

OWOSSO
Zoning Board of Appeals



Regular Meeting
9:30am, August 20, 2013
Owosso City Council Chambers

AGENDA
Owosso Zoning Board of Appeals

Tuesday, August 20, 2013 at 9:30 a.m.
Council Chambers – Owosso City Hall
Owosso, MI 48867

CALL MEETING TO ORDER:

ROLL CALL:

APPROVAL OF AGENDA: August 20, 2013

APPROVAL OF MINUTES: June 18, 2013

SITE INSPECTIONS: None

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 comment received by staff

COMMISSIONER/PUBLIC COMMENTS:

PUBLIC HEARINGS:

1. Variance request – 1409 Whitehaven Ct.; #2013-02

BUSINESS ITEMS:

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

COMMISSIONER/PUBLIC COMMENTS:

ADJOURNMENT: Next regular meeting will be on Tuesday, September 17, 2013 if any requests are received.

Commissioners, please call Marty at 725-0540 if you will be unable to attend the meeting on Tuesday, August 20, 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, August 20, 2013, 9:30 a.m.
Owosso City Council Chambers, 301 W Main St.,
Owosso, MI

Resolution 130820-01

Motion: _____
Support: _____

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

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 130820-02

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby approves the minutes of June 18, 2013 as presented.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 130820-03

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 fence variance with a height of 92" as illustrated in the attached petition, conditioned on the following:

1. _____

- 2. _____
- 3. _____

Ayes: _____
Nays: _____

Approved: _____ Denied: _____

Resolution 130820-04

Motion: _____
Support: _____

The Owosso Zoning Board of Appeals hereby adjourns the August 20, 2013 meeting,
effective at _____ a.m.

Ayes: _____
Nays: _____

Approved: _____ Denied: _____



MEMORANDUM

DATE: August 29, 2013
TO: Chairman Horton and the Owosso ZBA
FROM: Adam Zettel, AICP
RE: Zoning Board of Appeals Meeting: August 20, 2013

The Zoning Board of Appeals shall convene in the city council chambers at 9:30 a.m. on Tuesday, August 20, 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 side yard of the property. The proposed fence would be 92 inches tall for a distance of 36 feet along the south lot line. Fences are limited to 72 inches in 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. As it was described to me, he believes there is a unique hardship for this property because the home was constructed such that the rear of the house (from an architectural standpoint) is very close to the lot line, leaving no viable options for a patio with privacy. Because the exit from the house to the deck is elevated, and the distance between the home and lot line is very small, he contends that a fence that is six feet higher than the deck is required for privacy.

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.

Owosso Zoning Board of Appeals
July 29, 2013

- 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; **While staff does not find strong evidence that this change will be detrimental to this or surrounding properties, the conditions under which the hardship was formed and the degree of hardship that exists may not conform with the purpose of this chapter. More details are outlined below.**
 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; **While the property layout in relation to the house is not common, it appears to be far from unique. In maps #2 and #3 I indicated other corner lots in this very neighborhood that appear to be similarly situated, meaning that the rear of the house is very close to the lot line, resembling a side yard more closely than a rear yard.**
 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; **Staff acknowledges the desire for privacy and the difficulty in achieving privacy given the circumstances. However, the level of burden the circumstances place on the owner to achieve a permitted purpose is rather subjective, as is the uniqueness of the layout.**
 6. Was not created by action of the applicant (i.e. that it was not self-created); **The layout of the home as it relates to the lot line is a product of the original owner and/or builder. The applicant recently came to this hardship by virtue of purchasing the home “as-is”.**
 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; **It is important to hear what the neighbors have to say on this issue. I have attached some comments that we have received. As you can see, the opinion is mixed, indicated that there is definitely some concern over the impact of this proposal.**
 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; **Please see neighbor comments and visit the area in question to better judge the existing and proposed circumstances.**
 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. **Since the primary concern is privacy, this is entirely up to the judgment of the ZBA.**
- 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. Again, the degree to which this inhibits an expected use of the property, whether this hardship is not self-created, and whether this is a unique property feature are all pretty marginal or subjective findings.**

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July 29, 2013

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; **While the property features are not typical, I do not believe they are “exceptional or extraordinary”.**
 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district. **I am not convinced that privacy cannot be achieved in some other way that conforms to the ordinance; subject to the ZBA.**
- 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.

