

**City of Birmingham**  
**MEETING OF THE BOARD OF ZONING APPEALS**  
**TUESDAY, SEPTEMBER 14, 2021**  
**7:30 PM**

Should you have any statement regarding any appeals, you are invited to attend the meeting in person or virtually through ZOOM:

**[https://zoom.us/j/963 4319 8370](https://zoom.us/j/96343198370)** or dial: **877-853-5247 Toll-Free,**  
**Meeting Code: 963 4319 8370**

You may also provide a written statement to the Board of Zoning Appeals, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham MI, 48012-3001 prior to the hearing

September 14, 2021  
7:30 PM

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. ANNOUNCEMENTS**

- a) The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. **Oakland County is now at the HIGH level of community transmission for COVID-19.** The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

**4. APPROVAL OF THE MINUTES**

- a) July 13, 2021  
b) August 10, 2021

**5. APPEALS**

|    | Address      | Petitioner          | Appeal | Type/Reason                        |
|----|--------------|---------------------|--------|------------------------------------|
| 1) | 689 WESTWOOD | MACKENZIE           | 21-29  | DIMENSIONAL                        |
| 2) | 448 WILLITS  | HELLER & ASSOCIATES | 21-35  | DIMENSIONAL                        |
| 3) | 157 E FRANK  | N & M RESTORATIONS  | 21-37  | DIMENSIONAL                        |
| 4) | 1222 COLE    | FABRY               | 21-38  | DIMENSIONAL                        |
| 5) | 1159 E MAPLE | MACHASIC            | 21-39  | DIMENSIONAL                        |
| 6) | 1740 W MAPLE | KRIEGER KLATT ARCH. | 21-40  | <b>POSTPONED</b><br>INTERPRETATION |

**6. CORRESPONDENCE**

**7. GENERAL BUSINESS**

**OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

**ADJOURNMENT**

#### **Title VI**

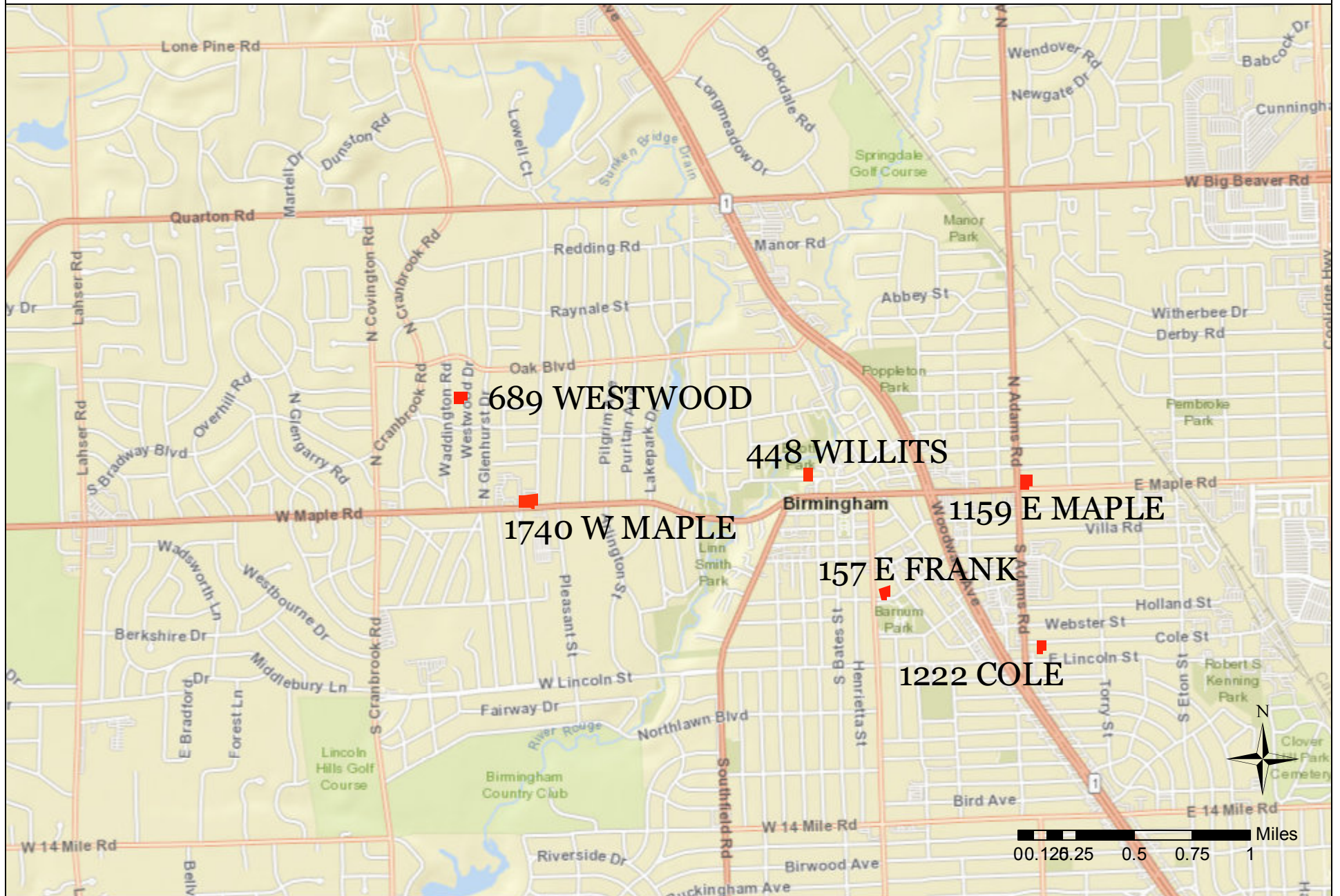
Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

*Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).*

The public entrance during non-business hours is through the police department at the Pierce Street entrance only. Individuals requiring assistance entering the building should request aid via the intercom system at the parking lot entrance gate on Henrietta Street.

La entrada pública durante horas no hábiles es a través del Departamento de policía en la entrada de la calle Pierce solamente. Las personas que requieren asistencia entrando al edificio debe solicitar ayudan a través del sistema de intercomunicación en la puerta de entrada de estacionamiento en la calle de Henrietta.

## SEPTEMBER BZA MAP



**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, July 13, 2021**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, July 13, 2021. Chair Charles Lillie convened the meeting at 7:31 p.m.

**2. Rollcall**

**Present:** Chair Charles Lillie; Board Members Richard Lilley, Erik Morganroth (attended virtually, located in Birmingham MI); Alternate Board Members Ron Reddy, Erin Rodenhouse

**Absent:** Board Member Jason Canvasser, Kevin Hart, John Miller, Francis Rodriguez

**Administration:**

Bruce Johnson, Building Official  
Laura Eichenhorn, City Transcriptionist  
Mike Morad, Assistant Building Official  
Jeff Zielke, Assistant Building Official

Chair Lillie described BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Chair Lillie took rollcall of the petitioners. All petitioners were present. The Chair offered all petitioners the option to delay their hearings to the August 2021 meeting since only five Board members were present. The appellants for Appeals 21-29 and 21-30 chose to table their hearings to the August 2021 meeting.

**T# 07-37-21**

**3. Approval Of The Minutes Of The BZA Meeting Of June 8, 2021**



With Messrs. Reddy and Lilley abstaining due to their absences from the June 8, 2021 meeting the Board did not have a quorum for a vote on the minutes.

The June 8, 2021 minutes will be voted on along with the July 13, 2021 minutes at the August 2021 meeting.

**T# 07-38-21**

**4. Appeals**

**1) 1220 Bird  
Appeal 21-27**

ABO Zielke presented the item, explaining that the owner of the property known as 1220 Bird was requesting the following variances to construct a rear and front addition to an existing single-family home:

**A. Chapter 126, Article 2.10.2** of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 20.90 feet. The proposed is 15.00 feet. Therefore a variance of 5.90 feet was being requested.

**B. Chapter 126, Article 2.10.2** of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.80 feet. Therefore a variance of 1.20 feet is being requested.

ABO Zielke continued that the applicant was requesting variances to an existing non-conforming home that was constructed in 1926. Variance A was for the front addition and variance B was for the rear addition. It was noted that the information for this appeal was provided as part of the June 2021 BZA agenda.

Zack Ostroff, representative for the appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Mr. Morganroth, Mr. Ostroff confirmed that the addition could be narrowed but said the 1.2 feet would be helpful. He said the two story buildout was being requested to have the architecture of the home better match the neighborhood.

Mr. Morganroth said that while both this home and the home to the west were pre-existing non-conforming, granting the variances would increase the non-conformity further down the lot and would increase the variance needed by the neighbor if they wanted to add on to their home in the future.

**Motion by Mr. Reddy**

Seconded by Mr. Lilley with regard to Appeal 21-27, B. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that no side yard shall be less than 5.00 feet. The existing and proposed is 3.80 feet. Therefore a variance of 1.20 feet is being requested.

Mr. Reddy moved to approve variance B only and tied it to the plans as submitted. He said based on the unique features of the lot, the fact that the home was pre-existing non-conforming, and the fact that the neighbor's home was also pre-existing non-conforming it was worth granting variance B to allow for a reasonable addition to the rear of the home.

Mr. Morganroth noted that Mr. Ostroff had stated the addition could be narrowed so as not to require a variance. He said the need for variance B was therefore self-created, and that if the addition were narrowed appropriately it would allow the neighbor to be able to build as they choose on their lot. For that reason he said he would not support the motion.

Ms. Rodenhouse offered her support for the motion, saying that preventing the appellant from keeping their roof line in a straight line was an unreasonable restriction given the house's pre-existing non-conformity.

Chair Lillie said he would not support the motion. He said that while the BZA occasionally grants variances for pre-existing non-conforming homes that stay within the existing plane, those variances have generally dealt with the minimum distances between buildings as opposed to buildings along the lot line. He noted that other properties have had additions in the area and indented them to avoid requesting a variance.

Mr. Reddy reiterated that it was a pre-existing non-conformity and said it was an undue hardship to require the appellant to narrow the addition. He noted that granting variance B would not necessarily affect the nextdoor neighbor since there was currently fifteen feet between the buildings according to the plans.

**Motion failed, 3-2.**

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lilley

Nays: Lillie, Morganroth

**Motion by Ms. Rodenhouse**

Seconded by Mr. Lilley with regard to Appeal 21-27, A. Chapter 126, Article 2.10.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 20.90 feet. The proposed is 15.00 feet. Therefore a variance of 5.90 feet is being requested.

**Ms. Rodenhouse moved to deny variance A. She noted that the proposed second-story space would just be decorative and that no practical difficulty vis-a-vis this variance was established by the appellant.**

**Motion carried, 5-0.**

ROLL CALL VOTE

Yeas: Rodenhouse, Reddy, Lilley, Lillie, Morganroth

Nays: None

**2) 689 Westwood  
Appeal 21-29**

Tabled to the August 2021 BZA meeting.

**3) 282 Greenwood  
Appeal 21-30**

Tabled to the August 2021 BZA meeting.

**4) 375 Lakepark  
Appeal 21-31**

ABO Zielke presented the item, explaining that the owner of the property known as 375 Lakepark was requesting the following variance to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 41.00 feet. Therefore a variance of 4.50 feet is being requested.

ABO Zielke continued that the original home was constructed in 1926 and had an addition in 2003.

Ben Heller, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to BZA comment, Mr. Heller noted that the appellant would be able to build a larger covered front porch by right without a variance, and stated that the appellant was trying to add something with more modest coverage instead. He explained that the primary issue was the walls being proposed for the small covered area. He stated that the practical difficulty was gaining coverage from inclement weather at the front door. He ventured that his proposal better keeps with the spirit of the ordinance. He noted the neighbors were supporting the appeal.

Mr. Morganroth floated two options that might mitigate the need for a variance. BO Johnson and ABO Zielke confirmed that both options would still require variances.

Ms. Rodenhouse observed that if the practical difficulty was gaining coverage from inclement weather, there were ordinance-compliant options to do that. She said the BZA is charged with applying the ordinance, not interpreting the intent. She said the BZA only looks at the 'spirit' of the ordinance if there is ambiguity, and stated there was no ambiguity in this case.

Mr. Lilley moved to grant the variance and tied it to the plans as submitted. He said it fit with the architecture of the house, fit with the neighborhood and would do justice to the property owner and the neighbors.

The motion failed for lack of a second.

**Motion by Mr. Reddy**

**Seconded by Mr. Morganroth with regard to Appeal 21-31, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 41.00 feet. Therefore a variance of 4.50 feet is being requested.**

**In moving to deny the variance request, Mr. Reddy concurred with Ms. Rodenhouse's comments. He noted that the Board had just turned down a similar request from 1220 Bird, and said that since there were ordinance-compliant options for achieving coverage from inclement weather in the front of the home the appellant should pursue those.**

**Mr. Morganroth said that while the design was likely the most aesthetically appropriate option, the challenge was the porch's existing non-conformity and the request to expand the non-conformity. He said expanding the non-conformity contradicts with the BZA's role. He stated that since the practical difficulty was described as coverage from inclement weather, and there are ordinance-compliant options for achieving that, the BZA could not grant a variance. He said the appellant could likely pull the design forward, open the sides, and maintain the front door and the window above without needing a variance. He concurred with Mr. Reddy that the BZA has to maintain consistency in its rulings and therefore could not grant this request.**

**Motion carried, 4-1.**

**ROLL CALL VOTE**

Yeas: Rodenhouse, Reddy, Lillie, Morganroth

Nays: Lilley

**5) 782 Chesterfield  
Appeal 21-32**

ABO Zielke presented the item, explaining that the owner of the property known as 782 Chesterfield was requesting the following variance to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 49.12 feet. The proposed is 37.61 feet. Therefore a variance of 11.51 feet is being requested.

ABO Zielke continued that the existing home was built in 1948. There was an addition to the rear and garage in 2006. It was noted that the house on the corner had a significantly larger setback than the other homes and thus significantly impacted the average setback in this case.

Ben Heller, builder, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

**Motion by Mr. Morganroth**

**Seconded by Ms. Rodenhouse with regard to Appeal 21-32, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 49.12 feet. The proposed is 37.61 feet. Therefore a variance of 11.51 feet is being requested.**

**Mr. Morganroth moved to approve the variance and tied it to the plans as submitted. He explained that the corner lot with the large setback created unique enough circumstances in this case to justify granting the variance. He noted that if it were not for the corner lot the proposed projection in this appeal would likely be allowed. He said granting the variance would do justice to the neighbors and the appellant.**

**Motion carried, 5-0.**

**ROLL CALL VOTE**

Yeas: Rodenhouse, Reddy, Lillie, Morganroth, Lilley

Nays: None

**6) 640 Suffield  
Appeal 21-33**

ABO Zielke presented the item, explaining that the owner of the property known as 640 Suffield was requesting the following variance to construct an addition to an existing single-family home:

**A. Chapter 126, Article 7.74(C)** of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 19.75 feet. The proposed is 18.40 feet. Therefore a variance of 1.35 feet is being requested.



ABO Zielke continued that the existing home was constructed in 1936 and that the detached garage would be demolished if the appeal is granted to construct a new attached garage. He stated that granting this variance would not likely create a hardship if a demolition and new build were proposed for 660 Suffield given the width of 660 Suffield's lot.

Matt Parkinson, appellant, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In reply to Chair Lillie, Mr. Parkinson stated he did not want to shorten the garage and push it back on the lot because he wanted to maintain the kitchen, upstairs hallway, and master bedroom as-is. He said he also believed the garage would look more balanced vis-a-vis the home if constructed and placed according to the plans.

Mr. Morganroth noted that given the depth of the proposed garage the appellant could mitigate the need for the variance by parking two vehicles slightly diagonal to each other in order to allow passengers and drivers enough space to get in and out of the vehicles in the garage.

**Motion by Mr. Reddy**

**Seconded by Mr. Lilley with regard to Appeal 21-33, A. Chapter 126, Article 7.74(C) of the Zoning Ordinance requires that the minimum distance between principal residential buildings on adjacent lots of 14.00 feet or 25% of the total lot width whichever is larger. The required is 19.75 feet. The proposed is 18.40 feet. Therefore a variance of 1.35 feet is being requested.**

**Mr. Reddy moved to approve the variance and tied it to the plans as submitted. He said installing a two-car garage was a reasonable use of the property, and that variance requested was small compared to the lot size. He noted that there was still a significant distance between the appellant's home and the home at 660 Suffield even if the variance was granted.**

**Ms. Rodenhouse said the owner established a practical difficulty and concurred with Mr. Reddy that the request for the variance was relatively minor. She said it would be an unreasonable restraint on the property to deny this variance request.**

**Motion carried, 5-0.**

**ROLL CALL VOTE**

Yeas: Rodenhouse, Reddy, Lillie, Morganroth, Lilley

Nays: None

**T# 07-39-21**

**5. Correspondence**

Included in the agenda packet.

**T# 07-40-21**

**6. General Business**

**T# 07-41-21**

**7. Open To The Public For Matters Not On The Agenda**

None.

**T# 07-42-21**

**8. Adjournment**

**Motion by Mr. Lilley**

**Seconded by Mr. Morganroth to adjourn the July 13, 2021 BZA meeting at 9:20 p.m.**

**Motion carried, 5-0.**

ROLL CALL VOTE

Yeas: Reddy, Lillie, Morganroth, Lilley, Rodenhouse

Nays: None

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Bruce R. Johnson, Building Official

**Birmingham Board Of Zoning Appeals Proceedings**  
**Tuesday, August 10, 2021**  
**City Commission Room**  
**151 Martin Street, Birmingham, Michigan**

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**1. Call To Order**

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, August 10, 2021. Vice-Chair Jason Canvasser convened the meeting at 7:30 p.m.

**2. Rollcall**

**Present:** Vice-Chair Jason Canvasser; Board Members Kevin Hart, John Miller, Francis Rodriguez, Richard Lilley, Erik Morganroth (attended virtually, located in Birmingham MI); Alternate Board Member Ron Reddy

**Absent:** Chair Charles Lillie; Alternate Board Member Erin Rodenhouse

**Administration:**

Bruce Johnson, Building Official  
Laura Eichenhorn, City Transcriptionist  
Mike Morad, Assistant Building Official  
Jeff Zielke, Assistant Building Official

Vice-Chair Canvasser described BZA procedure to the audience. He noted that the members of the Board of Zoning Appeals are appointed by the City Commission and are volunteers who serve staggered three-year terms. They are a quasi-judicial board and sit at the pleasure of the City Commission to hear appeals from petitioners who are seeking variances from the City's Zoning Ordinance. Under Michigan law, a dimensional variance requires four affirmative votes from this board, and the petitioner must show a practical difficulty. A land use variance requires five affirmative votes and the petitioner has to show a hardship. He pointed out that this board does not make up the criteria for practical difficulty or hardship. That has been established by statute and case law. Appeals are heard by the board as far as interpretations or rulings. In that type of appeal the appellant must show that the official or board demonstrated an abuse of discretion or acted in an arbitrary or capricious manner. Four affirmative votes are required to reverse an interpretation or ruling.

Vice-Chair Canvasser took rollcall of the petitioners. All petitioners were present.

**T# 08-43-21**

**3. Approval Of The Minutes Of The BZA Meeting Of June 8, 2021 and July 13, 2021**

**Motion by Mr. Miller**

**Seconded by Mr. Rodriguez to accept the Minutes of the BZA meeting of June 8, 2021 as submitted.**

**Motion carried, 5-0.**

ROLL CALL VOTE

Yeas: Hart, Morganroth, Canvasser, Rodriguez, Miller

Nays: None

Abstain: Reddy, Lilley

With Vice-Chair Canvasser and Messrs. Hart, Miller, and Rodriguez abstaining due to their absences from the July 13, 2021 meeting the Board did not have a quorum for a vote on the July 13, 2021 minutes.

The July 13, 2021 minutes will be voted on along with the August 10, 2021 minutes at the September 2021 meeting.

**T# 08-44-21**

#### **4. Appeals**

##### **1) 689 Westwood Appeal 21-29**

ABO Zielke presented the item, explaining that the owner of the property known as 689 Westwood was requesting the following variance to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.

ABO Zielke continued that the applicant was denied their initial request by the Board in May 2021, asked that their request be tabled at the July 2021 meeting, and was now requesting a lesser variance to construct an addition to the home. This property is zoned R1– Single Family Residential.

Mari MacKenzie, owner, and Glenda Meads, architect, reviewed the letter describing why this variance was being sought. The letter was included in the evening's agenda packet.

In discussion a number of Board members expressed concern that granting this variance might adversely impact the neighbor to the north. Because the submitted documents did not provide the distance between the neighbor to the north and that neighbor's northern neighbor, the Board could not say whether granting this variance might prevent 689 Westwood's northern neighbor from building to the maximum width allowed on their lot in the future if desired.

After discussion, Staff stated the City would help the appellant get the requisite information and return for future review if desired by the Board.

**Motion by Mr. Reddy**

**Seconded by Mr. Miller with regard to Appeal 21-29, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.82 feet. Therefore a variance of 3.65 feet was being requested.**

**Mr. Reddy moved to adjourn Appeal 21-29 to the September 2021 meeting, citing the need for additional information in order for the Board to complete its review.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

Yeas: Reddy, Miller, Lilley, Hart, Morganroth, Canvasser, Rodriguez

Nays: None

BO Johnson advised the Board to retain their documents for Appeal 21-29.

**2) 282 Greenwood  
Appeal 21-30**

ABO Zielke presented the item, explaining that the owner of the property known as 282 Greenwood was requesting the following variances to re-construct an existing deck and impervious areas of an existing non-conforming single-family home:

**A. Chapter 126, Article 4.30(C)(5)** of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore a variance of 10.00 feet was being requested.

**B. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) was being requested.

ABO Zielke continued that this appeal was tabled from the July 2021 meeting and that there was a change to the variance A request.

Steve Ahejew, architect, and Robert Jacobs, owner, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.



After discussion between Mr. Morganroth and Mr. Ahejew, Mr. Ahejew acknowledged that either a deck without a staircase, a staircase without a deck, or a staircase with a smaller deck could be built either within the ordinance or with a smaller variance request.

In reply to Board inquiry, Mr. Ahejew stated that while a spiral staircase was considered, the owner had concerns about a spiral staircase's safety especially for aging users. He also expressed concerns about potential egress issues if no stairs were provided.

Mr. Morganroth noted the proposed plans were likely better designed than the other options, but that the circumstances on the lot did not constitute a hardship. He expressed fewer reservations regarding variance B than variance A.

**Motion by Mr. Hart**

**Seconded by Mr. Lilley with regard to Appeal 21-30, A. Chapter 126, Article 4.30(C)(5) of the Zoning Ordinance allows a deck and/or steps may project into the rear open space for a maximum distance of 15.00 feet. This provision shall not reduce the required rear setback to less than 15.00 feet. The proposed it reduce the rear yard setback to 5.00 feet. Therefore, a variance of 10.00 feet is being requested; and, B. Chapter 126, Article 4.31(A) of the Zoning Ordinance requires that a minimum of 65% (998.53 feet) of the front open space in all single family districts shall be free of paved surfaces. The existing is 43.19% (663.50 SF) and the proposed is 56.44% (867.00 SF). Therefore a variance of 8.56% (131.53 SF) is being requested.**

Mr. Hart moved to approve the variance requests and tied them to the plans as submitted. He noted that the request mitigated some of the excess lot coverage in the front of the home. He continued that the stair placement in the rear presented challenges that amounted to a practical difficulty in terms of the staircase going in front of glass. The stairs allow for proper functioning and exterior egress in the rear. He noted there would be no adverse effect on neighboring properties, that the landing would be situated lower than the retaining wall, and that the staircase would be placed not to obscure neighbors' views. He opined that substantial justice would be done to the owners and neighbors.

