

BIRMINGHAM BOARD OF ZONING APPEALS AGENDA

UPDATED: VIRTUAL MEETING DUE TO COVID-19 PANDEMIC

Go To: <https://zoom.us/j/96343198370>

Or Dial: 877 853 5247 US Toll-Free

Meeting Code: 963 4319 8370

June 9, 2020
7:30 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF THE MINUTES

a) MAY 12, 2020

4. APPEALS

	Address	Petitioner	Appeal	Type/Reason
1)	501 S ETON	WHISTLESTOP	20-22	DIMENSIONAL
2)	1602 COLE	LUDWIG	20-16	DIMENSIONAL
3)	1884 W MELTON	KARCHON	20-27	DIMENSIONAL
4)	1165 HILLSIDE	NEEPER	20-28	DIMENSIONAL
5)	515 WESTWOOD	BOB STERN BLDG	20-29	DIMENSIONAL
6)	1055 LARCHLEA	GREATER DETROIT LANDSCAPING	20-30	DIMENSIONAL

5. CORRESPONDENCE

6. GENERAL BUSINESS

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

8. 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).

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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.

JUNE BZA MAP



**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MAY 12, 2020
City Commission Room
151 Martin Street, Birmingham, Michigan**

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, May 12, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLL CALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Richard Lilley, Erik Morganroth, Francis Rodriguez; Alternate Board Member Ron Reddy

Absent: Board Members Kevin Hart, John Miller; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Eric Brunk, I.T. Manager
Brooks Cowan, City Planner
Laura Eichenhorn, Transcriptionist
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official

Chairman Lillie explained 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.

Chairman Lillie took rollcall of the petitioners. All petitioners were present. Chairman Lillie explained the meeting was being held virtually due to the Covid-19 pandemic. He explained the procedures that would be followed for the virtual meeting.

T# 05-25-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF APRIL 14, 2020

Chairman Lillie asked that the spelling of his last name be corrected at the bottom of page three.

Motion by Mr. Morganroth

Seconded by Mr. Lilley to accept the Minutes of the BZA meeting of April 14, 2020 as amended.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Lilley, Lillie, Canvasser, Rodriguez, Reddy

Nays: None

T# 05-26-20

4. APPEALS

**1) 412 Willits
Appeal 20-21**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 412 Willits was requesting the following variances to construct an addition to the existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 15.00 feet. The existing and proposed total is 10.82 feet. Therefore, a variance of 4.18 feet is being requested.

B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 15.00 feet. The proposed is 11.02 feet. Therefore, a variance of 3.98 feet is being requested on the East side.

Assistant Building Official Zielke noted the home is historic and was built in 1865. The applicant was before the HDC in February 2020. This property is zoned R3 – Single Family Residential.

Jon and Lauren Stein, owners, and Brian Neeper, architect, were present on behalf of the petition. Mr. Stein and Mr. Neeper spoke on behalf of the petition.

In reply to an inquiry by Chairman Lillie, Mr. Neeper explained that there is a very shallow shed roof that protects part of the historic home to the rear. In order to allow water to flow off the roof, it would be prohibitively difficult to build an addition behind it. He said building behind the

home would also block in the existing home completely, and that the grading of the backyard is reasonably steep.

In reply to Mr. Morganroth, Mr. Neeper confirmed that the planned master bedroom would need to accommodate four to five feet of slope in the back in order to be built at grade. Mr. Neeper explained that even though that bedroom accommodates the slope, the further back the home is built the steeper the slope will be that requires accommodation.

In reply to Mr. Morganroth, Mr. Stein explained that the steep topography of the backyard and the condition of the existing rear addition were reasons why they did not want to build further into the backyard. He also explained that the plans of adding on to the east of the home would create a buffer between their home and their neighbors' atrium, which currently is a privacy issue for the Steins.

In reply to Mr. Canvasser, Mr. Stein explained that a lot across the street from their home was rezoned for office use, which will lead to a substantial increase in construction, first, and then traffic. He explained that as a result he and his wife are trying to move their living space more towards the side and rear of the home in order to maintain some distance and privacy from the bustle on the street. He said that these changes would create liveability, and said that for these reasons the need to add-on where the plans propose is not self-created.

Motion by Mr. Reddy

Seconded by Mr. Lilley with regard to Appeal 20-21, A. Chapter 126, Article 2, Section 2.08.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 15.00 feet. The existing and proposed total is 10.82 feet. Therefore, a variance of 4.18 feet is being requested. B. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 15.00 feet. The proposed is 11.02 feet. Therefore, a variance of 3.98 feet is being requested on the East side.

Mr. Reddy moved to grant approval of both variance and to tie them to the plans as submitted. He said the historic nature of the building, the across-the-street lot's rezoning and the narrowness of the 412 Willits lot all combine to form unique circumstances. He said the Steins were seeking to maintain some liveability in a very small structure.

Mr. Morganroth said he would not support the motion because he did not see a reason why the proposed addition could not be shifted to where the existing bedroom is. He said that while doing so would interfere with a wood deck, those kinds of compromises often must be made as part of remodeling. He said that since the house already has to compensate for a four-to-five foot drop behind the home, the slope of the rear of the home would be a factor in either remodeling scenario. He said for these reasons he would approve of granting an addition that goes into the sideyard setback since it could be avoided with other building decisions.

Mr. Canvasser said he would not support the motion either. He said he agreed with Mr. Morganroth's comments and saw the issue as self-created.

Mr. Lilley explained his seconding of the motion by noting that the proposed addition is minimally sized so as not to overwhelm the home or the neighborhood. He said he supported that because it would make the house more liveable for both the current owners and the future owners. He also noted that building into the rear could mean attaching the proposed addition to the already extant addition, which may not be able to support the proposed addition properly.

Mr. Rodriguez said this case posed some difficulty for him, and that ultimately the question came down to whether the need is self-created. He said he did not hear a reason why it was not self-created, even if he did appreciate the appellant's proposed plans in terms of dealing with the noise that will stem from the new office space across the street.

Chairman Lillie said he would not support the motion either for the reasons listed by Mr. Morganroth and Mr. Canvasser. He said the appellants did not show practical difficulty, and said they could accomplish most of what they wanted by adding on to the rear of the home.

Motion failed , 2-4.

ROLL CALL VOTE

Yeas: Reddy, Lilley

Nays: Morganroth, Rodriguez, Canvasser, Lillie

**2) 501 S. Eton
Appeal 20-22**

City Planner Brooks Cowan presented the item, explaining that the owner of the property known as 501 S. Eton was requesting the following dimensional variance regarding parking requirements in the MX Zone.

A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use. The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an

eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building.

The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

City Planner Cowan noted the subject property was built in 1968 and is zoned MX, Mixed Use. At the time of construction, the building was zoned (I) Industrial and had a parking requirement of 2 parking spaces + 1 square foot of parking space per 1 square foot of building space over 2,001 square feet. The building is 3,729 square feet and therefore was required to provide a total of 12 parking spaces when originally constructed. The Zoning Ordinance parking requirements have since been amended to 1 parking space per 75 square feet of restaurant use and 1 parking space per 300 square feet of office/retail use. The applicant appeared before the Planning Board on January 22nd, 2020. The Planning Board expressed their support for the project and motioned to approve the Final Site Plan and Design Review with the condition that the applicant satisfy the parking requirements through either a shared parking agreement or by obtaining a variance from the Board of Zoning Appeals.

Jerry Pesick, attorney, Jawan Matti, architect, and Valter and Elda Xhomaqi, owners, were present on behalf of the petition. Mr. Pesick spoke on behalf of the petition.

Mr. Canvasser suggested that given the ongoing parking negotiations with the Griffin Claw the variance request for the Whistle Stop was premature.

Chairman Lillie agreed with Mr. Canvasser, noting that the negotiations could either lead to there being no need for the variance or to a reduced need for a variance. He offered the petitioners two options: to have the BZA move forward and vote on the item during the present meeting, or to have the BZA adjourn the item to await the results of the negotiation with Griffin Claw.

Mr. Pesick said that Mr. LePage, owner of Griffin Claw, had indicated that he would not be able to move forward on a formalized parking agreement with the Xhomaqis presently. Mr. Pesick said he would be happy to discuss the issue with Mr. LePage once more, however, in order to return to the BZA with a final and definitive answer. Mr. Pesick said that the current informal arrangement with Mr. LePage is working quite well, and that he remains very supportive of the Whistle Stop's plans.

Chairman Lillie then asked Mr. Pesick if the petitioners would prefer a vote during the present meeting, an indefinite adjournment of the petition, or a tabling of the petition to the regularly scheduled June 2020 BZA meeting.

Mr. Pesick said he would prefer that the petition be tabled to the June 2020 meeting in order to allow for construction to be started on the Whistle Stop after that meeting whether a formal agreement is reached with Mr. LePage or whether a variance is granted.

Motion by Mr. Canvasser

Seconded by Mr. Reddy with regard to Appeal 20-22 A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. Chapter 126, Article 4, Table A requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use. The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building. The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

Mr. Canvasser moved to adjourn Appeal 20-22 until the regular June 2020 meeting of the BZA.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Canvasser, Reddy, Rodriguez, Lilley, Lillie, Morganroth

Nays: None

**3) 1313 Lakeside
Appeal 20-24**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1313 Lakeside was requesting the following variances to construct a new single family home:

A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 37.08 feet. Therefore a 7.08 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.21 feet. Therefore a 7.21 foot variance is being requested.

C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Assistant Building Official Zielke explained the applicant was requesting a height variance for a portion of the proposed residence. The lot slopes from the front to the rear towards the Rouge River. This property is zoned R1 – Single Family Residential.

Kurt Couture, architectural designer, and Scott and Dana Marcus, owners, were present on behalf of the petition. Mr. Couture spoke on behalf of the petition.

In reply to Mr. Morganroth, Mr. Couture confirmed that if the second wall was ended and tied into the first wall, so that the last five to six circles were gone, the need for Variance C could be substantially mitigated.

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez with regard to Appeal 20-24 A. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum building height for the R1 zoning district is 30.00 feet to the midpoint. The proposed height is 37.08 feet. Therefore a 7.08 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06.4 of the Zoning Ordinance requires that the maximum eave height for the R1 zoning district is 24.00 feet. The proposed height is 31.21 feet. Therefore a 7.21 foot variance is being requested. C. Chapter 126, Article 4, Section 4.03(A) of the Zoning Ordinance requires that no accessory structures shall be erected in the required front open space. A retaining wall is proposed to be constructed in the required front open space; therefore a variance to permit the retaining wall is requested.

Mr. Morganroth moved to approve Variances A, B and C, tied to the plans as presented, with the understanding that Mr. Couture would work with City staff to minimize the extent to which the retaining wall projects into the required open front space. He said the property had unique circumstances due to the extreme drop in grade from the front to the rear and that it would be unavoidable to have a variance for height because of the degree of the drop. He said the need for the variances was not self created and that strict compliance with the ordinance would be unduly burdensome.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Rodriguez, Canvasser, Lilley, Lillie, Reddy

Nays: None

**4) 1124 Smith
Appeal 20-26**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 1124 Smith, was requesting the following variance to construct a new single family home with a detached garage:

A) Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 22.30 feet. The existing and proposed is 21.00 feet. Therefore a 1.30 foot variance is being requested.

Assistant Building Official Zielke explained the applicant was requesting to construct a new single family home with a detached garage. This case was in front of the board in 2019, for a distance between structures on west side, Case 19-39. Minutes from that meeting were included in the agenda packet. This property is zoned R3 – Single Family Residential.

Jim Vervisch, builder, was present on behalf of the appeal.

Motion by Mr. Rodriguez

Seconded by Mr. Canvasser in regards to Appeal 20-26, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 22.30 feet. The existing and proposed is 21.00 feet. Therefore a 1.30 foot variance is being requested.

Mr. Rodriguez moved to deny the variance for lack of proof of practical difficulty. He noted that the builder also indicated that the house could be built without the variance.

Mr. Morganroth said the variance request was impossible to approve because none of the criteria for allowing a variance were met.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Rodriguez, Canvasser, Lilley, Lillie, Morganroth, Reddy

Nays: None

**5) 1989 Webster
Appeal 20-25**

and

6) 1971 Webster

Appeal 20-27

Appeals 20-25 and 20-27 were presented together at the request of Chairman Lillie since the appeals were similar in nature and had the same appellant. They were voted on separately.

Assistant Building Official Zielke presented Appeal 20-25, explaining that the owner of the property known as 1989 Webster was requesting the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Assistant Building Official Zielke then presented Appeal 20-27, explaining that the owner of the property known as 1971 Webster was requesting the following variance to construct a new single family home with a detached garage:

A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the East side.

Both 1989 Webster and 1971 Webster are zoned R3 - Single Family Residential. Robert Bloomingdale, founder of Bloomingdale Construction, was present on behalf of both appeals.

Motion by Mr. Morganroth

Seconded by Mr. Lilley with regard to Appeal 20-25, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Mr. Morganroth explained that 1989 Webster is unique because it is a corner lot with two front setbacks, which forces this home to need a variance for distance between homes. The home is being built within the building envelope and the plans meet all the other requirements of the ordinance. He explained the need for the variance was not self-created and granting the variance would do substantial justice to the applicant. For these reasons he moved to approve the variance as advertised and to tie the variance approval to the plans as submitted.

Chairman Lillie said he would support the variance approval because on most blocks in Birmingham there is a home that runs into an issue where the garage is on the

wrong side of the lot due to the 9-5, 5-9 rule. He said that 1989 Webster is the home on the block running into that issue in this case.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Lilley, Lillie, Rodriguez, Reddy, Canvasser

Nays: None

Motion by Mr. Reddy

Seconded by Mr. Canvasser with regard to Appeal 20-27, A. Chapter 126, Article 4, Section 4.74(C) of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 14.00 feet. The proposed is 11.00 feet. Therefore, a variance of 3.00 feet is being requested on the West side.

Mr. Reddy said he was moving to grant the variance and to tie it to the plans as submitted for the same reasons Mr. Morganroth moved to approve Appeal 20-25.

Chairman Lillie said he would support granting the variance for Appeal 20-27 for the same reason he supported granting the variance for Appeal 20-25. He noted that the plans also reduce the existing non-conformity of the lot.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Reddy, Canvasser, Lilley, Lillie, Morganroth, Rodriguez

Nays: None

T#05-27-20

5. CORRESPONDENCE (included in agenda)

T# 05-28-20

6. GENERAL BUSINESS

T# 05-29-20

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

T# 05-30-20

8. ADJOURNMENT

Motion by Mr. Morganroth

Seconded by Mr. Rodriguez to adjourn the May 12, 2020 BZA meeting at 9:33 p.m.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Morganroth, Rodriguez, Canvasser, Reddy, Lilley, Lillie

Nays: None

Bruce R. Johnson, Building Official

CASE DESCRIPTION

501 S. Eton (20-22)

Hearing date: May 12, 2020

Appeal No. 20-22: The owner of the property known as 501 S. Eton requests the following dimensional variance regarding parking requirements in the MX Zone.

A. Chapter 126, Article 4, Section 4.46(A) states that off-street parking spaces are required based on land use or land uses for the site, and that the number of spaces required per land use is detailed in Table A. **Chapter 126, Article 4, Table A** requires eating establishments with combined indoor-outdoor consumption to provide 1 parking space for each 75 square feet of floor area and 1 parking space per 300 square feet of commercial office or retail use.

The subject property currently has a total of 21 parking spaces. 13 parking spaces are located on site while an additional 8 parking spaces in the public right-of-way were approved by City Commission in 2007. The Whistle Stop restaurant is one of three tenant spaces in the subject building, the other two spaces are currently vacant. Whistle Stop occupies 1,494 square feet and therefore requires 20 parking spaces as an eating establishment. This requirement leaves one remaining parking space for the two vacant tenant spaces on the southern portion of the building.

The applicant is proposing to combine two tenant spaces and expand Whistle Stop into 2,554 square feet of restaurant use. Doing so would require 34 parking spaces for the eating establishment. The remaining 1,175 square foot tenant space is currently vacant, though if used for office/retail would require an additional 4 parking spaces. Assuming the aforementioned uses for the subject building, a total of 38 parking spaces would be required for the two tenant spaces. Therefore, the applicant has requested a dimensional variance of 17 parking spaces.

Staff Notes:

The subject property was built in 1968 and is zoned MX, Mixed Use. At the time of construction, the building was zoned (I) Industrial and had a parking requirement of 2 parking spaces + 1 square foot of parking space per 1 square foot of building space over 2,001 square feet. The building is 3,729 square feet and therefore was required to provide a total of 12 parking spaces when originally constructed. In 1974, the Zoning Ordinance was amended to require food services to provide 1 parking space per 75 square feet of floor area, therefore creating a legal conformity for the subject property.

The applicant appeared before the Planning Board on January 22nd, 2020. The Planning Board expressed their support for the project and motioned to approve the Final Site Plan and Design Review with the condition that the applicant satisfy the parking requirements through either a shared parking agreement or by obtaining a variance from the Board of Zoning Appeals.

CASE DESCRIPTION FOLLOW UP

501 S. Eton (20-22)

Hearing date: June 9th, 2020

Appeal No. 20-22: On May 12th, 2020, the applicant known as 501 S. Eton Street requested a variance of 17 parking spaces in order to expand the restaurant use for Whistle Stop. The applicant had indicated they had an informal agreement for shared parking with their neighbor, Griffin Claw, but at the time was unable to obtain a formal agreement with their neighbor in order to satisfy the Ordinance. The Board of Zoning Appeals motioned to adjourn the hearing to the next month in order to allow the applicant adequate time to demonstrate they have exhausted all possibilities in obtaining a shared parking agreement. Following the May 12th, 2020 Board of Zoning Appeals meeting, the Planning Division worked with the applicant to assist them in exhausting all possibilities regarding shared parking agreements. The Ordinance has multiple possibilities to pursue for shared parking that were discussed with the applicant. The methods of providing a shared parking agreement detailed in Section 4.45(G) of the Zoning Ordinance are provided below.

4.45(G): Methods of Providing Parking Facilities: The required off-street parking facilities for buildings used for other than residential purposes may be provided by any one of the following methods:

- 1. By providing the required off-street parking on the same lot as the building being served, or where practical, and with the permission of the City Commission, the area in the public right-of-way abutting the property in question may be included as a portion of the required parking area if such area is improved in accordance with plans which have been approved by the engineering department.*
- 2. By providing the required off-street parking within 100 feet of the building being served, distances being measured along the most direct line of public pedestrian access.*
- 3. By the collective provisions of the required off-street parking for 2 or more buildings or uses, provided that the total of such off-street parking areas shall not be less than the sum of the requirements of the various buildings or uses computed separately, and the location of such area meets the requirements of subsection (2) of this section, except as provided in Section 4.45(G)(4) below.*
- 4. By the shared provisions of the required off-street parking for 2 or more buildings or uses, which has been approved by the Planning Board. Shared parking between uses is based on the fact that certain neighboring uses may operate at different times over a 24-hour period with their greatest demand for parking occurring during different times. By allowing uses to share a parking facility, the amount of impervious land in the city may be reduced.*
 - a. The total number of combined spaces required for each use may be reduced by up to 50% upon the Planning Board making the determination that the peak parking demands of the uses being served occur at different times and the parking area meets the anticipated demands of all the uses. The Planning Board will make this determination based upon the following information, to be provided by the petitioner:*

- i. *The peak hours of operation for each use.*
 - ii. *The average parking demand and the peak parking demand for each use, based on reliable data. Such data will include actual parking counts for these uses, or at similar uses or actual parking counts are not available, reliable traffic/parking demand models may be used.*
 - iii. *The impact of shared parking arrangement on adjacent uses.*
 - iv. *Written legal evidence in the form of deeds, leases or contracts that establish the shared parking facility.*
- b. *Once a shared parking arrangement is approved by the Planning Board, such arrangement must be recorded on the land titles for all affected properties. If a shared parking arrangement is subsequently terminated, or if the uses change, Planning Board approval shall be automatically revoked and each use shall be required to comply with the requirements of this section.*
- c. *The petitioner(s) shall be responsible for any costs incurred by the city in contracting with consultants to review the proposed site plan as deemed necessary by the Community Development Director*

One option was to pursue reducing the amount of spaces required for the variance. Griffin Claw is required to provide 72 parking spaces on site and has provided 78, which is an excess of 6 spaces. These 6 spaces could potentially be used by the collective provisions requirement of 4.45(G)(3) and would have to be demonstrated to the City by a signed contract from both parties. This would reduce the applicant's variance requirement from 17 down to 11 parking spaces, and the use of these 6 spaces would not have to be recorded on the land title for both of the affected properties. The applicant has indicated that Griffin Claw was not willing to enter into a contractual agreement for 6 spaces that would reduce the variance requirement to 11 spaces.

Another option was to pursue a shared parking agreement that would eliminate the need for a variance. There was general consensus from the Planning Board that the peak parking demand for the uses of Whistle Stop and Griffin Claw occur at different times of the day, therefore the required spaces may be reduced up to 50% in a shared agreement. If Griffin Claw were to share 17 spaces with Whistle Stop, Article 4.45(G)(4) of the Zoning Ordinance would require that the arrangement be recorded on the land title of each property since Griffin Claw does not have an excess of 17 spaces and they would be sharing a portion of their required 72 spaces. The applicant has indicated that Griffin Claw was not willing to enter into a shared parking agreement for 17 parking spaces that would eliminate Whistle Stop's need for a variance.

The potential for adjacent properties to acquire available on street parking spaces to be included in their parking counts, and then use those spaces in a shared parking agreement was also discussed. Article 4.45(G)(1) of the Zoning Ordinance allows the area in the public right-of-way abutting a property to be included as a portion of the required parking area with the permission of the City Commission. Whistle Stop currently uses this provision to count 8 on-street parking spaces towards their requirement. At the moment, Griffin Claw has 5 on-street parking spaces abutting its property that are not counted in their parking requirement, Irongate has 17 on-street parking spaces abutting its property that are not counted in their parking requirement, and Crosswinds has 52 on-street parking spaces that are not counted in their parking requirement. It was determined that if a property requested to have on-street spaces counted towards their parking requirement by City Commission and was approved, these spaces could not be used in

a shared parking agreement with an adjacent neighbor. All parking spaces used in a shared parking agreement must be off-street spaces.

Questions regarding recommendations in the Birmingham Plan Draft that were relevant to Whistle Stop were also brought up at the Board of Zoning Appeals Meeting on May 12th, 2020. For clarification, there is an entire section in the Draft Master Plan dedicated to the Rail District where the Whistle Stop resides (pg. 224-232). Relevant pages regarding the unique character of single story buildings in this district and parking requirement recommendations from the Birmingham Plan Draft have been attached for further information.

The Draft Plan discusses how a number of buildings in the Lower Rail District are non-conforming, yet the current single story character of the area is a nationally emerging trend for business incubator space and is attractive to a demographic that is not particularly interested in the downtown corridor. The final charrette presentation on May 21st, 2019 discussed how forcing this area to meet current MX requirements would take away from the “gritty and cool” character of the area. In order to preserve its current character, the Draft Master Plan states that “everything should be done to support its continued existence and its extension as one-story buildings embedded in very small parking lots” (pg. 227), and that “in the near term, the Lower Rail District should remain informal and somewhat experimental” (pg. 228).

The first recommendation in the Birmingham Plan Draft for the Rail District includes creating an overlay zoning district for the Lower Rail District that implements zoning adjustments to activate more lenient development review standards. The third recommendation of the Birmingham Plan Draft is also of relevance to the current applicant because it recommends that the 1999 Eton Road Corridor Plan be updated to include a provision that would eliminate parking requirements for current and future one-story buildings (pg. 228) in order to maintain and compliment the repurposed industrial character of the area.

Whistle Stop is currently located above the northern edge of the recommended Lower Rail District Boundary. An inquiry was sent to the Master Plan Team, Duaney Plater-Zyberk (DPZ), as to why 501 S. Eton was not included in the boundary for the Lower Rail District, and their response was that it was an omission on their part, and that it should be included in the final Lower Rail District Boundary recommendation due to the age, design and location of the building.

501 ETON 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

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 2-12-20

Hearing Date: 4-14-20

Received By: BW

Appeal #: 30-22

Type of Variance:	<input type="checkbox"/> Interpretation	<input checked="" type="checkbox"/> Dimensional <u>Parking</u>	<input type="checkbox"/> Land Use	<input type="checkbox"/> Sign	<input type="checkbox"/> Admin Review
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I. PROPERTY INFORMATION:

Address: <u>501 S Eton</u>	Lot Number:	Sidwell Number:
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II. OWNER INFORMATION:

Name: <u>Valter Khomagi / WHISTLE STOP DINER INC.</u>			
Address: <u>501 S Eton</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: *		Phone:	

III. PETITIONER INFORMATION:

Name: <u>SAME</u>		Firm/Company Name:	
Address:		City:	State: Zip code:
Email: <u>vali2@gmail.com</u>		Phone: <u>248-635-7056</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 12th 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.

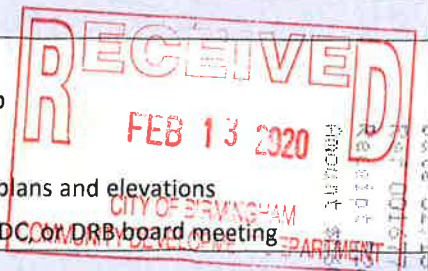
*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: Valter Khomagi

Date: Feb 12, 2020

Signature of Petitioner: Valter Khomagi

Date: Feb 12, 2020





STEINHARDT PESICK & COHEN
PROFESSIONAL CORPORATION Attorneys & Counselors

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Suite 120
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Jerome P. Pesick
H. Adam Cohen
Jason C. Long
John E. Scheibelhut

Frederick D. Steinhardt
(1941-2000)

Walter B. Mason, Jr.
(Retired)

March 23, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

**VIA: EMAIL AND
FIRST CLASS MAIL**

Re: 501 South Eton Street, Birmingham ("Property")
Whistle Stop Diner, Inc. ("Petitioner")

Dear Members of the Board of Zoning Appeals:

Please accept the following as a hardship letter on behalf of the Petitioner in support of its request for a dimensional variance from the following sections of the Birmingham Zoning Ordinance ("Zoning Ordinance"):

**Variance from the "Off-Street Parking Spaces" requirement
of the MX zone as set forth in Article 4, Section 4.46.**

The Property sits within the boundaries of the MX District (Mixed Use) of the Rail Overlay District and within the boundaries of the Via Activation Overlay District and Eton Road Area Corridor. The Property is located on the southeast boundary of the City of Birmingham, bounded by South Eton Road on the west, Hazel Street on the north, Graten Street to the east, and Palmer Street to the south.

The Petitioner, Whistle Stop Diner, is a traditional American diner that has been operating in Birmingham for decades, which serves patrons high quality, homestyle comfort food. The diner itself operates in the north end of a one-story brick building that also houses two other businesses (the "Building"). The space to the south of the diner with which it shares a wall is a bakery kitchen used by the Petitioner as the area devoted to baking bread and pastries for the diner. The



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retail commercial space situated in the south end of the building was previously operated as a yoga/health studio and is now vacant.

The proposed renovation of the restaurant is minor and does not involve an expansion of the building's current footprint except for the additional new walk-in cooler. The diner currently is tiny (1,494 square feet) and very outdated. Petitioner wishes to remove the wall between the current diner and the bakery space to reconfigure the diner and kitchen, so that the bakery kitchen is incorporated into the diner and the seating areas and bathrooms are updated to bring them into ADA compliance. The central purpose is to provide a safe area for the cooks and restaurant workers by increasing the size of the kitchen and storage coolers. Although these minor alterations of the building will allow the diner to increase its seating capacity and add a window banquette for patrons, the central purpose is to increase the size of the kitchen and storage coolers. Once the wall is removed so the existing restaurant is combined with the bakery, the entire restaurant space that will be approximately 1,000 square feet larger. However, even though the Building footprint will essentially remain unchanged. See Architectural Site Plan A050 and Floor Plan A100.

Pursuant to the requirements of the MX off-street parking standards of the Zoning Ordinance ("Ordinance"), this minor re-design to incorporate the existing restaurant with the bakery will require a total of 38 parking spaces for the Building. The Property currently provides 21 spaces, including 8 on-street parking spaces along Eton, Hazel and Palmer streets pursuant to a right-of-way parking authorization the City granted to the Property in 2007. The Petitioner would therefore need to increase the spaces provided by 17 to accommodate the diner renovation. The addition of 17 spaces creates a practical difficulty and unnecessary hardship for the Petitioner due to the uniqueness of this Property, its Rail District location and unusual shape, and the configuration of the existing parking. Thus, the Petitioner requests the Board of Zoning Appeals grant a variance for the Property, as set forth below, so that this Property, which is essentially unchanged, can continue to operate with 21 parking spaces.

The most recent Birmingham Master Plan draft states that "[b]oth the Triangle and Rail Districts suffer from lot patterns that are generally **small and include a number of oddly shaped properties**. Redeveloping these properties at a high capacity doesn't easily pencil when parking must be accommodated." The condition



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of having an oddly shaped property should not close the door for redevelopment, instead creative solutions should be discussed. The Birmingham Plan further states; **"...the Rail District needs public parking capacity and the ability to use that capacity in lieu of providing parking in mixed-use development projects."** See The Birmingham Plan, Draft 10/03/19, page 230. Importantly, the City of Birmingham recently approved a new street design in the Rail District. The concept plan is aimed to maximize parking, improve walkability and bikeability in the Rail District. This pending project hopes to achieve a redesign of Eton Road, adding additional features that would reduce traffic speeds and improve pedestrian crossing. These improvements could vastly improve parking and traffic in the Rail District in which the Property sits. See Esshaki, Tiffany. "Commission approves new street design for Rail District" Birmingham-Bloomfield Eagle, January 4, 2018.

Variance from Off-Street Parking Spaces Requirement

The Petitioner requests this variance, which would allow the diner to continue to operate as it currently exists, as a result of the unique size, shape, physical characteristics and location of this Property as it relates to other neighboring and nearby properties, coupled with the requirements in the Eton Road Corridor principles of design. Further, the purpose of combining the diner and bakery is not focused on increasing the number of patrons or to further intensify the use, but rather is mainly concerned with the health and safety of the kitchen operation and the restaurant employees.

The uniqueness of this area of the City is recognized by the Ordinance. It is interesting to note that although the general rule for restaurant use is 1 space for each 75 feet of floor area and retail commercial use is 1 space per 300 feet of floor area, the Eton Road Corridor plan does not establish the number of parking spots required for commercial buildings, only residential. The parking requirements for the Via Activation Overlay District do not apply to this instance. Further, the Rail District, in which the Property is located, does not have listed parking requirements. The Downtown Birmingham and Triangle Overlay Districts, on the other hand, both rely upon Article 4 of the Ordinance for off-street parking requirements. As stated above, the Property currently has 21 parking spaces, but needs a total of 38 to strictly comply with the Ordinance.



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The location of the Property has been fortunate for the Petitioner in many ways since it opened its doors in the 1980s. But in order to renovate the Building, the Petitioner has come to realize that its very unique location ironically stands in the way of improving the diner. To the west of the diner are residential homes, to the north is the Irongate of Birmingham apartment complex, to the immediate east is a commercial building and condos, and to the south is the newly built Griffin Claw Brewing Company. The Petitioner has an informal agreement with the Griffin Claw owner to allow diner patrons to park in their parking lot for overflow, if necessary. Also, the Griffin Claw and Whistle Stop do not require parking during the same hours of the day. The Griffin Claw sits less than 100 ft. away from the property and is closed on Mondays, open Tuesday through Thursday at 2:00 p.m. and Friday through Sunday at noon. Whereas the Whistle Stop serves breakfast and lunch and is open Monday through Saturday from 7:00 a.m. to 3:00 p.m. and Sunday 8:00 a.m. to 3:00 p.m. There is minimal overlap in operating hours between the two businesses. It has and will continue to be a high priority to the Petitioner to minimize the impacts of traffic on the residential neighborhoods.

ARTICLE 8.03(F)(3)(a)(i) - BECAUSE OF SPECIAL CONDITIONS APPLICABLE TO THE PROPERTY IN QUESTION THE PROVISIONS OF THE ZONING ORDINANCE, IF STRICTLY APPLIED, UNREASONABLY PREVENT THE PROPERTY OWNER FROM ENHANCING THE PROPERTY FOR ITS PERMITTED PURPOSE.

There are exceptional and extraordinary circumstances and conditions applicable to the Property because of its placement, size, unique shape and location along Eton and the thoroughfare running from Eton to Maple streets. These unusual circumstances cause a practical difficulty and unnecessary hardship for the Petitioner and prevent the Petitioner from renovating the diner to make it a safer place for the employees. Because of its location within the Rail District, it is physically impossible for off-street parking to be added to the Property. There is no option to expand the parking area behind or on either side of the existing building. The result of limiting a minor renovation of the diner which does not expand the existing footprint seems contrary to the goals of the Eton Road Corridor Plan. The clear and overwhelming pursuit of the district in which the Property sits, is to "encourage the retention, improvement and expansion of existing uses that help define the Eton Road Corridor." See Ordinance Sec. 2.39(c). The Petitioner wishes to do just that; improve its diner by incorporating adjoining bakery space and



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expanding its kitchen to provide local patrons a more comfortable area to enjoy their dining experience. The initial vision for the Eton Road Corridor was enhanced by the existence of the Petitioner as referenced in their plan over twenty years ago; "the Whistle Stop Restaurant, located on Eton north of Palmer, serves the immediate neighborhood. The restaurant's residential scale, quality building materials, and shallow front setback is particularly pedestrian-friendly." See Eton Road Corridor Plan, page 7, October 1999. The off-site parking restriction contained in the Ordinance is inconsistent with the goals of the Rail District for a modern, mixed use and pedestrian friendly neighborhood, as applied to the Property. Application of the parking restriction to this Property prohibits the diner from being modernized and maintained as part of the Rail District.

ARTICLE 8.01(F)(3)(A)(ii) - LITERAL ENFORCEMENT OF THE CHAPTER WILL RESULT IN PRACTICAL DIFFICULTY AND UNNECESSARY HARDSHIP.

The literal enforcement of the off-street parking requirements of the MX zoning district as it applies to an eating establishment will result in a practical difficulty and an unnecessary hardship to the Petitioner. Although the Building is designed in all respects as intended by the Zoning Ordinance, that is, with the standards of the Eton Road Corridor Plan, it is clear that the application of the off-street parking found in the MX zoning district, if applied to this particular unusually configured and located Property in this unique situation, will not only cause the Petitioner a practical difficulty and an unnecessary hardship, but also causes a conflict with the Eton Corridor Plan and the district's vision statement and intentions for the area. First, the Eton Road Corridor Plan expresses the driving vision as follows:

The Eton Road Corridor will be a mixed-use corridor with a range of commercial, service light industrial and residential uses that serve that needs of the residents of Birmingham. **Creative site planning will be encouraged to promote high quality, cohesive development that is compatible with the existing uses in the corridor and the adjacent single-family residential neighborhoods.** Eton Road Corridor Plan, page 8, October 1999.

Second, the spirit and intent of the Birmingham Ordinance is to have mixed-use buildings with an activated urban neighborhood pedestrian streetscape. The



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hardship caused here is that this MX zoning district standard does not satisfactorily accommodate the location of this Property with its unique shape as it is situated in the neighborhood. The result is that application of the off-street parking requirements to this Property has the unintended result of impeding the diner from redesigning and upgrading its interior space. The redesign will modernize the diner, with a minor expansion of the dining area, bring the building into ADA compliance, and allow an expansion of the kitchen and coolers, with only a minor change to the Bding's footprint. The only change to the footprint is to install a modern cooler for the health and safety of the patrons. The hardship is caused because of the unique siting of this Property, its configuration and the actual uses contemplated under the MX regulations.

ARTICLE 8.01(F)(3)(a)(iii) – THE GRANTING OF THE VARIANCE WILL NOT BE CONTRARY TO THE SPIRIT AND PURPOSE OF THE ZONING ORDINANCE NOR CONTRARY TO PUBLIC HEALTH, SAFETY AND WELFARE.

Granting of the variance that Petitioner requests will not be contrary to the spirit and purpose of the Zoning Ordinance nor will it be detrimental to the public health, safety and welfare. Other than being able to provide the current required amount of parking spots, all other elements of this building's renovations will be built in accordance with the Eton Road Corridor Plan and the Ordinance.

The purpose, spirit and intent of the Ordinance is clearly set forth in Section 2.39. It directs development in the MX District "that will encourage development in the Eton Road Mixed Use District and implement the Eton Road Plan", and further to "encourage the retention, improvement, and expansion of existing uses that help define the Eton Road Corridor." As noted above and referenced in the Eton Corridor Plan, the Whistle Stop diner is a quintessential example of an encouraged use within the Eton Road MX District. An "expansion and improvement" of this use is expressly supported by the Ordinance.

The location of this Building and the unusual shape and siting of the Property at the corner of Eton and Hazel, do not fit the normal MX zone paradigm. The spirit and intent of the Eton Road MX zone is not enhanced or in any way accomplished by applying the off-street parking restrictions to the diner. It is physically impossible to add parking to this Property due to its unique shape, size and location. The parking requirements unnecessarily inhibit the retention and



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improvement of the encouraged use of this Property as a neighborhood restaurant. The spirit, purpose and intent of the Zoning Ordinance is served by granting a variance that would allow the Petitioner to enhance and remodel the diner in the way described in this letter without adding 17 parking spots.

ARTICLE 8.01(F)(3)(a)(iv) – THE GRANTING OF THE VARIANCE WILL RESULT IN SUBSTANTIAL JUSTICE TO THE PROPERTY OWNERS, THE OWNERS OF THE PROPERTY IN THE AREA AND THE GENERAL PUBLIC.

Granting of the variance will result in substantial justice to the owner of the Property and the neighboring owners and the general public. The purposes of the Eton Road Corridor Plan are set forth above. The fulfillment of these requirements and the purpose of the Eton Road MX District have been determined by the Planning Commission and the City Commission as being for the benefit to the health, safety and welfare of the community. The purpose and planning goals of the Eton Road Corridor Plan encourage new, compact development with a traditional mixed-use urban form, in order to create an area of Birmingham that is as vibrant as the downtown, as well as retention and improvements of encouraged uses, such as the neighborhood Whistle Stop diner, all for the benefit of the community. The unique location and shape of this Property has ruled out the possibility of creating 17 new parking spots. The neighboring property owner, namely the owner of Griffin Claw, supports the renovation of the Property and has continuously participated with the Petitioner in an informal shared parking arrangement regarding the Property and Griffin Claw. That property owner also owns the nearby Eton Street Station. Lastly, granting this variance will be of benefit to the general public and will result in substantial justice to all of the citizens of the City of Birmingham as it aligns with the goals of the Eton Corridor Plan.

THE PRACTICAL DIFFICULTY AND HARDSHIP IS NOT SELF-CREATED.

