



7275 W. MAIN STREET, KALAMAZOO, MI 49009-9334
269-216-5220 Fax 375-7180 TDD 375-7198
www.oshtemo.org

**NOTICE
OSHTEMO CHARTER TOWNSHIP
Zoning Board of Appeals**

**Tuesday,
August 28, 2018
3:00 p.m.**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Public Comment on Non-Agenda Items
4. Approval of Minutes: July 24, 2018
5. **Public Hearing: Setback Variance for an Accessory Building**
A variance has been requested by Michael and Maggie Sullivan from Section 64.200 of the Township Zoning Ordinance to allow a residential accessory building to be placed a minimum of two feet from adjacent property lines when 13 feet is required. The subject property is located at 9979 West Main Street, Kalamazoo, MI 49009, within the RR: Rural Residential District. Parcel No. 3905-17-301-010.
6. Any Other Business
7. ZBA Member Comments
8. Adjournment

Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

- a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.
- b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be board discussion prior to call for a motion.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment or Citizen Comment on Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 5/9/2000)
(revised 5/14/2013)

Policy for Public Comment
6:00 p.m. "Public Comment"/Portion of Township Board Meetings

At the commencement of the meeting, the Supervisor shall poll the members of the public who are present to determine how many persons wish to make comments. The Supervisor shall allocate maximum comment time among persons so identified based upon the total number of persons indicating their wish to make public comments, but no longer than ten (10) minutes per person. Special permission to extend the maximum comment time may be granted in advance by the Supervisor based upon the topic of discussion.

While this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official to respond at a later date.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name; it is not required unless the speaker wishes to have their comment recorded in the minutes.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor shall terminate any public comment which is in contravention of any of the principles and procedures set forth herein.

(adopted 2/27/2001)
(revised 5/14/2013)

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD JULY 24, 2018

Agenda

PUBLIC HEARING: SIGN VARIANCE REQUEST (TABLED FROM JUNE 16 2018 MEETING)

A VARIANCE WAS REQUESTED BY THE VERNON GROUP, FROM SECTION 76.420.C OF THE TOWNSHIP ZONING ORDINANCE, TO ERECT A FREESTANDING SIGN WITH ZERO SETBACK FROM THE WEST MAIN STREET RIGHT-OF-WAY WHEN TEN FEET IS TYPICALLY REQUIRED. THE SUBJECT PROPERTY IS LOCATED AT 5945 WEST MAIN STREET, KALAMAZOO, MI 49009, WITHIN THE C: LOCAL BUSINESS DISTRICT. PARCEL NO. 3905-14-435-011.

SITE PLAN REVIEW: DRAKE FARMSTEAD CARRIAGE BARN

OSHTEMO TOWNSHIP PARK'S DEPARTMENT REQUESTED SITE PLAN APPROVAL FOR A 1,200 SQUARE FOOT CARRIAGE BARN, AS WELL AS A PICNIC SHELTER, WITHIN THE DRAKE FARMSTEAD PARK LOCATED AT 927 NORTH DRAKE ROAD, PARCEL NO. 3905-13-230-031.

A meeting of the Oshtemo Charter Township Zoning Board was held Tuesday, July 24, 2018 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT:	James Sterenberg, Chair Nancy Culp Neil Sikora, Vice Chair Anita Smith
MEMBERS ABSENT:	Bob Anderson Bruce VanderWeele

Also present were Julie Johnston, Planning Director, Karen High Oshtemo Township Parks Director, and Martha Coash, Meeting Transcriptionist. Three other persons were in attendance.

Call to Order and Pledge of Allegiance

Chairperson Sterenberg called the meeting to order and invited those present to join in reciting the "Pledge of Allegiance."

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

Approval of the Minutes of June 26, 2018

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of June 26, 2018. Hearing none, he asked for a motion.

Mr. Sikora made a motion to approve the Minutes of June 26, 2018 as presented. Ms. Culp supported the motion. The motion was approved unanimously.

PUBLIC HEARING: SIGN VARIANCE REQUEST (TABLED FROM JUNE 16 2018 MEETING)

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Chairperson Sterenberg moved to the next item on the agenda and asked Ms. Johnston for her presentation.

Ms. Johnston reminded the group that at the June Zoning Board of Appeals meeting, Staff presented the sign variance requested by The Vernon Group to allow a zero-foot setback on West Main Street where a 10-foot setback is required. The Board requested additional information from Staff, tabling the application until the July meeting.

She indicated the Board questioned whether the applicant could remove some of the parking spaces along West Main Street to allow the sign to be setback the required distance from the right-of-way. Staff pulled the latest site plan for the Walnut Woods development, which was submitted in 2016 for administrative review after a fire damaged one of the office buildings.

According to the site plan, she said 141 standard parking spaces and 9 accessible spaces exist. The office buildings, including the new structure connecting two of the buildings, have a total net floor area of about 16,800 square feet. Based on one parking space for every 150 square feet of net floor space required by Section 68.400, only 112 spaces are necessary to meet code. The removal of three to five parking spaces to accommodate a new sign would not violate ordinance requirements.

The Board also requested Staff review the minimum variance necessary under the sites current configuration. The distance between the West Main Street right-of-way and the edge of the parking lot varies from zero to 20 feet at the widest location. However, the location with the widest available depth is at the most eastern corner of the frontage along West Main Street and the tree coverage to the east, found in the US131 right-of-way, significantly blocks visibility for westbound traffic.

Ms. Johnston said the applicant wished to place the sign at about the midpoint of their West Main Street frontage where the depth between the right-of-way line and the parking lot is approximately 14 feet. The sign mock-up illustration provided by SignWriter has a total width of 12 feet. The 10-foot variance request could be reduced to 8 or 9 feet, depending on placement location.

In addition, she said, the sign has two 2-foot columns on either side of the sign face. While providing aesthetic appeal, they are not necessary to the development of the sign. Removing and/or reducing the width of these end cap pillars could reduce the size of the needed variance.

Ms. Johnston said Staff believed there were three possible options:

1. Deny the variance indicating setback compliance can be reached by removing parking spaces from the site.
2. Approve the variance, based on the conclusions outlined in the staff report dated June 13, 2018, but reduce the needed variance from the requested zero-setback to something that would fit the space available between the right-of-way and the parking lot. For example, a sign with a width of 10 feet could reduce the variance needed to between 4 and 6 feet depending on placement of the sign within the requested location.
3. Approve the requested zero-foot setback citing the conclusions provided in the June 13th staff report.

Chairperson Sterenberg asked if there were questions for Ms. Johnston.

Mr. Sikora wondered about the required number and sizes for parking spots.

Ms. Johnston said they currently have 141 regular and 9 accessible spaces. 112 are required; required dimensions are 200 square feet which generally equates to 10 x 20 feet.

There were no further questions. The applicant was not present to speak and there were no public comments. The Chair moved to Board Discussion.

Mr. Sikora noted the goal for tabling this item from the June meeting was to explore other possibilities than a variance. He was disappointed a representative from the Vernon Group was not present to explain what might be the best option from their point of view in order to provide full information to the Board prior to a decision.

