

**Zoning Board of Appeals
December 5, 2018 Regular Meeting**

STAFF REPORT

Subject: ZBA18-026, 11 Ridgeway Street

Summary:

Paul and Susan Bass, property owners, are seeking a variance from Chapter 55 Zoning Section 5.26 Fences in order to install an eight foot tall privacy fence in the side yard of their property. The fence will be 50 feet in length along the southern property line and will terminate 25 feet from the eastern and western property lines adjacent to Ridgeway Street.

Background and Description:

The subject property is located on a peninsula lot that has street frontage around the entire perimeter of the property except for the southern property line. The southern property is the desired fence location.

The residence is zoned R1C single family residential and was built in 1930. The property is challenged by a steep change in elevation and topography. The steep slope of the terrain limits the useable outdoor area for enjoyment and entertaining.

Standards for Approval Section 5.26 Fences (Variance):

The Zoning Board of Appeals has all the power granted by State law and by Section 5.29.12, Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

- (a). *That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.***

The applicant states the property is very steep on three sides of the property and the only area that is useable is the southern side of the home. The fence will contribute to the enjoyment of a small 15'x15' patio area. Additionally, the home sits on a hill and remains unprotected from the helicopter noise generated from the University hospital.

- (b). *That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.***

Due to the new construction and materials used for an adjacent residence in close

proximity, an eight foot tall privacy fence is needed to ensure the enjoyment of the side yard which serves as the subject property's rear yard.

- (c). ***That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.***

The variance will help in reducing the noise levels created by the mechanical equipment from the adjacent property and assist in reducing sight lines between the two properties.

- (d). ***That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.***

The variance request is not self-imposed as the owners did not create the peninsula lot and the challenging terrain. The property has remained in its current status since being built in 1921.

- (e). ***A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.***

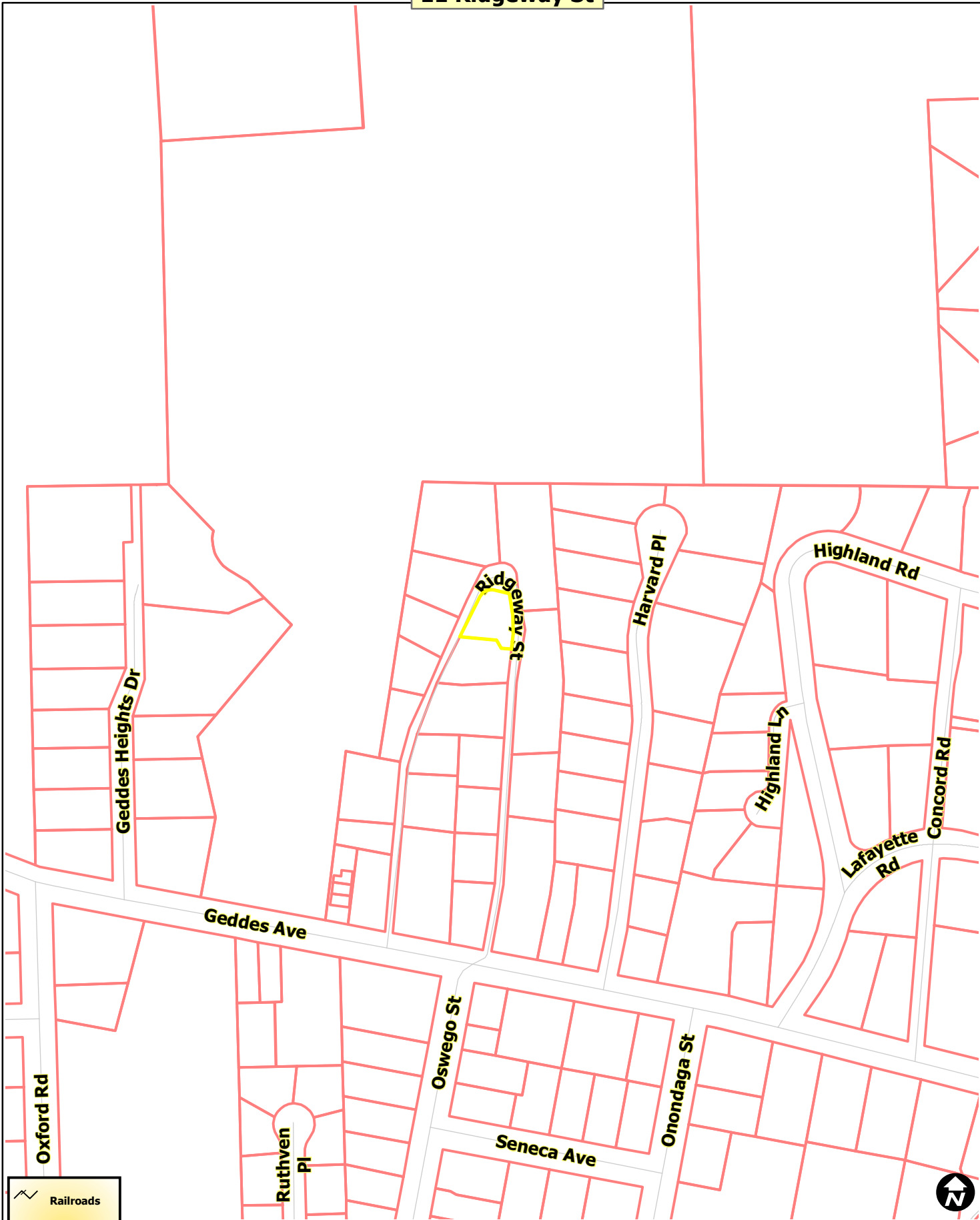
The variance being requested will enable the owners to maximize the enjoyment of their property and will create minimal impacts to the neighboring property.




