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NOTICE
OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

SPECIAL MEETING - VIRTUAL

Participate through this Zoom link:
https://us02web.zoom.us/j/87415705534

Or by calling: 1-929-205-6099
Meeting ID: 874 1570 5534

(Refer to the www.oshtemo.org Home Page or page 3 of this packet for additional Virtual Meeting Information)

TUESDAY, OCTOBER 12, 2021
3:00 P.M.

AGENDA

1. Call to Order
2. Roll Call and Remote Location Identification
3. Pledge of Allegiance
4. Approval of Agenda
5. Approval of Minutes: September 28th, 2021
6. **Public Hearing – Variance, Schneck Fence (CONTINUED)**
   Jamie Schneck is requesting relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites in order to construct a 6' tall privacy fence within the front yard setbacks at 10294 W KL Avenue.
7. Public Comment
8. Other Updates and Business
9. Adjournment

Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited.
At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township
Board of Trustees

Supervisor		
Libby Heiny-Cogswell	**216-5220**	**libbyhc@oshtemo.org**
Clerk		
Dusty Farmer	**216-5224**	**dfarmer@oshtemo.org**
Treasurer		
Clare Buszka	**216-5221**	**cbuszka@oshtemo.org**
Trustees		
Cheri L. Bell	**372-2275**	**cbell@oshtemo.org**
Kristin Cole	**375-4260**	**kcole@oshtemo.org**
Zak Ford	**271-5513**	**zford@oshtemo.org**
Kizzy Bradford	**375-4260**	**kbradford@oshtemo.org**

Township Department Information

Assessor:		
Kristine Biddle	216-5225	assessor@oshtemo.org
Fire Chief:		
Mark Barnes	375-0487	mbarnes@oshtemo.org
Ordinance Enf:		
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
Parks Director:		
Karen High	216-5233	khigh@oshtemo.org
Rental Info	216-5224	oshtemo@oshtemo.org
Planning Director:		
Iris Lubbert	216-5223	ilubbert@oshtemo.org
Public Works:		
Marc Elliott	216-5236	melliott@oshtemo.org

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to "**Join via computer**" as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to **join via computer**. You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on "Test Computer Audio." Once you are satisfied that your audio works, click on "Join audio by computer."

You may also join a meeting without the link by going to **join.zoom.us** on any browser and entering this **Meeting ID: 874 1570 5534**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet, or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **874 1570 5534#**

Participant controls in the lower-left corner of the Zoom screen:

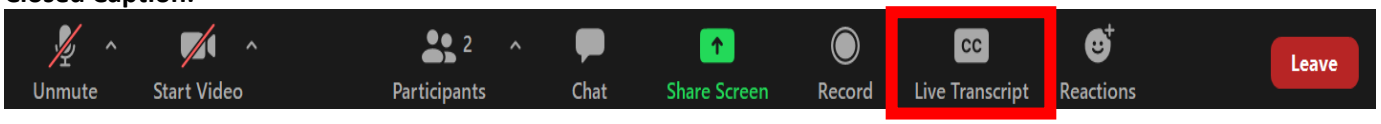
Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a "Raise Hand" icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the "Raise Hand" feature **press *9 on your touchtone keypad**.

Public comments will be handled by the "Raise Hand" method as instructed above within Participant Controls.

Closed Caption:



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2. Then select "Show Subtitle".

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OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

DRAFT MINUTES OF A VIRTUAL MEETING HELD SEPTEMBER 28, 2021

Agenda

Public Hearing – Variance Request Ascension Borgess Cancer Center Signage
RWL Sign, on behalf of Ascension Borgess Cancer Center, requested four variances pertaining to on-site signage for their new medical office facility located at 2520 Robert Jones Way. Parcel number 05-25-435-001.

Public Hearing – Variance, Wolthuis Deck
Richard Wolthuis requested relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16' x 29' deck on the rear of the principal building located at 6291 Torrington Road.

Public Hearing – Variance, Schneck Fence
Jamie Schneck requested relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites in order to construct a 6' tall privacy fence within the front yard setbacks at 10294 W. KL Avenue.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, June 22, 2021, beginning at approximately 3:00 p.m.

MEMBERS PRESENT: Neil Sikora, Chair (All attending within Oshtemo Township)
Dusty Farmer
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams
MEMBER ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Colten Hutson, Zoning Administrator, Karen High, Zoning Administrator, and Martha Coash, Meeting Transcriptionist.

Guests present included Adam Davidson, Ascension Borgess Cancer Center, Jason Headley, RWL Sign Co., Dale Charter, ABCC, Richard Wolthuis, and Fred Baker.

Call to Order and Pledge of Allegiance
Chairperson Sikora called the meeting to order and those present joined in reciting the "Pledge of Allegiance."

APPROVAL OF AGENDA

The Chair determined no agenda changes were needed, let it stand as presented, and moved to the next agenda item.

APPROVAL OF THE MINUTES OF JUNE 22, 2021

The Chair asked if there were any additions, deletions, or corrections to the minutes of June 22, 2021. Ms. Smith suggested changing "he" to "The Chairperson" on page 13. Hearing nothing further, he asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of June 22, 2021, as presented, with the correction as suggested. Ms. Smith seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Sikora moved to the next agenda item and asked Ms. High for her presentation.

Public Hearing – Variance Request Ascension Borgess Cancer Center Signage

RWL Sign, on behalf of Ascension Borgess Cancer Center, requested four variances pertaining to on-site signage for their new medical office facility located at 2520 Robert Jones Way, parcel number 05-25-435-001.

Ms. High explained RWL Sign, on behalf of Ascension Borgess Cancer Center, was requesting four variances pertaining to on-site signage for their new medical office facility. The 20,000 square foot medical office building is located on an eight-acre lot. The property is within BTR 2.0, the 53-acre business, technology and research park developed by Western Michigan University (WMU). The site is accessed from Robert Jones Way and is adjacent to preserved open space fronting on Hwy 131 and Drake Road.

The site is zoned BRP: Business and Research Park. Medical offices are a permitted use in this zoning district. In 2019, the Zoning Board of Appeals approved a site plan for the development of the Ascension Borgess Cancer Center. Construction was recently completed, and the Center is serving patients.

The BRP: Business and Research Park zoning district allows for the development of a "campus-style development including technology, research, light industry, office, life sciences, and development uses". The zoning designation currently applies only to BTR 2.0. Unique site and building design regulations for this district were developed in conjunction with WMU. All developments within BTR 2.0 must be reviewed and approved by WMU's design review committee in addition to the Township's Planning Commission or Zoning Board of Appeals. The WMU design committee approved the signage plan proposed by Ascension Borgess Cancer Center.

Article 55 of the Township Zoning Ordinance regulates signs and billboards. Section 55.90, Schedule C, specifies the use, area, type, height and number of signs permitted for buildings within industrial park or industrial-office developments. Properties in the BRP zoning district are considered industrial-office developments and thus must follow this section of the code. One wall sign and one ground sign are allowed per code for this development. The applicant is proposing four wall signs and one ground sign, which exceeds the number of signs permitted. In addition, the proposed signs exceed Ordinance requirements in terms of height and/or area. The applicant is therefore requesting that the Zoning Board of Appeals consider granting variances for relief from Section 55.90: Industrial Land Uses to allow the proposed signage.

She noted medical offices such as this are also a permitted use in the C: Local Business District. A medical office located in the C District would be permitted four wall signs and one ground sign. The size of permitted wall signs would be significantly larger than those permitted in the BRP district, as the maximum permitted size is based on the length of wall. Mounting height of wall signs in the C district is 30 feet in height and height of ground signs is ten feet. From discussions with the applicant, it appears the incorrect section of code was used to design the sign package. Despite this, the applicant wished to move forward with their proposal which led to this variance request. However, even if the standards for signage within the C District were used, only two of the five proposed signs would meet this section of the ordinance. Variances for sign area and height would be required for three of the proposed signs.

Wall sign 1: South side (main entry), 131.4 square foot sign, 33 foot mounting height

Wall sign 2: West side, 205.5 square foot sign, 30 foot mounting height

Wall sign 3: East side, 131.4 square foot sign, 39 foot mounting height

Wall sign 4: North side, 131.4 square foot sign, 28 foot mounting height

Ground sign 5: Robert Jones Way, 40 square foot sign, 6 foot height

Four separate sign variances are requested. In **Request A**, the applicant was requesting permission to have four wall signs where only one wall sign is permitted. In **Request B**, the applicant was requesting permission for the four proposed wall signs to exceed the 50 square foot maximum area permitted. In **Request C**, the applicant was requesting that each of the four proposed wall signs be allowed to exceed the 20 foot maximum mounting height. In **Request D,** the applicant was requesting a ground sign that is six feet in height where the maximum permitted height is five feet.

