



**To:** Members of the Board of Zoning Appeals

**From:** Tom Vander Woude, Planning Director

**Date:** July 9, 2018

**Re: PUBLIC HEARING**

BZA Docket No. 18-003. Basil Herbeck requesting developmental standards variances from Sec. 26-512(1) and Sec. 26-532(1) of the Munster Zoning Ordinance to permit the construction of a residential addition that extends 5 feet into the required 35 foot front yard setback at 8950 Delaware Parkway.

---

<b>Applicant:</b>	Basil Herbeck
<b>Property Address:</b>	8950 Delaware Parkway
<b>Current Zoning:</b>	R-2 Dwelling House District
<b>Adjacent Zoning:</b>	North: R-2 South: R-2 East: R-2 West: R-2
<b>Action Requested:</b>	Approval of Variance
<b>Additional Actions Required:</b>	Findings of Fact
<b>Attachments:</b>	Hand drawn site plan Hand drawn renderings of front elevation Surveyor Location Report of subject property, Torrenga Surveying, LLC, dated 04.30.2018 Additional photos of subject property, including interior, and surrounding properties provided by petitioner Petitioner-provided signature sheet Independence Park original plat of subdivision Photos of subject property and surrounding properties provided by staff

## Background

Property owner Basil Herbeck has requested developmental standards variances from Sec. 26-512(1) and Sec. 26-532(1) of the Munster Zoning Ordinance to permit the construction of an addition to the residential dwelling at 8950 Delaware Parkway. The proposed addition extends the southeast wall of the house 7'-6", leaving a front yard with a depth of 30', which is 5 feet less than the required 35-foot front yard.

The petitioner along with his wife Amanda and contractor Dean White appeared at the June 10, 2018 meeting to present the petition. At that time, the Board requested that they provide scaled renderings of the addition. A rendering was provided to staff. It may be drawn to scale, but it does not include a scale or dimensions.

The subject property is located in an R-2 Dwelling House District. The required front yard is stated in the Munster Zoning Code as follows:

**Sec. 26-532. - Yards.**

*In R-2 dwelling house districts, each building, structure or premises shall have yards as follows:*

*(1) Front yard. The front yard regulations shall be the same as those in R-1 dwelling house districts.*

