



**CITY OF WALLED LAKE  
ZONING BOARD OF APPEALS  
MONDAY, JUNE 29, 2020**

The Meeting was called to order at 7:30 p.m.

**ROLL CALL:** Arnold, Gunther, Hecht, O'Rourke, Rundell

**ABSENT:** Easter

**OTHERS PRESENT:** Consultant Building Official Wright, City Attorney Vanerian,  
Recording Secretary Stuart

**REQUESTS FOR AGENDA CHANGES:** None

Board Member Gunther requested to move New Business item #1 to be discussed before Unfinished Business item #1 since the item directly pertains to it.

**ZBA 06-01-20 TO DISCUSS NEW BUSINESS ITEM #1 PRIOR TO UNFINISHED BUSINESS SINCE THE ITEM DIRECTLY PERTAINS TO IT**

Motion by Gunther, seconded by Rundell: CARRIED: To discuss new business item #1 prior to unfinished business since the item directly pertains to it.

**APPROVAL OF MINUTES:**

**ZBA 06-02-20 APPROVAL OF THE MAY 18, 2020 ZONING BOARD OF APPEALS MEETING MINUTES**

Motion by O'Rourke, seconded Rundell: CARRIED: To approve the May 18, 2020 Zoning Board of Appeals meeting minutes.

**COMMUNICATION:** None

**UNFINISHED BUSINESS:**

*Discussed after New Business item number 1.*

1. Case: 2020-03  
Applicant: Ben Berry  
Location: 821 E. Walled Lake Drive  
Request: Non-Use Variance

**NEW BUSINESS:**

*Discussed first on agenda prior to Unfinished Business #1.*

**1. Public Hearing**

*Open Public Hearing 7:37 p.m.*

Public Hearing

Case: 2020-04  
Applicant: Kelly Tome  
Location: 821 E Walled Lake Drive  
Request: Interpretation of single-family front yard setback

This matter relates to an interpretation of the front yard setback requirement applicable to property located at the above referenced location. The applicant is requesting an interpretation of the single-family front yard setback requirements under sections 17.01 and 17.02, subsections (a) and (o), of the zoning ordinance as applied to the above referenced single family property at the above referenced location. The plan for an addition to the single-family structure at the above location proposes a front yard setback of 73 ft. from the center of E. Walled Lake Dr. The applicant claims a proper interpretation of the front yard setback requires alignment with the existing front yard setbacks of neighboring properties.

Applicant Kelly Tome thanked the board for hearing her request. Ms. Tome opined the design of Mr. Berry's home blocks her view and she wants to keep the existing sight line. Ms. Tome said the homes on Walled Lake Drive should all have the same setback, so each owner has the same view. Ms. Tome said both newly renovated homes on each side of the applicant's site have abided and not come out passed any homes. She said homes should all follow the required setback law so no homeowner can block another homeowner's beautiful view of the lake. She opined she will not be able to sit outside and watch the amazing sunsets, this new home's position will also make her home feel closed in and shadowed. She said Mr. Berry is her neighbor and his remodeling will bring great value to the city and make the street even more beautiful. Ms. Tome asked the board to keep the zoning front yard setback the same as it has been so each homeowner has the same stunning views.

**AUDIENCE PARTICIPATION:**

Mike Kernan, 817 E Walled Lake Drive – said when he built his home in 2004 he followed all the sight line rules and his neighbor to the north recently had a new build and it is further out than it should be blocking the view. Mr. Kernan said now when he looks out his kitchen he sees walls not the lake and he does not want that to happen to another neighbor. He said he did not build a house in a subdivision he built his house along the lake to look at the lake and sunsets. Mr. Kernan said he spends a lot of money in taxes and had spent a lot of money to build his

home he does not wish to take this any further, but he has spoken with real estate attorney's. Mr. Kernan said he and his neighbor Ms. Tome are prepared to fight tooth and nail to prevent the building forward of the home. Mr. Kernan opined there is room to design to go up or back.

Ben Berry, 821 E Walled Lake Drive – said from Mr. Kernan's and Ms. Tome's point of view is not realistic. Mr. Berry said both Mr. Kernan and Ms. Tome have very large trees and landscaping surrounding their properties, his home will not be in their purview. Mr. Berry said 813 E Walled Lake was built just the same and no views are obstructed.

Board Member Gunther opined he believes the way the ordinance is written it can be misinterpreted and city planning consultants McKenna and Associates, have misinterpreted it.

Vice Chairman Hecht said the ERPB is the establish residential build of that specific neighborhood. Mr. Hecht said the two scenarios laid out in McKenna letter dated June 11, 2020 discusses two scenarios.

Mr. Gunther suggested the McKenna memo interpreting the ordinance is wrong.

