



CITY OF BATTLE CREEK

COMMUNITY SERVICES DEPARTMENT – PLANNING AND ZONING

AGENDA **ZONING BOARD OF APPEALS MEETING**

Date: Tuesday, October 13, 2020
Time: 4:00 P.M.
Via: ZOOM Virtual Meeting

TO PARTICIPATE IN PUBLIC COMMENT: Zoom Telephone Number: 312-626-6799. The caller will be prompted to enter the meeting ID number: 985 7681 4508. The caller will be placed into a virtual “waiting room” until it is their time to speak during public comment.

1. **Call to Order**
2. **Attendance**
3. **Additions or Deletions to the Agenda**
4. **Correspondence**
5. **Old Business:**
6. **New Business:**
 - A) **Z-02-20 Petition by Samuel and Jeanne Cody, 10 Parkway Drive, requesting a 1’ variance from Ch. 1298.06(b) of the Battle Creek Zoning Ordinance to allow a 5’ fence in their secondary front yard along Langley Road.**
7. **Approval of Minutes – January 14, 2020 regular meeting minutes**
8. **Comments by the Public**
9. **Comments by the Staff and Boardmembers**
10. **Adjournment**

The City of Battle Creek will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered in the meeting upon notice to the City of Battle Creek. Individuals with disabilities requiring auxiliary aids or services should contact the City of Battle Creek by writing or calling the following: Office of the City Clerk, P. O. Box 1717 / 10 North Division - Suite 111, Battle Creek, MI 49016 / Phone: (269) 966-3348 (Voice) / (269) 966-3348 (TDD)

ZONING BOARD OF APPEALS
MEETING MINUTES
January 14, 2020
4:00 P.M.

CALL TO ORDER:

Mr. James Moreno, Chairperson called meeting to order at 4:03 P.M.

ATTENDANCE:

Members Present: John Stetler Bill Hanner
James Moreno Mark Jones
Michael Delaware

Members Absent: Carlyle Sims Deland Davis
Norris Lindsey

Staff Present: Marcel Stoetzel, Deputy City Attorney
Glenn Perian, Senior Planner, Planning Dept.
Eric Feldt, Planner, Planning Dept.
Michele K. Jayakar, CSR II, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None.

CORRESPONDANCE: None

OPENING COMMENTS: Mr. Jim Moreno, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be presented and then open the public hearing. At the public hearing, persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. If a petition has been denied the petitioner has the right to appeal to Circuit Court.

A. OLD BUSINESS:

Z-11-19 (859 Capital Ave. S.W., Parcel #0063-00-540-0):

Z-11-19, Petition is for Fadi Gulla and Fast Signs to allow 2 wall signs off of Capital Ave. elevations and 2 additional wall signs on the south and east elevations. Keep the 2 existing pole signs that state “BETTER” face ID in the cabinets. Which is in conflict with Chapter 1299.06(6) of the ordinance

Chairman James Moreno asked for a staff report; Glenn Perian gave a verbal staff report recommending denial for petition Z-11-19.

Chairman James Moreno asked the applicant to come forward and speak regarding the request for a dimensional variance.

Applicant Fadi Gulla of Fast Signs along with Mark Zoltowski of ISigns state they originally applied for 7 signs that were approved verbally.

Chair Mr. Moreno noted correspondence from Mark Zoltowski to Eric Feldt on 9/20/19. It states “please review the revised drawings for the two wall signs and we will variance the two other signs.” They were approved for two wall signs that are allowed.

Comm. Jones states the ordinance is clear.

Chair Mr. Moreno asked if there are any members of the public present to either speak for or against the variance request.

There was no public to comment.

Chair Mr. James Moreno asked if there was any further discussion; seeing none, he would close the Public Hearing and entertain a motion.

MOTION WAS MADE BY MARK JONES TO APPROVE THE REQUEST AS SUBMITTED. MOTION WAS SUPPORTED BY JOHN STETLER. ALL OPPOSED; VARIANCE DENIED.

