AGENDA
Board of Zoning Appeals

Thursday, June 16, 2016 – 10:00 AM
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 March 29, 2016 Board of Zoning Appeals meeting.
2. 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).** *The public hearing for this item occurred on March 29, 2016.*
3. 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.

MINUTES OF BOARD OF ZONING APPEALS

Tuesday, March 29, 2016 – 1:00 PM

PRESENT: Alderperson Denise Mrozek, Bob Woehr, Henry Korger, John Gardner, Alderperson Meleesa Johnson, and Robert Brush.

ALSO PRESENT: Community Development Director Michael Ostrowski, Associated Planner Kyle Kearns, Zoning Administrator Jim Zepp, City Attorney Beveridge, Alderperson Ryan, Peter & Vicki Anderson, Ronald & Ruth MacDonald, Hope Bemoski-Gallo, Erika Heinen, and Cindy Nebel.

INDEX:

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.

Mayor Wiza appointed John Gardner as Chairperson for the Board of Zoning Appeals.

Mr. Gardner had members introduce themselves.

1. Minutes of the August 1, 2013 Board of Zoning Appeals meeting.

Motion by Bob Woehr to approve the minutes of the August 1, 2013 Board of Zoning Appeals meeting; seconded by Meleesa Johnson.

Motion carried 5-0.

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)**.

Mr. Gardner declared the public hearing open.

Peter Anderson, 1321 Phillips Street, explained that his garage was damaged by snow. The garage had a flat roof to it, and when we had the heavy wet snow, the roof collapsed, causing extensive damage to that roof. He temporarily tarped the roof to prevent any further damage to the building and its contents, then researched the cost of repair or replacement of that roof. Once finding out what the costs were, he went to the building inspection office to find out what was needed for permits and any restrictions for construction. When going to the building inspector's office he stated he spoke with Mr. Kearns on 6/13/14 and explained in detail what the damage was, the fact that he had a flat roof on the garage that had collapsed due to the heavy snow, they talked about it for a few minutes and he asked the desk staff at that time to pull up an aerial view of the property so he could see exactly what was being talked about and looked at, similar to what is seen on page 16 and 17 of the staff report. As he spoke with Mr. Kearns he noted that he needed to remove and replace the entire roof deck structure and would like to replace it with a gabled sloped roof to match the rest of the house. Along with doing that, it would require that he would modify the east wall or the back wall by approximately four feet to

the height to square the walls. He also explained that the northwest corner of the garage over time had settled, and needed to be repaired. He asked if it was appropriate to take down at least half of that wall, to repair the foundation. On page 31 you can see the north wall where the garbage can is, the northwest corner you can see by the cracking in the concrete, the settling that had occurred. Mr. Anderson continued stating that at that time Mr. Kearns said there would be no problem with removing at least that much of the wall. He then explained that he had not opened up the wall yet. Mr. Anderson added that on page 31, the east wall is the way the walls were originally when he started investigating. He further explained that he had not opened the walls up yet when speaking with Mr. Kearns, and did not know what extent of damage may be hidden in the walls. On page 32, it shows a little more of the east wall and the type of construction that was on the interior, and it is what had to be removed once the damaged roof was removed so he could get in and start the repairs. He also at that time if he could do a replacement of the original garage door, which was sliding barn door style, to bring it more into alignment as seen on page 28. Because of the size and weight of the door, it is part of the reason why the northwest corner of the structure had settled, and part of the reason to do the repair on it. Mr. Anderson stated he was told at that time, there was no problem with that. He then went through in more detail stating that he had not opened the sidewalls and had not seen any additional damage that was in there. Mr. Anderson stated the exact question asked to Mr. Kearns which was are there any other requirements or permits needed if problems arise with the walls when he opens them up. According to Mr. Anderson, Mr. Kearns response was “No additional permits or requirements as long as the original foot print is not altered, the garage is grandfathered.” Mr. Anderson then stated after which Mr. Kearns asked me if I wanted to take out a permit to start the project. Based on that information, I proceeded to go out, purchase materials, and start the repairs. Furthermore, he explained when he started opening up the walls, he found that a large portion of the studs were crippled together making an unsteady wall, he also found that the sill plate on the north and east walls were rotted to the point where you could take a screwdriver and insert it easily into the wood. That rotting was also starting to affect the stud plate, as seen in pictures on page 35 where the deterioration is shown and you can see where removing it, the studs simply came away from the sill plate. He went on to clarify these walls would not stand up to any structural repair as of putting a new roof structure on. Lastly, Mr. Anderson indicated that based on the information that he was originally given by the building inspector’s office, as long as the original footprint was not altered, he could replace those walls with the damage that was there, and could complete the project. At this point, he started the project, and was halfway through when he was visited by the building inspector telling him that he had to stop the construction, and the repairs as it no longer met code, and that he had to apply for a variance.

Mr. Henry Korger stated that is why we are here, to which Mr. Anderson agreed.

Mr. Anderson continued identifying that based on the information given to him by the building inspector’s office; he proceeded with the reconstruction and replacement of the garage. Furthermore, he referenced the staff report stating that the staff has not found that a hardship exists due to physical limitations of a property as noted on page 15. Then the staff states on page 20 that the property exists mid-block on 7,832 square foot lot, and the lot is a non-conforming lot under 8,000 square feet. So right there, is a counter diction in that he is saying first there is no limitation, and then he is stating there is a limitation in the size. Mr. Anderson continues citing the staff report mentioning that staff also states reconstruction of the attached garage at this location could harm the public interests, but does not state why, and Mr. Anderson does not understand what is meant there. On page 18 the first line of the zoning ordinance says, to promote the health, safety, moral, prosperity, and aesthetics of the general welfare of this community. Mr. Anderson feels by denying the application to repair his home as it exists, denies him prosperity because it causes the value of his house and property to decline, and creates a

health and safety situation in that his property now has to be stored outside where it is exposed to the elements and possible theft and damage by people in the area. He also states that the neighboring property owner adjacent to this garage is subject to decreased aesthetics. Mr. Anderson added that if staff had spoken to the owner, they would have found out that the owner knew of the construction and had agreed to it. Mr. Ronald MacDonald who is that owner is here and will address that. Mr. Anderson continued commenting that the proposed attached garage jeopardizes the characteristics of the surrounding neighborhood and adjacent properties. Replacing the flat roof with a sloped roof and repairing the walls maintains the characteristic of the home as the rest of the house is all sloped and gabled roofed, and that all of the other homes in the area have garages. He continued stating his home would be the only one without a garage, therefore diminishing the neighborhood. Mr. Anderson pointed out that staff speaks of having to have a hardship, and he is finding that the hardship that has been caused is his failure of communications within the building inspector's office, and failure of the person issuing the permit and the inspector. Apparently information was not completely passed on as to what was discussed. Mr. Anderson described looking at the original permit that was issued, and pointed out where some confusion may have grown. The only descriptions put on there is reroof and gable reconstruction. He then asked how do you do gable reconstruction on a flat roof. He went on to state the person who issued the permit did not properly fill out the information leading to possible misunderstanding within the office. Mr. Anderson doesn't fault the inspector for what he has said or done. In conclusion, Mr. Anderson stated that what is being done is not new construction, but simply repair and maintenance of his current home and the value of the home. He addressed a letter that was just issued here concerning about being too close to powerlines and the transformer. The reconstruction takes into account those powerlines and that transformer. Mr. Anderson identified that he spoke with Wisconsin Public Service, and they gave him the guidelines of minimum distance from their wires and from the transformer, and the current construction that he's doing falls within those guidelines, so there is no problem there that he is aware of. He then stated that he tried to do his research to make sure that his reconstruction did not impact his neighbors, and then cited photos of the project. Furthermore Mr. Anderson clarified the house in the photo is Mr. MacDonald's and, to the east side there is nothing but trees. He continued pointing out the east wall and back yard which his nothing but trees, and a small garden that the home owner has. He went on to mention their home sits way up to the south and there is an entire tree hedge that covers the house and garage from their view.

Mr. Henry Korger stated he knew what the Andersons were talking about, and he was over there yesterday and looked at the project and property.

Cindy Nebel, OMNA, stated she realizes there are rules and that the ordinances have specific situations that they have to look at, specifically three conditions that have to be met. She realizes that nobody wants somebody to not be able to fix their property. She mentioned, it is difficult if they went back to having the same exact roof and the same flat roof again, because that would cause them to have another issue years down the road, of having water damage and things sit there. She then clarified the roof needs to be a slanted and it has to go up higher. She stated she knew one of the conditions were if they didn't have the garage connected to their house then it would be legal for them to do this new garage. Mrs. Anderson stated they were told they would have to observe the setback rules from the west side and from the east side. Ms. Nebel continued stating that if they didn't have it attached to the house, the constraints that it is now, with three feet between the neighbors would be approved, would that be one of the solutions the city would have said they could have done to rectify the situation. She then moved to her next point describing the difficultly as home owners in our area, they see so many ordinances and properties that do not get nailed for things that they do incorrectly. She then described this and cited a home owner that got cited because they needed to fix some things and now they have

done the ordinance checks on things for compliance. She continued stating one of things that was really important was that we just didn't do this to just landlords. Then she mentioned it's difficult to know all of these ordinances, and knows it is on the owner or contractor, but it is really difficult. She stated that when she looked back at the other case from the minutes, there were lots of things that were stated back in 2013 that is a problem; that it is difficult to get the information to the person asking for the permit because there are so many different pieces to it, that if you don't ask the exact right wording to find out if you need extra or, to give extra information would be really helpful because there are so many things like this that other people will be running into. Mrs. Nebel went on to say there is more than just getting a permit for a roof, you need to review the ordinance. Furthermore, she identified the difficulty of interpreting ordinances when getting a permit. She then summarized the previous zoning board of appeals case and cited this was the same thing that happened, somebody else didn't do their due diligence. She then stated the importance of the inspection department to provide thorough information to people to avoid mistakes. It adds up, and the contractors don't seem to know this on a lot of cases, they were very confused. She stated communicating really well is important. She also thinks that the board has an opportunity to maybe look at this a little bit better on these next issues of justice. She finds it hard, because she knows how hard and difficult and financially this is for the Andersons to do this, and this came about because of an ordinance violation of this deterioration. She then identified all these little hidden things that cause a problem throughout the entire town. In summary she clarified that she doesn't think that having a building that close to the property line is going to be a hardship to anybody in the neighborhood, it would be a positive, and we want people to start doing things. Lastly, she stated she would hope that the board could look at how they can change it to be able to find that they could have this variance, to be able to do their roof and their garage.

Ronald MacDonald, 1909 Main Street, stated he lives right behind the Andersons to the north west of them. He does not find it any problem whatsoever to his property or to the aesthetic view of the property, and the health and welfare. He continued stating prior to the project, the garage was in total disrepair. It housed vermin, raccoons, you name it, which is common for any structure that goes into demise. He went on stating he is directly north of that garage, and noticed his neighbor Paul and Barbara's written statements. He furthermore clarified the first picture that they show of the garage, the last truss, starts sloping down to the wall at that point, making it legal for the power company requirements. He continued stating, the second page shows the power pole with the transformer, right at the base of the power pole is his lot line. Then he said that the garage is totally covering his yard and his south sun, which he doesn't really care for the little bit of shade which is nice to have in the summer time. He continued mentioning that the rest of the trees in that area, like the 90 foot pine trees that are down a couple hundred feet or so, are over power lines of the city, which have already been whacked. He then described when a large branch fell and broke power lines. Furthermore, he described that by the pole are two Catalpa trees in this persons yard, that shadows their small little patio area, along with all of Peter's house. He then said, not of concern is that we need to remove Peter's house, but that is not going to happen. He feels this is sort of bogus. He does not want to contaminate the situation, but four or five years ago he had a problem putting up a wall, a fence alongside his property line after it got certified because he had offered Paul a chance to buy that strip of land 95 feet by 13 feet. He continued stating he refused to buy it and continued to use it and they work on it without any other government. Then he mentioned since he had gotten it certified and started erecting the fence, he had the police department called on him and everything else in the world, including them saying it was eminent domain and they own that chunk of land, yet he erected the fence anyways. Mr. MacDonald identified none of Peter's construction, reconstruction or however you want to call it, of this garage impales his aesthetics, as a matter of fact, it adds to the salability of his house, if he should have to sell it. He continued stating that aesthetics is the real problem here, it is not so much whether it is good for Pete,

but it is good for the neighborhood. He went on to question if he can sell his house at a reasonable market value, and then answered yes, citing that now he has a house that looks like a neighbors who has a nice looking garage that doesn't impede the health and welfare of his property in the event that he wants to sell it, rather than a worn down, dilapidated, destroyed garage that was there. Mr. MacDonald added another thing he would like to bring up is that he finds this kind of upsetting in one sense that if you walk into the city's office with all the good intent in the world to procure a permit to do something and whomever is in the offices, looks at the information and other information is wanted to be given to them by the owner that he says not a problem, signed, sealed and delivered elsewhere. He continued stating this office person has got the authority for the inspector to authorize, so that gives Peter or anybody here around the table the attitude or idea that everything is ok. Furthermore, Mr. MacDonald described the situation regarding the applicant and the financial investment made after talking with the inspection department. He then provided an example citing this is like going to the store and buying something and getting called back and told you didn't pay enough for it, come back and pay for it. He then described this behavior deters people from getting appropriate permits, so they just go ahead and do their project, and just have their wrist slapped. He then described his yard is the one that is most affected by this, and cited an example of his lilac bushes which go the full length of his driveway, and are within 8-11 feet and are periodically chopped down, but there have been no complaints of shady yards.