Vice Chairman Hecht expressed his interpretation the same as Mr. Gunther, the ERPB is established in the neighborhood and there was potentially a mistake made at the recent new build at 813 E Walled Lake. Mr. Hecht said the ordinance is confusing especially where it reads the lesser of the two and it should be reviewed and clarified to maintain the beautiful street the city does have.

Board Member Arnold said the ordinance as written to him should be easily interpreted. He said someone spent time, money and resources investigating the ordinances is acting in good faith on how this ordinance is written.

Board Member Gunther said if one follows the interpretation that McKenna Associates wrote, it will look all different.

Commissioner Hecht said he agrees with Mr. Gunther, the interpretation and the precedent has already been set by the ERBP in this neighborhood.

Building Official Wright reviewed item "o" if section 17.02 with the board, should be based on established residential building pattern (ERBP) or the minimum set back required in the schedule of regulations, or whichever is less. Mr. Wright said going back to 2002, McKenna was asked to amend the ordinance as written because of a situation with a home that had burnt down and they wanted to rebuild it but they could not because they could not meet the 30 foot setback. The Commission at the time wrote this ordinance with the ERBP or whichever is less. Mr. Wright explained in that situation those houses were 25 feet towards the front. Mr. Wright explained the current applicant would not be able to make the 30-foot requirement. The ordinance is written so he would have the ability to go with the ERBP. Mr. Wright said it is important to note that if the decision is made to interpret that the ERBP is the precedent, then we really would not have a need for front yard setback requirements. Mr. Wright said on Walled Lake Drive there is a 45-foot setback from the middle of the road plus an additional 30 feet. He said there are only two

streets that require this, and Walled Lake Drive is one of them. Mr. Wright said the ordinance states, or whichever is less and did not understand how there is a misinterpretation of this. You either have the ERBP or the schedule of regulations whichever is less.

Board Member Gunther said unless the setback interpretation considers the ERBP the zero line.

Building Official Wright explained, even if that is the case, you still have the setback requirement on the ordinance that is the 30 foot from the 45-foot mark, whichever is less.

Board Member Gunther said that would be 30-feet more than the zero line.

Building Official Wright said he reviewed prior builds trying to find other properties that had to meet the established residential building pattern and did not find anything in any of the properties. Mr. Wright explained as an example, Mr. Easter's home, the house originally sat back more than 100 feet back and there was a 20-foot addition to the home. Mr. Wright said there was nothing in the files that had any notes about the setback being an issue. Mr. Wright said this, ERBP could have been an agreement within the neighborhood.

Vice Chairman Hecht expressed his view that the 30 ft setback would be for newly built residential areas. He said if there are existing homes, then here is an established residential building pattern along that street. He said the zoning board grants applicant's the ability to build with variances. He said in most cases along E. Walled Lake Drive you can build towards the back of the lot. He said there is no hardship here. He said then the setback from the front would be for nonresidential site lines in a neighborhood.

Board Member Arnold said it is interesting to him the board is even reviewing this. He said it is a good point brought up about the established neighborhood. Member Arnold said he would argue based on how ordinance is written, it should not be before the Zoning Board of Appeals.

City Attorney Vanerian explained the ZBA board does have interpretive powers someone can ask the ZBA to offer an interpretation of ordinance however most common requests are for variances. He explained the ZBA is not often called upon to exercise this interpretive power, but they can. He explained questioning of the administrative review concerning 821 E Walled Lake was brought before the ZBA at the last meeting. Attorney Vanerian said the interpretive decision should be made in the spirit and intent of the zoning ordinance as presented. He explained text interpretations shall be limited to the issues presented and shall be based upon a reading of the zoning ordinance as a whole and shall not have the effect of marring the zoning ordinance. Prior to deciding a request for an interpretation, the ZBA may obtain recommendation and opinions from staff and consultants to determine the basic purpose of the provision to interpretation and consequences which may result from differing decisions. He said under the judicial rules of construction and interpretations, unambiguous provisions and statutes an ordinance are interpreted as written according to the plain and unambiguous statute in the ordinance. He said he reviewed the ordinance in question. He said he recommends the ZBA interpret the set back requirement according to the express and unambiguous provisions of the ordinance itself, as it is stated. He said Building Official Wright previously read the section in question which says the minimum front set back should be based on the established residential

building pattern or the minimum set back specified in the schedule of regulations which would be 30 feet or whichever is less. Attorney Vanerian said he recommends the ZBA interpret the ordinance as written.

Member O'Rourke said he believes the board needs to look at this further and made a motion to approve reviewing the interpretation of the single-family front yard set back requirements.

Vice Chairman Hecht asked if the board could make a motion to clarify as to what the board interprets the ordinance as.

City Attorney Vanerian said the board can do that prior to deciding, make a request for interpretation. He said the ZBA can take recommendations from staff and consultants to determine the basic purpose of the provision subject to interpretation and consequences which may result from differing decisions.

