

A-G-E-N-D-A

REGULAR MEETING

BOARD OF ADJUSTMENT

CITY COUNCIL CHAMBERS
308 E. STADIUM DRIVE

THURSDAY, SEPTEMBER 2, 2021
5:30 P. M.

1. Election of Officers.
2. Meeting called to order.
3. Oath of Office for Tom Fulton and Barbara Hale.
4. Roll call.
5. Approval of minutes of the special meeting on November 12, 2020.
6. Unfinished business:
7. New business:

Variance

1002 Lawson Street

V-20-01

Consideration of a variance from the literal provisions of Article 5.15(A)(1)(a) of the City of Eden Unified Development Ordinance which requires that all accessory buildings be located behind the front building line of the house; Article 5.15 (A)(1)(e) which requires that all accessory buildings shall not exceed 50 percent of the gross floor area of the principal building or 600 square feet, whichever is greater; and Article 4.05 which requires a 35 foot front setback. The request was submitted by Suzanne P. Williamson for her property located at 1002 Lawson Street. VARIANCE CASE: V-21-01.

8. Items from Staff:
9. Items from the Board of Adjustment:
10. Adjournment.

**PLEASE CALL THE PLANNING AND INSPECTIONS DEPARTMENT
UPON RECEIPT OF THIS AGENDA PACKAGE
336-623-2110**

MINUTES OF A SPECIAL MEETING
OF THE BOARD OF ADJUSTMENT
NOVEMBER 12, 2020

The Board of Adjustment held a special meeting on Thursday, November 12, 2020, at 5:30 p.m. in the Eden Room at City Hall.

Members present: Will Flynt
Barney Walker
Charles Johnson
Diana Biggs
Jackie Hampton
David Everett
Terry Shelton
Joan Moore

Members absent: Jeanette Wagoner

Staff present: Kelly K. Stultz, Planning Director
Debra M. Madison, Local Codes Administrator

Others present: Markus Wilhelm, Applicant
Karen Kemerait, Attorney
Jon Davis, Consultant

*Excused absence.

Will Flynt, Chairman, called the meeting to order and recognized that a quorum was present.

APPROVAL OF MINUTES OF A REGULAR MEETING ON SEPTEMBER 17, 2020.

Barney Walker made a motion that the minutes be approved as submitted. Terry Shelton seconded the motion. Motion carried unanimously.

UNFINISHED BUSINESS: NONE

NEW BUSINESS:

Special Use Permit 1085 E. Meadow Road SU-20-02
Consideration of a special use permit for a solar facility at 1085 E. Meadow Road as allowed for in Section 11.26(c)(3)(c)(16) of the special use requirements of the Board of Adjustment section of the City of Eden Zoning Ordinance. Request submitted by Edison Farm, LLC. SPECIAL USE CASE: SU-20-02.

All persons wishing to speak were sworn in.

Kelly reminded everyone that the only information that is allowed to be accepted for consideration is actual evidence based upon fact.

Kelly Stultz read the Staff Report into the record which included a recommendation that the Special Use Permit be approved. A copy of the Staff Report is incorporated into these minutes and attached hereto.

Correction to No. 6. The Draper Rural Fire Department will provide fire protection.

David R. Pruitt (1615 E. Meadow Road) was sworn in. Did we receive a Notice of this action because they want to access the property from Hundley Drive?

Kelly – No sir. They have access from Meadow Road.

David R. Pruitt – Will access only be from Meadow Road?

Kelly – It might have other access but not from Hundley Drive.

Will Flynt – Did staff receive telephone calls from the adjoining property owners:

Kelly – No, but that doesn't matter in this case.

Charles Johnson – After January 1, 2021, when the new ordinance goes into effect, will this be easier to approve?

Kelly – From the staff's stand point probably not because it will go to the City Council. The regulations will be the same. The Council will have to make a judicial decision instead of a legislative decision.