The following table detailing each variance request was provided to the Board:

Wall sign	Building wall	Is Wall Sign permitted?	Area permitted per ordinance	Proposed wall sign area	Height permitted per ordinance	Proposed wall sign height

1	South	Yes	50 SF	131.4 SF Variance Request B	20’	33’ Variance Request C
2	West	No – Variance Request A	0 SF	205.5 SF Variance Request B	Not permitted	30’ Variance Request C
3	East	No – Variance Request A	0 SF	131.4 SF Variance Request B	Not permitted	39’ Variance Request C
4	North	No – Variance Request A	0 SF	131.4 SF Variance Request B	Not permitted	28’ Variance Request C

Ground sign	Ground sign area permitted per ordinance	Proposed ground sign area	Ground sign height permitted per ordinance	Proposed ground sign height
5	40 SF	40 SF	5’	6’ Variance Request D

Ms. High indicated the owner provided the following reasons for the variance requests from Section 55.90:

> “This is a relocation from our prior location at the West Michigan Cancer Center at 200 N. Park Street in downtown Kalamazoo. We chose this site in the Western Michigan University BTR Park 2 for the beautiful and peaceful surroundings for the nature preserve and adjacency to the Asylum Lake Preserve. We are confident the natural beauty will provide a supportive healing environment for our patients seeking treatment for their journey with cancer.
>
> While situated in a natural setting, our location has easy access from the Kalamazoo community and the larger West Michigan community from US-131 and Stadium Drive. Given this is a new patient building in a new business park on a newly named street, we are placing a high priority on signage and wayfinding for patients and their families. Therefore, we are requesting a variance to allow for Ascension Borgess signs on all four sides of the building along with a monument sign on Robert Jones Way. The signs provide visibility along US-131 as well as Drake Road to guide our patients and family to our clinic. We know a cancer diagnosis is emotionally straining and we want to make it as easy and calming as possible for our patients and families to obtain their treatment.”

She explained the Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.
- Public safety and welfare.

Ms. High provided staff analysis/comment for each standard.

Standard: *Unique Physical Circumstances*
Are there unique physical limitations or conditions which prevent compliance?

Requests A & B) The BTR 2.0 business, technology and research park was designed by WMU to permanently preserve a large portion of the property as open space. Some of this open space is located along Hwy 131 and Drake Road adjacent to the subject site. Because of the presence of preserved open space, the building is setback approximately 570 feet from the northbound lane of Hwy 131 and 400 feet from Drake Road. Both of these roads are heavily travelled and have high speed limits. The increased setbacks, combined with high traffic speeds, will make it more difficult for the Cancer Center to be viewed by passing motorists. The presence of preserved open space between the building and the adjacent roadways could be considered a unique physical circumstance. Having signs visible from these major roads would help with wayfinding. It should be noted, however, that the only access to the Cancer Center is from Robert Jones Way, an interior road within BTR 2.0. There is no direct access from Drake Road or Hwy 131, which makes signage facing these roads less critical. Though the building is tall, at 47 feet in height, it is fairly difficult to see from Hwy 131 due to hilly topography. Therefore, any signage will also be difficult to see and may not provide a significant benefit.

Request C) Ascension Borgess received approval from the Zoning Board Appeals on December 17, 2019, to construct a 20,794 square foot building on the subject property. The building is two-stories with an atrium and ranges from 30 to 47 feet tall. The zoning ordinance requires that wall signs in Industrial-Office developments be placed no higher than 20 feet above grade. The applicant was requesting a variance to mount the four wall signs near the top of the building, from 28 feet to 39 feet above grade. If the variance request is denied, the wall signs would need to be placed on the lower half or third of the building. The building height could be considered a unique circumstance.

Request D) The ground sign was proposed to be located ten feet from the edge of right of way of Robert Jones Way, the minimum distance permitted. The land within the right of way and the ten-foot sign setback is slightly mounded then drops lower toward the parking lot. The mounded area blocks the view of the lower portion of the proposed

ground sign. The topography could be considered a unique physical circumstance preventing compliance.

The sign will be erected in an area that is lower than the adjacent street by one foot. Per the ordinance, *sign height is measured from the grade at the adjacent street to the top of the sign*. Therefore, a six-foot-tall sign would meet the five foot tall height requirement because it is being mounted a foot below the street grade. If this variance is approved, the sign will be a total of seven feet tall but because it is mounted a foot below road grade, it will be considered a six-foot-tall sign.

Standard: *Conformance Unnecessarily Burdensome*
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

Requests A-D) Conformance is not unnecessarily burdensome. Signage as permitted in the ordinance can adequately identify the Cancer Center. Reasonable options are available, as evidenced by the 'temporary' wall sign and ground sign that are currently on the site, both of which are in full conformance with the ordinance. These signs were installed in order to identify the building while awaiting the Zoning Board of Appeals' consideration of this variance request. However, it should be noted that buildings with frontage along Hwy 131 are typically identified with a sign and it could be argued that this business would be at a disadvantage to others along the highway if it cannot have a sign facing the highway.

Standard: *Minimum Necessary for Substantial Justice*
Applied to both applicant as well as to other property owners in district.
Review past decisions of the Zoning Board of Appeals (ZBA) for consistency (precedence).

In researching past ZBA decisions regarding sign relief for industrial-office developments, Planning Department staff did not find a record of similar requests to allow four wall signs where one is permitted, to increase the area or height of wall signs, or to increase the height of a ground sign. However, three commercial developments that requested an increase in mounting heights of wall signs were identified. These cases are described below.

Request C) Planning Department staff identified three comparable cases of past ZBA decisions regarding mounting height for wall signs in commercial developments. These findings are described below.

1. Advia Credit Union, 6400 W Main Street, June 22, 2021: The applicant requested a sign variance to allow wall signs to be mounted at approximately 50' in height, 20' higher than the maximum height permitted, on the 150,000 square foot building. The ZBA granted the variance based on size and height of the building, which is unique in the Township, and its significant setback from the road.

2.Holiday Inn Express and Suites, 5724 W Main Street, June 26, 2018: The applicant requested a sign variance to increase the height of their two wall signs. The height of the building was approximately 45' and located in proximity to US-131. The applicant proposed to place their wall signs at a height of approximately 40', 10' above the maximum allowed placement for a sign. Since the site was located within a Planned Unit Development (PUD), the Zoning Board of Appeals made a motion to forward the request for a departure from the sign ordinance to the Planning Commission to be reviewed under the PUD ordinance, outlined in Section 60.405 at the time. On July 26, 2018, the Planning Commission met and approved the request. Following the approval they updated the ordinance allowing the height of wall signs for buildings within the Westgate PUD with heights taller than 35' shall be placed no higher than 5' below the roofline/parapet wall of the building to which the sign is attached.

3. *Best Western; 2575 South 11th Street; March 17, 2009:* Best Western requested a variance to increase the height of their east and west facing wall signs. The applicant indicated the request was to help increase visibility from US-131 even though the hotel did not directly abut the highway. The ZBA granted the variance for increase height for the eastern wall sign facing US-131 from a mounting height of 30' to 39' but not the western wall sign facing S 11th Street, because they felt the request was not warranted for a sign facing a local street.

Standard: *Self-Created Hardship*
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Requests A-D) The applicant has chosen to pursue a signage plan that is out of compliance with all aspects of the zoning ordinance. The request is a self-created hardship.

Standard: *Public Safety and Welfare*

Will the variance request negatively impact the health, safety, and welfare of others?

Requests A-D) There are no residences nearby that would be negatively impacted by the proposed signs. However, the Asylum Lake Nature Preserve is located across Drake Road. Excess signage facing Drake Road could be detrimental to the enjoyment of the preserve. The lettering on the proposed wall signs is to be lit halo illumination. The ground sign is to be externally illuminated with a ground light.

Requests A, B, D) The purpose of the sign ordinance is to:
1. Promote the public peace, health, and safety of residents and visitors;
2. Protect the natural beauty and distinctive character of Oshtemo Charter Township;
3. Protect commercial districts from visual chaos and clutter;
4. Provide an environment which fosters growth and development of business;
5. Protect property values;
6. Eliminate distractions which are hazardous to motorists and pedestrians;
7. Protect the public's ability to identify establishments and premises;

8. Protect the public's interest in public buildings, streets, roads and highways and open spaces; and
9. Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.

Ms. High said the apparent disregard for the permitted number, size, and height of signs is concerning. Oshtemo Township has other industrial-office developments where businesses have followed the sign ordinance. Approving these variances would set a precedent for future industrial-office requests.

Request C) It is common for businesses to have their wall signs near the top of their buildings. Placing signage higher on a taller building to match this practice will not negatively impact the community. This has been implemented elsewhere and shown no negative effects.