Ms. Smith felt the best option was option one, to deny the variance and reach compliance by removing parking spaces.

Mr. Sterenberg agreed, noting it would not cause undue hardship, and said alternatives were available that would provide the best placement for the sign.

Mr. Sikora concurred and noted it would have been helpful to have a discussion with the applicant in case the Board was missing something. He asked whether the two current signs would be removed if the variance were granted and what the next step would be for the applicant if the variance were denied.

Ms. Johnston said the two current signs are non-conforming and if the variance were approved they would be removed. Regardless of the Board's decision, when a new sign permit is issued the two current signs will need to be removed. If the variance is denied, the applicant will need to provide a new proposal.

Hearing no further discussion, Chairperson Sterenberg asked for a motion.

Ms. Culp made a motion to deny the variance request from the minimum 10-foot sign setback from the West Main right-of-way down to zero feet by the Vernon Group, based on information provided by Staff and Board discussion. Mr. Sikora supported the motion. The motion was approved unanimously.

SITE PLAN REVIEW: DRAKE FARMSTEAD CARRIAGE BARN
OSHTEMO TOWNSHIP PARK'S DEPARTMENT REQUESTED SITE PLAN
APPROVAL FOR A 1,200 SQUARE FOOT CARRIAGE BARN, AS WELL AS A
PICNIC SHELTER, WITHIN THE DRAKE FARMSTEAD PARK LOCATED AT 927
NORTH DRAKE ROAD, PARCEL NO. 3905-13-230-031.

Chairperson Sterenberg asked Ms. Johnston for her review of this application.

Ms. Johnston said development of the Drake Farmstead Park, a unique new 26-acre community park near the intersection of West Main Street and Drake Road, has been an ongoing project of the Townships for many years. A master plan was created in 2015 and the Parks Department has been steadily working on improvements through public/private partnerships, grants, donations, and Township contributions.

She said the park master plan includes walking trails, a picnic shelter and outdoor classroom, educational garden, multi-purpose building designed in the style of a carriage barn for indoor programs and events, and more. The site plan includes:

- A 1,200 square foot multi-purpose building (carriage barn) with 320 square foot porch for educational programs and private events, with a work area and accessible restrooms.
- Improvements to the gravel driveway, which includes a loop at the western end near the existing home and planned carriage barn. The total length of the gravel driveway is approximately 1,800 linear feet.

- The addition of a parking area, which will total approximately 23,400 square feet and will accommodate approximately 50 parking spaces.
- A picnic shelter totaling 1,200 square feet, to hold at least four picnic tables.

Ms. Johnston noted the largest majority of the Drake Farmstead Park is zoned C: Local Business District, with the frontage along Drake Road zoned R-3: Residence District for a depth of 320 feet. However, the property is also zoned with the Historic Overlay, which is the prevailing zoning district for development on the property.

Section 54.200 of the Historic Overlay Zone indicates any use significant to the historical purposes or characteristics of the property is permitted by right. The intent of the Drake Farmstead Park is to try and retain as much of the historical character of the property as possible considering the intended use as a park. The design of the multi-purpose carriage barn will be historically appropriate to the existing Drake house.

She indicated both the carriage barn and picnic shelter meet all setback requirements for the site. Only residential security lighting, which will be downward directed, is intended for the carriage barn so a photometric plan is not required. No lighting is planned for the picnic shelter.

The Landscaping Ordinance is more than satisfied with existing vegetation on site. The Parks Department is working towards removing invasive species, planting native trees, developing an educational garden, and reconstructing six acres of prairie.

For this phase of the park development, approximately half of the intended parking lot will be constructed. As the carriage barn increases in size during later phases, the parking lot will also be increased. The lot will be approximately 180 feet by 130 feet, totaling 23,400 square feet.

Section 68.300.C indicates that parking lots and associated drives are to be paved with a surface resistant to erosion. Use of permeable materials, similar to a paved surface, is encouraged. The parking lot and access drive are currently planned to be gravel, which is in keeping with the historic character of the Park. Section 54.200 of the Historic Overlay Zone states any use significant to the historical characteristics of the property is permitted.

Section 68.300 requires parking spaces to be 200 square feet in size, which generally equates to a 10 foot by 20-foot space. There is also a requirement for a 24-foot drive aisle. Based on these regulations, the planned configuration of the lot will allow for approximately 50 parking spaces. In addition, there is also a small overflow lot adjacent to the Drake home, which will accommodate approximately 10 spaces.

Based on the size of the carriage barn and new picnic shelter, Section 68.400 of the Off-Street Parking Ordinance indicates 44 spaces are needed on site. However, Section 68.300.K allows the maximum number of parking spaces to be 110 percent of

the minimum required by Section 68.400. Based on this allowance, a total of 49 spaces are permitted.

Section 68.300.K goes on to say that parking spaces may total more than 110 percent if approved by the reviewing body. When considering the other uses within the Drake Farmstead Park, for example the planned trails system and the Drake house, the 11 additional parking spaces beyond the 49 spaces allowed does not seem excessive.

Due to the gravel nature of the parking lot, delineating layout of the spaces and drive aisles to meet ordinance standards will be difficult to achieve. Therefore, some type of space markers will be needed to ensure proper parking and drive aisle spacing is achieved.

The Township Engineer did not have any concerns with the site plan. The size of the Park allows for storm water to be managed onsite, as required by code. The Fire Marshal reviewed the plan with the Parks Director and indicated concern with the loop road and ensuring fire truck access. Parks staff will work with the Fire Department to confirm the loop road meets the necessary curve radii.

Ms. Johnston said Staff is satisfied the project meets all applicable ordinance requirements and recommended approval with the following conditions:

1. Approval of the additional parking spaces beyond the maximum allowable permitted by Section 68.300.K.
2. Parking space markers of some type shall be utilized within the gravel parking lot to ensure proper drive aisle widths and parking space dimensions are achieved.

Chairperson Sterenberg asked if there were questions from the Board.

In answer to a question from Mr. Sikora regarding whether a conditioning approval of the turn radii by the Fire Marshal would be appropriate and consistent with other site approval requests, Ms. Johnston said the Board could choose to add this condition for consistency with other site plan approvals.

She also responded to questions about the need for extra parking spaces, citing the variety of activities at the Park and noted it has not yet been determined what type of parking markers might be used.

Hearing no further questions, Chairperson Sterenberg asked whether the applicant wished to speak.

Ms. Karen High, Parks Director for Oshtemo Township, explained moving the carriage house from the original planned location was due to the steep slope behind the house that would have required 11 feet of fill.

She also noted phase one includes funding from Michigan Department of Natural Resources and Oshtemo Township for trails, interpretive signs, picnic shelter and the parking lot.

Ms. High introduced Mr. Chris Newman who will be building the carriage barn with timber construction in conjunction with Glas Associates, in order to keep with the historical and rural character of the Farmstead and the authentic feel desired.

