



Department of Planning + Urban Design

Unified Government of Wyandotte County • Kansas City, Kansas

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To: Board of Zoning Appeals
From: Planning and Urban Design Staff
Date: November 14, 2022
Re: **Appeal BOZA2022-049**

GENERAL INFORMATION

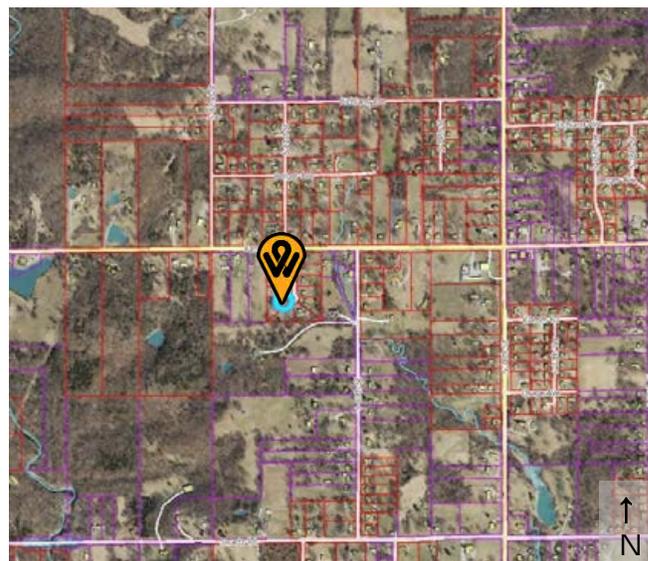
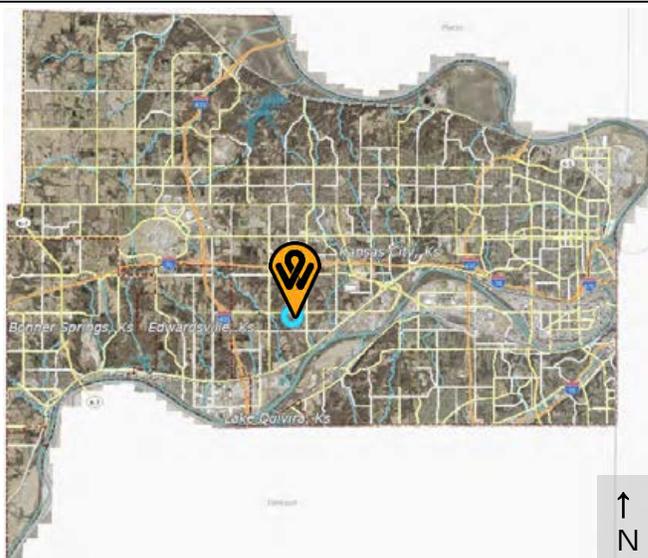
Applicant:
Emily Valerio

Status of Applicant:
Property Owner
634 South 81st Street,
Kansas City, Kansas 66111

Requested Actions:
Approval of a variance request.

Date of Application:
September 30, 2022

Purpose:
This appeal has been filed to grant a variance from the maximum percentage of the front yard paved. Section 27-673(b) states that paved parking areas or customary driveways in the required yards abutting streets shall not exceed 40 percent of the area of those yards for one- and two-family dwellings. The applicant is requesting a paved area that covers 79% of the front yard, a violation of 97.5% of the allowed paved coverage.



Property Location: 634 South 81st Street
Kansas City, Kansas 66111

Commission Districts: Commissioner At-Large, District #2: 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:** Vacant lot
South: Single-family residences
East: Single-family residence
West: Single-family residence

Neighborhood Characteristics: The subject property is within the Muncie-Stony Point Statistical Neighborhood and is not within a neighborhood group. The neighborhood features small clumps of single-family residences located on side streets off of Kansas Avenue, with larger agriculturally and residentially zoned parcels along Kansas Avenue. The subject property is located on a cul-de-sac with 11 single-family residences on 12 platted parcels.

Total Tract Size: 0.62 Acre

Master Plan Area: 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. The Low-Density Residential Land Use District allows for single-family detached residences, institutional uses such as elementary and middle schools, small places of worship (less than 50,000 square feet), libraries, and parks and open space. Discouraged uses include all industrial uses, business parks, adult-oriented businesses, night clubs and bars with a majority of sales in alcohol, and medium- and high-density residences.

Major Street Plan: The Major Street Plan classifies South 81st Street as a Local/Neighborhood Street.

Required Parking:	Section 27-454(e) requires two (2) off-street parking spaces on the premises for each single-family dwelling, at least one (1) of which shall be in a garage or carport. The primary residence has an attached garage, which allows for at least one (1) parking space; the paved driveway allows for at least one (1) vehicle, even if only 40% of the front yard is paved. Therefore, the subject property meets Section 27-454(e).
Advertisement:	<u>The Wyandotte Echo</u> – October 20, 2022 Letters to Property Owners – October 21, 2022
Public Hearing:	November 14, 2022
Public Support:	Eight (8) neighbors signed a statement attesting they have no problem with the existing paved driveway.
Public Opposition:	None to date.

RELATED ENFORCEMENT AND ACTION ITEMS

Noise or Disturbance Complaints:

1. The property owner has not received any noise or disturbance complaints.

Building or Code Enforcement Complaints:

1. Previous property owners have been cited for non-visible address numbers on the house (03200-00000-00826) in 2003, junk on the property (09200-4579) in 2009, house in disrepair (10200-01004) and a pool in the front yard (10200-02472) in 2010, multiple violations (13200-04372) in 2013, multiple instances of overgrown weeds and grass (17225-01767, 17225-04954, &17299-918) in 2017, multiple instances of overgrown weeds and grass (18212-00357 & 18225-03772) in 2018
2. The property owner has been issued a Stop Work Order (19395-00120) in 2019, cited for structural (siding) issues (20201-00157) in 2020, a vehicle without tags (ENV21-1241) in 2021, and vehicles parked on unimproved surfaces (ENV22-1537) in 2022.