Ms. High explained the Board might take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval for **Request A (number of wall signs)**
    - There are unique physical circumstances: the property has frontage on two major roads. Due to the presence of preserved open space, the building is set back a significant distance from the roads. More than one wall sign would help with wayfinding from these major roads.
    - Buildings with frontage along Hwy 131 are commonly identified with a sign. Strict compliance with the ordinance may be considered unnecessarily burdensome.

- Support of variance denial for **Request A (number of wall signs)**
    - The variance request is a hardship that is self-created.
    - Reasonable use of the property would still exist if the variance were denied.
    - Reasonable options for compliance are available.

- Support of variance approval for **Request B (area of wall signs)**
    - There are unique physical circumstances: the property has frontage on two major roads. Due to the presence of preserved open space, the building is set back a significant distance from the roads. Wall signs larger than 50 square feet may be deemed appropriate for visibility.
- Support of variance denial for **Request B (area of wall signs)**

- The variance request is a hardship that is self-created.
- Reasonable use of the property would still exist if the variance were denied.
- Reasonable options for compliance are available.

- Support of variance approval for **Request C (height of wall signs)**
  - There are unique physical circumstances: the building is two-stories with an atrium and ranges from 30 to 47 feet tall. The building is taller than most others in the township.
  - Approval of this request would provide substantial justice. There are previous cases in which buildings of a similar height were granted a variance to allow for a greater mounting height for wall signs.

- Support of variance denial for **Request C (height of wall signs)**
  - The variance request is a hardship that is self-created.
  - Reasonable use of the property would still exist if the variance were denied.
  - Reasonable options for compliance are available.

- Support of variance approval for **Request D (height of ground sign)**
  - Staff is unaware of findings of fact in this regard.

- Support of variance denial for **Request D (height of ground sign)**
  - There are no major physical limitations on this portion of the site.
  - The variance request is a hardship that is self-created, as the applicant is not required to install a taller ground sign than permitted.
  - Reasonable use of the property would still exist if the variance were denied.
  - Reasonable options for compliance are available

She indicated possible motions for the Zoning Board of Appeals to consider:

1. <u>Variance Approval</u>
   The Zoning Board of Appeals can choose to approve all of the variance requests for the reasons stated above. No conditions of approval are proposed by Planning staff.

2. <u>Variance Denial</u>
   The Zoning Board of Appeals can choose to deny all of the variance requests for the reasons stated above.

3. <u>Variance Approval and Denial</u>
   The Zoning Board of Appeals can choose to approve some of the requested variances and deny others, depending on the findings of facts presented. It should be noted that the Zoning Board of Appeals may also approve portions of the

requested variances (for example approve one additional wall sign instead of the three requested).

Chairperson Sikora thanked Ms. High for her report, moved to board questions and asked her if there are actually more than four variance requests being requested.

Ms. High said if each request for reach sign is treated separately, 12 variances are being requested, though they are being treated as four.

Ms. Smith asked what disadvantage there might be for the Asylum Lake property?

Ms. High said it was possible lights at night might distract from the natural aspect there. Halo lit illumination of letters on the sign facing that area were being proposed; she was not sure how bright resulting light would be or how distracting to nature lovers.

Attorney Porter noted signs do not require the sharp cutoff of light as do parking lot lights; if they don't surpass the boundaries of the property, they couldn't be seen.

Chairperson Sikora asked about impact on other adjacent properties.

Ms. High said most of the property is preserved open space. Property further north is owned by WMU. South is the rest of the BRP. The corner property at Drake and Stadium will likely develop as commercial.

She indicated although the request was based incorrectly on commercial rather than industrial zoning, the proposal is in excess of zoning requirements for both zones. She indicated the purpose of commercial zoning signage is to attract people from the road; industrial has less traffic and the purpose is not to attract people from the road.

Ms. Maxwell agreed, saying people who are going to industrial properties aren't going to look around, they are there for a purpose and know where they are going.

Hearing no further Board comments, the Chair asked if the applicant wished to speak.

Mr. Adam Davidson, Director of Oncology Services, explained they see about 100 – 150 patients per day and that wayfinding is a problem.

Mr. Jason Headley, RWS Sign Co., acknowledged the application was based on commercial requirements. (55.80) He mentioned differences such as the sign height relative to the height of the building and the nature of the clientele and use of the building as not reflective of a typical industrial situation. He said the building location is beautiful, but a little hidden, which requires clear signage.

He noted WMU reviewed and approved the proposed signage. The halo lit signage is indirect, more subtle and tasteful, outlines the letters and provides less light pollution.

He noted the topography of the site causes visibility problems for signs that will be too low if a variance is not allowed.

Mr. Dale Charter, ABCC, said ambulance drop off and pick up and other modes of transportation are common. They chose the setting for the natural features but need to be easily found.

Chairperson Sikora asked who would see a wall sign on the north side?

Mr. Headley indicated it would be seen by south bound 131 traffic.

There were questions and discussion of what traffic would/could see which signs from various locations.

Ms. Farmer noted the similarity of the property to the Woodbridge property in Portage, saying some of the signs may not be visible when trees are more mature.

The Chair noted there are signs placed on the property already.

Mr. Headley said the permitted signs are temporary and will be removed unless nothing is approved, and they need to become permanent. He noted the monument sign could become permanent, but it would be preferable to elevate it by one foot. There is no sign at Robert Jones Way. The only monument sign will be at the circle drive. It will be important for visitors to know when they are coming up on the entrance.

With no further comments from the applicant, the Chair moved to Public Hearing. Hearing no public comments, he closed the hearing and moved to Board Deliberations.

Ms. Maxwell felt four wall signs are overkill and that approving them would be precedent setting. She said she was ok with the sign height and area size requests.

Ms. Smith felt the circumstances are unique and that it makes sense to have the signs requested for people who are coming from different directions for a specific purpose. In that situation it is critical that patients do not miss the building. There is a great impact on the mental status of patients receiving chemo, a different circumstance than in typical industrial facilities.

Ms. Farmer noted urgent care is not provided at this location. She felt four signs on the building are unnecessary. There is one sign that can be seen from the road at Woodbridge and a wayfinding sign at the driveway. The building is surrounded by trees and cannot be seen, but people are able to find it. She supported the signs facing 131 and Drake. She supported the building sign height request as she felt the topography makes the extra foot of height for the ground sign reasonable.

Chairperson Sikora said he drove around the area and that it was difficult to find Robert Jones Parkway. He agreed with the 131 and Drake Road facing signs, but was concerned with the sign facing north; he was willing to talk about actual area and height.

Mr. Williams agreed with the above comments.

Since there seemed to be consensus on the one ground sign, the Chair asked for a motion on that item.

Ms. Maxwell **made a motion** to approve the variance request to allow the ground sign to be exceed the height allowed by one foot due to the unique physical circumstances of the ground topography which drops lower toward the parking lot between the end of the street and the sign location. Ms. Farmer **seconded the motion**. **The motion was approved unanimously by roll call vote**.

Attorney Porter suggested the Board consider both those signs likely to be permitted and those not, within a single motion.

Ms. Farmer **made a motion** to approve the variance request for signs 2 and 3 for number, height and area and to deny the request for signs 1 and 4 for the reasons as indicated in the staff report. Ms. Maxwell **seconded the motion**.

After brief discussion, Ms. Farmer and Ms. Maxwell withdrew the motion.

Mr. Headley was asked whether, if one sign were disapproved, which signs were higher priority.

Mr. Headley said they would like to keep them all, but signs 1, 2, and 3 were highest in priority.

Mr. Charters concurred that they could probably get along without #4, but 1 -3 were important particularly because of the topography.

Ms. High suggested keeping the sign now on the main entrance, which is 20 feet high and 50 square feet as a third sign.

Mr. Charters said that would be a big compromise as the area of the letters is much smaller than 50 square feet.

Mr. Headley asked the Board to keep in mind that the building drops down from the Parkway and that the 50 square foot sign is now not much above road grade.

Ms. High noted the temporary main entrance sign was issued a permit as if it would be permanent. If effective, keeping it permanently could be a compromise.

Chairperson Sikora said he would support keeping sign #1 and approve mounting it higher so you could see it better as you approach the building.

Ms. Farmer asked if the halo lit sign facing the Asylum Preserve would be lit when the building is closed, 24 hours a day.

Mr. Headley said that would be the case.

The Chair indicated he did not think sign #3 would be seen, but felt #1 and #2 would be useful and would also support the height and area increases requested.

Ms. Maxwell agreed, saying she would not support #3 and #4.

