

CITY OF
PORTAGE
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ZONING BOARD OF APPEALS

November 8, 2010

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, November 8, 2010

(7:00 pm)

**Portage City Hall
Council Chambers**

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

- * October 11, 2010

OLD BUSINESS:

- * ZBA #10-06, Scott Sampson, 4726 Deep Point Drive: Requesting a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling.

NEW BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS
Minutes of Meeting – October 11, 2010

DRAFT

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Four people were in the audience.

MEMBERS PRESENT: Timothy Bunch, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer Donald Mordas, Henry Kerr, Daniel Rhodus

MEMBERS ABSENT: David Felicijan

IN ATTENDANCE: Vicki Georgeau, Deputy Director of Neighborhood Services, Charles Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Linenger moved and Seyburn seconded a motion to approve the September 20, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA# 10-06, Scott Sampson, 4726 Deep Point Drive: Staff summarized the request for a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling. Mr. Sampson explained that since he came to the Zoning Board in 2009, he has removed the east side of the dwelling and made repairs to the northwest side of the dwelling, a small portion of which extends into the required front setback and he wishes to retain due to the floor plan. The applicant notes a prior variance was granted for the attached garage, other houses in the area do not meet the current setback requirements, that the shape of the lot is unique and that a portion of the road pavement actually encroaches onto his property. Kerr stated he does not find a practical difficulty and that the request is essentially the same as submitted one year ago. Sampson indicated the two lots of his property come together a unique shape and the city has paved part of the road onto his property. In response to Rhodus, staff clarified that the setback is measured from the right-of-way line, not the road pavement edge. Rhodus also inquired as to why the lot boundaries shown on the survey extend past the platted lot dimensions, as the plat does not indicate the lot extends to the shoreline. Staff indicated the issue of lake front property lines has arisen many times and that the City Attorney has provided several opinions in regard to the issue. If the plat does not have a public beach, walkway or promenade shown running along the shore, it has been presumed that lake front property extends to the legal lake level/established high water mark. The City Attorney indicated that statute and case law is consistent with this position. Rhodus expressed a concern regarding this matter, and requested additional information regarding case law on this matter. In response to Seyburn and Singer, the applicant indicated that while there is a closet at the corner of the house that encroaches into the setback, more than just the closet would have to be removed to comply with the setback, which would adversely impact the floor plan. Seyburn indicated if the entire northwest addition to the house were shifted to the south to comply with the setback, about 10 feet of wall area would connect to the older area of the dwelling, which does not seem desirable. Kerr noted that the addition was built without prior permit approval, and several conforming alternatives are available to the applicant. Linenger expressed concern that the process to comply with the decision of the Board has taken so long and that legal enforcement action by the city was necessary. In response to Seyburn and Bunch, staff indicated that Building Code violations do remain, but the applicant has been working to rehabilitate the dwelling. The applicant added that an interior inspection of the east side of the dwelling remains, and only two footings on the west side of the house have yet to be replaced. Linenger asked if action is needed on the attached garage built in 1988. Staff indicated no as a front setback variance was granted. Seyburn indicated it would be helpful to have information regarding the variance decision in 1988.

A public hearing was opened. No one was present to speak for or against the request. Mr. Sampson presented a letter of support from Daniel and Joyce Jackson, 4802 Deep Point and Mark Nakayama, 4708 Deep Point Drive, which was read into the record. There being no further comments the public hearing was closed.

A motion was made by Seyburn, supported by Rhodus, to postpone action on the request to the November 8th meeting to allow the Board an opportunity to review information relevant to the 1988 variance for the attached garage, and to receive an update regarding the conformity of the dwelling with the Building Code. After further

discussion and upon roll call vote, the motion failed 3-4 (Kerr-No, Linenger-No, Mordas-Yes, Schimmel-No, Seyburn-Yes, Singer-No, Rhodus-Yes).

A motion was made by Singer, supported by Linenger, to deny a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling. The immediate practical difficulty causing the need for the variance request was created by the applicant, and while the applicant did not construct the illegal addition, he knew about it when he purchased the property, and the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote, the motion failed 3-4 (Kerr-No, Linenger-Yes, Mordas-No, Schimmel-Yes, Seyburn-No, Singer-Yes, Rhodus-No).

