

CITY OF BLOOMINGTON



September 25, 2024 @ 2:00 p.m.
Kelley Conference Room #155 and Zoom

Virtual Link:

<https://bloomington.zoom.us/j/88225451589?pwd=SkQxQmQvTnBXc202M0ZPano1eW9rdz09>

Meeting ID: 882 2545 1589
Passcode: 897298

**CITY OF BLOOMINGTON
HEARING OFFICER (Hybrid Meeting)
September 25, 2024 at 2:00 p.m.**

**City Hall, 401 N. Morton Street
Kelly Conference Room #155**

❖Virtual Link:

<https://bloomington.zoom.us/j/88225451589?pwd=SkQxQmQvTnBXc202M0ZPano1eW9rdz09>

Meeting ID: 882 2545 1589 Passcode: 897298

Petition Map: <https://arcg.is/LjvKy>

PETITIONS:

V-28-24 **John Kincaid**
523 W. 7th Street
Parcel: 53-05-32-413-0800000-005
Request: Determinate sidewalk variance to allow construction of a single-family dwelling without construction of a sidewalk along the Jackson Street frontage of the property in the Residential Urban Lot (R4) zoning district.
Case Manager: Gabriel Holbrow

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**BLOOMINGTON HEARING OFFICER
STAFF REPORT
Location: 523 West 7th Street**

**CASE #: V-28-24
/ VAR2024-09-0047
DATE: September 25, 2024**

PETITIONER/OWNER: John and Jennifer Kincaid
3956 North Hinkle Road
Bloomington, IN

REQUEST: The petitioner is requesting a determinate sidewalk variance to allow construction of a single-family dwelling without construction of a sidewalk along the Jackson Street frontage of the property at this time in the Residential Urban Lot (R4) zoning district.

REPORT: The property is located at the southeast corner of the intersection of West 7th Street and North Jackson Street. The property is currently vacant, but formerly contained a single-family house which was demolished in 2019. The property as well as all surrounding properties are located in the Near West Side Historic District. The property and adjacent properties to the south and east are located in the Residential Urban Lot (R4) zoning district. Adjacent properties to the north and west are located in the Mixed-Use Institutional (MI) zoning district, and contain a school (MCCSC Fairview Elementary School) to the north across 7th Street and a place of worship (Fairview United Methodist Church) to the west across Jackson Street.

The petitioner proposes to build a new single-family house on the property. The design of the new house itself complies with applicable standards in the Unified Development Ordinance (UDO) and received certificate of appropriateness COA 24-28 from the Historic Preservation Commission on August 8, 2024. Construction of a new primary structure on the lot triggers full compliance with all UDO standards for the lot, including the requirement in UDO section 20.04.050(d)(2) to provide pedestrian facilities along all street frontages of the property, and the requirement in UDO section 20.04.050(d)(5) that the type of pedestrian facility shall be as indicated in the Transportation Plan. There is an existing sidewalk along 7th Street abutting the property, which the Planning and Transportation Department has determined is compliant with UDO requirements. There is currently no sidewalk along Jackson Street abutting the property; the UDO also requires a sidewalk along the Jackson Street frontage.

This segment of North Jackson Street is identified in the Transportation Plan as a Neighborhood Residential street typology, which calls for a minimum six-foot-wide sidewalk separated from the roadway by a minimum five-foot-wide greenscape (tree plot). In situations where there is not enough existing public right-of-way width for the required pedestrian facilities, the UDO directs the pedestrian facilities to be installed on the adjacent private property and placed within a pedestrian easement. Because the existing public right-of-way of this segment of North Jackson Street is only 40 feet wide, full compliance with the UDO would require the sidewalk to be placed on the property within a pedestrian easement.

The petitioner is requesting a variance from the UDO requirement to provide a sidewalk on the Jackson Street frontage of the property, in order to construct the house without constructing the sidewalk.

