

**Zoning Board of Appeals
June 28, 2017 Regular Meeting**

STAFF REPORT

Subject: ZBA17-018, 1510 Morton Avenue

Summary: Rebecca and Norton Fogel are requesting a variance from Chapter 104 Fences Section 8:434 (1)(c) to allow a ten (10) foot tall, one hundred (100) percent opaque fence to be installed in the rear yard. The property is zoned R1D, single-family residential.

Background and Description:

The subject parcel is located on the south side of Morton Avenue due east of Packard Street. The property is six thousand six hundred twenty-one (6621) square feet in area and the home was built in 1927. The applicants are requesting to install four (4) eight (8) foot wide panels of ten (10) feet height and one hundred (100) percent opaque along the eastern property line within their rear yard. The fencing will be adjacent to the neighbor's porch.

The applicant states that the fence will neutralize the residual effects of lighting and noise from the neighbors screened porch.

The following requirements are excerpts from Chapter 104, Section 8:434(1)(c):

(1) Fences located in residential districts:

(c) Shall not have a height greater than eight (8) feet at locations other than those described in subsections (a) and (b).

Standards for Approval (Variance):

The Zoning Board of Appeals has all powers granted by State law and by Section 5:99, Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

The Zoning Board of Appeals of the City of Ann Arbor may, after a hearing in accordance with the established procedures of the Board, in its sound discretion and in the interests of the public health, safety or welfare of the inhabitants of the community, reduce or remit the requirements of this Chapter in individual cases.

Zoning Board of Appeals
ZBA17-018 Variance
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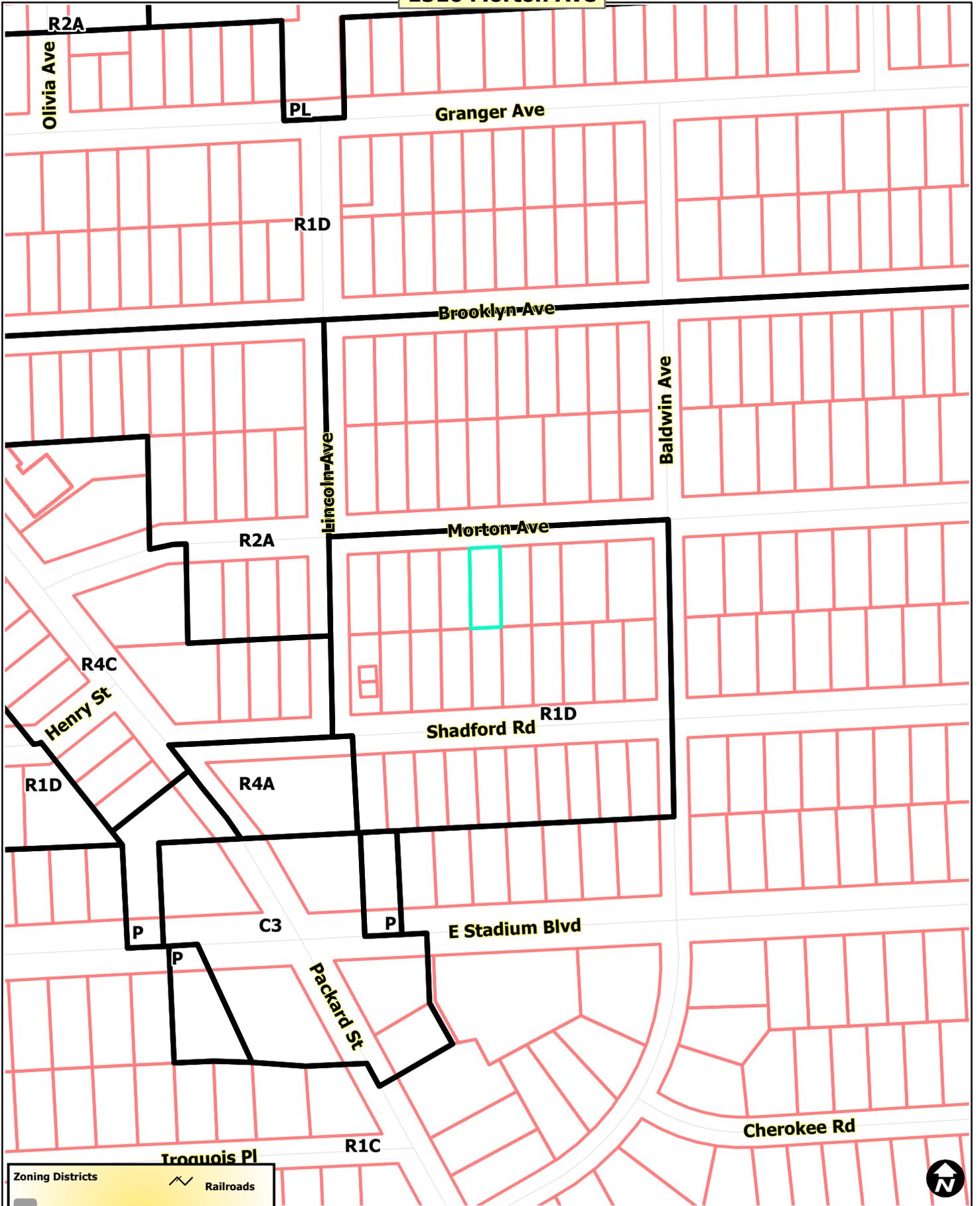
The petitioner states that allowing a ten (10) foot tall fence will not have a negative impact on the surrounding properties. The fence will allow for increased privacy for both parties involved.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jon Barrett". The signature is stylized with large, overlapping loops for the letters "J" and "B".

