

GAINES CHARTER TOWNSHIP ZONING BOARD OF APPEALS – REGULAR MEETING

Township Board Room - 8555 Kalamazoo Ave. S.E. Caledonia, MI 49316

Tentative Agenda

7:00 p.m. – Wednesday, November 9th, 2022

- I. Call to Order and Roll Call**
- II. Consideration of the Meeting Agenda**
- III. Consideration of Meeting Minutes**
May 11th, 2022 – *Regular Meeting*
- IV. Inquiry of Conflict of Interest**
- V. Advertised Public Hearing**
 - 1. 8390 Eastern Ave SE – Neighborhood Commercial (C-1)**
Request for a Dimensional Variance to construct a new commercial building 20 feet from the front property line, a variance from the required 50-foot front yard setback.
- VI. General Discussion Items**
- VII. Other Reports**
- VIII. Adjournment**

*Please note that advertised public hearings will not start before the noted time, but may start later due to the length of other agenda items. All interested persons are invited to attend and participate. Persons with disabilities needing accommodation for effective participation in the meeting should contact the Township Office at 616-698-6640 one week in advance to request mobility, visual, hearing or other assistance.

**DRAFT MINUTES OF THE GAINES CHARTER TOWNSHIP ZONING BOARD OF APPEALS REGULAR
MEETING
HELD ON MAY 11, 2022
GAINES CHARTER TOWNSHIP
8555 KALAMAZOO AVENUE SE CALEDONIA, MICHIGAN 49316**

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 7:00 pm by Chair Werkema.

MEMBERS PRESENT: Werkema, Kooiman, Wiersema, Hilton, Ringnalda, Tietz

MEMBERS ABSENT: None

OTHERS PRESENT: Dan Wells, Community Development Director; Michelle Renner-Lewis;
Sai Tuja, International Life Worship Church

II. CONSIDERATION OF MEETING AGENDA

No modifications.

III. CONSIDERATION OF MEETING MINUTES

March 9, 2022 – Regular Meeting Minutes.

Motion: By Member Hilton, supported by Member Tietz to approve the minutes for the
March 9, 2022, Zoning Board of Appeals regular meeting.

Discussion: None

Ayes: Werkema, Kooiman, Wiersema, Hilton, Ringnalda, Tietz

Nays: None

Abstain: None

Decision: Approved (5-0)

IV. INQUIRY OF CONFLICT OF INTEREST

None.

V. PUBLIC HEARING

1. 3596 76th Street SE (A-R)

The applicant is requesting a dimensional variance for reduced setbacks based on the existing building footprint and parcel configuration for use as a place of religious worship in the A-R zoning district.

The lot and structure are non-conforming with the current land division and setback requirements of the A-R zoning district. The applicant requested a special use permit from the Planning Commission at the March 24, 2022, regular meeting to operate a place of

religious worship in the A-R zoning district. The Planning Commission approved the special use permit request with a condition of approval to obtain a variance from the ZBA for the required setbacks and parcel dimensions. The applicant requests that the setbacks be adjusted to 25 feet from the side (west) property line, a variation from the required 60 feet, and 60 feet from the rear (south) property line, a variation from the required 100 feet.

Planner Wells stated that since the request meets all the standards for a dimensional variance, staff recommends the ZBA approve the request.

Motion: By Member Tietz, supported by Member Wiersema to approve the dimensional variance request for 3596 76th Street as outlined in the staff report.
Discussion: None
Ayes: Werkema, Kooiman, Wiersema, Hilton, Ringnalda, Tietz
Nays: None
Abstain: None
Decision: Approved (5-0)

VI. GENERAL DISCUSSION

None.

VII. OTHER REPORTS

None.

VIII. ADJOURNMENT

Motion by Wiersema, supported by Hilton to adjourn the meeting at 8:00 PM.

CERTIFICATION

I hereby certify that the above is a true copy of the minutes from May 11, 2022, Regular Meeting of the Gaines Charter Township Zoning Board of Appeals held at the time and place mentioned above pursuant to the required statutory procedures.