Staff believes that the primary hardship on this site is not unique and was a very observable feature of the property upon purchase. While the need of the homeowner is understandable, my interpretation of the criteria indicate that this request falls short of meeting expectations. **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, the facts at hand, and the public comment is to deny this petition and seek other options.**

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 20th. 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
JUNE 18, 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, Commissioners 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; Charles Rau, Building Official; Alternate John Horvath; Mr. Dave Wakeland, owner of 1107 W. Main Street; Mr. Chris Grzenkowica of Desine Inc., engineer for Mr. Wakeland; Don and Marilyn Moorman, 2358 W. Grand River Road, Owosso, owners of 1108 W. Main Street.

AGENDA: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY ALTERNATE GRUBB TO APPROVE THE AGENDA AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY BOARD MEMBER TELESZ AND SUPPORTED BY BOARD MEMBER WASCHER TO APPROVE THE MINUTES OF THE MEETING OF JANUARY 15, 2013.

YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from January 15, 2013
3. Variance request materials – 1107 West Main Street
4. Variance request plans - attached

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS: VARIANCE REQUEST – 1107 W. MAIN STREET. # 2013-01

Adam Zettel, Assistant City Manager and Director of Community Development, gave an overview of the Westown area proactive focus for development. In this particular case, the signage will be placed in a transitional area where clear vision is required at a corner and an alleyway. To meet the requirements of three to ten foot clearance would only leave a two foot tall sign. This would create a too small and very unusual, non-functional sign. Mr. Zettel referred to the petitioner, Mr. Dave Wakeland, owner of the property.

Mr. Wakeland introduced his design engineer for the project, Mr. Chris Grzenkowica of Desine Inc. Mr. Grzenkowica stated there would be a drive thru Subway, another business, and three upstairs apartments. The proposed signage would be 40 square feet and the best position would be at the west end of the property to allow traffic circulation in the parking lot. The sign creates a natural buffer between the parking lot and alley. The closer the sign is to the building, the less visible it would be and the less reaction time there would be for the driver creating potential hazards on the highway.

Public Hearing began at 9:45 am.

Mr. Don Moorman, owner of 1108 W. Main Street, asked if the alley was going to change to two way traffic. It was noted that it was not.

Mrs. Marilyn Moorman, co owner of 1108 W. Main Street, stated that questions were answered prior to the meeting in conversation with Mr. Grzenkowica.

Mr. Moorman expressed concerns about traffic coming into town driving too fast. Mr. Zettel commented that the state has not planned too much concerning that issue with the paving scheduled in 2014. They are not planning a "round-about".

Mr. Wakeland was asked when they would be building. He answered that things are advancing and he would like to start this summer, but he is proceeding cautiously.

Public Hearing ended at 9:52 am.

Discussion with the board about the height of the Shell Station sign which is 32 feet; temporary banners which can't be used because of the clear vision issue.

**MOTION BY ALTERNATE GRUBB, SUPPORTED BY BOARD MEMBER TELESZ:
THE OWOSSO ZONING BOARD OF APPEALS, AFTER REVIEWING THE CASE FOR 1107 WEST
MAIN STREET, PARCEL NUMBER 050-100-001-001-00, HEREBY MAKES THE FOLLOWING
FINDINGS:**

1. THE PROPERTY IS UNIQUELY SITUATED TO BE ADJACENT TO LAND ZONED FOR B-4 USES, WITH A PUBLIC ALLEY IN BETWEEN THE TWO PARCELS.
2. THE CLEAR VISION FOR THE ALLEY CREATES A HARDSHIP THAT WOULD EFFECTIVELY ELIMINATE ANY PRACTICAL USE OF THE PYLON SIGN ENTITLEMENTS FOR THE PROPERTY IN QUESTION.
3. THE PETITION MEETS ALL BASIC CONDITIONS AND THE REQUIRED SPECIAL CONDITIONS FOR A VARIANCE.

