

OWOSSO
Zoning Board of Appeals



Regular Meeting
9:30am, May 20, 2014
Owosso City Council Chambers



MEMORANDUM

301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599 • FAX (989) 723-8854

DATE: May 12, 2014
TO: Chairman Horton and the Owosso ZBA
FROM: Susan Montenegro, Asst. City Manager/Dir. of Community Development
RE: Zoning Board of Appeals Meeting: May 20, 2014

The Zoning Board of Appeals shall convene in the city council chambers at 9:30 a.m. on Tuesday, May 20, 2014 to hear a petition for a setback variance. The property seeking the variance is located at 615 Third Street, parcel number 050-670-004-007-00. The property is zoned and used for single family dwellings in the R1 zoning district.

The petitioner is seeking a setback variance and proposes to construct a 672 square foot attached garage with a three (3) foot side yard setback, instead of the required eight (8) foot setback. Petitioner further requests to add a 198 square area on the rear of the new garage, which decreases the rear yard setback to 16 feet instead of the required 35 foot setback. The lot coverage would be 30% instead of the 25% allowed. The applicant is seeking these variances as outlined in the zoning code, Section 38-351.

The petitioner believes that the lot is too small to accommodate the addition of an attached two car garage and creates an undue hardship for the use of the property. Staff has looked at the property and has identified a two car garage that is already attached to the house and is well within the setback requirements of the ordinance.

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; **Staff finds no issues, subject to ZBA review.**
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 determination or finding by staff.**
4. Will relate only to property that is under control of the applicant; **Staff cannot identify any other properties that demonstrate the same criteria in the neighborhood.**

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; **Subject to ZBA review.**
 6. Was not created by action of the applicant (i.e. that it was not self-created); **The addition of the garage will take action by the petitioner and thus will be self-created; ZBA will need to deliberate on this finding.**
 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; **Staff has concerns with the increase in lot coverage proposed in variance such as decreased ability to respond to a fire at the rear of the structure.**
 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; **Staff finds no indications of such, subject to ZBA review.**
 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; **subject to ZBA review.**
- 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; **Petitioner argues that the small lot does not allow for the addition of an attached two car garage. Drawings indicate petitioner already has a two car garage attached to the house; request is subject to ZBA review.**
 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; **Such features exist in other small lots, however, the addition of an attached garage will reduce the side yard setback as well as the rear yard setback. ZBA must deliberate on these points and issue findings.**
 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district. **No determination or finding by staff.**
- 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.

Owosso Zoning Board of Appeals
May 20, 2014

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.

Summarily, subject to deliberation and findings of the ZBA, as well as the public hearing, staff finding is to deny this petition based on the fact the home already has a two car attached garage that complies with the zoning ordinance setback requirements. So far, one neighbor called and stated she has no issues with the petitioner's request while another property owner within the vicinity expressed concern and requests the ZBA enforce the current ordinance. 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.

That is all for now. Please go through the rest of your packet contents and **RSVP for the meeting**. Please contact me if you have any questions, comments, or other feedback at susan.montenegro@ci.owosso.mi.us or on my cell at 989.890.1394. I look forward to seeing you all on the 20th.

AGENDA
Owosso Zoning Board of Appeals

Tuesday, May 20, 2014 at 9:30 a.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA: May 20, 2014

APPROVAL OF MINUTES: December 17, 2013

SITE INSPECTIONS: None

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from December 17, 2013
3. Variance request application & materials – 615 Third Street
4. Site map
5. Affidavit of notice

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. Variance request – 615 Third Street; #2014-01

BUSINESS ITEMS:

1. Variance request – 615 Third Street; #2014-01 (Resolution)

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next regular meeting will be on Tuesday, June 17, 2014 if any requests are received.

Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Tuesday, May 20, 2014

[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, May 20, 2014, 9:30 a.m.
Owosso City Council Chambers, 301 W Main St.,
Owosso, MI

Resolution 140520-01

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the agenda of May 20, 2014 as presented.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 140520-02

Motion: _____
Support: _____

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 140520-03

Motion: _____
Support: _____

Whereas, the Owosso Zoning Board of Appeals, after reviewing the case for 615 Third Street, parcel number 050-670-004-007-00, hereby makes the following findings:

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

Based upon those findings, the Owosso ZBA hereby approves/denies the petition to permit the setback variance as described in the attached petition, conditioned on the following:

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 140520-04

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby adjourns the May 20, 2014 meeting,
effective at _____ a.m.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
DECEMBER 17, 2013 at 9:30 AM
CITY COUNCIL CHAMBERS

The meeting was called to order by Chairman Randy Horton at 9:31 a.m.

Roll call was taken by Recording Secretary Marty Stinson.

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

MEMBERS ABSENT: Vice-Chairperson Christopher Eveleth.

OTHERS PRESENT: Adam Zettel, Assistant City Manager and Director of Community Development; Petitioner Mr. Kirk T. Preston, 1227 Adams; Mr. Ronald Brooks, 1228 Adams Street; Mr. Charles P. Rau, Building Official; Mr. John Horvath, Alternate Board Member.

MINUTES: IT WAS MOVED BY BOARD MEMBER TELESZ AND SUPPORTED BY BOARD MEMBER JOZWIAK TO APPROVE THE MINUTES OF THE MEETING OF SEPTEMBER 17, 2013.
YEAS: ALL. MOTION CARRIED.

AGENDA: IT WAS MOVED BY BOARD MEMBER WASCHER AND SUPPORTED BY ALTERNATE BOARD MEMBER GRUBB TO APPROVE THE AGENDA WITH THE ADDITIONAL TWO ATTACHMENTS DISTRIBUTED IMMEDIATELY BEFORE THE MEETING.
YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

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

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS: VARIANCE REQUEST – 1227 Adams Street, # 2013-04

Recent submission by William and Tamela Nielsen, 209 Osburn, and owners of properties of both sides of 1227 Adams Street was silently read by the board.

Public Hearing began at 9:40 am. Mr. Ron Brooks of 1228 Adams concurred with the applicant, Mr. Kirk Preston of 1227 Adams Street, about the fence, and because of the location there was no possibility of changes on N. M-52. It was wisely done.

Board Members and Mr. Preston discussed glare being more of a problem in the last three to five years, and that a handyman installed the fence.

Mr. Preston presented his variance as applied. Mr. Brooks noted there have been more police cars in recent years next door at the rental unit.

Public hearing ended at 9:55 a.m. Board members discussed several issues including that headlight glare is not usually a problem with six foot fences as can be seen all around the city; curvature of the driveway with headlights jumping may be more unique; screening could be done with vegetation without changing the height restriction; and the angle of these three houses and their driveways make this a unique situation.

Draft

**MOTION BY BOARD MEMBER JOZWIAK, SUPPORTED BY BOARD MEMBER GRUBB,
WHEREAS, THE OWOSSO ZONING BOARD OF APPEALS, AFTER REVIEWING THE CASE FOR
1227 ADAMS, PARCEL NUMBER 050-390-003-015-00 HEREBY MAKES THE FOLLOWING FINDING:**

- 1. THERE IS A UNIQUENESS OF THE PROPERTY WITH THE ANGLE OF THE HOUSES
AND THE DRIVEWAYS.**

**BASED ON THIS FINDING, THE OWOSSO ZBA HEREBY APPROVES THE PETITION TO PERMIT
THE FENCE VARIANCE WITH THE HEIGHT OF 86" AS DESCRIBED AND PHOTOGRAPHED IN THE
ATTACHED PETITION. ROLL CALL VOTE:
AYES: JOZWIAK, WASCHER, GRUBB, HORTON
NAYS: TELESZ
MOTION CARRIED.**

Mr. Zettel commented to Mr. Preston that he now needed to get a building permit for his fence.

COMMISSIONER/PUBLIC COMMENTS:

Chairman Horton thanked Mr. Zettel for his time with the Zoning Board of Appeals; that he has learned a lot about zoning from him. The board shared general agreement as Chairman Horton continued to express his appreciation for his service to the city. Applause ensued. Mr. Zettel introduced Ms. Susan Montenegro who will be taking his place. Mr. Zettel continued that this was the most fun group to work with. Chairman Horton wished everyone a Merry Christmas.

