

**Zoning Board of Appeals  
September 23, 2015 Regular Meeting**

**STAFF REPORT**

**ZBA15-021, 1512 Morton**

**Summary**

Shawn and Karen Schaefer are requesting one variance from Chapter 55(Zoning) for a side yard setback (R1D Zoning, Section 5:29) of 4 inches to allow a 2 foot 8 inch side yard setback for a building addition; 3 feet is required.

**Description and Discussion**

The subject parcel is located at 1512 Morton, east of Lincoln, west of Baldwin. The parcel is zoned R1D (Single-Family Residential).

The request is discussed in detail below:

The existing single-story house is 1,606 square feet and was built in 1924. The house is setback 5 feet 11 inches from the west side property line and 11 feet 2 inches from the east side property line; the minimum required side setback is 3 feet. In summer of 2014 the petitioner completed construction on an enclosed porch on the southwest corner of the house. The permit as approved showed the porch at 3 feet from the adjacent property line. The porch was inspected and passed final inspection by the City of Ann Arbor in October 2014.

In the spring of 2015 a complaint was filed with the City regarding construction of the porch. The complaint was assigned a code case and follow up was conducted by City Staff. Through the course of the investigation staff requested a boundary survey from the home owner to verify construction according to plans. A boundary survey is considered very accurate and is not required for submission of building permits. The survey results indicated that while the porch complies with the required setback at the southwest corner, it encroaches 4 inches into the side yard setback at the northwest corner of the screened porch. While the line of the porch is straight, the reason for the difference is due to the original house being constructed at a slight angle on the lot. A stone wall lining the rear of the porch does encroach 8 inches into the side setback, however, per Chapter 55 (Zoning), Section 5:54 Required Open Space, "Certain architectural features, such as cornices, eaves, gutters, and chimneys may project 2 feet into required open space." The required setback calculation is measured to the actual foundation of structures. Due to the limited encroachment, there is no habitable space located in the setback, and the majority of the porch conforms to the setback requirements.

### **Standards for Approval- Variance**

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

- (a). ***That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.***

The parcel is 6,621 sq ft and is a conforming R1D lot for lot area. The parcel is conforming for lot width; required width is 40 feet, subject lot is 50 feet wide. The existing house was constructed in 1924 with the enclosed porch completed in 2014. The slight angle in the placement of the original house on the lot resulted in the encroachment into the setback. The construction was inspected and approved; however, Building inspectors are not surveyors and do not measure exact distances to property lines.

- (b). ***That the practical difficulties which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.***

The variance is being requested in order to permit the owner to allow an enclosed porch to encroach a maximum of 4 inches into the side setback. If the variance is denied the petitioner will need to remove the side wall of the porch and re-construct the porch to comply with the required setback. The petitioner could also remove the porch completely and construct a patio on the ground in the setback up to the property line. Patios are not structures, and as a result, do not need to adhere to setback standards.

- (c). ***That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.***

The encroachment varies from 0 to 4 inches maximum and should not affect the rights of the neighborhood property owners. The intent of setbacks is to protect the separation of structures in order to help protect health, safety and livability of property. Removal of the porch and reconstruction 4 inches over will not have any discernible impact on neighboring properties. A privacy fence exists between the subject property and the property immediately adjacent to the west.

- (d). *That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty.***

The house was constructed in 1924 before existing zoning code requirements, but the existing house complies with required setbacks. A smaller screened porch could have been constructed without the need for a variance. The porch was planned for a three foot setback and was built and inspected according to approved plans. However, due to the construction of the original house at a slight angle, the final porch construction resulted in a side yard encroachment.

- (e). *A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure***

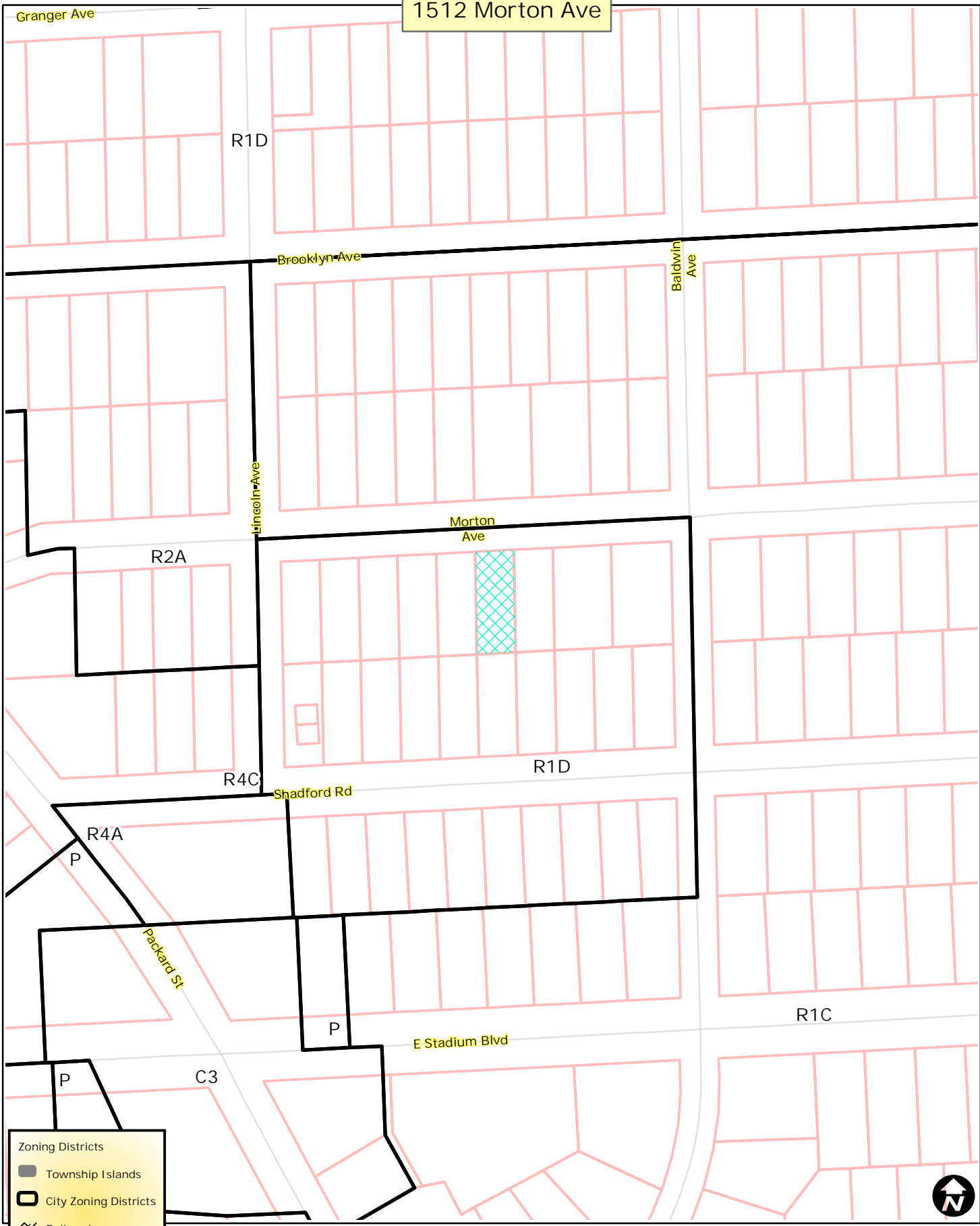
The requested variance will allow a small triangular corner of the screened porch, less than 5 square feet extend a maximum of 4 inches into the side setback. There will be no actual habitable space in this area, it is the corner of the wall that encroaches. Due to the angle of the house away from the west side property line, the requested variance is minimal.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'M. J. Kowalski', with a small comma at the end.