Outstanding or Related Permits and Cases:

1. The property owner does not have any outstanding Building Code violation:
2. The property owner has the following outstanding Property Maintenance Compliance case for paved surfaces exceeding 40% of the front yard (ENV22-0056), which will be addressed by BOZA2022-049.

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.***

This request has been filed to grant a variance from the maximum allowable paved area within the front yard. The condition leading to the paving of the front yard exceeding the maximum allowed area arises from the increased stormwater runoff from the South 81st Street right-of-way, which slopes towards the primary residence. While this condition has arisen as a result of the adjacent neighbor increasing paving in their own rear yard, increased stormwater runoff is not a condition unique to this property; it can be found in other properties within the R-1(B) zoning district. Furthermore, the applicant has already paved the front yard of the subject property. Therefore, the condition arises from the action of the property owner-applicant.

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

The property owner-applicant cited stormwater runoff that enters the subject property from the public right-of-way and enters the basement of the primary residence as the primary reason for the need to pave more than 40% of the front yard. The increase of impermeable surfaces may prevent runoff and groundwater from leaking into the property owner-applicant's basement by redirecting the stormwater runoff from the front yard into the rear yard. It does not appear that an increased amount of runoff is being diverted to the adjacent properties, especially the property at 640 South 81st Street, which has an existing single-family residence. Therefore, granting the variance will not 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 would require the property owner-applicant to remove approximately half of the existing paved surface in the front yard. While this may appear to be onerous, strict application of the Zoning Code only applies to the applicant's property, and not to the portion of the paved driveway apron in public right-of-way. The driveway apron may remain as it currently exists so long as Public Works approves the property owner-applicant's retroactive Right-of-Way Permit. Furthermore, removal of a structure or improvement which was constructed by the property owner and in violation of the Zoning Code does not constitute unnecessary hardship upon the property owner. While the applicant claims that removal of impermeable surfaces will cause flooding in the basement, the removal of impermeable surfaces will actually have the opposite effect. A more limited and targeted approach to paving could be used to divert stormwater

away from the foundation. Returning some of the front yard to green space, especially a green space with native plants and absorbent soil mixtures, will allow for runoff water to be more quickly absorbed into the ground than an impermeable surface would. Therefore, strict application of the provisions of the zoning ordinance of which the variance is requested does not constitute an unnecessary hardship upon the property owner.

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

While the increased in paved surfaces will redirect runoff in manner different than if the front yard had remained compliant with Section 27-673(b), the only parcels outside of the subject property that this change in water flow will have a significant effect on is the adjacent parcels. The rest of the neighborhood and the greater public will not be significantly affected (and thus will not be adversely affected) by the increased pavement. Therefore, the variance requested will not adversely affect the public health, safety, morals, order, convenience, prosperity, 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 and intent of Section 27-673(b) is to place a limit on paved areas allowed in the front yard of single- and two-family residences, which in effect prevents the overcrowding of vehicles parked in the front yard, maintains aesthetics of said residential buildings, and guarantees a certain amount of green space and impermeable ground surface. While there was a vehicle parked on the driveway apron within the right-of-way during Staff's site visit, the subject property was not overcrowded by any means. Furthermore, the aesthetics of the driveway and outdoor patio are pleasant and well incorporated into the yard. The applicant has failed, however, to provide proof that water diversion could not be accomplished in a compliant manner, such as installing water-absorbing soils and native plants along a compliant driveway and in other problem areas of the yard. As the installation of landscaping capable of absorbing greater amounts of stormwater could effectively address the underlying runoff issue as well as both increase the amount of greenspace while reducing the amount of non-compliant paved space, and as the applicant did not attempt to do so, the general spirit of the zoning ordinance has not been met.

PREVIOUS ACTIONS

- N/A

NEIGHBORHOOD MEETING

The applicant held a neighborhood meeting at 634 South 81st Street on October 31, 2022. Attached is the list of persons who attended the meeting, minutes, affidavit and/or submitted comments to the applicant.

KEY ISSUES

Change in Runoff Flow to Neighboring Properties
Driveway and Paving
Right-of-Way Permit

STAFF COMMENTS AND SUGGESTIONS

Planning and Urban Design Comments:

General

1. The variance request BOZA2022-049 was published in Wyandotte Echo as follows:

“This appeal has been filed to grant a variance from the maximum percentage of the front yard paved. Section 27-673(b) states that paved parking areas or customary driveways in the required yards abutting streets shall not exceed 40 percent of the area of those yards for one- and two-family dwellings. The applicant is requesting a paved area that covers 100% of the front yard, a violation of 150% of the allowed paved coverage.”

The variance request now reads:

“This appeal has been filed to grant a variance from the maximum percentage of the front yard paved. Section 27-673(b) states that paved parking areas or customary driveways in the required yards abutting streets shall not exceed 40 percent of the area of those yards for one- and two-family dwellings. The applicant is requesting a paved area that covers 79% of the front yard, a violation of 97.5% of the allowed paved coverage.”

The approximate areas of the front yard and the existing driveway can be found under “Front Yard and Driveway Measurements Provided by Staff” within the *Attachments* section of this report.

2. Due to the large portion of right-of-way between the paved street and the subject property’s front boundary line, the property owner-applicant has paved over a significant portion of right-of-way in creating the driveway apron. The property owner-applicant must receive a retroactive Right-of-Way Permit from the Public Work Department for the improvements made in the public right-of-way. The Public Works Department can be reached by phone at (913) 573-5311 or by email at info@wycokck.org.

Applicant Response: We will get any permit needed in order to keep our driveway as is it took a huge chunk of our savings to make this happen in order to stop the flooding. Please help us. If we would've know we needed a permit I guarantee you that we would not have gone this route.