Charles Johnson – Will this permit cover the entire property or just a portion?

Kelly – It will cover all of the property.

Karen Kemerait, Attorney from Raleigh with the law firm of Fox Rothschild, spoke on behalf of the applicant, Edison Farm, LLC. She highlighted facts in the Application. A copy of the Application is incorporated into these minutes and attached hereto.

Charles Johnson – Does Academy Farms own the land and what is Edison's relationship?

Karen Kemerait – Edison Farm is renting the property from Academy.

Jon Davis, Galaxy 2 Consulting, LLC – The air strip is a 150' buffer and access to the property is existing off Meadow Road.

Will Flynt – Will everything be removed during decommissioning?

Karen – Yes.

Will Flynt – Will energy be used for residential purposes?

Jon Davis – Everyone on that grid will benefit.

Charles Johnson made a motion to approve the Special Use Permit. Joan Moore seconded the motion and it passed unanimously.

ITEMS FROM STAFF:

Kelly advised the Board members of the status of the UDO. She explained that the text amendment would be heard by the City Council at the October council meeting and the map amendment would be heard by the City Council at the November council meeting.

ITEMS FROM THE BOARD OF ADJUSTMENT: NONE

ADJOURNMENT:

There being no further business to come before the Board, a motion and a second was made for adjournment. Motion carried unanimously.

Respectfully submitted,

Kelly K. Stultz, Administrative Assistant to
the Board of Adjustment

ATTEST:

William T. Flynt, Jr., Chairman

**PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
REPORT TO THE BOARD OF ADJUSTMENT
July 26, 2021**

CASE NUMBER: V-21-01

REQUEST: To allow construction of an accessory structure outside the front setback in the R12 district.

APPLICABLE REGULATIONS: Article 5.15-A Supplemental Use Standards – Accessory Structures and Article 4.05-D Dimensional Standards Table

APPLICANT: Suzanne P. Williamson

APPLICANT’S STATUS: Property Owner

PROPERTY INFORMATION

LOCATION: 1002 Lawson St.

PIN: 7979-0528-1311

ZONING: R12

ZONING HISTORY: Zoned R6; rezoned to R12 as part of UDO updates effective January 1, 2021

GENERAL INFORMATION

The request is to allow construction of an accessory structure outside the required setback in the R12 residential district. The subject property is located in the R12 residential district at the intersection of Lawson at Patterson Streets. The owner has constructed an enclosed free-standing garage which does not meet the required setbacks for the district. The requirements for residential accessory structures are as follows:

1. **Residential Accessory Structures.** All accessory structures for residential uses shall meet the following requirements.
 - a. **Location.** All accessory structures shall be located behind the front building line of the principal structure except carports that meet the requirements of subsection (f) below can be located in the front yard provided the carport meets the front yard setback of the underlying zoning district.
 - b. **Side and corner side yard requirements.**
 - i. All accessory structures located between the front building line and the rear building line of the principal structure shall comply with the side yard and corner side yard requirements of the applicable zoning district, except as permitted for carports in subsection (f) below.

- ii. All accessory structures located behind the rear building line of the principal structure shall observe a 5 feet minimum side yard setback and a 15 feet corner side yard set-back.
- c. **Rear yard requirements.** All accessory structures shall observe a 5 feet minimum setback from the rear lot line.
- d. **Height.** The height of all accessory structures shall meet the height requirements of the applicable zoning district; except for carports permitted in subsection (f).
- e. **Maximum accessory building area.** The total gross floor area for all accessory buildings for single-family and two-family dwellings shall not exceed 50 percent of the gross floor area of the principal building or 600 square feet, whichever is greater.
- g. **Carports.** Carport accessory buildings may be permitted to be located on a property used for single-family or two-family dwelling purposes provided that all setbacks are met and all of the following regulations are met. The carport must be:
 - i. 480 square feet or less in area;
 - ii. a freestanding structure detached from any other principal or accessory structure;
 - iii. unenclosed on all four sides;
 - iv. not exceeding 12 feet in height. Where such carport exceeds 12 feet in height, the carport shall setback an additional 2 feet from the side and corner side lot lines for every 1 foot of height exceeding 12 feet.
- h. All accessory structures must be designed for the purpose for which they are to be used, i.e., storage units must be designed as permanent storage buildings, carports must be designed to house automobiles, etc. No tractor trailers, mobile homes, automobiles, or other such items may be used as accessory structures or storage buildings, whether or not wheels have been removed.

