



AGENDA

REGULAR MEETING OF THE BOARD OF ZONING APPEALS

Thursday, May 02, 2024

6:30 PM

Village Hall – 21 East Church Street, Lake Orion, MI 48362

(248) 693-8391 ext. 102

Each person wishing to address the BZA shall be afforded an opportunity to do so. Anyone that would like to make a public comment at any point during the meeting must first sign the “Sign In” sheet located near the main entrance door. If you wish to comment, please stand or raise a hand to indicate that you wish to speak. When recognized, give your name and address and direct your comments to the Chair.

- 1. Call to Order**
- 2. Roll Call and Determination of Quorum**
- 3. Designation of Alternate, as necessary**
- 4. Approval of Agenda**

By order of the President/Chair, no matters will be discussed after 10:30 p.m., unless council/board/commission votes to continue the meeting.

- 5. Approval of Minutes**
 - A.** BZA Minute Approval- February 1, 2024
- 6. Public Comments on Non-Agenda Items Only**
- 7. Action Items**
 - A.** 136 Axford Dimensional Variance Request
- 8. Next Regular Meeting - June 6, 2024**
- 9. Board Member Comments**
- 10. Adjournment**

In the spirit of compliance with the Americans with Disabilities Act, individuals with a disability should feel free to contact the Village, at least three (3) business days in advance of the meeting, if requesting accommodations. The Village of Lake Orion will provide foreign language or hearing impaired interpretation services for those individuals who contact the village to request such services at least seven (7) days prior to the meeting.

En el espíritu de la observancia de la Ley de Estadounidenses con Discapacidades, las personas con discapacidad debe sentirse libre para ponerse en contacto con el pueblo, por lo menos tres (3) días hábiles de antelación a la fecha de la reunión, si se solicitan alojamiento. El municipio de Lake Orion proporcionará idioma extranjero o personas con problemas de audición servicios de interpretación para las personas que se ponen en contacto con el pueblo de solicitar dichos servicios con no menos de siete (7) días antes de la reunión.



BOARD ACTION SUMMARY SHEET

MEETING DATE: May 2, 2024

TOPIC BZA Minute Approval- February 1, 2024

RECOMMENDED MOTION: To approve the February 1, 2024 regular meeting minutes of Board of Zoning Appeals regular meeting, as presented.



MINUTES

SPECIAL MEETING OF THE LAKE ORION BOARD OF ZONING APPEALS

Thursday, February 1, 2024

6:30 PM

Lake Orion Village Hall Council Chambers

21 East Church Street

LAKE ORION, MI 48362

(248) 693-8391 ext. 102

1. Call to Order

The Thursday, February 1, 2024 Special Meeting of the Lake Orion Board of Zoning Appeals was called to order in the Lake Orion Village Hall Council Chambers located in the 21 East Church Street, Lake Orion, MI 48362 by Chairperson Bradley Mathisen at 6:30 PM followed by the Pledge of Allegiance.

2. Roll Call and Determination of Quorum

Attendee Name	Organization	Title	Status	Arrived
Brenton Bailo	Village of Lake Orion	Secretary	Present	
Mary Chayka-Crawford	Village of Lake Orion	Board Member	Excused	
Raymond Putz	Village of Lake Orion	Vice Chairperson	Present	
Henry Lorant	Village of Lake Orion	Board Member	Present	
Bradley Mathisen	Village of Lake Orion	Chairperson	Present	

Others present:

Gage Bielko, Planner

Mary Jo Pachla, Recording Secretary

3. Designation of Alternate, as necessary

None.

4. Approval of Agenda

1. **Motion to:** Approve the Board of Zoning Appeals Agenda of February 1, 2024 as presented

RESULT:	APPROVED AS PRESENTED [UNANIMOUS]
MOVER:	Henry Lorant, Board Member
SECONDER:	Brenton Bailo, Secretary
AYES:	Bailo, Lorant, Mathisen, Putz
EXCUSED:	Chayka-Crawford

5. Approval of Minutes

- A. Board of Zoning Appeals Regular Meeting Minutes – January 11, 2024

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brenton Bailo, Secretary
SECONDER:	Henry Lorant, Board Member
AYES:	Bailo, Lorant, Mathisen, Putz
EXCUSED:	Chayka-Crawford

RESOLVED: To approve the Thursday, January 11, 2024 regular meeting minutes of the Board of Zoning Appeals (BZA) as presented.

6. Public Comments on Non-Agenda Items Only

Let the record show no public comments were received.

7. Review of BZA Order of Procedure for Handling Appeals - Initial Consideration

Chairperson Mathisen reviewed the order of procedure for handling appeals. It was noted that there would not be a need for a public hearing for the action item as it had been held at the previous meeting.

8. Action Items

- A. Case: A-24-01 Petoskey Residence / 600 Longpointe Drive.

Presentation of Planner

Planner Gage Bielko re-reviewed McKenna’s review letter of January 2, 2024, regarding the request for variance, noting that there had been no change in the request or documents submitted for this meeting. He noted that the existing non-conforming home includes a garage that encroaches into the front setback. The applicant is proposing the construction of a new deck on top of the garage with a roof overhang supported by posts, requiring two variances. He explained that because the structure is existing nonconforming, it cannot be enlarged, both horizontally or vertically, and he stated that the existing setbacks are proposed to be increased vertically. He pointed out that the requested variance of 11.5 foot to the front setback and 1.5 foot to the side

were not proposed to increase horizontally as they are the same as existing, however they are proposed to go up vertically as the roof was to be supported by posts. He noted that at the previous meeting, several possible options were discussed; however, there were no changes made to the request for this meeting.

