

# AGENDA

## REGULAR MEETING OF THE MIDLAND ZONING BOARD OF APPEALS, TO TAKE PLACE ON TUESDAY, SEPTEMBER 15, 2020, 6:30 P.M.

***This meeting will be held electronically due to the COVID-19 pandemic.***

The meeting will be broadcasted live on ATT U-Verse Channel 99; MGTV Channel 188 and online at [Cityofmidlandmi.gov/video](http://Cityofmidlandmi.gov/video)

To join via videoconference, go to:  
<https://zoom.us/join> | **Webinar ID:** 824 3826 2045 | **Password:** 829470

To join via telephone, dial:  
US: +1 301 715 8592 or +1 312 626 6799 | **Webinar ID:** 824 3826 2045 | **Password:** 829470

1. **Roll Call**
2. **Approval of the Minutes**
  - a. Regular Meeting August 18, 2020
3. **Public Hearings**
  - a. **Petition No. 20-08** – David Yancey & Kathryn Julius: for an area/dimensional variance to permit the construction of a new attached garage at property located at 502 W. Main Street. The applicant is requesting a six (6) foot variance to construct the new garage at 14 feet from the property line. The property is zoned RA-3 Single Family Residential which requires a setback distance of 20 feet for a garage access from the side street.
  - b. **Petition No. 20-09** – Patrick Pnacek: for a use variance to permit the use of a vacant structure for residential purposes. The subject property is located at 6125 Jefferson Avenue and is zoned CC Community Commercial.
  - c. **Petition No. 20-10** – Eric Clark: for an area/dimensional variance of 30 feet to permit the complete reconstruction of a single-family home within the current home's footprint. The subject property is 3200 Pomranky Road. The current house is built at the property line. The property is zoned RA-1 Single Family Residential which requires a front yard setback of 30 feet.

### Public Hearing Process

1. Staff presentation and overview of petition
  2. Petitioner presentation
  3. Public comments in support of the petition
  4. Public comments in opposition to the petition
  5. Opportunity for petitioner rebuttal and final comments
  6. Closing of public hearing
  7. Deliberation and possible decision by the Zoning Board of Appeals
4. **Old Business**
  5. **Public Comments** (not related to items on the agenda)
  6. **New Business**
  7. **Decision Sheet Signatures**
    - a. No. 20-04
  8. **Adjournment**

**REGULAR MEETING OF THE MIDLAND ZONING BOARD OF APPEALS,  
TO TAKE PLACE ON TUESDAY, AUGUST 18, 2020, 6:30 P.M.,  
COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN**

***This meeting was held electronically due to the COVID-19 pandemic.***

<https://zoom.us/join> | Webinar ID: 880 5246 0483 | Password: 337664

**1. Roll Call**

**PRESENT: Board Members** – Danielsen, Green, Siemer, Poprave,

**ABSENT: Board Member** – Mead

**OTHERS PRESENT:** Grant Murschel, Director of Planning & Community Development;  
and six (6) others

**2. Approval of the Minutes**

It was moved by Siemer and supported by Green to approve the meeting minutes of the regular meeting dated July 21, 2020 as presented.

Vote on the motion:

Yeas: Danielsen, Green, Poprave and Siemer

Nays: None

Motion carries 4-0.

**3. Public Hearings**

- a. **Petition No. 20-03** – Winterstein Builders: for an area/dimensional variance to permit construction of a residential home addition at property located at 115 Helen Street. The applicant is requesting a five (5) foot variance from the side yard setback for the existing detached garage; with the proposed addition, the detached garage will be within the side yard rather than the rear yard. Detached garages in the side yard must meet the principle side yard setback of eight (8) feet in the RA-1 Single Family Residential zoning district. The current detached garage is only three (3) feet from the side lot line.

Murschel gave the staff presentation for Petition No. 20-03.

**Petitioner:**

Becky Winterstein 5071 Oakbrook Ct, Saginaw MI: Ms. Winterstein spoke about the reasons behind the need for the variance.

**Comments in Support:**

Marcus James 113 Helen Street, neighboring property owner is in support of this petition.

Comments in Opposition: None.

Poprave closed the public hearing.

**Findings of Fact:**

1. Property is located at 115 Helen.
2. Property is zoned RA-1, zoning to the east is RA-4.
3. The proposed screened-in porch measures 9' x 10'.
4. The lot size 70' x 163'.
5. Proposed porch is 80 ft from the rear property line.
6. Distance from the porch to the rear yard setback is 51 ft.

7. Two (2) written communications in support, none in opposition.
8. Variance request is needed due to placement of the screened sun porch, not the remaining addition to the house.
9. Garage is currently detached and complies with setback requirements.
10. Home was built in 1934.
11. The distance between the house and garage is greater than 6 ft.
12. The house is built to the front setback requirement, so there is no allowance for an addition to front of the home.
13. No work on the house expansion has begun at this time.
14. The house is located on the southwest side of Helen Street.
15. The speed limit on Helen Street is 25 MPH.
16. One comment in support during the public hearing.
17. Variance request total is 5 ft.

Siemer stated that the petition is in line with the criteria and the alternative would be overly burdensome to the property owner.

Danielsen notes that moving the garage to become compliance would be impractical and a burden to the homeowner.

Green and Poprave both agree that this petition is in compliance with the criteria.

Green made a motion to approve Petition No. 20-03 based on the findings of fact. Siemer seconded the motion.

Vote on the motion:

Yeas: Danielsen, Poprave, Green and Siemer  
Nays: None

Motion carries 4-0.

- b. **Petition No. 20-06 – Jean Wolfe:** for an area/dimensional variance to permit the construction a detached garage at property located at 1410 Lincoln Street. The applicant is requesting a variance of 2.5 ft. from the required six (6) ft. side yard setback. The property is zoned RB Multiple Family Residential. Single-family residential must have side yard setbacks totaling 14 ft. with one side being no less than five (5) feet. The opposing side yard setback is eight (8) feet.

Murschel gave the staff presentation for Petition No. 20-06.

**Petitioner:**

Lonnie Bromic Tenant at 1410 Lincoln Street: Petitioner states the need to comply with the size allowance for the garage would require a custom built garage and would not be cost effective for the applicant.

Comments in Support: None.

Comments in Opposition: None.

Poprave closed the public hearing.

**Findings of Fact:**

1. Property is located at 1410 Lincoln Street.
2. Property is zoned RB Multiple Family Residential.

3. Variance requested is 2.5 ft from the required 6 ft of side yard setback for construction of a detached garage.
4. The house is located in the east side of Lincoln Street.
5. One (1) written communication in support, none in opposition.
6. The speed limit on Lincoln Street is 25 MPH.
7. The garage is 20' x 40', 800 sq. ft.
8. The house is in compliance with all other setback requirements.
9. The house was built in 1934.
10. The house is 765 sq. ft.
11. The garage will have a stormwater and downspouts gutter system installed.
12. The detached garage meets all size requirements in 3.03 B3 of the City of Midland Zoning ordinance.

Danielsen notes that this request meets criteria, Siemer also supports the petition.

Green supports the petition, Poprave noted that the garage request does substantial justice to the property owner.

Green made a motion to approve variance for Petition No. 20-06 based on the findings of fact. Danielsen seconded the motion.

Vote on the motion:

Yeas: Danielsen, Poprave, Green and Siemer

Nays: None

Motion carries 4-0.

- c. **Petition No. 20-07** – Becca Scherting: for an area/dimensional variance to permit the construction of a six (6) ft. privacy fence at property located at 1115 Ashman Street. The applicant is requesting to build the new fence two (2) ft. from the side street lot line. The property is zoned RA-4 One and Two Family Residential which requires a side street setback of 15 ft. This is a variance request of 13 ft

Murschel gave the staff presentation for Petition No. 20-07.

Green wondered if the fencing would create a clear vision issue. Murschel indicated that it would create a possible line of site issue nearing the driveway.

Comments in Support: None.

Comments in Opposition: None.

Poprave closed the public hearing.

Findings of Fact:

1. Property is located at 1115 Ashman Street.
2. Property is zoned RA-4.
3. Applicant is requesting a 6 ft. tall fence
4. A 4 ft. fence is permitted in the proposed location.
5. The lot size is approximately 7,200 sq. ft.
6. No comments have been received in support or opposition.
7. The speed limit is 25 MPH on Reardon Street and 30 MPH on Ashman Street.

Siemer stated that property is slightly elevated and adding a 6 ft fence will add significant vision issues that could be solved with a 4 ft fence.

Green notes that the petitioner can construct the 4 ft fence with no variance and no safety issue, so he cannot support the request.

Danielsen agrees with both Siemer and Green regarding the safety issue. He understands the petitioner's request for extra privacy but that can be obtained with a 4 ft fence as well.

Poprave has concerns with pedestrian safety and he does not see a unique circumstance present to approve this request.

Siemer made a motion to approve Petition No. 20-07 based on the findings of fact. Danielsen seconded the motion.

Vote on the motion:

Yeas: None

Nays: Green, Siemer, Poprave, and Danielsen

Motion denied 0-4.

4. **Old Business**

5. **Public Comments (not related to items on the agenda)**

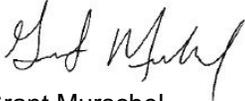
6. **New Business**

7. **Decision Sheet Signatures**

8. **Adjournment**

Siemer made a motion to adjourn the meeting, motion seconded by Green. The meeting was adjourned at 7:57 p.m.