Mr. Miller said he found variance B reasonable, and variance A a bit more difficult to decide on. Ultimately he found that the radical topography, the retaining wall separation with the neighbor to the north, and the lack of a neighbor to the rear made this existing non conforming home unique. He stated that substantial justice would be done if the variances were permitted.

Mr. Morganroth said he would not support the motion. He expressed appreciation for the design, but said the problem was being caused by wanting a deck in the rear and a patio in the front both of which exceed what the ordinance would allow. He said that given the request for both he was unable to find a hardship.

Vice-Chair Canvasser said he would also not support the motion, noting that the appellant acknowledged that there were a number of possible configurations that

would either mitigate or eliminate the need for a variance. He also noted that once the impervious surface is removed in the front, requesting to replace it in an amount that still exceeds the ordinance because an issue of self-creation. He stated that strict compliance would not restrict owner from using the property for its permitted purpose.

Mr. Rodriguez concurred with Mr. Morganroth and Vice-Chair Canvasser.

**Motion carried, 4-3.**

ROLL CALL VOTE

Yeas: Reddy, Miller, Lilley, Hart

Nays: Morganroth, Canvasser, Rodriguez

**3) 1135 Maryland  
Appeal 21-34**

ABO Zielke presented the item, explaining that the owner of the property known as 1135 Maryland was requesting the following variances to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested.

**B. Chapter 126, Article 4.30(C)(1)** of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.

ABO Zielke continued that the original home was constructed in 1941. There was an addition constructed to the home in 1996.

Chris Morgan, builder, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

**Motion by Mr. Miller**

**Seconded by Mr. Lilley with regard to Appeal 21-34, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 43.03 feet. The existing and proposed is 40.20 feet. Therefore; a variance of 2.83 feet is being requested; and, B. Chapter 126, Article 4.30(C)(1) of the Zoning Ordinance allows covered or uncovered porches and/or steps to project into the required front open space for a maximum distance of 10.00 feet. The proposed is 13.50 feet, Therefore; a variance of 3.50 feet is being requested.**

**Mr. Miller moved to approve the variances and tied them to the plans as submitted. He explained that both variance requests stemmed from the existing home not being in the zoning envelope. He stated that granting the variances would do substantial justice to the neighborhood.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Miller, Lilley, Hart, Morganroth, Canvasser, Rodriguez, Reddy

Nays: None

**4) 375 Lakepark  
Appeal 21-36**

ABO Zielke presented the item, explaining that the owner of the property known as 375 Lakepark was requesting the following variances to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested.

**B. Chapter 126, Article 4.75(B)(1)** of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.

ABO Zielke continued that the original home was constructed in 1926 and had an addition in 2003. The applicant was in front of the board in July 2021 (see draft minutes from July). The applicant reworked the existing plan due to the denial of the previous appeal.

Ben Heller, builder, reviewed the letter describing why these variances were being sought. The letter was included in the evening's agenda packet.

**Motion by Mr. Reddy**

**Seconded by Mr. Morganroth with regard to Appeal 21-36, A. Chapter 126, Article 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback is the average setback of homes with 200 feet in each direction. The required front yard setback is 45.50 feet. The proposed is 43.60 feet. Therefore; a variance of 1.90 feet is being requested; and, B. Chapter 126, Article 4.75(B)(1) of the Zoning Ordinance required that no individual dormer may exceed 8.00 feet in width as measured to the interior dimension. The existing is 16.75 feet. The proposed 11.33 feet, Therefore; a variance of 3.33 feet is being requested.**

Mr. Reddy moved to approve the variance and tied them to the plans as submitted. He offered that asking the appellant to comply with the ordinances in this case would be unnecessarily burdensome. He noted that the home was built before the current zoning requirements. He also noted that variance request B would reduce the existing nonconformity.

Mr. Morganroth stated that the architect took the Board's prior feedback and made a porch that the ordinance allows for. He said that the widening of the front does not increase the non-conformity. He continued that due to the condition of the lot, the neighbors, and the age of the home, expanding laterally makes sense for this home. He noted that the current dormer was larger than permitted by current ordinance, and that these plans would reduce the dormer and would fix a maintenance issue at the same time. He said it would do substantial justice to the homeowner and was a reasonable request.

Mr. Miller stated that there would be no negative impacts from this plan to the neighbors or neighborhood. He said it would do substantial justice to neighborhood.

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Reddy, Morganroth, Canvasser, Rodriguez, Miller, Lilley, Hart

Nays: None

**T# 08-45-21**

## **5. Correspondence**

Included in the agenda packet.

**T# 08-46-21**

## **6. General Business**

**T# 08-47-21**

## **7. Open To The Public For Matters Not On The Agenda**

None.

**T# 08-48-21**

## **8. Adjournment**

**Motion by Mr. Lilley**

**Seconded by Vice-Chair Canvasser to adjourn the August 10, 2021 BZA meeting at 9:27 p.m.**

**Motion carried, 7-0.**

ROLL CALL VOTE

Yeas: Hart, Morganroth, Canvasser, Rodriguez, Miller, Reddy, Lilley

Nays: None

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Bruce R. Johnson, Building Official



# **CASE DESCRIPTION**

## **689 Westwood (21-29)**

**Hearing date: September 14, 2021**

**Appeal No. 21-29:** The owner of the property known 689 Westwood, requests the following variance to construct an addition to an existing non-conforming single-family home:

**A. Chapter 126, Article 2.06.2** of the Zoning Ordinance requires that the minimum total side yard setback are 14.00 feet or 25% of the total lot width whichever is larger. The required is 22.47 feet. The proposed is 18.99 feet. Therefore; a variance of 3.48 feet is being requested.

**Staff Notes:** The applicant was in front of the board in May, which the appeal was denied (minutes attached). Tabled in July due to the number of members present. August meeting the applicant opted to table again as the board requested some additional information. The applicant is now requesting a lesser variance to construct an addition to the home.

This property is zoned R1– Single Family Residential.

---

Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

## 689 WESTWOOD MAP



**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
**151 Martin Street, Birmingham, MI 48009**  
 Community Development: 248-530-1850  
 Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Application Date: 5.28.21  
 Received By: HT

Hearing Date: 7.13.21  
 Appeal #: 21-0029

|                   |   |   |                                   |                               |                                       |
|-------------------|---|---|-----------------------------------|-------------------------------|---------------------------------------|
| Type of Variance: | <input type="checkbox"/> Interpretation | <input checked="" type="checkbox"/> Dimensional | <input type="checkbox"/> Land Use | <input type="checkbox"/> Sign | <input type="checkbox"/> Admin Review |
|-------------------|---|---|-----------------------------------|-------------------------------|---------------------------------------|

**I. PROPERTY INFORMATION:**

Address: 689 Westwood Lot Number: 459 Part 45 Sidwell Number: \_\_\_\_\_

**II. OWNER INFORMATION:**

Name: Mr. AND MRS L. Mackenzie

Address: 689 Westwood City: Birmingham State: MI Zip code: 48009

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**III. PETITIONER INFORMATION:**

Name: MR. & MRS L. Mackenzie Firm/Company Name: OWNER

Address: 689 Westwood City: Birmingham State: MI Zip code: 48009

Email: lmackenzie@ntvbmmedia.com Phone: 248-892-7717

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

| Requested Variances       | Required   | Existing   | Proposed   | Variance Amount |
|---------------------------|------------|------------|------------|-----------------|
| Variance A, Front Setback | 25.00 Feet | 23.50 Feet | 23.50 Feet | 1.50 Feet       |
| Variance B, Height        | 30.00 Feet | 30.25 Feet | 30.25 Feet | 0.25 Feet       |

**V. REQUIRED INFORMATION CHECKLIST:**

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: [Signature] Date: 5/22/21

Signature of Petitioner: same Date: 5/28/2021



CITY OF BIRMINGHAM  
 Date 06/01/2021 12:07:51 PM  
 Ref 00180467  
 Amount \$300.00

May 26, 2021  
REVISED June 30, 2021  
REVISED August 18, 2021

Re: MacKenzie Residence  
689 Westwood, Birmingham, MI

Dear Zoning Board Members:

After denial of 2 Variance requests at the May Board of Zoning Appeals (& agreeing to be tabled at the August meeting to bring additional information) in order to expand our Existing Garage, we have made the additional modification to our building plans to remove any expansion of existing overhang at the front and are hereby applying for a Single Dimensional Variance in order to construct a Garage Addition with Second Floor above to the home that we have lived-in for over 20 years and wish to continue to do so in our new empty-nest life.

The 3' Addition to Garage (without overhang) would put our garage at it's closest in Front Corner at 8.46' from our Lot Line AND **maintain the required 22.47'** (25% of our lot width) from neighbor at the Rear Corner.

The Total Side Setbacks for our lot are 22.47' (25% of lot width). Because the existing South Side of our house is 10.53' from the Lot Line, our Total Side Setback proposed would be 18.82', requiring the **Single smaller Variance of 3.48'** to the total side setback that are requesting.

This variance would only involve our own property, an item discussed at last May's meeting.

We had already modified our plans to set the Second Floor Addition back from the Lot Line the 3.48' so that the Second Floor would be at the required total side setback and so the Variance we are requesting will only apply to the Ground Floor Garage (the second floor complying).

The current size of our garage poses a number of practical difficulties at its 18'-4" width. It is does not fit 2 cars which is unreasonable to today's standards and our needs and does not provide any storage space for lawn equipment etc. The 3' addition requested would improve our situation greatly.

The original house was built with this undersized Garage AND prior to the Total Side Setback ordinance so this is not self-created. It was also built with the Den Room on the South at its location. Given these pre-existing conditions and the practical difficulties they impose, literal enforcement of the ordinance would result in a hardship unreasonably preventing us from using our property for permitted use, an attached garage.

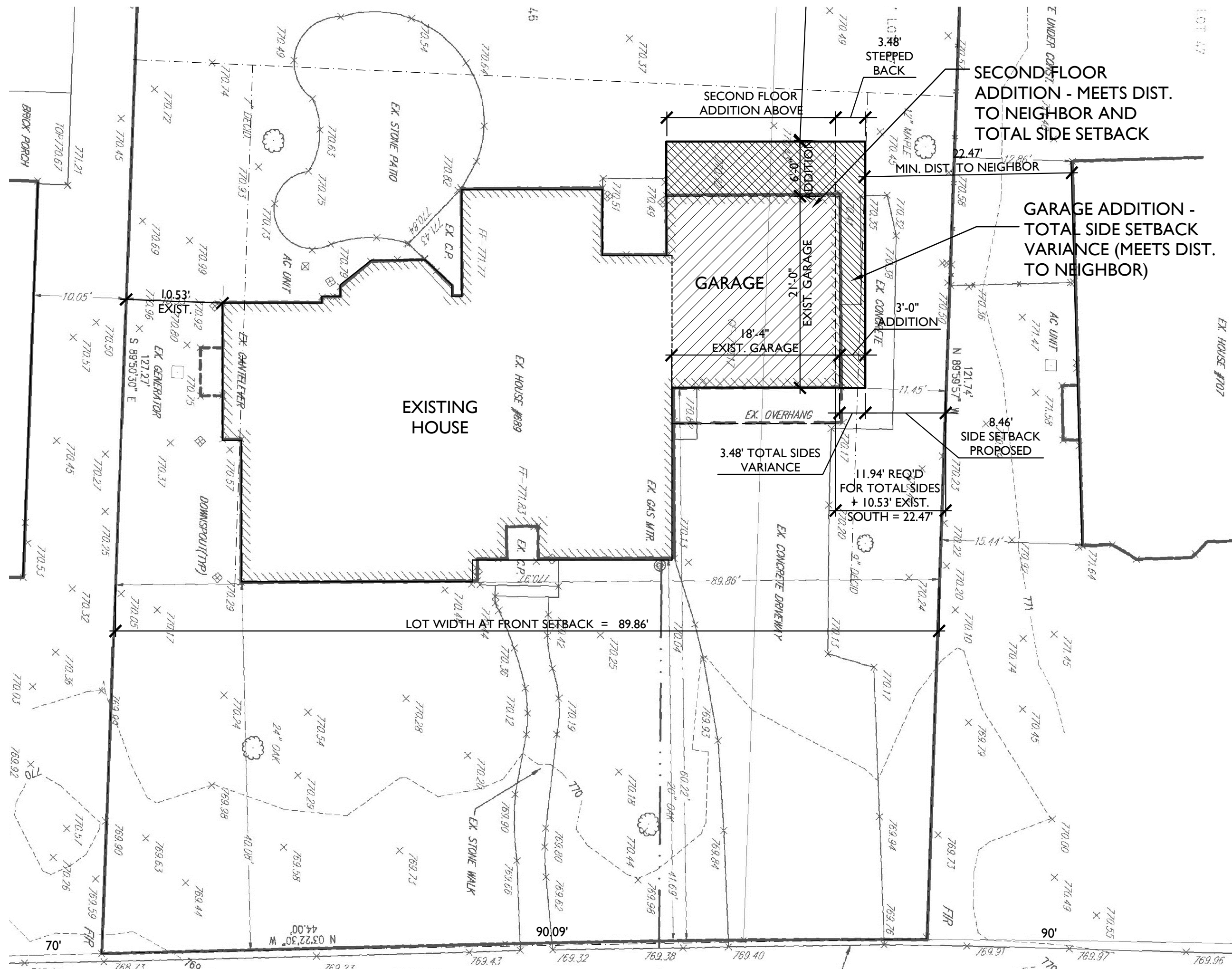
We are providing a Street Plan showing houses to north and south of ours, their respective LOT WIDTHS and approx. distances of those houses to their lot lines to aid in your discussions.

We respectfully request your consideration of the items that we have revised in order to get some addition to our existing Garage width (which does not impact the existing neighbor's house to north) and humbly request your approval.

Respectfully Submitted,



Larry & Mari MacKenzie





# MacKENZIE RESIDENCE

689 Westwood  
Birmingham, MI

Glenda MEADS Architects

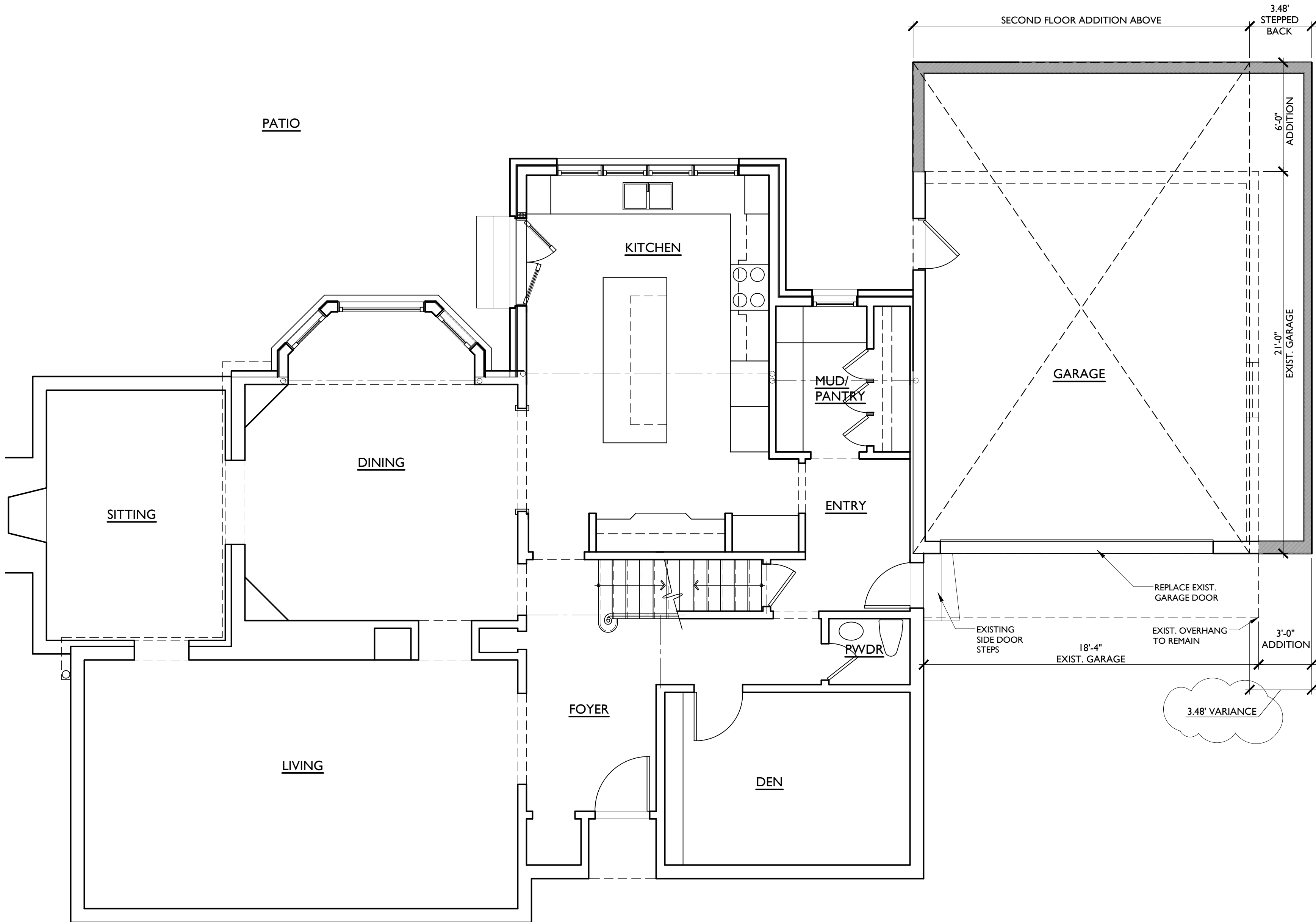
114 S. OLD WOODWARD AVE, SUITE 5, BIRMINGHAM, MI 48009  
TELEPHONE: (248) 220-4998  
MOBILE: (248) 514-2971  
E-MAIL: glendameadsarchitects@comcast.net

## Project Data:

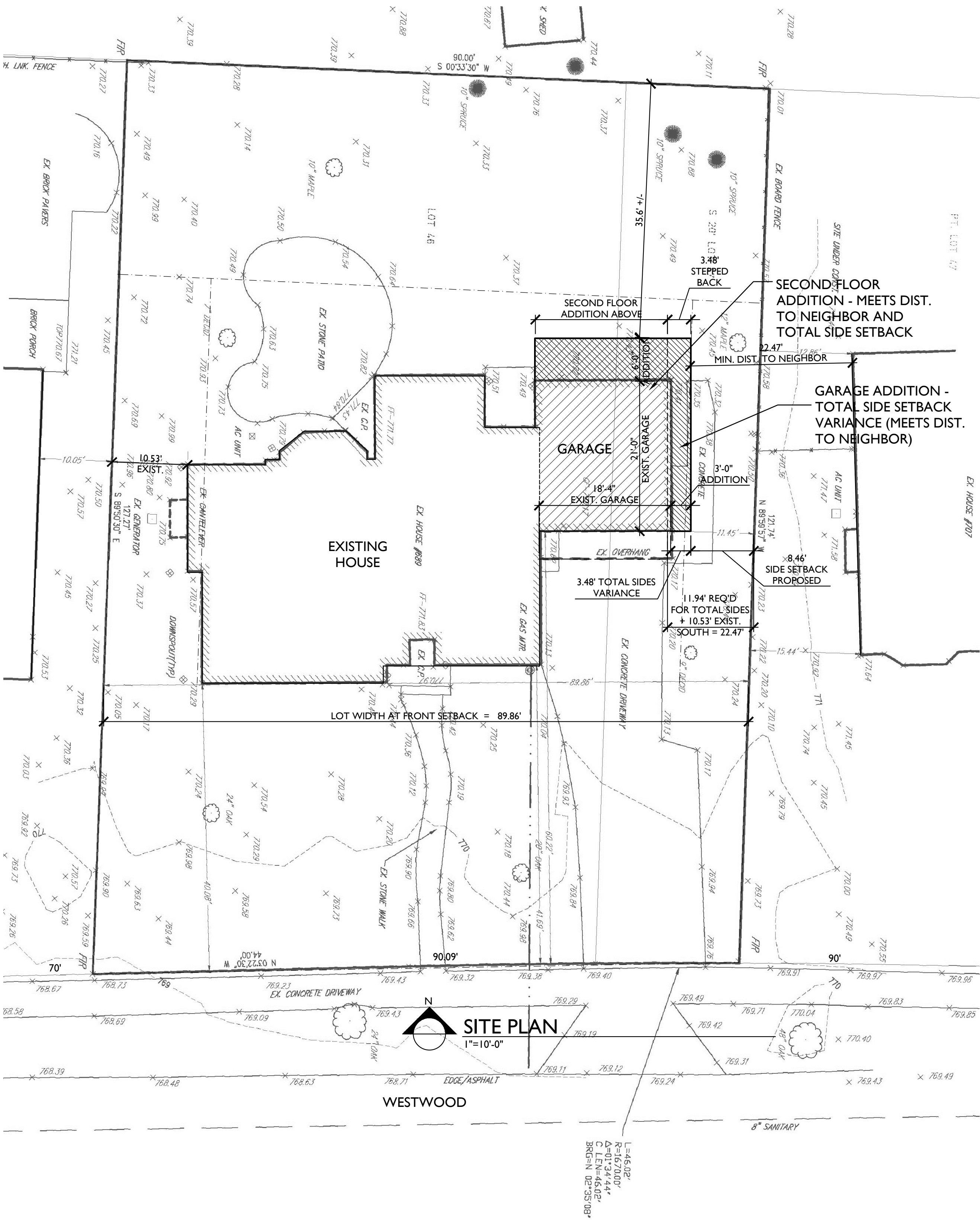
|                            |                                 |  |                         |
|----------------------------|---------------------------------|--|-------------------------|
| ADDRESS                    | 689 WESTWOOD                    |  |                         |
| ZONED                      | R-1 (SINGLE FAMILY RESIDENTIAL) |  |                         |
| LOT AREA                   | 22,414 +/- SF                   |  |                         |
| FRONTAGE                   | 90'                             |  |                         |
| LOT WIDTH AT FRONT SETBACK | 89.86'                          |  |                         |
| SITE DATA                  |                                 |  |                         |
|                            | REQUIRED                        | PROPOSED   |                         |
| FRONT SETBACK              | AVE OF HOUSES                   | 38.39 (EXIST. TO REMAIN)                           | - OK                    |
| REAR SETBACK               | 30' MIN.                        | 35.6' +/- TO ADD'N                                 | - OK                    |
| EAST SIDE SETBACK          | 5' MIN.                         | 7.45' TO ADD'N NORTH SIDE                          | - OK                    |
| SIDE SETBACK               | 9' MIN. (10% LOT WIDTH)         | 10.53' EXIST. SOUTH SIDE                           | - OK                    |
| TOTAL SIDES SETBACK        | 25 % OF 89.86' = 22.47' MIN.    | EXIST. SOUTH SIDE 10.53'<br>ADD'N NORTH SIDE 8.46' | 18.99' - 3.48' VARIANCE |
| DIST. TO NEIGHBOR          | 25 % OF 89.86' = 22.47' MIN.    | 22.47' TO ADD'N NORTH SIDE                         | - OK                    |

