

**CHARTER TOWNSHIP OF GARFIELD
ZONING BOARD OF APPEALS MEETING**

Thursday, July 21, 2022 @ 6:00 p.m.
Garfield Township Hall
3848 Veterans Drive
Traverse City, MI 49684

A G E N D A

ORDER OF BUSINESS

Call meeting to order
Pledge of Allegiance
Roll call of Board Members

1. Review and approval of the Agenda and declaration of a Conflict of Interest
2. Minutes – March 17, 2022
3. Public Hearings
 - a. A request made by Michael and Yana Powers for a 19.01 ft variance from the front setback requirements. The specific request is asking for a variance from 30 ft to 10.99 ft to allow construction of an addition. The property is zoned R-1 Single Family Residential and is currently used as single-family residential. The property is located at 4085 Jefferson Avenue with a property number of 05-315-010-00.
4. Other Business
5. Items for next agenda
6. Public Comment
7. Adjournment

The Garfield Township Board will provide necessary reasonable auxiliary aids and services, such as signers for hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities upon the provision of reasonable advance notice to the Garfield Township Board. Individuals with Disabilities requiring auxiliary aids or services should contact the Garfield Township Board by writing or calling Lanie McManus, Clerk, Ph: (231) 941-1620.

**CHARTER TOWNSHIP OF GARFIELD
ZONING BOARD OF APPEALS
MEETING MINUTES
March 17, 2022**

Call to Order: Vice Chair Swan called the meeting to order at 6:00pm.

Pledge of Allegiance: Recited by everyone in attendance.

Roll Call of Board Members:

Members Present: Fudge, Duell, Swan and Fricke

Members Absent: Rozycki and Smith

Also in Attendance: Zoning Administrator Mike Green

1. Review and Approval of the Agenda – Conflicts of Interest (6:02)

Fricke moved and Fudge seconded to approve the agenda as presented.

Yeas: Fricke, Fudge, Duell and Swan

Nays: None

2. Review and Approval of Meeting Minutes – January 13, 2022 (6:03)

Fudge moved and Swan seconded to approve the minutes of January 13, 2022.

Yeas: Fudge, Swan, Duell, Fricke

Nays: None

3. Public Hearings

A request made by Tom and Luann Nemitz for a variance from the side yard setback requirement in Section 313.E of the Garfield Township Zoning Ordinance. The applicant is requesting a 0.6 foot variance from the ten (10) foot side yard setback, resulting in a 9.4 foot setback for the proposed addition to the existing dwelling. The property is zoned R-1 One Family Residential and is located at 1439 Lake Drive with a property number of 05-295-013-00. The parcel is located within the Silver Pines Resort subdivision which was platted in 1947. Adjacent properties within the Silver Pines Resort subdivision are also zoned R-1 One Family Residential. According to Township records and information supplied by the application, the property contains a dwelling with a detached garage located partially in the front yard adjacent to Lake Drive. The purpose of this request is to construct an addition to the existing dwelling. Tom Nemitz spoke about the variance and is asking for a second story. He presented a powerpoint with pictures of his proposal as well as the plat map. He stated that there are many non-conforming properties in the area. Nemitz explained that they could not build to the east or south. They can only add on to the north side of the existing structure and want to protect the line of arbor vitae on the north side property line. He mentioned that his neighbors were supportive of the building plan.

Board members discussed the project and stated that although the property owner seemed to have a logical plan, it still needed to fit into the zoning ordinance.

Neighbor Ron Bowman said the proposed plan has no bearing on his home and he is in support of the proposed addition to the home.

Marsha Bowman a neighbor is in support of the proposed addition and it would not negatively impact their property or the safety of either of the properties.

ZBA members then weighed and discussed the following the criteria that the application needs to meet:

Practical Difficulty:

- A. Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
Green said that a platted lot could be split again and sold and property could be re-divided.
Board members decided unanimously that this condition was **Not Met**.
- B. The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;
Board members decided unanimously that this condition was **Not Met**.
- C. The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance; Board members discussed whether an ordinance text amendment could possibly help with situations like this.
Board members Swan, Duell and Fricke determined that the condition was **met** while Fudge determined that it was not met.
- D. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance;
Board members decided unanimously that this condition was **Not Met**.
- E. For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.
All board members determined that this condition was **Met**.

General Criteria

- A. The requested variance shall relate only to property that is under the control of the applicant; All board members determined that this condition was **Met**.

- B. No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;
All board members determined that this condition was **Met**.
- C. The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;
Board members decided unanimously that this condition was **Not Met**.
- D. The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located;
All board members determined that this condition was **Met**.
- E. The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.
Board members Duell, Fudge, and Fricke determined that this condition was **not met**, while Swan determined that it was met.

Special Conditions or Circumstances

Board members did not need to go through the special circumstances.

Board members commented that the requested 6" setback was not correct given the overhang of the roof and that there would be new construction in the setback of a non-conforming structure. They mentioned the possibility of text amendment at the planning level.

Duell moved and Fudge seconded to DENY the request for variance from Sections 313.E of the Garfield Township Zoning Ordinance to allow an eight (8) inch side yard variance based on findings for each Practical Difficulty standard and General Criteria for granting such request NOT being met.

Yeas: Duell, Fudge, Swan, Fricke

Nays: None

- 4. **Other Business:** None
- 5. **Items for Next Agenda:** None at this time
- 6. **Public Comment**
None
- 7. **Adjournment:** *Fudge moved and Fricke seconded to adjourn at 7:55pm.*

Lynn Fricke, Secretary



Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE
TRAVERSE CITY, MICHIGAN 49684
PH: (231) 941-1620 • FAX: (231) 941-1588

ZONING BOARD OF APPEALS STAFF REPORT

Meeting Date:	Thursday, July 21, 2022
Case #: 2022-02	Section 313.E front yard setback variance request
Owner:	Mike and Yana Powers
Applicant:	[same as owner]
Property ID #:	05-315-010-00
Property Location:	4085 Jefferson Avenue
Zoning District:	R-1 One Family Residential

Parcel Overview and History

The parcel is located within the Supervisor's Plat subdivision and is described as the N 305.47' of Lot 10 excluding road right-of-way. The property is zoned R-1 One Family Residential, and is located at 4085 Jefferson Avenue, with a property number of 05-315-010-00. Adjacent properties within the Supervisor's Plat subdivision and surrounding areas are also zoned R-1 One Family Residential. According to Township records and information supplied by the application, the property contains a dwelling with a detached garage. The dwelling is located partially in the front yard adjacent to Jefferson Avenue.

