do not know
Improper gesture (Blacked out)
Trash on my property
Adult diapers
Barbed wire on property line
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  

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
The fire department has review the proposed documentation and has no concerns at this time.

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

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

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

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

Thanks,

Debra Walton
Clerk
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48350
O: 248.391.0304, ext. 5002
W: www.oriontownship.org
MUTUAL RELEASE AGREEMENT

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

RECITALS

WITNESSETH:

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

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

AGREEMENT

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

1. CONSENT JUDGMENT. Each of the parties shall by their respective attorneys execute, deliver and have entered a Consent Judgment in the attached form and content suitable for recording with the Oakland County Register of Deeds confirming quiet title to the easement in the Plaintiffs and providing for the continuation of the described easement for purposes of ingress and egress and public utilities subject to maintenance of same in passable condition without ruts, snow, ice or accumulation of water by Plaintiffs as to that portion of same within the easement on Defendants’ property; and

1

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A. Allowing for maintenance by Plaintiffs as needed, should snow accumulation necessitate clearance, plowing such accumulation to the north side of the improved and traveled driveway, and to cure ruts, fill holes, or repair surface conditions. But for the instance of a failure by Defendants to cure the impediment of water flow as described in ‘B’ below, Plaintiffs shall not significantly alter the existing grade of the easement. Plaintiffs shall, in the course of such maintenance preserve the existing grass belts on either side of the improved driveway and should such grass belts be disturbed, repair the same; and

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

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

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

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

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

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

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

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

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

K. Retaining jurisdiction in the Court for enforcement; and

L. Dismissal of all claims for damages; and

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

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

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

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

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

PLAINTIFFS

Dated 3-25-2021

By

Thomas M. Darnall

Dated 3-25-21

By

Robin E. Darnall

DEFENDANTS

Dated

By

John Rife

Dated

By

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

DARNALL, THOMAS, M.,
Plaintiff

V

RIFE, JOHN,
Defendant

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

ORDER REGARDING MOTION

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

The above named motion is: Denied

☐ For the reasons stated on the record..

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

Dated: 4/27/2022

HON. JEFFERY S. MATIS
CIRCUIT COURT JUDGE

66
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 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 Plts, on Page 7, Oakland County Records, said Easement being described as beginning at the Northeast corner of said LOT 11; thence S 89°53'00" W along the North line of said LOT 11, 970.00 feet; thence South 30 feet; thence N 89°53'00" E parallel with said North line of said LOT 11, 970.00 feet to the East line of said LOT 11; thence North along the East line of said LOT 11, 30 feet back to the Point of Beginning.

Tax Parcel No. 09-15-201-026

Defendants' Property:

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

Tax Parcel No. 09-15-201-028

DISMISSAL OF COUNTER COMPLAINT

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

MAINTENANCE OF PRIVATE ROAD EASEMENT

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

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

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

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

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

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

DISCHARGE OF LIS PENDENS

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

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

Approved as to Content

And for Entry:                                              Jeffery Matis, Circuit Judge

_________________________________________________________

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

_________________________________________________________

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

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

Paul H. Huth
645 Griswold Street, Suite 4300
Detroit, Michigan 48226
(313) 965-5500
REvised Mutual ReLease anD JUDGMENT

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

2 attachments: 30 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 bout 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 GUIAIANA,
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 Guaiiana 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 Guaiana). 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

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

In this case, Plaintiffs request a temporary restraining order:

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

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).¹³

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.¹⁴ Accordingly, Plaintiffs' motion should be denied.

II. A PRELIMINARY INJUNCTION IS INAPPROPRIATE WHERE PLAINTEES WILL NOT SUFFER IRREPARABLE HARM IN THE ABSENCE OF RELIEF.

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

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
WARRANTY DEED

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

29TH MAY 29 AMILL: 16
REGISTER OF DEEDS
OAKLAND COUNTY
RECEIVED
OK-LB
EXHIBIT B
KNOW ALL PERSONS BY THESE PRESENTS: That John Rife
whose address is 1150 Hemingway Rd Lake Orion MI 48360
Quit Claim(e) to Tracey Gurnama and John Rife
whose address is 1150 Hemingway Rd Lake Orion MI 48360
the following described premises situated in the Township of Lake Oxford
County of Oakland
and State of Michigan, to-wit:
THN R10E, sec 15 Clarkston - Hemingway Acres
Parcel "A" part of Lot 11 BGC at NE Lot Cor,
TH 3 89-53 00 W 435 FT, TH 3 132 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 11

for the full consideration of None

Signed by: John Rife

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

Notary Public, Genesee County, Michigan
Acting In Oakland County
My Commission Expires: July 28, 2020

Instrument Drafted by Tracey Gurnama
Return To: Counter Customer

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.
EXHIBIT B
KNOW ALL PERSONS BY THESE PRESENTS: That

John Rife

married man
whose address is
1150 Hemingway Rd, Lake Orion, MI 48360

Quit Claim(s) to

Tracey Guniana and John Rife

whose address is
1150 Hemingway Rd, Lake Orion, MI 48360

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

TH 1, R 15E, sec 15, Clarkston - Hemingway Acres
Parcel "A", part of Lot 11, REC at NE Lot Cori,
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 REC 09-15-201-028

Commonly known as: 1150 Hemingway Rd Lot 11

for the full consideration of None

Tax I.D. Number: None

Dated this 12th day of September 2014

Signed by: John Rife

STATE OF MICHIGAN
COUNTY OF Oakland

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

by John Rife
My commission expires

Notary Public
County, Michigan
Business
Address:

Drafted by Tracey Guniana

After recording return to: County Clerk

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

Know all men by these presents: That

Thomas M. Durnall, a married man,

whose address is
1150 Hemingway, Lake Orion, Michigan 48360

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

whose address is
1150 Hemingway, Lake Orion, Michigan 48360

the following described premises situate in the

Township of Orion

County of Oakland

and State of Michigan, to wit:

Lot 11, except the East 870 feet of CLARKSTON-HEMINGWAY ACRES SUBDIVISION, as recorded in Liber 64 of Plats, Page 7 of Oakland County Records. Being more particularly described as 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 00°21'40" West 132.00 feet along the West line of said Lot 1 to the Southwest corner of said Lot 11; thence North 89°53'00" East 480.73 feet along the South line of said Lot 11 to a point; thence North 132.00 feet to the point of beginning.

Lot 1007

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

Dated this 22nd day of July, 1992.

Witnesses:

Jeffrey S. Drury

A.D. Drury

Dean D. Longley

Signed and Sealed:

Thomas M. Darnall

Thomas M. Darnall

Sean D. Longley

STATE OF MICHIGAN

COUNTY OF: Oakland

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 H. Griffin

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

Recording Fee: $9.00

State Transfer Tax N/A

When recorded return to: Grantees

Send subsequent tax bills to: Grantees

Tax Parcel: 88-10-201-026
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.

\[Signature\]

\[Signature\]

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

\[Signature\]

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

0:02 1:07
EXHIBIT E
PERSONAL PROTECTION ORDER (NONDOMESTIC)  EX PARTE

Court address 1200 N. Telegraph Road, Pontiac, MI 48341-1043

Petitioner's name TRACEY LYNN GUAIANA
Address and telephone no. where court can reach petitioner
1150 HEMINGWAY RD.
LAKE ORION, MI 48360 313-318-4052

Respondent's name, address, and telephone no.
THOMAS MARTIN DARNALL
Address and telephone no. where court can reach respondent
1136 HEMINGWAY RD.
LAKE ORION, MI 48360 UNKNOWN PHONE NUMBER

Date: NOV 25 2019
Judge: KAMESHIA D. GANT

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

THE COURT FINDS:
[ ] 2. A petition requesting an order to restrain conduct prohibited under MCL 750.411h and 750.411i and/or MCL 750.411s has been filed under the authority of MCL 600.2950a.
[ ] 3. Petitioner requested an ex parte order which should be entered without notice because irreparable injury, loss, or damage will result from the delay required to give notice or notice itself will precipitate adverse action before an order can be issued.

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

3 or more willful, unconsented acts of harassment +

5. Thomas Martin Darnall

IT IS ORDERED:
[ ] a. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to

[ ] following or appearing within sight of the petitioner.
[ ] appearing at the workplace or the residence of the petitioner.
[ ] approaching or confronting the petitioner in a public place or on private property.
[ ] entering onto or remaining on property owned, leased, or occupied by the petitioner.
[ ] sending mail or other communications to the petitioner.
[ ] contacting the petitioner by telephone.
[ ] placing an object on or delivering an object to property owned, leased, or occupied by the petitioner.
[ ] threatening to kill or physically injure the petitioner.
[ ] purchasing or possessing a firearm.
[ ] other: Third party contact

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

6. Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than $600.00.

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

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

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

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

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

Date and time issued NOV 25 2019

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

**RECEIPT FOR PAYMENT**

<table>
<thead>
<tr>
<th>FROM</th>
<th>TRACY</th>
<th>GUAIANA</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
<td>1150 HEMINGWAY RD</td>
<td>APTISTE</td>
</tr>
<tr>
<td>CITY/STATE</td>
<td>LAKE ORION</td>
<td>MICHIGAN</td>
</tr>
<tr>
<td>PHONE #</td>
<td>313-318-4052</td>
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</tr>
</tbody>
</table>

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

**IN THE MATTER OF:**

| GUAIANA V DARNALL |

**PLEADINGS**

| S C J M N O PPO PET VS OTS O DEPO SS AFF SUBP MIS |
|-----------|------|---------|---|---|---|---|---|
|           | 1 | 1 | 1 | 0 |

**SERVICE UPON:**

<table>
<thead>
<tr>
<th>FIRST NAME</th>
<th>LAST NAME</th>
<th>COMPANY NUMBER</th>
<th>STREET</th>
<th>CITY</th>
<th>SDEP</th>
<th>FEE</th>
<th>MILEAGE</th>
<th>REFUNDSERVICE</th>
<th>DATE</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>THOMAS</td>
<td>DARNALL</td>
<td>1136 HEMINGWAY RD</td>
<td>LK ORION</td>
<td>NC</td>
<td>$26.00</td>
<td>$23.95</td>
<td>$0.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

REQUESTING PRE-PAID MILEAGE: 2 YES 0 NO

**SERVE BY:**

| PPO |

RETURNED TO CUSTOMER: 04/10/19

**FEE TEXT:** FORTY NINE AND 95/100

**PROCESS SERVER LOG**

| 98 |
1. I SERVED A COPY OF

- Petition for Personal Protection Order/Stalking
- Verified Statement
- Notice of Hearing
- Personal Protection Order/Personal Protection Order Stalking
- Motion and Order to Show Cause for Violation of a Personal Protection Order
- Motion to Modify/Extend/Terminate Personal Protection Order
- Petition/Order Appoint Next Friend
- Order Modify/Extend/Terminate Personal Protection Order
- Order Deny/Dismiss Personal Protection Order
- Other

THOMAS MARTIN DARNALL

NAME OF PERSON SERVED

JVE 11/26/19 1:45

DAY, DATE, TIME

2. COMPLETE ADDRESS WHERE PERSON WAS SERVED

-24.8- 807-2040

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:

- A sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCRC2.104(A)(2)].

SPECIAL DEPUTY COOK #2194

NAME OF PERSON COMPLETING SERVICE (Type or Print)

Subscribed and sworn to before me on

Date

Signature:

County, Michigan

My commission expires:

Date

Signature:

Notary Public

COMPLETE ONLY IF YOU CAN'T FIND THE PERSON

After diligent search and inquiry, I have been unable to find and serve the respondent/petitioner. I have made the following efforts in attempting to serve process:

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)

Print full name
EXHIBIT F
February 3, 2020

To Whom it may concern,

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

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

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

By Email (lharrison@oriontownship.org)

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

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

Dear Zoning Board of Appeals:

This letter relates to the Application for Appeal (Single Family Residential) ("Application") submitted by Tracey Guaina ("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.

[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 GUAINA,

Husband and Wife,

Defendants/Counter-Plaintiffs

Case No. 2020-178816-CH

Honorable Jeffery Matis

/\ /

JAMES R. PORRITT, JR. (P23222) / PAUL H. HUTH (P31986)
Ponitt Law Firm / EMMY M. SULLIVAN (P81376)
436 S. Broadway, Suite C / Hath Lynett
Lake Orion, Michigan 48362 / 645 Griswold, Suite 4300
(248) 693-6245 / Detroit, MI 48226
(313) 965-5500

CONSENT JUDGMENT AND DISCHARGE OF LIS PENDENS

At a session of said Court held at the courthouse in the
City of Pontiac, said County and State on March 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;

[Signature]
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 ASRecorded in Liber 64, Page 7 of Plats, Oakland County Records; being More Particularly Described as Commencing at the Northeast corner of said Lot 11; Thence South 89 Degrees 53 Minutes 00 Seconds West 870.00 Feet Along the North Line if said Lot 11 to the Point of Beginning; Thence Proceeding South 89 Degrees 53 Minutes 00 Seconds West 479.90 Feet Along the North Line of said Lot 11 to the Northwest corner of said Lot 11; Thence South 00 Degrees 21 Minutes 40 Seconds West 132.00 Feet Along the West Line of said Lot 11 to the Southeast Corner of said Lot 11; Thence North 89 Degrees 53 Minutes 00 Seconds East 480.73 Feet Along the South Line of said Lot 11 to a Point; Thence North 132.00 Feet to the Point of Beginning, Subject to and Together with All Easements, Conditions, Restrictions and Agreements of Record, Inclusive of This Consent Judgment, and

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

Tax Parcel No. 09-15-201-026

Defendants’ Property:

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

Tax Parcel No. 09-15-201-028

DISMISSAL OF COUNTER COMPLAINT

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

MAINTENANCE OF PRIVATE ROAD EASEMENT

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

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

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

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

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

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

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

DISCHARGE OF LIS PENDENS

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

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

Approved as to Content
And for Entry

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

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

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

yw
CERTIFICATE OF SURVEY
CLARKSON-HENINGWAY ACRES
SECTION 15, T4N, R10E, ORION TOWNSHIP
OAKLAND COUNTY, MICHIGAN

Parcel A

Units: International Feet

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

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

Adjustment Statistical Summary

| Iterations | 2 |
| Number of Stations | 18 |
| Number of Observations | 185 |
| Number of Unknowns | 45 |
| Number of Redundant Obs | 140 |

Observation Count | Sum Squares of Residues | Error Factor
--- | --- | ---
Angles | 9 | 0.557 | 1.041
Distances | 9 | 6.890 | 1.007
Zanines | 9 | 10.388 | 1.235
GPS Deltas | 159 | 105.496 | 0.938
Total | 185 | 123.341 | 0.961

The Chi-Square Test at 5.00% Level Passed
Lower/Upper Bounds (0.393/1.117)

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

1. Terry R. Campbell, hereby certify that I have surveyed the above mapped and described property, that this map complies with section 3 (2-F), Act 132, P.A. 1970

Bearings: Clarkson-Henningway Acres

DATE: September 13, 2019
PAGE: Sheet 2 of 2
SCALE: 1" = 60'

LEGEND
- FOUND CAPPED IRON
- SET CAPPED IRON
- FOUND IRON
- FOUND CONCRETE MONUMENT

Original: Terry R. Campbell, P.S. No: 6036
10051 E. Highland Road, Suite 29 www.campbellse.com
Howell, Michigan 48843 (810) 390-1189

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Professional Surveyors

TOP SECRET
PREPARED AT THE REQUEST OF THE STATE OF MICHIGAN

112
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) [ REDACTED ]

In testimony whereof I have set my hand and placed the seal of REGISTER OF DEEDS this

day of March, 2021.

By: [ REDACTED ]

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
EXHIBIT 3
MEMORANDUM

TO: Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Coordinator

DATE: August 10, 2022

SUBJECT: Staff Report for AB-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd. For 8-22-22 meeting

This case was postponed from the July 25, 2022 ZBA meeting (minutes attached). Please review the minutes and the documents provided to you for the July 25th meeting which are part of your packet for this meeting.

The applicant has not provided any additional information for consideration.

Please call if you have any questions.
CHARTER TOWNSHIP OF ORION ZONING BOARD OF APPEALS

***** MINUTES *****

REGULAR MEETING – MONDAY, July 25, 2022 – 7:00 PM

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, July 25, 2022, at 7:00 pm at the Orion Township Municipality Complex Board Room, 2323 Jostyn Road, Lake Orion, Michigan 48360.

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

ZBA MEMBERS ABSENT:

CONSULTANT PRESENT:
David Goodloe, Building Official

OTHERS PRESENT:
Georgette Dib
Phyllis Sleight
John Tront
Bill Schmitz
Alfred Vuktilaj
Monica Carter

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

2. ROLL CALL

3. MINUTES
A. 06-27-22, ZBA Regular Meeting Minutes

Trustee Flood moved, seconded by Chairman Durham, to approve the 06-27-2022 minutes as amended changing: Item 3, paragraph 3, change “size” to “siding”; Item 3, paragraph 4, change “was he” to “would he be”; page 4, last line, change “July 27, 2022” to “July 25, 2022”.
Motion carried.

4. AGENDA REVIEW AND APPROVAL.

Trustee Flood moved, seconded by Board member Dunaskiss, to approve the agenda as presented.
Motion carried.

5. ZBA BUSINESS

A. 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. Alfred Vuktilaj introduced himself and summarized the variance request.

Chairman Durham stated that this property was part of a variance request in the past.

Board member Dunaskiss asked why a 4-foot fence would not work.

Mr. Vuktilaj stated that it is not tall enough to keep his kids safe. The high school is very close, and he pointed out the reckless and fast driving that occurs in this area. He wants the 6-foot fence to provide safety and privacy.

Board member Dunaskiss asked the petitioner about the wildlife mentioned in his application.

Mr. Vuktilaj answered he has no concerns about wildlife.

Mr. Vuktilaj provided photos to the Board members.

Vice-chairman Cook stated that he doesn’t know where the confusion occurred about getting the permit before starting. The petitioner knew he could put up a 4-foot fence without a permit.

Mr. Vuktilaj stated that he found out a 4-foot fence was allowed when the inspector visited his property and told him. The inspector told him that a 6-foot required a permit.

Vice-chairman Cook stated that usually, an approved fence is a different style of fencing than what is being put up currently. In looking at the layout, there might be a way to compromise what the applicant wants as opposed to what is being asked for.

Chairman Durham asked if the applicant hired a professional fence installer for this fence.

Mr. Vuktilaj replied he hired a local guy.

Chairman Durham asked how much is finished.

Mr. Vuktilaj replied it is half done. He asked his neighbors first and no one complained. One neighbor came to him and said she didn’t want the fence there because of the view so he did not put something on her side.

Trustee Flood stated that the applicant is allowed to put up a 6-foot fence as long as it conforms to the setback requirement. The applicant is asking for setback requirements that everyone else has to conform to. The applicant is asking the Board to waive the setback requirements. He provided details about the past actions of the Board regarding fencing. He summarized the ordinance fencing requirements. This
request is out of line with the Township requirements and the request that is being asked for is exactly what the Township is trying to avoid. The Board has to abide by the ordinance, and he is not in favor of the request.