She also noted they originally planned a partnership to develop a hay field but were unable to find a partner. Instead, a Kalamazoo Community Foundation grant will allow a six acre prairie reconstruction with interpretive trails and signs. This is what the Drakes would have found when the family arrived to settle the land. It will provide a pollinator and wildlife habitat and is actually more desirable than a hay field.

Chairperson Sterenberg thanked Ms. High for her work on this project, noted the Farmstead development will be a great addition to the Township and moved to Board Discussion.

Mr. Sikora confirmed the setbacks meet ordinance and that appropriate numbers and locations for accessible parking spots will be included.

Hearing no further comments, the Chair asked for a motion.

Ms. Culp made a motion to approve the request from Oshtemo Township Park's Department for site plan approval, including the two stated conditions by Staff, and with the addition of a third condition that the Fire Marshal approve the turn radii of the looped drive provided for fire trucks. The motion was supported by Mr. Sikora. The motion was approved unanimously.

Any Other Business

Ms. Johnston noted there will be an August ZBA meeting to consider another sign variance request.

ZBA Member Comments

There were no comments.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 3:40 p.m.

Minutes prepared:
July 25, 2018

Minutes approved:
_____, 2018



Date: August 12th, 2018

Mtg Date: August 28th, 2018

To: Zoning Board of Appeals

From: Ben Clark, Zoning Administrator

Applicant: Michael and Maggie Sullivan

Owner: Michael and Maggie Sullivan

Property: 9979 West Main Street, parcel number 05-17-301-010

Zoning: RR: Rural Residential

Request: Setback relief for a residential accessory building

Section(s): 64.200—Setbacks in Agricultural and Residential Districts; 78.800—Accessory Buildings

Project Name: Sullivan accessory building setback variance request

OVERVIEW

The subject property and existing single-family home, located on lot one of the Springwood Hills plat near West Main and North 2nd Streets, was purchased by Michael and Maggie Sullivan in November of 2016. Sometime between 2009 and 2013, according to available aerial imagery, the previous owner erected an approximately 360 square-foot residential accessory building near the property’s south boundary, but did so without obtaining a building permit and therefore without formal Township review and zoning approval. This structure straddles the common property line between lots one and two, in clear violation of the Township’s standards for an accessory building of this size, per section *64.200: Setbacks and Sideline Spacing*, which dictates 13 feet of setback from any side or rear property lines in this particular case.

When the Sullivans purchased lot one towards the end of 2016, they were provided with a signed seller’s disclosure statement that not only had no improvements been made to the property without the necessary permits, but that there were no encroachments or zoning violations either. It has since become evident that such violations are present, and while the current owners have been working with the Southwest Michigan Building Authority to resolve outstanding building code violations, the zoning issues associated with the location of the

accessory building have yet to be addressed. The Sullivans have explored various options for compliance, and have identified a setback variance as the most viable and reasonable way to correct this historic, preexisting issue. Specifically, the applicants would like to move the accessory building onto their property, albeit to a narrow corridor that runs towards the adjacent lake to the east. In order to facilitate this correction, the applicants request to be allowed reduced setbacks of two feet along the west and south boundaries and five feet to the east—relief of 11 and eight feet, respectively.

APPROVAL CRITERIA

The Zoning Enabling Act of Michigan outlines that when considering a variance request, the Zoning Board of Appeals must ensure that the “spirit of the ordinance is observed, public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of a practical difficulty for a nonuse (dimensional) variance. In addition, applicants must demonstrate that their plight is due to the unique circumstances particular to that property and that the problem is not self-created.

The request by the applicant is a nonuse variance. The ZBA should review the following standards in considering the variance request:

Standards of Approval of a Nonuse Variance (practical difficulty):

Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?

Comment: Evaluating this variance request, Township staff have determined that the existing accessory building cannot reasonably be relocated elsewhere on the subject property without giving rise to other zoning issues or causing the applicant to incur unnecessary burden:

- Moving the building anywhere north of the house would encroach into the West Main setback.
- The eastern area of the property is either occupied by a paved driveway/turnaround area or a stone retaining wall and marked elevation changes. The structure could hypothetically be moved to the end of the driveway, but it would be situated between a stone wall and a metal pool enclosure fence, leaving approximately one foot of clearance on either side of the building.
- Along the south property line, there is insufficient room to locate the structure due to the dwelling’s proximity to the lot boundary.
- Moving the building to the property’s front yard adjacent to 2nd Street would require land clearing and regrading and the building would have to

be disassembled to be moved, as there is no accessible path via which the structure can be relocated.

Staff would also like to note that the applicants have attempted to purchase land from their neighbor to the south in order to correct this issue, but that party was unwilling to enter into such a sales agreement. Similarly, the possibility of a long-term lease, which is recognized as property transaction per the State of Michigan's Land Division Act, was also explored, but it was determined that terms necessary to ensure that the encroachment would not be reestablished in the future could not be mutually arrived at by both parties involved.

*Standard: Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Comment: Researching past actions by the Zoning Board of Appeals, staff have identified the following decisions regarding setback relief for residential accessory buildings;

1. Michael Noora, 10540 West J Avenue, March 28th, 2017:

Citing challenging topography, restrictive parcel shape and size, and existing structures and other permanent objects on the property, the ZBA granted permission for an accessory building to located eight feet from a side property line when 16 feet would typically be required.

2. Matthew and Diane Basse, 2433 North 5th Street, January 24th, 2017:

The applicant sought and was granted sideline setback relief in order to place a residential accessory building three feet from the south property line as opposed to the ordinance-mandated 17 feet. Deliberating the case, the ZBA found that various physical difficulties associated with the subject property meant that the only reasonably suitable location for a new structure was in the narrow strip of land near the street, necessitating a variance.

3. James Heim, 8269 West Main Street, November 11th, 2009:

The applicant had mistakenly erected a residential accessory building partially onto a neighbor's property. As part of the attempt to correct this encroachment, Mr. Heim was attempting to purchase property from his neighbor, but that party desired to sell as little land as possible. To wit, the applicant had arrived at a tentative agreement with his neighbor to purchase only enough land to establish a ten-foot setback for the non-compliant structure, which would still leave an eight-foot setback deficiency.

Acknowledging that the applicant was making a good faith effort to resolve a past mistake, the ZBA found that granting the desired setback relief was the most practical and reasonable way to correct an existing compliance issue.

Standard: Unique Physical Circumstances

Are there unique physical limitations or conditions which prevent compliance?

Comment: Much of the subject property is already occupied by the primary dwelling, stone retaining walls and grade changes, or paved driveway areas. While the applicant does own a strip of land leading to the lake to the east, it is too narrow to accommodate the accessory building. Due to various obstacles between the current site of the structure and the North 2nd Street front yard, the structure would likely have to be completely disassembled in order to be moved to that area. Furthermore, the large front setback from West Main Street—170 feet from the center of the right-of-way—means that the entirety of the subject lot’s north front yard is restricted and cannot accommodate building placement.

Standard: Self-Created Hardship

Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: Upon purchasing the subject property, the applicant was told explicitly that there were no zoning compliance issues. The illegal placement of the accessory building predates their ownership; therefore the conditions and circumstances are not self-created.

