



Zoning Board of Appeals

Thursday, October 22, 2020 at 7:00 p.m.

Meeting Available on Zoom.us at the following meeting number:

<https://us02web.zoom.us/j/87854782561>

In lieu of participating via the Zoom website, the alternative telephone only dial-in is:

Telephone number: 312-626-6799 Meeting ID: 878 5478 2561

"Due to the COVID-19 Pandemic and in recognition of the declaration of states of emergency by the President, the Governor and the Village President, this meeting will not be open to the public in an in-person capacity. Those wishing to observe may do so by downloading the ZOOM app to your personal computer, tablet or smart phone and utilizing the above information to join via either computer or telephone. If you wish to communicate in written format with the Board you may send written comments to the Village Clerk at 235 Hickory St. Pewaukee, WI 53072 or you may email the Clerk at csmith@villageofpewaukee.com."

1. Call to Order and Roll Call
2. Approval of Minutes
 - a. September 14, 2016
 - b. April 20, 2017
 - c. June 26, 2017
 - d. July 27, 2017
 - e. October 5, 2017
 - f. July 18, 2019
3. Public Hearing
 - a. To consider a Request of Scott and Jennifer Immel as applicants and property owners, to construct a new detached accessory garage structure at 161/163 Main Street in a location that is closer to the side lot line (i.e. 5 feet proposed vs 10 feet minimum required) and taller (i.e. 22 feet proposed vs 15 feet maximum permitted) than the Ordinance provides for.
4. New Business
 - a. To consider a Request of Scott and Jennifer Immel as applicants and property owners, to construct a new detached accessory garage structure at 161/163 Main Street in a location that is closer to the side lot line (i.e. 5 feet proposed vs 10 feet minimum required) and taller (i.e. 22 feet proposed vs 15 feet maximum permitted) than the Ordinance provides for.
 - b. Discussion and Possible Action to Determine Future Meeting Date (if needed).
5. Adjournment

All interested parties please note: Section 40.137 of the Village Code states "The concurring vote of four (4) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any

such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation there from. The grounds of every such determination shall be stated.”

Note: Notice is hereby given that a quorum of a Village Committee and/or Commission may be present at the Zoning Board of Appeals meeting, and if so, this meeting shall be considered an informational meeting of that Committee or Commission and no formal action of that Committee or Commission shall occur. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. To request such assistance, contact the Village Clerk at 262-691-5660.

Dated: October 16, 2020
Casandra Smith – Village Clerk

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
September 14, 2016**

1. Call to Order and Roll Call

Attorney Blum called the meeting to order at approximately 7:06 p.m.

Roll Call was taken with the following Zoning Board of Appeals members present: Doug Joers, Susan Seagrist, Theresa Opie, and Casey Smith; Tim Gund, Matt Haydak were absent.

Also Present: Village Attorney, Mark Blum; Village Administrator, Scott Gosse; Village Planner, Mary Censky; Village Clerk, Chaz Schumacher.

a. *Election of Interim Zoning Board of Appeals Chairman*

Attorney Blum asked for nominations for an Interim Zoning Board of Appeals Chairman.

Casey Smith moved to nominate Theresa Opie as Interim Zoning Board of Appeals Chairperson, seconded by Susan Seagrist. Motion carried 4-0.

Attorney Blum began by giving a background of how the Zoning Board of Appeals works and the burden of proof is on the applicant to prove that the 4 variances being requested are appropriate. Blum stated that if the Zoning Board of Appeals is inclined to grant any of the variances, they will need to answer the conclusions of law for each and there will have to be a concurring vote of all 4 members present. Blum reviewed the variance requests being presented for consideration.

2. PUBLIC HEARINGS

- a. *To consider a request to construct a single family dwelling with a deck on the front elevation of the home where Section 40.436(c)(6)b.1 of the Land Development Code provides that decks may only be allowed on the rear and side elevations; and, which dwelling is proposed to be setback 18.29 feet from the Park Avenue base setback line where Section 40.209(a) of the Land Development Code provides that the minimum setback should be 35 feet; and, which dwelling is proposed to be setback 2.48 feet from the Highland Avenue base setback line where Section 40.210(1) of the Land Development Code and Section 40.419(e) combine to provide that the minimum setback should be 4.3 feet; and, which dwelling is proposed to be situated within the vision clearance triangle of 50 feet x 50 feet as set forth in Section 40.424 of the Land Development Code. (Applicant/Property Owner – Crowne Stephens Contracting, LLC – Stephen M. Schwartz)***

Michael Hawn - attorney representing the applicant Stephen M. Schwartz – Mr. Hawn presented the requests to the Zoning Board of Appeals stating the requests are simply a renewal of what has previously been granted twice before. Hawn stated it is the same project and the variance requests are the same. Hawn stated the previous dwelling had a front deck and was closer to the rear lot line, the front on Park Avenue was the same. He stated the footprint has not changed, the new building would be further from the rear lot line and closer to the neighboring lot line on Park Avenue. Hawn stated that neighbor is present and is okay with the proposed building. The deck proposed for the front of the house is in keeping with other homes on the street and is a practical issue as there is no room in the rear due to the size of the lot, what is being proposed is very modest and straight forward. Hawn stated the applicant is asking for a renewal of what has already been approved 2 times previously. Hawn submitted

documents into the record. S. Seagrist asked about the previous dwelling. Hawn stated there was no saving it. D. Joers referring to the applicant's statement, asked if the lawsuit that affected its ability to be built the last 2 years has been settled. Hawn stated yes, they are hoping to settle it. Stephen Schwartz, applicant, stated his intent to build the structure and then sell the property.

Richard Benkstein – 384 Park Avenue – Mr. Benkstein stated he is in favor of the proposed structure and thinks the proposed deck on the front is beautiful. Benkstein stated the previously granted variance was challenged by a lawsuit and the structure was not built. He stated, beginning with his home and moving east, that out of 20 homes, 8 have decks on the front, and going up Highland Avenue, there are 2 homes that have decks.

John Nurse – 387 Park Avenue – Mr. Nurse stated he lives across the street from 388 Park Avenue and he is definitely in favor of the proposed structure and that it would be nice to have a house on the vacant lot.

Erik Fabyan – Attorney representing Pat Nauth – questioned the ability of the applicant to demonstrate hardship. He referenced a similar case of Snider vs. Waukesha County Zoning Board of Appeals in which the applicant wanted a deck and was denied the variance request because even though the applicant stated the structure was designed with the deck in the proposed location because that was the best place to place it, the court stated that even though the applicant felt it was best there, the ordinances do not allow it. Fabyan questioned 388 Park Avenue's unique condition that creates a hardship, if a smaller house was proposed, the deck could go on the rear. Fabyan states that the application presented tonight is not the same application or foot print that was presented in 2014 to the Zoning Board of Appeals. Fabyan states the Village had an opportunity to change its vision triangle ordinance and chose not to. He stated the proposed structure will affect neighbors and will obstruct Ms. Nauth's view. He states there were no given justifications that had anything to do with unique conditions to the property and he is asking that the Zoning Board of Appeals deny the variance requests.

Pat Nauth – 112 Highland Avenue – Ms. Nauth read into the record, her statement regarding the application for 388 Park Avenue. She stated the proposed structure would negatively impact the neighbors and destroy her view of the lake and significantly reduce her enjoyment of her home and its value. She stated the structure would have a negative impact on public safety and welfare.

Discussion followed.

Attorney Blum stated for the record to show the following documents were submitted into evidence:

- a. The original application containing the following
 - handwritten note for 4 variance requests
 - narrative statement
 - plat of survey
 - proposed layout with grading plan
- b. 6 – 8x10 photos showing neighboring properties' front elevations
- c. 1 – 8x10 photo showing a rendering of the proposed structure
- d. 7- 3x5 photos showing the previous structure
- e. Google Map picture from 2012 of the previous structure at 388 Park Avenue
- f. 3-page narrative written by Village resident, Pat Nauth, an adjacent property owner
- g. Plat of Survey of the proposed structure, a replicate of the Plat of Survey included with the original application

- h. Copy of the Findings of Fact of the previous variance(s) granted
- i. Copy of a letter on older Village of Pewaukee letterhead
- j. Copy of Village Planner's staff report

Chairperson Opie closed the Public Hearing at approximately 8:24 p.m.