Ms. Farmer **made a motion** to approve the variance request for signs #1 and #2, including the height and area requested, based on unique physical circumstances as described in the staff report. She further moved to deny the request for signs #3 and #4 for the following reasons as listed in the staff report:

#s 3 & 4

- The variance request is a hardship that is self-created, as the applicant is not required to install a taller ground sign than permitted.
- Reasonable use of the property would still exist if the variance were denied.
- Reasonable options for compliance are available

#4 There are no major physical limitations on this portion of the site

Ms. Maxwell **seconded the motion**. **The motion was approved unanimously by roll call vote.**

The chair moved to the next agenda item and asked Mr. Hutson for his report.

Public Hearing – Variance, Wolthuis Deck

Richard Wolthuis requested relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16' x 29' deck on the rear of the principal building located at 6291 Torrington Road, parcel no. 05-11-402-541.

Mr. Hutson explained the applicant was requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct a 16' x 29' deck on the rear of the principal building located at 6291 Torrington Road. Section 50.60 of the Zoning Ordinance requires that any decks, whether attached or detached, located within the R-2: Residence District have a minimum rear yard setback of 15'. If approved, the variance would permit a deck that will protrude 12' feet into the required 15' rear yard setback.

6291 Torrington Road is a half-acre lot located within the northeast quadrant of the Township and resides within the West Port No. 4 plat. The plat itself was originally established on January 16, 1972, with the subject home being constructed later in 1986.

Although the lot is a half-acre in size today, it was not always configured as such. At the time of the lot's creation, 6291 Torrington Road was configured to be approximately 15,000 SF in size. In 2017, the lot was redescribed to acquire the western half of the neighboring lot to the immediate east, gaining an additional 6,500 SF of land. The southwest portion of the principal structure was built approximately 15' from the rear property line, leaving 0' of buildable area outside of the required 15' rear yard setback in the southwest corner. Currently, there is a 16' x 29' deck on the rear side of the principal building that was unlawfully constructed in late June of this year. It cannot be confirmed whether the previous deck was legal nonconforming or not; however, if the previous deck carried a legal nonconforming status, said claim for the current deck under consideration is not applicable per Section 63.40 of the Zoning Ordinance as the status of it being grandfathered is lost since the previous deck was demolished. A completely new deck was erected and relocated elsewhere on-site. As the deck under consideration is considered a new deck, current code standards need to be met.

Mr. Hutson noted the applicant provided the below rationale for this variance request. Further rationale supporting this variance request can be found in the letters of intent submitted by the applicant.

- "Given the location of the back door and shape/size of the backyard, it is unreasonable to locate the deck in another location. I have attached photos to support this."

- "Similar variance requests were approved by the zoning board for the following properties:
    - 798 Laurel Wood Street, parcel # 05-23-207-045 (8/2020)
    - 6473 Buckham Wood Drive (9/2006)

  The original deck built, approved, and in use since 1986 extended to approximately 3 ft from the south and west property lines. The new deck is positioned over 15 ft from the west property lines and averages approx. 10 ft setback from the south property line.

- "My original lot (parcel 208) has a rather odd shape where the west side lot line is only 108.5 ft long and the east lot line is 143 ft. long. When the house was built in 1986, it was situated closer to the west side due to the hill drop-off on the east side of the lot. This resulted in a shortened back yard on the west side and the builder constructing a deck for usable space in the SW corner of my lot. Additionally, the house to the south (6328 Old Log Trail) is built on the east side of their pie shaped lot and the back of the house is oriented to the North East, which places my deck in an unobtrusive location. Strict compliance to the current 15 ft setback from the back property line related to deck construction would unreasonably restrict the use of the shortened southwest corner of my property.

- "As stated under criteria #2, and #3, the new deck is substantially further away from property lines than the original approved deck built in 1986. I had a discussion with a staff person at the Oshtemo Township office approx. 18 months

ago (pre-Covid) about replacing my deck. It was my understanding after this discussion that a building permit would not be required to replace our existing deck."

- "The new replacement deck will be inspected by the building code inspector and all codes strictly adhered to regarding public safety, health, and welfare. The new deck replaces a rotted old deck, and adds value to our home and the neighborhood. The new deck meets the spirit of the setback ordinance by being placed in an unobtrusive location and much further away from the property line than the original approved deck. Additionally, it is endorsed by the homeowner to the south (the only property that would be impacted by the setback variance request). See attached letter of support from Stella Baker, property owner residing at 6328 Old Log Trail."

Mr. Hutson analyzed the request against the standards of review and provided the following information to the Board.

Standard: *Unique Physical Circumstances*
Are there unique physical limitations or conditions which prevent compliance?

The residence located at 6291 Torrington Road is constructed relatively close to the rear property line, matching some of the surrounding principal buildings in the neighborhood. The existing positioning of the principal building on-site limits the type of structures that may be erected in the rear yard. The terrain gradually slopes approximately 4' between the western boundary line and the east side of the principal building, a span of 80'. The slope on this site is not substantial enough where it would preclude compliance with the Oshtemo Township Zoning Ordinance. A deck could still be constructed at this site without requesting relief from the rear yard setback.

Standard: *Conformance Unnecessarily Burdensome*
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

A deck, though configured in a different way than what the applicant has already constructed, could be built to comply with the Oshtemo Township Zoning Ordinance. It should be noted that prior to this request, the applicant was advised that a land redescription could remedy the setback encroachment. The applicant has options to utilize this site without the need for a variance. Conformance with the code is not unnecessarily burdensome.

Standard: *Minimum Necessary for Substantial Justice*
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).

In researching past Zoning Board of Appeals decisions regarding setback relief for a principal building's deck from the rear yard setback, Planning staff was able to identify two similar cases.

1. *Salbenblatt, 6473 Buckham Wood Drive, 9/26/2006:* The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 12' x 14' all-season room in place of the existing 11'8" x 11'8" deck. The existing wooden deck, part of the original construction, protruded 4' into the 10' rear setback. The variance was requested to allow a 5'6" rear yard setback. A feature that was heavily discussed was that this principal building's rear yard abutted 30' of open space, which was owned by the Buckham Highlands Condominium Association, which separated Buckham Highlands from the property to the south. In this case the neighborhood association wished to remain neutral. The Zoning Board of Appeals approved the variance request based on that the request would not negatively impact surrounding properties, and that the 30' open space buffer acts as additional separation, or rear yard, between the site condominium and the unimproved parcel to the immediate south.

2. *Gillespie, 798 Laurel Wood Street, 08/25/2020:* The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 12' x 24' deck. If approved, the 12' x 24' deck would protrude into the 10' rear yard setback by 6'. The existing 4' x 4' deck was exceptionally small and did not allow for much space if an emergency were to occur and needed to exit through the back door. A unique feature that also factored into this request was that there was a 110' wide buffer of open space between the rear property line and the N 9th Street public right-of-way. The Zoning Board of Appeals approved the variance request, citing that substantial justice from previous cases, retainment of open space, and increased safety with the addition of a larger deck for reasons of granting the request.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

The purpose of the request stems from when the applicant demolished his old deck to construct a new 16' x 29' deck without applying for building permits through the Southwest Michigan Building Authority. Since the subject deck did not go through the permitting process, a review of zoning requirements did not occur. It was the applicant's desire to build a new deck at this location and layout that triggered this variance request. The deck under consideration protrudes 12' into the required 15' rear yard setback. A deck is not a required nor a necessary amenity. This request is a self-created hardship.

Standard: Public Safety and Welfare

Will the variance request negatively impact the health, safety, and welfare of others?

Setbacks act as a crucial part for any type of structure as they provide a form of security and privacy between adjacent uses and property owners. Setbacks can be considered the breathing room between properties where building restrictions apply. In the applicant's supporting documents, the applicant conveys that the property owner of 6328 Old Log Trail supports the newly constructed deck. Although the owners of said property to the immediate south may endorse the unlawful nonconforming deck, the mentioned property owners will not retain ownership of the property in perpetuity. Ownership of property eventually changes as home ownership acts as a revolving door and therefore should not carry much weight.

It should be noted a future owner of the property to the immediate south may take issue with a variance of this nature as it would prevent them from using their property to its fullest extent. Approval of this variance request will set a precedent for similar cases in the future and jeopardize the integrity and intent of the code's setback regulations which protect the health, safety, and welfare of the public.

Mr. Hutson said the Zoning Board of Appeals might take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
    - Two similar variances were granted approval in 2006 and 2020. It should be noted that both cases had designated open space directly behind them rather than another residential home.
- Support of variance denial
    - There are no unique physical limitations that precludes compliance.
    - Conformance is not unnecessarily burdensome, other locations/configurations for a deck can be explored.
    - The variance for the 16' x 29' deck is a self-created hardship, as the property owner constructed the new deck without any building permits or receiving zoning review.
    - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not a required nor a necessary amenity.
    - This request goes against the intent and integrity of the Zoning Ordinance which protects the health, safety, and welfare of the public.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval

   The Zoning Board of Appeals approves the variance request due to the minimum necessary for substantial justice.

