

STAFF REPORT

July 8, 2020

To: Board of Zoning Appeals
Fr: Diane Wicklund, AICP, Planner III
Re: Application No. SE 20-49-BZA (AU)

APPLICATION INFORMATION

Applicant: Kevin Christian

Landowners: Elisabeth Lothamer

Requested Action: Requesting a Variance to allow a 28 and a half-foot tall detached accessory structure instead of the maximum height allowed of 25-foot

Purpose: Requesting a Height Variance in order to construct a new detached accessory structure that exceeds the 25-foot maximum height requirement

Legal Description: Berryhill Farm Estates Subdivision, Lot 70

Site Address/Location: 6001 W. 180th St.

Existing Land Use/Zoning: Residential/ RN1, Residential Neighborhood 1 District

Existing Improvements: Single-family Residence

Site Size: 3.6 acres

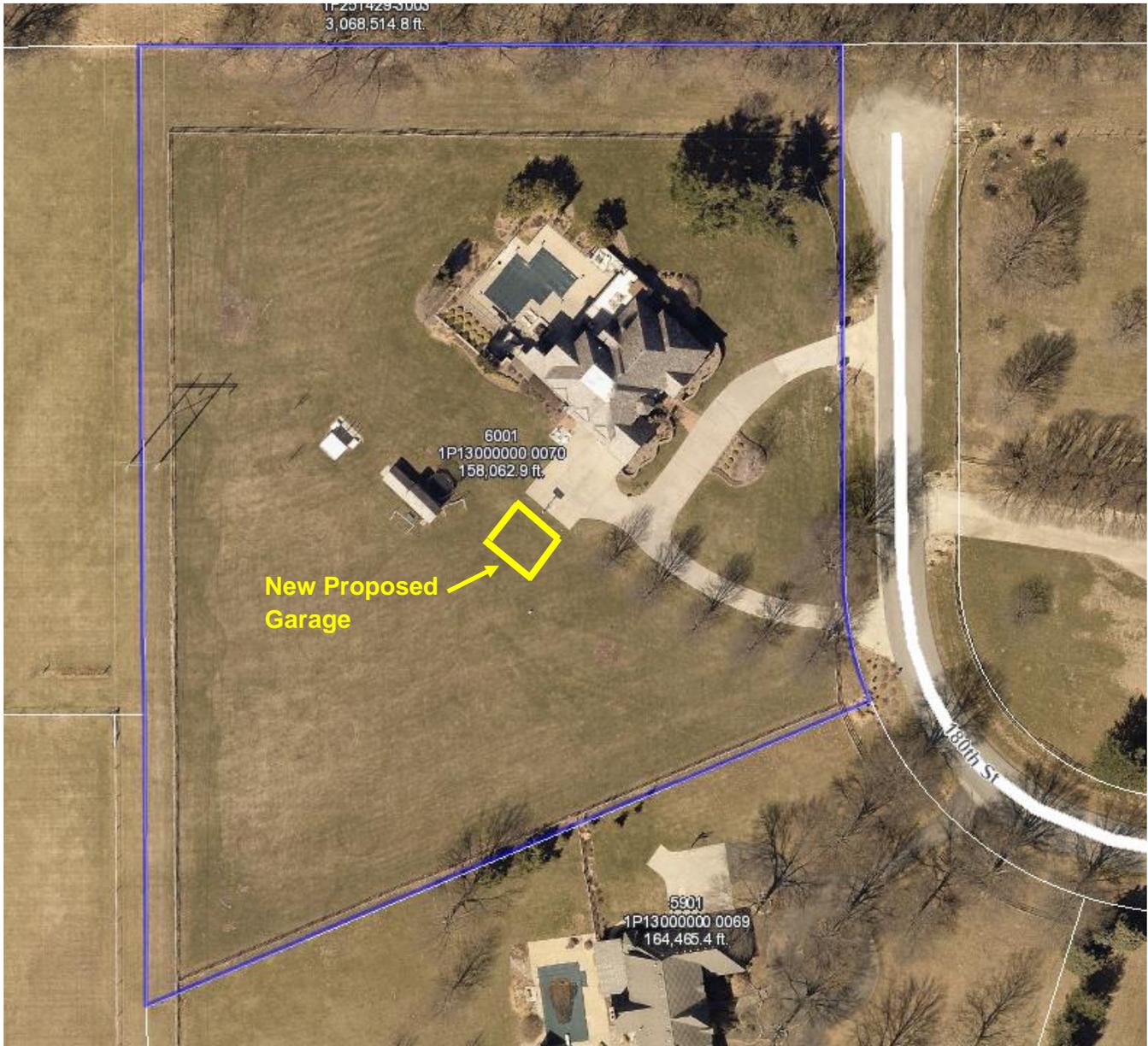
PROPOSAL

This is a request to allow a 28 and a half-foot tall (as shown on the attached building elevation drawings) detached accessory structure where the *Zoning and Subdivision Regulations of Johnson County (Regulations)* requires a maximum height of twenty-five (25) feet for detached accessory structures in the RN1 zoning district. The purpose