Mark from I signs asked if he was approved for two signs.

Chairman James Moreno states that only two are permitted, per the ordinance.

Glenn Perian states the applicant will want to submit a revised sign application to make sure they are within the standards allowed (size and location) in the ordinance.

NEW BUSINESS: 2020 Board Elections

Chairman James Moreno asked for a motion for election of officers for the 2020-2021 year.

MR. JOHN STETLER nominated JIM MORENO for Chair. BILL HANNER seconded the nomination.

Chair Moreno asked if there were any other nominations for Chair, with their being none he asked for a motion. With the nomination made a vote was taken. ALL IN FAVOR, NONE OPPOSED; NOMINATION APPROVED.

Chair Moreno asked for nominations for Vice Chair. CHAIR MORENO nominated BILL HANNER, seconded by MICHAEL DELEWARE. ALL IN FAVOR, NONE OPPOSED; NOMINATION APPROVED.

Chairman James Moreno asked for a motion approving the December 10, 2020 meeting minutes.

MOTION WAS MADE BY MR. JOHN STETLER TO APPROVE THE DECEMBER 10, 2019 ZONING BOARD OF APPEALS MEETING MINUTES; THE MOTION WAS SUPPORTED BY MARK JONES. ALL IN FAVOR; NONE OPPOSED; MINUTES APPROVED.

COMMENTS BY THE PUBLIC: Mark Zoltowski from I signs asked about the pole signs. Chair Moreno directed him to Staff for assistance.

COMMENTS BY THE MEMBERS / STAFF:

Glenn Perian gave an update on the Zoning Ordinance and Map Amendment.

Marcel Stoetzel gave reminders of the Open Meeting Act, talking outside of the board, Conflict of Interest and the Zoning Enabling Act.

ADJOURNMENT: Chairman James Moreno adjourned the meeting at 5:00 P.M.

Submitted by: Michele K. Jayakar, Customer Service Rep. II, Planning Dept.

DRAFT



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: October 13, 2020
Appeal #Z-02-20

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Date: October 5, 2020
Subject: Petition for a dimensional variance (Z-02-20) to permit the construction of a 5' chain link fence in a front yard on property located at 10 Parkway Drive in an R-1B zoning district.

Summary

This report addresses a petition from Samuel W. and Jeanne E. Cody, seeking approval of a Dimensional Variance (Z-02-20), to waive the height limitations for fences in a front yard to construct a 5' chain link fence in the front yard at 10 Parkway Drive. The Applicant is intending to connect with an existing 5' chain link fence in the rear yard and states that a one foot variance is being requested due to the elevation change from the roadway to the yard.

The ordinance states that a 4' fence is permitted in front yards in the R-1B zoning district. Fences on corner lots may not obstruct or interfere with traffic visibility across the street and must be at least 50% see through. The Applicant is requesting the variance to reconstruct a 5' chain link fence in the front yard of a corner lot as shown in the attached drawing. The Applicant states that the property sloped from the street to the yard with "a good 3+ foot grade difference from road to level ground." The applicant also states that if the variance is granted a 5' fence will not obstruct view due to the elevation change and will not appear taller than what is allowed from the roadway.

There is a survey of the property, a sketch drawing of the proposed project and pictures from the applicant included in your packet. The Appellant is expected to be at the hearing to discuss any questions you may have related to this request.