Mr. Vuktilaj stated that if he moves the fence to the setback lines, he will have no property left and he explained.

Trustee Flood stated that the applicant has additional front yards, and this must be addressed in the ordinance. He is not happy that this has not been addressed by the Township. He pointed out a 6-foot fence that is part of the Roundtree Subdivision and it meets ordinance.

Board member Walker asked when the applicant bought the property.

Mr. Vuktilaj replied 3 months ago. He reiterated his safety concerns regarding his children.

Board member Walker asked if the school and the neighbors were there when he purchased the house.

Mr. Vuktilaj replied yes.

Board member Walker reiterated that the applicant could put up a 4-foot fence.

Mr. Vuktilaj replied that he knows that.

Board member Walker stated that he doesn’t see a practical difficulty.

Mr. Vuktilaj reiterated his safety concerns regarding his children and a 4-foot fence.

Chairman Durham asked for public comment.

Ms. Phyllis Sleight stated that she doesn’t know why the applicant has a concern with his children playing in the yard. The neighbor of the applicant has small children, and they play in the yard. Sometimes the neighbors play in the yard, and she doesn’t mind. The fence that is being put up is an eyesore and she does not approve of it. She told him this before he put it up and she commented that a 4-foot fence would be sufficient.

Mr. John Stein stated that when he moved in, in December 2020, there was already a 6-foot privacy fence between the neighbor’s house and his house. There is no sight line issue and visually, he does not have a problem with the request. The applicant took the old fence down and put up the new fence to replace it.

No further public comment was heard.

Chairman Durham commented that he doesn’t care for the compound look of the fence being installed by the applicant. He also has a problem with the variance request at the corner because of corner clearance and thinks that this would be a mistake. He described the options for the applicant.

Board member Dunaskiss stated that the neighborhood is a place where the children grow up knowing what it means to live in a neighborhood and she described aspects of this including respecting neighbors, etc. The fencing to keep the children in the yard is a reasonable request but can be accomplished with a 4-foot fence. Even 6-foot fences have gates and if a child wanted to, he or she can exit using the gate. Since the applicant moved into a neighborhood, he needs to respect the idea of the neighborhood and accept the fencing that is allowed. This case does not present an unusual circumstance.

Trustee Flood asked Building Official Goodloe if the applicant’s request is denied, does it mean the fence would need to be removed?
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – July 25, 2022

Building Official Goodloe replied yes or cut it down to 4 feet.

Chairman Durham asked the applicant how he would like to proceed.

Mr. Vuktialj asked if the request is not granted, can he plant trees inside the 4-foot fence to create privacy?

Board member Walker answered yes. He asked the Board members about the corner clearance request. Chairman Durham asked the applicant if he had spoken to the Fire Department regarding the request.

Mr. Vuktialj replied that they did not have a problem with it.

Trustee Flood stated that he read in the Fire Department report that they were concerned with the gate and having access to the property.

Mr. Vuktialj replied that he was going to install a gate that was pushed in and out so it would be easy.

Building Official Goodloe provided details regarding the corner clearance.

Chairman Durham asked if the request was based on the applicant’s drawings or an inspection.

Building Official Goodloe answered that it was based on the applicant’s drawings and information provided to the Planning Department. He showed the applicant the corner clearance request that is being asked for.

Board member Walker stated that if the applicant postponed it and figured it out and agreed to cut down the fence to four feet, he would not have to come back.

Vice-chairman Cook stated that there would still be confusion on the corner clearance. If the Board votes on it now, it is a yes or no. If it is postponed, then the applicant can meet with the Building Official and they can decide about the corner clearance.

Chairman Durham explained the applicant’s options to him. He stated that they could postpone until August 22, 2022.

Trustee Flood stated that if it is postponed, it does not have to be re-advertised and re-noticed.

Board member Dunaskiss moved, and Trustee Flood supported, in Case # AB-2022-25, Armando Vuktialj, 2005 Bald Mountain Rd., 09-24-100-007, that the petitioner’s request for five variances be postponed at the request of the applicant until August 22, 2022.

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

B. AB-2022-27, J.S. Brown Road, LLC (Mattress Firm Wall & Ground Sign), 851 Brown Rd., 09-33-351-036

Chairman Durham read the petitioner’s request as follows:

The petitioner is seeking 2 variances from Sign Ordinance 153 – Zoned BIZ
1. A variance for 1 additional wall sign above the 1 allowed for a total of 2 wall signs totaling 117.26-sq. ft.
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-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007, I move that the petitioner’s request for:

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 Trail (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 Trail (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).

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-2022-25, Armando Vuktilaj, 2005 Bald Mountain Rd., 09-24-100-007, I move that the petitioner’s request for:

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 Trail (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 Trail (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).

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:
Meeting Documents from July 25, 2022 ZBA Meeting
MEMORANDUM

TO: Zoning Board of Appeals  
FROM: Lynn Harrison, Planning & Zoning Coordinator  
DATE: July 14, 2022  

The applicant is seeking to put a 6-ft. fence around the perimeter of the property. As indicated on the Application, the property owner and applicant is Armando Vuktilaj and he has given permission to Alfred Vuktilaj, who resides at the property, permission to represent the case.

The property has 3 front yards – Bald Mountain Road to the west and Starlight Trl to the north and west.

There is also a road right-of-way easement to the west of the property line along Bald Mountain Rd which is indicated by the gray shaded area on one of the color renderings. It is noted in the Definitions section of Zoning Ordinance #78 that the front yard setback is measured from the road right-of-way line which is reflected in the language for variance #1. All other road right-of-way shown on that rendering is outside of the applicant’s property.

The applicant is asking to be 3-ft. off all other property lines.

The applicant is also asking to install a gate across the driveway near the center of the property off Bald Mountain Rd. (the applicant has indicated that what appears to be a driveway at the northwest corner along Bald Mountain Rd will not be used). To add the gate where proposed will require a corner clearance variance (item #5) as structures are not allowed to impede into the area formed at the corner intersection of a public right-of-way and a driveway. The Fire Marshal has inquired as to how this gate will lock and upon the applicant’s response, had no concerns.

Please note that as part of your packet are the minutes from the December 12, 2016 ZBA meeting where a similar request, from the property owner at the time, was made. The motion was to grant the variances however it failed 2-3. FYI – in the minutes there is mention of a fence along the south property line – that was the result of a variance that was granted to the property owner of 2025 Bald Mountain Rd in 2016.
Please call if you have any questions.
event of non-performance by Menard’s for any reason, there will have to be some slope changes and other things done in the pit before any other permit can be addressed, and there may have to be some coordination of property to the west to be graded to where it needs to be.

Vice Chairman Durham amended the motion, Chairman Yaros re-supported to add to the motion – and any permit fees that are needed.

Roll call vote was as follows: Walker, yes; Koscielczynski, yes; Durham, yes; Flood, yes; Yaros, Yes Motion Carried 5-0

B. AB-2016-41, Trust of Rose Bressman, 2005 Bald Mountain Road, Sidwell #09-24-100-007

Chairman Yaros read the petitioner’s request as follows:

The petitioner is requesting two variances from Zoning Ordinance No. 78, Article VI, Section 6.07, R-1: a 10 ft. variance from the required 10 ft. side yard setback to construct a 6 ft. fence on the side property line (south) and a 40 ft. variance from the required 40 ft. front yard setback to construct a 6 ft. fence on the front property lines (north, northeast and east).

Ms. Rose Ann Bressman, 2005 Bald Mountain Road and 2001 Starlight Trail, presented.

Chairman Yaros clarified that Ms. Bressman owns both houses and the proposed fence will be between the two. Ms. Bressman said, yes, and explained that Starlight Trail is actually a 30 ft. easement which had to be named for postal reasons. Starlight Trail only access two pieces of property - hers and the Sleight residence at 2013 Starlight Trail. Ms. Bressman stressed that there can be no entry to Bald Mountain Road from Starlight Trail; she is able to enter it now because she owns the two aforementioned properties. Once she sells the property on Starlight Trail, she will not be able to access her Bald Mountain home from Starlight Trail.

Ms. Bressman said there is a lot of vegetation there that is undesirable and in order to get any privacy in the back of the Bald Mountain house, she needs the proposed fence. Being that a 6 ft. fence in a front yard has to be setback 40 ft. from the property line, it will take away 30 ft. from Starlight Trail and subject her to a 40 ft. sacrifice of property that no one could use. She wants the privacy fence instead of planting bushes or trees because it will take a long time for them to grow to the size that will give her some privacy.

Chairman Yaros clarified that Ms. Bressman is asking for is a fence between two properties that she owns. Ms. Bressman said, correct. Ms. Bressman explained that she doesn’t plan on keeping both houses, she has to sell one of them. Chairman Yaros asked what her hardship was - having to look at her other house? Ms. Bressman responded that the Bald Mountain Road house faces Round Tree subdivision and they have a privacy fence, the Bald Mountain house looks at the privacy fence and the rooftops of houses in the subdivision. As the owner of Starlight Trail, would like to do the same thing, would like to look at a privacy fence as opposed to looking at the neighbors’ backyard essentially.

Board Member Koscielczynski asked if she wanted the privacy fence so that she could get ready to sell one of the houses and not own both. Ms. Bressman said she does plan on selling the house on Starlight Trail. She also noted there is temptation to utilize the back of the Bald Mountain house because of the pavement that currently exists - that would not be a possibility once she sells the Starlight Trail house. She would not be using Starlight Trail anymore, she would access the Bald Mountain house from the front entrances.

Vice Chairman Durham clarified that Ms. Bressman is looking at occupying, at some point, the house on Bald Mountain Road. Ms. Bressman gave a brief history of how she ended up with the two houses
and clarified that the Bald Mountain house is her destination. It was Vice Chairman Durham's opinion that the house on Bald Mountain Road looks like it has some issues regarding maintenance, the one on Starlight Trail looks like a nice place that she could live in successfully for an extended period of time - he didn't understand why she would want to live in the house that is most "needy". Ms. Bressman agreed that a house that was built in 1831 is labor intensive, but her decision to live there is strictly an economic one. If she sells the Bald Mountain house, she would have to pay a Capital Gain tax because Starlight Trail is her primary residence. She also noted that she has several children and was not sure if one of them eventually might want the Bald Mountain house.

Vice Chairman Durham then commented if he was looking at the Bald Mountain house from Bald Mountain Road, if the fence is put in, he would essentially be looking at a compound. The fence is going to extend down to the south property line - the one that was an issue with the neighbor here recently. Ms. Bressman said, regarding the neighbors fence that just received a variance, she only wants two small sections in that area - to get it into the trees. The way the neighbor's fence looks now, it sticks out, if she puts in what she wants, it would make that fence look like it belongs there.

Chairman Yaros clarified he was looking at information that showed a section 50 to 70 ft., a section 65 ft., and a section that could be up to 80 ft., what are the two small sections she referred to? Ms. Bressman said there are also two 8 ft. long sections adjacent to Mr. Ashman's fence (that was approved at the 10/24/16 meeting) that she is asking for.

It was noted that one of the variances Ms. Bressman is requesting is where her property line touches the Starlight Trail easement.

Board Member Walker said that Ms. Bressman had indicated she didn’t want to plant trees because it will take too long for them to grow and would rather just put the fence in. Ms. Bressman responded that there is quite a bit of vegetation there already, if she gets the approval for the fence, she would be removing all the vegetation (the lilacs) on the Bald Mountain side and whoever buys the Starlight Trail house can do what they want with the vegetation on that side. Ms. Bressman then said she doesn’t intend to have the fence look like the one at Round Tree which was put in haphazardly. It was Board Member Walker’s opinion that putting in some arborvitaes would be better than having to look at either side of a fence.

Board Member Koscielny commented that she understands the vegetation issue, putting new shrubs in would be expensive and would be a lot of work and maintenance, but this gets a little complicated; what would be less expensive. Ms. Bressman said that either would be expensive especially because she would have to buy larger tress to get the privacy.

Chairman Yaros asked how much fence does she actually want? The Board needs more specific numbers. Ms. Bressman explained one section would be 80.78 ft., it would cut across the corner which would be 65.06 ft., go up the lot line which would not be more than 65 ft. between the school and her. These sections would be along the Starlight Trail easement. Then the two 8 ft. sections at either end of Mr. Ashman's fence.

Chairman Yaros asked if there was anyone here that wanted to speak to this matter?

Phyllis Sleight, 2013 Starlight Trail, said she doesn’t have a problem with Ms. Bressman putting up a fence however she would like to ask that there be a few stipulations. One, that the fence be off the lot line. It was her opinion that Ms. Bressman was crowding the easement making it difficult for her to get to her home. Secondly, if Ms. Bressman puts in the fence, Ms. Sleight wanted to make sure that Ms. Bressman trims around it at least along the Starlight Trail side. Currently Ms. Bressman does not trim around her trees or her house. Ms. Sleight also commented that Ms. Bressman has some issues with the cleanliness of her yard. If Ms. Bressman puts up the fence, she doesn’t want that to stop the
clean up process and hide what is in her yard. Ms. Sleight noted that Ms. Bressman received some violations that have not yet been completed, she wants to make sure the Township continues to monitor that. Currently on the Bald Mountain house there is a back door where there is a driveway that goes up to it, if there is going to be a gate there, she would like the gate to open into Ms. Bressman’s yard and not cut into the easement. If driving to her home down Starlight Trail and that gate should be open, she wouldn’t know it until it was too late. And, if the fence goes along Starlight Trail between the Bald Mountain house and the school, it cannot affect the placement of her mailbox. The mailbox has been there for 20 years and she does not want to move it for the fence. This is why she is asking that the fence not be allowed to be put on the property line - the issue with the mailbox and the crowding the easement which she needs to get to her property. It was Ms. Sleight’s opinion that Ms. Bressman had already adjusted the property line for the Starlight Trail house making it difficult for an emergency vehicle to get to her without driving in her yard. She didn’t believe the fence should be any closer to the property line than what is required.

Vice Chairman Durham asked Building Official Goodloe about the ordinance violations, would those violations prohibit occupancy of the house until they are cleared up? Building Official Goodloe said, no.

Chairman Yaros responded that according to the plans, Ms. Bressman wouldn’t be starting the fence for about the first 100 ft. of Starlight Trail so Bald Mountain Road shouldn’t be affected at all. Ms. Bressman noted that Ms. Sleight’s mailbox is in the Starlight Trail easement.

Chairman Yaros said that what he saw staked, if that is truly the property line, didn’t see where that would be a problem with the easement. He then asked Ms. Bressman if she intended to put in a gate? Ms. Bressman said, no.

Vice Chairman Durham asked Ms. Bressman what her timeline was for selling one of the houses and moving into the other? Ms. Bressman said she wanted to sell the one this past spring. Vice Chairman Durham commented that if he was in her situation, he wouldn’t want to put up anything that would block the view of the other property until it was sold. Because she lives next to the high school, he found it hard to believe the vacant house didn’t attract kids.

Ms. Bressman responded that neither of the houses are vacant. She is at the Bald Mountain house all day and then sleeps at the Starlight Trail house, her primary residence.

Trustee Flood figured out the total linear feet of the proposed 6 ft. high fence Ms. Bressman is requesting is 226.84.

Moved by Board Member Koscielny, seconded by Chairman Yaros that in the matter of ZBA case #AB-2016-41, Trust of Rose Bressman, 2005 Bald Mountain Road, Sidwell #09-24-100-007; the petitioner is requesting two variances from Zoning Ordinance No. 78, Article VI, Section 6.07, R-1: a 10 ft. variance from the required 10 ft. side yard setback to construct a 6 ft. fence on the side property line (south) and a 40 ft. variance from the required 40 ft. front yard setback to construct a 6 ft. fence on the front property lines (north, northeast and east) which would equal 226.84 linear feet; be granted because the petitioner has demonstrated that practical difficulties exist in this case which she has set forth facts that show that compliance with the strict letter of the ordinance would unreasonably prevent her from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome, based on the following: one home was built in the 1800s and the other home is newer, there is a lot of old vegetation and Ms. Bressman is trying to set the tone for selling one of the properties and this would help; granting the variance requested would do substantial justice to the petitioner as well as to other property owners in the area or that a lesser relaxation than that relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners based on the following: it was her opinion the fence
would do a lot of good around the property and get it ready to sell and does agree that putting in shrubs would be a hardship; the petitioner’s plight is due to the unique circumstances of the property based on the following: one house is older than the other; and the problem has not been self-created.

Board Member Koscielzynski amended the motion, Chairman Yaros re-supported to add that a previous variance was granted for the south property line, that the petitioner will not narrow the road into Starlight Trail with the fence according to where the stakes were placed.

Board Member Koscielzynski asked that Ms. Bressman try to work with her neighbors and to take of her yard. She understands that Ms. Bressman is older but to at least try.

Ms. Sleight asked if she could speak.

Chairman Yaros responded that there is a motion on the floor however did let her speak.

Ms. Sleight, 2013 Starlight Trail, commented that this motion would allow Ms. Bressman a 40 ft. variance on the front side of the property and 30 ft. variance on the back - that would be narrowing the easement. Ms. Bressman has already cut into the easement from the Starlight side and now it would be narrowed even more by only allowing 30 ft. on the back side. Why is Ms. Bressman being allowed to get the extra 10 ft. on the front of the property but not on the back of the property for her fence line? Chairman Yaros said he believed there wouldn’t be any narrowing and it didn’t show any narrowing on the plans. Ms. Sleight said there is a 30 ft. variance for the easement in the back, a 40 ft. variance for the easement in the front on Bald Mountain, she wanted to know why? Chairman Yaros explained there are different setbacks, the fence will be on the property line – in the front you have to be 40 ft. away, on the side you have to be 10 ft. Ms. Sleight then said that if the fence is put on the property line, she would be driving right along it when driving to her home. Ms. Sleight said that Ms. Bressman has already obscured the easement by taking part of the asphalt out. Chairman Yaros asked Ms. Sleight if she saw where Ms. Bressman put the stakes? Ms. Sleight said she had not. Chairman Yaros said the stakes indicate that the fence will be about 6 ft. off the road. Ms. Sleight said that might be the case on the side but not in the back, the back being the area between Ms. Bressman’s Bald Mountain house and her Starlight Trail house – the road that runs between the two is what her concern is, Ms. Bressman would be allowed to but the fence directly on the property line. Ms. Sleight is asking that the fence not go directly on the property line.

Roll call vote was as follows: Koscielzynski, yes; Flood, no; Walker, no; Durham, no; Yaros, yes Motion failed 2-3.

C. AB-2016-42, Justin Brantley, 1110 Indian Lake Road, Sidwell #09-01-201-021

Chairman Yaros read the petitioner's request as follows:

The petitioner is requesting two variances from Zoning Ordinance No. 78, Article VI, Section 6.07, R-3: requesting a 27.83 ft. variance from the required 30 ft. front yard setback (west) and a 3.5 ft. variance from the required 30 ft. front yard setback (north) to allow a staircase to remain 2.16 ft. from the west property line and 26.5 ft. from the north property line.

