

**Zoning Board of Appeals  
June 27, 2018 Regular Meeting**

**STAFF REPORT**

**Subject: ZBA18-017, 1501 S State Street**

**Summary:**

Oxford Companies, representing the property owners, are requesting a variance from Chapter 104 Fences, Section 8:434 (1) (a) Restrictions. The owners are requesting relief to install a six foot tall 95 percent opaque fence located along the front yard and the first 25 feet of the rear yard. Fences are not to exceed four (4) feet in height and 50% opacity in the proposed location.

**Background and Description:**

The subject property is located on a corner lot that has frontage along South State Street and East Stadium Boulevard. The fence is proposed to be installed along the east property line which is adjacent to the property's rear yard. The first 25 linear feet require the fence to be four foot tall and 50 percent opaque. The applicant is requesting a six foot tall and 95% opaque fence. The zoning ordinance requires the remaining 23 feet of fencing to be a maximum of eighty percent opaque. The applicants are seeking an additional 15% opacity variance for the 95% request.

The property is adjacent to the Stadium bridge which significantly raised the elevation of the street right of way.

**Standards for Approval Chapter 104 Fences (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.***

The petitioner states that the creation of the Stadium Boulevard overpass was not self-imposed and has created a lot that no longer resembles a corner lot. Additionally, the applicants state that their variance request will not create any negative impacts to the adjacent properties.

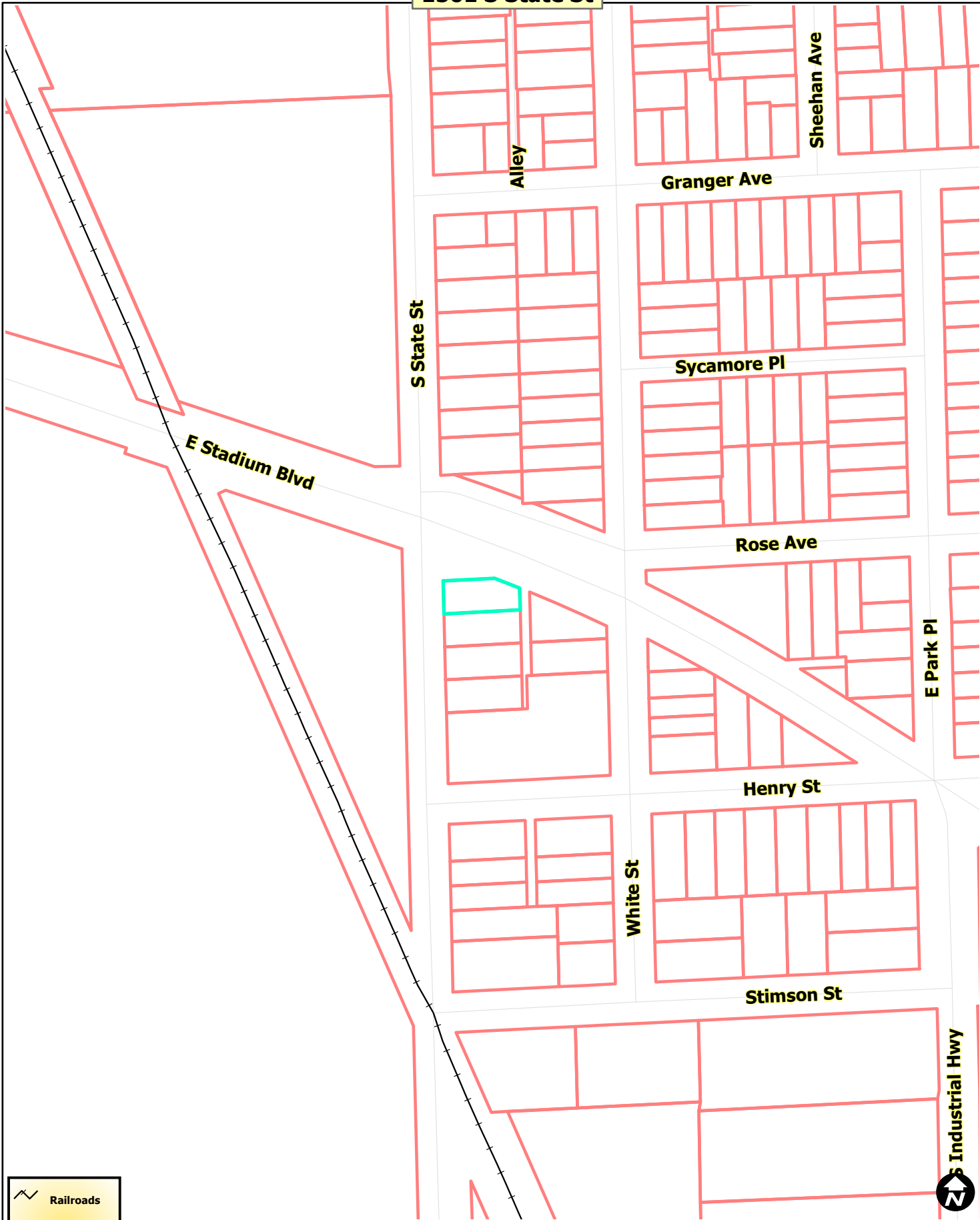
Zoning Board of Appeals  
ZBA18-017 Variance  
June 27, 2018 - Page 2

