



Planning and Urban Design

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To: Board of Zoning Appeals
From: Planning and Urban Design Staff
Date: July 12, 2021
Re: **BOZA2021-011**

GENERAL INFORMATION

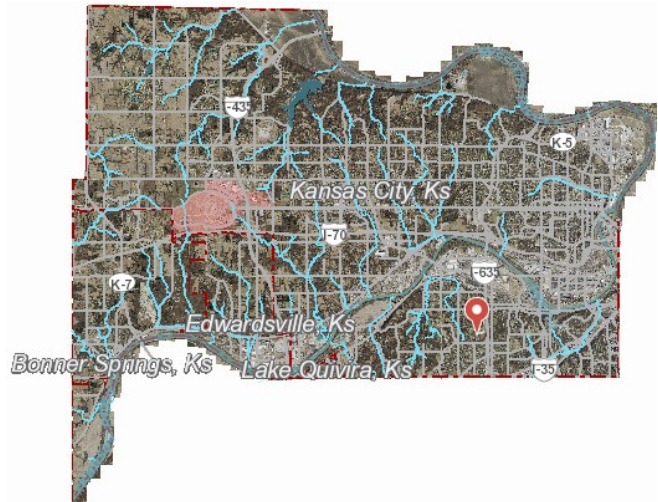
Applicant:
Joe Morton

Status of Applicant:
Property Owner
4621 Dover Street
Kansas City, KS 66106

Requested Actions:
Approval of a variance request.

Date of Application:
March 10, 2021

Purpose:
This appeal has been filed to grant a variance for an accessory building that exceeds the maximum footprint allowed. Section 27-609(2) states that total area of such detached accessory building shall not exceed 1,000 square feet. The appellant is requesting an accessory building measuring a total area of 2,400 square feet, a violation of 1,400 square feet.



Property Location: 4621 Dover Street, Kansas City, KS 66106

Commission District: Commissioner At Large: Tom Burroughs
District #6 Commissioner: Angela Markley

Existing Zoning: R-1 Single Family District

Adjacent Zoning: **North:** R-1 Single Family District
South: R-1 Single Family District
East: R-1 Single Family District
West: R-1 Single Family District

Adjacent Uses: **North:** Single-family residence
South: Single-family residences
East: Single-family residence
West: Single-family residence

Code Enforcement History: There are no outstanding violations recorded at this property. The subject property has been previously cited by Code Enforcement:
June 11, 2020- Multiple Violations
March 27, 2019- Accessory structure without permit
October 4, 2017- Environmental Junk
April 11, 2007- Environmental Debris

Neighborhood Characteristics: The subject property is within the Turner Statistical Neighborhood and is not within any Neighborhood Group boundary. The immediate neighborhood primarily consists of single-family lots, but to the east and north the properties are large, industrially zoned parcels. The neighborhood is immediately to the west of Interstate 635.

Total Tract Size: 0.49 Acre

Master Area Plan: The subject property is within the City-Wide Master Plan.

Master Plan Designation: The City-Wide Master Plan designates this property as Low-Density Residential. Low-Density Residential allows for single-family residences and institutions such as elementary and middle schools, libraries, and small places of worship. Low-Density Residential discourages all industrial uses.

Major Street Plan: The Major Street Plan classifies Dover Street as a Local/Neighborhood Street.

Required Parking:	Section 27-454(e) requires two (2) parking spaces for each single-family residence, at least one (1) of which must be in a garage or carport. The property has at least one (1) parking space in a attached garage and at least one (1) parking spaces available on the driveway.
Advertisement:	<u>The Wyandotte Echo</u> – April 15, 2021, May 20, 2021 and June 17, 2021 Letters to Property Owners – April 16, 2021, May 21, 2021 and June 17, 2021
Public Hearings:	May 10, 2021 and July 12, 2021
Public Support:	None to date.
Public Opposition:	A neighbor has contacted Staff to express opposition to the accessory structure as proposed. There were four (4) persons present in opposition at the May 10, 2021 meeting.

STATUTORY REQUIREMENTS/FACTORS TO BE CONSIDERED

- 1. The variance requested arises from such condition which is unique to the property in question, and which is not ordinarily found in the same zone or district; and which is not created by an action or actions of the property owner or the applicant.***

The applicant is requesting a variance for an accessory structure that exceeds the maximum footprint allowed in the R-1 Zoning Districts. The subject property is only 0.49 acre. The parcel is not uniquely large, even when compared to nearby parcels in the area. The only unique aspect of the subject property is that the primary residence is located in the eastern half of the parcel, which leaves the entire western half of the parcel, which measures approximately one-quarter (1/4) acre. Therefore, the variance does not arise from such condition which is unique to the property in question.

- 2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.***

The proposed accessory structure will have a footprint larger than the applicant's primary residence. As the applicant has pointed out, constructing this accessory structure "would be no different than if there was a house on said lot". An accessory structure that is sized as a residence rather than a garage, but which is also held to the less-restrictive accessory structure standards, will affect the right of adjacent property owners. The applicant has provided two (2) plot plans, the first showing the proposed structure with a rear yard setback of 15 feet, and

the other plot plan showing the proposed structure with a rear setback of 30 feet. In the R-1 District the rear yard setback for a primary residence is 30 feet. In contrast, the rear yard setback for an accessory structure is just three (3) feet. The rear yard setback requirement for primary structures applies to every newly constructed residence zoned R-1, from a residence with the least area allowed by the District's regulations (864 square feet) to a residence with a footprint of 2,400 square feet. Even if the proposed accessory structure was constructed with a 30-foot rear yard setback, the size of the structure is larger than any of the adjacent residences on the same block. While a primary residence with the same footprint could be constructed there by right, such primary structure would still have an adverse effect on the rights of adjacent property owners or residents; the only difference is that there are fewer methods of addressing a structure allowed by right that complies with the Zoning Code. In this case, the applicant is requesting an exception to the Zoning Code, and a requisite factor in granting such an exception is considering the adverse effect it may have on the neighbors. The adverse effect is still present, regardless of if the structure is a primary residence or an accessory structure. Therefore, granting the permit for the variance will adversely affect the rights of adjacent property owners or residents.