He reviewed the standards for consideration, noting that compliance with the ordinance would not prevent the construction of some sort of deck. He stated that while the variance would provide substantial justice to the applicant, it would not be in the interest of the abutting property owners or Village as a whole and would set a precedent for similar requests and create a greater building mass on the street. He pointed out that there are several uncovered decks that go above the garage. He commented that the request is not the minimum possible, as there might be other design solutions to provide some sort of covering. There is not a huge justification for making the structure more non-conforming when a smaller variance or no variance could allow for a similar use. And the self-creation of the need for a variance comes from the desire to build a cover over the whole deck.

He reiterated that McKenna's findings recommend the denial of the variance; however, it is recognized that there are many non-conforming structures along the lake. He stated that if the BZA chooses to grant the variance, it could suggest that the BZA discuss later in the meeting to recommend that the Planning Commission and Village Council take a look at the ordinance.

Applicant's Presentation

David Petoskey, 600 Longpointe, stated that he and his wife Cathy purchased the home in 2020, after coming out to Lake Orion for over 20 years. He pointed out that six houses away a 750 foot structure exists over a garage, and he commented that he is asking for a structure of 281.94 square feet. He stressed that he wants this structure for a place for family in the shade, and commented that his daughters love coming out to Lake Orion and his 85-year old father does not want to sit in the sun. He noted that he had included two letters of support from his neighbors and noted that a neighbor was in attendance tonight to show support.

Secretary Bailo asked about the neighboring structure that had been built and asked if a permit had been issued for it.

Mr. Bielko responded that different administrations had different interpretations of the ordinance and each request should be reviewed on a case-by-case basis. He noted that the other structure did not come before the BZA for a request. He stated that a permit

was issued and at the time it was decided that adding a gazebo would not create a non-conforming setback.

Mr. Petoskey stated that he looked into retractable awnings and umbrellas, and with the winds on the lake they would be only a temporary solution as other neighbors have lost umbrellas. He stressed that this would be a permanent structure to add value to the community. He mentioned that he did look into cantilevering the roof and was told by his architect that to retrofit it to an older home would be cost-prohibitive.

Mr. Lorant asked what kind of railings were proposed.

Mr. Petoskey responded that it would consist of light wire and posts and would be less maintenance. He noted that a heater and fan would be added to the space to make it more season-effective. He stated that the neighbors have noted that it would not be obstructive and pointed out that it is on the street side of the lake.

Chairperson Mathisen called for any public comment.

Ken Kutchek, 596 Longpointe, stated that he is the neighbor immediately to the north and is in support. He noted that what Mr. Petoskey is asking for is much less in scale than the structure down the street and would not block his view.

Matt Pfeiffer, 497 Bellevue, expressed his support, and stated that there is a lot of non-compliance on the lake. He noted that one neighbor was allowed to do this and it is hard to tell another they cannot. He commented that retractable awnings are not attractive, and he stated that he knows Mr. Petoskey and he will do it right.

Seeing no more public comment, Chairperson Mathisen closed it at 6:51 p.m.

Board Deliberation and Action

Secretary Bailo stated that he was struggling with his decision.

Mr. Lorant stated that his deck is non-compliant so he knows what Mr. Petoskey's situation is like. He noted that Ed Sabol would be doing the construction.

Vice Chairperson Putz expressed concern over denying a variance when a few houses down they were allowed to build.

Secretary Bailo commented that he liked the look of the design over the garage, and stated that he would probably be in favor of granting the variance.

Vice Chairperson Putz moved the motion included in the meeting packet to approve the variance. Mr. Lorant seconded the motion. The motion was adopted by a three-to-one vote.

RESULT:	ADOPTED 3-1
MOVER:	Raymond Putz, Vice Chairperson
SECONDER:	Henry Lorant, Board Member
AYES:	Bailo, Lorant, Putz
NAYES:	Mathisen
EXCUSED:	Bailo, Chayka-Crawford

In Case No. A-24-01. Parcel ID Number 09-02-351-019 more commonly known as **600 Longpointe**, located in the RL (Lake Single-Family Residential) District.

That the following variance be **approved** to construct a roof overhang on the southeast side of an existing dwelling.

1. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RL ZONING DISTRICT

Front (Street) Yard Setback: **25.0 feet minimum required**
13.5 feet existing/proposed (to southeast corner overhang)
11.5-foot variance requested

Side (North) Yard Setback: **5.0 feet minimum required**
3.5 feet existing/proposed (to northeast corner overhang)
1.5-foot variance requested

That said variances are approved based upon the following findings of fact as noted in the Board discussion and applicant’s presentation as follows:

- (1) There is a precedent of another covered deck on the street that was recently approved and constructed.
- (2) Approving the variances would provide substantial justice to the applicant.

This **approval** of the variances does not set a precedent for **approval** of similar requests from other property owners or applicants in the future.

This action is pursuant to:

- 1. Board of Zoning Appeals application consisting of seven (7) pages, including a letter of request from the applicant.

2. McKenna Review #1, dated January 2, 2024, consisting of (3) pages.
3. Construction Drawings for 600 Longpointe, AMK Designs, dated 11/27/23, consisting of two (2) pages.
4. Site Survey for 596 Longpointe, Kennedy Surveying P.C., dated 1/30/2020, Job No. 19-82242, consisting of one (1) page. NOTE: the survey submitted was not completed for the subject site but includes a reasonable amount of verifiable information for the purposes of review. The applicant has included hand sketches to supplement their construction documents.

