

AGENDA
Board of Zoning Appeals

Tuesday, March 29, 2016 – 1:00 PM

City Conference Room – 1515 Strongs Avenue, Stevens Point, WI 54481

(A Quorum of the City Council May Attend This Meeting)

Discussion and possible action on the following:

1. Minutes of the August 1, 2013 Board of Zoning Appeals meeting.
2. **Public Hearing** - Request from Peter & Vicki Anderson for a variance to allow a reduced side-yard setback of three feet and reduced rear-yard setback of four feet for an attached garage at **1321 Phillips Street (Parcel ID 2408-32-1035-11)**.
3. Action on the above.
4. Adjourn.

Maps further defining the above area(s) may be obtained from the City of Stevens Point Department of Community Development, 1515 Strongs Avenue, Stevens Point, WI 54481, or by calling 715-346-1567, during normal business hours.

Any person who has special needs while attending these meetings or needs agenda materials for these meetings should contact the City Clerk as soon as possible to ensure that a reasonable accommodation can be made. The City Clerk can be reached by telephone at (715)346-1569, TDD# 346-1556, or by mail at 1515 Strongs Avenue, Stevens Point, WI 54481.

PUBLISH: Friday, March 11, 2015

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Board of Zoning Appeals of the City of Stevens Point will hold a Public Hearing and hear evidence and make a determination on **Tuesday, March 29, 2016 at 1:00 PM** in the City Conference Room of the County-City Building, 1515 Strongs Avenue, Stevens Point, Wisconsin, on a variance request relating to the following matter(s):

- 1) Request from Peter & Vicki Anderson for a variance to allow a reduced side-yard setback of three feet and reduced rear-yard setback of four feet to reconstruct an attached garage at 1321 Phillips Street (Parcel ID 2408-32-1035-11). This property being zoned "R-3" Single and Two-Family Residence district, and is described as PT LOT 3 BLK 1 BOYINGTON & ATWELL ADD & PART OF SE NE S32 T24 R8 (88 1/2 X 88 1/2) E 8 1/2' FOR ST 422/1179, City of Stevens Point, Portage County, Wisconsin.

Maps further defining the above area(s) may be obtained from the City of Stevens Point Department of Community Development, 1515 Strongs Avenue, Stevens Point, WI 54481, or by calling 715-346-1567, during normal business hours.

All interested parties are invited to attend.

BY ORDER OF THE BOARD OF ZONING APPEALS
OF THE CITY OF STEVENS POINT, WISCONSIN

John Moe, City Clerk

MINUTES OF BOARD OF ZONING APPEALS

Thursday, August 1, 2013 – 9:00 AM

PRESENT: Alderperson Jerry Moore, Bob Woehr, John Gardner, Edward Bancker Jr. and Henry Korger.

ALSO PRESENT: Community Development Director Michael Ostrowski, Zoning Administrator Brent Curless, City Attorney Logan Beveridge, Alderperson Joanne Suomi, Mary Ann Laszewski, Miranda Moody, Reid Rocheleau, William Cooper, and Mike Cooper.

INDEX:

1. Report of the October 18, 2011 Board of Zoning Appeals meeting.
 2. Request from William Cooper, representing Cooper Oil Co. Inc., for a variance to allow a reduced street yard setback for a 30,000 gallon above ground liquid propane tank at **2172 Prairie Street (Parcel ID's 2408-32-4014-13 and 2408-32-4014-15)**.
 3. Adjourn.
-

Roll Call.

Present: Moore, Woehr, Korger, Gardner, Bancker.

Chairman Moore stated a quorum is present.

1. Report of the October 18, 2011 Board of Zoning Appeals meeting.

Motion by Bob Woehr to approve the report of the October 18, 2011 Board of Zoning Appeals meeting; seconded by John Gardner. Motion carried 5-0.

2. Request from William Cooper, representing Cooper Oil Co. Inc., for a variance to allow a reduced street yard setback for a 30,000 gallon above ground liquid propane tank at **2172 Prairie Street (Parcel ID's 2408-32-4014-13 and 2408-32-4014-15)**.

City Attorney Beveridge explained the law, and explained the authority of the board and what the standard of review is for cases of this type. He specifically explained, the Board of Zoning Appeals is established pursuant to our Zoning Ordinance, it has the power in appropriate cases to make variances to the requirements of the Zoning Code. The board also adopts certain portions of the State statute that lays out some basic standards for reviewing applications for variances. For instance, it has the power to authorize upon appeal and in specific cases grant such variance from the regulations of the zoning ordinance.

The granting of a variance shall not being contrary to the public interest, and where special conditions create a literal enforcement of the provisions of the ordinance will result in a practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Attorney Beveridge continued, identifying the request as an area variance rather than a use variance. There are two different standards of review for the two different types, and with regards to area variances the court has adopted a standard that says “an unnecessary hardship for an area variance is whether compliance with area zoning restrictions would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such restrictions unnecessarily burdensome.” Attorney Beveridge stated the board is ultimately going to have to listen to the evidence presented today and make the determination on those facts as to

whether they feel that burden has been met; the court does further specify that the property owner has to demonstrate that the hardship was based upon conditions unique to the property and was not self created. He emphasized that is the standard and it is up to the board to hear and see the evidence, take the testimony, and apply that law to the facts.

Bob Woehr asked if the last statement regarding self imposed hardship was in the statute, to which Attorney Beveridge stated no it was not in the statute, but it is part of the case law from the Supreme Court regarding the Servogal vs. Washington County Board of Adjustment from 2004.

Henry Korger stated he and Rich Sommer had gone over to the property in question, looking at it and talking to some people in the area and Mr. Bushman had no objection, and no matter what direction it faces, or if it does or does not comply with the setbacks, it will still be a tank. He continued stating you can't change the looks of the tank, and when the city comes up with ordinances, they have to cover a wide area and it is impossible to cover everything. So with this case, he stated, Coopers have followed the State law assuming it would be the strictest, and it wasn't, so the tank is going to have barriers and fencing. Mr. Korger does not see why this is an issue to move it back or turn it.

Attorney Beveridge reminded the board that your determination needs to be based upon the record as offered at the hearing today, the facts that are in the record for this hearing, and not based upon what you have read about the issue before today, or what you have heard about it at other meetings.

Mary Ann Laszewski, 1209 Wisconsin Street, stated regardless of how safe or dangerous it is, she feels perception is everything. Anybody wishing to come in and buy the residential property in that neighborhood may perceive a danger and choose not to purchase those properties, and the properties adjacent will not see any improved upgrades because their property will be devalued. She expressed her concern that the neighborhood may become a slum if the properties become anymore depreciated. Ms. Laszewski pointed out we have been able to benefit on the south side by having the trucks removed and the train whistle removed, and we are seeing a gradual improvement of the south side neighborhood. She continued stating that what happened over that was 90 years ago, and people did not have cars, so they had employment that was in walking distance, so we had industrial mixed with residential, but that is not practical any longer and we need to decide if we want industrial back there or residential. She pointed out an earlier suggestion of offering Coopers a location in our new industrial park if they are going to need to expand. She does not see any benefit to have the property there if the danger is perceived that it is just going to add to the deterioration of the neighborhood, and would vote against allowing the change in the setback.

Alderpersn Suomi stated we have ordinances and you need to remember why we have ordinances. She stated this is black and white, there is no grey, it is not meeting the setback standard. Alderpersn Suomi continued identifying her concern seen in the Portage County Gazette where Mr. Cooper had advertised for the product already and that was on July 19th, before the City Council meeting. She emphasized there are ordinances and we have specific setbacks for a reason.

Bill Cooper, Cooper Propane LLC, stated he has been given permission to use the land; the tank is going to go on the land regardless, and what we are here asking for today is a variance in allowing the tank to sit where it is. He continued explaining the State of Wisconsin gave us approval that is why the tank went there. Mr. Cooper pointed out we are not here to discuss the fact of moving the tank to a different property, we feel that where the tank is sitting right now is the safest instead of putting it in the middle of the property. He explained the long way faces up against two rental homes which are not

in very good condition, and they are trying to keep it less visible to the home owners that live there, and by keeping it the way it is, they will not have to look out their back window and see the full 30,000 gallon propane tank. Mr. Cooper continued, identifying if turning it is what the City is going to require us to do, we will do it. He continued stating that the tank was placed in the position that was approved by the State and plans were drawn up by a professional knowledgeable company.

Ed Bancker asked if Cooper's knew when they placed the tank that you would be in violation of the ordinance, to which Mr. Cooper answered no, the State of Wisconsin approved the position of the tank, and he thought they had the ruling on that, and they considered the road a setback and therefore where they put it was good for the State of Wisconsin. Mr. Cooper continued that the State inspector has already been there and approved the position of the tank, but he has not come back to give the final approval because that means we would have to put product in it and the project would be completed. They were about 95% complete when we found out that we needed to do some more things to have the tank there. Mr. Bancker then asked what the cost would be to relocate the tank to a 90 degree angle from where it is now, to which Mr. Cooper answered he does not know at this time, but it would include bringing in Peter's Heavy Crane, constructing two more cement pillar saddles, and new bollards. Mr. Bancker asked if there is a safety issue with leaving it as opposed to changing this location, and would those changes create another safety issue. Mr. Cooper answered the safety issue would increase by putting the tank in the middle of the lot, as it would put it closer to the semi and truck traffic that occurs within their lot which is why the dispensing end of the tank is in the back corner, the furthest away from any kind of traffic. He continued stating the plows will be constantly going around it to keep it cleaned out, semis and trucks that come to fuel at the unattended site would be closer as well. Assistance was given in site design and layout from LPD out of Minnesota.

Bob Woehr asked Mr. Cooper if he was the person who filled out the application, to which Mr. Cooper stated that is correct. Mr. Woehr asked several questions regarding the application, first being the application being filled out July 10, 2013 prior to the Common Council meeting and authorizing the conditional use permit, to which Mr. Cooper answered that, is correct. Mr. Woehr asked if he was told to fill this application out and any sort of indication that the conditional use permit would be approved by council, to which Mr. Cooper stated he was told to fill the application out and was told that if the Common Council denied the conditional use permit that then he would get the permit money refunded. Mr. Woehr then asked if he had written the check out for \$250.00 on the 10th to which Mr. Cooper stated that is correct, but possibly on the 14th the following Monday, to which Director Ostrowski stated the check came in on the 16th. Mr. Woehr asked if Mr. Cooper was there when City Staff confirmed the location of the property corner pins and the measurement of 13 feet as opposed to the 23 feet that was presented, to which Mr. Cooper stated he was not there, he was out of state, but his father was there. Mr. Woehr then pointed out the appeal form indicates the structure is not a building, to which Mr. Cooper agreed, Mr. Woehr then pointed out the city ordinance regarding building permits and zoning, it says a building is any structure built, but the definition of a structure is any manmade object either attached permanently, or temporarily to the ground, including roofed and walled buildings, gas or liquid storage tanks, and he asked if Mr. Cooper was aware of that, to which he answered no. Mr. Woehr then asked if Mr. Cooper was aware that building permits are normally required within the city of Stevens Point, to which Mr. Cooper stated yes, as Mr. Woehr pointed out there were several other improvements on the property that had included permits. Mr. Woehr then pointed out that Mr. Cooper had indicated that to move the tank would make other parts of the property useless, and asked what other parts. Mr. Cooper explained he is speaking specifically about the area that can be used as a turnaround for vehicles that come in and was not going to put a building or any other structure in the middle. Bob Woehr pointed out this would be a problem uncommon to other similar situations where

