

**City of Waukesha**  
Department of Community Development  
**BOARD OF ZONING APPEALS**  
201 Delafield Street, Waukesha, WI 53188

Stamp Date Received

**NOTICE:** The Board meets on the first Monday of every month at 4:00 p.m. in the upper level hearing room (207) at Waukesha City Hall. **ATTENDANCE OF THE APPLICANT OR A REPRESENTATIVE IS REQUIRED.** Failure to appear could result in the application being acted on without the applicant's input, or it could result in the item being removed from the agenda, requiring the applicant to reapply and pay another filing fee.

The appeal or application must be filed with the Community Development Department at least 17 days before the Board's meeting and within 20 days of the Zoning Inspector's order or decision, accompanied by the filing fee of **\$100.00**.

This application is for (choose one) (Use and/or Dimensional Variance)

A variance from section 22.61 of the zoning code     An appeal from the decision of the Zoning Inspector

For the property identified below:

Project Address: 900 Arcadian Avenue Tax Key #: WAKC1301001

Current Zoning: Rm-1 Existing Use: B. & M.

**ATTACH DETAILED DESCRIPTION OF PROPOSAL** including what is being requested, the rationale, and if a variance request, the facts and circumstances that satisfy the criteria for variance listed on the reverse of this form.

In order to be placed on the Board of Zoning Appeals agenda, the Community Development Department must receive the completed application, fee, project description, and a set of plans in PDF format by the applicable deadline. If this is an appeal from the decision of the Zoning Inspector, also attach a copy of the decision or order rendered by the Zoning Inspector and a statement of principal points on which the appeal is based. The Community Development Department - Planning Division should be consulted to assure an application is complete before being submitted.

**SEE REVERSE FOR DEADLINES AND ADDITIONAL INFORMATION.**

Applicant: <i>(Person to receive notices)</i>	Owner of property:
Name: <u>Whimsical Wonders Gallery &amp; Resale Pinnacle Realty, Inc.</u>	<u>Jacson Living Trust Dated 12/16/99</u>
Address: <u>900 Arcadian Avenue</u>	<u>S.23 W.23085 Broadway</u>
City & Zip: <u>Waukesha, WI. 53186</u>	<u>Waukesha, WI. 53186</u>
Phone: <u>(262) 424-2072</u>	<u>(262) 352-6794</u>
E-mail: <u>jafw4444@aol.com</u>	

I certify that the above statements and the statements contained in the materials submitted with this application are true and correct.

Whimsical Wonders Gallery & Resale/Pinnacle Realty, Inc.  
By: *jafw*, President    06-24-2021  
Applicant Signature    Date

**PLEASE NOTE: THIS FORM MUST BE ACCOMPANIED BY A \$100.00 FILING FEE**

For Internal Use Only		
Amount Paid:	Check #	Received by:

The property is located at 900 Arcadian Avenue, Waukesha, Wisconsin 53186 on the N.E. corner of Arcadian Avenue and Oakland Avenue. The property is zoned "RM-1 Multi-Family Residential District". The building was built in 1918 with the retail space.

The Owner of the building is Jacobson Living Trust Dated 12/16/1999.

This portion of the building has been occupied by a variety of businesses over the years:

- 1939 - Budzien's IGA Grocery Store (per Charles Betker)
- 1970 - Waukesha Musician's Union
- 1971 - Vetta's Sausage Preparation and Sales Operation
- 1978 - Frost TV Repair
- 1981 - Bits & Pieces Food Co-op (Personal knowledge of outside displays)
- 1995 - LaKosh's Toys and Memorabilia (Personal knowledge of outside displays)
- 1999 - K.C. Uniques, Inc. - Gifts and Crafts
- 2002 - Fashion Mart Clothing Store (Assessor's pictures show outside displays)
- 2003 - Classic Sunrooms & Remodeling
- 2005 - Peggy McHale, CMT - Massage Therapy
- 2014 - Bon Mini Mart, LLC. - Grocery Store
- 2016 - Super Mexico - Mini Mart
- 2020 - Pinnacle Realty, Inc., and it is umbrella of companies

Occupancy was applied for by Pinnacle Realty, Inc. on March 20th, 2020, and the Certificate of Occupancy was granted on January 6th, 2021. Whimsical Wonders Gallery and Resale is a part of the Pinnacle Realty, Inc. umbrella. Our application for the occupancy permit stated the intended usage of the building and premises, using the B-3 General Business District. There were no restrictions placed on our Occupancy Permit regarding any outside display usage. Pinnacle Realty, Inc. was aware of the "22.61 Nonconforming Uses" zoning designation for the retail space.