Respectfully submitted,



Jon Barrett
Zoning Coordinator

11 Ridgeway St

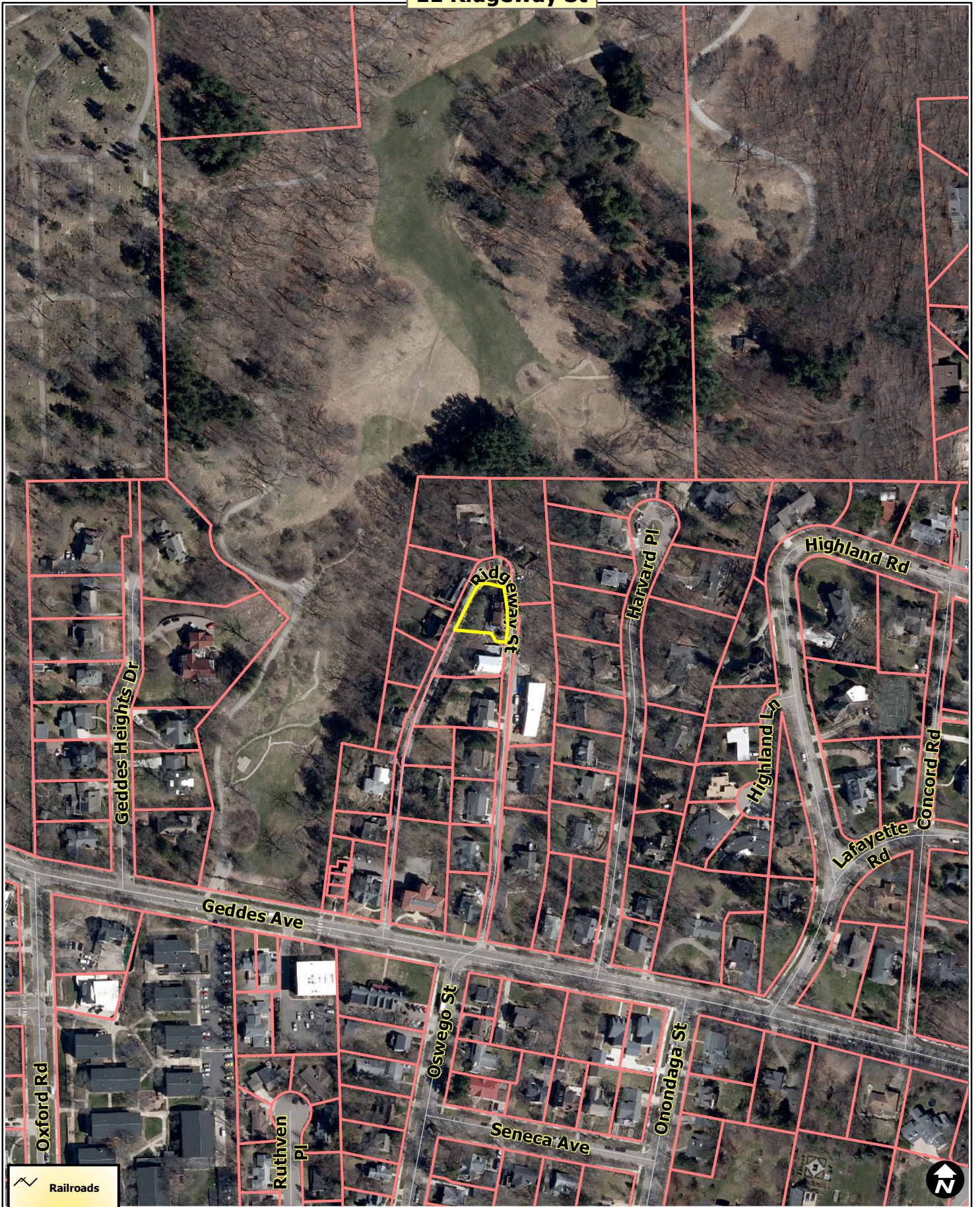





-  Railroads
-  Huron River
-  Tax Parcels



Map date: 11/13/2018
Any aerial imagery is circa 2018 unless otherwise noted
Terms of use: www.a2gov.org/terms

11 Ridgeway St






-  Railroads
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11 Ridgeway St



-  Railroads
-  Huron River
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ZONING BOARD OF APPEALS APPLICATION

City of Ann Arbor Planning Services

City Hall: 301 E Huron Street Ann Arbor, MI 48107-8647

Phone: 734-794-6265 Fax: 734-794-8460 Email: planning@a2gov.org

ZBA18-026
CITY OF ANN ARBOR
RECEIVED

OCT 30 2018

PROPERTY INFORMATION

PLANNING & DEVELOPMENT SERVICES

ADDRESS OF PROPERTY 11 Ridgeway St, Ann Arbor, MI		ZIP CODE 48104	
ZONING CLASSIFICATION Residential, R1C	NAME OF PROPERTY OWNER*If different than applicant, a letter of authorization from the property owner must be provided Paul and Susan Bass		
PARCEL NUMBER 09-09-28-401-015	OWNER EMAIL ADDRESS susankbass@aol.com		

APPLICANT INFORMATION

NAME Paul and Susan Bass			
ADDRESS 11 Ridgeway St.	CITY Ann Arbor	STATE MI	ZIP CODE 48104
EMAIL ADDRESS susankbass@aol.com		PHONE 734-995-9508	
APPLICANT'S RELATIONSHIP TO PROPERTY Owners			

REQUEST INFORMATION

<input checked="" type="checkbox"/> VARIANCE REQUEST Complete Section 1 of this application	<input type="checkbox"/> REQUEST TO ALTER A NONCONFORMING STRUCTURE Complete Section 2 of this application
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REQUIRED MATERIALS

One hard copy application complete with all required attachments must be submitted. Digital copies of supportive materials included in the submitted hard copy will only be accepted in PDF format by email or accompanying the hard copy application on a USB flash drive.

Required Attachments:

- Boundary 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.

ACKNOWLEDGEMENT

All information and materials submitted with this application are true and correct.

Permission is granted to City of Ann Arbor Planning Services and members of the Zoning Board of Appeals to access the subject property for the purpose of reviewing the variance request.