Jon Barrett
Zoning Coordinator

1510 Morton Ave



Zoning Districts	Railroads
Township Islands	Huron River
City Zoning Districts	Tax Parcels



Map date 6/7/2017
 Any aerial imagery is circa 2015
 unless otherwise noted
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1510 Morton Ave



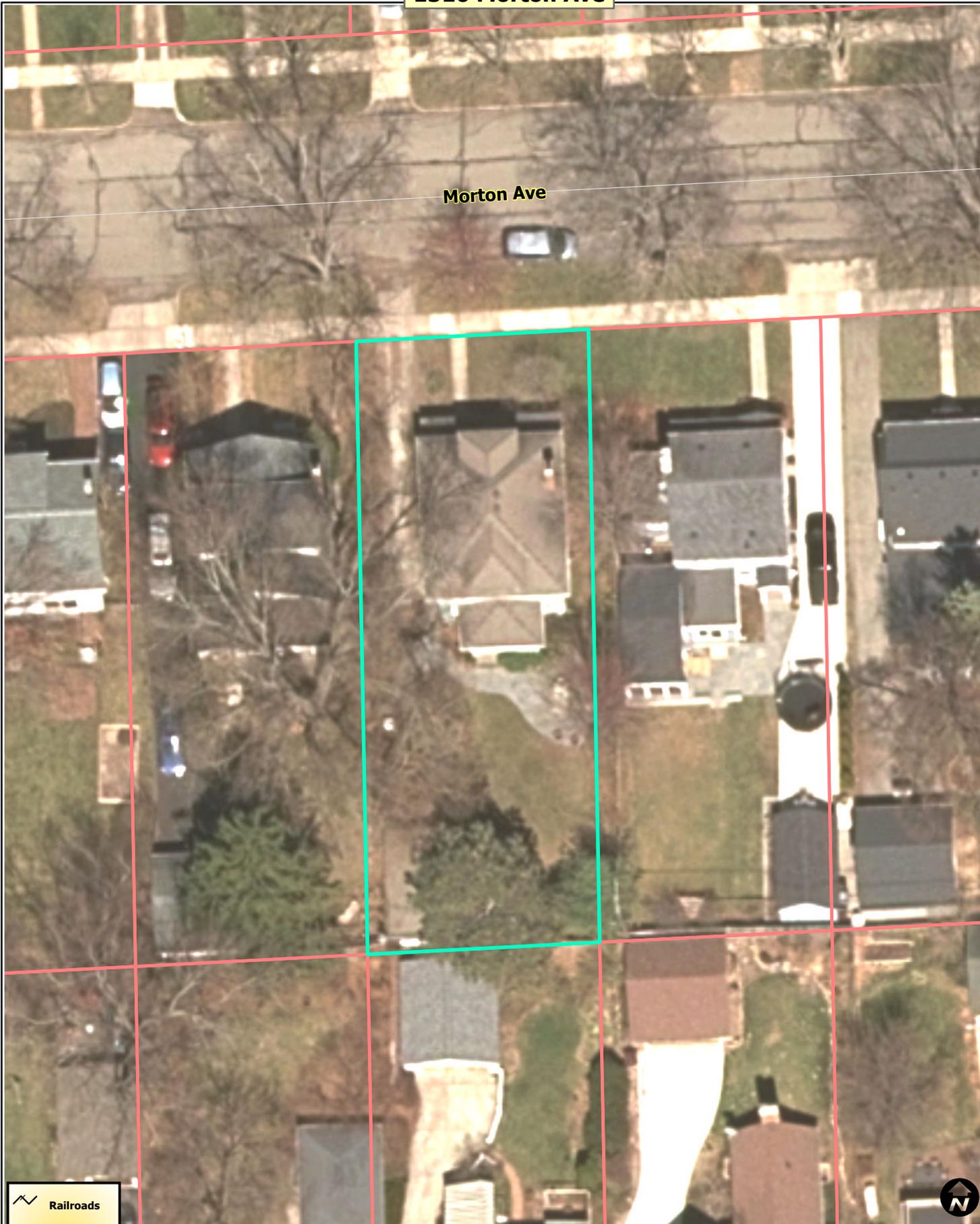
-  Railroads
-  Huron River
-  Tax Parcels



