

**KALAMAZOO TOWNSHIP  
ZONING BOARD of APPEALS MEETING  
AGENDA  
WEDNESDAY OCTOBER 18, 2023, 6:00 PM**

The agenda for the *meeting* will include the following items:

- #1 Call to order
- #2 Roll call
- #3 Approval of agenda for October 18, 2023
- #4 Approval of Minutes:
  - 4a. September 20, 2023
- #5 Public Hearings
  - 5a. 3122 Santos Avenue – Lot Coverage
- #6 Old Business
  - 6a. 4629 Winding Way – Setback [No Action]
- #7 New Business
  - 7a. 3122 Santos Avenue – Lot Coverage [Action Item]
- #8 Other matters to be reviewed by the ZBA
  - 8a. Comments from the public on matters not already addressed.
  - 8c. Zoning Board of Appeals members' comments.
  - 8d. Report of the Planning Commission member.
- #9 Adjournment

**Public Hearings.** The following rules of procedure shall apply to public hearings held by the ZBA:

1. Chairperson opens the public hearing and announces the subject.
2. Chairperson summarizes procedures/rules to be followed during the hearing.
3. Township zoning administrator/planning consultant presents brief summary of the request.
4. Applicant presents brief overview of request.
5. Persons wishing to comment on the request are recognized.
6. Chairperson closes public hearing.

\*Note: further discussion of the application (such as discussion) take place during “business”.

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**Charter Township of Kalamazoo  
Minutes of a Zoning Board of Appeals Meeting  
Held on September 20, 2023**

A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was conducted on September 20, 2023, commencing at 6:00 p.m. at the Township Hall.

**Present were:**

Nicky Leigh  
Fred Nagler  
Lisa Mackie—Alternate  
Shawn Blue

Also present were Township Zoning Administrator Kyle Mucha; Township Attorney Seth Koches; and, four (4) members of the audience.

**Absent was:**

None.

**Call to Order.**

Leigh called the meeting to order at 6:00 p.m. and called the roll.

**Approval of the Agenda for the September 30, 2023, Zoning Board of Appeals Meeting.**

The ZBA members received the agenda in their meeting packets. No additions or revisions were made. Nagler moved, supported by Blue to approve the agenda as presented. The motion passed 4-0.

**Approval of Zoning Board of Appeals' Meeting Minutes of the August 16, 2023 Meeting.**

The next item on the agenda was approval of the August 16, 2023, Zoning Board of Appeals' meeting minutes. Copies of the draft meeting minutes were provided to the Members in their agenda packets.

Mackie moved, supported by Blue to approve the minutes as revised. The motion passed 4-0.

**Public Hearings**

**3809 E. Michigan Ave. – Setback**

The next item on the agenda was the public hearing for the request of Adrienne Heidema of Consumers Concrete Corporation (applicant) regarding property located at 3809 E. Michigan Ave., within the Township, being Parcel No. 06-13-480-011, for a variance of up to 150 feet into the 300' setback requirement contained in Section 8.02.AAA.2 "Setbacks", from the S. Victor Ave public/private road right-of-way, to permit a freight-yard operation. Leight opened the public hearing.

1 Mucha prepared a staff report that was contained in the Board member packets and summarized it.  
2 Mucha said that the applicant proposed to construct a new concrete blow manufacturing plant on the  
3 same site where they own and operate and existing concrete manufacturing facility. Mucha said that the  
4 applicant seeks the requested setback variance due to the proposed placement of the new plant being  
5 150 feet from the S. Victor Ave. right-of-way. The subject property is located in the Township’s I-2 General  
6 Industrial District zoning classification and is approximately 52.31 acres in size.

7  
8 Steve Frenette addressed the ZBA on behalf of the applicant. Frenette said that he reviewed the site plan  
9 and noted that a variance was required in order to place the new plant in the proposed location. Frenette  
10 said that the building plan and site plan remain the same and won’t be changed. Frenette said that the  
11 proposed location best fits the design plans in order to accommodate trucks loading and unloading  
12 material at the project site. Mucha said that in November 1995, the Road Commission of Kalamazoo  
13 “absolutely abandoned and discontinued as a public highway the north 1,122 feet of Victor Ave”.

