Wexford Joint Planning Commission

c/o Cherry Grove Township
4830 E. M-55
Cadillac, Michigan 49601 www.wexfordjpc.org

Email: planningandzoning@wexfordjpc.org (231)775-1138x6

STAFF REPORT/Zoning Board of Appeals
Case # ZBA-2024-02

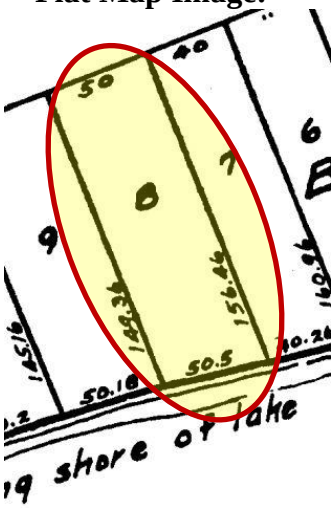
1. Application

Owner(s):	Cornelius, Leon and Theresa 5613 Wayfarer Ave. Apollo Beach, Florida 33572
Agent:	Long, Don 216 Otsego Place Cadillac, Michigan 49601
Site Address,	3409 W. Lake Mitchell Drive | Cadillac, MI 49601
And Proposed Location	Parcel ID# 2110-FW0208 | Selma Township
Zoned:	R2
Site Plan:	Staff and Applicant Provided [not required]

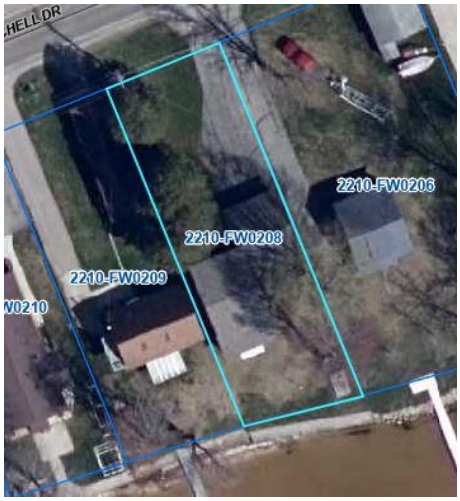
2. Development Proposal

2.1 Property Description – LOT 8, BLK. 2 FLOWING WELLS PARK SEL. SEC. 35 T22N R10W

Plat Map Image:



WexCo GIS Image



Google Earth Image – General Area:

2.2 Action Report – The applicant (and agent of the applicant) has been in conversations with the WJPC staff regarding a small addition to the subject property. The existing dwelling one of the 'smaller' footprint cottages (two-story) in an area of already improved homes. The Flowing Well plat was established in 1925.

The applicant is requesting to add a three-season porch / addition (123.5 square feet) to the southeast corner of the existing dwelling that would encroach into the required 10' side yard setback by approximately 6'-6" and encroach no further into the waterfront setback than currently exists.

2.3 Background:

1. This property (consisting of one platted lot) is approximately 7,500 square feet in area, but only 50' wide – therefore it is deemed to be nonconforming because it less than the required 75'.

2. The property is located in the R-2 Residential Zoning District

2.4 Current Narrative:

1. The Owner / Applicant's agent engaged the ZA in conversations in person to discuss possibilities for adding a small addition (123.5 square feet) on to the house in order to create more seasonable living area.
2. The applicant's agent worked with WJPC staff to determine exactly what type of project could be accomplished considering the current lot size, required setbacks, and the current location of the existing structures. It was determined that the applicant's proposal could not be administratively approved because of the encroachments into required setbacks (side and waterfront).
3. The applicant was advised of the variance process and provided a copy of Article 96; Appeals Board, from the Wexford Joint Zoning Ordinance and asked to provide a brief narrative justifying the need for the requested variance.
4. Public Hearing publication was scheduled and published in the Cadillac News on October 5th, 2024; 18 days in advance of the required public hearing.
5. 300 Foot Notices were sent out on October 2nd, 2024; 21 days in advance of any required public hearing.
6. Packets were sent out to the Zoning Board of Appeals members (and the Applicant / Agent) on October 16th, 2024 via email and U.S. Mail.