The practical difficulty and hardship experienced by this Petitioner is not self-created but exists because of the existing size, shape, location and natural features of the Property and existing building. This Property is an odd, trapezoid, almost triangular shape situated on the corner of Eton Street and Palmer Street. The reasons for this variance and the current development plan is to benefit the City of Birmingham with a building and development that is complimentary to, consistent



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with, and encouraged by the Eton Road Corridor Plan and the Eton Road MX District.

The Property has existed on this site for decades, as has the diner. Petitioner's proposed improvements to the Whistle Stop do not expand the building's footprint, except for the small addition of a modern walk-in cooler. The hardship and practical difficulty of adding 17 parking spaces in order to accomplish Petitioner's proposed interior renovation of the Property is not self-created. If parking spaces must be added, the Property owner will be deprived of the use of the entire building for its intended purposes, which purposes are expressly encouraged by Ordinance Section 2.39.

Conclusion

The variance requested is necessary to preserve the enjoyment and substantial property rights possessed by the property owner. Further, granting this variance provides the following relief: (i) the Petitioner will not be unreasonably prevented from renovating and improving the existing use of the Property; (ii) the literal enforcement of the Zoning Ordinance will result in unfair and unnecessary hardship to the Petitioner; (iii) the granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety, and welfare; and (iv) the granting of the variance will result in substantial justice to the Petitioner. Finally, the practical difficulty and unnecessary hardships experienced by the Petitioner are not caused by the Petitioner. The granting of this variance will produce a situation where the renovation of this Property as proposed in all ways complies with the purposes and objectives of both the Eton Road Corridor Plan and the Eton Road MX District.

Accordingly, Petitioner requests the Board of Zoning Appeals to grant the dimensional variance as submitted herein. Please contact the undersigned with any questions or requests for additional information.

Very truly yours,

Jerome P. Pesick

JPP/pas

cc: Whistle Stop Diner, Inc.
Ms. Jawan Matti

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 22, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Robin Boyle, Stuart Jeffares

Administration: Jana Ecker, Planning Director
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

01-09-20

B. Approval Of The Minutes Of The Regular Planning Board Meeting of January 8, 2020

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to approve the minutes of the Regular Planning Board Meeting of January 8, 2020 as submitted.

Motion carried, 6-0.

VOICE VOTE

Yeas: Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Abstain: Williams

01-10-20

C. Chairperson's Comments

Chairman Clein explained standard Planning Board meeting procedures.

01-11-20

D. Approval Of The Agenda

There were no changes to the agenda.

01-12-20

E. Community Impact Study Review and Preliminary Site Plan Review

1. 35001 Woodward (Parking lots & Hunter House) - Revised Community Impact Study Review to allow construction of a new 5 story mixed use building containing retail, office and residential uses

Planning Director Ecker presented the item. She confirmed that 35001 Woodward is located in the Parking Assessment District (PAD).

Motion by Mr. Williams

Seconded by Mr. Share to accept for filing the memorandum from Assistant City Engineer Austin Fletcher dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Kevin Biddison, architect for the project, commented on the fact that the 11 extra parking spaces could be used by the general public because the stairway and elevator accessing the residential areas of the building would be keycoded to prevent unauthorized entry.

Kelly Cobb, owner of Hunter House Hamburgers, stated that the wait time on Hamilton will increase if the number of parking spots available to Hunter House decreases.

Mr. Williams explained he had previously voted against the Community Impact Study (CIS) for this project due to concerns regarding potential congestion at Park and Maple stemming from an entrance to the site being located too close to Maple. He said that the current CIS corrected that issue.

Motion by Mr. Share

Seconded by Mr. Williams to accept the CIS as provided for the proposed development at 35001 and 35075 Woodward – with the following conditions:

- 1) Provide copies of Phase I and II Environmental Assessments;**
- 2) Applicant must provide mitigation strategies for control of noise vibration and dust during construction;**
- 3) Applicant will be required to bury all utilities on the site;**
- 4) Applicant must distinguish an area for the separation and storage of recycling;**
- 5) Applicant must conform to the streetscape design as outlined in the new E. Maple streetscape project; and,**

6) Applicant provide information on all life safety issues and Fire Dept. approval, as well as details on the proposed security system provided to and approved by the Police Department.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Clein, Whipple-Boyce, Koseck, Emerine, Ramin

Nays: None

Mr. Biddison explained the trash receptacles would be stored and obscured behind the wall meaning they would only be visible to stationary observers, looking into the building at a certain angle, while the glass doors are rolled up to allow entry or egress.

Ms. Whipple-Boyce shared concern regarding the fact that if one were to enter the garage in their vehicle and discover that the cluster of three parking spaces allotted to Hunter House were full, one would have to either reverse onto Hamilton or execute a multi-point turn to exit back onto the street.

Mr. Share and Mr. Koseck shared concern regarding the parking layout on the site as well.

Mr. Biddison stated that the eleven or twelve parking spaces being discussed as public spaces could also be executive or residential spaces, meaning they could be private instead and tied to an office or retail lease.

Mr. Cobb spoke, saying:

- Hunter House employees will continue parking in the parking deck, for which they are reimbursed, as opposed to parking in the three parking spaces in the garage off Hamilton.
- According to the deed the developer is required to provide Hunter House with 14 parking spaces which shall also be located on Hunter House property.
- If he were to enter the three-space section in the garage in his truck and discover those spots full, he would not be able to execute a turn that would allow him to leave given the insufficient space.
- There have been a number of deed violations on the part of the developer in this process including not seeking Mr. Cobb's approval of plans for the site before the plans' submission to the City, not seeking Mr. Cobb's approval for planning to build a non-hotel development, and proposing to leave a space for Hunter House that Mr. Cobb says would be unusable for operating the restaurant.
- He proposed multiple compromises to the developer which would allow Hunter House to continue and for a development to be built on the lot, all of which were passed on by the developer.
- If the developer and the Hunter House cannot reach an understanding, Mr. Cobb would pursue legal action. He said that legal action could result in a delay of the development for seven to ten years. Mr. Cobb said that the City, the developer, and himself should sit down together and try to reach an agreement amenable to all parties in order to avoid such a delay.

Chairman Clein said that in many respects he was in strong favor of the plan submitted for this site, including three stories of residential with units under 1,000 square feet, less reliance on office space, and well designed facades on most of the project. He continued that he sympathized with the Hunter House, which he said was being pulled from a park-and-go model to an urban center model. Chairman Clein said there were also aspects of the plan that gave him pause, including the functionality of the three parking space area in the garage and the Hunter House's charge that their space as laid out in these plans would be unusable. He acknowledged that it is not within the Board's purview to get involved in a dispute between two private parties. He stated that it is within the Board's purview to make sure all elements of the plans are functional and adhere to ordinance, however, and that he was unclear if the three parking space area off of Hamilton met those requirements.

Mr. Williams said he would not approve plans that include the three space parking area off of Hamilton because that layout creates more problems than it solves or propose a restaurant layout that would not comply with various laws, including health codes and ADA regulations. He concurred with the Chairman that the Board should not intervene in a matter between private parties, but knowing that the restaurant could not operate legally is a matter within the Board's purview.

Mr. Share also emphasized that the Board should not be involved in a dispute between two private parties. He said the Board has ruled on projects before that have resulted in legal action between two private parties subsequent to the approval. Mr. Share said he would consider moving forward on a preliminary site plan ~~under those~~ **despite these** circumstances, but that this particular site plan was deficient under Article 7, section 7.27 of the Zoning Ordinance in a couple of respects including the three parking space area off of Hamilton and the parking designated for the public off of Park Street. He said that the parking off of Park Street could become hazardous unless there was a traffic flow plan presented.

Mr. Koseck concurred with his colleagues' previous comments that the dispute between the Hunter House and the developer is not within the Board's purview. Continuing, he said that the plans are an improvement over previous plans submitted for the development, and that the building complies with ordinance. He stressed that the Board's only present obligation regarding this development was to ensure that residential parking would be included onsite. Mr. Koseck suggested that if the development included an egress across from the loading dock, a vehicle could move straight through the garage from Hamilton onto Park Street if it saw no free parking spaces in the three space area off of Hamilton. In that design, it could also turn into the three parking space area if there were a vacant space. This would avoid the need for either a vehicle reversal onto Hamilton or a multi-point turn in the case of full spaces. Mr. Koseck said he would approve the plans if that possibility were present.

Mr. Biddison confirmed that such a route through the garage would be possible. He stated he would need the owner to comment further on how the route would be designed.

Ms. Whipple-Boyce said that from a Board perspective the site should not include the parking off of Hamilton because it is not required by ordinance and creates an unsafe situation. She said she understood the legal agreement between the developer and the Hunter House required 14 spaces, but that was not the Board's concern. She expressed great enthusiasm for the majority

of the project in general, and frustration that the contention between the developer and the Hunter House was resulting in poor design in certain areas. She conceded that Mr. Koseck's proposal of being able to pass through from Hamilton onto Park would in theory solve the issue, but that the best outcome from a City perspective would be to eliminate the spaces off of Hamilton.

Mr. Emerine said he was also very enthusiastic about most aspects of the project with the exception of the issues with the parking off of Hamilton. He said he could not support the plans without a resolution to the Hamilton parking issue which could include Mr. Koseck's proposal of allowing entry off of Hamilton and egress onto Park.

Mr. Share said he would offer an editorial comment to the developer and the Hunter House, recommending that the parties actually speak to one another and resolve their issues.

Chairman Clein agreed, and said a future City Commission discussion of potential public land use by this development would prove very difficult if the issues between the Hunter House and the developer are not resolved.

Motion by Mr. Williams

Seconded by Mr. Koseck to schedule a special meeting of the Planning Board for the evening of February 27, 2020 at 7:30 p.m. to be held in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Ramin, Whipple-Boyce, Clein, Emerine

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to postpone consideration of the preliminary site plan for 35001 Woodward to February 27, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

01-13-20

F. Special Land Use Permit Reviews

- 1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350**

Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.

01-14-20

G. Final Site Plan & Design Reviews

1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Final Site Plan & Design Review for

the entire site to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

Matter withdrawn by the applicant during the Planning Board's January 22, 2020 meeting.

2. 501 S. Eton (Whistle Stop) - Final Site Plan & Design Review for construction of rear addition to the existing building and changes to existing building

City Planner Dupuis, Elda Xhomaqi, owner and Jawan Matti, architect, presented the item. City Planner Dupuis confirmed that the Zoning Ordinance requires a formal agreement for shared parking to be approved by the Planning Board.

Motion by Mr. Williams

Seconded by Mr. Share to receive and file the memorandums from Assistant City Engineer Fletcher dated January 22, 2020 and from the Building Department dated January 21, 2020, and an email from Norman LePage to Planning Director Ecker and City Planner Dupuis dated January 22, 2020.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Share, Whipple-Boyce, Clein, Emerine, Koseck, Ramin

Nays: None

Mr. Koseck said the Whistle Stop could be positively improved if the windows were made more transparent from the exterior.

Ms. Xhomaqi said she would consider updating the windows.

Chairman Clein invited public comment.

Karen Fithe said the landscaping in the neighborhood around Whistle Stop is rather lacking and asked that more effort be into the upkeep of the Arborvitaes near the entrance to the parking lot that the Whistle Stop shares with the Griffin Claw. She said that the Arborvitaes on Hazel Street are well maintained. She said there is no landscaping behind the Whistle Stop along the fencing of the condominium complex on Graten Street and that a line of Arborvitaes could be appropriate there as well. Ms. Fithe said she was also concerned that patrons of the Griffin Claw would congregate in the outdoor seating section of the Whistle Stop in the evening, contributing to noise in the neighborhood. She said pulling onto Eton from Hazel is difficult when large vehicles are parked in front of the Whistle Stop, which contributes to unsafe traffic conditions. Ms. Fithe concluded by saying she hoped that the freezers at the Whistle Stop will not be too noisy, as she said the Griffin Claw freezers are noisy enough to impact residential living.

Chairman Clein invited Ms. Matti and Ms. Xhomaqi to reply to Ms. Fithe's concerns.

Ms. Xhomaqi said that the outdoor seating would only be available in the summer, and not likely early in the morning.

Ms. Matti noted that the freezer Whistle Stop would be installing would be much smaller than the one at Griffin Claw, so noise would not likely be an issue. She said Arborvitaes could be added in some of the areas Ms. Fithe suggested, and that the Whistle Stop could add a bicycle rack to help reduce the number of vehicles parking in front of the restaurant.

Mr. Williams said that the City needs to consider putting a stop sign at Eton and Hazel in order to allow vehicles to exist Graten. He stressed that the lack of stop sign at that intersection is highly hazardous, and that he has been saying that for ten years.

Ms. Whipple-Boyce expressed her enthusiasm for the project, and said she would not require that the applicant add landscaping to the back property line since it is an asphalt parking lot. She said that it would make sense to add landscaping to the area near the entrance to the parking lot, noting that an adjacent building had successfully grown ornamental tall grasses on a similar strip of land. She said that it would likely be possible to find plants that could withstand being located close to a parking lot. Ms. Whipple-Boyce said she would also like to see the Whistle Stop enter into a formal shared parking agreement with the owners of Griffin Claw.

Chairman Clein expressed his support for the project. He encouraged Whistle Stop to be responsive to nearby residents' concerns in order to ensure the restaurant's continued success. Chairman Clein emphasized that the applicant can either enter into a formal parking agreement or pursue a variance from the Board of Zoning appeals.

Mr. Williams pointed out that while normally the Planning Board would review a formal shared parking agreement, it should be acceptable to allow the Planning Division to approve an appropriate shared parking agreement for this item should one occur.

Chairman Clein agreed. He invited the applicant to talk with Planning Director Ecker further to explore options for satisfying the parking requirements, including potentially counting adjacent street parking if approved by the City Commission to do so. For the benefit of the Board of Zoning Appeals, Chairman Clein stated that as long as relations remain amicable between the Whistle Stop and its neighbors he is happy to see the business continue with investments in the building.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Williams to Motion to approve the Final Site Plan and Design Review for 501 S. Eton St. – Whistle Stop diner – with approval of the LED Litebars as architectural enhancements and with the following conditions:

- 1. The applicant must provide 26 additional off-street parking spaces, enter into a written shared parking agreement with the adjacent property owner subject to review and approval by the Planning Division, or obtain a variance from the Board of Zoning Appeals;**
- 2. The applicant must revise the lighting proposals and photometric plan to not exceed 1.5 foot-candles at all property lines or obtain a variance from the Board of Zoning Appeals;**

- 3. The applicant receive administrative approval from the Planning Division for the proposed tables and chairs to ensure they are constructed primarily of metal, wood, or material of comparable quality and submit new plans with outdoor dining hours and add a trash receptacle within the outdoor dining area;**
- 4. The applicant must provide details to the Planning Division and/or the Design Review Board for approval for all proposed signage;**
- 5. The applicant must submit material samples; and,**
- 6. Comply with the requests of the Planning Board and all City departments.**

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, Williams, Share, Clein, Emerine, Koseck, Ramin

Nays: None

3. 1026 Canterbury Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Mr. Williams noted a lot of foliage to the west of the house that would block solar panels on the side. He also observed that foliage in front of the home would not block the solar panels but would prevent the solar panels from being obtrusive to the across-the-street home.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1026 Canterbury based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

4. 1800 Pine Street (House) - Design Review to consider installation of solar panels on roof of single family home

City Planner Dupuis presented the item.

Motion by Mr. Williams

Seconded by Mr. Koseck to approve the Design Plan for 1800 Pine based on the plans submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Koseck, Share, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

01-15-20

H. Pre-Application Discussion

1. 219 Elm Street (existing chiropractic office)

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:15 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Mark Highlen of Beztak presented the item. He explained the residents of Beztak's five current sites are 75 and older. The proposed expansion into 219 Elm Street would be for residents 55 and older seeking upscale apartments ranging from 1,140 square feet to 1,500 square feet in size. Mr. Highlen said they would be replacing the building at 219 Elm with a five-story building with stepped back upper floors, LEED certification, and the City's required parking contribution. There would be a total of 27 parking spaces for 24 units.

In response to Chairman Clein, Mr. Highlen stated he checked with the Planning and Building Departments to ensure ordinance compliance, and that at this time the project seemed like it would not require any variances.

01-16-20

I. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

Planning Director Ecker explained that Joe Barbat, future owner of the Forefront Building, is looking to increase the number of residential units on the second and third floor while reducing the size of the units and keeping the overall footprint of the building the same. She clarified that this change would change the building's parking requirements, leaving a shortfall of 13 spaces. There are no spaces on the street that could be counted towards meeting the parking requirement. The owners would have the option of entering into a formal shared parking agreement or pursuing a variance from the Board of Zoning Appeals.

Mr. Barbat stated the project would be working with Tom Roberts Architects, and has a total of 18 at-grade parking spaces within the building. Another 13 residential parking spaces would be

provided at the Pierce Street parking deck which is 400 feet away from the Forefront Building. The apartments would be between 600 square feet and 1,000 square feet in size, and the number of units in the building would increase from 10 to 30. He added there are another five parking spaces onsite which are used by retail during the day but could be used for residential parking in the evening when the retail businesses are closed.

Planning Director Ecker clarified that while the draft master plan is looking at allowing spaces in the public parking decks to be counted towards a building's parking requirements, at this time City ordinance does not allow parking deck spaces to be used to meet a building's parking requirements.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to permit the January 22, 2020 Planning Board meeting to continue until 11:30 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Koseck, Share, Clein, Emerine, Ramin

Nays: None

Chairman Clein stated he liked the idea of smaller units and liked the idea of leveraging the parking decks for residential parking in the evenings. He said the Board could not likely make a full determination on the impact of specifically going from 10 to 30 units at the end of a meeting, but that moving towards smaller units was in-line with the City's aims.

In reply to Planning Director Ecker, the Board expressed consensus with Chairman Clein's statement.

c. Draft Agenda for the next Regular Planning Board Meeting (February 12, 2020)

d. Other Business

Motion by Mr. Share

Seconded by Mr. Koseck to hold a special meeting of the Planning Board on April 9, 2020 at 7:30 p.m. in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

Yeas: Share, Koseck, Williams, Whipple-Boyce, Clein, Emerine, Ramin

Nays: None

Please note: Per an email subsequent to this meeting, the date of the Planning Board's April special meeting was moved to April 7, 2020, 7:30 p.m., in order to avoid a conflict with Passover.

01-17-20

J. Planning Division Action Items

- a. Staff Report on Previous Requests**
- b. Additional Items from tonight's meeting**

01-18-20

K. Adjournment

No further business being evident, the Chairman adjourned the meeting at 11:20 p.m.

Jana L. Ecker

Planning Director



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Frederick D. Steinhardt
(1941-2000)

Walter B. Mason, Jr.
(Retired)

June 3, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

VIA: HAND DELIVERY

Re: 501 South Eton Street, Birmingham ("Property")
Whistle Stop Diner, Inc. ("Petitioner")

Dear Members of the Board of Zoning Appeals:

At the May 12, 2020 BZA hearing, the BZA members requested that Petitioner make further attempts to obtain the use of additional parking spaces beyond the 21 spaces currently provided at the subject Property, and it adjourned the completion of the hearing to June 9, 2020.

As the BZA is aware, Petitioner has for some time had an informal reciprocal parking agreement in place with its immediate neighbor to the South, the Griffin Claw Brewing Company and its principle Norman LaPage. During the course of the planning process, Petitioner contacted Mr. LaPage to request that he enter into a written agreement memorializing the existing parking arrangement. In an email to the City (copied to Petitioner) which is attached hereto as Exhibit A, Mr. LaPage advised Petitioner that due to the recent death of his partner, he was unable to enter into such an agreement at this time. However, in that email, he also indicated that he supports Petitioner's project and that he intends to continue the informal arrangement into the foreseeable future.

Following the BZA hearing, Petitioner reached out to Mr. LaPage again through his attorney to inquire as to whether he would reconsider putting the informal agreement into writing, or in the alternative agree to a lease or license arrangement with Petitioner for spaces in Griffin Claw's lot. We were advised that Mr. LaPage's position has not changed with regard to a formal



City of Birmingham
June 3, 2020
Page 2

agreement of any kind, but that he continues to be fully supportive of Petitioner's project.

In addition to contacting Mr. LaPage, Petitioner reached out to Dominic Mocerri, the owner of the Irongate apartment complex, immediately to the north of Petitioner's property, to inquire about the use of spaces on Irongate's property, or sharing the street spaces available to the Irongate. Petitioner had been advised by the Planning Department that shared street spaces could be taken into account as spaces available to its Property. Attached as Exhibit B is an email from Mr. Mocerri dated May 26, 2020 where he indicates to Petitioner on behalf of the Irongate; "how pleased we are to have you [the Whistle Stop] as our neighbor. Your restaurant has been a great attraction for potential residents at our property. Your success is our success." He then goes on to indicate that he is agreeable to sharing 4 available street spaces with Petitioner. Unfortunately, Petitioner was subsequently advised that such spaces could not be included in its parking count.

Petitioner has in good faith exhausted the possible avenues of obtaining permanent use of additional parking spaces for its Property. Unfortunately, other than the existing and informal agreement with the Griffin Claw ownership, Petitioner has been unable to secure any additional spaces. That being said, Petitioner believes that the history and current circumstances of the Property, and in particular the Whistle Stop and the unique Rail District and Eton Road Corridor, justify granting the requested variance.

The Whistle Stop is an iconic restaurant in the area which has been extremely popular for decades. The Petitioner finds itself in a circumstance where for the benefit of its employees, its customers and the neighborhood, it needs to remodel and upgrade its facility. There is effectively no way to accomplish this project without a relatively small expansion of the restaurant into the adjacent space at the Property. The great majority of the proposed expansion space will be to enlarge the kitchen and storage areas to make them safer for employees. And, it will also enlarge the common areas such as restrooms and aisle ways to make them ADA compliant. In fact, as noted by Petitioner at the May 12, 2020 hearing, only approximately 300 sf of the proposed 1,060 sf expansion will be added to the dining area.



City of Birmingham
June 3, 2020
Page 3

The purpose, spirit, and intent of the City Ordinances applicable to the Rail District and the Eton Road Corridor are to encourage development and further to "encourage the retention, improvement, and expansion of existing uses that help define the Eton Road Corridor." The Whistle Stop diner is a quintessential example of an encouraged use within the Rail District and in particular the Eton Road Corridor. Accordingly, an "expansion and improvement" of this use is expressly supported by the Ordinances.

For all of these reasons and Petitioner's position set forth in its March 23, 2020 hardship letter and my comments made at the May 12th hearing, I respectfully request on behalf of the Petitioners Elda and Valter Xhomaqui and the Whistle Stop that the requested 17-space parking variance be granted.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Jerome P. Pesick

JPP/pas

cc: Whistle Stop Diner, Inc.
Ms. Jawan Matti

EXHIBIT A



jawan matti <jawanmatti@gmail.com>

Fw: Whistle stop

1 message

Scott LePage <slepage@griffinclaw.com>

To: "jawanmatti@gmail.com" <jawanmatti@gmail.com>

Wed, Jan 22, 2020 at 9:19 AM

From: norman lepage <nrlepage@yahoo.com>

Sent: Wednesday, January 22, 2020 7:04 AM

To: jana ecker

Cc: Scott LePage

Subject: Whistle stop

Good morning jana, I have been asked by the whistle stop to attend tonights planning board meeting to support their request to expand their facility. Unfortunately I am out the the country and do not return until tomorrow.

As you are aware griffin claw and the whistle stop have been cooperating with each other for some years as regards sharing our parking. Their hours of operation and ours are completely complementary ie they are open for breakfast and lunch and we are open for dinner only except on Friday, Saturday and Sunday lunch when by and large the parking requirements in the area are much lighter. While we want to continue to cooperate, due to the recent death of my partner (ray Nicholson) we are unable to enter into a formal agreement at this time. We do however intend to continue to cooperate for the foreseeable future in the spirit to which we have done so in the past.

It is for this reason that we support the whistle stops request before the planning board and urge the board to accept our informal agreement. We understand that such agreement is informal and non binding on either part but we see no reason to withhold approval based on past experience and our anticipated future needs.

With respect, Norman LePage

EXHIBIT B

Jerome Pesick

From: VALTER XHOMAQI <vali2@ymail.com>
Sent: Tuesday, May 26, 2020 9:41 AM
To: ARCHITECT JAWAN; Jerome Pesick
Subject: Fwd: Elda-Whistle stop diner

Sent from my iPhone

Begin forwarded message:

From: "Dominic F. Mocer" <DFM@moceri.com>
Date: May 26, 2020 at 8:54:49 AM EDT
To: VALTER XHOMAQI <vali2@ymail.com>
Subject: RE: Elda-Whistle stop diner

Valter,

Let me start by saying how pleased we are to have you as neighbors. Your restaurant has been a great attraction for potential residents at our property. Your success is our success. We agree to the shared parking on the 4 spots available for this exception. I am told that you are in need of 16 spaces to receive approval. I hope that this helps.

Dominic F. Mocer
Irongate of Birmingham LLC

From: VALTER XHOMAQI <vali2@ymail.com>
Sent: Friday, May 22, 2020 12:28 PM
To: Dominic F. Mocer <DFM@moceri.com>
Subject: Elda-Whistle stop diner

**** This email has been received from outside the organization – Think before clicking on links, opening attachments, or responding. ****

Hello Dominic !!

We are proposing to renovate the Whistle Stop Diner. The renovation will consist of interior and exterior improvements. Due to this minor renovation, the city is requiring us to obtain a variance for additional parking spaces. Considering, the Irongate has four on street spaces that are within the 100 feet requirement, we are hoping that you are willing to agree to a shared parking agreement for those spaces.

Thank you , let me know .

C. Mixed-use Districts

C.6. Rail District

Rail District

CONDITION

The Rail District is divided between what has been envisioned for its future and the utility that it currently provides. This is a place of experimentation for Birmingham, and has been for some time. Layers of history expose incremental changes. Traces of former rail spurs from the Grand Trunk Railroad are evident in odd property divisions, fencelines, and paths of unkempt foliage.

The district's northern edge, at the top of South Eton Rd., is capped by Big Rock Chophouse, an upscale restaurant housed in the City's former passenger rail station. From nearby parking lots, the City's Whole Foods market and large scale commercial in Troy is visible just over the tracks, yet inaccessible. Just below this, the District Lofts illustrate a grand future vision that is formal and neat. Along with the adjacent Iron Gate to the south, the area includes

some of the City's most contemporary multi-family offerings. Just east of Iron Gate, also part of the 1999 Eton Road Corridor Plan, is an experiment in live-work units, the area's tallest buildings at the time - 3 stories - that create a tight urban street grid open for future connections on neighboring properties. The Griffin Claw brewery is next southbound on Eton, a substantial micro brewery with an informal brewpub and outdoor beer garden, especially popular with young families. Next to this, tucked far back from Eton is the Robot Garage, a wonderland of toys and classes for creativity in making, from legos to art to robotics. Auto service, a lumber yard, and the City's Public Services Department follow old lines of rail spurs.

The Rail District is a place of experimentation for Birmingham, and has been for some time.



Image C.6-01. Recently constructed District Lofts look to the Rail District's urban future.

C. Mixed-use Districts

C.6. Rail District

The Rail District has no singular character, but overall it feels intimate, which is its charm.

The Lower Rail District, south of Palmer Street, consists of small, mostly single-story warehouse buildings occupied with varied businesses including yoga, co-working, dog daycare, art, dance, videography, auto body shops, and more. These are arranged haphazardly among small parking areas, charming in a way that is certainly not suburban. Only the degraded character of the street and lack of trees detract from the area's charm. The southern end of the district is capped by Kenning Park with the City's Ice Rink and skatepark, along with a new and quite urban senior retirement development.

The Rail District has no singular character, but overall it feels intimate, which is its charm. Other parts of the City are increasing their refinement, and many lament the loss of the City's artistic and entrepreneurial roots. Yet this is alive in the Rail District.

Plans and zoning for the Rail District point to a heavily urbanized future. A 2017 Ad-hoc Committee report for the Rail District estimated the zoned potential that could be built on properties likely to redevelop in the near future could increase intensity 10-fold, albeit unlikely. Due to the significant disparity between the district's long-term future and the functional and desirable near-term conditions, this plan recommends that policies and improvements continue the district's current success while incrementally preparing it for an intensified future condition.

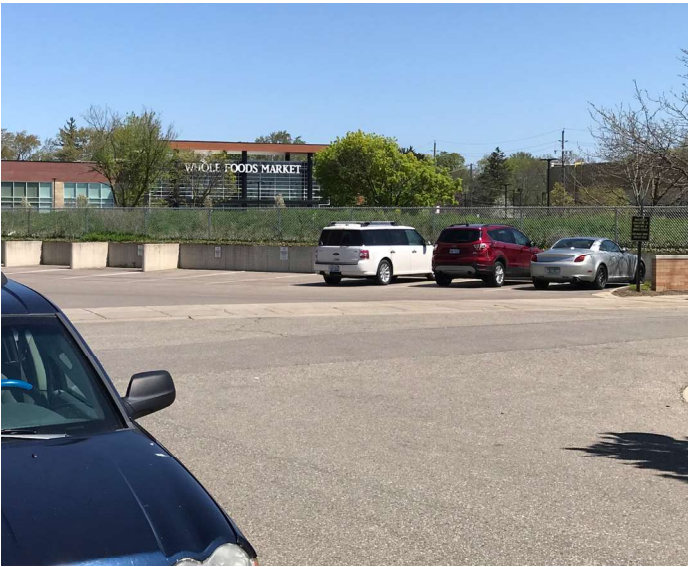


Image C.6-02. Despite being quite near, the large shopping area across the rail line is inaccessible.



Image C.6-03. Live-work townhouses experiment with new business formats and an urban scale well in advance of focused district development.

C. Mixed-use Districts

C.6. Rail District



Images C.6-04-C.6-05. The Robot Garage on South Eton Street.



Image C.6-06-C.6-07. Diverse businesses occupying small, single story warehouse buildings along Cole St.

C. Mixed-use Districts

C.6. Rail District

Near-term Conditions

CONDITION

Many existing buildings within the Lower Rail District, are legally non-conforming, disincentivizing investments in existing buildings and continuation of the present condition.

DISCUSSION

The Lower Rail district is a type of commercial development which is currently emerging nationally. It provides incubator space for businesses at a much lower cost level than the downtown shops. Furthermore, its character is attractive to the younger demographic which is not and has not historically been particularly interested in the downtown corridor. While this area has already been rezoned to four stories it is essential that its continuation not be dis-incentivized. Therefore, everything possible

should be done to support its continued existence and even its extension as one-story buildings embedded in very small parking lots.

The current code applies standards that are appropriate to create pedestrian-oriented streets but as a result is burdensome to existing structures and uses. In the near-term, the Lower Rail District should remain informal and somewhat experimental. This character should be encouraged through zoning, development review, and in the public realm.

The Lower Rail district is a type of commercial development which is currently emerging nationally.

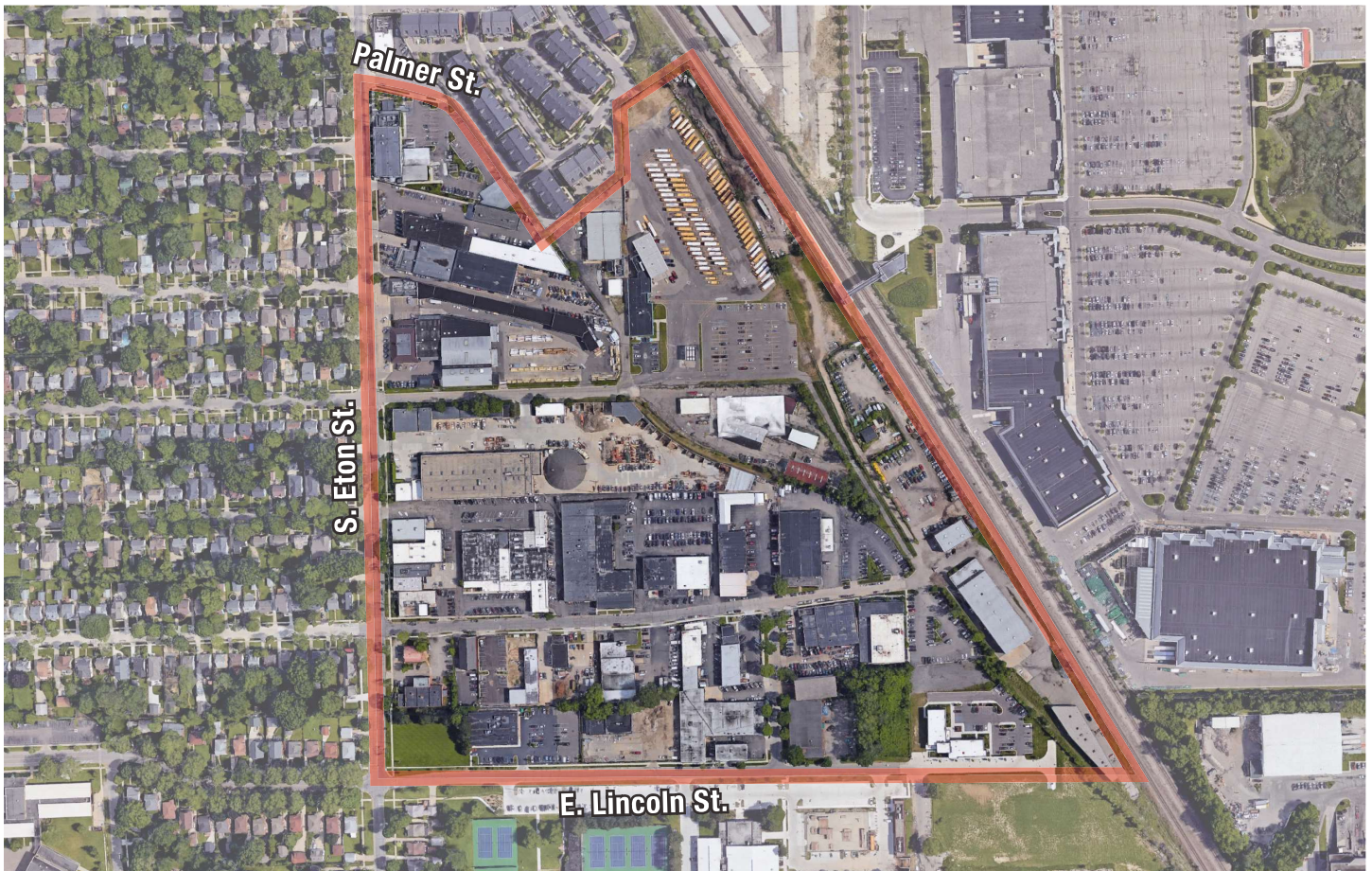


Figure C.6-08. The Lower Rail District.

C. Mixed-use Districts

C.6. Rail District

Zoning need only be slightly adjusted. These adjustments are the type appropriate for an overlay district which applies only to the Lower Rail District. The overlay should allow the following when existing buildings are improved or expanded, or when new single-story buildings are built:

- Parking to remain between buildings and front lot lines if it already exists.
- Buildings to retain their present setback when renovated, expanded, or reconstructed.
- Parking lots of 70 feet wide or less to be exempted from required trees and landscaping.
- Screening not be required except along lot lines facing Eton Street.
- Small footprint towers of 600 square feet or less should be allowed to exceed one story without causing the overall structure to be interpreted as over one story, invalidating the overlay allowances.

Development review should allow the unique nature of the district to continue when single story structures are improved or expanded, or when new single-story buildings are built, including the following:

- The wall cladding may be any material including raw concrete block, corrugated metal, wood, or brick.
- Awnings and canopies of any size may be used.
- Artificial sod should be encouraged over pavement where there is no parking. Other than artificial sod no landscaping should be required.
- Sidewalks should not be required to be added, preferring shared-use street conditions with bollards to define sidewalks.
- Large expanses of walls should be painted with murals.

In the near-term, the Lower Rail District should remain informal and somewhat experimental.

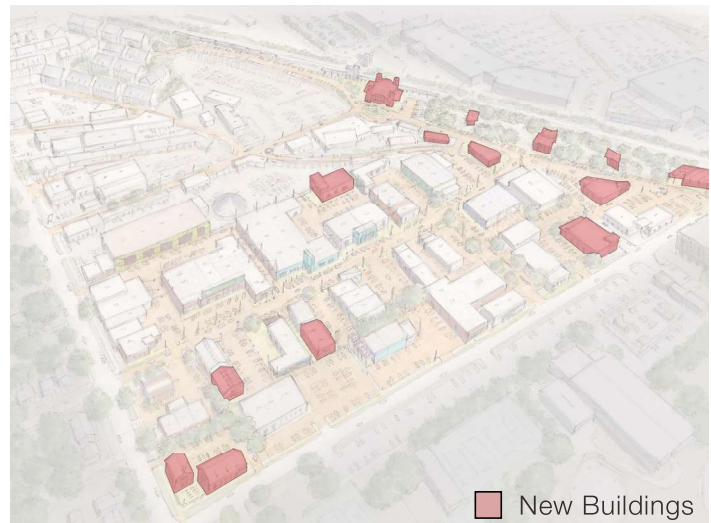
To support the district's current character and prepare for the future, streetscape improvements should be pursued which work for both. While mentioned in a number of existing contexts in other districts, shared-use streets are ideal for implementation along Cole and Commerce Streets, and Lincoln to the East of Eton. For the current condition, shared-use formalizes the condition that has occurred organically over time, and provides greater importance to pedestrians and cyclists. In the long-term condition, it helps to retain the character of the district, with greater use of shared-use streets than other places in the City.

RECOMMENDATIONS

1. Create an Overlay District for the Lower Rail District that implements the zoning adjustments discussed above and activates more lenient development review decision making.
2. Construct a shared-use street section along Cole and Commerce Streets.
3. Update the 1999 Eton Road Corridor Plan of 1999 for the area south of Palmer Street by including the following:
 - So long as the buildings--existing or new--are one story, eliminate all requirements of Section 5 of the Site Design Guidelines p 41-46. of the Eton Road Corridor Plan. These include but are not limited to:
 - ◊ Eliminating building frontage and sidewalk requirements.
 - ◊ Eliminating parking requirements, except as the on-street parking shall be as determined by the "Immediate Neighbors" of the adjacent Torry or Kenning Neighborhoods.
 - ◊ Eliminating the signage and landscaping requirements.
 - ◊ Eliminating building use and aesthetic requirements.

C. Mixed-use Districts

C.6. Rail District



Figures C.6-09 C.6-14. Near-term interventions to extend and improve upon the area's current character.

C. Mixed-use Districts

C.6. Rail District

Long-term Conditions

OBSERVATIONS

From a long-term perspective, local and regional connections are a limiting factor in the Rail District. Like the Triangle District, it requires public investment to incentivize development due to the lotting pattern.