3. *The strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

Strict application of the provisions of the zoning ordinance would require the applicant to construct an accessory structure with a footprint no greater than 1,000 square feet, a footprint approximately 58% smaller than proposed. Having an accessory structure of 1,000 square feet or less is the standard for single-family residences in Wyandotte County, which hardly seems to place an unnecessary hardship on homeowners. Therefore, strict application of the relevant provisions of the zoning ordinance of which variance is requested does not constitute an unnecessary hardship upon the applicant.

4. *The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

Based on the footprint dimensions provided by the applicant, there is a concern that the size and scale of the accessory structure does not conform with the desired layout of a single-family neighborhood. Improper massing and sizing, however, is not so great an issue that it adversely affects the public health, safety, or general welfare.

5. *The granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.*

The spirit of the ordinance is to prevent the overcrowding of a rear yard or the aesthetic of an accessory structure visually dominating the primary residence. The size and scale of the proposed accessory structure risks both dominating the

visual aesthetic of the subject property and circumventing District regulations under the guise of an accessory structure. The applicant's primary residence has a footprint of 1,552 square feet and a total living area of 2,271 square feet. The proposed accessory structure has a footprint of 2,400 square feet, which well exceeds even the total living space of the primary residence, much less the primary residence's footprint. As pointed out by both the applicant and Staff, this proposed structure is the size equivalent of a house. The accessory structure, however, is not beholden to the same setbacks as a primary residence is, which results in a structure that has all the imposition and visual power of a house, but without the same setbacks from the neighboring properties. Therefore, the variance is opposed to the general spirit and intent of the zoning ordinance.

PREVIOUS ACTIONS

This application was held over from the May 10, 2021 meeting for the staff to work with the applicant regarding the square footage of the proposed building.

NEIGHBORHOOD MEETING

The applicant accepted emails and phone calls through April 26, 2021. Attached is the list of persons who attended the meeting, minutes, affidavit and/or submitted comments to the applicant (see the "Attachments" section of this report).

KEY ISSUES

Materiality of the Primary Residence and Accessory Structure
Setbacks
Sizing and Massing of the Accessory Structure
Visual Impact

STAFF COMMENTS AND SUGGESTIONS

Planning and Urban Design Comments:

General

- 1) Why is the applicant proposing to build a 2,400 square foot structure instead of a 1,000 square foot structure?

Applicant Response: *I would like to have an area to do wood working and another area to do preventative maintenance on my vehicles. This size would also give me the desired storage space I need.*

Staff Response: *There are still outstanding questions about why the applicant needs an accessory structure with a footprint greater than their primary residence. Similar variance requests have cited the need for more storage and workspace, but these previous applicants have managed to attain a comfortable space in an areas less than 2,400 square feet.*

- 2) Are there currently any other accessory structures on the property, or any structure beside the house?

Applicant Response: *As stated in my previous application, there is but it will be coming down once the structure is built.*

Staff Response: *Any existing accessory structures must be demolished before the proposed accessory structure is built. Otherwise, there would be a point in time when two (2) accessory structures would be on the property and thus the applicant would be in violation of Section 27-609(2).*

- 3) What is the height of the primary residence? Zoning Code prohibits an accessory structure to be taller than the primary residence.

Applicant Response: *35ft to the peak.*

Staff Response: Staff is unable to verify or refute this measurement, but in photographs of the residence taken by Staff the peak of the primary residence does not appear to be 35 feet above the average grade. Regardless, the accessory structure may not be taller than the primary residence, an issue that is exacerbated by the higher terrain where the accessory structure is proposed to sit.

- 4) Due to the size of the proposed structure, it should follow the same R-1 setback standards as a primary residence. Therefore, the applicant must submit a revised plot plan that shows a rear yard setback of at least 30 feet.

Applicant Response: *Attached are the both 15 ft and 30 ft drawings.*

Staff Response: *Both plot plans have been received and can be found in the "Attachments" section of this report.*

- 5) The applicant has stated that the accessory structure will be used at least in part for "preventative maintenance on [the applicant's] vehicles". The current plot plan does not demonstrate a driveway connecting the proposed structure to the right-of-way. How will the applicant get the vehicles in the accessory structure?

Applicant Response: *See attachments as per code the driveway will be constructed.*

Staff Response: *The submitted plot plans have included driveway access. Both plot plans have been received and can be found in the "Attachments" section of this report.*

- 6) The color and material of the proposed accessory structure must match the color and material of the primary residence, unless the materials of the

primary residence are materials not allowed on an accessory structure under Section 27-609(2)(a)-(b).

- a. Exterior wall materials are limited to customary residential finish materials, which include horizontal clapboard siding of all materials; wood and plywood siding; stone and brick, both actual and artificial; and textured finishes such as stucco and stucco board which visually cover the underlying material regardless of the underlying material.
- b. Specifically excluded materials are preformed, corrugated or ribbed metal, fiberglass or plastic sheets or panels, unless the metal has a factory-applied finish that closely matches the color of the primary structure.
- c. Standard concrete masonry units are excluded unless the walls of the building are painted the exact color of the primary structure.
- d. The exterior roofing materials for roofs sloped more than two (2) in 12 shall be shingles or tiles and not metal, fiberglass or plastic sheets, unless the metal roof has a factory-applied finish that closely matches the roof color of the primary structure or closely matches the color of the primary structure itself if the roof and walls of the accessory structure are to be the same color.