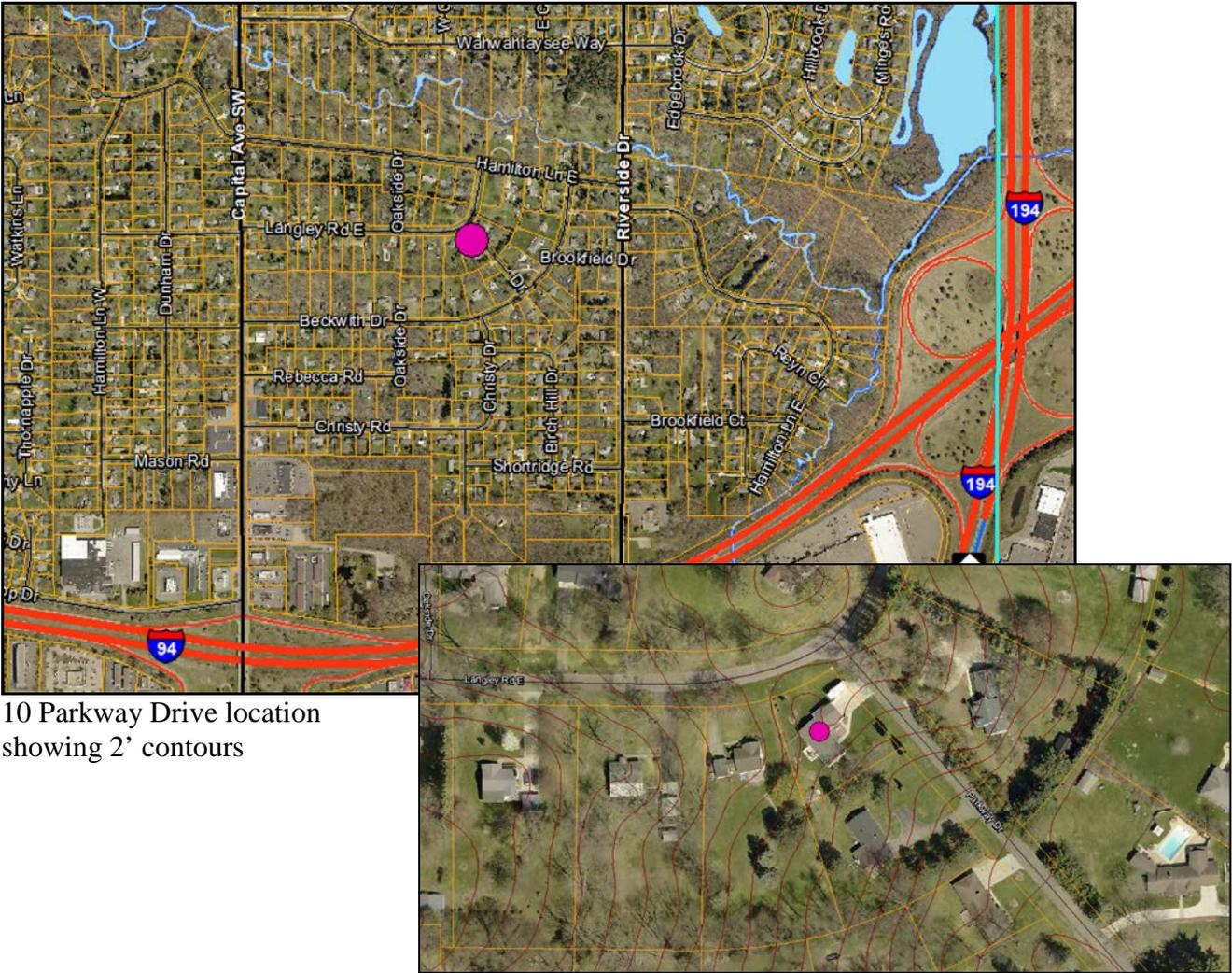
Legal Description

BROOKFIELD HEIGHTS NO 1 PART OF LOT 15 DESC AS BEG NE COR OF LOT 15 - SELY ALG NELY LI OF LOT 15 DIST OF 124 FT - SWLY 133.5 FT - NWLY ALG SWLY LI OF LOT 15 DIST OF 135.7 FT - NLY ALG NWLY LI OF LOT 15 DIST OF 78.5 FT TO POB (ASSESSED WITH 1250-03-215-0 IN '97)

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek Enquirer on Monday, September 28, 2020 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail to 23 property owners and occupants located within 300 feet of the subject parcel. As of the writing of this report, planning staff has not received any correspondence related to this request.



