

## BOARD OF ZONING APPEALS

### STAFF REPORT

TUESDAY, JANUARY 23, 2024

**CASE NO:** BZA 23-0013  
**PROJECT NAME:** LINDEN LOT SPLIT VARIANCE  
**PROJECT ADDRESS:** 5010 LINDEN AVENUE  
**PARCEL ID:** I39401506 0037  
**APPLICANT/PROPERTY INFO:** TYLER SMITH, 5010 LINDEN AVENUE, RIVERSIDE, OH 45432  
**OWNER/PROPERTY INFO:** DAVID MUSSARI, BLUE ROCK SELECT LLC  
 5700 GATEWAY BLVD, #200, MASON, OH 45040  
**ZONING DISTRICT:** R-2 MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT  
**CURRENT USE:** SINGLE FAMILY DWELLING AND VACANT RETAIL STRUCTURE

#### REQUEST:

Variances from UDO Section 1107.05(C)(1) to allow reductions in minimum lot width, side yard setback, and an increase in maximum lot coverage.

	LOCATION	REQUIREMENT	REQUEST	VARIANCE %
1	MIN. LOT WIDTH (TRACT I)	80 FT. WIDE	10.75 FT. DECREASE	13.4% REDUCTION
2	SIDE YARD (TRACT I)	10 FT.	3 FT. REDUCTION	30% REDUCTION
3	MAX. LOT COVERAGE	50% (5,453.7 SF)	TRACT 1 – 374 SF INCREASE	7% INCREASE
		50% (11, 451.9 SF)	TRACT 2 – 10,145 SF INCREASE	89% INCREASE

#### CASE SUMMARY/BACKGROUND:

The subject site is located on the south side of Linden Avenue, west of the Greene County line. This site is outside of the Source Water Protection Area. There are two exiting primary structures on the lot: a residential and commercial building. The applicant plans to subdivide the parcel to create two (2) lots. The resulting lots will each have a primary structure. The lots created from this lot split will not meet all the dimensional requirements of the zoning code. Therefore, several variances are required to permit the lot split.

#### INTERESTED PARTY COMMENTS:

Staff received one call from has adjacent property owner. They were interested in learning more about the circumstances of the case.

**STAFF REVIEW/FINDINGS:**

**Variance 1.** Staff finds that the requested variance to allow a reduction in the required *minimum lot width* is adequately justified and meets the standards for approval. Staff recommends approval of the requested variance.

- The applicant has requested the minimum variance necessary for relief from their predicament.
- The spirit and intent behind the zoning code would be observed.

**Variance 2.** Staff finds that the requested variance to allow a reduction in the *side yard setback* is adequately justified and meets the standards for approval. Staff recommends approval of the requested variance.

- The requested variance will not alter the essential character of the neighborhood.
- The spirit and intent behind the zoning code would be observed.

**Variance 3.** Staff finds that the requested variance to allow a reduction in the *maximum lot coverage* is adequately justified and meets the standards for approval. Staff recommends approval of the requested variance.

- The requested variance will not alter the essential character of the neighborhood.
- The spirit and intent behind the zoning code would be observed.

The question before the Board of Zoning Appeals is:

- **Does the proposal meet the standards for granting the request variance(s) established in Section 1105.15?**

In order to answer this question, the Board of Zoning Appeals should consider:

- the conditions upon which an application for the variance(s) is based are particular to the subject property with respect to the physical size, shape or other characteristics of the premises, differentiating it from other lots in the same district,
- variance(s) would result in an improvement of the property that is more appropriate and more beneficial to the community than would be the case without granting of the variance(s).
- information in the staff report (standards for approval, attachments, etc.) for each requested variance, and
- testimony and/or evidence provided at the public hearing which directly relates to the variance request.

**ATTACHMENTS:**

- Zoning Map
- Aerial Map
- Site Plan
- Justification Statement Page
- Supplemental Information

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR A VARIANCE 1 FROM SECTION 1115.09(G):**

The following factors shall be considered by the BZA in determining whether practical difficulty exists sufficient to warrant a variance to reduced minimum lot width; 1107.05(C)(1)

**1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;**

No, variances are required for any beneficial use of the property and for it to yield a reasonable return.