Request

A request has been made by the applicant/property owner for a nineteen and one one-hundredth (19.01) foot variance from the thirty (30) foot front yard setback, resulting in a ten and ninety-nine hundredth (10.99) foot setback for the proposed addition. The purpose of this request is to construct an addition to the existing dwelling along with a carport and breezeway connecting to an existing detached accessory building. If approved by the Zoning Board of Appeals, the applicant intends to build an addition to the existing dwelling and add a second story to the existing dwelling and proposed addition as shown on the provided site plan sketch. Staff review has been provided in the following pages of this report.

Aerial view of subject parcel and adjacent properties
(subject property labeled and highlighted in light pink)



Aerial View of the subject property**Approval Criteria (Section 454.E)**

A variance may only be granted if the Zoning Board of Appeals finds that each of the Practical Difficulty standards under Section 454.E.1 are met, each of the General Criteria under Section 454.E.2 are met, and at least one of the Special Conditions or Circumstances are met. The applicant has provided a letter written by Dusty Christiansen of Mansfield and Associates with responses to each of the approval criteria below. In addition, I have provided you with recommended findings for each Practical Difficulty standard and General Criteria below. As stated in Section 454.E, a variance can be granted only if the Zoning Board of Appeals makes **at least one finding in favor of each of these standards**.

(1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all the following criteria:

- a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
 - **Staff Response in favor:** Staff notes further in this report demonstrate that the subject property is bisected by a stream, meeting Special Conditions a) Physical Conditions and b) Significant Natural Features under Section 454.E(3).
- b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;

- **Staff Response in opposition:** *The subject property in its current configuration was created by a land division in 2001 under the previous Zoning Ordinance. Any hardship created by the land division would have been self-created as the previous R1B Zoning District classification of the parcel at the time the property was divided featured the same setback requirements as the current R-1 Zoning District classification.*
 - c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;
 - **Staff response in opposition:** *The strict application of the setback requirements of this Ordinance does not preclude the applicant from constructing an addition to the existing dwelling outside of the required front setback areas that otherwise meets the requirements of this Ordinance. Attachment "C" to this report is meant to demonstrate potential buildable areas available that would meet the R-1 District setback requirements.*
 - d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance;
 - **Staff response in opposition:** *The applicant has failed to adequately demonstrate that a denial of their request would deprive them of rights enjoyed by other properties in the same zoning district. Furthermore, Attachment "C" to this report shows other buildable area that could be used to expand the dwelling and connect it to the detached accessory building.*
 - e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.
 - **Staff Response in favor:** *The applicant is not claiming a financial hardship.*
- (2) **General Criteria**
- Where the applicant is able to demonstrate "practical difficulty" by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:
- (a) The requested variance shall relate only to property that is under the control of the applicant;
 - **Staff response in favor:** *The variance only relates to property under control of the applicant.*
 - (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;
 - **Staff response in favor:** *The applicant is not asking for a variance based on any other nonconformities in adjacent properties or within the R-1 District.*
 - (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;
 - **Staff response in opposition:** *The requested variance for the addition to the existing dwelling do not meet the purpose statement found in Article 8, Section 800, which states, in part, that "Nonconformities shall not be enlarged upon, expanded or extended, except in compliance with this article [Article 8 – Nonconformity], nor shall they be used as grounds for adding other structures or uses prohibited by the underlying zoning district."*
 - (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located;
 - **Staff response in favor:** *The requested variance would not cause a noticeable effect on neighboring properties beyond what is permitted by right.*
 - (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

- **Staff response in opposition:** The applicant has not adequately demonstrated that there is no reasonable alternative location on the parcel for the proposed improvements that wouldn't require a variance.

(3) Special Conditions or Circumstances

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not limited to, the circumstances as described below:

(a) Physical Conditions

The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.

- **Staff response in favor:** The stream located across the property is not generally found on properties in the R-1 District although it runs behind several other homes and through properties along Jefferson Avenue.

(b) Significant Vegetation or Natural Features

The proposed project site contains significant vegetation or other natural features identified as Stream environment/Wetland by the Garfield Township Master Plan.

- **Staff response in favor:** The site plan provided by the applicant shows a stream running through the property and along portions of the west property line near the dwelling.

(c) Substandard Lots(s)

The proposed project involved the utilization of an existing legal nonconforming lot(s).

- **Staff response in opposition:** The subject property is not considered a legal nonconforming lot.

(d) Historic Resources

The proposed project site contains historical significance.

- **Staff response in opposition:** There is no known historic designations for the subject property.

(e) Neighborhood Character

The proposed project promotes the established historical or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

- **Staff response in opposition:** An aerial view of the area shows that every other home on Jefferson Avenue within the Township is located further back from the road and appear to meet the 30 ft. front yard setback requirements.

Staff Comments

As you see in my staff findings for the Practical Difficulty standards and General Criteria, I was unable to make findings in favor of each standards based on information provided by the applicants. My analysis, however, is not meant to steer the Zoning Board of Appeals to deny the request or preclude the Zoning Board of Appeals from considering additional information provided by the applicant in support for each standard. I am including a chart below to assist you in reviewing the applicable standards prior to making a motion to grant or deny the request.