Alderperson Ryan stated he lives about a block from where the house lies. Furthermore, he does not have that much more to add to what has been said. He can see both sides of the situation, in dealing with communication and deciding where that broke down, if it did break down. Alderperson Ryan then stated that when it comes to the legalities dealing with the unnecessary hardship, unique property conditions, and public interests, he thinks a case exists for the unique property and the public interests easily. He continued stating the unnecessary hardship whether it was self-induced or not, is going to depend on the opinion of what was originally discussed and understood. He feels the owners did their due diligence and everything that they could do to try to do this legally with the best of intentions. Lastly he identified has not heard from anyone in the neighborhood or the district that has any kind of aesthetic concerns about putting up the garage, and personally testified stating he was excited to see the roof go up. Alderperson Ryan closed with saying it is really up to the board to determine if there is a communication breakdown, if that much of a communication breakdown existed from the start, and if the board can look at beyond just this property on how to fix that in the future.

Vicki Hafkemeyer – Anderson, 1321 Phillips Street, stated in response to Paul Gollota's letter, said when he came over and looked at what we were doing from when we had the dumpster with the debris in it to take out, he came over and volunteered to help roof it, because he had both the equipment and the expertise to do so. She continued saying he isn't here to question, but when he offered to help, when your neighbor offers to put forth some effort to do something for your, do you think that he is going to turn around and send a letter saying that the power pole needs to be replaced. Mr. Anderson added that for him to say he is willing to help you build this structure and then to turn around and say no I don't want it built is questionable. Mrs. Hafkemeyer-Anderson stated WPS was very good about when they installed the power pole, they asked us everything that we wanted to do, what we were going to do with our land, and our driveway and we told them nothing except probably replace the roof because it was a problem. She clarified she doesn't have the time period of when WPS put in the new transformer, but would certainly like to contact them and ask them if they had any other change at that location and if it created a problem. She added, if they put the pole in, they can move it, but it's only a question, shoe does not have any answers from them.

Mr. Gardner commented that the committee was provided with a letter from Mr. Paul and Barbara Gollota dated March 23, 2016 in which they are questioning whether the structure meets the electric code for setbacks from utility lines that are in existence now. Mr. Gardner asked for the letter to be made part of the record.

Bob Woehr asked how the letter was delivered, to which Director Ostrowski stated it was submitted via email.

Mr. Gardner declared the public hearing closed.

3. Action on the above.

Mr. Gardner asked about dates. He stated it looks like the permit was issued in 2014, but asked when the stop work order issued. Mr. Zepp stated November 23, 2015, Mr. Kearns added that the permit was issued June 13, 2014. Mr. Gardner stated that between June and November is what we are talking about and obviously no construction happened in winter time. Do we know what the easement width is for that utility line that goes through the middle of the block there, to which Mr. Kearns stated he did not have that information. Mr. Gardner asked if we could get a hold of that information during the meeting, to which Mr. Kearns stated he will certainly try. Mr. Gardner stated that might be a good question as to what that easement might say. The other question Mr. Gardner stated is that the board has not actually seen the permit, it has been eluded to and referenced a couple of times, but it is not in our packet. Director Ostrowski provided copies to the board members of the permit and application.

Kyle Kearns, Associate Planner, stated we also made copies of the notice that was sent with the stop work order. Mr. Kearns, Associate Planner within the Community Development Office stated he spoke to the applicant upon the issuance of the building permit and furthermore identified that what the owner has divulged to the board today regarding the structure and project was not divulged upon issuance of the building permit. He went on to say if it had been divulged, that the applicant was going to completely reconstruct the project, the community development office would have required necessary building plans, site plans and so forth. In conclusion he then clarified, the permit that would have been issued for a full garage reconstruction would have reflected that and there would have been necessary reviews from our building inspectors that would have occurred if that had been the case.

Mr. Gardner stated he is looking at the residential permit and he asked where on the permit it states what they are allowed to do. Mr. Zepp stated if you look at the top by project description. Mr. Gardner read the permit where it stated re-roof and gable reconstruction.

Jim Zepp, Building Inspector and Zoning Administrator, stated if you look at the description of work on the permit application it says replace flat roof with gabled on garage, and to him that was the extent of work being done.

Mr. Gardner addressed Mr. Kearns and asked for accuracy, stating Mr. Anderson testified that he had conversations with staff about the need to replace a corner of the building that had sunk and also that some of the walls may need to be rebuilt / replaced. Mr. Kearns responded confirming that he does not recall specifics of the conversation. Mr. Gardner verified that it would be Mr. Kearns testimony that the permit was issued just for the roof, for re-roofing and gable reconstruction, gable meaning the roof only, to which Mr. Kearns stated correct. Mr. Gardner, still addressing Mr. Kearns, then stated in the testimony that was given, Mr. Anderson indicated that the roof pitch would be identical or similar to the

house, was that a part of the conversation. Mr. Kearns stated he did not clearly remember if that was discussed or not.

Alderperson Mrozek, stated in regards to the permit where it says put gable on garage and then it states project reconstruction, is that normal to have a blanket placed in there, or is it free hand, to which Mr. Kearns stated it is free hand. He continued, stating that typically when a permit is requested, we ask what type of permit they are looking to obtain, and what type of work they are looking to do, which is typically what we write in that permit description area. Mr. Kearns stated he was under the assumption that the applicant was looking to re-roof his existing structure, and put in gables on the roof. Alderperson Mrozek asked if Mr. Kearns knew it was a flat roof to begin with to which Mr. Kearns answered that he did not necessarily know. She then asked with this sort of request are initial assumptions made, or is there some actual facts requiring background information such as when gable reconstruction is involved as gables can vary in height and in this case it appears to be taller than the home. Mr. Kearns explained a re-roofing permit is typically a permit that can be issued without any sort of site plan, or building plans. He went on further saying typically, when the applicant comes in and describes the project, telling us what they want to do, there are certain triggers, such as we are looking to tear down the walls, which would trigger a need for site plan and building plan and possibly a foundation plan and so forth. If none of those triggers are said by the applicant, then typically there are certain permits such as a water heater permit that can be issued without any review, or site plan submitted. In summary, Mr. Kearns stated that based off of what the applicant had stated when he came in to pull the building permit, Mr. Kearns was under the assumption that the building permit could be issued, as the applicant did not indicate he was tearing down walls, or the roof caved in, and the deteriorated state of the roof and the walls were not identified.

Mr. Gardner stated confirmed that because Mr. Kearns was told this was a maintenance project and not a reconstruction project, there would not have been any reason for him to get into questions about setbacks, building permits, and structural plans because Mr. Kearns thought it was simply a maintenance project that would not require any further admissions or discoveries. He went on to say that Mr. Kearns probably didn't know what the setbacks were, but knew and address and that is all you knew. Mr. Kearns stated that is correct, and added regardless if it was a nonconforming structure, you are allowed to perform maintenance to that nonconforming structure, re-roofing is a maintenance that is allowed on nonconforming structures. Mr. Kearns went on clarifying that based off of what the applicant told me, upon issuance of the building permit, he did not look further into it because he was not aware the applicant was going to totally reconstruct and demolish the structure. He finished identifying that if he had been made aware, he would have provided the applicant with the necessary process to receive approvals and that would have been issued identified on any future building permit description.

Mr. Gardner asked if there were any other interim building inspections done between the date when it was issued and when the stop letter was given in November, to which Mr. Zepp answered he went by a couple of times, and no work had been started. Mr. Gardner clarified that would have been in 2015, to which Mr. Zepp stated the summer of 2015.

Alderperson Mrozek asked when the work actually began on the project. Mr. Anderson stated the removal of the damaged roof had started late in the fall of 2014 due to weather and that he was doing the work himself, but was unable to complete the work until the following summer. Mr. Anderson stated he had his original note that he had when he walked into the Building and Inspection office, which basically is in his comments provided. Mr. Anderson specifically identified that he asked questions, and stated that in fact his last question to him as he had noted was that he had not opened

up the walls of the garage because he could not at this point and he could not get to them because of the collapsed roof area. Furthermore, Mr. Anderson stated he had specifically asked if he finds additional damage or problems beyond having to repair the northwest corner of the structure, is there any additional permits or requirements needed. Mr. Anderson then proceeded to read a quoted answer from Mr. Kearns stating, "No additional permits or requirements as long as the original foot print is not altered, and the garage is grandfathered." Mr. Anderson clarified that that is a direct quote from Mr. Kearns, and he fully understood that he was replacing a flat roof with a pitched and gabled roof, and that this was not just a patch job, this was a replacement of the roof because the roof no longer existed. Mr. Anderson then repeated that multiple times stressing that fact, and apologized if Mr. Kearns does not remember the conversation, but he has his notes on the conversation and what was told to him. Mr. Anderson then stated if he failed to understand, he does not know what to say other than he needs a tape recorder. Lastly, Mr. Anderson reiterated he asked the question if he needed to do additional work, what was needed, and said he was told nothing, no other permits or requirements were needed by the Community Development Office.

Bob Woehr asked Mr. Anderson, you stated that is a direct quote of what Kyle Kearns told you on June 13, 2014, to which Mr. Anderson stated that is correct. Mr. Woehr asked, did you stand there and take notes at the time, to which Mr. Anderson stated he noted that on his page, what he told me. Mr. Woehr then asked, that piece of paper you are holding in your and sir, you are telling me that you wrote made those notes on June 13, 2014 and you retained them. To which Mr. Anderson stated correct. Mr. Woehr then asked what other notes did you take on that day sir other than what is there, to which Mr. Anderson stated that is the main thing that he took note wise that he wrote down, all the questions he felt he needed to know are here, replace flat roof collapsed, repair the footing, replace sliding barn door with overhead door, raise level of the east wall, what of any other permits or requirements are needed if I find problems with other wall damages.

Mr. Woehr then asked Mr. Kearns if he recalled any of those questions being asked. Mr. Kearns stated he recalls none of them, and typically his answer if any of them would have come up, especially with regards to foundation and electrical, would have been to issue a separate permit for any sort of electrical, foundation, etc. which would require plans to be submitted. Mr. Kearns went on to say that if any of that would have come up, he would not have issued that permit that day, that would have required Jim Zepp or the other building inspector to review, because that is outside of his review purview.

Alderperson Mrozek asked stated that in listening to some of the testimony that was given, she realizes that when reviewing this, we also have to look at state statutes and its application to the law. She then asked Mr. Kearns and director Michael Ostrowski if, in their experience with in the issuance of permits, have they had similar situations with someone coming in where an assumption has been made and wrong or incorrect information provided. Alderperson Mrozek added that communication is always the key to everything, and both parties understand what you are going in with and what you are leaving with, because the community is not as well versed with statutes and ordinances. She followed up by stating it should be said that this is what you are getting your permit for and if you start touching anything else, you need to come back here. Again, she questions if the inspection department has had similar experiences where people have been issued a permit with miss-communication and then they start tearing down things where they should not have, or is this a really isolated case.

Director Ostrowski answered it is not all that common, but it does happen. He further explained, people get into projects and they sometimes find out there is more work that needs to be done then what was

originally expressed in the permit. There is the condition within the permit itself with work being done, and often when people get into that situation, they contact the building inspector and explain the situation and the building inspector goes out and reviews that before they proceed with additional work.

