



**THE CITY OF THE VILLAGE OF DOUGLAS
ZONING BOARD OF APPEALS MEETING
TUESDAY, AUGUST 27, 2024, AT 7:00 PM
86 W CENTER ST., DOUGLAS MI**

AGENDA

To view remotely, online or by phone -

Join online by visiting: <https://us02web.zoom.us/j/85738350628>

Join by phone by dialing: +1 (312) 626 - 6799 | **Then enter "Meeting ID":** 857 3835 0628

1. CALL TO ORDER

2. ROLL CALL

3. ELECTION OF OFFICERS

Nominations from the floor, Elected by Majority Vote

- Chair
- Vice-Chair
- Secretary

4. APPROVAL OF MINUTES

A. *Motion to Approve the February 29, 2024 minutes*

5. PUBLIC HEARING

A. Public Hearing and Decision: 91 Mixer – Relief from Section 21.01 12 (a) (3) to allow fencing to be placed in the Road Right-of-Way

- 1) Chairman declares the Public Hearing Open
- 2) Presentation of Written Communications
- 3) Presentation by the Petitioner
- 4) Comments from the Audience/Response from the Petitioner
- 5) Questions/Comments from the ZBA Members
- 6) Chairman declares Public Hearing Closed
- 7) Motion to Approve, Deny, or Approve with Conditions, or Table (Roll Call Vote)

6. NEW BUSINESS
7. OLD BUSINESS
8. REPORTS OF OFFICERS, MEMBERS, COMMITTEES
9. PUBLIC COMMUNICATION – VERBAL (LIMIT OF 5 MINUTES)
10. ADJOURNMENT

Please Note – The City of the Village of Douglas (the “City”) is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of this meeting or the facilities, are requested to contact Laura Kasper, City Clerk, at (269) 857-1438 ext. 106, or clerk@douglasmichigan.gov to allow the City to make reasonable accommodations for those persons. CITY OF THE VILLAGE OF DOUGLAS, ALLEGAN COUNTY, MICHIGAN



**THE CITY OF THE VILLAGE OF DOUGLAS
ZONING BOARD OF APPEALS (ZBA) MEETING
THURSDAY, FEBRUARY 29, 2024, AT 7:00 PM
86 W CENTER ST., DOUGLAS MI**

MINUTES

1. **CALL TO ORDER** Chair Schumacher called the meeting to order at 7:00PM

2. **ROLL CALL**

Present - Kutzel, Pullen, Pattison, Freeman, Schumacher

Also Present – Tricia Anderson, Williams & Works
Sean Homyen, Deputy Clerk

3. **APPROVAL OF AGENDA**

Motion to Approve; ZBA Meeting 2-29-24.

Pullen moved, with support from Kutzel to approve February 29, 2024 meeting agenda as presented.

4. **APPROVAL OF MINUTES**

A. **Motion to Approve; ZBA Meeting, 1-8-2024.**

Chair Schumacher noted that his name was spelled wrong throughout the minutes. He also pointed out some grammatical errors.

Kutzel moved, with support from Pullen, to approve the January 8, 2024 ZBA meeting minutes, subject to the corrections requested.

Motion carried unanimously by roll call vote.

5. **PUBLIC COMMUNICATION - VERBAL (LIMIT OF 3 MINUTES):** No verbal communication received.

6. **PUBLIC COMMUNICATION – WRITTEN**

A. Communications were received from the Saugatuck Douglas Fire District related to the driveway easement width, and from the City Engineer related to drainage and what the Allegan County Drain Commission's role is in the review of projects that impact drainage.

7. **NEW BUSINESS** (none)

8. **UNFINISHED BUSINESS**

A. 314 Ferry Street – Dimensional Variance requests from Section 50.2.C, Site and Building Placement Standards and Sections 16.13(4), Street Setbacks and 16.13(7) Front Yard Prohibition – Chris Meyer (Public Hearing adjourned and decision postponed on 1.8.24)

1) Reopen Public Hearing

Chair Schumacher reopened the public hearing that was adjourned from the January 8, 2024 ZBA meeting.

2) Presentation of Written Communications:

a. Communication received from the applicant, Chris Meyer, who indicated that his sister, Jenna Meyer would be present at the meeting on behalf of the applicant as he was ill.

3) Presentation by the Petitioner:

Jenna Meyer, of 6391 West Canterbury Dr., Belmont, Michigan 49306, was present on behalf of the applicant and noted that she's open to any questions the board may have related to the staking that has since been completed per the Zoning Board's request.

4) Public Comments:

a. Sean Dwyer, of 342 Ferry St. asked about the size about the home. He noted that the size in itself is considered self-created.

5) Interim Planning & Zoning Administrator Comments:

Ms. Anderson encouraged the zoning board to evaluate each criterion and make a determination as to whether they have each been met. She reminded the Zoning Board that the applicant, by right, can still build on the lot, as he indicated his confidence with the EGLE permit being approved, regardless of the outcome of the variance request. She added that the purpose for the request is to allow the home to be located at 10' from the rear property line in order to have the least impact on the wetlands as possible. She also noted that the fire department would require an expansion of the existing driveway easement since it is currently 15' where 16' is required. She added that this fact even further substantiates the practical difficulty in meeting the letter of the ordinance due to the encumbrances by wetlands, the shared driveway easement that must now be expanded, and then the fact that the traveled surface of the driveway actually encroaches onto the applicant's property outside of the easement. She also reiterated that the applicant and the neighboring property owner who utilizes the shared driveway, will ultimately need to come to a consensus on improvements that are needed and the need for a shared driveway agreement.

6) ZBA Comments:

Members of the Zoning Board discussed the offer of perhaps granting the variance at 15' from the property line instead of 10'. They felt that 10' was awfully close and some do not recall ever granting a variance for a structure that close to the rear property line.

Chair Schumacher wondered what kind of a precedent would be set if the variance to locate the home

at 10' to the property line was granted.

Ms. Anderson indicated that a precedent wouldn't be and shouldn't be set, based on the vast range of variables that differ among different properties. And that any other variance that is requested for a home to be permitted to be placed at 10' from the rear property line would also need to meet the criteria – and if it does not, then a variance should not be granted. She also added that accessory buildings such as detached garages are only required to be 10' from side and rear property lines.

