

## ADA TOWNSHIP ZONING BOARD OF APPEALS TUESDAY, FEBRUARY 7, 2023, 4:30 P.M. ADA TOWNSHIP OFFICE, ASSEMBLY ROOM 7330 THORNAPPLE RIVER DR SE, ADA, MI

#### **AGENDA**

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES OF January 3, 2023, REGULAR MEETING
- V. UNFINISHED BUSINESS none
- VI. NEW BUSINESS
  - 1. Request for setback Variances, 7000 Ada Drive SE, Parcel No. 41-15-33-426-015, Kelly Kuiper on behalf of Krause Family Trust

#### VII. CORRESPONDENCE

- 1. Zoning Board of Appeals Schedule
- VIII. PUBLIC COMMENT
- IX. ADJOURNMENT



# ADA TOWNSHIP ZONING BOARD OF APPEALS MINUTES OF THE TUESDAY, JANUARY 3, 2023 REGULAR MEETING

**Draft** 

A regular meeting of the Ada Township Zoning Board of Appeals was held on Tuesday, January 3, 2023, at 4:30 p.m. at the Ada Township Hall, 7330 Thornapple River Dr. SE, Ada, Michigan

#### I. CALL TO ORDER

The meeting was called to order by Chair McNamara at 4:30 p.m.

#### II. ROLL CALL

Members present: Burton, Courtade, McNamara, Nuttall, Smith

Members absent: 0

Staff Present: Bajdek, Buckley, Said

Others Present: 6

#### III. APPROVAL OF AGENDA

Moved by Nuttall, supported by Burton, to approve the agenda as presented. Motion carried.

#### IV. APPROVAL OF MINUTES OF NOVEMBER 1, 2022 REGULAR MEETING

Moved by Nuttall, supported by Burton, to approve the November 1, 2022, meeting minutes as presented. Motion carried.

#### V. UNFINISHED BUSINESS – none

#### VI. NEW BUSINESS

 Administrative Appeal regarding Staff determination of Sec. 78-808 of the Zoning Ordinance (regarding lots not abutting roads), Kelly Kuiper on behalf of Krause Family Trust

Jordan Bush, Attorney, on behalf of the Krause Family Trust, said the applicant has appealed to the Zoning Board of Appeals to determine the setback requirements for a proposed improvement on their property.

Mr. Bush stated the issue is the definition of 'abut' found in Sec. 78-808 of the Zoning Ordinance. He referred to the narrative and supporting documents submitted with the application from Kelly Kuiper. He also referred to aerial shots of the property at 7000 Ada Drive.

Bajdek stated for clarification purposes this is not a variance request and is not site specific. It is an Administrative Appeal regarding Staff's determination on how Staff interprets Sec. 78-808 of the Ordinance, lots not abutting roads.

Draft

Courtade arrived meeting at 4:34 p.m.

Mr. Bush said the principal issue is the interpretation of the proposed setbacks at 7000 Ada Drive. He explained that the Zoning Administrator's determination is the drive does not abut a private road right-of-way for its entire length and therefore must adhere to 40-foot setbacks on each property line. He read the Ordinance Sec.78-808, Lots not abutting roads.

Mr. Bush went into details of different sections of the Ordinance and how they relate to public and private roads/setbacks, went through some dictionary definitions of the word abut, and noted the current setbacks for the R-2 Zoning District (side yards, front yard and rear).

Bajdek summarized the staff report and reiterated for clarification purposes that it is not a variance request, it is a request for Administrative Appeal, not site specific.

Bajdek read Ordinance Section 78-808 on Lots not abutting roads, ""For any lot which does not abut a public road, or private road right-of-way, no building or structure shall be located less than 40 feet from all property lines." Bajdek explained that Staff has interpretated that as: "For any lot line which does not abut a public road, or private road right-of-way (for its entire length), no building or structure shall be located less than 40 feet from all property lines.

Bajdek concluded that staff interpreted Sec. 78-808 of the Zoning, due to the spirit and intent of it to ensure that all properties within the Township are properly separated from one another and have adequate yard space between them. Many properties within the Township have unique configurations that only minimally abut a public or private road right-of-way, including 'flag pole' type parcels. This language will affect all unique properties within the Township.

There was ZBA member discussion regarding clarification between an Administrative Appeal vs. variance request, how the interpretation of abut was determined, and shared concerns of some of the language in the Zoning Ordinance and possibly have it reviewed by the Planning Commission.

McNamara opened the public hearing at 4:49 p.m.

Jim Wierenga, Attorney, represents Whitmore Homes, spoke of the Sec. 78-802, subsection 2, and requested ZBA's review to help reconcile what seems to be an internal definition of abut, but not repeated in Sec. 78-808.

There was no other public comment and the public hearing was closed at 4:51 p.m.

There was discussion between ZBA Board, Planning Staff and Mr. Bush. McNamara asked Mr. Bush why they were handling as an Appeal and not a variance – Mr. Bush answered that you don't need to appeal something that does not exist in the Ordinance, since there was nowhere in the Ordinance that is says "for its entire length".

Said addressed the inquiry from Mr. Wierenga about Sec. 78-802 and explained that section refers to access and the access requirement and does not refer to specific setbacks.

There was additional ZBA Board discussion regarding the Zoning Ordinance and different examples of when the language would require Staff consulting for interpretation, the spirit and intent of the Ordinance, required criteria for a variance request, standard setback rules vs. the 40-foot setback rule, and whether to possibly table decision to discuss further.

Following extended ZBA discussion it was moved by Courtade, supported by Smith, to deny the request for Administrative Appeal based on what we have heard from Staff's consistent interpretation of this provision of the Ordinance. Motion carried by a roll call vote 5-0.

#### VII. CORRESPONDENCE

Said provided an update on the Master Plan in that the process is continuing to move forward through review and consideration and encouraged the ZBA to keep updated on its status. Said stated the Master Plan should be done in the spring and hopefully completed and adopted by this summer.

#### VIII. PUBLIC COMMENT - none

#### IX. ADJOURNMENT

Moved by Burton, supported by Nuttall, to adjourn meeting at 5:28 p.m. Motion carried.

Respectfully submitted,

Jacqueline Smith Ada Township Clerk

rs:eb

Date: 01-30-23



**TO:** Ada Township Zoning Board of Appeals

**FROM:** Department of Planning

**RE:** Agenda Item for February 7, 2023 Meeting

Request for variances for setbacks to all construction of a new home, 7000 Ada Drive SE, Parcel No. 41-15-33-426-015, Kelly Kuiper on behalf of property owner Krause Family Trust

#### Overview

The applicant proposes to construct a new home with attached garage, to replace an existing home on the subject property, which contains about 0.94 acres. The subject lot does not abut a public road or private road right-of-way. The new home is proposed to be located 11 feet from the east property line, and 39.33 feet from the west property line, whereas Section 78-808 of the Zoning Ordinance requires all buildings or structures on lots not abutting a public road or private right-of-way to be located a minimum of 40 feet from all property lines. The new home's placement would meet the applicable 40-foot setback requirements for the north and south property lines.

#### **Analysis**

The applicant appeared at the December Zoning Board of Appeals meeting to appeal the Staff application of Zoning Ordinance requirements regarding the 40-foot setback requirement. The Zoning Board denied the applicant's request, and therefore confirmed the administrative application of the 40-foot setback. As a result, the applicant now requests the zoning setback variances as noted above, to construct the new home.

The existing home on the property has setbacks of approximately 13.8 feet from the eastern lot line (proposed home 11-foot setback), and 12 feet from the western property line (proposed home 39.33-foot setback).

Per Section 78-107 of the Zoning Ordinance:

The board of zoning appeals may grant such variances only upon finding that all of the following conditions exist:

(1) Where it is found that, by reason of the exceptional narrowness, shallowness or shape of a specific parcel of property, or by reason of exceptional topographic conditions or

other extraordinary situation of the land or structure or of the use of property immediately adjoining the property in question, the literal enforcement of this chapter would involve practical difficulties or would cause undue hardship; provided that no variance shall be granted on a lot if the owner owns adjacent land which could, without undue hardship, be included as part of the lot in question avoiding the need for a variance.

- (2) Where it is found that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this chapter and the chapter can be varied in such a way that the spirit of this chapter shall be observed, public safety secured, and substantial justice done.
- (3) Where it is found that the condition or situation of the specific piece of property or the intended use of such property for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation in this chapter for such condition or situation.

#### **Conclusion & Recommendation**

The request does not meet the exact letter of all three of the Standards in Sec. 78-107 including no practical difficulties nor unnecessary hardship in carrying out Zoning Ordinance requirements. At the same time, the details of this request may merit further consideration, especially given the existing home's setbacks. As well, while the property to the east (7008) has accessory uses/structure, these are at least 65 feet away from the proposed home, and the existing home at 7008 is located over 300 feet away to the north of the proposed (and existing) home on the subject property. As such, if the Zoning Board of Appeals determines that the above standards have been satisfied, Staff has no objections to approval of the requested variance.

December 27, 2022

Mr. Jason McNamara Zoning Board of Appeals Chair Ada Township Zoning Board of Appeals 7330 Thornapple River Drive PO Box 370 Ada, MI 49301

RE: Dimensional variance request

7000 Ada Drive SE, Ada, Michigan 49301 (PPN: 41-15-33-426-015)

Dear Mr. McNamara and Members:

Included with this cover letter, please find the following documents to support a request for dimensional variances related to the 40 foot setback requirement of Section 78-808 of the Ada Township Zoning Ordinance.

- 1. Zoning Board of Appeals Application
- 2. Existing Conditions Survey
- 3. Proposed Site Plan
- 4. Narrative

We appreciate your consideration of this matter. Should you have any questions, please do not hesitate to contact me at (616) 485-5321 or kmkuiper@outlook.com.

Sincerely,

Kelly Kuiper

Agent of the Krause Family Trust



#### **ZONING BOARD OF APPEALS APPLICATION**

(ZONING VARIANCE OR ADMINISTRATIVE APPEAL)

1. Applicant Information:
Name: Kelly Kuiper
Address: 3471 146th Avenue, Zeeland, MI 49464
Phone Number: (616) 485-5321 Email: kmkuiper@outlook.com
2. OWNER (if different than above):
Name: Krause Family Trust
Address: 7000 Ada Dr SE, Ada, MI 49301
Phone Number: Email:
3. DESCRIPTION OF VARIANCE OR APPEAL REQUEST:  A variance from Sec. 78-808 that requires 40 foot setbacks from all
property lines.
4. PERMANENT PARCEL NUMBER: 4 1 - 1 5 - 3 3 - 4 2 6 - 0 1 5
5. PROPERTY ADDRESS: 7000 Ada Dr SE, Ada, MI 49301 6. ZONING DISTRICT: R-2
7. AΠACH:
A. AN ACCURATE SITE PLAN OF THE PROPERTY, DRAWN TO A STANDARD ENGINEERING SCALE SHOWING:

- Property boundaries.
- 2) Existing and proposed buildings or structures.
- 3) Distance from lot lines of each existing and proposed building or structure.
- 4) Unusual physical features of the site, building, or structure.
- 5) Abutting streets.
- B. A NARRATIVE STATEMENT WHICH ADDRESSES COMPLIANCE OF THE VARIANCE REQUEST WITH THE STANDARDS FOR APPROVAL CONTAINED IN THE ZONING ORDINANCE AND LISTED ON THE REVERSE SIDE OF THIS APPLICATION FORM.
  - \* APPLICATIONS SUBMITTED WITHOUT A NARRATIVE STATEMENT WILL NOT BE ACCEPTED \*

I understand that if the requested variance or appeal is granted, I am not relieved from complying with all other applicable requirements of the Ada Township Zoning Ordinance or any other Township Ordinances. By signing, the applicant and owner hereby grant permission to Ada Township officials and employees to enter upon the subject property for purposes of review and evaluation of this request.

APPLICANT'S SIGNATURE:	KelleKuper		_DATE: .	12/5/22
	Tony Krause	dotloop verified 12/22/22 2:30 PM EST EDEA-X4PJ-IVPW-FFSK	_ DATE:	
(If different than applicant)				

### 9. PLEASE NOTE THE FOLLOWING BOAKD OF APPEALS PROCEDURES:

- a) The application form, application fee, site plan and narrative statement must be submitted at least one (1) month prior to the regularly scheduled Zoning Board of Appeals meeting. Regular meetings of the Zoning Board of Appeals are generally held on the first (1st) Tuesday of each month at 4:30 p.m.
- b) Notices of the hearing will be given at least 15 days prior to the hearing to the applicant and to all property owners and occupants within 300 ft. of the property subject to appeal.
- c) Following the hearing, the Board of Appeals will make its decision and may reverse or affirm, in whole or part, or may modify any order, requirement, decision or determination.
- d) The variance or exception expires one (1) year after it is granted if no action is taken to affect the variance within the period. The Zoning Board of Appeals may grant up to an additional one (1) year extension of this time limit.
- e) A zoning variance does not excuse the applicant from obtaining a building permit. A building permit must be secured before construction begins.

#### **CRITERIA FOR APPROVAL**

The Zoning Board of Appeals treats each variance or appeal request individually and approves or denies each request on its own merits. In order for the Board of Appeals to grant a variance or appeal the applicant must satisfy all of the following findings which are contained in Section 78-107 of the Ada Township Zoning Ordinance:

That where there are practical difficulties or unnecessary hardship in carrying out the strict letter of this Ordinance, the Board of Zoning Appeals shall have the power to vary or modify any of the provisions hereof so that the spirit of the Ordinance shall be observed, public safety promoted, and substantial justice done. The Board of Zoning Appeals may grant such variances only upon finding that all of the following conditions exist:

where it is found that, by reason of the exceptional narrowness, shallowness or shape of a specific parcel of property, or by reason of exceptional topographic conditions or other extraordinary situation of the land or structure or of the use of property immediately adjoining the property in question, the literal enforcement of this Ordinance would involve practical difficulties or would cause undue hardship; provided that no variance shall be granted on a lot if the owner owns adjacent land which could, without undue hardship, be included as part of the lot in question avoiding the need for a variance.

- dottoop signature verification: dtlp\_us/d4NH-fcYc-kTeE:e it is found that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this Ordinance and the ordinance can be varied in such a way that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
  - where it is found that the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation in this Ordinance for such condition or situation.

Please note that the verbiage of the above stated conditions is generally abbreviated due to redundancy when reviewed by Staff and the Board.

APPLICATION FEE: RESIDENTIAL USE: \$100.00 NON-RESIDENTIAL USE: \$300.00

TO BE COMPLETED BY THE ADA TOWNSHIP PLANNING DEPARTMENT

Application received: 1-4-2023 by: D

Application fee of \$ 10000 received: 10000 by: Check No: 50007

(date)

Still Water Capital

Receipt No.342469

Updated 05/30/19

#### DIMENSIONAL VARIANCE NARRATIVE

Sec. 78-808

Dear Mr. McNamara and Members:

The applicant and property owner together seek dimensional variances from the setback requirement of Sec. 78-808 to demolish and build a new single-family residence on the property. The interpretation of Sec. 78-808 by staff that if a private road right-of-way does not abut a property for its entire length, a building or structure must adhere to a 40-foot setback requirement from all property lines. Therefore, the specific dimensional variance requests are as follows:

#### East property line:

The applicant and property owner request a setback of 11 feet, a <u>dimensional variance of 29 feet</u> from the requirement of 40 feet.

#### West property line:

The applicant and property owner request a setback of 39.33 feet (39 feet, 4 inches), <u>a dimensional</u> variance .66 feet (8 inches) from the requirement of 40 feet.

Please take note of the existing and proposed setbacks:

	East Property Line	West Property Line
Current Home	13.8 ft.	12.0 ft.
Proposed Home	11.0 ft.	39.33 ft.

Therefore, while the proposed east property line setback is proposed to decrease further to 11.0 feet from 13.8 feet, the side setback requirement of the R-2 district of 10 feet would still be met. In addition, the west property line setback is actually proposed to significantly increase, coming close to the desired conformance with Sec. 78-808.

To support the variance request, please find responses to the conditions of Sec. 78-107.

a) Where it is found that, by reason of the exceptional narrowness, shallowness or shape of a specific parcel of property, or by reason of exceptional topographic conditions <u>or other extraordinary situation of the land or structure or of the use of the property immediately adjoining the property in question, the literal enforcement of this Ordinance would involve practical difficulties or would cause undue hardship; provided that no variance shall be granted on a lot if the owner owns adjacent land which could, without undue hardship, be included as part of the lot in question avoiding the need for a variance.</u>

The property in question, 7000 Ada Drive NE, is exceptional first and foremost in its location along the Thornapple River. Despite having portions of both the Grand River and the Thornapple River within Ada Township, residential riverfront property is actually quite unique. In addition, this property and request is unique given the history of the property and its impact on the lot configuration that continues to exist today. The existing home on the parcel was constructed in 1978, and the

unnamed private road predates the private road ordinance, Article XXVIII. The historical zoning of the parcel is unknown; however, the parcel meets current R-2 minimum lot width and lot area requirements (for which it is zoned). In addition, the current home maintains traditional R-2 setbacks and considers the northern property line to be the "front" yard. Therefore, interpretations about the yards and the required setbacks at 7000 Ada Drive SE have been documented for over 40 years. Literal enforcement of the ordinance would involve practical difficulties and undue hardship that not only has this property never experienced in its 44 years of existence, but no other properties immediately adjacent (or in other areas of the Township) are required to adhere to. If Sec. 78-808, of Article XXVIII, was in effect at the time of the private road or lot's creation, it may have been configured differently or the private road may have been extended for "its entire length."

#### Granting of the variance would allow:

- 1. The property to be utilized with the same setback requirements it has enjoyed for 44 years without harm to adjacent properties and allow the house's rear face to be situated to use and enjoy its most unique feature, the Thornapple River;
- 2. The property to be utilized in the same manner as its immediate neighbors; and
- 3. The property to be utilized in the same manner as other similarly zoned, configured, and effectively utilized parcels, including:
  - o 975 Paradise Lake Drive SE
  - o 5539 Rustic Meadow Dr NE
  - o 506 Pine Land Dr SE
  - 5537 Rust Meadow Dr NE
  - o 6468 Bridlewood Ct NE
  - o 2500 Fairway Winds Ct NE
  - o 1881 Winterbrook Dr NE
  - o 1935 Shady Dr NE
  - o 118 Deer Run Dr NE
- b) Where it is found that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this Ordinance and the ordinance can be varied in such a way that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.

There is unnecessary hardship in carrying out the strict letter of this Ordinance. As mentioned previously, the existing home on the parcel was constructed in 1978, and the unnamed private road predates the private road ordinance, Article XXVIII. The current home maintains traditional setbacks and considers the northern property line to be the "front" yard. Therefore, interpretations about the yards and the required setbacks have been documented for over 40 years. *It would be an unnecessary hardship to enforce Sec. 78-808 in 2022 since this property was configured prior to this strict requirement.* If Sec. 78-808 was in effect at the time of the private road or lot's creation, it may have been configured differently or the private road may have been extended for "its entire length." *Granting the variance would allow the property to be utilized with the same setback requirements it has enjoyed for 44 years without harm to adjacent properties and allow the house's rear face to be situated to use and enjoy its most unique feature, the Thornapple River, in the same* 

manner as its immediate neighbors. In addition, granting the variance would allow substantial justice to be maintained for this lot since there are documented instances around the Township where Sec. 78-808 was not enforced, including:

#### 975 Paradise Lake Drive SE

- Home built in 2015
- Exists at the end of a private road/shared driveway that does not extend "its entire length"
- East property line setback approximately 23 feet

#### 5539 Rustic Meadow Dr NE

- Home built in 2016
- Existing at the end of a private road/shared driveway that does not extend "its entire length"
- North property line setback approximately 25 feet

#### 506 Pine Land Dr SE

- Home built in 2013
- Existing at the end of the shared driveway extending beyond Pine Land Dr SE that does not extend "its entire length"
- East property line setback approximately 30 feet

Other addresses with similar sub-40-foot setbacks, but built prior to 2013:

5537 Rust Meadow Dr NE

6468 Bridlewood Ct NE

2500 Fairway Winds Ct NE

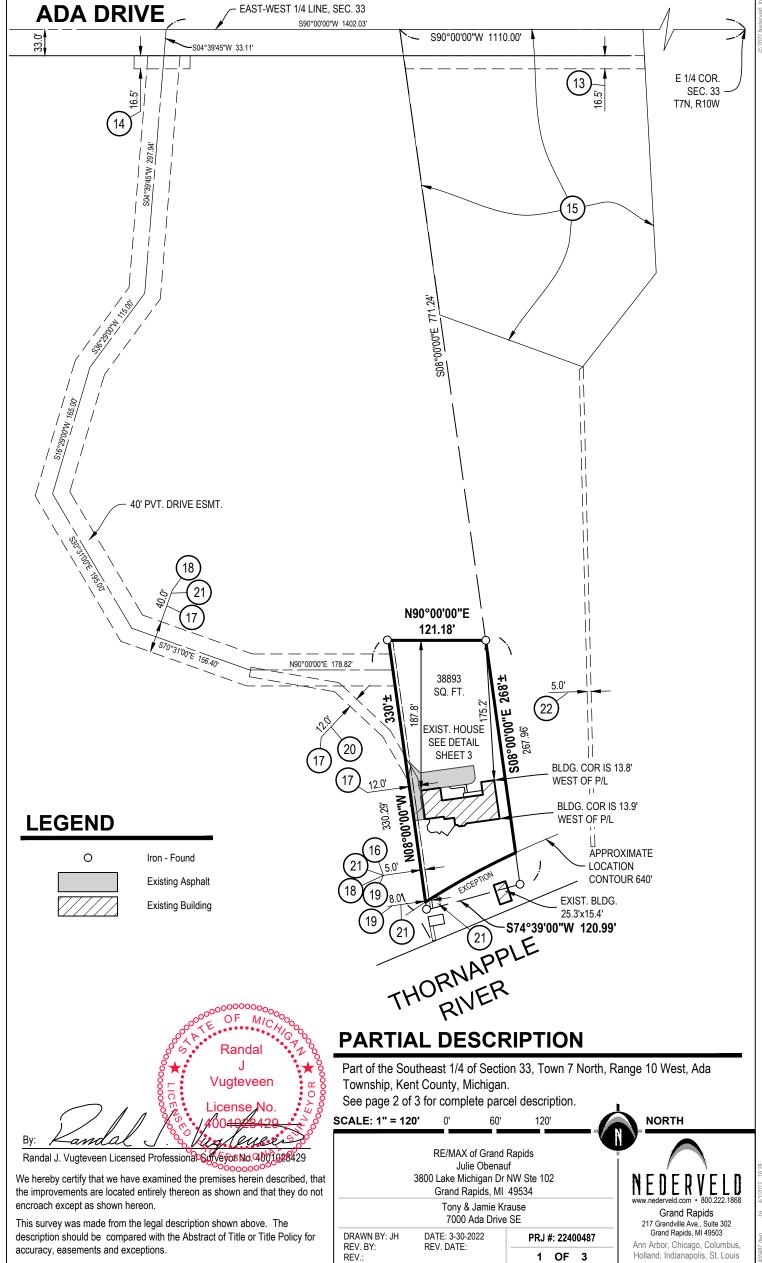
1881 Winterbrook Dr NE

1935 Shady Dr NE

118 Deer Run Dr NE

c) Where it is found that the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation in this Ordinance for such a condition or situation.

The conditions of this specific piece of property, given the existing home on the parcel was constructed in 1978, and the unnamed private road predates the private road ordinance (Article XXVIII), are not conditions which would be (re)created today. Given the requirements of Sec. 78-808, a new lot or parcel served by a private road would better meet the requirements of the current private road ordinance and not require (or would not be able to obtain) variances. It is for conditions such as this that the ordinance can and should be requested to be varied.







Construction Documents - Pricing/Permit

NORTH  $\bigcirc$ 

616.443.9887

clarkstudiollc@gmail.com

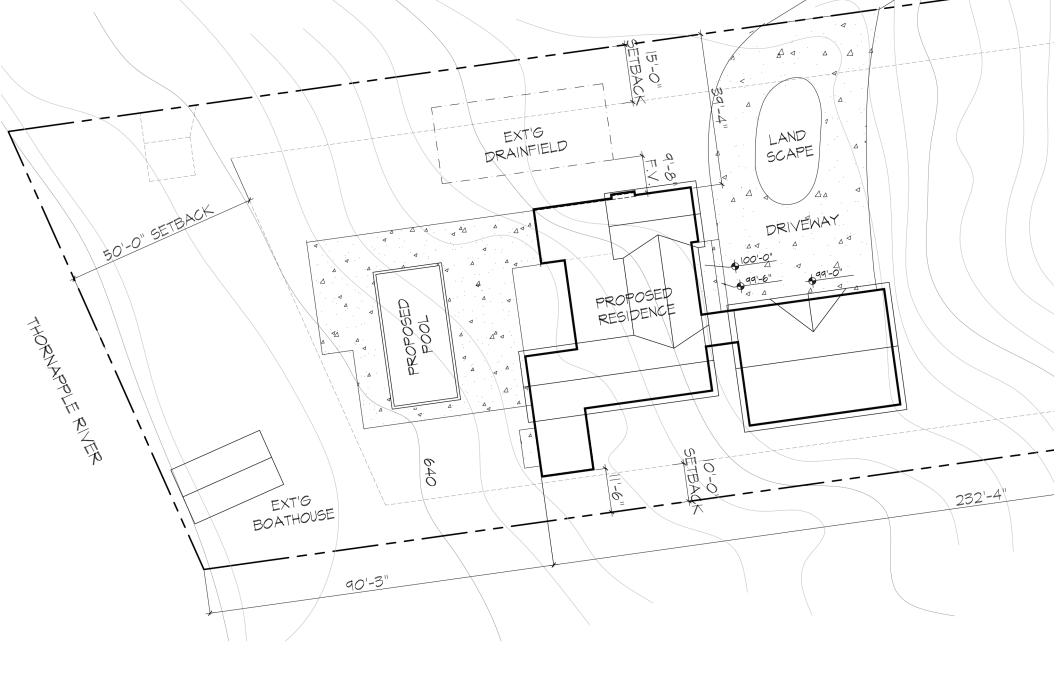
SCALE: NTS

**SITE PLAN** 

16 September 2022

WCH: Krause Residence 7000 Ada Dr SE Ada, MI 49301

C1





616.443.9887 clarkstudiollc@gmail.com

# Construction Documents - Pricing/Permit SCALE: NORTH SCALE: 50'

SITE PLAN

7 October 2022

WCH: Kra 7000 Ada Dr SE A

# **PROPOSED**

# MEETING DATES FOR FISCAL YEAR 2023-2024

**ZBA** - 4:30pm, 1st Tuesday of the Month
\*2nd Tuesday due to spring break, holiday, &/or elections

Meeting Dates - 2023	Agenda Deadline
April 11 *	March 14
May 2	April 4
June 6	May 9
July 11 *	June 13
August 1	July 3
September 5	August 8
October 3	September 5
November 7	October 10
December 5	November 7
Meeting Dates - 2024	
January 2	December 5
February 6	January 9
March 5	February 6