



301 East Main Street  
Lowell, Michigan 49331  
Phone (616) 897-8457  
Fax (616) 897-4085

CITY OF LOWELL  
ZONING BOARD OF APPEALS AGENDA

MONDAY, MAY 18, 2020 AT 7:00 P.M.

Meeting will be held remotely via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/81694282954>

Meeting ID: 816 9428 2954

One tap mobile

+16465588656,,81694282954# US (New York)

13017158592,,81694282954# US +(Germantown)

Dial by your location

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Meeting ID: 816 9428 2954

1. CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL
2. APPROVAL OF AGENDA
3. CITIZEN COMMENTS FOR ITEMS NOT ON THE AGENDA

IF YOU WISH TO ADDRESS AN AGENDA ITEM, PUBLIC COMMENT FOR EACH ITEM WILL OCCUR AFTER THE INITIAL INFORMATION IS SHARED ON THE MATTER AND INITIAL DELIBERATIONS BY THE PUBLIC BODY. PUBLIC COMMENT WILL OCCUR BEFORE A VOTE ON THE AGENDA ITEM OCCURS.

4. NEW BUSINESS
  - a. Public Hearing – Variance Application – 1242 E. Main Street
5. BOARD/COMMISSION REPORTS
6. COUNCIL COMMENTS
7. ADJOURNMENT

NOTE: Any person who wishes to speak on an item included on the printed meeting agenda may do so. Speakers will be recognized by the Chair, at which time they will be allowed five (5) minutes maximum to address the Council. A speaker representing a subdivision association or group will be allowed ten (10) minutes to address the Council.

# williams&works

engineers | surveyors | planners

## MEMORANDUM

To: City of Lowell Zoning Board of Appeals  
Date: May 15, 2020  
From: Andy Moore, AICP  
Whitney Newberry  
RE: **1242 E Main Street Non-Use Variance Application**

Mr. Ryan Gould has submitted an application for a variance on his property located at 1242 E. Main Street (PN 41-20-01-326-013). The applicant is proposing to construct an accessory building on the subject property and is seeking relief from three provisions in Section 4.08 of the Zoning Ordinance, which relate to accessory buildings located in front yards, accessory building size, and a hard-surfaced driveway. The purpose of this memorandum is to evaluate the request pursuant to Chapter 21 of the City of Lowell Zoning Ordinance.



### Background

The subject property is approximately 3.6 acres in the SR Suburban Residential district. The applicant is proposing to construct a 1,600 square foot accessory building in the front yard, near the East Main Street right-of-way. This would be accessed through an additional paved driveway off East Main Street. The applicant is requesting two variances. The first variance is from Section 4.08 F of the Ordinance, which states:

F. Detached accessory buildings shall be located:

1. A minimum of ten (10) feet from any main building;
2. A minimum of three (3) feet to any side or rear lot line, as measured to the eave of the building;
3. No nearer than the front yard setback required for the main building.

The applicant's proposed location for the accessory building meets requirements 1 and 2; however, the applicant is seeking relief from requirement 3, which requires all accessory buildings to be located no nearer than the front yard setback for a main building. The applicant has instead proposed an accessory building adjacent to the East Main Street right-of-way.

Additionally, Section 4.08 G(1)(b) states that the maximum total floor area for all accessory buildings associated with single and two-family dwellings, including the garage, is 1,200 square feet on lots 9,000 square feet or greater. The applicant has proposed a 1,600 square foot building. Additionally, the boundary survey indicates a shed on the property near the dwelling, the size of which is unknown. Therefore, the maximum allowed accessory building area would be exceeded by at least 400 square feet.

Finally, the applicant is not proposing to connect a hard surface driveway to the building, which is required by Section 4.08(L).

### **Practical Difficulty**

When reviewing a request for a variance, the ZBA must find that a practical difficulty exists that prevents the applicant from being able to conform to the standards of the Zoning Ordinance. A practical difficulty in the context of a non-use variance results from the physical characteristics of the land. Physical characteristics may be lot size, lot shape, or natural features such as slopes, water features, unbuildable soil, wetlands, etc., which causes an unreasonable burden to the applicant or property owner.

