

CITY OF SAUGATUCK
ZONING BOARD OF APPEALS
WRITTEN DECISION OF ZONING BOARD OF APPEALS

Application Number: 21001.

Hearing Date: June 17 – June 22, 2021.

Applicant: Dune Ridge SA, LP, 231 West Fulton, Grand Rapids, Michigan 49503: Phone: (616) 813-3333.

Site Address: 443 Park Street, Saugatuck, Michigan 49453.

Purpose of Request: Request for three variances to facilitate the construction of: 1) a 181-square-foot bathhouse; 2) a 4-foot-tall solid board half wall with a gate; and 3) a solid board screen with a height of 8 to 6 feet.

Public Hearing: The ZBA opened the public hearing on June 17, 2021, via Zoom to consider the Applicant's variance requests. The ZBA heard comments from the Applicant's representative, the City attorney, and members of the public. The ZBA also received written communications from the public. Due to connectivity issues, the hearing was postponed until June 22, 2021.

On June 22, 2021, the ZBA held a special meeting via Zoom to continue the public hearing on the Applicant's variance requests. The ZBA again heard comments from the Applicant's representative, the City attorney, and members of the public, and received written communications from the public. The ZBA deliberated but did not reach a conclusion as to Applicant's third variance request. The public hearing was closed at 7:39 p.m., with the ZBA's deliberations of Applicant's requests continued to July 14, 2021.

On July 14, 2021, the ZBA resumed deliberations via Zoom on Applicant's variance requests and continued its meeting to July 28, 2021, where the ZBA met in person to continue its deliberations on Applicant's variance requests. The ZBA concluded its deliberations and moved by unanimous vote to have the City attorney prepare a proposed written decision incorporating its findings of fact, analysis and decision into a written document to be adopted by the ZBA with or without amendments at its next regular meeting on August 12, 2021.

Standards of Review:

Non-Use Variances. Pursuant to Section 154.155(B) of the City Code, to obtain a dimensional or non-use variance, the Applicant must demonstrate that all of the following standards are met:

1. That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;

2. That a variance would do substantial justice to the owner as well as to other property owners in the district, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others;
3. That the plight of the owner is due to unique circumstances of the property and not to general neighborhood conditions; and
4. That the problem is not self-created or based on personal financial circumstances.

In applying these standards, if the ZBA finds that the requirements of the City's zoning provisions, as written, can be met or that there is no practical difficulty preventing a reasonable use of the land, then the non-use variance request shall be denied. Section 154.156(A).

Use Variances. Pursuant to Section 154.155(C) of the City Code, to obtain a use variance, the Applicant must demonstrate an unnecessary hardship under the following standards:

1. That the property in question cannot be used for any of the uses permitted in the district in which it is located;
2. That the plight of the owner is due to unique circumstances of the property and not to general neighborhood conditions;
3. That by granting the variance, the essential character of the neighborhood would not be altered; and
4. That the problem is not self-created or based on personal financial circumstances.

In applying these standards, if the ZBA finds that no unnecessary hardship exists and there is a reasonable use of the property as zoned without the grant of the use variance, then the use variance request shall be denied. Section 154.156(B).

Variances and Applicable Zoning Ordinance Provisions:

Variance 1: Bathhouse. The Applicant is requesting to construct a 181-square-foot bathhouse with a front yard setback of .2 feet and a side yard setback of 1.5 feet, that will be set back 10 feet from the roadway and 9 feet from the waterfront.

1. Section 154.37(D)(1) establishes a front yard setback of 15 feet and a side yard setback of 10 feet in the C-4 Resort Zoning District.
2. Section 154.092(D)(2)(d) requires buildings in a minor construction marina to be set back at least 20 feet from the roadway and 10 feet from adjacent property lines.
3. Section 154.022(F)(4) requires all structures on a waterfront lot shall have a setback of 25 feet from the waterfront.

Variance 2: 4-Foot-Tall Fence. The Applicant is requesting to construct a fence that will be 4 feet tall and constructed out of solid board.