3. Article 46: R-2 RESIDENTIAL DISTRICT

3.1 Section 4604 of Article 46 describes the regulations applicable to the specific zoning district – the following is presented for review by the Zoning Board of Appeals:

1. The minimum required parcel area is: 7,000 (seven thousand) square feet;
   The subject parcel where the current dwelling is located is approximately seven thousand and five hundred (7,500) square feet.
2. The **minimum buildable area** is five thousand (5,000) square feet, which further complicates the nonconformity. Briefly, the parcel does NOT conform to what the ordinance states is the minimum required lot size or the minimum area to build upon, among other dimensional issues such as width and road frontage.[1]

[1] See PowerPoint Image

3. The minimum parcel width required is: seventy-five (75) feet at the road. This property has approximately 50' on the road frontage.

3. Setback requirements are as follows:

Front:	4604.D.1.a	the required setback is 20'
Side:	4604.D.1.b.(3)[2]	the required setback is 10'
~~Rear:~~	~~4604.D.1.b~~	~~the required setback is 50'~~ [N/A]
Waterfront:	4604.D.1.c	the required setback is 50'[3]

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4. STANDARDS FOR GRANTING A DIMENSIONAL VARIANCE

4.1 According to WJZO, Article 9607.F.2.a.(1) thru (5) – The following standards **shall** be used by the Zoning Board of Appeals when considering a variance request.

1. That the need for the requested variance is due to **unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography** and is not due to the applicants personal or economic difficulty.

Staff Comments: XXX In addition, Article 10, Section 1011.A appears to suggest that regardless of how small a parcel may be in comparison to the required minimum lot size, that the ZBA 'shall' grant a further reduction … prior to reducing a water front setback, perhaps contemplating that most 'all' lots should be permitted to be built upon provided that certain protections are guaranteed.

Recommended Finding: The Zoning Administrator finds that the platted lot width of 50' (feet), being less than the required 75' for the zoning district, and the required spacial area of 68% (percent) absorbed by setbacks, when compared to the required 'buildable' area of 5,000 square feet present unique physical conditions for the subject property.

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[2] Parcel is narrower than lowest limit for nonconforming parcel

[3] **1011. Water Protection** Notwithstanding anything to the contrary contained in this Ordinance, the following provisions shall apply: **A.** No structure shall be built, located or constructed closer to the water's edge than fifty (50) feet for buildings, or one hundred (100) feet for nutrient sources (such as but not limited to drain fields, highly fertilized areas, manure storage), measured on a horizontal plane to the water's edge. In the event the water's edge recedes (moves landward), the setback line shall also be construed as to have moved landward a distance equal to the water's edge recession. In cases where parcels are smaller than the minimum parcel size allowed in the particular district so that applicable setbacks given here and in a particular district result in a building envelope less than 25 by 40 feet the Appeals Board shall grant a further reduction of side yard setback and/or a front yard setback prior to reducing the required water front setback. This setback shall not apply to a dock, bridge, or stairs and path to the shore.

2. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

Staff Comments: The current landowner has not altered the property since the adoption of the Wexford Joint Zoning Ordinance or acted to create the need for the variance. The parcel is incumbered by setback areas equaling 68% of the total lot area.

Is the issue "self-created"? (Article 'excerpt' from: MSUE)

The fourth standard is widely misunderstood among ZBA members. The proper interpretation is to ask whether the applicant took some affirmative action that created the need for the variance, such as making an unusual land division (shape), filling the entire building envelope so that a porch must necessarily extend into the setback area, digging a pond, etc. A practical difficulty cannot be self-created (*Norman Corp v. City of East Tawas*, 263 Mich App 194 (2004)). Being "self-created" includes actions of the current property owner and actions of all previous owners.