**22.61 Nonconforming Uses.** The lawful use of a **building or premise** existing at the time of adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be extended.

I believe the intended meaning of this is, that the nonconforming retail portion of the building area may not be extended or expanded as in adding additional space.

Per the Webster Dictionary - Premise is referred to as the building with its grounds.

In the letter dated May 7th, 2021, from Charlie Griffith, Associate Planner, for the City of Waukesha he states that there was a violation found. He states: "Outdoor display of merchandise constitutes an illegal extension of your use."

Here is where we differ in opinion and would like the Board of Zoning Appeals to clarify and if need be, grant a "Use Variance" and/or "Dimensional Variance".

I would also like some guidance as to which "B" district applies to this portion of the building. The application of the zoning code seems to be arbitrary and capriciously applied. The City of Waukesha does not have a "Mixed-Use Zoning". Charlie Griffith stated that he is using the B-1 Neighborhood Business District zoning and on my application, everything was referenced using the B-3 General Business District, (the prevalent zoning for which the businesses within a 10-block radius are). Because of my 64 years of personal knowledge of this property, it never entered my mind that outside displays would become a problem. Everything from produce, furniture, soda machines, bicycles, etc. have been displayed in this area by previous businesses in my lifetime.

If a "Use Variance" and/or a "Dimensional Variance is required:

We would like to have our outside displays on the concrete porch which extends across the front of the building along Arcadian Avenue. We will refrain from using the side of the building along Oakland Avenue. Store hours for Whimsical Wonders Gallery & Resale are Thursdays through Sundays from 12:00 p.m. to 6:00 p.m. and occasionally by appointment. Pinnacle Realty, Inc.'s hours vary.

Thank you for your consideration.

Pinnacle Realty, Inc.

By: J.A. Fuller, President  
J.A. Fuller, President

Attachments:

- 1.) Application for a Use Variance and/or Dimensional Variance
- 2.) Application for Certificate of Occupancy
- 3.) Survey - highlighted area of our request
- 4.) Storefront picture
- 5.) City of Waukesha Assessor's picture dated 04/24/2002
- 6.) Waukesha County GIS Map - Aerial
- 7.) City of Waukesha Property Map
- 8.) Letter from Charlie Griffith, Associate Planner dated May 7, 2021



**SCANNED**

COMMUNITY DEVELOPMENT DEPARTMENT - BUILDING INSPECTION DIVISION

201 Delafield Street, Room 200  
Waukesha, WI 53188

**Application for Certificate of Occupancy**

This form and instructions are available on the City website @www.ci.waukesha.wi.us.

Date: March 18th, 2020 Permit No. BLC 20-00061

Business Name: Pinnacle Realty, Inc. Business Address: 900 Arcadian Avenue

What part of the building will you occupy? 1/2 of the 1st floor How much space? 840 +/- SF

Existing or previous tenants type of business? M Has the space been vacant for +12 mo. NO

Describe new business in complete detail including the occupancy classification the use falls within if known. Please describe any parking spaces provided including the type, lot vs. street, and quantity: Real Estate Leasing, Maintenance and Sales Office. Some Antique, Art and Collectibles Sales and Resales.  
One on-site person 24/7. Using the B-3 General Business District, all uses are allowed. Within a 5 block radius 95+% of the businesses have a B-3 designation.