Respectfully submitted,



Grant Murschel  
Director of Planning & Community Development

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE ZONING BOARD OF APPEALS



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Report No. 20-08

Date: September 11, 2020

### STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Area/Dimension Variance  
PETITIONER: David Yancey and Kathryn Julius  
LOCATION: 502 W. Main Street  
PROPOSED: An area/dimensional to permit construction of an attached garage.  
ZONING: RA-3 Single Family Residential

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#### PETITION SUMMARY

The applicant is requesting an area/dimensional variance to permit the construction of a larger attached garage in the location of the existing attached garage at property located at 502 W. Main Street. The applicant is requesting a variance of six (6) ft. from the required 20 ft. side street yard setback. The property is zoned RA-3 Multiple Family Residential. Within a single-family residential zoning district, garage access to a side street requires that the garage be set back a distance of 20 ft. from the side street property line. The applicant is requesting to locate the new garage only 14 ft. from the side street property line.

*For aerial view of property and zoning map please see attached pages.*

#### REVIEW CRITERIA FOR DIMENSIONAL VARIANCES

The Zoning Board of Appeals may grant a “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulty is when the applicant has demonstrated all of the following:

- A. **Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.**

**Petitioner’s response:** See attached.

**Staff commentary:** The site is currently being used as a residential dwelling with a small, attached garage. While most residential homes across the city have garages, a garage is not necessary for a property to be used for residential purposes. That being said, garages are a permitted purpose in single-family residential zoning districts. Having a garage that is large enough for two vehicles as opposed to just a small garage for a single vehicle could be seen as a question of preference or privilege more so than one of prohibition.

- B. **The variance will do substantial justice to the applicant, as well as to other property owners.**

**Petitioner’s response:** See attached.

**Staff commentary:** The variance will allow for the new, larger garage therefore doing justice to the property owner. The variance could provide justice to other property owners by allowing this property owner to store more things within the interior of a closed-in space.

- C. **The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.**

**Petitioner’s response:** See attached.

**Staff Commentary:** The proposed variance appears to be the minimum as it will allow for a standard sized garage of 26 ft. x 24 ft.

**D. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?**

**Petitioner's response:** See attached.

**Staff Response:** The house on the subject property was originally built in 1890, well before personal vehicles became mainstream. The property itself is 60 ft. by 120 ft. which is on the smaller side of residential home lots within the city. This size of lot, or even smaller lots, are much more common in the historic areas of the city. The way the home is located on the property relative to the side street and the location of the existing garage are both unique attributes to this property compared to others in the adjacent area. The interior layout of the home limits the property owner from "pushing" the garage further into the interior of the property without substantial remodeling of the home.

**E. The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.**

**Petitioner's response:** See attached.

**Staff Response:** It could be argued that the resulting need is due to the desire for the property owner to have a larger garage than what can fit on the lot given the required setback distances. The house is compliant with current ordinance standards for side yard setbacks but given the relative small nature of the lot and the layout of the existing home, it is difficult for a standard-sized garage to be built on the property.

**ACTION REQUIRED**

An affirmative vote of a majority of ZBA members is necessary to approve this variance request.

**PUBLIC COMMENTS TO DATE**

As of September 11, 2020, City staff has not received any communications in support or opposition of this petition.

Respectfully Submitted,



Grant Murschel  
Director of Planning & Community Development

**AREA OR DIMENSION (NON-USE) VARIANCES**  
**ZONING BOARD OF APPEALS**  
**Criteria for Approval**

**The Zoning Board of Appeals may grant a requested “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulties is when the applicant has demonstrated all of the following:**

- a. How will strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome?

Strict compliance with the the restriction will not allow for the construction of a new garage that will facilitate parking of two full-sized vehicles on the property. Currently, the garage is only large enough to park a small sedan inside. The exterior parking on the property does allow for the parking of one full-sized vehicle. Thus, parking of vehicles on the current property is highly limited.  
Other options for garage construction are also highly burdensome. If the garage was setback further on the property, it would disrupt the current covered porch that exists on the back side of the house.

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- b. How will a variance do substantial justice to the applicant, as well as to other property owners?

This variance will allow for construction of a garage that will be suitable for 2 vehicles of any size (not requiring one to be a small sedan) on the property. The proposed variance is to build a standard sized 2 car garage which will be 26' x 24' (D x W).

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(Continued on reverse side)

- c. Is the variance requested the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners?

The variance requested is the minimum needed to provide substantial relief for the building of a standard size garage structure. No other properties are impacted by this street setback variance. Additionally, the setback of the proposed garage is consistent with the setback of our attached porch and will be less than the setback of the neighboring house on Ripley Street. Also, precedent was set in a zoning variance in 2017 to allow for a 14 foot setback for the construction of a garage at 713 Eastman Road, in the same neighborhood

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- d. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?

Unique circumstances here include the age of the house which was built in 1890, before the need for a garage structure and current zoning regulations.

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- e. Has the problem and resulting need for the variance been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors?

The problem has been created by strict compliance with other setback requirements. All other property setback requirements have been met which limits the buildable area for the garage setback.

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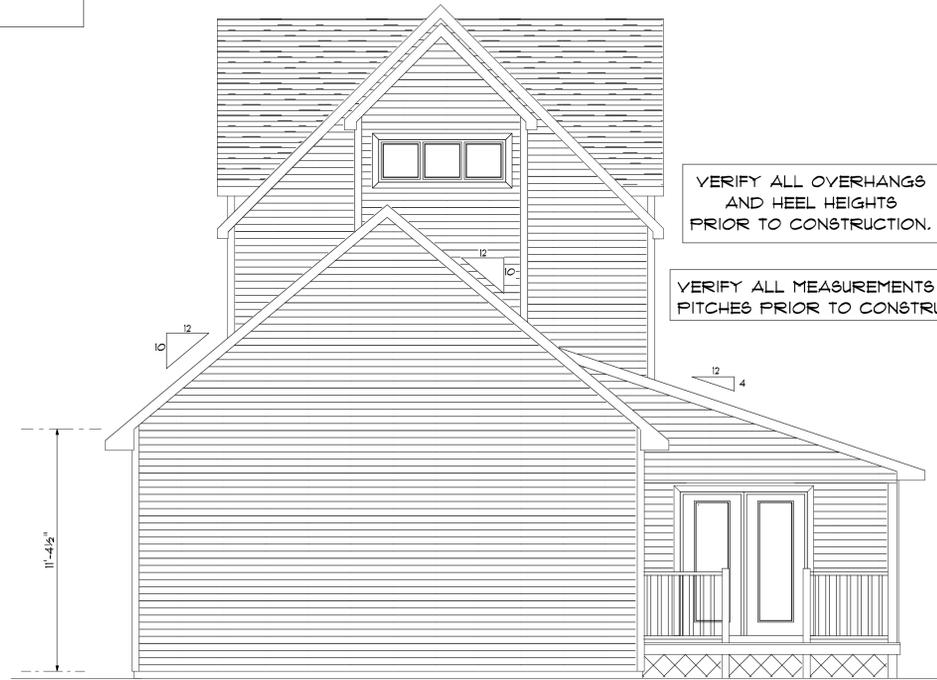
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IT IS THE RESPONSIBILITY OF THE PURCHASER/CONTRACTOR OF THESE DRAWINGS TO SEE THAT THE STRUCTURE IS BUILT IN STRICT COMPLIANCE WITH ALL GOVERNING MUNICIPAL CODES (CITY, COUNTY, STATE AND FEDERAL).



RIGHT ELEVATION 2  
SCALE: 1/4" = 1'-0"

VERIFY ALL OVERHANGS AND HEEL HEIGHTS PRIOR TO CONSTRUCTION.

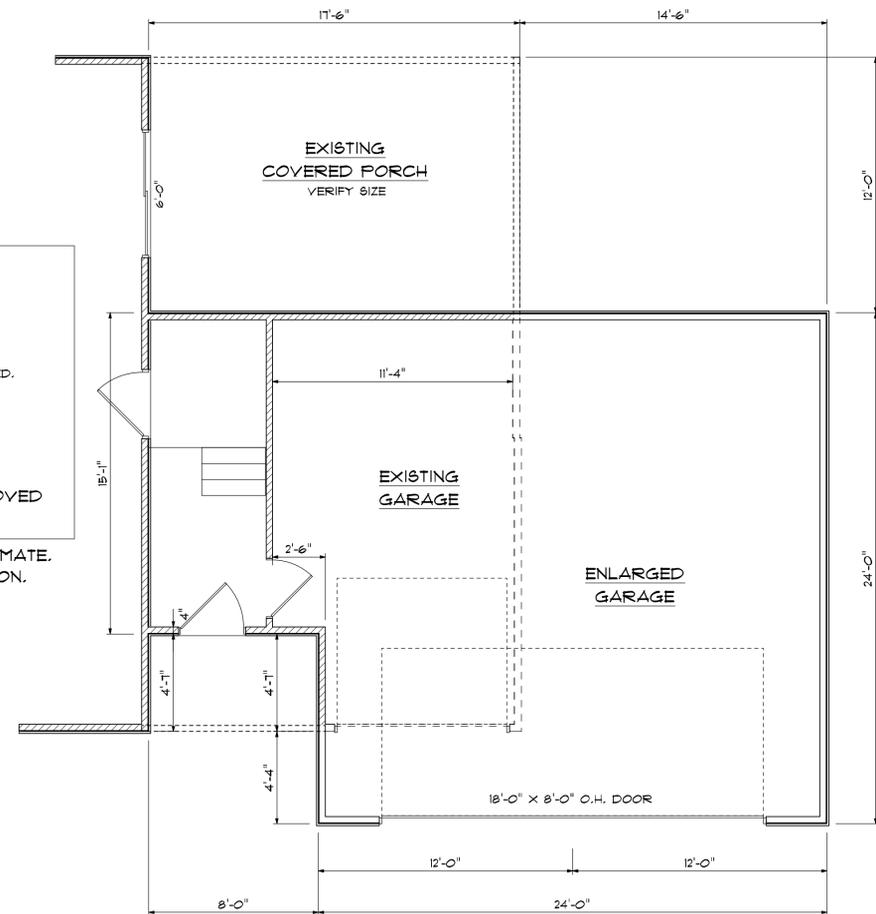
VERIFY ALL MEASUREMENTS & ROOF PITCHES PRIOR TO CONSTRUCTION

FLOOR PLAN NOTES:

- EXTERIOR WALL ARE SHOWN AS 2X6 CONST.
- INTERIOR WALLS ARE 2X4 CONSTRUCTION.
- EXTERIOR DIMENSIONS ARE FROM O/S EDGE OF 1/2" WALL SHEATHING TO CENTER OF OPENINGS UNLESS NOTED.
- INTERIOR DIMENSIONS ARE FROM 1/8" EDGE OF STUDS TO 1/8" EDGE OF STUDS UNLESS NOTED.
- ALL OPENINGS NOT SIZED ARE EXISTING.
- ALL OPENINGS NOT DIMENSIONED ARE TO BE CENTERED IN WALL OR 3" FROM WALL END.
- VERIFY ALL WINDOW MEASUREMENTS BEFORE CONSTRUCTION.

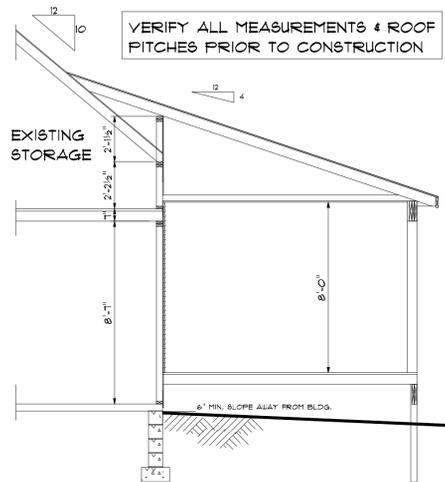
- ▨ EXISTING WALLS
- EXISTING WALLS TO BE REMOVED
- ▭ NEW INTERIOR WALLS

ALL MEASUREMENT ARE APPROXIMATE. VERIFY PRIOR TO CONSTRUCTION.



ADDITION FLOOR PLAN 2  
SCALE: 1/4" = 1'-0"

VERIFY WALL HEIGHT ON NEW ADDITION

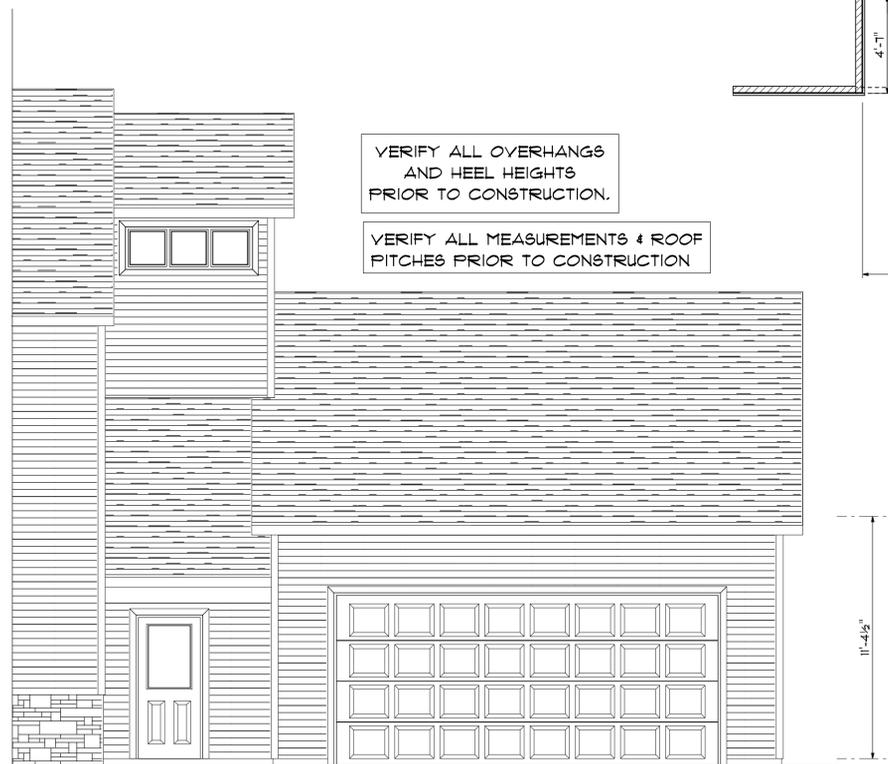


WALL SECTION THROUGH EXISTING GARAGE

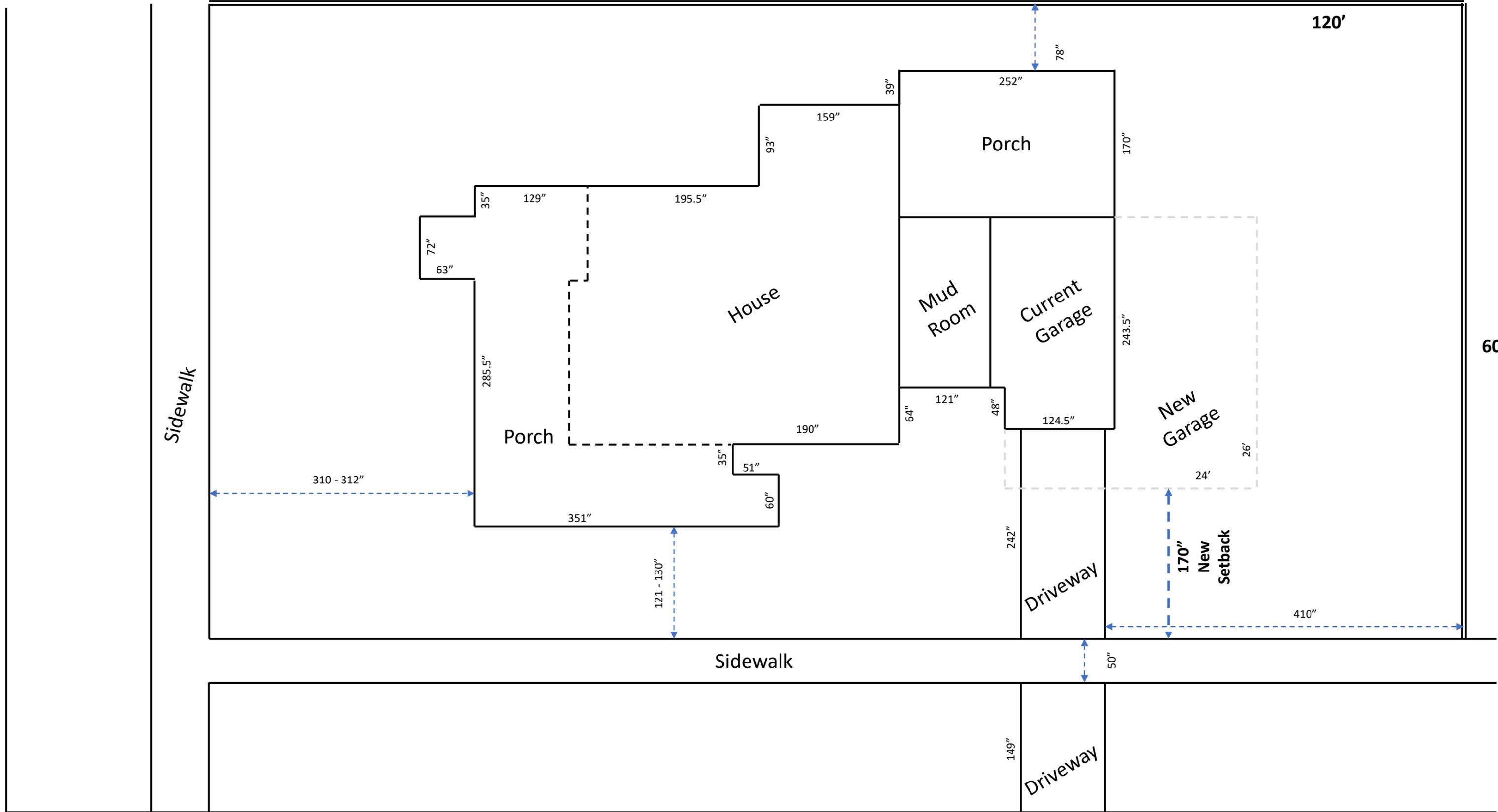
VERIFY ALL MEASUREMENTS & ROOF PITCHES PRIOR TO CONSTRUCTION

VERIFY ALL OVERHANGS AND HEEL HEIGHTS PRIOR TO CONSTRUCTION.

