Jennifer MacDonald <macdonaldj@rochesterhills.org>

# Fwd: Please place email and attachments into the public comment for the Sept 10, 2025 ZBA meeting in regards to 1737 N Fairview Lane - Thank you

1 message

**Jennifer MacDonald** <macdonaldj@rochesterhills.org> Thu, Sep 18, 2025 at 9:58 AM
To: Planning Dept Email <planning@rochesterhills.org>

ROCHESTER HILLS MICHIGAN
innovative by nature

Jennifer MacDonald
Planning Specialist
Planning & Economic Development

248-841-2575
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---------- Forwarded message ---------
From: **L shane** <schein6@sbcglobal.net>
Date: Tue, Sep 9, 2025 at 5:22 PM
Subject: Re: Please place email and attachments into the public comment for the Sept 10, 2025 ZBA meeting in regards to 1737 N Fairview Lane - Thank you
To: Chris McLeod <mcleodc@rochesterhills.org>
Cc: Jennifer MacDonald <macdonaldj@rochesterhills.org>, Planning Dept Email <planning@rochesterhills.org>, Jodi Welch <welchj@rochesterhills.org>, HOA Chichester East <chichestereasthoa@gmail.com>, Sara Roediger <roedigers@rochesterhills.org>

Members of the ZBA,

I realize I typed that Mr. Edwards sent the email on 9/2/24. That was a typo- should have been 9/2/25.
Thank you,
Lisa Schein

Sent from AT&T Yahoo Mail for iPhone

# ZONING BOARD of APPEALS
# CITY of ROCHESTER HILLS
# DEPARTMENT of PLANNING and ECONOMIC DEVELOPMENT
# 1000 Rochester Hills Drive, Rochester Hills, MI 48309
# 248-656-4660

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**APPLICANT:**

Universal Consolidated Enterprises, Inc.
Bradley A. Wolfbauer, Qualifying Officer.
P. O. Box 80850
Rochester, MI 48308 USA
universalconsolidated@yahoo.com

**PROPERTY OWNER:**

Lisa Anne Schein
1737 N. Fairview Lane
Rochester Hills
Oakland County, MI 48306 USA
Schein6@sbcglobal.net


**City of Rochester Hills Building Department:**
PB-2025-0152 Permit Application DENIED

**City of Rochester Hills Department of Planning and Economic Development/ZBA:**
File No. PVAI2025-0008

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## APPLICANT'S RESPONSE/REPLY TO: ROCHESTER HILLS DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT'S "STAFF REPORT TO THE ZONING BOARD OF APPEALS" DATED SEPTEMBER 3, 2025

Now comes before this Board, the Applicant, Universal Consolidated Enterprises, Inc., replying in response to the Rochester Hills Department of Planning and Economic Development (RHDPED)'s "Staff Report to the Zoning Board of Appeals" dated September 3, 2025 presumably authored by Chris McLeod, Planning Manager (see attached Staff Report to the Zoning Board of Appeals (Staff Report)).

### JURISDICTION

Based upon the Michigan Zoning Enabling Act 110 of 2006 and the City of Rochester Hills Zoning Ordinance Chapter 4, Section 138-2.400 A. 1. & 3. including the provisions of Section 138-2.406 this Board has appropriate jurisdiction as well as the duty/obligation to hear and decide on the issues/provisions presented for "interpretation" presented within the request previously submitted.

## STATEMENT OF CONCERN

Universal Consolidated Enterprises, Inc. (UCE) has made multiple submittals for the issuance of a Fireplace Permit. The Building Department has DENIED each and every submittal citing portions of the Ordinance as reasons for denial, yet OMITING and IGNORING other pertinent specific and clear PROVISIONS of the Ordinance. Subsequent to the submission of the Request for Interpretation by this Applicant, the Owner has submitted an application for an Electrical Permit which is being held in abeyance by the Building Department. To the best of my knowledge and belief the Building Department is obligated to follow and administer the Ordinance as it is written and that it is PROHIBITED for any Building Department Official to alter or change said provisions.

The requested "Interpretations" are NOT specific to the stated site address, in fact, they are of citywide concern/importance and apply to ALL Property Owners within the City of Rochester Hills. The residents of the City of Rochester Hills and others alike have the right to expect that the City Ordinances will be applied and enforced as written as opposed to arbitrarily and/or subjectively executed, otherwise there would not be any reason to have an informative written Ordinance in the first place.

## QUESTIONS PRESENTED

I. IS THE ROCHESTER HILLS BUILDING DEPARTMENT PERMITTED AND/OR ALLOWED TO ALTER/VARY THE TERMS OF THE ORDINANCE IN CARRYING OUT THEIR DUTIES?

Applicant answers..... **NO**
Property Owner answers ..... **NO**
Building Department answers..... **YES**
RHDPED answers ..... **YES**

II. IS THE ROCHESTER HILLS BUILDING DEPARTMENT PERMITTED AND/OR ALLOWED TO OMIT AND/OR IGNORE SPECIFIC PROVISIONS OF THE ORDINANCE RELATED TO THE PROPER MEASUREMENT OF BUILDING HEIGHT?

Applicant answers..... **NO**
Property Owner answers ..... **NO**
Building Department answers ..... **YES**
RHDPED answers ..... **YES**

III. IS THE ROCHESTER HILLS BUILDING DEPARTMENT PERMITTED AND/OR ALLOWED TO OMIT AND/OR IGNORE SPECIFIC PROVISIONS OF THE ORDINANCE RELATED TO THE PROPER MEASUREMENT OF ACCESSORY STRUCTURE FLOOR AREA?

Applicant answers ..... **NO**
Property Owner answers ..... **NO**
Building Department answers ..... **YES**
RHDPED answers ..... **YES**

ROCHESTER HILLS ZONING ORDINANCE PROVISIONS IN QUESTION

Article 1, Chapter 3 Permits and Certificates, Section 138-1.300 Duties, Powers, and Limitations, Paragraph/Subsection C. clearly states "*The building*, public services, and fire *departments* ***are under no circumstances*** *permitted to make changes in this ordinance* ***or to vary the terms of this ordinance in carrying out their duties.***"

Article 5, Chapter 1 Schedule of Regulations, Section 138-5.101 Footnotes to the Schedule of Regulations, Paragraph/Subsection A. clearly states "***Building Height Measurement.*** In the R-1 through R-5 and RE districts, *building height* ***shall*** *be measured from the average grade on the* ***front*** *façade of the building.*"

Article 10, Chapter 1 Accessory Buildings and Structures, Section 138-10.102 Detached Accessory Structures, Paragraph/Subsection A. clearly states "*....For purposes of this subsection, floor area of an accessory structure* ***shall be defined*** *as the exterior footprint of the structure supporting a roof, measured from the exterior of the exterior... ....structural supports.*"

## INTERPRETATIONS/CLARIFICATIONS REQUESTED/REQUIRED

- Does the plain and clear language of Article 1, Chapter 3 Permits and Certificates, Section 138-1.300 Duties, Powers, and Limitations, Paragraph/Subsection C. unambiguously REQUIRE that the Building Department follow and strictly apply the provisions of the Ordinance as the Ordinance is written in full compliance of **ALL** the Ordinance provisions?

- Does the plain and clear language of Article 5, Chapter 1 Schedule of Regulations, Section 138-5.101 Footnotes to the Schedule of Regulations, Paragraph/Subsection A. unambiguously REQUIRE that the Building Department follow the provision of the Ordinance in determining "building height" **by measuring the building height at the front façade of the building** as opposed to arbitrarily measuring the building height from ALL sides of the building?

- Does the plain and clear language of Article 10, Chapter 1 Accessory Buildings and Structures, Section 138-10.102 Detached Accessory Structures, Paragraph/Subsection A. unambiguously REQUIRE that the Building Department ONLY include the area that which supports a roof in the "floor area" measurement of an Accessory Structure as opposed to also including fireplaces, chimneys, stoops, planter boxes, and/or other features which do NOT support a roof in the "floor area" measurement?

## APPLICANT'S SUPPLEMENTAL ARGUMENT AND STATEMENT OF FACTS IN RESPONSE TO RHDPED'S STAFF REPORT

The Applicant agrees with the Staff Report statement of the RHZBA's Jurisdiction over this matter (see pages 1 & 2 of attached Staff Report).

The interpretations requested of this RHZBA are questions/clarifications of Law. Therefore, the RHZBA is acting as a quasi-judicial body when reviewing this matter.

In the State of Michigan, it is well established that Ordinances are interpreted in the same manner as Statutes. "Municipal ordinances are interpreted and reviewed in the same manner as statutes." *Sau-Tuk Industries, Inc. v Allegan County,* 316 Mich App 122, 136; 892 NW2d 33 (2016).

In reference to "**Interpretation #1**" of the Staff Report the author cites "*Section 138-1.106 Conflicting Provisions...*" then cites "*.... Section 138-13.101 Definitions...*" (The Applicant presumes that the author of the Staff Report intended to cite Section 138-13.100 Rules of Construction as opposed to Section 138-13.100 Definitions (based on the context of the authors narrative)). The Staff Report author in conclusion purports "*.... but then allows the appropriate interpretation to be made to ensure the intent of the Ordinance is maintained.*"(see pages 2 & 3 of Staff Report attached). The Staff Report author seems to erroneously imply that these sections of the Ordinance somehow water down and dilute the pertinent application/enforcement of Section 138-1.300 Duties, Powers, and Limitations. This is NOT a valid conclusion. In fact, this Applicant submits argument to the contrary:

> "Section 138-1.106 - Conflicting Provisions" MANDATES a more stringent adherence to the specific provisions of the Ordinance, it does NOT open the floodgates to arbitrary interpretation of other sections of the Ordinance by any Party (see attached copy of Section 138-1.106). "*Whenever any section of this ordinance imposes more stringent requirements, regulations, restrictions or limitations... .... the sections of this ordinance* ***shall*** *govern.*" Please refer to the second paragraph as well, "*In interpreting and applying the sections of this ordinance, they* ***shall*** *be held to be the minimum or maximum requirements...*" Section 138-1.106 does NOT diminish the provisions of any other section of the ordinance. In fact, Section 138-1.106 bolsters ALL the provisions of the Ordinance as a whole.

"Section 138-13.100 – Rules of Construction" (see attached copy of Section 138-13.100) specifically stipulate that "*A. The particular shall control the general.*" and "*C. The word "shall" is always mandatory and not discretionary. ...*" again, these MANDATES pull the reins in on any discretionary interpretation of the Ordinance, they do NOT allow any Party to subjectively or vaguely apply the provisions of the Ordinance.

In reference to "**Interpretation #2**" of the Staff Report the author erroneously misrepresents the provisions of Section 138-5.101 - Footnote to the Schedule of Regulations, A. Building Height Measurement. Here the Planning Department Manager, a person in which we expect to know the Ordinance, is blatantly disregarding the provision(s) of the Ordinance in regard to altering and/or varying the provisions of the Ordinance. Here the author of the Staff Report deliberately attempts to mislead the RHZBA by inferring that "*this is the method of height measurement used for **principal residential structures** in each one of the City's One Family Residential Districts.*" The author of the Staff Report is ADDING language to the Ordinance that does NOT exist. Here the Planning Department Manager is improperly taking on the role of the legislative body and clearly stepping out of the boundaries of his administrative role suggesting that the building height measurement provision of the Ordinance is somehow limited to "principal residential structures." The author of the Staff Report further states "*Again, these height limitations are for principal structures and based on conversations with the Building Department have been consistently applied for such structures.*" The author of the Staff Report goes on to say that "*...since the accessory structure section does not specifically address how building height is defined or how it is measured, then the definition section of the Zoning Ordinance should be referenced.*" (see Staff Report pages 3 & 4). The Applicant submits the following:

Here, as in the "Interpretation #1" portion of the Staff Letter, the author seems to veer away from the specific sections that the Applicant has submitted for interpretation and seems to want to expand the request (the Applicant did NOT request interpretation of the definition of "Building Height").

Section 138-5.101 – Footnotes to the Schedule of Regulations, A. Building Height Measurement. (see attached copy of Section 138-5.101), clearly states "*In the R-1 through R-5 and RE districts, **building height shall** be measured from the average grade on the front façade of the **building**.*" There is NO modifier of the word "building" to restrict or limit the measurement of building height to that of ONLY "principal residential structures," nor "principal structures" as the author of the Staff Report seems to imply. Therefore, this provision of the Ordinance MUST apply to ALL buildings *"In the R-1 through R-5 and RE districts..."* and building height of ALL buildings in those districts **SHALL** *"....be measured from the average grade **at the front façade**..."* of ANY building in said districts. Here the Ordinance unambiguously MANDATES that building height measurement of ANY building in the Residential Districts be measured from the average grade at the FRONT Façade of said building, NOT from the average grade at all sides of the building.

The Applicant agrees with the author of the Staff Report in regard to Section 138-5.101 A. as it applies to Section 138-5.100 Table 6. which does provide Maximum Building Heights. The Applicant also acknowledges that Table 6. of Section 138 – 5.100 does NOT apply to

"height limitations" of accessory buildings constructed within the respective Residential Districts.

The height limitations imposed on accessory buildings are clearly indicated in Section 138 – 10.102 – Detached Accessory Structures, C. Height. 1. (see attached copy of Section 138-10.102) clearly states "*1. No detached accessory structure in an RE, R-1, R-2, R-3, R-4, R-5, RM-1, RMH, or RCD district shall exceed one story or 14 feet in height when the roof pitch of the accessory structure is less than 4/12. If the roof pitch is 4/12 or greater, the maximum* ***building height*** *is 16 feet.*" The Staff Report author mis-states the Section of the Ordinance, yet is correct that the Ordinance does "*regulate[s] the maximum height of accessory structures as being 14 or 16 feet, depending on the roof pitch.*" This, however, does NOT negate, NOR nullify the method in which the building height is measured as the Staff Report author purports.

The definition of "Building Height" in the Ordinance does NOT give any direction, nor state any requirement(s) as to how "**measurement**" of the height of a building should be conducted, NOR does it state that it ONLY applies to a particular type of building. The text of the definition of "Building Height" does NOT limit, NOR discriminate as to what kind of building the definition applies to. Therefore, the Staff Report author's misconstrued claim that the "general" definition of Building Height should somehow dictate the measurement practices over the "particular" MANDATE of **Section 138-5.101 A. Building Height Measurement** flies in the face of reason.

In further support of this Applicant's argument, please refer to the **"BUILDING DEPARTMENT – CITY OF ROCHESTER HILLS – Guide to Residential Zoning Requirements, Document # 2. 2.9005, Created 2/1/22, Revised 2/1/2024"** (see attached copy of document # 2.2.9005) which the City of Rochester Hills has posted on the City's website at "**Building, Ordinance, & Facilities**" under "**Construction Guidebooks and Inspection Guides.**" In this document you will find on Page 3 of 8 "**Accessory Structures**," at "Detached accessory structures shall meet the following requirements: … …. E. Height -… …. The roof height is measured from ***the average grade at the front*** of the building to the midpoint between the bottom of the eave and the highest point of the roof." Here the Guide, published and posted by the City of Rochester Hills, pointedly reiterates what the Ordinance most clearly DICTATES in regard to the MEASUREMENT of building height, as it should be applied to ALL buildings in the respective districts indicated (here specifically referring to accessory buildings). If the Staff Report author's argument is held to be true, the "Guide to Residential Zoning Requirements," published and posted by the City of Rochester Hills, could ONLY be presumed to have been done so to DILBERATELY mislead the Citizens of the City and the general public at large.

Please note that the Guide also independently states the same "height measurement" requirements on page 1of 8 and page 2 of 8 regarding "New Homes and Additions" which bolsters this Applicant's claim that the building height measurement provision of the ordinance applies to all buildings within the prospective districts.

As of September 6th, 2025 the "Guide to Residential Zoning Requirements" remains posted on the City's website regardless of the fact that the Building Department has disputed it's content, with this Applicant, regarding the building height measurement method/requirement since early June of 2025.

In reference to "Interpretation #3" of the Staff Report the author purports that the plain language of the Ordinance should somehow be reconstrued or "*.... stated differently...*" as opposed to being read as the text of the Ordinance is written (see page 4 of the Staff Report). One important purpose of having written ordinances (laws) is so that nothing is left to the subjective and arbitrary imaginations of any Party in the enforcement and/or execution of the Ordinance. We are NOT permitted to add language to the Ordinance that does NOT exist in the text of the Ordinance as penned by the Legislative Body. We, by the same rule, are NOT allowed to DELETE and/or IGNORE that which is clearly stated within the text of the Ordinance. The author of the Staff report further goes on to say "*The floor area would typically include any additional ancillary features that are integral to the overall structure, particularly those that require a foundation.*" The author of the Staff Report then brings the Ordinance's general definition of "structure" into play, relying on it, to again misconstrue and veer from the plain text of the specific/particular Ordinance provision of Section 138-10.102 – Detached Accessory Structures A. Area. The Staff Report author then proceeds to claim that somehow the Ordinance's general definition of "structure" ADDS more to the particular provision of Section 138-10.102 A. than the text of the Ordinance actually states by claiming "*Therefore, while certain items such as a planter box would likely not be integral to the structure or otherwise require a foundation, other features, such as a fireplace or chimney that are integral to the overall larger structure and have a foundation due to their size would typically be a part of the overall floor area of the building.*" (see pages 4 and 5 of the attached Staff Report). The Applicant argues to the contrary:

> Section 138-10.102 Detached Accessory Structures A. Area., 1st sentence of Paragraph 2 unambiguously very clearly states "***For purposes of this subsection, floor area*** *of an accessory structure* ***shall be defined as*** *the* ***exterior footprint of the structure supporting a roof measured from the exterior of the*** *exterior walls, assembly or* ***structural supports***." ((see attached copy of Section 138-10.102) Specific to this Applicant's site at 1737 N. Fairview Lane, Rochester Hills, Oakland County, Michigan 48306 USA the portion of the text referencing "structural supports" will apply as there are NO exterior walls). The Ordinance is PARTICULARLY clear as to the DEFINITION of "FLOOR AREA" in regard to accessory structures by stating that "***For purposes of this subsection, floor area... .... shall be defined as the exterior footprint of the structure supporting a roof measured from the exterior of the... .... structural supports***."
>
> The text is quite clear by stating that "floor area" is calculated ONLY by applying the measurement of the "footprint" of the exterior of that which is "supporting a roof." If the Legislative Body that penned, and subsequently promulgated, the Ordinance wanted to include "ancillary features" of the "overall larger structure" into the "floor area" of the accessory structure(s) that Body would have included such features in the text of the Ordinance, **they did NOT**. Furthermore, if the Author(s) of the Ordinance had intended to consider features which require a foundation, yet do not support a roof, to be considered

included in the "floor area" calculation that Body would have included that in the text of the Ordinance, **they did NOT**.

The author of the Staff Report claims that a chimney that does NOT support a roof should be included in the floor area of an accessory building/structure because it has a "foundation." This Applicant submits that in recent years many fireplaces and chimneys are constructed (NOT supporting a roof) WITHOUT any form of foundation under them, they are built on cantilevered joists or other supports. Should this form of fireplace chimney combination be considered acceptable and one that has a foundation not be, even though theoretically they would occupy the same space? That seems to be an irrational conclusion.

The Staff Report author states that ".... a planter box would likely not... .... require a foundation..." therefore, would not be considered ".... Integral to the structure..." somehow implying that we should read this ADDITIONAL condition into the Ordinance where, quite frankly, NO inference of such could possibly be rendered from a plain reading of the text of the Ordinance. To adopt this purported policy would, again fly in the face of reason and vary from the language of the Ordinance by arbitrarily expanding the scope of the provision(s) of the Ordinance.

If the purported rationale of the Staff Report author were to be adopted by this Board the Ordinance would certainly become arbitrarily and subjectively ambiguous. It would also be in complete contravention to the plain text of the Ordinance provision. Many masonry planter boxes REQUIRE a full frost depth foundation (most do NOT support a roof). By the Staff Report author's misconceived rationale ANY ancillary feature of an accessory building/structure that REQUIRES a "foundation" but does NOT support a roof would be considered as "floor area" of an accessory building/structure. For example, any of the following non-roof supporting features that share a foundation with the accessory building/structure would be considered to be included in the "floor area" of that building/structure: masonry accent wingwalls, ADA access ramps, stoops, steps, planter boxes, chimneys, fireplaces, barbeques, approaches, raised patios, lamp posts, etc.. By the same ill-placed purported policy of the Staff Report author ANY of the aforementioned features installed WITHOUT a foundation would be acceptable and NOT included as "floor area" of an accessory building/structure. This purported policy MUST fail.

Regardless of the existence or absence of a foundation, the Ordinance provision as written unambiguously does NOT include ANY feature other than the exterior footprint of that which supports a roof to be included in the "floor area" calculation in regard to accessory structures/buildings. ANY other conclusion would be an adulteration of the Ordinance provision(s).

Collectively in reference to "Interpretation #1, Interpretation #2, & Interpretation #3" of the Staff Report the Applicant respectfully requests that this Board exercise deference towards this Applicant, Property Owner, and general public when rendering it's decision(s)/interpretation(s) of this matter (Please see attached copy of "**Interpretations**" portion of MML ZBA Handbook).

## CASE LAW IN SUPPORT OF APPLICANT'S ARGUMENT

Please refer to the following attached UNPUBLISHED MCOA Opinions **and Case Law Opinions cited within them:**

- Rapske v. Miga, (April 29th, 2021)
- Anscomb v. Township of Frankenmuth ZBA, (August 25, 2022)

Please refer to the following attached Michigan Supreme Court Opinion **and Case Law Opinions cited within it:**

- Hackel v. Macomb County Board of Commissioners, (June 16, 2025)

## RELIEF SOUGHT

The Applicant prays that this Board justly determine that the Building Department IS Required to apply the Ordinance as written, that the Building Department IS required to acknowledge and apply ALL provisions of the Ordinance when determining APPROVALS and DENIALS of Building Permit Applications, That building height measurement is determined by measuring only the front of said building per the Ordinance, and that "floor area" of an Accessory Building/Structure is determined ONLY by measuring the footprint of that which supports a roof (NOT to include chimneys, fireplaces, planter boxes, stoops, nor any other structural or non-structural feature which does NOT support a roof). Based on the aforementioned relief, require the Building Department to issue Permit PB-2025-0152, issue the Electrical Permit to the Owner, mandate that the Building Department issue any other permit properly applied for in respect to this property, pronounce the determinative proper interpretation of the provisions of the Ordinance for the benefit of ALL citizens of the City of Rochester Hills to include ALL Parties with a vested interest and/or stake in the community (including the general public at large), and any other relief that this Board finds to be just and equitable.

Respectfully submitted,

September 6th, 2025
Universal Consolidated Enterprises, Inc.
Bradley A. Wolfbauer, Qualifying Officer

Lisa Anne Schein September 6th, 2025
Lisa Anne Schein, APPROVED
Applicant's REPLY, as Property Owner

**Department of Planning and Economic Development**

Staff Report to the Zoning Board of Appeals

September 3, 2025

# PVAI2025-0008
# 1737 Fairview – Requested Interpretations

| | |
|---|---|
| **REQUEST** | The applicant is requesting a total of three (3) interpretations, of three different sections of the Zoning Ordinance.<br><br>First, the applicant is seeking an interpretation of Article 1, Chapter 3 Permits and Certificates, Section 138-1.300 Duties, Powers, and Limitations, specifically subsection C.<br><br>Second, the applicant is seeking an interpretation of Article 5, Chapter 1 Schedule of Regulations, Section 138-5.101 Footnotes to the Schedule of Regulations, specifically subsection A.<br><br>Third, the applicant is seeking an interpretation of Article 10, Chapter 1 Accessory, Buildings and Structures, Section 138-10-.102 Detached Accessory Structures, specifically subsection A.<br><br>The applicant is not seeking any variances at this time. |
| **APPLICANT** | Universal Consolidated Enterprises, Inc.<br>Bradley Wolfbauer<br>PO Box 80850<br>Rochester MI 48308 |
| **FILE NO.** | PVAI2025-0008 |
| **STAFF** | Chris McLeod, Planning Manager |

## Requested Interpretations

Pursuant to Section 138-2.400 and more specifically, Section 138-2.406, of the City's Zoning Ordinance that addresses the Zoning Board of Appeals authority to consider "interpretations", the applicant is asking for the Zoning Board of Appeals to provide interpretations on three (3) different sections of the Zoning Ordinance. The ordinance language with regard to ZBA interpretations is provided below, followed by the three applicable sections as requested by the applicant. It is important to note that pursuant to the application filed, these requests are interpretations. These interpretations would be applicable city-wide, including the applicant's property, and do not represent a specific appeal or variance request.

***SECTION 138-2.400 - Jurisdiction, Powers and Duties***

A. **Powers and Duties.** *The Zoning Board of Appeals shall have the power and it shall be its duty to:*

1. *Hear and decide on all matters referred to it by the provisions of this ordinance.*

2. *Hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the building, planning, or public services department in the enforcement of this ordinance. See Section 138-2.404 for additional considerations.*

3. *Interpret the text and map and all matters relating thereto whenever a question arises in the administration of this ordinance as to the meaning and intent of any provision or part of this ordinance. Any interpretations shall be in a manner as to carry out the intent and purpose of this ordinance and zoning map, and commonly accepted rules of construction for ordinances and laws in general. See Section 138-2.405 and Section 138-2.406 for additional considerations.*

4. *Where there are practical difficulties or unnecessary hardships, within the meaning of state law and this ordinance, in the way of carrying out the strict letter of this ordinance, the Zoning Board of Appeals shall have the power upon appeal in specific cases to authorize such variation or modification of the provisions of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured and substantial justice done. See Section 138-2.407 and Section 138-2.408 for additional considerations.*

***SECTION 138-2.406 - Interpretation of Zoning Ordinance Provisions***
*The Zoning Board of Appeals shall have the power to hear and decide requests for interpretations of Zoning Ordinance provisions in such a way as to preserve and promote the character of the zoning district in question, and carry out the intents and purposes of the Zoning Ordinance and Master Plan.*

## Interpretation #1

***SECTION 138-1.300 - Duties, Powers, and Limitations***

A. *The building department shall have the power to grant zoning compliance and occupancy permits, and the building and public services, and fire departments shall have the authority to make inspections of buildings or premises necessary to carry out their respective duties in the enforcement of this ordinance.*

B. *The City shall have the authority to conduct inspections as necessary to assure that landscaping and irrigation systems are installed according to approved plans and permits.*

C. *The building, public services, and fire departments are under no circumstances permitted to make changes in this ordinance or to vary the terms of this ordinance in carrying out their duties.*

The applicant is requesting an interpretation of Paragraph C of Section 138-1.300 regarding the Duties, Powers, and Limitations of City Officials and Administration in regards to implementation of the Zoning Ordinance. Paragraph C indicates that the Building, Public Services, and Fire Departments are not permitted to make changes to the ordinance or to vary its terms. This section of the Zoning Ordinance is located within Chapter 3 Permits and Certificates of Article 1 Administrative and Enforcement.