3. Provide a more thorough explanation of the stormwater/runoff flow plan for the subject property, including a clarification of where the water runoff now goes and proof that there was no code-compliant method to address the runoff problem.

Applicant Response: We created a slope going downward to prevent the rain water to affect anyone. I will attach proof of now bad it gets when it rains and proof of when your Insurance Company came out to help.

Staff Response: As the staff report is not provided on a medium that can properly convey video, relevant screenshots/stills from the video provided by the applicant can be found under "Stills of Video Provided by the Applicant" within the *Attachments* section of this report.

4. Provide a revised plot plan demonstrating the following:
 - a. The front boundary line of the subject property. This will aid in accurately calculating the percentage of the front yard that is paved.
 - b. Identify the problem areas in the front yard, where water is stagnating and/or leaking into the basement.

Applicant Response: I will attach a drawn image of the front yard and the paved area. Circled will be the affected areas.

Staff Response: The applicant has provided a revised plot plan, demonstrating the problem areas in the front yard. This revised submission can be found under "Plot Plan of 634 South 81st Street: Problem Spots" within the *Attachments* section of this report.

5. All parking, loading, or maneuvering areas related to the accessory building must be paved with a minimum of two (2) inches of asphalt over six (6) inches of compacted gravel or an acceptable alternative as determined by the county engineer.

Planning Engineering Comments:

1. Items that require plan revision or additional documentation before engineering can recommend approval:
 - a. None
2. Items that are conditions of approval:
 - a. None
3. Comments that are not critical to engineering's recommendations for this specific submittal, but may be helpful in preparing future documents:
 - a. None

STAFF RECOMMENDATION

Staff recommends that the Board of Zoning Appeals **DENY** Appeal **BOZA2022-049** subject to all comments and suggestions outlined in this staff report, and summarized by the following:

1. **The variance request does not fulfill Statutory Requirement #1. The variance arises from the existing driveway, which was paved by the property owner-applicant;**
2. **The variance request does not fulfill Statutory Requirement #3. Engaging in alternative methods to address stormwater runoff that are compliant with the Zoning Code do not constitute unnecessary hardship. The cost to the applicant of removing existing non-compliant paving cannot be considered; and,**
3. **The variance request does not fulfill Statutory Requirement #5. The applicant has not adequately addressed runoff-mitigating options that include more greenspace and less impermeable surfaces.**

If the Board of Zoning Appeals were to approve **BOZA2022-049**, Staff recommends that the following conditions apply:

1. **Due to the large portion of right-of-way between the paved street and the subject property's front boundary line, the property owner-applicant has paved over a significant portion of right-of-way in creating the driveway apron. The property owner-applicant must receive a retroactive Right-of-Way Permit from the Public Work Department for the improvements made in the public right-of-way. The Public Works Department can be reached by phone at (913) 573-5311 or by email at info@wycokck.org;**
2. **All parking, loading, or maneuvering areas related to the accessory building must be paved with a minimum of two (2) inches of asphalt over six (6) inches of compacted gravel or an acceptable alternative as determined by the county engineer;**
3. **All existing and future driveways must feature curb cuts that are constructed to UG standards; and,**
4. **Approval of this case by the Board of Zoning Appeals, and the conditions of approval contained herein, has been granted independent of any and all covenants, conditions, and restrictions (CC&R) of the plat or subdivision within which the subject property is located. It is the responsibility and duty of the applicant and/or landowner to ensure that the exercise of variance(s) approved, or any portion thereof, do(es) not violate the applicable and enforceable CC&R of the plat or subdivision within which the subject property is located.**

ATTACHMENTS

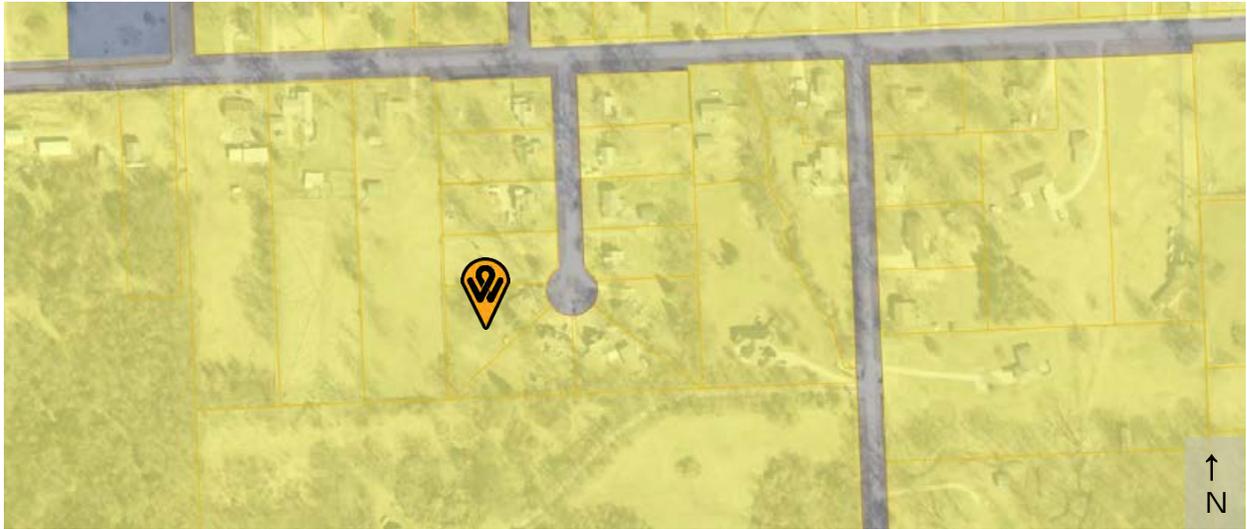
AERIAL MAP



ZONING MAP



LAND USE MAP



City-Wide Master Plan Land Uses

-  Utilities
-  Right-of-Way
-  Urban Density
-  Agricultural
-  Neighborhood Commercial
-  Community Commercial
-  Business Park
-  Floodway
-  Regional Commercial
-  Future Residential
-  Rural-Density Residential
-  Employment
-  High-Density Residential
-  Medium Density Residential
-  Low-Density Residential
-  Mixed-Use
-  Parks/Open Space
-  Public/Semi-Public