9. Board Comments

After the conclusion of the above item, Vice Chairperson Putz expressed that he would be interested in making a change to the Ordinance, noting that on Page 36 under RL that the front setbacks are noted as 25 feet. He stated that he would like to investigate changing that to reference an Established Front Setback. He noted that this would be eliminating having three houses in a row and one becomes a problem.

Secretary Bailo stated that this would be a good idea, as he sees four or five houses at one distance, and a new construction has to be pushed back to be in compliance.

Mr. Lorant stated that he would include considering the setback to the lake, noting the Board has dealt with cases where the variation of seawall location became an issue.

Mr. Bielko suggested a motion be made to request that the Planning Commission investigate making changes to the ordinance as they discussed.

Chairperson Mathisen made the motion for this request and it was seconded by Mr. Lorant. The motion carried unanimously.

After the vote, it was confirmed that the Board would ask the Planning Commission to consider both the Front (Street) Setback and the Front (Lake) Setback.

Mr. Bielko suggested that a letter be prepared as to why the Board supported this motion that could be delivered to the Planning Commission. He noted that the next Planning Commission meeting was this coming Monday.

Motion to: Request that the Planning Commission investigate making a change to the code on page 36 of the manual regarding front setback to reference an Established Front Setback.

RESULT:	APPROVED AS PRESENTED [UNANIMOUS]
MOVER:	Bradley Mathisen, Chairperson
SECONDER:	Henry Lorant, Member
AYES:	Bailo, Lorant, Mathisen, Putz
EXCUSED:	Chayka-Crawford

10. Next Regularly Scheduled BZA Meeting

March 7, 2024, 6:30 p.m.

11. Adjournment

1. **Motion to:** Adjourn the Board of Zoning Appeals Meeting at 7:03 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Henry Lorant, Board Member
SECONDER:	Bradley Mathisen, Chairperson
AYES:	Lorant, Mathisen, Putz
EXCUSED:	Bailo, Chayka-Crawford

Dr. Brenton Bailo
Secretary

Mary Jo Pachla
Recording Secretary

Sonja Stout
Village Clerk

Date Approved: as presented May 2, 2024.



BOARD ACTION SUMMARY SHEET

MEETING DATE: May 2, 2024

TOPIC 136 Axford Dimensional Variance Request

BACKGROUND BRIEF:

The subject site is located within the Village of Lake Orion in the RV (Village Single Family Residential) Zoning District. The applicant proposes to place an above-ground pool in their fenced-in backyard. The pool will be adjacent to a newly constructed deck in the rear yard. The proposed project requires the following variances from the Zoning Ordinance:

1. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RV ZONING DISTRICT

Rear (East) Yard Setback: 25.0 feet minimum required
10 feet existing / proposed
15-foot variance requested

Lot Coverage 40% required
41.95% existing / proposed
1.95% variance requested

SUMMARY OF PREVIOUS BOARD ACTION:

None.

FINANCIAL IMPACT:

None.

RECOMMENDED MOTION:

Motion to [approve/deny] a variance of 15 feet from the required minimum rear setback for the installation of an above-ground pool at 136 Axford.

Motion to [approve/deny] a variance of 1.95 percent from the required maximum lot coverage for the installation of an above-ground pool at 136 Axford.

ATTACHMENTS:

- Design Proposal
- Calculations

Property Information
Project Narrative
Staked Survey
Cut Sheet
Variance Application
Variance Review Letter

Project Narrative

Variations Requested for Placement of Above Ground Pool

136 North Axford St., Lake Orion, MI 48362-3010 | 810.287.7917 | saovermyer@gmail.com

04/01/2024

Village of Lake Orion

Board of Zoning Appeals

21 E. Church Street
Lake Orion, MI 48362

I am requesting two variances to accommodate the placement of an above ground pool in my fenced in backyard.

The pool is an Intrex Ultra XTR 18' x 9' pool with a maximum water depth of 45". I would like to place the pool adjacent the recently installed deck in my backyard. Access to the pool would be via a ladder from my lower deck. I have provided a diagram to illustrate the placement.

Based on the stake survey of my property, I have calculated my lot size to be 5,768 sq.ft. and the depth of my backyard is only 28.55 ft.

The dimensional variances that I am requesting from the Section 12.02 requirements are:

- Reduce the setback requirement from the rear property line from 25 feet to 10 feet – a reduction of 15 feet.
- Increase the lot coverage allowance from 40% [2,258.78 sq.ft.] to 41.95% [2,419.78 sq.ft.] – an increase of 112.58 sq.ft.

I am doing this install myself, with assistance from my sister, who has done it before. We will be making sure that the ground is level and placing patio tiles under the side supports.

My intent is to complete the pool install by June.

Should you require any additional information please do not hesitate to contact me.

Respectfully,



Steven A. Overmyer

136 N AXFORD ST LAKE ORION, MI 48362-3010 (Property Address)

Section 7, Item A.

Parcel Number: OL-09-02-404-025

Property Owner: OVERMYER, STEVEN

Summary Information

> Property Tax information found

> 8 Building Department records found

Owner and Taxpayer Information

Owner	OVERMYER, STEVEN 136 N AXFORD ST LAKE ORION, MI 48362-3010	Taxpayer	SEE OWNER INFORMATION
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Legal Description

T4N, R10E, SEC 2 PAYNE AXFORD'S ADD PART OF LOT 4 BLK 10 DESC AS BEG AT PT DIST S 88-02-39 W 103 FT FROM SE LOT COR, TH S 88-02-39 W 92.32 FT, TH N 02-30-00 W 62 FT, TH N 88-02-40 E 93.58 FT, TH S 01-19-40 E 62 FT TO BEG 9-12-03 FR 005

Recalculate amounts using a different Payment Date

You can change your anticipated payment date in order to recalculate amounts due as of the specified date for this property.