14  
15 Leigh opened the public comment portion of the public hearing and invited any interested party to speak  
16 in support of or in opposition to the proposed request. Hearing no public comments, Leigh closed the  
17 public hearing.

18  
19 **Old Business.**

20  
21 **4629 Winding Way – Setback**

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23 Mucha commented that this matter remains pending and no further action or discussion is needed at this  
24 time.

25  
26 **New Business.**

27 **3809 E. Michigan Ave. – Setback Discussion**

28  
29 The next item on the agenda was the Board members deliberation regarding the public hearing for 3809  
30 E. Michigan Ave. Mucha said that Section 26.05.B.4.a of the Township Zoning Ordinance contains the  
31 standards of review when considering a request for a variance. Section 26.05.B.4.a states, in part, that:

32  
33 In determining whether practical difficulties exist, the ZBA shall consider the following  
34 factors:

- 35 (1) Strict compliance with restrictions governing area, setback, frontage,  
36 height, bulk, density or other non-use matters, will unreasonably  
37 prevent the owner from using the property for a permitted purpose  
38 or will render ordinance conformity unnecessarily burdensome.  
39 (2) The variance will do substantial justice to the applicant, as well as to  
40 other property owners.  
41 (3) A lesser variance than requested will not give substantial relief to the  
42 applicant and/or be consistent with justice to other property owners.  
43 (4) The problem and resulting need for the variance has not been self-  
44 created by the applicant and/or the applicant's predecessors. (For  
45 example, a variance needed for a proposed lot split would, by  
46 definition, be self-created, so such a variance typically would not be  
47 granted.)

1 The Board members discussed each standard of review. Leigh said that conformance with existing  
2 ordinance standards would interfere with Top Grade’s mining easement, which presents a hardship on  
3 the applicant. Nagler said that the Planning Commission approved the applicant’s request for special land  
4 use and had no issues with the site plan that was submitted to and reviewed by Commissioners. The Board  
5 concluded that strict compliance with the restrictions governing setbacks will unreasonably prevent the  
6 applicant from using the property for a permitted purpose and/or will render conformity with the  
7 ordinance unnecessarily burdensome. The Board concluded that granting the requested variance will do  
8 substantial justice to the applicant as well as to other property owners. The Board concluded that a lesser  
9 variance will not give substantial relief to the applicant and/or be consistent with justice to other property  
10 owners. The Board concluded that the problem and resulting need for the requested variance has been  
11 self-created by the applicant.

12  
13 Nagler moved, supported by Mackie to approve the request of Adrienne Heidema of Consumers Concrete  
14 Corporation (applicant) regarding property located at 3809 E. Michigan Ave., within the Township, being  
15 Parcel No. 06-13-480-011, for a variance of up to 150 feet into the 300’ setback requirement contained in  
16 Section 8.02.AAA.2 “Setbacks” from the S. Victor Ave public/private road right-of-way (S. Victor) to permit  
17 a freight-yard operation. The motion passed 4-0.

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19 Koches prepared the Notice of Decision form which was personally served on the applicant and copies  
20 were made for Township records.

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22 **Comments from the public.**

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24 None.

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26 **Correspondence received.**

27  
28 None.

29  
30 **ZBA Member Comments.**

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32 The members discussed the need to appoint members to the ZBA.

33  
34 **Report of Planning Commission Member.**

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36 Nagler discussed updates from recent Planning Commission meetings.

37  
38 **Adjournment.**

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40 Nagler moved, supported by Blue to adjourn the meeting at 6:41 p.m. The motion passed 4-0.