### **Part 1. Variance Review Standards – Front Yard Setback**

Section 21.04 authorizes the ZBA to grant non-use variances only if it finds that all six of the standards listed in this Section are met. The standards of Section 21.04 are listed below, along with our remarks related to the request for a variance from Section 4.08 F prohibiting accessory buildings in the front yard setback:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;

Exceptional or extraordinary circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this ordinance would involve practical difficulties;

**Remarks:** The applicant's property is located almost entirely within the Grand River's 100-year floodplain. The applicant stated that EGLE will not permit the structure to be built within the floodplain. The front yard setback for the SR Suburban Residential

district is 30 feet, while the applicant is proposing to place the accessory building adjacent to the East Main Street right-of-way boundary. Although a setback dimension is not specified, this appears to make the setback approximately 0-10 feet according to the site plan. The applicant's front property line closely corresponds to the boundary of the 100-year floodplain, so the proposed accessory building location appears to be the option that would provide the smallest impact on the floodplain.

Compared to other SR Suburban Residential properties, the applicant's situation appears to be unique. There are limited properties in this district that are also within the floodplain. The few properties that are both in the SR district and entirely within the floodplain have limited or no residential development. Therefore, the applicant's situation appears unique within the SR Suburban Residential district. Because essentially the entire property is within the floodplain, there are exceptional natural features on the property that prohibit the applicant's ability to comply with the front yard setback requirement. The Board may find this standard met.

2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.

**Remarks:** The applicant's property is almost entirely within the 100-year floodplain and is also in the SR Suburban Residential district. This combination is relatively unique within the City, with limited development on parcels of a similar nature. The situation of this parcel does not appear to be so general or recurrent as to make practical the formulation of a general regulation. The Board may find this standard met.

3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

**Remarks:** Accessory buildings are a relatively common property right in the SR Suburban Residential district. There are a few accessory buildings on nearby properties, although they are not abundant. Because the property is located close to the border between the City of Lowell and Lowell Charter Township, different standards are present for accessory buildings. Nearby parcels along M-21 in Lowell Charter Township appear to have more accessory buildings than nearby parcels in the City. Overall, accessory buildings appear to be generally present throughout the broader area around the subject property. The applicant is not seeking any financial return as a result of the accessory building construction. The Board may find this standard met.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

**Remarks:** The construction of an accessory building at the proposed location would likely not be significantly detrimental to adjacent properties or the surrounding

neighborhood. The subject property is heavily wooded, which is expected to provide natural screening of the building for adjacent properties. The number of trees removed could impact screening and therefore building's effect on surrounding properties. The Board may discuss the extent of required tree removal that would be necessary to build the accessory building and how this would affect screening.

The applicant is proposing a paved driveway off East Main Street to access the building. Currently, the applicant's driveway provides two access points off East Main Street, forming a "V" on the property and combining into one driveway in the parcel's interior. It's unclear whether this paved driveway would extend from an existing curb cut or require a new curb cut on East Main Street. If a new curb cut is desired, the applicant would have to obtain a permit from MDOT. The presence of three access points on one property could increase the potential for hazardous vehicle interactions along East Main Street and should be further considered. However, the applicant has also indicated that EGLE will not permit any material added into the floodplain area, which may necessitate the proposed driveway location to avoid the floodplain. Emergency vehicle access should also be considered to ensure the accessory building would be accessible. The Board may address driveway design with the applicant.

Lastly, the building materials and proposed design of the building were not indicated in the application. Section 4.08 J provides standards for building design, including compatibility with the main building and neighborhood. The Board may discuss screening, building materials, and driveway access from East Main Street with the applicant to determine the extent to which the proposed location would impact the neighboring area. Subject to those discussion, the Board may find that this standard is met.