Map date 6/7/2017
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1510 Morton Ave

Morton Ave



-  Railroads
-  Huron River
-  Tax Parcels



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APPLICATION FOR VARIANCE OR NON-CONFORMING STRUCTURE
ZONING BOARD OF APPEALS

Section 1: Applicant Information

Name of Applicant: Rebecca and Norton Fogel
 Address of Applicant: 1510 Morton Ave
 Daytime Phone: 734-395-9598
 Fax: _____
 Email: fogelbn@gmail.com
 Applicant's Relationship to Property: Owner

Section 2: Property Information

Address of Property: 1510 Morton Ave
 Zoning Classification: R1D
 Tax ID# (if known): 09-09-33-417-015
 *Name of Property Owner: Rebecca and Norton Fogel

**If different than applicant, a letter of authorization from the property owner must be provided.*

Section 3: Request Information

Variance

Chapter(s) and Section(s) from which a variance is requested:	Required dimension:	PROPOSED dimension:
<u>Chapter 104:Fences, 8:434(1)(c)</u>	<u>8-feet in height</u>	<u>10-feet in height</u>
_____	_____	_____
_____	_____	_____
<i>Example: Chapter 55, Section 5:26</i>	<i>Example: 40' front setback</i>	<i>Example: 32'</i>

Give a detailed description of the work you are proposing and why it will require a variance (attach additional sheets if necessary)

see attached sheets

Section 4: VARIANCE REQUEST (If not applying for a variance, skip to section 5)

The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:98. A variance may be granted by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when **ALL** of the following is found **TRUE**. Please provide a complete response to each item below. These responses, together with the required materials in Section 5 of this application, will form the basis for evaluation of the request by staff and the Zoning Board of Appeals. (continued...)

1. Are there hardships or practical difficulties to complying with the ordinance? Are these hardships or practical difficulties an exception or unique to the property compared to other properties in the City?

See Attached Sheets

2. Are the hardships or practical difficulties more than mere inconvenience, inability to obtain a higher financial return? (explain)

See Attached Sheets

3. What effect will granting the variance have on the neighboring properties?

See Attached Sheets

4. What physical characteristics of your property in terms of size, shape, location or topography prevent you from using it in a way that is consistent with the ordinance?

See Attached Sheets

5. Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?

See Attached Sheets

Section 5: ALTERATION TO A NON-CONFORMING STRUCTURE

Current use of the property _____

The proposed change is allowed in accordance with Structure Non-Conformance, Section 5:87 (1) (a) & (b), which reads as follows:

- (1) A non-conforming structure may be maintained or restored, but no alteration shall be made to a non-conforming structure unless one of the following conditions is met:
 - a. The alteration is approved by the Zoning Board of Appeals upon finding that it complies as nearly as practicable with the requirements of this Chapter and that it will not have a detrimental effect on neighboring property.
 - b. The alteration conforms to all the requirements of this Chapter and is made to a building which will be a single-family dwelling on completion of the alteration and is located in an R1,R2, R3, or R4 district.
 - c. The structure is considered non-conforming due to the following reasons

(continued)

Description of work proposed:

- Four (4), eight-foot wide fence panels of ten-foot height in the area adjacent to our neighbor's porch.

Why is variance required?

- Fence Guidelines allow for eight-foot height.
1. A.) Hardships or practical difficulties to complying with the ordinance:
 - Neighbor's porch is 18-feet high with a completely open, screened side facing our property. The porch is located in places within the 3-foot setback required by the City's ordinances (they received a variance from the ZBA Board in 2015 after the porch was built). The porch dominates our eastern view and a 10-foot fence would restore privacy not provided by an 8-foot fence.
 - The porch has three (3), extremely, bright light fixtures one (1) outside and two (2) affixed to the ceiling of the porch. The interior lights reflect off of the white ceiling. The lights shine directly into our dining room, living room and backyard and patio. An 8-foot tall fence would not block the view of the interior lights from our dining room, living room or backyard and patio. A 10-foot fence would block these lights from our view and minimize their affect on our property.
 - The porch has a peaked roof with the open side facing our property. The height and shape of the porch amplify the sounds when people are talking in our neighbor's house and/or porch. A 10-foot fence would provide additional sound dampening not provided by an 8-foot fence.
 - The elevation of the porch floor is ~2-feet above grade which allows some people within porch to look over the existing fence into our patio area restricting our privacy. A 10-foot fence would provide additional privacy not provided by an 8-foot fence.