DISCUSSION

Many of the City's district-specific plans have become long-range, with investment remaining focused Downtown. Beyond the clear draw of Downtown's reputation, building there removes a \$50,000 per car obligation from developers, which is \$7,500,000 for 100 apartments or about \$5,625,000 for a 25,000 square foot office building. Both the Triangle and Rail Districts suffer from lot patterns that are generally small and include a number of oddly shaped properties. Redeveloping these properties at a high capacity doesn't easily pencil when parking must be accommodated. On the other hand, Downtown's small properties are being developed, including the recent hotel at Brown and Old Woodward. Like the Triangle District, the Rail District needs public parking capacity and the ability to use that capacity in lieu of providing parking in mixed-use development projects. As opposed to the Triangle District, the City owns property in the rail district. Most notably, the Public Services Department site is well located to provide parking access to Cole Street. Uses on site are necessary for maintenance of the City, and there are few places to relocate those uses. Even remaining on site, the DPS building is approximately the size of a parking structure, and may be part of a redevelopment plan to accommodate both. Additionally, the School District's underutilized bus lot can easily accommodate structured parking. These are options to be weighed in service of unlocking the area's development potential.

Before the district begins to see more intense development, its standards should be revisited. There are a number of ways that the MX standards differ from the Downtown Overlay standard, despite having similar desired physical outcomes. As discussed previously, zoning districts across the City that are similar in their desired outcome

should be consolidated. If not consolidated with Downtown and Triangle District zones, the MX zone should be carefully analyzed. A quick reading of zone standards passes muster, however some details have potential negative consequences. For instance, the zone has tree requirements tied to the number of residential units; because this doesn't account for potentially high lot coverage, the tree requirements could be a barrier to development, disincentivizing new housing in the district.

Connectivity is the most significant limitation to the Rail District. The Grand Trunk Railroad limits all modes of connectivity, with crossings only at Maple and 14 Mile, of which the Maple crossing is in poor condition. Additional rail crossings should be studied, mainly for pedestrian and bicycle movement. A vehicular bridge would be logical at Lincoln, like the Derby bridge, though difficult to achieve due to existing buildings, including the new senior living building on Lincoln. In the further future, with significant development in the Rail District, further connections will be necessary. Every effort should be made to avoid increased car trips from new development, providing extensive pedestrian, bicycle, and transit infrastructure instead.

ACCESS TO THE TRAIN STATION

Over Birmingham's long history, the railroad connection to Detroit has been an important asset. In recent decades, disinvestment in rail and investment in automobiles has reduced the role of rail travel. However, this trend is slowly changing across the country. Into the future, rail's comeback is projected to continue. The City cannot risk being left without a direct connection to passenger rail. Looking forward a few decades, rail access in the Rail District is the most likely economic driver.

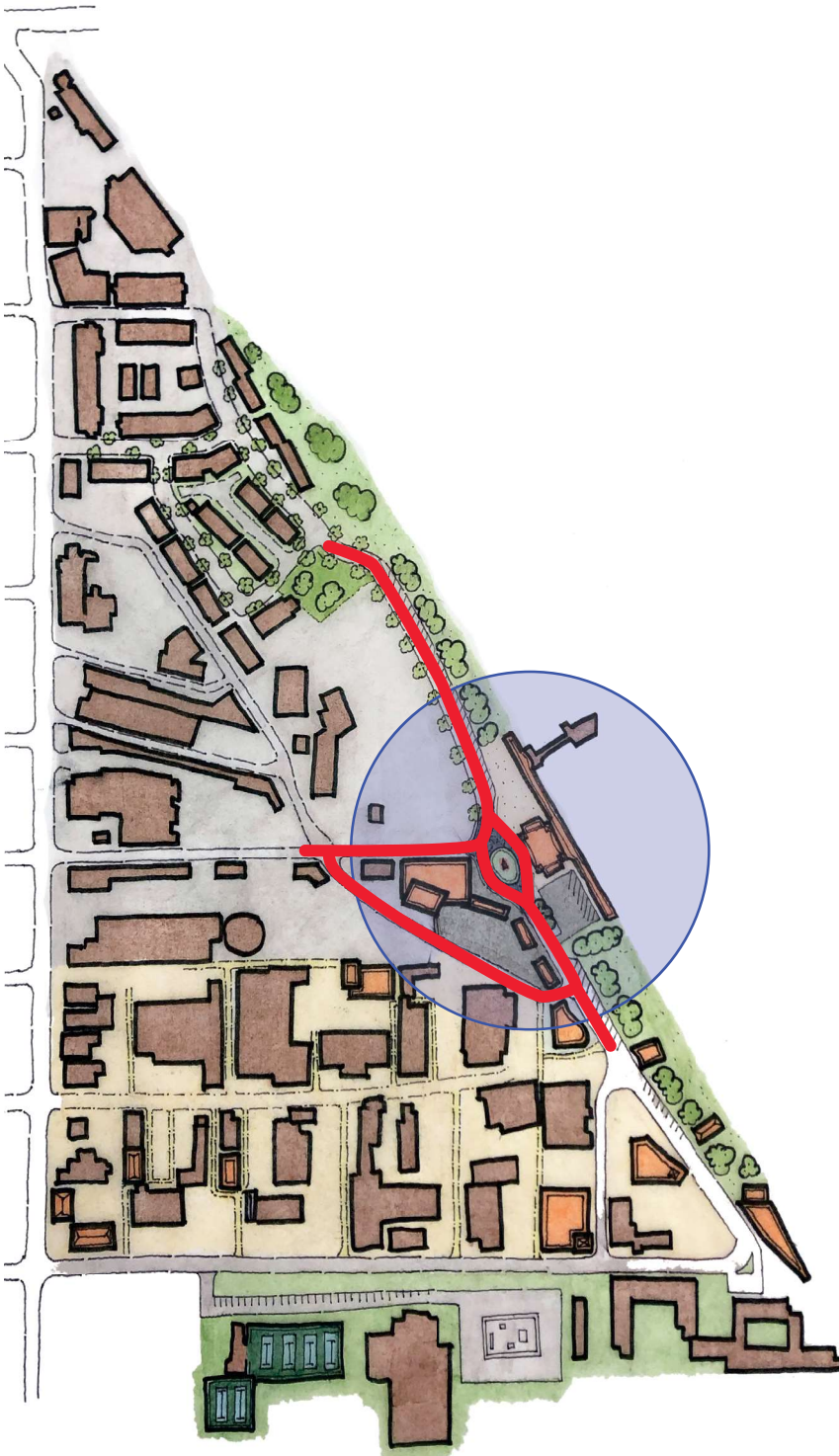
The City has recently attempted to negotiate access to the Troy Transit Center unsuccessfully. While the School District is willing to work with the City, a private land owner is not. The City should make another attempt at connection




Connectivity is the most significant limitation to the Rail District.

C. Mixed-use Districts

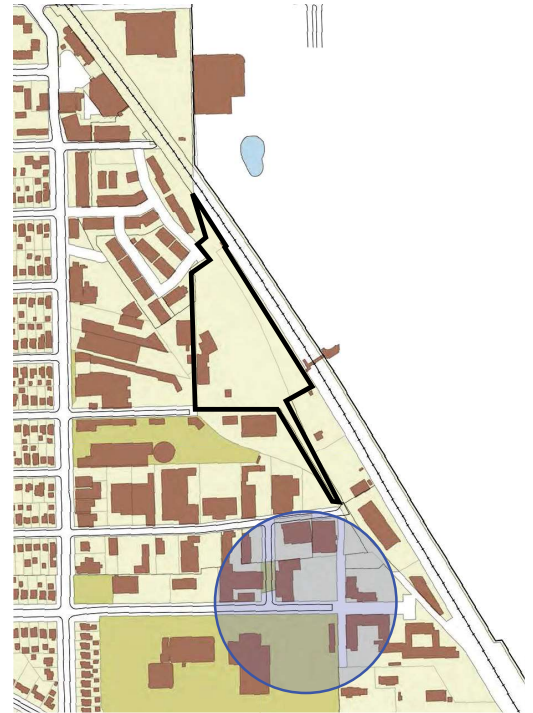
C.6. Rail District

Future Potential



-  Location of train station addition
-  Property blocking connection
-  Future road extensions

Existing Conditions



TRAIN STATION ACCESS

The City has recently attempted to negotiate access to the Troy Transit Center unsuccessfully. While the School District is willing to work with the City, a private land owner is not. The City should make another attempt at connection with this land owner. Should they be unwilling to participate, the City should not be afraid to exercise its' power to condemn property. Eminent domain has become a bad word in planning, particularly in a property rights focused place like Michigan. However, the tool is specifically designed for this type of situation, wherein a transportation connection is critical to the City's future success. Property owners are paid fair market value for the property, independently assessed. Ideally an agreement would be reached with the property owner, not requiring condemnation. However, the City has gone down this path before, resulting in City Hall, the Library, and Shain Park.

Figure C.6-15. Existing conditions and future potential of access to Troy Transit Center.

C. Mixed-use Districts

C.6. Rail District

RECOMMENDATIONS

- Zoning should be modified such that the MX District is exempt from LA-01 (E) and (F), as is true in Downtown, or at a minimum that plantings in the MX District are only required within the streetscape and within open areas of the property, but not based on a minimum number of trees per residential unit as currently defined.
- MX District zoning should be carefully analyzed by contracting two or more architects to complete preliminary building designs for mixed-use buildings on existing sites, small and large, with and without on-site parking, attempting to achieve capacity. The architects should be requested to discuss and present challenges and constraints that are faced in the process. While some challenges are part of code design, others may be unknown without testing.
- Update the 1999 Eton Road Corridor Plan for the area south of Palmer Street by including the following:
 - ◊ At the termination of Holland Street, creating a connection to the rail station by purchasing a 30 ft wide corridor or easement.
- Acquire access to the Troy Transit Center from the School District.
- Acquire access to the Troy Transit Center from remaining property owners using through negotiation, failing which through eminent domain.
- Pursue development of a public parking structure in the Rail District on a site with adequate access to the Lower Rail District and the future connection to the Troy Transit Center.

CASE DESCRIPTION

1602 Cole (20-16)

Hearing date: June 9, 2020

Appeal No. 20-16: The owner of the property known as 1602 Cole, requests the following variances to construct a detached garage:

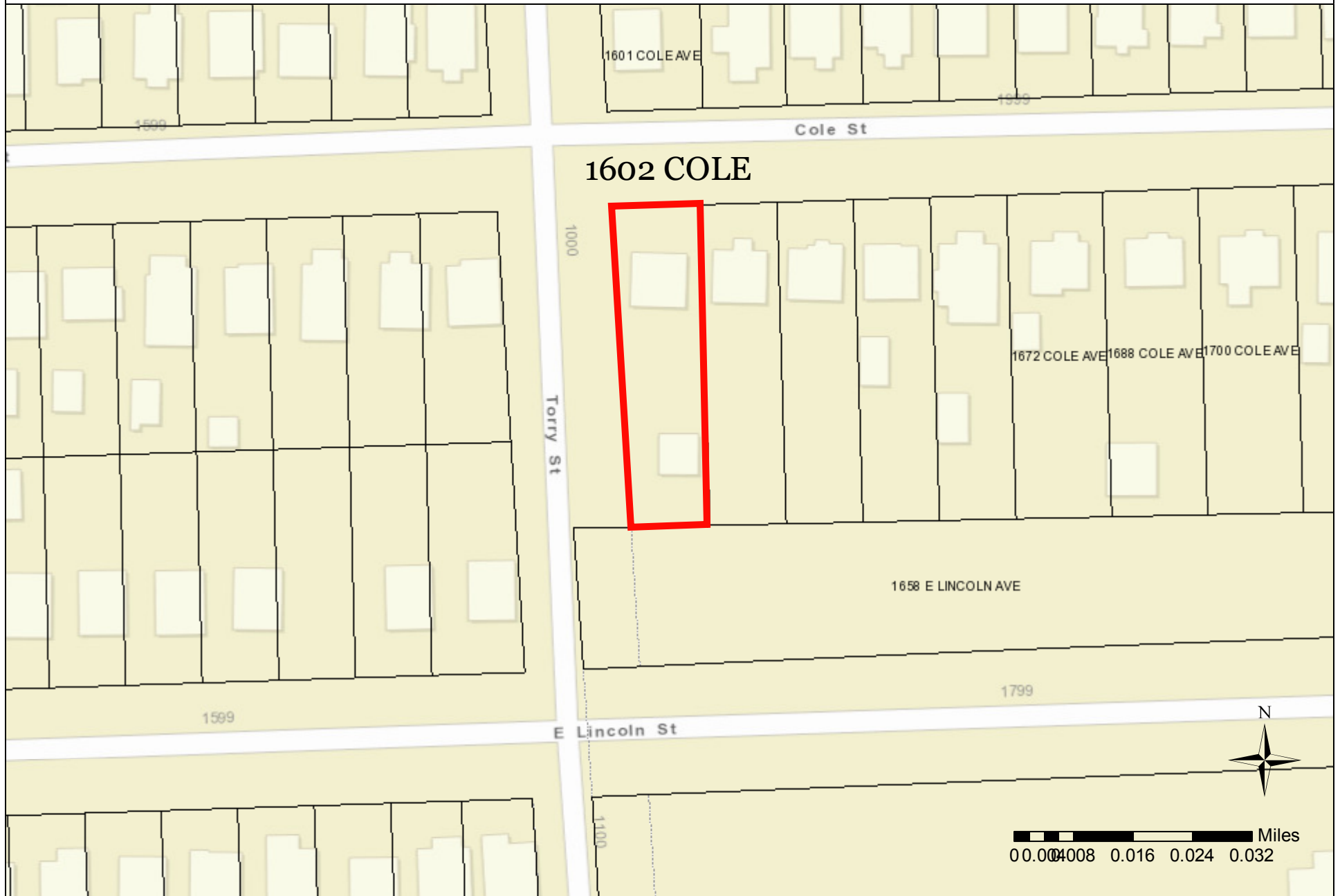
- A. Chapter 126, Article 4, Section 4.03(G)** of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 15.50 feet. Therefore a variance of 1.00 feet is being requested.
- B. Chapter 126, Article 4, Section 4.03(J)** of the Zoning Ordinance requires that dormers on accessory structures are limited to 50% or less of the width of the roof per elevation or a 10.00 foot interior dimension, whichever is greater. The proposed dormer width on the east side is 100% of the width of the roof, therefore a variance of 50% of the width is being requested.

Staff Notes: The applicant was in front of the board in March of 2020 for variances for this proposed detached garage. This appeal was tabled at that time, so the appellant could rework the design. (see minutes attached)

This property is zoned R3 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

1602 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

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 02/10/20

Hearing Date: 3-10-20

Received By: BW

Appeal #: 20-16-

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
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I. PROPERTY INFORMATION:

Address: <u>1602 COLE</u>	Lot Number: <u>270</u>	Sidwell Number: <u>08-20-31-180-001</u>
---------------------------	------------------------	---

II. OWNER INFORMATION:

Name: <u>MSG. Craig Ludwig, M.D.</u>			
Address: <u>1602 COLE</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>craigludwig1969@gmail.com</u>		Phone: <u>(248) 245-7991</u>	

III. PETITIONER INFORMATION:

Name:	Firm/Company Name:		
Address:	City:	State:	Zip code:
Email:	Phone:		

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 12th 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.

*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] M.D.

Date: 02/10/20 @ 1451

Signature of Petitioner: [Signature] M.D.

Date: 02/10/20 @ 1451

January, 31th 2020

MSG Craig Ludwig M.D.
P.O. Box 2112
Birmingham, MI 48012-2112

BZA Hardship Letter: 1602 Cole Ave, Birmingham, MI 48009

To Whom it concerns,

I am writing this letter for a hardship variance due to non conforming R3 lot size and because it is located in a school zone and the curb for Birmingham Public school bus pick up and drop off. Also, because I require said office space for administrative desk work.

- 1) Property total surveyed square footage equals 7138, which is much greater than it's R3 designation (<4500 sqft.). R2 is >6000+ and R1 is >9000+. So Lot #270 in the Linebach/Humphrey plot, sidwell/parcel ID #:20-31-180-001 is really more towards an R1 designation being that it is a corner lot, at the very least the property is a very big R2 size lot.
- 2) In order to place the proposed constructed garage even designated as is (R3) we are faced with set back problems above sidewalk on Tory driveway side which is a shared easement for Tory Elementary School (Our Shepherd Lutheran School) and Birmingham Public Schools Bus stop pick up and drop off. We need enough space to adequately be able to pull into driveway above sidewalk with a car or full size SUV truck in front of closed garage door without being parked over the existing sidewalk and blockading it that numerous kids use during school hours and the public dog walkers use daily and can only achieve said space by pushing the garage setback towards rear SE corner of property into required 3.0' setback space.
- 3) With ADUs on the Horizon, of the new Birmingham City Plan, right around the corner, which should be approved as early as October 2020 according to Ms. Jana Ecker and with my personal situation of needing more storage above the garage which has normal 8' overhead space as well as office space which I do not have space for inside house for said office (which code says residents are allowed 25% usage of livable square footage either in house or above garage space). We are also requesting a foot print size of 606 sqft which is indicative of R1-R2 size due to staircase being inside said garage structure. I'm 6' and can not move around in the attic space of an R3 size 14.5 mid point garage roof line even should it have a 10' dormer below ridge line. Plus, I do not have enough room in existing 756 square foot 1st story cape cod house with 3 kids and normal household domestic useage. I am with Pfizer, Inc. and am US Military so I need desk space for both jobs which require at home administrative tasks to be completed professionally on a weekly basis and sometimes daily. So I am requesting a change to roof mid point to be 16' instead of 14.5'.

In summary I am asking for a hardship with regards to lot size (7138sqft.) being more indicative of a R2-R1 classification. Also due to shared easement with Birmingham Public Schools Bus stop and Tory Elementary school's curbside pick up and drop off along 166' on Tory/Cole. Also, because of utilization purposes of garage space, which second story would be for file storage and office space during normal day hours as per city code. Thus, I am including a variance request for setback into typical 3' easement space towards SE property line shared with 1624 Cole, and Tory Elementary for rear E wall and chimney protrusion, mid point height, and foot print square footage.

Best Regards,

MSG Craig Ludwig M.D.
(248) 245-7991



M.D. 02022020
1856

original copy.



BASIS OF BEARING
SOUTH 89°41'00" EAST, BEING THE SOUTH RIGHT OF WAY
LINE OF COLE STREET, AS PLATTED.

BENCHMARK

SITE BENCHMARK
MAG NAIL IN UTILITY POLE AT SOUTHWEST CORNER OF PROPERTY.
ELEVATION = 750.42' (CITY DATUM)

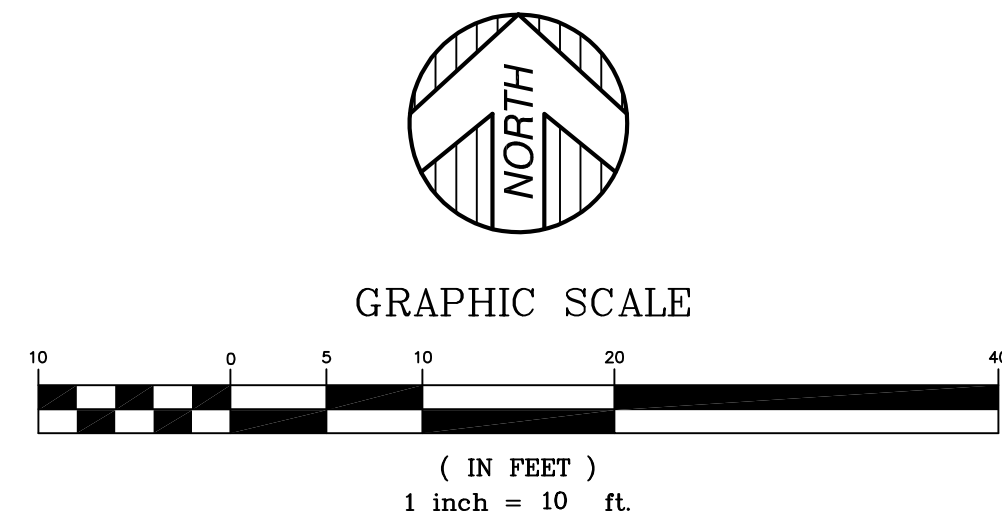
CITY BENCHMARK #13
SOUTHEAST CORNER OF EATON AND HOLLAND
ELEVATION = 743.34' (CITY DATUM)

SURVEYOR'S NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS CLOSELY TO THE EXACT LOCATION AS INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES OTHER THAN THE STRUCTURE INVENTORY SHOWN HEREON.

LEGEND

- | | |
|-----------|------------------------------------|
| ● | SET 1/2" REBAR WITH CAP P.S. 47978 |
| ⊙ | FOUND MONUMENT (AS NOTED) |
| (R&M) | RECORD AND MEASURED DIMENSION |
| (R) | RECORD DIMENSION |
| (M) | MEASURED DIMENSION |
| X
0.00 | GROUND ELEVATION |
| ⚡ | ELECTRIC METER |
| ⏚ | TRANSFORMER |
| ○ | UTILITY POLE |
| ⊠ | GAS METER |
| ① | TELEPHONE MANHOLE |
| ⏚ | TELEPHONE RISER |
| ⊙ | SEWER MANHOLE |
| WV | WATER VALVE |
| ⏚ | WELL |
| AC | AIR CONDITIONING UNIT |
| ⊙ | SINGLE POST SIGN |
| ⊙ | TREE (AS NOTED) |
| ===== | PARCEL BOUNDARY LINE |
| ===== | PLATTED LOT LINE |
| ----- | EASEMENT (AS NOTED) |
| ===== | BUILDING |
| ----- | BUILDING OVERHANG |
| ===== | CONCRETE CURB |
| ----- | RAISED CONCRETE |
| ----- | EDGE OF CONCRETE (CONC.) |
| ----- | EDGE OF ASPHALT (ASPH.) |
| X | FENCE (AS NOTED) |
| ----- | WALL (AS NOTED) |
| ----- | OVERHEAD UTILITY LINE |
| G | GAS LINE |
| S | SEWER LINE |
| W | WATER LINE |
| ----- | MINOR CONTOUR LINE |
| ----- | MAJOR CONTOUR LINE |
| ===== | BUILDING AREA |
| ===== | ASPHALT |
| ===== | CONCRETE |



PROPERTY DESCRIPTION

THE LAND SITUATED IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE OF MICHIGAN, IS DESCRIBED AS FOLLOWS:

LOT 270, LEINBACH-HUMPHREY'S WOODWARD AVENUE SUBDIVISION, PART OF THE 1/2 OF THE S.E. 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, BLOOMFIELD TOWNSHIP (NOW CITY OF BIRMINGHAM), AS RECORDED IN LIBER 27 OF PLATS, PAGE 5, MACOMB COUNTY RECORDS.

TITLE REPORT NOTE

A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY,
THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL
MAY NOT BE SHOWN.

SURVEYOR'S CERTIFICATION

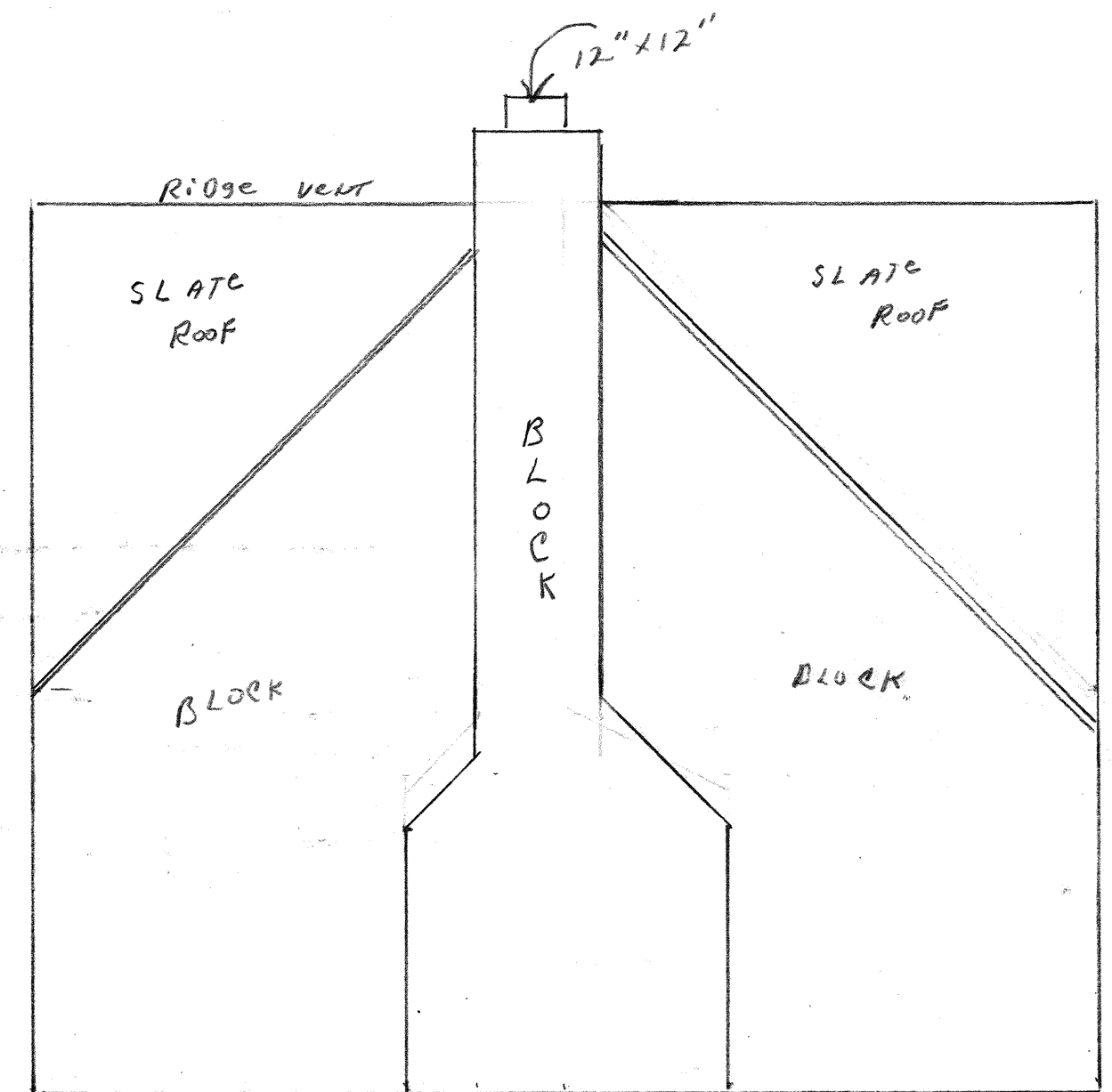
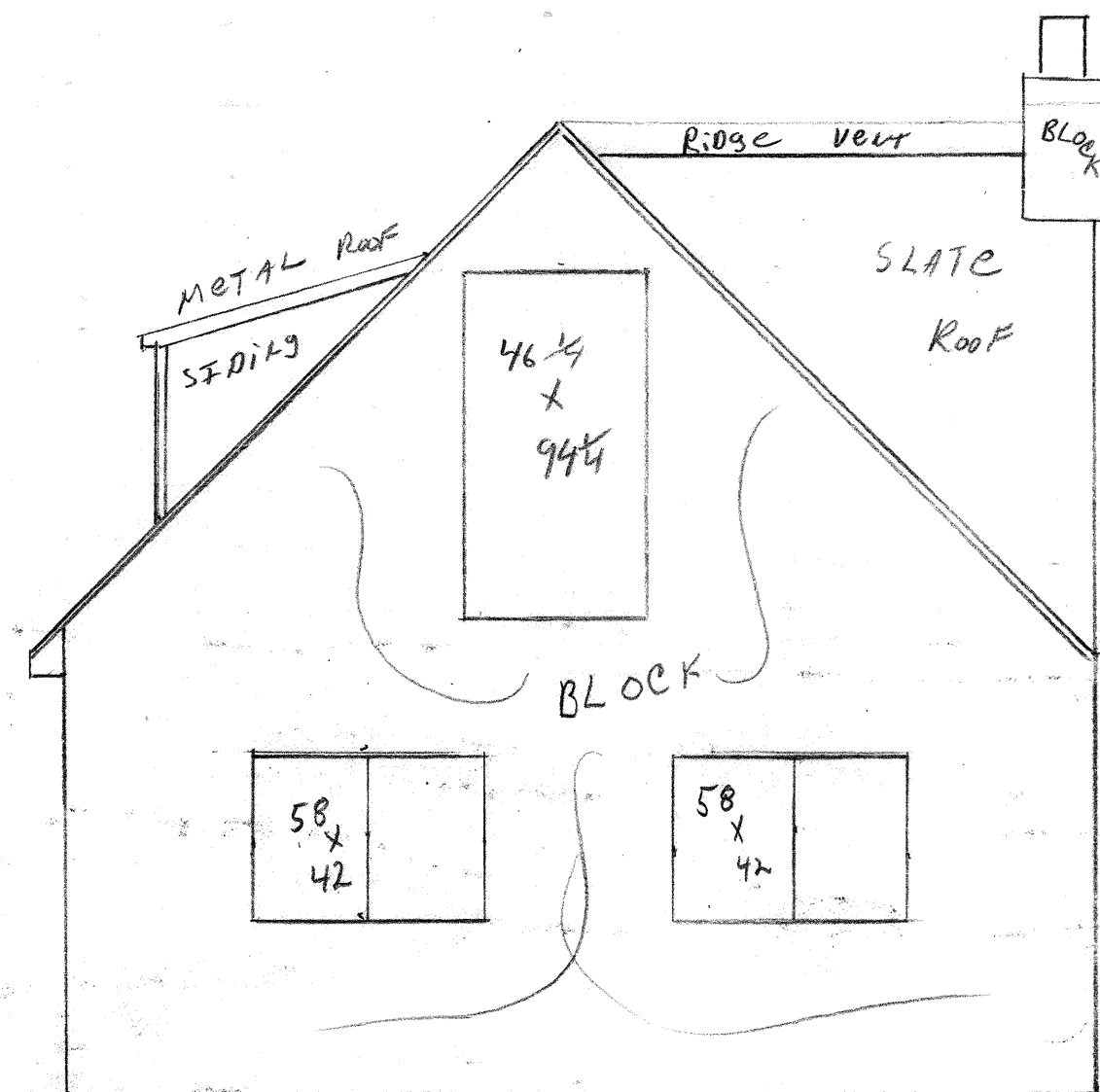
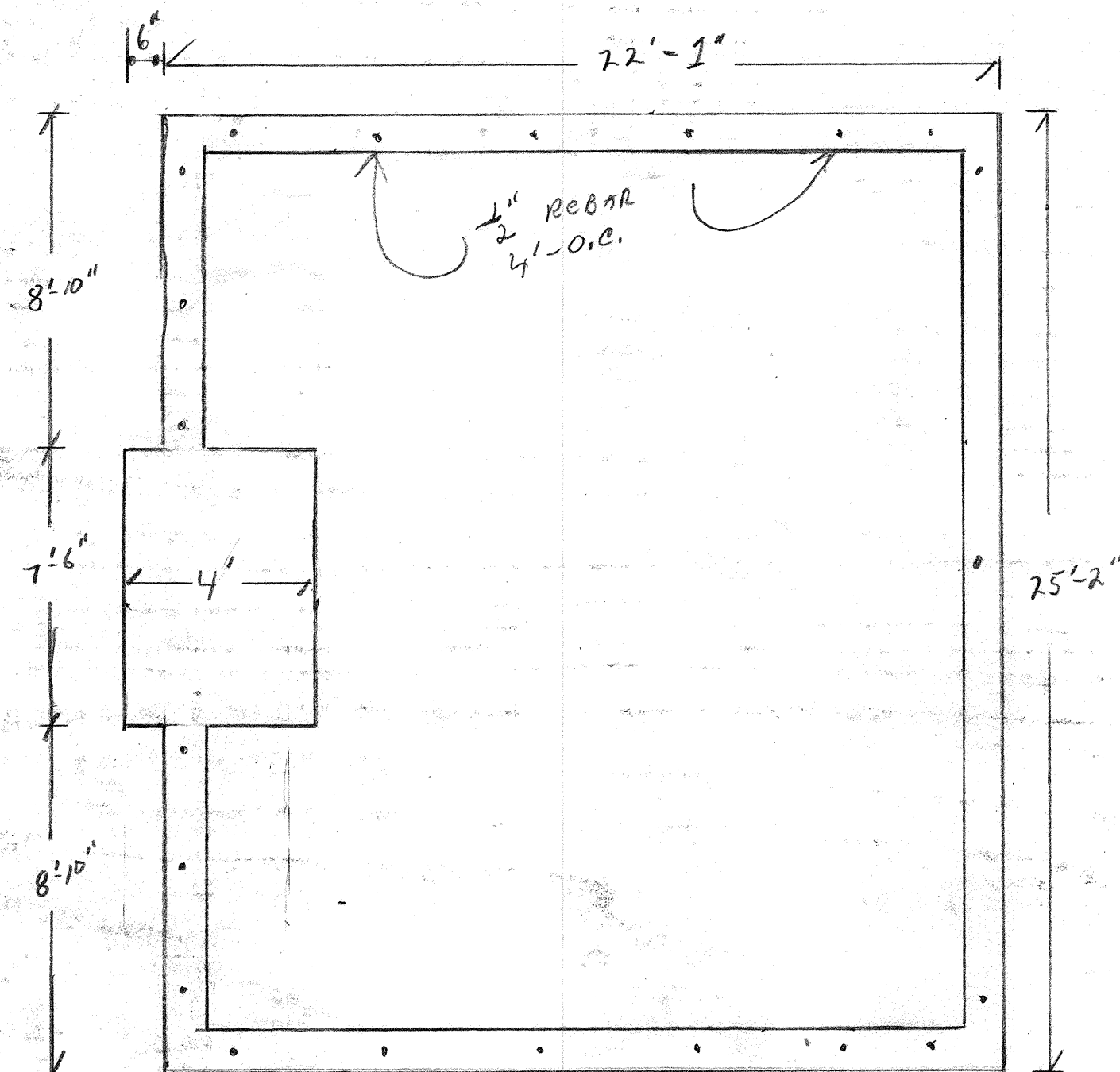
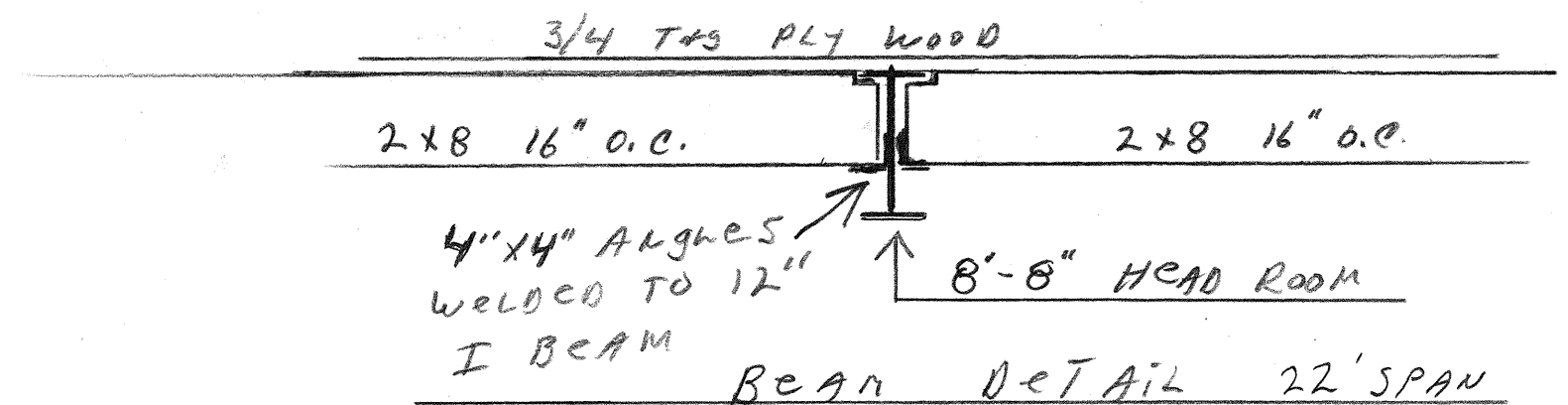
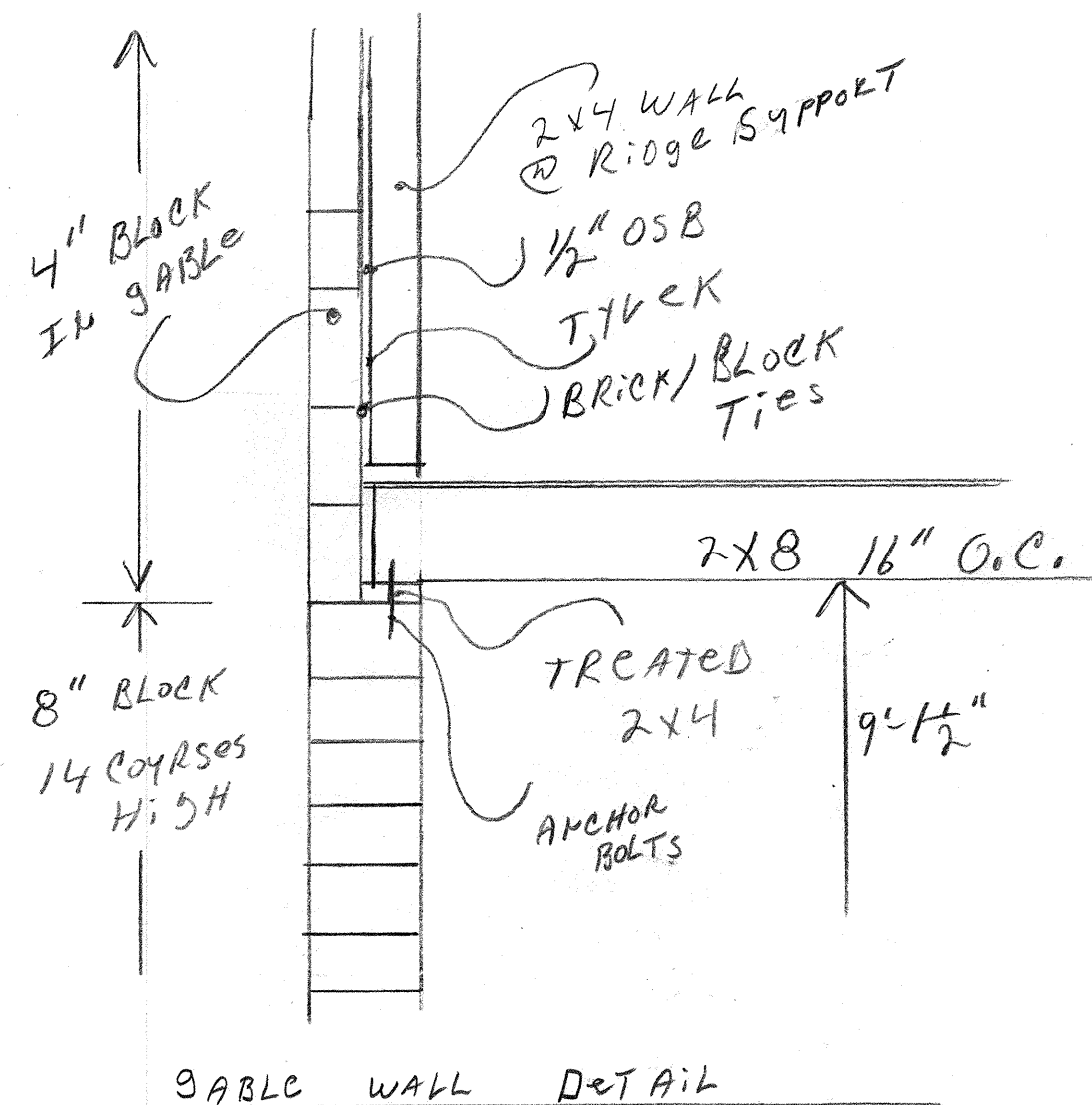
I HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY HEREIN DESCRIBED.
THE ELEVATIONS SHOWN HEREON ARE BASED ON A FIELD SURVEY AND THE
DRAWING HEREON DELINEATED IS A CORRECT REPRESENTATION OF THE SAME.