A motion was made by Seyburn to reconsider the first motion, which was supported by Rhodus, to postpone action on the request until the November 8, 2010 meeting to allow an opportunity to review information relevant to the 1988 variance for the attached garage, and to receive an update regarding the conformity of the dwelling with the Building Code. Upon roll call vote, the motion passed 5-2 (Kerr-No, Linenger-Yes, Mordas-Yes, Schimmel-Yes, Seyburn-Yes, Singer-No, Rhodus-Yes).

ZBA #10-07, William Kilkelly, 2404 Fairfield Road: Staff summarized the request for a) a 60 square foot variance to retain a 256 square-foot shed and 528 square foot garage with a combined area that exceeds the ground floor living area of the dwelling; and b) a four-foot variance from the required 10-foot building separation between the accessory buildings as specified in the Zoning Code. Mr. Kilkelly was present to explain his request, and that he hired a licensed contractor that told him he did not need a permit for a shed. The roof lines of the two buildings and service door for the garage present a problem with regard to attaching the buildings, and that the shed was built over 15 years ago, with no complaints. The applicant does not want to combine his adjacent lot due to tax ramifications. Bunch asked if the complaints about debris in the neighborhood involved this property. Staff responded yes and that the violations were addressed in a short period of time. Singer asked if the shed could be moved east without a setback problem. The applicant noted there is plenty of room, but that the shed could not be easily moved and would require a new slab. In response to Seyburn, staff indicated that if the Board granted a variance from the separation requirement, a fire wall in both the shed and adjacent garage wall are recommended. Linenger indicates it is unfortunate that a building permit was not obtained. Bunch indicated that a fire rated wall between the buildings would be an acceptable condition to address the building separation variance. In response to Schimmel, staff verified that if a 60 square foot addition was added to the dwelling, one of the two variances would not be needed.

A public hearing was opened. William Inkster, 2320 Fairfield Road, spoke in favor of the request, noting there is commercial property to the south and east with a six-foot solid wood fence, that the shed has been up for 15 years with no impact on the neighborhood. Seyburn asked if the house has a basement, and Mr. Inkster indicated yes. There being no further comments the public hearing was closed.

A motion was made by Linenger, supported by Singer, to deny a) a 60 square foot variance to retain a 256 square-foot shed and 528 square foot garage with a combined area that exceeds the ground floor living area of the dwelling; and b) a four-foot variance from the required 10-foot building separation between the accessory buildings as specified in the Zoning Code due to a lack of practical difficulty, and because the variance will materially impair the intent and purpose of the Zoning Ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. After further discussion and upon roll call vote: Linenger-Yes, Schimmel-Yes, Rhodus-No, Seyburn-No, Kerr-Yes, Singer-Yes, Mordas-Yes) motion carried 5-2.

STATEMENT OF CITIZENS: None

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:10 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services

TO: Zoning Board of Appeals
FROM: Jeffrey M. Erickson, Director of Community Development
SUBJECT: ZBA #10-06

DATE: October 25, 2010

**PROPERTY
IN QUESTION:** 4726 Deep Point Drive

INFORMATION/

UPDATE: During the October 11, 2010 Zoning Board of Appeals meeting, the Board postponed action on ZBA #10-06 until the November 8, 2010 meeting to allow an opportunity to review information relevant to the 1988 variance for the attached garage at 4726 Deep Point Drive, and to receive an update regarding the conformity of the dwelling with the Building Code. The following information is provided:

1. Attached are the minutes, staff report, application and site sketch from the July 25, 1988 Zoning Board of Appeals meeting with regard to the 15 foot variance granted to construct a 26 foot by 34 foot attached garage. As explained in the attachment, the request involved the demolition of a nonconforming detached garage and construction of a more conforming attached garage.

2. The dwelling at 4726 Deep Point Drive was inspected on October 21, 2010 and the following items require corrective action in order to comply with the Michigan Residential Building Code:

- Support columns need to be installed for the concrete piers located under the northwest dwelling addition.
- The wood siding on the east side of the house needs to be painted to protect it from the elements.
- Hand/guard railings need to be installed on the stairway from the kitchen to the upper level of the house.
- Interconnected smoke detectors need to be installed in the house.
- A 20-minute fire rated door with automatic closer needs to be installed for the furnace room.
- Attic insulation with an R-49 value needs to be installed. The mechanical ducts in the attic also need to be insulated.
- The relief valve for the water heater needs to be replaced.
- The clothes dryer located in the garage needs to be raised 15-inches above the garage floor.
- The 3-inch opening in the furnace exhaust vent needs to be properly capped.

