

**WHITE LAKE TOWNSHIP
ZONING BOARD OF APPEALS**

**REPORT OF THE
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Zoning Board of Appeals
FROM: Justin Quagliata, Staff Planner
DATE: September 23, 2021

Agenda item: 6c

Appeal Date: September 23, 2021

Appellant: Brian McNamara

Address: 1801 Bogie Lake Road
White Lake, MI 48386

Zoning: R1-C Single Family Residential

Location: 1801 Bogie Lake Road
White Lake, MI 48386

Property Description

The approximately 1.63-acre parcel identified as 1801 Bogie Lake Road is located on the south side of Cedar Island Road and zoned R1-C (Single Family Residential).

Appellant's Proposal

Brian McNamara, the appellant, is appealing an order of a Township official regarding a fence erected on the property in violation of the zoning ordinance.

Planner's Report

In the summer of 2020, the appellant inquired at Township Hall about installing a fence on the property. The Staff Planner informed the appellant of the zoning standards and gave him a copy of the relevant ordinance section. The Planning Department Secretary and a Building Department Secretary witnessed the Staff Planner informing the appellant the fence could not be constructed as proposed. In the summer of 2021, the Township became aware a fence was erected on the property in violation of the ordinance. On August 23, 2021 the Building Official ordered the fence be made to conform with the requirements set forth in the ordinance within 14 days. On August 26, 2021 the appellant filed an application to appeal the order to the Zoning Board of Appeals.

Article 5, Section 12 of the zoning ordinance states, "In no instance shall a fence over 4 feet high be placed in the front yard of a residence, or any closer than the minimum front setback line, in the case of a corner lot." The ordinance states front yard setbacks shall be measured from the existing right-of-way or access easement. The subject property is a corner lot, and therefore has two front yards. A previous nonconforming chain-link fence was removed and replaced with a 6-foot-tall privacy fence in the front yard. The fence is in violation of the ordinance for height and setbacks. The Township recommends the Zoning Board of Appeals affirm the order of the Building Official and deny the appeal.

The appellant provided a written statement with the application, received by the Township on September 2, 2021. None of the reasons listed in the letter are valid for satisfaction of the standards in Article 7, Section 37 of the zoning ordinance. Additionally, the ordinance prohibits the Zoning Board of Appeals from considering personal circumstances or economic hardship. There is not a practical difficulty or anything unique about the subject property to warrant modifying ordinance requirements.

In its determination of the appeal, the decision shall be made by a concurring vote of a majority of the members of the Zoning Board of Appeals. The Zoning Board of Appeals may take, but is not limited to, any of the following actions:

1. Affirm the decision of the Building Official with or without modification.
2. Reverse the decision of the Building Official and state its reason therefor.
3. Modify the decision of the Building Official.

Zoning Board of Appeals Options:

Affirm: I move to affirm the order of the Building Official to require the fence be made to conform with the requirements set forth in the ordinance and deny the appeal by Brian McNamara for Parcel Number 12-33-201-005, identified as 1801 Bogie Lake Road. This order will have the following condition:

- The Appellant shall comply with the requirements of the order by October 8, 2021.

Reverse: I move to reverse the decision of the Building Official and approve the appeal by Brian McNamara for Parcel Number 12-33-201-005, identified as 1801 Bogie Lake Road, due to the following reason(s):

Table: I move to table the appeal of Brian McNamara for Parcel Number 12-33-201-005, identified as 1801 Bogie Lake Road, to consider comments stated during this public hearing.

Attachments:

1. Application dated August 26, 2021.
2. Appellant's written statement, received September 2, 2021.
3. Exhibits submitted by the Appellant.
4. Violation letter from the Building Official dated August 23, 2021.

7.37 STANDARDS

General variances: The Zoning Board of Appeals may authorize a variance from the strict application of the area or dimensional standard of this Ordinance when the applicant demonstrates all of the following conditions "A - E" or condition F applies.

