

**ANN ARBOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MEETING MINUTES TUESDAY, JUNE 21, 2022 - 4:00 PM**

I. ROLL CALL

At 4:01 pm the meeting was called to order by Chair Gorman.

Present: Chair Lee Gorman, Members Bill Burlingame, Bud Collins, Jill Sweetman Lada, and Clerk Rena Basch

Also present: Township Planner Sally Elmiger from Carlisle/Wortman Associates, Building and Zoning Official Peter Pace, Code Enforcement Officer Ed Swope, and Township Litigation Attorney Tom Meagher.

Absent: None

II. APPROVAL OF MINUTES - Approval of Zoning Board of Appeals minutes June 16, 2020.

MOTION by Burlingame, support by Collins, to approve the minutes of the meeting on June 16, 2020.

Motion carried by voice vote.

III. OLD BUSINESS - None

IV. NEW BUSINESS

A. ZBA-1-2021: 3019 Maple Rd, Ann Arbor, Michigan, 48103, premises zoned R2- Single Family Suburban Residential, parcel # I-09-07-361-025. Owner/applicant Onur Ulgen is seeking the following variances for two gates, one on the east side of their property adjacent to N. Maple and a second gate toward the west side of their property adjacent to Whippoorwill:

- Variance from Sec. 74-600(e)(1)(a) to locate a gate in the required front yard that abuts a public street that exceeds 4-feet in height.
- Variance from Sec. 74-595 to locate a structure a distance closer to the existing right-of-way centerline of Maple Road than 60 feet and the required minimum front yard of the district (or 35 feet).
- Sec. 74-600(d) to locate a gate off of their property, and on the neighboring parcel identified as Parcel I-09-18-230-004 on the submitted survey, that is not located on the common property line.

1. Petitioner presentation

Onur Ulgen was present on behalf of this application, as was his attorney William Stapleton.

Utilizing a PowerPoint presentation, Mr. Ulgen and Mr. Stapleton explained the reasons for this variance request:

- The main issue was the safety concern of vehicles coming into the Ulgen driveway. Most

- driveways on N. Maple Road were at a 90 degree angle to traffic and the applicant's driveway was not at a 90 degree angle due to its location on a curve. Cars traveled at high speeds on N. Maple Road, and there had been multiple car accidents including fatal accidents near the applicants' property.
- Mr. Ulgen wanted to protect his driveway area as grandchildren played on and around it.
 - When they moved to the home about 11 years ago it had been vacant for some time, and pedestrians used the yard as a cut-through and drivers used the circular lane to turn around. Therefore they had put up a 4' chicken wire fence for the yard and across the driveways.
 - In March 2021 the west gate was hit twice and was destroyed.
 - The new west gate posts were about 6' high; the gate itself ranged from 4.5' to 5' tall.
 - The location of Mr. Ulgen's home was unique in the neighborhood.
 - The zoning ordinance is silent regarding gates. Their view was that the fence ordinance did not apply in this instance, since the variance request related to gates only, and there was no reference to gates in the fence ordinance. If the fence ordinance was intended to apply to gates, gates would have been mentioned separately. In this instance, the gate was an unattached separate structure with a specific purpose, which primarily served a safety purpose.
 - There were other sections of the ordinance where gates and fences were addressed separately (74-586 and 74-588).
 - Mr. Ulgen's neighbors (at 2987 Newport Road) were okay with placing the west gate wherever Mr. Ulgen felt it best. A ground lease had been signed in 2013, which had expired in December 2022, but which was in the process of being renewed.
 - Mr. Stapleton had just received a draft agreement from the neighbor's attorney, which he distributed to the Board, and which took the place of the unexecuted lease agreement that was previously provided to the Board. The neighbor's preference was to renew the existing lease agreement rather than enter into an easement.
 - The Road Commission had provided the applicant with an abandonment package to seek abandonment of the Newport Road right-of-way.
 - The Carlisle Wortmann report did not address the safety issues as outlined by Mr. Ulgen, the differences between the applicant's property and the applicant's neighbors' properties, or night traffic.
 - A higher gate will see help drivers see the gate from further away.
 - Pictures were provided of other fences with gates along Newport Road in the Township.
 - Mr. Ulgen reiterated that the main reason he needed the gates was for safety.

