



BEAVERCREEK BOARD OF ZONING APPEALS
Regular Meeting – February 8, 2017, 6:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
 - A. December 14, 2016
- V. PUBLIC HEARINGS
 - A. V-17-1, Juan Santana, 1815 Maple Lane
- VI. ADJOURNMENT

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, December 14, 2016

PRESENT: Mr. Hight, Mr. Morter, Mr. Raber, Mr. Roach

ABSENT: Mr. Hung

Chairman Hung called the meeting to order followed by roll call.

Mr. Raber MOVED to excuse Mr. Hung from the meeting. Motion was seconded by Mr. Morter, and PASSED by majority voice vote.

Mr. Raber MOVED approval of the agenda, seconded by Mr. Morter. Motion PASSED by majority voice vote.

Mr. Raber MOVED approval of the minutes of October 12, 2016, seconded by Mr. Morter. Motion PASSED by majority voice vote.

PUBLIC HEARING

BZA-16-1, Edward & Carolyn Fitch, 1436 Hanes Road

Clerk Gillaugh read the notice of public hearing on an application filed by Edward & Carolyn Fitch, 1436 Hanes Road, Beavercreek, OH 45434, appealing the order issued by the Code Enforcement Officer. The property is in violation of Property Maintenance Code Section 153.30. The property is located on the east side of Hanes Road, five lots south of the intersection of Walling Way and Hanes Road further described as Book 5, Page 13, Parcels 1 and 2 on the Greene County Property Tax Atlas.

Carolyn Fitch stated the basis of their appeal is under three categories, the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, and the requirements of the Code are adequately satisfied by other means short of demolition and removal of their earthen berm. She explained their earthen berm is comprised of soil, wood chips, deteriorating wood, mulch, decomposing leaves, and some logs. Mrs. Fitch said they were cited because staff said it was debris, and agreed that it is not aesthetically pleasing. She stated they have fully intended to cover the wood entirely with soil and landscape the earthen berm, but because it is winter it will be delayed.

Mrs. Fitch explained the definition of debris includes soil that is a result of landscaping, so if the earthen berm consisted of solely soil it would be by definition debris under the Code. She stated they are saying that it does not fully apply. She said their berm consists of loose earth materials that are suitable for the use that they have intended it, which is a screen from heavy traffic on Hanes Road. Mrs. Fitch believed there were approximately 8,000 to 10,000 cars a day travelling on Hanes Road. She explained they have been building the mound over many years now, and wished if the City objected they would have done so years ago when they started it before it grew to the size it has. Mrs. Fitch said the mound is about 85 feet long, about 15 to 20 feet wide and approximately six feet high. She stated since they have been cited, they have removed some brush and

debris that was in the area so the photos that were taken two months ago no longer represent its current condition.

Mrs. Fitch explained they plan on getting loads of top soil to finish the berm, but recent weather has prohibited that and they decided to wait and see what is required before they worked on it further. She said they do not feel they need to remove the wood in order to meet the requirements of the Code, which is to eliminate eyesores, but they feel removing the wood would be an economic waste because the cost of removing it would be punitive and replacing it with 20 loads of top soil would be unnecessarily costly. Mrs. Fitch estimated it would cost somewhere between \$7,000 to \$14,000 to replace the wood with top soil, and that does not include removing the existing wood, having the soil delivered or deposited in that location. She did not feel the wood was debris if people keep knocking on their door asking if they could have it or they take it and leave money behind. She said it is suitable for the use they intended, and said they wanted it to absorb the stormwater runoff from the road and to reduce the erosion that is occurring in their yard since their lot is below the level of the road.

Edward Fitch explained they were cited because it was firewood, and they specifically placed a sign on the berm that said "Private Property" and not "firewood for sale". He said the wood has been cut to firewood length because when a person cuts down a tree that is what they cut it to. Mr. Fitch stated it is not for firewood purpose unlike their neighbors who have had logs in their front yard for a long time.

Mrs. Fitch thought Mr. Funk was doing a great job, and he has a very difficult job and probably needs more help than he has, but they do not agree with him 100% of the time. Mrs. Fitch requested that the Board grant the variance and allow them to keep the wood there with the understanding that it will be completely covered with top soil and landscaping when the weather permits.

Mr. Funk stated they are here tonight to discuss an administrative appeal of a Notice of Violation that was given to the Fitch's back in October. He explained an administrative appeal is different than a variance request, in the fact they are appealing the decision he, the Code Enforcement Officer, made in terms of the Notice of Violation instead of requesting permission to construct something while not meeting the requirements of the Code. Mr. Funk reviewed what the Code states an appeal has to be based on and showed where the mound is in relation to the house using an aerial photo. He said he could not speak to the mound blocking sound to the house, but showed photos of what he found when he did the inspection on October 10, 2016. He discussed the chronology of what has happened since the original inspection. Mr. Funk explained in the original violation notice he cited Chapter 153.30 – Firewood, and the Fitch's responded back stating it was not firewood because they were not going to use it for that purpose or to sell it as firewood. He said at that point it transferred from being firewood to wood debris in the front yard, which is a violation of the same section in the Code. He referred to the Property Maintenance Code Chapter 153.30 – Junk, yard waste and debris, and the definition of yard waste and debris. He showed a picture of what the pile looks like, and said it is primarily made up of stacked wood and they pile leaves on it.