Therefore, within the context of this specific section, the Building, Public Services and Fire Departments cannot change or vary the specific zoning ordinance provisions themselves. Under State law, changes to a Zoning Ordinance provision or regulation requires Planning Commission and City Council action after a public hearing is conducted, therefore no individual or department is permitted to change or modify the terms of the Ordinance.

The zoning ordinance also has provisions within Section 138-1.106 Conflicting Provisions that discuss the interpretation of the zoning ordinances and how it is applied to help maintain the public safety, health, morals and general welfare. And further, Section 138-13.101 Definitions discusses how the specific prevails against the general and that terms and meanings, if not specifically defined in the Ordinance itself, shall take on meanings customarily assigned to them. These provisions become pertinent in regards to the application of the City's Zoning Ordinance since every scenario or circumstance cannot be foreseen or accounted for, but then allows the appropriate interpretations to be made to ensure the intent of the Ordinance is maintained.

## Interpretation #2

*SECTION 138-5.100 - Schedule of Regulations*
*Table 6. Schedule of Regulations - RESIDENTIAL DISTRICTS*

| District | Minimum Lot | | Maximum Building Height [A] | | Minimum Yard Setback (feet) | | | | Min. Floor Area | Max. Lot Coverage (all buildings) |
|---|---|---|---|---|---|---|---|---|---|---|
| | Area (sq. ft.) | Width (ft.) | Stories | Feet | Front | Side (each) | Side (total) | Rear | (sq. ft.) | |
| RE | 43,560 | 120 | 2 | 35 | 40 [B] | 15 [C,D] | 30 [D] | 35 [O] | 1,500 | 25% |
| R-1 | 20,000 | 100 | 2 | 35 | 40 [B] | 15 [C,D] | 30 [D] | 35 [O] | 1,500 | 25% |
| R-2 | 15,000 | 100 | 2 | 35 | 40 [B] | 15 [C,D] | 30 [D] | 35 [O] | 1,400 | 25% |
| R-3 | 12,000 | 90 | 2 | 30 [P] | 30 [B] | 10 [C,D] | 20 [D] | 35 [O] | 1,200 | 30% |
| R-4 | 9,600 [R] | 80 [R] | 2 | 30 [P] | 25 [B] | 10 [C,D] | 20 [D] | 35 [O] | 912 | 30% |
| R-5 | See Article 6, Chapter 7 for one-family flex residential district regulations | | | | | | | | | |
| RM-1 | See Article 6, Chapter 1 for multiple family district regulations | | | | | | | | | |
| RCD | See Article 6, Chapter 2 for one-family residential cluster district regulations | | | | | | | | | |
| RMH | See Article 6, Chapter 4 for manufactured housing park district regulations | | | | | | | | | |
| MR | See Article 6, Chapter 5 for mixed residential (overlay) district regulations | | | | | | | | | |

***SECTION 138-5.101 - Footnotes to the Schedule of Regulations***

A. ***Building Height Measurement.*** *In the R-1 through R-5 and RE districts, building height shall be measured from the average grade on the front façade of the building.*

The applicant is seeking an interpretation of the Zoning Ordinance as it relates to building height, specifically Subsection A of Section 138-5.101, that defines how building height is measured. This section of the Zoning Ordinance pertains to maximum height of structures within each Zoning District. Footnote A is a footnote to the maximum building height provision, generally applicable to any of the City's One Family Residential Districts. The ordinance, as modified by the footnote, indicates that building height is measured from the average grade of the front façade of a building. This is the method of height measurement used for principal residential structures in each one of the City's One Family Residential Districts. The maximum building heights for principal residential structures noted in the table above are 2 stories and either 30 or 35 feet depending in which residential district the subject property is located. Again, these height limitations are for principal structures and based on conversations with the Building Department have been consistently applied for such structures.

The applicant's inquiry appears to be more focused on heights for accessory structures. The City's Zoning Ordinance, Section 138, Article 10 General Provisions, Chapter 1, Accessory Structures and Buildings, which is specific to Accessory Structures, further regulates the maximum height of accessory structures as being 14 or 16 feet, depending on the roof pitch. Therefore, the height requirements in this section would prevail over those in Sections 138-5.100 and 138-5.101. Further, since the accessory structure section does not specifically address how building height is defined or how it is measured, then the definition section of the Zoning Ordinance should

be referenced.

The definition section of the zoning ordinance indicates that building height is the vertical distance from average grade to:

A. *The mean level of the highest gable or slope of a hip, gable, or gambrel roof.*
B. *The top of the highest roof beam for flat roofs.*
C. *The deck line for mansard roofs.*
D. *The mean level for a shed roof, from highest point to lowest point of roof.*

*Where buildings have multiple or conflicting roof styles, the most restrictive method applies.*

## Interpretation #3

*SECTION 138-10.102 - Detached Accessory Structures*

A. ***Area.*** *Detached structures accessory to a residential or non-residential building may be located in the side or rear yard. Such structures shall not be located in the front yard. The combined floor area of all detached accessory buildings on a single parcel shall not exceed the limits set forth in the following table, so long as total building area of all structures does not exceed the maximum lot coverage as provided in Section 138-5.100:*

| ***Lot or Parcel Size*** | ***Maximum Permitted Combined Accessory Structure Floor Area*** |
|---|---|
| *0.01 - 0.99 acres* | *1,000 square feet* |
| *1.00 - 1.99 acres* | *1,200 square feet* |
| *2.00 - 2.99 acres* | *1,400 square feet* |
| *3.00 - 3.99 acres* | *1,600 square feet* |
| *4.00 - 4.99 acres* | *1,800 square feet* |
| *5.00 or more acres* | *2,000 square feet* |

*For purposes of this subsection, floor area of an accessory structure shall be defined as the exterior footprint of the structure supporting a roof measured from the exterior of the exterior walls, assembly or structural supports. A structure shall be considered detached when it is completely separate from the main structure and when it does not meet one of the conditions noted in Section 138-10.101.A.2, above.*

1. *Exception: Decks constructed in the front yard shall be permissible provided such deck does not exceed the width of the residence and does not project more than ten feet from the front plane of the residence.*

The applicant is requesting an interpretation as to whether this specific provision should exclude fireplaces, chimneys, stoops, planter boxes, etc. which do not support a roof. The Ordinance indicates that the floor area of the accessory structure is measured from the exterior of the exterior wall, assembly or structural supports, or stated differently, the outermost dimensions of the structure. The floor area would typically include any additional ancillary features that are integral to the overall structure, particularly those that require a foundation. The definition of "structure" within the zoning ordinance is "anything constructed or erected and designed for a permanent location on the ground".

Therefore, while certain items such as a planter box would likely not be integral to the structure or otherwise require a foundation, other features, such as a fireplace or chimney that are integral to the overall larger structure and have a foundation due to their size would typically be a part of the overall floor area of the building.

## Interpretation #1

MOTION by_____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-1.102 of the Zoning Ordinance does not permit the Building, Public Services or Fire Departments to make changes or vary provisions of the Zoning Ordinance; however, other applicable sections of the Zoning Ordinance allow for interpretations that promote the general health, safety, morals and welfare of the community and are consistent with the intent of the Zoning Ordinance and Master Plan.

## Interpretation #2

MOTION by_____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-1.501(A) requires that maximum building height of structures within the One Family Residential Districts be measured from the average grade of the front façade. Further, this method of measurement is not applicable to accessory structures since the section of the ordinance regulating accessory structures (Sec. 138-10.102) provides specific regulations limiting the height of accessory structures and the Ordinance has general definitions for determining building height.

## Interpretation #3

MOTION by_____, seconded by _____, in the matter of File No. PVAI2025-0008, to interpret that Section 138-10-102(A) indicates that the area of accessory structures is calculated by measuring from the exterior of the exterior walls, assembly or structural supports of the structure supporting the roof, including any additional ancillary structures that are integral to such accessory structure.

## SECTION 138-1.106 - Conflicting Provisions

Whenever any section of this ordinance imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provisions of any other law or ordinance, the sections of this ordinance shall govern. Whenever the provisions of any other law or ordinance impose more stringent requirements than are imposed or required by this ordinance, the provisions of such law or ordinance shall govern.

In interpreting and applying the sections of this ordinance, they shall be held to be the minimum or maximum requirements for the promotion of the public safety, health, morals and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any ordinance, rules, regulations or permits previously adopted or issued, and not in conflict with any of the sections of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises and likewise not in conflict with this ordinance; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger open spaces or larger lot areas than are imposed or required by such ordinance or agreements, the provisions of this ordinance shall control.

SECTION 138-5.101 - Footnotes to the Schedule of Regulations

A. **Building Height Measurement.** In the R-1 through R-5 and RE districts, building height shall be measured from the average grade on the front façade of the building.

B. **Average Front Setback.** If there are existing homes within 200 feet of a subject lot, on the same side of the street, that have an average setback that differs from the front setback as required within this ordinance by more than ten feet, then the average front setback shall be used as the required front setback, provided, however, that in no instance shall a front yard setback be reduced to less than 20 feet.

C. **Corner Lots.** For corner lots, the side street yard shall not be less than 15 feet in the R-3 and R-4 district and 25 feet in the R-1, R-2, and RE districts.

D. **Reduced Side Yard on Narrow Lots.** If the lots or parcel is less than 60 feet in width, one side yard may be reduced to five feet providing the total of the two side yards shall be a minimum of 15 feet, except as denoted in Section 138-5.101.C above. To reduce a side yard to five (5) feet, the existing side yard on the abutting lot shall be a minimum of ten (10) feet.

E. **Nonresidential Lot Requirements.** The minimum lot area and minimum lot width shall be determined by the use meeting all minimum yard requirements and all other requirements of this ordinance. In CB districts, parcels with less area or width than the minimum requirement may be permitted provided all of the following exist:

1. The parcel is accessed through existing access points. Additional access points may only be constructed upon approval by the Planning Commission.
2. A covenant restriction prohibiting additional ingress/egress drives from abutting public thoroughfares without Planning Commission approval, shall be recorded at Oakland County.
3. Cross access easement(s) must be provided to neighboring parcels, if feasible.
4. Any parcel created as a result of this ordinance shall not be entitled to a separate freestanding monument sign.

F. **Side Yard Setbacks.** Side yards shall comply with the following:

1. If walls of structures facing interior side lot lines contain windows or other openings, the minimum yard requirements in the schedule of regulations shall be met.
2. Where an NB district abuts an R, RCD, RM-1 and MH district, the minimum side yard requirement shall be 50 feet. This requirement shall not apply to the BD district.
3. Where a CB or EC district abuts R, RCD, RM-1, MH, SP and BD districts, the minimum side yard shall be 75 feet.
4. Where an O district abuts an R, RCD, RM-1 or MH district, the minimum side yard requirement shall be 30 feet.
5. In NB and O districts, a 25-foot setback is required for a side street yard on a corner lot and for the exterior side of parcel or lot on the exterior of the district.
6. In the CB district a front yard setback shall be required on any street frontage and from any adjacent parcel n zoned CB

zoned CB.

G. **Rear Yard Setback Adjacent to a Residential District.** Where a CB district abuts an R, RCD, RM-1 or MH district, the minimum rear yard shall be 100 feet. The rear yard may be reduced to 50 feet with the approval of the Planning Commission after a public hearing in accordance with Section 138-1.203 and submittal of a plan which ensures there will be no significant negative impacts on the adjacent property as a result of the rear yard reduction.

H. **Rear Yard Setback Adjacent to a Nonresidential District.** Where an NB, CB, or HB district abuts any other non-residential district, the rear yard for the NB CB, or HB district may be reduced to ten feet with the approval of the Planning Commission, upon its determination that the requested reduction will allow for better development and will be compatible with adjoining properties.

I. **Industrial Reduced Front Yard Setback.** The required front yard setback may be reduced to 30 feet on internal streets in industrial subdivisions, provided there is no front yard parking. The front yard, except for areas approved for parking as provided for in this ordinance, shall be landscaped or planted in lawn, and the entire front yard shall be kept in a neat condition.

J. **Industrial Reduced Side Yard Setback.** The side yard in the interior of an industrial district may be reduced to 15 feet where there are no openings or windows, except for means of egress required by the building code, in the wall paralleling the side lot line, but where there are other openings or windows, the side yard shall not be reduced to less than 25 feet.

K. **Building Spacing.** When there is more than one principal commercial or industrial building on a lot or parcel, or a combination of parcels included in a unified development, the minimum spacing between buildings shall be 25 feet unless otherwise provided for in this ordinance. On all corner lots in I (Industrial) districts, the setbacks from the right-of-way lines shall be 50 feet, except as allowed in footnote I with both frontages to be considered as the front yard setback.

L. **Industrial Large Buildings.** In industrial districts, buildings in excess of 300 feet in length along any one side shall receive the approval of the Planning Commission, which approval shall be based upon compatibility with surrounding properties and buildings in reasonable attendance.

M. **Parking in Required Side and Rear Yards.** Parking and loading spaces may be located in required side and rear yards in the I (industrial) and EC districts subject to Planning Commission approval. The Planning Commission shall approve such parking or loading only if sufficient access is provided to the building and that the location of the parking or loading spaces will not imperil the health, safety or welfare of employees in the building. Loading spaces that are thusly located and will be visible from a public thoroughfare or any adjacent property not zoned I or EC shall be screened. Such screening shall be opaque to a minimum height of six feet.

N. **Outdoor Use Areas in the I (Industrial) District.** Required side yards may be used for loading, unloading, and storage provided that in such instances the Planning Commission shall review the plans for such area

to ensure sufficient access to the building or any storage or related areas to provide for the health, safety and general welfare of employees in the building. Dumpster and trash areas are subject to the requirements of Section 138-10.311. Storage areas are subject to the requirements of Section 138-4.430.

O. **Rear Yards Adjacent to Parks or Open Space.** The minimum rear yard setback requirement may be reduced to 30 feet on lots that border on land permanently dedicated for park, recreation, and/or open space purposes, provided that the dimension of the park, recreation, and/or open space land shall not be less than 100 feet measured in a straight line not more than 20 degrees off of perpendicular to the rear lot line of such lot.

For purposes of this footnote, permanently dedicated open space shall be determined as provided in Section 138-5.201 for open space option subdivisions. As to other residentially zoned property, dedicated open space shall be land dedicated for park, recreation and/or open space within an approved planned unit development (PUD) by way of recorded plan, easement, agreement or other satisfactory evidence, that the open space use is intended to be permanent.

P. **Building Height.** In the R-3 and R-4 districts, the maximum building height may be increased up to 35 feet when all of the following conditions are met:

1. The building site shall contain at least 13,500 square feet of lot area.
2. Minimum side yard setbacks, including the total of two, shall be increased by one-half-foot for each one foot or part thereof by which the proposed building height is in excess of 30 feet.
3. If an increase in building height is proposed on a lot which shares a common side yard with a lot occupied by an existing dwelling, the increased height of the proposed dwelling shall not be more than 190 percent of the height of a dwelling on a lot sharing a common side yard.

In the R-3 and R-4 districts, the maximum building height shall be limited to 24 feet when the following conditions are met:

1. The lot or parcel is 60 feet in width or less; or
2. The setback has been reduced as denoted in Section 138-5.101.D, above.

Q. **Increased Building Height.** The maximum height for buildings in the O-1 and EC districts may exceed the maximum noted in Section 138-5.100 in accordance with the following requirements:

1. Height modifications for projects located on sites with less than five acres shall require conditional use approval in accordance with the procedures of Article 2, Chapter 3 (Conditional Use Approval).
2. Height modifications for projects located on sites with five or more acres of land are subject to Planning Commission approval.
3. For those buildings with a pitched roof, the maximum height may not exceed 55 feet as measured to the mid-point of the roof system.
4. Any structure in the O or EC district abutting land planned for one-family residential land uses on the Master Land Use Plan Future Land Use Map shall increase the required yard abutting the residential district by two feet for every foot in height above 30 feet as measured to the top of the highest beam for flat roof systems or to the mid-point of pitched roofs.

R. **Reduced Minimum Lot Width and Area in the R-4 District.** Where a proposed parcel is located within a plat where the underlying platted lots are less than the minimum lot width required in the R-4 district and where the resultant lot width would be consistent with the character of the existing one-family

where the resultant lot width would be consistent with the character of the existing one-family neighborhood the minimum lot width may be reduced to the width of the underlying platted lot or 60 feet, whichever is greater. When a reduced lot width is permitted the minimum lot area shall be 7,000 square feet. Buildings on such reduced lots shall comply with the minimum setbacks and all other requirements not involving lot width or area otherwise applicable in the R-4 district.

S. **Average Front Yard Setbacks in Business Districts.** In the NB and CB districts, the front setback may be reduced to the average setback of structures within 300 feet of the subject parcel, along the same side of the street.

T. **Leach Road Side Yards.** For properties along Leach Road, the minimum side yard setback shall be 15 feet.

U. **Employment Center Front Yards.** When any building in the EC district is expanded or redeveloped to have a front yard setback less than 30 feet, a sidewalk shall be provided across the entire street frontage of the property.

V. **Community Business Side Yards.** When a side yard in the CB district abuts a NB, CB or HB zoned property and appropriate landscaping has been provided, the required side yard may be reduced to less than twenty five (25) feet provided the total of both side yards is at least fifty (50) feet.

(Ord. No. 165, § 7, 3-19-2012; ; Ord. No. 581, §§ 2, 5, 7, 11-11-2013; Ord. No. 174, § 2, 6-1-2015; Ord. No. 179, § 2, 8-8-2016; Ord. No. 182, § 4, 2-5-2018; Ord. No. 184, pts. 5, 6, 12-2-2019; Ord. No. 186, pt. 9, 12-2-2019; Ord. No. 196, § 5, 6-19-2023; Ord. No. 198, §§ 2—4, 6-24-2024)

SECTION 138-10.102 - Detached Accessory Structures

A. **Area.** Detached structures accessory to a residential or non-residential building may be located in the side or rear yard. Such structures shall not be located in the front yard. The combined floor area of all detached accessory buildings on a single parcel shall not exceed the limits set forth in the following table, so long as total building area of all structures does not exceed the maximum lot coverage as provided in Section 138-5.100:

| Lot or Parcel Size | Maximum Permitted Combined Accessory Structure Floor Area |
|---|---|
| 0.01 - 0.99 acres | 1,000 square feet |
| 1.00 - 1.99 acres | 1,200 square feet |
| 2.00 - 2.99 acres | 1,400 square feet |
| 3.00 - 3.99 acres | 1,600 square feet |
| 4.00 - 4.99 acres | 1,800 square feet |
| 5.00 or more acres | 2,000 square feet |

For purposes of this subsection, floor area of an accessory structure shall be defined as the exterior footprint of the structure supporting a roof measured from the exterior of the exterior walls, assembly or structural supports. A structure shall be considered detached when it is completely separate from the main structure and when it does not meet one of the conditions noted in Section 138-10.101.A.2, above.

1. Exception: Decks constructed in the front yard shall be permissible provided such deck does not exceed the width of the residence and does not project more than ten feet from the front plane of the residence.

B. **Setbacks.** A detached structure accessory to a residential building on properties less than two acres shall be located no closer than five feet to any side or rear lot line. A detached structure

accessory to a residential building on properties two acres or larger shall be located no closer than 20 feet to any side or rear lot line. A detached structure accessory to a non-residential building shall be located no closer than ten feet to any side or rear lot line. A detached accessory structure shall not be located in any required side yard.

C. **Height.**

1. No detached accessory structure in an RE, R-1, R-2, R-3, R-4, R-5, RM-1, RMH or RCD district shall exceed one story or 14 feet in height when the roof pitch of the accessory structure is less than 4/12. If the roof pitch is 4/12 or greater, the maximum building height is 16 feet.
2. Detached accessory structures in all zoning districts except for those listed in Section 138-10.102.F.1 above may be constructed to equal the permitted maximum height of structures in such districts, subject to site plan review requirements.

D. **Other Zoning Districts.** Accessory structures in all other zoning districts may be constructed to equal the permitted maximum height of structures in such districts, subject to site plan review requirements.

(Ord. No. 182, § 7, 2-5-2018; Ord. No. 183, § 19, 6-18-2018; Ord. No. 186, pt. 12, 12-2-2019; Ord. No. 199, § 9, 3-17-2025)

## SECTION 138-13.100 - Rules of Construction

The following rules of construction apply to the text of this ordinance:

A. The particular shall control the general.

B. In the case of any difference of meaning or implication between the text of this ordinance and any caption or illustration, the text shall control.

C. The word "shall" is always mandatory and not discretionary. The word "may" is permissive and discretionary.

D. Words used in the present tense shall include the future, and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

E. A "building" or "structure" includes any part thereof. The word "dwelling" includes "residence". The word "lot" includes the words "plot" or "parcel".

F. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for" or "occupied for."

G. The word "person" includes an individual, a firm, an association, an organization, a corporation (public or private), a partnership or co-partnership, a limited liability company, an incorporated or unincorporated association, a trust, or any other entity recognizable as a "person" under the laws of Michigan.

H. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either ... or," the conjunction shall be interpreted as follows:

   1. "And" indicates that all the connected items, conditions, provisions or events shall apply.
   2. "Or" indicates that all the connected items, conditions, provisions or events shall apply singly or in any combination (i.e., "or" also means "and/or").
   3. "Either ... or" indicates that the connected items, conditions, provisions or events may apply singly.

I. The terms "this Zoning Ordinance" or "this ordinance" includes the Zoning Ordinance of the City of Rochester Hills and any amendments there to.

J. The terms "abutting" or "adjacent to" include property "across from", such as across a street, alley, or an easement. This term shall also apply to adjacent zoning districts in an adjacent community.

K. The word "he" includes "she."

L. The phrase "such as" shall mean "such as, but not limited to."

M. The word "including" shall mean "including, but not limited to."

N. Terms not defined in Article 13 (Definitions), or elsewhere in this ordinance shall have the meaning customarily assigned to them.

# BUILDING DEPARTMENT
## CITY OF ROCHESTER HILLS

# Guide to Residential Zoning Requirements

**Document # 2.2.9005** **Revised 2/1/2024** **Created 2/1/22**

All construction for new homes, additions, and accessory structures shall meet the requirements of the City of Rochester Hills Zoning Ordinance. The residential zoning districts have been established in order to classify, regulate, and restrict the height and bulk of homes as well as to regulate the area of yard and other open spaces around the homes. The following are excerpts from the Zoning Ordinance for most residential projects. The full Ordinance is available online on the Planning Department's web page rochesterhills.org/planning.

### New Homes and Additions

The Zoning Ordinance outlines minimum and maximum requirements depending on the Zoning District you live in. Find your subdivision name on the "Zoning District" list at the end of this document to determine your zoning district. Refer to the chart below to determine the specific requirements for your district for each of the following:

The **Building Height** as measured from the average grade at the front of the home to the midpoint between the bottoms of the eave to the highest peak of the roof.
The **Minimum Yard Setbacks** from the property line to the front, side and rear of the house.
The **Minimum Floor Area** is gross floor area of all floors of the home excluding the basement.
The **Maximum Lot Coverage** is the gross area of the footprint of all buildings on the property.

Zoning Districts followed by an "OS" indicates an Open Space Subdivision. Lots within Planned Unit Developments (PUD) may have requirements other than those listed in the chart below. If you need further assistance, please contact the Building Department at (248) 656-4615.

| **Zoning District** | **Maximum Building Height (a)** | | **Minimum Yard Setbacks (feet)** | | | | **Min. Floor Area** (sq. ft.) | **Max. Lot Coverage** (all Buildings) |
|---|---|---|---|---|---|---|---|---|
| | Stories | Feet | Front | Side (each) | Side (total) | Rear | | |
| RE<br>RE-OS | 2 | 35 | 40(b)<br>30 | 15(c)(d) | 30(d) | 35(e) | 1,500 | 25% |
| R-1<br>R-1-OS | 2 | 35 | 40(b)<br>30 | 15(c)(d) | 30(d) | 35(e) | 1,500 | 25% |
| R-2<br>R-2-OS | 2 | 35 | 40(b)<br>30 | 15(c)(d) | 30(d) | 35(e) | 1,400 | 25% |
| R-3<br>R-3-OS | 2 | 30(f) | 30(b)<br>25 | 10(c)(d) | 20(d) | 35(e) | 1,200 | 30% |
| R-4<br>R-4-OS | 2 | 30(f) | 25(b)<br>25 | 10(c)(d) | 20(d) | 35(e) | 912 | 30% |
| R-5 | Contact the Building Department | | | | | | | |

Exceptions may apply to the above requirements.

Please contact the Building Department for clarification if any of the following situations apply:

(a) **Building Height Measurement** – In all districts the building height shall be measured from the average grade on the front of the building to either of the following:
   a. The midpoint between the bottom of the eave and the highest point of the roof.
   b. The top of the highest roof beam for flat roofs.
   c. The deck line for mansard roofs
   d. The mean level for a shed roof from highest point to the lowest point of the roof

   Where the home has multiple roof styles, the most restrictive method applies.

(b) **Average Front Setback** - If there are existing homes within 200 feet of the lot, on the same side of the street, that have an average setback that differs from the front setback as required in the ordinance by more than ten (10) feet, then the average front setback shall be used as the required front setback, provided however, that in no instance shall a front yard setback be reduced to less than twenty (20) feet.

(c) **Corner Lots** - For corner lots, the side yard shall not be less than 15 feet in the R-3, and R-4 districts and 25 feet in the R-1, R-2 and RE districts.

(d) **Reduced Side Yard on Narrow Lots** - If the lots or parcel is less than 60 feet in width, one side yard may be reduced to five feet providing the total of the two side yards shall be a minimum of 15 feet except as required by footnote (c).

(e) **Rear Yards Adjacent to Parks or Open Space** – The minimum rear yard setback requirement may be reduced to 30 feet on lots that border on land permanently dedicated for park, recreation and/or open space purposes, provided that the dimension of the park, recreation, and/or open space shall not be less than 100 feet measured in a straight line and not more than 20 degrees off of perpendicular to the rear lot line. The provision applies to open space (OS) option subdivisions.