ANTHONY T. SYCKO, JR., P.S.
PROFESSIONAL SURVEYOR
MICHIGAN LICENSE NO. 47976
22556 GRATIOT AVE., EASTPOINTE, MI 48021
TSycko@kemtec-survey.com

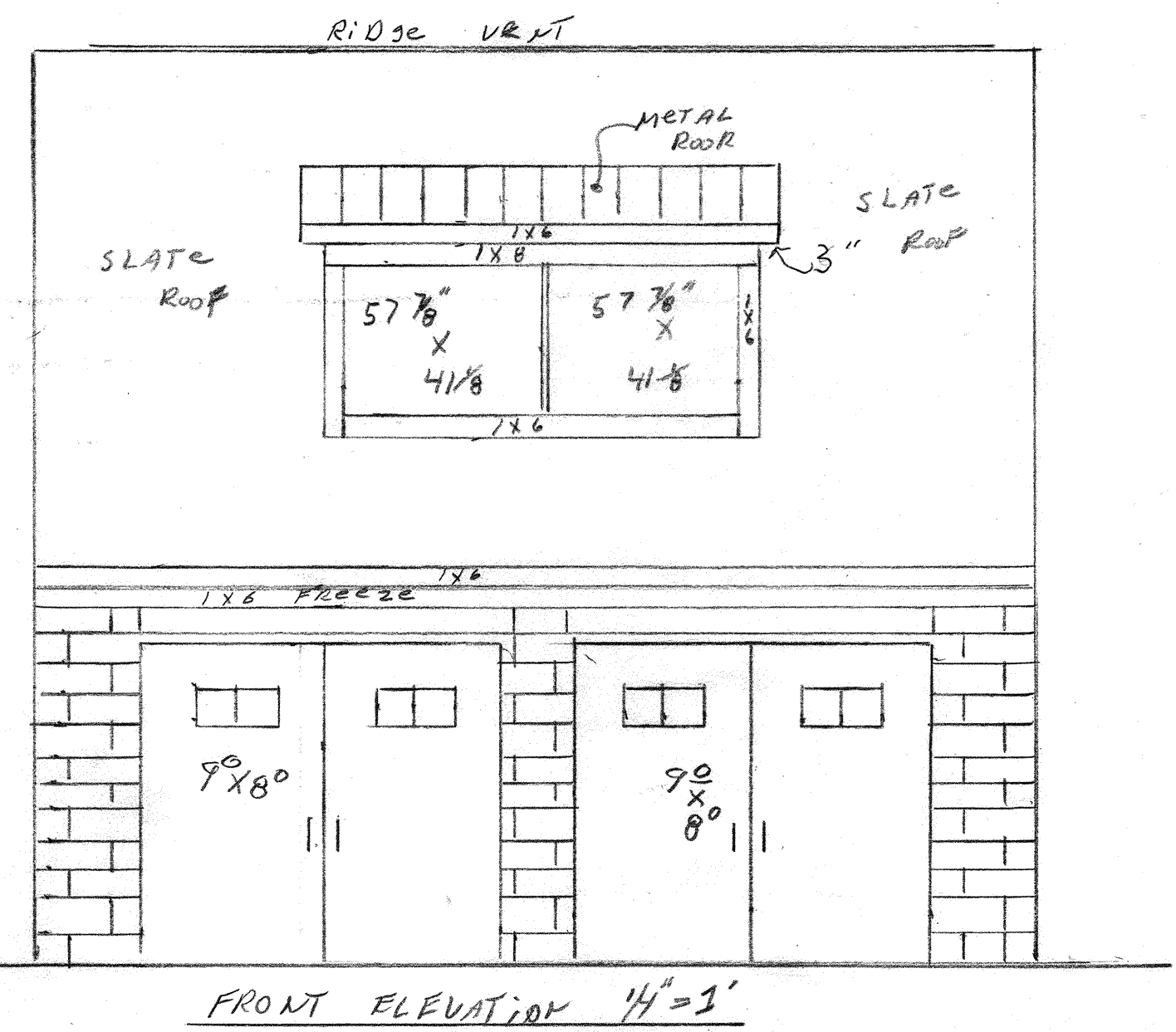
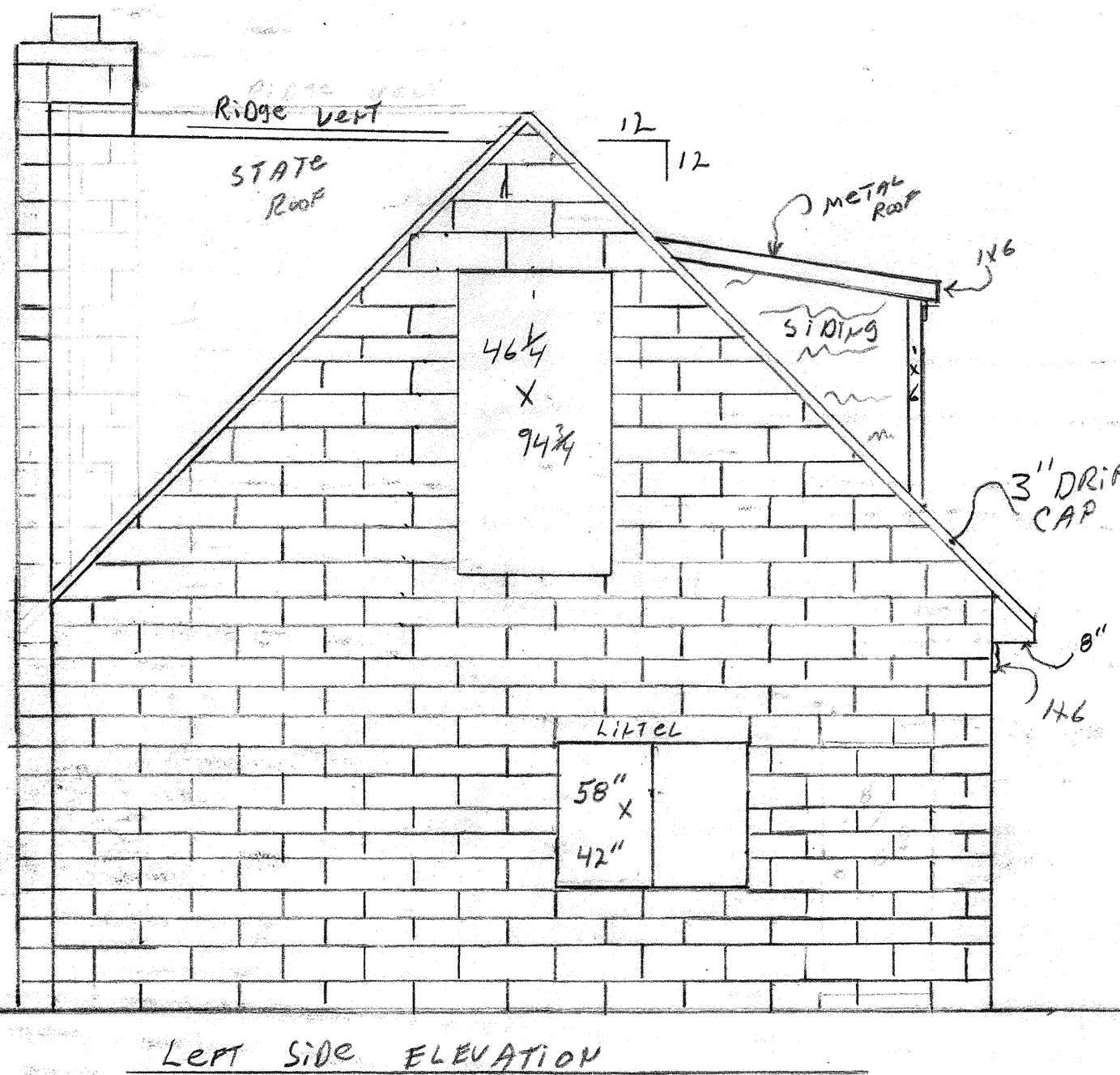
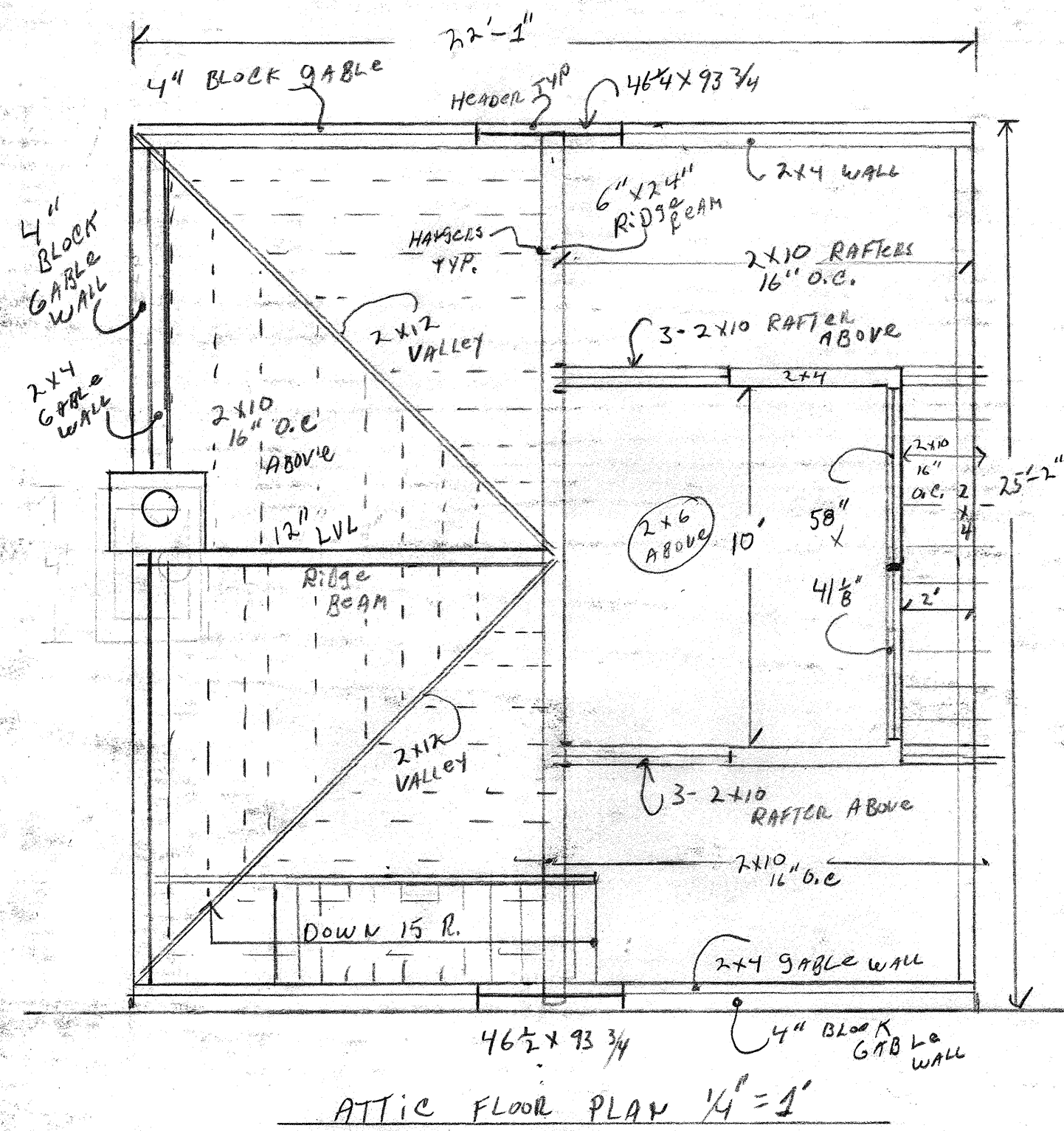
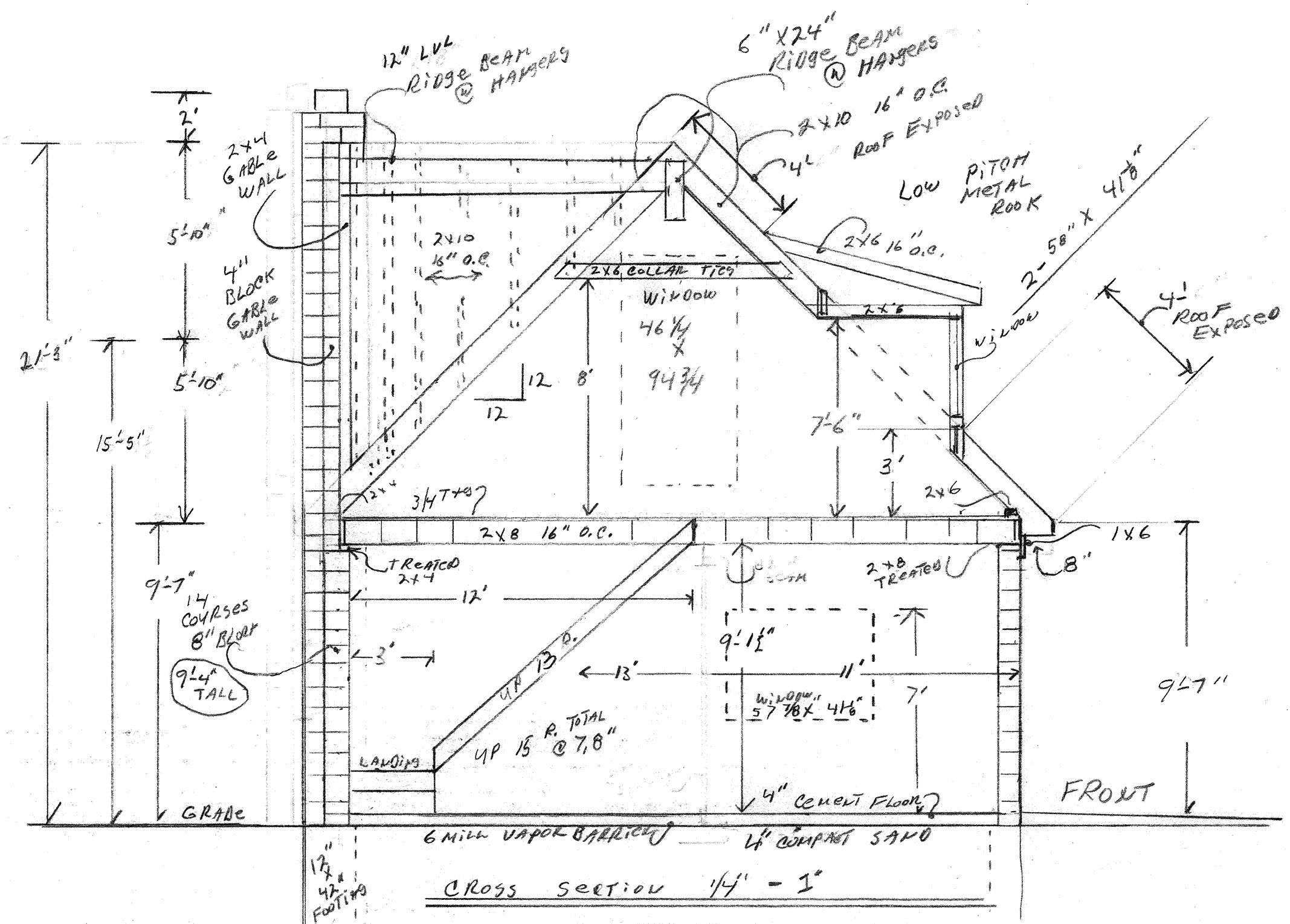
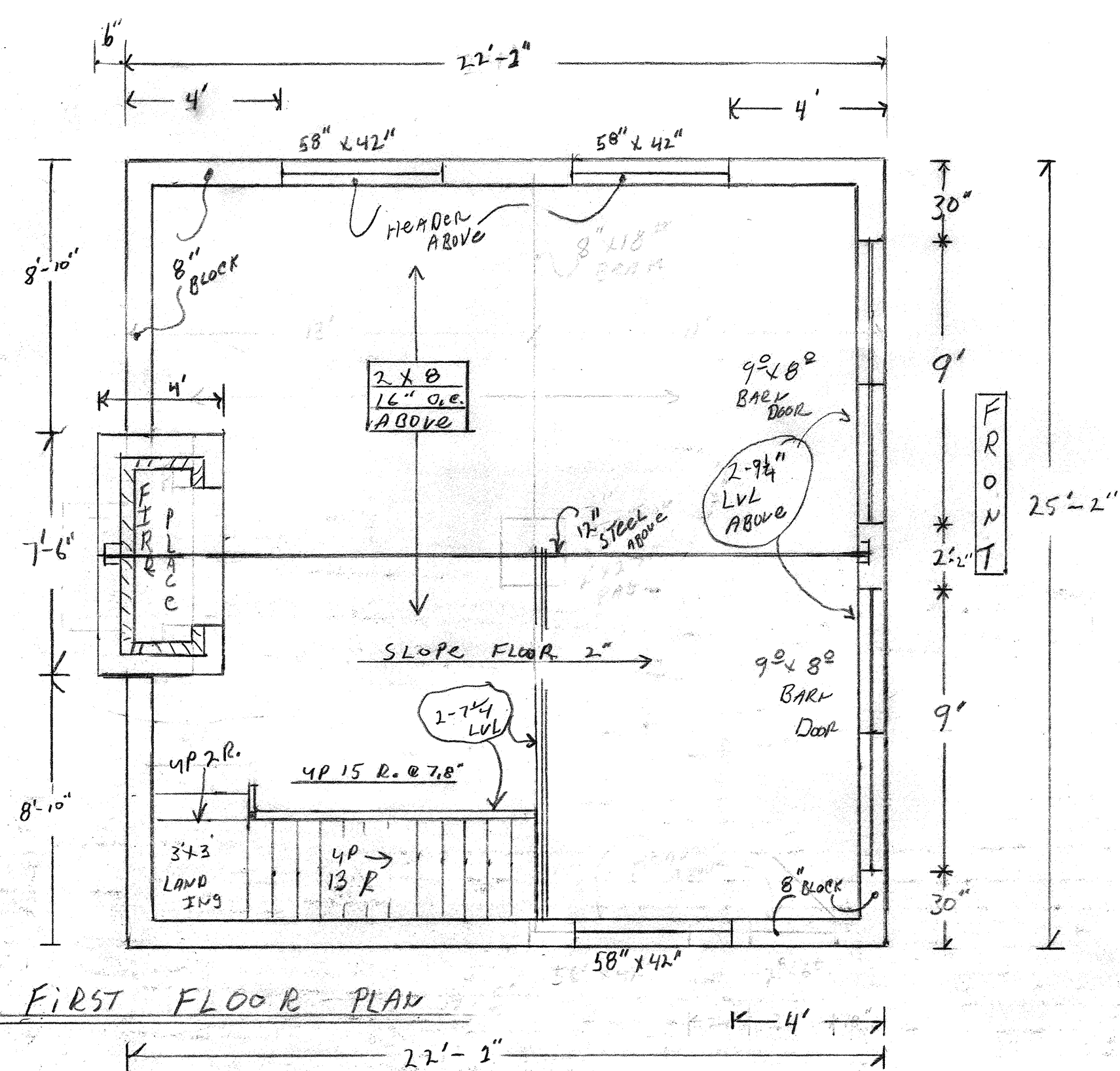
TOPOGRAPHIC SURVEY

PREPARED FOR: CRAIG LUDWIG
1602 COLE AVENUE, BIRMINGHAM, MICHIGAN,
PART OF SECTION 36,
TOWN 2 NORTH, RANGE 10 EAST

1	1 OF 1 SHEETS		DRAWN BY: JDM	01/06/20					
			CHECKED BY: AJS	01/13/20					
			DATE: JANUARY 13, 2020		3	03/20/20	JV	ADDED ADDITIONAL DIMENSION & SQUARE FOOTAGE OF PROPOSED GARAGE	
					2	03/19/20	JV	CHANGED SIZE & LOCATION OF PROPOSED GARAGE AND CHIMNEY	
			PROJECT NO: 19-03989	SCALE: 1" = 10'	1	01/15/20	DB	ADDED PROPOSED CHIMNEY	
						REVISION: 1	DATE: 01/15/20	BY: DB	DESCRIPTION: ADDED PROPOSED CHIMNEY



CRAIG LYDWIG
1602 COLE AVE.



CRAIG LYDWIG
1602 COLE AVE.

BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, MARCH 10, 2020
City Commission Room
151 Martin Street, Birmingham, Michigan

1. CALL TO ORDER

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, March 10, 2020. Chairman Charles Lillie convened the meeting at 7:30 p.m.

2. ROLLCALL

Present: Chairman Charles Lillie; Board Members Jason Canvasser, Kevin Hart, John Miller, Erik Morganroth; Alternate Board Member Ron Reddy

Absent: Board Members Richard Lilley, Francis Rodriguez; Alternate Board Member Jerry Attia

Administration:

Bruce Johnson, Building Official
Mike Morad, Asst. Building Official
Jeff Zielke, Asst. Building Official
Laura Eichenhorn, Transcriptionist

Chairman Lillie welcomed everyone and invited Vice-Chairman Morganroth to conduct the meeting for its duration.

Vice-Chairman Morganroth explained 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-Chairman Morganroth took rollcall of the petitioners. Petitioners for Appeal 20-13, 1054 Saxon, were absent during roll call. To allow the petitioners time to arrive, Appeal 20-13 was rescheduled to the end of the present meeting. When the petitioners were not present by the end of the meeting, Appeal 20-13 was rescheduled again to the regular May 2020 BZA meeting. All other petitioners were present.

T# 03-13-20

3. APPROVAL OF THE MINUTES OF THE BZA MEETING OF FEBRUARY 11, 2020

Mr. Canvasser said:

- The first line of the last paragraph on page four should have 'standard precedence in' removed.
- In the fourth line of the last paragraph on page four, 'of standard precedence' should be removed and 'the issue' should be changed to 'this issue'.
- In the last line of the last paragraph on page four, 'the zoning at this time' should be changed to 'the zoning ordinance'.
- On page seven, in the second paragraph, 'it is' should be added after 'that'.

Motion by Mr. Lillie

Seconded by Mr. Canvasser to accept the Minutes of the BZA meeting of February 11, 2020 as amended.

Motion carried, 6-0.

VOICE VOTE

Yeas: Lillie, Canvasser, Hart, Miller, Morganroth, Reddy

Nays: None

T# 03-14-20

4. APPEALS

**1) 932 Chestnut
Appeal 20-11**

Assistant Building Official Morad presented the item, explaining that the owner of the property known as 932 Chestnut was requesting the following variance to construct a window well in the required front open space:

A. Chapter 126, Article 4, Section 4.30(C) 4 of the Zoning Ordinance prohibits window wells to be erected in the required front open space. A window well is proposed to be constructed in the required front open space; therefore a variance to permit the window well is requested.

Assistant Building Official Morad noted this appeal was before the board last month and was tabled until this month. The applicant has proposed a window well around an existing basement window on the front of the home. The existing home was constructed in 1976. This property is zoned R2 – Single Family Residential.

Mark Lusek of ZLM Services was present on behalf of the appeal. He said the applicant would be willing to make any aesthetic modifications the Board might request to move this appeal through. Mr. Lusek also apologized that ZLM began the work before receiving a permit, explaining that the ZLM staff member charged with researching and applying for work permits failed to realize a permit was needed.

In reply to Mr. Canvasser, Building Official Johnson said if the Board were to recommend simple changes to the appeal, they could be considered as part of this item instead of requiring the appellant to re-draw, re-file and re-present at a future date. He said that in this particular case staff could ensure that the work complies with whatever the Board ultimately approves. Building Official Johnson said the appellant would be required to submit plans after this meeting, and before beginning work, showing adherence to the updated requirements if the Board were to proceed with approving something different than the current plans.

Motion by Mr. Lillie

Seconded by Mr. Reddy with regard to Appeal 20-11, A. Chapter 126, Article 4, Section 4.30(C) 4 of the Zoning Ordinance prohibits window wells to be erected in the required front open space. A window well is proposed to be constructed in the required front open space; therefore a variance to permit the window well is requested.

Mr. Lillie moved to approve a window well subject to the following conditions: 1. That the window well extends no further than three feet, inside the well, from the house; 2. That it be covered with a grate; and, 3. That prior to continuing the work the appellant provide drawings meeting these specifications which are satisfactory to the Building Official.

Mr. Lillie explained the petitioner demonstrated a practical difficulty that would make it difficult to comply with the ordinance. He noted that granting the variance would do no injustice to the neighbors, and that the issue the petitioner is facing was not self-created.

Mr. Canvasser said he would support the motion. He said that while in general he prefers the Board not dictate design, if the Board had voted on the plans as submitted he would have voted against them. In that situation, the appellant would have had to return to the drawing board, re-file, and re-present their appeal only to likely end up with exactly the conclusion Mr. Lillie is recommending. As a result, Mr. Canvasser said it was both more fair to the petitioner and more expeditious to proceed with Mr. Lillie's recommendation in this case.

Mr. Miller said that this appeal has very unique conditions, and that this decision should not be construed to be a precedent for any future decisions.

Vice-Chairman Morganroth said he would also support the motion. He said the Board frowns on retroactively approving work, and that the standard for approval remains the same whether the work is pending or has been commenced. He said that due to

the grade falling towards the home, Mr. Lillie's recommended variance is one Vice-Chairman Morganroth would have approved prior to the work beginning, and that it will mitigate the unique issues this site faces.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lillie, Reddy, Canvasser, Hart, Miller, Morganroth

Nays: None

**2) 295 S. Cranbrook
Appeal 20-12**

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 295 S. Cranbrook was requesting the following variance to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garage must be setback a minimum of 5 feet from the portion of the front facade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 4.30 feet forward of the front facade. Therefore, a variance of 9.30 feet is being requested.

Assistant Building Official Zielke noted the applicant was requesting to maintain the existing garage that was constructed 1959. This property is zoned R1 – Single Family Residential.

Frank Mastroianni was present as the owner of 295 S. Cranbrook. He reviewed his letter to the Board describing the reasons for the requested variance.

The Board asked Assistant Building Official Zielke fact-finding questions, but there was no discussion by the Board or from the public regarding this appeal.

Motion by Mr. Miller

Seconded by Mr. Lillie with regard to Appeal 20-12, A. Chapter 126, Article 4, Section 4.75(A)1 of the Zoning Ordinance requires that a private, attached, single-family residential garage must be setback a minimum of 5 feet from the portion of the front facade on the first floor of a principal residential building that is furthest setback from the front property line. The existing and proposed is 4.30 feet forward of the front facade. Therefore, a variance of 9.30 feet is being requested.

Mr. Miller said he moved to approve because strict compliance with the ordinance would present a hardship. He also noted that the majority of the homes on the block of 295 S. Cranbrook have garages similarly positioned to the one this appeal proposes. Mr. Miller continued that approving this variance would do substantial justice to the neighboring properties and that the circumstances are not self-created because they

were built prior to the current ordinance requirements. For these reasons, Mr. Miller said the Board should grant the variance and tie it to the plans as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Miller, Lillie, Morganroth, Reddy, Canvasser, Hart

Nays: None

**3) 1054 Saxon
Appeal 20-13**

Petitioners were absent during roll call. To allow the petitioners time to arrive, Appeal 20-13 was rescheduled to the end of the present meeting. When the petitioners were not present by the end of the meeting, Appeal 20-13 was tabled to the regular May 2020 BZA meeting.

Motion by Mr. Lillie

Seconded by Mr. Canvasser to table consideration of Appeal 20-13, 1054 Saxon, to the May 2020 BZA meeting.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lillie, Canvasser, Miller, Morganroth, Reddy, Hart

Nays: None

**4) 1063 W. Southlawn
Appeal 20-14**

Assistant Building Official Morad presented the item, explaining the owner of the property known as 1063 W. Southlawn was requesting the following variances to construct a two-story rear addition along with renovations to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 32.51 feet. The existing and proposed is 29.77 feet. Therefore a 2.74 foot variance is being requested.

B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front facade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 15.25 feet in front of the furthest front facade. Therefore a variance of 20.25 feet is being requested.

C. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in

width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing garage is being requested.

Assistant Building Official Morad noted the applicant was seeking variances to construct a two story rear addition to the existing home that was constructed in 1948. This property is zoned R2 – Single Family Residential.

Assistant Building Official Morad confirmed for Vice-Chairman Morganroth that this project only requires variances due to the three existing non-conformities. Assistant Building Official Morad also confirmed that none of the existing non-conformities would be expanded by these variances.

Zach Ostroff, designer, was present on behalf of the appeal. He reviewed owner Charles Atkins' letter detailing the reasons for the requested variances. Mr. Ostroff explained the garage could not be made into two nine foot doors because doing so would require eighteen inches between the doors and would thus leave only two to three inches clearance between the doors of the vehicles and the outer sides of the garage. Mr. Ostroff said expanding the garage was considered, but that since it would require additional variances and due to budgetary constraints the owner decided to pursue leaving the garage as is.

Motion by Mr. Canvasser

Seconded by Mr. Hart with regard to Appeal 20-14, A. Chapter 126, Article 2, Section 2.08 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 32.51 feet. The existing and proposed is 29.77 feet. Therefore a 2.74 foot variance is being requested. B. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front facade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 15.25 feet in front of the furthest front facade. Therefore a variance of 20.25 feet is being requested. C. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Mr. Canvasser moved to approve all three variances as advertised and to tie them to the plans as submitted. He said that strict compliance with the ordinance would unreasonably restrict the property owner from using the property for a permitted purpose, the variance would do substantial justice to the neighbors, the unique circumstances here include a pre-existing non-conforming use which would not be enlarged by the variance, and the problem was not self-created.

Vice-Chairman Morganroth said he would move to support the motion. He noted that the Board discussed with the appellant if there were any ways to further mitigate the non-conformities with the garage but that it was determined there were not any feasible alternatives.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Canvasser, Hart, Lillie, Miller, Morganroth, Reddy

Nays: None

**5) 725 Tottenham
Appeal 20-15**

Mr. Hart notified the Board that he has had professional involvement with this appeal and that he would be recusing himself from the appeal's discussion as a result.

Mr. Hart left the room at 8:26 p.m.

Vice-Chairman Morganroth noted for the record that the appellant was offered the opportunity to move the hearing of Appeal 20-15 to the next available BZA meeting since four affirmative votes would be required to approve these variances and with Mr. Hart's recusal there were only five Board members present. The applicant told the Board they were comfortable proceeding with this evening's scheduled hearing of the appeal.

Assistant Building Official Zielke presented the item, explaining that the owner of the property known as 725 Tottenham was requesting the following variances to construct a second floor addition to an existing non-conforming home:

A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 36.80 feet. The existing and proposed is 31.60 feet. Therefore a 5.20 foot variance is being requested.

B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 14.25 feet. Therefore, a variance of 2.00 feet is being requested.

C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 8.40 feet in front of the furthest front facade. Therefore a variance of 13.40 feet is being requested.

D. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Assistant Building Official Zielke noted the applicant was requesting variances to maintain the existing non conformities of the home that was constructed in 1954. This property is zoned R1 – Single Family Residential.

Mr. Canvasser observed that Variance D for this appeal was the same as Variance C in Appeal 20-14, and said the same question applied as to whether the installation of two nine foot garage doors had been considered.

Assistant Building Official Zielke said that the garage in the current appeal was even smaller than the garage in Appeal 20-14, meaning that the installation of two nine foot garage doors would be even more infeasible.

John VanBrouck, architect, was present on behalf of the appeal. Mr. VanBrouck reviewed his letter to the Board describing the reasons for the requested variance.

Motion by Mr. Reddy

Seconded by Mr. Canvasser with regard to Appeal 20-15, A. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 36.80 feet. The existing and proposed is 31.60 feet. Therefore a 5.20 foot variance is being requested. B. Chapter 126, Article 2, Section 2.06.2 of the Zoning Ordinance requires that the minimum total side yard setbacks are 14.0 feet or 25% of the lot width whichever is greater. The required total is 16.25 feet. The existing and proposed total is 14.25 feet. Therefore, a variance of 2.00 feet is being requested. C. Chapter 126, Article 4, Section 4.75(A)(1) of the Zoning Ordinance requires attached garages that face the street must be setback a minimum of 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The existing and proposed garage is 8.40 feet in front of the furthest front facade. Therefore a variance of 13.40 feet is being requested. D. Chapter 126, Article 4, Section 4.75(A)(2) of the Zoning Ordinance requires attached garages that face the street may not have garage doors exceed 9.00 feet in width. The existing and proposed is 16.00 foot. Therefore a variance to maintain the existing is being requested.

Mr. Reddy moved to approve all four of the variances requested, and to tie their approval to the plans as submitted. He said this is an example of an owner trying to improve a home while navigating existing non-conformities. Mr. Reddy stated that strict adherence to the ordinance would preclude the owner from using the house in the way he desires and would present an undue hardship.

Motion carried, 5-0.

ROLL CALL VOTE

Yeas: Reddy, Canvasser, Lillie, Miller, Morganroth

Nays: None

Mr. Hart returned to the meeting at 8:34 p.m.

**6) 487 Willits
Appeal 20-03**

Assistant Building Official Morad presented the item, explaining that the owner of the property known as 487 Willits was requesting the following variance to reconstruct an existing non-conforming accessory structure:

A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires accessory structures shall not be closer than 10.00 feet to the principal building located on the same lot. The existing and proposed is 4.40 feet. Therefore a variance of 5.60 feet is being requested.

Assistant Building Official Morad noted the applicant was requesting this variance to reconstruct an existing accessory structure from 1910. The placement of it in relation to the existing home does not meet the current zoning ordinance. This location is historic and the reconstruction was approved by the HDC on November 6, 2019. This property is zoned R3 – Single Family Residential.

Thomas Holleman, designer, was present on behalf of the appeal. He reviewed owner Susan Martin's letter detailing the reasons for the requested variance.

Motion by Mr. Miller

Seconded by Mr. Canvasser with regard to Appeal 20-03, A. Chapter 126, Article 4, Section 4.03(D) of the Zoning Ordinance requires accessory structures shall not be closer than 10.00 feet to the principal building located on the same lot. The existing and proposed is 4.40 feet. Therefore a variance of 5.60 feet is being requested.

Mr. Miller said strict compliance with the ordinance would be unnecessarily burdensome in this case due to the historic nature of the accessory structure and the unusual conditions of the property. Mr. Miller observed that the pre-existing non-conformities mean the need for a variance is not self-created. For those reasons, Mr. Miller moved to approve the variance request and to tie it to the plans as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Miller, Canvasser, Morganroth, Reddy, Hart, Lillie

Nays: None

**7) 1062 Cole
Appeal 20-16**

Assistant Building Official Zielke presented the item, explaining the owner of the property known as 1602 Cole was requesting the following variances to construct a detached garage:

A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires accessory buildings may occupy a portion of the rear open space. They shall be at least 3 feet from any lot line. The proposed is 1.10 feet. Therefore a variance of 2.90 feet is being requested.

B. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 16.38 feet. Therefore a variance of 1.88 feet is being requested.

C. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires The maximum area of the first floor of any accessory structure or accessory structures in combination shall not exceed 10% of the lot area or 500 square feet in R3, whichever is less. Chapter 126, Article 4, Section 4.30(C)6 of the zoning ordinance allows a bonus of an additional 75 square feet of area for the use of an interior fixed and stationary staircase. This will allow a maximum area of 575 square feet for the accessory structure. The proposed is 604.80 square feet. Therefore a variance of 29.80 square feet is being requested.

D. Chapter 126, Article 4, Section 4.30(C)2 of the Zoning Ordinance requires Roof overhangs, cornices, eaves, gutters, lintels, planter boxes, chimneys, bay windows and similar projections may extend or project into a required open space not more than 2 inches for each 1 foot of width of such required open space. The open space of 1.10 feet as per variance request A, allows an allowable projection of 2.20 inches. The proposed projection is 12.00 inches. Therefore a variance of 9.80 inches is being requested.

Assistant Building Official Zielke noted this property is zoned R3 – Single Family Residential.

Craig Ludwig, owner, was present on behalf of the appeal. MSG Ludwig reviewed his letter detailing the reasons for the requested variances. MSG Ludwig apologized for not seeking a work permit before beginning the work, explaining he was unaware that one was required. He said that if his property had a driveway off Cole he would likely be able to mitigate some of the requested variances, but his property's driveway is off Tory, necessitating some of the variance requests.

Mr. Lillie asked MSG Ludwig if he had considered reorienting his garage so it faces either north or south, with the garage a bit closer to the street, which would eliminate the setback issue. MSG Ludwig could then come in off of Tory and turn in his driveway to pull into his garage.

MSG Ludwig said there was a well head to the south that would prevent Mr. Lillie's suggestion from working, and that he hoped to add an attached garage to his home in the future which would prevent the current garage from being oriented towards the north.

Motion by Mr. Lillie

Seconded by Mr. Miller with regard to Appeal 20-16, A. Chapter 126, Article 4, Section 4.03(B) of the Zoning Ordinance requires accessory buildings may occupy a portion

of the rear open space. They shall be at least 3 feet from any lot line. The proposed is 1.10 feet. Therefore a variance of 2.90 feet is being requested.

Referring to variance request A only for Appeal 20-16, Mr. Lillie moved to deny the request. Mr. Lillie acknowledged the unusual shape of the lot, but said it would not be unduly burdensome for the appellant to comply with the ordinance for the sideyard setback.

Mr. Reddy said that in light of the fact that MSG Ludwig already poured a substantial amount of concrete, not granting Variance A could impose a high enough cost on MSG Ludwig that he may not be able to move forward with his project. For that reason Mr. Reddy said he would not support the motion.

