

OWOSSO
Zoning Board of Appeals



Regular Meeting
9:30am, September 17, 2013
Owosso City Council Chambers

AGENDA
Owosso Zoning Board of Appeals

Tuesday, September 17, 2013 at 9:30 a.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA: September 17, 2013

APPROVAL OF MINUTES: August 20, 2013

SITE INSPECTIONS: None

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from August 20, 2013
3. Variance request materials – 1409 Whitehaven Ct.
4. Variance request map
5. Affidavit of notice

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. Variance request – 1409 Whitehaven Ct.; #2013-03

BUSINESS ITEMS:

1. Variance request – 1409 Whitehaven Ct. (Resolution)

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next regular meeting will be on Tuesday, October 15, 2013 if any requests are received.

Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Tuesday, September 17, 2013

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500]. The City of Owosso website is: www.ci.owosso.mi.us

Affirmative Resolutions

Owosso Zoning Board of Appeals

Tuesday, September 17, 2013, 9:30 a.m.
Owosso City Council Chambers, 301 W Main St.,
Owosso, MI

Resolution 130917-01

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the agenda of September 17, 2013 as presented.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 130917-02

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the minutes of August 20, 2013 as presented.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 130917-03

Motion: _____
Support: _____

Whereas, the Owosso Zoning Board of Appeals, after reviewing the case for 1409 Whitehaven Court, parcel number 050-193-000-001-00, hereby makes the following findings:

- 1. _____
- 2. _____
- 3. _____

Based upon those findings, the Owosso ZBA hereby approves/denies the petition to permit the front yard fence variance with a height of 84" as illustrated in the attached petition, conditioned on the following:

- 1. _____
- 2. _____

3. _____

Ayes: _____

Nays: _____

Approved: _____

Denied: _____

Resolution 130917-04

Motion: _____

Support: _____

The Owosso Zoning Board of Appeals hereby adjourns the September 17, 2013 meeting,
effective at _____ a.m.

Ayes: _____

Nays: _____

Approved: _____

Denied: _____



MEMORANDUM

DATE: August 26, 2013

TO: Chairman Horton and the Owosso ZBA

FROM: Adam Zettel, AICP

RE: Zoning Board of Appeals Meeting: September 17, 2013

The Zoning Board of Appeals shall convene in the city council chambers at 9:30 a.m. on Tuesday, September 17, 2013 to hear a petition for a dimensional variance for a residential fence. The property seeking the variance is located at 1409 Whitehaven Court, parcel number 050-193-000-001-00. The property is zoning and used for single family dwellings in the R1 zoning district.

The petitioner is seeking a dimensional height variance to construct a fence in the front yard of the property. The proposed fence would be 84 inches tall and used to enclose an existing porch. Fences are limited to 72 inches for those areas of side yards functioning as front yards (corner parcels) that are set back more than 19 feet residential districts. This variance is sought to increase the privacy for the owner.

The petitioner's rationale for the variance is included in the application materials. He indicated to me that this would be an aesthetic upgrade.

In accordance with the law, the ZBA has authority and is charged with the need to deliberate and rule on each of the following criteria; what follow are staff recommendations/interpretations:

(3) *Variances.* The board shall have the power to authorize, upon appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, signs and off-street parking and loading space requirements, provided all of the basic conditions listed herein and any one (1) of the special conditions listed thereafter can be satisfied.

a. *Basic conditions.* In order to qualify for a variance, the applicant must show that a variance:

Owosso Zoning Board of Appeals
August 26, 2013

1. Will not be contrary to the public interest or to the intent and purpose of this chapter; **The intent of the ordinance does not support variances for aesthetic purposes. Front yards are intended to have fewer obscuring fences and lower heights.**
 2. Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required; **Staff finds no conflicts or concerns.**
 3. Is one that is unique and not shared with other property owners; **No findings indicate that the request for additional height is based upon any unique feature of the property.**
 4. Will relate only to property that is under control of the applicant; **The variance does not relate to property that is not controlled by the applicant.**
 5. Is applicable whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; **Unlike the side yard, which had been found to offer extraordinary circumstances, there are no findings related to the front yard that indicate that a six foot fence would be unnecessarily burdensome on the petitioner.**
 6. Was not created by action of the applicant (i.e. that it was not self-created); **Findings were made by the ZBA that indicate that the applicant did not create any hardships.**
 7. Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety; **No issues identified.**
 8. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located; **Comments from the neighbors may be forthcoming. No direct issues have been noted.**
 9. Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners. **It is unclear what relief is being sought. If privacy or aesthetics are the concern, a six foot fence is consistent with the justice to other property owners.**
- b. *Special conditions.* When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:
1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land; **There is certainly a hardship on the property, but it is not tied to the function of the front yard.**
 2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district; **There do not appear to be any related exceptional or extraordinary circumstances related to the front yard fence.**
 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district. **This property should be able to be afforded the same degree of**

privacy and aesthetic use with a six foot fence in the same manner as other properties in the same zoning district.

- c. *Rules.* The following rules shall be applied in the granting of variances:
1. The board may specify, in writing, such conditions regarding the character, location, and other features that will, in its judgment, secure the objectives and purposes of this chapter. The breach of any such condition shall automatically invalidate the permit granted.
 2. Each variance granted under the provisions of this chapter shall become null and void unless:
 - i. The construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance and proceeds to completion in accordance with the terms of the variance;
 - ii. The occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.
 3. No application for a variance which has been denied wholly or in part by the board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions found upon inspection by the board to be valid.
 4. In granting or denying a variance the board shall state the findings of fact upon which it justifies the action.

Obviously the final findings and determination are to be made by the board after the public hearing, but my recommendation based upon the parameters of the ordinance and the facts at hand is to deny this petition.

That is all for now. Please go through the rest of your packet contents and **RSVP for the meeting**. I look forward to seeing you all on the 17th. If you have any questions, comments, or other feedback, please contact me on my cell: 989.890.1394. Text and email also works to contact me.

MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
AUGUST 20, 2013 at 9:30 AM
CITY COUNCIL CHAMBERS

The meeting was called to order by Chairman Randy Horton at 9:32 a.m.

Roll call was taken by Recording Secretary Marty Stinson.

MEMBERS PRESENT: Chairperson Randy Horton, Vice-Chairperson Christopher Eveleth, Secretary Daniel Jozwiak, Board Members Kent Telesz, and William Wascher.

MEMBERS ABSENT: None.

OTHERS PRESENT: Adam Zettel, Assistant City Manager and Director of Community Development; Charles Rau, Building Official; Mr. Robert Rowland, owner of 1409 Whitehaven Ct.

AGENDA: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY BOARD MEMBER TELESZ TO APPROVE THE AGENDA AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY BOARD MEMBER WASCHER TO APPROVE THE MINUTES OF THE MEETING OF JUNE 18, 2013.

YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from June 18, 2013
3. Variance request materials – 1409 Whitehaven Ct.
4. Variance request plans – attached
5. Affidavit of notice
6. Public comments received by staff

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS: VARIANCE REQUEST – 1409 Whitehaven Ct. # 2013-02

Mr. Adam Zettel, Assistant City Manager and Director of Community Development, referred comments to the applicant as there was no public in attendance for the public hearing portion for the variance request.

Mr. Robert Rowland of 1409 Whitehaven Court, is requesting an additional 20 inches on top of a six foot fence along a 36 foot section of fence on his north property line next to his deck and neighbor's fence at 1405 Whitehaven Court. He distributed documents to board and staff members with pictures of various views of and from his home into his neighbors' yards. The original builder set the house with eight feet between the house and his neighbor's property line. He has an illegally built deck (long time ago) on that side going almost to the property line with little privacy; a safety issue with the current railing; and a neighbor's dog that barks even when he is in his living room.

Mr. Zettel noted that the layout of the house is not unique. There are many other houses built this way on their lots. The porch was built to the property line which probably wouldn't be allowed today. These were obvious choices made by the previous owner and were there when it was purchased by the current owner. This is not a hardship. Mr. Zettel recommends denial of this request.

There are various requirements for a variance which don't fit here. There should not be a deck built all the way to the property line which was built without a permit.