- A. Practical difficulty: A practical difficulty exists on the subject site (such as exceptional narrowness, shallowness, shape or area; presence of floodplain; exceptional topographic conditions) and strict compliance with the zoning ordinance standards would unreasonably prevent the owner from using of the subject site for a permitted use or would render conformity unnecessarily burdensome. Demonstration of a practical difficulty shall have a bearing on the subject site or use of the subject site, and not to the applicant personally. Economic hardship or optimum profit potential are not considerations for practical difficulty.
- B. Unique situation: The demonstrated practical difficult results from exceptional or extraordinary circumstances or conditions applying to the subject site at the time the Ordinance was adopted or amended which are different than typical properties in the same zoning district or the vicinity.

- C. Not self created: The applicants problem is not self created.
- D. Substantial justice: The variance would provide substantial justice by granting the property rights similar to those enjoyed by the majority of other properties in the vicinity, and other properties in the same zoning district. The decision shall not bestow upon the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity (such as the supply of light and air, significant increases in traffic, increased odors, an increase in the danger of fire, or other activities which may endanger the public safety, comfort, morals or welfare).
- E. Minimum variance necessary: The variance shall be the minimum necessary to grant relief created by the practical difficulty.
- F. Compliance with other laws: The variance is the minimum necessary to comply with state or federal laws, including but not necessarily limited to:
- i. The Michigan Right to Farm Act (P.A. 93 of 1981) and the farming activities the Act protects;
 - ii. The Americans with Disabilities Act of 1990 (as amended), and the needs of handicapped individuals the Act protects, including accessory facilities, building additions, building alterations, and site improvements which may not otherwise meet a strict application of the standards of this Ordinance.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

RECEIVED

CHARTER TOWNSHIP OF WHITE LAKE
Zoning Board of Appeals
APPLICATION

AUG 26 2021

BUILDING
DEPARTMENT

White Lake Township Planning Department, 7525 Highland Road, White Lake, MI 48383 248-698-3800 x163

APPLICANT'S NAME: Brian McNamara PHONE: 248 550 5221

ADDRESS: 1801 Bogie Lake Rd

APPLICANT'S EMAIL ADDRESS: gearheadmac@gmail.com

APPLICANT'S INTEREST IN PROPERTY: OWNER BUILDER OTHER: _____

ADDRESS OF AFFECTED PROPERTY: 1801 Bogie Lake Rd PARCEL # 12 - 33-201-005

CURRENT ZONING: _____ PARCEL SIZE: _____

STATE REQUESTED VARIANCE AND ORDINANCE SECTION: _____

VALUE OF IMPROVEMENT: \$ _____ SEV OF EXISTING STRUCTURE: \$ _____

STATE REASONS TO SUPPORT REQUEST: (ADDITIONALS SHEETS MAY BE ATTACHED)

APPLICATION FEE: 385.00 (CALCULATED BY THE PLANNING DEPARTMENT)

APPLICANT'S SIGNATURE: [Signature] DATE: 8/26/2021

RECEIVED

SEP 02 2021

BUILDING
DEPARTMENT

Zoning Board,

Thank you for reviewing our application.

Sharon and I purchased the property at 1801 Bogie Lake Rd in August of last year as our forever home with the vision and plans to make our perfect home to raise our family in. Sharon is a biology and environmental science teacher who loves plants, animals, and excellently manicured landscaping. I am a veteran, business owner, real estate developer, architect, and designer. It's a unique property with a brick ranch, which we plan on adding on to in a couple years, plus it came with three excellent but neglected outbuildings and a wonderful fenced in backyard that was extremely overgrown. We fell in love with the large lot and could see past all the neglect and overgrowth and envision how beautiful and amazing looking the entire property could be. We then got to work and have been improving the property day after day for almost a year. We have put our blood, sweat, and tears into this house, outbuildings, landscaping, and fence to make it the beautiful property it should be. And we still have a long way to go.

We are the perfect owners for this unique property because we are in the process of making it beautiful and maintaining it to the highest standards. The previous owner ran a business out of the outbuildings and that is not something we will be doing. The outbuildings will be used for our hobbies, our leisure activities, entertaining guests, and storage.

One of our must haves for purchasing our forever home was a fenced in backyard. This property has that and what we have done is replaced a portion of the existing fence with a new and improved fence in the exact same location and dimensions. We also discussed with all our surrounding neighbors before we made any changes to make sure they approved. It is very important to us to have great relationships with our neighbors and be a contributing factor to our neighborhood and community.