Respectfully submitted,

Don Hilton,
Secretary
Gaines Charter
Township Zoning
Board of Appeals

Dated: _____, 2022

Gaines Charter Township

Zoning Board of Appeals Memo

Meeting Date: November 9, 2022

AGENDA ITEM: V.1

REQUEST: Dimensional Variance

ADDRESS: 8390 Eastern Ave

PARCEL NUMBER: 41-22-17-300-054

APPLICANT: Luke Malski

FILE NUMBER: 221010LM

**PROPERTY ZONING DISTRICT: Neighborhood
Commercial (C-1) Conditional Rezone**

PROPERTY SIZE: 0.62 Acres

**REPORT BY: Dan Wells, Community
Development Director**



OVERVIEW

The property owner is requesting a dimensional variance to construct a new commercial building in the C-1 zoning district. The property owner was approved to conditionally rezone the parcel from RL-14 to C-1 by the Township Board in February of 2022. The rezone was conditional upon specific uses being implemented, in which the property owner is restricted to the following permitted and special land uses: restaurants (without a drive-through), retail (convenience and low intensity), assembly, places of worship, schools, offices without the sale of goods, personal service establishments, and studios for the instruction of dance or music.

These conditions were offered by the property owner as a mechanism to accommodate other future uses aside from the immediate desire of the current property owner, as well as to mitigate concerns with higher traffic-generating C-1 uses. If the property is not utilized for any of the above uses, then it will revert to the Single Family Residential (RL-14) zoning district.

If granted the variance, the property owner will build a 2,423-square-foot (S.F.) commercial building on the parcel, roughly 56' by 64'. This parcel is located where the historic Cook School once stood, and the property owner has expressed their desire to honor the schoolhouse in the architectural elements of the proposed building.

The applicant wishes to establish a café and ice cream shop on the property. However, given the size of the parcel, adjacent zoning districts, and the parcel being a corner lot, the property owner is constricted to a twenty-six (26) foot building envelope width. The property owner wishes to construct the building thirty (30) feet into the required front yard setback toward Eastern Avenue, which will create a twenty (20) foot setback distance from the front property line, a variance from the required fifty (50) foot front yard setback. All other setback distance requirements will be maintained. The building will be subject to a site plan review by the Planning Commission to ensure that all other requirements as outlined in the zoning ordinance are met.

Staff has included a site layout plan (dated 10/13/2022) and a certified survey from a recent lot line adjustment that was processed in 2021 which shows the parcel dimensions.

Setbacks	Neighborhood Commercial (C-1) Setback Requirements	Proposed Setbacks
Front Yard (Eastern Ave)	50 Feet	20 Feet (West)
Front Yard (84 th Street)	50 Feet	50 Feet (South)
Side Yard (If yard is adjacent to an "R" district)	50 Feet	100 Feet (North)
Rear Yard (If yard is adjacent to an "R" district)	50 Feet	50 Feet (East)

The surrounding zoning is:

	NORTH: Cooks Crossing PUD	
WEST: Steven's Pointe PUD	SUBJECT PARCEL	EAST: Single-Family Residential (RL-14)
	SOUTH: Single-Family Residential (RL-14)	

STANDARDS OF REVIEW

The request has been reviewed using the applicable review standards of Chapter 26, Section 26.8 (D) Non-Use (Dimensional) Variances. The Zoning Board of Appeals must find that all standards in this report are satisfied to grant a variance.

1. The predicament is caused by exceptional, unique, or extraordinary physical conditions, dimensions, or circumstances that directly relate to the subject lot or parcel rather than the individual situation or desire of the applicant or property owner (see definition of "unique circumstance").

"Unique Circumstance": An exceptional, unique, or extraordinary physical condition that is one of the following:

- 1. Exceptional narrowness of the width or depth of a lot or parcel, or an irregular shape, as compared to a conforming lot or parcel.*
- 2. Exceptional natural or topographic features located on the lot or parcel, such as steep slopes, surface water features, existing significant trees, or other unique or extreme physical conditions of the land.*
- 3. Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional features of the land.*
- 4. Other natural, topographic, built, or dimensional conditions or characteristics of land, lot, or parcel, which are determined by the Zoning Board of Appeals as exceptional or extraordinary*

Meets standard. The parcel is conforming to the zoning ordinance in terms of dimensions, but it is a corner lot and therefore is constrained by front lot setback standards on the west and south sides. There are not any exceptional natural or topographic features to take into consideration as the parcel is relatively flat when looking at a contour map. There are not any existing structures on the parcel to prohibit the construction of a building.

The necessity for the variance stems from the unique buildable envelope which is based on the parameters set by the zoning setbacks. The parcel was created before current zoning setbacks were in place and housed a school building. As defined by setbacks, the buildable envelope is 26 feet wide. To conform to a 26-foot width makes for an awkward building and is inadequate for a modern restaurant, kitchen and retail operation.