Standard: Will the spirit of the Ordinance be observed, the public health, safety, and welfare secured, and substantial justice done if the variance is granted?

Comment: Township staff view granting this ordinance as a reasonable way to correct a longstanding compliance issue. Approval of the requested variance would have no foreseeable deleterious impact on public health, safety, and general welfare. Indeed, the existing encroachment has existed for *at least* five years—likely longer—without soliciting complaint from the property owners to the south.

RECOMMENDATION

Township staff recommend approval of the requested variance from section 64.200 of the Oshtemo Township Zoning Ordinance in order to allow a residential accessory building to be placed not less than two feet from the south and west property lines and five feet from the east property line, when 13 feet would typically be required, based upon the following findings:

1. Compliance with the Zoning Ordinance is unnecessarily burdensome and the applicant has exhausted other reasonable options to correct the encroachment.
2. Past decisions made by the Zoning Board of Appeals support this request.
3. The applicants had no part in creating this non-conformity.
4. Granting of the requested variance would not compromise the health, safety, and general welfare of the public.

Respectfully Submitted,



Ben Clark
Zoning Administrator

Attachments:

- Application
- Applicant statement
- Aerial annotated map
- Sketch site plan for proposed relocation
- Seller's disclosure statement
- Statement from the Southwest Michigan Building Authority regarding absence of building permits
- Attorney correspondence
- Recent property survey
- Applicant-provide photographs



7275 W. Main Street, Kalamazoo, Michigan 49009-9334
Phone: 269-216-5223 Fax: 269-375-7180

PLEASE PRINT

PROJECT NAME & ADDRESS 9979 W. MAIN Kalamazoo MI.

PLANNING & ZONING APPLICATION

Applicant Name :

Michael Sullivan
~~Company~~ Maggie Sullivan

Address 9979 W. MAIN
Kalamazoo MI. 49009

E-mail sullyhp2@yahoo.com

Telephone 269-271-2203 Fax _____

Interest in Property Home owner

THIS
SPACE
FOR
TOWNSHIP
USE
ONLY

Fee Amount _____

Escrow Amount _____

OWNER*:

Michael Sullivan
Maggie Sullivan

Name

Address 9979 W. MAIN

Email Kalamazoo MI. 49009

Phone & Fax _____

(*If different from the Applicant)

NATURE OF THE REQUEST: (Please check the appropriate item(s))

- | | |
|---|---|
| <input type="checkbox"/> Planning Escrow-1042 | <input type="checkbox"/> Land Division-1090 |
| <input type="checkbox"/> Site Plan Review-1088 | <input type="checkbox"/> Subdivision Plat Review-1089 |
| <input type="checkbox"/> Administrative Site Plan Review-1086 | <input type="checkbox"/> Rezoning-1091 |
| <input type="checkbox"/> Special Exception Use-1085 | <input type="checkbox"/> Interpretation-1082 |
| <input checked="" type="checkbox"/> Zoning Variance-1092 | <input type="checkbox"/> Text Amendment-1081 |
| <input type="checkbox"/> Site Condominium-1084 | <input type="checkbox"/> Sign Deviation-1080 |
| <input type="checkbox"/> Accessory Building Review-1083 | Other: _____ |

BRIEFLY DESCRIBE YOUR REQUEST (Use Attachments if Necessary):

See Attachment

LEGAL DESCRIPTION OF PROPERTY (Use Attachments if Necessary):

Lot # 1 of Springwood Hills Subdivision

PARCEL NUMBER: 3905-

17-301-010

ADDRESS OF PROPERTY:

PRESENT USE OF THE PROPERTY:

PRESENT ZONING

R-2

SIZE OF PROPERTY

1.1 Acres

?

**NAME(S) & ADDRESS(ES) OF ALL OTHER PERSONS, CORPORATIONS, OR FIRMS
HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY:**

Name(s)

Address(es)

MARGARET MCGEE

2927 W. MAIN ST

Michael SULLIVAN

9979 West Main ST

SIGNATURES

I (we) the undersigned certify that the information contained on this application form and the required documents attached hereto are to the best of my (our) knowledge true and accurate. I (we) acknowledge that we have received the Township's Disclaimer Regarding Sewer and Water Infrastructure. By submitting this Planning & Zoning Application, I (we) grant permission for Oshtemo Township officials and agents to enter the subject property of the application as part of completing the reviews necessary to process the application.

Owner's Signature (* If different from Applicant)

Date

[Signature]

7/23/18

Applicant's Signature

Date

X Michael A Soler ****

7/23/18

PLEASE ATTACH ALL REQUIRED DOCUMENTS

Copies to:

- Planning Dir.-1
- Applicant -1
- Clerk -1
- Deputy Clerk, (only if Escrow)
- Attorney-1
- Assessor -1
- Planning Secretary - Original

2

Dear Zoning Board Officials,

We Mr. and Mrs. Sullivan home owners of 9979 W. Main Kalamazoo Michigan 49009 request a setback variance for our 18x20 shed on said property stated above.

We Mr. and Mrs. Sullivan home owners reside at said property 9979 W. Main Kalamazoo Michigan 49009 and purchased this property Oct 12, 2016.

Due to the fraudulent misrepresentation made by previous owner Robert Miller of said property has placed us Mr. and Mrs. Sullivan's in a hardship position.

The previous owner Robert Miller stated on the seller's disclosure statement that nothing on the property was ever built or altered without a permit. See Attachment

After living in the home for approximately 6 months we Mr. and Mrs. Sullivan discover that the shed on the property was not approved by the building department in Oshtemo and no permit was issued, for the shed to be built on the neighbor's property. (See Attachment from Oshtemo Township.)

The building is encroaching the neighbor's property by approximately 6 feet and said neighbors are requesting the building to be moved. After many attempts to try to work with the adjoining neighbor to do a lot line adjustment or an easement the neighbors are not willing to cooperate in anyway.

We the Sullivan's are willing to move the shed, but we have a very limited space in which we can place on our property. We the Sullivan's request a 2-foot set back so we can move the shed to the following area on their property (see site plan and survey.)

We are pleading and pray for reprieve from the townships ordinance set back requirements. We are requesting the variance from the Oshtemo township zoning board for the following reasons.

