

**TOWN OF PENFIELD  
ZONING BOARD OF APPEALS  
APPLICATION**

**2020**

To the Zoning Board of Appeals, Town of Penfield, New York,

I (We) AUBREY D. SMITH III (TREV) of 97 GUYGRACE LN  
 (Name of Applicant) (Street and No.)

WEBSTER/PENFIELD, NY, 14580, 585-737-9529,  
 (City) (State) (Zip Code) (Telephone)

Do hereby apply to the Zoning Board of Appeals for the following (check one):

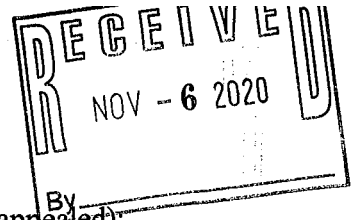
- ☒ An Area Variance  
☐ A Conditional Use Permit  
☐ A Special Permit for Signage  
☐ A Special Permit for Outside Storage and Display  
☐ An Expansion to a Pre-existing/Non-conforming Use  
☐ A Special Permit for Change of Use  
☐ A Use Variance  
☐ An interpretation of the Code of the Town of Penfield  
☐ An Itinerant Vendor License

**1. SUBJECT PROPERTY INFORMATION:**

Location of Subject Property

(Street and No. or other identification): 97 GUYGRACE LNProperty Owner: AUBREY D. SMITH III / SONYA A. SMITHTax Account (SBL) # of subject property: 493.16-2-38Zoning District subject property is located in: R-1-20**2. DESCRIPTION OF APPEAL (provide brief description of why you are applying to the Zoning Board of Appeals):**- GARAGE EXPANSION (EXISTING GARAGE)

- DUE TO THE LOT NOT BEING RECTANGULAR AND THE WINNING  
ROAD FRONTAGE, THE PROPOSED GARAGE 'ADDITION'  
ENCROACHES ON THE EASEMENT.



3. APPLICABLE TOWN CODE SECTION (provide section of the code being appealed):

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4. PREVIOUS APPEAL.

A previous appeal ~~(s) has~~ ☒ has not been made with respect to this property or to a decision of the Authorized Official of The Town of Penfield.

If a previous appeal was made, such appeal(s) was (were) made in Penfield Zoning Board Application # \_\_\_\_\_ dated \_\_\_\_\_.

5. LETTER OF INTENT (Please provide a letter of intent addressing the factors for consideration of the applicable type of appeal you are requesting):

~~AREA~~ **AREA VARIANCE:**

An Area Variance shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner that is not otherwise allowed by the dimensional or physical requirements of the applicable zoning regulations.

In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination, the Board shall consider each of the following factors:

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) Whether the alleged difficulty was self-created. (In contrast to the context of a use variance, in the context of an area variance application, whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)

**( ) CONDITIONAL USE PERMIT:**

The purpose of conditional use permit approval is to allow the proper integration of uses into the community and appropriate zoning districts. Because of their characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this chapter and their effect on surrounding properties.

In order to approve any conditional use, the Zoning Board of Appeals shall find that the request is:

- (1) In harmony with the general purpose and intent of this chapter and the zoning district in which it is proposed.
- (2) Not detrimental to adjacent properties because of its:
  - (a) Means of ingress and egress.
  - (b) Adequacy of parking facilities.
  - (c) Potential impact to both present and/or future uses.
  - (d) Compatibility with the general area in which it is to be located.
  - (e) Type and amount of signage.
  - (f) Potential noise level.
  - (g) Clear sight distance.
  - (h) Existing or proposed buffering.
  - (i) Proposed generation of noxious odors.
  - (j) Exterior lighting.
  - (k) Proposed hours of operation.
- (3) Not detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or detrimental or injurious to the property and improvements in the neighborhood, or to the general welfare of the Town.

**( ) SPECIAL PERMIT FOR SIGNAGE:**

A Special Permit for Signage shall mean the authorization by the Zoning Board of Appeals for the installation/display of signage that is not otherwise permitted by the Code of the Town of Penfield.