FIVE STATUTORY REQUIREMENTS ANSWERED BY THE APPLICANT

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 property did not come like this. We contracted a company to lay a sheet of concrete in our front yard because we were experiencing flooding issues. Our home sits lower than the street. When it rains or when the snow has melted the water stays I should say 'stayed' stuck in our front yard causing the water pressure to push down which lead to our basement always flooding. We had to call our insurance company several times out here to help get the water out & bring a humidifier. After laying the concrete we have not had any issues. It has been great. Hopefully we are able to resolve things.

Revised applicant response, 10/30/2022: We were forced to pave more than 40% due to our damaged street and how our home sits. Every rainy day caused flooding to our basement. Trust me we did not purposely try to go out of our way to pave more than the maximum allowable amount, we sadly had no other alternative. It was the... only option. We made many calls complaining about our street an[d] to this day nothing has been fixed.

FIVE STATUTORY REQUIREMENTS ANSWERED BY THE APPLICANT

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

No, the driveway will not affect any home owner around us or at all. It's purpose is to prevent our basement from flooding when it rains & after the snow melts down.

Revised applicant response, 10/30/2022: Property 640 S 81st Street has not and will not be affected by the paved driveway. After Jonathan Wiles visit he advised us to form a slope going down stream toward our back yard and way from both our property and our neighbors property and so we did. After the paved drive way we had some strong rain, my neighbor was not affected what so ever.

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.*

Yes, it will make unnecessary hardships because without it my house hold will keep flooding which will then lead to other issues within my home.

Revised applicant response, 10/30/2022: We tried absorbent soils and native plants prior to laying the driveway and that was of no help. Please understand that this was the only alternative that we could think of as a solution to our flooding. We did not know that we were not able to pave more than 40% of our yard. We called the city before we laid the concrete and they informed us that we did not need a permit they did not inform us with details. Our front yard is not coved 100% either we still have greenery on both sides of the yard.

FIVE STATUTORY REQUIREMENTS ANSWERED BY THE APPLICANT, CONT.

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

No, it will not affect anyone. The concrete stays within our property. For the benefit of our home not flooding.

Revised applicant response, 10/30/2022: [No revised response provided by the applicant.]

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

NO, the general will not be opposed because the concrete lays within my property lines. It will not affect anyone.

Revised applicant response, 10/30/2022: With the slopes in place, no I do not believe anyone will be affected.

NEIGHBORHOOD MEETING MATERIALS, CONT.

SAMPLE MINUTES:

Application Number Boza 2022-049

Date and Location: Oct. 31. 2022

Meeting called to order at: 6345 81st St. KCK 66111

Names of people in attendance:

Introductions:

Presentation by applicant and/or team (explain what information was given to those in attendance and a summary of what the speaker said).

Questions and answers (include the following):

- Who asked question or gave comment
- What was the question or comment
- Who answered the question/comment
- What was the answer given

Meeting adjourned at:

Minutes taken by: Karen Garcia

- we waited an our and no one showed up.
- we created a petition letter and had some of our neighbors that were available sign the letter. I email copies over.

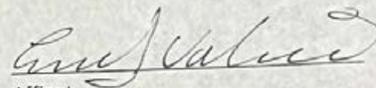
AFFIDAVIT – NEIGHBORHOOD MEETING

STATE OF Kansas,
COUNTY OF Wyandotte) ss:

Comes now Emily Valerio, of lawful age, sound mind and open his/her oath states as follows:

1. That I am the petitioner for Petition # Boza 2022-049
2. That I conducted a neighborhood meeting on Oct. 31. 2022
3. Attached are the minutes/summary of the meeting and a copy of the notice mailed to the property owners on the list provided by the Urban Planning and Land Use Department.

Further affiant saith not.


Affiant

NEIGHBORHOOD MEETING MATERIALS, CONT.

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature]