Review Standard	Staff Response	ZBA Determination/Comments
Practical Diff. (a)	Standard met	
(b)	Standard not met	
(c)	Standard not met	
(d)	Standard not met	
(e)	Standard met – N/A	
Gen. Criteria (a)	Standard met – N/A	
(b)	Standard met – N/A	
(c)	Standard not met	
(d)	Standard met – N/A	
(e)	Standard not met	

Possible Motion

Upon review of each finding, the Zoning Board of Appeals may consider a motion to take one of the following actions:

Motion to **GRANT** the request for variance from Sections 313.E of the Garfield Township Zoning Ordinance to allow a nineteen and one one-hundredth (19.01) foot variance based on findings for each Practical Difficulty standard and General Criteria for granting such request being met.

Motion to **DENY** the request for variance from Sections 313.E of the Garfield Township Zoning Ordinance to allow a nineteen and one one-hundredth (19.01) foot variance based on findings for each Practical Difficulty standard and General Criteria for granting such request NOT being met.

Please feel free to contact me if you have any questions before the meeting.

Sincerely,

Michael Green, Zoning Administrator
Charter Township of Garfield

Attachments:

- A. ZBA Application, site plan, and Mansfield Associates letter dated 6-21-2022
- B. Article 8 – Nonconformities (with highlighted text)
- C. Section 313.E of the Zoning Ordinance (R-1 District Dimensional Standards)
- D. Marked up version of applicant’s site plan showing available buildable area throughout the property and between the existing dwelling and detached accessory building.
- E. Copy of email from Amy DeHaan, Twp. Assessor, notifying of a 2001 division creating parcel.



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Case # 2022-02

Attachment A

ZONING BOARD OF APPEALS APPLICATION

Applications and fees shall be submitted 30 days prior to the regular scheduled ZBA hearing date.

1. Owner Name:

Michael & Yana Powers

Address:

4085 Jefferson Ave.

City, State, Zip Code:

Traverse City, MI 49684

Owner Phone Number:

231-394-1581

Applicant Name:

Michael & Yana Powers

Address:

4085 Jefferson Ave.

City, State, Zip Code:

Traverse City, MI 49684

Applicant Phone Number:

231-394-1581

2. Property Information:

a. Property Address: 4085 Jefferson Ave.

b. Property Location: 4085 Jefferson Ave.

c. Lot # 10 Subdivision Name: Supervisor's Sub.

d. Parcel ID# 28-05- 315 - 010 - 00

e. Current Zoning: R-1

f. Current Use: Single-family Residential

3. Purpose For Request:

Variance ☒ Appeal ☐ Interpretation ☐ Review ☐

Other ☐ Please explain request / list section(s) related to request:

Request for variance from front yard setback, Section 313.E of the

Garfield Township Zoning Ordinance.

Affidavit:

The undersigned affirms that he/she or they is/are the owner, or authorized agent of the owner, and that the answers and statements herein contained and the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is/are authorized and does hereby grant a right of entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding the request.



Owner Signature

6/19/22

Date

Applicant Signature

Date

Any party aggrieved by the decision of the Zoning Board of Appeals may appeal the decision to circuit court. An Appeal of the decision shall be filed in accordance with PA 110 of 2006, as amended.

SECTION 454 VARIANCES

A. Applicability – Dimensional Variances

The Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.

A. Applicability – Dimensional Variances

The Zoning Board of Appeals shall not grant a use variance or take any action that would have the effect of granting a variance from the permitted use of land.

E. Approval Criteria

(1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;
- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;
- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance; and
- (e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.

(2) General Criteria

Where the applicant is able to demonstrate “practical difficulty” by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

- (a) The requested variance shall relate only to property that is under the control of the applicant;
- (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;
- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;
- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located; and
- (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

(3) Special Conditions or Circumstances

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not be limited to, the circumstances as described below:

- (a) Physical Conditions:** The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.
- (b) Significant Vegetation or Natural Features:** The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.
- (c) Substandard Lot(s):** The proposed project involves the utilization of an existing legal nonconforming lot(s).
- (d) Historic Resources:** The proposed project site contains historical significance.
- (e) Neighborhood Character:** The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

June 21, 2022

Mike Green, Zoning Administrator
Garfield Township
3848 Veterans Drive
Traverse City, MI 49684

Re: Variance Request – 4085 Jefferson Rd.

Mr. Green,

The following responses to the approval criteria for variances, as listed in Section 454.E of the Zoning Ordinance, are provided for review of the variance request submitted by Michael Powers for his property located at 4085 Jefferson Road. Ordinance text is shown in *black italic* text, and responses are shown in *blue text*.

Should you have any questions or need additional information, please feel free to call me at (231) 360-7021 or email me at dusty@maaeps.com.

Sincerely,
Mansfield Land Use Consultants



Dusty Christensen, LLA

Section 454.E Approval Criteria

(1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);*

The dimensional variance sought from the front yard setback standards of Section 313.E.(B) of the Garfield Township Zoning Ordinance at the property located at 4085 Jefferson Road is related to circumstances that are unique to the subject property and do not apply generally to other properties within the R-1 Zoning District. Information related to specific regulations described in Section 454.E.(3) can be found later in this document.

The subject property contains unique natural features and development conditions that predate both Township zoning and the widening of the Jefferson Rd. right-of-way. The original plat of the subject property, surrounding parcels, and Jefferson Rd. included a 33'-wide right-of-way for the street, which was widened to 66' sometime after the existing single-family home was built on site, creating a situation where the right-of-way line, and any associated front yard setback, were shifted 16.5' closer to the existing on-site home. Additionally, the existing on-site home was constructed prior to the adoption of the Township's Zoning Ordinance.

The subject property is located at the base of hills that contain springs which discharge groundwater into a small stream that feeds Kid's Creek. These springs and small creek are clean, cold water bodies that play an important role in the watershed and provide habitat to a variety of native species. Recognizing this importance, the Ordinance requires a 50' setback from streams for single-family residential structures and that all grading or site disturbance within 200' of the creek be minimized to the greatest extent possible (Section 535.D).