## VARIANCE SUMMARY CHART

| ITEM               | REQUIRED | EXISTING | PROPOSED | VARIANCE AMOUNT |
|--------------------|----------|----------|----------|-----------------|
| VARIANCE I:        |          |          |          |                 |
| TOTAL SIDE SETBACK | 22.47'   | 21.98'   | 18.89'   | 3.48'           |



GROUND FLOOR PLAN  
1/4"=1'-0"



MACKENZIE RESIDENCE  
689 Westwood  
Birmingham, Mi

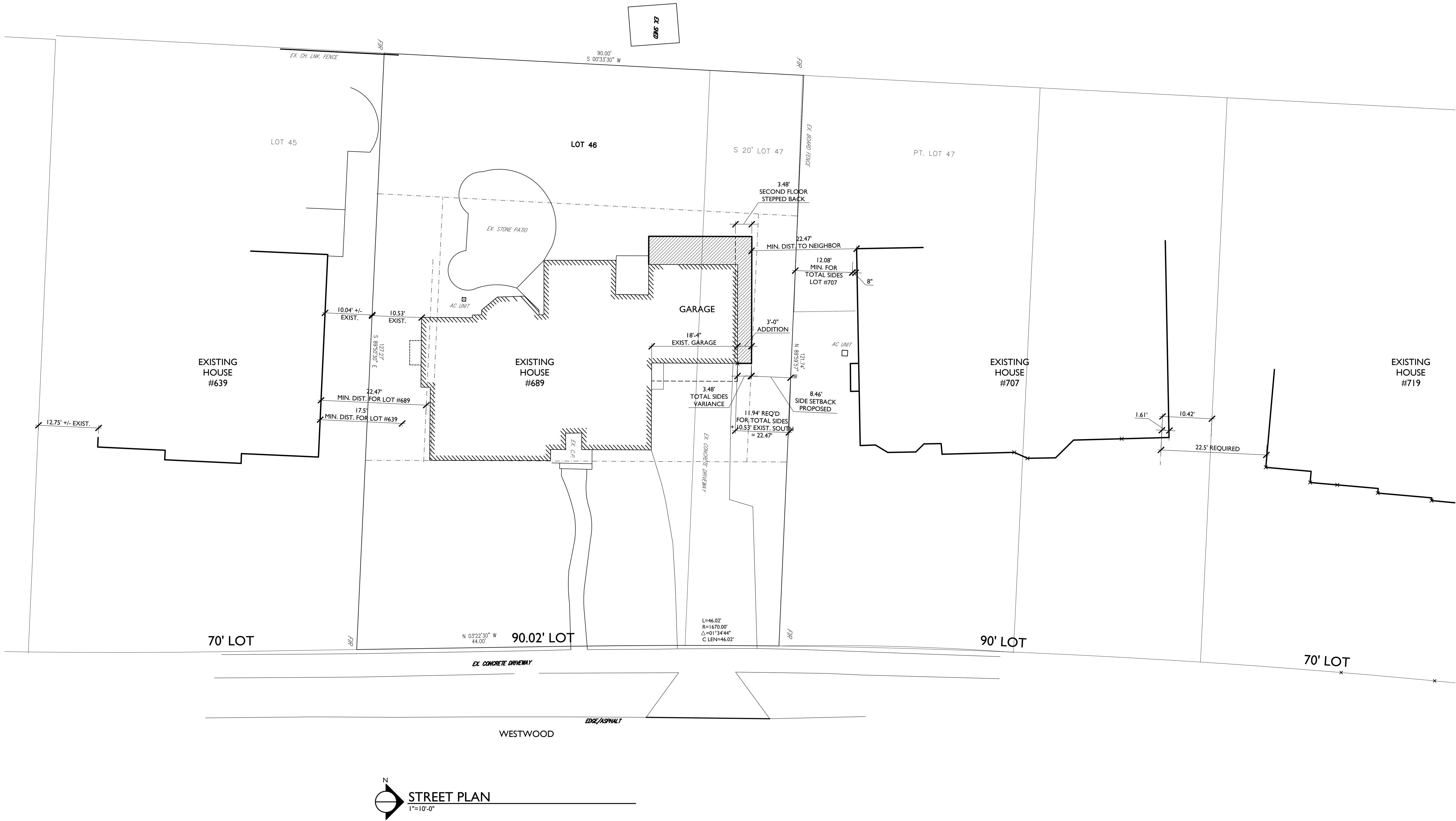
Glenda MEADS Architects  
114 S. OLD WOODWARD AVE, SUITE 5, BIRMINGHAM, MI 48009  
T (248) 220-4998 M (248) 514-2971 glenda@glendameads.com

SITE & GROUND  
FLOOR PLANS

4-8-21  
ZONING APPEAL  
5-26-21  
ZONING APPEAL 2  
6-17-21  
ZONING APPEAL 2  
REVISED

8-18-21  
ZONING APPEAL 2  
REVISED

A101



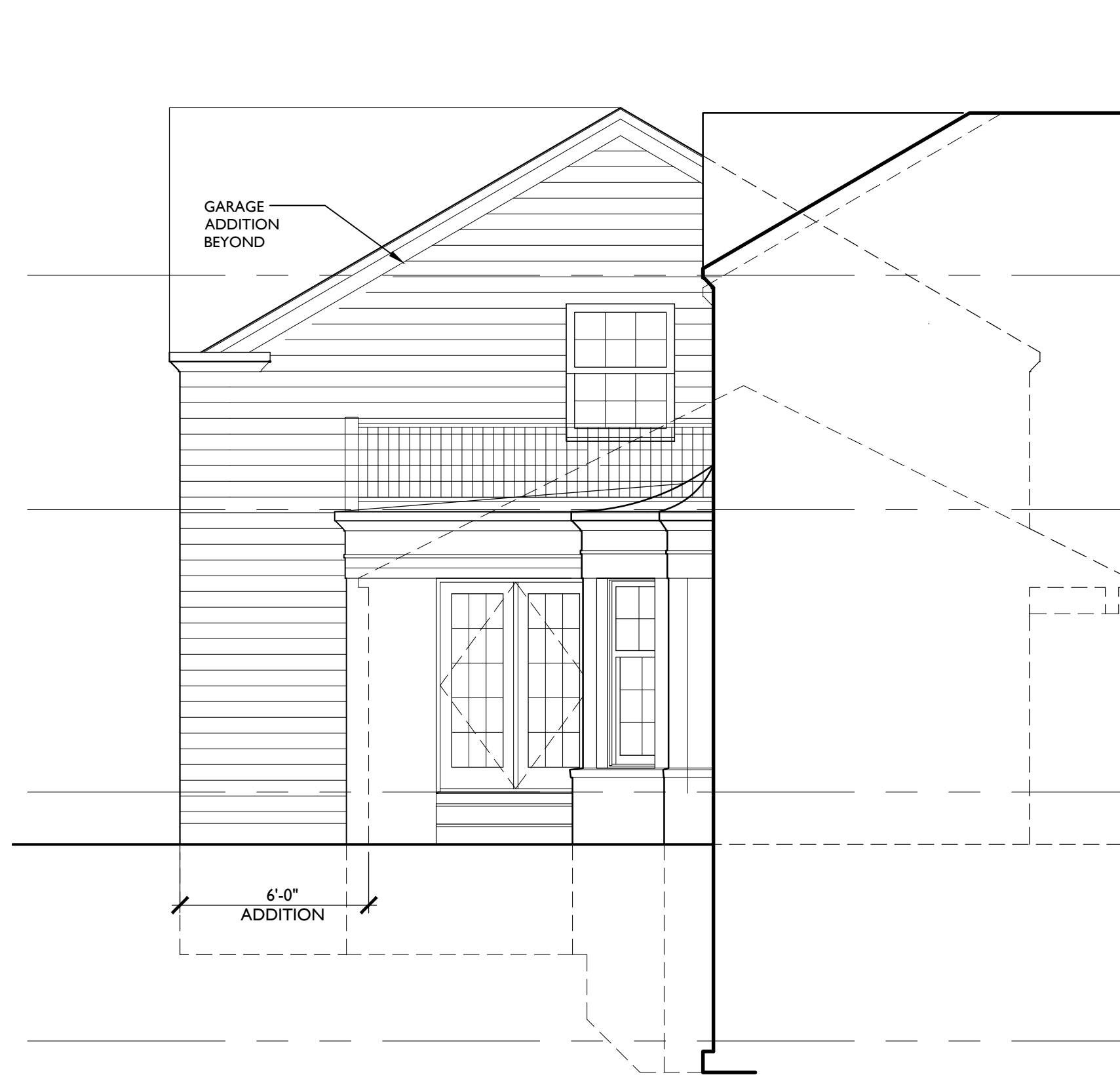
MACKENZIE RESIDENCE  
689 Westwood  
Birmingham, Mi

Glenda MEADS Architects  
1114 S. OLD WOODWARD AVE, SUITE 5, BIRMINGHAM, MI 48009  
T (248) 220-4998 M (248) 514-2971 glenda@glendameads.com

STREET PLAN

4-8-21  
ZONING APPEAL  
5-26-21  
ZONING APPEAL 2  
6-17-21  
ZONING APPEAL 2  
REVISED  
8-18-21  
ZONING APPEAL 2  
REVISED

A100



⊙ SOUTH (SIDE) ELEVATION  
1/4"=1'-0"



⊙ EAST (FRONT) ELEVATION  
1/4"=1'-0"



⊙ NORTH (SIDE) ELEVATION  
1/4"=1'-0"



⊙ WEST (REAR) ELEVATION  
1/4"=1'-0"

MACKENZIE RESIDENCE  
689 Westwood  
Birmingham, Mi

Glenda MEADS Architects  
1114 S. OLD WOODWARD AVE, SUITE 5, BIRMINGHAM, MI 48009  
T (248) 220-4998 M (248) 514-2971 glenda@glendameads.com

ELEVATIONS

4-8-21  
ZONING APPEAL  
5-26-21  
ZONING APPEAL 2  
6-17-21  
ZONING APPEAL 2  
REVISED

8-18-21  
ZONING APPEAL 2  
REVISED

A102

# **CASE DESCRIPTION**

## **448 Willits (21-35)**

**Hearing date: September 14, 2021**

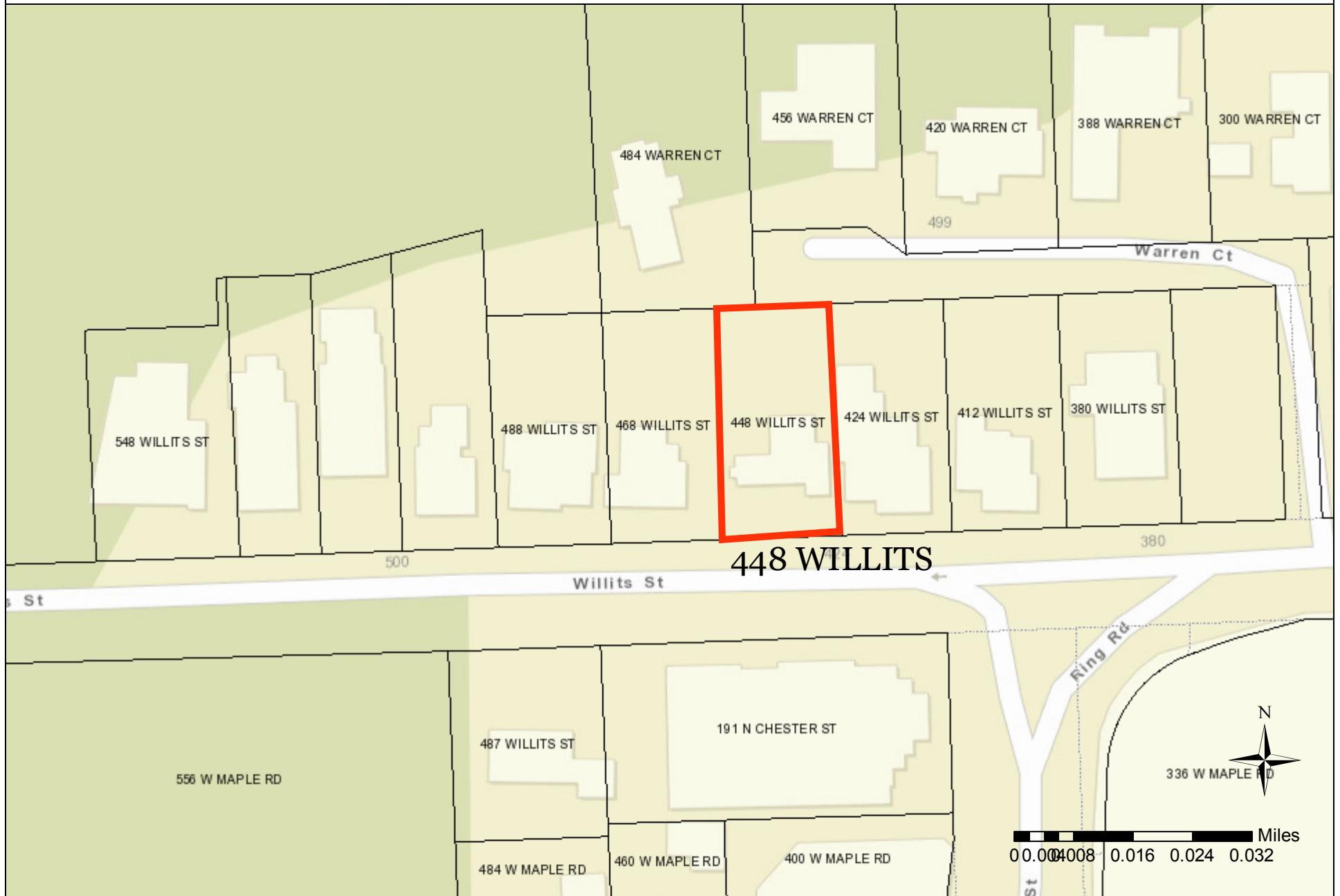
**Appeal No. 21-35:** The owner of the property known 448 Willits, requests the following variances to renovate the exterior of an existing non-conforming single-family home:

- A. Chapter 126, Article 4.30(C)(2)** of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The West side yard setback is non-conforming by 5.40 feet. A one (1.00) foot overhang is proposed. Therefore; a variance of 3.74 feet for the overhang is being requested.
- B. Chapter 126, Article 4.30(C)(2)** of the Zoning Ordinance allows roof overhangs to extend or project into a required side open space not more than 2 inches for each 1 foot of width of such required open space. The East side yard setback is non-conforming by 2.30 feet. An existing/proposed one (1.00) foot overhang is being proposed. Therefore; a variance of 2.47 feet for the overhang is being requested.
- C. Chapter 126, Article 4.30(C)(2)** of the Zoning Ordinance allows roof overhangs to extend or project into a required front open space not more than 2 inches for each 1 foot of width of such required open space provided that such extensions may not project more than 2 feet into the front open space. The front yard setback is non-conforming by 6.30 feet. A two (2.00) foot overhang is being proposed. Therefore a variance of 6.30 feet for the overhang is be requested.

**Staff Notes:** The applicant is proposing to re-side and restore the existing exterior of the existing non-conforming home that was constructed in 1924.

This property is zoned R2– Single Family Residential.

# 448 WILLITS MAP





CITY OF BIRMINGHAM  
Community Development - Building Department  
151 Martin Street, Birmingham, MI 48009  
Community Development: 248-530-1850  
Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 7.12.21

Received By: HT

Hearing Date: 9.14.21

Appeal #: 21-0036

| Type of Variance:   | <input type="checkbox"/> Interpretation | <input type="checkbox"/> Dimensional          | <input type="checkbox"/> Land Use | <input type="checkbox"/> Sign           | <input type="checkbox"/> Admin Review |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
|---|---|---|-----------------------------------|---|---------------------------------------|---------------------|----------|----------|----------|-----------------|---------------------------|------------|------------|------------|-----------|--------------------|------------|------------|------------|-----------|
| <b>I. PROPERTY INFORMATION:</b>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: <u>448 WILLITS</u>   |   | Lot Number: <u>50</u>                         |                                   | Sidwell Number: <u>08-19-25-376-042</u> |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>II. OWNER INFORMATION:</b>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Name: <u>MICHAEL VERDI</u>  |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: <u>448 WILLITS</u>   |   | City: <u>BIRMINGHAM</u>                       |                                   | State: <u>MI</u>                        | Zip code: <u>48009</u>                |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Email: <u>MVERDI@ME.COM</u>   |   |   |                                   | Phone:                                  |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>III. PETITIONER INFORMATION:</b>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Name: <u>BEN HELLER</u>   |   | Firm/Company Name: <u>HELLER &amp; ASSOC.</u> |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: <u>7 S. PERRY ST.</u>  |   | City: <u>PONTIAC</u>                          |                                   | State: <u>MI</u>                        | Zip code: <u>48342</u>                |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Email: <u>DABATE@HELLERHOMES.NET</u>  |   |   |                                   | Phone: <u>248.762.3824</u>              |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>IV. GENERAL INFORMATION:</b>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <p>The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.</p> <p>To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.</p> <p>The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.</p> |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <table border="1"><caption>Variance Chart Example</caption><thead><tr><th>Requested Variances</th><th>Required</th><th>Existing</th><th>Proposed</th><th>Variance Amount</th></tr></thead><tbody><tr><td>Variance A, Front Setback</td><td>25.00 Feet</td><td>23.50 Feet</td><td>23.50 Feet</td><td>1.50 Feet</td></tr><tr><td>Variance B, Height</td><td>30.00 Feet</td><td>30.25 Feet</td><td>30.25 Feet</td><td>0.25 Feet</td></tr></tbody></table>  |   |   |                                   |   |                                       | Requested Variances | Required | Existing | Proposed | Variance Amount | Variance A, Front Setback | 25.00 Feet | 23.50 Feet | 23.50 Feet | 1.50 Feet | Variance B, Height | 30.00 Feet | 30.25 Feet | 30.25 Feet | 0.25 Feet |
| Requested Variances   | Required                                | Existing                                      | Proposed                          | Variance Amount                         |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Variance A, Front Setback   | 25.00 Feet                              | 23.50 Feet                                    | 23.50 Feet                        | 1.50 Feet                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Variance B, Height  | 30.00 Feet                              | 30.25 Feet                                    | 30.25 Feet                        | 0.25 Feet                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>V. REQUIRED INFORMATION CHECKLIST:</b>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <p><input type="checkbox"/> One original and nine copies of the signed application</p> <p><input type="checkbox"/> One original and nine copies of the signed letter of practical difficulty and/or hardship</p> <p><input type="checkbox"/> One original and nine copies of the certified survey</p> <p><input type="checkbox"/> 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations</p> <p><input type="checkbox"/> If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting</p>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>VI. APPLICANT SIGNATURE</b>  |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <p>By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.</p>   |   |   |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Signature of Owner: <u>[Signature]</u>  |   | Date: <u>7.12.21</u>                          |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Signature of Petitioner: <u>[Signature]</u>   |   | Date: <u>7.12.21</u>                          |                                   |   |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |



August 8, 2021

To: Birmingham Board of Zoning Appeals

RE: 448 Willits

Dear BZA,

This single-family residence, built in the 1920's is pre-existing non-conforming. The current home does not meet the minimum side yard setback on the east and west sides, nor does it meet the required front yard setback under current rules of maintaining a consistent site line with neighboring properties. We are requesting the ability to add an overhang over the garage door and along the east and west sides of the house using a projected roof at the first-floor level.

The existing elevation is flat and does not allow the use of a gutter system over the garage door. The residence was built extremely close to the east side property line prior to the current homeowner purchasing the home. The neighboring home to the east (#424) was also constructed very close to the property line. The location of both houses to the property line leaves very little area to discharge roof water in a manner that moves the water far enough from our home without impacting the east side neighbor. By adding this overhang and 6" gutter, it will allow us to control runoff much better.

The proposed plans are purely cosmetic as we are not proposing any usable square footage to the home. The approval of roof projection on the south elevation would allow the proposed gutter system to move roof water further from the east side property line by directing the water over the garage door more toward the interior of the lot.

We are requesting three (3) separate variances which are only being requested to allow for overhangs to be constructed on the home. There are no plans of adding to the footprint of the home nor increasing square footage.

Variance #1: West side setback:

Existing setback = 4.6'

Required setback = 10.0'

Variance request = 5.66'

Approval of this request would change the west side setback to 4.33'. At two (2) inches per foot of setback, this would allow an extra 8.66 inches of overhang plus the 3.33 inches to the house to achieve a 12" overhang.

HISTORIC DOWNTOWN PONTIAC

7 South Perry Street • Pontiac, MI 48342 • (248) 322-6777 • (248) 322-6222 - Fax



FOUNDATION NOTES:

- 1) PROVIDE NECESSARY SHEETING, SHORING, BRACING, ETC. AS REQUIRED DURING EXCAVATIONS TO PROTECT SIDES OF EXCAVATION.
- 2) SEE MECHANICAL, ELECTRICAL AND ARCHITECTURAL DRAWINGS FOR PIPE SLEEVE, PIPING, CONDUIT, HANDRAIL INSERTS AND EMBEDDED ITEMS PRIOR TO CONSTRUCTION.
- 3) DO NOT BACKFILL AGAINST FOUNDATION WALLS UNTIL FLOOR SLABS ARE IN PLACE OR PERMISSION IS OBTAINED FROM THE DESIGNER.
- 4) ALL SOIL SURROUND AND UNDER FOOTINGS SHALL BE PROTECTED FROM FROST ACTION AND FREEZING DURING THE COURSE OF CONSTRUCTION.
- 5) WHERE FOOTINGS ARE IN CLOSE PROXIMITY OF SEWERS, BOTTOM OF FOOTINGS SHALL BE AT LEAST 8" BELOW INVERT ELEVATION OF SEWERS.