**Matthew J. Kowalski, AICP  
City Planner**

1512 Morton Ave



**Zoning Districts**

- Township Islands
- City Zoning Districts
- Railroads
- Parcels
- Huron River



Map date 9/3/2015  
Any aerial imagery is circa 2012 unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)





1512 Morton Ave

Granger Ave

Brooklyn Ave

Lincoln Ave

Baldwin Ave

Morton Ave

Shadford Rd

Packard St

E Stadium Blvd

-  Railroads
-  Parcels
-  Huron River



Map date 9/3/2015  
Any aerial imagery is circa 2012  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)







1512 Morton Ave

Morton Ave

D

-  Railroads
-  Parcels
-  Huron River



Map date 9/3/2015  
Any aerial imagery is circa 2012  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)



**APPLICATION FOR VARIANCE OR NON-CONFORMING STRUCTURE**  
**ZONING BOARD OF APPEALS**

**Section 1: Applicant Information**

Name of Applicant: Shawn and Karen Schaefer  
Address of Applicant: 1512 Morton Ave.  
Daytime Phone: 203-376-5907  
Fax: \_\_\_\_\_  
Email: fiveschaefer@mac.com  
Applicant's Relationship to Property: Owners

**Section 2: Property Information**

Address of Property: See above  
Zoning Classification: RID  
Tax ID# (if known): 09-09-33-417-014  
\*Name of Property Owner: \_\_\_\_\_

*\*If different than applicant, a letter of authorization from the property owner must be provided.*

**Section 3: Request Information**

☒ Variance

Chapter(s) and Section(s) from which a  
variance is requested:

Required dimension: PROPOSED dimension:

Chapter 55, Section 5.24

3 ft. side setback

2.3 ft side setback

*Example: Chapter 55, Section 5.26*

*Example: 40' front setback*

*Example: 32'*

Give a detailed description of the work you are proposing and why it will require a variance  
(attach additional sheets if necessary)

See Addendum A

**Section 4: VARIANCE REQUEST (If not applying for a variance, skip to section 5)**

The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:98. A variance may be granted by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when **ALL** of the following is found **TRUE**. Please provide a complete response to each item below. These responses, together with the required materials in Section 5 of this application, will form the basis for evaluation of the request by staff and the Zoning Board of Appeals. (continued...)



1. Are there hardships or practical difficulties to complying with the ordinance? Are these hardships or practical difficulties an exception or unique to the property compared to other properties in the City?

See Addendum B

2. Are the hardships or practical difficulties more than mere inconvenience, inability to obtain a higher financial return? (explain)

See Addendum B

3. What effect will granting the variance have on the neighboring properties?

See Addendum B

4. What physical characteristics of your property in terms of size, shape, location or topography prevent you from using it in a way that is consistent with the ordinance?

See Addendum B

5. Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?

See Addendum B

#### Section 5: ALTERATION TO A NON-CONFORMING STRUCTURE

Current use of the property

The proposed change is allowed in accordance with Structure Non-Conformance, Section 5:87 (1) (a) & (b), which reads as follows:

- (1) A non-conforming structure may be maintained or restored, but no alteration shall be made to a non-conforming structure unless one of the following conditions is met:
  - a. The alteration is approved by the Zoning Board of Appeals upon finding that it complies as nearly as practicable with the requirements of this Chapter and that it will not have a detrimental effect on neighboring property.
  - b. The alteration conforms to all the requirements of this Chapter and is made to a building which will be a single-family dwelling on completion of the alteration and is located in an R1,R2, R3, or R4 district.
  - c. The structure is considered non-conforming due to the following reasons

(continued . . . . . )



**Existing Condition**

**Code Requirement**

Lot area \_\_\_\_\_

Lot width \_\_\_\_\_

Floor area ratio \_\_\_\_\_

Open space ratio \_\_\_\_\_

Setbacks \_\_\_\_\_

Parking \_\_\_\_\_

Landscaping \_\_\_\_\_

Other \_\_\_\_\_

Describe the proposed alterations and state why you are requesting this approval:

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The alteration complies as nearly as is practicable with the requirements of the Chapter and will not have a detrimental effect on neighboring property for the following reasons:

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Wherefore, Petitioner requests that permission be granted from the above named Chapter and Section of the Ann Arbor City Code in order to permit \_\_\_\_\_

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**Section 6: Required Materials**

The following materials are required for all variance requests. Failure to provide these materials will result in an incomplete application and will delay staff review and Zoning Board of Appeals consideration of the request. The materials listed below must accompany the application and constitute an inseparable part of the application.

All materials must be provided on **8 ½" by 11" sheets.** (Continued.....)

- ☐ Survey of the property including all existing and proposed structures, dimensions of property, and area of property.
- ☐ Building floor plans showing interior rooms, including dimensions.
- ☐ Photographs of the property and any existing buildings involved in the request.
- ☐ Any other graphic or written materials that support the request.

## Section 7: Acknowledgement

### SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC

I, the applicant, request a variance from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

203-376-5907

Phone Number  
fiveschaefer@mac.com

Email Address

Shawn Schaefer

Signature

Print Name

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access the subject property for the purpose of reviewing my variance request.

Signature

I have received a copy of the informational cover sheet with the deadlines and meeting dates and acknowledge that **staff does not remind the petitioner of the meeting date and times.**

Signature

On this 26 day of August, 2015 before me personally appeared the above named applicant and made oath that he/she has read the foregoing application by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

Michelle Weaver  
Notary Public of Michigan  
Washtenaw County  
Expires 03/15/2021

Acting in the County of Washtenaw

Notary Commission Expiration Date

Notary Public Signature

Print Name

3/15/2021

### Staff Use Only

Date Submitted: \_\_\_\_\_

Fee Paid: \_\_\_\_\_

File No.: \_\_\_\_\_

Date of Public Hearing \_\_\_\_\_

Pre-filing Staff Reviewer & Date \_\_\_\_\_

ZBA Action: \_\_\_\_\_

Pre-Filing Review: \_\_\_\_\_

Staff Reviewer & Date: \_\_\_\_\_

# **ADDENDUM A**



## **ADDENDUM A**

In October 2012, Old School Construction pulled a permit for the purpose of constructing a new 288 sq. ft. screened porch with a foundation upgrade (the "Porch"). (Exhibit 1).

A site plan and drawings for the Porch were prepared by Studio Architecture for Old School Construction and those drawings are attached as Exhibit 2. The drawings identify the three foot setback requirement for the R1C zoning districts.

Old School Construction constructed most of the Porch but went out of business and eventually abandoned the project. The owners then retained another contractor to complete the project and obtain an inspection from the City of Ann Arbor. A final inspection was conducted on October 23, 2014, and the project passed inspection. (Exhibit 3).

The owners believe that their neighbors to the west were unhappy with the construction and complained to the City. There is an existing fence between the properties that currently encroaches on the owners' parcel by roughly 1.1', which was discovered at the time of obtaining a survey for this application. (See Exhibit 4).

The survey shows that the south end Porch was constructed at 3.0' from the property line, meeting the setback requirement at the south end of the Porch. (See Exhibit 4). The survey also shows that the foundation of the Porch was constructed at 2.7' from the property line at the north end of the Porch. Finally, the block wall constructed at the back of the Porch was constructed at 2.3' from the property line. The photo attached as Exhibit 5 shows the placement of the block wall ("B" on the photo) and the foundation of the Porch ("A" on the photo). The majority of the Porch meets the setback requirement, or is within 5 inches of the setback requirement.

The owners relied completely on the professionals hired to perform the work according to all applicable regulations and had no indication during the process that there were any violations of the setback requirement, or any other requirement. The owners, architect and contractors never discussed the setback requirement and the owners never told anyone to violate the setback requirement. When the City inspected the property and the project passed, the owners believed that the project met all required regulations.

For these reasons, the owners request a variance to the west side 3.0' setback requirement to 2.3' to accommodate the existing Porch and foundation block wall.