Ms. Anderson cautioned the zoning board in offering to grant a variance that did not align with how the public was noticed, and that at this point, a plan does not exist that would reflect the request for a home to be placed at 15' from the property line. She added that the applicant would also want to have a say in it, but that it should be noticed as such and it should be based on a plan that depicts the requested variance.

The applicant confirmed that they would need to discuss whether they could be ok with shaving 5' off the home so that a lesser variance could be granted. Members noted that the minimum lot size is 1,000 square feet and the drawing shows 1,700 square feet. Members also had questions regarding the garage such as the size, the look, and the proposed setback of the detached garage.

Chair Schumacher indicated that the variance request for the garage would be considered separately from the home.

Freeman asked about the drawing and whether the square feet on the site plan represented the footprint of the house.

Ms. Anderson asked for confirmation from Ms. Meyer and noted that the plan shows the proposed impervious surface since this is the plan that the applicant submitted to EGLE, which is only interested in knowing the impact on the wetlands by way of proximity and areas of impervious surface.

Kutzel indicated that he believes that the house is too big and if the footprint is made a little smaller then they only have to grant 10' of relief, rather than 15'.

The zoning board then discussed the option of granting only a 10' variance vs. 15 feet. Ken said that would be better than nothing.

Ms. Anderson reminded the Zoning Board that the request for a variance is needed to have a lesser impact on the wetlands. She believes that some retaining walls are proposed and that the staking may not give a clear picture of what the finished product would look like.

The applicant (Jenna) confirmed that they would need to discuss whether they could be ok with shaving 5 feet off the house so that a lesser variance could be granted.

7) Close Public Hearing

Chair Schumacher closed the public hearing.

8) **Motion to Approve, Deny, or Approve with Conditions** – House location only

Chair Schumacher noted that he would accept a motion to approve, deny, or tabling of the request.

Pattison moved, with support from Freeman, to grant the variance request to locate the home at 314 Ferry St. at 10' from the rear property line.

Chair Schumacher asked if there was any further discussion.

Kutzel noted that this is self-created. He compared it to the houses on the lakeshore and they propose a large building footprint on a postage stamp-sized lot.

Motion fails with a roll call vote as follows:

Pattison – yes

Freeman – yes

Pullman – no

Kutzel – no

Schumacher – no.

Chair Schumacher picked the discussion back up on the request to locate the detached garage in the front yard where prohibited, at 5' from the front property line. He asked for comments from the applicant's representative.

Ms. Meyer addressed the location and why it needed to be located there. She added that this is the only location to place a garage since they cannot have an attached garage due to the wetlands limitation. She added that part of the footprint shown on the plan includes the driving surface.

Chair Schumacher asked for comments from the Zoning Board.

Freeman asked if the garage is proposed as a two-story building. Ms. Meyer said that it was. She added that they are unsure exactly what the building would look like at this point.

Pattison commented on the location and indicated that she was comfortable with where it was located.

Chair Schumacher asked Ms. Anderson if conditions could be placed on the approval of a variance request. Ms. Anderson said that reasonable conditions may be added to an approval. He was concerned with the garage in the location proposed because it would stand out. He wondered if the zoning board could require the applicant to use materials that allow the garage to have a more residential look and feel. Ms. Anderson responded saying that yes, that is reasonable.

The Zoning Board agreed that they'd like to see more details on the garage, with driving surfaces and the building dimensions delineated.

Chair Schumacher closed the public hearing and indicated he'd take a motion.

- 9) **Motion to Approve, Deny, or Approve with Conditions – Garage only**
Motion by Kutzel, seconded by Freeman, to table the request based on the finding that they feel more detail should be provided so they know what's impervious and what is planned for the actual building footprint.

Motion carried unanimously by roll call vote.

- 10) **REPORTS OF OFFICERS, MEMBERS, COMMITTEES** – None

- 11) **PUBLIC COMMUNICATION – VERBAL (LIMIT OF 5 MINUTES)** – None received

- 12) **ADJOURNMENT**

Motion by Kutzel, seconded by Pullen to adjourn

Motion carried unanimously by voice vote

fts

To: City of the Village of Douglas City Council
Date: August 14, 2024
From: Sean Homyen, Planning & Zoning Administrator
RE: 91 Mixer – Variance Request - Relief from Section 21.01 (12) (a) (3) to allow fencing to be placed in the Road Right-of-Way



The Village of Friendliness – Since 1870

Request. Mr. Jonathan Karmel has submitted an application for a non-use variance under Section 29.05 (1), Non-Use Variance, that would provide relief from Section 21.01 (12) (a) (3). No fence shall be permitted in the street right-of-way or easement, in the R-3 Neighborhood Conservation District. Specifically, the applicant is seeking the following variance:

1. Relief from Section 21.01 (12) (a) (3) to allow fencing to be placed in the Road Right-of-Way

Background. The subjected property is located at 91 Mixer on the corner of Mixer St. and Randolph St., zoned as R-3 Neighborhood Conservation District, and is 0.21 acres (9,147.6 SF). This parcel is apart of the Mixer’s Addition plat. The property owner hired a contractor to install a fence. However the contractor did not pull a fence permit to construct the fence. Upon discovery, a past review of a survey shows that the home enroaches past the property line. The survey is included with the packet. The property owner has the right to seek a variance.

Pre-Hearing Conference. Section 29.05.3) requires that a pre-hearing conference be held to ensure that the applicant understands the requirements and procedures related to seeking relief from the Ordinance. I have been in communication with the applicant which fulfills the requirements of a pre-hearing conference, as described in the ordinance language below:

Section 29.05 Variances

3. Pre-hearing. Conference

a. Prior to the scheduling of a hearing, the applicant shall contact the Zoning Administrator for the purpose of scheduling a pre-hearing conference with the Zoning Administrator and City Attorney.