In other words, a self-created practical difficulty by a predecessor in title can bar a subsequent owner from a legitimate variance request (*Johnson v. Robinson Twp,* 420 Mich 115 (1984)). At the same time, the Court of Appeals recognizes that merely purchasing property with the knowledge of ordinance limitations does not preclude someone from apply for (and receiving) a variance (*City of Detroit v. City of Detroit BZA*, 326 Mich App 248 (2018)). **The key is whether a property owner — present or past, took affirmative action to alter the property counter to the controlling ordinance at the time. The purchase of a unique lot, even with knowledge of the current ordinance, should not be held against a new owner**. This standard is inappropriately applied if a ZBA member sees the presence of the applicant before the ZBA as a self-created situation. This mindset would lead to the conclusion that all variance requests are self-created. It is not an applicant's desire for a variance that is a self-created problem; it is an applicant's previous action to fill the buildable envelope with structures, or divide the parcel into an unusual shape that is the self-created problem.

Recommended Finding: The Zoning Administrator finds that there is no evidence of the property owner (past or present) taking affirmative action creating a 'need' for the requested variance – rather, the records indicate that the property was built and or improved upon prior to the existence of any zoning ordinances, thus, it was the 'government' action of zoning ordinance adoption that created the current 'practical difficulties'.

3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, **or** will render conformity with those regulations unnecessarily burdensome.

Recommended Finding: The Zoning Administrator finds that the above standard (due to the existing characteristics of the property) would present a burden by having to strictly comply with the regulations currently in effect.

4. That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.

   Staff Comments: There are at least two (2) variances to be considered by the ZBA in this application in order to do substantial justice to both the applicant 'and' other property owners in the area:

   - ***Waterfront (to be considered last)[4]***
     1. ***The house / dwelling, at its closest point, is 39' (feet from the water's edge (seawall).***
     2. ***The 'proposed' addition, at its farthest point), will be approximately 46.5' from the water's edge.***
   - ***Side Yard (addition encroachment into required side yard)***
     1. ***The existing garage currently encroaches approximately 9'-3" into the required 10' side yard setback.***
     2. ***The 'proposed' addition will encroach approximately 6'-6" into the required 10' side yard setback.***

   Recommended Finding: The Zoning Administrator finds that the <u>existing</u> encroachments into the side yard and waterfront yard setbacks will NOT be increased and that the 'proposed' addition is minimal in contrast.

5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

   Staff Comments: The area is a platted area of mostly improved homes upon nonconforming lots of record. Most dwellings / homes in the immediate vicinity consist of newer, larger buildings with 'very' large accessory structures. The Zoning Administrator cannot find evidence that permitting the requested variance(s) would cause any adverse impacts. This area (within and adjacent to the notice group) enjoys steadily increasing property values.

   Recommended Finding: The Zoning Administrator finds no evidence that the requested variance would cause any adverse impact on surrounding property values, or the use and enjoyment of property in the neighborhood or zoning district.