2. The variance is necessary for the preservation and enjoyment of a substantial property right which is similar to that possessed by other landowners in the same Zoning District and vicinity and does not grant special privileges to the applicant that are not available to the owners of these properties.

Meets standard. The applicant desires to build a relatively modest commercial building to serve the community. To build a structure to adequately operate a restaurant and retail operation, certain interior dimensions are necessary for kitchens, seating, and retail displays and counters which are driving the need for a larger footprint than is allowed by the building envelope based on current setback requirements. It is unlikely that any similar commercial business could profitably operate within the constraints imposed by the setbacks.

3. The practical difficulty for which the variance is requested does not result from a self-created problem by the applicant, current landowner, or any previous landowner of the property involved (see definition of "self-created problem").

Self-Created Problem: A problem that occurs, results, or exists from one or more of the following conditions:

- 1. A problem that occurs when one can reasonably develop a property in a compliant manner, but the landowner or applicant's personal desires and preferences for property development do not align with zoning requirements.*
- 2. A problem that occurs when a property is currently built-out under current zoning constraints, but the landowner or applicant's personal desires and preferences for expansion do not align with zoning requirements.*
- 3. A problem that results from the action, preference, or desire of the landowner or applicant that is not a result of a unique characteristic of the property.*
- 4. A problem that exists because the landowner, previous landowner, or applicant took a specific action that created the need for the variance, such as adjusting a lot line, constructing a building, or developing a site in a manner that does not allow future compliant construction, building expansion, or site development.*

Meets Standard. The applicant did purchase and add approximately 16 feet to the north side of the parcel in 2021 and has unsuccessfully attempted to buy neighboring property to the east to create a parcel large enough to house the building. The existing boundaries were set decades ago during the use of the parcel for a schoolhouse and prior to modern setback requirements.

Staff views the proposed variance request through the lens of whether a proposed building that will serve the designated zoning use can be "reasonably developed" without a variance. In this case, the setbacks define a narrow building envelope of 26 feet. Staff believes this would not be considered an adequate dimension for a standalone building housing a café/restaurant, retail operation, and kitchen. The narrowness imposed by the setbacks restricts interior space to the point of prohibiting those combined uses.

4. The variance will not be detrimental to the public welfare, injurious to neighboring properties, or change the essential character of the neighborhood.

Meets standard. If the variance is approved, there will still be a considerable amount of space between the outside edge of Eastern Avenue and the proposed building. The Kent County Road Commission's rights-of-way abutting this parcel are considerably wider than the surrounding parcels, likely due to the fact that it is a corner lot. Given the width of the right-of-way along Eastern

Avenue, a building in the proposed location is not anticipated to be detrimental or injurious to neighboring properties as intersection visibility and pedestrian amenities can still be maintained. Additionally, staff does not anticipate a change to the essential character of the neighborhood by placing a building in the proposed location.

5. The variance is consistent with the purpose and intent of the Master Plan and the intent and provisions of the Zoning Ordinance and Zoning District designation of the subject property.

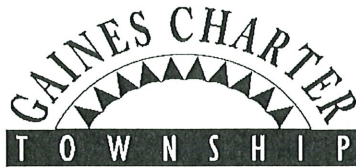
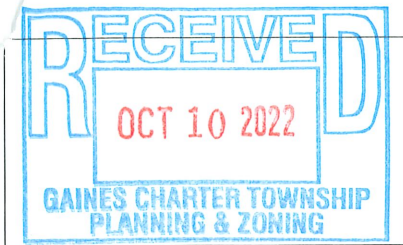
Meets Standard. The proposed building placement is consistent with the intent of the Master Plan. The 84th Street and Kalamazoo Sub-Area Plan, which was adopted by the Township Board in 2016, shows this parcel as neighborhood commercial with an emphasis on low traffic generating uses. The Township Board approved the rezoning of this parcel in February of 2022 from RL-14 to C-1 as the proposed use was consistent with the master plan and zoning ordinance.

STAFF RECOMMENDATION

Staff views the request as a decision that will hinge on the question of whether the parcel can be reasonably developed without a variance. The building envelope is 26 feet wide; would a building housing the uses allowed by zoning be commercially viable? Staff does not believe that such a building would be viable due to a restrictive layout imposed by setbacks.

If the ZBA agrees, staff recommends approval of the variance based on the attached site plan footprint.

If the ZBA disagrees, reasons should be specified that outline why the parcel could be reasonably developed within the existing buildable envelope.



