



Andy Schor
Mayor

**LANSING BOARD OF ZONING APPEALS
REGULAR MEETING
DEPARTMENT OF ECONOMIC DEVELOPMENT AND PLANNING
THURSDAY, October 14, 2021, 6:30 PM
600 W. Maple (Neighborhood Empowerment Center)**

Due to public safety concerns resulting from the COVID-19 pandemic, this meeting will be accessible to the public via Microsoft Teams by clicking on this [hyperlink](#) or via Zoom Conferencing by clicking on the following link: <https://us02web.zoom.us/j/86867723941>

AGENDA

- I. **ROLL CALL**
- II. **APPROVAL OF AGENDA**
- III. **PUBLIC COMMENT**
- IV. **PUBLIC HEARING/ACTION**
 - A. BZA-4073.21, 736 N. Larch Street - Variance to the clear vision requirements for a fence
- V. **OLD BUSINESS**
- VII. **NEW BUSINESS**
 - A. 2022 Meeting Schedule
- VI. **APPROVAL OF MINUTES**
 - A. Regular Meeting, August 12, 2021
- VIII. **PUBLIC COMMENT**
- IX. **ADJOURNMENT**

FOR SPECIAL ACCOMMODATIONS, PLEASE GIVE 24 HOURS NOTICE PRIOR TO THE MEETING BY CALLING SUSAN STACHOWIAK IN THE PLANNING OFFICE AT 517-483-4085 OR BY DIALING (TTY 711).

GENERAL INFORMATION

APPLICANT: John Berry
1750 Wewatta Street, Unit 430
Denver, CO 80202

OWNER: Johnny Berry
4509 Grand Cypress Drive
Austin, TX 78747

REQUESTED ACTION: Variances to permit a 6 foot high fence with screening slats within the required corner clearance area and driveway clear-vision areas

EXISTING LAND USE: Marijuana processing facility

EXISTING ZONING: "DT-2" Urban Flex

PROPERTY SIZE & SHAPE: Rectangular Shaped Lot
165.38' x 123.24' = 20,751 square feet (.476 acres)

SURROUNDING LAND USE: N: Commercial/parking lots
S: Residential & commercial
E: Vacant/Residential
W: Commercial

SURROUNDING ZONING: N: "H" Light Industrial District
S: "H" Light Industrial District
E: "H" Light Industrial District
W: "H" Light Industrial District

MASTER PLAN DESIGNATION: The Design Lansing Comprehensive Plan designates the subject property for Downtown Mixed-Use: Edge development. N. Larch Street is designated as a principal arterial.

REQUEST

This is a request to permit a 6 foot high chain-link fence with screening slats around the perimeter of the property at 736 N. Larch Street. Sections 1250.03.03 (a) & (b) of the City of Lansing Zoning Ordinance prohibit fences above a height of 3 feet that materially obstruct vision within a 25 foot corner clearance area at a street intersection and within a 10 foot corner clearance area at the intersection of driveways and property lines. The applicant is requesting a variance that allow the newly erected 6 foot high screen fence that projects into the clear visions areas to remain on the property at 736 N. Larch Street.

ANALYSIS

Section 1244.06 (c)(1-4) and (e)(1-4) of the Zoning Code sets forth the criteria and standard which must be used to evaluate a variance request:

- Does a Practical Difficulty or Unnecessary Hardship exist?
- Is the Location, Size and Character in harmony with surrounding uses?
- Will the request Impact on Vehicular and Pedestrian Traffic?
- Will a precedent regarding future land use patterns be set as a result of the request?

The variance application states:

“After multiple delays in being able to put up our fence (Covid, materials, etc), we have finally put it up. Our intention was always to add shaded material to the fence to dissuade break-ins/muggings as these are issues we have seen in the area. Recently an individual with the Department of Economic Development has stated we can’t have shading. They recently changed our zoning apparently and this wouldn’t have been an issue before. Our petition is to keep the shading on our fence.”

The corner clearance/clear vision requirements are the same under the current zoning ordinance as they were under the previous zoning ordinance.