1. Section 154.143(E)(5) requires fences located within a front yard setback to not exceed 3 feet in height.
2. Section 154.143(F)(6) requires fences located within 25 feet of the shore of any lake, river or stream to be no taller than 4 feet and to be constructed of wrought iron, open mesh, chain

link, lattice, slatted or similar type fencing provided that a minimum ratio of six parts open space to one part solid material is maintained.

Variance 3: Privacy Screen. The Applicant is requesting to construct a solid board screen that is 8 feet in height where it is in proximity to electrical meters and 6 feet in height for the remainder of its length.

1. Section 154.142(D)(3) provides that required screening may be accomplished by a solid wall or fence at least 5 feet but not greater than 6 feet in height.
2. Section 154.142(D) provides that, for any project for which a site plan is required, or whenever a nonresidential use or multiple family dwelling abuts a residentially zoned or used property, screening shall be constructed along all adjoining boundaries with residentially zoned or used property.
3. Section 154.142(F) provides that where a commercial or industrial zone or use abuts a residential zone or use, all support equipment including but not limited to air conditioning and heating equipment, gas meters and exhaust fans located outside of a building shall be screened from the view of abutting streets and surrounding properties.
4. Section 154.143(F)(6) requires fences located within 25 feet of the shore of any lake, river or stream to be no taller than 4 feet and to be constructed of wrought iron, open mesh, chain link, lattice, slatted or similar type fencing provided that a minimum ratio of six parts open space to one part solid material is maintained.
5. Section 154.005 defines a "fence" as: "A structure or other object or objects, including growing plants, erected to act as a boundary marker, or erected for the purpose of restricting access to or from a lot or parcel of land, whether enclosing all or part of the lot or parcel."
6. Section 154.005 defines "screening" as: "The erection or construction of a greenbelt buffer zone, earthen berm, solid wall or fence for the purpose of obscuring views, limiting noise or objectionable lighting between incompatible land uses or adjacent to a street or highway."

Findings of Fact: The ZBA finds as follows based upon the Ordinance, information and comments received by the Applicant, its representative and the City attorney, and based on input (both through comments and written submissions) received during the public hearing.

1. The Subject Property is located in the C-4 Resort District, and is located next to the City's historic Chain Ferry and a private marina.
2. Prior to being owned by the Applicant, the Subject Property was owned by a Presbyterian camp who used the site to launch canoes and boats for decades.
3. On March 3, 2016, the Applicant submitted a request for variance to the ZBA to construct a 144-square-foot bathhouse on the Subject Property. The application submitted by Applicant noted: "The owner intended use is consistent with uses in the district and has much less impact than other uses in the district."

