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**NOTICE
OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

REGULAR MEETING - VIRTUAL

Participate through this Zoom link:
<https://us02web.zoom.us/j/87643649630>

Or by calling: 1-929-205-6099
Meeting ID: 876 4364 9630

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

**TUESDAY, OCTOBER 26, 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: October 12th, 2021
6. **Public Hearing – Variance, Rudlaff Pool**
Nicole Rudlaff is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks to allow a 4’2” reduction of the 15’ required rear yard setback and a 6’4” reduction of the 10’ required side yard setback in order to construct a 18’ x 36’ in-ground swimming pool at 5756 Coddington Lane.
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		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
<u>Treasurer</u>		
Clare Buszka	216-5221	cbuszka@oshtemo.org
<u>Trustees</u>		
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			
<u>Assessor:</u>			
Kristine Biddle	216-5225	assessor@oshtemo.org	
<u>Fire Chief:</u>			
Mark Barnes	375-0487	mbarnes@oshtemo.org	
<u>Ordinance Enf:</u>			
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org	
<u>Parks Director:</u>			
Karen High	216-5233	khigh@oshtemo.org	
Rental Info	216-5224	oshtemo@oshtemo.org	
<u>Planning Director:</u>			
Iris Lubbert	216-5223	ilubbert@oshtemo.org	
<u>Public Works:</u>			
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: 876 4364 9630**

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: **876 4364 9630#**

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



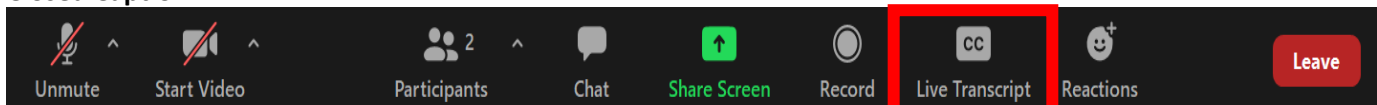
Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- 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:



Turn on Closed Caption:

Using the icons at the bottom of the Zoom screen:

1. Click on the “Live Transcription” button.
2. Then select “Show Subtitle”.

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**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

DRAFT 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
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, 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:
_____, 2021

DRAFT

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October 20, 2021



Mtg Date: October 26, 2021

To: Oshtemo Township Zoning Board of Appeals

From: Colten Hutson, Zoning Administrator

Applicant: Nicole Rudlaff

Owner: Nicole & Jennifer Rudlaff

Property: 5756 Coddington Lane, Parcel Number 05-25-120-550

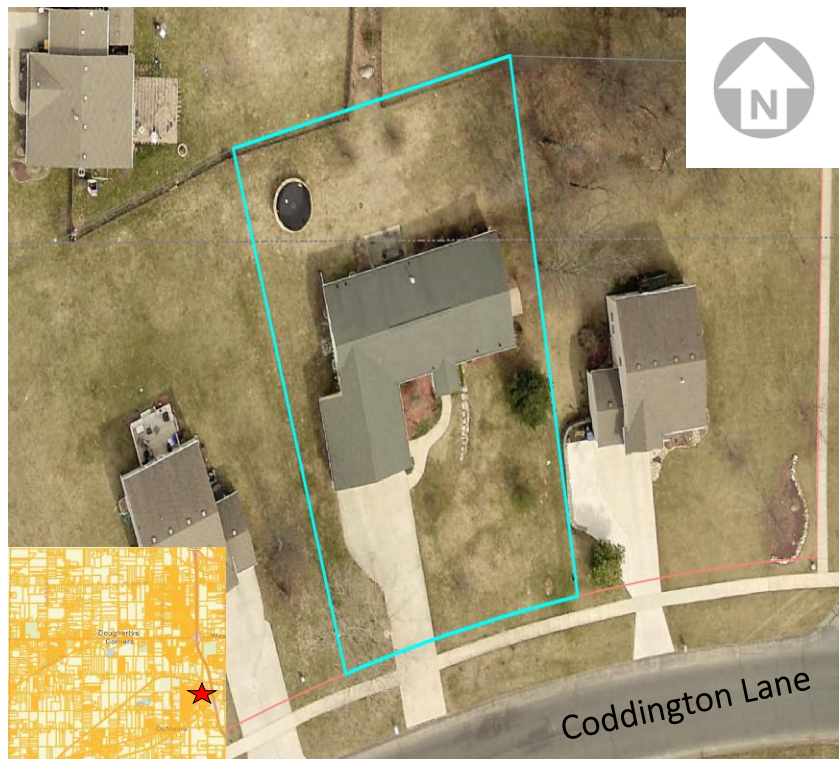
Zoning: R-1: Residence District

Request: A variance to allow a 4'2" reduction of the 15' required rear yard setback and a 6'4" reduction of the 10' required side yard setback in order to construct a 18' x 36' in-ground swimming pool.