Property Owner Signature: 

Date: 10/30/18

Section 1 City of Ann Arbor Planning Services – Zoning Board of Appeals Application

VARIANCE REQUEST

ARTICLE(S) AND SECTION(S) FROM WHICH A VARIANCE IS REQUESTED: (Example: Article 3, Section 5.26)

REQUIRED DIMENSION: (Example: 40' front setback)

PROPOSED DIMENSION: (Example: 32' front setback)

DESCRIPTION OF PROPOSED WORK AND REASON FOR VARIANCE:

Install an 8' or 6' fence between our house and the new build at 19 Ridgeway St. which abuts our property on the south side. #19 has a tall 100% opaque stone wall and raised patio, along with mechanicals and air conditioning unit directly across from the only area for our existing patio. The exterior house materials (glass, concrete siding, metal roof) deflect all sound and noise back to our patio. Floor-to-ceiling curtainless bathroom windows and first floor windows look directly into our patio and house. Our patio and garden area have no privacy from #19's yard.

The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:29. 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 statements are found to be true. Please provide a complete response to each of the statements below.

The alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.

Our property is very steep on all three sides (north, east, west) & surrounded by Ridgeway St. The only usable yard we have to dine, sit outside, entertain and grill is located on the south side of our house. This area contains a small ~15' x 15' patio (existing when we purchased the house 3 years ago), a few feet of grass and a garden (also existing from before purchase). Our house is directly across the Arboretum from the U of M helicopter pad at the hospital. Our house is on a hill, so the helicopter sound is not blocked by trees or land between the hospital and our house. Due to the small area we have to work with, a fence would be a better size option for privacy than large bushes or trees.

The alleged hardships are practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

#19 has floor to ceiling shadeless/ curtainless windows that are placed in direct viewing of our patio and garden. The exterior building materials used (mentioned above) amplify the noise from the U of M helicopter activity directly across the Arboretum and all noise from #19's patio. The air conditioning unit of #19 faces our patio and is operating most of the day in late spring & summer, causing more noise. The hard materials and shape of the patio door opening of #19 (like that of a brass instrument bell) amplifies all conversation from anyone talking in the doorway. We have had to curtail eating dinner outside in the summer and entertaining on the patio due to decreased privacy and increased noise. Our house was designed to have the north and south doors open for breeze in the summer (no AC downstairs). We have had to keep the south doors closed due to noise, which increases the indoor heat.

Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

We want to construct an 8' or 6' fence, 25 ft from the street on both our front yards. This will help to block out sound from #19's air conditioner, hide the mechanicals and partially obstruct the shadelesscurtainless bathroom windows from our patio. The wooden fence will absorb some of the reverberation from the helicopter and decrease sound from #19's patio. We will also obtain privacy in our patio and garden area, which will allow us to use this space freely again.

The conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.

The condition is not self imposed. Our house was built in 1921 and has been kept within the same footprint since that time. We had previously enjoyed our private, quiet patio area. We have obtained limited privacy by building a pergola over the patio & adding blinds to our daughter's 2nd floor windows. We are not able to add AC to the downstairs without destroying walls and plaster (boiler heating) and incurring extraordinary cost. Our property and orientation of the house do not allow us any options for changing location of patio.

A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

An 8' fence will allow us to use our small yard to maximum capacity. We will achieve more privacy sooner than waiting years for 12 month cover trees or bushes to grow. The fence will also allow for greater noise absorption. A 6' fence would afford a lesser degree of privacy.



City of Ann Arbor

PLANNING & DEVELOPMENT SERVICES — PLANNING DIVISION

301 East Huron Street | P.O. Box 8647 | Ann Arbor, Michigan 48107-8647

p. 734.794.6265 | f. 734.994.8312 | planning@a2gov.org

October 3, 2018

RE: 11 Ridgeway - Fence

Dear Mr. and Mrs. Bass:

I have reviewed your correspondence in reference to Zoning Compliance Permit ZCOM18-0277 for the fence permit. Additionally, I have discussed with Jon Barrett, Zoning Coordinator, who made an inspection of your property. This office cannot approve the permit as you have submitted as the proposed fence does not meet the requirements of Section 5.26 Fences. The submitted sketch plan depicts the fence beyond the footprint of the home on the western side of Ridgeway Street. The fence, once constructed beyond the footprint of the home and extending into the front yard shall not exceed 4 feet in height and 50% opacity. The submitted permit application proposes a fence to be 6 feet in height in that portion of your yard.

While staff is unable to deviate from City Code, you can pursue a variance from the Zoning Board of Appeals. You will need a completed application, survey, rendering of the proposed fence, and the \$500.00 filing fee (I am unable to waive this fee). It appears from your application and letter that the required documentation to submit the application is nearly complete. Due to the nature of your property, lot configuration and topography, you will likely be able to make some valid points to the Board as to why a variance is appropriate.

If you have additional questions please feel free to contact me at 734-794-6265 or blenart@a2gov.org. Likewise, Mr. Barrett is available to commence the process to seek a variance should you choose to move forward.

Sincerely,

Brett D. Lenart
Planning Manager

CC: Jon Barrett, Zoning Coordinator
File

DEFLECTING 88 DEGREES 17 MINUTES 37 SECONDS TO THE RIGHT WESTERLY 70.00 FEET ALONG SAID WEST LINE OF LOT 15; THENCE DEFLECTING 50 DEGREES 41 MINUTES 12 SECONDS TO THE LEFT WESTERLY 70.00 FEET ALONG SAID WEST LINE OF LOT 15; THENCE DEFLECTING 50 DEGREES 41 MINUTES 12 SECONDS TO THE LEFT WESTERLY 70.00 FEET ALONG SAID WEST LINE OF LOT 15; THENCE DEFLECTING 108 DEGREES 32 MINUTES 43 SECONDS TO THE RIGHT NORTHEASTERLY ALONG SAID WEST LINE OF LOT 15 15.82 FEET TO THE POINT OF BEGINNING.