other bulk propane tanks in the city of Stevens Point do not meet the required 40 foot setback, and asked what other tanks is the applicant referencing. Mr. Cooper answered that Lakes Gas along the railroad tracks are not 40 feet away from the railroad property, to which Mr. Woehr clarified from the railroad property, to which Mr. Cooper identified from even the track itself. Mr. Woehr stated the question at hand here today is the setback from the street, and asked if Lakes Gas was 40 feet from the street, to which Mr. Cooper answered no, but in answering that question, he was dealing with the fact that he had to be 40 feet from property lines and that was what he was told by the Commission and the City. Mr. Cooper continued, Lakes Gas is not 40 feet away from their property lines on all edges of their tank, and that is what is being asked of his business, and they may be grandfathered, but they do not meet the 40 foot setback from the property line as what the City is asking. Attorney Beveridge pointed out that the courts have specifically held that the compliance with the zoning ordinance at other properties is not a factor that the board can take into consideration in arriving at its decision. Mr. Woehr acknowledged the City Attorney and clarified the question, Mr. Cooper is applying for a variance from the 40 foot requirement of the ordinance for a street setback, to which Mr. Cooper confirmed that is correct. Mr. Woehr then pointed out that there are other documents included particularly from the state that require your tank to be 50 feet from residential properties, to which Mr. Cooper confirmed. Mr. Woehr then pointed out the document included in the application showing the tank to be 50 feet from the residential properties, to which Mr. Cooper confirmed. Mr. Woehr continued that is a state requirement, and it is the City 40 foot street setback requirement that Mr. Cooper is appealing, to which Mr. Cooper confirmed.

Reid Rocheleau, 408 Cedar Street, stated he is here because of the Cooper's lack of residential concern, and feels the entire process has been flawed from the beginning, including the fact that Mr. Cooper did not get a city building permit, and he believed this Public Hearing is not being conducted properly. He continued the Cooper's appear to be unaware of important facts for an important matter which should concern the board. He pointed out this is a residential area and there is one residential property immediately adjacent to their property that he expected the Planning Staff to inform the board. Mr. Rocheleau continued stating that a setback of 40 feet required in the city, not from the street, it is from the right of way, which has been re-measured upon his suggestion and they now come up with 13 feet, not the 23 feet that the Cooper's claim, which is way shy of 40 feet. He continued to explain that he had done his own investigation and contacted the State of Wisconsin and Mr. Mike Verhagen who is the state inspector and asked him about this point the Cooper's keep bringing up about the state allowing us to be x amount of feet from the road as that is the standard requirement. He continued stating, in certain circumstances they have supported that, however, the inspector impressed upon him that the state honors the city's setbacks and would not over ride them, and it was a surprise to Mr. Verhagen that they were unaware of the city setbacks, and Madison has even more extensive requirements that the state honors. Mr. Rocheleau continued so it is 40 feet from the setback and the tank is currently only 13 feet from the property line that was just measured this week by Mr. Curless. He senses that there is already sympathy for the Coopers and none for the residents that have been there since the late 1800's. Mr. Rocheleau explained that when he said this process has been flawed, who has been contacted. He identified the failure to contact Wisconsin Public Service (WPS), which he had done and pointed out they are very concerned and are doing an investigation regarding the 9 foot setback from the transmission lines. He was told today by WPS that there would be additional requirements from them to protect that tank if this goes forward, and they were never contacted and are still investigating as of this morning what requirements are necessary. He then points out when the application was filled out, Mr. Cooper had put this would cause us to have to put the tank in a less desirable spot and this would create safety problems and then comes to the meeting and tells the board that the tank is going in anyway and you might as well leave it, but then Mr. Rocheleau points out that Mr. Cooper talks about

all the safety problems. He then continues to express the setback is from the street and points out to the board that force is weight times speed and that on this truck route with a truck traveling 25 miles per hour and that would be 40 times for force than a car at 2000 pounds if it drove into the tank, and that is why we have setbacks. He continued we have setbacks and anyone investing this kind of money should have looked into this situation but there are a lot of areas where Cooper's claim and it appears they are lacking in a lot of areas. He then read the only other alternative is to place the tank in the middle of the lot and this would make the rest of the property useless and added self imposed, it already claims it is in a dangerous situation and maybe he shouldn't put the tank in there at all. Mr. Rocheleau continued that Mr. Cooper doesn't appear to be concerned about the residents, and originally Mr. Rocheleau was concerned about both parties here, but is primarily concerned about the residents, and also owns a residential property in that area and is concerned about the truck route situation, and additional trucks. He read again from the application that the bulk propane tanks in the City of Stevens Point do not meet the current requirements, and then stated Lakes Gas guessed it was probably not in the city limits when they first were constructed, and as the City Attorney says that is not a situation you can use. He continued he is concerned that this Zoning Board of Appeals may actually grant some type of variance out of sympathy for the Coopers similar to what the City Council did when the Planning Commission cited five items that they did not meet for conditional use and the council majority voted to give them the conditional use. Mr. Rocheleau pointed out the Coopers already understood they would have to meet these requirements, so this is not something new. He pointed out MaryAnn Laszewski's comment of giving Coopers some property out in the Industrial Park, and move them out of there and work with the residents and seeing as the Coopers are not sympathetic to the residents, but he is. Mr. Rocheleau also believes that the Board shall follow the letter of the law, you can follow the spirit of the law but if you do that you certainly would not allow this. There are reasons for it, and he expects all setbacks and all aspects of this to be covered. He then stated he is disappointed with the planning staff for not bringing these up to the City Council and from stating they are opposed of the situation. Mr. Rocheleau requested and demands that the Board follows the letter/spirit of the law and deny this variance and perhaps work something out with Coopers.

Ed Bancker asked assuming this tank would be turned 90 degrees how would that change the safety of any resident there? Alderperson Moore answered I don't think we have an answer to that, and they meet all the setback requirements to the other properties. Mr. Bancker continued it would meet all the requirements and therefore would be legal and could go forward and not change any safety to which Alderperson Moore stated correct. Director Ostrowski stated correct, what we are looking at here as was stated earlier that the Plan Commission and Common Council have already approved the use, and that is not what this board is here to decide, this board is here to decide to determine the three standards of review that have been outlined in the staff report. He continued for example if the tank can be turned and meet the setbacks he does not see why a variance would be granted in this instance, but in terms of the use on the property and the safety or the distance from the residence, they do meet those requirements for the City's zoning code.

Bob Woehr commented our job today is not to deal with whether a propane tank should be there on that parcel of land, that determination was already made by the Council two weeks ago, and the conditional use permit has been issued. He would hope that we would concentrate on granting or not granting a variance regarding the street side setback.

Henry Korger stated he has made his living in rental properties for the last 35 years and when you buy property and he presumes the people who bought that property at that time was zoned commercial or industrial. He continued, so when you buy it, you can expect anything to take place, and by moving the

tank further to the other end, they are closer to the residents and it doesn't have to be enclosed at all, so just driving by and studying it will be fenced in and to him this is the most logical spot to go and put it. His position is to grant the variance because of the common sense.

John Gardner stated we are convinced this is a structure by definition of the ordinance, to which Director Ostrowski stated correct. Mr. Gardner clarified that the setbacks do apply here, to which Director Ostrowski stated correct. He then continued stating that if the tank was moved directly back and complied with the 40 foot setback in the same orientation it is now and for those sympathetic to the neighbors, if this is denied, he thinks the tank going to be closer to the neighbors, so those who are sympathetic to the neighbors would want to be in favor of the variance because of keeping it way from the neighboring properties. Director Ostrowski pointed out one of the requirements from the state is the 50 feet from the property line. Mr. Gardner then talked about if they moved the tank straight back with the same orientation it is now to the 40 feet setback, they would not meet the state requirements and then stated that is not an option for them to move it straight back, and the only other option is to move it 90 degrees from what it is now. Director Ostrowski stated correct, they would just flip the tank, to which Mr. Gardner confirmed they would just turn the tank 90 degrees and it would be parallel with the street instead of perpendicular, to which Director Ostrowski stated correct. Mr. Gardner then asked how close to the side yard can it be, to which Director Ostrowski answered under state requirements 50 feet under our local zoning code it would be 20 feet, unless it adjoining a residential district then it would be 30 feet. He then confirmed this is not a residential district, and it could be 20 feet under city code, 50 feet if the location criterion for the state applies, to which Director Ostrowski stated correct, and that is 50 feet from any property line. Mr. Cooper stated to also consider 10 feet on the other side of a buildable property line but the state recognizes that you have to be 10 feet on the other side, that is what he was told, but they prefer not to do that and prefer to do 50 feet from your property line, when there is residential. Mr. Gardner continued, if you can't put it straight back, which means you have to keep it there and turn it 90 degrees, and would it fit if you turn it 90 degrees, to which Mr. Cooper answered yes.

Brent Curless asked Mr. Cooper how long is the tank, to which Mr. Cooper answered 46 feet, to which Director Ostrowski asked for clarification, pointing out the plan states 36 feet. Mr. Cooper clarified the tank is 46 feet long and it would be 6 feet short if it were to be in the middle to be 40 feet from every property line. Mr. Woehr stated it is actually 47 feet long, it is 564 inches. Mr. Gardner clarified the tank is now 47 feet long, and Mr. Curless stated he does not think you have the room to move it straight back and you will have to put it at an angle, to which Mr. Gardner stated that was his point earlier that you cannot move it straight back at 36 or 47 feet long because you won't have the 50 foot setback and so the only option is to turn it parallel with the street. Mr. Curless pointed out he will have to angle it in some fashion in parallel with the street, to which Mr. Gardner agreed to angle it in some fashion there may be the diagonal function too. He then asked Mr. Cooper about the reason he did not put it parallel to the street. Mr. Cooper answered the reason was to keep that lot open for traffic and trucks that are coming in and out of there, and to comply with the rules as far as the 50 feet from the property line and to keep it as far back away from every other aspect of where there is action on our property.

Mr. Gardner then asked about the comment regarding buried tanks, to which Mr. Cooper responded the buried tanks are up by where the loading rack is, just underneath the canopy, directly south of where the propane tank is. Mr. Gardner clarified so it is the circulation of the vehicles in and out underneath the canopy that you are concerned about, to which Mr. Cooper stated correct and the trucks that are bringing in products currently go underneath there to reach where certain tanks are located and the fact that we have companies who have heavy equipment in their semis come in and fill up. Mr. Gardner

confirmed that you determined tank position for circulation purposes; you have to stay 50 feet from the side, from the rear, and then ending up with 13 feet from the right of way, to which Mr. Cooper stated correct. Mr. Gardner then asked if staff sees the setback in industrial zones changing over time, to which Director Ostrowski stated at this point not now, but we are reviewing our zoning ordinance. Mr. Gardner then asked what you see as a time track to which Director Ostrowski explained probably within the next year or so. Mr. Gardner then asked again do you see a proposed change to the setback requirement, to which Director Ostrowski stated likely not in a heavy industrial district.