4. On May 12, 2016, the ZBA considered and denied the Applicant's request for a variance to construct a 144-square-foot bathhouse on the Subject Property.
5. On June 24, 2016, the Applicant appealed the ZBA's denial of its variance to the Allegan County Circuit Court.
6. On April 5, 2017, the Allegan County Circuit Court affirmed the ZBA's decision to deny Applicant's variance request for the 144-square-foot bathhouse, concluding that the ZBA's decision was "supported by substantial, material and competent evidence." and that the Applicant "failed to adequately show 'practical difficulties' or to convince the ZBA that [Applicant] was unnecessarily burdened."
7. June 17, 2017, the Applicant submitted a special land use permit application (the "SLU Application") for the construction of "docks, sea wall and covered boat slips," as well as a "2-foot high concrete base with a 4-foot high fence [...] along the North and West side of the covered boat slip for security and safety reasons." The SLU Application indicated that the "adjacent land and buildings on either side are currently used as a private marina and chain ferry," and that "[t]he proposed use is consistent and complimentary with such adjacent uses." The SLU Application further stated that "no buildings are proposed, only docks, thereby protecting the viewshed," noting also that "no utilities are proposed."
8. On June 20, 2017, the City of Saugatuck Planning Commission (the "Planning Commission") approved the "construction of five boat slips and one covered slip/building, sidewalk, parking area and security fencing" on the Subject Property with the condition that the Applicant "obtains a variance before construction of the [6-foot-tall] fence, or in the alternative, brings the height into compliance with the [zoning] ordinance."
9. On July 16, 2019, the Saugatuck City Council (the "City Council") and the Applicant executed an "Agreement Regarding Real Property," (the "Land Swap Agreement"), which effectuated, among other things, the transfer of certain City-owned property to the Applicant in exchange for the transfer of certain property owned by the Applicant to the City. The Land Swap Agreement further provided: "City approves and [Applicant] shall install the remaining infrastructure including an eight (8) foot high privacy screen to separate commercial traffic at the Chain Ferry from the adjacent private boat slips [...] A three (3) foot high open weave (6:1) fence along the current boardwalk and along future paved parking area will be permitted with the issuance of a standard fence permit."
10. At some point after the execution of the Land Swap Agreement, and without receiving a variance from the ZBA, the Applicant constructed an 8-foot-tall solid board screen on the Subject Property along the property line adjacent to the Chain Ferry.
11. After constructing the 8-foot-tall screen on the Subject Property, an installment of electrical panels and meters approximately 7 feet in height were erected on the Subject Property adjacent to the screen.
12. On June 10, 2021, the Applicant submitted an application to the ZBA for the three variances that are the subject of this decision (the "Variance Application"). The Applicant

checked the box for "dimensional variance" on the Variance Application form, but also wrote responses to substantiate its request based on both the dimensional and use variance standards, as reflected in the Variance Application.

13. During the public hearing, members of the public expressed that the appearance of the City's waterfront and the historic nature of Chain Ferry, which was constructed in 1838, were important aspects of the City's character. Members of the public indicated that the proposed screen, fencing and structure would be inconsistent with the aesthetic of the City's waterfront and that the visual impact of these proposed improvements would detract from the charm of the area and would deter tourists from visiting.
14. Members of the public further indicated that the proposed screening on the Subject Property threatens public safety by obscuring both pedestrian and vehicular traffic. Concerns were expressed about the Subject Property's proximity to a bend in the right-of-way and the City's Chain Ferry, which could result in ferry passengers being unable to see oncoming traffic or oncoming traffic being able to see pedestrians emerging from behind the screen.
15. The Applicant's representative further discussed during the public hearing and subsequent meetings of the ZBA examples of other nearby structures built within the waterfront setback, but the examples of such structures known to the ZBA predated the City's applicable waterfront restrictions and are thus not a justification for the Applicant to construct a structure within the required waterfront district.
16. The Applicant's request for a variance to construct a bathhouse is substantially similar to the request that was denied in 2016, except that the Applicant is now requesting an even larger structure. The ZBA notes that the reapplication for a variance is typically accompanied by request for a lesser variance, not a greater one. The ZBA is not aware of any changes in circumstance which would affect its prior analysis of the appropriateness of allowing a bathhouse on the Subject Property, nor is the ZBA aware of any changes to the nature of recreational boating since the ZBA's 2016 decision that would render a bathhouse essential for the use of the Subject Property for that purpose.
17. The Subject Property could have an increase in value by adding a bathhouse.
18. The Subject Property has been and is currently being used for a permitted purpose without all of the requested variances.
19. Requests for lesser variances from other applicants in the same area as the Subject Property have been denied by the ZBA in the past.
20. There are City-maintained bathroom facilities on both sides of the river that are available for public use and could be used by the patrons of Applicant's Marina.
21. The City-owned marina directly across the river from the Subject Property has 10 boat slips and has no screening or private bathrooms, despite being adjacent to the boardwalk and receiving substantially more traffic than the Subject Property.