- b. *The purposes of the pre-hearing conference shall be to:*
 - i. *Review the procedure for the hearing and identify all persons who will testify (directly or through affidavit) and the evidence to be offered on behalf of the applicant.*
 - ii. *Attempt to secure a statement of agreed upon facts to be used to narrow the matters of dispute and shorten the hearing.*
 - iii. *Explore a means of providing relief to the applicant by way of non-use variance from the zoning board of appeals, or other relief which may require action by persons or bodies other than the zoning board of appeals which will afford an adequate remedy for the applicant.*
 - iv. *Discuss the need, desirability, and the terms of providing, a verbatim record of the hearing*
- c. *The Zoning Administrator shall determine who should be present at the pre-hearing conference based upon the application submitted, and taking into consideration the discussion with the applicant or the applicant's representative.*
- d. *The pre-hearing conference shall be scheduled and conducted on an expeditious basis so as to avoid unreasonable delay to the applicant. Sufficient time shall be taken, however, to achieve the purposes of the pre-hearing conference, stated above.*

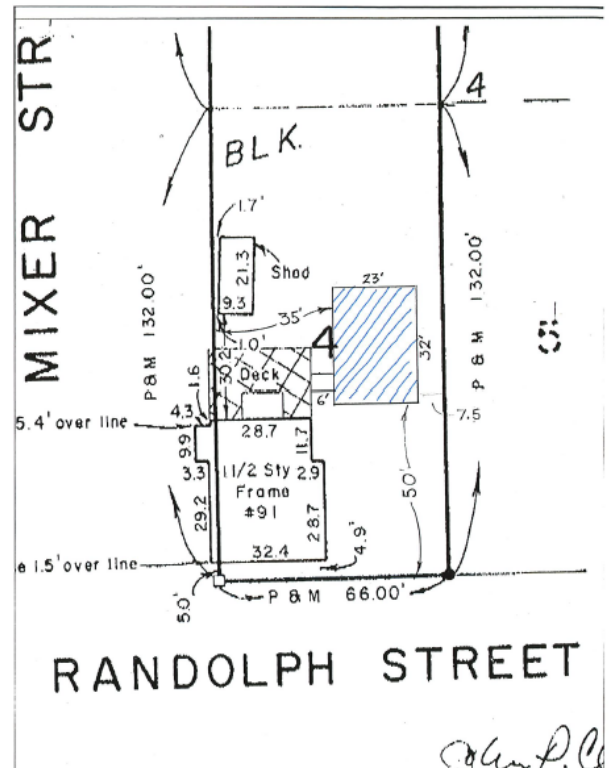
Criteria for Granting Variances: Section 29.05. The following criteria must be taken into consideration by the Zoning Board of Appeals in its review of the request. All criteria must be met for the variance to be granted. These criteria are listed below, along with our remarks:

1) *Nonuse variances. The Zoning Board of Appeals shall have the power to authorize specific variances from site development requirements such as lot area and width regulations, building height and bulk regulations, yard width and depth regulations and off-street parking and loading space requirements of this Ordinance, provided that all the required findings listed below are met and the record of proceedings of the Zoning Board of Appeals contains evidence supporting each conclusion.*

- a) *That there are practical difficulties that prevent carrying out the strict letter of this Ordinance. These practical difficulties shall not be deemed economic but shall be evaluated in terms of the use of a particular parcel of land.*

Remarks: The home was constructed in 1871. Although, the buildings/structures were conforming at this time, the existing home and accessory building would be considered non-conforming due to not meeting the front yard setbacks as well as, the accessory building cannot be constructed in the front yard under the current Zoning Ordinance. A survey of the property is shown and showcases that there is a lack of a front yard.

ZBA Members will determine if this criterion is met.



- b) That a genuine practical difficulty exists because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and shall not be recurrent in nature.

Remarks: The unique circumstance is that the home, constructed in 1871, originally met the standards of the ordinance in effect at that time but is now considered non-conforming by today's standards.

ZBA Members will determine if this criterion is met.

- c) That the practical difficulty or special conditions or circumstances do not result from the actions of the applicant.

Remarks: Due to the nature of the existing placement of the home, this was not result of the applicant.

This criterion appears to be met.

- d) That the variance will relate only to property under the control of the applicant.

Remarks: The applicant is requesting to place the fence in the ROW which is City owned property and not on their property.

This criterion is not met.

- e) That the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district. If a lesser variance would give substantial relief and be more consistent with justice to others it shall be so decided.

Remarks: Fencing is allowed in both residential and commercial districts. The applicant is entitled to have a fence for privacy. The surrounding property owners and drivers passing by could view this troublesome the purpose of not allowing fencing in the Road Right-of-Way is to protect and have access to the utilities underneath the Road Right-of-Way.

ZBA Members will determine if this criterion is met

- f) That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

Remarks: The strict compliance with the letter of the ordinance relevant to placement of fencing does not allow for fencing in the front yard due to the historical placement of the existing home, but the owner is allowed for the placement of the fence on the property if the owner meets the Zoning Ordinance requirements.

ZBA Members will determine if this criterion is met.

- g) That the variance requested is the minimum amount necessary to

overcome the inequality inherent in the particular property or mitigate the hardship.

The applicant is only requesting to place the fence in the road right of way along Mixer.

ZBA Members will determine if this criterion is met.

- h) That the variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district, or any use for which a Special Use Permit or a temporary permit is required except where failing to do so would result in a constitutional taking for which compensation would otherwise have to be paid because the application of existing regulations do not permit a reasonable use of land under existing common law or statutory standards. In this case, the appellant shall first have sought and been denied a rezoning, Special Use Permit approval, and/or a PUD approval and shall have their variance request processed according to the requirements of Section 29.05 (2).

Remarks: This criterion is not applicable

Recommendation and Summary of Findings. At the upcoming Zoning Board of Appeals meeting, the board should carefully consider all the facts presented in this report, testimony given by the applicant, and comments provided by the public. Again, all the criteria outlined in section 29.05 *must be* met in order for a variance to be granted. A suggested motion is shown below, along with our findings:

Suggested Motion:

I move to **[approve/table/deny]** the granting of a variance from Section 21.01 (12) (a) (3), No fence shall be permitted in the street right-of-way or easement for 91 Mixer in the R-3 Residential, on a parcel of land described as P.P District to allow for a fence in the Road Right-of-Way or easement, based on the findings that the request **[meets/does not meet]** the standards of the ordinance,













CITY OF THE VILLAGE OF DOUGLAS
ZONING BOARD OF APPEALS
REQUEST FOR VARIANCES APPLICATION

86 W. CENTER STREET, DOUGLAS, MI 49406
Phone: 269-857-1438 FAX: 269-857-4751

\$350.00 Fee & \$1000.00 Escrow Required (Article 29 Zoning Board of Appeals)

APPLICANT INFORMATION *(If different than owner)*

Name Jonathan D. Karmel Email jon@karmellawfirm.com
Address 91 Mixer Street
Phone # 708-204-1574 Fax # 312-641-0781

OWNER INFORMATION

Name Jonathan D. Karmel Email jon@karmellawfirm.com
Address 91 Mixer Street
Phone # 708-204-1574 Fax # 312-641-0781

PROPERTY INFORMATION

Address or Location 91 Mixer Street
Permanent Parcel # 59-504-010-00
Zone District (Current) R-3 (Proposed) _____
Property Size 132'x66' *(If Applicable)*

Requesting: Appeal _____ Variance X

Describe Variance Request Variance from ordinance Section 21.01(12)(a)(3).