10 Parkway Drive location showing 2' contours

Applicable Zoning Ordinance Provisions

Chapter 1234.04 states:

- b) The Board shall have the authority to grant the following variations:
 - (1) Nonuse. If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125-3101 et seq.; and
 - (c) Variance Standards. In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case,

first determine that the applicant has met all of the following conditions as set out for the specific type of variance requested:

(1) Nonuse (dimensional) Variances:

A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this zoning ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.

B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.

C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.

D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Analysis

Staff has reviewed the application and finds that it meets the requirements for submittal and is considered complete. The Appellant is requesting a variance from the front yard 4' maximum fence height requirement for properties located in residential zoning district. City records and the attached survey show the lot located at the corner of Parkway Drive and Langley Road with an approximate 4' elevation drop from Langley Rd to the yard. Photos submitted by the applicant further show the elevation change and demonstrate the proposed height of the fence and where it will be placed on the property. Based on the photos, we don't think approval of this request will alter the character of the neighborhood in any way, nor will traffic be impacted at the intersection by the proposed fence. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. The elevation change from Langley Rd. to the location of the proposed fence in the yard makes this property unique. We have provided a rationale for each condition set forth below for Dimensional Variances and the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-02-20) based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does in fact exist if the strict requirement of the ordinance is applied to this specific building project and that the Board is authorized to approve the variance in this case. The practical difficulty includes the slope of the property from the road to the yard and matching up the existing fence unique in this particular case.
- B) Staff believes that the practical difficulty is exceptional and peculiar to the subject parcel and the conditions associated with the property generally do not exist throughout the City. The slope of the property on a corner lot makes this particular property peculiar. We do not believe that if the variance is granted there will be any impact on property in the neighborhood or for motorists navigating the intersection.
- C) Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised in that the conditions associated with this particular property is unique and that the impact of a foot being added to the height of the proposed fence is anticipated to be minimal to neighboring property owners.
- D) Staff does not believe that the variance requested exceeds the minimum necessary to provide relief from any stated practical difficulty in that the appellant is requesting a variance from relief caused by the slope of the property.

Attachments:

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-02-20)
2. Sketch / survey of proposed project with supplemental photos



City of Battle Creek

Community Services – Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • www.battlecreekmi.gov

Appeal No. _____

Date: _____

APPLICATION FOR A VARIANCE **ZONING BOARD OF APPEALS**

An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Samuel W. & Jeanne E. Cody

Address: 10 Parkway Drive Battle Creek MI 49015 Phone: 269-924-9571 Samuel
269-924-9566 Jeanne

Name of Owner (if different from Appellant): N/A

Address: N/A Phone: N/A

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) Extend Erect Appeal Use Convert Enclose

Description: Erect a 5 foot chainlink fence on existing grade of property instead of 4 foot standard to code.

Contrary to the requirements of Section(s) Chapter 1298 of the Planning and Zoning Code, upon the premises known as 10 Parkway Dr, BC 49015 Battle Creek, MI, in accordance with the plans and/or plat record attached. MI.

The proposed building or use requires Board action in the following area(s):

To Approve a variance to allow 5 foot tall chainlink fence

Property/Tax I.D. # No. 1250 - 03 - 215 - 1 Size of the Lot: Width _____ Depth _____

Size of Proposed Building: Width N/A Depth N/A Height N/A

The following reasons are presented in support of this appeal (complete each section):

(a.) This property cannot be used in conformance with the ordinance without the requested variance because: → over →

Printed Name: 9/22/16

The reason to support this appeal is due to the elevation of the road and adjacent property - A 5 foot fence would provide greater protection and safety with the curve of E. Langley. There is a good 3+ foot grade difference from road to level ground.

(b.) This problem is due to a unique situation not shared in common with nearby property owners because:

The demographics of the property as shown in pictures - shows the significant elevation difference from E. Langley to our yard and from adjacent property to our side yard.

