

# AGENDA

## REGULAR MEETING OF THE MIDLAND ZONING BOARD OF APPEALS, TO TAKE PLACE ON TUESDAY, AUGUST 17, 2021, 6:30 P.M. COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN

1. **Roll Call**
2. **Approval of the Minutes**
  - a. **Regular Meeting July 20, 2021**
3. **Public Hearings**
  - a. **Petition No. 21-12 – Connie Gavin:** for an area/dimensional variance to permit the construction of a masonry wall of 6 feet in height at property located at 2401 Eastlawn Drive. Masonry walls are permitted at 6 feet above grade in the subject NC Neighborhood Commercial zoning district. The property to the immediate west of the proposed location slopes downward resulting in the proposed wall to be higher than 6 feet above grade necessitating the variance request.  
  
Public Hearing Process
    1. Staff presentation and overview of petition
    2. Petitioner presentation
    3. Public comments in support of the petition
    4. Public comments in opposition to the petition
    5. Opportunity for petitioner rebuttal and final comments
    6. Closing of public hearing
    7. Deliberation and possible decision by the Zoning Board of Appeals
4. **Old Business**
5. **Public Comments (not related to items on the agenda)**
6. **New Business**
7. **Decision Sheet Signatures**
  - a. No. 21-10
8. **Adjournment**

**REGULAR MEETING OF THE MIDLAND ZONING BOARD OF APPEALS,  
TO TAKE PLACE ON TUESDAY, JULY 20, 2021, 6:30 P.M.,  
COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN**

**1. Roll Call**

**PRESENT: Board Members** – Mead, Green, Keil, Erickson and Danielsen

**ABSENT: Board Member** – None

**OTHERS PRESENT:** Grant Murschel, Director of Planning & Community Development;  
Tom Wyatt, Community Development Planner and three (3) others

2. **Election of Officers:** Danielsen nominated Green, Erickson supported. Motion approved by 5-0  
Chairman Green asked for nomination for Vice Chair, Green made a motion to appoint Danielsen  
as Vice Chair, Erickson seconded the motion. The motion was approved 5-0.

**3. Approval of the Minutes**

It was moved by Mead and supported by Erickson to approve the minutes of the regular meeting  
dated April 20, 2021.

Vote on the motion:

Yeas: Danielsen, Green, Mead, Keil and Erickson

Nays: None

Motion carries 5-0.

**4. Public Hearings**

- A. **No. 21-10 – David Dowker:** for an area/dimensional variance at 648 Lambert Road to permit  
the construction of a home with exterior walls less than 20 ft. in length. The subject property is  
zoned RA-2 Single Family Residential.

Murschel gave the staff presentation for Petition No. 21-10.

**Petitioner: Dave Dowker 648 Lambert Road Midland, MI.**

The petitioner spoke about the parcel and the dam failures that created the need for this  
variance. Danielsen asked for clarity about the foundation of the structure. Mead asked about  
the previous flooding events in the area. Green asked about the elevation of the property.

**Comments in Support:** None

**Comments in Opposition:** None

Green closed the public hearing.

Findings of Fact:

1. The property is located at 648 Lambert Road
2. The property is zoned RA-2 Single Family Residential
3. Zoning of surrounding property RA-2 Single Family Residential and Homer  
Township Zoning
4. Speed limit on Lambert is 35 MPH

5. No written comment in support were received ahead of the meeting
6. One (1) written comment in opposition received ahead of the meeting
7. Property size is 21,778.63 sq ft
8. The property is historically used as residential but is currently vacant.
9. The base flood elevation of the subject property is 616 ft, so the new foundation of the building needs to be raised to 617 ft.
10. EGLE requirements necessitate the variance request since the home cannot be rebuilt on the existing footprint due to City of Midland zoning ordinance.
11. The property is located in the Floodway as well as the 100 Year floodplain.
12. Property is located in the City of Midland with Homer Township located directly across the street.
13. The variance request is for six (6) feet.
14. The probability of EGLE granting a variance is unlikely.
15. The property was annexed into the City of Midland more than 25 years ago.
14. The trailer is vacant at this time.
15. The home is located in a north to south orientation.

Erickson made a motion to approve Petition No. 21-10 based on the findings of fact, Danielsen seconded the motion.

Vote on the motion:

Yeas: Danielsen, Green, Mead, Keil, Erickson

Nays: None

Motion approved 5-0

- B. **Petition No. 21-11 – James D. Kim:** for an area/dimensional variance to permit 30 sq. ft. of additional signage to an existing 40 sq. ft. and 18 ft. tall ground pole sign. The property is located at 1020 S. Saginaw Rd and is zoned RC Regional Commercial and is within the CCO Center City Overlay District. The CCO district requires new ground signage to be monument in style, with a max. height of 12 ft. and a max. area of 60 sq. ft.

Murschel gave the staff presentation for Petition No. 21-11.

**Petitioner:** None

**Comments in Support:** None

**Comments in Opposition:** None

Green closed the public hearing.