of the Variance request is for the applicant to be able to construct a new detached accessory structure that exceeds the 25-foot maximum height requirement. *Please refer to the Applicant's Narrative and Site Plan attached for more details.*

The property is zoned RN1, Residential Neighborhood 1, and is 3.6-acres in size. The subject property is located in the Berryhill Farm Estates Subdivision.

The applicant is requesting the variance to facilitate construction of a detached accessory structure. The applicant has stated that the reason for requesting the height Variance is because he wants the proposed garage to match the existing home in height and architectural style (scale, roof pitch, etc.).

NOTE: If the Variance request is approved, a Conditional Use permit would also need to be approved for the oversized accessory structure, prior to issuance of a building permit. The proposed 2,012 square foot accessory structure would exceed the size restrictions of detached accessory structures located on lots less than 10 acres in size.



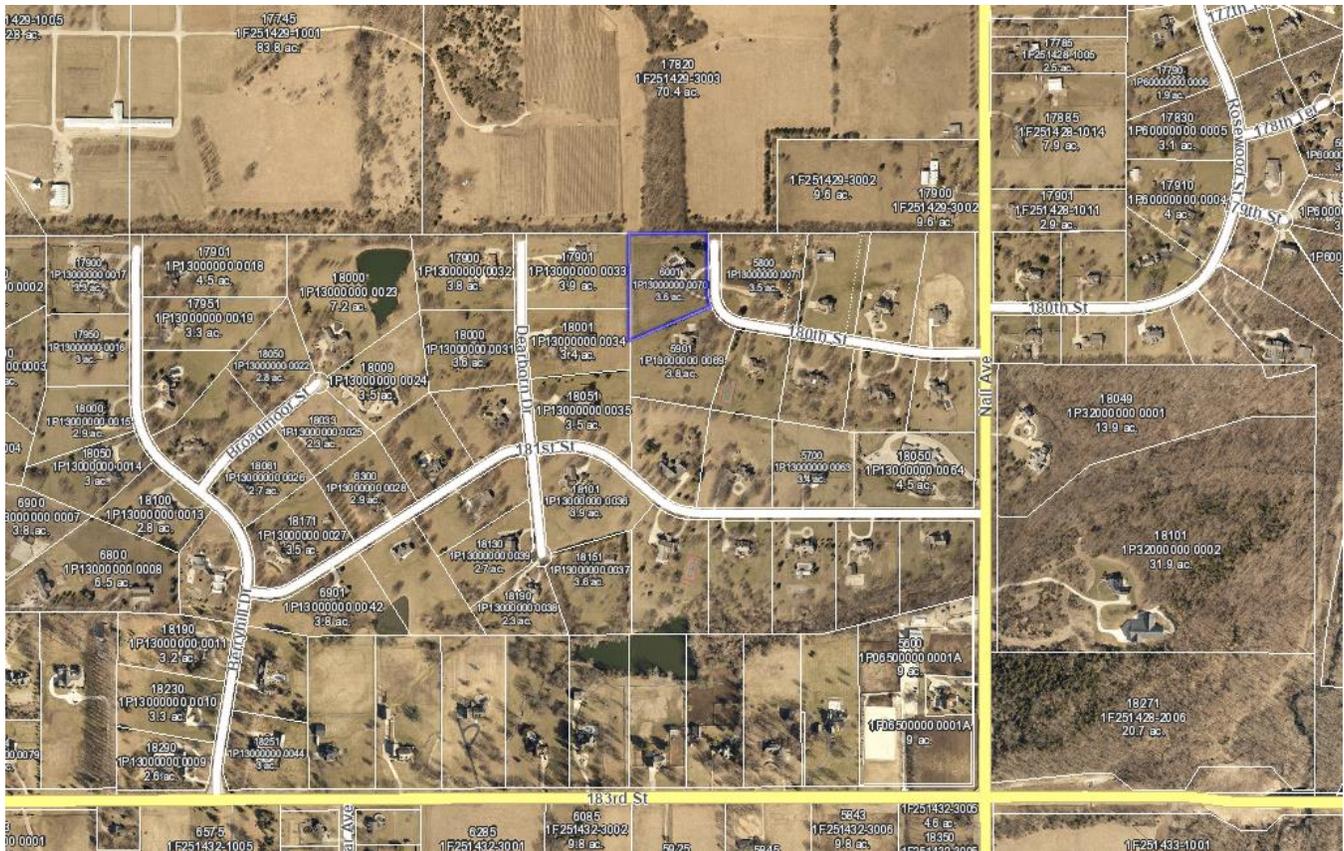
Close Up View of Subject Property (outlined in blue) – not to scale



