

Boklye Kim
2300 Vinewood Blvd
Ann Arbor, MI 48104

To the City of Ann Arbor Zoning Board Members,

I am writing in regard to the zoning appeal by the owners of 18 Heatheridge which is zoned to require a minimum rear yard setback of 40 ft.

My property at 2300 Vinewood borders 18 Heatheridge in the rear. The proposed sunroom addition by 18 heatheridge is directly behind my property line with only 19 ft setback. This is a significant reduction from the zoning requirement at 40 ft. I have a few concerns with this proposal and after carefully considering several factors I decided to oppose this appeal.

1. The reduced set back makes the building too close to my property and would affect private nature of my property, which I value and consider is important. The privacy of my dwelling has been already significantly compromised by the second story construction at 18 Heatheridge (including not being able to open the curtains in my second floor rooms) as well as the 1-story structure. This new addition that is inconsistent with the zoning requirement would have more detrimental effect on me and my family .

2. I would like to bring up the zoning issue in the previous 2-story renovation of 18 Heatheridge including the 1-story structure adjacent to the current proposed sunroom addition (picture 1). According to the city's record, this 1-story structure is about the size of the newly proposed sunroom and I have been puzzled over the construction of this part. When was the setback that is only about 20 ft for this 1-story structure approved or was it possibly an existing original structure? Else, was it built without the zoning appeal procedure or an approval (possibly around 2002-2004)? I do not remember any zoning appeal related to this structure.

3. The privacy of my family life has been constantly challenged with this neighbor. Within the first year they moved in (2001-2002), a good portion of the trees that used to line the border between our backyards were cut down including some branches and trunks that belonged to my property. I witnessed one day in early 2002 to my surprise that the owner of 18 Heatheridge, Mr. Ibraheem, crossed over the wire fence to come over to my yard to cut off my tree trunk. When I confronted him at the spot, he said he was clearing trees to maximize his backyard space. He showed little consideration for my concerns regarding our trees or honoring privacy of my family. After a few conversations that I could not resolve the bordering tree issue with him, I consulted a lawyer. I enclose here a copy of the letter from my lawyer I gave to him.

4. Since then, Mr. Ibraheem and I had conversations about planting evergreens between our rear properties to preserve the privacy of each other. I planted 5-6 young arbervaeete on my side of the property line for a couple of years in a row, but they did not survive for the lack of sunlight. Mr. Ibraheem's family hung vinyl tarps over the wire fence for a reason, I can guess, for keeping their privacy, but those tarps (picture 2) were not only unsightly but also blocked sunlight to my side. It has been hanging there for several years now and I cannot plant any trees to grow. They did not honor our agreement on planting trees between our property border.

5. To get their zoning appeal to proceed, Mr. Ibraheem's family came to talk to me and suggested they will plant screening evergreens at the property line now. Unfortunately, not only I've lost confidence in their consideration but also I do not think it would resolve the issue of building too close to the property line. Enjoying spending time in the backyard and tending my flower and herb beds in my backyard is important part of my life and it is important for me to keep my home as private as possible.

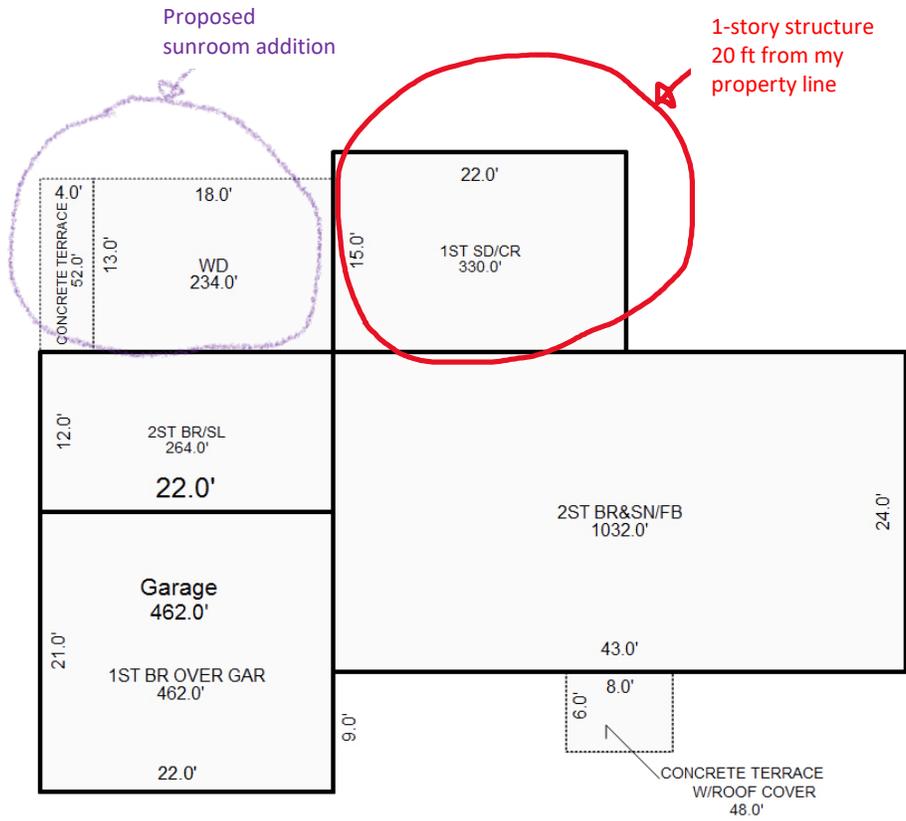
I do not support this zoning appeal that would allow to build too close to my property. We bought our house because, in addition to the house, we loved the backyard, although it is not that big, it is hilly and private from the street and neighbors. I would like to preserve the character and the private nature of our property as we bought it.