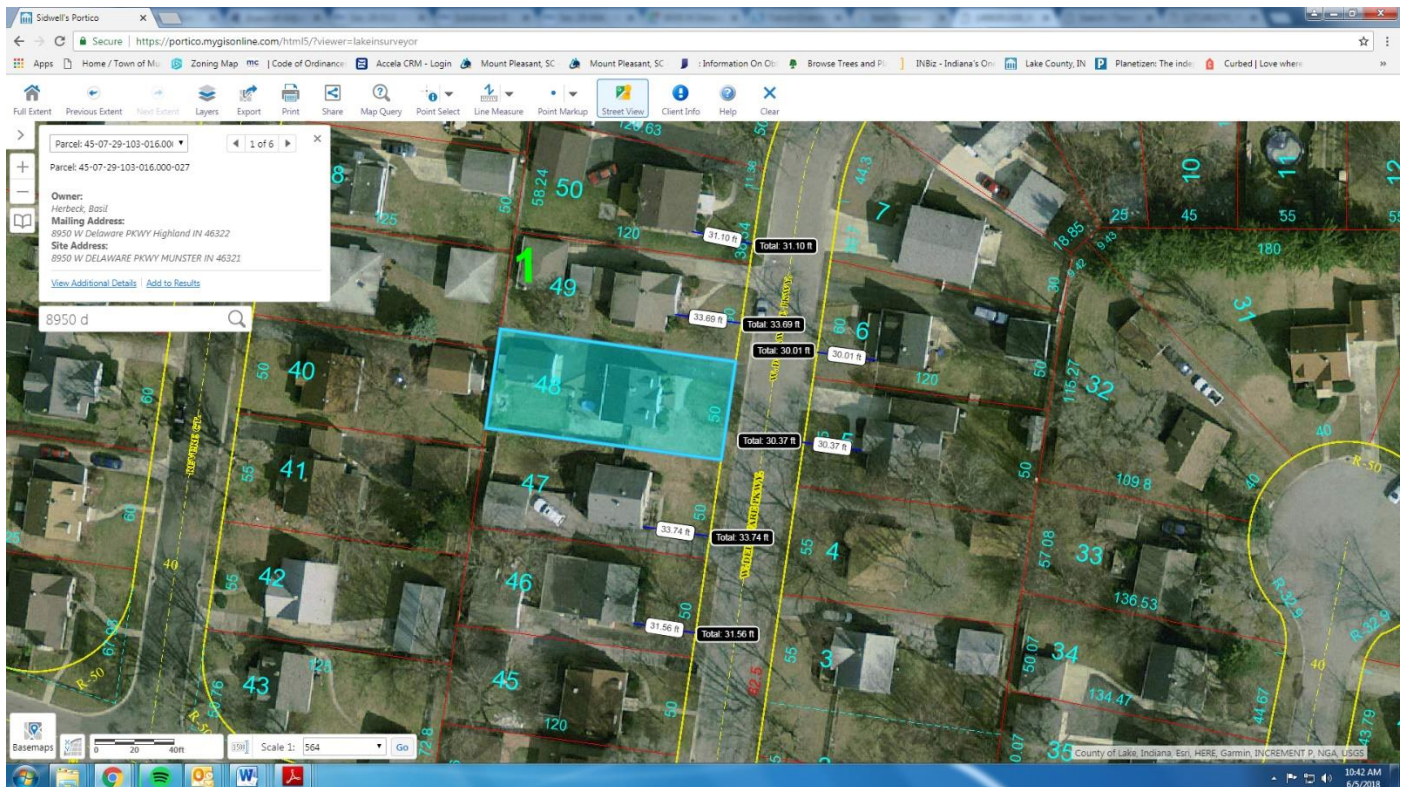
**Sec. 26-512. - Yards.**

*In R-1 dwelling house districts, each building, structure or premises shall have yards as follows:*

*(1) Front yard. There shall be a front yard at least one foot in least dimension for each one foot in height of the main building; provided, however, that no front yard shall be less than 35 feet.*

## Discussion

The surveyor location report attached to this memo depicts a 30 foot setback line for the subject property, which was the setback at the time the subdivision was platted in 1939. Since at least 1985, the required setback has been 35 feet. Staff conducted a rudimentary analysis of surrounding properties using the Lake County Surveyors GIS portal and found that most have a front yard between 30 and 35 feet in depth. See the screen shot below.



1005 Ridge Road • Munster, IN 46321 • (219) 836-8810 • Police/Fire Emergencies 911

Police Non-Emergency (219) 836-6600 • Fire Non-Emergency (219) 836-6960

www.munster.org

Sec. 26-456 of the Munster Municipal Code states that the BZA may hear and rule upon petitions for developmental standards variances after holding a public hearing. The BZA may then consider one of the following actions: approve the requested variances; approve the requested variances with conditions; or deny the requested variances.

## **Variance Standards**

The variance process is established to provide relief to a property owner, but the BZA is under no obligation to grant a variance. It is the petitioner's responsibility to prove a hardship or practical difficulty. The BZA should ask the petition to address the criteria listed below.

Sec. 26-456 of the Munster Municipal Code states that the basis for a variance is as follows:

Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or by reason of any other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulations enacted under this article would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owners of such property...

Sec. 26-456 also states:

No relief may be granted or action taken under the terms of this section unless such relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the master plan and this article.