What material will be used to make the accessory structure?

Applicant Response: *Metal siding that will [be] painted white in color factory applied.*

Staff Response: *The proposed accessory structure must meet all requirements of Section 27-609(2)(a)-(b), not just the paint color.*

- 7) Per Section 27-609(6), only motor passenger cars, other operable domestic equipment, material or vehicles, or a truck of 10,000 pounds GVWR or less shall be kept, parked or stored for more than 48 hours in any 30-day period in a residential area. Only a single one (1) of each of the following may be stored: truck other than customary vans or pickup trucks, camping trailer, hauling trailer, boat, or recreational vehicle. The parking of vehicles or equipment shall not occur on lawn areas, or other locations that tend to visually downgrade the property and neighborhood. Parking shall be limited to areas that have an improved surface and such areas shall generally be located in close relationship to the garage or an otherwise vehicle-oriented section of the premises or be located in the rear yard, so that the lawn areas upon which the living section of the dwelling faces can be attractively maintained with grass, trees and shrubs. Use of any yard area for commercial or any non-residential or ongoing non-resident parking purposes is prohibited.

Applicant Response: *The yard will only be used with personal Vehicles to be parked in the structure.*

- 8) BOZA2021-011 was heard by the Board of Zoning Appeals on May 10, 2021, where it was remanded back to the Department of Planning and Urban Design Staff in order for the applicant to submit modified building plans for an

accessory structure with a smaller total floor area. Staff and the applicant have spoken several times after the May 10th meeting, but as of July 6, 2021 the applicant has not submitted a revised site and building plan for the property and the proposed accessory structure.

Standard Conditions

- 1) A building permit is required for a permanent structure greater than 120 square feet. Please contact the Building Inspection Department at (913) 573-8620 to begin that process.
- 2) Driveways must be constructed and/or updated to comply with Section 27-575(a). If the Change of Zone to A-G Agriculture District is not granted, all new or updated driveways must be paved with two (2) inches of asphalt over six (6) inches of gravel, four (4) inches of concrete, or another alternative as approved by the UG Engineer.
- 3) The applicant, contractors, subcontractors, and related third parties shall comply with Planning Engineering Comments for General Engineering, Erosion Control, Sanitary Sewer, Storm Drainage, Stormwater Quality, Streets and Retaining Walls, as applicable.

Planning Engineering Comments:

- A) Items that require plan revision or additional documentation before engineering can recommend approval:
 - 1) None
- B) Items that are conditions of approval:
 - 1) The application indicated preventive maintenance on vehicles as one of the uses for the accessory structure. Please provide information on handling and disposal of used motor vehicle fluids. Further discussion with staff may be required.

Applicant Response: *My place of employment (KCATA) has adequate disposal facilities [sic]. As does the local auto parts store.*

- C) Comments that are not critical to engineering's recommendations for this specific submittal, but may be helpful in preparing future documents:
 - 1) None

STAFF RECOMMENDATION

Staff recommends that the Board of Zoning Appeals **DENY** case **BZA2021-011** subject to all comments and suggestions outlined in this staff report, and summarized by the following reasons:

- 1) **The variance request does not fulfill Statutory Requirement #1. The subject property is not subject to a unique condition for its area or zoning district that would require an accessory structure 140% larger than the maximum footprint allowed;**

- 2) **The variance request does not fulfill Statutory Requirement #2. Granting the variance will adversely affect the rights of adjacent property owners or residents;**
- 3) **The variance request does not fulfill Statutory Requirement #3. The strict application of the provisions of the zoning ordinance does not constitute an unnecessary hardship upon the property owner;**
- 4) **The variance request does not fulfill Statutory Requirement #5. Granting of the variance for a 2,400-square foot accessory structure is opposed to the general spirit and intent of the zoning ordinance;**
- 5) **The footprint and size of the proposed structure is incompatible with the size, zoning, and use of the subject property, and is incompatible with the size, zoning, and use of the surrounding parcels and the neighborhood; and,**
- 6) **The applicant has failed to provide revised site and building plans in a satisfactory manner, as instructed by the Board of Zoning Appeals.**

If the Board of Zoning Appeals were to approve BOZA2021-011, Staff recommends that the following conditions apply:

- 1) **The proposed accessory structure must have a total floor area less than the footprint of the primary residence. Unified Government records shows that the primary residence has a footprint 1,825 square feet. Therefore, the proposed accessory structure must not exceed 1,825 square feet of total floor area;**
- 2) **In order to comply with Section 27-609(2), any existing accessory structures must be demolished before the proposed accessory structure is constructed;**
- 3) **The color and material of the proposed accessory structure must match the color and material of the primary residence, unless the materials of the primary residence are materials not allowed on an accessory structure under Section 27-609(2)(a)-(b).**
 - a. **Exterior wall materials are limited to customary residential finish materials, which include horizontal clapboard siding of all materials; wood and plywood siding; stone and brick, both actual and artificial; and textured finishes such as stucco and stucco board which visually cover the underlying material regardless of the underlying material.**
 - b. **Specifically excluded materials are preformed, corrugated or ribbed metal, fiberglass or plastic sheets or panels, unless the metal has a factory-applied finish that closely matches the color of the primary structure.**

