

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



**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. <u>ATTENDANCE OF THE APPLICANT OR A REPRESENTATIVE IS REQUIRED</u>. 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) A variance from section \_\_\_\_\_\_ of the zoning code An appeal from the decision of the Zoning Inspector For the property identified below: \_\_\_ Tax Key #: <u>WAKC1338083</u> Project Address: 3 Existing Use: Current Zoning: 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: (Person to receive notices) Owner of property: Phone: I certify that the above statements and the statements contained in the materials submitted with this application are true and

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: \_\_\_\_\_

correct.

To: Community Development Department Board of Zoning Appeals 201 Delafield St. Waukesha, WI 53188

Re: 333 Oxford Rd. Waukesha, WI 53186 (Variance)

According to page 2 of the Variance Application, the following needs to be addressed in application to the Board requesting a variance.

1. Special circumstances exist that apply only to the property for which the variance is requested, and not to any other neighboring properties.

The property was purchased Valentines Day of 2014. At the time of purchase no survey of the property was provided or (to the best knowledge of the requestor) was a survey on file with the City. At the time of purchase a small event pad that extends 5 feet from the foundation of the residence existed on the southeast corner of residence. (Please See Attached Pics 1 - 3). The event pad did not extend completely along the side of the house nor was it connected to the driveway for easy access. The small portion of ground just North of the event pad did not have appropriate drainage, and had tree roots, and a large stump (originally a small tree was located at the location and was removed by this requestor) making access more difficult. Earlier (I believe this year) a small wooden trailer that I utilize for yard up keep, maintenance, and trips to the landfill was parked partially on the grass near this location and I was informed by the city I must have the trailer on concrete. I did as directed by the city, but ultimately was frustrated as the trailer denies access to an ease of movement for the entire portion of my garage. Recently a Contractor was able to provide me an outstanding quote on cementing the event pad and widening my driveway due to other construction in the area, as well as city construction on our same road. I urged him to widen the driveway to what was allowable and to provide a single line from the corner of the existing event pad to the front of the property allowing for one solid surface. A concrete design that has less lines and curves, and to ensure that the grade of the cement allowed for the proper irrigation. ( Please see Attached Contract for Work). The work was performed. The day the Concrete was to be poured my Neighbor stated she believed the forms were not in accordance with her lot line, nor the city code. Although I was at work that day, I was able to travel to City Hall to attempt to verify this information only to find it closed due to Covid19. After conversations with a city employee, I was informed: (1) There was no official Survey on record; (2) on file were a minimum of two permits that show 8 feet clearance from the foundation of the house in the area at issue; (3) the existing permitted structures were fine, but any new construction must comply (3 feet from the lot line for the event pad, and 5 feet from the lot line for the driveway); (4) and that I would receive my complete city file by email once she was able to enter the office. (Please see the Attached Email from City Employee Mary Strankowski, and two maps that were provided in a series of emails. Specifically noting the maps are close to identical but provided on different dates, one with a shed in the back yard).

I was able to verify that the existing concrete pad extended 5 feet from the foundation of the house, thereby making it 3 feet to the 8 feet stated in the application. (Please see Pics 2-3). I was not in possession of a survey at this time. Prior to leaving for work that day, I verified that the driveway itself was a minimum of 5 feet from what I believed, and was informed, was a survey marker for the properties. I ordered a survey within days of this by Atlas Survey paying for the entire lot to be surveyed, and was informed that they would be out end of July August time frame (which at the time I was fine with given the road had still yet to be paved and we were unable to drive on our street.) (Please See Attached Email with Atlas Survey).

Since that time my neighbor has acquired a survey by Jahnke and Jahnke of the existing lot line of which I have received today. It was completed a few weeks prior to the best of my knowledge and it shows that the lot line is much closer to the existing event pad then the city permit drawings show. (Please See Attached Survey rom Jahnke and Jahnke). I have been patiently waiting the results of my Survey which are slated to be finalized tomorrow 7/17/2020, but probably yet to be recorded. If utilizing the Surveyed Lot line from Jahke, a small pie like slice of the driveway and event pad is in violation of the City's 3/5 feet ordinance. In order to correct this, I would need to hire someone to properly cut the sliver and haul away concrete, backfill, causing an additional cost to myself. I am asking for a variance of the city code to allow the sliver of concrete to remain

2. Without a variance, substantial property rights that are enjoyed by neighboring properties will be denied to the applicant. Explain how the owners of neighboring properties are able to enjoy property rights that the applicant cannot.