David Pries 2121 Kansas Ave. Kansas City, MO 64111

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 11/1/22

Jordan Landon
849 Kessler Ave, Overland Park, KS 66204

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 10/31/22

Meggan Eganatic
640 S. 81st St.
KC KS 66111

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 11/1/22

Michelle J. Stork
445 81st

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 11/1/22

Marisol Conyer
634 S. 81st St. Kansas City, KS 64111

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 605 S. 81st St, KS 66111

Cindy Lee Wisdom 11-1-2022

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

x [Signature] 11/1/22

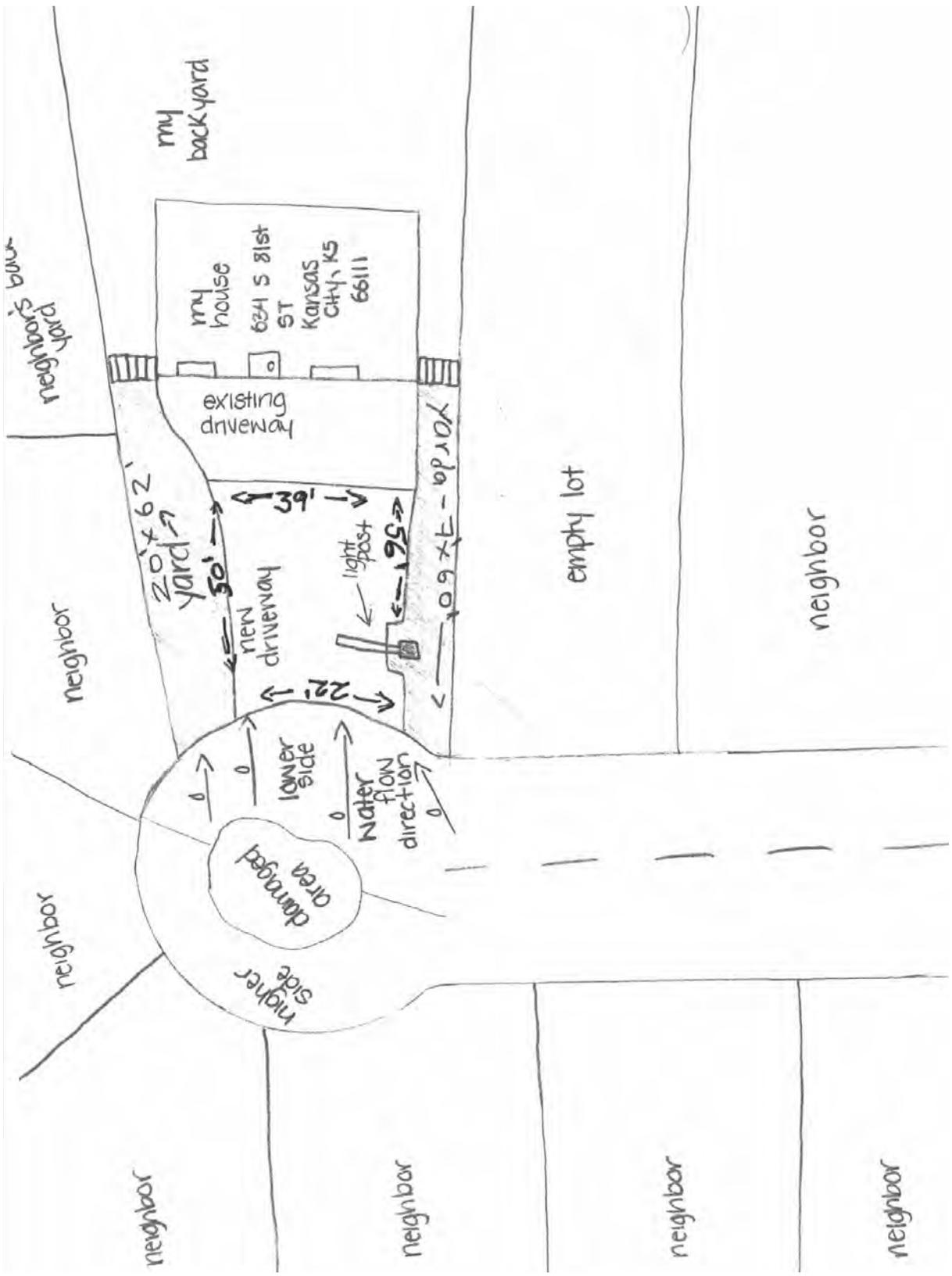
604 S. 81st Street MCK
Betsy Barks

To whom this may concern, my signature below confirms that I have no problem with the paved driveway on property 634 S 81st Street. Nor have I or my property been affected by the changes made.

