

OWOSSO

Zoning Board of Appeals



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

AGENDA
Owosso Zoning Board of Appeals

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

CALL MEETING TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA: December 17, 2013

APPROVAL OF MINUTES: September 17, 2013

SITE INSPECTIONS: None

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from September 17, 2013
3. Variance request application & materials – 1227 N. Adams St
4. Site map
5. Affidavit of notice

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. Variance request – 1227 N. Adams St.; #2013-04

BUSINESS ITEMS:

1. Variance request – 1227 N. Adams St.; #2013-04 (Resolution)

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next regular meeting will be on Tuesday, January 21, 2014 if any requests are received.

Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Tuesday, December 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, December 17, 2013, 9:30 a.m.
Owosso City Council Chambers, 301 W Main St.,
Owosso, MI

Resolution 131217-01

Motion: _____
Support: _____

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 131217-02

Motion: _____
Support: _____

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 131217-03

Motion: _____
Support: _____

Whereas, the Owosso Zoning Board of Appeals, after reviewing the case for 1227 North Adams Street, parcel number 050-390-003-015-00, 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 86” as described and photographed in the attached petition, conditioned on the following:

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 131217-04

Motion: _____
Support: _____

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____



MEMORANDUM

DATE: December 9, 2013

TO: Chairman Horton and the Owosso ZBA

FROM: Adam Zettel, AICP

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

The Zoning Board of Appeals shall convene in the city council chambers at 9:30 a.m. on Tuesday, December 17, 2013 to hear a petition for a dimensional variance for a residential fence. The property seeking the variance is located at 1227 North Adams, parcel number 050-390-003-015-00. 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 on the side yard of the property. Note that the fence in question was previously constructed without a permit. This fact has no bearing on this case since the petitioner is not vested in the existing fence, nor can he otherwise be penalized. The proposed fence would be 86 inches tall and used to shield this property from the property to the south. Fences are limited to 72 inches for residential side yards. This variance is sought to increase the privacy for the owner as a means to mitigate special peculiarities of the property as described by the applicant.

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:
 - 1. Will not be contrary to the public interest or to the intent and purpose of this chapter; **The fence is too tall, but the use is permitted in the district and the character of the installation does not appear to present any inconsistencies to the public interest.**

Owosso Zoning Board of Appeals
December 9, 2013

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; **The petitioner indicates that the layout of the homes and driveways is extremely uncommon. Staff finds this to be an extremely rare and potentially relevant circumstance that is not shared with many properties in a platted setting.**
 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; **This is the million dollar question. Staff findings indicate that the property has features which are peculiar to the physical layout and orientation of the homes. It is very plausible that these features may be burdensome or otherwise compromising reasonably use. This is subject to the ZBA deliberation.**
 6. Was not created by action of the applicant (i.e. that it was not self-created); **The applicant did not create the hardship or knowingly come to it.**
 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. **The petitioner describes the reasoning for selecting a height of 86”.**
- 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; **No comment.**
 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; **The orientation of homes and driveways do not generally apply to other properties in the same zoning district and neighborhood. These features appear related to the hardship.**
 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district. **No comment.**
- c. *Rules.* The following rules shall be applied in the granting of variances:

Owosso Zoning Board of Appeals
December 9, 2013

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.

Staff has not identified any red flags that would indicate the need for a denial; however, neighbor input may be a critical factor. Whether or not there is enough evidence to support a genuine hardship here that is not experienced by others is pretty subjective and will need to be scrutinized by the ZBA.

Recommendation: Pending input from the public hearing, staff is neutral on this petition. Under such circumstances, a prudent approach is to find in favor of the petitioner.

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
SEPTEMBER 17, 2013 at 9:30 AM
CITY COUNCIL CHAMBERS

The meeting was called to order by Chairman Randy Horton at 9:30 a.m.

Roll call was taken by Recording Secretary Marty Stinson.

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

MEMBERS ABSENT: Vice-Chairperson Christopher Eveleth.

