



BOARD of ZONING APPEALS
City Hall-Council Chambers- 32905 W. 84th Street
6 pm, Wednesday, February 9th 2023

AGENDA

Members of the public who wish to observe the meeting can do so via the City's YouTube channel at <https://www.youtube.com/user/DeSotoKansas/live>.

Members of the public who wish to participate during the meeting may join the video conference at <https://www.gotomeet.me/DeSotoKS>

1. Call to Order

2. Roll Call

Chairman: Steve Winslow

Members: Linda Lane
Lech Milewski
Robert Freeman
David Burns

Staff: Patrick Reavey, City Attorney
Mike Brungardt, City Administrator
Brad Weisenburger, Planning and Capital Projects Director
Brandon Mills, City Clerk - Asst. City Manager

3. Agenda Items:

A. Consider a variance from Article 5 Supplementary District Regulations - Article 3 Accessory Structures. The variance is requested for a 1.04 acre tract located at 8488 Waverly to allow the construction of an accessory building in the front yard. The application has been submitted by Bill Koppen

4. Adjournment

ITEM: *Consider a request for a variance from front yard building line regulations in the R-1 Zoning District for an accessory building*

HEARDING DATE: February 9th, 2023

TO: City of De Soto Board of Zoning Appeals

FROM: Brad Weisenburger, Planning and Capital Projects Director

CC: City Staff via Electronic Packet Distribution

Applicant: Bill Koppen

Site Address 8488 Waverly Road

EXHIBITS: Exhibit A: Variance Application

 Exhibit B: Location Map

 Exhibit C: Map of Variance Area on site

 Exhibit D : BZA Record of Findings

Summary: Bill Koppen is requesting a variance to construct an accessory building in the front yard of a single-family dwelling at 8488 Waverly Road. The property is zoned R-1, (Residential Low Density). The applicant is requesting to waive the requirement that states an accessory building cannot be constructed in the front yard.

“Unless otherwise provided, **no accessory structure or use shall be erected in any required or established front yard**, and all accessory structures must meet the set-back requirements for the zoning district in which they are located.”

I. Background & Application Information

The variance application materials are attached as **Exhibit A**. All required fees have been paid, and notification letters have been sent to all owners of property within 200 feet of the property. **Exhibit B** shows the project location for the proposed variance.

Exhibit C shows of the property and surrounding area. The property itself contains two tracts, the first which contains the principle residence is 0.94 acres and the second is .10 acres for a total of 1.04 acres. Article 5 Supplementary District Regulations addresses Accessory Buildings. The request is solely directed at allowing an accessory building in front of the residence. If approved setbacks required in the R1 district would still be enforced. This would include 15’ for the side, 35’ for the front and 30’ for the rear.

The hardship for the requested variance arises because there is no room to meet the rear yard and side yard setbacks due to sloping grade changes and also because the house was constructed towards the rear of the tract. The location of the septic tank and lateral field plays no role the applicants request.

Review of Variance Requests.

In considering approval of the requested variances, the BZA is charged with determining whether the requests are found to be generally compatible with surrounding area and is in the best interest of the City as a whole. In making such determination, the BZA may consider all factors they deem relevant to the questions of compatibility and the best interest of the City. Specific topics on which to base your decision are found in Paragraph 2.B of Article 12 of the City's Zoning Regulations, The criteria are listed below along with a brief staff review of each.

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 is not created by an action or actions of the property owner or applicant.

The lot size and configuration is common in the rural-residential areas of the City. The residential areas surrounding the applicants' location are all zoned R1 Residential low density. The proposed building does not fit due to the size of the structure (26' x 32'), and the grade sloping grade on the lot and the location of the principle structure being so far to the rear in the lot. The applicant recently purchased the property and is not responsible for the location of the principle residence.

The granting of the permit for the variance will not adversely affect the rights of adjacent property owners represented in the application.

The surrounding area includes mostly rural residential uses. There are several accessory buildings in the neighborhood and one residence to the south does have accessory building in the front yard. The proposed location is rather open, and the building would be clearly seen by the neighbors. The applicant has indicated a willingness to plant several trees to buffer the accessory building. It is unlikely that any surrounding properties will be significantly impacted by granting the variance request if the materials used are similar to the residential materials on the principle residence.