VERIFY ALL MEASUREMENTS & ROOF PITCHES PRIOR TO CONSTRUCTION



FRONT ELEVATION 2  
SCALE: 1/4" = 1'-0"



120'

78"

Porch

170"

Mud Room

Current Garage

New Garage

Driveway

170"  
New  
Setback

Driveway

Sidewalk

Ripley Street

Main St

Sidewalk

60'

310 - 312"

121 - 130"

410"

50"

149"

72"  
63"

35"

129"

195.5"

93"

159"

39"

252"

285.5"

Porch

351"

35"

51"

60"

190"

64"

121"

48"

124.5"

243.5"

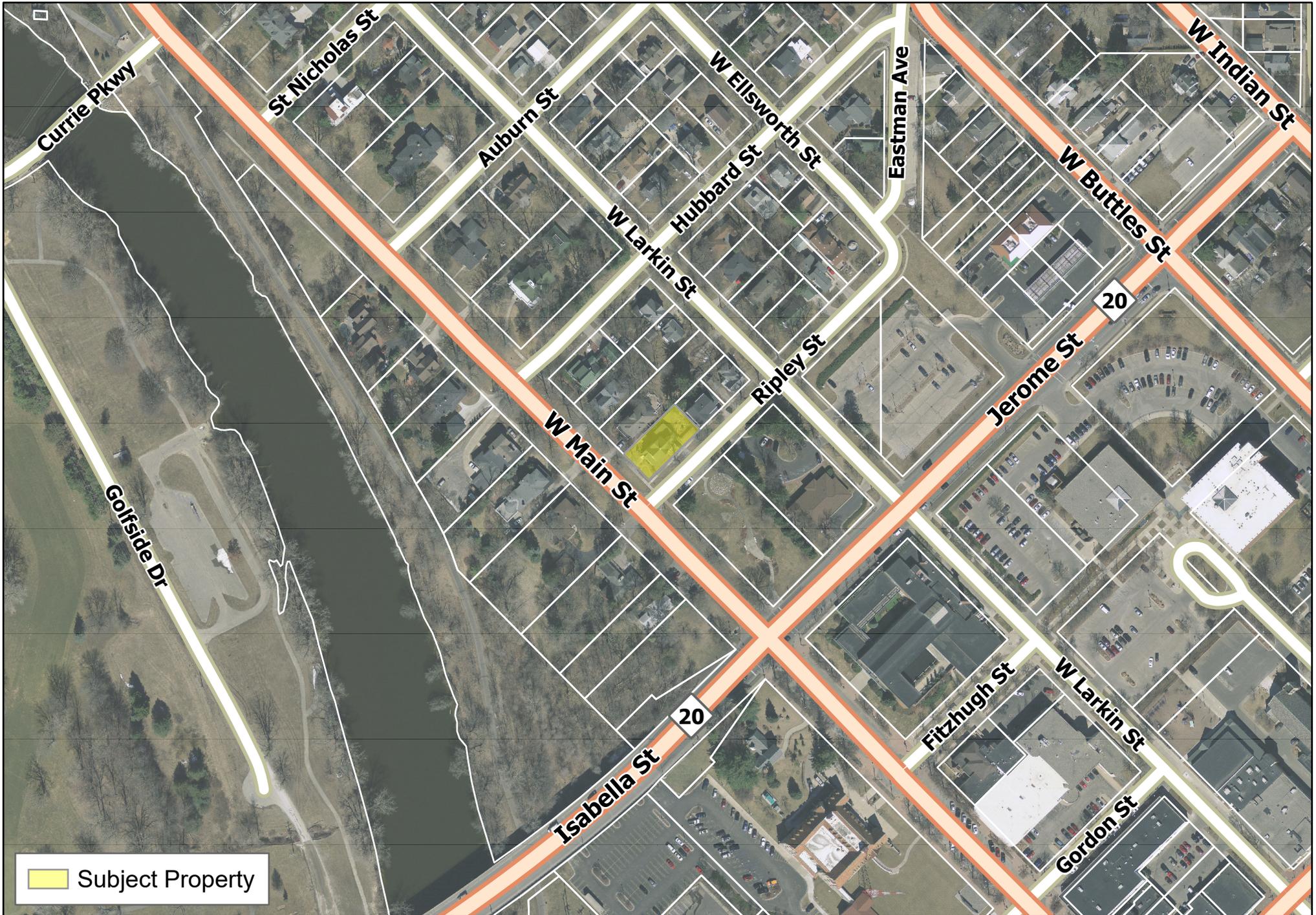
24'

26'

242"