2. Consultant reports

Township Planner

Township Planner Elmiger explained that if a word was not defined in the ordinance, the ordinance states that a dictionary definition of how the word is commonly defined would be used. The dictionary definition of gates included gates being a common feature of a fence, a gate was an opening in a fence, and therefore the fence ordinance applied to gates.

The Zoning Board of Appeals was responsible for interpreting the ordinance. If the applicant would like the Board to make an interpretation on whether or not the fence ordinance applied to gates, the Township would have to notice that request for a future meeting.

Referencing her June 15, 2022 memorandum, as well as referencing the applicant's survey, Township Planner Elmiger summarized her review as follows:

- The ordinance requires fence/and or gates to be on a common property line. This requirement was not met.
- The ordinance requires structures, including gates and fences, to be at least 95 feet from N. Maple Road. This requirement was not met.
- Fences in the front yard must be no taller than four feet tall. This requirement was not met.

Ordinance criteria for granting a variance:

1. *Special conditions peculiar to the land. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.*

West gate location:

The location of the existing driveway is relatively close to the intersection of Whippoorwill Lane and Maple Road (approx. 40 feet). Carlisle/Wortman contacted the WCRC (Washtenaw County Road Commission) and asked if driveway permits had been issued for both approaches. The Road Commission representative said that they did not have a record of a driveway permit for this address in their electronic system (going back to 2002), and she didn't expect to find anything in the vault (assuming there are paper files). Whether a driveway permit was requested, or just not issued, is unknown.

The location of the house and circular drive on this property is unusual. The west driveway is entirely on the neighbor's property, and the location of the existing driveway limits locations for a front yard fence on this site, as permitted in the ordinance for similar residential properties. Township Planner Elmiger considered these special conditions to locate a gate at the west driveway to be peculiar to this site.

West Gate Height: The grade of the west driveway is fairly level with the grade of Whippoorwill Lane and N. Maple Road. The level surface would allow a driver to see a four-foot tall gate as easily as a six-foot tall gate. There did not appear to be any issues peculiar to the property that would require a six-foot tall gate vs. a four-foot tall gate. Both would be visible from the right-of-way. The applicant states that drivers turning around at the Whippoorwill intersection hit chicken wire that had been stretched across his driveway. It is possible that the issue of vehicles damaging the chicken wire was that the wire was in the right-of-way and too close to the travel lane. Also, chicken wire is not easily seen, unlike a permanent metal gate which would be made of more substantial (and visible) materials.

However, regarding the minimum variance necessary, the west gate could be moved further back on the subject site (at least 10 feet), which would make the gate closer to the property line and reduce the variance for location. Regarding gate height, no variance is necessary for reasonable use of the land.

East gate location:

Newport Road is controlled with a stop sign at the intersection with Maple Road. The westbound lane of Newport Road is slightly north of the location of the existing east driveway. There are large trees in the applicant's yard north of the driveway, and appear to be in line with the westbound travel lane of Newport Road. Therefore, this driveway is not a straight shot from the westbound Newport Road lane.

The applicant has supplied a listing of accidents at the Newport Road and Maple Road intersection. This listing briefly describes the types of accidents, but does not indicate the direction the vehicles were moving at the time of the accidents, nor which street the accidents occurred on (Newport Road or Maple Road). Also, whether this number of accidents (6) is unusual for an intersection over this timeframe (6 years) is unknown. For a better understanding of how these accidents impacted the subject site, the applicant should provide the police reports that could possibly describe the direction the vehicles were traveling, and more specifically where in the intersection the accidents occurred.