Mr. Telez and Mr. Eveleth indicated that they believed there were unique feature to this property and the layout. They also indicated that the hardships were created by the previous owners and were likely unknown to Mr. Rowland, in terms of their impact, upon purchase.

Secretary Jozwiak asked if Mr. Rowland was going to take down the railing and put up the fence. Mr. Rowland replied yes. Mr. Jozwiak asked how are you going to maintain the weeds and grass between fences. Mr. Rowland replied that it will be open at the ground so he can maintain it there.

Mr. Rowland indicated that he would also like to build a fence in the front yard, where the current fence is, to a height of 7 feet. The board concluded that this was not part of the variance as applied for and published, so they could not review this part of the case. Mr. Zettel indicated that the ordinance adopted the night before by the city council would permit a front yard fence of six feet in height in that location. Mr. Rowland has a much larger front yard.

MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER EVELETH, WHEREAS, THE OWOSSO ZONING BOARD OF APPEALS, AFTER REVIEWING THE CASE FOR 1409 WHITEHAVEN COURT, PARCEL NUMBER 050-193-000-001-00 HEREBY MAKES THE FOLLOWING FINDINGS:

1. THE ADJACENT NEIGHBOR SUPPORTS WITH PRIVACY HEIGHT REQUEST OF MR. ROWLAND
2. THE PRIVACY HARDSHIP WAS UNKNOWN TO THE PURCHASER AS IT RELATES TO THE ORIENTATION OF THE HOUSE SUCH THAT THE REAR YARD SETBACK IS ONLY EIGHT FEET THAT THE DECK IS LEVEL WITH THE HOME EGRESS
3. WHERE THERE ARE EXCEPTIONAL OR EXTRAORDINARY CIRCUMSTANCES OR PHYSICAL CONDITIONS SUCH AS NARROWNESS, SHALLOUNESS, SHAPE, OR TOPOGRAPHY OR THE PROPERTY INVOLVED, OR TO THE INTENDED USE OF THE PROPERTY, THAT DO NOT GENERALLY APPLY TO OTHER PROPERTY OR USES IN THE SAME ZONING DISTRICT.
4. THE PETITIONER MEETS ALL GENERAL CRITERIA.

BASED UPON THOSE FINDINGS, THE OWOSSO ZBA HEREBY APPROVES THE PETITION TO PERMIT THE FENCE VARIANCE WITH THE HEIGHT OF 92" AS ILLUSTRATED IN THE ATTACHED PETITION, CONDITIONED ON THE FOLLOWING:

1. THAT THE FENCE BE CONSTRUCTED OF COMPOSITE OR VINYL MATERIAL.

ROLL CALL VOTE: AYES ALL. MOTION CARRIED.

COMMISSIONER/PUBLIC COMMENTS: None

ADJOURNMENT:

MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER WASCHER TO ADJOURN AT 10:43 A.M.

YEAS: ALL. MOTION CARRIED.

Dan Jozwiak, Secretary

m.m.s

rec'd 8-22-13
M.S.

CITY OF OWOSSO
ZONING BOARD OF APPEALS
REQUEST FOR HEARING

NOTE TO APPLICANTS:

1. All applications received by the 25th of the month will be heard on the 3rd Tuesday of the following month at 9:30 a.m., lower level of City Hall.
2. The applicant, or legal representative of the applicant, must be present at the Public Hearing for action to be taken.
3. In order that this application may be processed, the applicant must complete Page 1 of this form and make payment of a non-refundable fee of \$90.00 to the City Treasurer's Office to cover costs the City incurs.
4. Questions about this application may be directed to (989) 725-0540.

Request is hereby made to the City of Owosso for a hearing before the Zoning Board of Appeals for one or more of the following:

- Variance
- Administrative Interpretation
- Class A Non-Conforming Status or Expansion
- Appeal of Staff or "Board" Decision
- Exception/Special Approval

APPLICANT: ROBERT ROWLAND

ADDRESS: 1409 WHITEHAVEN CT LOCATION OF APPEAL: SAME
OWOSSO MI 48867

PHONE NO.: (989) 472-4480 DATE APPEAL FILED: 8-22-13

APPEAL: (Indicate all data pertinent to this case, both present and proposed.)