OTHERS PRESENT: Adam Zettel, Assistant City Manager and Director of Community Development; Mr. Robert Rowland, owner of 1409 Whitehaven Court.

MINUTES: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY BOARD MEMBER TELESZ TO APPROVE THE MINUTES OF THE MEETING OF AUGUST 20, 2013 WITH THE CORRECTION OF PAGE 1, PARAGRAPH 2 OF THE PUBLIC HEARING SHOULD SAY SOUTH PROPERTY LINE RATHER THAN NORTH PROPERTY LINE.

YEAS: ALL. MOTION CARRIED.

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: None.

PUBLIC HEARINGS: VARIANCE REQUEST – 1409 Whitehaven Ct. # 2013-03

Mr. Adam Zettel, Assistant City Manager and Director of Community Development noted that Mr. Robert Rowland requesting a front yard fence up to 86" in height. Current ordinances allow up to 72"; Mr. Rowland is requesting an additional 14". Mr. Zettel referred comments to the applicant at this time.

Mr. Robert Rowland of 1409 Whitehaven Court considers the deck railing unsafe. Mr. Zettel communicated that Commissioner Eveleth submitted a letter that stated the request is a clear violation of the spirit of the ordinances. Mr. Zettel stated the hardship is the elevated porch. There are too many elevated porches in the city and not unique; therefore this would set a precedent. This case doesn't meet all the necessary criteria for a variance.

Mr. Rowland totally disagreed. This is very unique. He was granted the first half at the last meeting and the same logic applies. He believed the deck was original to the build; whether it was legal can't be determined. Mr. Rowland reviewed several possible building theories.

9:57 am. Public Hearing was opened. No one responded.

9:58 am. Public Hearing was closed.

MOTION BY BOARD MEMBER JOZWIAK, SUPPORTED BY BOARD MEMBER WASCHER, 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 FINDING:

1. **THERE IS NOT A HARDSHIP IDENTIFIED.**

Draft

**BASED ON THIS FINDING, THE OWOSSO ZBA HEREBY DENIES THE PETITION TO PERMIT THE FENCE VARIANCE WITH THE HEIGHT OF 86" AS ILLUSTRATED IN THE ATTACHED PETITION.
ROLL CALL VOTE:
AYES: JOZWIAK, TELESZ, WASCHER, HORTON
NAYS: NONE
MOTION CARRIED.**

Mr. Rowland commented that this only leaves me with court.

COMMISSIONER/PUBLIC COMMENTS:

Mr. Rowland stated he still had questions. Mr. Zettel said that Mr. Chuck Rau, the Building Official can help outside of this meeting forum.

Chairman Horton thanked everyone for the assistance at this meeting.

ADJOURNMENT:

**MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER WASCHER TO
ADJOURN AT 10:02 A.M.
YEAS: ALL. MOTION CARRIED.**

Dan Jozwiak, Secretary

m.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 \$300.00 to the City Treasurer's Office to cover costs the City incurs. Checks are to be made out to "City of Owosso".
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: Kirk T. Preston
ADDRESS: 1227 N. Adams LOCATION OF APPEAL: 1227 N. Adams
Owosso, MI 48867
PHONE NO.: (989) 723-6563 DATE APPEAL FILED: 11/18/13

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

Ordinance states 6' Fence. Requesting 7'2" Fence.

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.)

Need For higher Fence. Detrimental For lower Fence. Please refer to attached reasons and purpose in detail (privacy, noise deterrent, reduction of headlight shine and glare).

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

Kirk T. Preston
Signature of Applicant

The reason why I have requested a hearing today with the Zoning Board Of Appeals, is to appeal the lowering of my fence, which is at a height of 7'2", with the city ordinance being 6'. I would first of all like to briefly answer the nine basic conditions for a variance (3a), and then the one special condition for a variance (3b, no.2). Then go into more detail on basic condition number 3a, no.3 and 3b, no.2. I have attached sheets that were given to me by Adam Zettel, Assistant City Manager of the city.