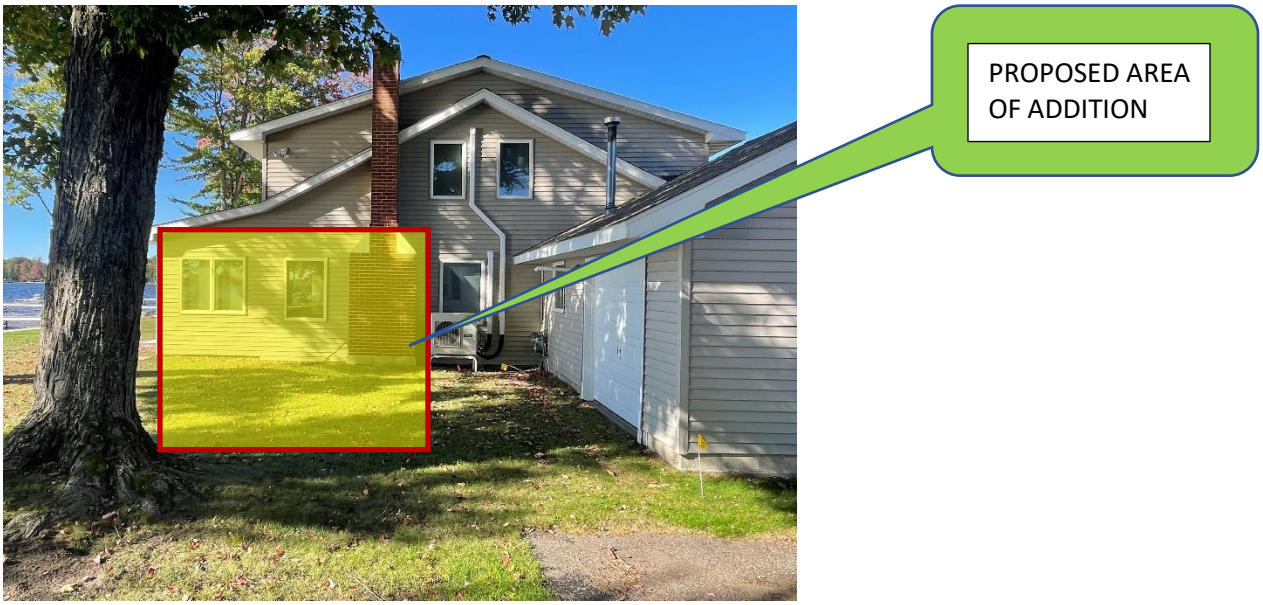
[4] Article 10, Section 1011.A

***Staff recommends*: that based upon the above cumulative findings, that the Zoning Board of Appeals make any additional findings and conclusions that support a decision to approve the requested variance(s) and grant any other equitable relief deemed appropriate for this property.**

PROPERTY IMAGES / PHOTOGRAPHS

STREET VIEW

VIEW FROM WATER



Respectfully submitted for consideration by the Wexford Joint Zoning Board of Appeals,

Robert (Bob) Hall
Zoning Administrator

Wexford Joint Planning Commission
c/o Cherry Grove Township
4830 E. M-55
Cadillac, Michigan 49601
231-775-1138x6

planningandzoning@wexfordjpc.org
www.wexfordjpc.org

APPLICATION FOR ZONING BOARD OF APPEALS [page 1 of 2]

[**WARNING**: THIS FORM IS NOT A LAND USE PERMIT]

Property Owner: CORNELIUS (Last Name) LEON (First Name) Phone: (331)-222-8477

Owner Address: ~~3049~~ 3409 W. LAKE MITCHELL DR (Street # or P.O. Box) CADILLAC (City), MI (State) 49601 (Zip)

Project Address: - SAME - (Street # or P.O. Box / City / State / Zip)

Parcel ID # 2210 - FH0208 Are property lines and building site staked? YES (NO) [Circle one]

LEORI.CORNELIUS60@GMAIL.COM

MAIL

IF BEING REPRESENTED BY AGENT OR ATTORNEY PLEASE COMPLETE THIS SECTION

Agent / Attorney: DORI LORING (Company Name) / 231.942.9068 (Individual Name)

Agent / Attorney Address: 216 OTSEGO PLC. (Street # or P.O. Box) / CADILLAC (City) 49601 (State / Zip)

Agent / Attorney Phone: (____)-_____-_____ **Email**: _____

ZONING BOARD OF APPEALS - ACTION BEING REQUESTED

(Check Only ONE)

☐ Administrative Appeal / Decision
☐ Dimensional Variance Request
☐ Ordinance Text / Map Interpretation

SITE PLAN: When applicable, the Zoning Administrator (on behalf of the Zoning Board of Appeals) may require that this application be accompanied by a legible site plan drawn to scale in accordance with Article 94 of the Wexford Joint Zoning Ordinance.

Please describe (***in detail***) the current use(s) of the buildings, structures, and / or land as applicable: [do not leave blank]

WE ARE LIVING IN THE HOME, ANTICIPATE USING BETWEEN APRIL AND OCTOBER.