3. New Business

- a. *To consider a request to construct a single family dwelling with a deck on the front elevation of the home where Section 40.436(c)(6)b.1 of the Land Development Code provides that decks may only be allowed on the rear and side elevations; and, which dwelling is proposed to be setback 18.29 feet from the Park Avenue base setback line where Section 40.209(a) of the Land Development Code provides that the minimum setback should be 35 feet; and, which dwelling is proposed to be setback 2.48 feet from the Highland Avenue base setback line where Section 40.210(1) of the Land Development Code and Section 40.419(e) combine to provide that the minimum setback should be 4.3 feet; and, which dwelling is proposed to be situated within the vision clearance triangle of 50 feet x 50 feet as set forth in Section 40.424 of the Land Development Code. (Applicant/Property Owner – Crowne Stephens Contracting, LLC – Stephen M. Schwartz)*

Attorney Blum explained the perimeters of the vision triangle as defined in the Village ordinances and that structures are restricted there. Planner Censky stated a map has been provided that shows the vision triangle and what's inside of it. T. Opie stated if anything is built there, there will be an obstruction, the old one did and anything new will. C. Smith asked about the pillars for the deck and if the Plan Commission thought they were insignificant. Censky stated the presentation to the Plan Commission was a different footprint where the only encroachment was the pillar. C. Smith stated now there is a house and a post. T. Opie stated the old house was had a porch and bushes that were just as far.

S. Seagrist moved, seconded by D. Joers to approve the variance from the Vision Triangle based on the survey map, the proposed structure is the same distance as the previous structure. Planner Censky stated her uncertainty regarding the survey map, the March 28, 2016 version has a setback of 45' the revised survey map has a setback of 35.5', the old house started back further. D. Joers stated previously it was just the deck and post, now it includes the house. Attorney Blum asked if the Board wanted to maintain its motion. **S. Seagrist stated no and withdrew her motion.**

C. Smith moved, seconded by D. Joers to deny the variance request from the Vision Triangle as the applicant has not demonstrated sufficient hardship. Discussion followed. **Motion failed on Roll Call vote 2-2; S. Seagrist and T. Opie voting Nay.**

T. Opie moved, seconded by S. Seagrist to approve the variance request from the Vision Triangle because no matter what is built on the property it will not meet the Vision Triangle clearance requirement. **Motion failed on Roll Call vote 2-2; D. Joers and C. Smith voting Nay.**

Due to lack of consensus the variance request from the Vision Triangle is denied.

T. Opie moved, seconded by D. Joers to approve the variance request for a dwelling setback of 2.48 feet from the Highland Avenue base setback line. **Motion carried on Roll Call vote 4-0.**

C. Smith moved, seconded by T. Opie to approve the variance request for decks on the front elevation of the home on both the first and second levels. Motion carried on Roll Call vote 4-0.

T. Opie moved, seconded by S. Seagrist to approve the variance request for a dwelling setback of 18.29 feet from the Park Avenue base setback line. Motion carried on Roll Call vote 4-0.

Planner Censky stated she feels she may have incorrectly stated a fact in regards to the 2 survey maps provided that have different dates. She stated the previous dwelling had the same setback on the northwest corner as what is proposed, with the previous dwelling was setback 35.5', the same as what is being proposed.

T. Opie moved, seconded by S. Seagrist to reconsider the original motion to deny the variance request from the Vision Triangle. Motion carried on Roll Call vote 4-0.

Discussion followed.

The original motion "to deny the variance request from the Vision Triangle as the applicant has not demonstrated sufficient hardship" failed on a Roll Call vote 2-2; with S. Seagrist and T. Opie voting Nay.

4. Adjournment

Doug Joers moved, seconded by Casey Smith to adjourn the September 14, 2016 Zoning Board of Appeals meeting. Motion carried 4-0.

Meeting adjourned at approximately 9:21 p.m.

Respectfully Submitted,

Chaz M. Schumacher
Village Clerk

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
April 20, 2017**

1. Call to Order and Roll Call

Clerk Schumacher called the meeting to order at approximately 7:00 p.m.

Roll Call was taken with the following present: Theresa Opie, Kris Tawil, Susan Seagrist, Casey Smith; Thomas Houck was excused and Douglas Joers had recused himself.

a. *Election of Interim Zoning Board of Appeals Chairperson*

T. Opie nominated herself as the Interim Chairperson. Nomination carried 4-0.

2. PUBLIC HEARINGS

- a. *To consider a request to construct a building (deck) replacement/addition at 485 Park Avenue, which building (deck) replacement/addition is proposed to be offset 64.19 feet from the ordinary high-water mark of Pewaukee Lake where an offset of 75 feet is required by Code. (existing building/deck offset from the ordinary high-water mark is 70.24 feet). Applicant – Property Owner Steve Krall in c/o Daniel Swinehart of Infinity Custom Builders LLC.***

Planner Censky provided a summary of the applicants request for variance. She stated there is a history of properties going before the Zoning Board of Appeals for similar requests. Censky stated the information provided by the applicant indicates a safety concern that necessitates a need for a deck with stairs.

Daniel Swinehart, owner of Infinity Custom Builders LLC, indicated that rather than climbing the railing during an emergency, stairs would create a more reasonable egress from the structure. He stated the neighbor to the north is within 53.4' of the high-water mark. The construction of the deck will be done to high standards and will match the colors of the home.

Steve Krall, property owner 485 Park Avenue, stated this would provide egress into and out of the home, he understands that a person can jump from the deck but he has an 11-month old and it would be difficult to do safely. On the lakeside of his home there is no way out in an emergency. Attorney Blum asked about the stairs and whether the design was for safety or aesthetics. Krall stated its mostly aesthetics, he will wants his home to look good and not piece-mealed.

Jennifer Krall, property owner 485 Park Avenue, stated she honestly wants to be out on her deck with a table, right now they can only have a chair. She feels it will look better, she would like to build the deck a little bigger than the existing one, the new one wouldn't be huge but they could at least get a table out there. She stated this would make her home safer and will increase its appealability for resale. She also wants to respect the sightlines of her neighbors.

Chris Tollefson, property owner 491 Park Avenue, stated he lives next to the applicant and he is not opposed to the deck.

3. New Business

- a. To consider a request to construct a building (deck) replacement/addition at 485 Park Avenue, which building (deck) replacement/addition is proposed to be offset 64.19 feet from the ordinary high-water mark of Pewaukee Lake where an offset of 75 feet is required by Code. (existing building/deck offset from the ordinary high-water mark is 70.24 feet). Applicant – Property Owner Steve Krall in c/o Daniel Swinehart of Infinity Custom Builders LLC.*

Attorney Blum explained the process the Zoning Board of Appeals follows in determining if the standards have been met for a variance request. Discussion followed.

S. Seagrist moved, seconded by C. Smith to approve the variance request for an offset of 64.19 feet from the Ordinary High-Water mark of Pewaukee Lake. Motion carried on Roll Call vote 4-0.

4. Adjournment

T. Opie moved, seconded by C. Smith to adjourn the April 20, 2017 Zoning Board of Appeals meeting. Motion carried 4-0.

Meeting adjourned at approximately 7:31 p.m.

Respectfully Submitted,

Chaz M. Schumacher

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
June 26, 2017**

1. Call to Order and Roll Call

Clerk Schumacher called the meeting to order at approximately 7:01 p.m.

Roll Call was taken with the following present: Thomas Houck, Kristine Tawil, Susan Seagrist, Douglas Joers, Alternate Patricia Stonger; Theresa Opie and Alternate Casey Smith were excused.

Also Present: Mary Censky, Village Planner; Mark Blum, Village Attorney; Val Anderson, Attorney representing the ZBA; Chaz Schumacher, Village Clerk.

Clerk Schumacher asked for nominations for chairperson. K. Tawil nominated Thomas Houck, nomination seconded by S. Seagrist. Nomination carried 5-0.

Val Anderson, attorney with Arenz, Molter, Macy, Riffle & Larson, S.C. and representing the Zoning Board of Appeals, introduced himself to the board and explained his purpose for attending.

2. Public Hearing

a. *There will be no public hearing at this meeting.*

The Zoning Board of Appeals must first consider and decide the issue set forth under "New Business" below. Once the issue is decided, a public hearing will be conducted at a subsequent meeting of the Board – on a to-be-announced date in July 2017.

3. New Business

a. *Consideration and decision of the scope of a hearing to be subsequently held with respect to the Application of Waukesha County Technical College, to-wit:*

Whether the subsequent hearing will be a de novo review and consideration of a request from Waukesha County Technical College for relief from the Zoning Board of Appeals from two decisions of the Village of Pewaukee Plan Commission of April 13, 2017, relating to hours of operation for an outdoor driving/training facility and related to means of sound abatement pursuant to Village Code Sections 40.134(1) and (3), 40.139 and Wis. Stat. Section 62.23(7)(e). (Applicant – Waukesha County Technical College)

Attorney Anderson stated briefs have been submitted to the ZBA from representatives for WCTC and the Village of Pewaukee Plan Commission. He stated if both sides are agreeable, the ZBA will hear from both parties' legal counsel representatives. Anderson stated that because the burden of proof with respect to the appeal is on WCTC, its representative would present first.