ADJOURNMENT:

**MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER WASCHER TO
ADJOURN AT 10:12 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: Kurt & Lisa Aurand
ADDRESS: 615 Third St LOCATION OF APPEAL: 615 Third St.
Owosso
PHONE NO.: (989) 277-3029 DATE APPEAL FILED: 4-25-14

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

would like a variance to built an attached
garage with a 3' side yard setback, instead of the
required 8'. Also 9'x22' bump out on the rear of new
garage to have a rear yard setback of 16' instead of the required
35'. Also lot coverage would be 36% instead of the 25% allowed

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.)

Due to small lot size, unable to build ATTACHED
Garage on house. Variance would allow
Room for two cars.

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

K. Aurand
Signature of Applicant

APPLICATION FOR BUILDING PERMIT, PLAN EXAMINATION, ZONING PERMIT

CITY OF OWOSSO

301 W. MAIN STREET, OWOSSO, MI 48867

tx - 989-725-0535 fx 989-725-0546

AUTHORITY: PA 230 OF 1972, AS AMENDED
COMPLETION: MANDATORY TO OBTAIN PERMIT
PENALTY: PERMIT WILL NOT BE ISSUED

The Department will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, handicap or political beliefs.

NOTE: SEPARATE APPLICATIONS MUST BE COMPLETED FOR PLUMBING, MECHANICAL, AND ELECTRICAL WORK PERMITS.

Are you in the 100 year flood plain? (If you are in a flood plain, a flood plain permit is required. See Engineering - 725-0550)

Has this property been tested for asbestos? ___ yes X no

What are you building or installing? GARAGE

IS THIS ___ COMMERCIAL OR X RESIDENTIAL?

Address of project 615 THIRD ST. OWOSSO, MI (PLEASE CHECK ONE)

Are you excavating any soil? (yes/no) Is this property within 500 feet of the Shiawassee River or Corlett Creek? (yes/no)

If you answer yes to both questions, please contact Charles Rau, Building Department, at 989-725-0535.

Property owner KURT & LISA AURAND Owner address 615 THIRD ST

City OWOSSO State MI Zip 48867 Telephone 989-277-3029

Contractor Business Name K. A. MILLS CONSTRUCTION

Contractor Name KURT MILLS Address 1842 BIG BEAR DR.

City OWOSSO State MI Zip 48867 Telephone 989-277-8128

State Lic # 2101183257 Expires 5-31-14

Insurance JACOBS INSURANCE MESC 38-3057783

Applicant Name KURT MILLS Address 1842 BIG BEAR DR.

City OWOSSO State MI Zip 48867 Telephone 989-277-8128

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent, and we agree to conform to all applicable laws of the state of Michigan. All information submitted on this application is accurate to the best of my knowledge.