(f) **Increased Building Height** – In the R-3 and R-4 districts, the maximum building height may be increased up to 35 feet when all of the following conditions are met:
   a. The building site shall contain at least 13,500 square feet of lot area.
   b. The minimum side yard setback, including the total of two, shall be increased by one-half foot for each one foot or part thereof by which the proposed building height is in excess of 30 feet.
   c. If an increase in building height is proposed on a lot which shares a common side yard with a lot occupied by an existing dwelling, the increase height of the proposed dwelling shall not be more that 190 percent of the height of a dwelling on a lot sharing a common side yard.

Note: Additional setbacks may be required if your property has steep slopes.

## Accessory Structures

Accessory structures such as garages, sheds, decks, gazebos, play houses, generators, pools, etc. have their own set of zoning requirements.

Accessory structures are either considered attached or detached. When an accessory structure is attached to the main building it shall be considered part of the main building and is subject to the ordinance requirements listed above. An accessory structure is considered attached when any of the following apply:

1. The accessory structure is attached by a common wall to the main building.
2. The accessory structure is within 10 feet of the main building
3. The accessory structure is attached to the main building by a breezeway with a floor area of seventy (70) square feet or greater.

Detached accessory structures shall meet the following requirements:

A. **Location** - Detached accessory structures shall be located in the side or rear yard. Such structures shall not be located in the front yard or within any public or private easement.

B. **Area** – The combined floor area of all detached accessory structures shall not exceed the limits in the following table and the total building area of all structures does not exceed the maximum lot coverage in the table above.

| Lot or Parcel Size | Maximum Permitted Combined Accessory Structure Floor Area |
|---|---|
| 0.01 – 0.99 acres | 1,000 sq. ft. |
| 1.0 - 1.99 acres | 1,200 sq. ft. |
| 2.00 – 2.99 acres | 1,400 sq. ft. |
| 3.00 – 3.99 acres | 1,600 sq. ft. |
| 4.00 – 4.99 acres | 1,800 sq. ft. |
| 5.00 or more acres | 2,000 sq. ft. |

C. **Setbacks** – Detached accessory structures shall not be closer than five (5) feet to a side or rear lot line on lots two (2) acres or less and twenty (20) feet on lots greater than two (2) acres.

D. **Corner Lots** - Contact the Building Department regarding setback requirements for corner lots.

E. **Height** – The height of detached accessory structures shall not exceed one story or fourteen (14) feet in height when the roof pitch is less than 4/12 or sixteen (16) feet when roof pitch is greater than 4/12. The roof height is measured from average grade at the front of the building to the midpoint between the bottom of the eave and the highest point of the roof.

## Decks and Patios

Decks and patios are considered accessory structures and shall meet the setback requirements of detached accessory structures.

A. **Roof Structures** – Any roof structure that is 50% open or more shall be considered an accessory structure and meet requirements for an attached or detached structure. Any roof structure that is less than 50% open and located within 10 feet of the main building shall comply with requirements for the main building.

## Gazebos

Gazebos are permitted in all residential districts and are subject to the following limitations

A. **Setbacks** – Gazebos shall comply with the yard and setback requirements applicable to detached accessory structures.
B. **Area** – Gazebos shall not exceed 180 square feet in floor area. The area of the Gazebos will not count toward the maximum allowable area for accessory structures.
C. **Height** – Gazebos shall not exceed one story or 16 feet in height. If attached to the main building, the height shall be measured from the floor area to the highest point of the gazebo roof.

## Solar Energy Systems

Solar Energy systems have their own set of zoning requirements and require a building permit before they can be installed. Any system that ceases to function for more that 12-months shall be removed in its entirety within 90 days of the 12-month period.

A. **Rooftop Systems** – Rooftop mounted systems shall not extend more than 4 feet above the roof surface and shall not extend beyond the edge of the roof.
B. **Ground Mounted Systems** – The system, if mounted in the front yard shall meet the required front yard setbacks for the district from the table above. It shall not exceed 42 inches in height and shall be screened with an evergreen landscaping sufficient to buffer the view of the equipment from the street or nearby homes. Systems mounted in rear or side yards shall be set back a minimum of five (5) feet from the property line and shall not exceed ten (10) feet in height when oriented at maximum tilt.

## Fences

Fences may be installed or replaced within the City subject to the following. Swimming pool enclosures shall meet the requirements of the Michigan Residential Code and International Swimming Pool and Spas Code.

A. **General** – Fences shall be installed free from defects and safety hazards. No signs, words, letters, images or other illustrations may be painted or affixed to any fence. Materials shall be wood, metal, bricks, masonry or other solid material. Fabric fences are not permitted.
B. **Residential Fences** – Fences that are located along the side or rear lot lines shall be a maximum of six feet in height and may not extend closer to the front property line than the front of the building. Fences not exceeding three feet in height may be installed in the front yard setback provide they provide proper corner clearance. Fences are subject to HOA restrictions.

## SUBDIVISION ZONING DISTRICTS

| | |
|---|---|
| Aberdeen | R4 |
| Adams Oaks | R4 |
| Andover Woods | RCD |
| Adams West (Aka Oxford) | R4OS |
| Arcadia Park | R4 |
| Ashford Farms | R1 |
| Autumn Hills | R1 |
| Avon Heights | R1/R3 |
| Avon Hills | R1/R4 |
| Avon Hills Village (Phase 3 aka Sycamores) | |
| Avon Hollow | R1/R3 |
| Avon Lakes Village | R4 |
| Avon Manor Estates | R3 |
| Avon Meadows | R1 |
| Avon Pointe | R3 |
| Avon Ravines | R3 |
| Avon Woods | R4 |
| Avoncrofts | R3/R4 |
| Avondale Farms | R4/O1 |
| Barrington Park | PUD |
| Basset & Smith Flowing Spring Acres | R2/R4 |
| Bellarmine Hills | R1 |
| Belle Cone Gardens | R4 |
| Berkshire | R4 |
| Blackett's Floral Garden | R3 |
| Bloomer Park Estates | R4 |
| Bloomer Woods | R3 |
| Bogarts Place | R3 |
| Brabach Orchards | R1 |
| Brampton Parc | R4 |
| Brewester Village | PUD |
| Bridgewood Farms | R2 |
| Brookedale West | R2 |
| Brookedale Woods | R2/R3 |
| Brooklands | R3/R4 |
| Brooklands Park | R4 |
| Brookwood Condo | RCD |
| Brookwood Golf Club | R3OS |
| Butler Ridge I & II | R2 |
| Chichester (Aka Georgetown) | R1/R2 |
| Chichester East | R2 |
| Christenbury | RE |
| Christian Hills | R1/RCD |
| Clear Creek | R1 |
| Clinton River Valley | R2 |
| C O Renshaw Addition | R4 |
| Coolidge Highway | R4 |
| Country Club Meadows | R2 |
| Country Club Village | R3 |
| Covington Place | R3 |
| Crestwood Village | RCD |
| Crestwyk Estates | R4 |
| Crissfield | R3 |
| Crooks Crossing East | R4 |
| Cross Creek (Lots 1-13) | R1 |
| Cross Creek (Lots 14-61) | R3 |
| Cross Creek (Lots 62-121) | R4 |
| Cumberland Hills | R3 |
| Cumberland Pointe | R3 |
| Cumberland Village | R3 |
| Cumberland Woods | R3 |
| Deer Run | R3 |
| Dee's Subdivision | R4 |
| Denison Aces | R3 |
| Devondale Condo | R4 |
| Dodge Auburn Park | R4 |
| Easthampton | R4 |
| Easthampton II | R3/R4 |
| Eddington Farms | R3/R4 |
| Eddington Woods | R4 |
| Edinshire | R4 |
| Eldon Acres | R4 |
| Elmdale | R2 |
| Estates Of Pine Creek | R2 |
| Eyster's Auburn Acres | R4 |

| | |
|---|---|
| Eyster's Avon Estates | RE |
| Eyster's Avon Gardens | R3 |
| Eyster's Bloomer Park | R3 |
| Eysters Auburn Acres | RE |
| | |
| Fairgrove Manor | R4 |
| Fairview Farms | R1OS |
| Fairwood Villas | RM1 |
| Falcon Estates | R2 |
| Ferryview Homelands | R4 |
| Fieldcrest | R3 |
| Fitzpatrick | R4 |
| Foxboro | R3 |
| | |
| Gabelman | R4 |
| Georgetown (aka Chichester) | R1 |
| Glidewell | R4 |
| Golden Hills | R4 |
| Golfview Estates | R4 |
| Grace Oaks | R4 |
| Grace Parc | R4 |
| Grandview | R4 |
| Grant M Johns | R4 |
| Great Oaks | R2/R3 |
| Grosse Pines | R3 |
| Gunthar's Run | R4 |
| | |
| Hamlin Estates | R3 |
| Hamlin Place Farms | R3/R4 |
| Hampton on the Green | RM1 |
| Hampton Park | R4 |
| Hampton Pines Townhomes | RM1 |
| Hawthorn | R1 |
| Hawthorn Forest | R2 |
| Hawthorn Hills | R2 |
| Hazelton Pines | R4 |
| Hazelton Woods | R4 |
| Hazelwood | R4 |
| Hazelwood Hills | R2 |
| Hazelwood Meadows | R4 |
| Heartpeace Hills | R2 |
| Heather View Estates | RM1 |
| Heatherwood Village | R3/R4 |
| Heritage Oaks | R2/R3/RM1 |
| Hickory Ridge | R4 |
| Hidden Hills | RM1 |
| Hillcrest | R4 |
| Hillside Creek | R1 |
| Hillview | R1 |
| Hillwood | RE/R1 |
| Hitchmans Haven | R1 |
| Homestead Acres | R4 |
| Hunters Creek | R3 |
| Huntington Park | RM1 |
| | |
| Ingram Acres | R4 |
| | |
| John R Highlands | R3 |
| Judson Park | R1 |
| Juengels Orchards | R1/R3 |
| Junction Land Co | R4 |
| | |
| Kensington Forest | R4 |
| King's Cove | RM1 |
| Kingston Pointe N | R4 |
| Kingston Pointe S | R4 |
| Klem Gardens | R4 |
| Knapp's Farm | R4 |
| Knolls North | RM1 |
| Knolls South | RM1 |
| Knorrwood Hills | R1 |
| Kollin Woods | R1 |
| | |
| Leggit Reiher | R4 |
| Lochmoor Hills | R2 |
| Long Meadows | R2 |
| | |
| MacKary | R4 |
| Manchester | R4 |
| Manchester Knolls | R1 |
| Martin Farms | R3/R4 |
| Meadow Brook | R1/R2 |
| Meadow Creek I & II | R4 |

| | |
|---|---|
| Meadowbrooks Hills Condo of Avon | RM1 |
| Meadowbrook Valley | R2 |
| Meadowfield Condos | RM1 |
| Meadowview | R1 |
| Messmore Farms | R4 |
| Michelson Meadows | R3 |
| Midvale | R4 |
| Mill Stream Village | R1/RCD |
| North Fairview Farms | R2 |
| North Hill Gardens | R4 |
| North Hill | R4 |
| North Oaks | R1 |
| Northbrooke | R4 |
| Nottingham Woods | R3 |
| Oak Pointe Estates | R2 |
| Oakbrook | RM1 |
| Oakland View | R3 |
| Oakwood Park | RM1 |
| Oxford Estates (Aka Adams West) | R2 |
| Paint Creek Hills | RE |
| Parke Valley | R4 |
| Perrydale | R1 |
| Pheasant Ring | R2OS |
| Pine Trace Village | R4 |
| Pine Trail | R3 |
| Pine Woods | R4 |
| Pon-Avon Farms | R4 |
| Quail Ridge | R2 |
| Quailcrest | RCD |
| Regal Colony Condo | R4 |
| Regal Estates | R4 |
| Regency Park Condo of Hampton | RM1 |
| Relyea Acres | R1 |
| Riverside Highlands | R1 |
| Rochdale | R1 |
| Rochelle Park Condo | RCD |
| Rochester Court | RM1 |
| Rochester Glens | R4/RM1 |
| Rochester Heights | R4 |
| Rochester Hills | RE |
| Rochester Hills Heathers | R3 |
| Rochester Knoll | R1 |
| Rockhaven Estates | R4 |
| Rookery Woods | R2 |
| Saddlebrook Orchards | R4 |
| Sancturary at River's Edge | R4/RCD |
| Sanctuary In The Hills | RCD |
| Sanctuary In The Hills East | R4 |
| Sargent's Crossing | RCD/RM-1 |
| Shadow Woods | R1/R2/R3 |
| Shortridge Estates | R4 |
| Skyview | R1 |
| Somerset Pines | R4 |
| South Boulevard Gardens | R4 |
| Spring Hill | R1 |
| Starr Estates | R3 |
| Stony Creek | R1/R4 |
| Stony Hollow | R1 |
| Stratford Knolls | R1/R2/R3/RM1 |
| Stratford Manor Townhouses | RM-1 |
| Stratford Village Manor | RM-1 |
| Streamwood Estates | R1/RCD/RM-1 |
| Sugar Creek | R4 |
| Summit Condos of Rochester Hills | RCD |
| Sunnydale Gardens | R4 |
| Supervisor's Avon Twp Plat No 11 | R4 |
| Supervisor's Avon Twp Plat No 7 | R3 |
| Supervisor's Avon Twp Plat No 8 | R3 |
| Supervisor's Plat No 2 | R4 |
| Supervisor's Plat No 5 | R3/R4 |
| Supervisor's Plat No 6 | R4 |
| Supervisor's Plat No 9 | R4 |

| | |
|---|---|
| Supervisor's Plat No 11 | R4 |
| Supervisor's Plat No 12 | R4 |
| Supervisor's Plat of Avoncroft's Sub No 1 | R3/R4 |
| Supervisor's Plat of Brooklands Park | R4 |
| Supervisor's Plat of Dodge Auburn Park | R4 |
| Supervisor's Plat of Grant M John's Sub | R4 |
| Supervisor's Plat of Hillview | R1 |
| Supervisor's Plat of Messmore Farms | R4 |
| Supervisor's Plat of Midvale | R4 |
| Supervisor's Plat of Glidewell | R4 |
| Sycamores (aka Avon Hills Vlg. Phase 3) | R4 |
| The Enclaves of Rochester Hills | RE |
| The Groves | PUD |
| The Legacy of Rochester Hills | R3 |
| The Townhomes of Maplehill | RCD |
| Thornridge | R2 |
| Tienken Center | RM-1 |
| Tienken Manor Estates | R2/R3 |
| University Hills | R3 |
| Valley Stream | R2/R3/RCD/RM1 |
| Villas of Shadow Pines | R4 |
| Vintage Estates | R1 |
| Vistas of Rochester Hills | R3 |
| Walnut Brook Estates | R4 |
| Walnut Creek | R3 |
| Waltonshire Estates Condo | R3 |
| Waverly Woods | RE/R1 |
| Weaver's Acres | R4 |
| Wheaton & Worrals Avon H.E. | R4 |
| Whispering Willows | R3 |
| Whispering Winds of Rochester Hills | RM-1 |
| Wildflower | R4 |
| Willowood | R2 |
| Winchester Village | RM-1 |
| Winkler Mill Estates | R1 |
| Woodgrove of Avon Hills | RM-1 |
| Woodland Crossing | R4 |
| Woodland Park | R3 |
| Yawkey & Chapmans Add | R4 |
| Yorktowne Commons | R4 |

# BUILDING DEPARTMENT
## CITY OF ROCHESTER HILLS

# Guide to Residential Zoning Requirements

**Document # 2.2.9005** **Revised 2/1/2024** **Created 2/1/22**

All construction for new homes, additions, and accessory structures shall meet the requirements of the City of Rochester Hills Zoning Ordinance. The residential zoning districts have been established in order to classify, regulate, and restrict the height and bulk of homes as well as to regulate the area of yard and other open spaces around the homes. The following are excerpts from the Zoning Ordinance for most residential projects. The full Ordinance is available online on the Planning Department's web page rochesterhills.org/planning.

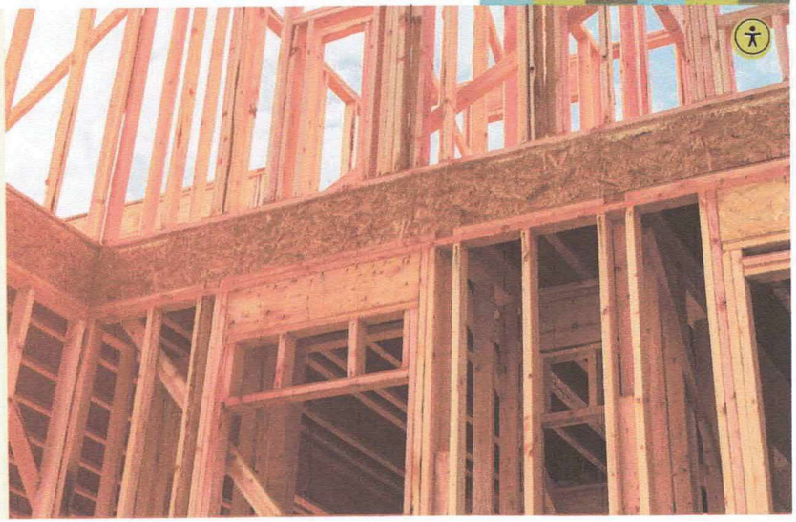
C. **Setbacks** – Detached accessory structures shall not be closer than five (5) feet to a side or rear lot line on lots two (2) acres or less and twenty (20) feet on lots greater than two (2) acres.

D. **Corner Lots** - Contact the Building Department regarding setback requirements for corner lots.

E. **Height** – The height of detached accessory structures shall not exceed one story or fourteen (14) feet in height when the roof pitch is less than 4/12 or sixteen (16) feet when roof pitch is greater than 4/12. The roof height is measured from average grade at the front of the building to the midpoint between the bottom of the eave and the highest point of the roof.

# Construction Guidebooks and Inspection Guides





**Building, Ordinance, & Facilities**

- Apply for Permit Online
- Building Permit Reports
- Construction Guidebooks and Inspection Guides
- Energy Code
- Permit Fee Schedules, Forms, Applications, Checklists
- Guide to Neighborhood Living

Share

## Construction Guidebooks and Inspection Guides

Guide to Home Zoning Requirements

Accessory Structures
- Guide to Accessory Structure Construction Inspections

Basement Finish
- Guide to Basement Finishing Inspections

Development Guide
- Guide to Commercial Development Inspections

Electric Vehicle Charging Station Guideline

New Home and Addition Construction
- Guide to New Home and Addition Construction Inspections
- Guide to Interior Alteration Inspections

michigan municipal league

# ZONING BOARD OF APPEALS

## HANDBOOK

**Michigan Municipal League**
1675 Green Road, Ann Arbor, MI 48105

## Some Don'ts

§ 19 if you have a conflict of interest, Don't discuss the proposal, either formally or informally with any of the other members.

Don't use inside knowledge and contacts. Make sure that minutes, staff materials, etc., are obtained through the same procedures as any other applicant. It is best to have someone else collect this information.

Don't represent yourself if you are the applicant. Have someone else perform that function. It is acceptable to have other family members, an attorney or a personal representative speak for the member.

## Interpretations

§ 20 The ZBA is authorized to issue an official interpretation of the zoning ordinance. Interpretations may be related to either the text of the zoning ordinance or to the boundaries of the zoning map. Unlike legal opinions or recommendations of consultants, an interpretation by the ZBA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the ZBA's interpretation is appealed to the courts.

Several rules of thumb may help in making interpretations.

a) Base map interpretations on the zoning ordinance itself and any relevant historical information. Commonly, these rules are of the "walk like a duck" variety. In other words, if it appears as though the zoning boundary follows a river, it should be assumed to follow the river, or a road right-of-way, or some other physical feature. Where the boundary is unclear, the ZBA should take into account past zoning history (if any) and the potential effect of a determination on surrounding properties.

b) Interpret the text of the zoning ordinance based on a thorough reading of the ordinance in order not to have the effect of amending the ordinance.

c) Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.

d) Keep records of all interpretations. Once an interpretation is rendered, it is the official position of the community as to that provision. Consistency in decision making is important for the long-term.

e) Generally, if equally convincing points are put forth by the zoning administrator and an individual affected by an interpretation, fairness dictates that the person most affected by the interpretation should prevail. In other words, where two interpretations are reasonably equal, the benefit of the doubt should be given to the property owner rather than the zoning administrator.

Once an interpretation is made, it is advisable for the planning commission to review the matter to determine whether or not an amendment to the ordinance is needed to further clarify the language (for a text interpretation), or to review the zoning map to determine a specific location of a zoning boundary (for a map interpretation).

## Appeals

§ 21 The zoning board of appeals is empowered to hear and decide appeals from any person aggrieved by an administrative decision. An administrative decision is one made by a zoning administrator or the planning commission, or by the legislative body when they are acting in an administrative capacity, (if, for example, the legislative body approved all site plans). Most often, appeals are the result of a disagreement with a decision of the zoning administrator, or, in some cases, a person aggrieved by a site plan review decision by the planning commission. Appeals may be required to be filed within a specific time period set in the zoning ordinance.

The ZBA cannot hear two types of zoning decisions. The first is an amendment to the zoning ordinance (rezoning or text change)—this is reserved for the legislative body. The second type of decision is for special land uses and planned unit developments, which can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal.

# STATE OF MICHIGAN

# COURT OF APPEALS

THOMAS RAPSKE and BEVERLY RAPSKE,

Plaintiffs/Counterdefendants-Appellants,

v

TIMOTHY MIGA and WENDY MIGA,

Defendants/Counterplaintiffs-Appellees.

UNPUBLISHED
April 29, 2021

No. 353258
Macomb Circuit Court
LC No. 2018-001928-CH

Before: O'BRIEN, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

In this dispute about a border fence, plaintiffs/counterdefendants, Thomas Rapske and Beverly Rapske (collectively, plaintiffs), appeal as of right the trial court's order granting a verdict of no cause of action in favor of defendants/counterplaintiffs, Timothy Miga and Wendy Miga (collectively, defendants), on plaintiffs' nuisance per se claim. On appeal, plaintiffs challenge both the trial court's no-cause ruling and the court's earlier order dismissing plaintiffs' "spite fence" nuisance claim under MCR 2.116(C)(10). We affirm.

## I. FACTUAL BACKGROUND

Plaintiffs and defendants own adjacent properties in Bruce Township, Michigan. Over the course of several years, the relationship between the parties soured. In the spring of 2017, defendants erected a privacy fence on the common border separating the parties' properties. The border fence blocks plaintiffs' view of a nearby lake, and plaintiffs believed that the fence was erected by defendants as a means to harass plaintiffs.

In May 2018, plaintiffs filed a complaint against defendants in which plaintiffs asserted that the border fence constituted a spite fence and a nuisance per se, as well as other claims not relevant to this appeal.

Defendants eventually moved for summary disposition under MCR 2.116(C)(10) on plaintiffs' spite-fence claim, and the trial court granted the motion. In so doing, the trial court

reasoned that, even if installation of the fence was partially motivated by spite, plaintiffs' spite-fence claim could not stand because the fence was clearly intended to serve—and did serve—the useful purpose of privacy.

Plaintiffs' nuisance per se claim eventually proceeded to a bench trial. The basis for plaintiffs' claim was that defendants' fence exceeded six feet in height in violation of a Bruce Township zoning ordinance. The court pointed out that plaintiffs only presented evidence that defendants' fence may have exceeded six feet in height when measured from the "existing grade," but the at-issue ordinance only prohibited fences that exceeded six feet in height when measured from the "established grade." Accordingly, the trial court reasoned that plaintiffs failed to establish their case and granted a verdict of no cause of action in favor of defendants.

This appeal followed.

## II. NUISANCE PER SE

On appeal, plaintiffs first argue that the trial court erred as a matter of law when it reasoned that the Bruce Township zoning ordinance required fence height to be measured from the "established grade." We disagree.

The issue raised by plaintiffs is strictly a question of law, which this Court reviews de novo. *Chelsea Investment Group, LLC v Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010).

When the border fence was constructed, the provisions of the Bruce Township zoning ordinance at issue provided as follows:

> Section 2.09 BUILDING GRADES.
>
> 1. Grade elevations shall be determined by using the elevation at the center line of the road in front of the lot as the established grade.
>
> * * *
>
> Section 2.18 FENCES, WALLS AND PROTECTIVE BARRIERS.
>
> All fences of any nature, type or description located in the Township shall conform to the following regulations:
>
> * * *
>
> 3. Fences erected along the boundary line dividing lots or parcels, or located within any required side or rear yard areas, shall not exceed six (6') feet in height. In addition, double faced fences are encouraged when such fence is constructed within a required side or rear yard. In those instances, when a double[-]faced fence is not constructed, such fence shall be constructed so that the non-post side of the fence faces adjacent properties.
>
> * * *

> 7. For the purposes of this Section of the Zoning Ordinance, *the height of a fence shall be measured from the established grade of the property*. If such fence is to be constructed on top of a berm or other modification to the existing grade the total height of the fence shall also include the height of the berm or other modification to the existing grade. [Bruce Township Ordinances, §§ 161-2.09, 161-2.18 (1990) (emphasis added).]

