



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

**NOTICE
OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS - REGULAR MEETING**

**MEETING WILL BE HELD IN PERSON
AT OSHTEMO TOWNSHIP HALL
7275 W MAIN STREET**
Masks Are Now Optional in Oshtemo Township Buildings

(Meeting will be available for viewing through <https://www.publicmedianet.org/qavel-to-qavel/oshtemo-township>)

**TUESDAY, APRIL 26, 2022
3:00 P.M.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Comment on Non-Agenda Items
5. Approval of Minutes: March 22nd, 2022
6. Other Updates and Business
 - a. Joint Board meeting update/discussion
7. 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	

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS - REGULAR MEETING**

**DRAFT MINUTES OF A MEETING HELD MARCH 22, 2022
OSHTEMO TOWNSHIP HALL, 7275 WEST MAIN STREET**

Agenda

PUBLIC HEARING: VARIANCE, 6125 VALLEY VIEW DRIVE FENCE

Tyler West and Megan Roschek were requesting relief from Section 57.60 of the Zoning Ordinance in order to install a 6-foot high fence within the front yard setback while only a 4-foot high fence is permitted. (6125 Valley View Drive, Parcel Number 05-14-480-050)

An in person meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, March 22, 2022, beginning at approximately 3:00 p.m.

MEMBERS PRESENT: Anita Smith, Chair
Dusty Farmer
Fred Gould
Micki Maxwell

MEMBER ABSENT: Louis Williams, Vice Chair

Also present were Iris Lubbert, Planning Director, Colten Hutson, Zoning Administrator, James Porter, Township Attorney, Martha Coash, Recording Secretary, and applicants Tyler West and Megan Roschek.

Call to Order and Pledge of Allegiance

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

Approval of Agenda

The Chair asked if there were any changes or additions to the agenda. Hearing none, she asked for a motion.

Mr. Gould made a motion to approve the meeting agenda as presented. Ms. Maxwell seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson Smith moved to the next agenda item.

Public Comment on Non-Agenda Items

Hearing no public comments, the Chair moved to the next agenda item.

Approval of the Minutes of February 22nd, 2022

Chairperson Smith asked if there were any additions or corrections to the Minutes of February 22nd, 2022. Hearing none, she asked for a motion.

Ms. Maxwell made a motion to approve the Minutes of February 22nd 2022, as presented. Ms. Farmer seconded the motion. The motion was approved unanimously.

Chairperson Smith moved to the next agenda item and asked Mr. Hutson for his presentation.

PUBLIC HEARING: VARIANCE, 6125 VALLEY VIEW DRIVE FENCE

Tyler West and Megan Roschek were requesting relief from Section 57.60 of the Zoning Ordinance in order to install a 6-foot high fence within the front yard setback while only a 4-foot high fence is permitted.

Mr. Hutson explained Tyler West and Megan Roschek were 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 6125 Valley View Drive. 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 6125 Valley View Drive having a zoning designation of R-1: 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 Township Zoning Ordinance.

6125 Valley View Drive is a one-third acre lot located within the northeast quadrant of the Township. The subject property is a corner lot situated along two different roadways within the Country Club Village subdivision. 6125 Valley View Drive fronts Highcrest Drive to its west and Valley View Drive to its north. If a property has frontage along two roadways, by code said property has two front yards and front yard setbacks need to be followed along those roadways.

He noted that a 6' tall privacy fence was unlawfully constructed within the public right-of-way and within the front yard setback adjacent to Highcrest Drive by a previous owner of the property in mid-2021. New property owners Tyler West and Megan Roschek, who purchased the property in November of 2021, were requesting a variance to keep the recently constructed 6' tall fence within the front yard setback along Highcrest Drive. The fence protrudes into the public right-of-way by approximately 11'; however, since fences are not allowed within the public right-of-way, the property owners will be relocating the fence outside of the public right-of-way, regardless of whether a variance is granted or not. The fence will shift approximately 11' to the east so that the fence is placed within their property's boundaries.