Findings of Fact:

1. The property is located at 1020 S. Saginaw Rd
2. The property is zoned RC Regional Commercial and is within the CCO Center City Overlay District.
3. Zoning of surrounding property is RC Regional Commercial and also within the CCO Center City Overlay District as well as RB Multiple Family Residential
4. Speed Limit on South Saginaw is 35 MPH
5. One (1) written comment showing no objection.
6. No comments in support or opposition during the public hearing.
7. Property size is 190 ft x 120 ft
8. The current use of the property is commercial use.

9. Current pole sign is 18 ft height and 40 sq ft of signage
10. Variance is requesting 30 additional sq ft of signage adding to the pole sign for a total request of 70 sq ft
11. Property has a zero setback from the property line
12. Any new sign would be required to be a monument type sign not to exceed 60 sq ft in total and would be subject to clear vision rule
13. Any new signage would have a maximum height of 12 ft, current sign stands at 18 ft
14. There is a fence between the residential and commercial properties
15. There is existing business on both sides of the parcel.
16. There are two tenants on the property that are not shown on the signage.

Danielsen made a motion to approve Petition No. 21-11 based on the findings of fact. Mead seconded the motion.

Vote on the motion:

Yeas: Erickson, Danielsen

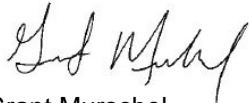
Nays: Green, Mead, Keil

Motion denied 2-3.

5. **Old Business:** None
6. **Public Comments (not related to items on the agenda):** None
7. **New Business:** None
8. **Decision Sheet Signatures**
  - a. 21-09
9. **Adjournment**

Green adjourned the meeting at 7:19 p.m.

Respectfully submitted,



Grant Murschel  
Director of Planning & Community Development

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE ZONING BOARD OF APPEALS



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Report No. 21-12

Date: August 13, 2021

### STAFF REPORT TO THE ZONING BOARD OF APPEALS

SUBJECT: Area/dimensional variance  
PETITIONER: Connie Gavin  
LOCATION: 2401 Eastlawn Drive  
PROPOSED: An area/dimensional variance to permit the construction of a masonry wall of 6 feet in height.  
ZONING: NC – Neighborhood Commercial

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#### PETITION SUMMARY

The applicant is requesting an area/dimensional variance to permit the construction of a masonry wall of 6 feet in height. The subject property is zoned NC – Neighborhood Commercial and the adjacent property to the west slopes downward from the grade of the subject property. If the applicant were to construct a six (6) foot high wall on their property, it would technically be higher compared to the grade on the western side of the property line.

NC Neighborhood Commercial permits masonry walls up to six (6) feet in height by right but this is measured from all grades surrounding the wall. The slope of the ground to the west is dramatic and would place a new six (6) foot high wall over six (6) feet in height.

*For an aerial view of the property and zoning map please see attached pages.*

#### REVIEW CRITERIA FOR DIMENSIONAL VARIANCES

The Zoning Board of Appeals may grant a “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulty is when the applicant has demonstrated all of the following:

- A. **How will strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome?**

**Petitioner’s response:** See attached.

**Staff Commentary:** Strict compliance with the ordinance will result in the property owner being able to construct a wall of only four (4) feet along the property line given the dramatic sloping of the western property. While this height would limit traversing of the property line, it would not provide the visual screen and full privacy that the applicant is desiring.

- B. **How will a variance do substantial justice to the applicant, as well as other property owners?**

**Petitioner’s response:** See attached.

**Staff commentary:** The variance would allow the property owner to have a full six (6) foot high wall on their property line from the vantage point of the property owner. Such a wall would also provide a visual screen for the property to the west that wouldn’t be provided by only a four (4) foot high wall.

- C. **Is the variance requested the minimum variance needed to provide substantial relief to the applicant and/or to be consistent with justice to other property owners?**

**Petitioner’s response:** See attached.

**Staff Commentary:** The applicant is seeking the minimum necessary in order to have a six (6) foot high wall on their property line.

- D. **What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?**

**Petitioner's response:** See attached.

**Staff Response:** The slopping nature of the adjacent property to the west is a unique situation. This slope is the result of a natural ridge that exists in this area of the city. In the vast majority of the city, the grade between properties is very similar as Midland is a rather flat geography. The slopping results in a variance needed to obtain a six (6) foot high wall from the vantage point of the subject property.

- E. **The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors.**

**Petitioner's response:** See attached.

**Staff Response:** The applicant is wanting to comply with the six (6) foot high maximum relative to the grade on their property. The applicant is not desiring to go above the six (6) foot maximum but is limited by the slopping grade of the adjacent property.

#### **ACTION REQUIRED**

An affirmative vote of a majority of ZBA members (3/5) is necessary to approve this variance request.

#### **PUBLIC COMMENTS TO DATE**

As of August 13, 2021, City staff has received one public comment in support of this petition.