While a small area compliant with setback standards exists to the south/southeast of the existing home, the proposed home addition as shown on the attached drawings eliminates soil disturbance close to the stream and moves it to a more remote location, reducing the potential for erosion to damage the stream. Additionally, the existing home's structure and existing surrounding grades make an addition to the south/southeast side of the home impractical. Existing shallow roof slopes and low south side wall elevations of the existing home would require major

changes to the building's roof structure, where the proposed addition utilizes existing roof lines to provide:

- an addition that eliminates major structural changes to the existing building
- avoids grade change issues between the existing home and garage
- reduces the amount of soil disturbance required for an addition, as the rear deck could remain intact for the construction of the addition

Additionally, the existing wastewater (septic) lead and septic tanks for the home are located to the south and east of the existing house and garage and would either need to be rerouted/moved for an addition within the Ordinance-defined building envelope or would require construction access further south on the property, increasing equipment activity and soil disturbance within closer proximity to the stream.

- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;*

The existing parcel and home at the subject site were created prior to the adoption of the Township Ordinance and the widening of the Jefferson Rd. right-of-way. The location of the existing home, location of the road right-of-way, and design of the existing home are unique to the subject site and were in no way conditions created by the applicants.

- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;*

Strict application of the provisions of the Ordinance would create a situation where the expansion of the existing home would require essentially an entire rebuild at an expense greatly disproportionate to the value of the property. The existing home consists of two bedrooms and the applicants, who have two children, are seeking to add a third bedroom and therapy area for their son who lives with severe disabilities and needs round-the-clock care. The location of this new bedroom within the home is important, as night-time check-ins and health emergencies are frequent, requiring that bedrooms be located near each other for necessary monitoring and care to be administered. Strict compliance with Ordinance setback regulations would place the needed bedroom/therapy area on the opposite end of the home from the existing bedrooms, creating a barrier to the night-time monitoring of and effective care for the applicants' son.

- (d) *Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance; and*

Literal interpretation of the standards of the Ordinance would deprive the applicants of the ability to create a home with the layout necessary for the safe and effective care of their disabled son, rights commonly enjoyed by those who do not have a legal, nonconforming, historic structure on their property OR the additional barriers to expansion created by the presence of an on-site stream. If the existing home had been constructed following the creation of the Zoning Ordinance and widening of the Jefferson Rd. ROW, an expansion such as that proposed would not need to encroach on the front setback.

- (e) *For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.*

As discussed earlier in this document, the need for the proposed dimensional variance is based on special conditions that exist on the site and the need for the rooms within the home to be arranged for the effective and safe care of a young child with serious health conditions.

(2) *General Criteria*

- (a) *The requested variance shall relate only to property that is under the control of the applicant;*

Given the unique circumstances present on the subject property (existing stream, structure that predates zoning and road ROW expansion), the requested variance relates only to the subject property, which is owned by the applicants.

- (b) *No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;*

No neighboring lands, buildings, structures, or other factors present on neighboring properties are presented as grounds for the issuance of the requested variance.

- (c) *The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;*

The variance requested is in harmony with the general purpose and intent of the Ordinance and will, in no way, be detrimental to the public health, safety, and welfare of the general public.

- (d) *The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located; and*

The requested variance will not alter the essential character of the area or cause an adverse effect upon properties in the immediate vicinity. The proposed dimensional variance would allow for the construction of a modest addition to the existing home that would not even extend further into the front setback than portions of the existing home. Given the small size of the proposed addition and the fact that it will not extend further into the setback than portions of the existing home, the essential character of the area will not be altered and such a variance will not cause substantial adverse impact on any neighboring property or the public roadway.

- (e) *The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.*

The requested dimensional variance is the minimum variance needed to allow for the expansion of the existing home in a manner that facilitates the safe and effective care of the applicants' son by locating the home's bedrooms and therapy areas in close proximity. The only alternative area of the site for a potential home expansion would create an unmanageable distance between the existing bedrooms and the needed bedroom/therapy area and also require additional soil disturbance within closer proximity to the existing stream - something that the Ordinance seeks to avoid and limit in order to protect our valuable waterways and water quality.

(3) Special Conditions or Circumstances

(a) Physical Conditions

The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.

As noted earlier in this document, the subject property contains unique physical conditions that do not generally apply to other properties or uses in the R-1 district. There is an existing stream that borders and crosses the subject site and the existing home was constructed prior to the adoption of the Zoning Ordinance and the widening of the Jefferson Rd. right-of-way.

(b) Significant Vegetation or Natural Features

The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.

The subject property is bordered and crossed by a stream that is a tributary to Kid's Creek.

(c) Substandard Lot(s)

The proposed project involves the utilization of an existing legal nonconforming lot(s).

The subject site utilizes an existing legal, nonconforming, single-family residential structure that already encroaches on the front setback.

(d) Historic Resources

The proposed project site contains historical significance.

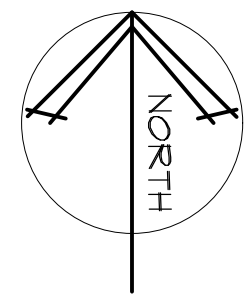
There is no known historical significance of the subject site.

