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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/89731905659?pwd=Z3VGWVNoZFBZZk9SREJaamdNTWNZUT09>

Or by calling: 1-929-205-6099

Meeting ID: 897 3190 5659

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

**TUESDAY, NOVEMBER 17, 2020
3:00 p.m.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Approval of Minutes: August 25th, 2020
5. **Variance: Jeremy, 5359 Sweet Briar Drive**
Frank H. and M. Jamie Jeremy are 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 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.
6. Public Comment
7. Other Updates and Business
 - a. 2021 ZBA Meetings
8. 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>		
Grant Taylor	216-5221	gtaylor@oshtemo.org
<u>Trustees</u>		
Cheri L. Bell	372-2275	cbell@oshtemo.org
Deb Everett	375-4260	deverett@oshtemo.org
Zak Ford	271-5513	zford@oshtemo.org
Ken Hudok	548-7002	khudok@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: 897 3190 5659**

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 toll-free teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **897 3190 5659#**

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.

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**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

DRAFT MINUTES OF A VIRTUAL MEETING HELD AUGUST 25, 2020

Agenda

VARIANCE: GILLESPIE, 798 LAUREL WOOD STREET
MELVINA GILLESPIE WAS REQUESTING A 6-FOOT REDUCTION OF THE 10-FOOT REQUIRED REAR YARD SETBACK IN ORDER TO REPLACE AN EXISTING 4'X4' DECK WITH A 12' X 24' DECK.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, August 25, 2020, called to order at approximately 3:02 p.m.

PRESENT: Neil Sikora, Chair
Fred Antosz
Cheri Bell
Fred Gould
Micki Maxwell
Anita Smith, Vice Chair

ABSENT: Ollie Chambers

Also present were Iris Lubbert, Planning Director, Josh Owens, Assistant to the Supervisor, James Porter, Township Attorney and Martha Coash, Meeting Transcriptionist.

One guest, applicant Melvina Gillespie, was present.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chairperson Sikora called the meeting to order and invited those present to join in reciting the "Pledge of Allegiance."

APPROVAL OF AGENDA

Chairperson asked if anyone objected to approval of the agenda. Hearing no objections, he asked for a motion.

Ms. Bell **made a motion** to approve the agenda as presented. Ms. Maxwell **seconded the motion. The motion was approved unanimously.**

APPROVAL OF THE MINUTES OF JULY 28, 2020

The Chair asked if there were any additions, deletions, or corrections to the Minutes of July 28, 2020.

Ms. Smith noted the word “look” was missing from the third line in the next to the last paragraph on the 3rd page of the Minutes.

Hearing no further comments, Chairperson Sikora asked for a motion.

Mr. Gould **made a motion** to approve the Minutes of July 28, 2020 with the correction noted by Ms. Smith. Ms. Smith **seconded the motion**. **The motion was approved unanimously.**

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

VARIANCE: GILLESPIE, 798 LAUREL WOOD STREET **MELVINA GILLESPIE WAS REQUESTING A 6-FOOT REDUCTION OF THE 10-FOOT REQUIRED REAR YARD SETBACK IN ORDER TO REPLACE AN EXISTING 4'X4' DECK WITH A 12' X 24' DECK.**

Ms. Lubbert said 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 12' x 24' deck in place of the existing 4' x 4' deck off the back of the house.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 15-foot rear yard setback. It should be noted that in this case Buckham Highlands, the development in which the home is located, was designed and approved under a previous version of the Ordinance which required a 10-foot rear yard setback. Following standard zoning practice the setback that was originally approved with the development is followed.

798 Laurel Wood Street is on a 0.24-acre lot that is 97 feet wide by 109 feet long. The house was built 16 feet from the back-property line, leaving 6 feet of buildable area outside of the required 10-foot setback. Currently there is a 4' x 4' deck off the back of the house. The door leading to this 4' x 4' deck is the only rear exit to the home and is elevated approximately 8 feet off the ground with no stairs.

The configuration of Buckham Highlands places 798 Laurel Wood Street on the western side of the development abutting approximately 110 feet of open space, which acts as a buffer between the development and 9th Street, and is owned by Buckham Highlands Condominium Association. Lots to the north and south of this site have been developed.

She noted the applicant provided the following rationale for this variance request:

- “Strict compliance would unreasonably restrict me from ever using the back door or use the deck. The biggest concern is for the safety for me and my family as an escape route in the event such as a fire.
- This would be substantial justice to allow me the opportunity to utilize the deck for living and safety purposes as well as for resale.
- The placement of my back door prevents me from placing my deck anywhere else and it is a raised deck; therefore, I am unable to exit the house from the rear without stairs leading from the deck.
- The Allen Edwin Homes builders did not consider the setback requirements for the owners eventually building a usable deck and exit. This was not self-created by the applicant/owner.
- Relief from strict compliance will not interfere with the safety and welfare of the public or my neighbor’s safety and welfare. It will however increase the safety and welfare of my family and me by providing a usable exit in the event of an emergency. It will also add to the value and aesthetics of the home and neighborhood.”

Ms. Lubbert said 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.

Staff analyzed the request against these principles and offered 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 topography around this site is fairly flat. 798 Laurel Wood is built closer to the rear property line than some of the neighboring homes leaving comparatively less space, in this case 16 feet, for a rear yard. Currently the only rear exit to the property leads to the existing elevated 4’

x 4' deck. There is approximately 110 feet of open space behind this property. There do not appear to be any unique physical limitations that prevent compliance.