The strict application of the provisions of the zoning regulations of which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application. Such hardship shall not be based solely upon economic considerations.

There is no feasible location on this lot for an accessory building of this size (32' x 26') due to the lot(s) size being just over 1 acre.

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

The proposed accessory building does not appear to have any significant impact on public safety.

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

In general, set-back requirements and building regulations are intended to protect adjoining properties from inappropriate or undesirable encroachments, and to help establish neighborhood densities and character. The set back requirements are not in question. If the variance was the issued the primary concern is the visibility from Waverly Road. Additional screening and using similar building materials and colors would help the proposed building blend into the neighborhood. Overall, the

variance does not appear to threaten the intent of the requirement to establish and maintain a low-density residential setting in this area. De Soto does have many accessory buildings in these large lot residential areas that are east of Kill Creek Road.

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

From staff's perspective the variance request is reasonable based upon the difficulty of the terrain and the principle residence limiting the ability to comply with the front yard building line setback. If granted it would be advisable to require similar materials colors as the residence.

II. **BZA Actions**

According to the variance regulations, the BZA is to make a specific finding on each of the criteria listed in Section II above. If the majority of the BZA finds that any one of the criteria is not met, the request must be denied.

Attached as **Exhibit D** is a "Record of Decision" form that can be used to formally record the votes of the members on each criteria. The BZA is the final authority on these variances. Once you vote, the decision can only be appealed to the district court.

**End of Memo
Exhibits to follow.**

Exhibit A

VARIANCE APPLICATION
BOARD OF ZONING APPEALS

Return Form to:

City of De Soto Planning Department
P.O. Box C, 32905 W. 84th Street
De Soto, KS 66018
(913) 583-1182 ext. 115
Fax: (913) 583-3123

For Office Use Only

Case No.: VAR-2023-01
Filing Fee: \$200
Deposit: _____
Date Advertised: 1-10-2023
Date Notices Sent: 1-9-2023
Public Hearing Date: 2-9-2023

APPLICANT: Bill KOPPEN PHONE: 913-957-1964
E-MAIL: DKoppen@AOL.com FAX: NA
ADDRESS: 8488 WAVERLY ZIP: 66018
OWNER: Bill Koppen PHONE: 913-957-1964
E-MAIL: DKoppen@AOL.com FAX: NA
ADDRESS: 8488 WAVERLY ZIP: 66018
LOCATION OF PROPERTY: 8488 WAVERLY De Soto, KS 66018
LEGAL DESCRIPTION: PART OF Lot 1 & Lot 2-A, Hilltop Estates
PART SE 1/4, Sec. 27, T22S, R22E

TO BE COMPLETED FOLLOWING CONSULTATION WITH PLANNING STAFF:

Section of Zoning Ordinance from which Variance is Requested: ARTICLE 5 - SECTION 3

Adjacent Zoning and Land Use:

	Zoning	Land Use
North	<u>R1-Residential</u>	<u>Single Family home</u>
South	<u>R1-Residential</u>	<u>Single Family home</u>
East	<u>R1-Residential</u>	<u>Single Family home</u>
West	<u>R1-Residential</u>	<u>Single Family home</u>

Present Zoning/Land Use of Property: R-1 Residential
Proposed Use of Property: Construction of Accessory building
Utility lines or easements that would restrict proposed development:
None

IMPORTANT: Review Zoning Regulations, Article 12 and Procedures Manual, Article 9 available at www.desotoks.us, Online Documents and Regulations

Please indicate below the extent to which the following standards are met, in the applicant's opinion. When answering the questions below, please provide full, complete, descriptive answers. Bear in mind that it is the function of the Board to investigate completely any proposed adjustment to how the regulations are applied to your property, to be sure that it is the least change necessary, and that it will not have a negative affect upon the surrounding property owners and property values.)

1. **UNIQUENESS**

Yes No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

Request VARIANCE to Build 32' x 26', (832 sq ft)
2 1/2 CAR GARAGE IN FRONT OF HOUSE,
NORTH side OF DRIVEWAY, TUCKED IN
TREE LINE. See MAP FOR LOCATION.