Mr. Brantley, 1110 Indian Lake Road, presented.

Chairman Yaros asked what the purpose was for the stairs? Mr. Brantley explained that his wife wanted another way for their son to get to their house from the bus stop. Their driveway is on Indian Lake Road and their property is odd – half is a large “bowl” and half a large hill. Going down the hill at his son’s age will be difficult. The idea was that his bus stop will either be on the far end of the horseshoe of Hidden Valley or the side nearest to the school on Hidden Valley. Instead of having him walk
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: Armando Vuktilaj
Address: 2005 Bald Mountain Rd, Lake Orion, MI, 48360
Phone: 347-638-6487, Cell: 248-214-0788, Fax: 
Email: armendovuktilaj@gmail.com

PROPERTY OWNER(S)
Name(s): Armando Vuktilaj, Alfred Vuktilaj
Address: 2005 Bald Mountain Rd, Lake Orion, MI, 48360
Phone: 347-638-6487, Cell: 248-214-0788, Fax: 
Email: armendovuktilaj@gmail.com

CONTACT PERSON FOR THIS REQUEST
Name: Alfred Vuktilaj, Phone: 248-214-0788, Email: armendovuktilaj@gmail.com

SUBJECT PROPERTY
Address: 
Sidwell Number: 09-24-100-007
Total Acreage: 0.906 Length of Ownership by Current Property Owner: 2 Years, 2 Months

Does the owner have control over any properties adjoining this site? 
Zoning Ordinance Allowance/Requirement Deviation requested
RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request. I am requesting to put 6 foot fencing around my property because I have 4 children and there is wildlife on the land next to me as well as roads closely.

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. Our property borders high school, and safety concerns for that reason, young teenagers tend to speed down that road.

3. If the appeal is granted, please explain how the variance will not be materially detrimental to the public health, safety and welfare, or to other properties or improvements in the Township. If granted this request will not negatively affect the public health, safety or other properties or improvements in the township.

4. Explain how the request is consistent with other properties in the immediate area, please site examples if possible: The request is consistent with other properties because everyone has a fence surrounding their property.

5. Describe how the alleged practical difficulty has not been self-created. Moving the fence 10 feet in from the property line on the North line will interfere with septic.

6. The topography of said land makes the setbacks impossible to meet because: Does not apply.

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. I need the fence to prevent my kids from running into the street.
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: ___________________________ Date: 6-2-22

Print Name: Armando Vulatilej

Signature of Property Owner: ________________________ Date: 6-2-22

Print Name: Armando Vulatilej

If applicable: I, the property owner, hereby give permission to Alfred Vulatilej 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: ________________
Zoned R-1

AB-2022-25 Armando vuKtilaj, 2005 Bald Mountain
09-24-100-007 1.906 acres

3 front yard setbacks: Bald Mountain Rd & Starlight Trl.

Front yard setback required 40-ft-
Side yard setback required 10-ft

Right of way

There is road easement along Bald Mountain Rd & Starlight Trl - therefore the front would
have to be either on the road right of way
or 3-ft away as the applicant indicated
he wanted from the property lines

Setback from Bald Mountain Rd to the west - 40'

Note 2016 case where similar variances
were denied.

6/23/22
Per conversation with Jeff Williams,
the driveway gate can not impede the
access drive and has to be only on
the applicants property. Also, applicant
should be made aware putting a gate
there could slow down the fire department
should there be a fire.
Farm Buildings: Any building or structure other than a dwelling, moved upon, maintained, used or built on a farm which is essential and customarily used on farms of that type for the pursuit of their agricultural activities.

Fast Food Restaurant: See Restaurant, Fast-Food.

Fence: Any permanent partition, structure or gate of definite height and location erected as a dividing marker, barrier or enclosure.

Fence, Obscuring (Walls): A structure constructed of a permanent, durable material and of definite height and location to serve as an obscuring screen in carrying out the requirements of this Ordinance.

Filling: The depositing or dumping of any matter onto, or into the ground, except common household gardening and general farm care.

Flood Plain: The area adjoining a river stream, water course or lake subject to a one hundred (100) year recurrenceinterval flood, as delineated by the Federal Insurance Administration of the Department of Housing and Urban Development "Flood Hazard Boundary" maps. The flood plain shall include the stream channel and the overbank area (the floodway) and the fringe areas of the floodway. No building shall be constructed in a flood plain.

Floor Area: See Structure Area.

Floor Area, Residential: For the purpose of computing the minimum allowable floor area in a residential, one-family dwelling unit, the sum of the horizontal areas of each story of a building shall be measured from the exterior faces of the exterior walls. The floor area measurement is exclusive of areas of basements, unfinished attics, attached garages, or space used for off-street parking, breezeways, enclosed and unenclosed porches, and accessory structures.

In the case of two-family or multi-family dwellings, the minimum allowable floor area of a dwelling unit is the horizontal floor area of the dwelling unit measured to the interior face of the dwelling unit's perimeter walls, excluding hallways and common areas.

Foster Child: A child unrelated to a family by blood or adoption with whom he or she lives for the purposes of care and/or education.

Front Setback for a Structure: In determining the placement of a structure on a lot, the front building setback line shall be measured from the future right-of-way line as provided in the map of Road Right-of-Way Widths within the Charter Township of Orion Master Plan or from the acquired highway easement whichever is greater. This provision relates solely to the measurement made for locating a structure on a lot, and is not intended to limit use of the property in other respects. Unless and until the area between the existing and future right-of-way lines is acquired or dedicated for public use, such area shall in all respects, be considered to be private property for private use. Thus, for determining density of use and other calculations relating to the layout and substantive use rights of the property, the existing right-of-way line shall be applicable (or highway easement, whichever is greater). (added 07.16.18)

Garage, Private: An accessory building designed or used for the storage of not more than three (3) motor vehicles owned and used by the occupants of the building to which it is accessory. A garage may be either attached to or detached from the principal structure.

Garage, Storage: Any premises except those herein defined as private garage, used exclusively for the storage of self-propelled vehicles, and where such vehicles are not repaired.

Garbage: All wastes, animal, fish, fowl or vegetable matter incidental to the preparation, use and storage of food for human consumption, spoiled food, dead animals, animal manure and fowl manures.

Gasoline Service Station: A place for the dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles, together with the sale of motor fuels directly to users of motor vehicles, together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair. (Also see Automobile Repair Garage & Service Center.)
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 theretofore existing building.

K. Administrative Nonconformities.

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

L. Change in Tenancy or Ownership.

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

M. Special Exceptions.

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

Section 27.02 – Buildings, Structures, and Uses

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

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

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

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

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

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

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

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.

Revised 05/21/20

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3. Lots that are peculiar in shape, topography, or site configuration.

G. Corner Clearance.

No fence, wall, structure, or planting shall be erected, established or maintained on any corner lot which will obstruct the view of drivers in vehicles approaching the intersection. Fences, walls, structures, or plantings located in the triangular area described below shall not be permitted to exceed a height of thirty (30) inches above the lowest point of the intersecting road. The unobstructed triangular area referred to above may consist of either:

1. The area formed at the corner intersection of two (2) public rights-of-way lines, the two (2) sides of the triangular area being thirty (30) feet in length measured along abutting public rights-of-way lines, and the third side being a line connecting these two (2) sides, or

2. The area formed at the corner intersection of a public right-of-way and a driveway, two (2) sides of a triangular area being ten (10) feet in length measured along the right-of-way line and driveway line and the third side being a line connecting these two (2) sides.

Section 27.04 – Parking and Loading Regulations

A. Off-Street Parking.

1. Scope and Application.

   a. Scope of Requirements. The off-street parking provisions of this Ordinance shall apply as follows:

      i. For all buildings and structures erected and all uses of land established after the effective date of this Ordinance, off-street parking shall be provided as required by the regulations of the districts in which such buildings or uses are located. However, where a building permit has been issued prior to the effective date and diligently pursued to completion, parking facilities in the amounts required for the issuance of said building permit may be provided in lieu of any different amounts required by this Ordinance.

      ii. If the intensity of use of any building, structure, or premises is increased through the addition of dwelling units, gross floor area, seating capacity, or other units of measurement specified herein for required parking, additional off-street parking shall be provided for such increase in intensity of use.

      iii. Whenever the existing use of a building or structure is changed to a new use, parking facilities shall be provided as required by this Ordinance for the new use, regardless of any variance which might have been in effect prior to the change of use.

   b. Existing Parking Facilities. Off-street parking facilities in existence on the effective date of this Ordinance and located on the same lot as the building or use served shall not hereafter be reduced below, or if already less than, shall not be further reduced below, the requirements for a similar new building or use under the provisions of this Ordinance.

      An area designated as required off-street parking shall not be changed to any other use unless and until equal facilities are provided elsewhere in accordance with the provisions of this Ordinance.

   c. Additional Off-Street Parking. Nothing in this Ordinance shall be deemed to prevent voluntary establishment of off-street parking facilities to serve any existing use or land or buildings, provided that all regulations herein governing the location, design, and operation of such facilities are adhered to.

   d. Submission of Plot Plan. No off-street parking facilities shall be constructed unless a building permit is first obtained from the Building Department. Any application for a building permit shall include a plot plan showing any off-street parking facilities proposed in accordance with the provisions of this Ordinance. Calculations for required parking shall be submitted on the plot plan or site plan and shall indicate the proposed use, building square footage and required number of parking spaces. Whenever a
Ok, we have no other concerns and or questions at this time.

Thanks

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

Jeff, regarding the proposed gate across the applicant’s driveway – he has indicated that - “It will lock with the latch so you can open from the outside and from inside. It’ll be only kids safety but anybody can open it except kids”
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: August 10, 2022
SUBJECT: Staff Report for AB-2022-28, Georgette Dib, 563 Oakland St. – For 8-22-22 ZBA Meeting

This case was postponed from the July 25, 2022 ZBA meeting (minutes attached). Please review the minutes and the documents provided to you for the July 25th meeting which are part of your packet for this meeting.

To clarify, the applicant was provided with an aerial view of the property known as a plot plan obfrom PropertyGateway. As pointed out at the July 25th meeting, this is not a survey and only provides an idea of where property lines are. Those lines can be off as they are obtained by a plane flying over and taking pictures which a grid is laid over to come up with the plot plan. I apologize if there was any misunderstanding between the applicant and the Planning & Zoning Specialist.

The applicant has not provided any additional information for consideration.

At your discretion, you may want to specify in the motion, if to approve, where you agree the 6-ft. fence along the east property line should end. Otherwise, the applicant would be able to run the fence along the east property line up to the front yard setback.

Please let me know if you have any questions.
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: in fact, this will be very helpful for people to find this location, especially going west to east along Joslyn Road. This signage in this area is needed.

5. The granting of this variance will not impair an adequate supply of light or air to the adjacent properties, it would not unusually increase congestion on the public streets, in fact, it will assist the congestion in this area. There is also not going to be an increase of fire or endanger public safety and is not going to reasonably diminish or impair established property values within the surrounding area, in fact, it may raise them, or in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

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

C. AB-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023

Chairman Durham read the petitioners request as follows:

The petitioner is seeking 2 variances from Zoning Ordinance #78 – Zoned R-3 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. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.
2. A 10-ft. rear yard setback variance from the required 10-ft. to erect a 6-ft. privacy fence 0-ft. from the rear property line south.

Ms. Georgette Dib and Mr. John Tront introduced themselves. Ms. Georgette Dib summarized the variance request for a 6-foot fence on the property line because the neighbors’ dogs go over the current fence.

Chairman Durham asked if the neighbors try to control their dogs.

Ms. Dib replied sometimes. She has seen both of the dogs jump over the fence.

Chairman Durham asked if animal control has been involved.

Ms. Dib replied yes, and she did submit the report.

Trustee Flood asked who owns the fence on the south side.

Ms. Dib replied two neighbors. This fence runs all along the rear yard. She stated that she wants the fence on the side.

Trustee Flood asked about the string and stakes that are out on the property.

Ms. Dib stated that they are locating the fence in front of the air conditioner. She confirmed that the utilities would also be on the outside of the fence.

Mr. Tront confirmed that the utilities could be serviced.
Ms. Dib confirmed that the neighbors have a fence on the property’s west side; it is a 6-foot fence.

Board member Dunaskiss asked about the fence on the neighbor’s property that has the dogs.
2. A 12-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 18-ft. from the road right-of-way.

and, 1 variance from Zoning Ordinance #78; Zoned B1Z
3. A 22-ft. front yard setback variance from the required 40-ft. for a ground sign to be 18-ft. from the front property line (Brown Road).

Mr. Bill Schmitz, representing J.S. Brown Road and Mattress Firm, introduced himself to the Board.

Chairman Durham asked if Mattress Firm was a franchise.

Mr. Schmitz replied yes, it is a corporate sign set up.

Chairman Durham described the property as a small parking lot, a building that sits, back and a narrow driveway.

Mr. Schmitz concurred.

Trustee Flood stated that the east side faces Joslyn Road. The applicant is asking for an additional sign to be on the building facing Brown Road to the south. Someone traveling on Brown Road will not see the sign. The Planning Commission made the applicant put a berm in front of the property and this is why the monument has to be moved. He commented that the applicant would need to stay behind the safety path.

Chairman Durham asked for public comment.

No public comment was heard.

Trustee Flood moved, and Board member Walker supported, in the matter of AB-2022-27, J.S. Brown Road, LLC (Mattress Firm Wall & Ground Sign), 851 Brown Rd., 09-33-351-036 in which the petitioner is seeking 2 variances from Sign Ordinance 153 – Zoned B1Z: 1. A variance for 1 additional wall sign above the 1 allowed for a total of 2 wall signs totaling 117.26-sq. ft., 2. A 12-ft. road right-of-way setback variance from the required 30-ft. for a ground sign to be 18-ft. from the road right-of-way and, 1 variance from Zoning Ordinance #78; Zoned B1Z for a 22-ft. front yard setback variance from the required 40-ft. for a ground sign to be 18-ft. from the front property line (Brown Road) 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 petitioner does show the following practical difficulties: the applicant needs the signage facing Brown Road so he can have vision not only from Joslyn Road on this busy corridor which makes common sense and since the ordinance is restricted to one, the applicant has to come before the Zoning Board of Appeals to get this permission. Another practical difficulty is that a berm was required to be installed and the applicant has to move the monument sign out to where it can be seen along the busy corridor. It will not impede line of sight and will still be in line with most of the signage along Brown Road and it will be behind the safety path.

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 applicant is having the same problems as other facilities that have been built in this area in getting their signage closer to the road to be seen and also have signage on the building to be seen.

3. The variance is also necessary for the preservation and enjoyment of a substantial property right posed by others in the same zone or vicinity: the applicant needs the same variance granted as other businesses that have been granted variances along that corridor.
Ms. Dib answered that the neighbors have a chain link fence all of the way around their property.

Board member Dunaskiss asked what the recommendation was from animal control.

Ms. Dib stated that animal control went to the house, and nobody answered, and they left a note on the neighbor's door. When she requested a copy of the report, she recalled the report details.

Trustee Flood asked what would keep the dog from jumping the fence and coming around the fence and going through the gap.

Ms. Dib stated that they also want the 6-foot fence for privacy because the neighbors are combative when they are out in their yard. They have had the police called because of leaves. The trees and leaves that are the problem are not even in their yard. The utility pole is on the neighbor's property. If they can put the fence on the property line, they would avoid ever going to that side of the fence.

Trustee Flood asked about the house building.

Mr. Tront provided details about the house construction.

Board member Dunaskiss stated that her concern with the 6-foot fence is the stockade look. The dog is still a problem for the neighborhood.

Ms. Dib described the topography of the property which allows the dogs to easily jump the fence on their side.

Chairman Durham asked if the neighbors that they have a problem with have issues with other neighbors.

Ms. Dib replied she does not know.

Mr. Tront and Ms. Dib explained the issues with the neighbors.

Board member Dunaskiss asked if the neighboring house was a rental property.

Ms. Dib replied yes.

Board member Dunaskiss asked if the property owner was aware of the problem with the dogs.

Ms. Dib answered that she did not know.

Chairman Durham asked if they were keeping paper copies of animal control documents.

Ms. Dib replied yes.

Chairman Durham stated that there is a need that will solve the petitioner's issues but wonders if this solves all of the issues.

Ms. Dib commented on privacy issues with the neighbors.

Vice-chairman Cook stated that his concern is the existing 4-foot fence now becomes a step to clear the new 6-foot fence and they would still get into the yard. Also, the dog jumping the fence and coming around the side also points out that it may solve the petitioner's problem but doesn't solve the problem for the neighborhood.

Ms. Dib stated that she knows it is an issue for the neighborhood.
Vice-chairman Cook reiterated that eventually, they will figure out how to jump the fence. He asked about the date of the report.

Ms. Dib answered that they do not hang out outside anymore. They have avoided the confrontation.

Chairman Durham asked if untrained dogs were more sight jumpers.

Vice-chairman Cook stated that they will start to bark more, and they will go back to their old habits of clearing the 4-foot fence.

Board member Walker asked if animal control keeps records on these dogs.

Ms. Dib answered when she called, she could only get the report of when she called.

Chairman Durham asked for public comment.

Ms. Monica Carter stated that she is the neighbor with the dogs. She does not have a problem with the fence. She has a problem with how far back they want to put the fence onto their property. According to the survey, there will be a 4-foot gap between the current fence which has numerous holes in it. She is concerned that her grandson will get caught between the fences. Her fence is on the property line according to the survey. The stakes that they have are 4 feet from the property line. She provided pictures to the Board members and explained them.

Chairman Durham asked if she still has the dog that has been talked about.

Ms. Carter replied that it is her daughter’s dog. The dog is now 9 years old and no longer jumps the fence. There is another dog on another street that looks like this dog that is roaming the neighborhood.

Ms. Allison Carter confirmed that this other dog roams the neighborhood.

Chairman Durham stated that it is a potential lawsuit every time the dog gets out; he asked Ms. Carter if she was aware of this.

Ms. Carter replied yes; most of the time the dogs are in the house. They use shock collars for the dogs. They confirmed the presence of another dog.

Ms. Allison Carter stated that her dog is a pit bull mix dog, and she doesn’t jump the fence.

Ms. Carter confirmed the poor nature of the existing fence. She owns the home and has lived there for 19 years. She provided details about the history of the inhabitants of the house next door. Mr. Tront has owned the home for 7 years with no yard and now they want to put up a privacy fence on the property line, but it is not. She has a concern with security.

Chairman Durham commented that he doesn’t know why someone would give away 4 feet of their property.

Ms. Carter replied that there are two trees that the petitioner has to cut down.

Board member Dunsaskiss asked how many reports have been made on the dog.