When considering a request for a variance, the BZA should consider the following:

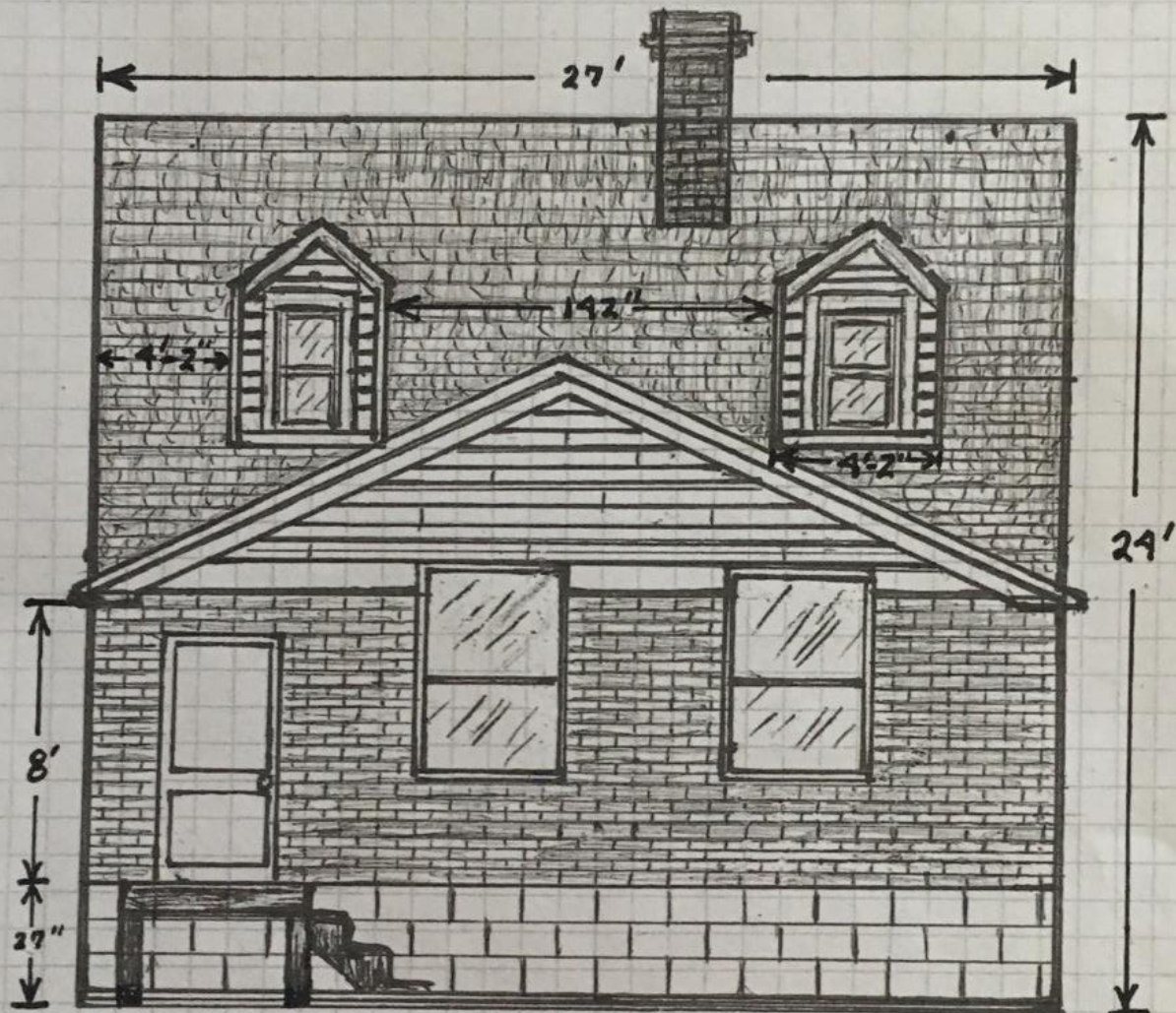
1. The specific provisions and requirements of [Sec. 26-456 – discussed above] pertaining to the specific subject matter of the application, petition or appeal.
2. The general provisions and requirements, intent and purpose of [Sec. 26-456 – discussed above].
3. The provisions, requirements, intents and purposes of other ordinances of the town which may be applicable thereto.
4. The effect on the public health, safety and welfare of the citizens of the town, specifically including, but not limited to, fire and traffic safety, considering the requirements, regulations and standards of any town, county or state health, fire, traffic or safety agency or commission.
5. The effect upon the sound economic development of the community.
6. The effect upon adjoining or other property in the community, recognizing the right of adjoining or other affected property owners to the peaceful and quiet enjoyment of their property, and including the effect upon the desirability or use of adjoining or nearby residential property, and bearing in mind whether or not such proposed action will be consistent with the development and growth of the town as a restricted residential community.
7. The existence, nature and degree of any hazards, odor, dust, gas, noise, smoke, fumes, light, glare or vibrations which may be attendant thereto.
8. The existence and degree, if any, of burdens which may be imposed upon police, fire, school or other facilities of the community.