Enter a Payment Date

3/30/2024

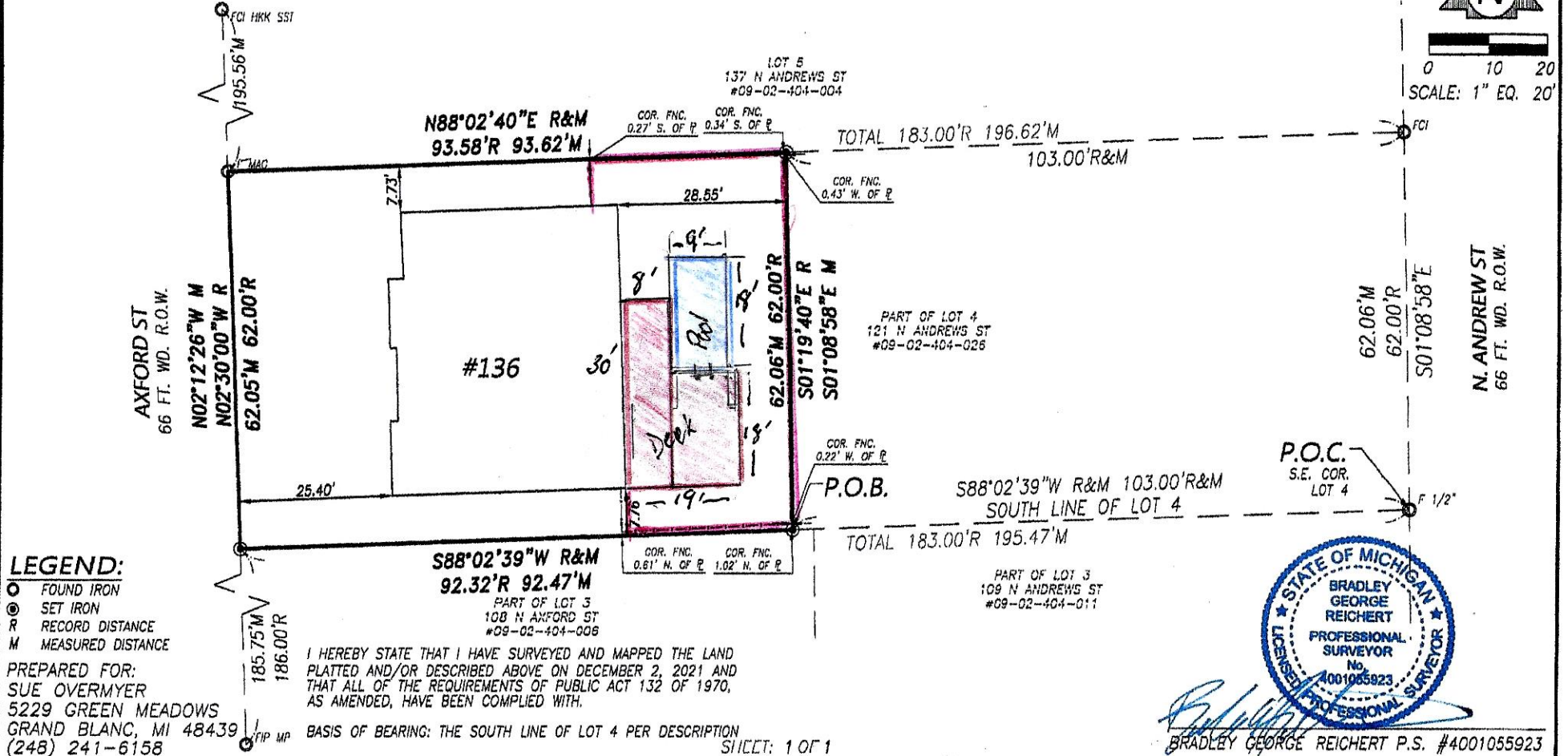
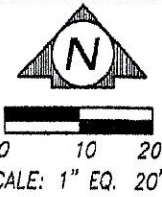
Recalculate

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Pool 9'x18'
 Deck
 6' Fence

CERTIFICATE OF SURVEY



LEGEND:
 ○ FOUND IRON
 ● SET IRON
 R RECORD DISTANCE
 M MEASURED DISTANCE

PREPARED FOR:
 SUE OVERMYER
 5229 GREEN MEADOWS
 GRAND BLANC, MI 48439
 (248) 241-6158

I HEREBY STATE THAT I HAVE SURVEYED AND MAPPED THE LAND PLATTED AND/OR DESCRIBED ABOVE ON DECEMBER 2, 2021 AND THAT ALL OF THE REQUIREMENTS OF PUBLIC ACT 132 OF 1970, AS AMENDED, HAVE BEEN COMPLIED WITH.