<b>Applicant</b> Judy Fuller, President	<b>Property Owner</b> Duane Jacobson
Name <u>Pinnacle Realty, Inc.</u>	Name <u>Jacobson Living Trust dated 12/16/99</u>
Address <u>P.O. Box 709</u>	Address <u>S.23 W.23085 Břřřđway</u>
City, State, Zip <u>Waukesha, WI. 53187-0709</u>	City, State, Zip <u>Waukesha, WI. 53186</u>
Phone <u>(262) 424-2072</u>	Phone <u>(262) 352-6794</u>
Email <u>jafw4444@aol.com</u>	Email <u>n/a</u>

The undersigned applies for a permit to occupy the premises described herein for the uses and purposes as herein set forth and in strict accordance with all of the provisions of the City of Waukesha zoning ordinance, health ordinance, and all other ordinances of the City of Waukesha and administrative rules of the State of Wisconsin applicable to said premises.

The undersigned understands that said premises will be subject to inspection to check that the above verifications occurred and if any of the information provided or any of the above statements are found to be false, the approval by the Zoning Administrator will become void, permit fees will be forfeited, and an Occupancy Permit will not be issued. The undersigned agrees that said premises will not be occupied until a Certificate of Occupancy has been issued by the City.

Signature of Applicant: By: Ja Fuller, President Date: 03/18/20

\*\*\*NOTE\*\*\* A building undergoing a change of occupancy classification to a higher hazard level based on Tables 912.4, 912.5, and 912.6 of the International Existing Building Code will require an evaluation be performed by a registered design professional prior to the application for occupancy being processed by this department. The evaluation should include plans of the entire building identifying the area intended to be occupied and all access to and egress from the space and a letter specifically identifying the tables referenced. The design professional should verify that the building meets all applicable building codes and identify any existing non compliant issues with a proposal to resolve them. The analysis will be reviewed by department staff to verify that the proposal is code compliant.

HISTORIC - WHP

**OFFICE USE ONLY**

Zoning District: Rm-1 BOZA approval req.  Conditional use approval req.  Date of approval \_\_\_\_\_ Expiration \_\_\_\_\_

Existing occupancy classification M Proposed occupancy classification M, B Change of use analysis required

Parking spaces provided: \_\_\_\_\_ Parking spaces required: \_\_\_\_\_ Variance required for parking

Inspections Required: No inspections required  Construction  Plumbing  Electrical  Capacity calculation/placard required

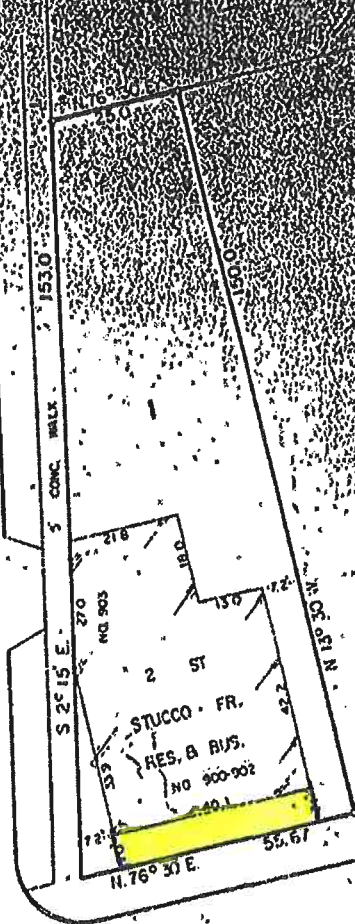
**FEES**

Residential New Construction \$55.00/unit \_\_\_\_\_ (all insp) Commercial Change of Use \$105.00 \_\_\_\_\_ (all insp)  
Commercial Level III alterations, additions, new \$210.00 \_\_\_\_\_ (all insp) Commercial Change of Operator \$55.00 X (no insp)  
Commercial Change of Occupancy Classification \$210.00 X (all insp) Temporary Occupancy \$210.00 \_\_\_\_\_ (all insp)