David Muth, Attorney with Quarles & Brady LLP, representing WCTC, reviewed his client's position that there should be a *de novo* review and why the ZBA should hear a *de novo* review.

Mark Blum, Attorney representing Village of Pewaukee Plan Commission, reviewed the timeline and process that has occurred since WCTC's first review in November 2016. Blum gave a review of his

position as to why he believes WCTC waived their opportunity to appeal, with a *de novo* review, of the January Plan Commission decision by signing and accepting the terms of the CUG and the ZBA should only consider a review of the record for the April 13, 2017 meeting.

Attorney Anderson asked Attorney Muth if he understood that if the ZBA conducted a '*de novo*' review that they could deny the project. Muth stated he did.

Presentations by the representatives of the parties was then closed and discussion followed.

Attorney Anderson stated the motion should be either for *de novo* review of the entirety of the project, or a record review of only the matters presented in the April 13, 2017 Plan Commission meeting.

K. Tawil moved, seconded by S. Seagrist to move forward with review of the record of just the April 13, 2017 Plan Commission meeting. Motion failed on Roll Call vote 3-2; P. Stonger & T. Houck voting Nay.

Discussion followed.

K. Tawil moved, seconded by D. Joers to review the record for April 13, 2017. T. Houck stated to the ZBA board that they put a lot of trust into matters we were not present for, another board of this village made a decision but at the end of the day we're the ones charged with hearing it; the minutes are memorialization of the key points and not the entire meat and potatoes of the discussion. **Motion failed on Roll Call vote 3-2; T. Houck and S. Seagrist voting Nay.**

P. Stonger asked if the ZBA decided to do just what was on the record and found there were a lot of questions, would they be able to do a '*de novo*' review. Attorney Anderson stated no and provided an explanation that the review methods are mutually exclusive. T. Houck stated he doesn't know how we can base our decision off of evidence we didn't hear or see, he feels it's too important to take the easy way out.

S. Seagrist moved, seconded by D. Joers to move forward with a '*de novo*' review of the April 13, 2017 meeting. Motion failed on Roll Call vote 3-2; P. Stonger and D. Joers voting Nay.

Discussion followed.

S. Seagrist moved, seconded by T. Houck to move forward with a '*de novo*' review of the April 13, 2017 meeting. Motion failed on Roll Call vote 3-2; P. Stonger and D. Joers voting Nay.

T. Houck asked what the opposition is to '*de novo*' review. D. Joers stated the Plan Commission spent a lot of time coming to their decision and he doesn't feel it's best to start over. Houck stated he would like to hear the information himself, he doesn't want to go off of a summary review, if we don't hear it we don't hear the nuances or if it's credible, we don't what else happened and he's afraid there is something here we might have missed. Houck stated we should hear it and make a decision ourselves. Discussion followed.

Attorney Anderson called a recess from approximately 8:46 p.m. to 8:55 p.m.

D. Joers moved, seconded by S. Seagrist to review only the record of the April 13, 2017 Plan Commission meeting. Motion failed on Roll Call vote 3-2, P. Stonger and T. Houck voting Nay. Discussion followed. Because P. Stonger stated she misunderstood the motion and voted incorrectly, without objection by any member of the Board, Attorney Anderson asked for the vote to be called again. **Motion carried on Roll Call vote 4-1; T. Houck voting Nay.**

4. Adjournment

K. Tawil moved, seconded by P. Stonger to adjourn the June 26, 2017 Zoning Board of Appeals meeting. Motion carried 5-0.

Meeting adjourned at approximately 9:05 p.m.

Respectfully Submitted,

Chaz M. Schumacher
Village Clerk

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
July 27, 2017**

1. Call to Order and Roll Call

T. Houck called the meeting to order at approximately 7:00 p.m.

Roll Call was taken with the following present: Thomas Houck, Susan Seagrist, Kristine Tawil, Alternate Patricia Stonger, Alternate Casey Smith; Theresa Opie and Douglas Joers were excused.

Also Present: Mark Blum, Village Attorney; Val Anderson, Attorney representing the ZBA; Chaz Schumacher, Village Clerk.

Clerk Schumacher asked the board if they would agree to have T. Houck serve as chairperson in the absence of the regularly appointed chairperson. The board gave consensus to have T. Houck serve as chairperson.

2. Public Hearing

a. There will be no public hearing at this meeting

The only business to be conducted at this meeting will be the Zoning Board of Appeals' record review of the decision of the Plan Commission at its April 13, 2017, meeting relative to the request of WCTC to amend the Conditional Use Grant dated March 20, 2017, regarding expansion of its Emergency Vehicle Operations Course.

3. New Business

a. Review of the record of the April 13, 2017, meeting of the Plan Commission relative to its denial the request of WCTC to amend the Conditional Use Grant dated March 20, 2017, regarding expansion of its Emergency Vehicle Operations Course.

Attorney Val Anderson stated both counsel will give presentations, with WCTC beginning. Anderson stated the burden of proof remains with WCTC.

David Muth, representing WCTC, thanked the ZBA for their time and patience. Muth gave an overview of what was included in the record review. He also presented additional materials for the board to consider:

- Color-coded map with pink and blue shaded areas, delineating different areas of the EVOC track.
- Printout of page 1 and page 9 of W.S.A. 62.23 City Planning, highlighted portions on page 9
- Printout of Village Ordinance Section 40.134
- Printout of Village Ordinance Section 40.144
- Printout of Village Ordinance Section 40.152
- Printout of pages 1-9, 282 Wis.2d 228, Supreme Court of Wisconsin, highlighted portions on page 6

Attorney Muth gave an overview of what the EVOC track will be for and stated the existing EVOC track, indicated in blue, has been in existence for 30 years, with no municipal violations or evidence of noise violations. Muth stated when the Conditional Use Grant (CUG) was issued for the additional loop, restrictions that were not previously in place, were placed on the blue track as well. This restriction is something WCTC would like to try

and negotiate. When the final CUG was issued, there was a limitation on the size of motorcycles, and a restriction on the use of external sirens.

Attorney Blum made an objection for the record that counsel for WCTC is rearguing what took place at the last ZBA meeting, this is not a de novo review, it is a reconsideration of review, the arguments are inappropriate. Attorney Anderson acknowledged the objection and asked Attorney Muth to proceed with WCTC's presentation of its position regarding the review of the record.

Attorney Muth proceeded to give a general background on what the ZBA can do, that they have the power to change the Plan Commission decision. Muth stated the Plan Commission did not consider the economic impact of their decision and did not have substantial evidence to justify their decision. Muth stated the CUG limits hours of existing and new tracks to 8am-8pm Monday through Saturday and Noon-5pm on Sundays. The track shaded in pink must stop by 5pm Mondays through Saturdays and must not operate at all on Sundays, there is one night a week allowed for emergency vehicle training. Muth stated this is a \$4.5 million taxpayer funded project for a facility that has non-traditional students that need the nights and weekends for attending classes. Classes have been cancelled, there are no motorcycles on Sundays. Muth stated the Plan Commission stated concern over the sound study in regards to the pink area, but it doesn't justify the restrictions on the blue area, why place the restrictions on the blue area when it's been in operation for over 30 years. Muth stated the restrictions on the blue area should be lifted. Muth stated there was only 1 person who commented against the expansion, he doesn't feel 1 person should impact a \$4.5 million project, where are the other residents, the Plan Commission can't speculate. One Commission member said residents should be allowed to sleep in on Sundays with no noise, another stated they wanted the noise to be evaluated after the expansion is complete. The Plan Commission's decision wasn't based on evidence. Muth reiterated that the restrictions on the blue area should be lifted immediately so at least some students can come back for classes. Muth stated the ZBA cannot rely on comments made about the sound study because the ZBA doesn't have it to review and new evidence cannot be introduced. Muth stated the Plan Commission didn't do anything wrong, they made a mistake, the ZBA should right a wrong.

Attorney Muth asked to make an offer of proof, as this case will most likely go before courts for an appeal. Discussion followed. After consultation with legal counsel for the Board, ZBA chairperson T. Houck denied the offer of proof by WCTC's counsel as a 'bell cannot be unrung.'

Attorney Muth stated this is an important decision for the college and the impact was unintended by the Plan Commission. He asked if the record before the ZBA justifies the Plan Commission decision. Muth asked if the restrictions to use the outside track could be lifted so that all tracks could be used for the hours of 8am-8pm Monday through Saturday and 8am-5pm on Sundays. There has been a lot of economic impact. He thanked the ZBA again.