Mr. Funk said they expressed a desire to create an earthen berm, and he explained what the definition of an earthen berm is in the Zoning Code. He stated the City has no objection to them building an earthen mound, but it would need to be constructed of soil and not waste products. Mr. Funk said in their appeal they had that the mound met the Code's definition of a screen, however there is no definition for screen or screening in the Code and what was actually cited was what was required for screening of a junk vehicle storage in a commercial district. Mr. Funk showed several photos of earthen berms that do exist in the City, which consist of solid soil with landscaping or grass on top. He explained staff is not objecting to the fact they have an earthen mound, but the violation was issued to the fact that they are accumulating yard waste and debris along Hanes Road. Mr. Funk said the Fitches' wished they were notified earlier, but the vast majority of the time everything is complaint driven. He said there was a complaint made, and staff had one even as recent as yesterday. He stated in Staff's opinion they are in violation of Chapter 153.30 because they have maintained, accumulated, caused to be accumulated or have allowed to be accumulated yard waste and debris on their property. Mr. Funk explained the Board can approve their administrative appeal, deny the administrative appeal, or they can modify the decision of the Code Enforcement Officer.

Mr. Morter asked if they had been gathering the wood for several years. Mr. Fitch said they have been over time. Mr. Morter questioned if the wood was from their property. Mr. Fitch stated yes.

Mr. Raber asked if the cost of the soil is out of the question to get the berm where they want it to be. Mrs. Fitch said no if they were able to leave the wood there, it would require much less. She explained the estimate of \$7,000 to \$14,000 was if the wood was removed and replaced with top soil. Mrs. Fitch stated the wood was already half way buried, and asked that they allow them to leave the wood providing that they cover it completely with soil and landscaping. She said it would be more cost prohibitive to remove and replace it when there is no reason to because it is suitable for the use they have intended.

Mr. Morter questioned if they were done stacking the wood. Mr. Fitch said yes, they were not planning on adding anymore wood. Mrs. Fitch stated they would like to continue to add woodchips, mulch, and leaves to it.

Mr. Roach stated the applicants feel that the incorrect provisions of the Code are being relied upon, and Mr. Funk during his presentation directed them to Chapter 153.30, and asked if they agree that Chapter 153.30 applies to their property. Mr. Fitch did not feel it should be called yard debris because they would call it yard preparation for composted soil. Mr. Roach asked if they feel it does not apply, and questioned why they felt that way. Mr. Fitch believed the material was not scattered debris, and it is neatly arranged debris to form a mound on their property. Mrs. Fitch said the definition of debris is loose earth material that is unsuitable for use, but stated this was earth material that was suitable for their use. Mr. Roach said their argument is that logs are suitable as soil. Mrs. Fitch said yes because it is becoming soil. Mr. Roach questioned if they had logs with six-inches of top soil spread over the top, how things will take root with the firewood stacked underneath

of it. Mr. Fitch explained it will continue to deteriorate, and with earth and other materials on top it will deteriorate faster and eventually turn into extremely rich soil. Mr. Roach asked if the trees were cut for the materials to create the berm or a by-product of having to remove some trees. Mr. Fitch stated they were dropped because they were dead or dying and the insurance company said they need to come out for protection of the house.

Mr. Morter questioned if they wanted the berm before or after the trees were cut down. Mr. Fitch explained they knew they wanted a berm from Day 1 because of the noise of the traffic and they saw that was convenient and available material to use.

Mr. Roach asked if he understood correctly that some of the hardship is hauling it off the property. Mr. Fitch said it is really going to be the replacing that is the hardship. Mrs. Fitch stated she appreciated the purpose of this ordinance to eliminate eyesores, and they want their yard to look nice. She agreed they were negligent and should have done it sooner, but they had other priorities. Mr. Roach questioned if they would have any concern with termite infestation with that amount of wood being underneath. Mr. Fitch explained they have an ant problem, and would say they do not have a termite problem.

Mr. Raber asked if they would be able to cover what currently exists or if it would have to be removed. Mr. Funk explained the definition of an earthen mound states it is solid soil. He thought part of the reason behind that is because as that material decays it is going to collapse, and the viability for plantings may become an issue. Mr. Funk said what they are looking at tonight is if he has properly interpreted the Code, and stated by their own omission it is yard debris that they have accumulated along the front property line. He explained the City is not against them creating an earthen mound, but it needs to be constructed of soil and not yard waste and debris.

Mrs. Fitch said one man's trash is another man's treasure. She stated what Mr. Funk is calling debris they are calling rich organic soil that is becoming soil and once it is covered completely with soil it will very rapidly be incorporated in the soil and be indistinguishable from the soil. She thought there may be sink holes or settling, but that occurs all over their property, and just like regular maintenance on a yard if they appear they are filled in with soil. Mrs. Fitch did not view it as debris, but as unsightly and they do want to cover it. She could understand why someone complained about it.

Mr. Roach asked if the pictures that were taken back in October did correctly show how the property looked. Mrs. Fitch stated that was over two months ago, and they did clean up some on the mess that was seen in those photos so it looks better now. Mr. Roach said on the day the violation was detected the pictures were adequate. Mrs. Fitch said yes. Mr. Funk said yes those pictures were from October, and then there were others that were taken from the beginning of November. He explained staff is continuing to get complaints about the debris, so from the City's perspective they have a responsibility to address those adequately.