**BASED UPON THOSE FINDINGS, THE OWOSSO ZBA HEREBY APPROVES THE PETITION TO PERMIT THE SIGN VARIANCE WITH THE HEIGHT OF 17' AS ILLUSTRATED IN THE PETITION FILED ON MAY 17, 2013.
YEAS ALL. MOTION CARRIED.**

COMMISSIONER/PUBLIC COMMENTS:

Chairperson Horton noted this will be a great addition to the M-21 corridor. Mr. Wakeland commented that we have to start with 1107 W. Main to keep Subway going. Then we can remodel the next building at the Shell Station.

ADJOURNMENT:

**MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER WASCHER TO
ADJOURN AT 10:09 A.M.
YEAS: ALL. MOTION CARRIED.**

Dan Jozwiak, Secretary

m.m.s

rec'd 7-24-13
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 (BOB) ROWLAND

ADDRESS: 1409 WHITEHAVEN CT. LOCATION OF APPEAL: THE SOUTH SIDE, EAST-
OWOSSO MI 48867 WEST PROPERTY LINE.

PHONE NO.: (989) 472-4480 DATE APPEAL FILED: _____

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

REQUEST TO INSTALL A 6' HIGH PRIVACY FENCE,
(EQUAL TO/OR BETTER THEN NEIGHBORHOOD FENCES),
20" ABOVE GROUND ON EXISTING DECK/PATIO OF 1409
WHITEHAVEN CT. PROPERTY, (BOB).
(SEE ATTACHMENT - "POINTS FOR CONSIDERATION.")

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.)

CURRENTLY, I HAVE ZERO PRIVACY ANYWHERE IN MY YARD OR HOME,
UNLIKE MOST OF THE HOMES NEARBY. MY PROPOSAL IS ONLY 8% OF
MY PROPERTY LINES, AND SHOULD INVOLVE NOT EFFECT MY 12' AWAY
HOME OF 1405 WHITEHAVEN CT., (AMY).
(SEE ATTACHMENT - SITE PLAN)

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)

THIS SECTION FOR OFFICE USE ONLY

APPLICANT: _____

APPEAL ADDRESS: _____

| | |
|------------------------------------|--|
| Case Number: | _____ |
| Receipt Number: | _____ |
| Hearing Date Request: | _____ |
| Current Zoning: | _____ |
| Size of Lot: | _____ |
| Tax Roll #: 78-050- | _____ |
| Previous Appeals on this property? | <input type="checkbox"/> No <input type="checkbox"/> Yes |

Legal Description:

This hearing is in accordance with the Zoning Ordinance as follows:

Section(s):

Explanation:

ZONING BOARD OF APPEALS INFORMATION

Date of Hearing: _____ Action Taken: _____

Specific Motion and Findings of Fact: _____

(Signature of Chairperson)

VARIANCE REQUEST - BOB

POINTS FOR BOARD CONSIDERATION;

1. BOB CAN SEE 100% OF AMY'S BACKYARD, FROM DECK/PATIO. IF VARIANCE IS GRANTED THIS WOULD TOTALLY REVERSE.
2. BOB CAN SEE IN ONLY ONE 2'x3' WINDOW ON AMY'S HOME. AMY CAN SEE IN BOB'S 6' PATIO DOOR (DINING RM), 8' LIVING RM BAY WINDOW AND MASTER BEDROOM S. WINDOW. ALSO, THE BARKING DOG CAN SEE IN THE SAME WINDOWS AND HAS BARKED AT MOVEMENT INSIDE MY HOME, (NOT TO MENTION ANY OUTSIDE MOVEMENT/SOUND).
3. BOB'S DECK (TOTAL BACKYARD) IS DEPRIVED OF PREVAILING S.W. (NICE) BREEZES OF WARM WEATHER TIMES. AMY WILL GAIN ADDITIONAL BLOCKAGE OF N.E. WINDS/STORMS, THAT SELDOM BRING ANYTHING NICE.
4. SAFETY, AMY RELIGIOUSLY KEEPS HER LAWN WELL MAINTAINED, INCLUDING THE 12'x30' PATCH NEXT TO MY DECK/PATIO AND HER HOME. MOWER, AVG. SIZE ROTARY WITH OPEN SIDE DISCHARGE CHUTE.