5. The variance will not impair the intent and purpose of this ordinance.

**Remarks:** The purpose of the Zoning Ordinance includes the provision for appropriate relationships between uses of land and their locations. Given that the applicant's property is almost entirely in the floodplain, the proposed location for the accessory building appears to allow a use that is generally permitted in the SR Suburban Residential district in an area that protects the floodplain to the greatest extent possible. Therefore, the Board may find this standard met.

6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

**Remarks:** The practical difficulty causing the variance request is not created by the action of the applicant. The subject property is within the 100-year floodplain and the construction of an accessory building in locations permitted by the ordinance is not allowed by EGLE. The Board may find this standard met.

## **Part 2. Variance Review Standards – Accessory Building Size**

Section 21.04 authorizes the ZBA to grant non-use variances only if it finds that all six of the standards listed in this Section are met. The standards of Section 21.04 are listed below, along with our remarks related to the request for a variance from Section 4.08 G(1)(b) prohibiting accessory buildings greater than 1,200 square feet:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;

Exceptional or extraordinary circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this ordinance would involve practical difficulties;

**Remarks:** The applicant is proposing to construct a 1,600 square foot accessory building. The Ordinance prohibits the total size of all accessory buildings on a property, including garages, to be greater than 1,200 square feet. The boundary survey indicates there is a shed located on the property, the size of which is unknown. Therefore, the total size of accessory buildings on the property would exceed the permitted area by at least 400 square feet.

The proposed use of the accessory building is not indicated in the application, so it is unclear whether this size is needed for an exceptional condition applicable to the subject property. Although the subject property is located almost entirely within the 100-year floodplain, it is unclear if this constitutes an exceptional circumstance for granting a larger accessory building. The Board may discuss the building's proposed use with the applicant to determine whether there are other exceptional circumstances warranting a larger building size than is typically permitted.

2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.

**Remarks:** Although the property's location within the 100-year floodplain is a condition relatively unique to properties in the SR Suburban Residential district, the reason for the increased size is unknown. It is uncertain whether there is a specific circumstance warranting the increased building size and therefore difficult to discern whether such circumstance would be general or recurrent in nature, though it is unlikely that a zoning amendment to increase accessory building size would be warranted. The Board may discuss whether there is a unique situation warranting the increased building size and whether this would be of a general or recurrent nature, but this standard is likely met.

3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

**Remarks:** Accessory buildings are relatively common in the general vicinity. Those in the City of Lowell are generally smaller in size, while those in Lowell Charter Township are generally larger since they only have a lot coverage limitation rather than an accessory building area limitation. However, the applicant's request could be for a larger building than what is ordinarily found in the City and the Township.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

**Remarks:** The proposed size of the accessory building appears to be considerably larger than those that currently exist in the area. However, the subject property is heavily wooded, which may provide adequate screening for a larger building. The current orientation would place the longer side of the building parallel with East Main Street, exposing a larger portion of the building to the road. However, an alternate orientation is likely not possible due to the floodplain and attempt to avoid it to the greatest extent possible. Therefore, the extent to which the building would be screened, building materials used, and overall design would likely influence the extent to which a larger building would impact the surrounding neighborhood. The Board may discuss these items with the applicant, but this standard is likely met.

5. The variance will not impair the intent and purpose of this ordinance.

**Remarks:** The purpose of the Zoning Ordinance includes the provision for appropriate relationships between uses of land and their locations, and to promote the public health, safety, and welfare. The request for a larger building does not appear to be necessitated as a result of the 100-year floodplain; rather, permitting a larger building along the floodplain boundary may create a greater impact on the floodplain. Unless another exceptional circumstance warrants a larger building, it would likely be excessive for land with such a condition. However, it is also unlikely that such a building would impair the other purposes of this Ordinance. The Board may discuss the extent to which a larger building would align with the intent of the Zoning Ordinance.

6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

**Remarks:** It is unclear if the request for a larger building was created by an action of the applicant. Although the property is located within a floodplain, this condition does not necessarily warrant a larger building. Without knowledge of any other exceptional circumstances that would require a larger building, the Board should carefully consider this standard and discuss it with the applicant.