FINDINGS OF FACT

The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:

- a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

STAFF ANALYSIS

The requested variance is for a 24'x 24' enclosed garage which was erected in front of the principal dwelling located at 1002 Lawson Street. This garage was erected without a building permit and does not meet the setback requirements of the R12 zoning district.

- a. Based on available information, when the principal dwelling was originally constructed, it was located in the R6 district. The front setback of the R6 district was 30 feet. The property was rezoned in 2021 to the R12 district with a required front setback of 35 feet. The garage was erected in front of the principal dwelling and does not meet either the front or side setback requirements of the district. The garage is less than six feet from the front property line, and is also less than five feet from the side property line. Absence of a variance will not deprive the property owner of any reasonable use of their property.
- b. The garage was erected without a building permit, which would have made the owner aware that the structure did not meet the setback requirements before construction. Other houses in the area, which were constructed about the same time (1992) are situated on similar size lots. Although these lots are fairly small, hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. The zoning violation that was created when the garage was constructed resulted from the actions of the property owner, and therefore can not be used as the justification for granting a variance.
- d. The requested variance would grant the property owner a special privilege that is not afforded to other similar property owners in the area, and would create a potential safety hazard, since the garage is located less than six feet from the public right-of-way. Therefore, the requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

STAFF CONCLUSION

Based upon the facts submitted and discovered, the staff is of the opinion that insufficient findings are present to consider granting this variance request. Therefore, staff recommends denial of the variance request.

Staff Recommendation:

Denial of the variance request.



Variance Application

Planning and Inspections Department
308 E. Stadium Dr., Eden, NC 27288

Phone: 336-623-2110 x2 / Fax: 336-623-4057

www.edennc.us

SEE ATTACHED

CONTACT INFORMATION

Contact Name Suzanne P. Williamson
Contact Address 1002 Lawson Street
City Eden State NC Zip 27288
Phone Number 434-251-3789 Email suzyvulcan@icloud.com
Contact's Property Interest or Legal Relationship to Owner Owner

PROPERTY OWNER INFORMATION

Property Owner Name Same as above
Property Owner Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Email _____

PROPERTY INFORMATION

Tax Property ID No. (PIN) 797905281311
Deed Book and Page No. _____
Physical Address 1002 Lawson Street
City Eden State NC Zip 27288
Year Current Owner Acquired Property 2016 Acreage _____
Public Water Available? Yes No Public Sewer Available? Yes No
Current Use of Property Residential

ZONING & VARIANCE INFORMATION

Current Zoning District _____
Description of Variance Requested _____

Ordinance Section Reference _____

PROCESS & FILING INFORMATION

Submission Requirements: Per Article 3 of the Eden Unified Development Ordinance (UDO), every applicant for a variance is encouraged to meet with the Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application. Upon application submittal, the Administrator shall review the application to ensure that it is complete.

Review Process: After review for compliance of the application by the Administrator, the Board of Adjustment shall hold an evidentiary public hearing on the request for official action.

Required Application Information: An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.

Action by Board of Adjustment: After conducting a public hearing, the Board of Adjustment may deny the request, conduct and additional public hearing, approve the request or approved the request with conditions. A concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance. Section 3.08 of the UDO requires the compliance of specific findings of fact in order for the Board of Adjustment to grant a variance.