Attorney Blum thanked the ZBA for their time. He stated WCTC counsel had the burden of proof, they showed no evidence in the record that a reasonable person couldn't come to the same conclusion, if they could show it, it would ratify the request for an appeal. Blum stated there also has to be an understanding for what's not in the record because it's not just about if the ZBA had heard this same information would they have come to the same conclusion. Blum stated if WCTC feels the Plan Commission was confused, why did agree to the CUG by signing it, WCTC agreed to the terms in it and should be bound to those terms. Blum stated the public hearing wasn't

the only one, there were 3 additional public hearings at prior meetings, the Plan Commission spent a great deal of time making the decision they made and voted unanimously for the CUG and also for the denial of the CUG amendment for the hours of operation. The Plan Commission considered the comment made by Mr. Barth at this meeting and at previous meetings. In regards to Attorney Muth's comment that there have been no violations, the Village doesn't have an issue with WCTC. The proposed use will have different types of vehicles operating concurrently, it's not just an increase in the track size, but an increase in the intensity of use. The Plan Commission looked at what could be put in place to help mitigate the impact to neighbors. The Plan Commission granted the hours in the CUG but had concerns with granting all the hours until there's a track record on how it will impact the surrounding area. There are conditions that impact how sound is heard and absent of what that actually looks like and until WCTC can show it will not have a negative impact, the Plan Commission made their decision. There is an absence by WCTC in the record as to why there should be an amendment to the CUG. The comment made by a neighbor is legitimate evidence to consider. Blum thanked the ZBA.

Attorney Muth stated there wasn't a single justification given as to why the blue area has restrictions in place. The ZBA is bound to just the record before it. He stated WCTC can't demonstrate how devastating this has been, he asked the ZBA to look at the evidence, he believes the record doesn't support the decision made by the Plan Commission.

Chairperson Houck opened the floor up for ZBA members to ask questions of coounsel. P. Stonger asked if Attorney Blum agreed with the supplemental information provided by Attorney Muth. Blum stated he does but he doesn't agree with comments that it's just an existing use in the blue area, there are additional vehicles and an aggregate impact.

Attorney Anderson stated the ZBA's job is to review the record to see if the Plan Commission made an error at its April meeting, WCTC was required to show evidence supporting the requested amendment, WCTC had the burden of proof at the Plan Commission meeting, the ZBA needs to determine if sufficient evidence was provided by WCTC that merited the amendment. Discussion followed.

K. Tawil stated she had read through the Plan Commission minutes several times and she agrees with the decision made in April. Tawil asked Attorney Anderson if the ZBA should or could consider economic impact. Anderson reviewed the Village Code that outlines the basis for approval by the Plan Commission, while economic impact is not directly addressed there is general welfare that can be considered. Anderson stated that while economic impact can be considered it is not a major part of denial or approval factors to be considered.

S. Seagrist stated WCTC signed the CUG, if they didn't agree with the terms than why did they sign it. She stated the minutes also state that WCTC has the opportunity to appeal, without prejudice, in one year.

C. Smith stated the minutes state Comm. Mantz remembered, which means she was referencing previous meeting minutes and there was citizen input that was concerned with noise. Smith stated even though there was only 1 citizen comment, it sounds like Commissioners expressed concern from previous meetings about noise and citizen comments at that time.

P. Stonger stated she agrees with what was already said, it was pretty clear on the original hours and the eastern track. It was a unanimous decision by the Commission, based on their knowledge and concern about future

intensity. There was also relief given that WCTC is free to come back in 2018 to put the question back before the Plan Commission.

T. Houck stated his disagreement. If the ZBA is going to do what they agreed to do which is to just review the record from the April Plan Commission meeting, we can't consider a comment by a Plan Commission member about things that had occurred at a previous meeting. C. Smith stated the comment is from the record that the ZBA is referencing. Houck stated he understands that the standard today is, is that the we are looking for substantial credible evidence and in his opinion a comment by a Plan Commission member about things that took place prior to the hearing that is being reviewed does not rise to substantial credible evidence. Discussion followed.

C. Smith moved, seconded by K. Tawil to uphold the Village of Pewaukee Plan Commission decision to deny the request of WCTC to amend the Conditional Use Grant dated March 20, 2017, regarding expansion of its Emergency Vehicle Operations Course, specifically the hours of operation. Motion carried on Roll Call vote 4-1; T. Houck voting Nay.

4. Adjournment

P. Stonger moved, seconded by C. Smith to adjourn the July 27, 2017 Zoning Board of Appeals meeting. Motion carried 5-0.

Meeting adjourned at approximately 8:18 p.m.

Respectfully Submitted,

Chaz M. Schumacher
Village Clerk

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
October 5, 2017**

1. Call to Order and Roll Call

Clerk Schumacher called the meeting to order at approximately 7:00 p.m.

Roll Call was taken with the following present: Kristine Tawil, Douglas Joers, Alternate Patricia Stonger, Alternate Casey Smith; Thomas Houck, Susan Seagrist, and Theresa Opie were excused.

Also Present: Mark Blum, Village Attorney; Mary Censky, Village Planner; Chaz Schumacher, Village Clerk.

Clerk Schumacher asked the board for recommendations for acting chairperson.

K. Tawil moved, seconded by C. Smith to approve Kristine Tawil as Acting Chairperson for the October 5, 2017 Zoning Board of Appeals meeting. Motion carried 4-0.

2. Public Hearing

a. To consider a request to construct a new single-family residence at 491 Park Avenue with a setback from the Park Avenue right-of-way of 20.5 feet where the Code calls for a 35-foot setback.

Planner Censky stated the lot is located on Park Avenue and is a conforming lot at 50 feet in width, for this reason, he is not eligible for non-conforming relief at Plan Commission level, when it's a conforming lot it then goes to the Zoning Board of Appeals. The applicant is planning to tear down the existing building and to then build a single-family residential building with an attached garage. Censky stated the existing garage is setback 12 feet from the Village right-of-way, the applicant is proposing a 20.5-foot setback, where the code calls for a 35-foot setback. The existing structures on neighboring lots is 16 feet and 7.5 feet. Censky stated the Village doesn't have an average provision when determining setbacks between neighboring properties.

Chris Tollefsen – Applicant for 491 Park Avenue – Mr. Tollefsen stated his neighbors to the east could not make it, he submitted a letter from the property owners of 485 Park Avenue expressing support of the granting the variance request. Tollefsen also presented a packet containing a survey map, building plans, a note from his healthcare provider outlining his medical condition, and a total of 5 pictures. Tollefsen asked the Village to consider granting the average setback for his property and stay consistent with the neighboring properties' setbacks.

Attorney Blum reminded the Board that they will need to address how the restrictions are unnecessarily burdensome, the physical limitations of the property, and the negative impacts this has or could have.

Mike Schieble – 481 Park Avenue – Mr. Schieble stated he has no issues with the proposal, his own property has a 15-foot setback.

Andy Lize – 509 Park Avenue – Mr. Lize expressed his support for the setbacks, if one house follows the setbacks it will look out of place, a new house would make the whole neighborhood look better.

Pam Olsen – 461 Park Avenue – Ms. Olsen stated her support for the proposal, she wants people to raise families in her neighborhood.

Attorney Blum noted that for the record there are 11 exhibits being added to the record, Exhibit 12 is the original application, Exhibit 13 is Planner Mary Censky's staff report, and Exhibit 14 is an email from John Gibbs in Building Inspections Department at City of Pewaukee.

K. Tawil closed the Public Hearing at approximately 7:18 p.m.

3. New Business

a. To consider a request to construct a new single-family residence at 491 Park Avenue with a setback from the Park Avenue right-of-way of 20.5 feet where the Code calls for a 35-foot setback.

K. Tawil stated that in regards to the first question of if the restrictions placed on the property are unnecessarily burdensome, preventing the owner from using the property for it's permitted use, she would say yes. D. Joers stated his agreement, this is a no brainer, the garage would be 18.5 feet off the right-of-way, if it wasn't, it would be the only house without a smaller setback. P. Stonger stated the incline of the lots makes it difficult to follow the 35-foot setback and it would be a good thing to get rid of it, she stated this could also have a negative impact on future buyers.

K. Tawil stated that in regards to the second question of if the physical limitations of the property prevent compliance with the ordinance standards, she would say yes, the incline of the lake makes it difficult to engineer. D. Joers stated his agreement.

K. Tawil stated that in regards to the third question of if the applicant's request could have potential negative impacts to surrounding lands, their uses or the environment, she stated no, the neighbors are completely supportive of the proposal.

D. Joers moved, seconded by P. Stonger to approve the variance request for 491 Park Avenue, for a 20.5-foot setback from the Village right-of-way, based on the topography of the property and the desire for the property to be handicap accessible, and for the applicant to act on the variance within 1 year of approval. Motion carried on Roll Call Vote, 4-0.