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**

1501 S State St



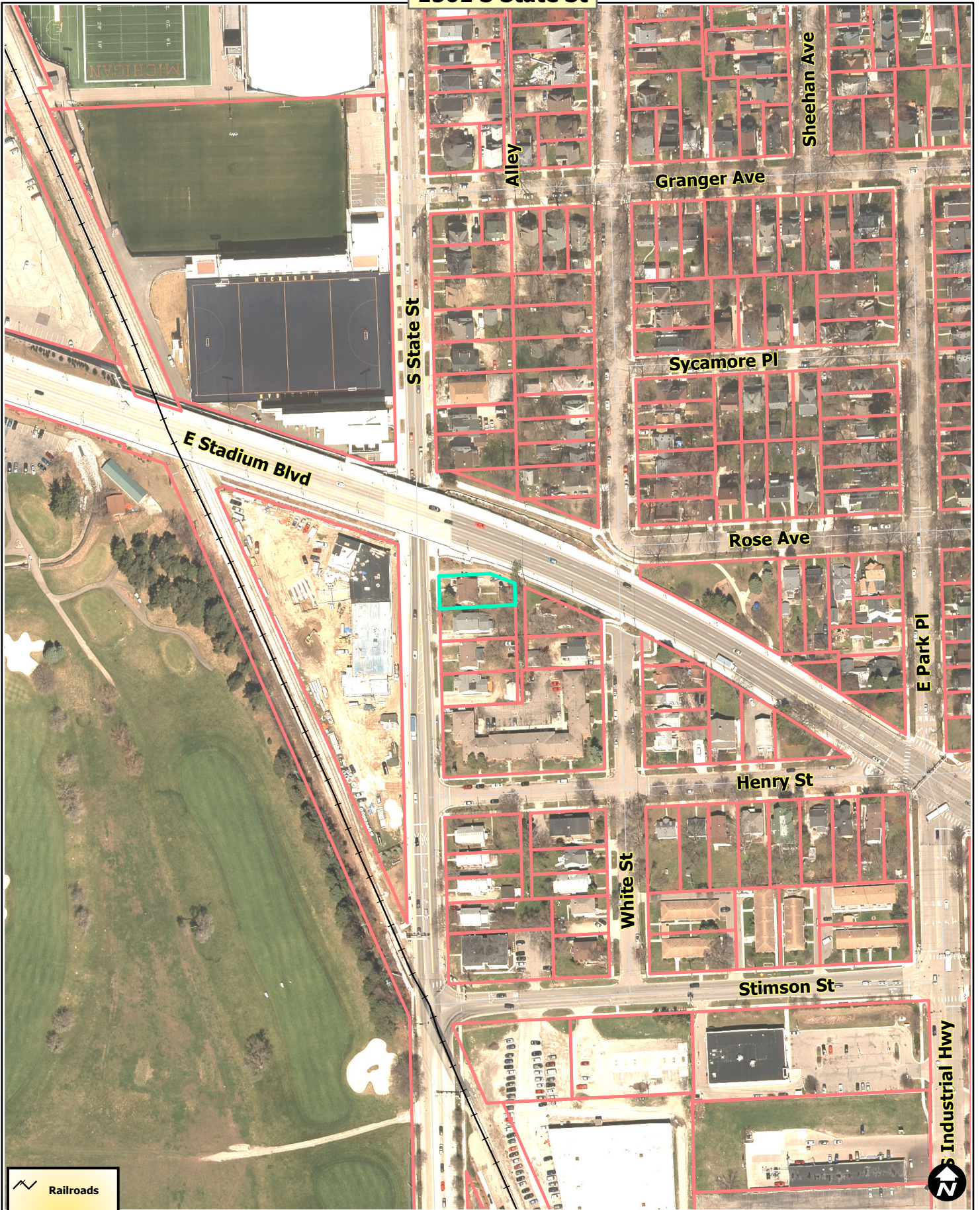
 Railroads  
 Huron River  
 Tax Parcels