Finally, attached are the application previously provided to the Board as well as the October 1, 2010 staff report with attachments.

JULY 25, 1988

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Oscar Hudson and Richard Westland.

IN ATTENDANCE:

Randall Brown, Assistant City Attorney; Jeffrey M. Erickson, Director of Development; Lisa A. Winger, Division Manager, Planning & Zoning; Norman Smith, Division Manager, Building Services; Joyce L. Opria, Zoning & Codes Administrator.

APPROVAL OF MINUTES:

A motion was offered by Ester, seconded by Hilton, to approve the minutes of the July 18, 1988 meeting as submitted. The motion was unanimously approved.

OLD BUSINESS:

1. ZBA #87-128, Robert Williams, 4280 Romence. Postponed until request can be heard before a full Board.
2. ZBA #87-126, Woodbridge Hills Condominiums. Postponed until request can be heard before a full Board.

NEW BUSINESS:

1. ZBA #88-2, Donald Barker, 4726 Deep Point. Donald Barker explained that since making application to the Zoning Board of Appeals he has reviewed his building plans and possible alternatives and would like to revise his request to seek a lesser variance of 15' rather than the 19' originally requested. He now wishes to construct a 26' x 36' attached garage to within 12' minimum of the front property line. He explained that if the garage were constructed in this location there would be a reduction in the degree of nonconformity as the side (east) property line would be increased from 4' to 14' 6" and the front yard setback would be increased from 8' to 12'. Board members discussed the alternative of constructing the garage to the west side of the dwelling on lot 10. Mr. Barker explained that this location is not desirable as it would severely limit the open yard space, play area, access for his boat, and would obscure the view to the lake from the road. Discussion followed on the staff recommendation to relocate the drive and entrance of the garage on the east side to prevent backing from the garage into the street and to enhance visibility at this intersection. Mr. Barker stated that everyone else in the neighborhood enters their garage on the north side and he felt that was the best alternative. He stated that relocating the entrance to the east side would not improve visibility. Board members noted that moving the garage back 4' and not constructing the finished breezeway as originally planned would result in the square footage of the garage exceeding the ground floor area of the residence. It was determined that if the garage was reduced to 26' x 34' (884 sq. ft.), a second variance would not be needed. Mr. Barker agreed that this would be acceptable. A petition in support of this request, signed by 16 neighboring property owners, was submitted to the Board. The public hearing was opened to the audience. Robert Rogers, 4628 Deep Point Drive, spoke in support of the request. The public hearing was declared closed.

A motion was offered by Ester, seconded by Hilton regarding ZBA #88-2, Donald Barker, 4726 Deep Point Drive be granted a 15' variance from the 27' front yard setback requirement in order to construct a 26' x 34' attached garage to within 12' minimum of the front property line. The hardship being the irregularly shaped lots and reduction in the degree of nonconformity as the front yard setback will be increased from 8' to 12' and the side yard setback will be increased from 4' to 16' 6". Upon a roll call vote, the motion was unanimously approved 6-0.

2. ZBA #88-3, Wanda Scott, 10061 Woodlawn. Postponed until the next meeting.
3. Resignation received from Cynthia L. Kooi.

MATERIALS TRANSMITTED:

1. Randy Brown, Assistant City Attorney reviewed his letter of July 14, 1988 regarding standards for variances with regard to ordinance violations.

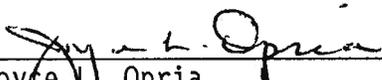
2. Board members reviewed the resumes for the vacant Board position and recommended that the following names be forwarded to City Council for consideration. The names are in order of preference: Kay Adler, Peter Strazdas, Dawn Gregory-Jadkowski, and Donald Nederhoed.

3. The video on the Romence Road extension was shown to the Board.

STATEMENT OF CITIZENS:

There being no further business to come before the Board, a motion was offered by Ester, seconded by Kalleward to adjourn the meeting at 8:45 p.m.

