



CITY OF
TOPEKA

AGENDA

BOARD OF ZONING APPEALS

Monday, August 9, 2021
5:30 P.M.

VIA VIDEO CONFERENCE

MEMBERS OF THE BOARD

Tim Carkhuff (Chair)
Walter Schoemaker (Vice Chair)
Toni Beck
Helen Crow
Camille Nohe
Carole Jordan
Travis Thomas

-
- The Topeka Board of Zoning Appeals holds a public hearing on the second Monday of each month to consider certain appeals, variances, and exceptions as may be granted by the Comprehensive Zoning Regulations of the City of Topeka, Kansas.
 - The following agenda identifies and describes each proposal to be considered by the Board.
 - Each item to be considered by the Board will be introduced by the Planning Department Staff. The Board will then hear and consider arguments both for and against each proposal.
 - Individuals wishing to address the Board are requested to state their name and address for the official hearing record.
 - Motions on all matters, which require a decision by the Board, are made in the affirmative. On a roll call vote, Board members then vote yes, no, or abstain based on the affirmative motion.
 - Any person, official or government agency dissatisfied with any order or determination of the Board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the Board.



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.



CITY OF
TOPEKA

BOARD OF ZONING APPEALS

Agenda for Monday, August 9, 2021

- A. Call to Order**
- B. Approval of Minutes from May 10, 2021**
- C. Declaration of Ex Parte Communications**
- D. BZA21V/05 by Dana Bradbury**, requesting a variance to the minimum setbacks required by section 18.60.020 of the Topeka zoning regulations for construction of a screened in porch on the site at 3628 SW Ashworth Court.
- E. Communications**
- F. Adjournment**



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CITY OF TOPEKA
BOARD OF ZONING APPEALS



M I N U T E S

Monday, May 10, 2021

Via Video Conference

Members present: Tim Carkhuff (Chair), Toni Beck, Helen Crow, Carole Jordan, Camille Nohe, Walter Schoemaker, Travis Thomas (7)

Members Absent: (0)

Staff Present: Mike Hall, Current Planning Manager; Mary Feighny, Deputy City Attorney; Kris Wagers, Administrative Officer

Call to Order

The meeting was called to order by Tim Carkhuff, Chair, with 7 members present for a quorum.

Approval of Minutes from April 12, 2021

Motion by Ms. Crow to approve, **second** by Ms. Beck. **APPROVAL** 6-0-0 with Ms. Jordan abstaining

Declaration of Ex Parte Communications – None

BZA21V/04 by Leslie Watson and Roni Davis-Watson, requesting a variance to exceed the maximum 4' fence height allowed beyond the front face of a principal structure as restricted by section 18.210.040 (a) of the Topeka zoning regulations. Approval of the requested variance will allow the owner to obtain a permit to replace an existing 6' high wooden fence with another 6' high wooden fence in its present location on the site at 3121 SW Belle Avenue.

Mr. Carkhuff called the case and Mr. Hall presented the staff report with findings. Staff recommendation is to support approval of the requested variance, subject to conditions included in the staff report.

Ms. Nohe asked if there was a reason for the 6' allowance in Condition #1 and Mr. Hall explained that it is meant to provide a small degree of flexibility or tolerance as the new fence is constructed.

Mr. Carkhuff asked if there was a permit for the pool and if so, was the pool constructed according to the permit. Mr. Hall stated there was a permit. The site plan provided was very basic but it appears the placement of the pool is correct. In response to a question from Mr. Carkhuff, Mr. Hall confirmed that there was no fence included in the pool permit and there was none indicated on the site plan provided.

Later Mr. Carkhuff asked the applicants if they had anything to add. Mr. Watson thanked Mr. Hall and his staff for helping them through the process and the board for considering their request.

Ms. Beck noted that she could relate to the situation the applicants are in because the previous owner of her home also did many things without permits. It is an unfortunate situation that can take many years to turn around. She thinks the variance is in order and mentioned safety, and the fact that the current fence is worn out. She stated she considers the situation a hardship for them because they are not the ones who created the issue.

DRAFT

Motion by Mr. Thomas to uphold the findings of staff and approve the variance and the five Conditions of Approval provided in the staff report; **second** by Ms. Jordan.

Location/Mode of future meetings – With the loosening of COVID-19 restrictions, it is becoming possible to once again meet in person, though the option of continuing to meet via Zoom is viable. Mr. Carkhuff stated he prefers meeting via Zoom and discussion followed. Ms. Feighny confirmed that there is nothing in the by-laws that would disallow continuing to meet digitally. It was agreed that BZA meetings will continue to be held via Zoom at least through the summer as people travel but would still have the ability to attend regardless of where they are. City Manager Brent Trout was logged in and noted that if applicants express concern about their ability to attend digitally, they would could be provided the option of going to 620 SE Madison where staff would assist them and provide digital access. The option to hold a meeting in-person remains for instances where staff feel it necessary based on the potential for substantial public interest regarding a case.

Adjourned at 5:55PM

VARIANCE EVALUATION
CITY OF TOPEKA PLANNING DEPARTMENT
FOR
TOPEKA BOARD OF ZONING APPEALS

Date of BZA Meeting: August 9, 2021

Case No.: BZA21V/05

Applicant Name: Dana Bradbury (Owner)
Address of Property: 3628 Ashworth Court
Parcel ID No.: 1451603015037010
Zoning of Property: "R-1" Single-Family Dwelling District

Regulations from which a Variance is Requested: The applicant is requesting a variance to the minimum rear building setback as required by section 18.60.020 of the Topeka zoning regulations for the construction of a porch / sunroom addition. The required minimum building setback from the rear property line is 30 feet; the requested variance will allow a rear setback of 24 feet.

The following table describes proposed and required setbacks.

	Setback Required per Section 18.60.020	Setback for Existing House
Front Property Line (From SW Ashworth Ct Street right-of-way)	30 feet	32 feet
Side Property Line (South)	7 feet	Greater than 37 feet
Side Property Line (North)	7 feet	9 feet
Rear Property Line (East)	30 feet	24 feet

Note: Building setbacks are typically measured from exterior walls to the property line, with the eaves allowed to extend into the required building setback.

Project and Property Data:

Proposed Development: A 12' by 14' enclosed porch / sunroom attached to the rear of the single family residence.

Size of Principal Dwelling: Single story residence with a finished basement. 1,759 sf on ground floor plus a 400 sf attached garage.