Map date 5/31/2018  
 Any aerial imagery is circa 2015  
 unless otherwise noted  
 Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)



1501 S State St



-  Railroads
-  Huron River
-  Tax Parcels



Map date 5/31/2018  
Any aerial imagery is circa 2015  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)








1501 S State St

Rose Ave

E Stadium Blvd

S State St

 Railroads  
 Huron River  
 Tax Parcels



Map date 5/31/2018  
 Any aerial imagery is circa 2015  
 unless otherwise noted  
 Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)





**ZONING BOARD OF APPEALS  
PLANNING DEPARTMENT**

City Hall: 301 E. Huron St. Ann Arbor, MI 48104-6120  
 Mailing: P.O. Box 8647, Ann Arbor, MI 48107-8647  
 Phone: 734.794.6265 [planning@a2gov.org](mailto:planning@a2gov.org)  
 Fax: 734.994.8460

**APPLICATION MUST BE FILLED OUT COMPLETELY**

Office Use Only	
Fee Paid: <u>\$500</u>	ZBA: <u>18-017</u>
<b>DATE STAMP</b> CITY OF ANN ARBOR <b>RECEIVED</b>  <b>MAY 23 2018</b>	
PLANNING & DEVELOPMENT SERVICES	

PROPERTY INFORMATION	
ADDRESS OF PROPERTY: <b>1501 S. State</b>	
ZONING CLASSIFICATION: <b>R4C</b>	TAX ID: (if known)
NAME OF PROPERTY OWNER*: <b>Peapod State St LLC</b>	

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

APPLICANT INFORMATION	
NAME OF APPLICANT: <b>Oxford Companies (Joseph Mifsud)</b>	
ADDRESS OF APPLICANT: <b>210 S. Fifth Ave</b>	
DAYTIME PHONE NUMBER: <b>734-548-6949</b>	FAX NO:
EMAIL: <b>jmifsud@oxfordcompanies.com</b>	
APPLICANT'S RELATIONSHIP TO PROPERTY: <b>Director of Property Management</b>	

REQUEST INFORMATION	
<input checked="" type="checkbox"/> VARIANCE REQUEST (Complete the section 1 below)	<input type="checkbox"/> ALTERATION TO A NON-CONFORMING STRUCTURE (skip to Section 2)

Section 1 - VARIANCE REQUEST	
CHAPTER(S) AND SECTION(S) FROM WHICH A VARIANCE IS REQUESTED: (Example: Chapter 55, Section 5:26) <b>8:434 (1) (a)</b>	
Required Dimension: (Example: 40' front setback) Shall not exceed 4' high and 50% opacity in a front open space	PROPOSED Dimension: (Example: 32') <b>6' high and 95% opacity</b>
Give a detailed description of the work you are proposing and why it will require a variance (Attach additional sheets if necessary) <b>Please see attached Exhibit A</b>	





# ZONING BOARD OF APPEALS

## PLANNING DEPARTMENT

City Hall: 301 E. Huron St. Ann Arbor, MI 48104-6120

Mailing: P.O. Box 8647, Ann Arbor, MI 48107-8647

Phone: 734.794.6265

Fax: 734.994.8460

[planning@a2gov.org](mailto:planning@a2gov.org)

### Section 1 - VARIANCE REQUEST con't

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.

1. That 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. This is answered in Exhibit A attached. We believe this is a unique situation created

when E Stadium Blvd was elevated.

2. That 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.

Addressed in Exhibit A

3. 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.

We do not believe this variance will create any hardships to any other property owners in the area.

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

We believe the creation of the Stadium Blvd overpass, which was not self-imposed, has created a non-corner lot.

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

The variance will not limit the reasonable use of the land or the structure.