Other properties are able to store/park, additional vehicles and trailers on their concreted driveway to the side, so as they can still utilize the full ability of the covered garage by having an ease of access. Simply Put They don't have to move their property to pull a vehicle in or out easily. I am simply asking for the same. This is a multi-generational home with a minimum of three kids living here, myself, my wife, and my seventy-eight year old mother. There are multiple vehicles and we have a two car garage. The added portion to the driveway simply makes it easier to comply with another city ordinance, and still have full enjoyment of the garage. (Please see Pictures 4 – 11 for examples).

3. The variance is not being requested solely for economic loss or gain. Explain how the variance is not just to increase property value or to allow for profit-making activities.

Question Two above also answers this question. I will say there is also a small economic loss should I have to remove it. I cannot tell you if it adds to the overall value of the property so I won't address that. It is not being used for any profit-making activities, simply maintenance and enjoyment.

4. The applicant's hardship is not self-created. Explain how the special circumstances relating to the property are not caused by the applicant's actions or wishes.

I simply wanted a width extension of my driveway and event pad to help with irrigation, aesthetic, and ease of garage access with the trailer. Attached you will find a copy of the contract with the construction company stating "with the additional width to the maximum allowed to lot line." My request was not only reasonable, it contemplated going to the maximum allowable.

5. The variance would not defeat the purpose of the zoning ordinance and would not be a detriment to neighboring properties. Variances cannot be contrary to the policy reasons for the ordinance from which the variance is requested. Explain how the variance would work within the existing zoning rules and not undermine the reasons for them.

I apologize as I am ignorant of the policy reasons behind the 3/5 foot setback, and in an effort to properly assemble this application and have it provided by the  $17^{th}$  of July to be heard at your earliest opportunity, I don't necessarily have the time to research that very reason either. However, I would not have asked for the variance if I did not believe it was appropriate. Further whatever policy reason is, I can assert by way of the attached pictures, (1) what I am requesting in terms of ease and enjoyment is commonly found through our community. The pictures contained in this application as an example of this were taken from simply walking around my block, no where else. Further by way of setback the number of homes with a driveway/ cement pad close to a lot line is also common and shown in the pictures of solely my block alone. If harm is created, then this harm is existing in multiple places on my block alone. I only want to be treated similarly. (See Attached Pictures 4 – 11).

In addition, please provide the following information:

If applicant is asking for a use variance, explain how the property will have no reasonable use unless a variance is granted.

If applicant is asking for a dimensional variance, explain how complying with the current rules is unreasonable or creates an unnecessary burden on applicant.

I believe that what I am requesting is a dimensional variance. As such if forced to comply with the current zoning ordinance I would be at a financial loss to repair the existing work done, after essentially relying upon the information known to me provided by the permit applications from the city and my existing knowledge at the time. It is clear from the attached Contract for work, that I wanted the maximum width allowable to the lot line and relied upon the expertise of the contractor and the city employee.

Finally in all candor my neighbor to the East would object to you allowing this variance and is threatening litigation. I will forward a copy of this application for variance to her attorney, however as of today's date litigation has not yet been filed.

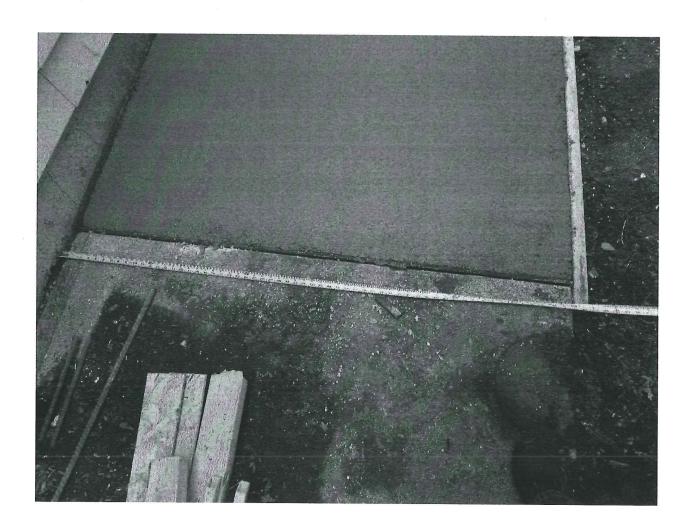
Pic 1 "Before"