Mr. Gardner asked staff if a permit is issued in error, that is issued totally in error, the inspector or person who issued the permit just got it wrong, what is the resolution of the problem like that, and is the city bound by that staff persons error. City Attorney Beveridge answered that while he has been sitting here, he has been reading a case where a village had sought an injunction against a county from building a land fill transfer station based on some sort of error in zoning between the village and the county. It appears the county had invested a little bit over a million dollars, or awarded a contract over a million dollars and in doing so, the county sought to have the villages complaint dismissed on the basis of equitable estoppel which is the concept that would kind of get at what you are suggesting. The court held that an entity, municipality, which acts and enforces the zoning code cannot be equitably estoppeled from enforcing it, however courts may take equitable principals into consideration in rendering decisions in those types of cases.

Mr. Gardner stated that the board of appeals is a quasi-judicial body, and the flexibility is not as great as if it is if it was a municipal body. In cases that he his familiar with and what was just read, even if the city did grant the permit in error, the city is still not stopped from enforcing the ordinance. He went on to further state that just because you allege that a permit was issued in error, it does not necessarily mean that the person that did the work based on the error gets to do it, a law is still a law. He is not taking sides on whether it should be or shouldn't be, but that is basically what the law says, that even if the permit was issued in error, that the person does not have the right to build something that is in conflict with the city's ordinance.

Alderperson Meleesa Johnson asked a question for Director Ostrowski that lends itself to the discussion of verses looking at a variance on a zoning ordinance or rather looking to a conditional use permit.

Mr. Bob Brush asked if the total cost of the project would have any bearing on what was accomplished to replace a flat roof with a gabled roof on a garage for $8,000. Mr. Gardner asked the question in a different way in that is $8,000 a reasonable cost for replacing the roof, or would that suggest that he is doing more than replacing the roof. Mr. Zepp pointed out that you have to remember you are going from a flat roof to a gabled roof, to which Mr. Gardner confirmed that it seemed reasonable. Mr. Gardner then stated should the city have noticed such an extremely high cost for doing just a roof. Mr. Brush stated that he was wondering whether taking down the walls could have been interpreted to come under that $8,000 amount. Mr. Kearns stated that we as staff can't objectify the applicant's or contractor's costs, and can't say that is what it is going to cost or we have seen these permits before and you need to adjust your numbers. Mr. Kearns did state that residential permit fee increase after $8,000.

Director Ostrowski explained there is a comment made about conditional uses and variances, which was also noted in the staff report. He went on to clarify there is a section in the zoning ordinance that talks about a Traditional Neighborhood Development District, which is created to allow property owners who may not meet current setbacks, buildings that were constructed long ago, before our zoning code came into place, to add on to homes, as long as they meet certain other setback parameters that are established by ordinance, see page 42 of 45 in the staff report. He then explained that starts the Traditional Neighborhood Development District, and added if you look under section 3 on page 43, it will talk about the required setbacks that you can be reduced to for construction of those areas within the

Traditional Neighborhood Development district. Director Ostrowski then described for a garage, you would still be required a 15 foot rear yard setback, however, the interior side yard could be reduced down to 4 feet if a conditional use permit is pulled and approved by the Plan Commission and Common Council. That was not the case in this instance, but furthermore a detached structure can be 3 feet off of the side yards and 3 feet off of the rear yards, or if they go through a Traditional Neighborhood Development ordinance, it could go down to 1 foot on each side. Director Ostrowski summarized identifying a detached structure could be constructed on this lot.

Mr. Gardner asked how far apart the structures have to be to in order to be classified as being detached. Director Ostrowski stated typically that determines with a firewall rating, usually 10 feet between the principal structure and the detached structure, however, it can be reduced depending on the firewall rating on the drywall that is constructed. Mr. Zepp added it can be down to 2 feet. Mr. Gardner summarized that if the structure, the garage was detached, if can be 2 feet away from the primary structure if constructed according to the proper fire codes etc. Furthermore he went on to state it could be as little as 1 foot set back from the side yard and 1 foot setback from the rear with council approval and again that is a legislative decision verses a judicial decision which has different standards. Mr. Gardner continued stating that with the exception of the powerlines, an overlying setback exists allowing for reduced setbacks, however the garage may not be able to be built 1 foot from the side yard because of the powerlines.

Director Ostrowski stated the overlay district was discussed in the staff report to identify another mechanism that doesn't render this property useless in terms of being overly burdensome to comply with ordinance regulations. He continued by referencing the standards of review on page 18 of 45 and stated in granting a variance, all standards of review shall be met. Three main standards exist. Director Ostrowski began by identifying the first, unnecessary hardship due to conditions unique to the property and no harm to public interest. He then described the difference between variance requests, citing for an unnecessary hardship to be present for an area variance, the hardship in existence would unreasonably prevent the owner from using the property for permitted uses, which in this case is a single family residential use. He continued stating that the individual is allowed to provide proper maintenance to the structure, such as re-roofing and re-siding, however, when the walls are removed, it is completely removed, it is considered an addition or new structure, and therefore, that structure is required to meet the ordinance setbacks. Director Ostrowski cited this instance in terms of the hardship that is present, and stated the applicant could look at constructing a detached garage which would allow him the capability of storing stuff inside, although staff does not typically review the applicant's ability to store stuff inside. He continued stating that with any unnecessary hardship that is present or is not present staff reviewed the applicant's ability to construct a garage on that property and still use it as a single family residence, and therefore, with the findings staff did not feel that the standard of review was met. Director Ostrowski then described standard two, the hardship is due to the physical limitations of the property rather than the circumstances of the appellant. He stated the applicant had a structure on to the building, they removed it at their choice, therefore, that nonconforming structure essentially loses status and is considered to be new construction and therefore would need to meet ordinance requirements. He added that typically staff looks for a unique property characteristics such as something on that property that is preventing the applicant from conforming to ordinance setbacks. He then provided an example where a property that is very shallow because a steep slope in back exists cannot construct a house on a slope, and the applicant can't typically meet the front yard setback of 25 feet. Director Ostrowski clarified that this is an internal lot and while it is smaller than the standard 8,000 square feet, the city provides a mechanism for structures in those areas to request a conditional use permit to seek relief with a reduced setback. He summarized further identifying in this instance, it is

a common lot, while it may be smaller than the current ordinance standards, and setbacks could be met on that lot. Director Ostrowski next identified the third standard of review, the variance will not harm public interest. He clarified that many comments were made earlier regarding the improvement in aesthetics of the garage, however, he stated that that opinion is of the current owner and this garage is going to run with the property, not the owner. Thus, he summarized that the variance is granted for the property and any new owners coming into that area would be subject to that garage being there. He then added that having the garage closer to the side lot line may present challenges for maintenance and aesthetic purposes, and comments from the neighbor immediately adjacent to this individual say it is negatively impacting. Director Ostrowski summarized his point by stating staff did not feel this standard was met as it could potentially pose a harm to the public interest in having it constructed that close to the property. Lastly, he clarified the difference with a detached structure and an attached structure, which includes the height of the garage as well. Furthermore, he described that when it is attached if falls within the principal structure height requirements, whereas detached has a maximum height of 15 feet, thus, the height of the structure would likely be lower with a detached structure. Director Ostrowski stated because the standards of review were not met, staff recommended denying such variance.

Mr. Gardner asked if staff spoke with the owners, Mr. Anderson and Mrs. Anderson, about the possibilities of a detached garage and going through the conditional use permit process as opposed to going through the Zoning Board of Appeals. Director Ostrowski answered he has not spoken with the applicants. Mr. Kearns stated yes, initially there was an email sent that he has record of that he can provide copies identifying the Traditional Neighborhood Overlay District and the reduced setbacks going through the conditional use process. Mr. Gardner stated that they chose to come through this process as opposed to the conditional use process. Mr. Kearns stated both options were provided to them in separate emails on separate days.

Mr. Woehr stated that was basically his question, that $250 is $250, $250 for a conditional use, or $250 to the Zoning Board of Appeals. He then asked Mr. Anderson if there was a reason that he decided to go through the board of appeals as opposed to a conditional use, to which Mr. Anderson stated yes the reason he did that is because the suggested standalone structure or the 15 foot back lot limitation would create a structure that would be slightly smaller than this garage. Mr. Anderson added that it would make it almost useless and beyond storing a lawn mower and snow blower and a couple of tools would not give sufficient space to store all of the items that would be normally kept or were kept in that garage.

Mr. Gardner clarified that if the applicant could keep the same walls on the north and east side at the same location, but you had to separate the building 2 feet from the house, wouldn't that be the same size garage? Mr. Anderson stated we run into a minor problem in that there is an outside stairwell to the basement that was part of the original west wall and he was told by inspection office that the measurement would have to come from that stairwell. He added that the edge of that stairwell extends approximately 10 feet into the structure of the garage. Mr. Gardner clarified that a distance between the detached new structure and the stairwell would be required. Mr. Anderson stated correct, and he was told the stairwell was considered part of the house. Alderperson Mrozek clarified that the stairwell would be the starting point of the 10 feet, and asked for confirmation, to which Mr. Anderson stated correct. He continued explaining on a photo the stairwell that is attached to the house, and was informed by the building inspector's office that any measurements for a detached garage have to come from that point, because it is considered part of the house. Mr. Woehr asked from your contemporary notes, is referred to in the Community Development Office, to which Mr. Anderson stated his meeting

was with Kyle and the Building Inspector to discuss what options he had to continue the project. They told him what the option was, which was the detached and he was told where the requirements were for those measurements. Mr. Gardner stated asked for clarification from staff as to what would the garage size be if it was detached, and what this garage size would be if it was detached. Mr. Kearns answered it would depend on if he puts up a fire wall or not, Mr. Gardner stated let's assume a firewall, and asked for a definition of what a fire wall. Mr. Zepp stated it would have to be a ¾ hour rated wall, which is 5/8 inch drywall on either the garage wall or house wall and if there is a door in either one of those walls, it has to be a 20 minute rated door. Mr. Gardner continued identifying that typically a wall between a garage and a single family house in newer construction is what is being discussed, drywall and studs, to which Mr. Zepp confirmed. Mr. Gardner continued, asking for clarification on measurements for a detached garage. Alderperson Mrozek asked is it from the stairwell, or is it from the exact existence of the back of the house. Mr. Zepp confirmed where the stairwell was and then stated it is the closest point of the house, so it would be from the stairwell. Mr. Gardner confirmed the measurement is two feet from the stairwell. Director Ostrowski stated you could probably subtract about 10 feet from the garage and make it 18 feet wide. Mr. Gardner then asked can you still wrap around the stairwell, Director Ostrowski continued, answering if the house was completely flush. Mr. Gardner stated right now the garage wraps around the stairwell, and let's assume that the owner would want to continue to wrap around the stairwell, therefore, the detached garage would be two feet from the stairwell to the north and to the east, and two feet from the house. Mr. Gardner continued identifying instead of being 28 feet wide, the garage would be 26 feet wide, and instead of being 20 feet minus the stairwell, it would be whatever the stairwell width minus two feet. Mr. Zepp confirmed and stated that would require a conditional use permit. Mr. Gardner confirmed that would be a conditional use request which is a legislative decision verses a Board of Appeals Decision which is quasi-judicial.

City Attorney Beveridge asked to briefly return to what he said earlier and stated the Supreme Court, State of Wisconsin 2005 Case Village of Hobart vs Brown County, quoted themselves from an earlier case, binding municipalities to every representation made by subordinate employees would produce severe results from the municipalities endless litigation and would ensue over the words of those employees, important municipal decisions would be delayed pending resolution of those suits. Attorney Beveridge clarified the city cannot be stopped from enforcing the code on the basis of verbal representations that may or may not have occurred. Mr. Gardner clarified that what is being said is even if a permit issued in error, and even if assurance is given by city representatives to applicants, the applicants are still bound by law to meet the standards and the city is not stopped from enforcing those standards even if everybody agrees, which is not the case here, but in the event if everybody agrees that the city had issued the permit in error. Attorney Beveridge stated there are two different questions there. He went on to say if the question is can statements that were made stop the city from enforcing the code, the answer is no, if a permit was actually issued saying you can do x and your proceed to do x that would be a different question so he is not exactly sure what the answer of that would be, but those are definitely two different things. Mr. Gardner stated the case is probably more analogues to the first than the second because in this case the building permit says re-roof. Attorney Beveridge stated that would be for the board to determine.