   If the Zoning Board of Appeals chooses this motion, staff requests that a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Variance Denial

   The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and the request will jeopardize the intent and integrity of the Zoning Ordinance.

Chairperson Sikora thanked Mr. Hutson for his report and asked whether Board members had questions for him.

Ms. Farmer asked for clarification regarding the change from the previous deck.

Ms. Lubbert explained the main objective is to bring non-conformity to conformance. Right now the 12 feet would have to be removed from the current deck to bring it to conformance with current regulations.

Mr. Hutson noted a re-description of property, an agreement between property owners, could be done which would solve the problem without needing a variance.

Attorney Porter said the variance request was not “all or nothing.” The Board could grant less but not more. Granting a 6-1/2 foot variance, for example would have the same effect as no variance, but might leave some deck on the back of the building.

As there were no further questions from the Board, the Chair asked if the applicant wished to speak.

Mr. Richard Wolthuis said the requirement identifies a 12 foot reduction of the 15 foot setback. His property is angled and only the very corner is 3 feet from the lot line. The deck is, on average, approximately 10 feet from the property line as it expands out. The far side of the deck corner is 13-14 feet from the property line.

He referred to the two similar cases cited in the staff report, saying they both were asking for variance because there was not much room in the back yard. They also had open space behind them. He noted the deck was in place when his family moved in, that the corner space is unobtrusive to the rest of the surrounding homes and includes a tree stand and fence. He noted the variance approved in Buckham was fully supported by the

neighborhood association. All of his neighbors within 300 feet fully support keeping the deck, which does not negatively impact anyone and in fact neighbors have said it increases neighborhood value.

The back door to his house is on the west side, so it makes sense to put the deck there. It is true this is a self-created hardship as he did not fully do due diligence to find that a building permit was needed for the deck. He indicated he spoke to someone in the Township office pre-covid telling them of his deck plan and was told there would not be any problem, which he construed to mean he did not need a permit. He apologized for not getting a permit.

He felt the ordinance is quirky, in that he could put up a 10 x 14 shed, or a number of them three feet from his property line without a building inspector or a permit. He wants an attractive deck and to be a good neighbor and feels other similar situations have set precedent for approval of his request.

Chairperson Sikora thanked Mr. Wolthuis for his comments and opened the meeting to public hearing.

Mr. Fred Baker told the Board his property abuts the property in question and he has no objection to the replacement or size including the proximity to his property. The new deck is no closer to his property than the old one. He contended “negligence is doing it knowing it is wrong,” and that Mr. Wolthuis did not know he was doing wrong. He asked the Board to grant the variance request that affects no one negatively.

Hearing no further comments, the Chair moved to Board Deliberations.

Ms. Farmer noted both the applicant and neighbor were in attendance, that the Planning staff shared the possibility of redefining the property line and wondered if that might be considered.

Mr. Baker responded there would need to be deeds redrawn and a host of other things as opposed to taking care of the problem right now.

Mr. Wolthuis said it would have to be agreed upon by both parties, that he would not object to that, but would prefer that a variance be granted.

Chairperson Sikora pointed out that time and money are involved with a variance request. He added that if rearranging the property lines could be accomplished, there would be no question in future years and that variance paperwork would not have to be maintained and monitored by the Township.

Ms. Farmer added that the Township’s goal is conformance.

Mr. Williams said he had a concern similar to the Chair’s if a variance is granted. If in 10 or 15 years the property is up for sale, there would be a potential situation as to

how it is documented, that could cause an issue for the buyer/seller of the property. He wondered if a building permit and associated fees could be made retroactive:

Attorney Porter said if relief is granted it would require an inspection by the building authority and associated fees would need to be paid.

The Chair noted he voted no on the two previous variance requests that were cited in the staff report for substantial justice.

Attorney Porter did not feel the two similar situations cited by staff compared "apples to apples" and that if the Board is inclined to grant relief of any kind in this case, the only justification is that it would be bringing the new deck into more compliance than it was, otherwise an adverse precedent would be set.

Mr. Gould asked what the intent is for setbacks.

Attorney Porter said there are multiple factors, including creating a livable community and safety factors which include fire department access.

Mr. Gould asked if there was some way to give Mr. Wolthuis relief by erecting some kind of barrier at the corner of the property.

Attorney Porter said a variance condition cannot be required.

Ms. Farmer said the Board cannot require neighbors to fix the problem on their own, but they do have the ability to do that without a variance that would go against the Township's ordinance. Ordinance and zoning are in place with the expectation that people will comply with them.

Attorney Porter agreed.

Mr. Williams acknowledged this is a difficult situation and the Board is sympathetic to the problem but needs to do the right thing.

Chairperson Sikora said it is a big concern to allow a variance that sets a precedent. The easier solution is for the neighbors to adjust lot lines to take care of the problem and both seem amicable to that solution.

The Chair **made a motion** to deny the variance request to allow a 12' foot reduction of the 15' required rear yard setback in order to construct a 16' x 29' deck based on the following criteria as outlined in the staff report:

- There are no unique physical limitations that precludes compliance.
- Conformance is not unnecessarily burdensome, other locations/configurations for a deck can be explored.

- The variance for the 16' x 29' deck is a self-created hardship, as the property owner constructed the new deck without any building permits or receiving zoning review.
- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not a required nor a necessary amenity.
- This request goes against the intent and integrity of the Zoning Ordinance which protects the health, safety, and welfare of the public.

Ms. Maxwell **seconded the motion**. **The motion was approved unanimously by roll call vote**.

Chairperson Sikora moved to the next item on the agenda and asked Mr. Hutson for his report.

Public Hearing – Variance, Schneck Fence
Jamie Schneck requested relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites in order to construct a 6' tall privacy fence within the front yard setbacks at 10294 W. KL Avenue.

It was brought to the attention of the Chair that the meeting must end by 6:00PM to allow the Township Board to meet on the Zoom platform. This issue needed to be concluded at a future date. It was agreed a quorum would be possible if the group scheduled a meeting for October 12 at 3:00 p.m.

Ms. Farmer **made a motion** to table this item until the Zoning Board of Appeals meets virtually at 3:00 p.m. on October 12. Mr. Williams **seconded the motion**. **The motion was approved unanimously**.

Adjournment

Ms. Farmer **made a motion** adjourn the meeting. Mr. Williams **seconded the motion**. **The motion was approved unanimously**.

The meeting was adjourned at 6:00 p.m.

Minutes prepared:
September 29, 2021

Minutes approved:
_____, 2021

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September 21, 2021

Mtg Date: September 28, 2021

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: Jamie Schneck

Owner: Jamie & Justin Schneck

Property: 10294 W KL Avenue, Parcel Number 05-19-270-010

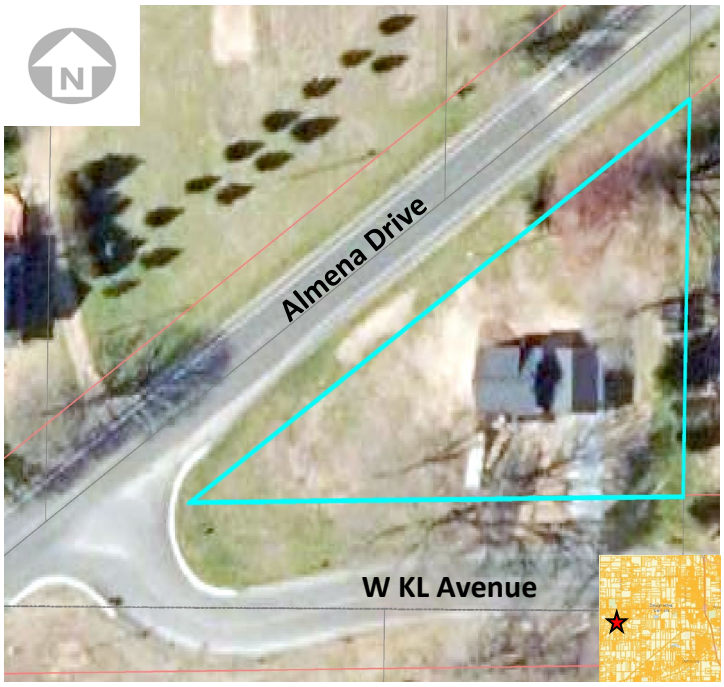
Zoning: RR: Residence District

Request: A variance to allow a 6' tall privacy fence within the front yard setback adjacent to W KL Avenue and Almena Drive.