Ms. Carter replied only the ones that have been made by the neighbors. She described issues that they have had with the neighbors.

Vice-chairman Cook stated that there is a utility pole there.
Ms. Carter replied that there is enough room between the utility pole and the fence that is currently there for the privacy fence, and she explained.

Vice-chairman Cook asked who owns the fence that Ms. Carter is complaining about having holes.

Ms. Carter replied that she doesn’t know. It was there when she moved in.

Vice-chairman Cook asked if they ever had a conversation about planting arborvitae.

Ms. Carter replied no, and she would not have a problem with plantings.

Board member Walker commented on the complexities of this case. This appears to be more of a neighborhood issue rather than a fence issue and suggested that arborvitae might be a solution.

Board member Dunaskiss stated that the petitioner is asking to put the fence on the property line, but Ms. Carter says it is not on the property line.

Ms. Carter confirmed the survey that she has.

Building Official Goodloe stated that much of this is irrelevant. They are looking to see if there is a practical difficulty to build a fence.

Trustee Flood stated that the request is to put the fence on the property line but now there is a dispute about the property line’s location. He does not want to grant a variance that is not correct.

Building Official Goodloe stated that the location of the property line needs to be solved in civil court. They are just determining if it can be located on the property line.

Trustee Flood stated that this is why they might want to require a survey. They do not want to see a 4-foot fence next to a 6-foot fence. He doesn’t think that this is fair to keep addressing this.

Ms. Carter stated that she doesn’t have a problem with it being on the property line because then she can take the broken one down.

Chairman Durham asked Mr. Tront if he got a survey.

Mr. Tront replied that he does not have a $2,000 survey.

Ms. Dib stated that Monica Carter does not live at the property; she may own it, but her daughter lives there.

Chairman Durham confirmed that the Property Gateway aerial does not clearly define property lines. If Ms. Dib doesn’t have a survey, how does she know where the property line is?

Ms. Dib replied that they are going off what they were given by the Township.

Chairman Durham replied that until she has paper in her hand that clearly shows where her property boundaries are, they cannot discuss it.

Ms. Dib commented that she does not need a permit to plant arborvitae.

Building Goodloe answered that this is correct.

Ms. Dib asked how she knows where the property line is for planting if she doesn’t go and get a survey done.
Chairman Durham asked that he doesn't know how she would know.

Ms. Dib asked if she would have to take a fence down if it was found to be on her property. The neighbors on the other side did this and she is fine with it.

Trustee Flood clarified that the GIS aerial is not a legal document. They need to get a survey to prove it. This is just a satellite view and is just an estimate.

Chairman Durham asked the Board members if they were satisfied with the documents in front of them.

Board members discussed the variance request and the documentation provided.

Trustee Walker asked if the arborvitae would take the place of the fence.

Petitioner answered no.

Board member Dunaskiss asked if they wanted the arborvitae and the fence.

Petitioner replied that she wants both and they explained.

Building Official Goodloe commented that you cannot park an RV in a side yard setback.

Chairman Durham commented on the fact that they do not know where the property line is.

Building Official Goodloe reviewed the measurements with the petitioner and provided them with approximate dimensions that they can use. He suggested that they could also find the metal stakes to know for sure.

Chairman Durham suggested that they postpone the case until exact information is received.

Vice-chairman Cook stated that the petitioner came up with different solutions including arborvitae.

Ms. Dib replied that they would still have the issues.

Vice-chairman Cook stated that there is still a vote that needs to take place for a 6-foot fence even if they find the stakes.

Petitioner asked for a postponement until August 22, 2022.

Trustee Flood stated that he will support postponement. If the petitioner finds that their neighbors are correct, and it is the property line where the cyclone fence is located, he likes the idea of removing the fence and not having a fence next to a fence. He hopes that the neighbors can work together. The Township has to take control of the problem. He suggested that they have a legal agreement as to who will take care of the fence and who will maintain it. The only way to make a record of it is to put it on the deed.

Ms. Carter reiterated that she does not have a problem with the fence. She does not know if there are going to be stakes to locate the property line. She stated that having two fences will look ridiculous and asked who was going to maintain arborvitae.

Chairman Durham stated that the neighbor always has remedies outside of this room and that would be through the court system.

Board member Dunaskiss moved, and Trustee Flood supported, in the matter of Case AB-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023 that the petitioner’s request for variances from
Charter Township of Orion Zoning Board of Appeals Minutes
Regular Meeting – July 25, 2022

Zoning Ordinance #78 – Zoned R-3 be postponed until August 22, 2022, at the request of the applicant.

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

D. AB-2022-26, Proposed Amended ZBA By-Laws

Trustee Flood commented on an edit that needed to be made.

Trustee Flood moved, and Chairman Durham supported, to adopt the amended ZBA By-Laws that were adopted May 16, 2022, and amended per the date drafted June 15, 2022, and forward to the Township Board for approval.

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

6. PUBLIC COMMENTS

7. COMMUNICATIONS

8. COMMITTEE REPORTS

9. MEMBER COMMENTS

Chairman Durham stated that he appreciated the Board’s support.

Trustee Flood stated that he will put the fencing ordinance on an upcoming Township Board meeting’s agenda so they can work toward a resolution.

Board members and Building Official Goodloe commented on the fence ordinance.

10. ADJOURNMENT

Moved by Trustee Flood, seconded by Chairman Durham, to adjourn the meeting at 8:54 pm. Motion carried.

Respectfully submitted,

Erin A. Mattice
Recording Secretary
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-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023, I move that the petitioner’s request for:

2 variances from Zoning Ordinance #78 – Zoned R-3

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. to erect a 6-ft. privacy fence 0-ft.
   from the side property line to the east.

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

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-2022-28, Georgette Dib, 563 Oakland St., 09-11-316-023, I move that the petitioner’s request for:

2 variances from Zoning ordinance #78 – Zoned R-3

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. to erect a 6-ft. privacy fence 0-ft. from the side property line to the east.

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

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:

__________________________________________________________________________________________________________________________________________________________

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__________________________________________________________________________________________________________________________________________________________
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:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
Meeting Documents from July 25, 2022 ZBA Meeting
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Coordinator
DATE: July 14, 2022
SUBJECT: Staff Report for AB-2022-28, Georgette Dib, 563 Oakland St.

The applicant is seeking to put a 6-ft. fence along the property line to the east about ¾’s of the way up towards the front property line. At the point the fence is proposed to end along the property line, it will cross over towards the house and end at the house (please see the PropertyGateway picture).

At your discretion, you may want to specify in the motion, if to approve, where you agree the 6-ft. fence along the east property line should end. Otherwise, the applicant would be able to run the fence along that east property line up to the front yard setback.

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: Georgette Dib
Address: 563 Oakland St
City/State/Zip: Lake Orion, MI 48362
Phone: 586-484-4845 Cell: Fax:
Email: georgettedib@outlook.com

PROPERTY OWNER(S)
Name(s): John Tront + Georgette Dib
Address: 563 Oakland St
City/State/Zip: Lake Orion, MI 48362
Phone: 586-484-4845 Cell: 586-889-0216 Fax:
Email: jtron1984@gmail.com

CONTACT PERSON FOR THIS REQUEST
Name: Georgette Dib Phone: 586-484-4845 Email: georgettedib@outlook.com

SUBJECT PROPERTY
Address: 563 Oakland St, Lake Orion, MI 48362
Sidwell Number: 09-11-316-023
Total Acreage: 0.33 Length of Ownership by Current Property Owner: 7 Years, 8 Months

Does the owner have control over any properties adjoining this site? NO
Zoning Ordinance Allowance/Requirement 10 feet Deviation requested

Page 2 of 4
Case #: ________________

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request. We would like to install a 6 foot privacy fence that is on the property line.

2. Describe how the request results from special or unique circumstances particular to the property, which are not applicable to other properties in the surrounding area. The neighbors dog jumps their fence and runs onto our property when we are outside with our dogs. The neighbors also harass us when they see us outside.

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: It will not be detrimental as it does not impact any buried lines and it is not in the way of any utility lines or poles.

4. Explain how the request is/is not consistent with other properties in the immediate area, please site examples if possible: I have seen multiple homes in the neighborhood that have privacy fences installed on or even over the property line.

5. Describe how the alleged practical difficulty has not been self-created. Our dogs to jump the neighbors 4 ft chain link fence into their yard. Also, we do not harass our neighbors or even speak to them about trees or leaves as they do to us.

6. The topography of said land makes the setbacks impossible to meet because: It would leave too much space and still allow their dogs room to jump the chain link fence. It would leave a large enough space for their dogs to hop over. It would also create more animosity with the neighbors complaints of issues with weeds and leaves. She has already called the twp about us leaving the space too open and complained about it.
Case #: ____________________

8. Have there been any previous appeals involving this property? If so, when? ____________ N/A ____________

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: ____________________________________________________________________________ Date: 1/24/2022

Print Name: ___________________________________________________________________________________

Signature of Property Owner: ____________________________________________________________________ Date: 1/24/2022

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: ____________
AB-2022-28, Georgette Dib, 563 Oakland
09-11-316-023  Zoned R-3  .330 acres

Sideyard setbacks for fence are 10'
rear yard setback for a fence is 10'

Applicant is asking for the fence to run 3/4 of the way along the property line to the east and then going in towards the house.

will need variances from the property line to the east and from the rear property line at the fence will end at the rear property line.
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 theretofore existing building.

K. Administrative Nonconformities.

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

L. Change in Tenancy or Ownership.

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

M. Special Exceptions.

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

Section 27.02 — Buildings, Structures, and Uses

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

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

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

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

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

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

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

Here is a statement to support our need for the variance and also the report from animal control. However, on the report it states a gentleman by the name of the Dave Nordstrom called in and that is his dog, we are not aware of this person is. The house belongs to Monica Carter and the tenant is her daughter, Alison Carter. The dog has belonged to them for years, prior to Alisons boyfriend moving in with her. It seems odd that if that is who called in, would do so and claim the dog is his. Let me know if there is anything else I need to add to these documents. I should have one more statement I will be sending you if it is not too late to do so by Monday, or over the weekend. Thank you.

Regards,

Georgette Dib
563 Oakland St.
Statement from Cheryl Tront regarding issues with a dog that resides at, 551 Oakland Street.

Over the past year and half, I have had a few incidents with the black Pitbull known as Remie, jumping the fence and roaming in front of the houses. I was in my backyard with my mother’s small dog on a leash when Remie jumped the fence, I grabbed my mother’s dog trying to shield it from the Pitbull jumping up in the air trying to see the dog.

Another occasion I was working in the yard and again the dog jumped the fence and I thought it was coming towards me but it passed me and ran to the street where an older gentlemen was walking his dog when I began yelling to the man to warn him, the owner of the house where the dog resides opened her front door and called the dog back in I told her that the dog scares me to death and she replied that the dogs jumps the fence all the time.

I have witnessed people trying to walk their dogs on Oakland St and were frightened by the Pitbull running up on them. One time I witnessed a mother walking with her children and medium size dog on a leash when the Pitbull ran up on them scaring the kids and the woman they started screaming in the street for help when a good Samaritan riding his bike from the opposite direction jumped off his bike with his fist up in the air prepared to punch the Pitbull if it came any closer. He repeatedly was yelling trying to scare the dog away this went on for a couple of minutes. The homeowner never came out to retrieve the dog. The dog ended up jumping back into its own yard.
## Case Report

### Administrative Details:

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### Action Requested:

- [ ] Arrest warrant
- [ ] Review only
- [ ] Search warrant
- [ ] Forfeiture
- [ ] Juvenile petition
- [ ] Other

### People:

#### NORDSTROM, DAVE (O-OTHER) (X-MISCELLANEOUS) [A1FULTZJ (00421)]

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#### TRONT, JOHN (O-OTHER) (C-COMPLAINANT) [A1FULTZJ (00421)]

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<tr>
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<th>Last Name</th>
<th>First Name</th>
<th>Middle Name</th>
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<tr>
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### Narrative:

CFS Narrative By: A1FULTZJ (00421)
I was dispatched for a dog complaint. I responded to Oakland in Orion Twp. to make contact with the caller John Tront.

John stated his neighbor's dog, which is a black/white, Pit Bull mix, jumped the fence into his backyard. The dog ran up to John's dog, picked his dog up and slammed him to the ground. The dog jumped back over the fence. John added there is no breakage of the skin on John's dog.

I also responded to Oakland in order to make contact with the dog's owner. No one was home so I secured a contact slip to the door. I spoke with the dog's owner Dave Nordstrom via the telephone on 12/21/20. Dave stated his dog did jump the fence, he denies his dog slammed the neighbor's dog to the ground or that the dog has ever attacked anyone. Dave stated he has been taking the dog out on a leash and has ordered a shock collar for some training so the dog won't attempt something like this again.

Dave's dog Remy is a female spayed, black/white, Pit Bull that is current #21-38739.
### EVIDENCE LIST

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<tr>
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The Prosecuting Attorney's Office certifies that (*) property belonging to the crime victim must be retained by the Law Enforcement Agency for trial purposes in lieu of photograph or other means of memorialization pursuant to 1985 PA 87.
Hi Lynn,

I have one more statement to add if possible. Thank you.

Regards,
Georgette Dib
563 Oakland St.
Lake Orion, MI 48362
Nicole Tront
4210 Rochester Rd, Apt 101
Royal Oak, MI, 48073

July 17, 2022

To whom it may concern,

On more than one occasion, I have personally witnessed the black Pitbull belonging to the neighbor of John Tront and Georgette Dib, jump over the backyard fence. On one specific occasion, my back was facing the neighbor’s backyard with the Pitbull as I was opening the side door of John and Georgette’s garage that is located in their backyard. When I initially entered John and Georgette’s backyard to get to their garage, I noticed their neighbors had their Pitbull outside in their fenced-in backyard. Within a few seconds of having my back facing the backyard containing the Pitbull, so I could unlock the side door of the garage, I began to hear the growling of a dog that was directly behind me. When I turned around, the neighbor’s Pitbull was in John and Georgette’s backyard, about five feet from me and continuously growling. It was immediately apparent that this Pitbull jumped over the metal fence quickly and quietly to sneak up behind me in a threatening manner. As I began to yell at the dog, out of fear that it was going to attack me, the dog ran back towards its owner’s fenced-in backyard and easily jumped over their fence to get back onto the correct property. This incident demonstrated the Pitbull’s ability to quickly jump over the property fence, which is currently the only line of protection for the residents and any visitors of 563 Oakland Street.

Should you need any additional information, I can be contacted by phone (586-713-8683).

Sincerely,

Nicole Tront 07/17/22
MEMORANDUM

TO: Zoning Board of Appeals  
FROM: Lynn Harrison, Planning & Zoning Specialist  
DATE: August 11, 2022  
SUBJECT: Staff Report for AB-2022-34, BACA Systems

The applicant requested a site plan amendment to include screening of an existing roll off dumpster adjacent to the east side of the building and to add a 400-sq. ft. screened outdoor storage area, also on the east side of the building. The plan went to the Planning Commission on June 15, 2022 (minutes and Planner’s review dated June 3, 2022 attached).

The plan was denied because it requires the proposed variances. As you can see, a variance is needed for the dumpster to be located in a side yard – Zoning Ordinance #78 requires dumpsters to be located in the rear yard of properties zoned Industrial Park (IP). And, that the dumpster needs to be enclosed with masonry brick-type walls with an opaque lockable gate. A variance is also being requested to omit this requirement.

Other variances are needed for the proposed outdoor storage area to be located in the side yard rather than in the required rear yard and to omit the required chain-link fencing and screening required.

Please let me know if you have any questions.
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-2022-34, BACA Systems, 101 Premier Dr., 09-35-451-001, I move that the petitioner’s request for:

4 variances from Zoning Ordinance #78 – Zoned IP

Article XVIII, Section 18.03(1)(1)(2)

1. A variance to allow a covered trash receptacle (dumpster) to be located in the side yard, north, rather than the required rear yard.
2. A variance to omit the required masonry brick type walls and the opaque lockable gate around the covered trash receptacle (dumpster).

Article XXVII, Section 27.19 (B)(2)(3)(4)

3. A variance to allow accessory/outdoor storage to be located in the side yard, east, rather than the required rear yard.
4. A variance to omit the required 8-ft. chain link fencing and screening around the accessory/outdoor storage.

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-2022-34, BACA Systems, 101 Premier Dr., 09-35-451-001, I move that the petitioner’s request for:

4 variances from Zoning Ordinance #78 – Zoned IP

Article XVIII, Section 18.03 (I)(1)(2)

1. A variance to allow a covered trash receptacle (dumpster) to be located in the side yard, north, rather than the required rear yard.

2. A variance to omit the required masonry brick type walls and the opaque lockable gate around the covered trash receptacle (dumpster).

Article XXVII, Section 27.19 (B)(2)(3)(4)

3. A variance to allow accessory/outdoor storage to be located in the side yard, east, rather than the required rear yard.

4. A variance to omit the required 8-ft. chain link fencing and screening around the accessory/outdoor storage.

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

1. The petitioner did not demonstrate Practical Difficulty because:

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

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

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

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

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

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

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

5. Or, in any other respect, impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
Charter Township of Orion Zoning Board of Appeals
Application for Appeal - 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: BACA Systems
Address: 101 Premier Drive City/State/Zip: Orion Township
Phone: 248-791-3060 Cell: 248-881-4344 Fax: 
Email: arusso@bacasystems.com

PROPERTY OWNER(S)

Name(s): LION INVESTMENT GROUP - PREMIER, LLC
Address: 5131 PACIFIC HWY BLDG 200 City/State/Zip: Farmington Hills, MI 48331
Phone: (248) 461-3430 Cell: Fax:
Email: more@frammanagement.com

CONTACT PERSON FOR THIS REQUEST

Name: Andrew Russo Phone: 248-791-3060 Email: arusso@bacasystems.com

SUBJECT PROPERTY

Address: 101 Premier Dr

Total Acreage: 3.70 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

Version 4/21/22
Case #:  

COMMERCIAL VARIANCE  

1. Describe the nature of the request.  
Request to allow outdoor storage in side yard without screening. Allow dumpster/compactor in side yard without screening  

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.  

as discussed in the original zoning meeting there are some circumstances that have lead to explosive growth of our business and we are looking at all options to grow and thrive in Orion Township.  

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 are ultimately asking to keep everything the way it has bee. there has been no negative impacts that we are aware of to anyone so continuing to do so would not appear to cause any to start happening.  

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

Other buildings on the street also have dumpsters on the side and front as there is not access to the back for many of the other buildings.  