"Municipal ordinances are interpreted and reviewed in the same manner as statutes." *Sau-Tuk Industries, Inc v Allegan Co*, 316 Mich App 122, 136; 892 NW2d 33 (2016). "[T]he goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body." *Id.* at 137 (quotation marks and citation omitted). "The most reliable evidence of that intent is the language of the ordinance itself, which must be given its plain and ordinary meaning." *Id.* "When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written." *Id.*

On appeal, plaintiffs argue that the trial court erred by interpreting section 2.18 as requiring border fences to be measured from the "established grade," and that the trial court should have interpreted section 2.18 as requiring that border fences be measured from the "existing grade." Yet section 2.18 of the Bruce Township zoning ordinance clearly limits the height of border fences to 6 feet "as measured from the *established grade* of the property." Bruce Township Ordinances, § 161-2.18 (1990) (emphasis added). That section uses both "existing grade" and established grade," suggesting that the terms have different meanings, see *United States Fid & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009) ("When the Legislature uses different words, the words are generally intended to connote different meanings."), and section 2.09 of the Bruce Township zoning ordinance defines "established grade," further suggesting that the term has its own distinct meaning under the ordinance. See Bruce Township Ordinances, § 161-2.09 (1990). Because section 2.18 of the Bruce Township Ordinance clearly and unambiguously provides that border fences shall not exceed a height of 6 feet as measured from the *established grade*, and, when that section is read within the ordinance as a whole, there is no plausible reading of section 2.18 that permits "established grade" to mean "existing grade," the trial court did not err by applying the zoning ordinance as written.[1]

In arguing that the trial court did err by applying the zoning ordinance as written, plaintiffs first argue that the trial court should have rejected the plain meaning of the ordinance because applying the ordinance as written will lead to absurd results. The validity of the absurd results

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[1] Plaintiffs do not contest that they failed to present any evidence that the border fence exceeded six feet in height if measured from the established grade. That is, plaintiffs do not argue that the trial court reached the wrong result if its interpretation of the ordinance was correct. Even if they did make such an argument, it would be without merit. The record clearly demonstrates that plaintiffs only provided the fence height as measured from the "existing grade," and they produced no evidence establishing the fence height as measured from the established grade. Plaintiffs claim therefore fails because they did not establish an element of their claim. See *Charles Reinhart Co v Winiemko*, 444 Mich 579, 586; 513 NW2d 773 (1994) (explaining that all plaintiffs in tort actions have the burden of proving the elements of their claims).

doctrine has been called into question by our Supreme Court, see, .e.g., *Johnson v Recca*, 492 Mich 169, 193; 821 NW2d 520 (2012), but this Court need not discuss whether the doctrine remains a valid tool of statutory interpretation because, assuming it does, the result reached in this case was clearly not absurd. Plaintiffs concede that fence height can be measured from the established grade, but contend that the legislative body could not have intended this because measuring a fence from the established grade requires "great effort and expenditure." This is simply not a reason to conclude that the legislative body did not intend for fence height to be measured from the established grade—it is entirely possible that the legislative body intended for fence height to be measured from the established grade even though doing so would take "great effort and expenditure." Accord *id.* (explaining that a result is only absurd if it is "quite impossible" that the legislative body could have intended the result).

Next, plaintiffs seem to contend that the intent of the ordinance should be derived from the testimony of a Bruce Township supervisor, who testified that he measured fences from the existing grade as opposed to the established grade. This argument is meritless because it is a foundational principle of statutory interpretation that the most reliable evidence of the legislative body's intent is the words of the ordinance. See *Sau-Tuk Industries*, 316 Mich App at 137. When an ordinance is clear, courts must apply the ordinance as written. See *id.* That a township supervisor may have had a different interpretation of the ordinance is not an exception to this rule—courts must still apply the text as plainly written.

In its final argument on this issue, plaintiffs contend that a subsequent amendment to the Bruce Township zoning ordinance reflects the township's true intent for the ordinance. For context, after the trial court's ruling, the Bruce Township Board of Trustees voted in favor of amending the Bruce Township zoning ordinance governing fence-height measurements, which now provides:

> For the purposes of this Section of the Zoning Ordinance, *the height of a fence shall be measured from the existing grade* of the subject property at the base of the fence at the time of installation. Where minor variations of grade at the base of the fence exist, the height of the fence shall be determined by the average height of the posts. If such fence is to be constructed on top of a berm or other modification to the existing grade the total height of the fence shall also include the height of the berm or other modification to the existing grade. [Bruce Township Ordinances § 161-5.7 (emphasis added).]

Plaintiffs argue that this "clarifying amendment . . . eliminates any doubt that the Township and its legislature intended the system of measurement" to be "from the existing grade." Plaintiffs, however, misinterpret the import of this amendment. The legislative body changing the pertinent ordinance text from stating that fence height must be measured from the "established grade" to now stating that fence height must be measured from the "existing grade" reinforces that "established grade" and "existing grade" have different meanings. The text as originally written intended for fence height to be measured from the "established grade"—not the "existing grade"—

as plainly expressed in the language of the ordinance.[2] The trial court properly applied the plain language of the ordinance, and plaintiffs' contention that the trial court should not have done so is without merit.

## III. SPITE FENCE

Next, plaintiffs argue that the trial court erred by granting summary disposition in favor of defendants under MCR 2.116(C)(10) on plaintiffs' spite-fence claim. We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 160. When considering a motion under MCR 2.116(C)(10), the trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id.* This Court's review is limited to the evidence that had been presented to the trial court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009).

In order to recover on the basis of a spite-fence claim, the plaintiff must establish that the defendant erected a fence or other obstruction that was constructed solely for malicious purposes. *Kuzniak v Kozminski*, 107 Mich 444, 445-446; 65 NW 275 (1895). However, a fence that serves a useful purpose to the property owner cannot form the basis of a spite-fence nuisance claim, even if its construction was partially motivated by malice. *Id.* at 446.

Based upon the record evidence at the time defendants' summary disposition motion was decided, plaintiffs failed to create a genuine issue of material fact regarding whether the border fence was constructed solely for malicious purposes. During their depositions, plaintiffs both testified that defendants constructed the border fence in an attempt to harass plaintiffs by blocking their view of a nearby lake. However, defendants both testified that they erected the border fence in an attempt to prevent plaintiffs from harassing them and to gain privacy. According to defendants, the border fence was necessary because Beverly insulted them and photographed them

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[2] Plaintiffs also at one point contend that this Court should "remand for reconsideration by the trial court under" the ordinance as amended, but they do not argue that the amendment applies retroactively. Even if they did, such an argument would lack merit. "Statutes and statutory amendments are presumed to operate prospectively." *Davis v State Employees' Retirement Bd*, 272 Mich App 151, 155; 725 NW2d 56 (2006). "Indeed, statutes and amended statutes are to be applied prospectively unless the [l]egislature manifests an intent to the contrary." *Id.* "The Legislature's expression of an intent to have a statute apply retroactively must be clear, direct, and unequivocal as appears from the context of the statute itself." *Id.* at 155-156. As amended, the Bruce Township zoning ordinance governing building and fence standards does not contain any language suggesting a legislative intent that the amendment should apply retroactively. Considering that the amended ordinance does not contain a clear, direct, and unequivocal expression of an intent to have the amended ordinance apply retroactively, it must be presumed that the amended ordinance applies prospectively.

while defendants were in their own backyard. Beverly corroborated defendants' testimony by admitting that she had multiple verbal altercations with Wendy before the border fence was erected. Beverly also acknowledged that she photographed Wendy after observing Wendy discharge grass clippings on plaintiffs' property on multiple occasions. Further, the evidence showed that the border fence served its intended purpose—Beverly and Wendy both testified that they did not have any additional verbal altercations after the border fence was erected. In light of the foregoing, even if the construction of the border fence was partially motivated by malice, there was no genuine issue of material fact regarding whether the border fence served the useful purposes of abating altercations between the neighbors and increasing privacy. Accordingly, the trial court did not err when it granted summary disposition in favor of defendants on plaintiffs' spite-fence claim.

On appeal, plaintiffs contend that the trial court should not have addressed whether the fence served a useful purpose, but whether "the Fence, as constructed, exceed[ed] any useful purposes." Plaintiffs cite no caselaw to support their assertion that this was how the trial court should have framed the issue. More importantly, even if this was how the issue should have been framed, plaintiffs point to nothing in the record that would create a question of fact whether "the Fence, as constructed, exceed[ed] any useful purposes." Accordingly, plaintiffs have not established that they are entitled to relief.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra

# STATE OF MICHIGAN

# COURT OF APPEALS

MICHAEL ANSCOMB and MEGAN ANSCOMB,

Plaintiffs-Appellees,

v

TOWNSHIP OF FRANKENMUTH ZONING BOARD OF APPEALS,

Defendant-Appellant.

UNPUBLISHED
August 25, 2022

No. 358016
Saginaw Circuit Court
LC No. 21-044363-AA

Before: SWARTZLE, P.J., and RONAYNE KRAUSE and GARRETT, JJ.

PER CURIAM.

In this zoning dispute, defendant, Township of Frankenmuth Zoning Board of Appeals (ZBA), appeals as of right the circuit court's order reversing the ZBA's decision to deny a residential building permit to plaintiffs. We affirm.

## I. BACKGROUND

On January 20, 2021, plaintiffs purchased a 40-acre parcel of property located in Frankenmuth Township. Most of the lot is a "back forty" squarish parcel of heavily-wooded land, mostly surrounded on all four sides by fields. The parcel is connected to a road by a strip of land 33 feet wide and approximately 1,300 feet long, running the length of what would otherwise be the "front" 40 acres. The property is located in the township's A-1 Rural Agricultural Zoning District. According to plaintiffs, they contacted a township building inspector before purchasing the property, seeking to determine whether the lot was buildable. Plaintiffs were referred to the township zoning administrator. Plaintiffs allegedly informed the zoning administrator by telephone on November 10, 2020, that they would only buy the lot if it was buildable, and the zoning administrator assured them that "the lot would be grandfathered in and is 100% a buildable lot." The ZBA disputes that the zoning administrator informed plaintiffs that the lot was buildable, and the zoning administrator later denied remembering that she told plaintiffs the lot was buildable. Plaintiffs purchased the lot and applied for a building permit.

On February 19, 2021, plaintiffs contacted the building inspector to check on the status of their building permit. The building inspector again referred plaintiffs to the zoning administrator.

By telephone, the zoning administrator informed plaintiffs that the lot was not buildable and that she did not recall making any statement to the contrary. At the zoning administrator's suggestion, plaintiffs then contacted a member of the ZBA and the township supervisor. According to plaintiffs, the township supervisor intended to review the matter and prepare a letter for plaintiffs with the township's decision on the matter. According to defendant, the phone call to the zoning administrator constituted a formal denial of the permit, the letter was a privileged attorney-client communication, and the letter was provided to plaintiffs as a mere courtesy. On March 9, 2021, plaintiffs received a text message from the township supervisor informing them that they would receive the letter that day. Plaintiffs received a letter prepared by the township's attorney via email on March 10, 2021. The attorney opinion letter concluded that the lot was not a buildable parcel because it did not meet the site development standard under zoning ordinance § 804(2)(a), requiring that all lots be 200 feet in width at the front building line. The letter further advised that plaintiffs would need to seek a variance from the ZBA if they chose to build on the lot. The same day plaintiffs received the emailed letter, plaintiffs filed a notice of appeal to the ZBA.

On March 25, 2021, the ZBA held a hearing on the matter. Plaintiffs argued, in relevant part, that a fair and reasonable reading of the zoning ordinance was that the "front building line" was not synonymous with "front property line," so their lot satisfied all of the ordinance requirements to be buildable. Plaintiffs argued that, in the alternative, the ZBA should grant a variance in light of two considerations. First, the lot was created in 2003—before the effective date of the ordinance—and should therefore be "grandfathered." Secondly, they were entitled to rely on the zoning administrator's statement that the lot would be buildable. According to the minutes of the hearing, the president of the ZBA stated "that the 200 feet of frontage was always considered from the street." The ZBA denied plaintiffs' request for relief, and it issued a written order to that effect on March 30, 2021. On April 22, 2021, plaintiffs timely[1] appealed the ZBA's decision to the circuit court.

In the circuit court, plaintiffs generally reiterated that the ZBA misinterpreted its ordinance to require 200 feet of road frontage, and, in the alternative, the ZBA abused its discretion by refusing to grant a non-use variance. Defendant reiterated that the "front building line" was necessarily coextensive with the street frontage, because street frontage established the area within which a building could be located. Defendant further disputed that plaintiff's lot was "grandfathered," and it argued that a variance would not be appropriate under the circumstances. Defendant also raised two new issues. First, defendant argued that plaintiffs had not timely appealed the denial of their building permit to the ZBA, which divested the ZBA of subject-matter jurisdiction and therefore also precluded the circuit court from having subject-matter jurisdiction. Secondly, plaintiffs' lot was not buildable pursuant to a different requirement of zoning ordinance § 804(2)(a), which required a width-to-depth ratio of no more than 1-to-2; defendant claimed the lot was only 33 feet wide, so the meaning of "front building line" was moot.

The trial court held a hearing and entered a written opinion and order. The trial court rejected the argument that the ZBA lacked jurisdiction, concluding that the township's final

[1] As will be discussed, defendant argues that plaintiffs did not timely appeal to the ZBA. However, defendant does not challenge the timeliness of plaintiffs' appeal to the circuit court.

decision was given to plaintiffs in the form of the letter on March 10, 2021. Considering all the record evidence before it, the trial court concluded that it was clear that the March 10 letter was intended to be the township's final decision, rather than the telephone conversation with zoning administrator. The trial court further admonished defendant that "you can't pick and choose when it's okay to listen to the zoning administrator verbally." The trial court also refused to consider the width-to-depth issue following defendant's concession at the hearing that there was no record evidence the ZBA relied on that issue in denying the building permit. Furthermore, the trial court rejected defendant's argument that "front building line" was synonymous with street frontage on the basis of historical interpretation, explaining that the plain language of the ordinance did not support any such interpretation. The trial court finally concluded that it did not need to address issues of "grandfathering," equitable estoppel, or the variance. It ordered that the building permit must be approved. After the trial court denied a motion for reconsideration from defendant, this appeal followed.

## II. STANDARDS OF REVIEW

"The decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material, and substantial evidence on the record, or an abuse of discretion." *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich App 197, 201; 651 NW2d 464 (2002). We review de novo "the circuit court's determination regarding ZBA findings to determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the ZBA's factual findings." *Huges v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009) (quotation and brackets omitted). Generally, this Court gives "great deference to the trial court and zoning board's findings." *Norman Corp v East Tawas (On Remand)*, 263 Mich App 194, 198; 687 NW2d 861 (2004).

Conversely, a reviewing court should give deference to a municipality's established historical interpretation of its own ordinances only if the ordinance is ambiguous and the municipality's interpretation is reasonable. *Macenas v Village of Michiana*, 433 Mich 380, 397-398; 446 NW2d 102 (1989); *Sinelli v Birmingham Bd of Zoning Appeals*, 1960 Mich App 649, 653-654; 408 NW2d 412 (1987). A municipality's historical interpretation of its own ordinance is not entitled to any weight if the language used in the ordinance is clear and unambiguous. *Kalinoff v Columbus Twp*, 214 Mich App 7, 10-11; 542 NW2d 276 (1995). "This Court reviews de novo matters of statutory construction, including the interpretation of ordinances." *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). "Municipal ordinances are interpreted and reviewed in the same manner as statutes." *Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452, 457; 965 NW2d 232 (2020) (quotation marks and citation omitted). If the language is unambiguous, "the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159-160; 645 NW2d 643 (2002). It is necessarily an abuse of discretion to make a decision premised upon an error of law. See *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552; 886 NW2d 113 (2016).

This Court reviews de novo whether a circuit court has subject-matter jurisdiction over a case. *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393; 952 NW2d 603 (2019).

## III. SUBJECT-MATTER JURISDICTION

Defendant contends that plaintiffs' appeal to the ZBA was untimely, thereby depriving the ZBA, and as a consequence the circuit court, of subject-matter jurisdiction over this matter. We disagree.

Frankenmuth Township Rural Zoning Ordinance § 1204(3), which governs appeals to the Zoning Board of Appeals, states:

> Any appeal from the rulings of the Administrative Staff concerning the interpretation or enforcement of the provisions of this ordinance shall be made to the board of appeals within ten (10) days *after the date of decision causing appeal.* Such appeal shall be filed with the Zoning Administrator and *shall specify the grounds for the appeal.* [Frankenmuth Township Zoning Ordinance § 1204(3) (emphasis added).]

The ordinance expressly states that "the term 'shall' is always mandatory and not discretionary." Ordinance § 201(4); see also *Roberts v Mecosta Co General Hospital*, 466 Mich 57, 65; 642 NW2d 663 (2002). However, as the trial court noted, nowhere in the ordinance is compliance with the ten-day deadline expressly stated to be jurisdictional. Presuming plaintiffs' appeal to the ZBA was untimely, the fact that the ZBA in fact took up plaintiffs' appeal suggests that the ZBA did not believe there to be any jurisdictional defect. Because the ordinance does not state that noncompliance with the ten-day deadline is jurisdictional, the ordinance is ambiguous on that point, and the ZBA's implicit interpretation that the deadline is non-jurisdictional would be reasonable.

In any event, statutes must be read as a whole, individual words or phrases must be considered in context, and no part of the statute should be rendered surplusage or nugatory. *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012). Although the ordinance does not explicitly define the term "Administrative Staff," the ordinance provides that "[t]he Township Board of Trustees shall employ a Zoning Administrator, a Code Enforcement Officer, and a Building Inspector to act as its officers to affect proper and adequate administration of this ordinance." Ordinance § 1201(1). It is "the duty of the Building Inspector to issue any necessary building permit and when such permit is denied, to state refusal in writing, with cause." Ordinance § 1201(5)(d). Conversely, the enumerated duties of the zoning administrator in Ordinance § 1201(2) do not include issuing or denying building permits. Plaintiffs' application for a building permit triggered § 1201(5)(d), because the permit would either be issued or denied. Although this section of the ordinance is not a model of clarity, it clearly contemplates a *written* denial *including an explanation for the denial*, and the source of that denial should be the building inspector rather than the zoning administrator. Furthermore, without receiving a statement of cause, it would be impossible for a person denied a permit to comply with the requirement in § 1204(3) of specifying the grounds for the appeal. The telephone conversation with the zoning administrator on February 19, 2021, cannot have been a proper, formal denial of the building permit that would trigger the ten-day deadline for appealing to the ZBA.

Defendant further argues that the township's attorney opinion letter could not serve as the written decision because the township's attorney did not have authority to deny the building

permit. Although the ZBA is correct that the township's attorney does not have authority to deny the permit under the zoning ordinance, plaintiffs were provided the March 10 letter with the representation that this was the township's decision on the matter. Defendant argues that the letter was an internal, implicitly privileged, attorney-client communication, and it was merely given to plaintiffs as a courtesy. A plain reading of the letter clearly demonstrates otherwise, if for no other reason than the sheer number of times the township attorney went to great pains to emphasize and reemphasize that the township did not concede that the zoning administrator informed plaintiffs on November 10, 2020, that the lot was buildable. The letter also never indicates that it is confidential or privileged. Rather, the letter was plainly intended to be read by persons other than the township board. Under the totality of the circumstances, the trial court correctly determined that the denial of the building permit came in the form of the letter on March 10, 2021.[2]

We also agree with the trial court that defendant is trying to "have it both ways," for two reasons. First, if the zoning administrator's undocumented statement by telephone on February 19, 2021, can constitute a formal and official determination by the township, then there is no apparent reason why the zoning administrator's undocumented statement on November 10, 2020, cannot *also* constitute a formal and official determination by the township. Secondly, the township attorney's own letter emphasizes that municipalities do not speak through individuals. By the township attorney's own logic, the zoning administrator's telephoned statement that the permit was denied could not, therefore, be the *township's* decision.

In sum, it is highly doubtful that the ten-day deadline was actually jurisdictional, and in any event, plaintiffs' appeal to the ZBA was timely on these facts.

## IV. FRONT BUILDING LINE

In relevant part, ordinance § 804(2)(a) provides that "[e]ach lot shall be a minimum of two hundred (200) feet in width at the front building line." Ordinance § 202(9) defines "building lines" as "[a] line defining the minimum front, side or rear yard requirements outside of which no building or structure may be located." Ordinance § 202(8) defines the front building line as "[t]he line that coincides with the face of the building nearest the front line of the lot." Ordinance § 202(40) provides that "every lot shall abut upon and have permanent access to a public street." Ordinance § 202(43) provides that the front lot line is the "line separating the lot from the street or place," and pursuant to ordinance § 202(44), the lot line width is "measured along the front lot line or street line."

Defendant asserts that, pursuant to its historical interpretation of the ordinance, § 804(2)(a) requires plaintiffs' lot to have a minimum of 200 feet in width of frontage on the road it abuts, and plaintiffs cannot meet this requirement because their lot is only 33 feet in width. We disagree. Initially, we note that defendant repeatedly insists that plaintiffs' lot is only 33 feet wide, which is blatantly untrue: their lot is 33 feet wide at the road, but the overwhelming majority of their 40

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[2] In any event, even if the letter was not, itself, the township's decision to deny the permit, the letter minimally constituted a written statement setting forth the denial and providing an explanation for the denial. Therefore, until plaintiffs received the letter, the township had not fully effectuated its denial of the permit, and, again, the ten-day deadline was not triggered.

acres is obviously somewhere in the vicinity of 1,300 feet wide. The plain and unambiguous language of the ordinance establishes that the "building line" is *not* the same as the "lot line," irrespective of whatever historical interpretation might have been made by the township. Indeed, § 202(8) provides that the front building line is "parallel to the front lot line and measured as a straight line between the intersecting points with the side yard." It could not possibly be more clear that the front building line is therefore not the front lot line and is not measured based on street frontage. Presumably, the front building line and the front lot line would tend to be *coincidentally* identical in a traditional city lot. Defendant, however, seems to misapprehend the unusual shape of plaintiffs' lot—which obviously has ample room for construction of an ordinary residence within the squarish portion of the 40 acres. Although the "front lot line" of plaintiffs' property, as defined by Ordinance § 202(43), may be 33 feet, that fact is utterly irrelevant. The "front building line" within the meaning of § 202(8) would be based upon the 1,300-foot-width of the main portion of plaintiffs' property where plaintiffs actually intend to construct their residence.[3]

Therefore, the trial court correctly determined that the ordinance did not preclude plaintiffs from building on their lot.

## V. MOOTNESS

Lastly, defendants argue that plaintiffs' appeal is moot because, even if plaintiffs are correct regarding street frontage, another provision of ordinance § 804(2)(a) renders their lot unbuildable. Specifically, § 804(2)(a) provides that a lot must have a "maximum lot width to depth ratio of 1:2." We find this argument meritless.

As the trial court found, and as defendant conceded at the trial court's hearing, nothing in the record supports the proposition that the ZBA addressed or ruled on this issue. Therefore, there was no decision regarding this issue that could be reviewed on the record. *Janssen*, 252 Mich App at 201. Nevertheless, defendant seemingly maintains the position that it could still deny the permit on this basis, and the record is sufficient to dispose of this issue now. See *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002). In the interest of economy, we therefore briefly observe that § 804(2)(a) does not discuss "lot line width," but rather only "lot width." The use of different words generally indicates different meanings. See *United States Fidelity & Guaranty Co v Mich Catastrophic Claims Ass'n (On Reh)*, 484 Mich 1, 14; 795 NW2d 101 (2009). Plaintiffs' lot is, in effect, an ordinary 80-acre half-of-a-quarter-section parcel with most of the front 40 acres carved out; in other words, the *lot* is approximately 1,300 feet wide by approximately 2,600 feet long. It therefore has a width-to-depth ratio of exactly 1:2. Even if considered, this argument

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[3] Plaintiffs note Ordinance § 302(2), which provides that "[a]ny lot of record created after the effective date of this ordinance shall have frontage on a public street, except as may be approved as a planned unit development in accordance with the provisions of this ordinance measured at the public street." Plaintiffs accurately observe that their lot was created before the effective date of the ordinance. In any event, § 302(2) does not obviously appear to specify how much frontage is required, and as far as we can determine defendant does not rely on this section.

defies the obvious reality of the lot and is meritless. Plaintiffs, being the prevailing parties, may tax costs pursuant to MCR 7.219(A).

Affirmed.

/s/ Brock A. Swartzle
/s/ Amy Ronayne Krause
/s/ Kristina Robinson Garrett

**Michigan Supreme Court**
**Lansing, Michigan**

# OPINION



FILED June 16, 2025

STATE OF MICHIGAN

SUPREME COURT

MARK A. HACKEL,

Plaintiff/Counterdefendant-Appellee,

v

No. 166363

MACOMB COUNTY BOARD OF COMMISSIONERS,

Defendant/Counterplaintiff-Appellant.

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BEFORE THE ENTIRE BENCH (except HOOD, J.)

WELCH, J.

This appeal concerns whether Macomb County's legislative branch has authority to require the county's executive branch to provide it with digital real-time, read-only access to financial information that the legislative branch deems necessary to perform its budgeting obligations. We hold that § 3.5(a) of the Home Rule Charter of Macomb County (the Charter) gives defendant, the Macomb County Board of Commissioners (the

Commission), legal authority to require plaintiff, Mark A. Hackel (the County Executive), to provide such access by "law," which includes a validly enacted local ordinance. The ordinance at issue does not directly conflict with other provisions of the Charter or state law and therefore is presumptively valid. Accordingly, we reverse the judgment of the Court of Appeals and remand to the circuit court for further proceedings that are consistent with this opinion.

## I. FACTUAL BACKGROUND

In Macomb County, the Commission is vested with legislative power and the County Executive is vested with executive power. Charter, §§ 3.1; 4.1. The Commission and the County Executive share responsibilities in the preparation and approval of the annual county budget. The Charter requires the County Executive to "prepare and administer a comprehensive balanced budget" and "transmit" it to the Commission at least 90 days before the beginning of the next fiscal year. Charter, § 8.6.1. The budget must contain, "at a minimum, the budget message, budget document, the proposed appropriations ordinance containing the information required by law, and *any information required by the Commission, law, or ordinance.*" *Id.* (emphasis added). The County Executive oversees the county's finance department. Charter, § 3.5(a). Specifically, the Charter states that the County Executive has "the authority, duty, and responsibility" to "[s]upervise, coordinate, direct, and control all County departments except for departments headed by Countywide Elected Officials other than the Executive . . . *except as otherwise provided by this Charter or law.*" *Id.* (emphasis added). The finance department is required to "[a]dminister [the] financial affairs of the county in accordance with law."

Charter, § 7.4(b). To carry out these duties, the finance department assists the County Executive with preparation of the annual comprehensive balanced budget.

The finance department uses financial management software provided by third-party vendors, which has included a program called OneSolution. The parties' briefs indicate that OneSolution includes a real-time record of all county financial data used by the County Executive and all county departments. OneSolution allows users to search, retrieve, and sort pertinent county financial data. The software offers granular detail as to all county expenditures, which can be broken down by the county department and line item.

The Commission has historically been provided with access to the county's financial management software for the purpose of managing the Commission's internal administrative budget, but it has not been provided with real-time access to information regarding other county departments and operations. Rather, to obtain additional information for use in creating and approving the annual budget, the Commission's director of legislative affairs has been required to request specific information from the finance department. The finance department or the County Executive would then respond to the request with printed paper records. According to the Commission, such paper records can quickly become outdated, and the lack of access to real-time information has impaired the Commission's abilities in relation to the budgeting process. The Commission has also alleged that responses to requests for information related to budgeting have sometimes been incomplete or untimely. The Commission further noted past instances in which the County Executive's proposed budget failed to break down departmental budgets and other expenditures by line item. Because of these perceived problems, during or before the 2017 calendar year, the Commission began requesting real-time, read-only access to

OneSolution. Plaintiff, acting in his official capacity as County Executive, refused to grant the request.