# ZBA # 20-08 | David Yancey & Kathryn Julius

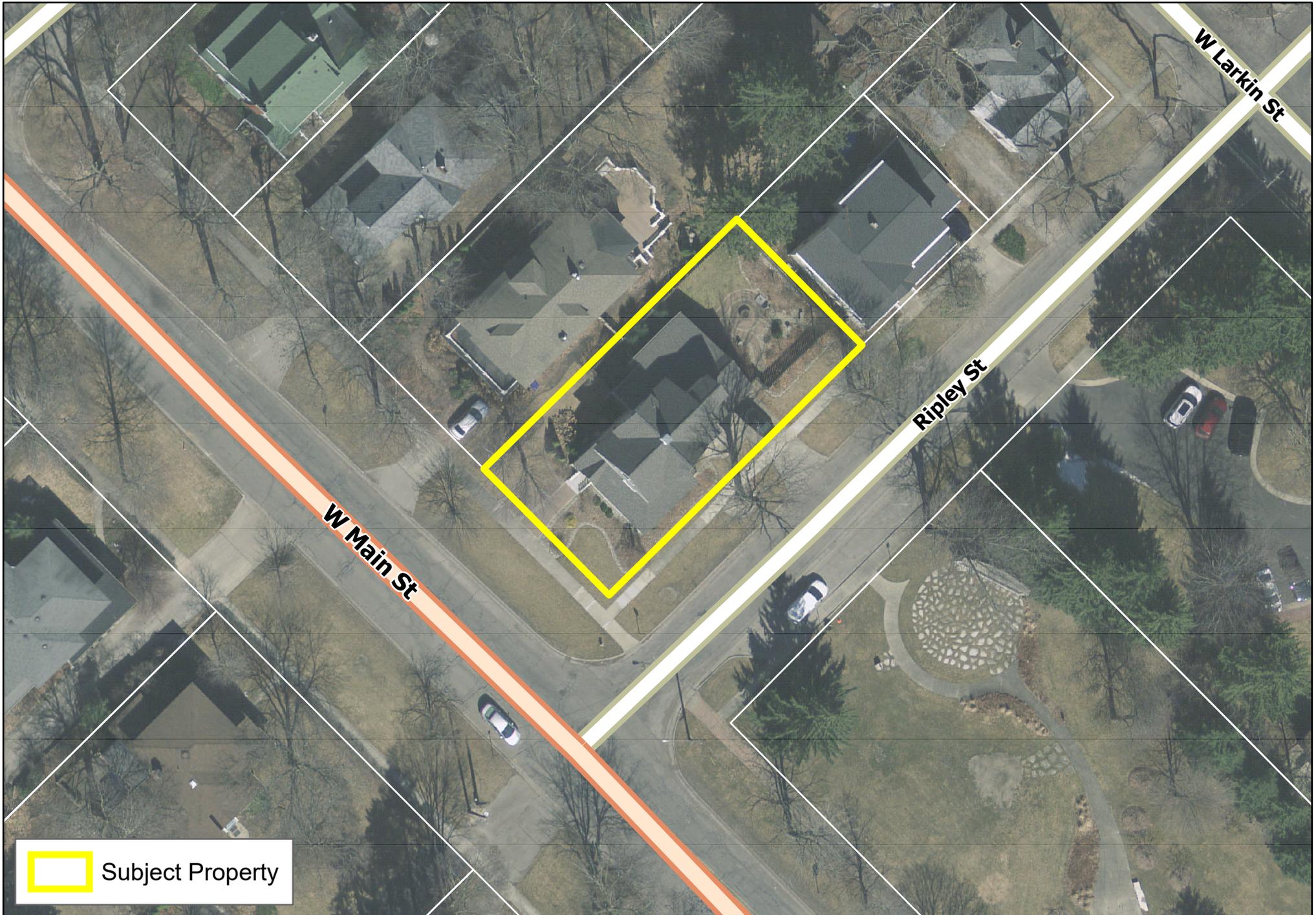
> 502 W. Main St



 Subject Property

# ZBA # 20-08 | David Yancey & Kathryn Julius

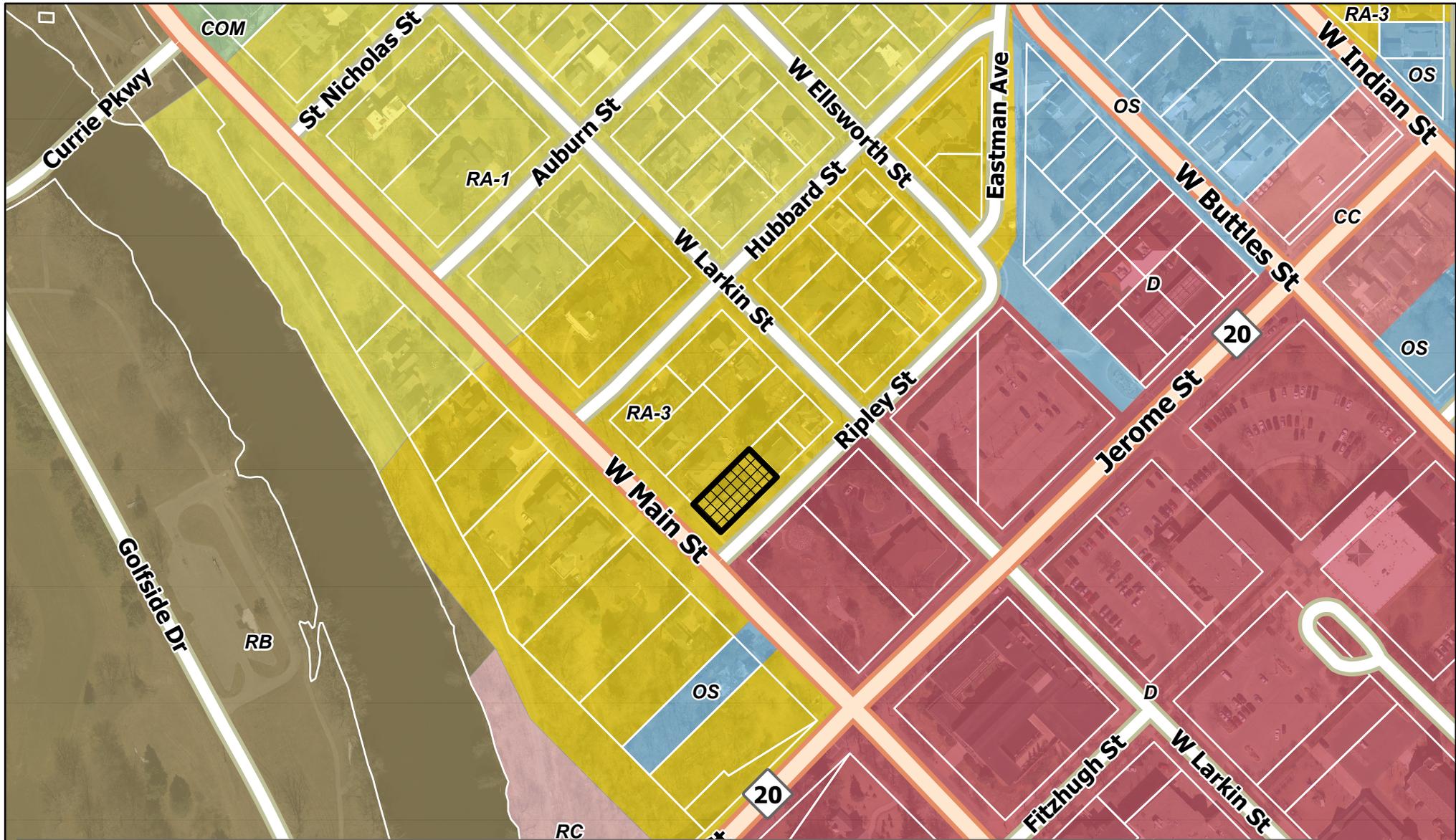
> 502 W. Main St



 Subject Property

# ZBA # 20-08 | David Yancey & Kathryn Julius

> 502 W. Main St



<b>CURRENT ZONING</b>	D Downtown District	RA-3 Residential	Subject Property
CC Community Commercial	OS Office Service	RB Residential	
COM Community	RA-1 Residential	RC Regional Commercial	



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Report No. 20-09

Date: September 11, 2020

### STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Use Variance  
PETITIONER: Patrick Pnacek  
LOCATION: 6125 Jefferson Avenue  
PROPOSED: A use variance to permit a single-family residential dwelling.  
ZONING: CC Community Commercial

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#### PETITION SUMMARY

The applicant is requesting a use variance to permit reuse of a single-family residential dwelling for residential purposes located on property at 6125 Jefferson Avenue. The subject property is located within a CC Community Commercial zoning district which is intended to provide locations for businesses that meet the day-to-day shopping and service needs of residents in surrounding neighborhoods. Single-family residential dwellings are not permitted by right or by conditional use permit.

*For aerial view of property and zoning map please see attached pages.*

#### REVIEW CRITERIA FOR USE VARIANCES

The Zoning Board of Appeals may grant a requested “use” variance only upon finding that an unnecessary hardship exists. An unnecessary hardship is when the restrictions of the zoning ordinance on the property, when its environment is considered, is so unreasonable as to constitute an arbitrary and capricious interference with basic private property rights. A “use” variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of unnecessary hardship shall require demonstration by the applicant of all of the following:

- A. The property cannot be reasonably used for any purpose permitted in the zoning district without a variance.**

**Petitioner’s response:** *See attached.*

**Staff commentary:** The subject parcel exists today as a single-family residential use although the home has been vacant for over a year. The property contains a single-family home and an accessory garage. Use of these existing structures for a limited commercial, manufacturing or research facility is possible but would require extensive renovation and extensive redevelopment of the site to accommodate current ordinance requirements like parking and stormwater management.

- B. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.**

**Petitioner’s response:** *See attached.*

**Staff Comments:** The subject property is the only single-family home within the CC zoning district in this particular area of the city. Other single-family homes are located nearby to the south but are legally non-conforming uses within the OS Office Service zoning district. While this subject property was used for residential purposes for many years, it’s legally nonconforming status lapsed when the property was vacant for more than 180 days.

- C. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.**

**Petitioner's response:** *See attached.*

**Staff Commentary:** The variance will not alter the essential character of the area as it was most recently being used for single-family residential purposes. Additionally, the adjacent properties to the south are being used for single-family residential purposes.

- D. The problem and resulting need for the variance has not been self-created by the applicant.**

**Petitioner's response:** *See attached.*

**Staff Response:** The problem and resulting need for the variance does not appear to be self-created. At the time the single-family home was constructed (1931) this use was permitted. Over the years, the property was rezoned to CC to match the surrounding lands which made the use legally non-conforming. A previous owner resulted in the extended vacancy which lost the legal non-conforming status.

#### **ACTION REQUIRED**

An affirmative vote of 2/3 (e.g. 4 of 5 members) of the ZBA is necessary to approve a use variance request.

#### **PUBLIC COMMENTS TO DATE**

As of September 11, 2020, City staff has not received any comments in support or opposition of the petition.

Respectfully Submitted,



Grant Murschel  
Director of Planning & Community Development

**USE VARIANCE  
ZONING BOARD OF APPEALS  
Criteria for Approval**

The Zoning Board of Appeals may grant a requested “use” variance only upon finding that an unnecessary hardship exists. An unnecessary hardship is when the restrictions of the zoning ordinance on the property, when its environment is considered, is so unreasonable as to constitute an arbitrary and capricious interference with basic private property rights. A “use” variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of unnecessary hardship shall require demonstration by the applicant of all of the following:

- a. Can the property be reasonably used for any purpose permitted in the zoning district without a variance?

Yes, the property can be used for Commercial use with the demolition of the existing home.

However, a home does exist on this property and is in good condition, it would require minimal improvements to meet City of Midland residential rental inspection requirements. Based on the current critical shortage of residential homes in Midland due to recent flooding and the uncertainty in the commercial market due to Covid-19 restrictions, we believe (and request) that the home be used for residential purposes at the present time.

- b. What are the unique circumstances peculiar to the property that are not generally applicable in the area or to other properties in the same zoning district?

We are in the process of purchasing this property for the long-term intent of using the property or commercial development. This home was used for residential purposes a was vacant due to a serious illness of the (previous) owner during the zoning change process. Our long-term strategy is to develop this property consistent with the current "commercial" zoning, however development under the current (Covid-19) restrictions makes development at the present time not feasible. We believe that using the existing home for residential purposes for the near term, better serves the community and the Midland housing needs. We are requesting that the zoning remain as COMMERCIAL, IMPROVED 2011, but, that the use of the home for residential purposes be granted.

(Continued on reverse side)

- c. Will the variance alter the essential character of the area? In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.

The home is already there, as it had been for many years, and would not change the character of  
the area.

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- d. Why has the problem and resulting need for the variance not been self-created by the applicant?

The current situation has resulted due to zoning changes on the property. We do agree with the past zoning change for this property, but, due to recent flooding and the effects of the Michigan Covid-19 situation on commercial property, we believe that the use of the home for residential purposes would be in the best interest of the community at the present time.