Hardships (All mentioning of "fence" is in reference to the section of fence that is stated by the township to be in violation of section 5.12 and section 5.14 of the White Lake Township zoning ordinance):

Our rescue dog was escaping through the old fence from holes and damage. She runs towards Bogie Lake Rd and runs along the road. This happened 3-4 times after trying to repair the fence but she continued to find a new way out, including jumping the fence in a few lower sections.

People drive too fast down Cedar Island and we are afraid our children and pets may get hurt or worse. Child and pet safety are our number one. The neighbors have told us numerous stories about vehicles crashing on Cedar Island Rd and ending up in their yard. We cannot live in a home we cannot protect our family from a road running alongside our back yard. We cannot live in a home without a fenced in yard period.

Our property is surrounded by seven other properties that can look into our backyard. This causes anxiety and the feeling that we have no privacy at any point in time without a surrounding fence.

Sharon had an abusive past relationship and an order of protection against her ex. He has stalked her to the point she has anxiety and PTSD. The fence is an important part of her protection and her healing process.

Poison Ivy Removal and extreme allergic reactions. We found after we moved in that our property was infested with poison ivy all along the fence line and throughout the rest of the property. Sharon is extremely allergic to it and now has scars on her legs and arms from the poison ivy. In order to kill the poison ivy we had to remove sections of the fence, dig down, treat, and bury what was left. The fence replacement was part of the process and the removal of poison ivy is still an ongoing process.

Security to our outbuildings and valuables within. Without a fence our outbuildings are vulnerable, open to, and very close to Cedar Island Rd. These buildings as far as we have researched have been here since the 1940s.

Neighbors Lights shining in our back windows. Without the fence our backyard is lit up at night from neighboring exterior lights and shine into our windows.

Vehicle Headlights shining in our back windows. Without the fence our backyard is lit up at night from vehicle headlights and running lights that shine into our windows.

Loud vehicles and recreational vehicles on Cedar Island cause anxiety (PTSD). The fence blocks the noise tremendously.

The liquid the road commission puts on the road smells like sewage and stinks up our backyard for days. The fence blocks the smell.

Dust allergies from dirt road. The fence keeps the dust from blowing into our property and into our home.