- c. **Standard concrete masonry units are excluded unless the walls of the building are painted the exact color of the primary structure.**
 - d. **The exterior roofing materials for roofs sloped more than two (2) in 12 shall be shingles or tiles and not metal, fiberglass or plastic sheets, unless the metal roof has a factory-applied finish that closely matches the roof color of the primary structure or closely matches the color of the primary structure itself if the roof and walls of the accessory structure are to be the same color;**
- 4) Vehicle storage must comply with Section 27-609(6), which has the following requirements:**
 - a. **Only motor passenger cars, other operable domestic equipment, material or vehicles, or a truck of 10,000 pounds GVWR or less shall be kept, parked or stored for more than 48 hours in any 30-day period in a residential area.**
 - b. **Only a single one (1) of each of the following may be stored:**
 - i. **Truck other than customary vans or pickup trucks; or,**
 - ii. **Camping trailer; or,**
 - iii. **Hauling trailer; or,**
 - iv. **Boat; or,**
 - v. **Recreational vehicle.**
 - c. **The parking of vehicles or equipment shall not occur on lawn areas, or other locations that tend to visually downgrade the property and neighborhood.**
 - d. **Parking shall be limited to areas that have an improved surface and such areas shall generally be located in close relationship to the garage or an otherwise vehicle-oriented section of the premises or be located in the rear yard, so that the lawn areas upon which the living section of the dwelling faces can be attractively maintained with grass, trees and shrubs.**
 - e. **Use of any yard area for commercial or any non-residential or ongoing non-resident parking purposes is prohibited;**
- 5) A building permit is required for a permanent structure greater than 120 square feet. Please contact the Building Inspection Department to begin that process;**
- 6) Driveways must be constructed and/or updated to comply with Section 27-575(a). If the Change of Zone to A-G Agriculture District is not granted, all new or updated driveways must be paved with two (2) inches of asphalt over six (6) inches of gravel, four (4) inches of concrete, or another alternative as approved by the UG Engineer; and,**
- 7) The applicant, contractors, subcontractors, and related third parties shall comply with Planning Engineering Comments for General Engineering, Erosion Control, Sanitary Sewer, Storm Drainage, Stormwater Quality, Streets and Retaining Walls, as applicable.**

ATTACHMENTS

Aerial Map
Zoning Map
Land Use Map
Five Statutory Requirements, Answered by the Applicant
Photographs of the Property Submitted by Staff, Dated April 22, 2021
Photographs of the Property Submitted the Applicant
Site Plan Provided by the Applicant
Aerial Imagery Provided the Applicant
Elevations Provide by the Applicant
Neighborhood Meeting Materials, Dated April 26, 2021

REVIEW OF INFORMATION AND SCHEDULE

<u>Action</u>	<u>Board of Zoning Appeals</u>
Public Hearing	May 10, 2021 – Held Over
Variance	July 12, 2021

STAFF CONTACT: **Michael Farley**
 mfarley@wycokck.org

MOTIONS

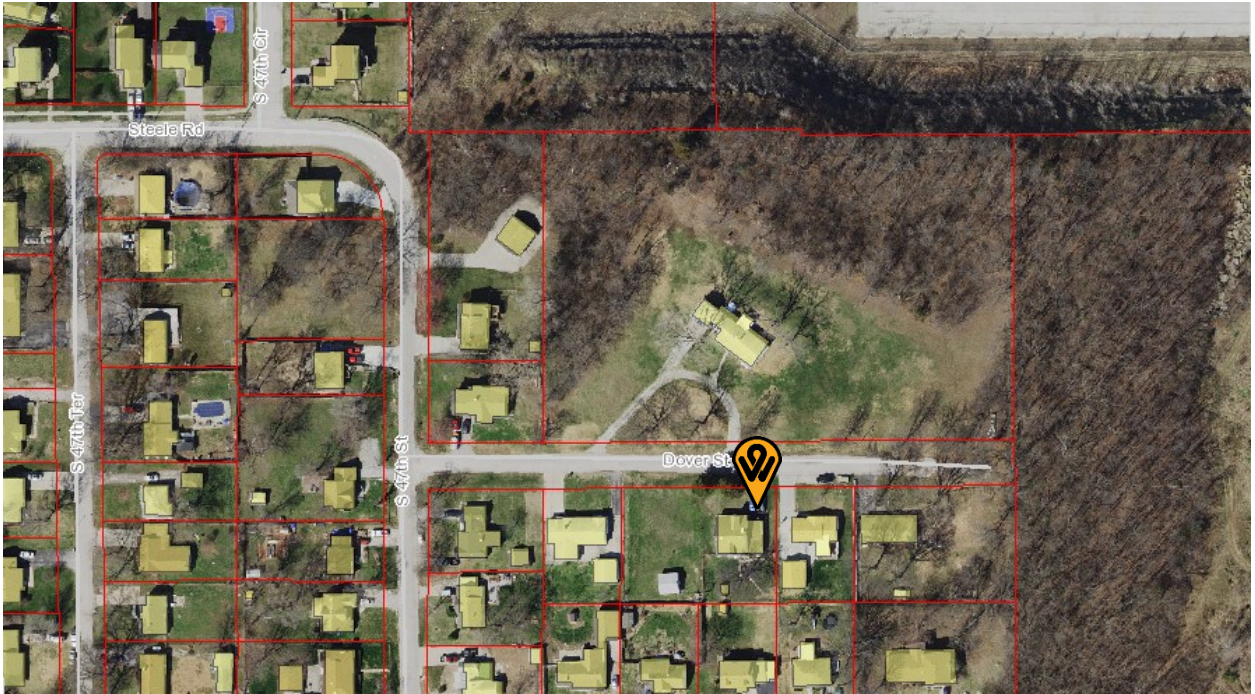
I move the Board of Zoning Appeals **DENY** Case **BOZA2021-011**, as it is not in compliance with the City Ordinances as it will not promote the public health, safety and general welfare of the City of Kansas City, Kansas; and other such reasons that have been mentioned.