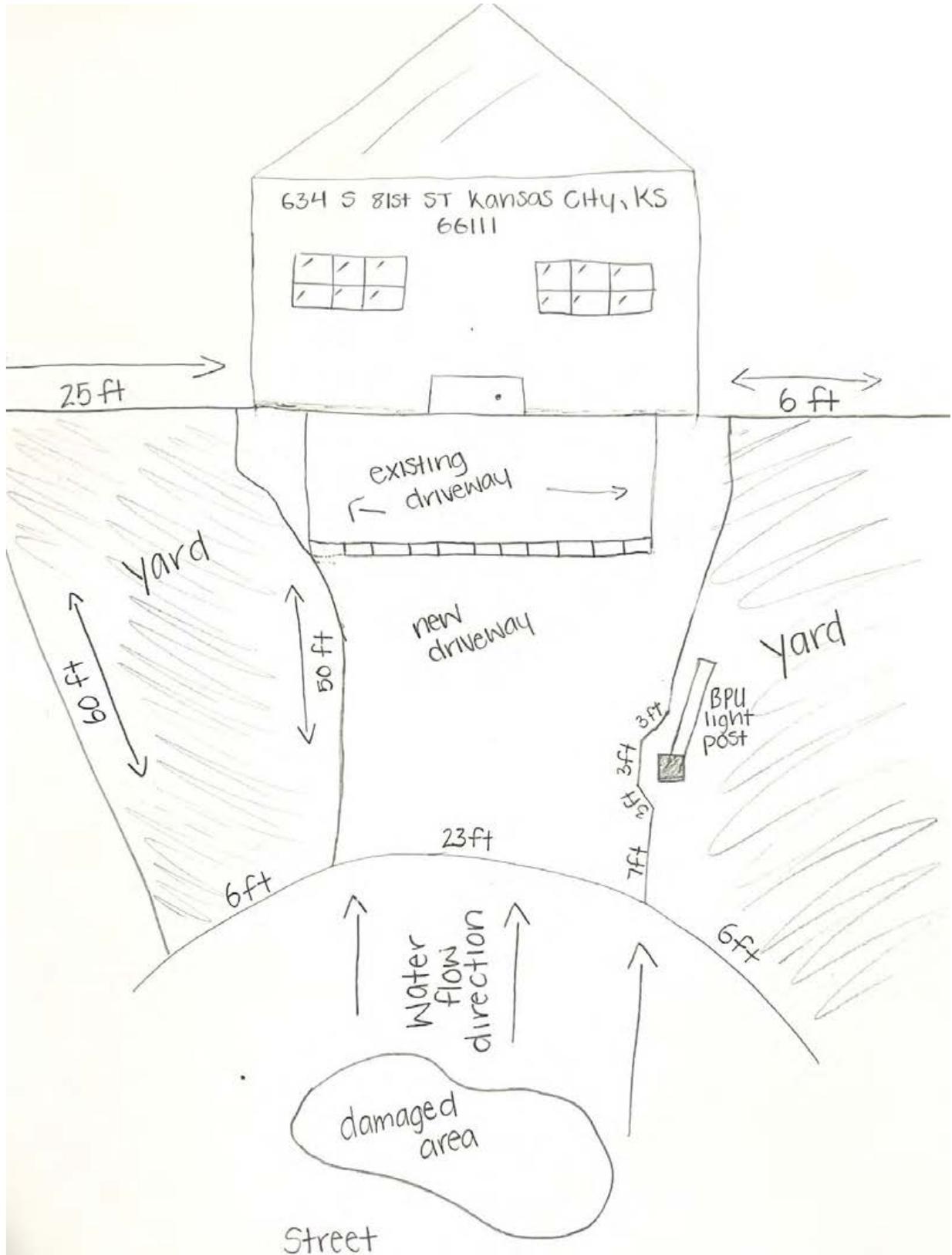
x [Signature] 11-1-2022

Davin M. Campbell 641 S. 81st St. KCS 66111

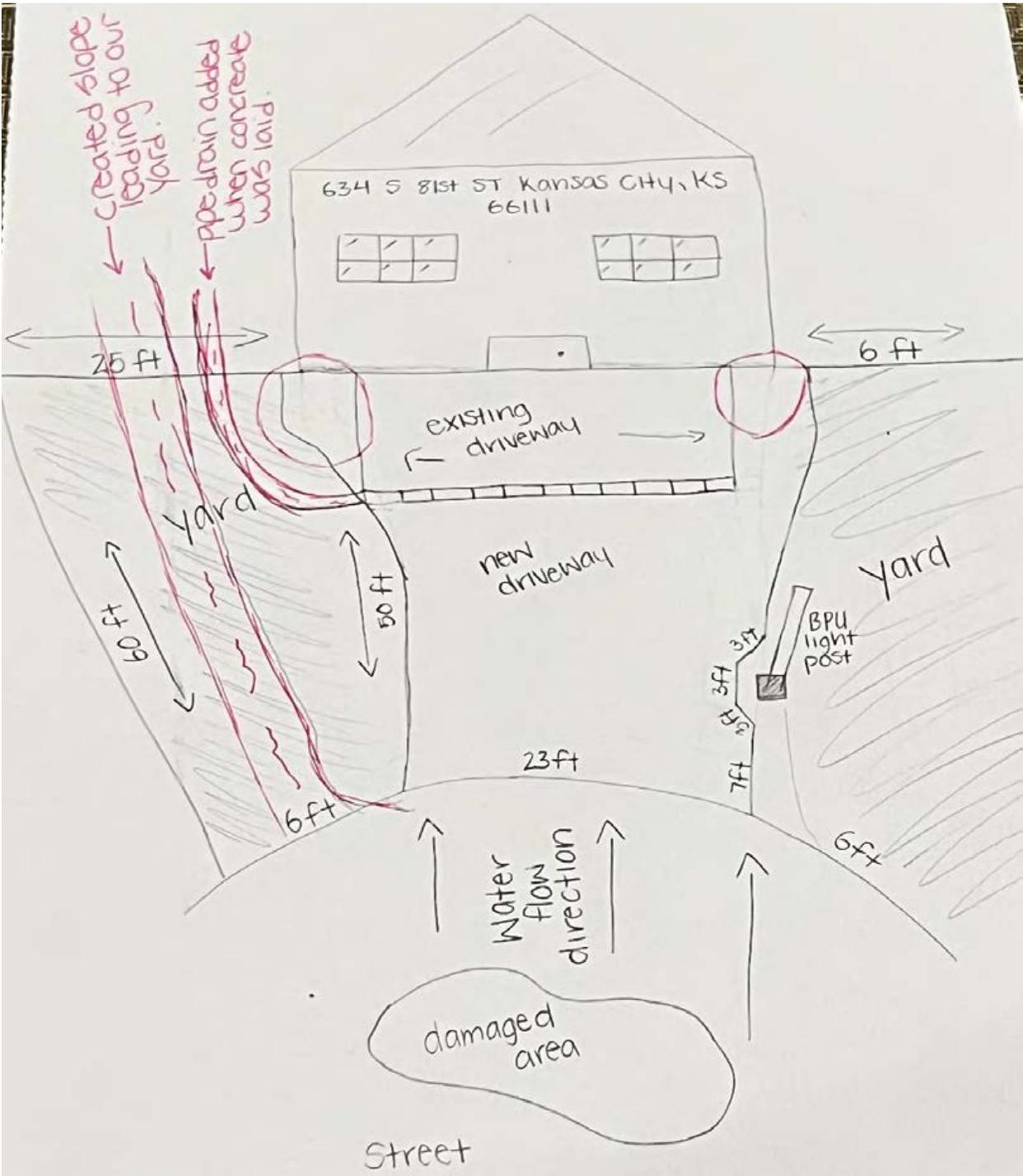
PLOT PLAN OF 634 SOUTH 81ST STREET SUBMITTED BY THE APPLICANT:
AERIAL VIEW



PLOT PLAN OF 634 SOUTH 81ST STREET SUBMITTED BY THE APPLICANT:
FRONT VIEW



PLOT PLAN OF 634 SOUTH 81ST STREET SUBMITTED BY THE APPLICANT:
PROBLEM SPOTS



STILLS OF VIDEO PROVIDED BY THE APPLICANT