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**SYNOPSIS OF ACTIONS**

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The Kalamazoo Township Zoning Board of Appeals undertook the following actions at the September 20, 2023 meeting:

- 1. Approved the request of Adrienne Heidema of Consumers Concrete Corporation (applicant) regarding property located at 3809 E. Michigan Ave., within the Township, being Parcel No. 06-13-480-011, for a variance of up to 150 feet into the 300’ setback requirement contained in Section 8.02.AAA.2 “Setbacks” from the S. Victor Ave. public/private road right-of-way, to permit a freight-yard operation.

\_\_\_\_\_  
Recording Secretary



# MCKENNA

October 10, 2023

Hon. Members of the Zoning Board of Appeals  
Kalamazoo Charter Township  
1720 Riverview Drive  
Kalamazoo, Michigan 49004

**SUBJECT:** ZBA Report  
#23-08 Variance Request – Lot Coverage

**APPLICANT:** Edward & Malinda Frybarger

**SECTION:** Section 25.02 – Schedule of Regulations – Lot Coverage

**LOCATION:** Unaddressed Parcel: 06-17-320-220

**REQUEST:** To obtain relief from the maximum permitted lot coverage of 25% in the R-1 District, to permit the construction of a single-family residential dwelling with an estimated lot coverage of 31%.

Dear Members of the Zoning Board of Appeals:

We have reviewed the above-referenced application regarding the variance request to permit the construction of a single family residential dwelling, with a lot coverage of 31%, where the Kalamazoo Township Zoning Ordinance permits a maximum lot coverage of 25%.

## VARIANCE REQUEST SUMMARY

The applicants, Edward & Malinda Frybarger, seek relief from the Kalamazoo Township Zoning Ordinance’s Schedule of Regulations as it pertains to maximum lot coverage. The applicant’s seek to construct a new single-family residential dwelling and attached accessory building (garage) on a currently vacant parcel immediately east of 3122 Santos Avenue.

The subject parcel is approximately 8,000 square feet in area (80 feet wide, 100 feet deep). The applicants seek to construct a 2,448 square foot building (30.6%), where a maximum 2,000 square-foot structure is permitted (25%).

The subject parcel, 06-17-320-220, is currently owned by Edward & Malinda Frybarger.



### HEADQUARTERS

235 East Main Street  
Suite 105  
NorthHille, Michigan 48167

O 248.596.0920  
F 248.596.0930  
MCKA.COM

Communities for real life.



**EXISTING SITE CONDITIONS**

The subject parcel is approximately 0.18 acres in size (8,000 square feet). The site is currently zoned R-1, Residential. Single-family detached dwellings are a permitted use within the R-1 District, per Section 11.02 of the Township Zoning Ordinance.

The subject parcel is currently vacant, as shown by the July 2023 street view capture, provided by Google.



**STANDARDS FOR VARIANCE APPROVAL**

Section 26.05.B.4.a, of the Zoning Ordinance provides criteria for the review of variance requests by the Zoning Board of Appeals. The following are those criteria and how they relate to this request:

- a. *The ZBA may grant a requested "non-use" variance only upon a finding that practical difficulties exist and that the need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. In determining whether practical difficulties exist, the ZBA shall consider the following factors:*

*Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.*

**Applicant Statement:** "Due to advancing ages (75 & 71) and health conditions, we wish to build an aging-in-place home on the vacant lot which we own on Santos Avenue. The home will be all on one level and accessible, allowing us to age in place. Our current home has 13 steps from driveway to living room and is beginning to be a hardship for us. Since our new home needs to be on one level and include an attached garage, the home needs to be slightly larger (by 488 square feet) than the allowed 1960 square feet. This will allow us to have the additional room in the bathroom, hallways, and bedroom required for anticipated wheelchair accessibility".

The applicant, as provided in their above statement, indicates that advancing age prevents them from compliance with the Township Zoning Ordinance. As referenced in earlier sections, the subject parcel is currently vacant. Any new construction would be required to meet the established zoning regulations. Meeting the ordinance requirements would not prevent the homeowner from using the property for a permitted use (single-family residential dwelling).