4. Adjournment

C. Smith moved, seconded by P. Stonger to adjourn the October 5, 2017 Zoning Board of Appeals meeting. Motion carried 4-0.

Meeting adjourned at approximately 7:27 p.m.

Respectfully Submitted,

Chaz M. Schumacher
Village Clerk

**VILLAGE OF PEWAUKEE
ZONING BOARD OF APPEALS
July 18, 2019**

1. Call to Order and Roll Call

Theresa Opie called the meeting to order at approximately 7:00 p.m.

Roll Call was taken with the following present: Douglas Joers, Thomas Houck, Susan Seagrist, Theresa Opie, Alternate Patricia Stonger, and Alternate Richard Goldade. Kristine Tawil was excused.

Also Present: Mark Blum, Village Attorney and Scott Gosse, Village Administrator.

2. Public Hearing

- a. To consider a request to construct an accessory storage building/detached garage that is 25 feet and 1 inch tall where Section 40.207(b) of the Village Code would limit such accessory structure height to a maximum of 15 feet. The property is located at 255 Main Street. (Applicant – Steve Clementi)*

T. Opie opened the public hearing at approximately 7:04PM.

Steve Clementi – Applicant for 255 Main Street – Mr. Clementi took an oath prior to submitting his testimony. He presented two pages illustrating detached garages within walking distance of his property that exceed the 15' height allowed by code. He further stated that his property does not have a garage and he is seeking to construct a garage for his cars and additional storage. He further stated that the proposed garage design would match the pitch of the house; that there is a 7' drop from the sidewalk in front of the house to the area where the garage would be located; and that there is a hardship if he tried to build within the 15' height restriction as the garage would not fit within the look of the area and/or neighborhood and would not give the storage needs.

Attorney Blum noted that for the record that the following documents have been submitted by the applicant: two pages with photos submitted this evening, a survey, series of design plans containing 8 pages, two pages of letters from Nancy and Andy Roncke and Brandon Yost, a photo of the exterior of the house, a cover letter, and an application form.

P. Stonger questioned the use of 2 x 6 framing and insulation for the construction of the proposed garage. Mr. Clementi responded that he does woodworking and the insulation would provide warmth and that no plumbing is proposed for the garage. P. Stonger questioned the width of the garage and indicated that if the garage was narrower, they would not need the additional height. Mr. Clementi advised that the space is needed for woodworking and storage.

T. Houck noted that the plans by the building note that a finished handrail would be provided by the property owner.

Attorney Blum reviewed the Planner's memo and the recommended conditions for approval should the Zoning Board of Appeals grant the requested variance.

T. Opie closed the Public Hearing at approximately 7:16 p.m.

3. New Business

- a To consider a request to construct an accessory storage building/detached garage that is 25 feet and 1 inch tall where Section 40.207(b) of the Village Code would limit such accessory structure height to a maximum of 15 feet. The property is located at 255 Main Street. (Applicant – Steve Clementi)*

Attorney Blum reviewed the Wisconsin Statutes regarding the guidance for a variance and the need for the demonstration of a hardship and that for an area variance, for which this request is, strict compliance for the granting of a variance means that the property is unusable or that there is no reasonable use of the property.

T. Houck indicated that what he sees is the uniqueness of the property with the drop in height from the sidewalk to the proposed garage. The aesthetics of the proposed design fit with the area and the restrictions are burdensome to the property owner. The physical limitation of the 7' slope to the back of the property and it is not reasonable to bring in 7' of fill and the impact that would have on drainage. T. Houck also noted the letters of support from the adjoining neighbors.

P. Stonger questioned the expansion of the driveway and the roof of the garage and the impact of runoff on neighboring properties. Attorney Blum indicated that the stormwater is reviewed based upon the size of the area to be disturbed does not rise to the level of detailed review by staff.

D. Joers stated that the design looks fantastic but that it does not meet the burden previously stated for the granting of a variance. He stated that without the variance they are not caused harm and that there is no burden on having a tall garage. He stated it is his opinion that the building is fantastic but it does not meet the law or burden.

S. Seagrist stated they can't take into consideration the 7' drop.

T. Opie stated this is on Main Street and the look and aesthetics of the community are important.

P. Stonger inquired of Attorney Blum if what he reviewed is law. Attorney Blum stated it is Wisconsin law and the Board is required to follow it.

Attorney Blum advised the Zoning Board of Appeals that for a variance to be grant that four out of five members need to vote to grant the variance.

T. Houck moved, seconded by S. Seagrist, to approve the variance request for 255 Main Street for an accessory storage building/detached garage that is 25 feet and 1 inch tall where Section 40.207(b) of the Village Code would limit such accessory structure height to a maximum of 15 feet. Motion failed on Roll Call Vote, 3-2 as the concurring vote of four (4) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation there from. The grounds of every such determination shall be stated.

4. Adjournment

**T. Houck moved, seconded by S. Seagrist, to adjourn the July 18, 2019 Zoning Board of Appeals meeting.
Motion carried 5 - 0.**

Meeting adjourned at approximately 7:27 p.m.

Respectfully Submitted,

Scott Gosse
Village Administrator

DRAFT

STAFF REPORT

To: Village of Pewaukee Board of Zoning Appeals

By: Mary Censky

Date Prepared: October 22, 2020

GENERAL INFORMATION:

Agenda Item: **4.a.**

Applicant:

Property Owners Scott and Jennifer
Immel

Requested Action:

Variance approval to construct a new detached accessory garage structure in a location that is both closer to the side lot line and taller than the Village Ordinance provides for.

Current Zoning:

R-6 Plex Residential

Current Master Plan Classification:

Plex Residential

Surrounding Zoning/Land Use:

North: R-5 Single Family Residential
South: B-2 Downtown Business w/
PUD Overlay and R-5 Single Family
Residential
East: Wisconsin Ave., then R-5
Single Family Residential
West: Main St., then IPS
Institutional and Public Service

Lot Size:

12, 175 sq. ft. area

63 ft. wide on west/Main St. *and*
48 ft. wide on east/ E. Wisconsin
Ave.

Location:

161/163 Main Street.

DISCUSSION:

This property does not presently have a garage – attached or detached.

The applicant proposes to construct a detached garage that is located 5 feet from the side (south) lot line where Section 40.220 (4) of the Code provides that a minimum 10 offset must be



LAND INFORMATION SYSTEMS DIVISION

Immel property area map



The information and depictions herein are for informational purposes and Waukesha County specifically disclaims accuracy in this reproduction and specifically admonishes and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means. Waukesha County will not be responsible for any damages which result from third party use of the information and depictions herein, or for use which ignores this warning.

0 55.27 Feet

Notes: 161-163 Main Street

Printed: 10/16/2020



To: Zoning Board of Appeals- R-6 RE: Sec. 40.220 Minimum Bldg Offset

- 1) Our property is located at 161-163 Main Street in the Village of Pewaukee.
- 2) Our property is a duplex with three (3) bedrooms in each unit.
- 3) Our property is zoned R6.
- 4) The minimum lot size requirement is 43,560 sq. ft. or one (1) acre.
- 5) Our lot is 12,669 sq. ft. or less than 1/3 acre which makes this a nonconforming lot.
- 6) We wish to construct a four (4) car garage to accommodate the two (2) families who each own two (2) cars.
- 7) Due to the narrow overall width of the lot it would be impractical to build a four (4) car wide garage. We wish to construct a two (2) car wide, two (2) car lengths deep garage. The hardship we have is to try to follow the side yard and rear yard setbacks on an R6 nonconforming lot.

The R6 minimum building offset for accessory storage structures is a minimum of 10' from the side lot line and a minimum of 25' from the rear lot line. As I mentioned, we have a nonconforming lot that is less than 1/3 of an acre and not the required R6, one (1) acre lot.