BASIS OF BEARING: THE SOUTH LINE OF LOT 4 PER DESCRIPTION
 SHEET: 1 OF 1



BRADLEY GEORGE REICHERT P.S. #4001055923

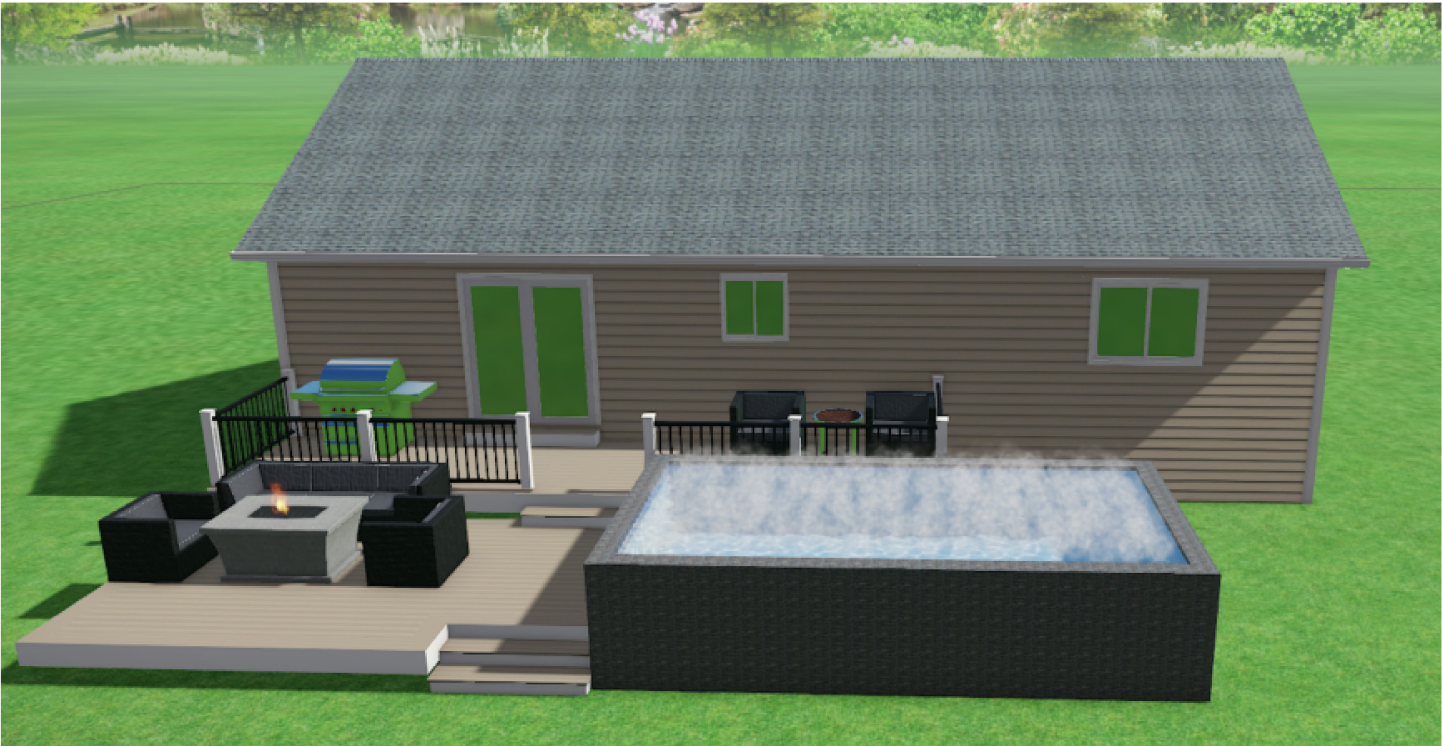
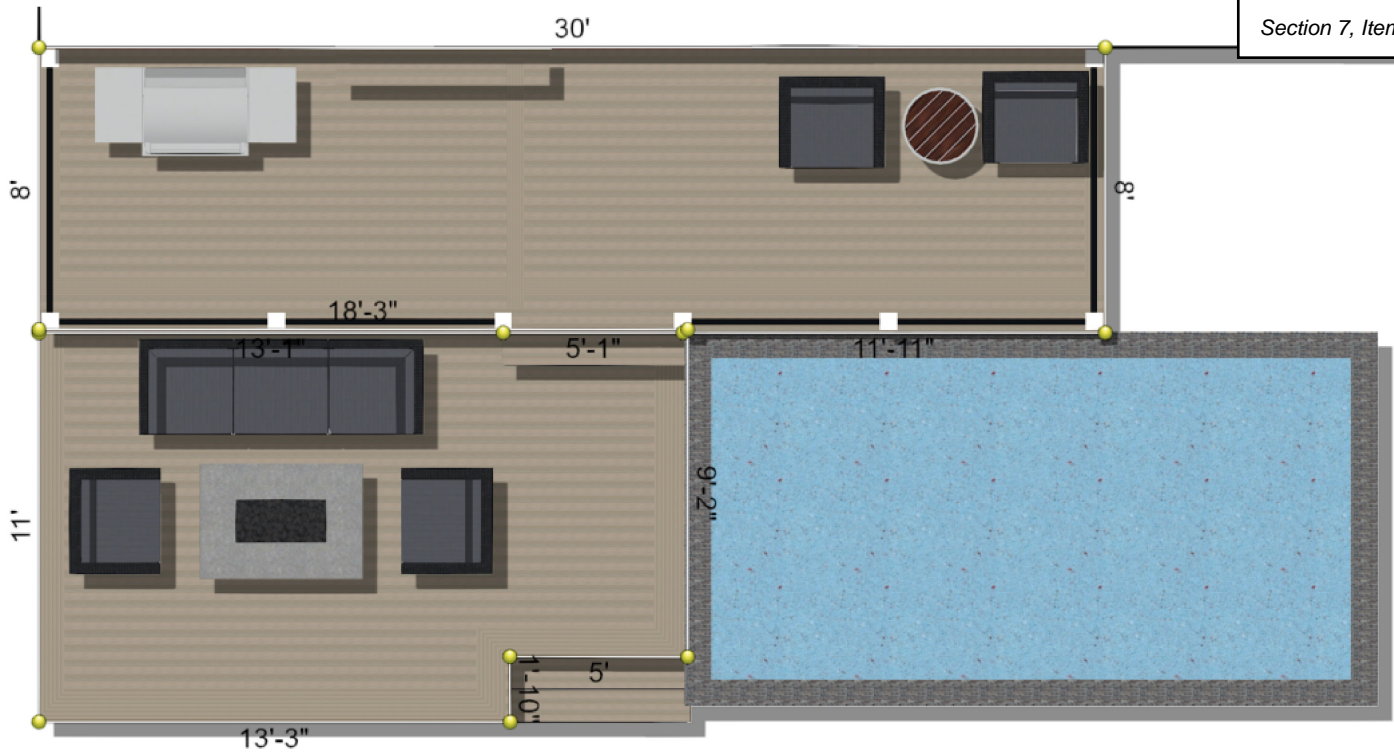
Scale: 1"=20'
 Date: 12/14/21
 Job No. 21-162
 Drawn: B.G.R.