Mrs. Fitch said if someone really objected to this, she felt they would have come tonight or sent their representative to represent them tonight. She wondered if those complaints are

coming from one source that they are involved in meditation and civil litigation with, which may have nothing to do with the earthen berm but due to other things. Mr. Roach stated they are not here tonight to discuss the motivations of why people complained, but if the Code Enforcement Officer interpreted the Code correctly or not.

There being no public input, the public hearing was closed.

Mr. Raber MOVED to overrule the appeal. Motion was seconded by Mr. Morter. Motion PASSED by unanimous voice vote.

Mr. Roach encouraged the Fitch's to continue to work with staff to resolve the matter. Mr. Morter stated the idea of the berm is great, and suggested selling the wood so they could buy the soil to create the berm. Mrs. Fitch said the wood is too rotten to sell. Mr. Morter said it is a great idea, but according to the Code it is a violation.

V-16-5, Debra Edwards, 1820 Maple Lane

Clerk Gillaugh read the notice of public hearing on an application filed by Debra Edwards, 1820 Maple Lane, Beavercreek, OH 45432, requesting a variance from Chapter 158.104 (D) of the City of Beavercreek Zoning Code, requesting permission to construct an accessory structure that would exceed the 16-foot maximum height permitted within a R-1A District. The property is located on the east side of Maple Lane, two lots north of the intersection of Hohl Road and Maple Lane further described as Book 5, Page 9, Parcel 33 on the Greene County Auditor's Property Tax Atlas.

Rich Franks stated the structure they are interested in building has an upper storage area, so the truss design pushed the building height to 22 feet. He said their property is about 6.28 acres, and explained they are proposing to build the structure about 70 feet northeast of house and 70 feet from the northern property line. Mr. Franks said he has cleared an area of trees to put the 30-foot by 30-foot structure. He stated they are requesting a six-foot variance from Chapter 158.104. Mr. Franks explained their lot is currently zoned R-1A, One-Family Residential and the alternative would be to request to rezone their property to A-1, Agricultural. He said that process would take multiple months, so they preferred to request the variance since it would be a faster process. Mr. Franks said the structure will not be visible from the street, and will not impact any neighbors and is the minimum variance possible.

Ms. Pereira summarized the staff report dated December 7, 2016, which stated the applicant is requesting to construct an accessory structure that is 22 feet tall that would exceed the maximum 16-foot requirement by 6 feet. She discussed the location of the property, and Chapter 158.104 (D) of the City of Beavercreek Zoning Code. Ms. Pereira said the property is 6.283 acres, and most of the residential properties in the City that are zoned R-1A are typically about half an acre. She explained in this area there are lots that are estate size that were given their zoning designations before the City was incorporated. Ms. Pereira said the zoning that was assigned doesn't really make sense because of the size of the lot, and especially because the lots that abut this property are zoned Agricultural. She said they could rezone the property to Agricultural, and the City would

recommend approval. Ms. Pereira stated she discussed this with the builder, and it was determined that going through the variance process would be much simpler for the applicant and staff, instead of going through the rezoning process which could take up to six months. She said they felt this made the most sense. Ms. Pereira showed photos, and recommended approval of the case.

There being no public input, the public hearing was closed.

Mr. Raber MOVED to approve V-16-5 with two conditions:

1. An Accessory Structure Zoning Permit must be approved by the Planning and Zoning Department prior to the construction of the garage.
2. The material colors shall be consistent with those of the main structure.

Motion was seconded by Mr. Morter. Motion PASSED by unanimous voice vote.

ADJOURNMENT

Mr. Raber MOVED adjournment at 6:47p.m., seconded by Mr. Morter. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk

January 31, 2017

**STAFF REPORT
VARIANCE REQUEST
CASE: V 17-1**

I. APPLICANT

Juan Santana
1845 Spring Ridge Court
Xenia OH 45385

II. NATURE OF REQUEST

The applicant is requesting a variance from §158.131(F)(1) of the City of Beavercreek Zoning Code in order to construct a single family home that will encroach into the required 50-foot rear yard setback by 17 feet in a R-1A ,One Family Residential district.

III. FINDINGS

1. The property under discussion is located at 1815 Maple Lane within section 2 of the Maple Grove Plat.
2. §158.131 (F)(1) of the City of Beavercreek Zoning Code , which references Table 1 outlines the Yard and Lot Requirements for a one family residential district and requires that there be a minimum rear yard setback of 50 feet.
3. The property has 240 feet of frontage along Maple Lane and is 150 feet deep.
4. The applicant is proposing to construct an approximately 83 foot wide by 64 foot deep single family home on the property, 33 feet from the rear property line.

IV. DISCUSSION

The property is located on approximately 0.8 acres of residentially zoned land and was recently combined from two nonconforming 18,000 square foot lots that didn't meet the minimum size requirement for single family residential lots. R-1A lots are required to be a minimum of 20,000 square feet and the depth of the lot is generally double the width in order to accommodate a minimum 40 foot front yard, a 50 foot rear yard and a primary structure. As shown in the attached site plan, the depth of the lot in this

application creates a hardship when trying to fit a home on the property while still maintaining the required setbacks. The house could be brought forward 13 feet in order to increase the rear yard to 46 feet (still requiring a variance), but the majority of the houses on the block have a 50 foot front yard setback which would cause this house to look out of place. The irregular depth of the lot creates the need for a reduced rear yard setback and will not create a negative impact for surrounding properties, therefore Staff finds that the variance request from §158.131(F)(1) meets the requirements for approval per §158.172 (H)(5)(a) of the City of Beavercreek Zoning Code.

V. RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals find that:

1. The reasons set forth in the application valid and justify the granting of the requested variance, and
2. The eight items in §158.172 (H)(5)(a) have been fully satisfied.

Staff further recommends that the Board of Zoning Appeals adopt the attached resolution approving a variance from §158.131 (F)(1) with the following conditions:

1. A Residential Zoning Permit must be approved by the Planning and Zoning Department prior to the construction of the home.
2. The driveway must be constructed of an improved surface once the primary structure is completed.

**RESOLUTION
BOARD OF ZONING APPEALS
CASE NO. V 17-1**

WHEREAS, Juan Santana has made application for a variance from the strict application of the requirements of the City of Beavercreek Zoning Code for the property located 1815 Maple Lane; and

WHEREAS, the applicant is requesting permission to construct a single family home that would encroach into the rear yard setback in a R-1A district; and

WHEREAS, a public hearing was held on February 8, 2017 at which time all persons were given opportunity to comment on the application; and

WHEREAS, the Board of Zoning Appeals finds that the reasons set forth in the application are valid and justify the granting of the variance; and

WHEREAS, the Board of Zoning Appeals finds that subparagraphs 1 through 8 of §158.172 (H)(5)(a) have been fully satisfied.

NOW therefore the Board of Zoning Appeals orders that:

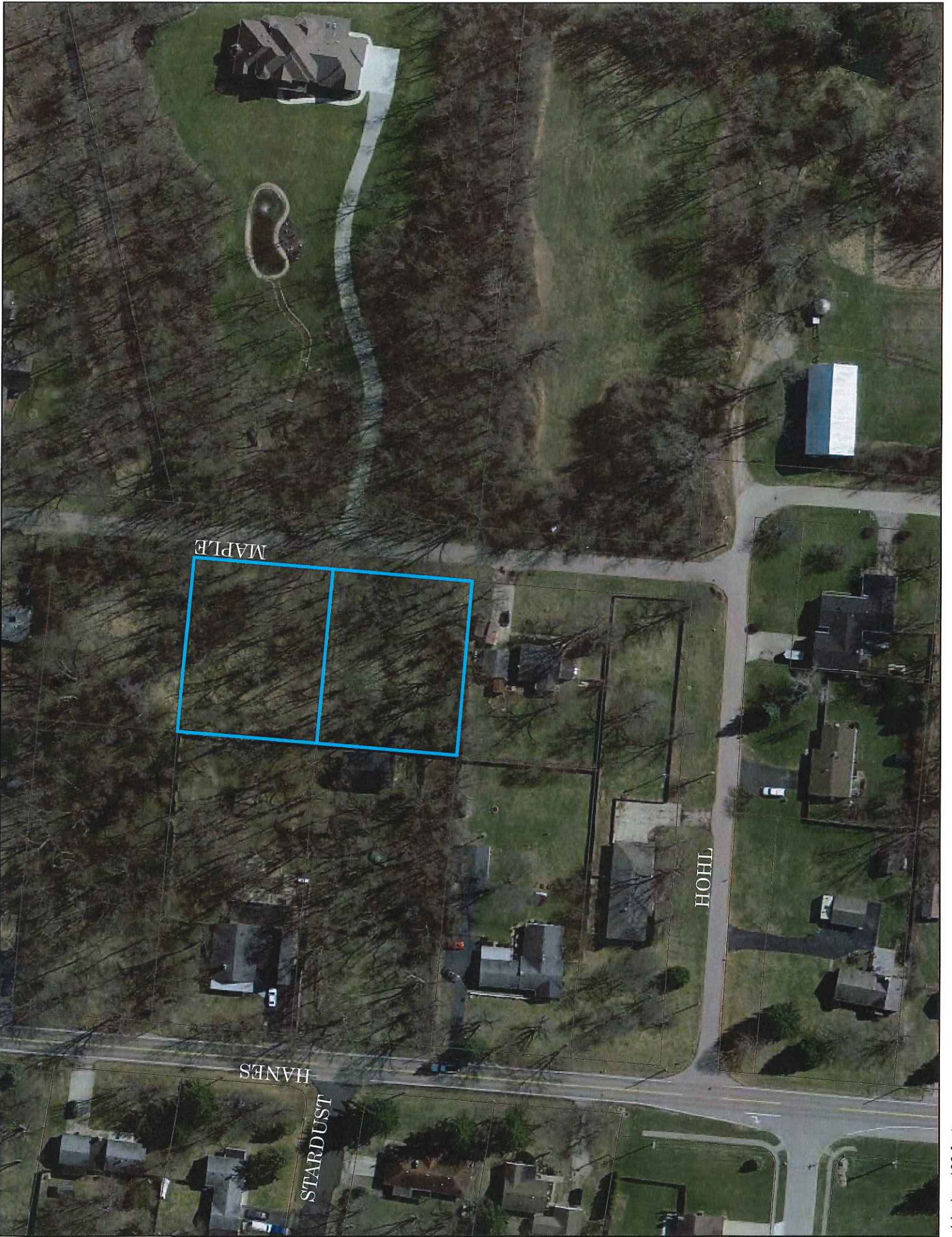
A variance from §158.131 (F) (1) of the City of Beavercreek Zoning Code to allow construction of said single family home, that would encroach into the required 50 foot rear yard setback for this property by 17 feet, be approved with the following conditions:

1. A Residential Zoning Permit must be approved by the Planning and Zoning Department prior to the construction of the home.
2. The driveway must be constructed of an improved surface once the primary structure is completed.