Mr. Gardner then asked Mr. Cooper if there are any state codes that say there is a certain way the tanks are supposed to be pointed, to which Mr. Cooper stated no, not that we have been told and the plans were done by a company out of Minnesota that works with the State of Wisconsin and had approved their plans before. Mr. Gardner asked again Mr. Cooper the reason you are asking for this variance is so that you can minimize circulation problems on the site from underneath the canopy where other vehicles load and unload, to which Mr. Cooper stated that is correct. Mr. Gardner then asked if you turn the tank 90 degrees those vehicles still could get in and out, to which Mr. Cooper stated he believed yes.

Aldersperson Moore asked how did we get here, how did the state approve everything and not contact the city why this business was going on, and was surprised that they did not get a building permit, or any ok from the city. Brent Curless stated the State of Wisconsin whether dealing with a building or structure does not contact the local municipality, their concern is with their requirements only. He continued it is extremely common to receive an approval on an addition or new building where they are meeting their code, but it is up to the City of Stevens Point to make sure the building permits, the zoning and the drainage is met. Mr. Curless stated the state is looking at the actual structure part in their regulations only, so when the Coopers got their approval from the state we were unaware of it and that in this situation we were contacted by a neighbor who had brought it to our attention and our office asking if we were aware of this going on. Aldersperson Moore then clarified so the state does not contact you and send any information regarding this type of project. Mr. Curless stated the state does on buildings by sending an approval letter, but you don't with a tank. Mr. Moore asked so they don't consider a tank a structure, to which Mr. Curless pointed out he did not say that, but that it is a different division. Mr. Gardner stated his suspicion is that the Fire Department knew about this one and didn't communicate with the Inspection Department, to which Mr. Curless stated he did not know if the Fire Department knew about this or not. Mr. Gardner also pointed out as said earlier; you really have to meet all of the requirements of all the various review agencies, and if for example Wisconsin Public Service has some concerns they would have to meet those too.

Bob Woehr asked where this decision form came from, to which Director Ostrowski stated with the Board of Zoning Appeals because it is a quasi judicial board, they should have findings within their decision. Three specific standards exist that the applicant needs to meet where a variance could be granted and that form is out of a handbook for the Board of Zoning Appeals created by UWSP Land Use. Mr. Woehr stated there are references related to the board of Adjustment and they have some standards in there which you applied, and asked if Director Ostrowski handled the staff report, to which he stated yes. He pointed out three standards listed the hardship, the public interest, and unique property characteristics, parts due to limitations, but those are not the standards that are in the statute. He continued there are a total of four standards that the City Attorney read off and they are contrary to public interest, literal enforcement will result in practical difficulty, public safety and welfare, and pure and substantial justice, that is what is in the statute, and not on this form. Mr. Woehr then clarified that the form was developed locally by the UWSP Land Use. Mr. Woehr then clarified the city ordinance which allegedly quotes the Wisconsin Statute 62.23(7)(e) and asked if review occurred against the state

statute. Attorney Beveridge answered he did, and he did not see any differences in terms of the standard of review for the Board of Appeals. Mr. Woehr continued regarding the standard of review but all of these sections are not even in the state statute. Attorney Beveridge asked if he was referring to the sections preceding it, to which Mr. Woehr explained paragraph nine; paragraph eleven in the ordinance, and that fact that state statute has a subparagraph 3 m, to which Attorney Beveridge stated 3 m referred to the number of votes necessary, to which Mr. Woehr interjected and whether a quorum is present and the majority of the quorum constitutes the decision. Attorney Beveridge stated he did notice that part was not included. Mr. Woehr clarified his point being the standards for our decision today since the Board of Zoning Appeals is a product of state statute, not of city ordinance. He continued, basically what he is asking is should we utilize what is printed in the city ordinance, or should we be utilizing the state statute to make our determination. Attorney Beveridge stated you should be using the state statute to make the determination. Alderperson Moore asked what the requirements in the statute are specifically. Mr. Gardner argued that we don't use the statute either; you would use the statute as modified by Supreme Court decisions, to which Mr. Gardner continued you should be using the standards that the City Attorney cited at the opening of the meeting, and what you are talking about is not necessarily relevant, and you should use the decision criteria from the court case cited earlier. Mr. Woehr pointed out that one of the things said in the staff report was unnecessary hardship is present, and then there was an analysis and a finding the standard was not met, to which Director Ostrowski stated correct. Mr. Woehr then asked why on page 1 of the staff report you stated staff does feel that an unnecessary hardship does exist that would render the property useless, to which Director Ostrowski stated that is a typo and should be not.

Alderperson Moore stated he felt uncomfortable using the decision form knowing it came from the University and not from a government body. He continued he needs some facts that we need to find and ask; what are those requirements that had been read out from the court at the beginning of this meeting. City Attorney Beveridge stated they do not need to be in written format, they just need to be on the record in the minutes. He continued you have certain ones that come from state statute, and then you have the Servogal case which explains what one of those statutory elements means, and then you have the two traditional long history and case law about the applicant having to demonstrate the hardship was not self created and that it is based on conditions unique to the property. He then stated the statutory elements are that public interest is preserved, that special conditions exist on the property that lead to the perceived hardship, that the spirit of the ordinance shall be observed, that public safety and welfare shall be secured, that substantial justice be done, and that there is a practical difficulty or unnecessary hardship. Attorney Beveridge stated the last one is where the courts explanation and Servogal comes in to play and that is where the court found that failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose, and that it would render conformity with such restrictions unnecessary burdensome.

Alderperson Moore stated the first one is public interest, and does anybody feel that it does not meet the public interest, the city council has approved this, and does it meet that criterion. John Gardner stated the questions would be would the reduction of the setback, not the use itself. Alderperson Moore continued does anybody believe the reduced setback would go against the public interest, is the question now. Henry Kroger stated common sense says set it back closer to the residence, so they can turn it around and have it go along with the street. He continued it is going to be fenced in and it is going to be quiet. Alderperson Moore stated we will take that as a no. Mr. Gardner disagreed and stated the council set the setback number at 40 feet, if it is not in our position to change it for the council, and does not see any particular uniqueness of the property that would require a change to the setback and therefore he feels it would be against the public interest if we were to grant the variance. Bob Woehr

commented if the tank is reoriented it still has to be 50 feet from the property, so therefore it is not closer to the property.

Henry Kroger stated as far as a hardship, his estimation to move it back will cost several thousand dollars, which is unnecessary to spend and to get a crane into move it and put a platform down and it is going to be quiet and not seen like you see it now, to move it that closer to the residence does not make sense to him. He continued this is a commercial property and everything is commercial, the people who have bought the property years ago knew it was that way and anything can happen there.

Motion by Henry Kroger to allow a variance for a reduced street yard setback for a 30,000 gallon above ground liquid propane tank at 2172 Prairie Street (Parcel ID's 2408-32-4014-13 and 2408-32-4014-15) providing they meet the requirements of installing cement pillars and fencing.

Point of Order by Bob Woehr that we have not gone through these items as far as the rationale for possibly issuing the variance and therefore he requests the motion be ruled out of order at this point in time until we have gone through all of the six requirements that you have listed.

Attorney Beveridge stated he believes that the motion is in order, but would recommend that the board address these issues and make findings of fact on the record prior to voting on the motion. Alderperson Moore pointed out there is a motion on the floor and asked if there was a second.

seconded by Ed Bancker.

Alderperson Moore continued we will go back to the discussion of the board and discuss these findings. He continued stating the first one was whether or not it is in the interest of the public, Mr. Gardner has voiced his opinion with the council has made the decision on how large the setback should be from the road and it would be against public interest if we go against the council's decision. He then asked does anyone else have any feeling upon public interest. Bob Woehr stated he concurs that the council has said that the propane tank can be on that parcel, to which Alderperson Moore clarified so you are disagreeing with that. Mr. Woehr explained he is agreeing and that public interest is being met, that the public represented by the eleven members of the Common Council. Alderperson Moore explained that Mr. Gardner's statement was that the public interest that the requirement should be 40 feet, correct, to which Mr. Gardner confirmed. Alderperson Moore explained that the tank should be 40 feet back, to which Mr. Woehr stated he concurs with Mr. Gardner. Henry Kroger stated the public interest; the tankers going in and out of Cooper's property make it very inconvenient for Coopers with their tank by pushing it further back, the plows, the tankers and the traffic for the public interest it would be better to leave it as it is because of the more safety you would have.

Alderperson Moore asked Attorney Beveridge how many of these requirements need to be met, is it all of them, to which he answered all of them, to which Alderperson Moore confirmed all of them need to be met in order for this variance to pass.

Alderperson Moore continued with special conditions, and asked for clarification exactly what that is. Attorney Beveridge explained special conditions refers to unique characteristics of the property from which the variance would arise, for instance if you were requesting a variance to a setback from a property line based upon the lot having rocks that narrowed the property and forced you closer to a property line on one side, that would be a special condition of the property. Bob Woehr stated as far as a practical hardship for that parcel if we look at Jeff Murphy's survey the parcel consists of lots 1 and 2

which are basically 60 feet wide if the Coopers only had access to lot 2 the southernmost, then reorienting the tank would not work because it would run into the building. He continued however they currently have 120 feet by 120 feet and that tank could be orientated north south or east west and still meet the lot requirements, not necessarily the setback requirements, it is the street setback we are speaking of. He continued if the tank can in fact be oriented generally north and south and there would not be a practical difficulty or unnecessary hardship, it would fit, so he feels that literal enforcement of the ordinance will not result in a practical difficulty or unnecessary hardship.

Aldersperson Moore stated the third requirement is spirit of the law, allowing the setback reduction does it go along with the spirit of the law of the setback. Mr. Woehr clarified the spirit of the ordinance, to which Aldersperson Moore stated yes. Mr. Woehr then stated the spirit of the ordinance is that it should be 40 feet from the street. Aldersperson Moore pointed out that 40 feet is just a number and the spirit is that it should be setback to out of the way of the public right of way. Mr. Kroger stated they create an ordinance to try and cover the whole city of Stevens Point, and it is pretty hard to cover every individual thing, that is why we are here. He continued that you cannot create an ordinance that is all encompassing, and we have a board of appeals to say maybe we should have included that in the ordinance under special conditions. Mr. Gardner stated the spirit of the ordinance is interesting, it is zoned industrial, and the council has already talked about ways to accommodate that location by putting up concrete barriers and such, so in that sense he agrees with Mr. Kroger. He continued that granting the variance and the location probably would be the spirit of the ordinance. Aldersperson Moore stated he agreed because he thinks that safety issues have been addressed in a very logical and orderly manner and that the public interest has been looked at.

Aldersperson Moore stated the next issue is public safety, the continued the setbacks to the residential areas have been met, so that takes into consideration that part of the public safety. He continued the safety of the right of way issue has been addressed by the concrete barriers by the council.

Aldersperson Moore covered the next issue of justice. Attorney Beveridge explained the language in the statute stated substantial justice done, which would mean it is up to the discretion of the board. Henry Kroger stated Mr. Cooper has agreed he will be making those requirements for safety hazards, what more can we ask of him. Bob Woehr stated if the city had desired to meet out justice to Mr. Cooper for failure to obtain a building permit could have been charged 35-200 dollars a day for every day that this thing has been out of compliance, but the city has elected not to. He continued, would issuing a variance provide for substantial justice to whom, do we have to provide substantial justice to the community, to the ninth district, or just that block surrounded by Shaurette Street, the railroad tracks, Wood and Prairie streets, to which Attorney Beveridge stated he defers that to the judgment of the board. Henry Kroger stated moving the tank closer to the residence does not add up, and would like to see it closer to the street and it will be all enclosed, it should stay where it is.