Respectfully submitted,



 Joyce L. Opra
 Zoning & Codes Administrator

JLO:1k1:2:7762

NORTHEAST 1/2



THE MICHIGAN MUNICIPAL LEAGUE
MEMBER OF THE MICHIGAN MUNICIPAL LEAGUE

COMMISSIONER
OF
LAND-USE

TO: Zoning Board of Appeals
FROM: Jeffrey M. Erickson, Director of Development

DATE: July 15, 1988

SUBJECT: ZBA Application #88-2

PROPERTY IN QUESTION: 4726 Deep Point Drive

ZONING DISTRICT: R-1A, one family residential

CODE SECTION: 1278.01, Schedule of Regulations, p. 99

APPEAL: Seeking a 19' variance from the 27' front yard setback requirement in order to construct a 26'x36' attached garage to within 8' of the front property line.

STAFF RECOMMENDATION: Applicant proposes to provide additional parking/storage/workshop and leave the appearance of his property intact by razing the existing detached garage (16.5' x 19.5') and constructing a 26'x36' (936 sq.ft.) attached garage as per the attached application and sketch. The northwest corner of the proposed structure will be 8' from the front property line. The irregularly shaped lakefront lot has 129' of road frontage and an average depth of 88'. It is improved with an 889 sq.ft. dwelling and 322 sq.ft. detached garage.

Applicant argues that: (1) the northwest corner of the proposed garage will not be any closer to the front property line than the existing garage; (2) there will be a reduction in the degree of nonconformity as the northeast corner will be set back 17' instead of the current 9'. Also, the side yard setback on the west will be increased from 4' to 14'6"; (3) construction of the garage on the east side of the dwelling will severely limit open yard space, future expansion of the dwelling, and obscure the view to the lake; and (4) this is the most practical location to construct the garage.

Conforming alternatives are available to construct an attached or detached garage to the east of the dwelling on lot 10. This would: (1) provide for off-street parking on site and not within the public street right-of-way; (2) prevent backing from the garage into the street; and (3) enhance visibility at this intersection.

As conforming alternatives exist, the variance is not recommended. However, should the Board determine there is a sufficient practical difficulty/hardship present to justify a variance, then staff would recommend that the garage be reduced to 34' x 22' to

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1986-1988 Michigan Communities of Economic Excellence Program

increase the setback to about 10' on the northwest corner and provide vehicular entrance to the garage from the east side which will prevent backing into/from the street.

CONSIDERED HARDSHIP/PRACTICAL DIFFICULTY:

Irregularly shaped lots and reduction in the degree of nonconformity.

JME:1k1:7690

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TO BE COMPLETED BY APPLICANT

I (we) Donald Gordon Barker (name(s)), of 4726 Deep Point Drive (address),

herby: (a) appeal to the Zoning Board of Appeals the determination of the Building Services Division dated _____, 19____, whereby the Building Services Division denied zoning approval;

(b) request approval of the Zoning Board of Appeals for the following:

(Explain) _____

ADDRESS OF PROPERTY IN QUESTION:

Street Address: 4726 Deep Point Drive

Lot 9 & 10 of Baniarla's Cove Plat Zoning District: R-1A

Legal Description (if unplatted land): Please attach on a separate sheet.

TYPE OF APPEAL:

Variance from Zoning Ordinance: Article 12-78 Section 01 Paragraph _____

Regarding: Use _____; Area _____; Yards _____; Setbacks Parking _____; Other _____

Reason for request: need for parking, inside parking, boat storage, tool storage, work shop, continuity of yard space lake view and access
See attached.

An Interpretation of the Zoning Ordinance: Article _____ Section _____ Paragraph _____

Reason for request: _____

REVIEW/APPROVAL:

A temporary permit for: building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for request: _____

By previous application been filed regarding this property? _____ Date: _____

Applicant's interest in premises affected? primary residence

Phone Number 329-2855

Signature of Applicant Donald G. Barker

try
3
wiring
out of
SW out
of
3 RM.

stalled
w/ utility

Subject Property
4726 Deep Point Dr

R-1B

4500

4811

4815

4819

4827

Deep Point Dr

4726

4802

4808

4810

4814

4818

4822

4826

4830

4708

4702

4632

4628

4624

4622

4618

4614

Zylman Av

Long Lake

Pavilion Township

R-1A 8643

Edgewater Dr



0 90 180 Feet

4726 Deep Point Drive
ZBA 10-06

Legend

- Subject Property
- 300' Notification Boundary
- Zoning Boundary

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 9-5-10
 Name of Applicant Scott A Sampson *Scott A Sampson*
Signature
Print
 Applicant's Address 4726 Deep Point Dr. Phone No. 321-591-0684
 Name of Property Owner (if different from Applicant) _____
 Address _____ Phone No. _____