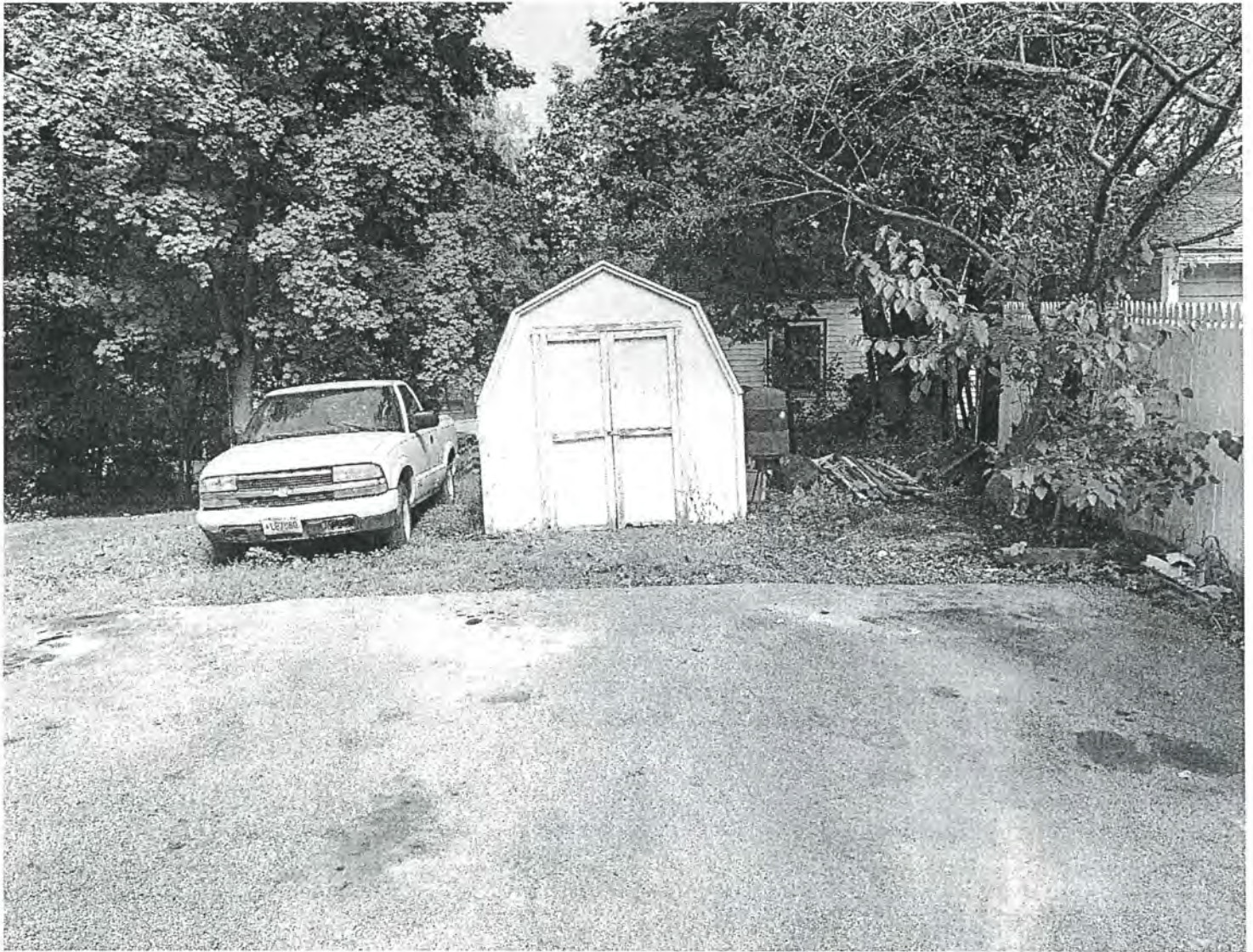
We would like to obtain a variance changing the side lot offset from 10' to 5' and obtain a variance changing the rear offset from 25' to 10'. This would be relative to the abutting and surrounding properties which are also nonconforming lots. The variance we are asking for is in accordance with all abutting and/or surrounding properties, is not contradictory to the public interest and will not endanger the public's safety or welfare.

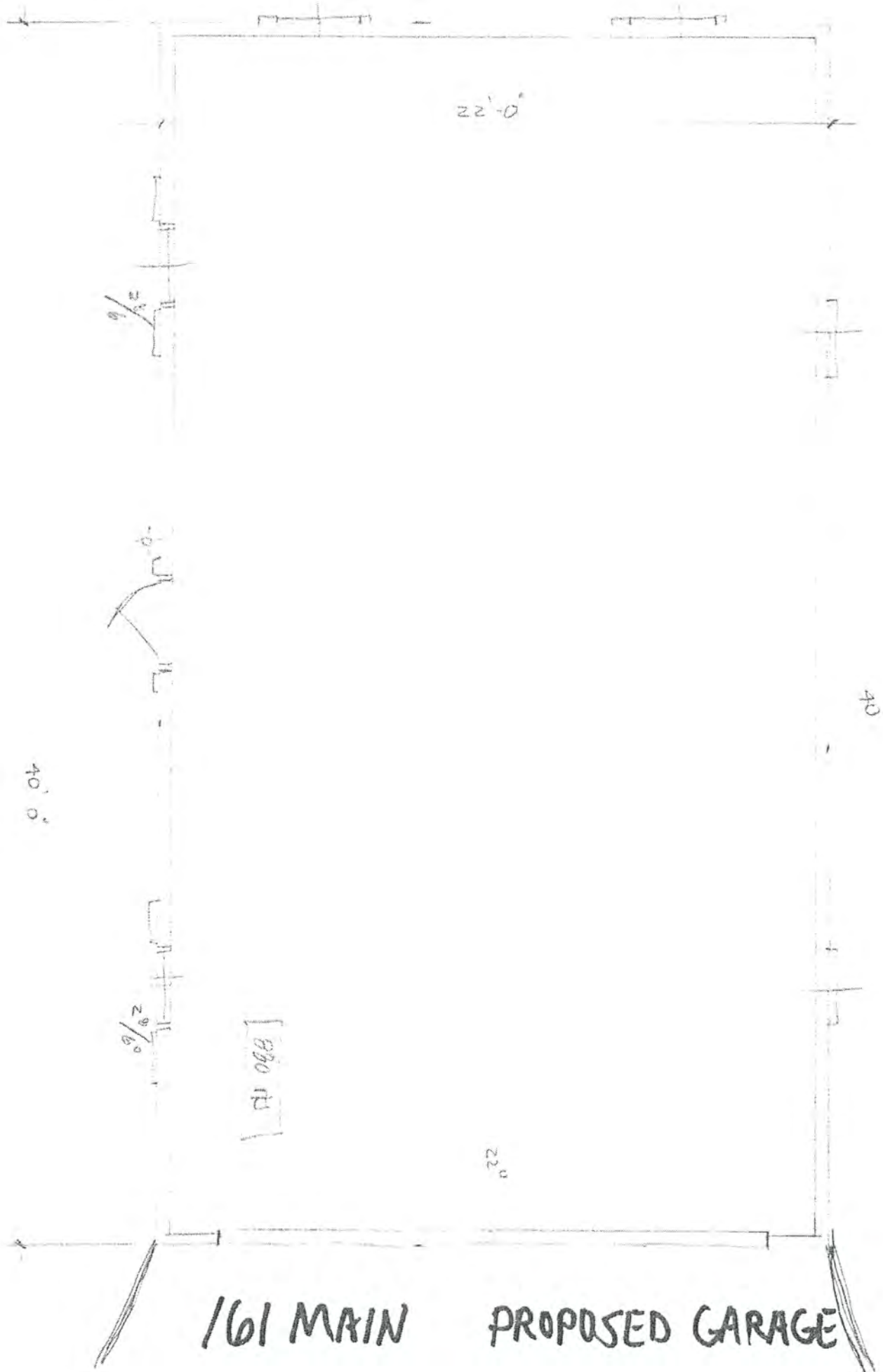
Thank You,

Scott and Jennifer Immel



PWV 0899964





22' 0"

40' 0"

40'

22'

[22' 0"]