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

Comment: Per building code a stairway is required to be at least 36 inches (3 feet) wide. There are 6 feet between the back of the building and the 10-foot rear yard setback. A deck, though smaller than what the applicant has requested, could be built with stairs within compliance of the code. Conformance with the code is not unnecessarily burdensome.

*Standard: Minimum Necessary for Substantial Justice
Applied to 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 a primary structure from rear yard setbacks, Planning Department staff was only able to identify one comparable case, as follows:

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 unique feature that was discussed was that this site's rear yard abutted 30 feet of open space owned by 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 the following reasons: the existing deck already encroaches into the recognized setback area and was not causing problems, the 30 feet of open space in effect acts as additional setback/separation, and the request would not negatively impact surrounding properties.

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

Comment: 798 Laurel Wood Street was built close to the rear lot line. That lot line and setbacks for the property have not changed since its construction. There is room on the back of the property to build a deck with stairs within zoning regulations. The applicant's desire for a larger deck has triggered this variance request. A deck is not a required or necessary amenity.

Ms. Lubbert noted that public safety and welfare should also be a consideration. In other words, if approved, the Board should consider if the request would negatively impact public safety and welfare. She noted that this is a general criterion that should always be applied to any review, variance or not. She noted that setbacks are intended to provide a set spacing distance between different land uses for both safety and quality of life purposes. In this case, there is roughly 110 feet of open space behind this property which is permanently tied to this development. Because of the large landscaping buffer between the property in question and the property behind it, staff does not foresee a negative impact to public safety and welfare if this variance for a smaller rear yard setback is approved.

Ms. Lubbert indicated 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

She noted 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
 - A variance was approved for a similar request in 2006. The comparable variance case is within the same development as 798 Laurel Wood Street.
 - If approved, the variance would not negatively impact public safety and welfare.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A deck is not required or a necessary amenity.
 - This variance request for this 12' x 24' deck is a self-created hardship, as a smaller deck with stairs could be built within regulation standards.
 - Conformance is not unnecessarily burdensome.
 - There does not appear to be any unique physical limitation that prevents compliance.

Ms. Lubbert noted possible motions for the Zoning Board of Appeals to consider regarding the applicant's request include:

1. Motion to approve: Based on past precedence, allowing the applicant to construct a 12' x 24' deck with a 4-foot rear yard setback.

She said if the Zoning Board of Appeals chose this motion, staff requested a condition be attached requiring the property owner to complete the building permit process via the Southwest Michigan Building Authority.

2. Motion to deny: the requested variance based on the findings of fact presented under 'Support of variance denial' as described above.

Chairperson Sikora thanked Ms. Lubbert for her presentation and asked whether board members had questions for her.

Ms. Bell asked her to review the property behind the home.

Ms. Lubbert said there is open space behind the home, approximately 110 feet between the rear yard and 9th Street.

Chairperson Sikora confirmed with Ms. Lubbert that a variance would apply to the entire back yard and, that if granted, the variance would stay with the property.

Hearing no further questions, he asked whether the applicant, Ms. Melvina Gillespie, wished to address the board.

Ms. Gillespie, 798 Laurel Wood, indicated she would like to be able to enjoy her back yard by having a place to sit on a deck. She said there is full vegetation along the back of the property. Her immediate neighbors on both sides are in support of her request for a variance. Kristen and Booth Allen, 700 Laurel Wood, neighbors to the right of her home, submitted a letter of support. The letter cited the value that would be added to the home and the neighborhood by adding a lovely outdoor area to the property and that the addition would not interfere with neighbors of Buckham Highlands.

Ms. Maxwell asked how long Ms. Gillespie has been in residence and whether she would remove any of the vegetation from the back yard.

Ms. Gillespie indicated she has lived in the house since it was built several years ago and noted the house was situated further back on the property than other neighboring homes. She said she would not disturb any of the vegetation within the open space.

Ms. Maxwell also asked whether the proposed deck would span the width of the house and if the deck provides the only rear exit for the home.

Ms. Gillespie said the deck width proposed is 24 feet; the width of the house is 30 feet. She indicated the only other egress from the back of the house is an elevated window.

Attorney Porter noted the windows below the deck probably qualify as egress windows.

Mr. Gould appreciated the wish for use of the deck and better egress.

Attorney Porter explained the original setback for the rear yard was 10 feet. Later ordinance revision subsequent to construction of the house changed the setback to 15 feet. The original 10 foot setback in effect at the time of construction is honored.

Hearing no further questions, Chairperson Sikora asked if there were any public comments. It was determined no members of the public were in attendance, so he closed the public hearing and moved to Board Deliberations.

Mr. Antosz said he had looked over the criteria for considerations and recognized the precedent in the decision in 2006 to grant a variance to 6473 Buckham Wood Drive, but felt the reasons for variance denial as presented by Ms. Lubbert apply in this situation. He noted that based on the various finding of facts outlined, he would not be able to support this request.

Ms. Maxwell disagreed and cited safety as a factor.