PARCEL B:

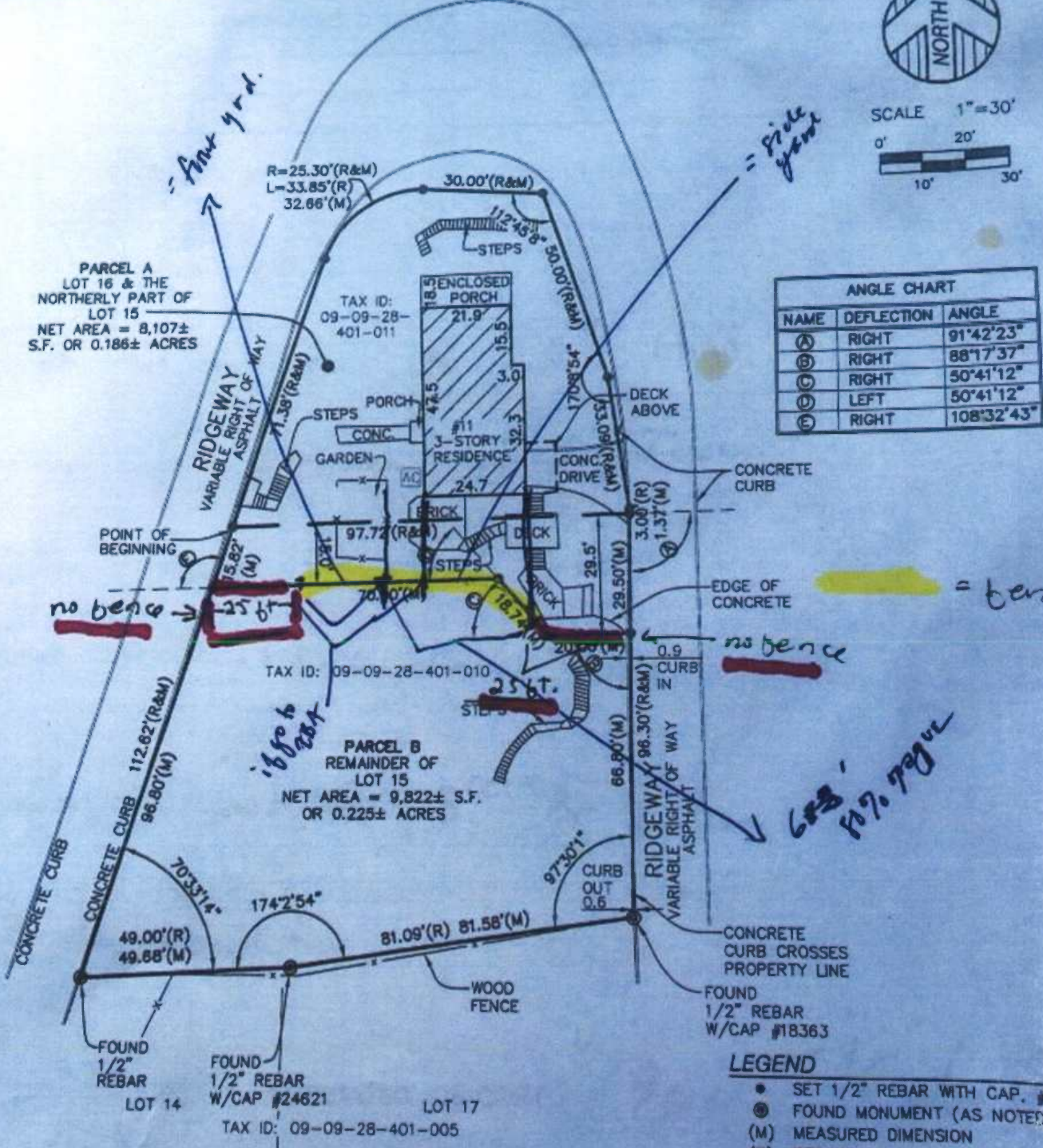
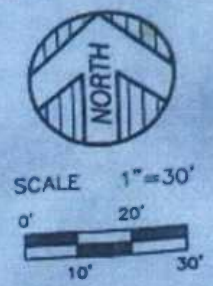
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PARCEL A
LOT 16 & THE
NORTHERLY PART OF
LOT 15
NET AREA = 8,107±
S.F. OR 0.186± ACRES

R=25.30'(R&M)
L=33.85'(R)
32.66'(M)

30.00'(R&M)
112.45'
50.00'(R&M)

ANGLE CHART		
NAME	DEFLECTION	ANGLE
(A)	RIGHT	91°42'23"
(B)	RIGHT	88°17'37"
(C)	RIGHT	50°41'12"
(D)	LEFT	50°41'12"
(E)	RIGHT	108°32'43"