ACTION BY BOARD OF ZONING APPEALS

(Date)

Chairman



MAPLE

HOHL

HANES

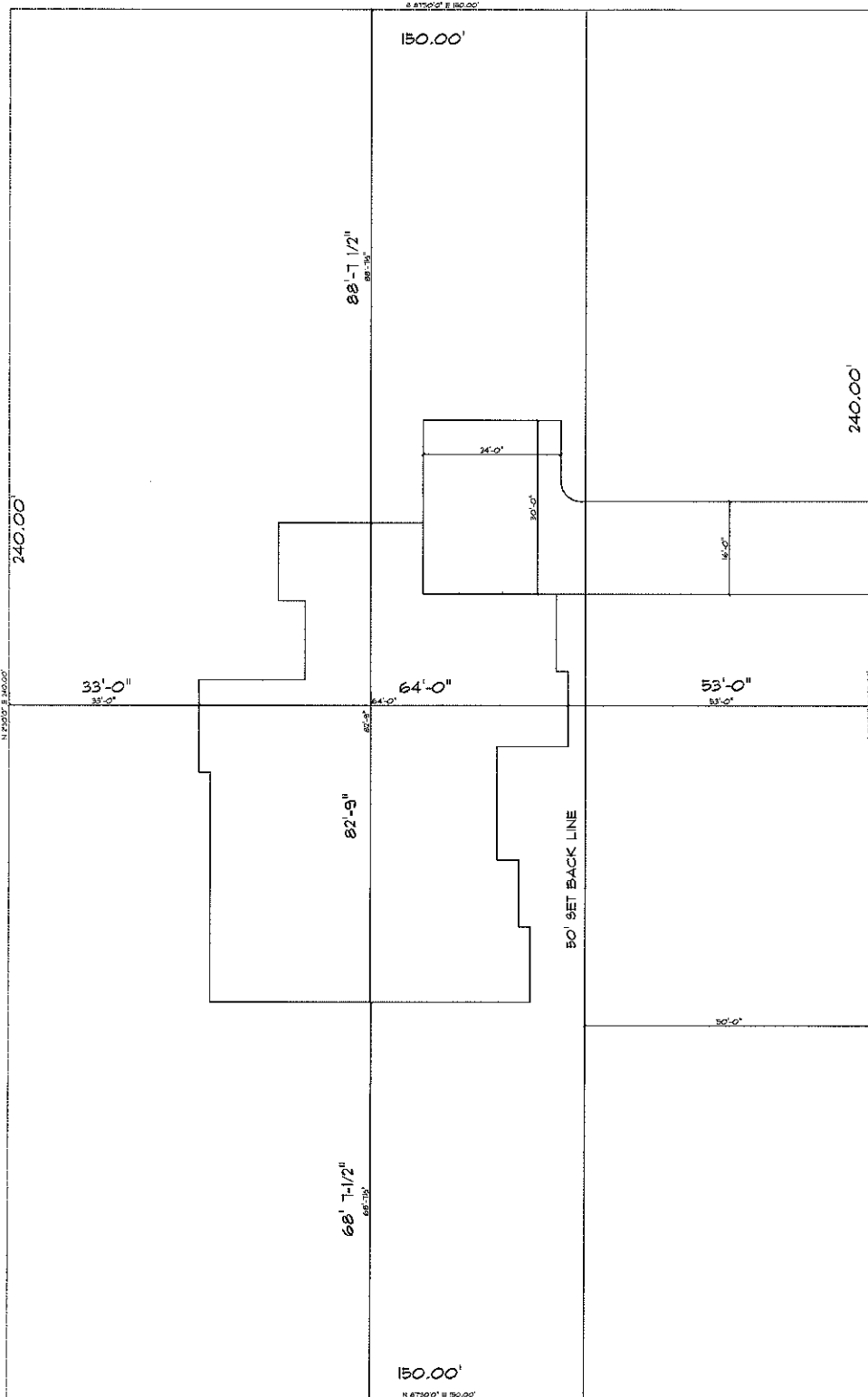
STARDUST

1 inch = 100 feet



SITE PLAN
SANTANA HOUSE
MAPLE LANE
APPLE CUSTOM HOMES LLC
937-470-7163

SCALE 1"=30'