Pic 3



## **PROPOSAL**

FROM:	COMPLETE CONSTRUCTION SERVI	San many kaominina dia kaominina	<u> </u>	Page No. 1 OF 1
	2149 KENSINGTON DR. WAUKESHA	A WI. 53188		(
	PH. 282-498-6824 FAX 262-875-362			
	WWW.COMPLETECONSTRUCTION	MICOM	<del></del>	
	21675 DORAL RD. WAUKESHA WI.	53186 SHOWROOM		
วลดอกจ	SAL SUBMITTED TO:			e d
IANTE	DAVID HERRING	PHONE	262-853-7429	DATE 5/6/2020
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YTE	WAUKESHA	STREET	333 OXFORD RD.	The state of the s
STATE	W	CITY	WALKESHA	STATE WI
2.) REM	OVE EXISITING CONCRETE DRIVEW, OVAL OF DIRT AND GRASS FOR PAI POSING IF WANTED. IF NOT, ALL RE	RKING AREA WILL BE	EXCAVATED AND PLACE	
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	mount of the contract to be paid with	AT COMPLETION	days after completion.	TARREST OF STATE OF S
arder fa	erations or deviation from the above sporsame, and will become an extra change and signature			
		ACCEPTAL	NCE	
You are	hereby authorized to furnish all mate	the forms of property of separate states		tioned in the above proposal for which
Dav	id L. Herring agree to p	pay the amount mention	ed in said proposal and ac	cording to the terms thereof.
<b>D</b>	4/6/2020		Thirt	. K 1

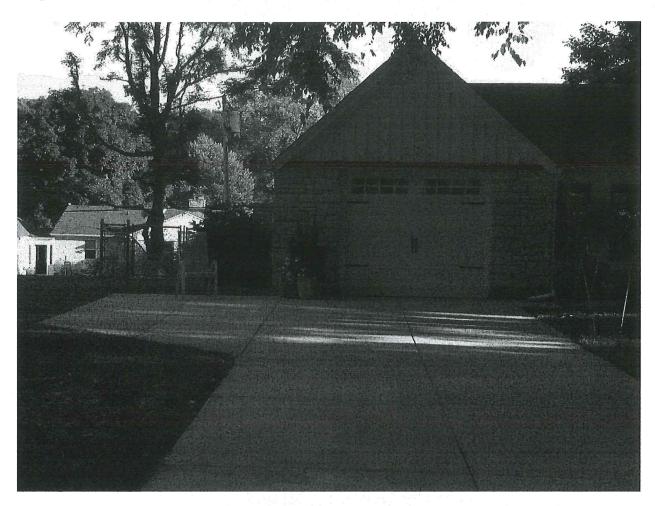
Picture 4

Afterward Picture Taken Today, Please look at grade going to the south.



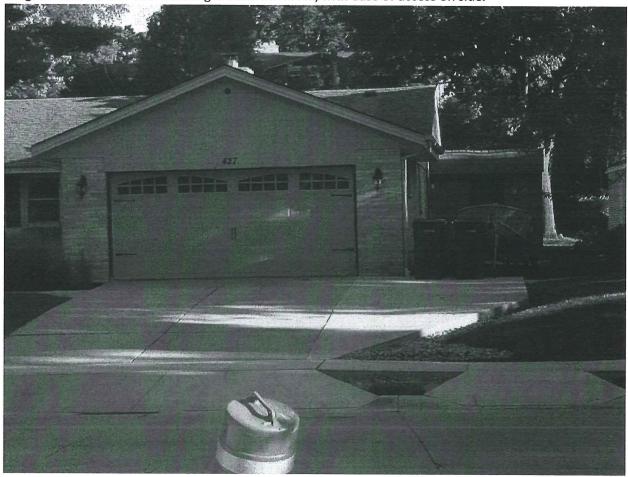
Picture 5

Neighbor to direct East with Driveway new driveway poured that allowing easy additional access.