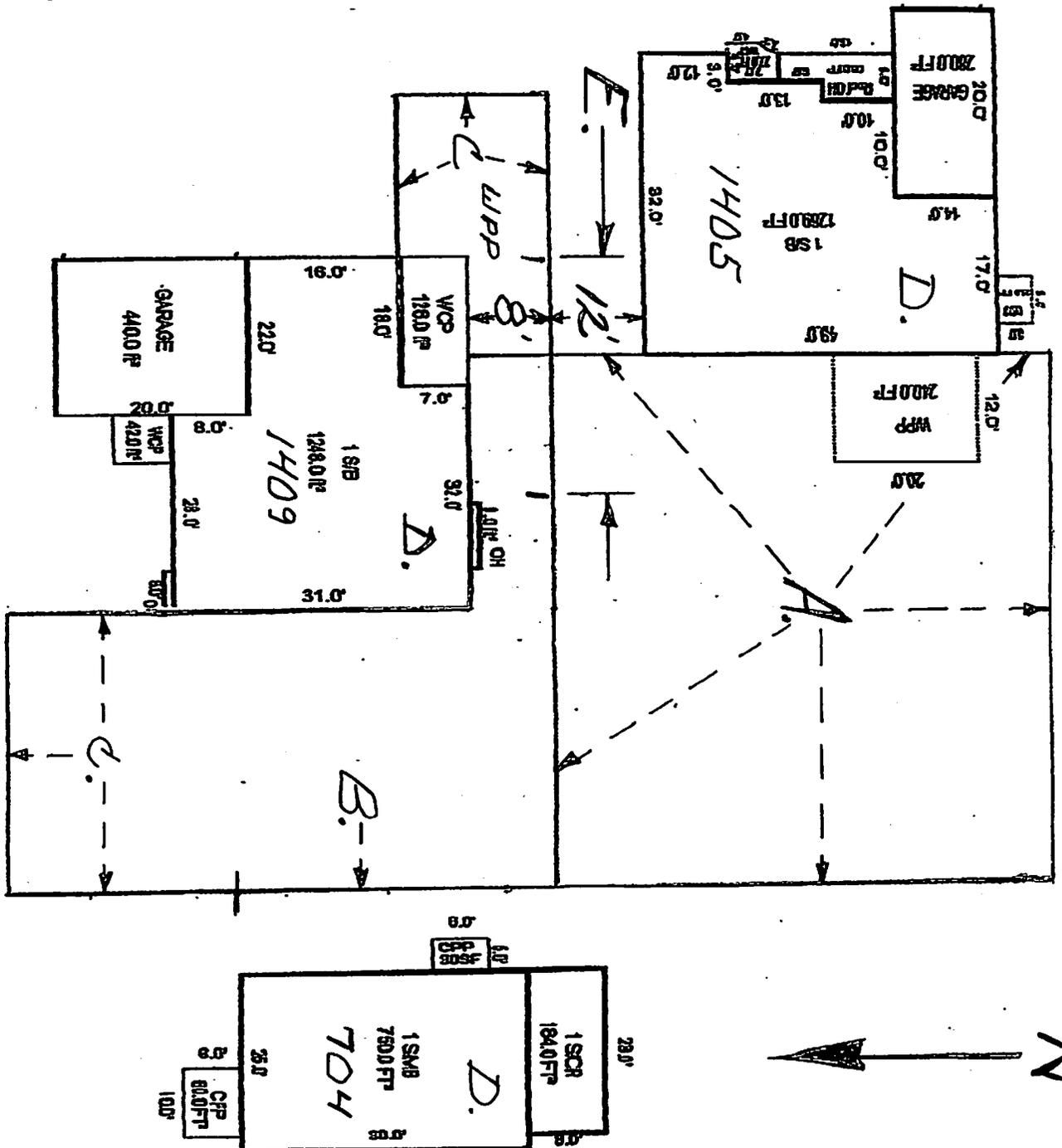
5. BESIDES AMY, BOB CAN SEE ONLY 4 PROPERTIES; 704 NORTH ST, 1407 & 1404 WHITEHAVE CT., AND 711 STEVENS. THE FIRST 3 WILL SEE ONLY THE THICKNESS (5") OF MY PRIVACY FENCE REQUEST. THE 4TH PROPERTY WILL SEE THE WIDTH, 20" ABOVE AMY'S GROUND LEVEL 6' HIGH FENCE, ONLY IF ON 2ND FLOOR. ALL 4 HOMES (ABOVE) HAVE 6' HIGH PROPERTY LINE FENCES (PRIVACY), SAME AS AMY. IF MY VARIANCE IS GRANTED, THE ABOVE 4 PROPERTIES WILL STILL HAVE A 100% VIEW OF BOB'S BACKYARD AND DECK/PATIO AREA.