CRITERIA AND FINDINGS FOR DEVELOPMENT STANDARDS VARIANCE

20.06.080(b)(3)(E)(i) Standards for Granting Variances from Development Standards: A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

PROPOSED FINDING: Not constructing a sidewalk along the Jackson Street frontage of the property at this time will not be injurious to the public health, safety, morals, and general welfare of the community. This block of South Jackson Street experiences an extremely low volume of vehicle traffic, such that it is a viable option for a pedestrian to walk in the street. An existing sidewalk on the west side of Jackson Street is available from 6th Street to the south, running as far north as the north end of the church building approximately 90 feet south of 7th Street. Even though a dedicated pedestrian sidewalk separate from the vehicle roadway is preferable, lack of a sidewalk on this side of this segment of North Jackson Street will not be injurious to public safety.

- 2) *The use and value of the area adjacent to the property included in the Development Standards Variance will not be affected in a substantially adverse manner.*

PROPOSED FINDING: Lack of a sidewalk along the Jackson Street frontage of the property will not limit access to other adjacent properties and will not substantially affect those properties. The abutting property to the south on the east side of Jackson Street does not currently have a sidewalk along its Jackson Street frontage, and constructing a continuation sidewalk along this abutting property would necessitate removal of part of the primary structure as well as several large trees.

- 3) *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the Development Standards Variance will relieve the practical difficulties.*

PROPOSED FINDING: Due to the limited public right-of-way width of 40 feet for this segment of North Jackson Street, the required sidewalk and greenscape would necessarily be located approximately 10 feet onto the property. This area of the property contains a significantly large mature pine tree in good health which would have to be removed to make way for the sidewalk. The existing state of this area of the property poses a practical difficulty for constructing the sidewalk. A determinate sidewalk variance to allow the sidewalk not to be constructed at this time would relieve the practical difficulty.

20.06.080(b)(3)(E)(i)(3) Determinate Sidewalk Variance Approval Criteria:

While not to be included as separate findings of fact, items to consider when determining the practical difficulties or peculiar conditions associated with a determinate sidewalk variance include, but are not limited to:

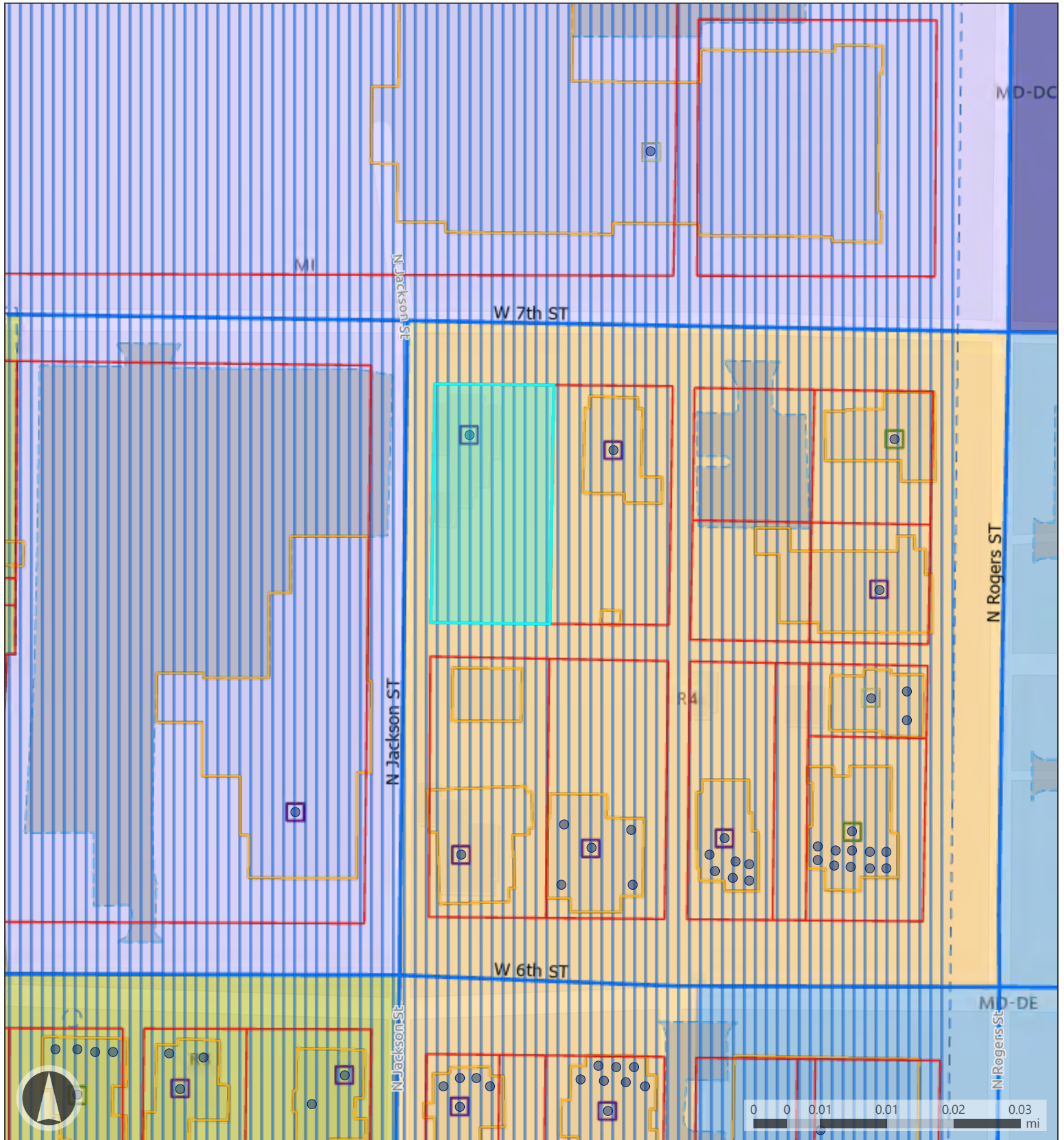
- [a] That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk; or*
- [b] That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians; or*
- [c] The adjacent lot or tracts are at present developed without sidewalks and there is no reasonable expectation of additional sidewalk connections on the block in the near future; or*
- [d] The location of the lot or tract is such that a complete pedestrian network is present on the other of the street on the same block; or*
- [e] Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date.*