Mr. Lillie stated that cost is not a determining factor as to whether there is a practical difficulty. He added that if the work had received a building permit before it was begun then the appellant would not be facing this problem.

Vice-Chairman Morganroth cautioned that if money already spent on a non-permitted project were a factor in the Board's decisions, then in the future that might encourage people to perform the work first and ask for City allowances after.

Mr. Miller observed that if the garage were redesigned to be in the zoning envelope major portions of the already poured foundation could still be saved.

Mr. Canvasser said he would support the motion as well, agreeing that money already spent on a non-permitted project cannot be a determining factor in the Board's decisions. He stated that the Board has to make its decisions as if the work had not already been performed. Mr. Canvasser said the need for Variance A is a self-created issue.

Vice-Chairman Morganroth said he would support the motion, explaining that he was unpersuaded that the garage could not be built within the zoning envelope. He stated that if an ordinance can be adhered to, and the lot allows for it, that adherence to the ordinance is required.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lillie, Miller, Morganroth, Canvasser, Hart

Nays: Reddy

Motion by Mr. Lillie

Seconded by Mr. Miller with regard to Appeal 20-16, C. Chapter 126, Article 4, Section 4.03(H) of the Zoning Ordinance requires The maximum area of the first floor of any accessory structure or accessory structures in combination shall not exceed 10% of the lot area or 500 square feet in R3, whichever is less. Chapter 126, Article 4, Section

4.30(C)6 of the zoning ordinance allows a bonus of an additional 75 square feet of area for the use of an interior fixed and stationary staircase. This will allow a maximum area of 575 square feet for the accessory structure. The proposed is 604.80 square feet. Therefore a variance of 29.80 square feet is being requested.

Referring to variance request C only for Appeal 20-16, Mr. Lillie moved to deny the request. Mr. Lillie said that in this case as well it would not be unduly burdensome for the petitioner to comply with the ordinance.

Mr. Miller said he was unable to find evidence that the need for Variance C was not self-created. He said he looked for unusual circumstances that would require the need for Variance C but that ultimately it came down to owner preference, which is not a factor in BZA decisions.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Lillie, Miller, Morganroth, Canvasser, Hart

Nays: Reddy

Conversation between the Board and MSG Ludwig ensued regarding whether he would prefer the Board vote on variance requests B and D, or table them to a future meeting.

MSG Ludwig stated the most important aspect for him would be the granting of Variance B, so he could increase the height of the garage.

Vice-Chairman Morganroth explained to MSG Ludwig that it would behoove him to return with drawings that show a proposal for variance request B that also conforms to the denials of variance requests A and C. He explained that if the Board were to vote on variance requests B and D and they were denied, then MSG Ludwig could not return to the Board without substantial changes to the proposed work.

Mr. Canvasser, Mr. Lillie, and Vice-Chairman Morganroth also emphasized for MSG Ludwig that without revised drawings for variance requests B and D that taking the denial of variances A and C into account, the Board would not be able to make an informed decision.

MSG Ludwig told the Board that he would like to table consideration of variances B and D until the May 2020 BZA meeting.

Motion by Mr. Lillie

Seconded by Mr. Canvasser with regard to Appeal 20-16, B. Chapter 126, Article 4, Section 4.03(G) of the Zoning Ordinance requires that the maximum building height for accessory structures in R3 District is 14.50 feet to the mid-point. The proposed mid-point is 16.38 feet. Therefore a variance of 1.88 feet is being requested; and, D. Chapter 126, Article 4, Section 4.30(C)2 of the Zoning Ordinance requires Roof overhangs, cornices, eaves, gutters, lintels, planter boxes, chimneys, bay windows

and similar projections may extend or project into a required open space not more than 2 inches for each 1 foot of width of such required open space. The open space of 1.10 feet as per variance request A, allows an allowable projection of 2.20 inches. The proposed projection is 12.00 inches. Therefore a variance of 9.80 inches is being requested.

Mr. Lillie moved that consideration of variances B and D be tabled until the May 2020 BZA meeting subject to presentation of new drawings.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Lillie, Canvasser, Miller, Morganroth, Hart, Reddy

Nays: None

T#03-15-20

5. CORRESPONDENCE (included in agenda)

T# 03-16-20

6. GENERAL BUSINESS

The BZA reviewed the first draft of the Birmingham Plan.

Mr. Canvasser noted the draft discusses a number of items that could increase variance requests, including incentives to encourage addition to existing homes rather than new builds, increased setbacks and other requirements, ensuring new construction better matches existing homes, and new requirements regarding accessory dwelling units (ADUs), multi-family units and cottage courts. He asked how other Board members viewed the potential increase in variance requests.

Mr. Morganroth said the proposed changes Mr. Canvasser referenced would incentivize the maintenance of non-conforming homes instead of allowing for new, conforming homes to be built.

Mr. Canvasser agreed, and said a master plan that encourages adding-on to non-conforming homes and a BZA that seeks to mitigate the need for variances could increase the contradictions in City policy.

Mr. Hart said that if the Building Department had some limited flexibility in applying ordinances to homes with historical value, those specific cases may not need to be heard by the BZA. He suggested some criteria could be formed in order to know when that would be appropriate.

Building Official Johnson said the master planning team may not have considered the issue of non-conformities in proposing some of the items Mr. Canvasser originally listed. He said that the BZA could recommend the master planning team consider the issue when considering incentives.

Mr. Morganroth asked if the master planning team should be made aware of issues that frequently arise as variance requests with an eye towards suggesting potential ordinance improvements.

Building Official Johnson said the master planning team was unlikely to get into that level of detail, but that it might be beneficial if the BZA periodically reviewed ordinances that commonly yield variance requests to see if the ordinances could be modified or improved.

In reply to Mr. Canvasser, Building Official Johnson confirmed that one of the aims of the master planning process is to minimize or eliminate conflicts between various overlay districts.

Mr. Miller commented that the City's previous master plan did well to advance the City's goals, and that the current master planning process seems to be headed in a similarly positive direction. In reply to Mr. Canvasser's initial query, Mr. Miller said a potential change in the number of variance requests would not be of concern to him as he sees making those decisions to be the Board's charge. He said he did agree with some of Mr. Canvasser's concerns, but that generally he was optimistic about the master planning process so far.

Mr. Reddy said he would like to see what zoning best practices the master planning team would recommend for incorporation into the master plan.

Building Official Johnson suggested Mr. Reddy raise that request at one of the ongoing master planning conversations the Planning Board is hosting since the consultants working on the master plan will be present at those meetings and would be able to address the question of best practices.

T# 03-17-20

7. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Margaret Peterson said she had concerns about what she described as the large, aesthetically uniform homes she sees going up around Birmingham.

Mr. Lillie explained to Ms. Peterson that the BZA does not deal with the ascetics of building houses and most of them do not require variances. He said Ms. Peterson would be better advised to direct her concerns to the City's Planning Board as part of the master plan discussion process as the Planning Board is specifically looking to hear that kind of feedback.

Building Official Johnson told Ms. Peterson that the following evening, March 11, 2020 at 7:30 p.m., the Planning Board would be having a master plan discussion in the City Commission room and he encouraged her to attend and share her views.

Ms. Peterson said she also appreciated how carefully and sensitively the Board members communicated with the appellants, and thanked them for that.

T# 03-18-20

8. ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 10:03 p.m.

A handwritten signature in blue ink, appearing to read "Bruce R. Johnson", is written over a horizontal line.

Bruce R. Johnson, Building Official

CASE DESCRIPTION

1884 W Melton (20-27)

Hearing date: June 9, 2020

Appeal No. 20-27: The owner of the property known as 1884 W Melton, requests the following variances to construct a new single family home with an attached garage:

- A. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 15.72 feet. Therefore, a variance of 4.28 feet is being requested on the West side.
- B. Chapter 126, Article 4, Section 4.74(C)** of the Zoning Ordinance requires a minimum distance between principal residential buildings on adjacent lots of 14 feet or 25% of the total lot width, whichever is larger. The required distance is 20.00 feet. The proposed is 16.06 feet. Therefore, a variance of 3.94 feet is being requested on the East side.

Staff Notes: The applicant is proposing to construct a new home with an attached garage. The site meets the zoning requirements with the exception of the requested variances mentioned above.

This property is zoned R2 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

1884 W MELTON 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

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 4-14-20
 Received By: HT

Hearing Date: 5-12-20
 Appeal #: 20-0023

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
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I. PROPERTY INFORMATION:

Address: <u>1884 West Melton</u>	Lot Number: <u>367 part of 368</u>	Sidwell Number: <u>2031329006</u>
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II. OWNER INFORMATION:

Name: <u>Alex Karchon</u>			
Address: <u>1854 West Melton</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>ajk711@gmail.com</u>		Phone: <u>248-982-2103</u>	

III. PETITIONER INFORMATION:

Name: <u>Patrick Raye</u>	Firm/Company Name: <u>Hillan Homes</u>		
Address: <u>1231 Lacrosse Trail</u>	City: <u>Oxford</u>	State: <u>MI</u>	Zip code: <u>48371</u>
Email: <u>patrick.hillanhomes@gmail.com</u>		Phone: <u>248-462-4792</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 12th 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.

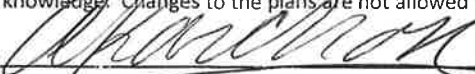

Requested Variances	Required	Existing	Proposed	Variance Amount
Variance A, Front Setback	25.00 Feet	23.50 Feet	23.50 Feet	1.50 Feet
Variance B, Height	30.00 Feet	30.25 Feet	30.25 Feet	0.25 Feet

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: <u></u>	Date: <u>3/10/20</u>
Signature of Petitioner: <u></u>	Date: <u>3/11/2020</u>



Hillan Homes, Inc.

March 11, 2020

City of Birmingham
Attn: Zoning Board of Appeals
151 Martin
Birmingham, MI 48009

RE: 1884 West Melton – ZBA Letter of Practicality and/or Hardship

Dear Sir or Madam:

Below we will illustrate our need for the requested variances:

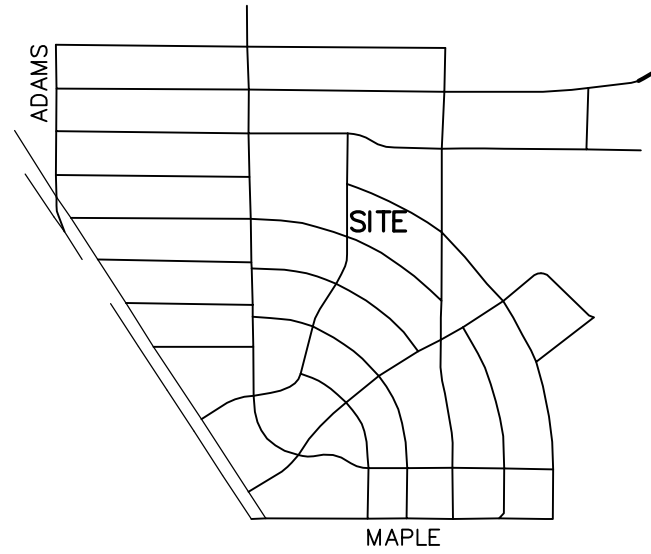
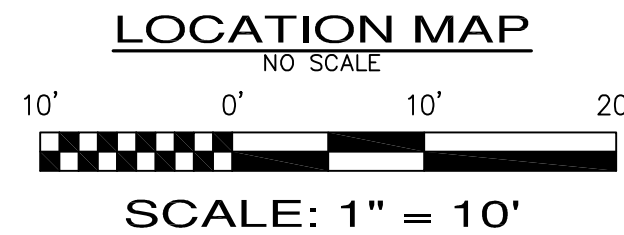
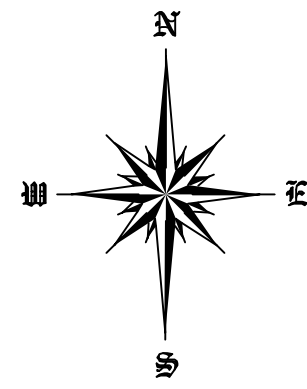
1. Request for relief on side yard distance between structures is due to the size of lot. Our request would give more space between structures than what currently exists. Due to the 80-foot lot size we would only be able to build a home that is half width of the lot.
2. Properties exist all over the City that are older and as new as 2019 that have balconies on the second floor both in the front and in the back of the house. It is well known that new construction in Birmingham commands a higher value than that of the surrounding communities. The addition of the requested balconies to this home give it better livability, more curb and rear yard appeal and a higher value.

If you have any questions, please feel free to contact me at 248-462-4792.

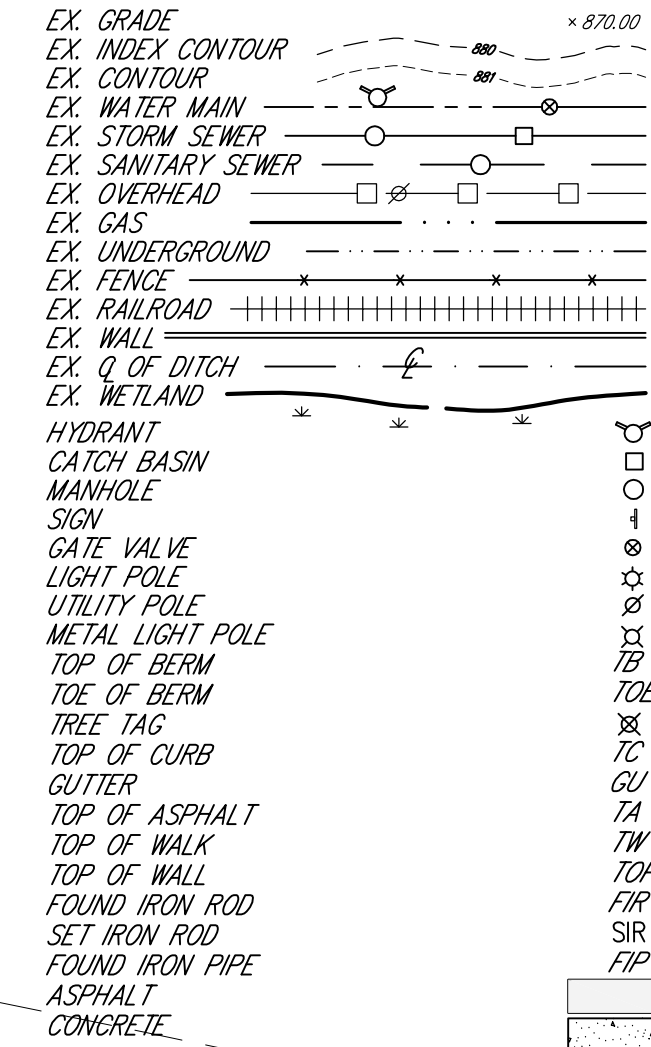
Thanks

Patrick Raye, Pres.
Hillan Homes

1231 Lacrosse Trail
Oxford, Michigan 48371
(248) 462-4792
(248) 693-1626 fax
www.hillanhomes.com



LEGEND



CALCULATIONS:

AREA OF LOT: 10,586 SQ. FT.
AREA OF HOUSE/GARAGE: 2,451 SQ. FT.
AREA OF DRIVEWAY: 785 SQ. FT.
AREA OF PORCHES: 205 SQ. FT.
AREA OF WALK: 97 SQ. FT.

FRONT SETBACK: 28.17FEET(AVG OF EX HOMES)
SIDE SETBACK: 9 FEET(MIN) 20 FEET(TOTAL)
REAR SETBACK: 30 FEET

TOPO. NOTES:

- THIS SURVEY WILL NOT SHOW ALL EASEMENTS OF RECORD UNTIL AN UPDATED TITLE POLICY HAS BEEN FURNISHED TO THE SURVEYOR BY THE OWNER.
- ALL ELEVATIONS ARE EXISTING ELEVATIONS
- SUBJECT PROPERTY LOCATED IN ZONE X. AREA OF MINIMAL FLOODING. PER FEMA FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 26125C0537F EFFECTIVE DATE: SEPTEMBER 29, 2006.
- THE LOCATION OF THE EXISTING UTILITIES AS SHOWN WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANIES RECORDS. NO GUARANTEE CAN BE MADE REGARDING THE COMPLETENESS OR EXACTNESS OF THE UTILITIES LOCATION. IT IS THE CONTRACTORS RESPONSIBILITY TO VERIFY IN THE FIELD THE LOCATION OF ALL UTILITIES. ANY POTENTIAL CONFLICT SHALL BE REPORTED TO THE ENGINEER PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL CONTACT MISS DIG 3 WORKING DAYS PRIOR TO CONSTRUCTION.



MATCH
EX. GRADES ALONG
PROPERTY LINE (TYP.)

HOUSE SETBACK DETAIL:

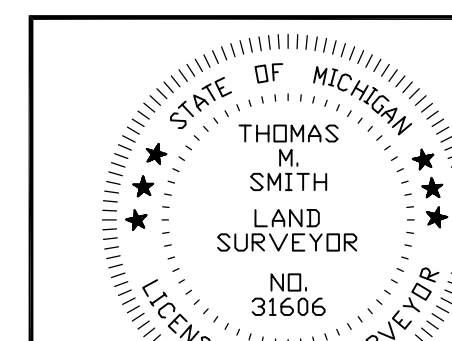
1"=40'

LEGAL DESCRIPTION:
THE WEST 17 FEET OF LOT 366, ALL OF LOT 367
AND THE EAST 18 FEET OF LOT 368, SHEFFIELD
ESTATES, CITY OF BIRMINGHAM, OAKLAND
COUNTY, MICHIGAN

SURVEYORS CERTIFICATE:

I HEREBY CERTIFY THAT I HAVE SURVEYED THE
PROPERTY DESCRIBED HEREON THAT THE
PROPERTY LINES ARE AS SHOWN.

THOMAS M. SMITH R.L.S. No. 31606



THOMAS M. SMITH P.S.
PROFESSIONAL LAND SURVEYOR

7559 OLDE STURBRIDGE TRAIL tsmith7559@yahoo.com
CLARKSTON, MICHIGAN 48348 PHONE: (248) 625-3276

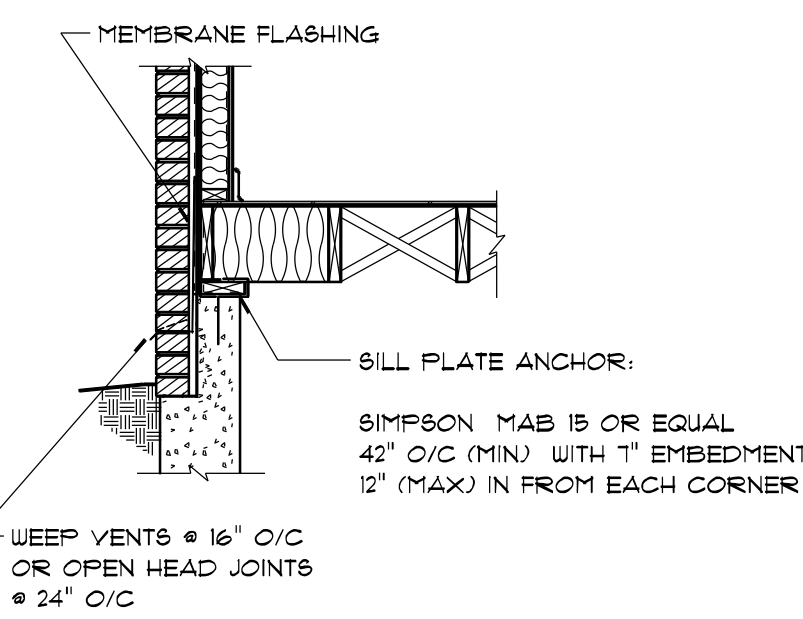
PROJECT
1884 W. MELTON
BIRMINGHAM, MI

TITLE
SITE PLAN

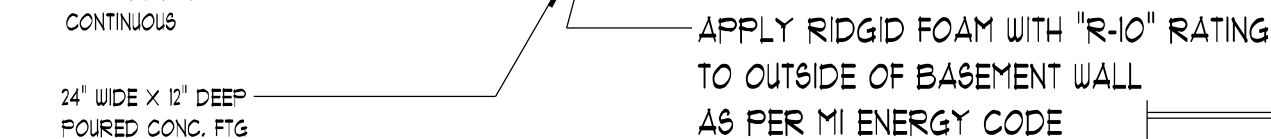
CLIENT
HILLAN

DRAWN BY: TMS
CHECKED BY: TMS
APPROVED BY: TMS
SCALE HORIZ. 1"=10'
SCALE VERT. N/A
DATE 02-01-20
PROJECT No. 20-111
SHEET No. 1 of 1

©2020

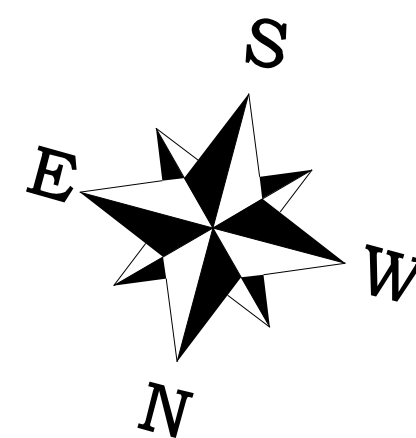
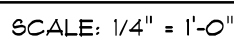


SCALE 1/2" = 1'-0"



SCALE: 3/8" = 1'-0"

EXTERIOR WALLS TO HAVE WEATHER RESISTIVE
PAPER APPLIED OVER SHEATHING
OR
EXTERIOR WALLS MUST BE SHEATHED WITH WEATHER
RESISTIVE PANELS WITH APPROVED TAPE OVER JOINTS



ALL WOOD FRAMING IN CONTACT WITH
CONCRETE MUST BE PRESURE TREATED
AS PER CODE

NOTE:
ROUGH PLUMB FOR
3 PIECE BATH. LOCATION
TO BE DETERMINED BY
BUILDER AND CUSTOMER
PRIOR TO ROUGH PLUMBING

POURED BASEMENT WALL
9'-0" HIGH

10' POURED CONCRETE WALL ON
24" X 12" POURED CONC. FTG. W/
REINFORCE AS NEEDED OR TO CO
4' WIDE BRICKLEDGE, HGT AS RE
GRADE OR BY LOCAL CODE.

IN MICHIGAN
(3 WORKING DAYS)
BEFORE YOU DIG CALL "MISS DIG"
1-800-482-7111

1.) TRENCH FOOTING SIZES 8-INCH ARE BASED ON 2500 PSF
LOAD BEARING VALUE OF SOIL.

2.) 4 VNC-BRICK VENEER OVER LIGHT FRAME CONSTRUCTION

GARAGE (WITHOUT LIVING AREA ABOVE) _____ 12 INCHES MIN.

GARAGE (WITH LIVING AREA ABOVE) _____ 14 INCHES MIN.

TWO STORY _____ 21 INCHES MIN.

THREE STORY _____ 32 INCHES MIN.

3.) FOOTINGS MUST COMPLY WITH THE MICHIGAN
RESIDENTIAL CODE, CHAPTER 4 AND TABLE R 403.1

4.) PERMIT HOLDER MUST VERIFY FOOTING
REQUIREMENTS WITH BUILDING OFFICIAL

NOTES:

1. ALL UNDERGROUND UTILITIES CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STANDARDS ESTABLISHED BY GOVERNING AGENCIES HAVING JURISDICTION.
2. FOOTINGS SHOWN ON PLANS WERE DESIGNED ASSUMING 1500 P.S.F. SOIL BEARING CAPACITY. P.S.F. BORINGS ARE DONE AND RESULTS ARE LESS THAN 1500 P.S.F. A STRUCTURAL ENGINEER SHOULD BE RESPONSIBLE FOR FOOTING DESIGN.
3. ALL SOLLS UNDER BUILDING MUST BE COMPACTED TO 95 PERCENT OR HIGHER. FLU MUST BE CLEAN, FREE OF VEGETATION AND DEBRIS. IT IS RECOMMENDED THAT SOIL TEST AND COMPACTION TEST BE CONDUCTED BY A SOILS ENGINEER.
4. ALL CONCRETE TO BE 3000 P.S.I. AT 28 DAYS.
5. ALL BUILDING FOOTINGS TO BE 4" MINIMUM DEPTH AND TO BE SOIL BEARING.
6. BATCHING, TRANSPORT AND PLACING OF ALL CONCRETE TO CONFORM TO A.C.I. LATEST EDITION. STEEL REINFORCING FABRICATION AND PLACEMENT TO CONFORM TO C.R.S.D. STANDARDS.
7. DAY-PROOFING AS PER LOCAL CITY CODE OR POLYMER - ENHANCED ASPHALT LIQUID APPLIED MEMBRANE AS PER ASHTO STANDARDS
8. PROVIDE EXPANSION JOINT BETWEEN CONCRETE SLAB AND BRICK OR BLOCK WALL. EXPANSION JOINT TO BE A.P.S. FIBER BOARD OR EQUAL (17" X 4" CONTINUOUS
9. BASEMENT WALLS ARE TO BE BACK FILLED AFTER INSIDE BRACING

THE ASSOCIATES DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THESE PLANS. BEFORE CONSTRUCTION, THE BUILDING CONTRACTOR, AND OR ENGINEER MUST CHECK DIMENSIONS, LOADING AND VERIFY BEAM AND HEADER SIZES.

Em 344 Mediterranean drive Punta Gorda

e-mail: t_m_f@comcast.net
web: TMfhomedesign.com

$$\frac{A}{B}$$

builder: **HILLMAN HOMES**

project:

NOTES

Division:

municipality / county / state:

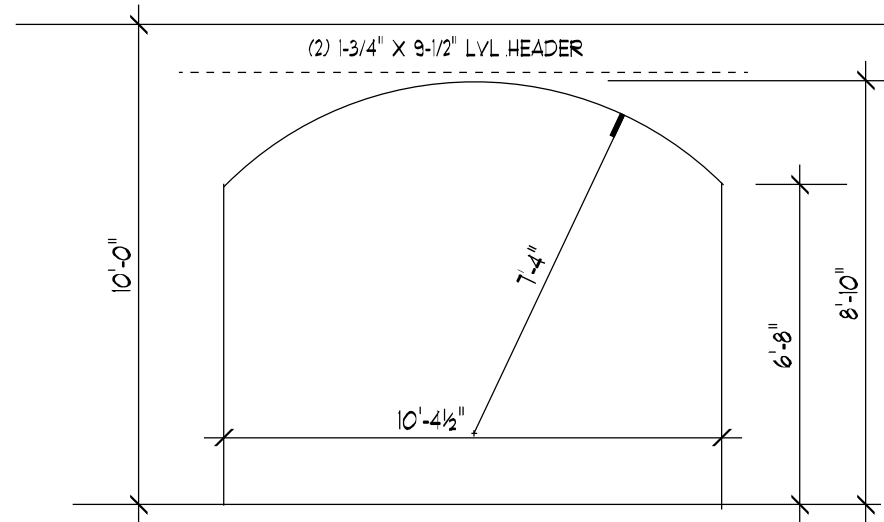
CITY OF BIRMINGHAM,
OAKLAND COUNTY, MICHIGAN

PDF creation date:
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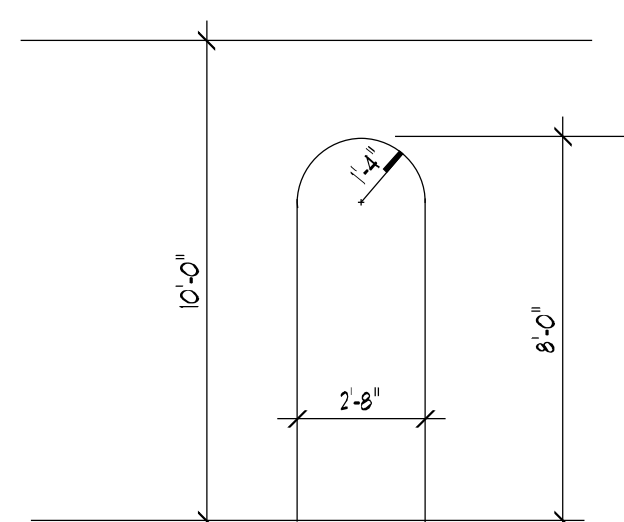
Friday, May 22, 2020

plan number:
19_030

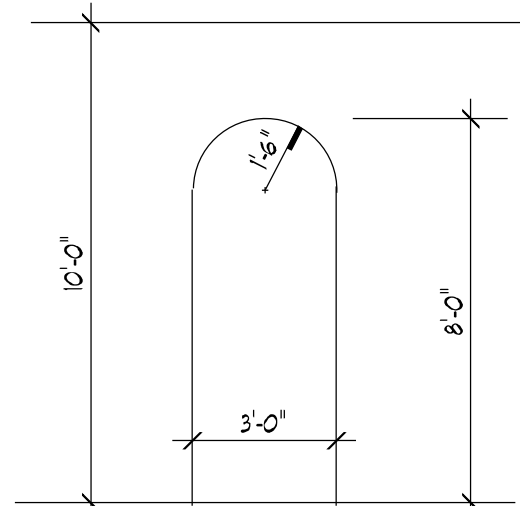
sheet no.
1 of 5



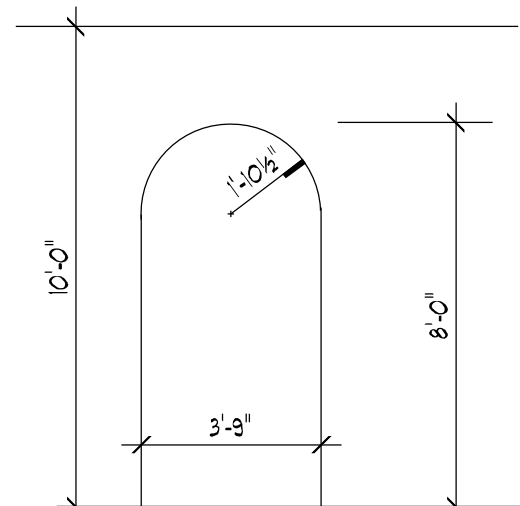
ARCH @ NOOK TO LIVING ROOM



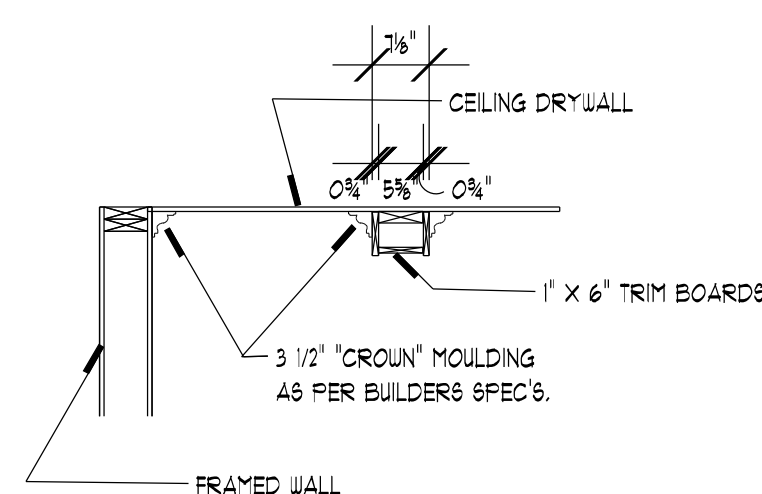
ARCH @ KITCHEN TO PANTRY
(2) PLACES



ARCH @ FOYER
& BACK HALL

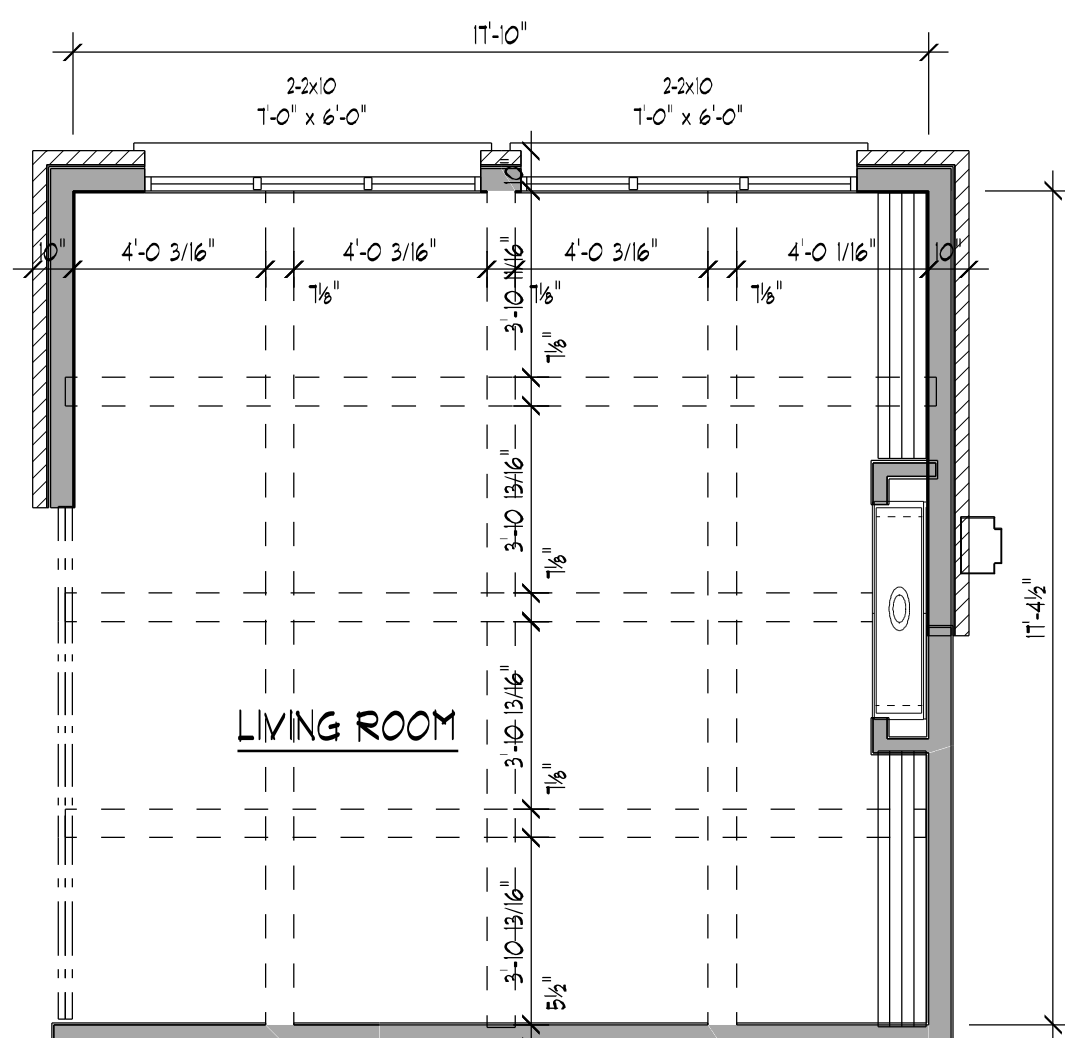


ARCH @ NOOK
& BACK HALL



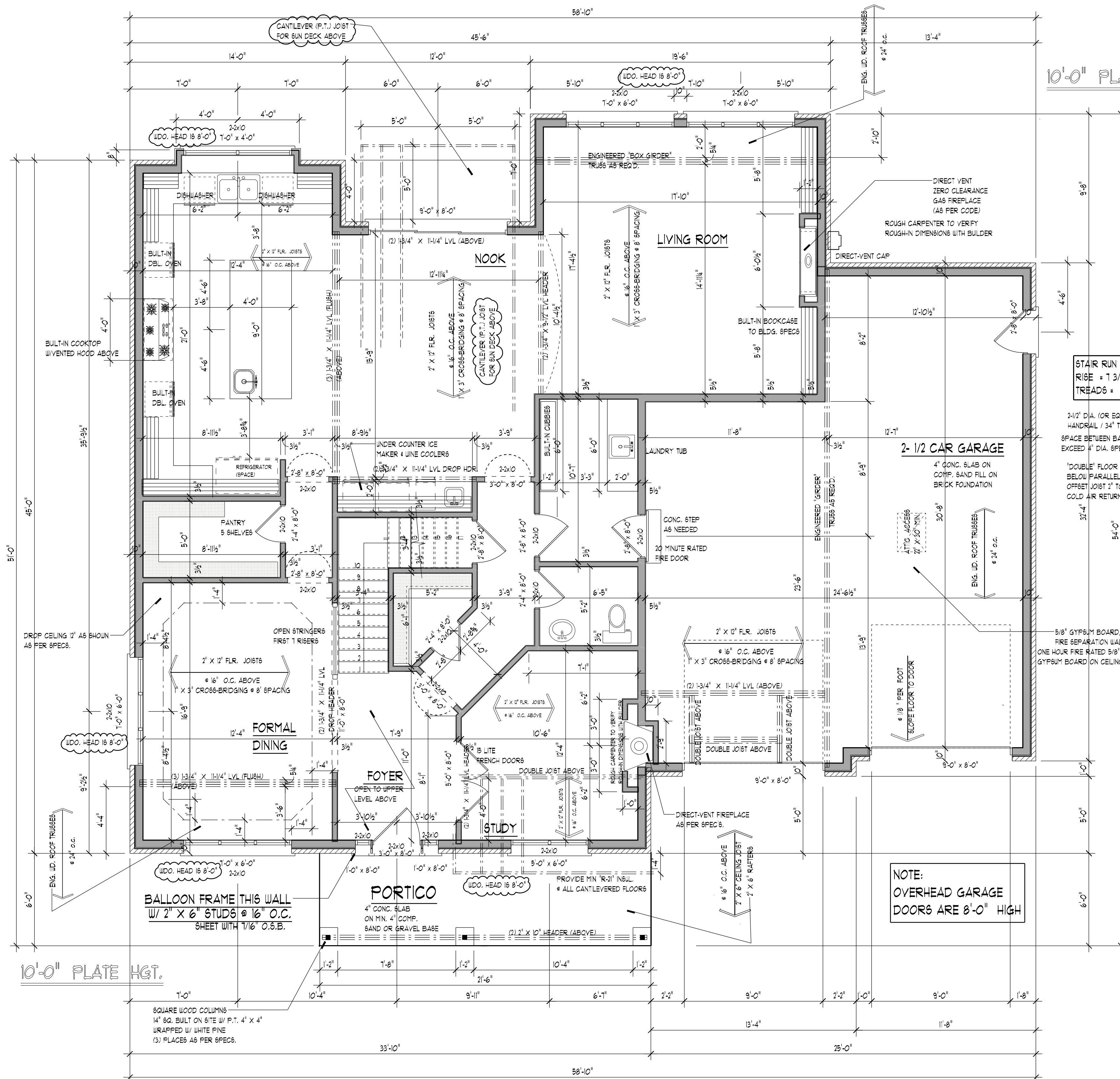
BUILDING SECTION @ COFFERED CEILING

SCALE 1/2" = 1'-0"



COFFERED CEILING PLAN

SCALE 1/4" = 1'-0"



FIRST FLOOR PLAN

SCALE 1/4" = 1'-0"

ALL EXTERIOR WALLS ARE TO
BE FRAMED WITH 2" X 6" STUDS
@ 16" O.C. (UNLESS NOTED OTHERWISE)

MICHIGAN RESIDENTIAL CODE 2015 WOOD FRAMING NOTES:

FLOORS:

VERIFY LIVE AND DEAD LOAD REQUIREMENTS WITH LOCAL BUILDING OFFICIALS. DIMENSION LUMBER SIZES AND SIZES MUST COMPLY WITH MICHIGAN RESIDENTIAL CODE 2015 FLOOR JOIST SPAN TABLES.