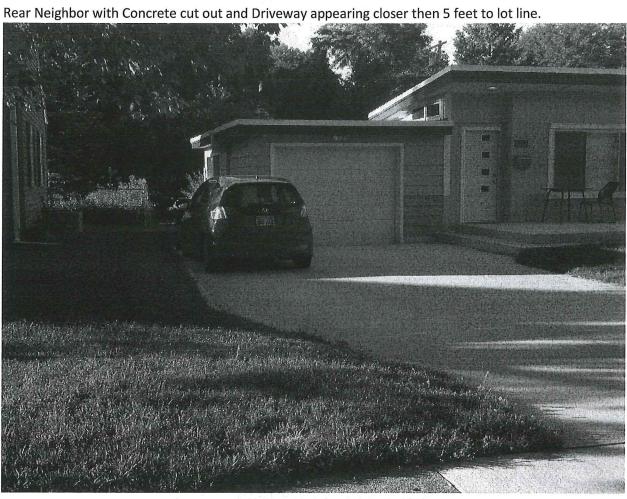


Pic 6

Neighbor behind me while walking around the block, with ease of access on side.



Pic 7



Pic 8

Direct Rear Neighbors with Driveway appearing much less then 5 feet to lot line.



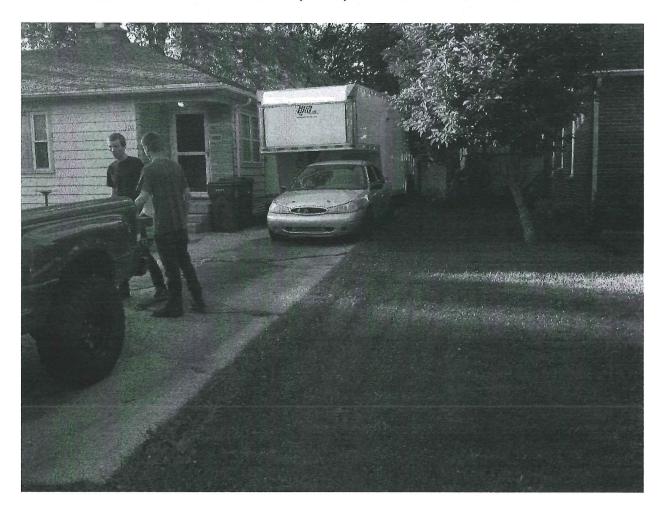
Another rear neighbor with driveway seemingly less then 5 feet to lot line and extended for ease of access to garage.

Pic 9

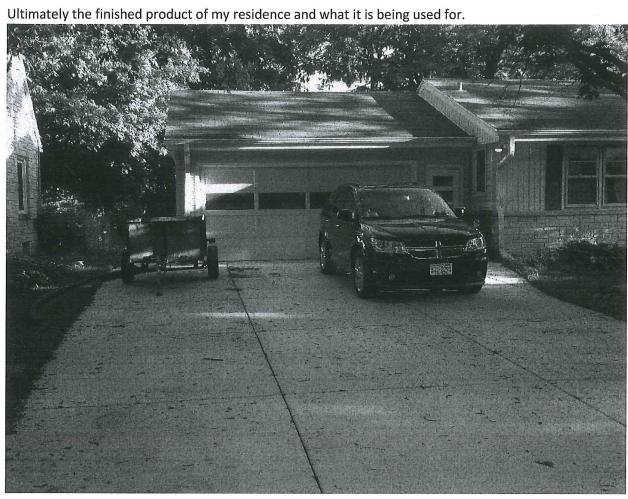


Pic 10

Another residence on the block with a driveway readily observable as less than 5 feet to lot line.



Pic 11



### **David Herring**

From:

Mary Strankowski <mstrankowski@waukesha-wi.gov>

Sent:

Tuesday, May 12, 2020 1:31 PM

To:

dherring246@gmail.com

Subject:

**Attachments:** 

FW: Message from "CD208" 20200512133320745.pdf

These are in NO ORDER.