On November 9, 2017, the Commission unanimously adopted the Fiscal Year 2018 Comprehensive General Appropriations Ordinance (Ordinance No. 2017-04). Subsection 10(H) of the ordinance added the following new requirement: "The Director of Legislative Affairs for the Board of Commissioners shall be given real-time, read-only access to the financial software program the County uses." The ordinance was made "effective immediately upon publication of a notice of enactment," Ordinance No. 2017-04, § 14, and the County Executive did not veto it. The Commission has included the same or similar language in each subsequent annual appropriation ordinance through fiscal year 2024.[1]

Despite the enactment of the financial management software access requirement for each fiscal year since Ordinance No. 2017-04 was adopted, the County Executive has never

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[1] We note that the financial management software used by the county has changed at least once during the pendency of this litigation. Although only Ordinance No. 2017-04 is on review before this Court, in 2023, the Commission revised the annual appropriations ordinance language for fiscal year 2024 to provide as follows:

> The Director of Legislative Affairs for the Board of Commissioners shall be given real-time, read-only access to any and all financial software programs the County uses, including, but not limited to "Workday." Within 24 hours (or otherwise agreed to in writing by the Chief of Staff for the Board of Commissioners) of a written request by the Chief of Staff for the Board of Commissioners for financial information, the Executive must provide, transmit, and furnish to the Chief of Staff for the Board of Commissioners any requested financial information, which may include but is not limited to the following: vendor reports and year-to-date budget reports by department line item (containing the same line item information and format available to the Executive and respective department), in an electronic, sortable format, such as a spreadsheet. [Ordinance No. 2023-04, § 10(G).]

authorized the finance department to grant the Commission's designee access to the software. The Commission asserts that the ordinance requires access to the software and that such access is consistent with the Uniform Budgeting and Accounting Act (UBAA), MCL 141.421 *et seq*.

## II. PROCEDURAL HISTORY

On March 28, 2018, the County Executive filed a three-count complaint against the Commission, seeking declaratory relief concerning different matters that are no longer at issue. On May 30, 2018, the Commission filed an answer, as well as a counterclaim. The counterclaim sought, in relevant part, declaratory relief and a writ of mandamus ordering plaintiff to comply with the UBAA, the Charter, and Ordinance No. 2017-04 by granting real-time, read-only access to the county's financial management software to the Commission's director of legislative affairs. The circuit court dismissed the County Executive's complaint in June 2019, and that order was not appealed. Discovery and pretrial litigation continued for several years. The parties later filed cross-motions for partial summary disposition of the Commission's counterclaim, and the circuit court took them under advisement following oral argument in September 2021.

In a January 13, 2022 opinion and order, the circuit court denied the Commission's motion and granted the County Executive's motion, holding that Ordinance 2017-04, § 10(H) unlawfully infringed the County Executive's authority under Charter, § 3.5. In an August 2022 order, the circuit court dismissed all remaining claims in the Commission's counterclaim by stipulation of the parties. The Commission appealed by right from the August 2022 final order.

In an unpublished, split decision, the Court of Appeals affirmed the circuit court. *Hackel v Macomb Co Bd of Comm'rs*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 362775). The majority held that Ordinance 2017-04, § 10(H) was neither valid nor enforceable because it impermissibly interfered with the County Executive's right to control county departments under Charter, § 3.5(a). *Id.* at 13-14. Although the Commission has the power to adopt ordinances under Charter, § 4.4(a), the majority noted that a county ordinance would not be enforceable if it provided for greater or lesser rights than those expressed in the Charter or if it was inconsistent with restrictions imposed by the state Constitution or state statutes. *Id.* at 7, citing *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 251; 704 NW2d 117 (2005); *Bivens v Grand Rapids*, 443 Mich 391, 400-401; 505 NW2d 239 (1993). The panel opined that Charter, § 3.5(a) vested the power to control access to the county's financial management software in the County Executive because the county's finance and information technology departments are not headed by elected officials. The majority held that this power includes the right to exclude others. *Id.* at 8, citing *Breakey v Dep't of Treasury*, 324 Mich App 515, 526 n 8; 922 NW2d 397 (2018).

Although the majority acknowledged a limitation on the County Executive's authority through the phrase "as otherwise provided by this Charter or law," Charter, § 3.5(a), it framed this limitation as being confined to actions of the County Executive that "violate[] the Macomb County Charter or other state law," *Hackel*, unpub op at 8-9. According to the majority, Charter, § 8.6.1 required the County Executive to "transmit to" the Commission a comprehensive budget along with "information required by [the Commission], law, or ordinance," this provision did not give the Commission a right to

access the information in a manner of its choosing, such as by accessing the county's systems on its own. *Id.* at 10-11. Charter, § 8.6.1 entitled the Commission to receive the information it requires for budgeting purposes and required the County Executive to transmit it rather than providing the Commission the ability to gather the information itself. *Id.* Similarly, the majority opined that MCL 141.434(5), a provision of the UBAA, merely required the County Executive to "furnish" information that the Commission requires for budgeting upon request. *Id.* at 11-12.

The majority held that because the challenged ordinance provided the Commission with " 'greater rights . . . than those expressed in the charter' " and fell outside " 'the scope of authority delegated' " by the Charter, the ordinance was invalid and unenforceable. *Id.* at 7, quoting *Wayne Co Retirement Comm*, 267 Mich App at 251, and *Bivens*, 443 Mich at 397, respectively. Accordingly, the majority concluded that the circuit court properly granted the County Executive's motion for summary disposition and denied the Commission relief.

Judge FEENEY dissented. The dissent would have held that the County Executive's failure to veto Ordinance No. 2017-04 amounted to executive acquiescence that removed the executive's ability to decline to do what the ordinance required. See *Hackel* (FEENEY, J., dissenting), unpub op at 3, citing *The Unconstitutionality of "Signing and Not-Enforcing,"* 16 Wm & Mary Bill Rts J 113, 121-122 (2007). The dissent opined that "even if the charter gives [the County Executive] control over who has access to the software, it necessarily follows that [the County Executive] gave access to the [Commission] when [he] chose not to veto Ordinance 2017-04." *Hackel* (FEENEY, J., dissenting), unpub op

at 5. In the dissent's view, the County Executive was bound to follow a lawfully enacted ordinance that had not been vetoed.

The Commission then sought leave to appeal in this Court. We scheduled oral argument on the application, MCR 7.305(H)(1), and directed the parties to brief the following questions:

> (1) whether, pursuant to Macomb County Charter § 8.6.1 and/or defendant's annual appropriations ordinances (see, e.g., Ordinance 2017-04 § 10(H)), plaintiff is required to provide defendant or its agent with access to real-time, read-only access to financial software programs used by the county; and (2) whether the term "law" as used in Charter § 3.5(a) encompasses ordinances validly enacted by the Commission. [*Hackel v Macomb Co Bd of Comm'rs*, 513 Mich ___ (June 21, 2024).]

## III. GOVERNING LEGAL STANDARDS

A trial court's decision to grant or deny declaratory relief or issue a writ of mandamus is reviewed for an abuse of discretion. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005); *US Fidelity & Guaranty Co v Kenosha Investment Co*, 369 Mich 481, 486; 120 NW2d 190 (1963). "A trial court necessarily abuses its discretion when it makes an error of law." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). Underlying questions of law, such as whether a party is obligated to perform a clear legal duty and how to interpret a statute, are subject to de novo review. *Casco Twp*, 472 Mich at 571; *Fraser Twp v Haney*, 509 Mich 18, 23; 983 NW2d 309 (2022). The interpretation of a municipal charter also presents a question of law that we review de novo. *Hackel v Macomb Co Comm*, 298 Mich App 311, 316; 826 NW2d 753 (2012).

Although the parties cited MCR 2.116(C)(8), (C)(9), (C)(10), and (I)(2) to support their motions, the circuit court did not indicate under which of these rules it granted summary disposition. The basis for the circuit court's decisions was primarily confined to considerations of law, but that court's decision was also rendered after extensive discovery, and the court considered whether Ordinance No. 2017-04 violated the county's policy on information technology security. Accordingly, we will presume that the circuit court's January 13, 2022 decision was based on both MCR 2.116(C)(8) and (10).

A motion filed under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. A court must limit its consideration to the pleadings, accept all well-pleaded factual allegations as true, and construe the allegations in the light most favorable to the nonmovant. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Such a motion "may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* (quotation marks and citation omitted).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint, and when evaluating the motion, a trial court may consider "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id.* at 120. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*

## IV. ANALYSIS

The key question before the Court is whether the requirement in Ordinance No. 2017-04, § 10(H) that a designee of the Commission be given real-time, read-only access to the county's financial management software was a valid exercise of the Commission's legislative powers. This requires examination of the Charter, which, pursuant to Const 1963, art 7, § 2 and the Michigan charter counties act, MCL 45.501 *et seq.*, serves as Macomb County's constitution.

Municipal charters should be construed in a rational manner, keeping in mind that they are "not always as judiciously framed as they might be." *Sterling Hts v Gen Employees Civil Serv Comm*, 81 Mich App 221, 223; 265 NW2d 88 (1978), citing *Torrent v Common Council of Muskegon*, 47 Mich 115, 118; 10 NW 132 (1881). However, well-known guiding principles of statutory construction apply to county or municipal ordinances, as well as county charters. See *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); *Detroit v Walker*, 445 Mich 682, 691; 520 NW2d 135 (1994). The primary goal of interpreting an ordinance or charter is to discover and give effect to the intent of the enacting body. See *Walker*, 445 Mich at 696-697; *American Civil Liberties Union of Mich v Calhoun Co Sheriff's Office*, 509 Mich 1, 8; 983 NW2d 300 (2022).

"[W]e are required to construe [a] charter's language by its commonly accepted meaning as long as it does not produce absurdity, hardship, injustice, or prejudice to the drafters and ratifiers." *Walker*, 445 Mich at 691. As with a statute, the "plain and ordinary meaning" of relevant terms must be understood in light of "the context in which the words are used." *Dep't of Talent & Econ Dev v Great Oaks Country Club, Inc*, 507 Mich 212, 226-227; 968 NW2d 336 (2021) (quotation marks and citation omitted). This Court strives

to harmonize and give effect to every word, phrase, and clause, and to avoid an interpretation that renders nugatory or surplusage any part of a statute, ordinance, or charter. See *2 Crooked Creek, LLC v Cass Co Treasurer*, 507 Mich 1, 9; 967 NW2d 577 (2021); *Rott v Rott*, 508 Mich 274, 293; 972 NW2d 789 (2021).

### A. THE HOME RULE CHARTER OF MACOMB COUNTY

"Michigan is a home rule state, in which local governments are vested with general constitutional authority to act on all matters of local concern not forbidden by state law." *Wayne Co v Hathcock*, 471 Mich 445, 460; 684 NW2d 765 (2004) (quotations marks and citations omitted). Macomb County is a charter county, and voters adopted the county's current charter pursuant to Michigan's charter counties act on November 3, 2009.[2] Macomb County voters thus chose a power-sharing arrangement under which the primary powers of governance are divided between the County Executive and the Commission. See *Hackel*, 298 Mich App at 316-318.

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[2] Macomb County and Wayne County are the only counties that have chosen the "charter county" form of government under the Michigan charter county act, and the electorate of each county chose the elected county executive option over having the county commission appoint a chief administrative officer. Schindler, *County Government Administrative Structure, Administration Today—Part 2*, Michigan State Extension (December 23, 2014), available at <https://www.canr.msu.edu/news/county_government_administrative_structure_administration_today_part_2> (accessed May 12, 2025) [https://perma.cc/K2GK-JF6Y]. According to 2020 census data, approximately 26% of Michigan's residents live in one of these two counties. See United States Census Bureau, *Michigan: 2020 Census* (August 25, 2021) <https://www.census.gov/library/stories/state-by-state/michigan-population-change-between-census-decade.html> (accessed May 12, 2025) [https://perma.cc/C3MN-3SKP].

The Charter grants the County Executive broad management, administrative, and enforcement powers:

> The Executive has the authority, duty, and responsibility to:
>
> (a) Supervise, coordinate, direct, and *control* all County departments except for departments headed by Countywide Elected Officials other than the Executive, facilities, operations, and services *except as otherwise provided by this Charter or law*;
>
> (b) *Enforce all laws in the County* except as provided for by this Charter or law;
>
> (c) *Discharge the duties granted the Executive by this Charter, law, or ordinance*, and exercise all incidental powers necessary or convenient for the discharge of the duties and functions specified in this Charter or lawfully delegated to the Executive[.] [Charter, § 3.5 (emphasis added).]

Similarly, the Charter grants the Commission broad legislative authority:

> In addition to other powers and duties prescribed in this Charter, the Commission may:
>
> (a) *Adopt, amend, or repeal ordinances* or resolutions;
>
> * * *
>
> (j) *Exercise any power granted by law to charter or general law counties unless otherwise provided by this Charter.* [Charter, § 4.4 (emphasis added).]

And the Commission's enumerated powers are not exclusive:

> The enumeration of powers in this Charter shall not be held or deemed to be exclusive. In addition to the powers enumerated in this Charter, implied by this Charter, or appropriate to the exercise of the powers enumerated in this Charter, the Commission shall have and may exercise all legislative powers which this Charter could specifically enumerate as provided by the Constitution and the laws of the State of Michigan. [Charter, § 4.5.]

The Commission must exercise its authority through ordinances or resolutions. Charter, § 4.6 ("The Commission shall act by ordinance if required by this Charter or law, otherwise by resolution. All acts of the Commission imposing a penalty shall be by ordinance."). The Commission's power to act by ordinance is also enshrined in the Michigan Constitution, which provides that, "[s]ubject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns."[3] Const 1963, art 7, § 2.

When resolving a previous dispute between the Commission and the County Executive, the Court of Appeals held that Charter, § 4.4(j) grants the Commission all lawful powers granted to charter or general law counties when there is no restriction expressly stated in the Charter. *Hackel*, 298 Mich App at 320-321. Although counties lack the state's police power to regulate for the general welfare, a county board of commissioners may "pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county . . . ." MCL 46.11(j). The Commission's general legislative authority to act through ordinances as it relates to local matters is firmly established.

As previously discussed, a proposed annual budget prepared by the County Executive must contain specified minimum information and a proposed appropriations

[3] Michigan's charter counties act further provides that a county charter must include "[t]he power and authority to adopt, amend, and repeal any ordinance authorized by law or necessary to carry out any power, function, or service authorized by this act and by the charter." MCL 45.514(1)(i).

ordinance, as well as "any information *required* by the *Commission, law, or ordinance*."[4] Charter, § 8.6.1 (emphasis added). The Commission "bears primary responsibility for the final budget." *Macomb Co Prosecutor v Macomb Co Executive*, 341 Mich App 289, 307; 989 NW2d 864 (2022). The Commission reviews the recommended budget, makes any desired changes, and then "adopt[s] a balanced line item operating budget and an appropriations ordinance in accordance with the requirements of law." Charter, § 8.7; see *Macomb Co Prosecutor*, 341 Mich App at 315-316 (holding that the Commission "is permitted to adopt an independent budget under the County Charter").

The parties also do not dispute that, at a minimum, the Charter and the UBAA authorize the Commission to determine *what information must be included in and transmitted with* the proposed budget prepared by the County Executive. See Charter, § 8.6.1; MCL 141.434(5). And there is no doubt that matters concerning a county's budget and financial management relate to local county concerns. But the parties contest whether requiring real-time access to financial management software exceeds the County Executive's obligation to transmit specific information with the proposed budget. Thus, the question in this case is whether Ordinance No. 2017-04, § 10(H), which arguably goes beyond mandating that specific information be included in and transmitted with the proposed budget, was a valid exercise of the Commission's legislative authority.

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[4] The UBAA also requires the "chief administrative officer" of a county to "furnish to the legislative body *information the legislative body requires* for proper consideration of the recommended budget." MCL 141.434(5) (emphasis added).

## B. "LAW" AND "ORDINANCE" IN CONTEXT

As the parties acknowledge, Charter, § 3.5(a) states that the management and supervisory authority held by the County Executive can be limited "as otherwise provided by this Charter or law[.]" If a validly enacted ordinance constitutes a "law" for purposes of Charter, § 3.5(a), then it would be within the Commission's authority to impose at least some conditions on the County Executive's management and supervisory powers through an ordinance. The definitions section in Article I of the Charter does not define the terms "law" or "ordinance." See Charter, § 1.4. Nonetheless, the Charter uses the words "law" and "ordinance," as well as related terms such as "state law" and the phrases "by law" and "by ordinance," in numerous Charter sections, including § 3.5.

The real-time digital access requirement in Ordinance No. 2017-04, § 10(H) affects both the finance and the information technology departments of Macomb County, given the nature of their duties. Those departments are not headed by elected officials and therefore operate under the County Executive's supervision pursuant to Charter, § 3.5(a). The Court of Appeals majority held that the limitation in Charter, § 3.5(a) is confined to actions of the executive that "violate[] the Macomb County Charter or other state law" and therefore did not authorize the Commission to impose limitations on the County Executive's control or management authority absent express authorization by a statute or the state Constitution. *Hackel*, unpub op at 9. The County Executive agrees and argues that the ordinance unlawfully infringes his power of "control" over executive branch departments. On the other hand, the Commission argues that mandating real-time, read-only access to financial management software does not erode the County Executive's control.

We disagree with the Court of Appeals. When concluding that the County Executive's supervisory power could not be limited in any way by an ordinance passed by the Commission, the Court of Appeals failed to give the proper meaning to Charter, § 3.5(a). The majority's analysis failed to consider relevant context and principles of statutory interpretation and thus failed to respect the status of county ordinances as binding "law" within the county.

Whether considered in a common or technical sense, the plain and ordinary meaning of "law" is exceptionally broad. *Black's Law Dictionary* (12th ed), for example, defines "law" as, among other things, "[t]he set of rules or principles dealing with a specific area of a legal system," "[t]he judicial and administrative process; legal action and proceedings," and "[a] statute." Similarly, in the abstract, a "statute" can refer to any "law enacted by a legislative body," such as "legislation enacted by . . . a legislature, administrative board, or municipal court," *id.*, although in Michigan the term is typically used in reference to legislation enacted by Congress or the state Legislature, see, e.g., *Ter Beek v Wyoming*, 495 Mich 1, 10-11; 846 NW2d 531 (2014); *Blank v Dep't of Corrections*, 462 Mich 103, 108; 611 NW2d 530 (2000) (opinion by MARILYN KELLY, J.). A popular lay dictionary defines "law" as "a binding custom or practice of a community" and "the whole body of such customs, practices, or rules[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed). Although the use of "law" in a specific context or in conjunction

with a specific modifier can narrow the scope of the term, the starting point must be a broad and inclusive meaning.[5]

The Commission's argument that a validly enacted local ordinance is a subset of law is well-supported and hardly novel. A relevant lay definition of "ordinance" is "a law set forth by a governmental authority; *specif*: a municipal regulation." *Merriam-Webster's Collegiate Dictionary* (11th ed). And *Black's Law Dictionary* (11th ed) provides a similar but more comprehensive definition:

> An authoritative law or decree; specif., a municipal regulation, esp. one that forbids or restricts an activity. • Municipal governments can pass ordinances on matters that the state government allows to be regulated at the local level. A municipal ordinance carries the state's authority and has the same effect within the municipality's limits as a state statute.

Both are consistent with our own past observation that "[a]n 'ordinance' is simply 'a law set forth by a governmental authority,' specifically 'a municipal regulation.' " *Clam Lake Twp v Dep't of Licensing and Regulatory Affairs*, 500 Mich 362, 381; 902 NW2d 293 (2017), quoting *Merriam-Webster's Collegiate Dictionary* (11th ed). And a leading

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[5] A majority of this Court recently held that the plain meaning of the phrase "a violation or a suspected violation of a law," when used in Michigan's Whistleblowers' Protection Act, MCL 15.361 *et seq.*, includes suspected violations of common law. *Stefanski v Saginaw Co 911 Communications Ctr Auth*, ___ Mich ___, ___; ___ NW3d ___ (April 14, 2025) (Docket No. 166663); slip op at 8, 11, citing MCL 15.362. The Court concluded that there was significance to the context in which the phrase was used as well as the Legislature's choice not to limit the scope of the phrase, such as by referring to "statutory law" or "constitutional law." *Id.* at ___; slip op at 11. Moreover, the broader understanding of the phrase was deemed more consistent with the purpose of the Whistleblowers' Protection Act. *Id.* at ___; slip op at 11. Justice ZAHRA dissented and opined that, when read in context, the text of MCL 15.362 "indicate[d] that the Legislature [was] referring to only positive enactments of law rather than the common law." *Id.* at ___ (ZAHRA, J., dissenting); slip op at 2.

treatise on Michigan municipal law states that "[t]he term 'ordinance,' as used in the law of municipal corporations, designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing rules of conduct relating to corporate affairs." 18 Michigan Civil Jurisprudence, Municipal Corporations, § 196, p 264.

Although more limited in scope and applicability than a state statute, an ordinance enacted by a county or municipal legislative body represents an analogous form of positive law with binding legal effect within the relevant jurisdiction. If properly enacted and adopted without a veto, a county ordinance becomes the law within the jurisdiction.[6] An ordinance is valid and enforceable if it is consistent with the powers conferred by the state in its Constitution and statutes[7] and if it falls within the scope of authority delegated by the electorate as set forth in the relevant charter. See *Bivens*, 443 Mich at 397. Thus, a validly enacted ordinance is "as much entitled to respectful obedience, and is as much the law of the land for that locality, as a law enacted by the Legislature[.]" *People v Hanrahan*, 75 Mich 611, 620; 42 NW 1124 (1889); see also *People v Goldman*, 221 Mich 646, 649; 192 NW 546 (1923) (recognizing that where the Legislature has allowed local legislation, "violations of such ordinances were violations of the law").[8]

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[6] And "[i]t is well established in Michigan that ordinances are presumed valid[,] and the burden is on the person challenging the ordinance to rebut the presumption." *Detroit v Qualls*, 434 Mich 340, 364; 454 NW2d 374 (1990).

[7] One form of inconsistency that would render an ordinance invalid would be preemption by a superior law, such as a state statute or constitution. But in this case, the parties agree that no state statutory or constitutional provision preempts Ordinance No. 2017-04, § 10(H).

[8] The United States Supreme Court has also observed the same in the insurance context, holding that "the broad phrase 'fixed by law,' in which the term 'law' is used in a generic

We see no reason to interpret the phrase "by . . . law" in Charter, § 3.5(a) as excluding validly enacted county ordinances given the surrounding context. Unlike in other sections of the Charter, the term "law" as used in Charter, § 3.5(a) is not expressly confined to laws passed by the Michigan Legislature. The drafters of the Charter could have included limiting modifiers or alternative phrases such as "applicable laws," "state law," "state statute," or "laws of this state," but they chose not to do so. This choice appears intentional, considering that numerous other provisions of the Charter include limiting language that, when read in context, confines the term "law" to state laws.[9]

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sense, as meaning the rules of action or conduct duly prescribed by controlling authority, and having binding legal force," includes "valid municipal ordinances as well as statutes." *US Fidelity & Guaranty Co v Guenther*, 281 US 34, 37; 50 S Ct 165; 74 L Ed 683 (1930).

[9] There are numerous examples in the Charter of provisions that refer to "law" as being narrower than all forms of laws or contrast the term with local ordinances. See, e.g., Charter, § 1.2 (stating that Macomb County "possesses home rule power as granted by Article VII, Section 2 of the Constitution to provide for any matter of County concern together with all other powers which a county may possess *under the Constitution and laws of this state*") (emphasis added); Charter, § 1.4 (defining "agency" as "a department, office, board, commission, or other administrative unit of County government, *whether created by Charter, ordinance, or law*") (emphasis added); Charter, § 2.5.1 (stating that "the Ethics Board shall propose rules of procedure for the enforcement of *the ethics provisions of this Charter, ordinance, and law*") (emphasis added); Charter, § 2.6.1 (stating that ethics complaints "shall be kept confidential except *as required by law or ordinance*") (emphasis added); Charter, § 3.2 (stating that "[*s*]*tate law procedures* and deadlines" apply to both elected countywide officials and the County Executive) (emphasis added); Charter, § 4.5 (stating that "the Commission shall have and may exercise all legislative powers which this Charter could specifically enumerate *as provided by the Constitution and the laws of the State of Michigan*") (emphasis added); Charter, § 6.6.4 (stating that offices and departments created under Article 6 of the Charter would continue to exist once the Charter was adopted but "shall be subject to" "the Michigan Constitution and *state law*") (emphasis added); Charter, § 8.10 (stating that purchasing policies adopted by the Commission "shall be consistent with *federal and state law, the Charter, and ordinances*, resolutions, and policies of the Commission") (emphasis added); Charter, § 11.5.1 (stating that "[a]ll

As a notable example, Charter, § 3.5(c) expressly contrasts "ordinance" and "law" by saying that the County Executive must "[d]ischarge all duties granted [to] the Executive by this *Charter, law, or ordinance* . . . ." (Emphasis added.) This provision implies that the Commission can impose legal duties on the County Executive through a validly enacted ordinance, in addition to duties that are imposed by the Charter or some other form of law. But Charter, § 3.5(a) uses only the broader phrase "by this Charter or law," without carving out ordinances as distinct from "law." Therefore, we conclude that the most rational way to harmonize the use of "law" within Charter, § 3.5, and within Article III as a whole, is to read the term as including validly enacted county ordinances unless surrounding context or a textual modifier clearly provides for a narrower meaning.[10]

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applicable requirements of the *Michigan Constitution and state law* shall continue to govern the Road Commission of Macomb County") (emphasis added).