22. Hundreds of boat docks have been continually and successfully operating within the City without private bathroom facilities.
23. The ZBA finds that the proximity of the proposed bathhouse to the right-of-way would represent a significant safety issue in terms of visibility for pedestrians and drivers, particularly when coupled with the 8-foot screen sought by the Applicant. The curve and narrowness of Park Street near the Subject Property, the lack of any walkable shoulder, and the intensity of vehicle and pedestrian traffic in this area would compound this safety hazard, which the ZBA feels could easily result in a pedestrian being struck by a car. The proposed improvements would obstruct the view of oncoming vehicles on Park Street for pedestrians at the Chain Ferry and could also prevent oncoming traffic from seeing approaching pedestrians.
24. The ZBA finds that the waterfront view of the Saugatuck downtown area from the Chain Ferry is a significant element of the City's charm and character as a tourist destination and is also important to the maintenance of local property values.
25. The Applicant failed to present any meaningful reason for why a 4-foot-tall solid board fence was necessary during the public hearing or in its Variance Application.
26. The ZBA is not aware of other solid fences with gates on waterfront parcels in the City.
27. Hundreds of boat slips operate within the City without privacy screens.
28. The ZBA is aware of numerous waterfront fences along the Kalamazoo River that comply with the City's height and opacity requirements, and before the Applicant's Variance Application, the ZBA is not aware of receiving another request to vary these requirements.
29. The ZBA finds that the Applicant's use of the Subject Property for the docking of boats is compatible with waterfront uses present on the adjacent properties.
30. A "fence," which according to Section 154.005 of the Code acts as a "boundary marker" or to "restrict access," is a distinct land use from a "screen," which Section 154.005 of the Code provides is intended to obscure views and limit noise or objectionable lighting. The ZBA further finds that because the Planning Commission only authorized the Applicant to construct a fence on the Subject Property, a use variance would be required for the screen proposed by the Applicant.
31. A fence meeting the applicable requirements of the C-4 Resort District and the relevant waterfront fencing restrictions would adequately secure the Subject Property from potential trespassers coming from the Chain Ferry.
32. The ZBA finds that pedestrian traffic adjacent to the Subject Property could be a burden to the Applicant but fails to see how such traffic would impede the docking or use of boats.
33. There are numerous public and private boat docks in the City that are adjacent to walkways with high pedestrian traffic.

Application of Dimensional Variance Standards to Variance 1: Bathhouse

1. Standard 1: Strict Compliance. The Applicant's strict compliance with the applicable setbacks in the C-4 Resort District, thus prohibiting the construction of the proposed bathhouse, would not prevent the Applicant from using the Subject Property for a permitted purpose or make conformity with these requirements unnecessarily burdensome.
 - a. A bathhouse is not necessary for the use of the Subject Property for a marina or the docking of boats, which are permitted uses in the C-4 Resort District. The Subject Property can be and currently is being used for this purpose without a bathhouse. The previous owner of the Subject Property used it for launching boats for many years without a bathhouse. The Applicant is simply incorrect that the Subject Property cannot be used for a permitted purpose due to setbacks. The ZBA would note that when the Applicant applied for a Special Land Use Permit from the Planning Commission, the Applicant acknowledged that all of its facilities would be at a lower elevation than adjacent developments.
 - b. While a bathhouse might be convenient to the Applicant and enhance the value of the Subject Property, the lack of a bathhouse is not an unnecessary burden or practical hardship on the Subject Property. There are numerous similar land uses on the City's waterfront that do not have private bathroom facilities and are not impeded by the lack of these facilities.
 - c. The burden on the Applicant of not having a private bathhouse is also alleviated by the availability of nearby public restrooms on both sides of the Kalamazoo River, which are used by the patrons of many other docks and marinas.
2. Standard 2: Substantial Justice. The requested variance would not do substantial justice to other property owners in the vicinity or to the general public.
 - a. The proposed bathhouse's proximity to the right-of-way would pose a substantial threat to public safety by obscuring the line of sight of both pedestrians and vehicular traffic, and this would be compounded by other improvements requested by the Applicant. It would be difficult to see around the bathhouse, and pedestrians would have less room to walk past the Subject Property. The increased risk of a vehicle striking a pedestrian would not do substantial justice to other property owners or the general public.
 - b. The proposed bathhouse would also obstruct the view of the waterfront and downtown Saugatuck, which are significant elements of Saugatuck's charm and character as a tourist destination. The bathhouse's impact on the viewshed could also impact nearby property values, which would not do substantial justice to the owners of such property.