Aldersperson Moore stated the last issue is does it create a practical difficulty. He commented flipping the tank 90 degrees would create a large practical difficulty with snow plowing, with safety of other vehicles delivering things in and out of the building, and wishes we wouldn't have gotten here. Mr. Gardner pointed out he did ask the question of Mr. Cooper if they could operate if the tank was flipped 90 degrees, and the answer was yes they could, he did not ask how much difficulty it would provide, and he also said earlier it would be difficult but we do not know the real answer of how difficult it would be. Mr. Woehr added it would be expensive, to which Mr. Gardner pointed out that is self created. Mr. Bancker asked in this economic climate why we would want to make things more difficult for growing concerns. Aldersperson Moore explained that is really not part of the debate at this time. Director

Ostrowski added you have gone through the standards of review that have been outlined within the state statutes and the one he has heard that was not met so far was the unique characteristics of the property. Alderperson Moore then asked are we dealing with three different lots, or two, to which Director Ostrowski stated two parcels with three separate lots, however, they own the lot in which their current facility is on and under our zoning code, it would be considered one zoning lot and therefore take a look at them as one cohesive lot in terms of setbacks from each of those property lines.

Mr. Gardner stated he finds it difficult to argue against local businesses, the Coopers are in town, and doing business for a long time, and the use has been decided by the Common Council to be appropriate for the area, so we are just looking at the size and orientation, and can they meet it in this location, he thinks the answer is yes. He continued they could have chosen to use a different size tank if that was a problem for them, they could have chosen to orient it a different way, they could have given us more information about practical difficulty, which they have not given us, and he does not know if they have met that standard. So it is difficult for him to support the variance given the fact that there is nothing unique about the property other than the fact that they have put themselves in a corner and now put us in a corner to decide after the fact, but they have done this to themselves and have not convinced us that they can't meet the setback. Alderperson Moore pointed out as Mr. Gardner stated they could have done all of these things, only if they had been informed from the city or if they would have gone and gotten a building permit to say that this is not the best choice, and he is disappointed that the state did not contact that city. He stated he knows that is not their job, but common sense wise it is unreal that they would issue state permits for a property located in a municipality and they would not pick up the phone and ask if it meets all the city setbacks since it is one of their requirements in their permitting. Alderperson Moore continued we are not going to solve that issue, to which Mr. Gardner stated the corner that we find ourselves in. Alderperson Moore added if they should have been informed after getting licenses and information from the state. Mr. Gardner also pointed out the owner could have called the city to see if permits were needed for the work being done, and that did not happen either. Alderperson Moore brought up also whether the tank was considered a structure according to the ordinance, Mr. Gardner responded that the business operator also does not know the ins and outs of city code either, and had hired someone to get the job done and presumed and relied upon that person to get the job done for them, and obviously that did not happen either.

Alderperson Moore explained when you deal with a contractor to build your house, or do those things; they do work with the city and get the permits that are needed. Mr. Gardner stated he will not decide who is at fault, to which Alderperson Moore explained it is not trying to decide who is at fault, but the ball was dropped and there is something flawed in the process that they did not get the information they should have at the beginning of this project and that is what has created the dilemma we are in right now.

Mr. Korgner stated driving down the street that is all commercial or industrial everything fits in line, therefore common sense is to approve the deal and he does not know why all the discussion has occurred. He does not know why we would have the Coopers spend the extra several thousand dollars to move it and set up the platform. He continued stating what do we gain by that, a tank is a tank and you will not change. He feels the discussion is just about where it is located, and they will do a good job of fencing it in and safety to make it convenient for the trucks going in and out without putting up with the tank turned the other way or farther back. He also stated it is good for the residents too because of it being farther away from them and it is all sealed up.

Mr. Gardner agreed with everything Mr. Korger said with the problem of that if you go down the block and across the street to the vacant land and if they wanted to put the building 13 feet from the street right of way, why can't they do it, to which he answered they cannot because there is nothing unique about that property that makes it different. He explained that is the reason he is having a hard time supporting this request, if the 13 feet is good for these guys, then it is good for everybody. Mr. Kroger responded they assumed the state has more strict rules than the city has. He continued this is a commercial tank and commercial property and if you are going to build housing, we know it is completely different from the commercial and you will have to go and get some type of approval, you don't go to the state to get approval for building a house, you go to the city. He added this is commercial and they had tanks above the ground years ago and they are all buried now, and now they are having a hard time with this propane tank and it is going to be all enclosed and quiet and won't see it and will fit into the area of commercial and residential, so lets approve it and go home.

Aldersperson Moore recognized Mr. Woehr to speak when Reid Rocheleau stood up and spoke out suspecting ex parte communications have occurred, to which Mr. Gardner asked Mr. Rocheleau to explain and support his allegations. Mr. Rocheleau did not explain or support his allegations and left the room.

Mr. Woehr asked if Mr. Cooper had any last words for the commission, and Aldersperson Moore asked if any of the committee had any last words. Mr. Gardner pointed out the attorney suggested that before a vote was made on the motion that sufficient findings were made, and asked if the secretary had been able to enumerate the findings sufficiently to your satisfaction.

City Attorney Andrew Beveridge suggested that anyone who votes in favor of granting the variance is by virtue of that vote finding that all of the requirements have been met, and would ask that anyone voting against the granting of the variance would specify which elements they feel have not been met.

Mr. Kroger asked if we won't get sued for that will we, to which Attorney Beveridge stated we could, and could get sued for anything at any time. Mr. Gardner added the good news is one would hope that the city would represent us and pick up the legal fees.

ROLL CALL:

Ayes: Kroger and Bancker.

Nays: Moore, Woehr, and Gardner.

Mr. Woehr stated the condition he did not feel was met to grant this variance was that it would be contrary to the public interest to issue the variance and feels that the provisions of the ordinance do not result in a practical or difficulty or unnecessary hardship regarding that specific property. Mr. Gardner agreed and thinks that unfortunately there was no testimony that said the property was unique or there were any special conditions that would justify the granting of the variance. Aldersperson Moore stated he also voted in the negative and reasons because there is no special conditions on that property that the tank could not meet the required setbacks.

Motion failed 2-3.

3. Adjourn.

Meeting Adjourned at 10:24 AM.

Administrative Staff Report

Peter & Vicki Anderson
Variance Request
1321 Phillips Street
March 21, 2016



Department of Community Development
 1515 Strongs Avenue, Stevens Point, WI 54481
 Ph: (715) 346-1568 - Fax: (715) 346-1498

<p>Applicant(s):</p> <ul style="list-style-type: none"> Peter & Vicki Anderson <p>Staff:</p> <ul style="list-style-type: none"> Michael Ostrowski, Director mostrowski@stevenspoint.com Kyle Kearns, Associate Planner kkearns@stevenspoint.com Jim Zepp, Zoning Administrator jzepp@stevenspoint.com <p>Parcel Number(s):</p> <ul style="list-style-type: none"> 2408-32-1035-11 <p>Zone(s):</p> <ul style="list-style-type: none"> "R-3" Single and Two Family Residence District <p>Master Plan:</p> <ul style="list-style-type: none"> Residential <p>Council District:</p> <ul style="list-style-type: none"> District 3 – Ryan <p>Lot Information: 2408-32-1035-11</p> <ul style="list-style-type: none"> Actual Frontage: 89 feet Effective Frontage: 89 feet Effective Depth: 88 feet Square Footage: 7,832 Acreage: 0.180 <p>Current Use:</p> <ul style="list-style-type: none"> Single Family Residence <p>Applicable Regulations:</p> <ul style="list-style-type: none"> 23.01(1), 23.02(1)(e), 23.02(1)(h), and 23.05 	<p>Request</p> <p>Request from Peter & Vicki Anderson for a variance to allow a reduced side-yard setback of three feet and reduced rear-yard setback of four feet for an attached garage at 1321 Phillips Street (Parcel ID 2408-32-1035-11).</p> <p>Attachment(s)</p> <ul style="list-style-type: none"> Property Data Application Site Plan Photographs <p>Findings of Fact</p> <ul style="list-style-type: none"> The property is zoned "R-3" Single and Two Family Residence District. The request is for a variance to reconstruct an attached garage. The garage side yard and rear yard setbacks are not met. The property owner demolished the roof and walls on the nonconforming garage due to their deteriorated state. Nonconforming premises are subject to Chapter 23.01(17) of the Revised Municipal Code. <p>Staff Recommendation</p> <p>After review, staff has concluded that the variance requirements are not met. Specifically, staff has not found that a hardship, due to the physical limitations of the property exists. In addition, the reconstruction of the attached garage at this location could harm the public interest. Furthermore, staff does not feel that an unnecessary hardship exists that would render the property useless, or be unnecessarily burdensome for the applicant to comply with the ordinance standards. Therefore, staff would recommend denying the request.</p>
---	--

Vicinity Map



Background



Mr. Anderson is requesting a variance from the required 7 ½ foot side yard and 17 feet and 7.2 inches (20% of lot depth) rear yard setbacks required for structures on properties within the R-3 Single and Two-Family Residence Zoning District. A variance is requested to reconstruct the attached garage utilizing a 3 foot side yard setback and a 4 foot rear yard setback (see attached site plan), which would be consistent with the previous garage dimensions and on the existing garage concrete slab. Note however that a nonconforming attached garage existed prior to the removal of roof and walls by the property owner. See the photos below from different years clearly identifying the structure and its partial demolition. The property owner obtained a residential building permit on June 13, 2014 to only re-roof the attached garage and perform roof repairs. Furthermore, new walls and roof trusses were constructed without proper approval or building permit after the garage demolition.



Aerial Image - 2012



Aerial Image – 2015

Given the demolition of the nonconforming attached garage, the following zoning ordinance is applicable which prevents any reconstruction of a nonconforming structure from occurring:

Chapter 23.01(17) – Nonconforming Premises

- a) *Intent. This ordinance and districts therein, or any later amendments may create situations where use of premises and parking, yards, setbacks, heights, lot area, lot width and density previously permitted may become prohibited, regulated or otherwise restricted for the purpose of implementing community plans and development goals. It is the intent of this ordinance to permit the continuance of these nonconforming premises, but not to encourage their survival. Such nonconforming premises are declared by the ordinance to be incompatible with conforming premises in the districts involved.*
- b) *Existing Nonconforming Uses. A nonconforming use existing at the time of the adoption or amendment of this ordinance may be continued, but no use on such premise shall be enlarged, increased, extended, reconstructed, resumed, substituted, or altered unless the nonconformity is changed to conforming except as follows:*
 - 1) *If a nonconforming use is discontinued for a period of less than 12 months, the previous use may be resumed.*
 - 2) *Minor modifications on nonconforming uses may be approved by Zoning Administrator such as permitting substitution of a more restricted use; permitting ordinary maintenance repairs such as interior and exterior painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components; or permitting minor deviations from parking, yard, setback, height, lot width, area or density where there are special circumstances caused by the nonconformity which would deprive the subject property of privileges enjoyed by other property in the vicinity under the same zoning classification. Minor modifications are permitted only after the Zoning Administrator finds the modifications are not contrary to the public health, safety, or well-being, the modifications are compatible with surrounding uses, the modifications would not injure the neighborhood.*
 - 3) *Additions to structures not conforming with floodway standards are permitted provided they will not increase the amount of obstruction to flood flows, are flood-proofed by means other than the use of fill to the floor protection elevation, and would not, over the life of the structure, exceed 50 percent of the present equalized assessment value.*
- c) *Where a lot of record at the effective date of this ordinance, or a lot in a subdivision which the Common Council has officially approved and agreed to accept at the time of the effective date of this ordinance, has less area or width than herein required in the district in which it is located, said lot may nonetheless be used for a one-family dwelling or for any other non-dwelling use permitted in the district in which it is located.*

Variations allow property owners to do certain things with their property or structures on their property that are not in conformance with the regulations within the zoning code. Variations can serve several purposes, including avoiding unnecessary burdens on property owners, preserving local regulatory standards, and preventing regulatory takings. Variations are not meant to provide general flexibility in zoning ordinances, but rather exceptions in specific cases. Variation decision standards are set by the legislature and the courts. There are two types of variations, use variations and area variations. Use variations permit a property owner to have a use on the property that would otherwise be a prohibited use. Area variations provide relief from the physical dimensional restrictions, such as building setbacks, height, etc.