Ms. Bell said the substantial justice rationale stands out for her and that she was willing to support the variance request on that basis. She noted in the statement regarding the previous variance, that part of the reasoning was that the development's captured land would not be impacted and that it would not be detrimental to neighbors. She felt that rationale rings true in this situation as well. An additional point for substantial justice is the photo showing the placement of homes on Laurel Wood, which clearly shows the house at 798 is placed back further on the lot than the other surrounding homes. She also questioned why the builder did not install stairs from the existing deck to the ground.

Ms. Smith agreed with Ms. Bell and expressed concern about the ability to reach the ground from the small deck in case of emergency and that it would be easier to get down the stairs safely from a larger deck. She noted the neighbors would not be impacted by granting this variance, nor would the captured land.

Mr. Antosz said a stairway could be built for egress from the back door onto a larger deck without a variance.

Mr. Gould said the homeowner is unable to use the property as she'd like to – it was not in her plans when she purchased the home but now she would like to use the property a little differently. For him, substantial justice and safety are overriding issues. He wouldn't deny the request just because not every criterion can be satisfied. The specific circumstances need to be considered. He supported granting the variance.

Attorney Porter asked board members to keep in mind that if there is basis to approve a variance on one criterion that weighs more heavily in favor of approval than others, it can still be approved on rationale.

Ms. Bell said her support for approval is based on substantial justice and the reasons she provided can be sufficient for support of approval.

Chairperson Sikora said he did not feel the fire safety issue should be considered by the board. If the fire code determined what was installed originally is ok, it is not for the board to overrule. If the applicant is concerned about egress, the concern can be addressed by adding stairs to a larger deck than what is currently in place, but still within code. The 2006 variance was given under different circumstances. Egress is not valuable as an argument.

Ms. Bell said she understood the variance granted in 2006 was based on unique features – the 30 feet of open space at the back of the lot that was owned by Buckham Highlands to create a buffer. The placement of the home in the current variance request also provides a unique physical circumstance. If more is needed because the property is already encroaching, it is not comparing apples to apples. It contains an abutment that is not unattractive. The deck will extend further behind the other homes because the home in question was built further back on the property than surrounding homes.

Chairperson Sikora argued the home placement is not unique. Examples of unique physical circumstances could be a road, a ravine, or a flood zone. In this case there is nothing to prevent building a smaller deck with stairs within ordinance requirements.

Ms. Smith asked what the maximum width would be allowed for a deck built within the current ordinance in these circumstances.

Ms. Lubbert said that according to building and fire code stairs need to be a minimum of 3 feet wide. She added that there were about six feet between the back of the house and the setback that the applicant could utilize.

The Chair felt a six-foot-wide deck would be a reasonable size.

Mr. Gould confirmed with Ms. Lubbert the original setback dimensions of 10 feet will be honored.

Ms. Maxwell said there were good arguments on both sides.

Ms. Maxwell **made a motion** to grant the requested variance based on the substantial justice rationale expressed by Ms. Bell, that the development's captured land would not be impacted and that it would not be detrimental to neighbors and also based on Ms. Maxwell's comments regarding increased safety with the addition of a larger deck and stairs.

Ms. Bell also asked that the unique placement of the home on the property, closer to the captured land than other surrounding homes, also be cited as a basis for approval.

Ms. Maxwell agreed to that addition.

Ms. Smith **seconded the motion.**

The motion was passed 4 - 2 by roll call vote, with Mr. Antosz and Mr. Sikora dissenting.

Public Comment

Chairperson Sikora determined there were no members of the public present and moved to the next agenda item.

Other Updates and Business

Ms. Lubbert said public meetings will continue to be held virtually through September by order of the Governor.

She also noted that if not live today, the next board meeting will be streamed live which will be a great stride toward transparency. The Township Board moved forward to approve holding live meetings online for both the Zoning Board and the Planning Commission.

Ms. Lubbert indicated there may be a site plan request to consider in September.

Ms. Bell reported the Township Board has been and is working on next year's budget, considering it line by line for all departments, trying to come to a balance of needs with realities and invited members to attend the 6:00 p.m. virtual meeting for the next session on budget later that evening.

She also thanked board members for the great dialogue on the variance application, citing it as the most difficult decision the board has had to make in some time. She appreciated the thorough and respectful conversation. She also encouraged the new era that will allow a virtual meetings component in the move toward better government transparency and the opportunity for more participation for those who may not be able to attend in person.

Mr. Sikora agreed and said just because a decision was made in the past does not necessarily mean it was the right decision and that it was appropriate that issues should be looked at again as they arise. He appreciated the conversation board members had and felt people in the community would also appreciate that they had a thorough discussion before arriving at a decision.

Adjournment

Hearing no further comments, Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:05 p.m.