In February, 2021, the applicant applied for and was denied a variance to allow barbed wire on the fence at 736 N. Larch. At the February BZA meeting, it was made clear on the record that the applicant would be permitted to install a 6 foot high chain-link fence around the perimeter of the property. The new zoning ordinance that went into effect on May 1, 2021 does not allow chain-link fences in front yards, even on industrially zoned parcels of land. The applicant’s chain-link fence, however, is considered legally nonconforming (grandfathered-in) under the previous ordinance. The slats that were installed on the fence, however, are not grandfathered-in as they would not have been permitted under the previous ordinance. There was no mention of installing the slats at the February meeting and the applicant did not inquire with the City as to their permissibility before installing them on the fence.

Practical Difficulty Criteria

Several criteria are described in Section 1244.06 (c) for the Board to consider in determining the adequacy of a practical difficulty:

1. The hardship results from the application of this Zoning Code to his or her lot, rather than from some other factor.
2. The hardship is not the result of his or her own actions.
3. The hardship is unique to the lot of the applicant.
4. If the owner of the lot complies with this Zoning Code, he or she can secure no reasonable return from, or make no reasonable use of, his or her property.

With respect to the first criterion, the request is directly related to ordinance regulation. Sections 1250.03.03 (a) & (b) of the City of Lansing Zoning Ordinance prohibit fences above a height of

3 feet that materially obstruct vision within a 25 foot corner clearance area at a street intersection and within a 10 foot corner clearance area at the intersection of driveways and property lines. The applicant is requesting a variance that allow the newly erected 6 foot high screen fence that projects into the clear visions areas to remain on the property at 736 N. Larch Street in its current condition.

The second and forth criterions are not applicable in this case. The third criterion relates to whether there is something unique about the subject property that warrants relief from a particular ordinance provision. In other words, if there are exceptional conditions relating to the site that distinguish it from most other properties that are subject to the same restrictions. By assuring that the request is adequate to differentiate it from a claim that could be made by most other property owners, the intent of the ordinance standard is preserved. In this case, there is nothing unique about the subject property that would warrant approval of the requested variance. The use of the property for a marijuana processing facility is not “unique” and the increased security and privacy that the slats provide is not related to any unique feature of the site.

IMPACT STANDARDS

The Ordinance also establishes four standards under Section 1244.06 (e) that must be satisfied relating to the impact of the variance on the surrounding properties and general public. These standards and the manner in which they relate to the request are as follows:

1. **The use will be in harmony with the appropriate and orderly development of the surrounding neighborhood.**

There are no screen fences in the front yards of any other properties in the surrounding area and its appearance (see attached photographs) is out of character with the area in which it is located.

The intent of the clear vision/corner clearance requirements is to ensure that there are no obstructions for motorists when turning at intersections or exiting driveways. The applicant’s fence is in direct conflict with this intent.

2. **The use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved.**

As evidenced by the attached photographs, the fence clearly obstructs vision at the N. Larch/May Street intersection and at the driveways on the site.

3. **The use will be designed to eliminate a possible nuisance emanating there from.**

The proposed variance will not generate any nuisances

4. **The use will not interfere with or discourage the appropriate development and use of adjacent land and structures or unreasonably affect their value.**

Since there is nothing unique about the subject property to warrant relief from the ordinance, approval of the requested variance could set a negative precedent for future requests to vary the restrictions on screen fences within clear vision/corner clearance areas, not just in the vicinity of the subject property but throughout the City in general.

FINDINGS

This is a request to permit a 6 foot high chain-link fence with screening slats around the perimeter of the property at 736 N. Larch Street. Sections 1250.03.03 (a) & (b) of the City of Lansing Zoning Ordinance prohibit fences above a height of 3 feet that materially obstruct vision within a 25 foot corner clearance area at a street intersection and within a 10 foot corner clearance area at the intersection of driveways and property lines. The applicant is requesting a variance that allow the newly erected 6 foot high screen fence that projects into the clear visions areas to remain on the property at 736 N. Larch Street.

The information does not support a finding that the requested variance is consistent with the variance evaluation criteria set forth in Sections 1244.06 (c) & (e) of the Zoning Ordinance.

RECOMMENDATION

Based on the information and findings described above, the following motion is offered for the Board's consideration:

“I make a motion to deny BZA 4073.21 for a variance to permit the screening slats in the 6 foot high chain-link fence at 736 N. Larch Street within the corner clearance and clear vision areas described in Sections 1250.03.03 (a) & (b) of the Zoning Ordinance, on a finding that the request does not comply with the variance evaluation criteria listed in Sections 1274.06 (c) & (e) of the Ordinance.”

