

Boklye Kim  
2300 Vinewood Blvd  
December 1, 2020

Dear ZBA Committee,

My property borders 18 Heatheridge at the rear property line. I understand that the owners submitted an application for Alteration to a Nonconforming Structure after being denied the previous proposal (August 26, 2020), that was requesting a variance to allow the sunroom construction to encroach into the rear setback. The current proposal is practically the same as the previous one but one side dimension reduced by 2'. The main objections raised last time by me and a few neighbors remain unchanged. I am enclosing the letters I sent to the ZBA last time along with this letter.

I oppose the proposal that would cause a detrimental effect on me financially and on quality of our family's daily home living. The proposed sunroom construction would encroach 20 ft into the 40 ft setback required by zoning and has started already but been stopped by the building department because it was proceeding without a permit.

I would like to point out following issues from the submitted application.

As proposed, it may seem the new sunroom will have the same setback as the existing non-conforming structure. The owners removed the problematic tarps that were hanging over the fence for many years and planted some evergreens along the fence (not nearly screening though), finally, after many years of dispute over the removal of greeneries and vegetation between our properties (refer to the attached letter submitted to the previous proposal reviewed August 26).

1. Although it sounds the minimum existing setback would not change, the proposed expansion that is flush with the existing non-conforming structure is not exactly parallel with the property line. The real situation is that the extended structure gets closer to the property line (Figure 1 below). The new 20x13 sqft sunroom would extend into their backyard next to the existing non-conforming structure (with the 21.87" encroachment) running the whole side dimension, that is 20 feet long. The end of the new structure would have narrower setback from the property line, but it is depicted same measurement in the diagram submitted by the owners (Figure 1). The proposed sunroom would be more imposing and detrimental to our privacy, because it is closer and behind the descending slope, than the existing non-conforming structure.

The original structure was built in 1953. The 40' setback was imposed after the original house was built and before the current ownership of the property. The position of the original structure relative to the current setback requirement seems irrelevant to be used to undermine the zoning requirement or to justify adding a new non-conforming structure, that would affect neighbors negatively.

2. I previously submitted pictures and a document that shows long standing disputes with this home's owners regarding the trees they removed, that used to screen our properties. They cleared most growths on their side when they moved in, 2001-2, to maximize their backyard space regardless of our privacy concerns. They did not respond to my request to remove the tarps or jointly planting screening evergreens until now. I have little confidence in that they would keep the integrity of the screening evergreens or respect our privacy concerns once the structure were finished.

Allowing this alteration will not do justice to the rights of others in the neighborhood. For my property, if the construction is allowed the sunroom would be directly behind my property line, 21 feet away. Clearly their backyard area would be significantly reduced to less than 20 feet deep area between the sunroom and my

property, which will result in their outdoor activities around the sunroom extremely close to my property. Bringing their indoor and outdoor space so close to my property would inflict difficulty in protecting my family privacy.

Their encroachment would impose substantial financial cost for me to fill the rear area with evergreens that would screen the views to protect our privacy and the subsequent loss of my usable backyard space occupied by the screening evergreens and landscaping. Without the screening trees now, their new sunroom partially framed is clearly visible from my house, and until recently, along with their outdoor furniture, picnic tables and bbq grills that had moved very close to the property line already. I doubt they would have much space for thick enough evergreens for screening on their backyard once the sunroom is built. This lack of screening is now worse in the winter season after my existing trees went bare without leaves. Also, one of my neighbors pointed out that loss of usable space and privacy would affect the property value.