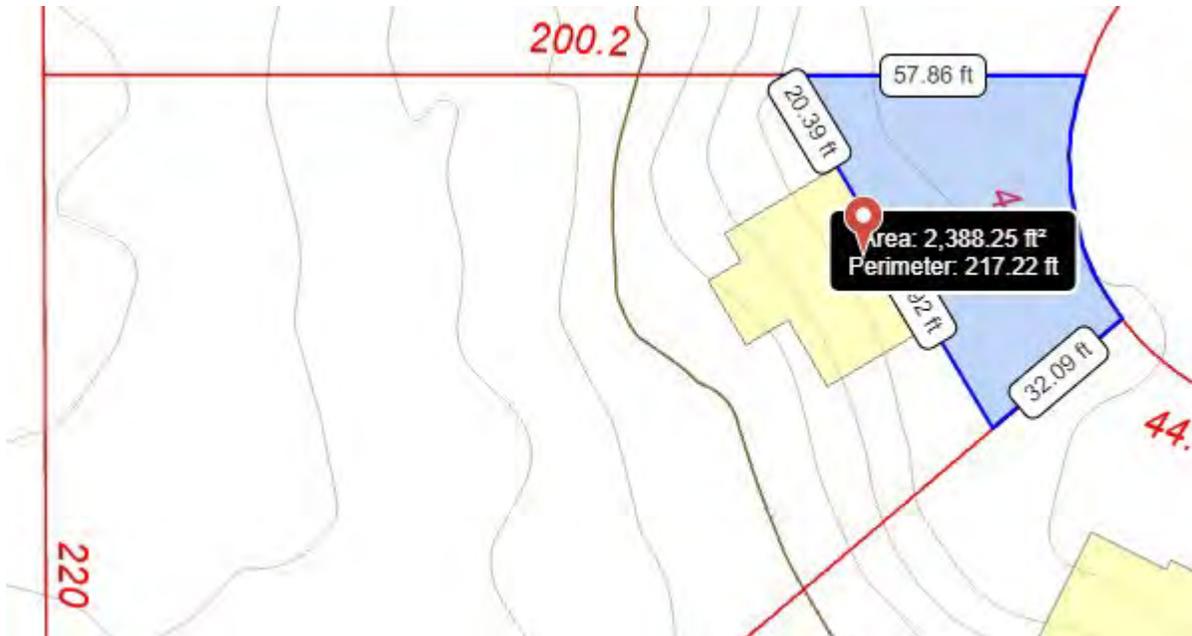


Upper Left: Standing water in the rear yard of the subject property, facing southwest.

Upper Right: Additional view of stormwater flowing downhill. The primary residence is visible in the background (highlighted by the red circle).

The video from which these stills come from was provided by the applicant and the date of the video is unknown.