Section(s): Section 57.60: Fences

OVERVIEW:

The applicant is requesting relief from Section 57.60 of the Zoning Ordinance which governs fence height for all parcels, lots, and building sites within the Township in order to construct a 6' tall privacy fence within the front yard setback at 10294 W KL Avenue. Section 57.60 of the Zoning Ordinance restricts the height of fences within the front yard setback to a maximum height of 4' when located within a low density zoning classification. With 10294 W KL Avenue carrying the zoning designation of RR: Residence District, the maximum fence height allowed within the front yard setback is 4'. If approved, the variance would permit a fence that will be 2' higher than what is allowed within the front yard setback per code. An aerial of the site under consideration is outlined in light blue in the image to the right.



10294 W KL Avenue is a half-acre parcel located within the southwest quadrant of the Township. The subject parcel has only three property lines, two of which possess frontage along two heavily used

roadways. The property in question fronts W KL Avenue to its south and fronts Almena Drive to its north, which are both 55 mph roadways. If a property has frontage along two roadways, for example such as corner lots within a subdivision, by code said property has two front yards and front yard setbacks need to be followed along those roadways.

It should be noted that a 6' tall privacy fence was unlawfully constructed within the front yard setback adjacent to Almena Drive by a previous owner of the property in early 2020. The new property owners, Jamie and Justin Schneck, are requesting a variance to keep the recently constructed 6' tall fence along with extending said fence throughout the majority of the frontage adjacent to Almena Drive and W KL Avenue. The existing 6' tall fence is a dog-eared wood picket fence and if granted a variance, the existing 6' tall fence would remain unchanged as the fence extension would be made up of the same wood panel materials. A photo of the proposed fence can be found on the immediate right.

SECTION 57.60: Fences

The applicant has provided the below rationale for this variance request. Further rationale supporting this variance request can be found in the letters of intent submitted by the applicant in which are attached to this staff report.

- "Part of our purchase agreement with the Ambroso's, the lovely family that bought and renovated the property in 2019/2020, was for them to start a privacy fence for us to complete after we moved in."

- "The main agreement for the fence came about for fear of being on a busy corner with our two (2) dogs who love for us to play fetch with them. The Ambroso's graciously agreed to start X amount of fencing for us since Justin and I decided we would like to have the maximum amount of the yard fenced for enjoyment with the dogs, future child(ren) and for entertaining. Once we moved in, we realized that having the privacy fence will also help with lights shining into our home as drivers pass the house during the night. Said fencing will allow for more privacy both in the home and in the backyard, I have noted that when driving northeast on Almena, driver can see directly into our home through our large bay windows. Allowing for a six (6) foot privacy fence to be installed as much around the property as possible would assist us with all the problems listed above."

- "We are aware of past incidents that have taken place at the Almena Drive and W KL Avenue intersection and want to ensure the safety of drivers travel along this road, while also having the privacy from it that we thought we could achieve when we purchased the property."

STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
- The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
- The problem is not self-created.
- Public safety and welfare.

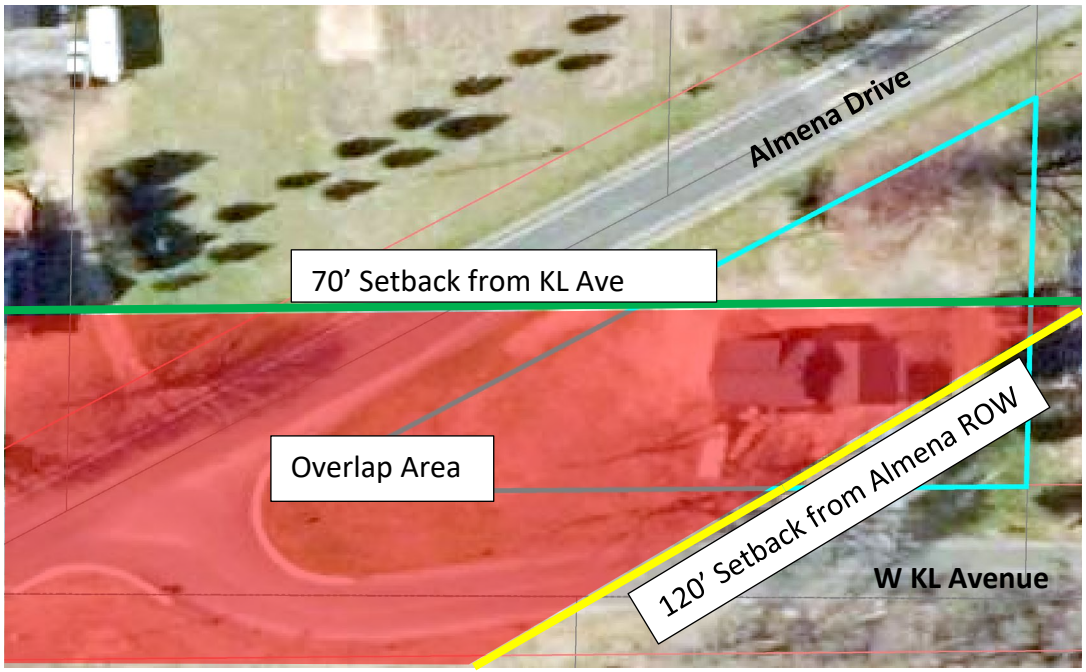
Staff has analyzed the request against these principles and offer the following information to the Zoning Board of Appeals.

Standards of Approval of a Nonuse Variance (practical difficulty):

S*tandard:* *Unique Physical Circumstances*
Are there unique physical limitations or conditions which prevent compliance?

Comment: 10294 W KL Avenue has road frontage along Almena Drive to its north and W KL Avenue to its south. Unlike many other corner parcels, lots, and building sites within the Township, the site is unique in that it only has a total of three property lines. Almena Drive and W KL Avenue are two 55 mph roadways with high traffic volumes. It should be noted that although W KL Avenue is a 55 mph road, the traveled way currently ends once it reaches Almena Drive as the intersection was reconfigured in recent years by the Kalamazoo County Road Commission. Since there is a stop sign on W KL Avenue at the T intersection, vehicles will be slowing down if heading westbound and will be beginning to accelerate traveling eastbound, therefore not reaching the 55 mph speed limit. The terrain is relatively flat throughout the site. There are no physical limitations such as a ditch or slope on the outskirts of the site.

It should be noted that the site's overall size and configuration does limit what can be done on this property. Both Almena Drive and W KL Avenue have larger front yard setbacks compared to the setbacks required along a standard residential street. For reference, the setback standard for residential roads is typically 30' from the edge of the right-of-way. Almena Drive's setback is 120' from the center of the public right-of-way. W KL Avenue's setback is 70' from the edge of the public right-of-way. These larger front yard setbacks combined from both W KL Avenue and Almena Drive completely consumes the compacted property. See visual at the top of the next page. Due to these setback restrictions, a 6' tall privacy fence cannot be erected anywhere on the subject property. However, a 4' tall fence can be constructed to comply with the Oshtemo Township Zoning Ordinance.



Standard: *Conformance Unnecessarily Burdensome*
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

Comment: A fence, though 2’ shorter than what the applicant has proposed, could still be installed to provide the desired security for the property owner’s pets and family, as referenced in their letter of intent. A fence that is 4’ in height would comply with the Zoning Ordinance and would still allow for some privacy. A fence for residential property is not required to be installed by the Zoning Ordinance. A single-family home is a permissible use within the RR: Residence District as reasonable use of the property would be maintained if the subject variance request was denied by the Zoning Board of Appeals. Conformance with the code is not unnecessarily burdensome.

Standard: *Minimum Necessary for Substantial Justice*
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).

Comment: In researching past Zoning Board of Appeals decisions regarding the request for relief from fence height requirements, Planning Department staff was unable to identify any similar case. This is most likely the first variance request of its kind for said relief as there are not many parcels within the Township that possess of only three property lines, two of which being front yard property lines properties in which also have a large front yard setback, and reside along a designated roadway having a 70’ or even a 120’ setback.

Standard: *Self-Created Hardship*
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: The initial reason a variance is being requested is due to a previous owner of the subject property unlawfully installing a 6' tall fence within a front yard setback. With that being said, the current property owner wishes to keep and extend the unlawful nonconforming fence within the front yard setback on both street frontages. A fence is not a required nor necessary amenity. This is a self-created hardship.

Standard: *Public Safety and Welfare*
Will the variance request negatively impact the health, safety, and welfare of others?

Comment: The Kalamazoo County Road Commission has adopted standards in regards to clear vision for motorists when approaching intersections. This standard is called the Clear Vision Triangle. The Clear Vision Triangle is implemented to provide safe passage and adequate clear vision for motorists by either eliminating or minimizing any obstructions protruding into the public right-of-way. Such standards were developed under AASHTO requirements, or more commonly known as the American Association of State Highways and Transportation Officials.