[10] We note that courts in other jurisdictions have reached similar conclusions. For example, in Minnesota, it is "well-established that ordinances are a subset of laws; the two are not co-extensive, but the former is included in the latter." *Motokazie! Inc v Rice Co*, 824 NW2d 341, 346 (Minn App, 2012). That court concluded that, because the Minnesota Legislature assumes the common usage of words, and because "[a]n ordinance is a local law," the words " 'as required by law' include[] requirements in ordinances . . . ." *Id.* (quotation marks and citation omitted). Similarly, in Ohio, "[w]here a city charter speaks of a law, it is inconceivable to conclude that such term does not include ordinances, for the reason that the legislative body set up by a city charter can only enact ordinances or resolutions and not statutes." *State ex rel Leach v Redick*, 168 Ohio St 543, 550; 157 NE2d 106 (1959). Other jurisdictions have reached similar conclusions. See *Maynard v Layne*, 140 W Va 819, 825; 86 SE2d 733 (1955) (stating that an ordinance is "a local law of the municipality, emanating from its legislative authority, and operative within its restricted sphere as effectively as a general law of the sovereignty"); *Taylor v City of Carondelet*, 22 Mo 105, 112 (1855) ("The law-making power, in fact, made the board of trustees a miniature general [a]ssembly, and gave their ordinances, on this subject, the force of laws passed by the legislature of the state."); *Kersey v Terre Haute*, 161 Ind 471, 476; 68 NE 1027 (1903) (stating that "the word 'ordinance' means 'a local law, prescribing a general and permanent

We emphasize, however, that our interpretation of Charter, § 3.5 should not be thoughtlessly applied to all other sections in all other articles of the Charter, and nothing in this opinion allows an ordinance to directly conflict with or override an unambiguous provision of the Charter or state law. Again, we note the longstanding general observation that municipal charters are "not always as judiciously framed as they might be." *Gen Employees Civil Serv Comm*, 81 Mich App at 223. Macomb County's Charter is no exception. The Charter uses the unmodified form of "law" inconsistently. Accordingly, each usage of "law" should be read in context with the goal of achieving rational internal harmony within the relevant section and article of the Charter that is under consideration.

## V. APPLICATION

Ordinance 2017-04, § 10(H) was validly adopted as a law within Macomb County. The ordinance imposes a degree of restriction upon the County Executive's control over the county's information technology and finance departments. But Charter, § 3.5(a) permits such restriction if it is accomplished by the "Charter or law" and does not create a conflict between the ordinance and the Charter. Nothing in Charter, § 3.5 clearly indicates that "law" was intended to be so narrow as to exclude validly enacted ordinances. It follows, therefore, that after its adoption Ordinance No. 2017-04, § 10(H) was effective and enforceable absent a clear conflict with a Charter provision other than § 3.5(a) or a superior form of law. Although the parties disagree about the meaning of Charter, § 3.5(a), neither party suggests that the ordinance is otherwise in conflict with or preempted by

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rule' "), quoting *Citizens' Natural Gas & Mining Co v Elwood*, 114 Ind 332; 16 NE 624 (1888).

another Charter provision or a state law. Section 3.5(b) of the Charter further implies that the County Executive has some form of a legal duty to enforce Ordinance 2017-04, § 10(H), irrespective of whether the ordinance requires more of the County Executive than the UBAA or Charter, § 8.6.1. Therefore, we hold that the plain language of Ordinance 2017-04, § 10(H) requires the County Executive to provide the Commission or its agent with access to real-time, read-only access to financial software programs used by the county. This conclusion makes it unnecessary to address whether Charter, § 8.6.1 separately imposes such a requirement.

## VI. CONCLUSION

For the reasons previously discussed, the judgment of the Court of Appeals is reversed, and this case is remanded to the circuit court for further proceedings that are consistent with this opinion. We take no position as to whether there are other issues that may need to be resolved on remand. We do not retain jurisdiction.

Elizabeth M. Welch
Megan K. Cavanagh
Brian K. Zahra
Richard H. Bernstein
Kyra H. Bolden
Kimberly A. Thomas

HOOD, J., did not participate because the Court considered this case before he assumed office.

Jennifer MacDonald <macdonaldj@rochesterhills.org>

# Email and attachment for ZBA Members- FILE # PVAI2025-0008

1 message

**L shane** <schein6@sbcglobal.net> Sun, Sep 7, 2025 at 8:26 PM
Reply-To: L shane <schein6@sbcglobal.net>
To: Planning Dept Email <planning@rochesterhills.org>, Jennifer MacDonald <macdonaldj@rochesterhills.org>

**PLEASE SUBMIT THIS EMAIL AND ATTACHMENTS TO THE ZBA MEMBERS PRIOR TO THE SEPTEMBER 10, 2025 MEETING.**

Members of the Zoning Board of Appeals,

The statement that Mr. McLeod made @ the August 2025 ZBA meeting under "Any Other Business" are extremely concerning and untrue.Frankly I am disappointed and it reflects poorly when a city employee makes inaccurate statements as accuracy is essential in maintaining public trust.
To state that we had been in front of the ZBA a few years ago to ask for a reduction in setback for a porch that was built erroneously is absolutely incorrect . First of all, we were in front of the ZBA asking for a reduction in setback to build out 3 feet in a very small portion of the front of our home, it had nothing to do with the porch.
The porch was not built erroneously, we obtained permits and had inspections( please see attachments). A variance or setback reduction was not needed for the porch. The porch had nothing to do with why we went in front of the ZBA.
I would also like to state that I have no idea why Mr. McLeod felt the need to make this statement when it is not only untrue, but it also has nothing to do with the requested interpretations of the ordinance we are in front of the ZBA for now in regard to an accessory structure in our backyard. It is not only of great importance to us that ordinances are being enforced and applied correctly, it is also important to all citizens of Rochester Hills.
So not only is what Mr. McLeod said in regard to what we were in front of the ZBA for a few years ago inaccurate , it has nothing to do with what we are in front of the ZBA for now.
This is beginning to feel like unfair targeting and I am beginning to think that there is much more going on behind the scenes. The only reason that statement could be made at the August 2025 ZBA meeting by Mr. McLeod under " Any Other Business" would be to " muddy the waters" for us and create confusion. It was not only unnecessary , but also deceptive.

I was reluctant to send this, but when I came across the statement made by Mr. McLeod I felt that it was important to have accurate information on the record. I would imagine any citizen would feel the same way.

Thank you for your time,

Lisa Schein

**1737_Porch_Permits_&_8-13-25_ZBA.pdf**
2604K

as described in the above criterion, specifically that the property is encumbered by a significant watermain and watermain easement that traverses the site, west to east and limits the location(s) in which the existing residence can be modified/expanded. Additionally, the presence of a significant old oak tree limits possible locations for an addition to the east.

5. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.

6. Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.

## ANY OTHER BUSINESS

*Mr. McLeod noted that the department has one application pending for a property on North Fairview. He mentioned that there had been an application on this property perhaps two years ago for a reduction in front yard setback for a porch that had been constructed erroneously. He explained that this applicant is coming back with a new request for ordinance interpretations related to a determination of the Building Department regarding accessory structures and how they are calculated in terms of area, location, and what constitutes an accessory structure. He commented that it will most likely be on the September meeting agenda.*

## NEXT MEETING DATE

*- September 10, 2025*

## ADJOURNMENT

*There being no further business to discuss, it was moved by Mr. Graves, seconded by Ms. Brnabic, to adjourn the meeting at 7:58 p.m.*

*Minutes prepared by Jennifer MacDonald.*

*Minutes were approved as presented/amended at the _____ 2025 Regular Zoning Board of Appeals Meeting.*

_____

*Charles Tischer, Vice Chairperson*
*Rochester Hills*
*Zoning Board of Appeals*

_____

*Jennifer MacDonald, Recording Secretary*

# Project Details: JREA2023-0041

Property Address: 1737 N FAIRVIEW LN, ROCHESTER HILLS, MI 48306-4021 | Parcel: 70-15-04-304-007

## Property Owner: SCHEIN, LISA A

*Summary Information*

> Finished

## Project Information

**Amount Due**

| | |
|---|---|
| Project-RES EXTERIOR ALTERATION | $0.00 |
| Total | |

| | | | |
|---|---|---|---|
| **Project Number** | JREA2023-0041 | **Filed As** | RES EXTERIOR ALTERATION |
| **Date Created** | 08/08/2023 | **Status** | Finished: Finished |
| **Date Completed** | 09/06/2023 | | |
| **Description** | EXTERIOR ALTERATION MRC 2015 FRONT PORCH HAND RAIL | | |

## Project Items

| Project Item | Record Number | Amount Due | Status Description | |
|---|---|---|---|---|
| Permit: RES-ALTER EXTERIOR | PB-2023-0247 | $0.00 | FINALED | View |
| Inspection: RES-ALTER EXTERIOR Permit: FINAL | | $0.00 | Completed - Partially Approved | View |
| Inspection: RES-ALTER EXTERIOR Permit: FINAL | | $0.00 | Completed - Approved | View |

## Inspection Details: FINAL Inspection

Property Address: 1737 N FAIRVIEW LN, ROCHESTER HILLS, MI 48306-4021 | Parcel: 70-15-04-304-007

**Property Owner:** SCHEIN, LISA A

*Summary Information*

> 0 Violation(s) Found

### Inspection Information

**Amount Due**

Permit - RES-ALTER EXTERIOR Total $0.00

| | | | |
|---|---|---|---|
| **Inspection Type** | FINAL | **Status** | Completed |
| **Inspector** | JEFF SCHULTZ | **Result** | Approved |
| **Scheduled Date** | 09/06/2023 | | |
| **Completed Date** | 09/06/2023 | | |

### Violations

Show All [Collapse All]

| Title | Violation Type | Date Found | Corrected | Date Corrected |
|---|---|---|---|---|
| No records to display. | | | | |

### Associated Record Information

| | | | |
|---|---|---|---|
| **Record Type** | Permit - RES-ALTER EXTERIOR | **Record Number** | PB-2023-0247 |
| **Status** | FINALED | **Date Issued/Filed** | 08/18/2023 |

## Inspection Details: FINAL Inspection

Property Address: 1737 N FAIRVIEW LN, ROCHESTER HILLS, MI 48306-4021 | Parcel: 70-15-04-304-007

**Property Owner:** SCHEIN, LISA A

*Summary Information*

> 0 Violation(s) Found

### Inspection Information

**Amount Due**

Permit - RES-ALTER EXTERIOR Total $0.00

| | | | |
|---|---|---|---|
| **Inspection Type** | FINAL | **Status** | Completed |
| **Inspector** | JEFF FRASER | **Result** | Partially Approved |
| **Scheduled Date** | 08/31/2023 | | |
| **Completed Date** | 08/31/2023 | | |

### Violations

Show All [Collapse All]

| Title | Violation Type | Date Found | Corrected | Date Corrected | |
|---|---|---|---|---|---|
| No records to display. | | | | | |

### Associated Record Information

| | | | |
|---|---|---|---|
| **Record Type** | Permit - RES-ALTER EXTERIOR | **Record Number** | PB-2023-0247 |
| **Status** | FINALED | **Date Issued/Filed** | 08/18/2023 |

## Permit Details: PB-2023-0247

Property Address: 1737 N FAIRVIEW LN, ROCHESTER HILLS, MI 48306-4021 | Parcel: 70-15-04-304-007

**Property Owner:** SCHEIN, LISA A

*Summary Information*

> 2 Inspection(s) Found

### Permit Information

**Amount Due**

Permit - RES-ALTER EXTERIOR Total **$0.00**

| | | | |
|---|---|---|---|
| **Number** | PB-2023-0247 | **Category** | EXTERIOR ALTERATION |
| **Type** | RES-ALTER EXTERIOR | **Status** | FINALED |
| **Applied Date** | 08/08/2023 | **Expire Date** | 03/04/2024 |
| **Issue Date** | 08/18/2023 | **Finaled Date** | 09/06/2023 |
| **Work Description** | EXTERIOR ALTERATION MRC 2015 FRONT PORCH GUARD RAIL | | |
| **Stipulations** | FINAL BUILDING INSPECTION REQUIRED. | | |
| **Project** | JREA2023-0041 | | |

Go to project

### Process Step Information

| Step Number | Step Display Name | Status | Date Step Started | Date Step Completed | Date Step Due | |
|---|---|---|---|---|---|---|
| 1 | RES-ALTER EXTERIOR Permit Reviews | Approved | 8/16/2023 | 8/16/2023 | 8/30/2023 | View |

### Document Summary

Document Title

CONSTRUCTION DRAWING

[Expand All]

| Version | Document Title | Review Status | Received | Completed | |
|---|---|---|---|---|---|
| 1 | CONSTRUCTION DRAWING | Not Required | 8/8/2023 | 8/8/2023 | View Reviewed Document |

CONSTRUCTION VALUE CALC RESIDENTIAL

[Expand All]

| Version | Document Title | Review Status | Received | Completed | |
|---|---|---|---|---|---|
| 2 | CONSTRUCTION VALUE CALC RESIDENTIAL | Approved | 8/16/2023 | 8/16/2023 | View Document |
| 1 | CONSTRUCTION VALUE CALC RESIDENTIAL | Disapproved | 8/8/2023 | 8/8/2023 | View Document |

HAND RAIL DOCUMENTS

[Expand All]

| Version | Document Title | Review Status | Received | Completed | |
|---|---|---|---|---|---|
| 2 | HAND RAIL DOCUMENTS | Approved | 8/16/2023 | 8/16/2023 | View Reviewed Document |
| 1 | HAND RAIL DOCUMENTS | Disapproved | | 8/8/2023 | No Attachment |

ZONING REVIEW EXCEL FILE

[Expand All]

| Version | Document Title | Review Status | Received | Completed | |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| 1 | ZONING REVIEW EXCEL FILE | Not Required | 8/8/2023 | 8/8/2023 | View Document |

## Inspection Information

| Inspection Type | Inspector | Status | Scheduled Date | Completed Date | Result | |
|---|---|---|---|---|---|---|
| FINAL | JEFF FRASER | Completed | 8/31/2023 | 8/31/2023 | Partially Approved | View |
| FINAL | JEFF SCHULTZ | Completed | 9/6/2023 | 9/6/2023 | Approved | View |

## Violations

Show All [Collapse All]

| Title | Violation Type | Date Found | Corrected | Date Corrected | Inspection | |
|---|---|---|---|---|---|---|
| No records to display. | | | | | | |

## Fees & Payments

| Date | Action | Qty | Description | Billed | Paid |
|---|---|---|---|---|---|
| 8/16/2023 | Invoice Item | 5,000.00 | NEW CONSTRUCTION: VALUE $1,001 - $10,000 (Invoice Number: 00144344) | $188.00 | |
| 8/16/2023 | Invoice Item | 5,000.00 | PLAN REVIEW: PR R-3 & U (Invoice Number: 00144342) | $85.00 | |
| 8/8/2023 | Invoice Item | 1.00 | APPLICATION FEE: APP FEE ALTER EXTERIOR (Invoice Number: 00144134) | $100.00 | |
| 8/18/2023 | Transaction | | Transaction Number: 00128120 | | $273.00 |
| 8/16/2023 | Transaction | | Transaction Number: 00128048 | | $100.00 |

## Applicant Information

**Address** SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS, MI
48306-4021

**Phone** *No Data to Display* **Fax** *No Data to Display*
**Mobile** *No Data to Display* **Other Phone** *No Data to Display*

## Owner Information

**Address** SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS, MI
48306-4021

**Phone** *No Data to Display* **Fax** *No Data to Display*
**Mobile** *No Data to Display* **Other Phone** *No Data to Display*

## Construction Details

**Construction Value** 5000.00

Phone:248-656-4615
Fax: 248-656-4623
Scan to Schedule Inspection Online

# City of Rochester Hills

1000 Rochester Hills Dr.
Rochester Hills, MI 48309
Hours: Monday-Friday 8:00 a.m.- 5:00 p.m.

RES-ALTER EXTERIOR

Permit No:

## PB-2023-0247

**Issued:** 08/18/2023

**Location** *1737 N FAIRVIEW LN*
**Subdivision** CHICHESTER EAST
**Sidwell #** 70-15-04-304-007
**Lot #** 40

**Owner**
SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS MI 48306-4021
Ph # 2484103920

**Applicant**
SCHEIN, LISA A
1737 N FAIRVIEW LN Ph # 2484103920
ROCHESTER HILLS MI 48306-402 Ph #
Lic #

**Work Description:** **Project #:** JREA2023-0041
EXTERIOR ALTERATION MRC 2015
FRONT PORCH GUARD RAIL

**Construction Value** $5,000
Size of structure width *0* length *0* height *0*
Total square footage of improvement *0* floors *0*
Section Number Zoning R-2
Use Group *R-2* Construction Type *V-B*
Occupancy Load *00* Number of Dwelling Units *0*

**Special Stipulations:**
FINAL BUILDING INSPECTION REQUIRED.

| Permit Item | Work Type | Fee Basis | Item Total |
|---|---|---|---|
| APP FEE ALTER EXTERIOR | APPLICATION FEE | 1.00 | $100.00 |
| PR R-3 & U | PLAN REVIEW | 5,000.00 | $85.00 |
| VALUE $1,001 - $10,000 | NEW CONSTRUCTION | 5,000.00 | $188.00 |

**Fee Total:** $373.00
**Amount Paid:** $373.00
**Balance Due:** **$0.00**

This permit is issued under the **MRC 2015**

and is subject to the Building Code, Zoning Ordinance and all other ordinances of Rochester Hills, and shall become void once work is abandoned for a period of (6) months. Separate permits must also be obtained for signs and any electrical, plumbing, building, sewer or lot disposal work. This permit conveys no right to occupy any street or public right-of-way, temporarily or permanently.

**OCCUPANCY PRIOR TO ISSUANCE OF A WRITTEN CERTIFICATE OF OCCUPANCY BY THIS DEPARTMENT IS A VIOLATION OF STATE AND LOCAL I INSPECTIONS HAVE BEEN MADE. PLANS APPROVED BY THE BUILDING DEPARTMENT MUST BE AVAILABLE ON THE JOB AT ALL TIMES UNTIL F INSPECTION HAS BEEN MADE.**

**The City shall pay no interest on cash bonds submitted to the City. The City shall not return any interest accrued on cash bonds.**

**SUNDAY & HOLIDAY WORK NOT PERMITTED R.H. ORD. 18-9 & 10**
**DEBRIS CONTAINMENT MEASURES REQUIRED R.H.ORD. 18-45.9**

# Permit Details: PB-2020-0065

Property Address: 1737 N FAIRVIEW LN, ROCHESTER HILLS, MI 48306-4021 | Parcel: 70-15-04-304-007

## Property Owner: SCHEIN, LISA A

*Summary Information*

> 5 Inspection(s) Found

## Permit Information

**Amount Due**

Permit - RES-ALTER EXTERIOR Total $0.00

| | | | |
|---|---|---|---|
| **Number** | PB-2020-0065 | **Category** | RES, ALTERATION |
| **Type** | RES-ALTER EXTERIOR | **Status** | CANCELED |
| **Applied Date** | 02/14/2020 | **Expire Date** | 06/15/2022 |
| **Issue Date** | 08/27/2020 | **Finaled Date** | *No Data to Display* |
| **Work Description** | EXTERIOR ALTERATION MRC 2105 BASEMENT WATERPROOFING | | |
| **Stipulations** | 1. ALL APPROVALS ARE SUBJECT TO FIELD INSPECTIONS. 2. CITY APPROVED PLANS SHALL BE ON SITE AT TIME OF INSPECTIONS. 3. SEE PERMIT CONDITIONS, 2 PAGES, ATTACHED TO PLANS. 4. A PRE-MASONRY INSPECTION IS REQUIRED. 5. SEPERATE PERMITS REQUIRED FOR ELECTRICAL. | | |
| **Project** | JREA2020-0008 | | |

Go to project

## Process Step Information

| Step Number | Step Display Name | Status | Date Step Started | Date Step Completed | Date Step Due |
|---|---|---|---|---|---|
| No records to display. | | | | | |

## Document Summary

| Document Title |
|---|
| No records to display. |

## Inspection Information

| Inspection Type | Inspector | Status | Scheduled Date | Completed Date | Result | |
|---|---|---|---|---|---|---|
| BACKFILL | MARK ARTINIAN | Completed | 10/6/2020 | 10/6/2020 | Approved | View |
| STEEL | JEFF FRASER | Completed | 11/25/2020 | 11/25/2020 | Partially Approved | View |
| PROGRESS CHECK | JEFF FRASER | Completed | 1/29/2021 | 1/29/2021 | Disapproved | View |
| BACKFILL | JEFF FRASER | Completed | 5/19/2021 | 5/19/2021 | Disapproved | View |
| STEEL | JEFF FRASER | Completed | 6/8/2021 | 6/8/2021 | Partially Approved | View |

## Violations

Show All [Collapse All]

| Title | Violation Type | Date Found | Corrected | Date Corrected | Inspection | |
|---|---|---|---|---|---|---|
| 1. REVISED PLANS FOR ADDITIONAL DRAIL TILE | Bldg Code | 5/19/2021 | No | | BACKFILL - Completed | View |
| 1. REVISED PLANS FOR ADDITIONAL DRAIN TILE WORK. | | | | | | |

## Fees & Payments

| Date | Action | Qty | Description | Billed | Paid |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| 8/20/2020 | Invoice Item | 12,906.00 | NEW CONSTRUCTION: VALUE OVER $10,000 (Invoice Number: 00113618) | $273.00 | |
| 8/20/2020 | Invoice Item | 12,906.00 | PLAN REVIEW: PR R-3 & U (Invoice Number: 00113618) | $85.00 | |
| 2/14/2020 | Invoice Item | 1.00 | APPLICATION FEE: APP FEE ALTER EXTERIOR (Invoice Number: 00109872) | $100.00 | |
| 8/27/2020 | Transaction | | Transaction Number: 00100441 | | $358.00 |
| 2/14/2020 | Transaction | | Transaction Number: 00096902 | | $100.00 |

## Applicant Information

**Address** SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS, MI
48306-4021

**Phone** *No Data to Display* **Fax** *No Data to Display*
**Mobile** *No Data to Display* **Other Phone** *No Data to Display*

## Owner Information

**Address** SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS, MI
48306-4021

**Phone** *No Data to Display* **Fax** *No Data to Display*
**Mobile** *No Data to Display* **Other Phone** *No Data to Display*

## Construction Details

**Construction Value** 12906.00

Phone:248-656-4615
Fax: 248-656-4623
Scan to Schedule Inspection Online

# City of Rochester Hills

1000 Rochester Hills Dr.
Rochester Hills, MI 48309
Hours: Monday-Friday 8:00 a.m.-5:00 p.m.

RES-ALTER EXTERIOR

Permit No:

**PB-2020-0065**

**Issued:** 08/27/2020

**24 Hour Inspection Line 248-656-4619**

**Location** *1737 N FAIRVIEW LN*
**Subdivision** CHICHESTER EAST
**Sidwell #** 70-15-04-304-007
**Lot #** 40

**Owner**
SCHEIN, LISA A
1737 N FAIRVIEW LN
ROCHESTER HILLS MI 48306-4021
Ph # (248) 650 7252

**Applicant** Lic #
SCHEIN, LISA A
1737 N FAIRVIEW LN Ph # (248) 650 7252
ROCHESTER HILLS MI 48306-402 Ph #

**Work Description:** **Project** JREA2020-0008
EXTERIOR ALTERATION MRC 2105
BASEMENT WATERPROOFING

**Construction Value** $12,906
Size of structure width *0* length *0* height *0*
Total square footage of improvement *270* floors *0*
Section Number Zoning R-2
Use Group *R-3* Construction Type *V-B*
Occupancy Load *00* Number of Dwelling Units *0*

**Special Stipulations:**
1. ALL APPROVALS ARE SUBJECT TO FIELD INSPECTIONS.
2. CITY APPROVED PLANS SHALL BE ON SITE AT TIME OF INSPECTIONS.
3. SEE PERMIT CONDITIONS, 2 PAGES, ATTACHED TO PLANS.
4. A PRE-MASONRY INSPECTION IS REQUIRED.
5. SEPERATE PERMITS REQUIRED FOR ELECTRICAL.

| Permit Item | Work Type | Fee Basis | Item Total |
|---|---|---|---|
| APP FEE ALTER EXTERIOR | APPLICATION FEE | 1.00 | $100.00 |
| PR R-3 & U | PLAN REVIEW | 12,906.00 | $85.00 |
| VALUE OVER $10,000 | NEW CONSTRUCTION | 12,906.00 | $273.00 |

**Fee Total:** $458.00
**Amount Paid:** $458.00
**Balance Due:** **$0.00**

**This permit is issued under the State of Michigan Construction Code:** ***Commercial - Michigan Building Code 2015*** ***Residential - Michigan Residential Code 2015,*** and is subject to the Building Code, Zoning Ordinance and all other ordinances of Rochester Hills, and shall become void once work is abandoned for a period of six (6) months. Separate permits must also be obtained for signs and any electrical, plumbing, mechanical, sewer or lot disposal work. This permit conveys no right to occupy any street or public right-of-way, temporarily or permanently. OCCUPANCY PRIOR TO ISSUANCE OF A WRITTEN CERTIFICATE OF OCCUPANCY BY THIS DEPARTMENT IS A VIOLATION OF STATE AND LOCAL LAW.

**THIS PERMIT MUST BE POSTED IN A PLACE READILY VISIBLE FROM THE STREET AND MUST NOT BE REMOVED UNTIL FINAL INSPECTIONS HAVE BEEN MADE. PLANS APPROVED BY THE BUILDING DEPARTMENT MUST BE AVAILABLE ON THE JOB AT ALL TIMES UNTIL FINAL INSPECTION HAS BEEN MADE.**
**SUNDAY & HOLIDAY WORK NOT PERMITTED R.H. ORD. 18-9&10 DEBRIS CONTAINMENT MEASURES REQUIRED R.H.ORD. 18-**
**The City shall pay no interest on cash bonds submitted to the City. The City shall not return any interest accrued on cash bonds.**

( ) Department Copy ( ) Contractor/Owner Copy ( ) Inspector's Copy

City of Rochester Hills
*Building Department*
1000 Rochester Hills Dr.
Rochester Hills, MI 48309
(248) 656-4615 Phone
(248) 656-4623 Facsimile

# BUILDING PERMIT APPLICATION

IAS ACCREDITED

Project # _____

Permit # PB _____

App Fee $ _____

Clerk _____

## I. LOCATION OF BUILDING

ADDRESS: 1737 N. Fairview Lane | CITY: Rochester Hills, | ZIP CODE: MI 48306

SUBDIVISION | LOT #

SIDWELL # 70-15-04-304-007 | ZONING DISTRICT

## II. IDENTIFICATION

### A. OWNER OR LESSEE

*REQUIRED EMAIL ADDRESS | FAX NO.

NAME: Lisa A. Schein | schein6@sbcglobal.net | TELEPHONE NO. 248-650-7252

ADDRESS: 1737 N. Fairview Lane, Rochester Hills, Michigan 48306 | CITY | STATE | ZIP CODE

### B. ARCHITECT OR ENGINEER

NAME | EMAIL ADDRESS | FAX NO. | TELEPHONE NO.