FILE NO. 221010LM

8555 Kalamazoo Avenue SE • Caledonia MI 49316
Ph: 616 698-6640 • Fax: 616 698-2490
www.gainestownship.org

Zoning Board of Appeals Application

Project Address	8390 Eastern Ave.		
Owner Name	Luke + Nicole Malski		
Owner Address	Street Address	City, State, Zip	
	805 Cadillac Dr. SE	Grand Rapids MI 49506	
Parcel Number(s):	41-22-17-300-054	41-22-	
Description of Proposed Project/Use			

Applicant/Contact	Luke Malski		
Applicant/Contact Address	Street Address	City, State, Zip	
	805 Cadillac Dr. SE	Grand Rapids MI 49506	
Contact Info	Home / Office / Cell	E-Mail	
	626-222-6427	Luke-Malski@gmail.com	

"I" hereby certify to the correctness and knowledge of the information submitted and hereby agree to comply with the terms and requirements of all applicable Township ordinances. I also grant Township staff permission to enter onto the subject property in review of this application.

Signature	
Please complete the appropriate Worksheet as part of your application packet (see Staff for more information) for: Planning Commission, Zoning Board of Appeals requests, Land Divisions, Combinations or Lot Line Adjustments.	

Township Use Only

Current Zoning District:	RL-14	RL-10	R-3	R-4	C-1	C-2	O-S	I-1	I-2	PUD	A-R	A-B
One / Two Family Construction ☐	Zoning Board of Appeals ☐		Planning Commission ☐		Land Combination ☐							
Site Plan Review ☐	Rezoning / PUD Rezoning ☐		PUD Amendment ☐		Land Division ☐							
Subdivision / Site Condo Review ☐			Special Use Permit ☐		Lot Line Adjustment ☐							
Other:												
Approved ☐		Approved with Conditions ☐		Denied ☐		Withdrawn ☐						
Zoning Administrator:										Date:		

Site Plan

Please Show:

The property lines and their dimensions.

The location, dimensions, setbacks, minimum building openings and distance between all existing and proposed structures.

The gross floor area, listed by floor level, including basements.

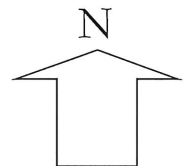
The location of all roads bordering or private drives/easements on the property.

The location of all bodies of water, easements, utility lines, sidewalks, drives, septic systems, drain, and other improvements.

Please Note: Setbacks must be measured from the edge of the street right of way (which is not the edge of the pavement) or from the edge of an access easement. Staff reserves the right to determine whether or not an application is complete.

Place site plan in this area (failure to do this may result in an incomplete application)

Gross Floor Area Calculations



Main Floor: _____ Second Floor: _____ Basement: _____ Total: _____ Garage: _____

Variance Request - Applicant Worksheet

File No. _____

Indicate your request type and the applicable Section(s) of the zoning ordinance.
Leave blank if uncertain.

- | | |
|--|------------------|
| ☒ Dimensional (Area) Variance | Section(s) _____ |
| ☐ Use Variance | Section(s) _____ |
| ☐ Interpretation / Appeal of Zoning Administrator * | Section(s) _____ |

* Attach a narrative of your comments regarding the interpretation/appeal.

Applicant Response to Variance Standards

*ZBA must find that all standards under A) are met for Dimensional (Area) Variance,
OR
all under B) for Use Variance approval*

1. A) Does the property display any unique circumstances that justify the need for the dimensional variance request, rather than the individual situation or desire of the applicant? (See definition of "unique circumstance.")

OR

B) Is the use variance necessary due to the unique condition, location, or situation of the property in relation to the permitted and special land uses categorized within the applicable Zoning District?

NO

2. A) Would approval of the variance request grant special privileges to the property owner requesting the dimensional variance that are not held by landowners in the same zoning district or vicinity?

OR

B) Does the unique nature of the property prevent the establishment of all other reasonable and appropriate permitted and special land uses categorized within the applicable Zoning District.

NO

3. A) Is the practical difficulty for which the dimensional variance is being requested a result from a self-created problem by the current landowner, such as personal desire, convenience, or preference, or was the practical difficulty created by a previous landowner? (See definition of "self-created problem.")

OR

B) Is the hardship for which the use variance is being requested a result from a self-created problem by the current landowner, such as personal desire, convenience, or preference, or was the practical difficulty created by a previous landowner? (See definition of "self-created problem.")