FINDINGS OF FACT

The variance process is intended to provide limited relief from the requirements of the Eden Unified Development Ordinance (UDO) in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed. It is not intended that variances be granted solely to remove inconveniences or financial burdens that the requirements of the UDO may impose on property owners in general or to increase the profitability of a proposed development, although such factors can be taken into consideration.

Section 3.08 of the UDO require the compliance of specific findings of fact in order to grant a variance. The applicant shall submit the following statements of justification, presenting information supporting each and all the required findings as they relate to the proposed variance:

1. Unnecessary hardship would result from the strict application of the ordinance. *It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

Statement by applicant:

Owners used 401K to build garage, and cannot afford to lose investment.

SEE ATTACHED

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. *Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

Statement by applicant:

Narrow lot dictates garage could only be built in current location. Garage needed for personal safety and security, to prevent further water damage to vehicles' computers, to prevent further theft and property damage.



Variance Application

Planning and Inspections Department
308 E. Stadium Dr., Eden, NC 27288
Phone: 336-623-2110 x2 / Fax: 336-623-4057
www.edennc.us

SEE ATTACHED

3. The hardship did not result from actions taken by the applicant or the property owner. *The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*

Statement by applicant:

Owner built garage in good faith, to preserve personal property and insure physical safety. Owner was deceived by contractor regarding building ordinances and requirements.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Statement by applicant:

Corner lot - Patterson and Lawson. Patterson very high traffic - Lawson only safe option.

PROPERTY OWNER CERTIFICATION

The undersigned property owner, or duly authorized agent/representative thereof certifies that this application and the foregoing answers, statements, and other information herewith submitted are in all respects true and correct to the best of their knowledge and belief, with the understanding that any incorrect information submitted may result in the delay or rescheduling of the required public hearing and may result in the revocation of this application. By signing this form, I hereby authorize the City of Eden to review this request, visit the site, and contact any appropriate design professional in relation to questions.

Applicant Signature *Suzanne P. Wilson* Date 7/21/21

Property Owner Signature *Suzanne P. Wilson* Date 7/21/21

Office Use Only

Staff Member (Initial upon Receipt) *DB* Date 7-21-21

Application Number _____ Fee Paid \$150⁰⁰

Street (w. Dented years ago)
Aspen House Bu. 17

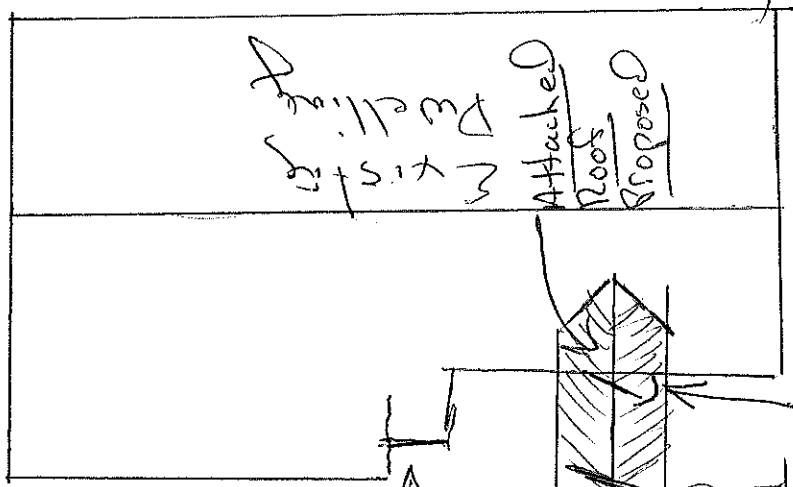
Lot Line

Not to scale

Lot Line

Lot Line

30' approx



House Front Entrance

Built Garage wired & Insulated

2 car 24' x 24'