**2. Whether the variance is substantial;**

No, the applicant is requesting a 13.4% reduction in the minimum lot width. This is not a substantial variance.

**3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;**

Staff finds the requested variance will have an impact of on the character of the neighborhood. Should this variance be granted the resulting lot will be 10 feet narrower than the next smallest residential lot in the immediate area.

**4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);**

No, the delivery of governmental services will not be impacted.

**5. Whether the property owner purchased the property with knowledge of the zoning restriction;**

Yes, the property owner was aware of the zoning regulations.

**6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;**

No, a variance for minimum lot width is required to subdivide the existing parcel.

**7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.**

The spirit and intent behind the zoning requirement would be observed should the variance be granted. There are two (2) existing structures on the lot. This variance is a result of special circumstances (a residential and commercial structure on one parcel) which do not generally apply to land in the same zoning district.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE 2 FROM SECTION 1115.01.C:**

The following factors shall be considered by the BZA in determining whether practical difficulty exists sufficient to warrant a variance to reduce the side yard setback; 1107.05(C)(1)

**1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;**

No, a variance is required for any beneficial use of the property and for it to yield a reasonable return.

**2. Whether the variance is substantial;**

No, the applicant is requesting a 30% reduction in the side yard. This is not a substantial variance.

**3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;**

No, the essential character of the neighborhood would not be altered. There are properties in the general vicinity with similar setbacks.

**4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);**

No, the delivery of governmental services will not be impacted.

**5. Whether the property owner purchased the property with knowledge of the zoning restriction;**

Yes, the property owner was aware of the zoning regulations.

**6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;**

No, a variance for the side yard setback is required to subdivide the existing parcel.

**7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.**

The spirit and intent behind the zoning requirement would be observed should the variance be granted. This variance is a result of special circumstances (a residential and commercial structure on one parcel) which do not generally apply to land in the same zoning district. The setback requirements are in place to allow property owners to maintain their property without intruding on neighboring lots and to provide adjacent properties with light and air flow. This request still allows adequate spaces to accomplish these objectives.



**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE 3 FROM SECTION 1115.01.C:**

The following factors shall be considered by the BZA in determining whether practical difficulty exists sufficient to warrant a variance to reduce the maximum lot coverage; 1107.05(C)(1)

**1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;**

Yes, there could still be a beneficial use of the property without the variance.

**2. Whether the variance is substantial;**

Yes, the applicant is requesting an 89% increase in the lot coverage permitted on Tract II. This is a substantial variance. The lot coverage variance for Tract I is not substantial.

**3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;**

No, the essential character of the neighborhood would not be altered. Tract II is adjacent to a parking lot and two other nonresidential uses. The property owner will be required to comply with all stormwater management regulations.

**4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);**

No, the delivery of governmental services will not be impacted.

**5. Whether the property owner purchased the property with knowledge of the zoning restriction;**

Yes, the property owner was aware of the zoning regulations.

**6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;**

No, variances for maximum lot coverage are required to subdivide the existing parcel.

**7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.**

The spirit and intent behind the zoning requirement would be observed should the variance be granted. This variance is a result of special circumstances (a residential and commercial structure on one parcel) which do not generally apply to land in the same zoning district. The lot coverage requirements are intended to ensure adequate green space and support stormwater management. The applicant is not proposing to add additional impervious surfaces to the site.



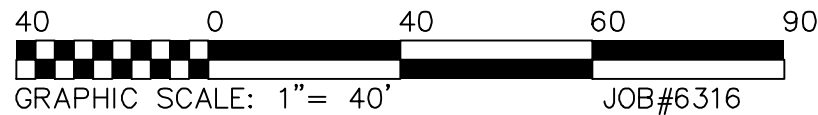








BEARINGS BASED ON THE CENTERLINE OF WENRICK DRIVE ( S 01°20'40"E ) AS SHOWN ON SURVEY SUR-92-27.