Schedule insp for later date Code case ce 20-00073

WAUKESHA SAVINGS & LOAN

OAKLAND AVENUE



INDICATES FRONTIES  
NOT FOUND

DUANE A. JACOBSON  
523 W23085 BROADWAY  
WAUKESHA, WI 53186

900-902 AVENUE  
ARCADIAN

Lot 1, Block A, Anoka Park Add.  
Part NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 21  
Town 6 North Range 10 East  
City of Waukesha County, Wb  
Waukesha, State of Wisconsin

CERTIFICATION

STATE OF WISCONSIN  
COUNTY OF WAUKESHA  
I, THE UNDERSIGNED, A REGISTERED SURVEYOR, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY AND THE ABOVE MAP WERE LAYED OUT AND THE POSITION OF THE PROPERTY CORNERS AND THE DIMENSIONS OF THE SAME WERE MEASURED AND FOUND TO BE CORRECT AND ACCORDANT WITH THE RECORDS OF THE REGISTERED PLAT OF SURVEY.



Whimsical Wonders  
GALLERY & RESALE

200

James  
100

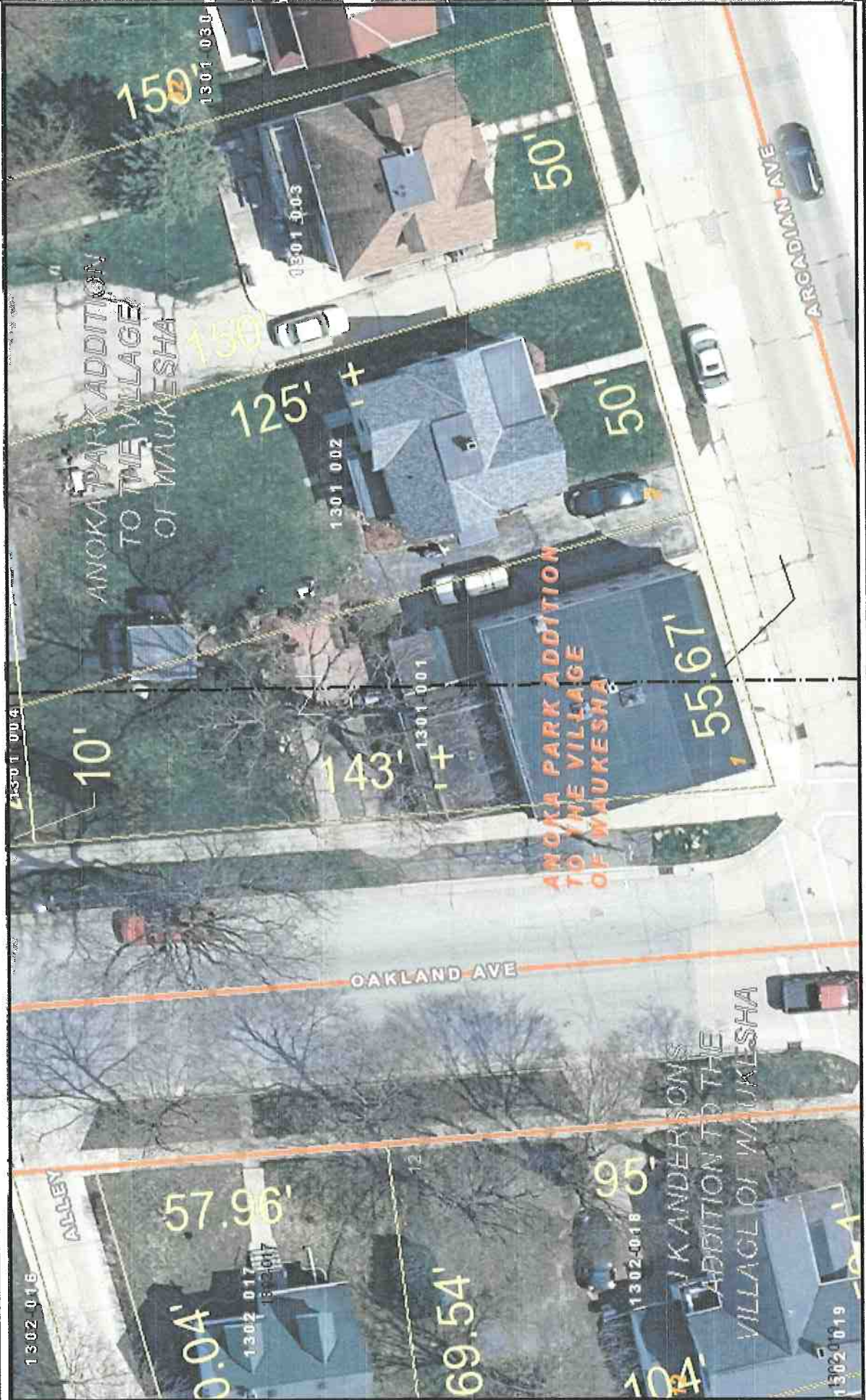
SHEA



1301001 04/24/2002

# Waukesha County GIS Map

LAND INFORMATION SYSTEMS DIVISION



**Notes:**

The information and depictions herein are for informational purposes and Waukesha County specifically disclaims accuracy in this reproduction and specifically admonishes and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means. Waukesha County will not be responsible for any damages which result from third party use of the information and depictions herein, or for use which ignores this warning.

0 26.70 Feet

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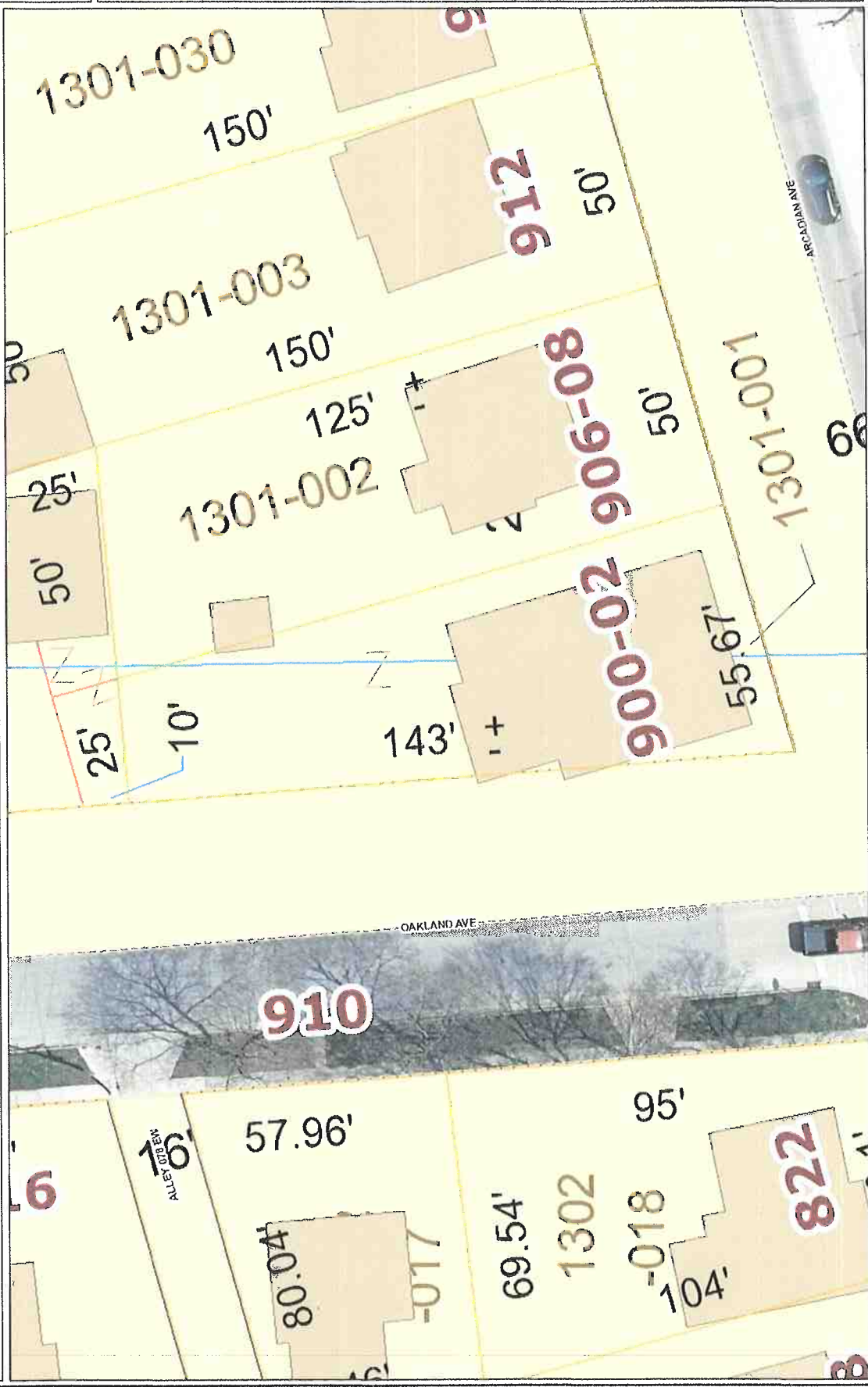