CHAPTER 5 / TABLES R 502.3.1 (1) THRU R 502.3.3

ROOF AND CEILING:

VERIFY LIVE AND DEAD LOAD REQUIREMENTS WITH LOCAL BUILDING OFFICIALS. DIMENSION LUMBER SIZES AND SIZES MUST COMPLY WITH MICHIGAN RESIDENTIAL CODE 2015 RAFTER AND CEILING JOIST SPAN TABLES.

CHAPTER 8 / TABLES R 802.4 (1) THRU R 802.5 (1) (3)

THESE CONSTRUCTION DOCUMENTS HAVE BEEN DESIGNED TO MEET THE MINIMUM LIVE LOAD CRITERIA BELOW. REFER TO SECT. R301.4 / R301.5 OF M.R.C. 2015 RESIDENTIAL BUILDING CODE

APPLICATION	LIVE LOAD	DEAD LOAD
DECKS / PORCHES	40 PSF	10 PSF
GAIRDRAILS / HANDRAILS	200 PSF IN ANY DIRECTION	
STAIRS	40 PSF	10 PSF
ALL ROOMS (EXCEPT SLEEPING ROOMS)	40 PSF	10 PSF
SLEEPING ROOMS	30 PSF	10 PSF
ATTIC (NO STORAGE)	10 PSF	10 PSF
ROOF	30 PSF SNOU LOAD	10 PSF

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

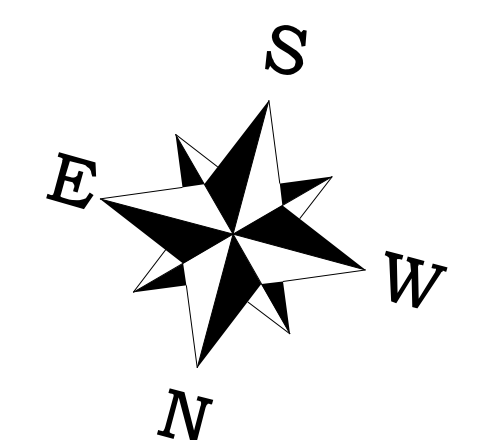
WIND SPEED	90 MPH
GROUND SNOW LOAD	30 LBS/SF

GENERAL WOOD FRAMING NOTES :

- INTERIOR WALL THICKNESS SHOWN ON PLANS. DOES NOT INCLUDE DRYWALL. DIMENSIONS ARE TO ROUGH FRAMING MATERIAL.
- EXTERIOR WALL THICKNESS INCLUDES BRICK VENEER, ROUGH FRAMING LUMBER AND FOAM OR FIBER BOARD SHEATHING. APPLIED WOOD VINYL OR ANY OTHER SIDING MATERIALS, NOT CONSIDERED IN CALCULATING OUTSIDE DIMENSIONS.
- ANGLED WALLS ARE 45 DEG. UNLESS OTHERWISE SPECIFIED.
- FLOOR JOIST ARE TO BE 10 CONTR. OR BETTER HEM-PIF. UNLESS OTHERWISE SPECIFIED.
- MICROLAM BEAMS & HEADERS SHOWN ARE APPROXIMATE. SPECIFIC SIZING IS THE SOLE RESPONSIBILITY OF THE MICROLAM SUPPLIER.
- ALL WOOD FRAMING IN CONTACT WITH CONCRETE MUST BE PRESURE TREATED AS PER CODE.
- WINDOW SIZES SHOWN ON PLANS ARE APPROX. FINAL SIZES WILL BE SPECIFIED BY THE WINDOW SUPPLIER.
- TRUSS MANUFACTURER TO FIELD MEASURE FOUNDATION DIMENSIONS PRIOR TO TRUSS FABRICATION.
- ALL OPENING SIZES ARE EXPRESSED IN "FEET INCHES". WIDTH & HEIGHT. E.G. 12'-0" X 5'-0" = 12'-0" WIDE X 5'-0" HIGH.
- IT IS THE RESPONSIBILITY OF THE PERMIT HOLDER TO SEE THAT ALL BUILDING CODE REQUIREMENTS ARE ADHERED TO DURING CONSTRUCTION.
- INTERIOR & EXTERIOR DIMENSIONS MAY VARY DURING CONSTRUCTION DUE TO CONDITIONS IN THE FIELD.

GENERAL PLUMBING NOTES :

- WATER SUPPLY LINES IN OUTSIDE WALLS MUST BE WRAPPED WITH FOAM INSULATION.
- PLUMBER TO INSULATE WATER SUPPLY LINES WHEN FIXTURE IS NEAR AN UNHEATED AREA.



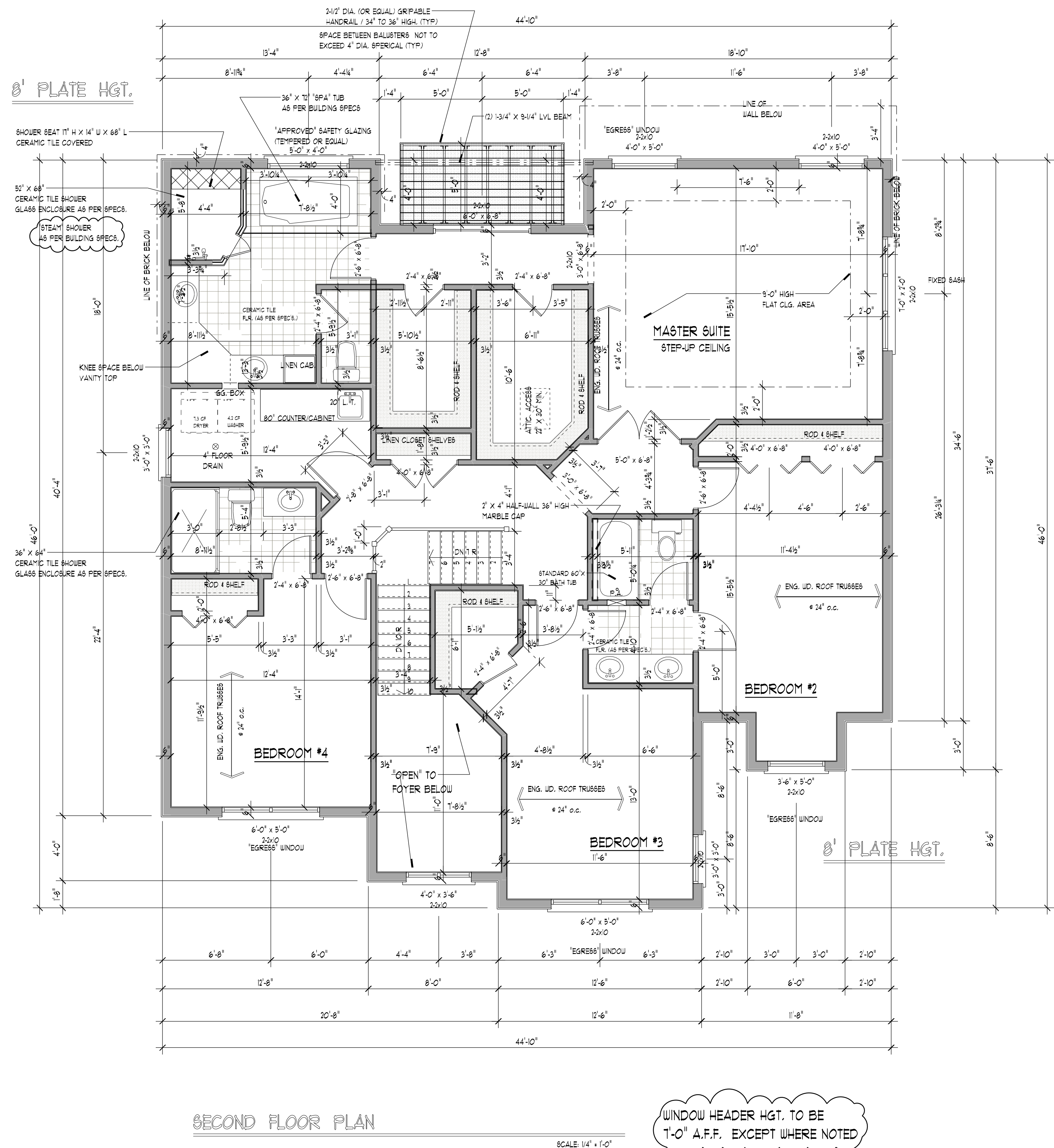
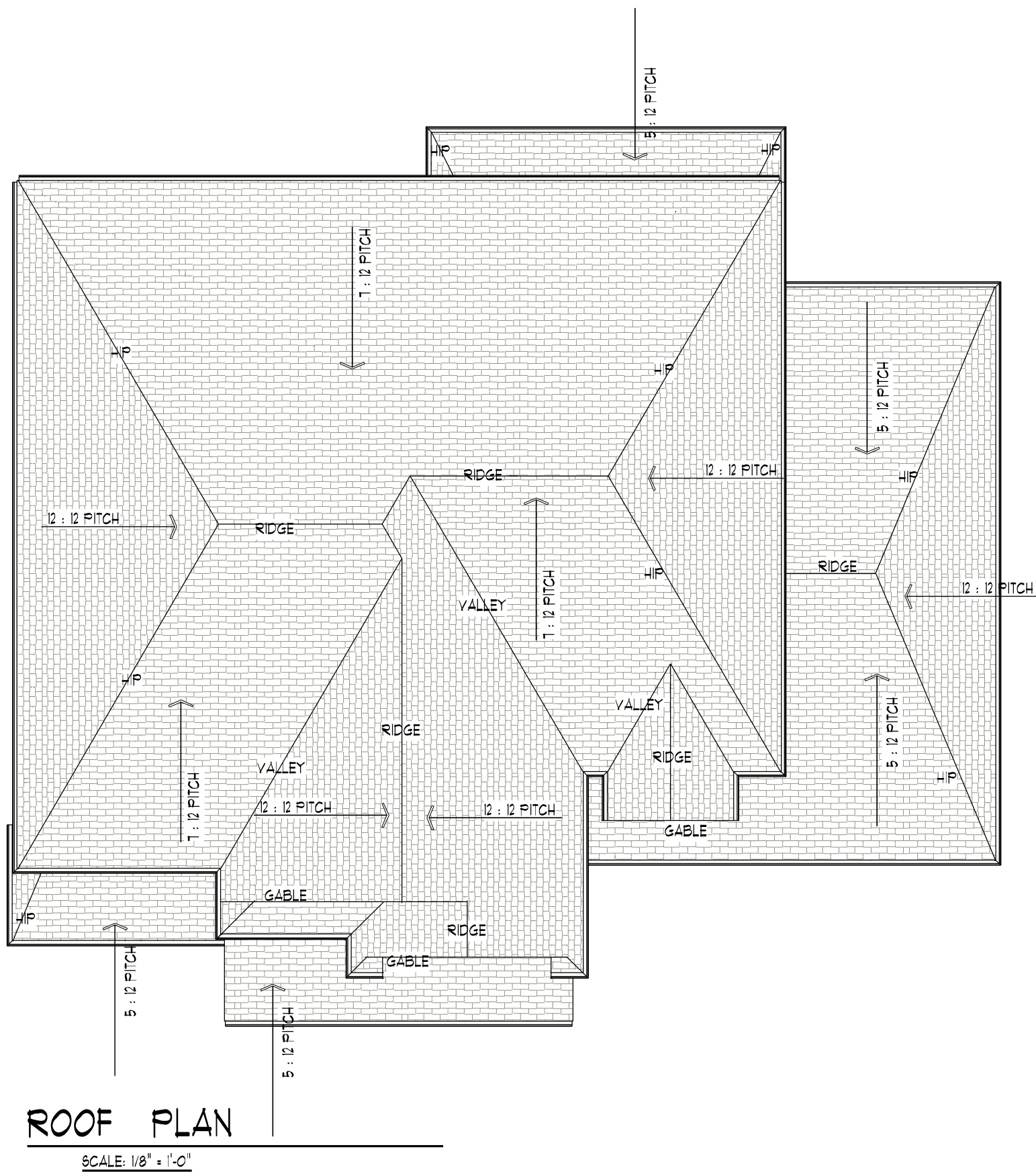
NOTE: SQUARE FOOTAGE SHOWN FOR 1ST FLOOR IS THE WALKABLE FLOOR SPACE. OPEN 1/2 STORY CEILING & STAIRWAYS ARE NOT INCLUDED.

LIVING AREA SQUARE FOOTAGE:
MEASURED TO OUTSIDE OF WALLS (GROSS)

FIRST FLOOR	1,701	S.F.
SECOND FLOOR	1,007	S.F.
BONUS ROOM		S.F.
TOTAL AREA	3,394	S.F.
GARAGE FLOOR SPACE		S.F.



IN MICHIGAN
(5 WORKING DAYS)
BEFORE YOU DIG CALL "MISS DIG"
1-800-482-7111



MICHIGAN RESIDENTIAL CODE 2015
WOOD FRAMING NOTES:

FLOORS:
VERIFY LIVE AND DEAD LOAD REQUIREMENTS WITH LOCAL BUILDING OFFICIALS. DIMENSION LUMBER SPECIES AND SIZES MUST COMPLY WITH 'MICHIGAN RESIDENTIAL CODE 2015' FLOOR JOIST SPAN TABLES.

CHAPTER 5/ TABLES R 502.3.1 (1) THRU R 502.3.3

ROOF AND CEILING:
VERIFY LIVE AND DEAD LOAD REQUIREMENTS WITH LOCAL BUILDING OFFICIALS. DIMENSION LUMBER SPECIES AND SIZES MUST COMPLY WITH 'MICHIGAN RESIDENTIAL CODE 2015' RAFTER AND CEILING JOIST SPAN TABLES.

CHAPTER 6/ TABLES R 602.4 (1) THRU R 602.5 (3)

THESE CONSTRUCTION DOCUMENTS HAVE BEEN DESIGNED TO MEET THE MINIMUM LIVE LOAD CRITERIA BELOW. REFER TO SECT. R301.4 / R301.5 OF M.R.C. 2015 RESIDENTIAL BUILDING CODE

APPLICATION	LIVE LOAD	DEAD LOAD
DECKS / PORCHES	40 PSF	10 PSF
GAUDDRAILS & HANDRAILS	200 LBS. IN ANY DIRECTION	
STAIRS	40 PSF	10 PSF
ALL ROOMS (EXCEPT SLEEPING ROOMS)	40 PSF	10 PSF
SLEEPING ROOMS	30 PSF	10 PSF
ATTIC (NO STORAGE)	10 PSF	10 PSF
ROOF	30 PSF SNOW LOAD	10 PSF

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA	
WIND SPEED	30 MPH
GROUND SNOW LOAD	30 LBS./SF

- GENERAL WOOD FRAMING NOTES :
- INTERIOR WALL THICKNESS SHOWN ON PLANS DOES NOT INCLUDE DRYWALL. DIMENSIONS ARE TO ROUGH FRAMING MATERIAL.
 - EXTERIOR WALL THICKNESS INCLUDES BRICK VENEER, ROUGH FRAMING LUMBER, AND FOAM OR FIBER BOARD SHEATHING. APPLIED WOOD VINYL, OR ANY OTHER SIDING MATERIALS, NOT CONSIDERED IN CALCULATING OUTSIDE DIMENSIONS.
 - ANGLED WALLS ARE 45 DEG. UNLESS OTHERWISE SPECIFIED.
 - FLOOR JOIST ARE TO BE 1" CONSTR. OR BETTER, 4x12, UNLESS OTHERWISE SPECIFIED.
 - MICRO-LAM BEAMS & HEADERS SHOWN ARE APPROXIMATE. SPECIFIC SIZING IS THE SOLE RESPONSIBILITY OF THE MICRO-LAM SUPPLIER.
 - ALL WOOD FRAMING IN CONTACT WITH CONCRETE MUST BE PRESURE TREATED AS PER CODE.
 - WINDOW SIZES SHOWN ON PLANS ARE APPROX. FINAL SIZES WILL BE SPECIFIED BY THE WINDOW SUPPLIER.
 - TRUSS MANUFACTURER TO FIELD MEASURE FOUNDATION DIMENSIONS PRIOR TO TRUSS FABRICATION.
 - ALL OPENING SIZES ARE EXPRESSED IN "FEET X INCHES" WIDTH X HEIGHT. E.G. 7'-6" X 3'-6" X 7'-6" WIDE X 3'-6" HIGH.
 - IT IS THE RESPONSIBILITY OF THE PERMIT HOLDER TO SEE THAT ALL BUILDING CODE REQUIREMENTS ARE ADHERED TO DURING CONSTRUCTION.
 - INTERIOR & EXTERIOR DIMENSIONS MAY VARY DURING CONSTRUCTION DUE TO CONDITIONS IN THE FIELD.
- GENERAL PLUMBING NOTES :
- WATER SUPPLY LINES IN OUTSIDE WALLS MUST BE UNRAFFED WITH FOAM INSULATION.
 - PLUMBER TO INSULATE WATER SUPPLY LINES WHEN FIXTURE IS NEAR AN UNHEATED AREA.

NOTE:
SQUARE FOOTAGE SHOWN FOR 2ND FLOOR IS THE WALKABLE FLOOR SPACE.
OPEN 1/2 STORY / CEILINGS & STAIRWAYS ARE NOT INCLUDED.

LIVING AREA SQUARE FOOTAGE:
MEASURED TO OUTSIDE OF WALLS (GROSS):

FIRST FLOOR _____ S.F.
SECOND FLOOR _____ S.F.
BONUS ROOM _____ S.F.
TOTAL AREA _____ S.F.
GARAGE FLOOR SPACE _____ S.F.

IN MICHIGAN
(WORKING DAYS)
BEFORE YOU DIG CALL "MISS DIG"
1-800-482-7171

SOFTPLAN
ARCHITECTURAL DESIGN SOFTWARE
2020.18

THE ASSOCIATES DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THESE PLANS. BEFORE CONSTRUCTION, THE BUILDING CONTRACTOR AND/OR ARCHITECT MUST VERIFY ALL DIMENSIONS AND VERIFY BEAM AND HEADER SIZES.

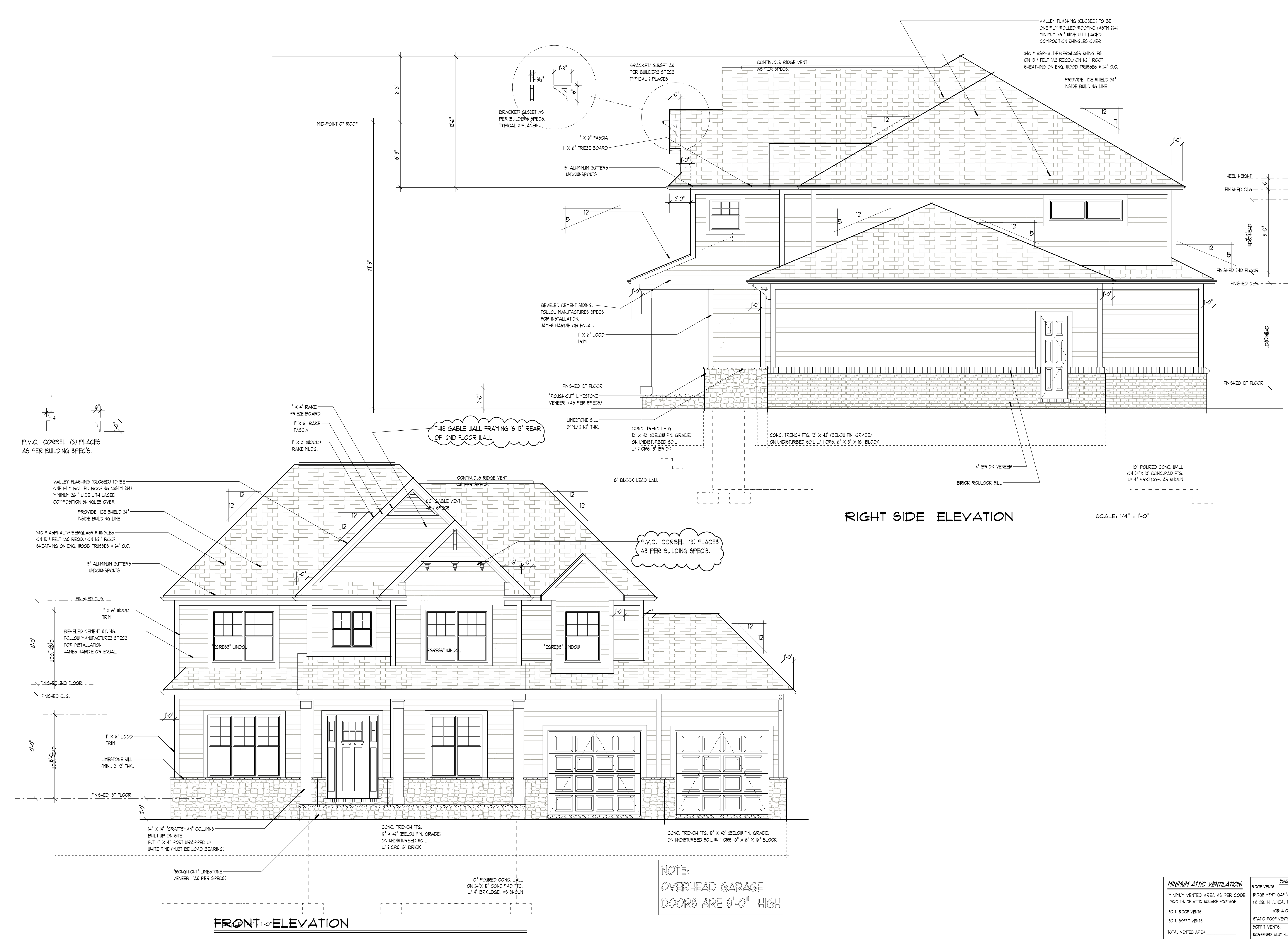
ASSOC.
Punta Gorda, FL 33950
1344 Mediterranean drive
cell office phone : 586.921.6310
e-mail : t.m_f@comcast.net
web : TMhomedesign.com

ALL BID
AMERICAN INSTITUTE OF BUILDING DESIGN

builder: **HILLAN HONES**
project: **KARCHON RESIDENCE**

street: **1004 WEST MELTON**
subdivision:
municipality / county / state:
CITY OF BIRMINGHAM , OAKLAND COUNTY, MICHIGAN

lot no:
PDF creation date:
10:43 AM
Friday, May 22, 2020
plan number:
19_030
sheet no.
3 of 5



NOTE:
PLEASE DO NOT SCALE
ELEVATIONS. DIMENSIONAL
INFORMATION SHOULD
ONLY BE TAKEN FROM
FLOOR PLAN SHEETS &
SECTION DRAWINGS.

NOTE:
FOR WINDOW SIZES
AND SPECIFICATIONS
PLEASE REFER TO
WINDOW SCHEDULES
& FLOOR PLANS

SOFTPLAN

ARCHITECTURAL DESIGN SOFTWARE

2020.12

THIS ASSOCIATES DOES NOT
WARRANT OR GUARANTEE THE ACCURACY
OF THESE PLANS. BEFORE CONSTRUCTION
THE BUILDING CONTRACTOR AND/OR
ARCHITECT MUST VERIFY ALL DIMENSIONS
AND VERIFY BEST AND NEAREST SIZES.

ASSOC.

1344 Mediterranean drive

Punta Gorda, FL 33950

cell/office phone : 586.216.3160

e-mail : t_m_f@comcast.net

web : TMhomedesign.com

ALL BID

AMERICAN INSTITUTE OF BUILDING DESIGN

builder: HILLAN HONES

project: KARCHON RESIDENCE

street: 1084 WEST MELTON

subdivision:

municipality / county / state: CITY OF BIRMINGHAM , OAKLAND COUNTY, MICHIGAN

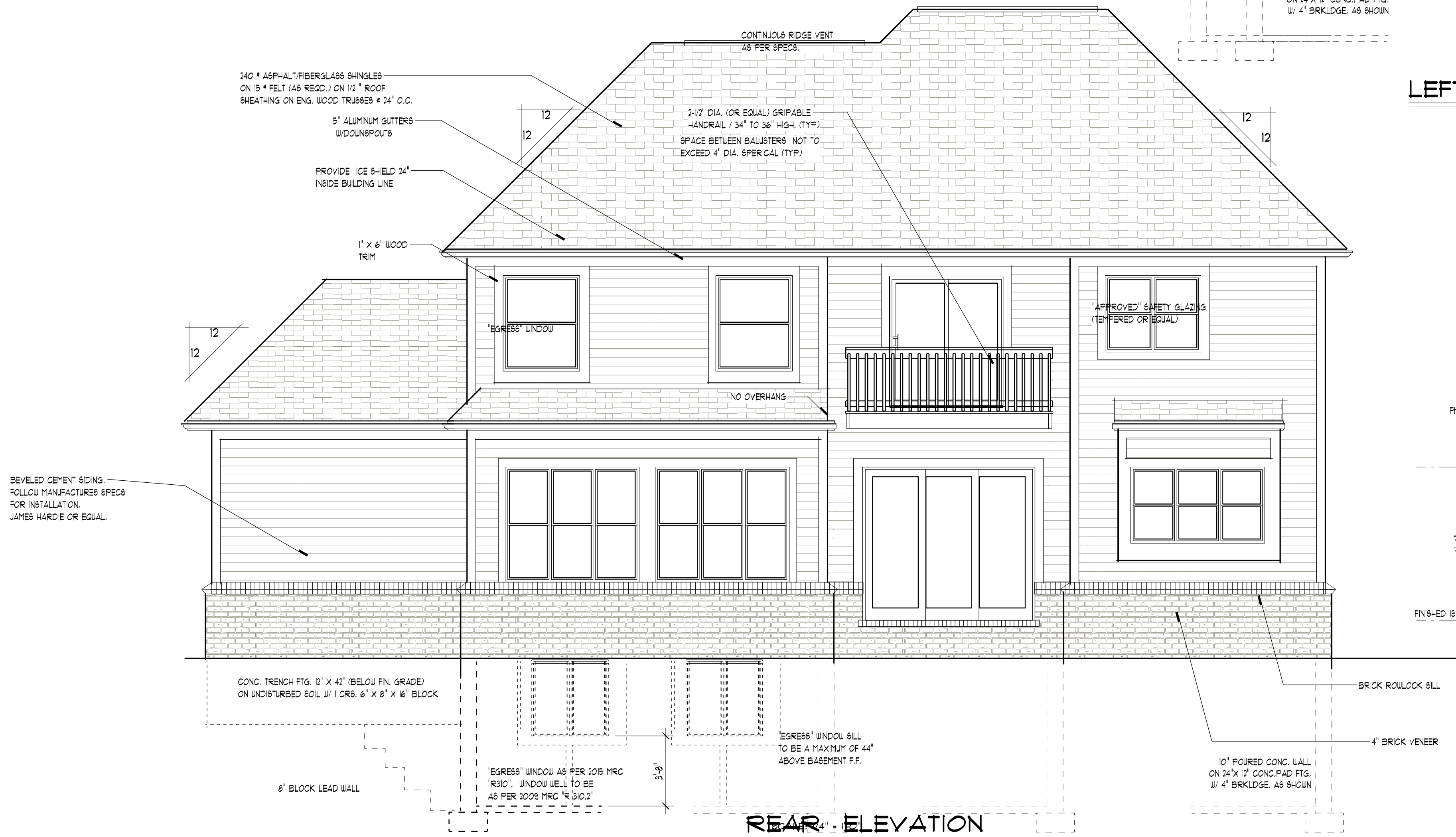
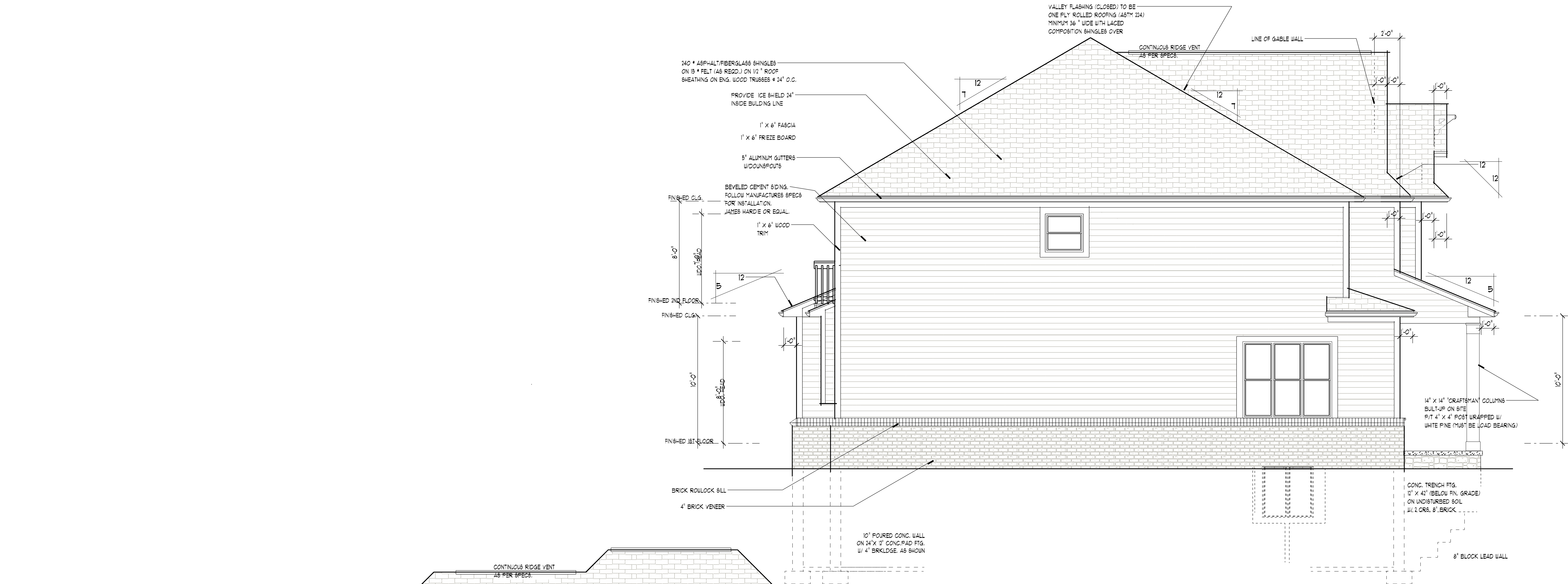
lot no:

pdf creation date: 405 S.I., 405 S.I., 810 S.I., 10:44 AM, Friday, May 22, 2020

plan number: 19_030

sheet no. 4 of 5

MINIMUM ATTIC VENTILATION:		MINIMUM ATTIC VENTILATION MATERIAL NEEDED:	
ROOF VENTS:	MINIMUM VENTED AREA AS PER CODE	ROOF VENTS:	MINIMUM VENTED AREA AS PER CODE
RIDGE VENT: GAR "SNOW COUNTRY" OR EQUAL	1300 TH. OF ATTIC SQUARE FOOTAGE	RIDGE VENT: GAR "SNOW COUNTRY" OR EQUAL	1300 TH. OF ATTIC SQUARE FOOTAGE
18 SQ. IN. LINEAL FT. 13 FEET		18 SQ. IN. LINEAL FT. 13 FEET	
(OR A COMBO OF THESE)		(OR A COMBO OF THESE)	
90 % ROOF VENTS		90 % ROOF VENTS	
90 % SOFFIT VENTS		90 % SOFFIT VENTS	
TOTAL VENTED AREA:		TOTAL VENTED AREA:	



NOTE:
PLEASE DO NOT SCALE
ELEVATIONS. DIMENSIONAL
INFORMATION SHOULD
ONLY BE TAKEN FROM
FLOOR PLAN SHEETS &
SECTION DRAWINGS.

NOTE:
FOR WINDOW SIZES
AND SPECIFICATIONS
PLEASE REFER TO
WINDOW SCHEDULES
& FLOOR PLANS

MINIMUM ATTIC VENTILATION:	
MINIMUM VENTED AREA AS PER CODE (3000 TH. OF ATTIC SQUARE FOOTAGE)	ROOF VENTS: RIDGE VENT: 1/4" (MIN. COUNTRY) OR EQUAL (18 SQ. IN. LINEAL FT.) _____ FEET (OR A COMBO OF THESE)
90 % ROOF VENTS	STATIC ROOF VENTS: (65 SQ. IN. EACH) _____ REQD.
90 % SOFFIT VENTS	SOFFIT VENTS: 50% OF VENTED AREA
TOTAL VENTED AREA: _____	SCREENED ALUMINUM 1/2" X 8" (65 SQ. IN. EACH) _____ REQD.

CASE DESCRIPTION

1165 Hillside (20-28)

Hearing date: June 9, 2020

Appeal No. 20-28: The owner of the property known as 1165 Hillside, requests the following variances to construct a new single family home with a detached garage:

- A. Chapter 126, Article 2, Section 2.08** of the Zoning Ordinance requires that the minimum front yard setback be the average of the homes within 200.00 feet in each direction. The required front yard setback is 53.20 feet. The proposed is 41.20 feet. Therefore a 12.00 foot variance is being requested.
- B. Chapter 126, Article 4, Section 4.75(A)(1)** of the Zoning Ordinance requires that a private, attached, single-family residential garages must be setback a minimum 5.00 feet from the portion of the front façade on the first floor of the principal building that is furthest setback from the front property line. The proposed is the garage is 2.33 feet in front of the furthest façade. Therefore a variance of 7.33 feet is being requested.

Staff Notes: The applicant proposed to construct a new home with an attached and detached garage on this irregular shaped corner lot.

This property is zoned R1 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

1165 HILLSIDE 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
APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: _____

Received By: _____

Hearing Date: 6-9-20

Appeal #: 20-28

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: <u>1165 HILLSIDE</u>	Lot Number: <u>64</u>	Sidwell Number: <u>19-75-303-009</u>
-------------------------------	-----------------------	--------------------------------------

II. OWNER INFORMATION:

Name: <u>James Danley</u>			
Address: <u>1859 Maryland Blvd</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>Jamesdanley@gmail.com</u>		Phone: <u>734-308-0109</u>	

III. PETITIONER INFORMATION:

Name: <u>BRIAN NEEFER</u>	Firm/Company Name: <u>BRIAN NEEFER ARCHITECTURE</u>		
Address: <u>630 N. OLD WOODWARD</u>	City: <u>BHAM</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>BRIAN@BRIANNEEFER.COM</u>		Phone: <u>248-259-1794</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 12th 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

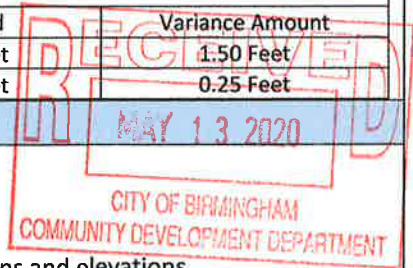
V. REQUIRED INFORMATION CHECKLIST:

- ☐ 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: _____	Date: <u>05/04/20</u>
Signature of Petitioner: _____	Date: <u>5/7/20</u>



Brian Neeper ARCHITECTURE P.C.
630 N. Old Woodward, Suite 203 Birmingham, MI 48009
248. 259. 1784 - brianneeper.com



City of Birmingham - Board of Zoning Appeals
151 Martin St.
Birmingham, MI 48009

Re: 1165 Hillside

May 7, 2020

Members of the Board,

On the behalf of my client, I respectfully request your consideration for the approval of the required dimensional variances to allow the construction of the proposed new residence. This corner site's extreme front setback average on Hillside, along with its trapezoid shape provide some unique challenges which make it substantially more difficult to meet all the zoning requirements of the current ordinance. We are requesting 2 variances to accomplish our proposed design.

Variance A- Front Yard Setback

The required front setback is 53.2'. The existing home on the site has a front setback of 41.1'. The proposed new setback is 41.2'. We are requesting a 12.0' variance.

Variance B- Garage Location

The required location of the garage is required to be 5' behind the front of the home. The proposed home has 2 small areas that require a 4.0' and 7.33' variance.

The existing site is on the South-East corner of Hillside and Greenlawn. We believe the unique shape and large front yard average setback are creating circumstances which restrict the footprint size of the site beyond the intent of the zoning ordinance. The existing older homes on Hillside were developed with large front setbacks (#1119= 57.5', #1135= 70.0', #72.1'). The existing home at #1147 Hillside is pushed so far back that it is in a non-conforming position with a rear yard of 25.6'. We have set the proposed home in line with the existing home's front yard setback.

The garage location is set on the rear yard setback. To mitigate the home's massing toward the front yard we have proposed a couple areas which are stepped back from the front. They are less than the required 5' in front of the garage. Given the wedge shape of the building area the garage cannot slide to the rear.

The design will be compliant with all other setbacks, lot coverage, open space and ordinance requirements.

We believe a strict enforcement of the ordinance in this location would result in an unnecessary hardship, creating a practical difficulty to develop a home size relative to the site size. The resulting footprint of the home would be a narrow wedge which is contrary to the ample size of the site.

We believe the approval of this variance request will allow for the construction of a new home without any adverse impact to the adjacent neighbors or the neighborhood as a whole. The shape and design of the home will meet the spirit of the ordinance by allowing the project to be built within a typically allowable footprint of development.

We believe you will be doing substantial justice to the developer and the neighbors with the approval of this variance by allowing a residence of similar proportion, balance and market value of the neighborhood to be built in this location.

Thank you for your consideration.