Respectfully Submitted,



Grant Murschel  
Director of Planning & Community Development

**AREA OR DIMENSION (NON-USE) VARIANCES  
ZONING BOARD OF APPEALS  
Criteria for Approval**

**The Zoning Board of Appeals may grant a requested “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulties is when the applicant has demonstrated all of the following:**

- a. How will strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome?

The objective of the wall is to provide privacy for confidential business outdoors. The masonry wall will also prevent trespassers from utilizing the current space as a shortcut to/from the complex to the west. Trash, including used needles and fireworks, are often strewn in this area as the current space provides opportunity for delinquency. The wall will enhance the security for all neighbors as every interested party has expressed anticipation for the wall/fence to be erected.

The current slope from the NW corner of the building from which the wall will run north is slightly tapered downward to the north. The slope to the west is more significant. Considering easterly the view from the apartments to the west, it would appear the wall including the slope is much higher than 6ft. If the wall was to be built 6ft tall, including the slope, it would defeat the objective of privacy for confidential business as it may only be 2ft. tall.

- b. How will a variance do substantial justice to the applicant, as well as to other property owners?

Outdoor meeting space is in high demand considering the dynamics of Covid, especially for older clientele, for which we generally serve. Providing an option to meet outdoors to clients is important and the proposed location for the wall will enhance the security of the area. The landowner approved our plan prior to consideration and current renters have expressed approval as there is significant foot traffic between and around their dwellings at all hours of the day.

(Continued on reverse side)

- c. Is the variance requested the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners?

yes, we are requesting no more than the 6 foot height restriction for the suggested wall, it is the slope of the land that presents an issue.

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- d. What are the unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district, which would require this variance?

Close proximity between the building (commercial) and the apartments (residential), along with the significant grade change, does not allow for privacy for all parties without a 6 foot wall.

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- e. Has the problem and resulting need for the variance been created by strict compliance with the Zoning Ordinance, not by the applicant or the applicant's predecessors?

Yes. The proposed masonry wall fence is not to exceed the city's legal limit of 6ft. It is the positioning of where the wall is to be built that poses a potential issue. We are not requesting anything higher than the legal 6 foot height, but we respectfully request that it can be built in the desired location as to fulfill both our need, and our neighbors' for privacy.

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July 19, 2021

Dear Zoning Board of Appeals,

Enclosed, please find an application for variance regarding our request for a masonry wall to be constructed on our commercial property at 2401 Eastlawn Drive. An application for the fence/wall was previously approved but with more inspection, it was determined that we needed to request a variance because of the slope of the land at the location we would like to build a masonry wall.

We are hoping to create an outdoor meeting space where privacy prevails and safety is ensured, while creating a pleasing aesthetic. The corner of the lot where the wall would be constructed backs up to apartments owned by Dave Rapanos. In our conversations with Mr. Rapanos, he had no objection to building a wall there, and the residents who live in the apartment complex have expressed pleasure at the talk of building a wall there, as there tends to be a lot of foot traffic cutting through the properties.

As we understand, the land is sloped down towards the apartment complex, so if we were to erect a 6 foot high fence, it would appear higher than 6 feet to the residents living behind the fence, thus requiring the variance. Our goal is to create privacy and safety, and it is our intention to remain neighborly with all properties and owners in the area.

Thank you for considering this request.