Minutes prepared:
August 26, 2020

Minutes approved:
_____, 2020

DRAFT

November 4th, 2020



Mtg Date: November 17th, 2020

To: Zoning Board of Appeals

From: Karen High, Zoning Administrator

Applicant: Frank H. and M. Jamie Jeremy
Owner: Frank H. and M. Jamie Jeremy

Property: 5359 Sweet Briar Drive, parcel number 05-36-475-010

Zoning: R2: Residence District

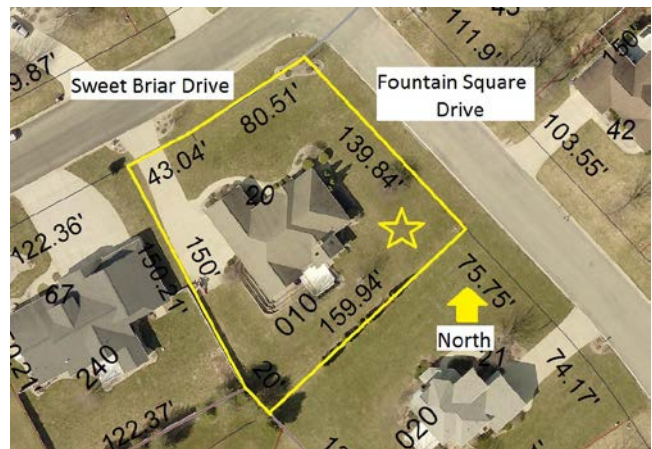
Request: A variance to permit a pool which will protrude 20 feet into the required 30-foot front yard setback

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 foot x 36 foot in-ground pool and associated concrete decking in the required front yard.

Section 50.60 of the Zoning Ordinance requires that all primary structures located within the R-2 district have a 30 foot front yard setback. Required side setback is 10 feet and required rear setback is 15 feet.

5359 Sweet Briar Drive is a 0.50-acre corner lot in Rose Arbor plat No. 2. The lot is approximately 150 feet wide by 150 feet long and also fronts Fountain Square Drive. Though the required front setbacks are 30 feet, the house, built in 2002, is approximately 44 feet from each right of way line. The side and rear yards are somewhat narrow, at approximately 35 foot and 40 foot wide respectively. The lot is outlined in yellow in the aerial photo to the right. Approximate location of the proposed pool is starred.



The applicant has submitted a property sketch showing the proposed layout in more detail. (See attachments.) Though not shown on the plan, they state that required fencing will meet all ordinance requirements. The applicant has provided the following rational for this variance request:

- The entire pool structure will be built below grade, with nothing above ground to impede the character of the neighborhood except enhanced landscape and plantings.

- A 10 foot side and 15 foot rear setback is provided. This shows a good faith effort to meet the side and rear setback requirements for lots not located on a corner.
- There is no other practical or safe location for a conventional pool on the property.
- A house in the neighborhood, also on a corner lot, was permitted to have a pool in the front yard.
- Several houses in the neighborhood have pools in the side and rear yards. Many of these pools would not be permitted if on our corner lot.

Public input was received from six residents of the neighborhood. There were no objections to the variance request. Copies of their statements are attached.

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:

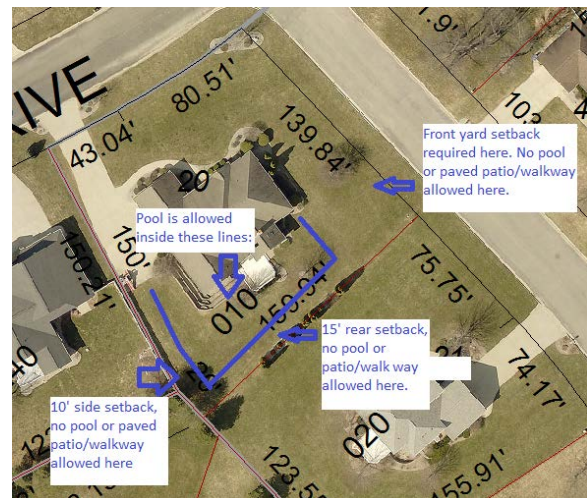
- Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted 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.

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 topography around this site is flat. Because it is located on a corner, a 30 foot front setback is required along each street frontage. This is a larger setback than is required of properties not located on a corner, where a 10 foot side yard setback is required on each side. Usable yard space is reduced by approximately 20 feet' along the Fountain Square Drive street frontage.



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

Comment: It is the applicant's desire for a pool that triggered this variance request. A pool is not a required nor necessary amenity. A smaller or differently shaped pool might fit on the property without the need for a variance.

*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 a pool in a front yard setback, Planning Department staff identified one comparable case. Further research revealed that interpretation of required setbacks for pools has varied over time. In a cursory review of the Township using aerial photos, staff found two inground pools in front yards. In addition, it should be noted that the zoning ordinance was amended in 2011 to require a setback for pools in the side and rear yard. These findings are described below.

1. Latoskewski, 405 Clubview, 10/20/1997: The applicant sought relief from the Zoning Board of Appeals to allow for the construction of a 17 foot x 35 foot pool in the required 40 foot front setback of Shadywood Drive. Located on a corner lot, the property also fronted Club View Drive. The Zoning Board of Appeals approved the variance request of 40 feet based on the following reasons: that conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks, that substantial justice would be served by the variance, and that the spirit and intent of the Ordinance would be met because the pool would be below ground and included no pool house or other structure. (See meeting minutes and aerial photo attached.)
2. 4970 Fountain Square, 10/9/01: A building permit for an inground pool in the required front yard was approved with no setback. This property is also on a corner lot. A letter in the file from Planning Department staff indicated that "placement of an inground pool is not subject to setbacks from the abutting streets." The letter and an aerial photo are attached to this staff report. This is consistent with statements in meeting minutes from that time period that 'buildings' were required to meet setback requirements but 'structures' were not.
3. 6488 Killington Drive, 2008: A building permit was issued for an inground pool at this address, also on a corner lot. The pool is located approximately 15 feet from the right of way line. Planning Department staff approved the building permit application. (See aerial photo attached.)
4. Zoning Code text amendment to Section 64 – Setback and Side Line Spacing, 2/24/2011: The zoning ordinance was amended to require a minimum front yard setback of 30 feet rather than 40 feet. Minimum rear yard setback, formerly 10 feet, was increased to 15 feet. In addition, text was added requiring that pools and decks (attached or detached) conform to applicable rear and interior side setbacks. According to the staff report, reasoning was that "this will prevent decks and pools from being too close to property lines." Added text for pools and decks follows in bold:
 - a. "The minimum setback distance between any building and any interior side property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-

1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be ten feet for all buildings, **pools, and associated decks whether attached or detached** unless a larger setback is otherwise required in the Township Zoning Ordinance.