### **Part 3. Variance Review Standards – Hard Surfaced Driveways**

Section 21.04 authorizes the ZBA to grant non-use variances only if it finds that all six of the standards listed in this Section are met. The standards of Section 21.04 are listed below, along with our remarks related to the request for a variance from Section 4.08 L requiring a hard surface driveway connecting to a proposed accessory building:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;

Exceptional or extraordinary circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in question, the literal enforcement of the requirements of this ordinance would involve practical difficulties;

**Remarks:** The applicant is proposing a driveway from East Main Street to the accessory building. The large majority of the site is located within the floodplain and the applicant has indicated that EGLE was very strict about bringing any material into that area. A gravel driveway may be more acceptable as a natural surface in order to reduce impervious surfaces within any part of the floodplain area.

Although the entire driveway may not be paved, the applicant has proposed that the entrance from East Main Street be paved. It is uncertain how far this pavement would extend based on the site plan. However, a paved entrance would prevent gravel from being tracked onto the state highway. Due to the presence of the floodplain and desires of EGLE, the applicant is somewhat limited in the amount and type of construction that may occur on the property. This appears to be an exceptional circumstance that hinders the applicant's ability to comply with the Ordinance. The Board may find this standard met.

2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.

**Remarks:** The property's designation in the SR Suburban Residential district and location within the floodplain is relatively unique in the City. It is not expected that this request would be of so general a nature as to justify a zoning amendment.

3. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

**Remarks:** Accessory buildings are a relatively common property right in the area. Such buildings also require some form of driveway access in order to be useful. Therefore, the applicant has proposed a driveway access in order to enjoy this



property right while also observing the environmental limitations on his property and respecting the stipulations of EGLE. The Board may find this standard met.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

**Remarks:** Creating a driveway to the accessory building is not expected to be detrimental to the adjacent property or general neighborhood. In an effort to reduce the impact of gravel being tracked onto East Main Street, the applicant has proposed to pave a portion of the driveway. The Board may inquire as to the length of the paved portion of the driveway to ensure its adequacy.

Should the applicant desire a third curb cut on East Main Street, a permit from MDOT will be required. The Board may discuss the applicant's intent for the driveway curb cut.

5. The variance will not impair the intent and purpose of this ordinance.

**Remarks:** The purpose of the Zoning Ordinance is to promote the public health, safety, and welfare. An unpaved portion of the driveway is not expected to impair the intent and purpose of the Ordinance, as the applicant has proposed to pave the entrance. The Board may find this standard met.

6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

**Remarks:** It does not appear that this practical difficulty was created by the applicant. The applicant's accessory building location is limited by the environmental conditions on the property, which impacts the placement of the driveway. The applicant has indicated that EGLE does not want any material in the floodplain. Because a completely paved driveway would increase the impervious surface by a length of over 50 feet, the floodplain may be impacted. Allowing a portion of the driveway to be gravel would provide a more natural, permeable surface that would reduce the impact on the floodplain. Because the applicant has still proposed to pave the driveway entrance, there are no detrimental impacts expected along East Main Street. Therefore, the Board may find this standard met.

**Recommendation.** At the May 18 meeting, the ZBA should consider the documents submitted and carefully listen to comments by the applicant, as well as the public. If, in the judgment of the Board, all of the above standards are met and a practical difficulty exists, the Board may approve the variance with or without conditions. When it comes to the decision-making process, we offer the following comments:

- If the variance for accessory building location (Section 4.08 F(3)) is granted, the Board may also grant the size variance (Section 4.08 G(1)(b)) and/or the driveway material variance (Section 4.08 L), though it is not obligated to do so.

- If the variance for accessory building location is denied, the variances for building size and driveway material should also be denied, as they would serve no purpose if the building location is not permitted.