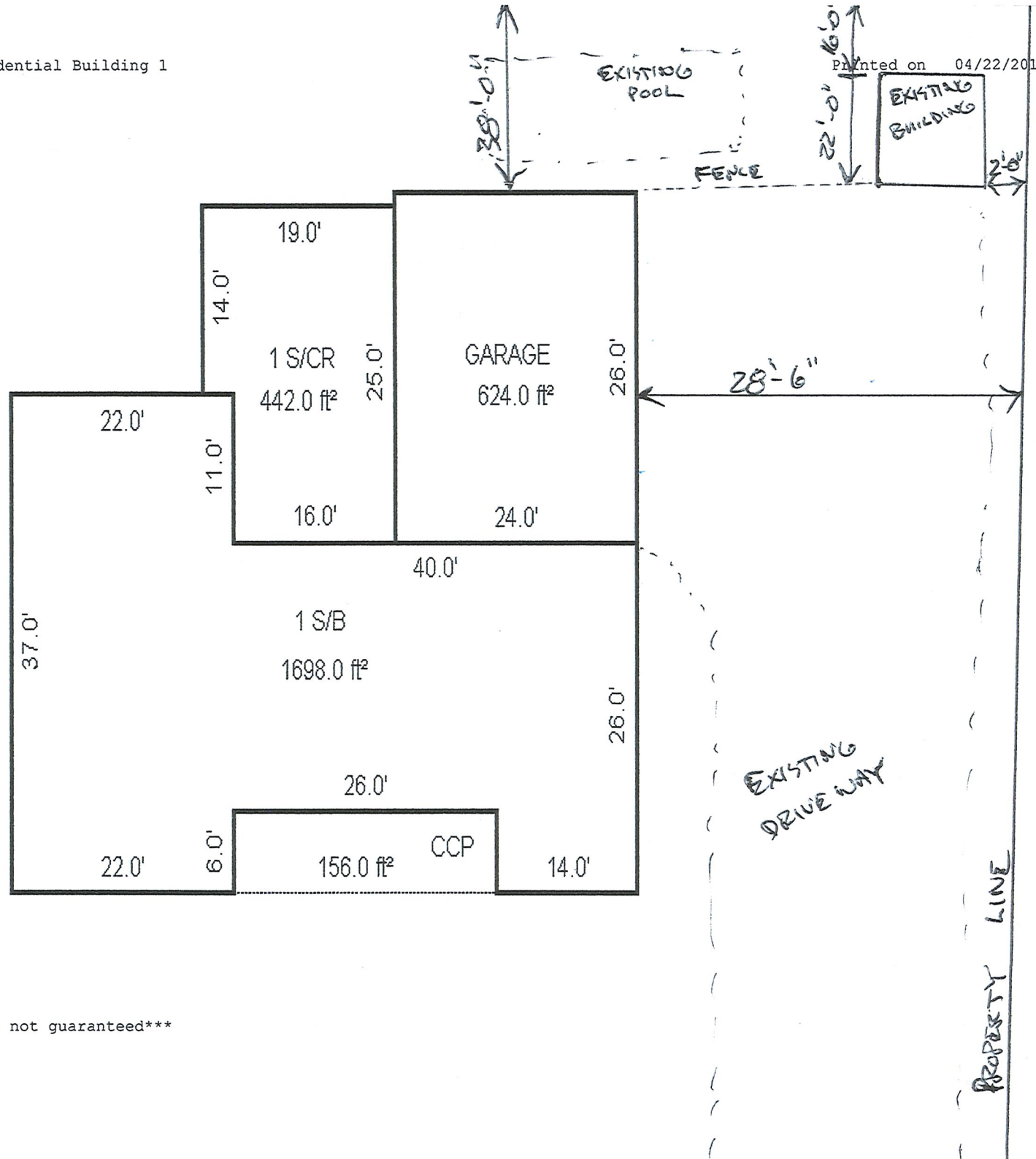
Section 23a of the state construction code act of 1972, 1972 PA 230, MCA 125, 1523A, prohibits a person from conspiring to circumvent the licensing requirements of this state relating to persons who are to perform work on residential building or a residential structure. Violators of section 23a are subjected to civil fines.

Signature of applicant [Signature] Date 4-25-14

Plan Review Fee \$ ___ Cost of Project (include materials & labor) \$ ___ Permit Fee \$ ___