East Gate Height: The grade of the east driveway is also fairly level with the grade of N. Maple Road. Again, Township Planner Elmiger's opinion was that the close proximity of the chicken wire barrier to the travel lanes was the issue, and not the height of the chicken wire.

The location of the east driveway doesn't clearly meet the location criterion, and the additional information from the police accident reports describing the direction vehicles were traveling, and more specifically where in the intersection the accidents occurred should be provided to consider the variances for the east gate location. Regarding gate height, there are no apparent peculiarities with this property that necessitate additional gate height.

While it was uncertain that the east gate met the criteria for a location variance, it was recommended that the gate be pushed back as far as possible on the driveway.

Township Planner Elmiger recommended that if any variance was approved by the Board, it should be conditioned on the Road Commission providing written proof that the Newport Road right-of-way has been abandoned before a fence permit is issued for a gate in that driveway portion.

The Board should also require written proof that the neighboring property owner has given permission to put the west gate on their property. The ordinance might require an easement be provided instead of a temporary permission agreement that could expire in order to construct a gate on the neighbor's property instead of on the property line.

In response to a question from Member Basch, the applicant agreed that the west gate existed, but in the wrong location, and that the east gate was currently just chicken wire across the driveway.

Township Attorney

Attorney Meagher said that he was involved in this case because there was a question as to

whether or not to ticket the applicant for unlawfully having a gate or a fence where the west gate is currently placed. While his advice was always to avoid litigation where possible, sometimes a homeowner left the Township no choice but to sue. This happened when a homeowner was recalcitrant, or when they were not acting good faith.

Building Official and Zoning Administrator

Referencing his July 22, 2021 memorandum, Building Official and Zoning Administrator Pace stated that Mr. Ulgen contacted him about a gate in 2019, and Building Official Pace had visited the site with the Fire Marshal. At the time Mr. Ulgen told him that the gate was to deter solicitors. The Fire Marshal was opposed to the gate, citing Section 503.6 (International Fire Code) which states that a security gate cannot cross an access road to anyone's property or an improved access road without approval by the Fire Chief. The gate clearly violated the ordinance, and Building Official Pace told Mr. Ulgen at the time that he would need to go the ZBA if he wanted to install it. Mr. Ulgen said he would take this under consideration. Building Official Pace did not hear from Mr. Ulgen again.

In July 2021 Building Official Pace discovered the gate had been installed, tagged the gate, and informed Mr. Ulgen that he would be ticketed if he did not remove the gate.

Regarding the portion of the gate that was on the neighbor's property, Building Official Pace said he had been asking for the agreement between the applicant and his neighbor for almost a year. The draft agreement provided did not mention a gate; the land lease agreement also did not mention a fence/gate.

Building Official Pace's position was that Mr. Ulgen knew he could not install the gate but did so anyway. The gate was very heavy and ornate, took planning to install, and would damage any emergency vehicle that needed to get past it.

The survey provided by the applicant showed the gate on the neighbor's property, and also construction in a road right-of-way. A gate was treated as a fence and had to meet the same standards.

Building Official Pace said he had received phone calls in opposition to the gate, and he was opposed to granting the variance.

3. Public Hearing – At 4:50 pm Chair Gorman opened the public hearing.

Van Sandstrom, 2846 Whippoorwill Lane, stated that he had submitted a letter objecting to the variance request on June 13. He did not think the variance was needed, the safety issue was fabricated, and the structure was not in keeping with the neighborhood.

No other public indicated they wished to speak

Chair Gorman indicated that the Board had received emails from:

- Tom and Sandra Jamison, 2876 N. Maple Rd., November 2021, in favor of the variance, stating that the gate and fence were far enough away from the road to not be

- considered a hazard.
- Sacha Feirstein, 2981 Newport Rd., opposed the variance.

Chair Gorman closed the public hearing at 4:53 as there were no more public comments.

