

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
Agenda for Regular Meeting on Thursday, September 26, 2019
7:00 p.m. at the Whitewater Township Hall
5777 Vinton Road, Williamsburg, MI 49690
Phone 231-267-5141/Fax 231-267-9020

1. Call to Order/Pledge of Allegiance
3. Roll Call
4. Set/Adjust Meeting Agenda
5. Declaration of Conflict of Interest
6. Approval of Minutes of August 15, 2019
7. Scheduled Public Hearing: Appeal #A-19-06, Ardella and Donald Benak, 8190 Bunker Hill Road, Williamsburg, MI 49690, are requesting a dimensional variance. Parcels are in the RC Zoning District, #s28-13-016-004-01, 28-13-016-004-03, and 28-13-016-004-10.
 - a. Open Public Hearing
 - b. Zoning Administrator Presentation
 - c. Petitioner Presentation
 - d. Report on Site Visit
 - e. Correspondence
 - f. Public Speaking in Favor of Appeal
 - g. Public Speaking in Opposition to Appeal
 - h. Anyone Wishing to Speak on the Appeal Who Has Not Already Commented
 - i. Close Public Hearing
 - j. Discussion of Appeal
 - k. Findings of Fact
 - l. Conclusion
 - m. Reasons for Conclusion
 - n. Decision
 - o. Motion
8. Other Matters to be Reviewed by the Zoning Board of Appeals
 - a. Correspondence Received
9. Report of Planning Commission Representative
10. Report of Township Board Representative
11. Report of Zoning Administrator
12. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141 or the TDD at 800-649-3777.



WHITEWATER TOWNSHIP

5777 Vinton Road • P.O. Box 159 • Williamsburg, MI 49690 (231)
267-5141 • FAX (231) 267-9020



September 19, 2019

Dear ZBA members (and alternates) –

Enclosed, you will find the packet for your September 26, 2019 meeting.

1. Zoning Board of Appeals Application
2. Staff Report
3. 300' Notice, mailing list, and publication
4. Applicant's narrative dated September 5, 2019
5. Applicant's exhibit A, B, and C and miscellaneous parcel maps.
6. DRAFT minutes of August 15, 2019

Respectfully,

Robert (Bob) Hall

WHITEWATER TOWNSHIP



5777 Vinton Road, PO Box 159 • Williamsburg, MI 49690 • PH (231) 267-5141 Fax (231) 267-9020

Case No. A-19-06 Date Rec. 07/09/2019 Fee: \$250

Property Information

Date Filed: 9/9/19
Tax ID #: 016-004-10 016-004-03 Subdivision: _____ Lot #: _____ Zoning District: RC
Flood Plain: _____ Property Address: 8190 Bunker Hill Rd Year Property was Acquired: 1983
Size of Lot: Front _____ Rear: _____ Side 1: _____ Side 2: _____
Present Use of Property: Residential Vacant Past Variances on Property in Question (Y/N) (N)
If So State Case No. and Resolution of Appeal: _____

Request Information

Request: ☒ Dimensional Variance ☐ Use Variance ☐ Ordinance Interpretation ☐ Appeal Zoning Administrator Decision

Description of Request: Reconfiguration of 3 vacant properties
to make all more conforable to make accessable
and buildable.

Square Feet of Existing Structure to be demolished (if any): 0

New Structure (Y/N) If So, Size of Proposed Structure (Square Feet): 1400 sq to be built on newly
created lot.

New Addition to Existing Structure (Y/N) If So,

Size of Addition: _____ Size of Existing Structure _____ Size of Existing Structure + Addition: _____

Ordinance in Question (if any): Artical 11, 5 acre and 300' width
Section 11.10a

Owner/Applicant Information

Owner Name: Ardella & Donald Benak - Ardella M. Benak
Mailing Address: 8190 Bunker Hill Rd City: Williamsburg State: MI Zip: 49690
Phone: (231) 409-4578 Fax: () - E-Mail: ardellwb22@gmail.com
Applicant (if different from owner): _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
Phone: () - Fax: () - E-Mail: _____

ck# 991
Ret # 022264



WHITEWATER TOWNSHIP

5777 Vinton Road • P.O. Box 159 • Williamsburg, MI 49690 (231)
267-5141 • FAX (231) 267-9020

September 19, 2019

To: Whitewater Township Zoning Board of Appeals
From: Robert (Bob) Hall – Zoning Administrator

Re: Staff Report for September 26, 2019

Parcel #28-13-016-004-01

Parcel #28-13-016-004-03

Parcel #28-13-016-004-10

Applicant: Benak, Ardella and Donald
8190 Bunker Hill Road
Williamsburg, Michigan 49690

231-409-4578

ardellab22@gmail.com

Zoned: RC – Recreational

This case arises from an initial conversation with the applicant regarding the above-captioned properties and the ability to divide and /or make boundary line adjustments under the Michigan Land Division Act, Act 288 of 1967, and under the Whitewater Township Land Division Ordinance, Ordinance No. 26.

In essence, there are several parcels that are the subject of this request that are either divided by a road right of way or are inaccessible along (Bunker Hill Road).¹ The RC – Recreational zoning district requires a minimum lot size of 5 acres in area unbroken by any public road, street, or thoroughfare.²

¹ The Land Division Act requires that newly created parcels be accessible

² Whitewater Township Zoning Ordinance, Article XI, Section 11.10.A

It was determined by consensus between the zoning administrator and the applicant that submission of a Land Division Application under these circumstances would most likely result in an administrative denial and would be a moot point.

The Whitewater Township Land Division Ordinance, Ordinance No. 26, Section VIII sets forth a variance procedure for land divisions as well as the standards to be reviewed. The review standards are substantially different from the traditional dimensional variance standards enumerated in Article XVIII, Section 18.70.B

Although not entirely related, and certainly without identical circumstances, the Whitewater Township Zoning Board of Appeals has, in the past, granted a variance to the Whitewater Township Land Division Ordinance, Ordinance No. 26.³

If the Zoning Board of Appeals chooses to make findings and conclusions in support of a decision to grant the requested variance, staff recommends that the following documentation be provided to Whitewater Township:

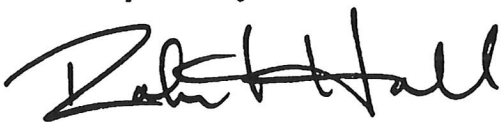
- A recent survey clearly defining the 'newly' created parcels with the appropriate legal descriptions demonstrating any applicable zoning regulations (i.e.: setbacks) are fully complied with.

If the Zoning Board of Appeals chooses to make findings and conclusions in support of a decision to grant the requested variance, staff recommends that the ZBA include an order that would effectively deem any new parcels to be 'buildable' under the Whitewater Township zoning ordinance regardless of the minimum lot size in effect at the time an application is made for a Land Use Permit.

Staff believes that an approval of the request will result in greater compliance with both the Land Division Ordinance as well as the Zoning Ordinance for the following reasons:

- A land-locked (non-accessible) parcel will become more compliant by being combined with 'part' of another parcel and have road frontage.
- An existing parcel that is broken by a road right-of-way will have a small portion combined with the remaining 'part' of another parcel, thus eliminating the parcel broken by the right-of-way.
- The resulting reconfiguration of boundary lines has the potential to create two (2) more separate and distinct buildable parcels.

Respectfully,



Robert (Bob) Hall

³ See: Zoning Board of Appeals minutes of November 10, 2010 whereby a variance was granted from the 4:1 depth to width ratio to allow for 17:1 depth to width ratio



*Whitewater Township Zoning
5777 Vinton Road - P.O. Box 159
Williamsburg, Michigan 49690*

231-267-5141

September 9, 2019

To whom it may concern,

In accordance with the Michigan Zoning Enabling Act, PA 110 of 2006, Whitewater Township is required to provide notice to all owners of real property within 300' of a property subject to a public hearing. You are receiving this notice as the owner of record subject to this notice (see below). No action is required on your part. All meetings of the Whitewater Township Zoning Board of Appeals are open to the public.

Respectfully,

Robert (Bob) Hall
Zoning Administrator

**LEGAL NOTICE
WHITEWATER TOWNSHIP
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE that the Whitewater Township Zoning Board of Appeals will hear a request by Donald and Ardella Benak, property address 8190 Bunker Hill Rd., Williamsburg, MI, Tax ID 28-13-016-004-01 & 28-13-016-004-10. Applicants wish to re-configure 2 (two) non-conforming lots of record and combine with a portion of an adjacent lot to bring the lots more into conformity with current Zoning Ordinance Standards. Tax ID# 28-13-016-004-10 will be reconfigured from 2.5 acres to 3.5 acres and Tax ID# 28-13-016-004-01 will be reconfigured from .80 acres to 1.5 acres. The RC District requires a minimum of 5 acres for lot size. The request requires a variance from Article XII, Section 12.11, schedule of regulations which requires a minimum lot size of 5 acres. This hearing will be held on September 26, 2019 at 7:00 PM at the Whitewater Township Hall, 5777 Vinton Road, PO Box 159, Williamsburg, MI 49690. A full copy of the application is available at the Township to view.

Interested parties may comment in person at the meeting or comment in writing by 5 pm on the day of the hearing at the address above or emailed to clerk@whitewatertownship.org.

Cheryl A. Goss, Whitewater Township Clerk

28-13-016-004-03
Linda Denham
8033 Bunker Hill Rd
Williamsburg, MI 49690

28-13-016-005-30
Donald Erickson
8130 Erickson Rd.
Williamsburg, MI 49690

28-13-016-004-20
28-13-016-004-00
Edward & Lodena Benak
8125 Bunker Hill Rd
Williamsburg, MI 49690

28-13-016-001-00
State of Michigan
PO Box 30448
Lansing, MI 48909

28-13-016-004-10 28-13-016-004-01
28-13-016-004-02
Donald & Ardella Benak
8190 Bunker Hill Rd
Williamsburg, MI 49690

T. C. RECORD-EAGLE, INC.
120 WEST FRONT STREET
TRAVERSE CITY MI 49684
(231) 946-2000
Fax (231) 946-8273

ORDER CONFIRMATION

Salesperson: DENISE LINGERFELT

Printed at 09/09/19 10:43 by dling

Acct #: 2055

Ad #: 530260

Status: New WHOLD

WHITEWATER TOWNSHIP CLERK
CHERYL GOSS
P.O. BOX 159
WILLIAMSBURG MI 49690

Start: 09/11/2019 Stop: 09/11/2019
Times Ord: 1 Times Run: ***
STDAD 3.00 X 2.96 Words: 210
Total STDAD 8.88
Class: 147 LEGALS
Rate: LEGAL Cost: 109.05
Affidavits: 1

Contact:

Phone: (231) 267-5141

Fax#:

Email: clerk@whitewatertownship.org

Agency:

Ad Descrpt: LEGAL NOTICE WHITEWATER T
Given by: EMAIL CHERYL GOSS

P.O. #:

Created: dling 09/09/19 10:39

Last Changed: dling 09/09/19 10:43

PUB	ZONE	EDT	TP	START	INS	STOP	SMTWTFS
RE	A	97	W	Wed 09/11/19	1	Wed 09/11/19	SMTWTFS
IN	AIN	97	W	Wed 09/11/19	1	Wed 09/11/19	SMTWTFS

AUTHORIZATION

Thank you for advertising in the Record-Eagle, our related publications and online properties. If you are advertising with the Record-Eagle classifieds, your ad will begin running on the start date noted above.

Please be sure to check your ad on the first day it appears. Although we are happy to make corrections at any time, the Record-Eagle is only responsible for the first day's incorrect insertions. Also, we reserve the right to edit or reclassify your ad to better serve buyers and sellers.

No refunds or rebates will be issued if you cancel your ad prior to the stop date.

We appreciate your business.

(CONTINUED ON NEXT PAGE)

T. C. RECORD-EAGLE, INC.
120 WEST FRONT STREET
TRAVERSE CITY MI 49684
(231) 946-2000
Fax (231) 946-8273

ORDER CONFIRMATION (CONTINUED)

Salesperson: DENISE LINGERFELT

Printed at 09/09/19 10:43 by dling

Acct #: 2055

Ad #: 530260

Status: New WHOLD WHOI

**LEGAL NOTICE
WHITEWATER TOWNSHIP
NOTICE OF PUBLIC HEARING**

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Interested parties may comment in person at the meeting or comment in writing by 5 pm on the day of the hearing at the address above or emailed to clerk@whitewatertownship.org.

Cheryl A. Goss, Whitewater Township Clerk

September 11, 2019-1T

530260

September 5, 2019

Whitewater Township Zoning Board of Appeals
5777 Vinton Road, PO Box 159
Williamsburg, MI 49690

RE: ZBA Application for Don and Della Benak, Tax ID #'s: 13-016-004-03; 13-016-004-10; 13-016-004-01
8190 Bunker Hill Rd, Williamsburg, MI 49690

Dear Zoning Board of Appeals Members:

Please accept this letter as the written portion of our request to reconfigure the parcels that will require a variance from Section 12.11 – Schedule of Regulations.

History:

The parcels in question were created from the original Benak 40-acre parcel. As the actual right of way for Bunker Hill Road was formally established, the 40 acres found part on one side of the road and the majority on the other. We are unsure of all the reasons why the parcel exists in its present form today. See Exhibit's A & B.

When we began construction on our home in 1983, the minimum lot size was 1 acre. Sometime in 1993, this changed, very quietly and without fanfare. The amendment was made as a text amendment that required only a notice published in the newspaper of record, whereas a rezoning would have required that all affected property owners be contacted. Further review of the minutes of this decision only identifies that the schedule of regulations was to be modified – not what, or how.

It wasn't until 2007 that we realized that this change had taken place. Our plans to further share the family property with our children was brought to a standstill. Our next step was to actively participate in the update of the Township's Master Plan which began in 2010.

Upon adoption 2015, the Plan did not provide much direction on the RC district other than to distinguish that there were 2 distinct members of the RC District: Public Recreation/Conservation Districts and Low-Density Residential Districts. No minimum lot size was identified. This didn't give us much support to ask for a rezoning of privately-owned RC property.

Request

We respectfully request to reconfigure portions of the original parent parcel to better reflect use of the land while making one non-conforming lot of record more conforming. Our proposal includes Linda Denham's parcel 28-13-016-004-03, and our two parcels, 28-13-016-004-10 & 01.

Linda's parcel is currently 14.9 acres and includes about 1.3 acres of land across Bunker Hill and adjacent to our home. Her parcel meets all requirements for the zoning district. She proposes to deed us the triangle. If the reconfiguration is approved, Linda's lot will still be in conformance with all zoning requirements and the width to depth ratio.

28-13-016-004-01 is currently vacant, .80 acre in size, and while also a non-conforming lot of record, it currently has no formal road frontage. The request would increase the lot size to 1.5 acres in size, have improved road frontage, meet the width to depth ratio. The lot will consist of the 138' x 553'+/- from the easternmost property line.

Our home currently sits on 28-13-016-004-10 and consists of approximately 2.5 acres. It is considered a non-conforming legal lot of record. Under our proposal, this lot will consist of 3.5 acres. And encompass a portion of the existing parcel -01 and the "foot of the L" from parcel -03 and all remaining property.

Variances Requested:

A variance from Section 12.11 of the Whitewater Township Zoning Ordinance to allow for the re-configuration of two legal non-conforming lots of record such that the resulting lots will both become MORE conforming but are not able to meet the 5-acre minimum lot size. Parcel B will have a lot size of 3.5 acres +/- and Parcel C will have a lot size of 1.5+/- . See Exhibit C

According to Article 18.70 (B):

Non-Use Variance. The Zoning Board of Appeals may grant a non-use variance only upon finding that practical difficulty exists. A non-use variance is variance from any standard or requirement of the Ordinance, such as, but not limited to, a deviation from density, bulk, setback, parking landscaping and sign standard requirements. A finding if practical difficulty shall require demonstration by the applicant of the following:

1. Granting the variance will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance. **The Master Plan and the Zoning Ordinance encourage respect of property rights, promoting orderly development and promoting and protecting property values. This variance allows for this.**
2. Granting the variance shall not permit the establishment within a zoning district of any use, which is not permitted by right within the district. **The use of the land is currently residential and will continue to be used for residential purposes.**
3. Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township. **Granting the variance will be in harmony with the appropriate and orderly development of the surround area and will allow all properties within vicinity the opportunity to continue their use as historically has been enjoyed.**
4. There are practical difficulties on the site which unreasonably prevent the owner from using the property for a permitted purpose without presenting an excessive burden and the practical difficulty not resulting from any act of the applicant. **The current parcel layout**

could be used for their intended purposes – residential. However, as parcel 28-13-016-004-01 will require a variance to develop with no road frontage. The ability to reconfigure the lots to allow them to be more conforming seems to be the course of action.

5. The variance will do substantial justice to the applicant, but the decision shall not bestow the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity which may endanger the public health, safety or welfare. If granted, the variance will allow for continuance of the rights currently enjoyed – two non-conforming lots – but that have both become less conforming. There will be no impacts that may endanger public health, safety or welfare.

6. The requested variance is the minimum necessary to permit reasonable use of the land. If granted the variance will allow the properties to be more conforming to current township standards. There are not many opportunities to be able to bring non-conformities more compliant.

7. The practical difficulty is not self-created. The actual ROW for Bunker Hill Road helped cause the unique layout and other factors not the fault of the applicants themselves.

Thank you for your consideration.

Sincerely,

Don and Ardella Benak

09
00

36.2 Ac

S 89°53'22" W
1315.65'

438.56'

438.55'

004-03

004-00

004-02

14.9 Ac

9.6 Ac

9.1 Ac

S 0°11'19" E

1318.31'

S 0°10'55" E 1318.78'

1277.59'

834.02'

N 0°10'30" W 1077.49'

N 0°10'05" W

N 0°10'05" W

S 89°53'22" W
320.45'

004-20

8125

S 0°10'55" E
416.55'

243.44'

16.75'

S 50°51' W
190.16'

252.69'

8190

004-10

N 89°57'03" E
338.41'

004-01
363.40'
363.39'

8033

438.39'

513.39'

302.62'
202.62'

100

100

8000

West Quarter
Corner

Original Benak Family 40 acres
Exhibit A

2709
1600

09
00

36.2 Ac

Lind Dien ham

Ed + Lodena
Benak

Don + Arde la
Benak

S 89°53'22" W
1315.65'

438.56'

438.55'

004-03

004-00

004-02

14.9 Ac

9.6 Ac

9.1 Ac

S 0°14'19" E

1318.34'

S 0°10'55" E 1318.78'

1277.59'

834.02'

N 0°10'30" W 1077.49'

N 0°10'05" W

S 89°53'22" W
320.45'

004-20

8125

16.75'

S 0°10'55" E
416.55'

8033

S 50°51' W
190.16'

8190

004-10

N 89°57'03" E
338.41'

004-01

363.40'
363.39'

N 0°10'05" W

453.28'

438.39'

121.11'

518.39'

302.62'

100

100

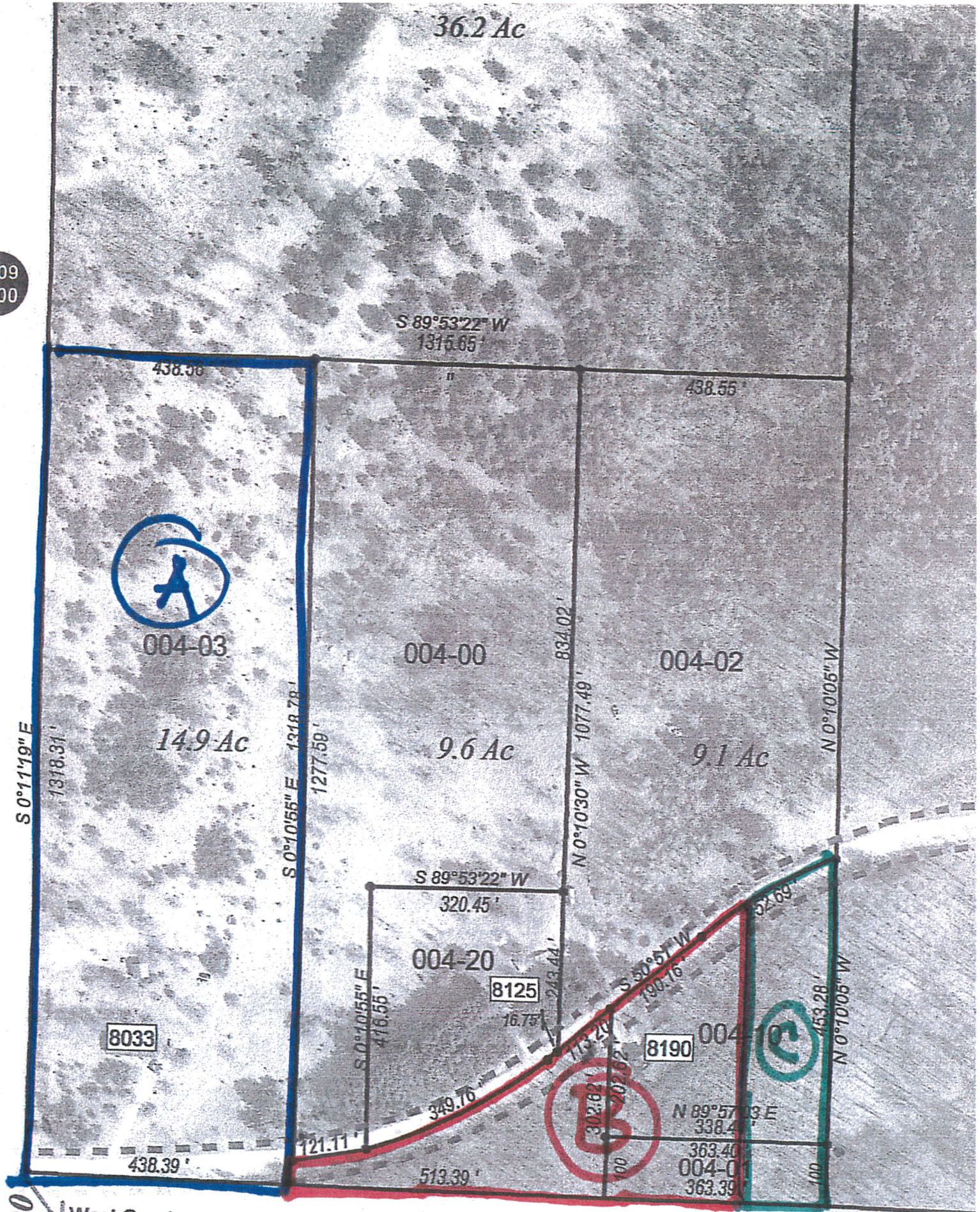
8000

West Quarter
Corner

Exhibit B

2709
1600

09
00

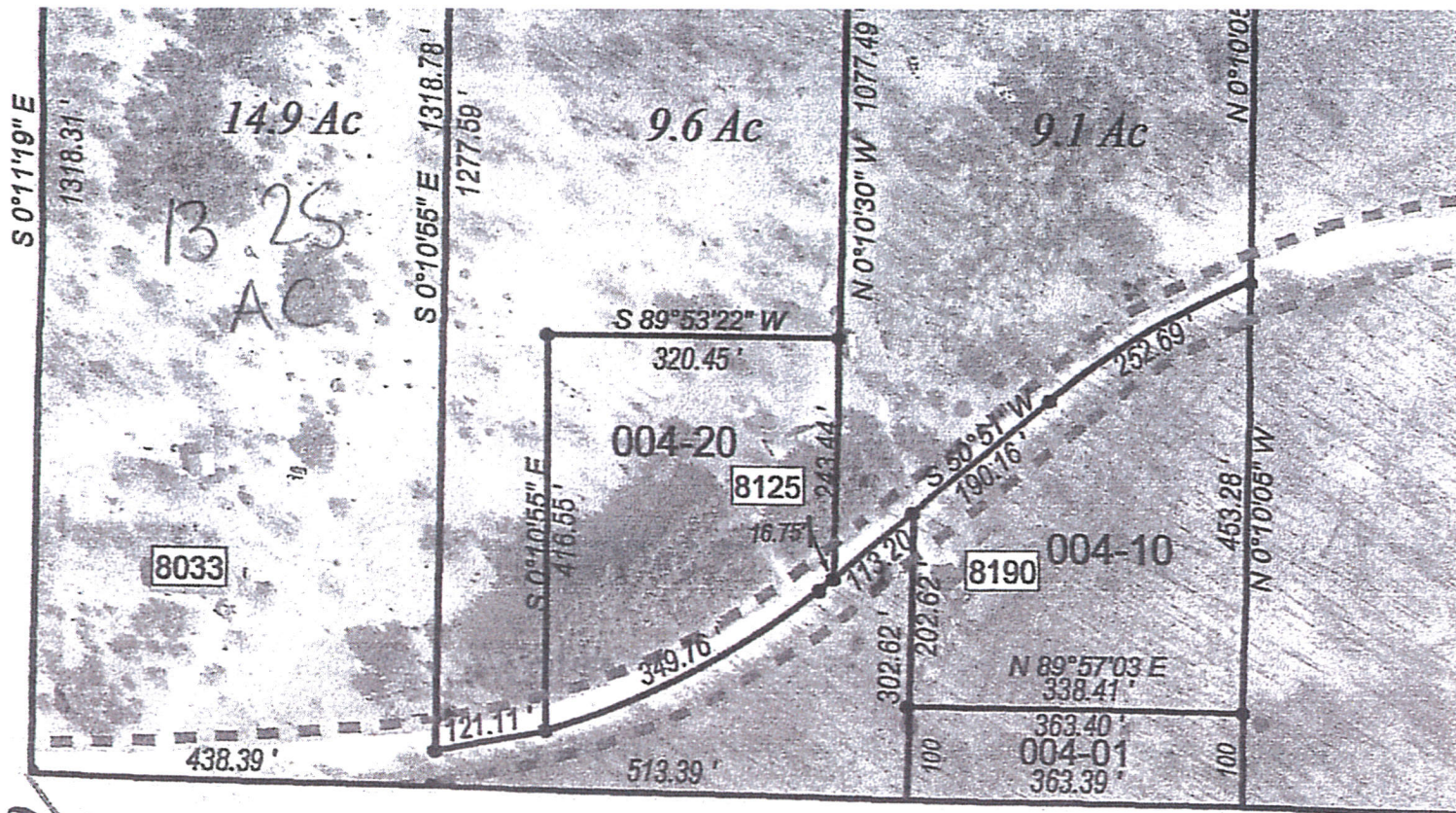


8000

West Quarter
Corner

1" = 200' Proposed
Exhibit C

2709
1600



09
00

36.2 Ac

S 89°53'22" W
1315.65'

438.56'

438.55'

004-03

14.9 Ac

004-00

9.6 Ac

004-02

9.1 Ac

S 0°11'19" E

1318.31'

S 0°10'55" E 1318.78'

1277.59'

834.02'

N 0°10'30" W 1077.49'

N 0°10'05" W

S 89°53'22" W
320.45'

004-20

8125

16.75'

S 0°10'55" E
416.55'

8033

438.39'

121.11'

513.39'

243.44'

302.62'

202.62'

100

100

N 89°57'03" E
338.41'

363.40'

004-01

363.39'

N 0°10'05" W
453.28'

190.16'

S 50°51' W

252.69'

113.20'

349.76'

16.75'

243.44'

302.62'

202.62'

100

100

338.41'

363.40'

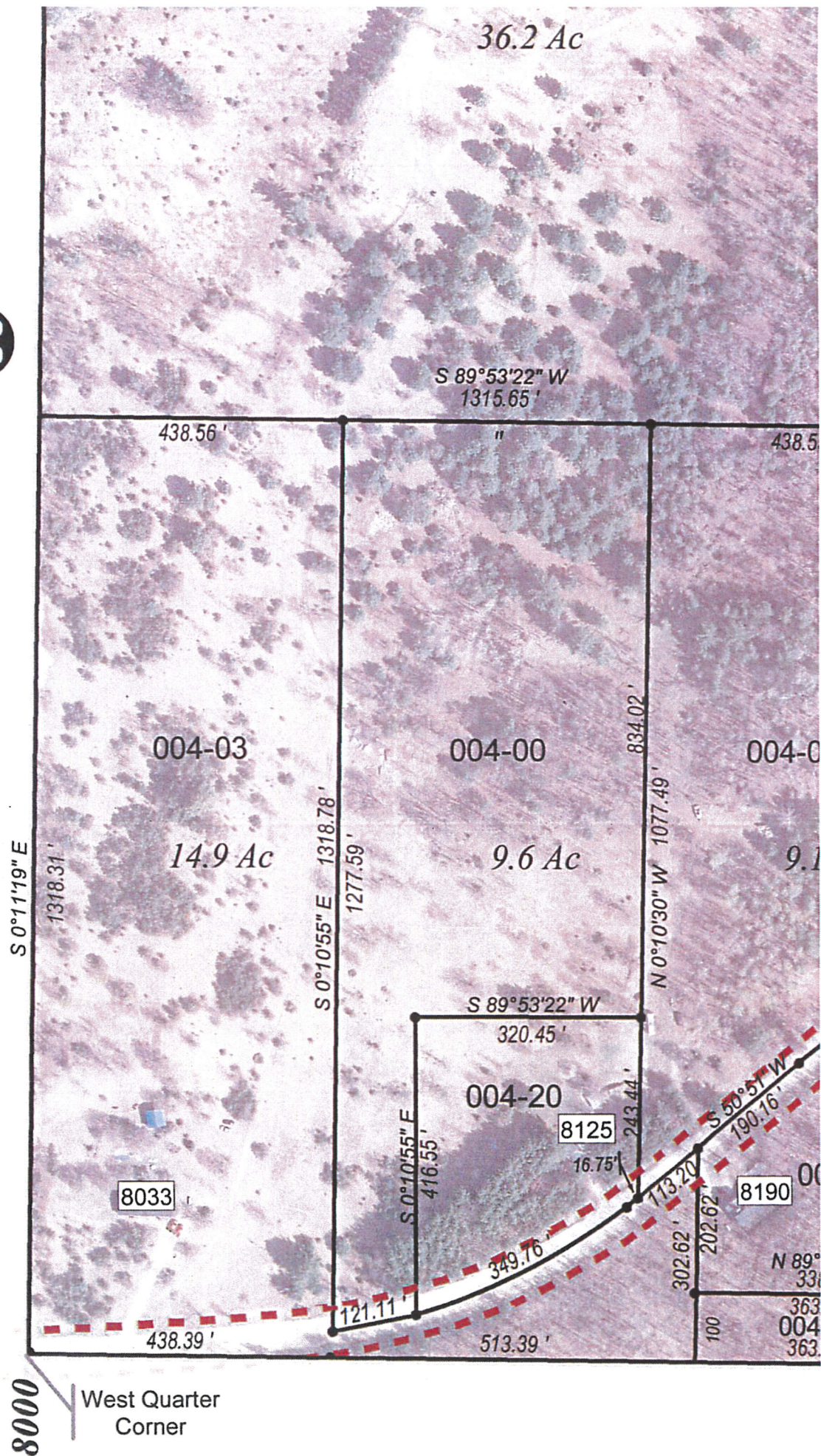
363.39'

8000

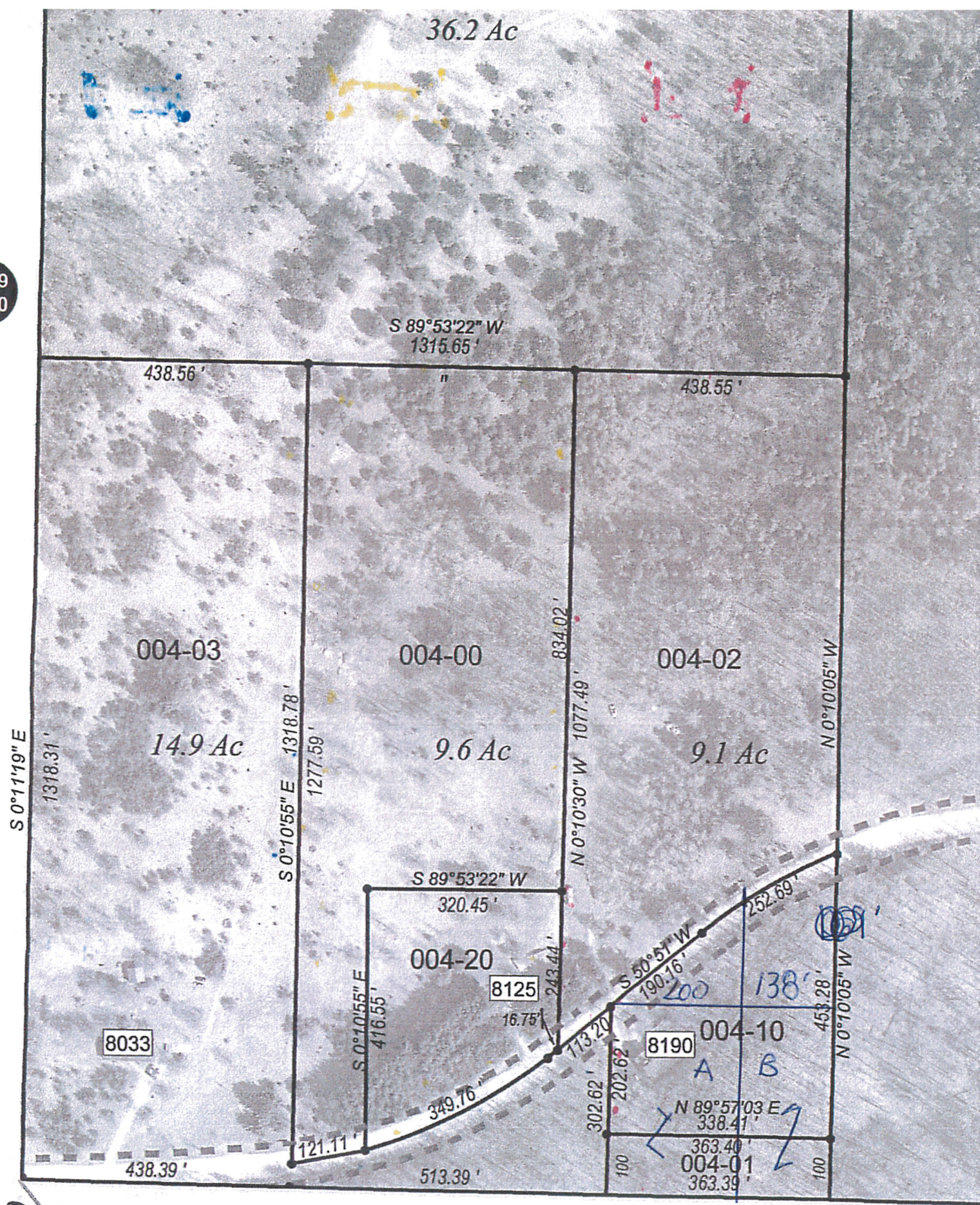
West Quarter
Corner

2709
1600

2709
1700



09
00



8000

West Quarter
Corner

1" = 20'

2709
1600

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
Rescheduled REGULAR MEETING August 15, 2019
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7:05 p.m.

Roll Call: Bowen, Hooper, Lake, Alternate Shaffer

Absent: Halstead, Benak

Also in attendance: Recording Secretary MacLean, Leslie Meyers of The Planning Team

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Approval of Minutes:

Motion to approve meeting minutes of April 25, 2019, by Bowen, second by Lake. On voice vote, all in favor.
Motion carried.

Scheduled Public Hearing:

A. Public Hearing on Appeal #19-005. Dennis and Barbara Reese, 11364 Trails End North, Williamsburg, MI 49690, are requesting a dimensional variance. Parcel is in the R-1 Zoning District. Parcel #28-13-103-004-10.

a. Open Public Hearing on Appeal #19-005 at 7:08 p.m. Dennis and Barbara Reese, 11364 Trails End North, Williamsburg, Michigan, parcel #28-13-103-004-10, requesting a dimensional variance of 10' to reconstruct the home.

b. Zoning Administrator Presentation: The legal notice of public hearing was posted in the Record Eagle. Notices were also sent out to property owners within 300 ft. of the property.

Summary of staff report:

The request for variance is based on (1) The home was built prior to adoption of the zoning ordinance and does not meet current setback requirements of 50'. (2) The owner's intent is to convert the cottage into their primary residence and place the new home within the same footprint – this will allow the line of sight from the home to remain the same.

The plan is to remove the existing detached garage and add on to the exiting home. The home will become two-stories, but the current non-conforming portion will remain single story and will not encroach further than currently exists. Therefore, the owners will require a variance to proceed.

c. Petitioner Presentation: Dennis and Barbara Reese, 3898 Baulistrol Dr., Okemos, Michigan. Eric Mansuy (Designer), 1010 Rose St, Traverse City, Michigan. Have kept the neighbors in consideration. Had to work around wetlands and existing septic. Currently single story and will continue to be single story on the non-conforming area. Will need to do significant soil work to get it up to code for the foundation. New foundation will be where the old foundation is currently. Situated to maintain access for emergency vehicle access to the lake.

Bowen: Existing foundation or new foundation? Will all need to be rebuilt to meet existing building code. Eric: If the foundation can be saved, we will do that. It depends on how the foundation is constructed, if it meets current code.

Hooper: Could you move it back? Eric: The wetland is the issue and the septic.

Hooper: Sounds like you are tearing the whole thing down, not saving any of it. Eric: we are still in the investigation stages of determining the foundation viability. If the foundation is viable it will be kept. If not it has to be built to code.

Hooper: The goal of the ZBA is to not have non-conforming structures. A portion of the foundation must remain or it is a complete redo and must meet current zoning set backs.

Eric: Once the investigation is done on the foundation we will know if it needs to be underpinned or completely re-done. We are not looking to add anything additional to the non-conformity and to bring the rest up to code.

Hooper: What about the existing deck? It is non-conforming and will be repaired / replaced as it is.

Eric: If the foundation has to be left on that corner we will leave it.

Lake: I thought it was not going to be completely torn down.

Eric: We will keep the foundation if we have to.

d. Report on Site visits:

Bowen: I looked at it and I understand it. Concerned about erosion. There is a reason there are setbacks.

Hooper: Looked through the ordinance. There is nothing about the percentage of the building that needs to be kept. As long as they keep that part of the foundation.

Lake: They can fix the foundation.

Hooper: If they keep the part of the foundation and they repair the deck it is within the right of this board to allow.

e. Correspondence: Haggard Plumbing and Heating has no problem with granting the variance.

f. Public speaking in favor of appeal: Barbara Reese, thank you for calling this special meeting. Obviously, I have an emotional stake in this. This is where we want to be and really want to make this our community. Your consideration is very much appreciated.

g. Public speaking in opposition of appeal: None.

h. Anyone wishing to speak on the appeal: None.

i. Close Public Hearing on Appeal #19-005 at 7:46 p.m.

j. Discussion of appeal:

Hooper: My only caveat would be that the corner of the foundation has to stay. If you tear it out it is a complete rebuild.

Hooper: It is a rebuild of the non-conforming part, no additional variance requested beyond what is currently there.

Bowen: Everything that is already non-conforming must come to the ZBA for approval.

Shaffer: I do see the wetlands to the south, would it be possible to fill in the wetland? Barbara: We have had it checked and that is a DNR issue. It is not a good option to fill in wetland. This, we feel, is the least invasive path to take.

k. Findings of Fact:

To obtain a nonuse (dimensional) variance, the applicant must show that a practical difficulty exists on the property by demonstrating that the applicable following review standards are met:

1. Granting the variance will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance.

The property, because of the wetlands, has unique characteristics. The Master Plan and zoning ordinance encourage respect of property rights, promoting orderly development and promoting and protecting property values. This variance allows for this.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

2. Granting the variance shall not permit the establishment within a zoning district of any use, which is not permitted by right within the district.

The applicant proposes to continue the use as residential.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

3. Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township.

Granting the variance will allow the applicant and properties within the vicinity the opportunity to continue their use of the property as has historically been enjoyed, both structurally and visually.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

4. There are practical difficulties on the site which unreasonably prevent the owner from using the property for a permitted purpose without presenting an excessive burden and the practical difficulty not resulting from any act of the applicant.

Wetlands. The neighboring properties have been built in such a way that they all "naturally align." If the 50' setback is applied to the Reese property they will set behind the site line of the home to the north.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

5. The variance will do substantial justice to the applicant, but the decision shall not bestow the property special development rights not enjoyed by the other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity which may endanger the public health, safety, or welfare.

If granted, the variance will allow for continuance of the rights currently enjoyed. There will be no adverse impacts on neighboring properties.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

6. The requested variance is the minimum necessary to permit reasonable use of the land.

If granted, the variance will allow for the alignment of the homes to continue.

To be determined by the Zoning Board of Appeals. YES ☒ NO ☐

7. The practical difficulty is not self-created.

To be determined by the Zoning Board of Appeals. YES x NO

Determining the answers to the seven (7) review standards should give us a well-supported foundation in regards to approving or denying the requested variance; as well as a well-supported foundation in case of an appeal to Circuit Court. Decisions related to zoning are rarely easy, and they are not usually a matter of right and wrong. The duties of the Zoning Board of Appeals require a balancing of the needs of the community and the rights of a property owner.

- l. Conclusion: Grant the variance with the stipulation that the corner foundation of the non-conforming structure stay.
- m. Reasons for Conclusion: Because if the whole thing is torn down it becomes a new build.
- n. Based on the findings of fact as presented.
- o. Decision: Grant variance.
- p. Motion by Lake, second by Shaffer to grant the request for a non-use variance for a waterfront setback reduction of 10' for a distance of 15' to reconstruct a new home within the existing footprint on ZBA Appeal #19-005 as long as the southeast corner of the foundation stays intact.
Roll call vote: Hooper-Yes; Shaffer-Yes; Lake-Yes; Bowen-Yes. Motion carried.

Decision form and Resolution signed by all present members.

Other Matters to be Reviewed by the Zoning Board of Appeals: None.

Correspondence Received: None.

Planning Commission Representative report: Hooper: Working on an ordinance for storage building on vacant lots. Apparently the board has said no. Disappointed that it did not go through but we will get on with the next thing. Review of the Master Plan is next on the agenda.

Township Board Representative report: Benak: NA

Zoning Administrator report: The ZBA thanks Leslie Meyers for helping. Meyers recommends Hooper take the non-conforming issue to the PC.

Comment: None.

Next regularly scheduled meeting will be September 26, 2019, if it is necessary.

Adjourned at 8:18 p.m.

Respectfully submitted by
Recording Secretary
Lois MacLean