Door Not yet installed

Eventually to Put a Door

Yard

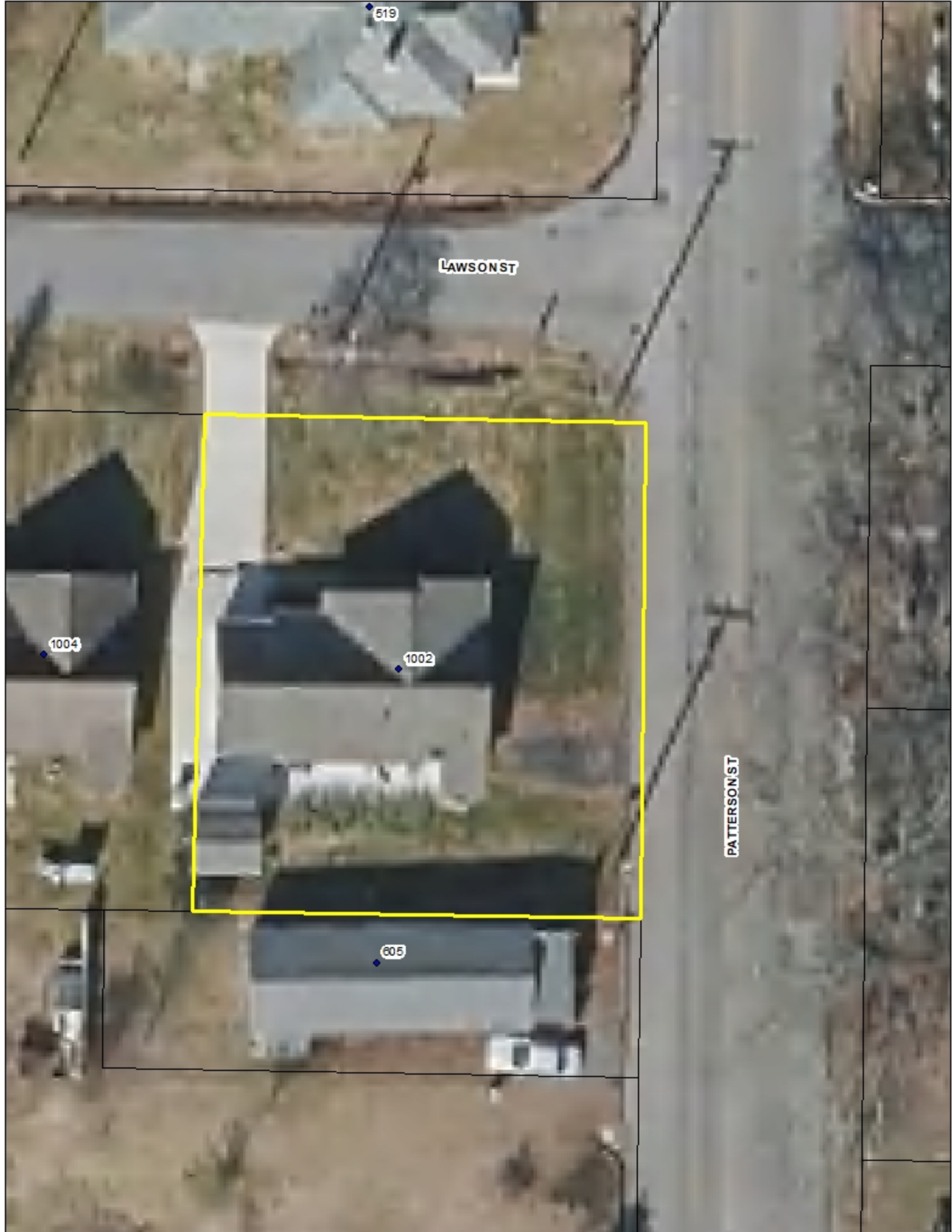
15ft approx

Driveway

Lot Line

Site Plan

Lawson Street



519

LAWSON ST

1004

1002

PATTERSON ST