OR

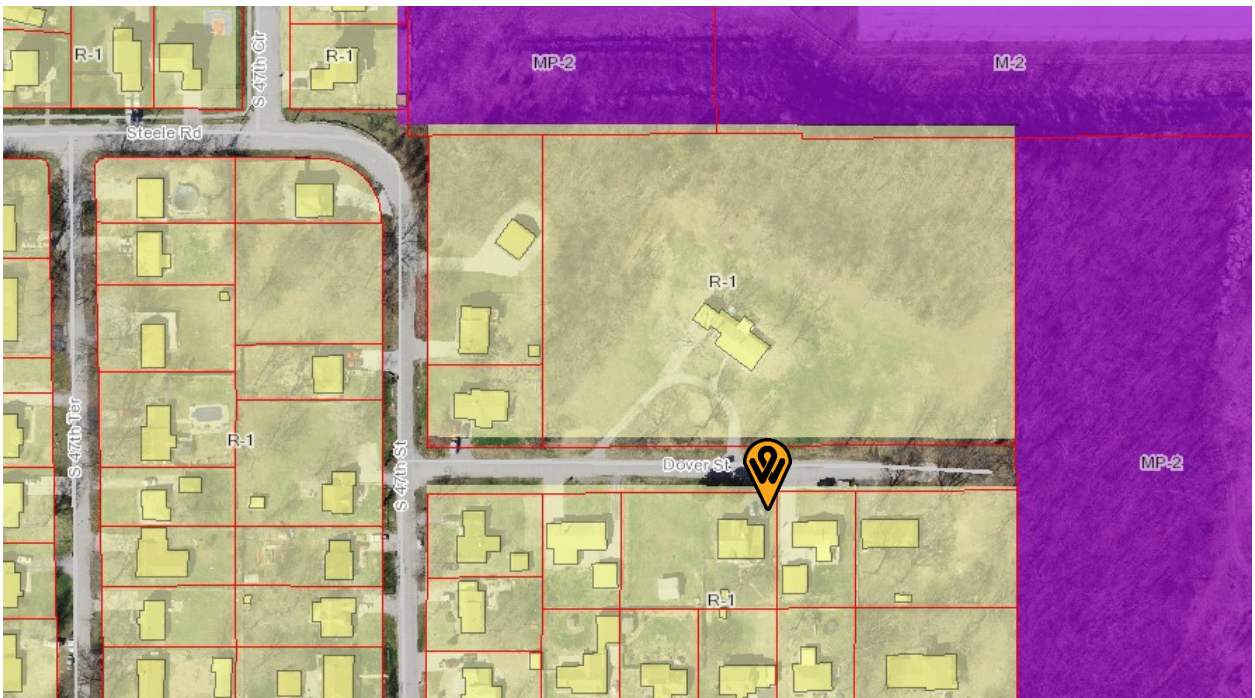
I move the Board of Zoning Appeals **APPROVE** Case **BOZA2021-011** as meeting all the requirements of the City code and being in the interest of the public health, safety and general welfare subject to such modifications as are necessary to resolve to the satisfaction of City Staff all comments contained in the Staff Report; and the following additional requirements:

1. _____;
2. _____; AND
3. _____;