In order for a variation to be granted, the applicant has the burden of proof to show that all three statutory tests are met:

1. Unnecessary hardship,
2. Due to conditions unique to the property, and
3. No harm to public interests.

Below is an analysis of the standards of review.

Standards of Review

1) An unnecessary hardship is present.

Analysis: For an area variation, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted use, or be unnecessarily burdensome in the view of the ordinance purposes.

The purpose and intent of the zoning ordinance is:

“to promote the health, safety, morals, prosperity, aesthetics and general welfare of this community. It is the general intent of this ordinance to regulate and restrict the use of all structures, lands and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic and other dangers; provide adequate light, air, sanitation and drainage; prevent over-crowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and promote the beauty of the community; and implement the community's comprehensive plan or plan components. It is further intended to provide for the administration and enforcement of this ordinance and to provide penalties for its violation.”

Findings: If the variation is not granted, the property still could have many uses associated with it, including the existing use. The garage may have to be detached, but the City does provide an avenue for the construction of the garage with 3 foot side and rear yard setbacks. Those could be reduced to 1 foot if a conditional use permit is granted to allow the property to use the traditional neighborhood setback requirements. Furthermore, the removal/demolition of the garage was self-created, as the owner was only granted a permit to reroof, but instead decided to remove and rebuild it. With this being the case, staff does not feel that this standard is met.

2) The hardship is due to physical limitations of the property rather than the circumstances of the appellant.

Analysis: The conditions that are unique to the property include physical limitations of the property, such as steep slopes or wetlands that must prevent compliance with the ordinance. These conditions should not be common to a large number of properties, but rather a few. Conditions that are common to a large number of properties should be addressed by an ordinance amendment, such as the Traditional Neighborhood Overlay District. In reviewing the property, the property is relatively a common lot in the immediate area. The applicant/property owner demolished an existing nonconforming attached garage without prior approval or a necessary building permit, citing the garage's deteriorated state (see attached photographs). The attached garage is nonconforming as required side and rear yard setbacks are not met. A 7 ½ foot side yard setback is required, and a 17 foot 7.2 inch rear yard setback is required. The property is approximately 7,832 square feet and is shaped like a square. Ingress/egress exists to the property from a single driveway on Phillips Street. Note that the City measures setbacks from the property lines of the property in question. See the ordinance above (page 3) regarding Nonconforming Premises.

Findings: After staff review, it has been concluded that the applicant (property owner) has created a hardship on the property with the demolition of the existing garage and its reconstruction. Normal maintenance is permitted on existing nonconforming structures; however reconstruction of a nonconforming structure is prohibited. It is clearly stated in the ordinance above that the intent of the zoning ordinance is to permit the continuance of the nonconforming premises, but not to encourage their survival. Reconstruction loses nonconforming status and would require applicable zoning ordinance requirements, such as setbacks, to be met. The property owner performed demolition and reconstruction activities prior to applying for a correct building permit and obtaining a variance and therefore caused the practical difficulty. Staff has not found any characteristics of the property that would make unique and therefore warrant a variance. Other avenues exist by which the property owner can construct a detached garage meeting setback requirements. With this being the case, staff has determined this standard is not met.

3) The variance will not harm the public interest.

Analysis: A variance granted may not harm the public interests, but it is not necessary to advance them. The public interests are the purpose and intent of the ordinance that has been adopted. The following is the purpose and intent of the zoning ordinance:

“to promote the health, safety, morals, prosperity, aesthetics and general welfare of this community. It is the general intent of this ordinance to regulate and restrict the use of all structures, lands and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic and other dangers; provide adequate light, air, sanitation and drainage; percent over-crowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and promote the beauty of the community; and implement the community's comprehensive plan or plan components. It is further intended to provide for the administration and enforcement of this ordinance and to provide penalties for its violation.”

The intent of the setbacks within the ordinance is to provide a buffer between buildings and adjacent properties which minimize effects from the use. The use is a single family home which requires the following setbacks in the R-3 Single and Two-Family Residence District:

	Side Yard	Rear Yard
R-3 District Setback Requirement	Minimum 7 ½ feet on each side for buildings not over 2 ½ stories	Note less than 20% lot depth, but not less than 15 ft. and need not exceed 30 ft. Lot Depth = 88 ft. X .20 = 17.6 (17 ft. 7.2 inches)
Proposed Variance Setbacks	3 Feet	4 feet

1321 Phillips Street is within a dense residential area and exists mid-block on a 7,832 square foot lot. The lot is a nonconforming lot as 8,000 square feet is not provided, however, Chapter 23.01(17)(c) identified previously allows the continuance of the single family use.

Findings: Granting of the variance would fail to provide a needed buffer between the attached garage and the neighboring lot. Little space is provided to perform maintenance to the garage or the neighboring fence. In addition, the neighboring property owner adjacent to the proposed garage is subject to decreased aesthetics. Furthermore, the proposed attached garage jeopardizes the characteristics of the surrounding neighborhood and adjacent properties which meet setback requirements. Therefore, staff feels that granting this variance has the potential to harm the public interest and therefore have determined this standard is not met.



Upon review, staff has determined that none of the variance standards are met, and therefore staff would recommend denying the variance request to reconstruct a nonconforming attached garage.

Photos



Sideyard



Newly Constructed Garage

Name and Address		Parcel #	Alt Parcel #	Land Use		
Peter J Anderson & Vicki L Hafkemeyer 1321 Phillips Street Stevens Point, WI 54481		240832103511	240832103511	Residential		
		Property Address		Neighborhood		
		1321 Phillips St		294 Main & Clark Neighborhood		
		Subdivision		Zoning		
Display Note		Metes And Bounds		R3-TWO FAMILY		

OWNERSHIP HISTORY

Owner	Sale Date	Amount	Conveyance	Volume	Page	Sale Type
Peter J Anderson &	5/1/1981	\$29,900	Warranty Deed	422	1179	Land & Build.

SITE DATA

PERMITS

Actual Frontage	89.0	Date	Number	Amount	Purpose	Note
Effective Frontage	89.0					
Effective Depth	88.0					
Square Footage	7,832.0					
Acreage	0.180					

2015 ASSESSED VALUE

Class	Land	Improvements	Total
(1) - A-Residential	\$12,000	\$49,600	\$61,600
Total	\$12,000	\$49,600	\$61,600

LEGAL DESCRIPTION

PRT OF LOT 3 BLK 1 OF BOYINGTON & ATWELL ADD & PART OF SE NE IN S32 T24 R8 (88 1/2 X 88 1/2) E 8 1/2 FOR ST 422/1179

DWELLING DATA (1 of 1)

Style	07A Old Style - 1sty		Basement	Partial	Exposed	No
Ext. Wall	Slate/Asphalt		Heating	Basic		
Story Height	1	Age	116	Fuel Type	Gas	
Year Built	1900	Eff. Year	1900	System Type	Warm Air	
Class	(1) - A-Residential		Total Rooms	6	Bedrooms	3
Int. Cond. Relative to Ext.	Interior Same As Exterior		Family Rooms	0		
Physical Condition	Average		Full Baths	1	Half Baths	0
Kitchen Rating	Average		Bath Rating	Average		

FEATURES

ATTACHMENTS

Description	Units	Description	Area
Additional Plumbing Fixtures	1	Open Frame Porch	144
		Enclosed Frame Porch	112
		Concrete / Masonry Patio	180
		Enclosed Frame Porch	280

Name and Address		Parcel #	Alt Parcel #	Land Use
Peter J Anderson & Vicki L Hafkemeyer 1321 Phillips Street Stevens Point, WI 54481		240832103511	240832103511	Residential
		Property Address		Neighborhood
		1321 Phillips St		294 Main & Clark Neighborhood
		Subdivision		Zoning
Display Note		Metes And Bounds		R3-TWO FAMILY

LIVING AREA

Description	Gross Area	Calculated Area
Basement	736.0	
Finished Basement Living Area	0.0	0.0
First Story	1,288.0	1,288.0
Second Story	0.0	0.0
Additional Story	0.0	0.0
Attic / Finished	0.0	0.0
Half Story / Finished	0.0	0.0
Attic / Unfinished	0.0	
Half Story / Unfinished	0.0	
Room / Unfinished	0.0	
Total Living Area		1,288.0

DETACHED IMPROVEMENTS

Description	Year Built	Square Feet	Grade	Condition

PROPERTY IMAGE

PROPERTY SKETCH





City of Stevens Point
Community Development Department

1515 Strongs Avenue, Stevens Point, WI 54481
(715) 346-1567
(715) 346-1498

APPLICATION FOR A ZONING VARIANCE

(Pre-Application Conference Optional)

ADMINISTRATIVE SUMMARY (Staff Use Only)

Application #	-	Date Submitted	2/1/16	Fee Required	250. ⁰⁰	Fee Paid	250. ⁰⁰
Associated Applications if Any	-	Assigned Case Manager		Kyle Kuorns			

APPLICANT/CONTACT INFORMATION

APPLICANT INFORMATION		CONTACT INFORMATION (Same as Applicant? <input checked="" type="checkbox"/>)	
Applicant Name	Peter & Vicki Anderson	Contact Name	
Address	1321 Phillips Street	Address	
City, State, Zip	Stevens Point, WI 54481	City, State, Zip	
Telephone	715-341-7973	Telephone	
Fax	--	Fax	
Email	solnut@yahoo.com	Email	

OWNERSHIP INFORMATION

PROPERTY OWNER 1 INFORMATION (Same as Applicant? <input checked="" type="checkbox"/>)		PROPERTY OWNER 2 INFORMATION (If Needed)	
Owner's Name		Owner's Name	
Address		Address	
City, State, Zip		City, State, Zip	
Telephone		Telephone	
Fax		Fax	
Email		Email	

VARIANCE SUMMARY

Subject Property Location [Please Include Address and Assessor's Identification Number(s)]		
Parcel 1	Parcel 2	Parcel 3
2408.32.1035.11	--	--
Legal Description of Subject Property		
PT LOT 3 BLK 1 BOYINGTON & ATWELL ADD& PART OF SE NE S32 T24 R8 (881/2 X 88 1/2) E 8 1/2' ST 422/1179		
Designated Future Land Use Category	Current Use of Property	
Residential	Residential	
Proposed Use of Property	Current Zoning District(s)	
Residential	Residential	
Ordinance Provision(s) from which a variance is requested		
Side & Backyard Setbacks for building		

TYPE OF VARIANCE REQUESTED

Project (i.e. setback, parking, height, area, etc.)	Required	Proposed
Setback	4' side & 15' backyard	original grandfather 3' & 4'

List the exceptional and extraordinary circumstances that are peculiar to the land or structure involved which are not applicable to other land or structures in the same zoning district. (use additional pages if necessary for questions below)

This project is to repair the original structure side walls and replace damaged roof.
 The size of the lot and location of the house on the lot does not allow for the change from the original foot print of the garage as it would make the structure non functional as a garage (see site map).