Section(s): Section 50.60: Setback Provisions

OVERVIEW:

The applicant is requesting relief from Section 50.60 of the Zoning Ordinance which governs setbacks for structures in residential zoning districts in order to construct an 18' x 36' in-ground swimming pool in the back yard at 5756 Coddington Lane. Section 50.60 of the Zoning Ordinance requires that any swimming pool, whether in-ground or above ground, located within the R-1: Residence District have a minimum rear yard setback of 15' and a minimum side yard setback of 10'. If approved, the variance would permit a swimming pool that will protrude 4'2" into the required 15' rear yard setback and 6'4" into the required 10' rear yard setback.



2. Granting the variance will NOT be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:

The use is for private use only. It will improve the property and its value by creating a functional recreation and gathering space. It cannot be located elsewhere on site.

3. Granting the variance WILL be an improvement to the neighborhood and result in the overall increase in property value and tax base created by improvement.
- As you will see from the pictures provided the requested variance will be safer than the current required variances. The required variance you will be walking out of the home's french doors and fall into the pool. With the requested variance approval will allow more room once you open the french doors to walk out safely without falling into the pool and still be inside the 6 ft privacy fence which surrounds the entire back yard."

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):

Standard: Unique Physical Circumstances

Are there unique physical limitations or conditions which prevent compliance?

Comment: The principal building located at 5756 Coddington Lane is setback 10' to 12' further back compared to a number of the surrounding principal buildings within the Oshtemo Woods No. 1 plat. The existing positioning of the principal building on-site limits the size and types of structures that may be erected in the rear yard. The natural grade of the site slopes to the east. However, there are no substantial topographical changes which would preclude compliance with the Oshtemo Township Zoning Ordinance. A swimming pool can still be constructed at this site without requesting relief from the rear yard and side yard setbacks.

Standard: Conformance Unnecessarily Burdensome

*Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

Comment: A swimming pool, though slightly smaller or configured in a different way than what the applicant has proposed, could be built to comply with the Oshtemo Township Zoning Ordinance. A circular above ground pool or a smaller in-ground pool could be erected. This would still allow the property owner to establish a swimming pool on-site while increasing the value of the subject property along with the surrounding properties in the neighborhood. 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).*

Comment: In researching past Zoning Board of Appeals decisions regarding setback relief for swimming pools from the side or rear yard setback, Planning Department staff was unable to identify any similar case. Staff found a number of variances in which were granted setback relief for swimming pools from their front yard setback. All properties in which received variance approval were located on corner lots within subdivisions, with the most recent request being approved on November 17, 2020. Since 5756 Coddington Lane is requesting relief from the side and rear yard setback, and is not located on a corner lot, the previous cases found by staff cannot be considered for substantial justice.

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

Comment: The purpose of the request originates from when the applicant pre-ordered the fiberglass molds for the swimming pool and later realized through applying for building permits that the 18' x 36' swimming pool would not meet the minimum side and rear yard setbacks where proposed. It is the applicant's desire to construct an 18' x 36' in-ground pool at this location that triggered this variance request. A smaller swimming pool could be constructed on-site. A swimming pool 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?*

Comment: The swimming pool will not be visible from neighbors as the back yard at the subject property is completely fenced-in with a 6' tall vinyl fence. Access to the swimming pool will only be made available to the homeowners and their guests. If approved, the swimming pool will go through the building permit process and will be inspected by the Southwest Michigan Building Authority to ensure the new construction meets building code. The swimming pool will not negatively affect neighboring properties and will not harm members of the public. However, setbacks are paramount for any type of structure as they provide security and privacy between adjacent uses and property owners. 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.



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
 - There would be no negative impact to the safety of the public as the swimming pool will not be visible to neighbors and will not directly negatively affect adjacent properties.
- Support of variance denial
 - There are no unique physical limitations that precludes compliance.
 - Conformance is not unnecessarily burdensome, other locations/configurations for a swimming pool can be explored.
 - The variance for the 18' x 36' swimming pool is a self-created hardship.

- Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A swimming pool is not a required nor a necessary amenity.
- This request goes against the intent and integrity of the Zoning Ordinance.

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.

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.