- b. The minimum setback distance between any building, **pools, and associated decks whether attached or detached** and any rear property line in the "AG" Agricultural Districts, "RR" Residence Districts, "R-1" Residence Districts, "R-2" Residence Districts, and "R-3" Residence Districts shall be not less than 15 feet unless a larger setback is otherwise required in the Township Zoning Ordinance."

Text adopted in 2011 for front yard setbacks was as follows: "there shall be a setback from all street right of way lines and outlots and/or planned future public street extensions of not less than 30 feet for all buildings unless a larger setback is otherwise required."

This is essentially the same as language in the current ordinance, which states "front yard setbacks for primary structures: a setback of 30-feet shall be required from all street rights-of-way and outlots and/or planned future public street extensions." Because the code sets forth a side and rear setback for pools but does not mention a front setback, the generally accepted interpretation is that no pools are permitted in front of a house.

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

Comment: The home at 5359 Sweet Briar Drive was built near the center of the property. The lot lines and setbacks for the property have not changed since its construction. There may be room in the rear yard for a much smaller or irregularly shaped pool that meets setback requirements. It is the applicant's desire for a pool that has triggered this variance request. A pool is not a required or necessary amenity.

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 corner lot places additional restrictions on this property – is a unique physical circumstance.
 - A variance was approved for a similar request in 1997.

- Pools were previously allowed to be constructed in the Township with no required front setback.
- Support of variance denial
 - Without relief, the property can still accommodate a single-family home, as allowed per the Zoning Ordinance. A pool is not a required nor a necessary amenity.
 - The variance request for this 18' x 36' pool is a self-created hardship, as a smaller pool could be built.

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

1. Applicant's Request

Based on past precedence presented in this memo, motion to approve the variance request, allowing the applicant to construct an 18 foot x 36 foot in ground pool with a 10-foot front yard setback.

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

If the Zoning Board of Appeals chooses this motion, staff also requests that a request be sent to the Planning Commission to consider an update to the code that provides some flexibility to pools on corner lots.

2. Motion to deny the requested variance based on the findings of fact presented under 'Support of variance denial' in this memo.

Attachments: Application, Letter from Applicant, Property sketch, Public input received as of 11/9/2020, 10/09/2001 Planning Dept letter, 10/20/1997 ZBA minutes, Aerial photos of existing inground pools in front setback.

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

PLEASE PRINT

PROJECT NAME & ADDRESS Jeremy Home Inground Pool 5359 Sweet Briar Dr

PLANNING & ZONING APPLICATION

Applicant Name : Frank H. and M. Jamie Jeremy

Company _____

Address 5359 Sweet Briar Dr.
Kalamazoo MI 49009

E-mail jamie.jeremy@wmich.edu

Telephone 269 760-6981 Fax _____

Interest in Property Owners

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

OWNER*:

Name Same

Address _____

Fee Amount _____

Email _____

Escrow Amount _____

Phone & Fax _____

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

- | | |
|---|---|
| <input type="checkbox"/> Planning Escrow-1042 | <input type="checkbox"/> Land Division-1090 |
| <input type="checkbox"/> Site Plan Review-1088 | <input type="checkbox"/> Subdivision Plat Review-1089 |
| <input type="checkbox"/> Administrative Site Plan Review-1086 | <input type="checkbox"/> Rezoning-1091 |
| <input type="checkbox"/> Special Exception Use-1085 | <input type="checkbox"/> Interpretation-1082 |
| <input checked="" type="checkbox"/> Zoning Variance-1092 | <input type="checkbox"/> Text Amendment-1081 |
| <input type="checkbox"/> Site Condominium-1084 | <input type="checkbox"/> Sign Deviation-1080 |
| <input type="checkbox"/> Accessory Building Review-1083 | <input type="checkbox"/> Other: _____ |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary): _____

Seeking variance of setback requirements to allow construction of inground pool.

See attached letter and preliminary sketch.