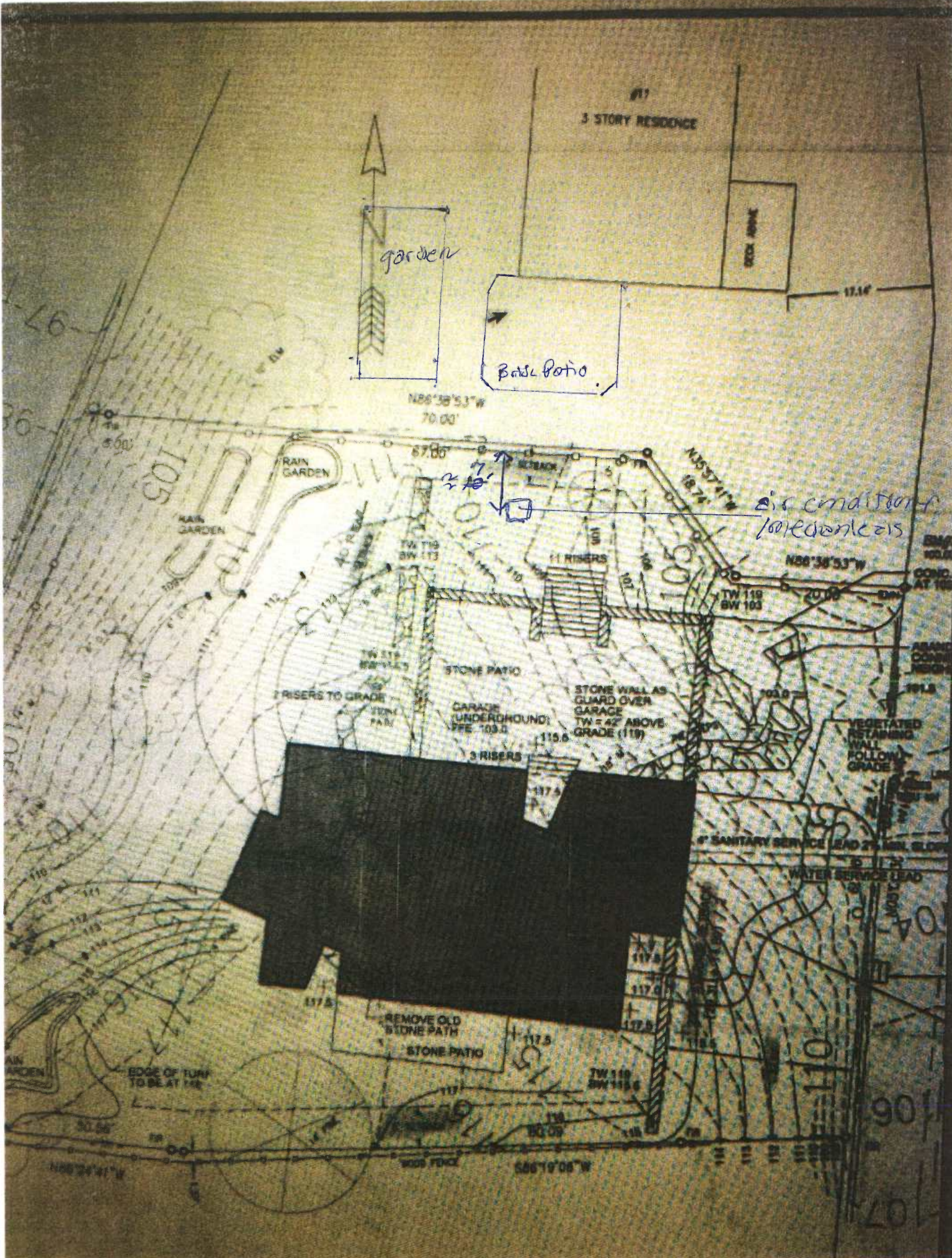


- LEGEND**
- SET 1/2" REBAR WITH CAP. #47
 - ⊙ FOUND MONUMENT (AS NOTED)
 - (M) MEASURED DIMENSION
 - (R) RECORD DIMENSION

- NOTES:**
1. A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.
 2. ALL PROPERTY SPLITS REQUIRE PRIOR CITY, TOWNSHIP, COUNTY, AND/OR STATE APPROVAL.

I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND HEREIN PLATTED AND DESCRIBED AND THAT THE DATA

KEM-TEC & ASSOCIATES



garden

Back Patio

is condition for edentle is

REMOVE OLD STONE PATH

STONE PATIO

STONE PATIO

GARAGE (UNDERGROUND) FFE 103.0

STONE WALL AS GUARD OVER GARAGE TW = 42" ABOVE GRADE (119)

VEGETATED RETAINING WALL FOLLOW GRADE

12" SANITARY SERVICE LEAD 2% MIN. SLOPE

WATER SERVICE LEAD

3 STORY RESIDENCE

WOOD SHED

N88°38'53"W
70.00'

N35°24'1"W
18.74'

N88°38'53"W

TW 119 SW 103

67.00'

2.70'

11 RISERS

3 RISERS

2 RISERS TO GRADE

WOOD PATH

117.5

117.5

117.5

TW 119 SW 115.6

S88°19'08"W
50.09'

5.00'

RAIN GARDEN

MAIN GARDEN

30.56'

EDGE OF TURF TO BE AT 118

WOOD FENCE

106

107

110

104

EM

COND. AT 105

ABAND. CONC. NEIGH.

191.8

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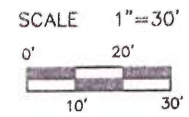
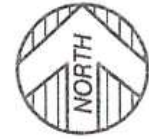
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PARCEL B:

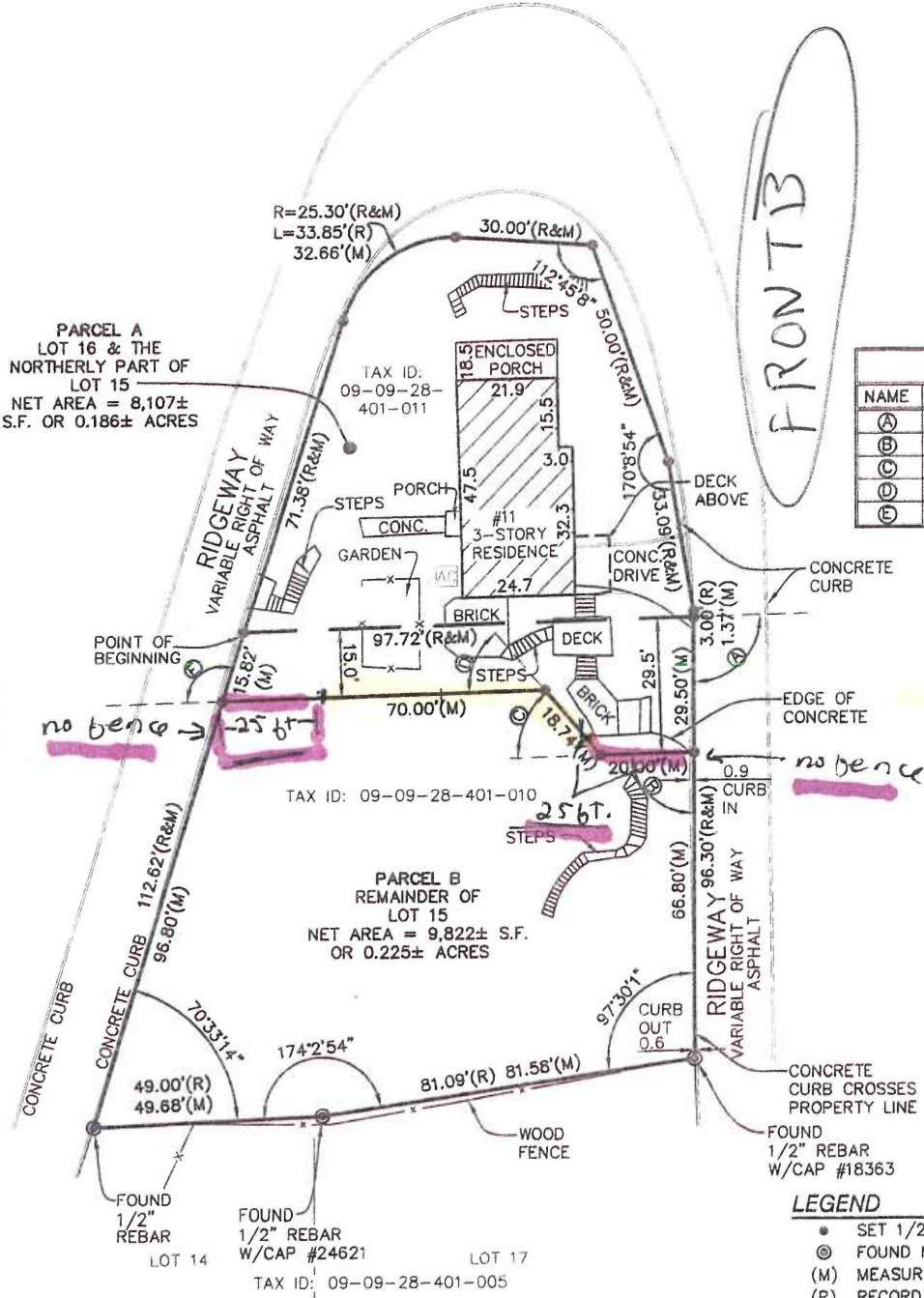
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(B)	RIGHT	88°17'37"
(C)	RIGHT	50°41'12"
(D)	LEFT	50°41'12"
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FRONT A