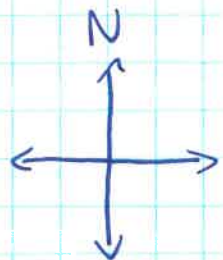
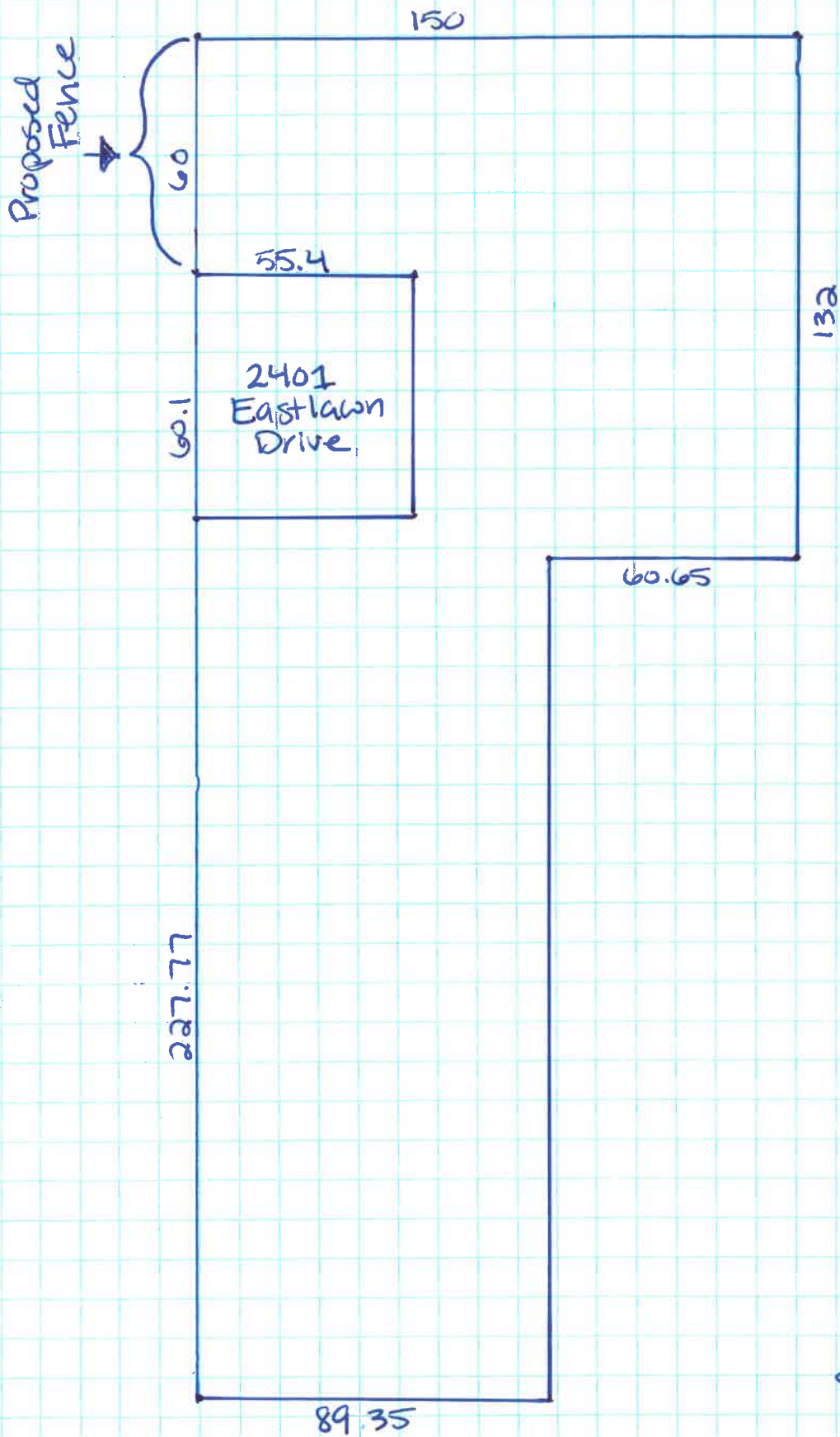
Respectfully,



Connie Gavin

**Legal Description of 2401 Eastlawn Drive:**

PART OF NW 1/4 OF SEC 14, T14N, R2E; COM AT THE W 1/4 COR OF SEC 14; TH N 90D 00M 00S E, 2189.57 FT, TO POB; TH N 00D 20M 00S E, 346.77 FT; TH N 89D 58M 00S E, 150.00 FT; TH S 0D 20M 00S W, 132.00 FT TH S 89D 58M 00S W, 60.65 FT; TH S 00D 20M 00S W, 214.82 FT; TH N 90D 00M 00S W, 89.35 FT TO POB. EASTMENT 1: PART OF NW 1/4 OF SEC 14, T14N, R2E; COM AT THE W 1/4 COR OF SAID SEC 14; TH N 90D 00M 00S E, 214.81 FT; TH N 89D 58M 00S E, 24.00 FT; TH S 00D 20M 00S W, 214.82 FT; TH N 90D 00M 00S W, 24 FT TO BEG. EASEMENT 2: PART OF THE NW 1/4 OF SEC 14, T14N, R2E; COM AT THE W 1/4 COR OF SAID SEC 14; TH S 00D 44M 00S W, 2319.02 FT TO POB, SAID POINT BEING N 00D 44M 00S E, 297.02 FT FROM THE CENTER OF THE SAID SEC 14; TH S 89D 58M 00S W, 287.01 FT; TH N 00D 20M 00S E, 50.00 FT; TH N 89D 58M 00S E, 286.73 FT; TH S 00D 00M 44S W, 50.00 TO BEG