(c.) Granting the variance would not alter the essential character of the area because:

The elevation of E. Langley Rd is greater and a 5 foot fence will NOT OBSTRUCT VIEW - due to elevation will NOT APPEAR TALLER THAN WHAT IS ALLOWED from the roadway.

(d.) The problem is not self-created because:

The elevation of roadway is natural and pre-existing.
(topography)

(e.) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

N/A

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. **In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.**

Samuel W. Cody
(Print Appellant Name)

Jeanne E Cody

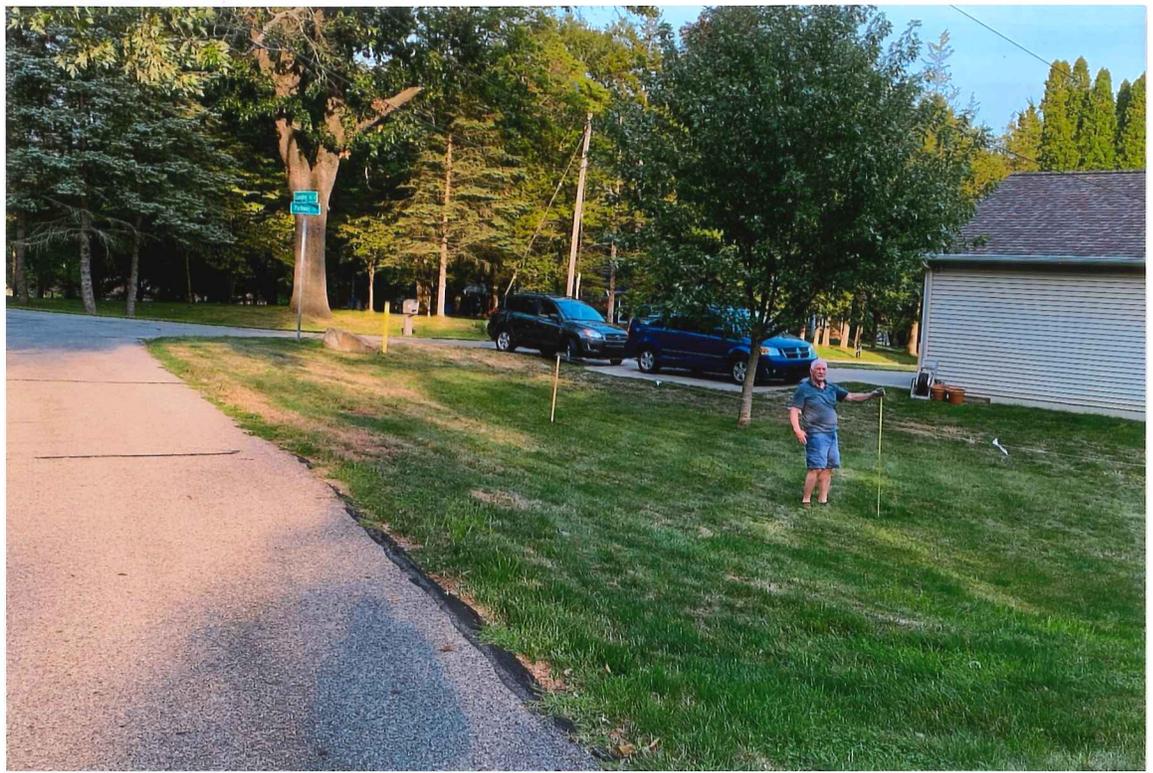
Samuel W. Cody
(Signature of Appellant)

Jeanne E Cody

10 Parkway DR., Battle Creek, MI 49015
(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

You can see the elevation differences.



Staked off where fence would be.

He has measure tape at 5 ft.