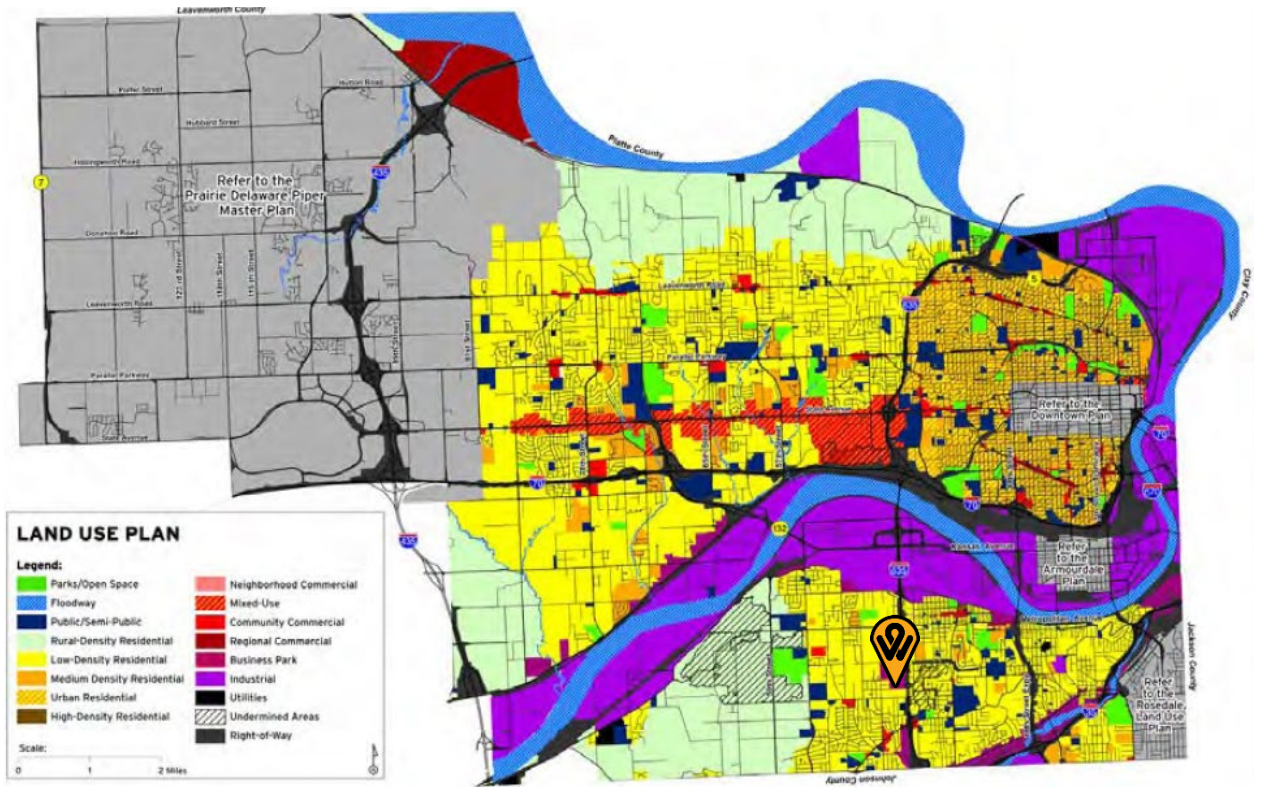
AERIAL MAP



ZONING MAP



LAND USE MAP



FIVE STATUTORY REQUIREMENTS, ANSWERED BY THE APPLICANT

BOARD OF ZONING APEALS

Five Conditions Set by State Statute

(Please feel free to use additional pages if necessary)

1. **The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and which is not created by an action or actions of the property owner or the applicant.**

Asking to build a 40x60 accessory structure on My
1/2 acre of land. I have an Empty lot to build this on.

2. **The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.**

Would Be No different then if there was a house on said lot.

3. **The strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.**

wh the ordinance Reads to Me such as Someone was building
in their backyard. With Mine being a whole Empty lot
hoping to go bigger so I can have the room to do My hobbies.

4. **The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.**

Do not see in any way that it would.

again no different then if there was a house on that lot.

5. **The granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.**

Within My .249 acre lot. I would have Plenty of area
for a 40x60 building. hope to Maintain the integrity
of the area. with a metal building. 15 foot from back
Property line and 15 foot from West property line.

Will Remove existing shed once building is erected.

PHOTOGRAPHS OF THE PROPERTY SUBMITTED BY STAFF, DATED APRIL 21, 2021



Upper Left: Front view of the primary residence and driveway, from the north.

Left: Alternate view of the subject property, showing both the primary residence and the open side yard.

Lower Left, Upper Right, & Lower Right: Signs of parking on the grass, which not only destroys the property and looks bad, but is also prohibited.



PHOTOGRAPHS OF THE PROPERTY SUBMITTED BY STAFF, DATED APRIL 21, 2021, CONT.



Upper Left: Evidence of tires stacked in the rear yard. This is trash and needs to be removed.

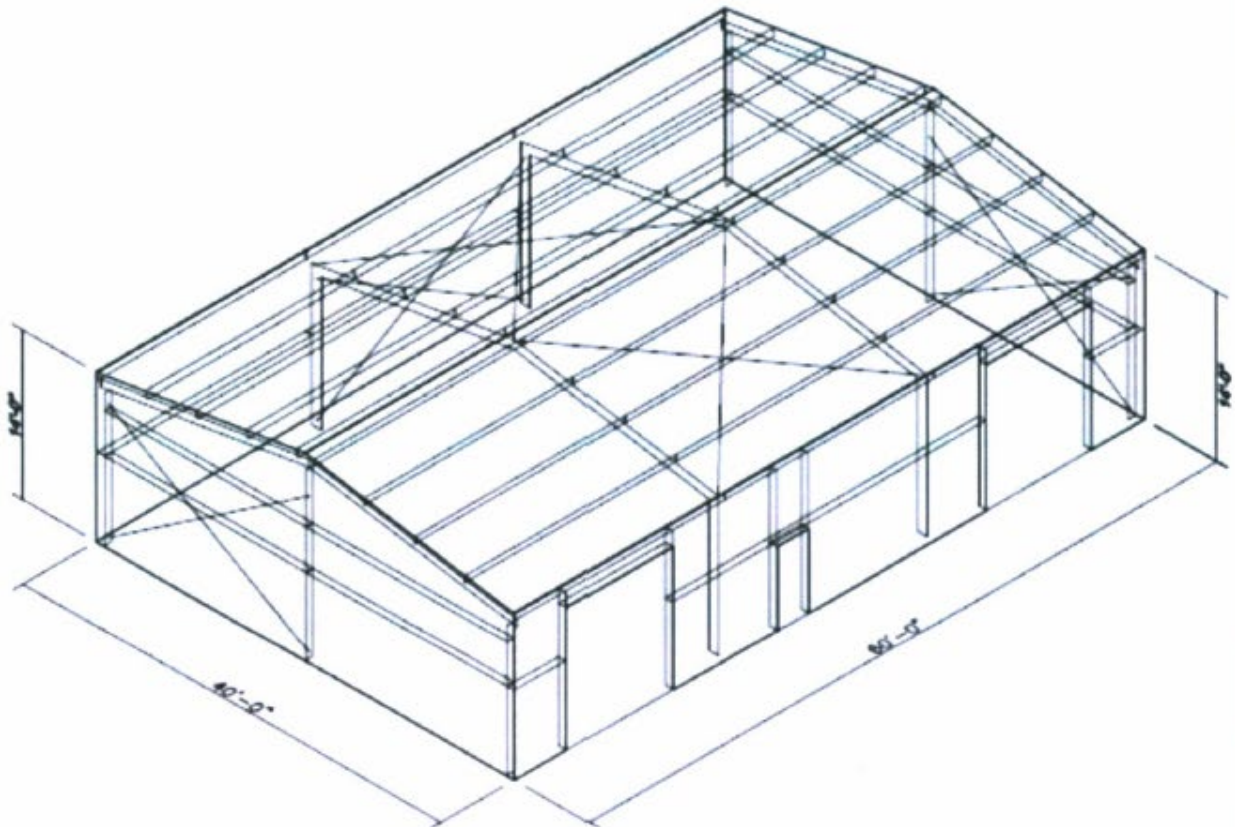
Upper Right: Additional items need to be removed or properly stored.