Indiana Code 36-7-4-918.5 identifies the legal criteria for a developmental standards variance:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property



# HERBECK RESIDENCE



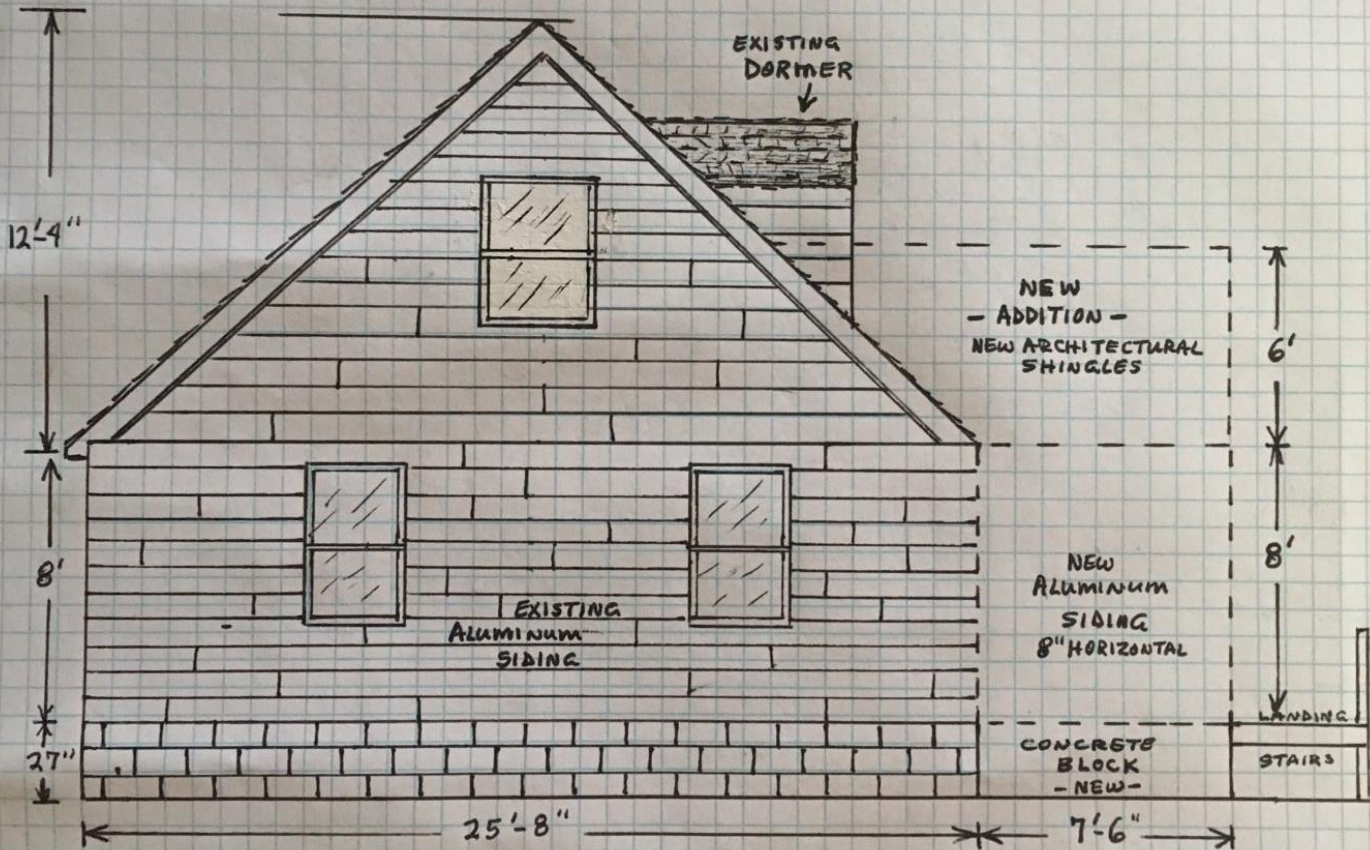
8950 WEST DELAWARE PARKWAY  
MUNSTER, IN.