List any and all practical difficulties or unnecessary hardships that will result from the exceptional and extraordinary circumstances.

Would deny the ability to store and protect a vehicle and other items (i.e. mower, snow blower, other tools, etc.)
 Will reduce the value of the property and its resale value.
 Makes the house non conforming to the rest of the houses in area (All other house have garages).

The applicant must prove that the exceptional and extraordinary circumstances do not result from the actions of the applicant. How were the exceptional and extraordinary circumstances created?

The exceptional and extraordinary circumstances are caused by the current set back requirements. The original garage flat roof failed and required complete replacement (building permit was issued with the understanding that the walls required repair. Home owner was told that as long as the original foot print was not altered no other permits were required or restrictions as structure is grandfather). When the walls were opened to make repairs it was found that the sill plate was rotted and that most of the studs were crippled together, requiring repairs to the damaged walls before the new trusses could be erected. (No new construction only what was required to make the structure sound.) (See photos)

List any and all alternatives considered by the applicant and provide evidence as to why they are not feasible.

All other alternatives would create a structure that is to small for any reasonable use as a garage or storage area.

Would approval of this variance allow the applicant to do something that other property owners in the same situation would not be able to do? If so how?

No. This is a common structure to all homes in the area.

Would denial of this variance deprive the applicant of rights commonly enjoyed by other property owners in the similar situations? If so how?

Yes. It would deny a safe storage area for a vehicle and other items (i.e. mower, snowblower, tools, etc.) Will reduce the value of the property and its ability to be resold value in the future.

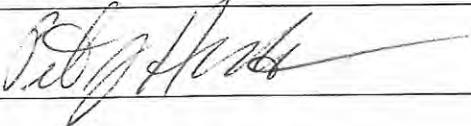
Current Zoning Surrounding Subject Property			
North:	Residential 2 family	South:	Residential 2 family
East:	Residential 2 family	West:	Residential 2 family
Current Land Use Surrounding Subject Property			
North:	Residential 2 family	South:	Residential 2 family
East:	Residential 2 family	West:	Residential 2 family

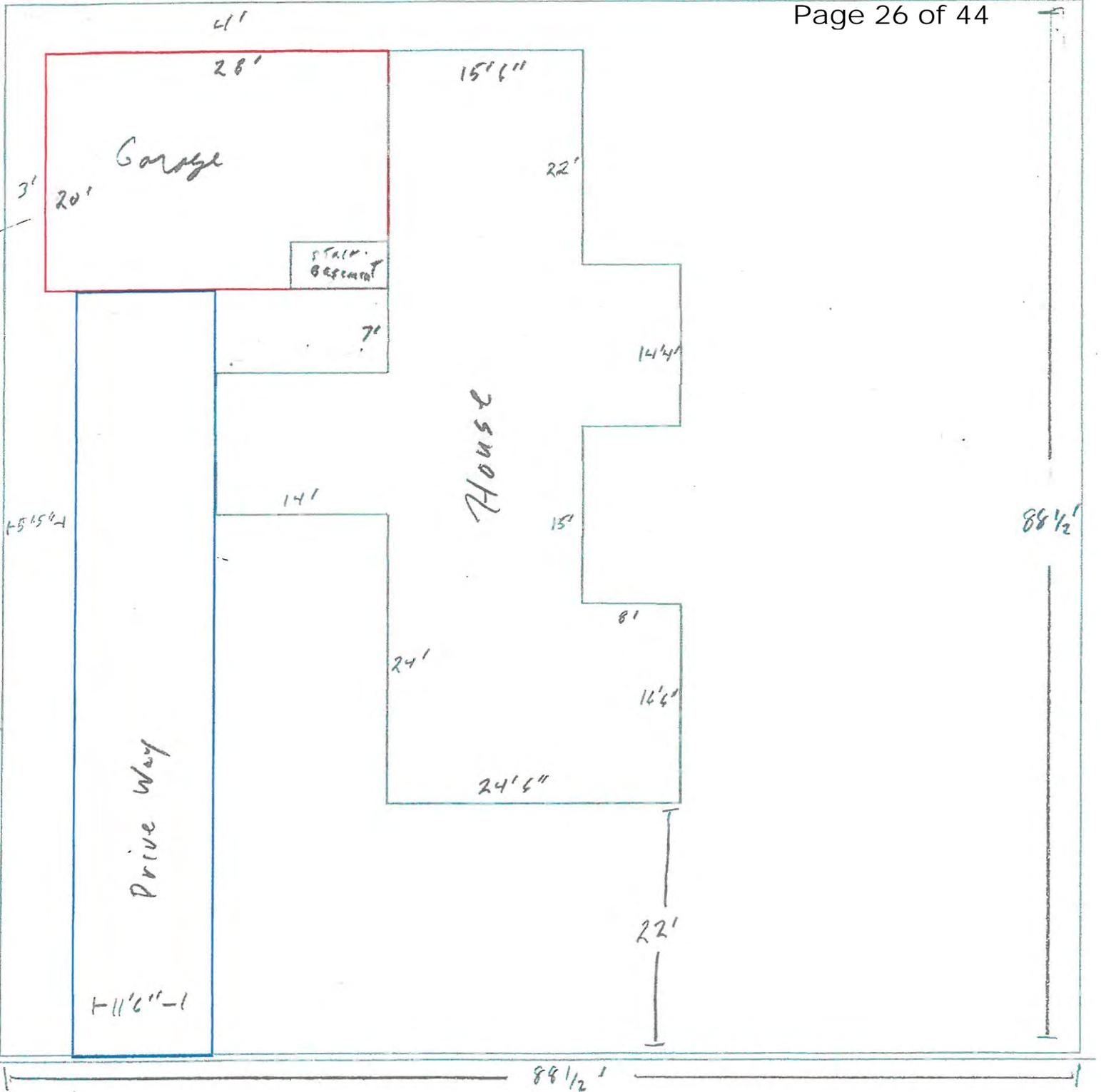
EXHIBITS

Owner Information Sheet	<input type="checkbox"/>	Additional Exhibits If Any:
Maps (vicinity, zoning, floodplains, wetlands others as requested by staff)	<input type="checkbox"/>	
Site Plan (designating primary, side, and service street frontages)	<input checked="" type="checkbox"/>	
Photos of property, building, etc.	<input checked="" type="checkbox"/>	

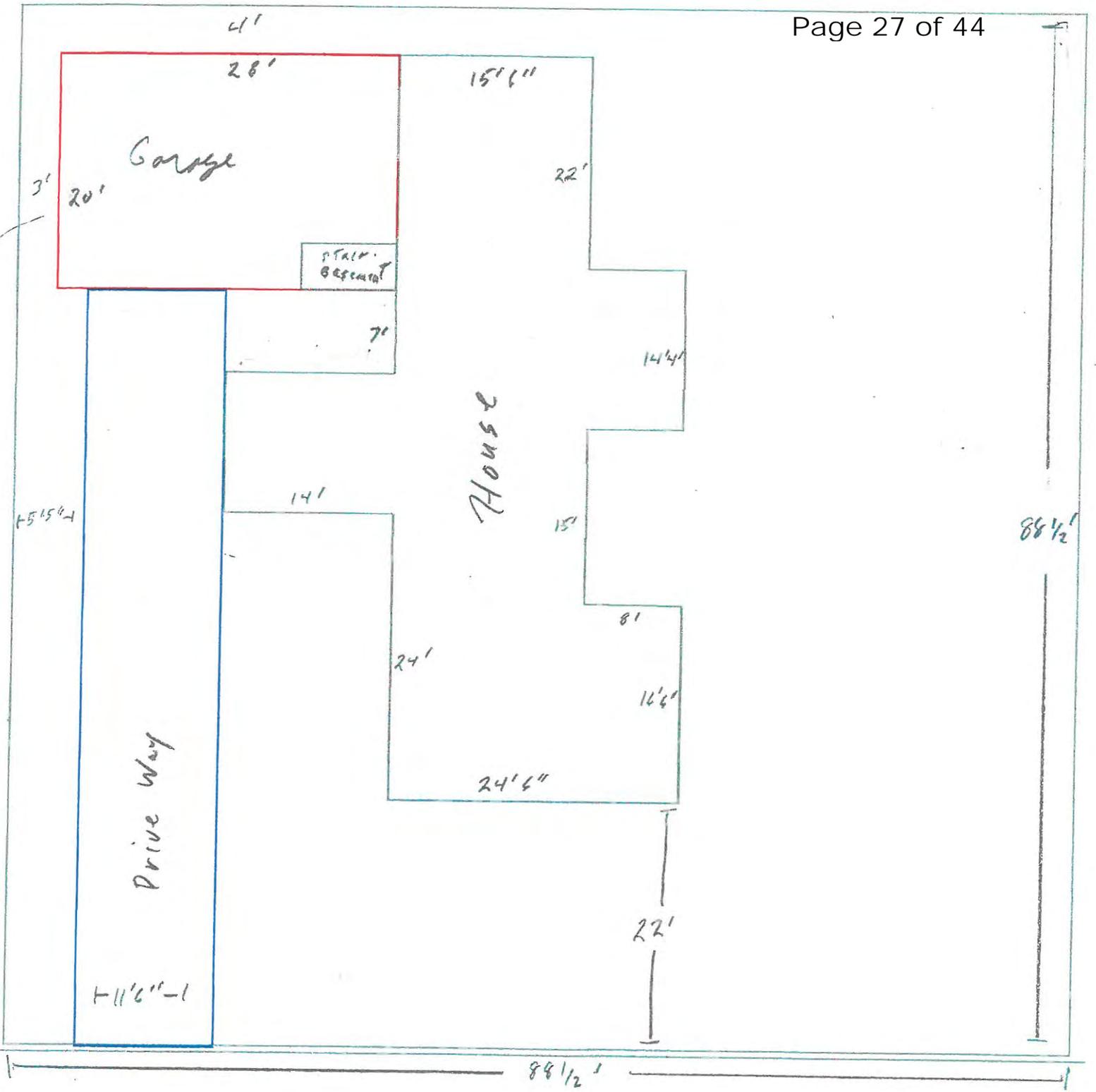
CERTIFICATION AND SIGNATURE

By my signature below, I certify that the information contained in this application is true and correct to the best of my knowledge at the time of the application. I acknowledge that I understand and have complied with all of the submittal requirements and procedures and that this application is a complete application submittal. I further understand that an incomplete application submittal may cause my application to be deferred to the next posted deadline date.