CONCRETE:

- 1) ALL CONCRETE WORK, DETAILING, FABRICATION AND ERECTION OF STEEL REINFORCING BARS SHALL CONFORM TO THE LATEST A.C.I. SPECS AND DETAILING MANUAL.
- 2) ALL CONCRETE SHALL ATTAIN THE FOLLOWING 28 DAY COMPRESSIVE STRENGTHS:
  - FOOTINGS, PIERS, FOUNDATION WALLS: 3000 PSI
  - SLAB ON GRADE: 4000 PSI
  - EXPOSED CONCRETE LANAI SLAB: 4000 PSI WITH 6% +/- 1% ENTRAINED AIR AND LESS THAN 50% WATER TO CONCRETE RATIO.
- 3) ALL CONCRETE SHALL BE PORTLAND CEMENT CONFORMING TO ASTM C150 AND AGGREGATE CONFORMING TO ASTM C33.
- 4) CONCRETE ADMIXTURES SHALL BE USED TO FACILITATE CONCRETE PLACEMENT, AID DIFFICULT PLACING CONDITIONS OR ASSIST IN ATTAINING SPECIFIED CONCRETE QUALITIES. ADMIXTURES SHALL HAVE LESS THAN 0.05 PERCENT CHLORIDES IONS.
  - AIR ENTRAINMENT PER ASTM C260
  - WATER REDUCER PER ASTM C494, TYPE A OR B
  - ACCELERATOR PER ASTM C494, TYPE C, D OR E
  - SUPERPLASTICIZER PER ASTM C494, TYPE F OR G
- 5) ALL REINFORCING BARS, DOWELS, AND TIES SHALL CONFORM TO ASTM A615, GRADE 60. ALL REINFORCING STEEL SHALL BE CONTINUOUS.
- 6) REINFORCING STEEL SPLICES SHALL BE IN ACCORDANCE WITH ACI 318 SECTIONS 12.15, 12.16. PROVIDE CLASS B SPLICES FOR VERTICAL AND HORIZONTAL WALL STEEL AND LONGITUDINAL AND TRANSVERSE FOOTING STEEL. PROVIDE CORNER BARS TO MATCH ALL HORIZONTAL REINFORCING IN FOOTING.
- 7) REINFORCED CONCRETE WALLS AND TRENCH FOOTINGS SHALL HAVE CORNER BARS AT ALL INTERSECTIONS OF THE SAME SIZE AND SPACING OF THE MAIN HORIZONTAL REINFORCING.
- 8) PROVIDE 2 #5 BARS EACH SIDE OF ALL OPENINGS AND 2-#5 X 4'-0" DIAGONAL BARS AT CORNERS OF OPENINGS.
- 9) PROVIDE DOWELS BETWEEN ALL FOOTINGS, WALLS, AND PIERS TO MATCH SIZE AND SPACING OF VERTICAL REINFORCING.

GENERAL NOTES:

1. ALL FOOTINGS SHALL BE PLACED ON UNDISTURBED SOIL.
2. ALL STEEL FABRICATION AND ERECTION SHALL MEET ALL A.I.S.C. CODE
3. BRACE ALL WALLS PRIOR TO PLACING BACKFILL
4. HEADERS, JOISTS, AND RAFTERS SHALL BE #2 OR BETTER SPF MINIMUM
5. WINDOW ROUGH OPENINGS GIVEN ARE FOR "PELLA" VINYL DOUBLE HUNG UNITS - VERIFY WITH SUPPLIER
6. ALL STAIRWAYS SHALL HAVE 6'-8" MIN. HEADROOM WITH 10" TREAD & MAX. 7 3/4" RISER
7. DOUBLE OR LADDER JOIST UNDER ALL PARALLEL PARTITIONS
8. APPROVED FIRESTOP MATERIALS SHALL BE PROVIDED IN ALL DROPS AND CHASES FOR ELECTRICAL, PLUMBING, AND HVAC
9. JOB SET OF PLANS FOR BUILDING MUST BE ON-SITE FOR ALL ROUGH FRAMING INSPECTIONS
10. ALL WORK COVERED WITHOUT INSPECTION WILL BE REQUIRED TO BE UNCOVERED AND INSPECTED
11. ALL ANGLES SHALL BE 45 DEGREES UNLESS OTHERWISE NOTED
12. DO NOT SCALE DRAWINGS - USE GIVEN DIMENSIONS
13. CONSTRUCTION OF BUILDING AND THERMAL ENVELOPE SHALL COMPLY WITH MRC 2015 AND MUEC 2015 & ALL CERTIFICATIONS AND INSPECTIONS SHALL BE PROVIDED FOR TOWNSHIP APPROVAL.

WALL BRACING NOTES:

- 1) WALL BRACING TO BE CONTINUOUS TYPE
- 2) ALL EXTERIOR WALLS SHALL HAVE 7/16" OSB CONTINUOUS INSTALLED ON EXTERIOR SIDE OF STUD.
- 3) NAILING SHALL BE WITH 8d NAILS @ 12" IN THE FIELD AND 6" AT THE EDGES UNO.
- 4) ALL CORNERS SHALL BE CONSTRUCTED PER SK-8 CORNER DETAIL.
- 5) ALL INTERIOR GYPSUM SHALL BE ATTACHED BY THE FOLLOWING SCHEDULE:
  - Interior Wall Bracing Gypsum Fastening Schedule
  - Fasteners:
    - Nails
      - 13 gage, 1 3/8" long, 19/64 head
      - 0.098" diameter, 1 1/4" long annular-ringed, 5d cooler nail
      - 0.086" diameter, 1 5/8" long, 15/64" head
      - gypsum board nail, 0.086" diameter, 1 5/8" long, 9/32" head
    - Screws
      - Type S or W per ASTM C 1002 and to be 1 1/8" long min.
  - Maximum Spacing of Fasteners (max stud spacing 16" o.c.)
  - WITHOUT Adhesive
    - Nails 8" o.c.
    - Screws 16" o.c.
  - With Adhesive
    - Nails 16" o.c.
    - Screws 24" o.c.
- 6) REFERENCE SKETCHES FOR SPECIFIC DETAILS FOR ADDITIONAL BRACING

| General Design Loads                 |   |
|--------------------------------------|---|
| Live Loads                           |   |
| Decks                                | 40 psf                                    |
| Fire Escapes                         | 40 psf                                    |
| Passenger Vehicle Garages            | 50 psf (or 2000 lbs projected on 20 in 2) |
| Attics w/o storage                   | 10 psf                                    |
| Attics w/ storage                    | 20 psf                                    |
| Rooms other than sleeping            | 40 psf                                    |
| Sleeping Rooms                       | 30 psf                                    |
| Stairs                               | 40 psf                                    |
| Guard Rails and Hand Rails           | 200 lbs point ld. in any direction        |
| Snow Loads [MRC R301.2.3, ASCE 7-10] |   |
| Ground snow load, pg                 | pg =25 psf                                |
| Exposure Factor, Ce                  | Ce = 1.0                                  |
| Thermal Factor, Ct                   | Ct=1.1                                    |
| Snow Load Importance Factor, Is      | Is=1.0                                    |
| Flat Roof Snow Load, pf              | pf= 0.7 Ce Ct Is pg = 0.7x1.0x1.1x1.0x25  |
|                                      | pf= 19.25 psf                             |
| Wind Loads [MRC R301.2.1, ASCE 7-10] |   |
| Basic Wind Speed, V                  | V = 115mph                                |
| Exposure Factor, Iw                  | Iw =1.0                                   |
| Enclosure Classification             | Enclosed                                  |
| Wind Exposure Category               | Exposure B                                |
| Internal Pressure Coefficient, GCpi  | GCpi = +/-0.18                            |
| Component and Cladding Pressure      | Design pressure = 19.5psf                 |

| General Design Loads   |
|--|
| Earthquake Design Data [MRC R301.2.2, ASCE 7-10]               |
| Seismic Use Group  |
| Seismic Use Group 1  |
| Seismic Design Category A                                      |
| Seismic Design Category A                                      |
| Therefore, Seismic provisions are not required. [MRC R301.2.2] |
| Soil Considerations [MRC R401.4.1]                             |
| Confirmed Load-bearing Values                                  |
| Silty sand and sandy clay                                      |
| 3,000 psf  |

|   |                                      |
|---|--------------------------------------|
| 1 | COVER & GENERAL NOTES                |
| 2 | DEMOLITION PLAN                      |
| 3 | DEMOLITION ELEVATIONS                |
| 4 | MAIN LEVEL & UPPER LEVEL FLOOR PLANS |
| 5 | PROPOSED ELEVATIONS                  |

| GROSS SQUARE FOOTAGE CALCULATION |                          |
|----------------------------------|--------------------------|
| MAIN LEVEL                       | 1,347 SQ. FT.            |
| UPPER LEVEL                      | 1,059 SQ. FT.            |
| TOTAL FINISHED                   | 2,406 SQ. FT. (finished) |

# PROPOSED RESIDENCE OF VERDI



HELLER  
& ASSOCIATES

7 SOUTH PERRY STREET - PONTIAC, MICHIGAN 48342 - OFFICE: (248) 322-8777 FAX: (248) 322-8222 - www.hellerhomes.net

VERDI RESIDENCE  
448 WILLITS ST., BIRMINGHAM, MI 48009

COVER SHEET

COPYRIGHT 2021

DRAWN BY:

B. HELLER  
D. ABATE

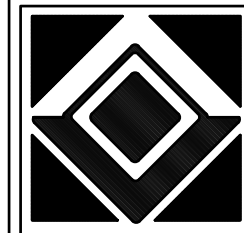
REVISIONS:

5-3-2021

PAGE NO. #

1 OF 5





HELLER  
& ASSOCIATES  
DESIGN + BUILD

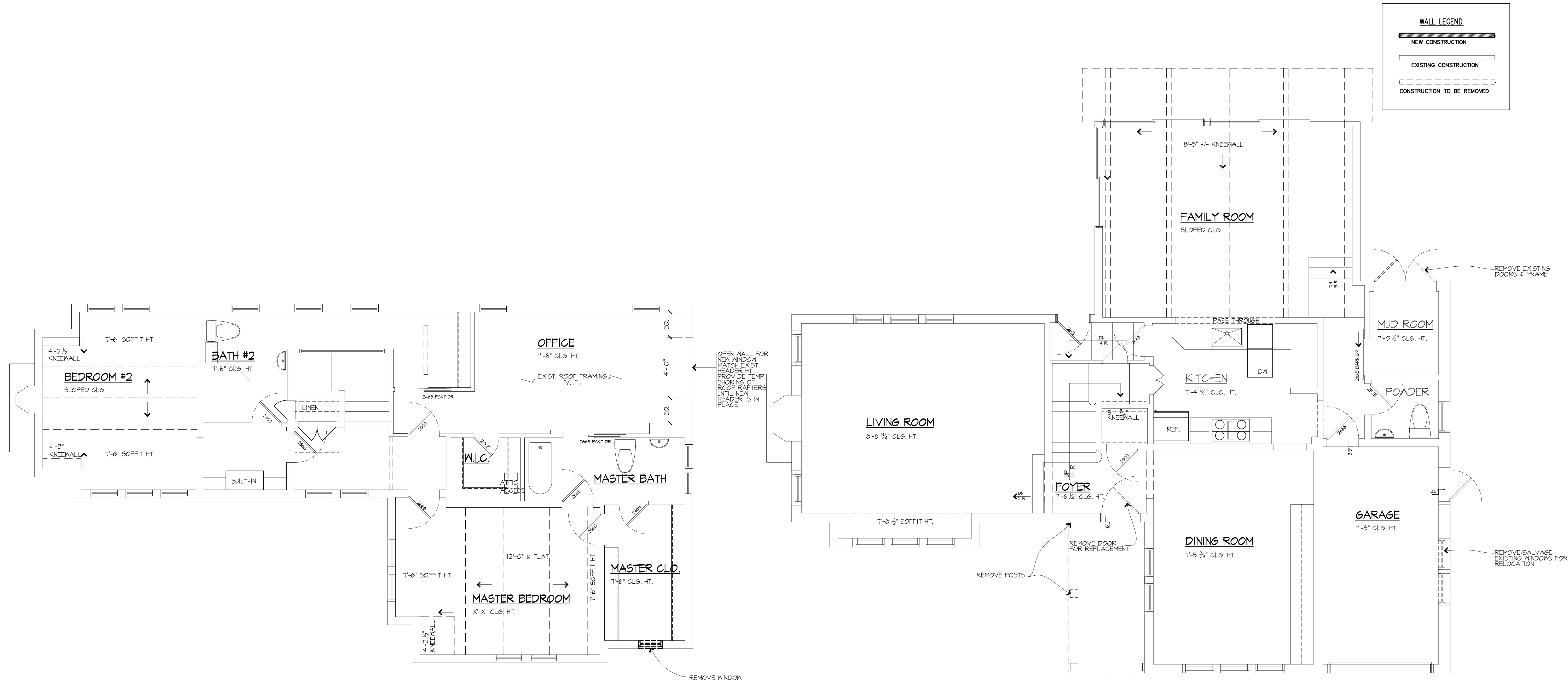
HELLER  
& ASSOCIATES  
7 SOUTH PERRY STREET - PONTIAC, MICHIGAN 48342 - OFFICE: (248) 322-5777 FAX: (248) 322-5222 - www.hellertd.com

VERDI RESIDENCE  
448 WILLITS STREET BIRMINGHAM, MI 48009

DEMO PLAN  
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DRAWN BY:  
B. HELLER  
D. ABATE  
REVISIONS:  
5-32021

PAGE NO. #  
20F5

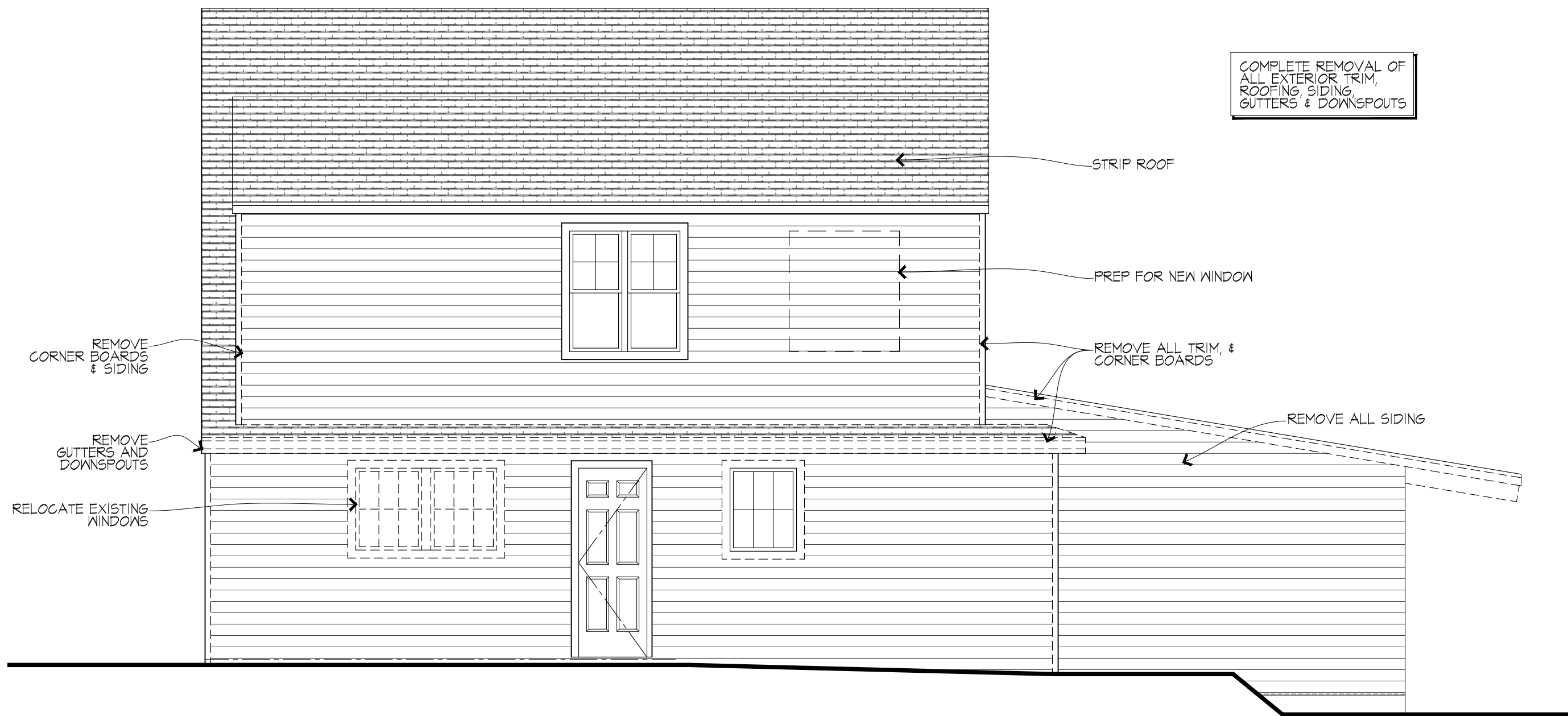


## UPPER LEVEL DEMO PLAN

SCALE: 1/4" = 1'-0"

## MAIN LEVEL DEMO PLAN

SCALE: 1/4" = 1'-0"



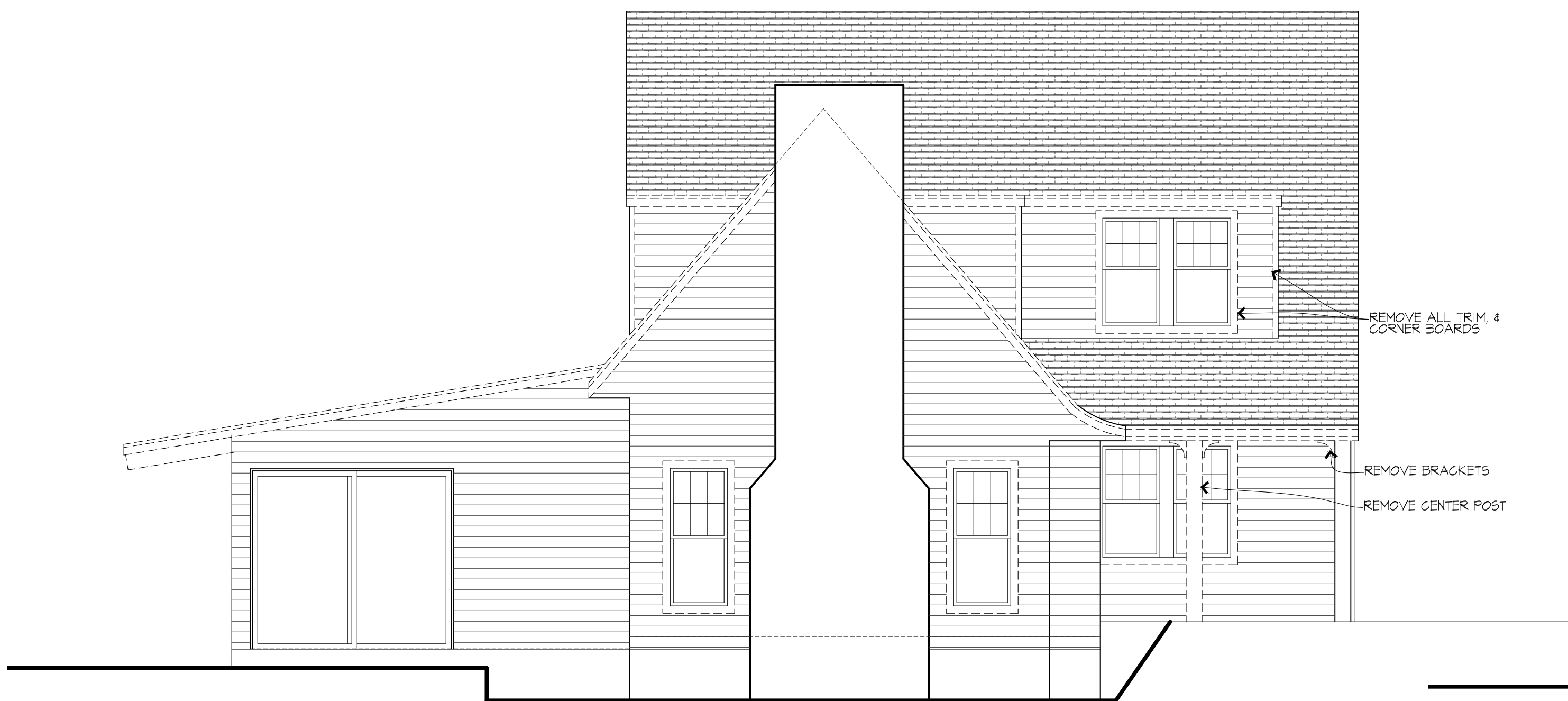
**DEMO RIGHT ELEVATION**

SCALE: 1/4" = 1'-0"



**DEMO REAR ELEVATION**

SCALE: 1/4" = 1'-0"