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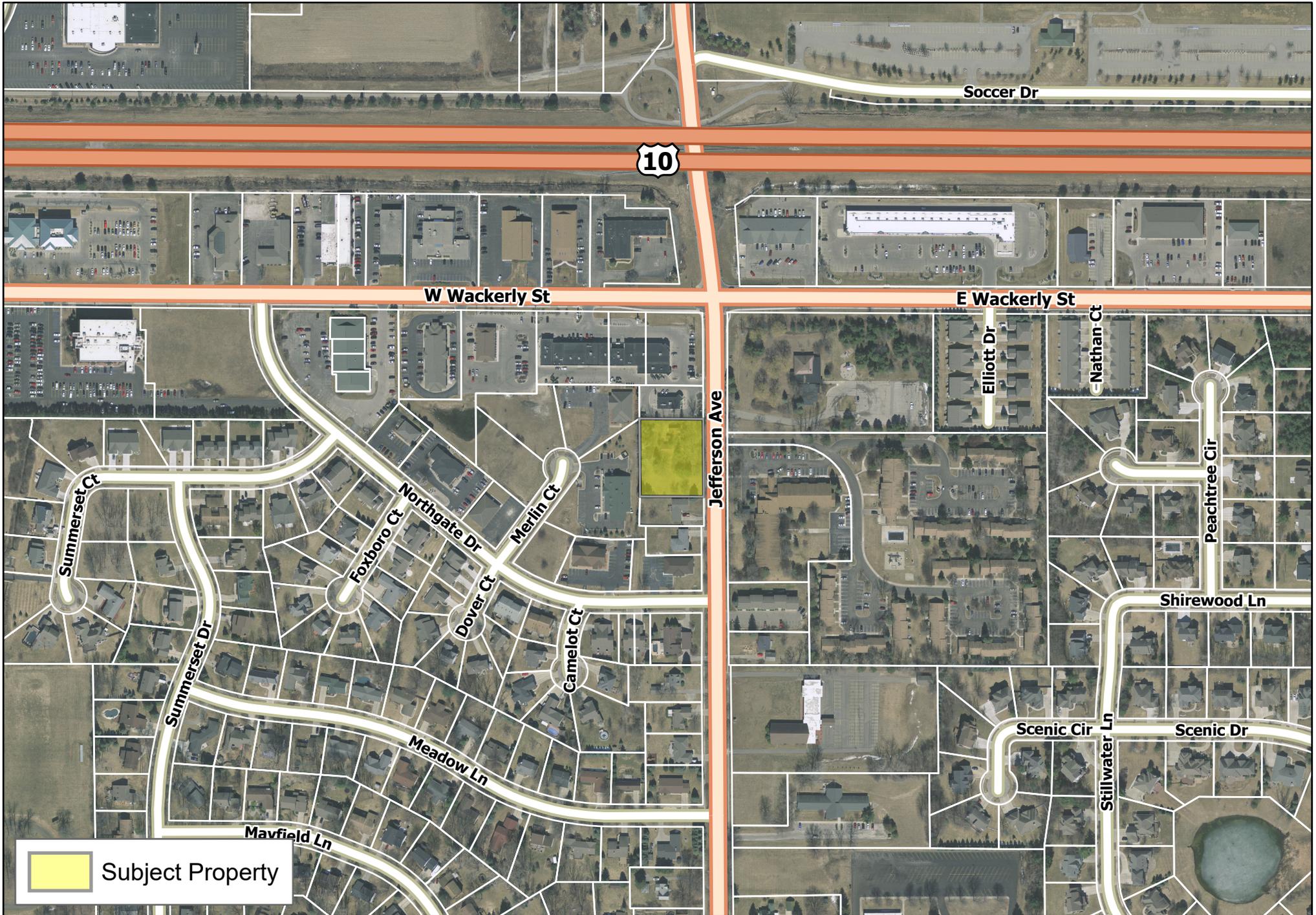
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# ZBA # 20-09 | Patrick Pnacek