# **EXHIBIT 1**



# BUILDING PERMIT CITY OF ANN ARBOR

BUILDING DEPARTMENT  
301 E Huron St, P.O. Box 8647  
Ann Arbor, MI 48104  
Phone: (734) 794-6267  
Fax: (734) 994-8460

PLEASE VISIT THE CITY WEB SITE TO SCHEDULE YOUR INSPECTION - [WWW.A2GOV.ORG/permits](http://WWW.A2GOV.ORG/permits)

Permit Number: **BLDG12-1965**

Construction Type:

Use Group:

Work Type: **RES ADD/ALTER**

**New 288 sq.ft. screened porch w/ foundation upgrade**

Stipulations:

<b>LOCATION</b>  <b>1512 MORTON AVE</b> <b>09-09-33-417-014</b>	<b>OWNER</b>  <b>SCHAEFER SHAWN &amp; KAREN</b> <b>1512 MORTON AV</b> <b>Ann Arbor, MI 48104</b>
<b>Approved plans must be retained on job and this card kept posted until final inspection has been made. Permits and inspection notices must be posted at a single location on site (electrical panel, etc.). Where a Certificate of Occupancy is required, such building shall not be occupied until final inspection has been approved. Minimum 24 hour notice required for inspection. You must request inspection.</b>	<b>CONTRACTOR</b>  <b>Old School Construction Inc</b> <b>7540 Plymouth Rd</b> <b>Ann Arbor, MI 48105</b> <b>(734) 320-8991</b>

Permit Item	Account Number	Fee Basis	Amount
PLAN EXAMINATION	0026-033-3330-0000-434	0	274.00
COMPLIANCE REV OVER 10,000	0010-050-3360-0000-432	0	50.00
BUILDING PERMIT FEE	0026-033-3330-0000-431	0	685.00

**Ralph Welton**

Building Official

Date Issued: **10/25/2012**

Date Expires: **04/23/2013**

**Fee Total: \$1,009.00**

**Amount Paid: \$1,009.00**

**BALANCE DUE: \$0.00**

I agree this permit is only for the work described and does not grant permission for additional work which requires separate permits. I understand that this permit will become invalid, and null and void if work is not started within 180 days, or if work is suspended or abandoned for a period of 180 days any time after work has commenced, and that I am responsible for assuring all required inspections are requested in conformance with the applicable code.

I hereby certify that the proposed work is authorized by the owner, and that I am authorized by the owner to make this application as authorized agent. I agree to conform to all applicable laws of the State of Michigan and local jurisdiction. All information on the permit application is accurate.

Payment of permit fee constitutes acceptance of above terms.



# **EXHIBIT 2**

Shaun & Karen Schaefer

Issued for  
Permit & Construction  
8/16/2012

OFFICE COPY

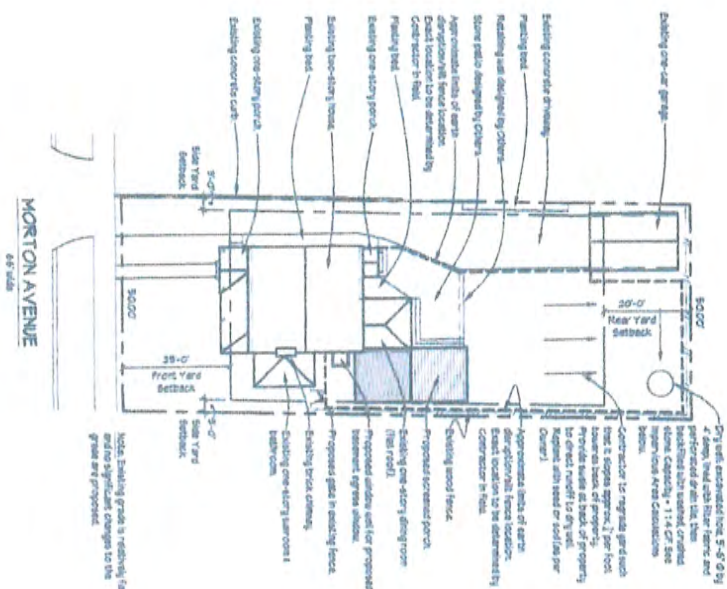
Renovating Contractor

Old School  
Construction

7500 Plymouth Rd  
Ann Arbor, MI 48106  
(734) 320-8991



North  
1" = 20'-0"  
Site Plan (Showing Roof)

[illegible]

## ImperVIOUS Area Calculations

Struts (vertical posts only)	3.4 SF
Floor	3.0 SF
Back end *	1.14 SF
Total	2.94 SF
2.94 multiplied by 0.04	0.12 Required volume *
Dry weight (pneumatically applied) total capacity	

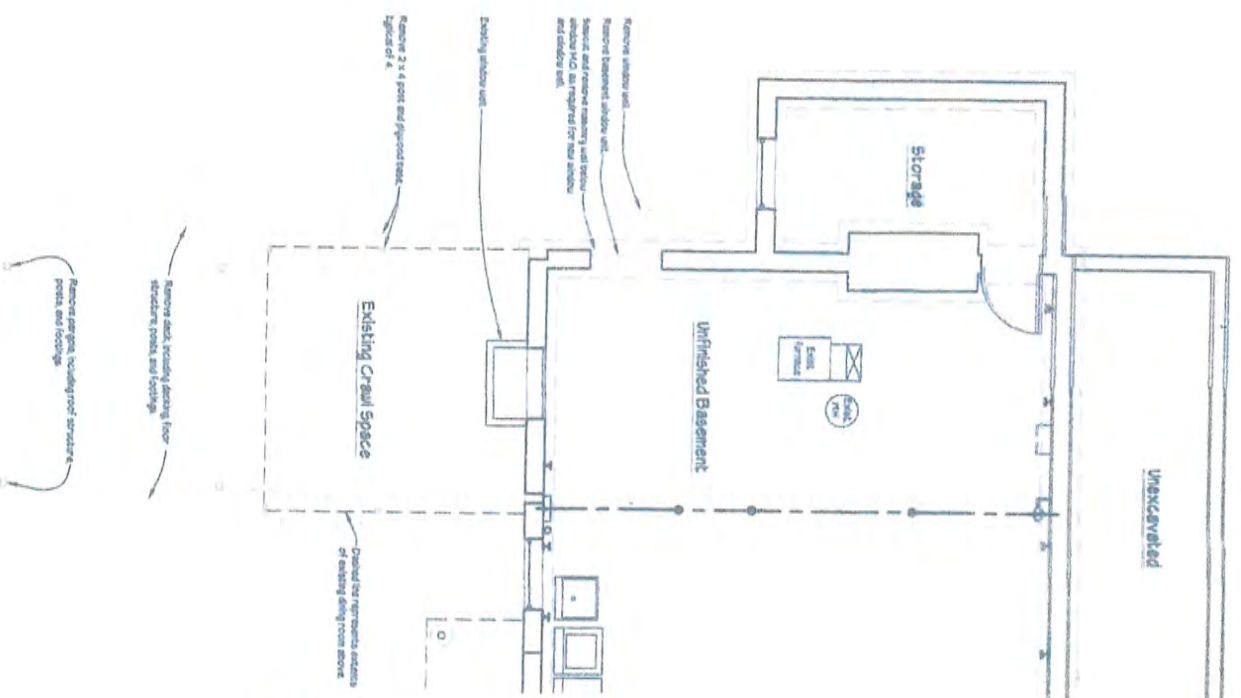
Jurisdiction	City of Ann Arbor
Zoning District	R-1D
Address	28 Front & East (North of a road ideal), 200 East
Lot Area	Approx. 7,000 sq. ft. (2.1 acres.)