SECTION 57.60: Fences

Mr. Hutson said the applicants provided the following summary of their rationale for this variance.

- “Allowing the fence in this location will not compromise public health, safety, and welfare.”
- “Substantial justice would be served by allowing this variance. This fence was constructed with hopes to provide a safe space for our children to play, family to gather and dogs to enjoy.”
- “Vision/line of sight for traffic of intersection at Valley View Dr. & Highcrest Drive is not impeded by the fence (even as it stands presently)”
- “Side-yard frontage prevents us from using our property to its full potential due to the 20x40 backyard pool.”
- “The pool presents a liability that we feel a 4ft fence would not properly protect. Even though the minimum height for fencing around pools per the Michigan Building Code is 4ft, it is a height that we feel can easily be jumped. Which has been done at the property in the past, details of complaint with County Sheriff included.”
- “Side-yard frontage on a corner lot was not outlined on the Zoning Ordinance 57.60 and was an unknown restriction when planning for the fence.”
- “It would seem a precedent was set at 405 Club View Drive (corner lot of Club View Drive and Shadywood Drive) where a swimming pool was allowed in the front-yard and side-yard setbacks and on the ROW. Oshtemo Township Zoning Appeal minutes included.”

STANDARDS OF REVIEW - STAFF ANALYSIS

Mr. Hutson explained Michigan courts have applied the 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.

He said staff analyzed the request against these principles and offered the following information:

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 property possesses road frontage along Highcrest Drive to its west and road frontage along Valley View Drive to its north. The subject site is located on a corner lot within a subdivision. The topography throughout the area is relatively flat. No physical limitations, such as dramatic slopes or ditches, exist along the boundaries of the subject property to 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: A fence that is either 4' or 6' in height can be constructed on this lot to comply with the Oshtemo Township Zoning Ordinance that provides the security for the property owner's family, friends, and pets as referenced in their letter of intent. A fence for residential property is not required by the Zoning Ordinance. Reasonable use of the property would be maintained if the subject variance request was denied by the Zoning Board of Appeals. Conformance with the code is not unnecessarily burdensome.

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

Comment: In researching past Zoning Board of Appeals decisions regarding the request for relief from fence height requirements within the front yard setback, Planning Department staff was able to identify one similar case.

1. Schneck, 10294 W KL Avenue, 10/12/2021: The applicant sought relief from the Zoning Board of Appeals to allow for the installation of a 6' tall privacy fence within the front yard setback along both frontages on Almema Drive and W KL Avenue. The Zoning Board of Appeals denied the variance request, citing that the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, and no unique physical limitations exist for reasons of denying the request.

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

Comment: The primary reason a variance is being requested is due to a previous owner of the subject property unlawfully installing a 6' tall fence within the front yard setback and 11' within the public right-of-way. The current property owners wish to relocate the fence outside of the public right-of-way but are requesting to maintain the fence at 6' in height within the front yard setback along the Highcrest street frontage. A fence is not a required nor necessary amenity. This is a self-created hardship.

He also noted that the example the applicants cited as precedent, a swimming pool allowed in the front-yard setbacks and on the ROW at 405 Club View Drive, was not relevant.

Standard: Public Safety and Welfare

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

Comment: Township staff was able to perform an inspection of the site to verify whether the 6' tall fence as proposed would interfere with the clear vision triangle at the Valley View-Highcrest intersection. Through field measurements, it was determined that the 6' tall fence in the proposed location would not obstruct the clear vision triangle for motorists traveling through the Valley View-Highcrest intersection. Having completed the above-mentioned field observations, it does not appear that a 6' tall privacy fence as proposed would endanger any members of the public.