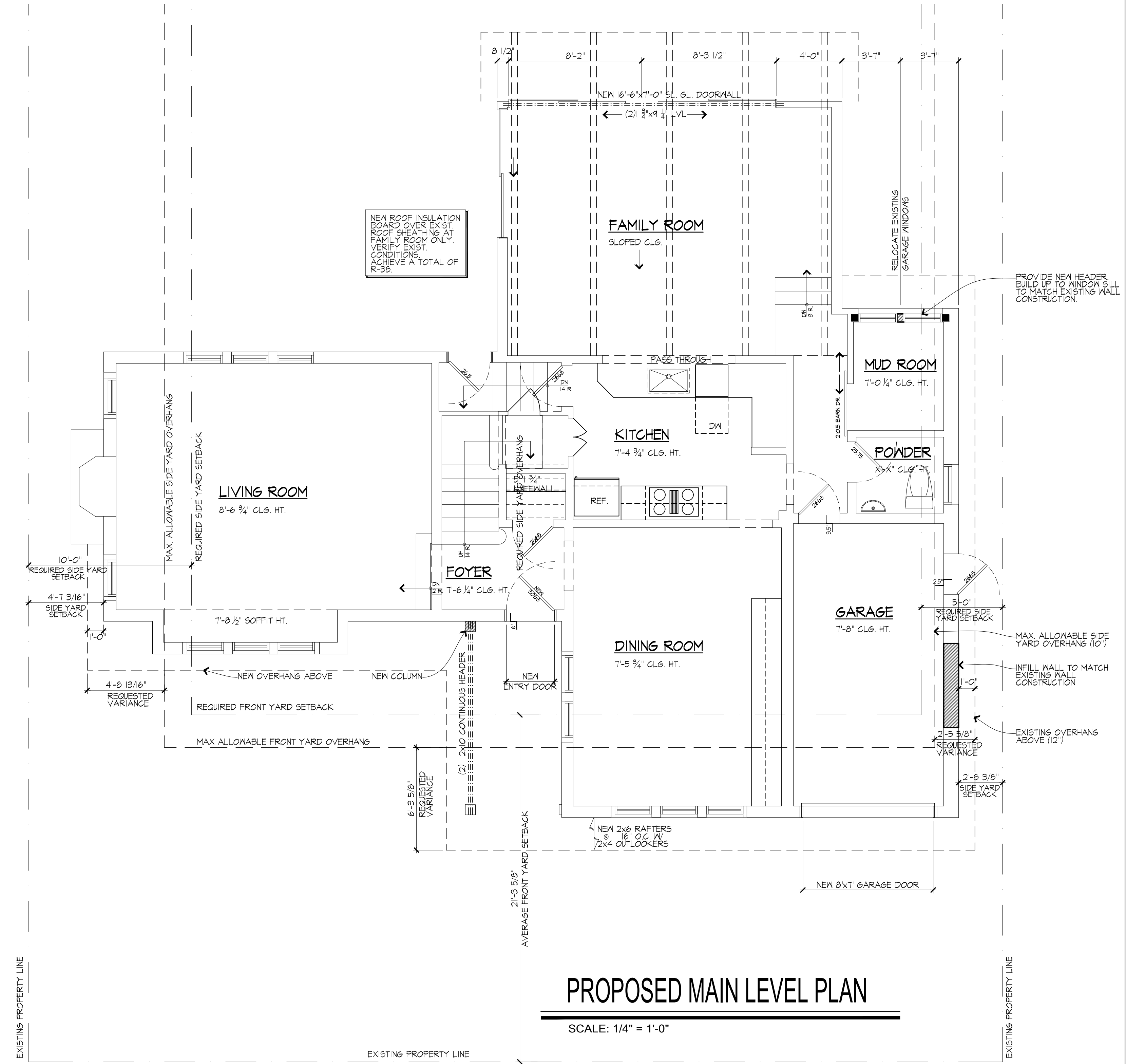
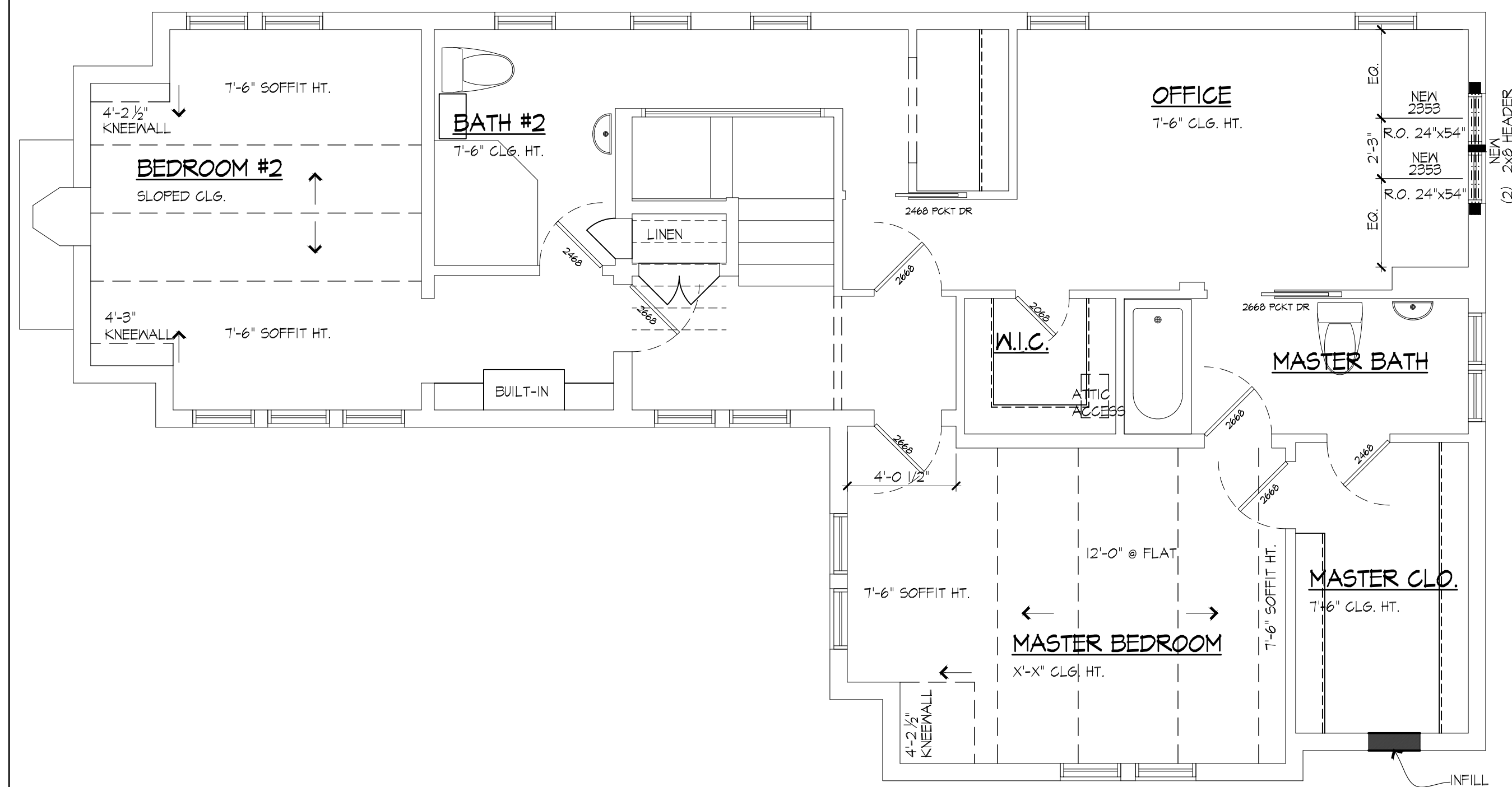
**DEMO LEFT ELEVATION**

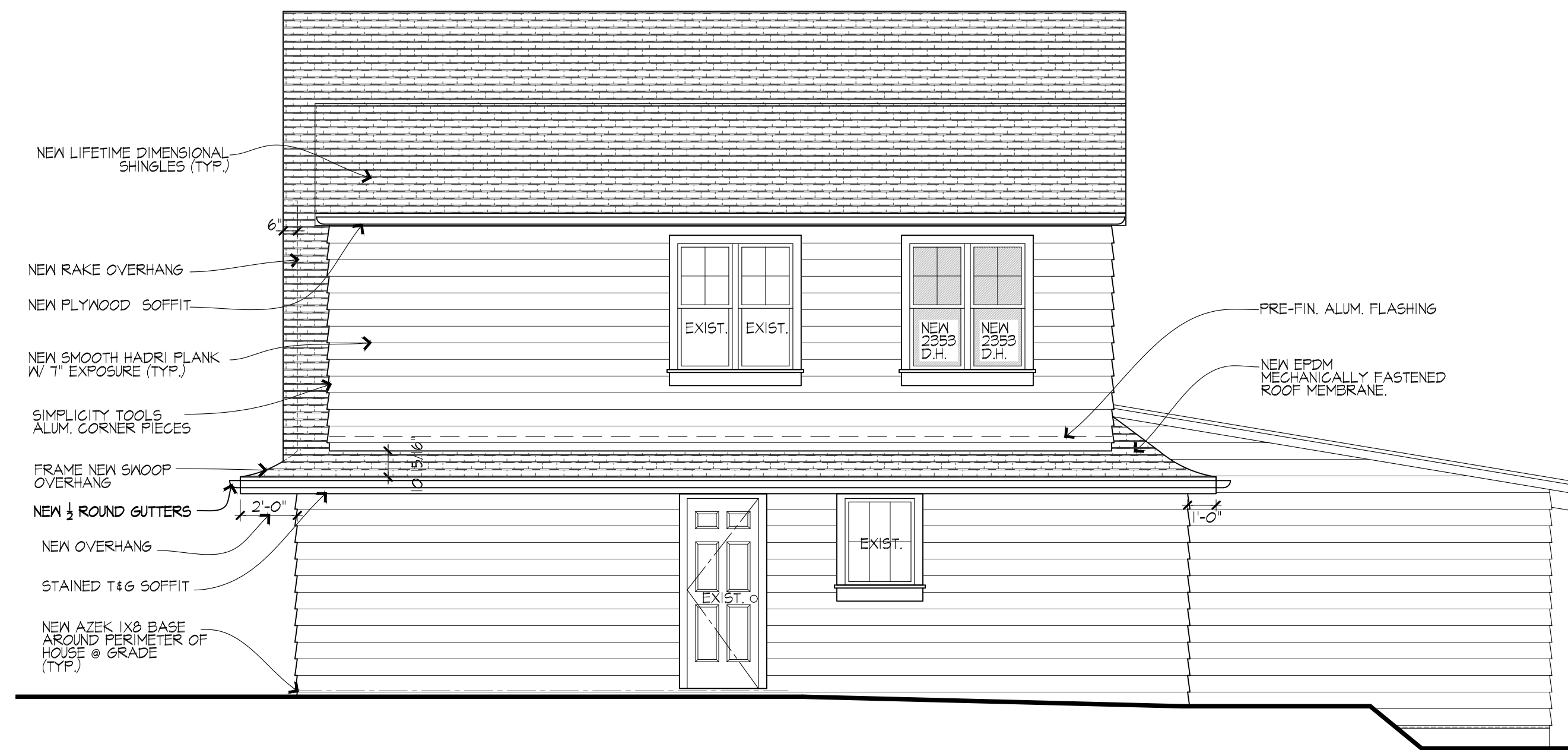
SCALE: 1/4" = 1'-0"



**DEMO FRONT ELEVATION**

SCALE: 1/4" = 1'-0"





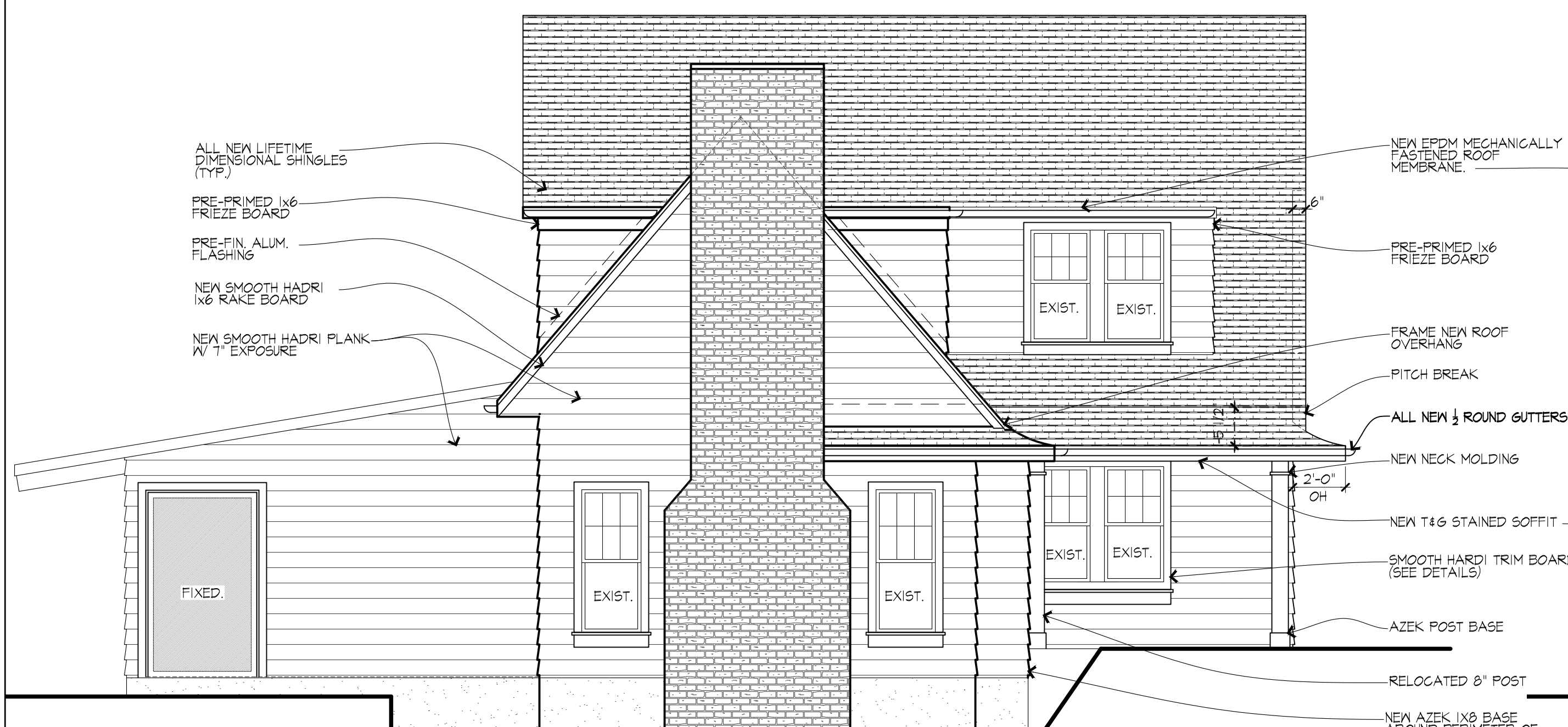
PROPOSED RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



PROPOSED REAR ELEVATION

SCALE: 1/4" = 1'-0"



PROPOSED LEFT ELEVATION

SCALE: 1/4" = 1'-0"



PROPOSED FRONT ELEVATION

SCALE: 1/4" = 1'-0"

# **CASE DESCRIPTION**

## **157 E. Frank (21-37)**

**Hearing date: September 14, 2021**

**Appeal No. 21-37:** The owner of the property known 157 E Frank, requests the following variance to replace the existing driveway:

- A. Chapter 126, Article 2.10.1** of the Zoning Ordinance requires that a minimum open space of 40% (2440.00 SF), shall be maintained. The proposed is 33.63% (2051.65 SF). Therefore; a variance of 6.37% (388.35 SF) is being requested.
- B. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (1034.40) of the front open space in all single-family districts shall be free of paved surfaces. The proposed is 36.04% (573.65 SF). Therefore a variance of 28.96% (460.75 SF) is being requested.

**Staff Notes:** The applicant is requesting variances on the required open space to remove and replace the existing drive. The existing home was constructed in 1985, before lot coverage and open space regulations were added to the ordinance.

This property is zoned R2– Single Family Residential.

---

Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

157 E FRANK MAP





**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
**151 Martin Street, Birmingham, MI 48009**  
**Community Development: 248-530-1850**  
**Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)**

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Application Date: 7-7-21

Received By: HT

Hearing Date: 9-14-21

Appeal #: 21-0037

|                   |  |                                      |                                   |                               |                                       |
|-------------------|--|--------------------------------------|-----------------------------------|-------------------------------|---------------------------------------|
| Type of Variance: | <input checked="" type="checkbox"/> Interpretation | <input type="checkbox"/> Dimensional | <input type="checkbox"/> Land Use | <input type="checkbox"/> Sign | <input type="checkbox"/> Admin Review |
|-------------------|--|--------------------------------------|-----------------------------------|-------------------------------|---------------------------------------|

**I. PROPERTY INFORMATION:**

|                                  |             |                 |
|----------------------------------|-------------|-----------------|
| Address: <u>157 E. Frank St.</u> | Lot Number: | Sidwell Number: |
|----------------------------------|-------------|-----------------|

**II. OWNER INFORMATION:**

|  |                              |                  |                        |
|--|------------------------------|------------------|------------------------|
| Name: <u>Michael Lewis</u>               |                              |                  |                        |
| Address: <u>157 E. Frank St.</u>         | City: <u>Birmingham</u>      | State: <u>MI</u> | Zip code: <u>48009</u> |
| Email: <u>LewisMichael0000@gmail.com</u> | Phone: <u>(810) 397-4334</u> |                  |                        |

**III. PETITIONER INFORMATION:**

|   |  |
|---|--|
| Name: <u>Nathan Matatail</u>            | Firm/Company Name: <u>NM Restorations Inc.</u> |
| Address: <u>21300 Groesbeck Hwy</u>     | City: <u>Warren</u>                            |
| Email: <u>info@nandmrestoration.com</u> | State: <u>MI</u> Zip code: <u>48089</u>        |
|   | Phone: <u>(586) 883-2170</u>                   |

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is \$360.00 for single family residential; \$560.00 for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

| Variance Chart Example    |            |            |            |                 |
|---------------------------|------------|------------|------------|-----------------|
| Requested Variances       | Required   | Existing   | Proposed   | Variance Amount |
| Variance A, Front Setback | 25.00 Feet | 23.50 Feet | 23.50 Feet | 1.50 Feet       |
| Variance B, Height        | 30.00 Feet | 30.25 Feet | 30.25 Feet | 0.25 Feet       |

**V. REQUIRED INFORMATION CHECKLIST:**

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

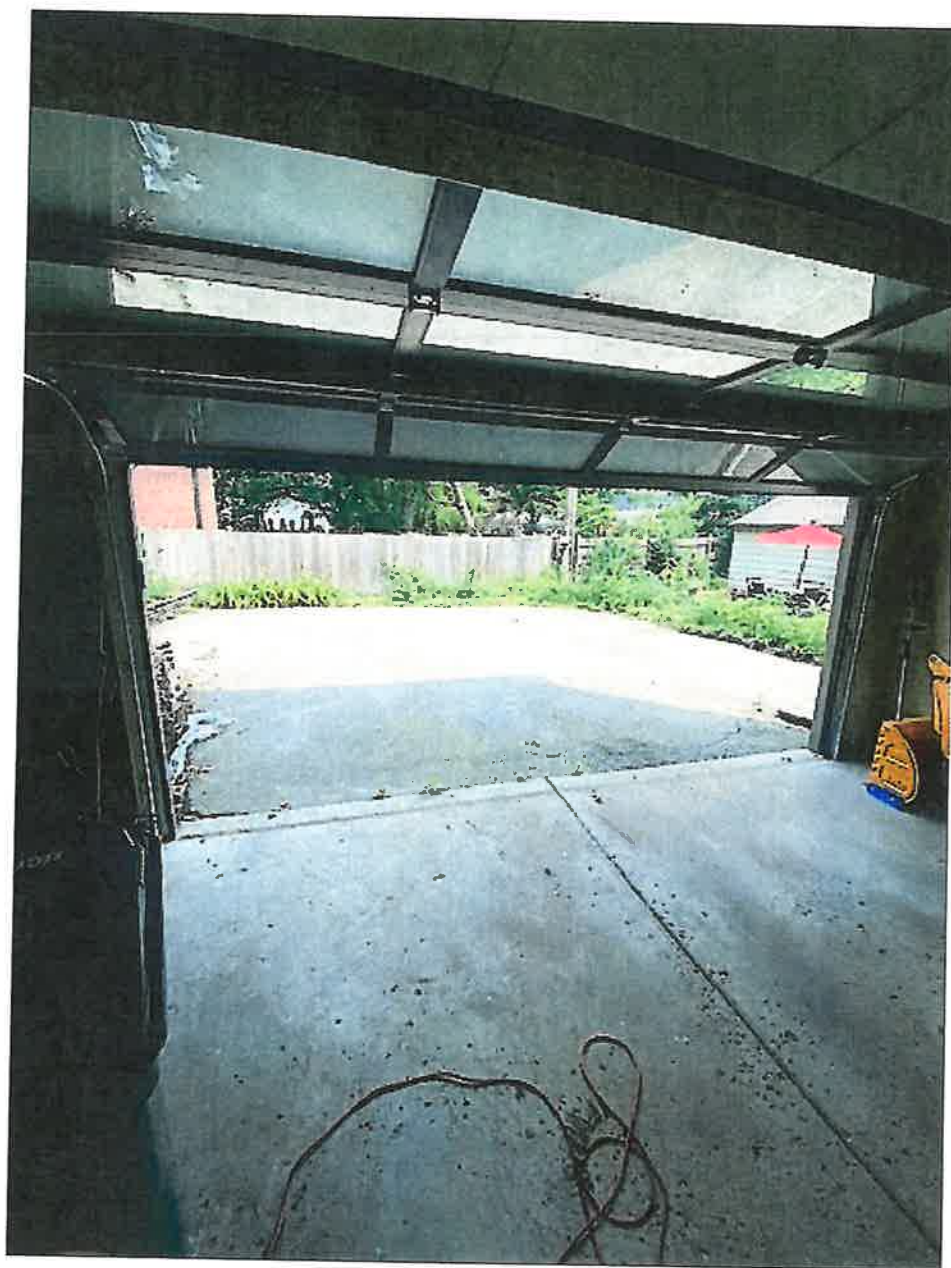
By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

X Signature of Owner: Michael Lewis

Date: 7-7-21

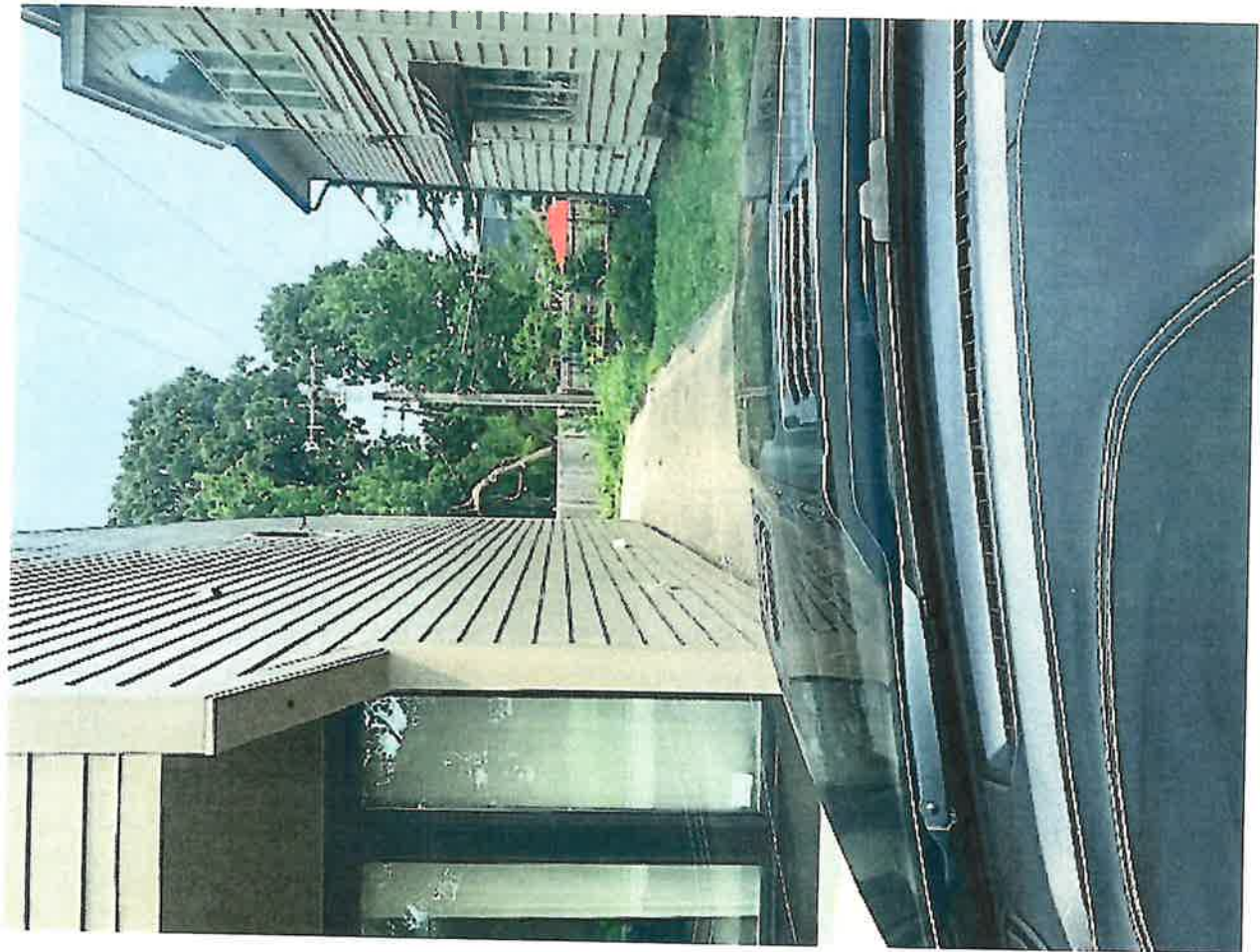
Signature of Petitioner: Nathan Matatail

Date: 7/7/2021









To Whom it May Concern,

I purchased my new home at 157 E Frank St in Birmingham in February of this year. After purchasing the home, I made plans to replace windows, update electrical that was not up to code and various other items. One item that has been very difficult to deal with has been the driveway. The driveway slopes towards the garage due to the root system of a MASSIVE oak tree that I had removed which was growing 1.5' away from the home. When it rains, the water goes all inside my garage and creates a flood every time. When it snows, the ice freezes and melts into the garage as well, producing ice dams and more floods. As you can see from the attached photos, my driveway is a rare driveway in Birmingham as it is a front entry drive, rear entrance-attached garage. This being my 4th home in Birmingham, all of my previous homes had detached garages, or forward facing however this driveway requires a 4-5 point turn just to get my vehicle in the garage as it currently is designed. The driveway has eroded on all corners and areas, where re-sealing or resurfacing it is no longer an option. The drive pools at the entrance as it is higher than the sidewalk and has potholes on both sides from the asphalt eroding. The drive from the front to the back is like walking a tight-rope and my mirror has hit my home several times, one time my bumper actually hit the corner of the home splitting the wood and leaving a massive

dent on my bumper that I will be forced to replace when turning in my lease. I wanted to replace the driveway exactly as it stands because I cannot afford to lose an inch in any direction because of how difficult it is to use/maneuver with my vehicle. I was then told I had to find some area to reduce it which I replied if I absolutely have to, I would take some off of the back (north facing side against the fence) however it would cause me to drive in my garden to turn around, but if I have to just to replace the driveway to avoid any further flooding and bury the electrical underneath it, then I will. All I am asking is to replace my current dilapidated driveway with a cement driveway. I am available to discuss this in front of the city planning or commission team at any time and would be happy to walk anyone around my property as well. Please view the attached photos as further supporting documentation that I am merely asking to replace the driveway with an operable one.