EAST ELEVATION - FRONT

TOWN AND COUNTRY REMODELING  
DEAN WHITE

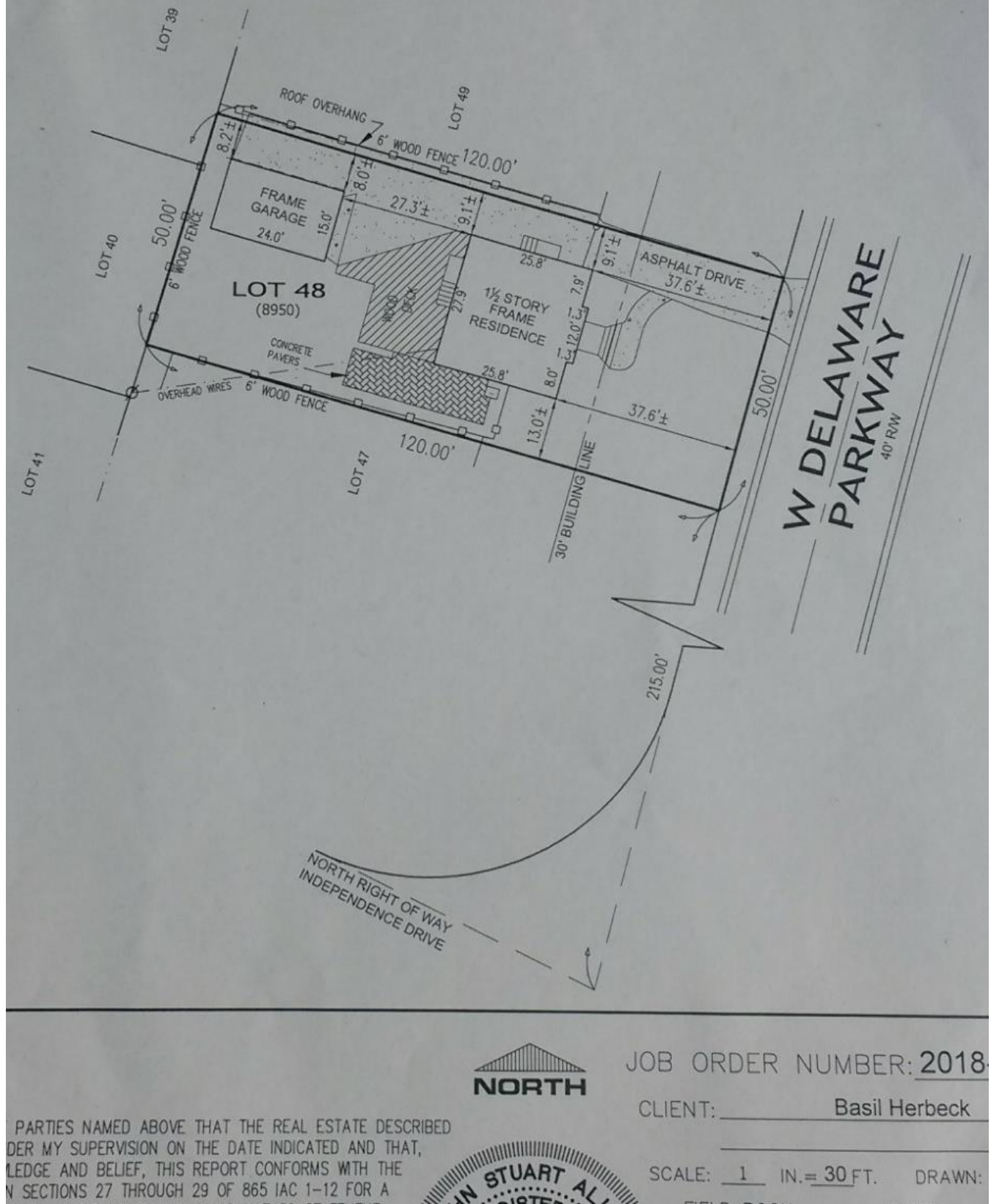


HERBECK  
8950 WEST DELAWARE PARKWAY MUNSTER, IN.



TOWN AND COUNTRY REMODELING - DEAN WHITE  
SOUTH ELEVATION