Sincerely, Brian Neeper AIA

EXISTING CONDITION SURVEY LOT 64 OF GOLF VIEW HEIGHTS

PART OF SECTION 35, TOWN 2 NORTH, RANGE 10 EAST,
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN

SETBACK TABLE

HOUSE# 1101	-	17.7'	FRONT SETBACK
HOUSE# 1119	-	57.5'	FRONT SETBACK
HOUSE# 1135	-	70.0'	FRONT SETBACK
HOUSE# 1147	-	72.1'	FRONT SETBACK
HOUSE# 1165	-	THE SITE	
HOUSE# 1222	-	13.1'	FRONT SETBACK
HOUSE# 1275	-	31.2'	FRONT SETBACK

TOTAL OF SETBACKS = 261.6'

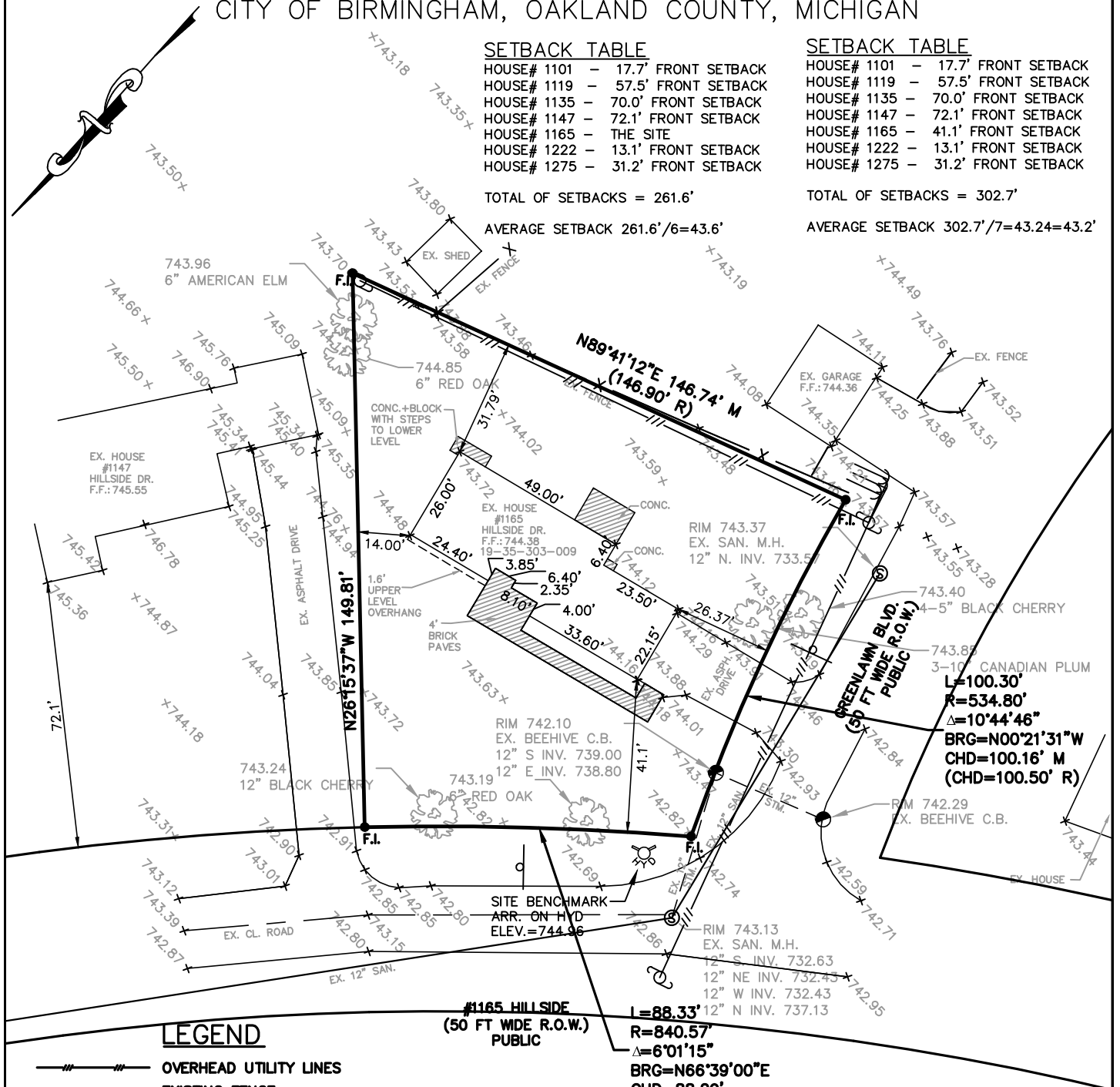
AVERAGE SETBACK $261.6' / 6 = 43.6'$

SETBACK TABLE

HOUSE# 1101	-	17.7'	FRONT SETBACK
HOUSE# 1119	-	57.5'	FRONT SETBACK
HOUSE# 1135	-	70.0'	FRONT SETBACK
HOUSE# 1147	-	72.1'	FRONT SETBACK
HOUSE# 1165	-	41.1'	FRONT SETBACK
HOUSE# 1222	-	13.1'	FRONT SETBACK
HOUSE# 1275	-	31.2'	FRONT SETBACK

TOTAL OF SETBACKS = 302.7'

AVERAGE SETBACK $302.7' / 7 = 43.24 = 43.2'$



LEGEND

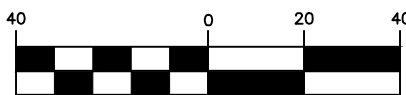
- OVERHEAD UTILITY LINES
- EXISTING FENCE
- UTILITY POLE
- F.I. FOUND IRON
- S.I. SET IRON
- MB MAILBOX

SITE BENCHMARK
ARROW ON HYDRANT
NORTHWEST CORNER
GREENLAWN AND HILLSIDE
ELEV. 744.96 (NAVD88)

CITY BENCHMARK #8
BIRMINGHAM G.I.S. COORD.
N=3749103.285,
E=13436221.687
NORTHWEST CORNER OF
CUMMINGS AND DAVIS.
ELEV.=748.568

LIVE WELL CUSTOM HOMES
RICK MERLINI
433 N. WASTINGTON
CITY OF ROYAL OAK., MI 48067
(586) 201-2500

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.

SHEET 1 OF 1

PAGE 1 OF 4

Lehner Associates, Inc.

- Assumes no responsibility for given house dimensions. Client must verify dimensions prior to construction.
- Upon acceptance and submittal of this plan for permits, the Owner acknowledges that he has reviewed the plan and that it meets the requirements established on the work order.
- This plan shall not be used to set foundations. Architect's plans must be used for construction of foundation.
- Approval of this plot plan does not relieve owner/builder of compliance with all applicable codes, ordinances, and restrictions of record.
- Special requirements (i.e. Subdivision Restriction applying to building setbacks, house size, orientation of house on site, etc.) must be provided to Lehner Associates, Inc. in writing when plot plan is ordered. These Restrictions must be clearly labeled on the work order or house plans. Lehner Associates, Inc., will not be responsible for interpreting Subdivision Restrictions.

Note: State Law Act 53, three (3) days before you dig dial toll free Miss Dig 1-800-482-7171.

SCALE: 1"=40' JOB#: 20-046
DATE: 02-21-20 DRAWN BY: D.K.



LEHNER ASSOCIATES, INC.
PROFESSIONAL ENGINEERS & SURVEYORS
17001 19 MILE ROAD - SUITE 3
CLINTON TOWNSHIP, MICHIGAN 48038
PHONE: (586) 412-7050
FAX: (586) 412-7114
www.lehnerassociates.com

REVISIONS



VARIANCE CHART					
		REQUIRED	PROPOSED	VARIANCE	Description
	A	53.2'	41.2'	12.0'	AVERAGE FRONT YARD SETBACK IS 53.2'. THE EXISTING HOME HAS A 41' FRONT YARD SETBACK. THE NEW PROPOSED IS 41.2'.
	B	5' 5'	-2.33' 1.0'	1.33' 4.0'	GARAGE RELATIONSHIP TO THE FRONT OF THE PROPOSED NEW HOME.

SITE PLAN

SCALE: 1/8" = 1'-0"



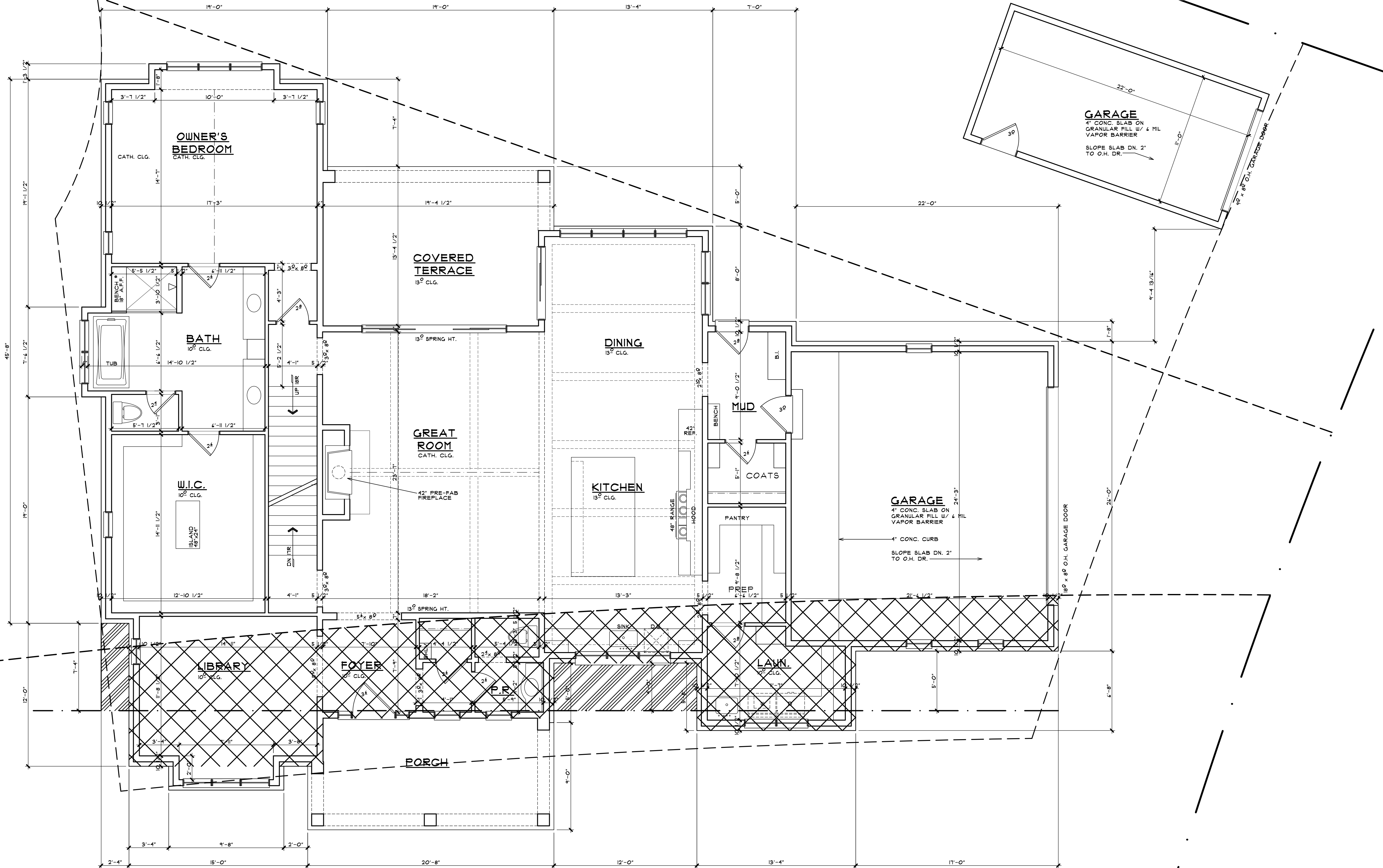
BRIAN NEEPER ARCHITECTURE P.C.
DESIGN - PLANNING - INTERIORS
650 NORTH AVENUE, SUITE 203
BIRMINGHAM, MICHIGAN
BRIANNEEPER.COM
248.259.1784

SHEET TITLE
SITE PLAN
BZA JUNE 2020

CLIENT / PROJECT
HILLSIDE RESIDENCE
1145 HILLSIDE STREET
BIRMINGHAM, MICHIGAN

PRELIMINARY	3-30-2020
BIDS	
PERMITS	
FINAL	
REVISIONS	
COPYRIGHT 2020 BRIAN NEEPER ARCHITECTURE P.C. JOB NUMBER 20013 DRAWN BY BN / JF CHECKED BY	

SHEET NUMBER
A-1

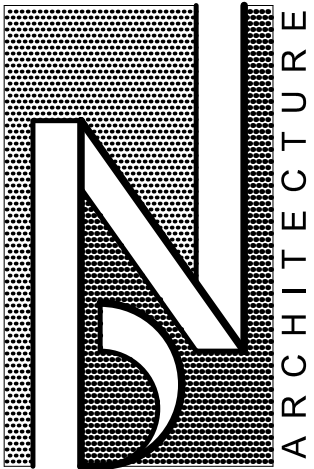


VARIANCE CHART					Description
	REQUIRED	PROPOSED	VARIANCE		
A	53.2'	41.2'	12.0'	AVERAGE FRONT YARD SETBACK IS 53.2'. THE EXISTING HOME HAS A 41.1' FRONT YARD SETBACK. THE NEW PROPOSED IS 41.2'.	
B	5'	-2.33'	7.33'	GARAGE RELATIONSHIP TO THE FRONT OF THE PROPOSED NEW HOME.	
	5'	1.0'	4.0'		

FIRST FLOOR PLAN

LOT AREA = 13,126 SQ FT
30% COVERAGE = 4,118 SQ FT
BUILDING COVERAGE = 3,519 SQ FT

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



BRIAN NEEPER ARCHITECTURE P.C.
DESIGN - PLANNING - INTERIORS
630 North Main Street, Suite 205
BIRMINGHAM, MICHIGAN
BRIANNEEPER.COM
248.259.1784

SHEET TITLE
FIRST FLOOR PLAN
BZA JUNE 2020

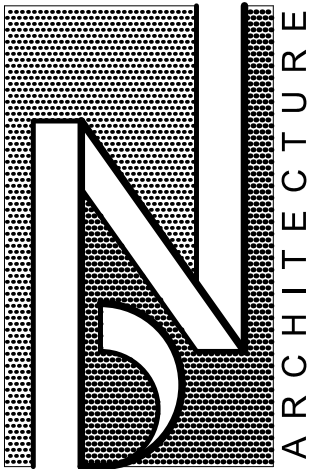
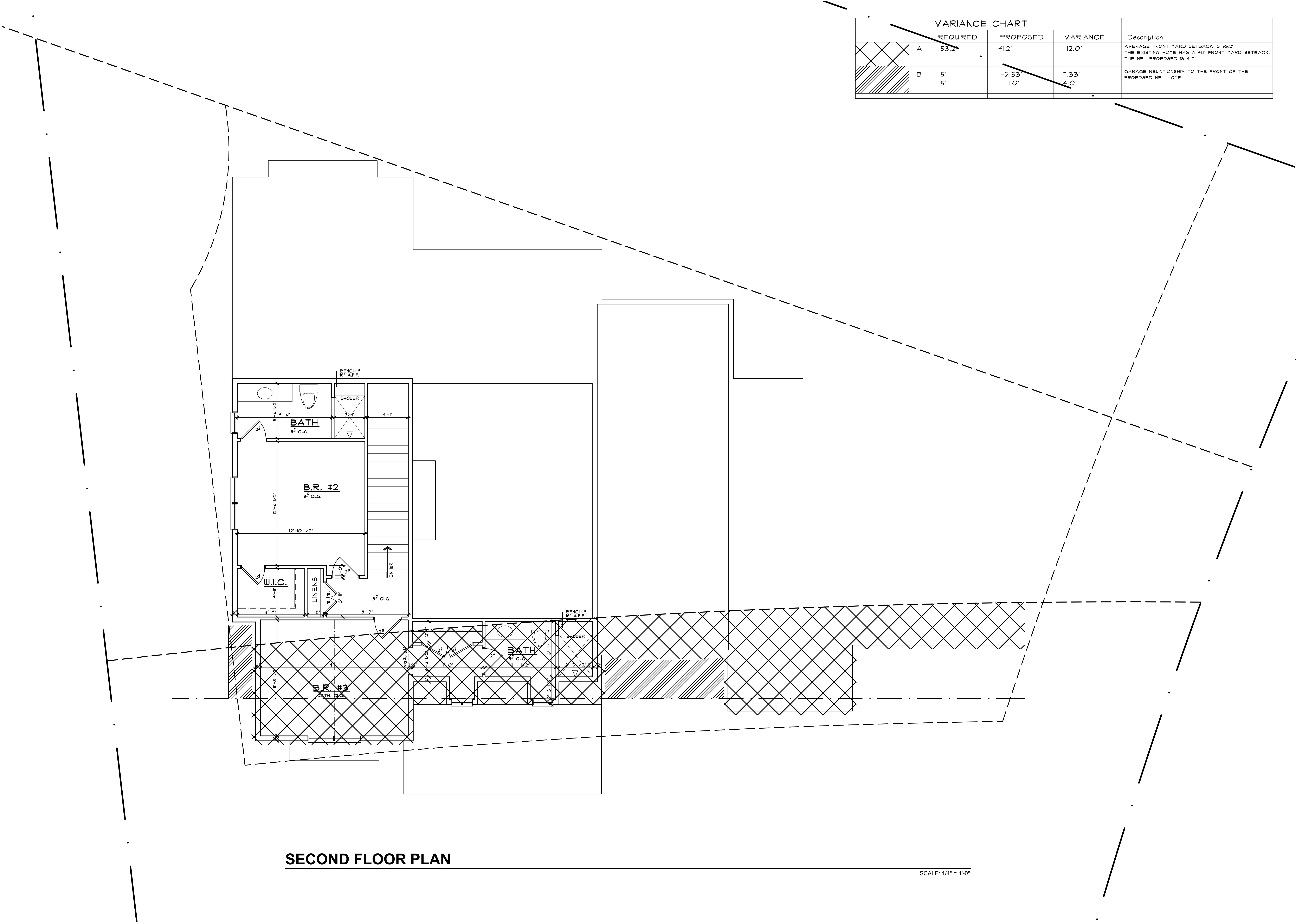
CLIENT / PROJECT
HILLSIDE RESIDENCE
1145 HILLSIDE STREET
BIRMINGHAM, MICHIGAN

PRELIMINARY	3-30-2020
BIDS	
PERMITS	
FINAL	
REVISIONS	

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ARCHITECTURE P.C.
JOB NUMBER
20013
DRAWN BY
BN / JF
CHECKED BY

SHEET NUMBER

A-2



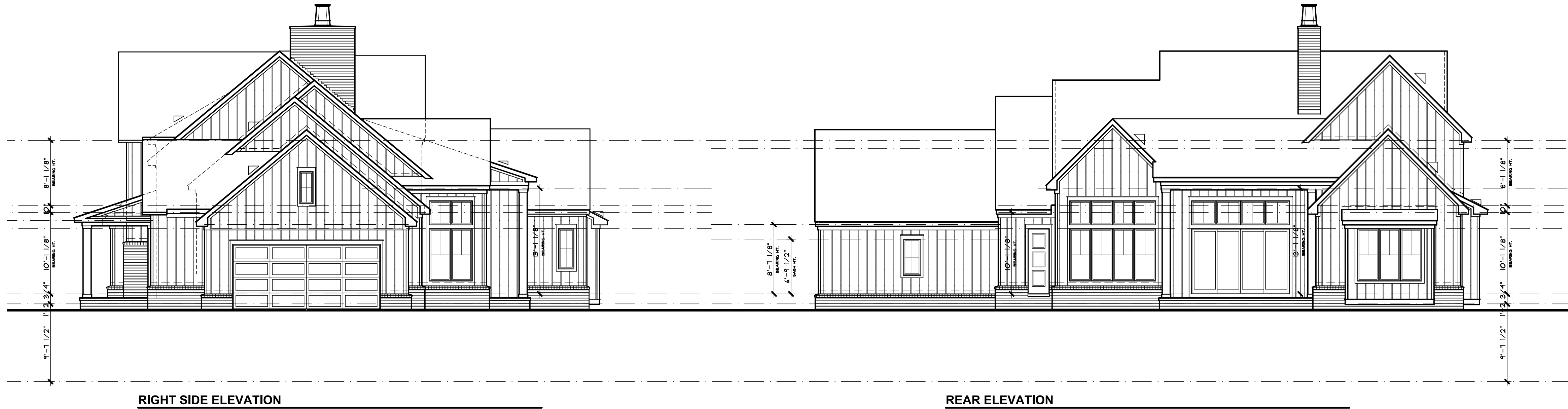
BRIAN NEEPER ARCHITECTURE P.C.
DESIGN - PLANNING - INTERIORS
630 North Main Street, Suite 205
BIRMINGHAM, MICHIGAN
BRIANNEEPER.COM
248.259.1784

SECOND FLOOR PLAN
BZA JUNE 2020

HILLSIDE RESIDENCE
1145 HILLSIDE STREET
BIRMINGHAM, MICHIGAN

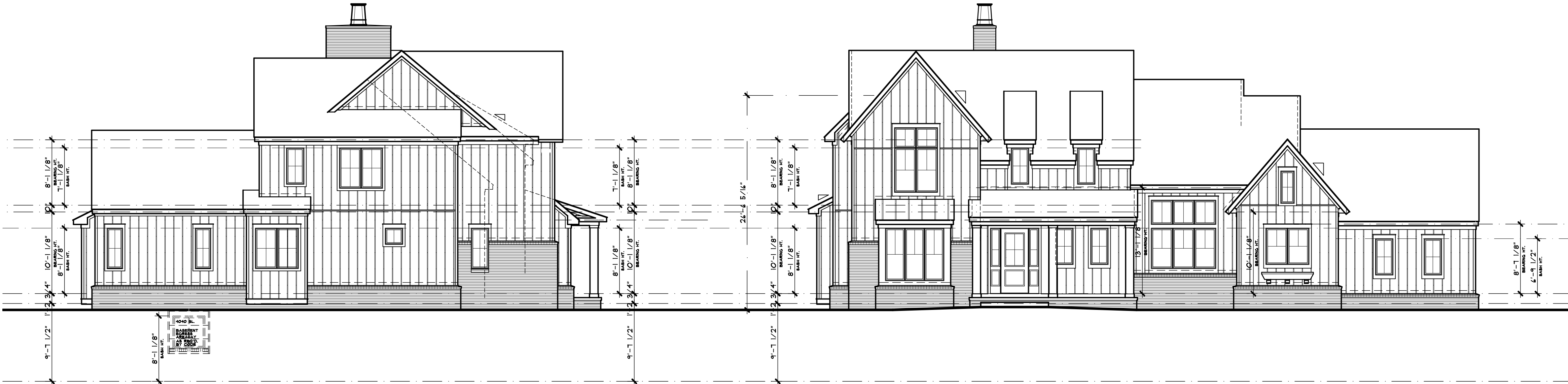
PRELIMINARY	3-30-2020
BIDS	
PERMITS	
FINAL	
REVISIONS	
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JOB NUMBER	20013
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CHECKED BY	

A-3



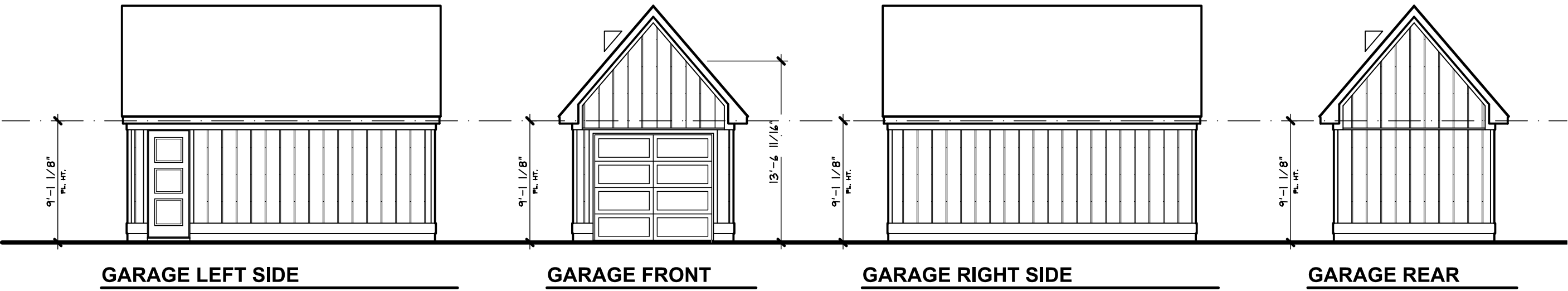
RIGHT SIDE ELEVATION

REAR ELEVATION



LEFT SIDE ELEVATION

FRONT ELEVATION

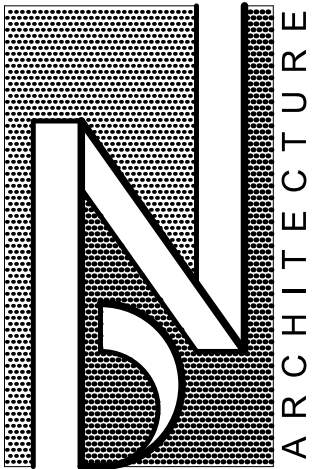


GARAGE LEFT SIDE

GARAGE FRONT

GARAGE RIGHT SIDE

GARAGE REAR



BRIAN NEEPER ARCHITECTURE P.C.
DESIGN - PLANNING - INTERIORS
630 NORTH HANCOCK, SUITE 203
BIRMINGHAM, MICHIGAN
BRIANNEEPER.COM
248.259.1784

SHEET TITLE
ELEVATIONS
BZA JUNE 2020

CLIENT / PROJECT
HILLSIDE RESIDENCE
1145 HILLSIDE STREET
BIRMINGHAM, MICHIGAN

PRELIMINARY	3-30-2020
BIDS	
PERMITS	
FINAL	
REVISIONS	
COPYRIGHT 2020 BRIAN NEEPER ARCHITECTURE P.C.	
JOB NUMBER	20013
DRAWN BY	BN / JF
CHECKED BY	

SHEET NUMBER

A-4

June 8, 2002

To: Birmingham City Clerk
151 Martin
Birmingham, MI 48009

From: Chris and Chris Fisher
1147 Hillside Drive
Birmingham, MI 48009

RE: 1165 Hillside Drive Variance Request - Hearing June 9, 2020

To Members of the Zoning Board,

We are writing to object to the front/facing variance requested for the new home on 1165 Hillside Drive. From the drawing, we believe this to be approximately a 12' variance, setting the structure 41' from the front property line.

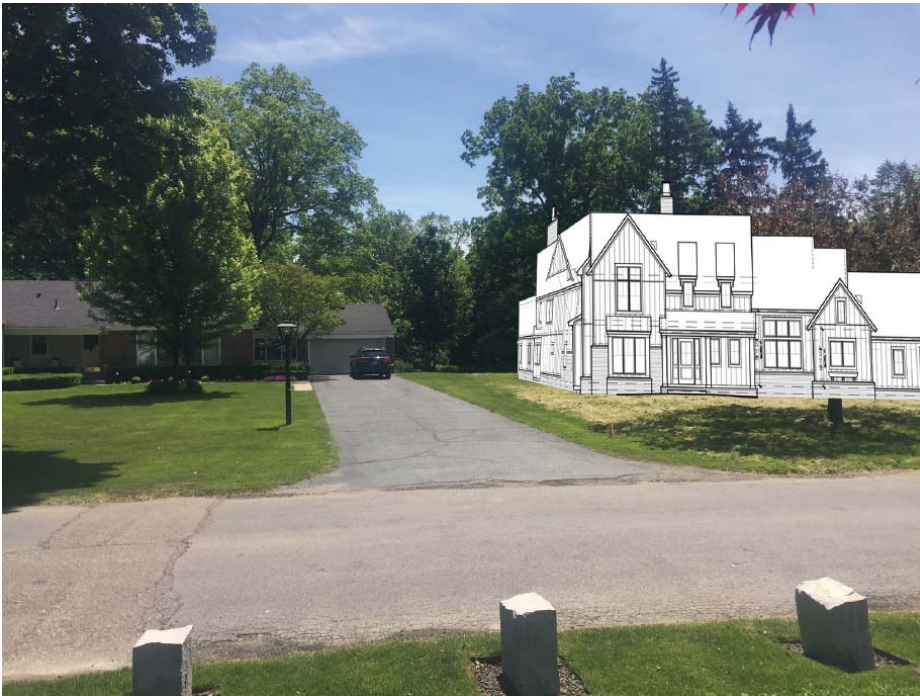
We object for the following reasons:

1. This home will be located on the east side of Hillside Drive; a short street on a block that connects from East Lincoln Street to Cranbrook/Evergreen. The setback line of existing homes on the block on which this home will be situated trends much further back. The current plan, if approved, will negatively impact the appearance of the entire street when traveling south from Lincoln. We suggest that the board require a setback that is closer to the 53', without a variance; this structure will severely impact our view from the front and side of our property, light exposure, existing plantings and possibly cause us flooding and water issues.
2. The structure will be the largest home (by twice the size) on a corner lot that is one of the smallest lots on this block of Hillside. It will sit so far forward on the block that it will look extremely out of place, dominate the block and have a negative impact on the character as one drives or walks South on the Hillside block on which it sits. Please see images on next page, attached.
3. Compounding the negative affect, is that the other homes on our side of the street (East) are all ranches (approximately 18 feet tall). The proposed home will be approximately 33 feet tall at the front left peak, exceeding the other homes to its left on the block on which it sits (before Green Lawn) by 15 feet. If the home orientation were mirrored, with a lower roof height on the left and highest roof line to the right, it would have a less severe impact.
4. The new homes built in the last 10 years have either had severe run-off issues affecting adjacent properties or flooding Hillside Drive itself. In fact, some have had to manage water in their new basements or front yards to mitigate the impact. This could be exacerbated by another large structure on such a small lot. Any home that is built on the lot must not change the grade of the lot.
5. Why not grant a variance to the back of the property and move the home back? Does the detached 3rd garage/shed prevent that?
6. Those who face the South side of the house now need to look at 3 garage doors which they do not appreciate.



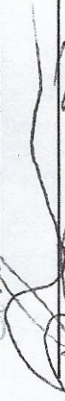




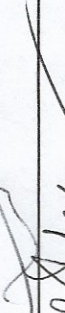


We welcomed and were thrilled with the new building nearby and on the West side of Hillside in recent years, and our new neighbors. The children in those homes play on the (our) front yards on the East side of the street. And with the recent Covid Stay at Home order, having yards and outdoor spaces to play and run are even more important for children and families. We are not opposed to a new structure on this lot. We believe, however, that this variance is too extreme and will negatively impact the character of the block and neighborhood too significantly.

Thank you for the important work you do.

Chris and Chris Fisher



Opposition to Variance Request

House	Street	City	Zip	Signatures	Phone
1101	Hillside Drive	Birmingham	48009		248 672-0926
1119	Hillside Drive	Birmingham	48009		248-225-6824
1120	Hillside Drive	Birmingham	48009		973 551 6076
1130	Hillside Drive	Birmingham	48009		248-763-6016
1135	Hillside Drive	Birmingham	48009		(630) 209-7740
1140	Hillside Drive	Birmingham	48009		248 792 2958
1147	Hillside Drive	Birmingham	48009		248-646-0796
1150	Hillside Drive	Birmingham	48009		34-730-5704
1160	Hillside Drive	Birmingham	48009		248-701-7079
1200	Hillside Drive	Birmingham	48009		
1222	Green Lawn	Birmingham	48009		586-321-6243
1242	Green Lawn	Birmingham	48009		

CASE DESCRIPTION

515 Westwood (20-29)

Hearing date: June 9, 2020

Appeal No. 20-29: The owner of the property known as 515 Westwood, requests the following variances to construct an addition the existing non-conforming home:

- A. Chapter 126, Article 2, Section 2.06.2** of the Zoning Ordinance requires a minimum rear yard setback is 30.00 feet. The proposed is 23.13 feet. Therefore, a variance of 6.87 feet is being requested.
- B. Chapter 126, Article 4, Section 4.61(A)(1)** of the Zoning Ordinance requires that a corner lot which has on its side street an abutting interior residential lot shall have a minimum setback from the side street equal to the minimum front setback for the zoning district in which such building is located. The required side yard setback is 22.56 feet. The proposed is 17.06 feet, therefore a variance is 5.50 feet.

Staff Notes: The applicant is requesting variances to construct an addition to the existing home that was granted variances in 2014 and 2005. The variance that was granted in 2005 had never be constructed, which this proposed variance is similar in nature that requested. (Minutes attached for both BZA meetings).

This property is zoned R1 – Single Family Residential.

515 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

APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: 5/12/20

Hearing Date: June 9, 2020

Received By: BM

Appeal #: 20-29

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>515 Westwood</u>	Lot Number:	Sidwell Number:
------------------------------	-------------	-----------------

II. OWNER INFORMATION:

Name: <u>Michael Dresden</u>			
Address: <u>515 Westwood</u>	City: <u>Birmingham</u>	State: <u>MI</u>	Zip code: <u>48009</u>
Email: <u>mdresden@duetapp.com</u>	Phone: <u>248-505-5794</u>		

III. PETITIONER INFORMATION:

Name: <u>Ron Stern</u>	Firm/Company Name: <u>Ron Stern Building Co.</u>
Address: <u>6819 High Ridge Rd</u>	City: <u>West Bloomfield</u>
Email: <u>Ron@sternbuilding.com</u>	State: <u>MI</u> Zip code: <u>48324</u>
Phone: <u>248-593-9191</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 12th 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.

*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: 5/11/20

Signature of Petitioner: [Signature]

Date: 5/11/2020

CITY OF BIRMINGHAM
 Date 05/14/2020 4:20:18 PM
 Ref 00168902
 Receipt 53415
 Amount \$360.00



Remodeling • Additions • Kitchens • Baths

May 8, 2020

Attn: City of Birmingham Board of Zoning Appeals

Re: 515 Westwood

Practical Difficulty/Hardship

This letter is in reference to a proposed remodeling project to 515 Westwood. The plans call for adding a new 3rd garage bay on the west end of the current garage approximately 12'-0" wide by 29'-11" deep. This will allow the addition of a minimal 1st floor in-law suite where the existing garage bay closest to the house is currently. The owner's parents are elderly and are planning on moving in with their son's family. There is not an option to place them on the 2nd floor. There was a previous variance for this same type of addition granted on August 9, 2005. The previous owner was granted a variance for 7.73'. For this project, we will only require a variance of 6.87'.

We are requesting a variance of 6.87'. The rear yard setback minimum is 30'-0". The proposed rear yard setback will be 23.13'. The house sits on a corner lot and backs up to a house that is in Bloomfield Village.