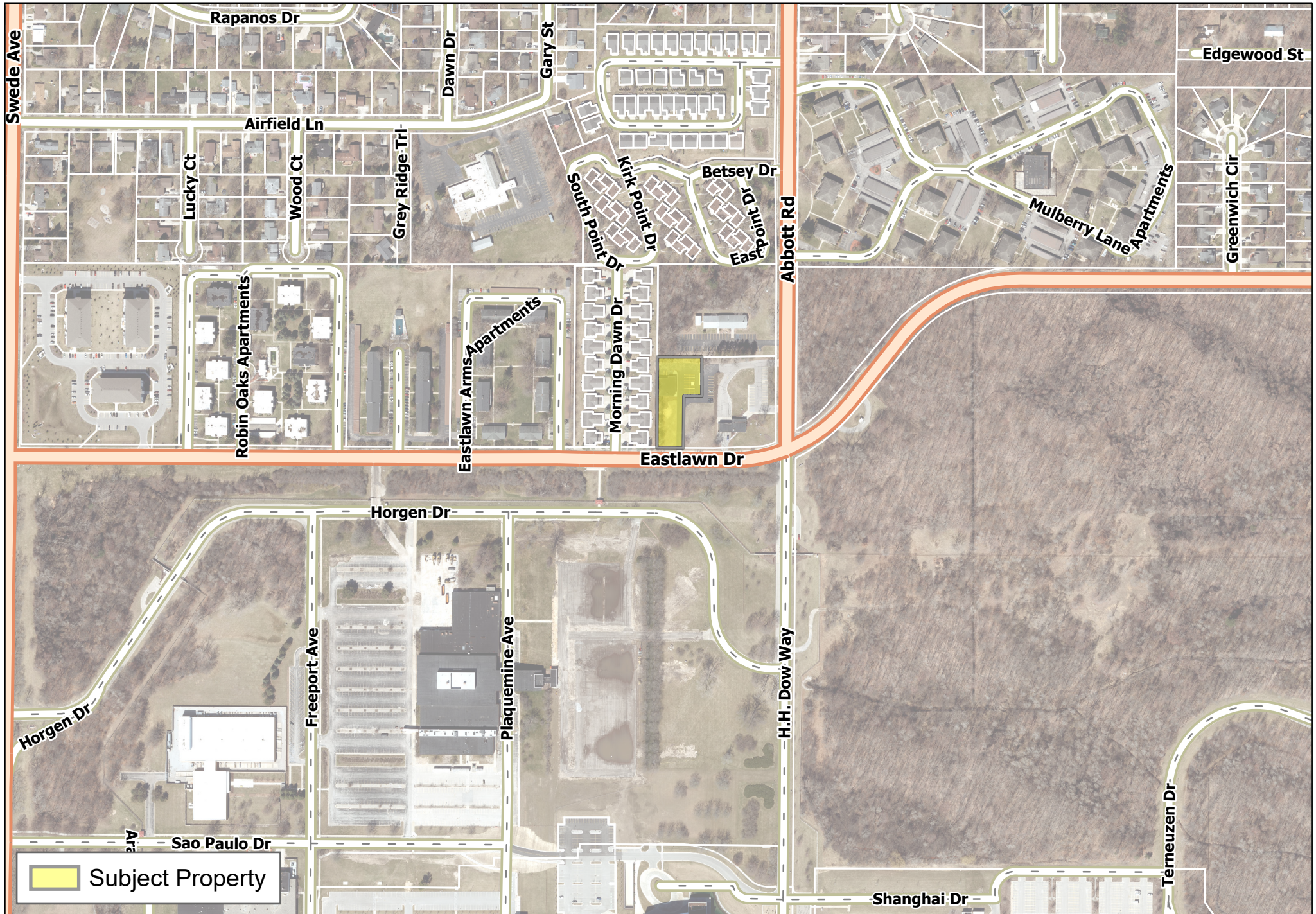


← Eastlawn Drive →



# ZBA #21-12 | Connie Gavin

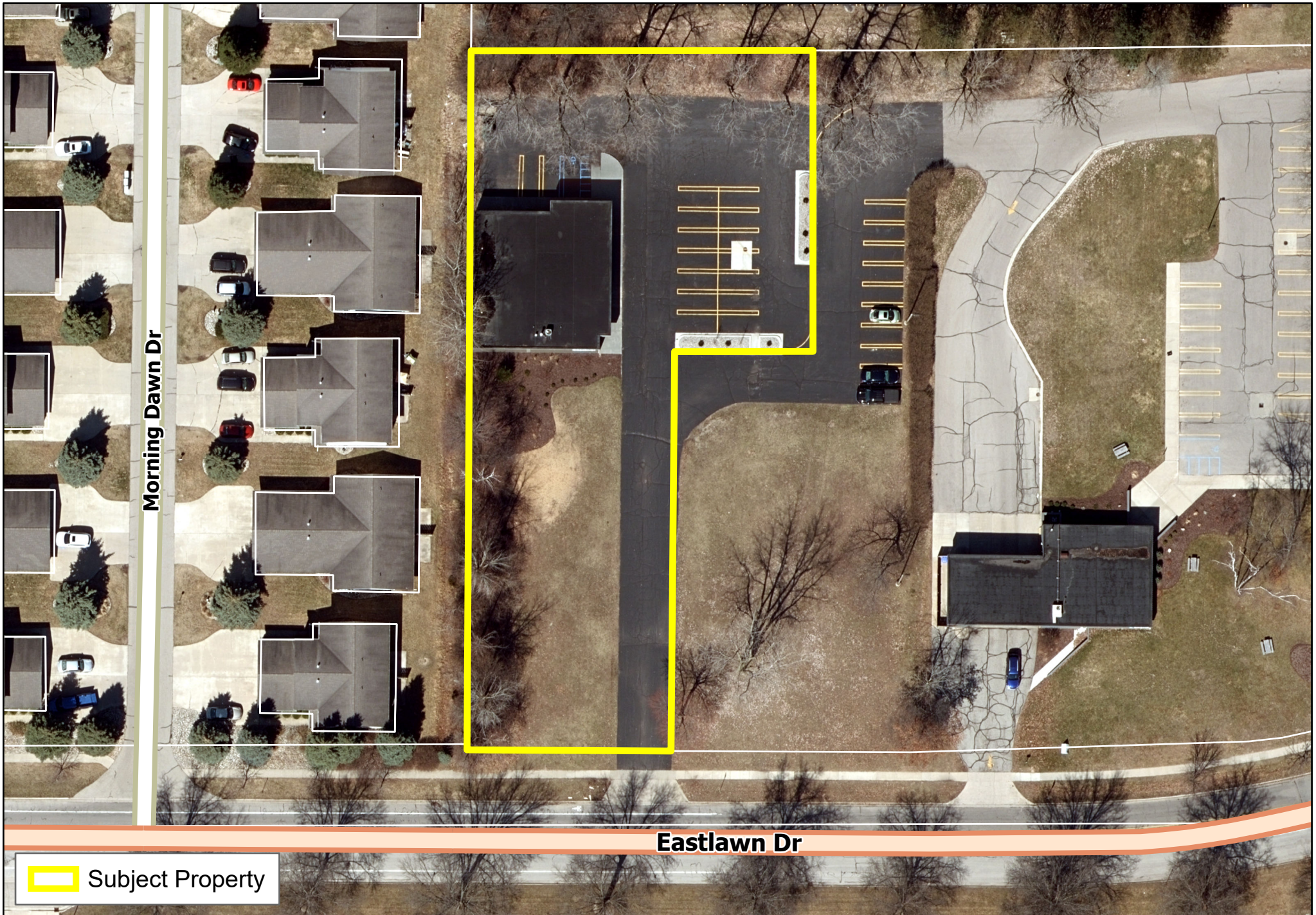
> 2401 Eastlawn Dr





# ZBA #21-12 | Connie Gavin

> 2401 Eastlawn Dr



Morning Dawn Dr

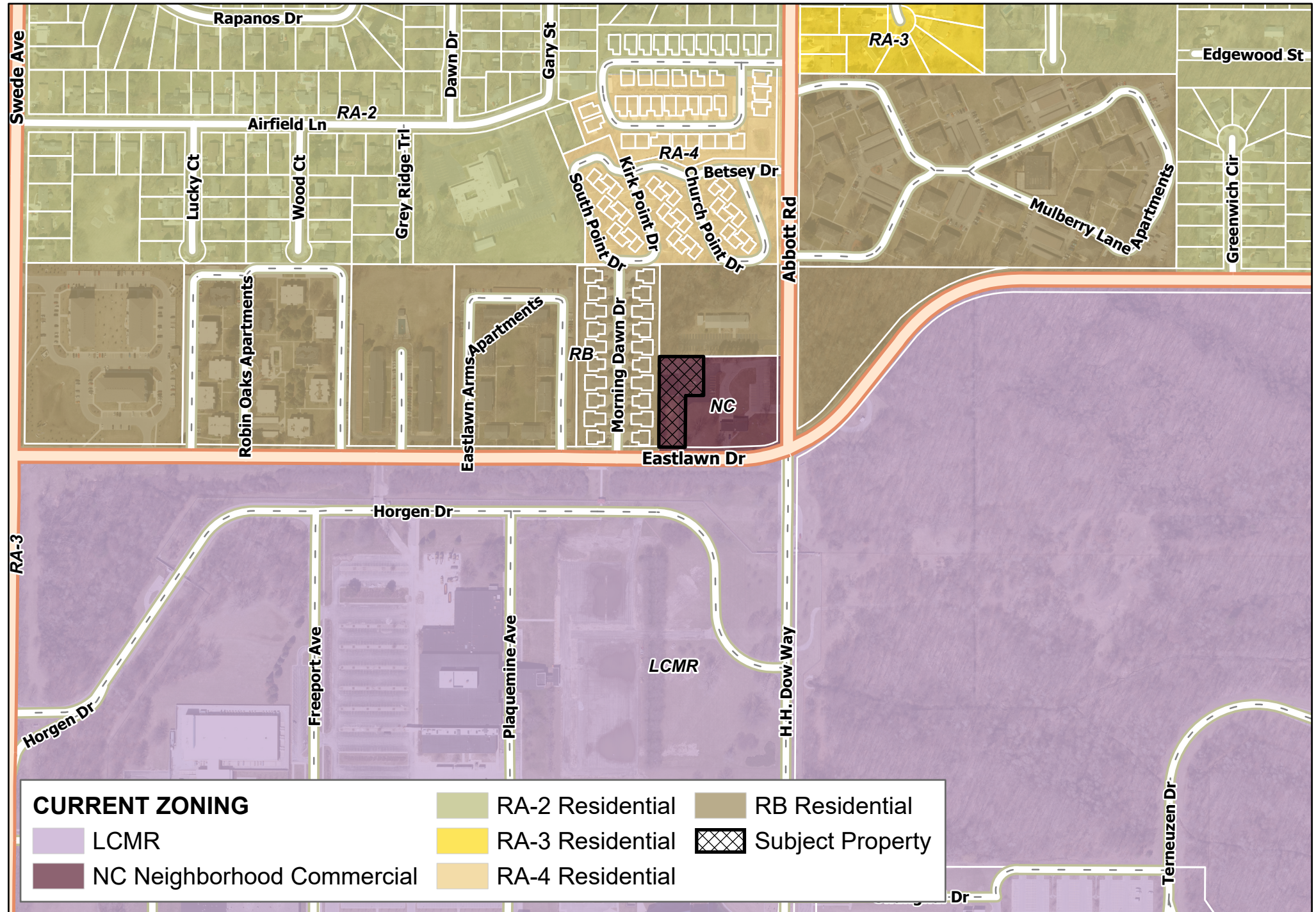
Eastlawn Dr

 Subject Property



# ZBA #21-12 | Connie Gavin

> 2401 Eastlawn Dr



## CURRENT ZONING

LCMR

NC Neighborhood Commercial

RA-2 Residential

RA-3 Residential

RA-4 Residential

RB Residential

Subject Property

Dr

# David G. Rapanos

925 East Wheeler Street  
Midland, Michigan 48642  
Phone (989) 839-0541 ~ Fax (989) 839-0744  
RapanosRentals.com

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August 2, 2021

City of Midland  
Zoning Board of Appeals  
City Hall  
333 West Ellsworth Street  
Midland, Michigan 48640

City of Midland Zoning Board of Appeals,

As the owner of the property adjacent to the west, I have no problem with this request as long as the block wall conceals the dumpster that sits on their western boarder.