Alderperson Mrozek stated to be real clear with this, because it is sitting in front of us at the Board of Zoning Appeals, there is a totally different standard that we need to apply to making this decision verses if the Andersons would have opted to go through the council for a conditional use permit. To which Director Ostrowski stated that is correct, and furthermore identified there are certain standards of review for the Board of Zoning Appeals, and there are also 16 standards for a Conditional Use permit to be issued. She then asked for confirmation that the options were presented to the applicant, to which

Mr. Anderson stated not in full detail, he was just given the two choices and the cost of what the two were. He then added that basically he was told both ways he would be absolutely denied, and quoted the gentle man that he had the conference with, "don't even think about applying." He continued stating staff did not give him all this information, and that this is more information now on what the choices he had than at the time when he made the choice. Mr. Gardner asked given what the applicant knows now, Mr. Anderson, would he prefer to go to the common council, or prefer to have a decision by this board, to which Mr. Anderson stated at this point, he is still unsure, and questioned if he had gone the other route, what additional process is required. Alderperson Mrozek stated that from being on the council, the staff can present finding and facts and recommend approval or denial, but that doesn't mean that the council can't look at things further and collectively disagree with staff. She stated that at this level, different standards need to be applied, even with some of the testimony that was given, which is the hard part because of where this lies now. Lastly she mentioned, this is not in front of the council, or at the staff level, we are at a totally different level here.

Alderperson Johnson asked if the Andersons could request a conditional use permit even if this committee denies the variance, under the assumption that course of action is still open to them. Director Ostrowski stated they can still pursue that course of action.

Mr. Zepp addressed Mr. Anderson and stated he recalls from the conversation he and Kyle had with him that the applicant was not interested in going for the conditional use option, because the applicant wanted the garage to be attached and he did not have the rear yard setback of 15 feet. Mr. Kearns confirmed that conversation and stated there was an email sent on December 10th that outlined all of the Traditional Neighborhood Overlay District standards and the process and application upon which the applicant moved forward and filled out the application to apply for the TND district overlay. Mr. Kearns then stated that when the applicant came in and had the site plan with him that showed it was attached and did not meet the 15 feet rear yard setback, staff, including Jim discussed options further, as it would not qualify for the TND overlay district because it is attached and does not meet the attached rear yard setback of 15 feet. Mr. Kearns continued stating the only other option then would be for a variance, with which was provided to the applicant and which he submitted, and the conditional use permit fee was transferred to the variance application.

Mr. Korger stated he was at the house yesterday and he does not understand all the technical things being brought up for the past hour and a half, it is quite a simple result. He then asked the applicant for clarification as to the location of the original and existing walls, to which Mr. Anderson stated that is exactly the original footprint of structure. Mr. Korger then clarified his only question he had regarding meeting the requirements for the powerlines, to which Mr. Anderson stated yes. Mr. Korger continued stating that was the only thing concerning him, and he feels the garage fits in with the neighborhood and the roof a fits in with the house roof. Furthermore he stated he doesn't understand all this technical talk and thinks the board should go ahead and approve so the applicant can finish the building. He added that the home is older and the ordinances were made umpteen years ago and new ordinance exist now. He described not understanding why there is so much technical talk and review, when the applicant is replacing the original walls and putting a roof on the garage, which fits within the area. Mr. Gardner stated like always he agrees with Mr. Korger. Mr. Korger then stated that he understands the city regarding the law, which is why the applicant is here, but the law were can be bent and it should be for the applicant.

Mr. Gardner asked staff, in regards to the Gollata's letter, if they know if the power line setback is met. Director Ostrowski stated staff doesn't know, but typically what he has heard, but cannot confirm

currently, is 10 feet from the electrical is required, as was required for a previous commercial sign variance request. Mr. Gardner clarified his understanding that a different entity is responsible for the regulation which is same thing for the easement, and added that is their responsibility to enforce, but not necessarily our problem today.

Alderperson Johnson asked for clarification, regarding the original footprint and whether it is vertical and horizontal, or is it just vertical. Director Ostrowski stated it depends on what they are asking for and if it cannot be expanded, then you probably couldn't go higher. Alderperson Johnson stated with shore land zoning there is some discussion on original footprint and where buildings can be, but it also includes vertical height.

Mr. Gardner asked if the board is ready for discussion amongst the board only. Mr. Gardner then stated it seems to him there are two issues before the board, and summarized them quickly. The first he stated is one regarding a legislative decision verses quasi-judicial, and the board is a quasi-judicial body which is what staff has identified and why they recommend denial as the standards of hardship are not met. Mr. Gardner went on to state the board has three options, approve with conditions, deny based on lack of meeting hardship or the other two standards, or table the request. He mentioned adding tabling as it occurred to him of the fact that if the owner decides that a better approach would be to apply for a conditional use permit, legislative route, tabling would then hold this decision if that route is pursued. Mr. Woehr interjected, asking for clarification between tabling and postponement, to which Mr. Gardner stated they are the same whatever the technical used. Then Mr. Gardner said that postponement or tabling the decision would allow for the applicant to look at other options. Alderperson Mrozek commented that based on the conversation with the applicant, this is the first they are hearing of the options, and then she stated her opinion of letting the applicant have time to digest the information and option. Mr. Gardner then asked if there are any other comments from the board.

Mr. Korger motioned to approve the 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).

Motion failed for lack of a second.

Motion by Alderperson Johnson to postpone the request from Peter & Vicki Anderson for a variance to allow a reduced side-yard setback of three feet and reduce rear-yard setback of four feet for an attached garage at 1321 Phillips Street (Parcel ID 2408-32-1035-11) to allow the applicant to pursue solutions outside the Zoning Board of Appeals quasi-judicial system; seconded by Mr. Woehr.

Alderperson Mrozek stated it is her understanding that if we were at this level, since we have not made a motion to approve it, the other option was a motion to deny it, which means the applicant only alternative would an appeal to the Circuit Court. Mr. Gardner stated they would have two options, in his assumption, they would have the option to pursue the conditional use permit, or they could appeal this board's decision to the Circuit Court. The city attorney asked a moment to review information. Director Ostrowski explained in terms of going to the Common Council for conditional use it would be for detached only, because they don't meet the rear yard setback for attached structures.

Mr. Korger asked if it will go to the Common Council, to which Attorney Beveridge stated the decision of whether to grant the variance does not go to the Common Council. Mr. Gardner confirmed, and stated if they want to appeal the decision, that would be in Circuit Court, but if we postpone, no decision, then

they would have time to go to common council for a conditional use permit. He went on to say if common council denies the request they can come before the board again for the variance. Alderperson Johnson stated she thinks this speaks to a larger issue which Mr. Korger had mentioned regarding the communication of information in the inspection department that relates to the one thing that people value most financially, their homes. She then described going around the neighborhoods and finding many of these garages, including hers which is detached. Alderperson Johnson then added that the City has to figure out a system that still maintains the character of our community and provides the safety. Mr. Gardner commented that in defense of the city, alderpersons have the ability to created ordinances, such as the Traditional Neighborhood Development District which was designed with just that in mind. He went on to say if in fact the standards contained in the Traditional Neighborhood Development District are not appropriate or should be amended, they can be amended to address some of these sorts of issues legislatively as opposed to judicially, which the distinction is being made.

Mr. Korger does not know what is complex about this, and stated if you drove around the neighborhood and went into the property this is the right thing to do, but just driving around is not going to give you an answer.

Mr. Gardner stated a motion is on the floor to postpone the decision, along with a second, meaning a vote is needed.

Mr. Woehr asked if we postpone the decision does that say in advance forever and ever, or does the board have to recall the Board of Zoning Appeals. City Attorney Beveridge asked the chair if he would allow a brief recess for him to do some research and provide some consultation, before the vote is taken. Mr. Gardner stated clarified for the attorney to review the date for the postponement, to which Attorney Beveridge answered correct and asked for a 5 minutes recess. Mr. Gardner asked if the person making the motion would like to put a date on the postponement, to which Attorney Beveridge stated he would really prefer to take a few minutes to look more specifically if any time restrictions exists for this body to issue a decision once postponed. Mr. Gardner asked the board for confirmation to the board members agreed.

City Attorney Beveridge returned stating the statute specifies that the board shall provide a decision in a reasonable time. Mr. Gardner stated he would suggest that this board would take it up again after the April or May Plan Commission meeting. Director Ostrowski stated April would be difficult due to publishing requirements. Mr. Gardner confirmed postponement until after May, allowing the board to review in June if necessary. He then asked if a conditional use is granted by the common council, would it take formal action on the part of the applicant to withdraw the request, would the board have to meet again to act on it, or deny it if not withdrawn, to which Attorney Beveridge answered he would tend to agree, unless withdrawn, the board would have a legal obligation to render a decision within a reasonable time limit and certainly the time frame contemplated is reasonable.

Mr. Gardner then recommended to tenatively schedule a meeting in June, which would give the applicant some decision time to resolve the issue using the alternate conditional use permit approach. Mr. Gardner proceeded to call for a vote. Mr. Woehr asked if there was a specific date or just the latter portion of June, to which Mr. Gardner replied and clarified that staff would contact all the members to determine an appropriate date for the meeting.

Roll call:

Yeas: Mrozek, Woehr, Gardner, Johnson

Nays: Korger

Motion carried 4-1.

Mr. Gardner stated the action is being postponed with a tentative date taken up in the latter part of June, and he would hope that the applicant and the city could get together and work something out.

Mr. Korger stated tell everybody to go over there and look at it and drive in the driveway. Mr. Gardner commented that in the book that the members were given, it talks about ex parte communications. He went on to say it means that you are not supposed talk to each other or the applicants or anybody about the board action items outside of the boards meeting. He clarified if visiting the property, and he confirmed doing so, not to knock on the door, also which he confirmed not doing, and not to talk to the applicant about their application. He clarified the reason for this is because the board acts as judicial, and if those conversations occur, board members shouldn't vote on it the item. Mr. Brush asked about having permission to enter property, to which Mr. Gardner answered yes, but also talking about the item should not occur to the applicant or neighbors and friends. City Attorney Beveridge concurred and stated it would be similar to a litigant before a court having communications with the judge outside of the court room or the presence of the opposing council. Mr. Gardner reminded the board members to remember they are judges, not council people, but are judges.

Mr. Anderson stated at this point he will give anybody on the board permission to come onto his property and look at the structure and what is in question. You do not need to speak with me, you have my full permission to look at what is in question. City Attorney Beveridge cautioned against that and stated these proceedings are meant to be open to the public, and that means that the public has a right to know what information the members of the board are basing their decision on. He continued stating he can't imagine the general public being invited onto the property to make those types of investigations and because of that he would strongly caution the board to limit it to photographs and information, as well as testimony that is presented at the proceedings. Mr. Gardner summarized that if board members wanted to visit the site they should do so under the public meeting. Attorney Beveridge stated that would be allowable. Mr. Gardner stated he would let the board judge that to the best of their abilities. Mr. Woehr asked before adjournment, for confirmation that there were only 3 exhibits, to which Mr. Gardner confirmed as the Gollata's letter, the permit, and application, and Mr. Anderson's written prepared statement.

4. Adjourn.

Meeting Adjourned at 2:46 PM.

Exhibit 1 – Provided at the meeting to the Board Members – Mr. and Mrs. Gollata's Letter

Paul A and Barbara M Gollata
1901 Main Street
Stevens Point WI 54481

Director of Community Development
Stevens Point City Hall
1515 Strongs Avenue
Stevens Point, WI 54481

23 March 2016

For the attention of Mr Michael Ostrowski

Dear Sir

RE: Proposed 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) by Peter and Vicki Anderson

We are writing in connection with the above variance application and strongly object to the variance. Building codes address many of society's most important concerns, including health and public safety. The proposed variance would place the new garage very close to power lines and a transformer that supplies the electricity to the neighborhood. This is a safety concern.

We have spoken with a Wisconsin Public Service Engineer, and they referred us to the National Electrical Safety Code. A line service crew for WPS had already reported concern with the height of the structure and proximity of it to the utility lines and transformer prior to our call. We have been told WPS will be contacting the home owner and the city with their concern. We were also told the safe distance between the structure and the utility lines is approximately eight feet horizontally. If the variance is approved, the horizontal distance to the utility line would only be three feet. This would not be considered a safe distance. We have had lightning strikes on the power transformer, so having the structure as being proposed is a fire hazard.

We also have concerns that the value of our property could potentially be decreased. Current city building code is that a garage can be seven feet from a lot line when attached to the home. Allowing a three foot setback puts the garage very close to our property. The previous garage was nine or ten feet tall.