Address of the Property that is the subject of this Application:

Street Address 4726 Deep Point Dr. Portage, MI 49002
 For Platted Property: Lot 9&10 of Bauierlas Cove Plat _____

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: front yard set back on west side of home

Application Fee _____ (Residential Uses) _____ (All Other Uses)

Type of Appeal (Please check one of the following **bold choices** and provide the requested information):

Variance from Zoning Ordinance: Article _____ Section _____ Paragraph _____
 Regarding: Use _____ Area _____ Yards _____
 Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): _____

Appeal of Administrative Decision: Article _____ Section _____ Paragraph _____

Reason for Request: _____

Interpretation of the Zoning Ordinance: Article _____ Section _____ Paragraph _____

Reason for Request: _____

A Temporary Permit for: Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

Application Number: <u>10-067</u>	Filing Date: <u>9/9/10</u>	Tentative Hearing Date: <u>10/11/10</u>
Previous Application Filed Regarding This Property:		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)
See Attached
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
See Attached
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
See Attached
4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)
See Attached
5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)
see Attached
6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
See Attached
7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)
see Attached
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
See Attached


Signature of Applicant

9/17/2010
Date

RECEIVED

SEP 09 2010

COMMUNITY DEVELOPMENT

- 1) The irregular shape of these two lots along with the way the road meets with the lots seems to be what caused confusion with the previous owner and prevented compliance with the zoning ordinance. The road, as it sets now, is at least 30 feet from the house which subtracting 3 feet from that, which seems to be the median setback for lot lines on this road, would give you the 27 feet needed to be in compliance.
- 2) Yes the physical characteristics listed above with the way the road meets the lot lines on this property are unique and are not shared with neighboring properties.
- 3) No this part of the property now contains the main front entrance to the home as well as the kitchen and living area of the home.
- 4) This is the minimum variance needed to allow reasonable use of the home. Other homes in the area set closer then this home currently sets, at the point of interest.
- 5) This home sets 30 plus feet off the edge of the road at the point of interest. Neighboring homes set closer to the road and have less vegetation blocking views of how near to the road they are.
- 6) This variance would essentially have no effect at all on traffic or noise in the neighborhood. Actually not granting the variance would cause more construction noise as the site in question was built over 10 years ago according to neighboring witnesses.
- 7) No the hardship was not created by anyone involved.
- 8) Granting the variance would not affect any other properties in the area nor would it create a traffic congestion problem or fire hazard. Granting the variance will deal with the hardship of having two uniquely shaped lots that make it hard to meet front setback requirements.