Before directing the authorized official to issue a sign permit, the Zoning Board of Appeals shall find that the applicant has demonstrated the following facts to be true:

- (1) The proposed sign is in harmony with the standards for permitted signs and within the spirit of this article.
- (2) The proposed sign shall be compatible with and not be detrimental to neighborhood properties.
- (3) The proposed sign does not, by reason of its location, create a hazard of any nature to the public in general or to any owner or occupant of neighborhood properties.
- (4) The proposed sign does not in any way interfere with the lawful and aesthetic enjoyment of the public highway or neighborhood properties.
- (5) Where applicable, the proposed sign is necessary to adequately identify the business(es).

**( ) SPECIAL PERMIT FOR OUTSIDE STORAGE AND DISPLAY:**

A Special Permit for Outside Storage and Display shall mean the authorization by the Zoning Board of Appeals for the outside storage and display of items which are otherwise not allowed or are prohibited by the Code of The Town of Penfield.

The Zoning Board of Appeals may permit the outdoor display or storage of such items upon such conditions as it may deem reasonable, provided:

- (1) Such storage and display is an accessory use to the main business conducted or to be conducted on the premises.
- (2) Such storage and display is not within 100 feet of the line of a residential zoning district.
- (3) Such storage and display is not at such distance from any public highway as to interfere with the safe use of such highway.
- (4) Such storage and display does not unreasonably interfere with the quiet enjoyment of property by adjacent property owners.

**( ) EXPANSION TO A PRE-EXISTING/NON-CONFORMING USE:**

A Pre-existing/non-conforming use shall mean the use of land or use and/or occupancy of a nonconforming structure, which use was lawful at the time of the effective date of the applicable requirements of the Code of the Town of Penfield or an amendment thereto. Such use may be continued; provided, however, such use shall have continued in operation, does not constitute a nuisance, and shall not be enlarged, altered or changed in area, activity or content during its continuance, except as provided otherwise by the authorized official.

In order to approve an expansion to a pre-existing/non-conforming use, the Penfield Zoning Board of Appeals shall find that such enlargement, change or alteration will permit greater compliance with the applicable provisions of the Code of the Town of Penfield or other appropriate regulations, and is installed or instituted to minimize the detrimental effects of the nonconforming use upon adjoining conforming uses.

**( ) A SPECIAL PERMIT FOR CHANGE OF USE:**

At any time when the specific use originally permitted within a zoning district is to be changed so that it involves a separate, different and distinct use, process or product, application must be made to the Zoning Board of Appeals for a special use permit, at which time the Board may require that any and all phases of the operation which have become or are liable to become detrimental to the neighborhood be corrected prior to the Town Clerk issuing the Special Use Permit.

**( ) USE VARIANCE:**

Use variance' shall mean the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

In order to approve a Use Variance, the Zoning Board of Appeals shall find that each and every one of the following four criteria is satisfied:

- (1) The applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

**( ) INTERPRETATION OF THE CODE OF THE TOWN OF PENFIELD OR  
DECISION OF THE AUTHORIZED OFFICIAL:**

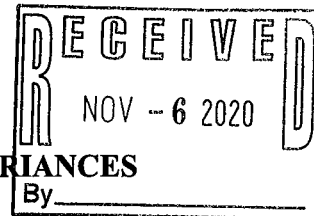
An interpretation shall mean the authority of the Zoning Board of Appeals to hear and decide appeals from and review decisions of the Authorized Official responsible for the enforcement of the zoning regulations.

**( ) ITINERANT VENDOR LICENSE:**

An Itinerant Vendor is a person who engages in the act or occupation of selling or offering for sale from a fixed location or locations at times, and from time to time, goods, wares or merchandise, meats, fish and produce, from any portable cart, stand, vehicle or display device of any nature.

Itinerant Vendor Licenses are issued by the Penfield Town Clerk upon a recommendation of the Penfield Zoning Board of Appeals. In order to recommend an Itinerant Vendor License, the Zoning Board of Appeals shall find:

- (a) That the proposed use will create no risk of danger or danger to persons or property.
- (b) That the proposed use will not create an increase in vehicular traffic or interfere in any manner with pedestrians or vehicles lawfully on the roadways.
- (c) That the proposed use will have no detrimental effect on adjacent property, nor interfere with the lawful enjoyment of adjacent property.
- (d) That the proposed use will not create noise or litter.