MAPLE LANE

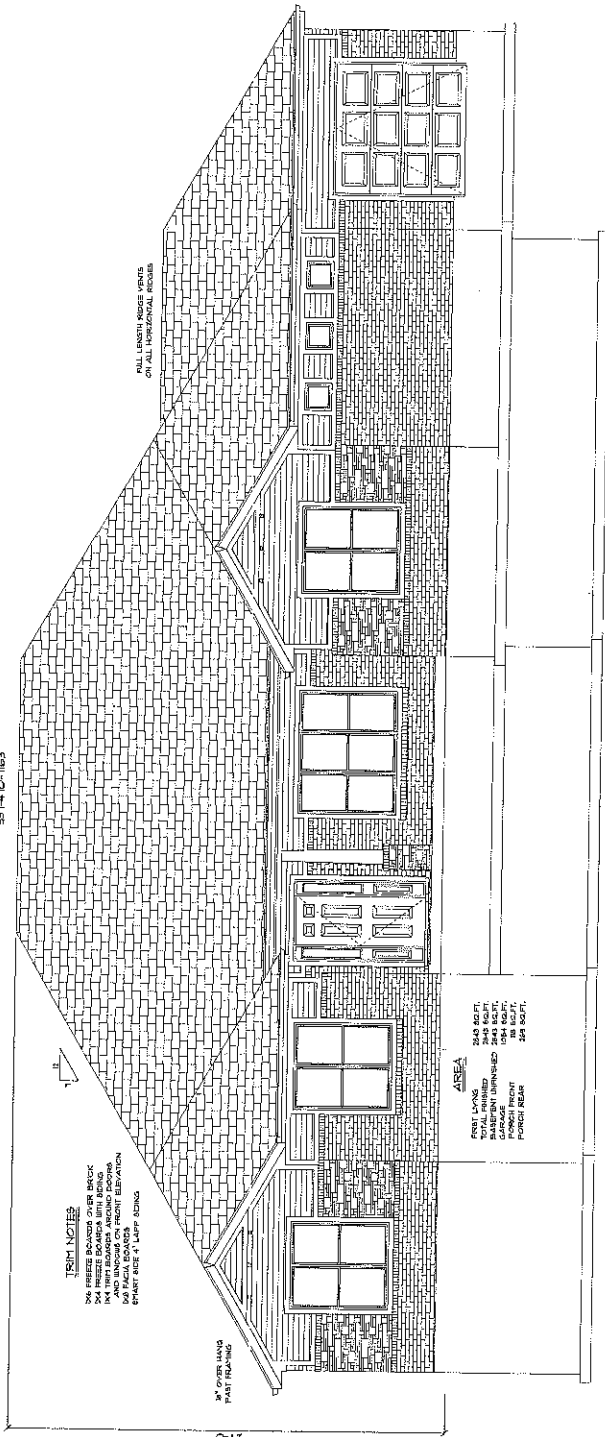
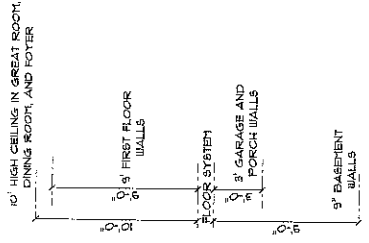
THE SANTANA RESIDENCE

MAPLE LANE, BEAVERCREEK, OHIO
 DRAWN BY
 JAMES APPLE
 APPLE CONSULTING
 331-410-7163

TRIM NOTES
 2x4 FRISSE BOARD OVER BRICK
 1x4 TRIM BOARDS AROUND DOORS
 1x4 TRIM BOARDS AROUND WINDOWS
 3/4" FASCIA BOARDS FRONT ELEVATION
 SPANT BISE 4" LAP JOINT

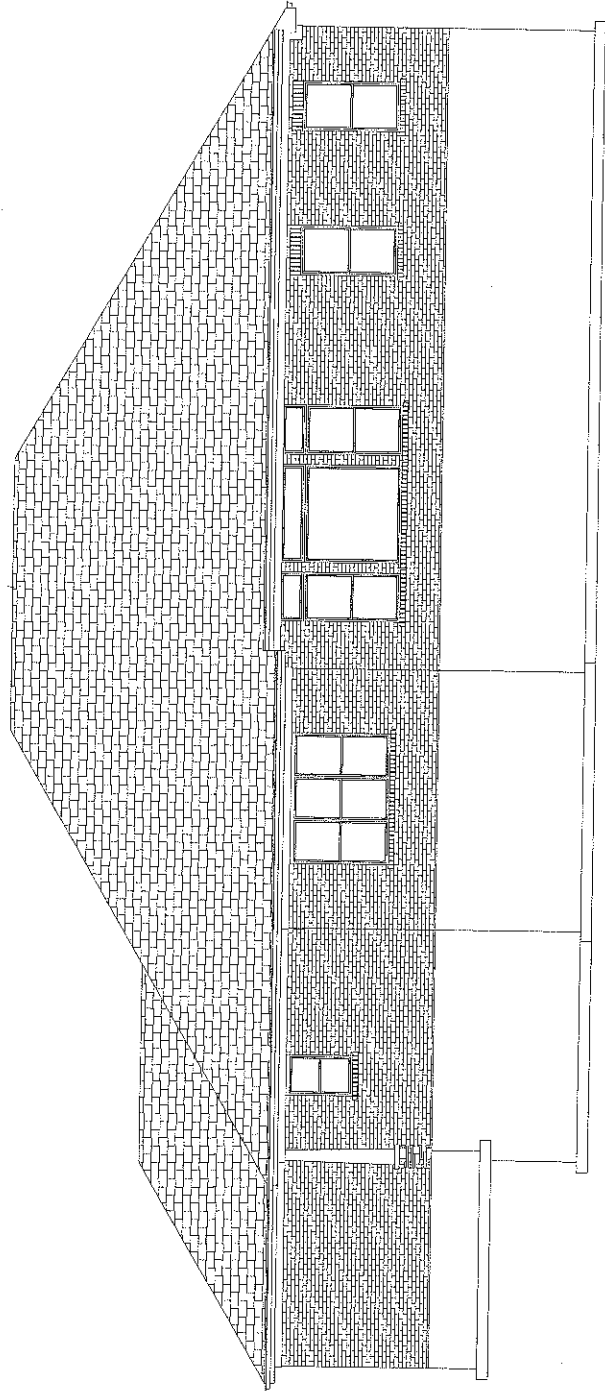
FULL LENGTH RIDGE VENTS
 ON ALL HORIZONTAL ROOFS