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



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

PLEASE PRINT

PROJECT NAME & ADDRESS _____

PLANNING & ZONING APPLICATION

Applicant Name : Nicole & Jennifer Rudloff

Company _____

Address 5756 Coddington Ln.
Kalamazoo, MI 49009

E-mail NIKKI.RUDLOFF0311@gmail.com

Telephone 269-519-3420 Fax _____

Interest in Property _____

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

OWNER*:

Name Nicole & Jennifer Rudloff

Address 5756 Coddington Ln.
Kalamazoo, MI 49009

Email NIKKI.RUDLOFF0311@gmail.com

Phone & Fax 269-519-3420

Fee Amount _____

Escrow Amount _____

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): _____

Zoning Variance For Inground Pool

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

OSHTemo Woods # 1, Lot 55 12/03 24-355-020
And 25-105-010V Combined into OSHTemo
Woods No 1

PARCEL NUMBER: 3905- 05-25-120-550

ADDRESS OF PROPERTY: 5756 CODDING LANE KALIMAZOO, MI, 49009

PRESENT USE OF THE PROPERTY: Residential

PRESENT ZONING R-1 RES **SIZE OF PROPERTY** 0.346

**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.

Alice Purcell / Doug Purcell 8/29/21
Owner's Signature(* If different from Applicant) **Date**

Applicant's Signature **Date**

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

PLEASE ATTACH ALL REQUIRED DOCUMENTS

City of Oshtemo
7275 W. Main Street
Kalamazoo, Michigan 49009

Letter of Intent for Zoning Variance For:

Nicole and Jennifer Rudlaff
5756 Coddington Ln.
Kalamazoo, Michigan 49009

ZONING: RSA-1 PARCEL ID#: 3905-05-25-120-550

Dear Planning & Zoning Members,

We are requesting a variance for the above to construct an inground swimming pool (18' X 36' Rectangle). Currently the township setback requirements are a minimum of 10 feet from any side yard property line and a minimum of 15 feet from any rear property line.

The location of the proposed swimming pool will be in the rear yard directly behind the house. There is no other location on site to build the swimming pool. The requested variance would be safer than the current zoning requirement.

1. Due to the shape and narrowness of this lot combined with the required rear setback of 15 ft. and the required side yard setback of 10 ft. The strict application of the requirements of this applicable zoning chapter would deprive the existing property owner the rights and privileges currently enjoyed on this site by other property owners in the same zoning district. We are requesting a reduction of the required rear setback to 10 ft. and the required side yard setback to 3 ft. which is still inside the 6ft privacy fence (see attached pictures of yard).
2. Granting the variance will NOT be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located:

The use is for private use only. It will improve the property and its value by creating a functional recreation and gathering space. It cannot be located elsewhere on site.