2. **ADJACENT PROPERTY**

Yes No

The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.

I will Add ADDITIONAL trees & LANDSCAPE
to shield view OF Building. EXTERIOR
FINISHES will MATCH EXISTING HOUSE.

3. **HARDSHIP**

Yes No

The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

NOT ABLE to LOCATE Building Behind
HOUSE due to HOUSE LOCATION ON property.

IMPORTANT: Review Zoning Regulations, Article 12 and Procedures Manual, Article 9 available at www.desotoks.us, Online Documents and Regulations

4. **PUBLIC INTEREST**

Yes No

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

EXTERIOR FINISHES WILL MATCH EXISTING
HOUSE, ADDITIONAL LANDSCAPE WILL
SHIELD BUILDING FROM PUBLIC VIEW

5. **SPIRIT AND INTENT**

Yes No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

SIMILAR VARIANCES WITHIN CITY LIMITS.
MY GOAL IS TO BUILD BUILDING WITH AS
LITTLE AS POSSIBLE IMPACT TO MY NEIGHBORS VIEWS.

6. **MINIMUM VARIANCE**

Yes No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

FLEXIBLE ON EXACT LOCATION &
PLACEMENT BASED ON INPUT FROM CITY.

SIGNATURE: 

DATE: 11-4-22

BY: Bill Koppen

TITLE: OWNER

IMPORTANT: Review Zoning Regulations, Article 12 and Procedures Manual, Article 9 available at www.desotoks.us, Online Documents and Regulations

SAMPLE MEMO FROM APPLICANT TO THE BOARD OF ZONING APPEALS

Date: 11-4-22

(Please print)
Applicant's Name: Bill Koppen
Address: 8488 WAVERLY
Applicant: Bill Koppen

To: City of De Soto Board of Zoning Appeals

Re: Variance Request

Listed below is the information requested by City staff in connection with my/our request for a Variance from the Restriction to build in front of house regulations. This variance is needed because: due to house location on property, no room behind house.

1. **Uniqueness.** (What physical surroundings, shape, or topographical conditions make this property unique or different from others and creates a practical difficulty or unnecessary hardship in meeting this regulation).
2. **Adjacent Property.** (Will varying the regulation be detrimental or adversely affect the rights of adjacent property owners or other residents of the City)
3. **Hardship.** (What type of hardship would result in strict application of the regulations)
4. **Public Interest.** (Why will the variance not have an adverse affect upon the public health, safety, morals, order, convenience, or general welfare of De Soto)
5. **Spirit and Intent.** (How will the spirit and intent of the regulations be met with the Variance)
6. **Minimum Variance.** (Request is for the minimum variance necessary for proposed use)