Picture of Subject Property – not to scale



Picture of Surrounding Neighborhood (red star represents location of proposed garage)



Aerial View of Surrounding Area (subject property outlined in blue)

BACKGROUND INFORMATION

Zoning/Building History:

The Berryhill Farm Estates Subdivision, Subdivision Plat was recorded in 1973. The existing single family home was constructed in 1985. According to the applicant, he was a contractor buyer of the property for at least 20 years and closed on the property on June 23, 2020 and is now the landowner. The property was rezoned to the RN1, Residential Neighborhood 1 Zoning District as part of the county-wide rezoning in 1994.

Comprehensive Plan:

The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County (Plan)* indicates this site within the Blue Valley Area Plan. The Blue Valley Plan shows the future land use designation for the subject property as Very Low Density Residential (which calls for a density of less than or equal to one unit per acre). The subject property and the existing residential subdivision are compatible with the Blue Valley Plan. In addition, the *Plan* does not specifically address requests for variances.

General Character of the Area:

The subject property is located within the Berryhill Farm Estates Subdivision. The entire subdivision is zoned RN1, Residential Neighborhood 1 District. To the east, west, and south of the subject property is

RN1 zoning. To the north is RUR, Rural zoning. There is PEC1 Industrial zoning to the northwest of the subdivision. Surrounding uses are primarily residential with lot sizes ranging from two to five acres in the subdivision. The Midwest Bioscience Research facility is located to the north and northwest of the subject property and the Berryhill Farm Estates Subdivision.

BZA AUTHORITY

In this Section, Planning staff describes its analysis, including background information and special factors for the Board of Zoning Appeals (BZA) to consider. The analysis is organized by the requirements set out in the *Regulations*. According to the *Regulations*, in specific cases, the BZA may recommend a variance from the specific terms of the *Regulations* which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the *Regulations* will, in an individual case, result in unnecessary hardship for the applicant and provided that the spirit of the *Regulations* shall be observed, public safety and welfare secured, and substantial justice done. The BZA shall not have the power to act upon variances regarding uses permitted within zoning districts. The BZA shall be limited to granting variances on matters including, among others, building height, setbacks, lot size, and lot dimensions, as provided by the *Regulations*.

There are five criteria for granting a variance (a through e, below) that are specified in state statutes (See KSA 19-2962). Pursuant to state law requirements, the BZA must find that all five criteria are met in order to grant a variance. If the request fails any one or more of the five, the variance cannot be granted.

Staff Analysis

Planning staff has reviewed the variance in accordance with Article 3, Responsible Authorities and Administrative Duties, Section 5, Board of Zoning Appeals, subsection F(2) of the *Regulations*. Staff analyzes below whether all five of the statutory criteria are met:

- a. *The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the Zoning Regulations and not created by an action or actions of the property owner or applicant.***

The subject property is 3.6 acres in size. The existing house is generally located toward the front of the property. The subject property and existing house location is typical of the size and configuration of lots and existing residences within the subdivision. There does not appear to be anything unique about this property, as to its size, zoning, configuration or topography, that would prohibit the applicant from complying with the height requirement. The proposed detached garage would exceed the height limitation for this zoning classification. The proposed location of the detached garage (to the side of the house) is a typical location for a garage.

The property is zoned RN1, Residential Neighborhood 1 and is 3.6 acres in size. The RN1 zoning district allows a maximum height of 25 feet for detached accessory structures. The 25-foot height requirement is equally shared and enforced against all property owners in the RN1 zoning district. Compared to the proposal (a 28 and a half-foot tall accessory structure), there are no accessory structures in the subdivision that are taller than 25 feet.