Mary

----Original Message----

From: CD208@waukesha-wi.gov <CD208@waukesha-wi.gov>

Sent: Tuesday, May 12, 2020 1:33 PM

To: Mary Strankowski <mstrankowski@waukesha-wi.gov>

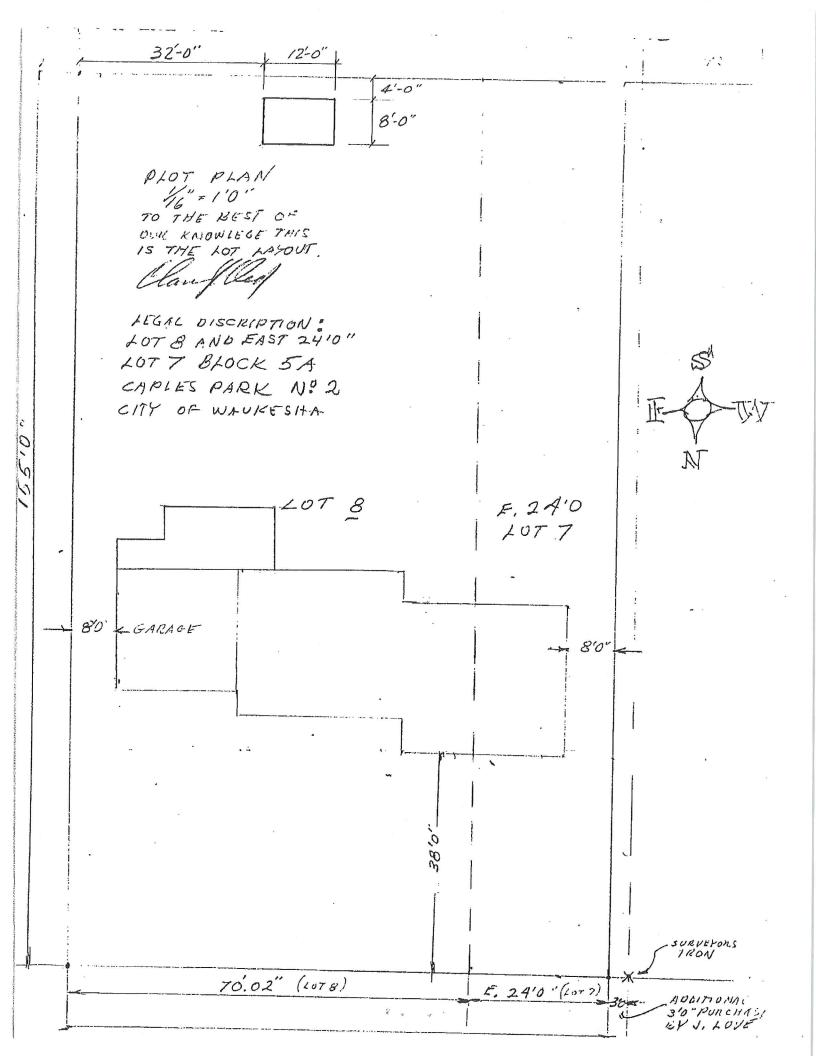
Subject: Message from "CD208"

This E-mail was sent from "CD208" (MP C4503).

Scan Date: 05.12.2020 13:33:20 (-0500) Queries to: CD208@waukesha-wi.gov

Notice: Please be aware that email sent to, or received from, the City of Waukesha should be presumed to be a public record, that it will be retained by the City as a public record, and will be subject to public disclosure under Wisconsin's open records law. If you are not the intended recipient of this email, please do not read it or forward it to another person, but notify the sender and then delete it.

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### **David Herring**

From:

David Herring <a href="mailto:com/">dherring246@gmail.com/</a>

Sent:

Monday, May 18, 2020 1:28 PM

To:

Sarah Herring

Subject:

Fwd: land survey status

**Attachments:** 

ContractHerringPOS.pdf

Sent from my Verizon, Samsung Galaxy smartphone

From: bryce@atlassurveywi.com <bryce@atlassurveywi.com>

**Sent:** Monday, May 18, 2020 9:54:33 AM **To:** David Herring <a href="mailto:dherring246@gmail.com">dherring246@gmail.com</a>

Subject: land survey status

Hello David,

Please find and review the attached contract. If everything is good, sign and return all four pages and half of the payment to me. Once I have received the signed contract and half of the payment, we will begin work.