Compliance with ordinance standards would not be overly burdensome. A single-family home could be constructed that meets zoning requirements. Further, due to the subject site being vacant (undeveloped), no apparent practical difficulties exist that would prevent the applicant from constructing a home that is in compliance with ordinance standards. A



modest home of 1,500 square feet, with an attached garage of up to 500 square feet could be constructed on the subject site.

*The variance will do substantial justice to the applicant, as well as to other property owners.*

**Applicant statement:** “The requested variance will allow us to proceed with building our accessible aging-in-place home. We would still meet or exceed all setback requirements and the property will be used as a single-family dwelling per the R-1 zoning.”

The variance is not anticipated to do substantial justice to other property owners. The below synopsis table provides existing square-footage and lot sizes of adjacent residential dwellings. The data in the following table was accessed via the Kalamazoo Township Assessing Database and depicts total livable space of the residential dwelling. Accessory structures, attached & detached, were not included in the total square footage.

Property	Square Footage	Lot Size (Acres)
3108 Santos	1,547	0.184
3022 Santos	1,548	0.184
3016 Santos	1,008	0.184
3010 Santos	1,154	0.23
3007 Santos	1,064	0.23
3015 Santos	998	0.184
3021 Santos	1,342	0.184
3027 Santos	1,044	0.184
	<i>Average: 1,213</i>	<i>Average: 0.195</i>

Existing residential dwellings along Santos Avenue are within ordinance standards as it pertains to dwelling square-footage. Such an increase in square footage of the home would not be in character of Santos Avenue. Further, the variance would not correct an injustice to the property owner: the site is currently vacant and has no apparent hardships in which conformance to the ordinance standards would constitute an injustice.

*A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.*

**Applicant statement:** “A lesser variance would force us to hire our builder to redesign a smaller home with less accessibility and less parking space provided in the garage. The garage needs to provide sufficient width for potential wheelchair entry and exit from the parked cars.”

The applicant seeks a variance from the maximum lot coverage standards within the Kalamazoo Township Zoning Ordinance. This is an entirely self-created hardship and as such, conformance with ordinance standards are not unduly burdensome. As such, because conforming alternatives exist which make the need for the variance null, a lesser variance would be counter to the intent of the ordinance. The subject site can still be developed for a single-family residential dwelling that meets all applicable regulations.

*The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors. (For example, a variance needed for a proposed lot split would, by definition, be self-created, so such a variance typically would not be granted.)*

**Applicant statement:** “This is not a self-created issue.”





The need for the variance is a direct result from the proposed construction of a single-family residential dwelling that exceeds the maximum lot coverage as established by the Kalamazoo Township Zoning Ordinance. The following alternative options exist that would negate the need for the variance:

1. Construct a residential dwelling and attached garage that does not exceed the maximum lot coverage of 2,000 square feet.
2. Construct a residential dwelling and expanded single-car garage that would permit wheelchair access, while not exceeding the 2,000 square foot maximum.
3. Combine the subject parcel with that of 3122 Santos Avenue (parcel number 06-17-320-210) and expand the existing footprint of the residential dwelling at 3122 Santos Avenue.
4. Combine the subject parcel and 3122 Santos Avenue. Demolish the existing structure at 3122 Santos Avenue and construct a new residential dwelling on the combined parcel that meets ordinance requirements.
5. Construct a new residential dwelling on the subject parcel and a *detached accessory building*. The detached accessory building would not be considered towards total lot coverage as indicated by the following Zoning Ordinance Section 2.03.C.3.a (detached accessory buildings):

*The maximum floor area of an accessory building or structure is 768 square feet, provided that the accessory building or structure together with all other buildings and structures does not cover more than twenty-five percent (25%) of the total area of the parcel, exclusive of road rights-of-way. Notwithstanding the percentage of lot coverage requirement, each parcel shall be permitted accessory building or structure floor area totaling 576 square feet, provided that in no case shall an accessory building or structure exceed the square foot area of the principal building on the parcel.*

The applicant could construct the detached accessory building in conformance with ordinance standards, thus allowing for a larger footprint residential dwelling. If the applicant pursued a detached accessory building, the need for a variance may be negated.