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

there is no other logical place to have these items. we really don't have a back side as we face a major road on the side of the building  

6. The topography of said land makes the setbacks impossible to meet because:  
the back of the building has a massive slope up to the next building and is not accessible by vehicles  

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 dupster has been here since we have been in the property there have been no complaints by any neighbors and overall does not stand out in the industrial area.
Case #: ____________________________

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

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

If/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: ____________________________ Date: 6/27/2022

Print Name: ____________________________

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

Signature of Property Owner: ____________________________ Date: 6/27/2022

Print Name: ____________________________

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: ____________________________
when existing off-street parking, drives and/or structures are located within the setback area. The Planning Commission may, at their discretion, modify or waive certain landscaping requirements in accordance with the considerations outlined in Section 27.05. (amended 01.30.86, 09.16.93)

E. Sign Regulation. All signs shall comply with the standards set forth in Orion Township Sign Ordinance No. 153. (amended 10.08.98, 02.21.06)

F. Lighting Regulations. (amended 04.27.00)

1. A lighting plan shall be submitted with all site plans as set forth in Section 27.11 of this Ordinance. All other Zoning Ordinance regulations shall apply unless otherwise noted in this Ordinance.

2. Exterior site lighting shall be fully shielded and directed downward to prevent off-site glare.

3. Site illumination on properties adjacent to residential properties shall not exceed 0.3 foot-candle along property lines, or 1.0 foot-candle along non-residential property lines. Parking lot lighting shall be governed by Section 27.11.

G. Public Road Access.

1. Any industrial park developed or proposed in the Industrial Park District shall have an internal public road having a minimum right-of-way of at least sixty (60) feet.

2. The internal public road shall have direct access onto an existing or proposed major thoroughfare having a thoroughfare having a right-of-way of at least one hundred twenty (120) feet.

H. Utilities. All utilities servicing the business structure may be required by the Planning Commission to be buried underground.

I. Covered Trash Areas.

1. Covered trash receptacles, surrounded on three (3) sides by masonry brick-type walls one (1) foot higher than the receptacle shall be provided in the rear yard of the building or principal use structure.

2. The fourth side of the trash receptacle enclosure shall be equipped with an opaque lockable gate that is the same height as the masonry brick wall.

3. The Planning Commission may, at their discretion, waive the requirements for a covered trash receptacle as described herein, if, after considering the nature of the operation being proposed, the Commission determines that the amount of trash generated can be adequately disposed of without use of an outside trash receptacle. (amended 01.30.86)

J. Loading and Unloading.

1. The loading and unloading area shall not be located where it will not interfere with parking or obstruct ingress and egress.

2. The loading and unloading area shall be located in the rear or side yard. However, it may be located in a front yard area only when the loading area is of a drive-through design as approved by the Planning Commission.

3. Truck wells shall not be located in the front yard area.

4. All loading and unloading areas shall be in conformance with the requirements set forth in Section 27.04.

K. Performance Guarantee Requirement. The Planning Commission shall require a performance guarantee to be deposited with the Township Clerk in accordance with the provisions set forth in Section 30.09, to ensure that necessary and required improvements proposed on the site plan will be completed. (amended 08.15.16)
F. Shadow Flicker. The application for a wind energy system shall include a shadow flicker analysis, unless administratively waived by the Building Department, demonstrating locations of and expected duration of shadow flicker between sunrise and sunset over the course of a year, along with the measures the applicant will take to eliminate or mitigate the effects of shadow flicker on adjacent or nearby affected residential properties.

G. Utility Connection. The applicant shall submit evidence that the utility company has been informed of the customer's intent to install an inter-connected customer-owned wind energy generator and that such connection has been approved. Off-grid systems shall be exempt from this requirement.

Section 27.19 – Outdoor Storage (added 02.01.16, amended 07.16.18)

A. Outdoor storage of supplies, equipment, vehicles, materials, or similar items may occur as a principal use or on the same site as an accessory to a principal use only as provided for in each individual district’s use matrix.

1. Principal Use. If a principal use, the storage area shall comply with the front and rear yard setbacks of the zoning district. Outdoor yards for the storage of materials, equipment and vehicles are permitted by right when located one hundred (100) feet or more from the property line of a residentially zoned or used parcel. When located within one hundred (100) feet of the property line of a residentially zoned or used parcel, outdoor storage yards may be permitted as a special land use and shall be permitted only upon special land use review and approval as set forth in Section 30.02 and upon meeting the landscaping standards of Section 27.05

2. Accessory Use. An incidental storage area located outside of the principal building which does not exceed ten percent (10%) of the principal building area, one thousand (1,000) square feet, or eight thousand (8,000) cubic feet, whichever is less shall be permitted. The outdoor storage shall be incidental to the existing principal building. The accessory storage area shall be located in the rear yard and screened from view of any public right of way.

B. Outdoor storage either as a Principle Use or Accessory Use shall be subject to the following regulations in addition to any specific regulations listed within each district’s use matrix.

1. Outdoor storage shall not exceed eight (8) feet in height. The outdoor storage of any product or material greater than eight (8) feet in height shall require special land use approval in accordance with Section 30.02.

2. Outdoor storage shall be limited to the rear yard area or as otherwise permitted.

3. Outdoor storage areas shall be completely fenced with a chain link fence at least eight (8) feet high.

4. Outdoor storage areas shall be screened from view from all roadways. This screening shall be either opaque screening or evergreen landscape screening in accordance with the provisions set forth in Section 27.05. The Planning Commission may waive or modify these requirements for fencing and screening upon determining that:

   a. Outdoor storage will be adequately screened from view by existing or proposed buildings, trees or shrubs, or other physical features.

   b. Screening would serve no useful purpose due to similar uses located on adjacent land.

5. The outdoor storage is allowed only when such storage is specifically shown on the site plan as approved by the Planning Commission. The site plan shall illustrate or specify the following information, at minimum:

   a. The exact boundaries of proposed outdoor storage.

   b. Surfacing and drainage details.
June 3, 2022
Orion Township Planning Commission
2525 Joslyn Road
Lake Orion, MI, 48360

Site Plan Modification
BACA Systems

Case Number: PPC-2022-23
Address: 101 Premier Drive
Parcel ID: 09-35-451-001
Area: 3.70 AC
Applicant: BACA Systems

Plan Date: 05/18/2022
Zoning: Industrial Park (IP)
Reviewer: Matt Wojciechowski, Rod Arroyo

Dear Planning Commission Members:

We have reviewed the above application and site plan; a summary of our findings is below.

Source: Oakland County Property Gateway
Project Summary
The applicant is proposing site plan modifications to the existing building that include screening of existing roll off dumpster and compactor that are adjacent to the east side of the building. A 400 sf screened outdoor storage area is also proposed on the east side of the building approximately 27' from the dumpster and compactor area.

Revisions & Additional Information
1. The proposed location of the outdoor storage is within the side yard and is not permitted unless a variance is obtained from the ZBA; Storage is permitted in this area if within an enclosed building.
2. The area shown for proposed storage appears to eliminate parking spaces. The plans should be updated to indicate the number proposed to be removed.
3. Applicant shall provide details for “PR. PRIVACY GATE (TYP)”
4. Applicant shall add the lot coverage calculation to the site plan.

IP District Standards. Accessory storage areas.

<table>
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<th>Section</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>18.01 Use Matrix</td>
<td>Outdoor storage as an accessory use, in accordance with Section 27.19</td>
<td>Not Compliant; see 27.19.A.2 (pg. 3)</td>
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<tr>
<td></td>
<td>The area shown for proposed storage appears to eliminate parking spaces. The plans should be updated to indicate the number proposed to be removed</td>
<td></td>
</tr>
<tr>
<td>18.02 Footnotes to Use Matrix</td>
<td>3. One [accessory] storage building for materials or equipment related to the principal use. However, building material outlets may be permitted, subject to Planning Commission approval.</td>
<td>Storage is permitted in this area if within an enclosed building</td>
</tr>
<tr>
<td>18.03 Required Conditions</td>
<td>1. Covered trash receptacles, surrounded on three (3) sides by masonry brick-type walls one (1) foot higher than the receptacle shall be provided in the rear yard of the building or principal use structure.</td>
<td>The applicant is proposing this directly adjacent to the building</td>
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<td></td>
<td>2. The fourth side of the trash receptacle enclosure shall be equipped with an opaque lockable gate that is the same height as the masonry brick wall.</td>
<td>Applicant shall provide details for “PR. PRIVACY GATE (TYP)”</td>
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<tr>
<td>18.04 Area and Bulk Requirements</td>
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## General Provisions (Article 27)

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<td>A 2.</td>
<td>An incidental storage area located outside of the principal building which does not exceed ten (10%) of the principal percent building area, one thousand (1,000) square feet, or eight thousand (8,000) cubic feet, whichever is less shall be permitted. The outdoor storage shall be incidental to the existing principal building. The accessory storage area shall be located in the rear yard and screened from view of any public right of way.</td>
<td>The proposed location of the outdoor storage is within the side yard and is not permitted without a variance from the ZBA.</td>
</tr>
</tbody>
</table>

Outdoor storage either as a Principal Use or Accessory Use shall be subject to the following regulations in additional to any specific regulations listed within each district’s use matrix.

<table>
<thead>
<tr>
<th>B 1.</th>
<th>Outdoor storage shall not exceed eight (8) feet in height.</th>
<th>The proposed screening is 6’ high; no height limits are listed on the plan to ensure materials are not stacked higher.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Outdoor storage shall be limited to the rear yard area or as otherwise permitted.</td>
<td>Side yard outdoor storage is not permitted.</td>
</tr>
<tr>
<td>3.</td>
<td>Outdoor storage areas shall be completely fenced with a chain link fence at least eight (8) feet high</td>
<td>Block enclosure is proposed.</td>
</tr>
<tr>
<td>4.</td>
<td>Outdoor storage areas shall be screened from view from all roadways. This screening shall be either opaque screening or evergreen landscape screening in accordance with the provisions set forth in Section 27.05. The Planning Commission may waive or modify these requirements for fencing and screening upon determining that:</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Outdoor storage will be adequately screened from view by existing or proposed buildings, trees or shrubs, or other physical features.</td>
<td>6’ block wall is proposed.</td>
</tr>
<tr>
<td>b.</td>
<td>Screening would serve no useful purpose due to similar uses located on adjacent land.</td>
<td></td>
</tr>
</tbody>
</table>

The outdoor storage is allowed only when such storage is specifically shown on the site plan as approved by the Planning Commission. The site plan shall illustrate or specify the following information, at minimum:

<table>
<thead>
<tr>
<th>5.</th>
<th>The exact boundaries of proposed outdoor storage</th>
<th>Shown as 10’ x 40’ (400 sf)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Surfacing and drainage details.</td>
<td>Not shown</td>
</tr>
<tr>
<td>b.</td>
<td>Screening details</td>
<td>Offset Block Panel Design proposed</td>
</tr>
</tbody>
</table>
### Lapeer Road Overlay District Article XXXV

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>35.04 Development Standards</td>
<td></td>
</tr>
<tr>
<td>Outdoor Storage shall be located at least five hundred feet (500) feet from a residential zoning district. Outside storage located along the Lapeer Road right-of-way shall be setback at least fifty (50) feet and shall be screened with landscaping and/or fencing in accordance with Section 27.05 (A)(S) and subject to all the regulations contained within Section 27.19 with the exception of the distance to residential zoning district provided for in this Section.</td>
<td></td>
</tr>
</tbody>
</table>

*This standard does not apply as the storage is not proposed adjacent to the Lapeer Road ROW; the standards of 27.19 do not permit outdoor storage in the proposed area*

---

Staff will be available to discuss this review at the next Planning Commission meeting

Respectfully,

Giffels Webster

Rodney L. Arroyo, AICP
Partner

Matt Wojciechowski, AICP
Senior Planner
A. PPC-22-23, BACA Systems Site Plan Modification, located at 101 Premier Dr., (Sidwell #09-35-451-001),

Chairman Reynolds asked the applicant to state his name and address for the record and to give a brief overview of their presentation.

Mr. Andrew Russo representing BACA Systems 101 Premier Dr. the applicant presented.

Mr. Russo stated that they have been in the building since 2018 and they have outgrown the building. They had dumpsters outside since they have been there, and with the compactors, since they moved into the building. They slowly took over more and more of the building and now with the dumpsters outside, they found out that the site plan did not have it originally. They have outgrown the building to where they have to store some trash outside, they are looking at moving buildings. They have purchased land in Orion Township to build a new manufacturing building of approximately 100,000-sq. ft. on Brown Rd. So, for the time being, until they are able to build that building, they are looking to get a site plan modification to allow the dumpsters on the side as well as some outdoor storage.

Planner Wojciechowski read through his review date stamped June 3, 2022.

Engineer Landis read through his review date stamped June 6, 2022.

Chairman Reynolds said there was a review from the Fire Marshal with no explicit comments. He added that they received a Public Service review, WRC, and they also had a site walk done.

Vice-Chairman Gross asked why on the side yard and not in the rear yard? Mr. Russo replied that if they look at the actual building there is 49-ft. on the rear there is no way to actually have a truck, like a garbage truck, to put a dumpster in the back, or even access the side. It is 49-ft., and it is an embankment that goes up because there is a hill where it is going in. The next building above is about a 20-ft. elevation increase over that 49-ft. There is no actual way to put a dumpster in the back.

Vice-Chairman Gross asked about the outdoor storage on the side as opposed to in the rear? Mr. Russo replied said they need to have forklift access to the outdoor storage, so there is no way to put that in the back without trying to go through a bunch of earth moving and wasn’t sure exactly if that was possible because there is a utility easement back there. There are a lot of high-transmission powerlines that run along the rear of the building.

Chairman Reynolds said he did the site walk on this, keep in mind it is on a corner lot too, so by definition they technically have that side yard to side yard condition. It is technically the rear to Lapeer, but their address is Premier, so it is the side yard.

Chairman Reynolds said he didn’t have any major comments on this, obviously, it is a thriving business in their community, and trying to make something right. He asked if there were any issues with addressing their ordinance as it relates to trash enclosures, and gates, all the comments that their professional consultants came up with? Mr. Russo replied that they were looking for it to be Dura-Crete precast walls, they are located in Warren, and they actually make them. They were going to do that rather than trying to do mason walls from the ground up because this doesn’t impact the water flow because they can have them raised off of the ground so water can flow naturally. He added that he believed the gate they were going to do is going to be galvanized metal and then a Trex type of composite wood privacy gates, those are what they had quoted from them.
Vice-Chairman Gross stated procedurally since this requires a variance, he believed they had to deny this site plan and then it goes to the Zoning Board of Appeals, and if the Zoning Board of Appeals approves it, it in effect approves the site plan. Chairman Reynolds said correct.

Mr. Russo asked if this lives with the building, then in perpetuity of the site plan change? Chairman Reynolds replied yes.

Mr. Russo stated they were planning on moving within a year and a half, but they are getting a site plan change, and questioned if that lives with it infinitely? Chairman Reynolds replied correct, so in order to break the ordinance requirement they have to seek a site plan modification, and because it doesn’t adhere to the ordinance that is why they are going to the Zoning Board of Appeals.

Mr. Russo said they are trying to leave the building to move to build another building on Brown Rd.

Chairman Reynolds said that if they were to go back to the way it was before that still is also allowed. What they are applying for is the ability to have storage outside, their dumpster enclosures, and their technical side yard.

Mr. Russo stated that the dumpsters have been there for five years, so if they were to forgo any outside storage. They were trying to move into a bigger building in the same Township.

Planning & Zoning Director Girling said that this whole issue came up with a fire inspection. So, it was the Fire Marshal that had an issue with the configuration out there. If the applicant is asking to withdraw his request for outdoor storage and everything that he wants to do meets the ordinance and doesn’t necessitate a change in site plan that is fine but what was there before and they say five years he didn’t know, she is not ordinance enforcement or the Fire Department that visited. What was there if it didn’t meet the ordinance, they cannot let them continue on. What is in the plan here is exactly what it looks like today if they go there. They are approving what is in the plan but didn’t like what it was today. Chairman Reynolds replied no, it doesn’t follow the ordinance as it sits right now. What they are applying for is to gain permission to actually do what was done there previously. It doesn’t mean that it can’t go back to anything in the side yard but to have a dumpster enclosure and outdoor storage specifically, that needs to seek a variance. They are not the only ones whom this occurred that they have been asked to come back and get legitimate approval for.

Mr. Russo asked if they could apply to not have to put the enclosure around it because this is a lot of money, it is $45,000 for an enclosure. When they leave the building, the enclosure still stays there, and the new tenant may or may not need a compactor and a roll-off and now they have infinitely long mason walls installed. That is the bigger thing, for $45,000 they can put better landscaping on Brown Rd., there are a lot of things that they can do with $45,000.

Planning & Zoning Director Girling stated that if they are already going to the Zoning Board of Appeals an additional variance could be sought to ask to not screen the outdoor storage. She stated that no one has ever asked, and she had no idea their success rate.

Chairman Reynolds said that their ordinance whether it is in the side yard or not asks for trash to be provided within an enclosure. Whether they seek an additional variance from ZBA that is up to them.

Mr. Russo asked if it was possible to get a temporary variance? Chairman Reynolds replied no, there isn’t a temporary one. There could be a request made to the ZBA to not have a trash
enclosure. He asked if they need to make that within their motion. They are asking if they get approval for outdoor storage and a dumpster in the side yard, they are also asking in addition to what they have seen this evening, no enclosure. They would have to make that part of the motion, correct? Planning & Zoning Director Girling believed that their motion would be to be denied, go to the ZBA for XYZ, and if those are granted then perhaps the plans are approved with the few things that are missing. If they go to the ZBA for XYZ and only get X & Y they might have to come back with the plan reflecting on how they are going to put in Y. Because if he is asking for a variance to not screen it and the ZBA says no they can have their dumpster in the side yard and they will not give them variance to not screen their outdoor storage then they have no choice but to come back and show the screening. Their plan is not going to add any screening to it because that was a requirement that they are not showing.

Mr. Russo asked if the building already had a variance for it in the side yard as it stands today because the enclosure that was on the original site plan was built which was still in the side yard. He didn’t know if there was a variance that it could be on the side yard and that covers the side yard as a whole. Planning & Zoning Director Girling said she could research it, she felt that they would have researched it to this point but will double-check that. If there is already a variance that has been granted on this property allowing a dumpster on the side, and it depends on the motion, if it was a dumpster in the side located “right here” is different than a dumpster, anywhere on the side.

Mr. Russo stated that the site plan originally has it there and this site plan was approved when the building was built. Planning & Zoning Director Girling said it could be a different ordinance the ordinance could have been amended since that time but would research it for him. Mr. Russo said he was just wondering because he didn’t know how it works. They could say it is the side yard and covers the side yard or if it was a variance for the exact location.

Chairman Reynolds said that the Planning staff would be happy to look back at historical records to give them the findings of the motion when it was made.

Planner Wojciechowski stated that the plan up there was not the plan that they reviewed. This plan shows a chain-link fence with slats, the plans they have shows a proposed pre-cast mason wall. He didn’t know what else was different. Typically, they would like to know if the site plan was going to change.

Mr. Alan Panley 3835 Buckingham Ave. Berkley, MI. He stated that the only difference is the chain-link fence is replaced with a pre-cast masonry wall.