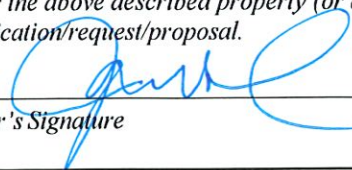
Section of the ordinance relating to the request 21.01(12)(a)(3)

I hereby attest that the information on this application form is, to the best of my knowledge, true and accurate.

Signature of Applicant and Owner (If different than applicant)

Date

I hereby grant permission for members of the Douglas Planning Commission, Board of Appeals and/or City Council to enter the above described property (or as described in the attached) for the purpose of gathering information related to this application/request/proposal.



Owner's Signature

May 23, 2024

Date

DO NOT WRITE IN THIS BOX

Date Received _____ Application Accepted By _____ Fee Paid \$ _____

Submitted Materials: Site Plan Application Legal Description Narrative Description _____

For Office Use Only

REMARKS

Other (Where Applicable):

Plans sent to Saugatuck Fire District on: _____

Approved on: _____

Planning Commission Review on: _____

Minutes attached: _____

Zoning Board of Appeals Review on: _____

Minutes attached: _____

Sent to KLWSA (269-857-1565) on: _____

ZONING APPROVAL

APPROVED: _____

By: _____ Date: _____

Zoning Administrator

DENIED: _____

By: _____ Date: _____

Zoning Administrator

KLSWA APPROVAL

APPROVED FOR CONNECTION TO WATER/WASTEWATER SYSTEM

(Subject to appropriate connection fees and charges)

Street and Number _____

KALAMAZOO LAKE SEWER AND WATER AUTHORITY

APPROVED

Date: _____ By: _____

DENIED

Date: _____ By: _____

**CITY OF THE VILLAGE OF DOUGLAS
ZONING BOARD OF APPEALS
REQUEST FOR NON-USE VARIANCE APPLICANT SUMMARY OF FACTS**

Section 29.05 1) Non use variances. The Zoning Board of Appeals shall have the power to authorize specific variances from site development requirements such as lot area and width regulations, building height and bulk regulations, yard width and depth regulations and off-street parking and loading space requirements of this Ordinance, provided that all the required findings listed below are met and the record of proceedings of the Zoning Board of Appeals contains evidence supporting each conclusion.

Under Section 29.05 of the City of the Village of Douglas Zoning Ordinance, the Zoning Board of Appeals is empowered and entrusted with specific duties. To be considered for approval, all variance requests must comply with the standards outlined in this section. Please detail in the space below, or on additional pages if required, how your request aligns with each of these approval standards.

Question 1 - Zoning Ordinance Section 29.05 a)

Please list the practical difficulties which prevent carrying out the strict letter of the Ordinance. These practical difficulties shall not be deemed economic but shall be evaluated in terms of the use of a particular parcel of land.

See attached

Question 2- Zoning Ordinance Section 29.05 b)

Please list the genuine practical difficulty that exists because of unique circumstances or 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.

See attached

3 -Zoning Ordinance Section 29.05 c)

Please verify that the practical difficulty or special conditions or circumstances that are due to no fault of your own.

See attached

Question 4 - Zoning Ordinance Section 29.05 e)

Please verify that the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood.

See attached

Question 5 - Zoning Ordinance Section 29.05 g)

Please verify that the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or to mitigate the hardship.

See attached

Question 5 - Zoning Ordinance Section 29.05 H)

Is the variance request for a use that's not normally allowed in this district, without requiring a Special Use or temporary permit, and only because following current rules would unfairly limit how you can use your land? Have you already tried and been denied rezoning, Special Use Permit, or PUD approval before submitting this request according to Section 29.05 (2)?

I believe that a fence is a permitted use in the R-3 district.

Sean Homyen

From: Jonathan Karmel <jon@karmellawfirm.com>
Sent: Wednesday, August 14, 2024 4:05 PM
To: Sean Homyen
Subject: Re: 91 Mixer - Missing Response (Variance)

The answer to 29.05 d is that the variance will only apply to our property.

Jonathan D. Karmel
The Karmel Law Firm
20 S. Clark Street, Suite 1720
Chicago, Illinois 60603
(312) 641-2910

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On Wed, Aug 14, 2024 at 2:29 PM Sean Homyen <pzadmin@douglasmichigan.gov> wrote:

Hi Jon,

Can you answer section D that was supposed to be apart of the application I sent to you. You can either respond to this email or send me another word document of the response that I can attach to the application. Please have this out to me by the end of the day.

Sean Homyen

Planning & Zoning Administrator

City of the Village of Douglas



KARMEL & Torres

20 SOUTH CLARK STREET

SUITE 1720

CHICAGO, ILLINOIS 60603

TELEPHONE (312) 641-2910

FACSIMILE (312) 641-0781

www.karmellawfirm.com

JONATHAN D. KARMEL

Admitted in Michigan

JOSHUA N. KARMEL

JOSEPH C. TORRES

May 21, 2024

Sean Homyen
Planning & Zoning Administrator
City of the Village of Douglas
86 W. Center Street
P.O. Box 757
Douglas, Michigan 49406

VIA UPS

Re: Request for Variances Application

Dear Mr. Homyen:

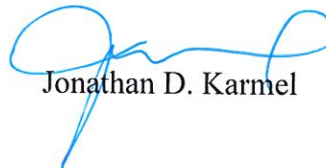
Enclosed please find the following:

- (a) Request for Variances Application.
- (b) Applicant Summary of Facts with attached Answers to Questions 1-5 and Exhibits 1-4.
- (c) Ten (10) copies of undated survey and Preliminary Survey dated April 24, 2013.
- (d) \$500.00 Application Fee.