P 248.651.0592 F 248.656.7099
 Mail@ReichertSurveying.com
 140 Flumerfelt Lane - Rochester, MI 48306

LEGAL DESCRIPTION: PART OF LOT 4, BLOCK 10 OF "PAYNE AXFORD'S ADDITION" AS RECORDED IN L.4 OF PLATS, P.21 OF O.C.R., DESCRIBED AS: BEGINNING AT THE S.E. COR. OF LOT 4; THENCE ALONG THE S. LINE OF SAID LOT 4, S.88°02'39"W., 103.00 FT. TO THE POINT OF BEGINNING; THENCE CONTINUING S.88°02'30"W., 92.32 FT.; N.02°30'00"W., 62 FT.; THENCE N.88°02'40"E., 93.58 FT.; S.01°19'40"W., 62 FT. TO THE POINT OF BEGINNING. DEED RECORDED IN L.56390, P.30, O.C.R.

Date:	Rev. By:



Material costs are updated each Monday. Above proposal is only valid until the upcoming Monday. It's the signing of this proposal that secures your spot on our schedule, and locks in the current costs.

© Custom Deck Creations, LLC. Please do not share with others.

Ordinance Variance Requests for placement of Above Ground Pool at 136 N. Axfo

Section 7, Item A.

Address: **136 N. Axford**

Parcel ID: **09-02-404-025**

Need to request lot coverage variance to accommodate above ground pool.

					Total Sq. Ft.	Lot %	Accum %
Lot Dimensions	north	south	west [front]	east [back]			
feet	93.5800	92.3200	62.0500	62.0600			
avg		92.9500		62.0550			
size in ft ²					5,768.01		

Distance from Property Line to House 7.7300 7.7600 25.4000 28.5500

House Dimensions	46.5650	39.0000				
size in ft ²					1,816.04	31.48%

New Deck Dimensions						
upper in feet	8.0000	30.0000				
size in ft ²			240.0000			
lower in feet	11.0000	18.3400				
size in ft ²			201.7400		441.74	7.66% 39.14%

Above Ground Pool						
feet	9.0000	18.0000				
size in ft ²			162.0000		162.00	2.81% 41.95%
Exceeds Lot % by					112.57	1.95%

Need to request setback variance to accommodate above ground pool.

The pool placement adjacent deck in the backyard needs allowance for a 10' setback from rear property line - resulting in a 15' reduction from the 25' setback requirement.



Village of Lake Orion

21 E. Church Street
Lake Orion, Michigan 48362
Tel 248.693.8391
Fax 248.693.5874
www.lakeorion.org

BOARD OF ZONING APPEALS – APPLICATION FOR VARIANCE OR REVIEW

PROPERTY INFORMATION

Site Address: 136 North Axford St., Lake Orion, MI 48362-3010 Parcel ID #: 09 02 404 205

Parcel Size (Sq.Ft.): 5,768 sq. ft. Zoning District: RV - Village Single Family

Has the property previously been approved for a variance(s)? Yes / No (If yes, indicate date: none under current ownership)

OWNER INFORMATION

Property Owner Name: Steven A, Overmyer Address: 136 North Axford St., Lake Orion, MI 48362-3010

Property Owner Phone #: 810.287.7917 E-Mail: saovermyer@gmail.com

APPLICANT INFORMATION (If applicant is NOT property owner)

Applicant Name: _____ Address: _____

Applicant Phone #: _____ E-Mail: _____

Applicant is: (i.e. contractor or business owner or architect, etc.) _____

TYPE OF VARIANCE AND/OR REVIEW REQUESTED

Please check one. A request for multiple types of reviews may require a separate form.

Appeal of Administrative Order Interpretation of Map Interpretation of Section # _____

Dimensional Variance (required setback, height, lot coverage, lot width, lot size, etc.)

Use Variance (specify intended use): _____

Variance from Zoning Ordinance Requirement - Section # _____

Other (please specify): _____

DIMENSIONAL VARIANCE – REQUESTED DEVIATION FROM REQUIREMENTS

Please complete the table below for each deviation from the dimensional requirements which you are requesting.