We believe that the current guideline for the height of a garage is 17 feet. It appears the partially built structure is about 24 feet and is taller than the home on the lot. The structure is casting a shadow on our side yard (the only yard area we have) and blocking sunlight to one corner of our house. The structure appears even taller due to the fact that the elevation of the garage floor is almost two feet higher than our yard elevation. Furthermore, the roughed in size of the garage door opening appears to be nine feet tall. City ordinance is the garage door height be eight feet tall or less. The size and proximity of this proposed structure would be unsightly in a downtown neighborhood that tries to be aesthetically pleasing and desirable

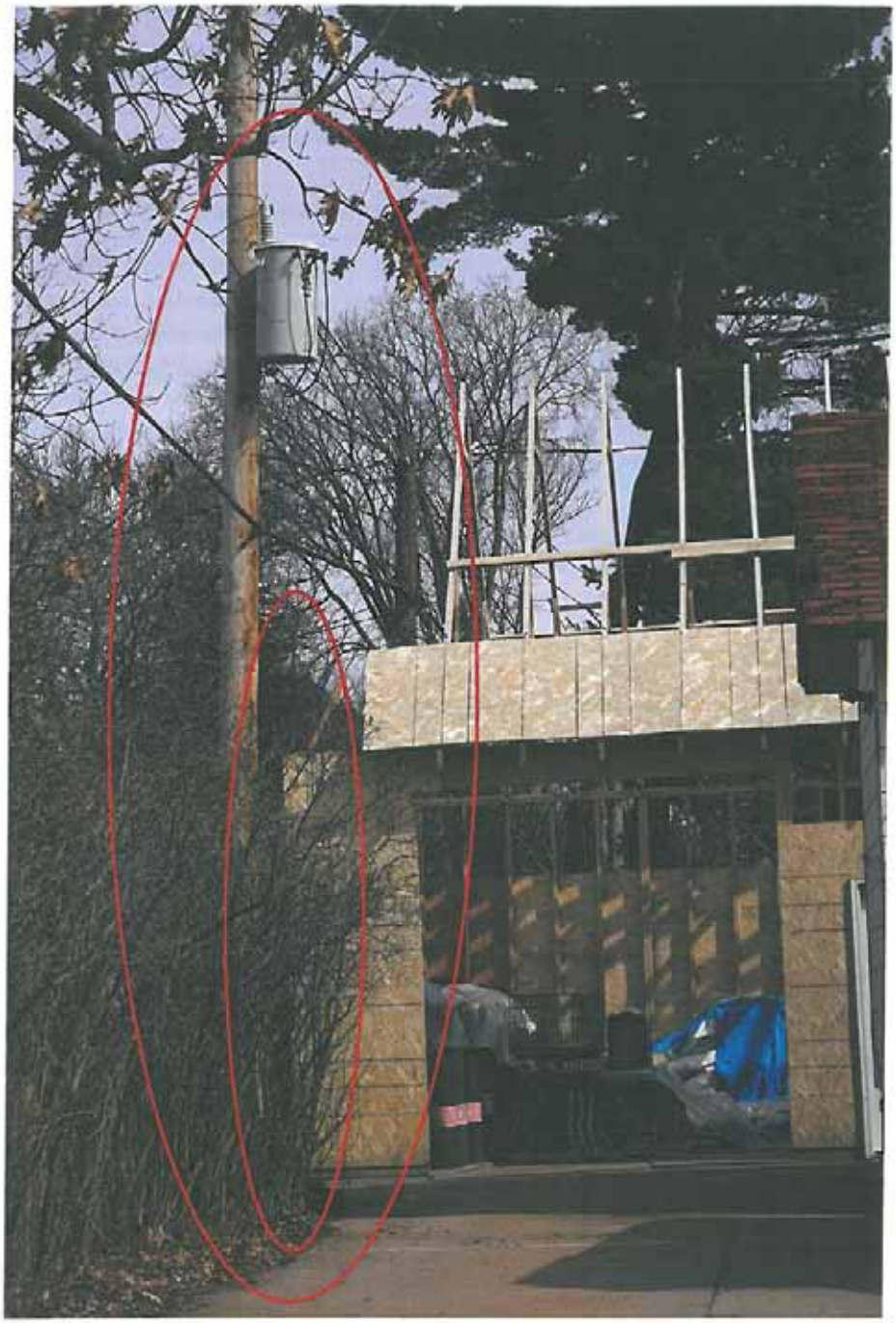
Please consider the variance application carefully with thought and concern for the safety of others in the neighborhood as well as the aesthetics of the proposed building whose dimensions would be out of character with the areas historic nature.

Please inform us of the decision made by the City of Stevens Point Zoning Board.

Please review included pictures

Thank You,

Paul and Barbara Gollata



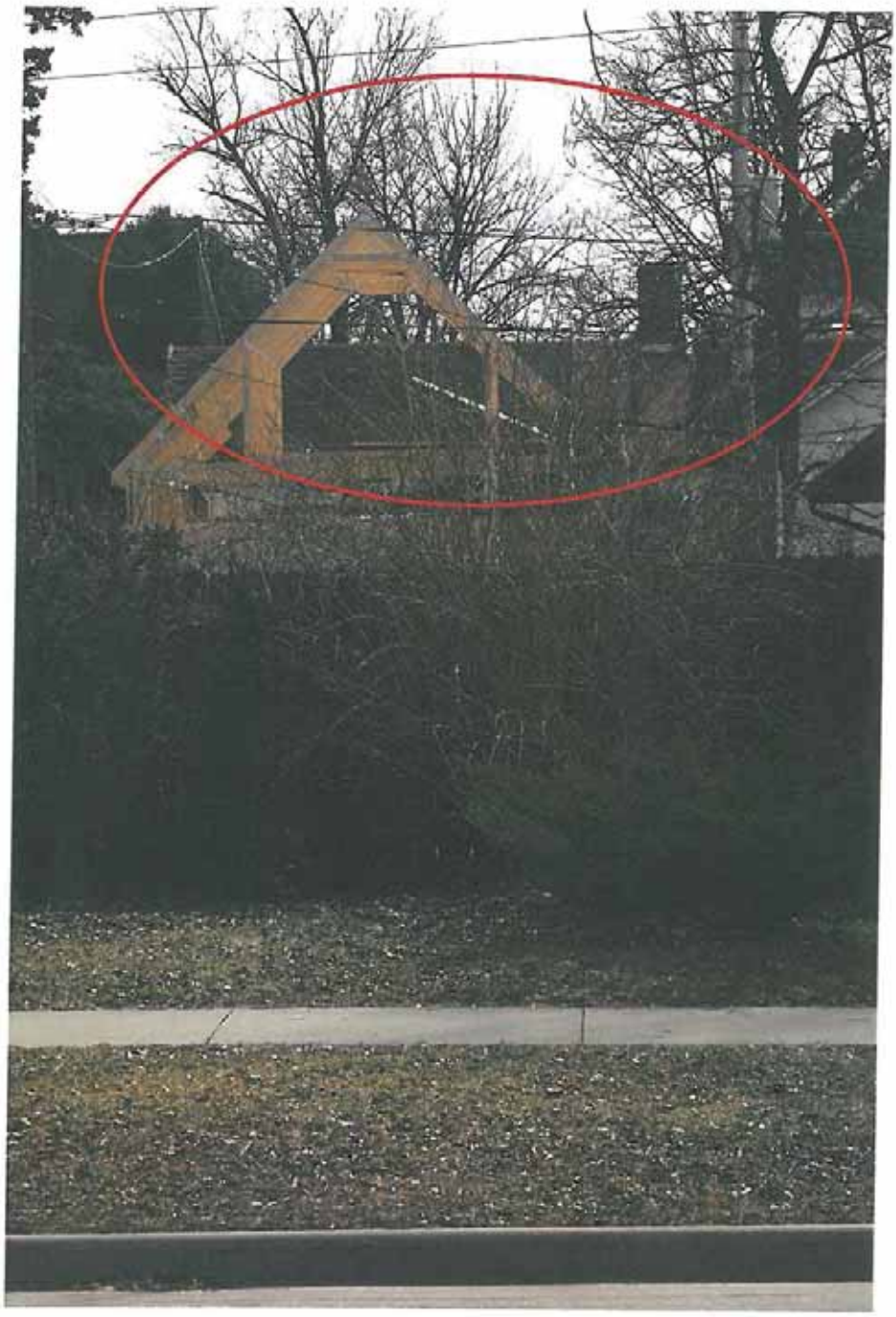


Exhibit 2 – Provided at the meeting to the Board Members – Peter Anderson's (Applicant) Summary

Steven Point Zoning Board of Appeals

March 29, 2016

1. Thank you for your time.
2. Brief history of the project
   a. Snow damage to the flat garage roof.
   b. Put temporary tarping on to prevent further damage (used Black& white plastic). (can be seen on page 17)
   c. Researched the cost to repair or replacement.
   d. Went to the Building Inspectors office to find out what was needed for permits and any restrictions.
3. Building Inspector Office
   a. Spoke with Kyle Kearns on 06-13-14
      i. Explained in detail about the damage to the flat roof on my garage having collapsed due to snow, causing a large portion of the roof to collapse.
         1. (Kearns asked the desk staff to pull up an aerial view of the house & lot we reviewed the image and what I was requesting.) (see page 16 & 17)
      ii. Need to remove and replace the entire roof deck structure and would like to replace it with a gabled and sloped/pitched roof so it would match the rest of the home. This would require me to match the height of the three walls. (The east wall would need to be extended up about 4 feet to match the west wall.)(see page 33)
      iii. Explained that there was needed repair to the northwest corner and north wall as it had settled and damaged the garage floor slab. That I want to repair the footing to bring back to grade and support the new roof. (Needing to take down about half the wall, west wall is the garage door opening.) (see page 31)
      iv. Also would like replace the heavy sliding barn door style garage door with a standard roll up door. (see page 29, 30 & additional photo)
      v. What if any other requirements and/or permits are needed if I find problems with the walls when I open them up.
         1. Kearns response: "No additional permits or requirements as long as the original foot print is not altered, the garage is grandfathered."
         2. "Would you like to get the permit?" I said yes and that I would be doing the work myself. (also noted on the permit form)
4. Based on that information I started plans to order the materials and remove the damaged roof and open the walls to make the need height adjustments.
5. After opening the walls I found that the studs were crippled together (close-up page 40 & 41), the sill plate had rotted to the point where you could push a screw drive into it., the top plate on the east was had Sevier water damage and rotting, (see page 31, 35, 36, 37, 38, & 39.)
6. After having completed over half of the reconstruction Mr. Zepp then showed up to tell me that I cannot complete the repairs or reconstruction of the garage as it does not meet the new setback requirement and is new construction. That I needed to apply for a variance. (yet later it is called reconstruction)(see letter sent to neighbors.)
7. I then went to the Building Inspector office and Kyle Kearns gave me the forms to fill out and charged me $250.00 fee. Several weeks later I get a call telling me that I have to fill out a different request form for hearing.

8. Report to Committee Question on Statements
    a. In Staff Recommendations
        i. It is stated that "staff has not found that a hardship, due to physical limitations of the property exists." (page 15) Then staff states on page 20 "...exists midblock on a 7,832 square foot lot. The lot is a nonconforming lot as 8,000 square feet is not provide,..." the staff is showing that there is a physical limitation to the property.
        ii. "Reconstruction of the attached garage at this location could harm the public interest," On page 18 first line of the zoning ordinance is: "to promote the health, safety, morals, prosperity, aesthetics and general welfare of this community." It harms the owner and the neighborhood in it reduces the value of the home thus losing prosperity, expose personal property to theft and damage causing health and safety issues.
    b. "The neighboring property owner adjacent to the proposed garage is subject to decreased aesthetics." The staff is speaking for the neighbor. They did not confer with neighbor as they would have been informed that the home owner had talked to him, (Ron MacDonald is here) and he approved of the building repairs.
    c. "... the proposed attached garage jeopardizes the characteristics of the surrounding neighborhood and adjacent properties..." Replacing the flat roof with a sloped roof and replacing barn door with rollup door the garage characteristic blend into the characteristics of the home and the neighborhood. All homes in the area have garages so by denying the reconstruction the characteristic of the neighborhood is being changed.
9. Conclusion
    a. The hardship is caused by the building Inspector Office, because they gave wrong information on which the project was based on.
    b. Kyle Kearns failed to completely fill in the description of the project on the permit. He only noted on the permit "Re-roof and gable repairs". How can you repair a gable on a flat roof? This caused the building inspector to have the wrong information about the project. He also failed to inform the inspector about the complete project and the information he gave the home owner.
    c. The report to this committee shows a strong negative view against the home owner who is only trying to maintain his home.
    d. An argument was written by Judge Joanne Kloppenburg who is currently on the Wisconsin Court of Appeals. She wrote that all structures are to conform to current codes within municipalities. Her opinion has been struck down by the current Supreme Court.