Signature of Applicant	Date	Signature of Property Owner(s)	Date
	1/15/16		1/15/16



Phillips Street



Phillips Street





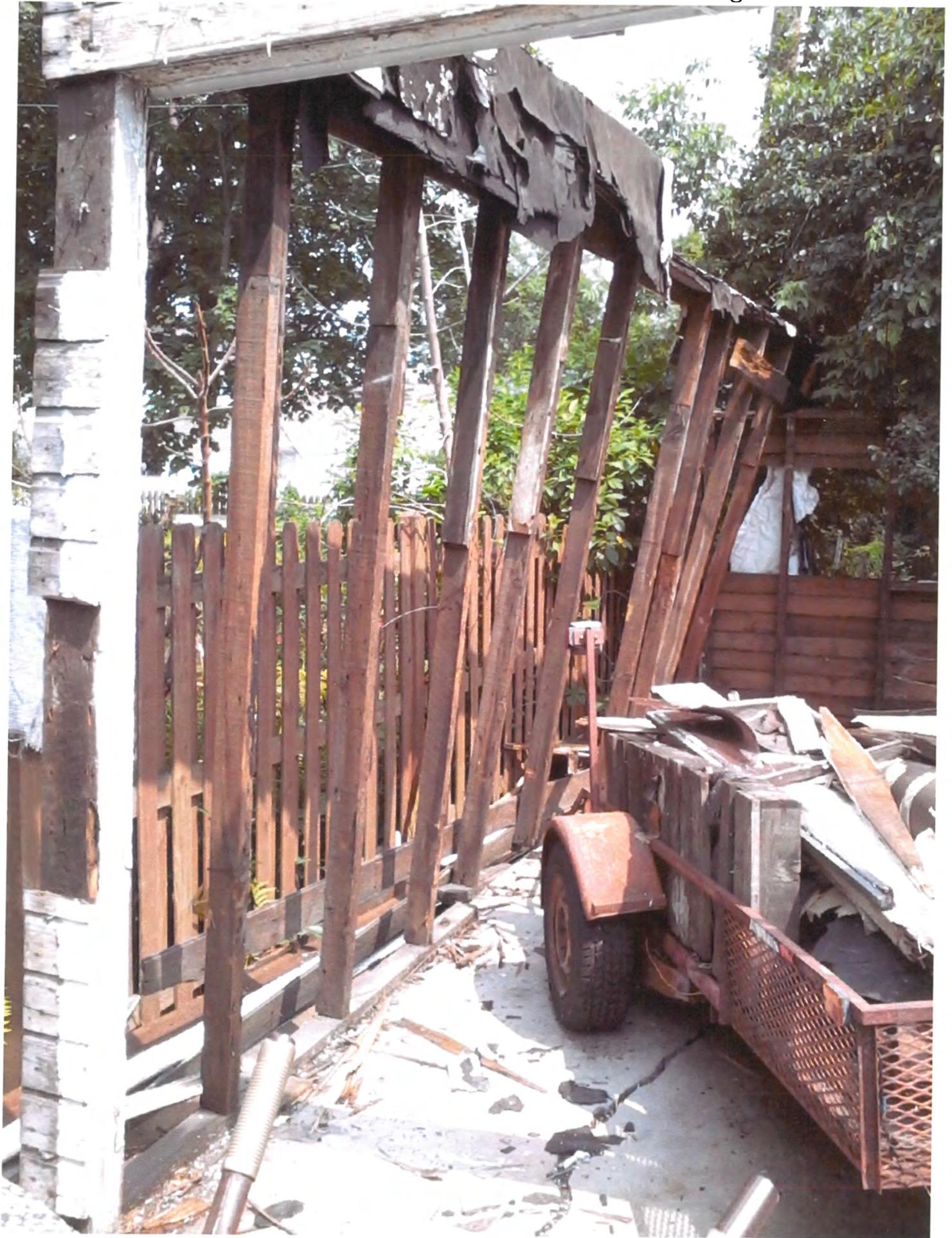




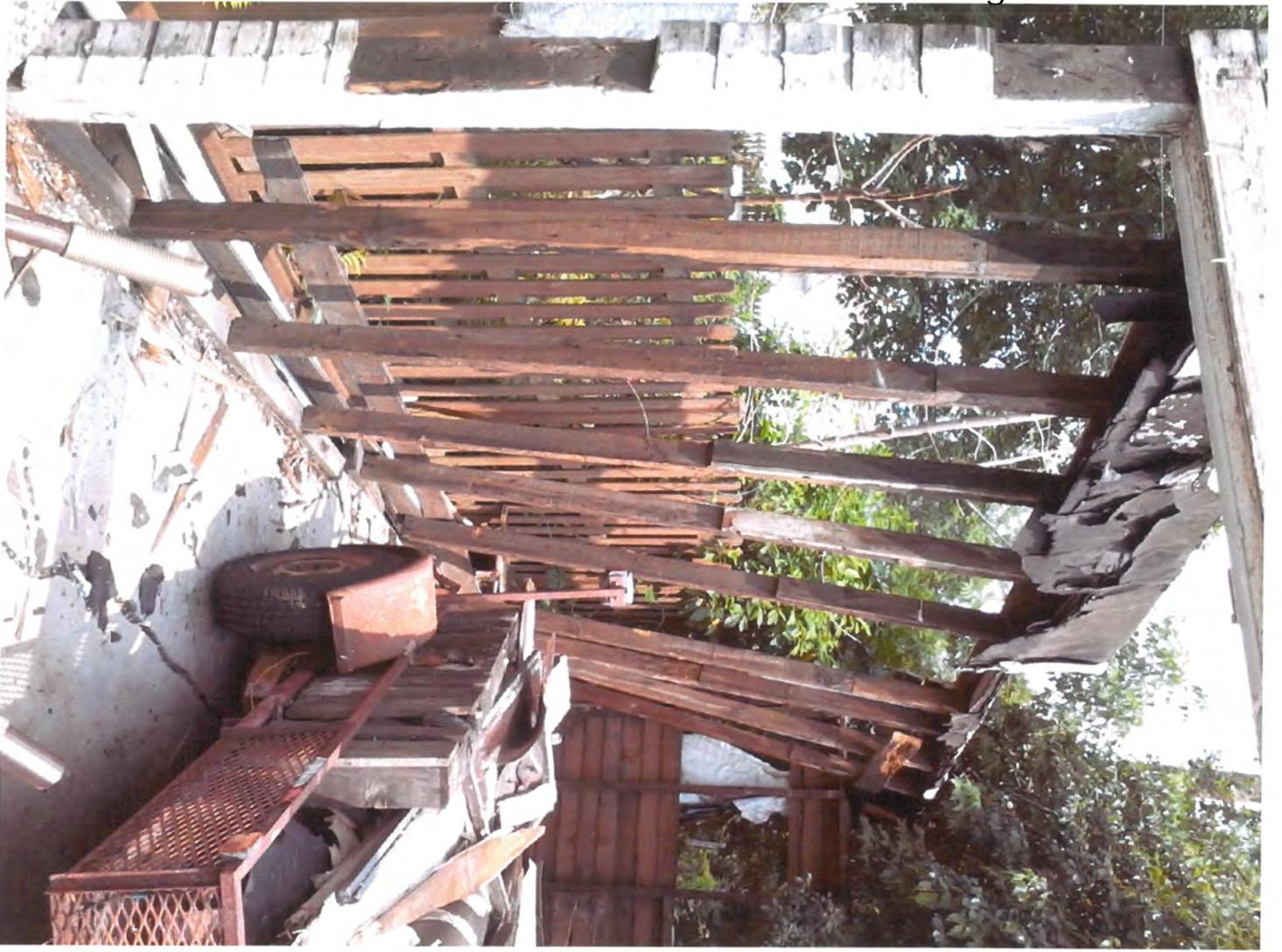




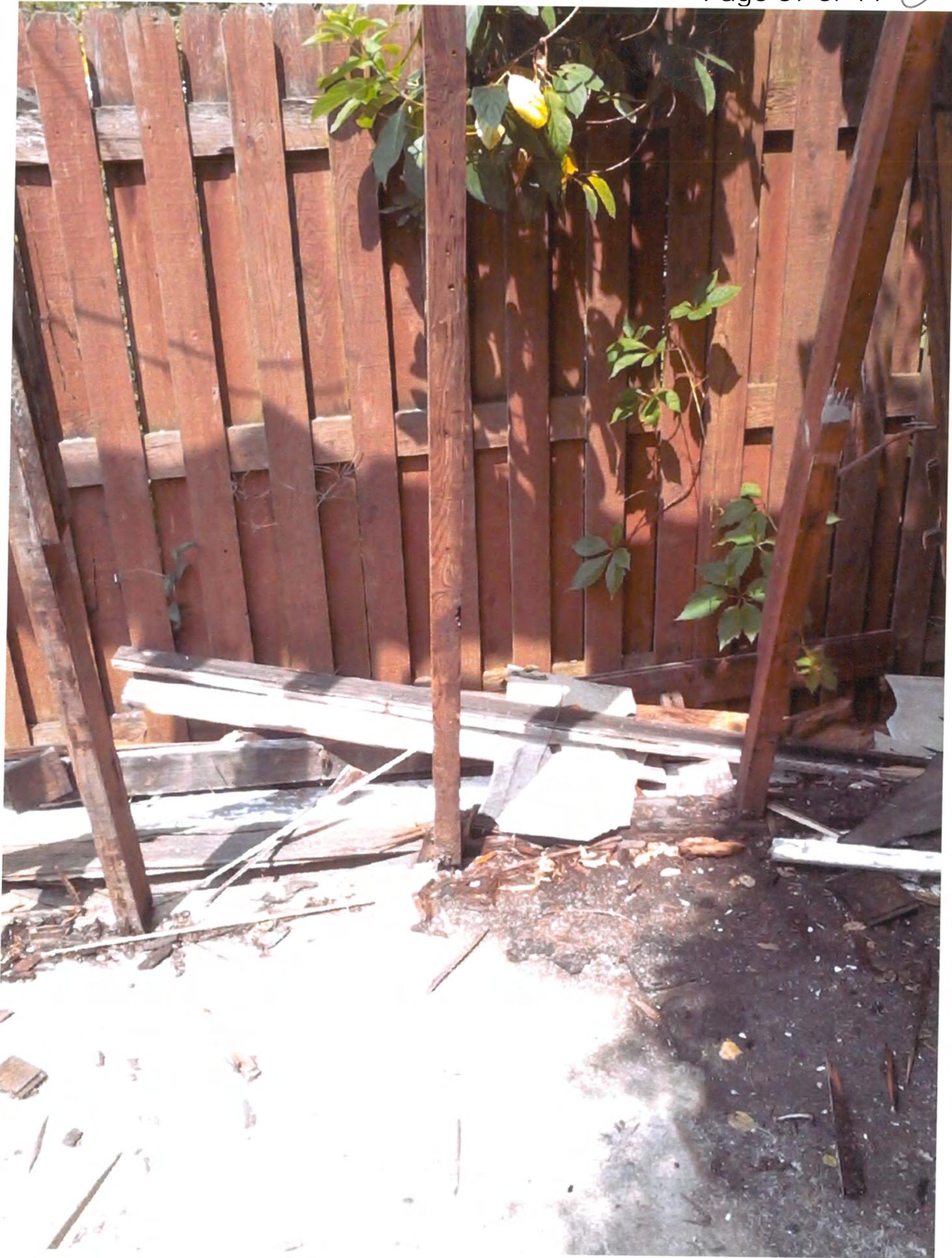


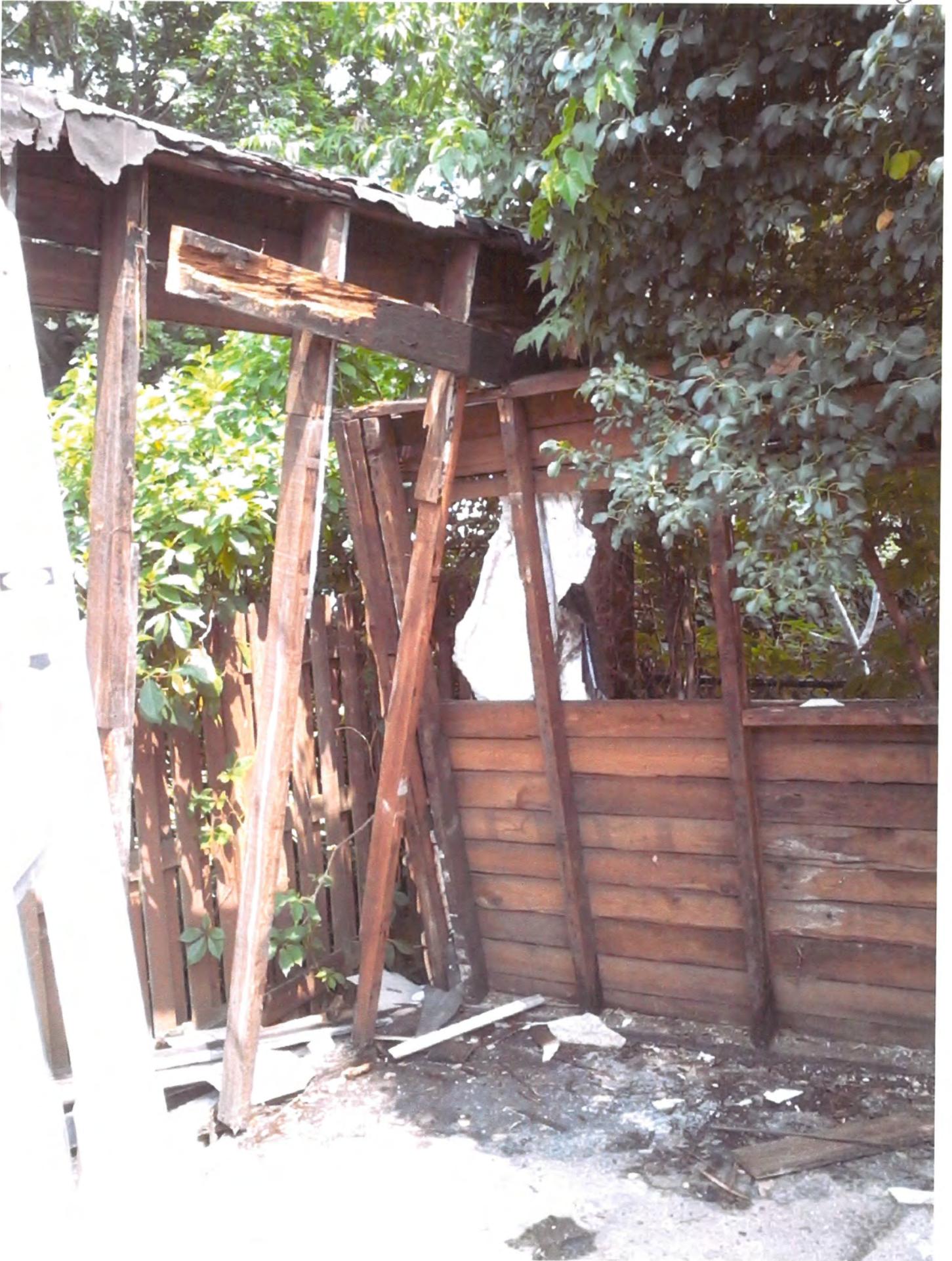


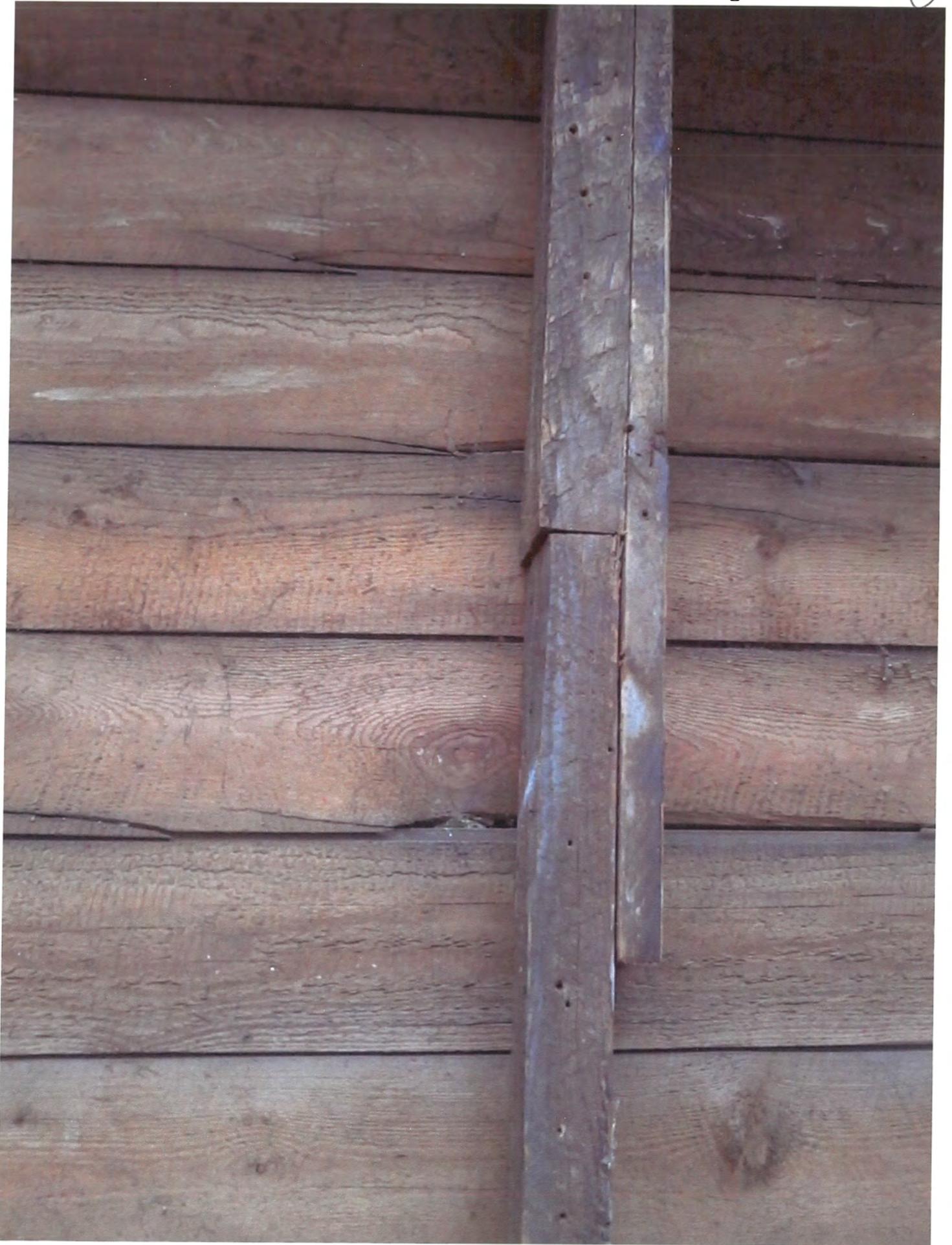
9



10









	3,300 s.f. + 100 s.f./bdm.								
All Other Permitted Uses	8,000 s.f.								
Cond. Uses	3 or more units shall be required to submit a site plan, building elevations, and landscaping plans prior to Cond. Use Review								

h) “R-TND” Traditional Neighborhood Development Overlay District

- 1) Intent. The purpose of this district is to allow the development and redevelopment of residential land in the city consistent with the design principles of traditional neighborhoods. A traditional neighborhood is compact, designed for the human scale, and characterized by larger homes on smaller lots with smaller setbacks from the property lines. Other purposes include:
 - a) To promote the public health, safety, morals, comfort, convenience, prosperity, and general welfare of the City neighborhoods.
 - b) To establish a method to allow modest adjustments to the underlying zoning district setback requirements while balancing the proposal with the impact on neighborhood properties.
 - c) To provide adequate light, air, privacy and convenience of access to property.
 - d) To prevent the overcrowding of land.
 - e) To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
 - f) To conserve and enhance the taxable value of land and buildings.
 - g) To encourage the most appropriate use of land throughout the City and environs.
 - h) To protect the character and maintain the stability of residential areas within the City and environs, and to promote the orderly and beneficial redevelopment of such areas.
 - i) To evaluate such additions to, and alterations or remodeling of, existing buildings or structures
 - j) To define the powers and duties of the administrative officers and bodies as provided hereinafter.

1.1) Application of Regulations

The regulations specified in this R-TND Traditional Neighborhood Development Overlay District shall apply only to lands as described below and which also lie within the City of Stevens Point Corporate Limits.

W ½ of the NW ¼ of Section 4; NE ¼ of Section 5; S ½ of Section 29; SE ¼ of Section 30; E ½ of Section 31; All of Section 32; & W ½ of W ½ of Section 33; all in T24N R8E, City of Stevens Point, Portage County, Wisconsin.

- 2) Permitted Uses: as allowed in the underlying zoning district