- b. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings. Administrative officials and other persons may, but shall not be required to, provide information, testimony and/or evidence on a variance request.*

The applicant has provided an application, brief description as it relates to the four review criteria, and a conceptual site design and justification for the requested variance.

#### Conditions

*The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request.*

We find that additional/reasonable conditions in connection with the variance request are not applicable at this time, but defer to the Zoning Board of Appeals should they find any additional conditions warranted after the Public Hearing has been held.



## STAFF FINDINGS

We offer the following for consideration by the Zoning Board:

1. The applicant could construct a single-family residential dwelling that meets ordinance requirements as it pertains to lot coverage. Therefore, strict compliance with the ordinance standards would not unreasonably prevent the property owner from utilizing the subject site for a permitted use, as stipulated by the R-1 Residential District.
2. Granting the variance would not provide substantial justice to other property owners. Adjacent property owners with similar lot sizes have single-family residential dwellings whose livable square-footage conforms to the Kalamazoo Township Zoning Ordinance.
3. The applicant has alternative conforming options that render the need for the variance unneeded. As such, a lesser variance would not be consistent with justice to other property owners.
4. The need for the variance is entirely self-created.
5. The applicant has conforming alternatives for site design that would not require a variance.

Feel free to reach Danielle Bouchard, AICP, Principal Planner, at [DBouchard@mcka.com](mailto:DBouchard@mcka.com) or Kyle Mucha, AICP, Senior Planner at [KMucha@mcka.com](mailto:KMucha@mcka.com) you have any questions about this variance request or review.

Respectfully,

**McKenna**

Danielle Bouchard, AICP  
Principal Planner/Township Planner

Kyle Mucha, AICP  
Senior Planner/Township Zoning Administrator



**Zoning Board of Appeals  
Application for Variance,  
Interpretation, or Appeal**



OFFICE USE ONLY
Date: _____
Case #: _____
Fee: _____

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Contact Person **Edward and Malinda Frybarger**

Business Name *(if applicable)*

Email **epfrybar@att.net**

Address **3122 Santos Avenue**

Phone **269-270-1954**

City **Kalamazoo**

State **MI**

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Check here if same as above X

Name	Email
Address	Phone
City	State

P R O P E R T Y  I N F O R M A T I O N	
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Street Address Santos St VAC	Suite/Apt. #
Zoning District R1	Master Plan Designation 3906-17-320-22
Gross Acreage 0.18	Parcel Dimensions 80' x 100'

ZBA ACTION REQUESTED
<ul style="list-style-type: none"> <li><input type="checkbox"/> To interpret a particular section of the ordinance, as it is felt the Zoning Administrator/Planning Commission is not using the proper interpretation.</li> <li><input type="checkbox"/> To interpret the zoning map, as it is felt the Zoning Administrator/Planning Commission is not reading the map properly. Describe the portion of the zoning map in question (attach detail maps if applicable).           <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> To grant a variance to certain requirements of the zoning ordinance, (parking, setbacks, lot size, height, floor area, sign regulations, location of accessory buildings, maximum amount of lot coverage, etc.).</li> </ul> </li> <li><input type="checkbox"/> To overturn an action of the zoning administrator. The zoning administrator erred (did not issue a permit, issued a permit, enforcement).</li> </ul>

**SECTION OF THE ZONING ORDINANCE  
SEEKING INTREPRETATION OR VARIANCE**

Section: 25

I (we), the undersigned, do hereby indicate that all information contained in this application, accompanying plans and attachments are complete and accurate to the best of my (our) knowledge.

AUG. 29, 2023 Malinda J. Frybarger Edward Frybarger  
 Date Signature of Applicant Print Applicant Name

AUG. 29, 2023 Malinda J. Frybarger Malinda J. Frybarger  
 Date Signature of Property Owner Print Property Owner Name

**FOR VARIANCE APPLICATIONS ONLY**

**RULING SOUGHT** (attach additional sheets if necessary)

Allow variance to ordinance section 25 to allow us to proceed with building a single family dwelling home on Santos St Vac lot (which we have owned since 1985).