161 MAIN

PROPOSED GARAGE

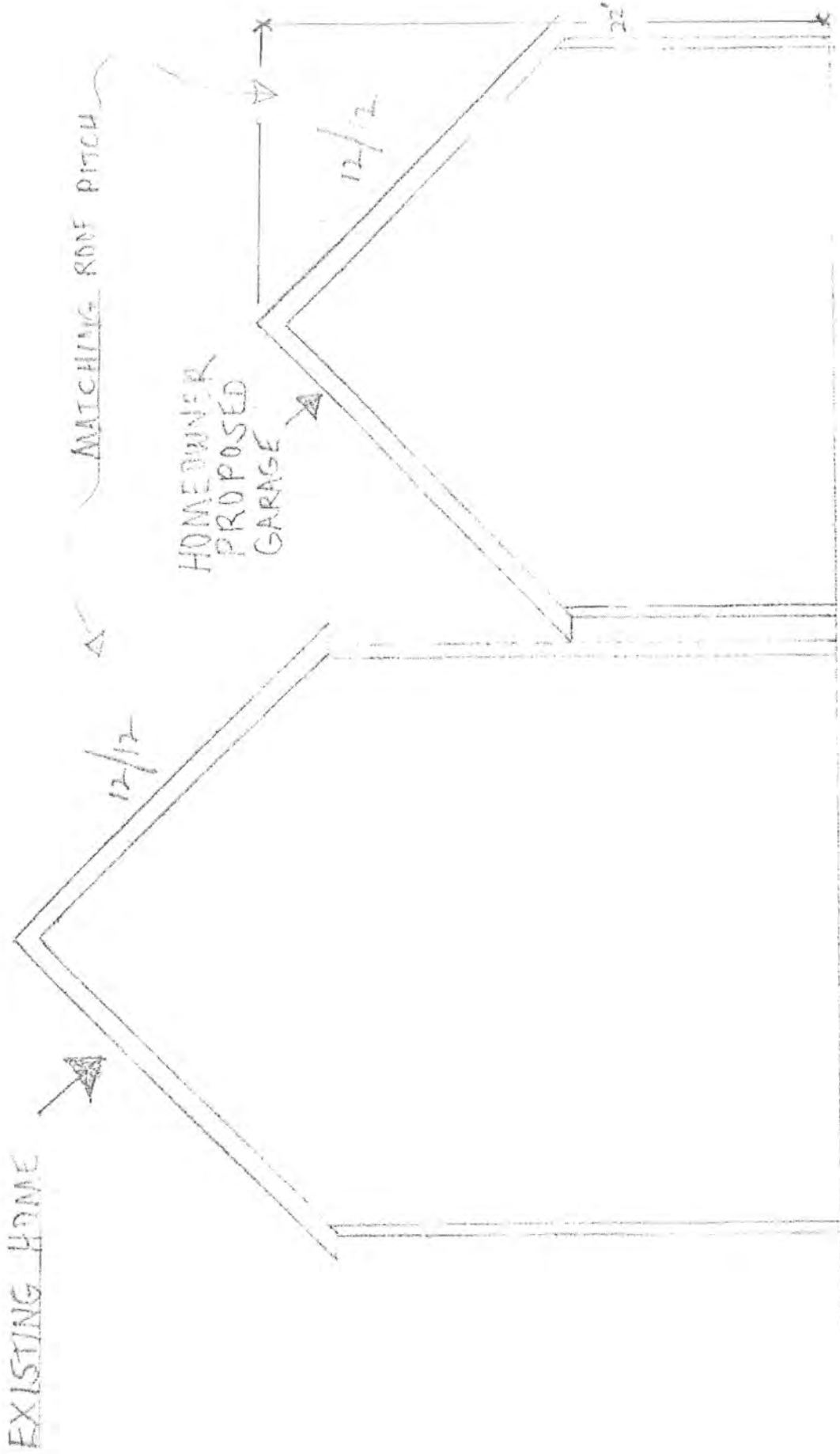
To: Zoning Board of Appeals- R-6 RE: Sec. 40.221 Accessory Building Height

- 1) Our home was built in the early 20th century.
- 2) Our home has three (3) stories and a roof pitch of 12/12.
- 3) We would like to give the appearance or curb appeal that the garage was constructed at the same time as the house was constructed and not as an afterthought or 1960's. At some point in time the original garage was raised for whatever reason. I would bet the original garage matched the house roof pitch.
- 4) By following the current code our home would have the 12/12 roof pitch and the garage would have to be constructed with a 6/12 roof pitch.
- 5) Fact: There is no subdivision developer that would allow a homeowner to construct (2) separate structures to have opposing roof pitches. They would be looking for symmetry of the two structures.

Please review the attached sketches.