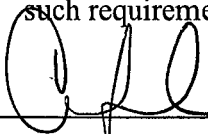


**PLEASE SIGN THIS PAGE FOR ALL TYPES OF VARIANCES**

6. The Zoning Board of Appeals, in the granting of approvals, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Zoning Board of Appeals shall, in the granting of approvals, have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the applicable requirements of the Penfield Town Code, and shall be imposed for the purpose of minimizing any adverse impact such approval may have on the neighborhood or community.

The applicant shall be required to read and understand the final resolution and shall have a statement to the fact notarized and returned to the Clerk to the Penfield Zoning Board of Appeals within ten (10) days of the receipt of the resolution. If the applicant refuses to accept such requirements and conditions, the applicant's request shall be denied.

  
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(Signature of Applicant)

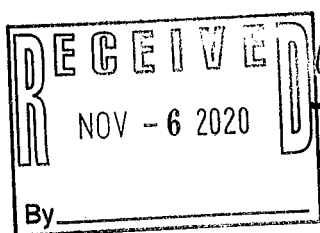
AUBREY D. SMITH

11/6/2020  
\_\_\_\_\_

(Date)

\_\_\_\_\_  
(Signature of Co-Applicant)

\_\_\_\_\_  
(Date)



LETTER OF INTENT

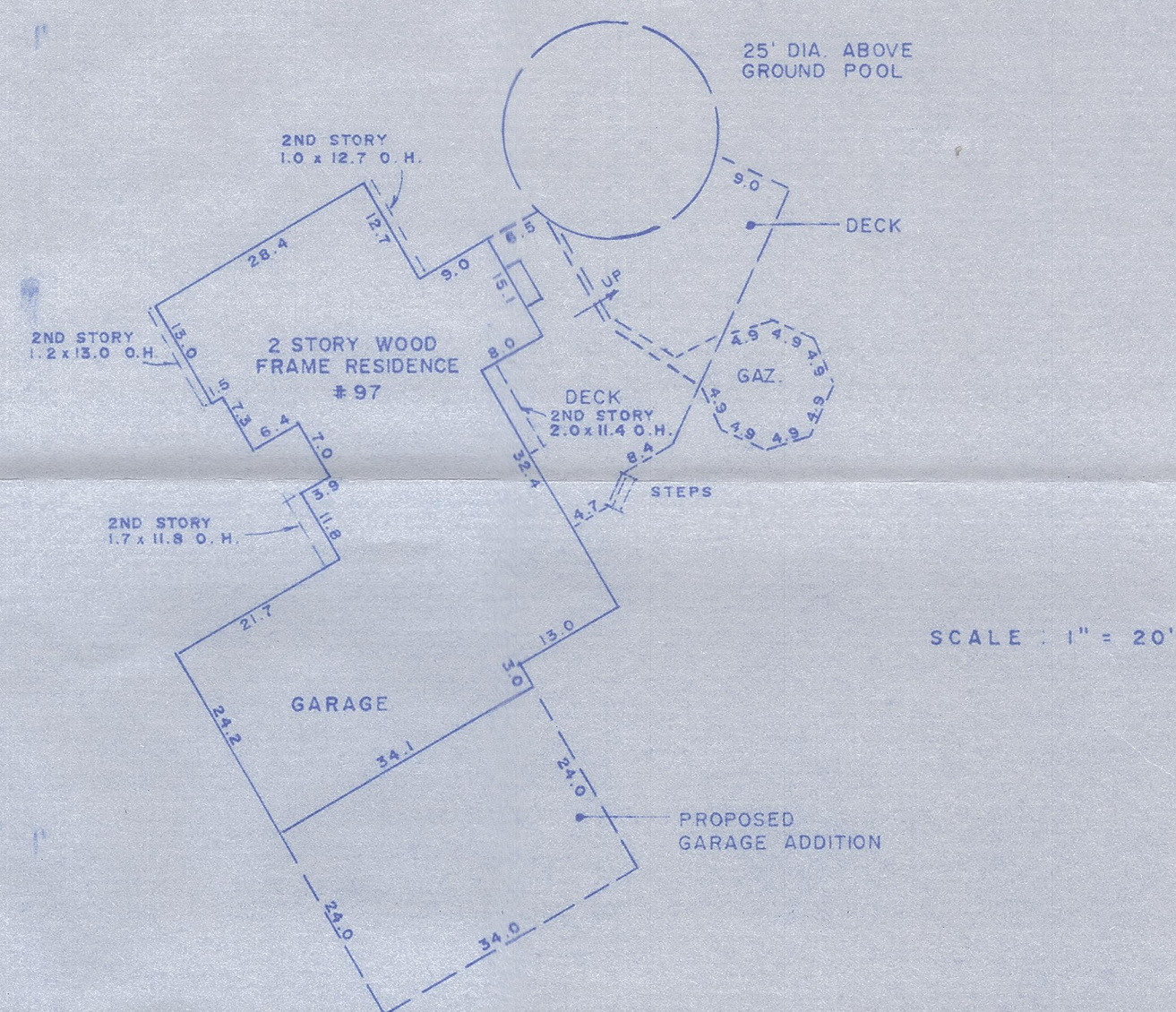
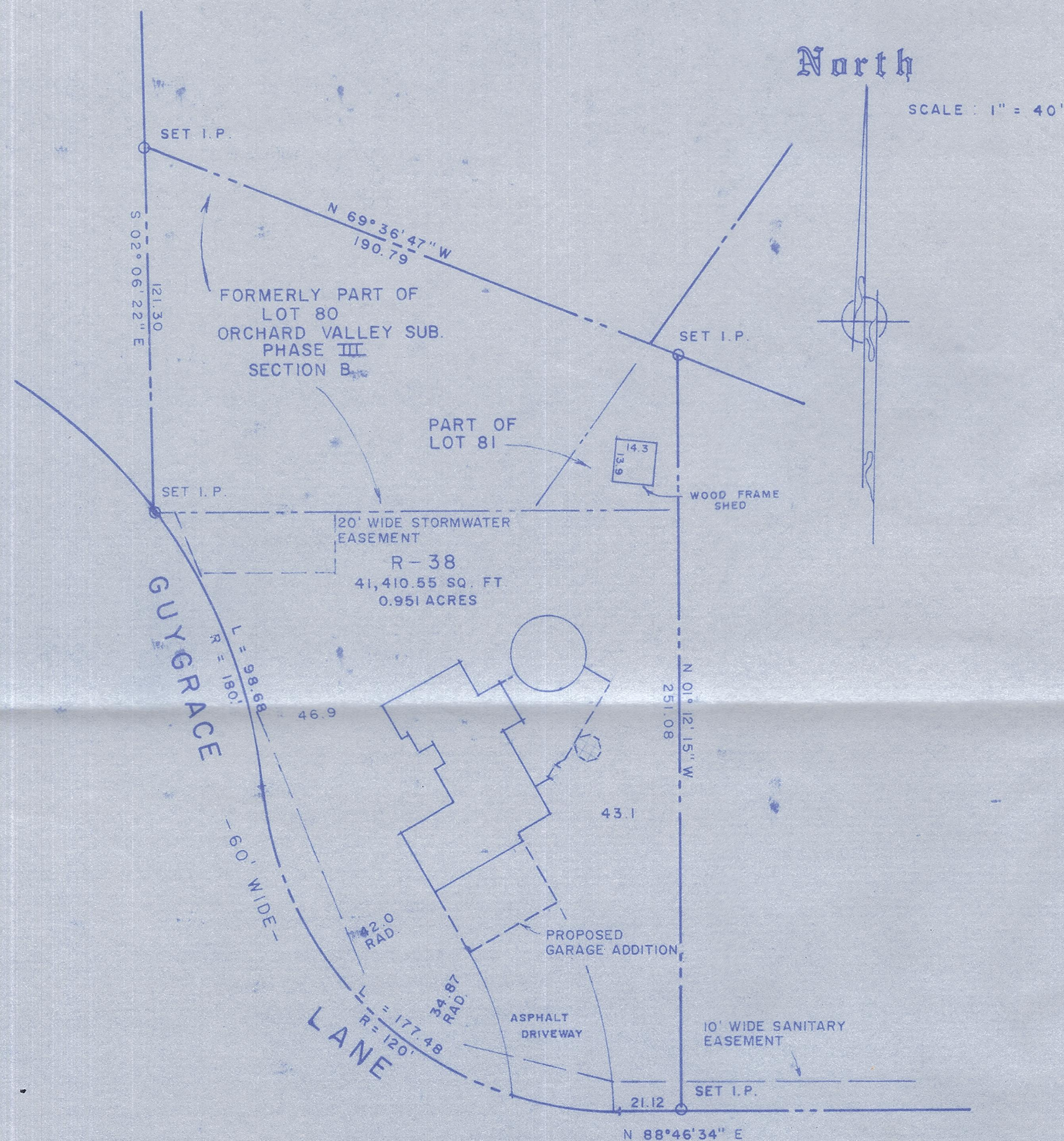
- Aubrey D. Smith