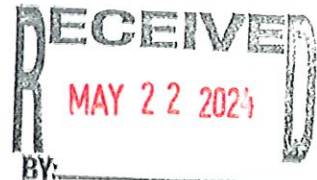
Please let me know the date of the public hearing to consider our variance request, as well as any pre-hearing conference.

Very truly yours,

KARMEL & TORRES


Jonathan D. Karmel

JDK/aew





CITY OF THE VILLAGE OF DOUGLAS

ZONING BOARD OF APPEALS REQUEST FOR VARIANCES APPLICATION

86 W. CENTER STREET, DOUGLAS, MI 49406
Phone: 269-857-1438 FAX: 269-857-4751

\$500.00 Fee Required (Article 29 Zoning Board of Appeals)

APPLICANT INFORMATION *(If different than owner)*

Name Jonathan D. Karmel Email jon@karmellawfirm.com
Address 91 Mixer Street
Phone # 708-204-1574 Fax # 312-641-0781

OWNER INFORMATION

Name Jonathan D. Karmel Email jon@karmellawfirm.com
Address 91 Mixer Street
Phone # 708-204-1574 Fax # 312-641-0781

PROPERTY INFORMATION

Address or Location 91 Mixer Street
Permanent Parcel # 59-504-010-00
Zone District (Current) R-3 (Proposed) _____
Property Size 132'x66' *(If Applicable)*

Describe Variance Request

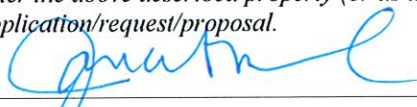
I request a variance from Section 21.01(12)(a) of the Zoning Ordinance for the reasons set forth in the Applicant
Summary of Facts and from evidence adduced at the Appeals Hearing.

I hereby attest that the information on this application form is, to the best of my knowledge, true and accurate.

Signature of Applicant and Owner (If different than applicant)

Date

I hereby grant permission for members of the Douglas Planning Commission, Board of Appeals and/or City Council to enter the above described property (or as described in the attached) for the purpose of gathering information related to this application/request/proposal.


Owner's Signature

5/21/2024
Date

DO NOT WRITE IN THIS BOX

Date Received _____ Application Accepted By _____ Fee Paid \$ _____
Submitted Materials: ___ Site Plan ___ Application ___ Legal Description ___ Narrative Description

**CITY OF THE VILLAGE OF DOUGLAS
ZONING BOARD OF APPEALS
REQUEST FOR VARIANCES
APPLICANT SUMMARY OF FACTS**

Adopted 6/27/05

1. Date of application May 21, 2024
2. Name of applicant (or authorized agent) Jonathan D. Karmel
3. Address of applicant 91 Mixer Street
4. Telephone (Home) 708-204-1574 (Business) _____
5. Address of property in question 91 Mixer Street
6. Legal description and/or property description number
59-504-010-00
7. Present zoning and use of property Residential
8. Present zoning and use of adjacent properties Residential
9. State variance requested and reference Article 29 (Zoning Board of Appeals) and Sub-
Section 29.05 (1) variances and 29.05 (2) _____
Variance from ordinance Section 21.01(12)(a)(3).
10. Attach ten (10) copies of a current property survey together with accompanying site plan delineating property lines, proposed construction/setbacks, as well as any other information that may assist the Zoning Board of Appeals.
11. Due to public notice requirements, applications must be received no less than twenty one (21) days prior to the scheduled meeting date, however the Chairman retains the right to schedule meetings based upon the adequacy of the information received.

12. I have read/reviewed the Douglas Zoning Ordinance in regard to the Zoning Board of Appeals (Article 29) and the requirements for a Variance, and hereby give the Zoning Board of Appeals permission to examine the property in question.

In order for the Zoning Board of Appeals to grant a variance a "practical difficulty" must exist. The "practical difficulty" must not be self created, must not be economic, and must not adversely affect the neighborhood. If you are requesting a non-use variance please answer the following 5 questions in order to verify the conditions for a variance exist.

Question 1 – Zoning Ordinance Section 29.05 a)

Please list the practical difficulties which prevent carrying out the strict letter of the Ordinance. These practical difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

See attached

Question 2 – Zoning Ordinance Section 29.05 b)

Please list the genuine practical difficulty that exists because of unique circumstances or 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.

See attached

Question 3 – Zoning Ordinance Section 29.05 c)

Please verify that the practical difficulty or special conditions or circumstances that are due to no fault of your own.

See attached

Question 4 – Zoning Ordinance Section 29.05 e)

Please verify that the variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood.

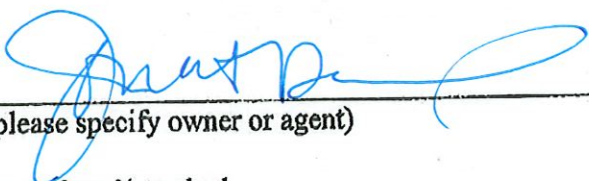
See attached

Question 5 – Zoning Ordinance Section 29.05 g)

Please verify that the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or to mitigate the hardship.

See attached

Applicant's Signature _____


(please specify owner or agent)

\$500.00 Application Fee enclosed/attached _____

=====
City of the Village of Douglas use only

Date application received _____

Date to be reviewed by the Zoning Board of Appeals _____

Variance: Approved _____ Denied _____ Approved with conditions as follows:

Dated _____ By _____

Clerk and/or Zoning Administrator

ANSWERS TO QUESTIONS 1-5 OF APPLICANT'S REQUEST
FOR A NON-USE VARIANCE

Introduction: By way of background, we purchased 91 Mixer Street in August 2013 from Judy and Tom Anthrop. My wife and I are still working in Chicago and the Mixer house is the second home for holidays and a respite from Chicago for our family which includes four grown children, their partners and three grandchildren. We were initially attracted to the home's historical place to Douglas and the neighborhood, as well as to the listing potting shed that Judy Anthrop sold us on to close the deal. Since then, we have made a significant financial investment in updates and improvements to the home while maintaining its unique character. In the 10 plus years we have made friends with our neighbors, merchants, gallery and restaurant owners in Douglas and Saugatuck and have enjoyed all that the Art Coast offers. All of this has been a rehearsal for when we hope soon to make Mixer a more permanent residence. Needless to say, the zoning ordinance issue has been an unfortunate experience for us in an otherwise uninterrupted life in Douglas that has justified our decision to own a home here.