Thank you,

Michael E. Lewis

810-397-4334



REVISIONS:

SJW ENGINEERING LLC  
P.O. BOX 2  
NORTH STREET, MI 48049  
www.sjwengineering.com  
+1 (810)292-9258  
steven@sjwengineering.com

CUSTOMER DATA:

LEWIS RESIDENCE  
157 E. FRANK ST.  
BIRMINGHAM, MI 48009  
810-397-4334  
lewismichael0000@gmail.com

DRAWN:

S. WHITCAN

CHECKED:

APPROVED:

SCALE:

NOTED

DATE:

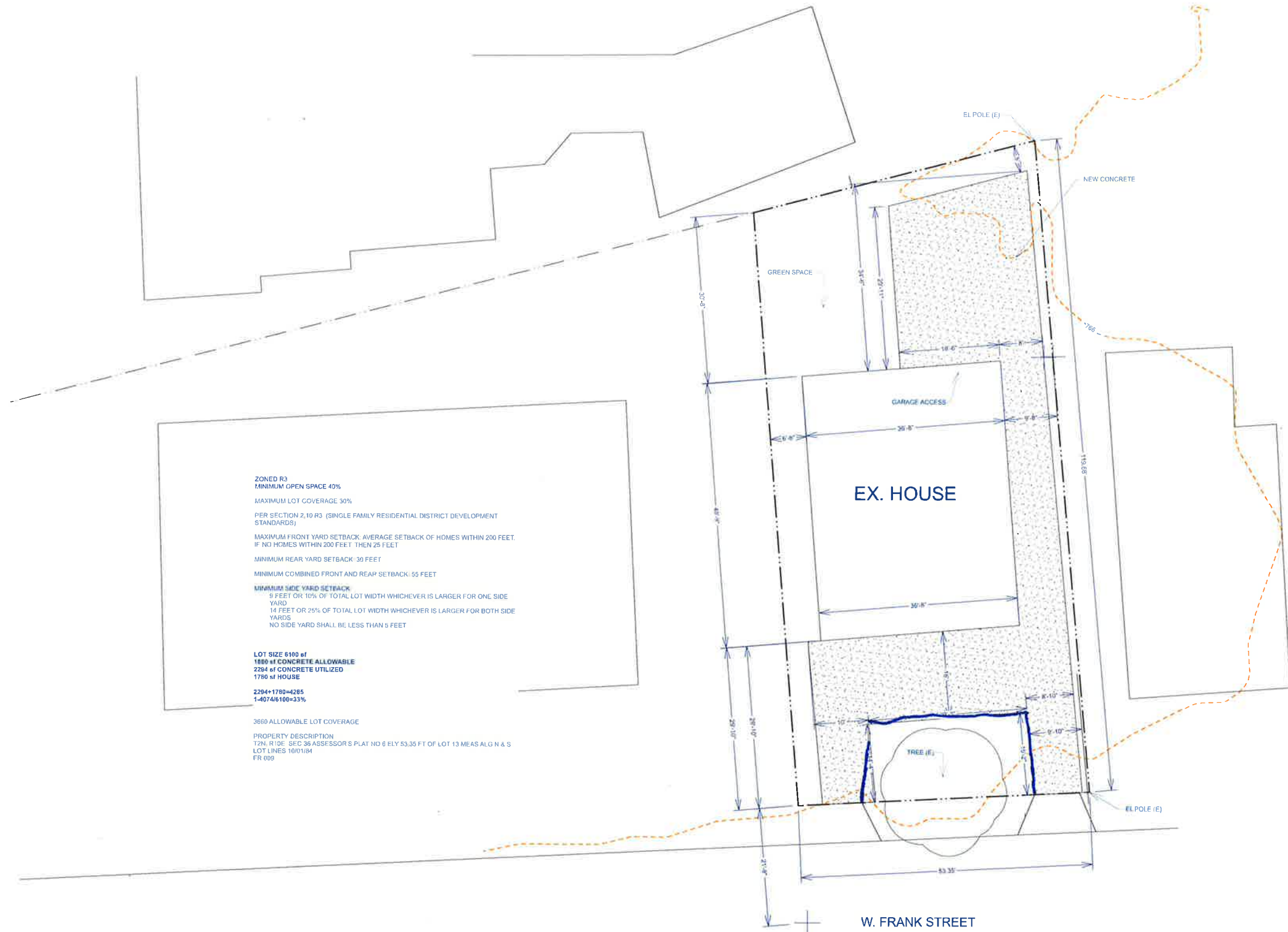
8/22/2021

SHEET NO.

P-1



PIERCE ST.



# **CASE DESCRIPTION**

**1222 Cole (21-38)**

**Hearing date: September 14, 2021**

**Appeal No. 21-38:** The owner of the property known 1222 Cole, requests the following variance to replace the existing A/C condensers:

**A. Chapter 126, Article 4.03(B)** of the Zoning Ordinance allows accessory structures to be located in the rear open space, but shall be at least 3.00 feet from any lot line. The existing and proposed is 1.90 feet. Therefore; a variance of 1.10 feet is being requested.

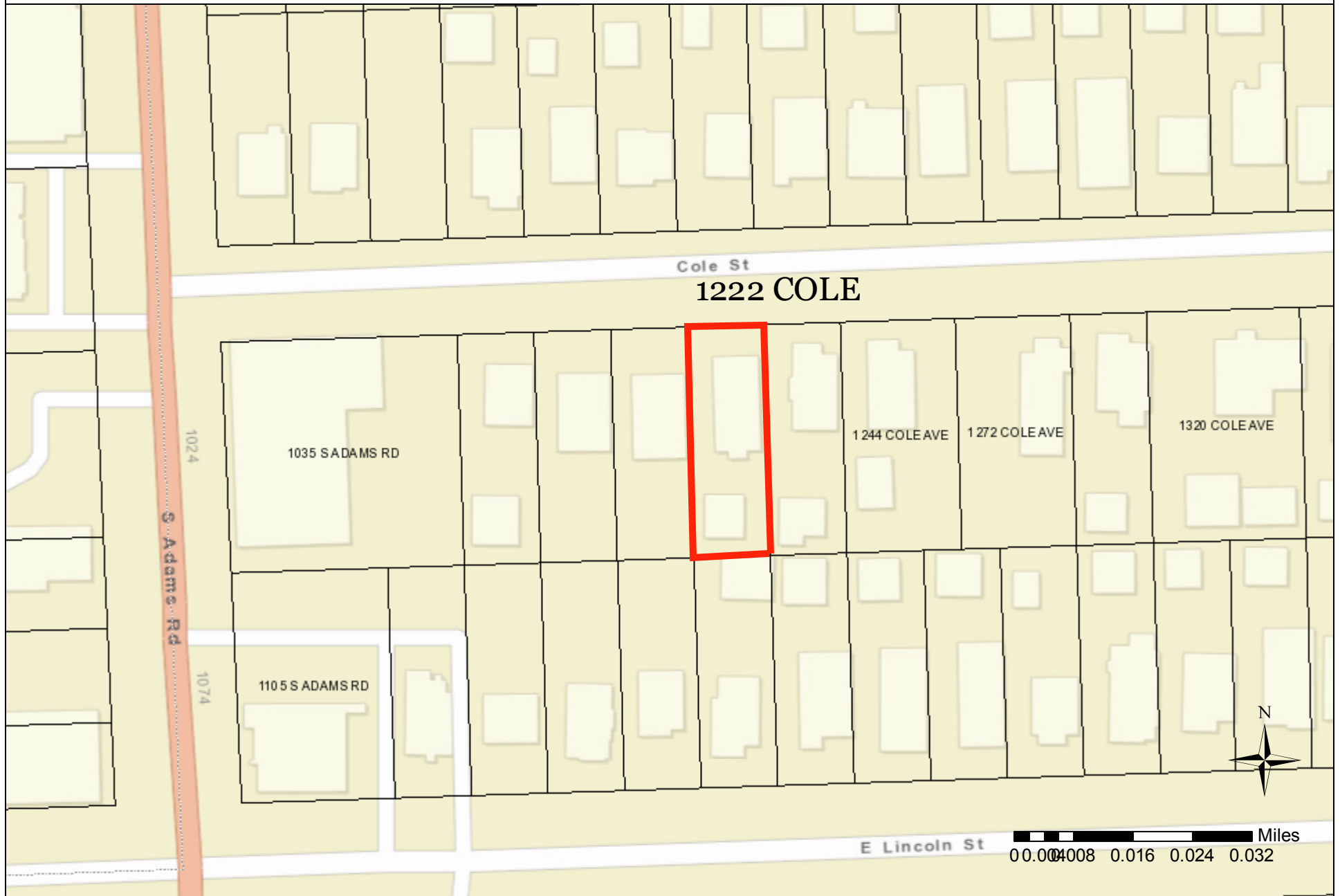
**Staff Notes:** The applicant is seeking to replace the existing A/C units which are currently non-conforming. The home was constructed in 2011.

This property is zoned R2– Single Family Residential.

---

Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

# 1222 COLE MAP



CITY OF BIRMINGHAM  
Community Development - Building Department  
151 Martin Street, Birmingham, MI 48009  
Community Development: 248-530-1850  
Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 8-12-21  
Received By: HT

Hearing Date: 9-14-21  
Appeal #: 21-0038

| Type of Variance:   | <input type="checkbox"/> Interpretation | <input checked="" type="checkbox"/> Dimensional | <input type="checkbox"/> Land Use | <input type="checkbox"/> Sign | <input type="checkbox"/> Admin Review |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
|---|---|---|-----------------------------------|-------------------------------|---------------------------------------|---------------------|----------|----------|----------|-----------------|---------------------------|------------|------------|------------|-----------|--------------------|------------|------------|------------|-----------|
| <b>I. PROPERTY INFORMATION:</b>   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: 1222 Cole Street   |   | Lot Number: 245                                 |                                   | Sidwell Number:               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>II. OWNER INFORMATION:</b>   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Name: Stephen and Amy Fabry   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: 1222 Cole Street   |   | City: Birmingham                                |                                   | State: MI                     | Zip code: 48009                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Email: stephenfabry@gmail.com   |   |   |                                   | Phone: 202-744-5883           |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>III. PETITIONER INFORMATION:</b>   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Name: Stephen and Amy Fabry   |   | Firm/Company Name:                              |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Address: 1222 Cole Street   |   | City: Birmingham                                |                                   | State: MI                     | Zip code: 48009                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Email: stephenfabry@gmail.com   |   |   |                                   | Phone: 202-744-5883           |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>IV. GENERAL INFORMATION:</b>   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <p>The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.</p> <p>To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.</p> <p>The BZA application fee is <b>\$360.00</b> for single family residential; <b>\$560.00</b> for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.</p> |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <table border="1"><caption>Variance Chart Example</caption><thead><tr><th>Requested Variances</th><th>Required</th><th>Existing</th><th>Proposed</th><th>Variance Amount</th></tr></thead><tbody><tr><td>Variance A, Front Setback</td><td>25.00 Feet</td><td>23.50 Feet</td><td>23.50 Feet</td><td>1.50 Feet</td></tr><tr><td>Variance B, Height</td><td>30.00 Feet</td><td>30.25 Feet</td><td>30.25 Feet</td><td>0.25 Feet</td></tr></tbody></table>  |   |   |                                   |                               |                                       | Requested Variances | Required | Existing | Proposed | Variance Amount | Variance A, Front Setback | 25.00 Feet | 23.50 Feet | 23.50 Feet | 1.50 Feet | Variance B, Height | 30.00 Feet | 30.25 Feet | 30.25 Feet | 0.25 Feet |
| Requested Variances   | Required                                | Existing  | Proposed                          | Variance Amount               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Variance A, Front Setback   | 25.00 Feet                              | 23.50 Feet                                      | 23.50 Feet                        | 1.50 Feet                     |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Variance B, Height  | 30.00 Feet                              | 30.25 Feet                                      | 30.25 Feet                        | 0.25 Feet                     |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>V. REQUIRED INFORMATION CHECKLIST:</b>   |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <ul style="list-style-type: none"><li><input type="checkbox"/> One original and nine copies of the signed application</li><li><input type="checkbox"/> One original and nine copies of the signed letter of practical difficulty and/or hardship</li><li><input type="checkbox"/> One original and nine copies of the certified survey</li><li><input type="checkbox"/> 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations</li><li><input type="checkbox"/> If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting</li></ul>  |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| <b>VI. APPLICANT SIGNATURE</b>  |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.  |   |   |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Signature of Owner: <u>[Signature]</u>  |   | Date: <u>8/11/2021</u>                          |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |
| Signature of Petitioner: _____  |   | Date: _____                                     |                                   |                               |                                       |                     |          |          |          |                 |                           |            |            |            |           |                    |            |            |            |           |



August 11, 2021

City of Birmingham  
Community Development – Building Department  
151 Martin Street  
Birmingham, MI 48009

RE: 1222 Cole Street, Practical Difficulty Variance Request

To Members of the Board:

We purchased our residence at 1222 Cole Street in September of 2020. During routine maintenance of our heating and cooling systems, we were informed both systems were failing and need replacement. We are therefore requesting a variance from the Board of Zoning to replace the AHUs in their current location (Exhibit A).

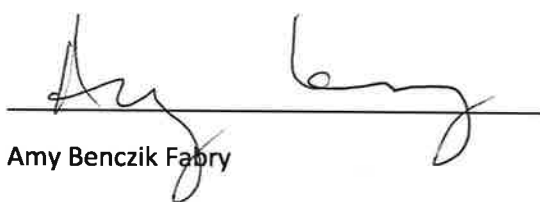
The AHUs were placed in the current location when the home was built in 2011. It came to our attention by our heating and cooling representative that the city of Birmingham requires all units to be placed 3'-0" off the property line, even when units are placed behind the home and when the units are being directly replaced. The city did not have a current survey, only one of the original home. We therefore paid for a new survey, included with application, which clearly shows the 2011 new construction and existing AHU placement in relation to property line. The new AHUs would be a direct replacement, similar in size and new pads would be placed in the exact, existing locations.

Why are we seeking practical difficulty variance to replace the AHUs in the same locations?

- Existing construction and size of raised patio, as well as existing built up hardscape planters, constricts placement of AHU's in alternate locations. (Exhibit A)
- Existing construction of raised patio allows for direct access from interior of home through series of sliding glass doors that would be rendered useless if patio were to be demolished to meet 3'-0" criteria. (Exhibit A). W
- Cost of demolition to existing raised patio is cost prohibitive and not anticipated and likely not feasible.
- Home was purchased in good faith that all trades followed applicable codes and Certificate of Occupancy signed off by the city in 2011.
- No documentation of AHU variance on title of home when purchased.
- Many new construction homes within a one block radius of 1222 Cole St. have AHUs positioned over the 3'-0" property boundary (Exhibit B).



Stephen Scott Fabry

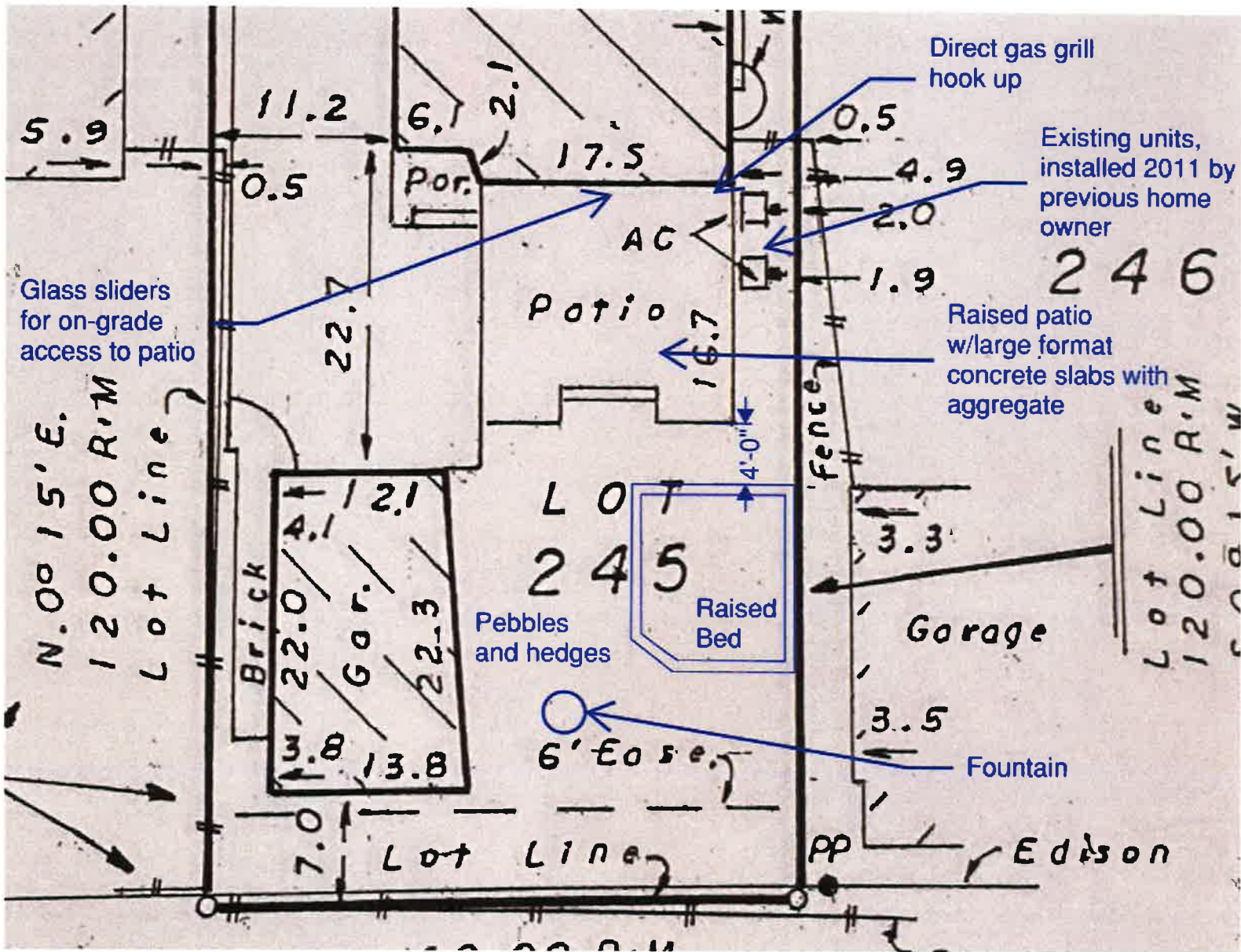


Amy Benczik Fabry

8/11/2021



1222 Cole St. July 2021 survey with home owner notes and description of images for context and reference.



View 1 - existing units behind house with shrubbery shielding view behind fence from street.  
View 2 - view to rear of house, note sliding doors, gas hookup and raised patio.  
View 3 - overall view of yard for context of existing raised patio, raised bed and extent of hardscape including fountain.  
View 4 - overhead view of existing units in relation to raised patio.  
View 5 - overhead view of existing units, behind house.





view 1



View 4



/iew 2



View 5



/iew 3



EXHIBIT B

Precedent images of newer construction within 1 block radius of 1222 Cole St.



Built  
2019



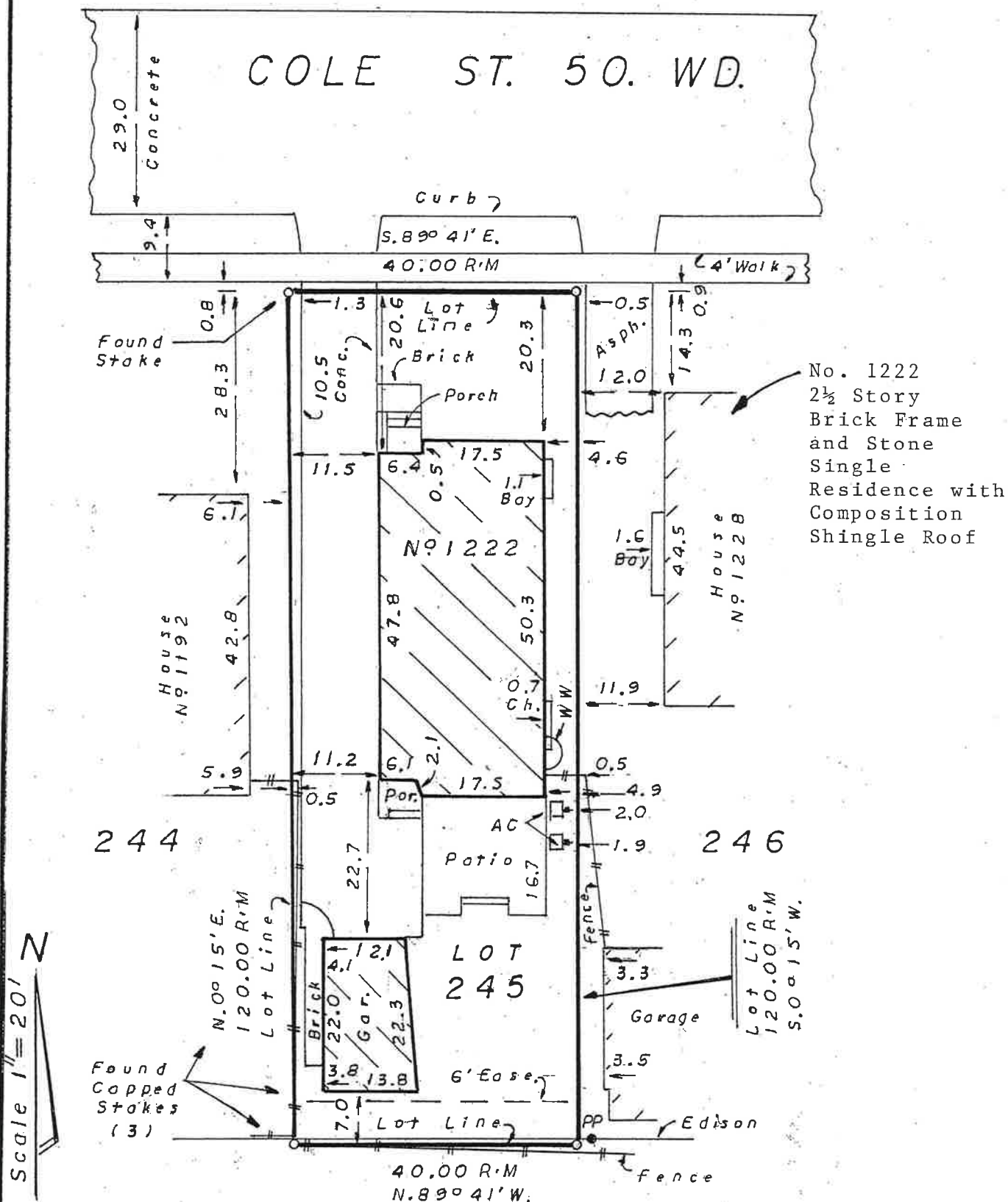
Built  
2016



Built  
2016



# CERTIFICATE OF SURVEY



LEGAL DESCRIPTION OF PROPERTY: ID # 20-31-155-063

Lot 245, LEINBACH - HUMPHREY'S WOODWARD AVENUE SUBDIVISION,  
City of Birmingham, Oakland County, Michigan.  
Plat recorded LIBER 27, PAGE 5, Oakland County Records.  
Bearings in relation to Cole St. as platted.