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

Rose Arbor #2 Lot 20 12-96 split from 35-455-012 and 36-455-018. According

to the plat thereof as recorded in Liber 38 of Plats on page 46 Kalamazoo

County Records

PARCEL NUMBER: 3905- 36 475 010

ADDRESS OF PROPERTY: 5359 Sweet Briar Dr. 49009

PRESENT USE OF THE PROPERTY: Primary residence

PRESENT ZONING R2 **SIZE OF PROPERTY** 0.5 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

Frank B. Jeremy *1/28/2000*

9/28/2000

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

Frank and Jamie Jeremy
5359 Sweet Briar Dr
Kalamazoo, MI 49009
269 760-6981 (cell)
jamie.jeremy@wmich.edu

September 28, 2020
Amended October 13, 2020

Iris Lubbert, Planning Director
Oshtemo Charter Township
7275 W. Main St.
Kalamazoo, Michigan 49009

RE: 5359 Sweet Briar Drive – Proposed New Pool

Dear Director Lubbert:

Thank you for considering our request to invest in a new pool for our house at 5359 Sweet Briar Drive. We have been residents of Oshtemo Township for over thirty-five years, and we look forward to remaining residents for the foreseeable future. One of the reasons for staying in Oshtemo for so many years has been the township's reasonable approach to new growth and development, including modifications to existing homes to meet the needs of the current environment. Modifications and updates such as our proposed pool project allow residents to remain in their current homes. We believe the proposed pool project at our house is an example of the type of growth that makes Oshtemo an appealing place to live. With proper design and landscaping, the new pool can enhance our house and the neighboring properties.

As shown on the attached Site Sketch 3, the new pool is proposed in a location immediately south and east of our existing home. The pool is a conventional rectangular shape with dimensions of 18 feet by 36 feet. In order for the pool to be safe and functional, it also includes concrete walks that wrap the perimeter.

Although not shown on the site sketch, the pool area will be fenced in accordance with the zoning ordinances.

The landscaping shown in the sketch is not our exact plan. It does, however, represent our intent to fully screen the area from adjacent roads and homes as well as create an aesthetically pleasing view for us and our neighbors, with the help of a professional landscaping firm. We believe this design is very similar to another pool in our neighborhood at 4970 Fountain Square Drive. This Fountain Square Drive property is similarly unique to ours as it is located at the corner of two neighborhood streets. As such, it is subject to the same setback requirements as our parcel, yet with allowances, they were able to successfully install a pool and fully screen it from the adjacent streets.

While we understand and fully support the need to have a consistent front yard setback throughout residential districts in the township, our property is unique in that it is classified as having two "front" setbacks due to its corner location. As such, we have an actual "front" of the house on Sweet Briar Drive with the required setback, and a setback on the side that is technically classified as a second "front" of the house. It is within this second "front" setback that we are seeking a variance to construct the new pool. We are asking that it be treated as a side yard with a 10-foot setback.

The attached sketch is based on aerial views of our property. We have contacted a surveyor and plan to have the property lines defined exactly prior to beginning the project.

If you review the aerial photography of our neighborhood, you will see that several houses have pools within their back and side yards. Many of those pools would not be permitted if they were on our corner lot. We believe our request is in keeping with the precedent set by the existing pool on Fountain Square Drive, is in harmony with the surrounding neighborhood lots, and will allow us to more fully use and enjoy our property

We have studied our parcel in great detail to find another location to install a conventional pool, but the only practical and safe option is in the location shown on the attached site sketch.

One final point of consideration is that the entire pool structure will be built below grade. In other words, there will be nothing above the ground to impede on the character of the neighborhood except enhanced landscape and plantings.

We look forward to your review of this project, and to working with you for a successful outcome for all concerned. Do not hesitate to contact us with any questions.

Thank You,

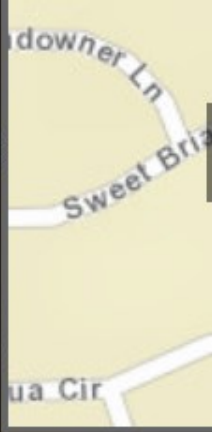
A handwritten signature in blue ink that reads "Frank & Jamie Jeremy". The signature is written in a cursive, flowing style.

Frank and Jamie Jeremy

Cc. Karen High, Zoning
Planning Office
Township Clerk
Township Deputy Clerk
Township Attorney
Township Assessor

5359 Sweet Briar Drive

Front Yard of House



-85.65542248 Degrees

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OSHTEMO CHARTER TOWNSHIP ZONING BOARD OF APPEALS

MINUTES OF MEETING HELD OCTOBER 20, 1997

Agenda

KALAMAZOO CHINESE CHRISTIAN FELLOWSHIP - SITE PLAN REVIEW -
PROPOSED CHURCH FACILITY - 5334 PARKVIEW AVENUE

→ VLIETSTRA BROS. SWIMMING POOL CO. - VARIANCE FROM FRONT SETBACK
REQUIREMENT FOR LATOSZEWSKI - 405 CLUBVIEW

CITY OF KALAMAZOO - VARIANCE FROM 200' PUBLIC ROAD FRONTAGE
REQUIREMENT - 7134 STADIUM DRIVE

CHIME SCHOOL - SITE PLAN REVIEW - 6750 CHIME ST.

A meeting was conducted by the Oshtemo Charter Township Zoning Board of Appeals on Monday, October 20, 1997, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall, pursuant to notice.

MEMBERS PRESENT: Brian Dylhoff, Chairperson
 Thomas Brodasky
 David Bushouse
 William Saunders

MEMBERS ABSENT: Lara Meeuwse

Also present were Rebecca Harvey and Mike West on behalf of the Planning and Zoning Department, Patricia R. Mason, Township Attorney, and five (5) other interested persons.

CALL TO ORDER

The Chairperson called the meeting to order at 3:04 p.m.

MINUTES

The Board considered the minutes of the meeting of October 6, 1997. Mr. Brodasky moved to approve the minutes as submitted. Mr. Saunders seconded the motion, and the motion carried unanimously.