Issue: Although the Notice of Violation cites Sections 21.01(12)(a) and 23.03 due to our failure to obtain a Zoning Permit, we are not requesting the Board vacate that violation. As we did when we remodeled portions of the house, we relied on our landscaping contractor to obtain any necessary permits. We certainly would not have risked a violation had we known a permit to build the fence was required. Nonetheless, we accept responsibility for this oversight and have offered to pay for a permit and any fine. Instead, for the reasons discussed here and at a hearing, we are requesting a variance from that part of Section 21.01 (12) (a) (3) that states: "No fence shall be permitted in the street right-of-way or easement."

Question 1:

When we bought the house the Purchase Agreement was amended as follows so as not to require a new property survey because a, "Survey was completed recently within the last 60 days" (Ex. 1). Prior to our purchase, the Anthrops sold the adjacent lot at the corner of Mixer and Fremont where a new home was eventually built. The recent survey obtained and referenced in the Purchase Agreement was a "PRELIMINARY" survey dated April 24, 2013 obtained in connection with the sale of the lot (Ex. 2). This survey did not reveal any encroachment from our property into the right-of-way.

Accordingly, what we did not know until Sean Homyen provided a copy of an undated survey on April 2, 2024, was that our house and deck "extend out into the ROW" and, as a result, he wrote, "you will have to remove the fence" (Ex. 3). More specifically, this undated survey shows the property line between the right-of-way and our property running through the entire west side of our home by as much as 5.4' and through our deck and all the way to the adjacent lot at Mixer and Fremont (Ex. 4). As such, the survey we relied on (Ex. 2) when purchasing the house did not show any encroachment, let alone an encroachment of our house into the right-of-way.

To say it was a surprise to learn that a significant portion of our 160-year-old house encroached into the right-of-way is an understatement. Putting aside the issue of the fence, we were shocked to find out our home, decking, lighting, and landscaping all built and installed by prior

owners were into a right-of-way. For more than 10 years we also learned we had mowed and maintained the public parkway, flower beds and the large red maple tree along the house believing it was ours and without any comment or notice from the Village. Based on all of this good faith reliance now to our detriment we decided last summer to remove the dying boxwoods along Mixer that once provided us with privacy on our deck and a barrier to the street for our grandchildren and replaced the boxwoods with a fence. In addition to the fence, new grass and an in-ground watering system was installed, all now apparently into the right-of-way.

All of this good faith reliance that the property where the fence is located all belonged to us demonstrates that that the violation was not self-created. In addition, the fence where it is presently located does not adversely affect the neighborhood. Other homes in the neighborhood have cement and rock walls closer to the paved street and are clearly in the right-of-way.

Finally, it is impractical to move the fence out of the right-of-way and onto our property as it would be inches away from the potting shed and would require us to cut off the west end of the deck and deprive us of the full and intended use of the deck.

For all these reasons, enforcing the strict letter of the Ordinance would create practical difficulties as defined by the Ordinance.

Question 2:

I have not done a survey of other properties in the R-3 zoning district. But as I note above, there is no practical way that would allow us to create a privacy and safety barrier from Mixer Street without the fence or another barrier that would not encroach into the right-of way. There is all but a few inches between the west side of the potting shed and the property line and the right-of-way. Having a privacy and safety barrier was a critical selling point without which we might not have purchased the house. In the summer we spend many hours on the deck lounging and eating all of our meals. Please feel free to enter the property and see for yourself the practical difficulty of siting the fence or other barrier in a location that would not encroach into the right-of-way.

Moreover, because the boxwoods were old and with "holes" they did not provide sufficient privacy to our deck and yard from people walking and driving by curious to get a closer look at the old house. Similarly, the boxwoods did not provide an adequate barrier to toddlers wanting to wander through and on to Mixer.

Most importantly, from before we bought the house and until last summer, the boxwoods were in the exact same location where the fence now sits. The boxwoods were not natural and were apparently permitted to remain in the right-of-way for many years without running afoul of the same Ordinance that is now being enforced against us. The years of apparent non-enforcement against the boxwoods further supports our reasonable belief and reliance that the fence was on our property.

Question 3:

As described in response to Questions 1 and 2, all the circumstances that created a perfect storm of detrimental reliance supports a finding that the installing the fence was not of our fault

and making. Without a doubt, had we known otherwise we would have left the boxwoods intact, "holes" and all.

Question 4:

Other than the unwitting encroachment of the fence into the right-of-way, the fence is otherwise in harmony with the Ordinance as alleged in the Notice of Violation¹. As such, it is highly unlikely that permitting the fence to remain will cause a substantial adverse effect on the surrounding property, property values, and the use and enjoyment of any other property in the neighborhood.

Question 5:

As already discussed in Question 2, the variance request is the minimum amount necessary. Simply restated, without the variance our use and enjoyment of our home will be greatly diminished while the Village will not experience any sufferance. After all, the boxwoods existed in the right-of-way for many years without any condemnation by the Village.

Conclusion:

Section 29.01 describes the intent and purpose of Article 29 and should be read together with Section 29.05 (1). As to purpose, 29.01 states that the objectives of the Ordinances are to be "fully and **equitably** achieved," and that "**flexibility** be provided for in the strict interpretation of this Ordinance," while the spirit of **substantial justice** be observed. We believe that granting our request for a variance from the strict enforcement of Section 21.01(12)(a)(3) observes these guiding principles of equity, flexibility and substantial justice that are codified in Section 29.01. We thank the Board for its careful consideration.

¹ As previously noted, we have already conceded the permit violation.

- 14. **Municipal Compliance:** The Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.
- 15. **Title Insurance:** Seller agrees to convey marketable title to the property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An expanded coverage ALTA Homeowner's Policy of Title Insurance in the amount of the purchase price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within seven (7) days after this Agreement is fully executed. If Buyer so chooses, or if the property is not an existing residential structure (one to four family) on a residential parcel or a condominium unit, then a standard ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days from the aforementioned seven (7) day period, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's good-faith deposit, or make a written proposal to Seller to correct unsatisfactory conditions that Buyer does not accept. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the conditions and will proceed to closing according to the terms and conditions of this Agreement. Seller may negotiate with Buyer or, by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. Failure of Seller to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal shall result in a termination of this Agreement and a return of any applicable good-faith deposit. Exceptions:

- 16. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the property and the location of improvements thereon. The Buyer has elected to obtain:
 - A boundary survey certified to Buyer with iron corner stakes and with improvements and easements located on a map of survey.
 - A surveyor's report or sketch (not a boundary survey) re-certified to Buyer showing the approximate location of improvements.
 - No survey.