1. Do you require any training?
2. In developing any new ideas or ideas across the board, what are the current, present and future needs of the business?
3. What would you like to see in the future? Do you want to be a 4.4, 5.0, a 5.5, or 6.0? Do you want to be a 7.0?
4. Conduct the project, considering the following: *Strategic, tactical, and/or other documents provided by the relevant team members or working information.*
5. Produce the final Training Manual, or other support of the relevant team and be the responsibility of the relevant team.
6. The Contractor shall ensure that Training is carried out in accordance with the requirements of the relevant team and working by the relevant team.

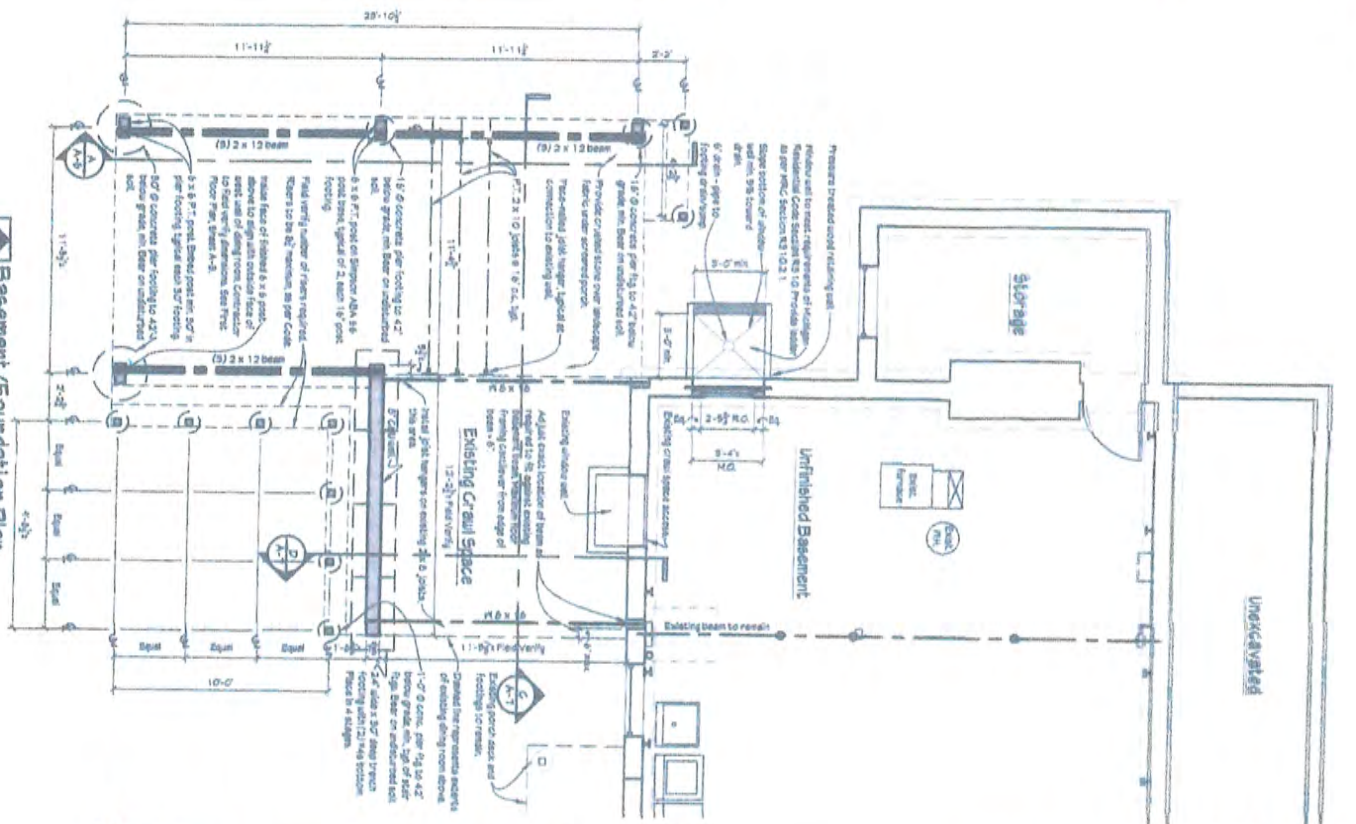
A-1	Swet, main, General Notes, Site map (Showing Road)
A-2	Element description list, Element or Condition Plan
A-3	First Floor Elevation Plan, First Floor Plan (includes Electrical)
A-4	Side (E) Elevation, Back (S) Elevation
A-5	Side (N) Elevation, Front (N) Elevation
A-6	Section A - N-5 Section at Second Floor
	Section B - Section at Screen Panel
A-7	Section C - E-5 Section at Second Floor (Using Room)
	Section D - N-5 Section at Foundation

**This plan MUST**  
be on file when  
inspection is made,  
otherwise inspection  
will not be made.

A-1



**Basement Demo Plan**  
North  
1" = 1'-0"



North	Basement/Foundation Plan
2" = 1'-0"	



Front Porch

Living Room

Office

Kitchen

Dining Room

Screened Porch

First Floor Demo Plan

North 3' = 1'-0"

Front Porch

Living Room

Office

Kitchen

Dining Room

Screened Porch

First Floor Plan

North 3' = 1'-0"

**STUDIO ARCHITECT**  
 7300 Plymouth R  
 Ann Arbor, MI 48106  
 (734) 350-8999

**Old School Constructio**  
 7300 Plymouth R  
 Ann Arbor, MI 48106  
 (734) 350-8999

**Schaefer Residence**  
 1512 Morton Av  
 Ann Arbor, MI 48106

**Project:**  
 Schaefer Residence  
 1512 Morton Av  
 Ann Arbor, MI 48106

**Scale:**  
 1/8" = 1'-0"

**A-3**

**SHEET 3 OF 3**





**Old School**  
 Constructor  
 7500 Plymouth Rd  
 Ann Arbor, MI 48105  
 (734) 320-8991

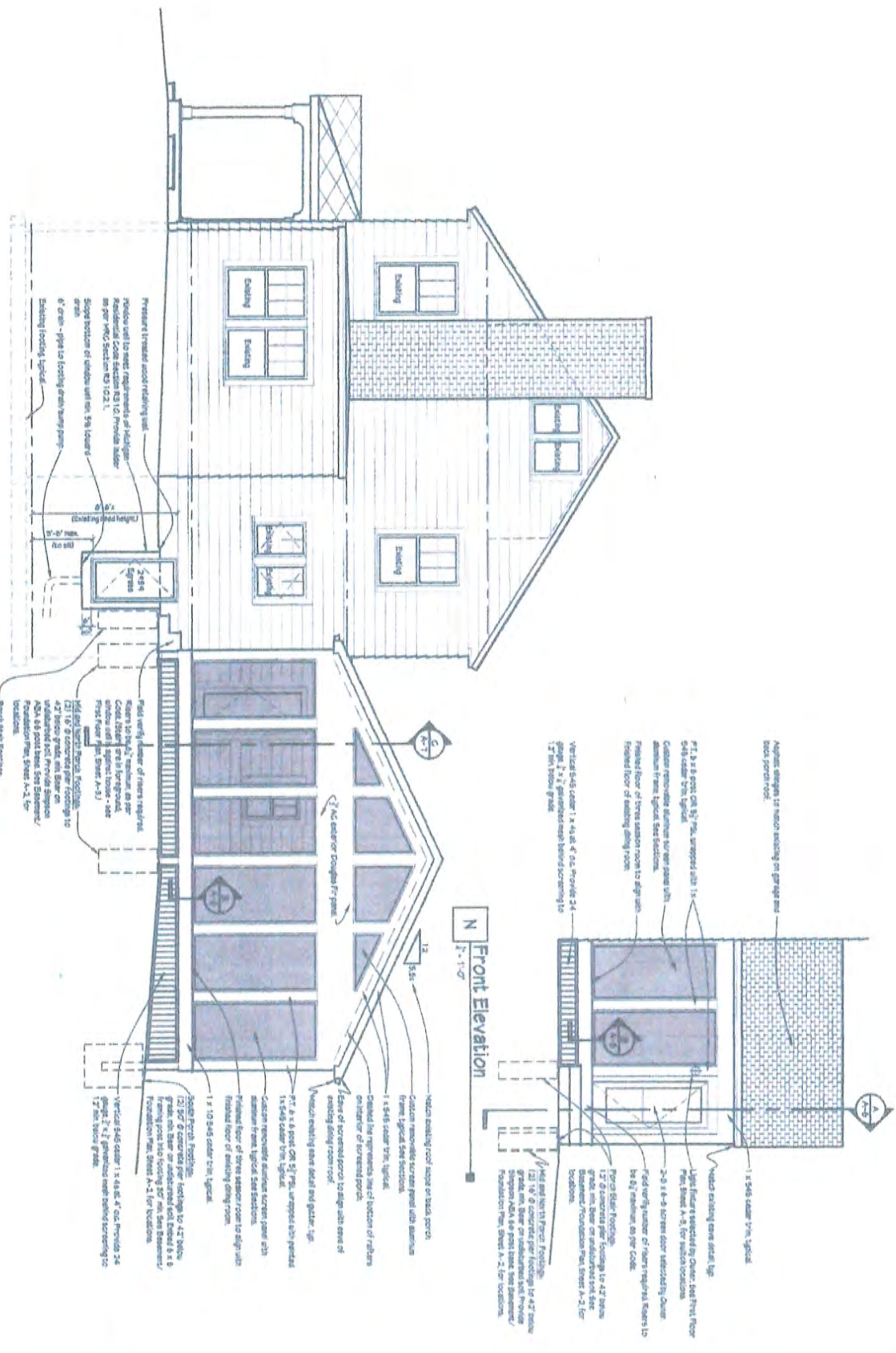
**Project location:**  
 15172 Morton Ave  
 Ann Arbor, MI 48105  
 Project No. 15172