Do not hesitate with any questions or concerns,

Thank you,

Bryce Kaczor Atlas Survey

Phone: 262-901-5256

Email: bryce@atlassurveywi.com

www.atlassurveywi.com

On 2020-05-17 21:02, bryce@atlassurveywi.com wrote:

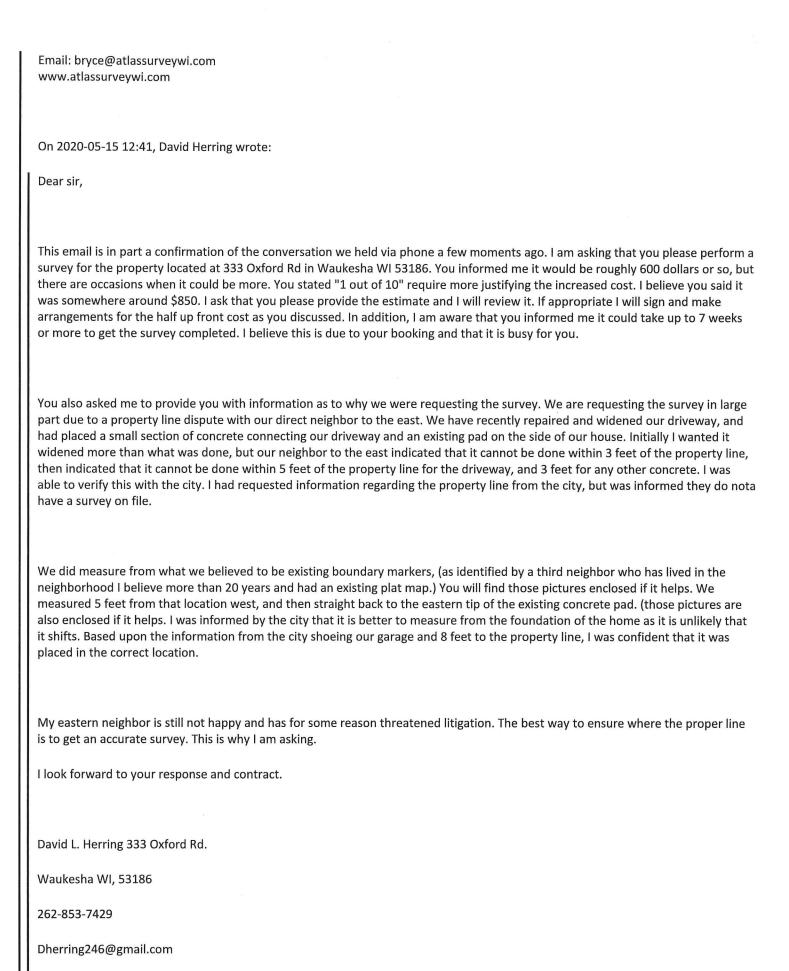
Thank you for following up our phone call. The cost of a survey to identify boundary lines and prepare said survey for potential litigation is \$800. I have increased the price to provide more a more detailed survey that will serve you well it your neighbor pushes for litigation. Often times I have found a highly detailed survey is enough for an aggressive neighbor to forget about litigation. I can't guarantee anything but I will look for more information, physical and record, and show said information on the survey while working on this project.

We are about eight weeks out with new projects right now. If you do want to do this, let me know and I'll prepare and send over a contract to you.

If you have any other questions, do not hesitate to contact me,

Bryce Kaczor Atlas Survey

Phone: 262-901-5256



May 18, 2020

Atlas Survey, LLC 2826 St. Andrews Ct. Waukesha, WI 53188 262-901-5256

David Herring 333 Oxford Road Waukesha, WI 53186 262-853-7429 dherring246@gmail.com

Regarding Plat of Survey to identify boundary lines

Dear David,

Please review the proposed agreement prepared per your request. If you approve, please sign, date and return the agreement and half of the payment to us. After we receive the signed agreement and any items to be furnished by the client, we will begin work.