The variance request arises from the applicant's preference to build a detached accessory that is over-height so that it matches the existing home in height and architectural style (scale, roof pitch, etc.), rather than from an inability to make use of the property, and it is not created by the Regulations. The applicant was a contract buyer for the property at the time the Regulations were in effect (for the 25-foot maximum height requirement for accessory structures) and is presumed to know what the Regulations were at the time he became a contract buyer and the Regulations have not changed since that time. There are no unique conditions or features to the subject property that prohibits the applicant from complying with the maximum height regulation of 25 feet. Furthermore, the applicant submitted photographs (*attached*) of detached accessory structures located on nearby properties. Please note that those structures do not exceed the 25-foot height requirement.

Furthermore, there are other options the applicant could utilize in order to comply with the Regulations, such as: (1) redesign the proposed accessory structure and reduce the height to 25 feet, or (2) construct an addition to the house instead of a detached accessory structure. Main structures in the RN1 zoning district are allowed a maximum height of 35 feet. ***This criteria is not met.***

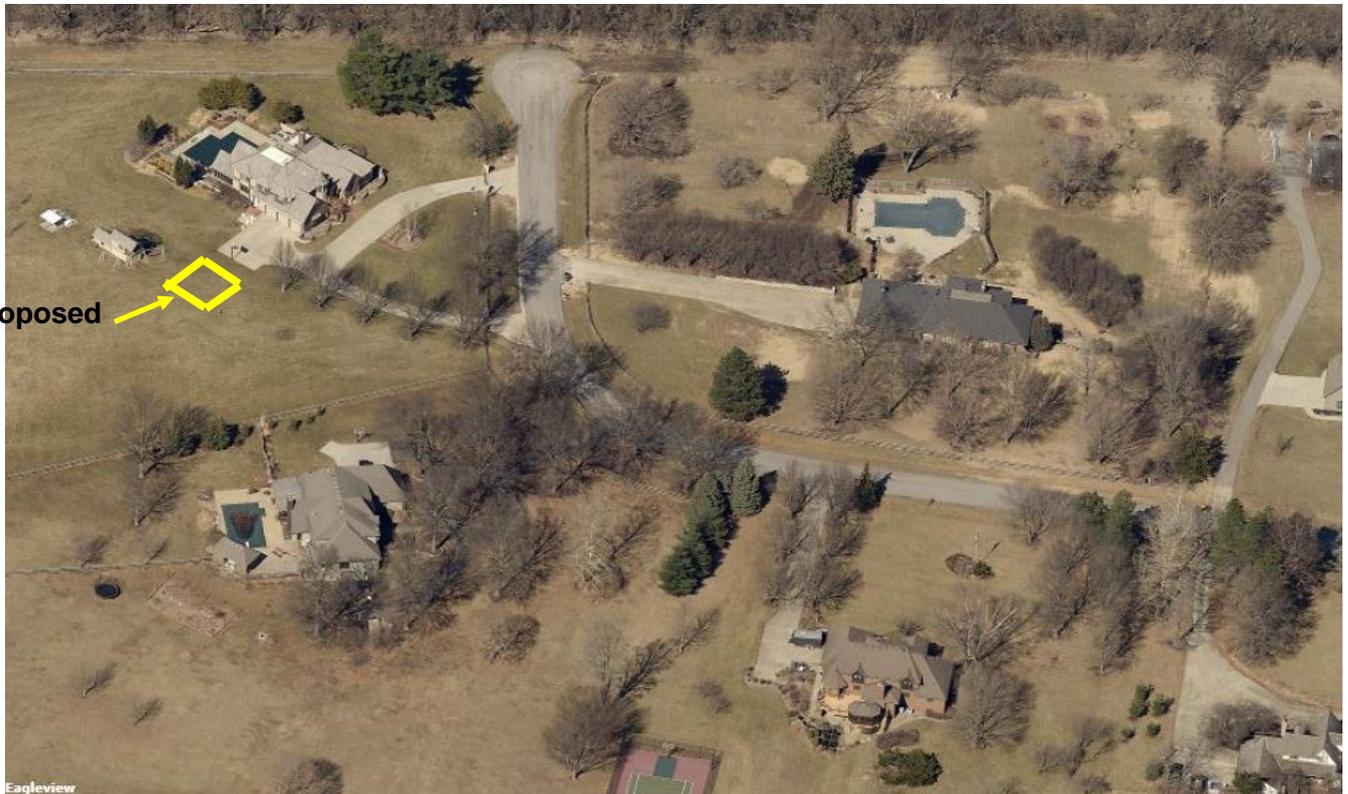
b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

Adjacent property owners have the right to develop and use their property in accordance with the Regulations and to expect enforcement of Regulations on neighboring property. The current Regulations require a maximum height of 25 feet for detached accessory structures for property zoned RN1.