Chairman Reynolds said that with the submitted plan, obviously, there is some discrepancies or suggestion that the plan they are seeing up on the screen is slightly different. They are going to go with the plan that was reviewed.

Planner Wojciechowski said that obviously they would have come a little more prepared if they would have known that they were going to be changing. The Planning Commission does have the ability to waive screening for outdoor storage, but that ordinance envisions it being in the rear yard. He would have to look a little deeper into if the ZBA is granting a various for outdoor storage do they know it is in the side yard does that then come back to the Planning Commission. He didn’t have the answer for that right now, they only reviewed the plans that were submitted.

Chairman Reynolds stated that they are looking for outdoor storage and a dumpster enclosure in the side yard. He asked if they are also asking if that enclosure can be permitted and not be screened? Mr. Russo said he would like to have four things, the dumpster on the side, outdoor
storage on the side, no enclosure on the outside storage, and no enclosure on the dumpster. If there are four separate things then if one gets shot down, then they have to build an enclosure around the one.

Chairman Reynolds stated that he would be comfortable with no enclosure if it was just a small period of time, temporary.

Secretary St. Henry said these are extenuating circumstances, their plans are to move to a larger facility, they are a longtime Orion corporate entity. He has no problem with granting, or at least being comfortable with no enclosures on either of them, for a year and a half, if that is how long they can get the facility up and running, more power to them.

Mr. Russo stated that they signed on the land in April and as soon as they can get plans through, actually the same group, to get plans submitted and approved to build the other building they want to move out. It is tight when they don't have space to move around, they are as eager to move as they can be.

Moved by Vice-Chairman Gross, seconded by Commissioner Walker, that the Planning Commission denies the site plan approval for PPC-22-23, BACA Systems Site Plan Amendment, located at 101 Premier Dr., parcel number 09-35-451-001 for plans date stamped received May 20, 2022. This denial is for, 1) the outdoor storage in a side yard is in violation of the Zoning Ordinance requirements; 2) a dumpster location in the side yard; 3) the dumpster screening as a requirement by the ordinance; 4) screening around the outdoor storage. This denial recognizes that this is a modification to a previously approved site plan and the constructed building was in accordance with that approval; the proposed outdoor storage although it is in a side yard is in violation of Section 28.19. Because this is a unique situation with a parcel that has two fronts and this could in effect be considered almost a rear yard but it is still in violation of the ordinance and therefore requires a Zoning Board of Appeals approval on those four items, and if those four items are deemed approved by the Zoning Board with waivers that this would not have to come back before the Planning Commission and the site plan would be considered approved as revised.

Discussion on the motion:

Chairman Reynolds asked if it was intended that the no screening would be a temporary item or permanent? Vice-Chairman Gross replied that it would be up to the Zoning Board of Appeals.

Chairman Reynolds asked if there is a condition or motion by the ZBA to approve will the applicant be required to address the comments per the Planner for plans submitted? Vice-Chairman Gross replied yes.

Vice-Chairman Gross amended the motion, Commissioner Walker re-supported that the temporary screening would be up to the ZBA and that the applicant will be required to address the comments per the Planners review for plans submitted.

Planning & Zoning Director Girling asked what if only a few of the variances are granted? Chairman Reynolds asked if there was a scenario in which if only some of the variances are granted that there would still be a conditional approval? Chairman Reynolds said if they are not provided with the screening requirement is there still a conditional approval on the plan? Vice-Chairman Gross replied then they would be required that they screen it. Chairman Reynolds said as a clarification of the motion if
there isn’t a variance granted for the screening would have to be provided and therefore would still be a conditional approval, correct? Vice-Chairman Gross replied correct.

Commissioner Walker said when they come in front of the ZBA he could see pitfalls in this matter. He is on the ZBA, but he only has one vote on the ZBA. He thought it would be very important that they make sure that the other members of the Board understand their unique situation. Without their unique situation, this has no chance of passing. He thought they might have a good chance to get that passed. When they prepare for that meeting make sure that they explain the timing of this whole thing. It is not that they are leaving the building and they are moving to someplace in Tennessee.

Mr. Russo stated that they would like to stay in Orion Township, it has been awesome, they used to be Macomb County, then Auburn Hills, and now in Orion Township.

Secretary St. Henry said to be very clear that they are staying in the same complex. Mr. Russo said they are actually moving to the property right next to Esys on Brown Rd. so they will be building a 100,000 plus sq.-ft. building there. Secretary St. Henry said to make sure that they spell all that, so they know what their situation is.

Planning & Zoning Director Girling said if they go to the ZBA, and so this is denied unless they get the variances. If there is something besides the screening that they don’t get the dumpster screening or the dumpster location, they have a site plan that is denied, so she would think that the motion might have something saying if one of those is denied they have to see it back? Do they not want to see it back? Do they not want to see a plan that contains these things?

Secretary St. Henry asked what they would see different on a site plan if it came back to them? Sounds like the enclosures are the issue.

Chairman Reynolds said the other issue is when plans come back, and they don’t ask for their consultant to review it it’s purely on Planning & Zoning Director Girling to acknowledge that the changes exist and that the plan is still adequate for their approval.

Secretary St. Henry stated that if it is clearly just this enclosure issue, he would trust that Planning & Zoning Director Girling would be able to handle that and make sure it is done the right way versus going through the whole process again and having the Planners review it again, schedule it and get it before them. Chairman Reynolds said that it doesn’t have anything to do with necessarily appearing back here it is more or less just checking the boxes. Their plan reviewer is Giffels Webster, so the point is the plan reviewer is not Planning & Zoning Director Girling is their coordinator. Secretary St. Henry thought that Planning & Zoning Director Girling could coordinate that with the Planner. It is not very efficient to go through this whole process again for something as simple as those if they are denied by the ZBA. Chairman Reynolds said in his statement he said that he would like it to go to the Planner and Planning & Zoning Director Girling to coordinate that but not come back here. Secretary St. Henry said yes, that is his opinion, he didn’t think it was an efficient use of their time.

Commissioner Walker asked Planning & Zoning Director Girling how would she prefer to handle it? Planning & Zoning Director Girling replied that if they do not want to see it back, she preferred that the directive is to have the consultants rereview it. They are already having to look at it for the criteria that they are missing in their review, so looking for those plus he does the review. If they have one set of eyes that have done it the entire time versus somebody different, she doesn’t do the reviews the planner does.
Chairman Reynolds suggested on the motion that the administrative review include being reviewed by their professional consultants.

Vice-Chairman Gross amended the motion, Commission Walker re-supported that the administrative review includes being reviewed by their professional consultants.

Chairman Reynolds said it is a motion to deny based on the following findings of fact: the outdoor storage and the screening of outdoor storage, the outdoor dumpster enclosure, and the screening of the outdoor dumpster enclosure being in the side yard with the condition that it would be approved if the variances are sought if essentially the enclosure requirements are not granted that they would still be approved and the applicant would have to provide the screening of those enclosures. The condition of their approval would be that it would be an administrative approval with a review from their professional consultants, and the applicant is required to address the concerns in the Planners review.

Roll call vote was as follows Walker, yes; Brackon, yes; St. Henry, yes; Gross, yes; Urbanowski, yes; Gingell, yes; Reynolds, yes. Motion carried 7-0

8. UNFINISHED BUSINESS
A. PC-2022-10, The River Church Site Plan & Special Land Use Request for a church, located at 3900 S. Baldwin Road (parcel 09-29-301-029), 3910 S. Baldwin Road (parcel 09-29-301-034), and 3920 S. Baldwin Road (parcel 09-29-301-038).

Chairman Reynolds asked the applicant to give a brief overview of their application.

Mr. Alan Hall with Architectural Planners Incorporated (API), at 5101 Williams Lake Rd. Waterford, MI. They also had Pastor Yates from The River Church that could ask any questions based on the Church.

Mr. Hall said that The River Church has recently acquired the existing church that has been there for a while.

Mr. Hall said that The River Church has eight locations in the state of Michigan. Their headquarters are in Holly, MI and the newly acquired facility is in Orion Township at 3920 S. Baldwin Rd. The project is on the NW corner of Gregory and Baldwin Rd. He showed them an older aerial to show them the original Baldwin Rd. and there were two existing buildings right at the corner that have been demolished. The church is the brown-roofed building right to the north of that. The property is three separate parcels that combine into one that is approximately 5.5-acres. The existing church used to be Gingelville Community Church, they have been in the community for over 70 years, and it is still acting as a church, and they are still worshiping and doing the same thing that Gingelville Community Church did in the past. The only change in the church itself was the administration.

Mr. Hall stated that The River Church now has possession of it. They already have a permit to do the façade improvements of the building. He showed them the construction pictures right on Baldwin Rd. They may have seen some of the improvements as they go up and down Baldwin Rd. They have a building permit for all four facades right now. Architecturally they were instructed to take a look at the property and basically solve two separate items, one was to wayfinding the site and the other is the handicap accessibility issues inside the church and on the site. He showed them an up-to-date aerial, it shows a round-a-bout at Gregory at Baldwin and the configuration of Baldwin Rd. The main entrance is right off Baldwin through a boulevard-type entrance. The church is very close to Baldwin Rd. now and so they are now
The Fire Department has reviewed the 3 proposed cases and has no concerns at this time regarding case numbers AB-2022-34 and 35.

If you should need anything further, please let me know

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

Attached are three ZBA residential cases that needs to be reviewed by you for the August 22, 2022, ZBA meeting.

Thanks,

Debra Walton
Clerk
Planning & Zoning
2323 Joslyn Road, Lake Orion, MI 48360
O: 248.391.0304, ext. 5002
W: www.oriontownship.org
TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: August 9, 2022
SUBJECT: Staff Report for AB-2022-35, Keith Ford, 3850 Joslyn Road

The subject parcel currently has a gas station on it, the applicant is proposing to demolish the gas station building and rebuild a new one with a convenience store including a drive-thru component on the south side and 4 additional pumps.

The property borders single family residential to the north and west, commercial separated by a road to the south, and Joslyn Road to the east.

An application for a Site Plan with a Special Land Use went to the Planning Commission on July 6, 2022 and was denied due to needing the variances presented (see attached minutes from that meeting and the Planner Report dated June 20, 2022).

The proposed plan dated stamped Received July 27, 2022 lists the variances they are asking for and those are referenced on the drawing with corresponding numbers.

The Township Planner indicated the plans reviewed were lacking information and the applicant was made aware that other variance may be needed once the plans are reviewed again.

Please let me know if you have any questions.
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-2022-35, 3850 Joslyn Road, 3850 Joslyn Road, 09-28-376-031, I move that the petitioner’s request for:

15 variances from Zoning Ordinance #78 – Zoned GB

Article XIV, Section 14.02(A)

1. A 66-ft. setback variance, from the required 100-ft. from residential property, to build a building with a drive-thru 34-ft. from the west property line.

2. A 32-ft. setback variance, from the required 50-ft. from residential property, for a drive-thru maneuvering lane to be 18-ft. from a residential property.

Article XIV, Section 14.03(C)(3)

3. A 22-ft. side yard setback variance, from the required 30-ft. along residential property, for parking spaces to be located 8-ft. from the north property line.

Article XIV, Section 14.03(I)(1)

4. A variance to allow a covered trash receptacle (dumpster) to be located in a side yard (north)

Article XIV, Section 14.03(J)(1)

5. A variance to allow a loading & unloading area to be in a side yard adjacent to residential property.

6. A variance to allow a loading & unloading area to be in a front yard (Hammerslea Road).

Article XIV, Section 14.04

7. A 2.42-ft. building height variance, from the maximum height limit of 25-ft., for the building to be 27.42-ft. high

8. An 18-ft. side yard setback variance from the required 20-ft. for a structure (propane tank) to be 2-ft. from the side property line (north).

Article XXVII, Section 27.04

9. A 24-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 6-ft. along the north property line.

10. A 25-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 5-ft. along the west property line.

Article XXVII, Section 27.04(A)(4)

11. A 20-ft. greenbelt width variance, from the required 20-ft. greenbelt between road right-of-way and parking, for a 0-ft. greenbelt along the south & east sides.

Article XXVII, Section 27.05(A)(4)

12. A variance of 7 trees from Joslyn Road & 7 trees from Hammerslea Road to have 0 trees along the road right-of ways of Joslyn Road and Hammerslea Road.

Article XXVII, Section 27.05(A)(6)

13. A variance to omit 2 required trees from the interior landscaping requirements of 1 tree per 200-sq. ft. of interior landscape space.

14. A 66-sq. ft variance for interior landscape areas, from the required 400-sq. ft., to have 334-sq. ft. of interior landscape areas.

15. A 6-ft. variance from the required 10-ft. for interior landscape area to be 4-ft. wide.
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-2022-35, 3850 Joslyn Road, 3850 Joslyn Rd., 09-28-376-031 I move that the petitioner’s request for:

15 variances from Zoning Ordinance #78 – Zoned GB

Article XIV, Section 14.02(A)

1. A 66-ft. setback variance, from the required 100-ft. from residential property, to build a building with a drive-thru 34-ft. from the west property line.

2. A 32-ft. setback variance, from the required 50-ft. from residential property, for a drive-thru maneuvering lane to be 18-ft. from a residential property.

Article XIV, Section 14.03(C)(3)

3. A 22-ft. side yard setback variance, from the required 30-ft. along residential property, for parking spaces to be located 8-ft. from the north property line.

Article XIV, Section 14.03(I)(1)

4. A variance to allow a covered trash receptacle (dumpster) to be located in a side yard (north).

Article XIV, Section 14.03(J)(1)

5. A variance to allow a loading & unloading area to be in a side yard adjacent to residential property.

6. A variance to allow a loading & unloading area to be in a front yard (Hammerslea Road).

Article XIV, Section 14.04

7. A 2.42-ft. building height variance, from the maximum height limit of 25-ft., for the building to be 27.42-ft. high.

8. An 18-ft. side yard setback variance from the required 20-ft. for a structure (propane tank) to be 2-ft. from the side property line (north).

Article XXVII, Section 27.04

9. A 24-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 6-ft. along the north property line.

10. A 25-ft. landscape greenbelt width variance, from the required 30-ft., for the landscape greenbelt width to be 5-ft. along the west property line.

Article XXVII, Section 27.04(A)(4)

11. A 20-ft. greenbelt width variance, from the required 20-ft. greenbelt between road right-of-way and parking, for a 0-ft. greenbelt along the south & east sides.

Article XXVII, Section 27.05(A)(4)

12. A variance of 7 trees from Joslyn Road & 7 trees from Hammerslea Road to have 0 trees along the road right-of-ways of Joslyn Road and Hammerslea Road.

Article XXVII, Section 27.05(A)(6)

13. A variance to omit 2 required trees from the interior landscaping requirements of 1 tree per 200-sq. ft. of interior landscape space.

14. A 66-sq. ft variance for interior landscape areas, from the required 400-sq. ft., to have 334-sq. ft. of interior landscape areas.

15. A 6-ft. variance from the required 10-ft. for interior landscape area to be 4-ft. wide.
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:

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

209
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: KEITH FORD

Address: 3850 JOSLYN RD City/State/Zip: ORION TWP MI 48359

Phone: 248-249-6058 Cell: Fax: 

Email: kford@oaklandlive.com

PROPERTY OWNER(S)

Name(s): SAME AS ABOVE

Address: City/State/Zip: 

Phone: Cell: Fax: 

Email: 

CONTACT PERSON FOR THIS REQUEST

Name: BRUCE CALHOUN Phone: 810 919 8555 Email: becalhoun@creekwoodarch.com

SUBJECT PROPERTY

Address: 3850 JOSLYN RD Sidewell Number(s): 0-01-28-376-031

Total Acreage: 91

Length of Ownership by Current Property Owner: ____________ Years, ____________ Months

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

Ordinance Allowance/ Deviation requested
Requirement

List additional ordinance requirements and deviations on a separate page
Case #: __________________

COMMERCIAL VARIANCE

1. Describe the nature of the request.  **Parking & Drive Thru Setbacks, Landscape Reductions, Building Height.**

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.  **Existing site need to obtain variances to update & expand.**

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: **If this variance is granted all changes will be screened from adjacent properties by a masonry screen wall. This will improve drainage and the environment by adding storm water detention & protection.**

4. Explain how the request is/is not consistent with other properties in the immediate area, please site examples if possible: **This site is unique in that it is existing & is screened by existing masonry walls on two property lines.**

5. Describe how the alleged practical difficulty has not been self-created. **The site is existing in order to update & expand variances will be required.**

6. The topography of said land makes the setbacks impossible to meet because: **The size of the existing site.**

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. **Due to the size of the existing site and the large setbacks we would not be able to expand & upgrade if all were met.**
Case #: ____________________________

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

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

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

Signature of Applicant: ____________________________ Date: 7-20-22

Print Name: Keith Ford

Property Owner: ____________________________

Signature of Property Owner: ____________________________ Date: 7-20-22

Print Name: Keith Ford

OFFICE USE ONLY

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

Total Square Footage of Principal Structure: ____________________________ Total ____________________________

Description of variance(s):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Date Filed: ____________________________ Fee Paid: ________ Receipt Number: ____________________________
Special Land Use & Site Plan Review no. 1
Oakland Fuels

Case Number: PC-2022-18
Address: 3850 Joslyn Road
Parcel ID: 09-28-376-031
Area: 0.91 AC

Applicant: Keith Ford
Plan Date: 01/02/2022
Reviewer: Matt Wojciechowski
Rod Arroyo

Dear Planning Commission Members:

We have completed a review of the application referenced above. Items in bold should be revised; items in italics should be discussed by the planning commission.
SUMMARY OF PROJECT

The applicant is proposing to demolish the existing retail establishment and replace the structure with a new 6,217 square foot building that includes multiple tenant spaces and a drive through window on the south side of the building. The existing gas station canopy is also proposed to be expanded to accommodate two additional pumps. The drive through operation is regulated as a special land use in the General Business (GB) district.