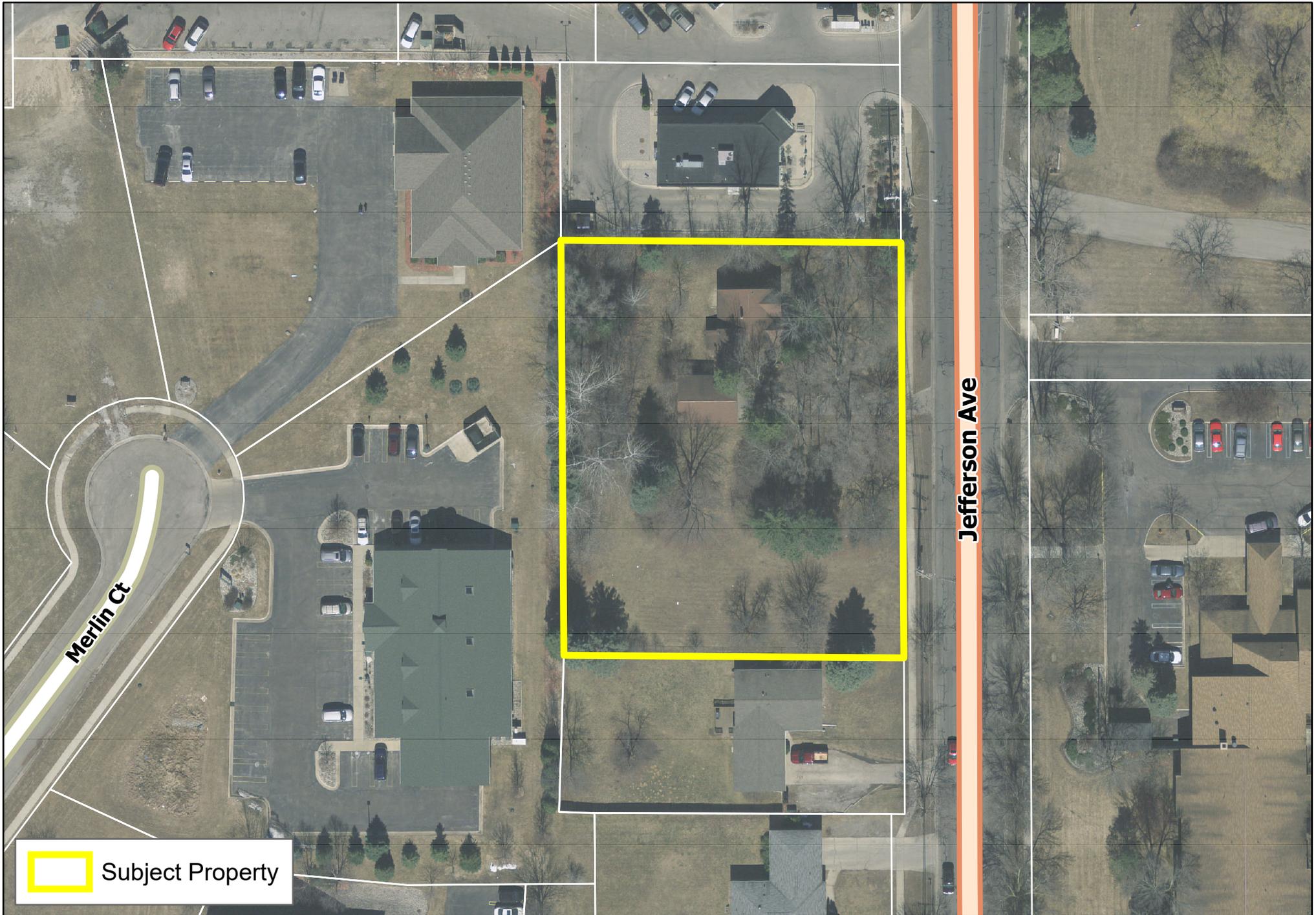
> 6125 Jefferson Ave



 Subject Property

# ZBA # 20-09 | Patrick Pnacek

> 6125 Jefferson Ave



Merlin Ct

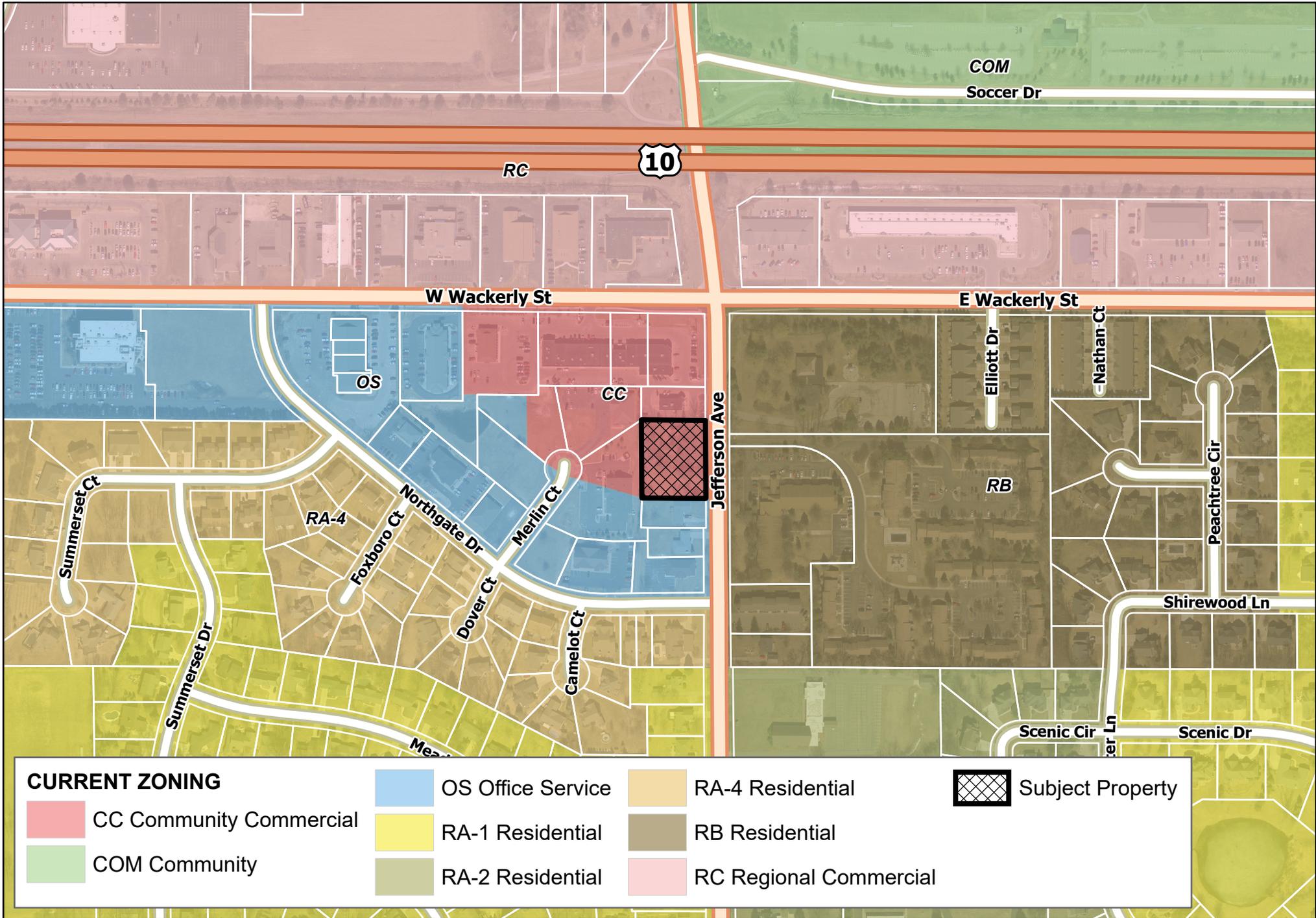
Jefferson Ave



Subject Property

# ZBA # 20-09 | Patrick Pnacek

> 6125 Jefferson Ave





## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Report No. 20-10

Date: September 11, 2020

### STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Area/Dimension Variance

PETITIONER: Eric Clark

LOCATION: 3200 Pomranky Road

PROPOSED: An area/dimensional to permit the reconstruction of a single-family residential home substantially damaged during the May 2020 dam failure and subsequent flooding event.

ZONING: RA-1 Single Family Residential

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#### PETITION SUMMARY

The applicant is requesting an area/dimensional variance to permit the reconstruction of a single family home at property located at 3200 Pomranky Road. The applicant is requesting a variance of 30 ft. from the required 30 ft. front yard setback. The property is zoned RA-1 Single Family Residential. The applicant's home was substantially damaged during the May 2020 dam failure and subsequent flooding event. Substantially Damaged structures are ones that have been damaged beyond 50% of their fair market value prior to the flood.

Reconstruction of residential homes within the 100-year floodplain and the floodway have special regulations that must be complied with. These regulations are found within the Michigan Residential Building Code and the rules governed by the Michigan Department of Environment, Great Lakes and Energy (EGLE). They include elevating the lowest finish floor of the new home to at least 1 foot above the Base Flood Elevation for a 100-year flooding event.

The applicant has engaged EGLE and it has been determined that reconstruction can only be permitted by EGLE if the reconstruction takes place within the footprint of the former home. The former home was located with a zero (0) lot line for the front yard as the home was built prior to existing setback rules. In order to satisfy EGLE, the applicant is requesting this variance to maintain the existing footprint of the home.

*For aerial view of property and zoning map please see attached pages.*

#### REVIEW CRITERIA FOR DIMENSIONAL VARIANCES

The Zoning Board of Appeals may grant a "non-use" variance only upon a finding that practical difficulties exist. A finding of practical difficulty is when the applicant has demonstrated all of the following:

- A. **Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.**

**Petitioner's response:** See attached.

**Staff commentary:** As mentioned in the petition summary, the Michigan Department of Environment, Great Lakes and Energy will not permit new residential construction on this property unless it is within the existing residential footprint. While not a City regulation, this regulation is married to the City's floodplain management ordinance which requires and EGLE permit in order for a residential home to be built within a floodplain or floodway. Without the variance, a new residential home would not be able to be built on the property.

**B. The variance will do substantial justice to the applicant, as well as to other property owners.**

**Petitioner's response:** See attached.

**Staff commentary:** The variance will allow for the reconstruction of the home, this will do substantial justice to the applicant. As part of the EGLE permit application, consideration is given to surrounding properties as development within the floodplain has the ability to negatively impact other surrounding properties. ELGE has determined that surrounding property impacts will not disallow them to issue a permit if the existing footprint is utilized. This is a form of justice to other property owners.

**C. The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.**

**Petitioner's response:** See attached.

**Staff Commentary:** The proposed variance appears to be the minimum as it is in alignment with the requirements of the EGLE permit.

**D. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?**

**Petitioner's response:** See attached.

**Staff Response:** The house was built in 1920 when setback distances were not what they are today. As such, the house is located immediately adjacent to the front lot line. This is common on this portion of Pomranky Road as the house across the street is also rather close to the front lot line. The property is also completely located within the 100-year floodplain and is mostly covered by the Floodway.

The unique circumstance peculiar to this property is the substantial damage that was sustained due to the dam failure and the subsequent flooding events. This has required the new construction to be brought into full compliance with current floodplain regulations.

**E. The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.**

**Petitioner's response:** See attached.

**Staff Response:** The resulting need has resulted from where the home was originally built combined with the EGLE requirement for any new home to be within the current footprint of the existing structure.

**ACTION REQUIRED**

An affirmative vote of a majority of ZBA members is necessary to approve this variance request.

**PUBLIC COMMENTS TO DATE**

As of September 11, 2020, City staff has not received any communications in support or opposition of this petition.

Respectfully Submitted,



Grant Murschel  
Director of Planning & Community Development

**AREA OR DIMENSION (NON-USE) VARIANCES**  
**ZONING BOARD OF APPEALS**  
**Criteria for Approval**

The Zoning Board of Appeals may grant a requested "non-use" variance only upon a finding that practical difficulties exist. A finding of practical difficulties is when the applicant has demonstrated all of the following:

- a. How will strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome?

If I comply with the required setback needed, the new home will have to be moved back approximately 30 feet from where the existing home currently is.

- b. How will a variance do substantial justice to the applicant, as well as to other property owners?

If I'm granted a variance to rebuild in the home's current location, I will be able to build on the highest point of the property which is on a small sandy knoll. I would also be able to hookup to the existing septic tank and field and that will save me a considerable amount of money that I can apply to the new structure. Other property owners will benefit because my new home will help beautify the neighborhood and help increase the property values of my property and the neighbors' properties.

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- c. Is the variance requested the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners?