Property Dimensions: 60 feet wide x 135 feet deep (approximate dimensions)

Size: 8,109 sf

Property Description:	Lot 17, Block A Spyglass Summit Subdivision
Existing Property Characteristics:	Detached single family residence with an at-grade concrete patio. Existing rear setback (house) is 36 feet.
Surrounding Land Uses:	All lots on this segment of Ashworth Court, a culdesac, contain detached single family homes similar in size and overall design. Except for the lots at the end of the culdesac, lots are very similar in size with shallow rear yards. The two homes immediately north of the subject property includes porches extending into the 30 foot rear setback.
Zoning of Property:	R-1 Single Family Dwelling District
Zoning of Surrounding Property:	R-1 Single Family Dwelling District
Neighborhood:	Not in a designated neighborhood but located west of SW Fairlawn Road and immediately north of 37 th Street.
Neighborhood Health:	“Healthy” per the Neighborhood Health Map.

Background:

The applicant relied on the contractor, Champion Enclosure Suppliers, to obtain a building permit for the enclosed porch addition. Champion applied for the permit on June 3, 2021 before beginning construction but before the City’s review was completed and permit issued.

On June 9, 2021 Planning Staff informed the applicant (owner) that the proposed addition does not comply with the minimum rear setback of 30 feet. Until being contacted by staff, the owner had assumed the permit had been granted. On June 10, 2021, at the request of the owner, the contractor stopped work on the project. The owner met with the Planning staff on June 11, 2021 for a pre-application consultation and submitted the variance application on June 28, 2021.

Applicant’s Stated Grounds for Variances

See applicant’s statement relative to findings a – e (Application Exhibit A).

Analysis and Findings:

Pursuant to K.S.A. 12-759, and as set forth in TMC 2.45.110, the Board of Zoning Appeals shall find that **all** of the following conditions are met before a variance may be granted.

- a. **That the variance request arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by action of the property owner or applicant;**

The size and dimensions of the property are not unique. There are other conditions of the property that are somewhat unusual for residential lots under R-1 zoning. The house has a relatively long footprint measuring front to back (west to east) with an at-grade patio that extends into the setback. An at-grade patio is not restricted by side and rear building setbacks. Additionally, the neighboring home immediately north of the property includes an enclosed screened porch that encroached into its required rear yard by what appears to be 2 to 4 feet.¹

As support for this finding the applicant describes a shallow depression in the rear yard, between the existing patio and trees along rear property line. The depression collects water that does not drain or evaporate well. Evidence of the depression are provided by photographs. The standing water breeds mosquitoes, hence the need for an enclosed porch to afford the owner fuller use of the rear yard.

- b. **That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residences;**

The proposed porch addition will have no adverse effect on adjacent property owners. It will not be visible from the adjacent lot east of the property because of the large, dense evergreen trees along the rear property line. It is visible from the adjacent lots on the south and north, but it is similar in size and location as the screened porch on the adjacent lot on the north side at 3624 SW Ashworth. Additionally, the proposed porch is attractive and well designed by a professional contractor and vendor of sunrooms (Champion Enclosure Suppliers). The sunroom will be integrated with the architecture of the existing house and will add value to the property.

The owner has received approval from the homeowners association and the neighbors on the adjoining lots to the north and south (See Application - Exhibit A). Planning staff has received an email message expressing support for the variance from the owner and resident of 3625 SW Ashworth Court on the west side of Ashworth Court and northwest of the subject property.

- b. **That the strict application of the provisions of this chapter of which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application;**

Strict adherence to the building setback requirements is unnecessary because it will not result in any adverse impact to adjacent property owners or the neighborhood more generally. Denial of the variance constitutes a hardship because it prohibits the owner from the full enjoyment of the property that the proposed enclosed porch will provide.

The applicant makes a clear and credible argument for the hardship finding in the application (Exhibit A). Adherence to the 30' rear setback requires the applicant to either abandon the project and remove the work already completed, or redesign the project by reducing the depth of the porch (front to back dimension) from 12 feet to 6 feet. Because of the basement egress window, which projects 3 feet beyond the exterior wall of the house, compliance with the setback would result in the usable depth of the deck being reduced to 3 feet. The owner's current medical condition requires her to walk with two canes, and it is likely the owner's condition will progress to limiting her mobility to use of a walker or wheelchair. An enclosed porch with a depth of 6 feet – 3 feet at its narrowest point – renders it virtually unusable. Without the porch, the owner will need to install a ramp to access her current patio.

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;

Granting relief from the required rear setback is warranted as it will allow the owner to build a modestly sized enclosed porch. The proposed addition in no way detracts from adjacent neighbors or the broader community. The enclosed porch will enhance the value of the subject property. The building permit will ensure that standards to ensure public safety in the City's building code are met.

e. That granting the variance desired would not be opposed to the general spirit and intent of this chapter.

Granting a variance to the required setback from the alley is not opposed to the general spirit and intent of the City's variance provisions in Chapter 2.45 nor does such a variance conflict with the spirit and intent of the zoning regulations in Title 18 of the city code. The porch addition allowed by the variance encroaches no more than 6 feet into the 30 foot setback required by the zoning code, leaving ample open space on the rear and side of the subject lot. The unique conditions of the property are documented in this staff report and, therefore, approval of the variances requested does not set a precedent for future administration and enforcement of setback standards.

Planning Staff Recommendation

Based on the above findings staff recommends APPROVAL subject to the following conditions.

Conditions of Variance Approval

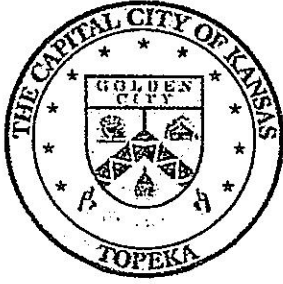
1. Development shall be consistent with the site plan received June 3, 2021 with the building permit application and included as an attachment to this staff report.
2. A building permit is required.

Staff Report by: Mike Hall, AICP, Current Planning Manager

Exhibits:

1. Variance Application
2. Application – Exhibit A
3. Site Plan and Building Plans
4. Photos of Sunroom under Construction
5. Photos of Porch to the North
6. Floor Plan – Exhibit by Staff
7. Email Message of Support from Neighboring Property Owner
8. Zoning Map
9. Aerial Map

¹ The record of the building permit from 1996 for the house includes a site plan that does not reflect the screened in porch.



APPLICATION TO THE BOARD OF ZONING APPEALS VARIANCE / EXCEPTION

CITY OF TOPEKA PLANNING DIVISION

620 SE MADISON, 3RD FLOOR (UNIT #11) | TOPEKA, KS 66607-1118

PHONE 785.368.3728 | EMAIL: PLANNING@TOPEKA.ORG

EXHIBIT 1

Applicant Information

Name: Dana Bradbury

Address: 3628 Ashworth Ct, 66614

Phone: 7852507054

Email: dana_bradbury@yahoo.com

**For Planning &
Development
Use Only**

Case #

BZA21V/05

Property Information

Location of property: 3628 Ashworth Ct.

Legal description of property: (attach additional sheets if necessary)

Block A, Lot 17, Spyglass Summit Sub., Section 16, Township 12, Range 15.

Hearing Date:

8/9/2021

Legal Ad Date:

7/19/2021

Zoning District:

#7 / Dobler

Action Sought:

☐ A variance from a provision of the Zoning Ordinance

(Section to be appealed: x)

☐ An exception from a provision of the Zoning Ordinance

(Section to be appealed: _____)

Description of Action Sought:

Variance from the setback line.

Building Height:

Number of Stories:

Parcel Size:

Lot Dimensions:

Authorization

Property Owner(s):

I/We the undersigned owner(s) of record hereby authorize the filing of this application and declare that all required materials are submitted along with this application and that the information and material is complete and accurate. I/We hereby acknowledge that all appropriate procedures, policies, and regulations have been reviewed and also understood that this application will be processed in sequence with respect to other submittals.

Dana A. Bradbury
Owner Name (print)

Dana A. Bradbury
Owner Signature

Owner Name (print)

Owner Signature

Owner Name (print)

Owner Signature

Authorized Agent:

If the owner(s) of record are to be represented by legal counsel or an authorized agent, please complete the following information so that communications and correspondence pertaining to this application may be forwarded to such individual.

Authorized Agent Name (print)

Signature – Authorized Agent

Mailing Address: _____
STREET ADDRESS CITY STATE ZIP

Phone: _____ Email: _____

Applicant:

Dana A. Bradbury
Applicant Name (print)

Dana A. Bradbury
Applicant Signature

EXHIBIT 2

Application to the BZA for variance

June 18, 2021

EXHIBIT A

1. The variance requested arises from a condition unique to the property, which is not found in the same zone and is not created by action of the property owner.

-This house was built in 1996, with a 14' x 14' patio for the owner's personal enjoyment. I am seeking to build a 14' x 12' screened-in-porch directly over the patio. Apparently, the patio was originally built past the setback because I was informed that the dimensions of the porch exceed the property setback by 6'. Otherwise, a porch would be permitted. With the exception of the stairs, the porch is directly over and shallower than the patio. See, photos.

-There is a shallow depression just East of the patio. The property behind me is at a higher elevation and I get their water runoff. Also, tall trees on the East property line prevent that depression from getting the morning sun. Likewise, water drains away from my house to this low spot. If we have a rain on a hot summer day, the depression dries out in a day or two. However, if we have two weeks of rain like we did the end of May this year, water tends to sit in that depression and provides a good breeding ground for mosquitos. Enclosed is a picture of the depression that I took for the mowers on May 11, 2021, before the two-week rain. I would have taken one of the standing-water during the rain but didn't know I would be seeking a variance at that time.

2. Granting the variance will not adversely affect the neighbors.

- Two of my neighbors to the South already have a screened- in-porch over their patios that exceed the setback. My proposed porch does not encroach the setback any further than my neighbors' porches. See, ariel photo.

- I have received HOA approval, and approval from the neighbors on each side of my house. I have not sought approval from my backyard neighbor because they can't see my porch through the high pine trees.

3. That strict application of the setback will provide an unnecessary hardship. Denying the variance would prevent me from using the property in a reasonable fashion or in a manner permitted by the zoning ordinance.

- The plans call for a 12' porch. Strict compliance with the setback removes 6' of the porch and leaves me with a 6' porch. However, I also have a code required 3' egress window in that area, which removes 3' of usable space and leaves me three feet for a porch. This would prevent me from using the porch in a reasonable fashion and in a manner permitted by code. See, photo measuring 6' from the house and including the 3' egress window.

- The application is to focus on the property rather than the applicant. However, because the BZA is granted limited discretion, I will mention another issue that comes into play here. I have MS. I presently walk with two canes and use a walker when I get up in the middle of the night. It is highly probable that I will be totally walker or wheelchair bound in the near future. As built, this house had two steps from the back door to the patio. The porch plans involve a deck that provides zero entry to the back door. Because of the height from the back door to the patio, a wheelchair ramp would be impossible because it would be too long.

- Therefore, if the variance is denied, and if and when the time comes that I am totally walker or wheelchair bound, my options consist of a 3' porch that prevents me from using the property in a reasonable fashion or not being able to access and use the patio at all. These options would not allow me to use the property as intended and constitutes an unnecessary hardship.

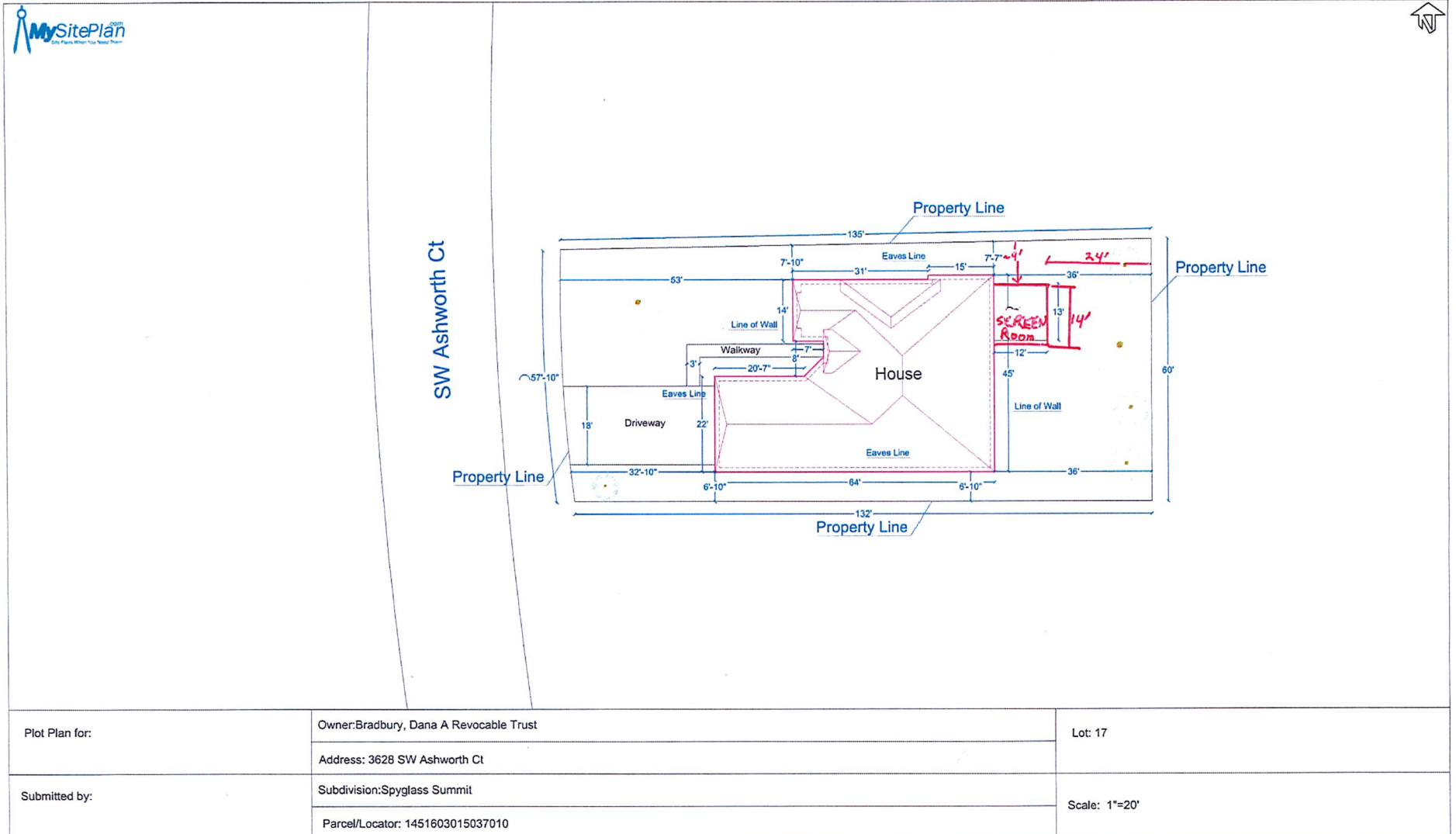
4. The variance desired will not adversely affect the public health, safety, morals, order, convenience, property, or general welfare.

- The proposed screened-in-porch comports with the character of the neighborhood and will increase property values. The porch will have a shingled, gabled roof that ties into my house like the other two porches on my side of the street. I have included pictures of the framing and how it fits within the neighborhood. I have also enclosed a photo from the Champion brochure to give you idea of the proposed finished product. I believe my porch will be prettier than the neighbors because it will not be so sunken and dark. Likewise, it will not further enhance any water runoff issues that already exist. See, photo of frame and Champion's brochure.

5. The granting of the desired variance will not be opposed to the general spirit and intent of the chapter.

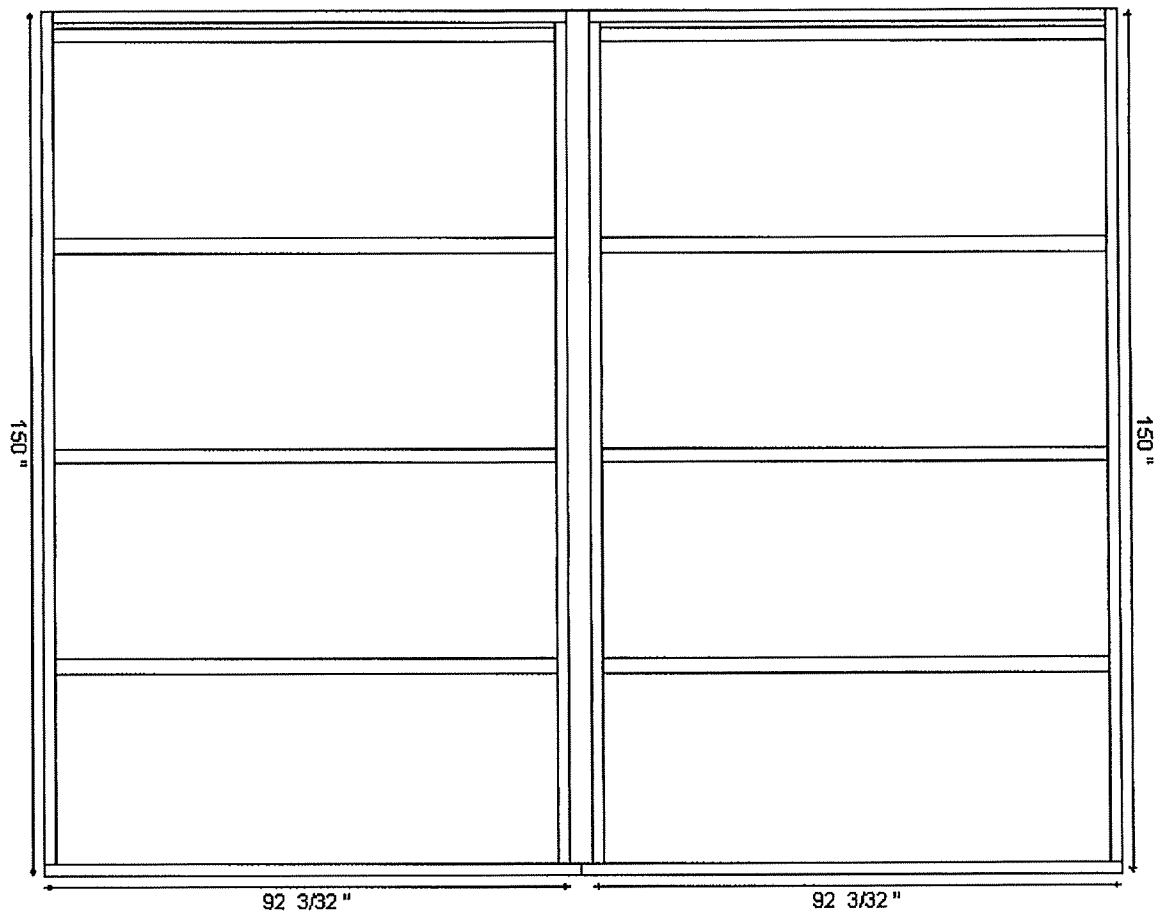
- It is my understanding that the intent of the code is to control the bulk of the building, that it not occupy the entire lot. The proposed porch is not overly large and no larger than my neighbors' porches. It will not occupy the entire lot. See, photo.

EXHIBIT 3



ORDER NO: 2745
ITEM: 1
DATE: 05/04/21

Roof

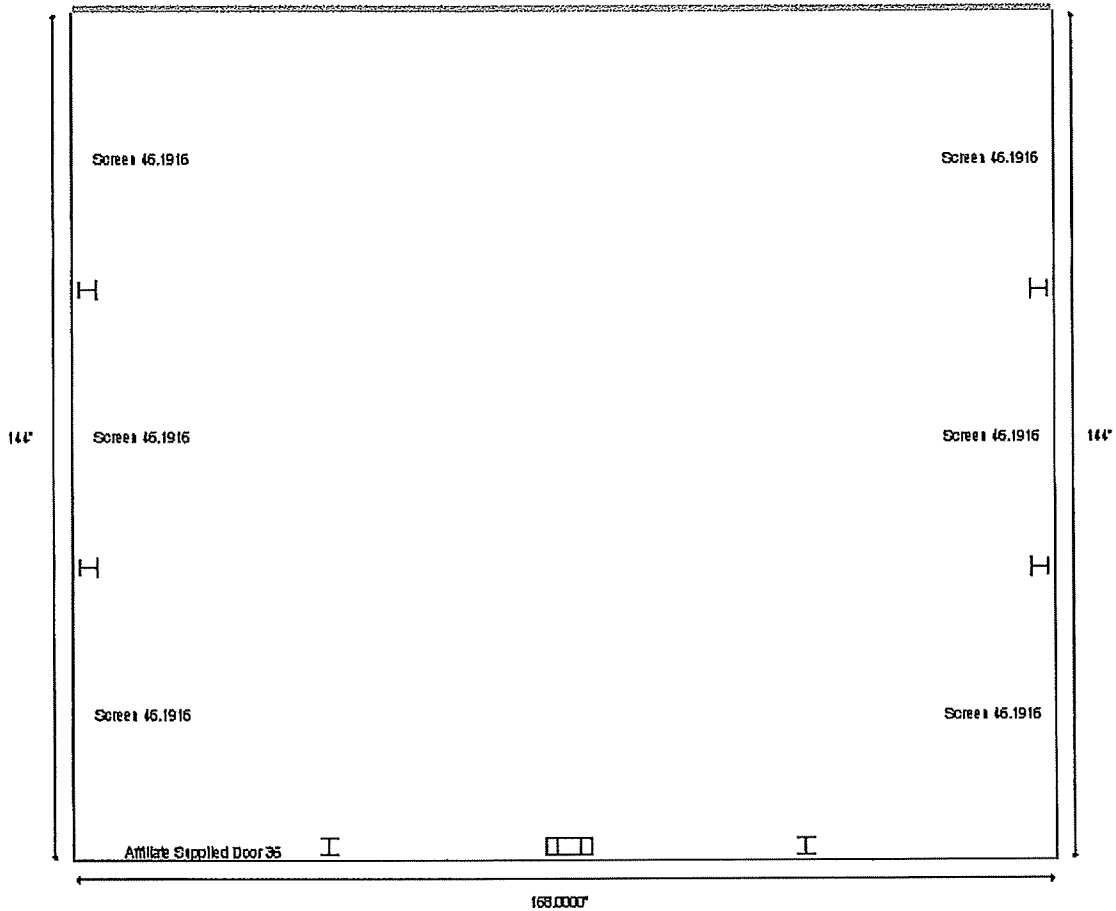


Dimensions

Attachment Height: 112 "
B Wall Height: 85.75 "
B Wall Width: 168 "
A Wall Width: 144 "
C Wall Width: 144 "
Roof Overhang: 6 "

ORDER NO: 2745
ITEM: 1
DATE: 05/04/21

Floor Plan

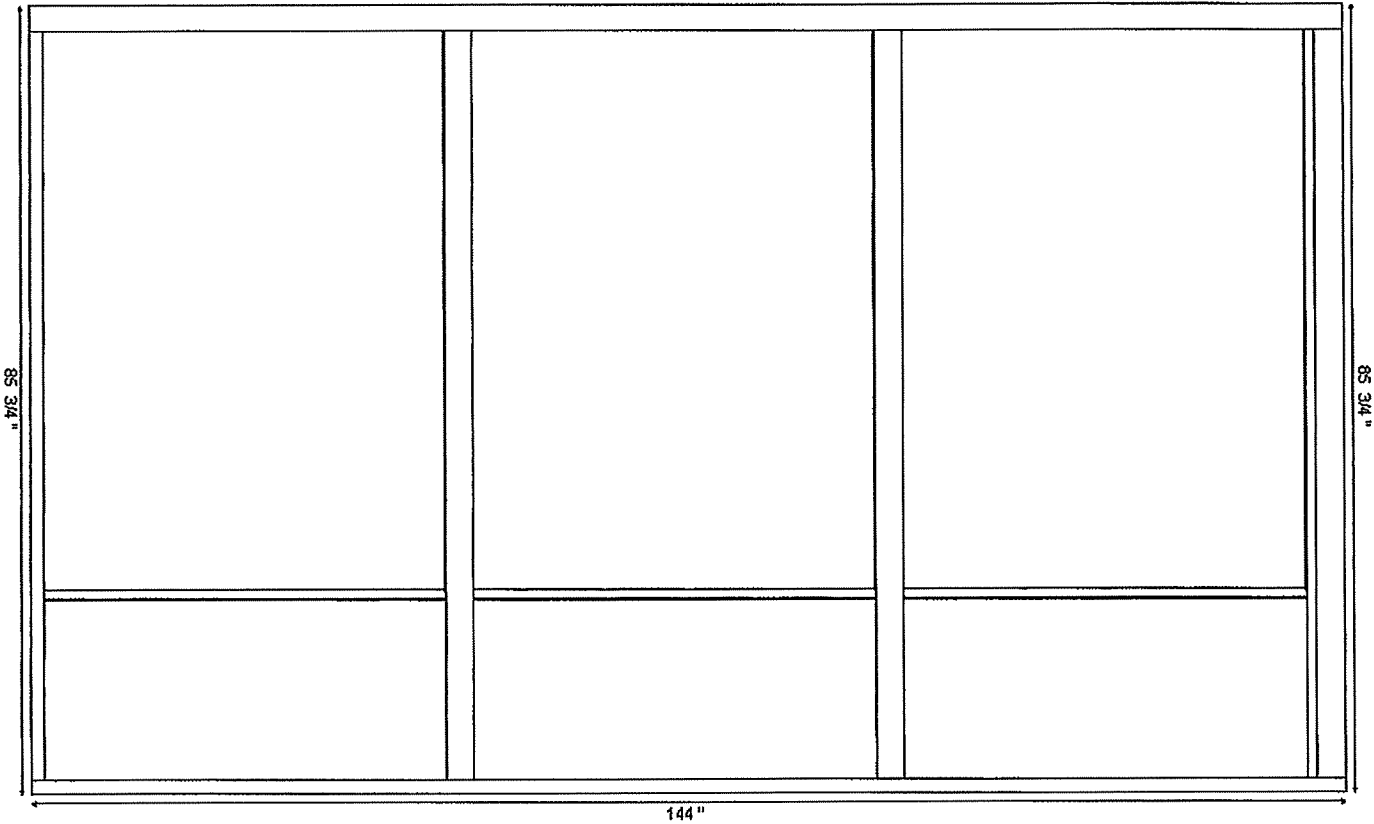


Dimensions

Attachment Height: 112 "
B Wall Height: 85.75 "
B Wall Width: 168 "
A Wall Width: 144 "
C Wall Width: 144 "
Roof Overhang: 6 "

ORDER NO: 2745
ITEM: 1
DATE: 05/04/21

A Wall



Dimensions

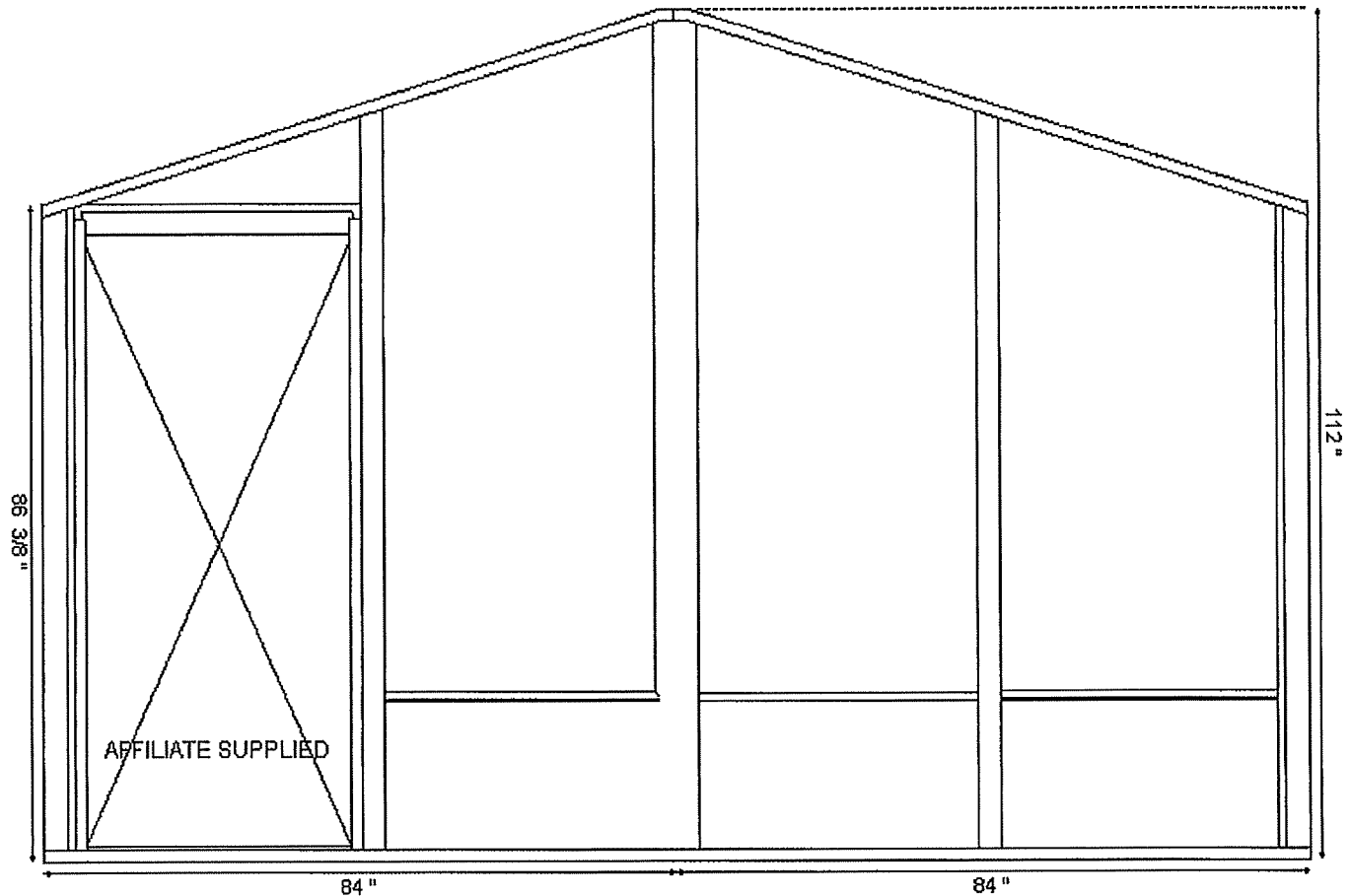
Attachment Height: 112 "
B Wall Height: 85.75 "
A Wall Width: 144 "
Roof Overhang: 6 "

Layout

0.25" (U Channel) + 46.1916" (Screen) + 1" (Mating Offset H) + 46.1916" (Screen) + 1" (Mating Offset H) + 46.1916" (Screen) + 0" (Offset H) + 3.175" (Corner Post) + 0.0002" (Remainder - No Fill)

ORDER NO: 2745
ITEM: 1
DATE: 05/04/21

B Wall



Dimensions

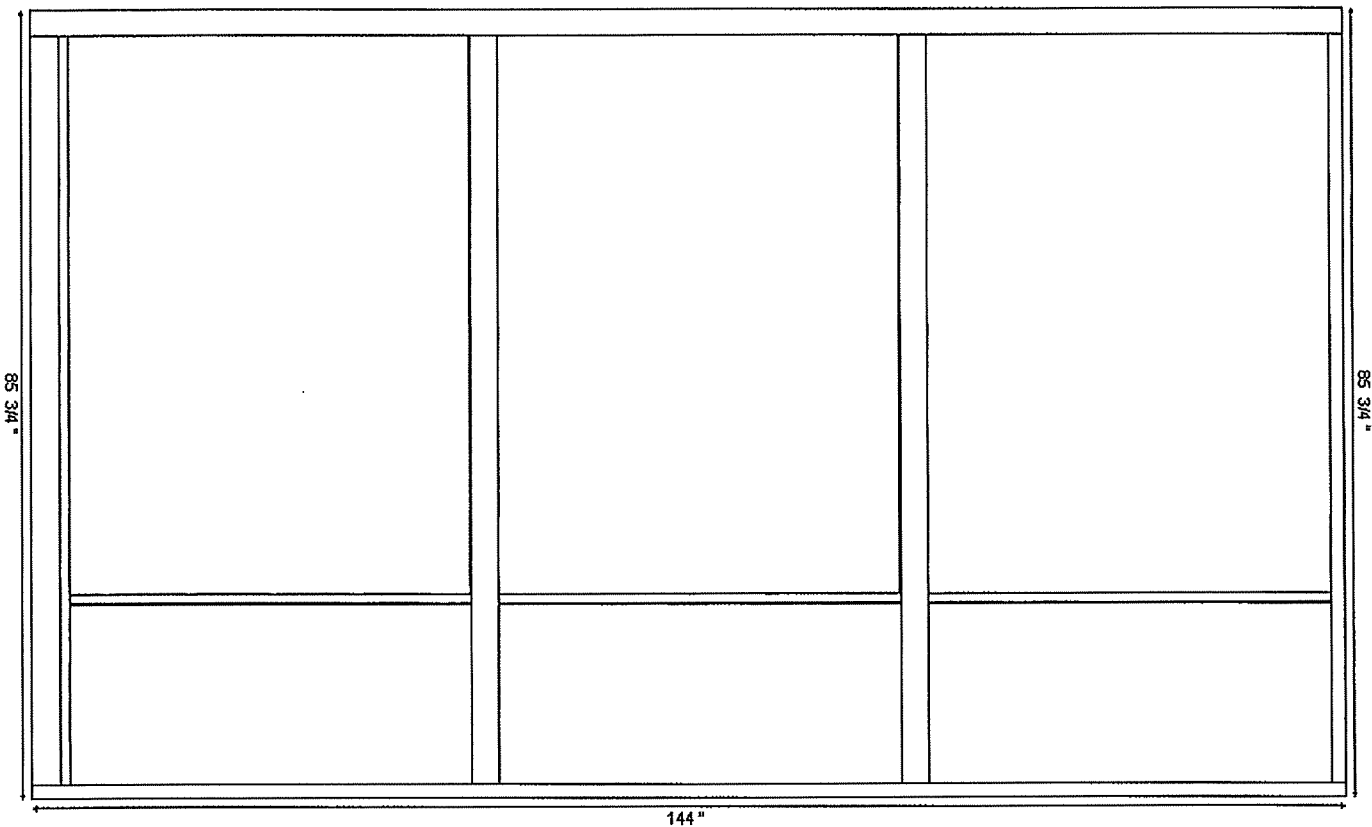
Attachment Height: 112 "
B Wall Height: 85.75 "
B Wall Width: 168 "
Roof Overhang: 6 "

Layout

3.175" (Corner Post) + 0" (Offset H) + 2" (Screen Door Adapter) + 36" (Affiliate Supplied Door) + 2" (Screen Door Adapter) + 1" (Mating Offset H) + 38.9125" (Screen) + 4" (Gable Post) + 0.9125" (Remainder - No Fill) + 38.9125" (Screen) + 1" (Mating Offset H) + 38.9125" (Screen) + 0" (Offset H) + 3.175" (Corner Post)

ORDER NO: 2745
ITEM: 1
DATE: 05/04/21

C Wall



Dimensions

Attachment Height: 112 "
B Wall Height: 85.75 "
C Wall Width: 144 "
Roof Overhang: 6 "

Layout

This wall is a mirror image of the A Wall.

EXHIBIT 4



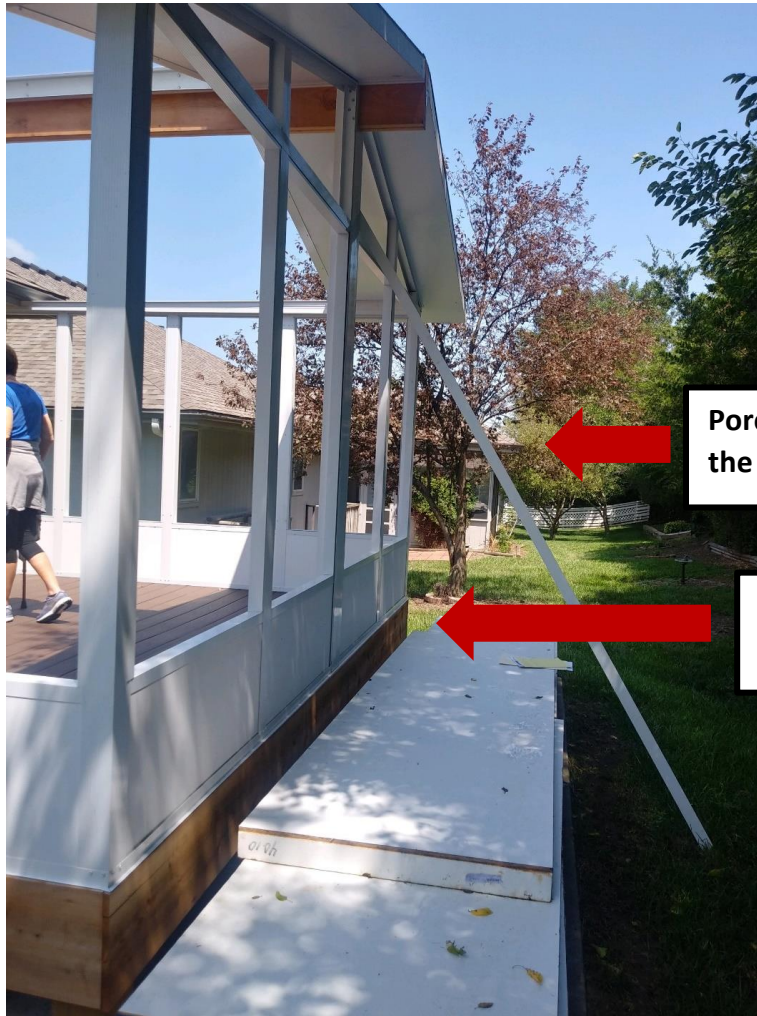


Depression in Rear Yard



Depression in Rear Yard





Porch on Lot North of
the Subject Property

Owner's Sunroom
under Construction

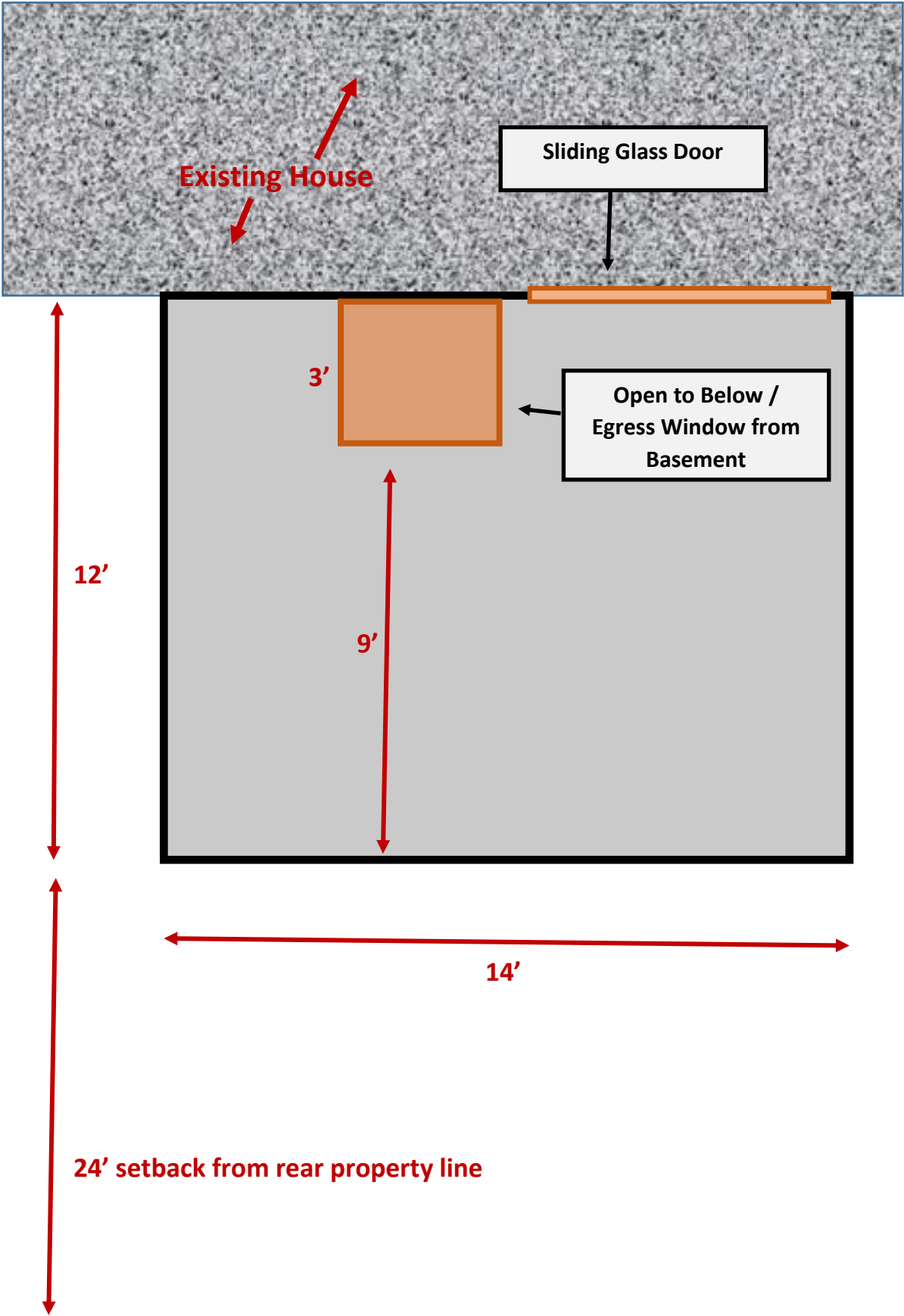


Porch on Lot North of
the Subject Property

EXHIBIT 6

Floor Plan of Enclosed Porch (Sunroom)

Exhibit provided by staff.



Kris Wagers

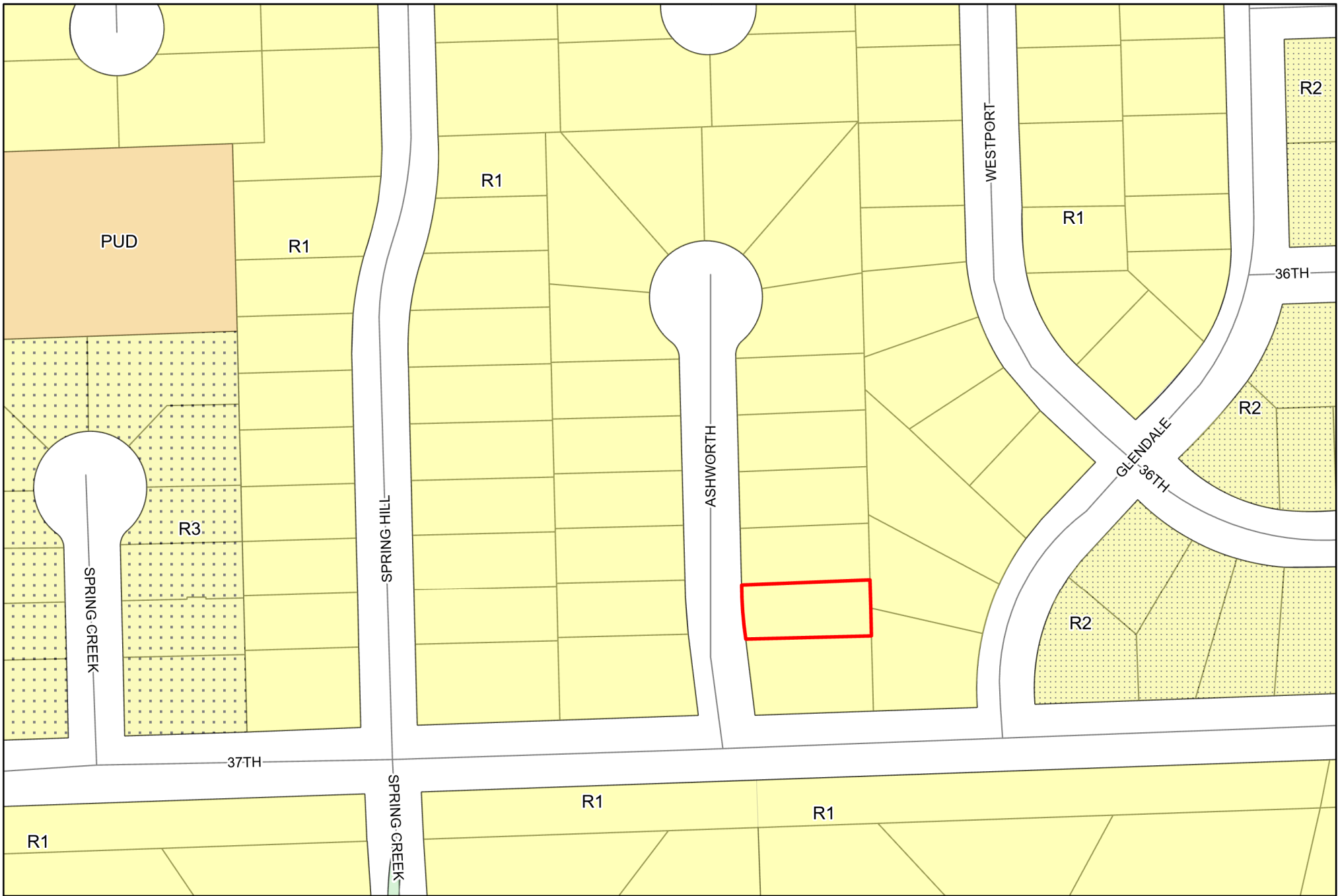
From: Randy Hearrell <rmhearrell@gmail.com>
Sent: Monday, July 19, 2021 3:04 PM
To: Planning Distribution
Subject: BZA21V/05 by Dana Bradbury

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am Dana Bradbury's neighbor living at 3625 SW Ashworth Ct. I am emailing in support of her request for a variance to allow her to construct a screened in porch at her home.

Randy M. Hearrell

Sent from [Mail](#) for Windows 10



Zoning
BZA 21V/05 Dana Bradbury

EXHIBIT 8

Legend
 Subject Property

City of Topeka
Planning and Development
Department





BZA21V/05 Dana Bradbury

EXHIBIT 9

Legend

Subject Property

City of Topeka
Planning and Development
Department