- c. This variance request is even more burdensome than the previous variance that was proposed by the Applicant in 2016, rejected by the ZBA and upheld by the Allegan County Circuit Court. There are no changed circumstances that have been brought to light that would change the ZBA's previous analysis on this issue; if anything, the increase in size of the proposed bathhouse makes it even less suitable for this area. The Applicant offered no explanation as to why the bathhouse required additional square footage beyond the previous request. Absent such an explanation, the previous request makes it clear that the Applicant could have requested a lesser relaxation of the City's zoning restrictions that would have been more consistent with justice for others, but chose not to. Moreover, even if the Applicant did request a lesser relaxation for the bathhouse consistent with its previous variance request, the request would still not be consistent with justice to others.
 - d. The ZBA has previously denied lesser variance requests from other applicants in the area. Granting a request of this magnitude to the Applicant would not do substantial justice to those property owners who were required to comply with the City's zoning restrictions.
3. Standard 3: Unique Circumstances. The ZBA recognizes that the Applicant's circumstances are somewhat unique due to the narrow shape of the Subject Property and the lack of a buildable envelope. However, the lack of private bathroom facilities on the Subject Property is not a circumstance that is unique to the Subject Property, as many nearby parcels with similar land uses do not have such facilities.
4. Standard 4: Self-Created Problem. To the extent that the Applicant's problems are due to the geometry of the Subject Parcel and its proximity to the right-of-way and the waterfront resulting in a non-buildable parcel, the ZBA finds that these problems were not created by the Applicant. However, the Applicant's purported problem is not just that there is no buildable space on the Subject Property, but that a bathhouse is somehow essential to the docking and mooring of boats on the Subject Property. Given that other nearby private and public docks have no issue operating without private bathhouses, the ZBA finds that the Applicant's problem is somewhat self-created as the bathhouse is not necessary for the Applicant's use.

Application of Dimensional Variance Standards to Variance 2: 4-Foot Opaque Fence

1. Standard 1: Strict Compliance. Strict compliance with the fencing restrictions applicable in the C-4 Resort District and within 25 feet of the waterfront would not prevent the Applicant from using the Subject Property for a permitted purpose or make conformity with these requirements unnecessarily burdensome.
 - a. The burden of proof is on the Applicant to demonstrate that all of the standards for dimensional variances are met, but the Applicant presented no evidence as to why a 4-foot-tall, opaque fence is required for the Applicant to use the Subject Property for a permitted purpose, nor did the Applicant present any evidence as to why a 3-

foot-tall fence with a ratio of six parts open space to one part solid material would be unnecessarily burdensome.

- b. The use of the Subject Property as a marina does not require a 4-foot-tall, opaque fence. The docking and mooring of boats would be no more aided by such a fence than it would be by a fence that complies with all relevant zoning restrictions.
2. Standard 2: Substantial Justice. The requested variance would not do substantial justice to others, and a lesser relaxation (in this case, no relaxation of the fencing standards at all) would provide the same relief to the Applicant while being more consistent with justice for others.
 - a. Again, the Applicant presented essentially no evidence demonstrating how the proposed fence would do substantial justice to the Applicant or other property owners in the C-4 Resort District.
 - b. The waterfront is largely devoid of solid fencing like the kind proposed by Applicant, and the ZBA fails to see any reason why the Applicant should be permitted to depart from the default rules applicable to fences when other property owners with similar uses have had no need for such fences. Allowing such a departure without any meaningful justification would not be consistent with justice for other property owners who have complied with the City's regulations.
3. Standard 3: Unique Circumstances. The ZBA infers that the Applicant's request for a 4-foot-tall opaque fence is prompted by the pedestrian traffic near the Subject Property. This problem is hardly unique to the Subject Property.
 - a. Numerous docks and marinas operate in high pedestrian traffic areas in the City. The City-owned marina directly across the Kalamazoo River is adjacent to the boardwalk and receives substantially more traffic than the Subject Property and does not require opaque fencing.
4. Standard 4: Self-Created Problem. The proximity of the Subject to the Chain Ferry and the pedestrian traffic coming from that parcel is not a self-created hardship. However, to the extent that the Applicant contends its hardship is due to the lack of privacy on the Subject Property, the ZBA finds that this hardship is self-created, as the ZBA fails to see how privacy is a necessary requirement for a marina or for the docking and mooring of boats.