Basic conditions, 3a.

1. Will not be contrary.
2. Fence replaced existing fence, and was not put up at height to change intentions for use of property. Household use only. No issues permitted.
3. Will go into detail on this condition.
4. Yes, only to property of applicant.
5. Six foot height is detrimental and infringement (burdensome), for it keeps me from using living room and bedroom, for intended purpose, because of angle and curvature design of the driveway at house number 1225 N. Adams, (privacy, noise and head light shine and glare from vehicle's). Height function to height. Function of 7'2" height (see below details).
6. Parent's purchased house when originally built in 1947. I inherited home at death of my mother in 1995. Had no say so to existing conditions.
7. Definitely not. Would not see issue.
8. Definitely not. Would not see issue.
9. Will justify height of 7'2' when answering 3a, no.3. But in brief, privacy, noise and head light shine and glare from vehicles coming and going at 1225 N. Adams.

Special conditions, 3b,no. 2.

2. Height of fence at 1227 N. Adams will reduce and deter noise. Also, headlight shine and glare into living room and bedroom will be for the most part eliminated from vehicle's coming and going at 1225 N. Adams due to angle and curvature design of driveway at 1225 N. Adams.

I would now like to go into more detail on Basic condition 3a, no.3 and Special condition 3b, no. 2. To begin with, it is the Gospel truth that the individual who put my fence up, and myself did not know that a permit was needed. The fence that went up, replaced another fence that had been there for many years that my mother and myself put up. I was not trying to get around a city ordinance of 6'. As an example, just last spring I had a concrete driveway entrance and four blocks of city sidewalk replaced, which I pulled a permit for (\$1100 project). A number of years ago I had my driveway, sidewalk in front of porch, and porch replaced, all concrete, which I pulled a permit for. Also, I had my home shingled, which I believe the individuals pulled a permit on who did the work. As mentioned, the fence is 7'2". I would not have known it to be that, because we did not measure it out. I did not know the height until the building inspector came by and measured it. The height of the fence was arrived at by standing in my living room, bedroom, and side porch, and eyeballing the height, and coming up with a height that would give me privacy, no head light shine or glare, and some noise deterrent in my living room and bedroom which face directly at house number 1225. The current height was not a plan, it just worked out as such.

There are three houses in a row. All built by the same contractor, probably in 1946. These houses are small and sit at angles to the road. The driveways at 1223 and 1225 are

at angles, and curved. House number 1225 has the greatest radical angle and curvature and is the longest. Mine is at a slight angle only, and the shortest of the three. In other words, they are not square to the road. Often when I tell people where I live, they will comment, "is your house one of those that are at an angle?" So, they are somewhat unique, though small. My home has been in the family for 66 years. I inherited the home in 1995, and moved from Indianapolis, where I lived for 20 years, back to Owosso in 1999. The two other houses are rental houses owned by the same family. They are normally not around unless a house is vacated.

The owner of the other two homes tries quite hard on renting to quality tenants. There has been some problem's over the last few years, which is not necessary to go into. Only to say, this was a part of my reason for taking the old fence down, and replacing it with a new one, for increased privacy. My living room and bedroom face directly into the kitchen, bathroom and partially into the bedroom next door. My living room is wide open, because I like it that way. So I am visible either from inside the neighbor's home, or from the outside. Unfortunately, I can also see the occupants next door in the kitchen if blinds are not drawn. But also, at times, when someone is in the shower, if there is not a shower curtain or something over the window. The extra height of this fence was constructed to block out these visuals, and almost eliminates these problems for both of us, beautifies both properties, gives both parties more privacy, far better, but not completely.

Previously, I spoke about the angle and curvature of the driveway at 1225. You can clearly see this by the photographs. The end of the driveway corner is five feet from my property line, and fifteen feet from my house, as you can also see by the photographs. As

you can see by the photographs also, when a vehicle is coming into the driveway, the angle and curvature of the driveway directs the headlights and shines and glare directly into my living room and bedroom. The extra height of the fence eliminates the detriment of the headlights. Also, it blocks out some of the porch light, and also serves somewhat as a deterrent to noise. Because of where the fence is located, there is absolutely no loss of visibility to neighbor entering or exiting the driveway.