Exhibit 3 – Provided at the meeting to the Board Members – Peter Anderson's Building Permit & Application

RESIDENTIAL PERMIT

Issue Date: June 13, 2014

PROJECT DESCRIPTION: Re-roof and gable reconstruction

PROJECT #	(715) 346-1567	www.mygov.us
ROTH-14-0234	Inspections	Permits

City of Stevens Point, WI

1515 Strongs Avenue
Stevens Point, WI 54481

(715) 346-1567 Voice
(715) 346-1498 Fax

LOCATION

1321 PHILLIPS St.
Stevens Point, WI 54481

LEGAL

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

CONTRACTOR

Owner
Owner
Stevens Point, WI 54481
(715) 346-1567 Phone

OWNER

Peter J Anderson &
HAFKEMEYER VICKI L
1321 Phillips Street
Stevens Point, WI 54481

AVAILABLE INSPECTIONS

- Residential Building (required)

INFORMATION

Cost (Total Project)	8000
Parcel Number	2408-32-1035-11
Zoning District	R3 - Two Family

FEES TOTAL = $ 40.00

Residential (Principal) Building	$ 40.00

READ AND SIGN

I understand that I am subject to all applicable codes, statutes and ordinances and with the conditions of this permit; understand that the issuance of the permit creates no legal liability, express or implied, on the state or municipality; and certify that all the above information is accurate. I expressly grant the building inspector, or the inspector's authorized agent, permission to enter the premises for which this permit is sought at all reasonable hours and for any proper purpose to inspect the work which is being done. I understand that I shall contact the inspector(s) at the appropriate times throughout the project for the required inspection(s). The applicant must sign the permit for the permit to be valid. A copy of the signed permit and approved plans must be on site at all times. The project address must be clearly posted at the job site. Please call (715) 346-1567 for all inspections. Work may proceed in accordance with this permit only after applicable state approvals are filed with the Community Development Department's Inspection Division.

Owner/Agent Signature — Date: 13 June 14

ISSUED BY

06/13/2014

Tax Parcel #_____ Permit #_____

CITY OF STEVENS POINT PERMIT APPLICATION

City Inspection Dept. - 1515 Strongs Ave. - Stevens Point, WI 54481
(715)346-1567

DATE: 13 June 14 Zoning: _____

Property Owner/Address/Phone: Peter Andersen
1321 Phillips ST 715-341-7973

Property Address: 1321 Phillips ST.

R#1-57338
6-13-14
$40

BUILDING: Cost (Labor & materials): $8,000 Permit Fee: _____
Plan App. Fee: _____ Park Fee: _____
Description of Work: Replace Flat Roof w Gabled on Garage
Contractor: Self Tele. No. _____
Address: _____
Mobile/Cell No. _____ Contractor Certificate No. _____ Exp _____
Qualifier No. _____ Exp _____

ELECTRICAL: Cost (Labor & materials): _____ Permit Fee: _____
Description of Work: _____
Contractor: _____ Tele. No. _____
Address: _____
Mobile/Cell No. _____ Master License No. _____ Exp. _____
City License No. _____ Exp _____

PLUMBING: Cost (Labor & materials): _____ Permit Fee: _____
Description of Work: _____
Contractor: _____ Tele. No. _____
Address: _____
Mobile/Cell No. _____ Master License No. _____ Exp _____

HVAC: Cost (Labor & materials) : _____ Permit Fee: _____
Description of Work: _____
Contractor: _____ Tele. No. _____
Address: _____
Mobile/Cell No. _____ License No. _____ Exp _____
State HVAC Qualifier No. _____ Exp _____

Total Cost Of Project: 8000 Total Permit Fee: 40

The applicant agrees to comply with the Wisconsin Uniform Dwelling Code, Wisconsin Commercial Building Code, Wisconsin Plumbing Code, National Electrical Code and other Municipal ordinances and with the conditions of this permit; understands that issuance of the permit creates no legal liability, express or implied, on the Department or Municipality; and certifies that all the above information is true and accurate. **Do not start work/enclose wall or ceiling until Building Inspector is notified.**

Print Name of Owner/Applicant: Peter Andersen
Signature of Owner/Applicant: Peter Andersen Date: 13 June 14

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

Applicant(s):
- Peter & Vicki Anderson

Staff:
- Michael Ostrowski, Director mostrowski@stevenspoint.com
- Kyle Kearns, Associate Planner kkearns@stevenspoint.com
- Jim Zepp, Zoning Administrator jzepp@stevenspoint.com

Parcel Number(s):
- 2408-32-1035-11

Zone(s):
- "R-3" Single and Two Family Residence District

Master Plan:
- Residential

Council District:
- District 3 – Ryan

Lot Information: 2408-32-1035-11
- Actual Frontage: 89 feet
- Effective Frontage: 89 feet
- Effective Depth: 88 feet
- Square Footage: 7,832
- Acreage: 0.180

Current Use:
- Single Family Residence

Applicable Regulations:
- 23.01(1), 23.02(1)(e), 23.02(1)(h), and 23.05

Request

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).**

Attachment(s)

- Property Data
- Application
- Site Plan
- Photographs

Findings of Fact

- 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.

Staff Recommendation

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.

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 varaince 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 occuring:

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 ordinanc emay 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.*

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

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

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

Below is an analysis of the standards of review.

Standards of Review

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1) An unnecessary hardship is present.

Analysis: For an area variance, 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; 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."*

Findings: If the variance 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

Actual Frontage	89.0
Effective Frontage	89.0
Effective Depth	88.0
Square Footage	7,832.0
Acreage	0.180

PERMITS

Date	Number	Amount	Purpose	Note

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

Description	Units
Additional Plumbing Fixtures	1

ATTACHMENTS

Description	Area
Open Frame Porch	144
Enclosed Frame Porch	112
Concrete / Masonry Patio	180
Enclosed Frame Porch	280

Information considered accurate but not guaranteed.

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
communitydevelopment@stevenspoint.com
http://stevenspoint.com

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 Kearns		

APPLICANT/CONTACT INFORMATION

APPLICANT INFORMATION		CONTACT INFORMATION (Same as Applicant? ☐)	
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? ☐)		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

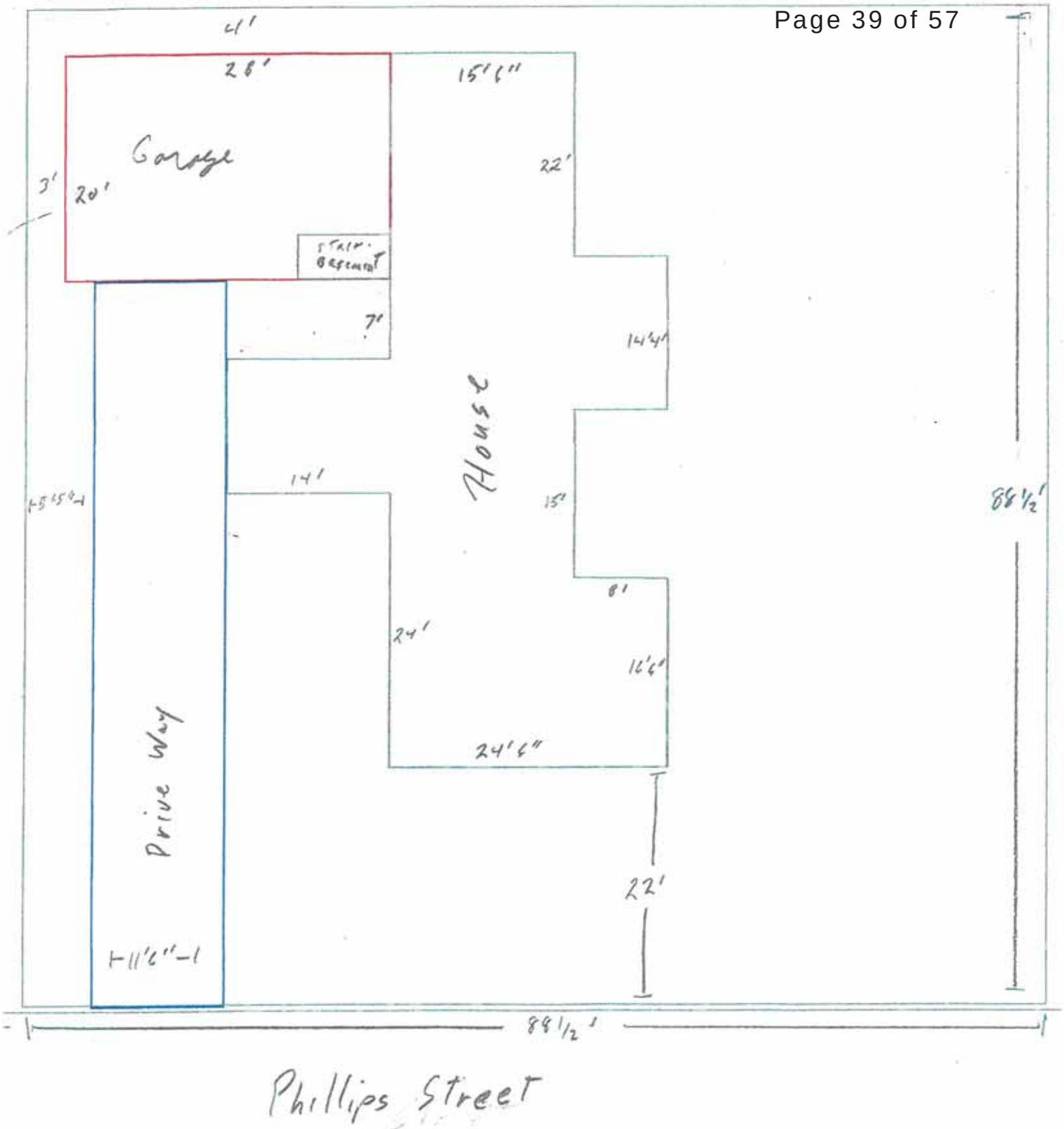
EXHIBITS

Owner Information Sheet	☐	Additional Exhibits If Any:
Maps (vicinity, zoning, floodplains, wetlands others as requested by staff)	☐	
Site Plan (designating primary, side, and service street frontages)	☒	
Photos of property, building, etc.	☒	

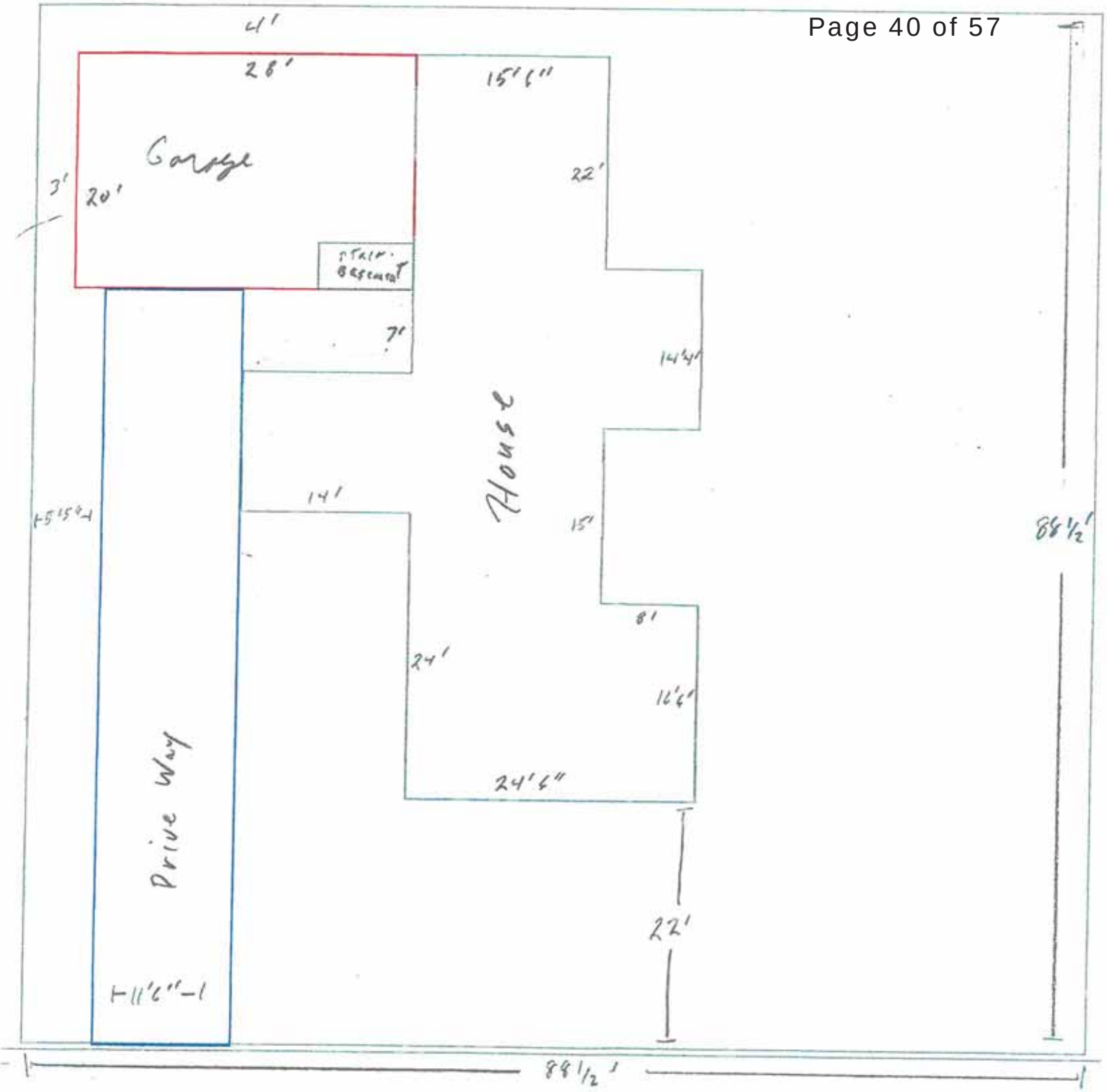
CERTIFICATION AND SIGNATURE

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.