FRONT B



LEGEND

- SET 1/2" REBAR WITH CAP. #47976
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION

NOTES:

1. A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.
2. ALL PROPERTY SPLITS REQUIRE PRIOR CITY, TOWNSHIP, COUNTY, AND/OR STATE APPROVAL.

I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND HEREIN PLATTED AND DESCRIBED AND THAT THE RATIO OF CLOSURE MEETS THE REQUIREMENTS OF PUBLIC ACT

KEM-TEC & ASSOCIATES
 22556 GRATIOT AVE. EASTPOINTE, MI 48021
 PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS
 (586)772-2222 * FAX (586)772-4048

SPLIT SURVEY

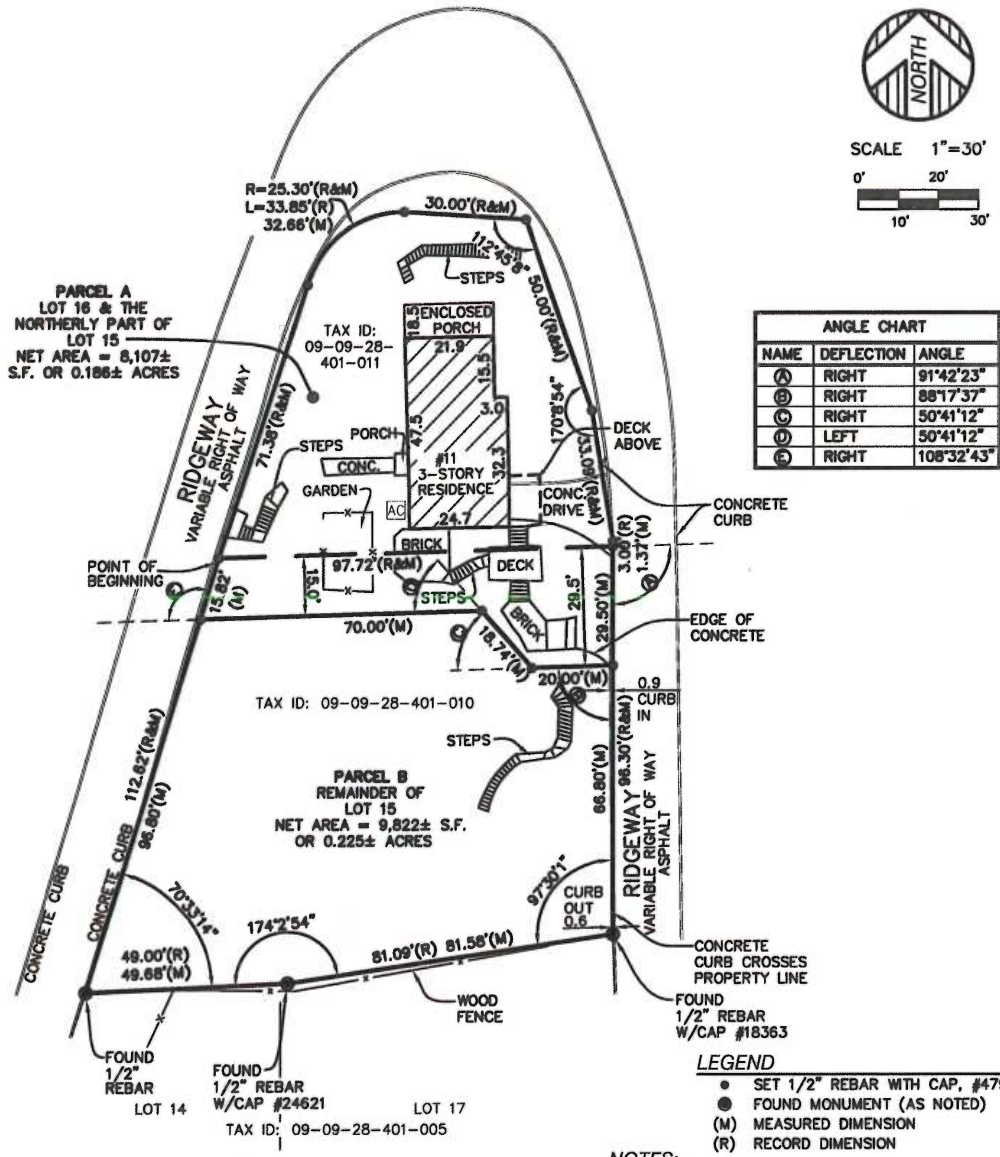
PROPERTY DESCRIPTION:

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I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND HEREIN PLATTED AND DESCRIBED AND THAT THE RATIO OF CLOSURE MEETS THE REQUIREMENTS OF PUBLIC ACT 132 OF 1970.