Review of Determinate Sidewalk Criteria:

- [a] Existing features along the property's Jackson Street frontage, including existing utility poles and guy wires in the right-of-way adjacent to the street as well as a significantly large mature pine tree on the property where a sidewalk would be located, add complications to the design and construction of a sidewalk.
- [b] This block of South Jackson Street experiences an extremely low volume of vehicle traffic such that it is a viable option for a pedestrian to walk in the street.
- [c] The abutting property to the south on the east side of Jackson Street does not currently have a sidewalk along its Jackson Street frontage. Constructing a continuation sidewalk to the south along the abutting property would necessitate removal of part of the primary structure as well as several large trees. There is no reasonable expectation of a sidewalk connection to the south along the east side of Jackson Street in the near future.
- [d] There is a partial pedestrian network on the west side of Jackson Street across from the property: an existing sidewalk from 6th Street to the south, running as far north as the north end of the church building approximately 90 feet south of 7th Street. It is possible for a pedestrian on the west side of the street to continue north through the edge of the church parking lot without encountering any grade changes. Even though the path through the edge of the parking lot is not a dedicated pedestrian facility, it does provide a connection in the pedestrian network that is physically possible for a pedestrian to use.
- [e] Existing structures in the path of a sidewalk connection to the south mean that deferring sidewalk construction until at least the full block could be completed would result in more uniformity of development for the pedestrian network in the area.

RECOMMENDATION: Based upon the written findings above, the Department recommends that the Hearing Officer adopt the proposed findings for V-28-24 / VAR2024-09-0047 and approve the requested variance with the following condition:

1. A zoning commitment for the determinate sidewalk variance must be recorded and submitted prior to approval of a building permit.