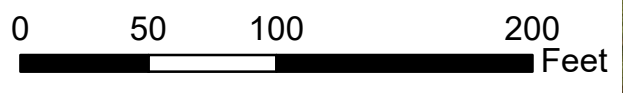
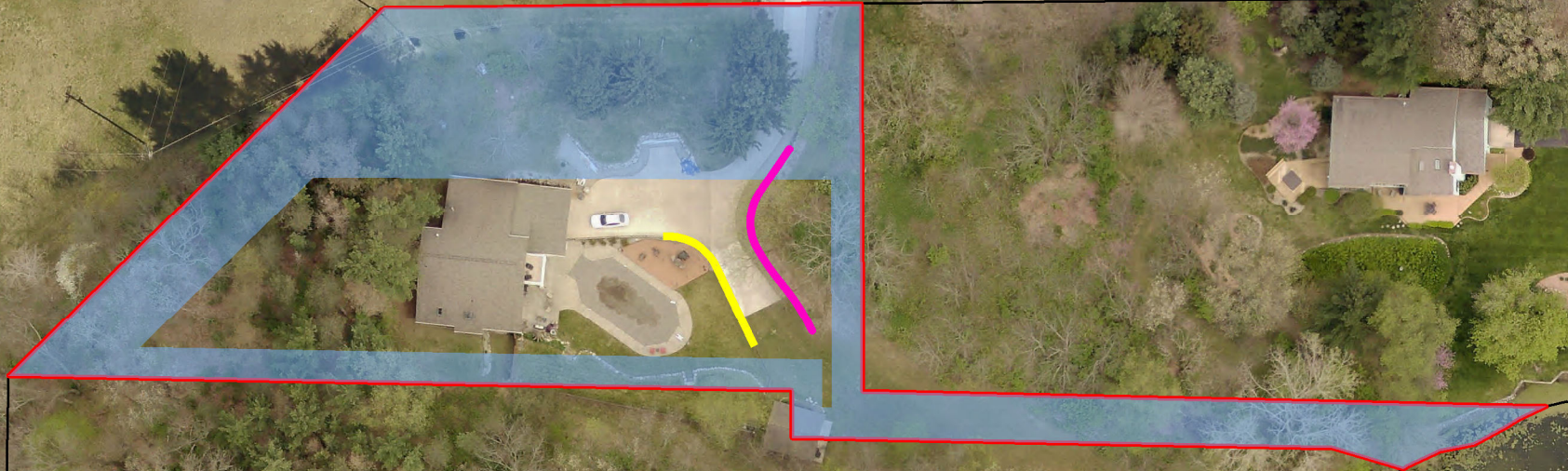
- 1) We Mr. and Mrs. Sullivan did not create the hardship we are in.
The property when purchased from the previous owner was fraudulently misrepresented. (See the seller's disclosure statement).**
- 2) It seems that in this situation that the a few parties played a role in where we are today with the building and its current location. The previous owner in his activities of building a storage shed without a permit. The construction of the building was un noticed by the township when it was erected approximately 10 years ago. The storage building while under construction was dismissed as an issue by the adjoining property owners in which part of the building is currently sitting on. Note: (The current owners were the owners when the shed was built) The reason we say dismissed is because the adjoining land owners stated in front of 3 witnesses, "We thought the structure was being built on our land" and further stated: " We did not say anything".**
- 3) Due to the terrain of the land with slopes and the bolder retaining walls and the location of the swimming pool, it prohibits having the storage shed moved to any other location on the property. See Pictures.**
- 4) If the zoning board offers us leniency and grants a setback variance it would resolve the issue with the adjoining property owner having part of our shed on their land.**








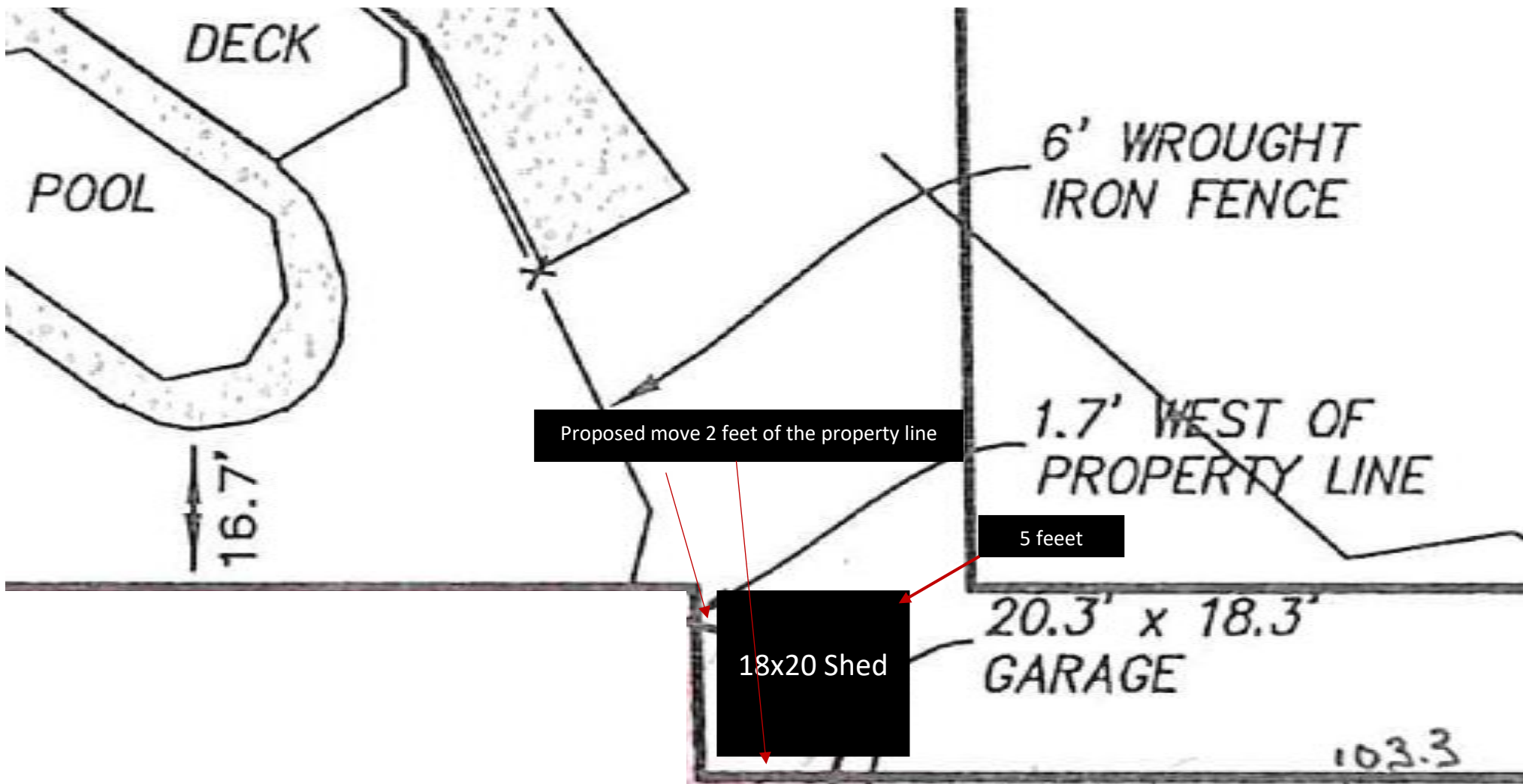
9979 WEST MAIN STREET

W MAIN ST

N 2ND ST



-  Subject Property
-  Other Property Line
-  Accessory Building Setback Area
-  Metal Pool Enclosure Fence
-  Stone Retaining Wall



DECK

POOL

16.7'

Proposed move 2 feet of the property line

6' WROUGHT IRON FENCE

1.7' WEST OF PROPERTY LINE

5 feet

18x20 Shed

20.3' x 18.3' GARAGE

103.3

SELLER'S DISCLOSURE STATEMENT

Property Address: 9979 W Main Street Kalamazoo Michigan
Street City, Village, or Township

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the seller disclosure act. This statement is a disclosure of the condition and information concerning the property, known by the seller. Unless otherwise advised, the seller does not possess any expertise in construction, architecture, engineering, or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction, and is not a substitute for any inspections or warranties the buyer may wish to obtain.