FRONT YARD AND DRIVEWAY MEASUREMENTS PROVIDED BY STAFF

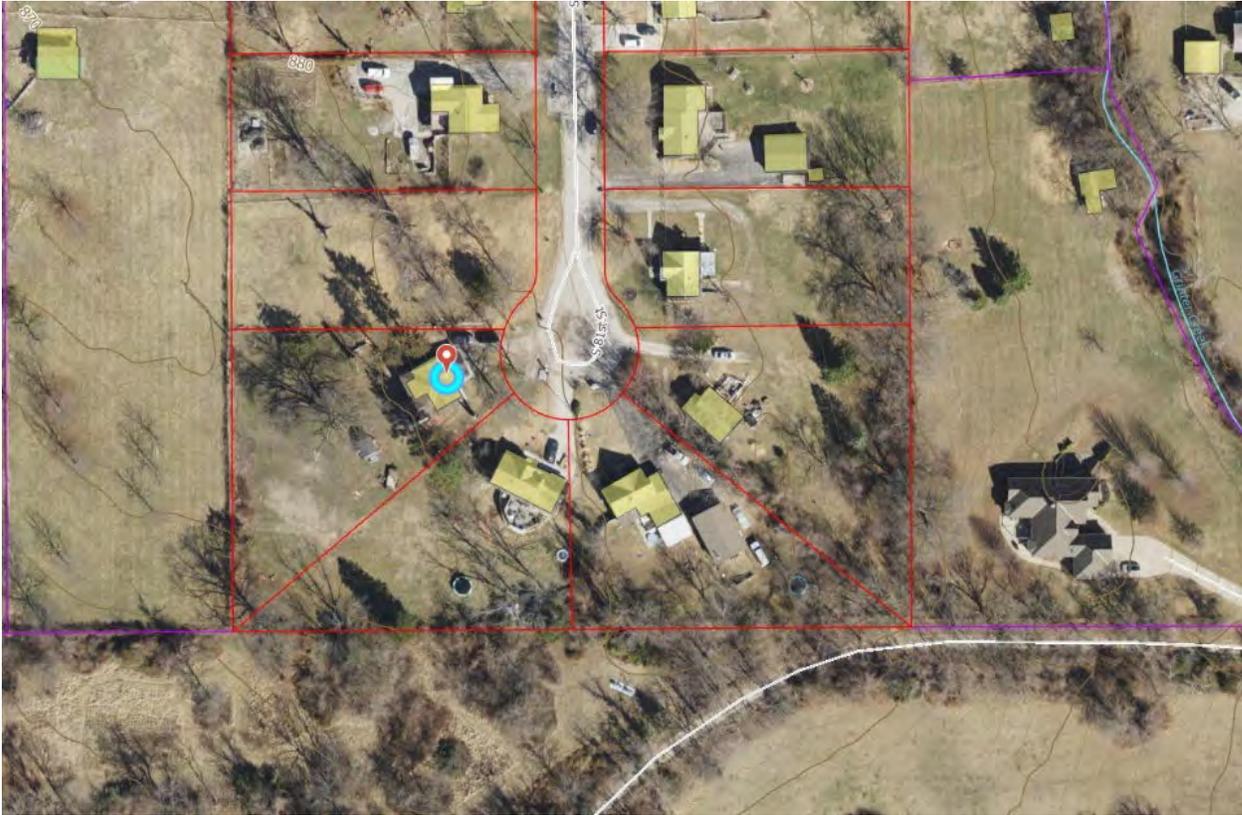
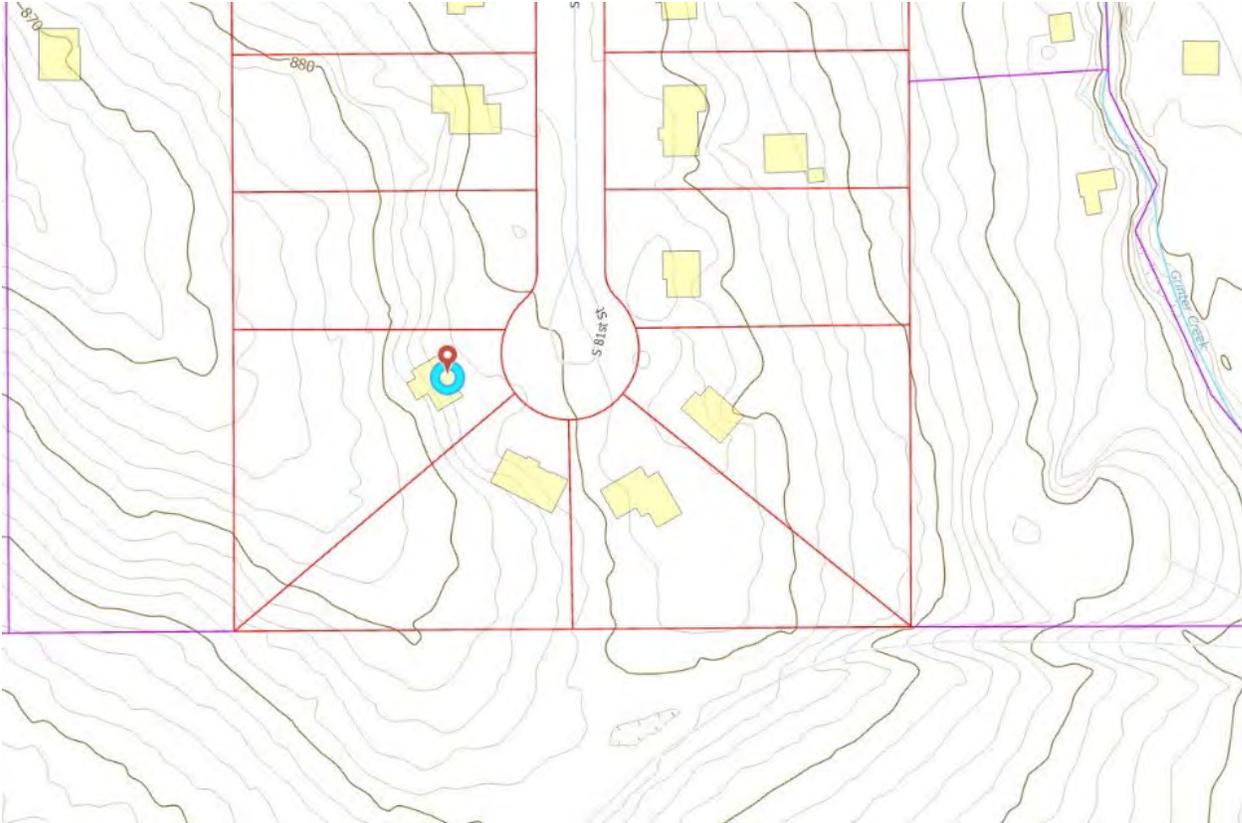


Above: The front yard of the subject property has an approximate area of 2,388 square feet.

Below: The existing driveway of subject property has an approximate area of 1,881 square feet, based on drawings provided by the applicant and photographs taken by Staff. This accounts for approximately 79% of the total front yard area.



TOPOGRAPHICAL MAPS OF 634 SOUTH 81ST STREET



TOPOGRAPHICAL MAPS OF 634 SOUTH 81ST STREET, CONT.



Above: A topographical map of the subject property, demonstrating the change in elevation on and around 634 South 81st Street. Each line represents a net change of two (2) feet of elevation.

As the map demonstrates, there is a slight drop in elevation from the center of the South 81st Street “cul-de-sac” to the front boundary line of the subject property. From there, the elevation drops another six (6) feet in approximately the depth of the primary residence. The rear yard continues to slope downhill, although not as steep of a rate as in the front and side yards. The slope of the terrain is apparent from both the topographic map and from Staff’s site visit.

SITE VISIT PHOTOGRAPHS BY STAFF, DATED OCTOBER 18, 2022



Upper Left: View of the front of the subject property from the South 81st Street right-of-way, facing west.

Upper Right: Alternate view of the driveway and front yard of the subject property, facing southwest.

Lower Left: Alternate view of the driveway and front yard of the subject property, facing northwest.

Lower Right: View of the front yard from across the South 81st Street right-of-way. The slope of the street toward the subject property is slightly noticeable.



SITE VISIT PHOTOGRAPHS BY STAFF, DATED OCTOBER 18, 2022, CONT.



Upper Left: View of the subject property's south side yard. While paved parking in the side yard may be an alternative to a non-compliant driveway in the front yard, the terrain slopes downhill quickly, and therefore limited space is available in the side yard further to the rear and in the rear yard at all.

Upper Right: View of the subject property's north side yard. The property owner-applicant has fenced off the side yard, thus limiting any available space for paved parking.

Below: View of the subject property's rear yard. The sloping fence line is demonstrative of the change in elevation from the front of the primary residence to the rear boundary line.