Survey to be paid for by: Buyer Seller
 When closing occurs, Buyer shall be deemed to have accepted the boundaries of the property and the location of such improvements thereon.
 Exceptions: **BUYER ACCEPTS EXISTING SURVEY - STAKES ARE IN. SURVEY WAS COMPLETED RECENTLY WITHIN LAST 60 DAYS**

- 17. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

- 18. **Prorations:** Rent, association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer, will all be adjusted to the date of closing.

- 19. **Possession:** Seller will maintain the property in its present condition until the completion of the closing of the sale. Possession to be delivered to buyer, subject to rights of present tenants, if any:

At the completion of the closing of the sale.
 At _____ a.m. p.m. on the _____ day after completion of the closing of the sale, during which time Seller will have the privilege to occupy the property and hereby agrees to pay the Buyer \$ _____ as an occupancy fee for this period payable at closing. WITHOUT PRORATION, if Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ _____ per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the property.
 If Seller occupies the property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the property will be Seller's responsibility and expense.
 On the agreed delivery date, Seller shall deliver the property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in title or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer. Exceptions:

91 MIXER ST. Subject Property Address/Description
6/25/13 Date
4:00 PM Time
 [Signature] Buyer's Initials [] [] Seller's Initials



FOR: PATRICK MURPHY HOMES, LLC

SITE PLAN

DESCRIPTION:
 LOT 3, BLOCK 4, MIXERS ADDITION TO THE VILLAGE OF DOUGLAS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN BOOK 45 OF DEEDS ON PAGE 2.

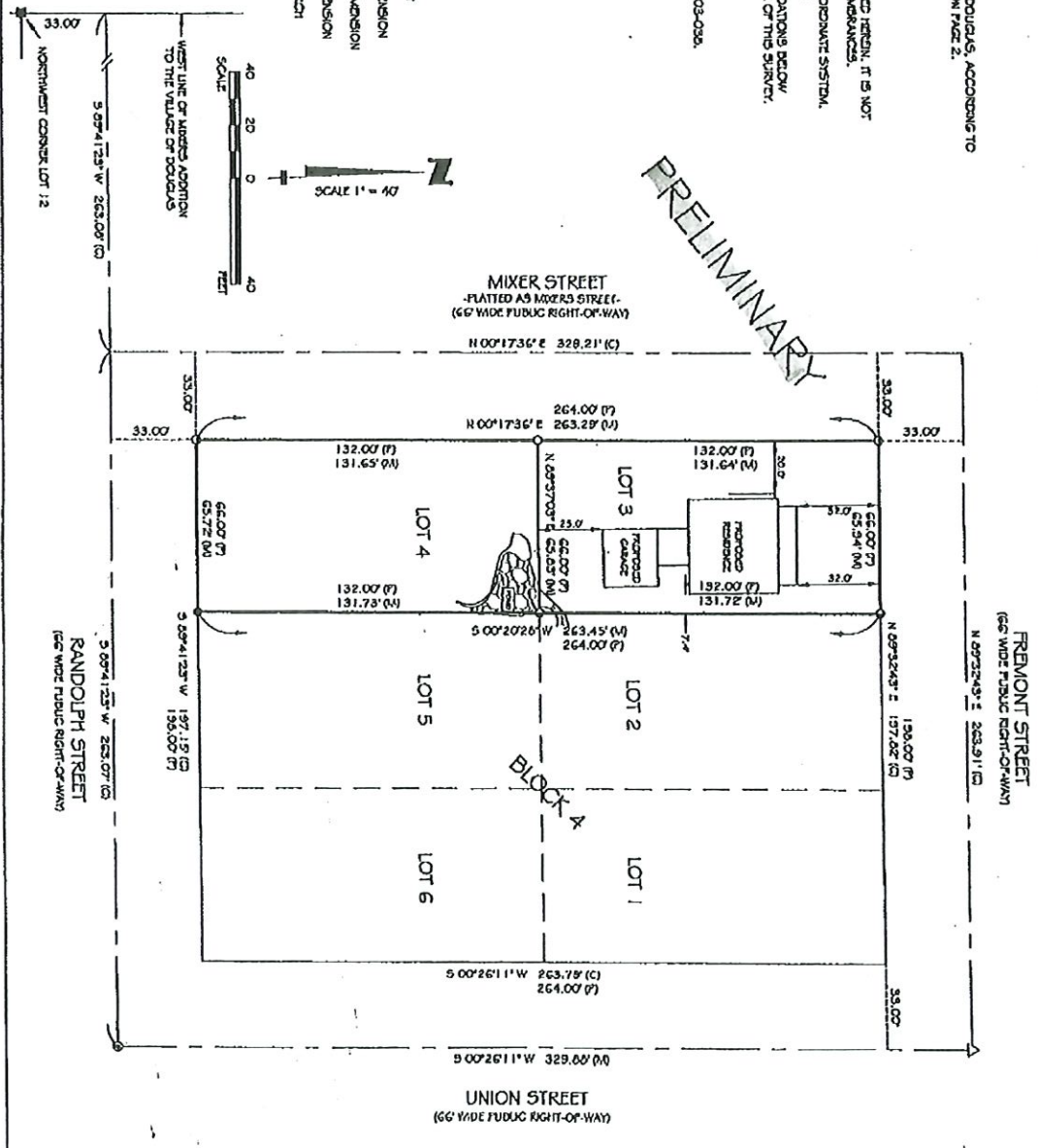
GENERAL NOTES:

THIS SURVEY WAS PREPARED FOR THE LANDS AS DESCRIBED HEREIN. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES. DIMENSIONS ARE BASED ON THE MICHIGAN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NORTH AMERICAN DATUM OF 1983 (1994). ALL UTILITIES SERVING THE SUBJECT PROPERTY AND FOUNDATIONS BELOW GROUND SURFACE WERE NOT LOCATED UNDER THE SCOPE OF THIS SURVEY. DATE OF FIELD SURVEY, JANUARY 3, 2006. DATE OF UPDATED FIELD SURVEY, APRIL 24, 2013. REFERENCE HOLLAND ENGINEERING, INC. JOB NUMBER 04-03-030.