Above: An accessory structure on the property. This structure will need to be removed before the proposed accessory structure can be completed.

Left: A second accessory structure on the property. This structure will need to be removed as well before the proposed accessory structure can be completed.

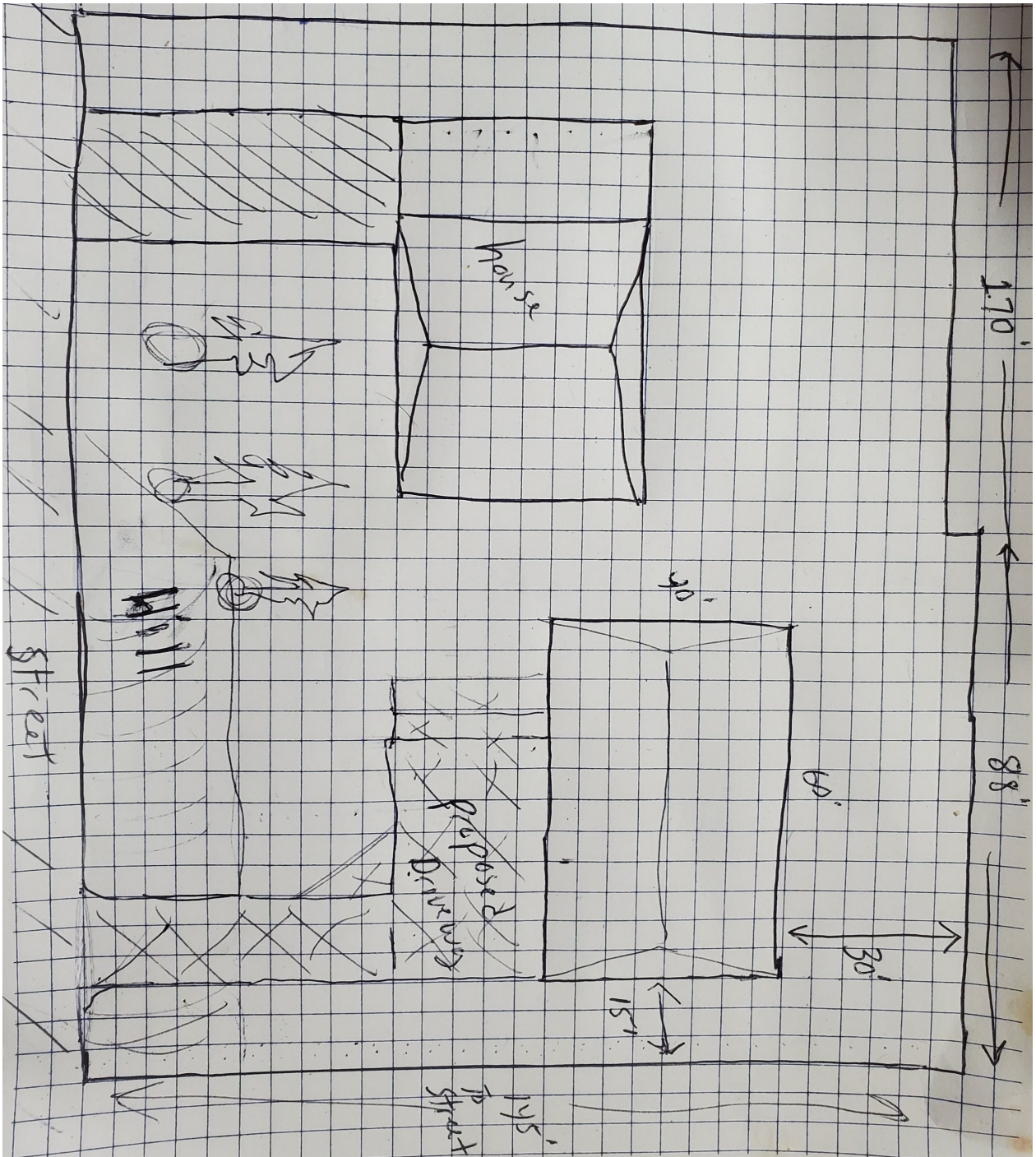
PHOTOGRAPHS OF THE PROPERTY SUBMITTED THE APPLICANT



PHOTOGRAPHS OF THE PROPERTY SUBMITTED THE APPLICANT, CONT.