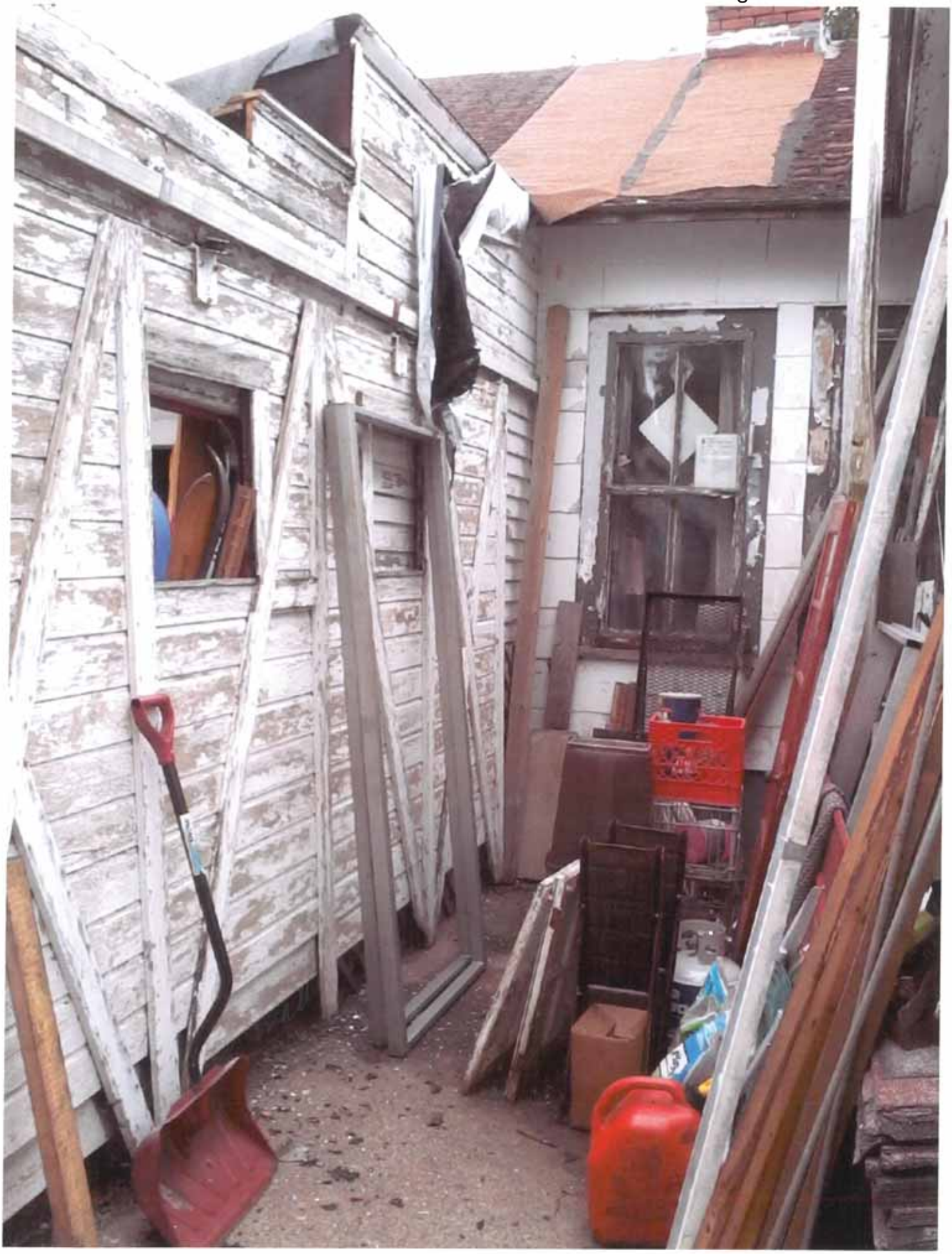
Signature of Applicant	Date	Signature of Property Owner(s)	Date
	1/15/16		1/15/16



Phillips Street



Phillips Street



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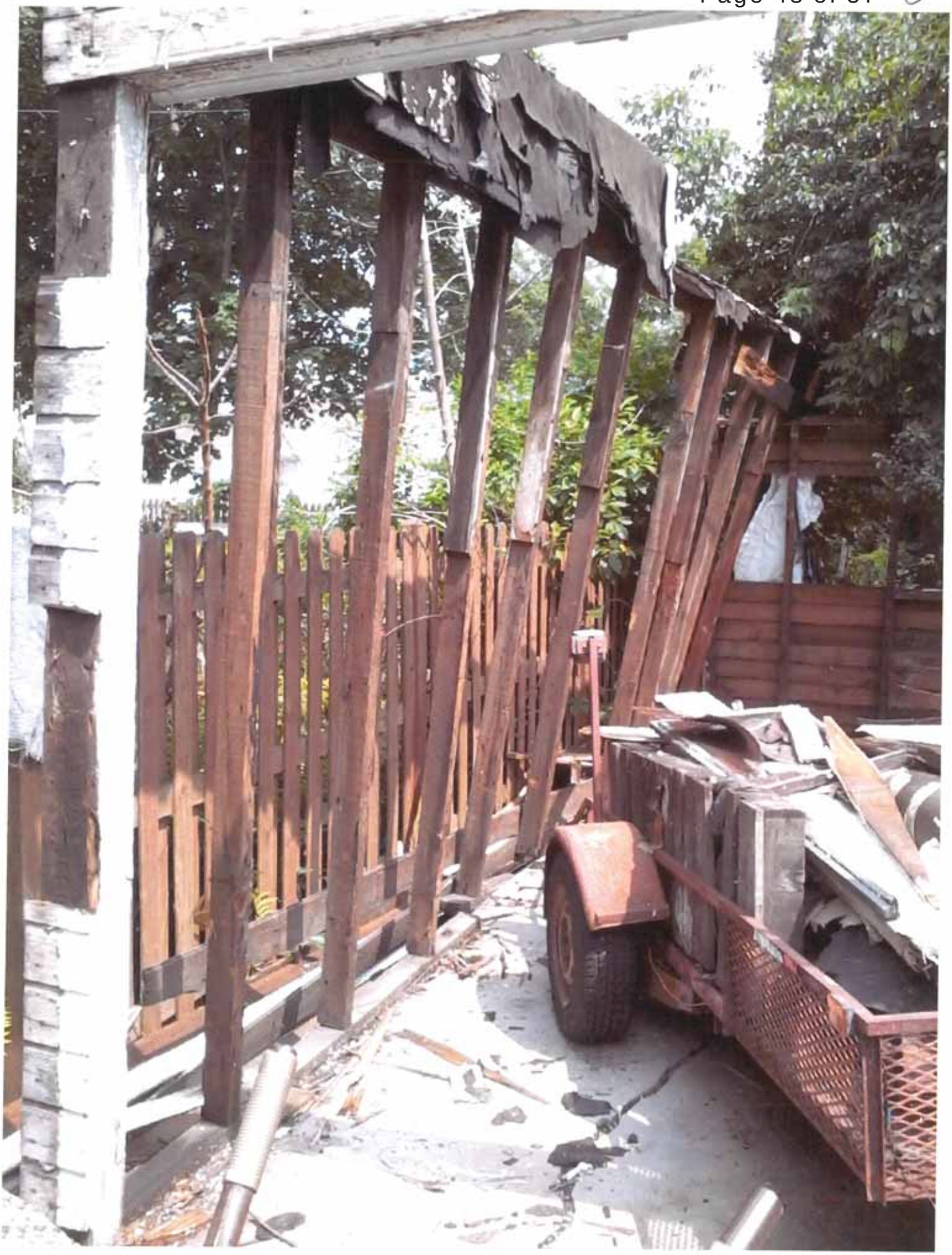
EZ ACCESS
570-9373
CAUTION

(4)

(6)



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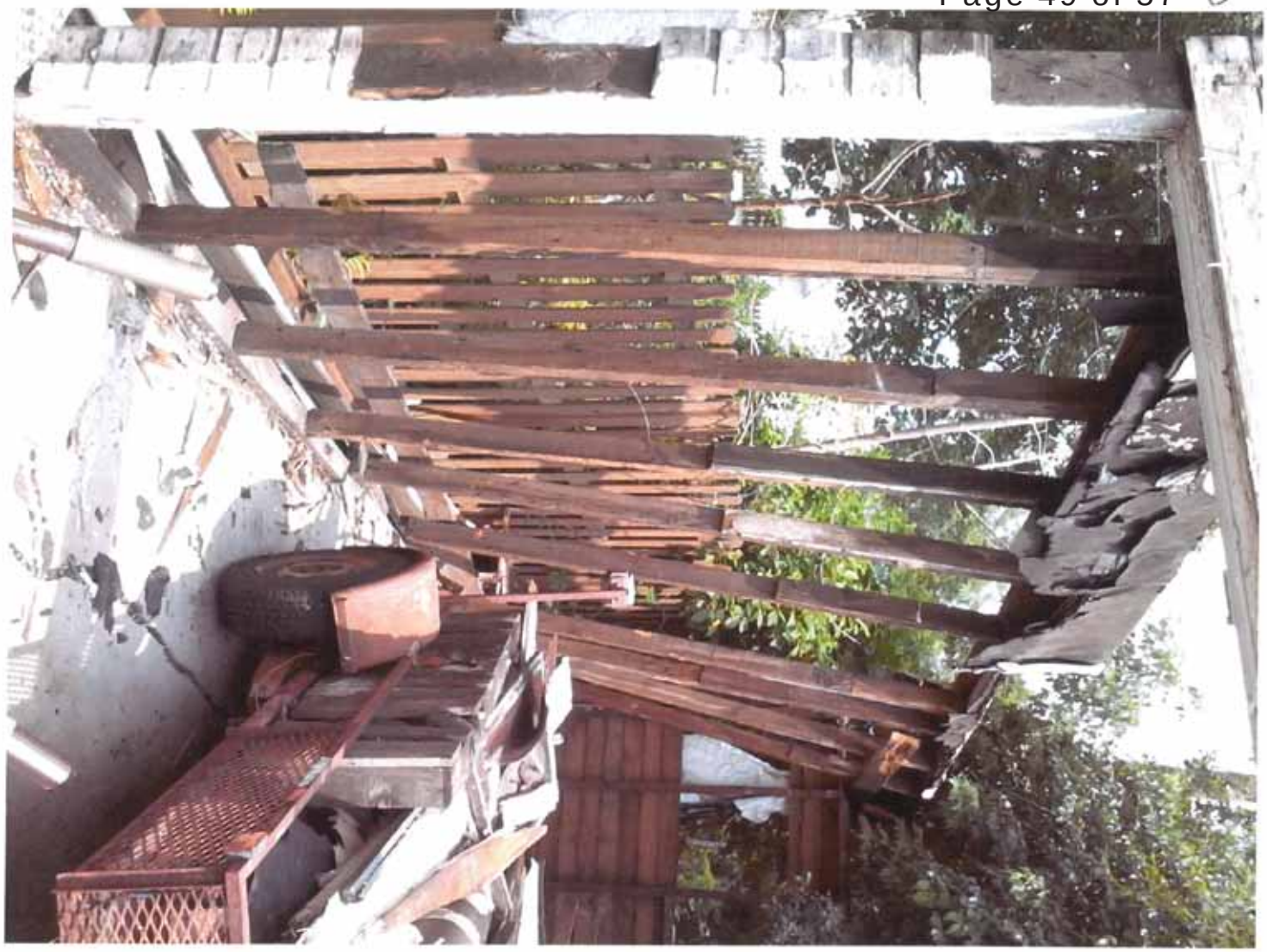