The project address / property is located in the _____ Zoning District.

Do Not Write Below This Line - For Administrative Use Only

Assigned ZBA Case # 2024-04 Date Application Received: 09 / 05 / 2024
Fee: $ 390.00 Receipt # 10435 Date of ZBA Action: ____ / ____ / ____

APPLICATION FOR ZONING BOARD OF APPEALS [page 2 of 2]

DEMONSTRATING PRACTICAL DIFFICULTY

The Zoning Board of Appeals must find that very specific standards can be demonstrated or 'proven' that apply to your particular situation in order to grant a 'variance' from the zoning ordinance. You are encouraged to arrange a pre-application conference with the Zoning Administrator so that you can be presented with information that will assist you in submitting a complete application. **An application to appear before the Zoning Board of Appeals will not be considered complete unless accompanied by the appropriate fee, a site plan (as required), and a narrative that addresses all of the standards that the Zoning Board of Appeals is required to consider.**

AFFIDAVIT: I agree the statements and representations made herein and attached to this application are true and if found not to be true, any zoning (Land Use) permit that may be issued in reliance upon this application may be void. Further, I agree to comply with any conditions and regulations provided with any permit that may be issued in connection with this application. Further, I agree the permit that may be issued is with the understanding all applicable sections of the Wexford Joint Zoning Ordinance (and all conditions attached) will be complied with. Further, I agree to notify the Planning and Zoning Administrator for inspection before the start of construction and when locations of proposed uses are marked on the ground. ***Further, I agree to give permission for the Wexford Joint Zoning Board of Appeals / Planning and Zoning Administrator, the County and the State of Michigan to enter the property subject to this permit application for purposes of inspection.*** Finally, I understand this is an application to appear before the Wexford Joint Zoning Board of Appeals, (not a permit), and that a Land Use Permit, if issued, conveys only land use rights and does not include any representation or conveyance of rights in any other statute, building code, deed restriction or other property rights.

Signed: LP Carlis ***Date:*** 9/6/24

Please see Article 94 of the Wexford Joint Zoning Ordinance for Site Plan requirements related to any matter before the Zoning Board of Appeals:

www.wexfordjpc.org

Examined and Approved
April 23 1925
Geo. K. Hunter
Deputy Auditor General

PLAT OF "FLOWING WELLS PARK."

WEXFORD COUNTY, MICHIGAN.

DESCRIPTION OF LAND PLATTED.

The land embraced in the annexed plat of "Flowing Wells Park," Wexford County, Michigan, is described as follows: Commencing at the north quarter post of section 35 T22N R10W, Michigan Meridian: Thence N 89°29' W along the north boundary of said section 35 1295.26 feet to a point 50 feet east of the west ¼ post of said section: Thence South 811.91 feet to the shore of Lake Mitchell: Thence Northeasterly along the shore of said lake 1462.85 feet to the north and south quarter line of said section 35: Thence North along said quarter line 321.80 feet to place of beginning.

SURVEYOR'S CERTIFICATE.

I hereby certify that the plat hereon delineated is a correct one, and that permanent monuments, consisting of one inch iron gas pipes 30 inches long have been planted at points marked thus ○ as thereon shown at all angles in the boundaries of the land platted, and at all intersections of streets, intersections of alleys, or of streets and alleys, and at the intersections of streets and alleys with the boundaries of the plat

Delmar E. Teed
REGISTERED CIVIL ENGINEER.

DEDICATION.

KNOW ALL MEN BY THESE PRESENTS, That I, William E. Brown, single, have caused the land embraced in the annexed plat to be surveyed, laid out and platted, to be known as "Flowing Wells Park," Wexford County, Michigan, and that the streets, alleys and parks as shown on said plat are hereby dedicated to the use of the public.

SIGNED AND SEALED IN PRESENCE OF
Oscar Johnson
Delmar E. Teed

William E. Brown (L.S.)