6. IF, A VARIANCE IS ONLY GOOD FOR SIX MONTHS? PROCEED.
IF, A VARIANCE COULD BE EXTENDED TO ONE YEAR? I WOULD LIKE TO REQUEST A VARIANCE OF 14" ABOVE GRADE FOR THE "REMAINING" 40% OF THE DECK/PATIO, PERIMETER, WITH A 6' HIGH PRIVACY FENCE.

WHITEHAVEN CT.

NOTE!

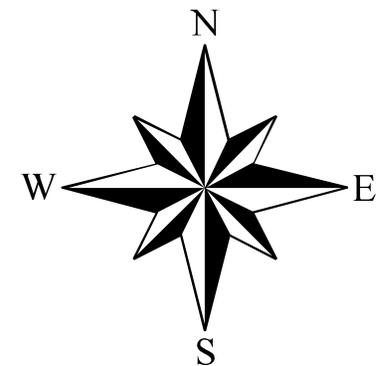
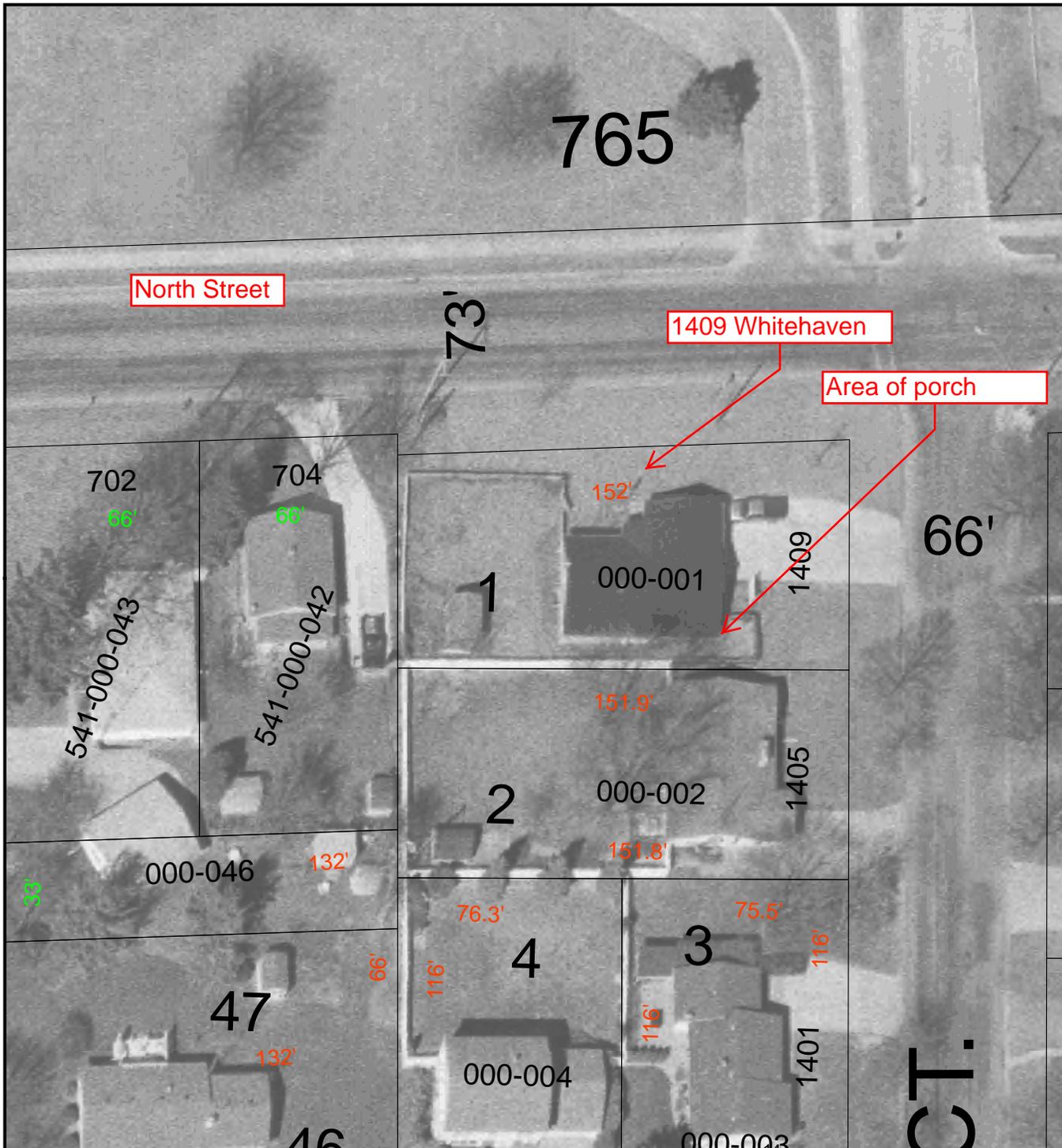
- A. 6' HIGH SOLID FENCE.
- B. 6' " OPEN " "
- C. 3' " " " "
- D. THREE S/B'S CITY PROVIDED.
- E. VARIANCE AREA - 36' x 5", TOTALLY ON 1409.