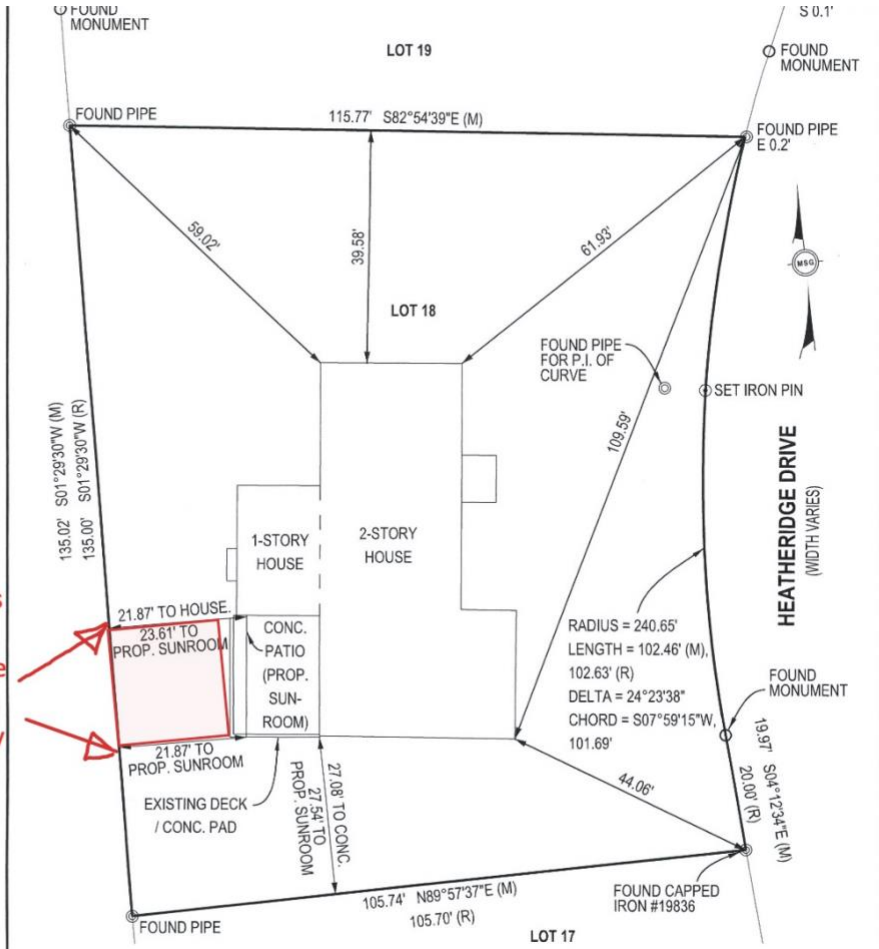
Justification of this proposal is not met since it would significantly compromise our rights, our privacy and neighbors'. Our main concern is that the encroachment into the zoning requirement by this expansion negatively affects the lives of neighbors, especially ours whose property is directly behind the new structure. I adamantly oppose this expansion that would cause unwarranted expenses and difficulties to neighboring properties.

Your careful considerations are greatly appreciated.

Boklye

Figure 1

These measurements cannot be the same. The end corner of the proposed sunroom is closer to my property line.



Following pages are previously submitted materials to the ZBA, August 26, 2020

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.

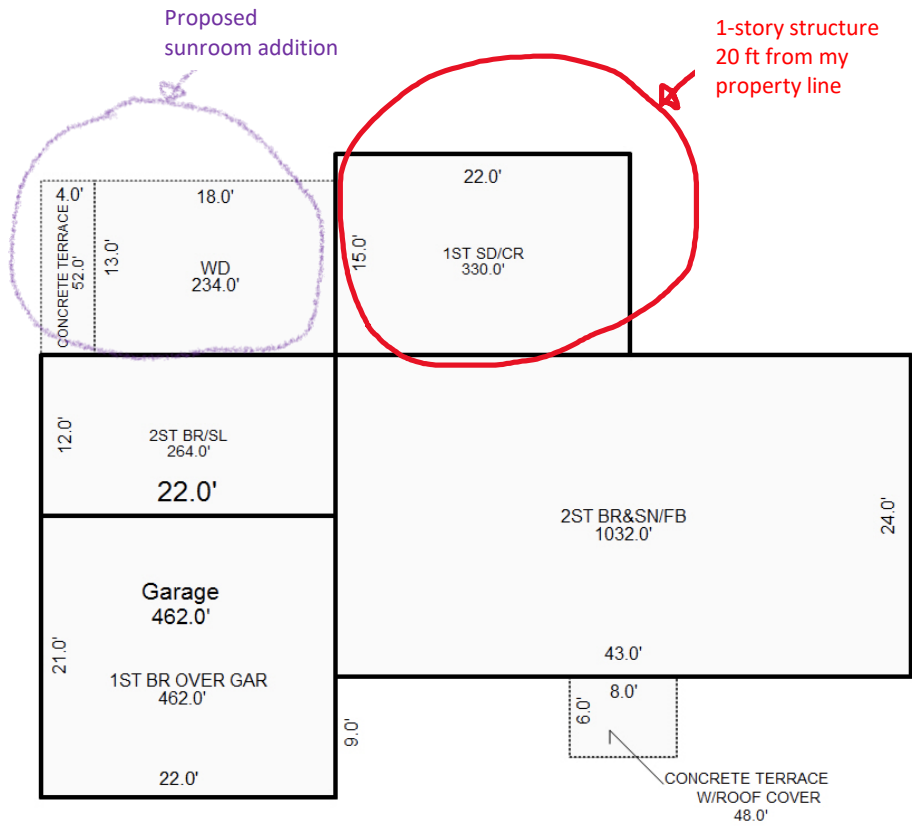
I do not support this zoning appeal that would allow to build too close to my property. We bought our house because, in addition to the house, we loved the backyard, although it is not that big, it is hilly and private from the street and neighbors. I would like to preserve the character and the private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