Map Legend

- Addresses
- Parcels
- Buildings

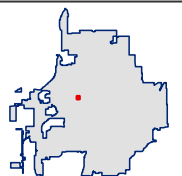
Rating

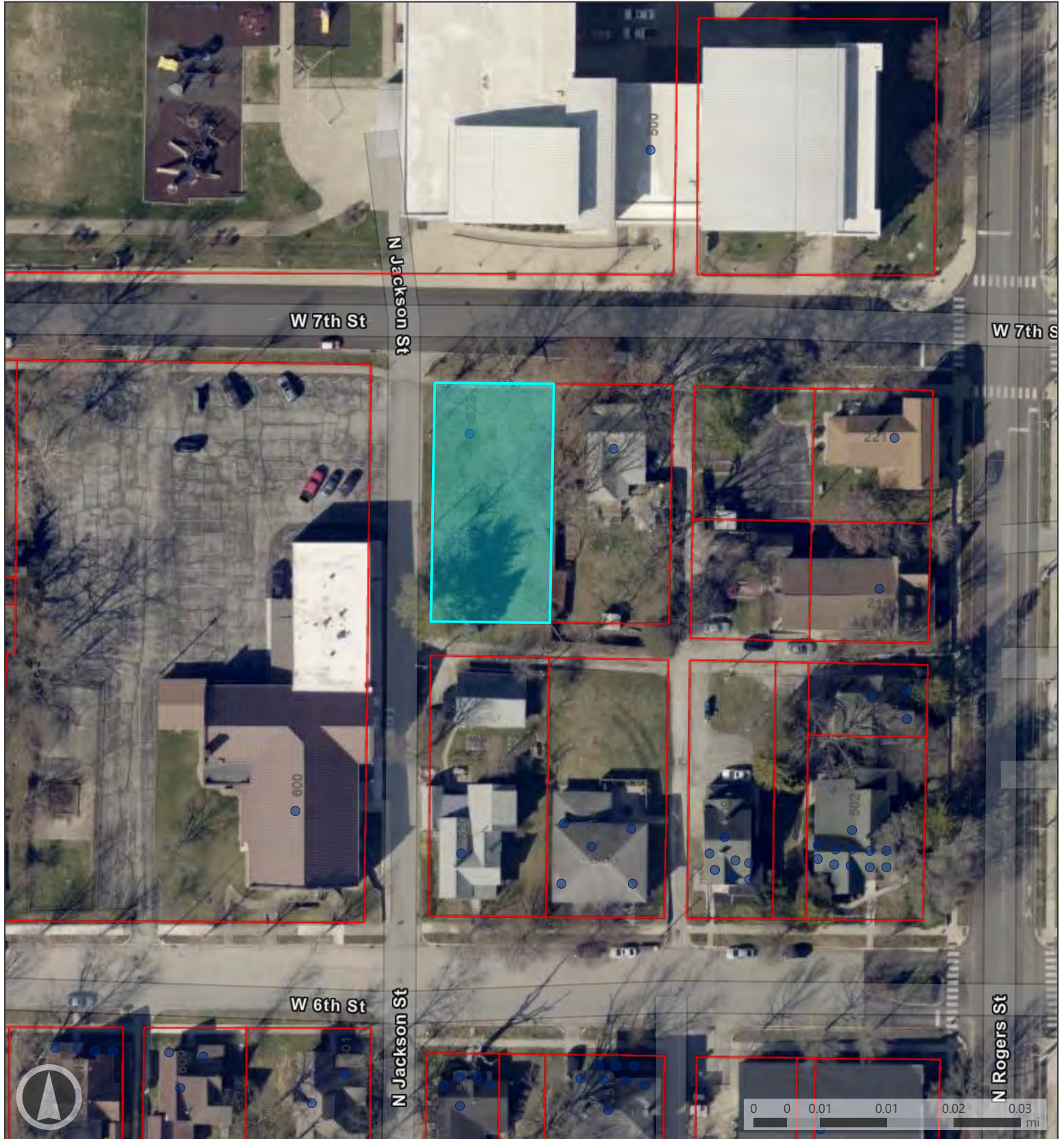
- Notable
- Contributing

- Non-Contributing
- Local Historic Districts

Parking Lot

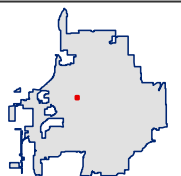
- Paved
- City





Map Legend

- Addresses
- ▭ Parcels



PETITIONERS' STATEMENT

Variance application: 523 W. 7th Street

Project description:

New construction single-family home to be occupied by owners. Plans have previously been approved by Historic Commission and received Certificate of Appropriateness. There is an existing sidewalk along 7th Street in the front-facing side of the proposed home. There is no sidewalk along Jackson Street and petitioners request a variance so as not to have to construct a sidewalk on that west side of the property.