B.) Hardship is unique to property:

- We are not aware of any other structure like the porch-in terms of size, height, and proximity to neighbor's property line - in our neighborhood or the city

2. Hardships more than mere inconvenience:

The porch's size, proximity to the property line, bright lights, and amplified acoustics due to its high ceiling have significantly affected our enjoyment of our patio, backyard, and living spaces.

3. Effect of granting variance on neighboring properties:
 - Increased privacy for neighbors. With the current fence we can see into their porch from our house
4. Physical characteristics of property that prevent using it in a way consistent with ordinance:
 - The area between our home and our neighbor's is heavily shaded. There are three (3), 40 to 50-foot maple trees between the homes, which provide a heavy canopy, making it nearly impossible to grow a "green screen". We have consulted with multiple nurseries in the area, who have stated that the shade would prohibit the successful growing of any evergreens that could provide a green screen.
 - The space between our stone patio and the property line is ~3 to 4-feet, this too, makes planting anything of any size difficult.
 - We have established landscaping including heirloom plants from my grandmother's garden in Massachusetts consisting of Trillium, Jack-in-the-Pulpit, Solomon's Seal, Mayapple, peonies, and a mature Dogwood tree transplanted from my parent's farm in Pennsylvania as a seedling, which would be destroyed if we attempted to put in any substantial trees.
 - Creating a "green screen" that would offer us the privacy and light screen we want to restore would be extraordinarily expensive and take years to grow.
5. Is the condition which prevents compliance with the ordinance self-imposed?
 - The condition is not self-imposed. We have lived in our home since 1994, and until the porch was built, we were very happy with the six-foot high fence, which previously existed between the homes.
 - Our neighbors have not accommodated any of our requests to reduce the light and/or sound coming from the porch. These requests have included: shades on the lights, shades on the screens, or placing siding on the porch peak.

Existing Condition

Code Requirement

Lot area _____

Lot width _____

Floor area ratio _____

Open space ratio _____

Setbacks _____

Parking _____

Landscaping _____

Other _____

Describe the proposed alterations and state why you are requesting this approval:

The alteration complies as nearly as is practicable with the requirements of the Chapter and will not have a detrimental effect on neighboring property for the following reasons:

Wherefore, Petitioner requests that permission be granted from the above named Chapter and Section of the Ann Arbor City Code in order to permit _____

Section 6: Required Materials

The following materials are required for all variance requests. Failure to provide these materials will result in an incomplete application and will delay staff review and Zoning Board of Appeals consideration of the request. The materials listed below must accompany the application and constitute an inseparable part of the application.

All materials must be provided on **8 1/2" by 11" sheets.** (Continued.....)

- Survey of the property including all existing and proposed structures, dimensions of property, and area of property.
- Building floor plans showing interior rooms, including dimensions.
- Photographs of the property and any existing buildings involved in the request.
- Any other graphic or written materials that support the request.

Section 7: Acknowledgement

SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC

I, the applicant, request a variance from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

734-395-9598

 Phone Number
 fogelbn@gmail.com

 Email Address

Rebecca S. Fogel

 Signature
 Rebecca S. Fogel

 Print Name

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

Rebecca S. Fogel

 Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access the subject property for the purpose of reviewing my variance request.

Rebecca S. Fogel

 Signature

I have received a copy of the informational cover sheet with the deadlines and meeting dates and acknowledge that **staff does not remind the petitioner of the meeting date and times.**

Rebecca S. Fogel

 Signature

On this 22nd day of May, 2019, before me personally appeared the above named applicant and made oath that he/she has read the foregoing application, by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

Acting in Washtenaw County, MI
K. Wordberg

 Notary Public Signature

12-29-2019

 Notary Commission Expiration Date
K. Wordberg

 Print Name

Staff Use Only

Date Submitted: _____ Fee Paid: _____

File No.: _____ Date of Public Hearing _____

Pre-filing Staff Reviewer & Date _____ ZBA Action: _____

Pre-Filing Review: _____

Staff Reviewer & Date: _____



Photo 7 - Schaefer Porch: from Dining Room *and old fence.*



Photo 6- Schaefer Porch Light



Photo 4 - Schaefer Porch from Patio Picnic Table (with old fence)



note
3 maple
trees

Photo 3 - Schaefer Porch from Fence (new fence 1 foot higher)



note →
logwood

Photo 1 - Schaefer Porch from Patio

with old fence. Current fence is one foot
p.i.



↑
logwood
tree

Photo 2 - Schaefer Porch from Patio

with old fence. New fence is one foot higher