Seller's Disclosure: The seller discloses the following information with the knowledge that even though this is not a warranty, the seller specifically makes the following representations based on the seller's knowledge at the signing of this document. Upon receiving this statement from the seller, the seller's agent is required to provide a copy to the buyer or the agent of the buyer. The seller authorizes its agent(s) to provide a copy of this statement to any prospective buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the seller and are not the representations of the seller's agent(s), if any. **THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.**

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order (the items below are included in the sale of the property only if the purchase agreement so provides):

Item	Yes	No	Unknown	Not Available
Range/Oven	X			
Dishwasher	X			
Refrigerator	X			
Hood/fan	X			
Disposal	X			
TV antenna, TV rotor & controls				X
Electrical system	X			
Garage door opener remote control	X			
Alarm system				X
Intercom				X
Central Vacuum				X
Attic fan				X
Pool heater, wall liner & equipment	X			
Microwave	X			
Trash compactor				X
Ceiling fan	X			
Sauna/hot tub	X			
Washer	X			

Item	Yes	No	Unknown	Not Available
Dryer	X			
Lawn sprinkler system	X			
Water heater	X			
Plumbing system	X			
Water softener/conditioner	X			
Well & pump				X
Septic tank & drain field	X			
Sump pump				X
City Water System	X			
City Sewer System				X
Central air conditioning	X			
Central heating system	X			
Wall furnace				X
Humidifier				X
Electronic air filter				X
Solar heating system				X
Fireplace & Chimney gnr?	X			
Wood burning system				X

Explanations (attach additional sheets if necessary):

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED, WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

- Basement/crawl space:** Has there been evidence of water? N/A yes ___ no ___
 If yes, please explain: _____
- Insulation:** Describe, if known SPF / cellulose
 Urea Formaldehyde Foam Insulation (UFFI) is installed? _____ unknown ___ yes ___ no X

Page 2 of 3
 © Copyright Greater Kalamazoo Association of REALTORS®
 Seller's Initial RM Buyer's Initial _____

Property conditions, improvements & additional information (continued):

3. Roof: Leaks? _____ yes ___ no X
 Approximate age if known 5 years
4. Well: Type of well (depth/diameter, age, and repair history, if known): _____
 Has the water been tested? _____ yes ___ no X
 If yes, date of last report/results: _____
5. Septic tanks/drain fields: Condition, if known: (GOOD)
6. Heating System: Type/approximate age: 5 yrs
7. Plumbing system: Type: copper _____ galvanized _____ other X UNK.
 Any known problems? N/A
8. Electrical system: Any known problems? NONE
9. History of infestation, if any: (termites, carpenter ants, etc.) NA
10. Environmental Problems: Are you aware of any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel, or chemical storage tanks and contaminated soil on the property.
 _____ unknown ___ yes ___ no X
 If yes, please explain: _____

11. Flood insurance: Do you have flood insurance on the property? _____ unknown ___ yes ___ no X
12. Mineral rights: Do you own the mineral rights? _____ unknown ___ yes ___ no X

Other items: Are you aware of any of the following:

1. Features of the property shared in common with the adjoining landowners, such as walls, fences, roads, and driveways, or other features whose use or responsibility for maintenance may have an effect on the property? _____ unknown ___ yes ___ no X
2. Any encroachments, easements, zoning violations, or nonconforming uses? _____ unknown ___ yes ___ no X
3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others), or a homeowners' association that has any authority over the property? _____ unknown ___ yes ___ no X
4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors? _____ unknown ___ yes ___ no X
5. Settling, flooding, drainage, structural, or grading problems? _____ unknown ___ yes ___ no X
6. Major damage to the property from fire, wind, floods, or landslides? _____ unknown ___ yes ___ no X
7. Any underground storage tanks? _____ unknown X yes ___ no
8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.? _____ unknown ___ yes ___ no X
9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge? _____ unknown ___ yes ___ no X
10. Any outstanding municipal assessments or fees? _____ unknown ___ yes ___ no X
11. Any pending litigation that could affect the property or the seller's right to convey the property? _____ unknown ___ yes ___ no X
- If the answer to any of these questions is yes, please explain. Attach additional sheets, if necessary: _____

The seller has lived in the residence on the property from _____ (date) to _____ (date). The seller has owned the property since _____ (date). The seller has indicated above the condition of all the items based on information known to the seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, seller will immediately disclose the changes to buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or broker's agent.

Seller certifies that the information in this statement is true and correct to the best of seller's knowledge as of the date of seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 26.721 TO 26.732, IS AVAILABLE TO THE PUBLIC. BUYERS SEEKING THAT INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, HOMESTEAD EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE. BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.

Seller Robert Miller Date 9-11-16

Seller _____ Date _____

Buyer has read and acknowledges receipt of this statement.

Buyer Michael Sullivan Time: _____

Buyer _____ Time: _____

James N. Rodbard, P.C.

Attorney at Law
141 E. Michigan Avenue
Suite 601
Kalamazoo, MI 49007
Tele: (269) 342-6000
Fax: (269) 342-6499

jnrket@gmail.com

JAMES N. RODBARD

July 9, 2018

Ed Annen, Jr.
5823 South Westnedge Avenue
Suite A
Portage, MI 49002

RE: Rodbard/Sullivan and McGhee

Dear Ed:

At this point, my clients are no longer interested in pursuing a license agreement with Mike Sullivan or Maggie McGhee. Therefore, we request that your clients immediately remove their encroachments from my clients' property. Please provide me with their plans and next steps within the next week or so so we will know that they are going to proceed with rectifying this situation. Otherwise, my clients are prepared to proceed with a quiet title action. If you have any questions, please let me know.

Very truly yours,

JAMES N. RODBARD, P.C.



James N. Rodbard

JNR/ah

cc: Eric and Cheryl Rodbard

EDWARD J. ANNEN, JR.
Attorney at Law
5823 S. Westnedge Ave., Suite A
Portage, MI 49002
1-269-343-0802
Fax: 1-269-343-2425
edannenjr@aol.com

October 31, 2017

Mr. & Mrs. Rick Rodbard
690 N. 2nd Street
Kalamazoo, MI 49009

Re: Encroachment

Dear Mr. & Mrs. Rodbard:

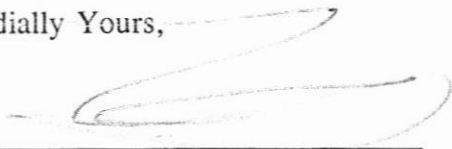
I represent your neighbors Mr. & Mrs. Sullivan. Although they were not the owners of their property when it was constructed, they have become aware that a storage shed located near their swimming pool is actually located on real property owned by yourselves. The shed was constructed on that location by a Mr. Miller, the previous owner.