SUMMARY OF FINDINGS

Deficient Zoning standards requiring ZBA Approval
1. Drive through building setback of 100’ required; 30’ proposed
2. Drive through maneuvering lane setback of 50’ required; 20’ proposed
3. A landscape greenbelt of at least thirty (30) feet in width except where ingress or egress drives are located, is required
4. Covered trash areas are required within the rear yard; two trash enclosures are proposed, one in the south front yard and one in the north side yard
5. Loading and unloading areas shall be located in the rear or side yard of a non-residential district
6. The building exceeds the 25’ maximum height limit within the GB district
7. No interior parking lot landscaping is proposed

Planning Commission waivers required
1. The site currently proposes 28 compliant parking spaces; 31 are required
2. The Planning Commission may, at their discretion, waive or modify the requirement for interior landscaping in cases where the parking lot consists of only one (1) aisle and the area surrounding the parking lot is heavily landscaped or where existing off-street parking drives and/or structures are located on the parcel. (none shown)

Additional Information and Revisions
- Speaker box not shown; applicant shall add location and decibel levels to plan
- Three spaces along the north side do not comply with the 30’ residential district setback
- Applicant shall provide building coverage
- A mixture of evergreen and deciduous trees shall be planted at the rate of one (1) tree for each three thousand (3,000) square feet, or portion thereof, of landscaped open-space area
- The proposed greenbelt areas should be located on the subject property and not within the ROW
- Seven trees are required on the site within the Joslyn Rd greenbelt and seven trees are required on site within the Hammerslea greenbelt in addition to a wall or fence (14 required; three proposed)
- No interior parking lot landscaping is proposed
- Applicant shall update photometric plan to show light levels at property lines and provide average light levels for site and parking area according to 27.11
- Applicant shall include light timing scheduled on updated photometric plan
- Engineering should determine the appropriate number of driveways, as the four two-way drive cuts proposed to remain exceed the amount deemed necessary by the ordinance
# Zoning Ordinance Compliance

<table>
<thead>
<tr>
<th>General Business (Article XIV)</th>
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<tbody>
<tr>
<td><strong>Section</strong></td>
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<tr>
<td>14.01 Use Matrix</td>
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<td>14.02 Footnotes to Use Matrix</td>
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<td>14.03 Required Conditions</td>
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</table>

www.giffelswebster.com
<table>
<thead>
<tr>
<th></th>
<th>Three spaces along the north side do not comply</th>
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<tbody>
<tr>
<td>1.</td>
<td>A landscape plan shall be submitted to the Planning Commission for approval. The landscape plan shall specify plant materials and landscape treatment, based on the requirements of Section 27.05 of this Ordinance for such items. This landscape plan shall be part of, or accompany, the site plan.</td>
</tr>
<tr>
<td>2.</td>
<td>A landscaped greenbelt at least twenty (20) feet in width shall be provided along the entire perimeter of a GB District, except where ingress or egress drives are located when the parcel abuts commercial/office or industrially zoned property. However, when the parcel abuts residentially used or zoned property, the landscape greenbelt shall be at least thirty (30) feet in width except where ingress or egress drives are located.</td>
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<tr>
<td>3.</td>
<td>The off-street parking areas and access driveways shall be screened from view from any adjoining residential property. Such screening shall consist of earth berms, permanent walls or evergreen landscaping subject to approval of the Planning Commission.</td>
</tr>
<tr>
<td>5.</td>
<td>The landscaped greenbelt required along with the perimeter of the parcel may be reduced in width or waived by the Planning Commission when the parcel abuts commercial/office or industrially zoned property. The Planning Commission may, at their discretion, modify or waive certain landscaping requirements in accordance with the considerations outlined in Section 27.05.</td>
</tr>
<tr>
<td>6.</td>
<td>Where commercial uses abut residential uses, the Planning Commission may require a greenbelt buffer, berm, or obscuring wall or combination of the aforementioned methods of screening in accordance with Section 27.05 (A)(5).</td>
</tr>
<tr>
<td>I</td>
<td>Covered trash receptacles, surrounded on three (3) sides by masonry brick-type walls one (1) foot higher than the receptacle shall be provided in the rear yard of the building or principal use structure.</td>
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<td>The fourth side of the trash receptacle enclosure shall be equipped with an opaque lockable gate that is the same height as the brick-type wall.</td>
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<td>Two trash enclosures are proposed in the south front yard and north side yard; Applicant shall revise to comply with rear yard requirement.</td>
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</table>

North and west side requires a 30' landscape buffer; 5'-6' is proposed

East and south require a 20' greenbelt; none are observed

Greenbelt abutting residential properties cannot be waived by the planning commission; the applicant shall revise or seek a variance from the ZBA
1. **General Provisions.** The below table indicates compliance with the General Provisions in Zoning Ordinance Article XXVII. The standards in this checklist are a summary of Zoning Ordinance standards, please refer to the individual sections referenced below for the full Zoning Ordinance text.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.04 Parking and Loading</td>
<td>3. e. all off-street parking areas shall be screened from view from any adjoining residential property. Such screening shall consist of earth berms, permanent walls, or evergreen landscaping, subject to approval of the Planning Commission and in accordance with the provisions set forth in Section 27.05</td>
<td>Existing 6’ wall is proposed to satisfy this requirement; PC shall discuss preferred screening</td>
</tr>
<tr>
<td>27.05 Landscaping</td>
<td>In cases where the use of an existing building changes or an existing building is changed or otherwise altered, all of the standards set forth herein shall be met</td>
<td>Not provided</td>
</tr>
<tr>
<td></td>
<td>3.a.ii. A mixture of evergreen and deciduous trees shall be planted at the rate of one (1) tree for each three thousand (3,000) square feet, or portion thereof, of landscaped open-space area</td>
<td></td>
</tr>
<tr>
<td></td>
<td>In consideration of the overall design and impact of the landscape plan, the Planning Commission may reduce or waive the requirements outlined herein for General Landscaping, or for landscaping in greenbelt areas, on berms, or as part of a screen, provided that any such adjustment is in keeping with the intent of the Ordinance, and more specifically, with the intent of Section 27.05.</td>
<td></td>
</tr>
</tbody>
</table>
A greenbelt separation area is required between the right-of-way property line and the nearest portion of any off-street parking area, for parcels fronting roads but excluding single family residential uses

<table>
<thead>
<tr>
<th>The greenbelts should be located on the subject property and not within the ROW</th>
</tr>
</thead>
<tbody>
<tr>
<td>The site has approximately 200' of frontage along Joslyn and 190' along Hammerslea; seven trees are required on site within the Joslyn Rd greenbelt and seven trees are required on site within the Hammerslea greenbelt in addition to a wall or fence. Three trees are proposed in Joslyn ROW (no wall or fence)</td>
</tr>
</tbody>
</table>

4.a. One (1) tree for each thirty (30) lineal feet, or fraction thereof, of required greenbelt separation area (including driveways). Such trees shall be located between the abutting right-of-way and the off-street parking area or vehicular use area.

4.b. In addition, a hedge, wall, decorative metal fence, or berm, or other landscape elements with a vertical rise of at least thirty (30) inches shall be developed within said separation zone.

4.e. Landscaping of Right-of-Way and Other Adjacent Public Open Space Areas. Public rights-of-way and other public open-space areas adjacent to required landscaped areas and greenbelts shall be planted with grass or other suitable ground cover and maintained by the owner of the adjacent property as if they were part of required landscaped areas and greenbelt.

4.f. Regulations Pertaining to Landscaping Areas Used for Sight Distance.

The Planning Commission may at their discretion waive or modify the requirements of this section subject to one or more of the following conditions: limited parcel depth, existing vegetation or other site factors which limit the practical application of landscaping standards.

5. Where non-residential uses abut residential uses or where multi-family uses abut single family uses, the Planning Commission may require a greenbelt buffer, berm or obscuring wall or combination of the aforementioned methods of screening. The methods of screening for conflicting lands uses are:

<table>
<thead>
<tr>
<th>Add information to site plan</th>
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<tbody>
<tr>
<td>The ordinance does not suggest planting trees within the ROW; rather, these areas should be maintained with grass cover</td>
</tr>
</tbody>
</table>

| a. Greenbelt Buffer. |
| b. Berrn |
| c. Obscuring wall |

6. Interior Parking Lot Landscaping. Off-street parking areas shall be landscaped as follows:

<table>
<thead>
<tr>
<th>No parking lot landscaping is shown or proposed; applicant shall revise the plans to comply with this standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Off-street parking areas containing greater than twenty (20) spaces shall be provided with at least twenty (20) square feet of interior landscaping per parking space. A minimum of one-third (1/3) of the trees required in Section 27.05 (A)(5) shall be placed on the interior of the parking area and the remaining may be placed surrounding the perimeter parking lot within ten (10) feet, as illustrated on the following figure.</td>
</tr>
</tbody>
</table>

<p>| b. A minimum of one (1) tree shall be planted per two hundred (200) square feet or fraction thereof of interior parking lot landscaping. At least fifty percent (50%) of each interior landscaped area shall be covered by living |</p>
<table>
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<tr>
<td>E. Non residential lighting standards</td>
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<tr>
<td>27.11 Lighting</td>
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<tr>
<td>a. Properties adjacent to residential properties shall be designed and maintained such that illumination levels shall not exceed 0.3 foot-candle along property lines. Lighting for uses adjacent to non-residential properties shall be designed and maintained such that illumination levels do not exceed 1.0 foot-candle along property lines. The light intensity provided at ground level shall be a minimum of 0.3 foot-candle anywhere in the area to be illuminated. Parking lot illumination shall average 0.6 over the entire area.</td>
<td>Applicant shall update photometric plan to show light levels at property lines and provide average light levels for site and parking area according to 27.11</td>
</tr>
<tr>
<td>Except where used for security or safety purposes, as approved in advance by the Planning Commission, all outdoor lighting fixtures, existing or hereafter installed and maintained upon private property within commercial districts shall be turned off or reduced in lighting intensity between 11:00 p.m. and sunrise, except when used for, such as in sales areas, where such use continues after 11:00 p.m., but only for so long as such use continues.</td>
<td>Applicant shall include light timing scheduled on updated photometric plan</td>
</tr>
</tbody>
</table>

Plant material, such as sod, shrubs, ground cover, or trees. Interior parking lot shrubs and trees shall permit unobstructed visibility and maintain clear vision between a height of thirty (30) inches to eight (8) feet.

c. Interior parking lot landscaping islands shall be no less than ten (10) feet in any single dimension and no less than two hundred (200) square feet in any single area and shall be protected from parking areas with curbing, or other permanent means to prevent vehicular encroachment onto the landscaped areas.

d. The landscape plan shall designate the sizes, quantities, and types of plant material to be used in parking lot landscaping.

e. Required landscaping elsewhere on the parcel shall not be counted in meeting the parking lot landscaping requirement.

f. Interior parking lot landscaping and/or landscape islands shall be dispersed throughout the parking lot in order to break up large expanses of pavement.

g. The Planning Commission may, at their discretion, waive or modify the requirement for interior landscaping in cases where the parking lot consists of only one (1) aisle and the area surrounding the parking lot is heavily landscaped or where existing off-street parking drives and/or structures are located on the parcel.
30.02 – Special Land Use Procedures and Standards

8. Planning Commission Determination. The Planning Commission shall make the final determination on the application for special land use approval. Such determination shall be based on the requirements and standards of this Ordinance. In making the final determination, the Planning Commission shall consider the reports and recommendations from the Enforcement Officer, Water and Sewer Department, Township Planner, Township Engineer, Township Fire Chief, the Road Commission for Oakland County, the Oakland County Health Department, the Oakland County Drain Commission, appropriate utility companies, and the Michigan Department of Transportation, where applicable.

13. Standards for Granting Special Land Use Approval. The Planning Commission shall approve special land uses upon determination that the proposed use will comply with all applicable requirements of the Ordinance, applicable standards for specific uses, and the following general standards. The applicant has addressed items a. though g. in detail in their SLU application letter dated March 24, 2021.

a. Compatibility with Adjacent Uses. The proposed special land use shall be designed, constructed, operated and maintained so as to be compatible with uses of adjacent land. The site design of the proposed special land use shall minimize the impact of site activity on surrounding properties. In determining whether this requirement has been met, consideration shall be given to:

1) The location and screening of vehicular circulation and parking areas in relation to surrounding development.
2) The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment, in relation to surrounding development.
3) The hours of operation of the proposed use. Approval of a special land use may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
4) The bulk, placement, and materials of construction of the proposed use in relation to surrounding uses.

b. Compatibility with Master Plan. The proposed special land use shall be compatible with and in accordance with the general principles and objectives of the Orion Township Master Plan and shall promote the intent and purpose of this Ordinance.

c. Public Services. The proposed special land use shall be located so as to be adequately served by essential public facilities and services, such as highways, streets, police and fire protection, drainage systems, water and sewage facilities, and schools.

d. Impact of Traffic. The location of the proposed special land use within the zoning district shall minimize the impact of the traffic generated by the proposed use on surrounding uses. In determining whether this requirement has been met, consideration shall be given to:

1) Proximity and access to major thoroughfares.
2) Estimated traffic generated by the proposed use.
3) Proximity and relation to intersections.
4) Adequacy of sight distances.
5) Location of and access to off-street parking.
6) Required vehicular turning movements.
7) Provision for pedestrian traffic.

e. Detrimental Effects. The proposed special land use shall not involve any activities, processes, materials, equipment, or conditions of operation, and shall not be so located or designed, as to be detrimental to public health, safety, and welfare. In determining whether this requirement has been met, consideration shall be given to the production of traffic, noise, vibration, smoke, fumes, odors, dust, glare, and light.

f. Enhancement of Surrounding Environment. The proposed special land use shall provide the maximum feasible enhancement of the surrounding environment and shall not unreasonably interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value. In determining whether this requirement has been met, consideration shall be given to:

1) The provision of landscaping and other site amenities. Provision of additional landscaping over and above the requirements of this Ordinance may be required as a condition of approval of a special land use.
2) The bulk, placement, and materials of construction of proposed structures in relation to surrounding uses.

g. Isolation of Existing Land Use. The location of the proposed special land use shall not result in a small residential area being substantially surrounded by non-residential development, and further, the location of the proposed special land use shall not result in a small non-residential area being substantially surrounded by incompatible uses.
The plans should be revised for compliance with the items listed on pages 2 of the letter before being considered by the planning commission. We are available to answer questions.

Respectfully,
Giffels Webster

Rodney L. Arroyo, AICP
Partner

Matt Wojciechowski, AICP
Senior Planner
5. BRIEF PUBLIC COMMENT – NON-AGENDA ITEMS ONLY
None.

6. CONSENT AGENDA
None.

Acting Chairman Gross recessed the regular meeting and opened the Public Hearing at 7:05 p.m. for case PPC-22-18, 3850 Joslyn Rd., Special Land Use for a Gas Station with a Drive-Thru, located at 3850 Joslyn Rd. parcel 09-28-376-031.

Chairman Reynolds closed the PPC-22-22 Public Hearing at 7:21 p.m. and reconvened the regular Planning Commission meeting at 7:21 p.m.

7. NEW BUSINESS
A. PPC-22-18, 3850 Joslyn Rd., Special Land Use request for a gas station with a drive-thru and Site Plan, located at 3850 Joslyn Rd., parcel #09-28-376-031.

Acting Chairman Gross asked the Township Planner to read through his report.

Planner Arroyo read through his review date stamped June 21, 2022.

Engineer Landis read through his review date stamped June 22, 2022.

Secretary St. Henry said that their engineer brought up 14 issues of concern. Their planner brought up another 10 or a dozen of concerns. The variances are significant, some of the largest variance requests he has ever heard of in seven years with the Commission. At the very least they need to come back with a cleaned-up plan to address all those issues before he is going to approve anything.

Acting Chairman Gross stated that with the demo of the building it is almost like they are starting with a brand-new site. It is hard to imagine with a brand-new site, looking at all these different waivers that are being proposed. It is something that the Zoning Board of Appeals would have to justify in terms of making waivers on a site like that. This is a gasoline service station it is a gas only station there is no service. He asked if they know what type of restaurant that is suggested? Mr. Ford replied that it is a gas station and convenience store only, and they don’t know for sure on the end cap, possibly a Tropical Smoothie if approved.

Acting Chairman Gross asked if they know if there will be a dine-in or if it is drive-thru only? Mr. Ford said it would be both. Acting Chairman Gross said they have to take into account the type of parking that would be required to accommodate the restaurant as well as the service station area.

Mr. Ford said the one they do have now in Ortonville with the Tropical Smoothie they do about 90% drive-thru. There is not that much dining anymore, but they are not sure yet what would be there.

Mr. Ford stated they are putting a lot of money and investing into this, and it has been something they have been trying to work on for years to try to get the funds together. Having the end cap helps provide them the ability to do that.
Acting Chairman Gross asked regarding the canopies being proposed, they are going to take down the existing ones and put-up new ones? Mr. Ford said that they haven’t spoken to a contractor on that yet, on what they would do. He didn’t know the answer. He did know that their architect did ask about the measurement of it.

Acting Chairman Gross said his concern on that is the lighting that would be coming in with the canopies and how late they would be on. Mr. Calhoun said they would adhere to the new lighting ordinance, with the existing canopy or a new canopy. What they are proposing right now is just to extend the existing canopy. The Fire Marshal mentioned that he wanted it to be 13.6 or 14-ft. at the lowest end, and as it approaches south it gets higher. As far as the lighting they would adhere to whatever standards are required.

Mr. Calhoun said when they do a lease space on a building, they really don’t know what is going to go into that, even if they do know what is going to go in there today doesn’t mean they are going to be there tomorrow. It always goes back to the Planning Department, and they review that to make sure whatever is going to go in there adheres to the parking. Right now, they have the right amount of parking except for the three that would require a variance.

Commissioner Brackon asked if they are adding a fourth island in the proposal? Mr. Calhoun replied to the north of the site yes. Commissioner Brackon asked if that was going to involve another gas underground tank being added? Mr. Ford replied no sir, all the tanks underground are staying those were replaced a few years ago, so no additional tanks are added.

Commissioner Brackon asked if the fourth island was going to drain from the existing? Mr. Ford replied that all the underground pipes will connect to the existing underground tank.

Acting Chairman Gross said that some of their parking counts have included the space at the pump island. He asked if that was what they have done in the past? The 30 spaces include around 10 spaces at the pump islands. Planning & Zoning Director Girling replied that is what they believe had been done a Speedway when that redeveloped. They did allow those spaces because those cars are utilizing part of the parking count. Mr. Calhoun said the reason behind that is because they figure that the person that is going into the convenience store is also the person that is filling up their gas tank.

Commissioner Walker said that they indicated that wastewater and discharge that there is no trap for it at this time. Mr. Calhoun replied at this time no it just flows right off the site into the road. Commissioner Walker asked Engineer Landis if that was correct. Engineer Landis said to clarify the current site is hooked up to a sanitary sewer for municipal discharge. The stormwater runoff currently just sheet flows off the site into the roadside ditches. Commissioner Walker asked if that was allowed in past practices? Engineer Landis replied at some point in time, yes. Commissioner Walker said sounds like what they are going to do is going to fix that at least. They have a lot of moving parts here.

Mr. Calhoun said they have a lot of moving parts, but the problem is they have an existing piece of land and to improve the site they will be encroaching on those little areas that do involve variances.

Commissioner Walker thought that Mr. Calhoun was a very competent architect, he knows what he is getting into. He is not coming here saying oh my goodness look what we found, he says what it was going to be like. They are going to be asking them and the Zoning Board of Appeals to grant them a lot of stuff. Mr. Calhoun stated that they are asking for a lot of stuff, again it is an existing site, they can’t just go in and build a new building to replace the existing one and not
improve the site in a way that is going to justify it, they must ask to improve and expand to improve the site.

Mr. Calhoun said one other thing they must look at too is as far as site lighting, they will be shielding that. They are trying to improve things and trying to make it nice, but they do need circulation on the site, and they also need parking.

