



500 West Big Beaver
Troy, MI 48084
troymi.gov

248.524.3364
planning@troymi.gov

ZONING BOARD OF APPEALS MEETING AGENDA

Michael Bossenbroek, Chair, Thomas Desmond, Vice Chair
Aaron Green, David Eisenbacher, Mahendra Kenkre, Jim McCauley,
Tyler Fox, Barbara Chambers, Alternate, Jeffrey Forster, Alternate

MAY 21, 2024

7:00 P.M.

COUNCIL CHAMBERS

1. ROLL CALL
2. PROCEDURE
3. APPROVAL OF MINUTES – February 20, 2024
4. APPROVAL OF AGENDA
5. HEARING OF CASES:
 - A. 233 NOTTINGHAM, JASON MCFALL FOR WAYNE CRAFT INC. - A variance request to allow a proposed home addition to be constructed 38.34 feet from the rear property line, where the Zoning Ordinance requires the addition to be setback 45 feet from the rear property line.

ZONING ORDINANCE SECTION: 4.06 C, R-1B Zoning District
 - B. 5356 CAPRI, PETER STUHLREYER - A variance request to allow a proposed 266 square foot accessory supplemental building (cabana/gazebo) be set back 2.08 feet from the side property line. The Zoning Ordinance requires the total floor area of the accessory supplemental building shall not exceed 200 square feet, and be set back 6 feet from the property line.

ZONING ORDINANCE SECTION: 7.03 B 3
6. COMMUNICATIONS
7. MISCELLANEOUS BUSINESS –
 1. Elections Board Chair and Vice Chair
 2. Training presentation
8. PUBLIC COMMENT
9. ADJOURNMENT

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk by e-mail at clerk@troymi.gov or by calling (248) 524-3317 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.



Zoning Board of Appeals Application

STATEMENT OF PRACTICAL DIFFICULTY

In order for a variance to be granted, a practical difficulty, as determined by the Board, must be present. On a separate sheet, please clearly identify and explain the practical difficulty justifying the variance request. Dimensional or other non-use variances shall not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:

- a) Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
- b) The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
- c) The characteristics which make compliance with the dimensional requirements shall not be of a personal nature.
- d) The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.
- e) The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City.

MOTION TEMPLATE GRANT VARIANCE

RESOLUTION TEMPLATE

Moved by:

Seconded by:

That the variance request for [applicant name, address or location], for [request]

Be granted for the following reasons:

The applicant has demonstrated that:

- a) Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
- b) The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
- c) The characteristics which make compliance with the dimensional requirements shall not be of a personal nature.
- d) The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.
- e) The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City

Yeas:

Nays:

MOTION CARRIED / FAILED

MOTION TEMPLATE DENY

Moved by:

Seconded by:

That the variance request for [applicant name, address or location], for [request]

Be denied for the following reason(s):

The applicant has not demonstrated that:

- f) Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
- g) The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
- h) The characteristics which make compliance with the dimensional requirements shall not be of a personal nature.
- i) The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.
- j) The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City

Yeas:

Nays:

MOTION CARRIED / FAILED

MOTION TEMPLATE POSTPONE

Moved by:

Seconded by:

RESOLVED, that the variance request for [applicant name, address or location], for [request]

Be postponed for the following reason(s):

Yeas:

Nays:

MOTION CARRIED / FAILED

G:\ZONING BOARD OF APPEALS\Resolution Template Zoning Board of Appeals.doc

ZONING BOARD OF APPEALS – OPENING STATEMENT

The Zoning Board of Appeals is a group of seven of your neighbors appointed by the Troy City Council to decide on requests for variances and other matters that are brought before them. A variance is a relaxation of the literal provisions of the Zoning Ordinance. Applicants must indicate a hardship or practical difficulty with the land that would warrant the granting of the variance.

PROCEDURE

The Board will hear the items in the order that they appear on the approved agenda. When an item is called, the Chairperson will verify that the applicant is present. Then the City Administration will summarize the facts of the case. If there is less than a full board (7 members) present at a meeting, an applicant may request a postponement so his or her request can be heard by a full board. If there is no request for a postponement, the applicant will then be given an opportunity to address the Board to explain the justification for the action requested.

After the applicant makes their presentation, and answers any questions that the Board may have, the Chairperson will open the Public Hearing. Any person wishing to speak on the request should raise their hand and when recognized by the Chairperson, come up to the podium. The speaker should identify themselves with name and address, indicate their relationship to the property in question (i.e. next-door neighbor, live behind the property, etc.) and state whether they are in favor of or against the variance request and give reasons for their opinion. Comments must be directed through the Chairperson. Comments should be kept as brief as possible and closely pertain to the matter under consideration. Only one person will be recognized by the Chairperson to speak at one time.

At the conclusion of public comments, the Chairperson will close the Public Hearing. Once the Public Hearing is closed, no other public comment will be taken unless in response to a specific question by a member of the Board. The Board will then make a motion to approve, deny, or postpone the request. In order for the request to pass a minimum of four votes are needed. If the request is not granted, the applicant has the right to appeal the Board's decision to Oakland County Circuit Court.

On February 20, 2024 at 7:02 p.m., Chairperson Bossenbroek called the Zoning Board of Appeals meeting to order.

1. ROLL CALL

Present:

Michael Bossenbroek
Tommy Desmond
David Eisenbacher (arrived at 7:06pm)
Aaron Green
Tyler Fox
Jeffrey Forster
James McCauley

Also Present:

Ben Carlisle of Carlisle and Wortman Assoc., Planning Consultant
Nicole McMillan, Assistant City Attorney
Jackie Ferencz, Planning Department Office Manager

2. PROCEDURE- read by Vice Chair Desmond

3. APPROVAL OF MINUTES –

Moved by Fox
Seconded by McCauley

RESOLVED, to approve the November 21, 2023 draft minutes.

Yes: All

MOTION PASSED

4. APPROVAL OF AGENDA – No changes

5. HEARING OF CASES:

5268 CROWFOOT, KEVIN FARRELL for GREAT DAY IMPROVEMENTS – A variance request to allow a proposed home addition to be constructed 31 feet from the rear property line, where the Zoning Ordinance requires the addition to be setback 40 feet from the rear property line.

Moved by McCauley
Seconded by Desmond

RESOLVED, to grant the request.

Yes: Eisenbacher, Fox, Desmond, Forster, McCauley, Green
No: Bossenbroek

MOTION PASSED

6. COMMUNICATIONS – Mr. Fox reported a Master Plan status update.
7. MISCELLANEOUS BUSINESS – None
8. PUBLIC COMMENT – None
9. ADJOURNMENT –The Zoning Board of Appeals meeting ADJOURNED at 7:20 p.m.

Respectfully submitted,

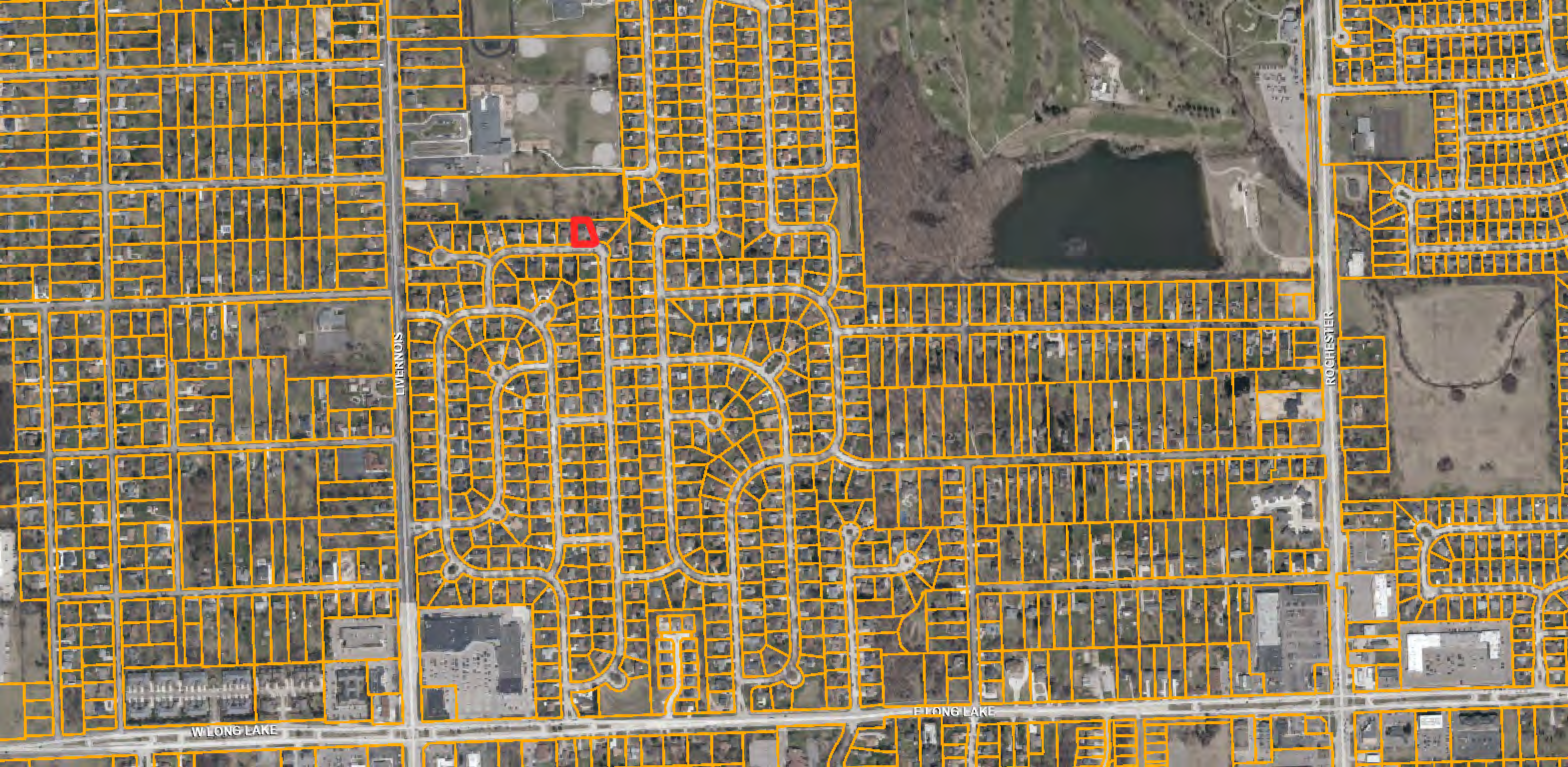
Michael Bossenbroek, Chairperson

Jackie Ferencz, Planning Department Office Manager

[ZBA Minutes 02 20 2024 draft.doc](#)

A. 233 NOTTINGHAM, JASON MCFALL FOR WAYNE CRAFT INC. - A variance request to allow a proposed home addition to be constructed 38.34 feet from the rear property line, where the Zoning Ordinance requires the addition to be setback 45 feet from the rear property line.

ZONING ORDINANCE SECTION: 4.06 C, R-1B Zoning District

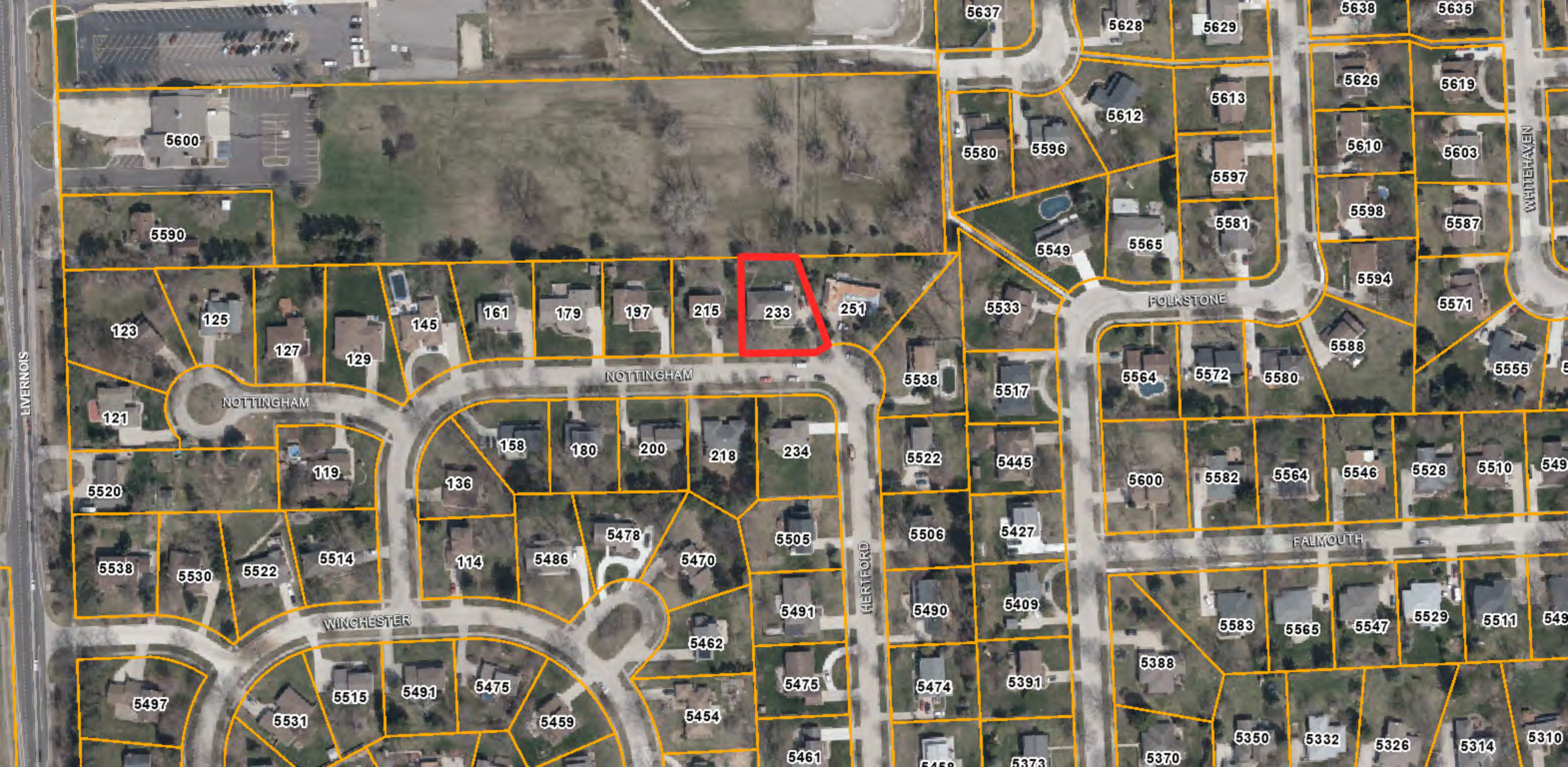


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LIVERNOIS

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NOTTINGHAM



Zoning Board of Appeals Application

planning@troymi.gov | Fee: \$500.00

THE ZONING BOARD OF APPEALS MEETS THE **THIRD TUESDAY OF EACH MONTH AT 7:00 P.M. AT CITY HALL**. PLEASE FILE A COMPLETE DIGITAL APPLICATION AND FEE AT LEAST **36 DAYS BEFORE** THE MEETING DATE. PRE APPLICATION MEETING WITH PLANNING DEPARTMENT REQUIRED BEFORE FILING APPLICATION.