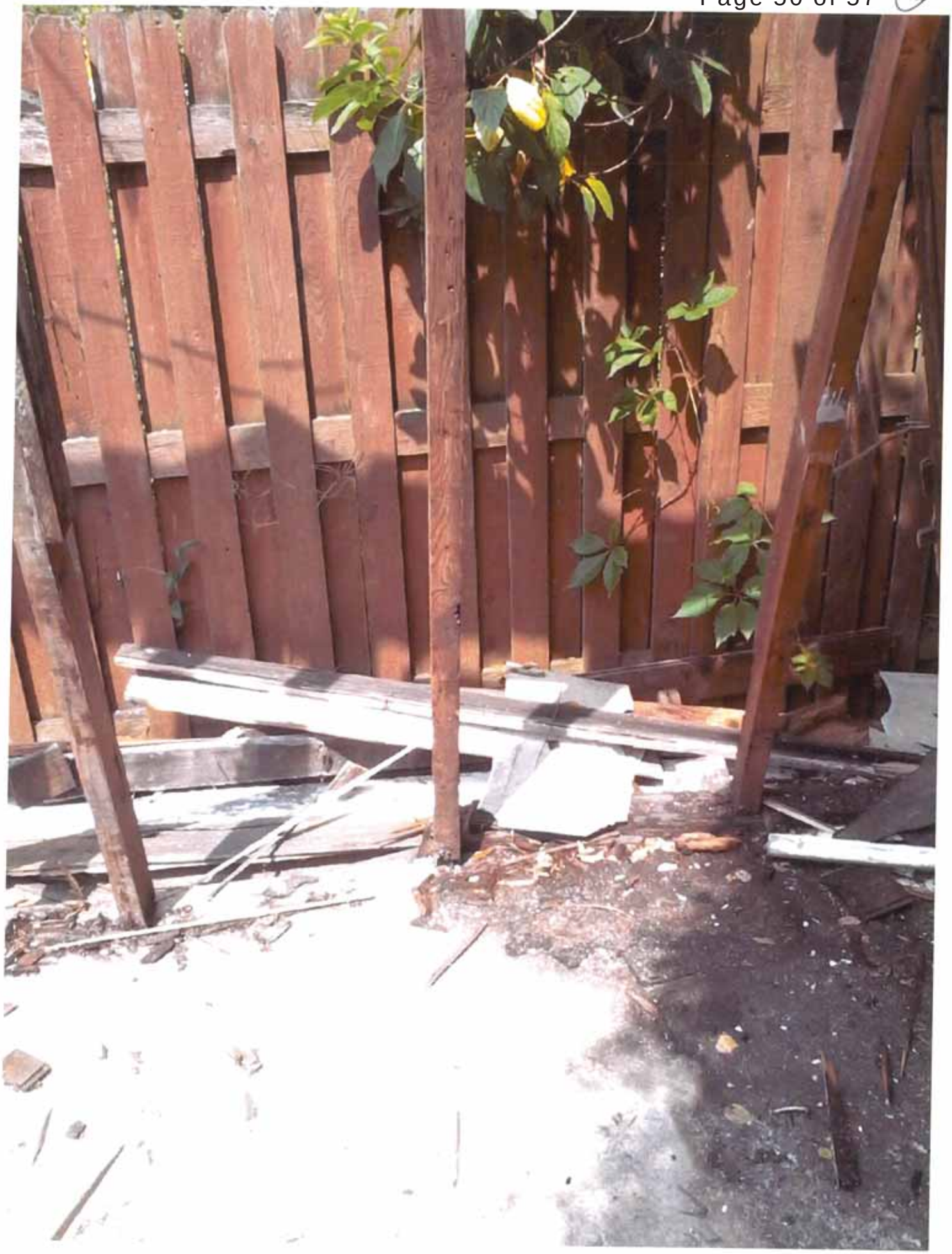

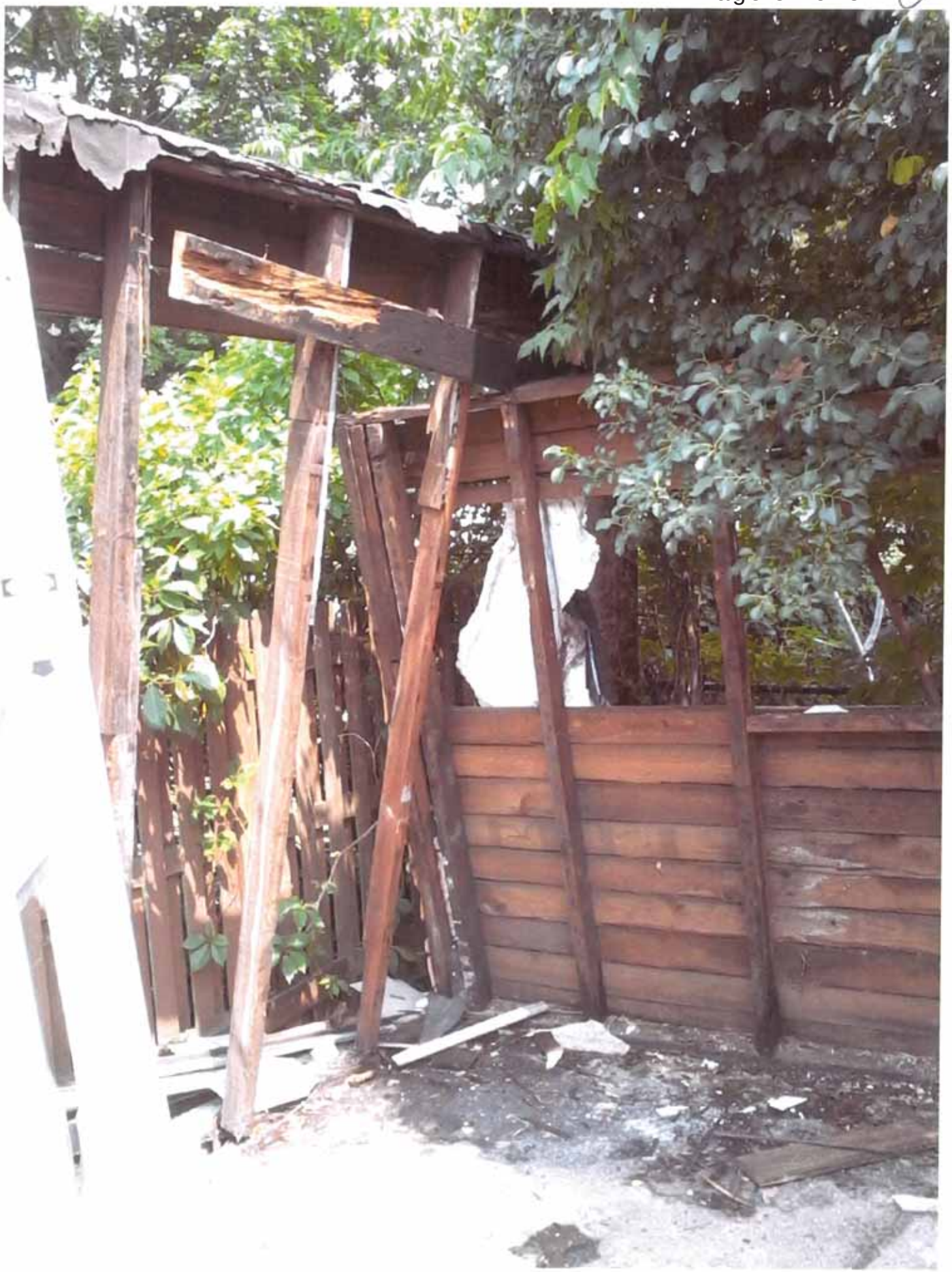

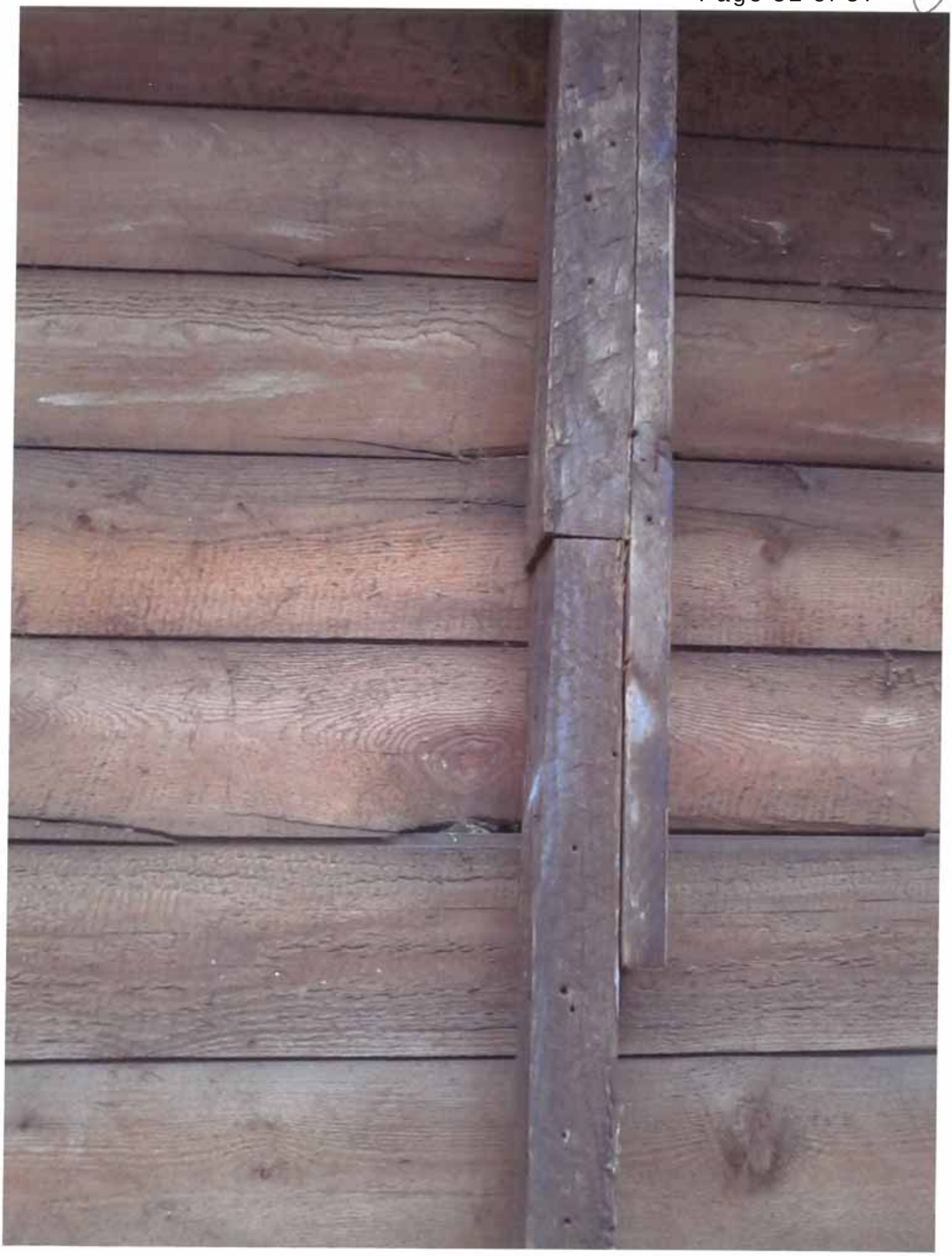

13

	3,300 s.f. + 100 s.f./bdrm.								
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 1/4 of Section 4; NE 1/4 of Section 5; S ½ of Section 29;SE 1/4 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