Approval Signature ___ Date ___

EXISTING



Sketch by Apex IV™

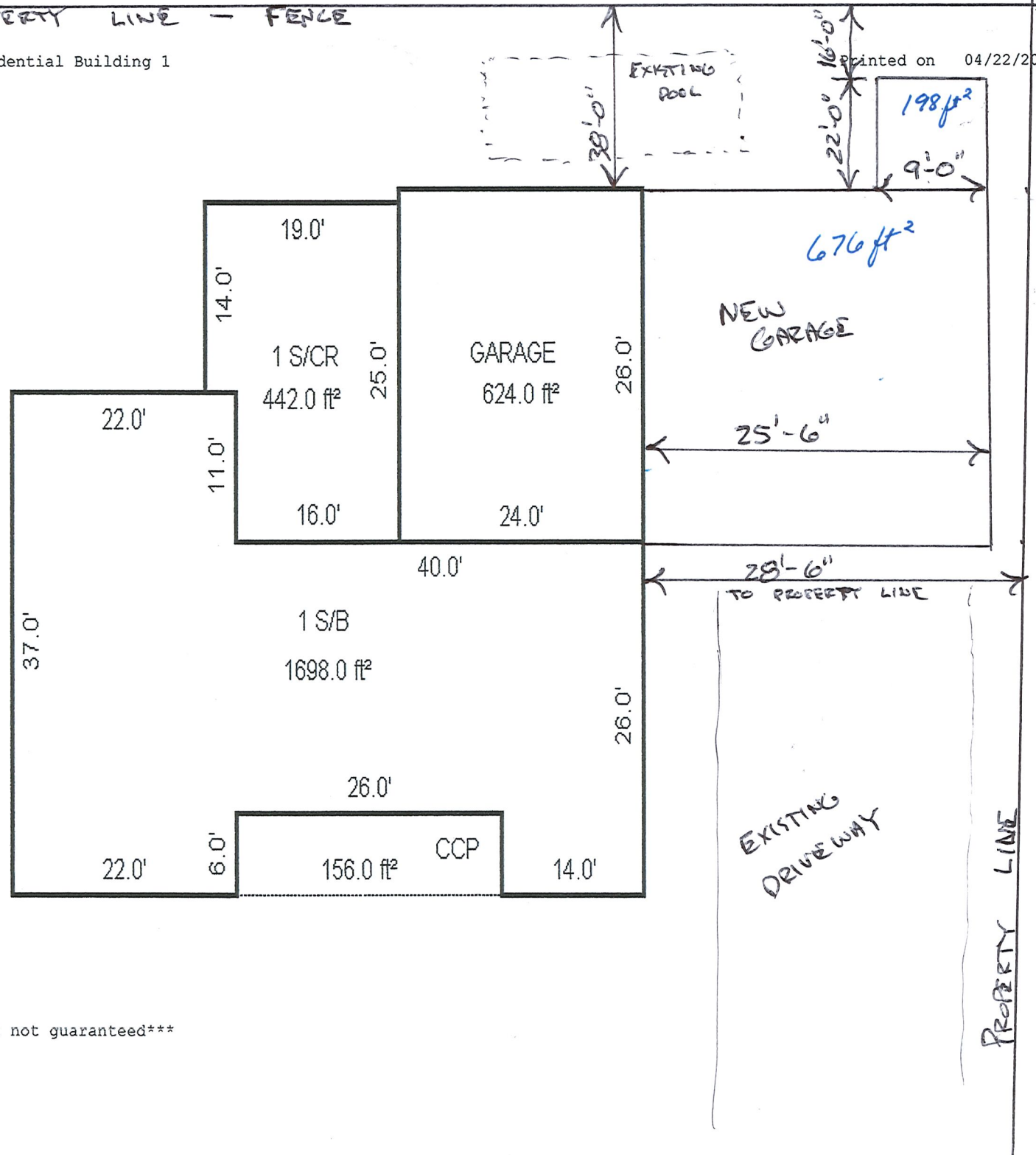
*** Information herein deemed reliable but not guaranteed***

PROPERTY LINE - FENCE

Parcel Number: 78-050-670-004-007-00, Residential Building 1

Printed on 04/22/2014

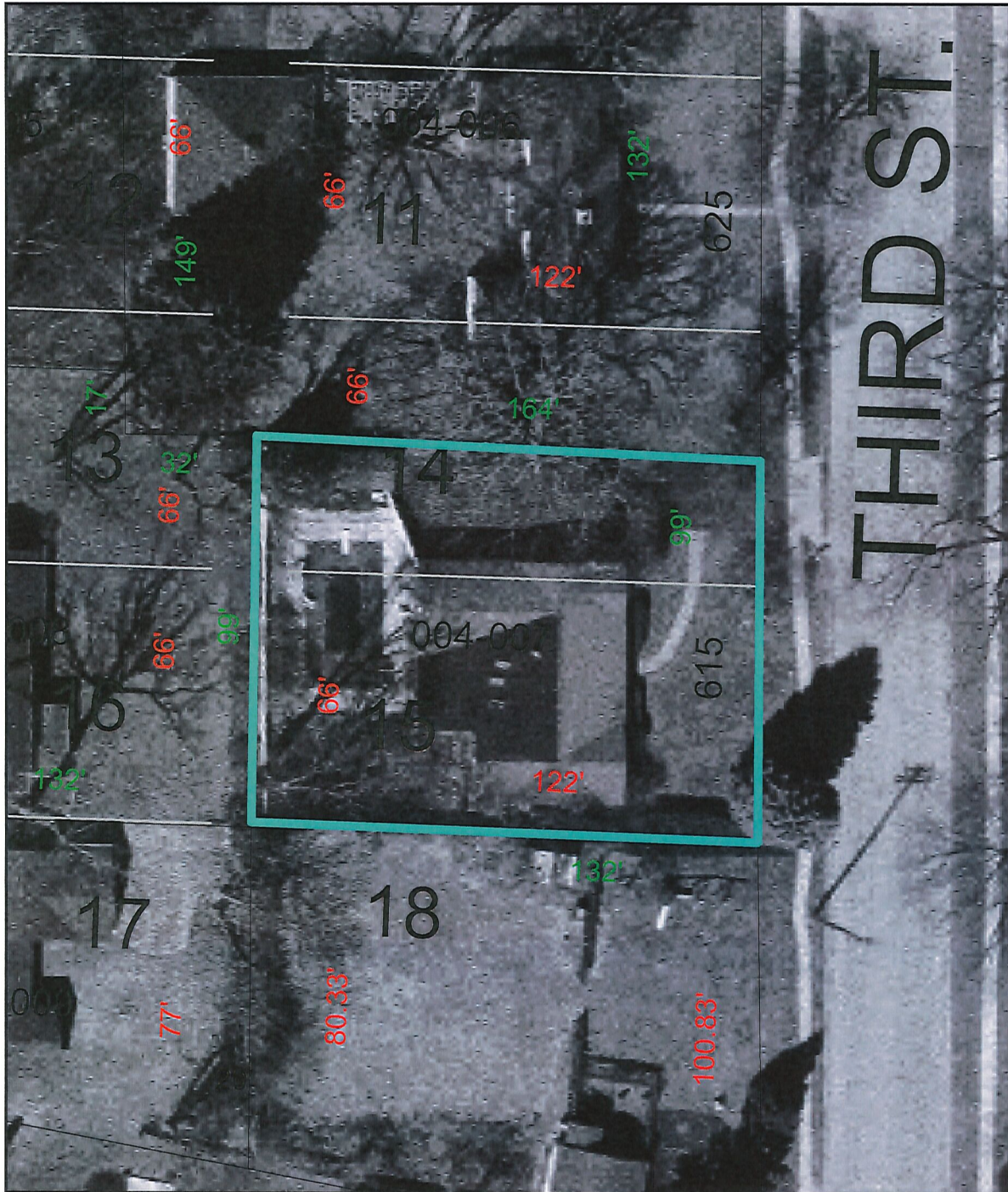
Proposed



Sketch by Apex IV™

*** Information herein deemed reliable but not guaranteed***

Total 3794 ft²

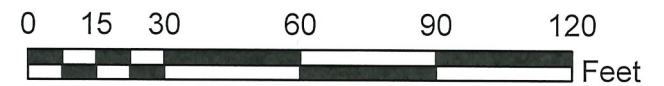


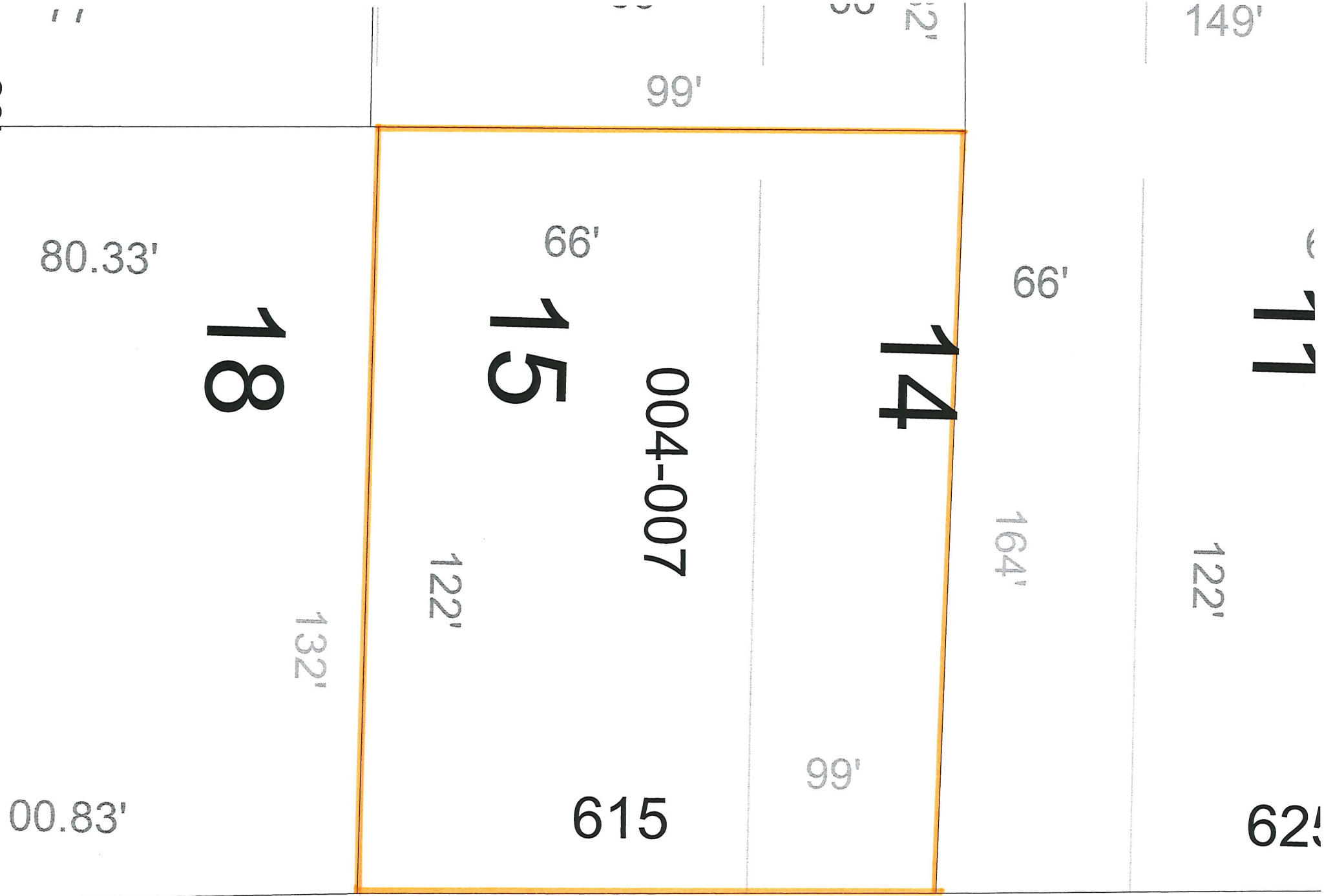
City of Owosso

615 Third Street

Zoning Board of Appeals

May 6, 2014





99' x 122' = 12078 ft² Lot size

Susan K. Montenegro

From: Martha M. Stinson
Sent: Tuesday, May 13, 2014 3:25 PM
To: Susan K. Montenegro
Subject: ZBA Var - 615 Third

Chuck Rau took the following message:

Ms. Valerie Benson at 614 Fifth called on 5-8-14 and said she is OK with the new garage addition, but would like the tall white fence in the rear yard to remain there.

Marty Stinson
City of Owosso
301 W. Main Street
Owosso, MI 48867
989-725-0540

This communication, along with any documents, files or attachments, is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of any information contained in or attached to this communication is strictly prohibited. If you have received this message in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing or saving in any manner. This communication does not form any contractual obligation on behalf of the sender or the City of Owosso and, when applicable, the opinions expressed here are my own and do not necessarily represent those of the City.

rec'd 5-14-14
M.S.