The variance request meets several of the listed criteria:

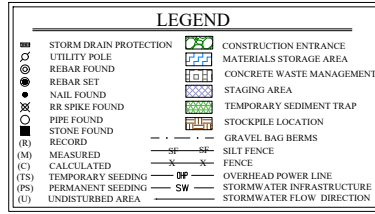
- a) That the topography of the lot or tract together with the topography of the adjacent lots or tract and the nature of the street right-of-way make it impractical for construction of a sidewalk
 - If a sidewalk were required, a significantly large mature pine tree in good health would have to be removed. Petitioners had already worked with an arborist and the City to remove diseased trees in order to preserve the remaining trees as much as possible. In addition, two utility lines/poles would have to be relocated.
- b) That the pedestrian traffic reasonably to be anticipated over and along the street adjoining such lot or tract upon which new construction is to be erected is not and will not be such as to require sidewalks to be provided for the safety of pedestrians
 - Jackson Street between 6th and 7th Streets does not receive much car traffic. Fairview United Methodist Church takes up the entirety of the property across the street on that side. There is a sidewalk all along the church buildings ending with a ramped portion into the church parking lot where there is even more room for any pedestrians to walk.
- c) The adjacent lot or tracts are at present developed without sidewalks and there is no reasonable expectation of additional sidewalk connections on the block in the near future
 - The adjoining property to the south of the lot along Jackson Street is a residence with no sidewalk. No sidewalk can be expected to be constructed there as it would necessitate the removal of a structure and the removal of several large trees.
- d) The location of the lot or tract is such that a complete pedestrian network is present on the other side of the street on the same block
 - See item (b)- there is a complete pedestrian network on the other side of the street on that block.
- e) Uniformity of development of the area would best be served by deferring sidewalk construction on the lot or tract until some future date
 - Having a one-lot length of sidewalk would not serve the uniformity of development in the neighborhood. Very few sidewalks exist on parallel blocks in the neighborhood.

Thank you for your consideration,
Jennifer and John Kincaid

NOTES:

- 1). Basis of Bearings (State Plane- West).
- 2). Fieldwork performed in May 2024.
- 3). Proposed 1st floor elevation of residence shall be 798.0'.
- 4). Source of title now or formerly owned by John W. Kincaid and Jennifer Uber Kincaid as found in Instrument Number 2024002834 in the Office of the Monroe County Recorder.
- 5). The proposed finish floor and finish grade elevations shown are minimum elevations in order to provide positive surface drainage away from the proposed residence. The finish grade elevations shall not in any way shed surface storm water flow onto the adjoining properties unless provisions have been made with the adjoining property owners and the governing jurisdiction. Shallow flow lines shall be made by the finish grade subcontractor along the common lines with adjoining property owners to direct the storm water flow as shown on this plot plan. The builder shall notify this firm if field adjustments are made lowering than the elevations shown or redirecting the surface storm water flows.
- 6). The dimensions shown on the proposed residence are based upon plans provided by the builder. Prior to construction the builder shall verify no changes have been made from those shown hereon.
- 7). The plot plan has been prepared for use in obtaining a building permit and is not intended to identify lot or property lines. The dimensions shown to lot lines or lines representing property lines are shown based upon limited field evidence of said lines and the dimensions are subject to the same limitations which might affect the accuracy of the dimensions.
- 8). No wetlands shall be disturbed during or after the construction of the site improvements.
- 9). Any subsurface drainage tiles encountered during the construction of the site improvements shall be protected from damage and if necessary rerouted with the drainage flow within perpetuated. If said tile is damaged, repairs shall be made immediately to restore the tile to its original condition.
- 10). The builder and/or any underground site contractor shall call Indiana 811 to verify the location of the underground utilities on this site and report any conflicts to Deckard Land Surveying prior to commencing work.
- 11). Construction drive: Temporary construction drive to comply with City of Bloomington ordinances.
- 12). Gentle swale statement: Gentle swale required to be constructed (or be protected if existing along side lot line) during construction and to remain post-construction to direct sheet drained watershed towards the front and back of lot and not towards existing or proposed residence.
- 13). Erosion control measure must be functional and maintained through construction.
- 14). Sediment Discharge and tracking from lot shall be minimized.
- 15). Adjacent lots disturbed by an individual lot operator must be repaired and stabilized.
- 16). Concrete and Cementitious Washwater: Include location of concrete washout and building materials area on site plan. All concrete and cementitious washwater is required to be captured in a leak-proof concrete washout container.
- 17). Ingress/Egress: Equipment is only allowed to access the site through the approved driveway with a Driveway Permit. Maintain the driveway as a stabilized construction ingress/egress. If alternate access is required, please apply for another Driveway Permit with the City of Bloomington Street Department.
- 18). Tracking and Off-Site Discharges: Any sediment tracked off site, must be swept (not flushed) off the road by the end of the business day. Off-site discharges of sediment must be remediated by the end of the business day.
- 19). Spill Response: No vehicle fueling, storage of fuel, or repair of equipment is allowed on site. All spills must be cleaned up immediately and reported according to local, state, and federal regulations. Contact the MS4 Coordinator immediately for any reportable spills or discharge to storm sewers or waterbodies.
- 20). Karst: New sinkholes that develop as a result of construction must be reported to the MS4 Coordinator within 24 hours of discovery. Immediately protect the sinkhole with erosion control measures. Filling of new sinkholes requires MS4 Coordinator approval.
- 21). Stabilization: Permanently stabilize areas at final grade within 7 days. Temporary stabilization is required for disturbed areas left inactive for more than 7 days. Any disturbance caused on adjacent lots must be repaired or stabilized.
- 22). Changes or deviations to this plan shall be submitted to City of Bloomington Planning Department for approval.
- 23). The individual lot operator is responsible for installation and maintenance of all erosion and sediment control measure until the lot is stabilized. The operator must comply with all the requirements of the zoning ordinance of the City of Bloomington.
- 24). This drawing is not intended to be represented as a retracement or original boundary survey, a route survey, or a Surveyor Location Report.
- 25). I affirm, under penalty for perjury, that I have taken responsible care to redact each Social Security Number in this document, unless required by law.
-ERIC L. DECKARD