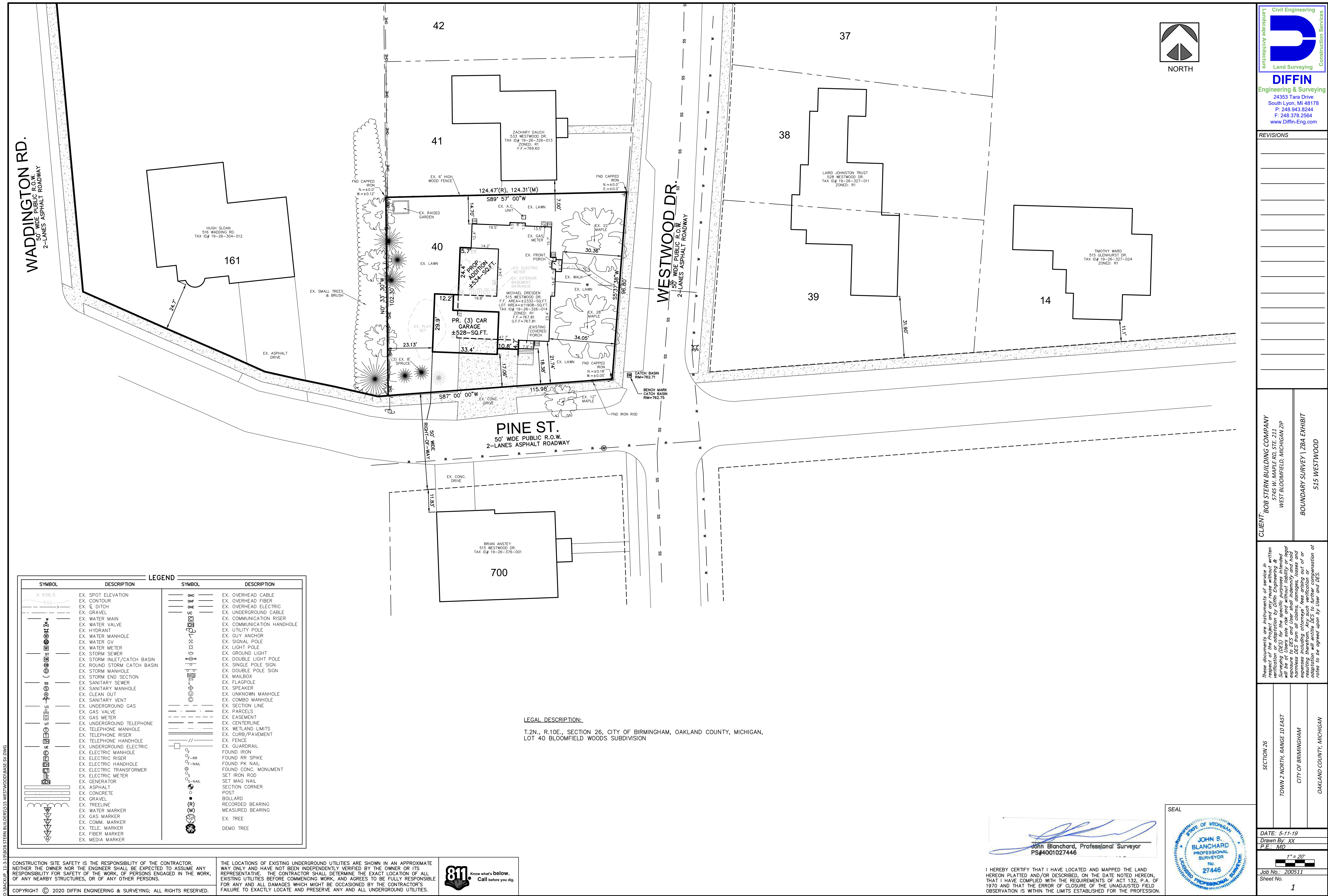
Thank you,

Ron Stern

Bob Stern Building Company

6819 High Ridge Rd, West Bloomfield, MI 48324

Phone: 248-593-9191 Fax: 248-593-7822 E-Mail: ron@bobsternbuilding.com





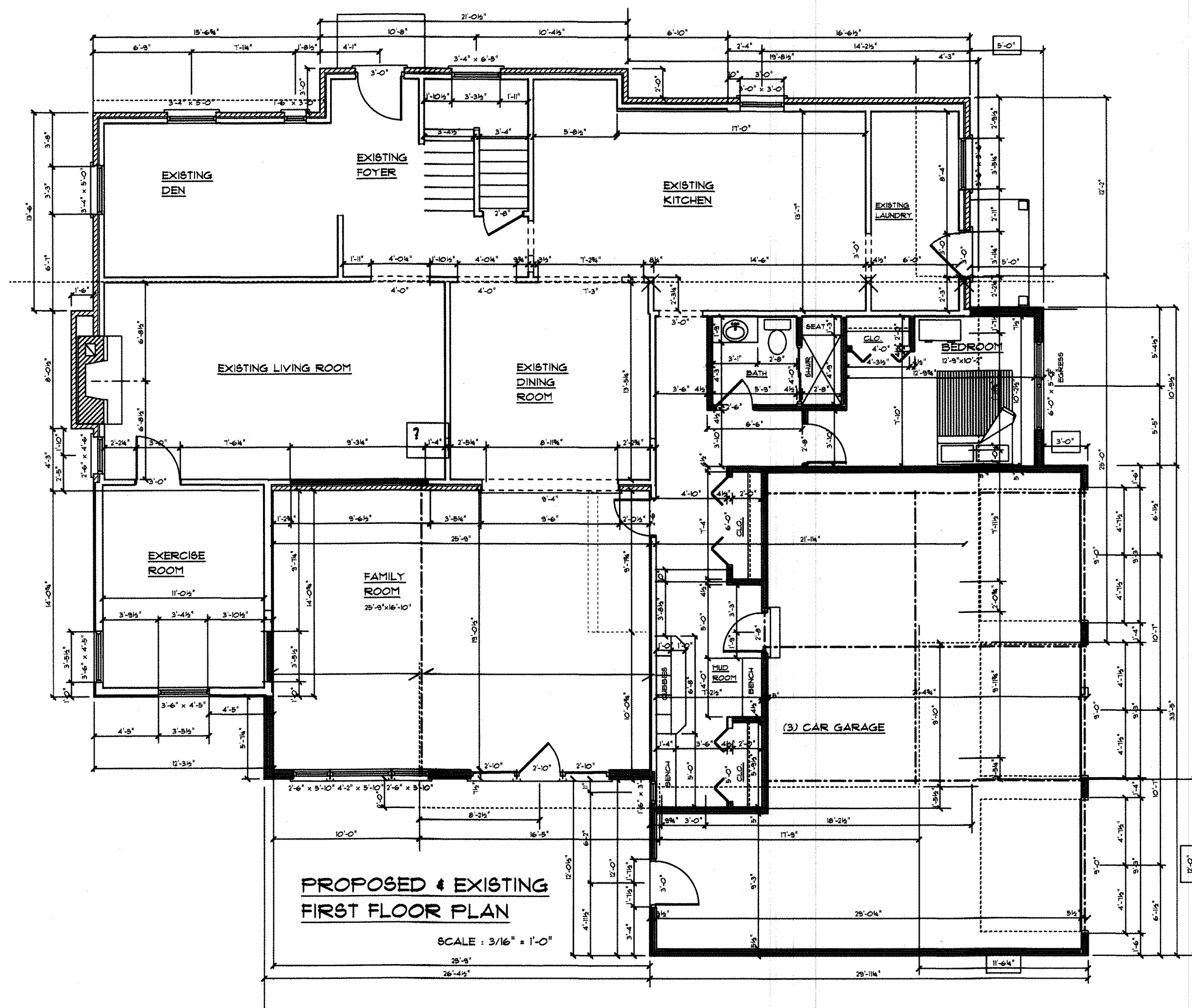
PROPOSED & EXISTING SOUTH ELEVATION

SCALE : 3/16" = 1'-0"



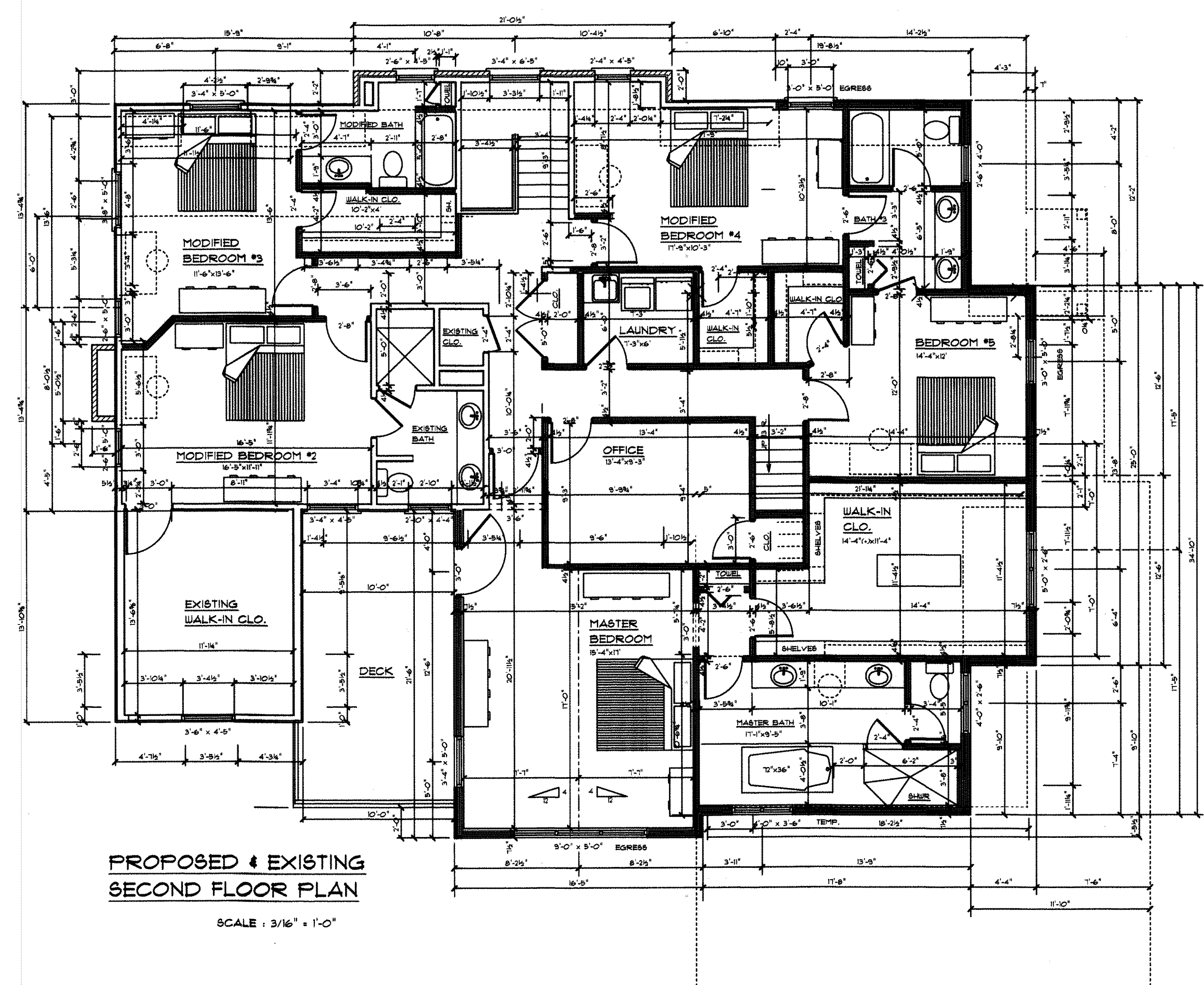
EXISTING EAST ELEVATION

SCALE : 3/16" = 1'-0"



PROPOSED & EXISTING
FIRST FLOOR PLAN

SCALE : 3/16" = 1'-0"



PROPOSED & EXISTING
SECOND FLOOR PLAN

SCALE : 3/16" = 1'-0"

DOUGLAS HOME
DESIGNS, LLC

2520 S. COMMERCE RD.
WALLED LAKE, MI 48390
PHONE (248) 896-2265
FAX (248) 896-2265

PROJECT PROPOSED ADDITION & RENOVATIONS FOR :
MICHAEL & HEATHER DRESDEN
515 WESTWOOD BIRMINGHAM, MI 48009

SHEET NAME
PROPOSED FIRST & SECOND FLOOR PLANS AND
PROPOSED SOUTH & EAST ELEVATIONS

- ☐ PRELIMINARY
- ☒ ZBA REVIEW PROCESS
- ☐ ISSUED FOR PERMIT
- ☐ FOR CONSTRUCTION

SEAL

Please call with any questions. Also call if you find inconsistencies or problems so appropriate corrections can be made.

REVISIONS

- 1
- 2
- 3
- 4
- 5

DATE :
MAY 11, 2020

PROJECT NO. :
201231

SHEET

1 OF 1













**BIRMINGHAM BOARD OF ZONING APPEALS PROCEEDINGS
TUESDAY, APRIL 8, 2014**

Commission Room of the Municipal Building
151 Martin St., Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Board of Zoning Appeals ("BZA") held on Tuesday, April 8, 2014. Chairman Charles Lillie convened the meeting at 7:30 p.m.

Present: Chairman Charles Lillie; Board Members Kevin Hart, Thomas Hughes, Jeffery Jones, Randolph Judd, Peter Lyon, John Miller

Absent: Board Member David Conlin; Alternate Board Member Cynthia Grove,

Administration: Ken Cooper, Asst. Building Official
Bruce Johnson, Building Official
Carole Salutes, Recording Secretary

The chairman welcomed everyone and explained the BZA procedure to the audience. Additionally, he noted that the members of the Zoning Board are appointed by the City Commission and are volunteers. They 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. There are no land use variances called for this evening. Also, appeals are heard by the board as far as interpretations or rulings. There are no interpretations on this evening's agenda. Four affirmative votes are required to reverse an interpretation or ruling.

T# 04-21-14

APPROVAL OF THE MINUTES OF THE BZA MEETING OF MARCH 11, 2014

Mr. Jones:

Page 1 - Remove Vice-Chairman from Mr. Miller's name.

Motion by Mr. Jones

Seconded by Mr. Hughes to approve the Minutes of the BZA meeting of March 11, 2014 with the change.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jones, Hart, Hughes, Judd, Lillie, Lyon, Miller
Nays: None
Absent: Conlin

T# 04-22-14

**515 WESTWOOD
(Appeal 14-13)**

The owners of the property known as **515 Westwood** request the following variances to allow the construction of a first and second floor addition:

A. **Chapter 26, Article 4, Section 4.69** requires the distance between principal residential buildings be 24.69 ft. for this lot; with 22.25 ft. existing and 22.25 ft. proposed. Therefore, a variance of 2.44 ft. is requested.

B. **Chapter 26, Article 2, Section 2.06** requires a front yard setback of 37.97 ft. for this lot; with 33.31 ft. existing and 34.37 ft. proposed. Therefore, a variance of 3.60 ft. is requested.

This property is zoned R-1 Single-Family Residential.

Mr. Cooper advised that the petitioner's home is on the corner of Westwood and Pine. The existing two-story home with attached garage was constructed in 1939. With respect to Variance A, they propose to build a new second story on exactly the same footprint as the existing non-conforming first floor. That same square footage would be non-conforming on the second floor. A new walk-in closet is proposed for the second floor. Variance B is to enlarge the kitchen by expanding the first floor living space into the front yard setback, but less than the existing partially non-conforming front facade.

Chairman Lillie observed the west side of the house is not parallel to the west lot line and the north side is not parallel to the north lot line.

Mr. Ron Stern of Bob Stern Building Co. represented the petitioners, Michael and Heather Dresden, who were present. He noted a number of reasons that the Dresdens with their growing family need the expanded living space. Chairman Lillie noted that he did not address the practical difficulty with complying with the Ordinance. Mr. Stern replied they could not fit an island in the kitchen which would be difficult for the family. At the rear it would not look right to take a corner off of the second floor.

In response to Mr. Miller, Mr. Stern agreed the mud room off of the kitchen could still be functional if it didn't bump out beyond the setback line.

Chairman Lillie noted that just because the family wants to do something isn't a practical difficulty or grounds for getting a variance. Mr. Judd did not see a practical difficulty with

the existing property, but rather the difficulty lies with the use the petitioners have in mind for the property. That evaporates when those people leave. Mr. Stern replied the difficulty is that the petitioners have a large family of six and they cannot eat together in the kitchen.

Mr. Lyon said the board is looking for the answer to why strict compliance would be unduly burdensome. Also, the petitioner might want to consider they are dealing with an existing, non-conforming house and address whether or not they are substantially expanding that. Also, address why they did not put a second floor on the first floor addition at the front of the house. Mr. Stern answered they scaled back the project to just include the first floor at this time. Future plans may be to expand over the kitchen and garage. Further, as far as setbacks they will be staying behind the existing non-conforming area of the house which is the front entrance. They are actually holding the house back.

Mr. Miller commented it would have been helpful to have an existing floor plan to compare with what is proposed.

Mr. Stern said if the lot were perfectly rectangular or square, they would not have an issue with the front setback.

Mr. Lyon asked Mr. Stern whether he would say if they were to add the kitchen onto the front and comply with the zoning rules, the setback from the front and the step into the kitchen would be somewhat unduly burdensome in that they would have a chopped up kitchen. Mr. Stern agreed. Mr. Lyon further inquired whether Mr. Stern would say they have mitigated their request for a variance by only going to one story to reduce the amount of requested variance in order to do substantial justice to the surrounding neighborhood, and Mr. Stern concurred. Additionally he agreed with Mr. Lyon that because the house sits forward in relation to the houses within 200 ft. it presents a practical difficulty in complying with the Ordinance.

Mr. Miller noted that a proposed front elevation wasn't submitted for the house.

The chairman called for comments from the audience at 7:55 p.m.

Ms. Sue Johnston, 528 Westwood, talked about possible construction damage to her property. She didn't think the variances would be a problem, but wanted to see a front elevation drawing.

The majority of board members felt they had enough information in order to make an informed decision.

Mr. Hughes said this is an effort to take a pre-World War II house and develop it into the type of dwelling we are accustomed to seeing in Birmingham now. So, he would

support the petitioner's compliance with the spirit and intent of the Ordinance. He feels this renovation would be an enhancement to the surrounding area

Motion by Mr. Lyon

Seconded by Mr. Jones in regard to Appeal 14-13, 515 Westwood, he would move to approve the variances as advertised. The appellant seeks to gain variances under Chapter 26, Article 4 Section 4.69; and Article 2, Section 2.06.

(A) Section 4.69 requires a variance for the distance between principal residential structures in order to construct a second floor addition on top of an existing non-conforming structure. In this case strict compliance would be unduly burdensome in that bringing the walls in from the existing lower level presents a lot of structural and aesthetic issues. It does substantial justice to the neighbors by not expanding an existing non-conformance at least horizontally. It does expand it a bit vertically. Mr. Lyon believes it does substantial justice to the surrounding folks and it is equitable.

(B) The second variance is Section 2.06 for a front yard setback. This takes a little more evidence. He believes there is a practical difficulty here, although it has not been well articulated. The existing house is non-conforming. The front setback is non-conforming. It does not sit parallel to the front setback. The appellant seeks to square off the house by extending the front wall parallel to the existing front wall and the side wall parallel to the existing side wall. Mr. Lyon believes that strict compliance would be unduly burdensome in that it would be functionally and aesthetically undesirable to do that. The proposed structure is only one floor which he thinks mitigates a large massive structure out into the required front yard setback. So, for those reasons he would move to approve and tie the motion to the plans as submitted.

Motion carried, 5-2.

Mr. Jones concurred with Mr. Hughes. The concept of this area now coming into what we all know is the next rehab is the idea that this age house is also on the corner. We are not talking about bunching something on either side where the neighbors would have concerns. The concept of the corner lot also mitigates the variance request.

Chairman Lillie indicated his support of the motion. The petitioner is staying within the existing plane of the current house. The part that requires a variance is minimal. It is quite possible that had this been a square or rectangular lot the applicant might not have needed a front setback variance. In addition, they are decreasing the amount of variance for the front setback.

Mr. Miller said he will not support the motion. To push out into the front yard setback without providing a front elevation of the house sets a precedent that he is very uncomfortable with.

ROLLCALL VOTE

Yeas: Lyon, Jones, Hart, Hughes, Lillie

Nays: Judd, Miller

Absent: Conlin

T# 04-23-14

**2123 WINDEMERE
(Appeal 14-14)**

The owners of the property known as **2123 Windemere** request the following three variances to allow for the construction of a second level addition and the installation of a basement egress window well:

A. **Chapter 26, Article 2, Section 2.08** requires a front yard setback of 35.40' for this lot; with 34.80 ft. existing and 34.80 ft. proposed. Therefore, a variance of 0.60 ft. is requested.

B. **Chapter 26, Article 2, Section 2.08** requires a side yard setback of 5.00 ft. for west side of this lot; with 4.80 ft. existing and 4.80 ft. proposed. Therefore, a variance of 0.20 ft. is requested.

C. **Chapter 26, Article 4, Section 4.30 (C. 4.)** allows window wells to project into the required side yard setback a maximum of 3.00 ft. measured to the inside of the well opening. This lot's westerly side yard setback is required to be 5.00 ft.; with 4.80 ft. existing. Therefore, a variance of 0.20 ft. is requested.

This property is zoned R-2 Single-Family Residential.

One e-mail was received in support of the variance requests.

Mr. Cooper said the petitioner is requesting to add a second floor on the existing footprint, add a two-story addition to the rear of the home, and build a covered front porch. The rear addition and the covered front porch comply with the Zoning Ordinance. The owner is proposing to stack the new second floor front wall onto the existing non-conforming front first floor wall and stack the new second floor west wall onto the existing non-conforming west first floor wall. Down the road they plan a basement renovation and are currently proposing to install a basement emergency egress window well.

It was noted that the driveway of the house to the west is right up against the lot line and the window well is proposed to be on that side.

Mr. Brad Martin, the property owner, said the practical difficulty is they want to be able to stack the second story wall on top of the first floor wall and also be able to run the duct work to the second floor. Further, they cannot finish off the basement without having an egress window. In response to the chairman, he noted the addition will not have a basement so the window well cannot be placed in the rear of the house.

Chairman Lillie took comments from the audience at 8:15 p.m.

Ms. Marianne Gada read a letter into the record from her daughter and son-in-law, Bradley and Natalie Gilling, the property owners on the west side of the subject house. They are concerned that the proposed variance for an egress window creates a danger to their children as it would be 1 ft. 9 in. from their driveway. Further, the proposed construction plan is to go up an additional floor to permit a third floor of habitable attic space. Allowing construction of a towering structure closer to their property line than allowed creates a new standard that goes against the original laws designed for the City. They expect the City to enforce the code as written. Lastly, by removing green space with the proposed addition, they would assume a proper drain solution will be enforced.

Chairman Lillie pointed out the Ordinance allows a window well and the petitioner is only asking for a 3 in. variance for it. Mr. Lyon suggested the neighbors could put up a fence along the lot line. Also, there will be a cover on the window well. The reality is the subject house is existing, non-conforming. Mr. Johnson confirmed the drainage issue will be addressed at the time of construction.

Motion by Mr. Judd

Seconded by Mr. Jones in regard to Appeal 14-14, 2123 Windemere, the petitioner brings a request for three variances. This is a 1951 house that is compatible with the other style houses that were built in that neighborhood in 1951. However there has been a change in the neighborhood, either through demolition of homes and reconstruction or the re-use of a home by placing a second story within the existing plane of the house walls. The is the case really with 2123 Windemere.

The petitioner seeks three variances. The first is (A) Chapter 26, Article 2, Section 2.08 requiring a front yard setback of 35.40 ft. for this lot; with 34.80 ft. existing and 34.80 ft. proposed. Therefore, a variance of 0.60 ft. is requested. As noted, this is the existing front yard setback; there is no change. Mr. Judd feels that strict compliance with the required front yard setback would unreasonably prevent the owner from using the property. He feels that to grant the variance would do substantial justice to the applicant. He does not think this is due to unique circumstances in the property; nor does he feel that the situation is self-created. For those reasons he would move to grant it.

The second is (B) Chapter 26, Article 2, Section 2.08 requiring a side yard setback of 5.00 ft. for the west side of this lot; with 4.80 ft. existing and 4.80 ft. proposed. Therefore, a variance of 0.20 ft. is requested. Once again, this is in regard to placing a second story on the existing first story weight bearing walls. It is within the plane. Mr. Judd would move to grant this. He feels that strict compliance would unreasonably prevent the owner from using the property for a permitted purpose. He finds conformity with such restrictions unnecessarily burdensome. He feels granting this would do substantial justice to the applicant and to surrounding property owners. In this case there certainly are unique circumstances in that this is a pre-existing non-conformity. While this does enlarge the non-conformity, once again they are within the plane. He feels that the property owner has certainly mitigated any non-conformity by staying within the plane. He does not feel this problem is self-created and he would move to grant.

The third variance (C) is Chapter 26, Article 4, Section 4.30 (C.4) which allows window wells to project into the required side yard setback a maximum of 3 ft. 0 in. measured to the inside of the well opening. As noted, we are only dealing with a 3.0 in. variance in this case. Since the addition will utilize the basement as required, certainly for new construction, and in this case for re-use construction, there must be an emergency egress from the basement for safety reasons. Mr. Judd would grant this variance. He feels that to hold them to strict compliance would unreasonably prevent the owner from using the property for a permitted purpose and would be unnecessarily burdensome. He feels to grant it would do substantial justice to the applicant as well as to other property owners. He feels it is due to unique circumstances of the property and certainly this is a mitigation of a necessity under our Ordinance and for the public health, safety, and welfare. He would tie his motion to the plans, and moves to grant all three variances.

Mr. Jones commented it would not surprise him a bit if this request occurs again in the near future simply because these houses are in a lovely area that overlooks the park. He will support the motion.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Judd, Jones, Hart, Hughes, Lillie, Lyon, Miller

Nays: None

Absent: Conlin

T# 04-24-14

CORRESPONDENCE (none)

T# 04-25-14

GENERAL BUSINESS

Mr. Johnson promised to check with the city attorney as to authenticity of e-mails.

T# 04-26-14

ADJOURNMENT

No further business being evident, the board members passed a motion to adjourn at 8:37 p.m.

Bruce R. Johnson, Building Official

08-76-05

**515 WESTWOOD
(Appeal 05-44)**

The owners of the property known as 515 Westwood request the following variance to construct an addition to the principal residential structure:

- A. Article 2.06 requires a rear-yard setback of 30 ft., with 46.29 ft. existing and 22.27 ft. proposed; therefore, a variance of 7.73 ft. is requested.

This property is zoned R-1 Single-Family Residential.

Three letters from immediate neighbors have been received in support of this project.

Mr. Cooper explained that the property owners propose to add a family room on the south end of the home, and relocate their garage.

Mr. Kirk Uhas, Architect, spoke to represent the homeowners, John and Ann Jurkovich. He described the present kitchen as being small and at the opposite end of the house from the living area. To satisfy current lifestyles, the plan is to construct a family room addition adjacent to the present kitchen. Due to the proposed family room addition, the garage needs to be relocated. The back yard has beautiful landscaping and any garage relocation will be impacted by the current tree locations and canopy of the trees. They reviewed several possibilities for placement of the garage and the most practical solution both architecturally and to fit the spirit of the ordinance is proposed this evening. It will encroach on the current rear yard setback by 7.73 ft.

The other practical difficulty they have is that the site naturally drains from north to south. The grade difference from the center of the property to the road is almost 4 ft. To divert rain water around a garage that has a different orientation becomes somewhat difficult. Their proposal attempts to minimize this practical difficulty. Mr. Uhas distributed several pictures to illustrate the lot.

The design is consistent with other homes in the area that are also focused on maintaining an open backyard, and preserving green space along with mature trees. Discussion contemplated alternate placement of the garage.

Mr. Force suggested cutting back the kitchen. There is a fairly large area between the kitchen and the great room. Mr. Uhas said they examined what is an appropriate size living area for how they intend to use it and feel this is a minimum size room for their use. He answered several questions from board members as to placement of the garage. The garage has been set back from the street as far as it is in order to allow a car to park in the driveway. He took a few minutes to review some of the alternate plans that they had considered and to explain the difficulties with them.

Mr. Lyon stated that in his opinion, a minimal two-car garage is 20 ft. wide. If this variance were allowed to go through at 20 ft. it would greatly reduce the need to construct a detached accessory garage that could be as close as 3 ft. to the lot line and as high as 22 ft. under current Ordinances. Mr. Uhas said if he had the option he would go with a two and one-half or three-car garage with room above. If he had an attached garage of sufficient size there would not be any need to build a detached garage.

Ms. Ann Jurkovich noted they wanted to do an addition that would be in keeping with the integrity of the home and that would preserve the backyard. She feels that a detached garage would detract from the neighborhood. Additionally they feel this is the best solution for everybody and that is why they asked for the variance.

In answer to a question from Mr. Hughes, Mr. Uhas explained how much additional space they have on the first level of the proposed garage with respect to storage. The mud room between the garage and the family room is planned to be 7.5 ft. x 9 ft. Mr. Hughes observed that the storage space in the garage doesn't appear to him to be excessive. Mr. Uhas explained that the house to the rear is almost 46 ft. from the lot line. That, along with the 22.27 ft. requested setback variance, would place them 68 ft. to the rear.

No one in the audience wanted to speak to this appeal at 9:25 p.m.

Motion by Mr. Hughes

Seconded by Mr. Stamps in the matter of Appeal 05-44, the property located at 515 Westwood, to grant the variances as advertised and requested on the grounds that the information presented establishes a practical difficulty with respect to this particular property. Part of that practical difficulty has to do with the vegetation and trees that are located on the particular site. And, there is some information that there appears to be some drainage problem in the rear of the lot based upon the difference in elevation from the rear to the front of the lot. The proposed addition to the existing structure appears to be very sensitively designed to be harmonious with the adjacent properties, both to the west on Waddington as well as to the north on Westwood and across the street. The size of the garage is such that it does not appear to him to be excessive. There is some storage space, apparently about a 7 ft. by 9 ft. pad for the storage of garden tools, bikes, etc. Additionally, the length of the garage from front to rear appears to be about 28 ft. on the west and on the front it is 23.33 ft. at the entrance and 27 ft. in the rear. That does not appear to him to be unusually excessive, particularly in light of the size of SUVs, and other vehicles of that general size. Mr. Hughes thinks that under the circumstances there certainly isn't any adverse impact on the adjacent properties and he would move to grant the variance subject to the plans and specifications submitted in support of the variance.

Mr. Stamps spoke in favor of the motion. The petitioners can conform to the Ordinance by constructing a detached garage. However he believes that their solution is preferable to that, even in consideration of the encroachment of the rear yard setback. He does not think it is really necessary to ask the petitioners to take a foot out of the garage and a foot out of the house because there is no negative impact on the adjacent properties. He believes they have tried to be very sensitive in this situation. He doesn't like the fact that it is a 7 ft. variance, but feels they have tried hard to explore the various options and to present to the board a solution that he does not find excessive in terms of the size of any of the rooms in the house or the garage. He thinks it is inappropriate for the board to require them to construct a 20 ft. garage.

Chairman Lillie commented the board is being held hostage because of the concern if the garage is placed in the backyard. He does not think vegetation causes a practical difficulty. There has not been any showing that this property is unique.

Mr. Hughes stated he thinks that a detached garage, even if it were a one-story structure, would be inappropriate. Attaching the garage to the building is a much better proposal with all kinds of advantages.

Mr. Lyon noted that by the thinnest of margins he believes that destroying substantial trees along with the drainage pattern would be a practical difficulty, in that there is great economic value in the trees. If the board grants a minimal garage it mitigates any downstream needs for further intrusion into the green space and increases in paved surfaces. He feels the solution justifies the variance.

Mr. Force said he would feel a lot more comfortable if he had seen different drawings that show how they could minimize the variance that is being requested. This is a tough call, but as Mr. Stamps suggested, knocking off a couple of feet really wouldn't help much because none of the neighbors really are hurt. In fact, they fully support the proposal.

Chairman Lillie noted for the record the fact that neighbors support is not grounds for granting or denying a variance. Also, economics does not establish practical difficulty.

Motion carried, 5-1.

ROLL CALL VOTE

Yeas: Hughes, Stamps, Betanzos, Force, Lyon

Nays: Lillie

Absent: Conlin, Judd, Koseck

08-77-05

**1200 LATHAM
(Appeal 05-45)**

CASE DESCRIPTION

1055 Larchlea (20-30)

Hearing date: June 9, 2020

Appeal No. 20-30: The owner of the property known as 1055 Larchlea, requests the following variance to expand the impervious surface in the required front open space:

A. Chapter 126, Article 4, Section 4.31(A)(1) of the Zoning Ordinance requires a minimum of 65% of the front open space in all single-family districts shall be free of paved surfaces. The required is 65%(2120.00 sf) The proposed is 59%(1932.00 sf). Therefore, a variance of 6.00%(188.00sf) is being requested.

Staff Notes: The applicant is requesting additional paving in the required front yard. The home was issued a permit in 2018 and is currently still under construction.

This property is zoned R1 – Single Family Residential.

Jeff Zielke, NCIDQ, LEED AP
Assistant Building Official

1055 LARCHLEA 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
APPLICATION FOR THE BOARD OF ZONING APPEALS

Application Date: _____

Hearing Date: _____

Received By: _____

Appeal #: _____

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
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I. PROPERTY INFORMATION:

Address: 1055 Larchlea	Lot Number: South 1/2 141 & 142	Sidwell Number: 19-35-180-015
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II. OWNER INFORMATION:

Name: Christopher Dreckmann			
Address: 1707 Hazel	City: Birmingham	State: MI	Zip code: 48009
Email: * cadreckmann@gmail.com		Phone: (248) 330-4656	

III. PETITIONER INFORMATION:

Name: Matt Whetstone	Firm/Company Name: Greater Detroit Landscape Company		
Address: 21000 Fairfield Ave.	City: Warren	State: MI	Zip code: 48089
Email: matt@greaterdetroitlandscape.com		Phone: (586) 663-6675	

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 12th 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.

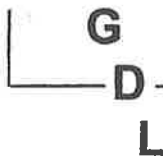
*By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: _____

Date: **February 5th, 2020**

Signature of Petitioner: _____

Date: **February 5, 2020**



Greater Detroit Landscape Co.

21000 Fairfield • Warren, Michigan 48089 • (586) 777-2000 • Fax (586) 777-2095

February 5, 2020

City of Birmingham
Board of Zoning Appeals
151 Martin Street
Birmingham, MI 48009

Regarding: 1055 Larchlea

Dear Board,

Our clients, the Dreckmann's are looking to put a circle driveway in at their new home for additional off street parking. We are asking for a dimensional variance of 188 SF or 6% for front yard open space. We would still exceed the required overall open space requirement of 40% or 5,246 SF, by providing 42% or 5,537 SF.

Requested Variance	Required	Existing	Proposed	Variance Amount
Front Open Space	2,120.00 SF 65%	2,122.00 SF 65%	1,932.00 SF 59%	188.00 SF 6%

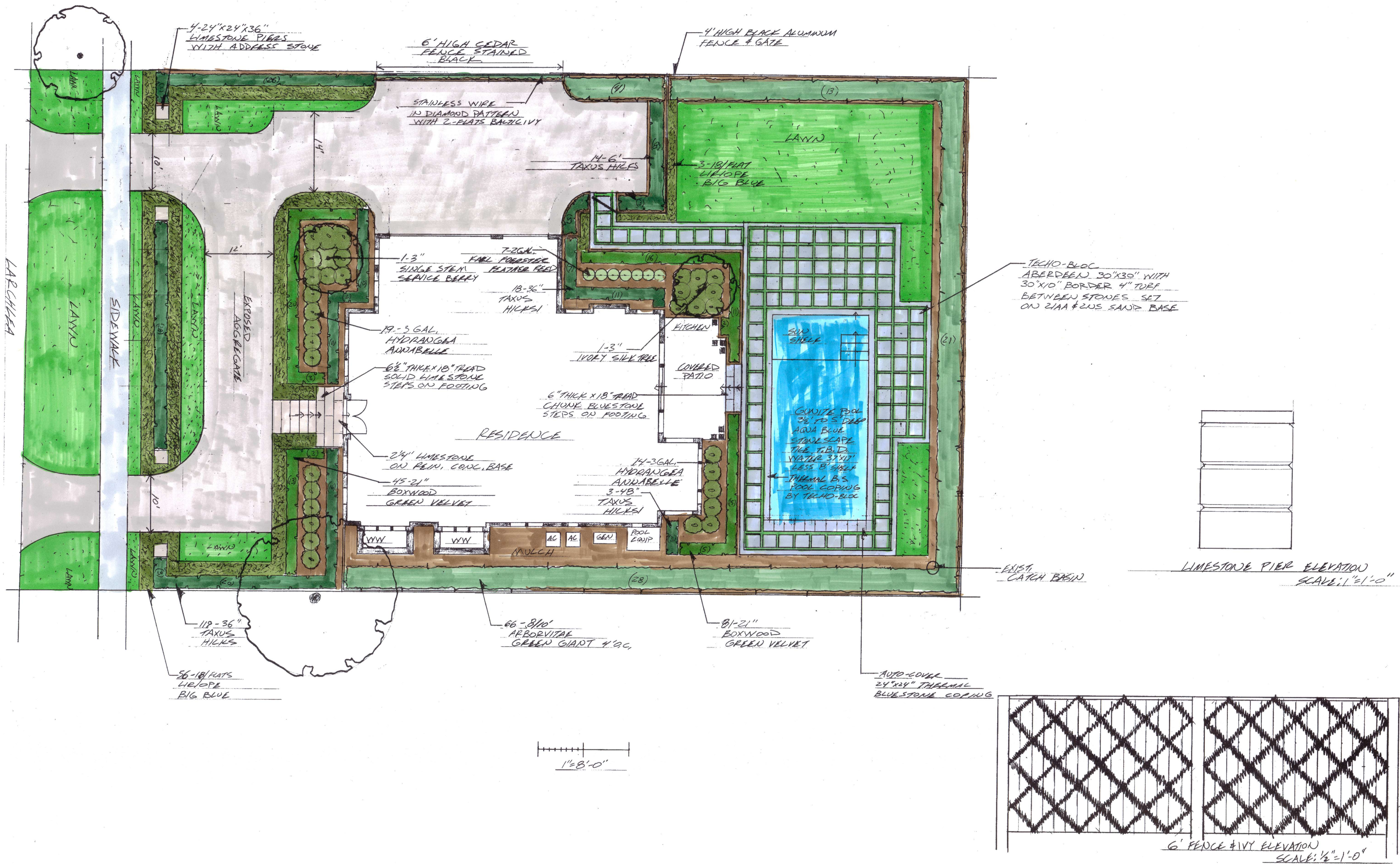
We have reduced the driveway as much as possible, while still leaving it functional and aesthetically pleasing for the community. We have reduced the entry points to 10' in width, the portion running parallel to the home/street at 12' in width, the portion leading to garages was widened to 14' to allow access into the garage. We have helped to provide softening of the driveway with landscaping between the drive and city walk.

I would like to thank you again for taking the time to consider our request.

Sincerely,

Matt Whetstone

Requested Variance	Required	Existing	Proposed	Variance Amount
Front Open Space	2,120.00 SF - 65%	2,120.00 SF - 65%	1,932.00 SF - 59%	188.00 SF - 6%



DRAWN BY: M.S.V.
DATE: SEPT 2019
SCALE: 1/8"=1'-0"
PLAN #: 00-73-19

REVISIONS
10/19/2019
JAN 19 2020
FEB 3 2020

Greater Detroit Landscape Co.
21000 Fairfield - Warren, Michigan 48098
P (586) 777-2000 F (586) 777-2095
ENHANCING ENVIRONMENTS SINCE 1932

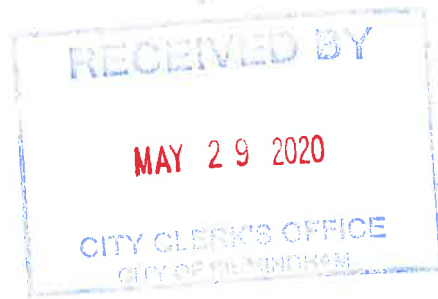
PROJECT
DREEMAWU RESIDENCE
1055 LARCHMERE
BIRMINGHAM, MI

[illegible]

"SAMELSON SUB."
L. 81, P. 14, O.C.R.

OF: _____

MUNICIPAL REVIEW NUMBERS: _____



1756 W. Lincoln
Birmingham, MI 48009-1833
May 27, 2020

City Clerk
City of Birmingham
151 Martin Street
Birmingham, MI 48012-3001

RE: 1055 Larchlea-Request for Variance-Impervious Surface

My family and I live at 1756 W. Lincoln, directly south of the subject property.

I am writing to convey my opposition to allowing a variance from the allowed amount of impervious surface in the front open space. I am already concerned that the greatly increased footprint of this structure will result in water drainage problems for my property. Exceeding the allowed, codified amount of impervious surface can only serve to exacerbate any drainage issues.

I must opine here.

It seems that most, if not a great majority of requests for variance are approved by the board of appeals. Every deep-pocketed developer/builder/home owner can be assured of probable approval of their request for variance if they are persistent and willing to spend enough money on appeals, architects, and if necessary, lawyers.

Before these projects are undertaken, the zoning rules are well known to all involved. I don't understand why any architect/builder would move forward with a project knowing their design calls for a zoning variance. The only reason I can come up with is that they are very confident that their requests for variance will be approved. Is it worth the expense to maintain these zoning requirements if they can so often (and easily) be skirted?

A handwritten signature in blue ink, appearing to read "Neil C. Skaar".

Neil C. Skaar



Jeff Zielke <jzielke@bhamgov.org>

1055 Larchlea Drive - Variance

1 message

khic@aol.com <khic@aol.com>

Tue, Jun 2, 2020 at 8:51 PM

Reply-To: khic@aol.com

To: "jzielke@bhamgov.org" <jzielke@bhamgov.org>

Dear Mr. Zielke,

We are writing to you about our concerns regarding the 1055 Larchlea property. My husband and I feel that the extra concrete would not match the aesthetics of the neighborhood. There would also be runoff that could flow into the the surrounding properties and into the street. We don't think the extra impervious surface for the front of the house and driveway is necessary.

Thanks for soliciting our concerns.

Sincerely,

Kevin & Ivy Hickey
1006 Larchlea
Birmingham, MI 48009
248-258-2745



Jeff Zielke <jzielke@bhamgov.org>

from Annis Pratt re 1055 Larchlea

1 message

Annis <avpratt@aol.com>
Reply-To: Annis <avpratt@aol.com>
To: "jzielke@bhamgov.org" <jzielke@bhamgov.org>

Tue, Jun 2, 2020 at 3:44 PM

Dear Jeff,

As I write they are digging up the forecourt, or what was the front lawn, of [1055 Larchlea](#) directly across the street from me.

I would be opposed to filling in that area entirely with impervious material for two reasons:

1. Impervious paving prevents water absorption during rainstorms so that more water than before will pour directly into the street and create potential overflow in the Linden Park Water retention facility. Even the smallest area of grass will absorb moisture and cut down on the speed and content of runoff, which can be contaminated by fertilizer and other chemicals.
2. I have established two gardens on my property facing 1055, not only for my own enjoyment but for that of my neighbors. Aesthetically, a filled in yard is far less pleasing than a lawn and/or border gardens.

Thank you for providing the opportunity for nearby property owners to weigh in on this issue. We look forward to welcoming our new neighbors.

Sincerely yours,
Dr. Annis Pratt
[1056 Larchlea Dr](#)
[Birmingham, MI 48009](#)
248 644-0737