The surrounding zoning in this subdivision is RN1. There are ten lots along 180th Street and they are all developed with a residence. Only one of the lots has a detached accessory structure and it is less than 25 feet tall. To the west of the subject property, along Dearborn Drive, there are two lots that have detached accessory structures and they both appear to be less than 25 feet tall.

The proposed detached garage will comply with the setback requirements and will be located to the side of the house (and not behind the house). It will be located about 170 feet from the house to the south, about 360 feet from the house to the east (across the street) and about 470 feet from the houses directly to the west. The subject property is located within a residential subdivision and is located along the curve of 180th St., which would make the proposed garage more visible. Because of the location of the proposed garage and the close proximity to adjacent residences, granting the variance will adversely affect the rights of adjacent property owners or residents. In addition, the proposed over-height accessory structure contradicts neighborhood expectations that uniform rules and County Regulations apply and will be enforced within the subdivision. ***This criteria is not met.***

New Proposed
Garage



Picture of Immediate Area

- c. ***The strict application of the provisions of the Zoning Regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

The strict application of the maximum height requirement will not allow the owner to build the proposed detached accessory structure as preferred, but it will allow an accessory structure 25-feet in height. If the Variance is denied, the applicant would have to redesign the proposed detached garage in order to comply with the 25-foot maximum height requirement. However, there are other options the applicant could utilize in order to comply with the Regulations, such as: (1) redesign the proposed accessory structure and reduce the height to 25 feet, or (2) construct an addition to the house instead of a detached accessory structure. Main structures in the RN1 zoning district are allowed a maximum height of 35 feet.

The strict application of the height requirement does not constitute an unnecessary hardship upon the applicant, but more of an inconvenience, because he will still be allowed to construct an accessory structure 25-feet in height and also make a reasonable and economically viable use of the property, if required to conform to the height requirements. ***This criteria is not met.***

d. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

The order and character of the Berryhill Farms Estates Subdivision and neighborhood has generally been established since the mid 1970's. There are ten lots along 180th Street and they are all developed with a residence. Only one of the lots has a detached accessory structure and it is less than 25 feet tall. To the west of the subject property, along Dearborn Drive, there are two lots that have detached accessory structures and they both appear to be less than 25 feet tall. The proposed detached accessory structure could visibly alter the character of the established residential subdivision because, if the variance is approved, then it would locate a larger, over-height accessory structure, which could be seen from the street and adjacent residences. The variance requested would not adversely affect public health, safety, prosperity, or morals. However, the variance requested will adversely affect the order, convenience, and/or general welfare of the neighborhood for the following reasons: (1) the detached accessory structures in the immediate neighborhood do comply with the height requirements, (2) the location of the proposed garage is to the side of the house (and not behind the house) and visible from the street, (3) the close proximity to adjacent residences, and (4) the over-height proposed accessory structure would not be compatible with the order and uniformity of the subdivision and would not meet neighborhood expectations of enforcement and compliance with the County Regulations. ***This criteria is not met.***

e. Granting the variance desired will not be opposed to the general spirit and intent of the Zoning Regulations.

The Regulations set forth uniform rules and procedures for the division, use, and improvement of property. The intent of height requirements in the Regulations is to promote orderliness and uniformity in residential zoned subdivisions, and to promote adequate light and air onto the subject property and adjacent properties. In addition, height limitations can also help protect views and vistas of adjacent properties and neighborhoods/subdivisions, and therefore, benefitting the community. Uniformly applied, height restrictions can play a large role in the integrity and character of a subdivision or neighborhood. The Regulations require a maximum height of 25 feet in the RN1 zoning district, for detached accessory structures. The applicant is requesting a 28 and a half-foot tall structure. This results in a 14% increase (or 3.5 feet) in height from what the Regulations allow and is not a substantial deviation from the maximum height requirement, and therefore, is not opposed to the spirit and intent of the requirement. ***This criteria is met.***

Summary

In Staff's opinion, not all of the criteria required to approve a variance can be met with this request and the applicable statutory law requires that all 5 criteria must be met in order to approve the variance. The applicant is requesting to construct a detached accessory structure 3.5 feet taller than what is allowed by the Regulations. The maximum height requirements for an accessory structure within the RN1 zoning district of the Regulations have not changed so the variance is not created by the Regulations and arises from an action (preference) of the applicant. Staff recognizes the desire of the applicant to construct the accessory structure (for the reasons stated by the owner in his Narrative) but would argue that the proposed structure can be redesigned, without known constraints,

to comply with the Regulations. Staff does not find any unique condition of features of this property or unnecessary hardship to the applicant that would justify the variance requested.