1. ADDRESS OF THE SUBJECT PROPERTY: 233 Nottingham
2. PROPERTY TAX IDENTIFICATION NUMBER(S): 88-20-10-152-010
3. ZONING ORDINANCE SECTIONS RELATED TO THE REQUEST: Article 4 Section 4.06
4. HAVE THERE BEEN ANY PREVIOUS APPEALS INVOLVING THIS PROPERTY? If yes, provide date(s) and particulars: N/A
5. APPLICANT:
 - NAME Jason McFall
 - COMPANY Wayne Craft Inc.
 - ADDRESS 13525 Wayne Rd
 - CITY Livonia STATE MI ZIP 48150
 - PHONE (734)421-8800
 - E-MAIL contact@waynecraft.com
 - AFFILIATION TO THE PROPERTY OWNER: Hired Contractor



Zoning Board of Appeals Application

6. PROPERTY OWNER:

NAME John Heinlen

COMPANY _____

ADDRESS 233 Nottingham

CITY Troy STATE MI ZIP 48085

TELEPHONE (248) 229-4589

E-MAIL johnheinlen@hotmail.com

The undersigned hereby declares under penalty of perjury that the contents of this application are true to the best of my (our) knowledge, information and belief.

The applicant accepts all responsibility for all of the measurements and dimensions contained within this application, attachments and/or plans, and the applicant releases the City of Troy and its employees, officers, and consultants from any responsibility or liability with respect thereto.

I, Wayne Craft, Inc. (APPLICANT) HEREBY DEPOSE AND SAY THAT ALL THE ABOVE STATEMENTS CONTAINED IN THE INFORMATION SUBMITTED ARE TRUE AND CORRECT AND GIVE PERMISSION FOR THE BOARD MEMBERS AND CITY STAFF TO ENTER THE PROPERTY TO ASCERTAIN PRESENT CONDITIONS.

APPLICANT SIGNATURE [Signature] DATE 11/1/23

PRINT NAME: _____

PROPERTY OWNER SIGNATURE [Signature] DATE 11/7/23

PRINT NAME: John Heinlen

Failure of the applicant or their authorized representative to appear before the Board as scheduled shall be cause for denial or dismissal of the case with no refund of fees. The applicant will be notified of the time and date of the hearing by mail. If the person appearing before the Board is not the applicant or property owner, signed permission must be presented to the Board.

Approved variances are good for a one year period.

April 2nd, 2024

John Heinlen
233 Nottingham
Troy, MI 48085

Re: Statement of Practical Difficulty

Dear Zoning Board of Appeals,

Thank you for taking the time to review our application for appeal. This letter will describe the practical difficulties John Heinlen faces in getting the home addition approved for the rear of his property.

Section A: Irregular Lot Size & Gas Meter Location.



The lot is an irregularly shaped lot due to the home being on the start of a curve in the road, similar to a cul-de-sac. Another difficulty the homeowner faces is his gas meter location as well as windows in the rear of the home. We cannot enclose a gas meter in a sunroom addition, nor can we enclose an emergency exit to a bedroom. These requirements limit us on the location the sunroom can be placed on the home. Due to these regulations, we cannot move the sunroom over nor extend the sunroom width wise. Instead, we have extended the projection to make a suitable and functional size sunroom for the homeowner to enjoy like other homeowners get to do.

Section B: This variance request is for the said property at 233 Nottingham Troy MI 48085.

Section C: The characteristics that make compliance with dimensional requirements difficult are not of a personal nature. The homeowner is faced with difficulties complying due to the minimal allotted space to make new development in.

Section D: The characteristics that make compliance difficult were not created by the current or previous owners. The difficulties were created by the location of the lot and the way the lot had to be divided due to the curve in the road. They were also created by the builders of the home and the location of the utilities.

Section E: The proposed variance will not be harmful or alter the essential character of the area in which the property is located. The addition is proposed on the rear of the property. The rear of the property backs up to an open field which is city property that will not be developed on. It does not affect or impair light and air to adjacent properties. It does not decrease the property value, it increases it.



With the above-mentioned facts about the practical difficulties at 233 Nottingham Dr, we kindly request that the City of Troy's Zoning Board consider the appeal and issue a variance to extend into the rear (45') and side (10') setbacks.

Regards,

Wayne Craft, Inc.
13525 Wayne Rd
Livonia MI 48150

contact

From: Raymond L Tuttle <Raymond.Tuttle@troymi.gov>
Sent: Monday, October 30, 2023 7:17 AM
To: contact
Subject: 233 Nottingham/DENIAL

Applicant,

The proposed addition has been denied. R-1B zoned properties require a minimum 45' rear setback and a minimum 10' side with 25' least two.

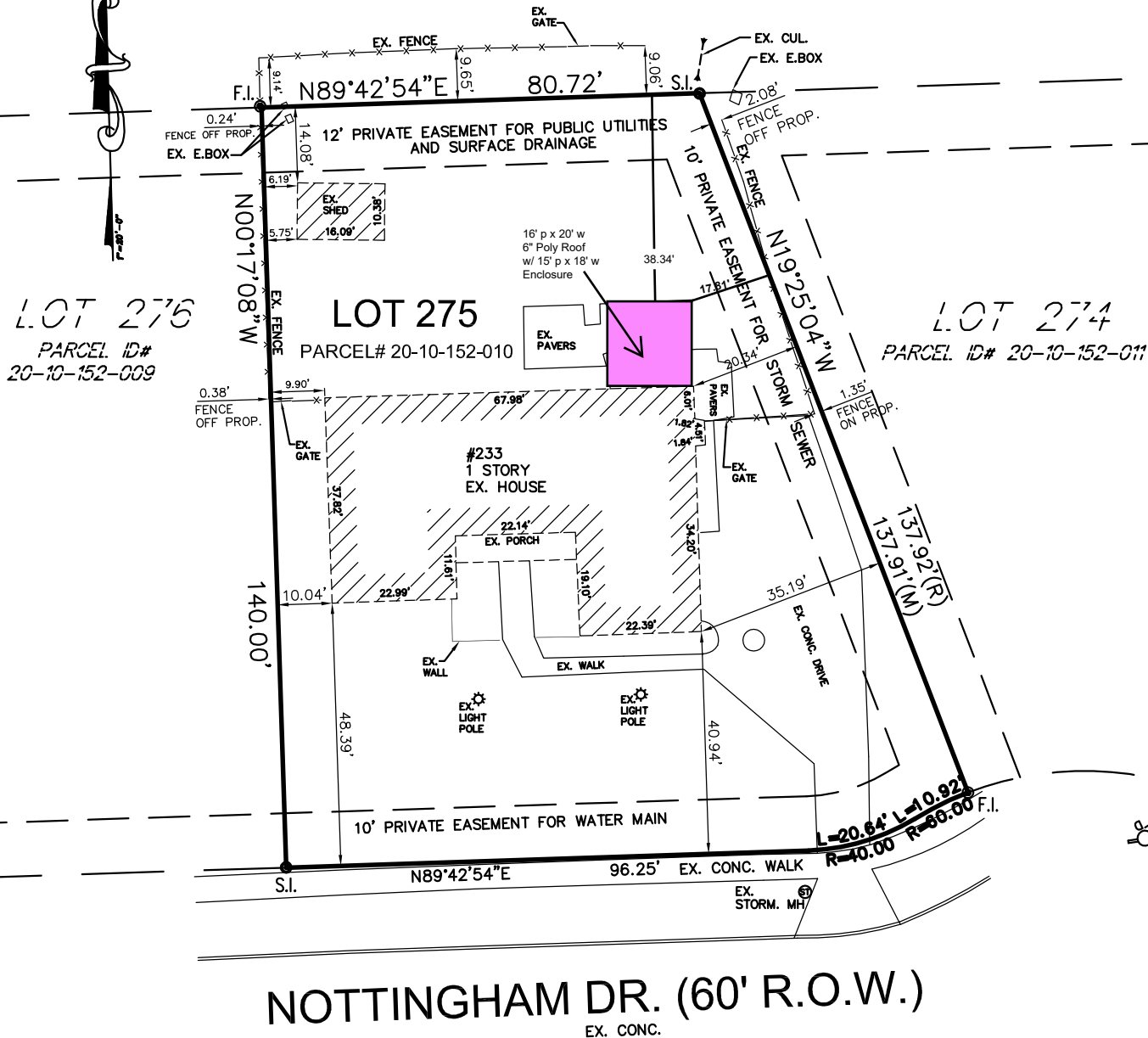
It appears a variance would be needed to proceed.

Thanks,

Ray Tuttle
Inspector
City of Troy

BOUNDARY SURVEY #233 NOTTINGHAM SYLVAN GLEN SUBDIVISION

SUPERVISORS PLAT No. 25 (L.59, P.2 O.C.R.)



LEGEND

- F.I. FOUND IRON
- F.P. FOUND PIPE
- F.M. FOUND MONUMENT
- F.P.K. FOUND P.K. NAIL
- S.P.K. SET P.K. NAIL
- S.I. SET IRON

LEGAL DESCRIPTION

A PARCEL OF LAND OF PART OF THE WEST 1/2 OF SECTION 10, T.2N, R.11E, CITY OF TROY, OAKLAND COUNTY, MICHIGAN, BEING FURTHER DESCRIBED AS FOLLOWS:
LOT 275 OF SYLVAN GLEN SUBDIVISION No.2 (L.132, P.12-14 O.C.R.)
CONTAINING 0.33 ACRES OF LAND SUBJECT TO ALL RIGHTS, EASEMENTS, AND RESTRICTIONS OF RECORD.

233 Nottingham
Troy, MI, 48065



Civil, Construction Management
& Surveying Services

Land Development Services
of Michigan L.L.C.
48597 Hayes
Shelby Twp, MI 48315
P: 586.854.7310

E: David@LDSofMichigan.com

CLIENT: Linda Heinlen DATED 3/26/2024 LOT NO. 275 JOB NO. 24104 SCALE 1" = 30'-0"