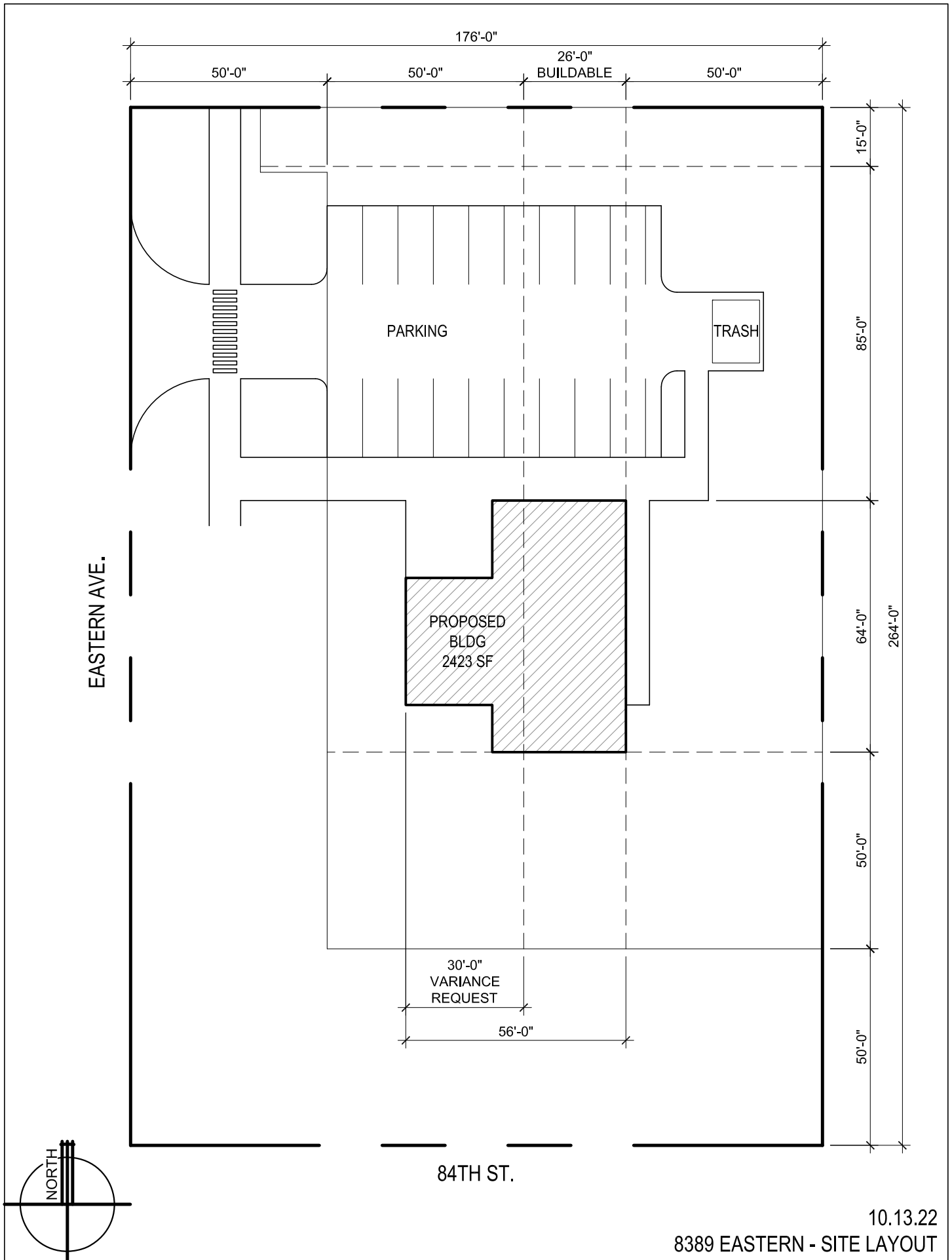
A) The width (E-W) of property with current set backs does not allow sufficient building size for proposed business consistent with conditional rezone.

4. For A) & B) If approved, will the dimensional or use variance cause detriment to the public welfare, injury to neighboring properties, or change the essential character of the neighborhood? If so, please explain.

No. It will improve pedestrian accessibility and neighborhood aesthetic

5. For A) & B) To the best of your knowledge, is the dimensional or use variance request consistent with the purpose and intent of the Master Plan, Gaines Charter Township Zoning Ordinance, and zoning district designation of the property?

Yes.



PARENT PARCEL DESCRIPTIONS

41-22-17-300-003

The following described premises located in the Township of Gaines, County of Kent, State of Michigan, to-wit:

THE SOUTH 264 FEET OF THE WEST 60 ACRES OF THE SOUTH 7/8, SW 1/4, EXCEPT THE WEST 176 FEET OF THE SOUTH 247.5 FEET, SECTION 17, T5N, R11W, GAINES TOWNSHIP, KENT COUNTY, MICHIGAN.