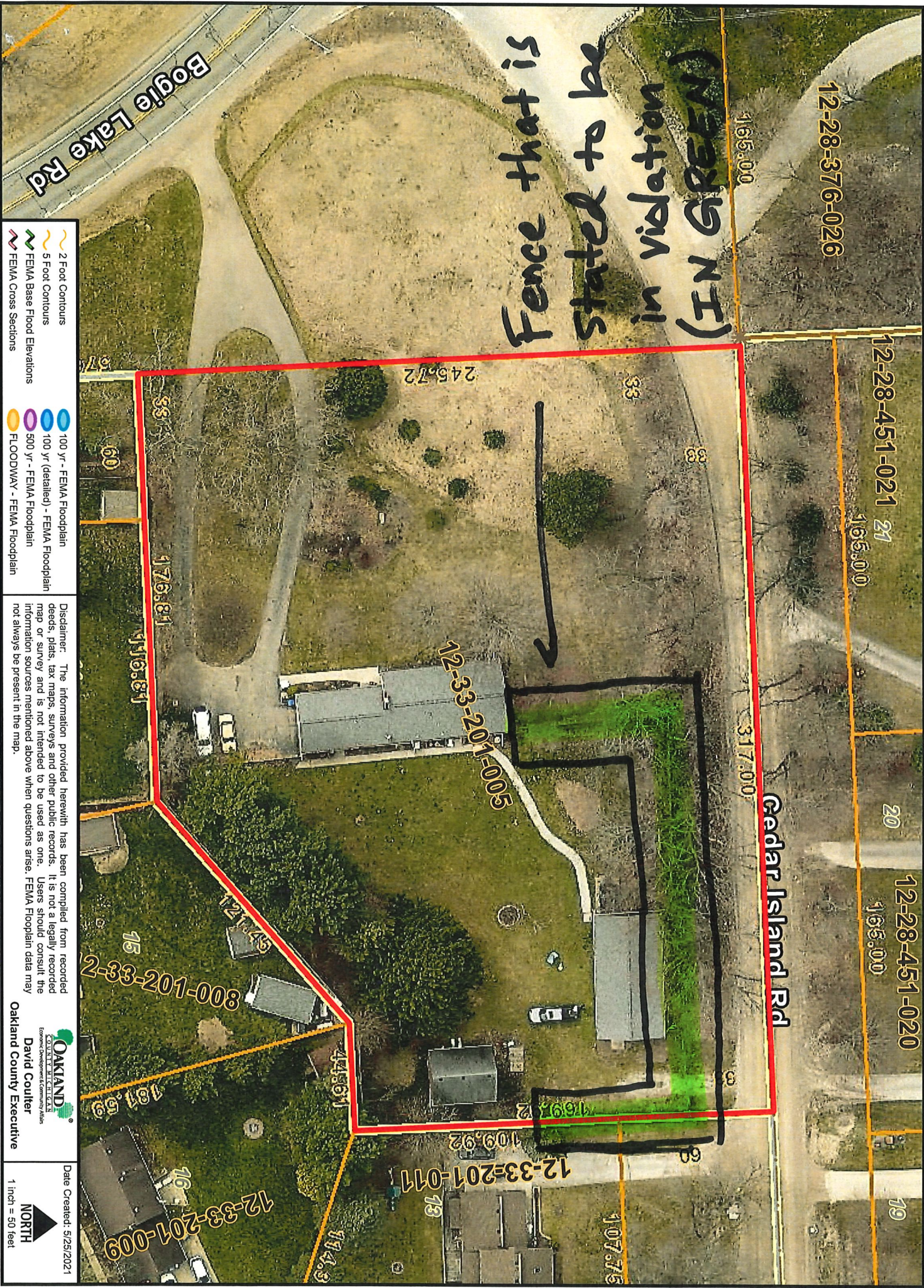
We matched the neighbor's fence structure to keep consistency and appearance. The fence that was replaced was an old ugly chain link fence that was completely overgrown with invasive and highly allergenic plants, weeds, and vines. We replaced it with the highest quality material and build quality. It is a full cedar fence with a doubled-up shadowbox plank orientation that gives a high-end appearance and the best structural integrity for durability and longevity. The fence cost us \$25,000.00 to install.

Sincerely,

Brian McNamara and Sharon Rowe

1801 Bogie Lake Rd, White Lake, Mi 48386

Home L



Fence that is stated to be in violation in (N232819 NI)

- 2 Foot Contours
- 5 Foot Contours
- FEMA Base Flood Elevations
- FEMA Cross Sections
- 100 yr - FEMA Floodplain
- 100 yr (detailed) - FEMA Floodplain
- 500 yr - FEMA Floodplain
- FLOODWAY - FEMA Floodplain

Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. FEMA Floodplain data may not always be present in the map.

OAKLAND COUNTY EXECUTIVE
 David Coulter
 Oakland County Executive

Date Created: 5/25/2021
 1 inch = 50 feet

1 year ago
when we purchased
home/property.



Current day progress.



Rik Kowall, Supervisor
Anthony L. Noble, Clerk
Mike Roman, Treasurer



Trustees
Scott Ruggles
Liz Fessler Smith
Andrea C. Voorheis
Michael Powell

WHITE LAKE TOWNSHIP

7525 Highland Road • White Lake, Michigan 48383-2900 • (248) 698-3300 • www.whitelaketwp.com

August 23, 2021

Brian McNamara
1801 Bogie Lake Rd
White Lake, MI 48386

Re: Fence

Please be advised that the fence recently erected upon your property is in violation of White Lake Township Clear Zoning Ordinance 5.12 for fence height and setbacks. The fence will need to be made to conform with the requirements set forth in the ordinance within 14 days.

Additionally, it appears the drive opening is prepped for an access gate. Please note that gated accesses are subject to Section 5.14 of the Ordinance with the requirement of a permit and approval from the Building Department.

If you have further questions about this matter in regards to building, please contact the Building Department at ext. 2. If you have further questions about the zoning ordinance, please contact Justin Quagliata in the Planning Department at ext. 177

Best Regards

Nick Spencer, Building Official
White Lake Township