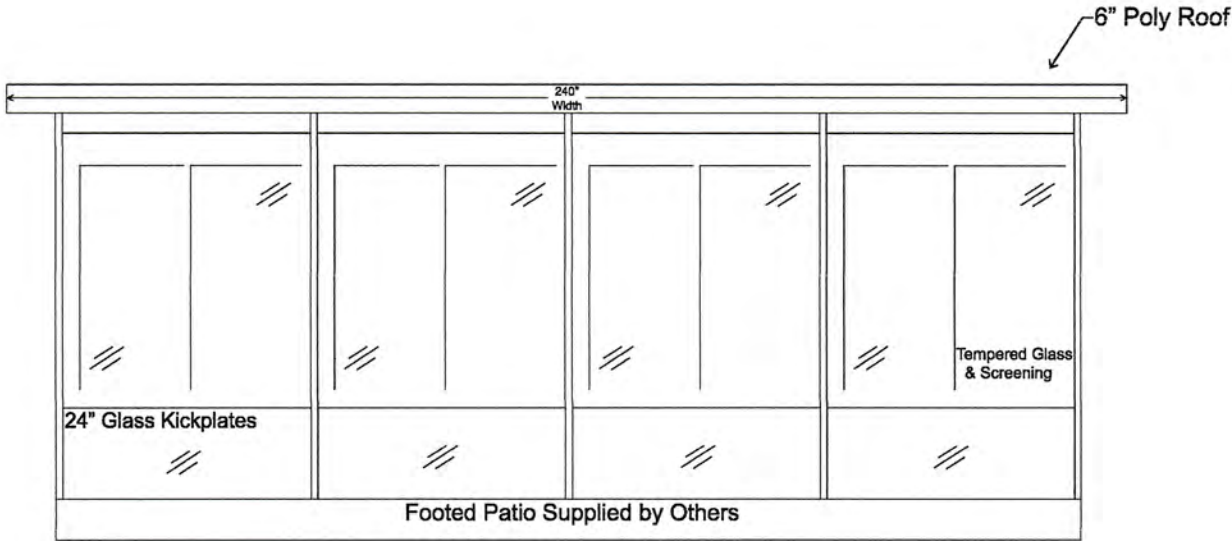


Gas & Electrical Boxes

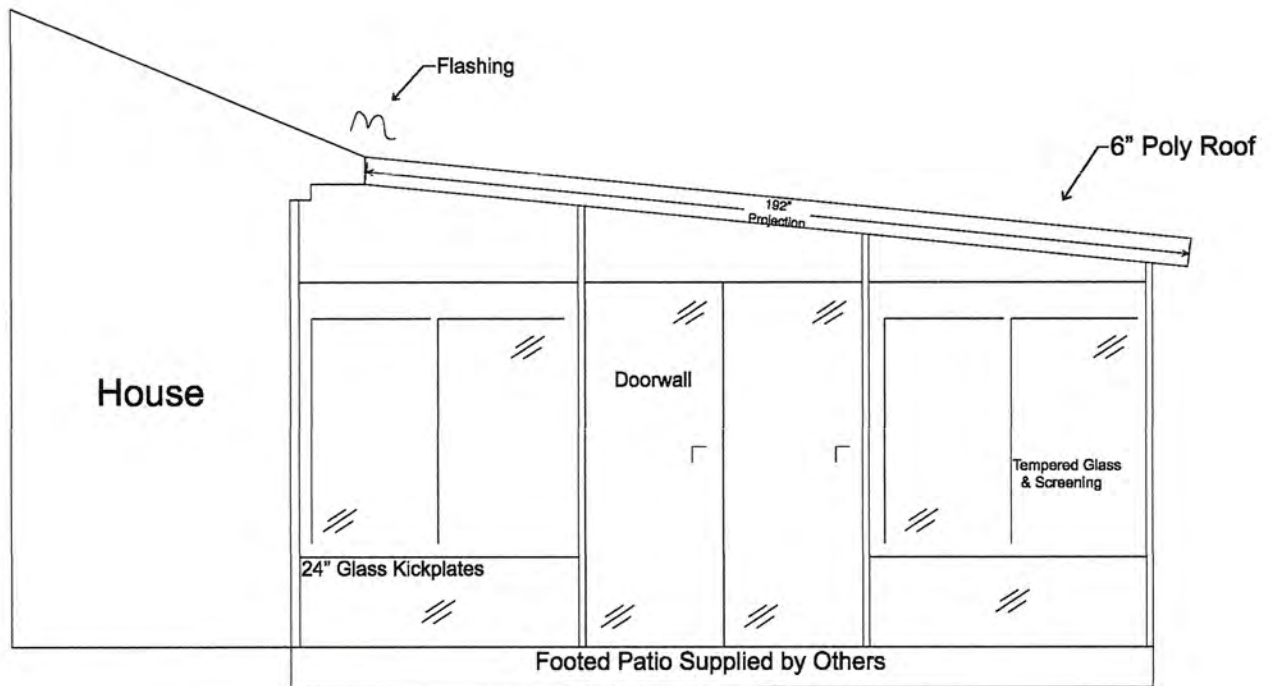


install 6" poly roof over new enclosure on top of newly poured footed patio to be supplied by others.

Front view

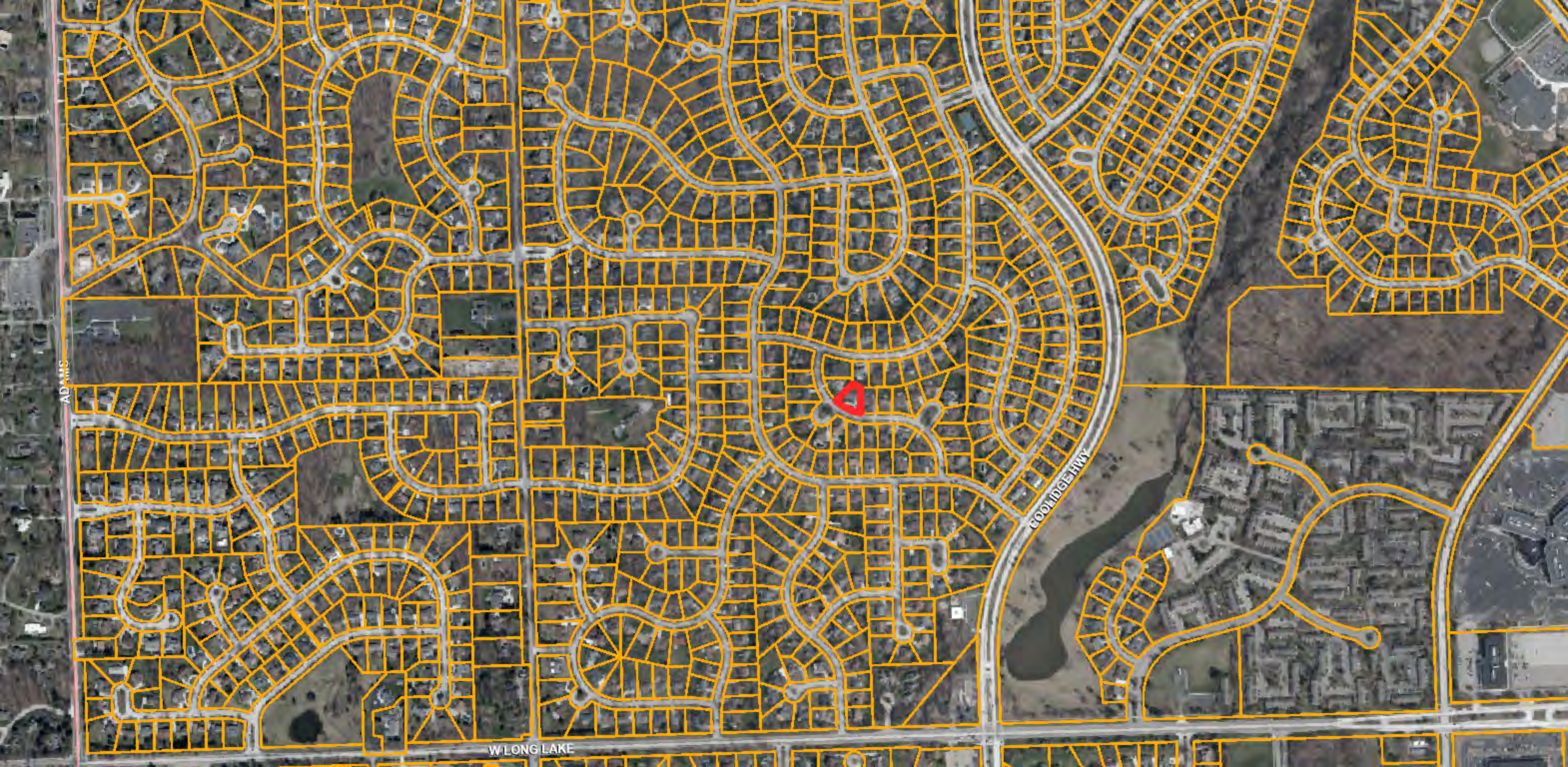


Side View



B. 5356 CAPRI, PETER STUHLREYER - A variance request to allow a proposed 266 square foot accessory supplemental building (cabana/gazebo) be set back 2.08 feet from the side property line. The Zoning Ordinance requires the total floor area of the accessory supplemental building shall not exceed 200 square feet, and be set back 6 feet from the property line.

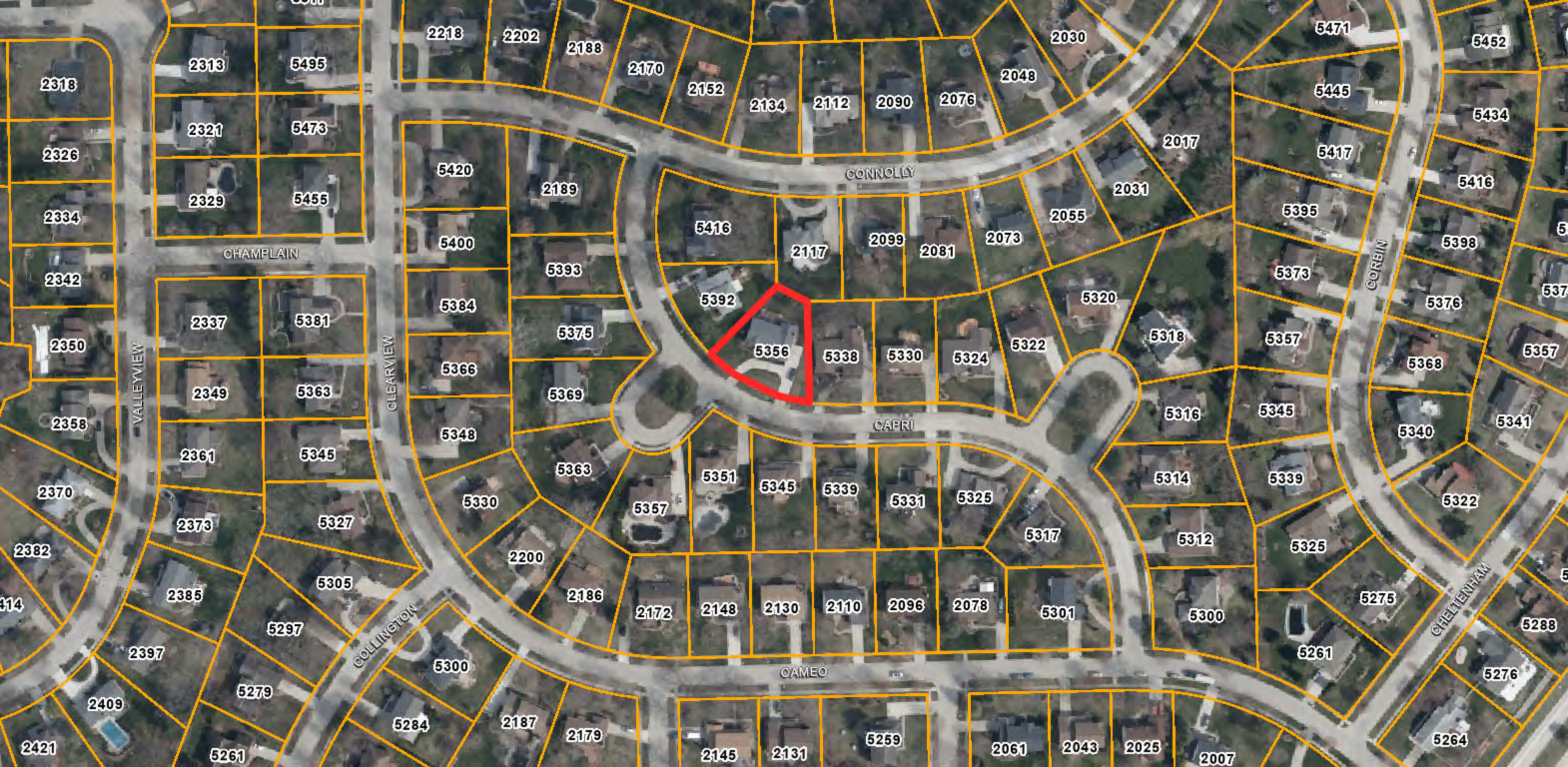
ZONING ORDINANCE SECTION: 7.03 B 3



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CAPRI





Zoning Board of Appeals Application

planning@troymi.gov | Fee: \$500.00

THE ZONING BOARD OF APPEALS MEETS THE **THIRD TUESDAY OF EACH MONTH AT 7:00 P.M. AT CITY HALL**. PLEASE FILE A COMPLETE DIGITAL APPLICATION AND FEE AT LEAST **36 DAYS BEFORE** THE MEETING DATE. PRE APPLICATION MEETING WITH PLANNING DEPARTMENT REQUIRED BEFORE FILING APPLICATION.

1. ADDRESS OF THE SUBJECT PROPERTY: 5356 Capri Dr.
2. PROPERTY TAX IDENTIFICATION NUMBER(S): 20-07-427-010
3. ZONING ORDINANCE SECTIONS RELATED TO THE REQUEST: 7.03.B.3 - Detached Accessory Buildings
4. HAVE THERE BEEN ANY PREVIOUS APPEALS INVOLVING THIS PROPERTY? If yes, provide date(s) and particulars: NO
5. APPLICANT:
NAME Peter Stuhlreyer
COMPANY Designhaus Architecture
ADDRESS 3300 Auburn Rd.
CITY Auburn Hills STATE MI ZIP 48326
PHONE 248.601.4422
E-MAIL info@designhaus.com
AFFILIATION TO THE PROPERTY OWNER: Architect



Zoning Board of Appeals Application

6. PROPERTY OWNER:

NAME Nouri Orow

COMPANY _____

ADDRESS 5356 Capri Dr.

CITY troy STATE MI ZIP 48084

TELEPHONE 248-227-0661

E-MAIL norow902@yahoo.com

The undersigned hereby declares under penalty of perjury that the contents of this application are true to the best of my (our) knowledge, information and belief.

The applicant accepts all responsibility for all of the measurements and dimensions contained within this application, attachments and/or plans, and the applicant releases the City of Troy and its employees, officers, and consultants from any responsibility or liability with respect thereto.

I, Peter Stuhlreyer (APPLICANT) HEREBY DEPOSE AND SAY THAT ALL THE ABOVE STATEMENTS CONTAINED IN THE INFORMATION SUBMITTED ARE TRUE AND CORRECT AND GIVE PERMISSION FOR THE BOARD MEMBERS AND CITY STAFF TO ENTER THE PROPERTY TO ASCERTAIN PRESENT CONDITIONS.

APPLICANT SIGNATURE *Peter Stuhlreyer* DATE 04.09.2024

PRINT NAME: Peter Stuhlreyer

PROPERTY OWNER SIGNATURE *Nouri Orow* DATE 4-9-24

PRINT NAME: NOURI OROW TR

Failure of the applicant or their authorized representative to appear before the Board as scheduled shall be cause for denial or dismissal of the case with no refund of fees. The applicant will be notified of the time and date of the hearing by mail. If the person appearing before the Board is not the applicant or property owner, signed permission must be presented to the Board.

Approved variances are good for a one year period.