3" FIBER GLASS
 PAINT INSULATION



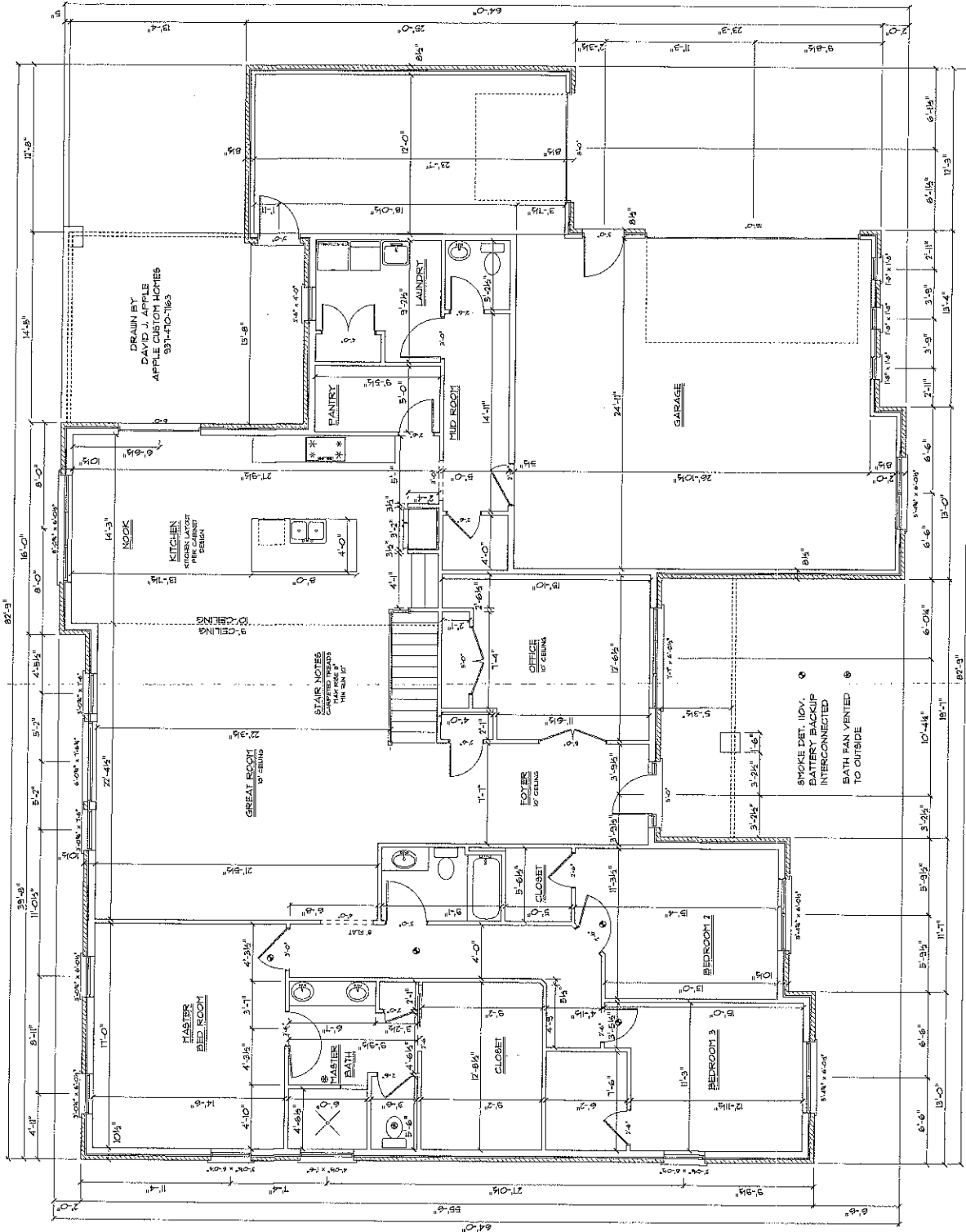
FRONT ELEVATION
 SCALE 1/4" = 1'

AREA
 FRONT LIVING 240 SQFT.
 FRONT DINING 240 SQFT.
 BASEMENT UNFINISHED 240 SQFT.
 PORCH 150 SQFT.
 FRONT PORCH 150 SQFT.
 FRONT REAR 150 SQFT.