Our plans (see attachment) measure 2448 square feet which exceeds the allowable 25% of the land usage ordinance by 488 square feet.

**STATEMENT OF JUSTIFICATION FOR REQUESTED ACTION** (attach additional sheets if necessary)

State specifically the reason for the variance

Due to our advancing ages (75 and 71) and health conditions (heart conditions, cancer, arthritis) we wish to build an aging-in-place home on the Vacant Lot which we own on Santos Ave. The home will be all on one level and accessible, allowing us to age in place. (Our current home has 13 steps from driveway to living room and is beginning to be a hardship for us).

**VARIANCE QUESTIONS:** If you are seeking a variance, please provide answers to the following questions. Be specific, and explain your answers. If the answer to any of the questions numbered 1-4 is "no," a variance may not be granted (attach additional sheets if necessary)

<p>1. Does strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or does the ordinance render conformity unnecessarily burdensome?</p> <p>Since our new home needs to be on one level and include an attached garage, the home needs to be slightly larger (by 488 square feet) than the allowed 1960 square feet... this will allow us to have the additional room in the bathroom, hallways, and bedroom required for anticipated wheelchair accessibility.</p>
<p>2. Would a variance do substantial justice to the applicant, as well as adjacent property owners?</p> <p>The requested variance will allow us to proceed with building our accessible aging-in-place home. We would still meet or exceed all setback requirements and the property will be used as a single family dwelling per the R1 zoning.</p>
<p>3. Would a lesser variance not give substantial relief to the applicant and/or be consistent with justice to other property owners?</p> <p>A lesser variance would force us to hire our builder to redesign a smaller home with less accessibility and less parking space provided in the garage. The garage needs to provide sufficient width for potential wheelchair entry and exit from the parked cars.</p>
<p>4. Is the problem and resulting need for the variance not self-created by the applicant and/or the applicant's predecessors?</p> <p>This is not a self-created issue.</p>

**ATTACH SEVEN (7) COPIES OF A SITE PLAN PLUS ONE ELECTRONIC COPY**

**NOTE:** The ZBA shall *not* have the authority to alter or change zoning district classifications of any property, nor to make any change in the text of the Township Zoning Ordinance. The ZBA has *no* authority to grant variances or overturn decisions involving special land uses or planned unit developments.

The ZBA shall have authority in specific cases to authorize one or more dimensional or "non-use" variances from the strict letter and terms of the Township Zoning Ordinance by varying or modifying any of its rules or provisions so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of a use of land that is otherwise prohibited in a zoning district. The ZBA is *not* authorized to grant use variances by this Ordinance.

For more information pertaining to the rules, regulations, and powers of the ZBA, see Section 26.05 of the Township Zoning Ordinance.

**FOR ORDINANCE INTREPRETATION / OVERTURN (MAPS OR TEXT)  
APPLICATIONS ONLY**

**RULING SOUGHT** (attach additional sheets if necessary)

**STATEMENT OF JUSTIFICATION FOR REQUESTED ACTION** (attach additional sheets if necessary)  
State specifically the reason for the variance request

**Attach a copy of any communications pertaining to the interpretation issue and the zoning administrator's (or planning commission's) written ruling on this issue.**