April 17, 2024

City of Troy
500 W Big Beaver Rd.
Troy, MI 48084

Attn. Zoning Board of Appeals

Re: Mr. Nouri Orow - Detached Accessory Building Variance Request of:
Minimum Side Setback and Maximum Building Area
Address: 5356 Capri Dr.
Property Tax ID Number: 20-07-427-010

Board Members,

Designhaus Architecture of Auburn Hills, Michigan has been retained by Mr. Nouri Orow for design and approval of a detached accessory pool structure located in his residential rear yard. His property is located on the north side of Capri Dr. between Connolly and Cameo Drives in the Beach Forest subdivision west of Coolidge Hwy. Zoning is R-1, Single Family Residential. The 0.31-acre parcel was recently purchased and has undergone extensive renovations inside and out. Most recently, an inground pool for Mr. Orow and his family to enjoy. It was quickly discovered that extra space is needed for storage and sun cover is also needed for young and older family members for safety concerns. After reviewing ordinance regulations, we found that a structure would be difficult to fit in the buildable area as defined by the setbacks. Other options were explored, and it was determined that the best option would be a detached canopy structure or accessory supplemental building with room for enclosed storage. The structure would be open on the pool side with 3 posts for roof support. Measuring 14' x 19' (266 SF) and 11'-8" tall. The problems encountered is that the irregular shaped parcel makes it difficult to fit the structure in the compliant area. We have requested it be reviewed as a detached accessory building structure.

Section 7.03.B.3.a - The total floor area of all detached accessory supplemental buildings on a parcel of land shall not exceed two hundred (200) square feet.

Requesting 266 Sq. Ft. area as minimum requested where the actual enclosed area is only 98 Sq. Ft.. The remaining area is a covered canopy or cabana.

Section 703.B.3.c- No detached accessory building shall be located closer than ten (10) feet to any main building, nor closer than 6 (six) feet to any side or rear lot line.

To be as compliant as possible, the structure is in the rear yard in an area would still infringe on the side and main building setbacks. We are seeking relief of 3.92' from the required 6' for a side setback of 2.08'.



Statement of Practical Difficulty: When the request is applied to similar or adjacent properties of the subdivision, the request would be deemed compliant. However, when compared to the current situation, it is not. We feel that this is due to the nature of the land and layout of the subdivision, not part of the homeowners' own doing. The irregularly shaped parcel limits the opportunity to fully utilize placement of attached or detached accessory structures. We intend to prove this as such by applying the following 5 statements of practical difficulty, we think are relevant to this request as follows:

A. Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property which shall be considered include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.

The existing irregular lot is 'pie shaped' such that the front property line is 161.19' and the rear is 49.52'. Sides are 137.20' and 146.51'. Adjacent lot, like many others are more traditional and rectangular with lot widths of 90' – 100'. When this project is applied to lots such as those, compliance is obtainable.

B. The characteristics which make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.

The characteristics are directly related to this site when applying dimensional standards of the R-1 single family district of which the property falls within. The existing layout and construction of the house of the site is the main cause of concern regarding the request.

C. The characteristics which compliance with the dimensional requirements shall not be of a personal nature.

The request presented is the minimum non-compliance situation for those surrounding properties and is not in any way a personal nature. Project has been discussed with those directly affected by the placement and letters of comment to be presented.

D. The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or a previous owner.

The characteristics of the situation have not been created by the current or previous homeowners. The initial design and layout when approved created a hardship within itself. Geometry or angles and curves should be a underlying factor when considering the case presented.



- E) ***The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City.***

The structure will be separated by a 6' privacy fence to the closest property. The minimal height and open design will not infringe or impair the adjacent property in any way, nor increase congestion in public streets. No dangers such as fire risk or endangerment of public safety to any inhabitants would be present.

As mentioned before, we feel this request represents the minimal relief requested. The homeowner has introduced this to the adjacent neighbors and letters of support or concern will be presented. Please review the enclosed drawings and presentation materials, and we would be happy to discuss this matter further at the next available ZBA meeting. Upon review of the proposed documents, we ask you to consider the facts and approve the request allowing the addition.

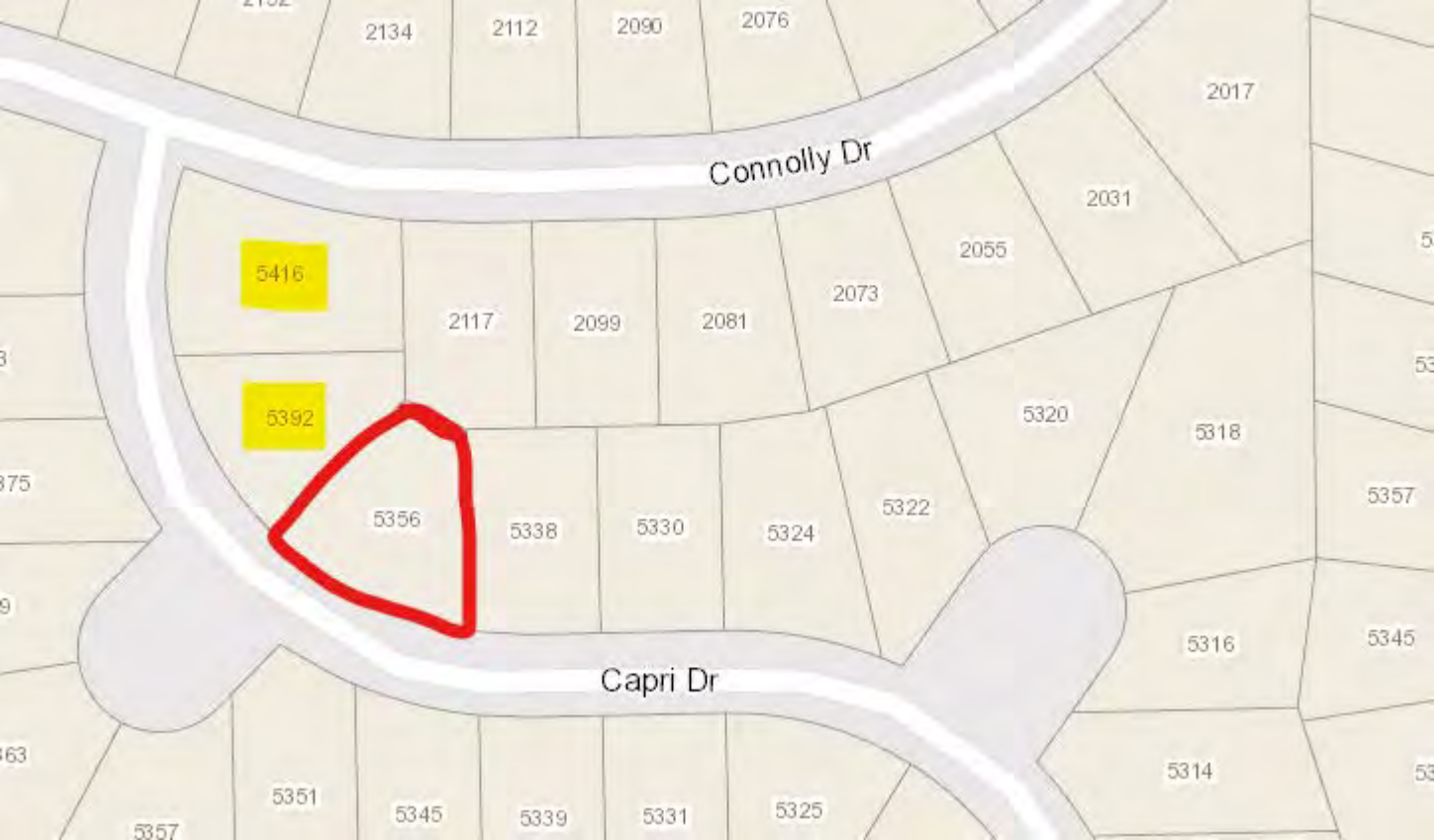
In addition, letters of support have been included for reference.

We will be available to discuss this at future ZBA meetings.

Regards.

Peter Stuhlreyer
Chief Architect
Designhaus, LLC





SOIL EROSION AND SEDIMENTATION CONTROL and MAINTENANCE NOTES

THIS PROJECT SHALL BE CONDUCTED IN COMPLIANCE WITH PART 81 OF ACT 451 OF 1994, AS AMENDED, THE SOIL EROSION AND SEDIMENTATION CONTROL ACT AND ALL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE MICHIGAN COUNTY PUBLIC WORKS OFFICE.

EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE MAINTAINED ON THE SITE AND NOT ALLOWED TO COLLECT ON ANY OFF SITE AREAS OR IN WATERWAYS. MEASURES SHALL BE MAINTAINED WITHIN 24 HOURS OF RAINFALL AND SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.

THE WORK SHALL BE DONE BY THE LANDOWNER OR LANDOWNER'S REPRESENTATIVE AS DIRECTED IN THESE PLANS AND AS REQUIRED TO ENSURE PROGRESSIVE STABILIZATION OF DISTURBED EARTH CHANGE.

THE LANDOWNER'S REPRESENTATIVE SHALL BE RESPONSIBLE FOR INSTALLATION AND MAINTENANCE OF SOIL EROSION AND SEDIMENTATION CONTROL DEVICES.

THE LANDOWNER'S REPRESENTATIVE SHALL MAINTAIN AND REPAIR THE SOIL EROSION CONTROL MEASURES AS SHOWN ON THE PLANS BEFORE AND AT ALL TIMES DURING CONSTRUCTION ON THE PROJECT. ANY MODIFICATIONS OR ADDITIONS TO SOIL EROSION CONTROL MEASURES DUE TO CONSTRUCTION OR CHANGES TO THE PROJECT SHALL BE APPROVED BY THE MICHIGAN COUNTY PUBLIC WORKS OFFICE.

IF ANY OF THE SOIL EROSION CONTROL MEASURES ARE NOT MAINTAINED OR ARE DEFECTIVE, THE MICHIGAN COUNTY PUBLIC WORKS OFFICE SHALL HAVE THE RIGHT TO REQUIRE ADDITIONAL SOIL EROSION CONTROL MEASURES AT THE EXPENSE OF THE LANDOWNER.

NOTES: A CROOKED CURB OR ACCESS DRIVE SHALL BE CONSIDERED AS INDICATED ON THE PLAN. THE ACCESS DRIVE MUST BE A MINIMUM OF 30" X 50" W/ 4" NEW LAYERS OF CURED CONCRETE. ALL EXISTING DRIVE SHALL BE MAINTAINED AS OLD LAYERS BECOME COMPACTED.

INSTALL SILT FENCE AS INDICATED ON THE PLAN AND AT ADDITIONAL AREAS AS NECESSARY.

SILT FENCE SHALL BE MAINTAINED PER DETAIL.

IF SILT FENCE BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE, IT SHALL BE REPAIRED IMMEDIATELY. SILT FENCE SHALL BE REPLACED IMMEDIATELY IF IT BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE.

IF SILT FENCE BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE, IT SHALL BE REPAIRED IMMEDIATELY. SILT FENCE SHALL BE REPLACED IMMEDIATELY IF IT BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE.

INSTALL SILT FENCE ON ALL EXISTING CATCH BASINS PER DETAIL.

IF SILT FENCE BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE, IT SHALL BE REPAIRED IMMEDIATELY. SILT FENCE SHALL BE REPLACED IMMEDIATELY IF IT BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE.

INSTALL DRAIN GUARD ON ALL CATCH BASINS PER DETAIL. SET ON SOIL AREA BETWEEN THE SILT FENCE AND THE WELL.

DRAIN GUARDS SHALL BE MAINTAINED WEEKLY UNDER NORMAL CONDITIONS, WITHIN 24 HOURS OF RAINFALL AND DAILY DURING A PROLONGED RAIN EVENT.

IF DRAIN GUARD BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE, IT SHALL BE REPAIRED IMMEDIATELY. DRAIN GUARD SHALL BE REPLACED IMMEDIATELY IF IT BECOMES DEFECTIVE OR ACCUMULATES TO 1/2 TO 1/3 OF THE HEIGHT OF THE SILT FENCE.

INSTALL SEDIMENT TRAPS AND ALL OTHER SEDIMENT TRAPS SHALL BE INSPECTED DAILY. THE SEDIMENT TRAPS SHALL BE CLEANED OUT WHEN HALF FULL OR AS DIRECTED BY THE MICHIGAN COUNTY PUBLIC WORKS OFFICE.

ALL STOCKPILES SHALL BE MAINTAINED IN SUCH A MANNER AS TO PREVENT EROSION FROM LEAVING THE SITE. IF THE STOCKPILE WILL BE ON SITE FOR MORE THAN 30 DAYS, THE STOCKPILE MUST BE SEEDED. SILT FENCE MUST BE INSTALLED AROUND THE PERIMETER OF THE STOCKPILE.

IMMEDIATELY AFTER SETTING, MOUND ALL SEEDS WITH AN INCREASING SMALL DRAIN STRIP, SPREAD UNIFORM AT THE RATE OF 1 TO 2 TONS PER ACRE ON TOP OF STOCKPILE. MOUND ALL SEEDS WITH AN INCREASING SMALL DRAIN STRIP, SPREAD UNIFORM AT THE RATE OF 1 TO 2 TONS PER ACRE ON TOP OF STOCKPILE.

ALL DISTURBED AREAS SHALL BE SEEDED IMMEDIATELY. THE SEEDING SHALL BE DONE WITHIN 24 HOURS OF THE DISTURBANCE. THE SEEDING SHALL BE DONE WITHIN 24 HOURS OF THE DISTURBANCE.

STREETS AND OR PARKING AREAS WILL BE SEEDING ON A DAILY BASIS AND SHEET AT A MINIMUM OF ONCE PER WEEK BY THE LANDOWNER OR LANDOWNER'S REPRESENTATIVE.

DURING 300 PERIODS, ALL DISTURBED AREAS SHALL BE MAINTAINED FOR DUST CONTROL.

PERMANENT SOIL EROSION CONTROL MEASURES FOR ALL SLOPES, CHANNELS, DITCHES, OR ANY DISTURBED LAND AREA SHALL BE COMPLETED WITHIN 5 CALENDAR DAYS AFTER THE GRADING OF THE AREA HAS BEEN COMPLETED. WHEN A PERMANENT STABILIZATION MEASURE IS REQUIRED, IT SHALL BE COMPLETED WITHIN 5 CALENDAR DAYS AFTER THE GRADING OF THE AREA HAS BEEN COMPLETED.

ALL TEMPORARY SOIL EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. ALL TEMPORARY SOIL EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. ALL TEMPORARY SOIL EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.

FINAL GRACE, ESTABLISH VEGETATION AND OR LANDSCAPE ALL DISTURBED AREAS NOT BUILT OR FINISHED UPON.