Section #	Type of Dimensional Requirement	Existing Distance	Required Distance	Proposed Distance	Variance (=Required – Proposed)
Example: Table 12.02	Front Setback	28 Feet	25 Feet	20 Feet	5 Feet
Section 12.02	Rear Setback		25 ft.	10 ft.	15 ft.
Section 12.02	Lot Coverage [40%]	2,258.78 sq.ft.	2,307.2 sq.ft.	2,419.78 sq.ft.	112.58 sq.ft. [1.95%]

Please only fill out the section for the type of variance or review you are requesting.

**DIMENSIONAL VARIANCES AND VARIANCES FROM ZONING ORDINANCE REQUIREMENTS -
EXPLANATION OF PRACTICAL DIFFICULTIES**

Dimensional Variances, which are deviations from the dimensional zoning requirements, i.e. height, bulk, setback, and variances from other zoning ordinance requirements, such as the amount of investment in a non-conforming property, may only be granted by the Board of Zoning Appeals upon finding that a practical difficulty exists. All of the following conditions must be determined to apply to your case in order to determine that a true practical difficulty exists. (*Attach additional sheets if necessary.*)

Please explain how: Strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.

The existing lot is relatively small with the back of the house only 28.55' from the rear property line. The portion of the existing deck that would be adjacent the placement of the proposed above ground pool extends 8' from the rear of the house. The pool would extend an additional 9' plus an additional 1' for supports and ease of placement, leaving only 10.55' of setback from the rear property line. The pool size of 162 sq.ft. also would result in exceeding lot coverage by 112.57 sq.ft. [1.95%].

Please explain how: Granting the variance will provide substantial justice to the applicant, as well as other property owners.

The requested variances would allow the owner to utilize the 9' X 18' above ground pool that was gifted to him for recreational and theraputic purposes.

Please explain how: The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.

The requested variances would permit the owner to install the pool for recreational and theraputic purposes. The entire back yard is surrounded by a 6' high wooden fence for privacy and safety. This should not create any disturbance or adverse concerns for surrounding neighbors.

Please explain how: The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.

Please explain how: The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, and not by the applicant or applicant's predecessors; it is not self-created.

In general, the lots in the established neighborhood tend to be small which creates a constraint on the ability to adhere to the dimensional requirements.

Please explain how: Granting the variance will not impair the public health, safety, comfort, or welfare of the inhabitants of Lake Orion.

The entire back yard is surrounded by a 6' high wooden fence for privacy and safety. This should not create any disturbance or adverse concerns for surrounding neighbors.

USE VARIANCES – EXPLANATION OF UNNECESSARY HARDSHIP

A Use Variance is a variance that permits the use of a property that is otherwise not permitted in a zoning district. The Board of Zoning Appeals may grant a requested use variance only upon finding that an unnecessary hardship exists. Explain below how the requirements in Article 19, Section 19.04 D. 2. Use Variance Review Standard of Zoning Ordinance pertains to your site. *(Attach additional sheets if necessary.)*

APPEALS OF ADMINISTRATIVE ORDERS, INTERPRETATIONS OF MAP OR ZONING ORDINANCE SECTIONS

Per Section 19.04(B), when an applicant believes they have been aggrieved by a decision of the Zoning Administrator, they may appeal the decision to the Board of Zoning Appeals. Per Section 19.04(C), the Board of Zoning Appeals has the authority to hear and decide requests for interpretation of the Zoning Ordinance, including the Zoning Map. In the area below, please state the Section relevant to your appeal or interpretation request. Please state any facts or conditions relevant to your application. *(Attach additional sheets if necessary.)*

ADDITIONAL INFORMATION AND REQUIREMENTS

Section 19.04(F) identifies all information required for a complete application.


Please place your initials below next to all items included in your application.

If you believe the information is not relevant please place 'N/A' for not applicable next to the item.

- SAO 1) A completed application signed by the property owner.
- SAO 2) Proof of ownership.
- _____ 3) Property owner authorization for an applicant to act on their behalf.
- SAO 4) Project Narrative – *A letter to the BZA explaining the variance or review request.*
- SAO 5) Land Survey – *A survey prepared by a professional surveyor.*
- SAO 6) Site Plan – *A set of plans to scale which include all property lines with dimensions, setbacks, existing and proposed structures.*
- _____ 7) Architectural plans and elevations – *A set of drawings illustrating the details of any proposed structures.*
- SAO 8) PDF files - *A digital PDF version of all documents must be provided either via media source (CD, DVD, USB drive) or email to the Zoning Coordinator.*
- _____ 9) Payment of fees.

By signing below you acknowledge all of the following:

- The undersigned acknowledges that they have read Section 19.04 of the Village of Lake Orion Zoning Ordinance, has received and read the instructions and understands the application process.
- The undersigned acknowledges that in their opinion they believe the additional information included with this application meets the submittal requirements for a variance or review application and accept all responsibility for any lack of required information.
- The undersigned acknowledges that any lack of information which may result in a delay of the review process is the sole responsibility of the applicant.
- The undersigned deposes that the forgoing statements and answers and accompanying information are true and correct.
- The undersigned hereby authorizes Village representatives to enter the subject property in connection with this application.