As mentioned, I have enclosed photographs. Briefly, here is what you will be looking at.

Page 1. Backyard of 1225 N. Adams, looking down the driveway, showing the angle and curvature of driveway, and closeness to property line.

Page 2. Looking up the driveway, from street at 1225 N. Adams, showing the angle and curvature of driveway.

Page 3. Corner of driveway, and it's closeness to the property line.

Page 4. Photo's of fence and 1225 N. Adams taken from my living room and bedroom.

Note how height covers up almost half of the windows.

Page 5. Tape measure showing the distance that corner of fence is away from my property line, which is five feet.

Page 6. Tape measure showing the distance that the corner of fence is from my house, which is fifteen feet.

Page 7. Photo of fence from my front yard and also, photo showing angle of house and a shorter slightly angled driveway.

Page 8. Side porch view of fence, and it's height that covers almost half of 1225 N. Adams door and window.

I hope that you can see there was a purpose for constructing this fence in this way, and with the additional height as well. It wasn't like I didn't have anything else to do with \$900 dollars. I honestly believe this fence makes the neighborhood look better, and both properties not only look better, but serve's an actual purpose for both properties as well, which they did not have before.



1.



2.



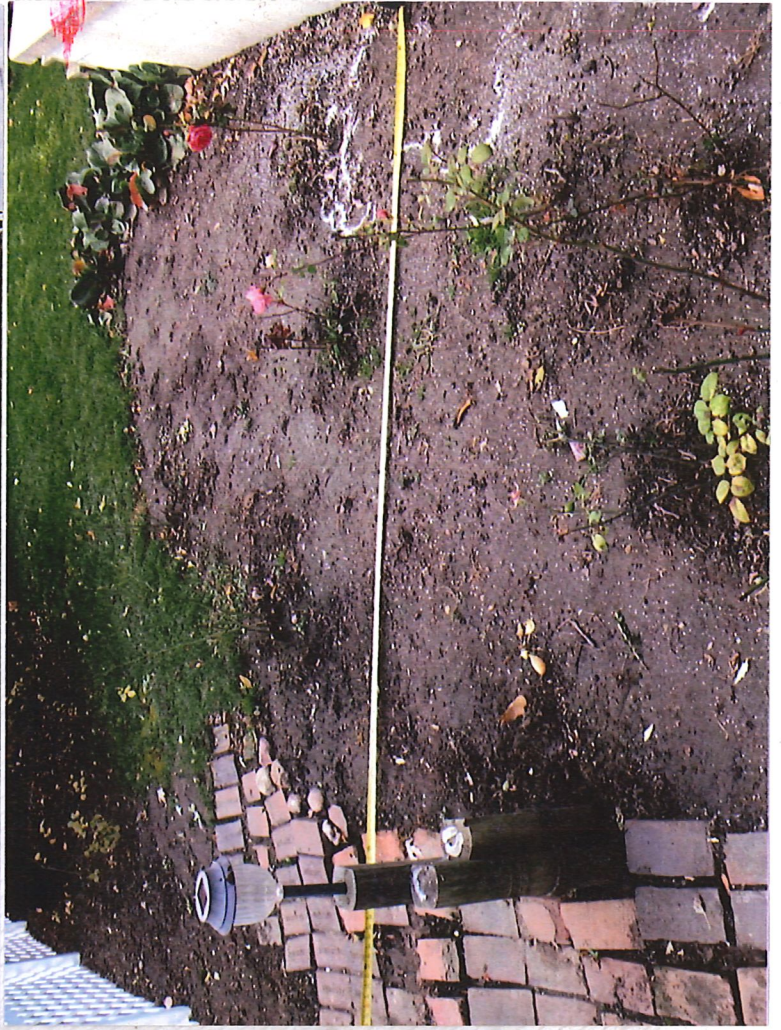
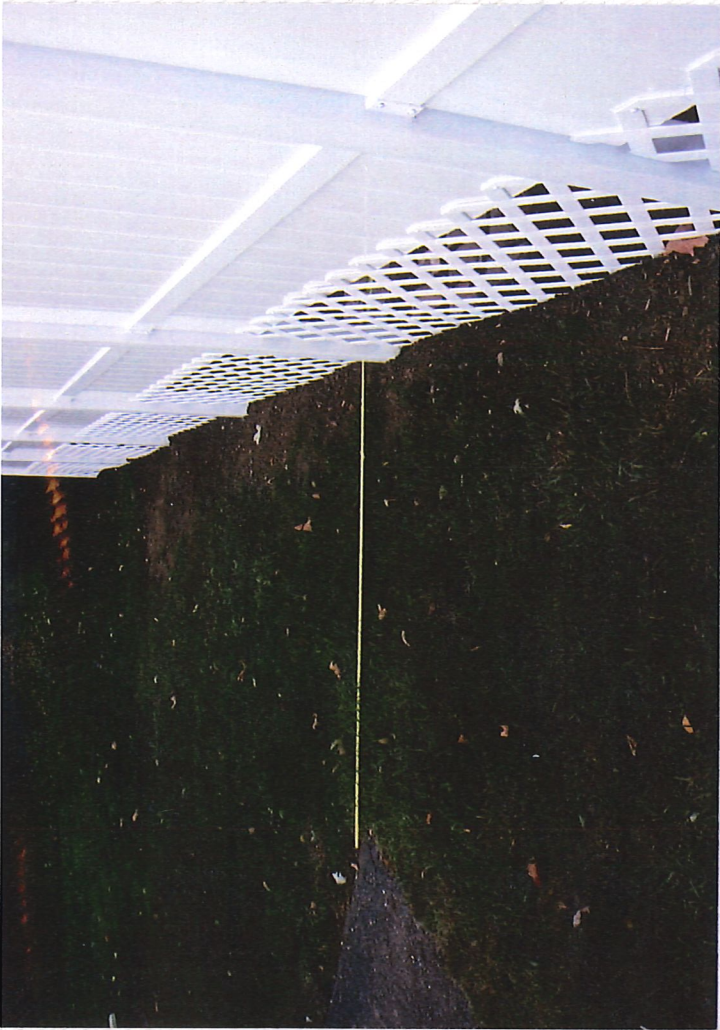
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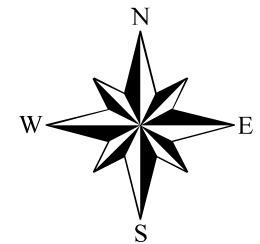
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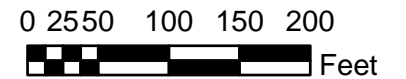
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City of Owosso

1227 N. Adams

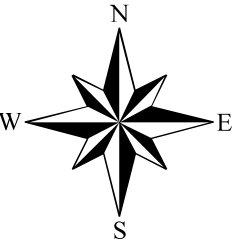


November 20, 2013



City of Owosso

1227 N. Adams



November 20, 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 2nd day of December, A.D., 2013.

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, December 17, 2013 to consider the following request:

APPLICANT: Kirk Preston - Owner
Case # 2013-01 Parcel 050-390-003-015-00

LOCATION OF APPEAL: 1227 N. Adams St.: Owosso, MI 48867

APPEAL: The petitioner proposes to construct (validate existing construction) of a side yard fence at a height of 86" inches. The fence location is on the south lot line.

THE PROPOSAL IS CONTRARY TO THE ORDINANCE AS FOLLOWS:

The maximum height permitted for a side yard 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: 66' x 188.75' irregular (0.285 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: December 2, 2013

SIGNED:



Subscribed and sworn to before me
this 2nd day of December, A.D., 2013


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