AUBREY D. SMITH

EXPAND RESIDENTIAL GARAGE TO ACCOMMODATE  
MORE CARS. GARAGE WILL BECOME DOUBLE-  
DEEP TO MATCH EXISTING 3-BAYS TO SUPPORT  
UP TO 6 CARS (VIA 3 GARAGE DOORS).

1. THE CHANGE WILL NOT BE UNDESIRABLE  
TO THE NEIGHBORHOOD AS IT WILL INCREASE  
VALUE WHILE MAINTAINING ARCHITECTURAL  
ATTRACTIVENESS.
2. A VARIANCE IS NECESSARY DUE TO THE  
WINDING NATURE OF THE ROAD FRONTAGE, AND  
THE ODD SHAPE OF THE PROPERTY, WHICH IS  
NOT RECTANGULAR.
3. BECAUSE THE WINDING NATURE OF THE  
ROAD, THE VARIANCE IS NOT SUBSTANTIAL.
4. GIVEN THE POSITIONING OF THE HOUSE ON  
THE PROPERTY, AND THE WINDING ROAD FRONTAGE,  
THERE WILL BE NO PHYSICAL IMPACT ON THE  
NEIGHBORHOOD, ESTHETICALLY.
5. I DIDN'T POSITION THE HOUSE, ORIGINALLY ON  
THE PROPERTY. THIS IS THE ONLY FEASIBLE MEANS  
BY WHICH THE GARAGE CAN BE EXPANDED TO MEET  
MY NEEDS.





REFERENCES: 1.) L. 277 OF MAPS, PG. 42  
2.) L. 318 OF MAPS, PG. 98  
3.) L. 339 OF MAPS, PG. 34  
4.) L. 9618 OF DEEDS, PG. 409

"I, WALTER P. LISOWSKI, L.S., HEREBY CERTIFY THAT THIS MAP WAS PREPARED FROM INFORMATION CONTAINED IN THE LISTED REFERENCES AND FROM THE NOTES OF A SURVEY COMPLETED BY ME ON 18 SEPT 2020."

*Walter P. Lisowski*  
WALTER P. LISOWSKI  
L.S. 49,687

## SURVEY MAP

OF  
97 GUYGRACE LANE, TOWN OF PENFIELD  
MONROE COUNTY, N.Y.  
SBL 093.16-2-038

LOT R-38 OF THE ROMAN ESTATES, SECTION V  
TOWN LOT 58, TOWNSHIP 13, RANGE 4, PHELPS  
AND GORHAM PURCHASE  
TOWN OF PENFIELD - MONROE COUNTY - N. Y. S.

DATE: 25 OCT. 2020 SCALE: 1" = 40'

DARYL CARMICHAEL & ASSOC., LLC  
P.O. BOX 60709, ROCHESTER, N.Y. 14606  
TELEPHONE: 585-647-3557 / FAX: 585-647-1352  
CONSULTANT TO: DAVID E. SIMPSON, P.E.  
WALTER P. LISOWSKI, L.S.  
REZA HOURMANESH, R.A., C.E., C.D.T.