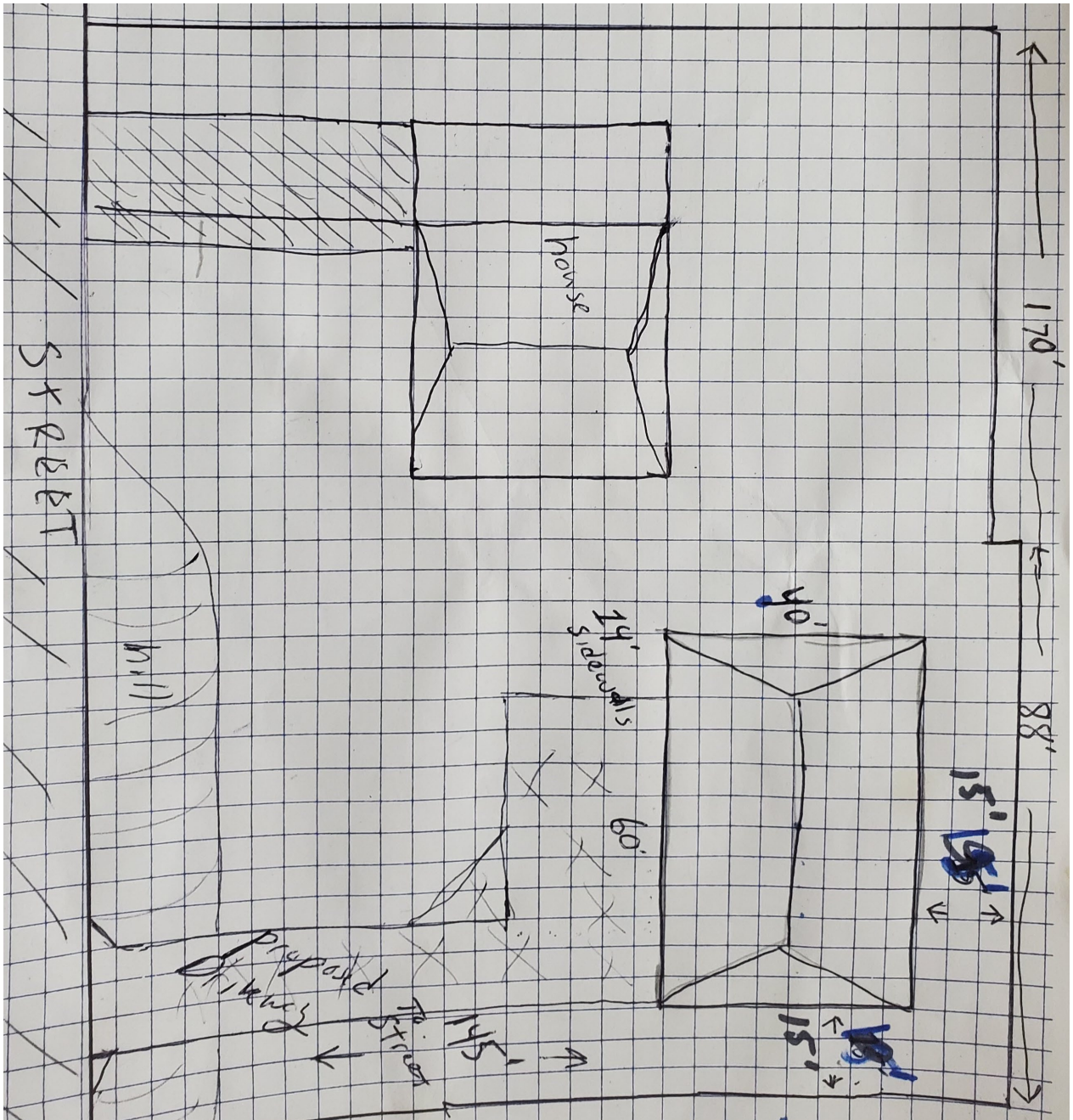


SITE PLAN PROVIDED BY THE APPLICANT



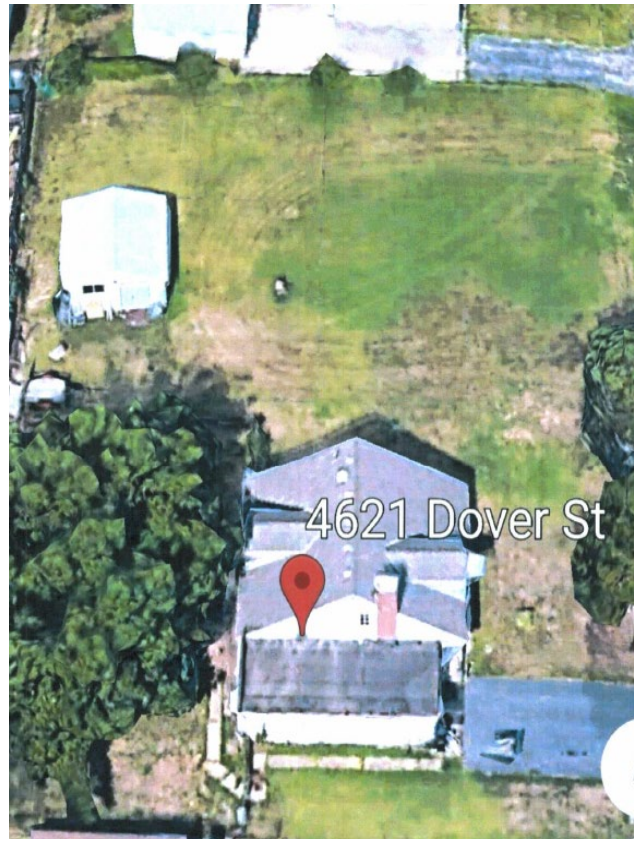
Site plan demonstrating a 30-foot rear yard setback. This is the same rear yard setback required by a primary residence in the same zoning district.

SITE PLAN PROVIDED BY THE APPLICANT, CONT.



Site plan demonstrating a 15-foot rear yard setback. This is 15 feet less than the minimum rear yard setback required for a primary residence in the same zoning district, but 12 feet more than the minimum rear yard setback required for an accessory structure in the R-1 Single Family District.

AERIAL IMAGERY PROVIDED BY THE APPLICANT



RE: boza2021-011 confirmation




joe morton <jmdd55@yahoo.c

To  Farley, Michael



4/28/2021

 You replied to this message on 4/28/2021 5:14 PM.

no sir. no one has contacted me about the variance. have talked person to person with my adjoining neighbors with no issues from them.

[Sent from Yahoo Mail on Android](#)