Respectfully Submitted,

Susan Stachowiak
Zoning Administrator



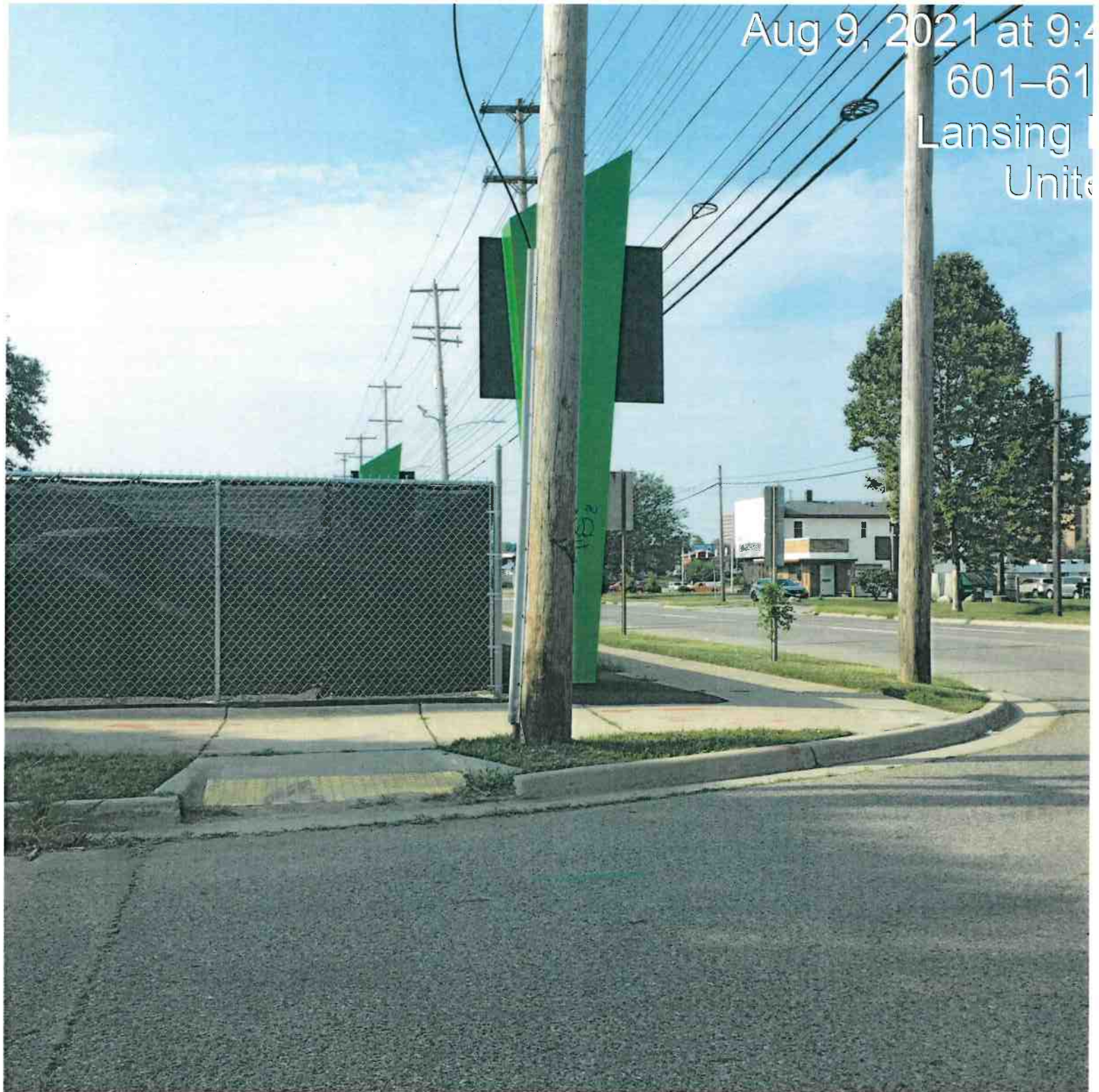
The red line represents the location of the fence

The blue lines represent the areas where fences that materially obstruct vision are not permitted above a height of 3 feet