ANTHONY T. SYCKO, JR., P.S. NO. 47976

- NOTES:**
1. A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.
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KEM-TEC & ASSOCIATES
 22556 GRATIOT AVE. EASTPOINTE, MI 48021
 PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS
 (586)772-2222 * FAX (586)772-4048

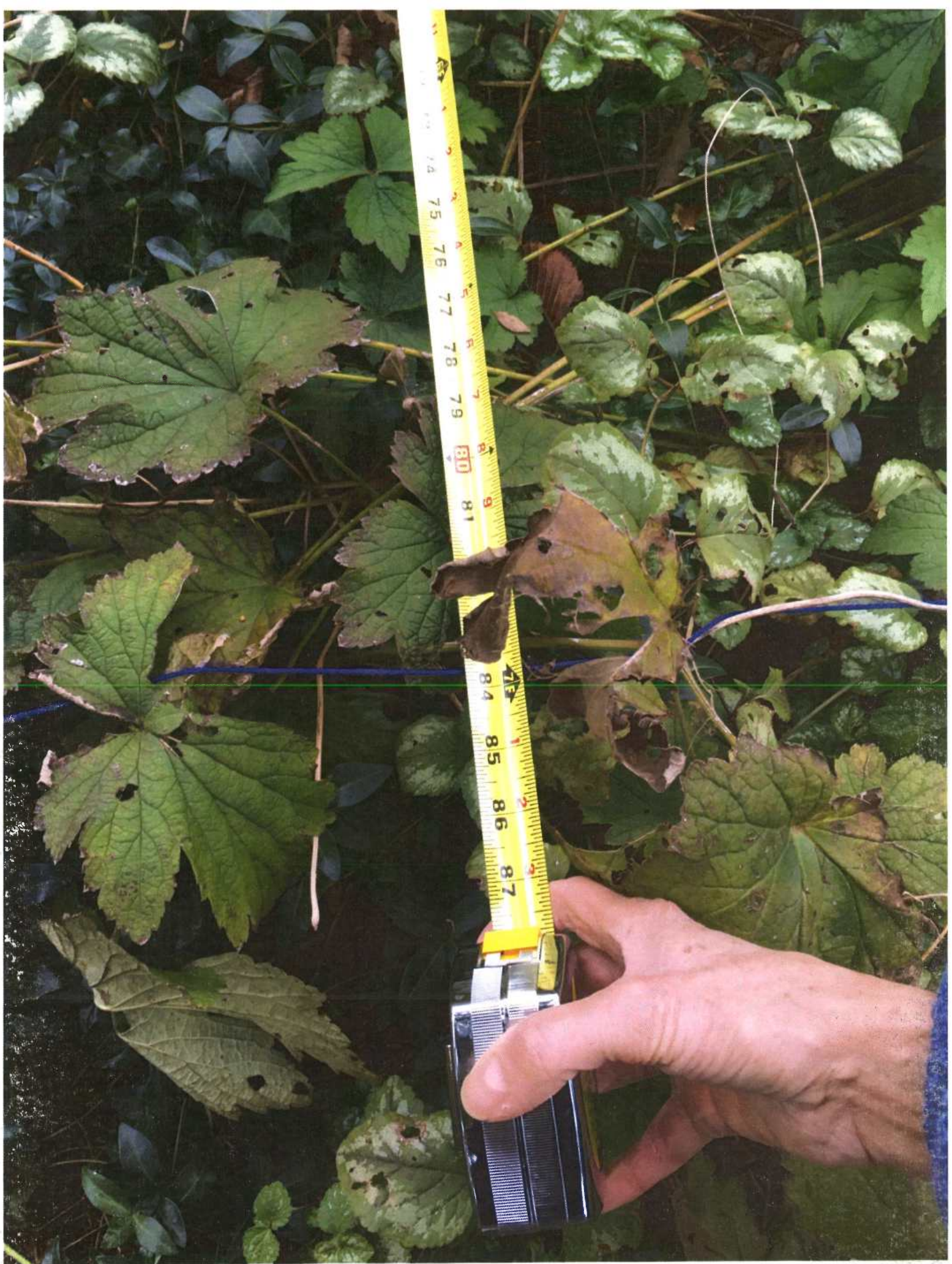
CERTIFIED TO: ELAINE SELO	
FIELD SURVEY: TS JD	MARCH 31, 2015
DRAWN BY: JDM JAL	SHEET: 1 OF 1
SCALE: 1" = 30'	JOB NO.: 14-04701



















Mitzel Law Group PLC

Attorneys at Law

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Louise L. Labadie, PLLC (*of counsel*)
Peter A. Long (*of counsel*)

contact@mitzellaw.com
www.MitzelLaw.com

November 7, 2017

VIA EMAIL: susankbass@aol.com; pbbass2000@gmail.com

Mr. Paul B. Bass
Mrs. Susan K. Bass
11 Ridgeway Street
Ann Arbor, MI 48104

Dear Mr. and Mrs. Bass:

In our phone call of September 25, 2017 you related to me that Warren Samberg, the neighbor owning the lot immediately south of your home, has been building a house on his lot for more than a year. To the best of your understanding, his final construction project has changed from his initial plan and has resulted in a house that towers over your home. His developments on his property have caused you concern about your house on your property – both as to your privacy in your home and the tendency of his building materials to reflect and concentrate area noises (such as the sounds of helicopters taking off and landing at University Hospital) toward your property.

I have reviewed the Zoning Map and Ordinances of Ann Arbor, the founding plat of your neighborhood, and the statutes and judge-made law of the State of Michigan. I have found no provision that definitively requires your neighbor to perform actions on his property to benefit your use and enjoyment of your property.