STATE OF MICHIGAN } ss
COUNTY OF WEXFORD }

On this First day of December 1924 before me, a Notary Public in and for said county, personally came the above named William E. Brown, known to me to be the person who executed the above dedication, and acknowledged the same to be his free act and deed.

Oscar Johnson
My commission expires June 29 1926 NOTARY PUBLIC, WEXFORD CO. MICH.

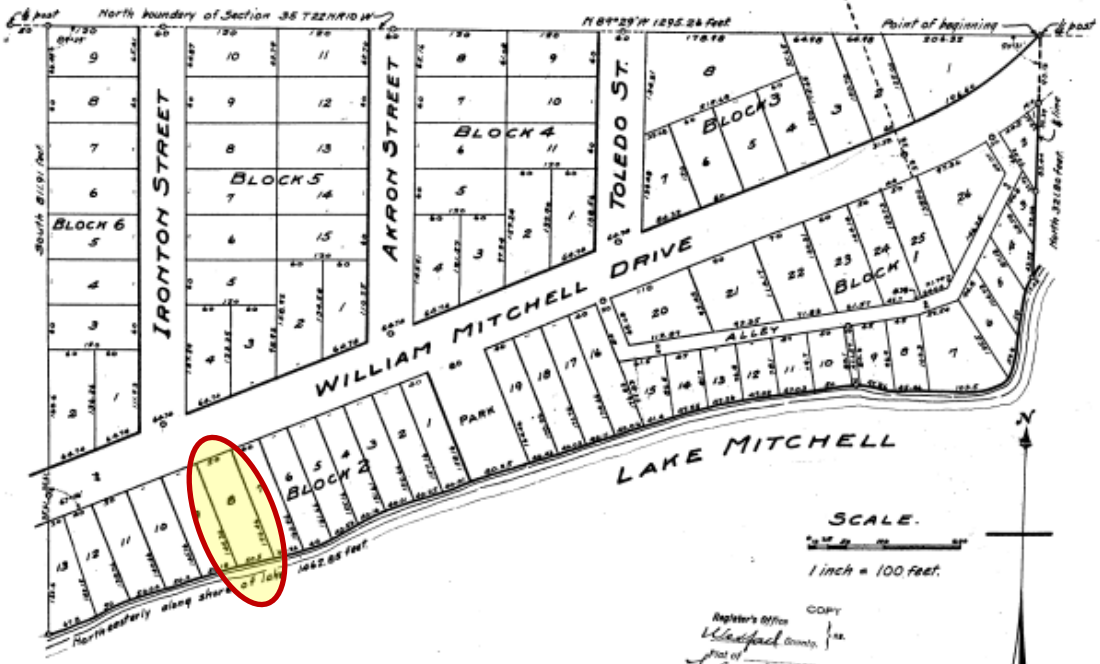
COUNTY TREASURER'S CERTIFICATE.

Office of County Treasurer, Wexford County.

I hereby certify, that there are no tax liens or titles held by the State on the lands described below, and that there are no tax liens or titles held by individuals on said lands, for the five years preceding the 1st day of Dec 1924, and that the taxes for said period of five years are paid, as shown by the records of this office. This certificate does not apply to taxes, if any, now in process of collection by township, city or village collecting officers.

DESCRIPTION. The N½E¼ of the NW¼ of section 35 T22N R10W except the west 50 feet thereof.

A.C. Fessenden
COUNTY TREASURER



SCALE.
1 inch = 100 feet.

CERTIFICATE OF APPROVAL BY TOWNSHIP BOARD.

This plat was approved by the Township Board of the township of Selma at a meeting held December 12th 1924

Walford Simons CLERK

CERTIFICATE OF APPROVAL BY COUNTY BOARD.