Township staff met with personnel from the Kalamazoo County Road Commission on-site earlier in the month to ensure that clear vision would be maintained if the variance request is approved as proposed. For 55 mph roadways, the Kalamazoo County Road Commission requires a clear vision path of at least 610' without any obstructions. A measurement was taken beginning at the south side of the edge of the traveled way adjacent to the T intersection located at W KL Avenue and Almena Drive spanning 610' to

the end point location, shown in the image below, traveling northeast bound on Almena Drive. Township staff and personnel from the Kalamazoo County Road Commission were able to confirm that the proposed 6' tall fence would not obstruct the clear vision triangle for motorists. Through this verification process, it does not appear that a 6' tall fence as proposed would endanger any members of the public. If the Zoning Board of Appeals approved this request, the health, safety, and welfare for public members would remain intact. It should be noted that approval of this variance request will set a precedent for similar cases in the future. Visuals of the field visit can be found as an attachment to this staff report.

Lastly, the importance of setbacks for any type of structure should be mentioned . Setbacks provide a form of privacy and security between adjacent uses and property owners, help reinforce desired and consistent community aesthetics, and also are established for safety purposes. Once reason why the ordinance requires that a fence can only be a maximum height of 4' in a front yard is so that emergency services can see the address numbers on the residential structure. Moreover, another reason as to why a fence can only be 30" in height when within 20' from the adjacent public right-of-way of an intersection is so that clear visions for motorists can be accommodated for. Although fences may be placed on the property line, setbacks still factor in as a key role as it pertains to the permitted height.

POSSIBLE ACTIONS

The Zoning Board of Appeals may take the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

The motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
    - The site only has three property lines, two of which being front yard property lines by code. The properties configuration and setbacks from both adjacent public rights-of-way do not permit a 6' tall fence to be placed anywhere on the property which can be considered a unique physical limitation.
    - There would be no negative impact to the safety of the public as a 6' tall fence in the proposed location will not be obstructing the clear vision of motorists.

- Support of variance denial
    - There are no unique physical limitations that prevent compliance with the Zoning Ordinance.
    - Conformance is not unnecessarily burdensome, as a 4' tall fence may be installed within both front yard setbacks in order to comply with the Zoning Ordinance.
    - The variance for a 6' tall fence is a self-created hardship.

- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A fence is not a required nor a necessary amenity.
- The request goes against the intent and integrity of the Zoning Ordinance which protects the health, safety, and welfare of the public.

Possible motions for the Zoning Board of Appeals to consider include:

1. Variance Approval
   The Zoning Board of Appeals approves the variance request due to the proposal not negatively impacting the health, safety, and welfare of the public as well as the parcel's unique configuration.

2. Variance Denial
   The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and no substantial justice was found.

3. Variance Approval and Denial
   The Zoning Board of Appeals can choose to approve portions of the requested variance or provide alternate relief. For example, approve specific sections of the requested fencing.

Attachments: Application, Letters of Intent, Site Plan, and Site Photos.

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charter township oshtemo

7275 W. Main Street, Kalamazoo, Michigan 49009-9334
Phone: 269-216-5223 Fax: 269-375-7180

PLEASE PRINT

PROJECT NAME & ADDRESS 6 Foot Privacy Fence: 10294 W KL Ave

PLANNING & ZONING APPLICATION

Applicant Name : Jamie & Justin Schneck

Company

Address 10294 W KL Ave
Kalamazoo, MI 49009

E-mail jamie@sharplawgroup.com

Telephone 269-330-9992 Fax

Interest in Property

THIS SPACE FOR TOWNSHIP USE ONLY

Fee Amount

Escrow Amount

OWNER*:

Name Jamie & Justin Schneck

Address 10294 W KL Ave
Kalamazoo, MI 49009

Email jamie@sharplawgroup.com

Phone & Fax 269-330-9992

NATURE OF THE REQUEST: (Please check the appropriate item(s))

___Planning Escrow-1042
___Site Plan Review-1088
___Administrative Site Plan Review-1086
___Special Exception Use-1085
✓Zoning Variance-1092
___Site Condominium-1084
___Accessory Building Review-1083
__Land Division-1090
__Subdivision Plat Review-1089
__Rezoning-1091
__Interpretation-1082
__Text Amendment-1081
__Sign Deviation-1080
__Other:

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):

To continue building a 6ft privacy fence along Almena for the enjoyment of our property

LEGAL DESCRIPTION OF PROPERTY *(Use Attachments if Necessary)*:

Property sits on the triangular corner of W KL Avenue and Almena Drive

PARCEL NUMBER: 3905- _____

ADDRESS OF PROPERTY: 10294 W KL Ave

PRESENT USE OF THE PROPERTY: Single Family Home

PRESENT ZONING _____ **SIZE OF PROPERTY** 1.125 acres

NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:

Name(s)	Address(es)

SIGNATURES

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

Owner's Signature*(* If different from Applicant)* — **Date** 8/10/2021

Applicant's Signature — **Date** 8.1.21

Copies to:
Planning –1
Applicant -1
Clerk –1
Deputy Clerk –1
Attorney-1
Assessor –1
Planning Secretary - Original

****

PLEASE ATTACH ALL REQUIRED DOCUMENTS

Sharp & Associates Law Firm

6312 West Main St.
Kalamazoo, MI 49009
P: (269) 978-6560
F: (269) 903-2420
www.sharplawgroup.com

Oshtemo Zoning Board

RE: Justin and Jamie Schneck: 10294 W KL Ave., Kalamazoo, MI 49009

To Whom It May Concern:

My husband Justin and I purchased the property located at 10294 W KL in Oshtemo Township on Monday, November 2, 2020, after several grueling months of searching and fighting for a new home. Part of our purchase agreement with the Ambroso's, the lovely family that bought and renovated the property in 2019/2020, was for them to start a privacy fence for us to complete after we moved in.

The main agreement for the fence came about for fear of being on a busy corner with our two (2) dogs who love for us to play fetch with them. The Ambroso's graciously agreed to start X amount of fencing for us since Justin and I decided we would like to have the maximum amount of the yard fenced for enjoyment with the dogs, future child(ren) and for entertaining. Once we moved in, we realized that having the privacy fence will also help with lights shining into our home as drivers pass the house during the night. Said fencing will allow for more privacy both in the home and in the backyard, I have noted that when driving northeast on Almena, driver can see directly into our home through our large bay windows. Allowing for a six (6) foot privacy fence to be installed as much around the property as possible would assist us with all the problems listed above.

Justin and I (we) are requesting to continue the installation of our six (6) foot privacy fence towards the intersection of Almena Drive and W KL Avenue, keeping the six (6) foot fence 30 feet away from the intersection, which is well more than the 20 foot away from intersection ordinance for six (6) foot fencing. We are aware of past incidents that have taken place at the Almena Drive and W KL Avenue intersection and want to ensure the safety of drivers travel along this road, while also having the privacy from it that we thought we could achieve when we purchased the property. I would like to note that neither my husband, Justin, nor myself, were made aware of any issues that pertained to the fence before, during, or after the sale of the home by the builders or their realtors or the township, until Officer Rick Suwarsky emailed me after seeing we were continuing the fence along the back of our property, on Almena.

Jamie & Justin Schneck

VARIENCE RESUBMITTAL

Justin & Jamie Schneck
10294 W KL Avenue
Kalamazoo, MI 49009

My husband and I were made aware of some comments that the Oshtemo Tech Review Committee had regarding our variance request for our fence. We wanted to address those comments for the board and hope to clear up any more questions or concerns there might be.