(e) Neighborhood Character

The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

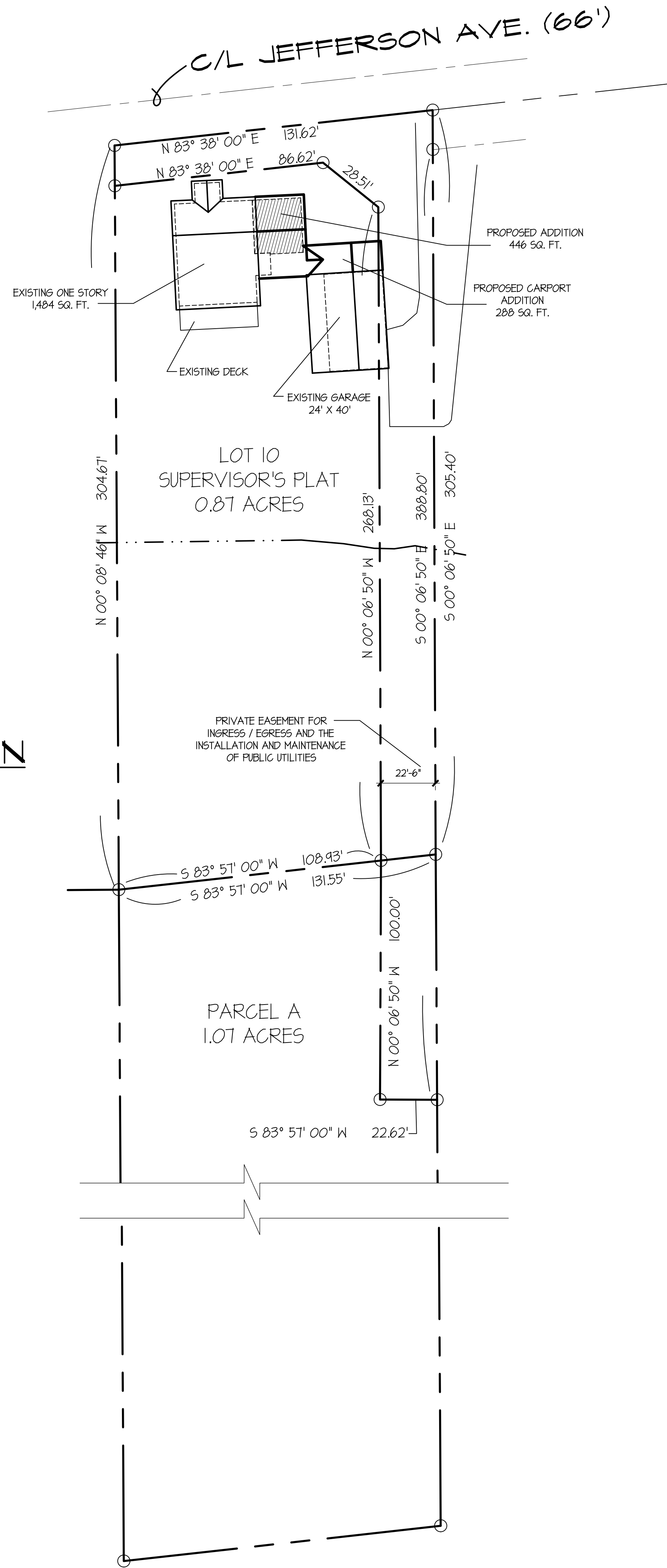
The proposed variance request would allow for the expansion of the existing residence along the same front façade line, continuing the historic and traditional character and building line of the existing site.

830 Cottageview Dr., Ste. 201
P.O. Box 4015
Traverse City, MI 49685
Phone: 231-946-9310
www.maaeps.com
info@maaeps.com



PROPOSED SITE PLAN

SCALE: 1" = 30.00'



PRELIM DESIGN

4-24-2019

019-014

—

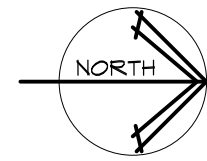
NEW ADDITION DESIGN FOR:

POWERS RESIDENCE

4085 JEFFERSON STREET
TRAVERSE CITY, MI., GARFIELD TOWNSHIP, GRAND TRAVERSE COUNTY

CREATIVE HOME DESIGN
CHD

JIM WALTERS
3641 FIVE MILE RD.
TRAVERSE CITY, MI. 49686
(231) 631-3642
RESIDENTIAL DESIGN AND
CONSTRUCTION DOCUMENTS



Attachment “B” - Article 8 – Nonconformity from the Zoning Ordinance (with highlighted text)**SECTION 800 PURPOSE**

The purpose of this article is to protect the rights of property owners who have lawfully established, and continuously maintained in a lawful manner, a use, site, structure or lot prior to the adoption of this ordinance or prior to any amendment to this ordinance that otherwise renders such use, site, structure or lot unlawful. Such legal nonconformities shall be permitted to continue until they are lost or removed. Nonconformities shall not be enlarged upon, expanded or extended, except in compliance with this article, nor shall they be used as grounds for adding other structures or uses prohibited by the underlying zoning district.

Nothing in this ordinance prohibits the voluntary compliance with this or any future ordinance, regulation, or incentive.

SECTION 810 GENERALLY**A. Applicability**

This article applies to any nonconformity. There are four categories of nonconformities as defined in Table 8-1. Nonconformity shall mean either Nonconforming Use, Nonconforming Site, Nonconforming Structure or Nonconforming Lot.

**Table 8-1
Nonconformities**

Situation	Definition
Nonconforming uses (§ 811 Nonconforming Uses of this article)	A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located
Nonconforming site (§ 812 Nonconforming Sites of this article)	A lot, parcel, or development site that was lawfully established but that does not comply with the standards of Article 5, Development Standards, of this ordinance
Nonconforming structure (§ 813 Nonconforming Structures of this article)	A structure that was lawfully erected but that no longer complies with all the regulations applicable to the zoning district in which the structure is located
Nonconforming lot (§ 814 Nonconforming Lots of this article)	A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the district because of a change in the applicable zoning district regulations, annexation, condemnation of a portion of the lot, or other governmental action

B. Continuation

On or after the effective date of this ordinance, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this article.

C. Issued Land Use Permit at Effective Date

Any land use permits issued prior to the effective date of this ordinance shall be valid, in accordance with its terms, even though not conforming to the provisions of this ordinance, provided that construction is commenced within six (6) months after the date of permit issuance and proceeds meaningfully until completion.

D. Exception for Repairs Pursuant to Public Order

Nothing in this article shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to restoration to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this ordinance prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

E. Loss of Nonconformity

A legal nonconformity is lost by changing to conform to the ordinance or through vacancy, lack of operation or otherwise for twelve (12) or more successive calendar months. If lost, any future use of such premises shall be in conformity, in its entirety, with the provisions of this ordinance. Loss of a nonconformity shall terminate the right to continue the nonconformity.

SECTION 811 NONCONFORMING USES

A. Applicability

This section applies to the continuation, enlargement, or expansion of a nonconforming use.

B. Continuance

A legal nonconforming use of any structure may be continued, although such use does not conform to the provisions of this ordinance. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure are made.