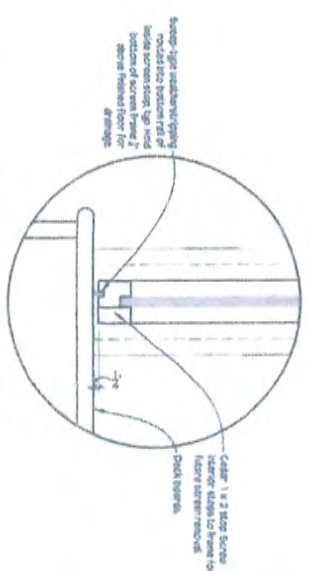
**Project description:**  
 15172 Morton Ave  
 Ann Arbor, MI 48105  
 Project No. 15172

**Schaefer Residence**  
 15172 Morton Ave  
 Ann Arbor, MI 48105  
 Project No. 15172

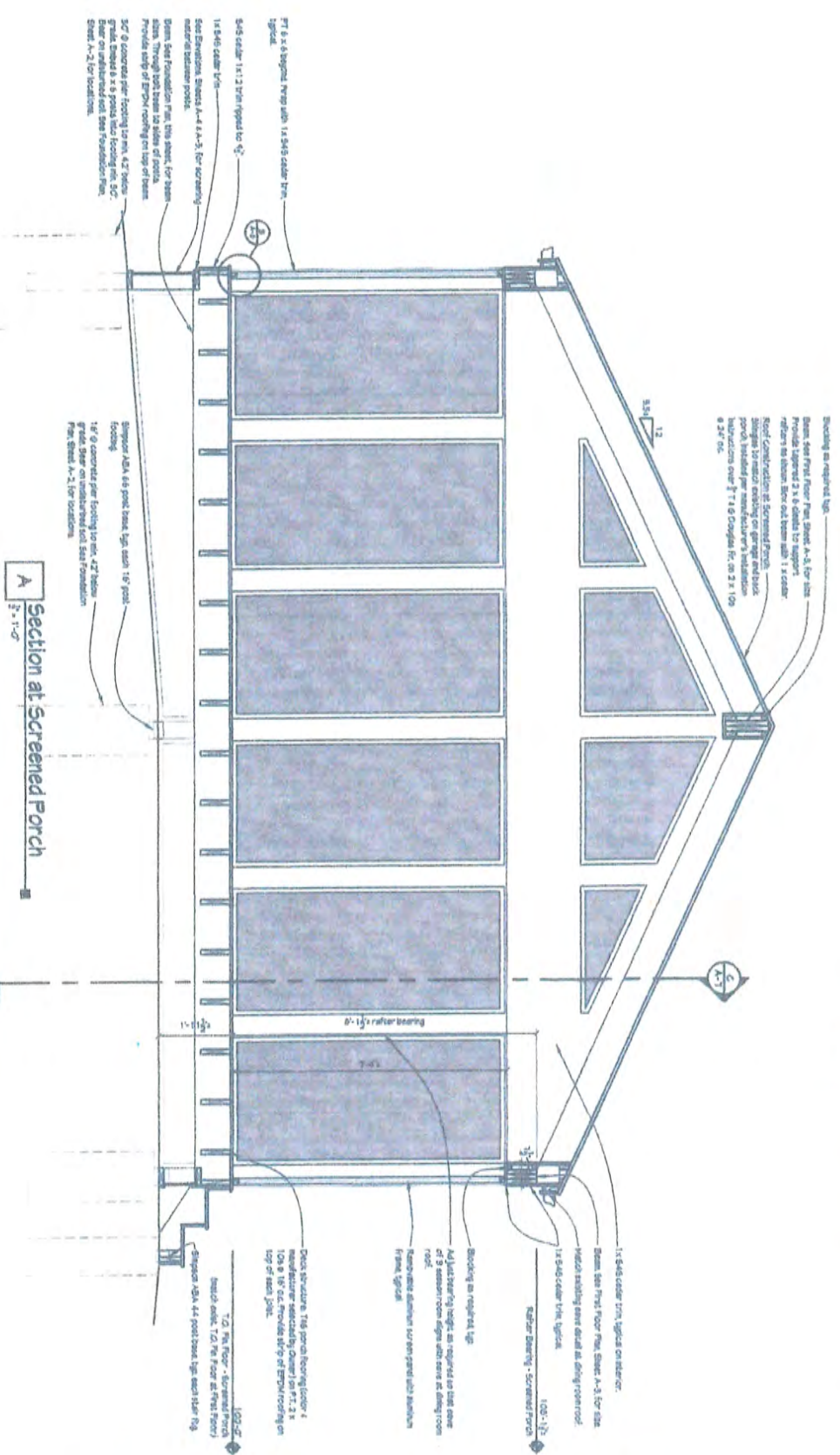
**A-5**

**Sheet 5 of 5**



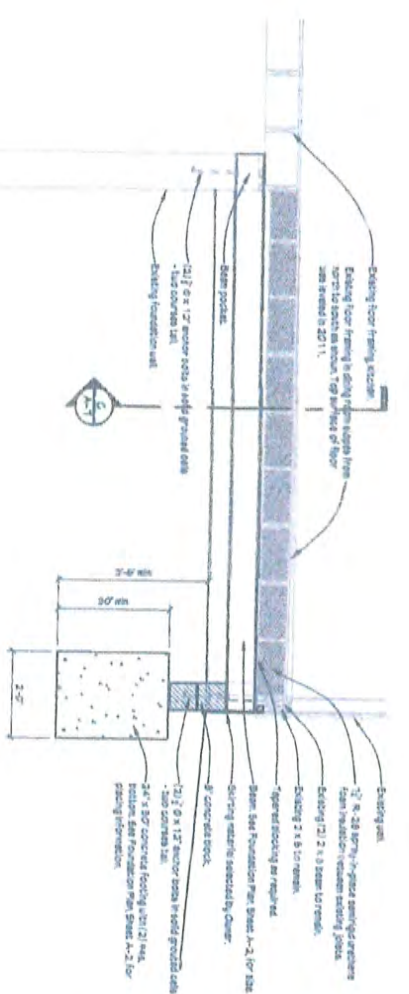


**B**  
 Section at Screen Panel  
 5'-1'-0"

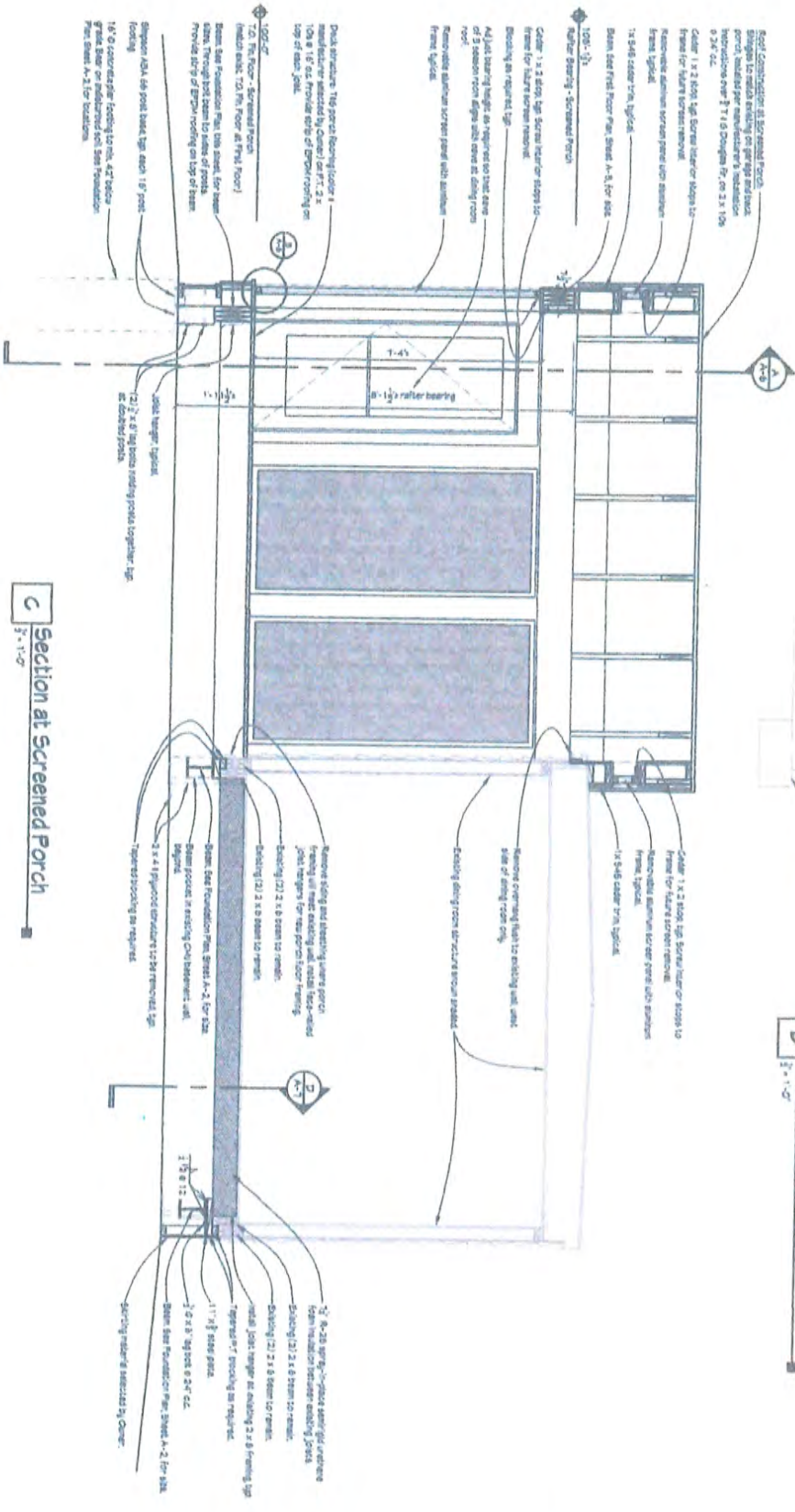


**A**  
 Section at Screened Porch  
 3'-1'-0"





**D** Section at Foundation  
3/4" = 1'-0"



**C** Section at Screened Porch  
3/4" = 1'-0"

**STUDIO ARCHITECT**  
POST OFFICE BOX 8  
CARTERSVILLE, GA 30120  
TEL: (770) 397-1111  
FAX: (770) 397-1111  
www.studioarchitect.com