(Quit Claim Deed, dated September 19, 2007, as recorded in Instrument No. 20070927-0095150, Kent County Register of Deeds)

41-22-17-300-002

The following described premises situated in the Township of Gaines, County of Kent, State of Michigan, to wit:

Land situated in the Township of Gaines, County of Kent, State of Michigan, described as follows:

The South 247.5 feet of the West 176 feet of the Southwest 1/4, Section 17, Town 5 North, Range 11 West, Gaines Township, Kent County, Michigan

(Warranty Deed, dated August 13, 2010, as recorded in Instrument No. 20100820-0069604, Kent County Register of Deeds)

SECTION CORNERS AND WITNESSES

Southwest corner, Section 17, T5N, R11W, Kent County Monument C-07, LCRC #9227

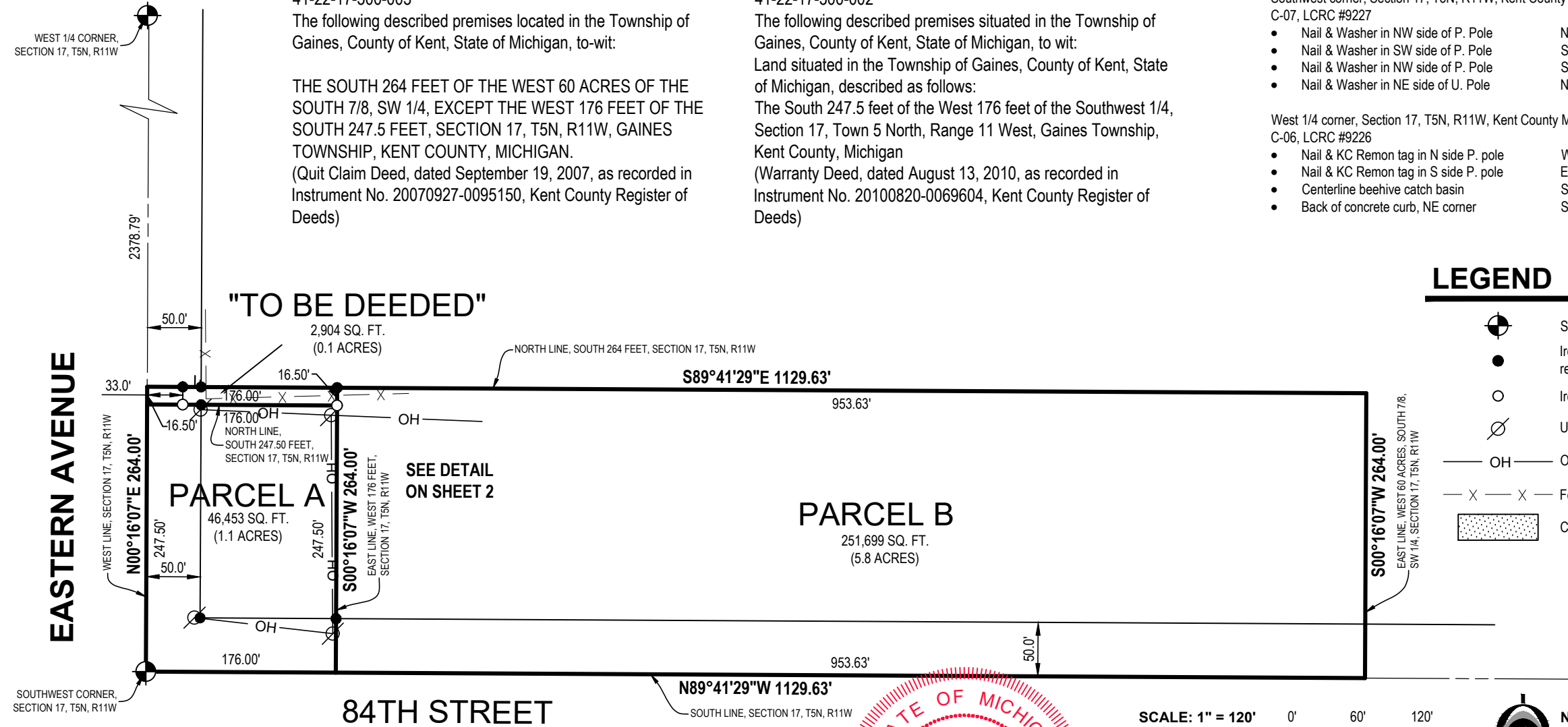
• Nail & Washer in NW side of P. Pole	N45°E	67.13'
• Nail & Washer in SW side of P. Pole	S45°E	62.88'
• Nail & Washer in NW side of P. Pole	S45°W	64.65'
• Nail & Washer in NE side of U. Pole	N45°W	63.81'