Sincerely,



David G. Rapanos

925 East Wheeler Street  
Midland, Michigan 48642  
Office: (989) 839-0541 Fax: (989) 839-0744  
RapanosRentals.com  
WheelerRoadSelfStorage.com



**ZONING BOARD OF APPEALS | NOTICE OF HEARING | ORDINANCE NO. 1585 | L -9156**

**July 27, 2021**

**Petition No. 21-12**

According to City of Midland property records, you are the registered owner or an occupant of one or more properties located within 300 feet of a parcel that will be the subject of a public hearing before the City of Midland Zoning Board of Appeals. Please therefore be advised of the following:

**PLEASE TAKE NOTICE:**

The City of Midland Zoning Board of Appeals will hold a public hearing in Council Chambers, City Hall, 333 West Ellsworth Street, Midland, Michigan, 48640 on August 17, 2021, at 6:30 p.m., for the purpose of considering the following petition(s):

**Petition No. 21-12 – Connie Gavin:** for an area/dimensional variance to permit the construction of a masonry wall of 6 feet in height at property located at 2401 Eastlawn Drive. Masonry walls are permitted at 6 feet above grade in the subject NC Neighborhood Commercial zoning district. The property to the immediate west of the proposed location slopes downward resulting in the proposed wall to be higher than 6 feet above grade necessitating the variance request.

Additional information concerning the petition(s) may be obtained by contacting the City of Midland Planning Department at the above address during the City's regular business hours of 8:00am to 5:00pm Monday through Friday. Written comments regarding the appeal(s) may be submitted to the City of Midland Zoning Board of Appeals at the above address not later than the date set for the hearing on this matter. All interested persons may appear in person, in writing, by agent, or by attorney, and present any reasons you may have for the granting or denying of this petition.