Application of Dimensional Variance Standards to Variance 3: 6- to 8-Foot Screen

1. Standard 1: Strict Compliance. Strict compliance with the fencing restrictions applicable in the C-4 Resort District and within 25 feet of the waterfront would not prevent the Applicant from using the Subject Property for a permitted purpose or make conformity with these requirements unnecessarily burdensome.
 - a. The ZBA is not persuaded by the Applicant's contention that a 6- to 8-foot privacy screen is "essential to allowing the intended use of the dock," or that Applicant's dock would be rendered "essentially unusable" without a privacy screen. The

- burden of proof is on the Applicant to demonstrate why compliance with the City's zoning provisions would unreasonably prevent the Applicant from using the Subject Property for a permitted purpose, and the Applicant presented no meaningful evidence of why its dock would be rendered useless without a screen.
- b. A privacy screen is not necessary for the use of the Subject Property for a permitted purpose. Boats can be docked and moored without a privacy screen; the presence of a screen has absolutely no bearing on the functionality of Applicant's boat slips.
 - c. The presence of pedestrian traffic near the Subject Property might be a burden on the Applicant, but it is not an unnecessary burden. Hundreds of boat slips, docks and marinas within the City operate without privacy screens.
 - d. The ZBA rejects the Applicant's position that screening is necessary due to the incompatibility of the Subject Property with adjacent parcels. Applicant's use of the Subject Property for a marina and the docking of boats is compatible with the other waterfront uses in the vicinity, which is consistent with the representations made by the Applicant in its 2016 variance application to the ZBA ("The owner intended use is consistent with uses in the district"), its 2017 SLU Application to the Planning Commission ("The proposed use is consistent and complimentary with such adjacent uses") and even its current Variance Application that is the subject of this decision ("Granting a variance would not alter the essential character of the neighborhood as the intended use is consistent [with] the existing uses along the riverfront").
2. Standard 2: Substantial Justice. The requested variance might do substantial justice to the Applicant, but it would not do substantial justice to others, and a lesser relaxation (in this case, either a compliant fence or variance for a slightly taller fence, as approved by the Planning Commission) would provide essentially the same relief to the Applicant while being more consistent with justice for others.
- a. A preeminent concern with the Applicant's screen is the impact on public safety. The proposed screen threatens to present significant safety issues in terms of visibility for pedestrians and drivers. The curve and narrowness of Park Street near the Subject Property, the lack of any walkable shoulder, and the intensity of vehicle and pedestrian traffic in this area would compound this safety hazard, which the ZBA feels could easily result in a pedestrian being struck by a car. The screen would obstruct the view of oncoming vehicles on Park Street for pedestrians at the Chain Ferry and could also prevent oncoming traffic from seeing approaching pedestrians, all of which is inconsistent with substantial justice for others.
 - b. The waterfront is largely devoid of screening like the kind proposed by Applicant, and the ZBA fails to see any reason why the Applicant should be permitted to depart from the default rules when other property owners with similar uses have had no need for such fences. Allowing such a significant and impactful departure purely

for the sake of privacy would not be consistent with justice for other property owners who have complied with the City's regulations.