THOMAS E. & REBECCA C. McCLEAR

619 FIFTH STREET, OWOSSO, MICHIGAN 48867
TELEPHONE 989-725-8189 • FACSIMILE 989-725-1744

City of Owosso
Zoning Board of Appeals
301 W. Main Street
Owosso, MI 48867

May 12, 2014

Re: Official Notice of Proposed Variance

Dear Zoning Board:

My husband and I reside at 619 Fifth Street and have received notice of the proposed variance for 615 Third. In the usual sense of things, this variance will not affect us because the property is not next door. This, I suspect, is why so many variances are allowed in the City.

However, the zoning laws are set up and enforced to maintain the character, quality and safety of a neighborhood in the long term. The area of town we live in has the distinction of many different style homes of varying ages making it a unique and particularly lovely neighborhood. We would like to see it remain that way.

The fact that this Notice is sent to more than just the property next door to the petitioning resident is significant. It means that there is more at issue than just the sensibilities of the adjacent property. The sensibilities of the entire neighborhood are at issue.

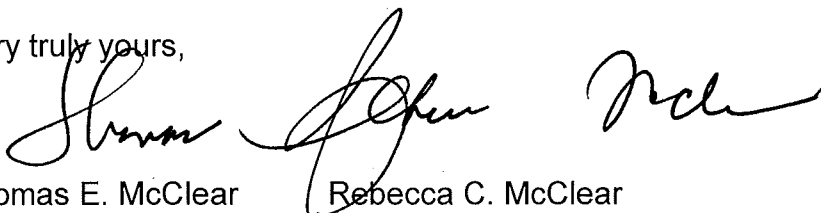
The house at issue has already had an addition to the original structure and has a pool in back. It was purchased recently with the knowledge that this was so. It is assumed that if a larger parcel was required a different house would have been purchased. Setbacks are established zoning requirements for a reason – water runoff, fire safety, privacy, access, and so forth.

Granting a few feet of variance from the legal setback is one thing when it is needed to correct an otherwise unsolvable problem not created by the homeowner. This owner simply wants more house and garage on a too small lot that he purchased just a few months ago. This is not a good reason for a variance. It is also not a good reason for a variance that the petitioners are nice people and have the best of intentions.

The Board should makes its decision without determining how many letters from the neighborhood it receives in objection, as it should know that few people wish to make a fuss. The only votes that matter are those of the Zoning Board. Please enforce the current ordinance.

Thank you for your service.

Very truly yours,



Thomas E. McClear

Rebecca C. McClear

OFFICIAL NOTICE OF PROPOSED VARIANCE

The city of Owosso Zoning Board of Appeals will hold a Public Hearing in the City Hall Council Chambers at 9:30 a.m. on Tuesday, May 20, 2014 to consider:

APPLICANT: Kurt & Lisa Aurand – Owner
Case # 2014-01 615 Third Street, Owosso, MI 48867
LOCATION OF APPEAL: 615 Third Street, Owosso, MI 48867

APPEAL: The petitioner proposes to construct a 672 square foot attached garage with a three (3) foot side yard setback, instead of the required eight (8) foot setback. Petitioner further requests a 198 square area on the rear of the new garage, which decreases the rear yard setback to 16 feet instead of the required 35 foot setback. The lot coverage would be 30% instead of the 25% allowed. The applicant is seeking these variances as outlined in the zoning code, Section 38-351.

THE PROPOSAL IS CONTRARY TO THE ORDINANCE AS FOLLOWS:

The proposed structure would be parallel with the northern property line, which is a side yard. The setback from the structure to the property line on this side is currently 28 foot and 6 inches. The proposed attached garage would have a three (3) foot setback from the property line where an eight (8) foot setback is required. The proposed structure would be 16 feet from the rear lot line instead of the 35 feet as required.

APPLICABLE SECTION OF THE ZONING ORDINANCE: Sections 38-351.

CURRENT ZONING: R-1 – Single Family Residential
SIZE OF LOT: 99' x 122' = 12,078 square foot lot

As an affected property owner, you are encouraged to acquaint yourself with this proposal and make your position known on the request 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.

Susan Montenegro, 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 Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500. Website address is www.ci.owosso.mi.us.]