RESEED ALL TEMPORARY SOIL EROSION CONTROL MEASURES.

SOIL TYPES: 54A

NAME OF NEAREST WATERCOURSE: RIVER ROUGE

DISTANCE TO NEAREST WATERCOURSE IN FEET: 1,750 ±

OWNER AND PHONE NUMBERS FOR THE PERSONS RESPONSIBLE FOR THE MAINTENANCE OF ALL TEMPORARY SOIL EROSION CONTROL MEASURES:

NAME AND PHONE NUMBERS FOR THE PERSONS RESPONSIBLE FOR THE PERMANENT SOIL EROSION CONTROL MEASURES:

APPROXIMATE START DATE: APRIL 2023

APPROXIMATE COMPLETION DATE: APRIL 2024

TOTAL ACRES DISTURBED: 0.098 ACRES

LANDOWNER'S RESPONSIBILITY OUTLINED UNDER THESE GUIDELINES.

LANDOWNER'S SIGNATURE: _____ DATE: _____

CONSTRUCTION TASK	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEP.	OCT.	NOV.	DEC.
SOIL EROSION CONTROL MEASURE												
EXCAVATE BASEMENT				23	23							
FOUNDATION				23	23							
STONE ACCESS DRIVE				24								
COMPLETE ALL EARTH MOVEMENT				24								
SEED AND MOUND AS REQUIRED				24								

DEWATERING (ONLY IF REQUIRED ON SITE)

A NUMBER OF BUILDERS AND DEVELOPERS IMPROPERLY DEWATER CONSTRUCTION SITES BY PLACING THE DISCHARGE HOSE DIRECTLY INTO A CATCH BASIN OR BY DISCHARGING INTO A CATCH BASIN. THIS IS AN UNACCEPTABLE PRACTICE. THE MICHIGAN COUNTY PUBLIC WORKS OFFICE HAS A PROHIBITION AGAINST THIS PRACTICE. THE MICHIGAN COUNTY PUBLIC WORKS OFFICE HAS A PROHIBITION AGAINST THIS PRACTICE.

TAKE CARE WHEN DEWATERING CONSTRUCTION SITES. DO NOT ALLOW SEDIMENT-LADEN WATER DIRECTLY TO LAKES, STREAMS, COUNTY DRAINS, STORM DRAINS, WETLANDS OR OTHER ENVIRONMENTALLY SENSITIVE AREAS. THE PROPER WAY TO DEWATER A CONSTRUCTION SITE IS AS FOLLOWS:

1. PLACE A SEDIMENT FILTER BAG OR BAGS AT THE END OF THE DISCHARGE HOSE.
2. DISCHARGE DIRECTLY TO A SEDIMENT BASIN.
3. DISCHARGE TO A WELL VEGETATED AREA (NOT WETLANDS).
4. DISCHARGE INTO A CONSTRUCTED CONCRETE AREA.

DISPENSE ENERGY TO PREVENT SCOURING, AND INSPECT DEWATERING OPERATIONS SEVERAL TIMES DAILY.

NOTE: SOIL EROSION CONTROLS WILL BE MAINTAINED WEEKLY AND AFTER EVERY STORM EVENT.

*NO STOCKPILING IS TO TAKE PLACE ON SITE

*NO DEWATERING IS TO TAKE PLACE ON SITE

*ALL DISTURBED AREAS SHALL BE SEED

SOILS

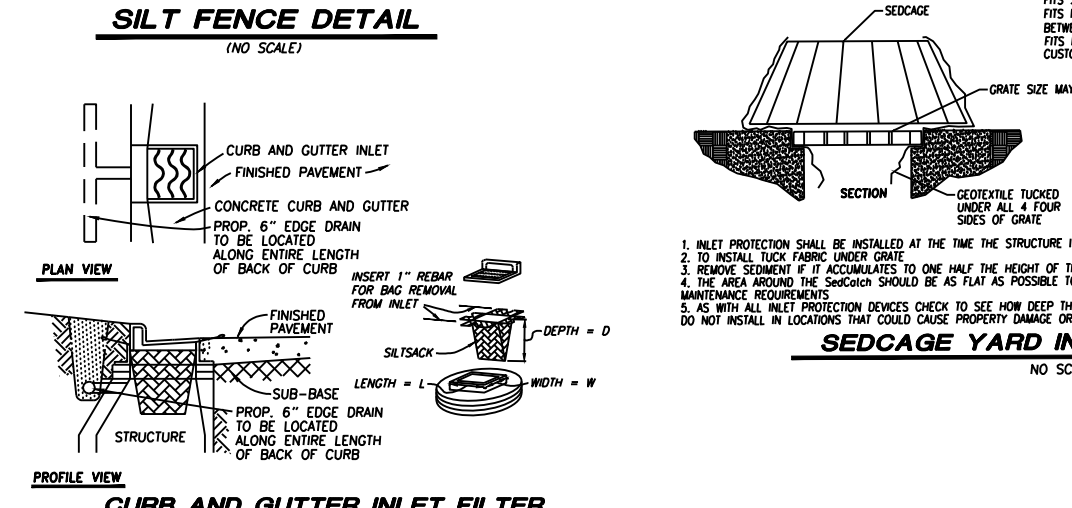
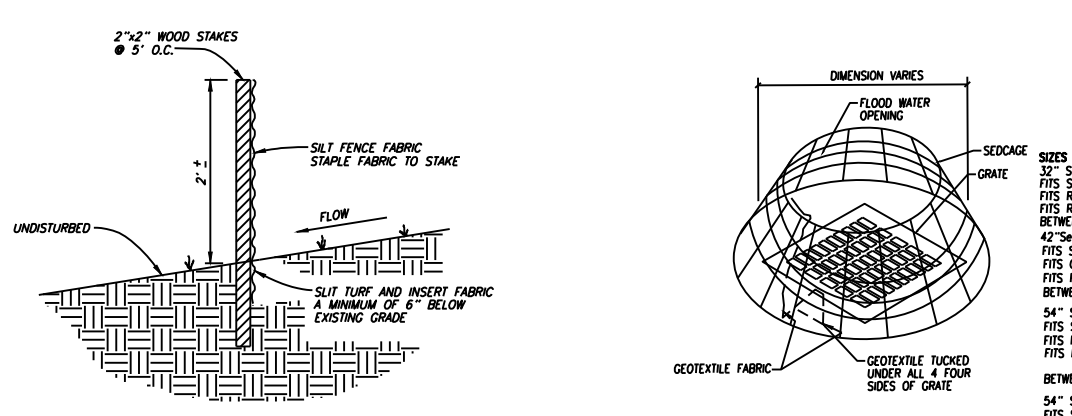
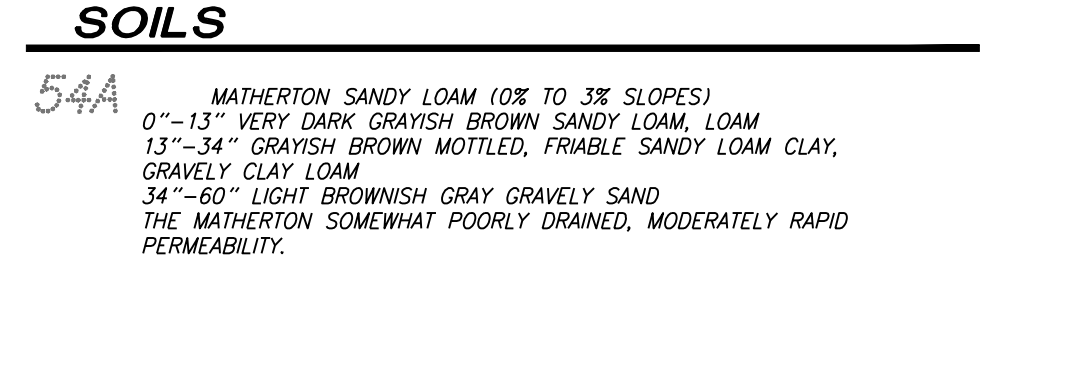
54A MATHERTON SANDY LOAM (0% TO 3% SLOPES)

0"-13" VERY DARK GRAYISH BROWN SANDY LOAM, LOAM

13"-34" GRAYISH BROWN MOTTLED, FRIABLE SANDY LOAM CLAY, GRAVELLY CLAY LOAM

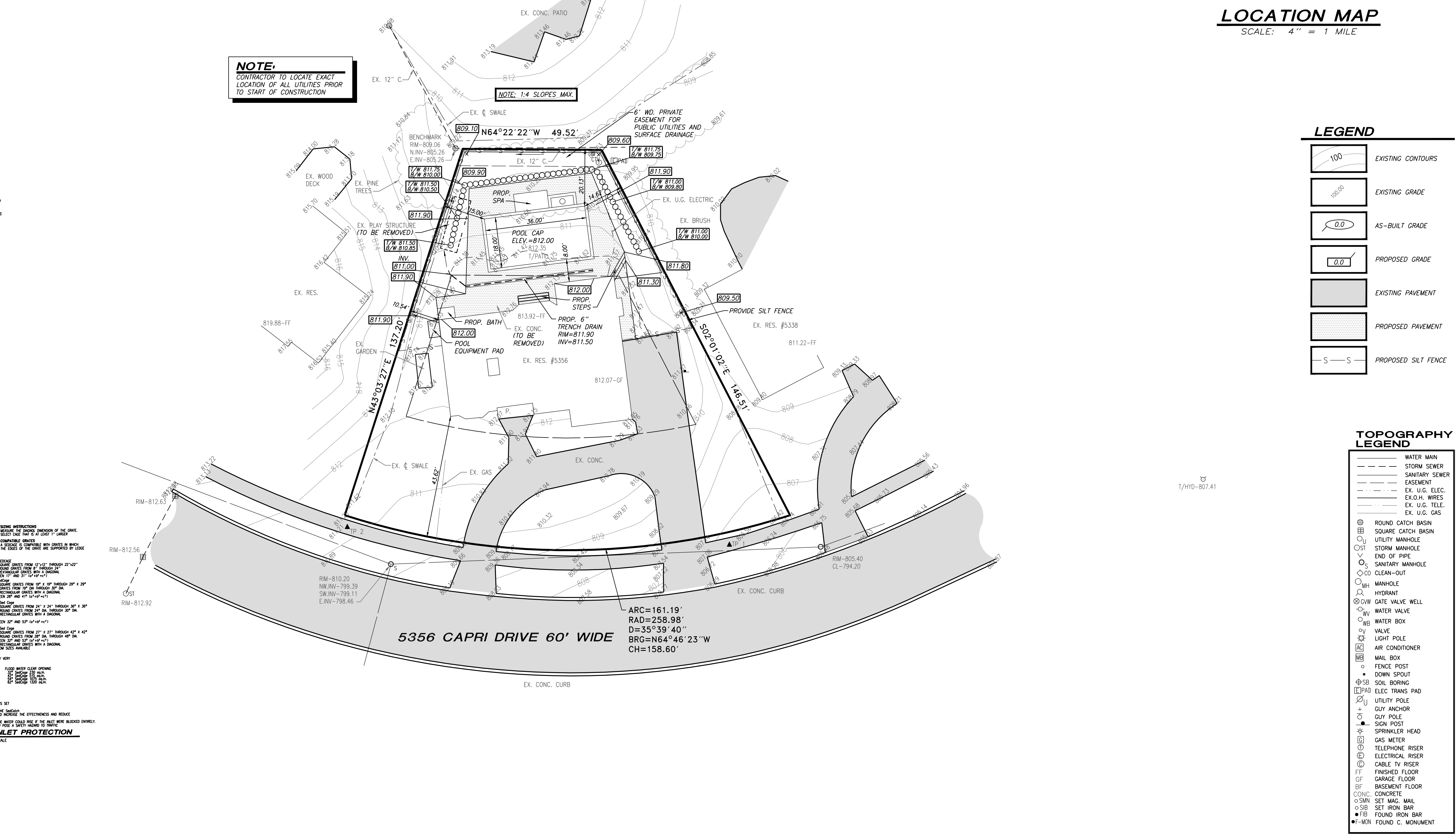
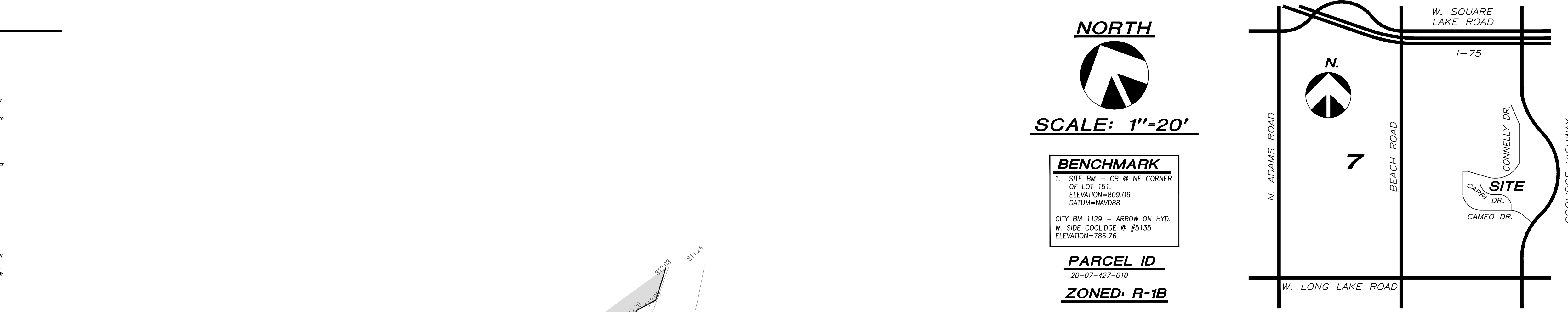
34"-60" LIGHT BROWNISH GRAY GRAVELLY SAND

THE MATHERTON SOMEWHAT POORLY DRAINED, MODERATELY RAPID PERMEABILITY.