4. Board questions/comments

Member Basch pointed out, as Building Official Pace had already noted, none of the original materials talked about safety, they talked about solicitation. Exhibit 7, the Sheriff's report of accidents in the North Maple and Newport area, reported that all accidents were in the daylight except the 8:40pm accident on February 20, 2019. The first 3 lines of the accident report all refer to the same accident. So the Sheriff's report listed 5 accidents in approximately 10 years; this was not too bad or any worse than on other high speed roads or curved roads.

Member Collins said he agreed with Building Official Pace's timeline, and that Mr. Ulgen was told in 2019 what the rules about a fence were. Somewhere in the documentation Mr. Ulgen said he didn't come to the Board in 2021 because of Covid, but during that same period he was able to hire a contractor and proceed forward. Using Covid as a reason not to come to the ZBA was not a good way to approach this request. Member Collins was not supportive of this variance request, based on what he heard.

Township Planner Elmiger reviewed the criteria for granting a variance, and also reviewed the 3 variance requests for the west gate, and the 2 variance requests for the east gate, as outlined in her June 15, 2022 memorandum.

Regarding A. ZBA-1-2021, west gate, the variance request from Section 74-600(d), Member Basch said she was persuaded that the petitioner did not install the driveway, and that circumstance is a special condition that was not created by the applicant. She would be comfortable with granting a variance for a gate or fence that meets all other requirements. However, the applicant will have to submit proper easement documents provided by his neighbor. Given that, she would be comfortable with the variance because it is an unusual situation where the driveway is on the neighbor's property.

However, Member Basch did not accept the argument that the driveway angle was in some way unsafe. An aerial map of the area showed that someone traveling northbound on Maple would be hard pressed to miss the turn. Even if they did they would not go into the driveway; they would go onto the grass.

Chair Gorman agreed, although she would like to see the variance minimized by moving the gate back.

Member Lada asked for clarification regarding whether gates were permitted across driveways in the Township.

Building Official Pace said that since he had been working for the Township, one gate had been allowed across a driveway. In that instance the gate was attached to the front of

house, was flush with the house, helped act as a dog run barrier for the entire property, the gate was not at the road easement or property line right-of-way, and at least 100 feet of driveway was exposed from the right-of-way for emergency vehicles. Two other permits were granted by his predecessor.

Member Basch said a front yard fence or gate was allowed under certain criteria, on a permit by permit basis.

Building Official Pace said he had received two calls opposed to today's request: 1) 1st person said there were no problems with solicitation in the neighborhood. 2) 2nd person was not in favor of the gate.

Member Lada asked how Mr. Ulgen's family used the driveway. Mr. Ulgen said his wife did not want to use the front driveway and stayed at home. They primarily used the west driveway; they were afraid to use the east driveway. The east driveway was only used for mulch deliveries, etc. His idea was to put a "no entry" sign at the east gate, and show the entry point as the west gate. The east driveway was not safe.

Member Burlingame said that if the gate was allowed, it should be placed further back to allow for traffic stacking. Also, when the height limit was 4 feet, why did Mr. Ulgen construct a 6-foot fence?

Mr. Ulgen said that at the time they were in a rush. The fences that were used as gates were broken twice in a 2-week period. He want to get something nice and at the same time get a strong wrought iron fence to keep the cars out. He had to rush and get it done; he didn't have time to talk to Building Official Pace about it because he knew that getting the okay would probably take months; Mr. Ulgen just needed to get it done. After it was done, about a week later, Building Official Pace posted the violation notice. Mr. Ulgen was not hiding the gate; he just needed to get it done. The person that called indicating that it should be a shorter gate lived on Whippoorwill Lane, where there were only about 10 cars that go by there a day. There were roughly 1500 cars per day coming on the road that is coming toward Mr. Ulgen's home.

Member Burlingame asked if the gate was automatic or manual.

Mr. Ulgen said it was a manual gate, in order to provide ease of entry for emergency vehicles.

Chair Gorman reviewed the Township Planner's written comments regarding the criteria for granting a variance.

Regarding the 1st criterion for granting a variance, Chair Gorman summarized that it appeared the Board felt the special conditions of location for the west gate were met, but not the height, and also that the variance could be minimized by moving the gate further back.