Thank You for your consideration,

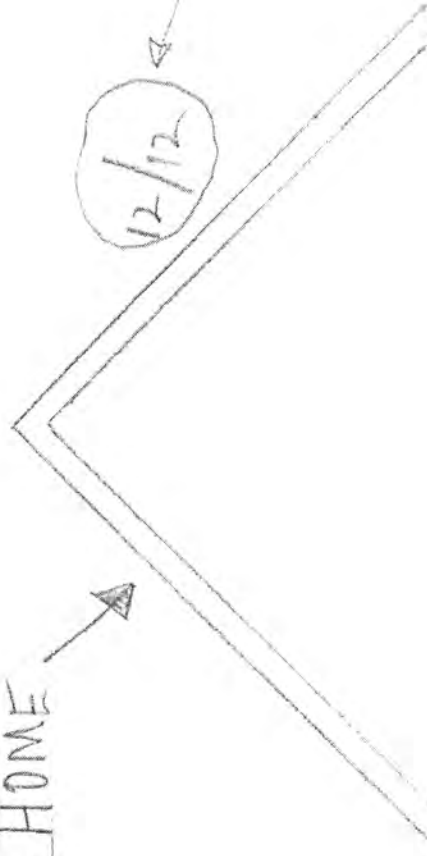
Scott and Jennifer Immel



AS VIEWED FROM STREET

161 MAIN ST, PUVV 089916

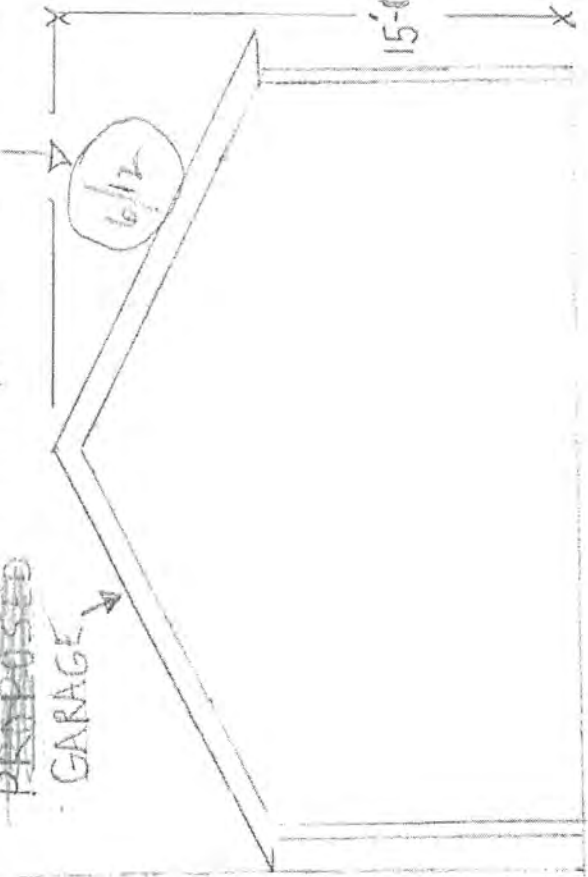
EXISTING HOME



NON MATCHING ROOF PITCH

MANDATED ~~PROPOSED~~ GARAGE

SEC. 40.221 BUILDING MGA

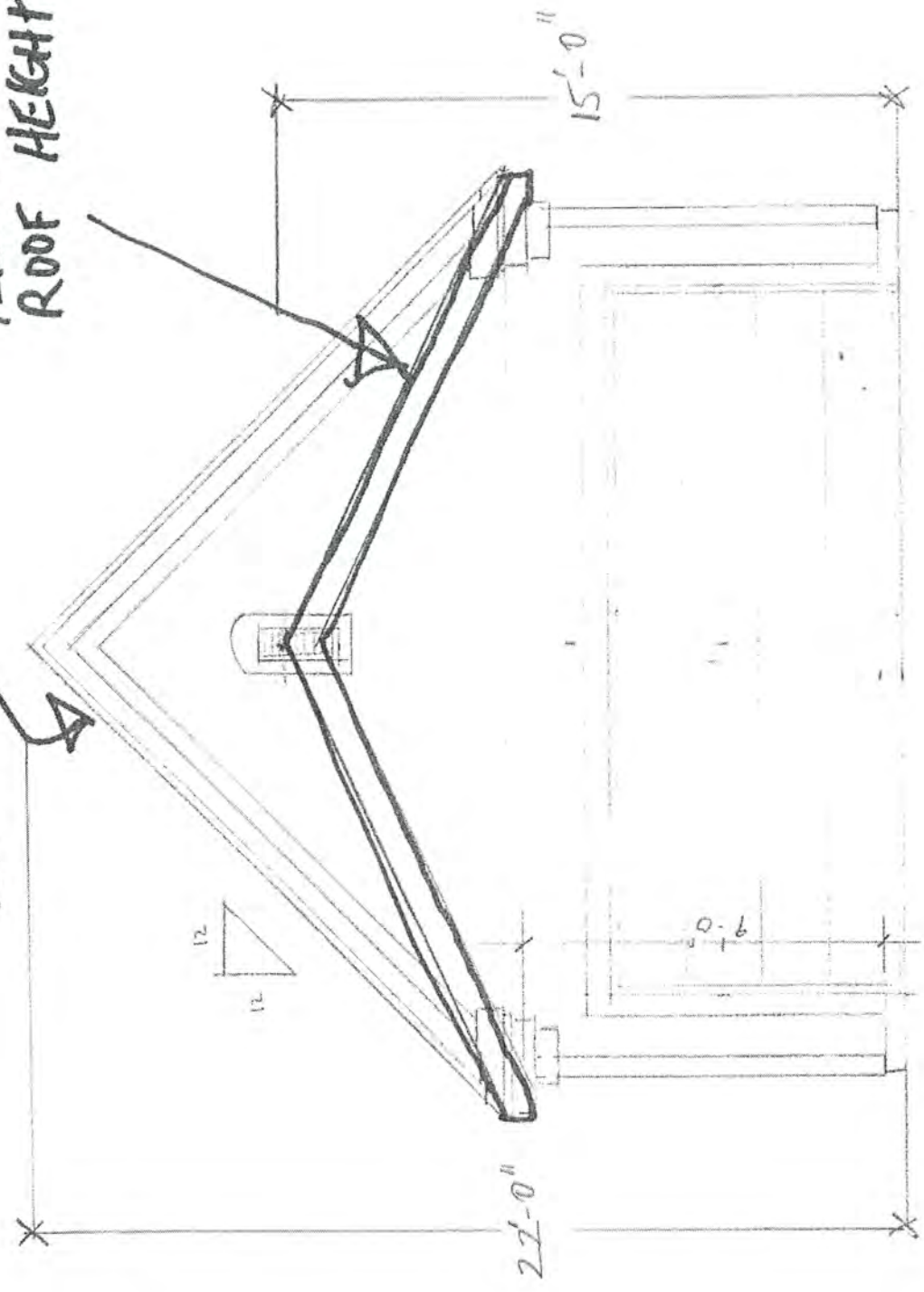


AS VIEWED FROM STREET

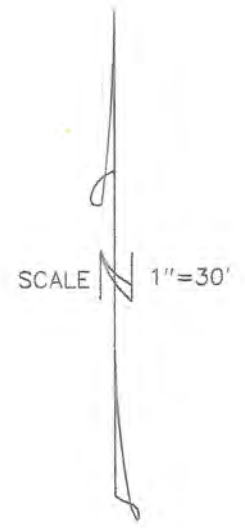
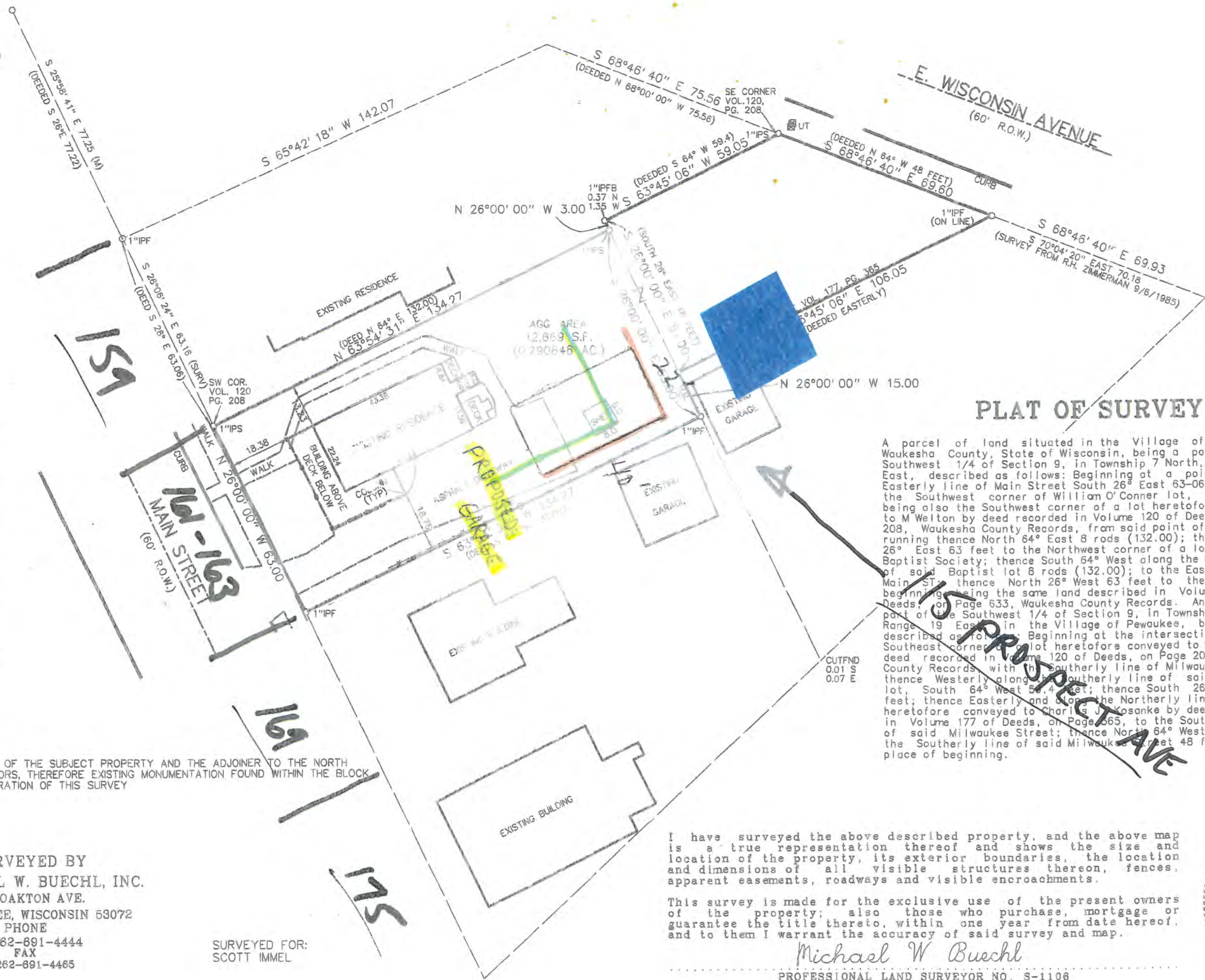
161 MAIN ST, PHOENIX, AZ 85001

PROPOSED ROOF HEIGHT

~~MANDATED~~
MANDATED ROOF HEIGHT



161 MAIN
PWV 0899964



R6 MINIMUM OFFSET

VARIANCE REQUESTED OFFSET

5' SIDE
15' REAR

10' SIDE
25' REAR

PLAT OF SURVEY

A parcel of land situated in the Village of Pewaukee, Waukesha County, State of Wisconsin, being a part of the Southwest 1/4 of Section 9, in Township 7 North, Range 19 East, described as follows: Beginning at a point in the Easterly line of Main Street South 26° East 63-06 feet from the Southwest corner of William O'Conner lot, said point being also the Southwest corner of a lot heretofore conveyed to M Welton by deed recorded in Volume 120 of Deeds, on page 208, Waukesha County Records, from said point of beginning running thence North 64° East 8 rods (132.00); thence South 26° East 63 feet to the Northwest corner of a lot owned by Baptist Society; thence South 64° West along the North line of said Baptist lot 8 rods (132.00); to the East line of Main Street; thence North 26° West 63 feet to the place of beginning being the same land described in Volume 129 of Deeds, on Page 633, Waukesha County Records. And all that part of the Southwest 1/4 of Section 9, in Township 7 North, Range 19 East, in the Village of Pewaukee, bounded and described as follows: Beginning at the intersection of the Southeast corner of a lot heretofore conveyed to M Welton by deed recorded in Volume 120 of Deeds, on Page 208, Waukesha County Records, with the southerly line of Milwaukee Street; thence Westerly along the southerly line of said Welton's lot, South 64° West 59.4 feet; thence South 26° East 48 feet; thence Easterly and along the northerly line of a lot heretofore conveyed to Charles J. Kosanke by deed recorded in Volume 177 of Deeds, on Page 365, to the Southerly line of said Milwaukee Street; thence North 64° West and along the Southerly line of said Milwaukee Street 48 feet to the place of beginning.

NOTE: THE LEGAL DESCRIPTIONS OF THE SUBJECT PROPERTY AND THE ADJOINER TO THE NORTH CONTAIN SIGNIFICANT ERRORS, THEREFORE EXISTING MONUMENTATION FOUND WITHIN THE BLOCK WAS USED IN THE PREPARATION OF THIS SURVEY

SURVEYED BY
MICHAEL W. BUECHL, INC.
 233 OAKTON AVE.
 PEWAUKEE, WISCONSIN 53072
 PHONE
 1-262-691-4444
 FAX
 1-262-691-4465

SURVEYED FOR:
 SCOTT IMMEL

I have surveyed the above described property, and the above map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location and dimensions of all visible structures thereon, fences, apparent easements, roadways and visible encroachments.

This survey is made for the exclusive use of the present owners of the property; also those who purchase, mortgage or guarantee the title thereto, within one year from date hereof, and to them I warrant the accuracy of said survey and map.

Michael W Buechl
 PROFESSIONAL LAND SURVEYOR NO. S-1106
 STATE OF WISCONSIN