ON: Lot 48, Block 1, Independence Park in the Town of Munster, as per plat thereof, recorded in Plat Book 24, Page 23 in the Office of the Recorder of Lake County, Indiana.



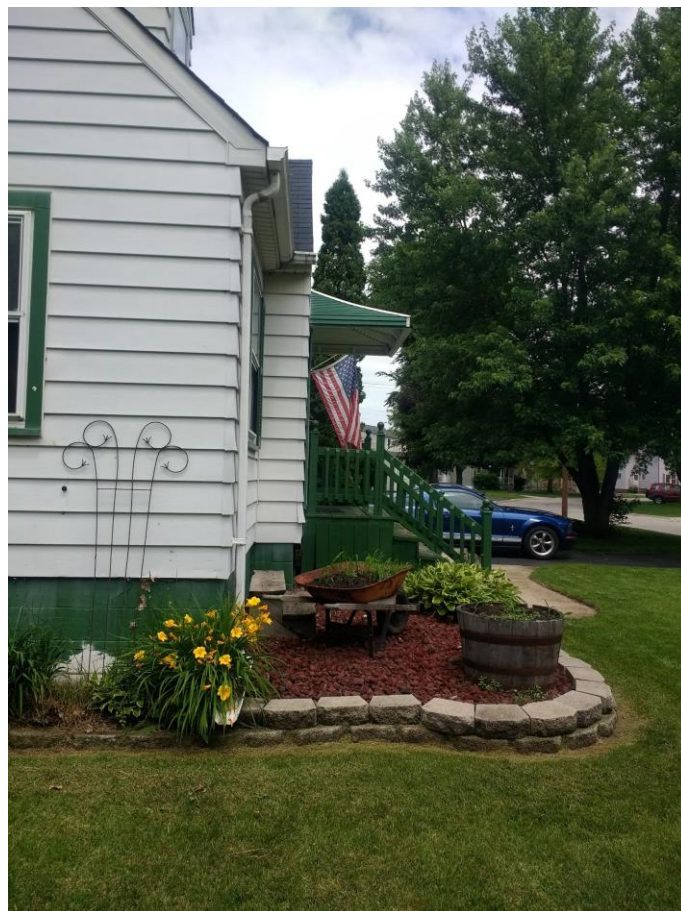
8925 W. Delaware Parkway (subject property)  
Plat of Survey