**ZBA 06-03-20 TO TABLE ZBA CASE 2020-04, KELLY TOME APPEAL TO REVIEW SETBACK INTERPRETATION**

Motion by O'Rourke, seconded by Gunther: To table case 2020-04, Kelly Tome to review setback interpretation.

Roll Call Vote

Ayes (5)	Hecht, Rundell, O'Rourke, Arnold, Gunther
Nays (0)	
Absent (1)	Easter
Abstention (0)	

UNFINISHED BUSINESS: Item #1

1. Case: 2020-03  
Applicant: Ben Berry  
Location: 821 E. Walled Lake Drive  
Request: Non-Use Variance

This matter relates to property located at the above referenced location. The applicant is requesting variance from Article 17.02 (m) Impervious Surface in Single Family Districts which is a maximum of 35%. Applicant's plan proposes lot coverage of 48.2%.

Vice Chairman Hecht asked City Attorney Vanerian for clarification if motion were to approve the impervious surface variance does that have any effect on the setback.

City Attorney Vanerian explained the variance would be only for impervious surface and any other condition made by the board if applicable.

Board Member Gunther said no body on the board has an issue with a beautiful new home in the neighborhood or impervious surface but would like to discuss an approval contingent upon the home being built by the Established Residential Building Pattern (ERBP) not the setback of 30 feet.

Applicant Mr. Berry expressed he would like to move forward as much as possible.

City Attorney Vanerian explained to the board members they possibly could attach a condition to the impervious surface variance to also include home to be placed in alignment with the other houses on the street however this condition could be legally challenged.

Board Member Rundell asked Building Official Wright if applicant still has to go through plan review process when variances are granted.

Building Official Wright said if applicant chose to move ahead with plan review, with the possibility that the interpretation is not in his favor there would be additional costs to Mr. Berry. Mr. Wright said City Attorney Vanerian mentioned adding a condition of meeting the ERBP. Mr. Wright suggested making the condition based on the interpretation of the ordinance rather than the ERBP.

Board Member Gunther said the board has made conditions on variances in the past and Mr. Berry could be provided that option tonight. He opined the board could approve the impervious surface variance request provided Mr. Berry follows the ERBP.

Vice Chairman Hecht said he does not hear much support of approving the variance request without clarification on the outstanding setback interpretation issues. He opined postponing the case is the right route.

Member O'Rourke agreed.

Board Member Rundell said he did not think it was appropriate to do anything beyond or make any contingency based on the ERBP in the approval or denial of the impervious surface variance request that is before the board tonight.

Applicant Mr. Berry said he is not ruining the neighborhood; he is adding value to each home on either side of him. He said the home is not going to be an eye sore, it is going to be beautiful, his home will not restrict the neighbor's views as they think.

Vice Chairman Hecht said if the board approves the impervious surface; would the site plan then be approved as well or would Mr. Berry have to wait until the front yard setback ordinance is addressed.

Attorney Vanerian said all the ZBA would be approving this evening would be the impervious surface request. He said whatever other requirements the board places, those contingencies would also have to be satisfied. Attorney Vanerian said the board could possibly place a condition to the variance that if the board decided to grant the impervious surface variance, that

the approval be contingent upon the determination of the applicable front yard setback requirement which has yet to be determined. City Attorney Vanerian said board could also postpone the decision on the impervious surface variance request until the setback interpretation issue is resolved.

Mr. Berry said if this is the case, he would get more support from the neighborhood for his design plan. He said without looking at the architectural plans surroundings neighbors are immediately resistant to it but opined there is general support for him to build. Mr. Berry said he is not ruining the neighborhood; he is adding value to each house on either side it is not an eye sore nor 60 feet out. Mr. Berry said it is going to be beautiful it is not going to restrict his neighbor's views in the way they are thinking.

Board Member Gunther said he wanted to move forward.

Mr. Berry said he has spent a lot of time and money on his project already.

Board Member Rundell asked if Mr. Berry's architect investigate the city ordinances before doing anything.

Mr. Berry said yes, he met with Building Official Wright and had correspondence back and forth and came to conclusion he was within his rights to design the home this way. Mr. Berry said he is not even the furthest out he could go under the ordinances. Mr. Berry said to move back is not possible, the way the home is constructed it would have to be gutted and that is not fiscally feasible.

Building Official Wright explained under the ordinance, based on his interpretation and his associates and also based on the 2002 writing of the ordinance, which McKenna also wrote, they are confident in their interpretations of how the ordinance operates and Mr. Berry was informed on how the ordinance is applied and was applied in other cases in the past.