### **Services Agreement**

This agreement is made on this 18th day of May 2020 between Atlas Survey, LLC hereinafter called Atlas Survey and David Herring, hereinafter called the Client.

**PROPERTY LOCATION:** LOT 8 & E24' LOT 7, BLK 5A of CAPLES PARK NO 2. Also known as 333 Oxford Road, Waukesha, WI 53186.

**SERVICES INCLUDED:** Atlas Survey shall prepare a Plat of Survey of property for the Client. The Plat of Survey shall show the property boundary with found monuments, buildings, and reset monuments. Atlas Survey shall provide two copies of said survey.

**SERVICES EXCLUDED:** All of, but not limited to, the following services shall be excluded under this agreement: Preparing additional legal descriptions and documents other than the Plat of Survey. The Plat of Survey shall not show topography, easements, underground utilities and other features such as asphalt, concrete and fences.

#### ITEMS PROVIDED BY CLIENT: NA

**FEES:** For services provided by Atlas Survey, Client will pay Atlas Survey \$800 before or upon Client's receipt of Plat of Survey. Half of said fee to be paid prior to work beginning on site.

EXPENSES: Client shall pay all "expenses" in relationship to surveying services under this agreement. Expenses include, but are not limited to, ordering title policy, additional copies of surveys, research for deeds and easements. All "expenses" will be authorized by client with either verbal or written approval.

PAYMENTS: Atlas Survey, will prepare invoices monthly. Invoices are due and to be paid in full within 30 days after the invoice has been mailed.

FAILURE TO PAY INVOICES: Owner shall pay all costs of collection fees, including attorney's fees in addition to unpaid invoices. Also, Atlas Survey may after giving seven days written notice to Owner, suspend services under this Agreement until Atlas Survey has been paid in full. Atlas Survey shall not be liable for any costs or damages caused by Owner's failure to pay invoices when due.

LIEN LAW: As required by the Wisconsin construction lien law, claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on owner's land may have lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned claimant, are those who contract directly with the owner or those who give the owner notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the owner and the owner's lender, if any, to see that all potential lien claimants are duly paid

PAYMENTS UPON TERMINATION: Atlas Survey will be entitled to be paid for all services and expenses as of the date of termination.

TIME OF COMPLETION: Atlas Survey will begin work within eight weeks of receiving contract and items from Client. Atlas Survey will endeavor to finish work within nine weeks of receiving contract and other required items from Client. This nine-week time of completion is contingent upon performance of subcontractors, weather, field conditions and other delays, such as digger's hotline, that are beyond Atlas Survey's control.

**CHANGE ORDERS:** Any alteration or deviation from this contract involving extra costs will be undertaken only upon written order of the Client, and will become an additional charge and may extend the time of completion.

**STANDARD OF CARE:** The standard of care for all professional services and related services performed by Atlas Survey will be the care and skill ordinarily used by members of their profession under similar circumstances. Atlas Survey makes no warranties under this agreement with their services.

Atlas Survey may employ subconsultants as deemed necessary. Atlas Survey shall not be required to employ any subconsultant unacceptable to Atlas Survey.

Atlas Survey will endeavor to comply with applicable laws and regulations. Changes to said applicable laws and regulations may be the basis for modifications to the Owner's responsibilities or the Atlas Survey's scope of services, time of completion, or fees.

Owner shall be responsible for, and Atlas Survey may rely upon, the accuracy and completeness of all requirements, instructions, data and other information furnished by Owner to Atlas Survey. Atlas Survey may use such requirements, instructions, data and other information in performing or providing services under this agreement.

Owner shall make decisions and carry out its other responsibilities in a timely manner and shall bare all costs incident thereto so as to not delay the services of Atlas Survey.

OWNERSHIP OF DOCUMENTS: Drawings, specifications and other documents, prepared by Atlas Survey are Instruments of Service for use solely with respect to this project. This includes documents in electronic form. Atlas Survey shall be deemed the author and owner of the Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service shall not be used by the owner for future additions or alterations to this Project or for other projects, without the prior written agreement of the Atlas Survey. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to Atlas Survey.

Copies of documents that may be relied upon by Owner are limited to printed copies (also known as hard copies) that are signed or sealed by Atlas Survey. Electronic files of text, data, graphics or other