8925 W. Delaware Parkway (subject property)  
Photos of Exterior



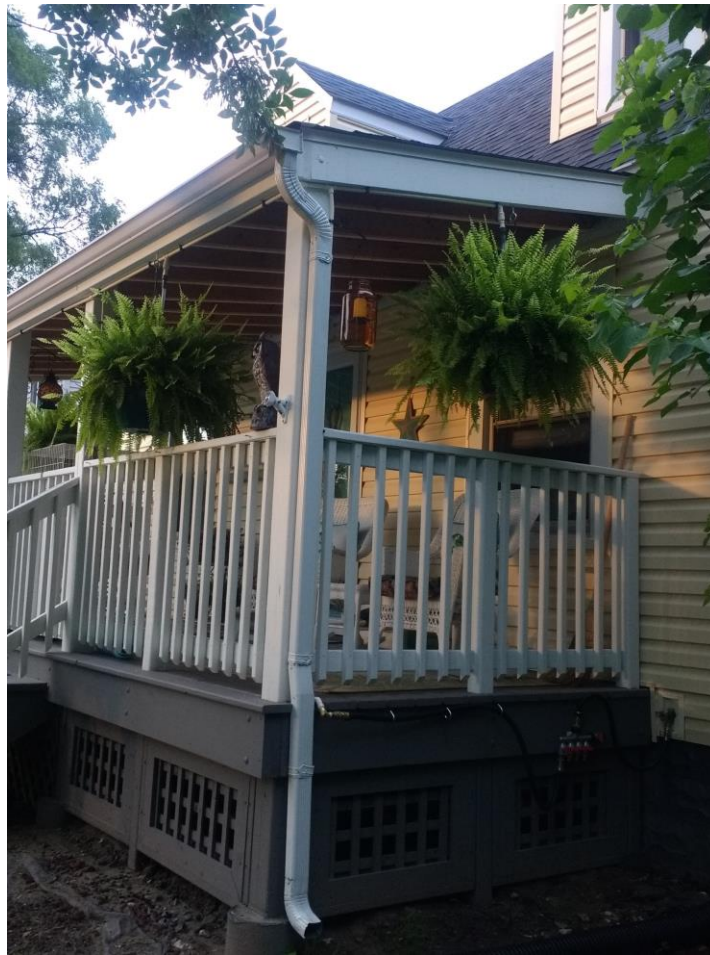


8925 W. Delaware Parkway (subject property)  
Photos of Exterior





8925 W. Delaware Parkway (subject property)  
Photos of Interior



8941 W. Delaware Parkway (Neighboring Property)  
Photos of Recently Installed Porch Roof



If you have recieved our certified mail, you know  
we are asking the town for a variance to build  
5 feet passed the 35 foot buildline. Please  
sign your name next to your address if you  
DO NOT have a problem with us doing the  
addition to the front of our property at

8950 W Delaware Pkwy

-Basil and Amanda Herbeck

8926 W Delaware Pkwy

8930 W Delaware Pkwy

8931 W Delaware Pkwy

8930 W Delaware Pkwy

8938 W Delaware Pkwy

8941 W Delaware Pkwy

8944 W Delaware Pkwy

8947 W Delaware Pkwy

8954 W Delaware Pkwy

8953 W Delaware Pkwy

8956 W Delaware Pkwy

8957 W Delaware Pkwy

8960 W Delaware Pkwy

8964 W Delaware Pkwy

8967 W Delaware Pkwy

~~8968 W Delaware Pkwy~~

8931 W Delaware Pkwy

8936 W Delaware Pkwy

*[Signature]*

Michael Monaghan

John Rogowski

*[Signature]*

Rachel Drewine

Patricia Davidson

*[Signature]*

Patti Herck

*[Signature]*

B. Edwards

*[Signature]*

Carol Ann

Jennifer Guntie

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*



# INDEPENDENCE PARK

Being a subdivision of that part of the North Half of the Northwest Quarter of Section 29, Township 36 North, Range 9 West of the 2nd P.M., Lake County, Indiana, which lies West of the center line of Hart Creek, excepting the North 190 feet; containing 50.64 acres, more or less.



STATE OF ILLINOIS } ss.  
COOK COUNTY

of John J. Lawler, deceased, do hereby certify that we are the owners of the above described tract of land and that we did direct the same to be subdivided into lots, blocks, streets, paths and parks as represented by the plat hereof, hereon drawn, and we hereby dedicate all streets, paths and parks for public use, all of which is our free and voluntary act and deed.

*Charles E. Day*  
*David H. Reimer*  
*Edward J. Lawler*  
*William F. Raff*  
*William F. Morley*

Trustees of last will and Testament of John J. Lawler, deceased - OWNER

STATE OF ILLINOIS } ss.  
COOK COUNTY

This day personally appeared before me *J. F. Haberborn*, a Notary Public in and for the State and County aforesaid, *Charles E. Day, David H. Reimer, Edward J. Lawler, William F. Raff, William F. Morley*, to me known to be the same persons whose names are subscribed to the above certificate as Trustees under the last will and testament of John J. Lawler, deceased, owner of the above described tract of land, and acknowledged the subdivision of the said tract of land into lots, blocks, streets, paths and parks, and the dedication of the streets, paths and parks to the public use, as their free and voluntary acts.