City of Waukesha Property Map



- Legend**
- Parcels
  - City Limits
  - Railroads
  - Buildings
  - Water Bodies
  - Landmarks
  - Cemetery
  - County
  - Municipal
  - Hospital
  - Parks
  - School
  - State/Federal
  - Easement Line
  - DA
  - Extended Tie Line
  - IA
  - Meander Line
  - Note Line
  - PT
  - Tie
  - Tie Line
  - Right of Way
  - Right of Way Centerline
  - Railroad Right of Way
  - RR Right of Way Centerline
  - Road Radius
  - Subdivision Block
  - Quarter Section Boundary
  - Condominium Plat
  - CSM Boundary
  - Subdivisions

1:250



Notes:

This map is a user generated data, output from an internet mapping site and is for reference only. The data found on this site is considered to be correct, but should not be used for engineering or survey applications without verifying the information from officially recorded sources.

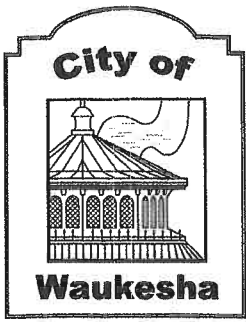
41.7 Feet

20.83

0

Print Date: 6/23/2021

City of Waukesha GIS



# COMMUNITY DEVELOPMENT

201 DELAFIELD STREET  
WAUKESHA, WISCONSIN 53188-3633  
TELEPHONE 262/524-3750 FAX 262/524-3751

May 07, 2021

JACOBSON LIVING TRUST DTD 12/16/99  
S23W23085 BROADWAY  
WAUKESHA, WI 53186

Re: 900 ARCADIAN AV - Case #CE21-00196

Dear JACOBSON LIVING TRUST DTD 12/16/99:

This office has received a complaint regarding the condition of your above stated property. During a recent inspection, the following violations were found:

22.61 NONCONFORMING  
USES:

22.61 NONCONFORMING USES. The lawful use of a building or premise existing at the time of adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. **Such nonconforming use may not be extended.**

Outdoor display of merchandise constitutes an illegal extension of your use. Please move all merchandise for Whimsical Wonders Gallery and Resale inside by no later than Friday May 21st, 2021.

An inspector will return to your property after the deadline given in these Orders to determine whether the property has been returned to compliance with the Code. If the inspector determines the Code violation has not been corrected, a \$75 fee shall be charged against the property for the first re-inspection, \$150 shall be charged for the second and any subsequent re-inspections. Any such fees shall be charged against the real estate upon which the re-inspections were made, shall be a lien on the real estate, and shall be assessed and collected as a special charge. Additional enforcement action may also be taken such as issuing citations or filing a lawsuit.

If you have any questions, please contact this office.

Sincerely,

Charlie Griffith  
Associate Planner  
262-524-3529  
CGriffith@waukesha-wi.gov