3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171 (TOLL FREE) for the location of underground utilities

CAUTION
CONTRACTOR TO VERIFY GROUND WATER PRIOR TO CONSTRUCTION.
ULC RECOMMENDS SOIL ANALYSIS TO BE PERFORMED BY A PROFESSIONAL.
CONTRACTOR TO MONITOR EXCAVATION FOR SOIL/GROUND WATER CONDITIONS.



GRADING NOTE

- 1.1 ALL PROPOSED GRADING SHALL BE CONTAINED WITHIN THE PROPERTY LINES OF THIS LOT, AND SHALL NOT ENCRONCH ON ANY ADJACENT PROPERTIES.
- 2.1 SOIL EROSION CONTROLS ARE REQUIRED TO BE INSTALLED AROUND THE ENTIRE PERIMETER OF SOIL DISRUPTION FOR THE COUNTY.

NOTE: SIDEYARD DRAINAGE SHALL NOT DRAIN ONTO ADJACENT LOTS!! (TYPICAL)

ATTENTION BUILDERS/CONTRACTORS

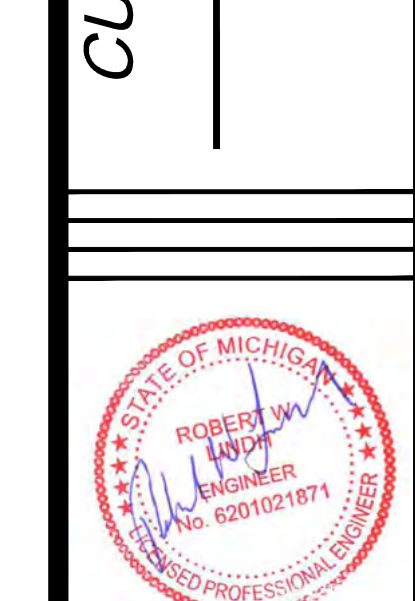
1. THIS DRAWING IS NOT INTENDED TO REPRESENT A BOUNDARY OR LOT SURVEY, AND SHOULD NOT BE USED TO ESTABLISH PROPERTY LINES OR LOCATE IMPROVEMENTS.
2. U.L.C. ASSUMES NO RESPONSIBILITY FOR THE GIVEN BUILDING DIMENSIONS. DIMENSIONS MUST BE VERIFIED BY OWNER/BUILDER PRIOR TO CONSTRUCTION.
3. THIS PLAN SHALL NOT BE USED TO SET FOUNDATIONS. ARCHITECTURAL PLANS MUST BE USED FOR CONSTRUCTION OF FOUNDATION.
4. UPON ACCEPTANCE AND SUBMITAL OF THIS PLAN FOR PERMITS, THE OWNER/BUILDER ACKNOWLEDGES HE HAS REVIEWED THE PLAN, AND THAT IT MEETS THE ESTABLISHED REQUIREMENTS.
5. APPROVAL OF THIS PLOT PLAN DOES NOT RELIEVE THE OWNER/BUILDER OF COMPLIANCE WITH ALL CODES AND ORDINANCES THAT SHALL APPLY.
6. SETBACKS SHOWN ON THIS DRAWING HAVE BEEN OBTAINED FROM THE MUNICIPALITY. ANY DEED OR SPECIAL RESTRICTIONS - (i.e. SUBDIVISION RESTRICTIONS, HOUSE SIZE, BUILDING LOCATION, ETC.) MUST BE SUPPLIED TO U.L.C. IN WRITING WHEN PLOT PLAN IS ORDERED. U.L.C. WILL NOT BE RESPONSIBLE FOR INTERPRETING SUBDIVISION RESTRICTIONS.
7. U.L.C. RECOMMENDS A .50' EXTRA ALLOWANCE TO ALL MINIMUM SETBACKS, WHERE THE OWNER / BUILDER DOES NOT FOLLOW THIS RECOMMENDATION, THE OWNER / BUILDER AGREES TO HOLD U.L.C. HARMLESS FOR STRUCTURE ENCRONCHMENT (S) INTO THE MINIMUM SETBACK.
8. UTILITY LEAD LOCATIONS AS SHOWN ARE APPROXIMATE. AS-BUILT LOCATIONS MUST BE OBTAINED FROM THE LOCAL MUNICIPALITY.

URBAN LAND CONSULTANTS WILL SET HIGH GRADE/BRICKLEDGE CONTRACTOR TO USE GRADE SET ON SITE.

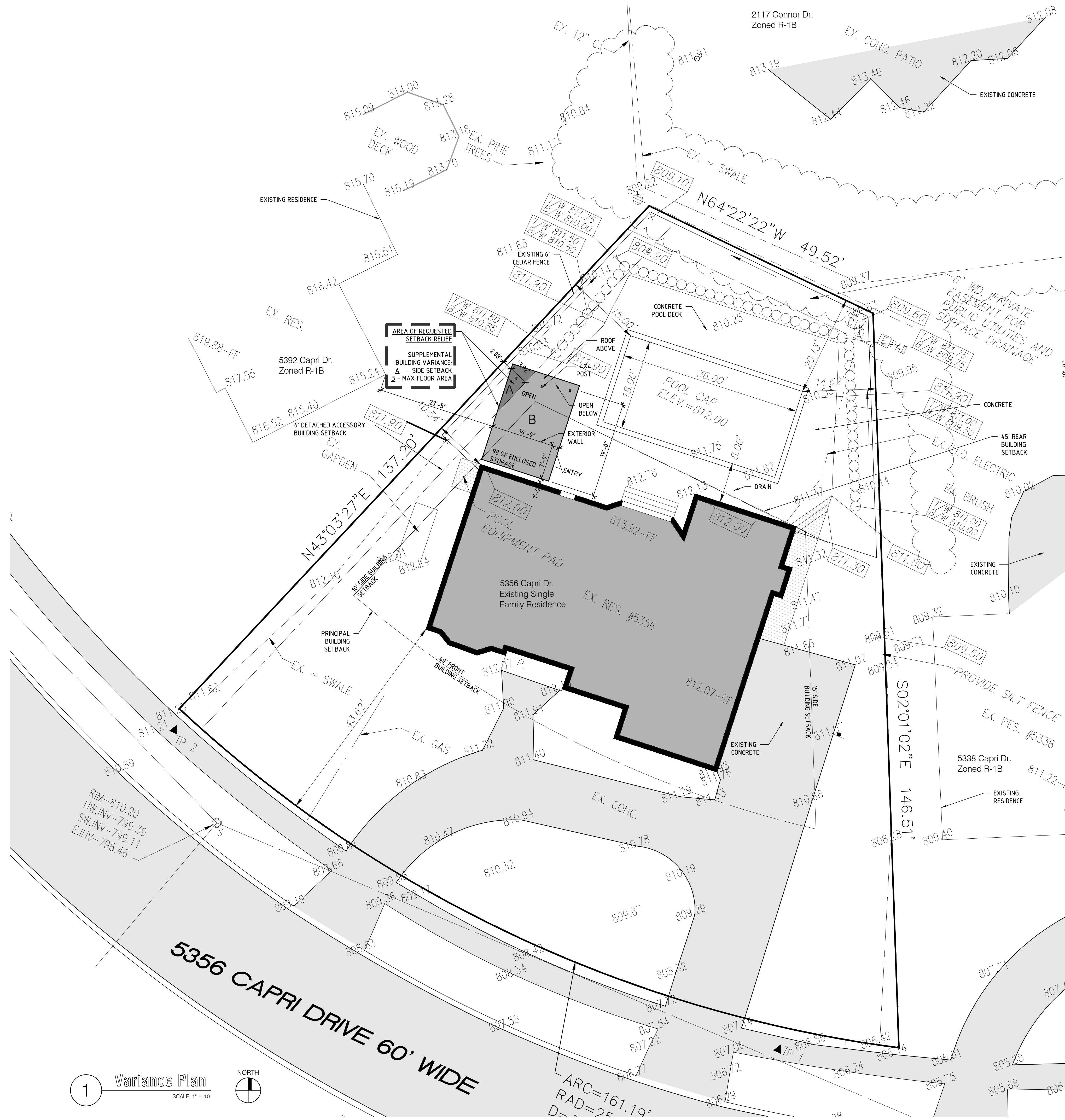
PLOT PLAN
LOT 151
CHELSEA VILLAGE SUB. No.2
PART OF THE S.E. 1/4 OF SECTION 7
T.21N., R.11E., CITY OF TROY
OAKLAND COUNTY, MICHIGAN

DATE: 3-24-23
DATE: 3-20-23
JOB NO.: 230214-8909
SCALE: 1"=20'
DRAWN BY: CV
CHECKED BY: R. LINDH
SHEET 1 OF 1
REVISED PER BUILDER

CUSTOM IN-GROUND POOLS, LLC
24730 HAGEN ROAD
MACOMB, MI 48042
586-843-7005



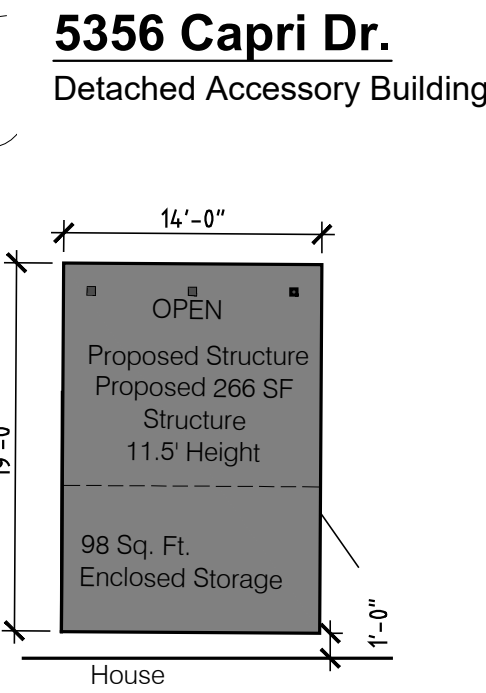
PHONE: 586-731-8030
URBAN LAND CONSULTANTS
PLANNERS LAND SURVEYORS
8800 2.3 MILE ROAD
SHELBY TWP., MI 48316-4516



Dimensional Variance Requests	
Section 7.03.B.2: Detached Accessory Supplemental Buildings	
A	Maximum Floor Area * Required: 200 Sq. Ft. Maximum Requested Relief: 66 Sq. Ft. Proposed Maximum 266 Sq. Ft.
B	Side Setback * Required: 6'00" Requested Setback Relief: 3.92' Proposed Side Setback: 2.08'

SITE DATA	
Regulation	Information
Parcel I.D.	20-07-427-010
Address	5356 Capri Ln. Troy, MI
Zoning	Zoned: R1-B
Lot Area	+/- 13,575 Sq. Ft. (0.31 Acres)

ZONING SCHEDULE OF REGULATIONS		
Regulation	Required	Provided
Setbacks	(R1-B Zoning) Front - 40' Sides - 10' / 25' Rear - 45'	<u>EXISTING BUILDING</u> Front - 65.83' Sides: 38.5' / 24.83' Rear: 35.67' (Variance Relief of 9.33')
Building Height	2.5 Stories / 30'	32' - 0"
Minimum Lot Area	15,000 SF	79,793 Sq. Ft.
Maximum Lot Coverage	30%	House - 2,858 SF Pool - 733 SF Proposed Structure - 280 SF Total Coverage: 28.52%
Maximum Lot Width	110'	



Existing House: 2,858 SF
Maximum Accessory Building Area (75%): 714.50 SF
Maximum Accessory Building Coverage: 450 SF
Proposed Area: 280 SF



1 Variance Plan
SCALE: 1" = 10'

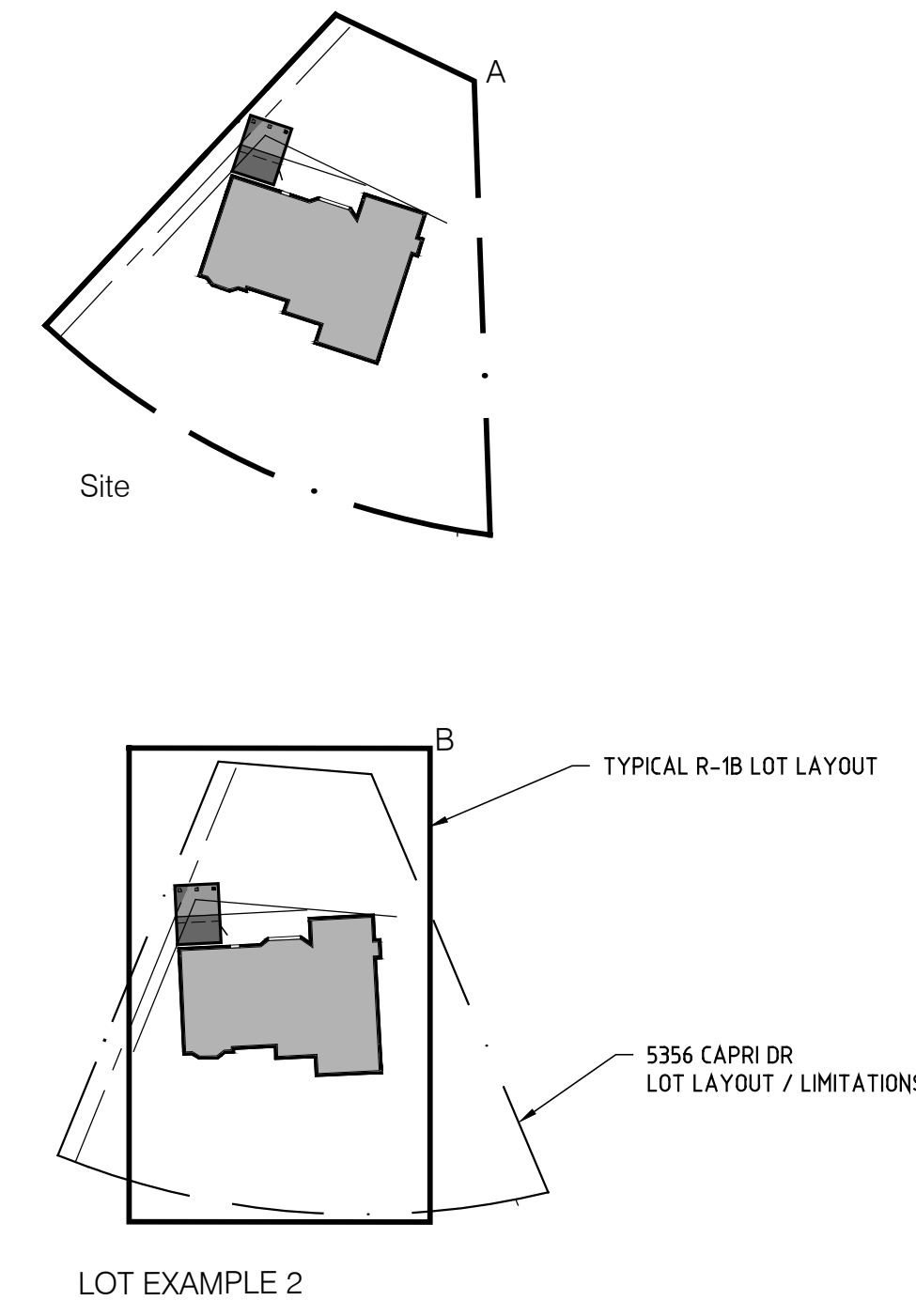
2 Aerial Photo
SCALE: 1" = 50'