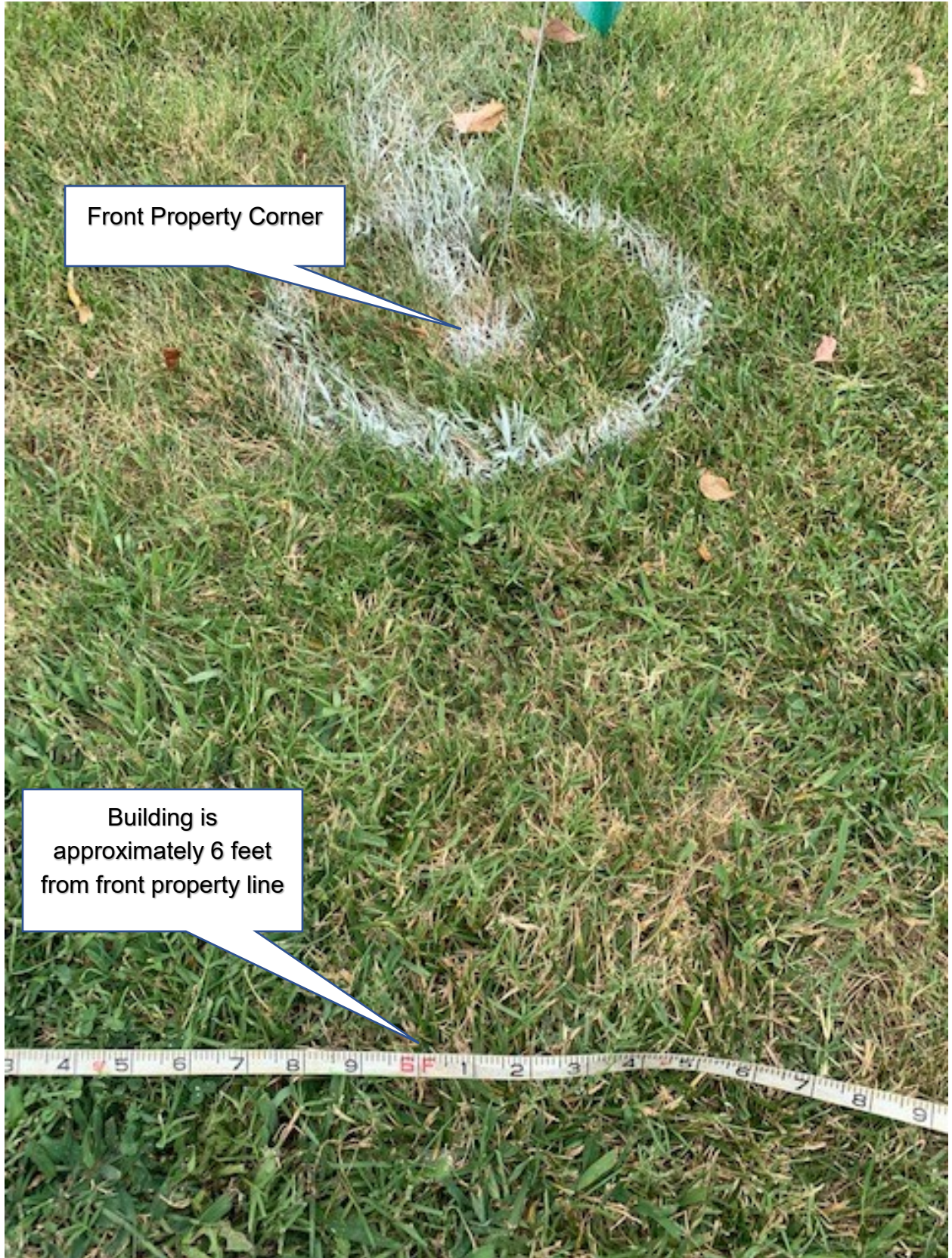
805



Corner at intersection of
Lawson Street and
Patterson Street







Front Property Corner

Building is
approximately 6 feet
from front property line