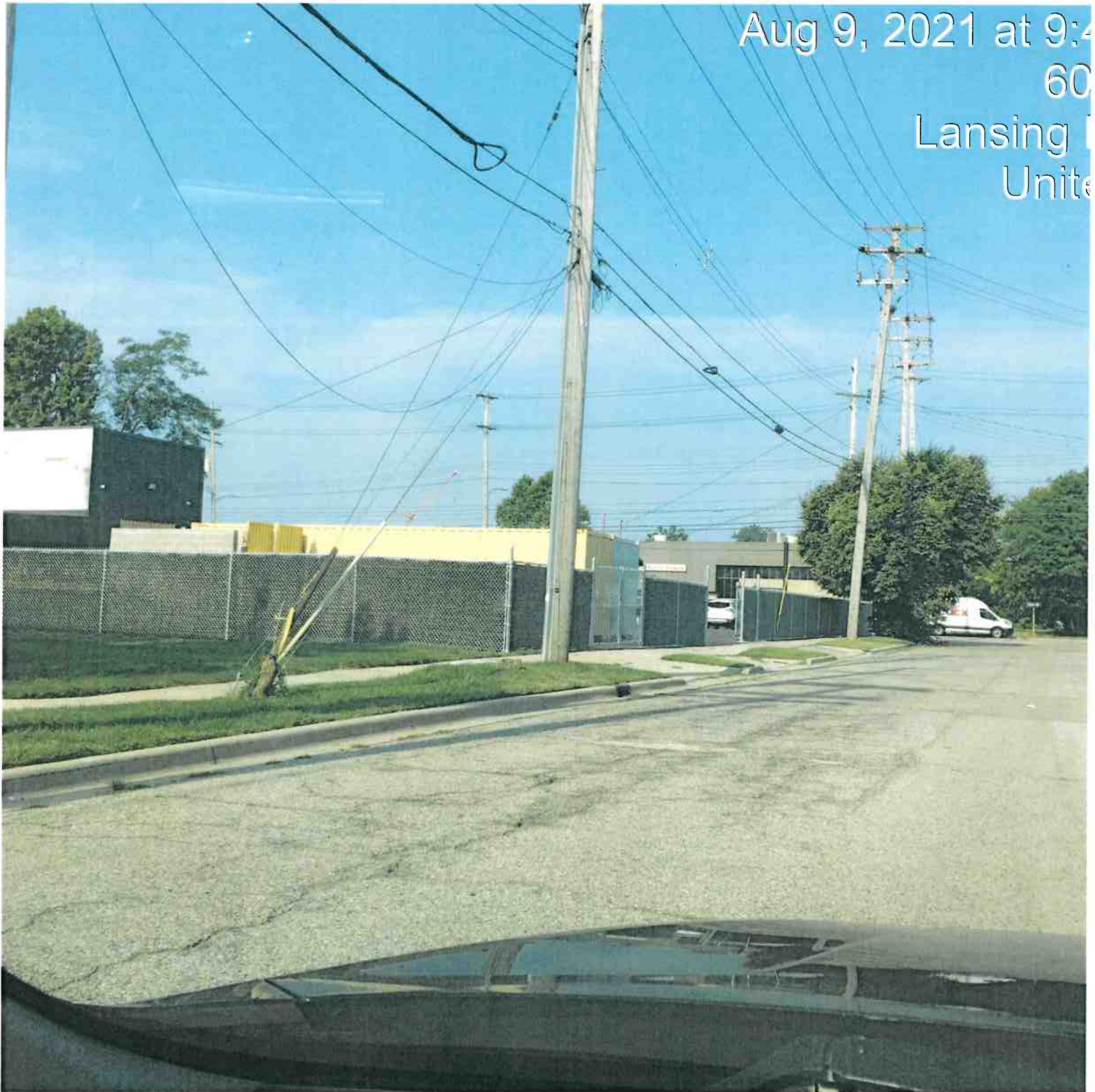
Not to scale



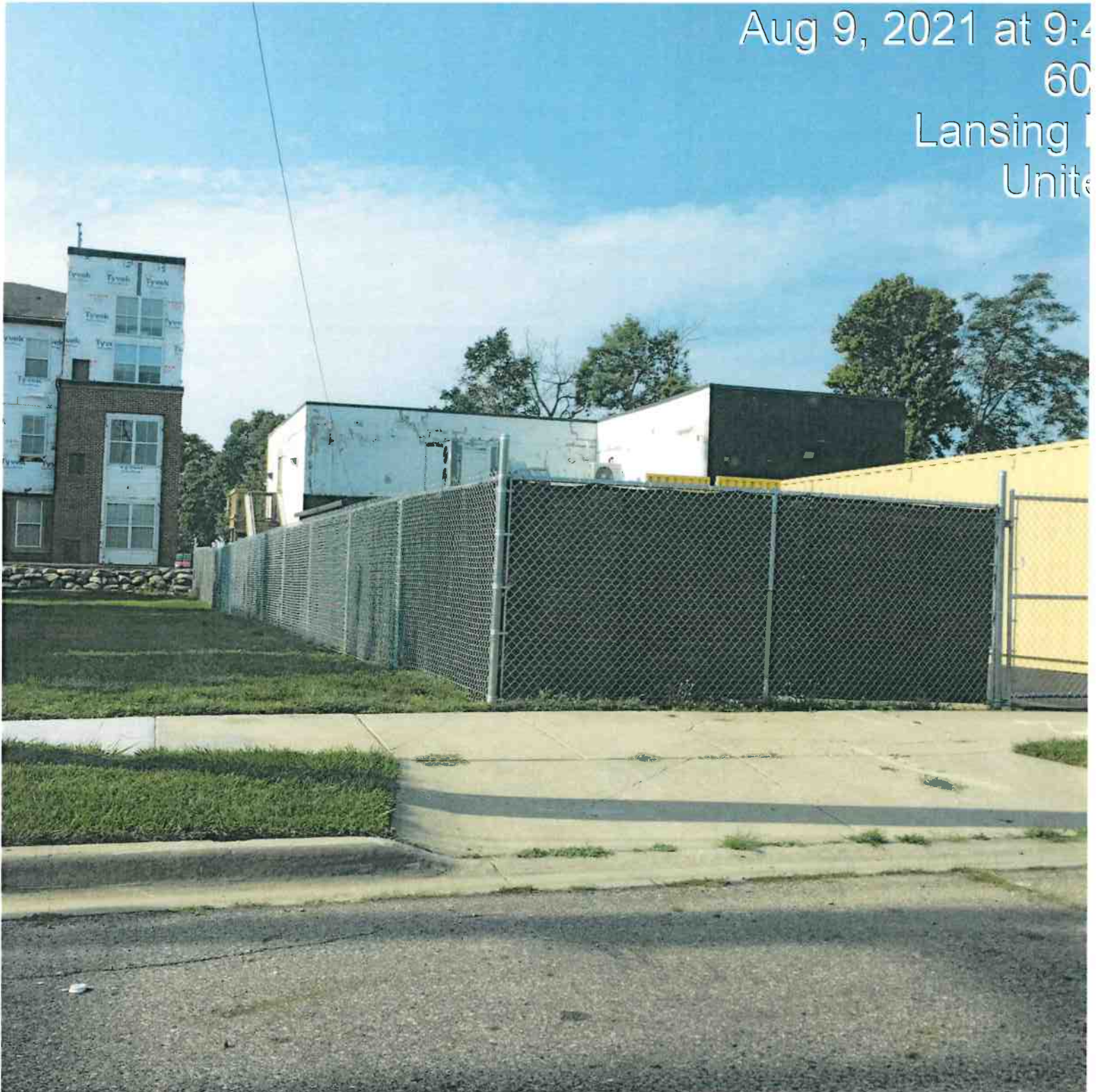
Aug 9, 2021 at 9:4
601-61
Lansing
Unit



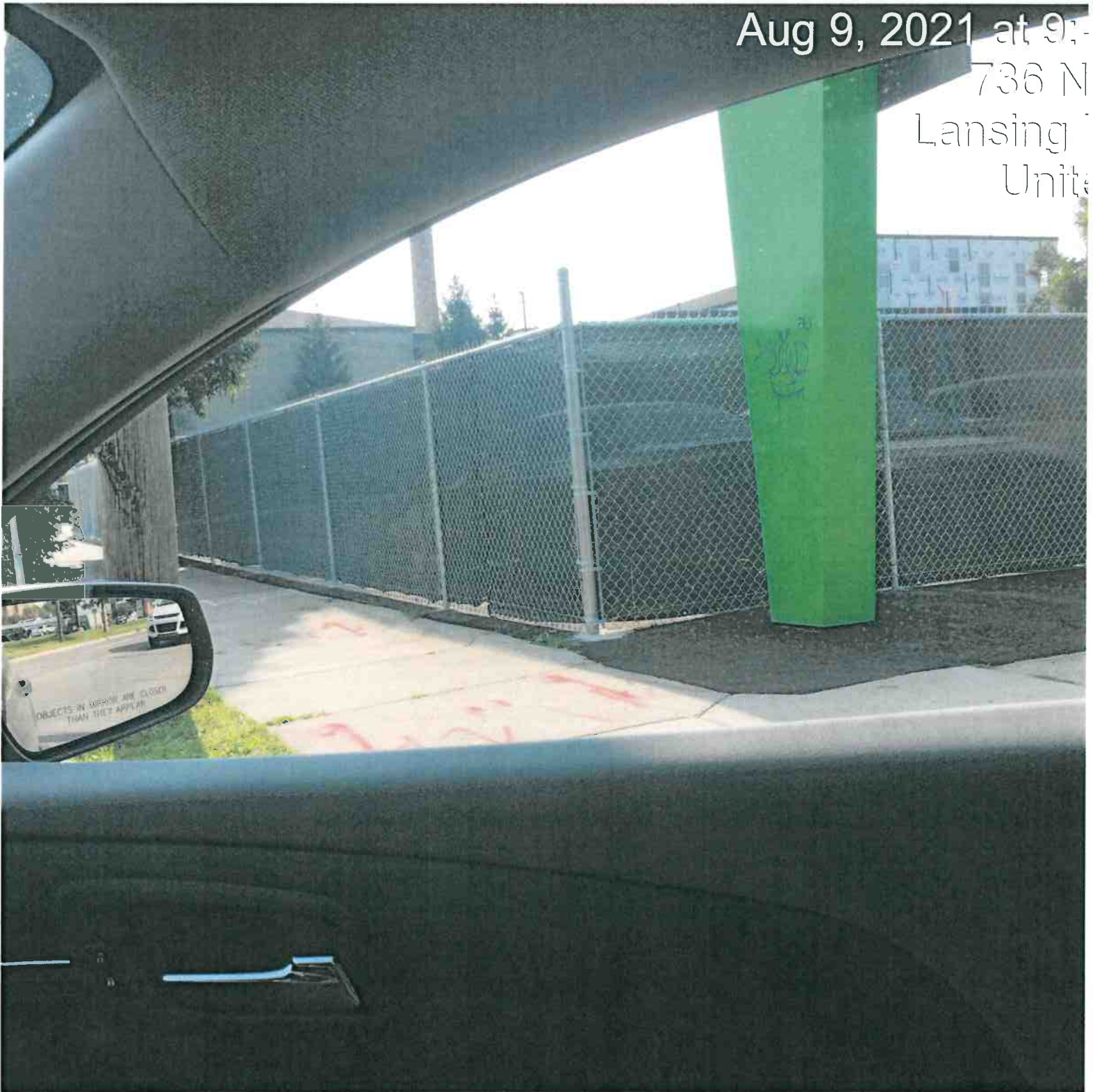
Aug 9, 2021 at 9:4
60
Lansing
Unit



Aug 9, 2021 at 9:4
60
Lansing
Unit



Aug 9, 2021 at 9:41
736 N
Lansing
Unit







Andy Schor
Mayor

BOARD OF ZONING APPEALS 2022 Meeting Schedule

DATE	TIME	PLACE
January 13, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
February 10, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
March 10, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
April 14, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
May 12, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