~~(10) That screening along the northern and western boundaries of the site was to be accomplished through the retention of the "thick woods" which occupy a large portion of the subject site. The proposal to retain the natural vegetation as set forth on the plan was approved. A landscape plan for the developed portion of the site should be submitted to the Township for review and approval.~~

~~(11) That no variance had been requested.~~

~~(12) That approval is subject to the review and approval of the Township Fire Department.~~


~~(13) That approval is subject to the review and approval of the Township Engineer.~~

~~(14) That public water and an on-site septic system are proposed to service the proposed church facility. Approval is subject to the review and approval of the Kalamazoo County Health Department.~~

~~(15) That an environmental permits checklist and hazardous substance reporting form is required for review and approval pursuant to Section 69.000.~~

~~(16) That a revised site plan reflecting the conditions of approval is to be submitted to the Township.~~

~~Mr. Saunders seconded the motion, and the motion carried unanimously.~~

 **VLIETSTRA BROS. SWIMMING POOL CO. - VARIANCE FROM FRONT SETBACK REQUIREMENT FOR LATOSZEWSKI - 405 CLUBVIEW**

The next item was the application of Ron Vlietstra of Vlietstra Bros. Swimming Pool Company, representing Mick and Nancy Latoszewski, for variance approval from the 40' front setback requirement established by Section 64.200 of the Zoning Ordinance. The subject site is located at 405 Clubview and is within the "R-1" Residence District Zoning classification.

The report of the Planning and Zoning Department is incorporated herein by reference. Ms. Harvey noted that the Board had not previously reviewed a variance request with regard to a swimming pool location. However, a history of building setback variance applications had been provided in the report. She further noted that the applicant had submitted a drawing showing the proposed location of the pool and of existing improvements at the site.

The applicant was present, stating he felt that the Township would see many more applications for variance due to the placement of on-site septic systems. He stated that the drawing shows that the pool could be moved to the west; however, he had attempted to place the pool so as to retain an area at the western portion of the site for the placement of future

drywells/septic systems. He noted that the County Health Department had stated it would like to see 20' between a drywell and the pool. However, they would approve 10-12'. He felt that the pool could not be moved to the south at all. Thus, the "setbacks" from Clubview and from Shadywood Drive were at issue. He stated, in response to questioning by the Board members, that the size of the pool at 17' x 35' did not include the decking thereon.

Mr. Bushouse commented that he would be more concerned about an above-ground pool or about a pool which included fencing near the property line.

The applicant stated that the Township's Ordinance does not prohibit an 8' stockade fence along the property lines of a lot.

The Chairperson commented, and other Board members agreed, that the Planning Commission should review the Zoning Ordinance and specifically address setbacks for pools.

In response to questioning by Mr. Brodasky, the applicant stated that 16' in width was the minimum pool size for a pool with a diving board.

The Chairperson sought public comment, and none was offered. The public hearing was closed.

The Chairperson asked whether any outbuildings were proposed. The applicant stated that a 6' x 6' or 6' x 8' pad on the far west side of the property would be established. However, there would be no outbuilding associated with the pool.

The Board reviewed whether the conformance was unnecessarily burdensome. It was noted that the proposed swimming pool could not be placed in accordance with all setback requirements due to the size of the lot and the location of existing house and septic system. Further, it was noted that the property in the area has problems with drywell and septic. There was discussion of the fact that an area should be left at the site to establish future drywell/septic systems. Ms. Harvey noted that drywell and septic could be placed at the front of the lot.

After further discussion, Board members agreed that the pool location could be pushed to the west to meet the setback requirement from Clubview. However, the pool could not be located in compliance with the setback from Shadywood.

As to substantial justice, it was noted that the Board had not previously reviewed a variance request for the establishment of a pool. Mr. Saunders recalled past applications which were granted where there was an existing home and the location was limited for a garage or outbuilding.

As to unique physical circumstances, again it was noted that the pool could not be placed in conformance with the Shadywood setback, given the size of the lot and existing improvements.

It was felt that the hardship was self-created but the spirit and intent of the Ordinance could be met if the pool complied with the Clubview setback. Again there was comment that the matter should be referred to the Planning Commission for review of setbacks applicable to pools.

Based upon the preceding discussion, Mr. Saunders moved to grant variance from the setback required from Shadywood, requiring the pool to be placed 40' from the Clubview right-of-way, with the following reasoning:

(1) That conformance was unnecessarily burdensome in that the pool could not be located in compliance with all setbacks.

(2) That substantial justice would be served by the variance.

(3) That the spirit and intent of the Ordinance would be met due to the type of structure (pool) involved (i.e., that it would be below ground).

Mr. Bushouse commented he felt that, since the pool was below ground, included no poolhouse or other structure, included no fencing, the variance from setback would be appropriate. He stated that, if the pool included structures, etc., he would feel differently.

Mr. Brodasky seconded the motion. The motion carried unanimously.

The applicant offered to provide information to the Planning Commission when it considers the pool setback issue.