The purpose of this letter is to determine if we can address and correct this encroachment in a civil manner. Several options come into mind, such as a land swap of an equal size of property from the Sullivans to you and the equal land back to the Sullivans on which the shed sits.

We would like to find a time to sit down with you and discuss if there is a peaceful way to resolve this encroachment matter.

Please contact me to determine if there is a time we can meet.

Cordially Yours,



Ed Annen, Jr.

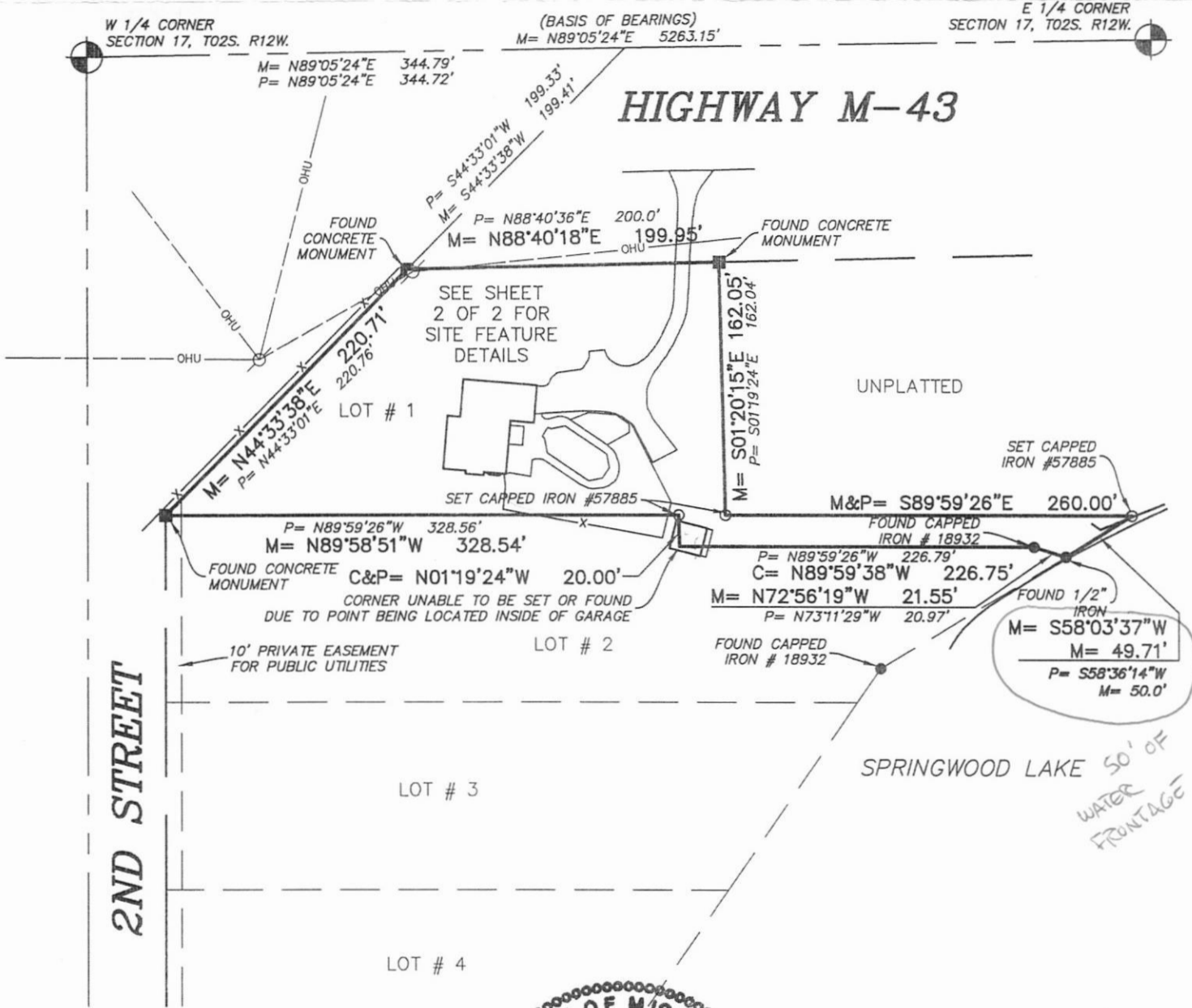
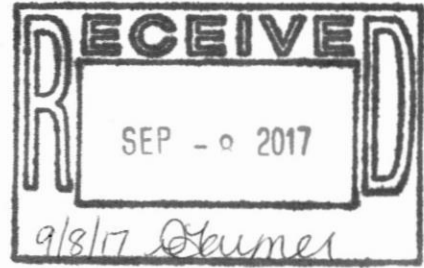
ccc

PLAT OF SURVEY

LEGAL DESCRIPTION

SITUATED IN THE TOWNSHIP OF OSHTEMO, COUNTY OF KALAMAZOO, STATE OF MICHIGAN AND IS DESCRIBED AS FOLLOWS:

LOT NUMBER 1, SPRINGWOOD HILLS



LEGEND

- Set Conc. Mon.
- Found Conc. Mon.
- Set Capped Rebar #57885
- Found Iron
- P= Platted
- D= Described
- M= Measured
- R= Record
- C= Calculated

SCALE: 1"=100'

ADDRESS: 9979 WEST MAIN STREET
Tax Parcel No.: 05-17-301-010

Travis Krentz
Travis Krentz P.S. No. 57885

THE DESCRIPTION WAS GIVEN TO US BY THE PERSON CERTIFIED TO, OR WAS PREPARED BY US FROM INFORMATION OR DOCUMENTS GIVEN TO US BY THE PERSON CERTIFIED TO, AND SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE INSURANCE POLICY FOR ACCURACY, EASEMENTS OR EXCEPTIONS.



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Detroit, MI - 734-368-9483

FOR **SULLIVAN, MICHAEL & MCGEE MARGARET**

SECTION 17 T. 02 S., R. 12 W.