Commissioner Walker asked regarding parking does that include parking for the restaurant also? Mr. Calhoun replied yes it does. He apologized that they are deficient as far as the amount of stuff that was required from the Planner and the Engineer. They know they must get a lot of variances and to do all those things, at this point, there would be an awful amount of money to be spent, they are already about 16-20 thousand dollars into it right now. If they don't get the variances, then that is all gone. They know that those things are deficient on the plan, but it is things that they do for a final plan that will be reviewed by the Engineer.

Trustee Urbanowski asked what the best option was because they need to go in front of the Zoning Board of Appeals first to get the variances. She knew that in the past they have denied unless the ZBA approved however, they have a lot of outstanding issues, and they need to see it back. They have a lot of moving parts that are not in place yet. She wouldn't say deny unless the ZBA approves the variances so that they are good to go. Can they postpone it until after a ZBA meeting and then see it back here if they get those approvals? Acting Chairman Gross thought that they had the option to deny it outright and then the applicant would go to the Zoning Board of Appeals and then they would have to resubmit after the Zoning Board of Appeals approved or denied certain items, or they could postpone without a date to allow the applicant to go to the Zoning Board of Appeals. There is a laundry list of items that they must work on and then come back to them without having to resubmit a new application.

Planner Arroyo said it was his understanding that their past practice when they have a situation like this with these variances that it is denied because that is what the ZBA is looking for to have it so that it becomes an appeal then it goes to them, and then they can act on those variance items. If they get those variance items, then they come back to them with a new plan that has everything up to date and reflects the variances that were granted.

Planning & Zoning Director Girling said it is not considered a new application. Their denial in the past has been a denial for those items that are deficient to give them the right to go to the Zoning Board of Appeals. If they get those variances or even if they don't they could come back with a plan that met those if they didn't meet them. They are still the same application because they didn't deny the whole thing, and they just denied the sections that they didn't meet. They have paid for two reviews, one review has been done, they go for a side course to the ZBA depending on what happened with that they would resubmit the plans be rereviewed and be in front of them again.

Acting Chairman Gross said one of his concerns is that as he had indicated at the beginning that they are talking about the demolition of the site. They are looking basically at except for the existing pumps a brand-new building which he thought was a plus but is the building too large on the site because of the number of variances that are being requested that could be alleviated by a smaller building of some kind.

Secretary St. Henry said if they deny this based on the specific outstanding issues that must be addressed. They go before the ZBA, see what happens with the variances, they update the plan, depending on what the ZBA decides. They come back with a new plan, with the changes they have requested, also recognizing any variance that was perhaps granted. It is the same application and then they decide then.

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Secretary St. Henry said he is familiar with the piece of property and understood what they wanted to do. If this building is completed it will be an improvement to what is there now, but they do have to follow the process. The building footprint is something that will have to be addressed at the ZBA with the variances they are requesting. He thought that if they follow that process that they just outlined to him that is the fairest approach to this at this point.

Moved by Secretary St. Henry, seconded by Commissioner Brackon, that the Planning Commission postpone the Special Land Use request, and deny the Site Plan based on the outstanding issues that were presented today by the Township Engineer and the Township Planner, for plans date stamped received April 21, 2022, for the following reasons: the applicant should go before the Zoning Board of Appeals to address a number of variance issues, and also address the outstanding issues that were presented, and then return to the Planning Commission with an updated plan reflecting any changes that are necessitated by the Zoning Board of Appeals decisions and reflecting the corrections per the Engineer and Planners, then a decision will be made on the site plan at that time.

Discussion on the motion:

Commissioner Walker asked if they could include the suggestion about the size of the building. Before these folks go to the Zoning Board of Appeals this might give them another opportunity to think about that. That perhaps if they shrunk the size of that building some of those variances might not be necessary or certainly wouldn't be as large as they are requesting which might induce the ZBA to look more favorably on it.

Trustee Urbanowski thought that it had been addressed but it shouldn't be in the motion. She was hearing what he was saying but was hoping that they were hearing it as well, from a ZBA member’s mouth. Considering that size but wasn’t sure about putting it in the motion.

Planner Arroyo said that the Zoning Board of Appeals is there to make those determinations on ordinance modification. It was his suggestion that they leave the motion and let them make that determination based upon what they believe is appropriate. That is what their specific role is to address whether there is a practical difficulty.

Planning & Zoning Director Girling said that they forward the meeting minutes when they come from Planning Commission and go to the Zoning Board of Appeals, so they will be provided with the minutes which are close to verbatim minutes. Any conversation that was conducted here would be within the minutes.

Planning & Zoning Director Girling thought they should add to the motion that upon return before appearing at the Planning Commission those plans will be rereviewed by the consultants.

Secretary St. Henry amended his motion, Commissioner Brackon re-supported that before appearing at the Planning Commission those updated plans will be rereviewed by the consultants.

Roll call vote was as follows: Gross, yes; St. Henry, yes; Urbanowski, yes; Walker, yes; Gingell, yes; Brackon, yes. Motion carried 6-0 (Reynolds absent)
The Fire Department has reviewed the 3 proposed cases and has no concerns at this time regarding case numbers AB-2022-34 and 35.

If you should need anything further, please let me know.

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

Attached are three ZBA residential cases that needs to be reviewed by you for the August 22, 2022, ZBA meeting.

Thanks,
MEMORANDUM

TO: Zoning Board of Appeals
FROM: Lynn Harrison, Planning & Zoning Specialist
DATE: August 11, 2022
SUBJECT: Staff Report for AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, Vacant Parcel on Cushing St.

The parcel measures approximately 70-ft. at its widest point and is .140 acres or 6,098-sq. ft. The applicants are seeking variances to build a new home with an attached garage on the property.

The lake side of the property is being considered the front and the roadside the rear.

Because the property measures approximately 63-ft. at the front setback – there is a relaxed side yard setback from 10-ft. to 8-ft.

Per the applicants, the property slopes drastically towards the lake and will require the retaining walls shown on the plans. The retaining walls are proposed to be on or near the property lines on both the north and south sides.

Township Zoning Ordinance #78 measures the height of a house at its mid-point by measuring 3-points along each side of the house from ground level to the mid-point of the roof (see attached diagram) and using the average of those measurements to determine the mid-point height. The height measurements of the house, due to the placement of the house as it relates to the slope of the land, varies on each side for a total mid-point height of 40.18-ft. – the measurements used to come with this calculation was provided by the applicant (attached).

Please let me know if you have any questions.
To find the midpoint of the roof, you measure from the start of the roof to the peak. Half of that measurement is the midpoint.

Take the measurements on all sides of the home and average to get the Height of the Home.

To find the midpoint of the roof, you measure from the start of the roof to the peak. Half of that measurement is the midpoint.
5. Regarding the height - I still need to know the actual height of the house to its mid-point (the number of stories is not an issue as originally discussed). We measure that by taking 3 measurements on all 4 sides of the house - 1 at each corner and 1 in the middle all measured from the grade at the point of measurement and then take the average of those 12 numbers to come up with the height. I attached an illustration that may help. **The height of the home will be 40'-2" at its mid-point. This house will have a flat roof so the measurement comes from the top of the 3'-6" parapet wall on the top of the roof. Which is the highest part of the house. The actual height of the house would only be 29'-6" on a flat lot, but with the extreme drop on this property of 28’ it makes it very hard to stay in the 30’ requirement.**

Front of house. 29'-6" on the right side. 29'-6" in the middle. 29'-6" on the left side.
Right side of house. 29'-6" on the front right side. 34'-6" middle of right side. 52'-6" back of house on the right side.
Back of house. 52'-6" on the left side. 52'-6" in the middle. 52'-6" on the right side.
Left side of house. 29'-6" on the front left side. 37'-9" middle of left side. 52'-6" back of house on the left side.

Pete
303-419-7815

---

**From:** Rison Construction <risonconstruction@hotmail.com>
**Sent:** Friday, July 22, 2022 7:01 PM
**To:** Pete Smilanic <pete@scdcorpfdn.com>; Nancy smilanic <nancysmilanic@me.com>
**Subject:** Fwd: Parcel 2 Cushing Street

Hi

This needs to be answered ASAP - Please see below.

They need all information by Tuesday to submit to the paper.

The earlier the better so if they need further clarification, we can get to them.

Thanks

Marcy

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](https://go.microsoft.com/fwlink/?LinkID=520558)

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**From:** Lynn Harrison <lharrison@oriontownship.org>
**Sent:** Friday, July 22, 2022, 4:27 PM
**To:** Michael Riddle <risonconstruction@hotmail.com>
**Subject:** Parcel 2 Cushing Street

Hi Mike, I am reviewing the variances for the above parcel with Tammy and she pointed out a few things I need to clarify before I can come with the final language.

1. Although you are declaring the lake side as the front – the front setback is still measured from the roadside (as that will be the address) and when we measure 30-ft from that line, the property width is about 63-ft. so therefore the side yard setback is 8-ft. instead of 7-ft. I apologize for the misinformation.
MOTION OPTIONS

TO: Charter Township of Orion Zoning Board of Appeals

FROM: Lynn Harrison, Planning & Zoning Specialist

DATE: August 3, 2022

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

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-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcel 2 parcels south of 576 Cushing St., 09-03-278-027, I move that the petitioner’s request for:

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 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. An 8-ft. side yard setback variance 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).

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

Please be specific how the petitioner meets these criteria

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

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

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

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

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

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

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

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

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

DENIAL OF A NON-USE VARIANCE

In the matter of ZBA case # AB-2022-36, Mat Dunaskiss and Pete & Nancy Smilanic, vacant parcels 2 parcels south of 576 Cushing St., 09-03-278-027, I move that the petitioner’s request for:

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, 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. An 8-ft. side yard setback variance 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).

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:

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, impar the public health, safety, comfort, morals, or welfare of the inhabitants of the Township due to:
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: Mat Dunaskiss & Pete/Nancy Smilanic
Address: 535 Cushing Rd
City/State/Zip: Lake Orion, MI 48362
Phone: (248) 790-1343
Cell: 
Fax: 
Email: mat@dunaskiss.com

PROPERTY OWNER(S)
Name(s): Mat & Diane Dunaskiss
Address: 535 Cushing Rd
City/State/Zip: Lake Orion, MI 48362
Phone: (248) 790-1343
Cell: 
Fax: 
Email: mat@dunaskiss.com

CONTACT PERSON FOR THIS REQUEST
Name: Mike Riddle
Phone: (248) 318-9584
Email: risnconstruncture@hotmail.com

SUBJECT PROPERTY
Address: Lot 2 Cushing Street
Sidwell Number: 09-03-278-027
Total Acreage: 
Length of Ownership by Current Property Owner: 8 Years, 0 Months

Does the owner have control over any properties adjoining this site? No
Zoning Ordinance Allowance/Requirement Deviation requested
Case #: ________________

RESIDENTIAL VARIANCE

1. Describe in detail the nature of the request. ____________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

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 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. ____________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

Please see Attached Answers
1. Asking for a variance because of the narrow width of the lot and steep grades. We are asking for the following:

**HOUSE/STRUCTURE:**
- A 10.25' variance on the front side (lake side) (19.75' from the house to the property line vs 30' required)
- A 17' variance on the rear side (road side) (18' from the house to the property vs 35' required)

2. The lot is approximately 57.20' wide by 104.91' feet deep. Because of this, we need adequate space for a driveway at the road side for safe parking.

3. If this appeal is granted, it will reduce parking in the street and conform to normal parking. It will also be a positive impact to the community and surrounding neighbors because of the proposed home we would like to construct on the lot.

4. It appears that this lot is in uniform with neighboring lots and how the homes were constructed on that street as well as other areas on the lake - This will conform with the rest of the lake and neighborhood.

5. A new lot was created and approved. Because of the grades, width and depth of the property, we are respectfully asking for a variance so that we may build a home on this lot. We intend to meet, exceed and conform to the other structures around the lake.

6. Because of the depth of the lot, the narrow width of the lot and the steep grades, the setbacks are impossible to meet.

7. Strict compliance with the ordinance unreasonably prevents the owner from using the property because due to the grades, width and depth of the property, we would have lack of space to build an adequate sized home and provide safe parking.
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)  Mat Dunaskiss  Date: 7-01-22

Print Name:  Mat Dunaskiss

Signature of Property Owner:  
______________________________  __________________________
(must be original ink signature)  Mat Dunaskiss  Date: 7-01-22

Print Name:  Mat Dunaskiss

If applicable:  
I the property owner, hereby give permission to Mike Riddle 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: ____________________
Article VI  
Single Family Residential: R-1, R-2 & R-3

Section 6.04 – Area and Bulk Requirements (amended 01.05.87, 02.17.04, 02.07.05, 07.16.18)

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

<table>
<thead>
<tr>
<th></th>
<th>R-1</th>
<th>R-2</th>
<th>R-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Area</td>
<td>14,000 sq. ft.</td>
<td>10,800 sq. ft.*</td>
<td>8,400 sq. ft.*</td>
</tr>
<tr>
<td>Minimum Width of Lot</td>
<td>100 ft.</td>
<td>80 ft.</td>
<td>70 ft.</td>
</tr>
<tr>
<td>Minimum Lot Setbacks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(in feet)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard**</td>
<td>40 ft.</td>
<td>35 ft.</td>
<td>30 ft.</td>
</tr>
<tr>
<td>Each Side Yard***</td>
<td>10 ft.</td>
<td>10 ft.</td>
<td>10 ft.</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>35 ft.</td>
<td>35 ft.</td>
<td>35 ft.</td>
</tr>
<tr>
<td>Minimum Floor Area/Unit</td>
<td>1,320 sq. ft.</td>
<td>1,080 sq. ft.</td>
<td>960 sq. ft.</td>
</tr>
<tr>
<td>Maximum Lot Coverage</td>
<td></td>
<td></td>
<td>25%</td>
</tr>
<tr>
<td>Total Maximum Floor Area of All Accessory Buildings</td>
<td></td>
<td>See Section 27.02, A, 8</td>
<td></td>
</tr>
<tr>
<td>Height of Structures</td>
<td>30 ft.</td>
<td>30 ft.</td>
<td>30 ft.</td>
</tr>
</tbody>
</table>

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

Section 6.05 – Sign Regulation (amended 10.08.98, 02.21.06)

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

Section 6.06 – Tree Preservation Regulations (amended 08.03.00)

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

Section 6.07 – Wetland Setbacks (added 09.17.07)

The wetland setback requirements apply to developments in this District, according to the terms of Section 27.17.
construction on the rebuilding project is begun and diligently carried on within a reasonable time after the excavation, demolition, or removal of the theretofore existing building.

K. Administrative Nonconformities.

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

L. Change in Tenancy or Ownership.

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

M. Special Exceptions.

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

Section 27.02 — Buildings, Structures, and Uses

A. Accessory Buildings, Structures and Uses. (amended 02.17.06)

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 07.16.10)

5. Detached accessory building 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 07.16.10)

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 07.16.10)
Section 27.17 - Wetland Setbacks (added 09.17.07)

A. It is the intent of this section to require a minimum setback from wetlands (or natural features), and to regulate property within such setback in order to prevent physical harm, impairment and or destruction of or to a natural feature or the surrounding area. It has been determined that, in the absence of such a minimum setback, intrusions in or onto natural features would occur, resulting in harm, impairment and/or destruction of natural features contrary to the public health, safety and general welfare. This regulation is based on the police power, for the protection of the public health, safety and welfare, including the authority granted in the zoning enabling act. It is further the purpose of this section to establish and preserve minimum setback from wetlands (or natural features) in order to recognize and make provision for the special relationship, interrelationship and interdependency between the natural feature and the setback area in terms of: spatial relationship, interdependency in terms of physical location, plant and animal species, over land and subsurface hydrology, water table, water quality, and erosion of sediment deposition.

It is further the purpose of this section to provide for protection, preservation, proper maintenance and use of areas surrounding wetlands (or natural features) in order to minimize disturbance to the area and to prevent damage from erosion and siltation, a loss of wildlife and vegetation, and/or from the destruction of the natural habitat. A setback shall be maintained in relation to all areas defined in this chapter, unless, and to the extent, it is determined to be in the public interest not to maintain such setback.

B. Setbacks. For all wetlands as defined in Article II of this ordinance and by Ordinance No. 107, setbacks for all structures, parking lots, streets or driveways shall be in accordance with the following regulations:

<table>
<thead>
<tr>
<th>Required Setbacks</th>
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<td>All structures or buildings</td>
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<tr>
<td>All decks</td>
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<tr>
<td>Parking lots</td>
</tr>
<tr>
<td>Streets, roads, driveways</td>
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</tbody>
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C. Waivers. The Planning Commission has the discretion to decrease the above required setbacks upon demonstration of the appropriateness of a lower setback and compliance with one (1) or more of the following criteria:

1. Demonstrated habitat preservation.
2. Demonstrated water quality preservation.
3. Demonstrated storm water quality retention.
4. Existence of a legal lot of record.

For development projects adjacent to wetlands which are not reviewed by the Planning Commission, the Building Official shall have authority to issue setback waivers subject to the criteria as listed above. Appeal to the Zoning Board of Appeals, in accordance with Section 30.06, may also be sought.

Section 27.18 - Wind Energy Conversion Systems (added 02.01.10)

A. Intent. It is the intent of the Charter Township of Orion to promote the effective and efficient use of Wind Energy Conversion Systems (WESC) by regulating the siting, design, and installation of such systems to protect the public health, safety, and welfare. In no case shall this ordinance guarantee any wind rights or establish access to the wind.

B. Approval Required - Except where noted in this Section, it shall be unlawful to construct, erect, install, alter, or locate any WECS project within the Charter Township of Orion unless approval for a:

1. Private WECS: A permit has been obtained from the Building Department as an accessory use and subject to Section 27.02 and the height restrictions of Section 28.02. Only one (1) Private WECS shall be permitted per parcel, and the private WECS shall not be allowed within a front yard area.

2. Commercial WECS: A special land use has been obtained pursuant to Section 30.02 and this Section.
Top of Parapet Wall: 125'-10.5"

Top of Roof Elevation: 126'-0"

Finish Floor Lower Beroom Elevation: 114'-0"

Finish Floor on Main Level Elevation: 106'-0"

Finish Floor on 2nd Level Elevation: 88'-6"

Finish Floor on Level 3: 77'-6"

Top of Roof: 75'-0"

REAR ELEVATION: Lakeside is Front
The Fire Department has reviewed the 3 proposed cases and has no concerns at this time regarding case numbers AB-2022-34 and 35.

Case number AB-2022-36 shows the construction of a residential structure measuring 41’6” in height. The location and height of this proposed residential building is an area of extreme concern regarding life safety, property conservation, and limits our ability to conduct firefighting tactics if this building were to catch on fire.

It is the fire department recommendation to the ZBA that height variance listed as #5 NOT be granted.

If you should need anything further, please let me know

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

Attached are three ZBA residential cases that needs to be reviewed by you for the August 22, 2022, ZBA meeting.

Thanks,

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