Given under my hand and Notarial Seal this *24th* day of *April*, A.D. 1939

My Commission Expires *June 23-1940*

*J. F. Haberborn*  
NOTARY PUBLIC

STATE OF INDIANA } ss.  
LAKE COUNTY

This is to certify that the above plat has been Submitted to, approved and accepted by the Board of Trustees of the Town of Munster, Indiana this *24th* day of *April*, A.D. 1939

BOARD OF TRUSTEES,  
TOWN OF MUNSTER, INDIANA

Attest

*Arthur C. Davis*  
CLERK - TREASURER  
Town of Munster, Indiana

STATE OF INDIANA } ss.  
LAKE COUNTY

This is to certify that the above plat has been submitted to and approved by the Plan Commission of the Town of Munster, Lake County, Indiana this *24th* day of *April*, A.D. 1939

PLAN COMMISSION  
TOWN OF MUNSTER, INDIANA  
*Harold J. Anderson* President  
*Arthur C. Davis* Secretary

STATE OF INDIANA } ss.  
LAKE COUNTY

I, J.B. Murphy, a Registered Professional Engineer, do hereby certify that I have made a survey of the above described tract of land and have subdivided the same into lots, blocks, streets, walks and parks, and that the plat thereof hereon drawn truly represents said survey and subdivision.

Hammond, Ind.  
April 15, 1939

*J.B. Murphy*  
Registered Professional Engineer.

Approved this *25th* day of *April*, A.D. 1939

*Arthur C. Davis*  
CONSULTANT

30

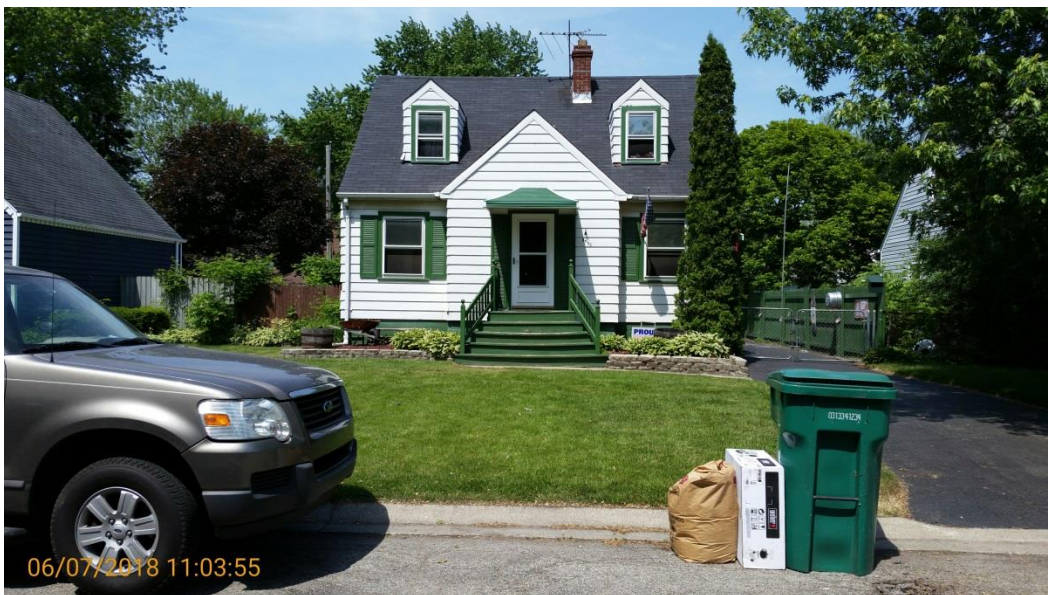




8950 W.  
Delaware  
Parkway

Existing  
Conditions

View from  
South



View from  
Southeast



View from  
Northeast