Sincerely,

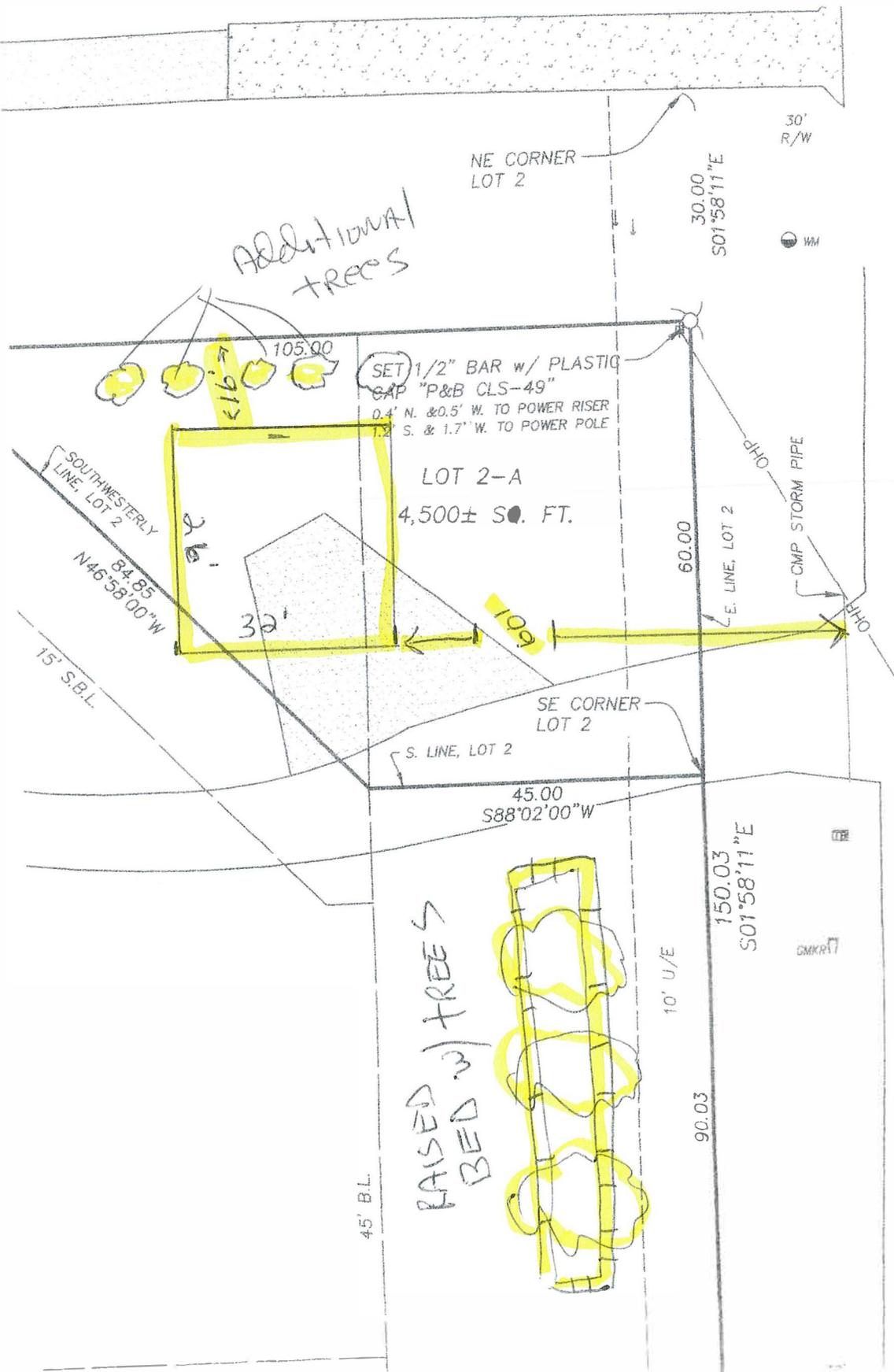


Bill Koppen
(Applicant's Name)
(Business Name)

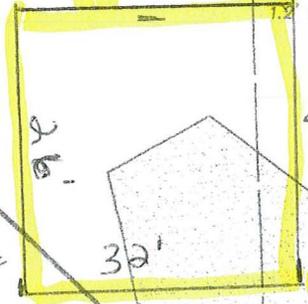
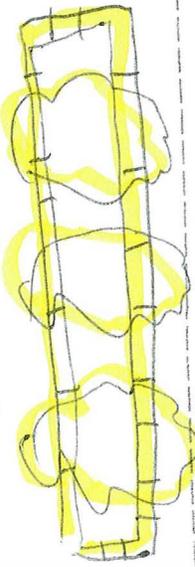
IMPORTANT: Review Zoning Regulations, Article 12 and Procedures Manual, Article 9 available at www.desotoks.us, Online Documents and Regulations

Exhibit B

W
N
E



RAISED w/ TREES



Additional trees

105.00

32'

10'

10' U/E

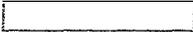
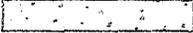
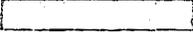
90.03

150.03
S01°58'11"E

45' B.L.