NORTH ST.

City of Owosso

1409 Whitehaven Ct.
Map 1



July 29, 2013



8-6-13 –

Message from Janice Swenk, 617 Stevens

First call – she was opposed – 6 feet is high enough.

Second call a couple days later she changed her mind. The additional 20” is OK after all.

08-05-13

CINDY RANDT, 1400 WHITEHAVEN

DOES NOT WANT AN 8 FOOT IN THE NEIGHBORHOOD. SHE IS OPPOSED TO THE VARIANCE.

Adam H. Zettel

From: Martha M. Stinson
Sent: Tuesday, August 13, 2013 12:30 PM
To: Adam H. Zettel
Subject: ZBA VARIANCE

Jennifer Poullion and Dennis Hyatt of 704 E. North Street are both in favor of allowing the variance for the additional 20" for the fence as long as it is only near the patio area and not for the whole fence area.

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 7-30-13
M.S.

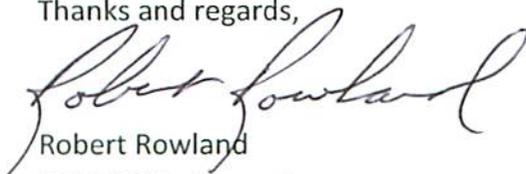
July 27, 2013

Ms. Amy Ritter
1405 Whitehaven Court
Owosso, MI 48867

As we discussed, I am proposing to build a new fence between our yards. The fence will be 20 inches taller than the top of your fence. The eastward progression will not be any closer to Whitehaven Court than the northeast corner (side yard) of your home. The fence will be at least equal in quality to your existing fence, and similar in appearance if possible. My fence will be totally separate from your fence, and the "outside" (aesthetically pleasing side) will face your yard.

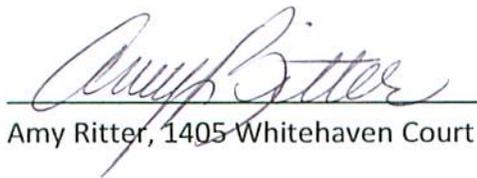
I must request a variance from the City of Owosso. I have attached the site plan that I provided to the City, for your review. If you have any additional questions, please let me know. If not, I would appreciate it if you would sign this letter indicating your approval, and return it to me at your earliest convenience (feel free to drop it in my mailbox).

Thanks and regards,



Robert Rowland
1409 Whitehaven Court
Owosso, MI 48867
989-472-4480

I have reviewed the site plan for the proposed fence between my yard and Robert Rowland's house at 1409 Whitehaven Court, and do not have any objections.



Amy Ritter, 1405 Whitehaven Court

7-29-13
Date