C. Enlargement or Expansion

A conforming structure in which a nonconforming use is operated shall not be enlarged or expanded except as required by law or to comply with an order of the township building official.

D. Change of Use Regulations

(1) Changes to Conforming Uses

Any nonconforming use may be changed to a use conforming with the regulations established for the district in which the nonconforming use is located, provided, however, that a nonconforming use so changed shall not in the future be changed back to the former nonconforming use.

(2) Changes to Other Nonconforming Uses

A nonconforming use may be changed to another nonconforming use by order of the Zoning Board of Appeals, provided that the new use is determined to be more consistent with the spirit of this ordinance, the neighborhood, and the master plan than the nonconforming use which is being replaced. The order may be made by the Zoning Board of Appeals only if it make findings in support of each of the following:

- (a) The new use will not be contrary to the public interest;
- (b) The new use will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- (c) The new use will be in harmony with the spirit and purpose of these regulations and the master plan goals, objectives, and policies;
- (d) The plight of the applicant for which the new use is sought is due to unique circumstances existing on the property and/or within the surrounding district;

- (e) Approval of the new use will not substantially weaken the general purposes of this article or the regulations established in this ordinance for the applicable zoning district;
- (f) The new use shall not require more off-street parking and loading space than the former nonconforming use unless additional adequate off-street parking and loading space is provided for the increment of the new nonconforming use as if the increment were a separate use;
- (g) The new use shall conform to all regulations established in Article 5, Development Standards, of this ordinance; and
- (h) The new use will not adversely affect the public health, safety, and welfare.

SECTION 812 NONCONFORMING SITES

A. Applicability

This section applies to the continuation, enlargement, or expansion of a nonconforming site.

B. Generally

Various site design standards are established in Article 5, Development Standards, of this ordinance. Consequently, many development sites do not meet current requirements for such items as parking lot standards, landscaping, storm water requirements and other design specifications. This section requires that such nonconforming sites be brought into conformance with the site development standards prescribed by this ordinance.

C. Authority to Continue

Any legal nonconforming site may be continued so long as it remains otherwise lawful subject to this section.

D. Extension

(1) Generally

A nonconforming site on which there is a conforming use shall not be expanded or contracted unless the site is brought into conformance with the provisions of this ordinance.

(2) Single Family Residential Exception

A single-family residential structure that is located on a legally nonconforming site with respect to required yards, areas, or height may be structurally altered or enlarged, providing the portion of the structure that is altered or enlarged conforms with the provisions of this ordinance.

E. Relocations

No structure shall be relocated within a nonconforming site until the site is brought into conformance with the provisions of this ordinance.

F. Change in Use

No existing structure located on a nonconforming site shall be changed from one use classification to another use classification until the site is brought into conformance with the provisions of this ordinance or a nonconforming site variance has been approved by the Zoning Board of Appeals.

SECTION 813 NONCONFORMING STRUCTURES

A. Applicability

This section applies to the continuation, repair, replacement, enlargement, or expansion of a nonconforming structure.

B. Continuance of Nonconforming Structures

Subject to all limitations in this section, and the provisions of § 810.D. Exception for Repairs Pursuant to Public Order of this article, any nonconforming structure may be occupied, operated, and maintained in a state of good repair, **but no nonconforming structure shall be enlarged or extended unless in accordance with § 813.E.** Enlargement or Expansion provided that such maintenance does not exceed an aggregate cost of thirty (30) percent of the assessed value of the structure.

C. Repair and Maintenance of Nonconforming Structures

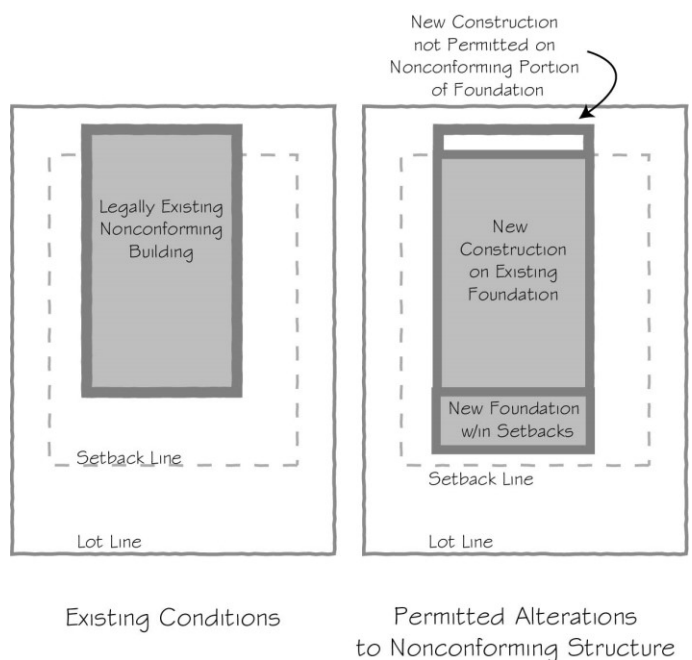
Nothing in this ordinance shall prevent the repair, reinforcement, improvement or rehabilitation of any nonconforming structure, or any part thereof, which results from wear and tear, deterioration, fire, windstorm, snowstorm, rainstorm, flood or other casualty damage, nor shall it prevent compliance with the provisions of the State Construction Code Act, relative to the maintenance of buildings or structures. Such repair and maintenance shall not be so extensive as to constitute a replacement of the structure by replacing an exterior wall(s). For the purposes of this subsection, the determination of whether proposed repairs and maintenance constitute replacement shall be made by the Zoning Administrator. The determination of the Zoning Administrator shall be appealable to the Zoning Board of Appeals provided that no approval under this subsection shall permit the replacement of a structure.

D. Replacement of Damaged Nonconforming Structures

Nothing in this ordinance shall prevent the replacement of any nonconforming building or structure damaged or destroyed by fire, windstorm, snowstorm, rainstorm, flood or other casualty damage beyond the control of the owner, provided such replacement utilizes the original structure footprint and does not increase the original usable floor area or volume of such structure. Such replacement shall commence within twelve (12) months of the damage or destruction.