CITY OF KALAMAZOO - VARIANCE FROM 200' PUBLIC ROAD FRONTAGE REQUIREMENT - 7134 STADIUM DRIVE

The next item was the application of Alberto Forero, Public Service Engineer, representing the City of Kalamazoo Department of Public Utilities, for variance approval from the 200' public road frontage requirement established by Section 66.201 of the Zoning Ordinance. The subject site is located at 7134 Stadium Drive (water tower site) and is within the "C" Local Business District Zoning classification. It was noted that Mr. Forero had asked that the item be placed at the end of the agenda so that he would have an opportunity to be present. Therefore, the item was tabled.



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
616-375-4260 FAX 375-7180 TDD 375-7198
www.oshtemo.org

October 9, 2001

Mr. Mike Lutke
Kalamazoo Pool
P.O. Box 207
Oshtemo, MI 49077

Re: 4970 Fountain Square Drive

Dear Mike:

Per our conversation, the placement of an in-ground pool at the above address is not subject to setbacks from the abutting streets. However, if any accessory building is placed on the site, it will be subject to building setbacks.

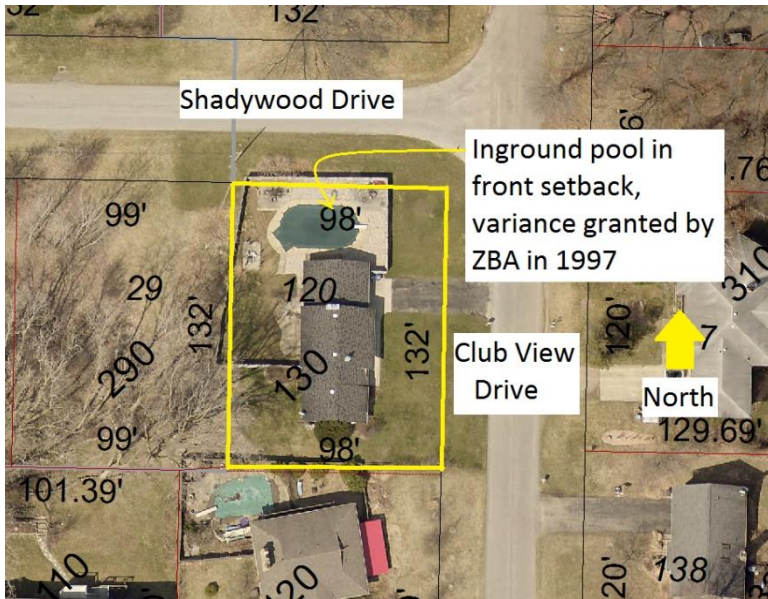
Please call if you have additional questions.

Sincerely,

Mary Lynn B. Bugge
Planner

correspondence\2001\lutkePool0809

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**Aerial photo of
405 Club Drive**



**Aerial photo of
4970 Fountain Square Drive**



**Aerial photo of
6488 Killington Drive**

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From: lizchatman@aol.com
To: [Karen High](#)
Subject: Variance Request
Date: Tuesday, October 27, 2020 1:48:57 PM

To: Oshtemo Township Zoning Board
From: Charles & Liz Chatman
Re: Request for Variance

Frank and Jamie Jeremy, 5359 Sweet Briar Dr., have discussed with us their hope to add an in-ground swimming pool to their backyard and the request they have made to the Oshtemo Township Zoning Board. We have no objection to their plans and we support their request for a variance.

Charles & Elizabeth Chatman
5341 Sweet Briar Dr.

From: [David Prentice](#)
To: [Karen High](#)
Subject: Jeremy Variance Request
Date: Friday, October 30, 2020 4:26:00 PM

Ms. High, I am writing to inform the zoning board that I have no objections to the setback variance request Frank Jeremy has submitted for consideration.

Regards,
David Prentice
4720 Fountain Square Dr
Kalamazoo MI 49009

From: [Angela Tabb](#)
To: [Karen High](#)
Subject: Jamie and Frank pool
Date: Sunday, November 8, 2020 8:08:47 AM

Hello. We are neighbors of Jamie and Frank. Our address is 4664 fountain square drive. We do not mind them moving forward with a pool at 10 feet from fountain square drive. Have a nice day

Angela and Ron Tabb

--

Angela Tabb
Tavani Salon and Spa
269-375-0270
tavanisalonandspa.com

From: [Mary Jo Vander Kooy](#)
To: [Karen High](#)
Subject: Frank & Jamie Jeremy's request for a variance
Date: Tuesday, October 27, 2020 4:02:19 PM

We support the request of a variance to add a swimming pool to their back yard.

Don & Mary Jo Vander Kooy
4679 Fountain Square Drive
Kalamazoo, Michigan 49009

From: 2692677001@pm.sprint.com
To: [Karen High](#)
Date: Tuesday, October 27, 2020 3:36:12 PM

Sent from my mobile.

Frank and Jamie Jeremy have talked to us about the inground swimming pool they hope to add to their backyard. We understand they are asking for their property along Fountain Square to be treated as a side yard. We have no objections to their plans or to their request for a variance.

Paul and Phyllis Vlietstra
5363 Sweet Briar Dr.
phone--269-267-7001

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7275 W. MAIN STREET, KALAMAZOO, MI 49009
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

Zoning Board of Appeals

Fourth Tuesday of every month @ 3PM

2021 Meeting Dates

1/26
2/23
3/23
4/27
5/25
6/22
7/27
8/24
9/28
10/26
11/16*
12/14*
1/25/2022

*Dates shifted to avoid holidays or for consistency with the Development Schedule of Applications.