I believe several of my neighbors on Vinewood, some with partially overlapping rear property lines with 18 Heatheridge, feel the same way as I do in that it is important for all of us to keep and honor zoning requirements in the neighborhood as a means to preserve our properties and each other's privacy. I understand that the proposed structure has already been built partially without any city issued permit.

I request the zoning commission to consider the current issues on the zoning and permit issues, opinions of the neighbors involved and whose lives may be altered by this construction if the appeal would be approved. I also request information on the old permits (2001-2005) to check if the zoning requirement was followed for the renovation of the 2-story construction that included the 1-story structure that is clearly not set back 40 ft from my property line. The existing structure for the past 10-15 years may not be under consideration in this appeal but the past approval history may be a factor in the decision the Zoning board may consider.

Thanks for your cooperation.

Boklye Kim



PRF 8-6-09

Fig 1

Sketch by Apex Sketch

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March 25, 2002

Boklye Kim
2300 Vinewood
Ann Arbor, MI 48104

Dear Boklye,

I have now done some research on your tree problem and have a definitive answer for you. I have enclosed a very comprehensive article on the subject (more than you ever wanted to know) and two copies of a very old (1893) Michigan Supreme Court case holding that an adjoining landowner may cut tree branches that overhang his/her premises, but only to the extent to which they encroach upon his/her own property. An adjoining landowner who exceeds this dictate will be liable for damages. This case is still the law in Michigan. Your neighbor does not have to ask your permission or give you notice if all he is doing is trimming the tree in the airspace above his own property, from the point that the branches encroach onto his property. Neither your neighbor, nor his agent may trespass upon your property to gain access to the encroachment.

Your neighbor may potentially be criminally liable if you were to file a complaint. MCL (Michigan Compiled Laws) § 750.367 states (in part):

Taking or injuring fruit, shade, ornamental trees, shrubs, vines, etc. - Any person ... who shall without right and with wrongful intent, detach from the ground or injure any fruit tree, ornamental tree, shade tree, ornamental shrub, or any plant, vine, bush, vegetable or produce shall be deemed by so doing to have committed the crime of larceny and shall be punished as provided in the first section of this chapter.

The section to which the law above refers, MCL § 750.356, sets out the punishment for larceny:

If the value of the property "stolen" has a value of less than \$200, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500 or 3 times the value of the property, whichever is greater, or both imprisonment and a fine.

Your neighbor could be liable in a civil suit under a different statute, MCL § 600.2919(1), which states:

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Any person who cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands ... without the permission of the owner of the lands, ... is liable to the owner of the land ... for 3 times the amount of actual damages....

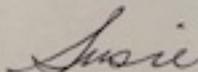
In addition, you could bring a civil suit for common law trespass, which is any unauthorized intrusion or invasion of private premises or land of another. You could seek money damages and an injunction to keep him from repeating the conduct in the future.

I understand that you would rather not pursue your legal options and presumably there will be no damage to the tree if your neighbor just cuts branches from the point that they hang over his property line. The real issue will arise if his "trimming" is so severe that it injures the health of the tree. The cost of replacing a mature tree can be substantial. I know people socially who cut down a diseased tree that they thought was on their property and that they thought they had a responsibility to remove. After paying to have the tree removed, they learned that it was actually on their next-door neighbor's property. The neighbor sued them; the case went to trial, and my friends had to pay \$25,000 in addition to all their attorney fees. I also read a report about a case in either Wayne or Oakland County where the defendant was found liable for over \$200,000 for cutting down a mature tree on someone else's property.

Feel free to share this information with your neighbor. Hopefully, the two of you can "mend fences" so to speak. Good luck and call me if you have further questions.

Very truly yours,

HOOPER, HATHAWAY, PRICE,
BEUCHE & WALLACE



Susan Cannell

/stc
Enclosure