**Old School Construction**  
7500 Plymouth Road  
Ann Arbor, MI 48106  
(734) 320-0991

**Schaefer Residence**  
1512 Morton Avenue  
Ann Arbor, MI 48104

**Project:**  
Schaefer Residence

**Architect:**  
Studio Architect

**Contractor:**  
Old School Construction

**Section:**  
Section C & D at Screened Porch

**Sheet:**  
A-7

# **EXHIBIT 3**

08/26/2015  
9:59 AM

**Permit No.** BLDG12-1965      **Permit Type** BUILDING      **Site Address** 1512 MORTON AVE  
Ann Arbor, MI 48104

**Applied** 09/28/2012

**Applicant** Old School Construction Inc

**Approved** 10/10/2012

**Owner** SCHAEFER SHAWN & KAREN

**Issued** 10/25/2012

**Contractor** Old School Construction Inc

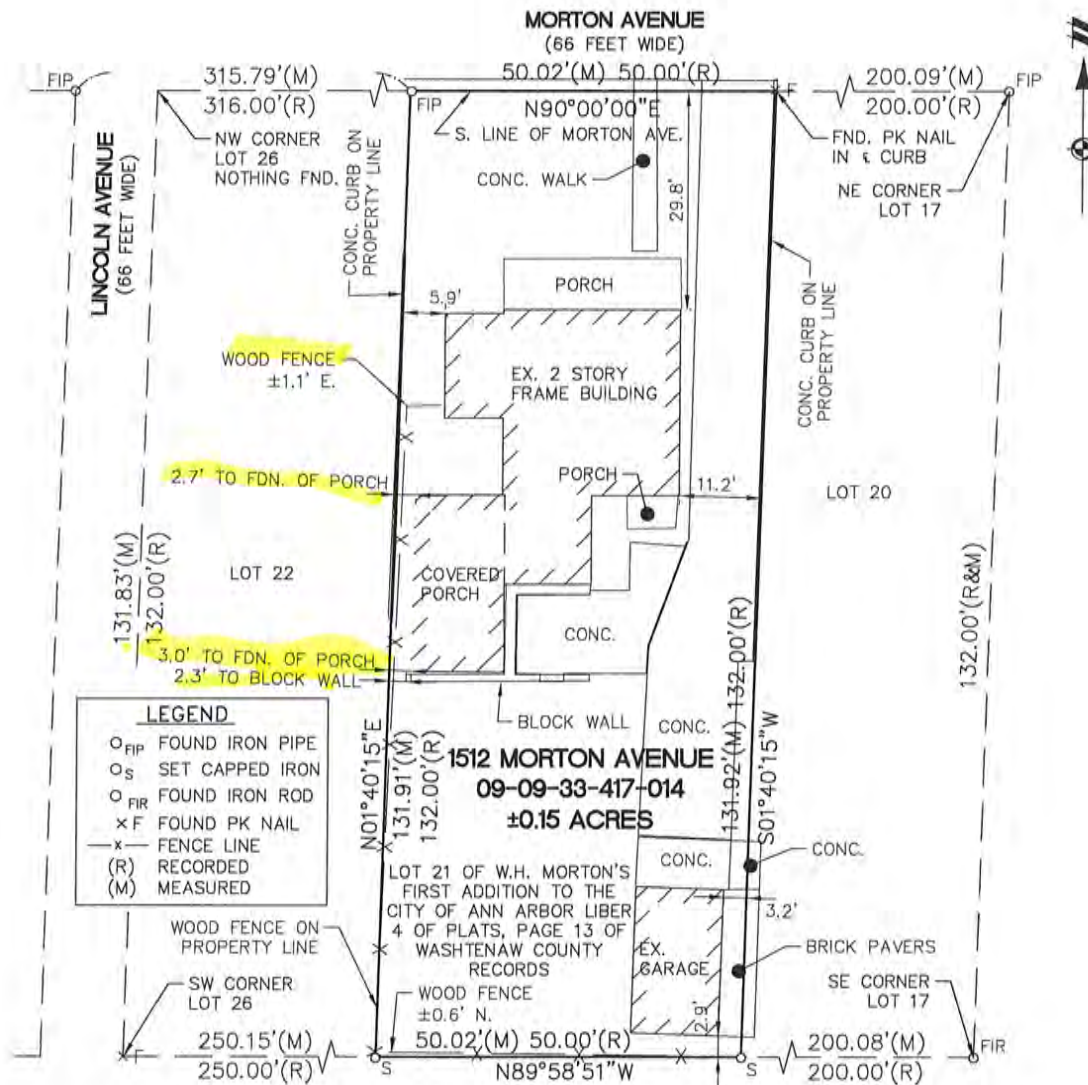
**Parent Permit No.**

**Description** New 288 sq.ft. screened porch w/ foundation upgrade  
**Notes**

Date of Inspection	Inspection Type	Inspector	Result	Remarks	Notes
10/23/2014	**FINAL	DIEFENBACHER JOHN	PASS		
09/17/2014	**FINAL	DIEFENBACHER JOHN	FAILED		(9/17/2014 2:22 PM JD) landings required at addition doors
07/15/2013	**FINAL	DIEFENBACHER JOHN	FAILED		(7/15/2013 3:10 PM JD) landings required at doors from porch; proper ladder required out of egress well
01/10/2013	ROUGH	DIEFENBACHER JOHN	PASS	eTRAKiT Inspection Request	Contact Name: Ben Lutzeier Site Address: 1512 MORTON AVE Phone: 7343208991 e- Mail: Ben@oscmi.com
11/21/2012	FOOTING	DIEFENBACHER JOHN	PASS		
11/16/2012	FOOTING	DIEFENBACHER JOHN	NOT READY	eTRAKiT Inspection Request	Contact Name: Ben Lutzeier Site Address: 1512 MORTON AVE Phone: (734) 320-8991 e- Mail: ben@oscmi.com

# **EXHIBIT 4**






DESCRIPTION OF TAX PARCEL 09-09-33-417-014 (PER WARRANTY DEED, RECORDED IN LIBER 4676, PAGE 449, WASHTENAW COUNTY RECORDS):

LOT 21, W. H. MORTON'S FIRST ADDITION TO THE CITY OF ANN ARBOR, AS RECORDED IN LIBER 4 OF PLATS, PAGE 13, WASHTENAW COUNTY RECORDS.

TAX PARCEL NO. 09-09-33-417-014

BEARING BASE: SOUTH LINE OF MORTON AVENUE, BEING N90°00'00"E, PER W.H. MORTON'S FIRST ADDITION PLAT

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE LAND ABOVE PLATTED AND/OR DESCRIBED ON JUNE 6, 2014, AND THAT THE RATIO OF CLOSURE ON THE UNADJUSTED FIELD OBSERVATIONS OF SUCH SURVEY WAS NOT GREATER THAN 1/5000.

CLIENT <b>SHAWN SCHAEFER</b>  BOUNDARY SURVEY OF 1512 MORTON AVENUE LOT 21 W.H. MORTON'S FIRST ADD. LIBER 4, PAGE 13 IN  SECTION 33 TOWN 2 SOUTH, RANGE 6 EAST CITY OF ANN ARBOR WASHTENAW COUNTY, MICHIGAN  SCALE: 1 INCH = 20 FEET	JOB: 14000905	CAD 14000905SU-01
	DR. CK	CH. LMD
	BOOK NA	PG. NA
	SHEET 01 OF 01	DATE: 8-19-2015
	FILE CODE: SU-01	
 <b>ATWELL</b> 866.850.4200 www.atwell-group.com TWO TOWNE SQUARE, SUITE 700 SOUTHFIELD, MI 48076 248.447.2000		

PROFESSIONAL SURVEYOR  
NUMBER 46723

# **EXHIBIT 5**

At point A marked below, the foundation wall of the covered porch is 2.8' inside the property line (so 0.2' into the 3' setback).

For reference, Point B marked below is 2.3' inside the property line.



# **ADDENDUM B**



## **ADDENDUM B**

- 1. Are there hardships or practical difficulties to complying with the ordinance? Are these hardships or practical difficulties an exception or unique to the property compared to other properties in the City?**

Yes. The width of this lot and typical lots in this neighborhood is only 50 feet, making remodeling very difficult. The house was built in 1924, and like many homes of this age and in this neighborhood, requires updates and repairs from time to time.