West 1/4 corner, Section 17, T5N, R11W, Kent County Monument C-06, LCRC #9226

• Nail & KC Remon tag in N side P. pole	West	107.98'
• Nail & KC Remon tag in S side P. pole	East	61.42'
• Centerline beehive catch basin	S65°W	46.51'
• Back of concrete curb, NE corner	S20°E	108.31'

LEGEND

- Section Corner
- Iron - Set 1/2" X 18" iron rebar with NED Cap
- Iron - Found as noted
- Utility Pole
- OH Overhead Utility
- Fence
- Concrete



This survey was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SURVEYOR'S CERTIFICATE:

I certify that the requirements for 1970 PA 132, MCL 54.213 have been met. The relative positional precision of the corners identified for this survey and shown on the map are within the limits accepted by the practice of professional surveying.

By: *Randal J. Vugteveen*
Randal J. Vugteveen Licensed Professional Surveyor No. 28429

SCALE: 1" = 120'

Luke Malski 8390 Eastern Avenue SE Byron Center, MI 49315		
8390 Eastern Avenue SE		
DRAWN BY: ED REV. BY: REV.:	DATE: 08.18.2020 REV. DATE:	PRJ #: 20400793DSC
1 OF 2		



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Grand Rapids, MI 49503
Ann Arbor, Chicago, Columbus,
Holland, Indianapolis, St. Louis

"TO BE DEEDED" DESCRIPTION

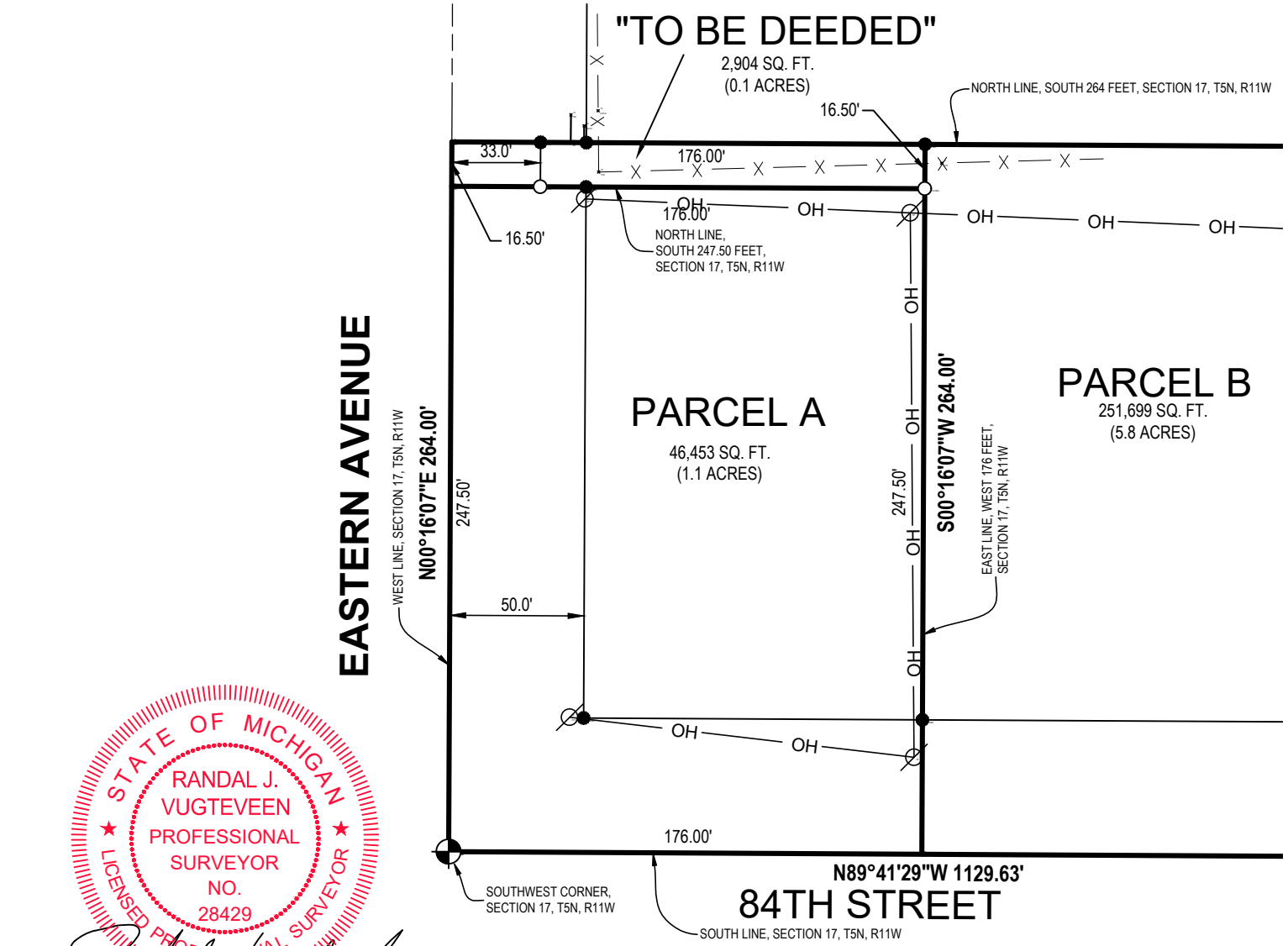
Part of the Southwest 1/4 of Section 17, Town 5 North, Range 11 West, Gaines Township, Kent County, Michigan, described as: Beginning at the Southwest corner of said Section; thence N00°16'07"E 247.50 feet along the West line of said Section to the Point of Beginning; thence N00°16'07"E 16.50 feet; thence S89°41'29"E 176.00 feet along the North line of the South 264 feet of Section; thence S00°16'07"W 16.50 feet along the East line of the West 176 feet of said Section; thence N89°41'29"W 176.00 feet along the North line of the South 247.50 feet of said Section to the Point of Beginning. Contains 0.1 acres. Subject to easements, restrictions and rights-of-way of record. Also subject to highway right-of-way for Eastern Avenue over the most Westerly 33 feet thereof.