# ZONING BOARD OF APPEALS

## PLANNING DEPARTMENT

City Hall: 301 E. Huron St. Ann Arbor, MI 48104-6120  
 Mailing: P.O. Box 8647, Ann Arbor, MI 48107-8647

Phone: 734.794.6265  
 Fax: 734.994.8460  
[planning@a2gov.org](mailto:planning@a2gov.org)

### Section 2 – 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.

REQUIREMENT	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:

---



---



---





**ZONING BOARD OF APPEALS  
PLANNING DEPARTMENT**

City Hall: 301 E. Huron St. Ann Arbor, MI 48104-6120  
Mailing: P.O. Box 8647, Ann Arbor, MI 48107-8647

Phone: 734.794.6265  
Fax: 734.994.8460  
[planning@a2gov.org](mailto:planning@a2gov.org)

**Section 2 – ALTERATION TO A NON-CONFORMING STRUCTURE**

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

**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 ½" by 11"** sheets:

- One (1) hardcopy and one (1) electronic copy shall be submitted.
- The electronic copy shall include all associated supporting documentation with application submission.

- 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.

**ACKNOWLEDGEMENT**

I, the applicant, hereby 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.

Phone number: **734.518.6949**

Signature: **X**

Email address: **JAMIFSUOSS@GMAIL.COM**

Print Name: **Joseph Mifsud**

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

\_\_\_\_\_  
Signature

Further, I hereby give the City of Ann Arbor Planning and 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.