LEGEND:

- FOUND 1/2" STEEL ROD WITH CAP #16042
- SET 1/2" STEEL ROD WITH CAP #45500
- FOUND 1/2" STEEL ROD WITH CAP #14091
- FOUND 1/2" STEEL ROD WITH CAP #45500
- FOUND CONCRETE MONUMENT
- △ FOUND P.C. WALL
- FOUND T.I. IRON
- CUT X
- CONCRETE
- WOOD DECK
- STONE PAVEMENT

HOLLAND ENGINEERING, INC.
 220 HIGHLAND AVENUE, SUITE 2
 DOUGLAS, MI 49406
 P: (616) 392-9355
 F: (616) 392-9355



4/24/2013

Issued for: PROJECT LOCATION: LOT 3, BLOCK 4, MIXERS ADDITION CITY OF THE VILLAGE OF DOUGLAS ALLEGH COUNTY, MICHIGAN	CLIENT: PATRICK MURPHY HOMES, LLC ATTN: PATRICK MURPHY 202 CENTER STREET P.O. BOX 59 DOUGLAS, MI 49406	HOLLAND ENGINEERING 220 HIGHLAND AVENUE, SUITE 2 DOUGLAS, MI 49406 P: (616) 392-9355 F: (616) 392-9355





Jonathan Karmel <jon@karmellawfirm.com>

91 Mixer

Sean Homyen <pzadmin@douglasmi.gov>
To: Jonathan Karmel <jon@karmellawfirm.com>

Tue, Apr 2, 2024 at 10:23 AM

Hi John,

Sorry for responding late. It took a while searching every file here at the city, but I was able to locate a survey of your property. Based on the first survey, it shows that your home and deck extend out into the ROW. An accurate representation of the ROW can be seen on the second survey. Based on the current location, this would not be allowed per 21.01 (12) of the zoning ordinance.

12) Fence Standards

a) General Standards:

- 1. A zoning permit shall be required for all fences.*
- 2. The applicant shall provide a survey of the property to determine the proper location for the fence.*
- 3. No fence shall be permitted in the street right of way or easement.*

Unfortunately, you will have to remove the fence. Let me know if you have any questions.

Sean Homyen

Planning & Zoning Administrator

City of the Village of Douglas



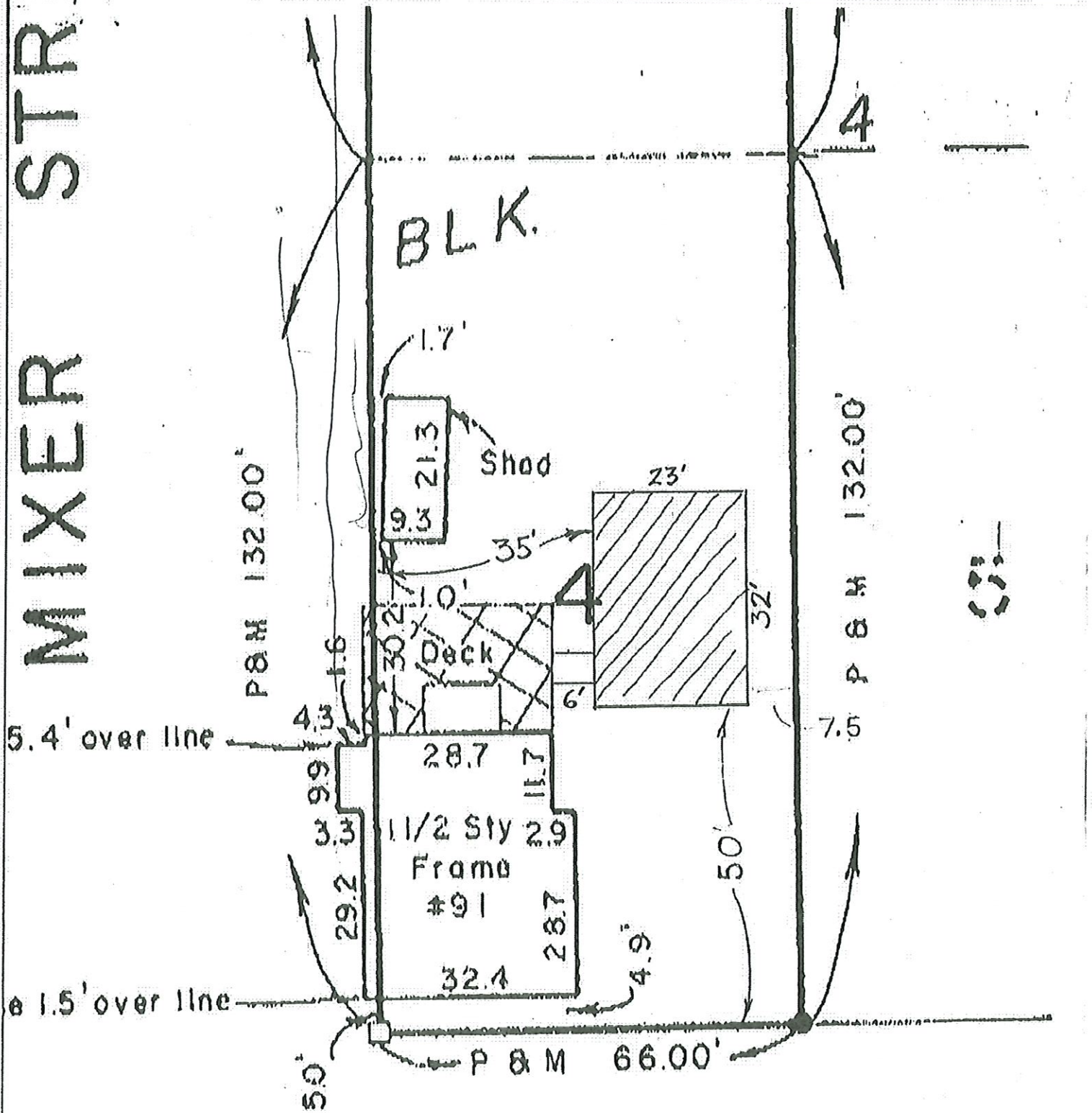
Office: 269-857-1438

Email: PZAdmin@douglasmi.gov



[Quoted text hidden]

MIXER STR



RANDOLPH STREET

EXHIBIT
4

John P. [Signature]