In addition, in this case, since the contractor constructed the foundation upgrade and Porch with a portion thereof violating the setback in two spots (without the knowledge of the owners) it would be a tremendous hardship and practically difficult to tear down and reconstruct the Porch and foundation upgrade, which does make the situation unique to the property.

- 2. Are the hardships or practical difficulties more than mere inconvenience, inability to obtain a higher financial return?**

Yes. In the event this variance is not granted, the owners will have to demolish and reconstruct a porch and foundation wall upgrade that was inadvertently constructed by their contractor in some spaces amounting to a fairly minor setback violation. The cost of such a project would be an extreme hardship.

Furthermore, the owners hired and completely relied on their architect and contractors to follow all applicable regulations. The contractor pulled the appropriate permits and the City inspected the property and the project passed inspection. The owners had no reason to believe at any point in the project that they were in violation of any rule or regulation.

- 3. What effect will granting the variance have on the neighboring properties?**

None. There is currently a fence between the two properties that encroaches onto the owners' property. While the neighbors have complained about the construction of this Porch and other projects, nothing about a variance will affect them.

The neighbors have, on information and belief, complained about the height, light and noise from the screened in Porch, and have not, on information and belief, complained about the construction of the block wall, which sits 2.3' from the property line, but cannot be seen by the neighbors due to the fence. (See Exhibit 5 to Addendum A). The Porch sits 3.0' from the property line at the south end and 2.7' from the property line at the north end. The largest encroachment into the setback requirement is 5 inches. A 5 inch variance to one end of the Porch is not going to impact the neighbors one way or the other. The light, height and noise from the porch will have the same impact on the neighbors with or without this variance.

**4. What physical characteristics of your property in terms of size, shape, location or topography prevent you from using it in a way that is consistent with the ordinance?**

The width of this lot and typical lots in this neighborhood is only 50 feet, making remodeling very difficult. The house was built in 1924, and like many homes of this age and in this neighborhood, requires updates and repairs from time to time. The existing two story frame house built in the twenties is only 5.9' from the property, making remodeling or repair work difficult in light of the very narrow lots and small setback area.

**5. Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?**

No. Please see Addendum A and Exhibits 1-5 thereto in response to this question.

Ms. Gale:

I am writing concerning ZBA 15-021. I am familiar with Schafer family as our children both attend Burns Park. I assume this variance is for the screen porch that was recently added to their house. As a life-long resident of Burns Park I feel the porch fits in very well with the culture and fabric of the neighborhood. In fact it seems to represent what our neighborhood is about: Community. This recent change also increases the property value of their lot, and by default, makes the entire neighborhood a more desirable place to live. I have no issue a variance being issued for the porch. In fact I strongly support it.

If you have any questions do not hesitate to get in touch.