June 9, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
July 14, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
August 11, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
September 8, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
October 13, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
November 10, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.
December 8, 2022	6:30 PM	Neighborhood Empowerment Center 600 W. Maple St.

ADDRESS OF PRINCIPAL OFFICE: 316 N. CAPITOL AVE, SUITE D-1
TELEPHONE NUMBER: 517-483-4066

POSTED AT:

- City Clerk's office
- Planning Division Lobby
- City Council Office

**MINUTES OF REGULAR MEETING
BOARD OF ZONING APPEALS
THURSDAY, August 12, 2021, 6:30 P.M.
600 W. Maple Street, Lansing, MI 48915**

The meeting was also accessible to members of the public via online teleconference in compliance with the Open Meetings Act, as amended.

I. ROLL CALL

The meeting was called to order by Marcie Alling at 6:30 p.m. Roll call was taken.

Present: M. Alling, K. Berryman, J. Leaming, E. Jefferson & B. Fryling

Absent: M. Solak, M. Rice, C. Iannuzzi & J. Hovey

Staff: S. Stachowiak & A. Fedewa

A quorum of at five members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

It was moved by Mr. Leaming, seconded by Ms. Jefferson to approve the agenda with the addition of "Excused Absences" under New Business. On a voice vote, the motion carried 5-0.