If the Board opts to grant the variance for accessory building location (Section 4.08 F(3)), we suggest the following conditions of approval:

- The applicant shall comply with any stipulations of the Lowell Area Fire Department regarding emergency vehicle access and obtain a permit from MDOT, if required.
- The accessory building shall comply with applicable building codes and other similar codes and regulations that apply to such structures and be compatible in design and similar to the main building with respect to exterior finish materials, color, overall design and aesthetic quality, in accordance with Section 2.08 J of the Zoning Ordinance.

The discussion contained in this memorandum may be cited as a basis for the decision.

As always, please feel free to contact us if there are additional questions.



9. Your Request is: (check only one)

☐ An Appeal of an Administrative Decision

☐ A Temporary Use

☒ A Variance from Zoning Ordinance Requirements

10. If an appeal is being requested, state the administrative decision being appealed: \_\_\_\_\_

\_\_\_\_\_

10(a). If a variance is being requested, state the reason(s) for the request and your intended uses:

*our home is in the flood flow the DEQ will not let us put a structure in area we can put it closer to road in (100yr. plain)*

The following provisions of the City of Lowell Zoning Ordinance (Section 21.04 B) must be met in total before a variance can be granted. Respond to each of the six criteria as it pertains to the request.

A. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district:

Exceptional or extraordinary circumstances include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter, or by reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure or by reason of the use or development of the property immediately adjoining the property in questions, the literal enforcement of the requirements of this Ordinance would involve practical difficulties;

*the DEQ has told us we would have to build the structure up by the road*

B. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- C. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

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- D. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

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- E. The variance will not impair the intent and purpose of this Ordinance.

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- F. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

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The facts presented above are true and correct to the best of my knowledge.

Signature: Ryan Gould Date: 4-10-20

Type or Print Your Name Here: Ryan Gould



4-10-20

Due to my driveway being in a FLOOD FLOW, and the obvious cost, I propose a paved approach on M-21 continuing toward the home approx. 50' to 60'. When dealing with the DEQ, they were very strict on bringing ANY material into the flood flow. I would also like to point out that we have been living at this residence for the last 6 years and have an existing driveway. I drew a spot for building and drive on enclosed survey.

Thank you for taking the time to help me deal with this issue.

Ryan Gould



My name is Ryan Gould, I live at 1242 E. Main and have been a Lowell resident for 47 years. We are currently rebuilding our home of 6 years. We are now 3 years into this process due to the tight requirements of the state (DEQ). We are in what is called the flood flow.

The reason for this letter is to request we not be required to put in 350' of sidewalk along M-21. We do not receive city sewer or water and do not have sidewalk on either side of us.

I also ask we not pave the driveway (500'-600') due to cost, the state not wanting fill in the flood flow, and gravel drives on both sides and across the street. I am requesting that we asphalt an apron at M-21 back 50'-60' toward house.