SITE PLAN
IN LOT NUMBERED TWO HUNDRED EIGHTY (280) IN THE
ORIGINAL PLAT OF THE CITY OF BLOOMINGTON
MONROE COUNTY, INDIANA



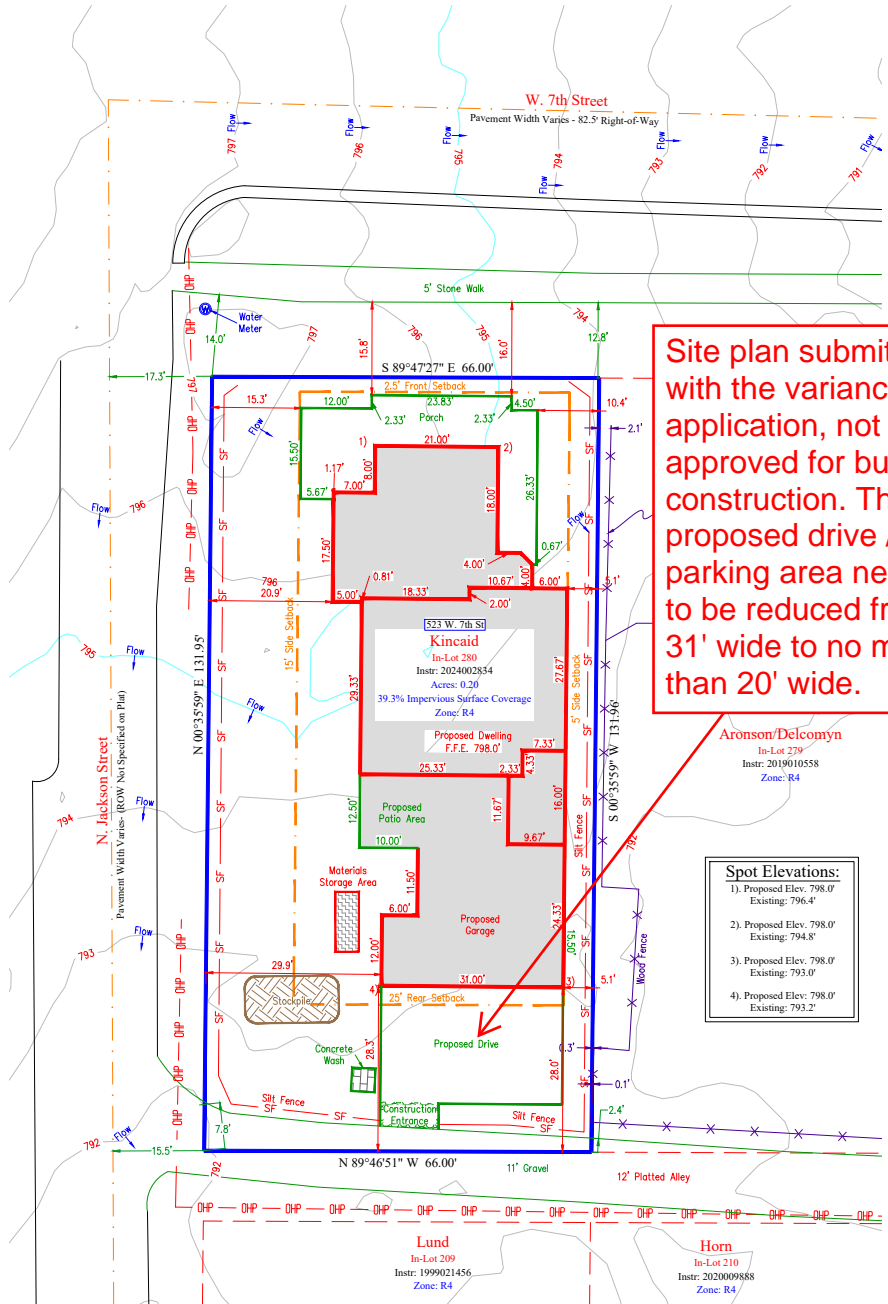
PROJECT LOCATION

BLOOMINGTON TWP.
TOWNSHIP 9 N
RANGE 1 W
SECTION 32

DEVELOPER, APPLICANT & OR OWNER
JOHN W. KINCAID &
JENNIFER UBER KINCAID
INSTRUMENT NUMBER 2024002834
3956 N. HINKLE ROAD
BLOOMINGTON, INDIANA 47408



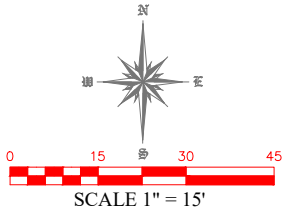
LOCATION MAP



Site plan submitted with the variance application, not yet approved for building construction. The proposed drive / parking area needs to be reduced from 31' wide to no more than 20' wide.

Spot Elevations:

1). Proposed Elev. 798.0'	Existing: 796.4'
2). Proposed Elev. 798.0'	Existing: 794.8'
3). Proposed Elev. 798.0'	Existing: 793.0'
4). Proposed Elev. 798.0'	Existing: 793.2'



CERTIFICATION

This drawing was prepared in the office without the benefit of a field survey and examination of adjoining deeds. This certification does not take into consideration additional facts that an accurate and correct title search and/or examination of a field survey might disclose.

Certified this 23rd day of July, 2024.

Eric L. Deckard
Registered Surveyor LS29900012
State of Indiana



Record Legal Description:
In Lot Number Two Hundred and Eighty (280) in the
Town (now City) of Bloomington, Indiana.

Zoning Classification:
R4 - Residential

Setback Table:
Per Bloomington UDO 20.02.010
Front - 1.5' or the median front setback of abutting residential structure, whichever is less
Side - 5'
Rear - 25'
These lots are for "Single Family" use.

SITE SHEET	DATE 7/23/24	SHEET 1 OF 1	SCALE 24x61	SURVEYED WS & T1 WRS CHECKED ELD DATE 7/23/24	REVISIONS	BY	DATE	JOB TITLE KINCAID SITE PLAN A PART OF SECTION 32, T9N, R1W	DRAWN BY ERIC L. DECKARD LAND SURVEYING 1604 S. HENDERSON STREET BLOOMINGTON, IN 47401 TELEPHONE (812) 961-0235 ERIC@DECKARDLLS.COM



Map Legend

 Parcels