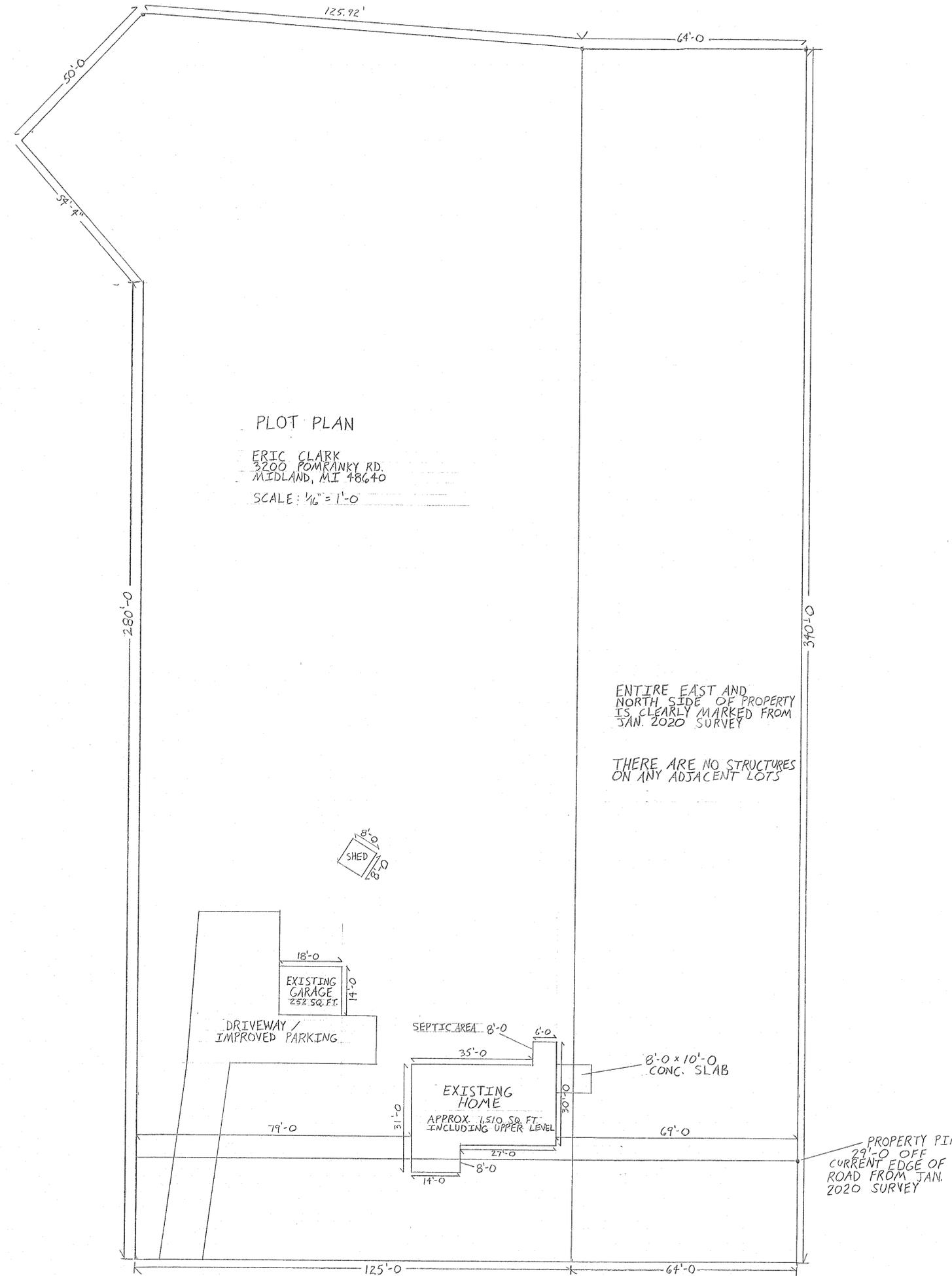
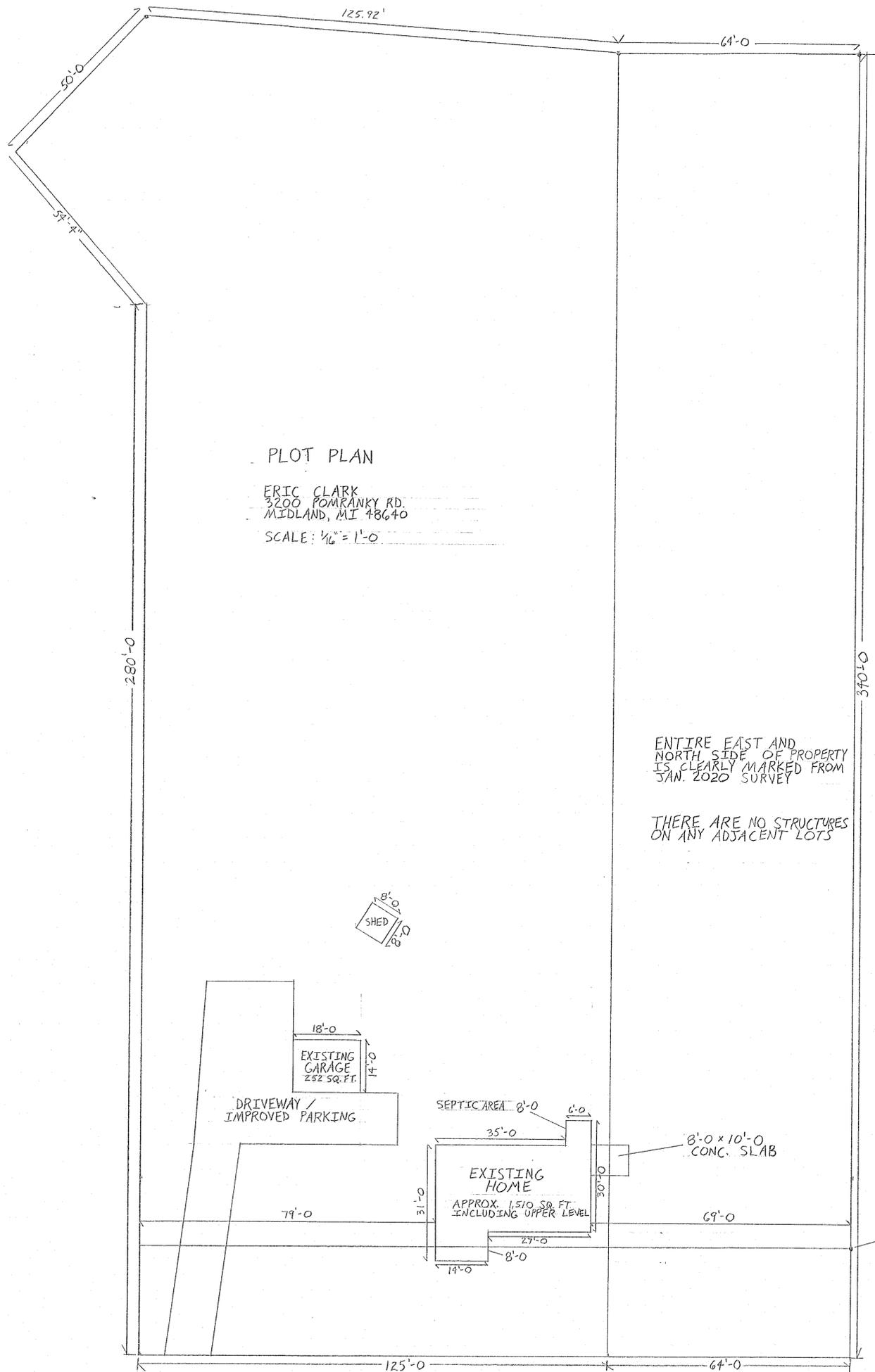
Yes, I have plenty of room on the north, east, and west sides of the property to meet required setbacks. The south side of the property along the road is the only area I need a variance for.

- d. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?

Because my house is 100 years old this year, it was built before setback and zoning requirements were in place. Therefore, the existing home sits closer to the road than any of the other homes in the area.

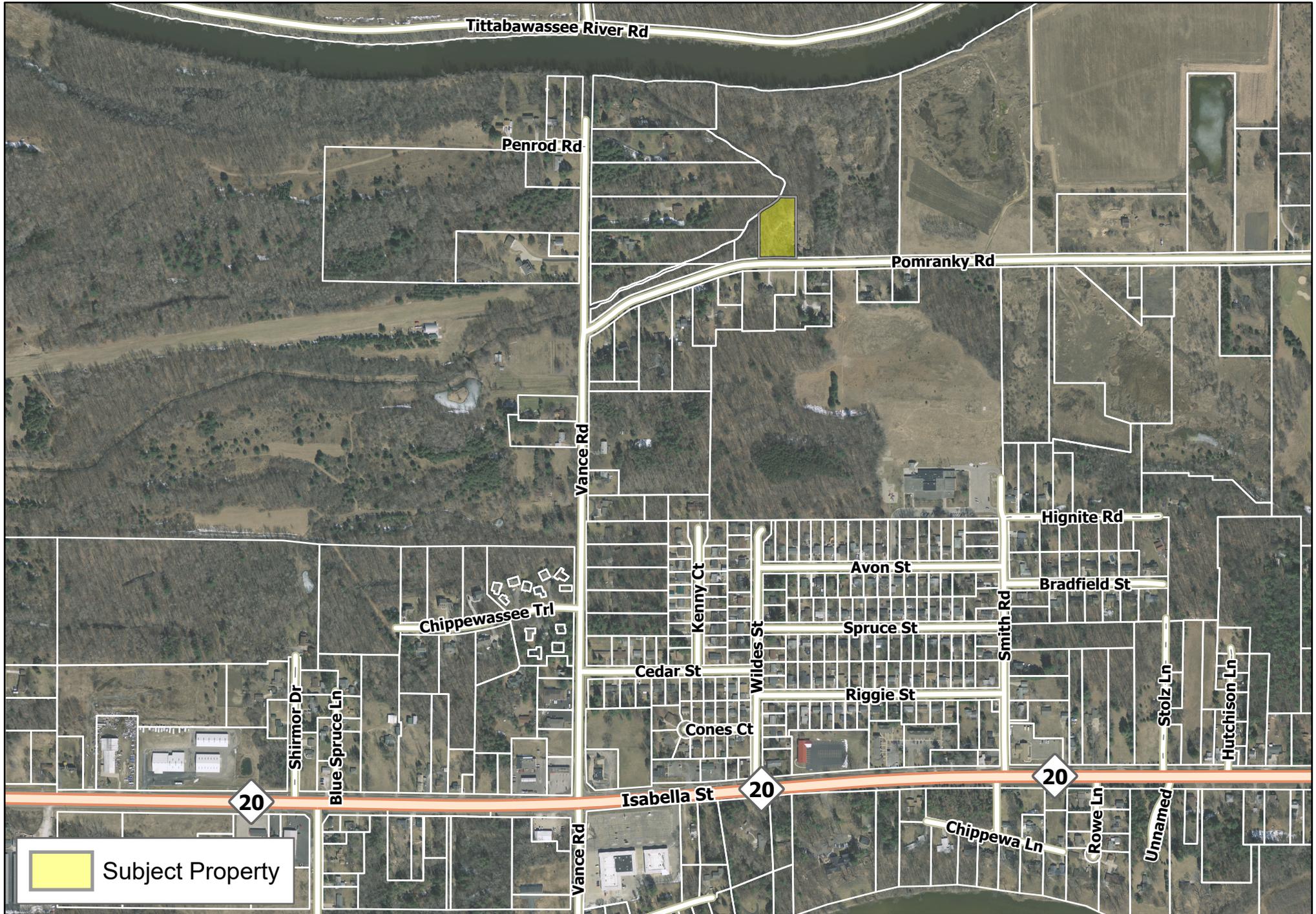
- e. Has the problem and resulting need for the variance been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors?

Yes. My new home needs to be moved back from its existing location around 30' to meet the required setback from the road. However, Joy Brooks from the Saginaw Bay District of EGLE only wants me to rebuild using the current home's existing footprint which is too close to the road to comply with zoning. Per the request of Joy Brooks, I need a variance to rebuild using the existing footprint of the home.



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 Subject Property

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