RECEIVED

MAR 18 2020

CITY OF LOWELL  
LOWELL, MICHIGAN

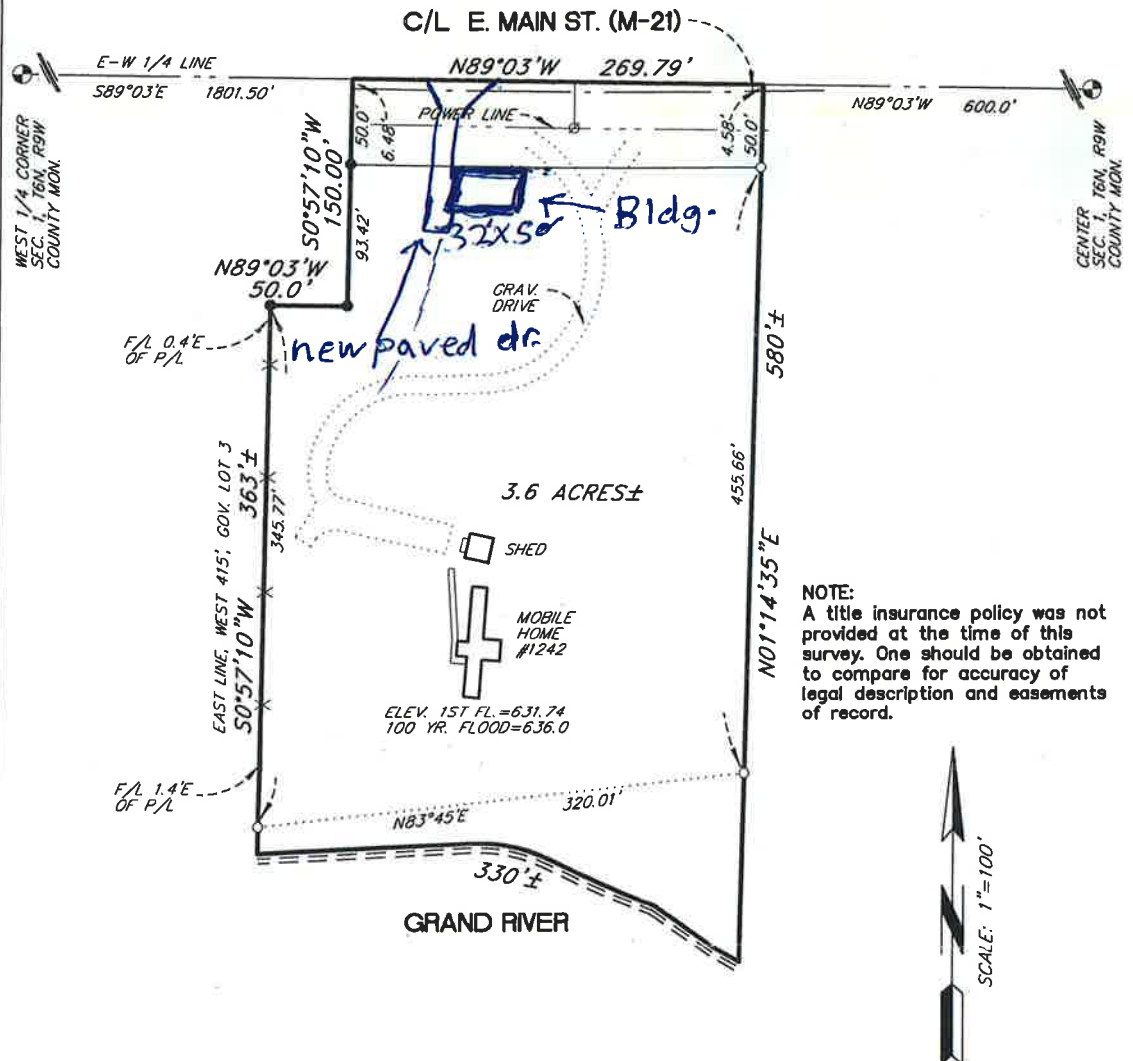
Ryan Gould 262-9949

Project No. 180420  
Date: May 3, 2018  
For: Gould, Ryan  
1242 E Main  
Lowell, MI 49331

RE: Boundary survey  
Prop. Address: 1242 E Main

**LEGAL DESCRIPTION FROM TAX RECORDS:**

Government Lot 3, except the West 415 feet thereof, and except the East 600 feet, and except the North 150 feet of the West 50 feet of remainder, Section 1, T6N, R9W, Lowell Township, Kent County, Michigan.



I hereby certify that the buildings and Improvements are located entirely thereon and that said buildings and improvements are within the property lines and that there are no existing encroachments upon the lands and property described unless otherwise shown hereon.

**LEGEND**

- IRON STAKE - SET
- IRON FOUND
- WOOD STAKE
- R RECORDED DIMENSION
- D DEED DIMENSION
- P PLATTED DIMENSION
- M MEASURED DIMENSION
- ⊕ CENTERLINE
- x-x FENCE LINE

**R**  
**Roosien & Associates**  
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5055 PLAINFIELD AVENUE, NE  
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BY

*Kevin Roosien*