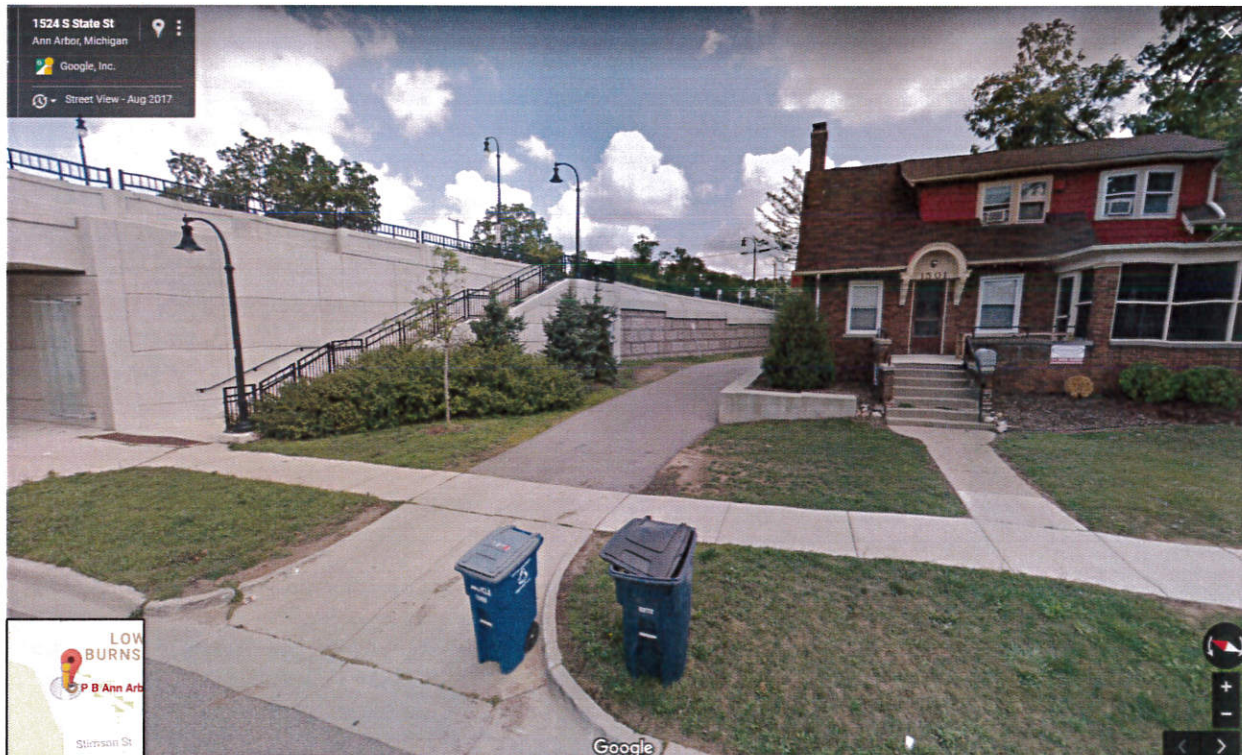
\_\_\_\_\_  
Signature

## EXHIBIT A

### 1501 S STATE ST - FENCE ZONING VARIANCE REQUEST

The City of Ann Arbor currently recognizes 1501 S State St as a corner lot. This is because, at one time, E Stadium Blvd was not an elevated road. As a corner lot, the area in the rear of the home is noted as “front open space”, as referenced in the attached “Fence Guidelines and Zoning Compliance Application”. Because it is technically a “front open space”, the fence can not extend beyond 4’. Because E Stadium Blvd is now elevated along the rear of the home, we are requesting a variance to Restrictions Section 8:434 (1) (a) in order to build the fence to a height of 6’. The lot backs up to a small alleyway, then another residential lot. We also believe that because the fence is largely out of view, that the opacity of 95% should be acceptable.

#### FRONT LOT SHOWING ELEVATED E STADIUM BLVD AND FRONT OF HOME/LOT





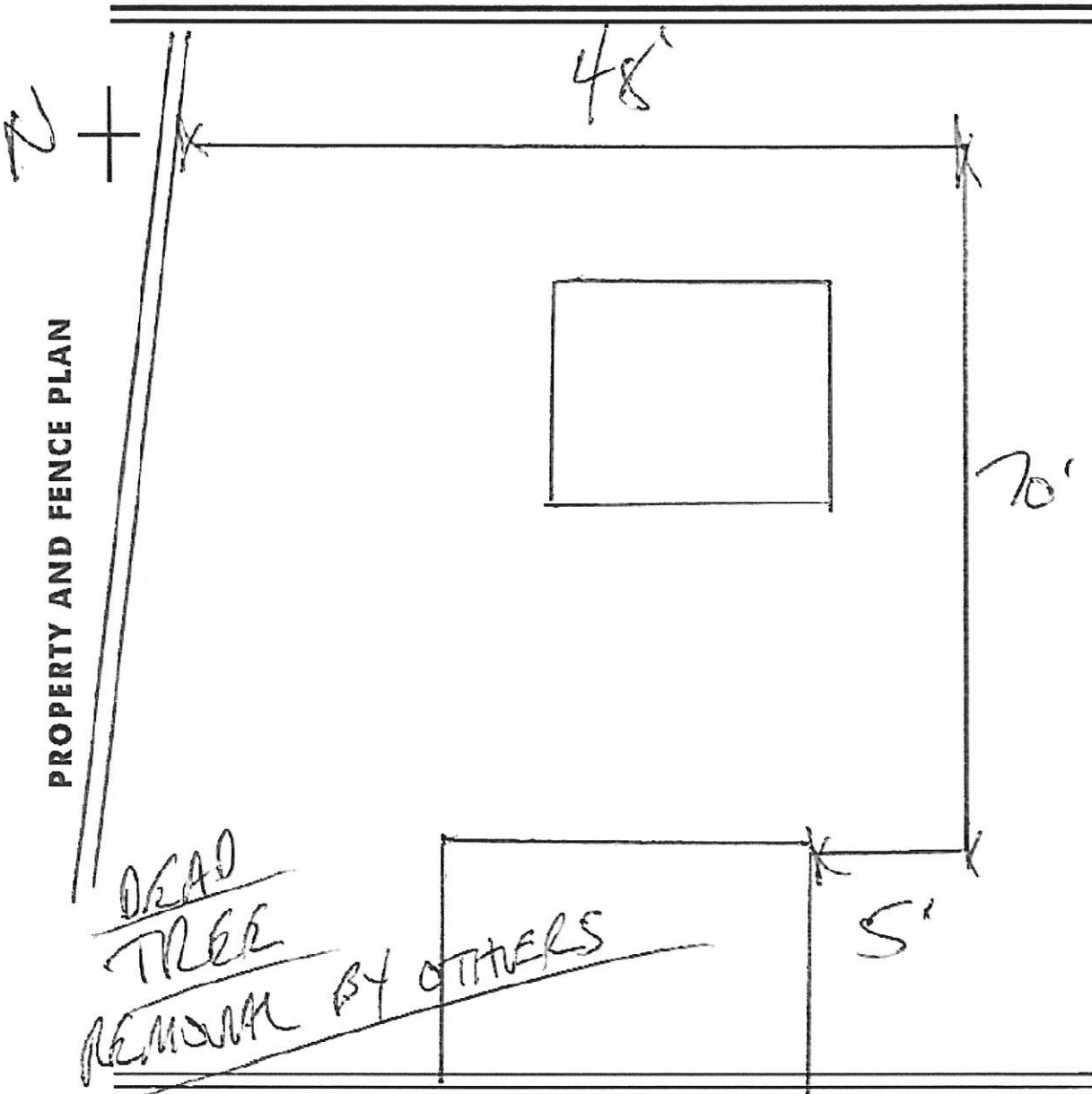
GOOGLE EARTH VIEW OF ENTIRE LOT, ALLEYWAY, THEN NEIGHBORING RESIDENTIAL LOT TO THE EAST