PARCEL A DESCRIPTION

Part of the Southwest 1/4 of Section 17, Town 5 North, Range 11 West, Gaines Township, Kent County, Michigan, described as: Beginning at the Southwest corner of said Section; thence N00°16'07" E 264.00 feet along the West line of said Section; thence S89°41'32"E 176.00 feet along the North line of the South 264 feet of said Section; thence S00°16'07"W 264.00 feet along the East line of the West 176 feet of said Section; thence N89°43'53"W 176.00 feet along the South line of said Section to the Point of Beginning. Contains 1.1 acres. Subject to easements, restrictions and rights-of-way of record. Also subject to highway right-of-way for 84th/ Street over the most Southerly 50 feet thereof. Also subject to a varying width highway right-of-way for Eastern Avenue over the Westerly 33 or 50 feet thereof.

PARCEL B DESCRIPTION

Part of the Southwest 1/4 of Section 17, Town 5 North, Range 11 West, Gaines Township, Kent County, Michigan, described as: Beginning at the Southwest corner of said Section; thence S89°43'53"E 176.00 feet along the South line of said Section to the Point of Beginning; thence N00°16'07"E 264.00 feet along the East line of the West 176 feet of said Section; thence S89°41'29"E 953.63 feet along the North line of the South 264 feet of said Section; thence S00°16'07"W 264.00 feet along the East line of the West 60 acres of the South 7/8 of the Southwest 1/4 of said Section; thence N89°41'02"W 953.63 feet along the South line of said Section to the Point of Beginning. Contains 5.8 acres. Subject to easements, restrictions and rights-of-way of record. Also subject to highway right-of-way for 84th Street over the most Southerly 50 feet thereof.



By: *Randal J. Vugteveen*
Randal J. Vugteveen Licensed Professional Surveyor No. 28429

This survey was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SURVEYOR'S CERTIFICATE:
I certify that the requirements for 1970 PA 132, MCL 54.213 have been met. The relative positional precision of the corners identified for this survey and shown on the map are within the limits accepted by the practice of professional surveying.

SCALE: 1" = 60'

0' 30' 60'

NORTH

Luke Malski
8390 Eastern Avenue SE
Byron Center, MI 49315

8390 Eastern Avenue SE

DRAWN BY: ED	DATE: 08.18.2020	PRJ #: 20400793DSC
REV. BY:	REV. DATE:	
REV.:		
		2 OF 2

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