MONUMENT LEGEND

- ⊗ Indicates 5/8" iron pin found (unless otherwise noted)
- Indicates 5/8" iron pin set
- ⊗ Indicates Iron Pipe found
- △ Indicates MAG nail found (unless otherwise noted)
- △ Indicates MAG nail set
- ⊗ Indicates Concrete Monument found
- Indicates Railroad Spike found
- × Indicates Scribe set

REFERENCES

DEED: 0.773 ACRES – BLUE ROCK SELECT LLC – I.R. DEED-22-073686

PLAT: BOX ELDER PLAT – PLAT BOOK "CC", PAGE 31

SURVEY NOTES:

- ALL DEED, SURVEY AND PLAN RECORDS SHOWN HEREON WERE USED IN THE PERFORMANCE OF THIS SURVEY.
- LINE OF OCCUPATION (WHERE EXISTING) IN GENERAL AGREE WITH PROPERTY LINES.
- ALL MONUMENTATION FOUND IN GOOD CONDITION UNLESS NOTED OTHERWISE.
- IRON PINS SET ARE 30" x 5/8" REBAR WITH PLASTIC CAP STAMPED "MARSH 7735"
- SURVEY PREPARED IN THE ABSENCE OF A COMPLETE AND UP TO DATE TITLE REPORT.

APPROVALS, CITY OF RIVERSIDE:

THIS PLAT APPROVED AND ACCEPTED BY CITY OF RIVERSIDE THIS \_\_\_\_\_, DAY OF \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
ZONING ADMINISTRATOR DATE

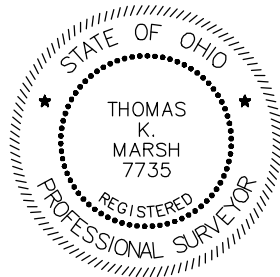
\_\_\_\_\_  
SERVICE DEPT. DIRECTOR DATE

I certify that this plat of survey was prepared in accordance with Ohio Administrative Code Chapter 4733-37 standards for boundary surveys. All monumentation is or to be set as shown.

McDougall – Marsh Land Surveyors

BY: \_\_\_\_\_  
THOMAS K. MARSH, P.S. No.7735

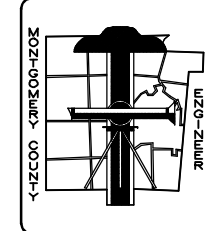
DATE: \_\_\_\_\_



Plat of Survey  
**5010 Linden Avenue**  
Section 15, Town 2, Range 7 M.R.s.  
City of Riverside, Montgomery County, Ohio  
Tract I: 0.2504 / Tract II: 0.5258  
**Total: 0.7762 Acres**