WAVERLY ROAD

LEGEND

○	Denotes Set 1/2" Rebar with Plastic Cap, "P&B CLS-49"		Denotes Asphalt Pavement
●	Denotes Found 1/2" Rebar with Plastic Cap, "P&B CLS-49"		Denotes Concrete Pavement
⊙	Denotes Septic Tank Lid		Denotes Gravel
Ⓟ	Denotes Electrical Riser	---STM---	Denotes Storm Sewer Line (As Noted)
⊖ ^{FFB}	Denotes Electrical Box at Building	---OHP---	Denotes Overhead Electrical Line
↓	Denotes Guy Anchor	R/W	Denotes Right-of-Way
⊕	Denotes Power Pole	U/E	Denotes Utility Easement
Ⓜ	Denotes Telephone Box	B.L.	Denotes Building Line
⊖ ^{TFB}	Denotes Telephone Box at Building	S.B.L.	Denotes Side Building Line
Ⓜ ^{GMKR}	Denotes Gas Marker	R.B.L.	Denotes Rear Building Line
⊖ ^{WM}	Denotes Water Meter		
⊗	Denotes Mailbox		

**PART OF LOT 1 & LOT 2-A, HILLTOP ESTATES
PART SE 1/4, SEC. 27, T12S, R22E**



Payne & Brockway P.A.

CIVIL ENGINEERS & LAND SURVEYORS
426 SOUTH KANSAS AVE. OLATHE, KANSAS 66061
PH: 913.782.4800 FAX: 913.782.0907
WWW.PAYNE-BROCKWAY.COM