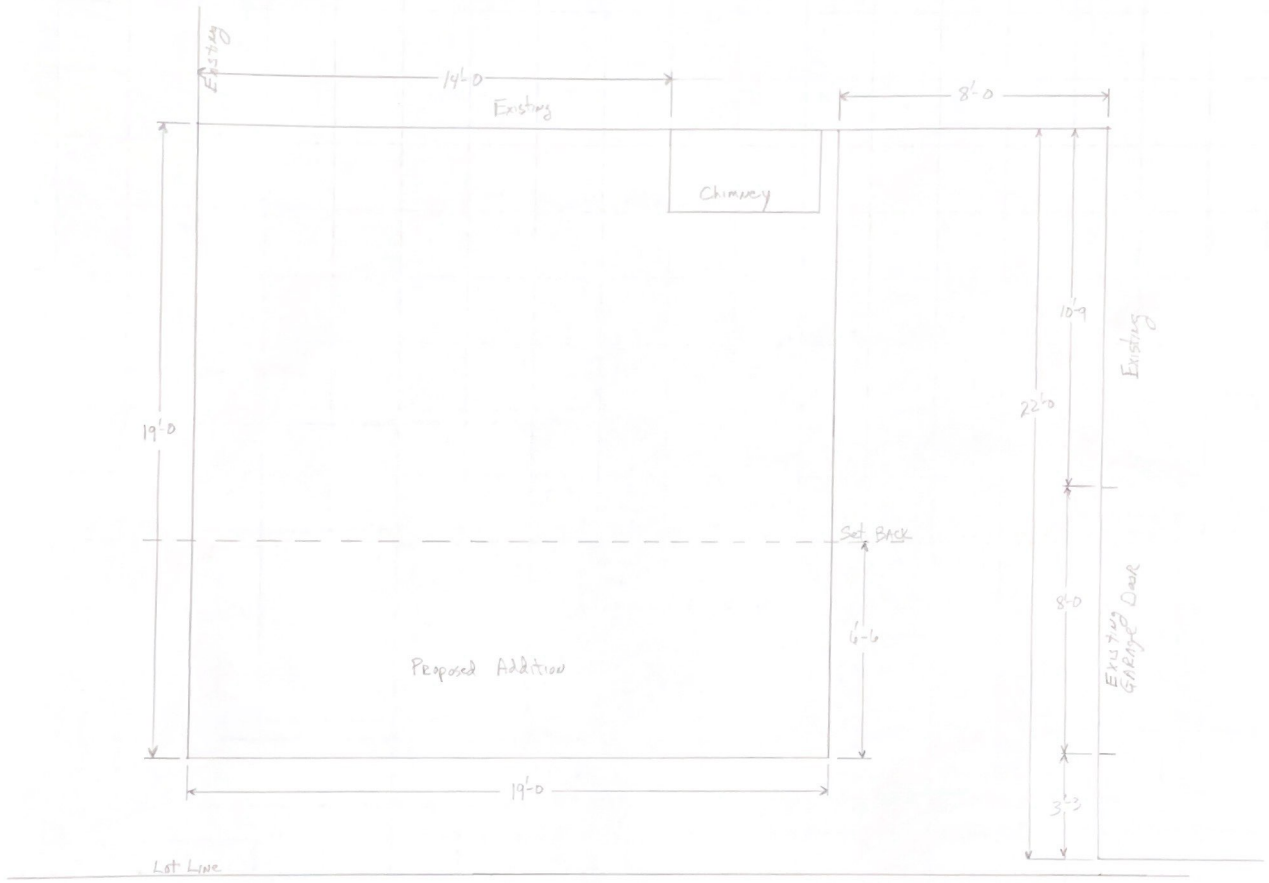
This plat was approved on the 13th day of April 1925

Herbert A. Snider Judge of Probate.
Guy W. Slack County Clerk.
A.C. Fessenden County Treasurer.