Board Member Rundell said he has lived in Walled Lake for 54 years, in the subdivision off the lake watching the corner of Welfare and Walled Lake Drive develop. Mr. Member Rundell said several homes were built and rebuilt and they all kept in line. Mr. Rundell said the one that bothers him the most is the one recently built, this home is 9 feet closer to the road and asked why they had not been required to run with the ERBP. Mr. Rundell said his architectural background makes him feel the homes need to stay with the ERBP and need to keep that line clean.

Vice Chairman Hecht said he understands from the board is there is not much support of approving the impervious surface variance.

Mr. Berry said he is reviewing his options and asked if he had support from neighbors would that assist him in his approvals from the ZBA.

Vice Chairman Hecht said he lives down the street from applicant, he knows a lot of the homes surrounding applicant are not in support of this project as is but may be with modifications.

Board Member Gunther said the interpretation of the ordinance setback is not in the spirit if the ERBP.

Mr. Berry explained if modifying home design to meet the ERBP it would change the entire site plan; the variance would change as well and then it would not be an accurate variance request.

**ZBA 06-04-20 TO TABLE CASE 2020-03 UNTIL FURTHER RESOLVE IS MADE ON INTERPRETATION OF ORDINANCE**

Motion by Gunther, seconded by O'Rourke: CARRIED: To table case 2020-03 until further resolve is made on interpretation.

Roll Call Vote

Ayes (5)	Rundell, O'Rourke, Arnold, Gunther, Hecht
Nays (0)	
Absent (1)	Easter
Abstention (0)	

**2. Public Hearing**

*Open Public Hearing 7:48 p.m.*

Public Hearing

Case:	2020-05
Applicant:	Kevin Diaz
Location:	135 Glenwood Drive
Request:	Non-Use Variance

This matter relates to property located at the above referenced location. The applicant is requesting variance from Article 17.02 (m) Impervious Surface in Single Family Districts which is a maximum of 35%. Applicant's plan proposes lot coverage of 41%.

Mr. Diaz explained he is seeking variance on impervious surface. He explained he desires to remove deck and brick pavers and place with concrete. He said the deck is 25 years old and nonfunctional the boards are warped cannot place table and chairs. The brick pavers, the ground has shifted, and causing tripping hazards. We have elderly parents, and 2 yr. old grandson and the brick pavers are a tripping hazard. He said this will allow them to have a large area to enjoy and outdoor furniture to entertain.

Member Rundell said he was curious how much more concrete is planning to be removed.

Mr. Diaz said in addition to brick pavers and deck, there might be an additional 70 square feet to edge of deck of pool. 70 to 80 square feet additional to removing the deck and pavers.

Member Rundell said basically right now you are over the minimum right now.

Applicant Diaz said yes, the deck was placed 25 years ago.

Member Rundell said it is such a minimal change he did not see a problem.

Board Member Arnold asked if the pavers were a trip hazard because of need for repair or could they be placed with new pavers.

Applicant Mr. Diaz said there is one area he could replace but where it meets top concrete it has risen to the pool areas. He said he is trying to create less maintenance as well.

Member Rundell said it is impossible to replace a few brick pavers, you have to pull them all. It becomes a mess to replace just a few.

Vice Chairman Hecht asked if there was public comment

Recording Secretary Stuart said no.

**ZBA 06-05-20 MOTION TO APPROVE NON-USE VARIANCE REQUEST FROM ARTICLE 17.02(M) IMPERVIOUS SURFACE IN SINGLE FAMILY DISTRICTS WHICH ALLOW A MAXIMUM OF 35% IMPERVIOUS SURFACE AND ALLOW APPLICANT 41%**

Motion by Gunther, seconded by O'Rourke, CARRIED: To approve non-use variance request from Article 17.02(m) impervious surface in single family districts which allow a maximum of 35% impervious surface and allow applicant 41%.

Roll Call Vote

Ayes (5)	O'Rourke, Arnold, Gunther, Hecht, Rundell
Nays (0)	
Absent (1)	Easter
Abstention (0)	

Vice Chairman Hecht asked how the board requests a report for next month's meeting from staff on interpretations of the setback ordinance.

City Attorney Vanerian explained the board can request recommendations from staff and consultants on interpretations. He asked if there was particular staff or consultant he was interested in hearing from in writing.

Vice Chairman Hecht asked if the board needs to work with the building department,

City Attorney Vanerian said the board can have the building department, consultant city planner McKenna & Associates review, review cases reviewed as to how ordinance was applied in the past. He asked if board wished him to prepare something.

Board Member Rundell asked City Attorney if he could provide legal ramifications.

**ADJOURNMENT**

**ZBA 06-06-20**

**MOTION TO ADJOURN**

Motion by Gunther seconded by O'Rourke, CARRIED, to adjourn the meeting at 8:31 p.m.

  
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Jennifer Stuart  
Recording Secretary

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Kyle Hecht  
Vice Chairman

*approved 7/27/20*