SURVEY FOR: KIRBY DEAN DRAYER &
CHARLOTTE GILBERT DRAYER
8488 WAVERLY ROAD
DESOTO, KS 66018

TAX PROPERTY ID: AP29000000-0001

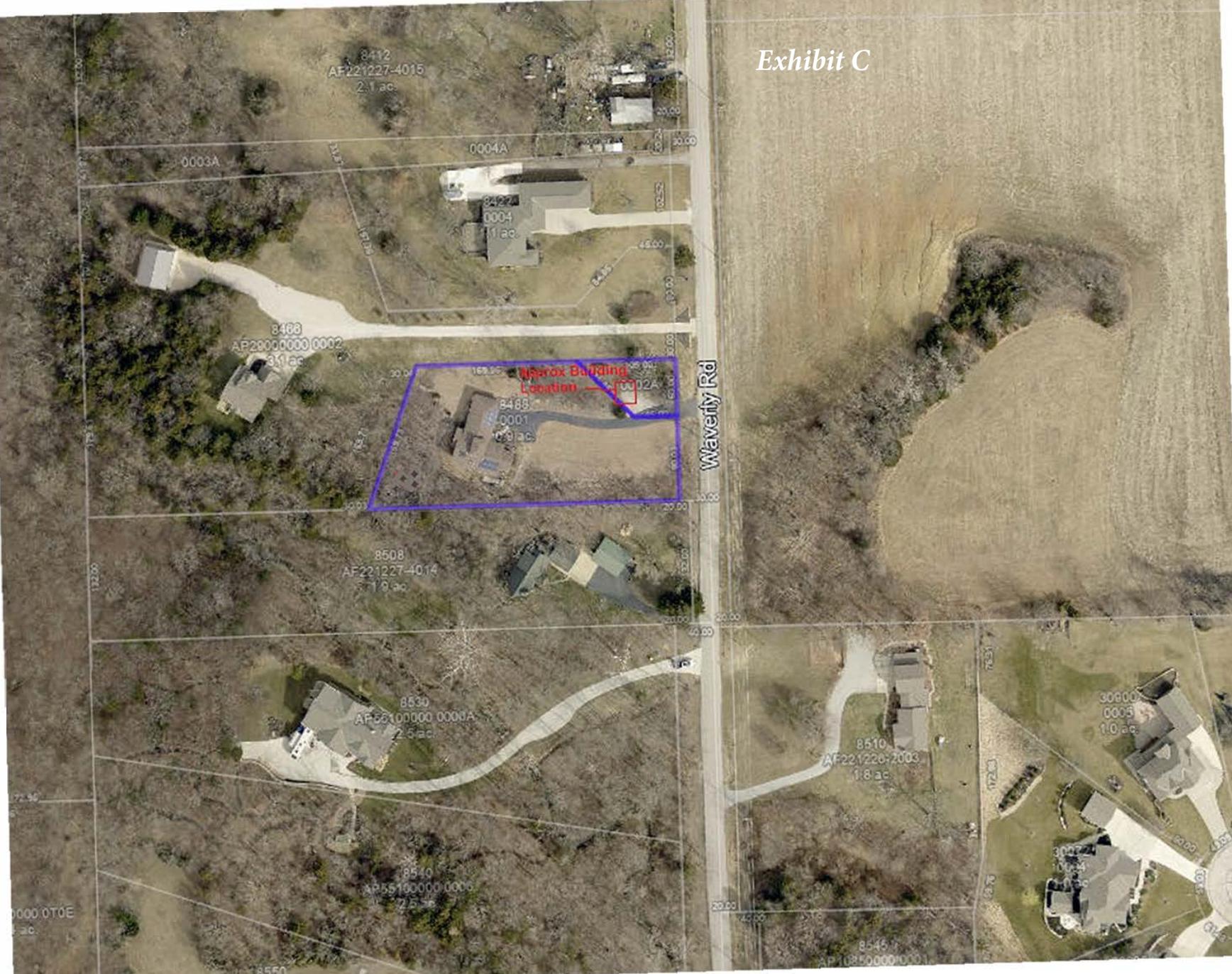
DATE
12/20/18

SCALE
1"=20'

SHEET **1**

OF **1**

Exhibit C



8412
AF221227-4015
2.1 ac

0003A

0004A

8427
0004
1 ac

8468
AF20000000 0002
3.1 ac

**Nisrox Building
Location**

8488
0001
0.8 ac

Waverly Rd

8508
AF221227-4014
1.9 ac

8530
AF56100000 0000A
2.5 ac

8540
AF55100000 0000
2.5 ac

8510
AF221226-2003
1.8 ac

8000
0005
1.0 ac

8546
AF18500000 0001

Exhibit D

Board of Zoning Appeals
RECORD OF FINDING

From Paragraph 2.B.(2) of Article 12 of the Zoning Regulations:

“A request for a variance may be granted, upon a finding of the Board that all of the following conditions have been met. The Board shall make a determination on each condition, and the finding shall be entered in the record.”

This document represents the findings of the Board of Zoning Appeals on the matter described herein.

APPLICANT: Bill Koppen
HEARING DATE: February 9th, 2023
PROPERTY LOCATION: 8488 Waverly
VARIANCE REQUEST: Allow Accessory building in Front yard

The votes of each member of the BZA are recorded below. A yes vote indicates that the requested variance meets the specific standard, and is in support of granting the variance.

1. **UNIQUENESS**

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

Lane: ___ Yes ___ No

Milewski :___ Yes ___ No

Freeman:___ Yes ___ No

Winslow:___ Yes ___ No

Burns:___ Yes ___ No

Overall Board Determination: ___ Yes ___ No

2. **ADJACENT PROPERTY**

The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.

Freeman :___ Yes ___ No

Burns:___ Yes ___ No

Lane:___ Yes ___ No

Milewski: ___ Yes ___ No

Winslow:___ Yes ___ No

Overall Board Determination: ___ Yes ___ No

3. *HARDSHIP*

The strict application of the provisions of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.

Burns: Yes No

Winslow: Yes No

Milewski : Yes No

Lane: Yes No

Freeman: Yes No

Overall Board Determination: Yes No

4. *PUBLIC INTEREST*

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Winslow: Yes No.

Milewski : Yes No

Lane: Yes No

Burns: Yes No

Freeman : Yes No

Overall Board Determination: Yes No

5. *SPIRIT AND INTENT*

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

Milewski: Yes No

Lane : Yes No

Freeman: Yes No

Winslow: Yes No

Burns: Yes No

Overall Board Determination: Yes No

6. *MINIMUM VARIANCE*

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

Winslow: Yes No.

Milewski : Yes No

Burns: Yes No

Lane: Yes No

Freeman : Yes No

Overall Board Determination: Yes No

SIGNATURE: _____

DATE: _____

BY: Steve Winslow

TITLE: Chairman, Board of Zoning Appeals

“Motion to Allow or Deny the variance by _____.”

“Second by _____.”