IMAGE OF SIMILAR FENCE WHICH IS CONSTRUCTED FROM DOGEARED WOOD PLANKS



CONTRACTOR DRAWING OF PROPOSED FENCE INSTALLATION





# CERTIFIED SURVEY

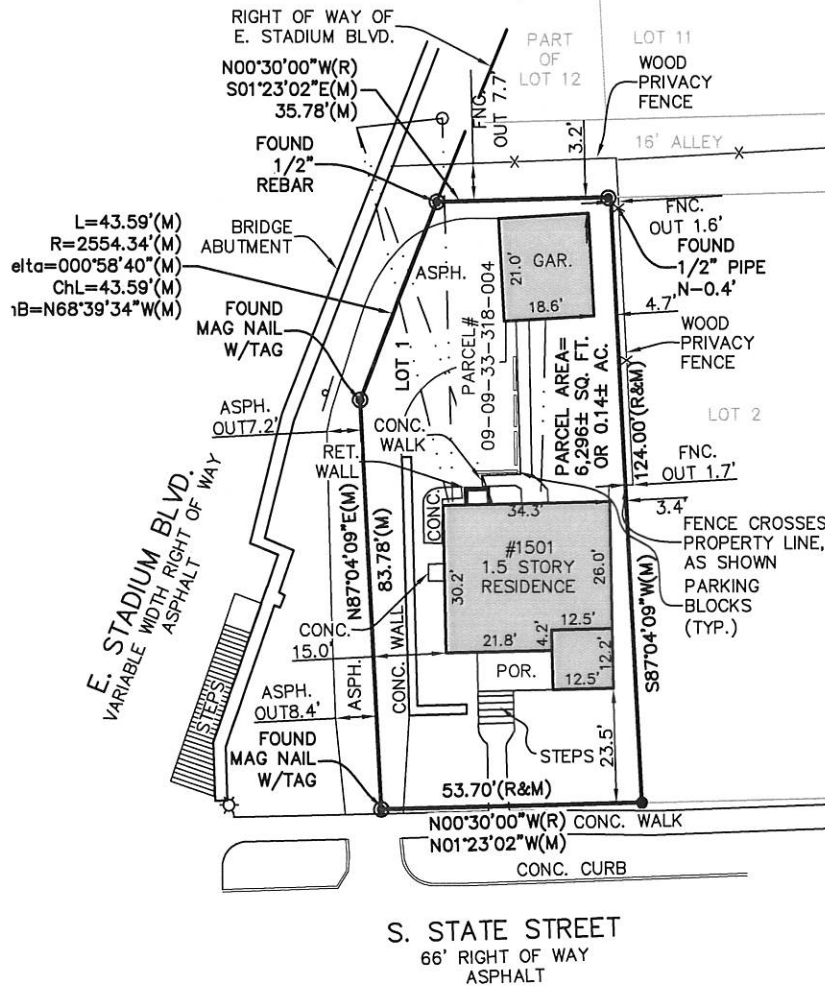
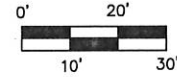
**PROPERTY DESCRIPTION:**

LAND SITUATED IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN, DESCRIBED AS FOLLOWS:

LOT 1, EXCEPT HIGHWAY IN NORTHEAST CORNER OF BLOCK 3; HAMILTON, ROSE AND SHEEHAN'S ADDITION TO THE CITY AND TOWN OF ANN ARBOR (NOW CITY OF ANN ARBOR), AS RECORDED IN LIBER 1 OF PLATS, PAGE 24 OF WASHTENAW COUNTY RECORDS.