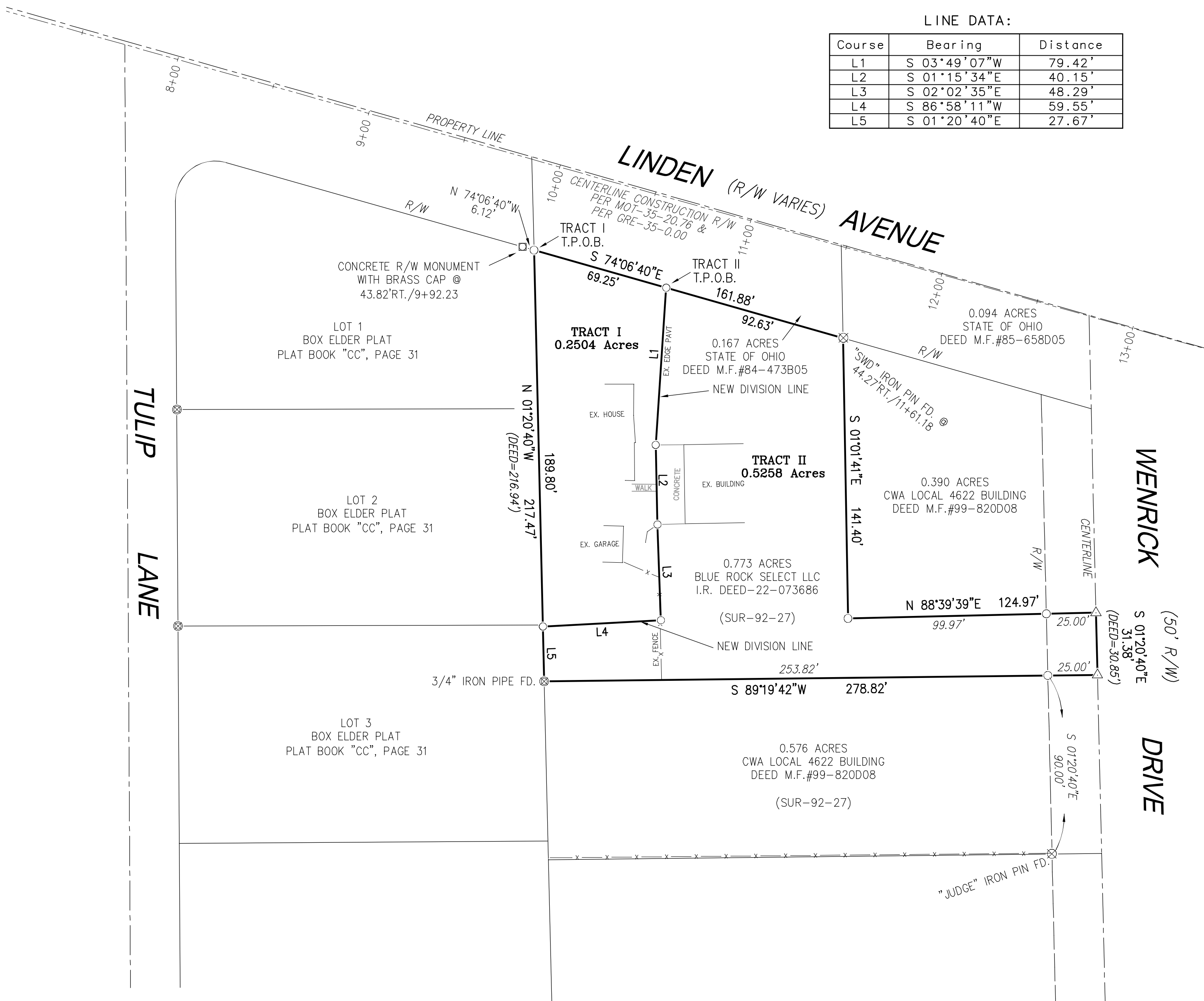
Prepared by:  
**McDougall - Marsh**  
**Land Surveyors**  
8529 Byers Road, Miamisburg, Ohio 45342  
Tel: 937-847-2660 - Fax 937-847-2670  
www.mcdougallmarsh.com



RECORD OF  
LAND SURVEYS  
VOLUME 2023, PAGE 0\_\_\_\_

LINE DATA:

Course	Bearing	Distance
L1	S 03°49'07"W	79.42'
L2	S 01°15'34"E	40.15'
L3	S 02°02'35"E	48.29'
L4	S 86°58'11"W	59.55'
L5	S 01°20'40"E	27.67'



### **Variance Justification:**

In order to justify approval of any variance staff and/or the Board of Zoning Appeals considers the following criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

1. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance. Our intention is to utilize the commercial building as an owner/operator. We are not equipped to manage the rental house - or it can be sold as a single family home if the variance is granted.
2. Whether the variance is substantial. Yes, the variance is substantial because in order to separate the buildings properly and efficiently the parcels do not meet minimum lot dimensions.
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. No, there would be no substantial alteration to the neighborhood or the properties use.
4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage). No, both properties are on a well and sanitary sewer.
5. Whether the property owner purchased the property with knowledge of the zoning restriction. Yes, we had knowledge of the zoning restrictions but always had intention of requesting a variance.
6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance. No, there are no other alternatives.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Yes, the spirit of zoning and "highest and best use" would be better served with a lot split.





Front of Subject Site



Adjacent Property to the North



Adjacent Property to the West



Adjacent Property to the East



Variance 1: Min. Lot Width (Tract I)



Variance 2: Side Setback (Tract I) – View 1





Variance 2: Side Setback (Tract I) – View 2



Variance 3: Max. Lot Coverage (Tract I)



Variance 3: Max. Lot Coverage (Tract I)



Variance 3: Max. Lot Coverage (Tract II )

a.	Minimum Lot Width:	80 feet
b.	Minimum Lot Area:	9,600 square feet
c.	Front Yard Set-back:	25 feet
d.	Side Yard Set-back:	10 feet
e.	Rear Yard Set-back:	35 feet
f.	Maximum Lot Coverage:	50%
g.	Maximum Building Height:	35 feet
h.	Minimum Dwelling Unit Size:	1,300 square feet