← you can see the string



← Left hand at 4 ft
Right hand at 5 ft



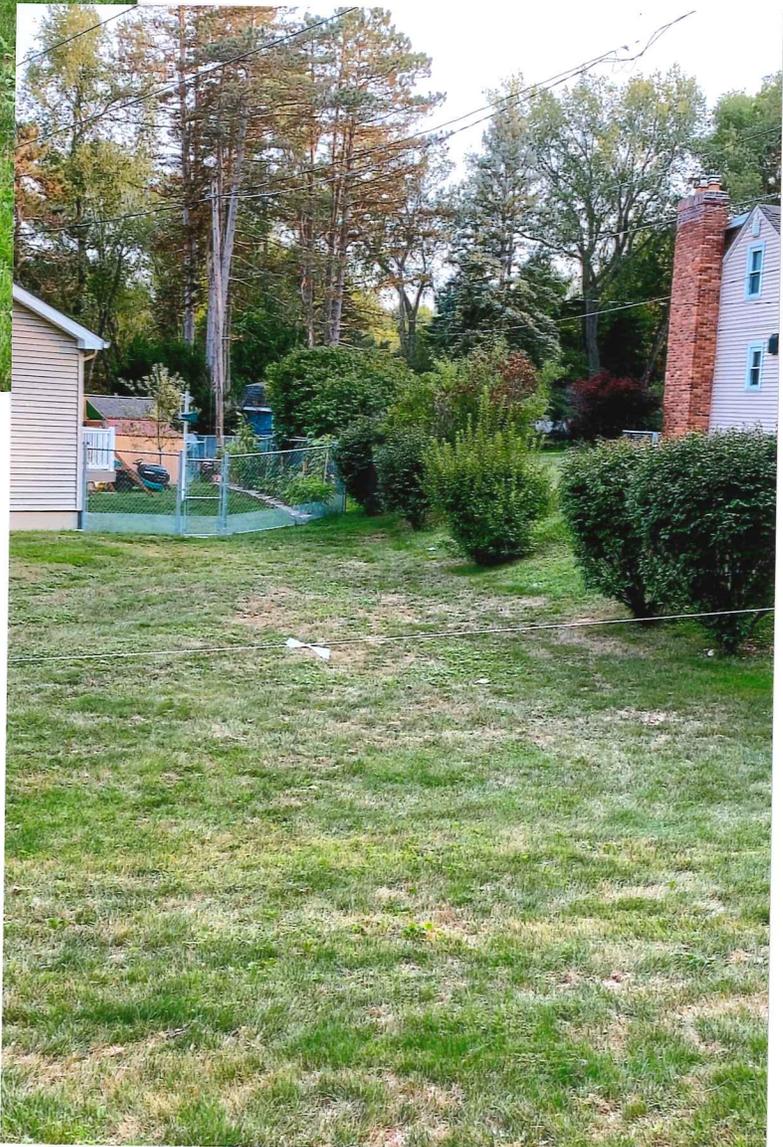
Standing →
on neighbor
property to
show elevation
difference



TOP
* Pic
← Standing
Here

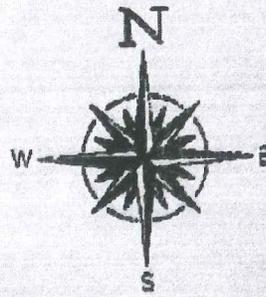


We would like to continue
the rest of our yard
with the 5 foot fence we
already have around the
rest of our yard.



Thank //
you ☺

PROPOSED HOUSE LOCATION



LANGLEY ROAD

PARKWAY DRIVE

LOT 16

LOT 15

SOUTHWESTERLY

Client: PONTONI DEVELOPMENT CORPORATION

Drawn by: RAL
 Surveyed by:
 Scale: 1" = 30'

Job No.: 35908
 Date: 08/15/04
 Revised:



WILLIAM K. CRANE, P.S. #29243

CRANE LAND SURVEYING, P.C.
 1967 E. MICHIGAN AVENUE
 BATTLE CREEK, MICHIGAN 49014
 PHONE (269) 913-7477
 or
 FAX (269) 963-7008