DATE 07-17-2017

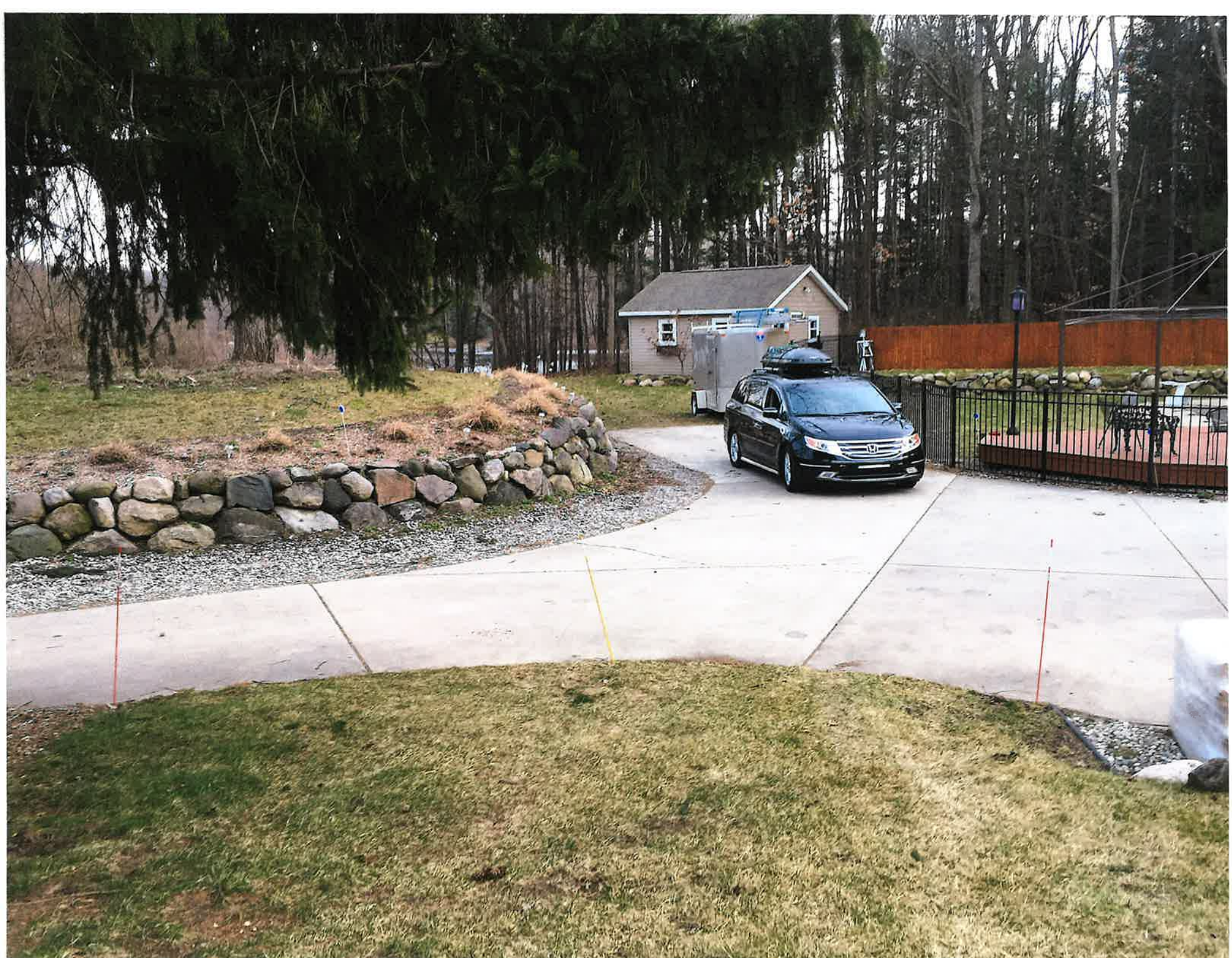
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SHEET 1 OF 2

JOB No. 1750495.5A

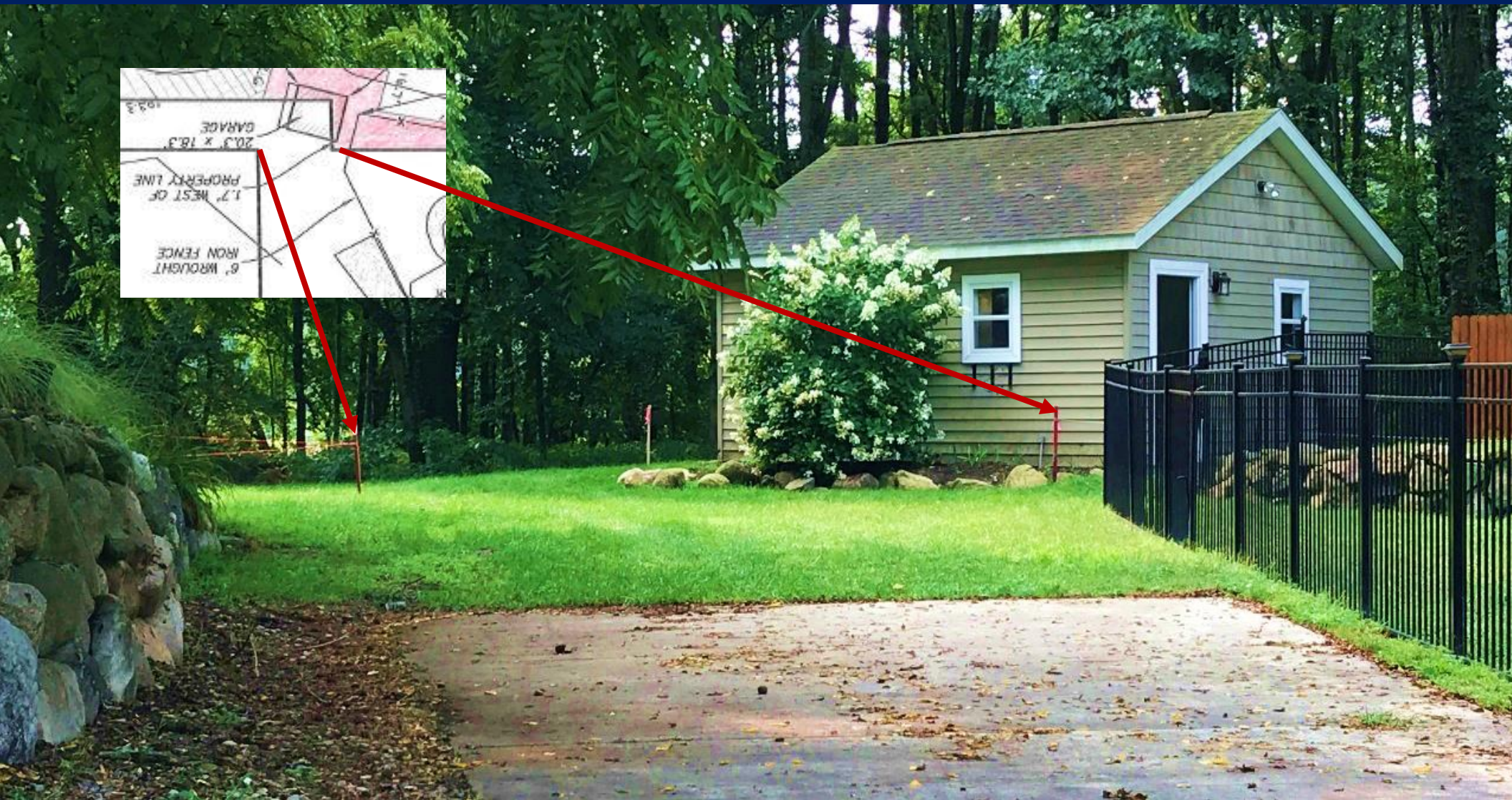














PROPERTY LINE

20.3' x 18.3'
GARAGE

103.8

50.6

6.1' SOUTH
OF PROPERTY LINE

44.2

11.7