The applicant provided in their supportive documents a copy of an incident report with the Kalamazoo County Sheriff's Office of a prior event that took place in August of 2020 which involved an individual trespassing onto the subject property. The incident report that the applicant submitted included statements conveying that an individual "scaled a chain link fence into the backyard and then tore some vegetable plants out of the garden into the back yard." Based on Google Streetview as well as imagery obtained from 2018, it appears that the previous fence in place was approximately 4' in height. To a certain extent, it could be argued that a 6' tall fence is warranted as it may have prevented the mentioned trespass incident. An orthophoto showing the subject property from a tilted camera angle was provided. As noted previously, a 6' tall fence could be installed that meets ordinance requirements.

Mr. Hutson said it is important to note that approval of this variance request will set a precedent for cases which have commonality with each other the future. 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. For example, one reason why the Zoning 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.

He outlined the possible actions the Zoning Board of Appeals 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 indicated a motion should include the findings of fact relevant to the requested variance, and based on staff analysis, presented the following findings:

- Support of variance approval
 - 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 the front yard setback adjacent to Highcrest Drive to comply with the Zoning Ordinance or a 6' tall fence installed in line with the front of the house.
 - 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.

Mr. Hutson provided the following 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.
2. Variance Denial
The Zoning Board of Appeals denies the variance request as the need for the variance is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and no substantial justice in favor of granting a variance was found.
3. Variance Approval and Denial
The Zoning Board of Appeals can choose to approve portions of the requested variance or provide alternate relief. For example, approve specific sections of the requested fencing.

Mr. Hutson indicated staff has received five public comments from neighbors, four of which provided to staff by the applicants, and that he would read them during the public comments portion of the meeting.

Chairperson Smith thanked Mr. Hutson for his report and asked if the applicants wished to speak.

Ms. Megan Roschek described the lot in question as unique as there are not many corner lots in the subdivision. Most of the space in the yard is taken up by the swimming pool. The side yard setback also impedes use and enjoyment of the property.

She emphasized the desire to have usable space for their children and dogs to play and noted the view from the street would not be impeded if the variance was granted. She said installation of a pool requires a four foot fence, but that is not enough to provide safety for children in the neighborhood. She felt a precedent was set when a variance for a pool to be built in a front yard on Club View Drive was allowed.

Ms. Roschek read comments from four neighbors who were in support of the requested variance.

Chairperson Smith thanked Ms. Roschek for her comments and determined there was no one from the public who cared to speak.

Mr. Hutson read a letter of support for the variance from an additional neighbor. **The five letters of support are attached to these Minutes.**

The Chair moved to Board Deliberations and asked for comments from members.

Ms. Maxwell said the board has denied requests for variances for six foot fences where only four foot fences are allowed several times and felt that precedent has been set and needs to be upheld. If this variance was approved, it would set precedent going forward for future requests.

Ms. Farmer explained that decisions regarding variance requests are not personal, if they were, then based on neighbors' support the request could be considered. She saw no reason before the board to vote for approval as only one of the five standards for approval is met.

Chairperson Smith asked what a basis might be for partial approval.

Attorney Porter said that a partial approval for deviation would still require the proposal to meet standards of review.

Mr. Gould said the applicants have good reasons for wanting approval of the variance and he would like very much to approve what was requested.

Ms. Farmer noted there are five standards on which the board could vote yes, but only one applies in this case; four do not.

Ms. Farmer made a motion to deny the request for relief from Section 57.60 of the Zoning Ordinance in order to install a 6-foot high fence at 6125 Valley View Drive within the front-yard setback, because we find that the request is a self-created hardship, conformance with code requirements is not unnecessarily burdensome, no unique physical limitations exist, and no substantial justice in favor of granting a variance was found. Ms. Maxwell seconded the motion. The motion was approved 3 – 1. (with Mr. Gould dissenting)

Other Updates and Business

Ms. Lubbert provided copies of the APA planner to members.

Adjournment

Chairperson Smith noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, she adjourned the meeting at approximately 3:35 p.m.

Minutes prepared:
March 23, 2022

Minutes approved:
_____, 2022