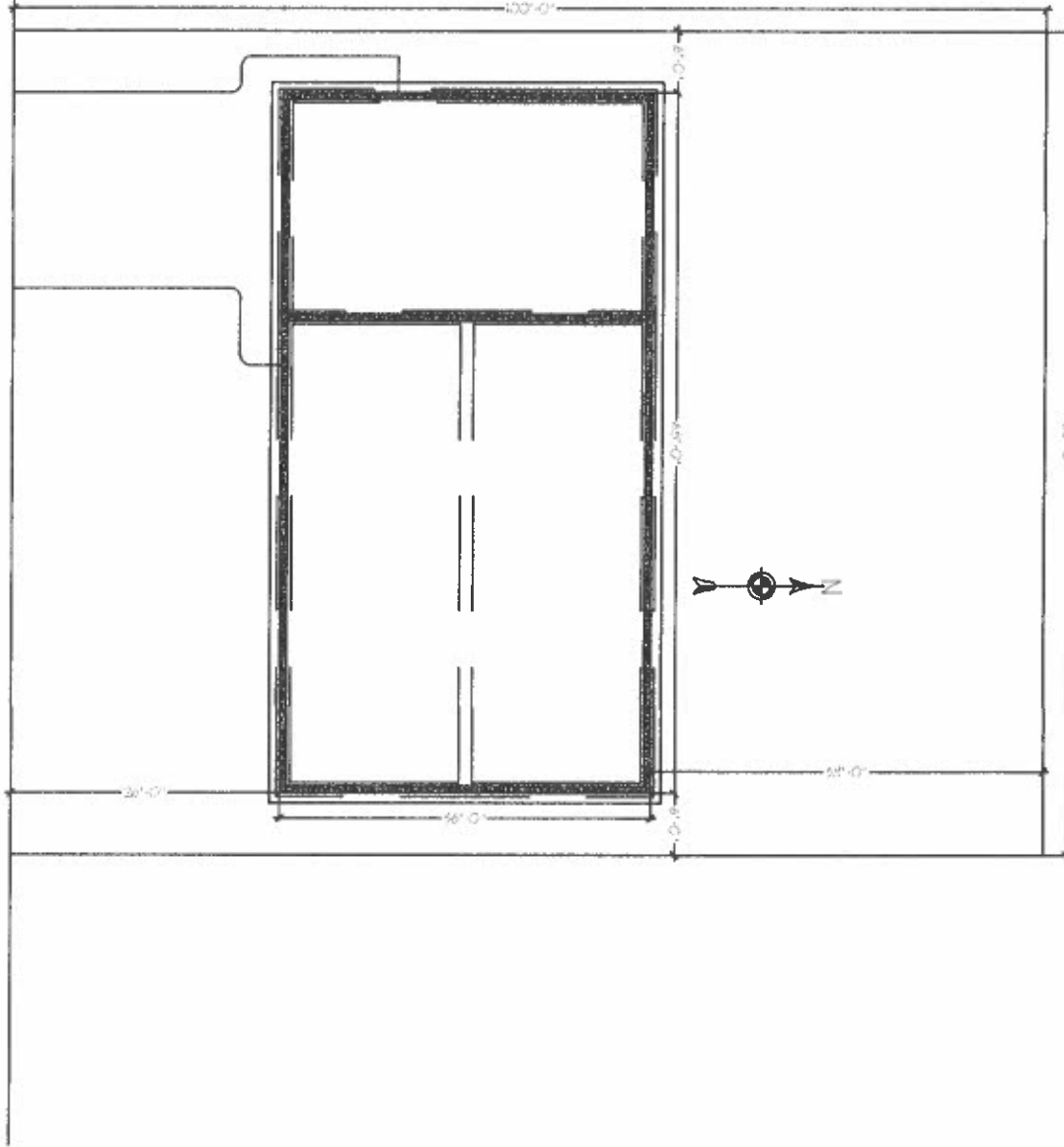


**CLIENT NAME & ADDRESS**  
 Ed and Malinda Filbarger  
 3122 Santos Ave.  
 Kalamazoo, MI 49006

**DRAWING INFORMATION**  
 PROJECT: New Home  
 DRAWN BY: Jason Cook  
 PVE: JdI  
 REVISION: 4.0  
 SCALE: -

**NOTES:**  
 Setback dimensions shown are from property lines to the foundation wall. The roof will have 12" overhangs, so the actual setback distances will be 1" less than what is shown.

SANTOS AVE.



LOT DIAGRAM