DESIGNHAUS EST 1998
ARCHITECTURE

3300 AUBURN RD, SUITE 300
AUBURN HILLS, MI 48326
T: 248.601.4422 F: 248.453.5854
WWW.DESIGNHAUS.COM
INFO@DESIGNHAUS.COM

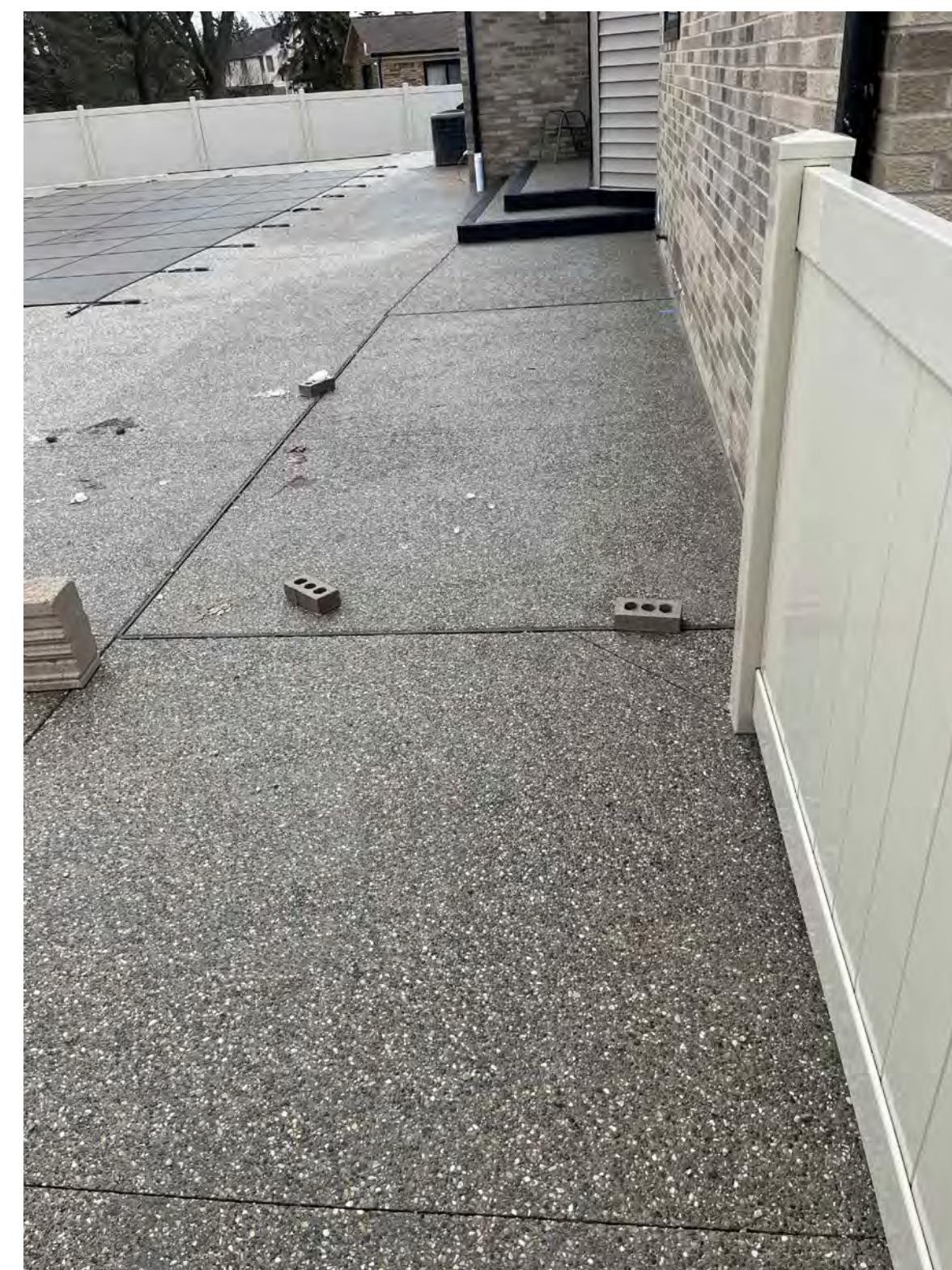
5356 Capri Dr Variance Request

Project Number
AS1.1



DEMONSTRATION SHOWING HOW SIMILAR CONDITIONS WHEN APPLIED TO OTHER ADJACENT PROPERTIES ARE CONFORMING AND COMPLIANT

1 Variance Plan
SCALE: 1" = 10'
NORTH



2 Existing Photos
SCALE: none

DESIGNHAUS
EST 1998
ARCHITECTURE

3300 AUBURN RD, SUITE 300
AUBURN HILLS, MI 48326
T: 248.601.4422 F: 248.453.5854
WWW.DESIGNHAUS.COM
INFO@DESIGNHAUS.COM

ISSUANCE	DATE
----------	------

5356 Capri Dr Variance Request

Site Details

Project Number

AS1.2

Zoning Board of Appeals

500 W. Big Beaver Rd.

Troy, Michigan 48084

Dear Zoning Board Members,

I live at 5416 CAPRI DR, I am aware of the proposed gazebo project located at 5356 Capri Dr. Troy, MI, I have no issues with this proposal and am in full support for it to move forward.

Sincerely,

Linda Cavanagh

Zoning Board of Appeals

500 W. Big Beaver Rd.

Troy, Michigan 48084

Dear Zoning Board Members,

I live at 5392 Capri Dr., I am aware of the proposed gazebo project located at 5356 Capri Dr. Troy, MI, I have no issues with this proposal and am in full support for it to move forward.

Sincerely,

Robert Juty

Troy Zoning Board of Appeals Legal Update

TROY CITY ATTORNEY'S OFFICE, MAY 2024

CREATION OF ZONING BOARD OF APPEALS

The Michigan Zoning Enabling Act (MZEA) requires local units of government that have a zoning ordinance to create a Zoning Board of Appeals (ZBA). The MZEA has some specific requirements, but also provides local units of government discretion regarding the make up of the board, number of members, and standards related to decision making.

- ▶ The makeup, authority, and standards of Troy's ZBA are set forth in Article 15 of the Troy Zoning Ordinance.
- ▶ Troy's ZBA consists of 7 members who serve three year terms.
- ▶ One of the members must also be a member of the Planning Commission.
- ▶ The Planning Commission member cannot serve as chairperson and cannot participate in a public hearing or vote on the same matter that the member **voted** on as a member of the Planning Commission.
- ▶ Under the Zoning Ordinance, City Council also appoints 2 alternate ZBA members.

Troy ZBA Authority and Decisions

- ▶ Dimensional (nonuse) variances.
- ▶ Interpretation of Zoning Ordinance.
- ▶ Interpretation of Zoning Map.
- ▶ Appeals of administrative decisions.
- ▶ Use variances.

Voting Requirements

- ▶ Under the MZEA and the Zoning Ordinance, the concurring vote of the majority of the members (4 votes) is necessary to reverse an order, requirement, decision, or determination of the administrative body or to grant a dimensional variance.
- ▶ An affirmative vote of 2/3 of the members (5 votes) is necessary to grant a use variance.

Variations in general

- ▶ A variance excuses someone from complying with the law.
- ▶ Variations should be sparingly granted- after consistent application of the standards. Otherwise, it undermines the Zoning Ordinance and the City's ability to enforce it.
- ▶ Requires public hearing and findings of fact and application of standards.
- ▶ Runs with the land- can't be limited to current property owner.
- ▶ If denied, can't be submitted for at least one year unless changed conditions.
- ▶ Most requests for variations are for dimensional (non-use) variations.

Dimensional Variances

- ▶ Authorized when literal enforcement of the Zoning Ordinance would involve “practical difficulties.”
- ▶ Variances may be granted with conditions and safeguards ZBA determines are in harmony with the spirit of the ordinance so that public safety and welfare are secured and substantial justice done.
- ▶ Variance should be minimum amount necessary- and not granted where a different solution is possible.

Dimensional Variances

- ▶ Under Troy's Zoning Ordinance, a practical difficulty justifying the variance requires a finding of all the following:
 - ▶ Exceptional characteristics of the property make development more difficult than the great majority of properties in the same zoning district; and
 - ▶ Related to the physical premises; and
 - ▶ Not of a personal nature; and
 - ▶ Need for variance not created by owner or previous owner
 - ▶ Variance will not be harmful or alter the essential character of the area; increase congestion; diminish property value in area; impair public health, safety and welfare

Dimensional Variance – Exceptional Circumstances

- ▶ A dimensional variance should not be granted unless there is a showing of exceptional circumstances in the property.
- ▶ Exceptional Circumstances may include an irregularly shaped parcel, a parcel that is unusually small or narrow, a parcel that is affected by environmental features such as large trees that cannot be removed, or topographical features such as wetlands.
- ▶ If there is nothing exceptional or unusual about the parcel when compared to other parcels in the same zoning district, a dimensional variance should not be granted.
- ▶ A change in the zoning ordinance itself does not justify variance unless all standards are met.

Pegasus Case Update

- ▶ In 2022, The Michigan Court of Appeals held in *Pegasus* that under the MZEA, an applicant for a dimensional variance is only required to establish a practical difficulty. An “unnecessary hardship” showing is only required for use variances.
 - ▶ This means that it would not be necessary for an applicant to demonstrate unique characteristics inherent in the property in order to obtain a dimensional variance.
- ▶ However, the Michigan Supreme Court vacated the Court of Appeals decision.
 - ▶ This means that the current standards in our ordinance for granting the variance are still valid (ie the ZBA can continue to require a showing that the need for the dimensional variance is based on peculiar or unique circumstances of the property).

Dimensional Variance – Related to the Premises

- ▶ The need for the variance must be based on a characteristic of the subject property and not based on some characteristic of a neighboring property.
 - ▶ For example, if a neighboring property has an unusual characteristic, that characteristic would not support the request for a variance for the subject property unless the subject property also shared the same characteristic and that characteristic met the exceptional characteristic standard.

Dimensional Variance – Not of a Personal Nature

- ▶ A variance should not be granted if the reason for the variance is a personal reason that is not related to the land itself.
- ▶ Personal reasons that do not justify a variance include:
 - ▶ financial reasons, such as not being able to afford to move to another home, or being able to make more money if the variance is granted,
 - ▶ reasons specific to a person who currently resides in a home such as requesting a variance because of a disability or illness.

Dimensional Variance – Self Created Hardship

- ▶ Self Created Hardship – a variance should not be granted if the only reason for the variance was self created. E.g. If a person builds a structure within the setback and then makes a variance request.
 - ▶ In such circumstance, a variance may still be granted if other standards are met - treat the situation as if the violation did not exist.
- ▶ If the need for a variance is based on something the owner or a previous owner did, it should not be granted. For example, if the need for a variance was the result of a land division requested by the owner, the variance should not be granted.
- ▶ The ZBA must deny a variance on the basis of the self created hardship rule when a landowner or predecessor in title partitions, subdivides, or somehow physically alters the land **after** the enactment of the applicable zoning provision, so as to render it unfit for the uses which it is zoned.

Dimensional Variances – Not Harmful to Character of Area

- ▶ The Board should deny a variance request if there is evidence that the variance would cause any of the following:
 - ▶ impairs light or air to adjacent properties,
 - ▶ unreasonably increases congestion in public streets,
 - ▶ increases the danger of fire, or endangers the public safety,
 - ▶ unreasonably diminishes or impairs established property value within the surrounding area,
 - ▶ in any way impairs the public health, safety, comfort, morals or welfare of the inhabitants of the City.

Decision on Variance Requires Substantial Evidence

- ▶ A variance may only be granted if supported by substantial evidence.
- ▶ A statement in support should be based on information or material provided by the applicant, City staff, or members of the public.
- ▶ The ZBA may consider public comment as relevant evidence, but unsubstantiated or speculative public comment does not provide competent evidence to grant or deny a variance.
- ▶ If denying a variance, there must be a finding that at least one standard was not met.
- ▶ A variance should not be granted solely because nobody from the public objected.
- ▶ A variance should not be denied solely because several members of the public objected.
- ▶ There is substantial evidence if a reasonable person would accept that evidence as sufficient to support a conclusion.

Proposed Variance Must be Minimum Necessary

- ▶ The ZBA may grant a lesser variance than requested by the applicant, without the need to postpone and publish a new notice of hearing.
- ▶ A greater variance than requested cannot be approved, unless the Board postpones and a new public hearing notice is published.
- ▶ If the ZBA finds, based on evidence included as part of the record, that a different solution not requiring a variance is possible, the variance should be denied.
 - ▶ For example, an applicant wishes to construct an accessory building in a particular location and seeks a setback variance. If the same accessory building can be placed on the property in a different location without violating the setback provisions, the variance should not be granted.