Chair Gorman noted that the Township Planner's review concluded that granting a variance for the east gate as requested *would confer a special privilege on this applicant* . . .

Chair Gorman summarized that granting a location variance for the west gate would not grant special privileges; granting the location variance for the east gate would grant special privileges. Neither gate met the criteria for a variance regarding height.

Regarding the 2nd criterion for granting a variance, the criterion was noted.

Regarding the 3rd criterion for granting a variance, Chair Gorman asked if the Board found that the requirements of Section 74-266(d)(1) have been met.

It came out in discussion that the Newport Road southern right-of-way line was not shown on the survey but likely should have been. The County will need to provide in writing that they have abandoned the Newport Road right-of-way to the south (west gate) as well as to the north (east gate).

Building Official Pace emphasized that these issues needed to be cleared up so that a future sale of the property would not have confusing right-of-way issues.

The Board was in agreement that the criteria for granting a variance for the location of the west gate had been met, conditioned on 1) the gate being moved further back, 2) shortened to the allowed height, 3) documentation from the County that the Newport Road right-of-way has been abandoned, 4) written agreement with the neighbor to locate the gate on the neighbor's property.

Member Basch emphasized that the gate should be as far away from the Whippoorwill right-of-way and setback as possible.

MOTION by Basch, support by Burlingame, in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor, MI, that the Zoning Board of Appeals deny the request for a variance from Section 74-600[e][1][a] in order to locate a gate (the proposed west gate and the proposed east gate) in the required front yard that abuts a public street that exceeds 4-feet in height.

Motion carried unanimously by voice vote.

To clarify the terms of motion just made and passed, the following motions were also made:

MOTION by Basch, support by Burlingame, in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor MI, that the Zoning Board of Appeals deny the request for a variance from Section 74-600[e][1][a] in order to locate the west gate on the property off of Whippoorwill in the required front yard that abuts a public street that exceeds 4-feet in height, because the standards in Section 74-266[d] to demonstrate a practical difficulty have not been met. There are no special conditions peculiar to the land, such as the contour of the land, that would require a taller gate than what everyone else in the Township is allowed to have. Granting a special height would confer on the applicant a special privilege that is denied to others in the same district.

Roll Call: Ayes – Collins, Lada, Burlingame, Basch, Gorman. Nays – None. Motion carried 5-0.

MOTION by Basch, support by Burlingame , in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor MI, that the Zoning Board of Appeals deny the request for a variance from Section 74-600[e][1][a] in order to locate the east gate as proposed at the eastern location of the driveway off of Maple, in the required front yard that abuts a public street that exceeds 4-feet in height, because the standards in Section 74-266[d] to demonstrate practical difficulty have not been met and there are no conditions that require a variance. There are no special conditions or circumstances peculiar to the land or that are related to the land. The driveway is perpendicular to the road like all the other driveways. Granting the variance would confer a special privilege to the applicant that others in the district don't get.

Roll Call: Ayes – Collins, Lada, Gorman, Basch, and Burlingame. Nays – None. Motion carried 5-0.

Member Basch addressed the variance request from Sec. 74-595, the request to locate a structure (the east gate) a distance closer to the existing right-of-way centerline of Maple Road than 60 feet and the required minimum front yard of the district (or 35 feet). A permit had not actually been applied for, and the specifics of the gate were unknown. The Board could not make a decision without this information.

Chair Gorman suggested the Board table this request to give the applicant an opportunity to come up with the specific gate in a specific location, which the Board encourages to be as far back as possible, and at the four foot height as required per ordinance.

Member Basch agreed with this course of action, as it also gave the applicant the opportunity to get documentation regarding the abandonment of the right-of-way by the County.

MOTION by Basch, support by Collins, in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor MI, that the Zoning Board of Appeals table consideration of the request for a variance from Section 74-595 for the east gate, in order to allow the applicant to develop a site plan, and to make sure the abandonment of the right-of-way is completed.