- c. Complying with the City's fencing regulations and constructing a compliant fence adjacent to the Chain Ferry would provide essentially the same relief to the Applicant without being as burdensome on others. A compliant fence would mark the boundary of the Subject Property and keep would-be trespassers out.
 - d. Although the Applicant contends that granting this variance would do substantial justice to the Applicant by upholding the Land Swap Agreement, the ZBA finds that the Planning Commission's approval for the Subject Property authorized only a fence and required the Applicant to obtain a variance for that fence if it was to be constructed at the 6-foot height desired by the Applicant. The Applicant never requested the variance that was required by the Planning Commission and its current request exceeds what was authorized in its approved site plan, so the ZBA disagrees that substantial justice would require a variance beyond what was previously requested by the Applicant and approved by the Planning Commission.
3. Standard 3: Unique Circumstances. The pedestrian traffic near the Subject Property is not unique to the Subject Property. Pedestrian traffic is a general neighborhood condition that is common to almost all waterfront uses.
- a. Numerous docks and marinas operate in high pedestrian traffic areas in the City. The City-owned marina directly across the Kalamazoo River is adjacent to the boardwalk and receives substantially more traffic than the Subject Property and does not require privacy screens.
4. Standard 4: Self-Created Problem. The proximity of the Subject Property to the Chain Ferry and the pedestrian traffic coming from that parcel is not a self-created hardship, nor is the geometry of the lot and its proximity to the right-of-way and waterfront that do not yield any buildable envelope. However, the Applicant's other justifications for this variance are self-created.
- a. To the extent that the Applicant contends its hardship is due to the lack of privacy on the Subject Property, the ZBA finds that this hardship is self-created, as the ZBA fails to see how privacy is a necessary requirement for a marina or for the docking and mooring of boats.
 - b. To the extent that the Applicant contends that the 8-foot screen is necessary to screen and protect the electric utilities on the Subject Property, the ZBA finds that this is a self-created hardship, as the electric utilities were installed in a location and at a height designated by the Applicant and were not approved or authorized by the City (the Applicant's SLU Application specifically represented that "no utilities are proposed"). The electric utilities could have been built at a much lower height that would not necessitate an 8-foot-tall screen.

Application of Use Variance Standards to Variance 3: 6- to 8-Foot Screen:

The Variance Application submitted by the Applicant contained response to the "Use Variance Request Standards" related to the Applicant's proposed screening. While it is not entirely clear whether the Applicant intended to apply for a use variance for the screen, the ZBA believes that such a variance would be required, as the Planning Commission only authorized a fence on the Subject Property, and a screen is a distinct land use from a fence. Additionally, Section 154.142 of the City Code provides that screening is appropriate only between a residential use and an incompatible commercial or industrial use, and no such incompatibility exists here, so a use variance would be required to allow a screen.

The standards for use variances are more stringent than the standards for dimensional variances. Therefore, for the same reasons the ZBA concluded that the Applicant would not satisfy the dimensional variance standards, the ZBA concludes that the Applicant would likewise fail to satisfy the heightened standards applicable to use variances.

Decision:

For the reasons above and stated on the record, the ZBA denies Applicant's variance requests for a 181-square-foot bathhouse within the Subject Property's required setbacks, a 4-foot-tall fence constructed out of solid board, and a 6- to 8-foot-tall privacy screen.

ADOPTED:

YEAS: BONT muir Kubasiak Zerfa s BOUCK

NAYS: Ø

Bob Kubasiak
BOB Kubasiak ZBA Chair

Dated: Aug 12, 2021

CERTIFICATION

I, the duly acting Secretary of the City of Saugatuck Zoning Board of Appeals, certify that on this date I witnessed the signature set forth above and attest to the accuracy of this Decision, which was approved by the Zoning Board of Appeals at a duly scheduled and conducted meeting on August 12, 2021.

Dindy Osman
DINDY OSMAH
ZBA Secretary

Dated: Aug 12, 2021