SCALE 1"=30'



**NOTE:**

A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.

**LEGEND**

- SET 1/2" REBAR WITH CAP, #32341
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION

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.



**KEM-TEC & ASSOCIATES**

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

CERTIFIED TO: OXFORD PROPERTY MANAGEMENT

FIELD SURVEY: AG PM

DATE: MAY 18, 2018

DRAWN BY: DLD

SHEET: 1 OF 1

SCALE: 1" = 30'

JOB NO.: 18-01588

THOMAS G. SMITH, P.S. NO. 32341

**City of Ann Arbor Code**  
**Chapter 104: FENCES**

8:431. Definitions.

The following definitions shall be applicable to the interpretation of this chapter.

- (1) *Fence*. Any artificial permanent fence, partition, structure or gate erected as a dividing marker, barrier or enclosure.
- (2) *Opacity*. The degree to which a fence is impervious to rays of light. This condition will be measured by observation of any 2 square yard area of fence between 1 foot above the ground level and the top of the fence. The observation shall be from a direction perpendicular to the plane of the fence.
- (3) *Residential district*. Those districts classified as residential in subdivisions 5:21(2) through 5:21(6E) of Chapter 55 of Title V of this Code.

8:432. Requirements.

It shall be unlawful for any person, firm or corporation to construct or cause to have constructed any fence upon any property within the corporate limits of the City of Ann Arbor, except in accordance with the requirements and restrictions herein provided.

8:433. Permit.

Any person desiring to build or cause to be built a fence upon property within the corporate limits of the City of Ann Arbor shall first apply to the planning and development services unit for a permit to do so. Application for such permit shall contain any and all information, including drawings, required and necessary for the determination of whether the erection of such fence would be contrary to the provisions of this chapter or the laws of the State of Michigan. A fee in the amount prescribed in Chapter 100 shall be paid for such permit. Fee for the permit shall be established by resolution of the city council upon the recommendations of the city administrator.

8:434. Restrictions.

The following requirements shall be observed:

- (1) Fences located in residential districts
  - (a) In the required front open space shall not exceed 4 feet in height and 50% opacity.
  - (b) Shall not exceed 6 feet in height and 80% opacity in any part which is 25 feet behind the front setback line.
  - (c) Shall not have a height of greater than 8 feet at locations other than those described in subsections (a) and (b).
- (2) In other than residential districts, fences may be extended to 12 feet in height without restriction as to solid matter or closed construction.
- (3) Fences located within 25 feet of the intersection of 2 or more street lot lines where a setback is required for a building shall not be higher than 30 inches above the sidewalk grade.
- (4) Except on top of fences having a height of 10 feet or more, there shall not be attached, affixed or placed any spike, nail, barb (including barb wire) or other pointed instrument, and all cleaved selvages and sharp points on wire fences shall be removed or bent to eliminate any sharp extrusions.
- (5) No fence shall be constructed or maintained which is charged or connected with an electrical current.
- (6) Temporary construction fences and fences required for protection around excavations shall comply with Article 13 of the Basic Building Code. Such fences shall not be maintained for a period greater than a year without special approval of the zoning board of appeals.
- (7) In determining the maximum height of a fence which separates 2 adjoining lots and which runs within 2 feet of the lot line, the maximum height at any point shall be determined from the highest grade at that point within 2 feet on either side of the lot line.
- (8) Fences not within a required open space established by Chapter 55 of this Code may be the building height limit for the district in which they are located and shall not be subject to opacity restrictions.

8:435. Maintenance of nuisances.

Fences shall be maintained so as not to endanger life or property. Any fence which, through lack of repair, type of construction or otherwise, endangers life or property is hereby deemed a nuisance. If an unsafe condition exists in regard to a fence, the planning and development services manager or designee shall serve on the owner, agent or person in control of the property upon which such fence is located, a written notice describing the unsafe condition and specifying the required repairs or modifications to be made to render the fence safe or requiring the unsafe fence or any portion thereof to be removed, and shall provide a time limit for such repair, modification or removal.

8:436. Power of the board of appeals.

Upon appeal in writing by any person directly or indirectly affected hereby, the zoning board of appeals of the City of Ann Arbor may, after a hearing in accordance with the established procedure 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.