RECEIVED

SEP 17 2010

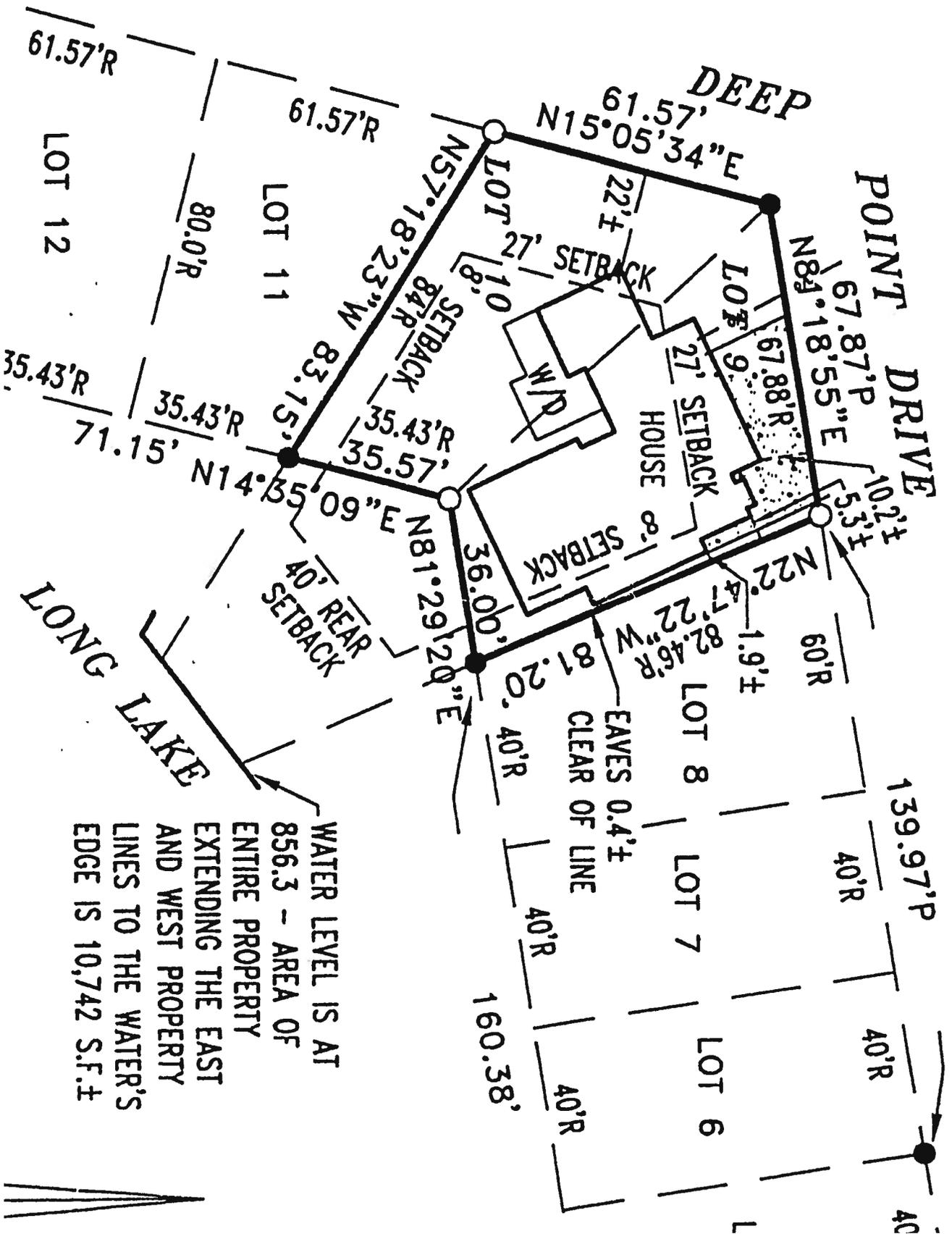
COMMUNITY DEVELOPMENT

ALL BEARINGS AND DISTANCES ARE FIELD MEASURED UNLESS OTHERWISE NOTED.