2. I THINK, THE BOARD ON 8-20-13, 9:30AM HEARING, (FOR ME),
CITED VARIANCE HAND-OUT, (3) A. 1. THROUGH 9., SATISFIED
AND (3) B. #2., APPLIED.

If this is a variance request, indicate how the strict enforcement of the Zoning Ordinance would result in practical difficulty to the property owner, and how this difficulty is peculiar to the property.
(Note: For a dimensional variance it is necessary to submit a site plan with this application.)

1. YES, I WOULD LIKE TO REQUEST A VERTICAL DIMENSIONAL
VARIANCE OF 14" ABOVE GRADE, FOR INSTALLMENT OF 6'
HIGH PRIVACY FENCING. FENCE, WILL BE AROUND A EXISTING
FRONT/SIDE YARD DECK. SEE SITE PLAN, ATTACHED.

I hereby state that all above statements and any attached documents are true and correct to the best of my knowledge.

Robert Rowland
Signature of Applicant

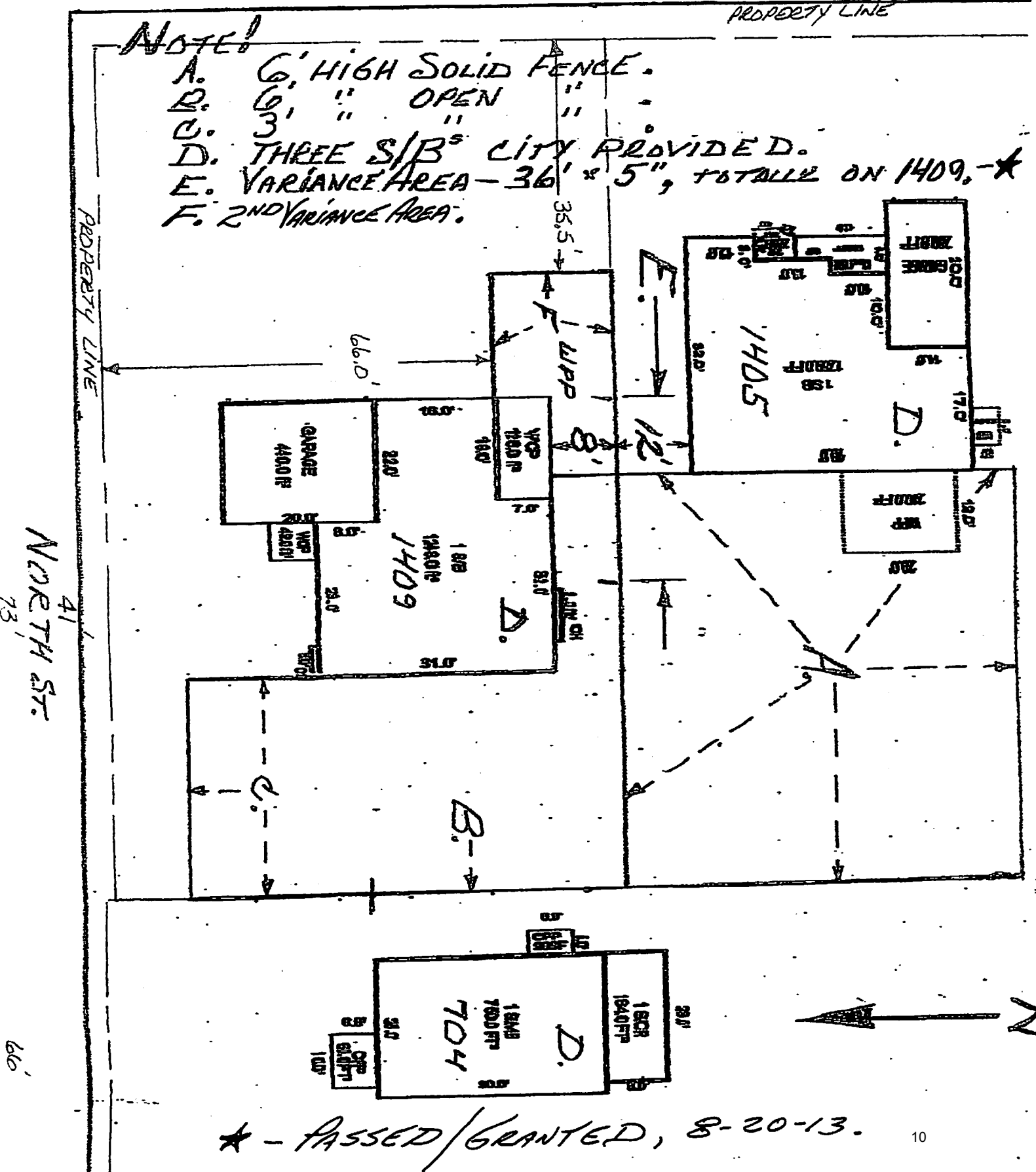
(OVER)