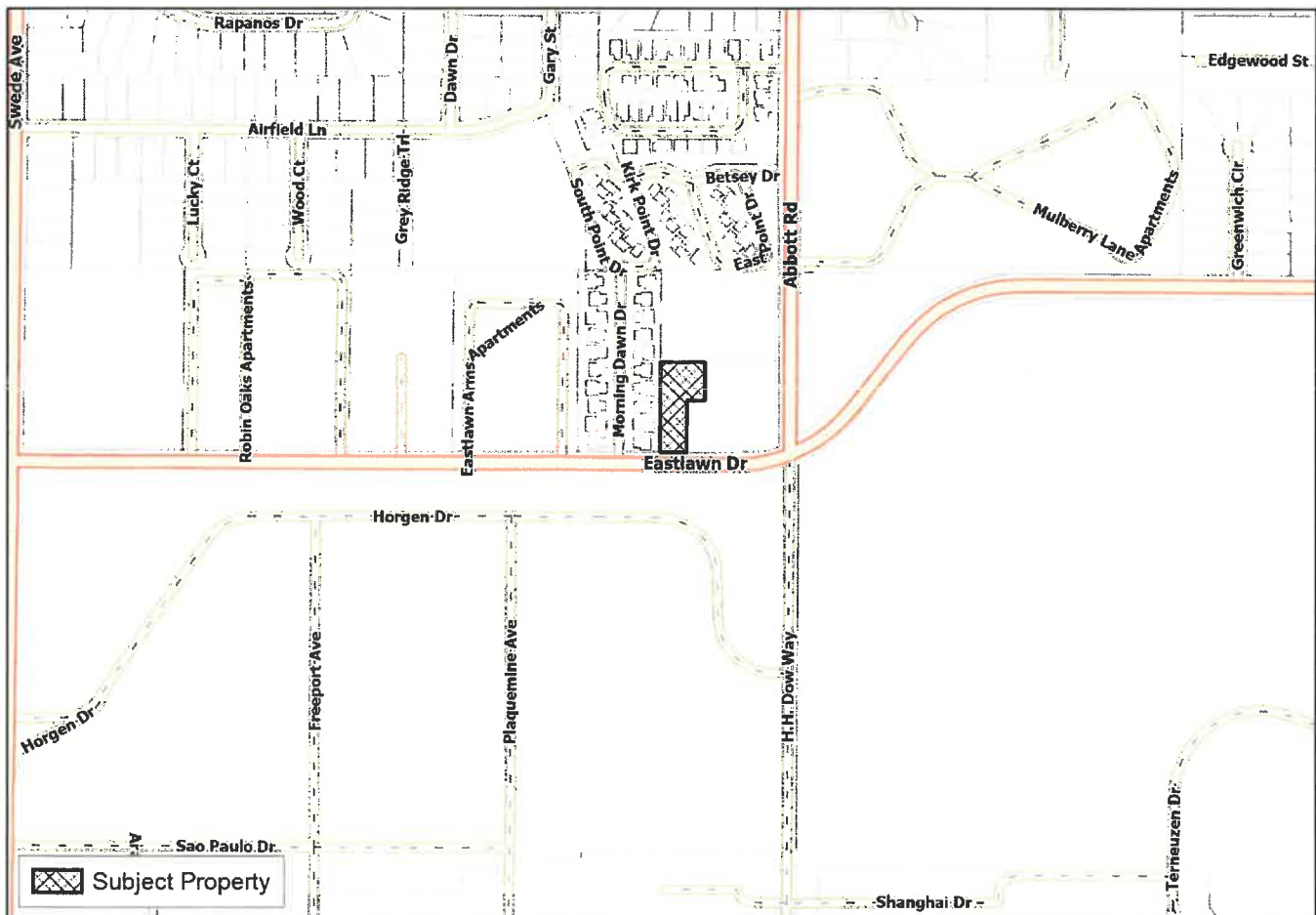
If you have any further questions, please contact the Planning Department at (989) 837-3374.

Grant Murschel  
Director of Planning & Community Development

RECEIVED  
AUG 02 2021

**ZBA #21-12 | Connie Gavin**

> 2401 Eastlawn Dr







PLANNING DEPARTMENT  
HEARING DATE: 07-20-2021  
CITY OF MIDLAND, MICHIGAN  
PETITION NO: 21-10

## ZONING BOARD OF APPEALS

The petition of David Dowker: for an area/dimensional variance at 648 Lambert Road to permit the construction of a home with exterior walls less than 20 ft. in length. The subject property is zoned RA-2 Single Family Residential

### Findings of Fact:

1. The property is located at 648 Lambert Road
2. The property is zoned RA-2 Single Family Residential
3. Zoning of surrounding property RA-2 Single Family Residential and Homer Township Zoning
4. Speed limit on Lambert is 35 MPH
5. No written comment in support were received ahead of the meeting
6. One (1) written comment in opposition received ahead of the meeting
7. Property size is 21,778.63 sq ft
8. The property is historically used as residential but is currently vacant.
9. The base flood elevation of the subject property is 616 ft, so the new foundation of the building needs to be raised to 617 ft.
10. EGLE requirements necessitate the variance request since the home cannot be rebuilt on the existing footprint due to City of Midland zoning ordinance.
11. The property is located in the Floodway as well as the 100 Year flood zone.
12. Property is located in the City of Midland with Homer Township located directly across the street.
13. Variance request is for six (6) feet.
14. The probability of EGLE granting a variance is unlikely.
15. The property was annexed into the City of Midland more than 25 years ago.
14. The trailer is vacant at this time.
15. The home is located in a North to South orientation.

Erickson made a motion to approve Petition No. 21-10 based on the findings of fact, Danielsen seconded the motion.

### Vote on the motion:

Yeas: Danielsen, Green, Mead, Keil, Erickson  
Nays: None

Motion approved 5-0

All permits necessary for prosecution of the work shall be obtained within six months from the date.

BEG 1023 FT N OF SW SEC COR TH E 165 FT N 132 FT W 165 FT S 132 FT TO POB SEC 12 T14N R1E