

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A SPECIAL VIRTUAL MEETING HELD OCTOBER 12, 2021

Agenda

Public Hearing: Variance, Schneck Fence (Continued from the Meeting of September 28, 2021)

Ms. 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 special virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, October 12, 2021, beginning at approximately 3:03 p.m.

MEMBERS PRESENT: Neil Sikora, Chair (All attending within Oshtemo Township)
Dusty Farmer
Micki Maxwell
Anita Smith, Vice Chair
Louis Williams

MEMBER ABSENT: Ollie Chambers, Fred Gould

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

Applicant Jamie Schneck was also present.

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 SEPTEMBER 28, 2021

The Chair asked if there were any additions, deletions or corrections to the minutes of September 28, 2021. After Ms. Smith noted the following corrections: p. 1,

date change, p. 10, change “reach” to “each”, and “RWS” to “RWL”, and remove the letter “b” from the motion on p. 12, he asked for a motion.

Ms. Farmer made a motion to approve the Minutes of September 28, 2021, as presented, with the corrections as suggested. Chairperson Sikora seconded the motion. The motion was approved unanimously by roll call vote.

The Chair moved to the next item and asked Mr. Hutson for his presentation.

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.

Mr. Hutson told the Board the applicant was 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, parcel no. 05-19-270-010. 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.

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.

He noted 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 were 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 Ave. The existing 6’ tall fence is a dog-eared wood picket fence. 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.

He explained the applicant provided the below rationale for this variance request.

- “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, drivers 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.”

Mr. Hutson indicated staff analyzed the request against the required criteria and provided the following analysis.

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

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. 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.

The overall size and configuration of the site 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. 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 line. These larger front yard setbacks combined from both W KL Avenue and Almena Drive completely consumes the compacted property. 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?*

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. 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).*

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 only three property lines, two of which being front yard property lines properties 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?

The initial reason a variance was 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?*

The Kalamazoo County Road Commission has adopted standards in regard 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. 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.

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. One 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. Although fences may be placed on the property line, setbacks still factor in as a key role as it pertains to the permitted height.

Mr. Hutson noted the request goes against the intent of the ordinance and detailed the possible actions the Board might take:

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

He said the motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact were 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.

He offered possible motions for the Zoning Board of Appeals to consider:

1. Variance Approval
The Zoning Board of Appeals approves the variance request due to the proposal not negatively impacting the safety 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, and no unique physical limitations exist.
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.

Mr. Hutson noted the applicant was present.

Chairperson Sikora thanked Mr. Hutson for his presentation and asked whether Board Members had questions.

Ms. Maxwell wondered why the request goes against public health and safety.

Ms. Lubbert indicated the intent of the ordinance includes public safety and that part of the issue is that a privacy fence in the front yard would limit the view of the house from the road, which could be a potential issue for emergency responders/others finding the home. She also noted that taller fences cause visual obstructions for cars that are entering or leaving a adjacent driveway. She noted that the vision triangle itself at the road intersection is not obstructed for motorists.

Ms. Maxwell commented the corner there was reconfigured recently.

Ms. Lubbert said it was reconfigured in late 2018 to be made more perpendicular.

Ms. Jamie Schneck said she and her husband purchased the property in November of 2020.

Ms. Maxwell asked why the setbacks for Almena Rd. and KL Avenue are so big.

Mr. Hutson said they both have high traffic volumes and a 55 mph speed limit and that larger setbacks are common for safety purposes, though not always required.

Ms. Lubbert added it can also be a quality of life issue and was put into effect by the Township a long time ago.

Attorney Porter added that based on earlier traffic studies, maybe the larger setback was provided in case of a need for expansion.

Ms. Smith noted a 6' fence is not permitted anywhere on the property.

Ms. Lubbert agreed, saying that due to the site's size and layout the entire property is technically considered front yard and a fence cannot be placed in the right of way.

Chairperson Sikora commented the Road Commission says you cannot have a driveway that does not have a clear view out. Hearing no further comments, he asked if the applicant wished to speak.

Ms. Schneck said they hoped to have a fence at least to the stop sign at a minimum. Bright car lights from the stop sign at Almena shine in their windows. When driving toward the house drivers can see right into the house at night. She said when they purchased the property, they were not aware there was an issue with the fence and were shocked to hear there were issues even prior to the purchase.

The Chair asked if a 4' fence would serve their needs or perhaps a hybrid, partly 4', partly 6'.

Ms. Schneck hoped to at least keep the 6' fencing that exists; she was not sure if 4' would be tall enough to keep traffic lights out of their windows.

Chairperson Sikora moved to public hearing, but as there was no one present to comment he moved to Board Deliberations.

Ms. Smith did not think the extra 2' requested would make a big difference regarding car lights and drivers are paying attention to the road not house windows.

Ms. Maxwell asked if the roadways are at or above the grade of the property.

Mr. Hutson indicated the roads and property are the same grade.

The Chair felt a 6' fence all the way would be imposing and off putting and wondered if approved how many others would be requested in the future.

Ms. Maxwell agreed she worried about setting a precedent but would like to see them keep what they have.

Ms. Farmer felt if the existing 6' was left in place, any extension should be at 4'.

Chairperson Sikora said he thought plantings could help with screening.

Ms. Smith agreed and said they could be planted closer to the house. She said she did not want to set a precedent and felt 4' all the way around should be required to bring the property into compliance.

Ms. Farmer did not feel it was reasonable to require the existing 6' fence to be removed as the current owners did not construct it and it would be expensive to do.

Ms. Lubbart said cost of removal and the fact that the out of compliance fence exists today are not appropriate reasons to be considered by the Board.

Attorney Porter agreed and said they need to consider the reasons provided by staff when considering the variance request.

The Chair noted that just because the fence existed when the property was purchased does not make it a pre-existing condition.

Ms. Smith made a motion to deny the variance request in order to construct a 6' tall privacy fence within the front yard setbacks at 10294 W. KL Avenue for the following reasons as recommended by staff:

- the need for the variance is a self-created hardship
- conformance with code requirements is not unnecessarily burdensome
- no unique physical limitations exist.

Chairperson Sikora seconded the motion. The motion was approved unanimously by roll call vote.

Ms. Schneck confirmed this action means the fence will need to be 4' all around the property.

Public Comment

As there were no members of the public present, the Chair moved to the next agenda item.

Other Updates and Business

Ms. Lubbart reminded the group of a virtual Joint Board Meeting to be held Tuesday October 19th at 6:00 p.m., invited them to attend, and noted the meeting would not last more than an hour.

She told them that after the Burlington loading dock request was denied, the company proceeded to rent the space using the current configuration, complying with the decision of the Board.

Ms. Farmer said the communication between Burlington and the Building Authority has been a good experience.

Ms. Lubbert noted the ordinance language that was revised as a result of the wall lights approved behind Meijer, was approved by the Planning Commission and the Township Board would be considering it for the second reading at its meeting later in the evening.

She also indicated there will be an October 26th ZBA meeting.

Adjournment

There being no further business to consider, the Chair adjourned the meeting at approximately 3:54 p.m.

Minutes prepared:
October 14, 2021

Minutes approved:
October 26, 2021