Variance Conditions

- ▶ The ZBA may impose conditions with an affirmative decision to grant a variance.
- ▶ The conditions may include those necessary to promote the public health, safety and welfare, ensure compatibility with surrounding land uses, and protect and preserve natural features.
- ▶ Conditions must be reasonable.
- ▶ Conditions must be related to the use of the land and not the person who uses the property.
- ▶ For example, it could be a condition that the owner provide a landscaped berm to obstruct the view of a structure, or verification from the City engineer the new structure will not cause drainage issues.

Sample Motion Granting Dimensional Variance

I move to grant the setback variance for the following reasons:

- 1) The survey presented by the applicant shows the unusual shape of the lot makes it more difficult to develop the property than other properties in the zoning district and thus the exceptional characteristic standard is met; and
- 2) The applicant has shown the unusual shape of the property that makes compliance with the setback requirements is related to the property in question and not some other property; and
- 3) The need for the variance is based on the shape of the property and there is no evidence showing that the need is of a personal nature; and
- 4) As shown by the information provided by City staff, the lot in question was created well before the enactment of the present setback provisions and not by any act of a previous owner since the effective date of those provisions; and
- 5) Based on the favorable comments of the owners of the adjacent properties, the variance will not be harmful or alter the essential character of the area; increase congestion; diminish property value or impair public health, safety and welfare

Sample Motion Denying Dimensional Variance

- ▶ I move to deny the variance because the documents submitted by the applicant and City staff show that the lot in question is a standard lot with no exceptional or unusual characteristics that would make compliance with the dimensional requirements more difficult than it would be for any other lot in the same zoning district.

Sample Motion Denying Dimensional Variance

- ▶ I move to deny the variance of the applicant requesting that an accessory structure be allowed in the side yard rather than in the rear yard because the only reason provided for not building the structure in the rear yard is based on the claim that adjacent property has an accessory structures in the side yard. Since the information provided by City staff demonstrates the structure could be built in the rear yard without a variance, that the variance for the adjacent property was based on the particular characteristics of that property, the stated reason for the variance is not related to the property in question but instead based on the characteristics of other properties and thus the variance should be denied.

Sample Motion Denying Dimensional Variance

- ▶ I move to deny the variance that would allow the applicant to build an addition within the required setback because the applicant has not provided any evidence that the need for the variance is based on exceptional characteristics of the property itself and the only reason for the request is the applicant needs more storage area. Thus, since the request is solely of a personal nature, the variance should be denied.

Sample Motion Denying Dimensional Variance

- ▶ I move to deny the variance request to build a structure on a lot without the required road frontage because the sole basis for the request is the applicant's claim the lot is irregular. However, the documentation provided by City staff demonstrates the lot was created by a land division by the current owner of the property that occurred after the effective date of the applicable zoning provision. Therefore, the need for the variance is self created and should be denied.

Sample Motion to Deny Dimensional Variance

- ▶ I move to deny the variance based on the engineering study provided by _____ that demonstrates that if the variance is granted there will be a substantial increase in traffic that would unreasonably increase the congestion on _____ Road, and the applicant has not provided any evidence to rebut the findings in the engineering study.

Use Variances

- ▶ Requires proof of unnecessary hardship and:
 - ▶ Applicant cannot reasonably use property for uses allowed under the zoning district (ZBA can demand professional documentation to substantiate); and
 - ▶ Condition or situation of Property is unique and not commonly present in the general vicinity; and
 - ▶ Land conditions make it impossible to earn a reasonable return without adjustment (not highest return); and
 - ▶ Not detrimental to adjacent land; and
 - ▶ Sufficient capacity (roads, utilities); and
 - ▶ Need for variance not self created by **applicant**.

Use Variances- Features or conditions of the land that are not generally applicable throughout the zone

- ▶ Such unique conditions or situations include:
 - ▶ Exceptional narrowness, shallowness or shape of a specific property on the effective date of the ordinance from which this chapter is derived.
 - ▶ Exceptional topographic conditions or other extraordinary situation on the land, building or structure.
 - ▶ The use or development of the property immediately adjoining the property in question.
 - ▶ Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.

Site Visits –Variance Request

- ▶ If possible, ZBA members should view the property that is the subject of a variance request.
- ▶ Do not have any discussion with applicant or any other person while visiting the site.
- ▶ The site should be visited independently - not with any other ZBA members.
- ▶ ZBA members should wear Identification badge from City.
- ▶ For residential property, ZBA member should knock on door and seek permission to view property.

Administrative Appeals

- ▶ Arise when a property owner or property interest alleges an error of law in any order, requirement, decision or determination made by an administrative official or body under Chapter 39.
- ▶ Burden is on the appellant to file a written appeal, identifying the order or decision sought to be overturned, and the grounds for the appeal.
- ▶ ZBA can require appellant to provide additional information to clarify.
- ▶ Must be filed within 30 days.
- ▶ Generally stays proceedings- unless imminent peril to life/property.
- ▶ Can reverse, modify, or affirm. To reverse or modify ZBA must find:
 - ▶ Decision was arbitrary and capricious; and/or
 - ▶ Decision was based on an erroneous finding of material fact; and/or
 - ▶ Decision was an abuse of discretion; and/or
 - ▶ Decision was based on an erroneous interpretation of the Ordinance or law.

Interpretation of Zoning Ordinance or Zoning Map

- ▶ Must consider the intent and purpose of Troy's Zoning Ordinance.
- ▶ Must consider the Master Plan.
- ▶ Can only change district boundaries when ambiguity.
- ▶ Must be consistent with Section 4.03 - Interpretation of District Boundaries.
- ▶ The Zoning Board of Appeals may request the Planning Commission to initiate an Ordinance amendment that would correct or clarify the Ordinance.

Deliberation and Resolutions

- ▶ Avoid discussions, debates, or negotiations with applicant during the meeting.
- ▶ Avoid redesigning the project or trying to convince applicant of alternatives.
- ▶ If presented with new information or material at the meeting, it is acceptable to postpone to another meeting to have time to review new information.
- ▶ Use templates when making resolution and provide summary why each standard is met or not met.
- ▶ Not necessary to read verbatim agenda item description – may state “as printed in the agenda.”
- ▶ Be clear and concise as possible.
- ▶ Its acceptable to ask person making the resolution to provide clarification.
- ▶ It is acceptable to state reasons why you will approve or deny request.
- ▶ Be aware of body language – avoid frowns, gestures, head hanging, dozing off.

Troy Board and Committee Appointee Ethics

- ▶ Council adopted Chapter 14A in 2021, which is an ordinance that governs elected and appointed officials.
- ▶ Respect the confidentiality of privileged information;
- ▶ Recognize that an individual board or committee member has no authority to speak or act for the Troy City Council, the City of Troy, or their respective Committee;
- ▶ Work with other appointees to further the board or committee goals;
- ▶ Encourage the free expression of opinion by all committee members;
- ▶ Communicate to City Council and staff as to issues of concern or requiring study or action;

Troy Board and Committee Appointee Ethics

- ▶ Render all decisions based on the available facts and independent judgment;
- ▶ Make every effort to attend all meetings;
- ▶ Become informed concerning the issues to be considered at each meeting;
- ▶ Avoid conflicts of interest or the appearance thereof;
- ▶ Refrain from using position for personal benefit, or for the benefit of family members or business associates;
- ▶ Avoid use of derogatory language;
- ▶ Treat all people fairly and with dignity and respect.
- ▶ Abstain from harassing or discriminatory behavior.

Troy Board and Committee Appointee Ethics

- ▶ *Freed v. Lindke* was decided by the United States Supreme Court in 2024.
 - ▶ A public official's social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media.
- ▶ What this means for ZBA members:
 - ▶ Posting about what happens at a meeting is discouraged, since the board members' interpretation may be challenged, but board members are able to share a link so that persons can view the entire meeting.
 - ▶ Disclaimers expressly indicating that the views expressed are the board members alone is encouraged in the Freed case.

Conflicts of Interest

- Officials should avoid participating in any matter where he or she has a conflict of interest.
- Conflict of interest is generally described as having a financial interest- but it may be a personal interest too. This could include those officials who have real property in close proximity to the applicant- where the property value could be impacted.
- Minor relationship with applicant is not a conflict unless it impacts ability to be fair and impartial.
- When in doubt- disclosure is critical. After such disclosure, the decision can be left to the Board.
- If the Board votes that there is a conflict, the individual ZBA member should NOT be in the room when the matter is discussed, and should not participate in the discussions or deliberations.

Open Meetings Act and Freedom of Information Act

- Michigan adopted the current versions of the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) after Watergate (effective March 31, 1977). The core purpose of OMA and FOIA is best served through information about the workings of government or information concerning whether a public body is performing its core function.
- OMA and FOIA are applicable to the ZBA, since it is a “public body,” empowered by State Statute and City Charter and City Ordinance to exercise governmental authority.

Open Meetings Act

- **“All meetings of a public body shall be open to the public and shall be held in a place available to the public.” MCL 15.263**
- This includes virtual meetings.
- The following may constitute a meeting under OMA:
 - E-mail chain of discussion using “reply to all” feature
 - Social gathering or educational session w/ quorum and discussion or deliberation
 - Site visit w/quorum and discussion or deliberation
 - Sub-committee meeting w/quorum and discussion or deliberation
 - Round robin telephonic or e-mail discussion

Open Meetings Act

- Open to the public means that all persons are entitled to record, televise, videotape, or broadcast a public meeting.
- Meetings shall be in open facilities and preferably easy for the public to access.
- If there is an unexpected crowd, the public body must try to accommodate if possible.
- All persons shall be permitted to attend- and address the public body on any item.
 - Can't restrict to residents only
 - Can't limit subject matter without good justification and written rules
 - Can have time limits imposed uniformly- do not restrict based on subject matter or opinion
 - May ask the speaker to voluntarily disclose their address when speaking, since it goes to the weight of the comments, but cannot deny a speaker if they refuse

Open Meetings Act

- Reasonable rules can be enacted to minimize the possibility of disruption- but should be written and uniformly applied.
 - Public comment can be limited to a specific time on the agenda- and should be prohibited during deliberations.
 - Time limits- per speaker or per item or per meeting- must be reasonable and not based on the subject matter.
- In the event that a speaker becomes unruly, the chair should provide a warning if possible before taking any adverse action.
- Recess requests may assist with an orderly meeting. During a recess, do not discuss any matters with other ZBA members to avoid appearance of OMA violation.
- Purpose of public meeting- discuss public business- not deal with individual personalities. However, comments pertaining to job performance cannot be prohibited.

Open Meetings Act – Remote Attendance by Member of Board

- ▶ During Covid Pandemic there were OMA amendments allowing for remote participation by board members and the public.
- ▶ Many of the Covid provisions were temporary and have now expired.
- ▶ The OMA now requires all board members to be physically present except a member on military duty.
- ▶ A board must have a procedure to allow a board member on military duty to participate remotely by an electronic procedure that allows two-way communication,
- ▶ A board member participating in a meeting remotely because of military duty must disclose at the onset of the meeting that he or she is attending remotely but the member is not required to specifically identify their physical location.

Open Meetings – Remote Participation by Member of Public

- ▶ A board is not required to provide electronic access to the public or others (attorney, consultant, staff) not a member of the board, but may do so.
- ▶ If a board has chosen to provide electronic access to the public and has authorized electronic participation for public comment, members of the public attending a meeting remotely may address the board during a public hearing or public comment period.
- ▶ The Troy ZBA Rules of Procedure do not authorize members of the public to participate remotely, but do allow members of the public to submit written comments that are read or summarized at the meeting.

Freedom of Information Act

- ▶ Requires disclosure and access to public records.
- ▶ Public records are writings prepared by, owned, used, in the possession of, or retained by a public body in the performance of an official function- from the time it is created.
- ▶ Writing is broadly defined to include all types of recordings, letters, words, pictures, sounds, papers, maps, photographic film, prints, punch card, discs... or other means of recording or retaining meaningful content.
- ▶ Includes letters, e-mails, text messages in course of performance of duties - even if on private devices (BYOD).
- ▶ Public body has 5 business days to respond to a FOIA request unless expressly asking for a 10 day extension due to unusual circumstances.
- ▶ The public body has the burden of justifying an exemption

Freedom of Information – Communications Received by ZBA Members

- ▶ If a ZBA member receives a letter or email from applicant or any member of the public, do not respond other than to indicate the communication has been forwarded to City Administration.
- ▶ If the communication has relevance, City Administration may provide copy to all ZBA members in an agenda packet.
- ▶ ZBA members should not engage in any communications with applicant or other members of the public concerning a matter that is pending before the ZBA outside the meeting.
- ▶ Any written communications with applicants or members of the public may be subject to disclosure under FOIA.
- ▶ ZBA members should establish dedicated email for ZBA matters.

Appeals from ZBA Decisions

- ▶ Appeal as of right to circuit court by any person aggrieved by a decision of the ZBA.
- ▶ The appeal must be filed within 21 days of the date the board certifies the minutes of the meeting at which the decision on the variance was made.
- ▶ The circuit court reviews the zoning board of appeals record and decision to ensure that the decision:
 - ▶ a) complies with the constitution and laws of Michigan;
 - ▶ b) is based on proper procedure;
 - ▶ c) is supported by competent, material and substantial evidence on the record; and
 - ▶ d) represents the reasonable exercise of discretion granted by law to the board of appeals.
- ▶ The circuit court may affirm, reverse, or modify the decision of the board of appeals.

Aggrieved Person

- ▶ In 2022, the Michigan Supreme Court in *Saugtuck Dunes Coastal Alliance v Saugatuck Twp* ruled an aggrieved person entitled to appeal a ZBA decision must meet the following:
 - ▶ 1. Participated in challenged decision such as through a letter or public comment.
 - ▶ 2. Must have some legally protected personal, property or pecuniary interest affected by the decision.
 - ▶ 3. Must provide some evidence of special damage that is different in kind or more significant in degree than the effects on others in the community.
- ▶ An aggrieved person does not need to be a property owner.

Questions