III. PUBLIC COMMENT

IV. PUBLIC HEARING/ACTION

A. BZA-4071.21, 1218 Theodore Street - Variance to permit artificial turf in the front yard

Ms. Stachowiak stated that this is a request by the owner of 1218 Theodore Street for a variance to permit the front yard at this location to be covered with synthetic turf. Section 1252.05 of the City of Lansing Zoning Ordinance requires those areas of a lot that are not covered by buildings or pavement to be covered by grass or other natural (growing) ground covers. Ms. Stachowiak stated that the staff recommendation is to deny the variance on a finding that the request does not comply with the variance evaluation criteria described in Sections 1274.06 (c) & (e) of the Zoning Ordinance.

Ms. Stachowiak stated that In April of this year, it was brought to her attention that the applicant covered the front yard, including the public right-of way at 1218 Theodore Street with gravel. In response, she sent a letter notifying the applicant that the gravel violates the Zoning Ordinance and the gravel in the public right-of-way violates the provisions of City Ordinance 1020.03 & 1020.04, which prohibit the placement of any plant or other material, other than natural grass, in the public right-of-way. In response to the letter, the applicant covered the front yard with artificial grass rugs and was then notified that artificial grass does not satisfy the ordinance requirements for covering a yard/public right-of-way with grass. Ms. Stachowiak said that there is nothing unique about the applicant's property that warrants relief from the ordinance. She said that the basis for the applicant's request is that the artificial grass would be low maintenance, will look good all of the time and will not require the use of pesticides or fertilizers.

Ms. Stachowiak pointed out that the Board of Zoning Appeals does not have the authority to grant a variance to allow gravel, artificial grass or anything else in the public right-of-way. She said that Ordinance 1020 grants the City's Public Service department sole authority over use of or placement of anything in the public right-of-way.

Ms. Alling opened the public hearing.

Jose Lopez, 1218 Theodore Street, addressed the Board remotely via Zoom Conferencing. Mr. Lopez explained that 1218 Theodore is his second home and the artificial turf ensures that it will always look nice since he is not there much of the time to perform maintenance. He said that he did not realize that the artificial turf would be an issue and he asked that the Board grant the requested variance so that it can remain as is.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. Leaming stated that he went by the property to look at it and it appears that grass is growing up through the rug. He said that since there is nothing unique about the property itself that makes compliance with the ordinance impractical or unreasonably difficult, the Board is not in a position to approve the variance.

Ms. Stachowiak assured Mr. Lopez that he would be given ample time to remove the artificial turf and the gravel and plant the area with grass.

Ms. Jefferson made a motion, seconded by Mr. Leaming to deny BZA 4071.21 for a variance of 16 feet to the allowable width for a driveway in the front yard at 409 W. Sheridan Road, on a finding that the request does not comply with the variance evaluation criteria described in Sections 1274.06 (c) & (e) of the Zoning Ordinance. On a roll call vote, the motion carried unanimously (5-0).

B. BZA-4072.21 – 804 W. Shiawassee Street - Variance to permit covering the front and side yard with mulch

Ms. Stachowiak said that this is a request by the owner of 804 W. Shiawassee Street for a variance to permit the front yard and part of the side yard at this location to be covered with mulch. Section 1252.05 of the City of Lansing Zoning Ordinance requires those areas of a lot that are not covered by buildings or pavement to be covered by grass or other natural (growing) ground covers. This Section also limits the area of a yard that can be covered by mulch to 25%. Ms. Stachowiak stated that the staff recommendation is to deny the variance on a finding that the request does not comply with the variance evaluation criteria described in Sections 1274.06 (c) & (e) of the Zoning Ordinance.

Ms. Stachowiak stated that In June of this year, it was brought to her attention that the applicant covered the front yard, part of the side yard and the public right-of way at 804 W. Shiawassee Street with mulch. In response, she sent a letter notifying the applicant that the mulch violates the Zoning Ordinance and the mulch in the public right-of-way violates the provisions of City Ordinance 1020.03 & 1020.04, which prohibit the placement of any material, other than natural grass, in the public right-of-way. Ms. Stachowiak said that the applicant has removed the vast majority of the mulch and at this point, she considers the property to be in compliance with the ordinances.