REVISED 8-19-13
REVISED 8-22-13

37'
WHITEHAVEN CT.
66'

NOTE!

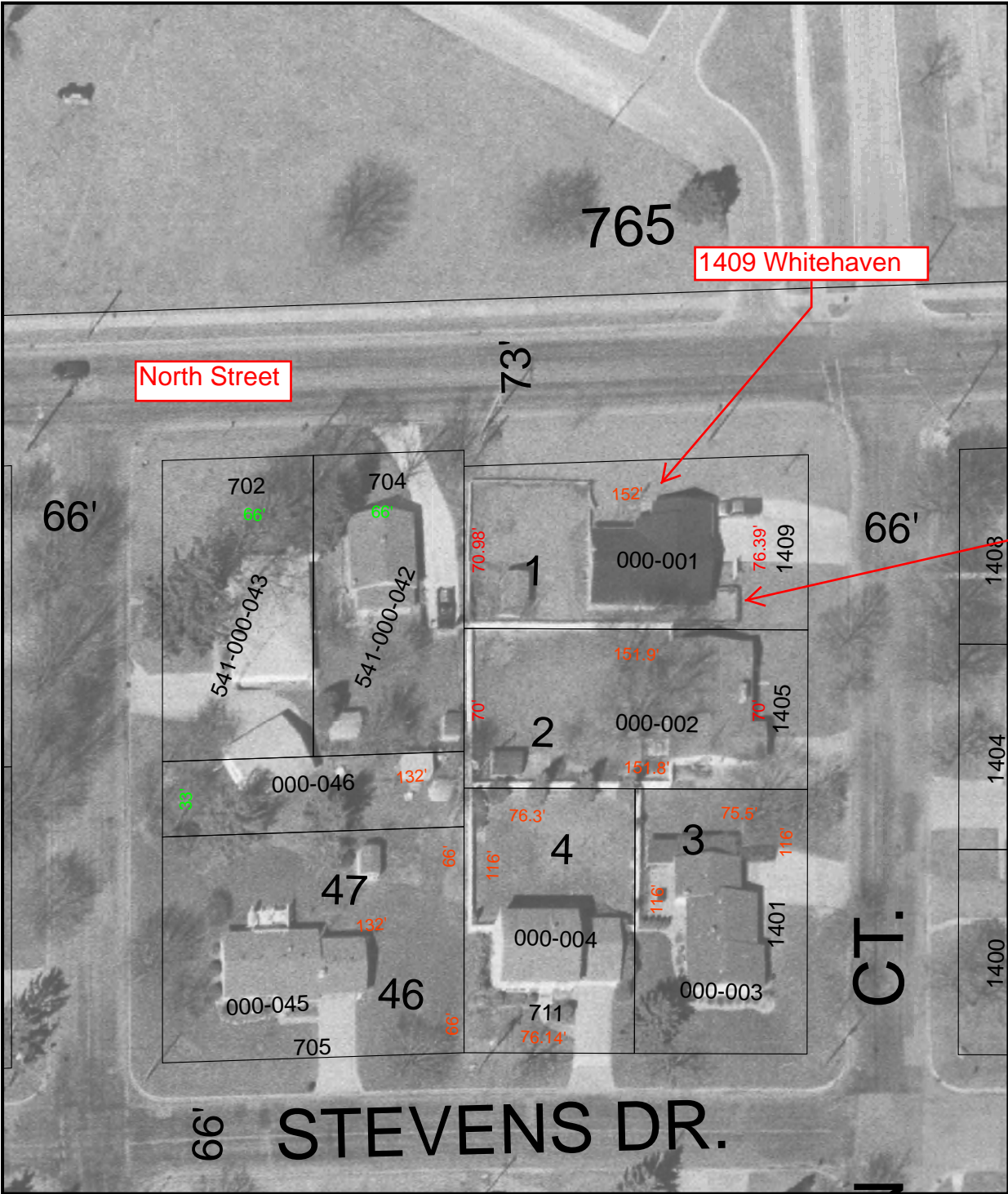
- A. 6' HIGH SOLID FENCE.
- B. 6' " " OPEN
- C. 3' " " " " " "
- D. THREE S/B'S CITY PROVIDED.
- E. VARIANCE AREA - 36' x 5", TOTAL ON 1409. *
- F. 2ND VARIANCE AREA.



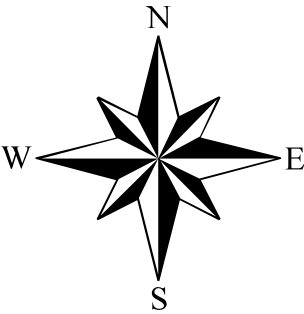
* - PASSED / GRANTED, 8-20-13.

City of Owosso

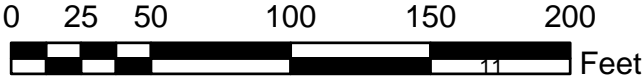
1409 Whitehaven Ct.
Front Yard Fence Variance



Approximate area
(existing enclosure
of front yard fence
height variance



August 29, 2013



The Argus-Press Company

201 E. Exchange Street
Owosso, Michigan 48867
Phone (989) 725-5136 • Fax (989) 725-6376

Richard E. Campbell, Chairman
Thomas E. Campbell, President & Publisher

AFFIDAVIT OF PUBLICATION

In the matter of **Official Notice of Proposed Variance - City of Owosso**

STATE OF MICHIGAN)
County of Shiawassee) ss **Thomas E. Campbell**

Being first duly sworn, says that he is the Publisher of **THE ARGUS-PRESS**, a newspaper published in the English language for the dissemination of local or transmitted news and intelligence of a general character and legal news, which is a duly qualified newspaper and that annexed hereto is a copy of a certain order taken from said newspaper, in which the order was published once, and that the only insertion of said Notice was on the 1st day of September, A.D., 2013.

SIGNED:



Subscribed and sworn to before me
this 1st day of September, A.D., 2013



Anita M. Pasik, Notary Public
Shiawassee County, Michigan
My commission expires: December 1, 2018

OFFICIAL NOTICE OF PROPOSED VARIANCE

The Zoning Board of Appeals of the City of Owosso will hold a Public Hearing in the Council Chambers of City Hall at 9:30 a.m. on Tuesday, September 17, 2013 to consider the following request:

APPLICANT: Rowland, Robert et al - Owner
Case # 2013-03 Parcel 050-193-000-001-00

LOCATION OF APPEAL: 1409 Whitehaven Ct.; Owosso, MI 48867

APPEAL: The petitioner proposes to construct a section of front yard fence a height to a height of 84 inches.

THE PROPOSAL IS CONTRARY TO THE ORDINANCE AS FOLLOWS:

The maximum height permitted for a fence at this location is 6 feet, resulting in a 14 inch height variance.

APPLICABLE SECTION OF THE ZONING ORDINANCE: Section 26-28.

CURRENT ZONING: R1 - One Family Residential District

SIZE OF LOT: 76' x 152' irregular (0.224 acres)

As an affected property owner, resident, business, or taxpayer, you are encouraged to acquaint yourself with this proposal and make your position on the request known to the Zoning Board of Appeals. You may do so by being present for the public hearing, writing a letter stating your position, or phoning 989-725-0535. Information on this case is on file in the Zoning Office at City Hall for your review.

Adam Zettel, AICP, Assistant City Manager/Director of Community Development

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500. Website address is www.ci.owosso.mi.us]

Publish: September 1, 2013