Roll Call: Ayes – Burlingame, Basch, Gorman, Lada, and Collins. Nays – None. Motion carried 5-0.

Regarding the request for a variance from Section 74-595 for the west gate, it came out in discussion that the Board did not have the ability to grant a variance to allow the gate to

remain where it was, in the right-of-way. The Board did have the ability to grant a variance from the setback requirement.

Township Attorney Meagher advised the Board to act strictly on the application that had been submitted.

It came out in further discussion that the Board could not approve the location request without an easement being submitted for the neighbor's property, and the variance could not be granted until the applicant proposed a specific location as to where the gate will be moved to.

Member Basch pointed out that Township Planner Elmiger's review concluded that there were special conditions for the west gate in terms of location because of the shape and location of the driveway, which were not the fault of the applicant. However, the Board did not feel they could grant a variance because the applicant had not submitted a specific plan and location for the gate. The Board could not design the location for the applicant. The applicant should bring a plan that would show the proposed location, as far out of the setback as possible.

Mr. Stapleton said they would not have an objection to tabling this request. They had a good understanding of what the Board was asking for, and they would also not return until the right-of-way abandonment issue was resolved.

Building Official Pace said that in the interim, the gate could not remain in the road right-of-way, and should be removed.

Township Attorney Meagher advised that the ZBA could only rule on the application before them. The applicant had been denied the height variance, and it was now up to the applicant, working with the Township, to comply with the height requirement and the requirement that no structure could be constructed in the right-of-way. He agreed with Building Official Pace, and those decisions had been made. However, enforcement – whether the fence comes down or not – was not a ZBA determination.

MOTION by Burlingame, support by Basch, in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor MI, that the Zoning Board of Appeals table the request for a variance from Section 74-595, to locate a structure a distance closer to the existing right-of-way centerline of Maple Road than 60 feet and the required minimum front yard of the district (or 35 feet), for the west gate, to give the applicant the opportunity to submit a plan showing the exact location of the gate, and provide documentation from the County that the right-of-way abandonment issue was resolved.

Roll Call: Ayes – Collins, Lada, Gorman, Basch, Burlingame. Nays – None. Motion carried 5-0.

Regarding the request for a variance from Section 74-600(d), the consensus of the Board was that the applicant needed a permanent easement from the neighbors, not a temporary lease. The gate would be permanent, and the permission also needed to be permanent, and go with the land.

Member Basch said she would be comfortable approving this particular request, because as Township Planner Elmiger noted, this parcel was an unusual shape, and the driveway was not installed by the applicant.

Chair Gorman said she would not be comfortable approving this variance today, because of the complexity of the entire request, and because the location of the gate was not yet certain.

MOTION by Gorman, support by Burlingame, in the matter of ZBA-1-2021, 3019 Maple Rd., Ann Arbor MI, that the Zoning Board of Appeals table the request for a variance from Section 74-600(d) to locate a gate off their property and on the neighboring parcel, until such time as the applicant has finalized the location of the gate, and has provided an easement agreement with the neighbor.

Mr. Stapleton asked if there was a specific part of the ordinance that addressed the need for an easement in this type of circumstance.

Township Attorney Meagher said this would need to be answered by the Township's municipal attorney. Chair Gorman said the question could be answered before the applicant returned.

Roll Call: Ayes – Collins, Lada, Basch, Burlingame, Gorman. Nays – None. Motion carried 5-0.

Chair Gorman summarized that the Board had denied the variance request for a 6 foot high fence/gate; the 4 foot standard must be adhered to. Everything else was tabled to allow the applicant to gather the rest of the information needed for the Board to approve or deny the requests.

V. PUBLIC COMMENT

None.

VI. NON-AGENDA OR INFORMATION ITEMS

None.

VII. ADJOURNMENT

MOTION by Collins, support by Burlingame, to adjourn the meeting at 5:53pm.

Motion carried by voice vote.