Drew Denzin  
1506 Shadford  
734 945 7592

RE: Schaefer Family Variance  
ZBA15-021; 1512 Morton Ave

Hi Mia,

My wife, Caitlin, and I received the notification on the Schaefer family's variance request and we fully support them. They are simply fantastic neighbors and add so much to our block and community. Their yard is the center of gravity for all the kids in the area and they host graciously.

From what I've heard I'm simply befuddled as to how/why someone has a problem with their porch. It's a beautifully designed feature to their home that no doubt adds value to our entire block by showing we care about investing in our homes here on 1500 Morton.

I'd be very disappointed to hear that the City does not provide them with the variance they need.

Very best,  
Joe Malcoun



Norton and Becky Fogel  
1510 Morton Ave  
Ann Arbor, MI 48104

September 7, 2015

**Zoning Board of Appeals**

City of Ann Arbor  
301 E. Huron St.  
Ann Arbor, MI 48104

Re: Schaefer Variance Request (1512 Morton Ave)

**Dear Member of the Zoning Board of Appeals:**

***Introduction***

We are truly saddened by having to write this letter and present it to the Zoning Board of Appeals (ZBA). Until Karen and Shawn built their new porch at 1512 Morton Avenue, we had an excellent relationship. Our three older boys babysat and acted as “big” brothers for the Schaefer’s three young boys. There was a constant movement between our houses to the point that the Schaefer’s and we decided to remove a section of common fence to allow for free movement between our yards. Becky and I watched their boys for a weekend, so Shawn and Karen could enjoy a weekend of Shakespeare at Stratford. On each of the boy’s birthdays, we would put a happy birthday sign in our side window so that they would see it when they woke up. Unfortunately, this wonderful relationship came to an end after the construction of a massive porch on the west side of their property within the 3-foot setback required by Ann Arbor ordinance. The structure is not only very large, it rises 16 feet tall, but the floor is built from 1’ 6” to ~2’ above grade. This means that the six-foot fence between the properties reaches waist high on the people in the porch, which has a dramatic effect on our privacy both in our backyard and in our dining room, which faces the porch.

When construction on the porch began in winter of 2012/2013, we watched the size and height of the structure grow. By the time it was completed, we were in shock at the size and the nearness to the fence line. Not wanting to harm the relationship, we thought long and hard about what to do. We considered building a taller fence to visually block part of the structure and regain some privacy, however, as described below, the visual intrusion of the structure is only one, and perhaps the smallest issue we have with the porch. The bigger issues are related to sound, light, privacy, and the effect on the value of our property.

We first approached the Schaefer’s during the summer of 2013 to discuss our concerns about the porch. During these discussions, we suggested changes to the

bright lights on the porch (i.e., installation of shades). The Schaefer's responded to these discussions by saying they'd talk to their contractor about installing a higher fence. No action was taken by the Schaefer's to alleviate the issues associated with lights shining into our house and back yard.

On Labor Day 2014, we approached the Schaefer's to explain our concerns and discuss a potential resolution that would allow us to support a variance in the 3-foot setback requirement. At that time, we proposed that the Schaefer's install siding on the west and north walls of the structure. This retrofit would address the issues of sound, light, and privacy. To achieve a resolution, we were willing to compromise on the issues related to visual encroachment and property value.

Based on the issues discussed above and presented below, City of Ann Arbor's Zoning Board of Appeals (ZBA) should not provide the Schaefer's a variance to allow their porch to remain within the required setback line minimum of 3 feet.

### ***Zoning Classification***

Per City Code of Ann Arbor, Chapter 55-Zoning, Article III – Area, Height and Placement Regulations, 5:24, the side setback for property in our zoning district (R1D) is 3 feet. The actual setback of the porch is approximately, 1' 6".

### ***Issues Associated with the Porch***

- **Sound:** The porch has a cathedral ceiling and a hollow floor several feet above ground level. This design amplifies sound coming from the porch as well as the sound coming out of their home from the new side door they installed. When people are in the porch, it sounds as though they are in our house.
- **Light:** The porch is lit by two hanging clear glass globe light fixtures with bare bulbs within. When reflected against the bright white cathedral ceilings, the light is bright enough to light up not only our patio area outside, but to shine into our dining and living rooms.
- **Privacy:** The top of the 6-foot fence between the 2 yards is at about waist level for people on the porch, so that when we are sitting out in our patio, we feel as though people are towering over us, and when we are in our dining room, we have to avoid looking right into people's eyes.
- **Encroachment:** The structure is massive. It towers over our patio, looks right into our dining room, and is imposing even from our upstairs windows. It is almost 25 feet in length, as deep as the original footprint of their house, and 16 feet high. In a neighborhood where the houses are already very close, this structure feels very intrusive.

- **Property Values:** We have lived in Ann Arbor for over 25 years and have walked or run through almost all the streets in Burn Park and a majority of other older neighborhoods (e.g., Old West Side, Kerrytown). Since the porch was built, we have been looking at porches and other extensions throughout these neighborhoods and have not observed one structure built as close to the property line as the Schaefer's porch. As outlined below, we conclude that the porch will have an impact on our property value
  - Based our informal survey of neighborhoods, similar structures are non-existent or extremely rare (i.e., we have not seen one)
  - The porch affects our privacy and enjoyment of our property
  - Potential buyers of our property may have similar reactions to the porch as we do and discount the value of our property accordingly
  - Having an adjacent property that is not within code may lower the market value of our property
- **Violation of City Ordinance:** As discussed below, the structure is in violation of the City of Ann Arbor's Code of Ordinances setback requirement.

### ***Origin of the Issue***

Drawings prepared by Studio Z Architecture were submitted to the City for issuance of building permits. Drawings A1 and A3 show the property line approximately 1'6" to the west of the shared fence. Subsequent to the building of the porch, we have located the iron front yard property line stake (northeast) and a licensed surveyor has installed a property stake at the back corner (southeast). The conclusion of the survey and property line stakes is that the shared fence and property line are approximately the same. If a survey had been completed before the start of construction, the plans could have been modified to comply with the City's setback requirements.

### ***City of Ann Arbor Variance Request Requirements***

As the ZBA members are aware, Chapter 55 Section 5:99 **Application for Variance Power** sets a high standard for the issuance of a variance. The Section state the following: "A variance may be allowed by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when the evidence in the official record of the appeal from a decision of the Planning and Development Services Manager or order of the Building Official supports all the following affirmative findings:"

- a) That the alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.
- b) That the alleged hardships are practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

- c) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.
- d) That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.
- e) A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

As shown above, the City's Variance Request Requirements set a high bar for issuing a variance. We do not believe that this high standard can be met for the issuance of a variance by the ZBA for the Schaefer's porch. Our rationale for this conclusion includes:

- This is a self-created situation, not a pre-existing hardship.
- Had the Schaefer's architect requested a survey before the start of the project and had this survey been completed, the City would not have approved the plans as presented and/or the structure would have been redesigned to meet the City's setback requirements. The porch is very large, approximately 12' x 24'x (288 ft<sup>2</sup>). Reducing the porch by 2 feet in width would not have an appreciable impact on the use and enjoyment of the space.
- A mistake by the architect (i.e., not completing a property survey before designing the porch) is not a "hardships or practical difficulty"
- Based on our informal observations of similar structures in various neighborhoods, we have not observed a similar structure built within 3 feet of an assumed property line (i.e., shared fence). Therefore, we conclude that the standard of "...are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city" is not met. **There is nothing unique about the petitioner's property that makes complying with the 3 foot setback hard to do.**
- The only reason that we can conclude for requesting the variance is that the Schaefer's will incur costs to remove or modify the structure. This is not a hardship or a practical difficulty.
- The City has developed Zoning and Planning ordinances to ensure that properties are developed and maintained, taking into account the intended use of the property and to protect the rights of all property owners in the City. If the zoning board approves this variance, a very low-bar for obtaining future variances will be set.

We appreciate the time of the ZBA members. Thanks.

Sincerely,

Nort and Becky Fogel