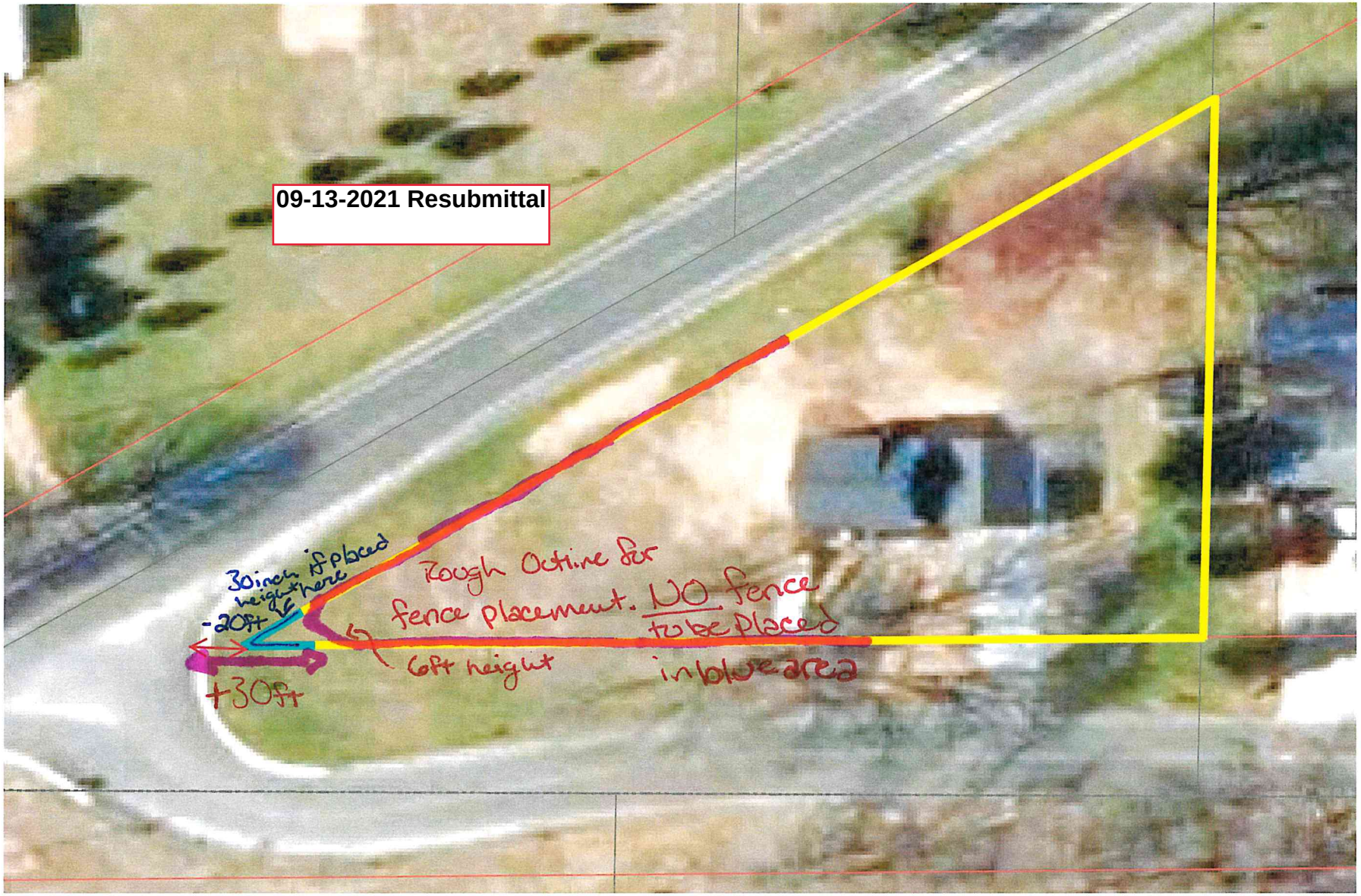
The first comment was in regards to our fence and the intersection: *Section 57.60 (B.2.) of the Zoning Ordinance outlines that fences on corner properties cannot be more than 30 inches in height if placed within 20 feet of the intersection of the abutting public rights-of-way. Since this code section was solely implemented for the safety of the public, the site plan will need to be amended as the plan illustrates a 6 foot tall fence within 20 feet from the edge of abutting public rights-of-way (example showing vision triangle location attached). Please note that the Zoning Board of Appeals cannot grant a variance in which supersedes the public's safety. Please modify accordingly.*
I am unsure if it was looked over or if there was confusion from our rough outline drawing, we did address this issue in our Letter of Intent that was originally submitted, but I will try my best to clarify. In an informational photograph sent to us from Colton Hutson describing fence locations and heights, I have included a new rough outline drawing for fence placement using the photograph sent to us from Mr. Hutson. As we had stated in our Letter of Intent, we are aware of prior events that have caused this intersection to be changed and are wanting to add this fence safely to the area for privacy and the protection of ourselves, our animals, and our future children, I feel that bringing the fence 30 feet in from the right-of-way of the intersection would allow for enough vision clearance in all seasons.

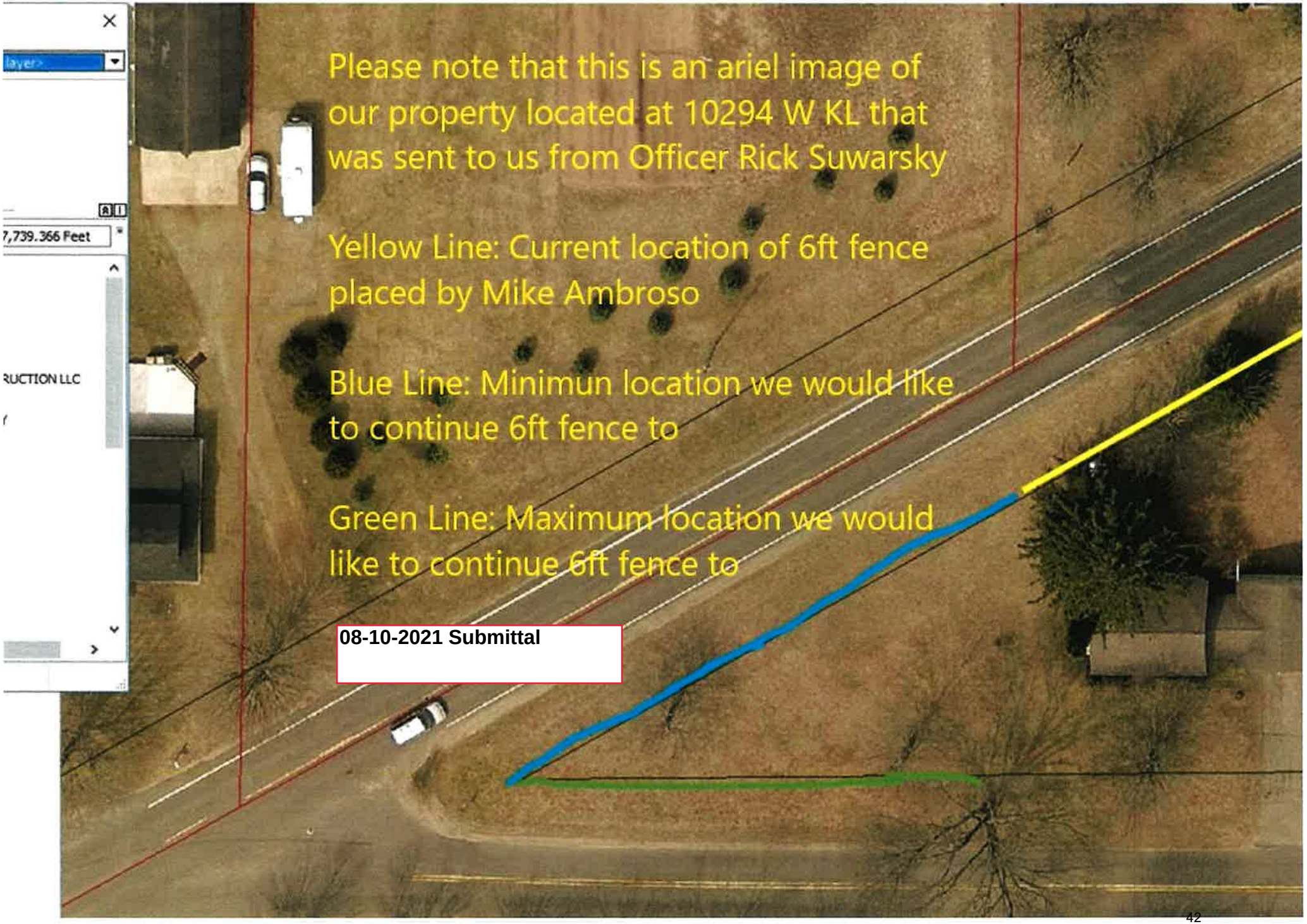
The second comment was in regards to using an image showing how the KL intersection has been reconfigured verses using the older image, as mentioned above, I have included such provided to me from Mr. Hutson.

The third comment was asking for material type and encouraging photos of the current fence. Both the current fence and the extension we are adding are classic Dog-Eared Wood Pickets with wood support cross beam and wood posts, the wooden posts are being cemented into their holes and support beams/pickets secured with appropriate nails. I have also included a few pictures of the current fence for reference of material.

Please let us know if there are any further questions or concerns.

Justin & Jamie Schneck


09-13-2021 Resubmittal
30 inch if placed height here
20ft
Rough Outline for fence placement. NO fence to be placed in blue area
6ft height
+30ft


Please note that this is an ariel image of our property located at 10294 W KL that was sent to us from Officer Rick Suwarsky
Yellow Line: Current location of 6ft fence placed by Mike Ambroso
Blue Line: Minimun location we would like to continue 6ft fence to
Green Line: Maximum location we would like to continue 6ft fence to
08-10-2021 Submittal


Starting Point (from edge of traveled way)


610' Mark


610' Mark


6' tall fence


6' tall fence


610’
Clear Vision Path
Existing 6’ Tall Fence
Edge of traveled way
Proposed Fence
Property Lines
15’
49