ADDRESS | CITY | STATE | ZIP CODE

LICENSE NUMBER | EXPIRATION DATE

### C. CONTRACTOR (HOMEOWNER)

NAME: Lisa A. Schein (Homeowner) | EMAIL ADDRESS | FAX NO. | TELEPHONE NO. 248-650-7252

ADDRESS: 1737 N. Fairview Lane, Rochester Hills, MI 48306 | CITY | STATE | ZIP CODE

BUILDERS LICENSE NUMBER | EXPIRATION DATE

FEDERAL EMPLOYER ID NUMBER OR REASON FOR EXEMPTION

WORKERS COMP INSURANCE CARRIER OR REASON FOR EXEMPTION

MESC EMPLOYER NUMBER OR REASON FOR EXEMPTION

## III. TYPE OF IMPROVEMENT

ESTIMATED COST OF CONSTRUCTION $ 12,499.00 for Repairs

1. ☐ NEW BUILDING
2. ☐ ADDITION
3. ☐ ACCESSORY STRUCTURE
4. ☐ ALTERATION
5. ☑ REPAIR
6. ☐ DEMOLITION
7. ☐ MOBILE HOME SET-UP
8. ☐ FOUNDATION ONLY
9. ☐ PRE-MANUFACTURE
10. ☐ RELOCATION
11. ☐ POOL ☐ In Ground ☐ Above Ground
12. ☑ OTHER Basement waterproofing, replace weep tile, & replace porch footing(s)

## IV. PROPOSED USE OF BUILDING

### A. RESIDENTIAL

1. ☐ MODEL
2. ☐ ONE FAMILY (PLAN NO. _____)
3. ☐ TWO OR MORE FAMILY (NO. OF UNITS _____)
4. ☐ HOTEL, MOTEL (NO. OF UNITS _____)
5. ☐ ATTACHED GARAGE
6. ☐ DETACHED GARAGE
7. ☐ OTHER _____

### B. NON-RESIDENTIAL

8. ☐ AMUSEMENT
9. ☐ CHURCH, RELIGION
10. ☐ INDUSTRIAL
11. ☐ PARKING GARAGE
12. ☐ SERVICE STATION
13. ☐ HOSPITAL, INSTITUTIONAL
14. ☐ OFFICE, BANK, PROFESSIONAL
15. ☐ PUBLIC UTILITY
16. ☐ SCHOOL, LIBRARY, EDUCATIONAL
17. ☐ STORE, MERCANTILE
18. ☐ TANKS, TOWERS
19. ☐ OTHER

NON-RESIDENTIAL – DESCRIBE IN DETAIL PROPOSED USE OF BUILDING, E.G. FOOD PROCESSING PLANT, MACHINE SHOP, LAUNDRY BUILDING AT HOSPITAL, ELEMENTARY SCHOOL, SECONDARY SCHOOL, COLLEGE, PAROCHIAL SCHOOL, PARKING GARAGE FOR DEPARTMENT STORE, RENTAL OFFICE BUILDING, OFFICE BUILDING AT INDUSTRIAL PLANT, IF USE OF EXISTING BUILDING IS BEING CHANGED, ENTER PROPOSED USE.

## V. SELECTED CHARACTERISTICS OF BUILDING

### A. PRINCIPAL TYPE OF FOUNDATION SYSTEM

1. ☐ CONCRETE SLAB/FOOTING
2. ☐ CRAWL SPACE/FOOTING
3. ☐ BASEMENT WALL/FOOTING
4. ☐ MASONRY UNIT FOUNDATION
5. ☐ WOOD FOUNDATION
6. ☐ PIER FOUNDATION
7. ☐ PILE FOUNDATION
8. ☐ OTHER _____

**B. PRINCIPAL TYPE OF FRAME**

9. ☐ MASONRY WALL BEARING 10. ☐ WOOD FRAME 11. ☐ STRUCTURAL STEEL 12. ☐ REINFORCED CONCRETE 13. ☐ OTHER

**C. TYPE OF SEWAGE DISPOSAL**

14. ☐ PUBLIC 15. ☐ SEPTIC SYSTEM

**D. TYPE OF WATER SUPPLY**

16. ☐ PUBLIC 17. ☐ PRIVATE WELL

**E. TYPE OF MECHANICAL**

18. WILL THERE BE AIR CONDITIONING? ☐ YES ☐ NO
19. WHAT IS THE INPUT RATING OF THE HEATING SYSTEM IN THIS BUILDING? _____ BTU's
20. WILL THERE BE AN ELEVATOR? ☐ YES ☐ NO
21. WILL THERE BE A FIRE SUPPRESSION SYSTEM? ☐ YES ☐ NO

**F. ELECTRICAL**

22. WHAT IS THE RATING OF THE SERVICE OR FEEDER IN AMPERES? _____
23. WILL THERE BE A FIRE ALARM SYSTEM? ☐ YES ☐ NO

**G. NUMBER OF OFF-STREET PARKING SPACES**

24. ENCLOSED _____ 25. OUTDOORS _____

**H. DIMENSIONS**

26. NUMBER OF STORIES _____ 27. BUILDING HEIGHT _____ 28. BUILDING LENGTH _____ 29. BUILDING WIDTH _____
30. TOTAL SQUARE FOOTAGE OF BUILDING (ALL FLOORS EXCEPT UNFINISHED BASEMENT) _____

## VI. PLAN REVIEW

**A. REVIEW(S) TO BE PERFORMED – SEE SECTION B, C, D BELOW BEFORE COMPLETING THIS SECTION**

| 1. BUILDING | 2. PLUMBING | 3. MECHANICAL | 4. ELECTRICAL | 5. ENERGY |
|---|---|---|---|---|
| ☑ PLAN SUBMITTED | ☑ PLANS NOT REQUIRED | ☑ PLANS NOT REQUIRED | ☑ PLANS NOT REQUIRED | ☐ WORKSHEET SUBMITTED |
| | ☐ PLANS REQUIRED & SUBMITTED | ☐ PLANS REQUIRED & SUBMITTED | ☐ PLANS REQUIRED & SUBMITTED | |

**B. PLUMBING**

PLANS ARE NOT REQUIRED FOR THE FOLLOWING:
1. One or two-family dwellings containing not more than 3,500 square feet of building area.
2. Alterations and repair work determined by the plumbing official to be of a minor nature.
3. Assembly, business, mercantile and storage buildings with a required plumbing fixture count less than 12.
4. Work completed by a governmental subdivision or state agency costing less than $15,000.00.

**C. MECHANICAL**

PLAN ARE NOT REQUIRED FOR THE FOLLOWING:
1. One and two-family dwellings when the total building heating/cooling system input rating is 375,000 BTU's or less.
2. Alterations and repair work determined by the mechanical official to be of a minor nature.
3. Business, mercantile, and storage buildings having HVAC equipment only, with one fire area and not more than 3,500 square feet.
4. Work completed by a governmental subdivision or state agency costing less than $15,000.00.

**D. ELECTRICAL**

PLANS ARE NOT REQUIRED FOR THE FOLLOWING:
1. When the electrical system rating does not exceed 400 amps and the building is not over 3,500 square feet in area.
2. Work completed by a governmental subdivision or state agency costing less than $15,000.00.

**Plans are required for all other building types and shall be prepared by or under the direct supervision of an architect or engineer, licensed pursuant to Act No. 299 or the Public Acts of 1980, as amended, and shall bear that architect's or engineer's signature and seal.**

## VII. APPLICANT INFORMATION

APPLICANT IS RESPONSIBLE FOR THE PAYMENT OF ALL FEES AND CHARGES APPLICABLE TO THIS APPLICATION AND MUST PROVIDE THE FOLLOWING INFORMATION

PRINT NAME: Lisa Anne Schein — TELEPHONE NO.: 248-650-7252

ADDRESS: 1737 N. Fairview Lane — CITY: Rochester Hills, — STATE: Michigan — ZIP: 48306-4021

FEDERAL I.D. NUMBER:

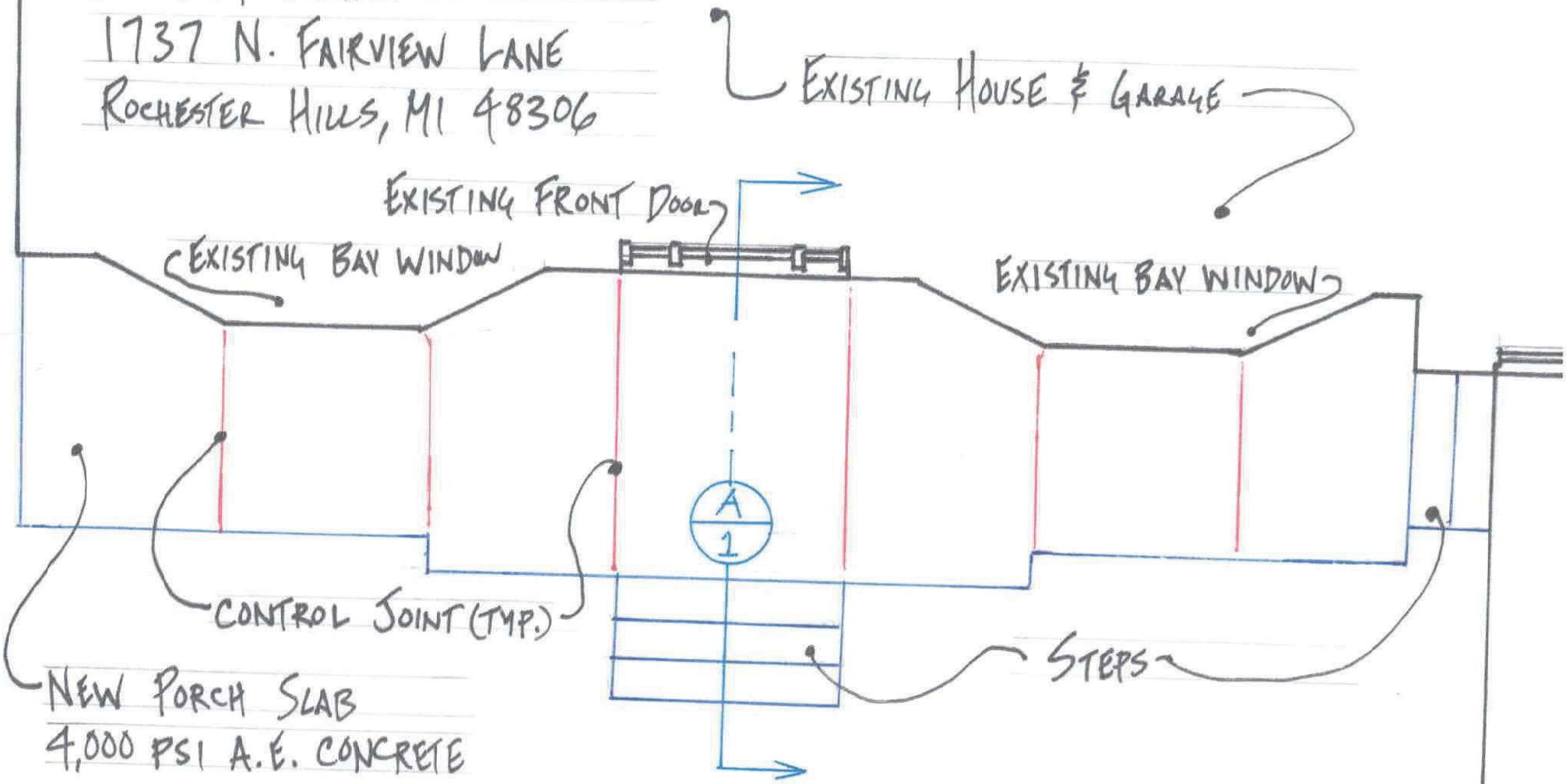
I HEREBY CERTIFY THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER OF RECORD AND THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO MAKE THIS APPLICATION AS HIS AUTHORIZED AGENT, AND WE AGREE TO CONFORM TO ALL APPLICABLE LAWS OF THE STATE OF MICHIGAN. ALL INFORMATION SUBMITTED ON THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE.

**SECTION 23a OF THE STATE CONSTRUCTION CODE ACT OF 1972, 1972 PA 230, MCL 125.15239, PROHIBITS A PERSON FROM CONSPIRING TO CIRCUMVENT THE LICENSING REQUIREMENTS OF THIS STATE RELATING TO PERSONS WHO ARE TO PERFORM WORK ON A RESIDENTIAL BUILDING OR A RESIDENTIAL STRUCTURE. VIOLATORS OF SECTION 23a ARE SUBJECT TO CIVIL FINES.**

NAME (PRINT) Lisa Anne Schein, Homeowner EMAIL schein6@sbcglobal.net

SIGNATURE OF APPLICANT Lisa Anne Schein DATE February 11th, 2020

LISA A SCHEIN
1737 N. FAIRVIEW LANE
ROCHESTER HILLS, MI 48306



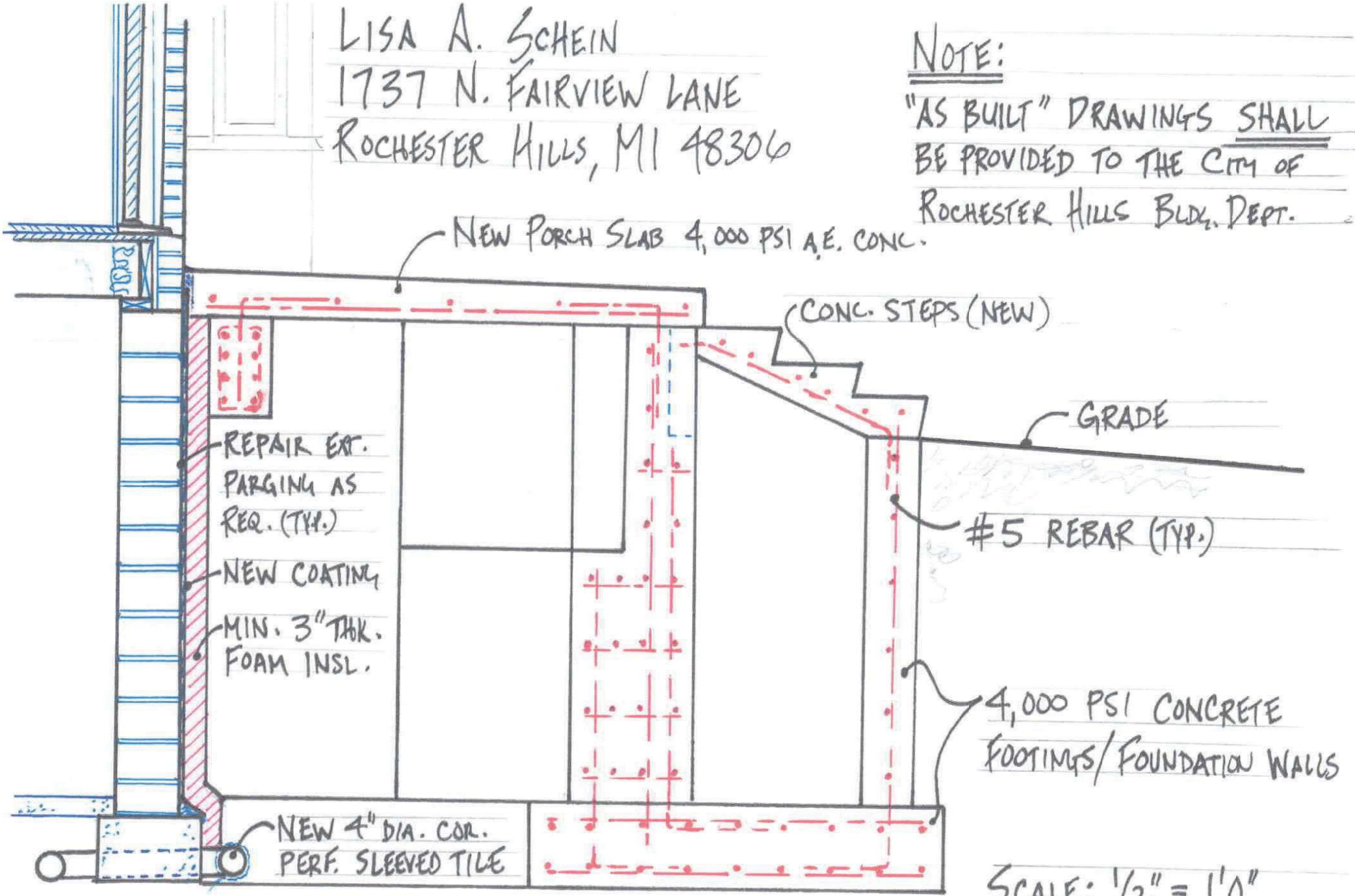

# PLAN VIEW

SCALE: 1/4" = APPROX. 1'0"

SHEET 1 OF 3

LISA A. SCHEIN
1737 N. FAIRVIEW LANE
ROCHESTER HILLS, MI 48306

NOTE:
"AS BUILT" DRAWINGS SHALL BE PROVIDED TO THE CITY OF ROCHESTER HILLS BLDG. DEPT.



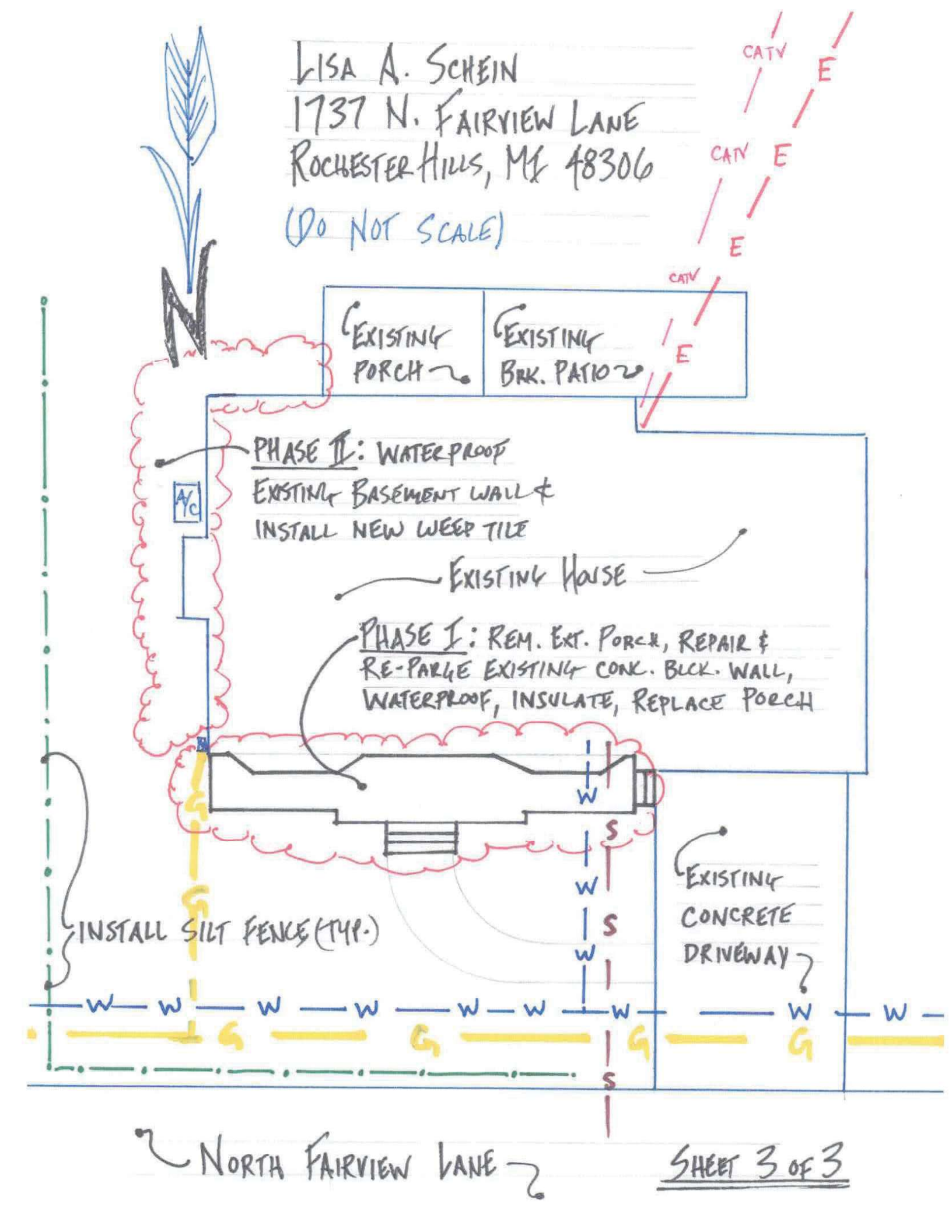

SCALE: 1/2" = 1'0"

# SECTION A-1 (SEE SHEET 1 OF 3)

SHEET 2 OF 3

LISA A. SCHEIN
1737 N. FAIRVIEW LANE
ROCHESTER HILLS, MI 48306

(DO NOT SCALE)




SHEET 3 OF 3

Jennifer MacDonald <macdonaldj@rochesterhills.org>

# Please place email and attachments into the public comment for the Sept 10, 2025 ZBA meeting in regards to 1737 N Fairview Lane - Thank you

1 message

**L shane** <schein6@sbcglobal.net> Wed, Sep 3, 2025 at 6:31 PM
Reply-To: L shane <schein6@sbcglobal.net>
To: Planning Dept Email <planning@rochesterhills.org>, Jodi Welch <welchj@rochesterhills.org>, Jennifer MacDonald <macdonaldj@rochesterhills.org>, HOA Chichester East <chichestereasthoa@gmail.com>

To Whom it May Concern,

This email and attachments are a response to the email placed in public comments by Brett Edwards @ 1719 North Fairview Lane. I will apologize in advance for the length of the email, but want to explain each attachment. The email attached has been highlighted and numbered. My response to things Mr. Edward states:

1. Mr. Edwards claims this is a 7 year ordeal. That is untrue. When we begin renovations in the front of our home we ran into many obstacles, one of which was Mr. Edwards continually calling the city and making false claims about noise when we were not working past 6 pm most evenings. We also had to deal with Covid, product delays, and our 21 year old son dying ( which Mr. Edwards likes to bring up and make fun of each time it comes up.) Also the backyard HAS nothing to do with the front yard project.

2. Not that it matters, but Brad did not move from Roseville. By the way, why is Mr. Edwards even mentioning Roseville? Is there something wrong with Roseville? You will see in other attachments I provide that Roseville is a common theme with him. Not that it matters, but Brad grew up In Washington, Michigan. The address in Roseville is his office.

3. Mr. Edwards called the police because I gave him a letter in 2023 that asked him to cease and desist. The police stated that I was allowed to give him the letter and it was not threatening. He fails to mention that I have had to visit the police due to him following me to work and placing notes on my car ( please see attachment), telling Brads employees to go back to Mexico and that he will call ICE on them, blocking me in my driveway with his vehicle to make hand gestures out his car window, carrying a white board up and down his driveway stating he is calling ICE on Brads employees, approaching my kids on the Paint Creek Trail as they were walking and circling them with his bike, yelling disrespectful comments from is kitchen window and deck, and the list goes on. There is too much to even go into, but he has been stalking and harassing us for years.

4. We have not destroyed neighboring properties or caused house values to plummet. In fact a $150 thousand dollar Gazebo will increase HIS property value. Attached you will find a photo of our front landscaping and Gazebo - which once it is complete will have stone pillars. You will also find attached a picture of Mr. Edwards front yard and backyard...
Mr. Edwards states that Brad and his employees are using my yard as a permanent construction site to fabricate materials for other sites. He clearly does not know what he is looking at because that is ridiculous and untrue. As you will see in the letter I gave him in 2023 it states that forms were being built for the pillars. He calls the city constantly about this and NOTHING has ever been fabricated for another job in my backyard, in fact certain things for my Gazebo have been fabricated @ Brads shop! Mr. Edwards stating this to the city @one point was proven wrong! Brad does commercial work, nothing he does elsewhere can be fabricated in my yard. LOL

5. None of the trucks Brad owns are dilapidated ( and frankly what does that have to do with anything?!) He has several trucks, machines and a semi all of which are not dilapidated. We have

NEVER left anything stranded in the street nor has anything been leaking chemicals into a drainage system. This statement is very concerning, who makes up lies about this? Does the city have record of this? No, because it did not happen. If we had left a leaking vehicle abandoned do you not think Ms. Welch would not have had it removed? We have only had construction equipment in the backyard to build the Gazebo.

6. The Gazebo is not tacky and has extremely expensive materials used. We have copper on the roof, three dimensional shingles ( Grand Manor Gatehouse Shingles) expensive trim( Royal PVC trim, and 12 grand worth of split stone ( quarried in New York) for it. We have spent $150 grand on this. He has a 1 story house and many things will be taller. The grade is actually now diverting water from his property where before it was not. We paid 5 grand to have Kem Tech do a survey and TOPO which will be provided to you @ the meeting or before if you would like. We did NOT change the grade to make the height of the Gazebo compliant. He has no clue about construction, grading, etc. In fact we can provide video of how the water is being diverted to the drain in the back.

7. We have NEVER damaged adjacent properties. The gas line he speaks of was Nancy Thurston's @ 1755 n Fairview, when Consumers arrived after inspecting the situation we were all made aware ( including Ms. Thurston) that MISS DIGG had no clue about this line or her electric line as they are on OUR property. Not sure why Mr. Edwards does not understand that her gas and electric lines should NOT be on our property. You may reach out to Consumers and ask for a report, it was absolutely not our fault and Consumers will eventually move the line. We have also requested DTE remove her electric from our yard. Consumers will also make you aware that gas lines are hit many times a day by city employees doing work in the metro Detroit area- due to MISS DIGG not knowing lines are there due to improper placement. This does not mean Brad has an unsafe knowledge of construction equipment and in fact this line was hit while hand digging by an employee. The person from Consumers commended us for hand digging. Again Mr. Edwards is spreading misinformation.

8. Mr. Edwards calling attorneys ambulance chasers is disrespectful and rude. It is a derogatory slang term and quite honestly insulting to the profession. Our attorney is highly respected and one of the kindest humans I know. You will see in emails (attached) that Mr. Edwards has sent me how he speaks about many people in a derogatory fashion.