RECOMMENDATION

Planning staff recommends **denial** of a variance to allow a 28 and a half-foot tall detached accessory structure where the *Regulations* require a maximum height of 25 feet because it does not comply with **all** of the criteria as discussed in this report.

Reasons for Recommendation to Deny

1. The variance is not created by the Regulations and arises from an action (desire) of the applicant to construct an over-height detached accessory structure.
2. An unnecessary hardship does not exist if the request is denied because the proposed structure can be redesigned, without known constraints, to comply with the Regulations.

Proposed Findings and Conclusions (Denial)

Planning Staff recommends that the following be adopted by the Board of Zoning Appeals:

I. Preface

In its review of the subject application, the BZA has summarized the written reasons that form the basis of our decision, which appear below. It was not intended, nor should it be considered, that the summarized reasons are exclusive in nature, as the entire record of the proceedings regarding the application remain, and are ultimately the supporting rationale of our decision.

II. Findings and Conclusions

1. A. FACT

The owner desires to build a detached accessory structure that will be 28 and a half-foot tall, where the maximum height allowed is 25 feet is in the underlying zoning district. There are no topographical, lot shape, or other unique conditions or features on the subject property. The maximum height requirements for an accessory structure within the RN1 zoning district of the Regulations have not changed since the applicant became a contractor buyer of the property.

B. CONCLUSION

There are no unique conditions to the property and the variance request is not created by the Zoning Regulations.

2. A. FACT

The applicant's desire to build an over-height accessory structure (28 and a half feet tall), instead of a maximum height of 25 feet, which would meet the height requirements in the underlying zoning district.

B. CONCLUSION

The variance arises from an action (desire/preference) of the applicant and is not caused by the zoning regulations.

3. A. FACT

As proposed, the design of the accessory structure does not meet the maximum height requirement of 25 feet. There are other options that the applicant could utilize in order to comply with the height requirements, such as: (1) redesign the proposed accessory structure and reduce the height to 25 feet, or (2) construct an addition to the house instead of a detached accessory structure. Main structures in the RN1 zoning district are allowed a maximum height of 35 feet.

B. CONCLUSION

The strict application of the maximum height of 25 feet does not constitute an unnecessary hardship upon the applicant as he would still be allowed to make a reasonable and economically viable use of the property, if required to conform to the height requirements.

4. A. FACT

The order and character of the Berryhill Farm Estates subdivision and neighborhood has generally been established since the mid 1970's. There are ten lots along 180th Street and they are all developed with a residence. Only one of the lots has a detached accessory structure and it is less than 25 feet tall. To the west of the subject property, along Dearborn Drive, there are two lots that have detached accessory structures and they both are less than 25 feet tall.

B. CONCLUSION

The variance requested will adversely affect the order, convenience, or general welfare of the neighborhood for the following reasons: (1) the detached accessory structures in the immediate neighborhood comply with the height requirements, (2) the location of the proposed garage is to the side of the house (and not behind the house) and visible from the street, (3) the close proximity to adjacent residences, and (4) the over-height proposed accessory structure would not be compatible with the order and uniformity of the subdivision and would not meet neighborhood expectations of enforcement and compliance with the County Regulations.

5. A. FACT

The Regulations require a maximum height of 25 feet in the RN1 zoning district, for detached accessory structures. The applicant is requesting a 28 and a half-foot tall accessory structure. This results in a 14% increase in height from what the Regulations allow.

B. CONCLUSION

The request is not a substantial deviation from the maximum height requirement, and therefore, is not opposed to the spirit and intent of the Regulations.

Alternate Findings and Conclusions

If the BZA decides to approve the variance request, rather than deny it, the BZA should be prepared to summarize, for inclusion in the minutes of the meetings, its reasons to approve, which will serve as its written decision on the application.

Proposed Motion

I move that the Board deny Application No. SE 20-49-BZA (AU), for the reasons set forth in the Proposed Findings and Conclusions Section of this Staff Report.

Attachments: Vicinity Map, and Applicant's Narrative, Drawings, and Pictures