I HEREBY CERTIFY that I have surveyed and mapped the property herein described; and that said survey was performed with a relative error of closure of no greater than 1 in 5000 and that all the requirements of P.A. 132, 1970 have been complied with.

Prepared For: Amy Fabry  
202-302-0421

**GUARANTY SURVEY CO.**  
REGISTERED LAND SURVEYORS



PETER G. PICKFORD (248) 528-1717  
TOM NORTHRUP FAX (248) 528-1746

ORDER No. 191910 DATE July 13, 2021

BY: *[Signature]*

# **CASE DESCRIPTION**

## **1159 E Maple (21-39)**

**Hearing date: September 14, 2021**

**Appeal No. 21-39:** The owner of the property known 1159 E Maple, requests the following variance to replace the existing driveway:

**A. Chapter 126, Article 4.31(A)** of the Zoning Ordinance requires that a minimum of 65% (1924.00) of the front open space in all single-family districts shall be free of paved surfaces. The existing is 52.70% (1561.00 SF) and the proposed is 57.60% (1706.00 SF). Therefore a variance of 7.94% (218.00 SF) is being requested.

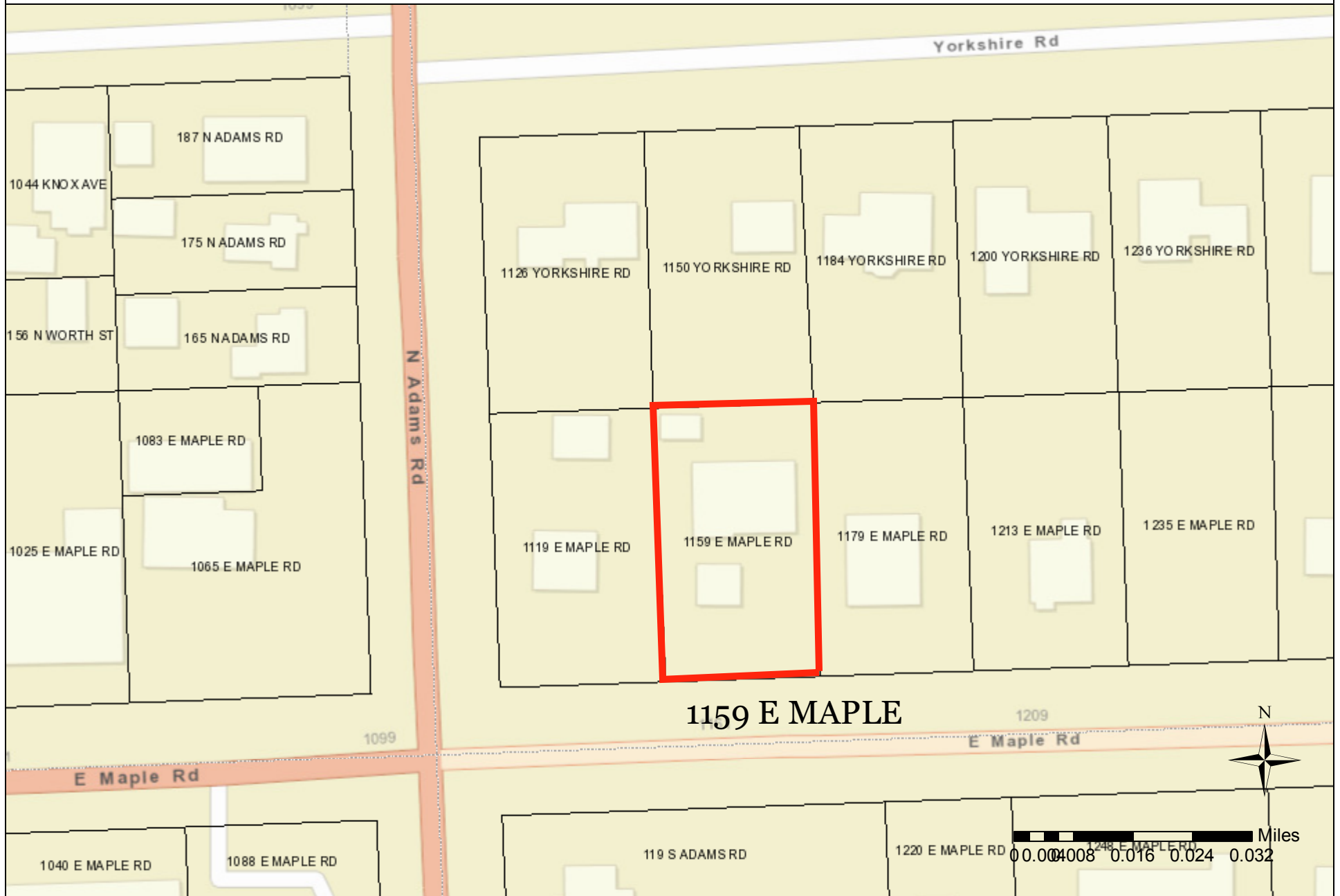
**Staff Notes:** The applicant is seeking to replace the existing driveway, which exceeds the allowable impervious area in the required front yard. The home was constructed in 1986

This property is zoned R1– Single Family Residential.

---

Jeff Zielke, NCIDQ, LEED AP  
Assistant Building Official

# 1159 E MAPLE MAP



**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
**151 Martin Street, Birmingham, MI 48009**  
Community Development: 248-530-1850  
Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Application Date: 8.12.21  
Received By: HT

Hearing Date: 9.14.21  
Appeal #: 21-0039

|                          |   |                                      |                                   |                               |                                       |
|--------------------------|---|--------------------------------------|-----------------------------------|-------------------------------|---------------------------------------|
| <b>Type of Variance:</b> | <input type="checkbox"/> Interpretation | <input type="checkbox"/> Dimensional | <input type="checkbox"/> Land Use | <input type="checkbox"/> Sign | <input type="checkbox"/> Admin Review |
|--------------------------|---|--------------------------------------|-----------------------------------|-------------------------------|---------------------------------------|

**I. PROPERTY INFORMATION:**

|                                   |             |                 |
|-----------------------------------|-------------|-----------------|
| Address: <u>1159 E. Maple Rd.</u> | Lot Number: | Sidwell Number: |
|-----------------------------------|-------------|-----------------|

**II. OWNER INFORMATION:**

|                                       |                         |                            |                        |
|---------------------------------------|-------------------------|----------------------------|------------------------|
| Name: <u>Robert Machasic</u>          |                         |                            |                        |
| Address: <u>1159 E. Maple Rd.</u>     | City: <u>Birmingham</u> | State: <u>MI</u>           | Zip code: <u>48009</u> |
| Email: <u>suburbanutica@yahoo.com</u> |                         | Phone: <u>586-899-7012</u> |                        |

**III. PETITIONER INFORMATION:**

|                                       |                         |                            |                        |
|---------------------------------------|-------------------------|----------------------------|------------------------|
| Name: <u>Robert Machasic</u>          |                         | Firm/Company Name:         |                        |
| Address: <u>1159 E. Maple Rd.</u>     | City: <u>Birmingham</u> | State: <u>MI</u>           | Zip code: <u>48009</u> |
| Email: <u>suburbanutica@yahoo.com</u> |                         | Phone: <u>586-899-7012</u> |                        |

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

To insure complete applications are provided, appellants must schedule a pre-application meeting with the Building Official, Assistant Building Official and/or City Planner for a preliminary discussion of their request and the documents that will be required to be submitted. Staff will explain how all requested variances must be highlighted on the survey, site plan and construction plans. Each variance request must be clearly shown on the survey and plans including a table as shown in the example below. All dimensions to be shown in feet measured to the second decimal point.

The BZA application fee is **\$360.00** for single family residential; **\$560.00** for all others. This amount includes a fee for a public notice sign which must be posted at the property at least 15-days prior to the scheduled hearing date.

| Variance Chart Example    |            |            |            |                 |
|---------------------------|------------|------------|------------|-----------------|
| Requested Variances       | Required   | Existing   | Proposed   | Variance Amount |
| Variance A, Front Setback | 25.00 Feet | 23.50 Feet | 23.50 Feet | 1.50 Feet       |
| Variance B, Height        | 30.00 Feet | 30.25 Feet | 30.25 Feet | 0.25 Feet       |

**V. REQUIRED INFORMATION CHECKLIST:**

- ☐ One original and nine copies of the signed application
- ☐ One original and nine copies of the signed letter of practical difficulty and/or hardship
- ☐ One original and nine copies of the certified survey
- ☐ 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- ☐ If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.

Signature of Owner: [Signature]

Date: 8/12/21

Signature of Petitioner: [Signature]

Date: 8/12/21



Robert Machasic  
1159 E. Maple Rd.  
Birmingham MI 48009

To: City of Birmingham

I am writing this letter of hardship asking for approval to redo my driveway.

It's in very poor condition, with cracks & dips, and even has small potholes.

I believe it's a hazard when walking up from the sidewalk. I live on a main street, 2 houses from Adams Rd., and traffic backs up in front of my drive.

I'm keeping the dimensions as they are currently, making no changes. Thank you for your kind consideration.

Sincerely,

Robert Machasic











Certified to: ROBERT MACHASIC

Applicant: ROBERT MACHASIC

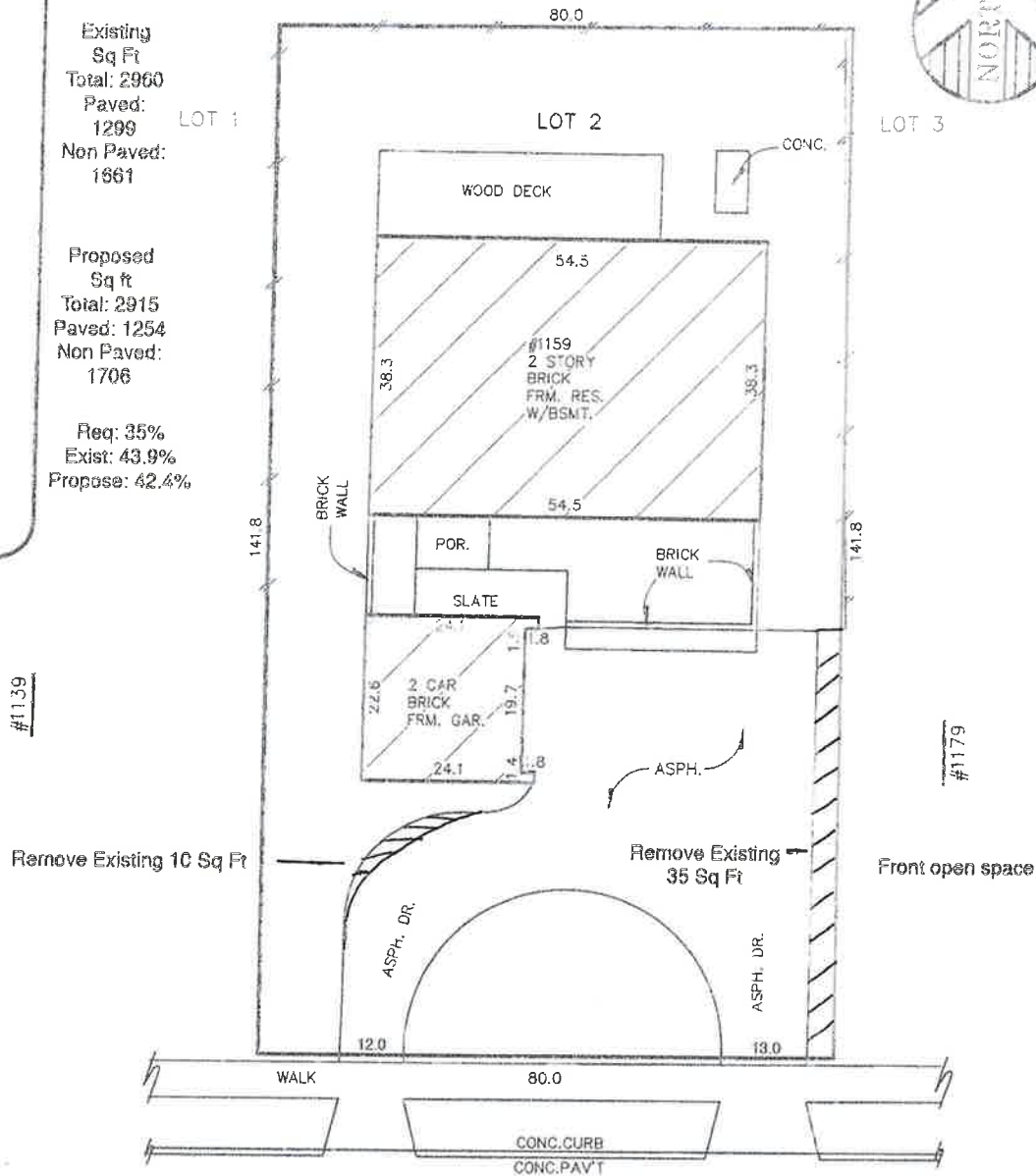
Property Description:

Lot 2; BIRMINGHAM ESTATES SUB., of part of the S.W. 1/4 of Sec. 30, T.2 N., R.11 E., Troy Twp. (now City of Birmingham), Oakland County, Michigan, as recorded in Liber 13 of Plats, Page 5 of Oakland County Records

Existing  
Sq Ft  
Total: 2960  
Paved:  
1299  
Non Paved:  
1661

Proposed  
Sq ft  
Total: 2915  
Paved: 1254  
Non Paved:  
1706

Req: 35%  
Exist: 43.9%  
Propose: 42.4%



E. MAPLE RD. 75' WD.

CERTIFICATE: We hereby certify that we have surveyed the above-described property in accordance with the description furnished for the purpose of a mortgage loan to be made by the forementioned applicants, mortgagor, and that the buildings located thereon do not encroach on the adjoining property, nor do the buildings on the adjoining property encroach upon the property heretofore described, except as shown. This survey is not to be used for the purpose of establishing property lines, nor for construction purposes, no stakes having been set at any of the boundary corners.

JOB NO: 21-02459 SCALE: 1"=20'  
DATE: 07/27/21 DR BY: JC



THIS SURVEY DRAWING IS VOID IF THE PROFESSIONAL SEAL IS NOT IN BLUE INK.

**KEM-TEC** PROFESSIONAL ENGINEERING, SURVEYING & ENVIRONMENTAL SERVICES  
A GROUP OF COMPANIES  
Eastpointe (800) 295.7222 Detroit (313) 758.0677 Ann Arbor (734) 994.0888 Grand Blanc (888) 644.0001  
FAX: (586) 772.4048 FAX: (586) 772.4048 FAX: (734) 994.0667 FAX: (810) 804.9955







# **CASE DESCRIPTION**

**1740 W Maple (21-40)**

**Hearing date: September 14, 2021**

**Appeal No. 21-40:** The owner of the property known 1740 W Maple, requests to appeal a use interpretation of the Building Official regarding indoor seating for a bakery in a B1 Neighborhood Business zone.

## **Staff Notes:**

After a recent expansion of the Holiday Market, the appellant inquired about adding indoor seating in a bakery section of the existing grocery store. The question was brought to the Building Official to determine if indoor dining would be a permitted use in a B1 Zoning District. The Building Official ruled that it would not and the appellant is appealing that decision.

The decision that indoor dining is not permitted in a B1 district was made after reviewing the district intent and the permitted uses in that district compared to other districts. The intent of the B1 District as stated in the Zoning Ordinance is to allow only uses necessary to satisfy basic shopping and/or service needs for adjacent residential areas which are not related to the shopping pattern of the general business district. In accordance with Section 1.13 of the Zoning Ordinance, any use not specifically listed as permitted in each district is considered non-permitted. The uses permitted in B1 as listed in Section 2.27 of the Zoning Ordinance would not include indoor seating for dining purposes that are typically found in other zones closer to the general shopping district. As you get closer to the downtown, the B2, B2B, B2C, and B4 Zoning Districts all permit food and drink establishments and delicatessens that would have indoor seating.

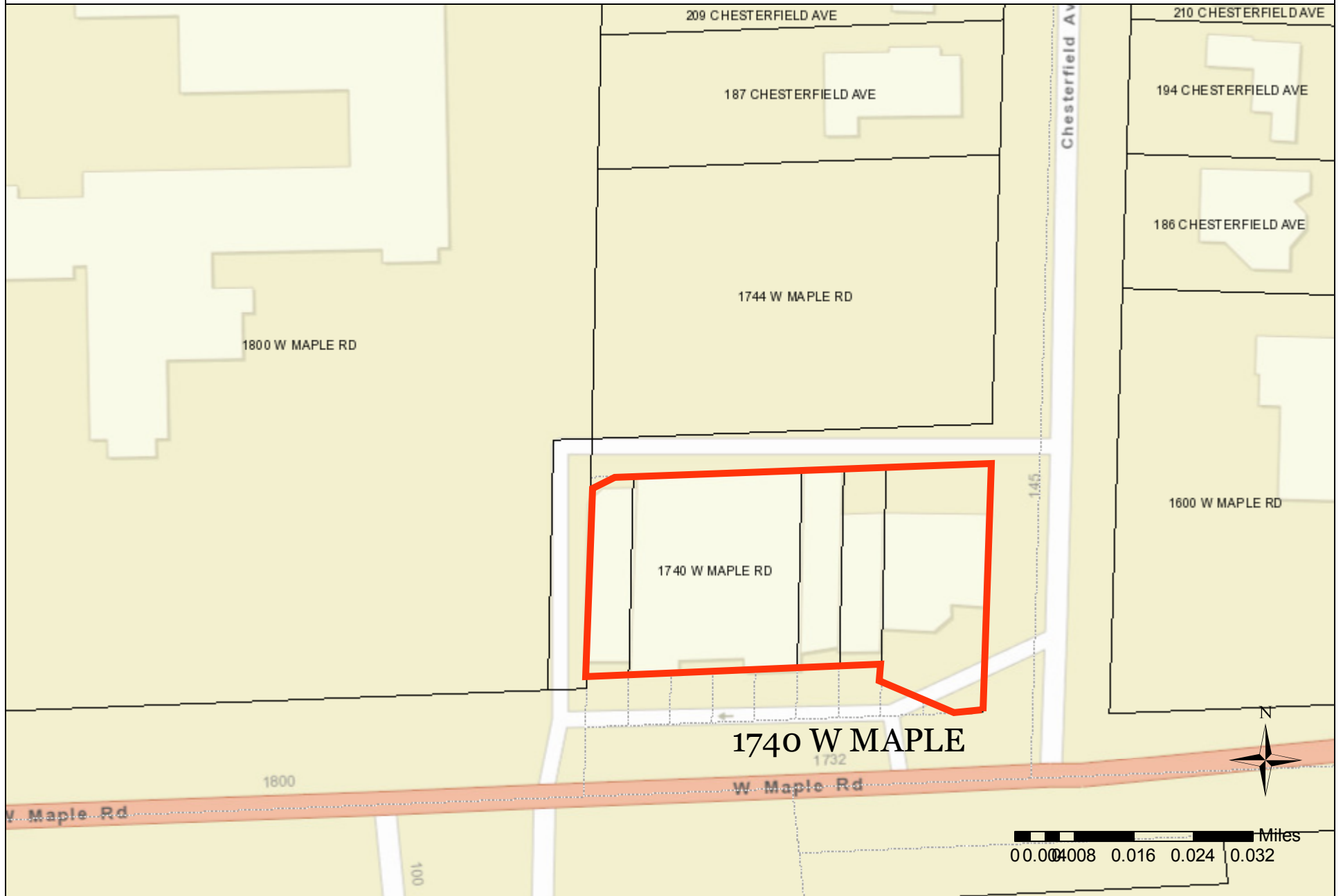
The appellant questioned how Cannelle Patisserie located at 159 N. Eton in a B1 zoned district was approved with indoor seating. It appears an oversight by staff was made when Cannelle Patisserie was approved with indoor seating for dining purposes.

This property is zoned B1.

---

Bruce Johnson  
Building Official

# 1740 W MAPLE MAP



**CITY OF BIRMINGHAM**  
**Community Development - Building Department**  
**151 Martin Street, Birmingham, MI 48009**  
**Community Development: 248-530-1850**  
**Fax: 248-530-1290 / [www.bhamgov.org](http://www.bhamgov.org)**

**APPLICATION FOR THE BOARD OF ZONING APPEALS**

Application Date: 7/14/2021

Hearing Date: 9-14-21

Received By: BM

Appeal #: 21-40

|                   |   |                                      |  |                               |                                       |
|-------------------|---|--------------------------------------|--|-------------------------------|---------------------------------------|
| Type of Variance: | <input checked="" type="checkbox"/> Interpretation <b>X</b> | <input type="checkbox"/> Dimensional | <input type="checkbox"/> Land Use <b>X</b> | <input type="checkbox"/> Sign | <input type="checkbox"/> Admin Review |
|-------------------|---|--------------------------------------|--|-------------------------------|---------------------------------------|

**I. PROPERTY INFORMATION:**

|   |             |                 |
|---|-------------|-----------------|
| Address: 1740 W MAPLE, BIRMINGHAM, MI 48009 | Lot Number: | Sidwell Number: |
|---|-------------|-----------------|

**II. OWNER INFORMATION:**

|                               |                  |                     |                 |
|-------------------------------|------------------|---------------------|-----------------|
| Name: Jerry Mills             |                  |                     |                 |
| Address: 737 Kensington Lane  | City: Bloomfield | State: MI           | Zip code: 48304 |
| Email: * jerry@millsjills.com |                  | Phone: 248-421-1101 |                 |

**III. PETITIONER INFORMATION:**

|                               |                  |   |                 |
|-------------------------------|------------------|---|-----------------|
| Name: Jason Krieger           |                  | Firm/Company Name: Krieger Klatt Architects, Inc. |                 |
| Address: 2120 E. 11 Mile Road | City: Southfield | State: MI   | Zip code: 48067 |
| Email: jason@kriegerklatt.com |                  | Phone: 248-414-9270                               |                 |

**IV. GENERAL INFORMATION:**

The Board of Zoning Appeals typically meets the second Tuesday of each month. Applications along with supporting documents must be submitted on or before the 12<sup>th</sup> day of the month preceding the next regular meeting. Please note that incomplete applications will not be accepted.