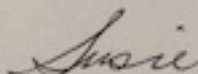
In addition, you could bring a civil suit for common law trespass, which is any unauthorized intrusion or invasion of private premises or land of another. You could seek money damages and an injunction to keep him from repeating the conduct in the future.

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









Boklye Kim  
2300 Vinewood Blvd

Dear ZBA Committee,

My property borders 18 Heatheridge at the rear property line. I am speaking out to oppose the appeal that would otherwise cause a financial burden and affect our daily home living. The proposed sunroom construction would encroach 22 ft into the 40 ft setback required by zoning and has started already but been stopped by the building department because it was proceeding without a permit.

I would like to address the following statements submitted to the zoning board of appeals (ZBA).

Submitted by 18 Heatheridge: the new sunroom will have the same setback as the existing house and the property is separated by trees and vegetation from the neighbors'.

1. The original structure was built in 1953. The 40' setback was imposed after the original house was built and before the current ownership of the property. Therefore, the position of the original structure relative to the current setback requirement seems irrelevant and cannot be used to undermine the zoning requirement or to justify adding a new non-conforming structure.

2. The natural cover or vegetation they mention between our house and theirs is mostly on my side of the fence. I submitted pictures and a document that we have had long standing disputes with this homeowner regarding the trees they removed, that used to screen our properties. They cleared most growths on their side when they moved in, 2001-2, to maximize their backyard space regardless of our privacy concerns. The aerial view they submitted for "natural cover between houses" does not represent the real picture at the ground level.

ZBA Report (c) Allowing this variance will not do justice to the rights of others in the neighborhood. For my property, if the variance is allowed the sunroom would be directly behind, 18 feet away from my property line. In addition, their remaining backyard will be significantly reduced to 18 feet deep area between the sunroom and our property, which will result in their outdoor activities around the sunroom extremely close to my property. Bringing their indoor and outdoor space so close to us would inflict difficulty in protecting our privacy.

ZBA Report (e), Submitted by 18 Heatheridge: the sunroom does not result in a decrease in the minimum existing setback. This is an understatement. Two feet more can be substantial already when there's only 18 ft left in the 40 ft required setback. But the real situation is that the variance they are asking is not mere additional two feet in the existing non-conforming structure. The new 20x15 sqft sunroom would extend into the backyard next to the existing non-conforming structure with the 22 foot encroachment running the whole side dimension, that is 20 feet long. The new structure would be comparable in size to the existing non-conforming structure that is the size of 22x14, but it is depicted much smaller in the diagram submitted by the owners.

Their encroachment would impose substantial financial cost for me to fill the rear area with evergreens that would screen the views to protect our privacy and the subsequent loss of my usable backyard space occupied by the screening evergreens and landscaping. Without the screening trees now, their new sunroom partially framed is clearly visible from my house along with their outdoor furniture, picnic tables and bbq grills that were moved very close to the property line already. I doubt they would have much space for thick enough evergreens for screening on their backyard once the sunroom is built. This lack of screening will be worse in the winter season when my existing trees go bare without leaves.

Justification of this variance is not met since it does not offer the intended public benefits, that our rights and our privacy would be significantly compromised.

ZBA Report (b) The hardship or practical difficulty raised for the stormwater management by the owners: Would there be simpler alternatives? (d) The self imposed hardship or practical difficulty cannot be clearly understood due to the lack of information about the cause of the water problem or any consideration for alternative solutions to adding a non-conforming sunroom that is deemed to affect the lives of other neighbors. Would the water runoff of the 2nd story structure added around 2002-2005 be the possible cause of the problem?

My main concern is that the encroachment into the zoning requirement negatively affects the lives of some neighbors, especially ours whose property is directly behind the new structure. I propose recommendations for alternate plans for diverting stormwater without causing the unwarranted expenses and difficulties to neighboring properties.

Thanks.

Boklye