E. Enlargement or Expansion

A nonconforming structure in which only permitted uses are operated may be enlarged or expanded provided that the area of nonconformance is not increased and provided further that compliance with all of the provisions of this ordinance established for structures in the district in which the nonconforming structure is located. Such enlargement shall also be subject to all other applicable township ordinances.



SECTION 814 NONCONFORMING LOTS

A. Applicability

This section applies to the continuation, enlargement, or expansion of a nonconforming lot.

B. Development

Any lawfully established nonconforming lot may be developed and used for any permitted use specified by the zoning district in which the lot is located, whether or not such lot complies with the lot area and lot width requirements of this ordinance, **provided that all other requirements of this ordinance are complied with.** This section does not require the replatting or combination of lots under the same ownership.

SECTION 815 TERMINATION OF NONCONFORMITIES

A. Violation of Article

The violation of this article shall immediately terminate a nonconformity.

B. Specific Acts of Termination

Any of the following specific acts of termination shall immediately terminate a nonconformity:

- (1) Changing a nonconformity to a conforming use or a more conforming use pursuant to
§ 811.D.(2). This type of termination applies only to the nonconforming use existing prior to any change;
or
- (2) Nonuse of a nonconformity for a period of twelve (12) or more successive calendar months.

Attachment “C” – Section 313.E – R-1 Dimensional Standards from the Zoning Ordinance

E. DIMENSIONAL STANDARDS (Per Dwelling Unit):

Minimum Lot Area (A):

- With Public Sewer: 15,000 sq. ft.
- Without Public Sewer: 20,000 sq. ft.

Notes to Dimensional Standards:

- (A) Lots in subdivisions having stubbed sewers shall be considered as having public sewer.
- (B) Setbacks shall be measured from the furthest protruding point of structure.

Minimum Lot Width: 100 feet

Maximum Building Height:

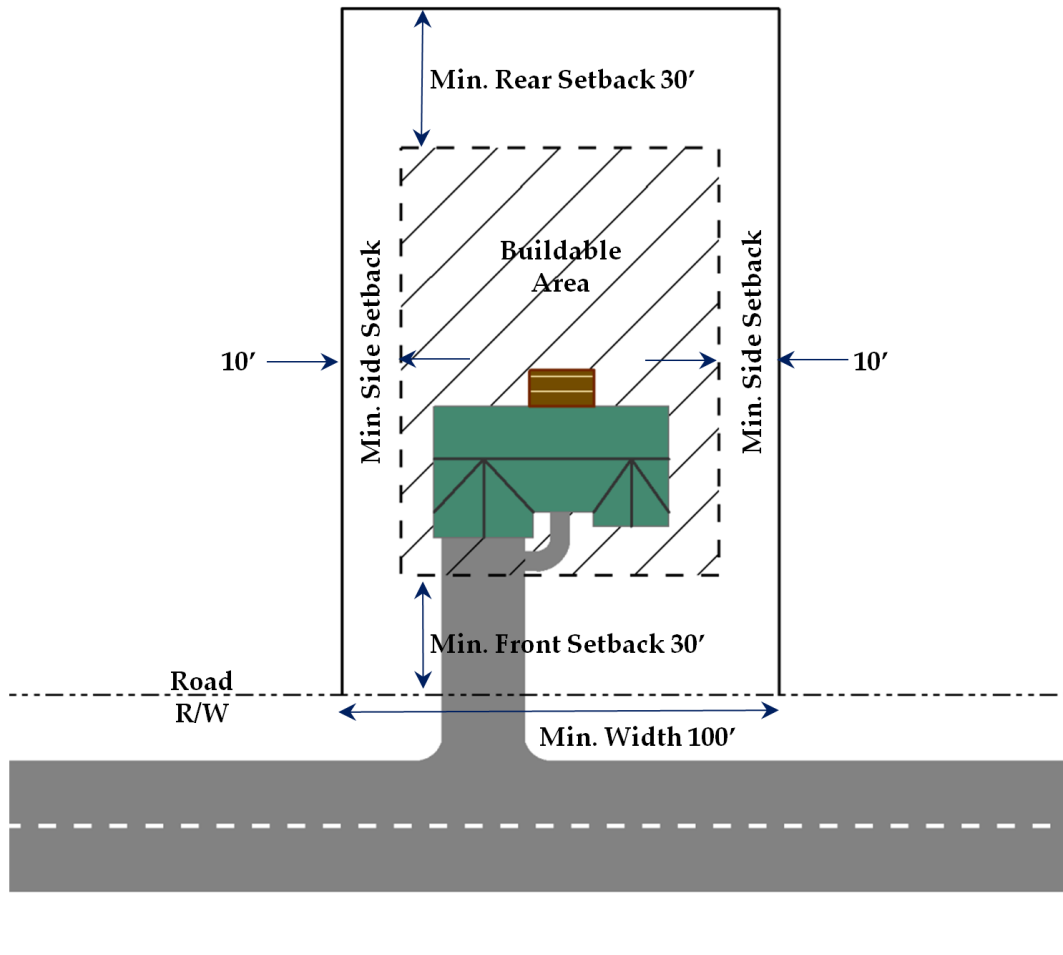
- In Stories: 2 ½ stories
- In Feet: 35 feet

Minimum Yard Setbacks (B):

- Front: 30 feet
- Each Side: 10 feet
- Rear: 30 feet

Maximum Lot Coverage: 30 percent

Minimum Bldg. Cross Section: 24 feet



PROJECT DATA:

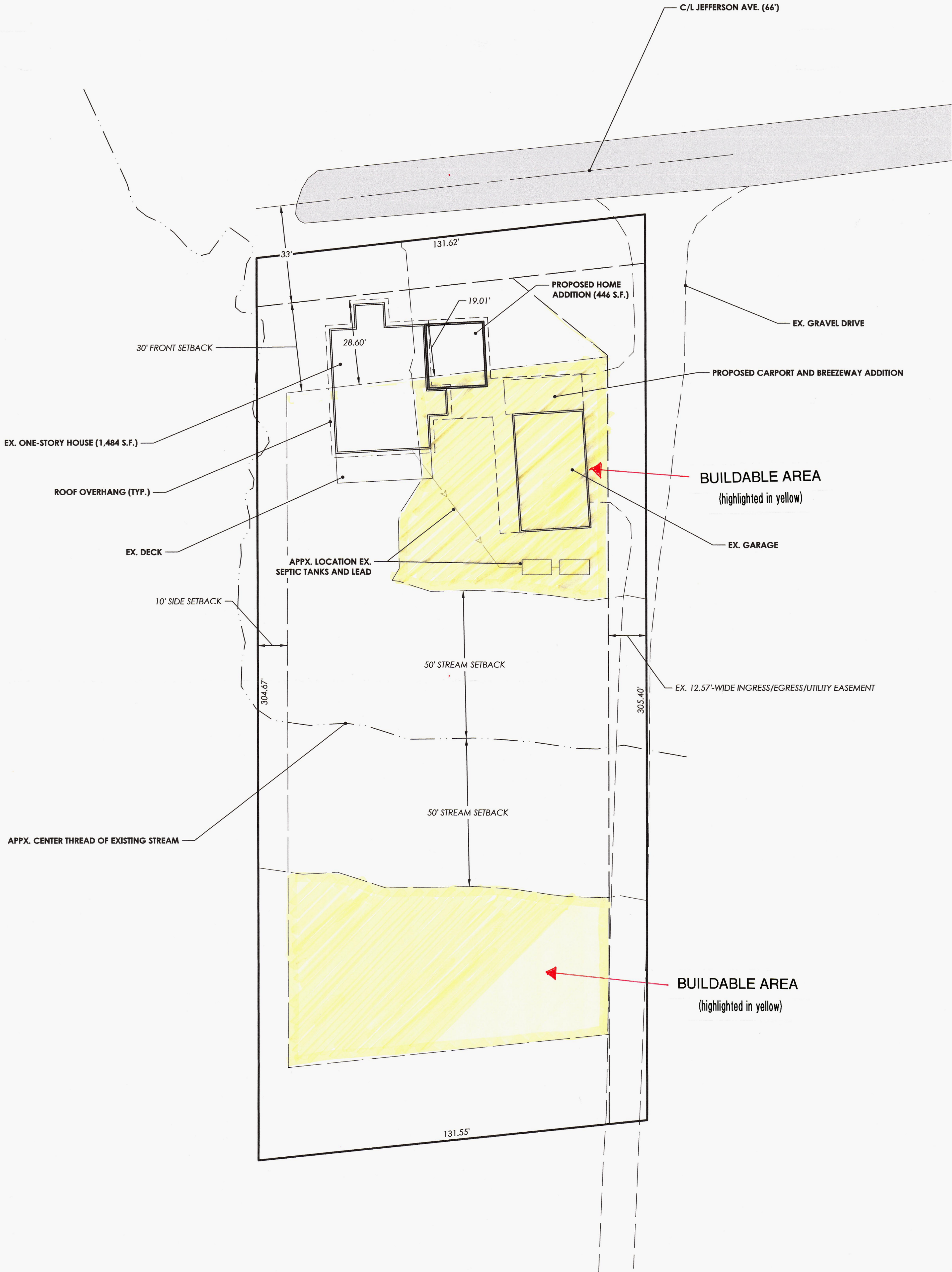
Owner: MICHAEL & YANA POWERS
Address: 4085 JEFFERSON AVE.
TRAVERSE CITY, MI 49684

SITE DATA:

Location: 4085 JEFFERSON AVE.
TRAVERSE CITY, MI 49684
Tax ID: 28-05-315-010-00
Legal Description: THE N 305.47' OF LOT 10 SUPERVISOR'S PLAT
Zoning District: R-1

SETBACKS:

FRONT = 30'
SIDE = 10'
REAR = 30'



GRAPHIC SCALE: 1 inch = 20 feet
0 10 20 40 60

NOTE: Property boundaries, land contours, physical features and the like, illustrated on this plan are exhibited for planning purposes only. Mansfield Land Use Consultants makes no guarantee to the correctness nor the completeness of this information.

Attachment D

C4.0	22134	PRELIMINARY
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Mike Powers
Powers Residence
SITE AND DIMENSION PLAN
Section 4, Town 27 North, Range 11 West
Garfield Twp., Grand Traverse County, Michigan

REV#	DATE	DES	DWN	CHK	DESC
00	06-15-22	dmc	dmc	dmc	Original design

Mansfield
Land Use Consultants

830 Cottageview Dr., Ste. 201
P.O. Box 4015
Traverse City, MI 49685
Phone: 231-946-9310
www.maaeps.com
info@maaeps.com

Mike Green

From: Amy DeHaan
Sent: Wednesday, July 13, 2022 12:18 PM
To: Mike Green
Subject: RE: 4085 Jefferson Avenue

Yes, it was split in 2001 into 05-315-010-00 (N 305.47' of Lot 10) and 05-315-010-10 (S 357.48' of Lot 10 w/Ingress & Egress Esmt over N 305.47')

Amy L DeHaan, MMAO(4)

Assessor

Garfield Charter Township

Grand Traverse County

3848 Veterans Drive

Traverse City, MI 49684

☎ (231) 941-1620

*"Coming together is a beginning,
keeping together is progress,
and working together is success." - Henry Ford*

From: Mike Green <Mgreen@garfield-twp.com>
Sent: Wednesday, July 13, 2022 12:04 PM
To: Amy DeHaan <adehaan@garfield-twp.com>
Subject: 4085 Jefferson Avenue

Hi Amy,

I am working on a ZBA staff report for a variance request at 4085 Jefferson Avenue and was wondering if the property was split from Lot 10 at any time since 1974. Do you have any information on this?

Sincerely,

Michael Green, Zoning Administrator
Charter Township of Garfield
Phone: 231-941-1620
Fax: 231-941-1588