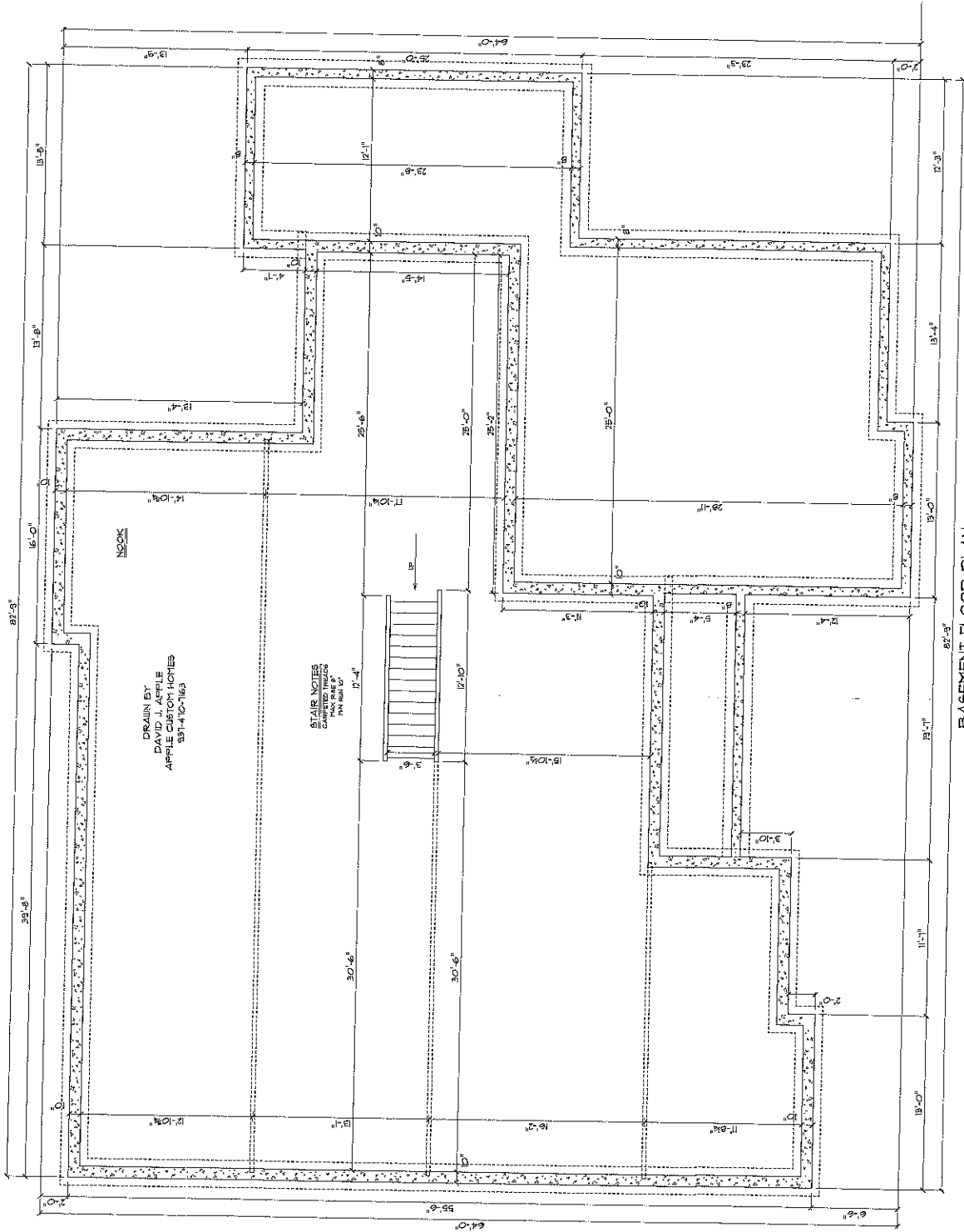
REAR ELEVATION
 SCALE 1/4" = 1'

SANTANA RESIDENCE



FIRST FLOOR PLAN
SCALE 1/4" = 1'-0"

SANTANA RESIDENCE



DRAWN BY:
DAVID J. APPLE
APPLE CUSTOM HOMES
931-410-1163

STAIR NOOKS
CONCRETE
HARDWOOD
FINISH
FLOOR

BASEMENT FLOOR PLAN
SCALE 1/4"=1'-0"

Justification of Variance

As the property owners of Lot 22A Maple Lane, Beavercreek, OH 45431 (Parcel ID B42000500090001800), we are requesting variance approval pursuant to Chapter 158.172 of the Beavercreek City Zoning Code. This request is to allow a 17 feet variance (to the requirement of 158.031F – Lot Requirements) from the required distance between the house and the rear property line. The projected building is a single family ranch-style home that requires a large footprint.

A couple of factors to consider; we do view the 17 feet variance as the minimum variance and the least impact solution. The alternative of having the house redesigned would involve considerably more time and effort due to the odd configuration of the lot. The property is a 0.8264 acre wooded lot and the dimensions are 150' x 240'. Having an easement of 50 feet (rear property line) and 40 feet from the front will complicate the construction/design of the house. As a secondary consideration, the other houses on the block are all 45 to 50 feet from the road and building this house at 40 feet from the road to comply with the regulation would look out of place.

As presented in the variance package and supported by the site plan and drawings, we believe that the following criteria are met:

1. There exist conditions and/or circumstances relating to the property that would create practical difficulties for the property owner if strict conformance to the requirements of this Zoning Code were required.
2. The variance to be granted is the minimum variance possible and other alternatives for resolving the conflict between the applicant's plan and the requirements of the Zoning Code are impractical or infeasible.
3. The granting of the variance will be in harmony with the general spirit, intent and purpose of this Zoning Code.
4. The granting of the variance will not be injurious to surrounding properties and the general neighborhood or be otherwise detrimental to the public welfare.
5. The granting of the variance will not result in a deleterious change in the character of the community.
6. The granting of the variance will not infringe upon the rights and quiet enjoyment of adjacent property owners and will not diminish property values, endanger the public safety, or create a public nuisance.