Regarding privacy – Both 11 Ridgeway and 19 Ridgeway are located in the R1C zoning district. Within the R1C zoning district, property owners are permitted to build single-family homes that are up to 30 feet tall without needing any variance. Even if a particular property owner were granted a variance to build a home taller than 30 feet, there would be no “privacy” damage to the adjoining property owners. The law presumes that a property with a higher elevation will be able to look down upon a property at a lower elevation. If the property owner at lower elevation has concerns about his privacy on his property, he should build a privacy fence on his property that complies with the city ordinances.

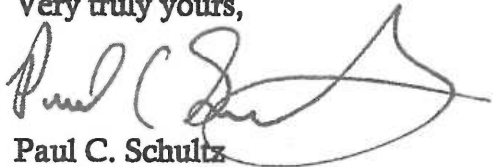
Regarding noise – Michigan law does sometimes require a property owner to pay damages where his actions on his property constitute a “private nuisance” to a neighboring property owner. Unfortunately, the examples of actionable private nuisance that I have found in existing precedent have involved the flow of water or pollution onto a neighboring

property or a bad neighbor's creation of bad odors or sounds on his property that burden neighboring properties. I have found no previous case where the concentration or reflection of noise (or light) originating elsewhere was made the responsibility of the property owner whose home incidentally concentrated or reflected the noise.

Though a helpful precedent doesn't exist, it is always possible that your current circumstance could become the first case in Michigan in which the "private nuisance" principle could be extended to reflection of sound, if you wished to pursue litigation. Our firm does not prosecute such lawsuits. One Ann Arbor attorney who handles cases between neighbors over land use issues is Scott Munzel – (734) 665-4441.

I understand that you have written to your neighbor today and have documented discussions that you have previously had with your neighbor. I think it is a good idea to regularly document such conversations. In hard cases, courts are much more likely to enforce agreements that property owners have made than to enforce general principles of law.

Very truly yours,



Paul C. Schultz

PCS

cc: Mr. Dennis M. Mitzel



ZONING COMPLIANCE PERMIT APPLICATION

- FENCE, DECK AND SHED CONSTRUCTION CONSTRUCTION AND BUILDING

City Hall: 301 E. Huron St. Ann Arbor, MI 48107-6120
Mailing: P.O. Box 8647, Ann Arbor, MI 48107-8647
Phone: 734.794.6265 Questions: planning@cityofannarbor.org
Fax: 734.994.8460 Submission: building@cityofannarbor.org

9:57 8/31 still not up P.2
401 restructure

OFFICE USE ONLY	
Permit Number	ZCOM# _____
DATE STAMP	

APPLICATION MUST BE FILLED OUT COMPLETELY

AUTHORITY: PA 230 of 1972, AS AMENDED
PENALTY: PERMIT WILL NOT BE ISSUED

PROPERTY LOCATION

PROPERTY ADDRESS (Street No. and Name) 11 Ridgeway St.		APT/SUITE #
CITY Ann Arbor	ZIP CODE 48104	ZONING DISTRICT Lot 15, Assessor's Plat No. 14, Ann Arbor Word 2
Construction Proposed:	<input checked="" type="checkbox"/> Fence <u>up to</u> 7 ft.	<input type="checkbox"/> Shed <u>under</u> 200 sq. ft.
	<input type="checkbox"/> Free-standing deck <u>under</u> 200 sq. ft.	
IS PROPERTY IN A HISTORIC DISTRICT?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, If Yes, you MUST also complete a <u>Historic District Commission Application</u>	
IS PROPERTY IN A FLOODPLAIN?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, If Yes, follow additional instructions found on the <u>Building in the Floodplain</u> webpage	

CURRENTLY, THE PROPERTY IS BEING USED AS:
Residential, single family owner-occupied

DESCRIPTION OF PROJECT: (Include a detailed description of the proposed work)
6' fence on side yard, treated wood, hextop, Ac= 1x6x6 fence boards.
As pictured as "Middle" on Fence Guidelines + Zoning Compliance Application, Page 1

COST OF PROJECT:
\$ 1960-

You must attach copy of SITE PLAN or PLOT PLAN indicating the following:

- Fences: Location, height and opacity of the fence. If the proposed fence is **over 7 feet** in height, you **MUST** apply for a building permit (PDF).
- Sheds and Decks: Dimensions of propose structure and distance from the adjacent property line(s). If the proposed shed or deck is **over 200 square feet**, you **MUST** apply for a Building Permit.

HOMEOWNER AND CONTRACTOR INFORMATION

OWNER NAME Paul + Susan Bass			CONTRACTOR NAME Greg Scully		
ADDRESS 11 Ridgeway St			ADDRESS		
CITY Ann Arbor	STATE MI	ZIP CODE 48104	CITY Tecumseh	STATE MI	ZIP CODE
PHONE / CELL PHONE # 734-995-9508			PHONE / CELL PHONE # 517-301-1331		
EMAIL susankbass@aol.com			EMAIL y1luc3@gmail.com		

By signing this application, I indicate that I am aware of the location of the property lines and agree to erect the proposed structure within those lines

OWNER SIGNATURE: 	APPLICANT SIGNATURE:
APPROVED BY:	DATE
COMMENTS:	

Please return to: Construction and Building – Planning Division, 301 East Huron Street, Ann Arbor, MI 48104

Permit Fee:	<input checked="" type="radio"/> \$20 For projects up to \$10,000	<input type="radio"/> \$50 For projects over \$10,000
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ESTIMATE

CLIENT

DAL

ADDRESS

11 Ridgeway

JOB DESCRIPTION

Install $\approx 70'$ of 6' high
 flex top privacy wood fence
 using 4x4 treated posts
 and AC² 1x6x6 fence boards

Beginning project Sept. 3rd or before

2-3 day completion

PD contract 3585

\$1000

ESTIMATED JOB COST \$1960 - 1/2 down

SUBMITTED BY G. Scully

bal \$960⁰⁰ on completion