Signature of Property Owner: 

Date: 3/31/24

Signature of Applicant: 

Date: 3/31/24

MCKENNA

April 25, 2024

Board of Zoning Appeals
Village of Lake Orion
21 E. Church Street
Lake Orion, MI 48362-3274

Subject: A-24-02 136 Axford; Variance Review #1
Parcel #: 09-02-404-025

Dear Board Members:

We have reviewed the above-referenced variance application submitted by Steve Overmyer to install an above-ground pool within their fenced-in backyard. The residence is located on the east side of N Axford Street and is zoned RV (Village Single Family Residential). The subject site has an existing single-story dwelling with an attached single-story, two-car garage.

REQUEST

The proposal requires the following two (2) variances from the Zoning Ordinance:

1. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RV ZONING DISTRICT

- | | | |
|--------------------------|---|-----------------------------------|
| Rear (East) Yard Setback | - | 25.00 feet minimum required |
| | - | <u>10.00 feet proposed</u> |
| | - | <i>15-foot variance requested</i> |

2. ARTICLE 12, SCHEDULE OF REGULATIONS, SECTION 12.02 TABLE – RV ZONING DISTRICT

- | | | |
|--------------|---|---------------------------------|
| Lot Coverage | - | 40% required |
| | - | <u>41.95% proposed</u> |
| | - | <i>1.95% variance requested</i> |

COMMENTS

Per Section 19.04.D.1 of the Village's Zoning Ordinance and the *Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended*, the Board must, prior to acting on a proposed variance, consider and make findings regarding several factors. The Board may grant a dimensional (or non-use) variance upon a finding that practical difficulties exist. To meet the test of practical difficulty, the applicant must demonstrate compliance with ALL of the following:

- (a) **Compliance with Ordinance standards prevents use of property or is unnecessarily burdensome.**
The minimum required lot size for parcels in the RV district is 7,200 square feet and the required lot width is 60 feet. With an area of approximately 5,768 sq. ft and a lot width of 62 feet, the subject site is nonconforming with respect to the minimum required lot area for the district. The subject parcel was likely the result of a previous split of a lot which had complied with previous Village zoning standards.

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The parcel is currently occupied by a one-story dwelling with an attached single-story, two-car garage. The existing dwelling conforms with front and rear setbacks but is nonconforming with side setbacks; we have no evidence of approved variances to the side setbacks. The recently constructed deck, a detached accessory structure, is conforming with respect to all setbacks and lot coverage.

We do not find the Zoning Ordinance standards to be unnecessarily burdensome in this case as *in-ground* pools are allowed to encroach within the required rear setback and overall lot coverage could be brought into compliance by shrinking the deck by approximately 112 square feet. These alternatives would allow the applicant to maintain compliance with the Zoning Ordinance. Increased cost for in-ground pool is not a legitimate burden preventing use of the property for a permitted purpose.

- (b) **The variance will provide substantial justice to applicant as well as property owners.**
Approval of the variance would provide substantial justice to the applicant, as a pool is a permitted accessory structure for single-family homes; however, we note again that an in-ground pool and smaller deck could meet the standards of the Ordinance. It would not provide justice to neighbors to approve a variance at the subject property where a variance for the same may be reasonably denied at another time on a similar property; if the circumstances are shared among nearby property owners, an amendment to the Ordinance is more appropriate, and this responsibility must fall within the purview of the Planning Commission and Village Council.
- (c) **Variance requested is minimum possible.**
The variances requested for the subject property are not the minimum possible, as mentioned under Item (a), lot coverage can be brought into compliance with a smaller deck, while an *in-ground* pool could achieve compliance with setback requirements.
- (d) **Need for variance(s) is due to unique circumstances peculiar to the property.**
The size and shape of the lot, though nonconforming, are not unique when compared to adjacent properties within the district. Although the arrangement of structures on the lot inherently prevents an above-ground pool, current regulations for swimming pools have been in place since at least 2006 and the existing home was constructed in 2008/2009. Thus, the circumstances surrounding the request are not unique to the property, but indicate a self-created need for a variance.
- (e) **Problem necessitating variance is not self-created.**
The variance is entirely self-created; case law tells us that a self-created variance includes the actions of the current property owner and the actions of all previous owners. The Applicant took affirmative action to construct a deck on their property, which, at minimum, necessitates a variance for lot coverage for an above-ground pool. The lot split that rendered the shallow lot depth was an affirmative action by a previous owner – which appears to have been common in this neighborhood – creating the need for a variance for an above-ground pool regarding the rear yard setback.

RECOMMENDATION AND FINDINGS

Subject to any additional information presented and discussed by the applicant, Board, and/or the public during the public hearing and incorporated into the record prior to any findings being made, we recommend that the Board of Zoning Appeals deny the requested variances for the property located at 136 Axford Street, based on the following findings of fact:

- (1) Compliance with the ordinance standards would not be unnecessarily burdensome or prevent the use of the property for a pool, provided it is an *in-ground* pool, which, though more expensive, would be a reasonable alternative.
- (2) Substantial justice would be provided to the applicant but would not be afforded to the neighborhood, where similar lots and circumstances exist.
- (3) The variances requested are not the minimum possible, as compliance with these standards could be achieved through an alternative design.
- (4) The property, though nonconforming, does not present unique circumstances compared to other properties in this neighborhood or district.
- (5) The need for the variances is entirely self-created.

The Board, after issuing denial of the variances, may provide direction to the applicant to initiate a text amendment to the Zoning Ordinance. Current regulations are broadly applicable to all residential lots and substantial justice could be done by amending the Ordinance to include setback standards for swimming pools within smaller, nonconforming lots.

Should you have any questions, please reach out to me.

Respectfully,

McKENNA


 Gage Belko, AICP
 Associate Planner


 Ashley E. Amey
 Assistant Planner

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