All setback requirements of the underlying district apply

- 3) Conditional Uses as allowed in the underlying zoning district

The Common Council may consider the following conditional use setback requirements as an alternative to the setback requirements in the underlying zoning district. These conditional use setback requirements shall be applied only to single family uses.

Conditional Use Setback requirements:

Street front setback 12 ft

Garage Street front and corner-side yard 25 ft

Corner side yard 12 ft

Interior side yard 4 ft

Rear yard 15 ft

Accessory bldg 1 ft

The Corner side yard is the side yard adjoining the street on a lot bounded on two or more sides by public right of way. As applied in this conditional use, the Common Council shall define the primary facade of the home as being the front yard and the secondary facade of the home as the side yard.

The following design standards shall be incorporated into each development and will be utilized in the review of conditional use. A conditional use is not automatically allowed. A balance is required between allowing remodeling or modest additions to structures while not unduly affecting the neighboring property owner's enjoyment of open space and light.

- a) The proposed structure shall fit the overall character of the

neighborhood. Neighborhood character includes the conformity or nonconformity of buildings in the immediate neighborhood with the setback requirements. Neighborhood character also includes the physical characteristics of the buildings in the immediate neighborhood including such elements as windows, exterior finishes, roof pitch, height of buildings, the diversity or homogeneity of architectural styles, porches, location of garages, density, and the like.

- b) In no case shall the front facade of the building consist of a blank wall or a series of garage doors.
- c) Developers shall vary design elements to avoid monotonous facades.
- d) One ground floor entry shall be oriented to the front of the lot on a public or private street.
- e) Garages shall be sited in several ways:
 - 1) In the rear yard, either attached or detached, accessed from a public street or an alley.
 - 2) Accessed from a public street with the garage doors facing the public street provided it be set back a minimum of two (2) feet from the front façade of the building.
- f) Consideration shall be given to the impact of the proposed addition on neighboring light, ventilation, and privacy from existing windows and yards.

R-TND Traditional Neighborhood Development Overlay District Map