9. Residents can have a fireplace in their backyard, he has zero argument here.

Mr. Edwards real issue is that he does not want someone to have something that is not attainable to him. Mr. Edwards likes to belittle people, he thinks character assassination is okay, he enjoys attacking the person instead of their point. If you have to put people down to make your case maybe your case is not that strong.

Attached you will find the email Mr. Edwards sent the Planning Dept. on 9/2/24- as I said I have highlighted and numbered this email above to elaborate on his untruths. I am also attaching emails he has sent me and various other pictures that I will label to let you know what they are.

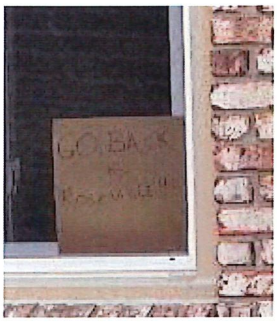
I appreciate you taking the time to look over this information. We will be providing the Kem Tech surveys, the TOPO and other information in regard to the Gazebo and Fireplace. Any information you may need please let us know.

Thank you again,

Lisa Schein

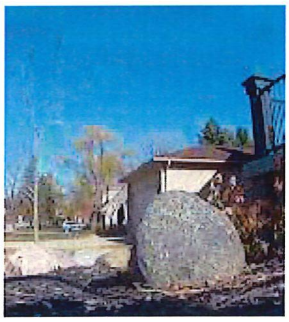
**11 attachments**


**Brett Edwards followed me to work and left this on my car..jpg**
1574K



**Brett Edwards sign in his Kitchen window.jpg**
72K

**Brett Edwards walking up and down driveway with a whiteboard stating he is calling ICE..jpg**
66K



**Brett Edwards daily occurence of coming out to watch and intimidate me..jpg**
82K

**Brett Edwards- another sign in window.jpg**
66K

**Brett Edwards- another intimidation moment- will do this for ten minutes..jpg**
93K

**Brett Edwards- another sign in his kitchen window.jpg**
57K

**Brett Edwards- mailed this to us for Xmas.jpg**
80K

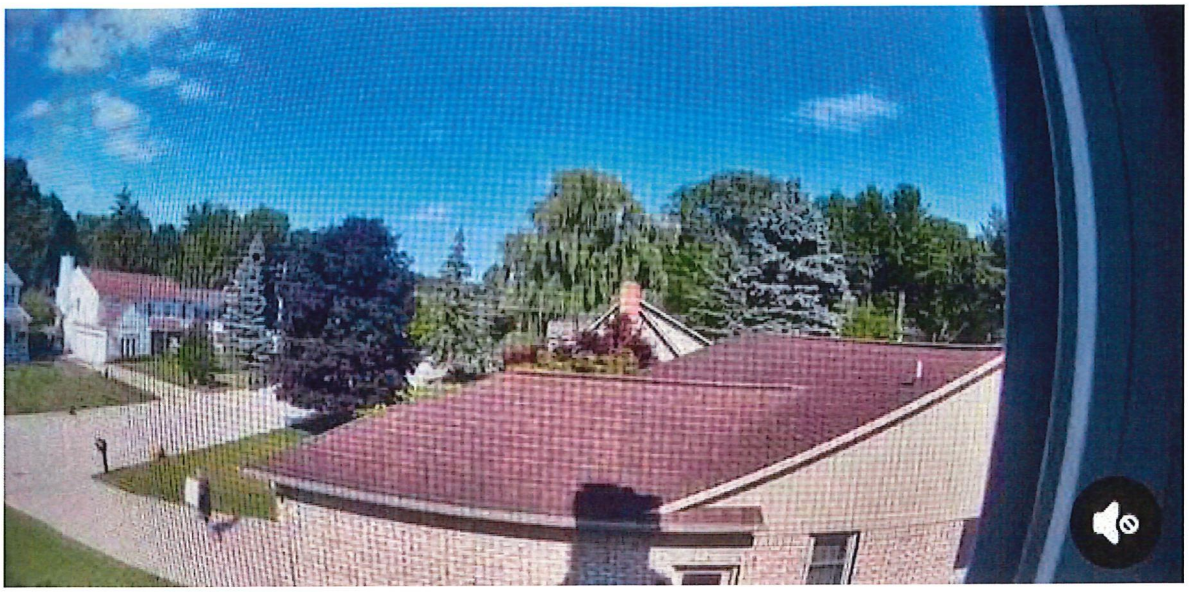
**Brett Edwards- blocking me in my driveway to make hand gestures..jpg**
77K

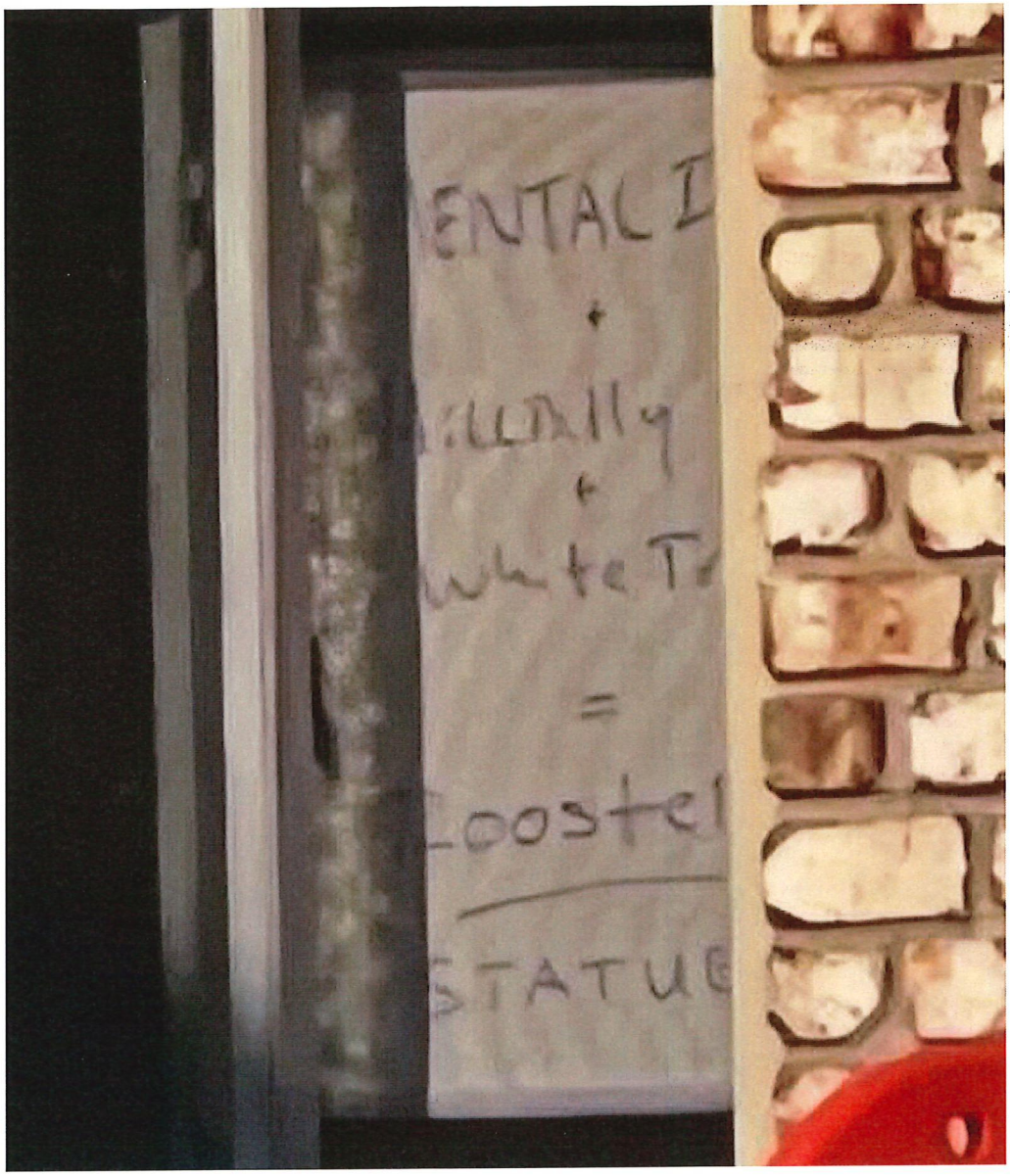
**Brett Edwards Email .pdf**
1678K

**Emails Brett Edwards sent me .pdf**
2269K


MOVE AWAY NOW!!!!!
WE ALL HATE LISA + BRAD!!!
-HOA
03/13/2025


GO BACK
to
RoseVILLE!!!

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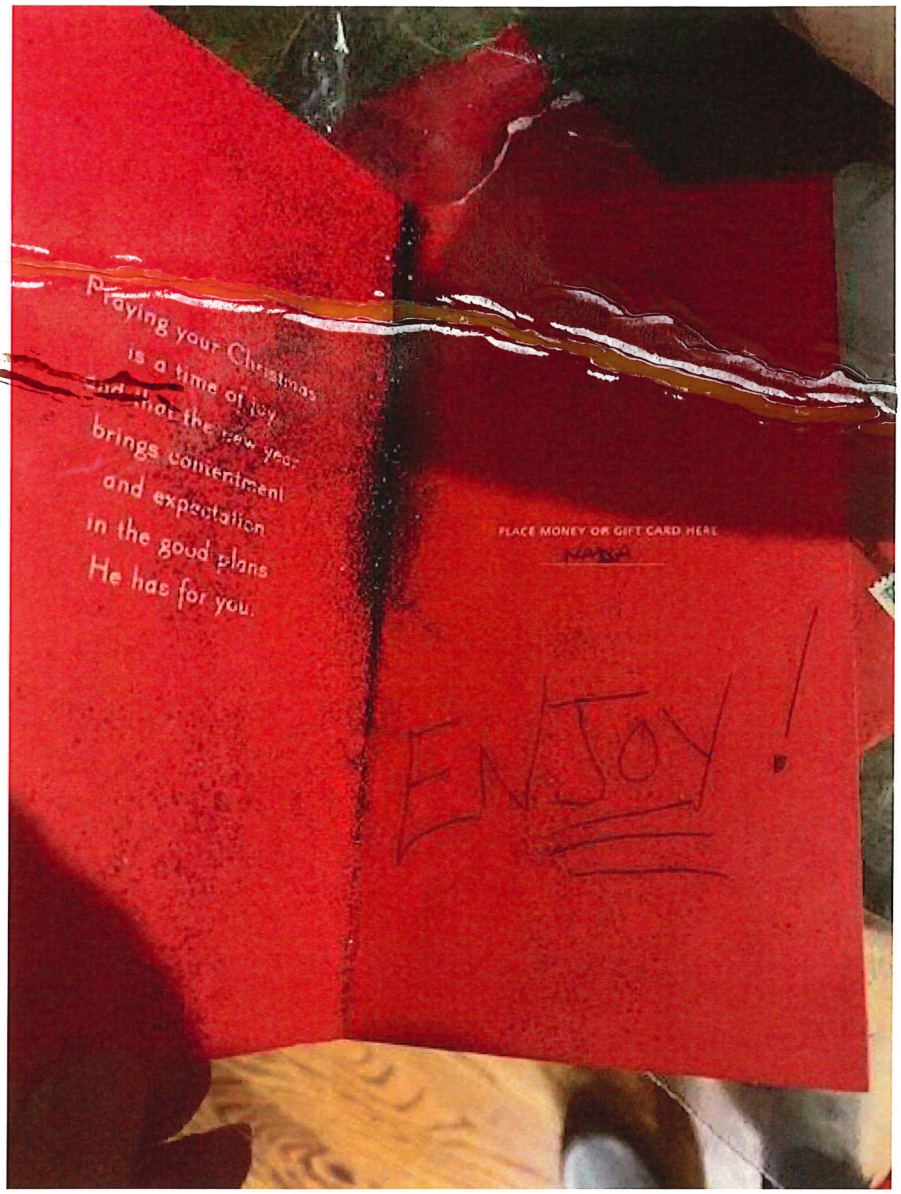

Praying your Christmas
is a time of joy
brings contentment
and expectation
in the good plans
He has for you.
PLACE MONEY OR GIFT CARD HERE
ENJOY!


HomeHawk
03/17/2025 04:53:09PM

Planning Dept Email <planning@rochesterhills.org>

# 1737 North Fairview Lane – request: PVAI2025-0008 (Sept 10 Zoning Public Hearing) - LETTER

1 message

**Brett F. Edwards** <brett_f_e@hotmail.com> Tue, Sep 2, 2025 at 10:16 AM
To: Planning Dept Email <planning@rochesterhills.org>

Hi Panning & Economic Development Dept,

This email is in regards to > 1737 North Fairview Lane – request: PVAI2025-0008.

Any permit resulting in the interpretation in favor of the applicant should **not** be granted as this will add countless years onto this 7 + year ordeal, put the neighborhood in danger as well as ensure endless future court battles once the permit and its contents are undermined.

The day Brad Wolfbauer (applicant - UCE) moved from Roseville to Rochester Hills dramatically changed everything for everyone in the area. I had never had a single issue with a neighbor before this day. I had never called the police on a neighbor before this day. I never wanted to move before this day. I know I am not alone.

For over 7 years and counting, the residents of this once beautiful and peaceful area have had to endure never-ending construction, hideous blight, blinding noise and destruction of neighboring properties and home values. All at the hands of Lisa Schein and Brad. They have no intention of ever completing this "gazebo" because Brad is using his backyard as a permanent commercial construction site in which he and his crew fabricate materials for other job sites. He seems to not know the difference between a residential and commercial space.

For 5 years, the front yard was littered with garbage, Brad's dilapidated UCE-issued vehicle was left stranded in the road leaking chemicals into our fragile drainage system, large construction equipment sat/ was 'stored' for years with no activity.

For nearly 3 years, the backyard is where the 'gazebo' / permanent construction site is located.
The backyard is littered with garbage, large orange barrels, and numerous pop-up work stations. The once bright yellow (temporary) plastic caution tape that outlines the perimeter of their yard is now well faded after nearly a decade in use.

From 7:30AM to well into the night (Monday – Saturday), 3-4 men saw, drill, and make a horrendous racket. The plans the homeowner submitted to the city was for a simple gazebo. What we now see leaves neighbors and people that walk by dumbstruck as this structure is massive, tacky and looks incredibly out of place mere feet away from their home (a 1 family residential zoned space). The 'gazebo' towers over our house. With a strict code in place re: height restrictions, how can this be, you may ask? He simply went around this issue by altering the grade significantly in their yard to make this structure height compliant. If they lived in the country with no neighbors within site, that may be ok. The fact that 2 neighboring houses are 10 feet away means that flooding due to run off during and after substantial rain will occur. Another example of Lisa/Brad showing zero consideration for anyone.

Brad has continuously damaged adjacent properties (most notable - a neighbor's gas line). This shows he has an unsafe knowledge of the equipment he uses.

If Brad Wolfbauer (applicant - UCE) is granted a permit for an inch, he takes a mile. He then hires multiple ambulance chasing attorneys to fight his senseless battles costing the city precious time and money. As all 5

residents of 1737 have concerning, varying degrees of mental capacity/stability, a fireplace in their gazebo poses a serious fire hazard and puts in entire neighborhood at risk.

Warm Regards,
Chichester Resident

On Friday, February 21, 2025, 10:31 AM, Lisa Sux <lisasux23@gmail.com> wrote:

Lisa,

At the last "we hate the people at 1737" meeting, we pulled out the plans that Brad submitted for the backyard project. We all had a laugh as it looks NOTHING like the disaster it's turning out to be...

The topic of the waste of money came up (lights left on 24/7 for no reason, endless lawyer costs, your 2 illegal alien Mexicans 7 year + salary, etc,etc,etc). Whatever it is he is building is going to cost more than your house...haha.

How can you blow money like drunken sailors? → Making fun of my son during
-4 handicapped/mentally disabled kids (oops > 3) gov't money?
-Payout from Oakland University? — Not sure what this means?

MOVE AWAY NOW!!!! YOU ARE RUINING THE AREA!!!!!!!!!!MAKING OUR PROPERTY VALUE PLUMMET!!!!!!!!

We heard that you have yet another project in the near future (sun room?). My suggestion is to hire actual professionals. Apartment complexes and churches are built quicker than the backyard nightmare.

How does all day every day drilling and hammering not bother you??????????????

email Brett Edwards sent me

On Sunday, January 26, 2025, 5:22 PM, Avon Player <unfairview@outlook.com> wrote:

Hi Lisa,

This email reflects the wishes and feelings of all residents living near your house (aka - permanent nightmare construction zone). We kindly ask you to pack up your crap and move far away now (to the Upper Peninsula, Kentucky, Roseville, etc). Move to a place where Brad can be in the yard every day with a beer in one hand and a cigar in the other, with his Mexican crew (are they in the US legally?), with excavation equipment collecting dust, power tools blasting away from sunrise - well past sunset, with a yard littered with propane tanks/orange barrels, etc (how does this not bother you????).

Before Brad came along (we miss you Dave!), the area was peaceful and everyone loved living here. Now it is a noisy/ugly disaster. We don't blame Brad, however. All he knows is how to dig a hole and hammer a nail, start a project that he has no idea how to finish/write up plans that don't make sense. WE BLAME YOU LISA! You brought the convicted felon here (*what a match made in hell!*).

Thank you in advance for your consideration! We have all discussed the possibility of starting a go-fund-me page to buy you out if you cannot secure a buyer. We will tear down the crazy structure in the backyard & house and replace it with a memorial park. The residents can come to the park to relax and recover from the PTSD induced by 1737.

email Brett Edwards sent me -
Notice the common theme from
the emails he sent the City.

On Tuesday, March 25, 2025, 3:28 PM, Ef You <dentist1737@outlook.com> wrote:

WHY DID YOU LET BRAD COME HERE AND RUIN THE AREA

---

**From:** Ef You
**Sent:** Tuesday, March 25, 2025 7:26 PM
**To:** schein6@sbcglobal.net <schein6@sbcglobal.net>
**Subject:** WE ALL HATE YOU LISA....MOVE AWAY NOW

email
Brett Edwards
Sent me.

On Saturday, February 1, 2025, 1:09 PM, Chi Chester <Chichester19@outlook.com> wrote:

Lisa,

Everyone in the entire Chichester area wants you to move away NOW!

How can you live with your backyard in such a miserable state?

Your house alone is dragging down the property value of the entire sub.

PS - it might be a good idea to have your Mexicans get their paperwork in order. Trump and his ICE team might come knocking soon...

email
Brett Edwards
Sent me

Jennifer MacDonald <macdonaldj@rochesterhills.org>

# Second email for ZBA and to add to the online system as part of the case- PVAI2025-0008

1 message

**L shane** <schein6@sbcglobal.net> Thu, Sep 4, 2025 at 12:51 PM
Reply-To: L shane <schein6@sbcglobal.net>
To: Planning Dept Email <planning@rochesterhills.org>, Jodi Welch <welchj@rochesterhills.org>, HOA Chichester East <chichestereasthoa@gmail.com>, Jennifer MacDonald <macdonaldj@rochesterhills.org>

To Whom it May Concern,

This a follow up to my email and attachments I sent yesterday as I realized I forgot to add a few things.

In Mr. Edwards email to the city(public comment) which I attached in my previous email, he states that our Gazebo is tacky and we don't know what we are doing. Photos attached will prove him incorrect. I am attaching photos of our yard @ 1737 and Mr. Edwards yard @ 1719. No need to elaborate more as the photos speak for themselves.

I have attached the second page of Mr. Edwards public comment email because I would like the ZBA board and the City to take notice of the portion where he writes" As all 5 residents of 1737 have concerning, varying degrees of mental capacity/ stability..."
First let me say not one of us has ever had a conversation with Mr. Edwards, we do not interact with him. For him to write such things is libel and a smear campaign. Mr. Edwards spreading lies and making up stories says more about him than it does us. It truly shows his character.

Brad and I are both well educated, have good jobs, give back to our community through volunteerism and donate to many causes. Our daughter is a college graduate, our son is a Junior in college, and our oldest daughter is a very high functioning Down Syndrome individual whom Brett Edwards has made fun of ( her being cognitively impaired) in emails to me and now to the city. I simply ask you, who does that? What kind of person behaves this way? He has made fun of our 21 year old son dying in 2022. He makes jokes about it and puts it in emails.

You may wonder why I feel the need to let you know all of this. It is because it should be known what we are dealing with next door to us. Mr. Edwards has the audacity to bring up stability, all I can say is at least I am stable enough not to go around diagnosing my neighbors ( of which I don't know.) He appears to be a bitter person.

Please speak to your ordinance officer about their interactions with him.

He has no idea about construction, concrete forms ( which were built for the Gazebo pillars - and he states we were building them to use at another job), or home repair.

Again as stated in my previous email we will provide surveys ( done at our expense) , TOPOS ( done at our expense), and any other information you request.

Thank you for your time. It is truly appreciated.

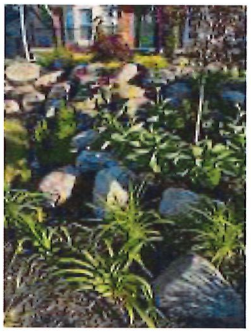
Lisa Schein

* This email has 13 attachments

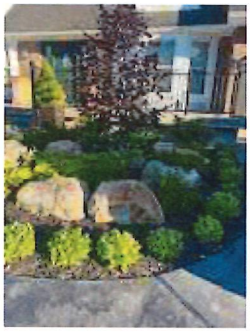
**13 attachments**

**1737 FRONT YARD - SCHEIN.jpg**
37K

**1737 FRONT YARD 2- SCHEIN.jpg**
43K



**1737 FRONT YARD 3- SCHEIN.jpg**
48K



**1737 FRONT YARD 4- SCHEIN.jpg**
39K

**1737 GAZEBO.jpg**
115K

**1737 NORTH FAIRVIEW GAZEBO.jpg**
36K

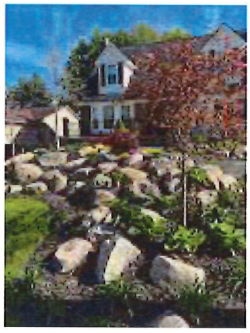
**1719 BACKYARD DECK - EDWARDS.jpg**
4163K

**1719 BACKYARD EDWARDS.jpg**
4631K

**1719 N FAIRVIEW FRONT - EDWARDS.jpg**
27K

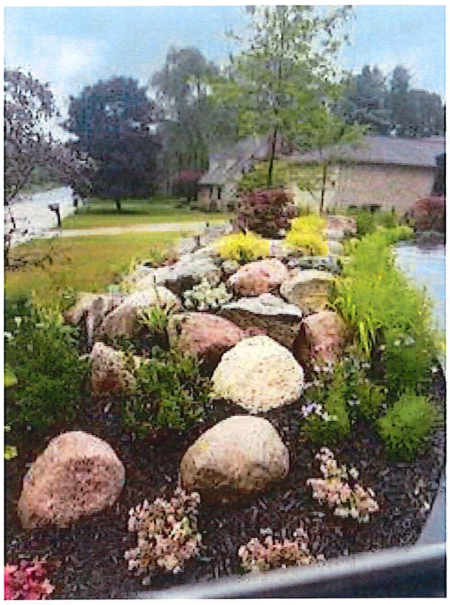
**1719 NORTH FAIRVIEW BACKYARD- EDWARDS.jpg**
35K

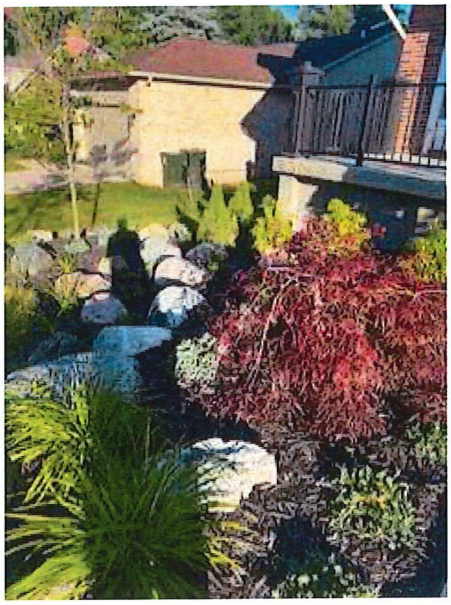
**1719 SIDE YARD - EDWARDS.jpg**
143K

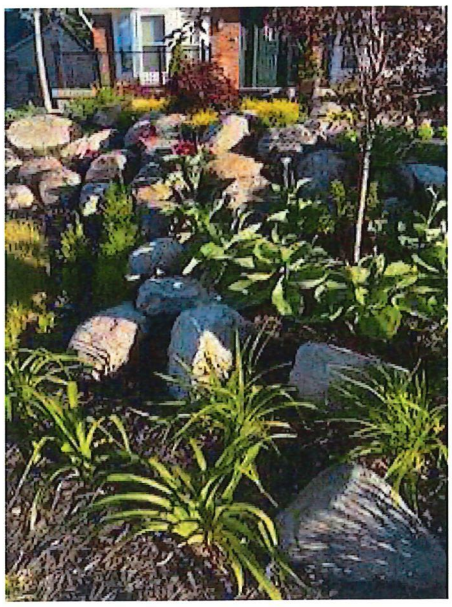


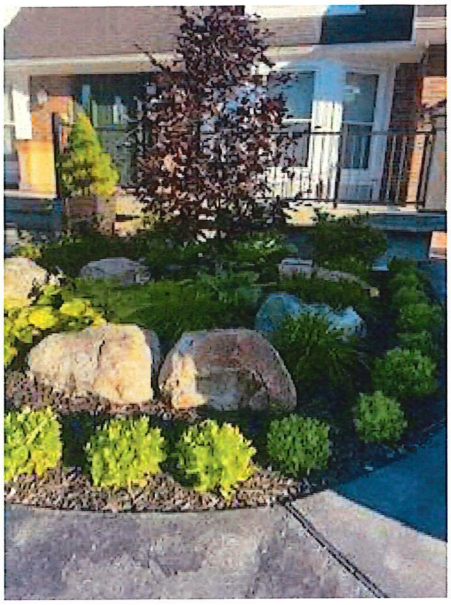
**1737 FRONT YARD - Lschein.jpg**
273K

**Brett Edwards second page of email to the City. .pdf**
417K










2025/06/01 07:40


06/07/2024

residents of 1737 have concerning, varying degrees of mental capacity/stability, a fireplace in their gazebo poses a serious fire hazard and puts in entire neighborhood at risk.

Warm Regards,
Chichester Resident

From page 2 of Mr. Brett Edwards email to the Planning Dept -

Please see my email regarding this.

Thank you
Lisa Scherr