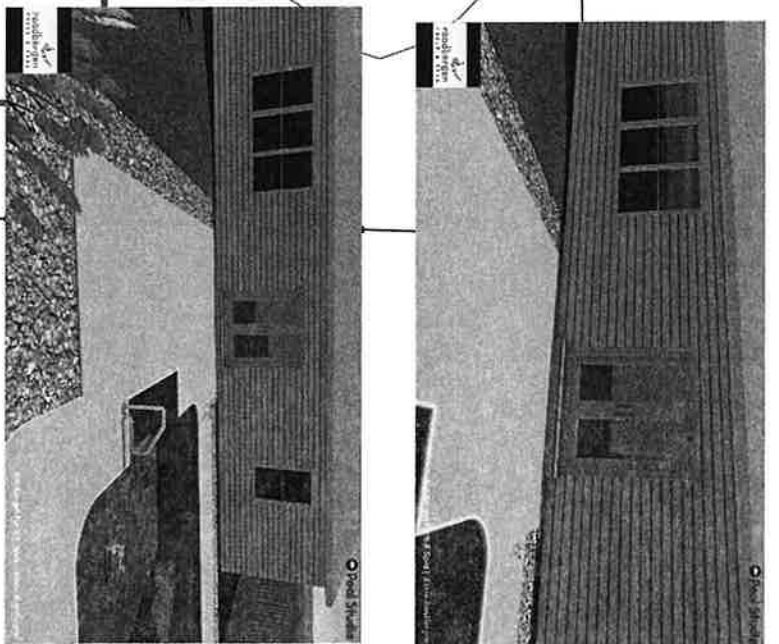
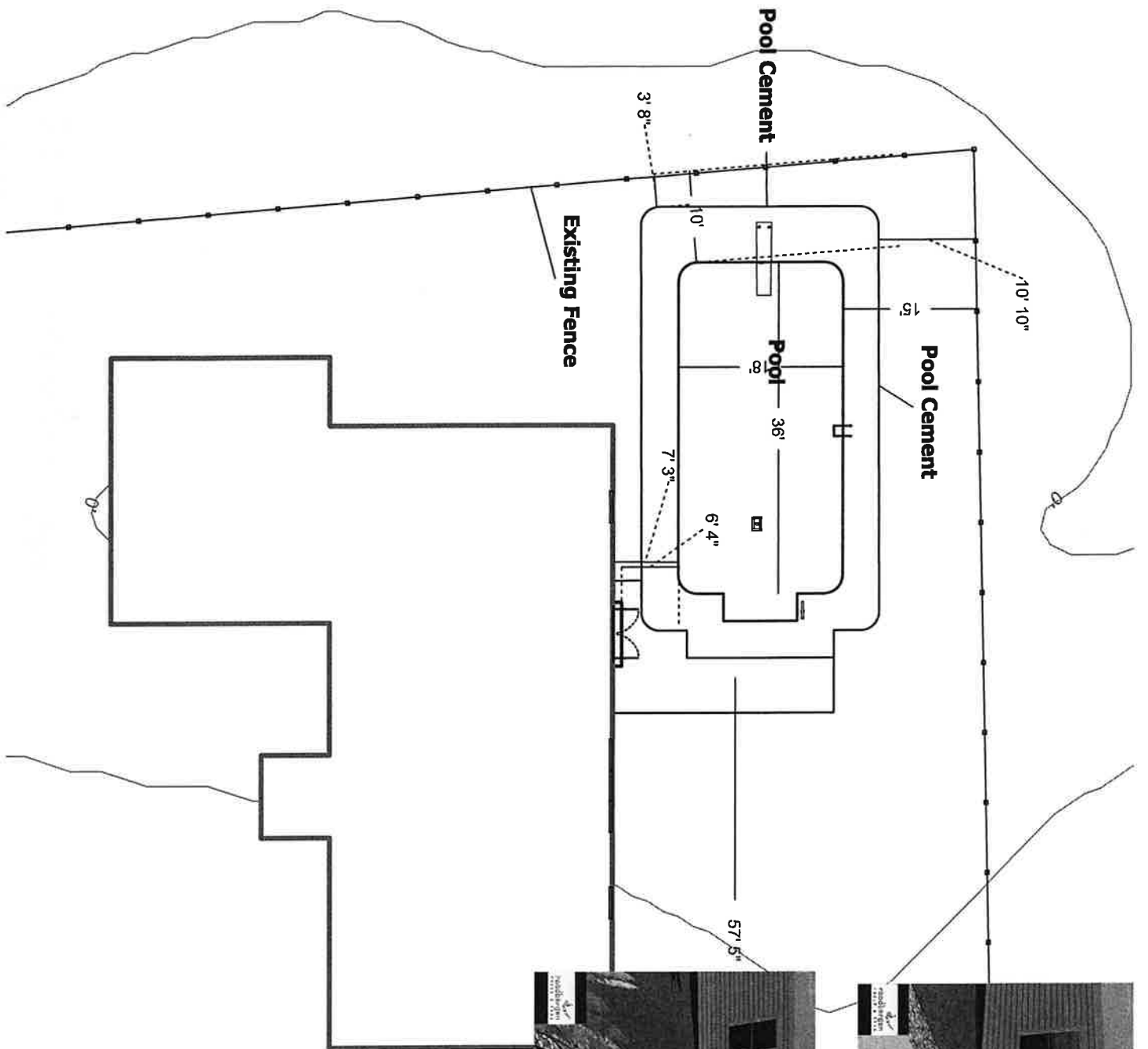
3. Granting the variance WILL be an improvement to the neighborhood and result in the overall increase in property value and tax base created by improvement.


As you will see from the pictures provided the requested variance will be safer than the current required variances. The required variance you will be walking out of the home's french doors and fall into the pool. With the requested variance approval will allow more room once you open the french doors to walk out safely without falling into the pool and still be inside the 6 ft privacy fence which surrounds the entire back yard.

Thank you for your time and consideration of property variance.

Sincerely,

Nicole Rudlaff
Property Owner





rodderbergen

P O O L S & S P A S

Designer: Rodderbergen Pools & Spas / Kevin Rodderbergen
 Address: 233 Ramona Ave.
 City: Portside
 State/Zip: NJ / 49002
 Phone: (269)323-1158
 Cell: _____
 Email: rodderbergen@skytel.net
 Key Rodderbergen NJ Rodderbergen
 License # 2101020278
 Scale: 1/8" = 1ft.

BACKYARD

AREA IN QUESTION