Ms. Stachowiak said that the applicant does not seem disagree that the mulch is a violation of the City Ordinances but does not feel that the City should be taking enforcement action against her because (1) she was not aware of the ordinance, (2) the time frame that was given to correct the violation (21 days) was not sufficient, (3) there has historically been mulch beds in the front yard and public right-of-way at 804 W. Shiawassee, (4) trash that collects in her yard from littering in the area does not have to be picked up to mow the yard as long as it is covered with mulch; and (5) the City is only pursuing this matter because her next door neighbor, who is a former City employee, contacted the City about the mulch. Ms. Stachowiak said that none of these issues are sufficient justification for issuance of a variance. She said that there is nothing unique about the applicant's property that warrants relief from the ordinance.

Ms. Stachowiak stated that aerial photographs from 2015 and 2020 do not show that there was mulch in the public right-of-way at 804 W. Shiawassee Street. The aerials do show that there have been mulch beds in the front yard at this location. This was considered a legal nonconformity (grandfathered-in) and allowed to continue as it has existed for many years. As a nonconformity, however, the area covered by mulch could not be increased which is what has occurred and why it became a violation of the ordinance.

Ms. Stachowiak again pointed out that the Board of Zoning Appeals does not have the authority to grant a variance to allow mulch or anything else in the public right-of-way. She said that Ordinance 1020 grants the City's Public Service department sole authority over use of or placement of anything in the public right-of-way.

Ms. Alling opened the public hearing.

Ms. M. Cherry, 804 W. Shiawassee Street, stated that her purpose for bringing this matter before the Board was to explain the situation that resulted in a need to add additional mulch to areas where it has already existed for quite some time. She said that the situation with her next door neighbor has been very difficult and the mulch prevents her from having to spend as much time in the yard doing maintenance which is less time that she has to interact with the neighbor. Ms. Cherry said that if she cannot have the mulch, she would like to have some other type of ground cover that serves the same purpose of less maintenance. She also said that she naturally assumed that there would not be an issue with the mulch since it was given to her by the City or one of its contractors.

Jeffrey Rogers, 804 W. Shiawassee Street, reiterated the concerns expressed by Ms. Cherry with respect to trash in the yard, the tense situation with the next door neighbor, the prior existence of mulch on the property and the need for some type of ground cover that would not require as much maintenance as standard grass.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Ms. Jefferson informed Ms. Cherry that the Board does not have the authority to authorize the placement of mulch or anything else in the public right-of-way but that Ms. Stachowiak can provide her with the information she needs to request an exception from the City's Public Service Department.

Mr. Leaming asked Ms. Stachowiak about adding mulch to areas where it already existed.

Ms. Stachowiak said that if the applicant had just put some mulch over the area in the front yard where it previously existed just to give it a clean and fresh look, there would not have been an issue. She said that the problem occurred when the area was expanded, particularly into the public right-of-way.

Mr. Leaming explained that the request does not comply with the evaluation criteria to authorize a variance.

Mr. Leaming made a motion, seconded by Ms. Jefferson to deny BZA 4072.21 for a variance to permit the front yard and part of the side yard at 804 W. Shiawassee Street to be covered with mulch, on a finding that the request does not comply with the variance evaluation criteria listed in Sections 1274.06 (c) & (e) of the Zoning Ordinance, and to confirm that the applicant will be permitted to maintain the current level and placement of mulch/mulch beds that have historically existed on the property, as shown in the photographs provided in the meeting packet. On a roll call vote, the motion carried unanimously (5-0).

V. OLD BUSINESS - None

VI. NEW BUSINESS

A. Excused Absences

Mr. Leaming made a motion, seconded by Ms. Jefferson to approve excused absences for Mr. Solak, Mr. Iannuzzi and Mr. Rice. On a voice vote, the motion carried unanimously (5-0).

- B.** Ms. Stachowiak stated that a new zoning ordinance went into effect on May 1, 2021. She said that as staff works with the ordinance, they are finding a lot of conflicts, unclear language and things that just need to be tweaked so there are already a number of amendments in the works.

VII. APPROVAL OF MINUTES

A. Regular Meeting, June 10, 2021

Ms. Jefferson made a motion, seconded by Mr. Fryling to approve the June 10, 2021 meeting minutes, as presented. On a voice vote, the motion carried unanimously (5-0).

VIII. PUBLIC COMMENT

IX. ADJOURNMENT AT 7:41 p.m.

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator