

The public may attend the meeting in person or view it online at  
<https://www.facebook.com/CityofPrairieVillage>.

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE  
TUESDAY, MAY 2, 2023  
7700 MISSION ROAD  
COUNCIL CHAMBERS  
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF BZA MINUTES - October 11, 2022

III. PUBLIC HEARINGS

BZA2023-01	Variance of Required Side Setback 5200 W. 69 <sup>th</sup> Street Zoning: R-1A Applicant: Dan McCarthy
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IV. OTHER BUSINESS

V. ADJOURNMENT

Plans available at City Hall if applicable  
If you cannot be present, comments can be made by e-mail to  
[cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com)

**\*Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
MINUTES  
TUESDAY, OCTOBER 11, 2022**

**ROLL CALL**

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, October 11, 2022, at 6:30 p.m. in the Council Chambers of the Municipal Building at 7700 Mission Road. Chair Patrick Lenahan called the meeting to order at 6:30 p.m. with the following members present: Jonathan Birkel, James Breneman, Melissa Brown, and Nancy Wallerstein.

The following individuals were present in their advisory capacity to the Board of Zoning Appeals: Chris Brewster, Multistudio; Nickie Lee, Deputy City Administrator; Greg Shelton, Council Liaison, and Adam Geffert, City Clerk/Board Secretary.

**APPROVAL OF MINUTES**

Mr. Birkel moved for the approval of the minutes of the July 12, 2022, Board of Zoning Appeals meeting as presented. Mrs. Wallerstein seconded the motion, which passed 4-0, with Mr. Breneman in abstention.

**PUBLIC HEARINGS**

BZA2022-02            Variance of Required Site Setback  
7431 Belinder Ave.  
Zoning: R-1B  
Applicant: Anthony Fiorello

Mr. Brewster stated that the applicant was requesting a variance from Section 19.08.015 to allow an egress window well to encroach more than 50% into the required 6' side setback. R-1B development standards require a side setback that is:

1. at least 6' on each side
2. at least 20% of the lot width on both sides
3. at least 12' from any adjacent building

Section 19.44.020, "Yard Exceptions", also allows window wells to project into the required yards by 4', but all encroachments are limited to no more than one-half the required setback.

Mr. Brewster continued, stating that in this case, the egress window well would be limited to a 3' encroachment, and no closer than 3' to the property line. The applicant is proposing a 3' encroachment and the well being placed 2' from the adjacent property line, which is consistent with the encroachment allowance. Due to the nonconforming situation, this results in a variance of 12" from the resulting location and a variance of 6" from the permitted 50% exception when applied to the existing actual setback. The request is associated with remodeling an existing house and an existing building foundation.

Mr. Brewster noted that Section 19.54.030 of the zoning regulations requires the Board to find that all five of the following "golden factors" be met to grant a variance:

1. Uniqueness - That the variance requested 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 an action or actions of the property owner or the applicant.
2. Adjacent Property - That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.
3. Hardship - That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.
4. Public Interest - That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
5. Spirit and Intent of the Regulation - That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

He added that if the Board does approve the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application, sufficient to allow the minimum required egress window well of 36" deep.
2. The variance, if approved, be recorded with the County Register of Deeds within one year of approval.

Applicant and property owner Anthony Fiorello was present to discuss the variance.

Mr. Birkel asked whether a bedroom was being installed in the basement which would require the egress window. Mr. Fiorello stated the space would include an office, a bathroom, and a playroom, but not a bedroom.

Mrs. Wallerstein asked if there would be a cover over the window well. Mr. Fiorello said there would.

Mr. Birkel also asked if the egress window could be placed at the back or the front of the house instead. Mr. Fiorello stated that the home's furnace and water heater were located in an unfinished area of the basement at the front of the house, and that the foundation did not extend all the way to the back of the house, which sits on a concrete pad.

Board members reviewed each golden factor and determined that the proposed addition met all requirements.

**Mrs. Wallerstein made a motion to approve the variance. Mr. Breneman seconded the motion, which passed 5-0.**

## **OTHER BUSINESS**

None

## **ADJOURNMENT**

Chair Patrick Lenahan adjourned the meeting of the Board of Zoning Appeals at 6:40 p.m.

Adam Geffert  
City Clerk/Board Secretary

# STAFF REPORT

**TO:** Prairie Village Board of Zoning Appeals  
**FROM:** Chris Brewster, Multistudio, Planning Consultant  
**DATE:** May 2, 2023

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**Application:** BZA 2023-01

**Request:** Variance of 1.7 feet to the side yard setback, allow the garage side of the house to be placed 5.3 feet from the side lot line.

**Action:** *A variance request requires the Board of Zoning Appeals to evaluate facts and weigh evidence, and a majority of the Board must find that all 5 criteria for a variance have been met in order to approve the request.*

**Property Address:** 5200 W. 69<sup>th</sup> Street

**Applicant:** Dan McCarthy

**Current Zoning and Land Use:** R-1A Single-Family Residential - Single-Family Dwelling

**Surrounding Zoning and Land Use:** **North:** R-1A Single-Family Residential – Single-Family Dwellings  
**East:** R-1A Single-Family Residential - Single-Family Dwellings  
**South:** R-1A Single-Family Residential - Single-Family Dwellings  
**West:** R-1A Single-Family Residential – Single-Family Dwellings

**Legal Description:** Unplatted meets and bounds

**Property Area:** 0.90 acres (39,114.48 s.f.)

**Related Case Files:** None

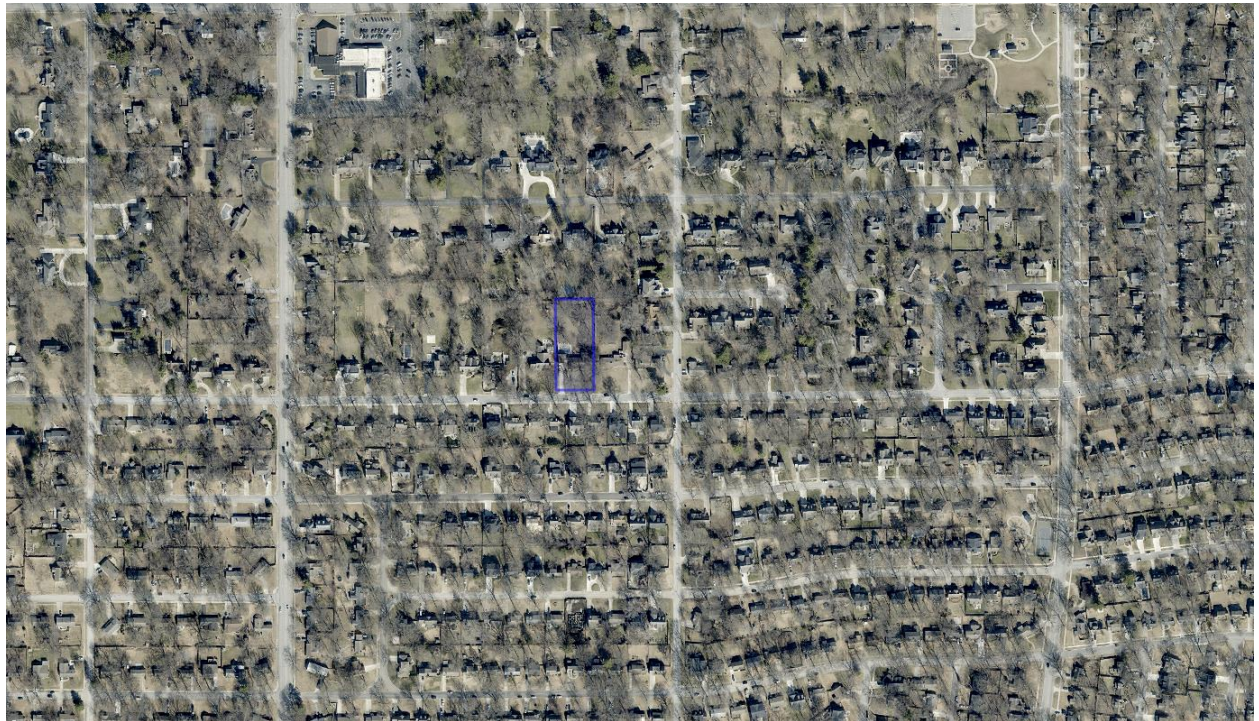
**Attachments:** Application, variance request, lot plans,

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**General Location Map**



**Aerial Map**



**Aerial Site**



**Birdseye View**



**Street View**



*Looking north on West 69<sup>th</sup> street; subject setback line on the left.*

**COMMENTS:**

The applicant is requesting a variance from Section 19.08.015 to allow garage to be built 5.3 feet from the side setback, rather than the required 7 feet. The property is zoned R-1A. The development standards require a side setback that is (1) at least 7' on each side; (2) at least 20% of the lot width on both sides; and (3) at least 12' from any adjacent building. [[19.06.015](#)].

The applicant is tearing down an existing home and replacing it with a new home. However, the plan proposes to retain the driveway and existing garage, and the current location does not comply with the side setback. This plan (and existing condition) results in the following:

- Separation from the existing home on the west side of at least 29.3 feet at the closest point (complies with 19.06.015)
- A combined setback of 25.7 feet for both sides on the subject lot, which is 20.2% of the lot width (complies with 19.06.015)
- A specific setback of 5.3 feet on the west (garage) side of the lot (does not comply with 19.06.015)

Although this situation may qualify as a legal nonconforming situation under the ordinance, the fact that a new primary structure is being built eliminates eligibility for that protection under the code. [[Chapter 19.40](#)]

The applicant had a neighborhood meeting as required by the Prairie Village Resident Participation Policy and has supplemented the application with background on that meeting.

**ANALYSIS:**

Section 19.54.030 of the Zoning Ordinance requires the Board to find that **all five** of the following conditions are met in order to grant a variance. If the Board finds that even one of these conditions is not met, a variance should not be granted:

**A. Uniqueness**

**That the variance requested 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 an action or actions of the property owner or the applicant.**

**In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.**

The current situation is apparently a legally non-conforming situation. The Prairie Village Zoning Ordinance was amended in 2016 to change the required side setback in R-1A from 5 feet to 7 feet. Ordinarily any pre-existing condition is not subject to the ordinance, and receives protection from provisions that allow legally occurring

situations under the prior ordinance to remain with limited protections. However, at a certain level of investment those protections are lost and the property should comply. The intent is to bring all property in compliance with the current standards in a reasonable manner in coordination with the level of reinvestment. In this case the reinvestment is in the house, but not the garage. The intent is to keep the existing driveway and garage and maintain the current relationship of the garage and driveway to the back yard pool. While the lot and buildings are not necessarily unique compared to similarly zoned property and property in the area, these circumstances can be considered when evaluating the intent of the setback standards and coordination with the legal non-conforming structure status of the property.

## **B. Adjacent Property**

**That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.**

The existing situation has been in place for 27 years and conformed to prior standards. Additionally, the garage portion of the house has a lower-scale 1.5 story profile and is a lesser impact than the potential 2.5-story / 35-foot profile could be built at the side setback (1.7 feet from the current location) and comply with the ordinance. This side of the lot exceeds the building separation requirement significantly, as the building to the west is setback more than 20 feet from the side setback line. This is a pattern among several lots on this block, and the proposed structure will have an over 20-foot side setback on the east side.

## **C. Hardship**

**That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.**

This request is associated with construction on the property that is eliminating the eligibility of the property as a legal non-conforming house. However, this specific portion of the property is proposed to be maintained in the current condition. Compliance with the standards could also alter or impact some of the physical relationships or other site elements not proposed for construction or demolition, including the garage footings, driveway, and pool facilities.

## **D. Public Interest**

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

Side setbacks standards can ensure that all lots have buildable areas subject to building code requirements and can help establish a rhythm of buildings along the streetscape in neighborhood settings. The proposed variance will not bring structures closer in proximity and will not affect the appearance of buildings along the streetscape.

## **E. Spirit and Intent of the Regulation**

**That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.**

Side setbacks standards can ensure that all lots have buildable areas and manage relationships between adjacent buildings. The proposed variance would maintain an existing condition that is similar to other building relationships and patterns in the area, it involves a lower-scale building than what could be built and comply with the setback, and it retains a larger-than-required separation between the location of the variance and the nearest building to the west.

**EFFECT OF DECISION:**

After reviewing the information submitted and considering the testimony during the public hearing, if the Board finds that **all five conditions** can be met as required by state statutes and Section 19.54.030 of the Prairie Village Zoning Ordinance, then it may grant the variance. If the Board does approve the variance, it should be subject to the following conditions:

1. That the variance be granted only to the extent shown with the submitted application, sufficient to retain the existing structure without further expansion.
2. The variance, if approved, be recorded with the County Register of Deeds within 1 year of approval.

Cuot# 021680  
App# 0630410

VARIANCE APPLICATION  
BOARD OF ZONING APPEALS

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only

Case No: ~~22-00000~~ BZA2023-01  
Filing Fee: 100.00  
Deposit: \_\_\_\_\_  
Date Advertised: \_\_\_\_\_  
Public Hearing Date: \_\_\_\_\_

APPLICANT: Dan McCarthy PHONE: 314-520-6741  
ADDRESS: 5200 West 69th Street Prairie Village ZIP: 66208  
OWNER: Dan McCarthy PHONE: 314-520-6741  
ADDRESS 5200 West 69th Street Prairie Village Kansas ZIP: 66208  
LOCATION OF PROPERTY: \_\_\_\_\_  
LEGAL DESCRIPTION: Primary Residence

**Variance Requested** Requesting to keep the existing 2-car garage on the west side of the property

ADJACENT ZONING AND LAND USE:

	<u>Land Use</u>	<u>Zoning</u>
North	<u>single family residential</u>	_____
South	<u>Single Family residential</u>	_____
East	<u>Single Family residential</u>	_____
West	<u>Single Family Residential</u>	_____

Present use of Property: Primary residence single family

Proposed Use of Property: Primary residence single family

Utility lines or easements that would restrict proposed development:  
None

Please complete both pages of the form and return to:

City Clerk  
City of Prairie Village  
7700 Mission Road  
Prairie Village, Kansas 66208

Please indicate below the extent to which the following standards are met, in the applicant's opinion. *Provide an explanation on a separate sheet for each standard which is found to be met.*

1. *UNIQUENESS*  Yes  No

The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by actions of the property owners or applicant. Such conditions include the peculiar physical surroundings, shape, or topographical condition of the specific property involved which would result in a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

2. *ADJACENT PROPERTY*  Yes  No

The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents.

3. *HARDSHIP*  Yes  No

The strict application of the provision of the zoning regulations from which a variance is requested will constitute an unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be sufficient reason by itself to justify the variance.

4. *PUBLIC INTEREST*  Yes  No

The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

5. *SPIRIT AND INTENT*  Yes  No

Granting the requested variance will not be opposed to the general spirit and intent of the zoning regulations.

6. *MINIMUM VARIANCE*  Yes  No

The variance requested is the minimum variance that will make possible the reasonable use of the land or structure.

SIGNATURE:  DATE 3/6/2023

BY: Dan McCarthy  
TITLE: Home Owner

I am requesting approval for a variance of **1.7 feet** to **keep** the **EXISTING** 2-car garage on the west side of the property which was built in 1996. This structure has existed on the property for 27 years and does not present any issues with our current neighbor(s). Our garage actually **does** comply with the current greenspace requirements.

The variance is only 1.7 feet in order to meet the **current** regulations. A new garage would cost an additional \$50,000 to construct a 2-car new garage. Furthermore, the current garage is also connected to a pool which would have to be removed as all of the plumbing is routed into the garage. To remove and build a new pool will cost an additional \$180,000.

We had our neighbor confirm there is no issue with the current location of the 2-car garage. Our neighbors have also expressed that they prefer to keep the existing garage and pool and have less construction near their home.

I feel it would be a very extreme measure to demolish a perfect garage and pool and incur an additional \$250,000 in expenses to meet the **1.7ft** of additional space need to meet the current code.

We cannot incur the additional cost to build a new garage and our neighbor is acceptable to leaving the current garage.

It is very important to note that our lot is nearly **1 Acre**. I suspect the intent of this zoning regulation / setback requirement is for the small lots in Prairie Village.

The new construction houses throughout Prairie Village have as little as 10ft between the homes. We have more than **30 feet of space** on either side of our residence.





March 10, 2023

122 N. Water St.  
Olathe, Kansas 66061  
Ph: 913-764-1076  
Fx: 913-764-8635

14 W. Peoria  
Paola, Kansas 66071  
Ph: 913-557-1076  
Fx: 913-557-6904

[www.allenbrand-drews.com](http://www.allenbrand-drews.com)

Cliff Speegle, P.E.  
City of Prairie Village  
7700 Mission  
Prairie Village, Kansas 66208

**RE: 5200 W 69<sup>th</sup> Street**

Mr. Speegle,

We have been hired by Dan McCarthy, who is proposing to demolish a portion of the existing house and build a new residence at the above address. The property generally slopes from back to front (north to south) and flows to the street as shown on Exhibit A. The majority of the house will be removed, but the garage will remain. The existing pool and a portion of the existing driveway will also remain. New construction will consist of a new living area, additional garage, and a portion of the driveway will be reconstructed. The existing drainage patterns will remain generally unchanged, but a swale will be graded on the east side of the house to keep runoff off of the neighboring lot as shown on Exhibit B. The drainage patterns have been evaluated and should not adversely affect surrounding properties.

As shown on the attached Stormwater Calculations sheet, impervious area is proposed to increase from 19.8% to 22.8%, which would increase runoff 0.12 cfs in the 10 year and 0.20 cfs in the 100 year storm. As the proposed improvements will result in less than the 40% of allowable impervious area, we request that the project be approved as proposed.

Please feel free to contact us at (913) 764-1076 with any questions or if you require any additional information.

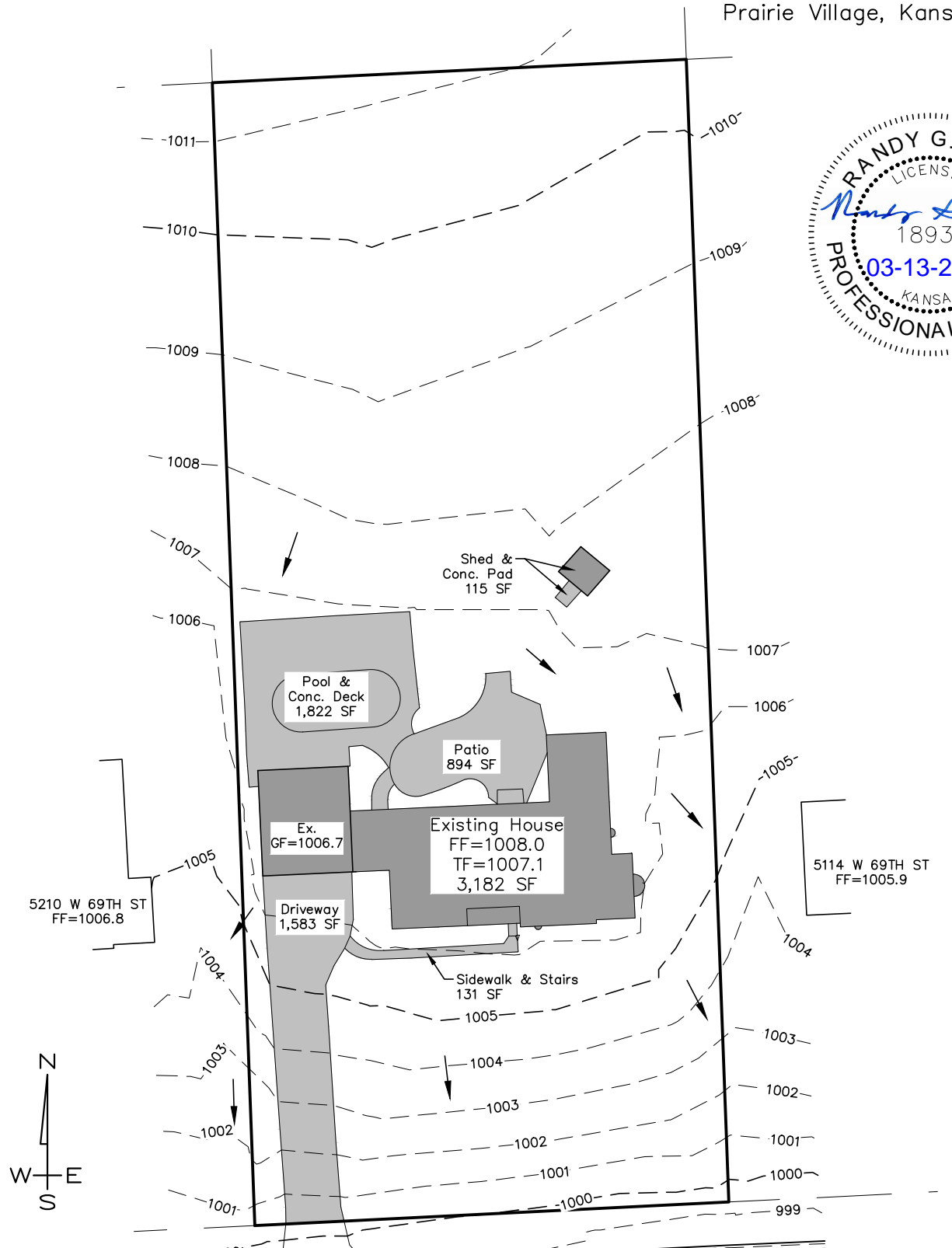
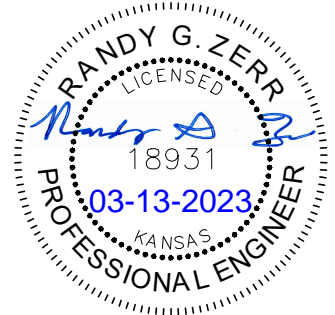
Sincerely,

Randy Zerr, P.E.

**EXHIBIT A**  
Current Conditions

Pt. SW ¼, Sec. 16-12-25

5200 W 69th Street  
Prairie Village, Kansas



SCALE: 1"=40'



**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET  
OLATHE, KANSAS 66061  
PHONE: (913) 764-1076  
FAX: (913) 764-8635

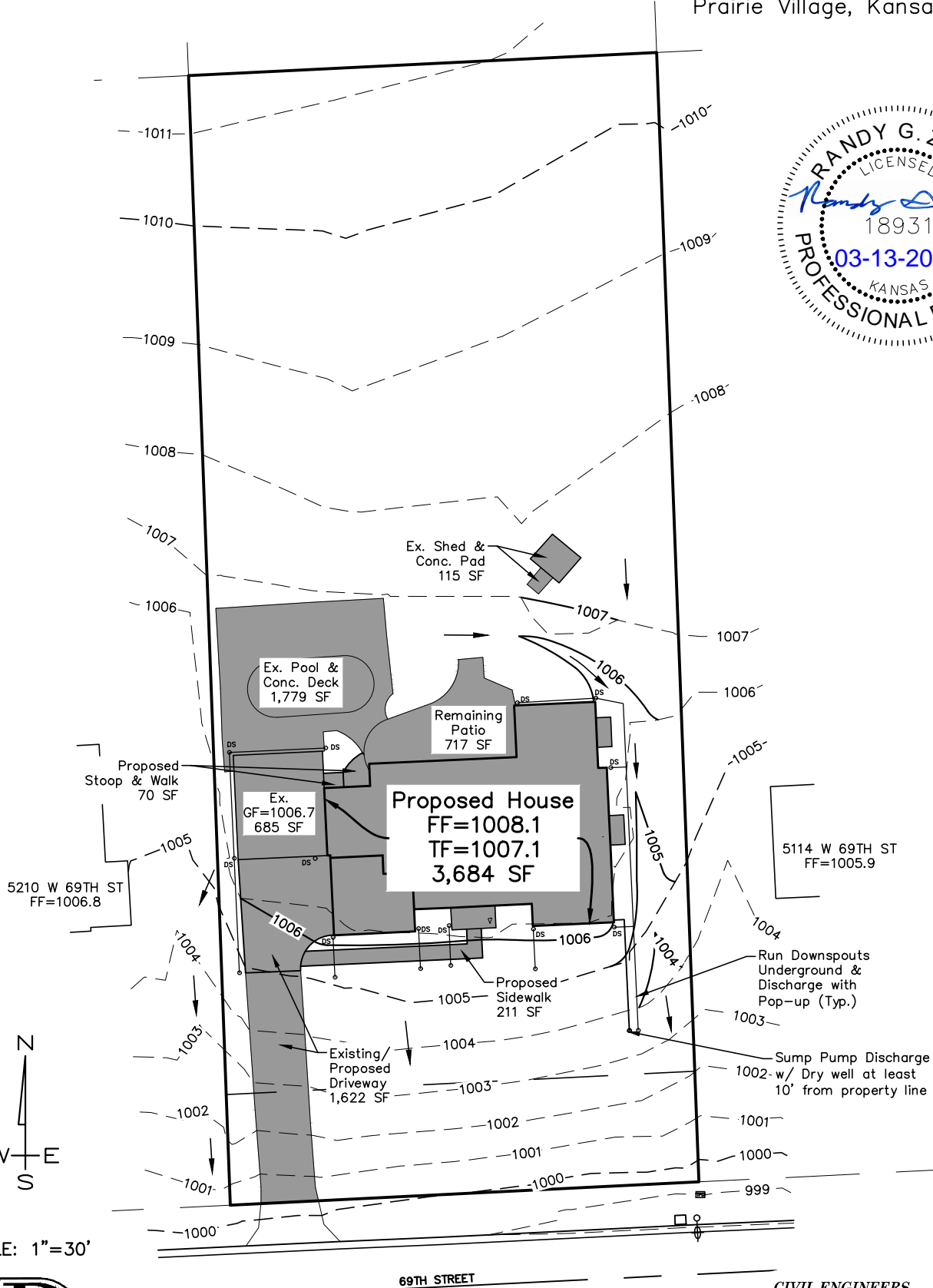
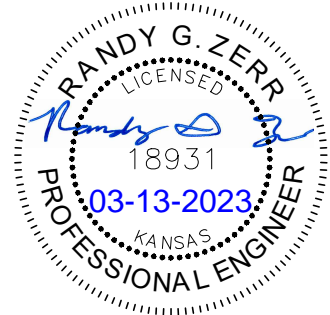
14 W. PEORIA  
PAOLA, KANSAS 66071  
PHONE: (913) 557-1076  
FAX: (913) 557-6904

# EXHIBIT B

## Proposed Conditions

Pt. SW ¼, Sec. 16-12-25

5200 W 69th Street  
Prairie Village, Kansas



SCALE: 1"=30'



69TH STREET

**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET  
OLATHE, KANSAS 66061  
PHONE: (913) 764-1076  
FAX: (913) 764-8635

14 W. PEORIA  
PAOLA, KANSAS 66071  
PHONE: (913) 557-1076  
FAX: (913) 557-6904

# Stormwater Calculations Sheet

Pt SW 1/4,  
 Sec. 16-12-25  
 5200 W 69th St  
 Prairie Village, KS

Total Lot Area 38,984 SF

## Drainage Area

10 year

Tc                    5 Minutes                    300 Seconds  
 I<sub>10</sub>                    7.35 in/hr

	Existing	Proposed	Delta
Total Area (in SF)	38,984	38,984	0
Impervious Area (in SF)	7,727	8,883	1,156
Percent Impervious	19.8%	22.8%	3.0%
Runoff Coefficient	0.42	0.44	0.02
Q <sub>10</sub> (cfs)	2.76	2.87	0.12

## Drainage Area

100 year

Tc                    5 Minutes                    300 Seconds  
 I<sub>100</sub>                    10.32 in/hr

	Existing	Proposed	Delta
Total Area (in SF)	38,984	38,984	0
Impervious Area (in SF)	7,727	8,883	1,156
Percent Impervious	19.8%	22.8%	3.0%
Runoff Coefficient	0.42	0.44	0.02
Q <sub>100</sub> (cfs)	4.84	5.04	0.20

April, 7 2023

To: Prairie Village zoning and planning commission

We live at 5210 West 69<sup>th</sup> Street in Prairie Village, Kansas, immediately to the west of Dan & Mary McCarthy's home at 5200 West 69<sup>th</sup> Street. Dan and Mary McCarthy have explained that the main structure of the home will be demolished, but they would like to keep the existing garage structure and pool. From our understanding, while the current garage location met previous codes for Prairie Village, in the context of the construction planned for the property, it is 1.7 feet too close to the property line between our homes than current codes/regulation. The garage is not over the property line.

The garage has been in its current location for nearly 30 years, and we are **agreeable to the garage remaining in its current location.** There would be less construction near our house, which would be preferable for us.

Do not hesitate to contact us with any questions about this letter and we are happy to participate in any additional conversations if needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura and Chris Plencner', written in a cursive style.

Laura and Chris Plencner

5210 W. 69<sup>th</sup> St.

Prairie Village, KS 66208

618-558-4573

847-809-4425

[lplencner@gmail.com](mailto:lplencner@gmail.com)

[cplencner@gmail.com](mailto:cplencner@gmail.com)

5200 West 69th Street  
Prairie Village, KS 66208

Dear Neighbors,

We are writing to make you aware of our plans to keep our existing garage on our property located at 5200 West 69th Street. We will be removing the main structure of the house and would like to keep our existing garage. Our garage has been in this location for 27 years, installed by the prior owner.

While this garage was installed to code 27 years ago, it does not comply with the current Prairie Village zoning regulations. Under these regulations, the garage is 1.7ft too close to the property line (NOT over the line, just too close). Our garage does comply with the current greenspace requirements between the houses. Keeping our existing garage would also reduce the amount of construction and translate to less disruption for our nextdoor neighbors.

We have applied to the City of Prairie Village Planning Commission for approval to keep the garage in its current location. The garage is structurally sound and it would be unfortunate to demolish a good structure. The Planning Commission requires us to provide an opportunity for our neighbors to raise any questions or concerns regarding Keeping our Existing garage in its current location.

This letter is to make you aware of a meeting that we are holding on Monday, April 17th at 5pm in front of our house at 5200 West 69th Street. You are invited, but NOT required, to attend and to express any concerns you may have. We will submit a record of the meeting to the Prairie Village Planning Commission. This record will identify attendees and will document any concerns that may be expressed.

Regards,

Dan & Mary McCarthy

Attendees:

Shannon & Pat Obryan 5220 West 69th Street  
Chris and Laura Plencner 5210 West 69th Street  
Matt & Natalie Oldroyd 5113 West 69th street  
James Engle 5225 West 69th Street (email confirmation)

The neighbors who attended were excited for us to start our project. No concerns or issues with our plan to keep the existing garage.

The discussion entailed the garage remaining in its current location as detailed in the certified letter sent to all of the neighbors within 200ft of our property. We also discussed the demolition of the existing main structure of the house and rebuilding. Our constructions plans were there to review, NO negative feedback.

Thanks

Dan & Mary McCarthy