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| Variance Chart Example    |            |            |            |                 |
|---------------------------|------------|------------|------------|-----------------|
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**V. REQUIRED INFORMATION CHECKLIST:**

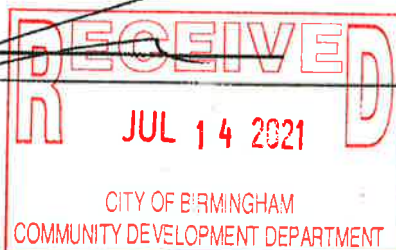
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- One original and nine copies of the signed letter of practical difficulty and/or hardship
- One original and nine copies of the certified survey
- 10 folded copies of site plan and building plans including existing and proposed floor plans and elevations
- If appealing a board decision, 10 copies of the minutes from any previous Planning, HDC, or DRB board meeting

**VI. APPLICANT SIGNATURE**

By signing this application, I agree to conform to all applicable laws of the City of Birmingham. All information submitted on this application is accurate to the best of my knowledge. Changes to the plans are not allowed without approval from the Building Official or City Planner.  
 \*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: [Signature] Date: 7/19/2021

Signature of Petitioner: [Signature] Date: 7/14/2021





**krieger klatt**  
ARCHITECTS  
architecture interiors consulting

July 21st, 2021

City of Birmingham Board of Zoning Appeals  
151 Martin Street, P.O. Box 3001  
Birmingham, Michigan 48012

Re: #Holiday Market Select – 1740 W Maple Rd., Birmingham, MI 48009

Hello Board of Zoning Appeals Members,

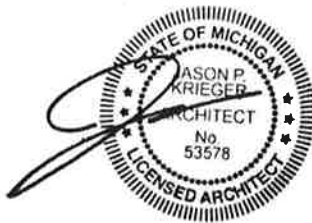
We are appealing the decision of the Building Official, regarding the addition of indoor seating in the Holiday Market Select at 1740 W Maple Road. The building department's belief is that this is not a permitted use within this zoning district. We believe the origin of this determination is that restaurants are not allowed within this zoning district. Our opinion is that this is not a restaurant, but rather a bakery. It is common for bakeries to have small seating areas where patrons can enjoy freshly bought products. This is seen in other establishments like Tim Hortons, Kroger, Holiday Market in Royal Oak, Bread and even Cannelle Patisserie which is located in Birmingham.

Cannelle's is located at 159 N Eton Street. This business is in the same zoning district and matches the intent of the indoor seating for Holiday Market Select. Within Cannelle Patisserie there is movable seating in the interior and exterior. That allows patrons who buy baked goods from the business to sit down and eat. The same goal is in mind at Holiday Market. This establishment will not be serviced by wait staff as this is not a restaurant. There is also no cooking equipment in the store or anything that would qualify Holiday Market as a commercial kitchen. The store will only have warming equipment that is typical for a market.

Based on this example of a similar business within a B1 district, the Holiday Market Select would match the intent of the zoning code and provide a valuable and community-enriching addition to the City of Birmingham. Attached to this you will find plans for the development of the interior of the store as well as a site plan.

Thank you,

Jason Krieger  
Principal  
Krieger Klatt Architects , Inc.



## CASE STUDY



**CANELLE PATISSERIE**  
159 N ETON ST, BIRMINGHAM, MI 48009





## DALTON • TOMICH

719 Griswold St. • Suite 270 • Detroit, Michigan 48226  
P: 313-859-6000 F: 313-859-8888 www.daltontomich.com

September 3, 2021

City of Birmingham Board of Zoning Appeals  
151 Martin Street, P.O. Box 3001  
Birmingham, Michigan 48012

Re: Holiday Market Select – 1740 W Maple Rd., Birmingham, MI 48009

Dear Board Members,

My firm represents the Holiday Market Select (HMS) located at 1740 W. Maple Road. This correspondence is submitted as a supplement to HMS's appeal regarding the addition of indoor seating in our Birmingham location. Please include this letter in the official record for this application. For the reasons below, HMS respectfully asserts that our proposed indoor seating falls comfortably within the spirit and intent of the B1 zoning ordinance.

### **Background Facts**

Holiday Market Select is a true neighborhood market where the gourmet experience is front and center. It caters to busy, time-strapped people who want the best for themselves and their families. To this end, HMS desires to place indoor seating in its W. Maple Road location to enhance the customer experience. This indoor seating would allow for customers to enjoy a quick bite to eat while shopping. The seating area would enhance the community experience at HMS.

HMS is located in the B1 Zoning District. The City Building Department has concluded that HMS's indoor seating is not a permitted use within the B1 Zoning District. HMS strongly disagrees with this conclusion. Therefore, HMS submits this appeal of the Building Department's decision.

### **Analysis**

Under Section 8.01(F)(1) of the Birmingham Zoning Ordinance:

- a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance.
- b. It may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement,

decision or determination as in its opinion ought to be made in the situation, and to that end shall have all the powers of the officer from whom the appeal is taken.

In this case, HMS requests a reversal of the decision regarding HMS's proposed indoor seating.

As the Board is aware, The B1 District is governed by Section 2.27 of the Zoning Ordinance. According to the Zoning Ordinance, the B1 District "is established for the convenience of shopping for persons residing in adjacent residential areas to permit only such uses as are necessary to satisfy those limited basic shopping and/or service needs which by their very nature are not related to the shopping pattern of the general business district."

Under the Zoning Ordinance, permitted uses in the B1 District include:

- community center
- government office
- government use
- religious institution
- school - private
- school - public
- social club
- recreational club
- swimming pool – semiprivate
- bakery
- barber shop/beauty salon
- drugstore
- dry cleaning
- grocery store
- hardware store
- neighborhood convenience store
- office
- shoe store/shoe repair
- tailor

Additionally, "outdoor cafes" are permitted as an accessory use, and "alcoholic beverage sales (on-premise consumption)" are allowed as a special land use. The Zoning Ordinance does not include a specific definition of "indoor dining" or "indoor seating."

Many of the uses permitted in the B1 District often include indoor seating for dining. For example, schools and social clubs nearly always have a cafeteria for dining. Government offices frequently have a small dining area for employees. Indoor dining areas are also common in bakeries. Finally, many religious institutions have a "fellowship hall" where meals or refreshments are served.

It is apparent that indoor seating for dining is contemplated within the B1 District when it is incidental to a permitted use.

In the zoning districts which permit bistros, restaurants, etc., the Zoning Ordinance does not specifically permit indoor seating for dining. To disallow indoor seated dining in every district

where it is not specifically permitted would result in banning the use from the entirety of the city. This is certainly not the result intended by the Zoning Ordinance.

By way of example, there is already at least one business in the B1 Zoning District which is successfully utilizing indoor seating for dining. Cannelle Patisserie, located at 159 N. Eton St., offers indoor seating for dining in a manner very similar to what HMS proposes. There have been no ill effects of this use. On the contrary, publicly available reviews indicate that the indoor seating area is viewed as a positive element.

Similar to Cannelle Patisserie, HMS proposes movable casual-style seating which caters to customers who will enjoy a quick bite rather than a full meal. The seating will be easily movable and consistent with "the convenience of shopping." HMS's proposed use is consistent with the objectives of the B1 Zoning District and is consistent with existing uses. Further, approval of HMS's proposed use would prevent inconsistent enforcement of the Zoning Ordinance within the B1 District.

### **Conclusion**

In sum, HMS's proposed indoor seating should be approved. It is consistent with the spirit and intent of the B1 Zoning District. It is also consistent with existing uses in the B1 Zoning District. Therefore, HMS respectfully requests a decision in its favor and consistent with the authority cited herein.

Very truly yours,

**DALTON & TOMICH, PLC**

*/s/ Daniel P. Dalton*

Daniel P. Dalton

DPD/ljo







BAKERY SEATING

APRIL 28, 2021





EXISTING PHOTOS

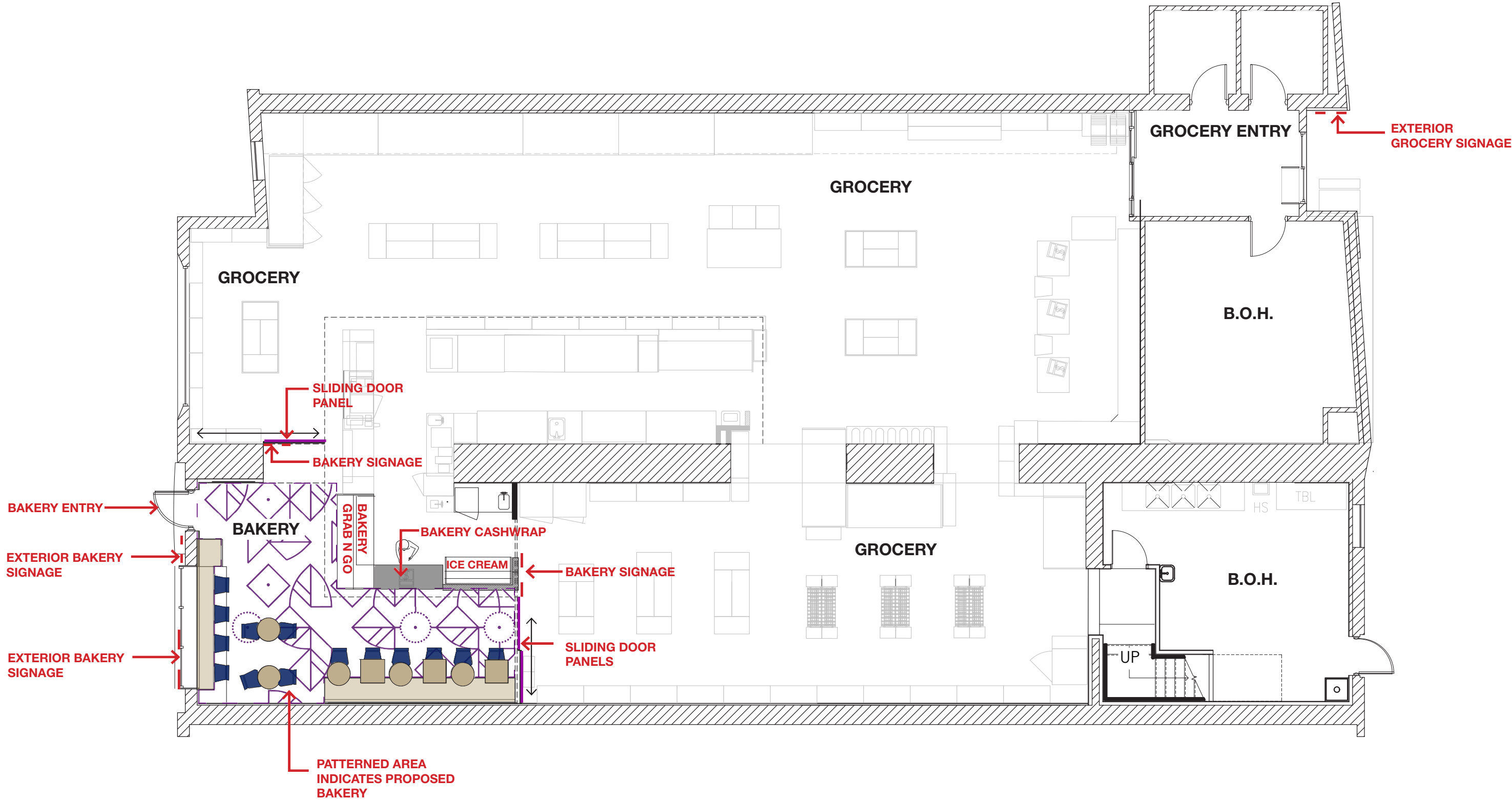


NOTE: EQUIPMENT SHOWN IS FOR DESIGN INTENT ONLY. COORDINATE ALL EQUIPMENT WITH ARCHITECT AND EQUIPMENT SUPPLIER. (TYP.)

NOTE: CEILING HEIGHTS ARE BASED ON AN ASSUMED 10'-6". DIMENSIONS TO BE VERIFIED. IF DIFFERENT CONTACT STUDIO H2G (TYP.)

NOTE: DIMENSIONS ARE FOR DESIGN PURPOSES ONLY (V.I.F.) SEE ARCHITECTURAL DRAWINGS. VERIFY EQUIP SIZES BEFORE STARTING ANY CONSTRUCTION

NOTE: DRAWINGS ARE FOR DESIGN PURPOSES ONLY. SEE ARCHITECT AND ENGINEERS DRAWINGS FOR NOTES DIMENSIONS AND DETAILS (TYP.)



FLOOR PLAN  
N.T.S. (NOT TO SCALE)



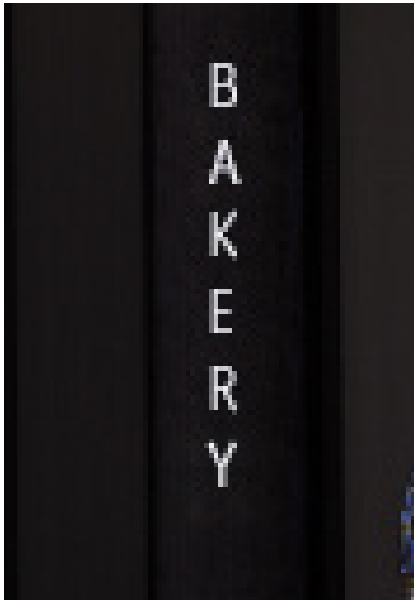


RENDERED VIEW- BAKERY ENTRANCE

EXTERIOR SIGN & LOGO TO BE ATTACHED TO EXISTING FACADE:

BLACK BACKER WITH WHITE "HM" LOGO TEXT SIZE TO BE V.I.F.

"BAKERY" TEXT TO BE APPROX. 12" H X 1" THICK DIMENSIONAL LETTERS, FINISH TO BE WHITE V.I.F. FONT: OFFICINA SANS STANDARD BOOK



PIN MOUNT LETTERS TO BE ATTACHED TO EXISTING FACE:

3.5" H X .25" THICK, FINISH TO BE WHITE, ATTACHED TO FACADE USING SPACERS TO ALLOW LETTERS TO STAND OFF THE WALL FONT: OFFICINA SANS STANDARD BOOK





RENDERED VIEW- GROCERY ENTRANCE



PIN MOUNT LETTERS TO BE ATTACHED TO EXISTING FACE:  
3.5" H X .25" THICK, FINISH TO BE WHITE,  
ATTACHED TO FACADE USING SPACERS TO  
ALLOW LETTERS TO STAND OFF THE WALL  
FONT: OFFICINA SANS STANDARD BOOK





RENDERED VIEW





RENDERED VIEW





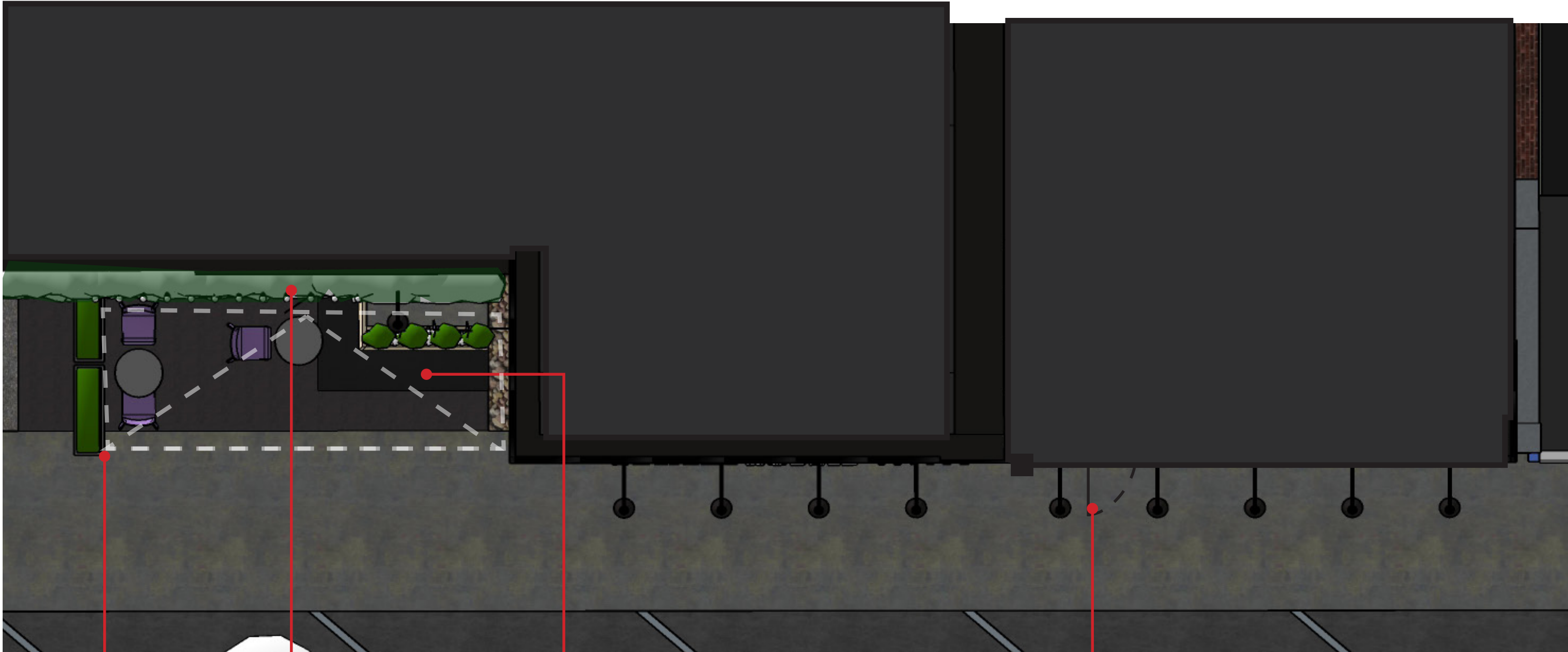
RENDERED VIEW





RENDERED VIEW





DASHED LINES REPRESENT SUN SAILS ABOVE, TO BE FAB2 AND FAB3, FABRICATED BY AWNING VENDOR (TYPICAL)

EXISTING WALL TO RECEIVE VERTICALLY HUNG FESTOON LIGHTS, L1

BUILT IN BENCH WITH PLANTER, TO BE EXTERIOR GRADE FINISHED WOOD TO MATCH W1, SEAT CUSHION TO BE FAB1

EXISTING FRONT ENTRY DOOR

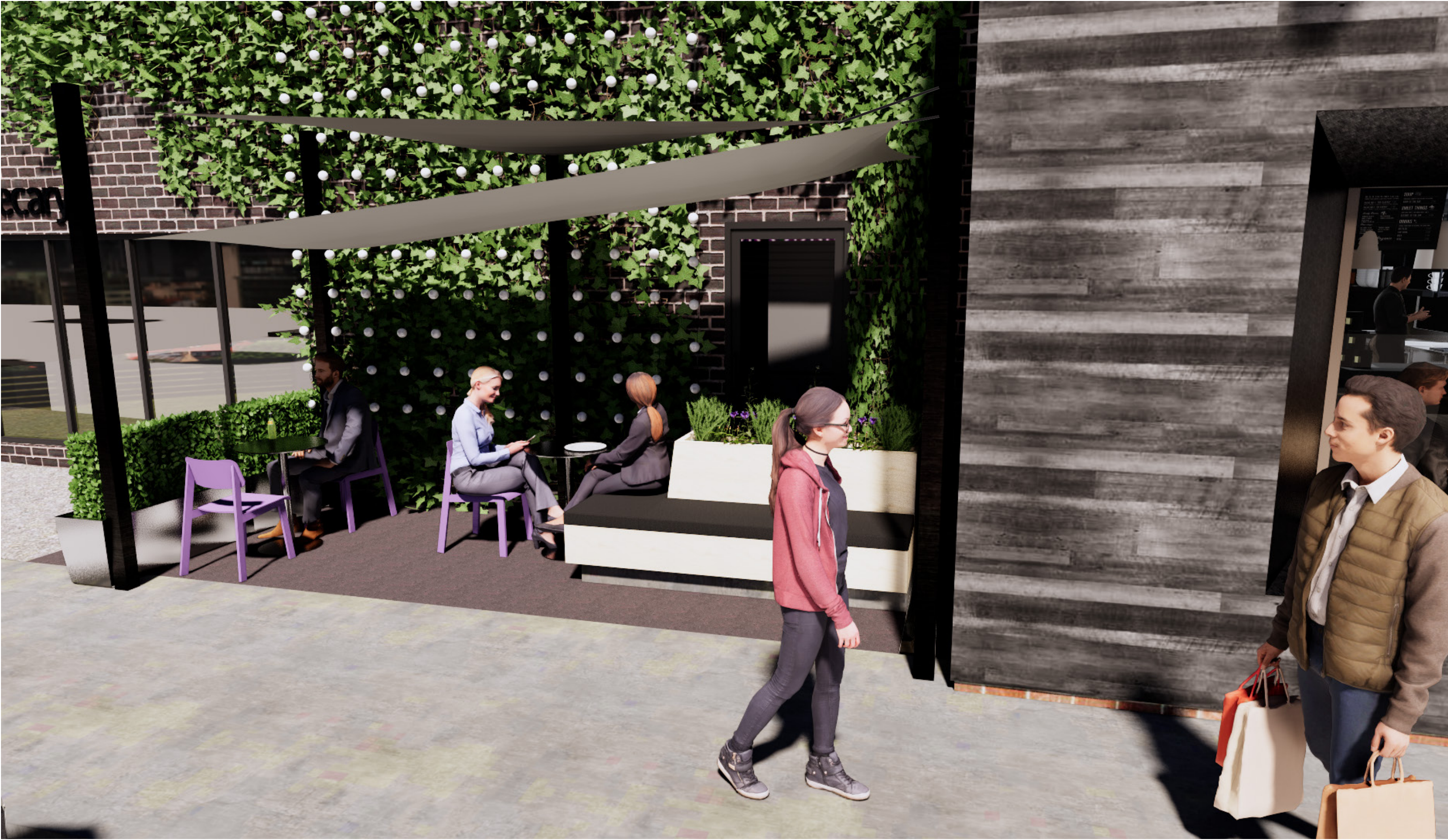
EXTERIOR SEATING PLAN (NTS- NOT TO SCALE)





RENDERED VIEW (EXTERIOR SEATING)





RENDERED VIEW (EXTERIOR SEATING)





RENDERED VIEW (EXTERIOR SEATING)





RENDERED VIEW (EXTERIOR SEATING)



Thank You.



2299 E Lincoln Birmingham, MI 48009 USA  
+1 248.671.4640 [www.studioH2G.com](http://www.studioH2G.com)