COPY
Register's Office
Wexford County } ss.
Plat of Flowing Wells Park
was recorded the 25th day of April A.D. 1925 at 8:30 o'clock A M. in Liber 3 of Plats on Page 81
Oscar Johnson
Register

I HEREBY CERTIFY THAT THE ABOVE IS A COPY OF A TRUE COPY OF THE ORIGINAL PLAT AS RECORDED IN MY OFFICE FOR RECORD
DUPLICATED April 23-1925
Geo. K. Hunter
DEPUTY AUDITOR GENERAL

FILED IN AUDITOR GENERAL'S DEPT.
May 9-1925
Geo. K. Hunter
DEPUTY AUDITOR GENERAL

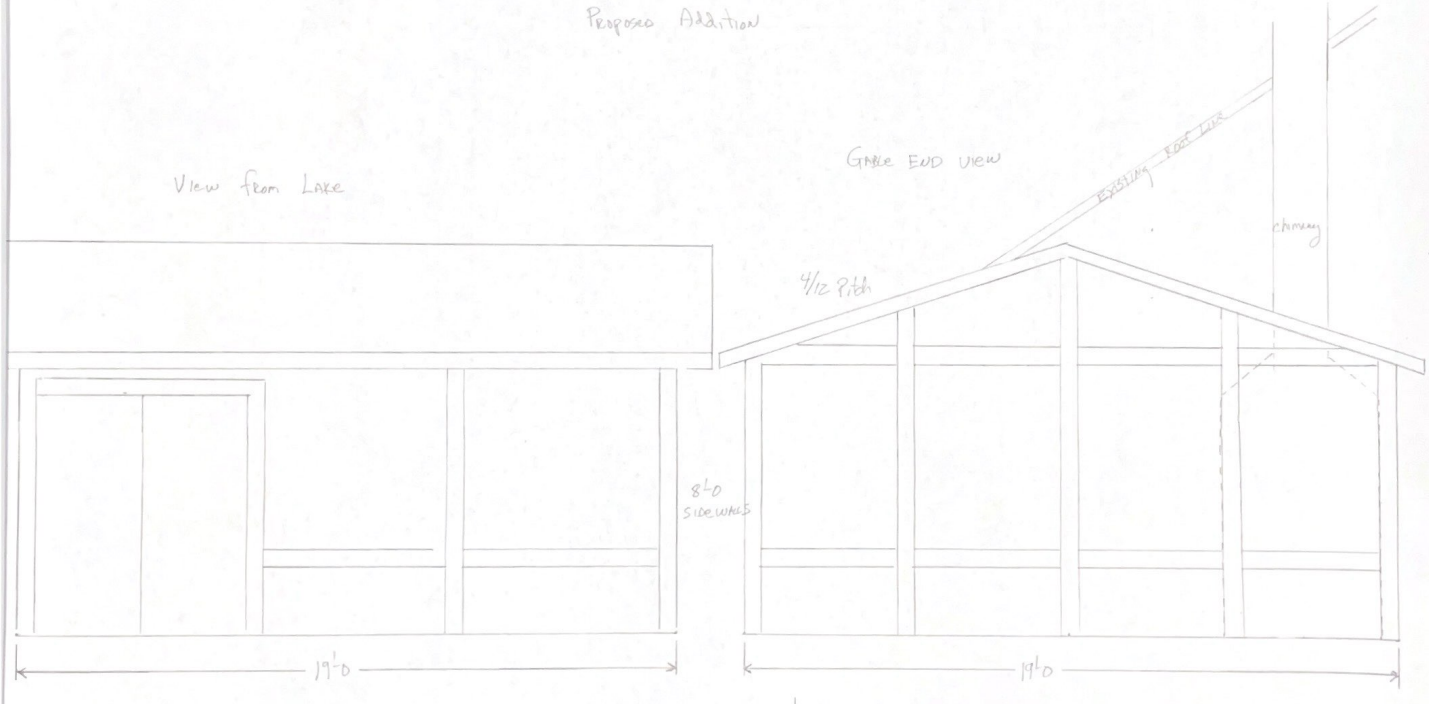


Leon Cornelius
3409 West Lake Mitchell Dr.

Proposed Addition

View from Lake

Gable End view



Set Back

Lot Line

Leon Cornelius
3409 West Lake Mitchell Dr.