Prior to construction

CERTIFIES THE BOUNDARY LOCATIONS ARE FOR VISUAL SHOULD NOT BE USED FOR

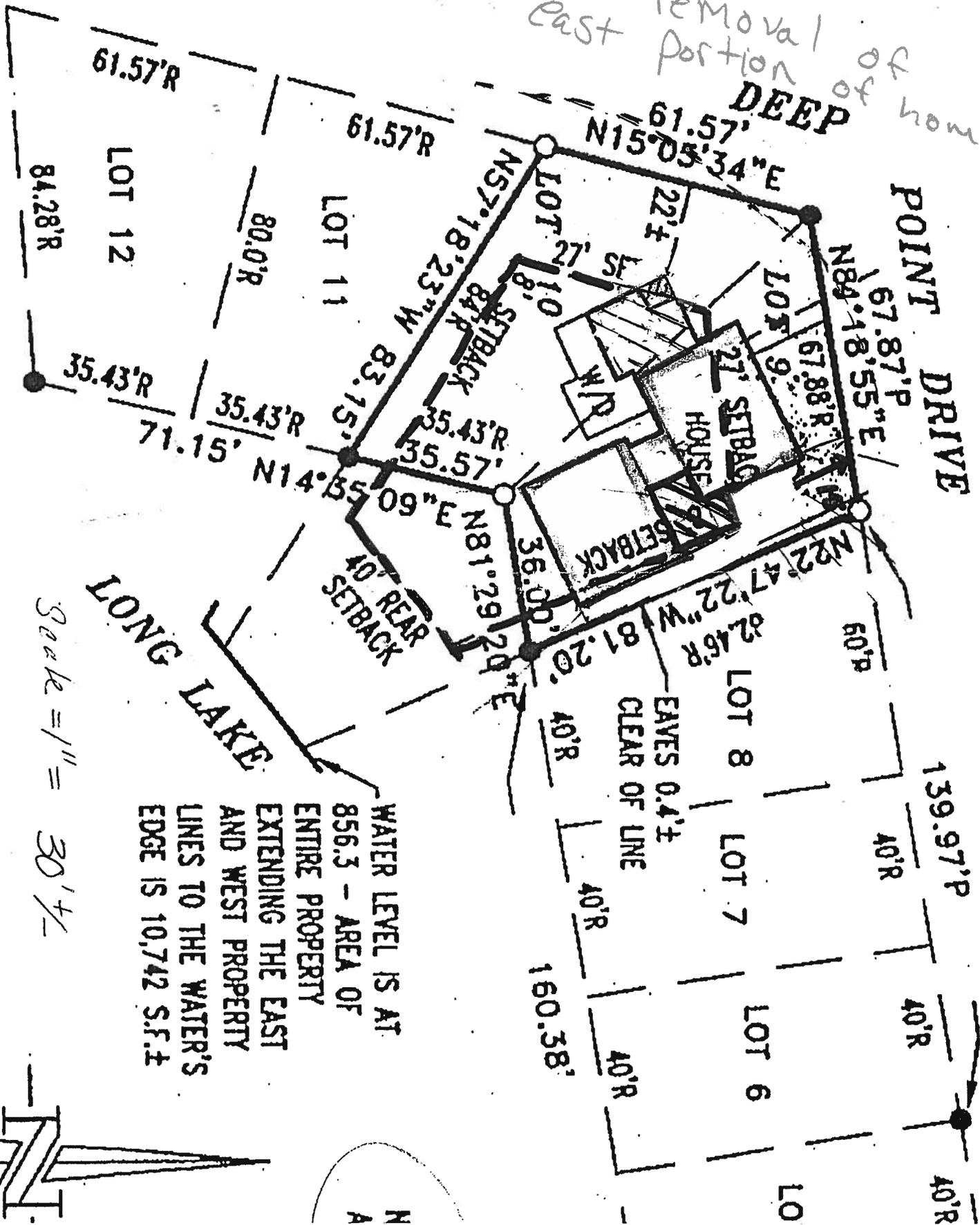
ADDRESS: DEEP POINT D
 DATE: 2/13/09 & 5/28
 SCALE: 1" = 60'
 DRAWN BY: DMS



DEFINES THE BOUNDARY LINES ARE FOR VISUAL

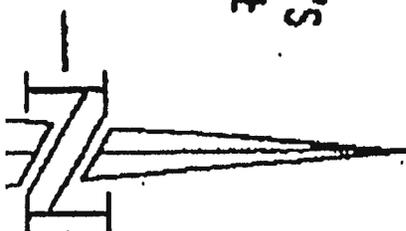
ADDRESS: DEEP POINT DRIVE
DATE: 2/13/09 & 5/28/09
SCALE: 1" = 60'

Post removal of portion of home



Scale = 1" = 30' 1/2

WATER LEVEL IS AT 856.3 - AREA OF ENTIRE PROPERTY EXTENDING THE EAST AND WEST PROPERTY LINES TO THE WATER'S EDGE IS 10,742 S.F.









TO: Zoning Board of Appeals **DATE:** October 1, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: ZBA #10-06; Scott Sampson, 4726 Deep Point Drive; R-1A One Family Residential

CODE SECTION: 42-133 Nonconforming Buildings, p. 42-44
42-350, Schedule of Regulations, p. 87-89

APPEAL: Requesting a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling.

STAFF RECOMMENDATION: The applicant is requesting the above variance per the enclosed application, site sketch, and letter of explanation. The 10,742 square foot lake front property is improved with a 1,799 square foot dwelling and 472 square foot attached garage. The original portion of the dwelling, built in 1925, is nonconforming along the southeast side with regard to the side yard setback, and the attached garage, built in 1988, received a front yard setback variance in 1988.

As additional background for the Board, the applicant requested two variances in June 2009 to retain two illegal building additions along the northeast and northwest sides of the dwelling, constructed by a previous owner (see attached staff report and minutes). The Board denied the requested variances and the city required the applicant to remove the nonconforming portions of the dwelling. As the June 30, 2010 deadline to complete the demolition and reconstruction was not met by the applicant, legal enforcement action was initiated in August 2010. While the demolition and reconstruction of the east side of the dwelling in compliance with the Zoning Code and Building Code is now nearly complete, the applicant is requesting the Board reconsider the prior variance request to retain the addition on the northwest corner of the dwelling.

The applicant indicates the property has an irregular shape and the area of the dwelling that does not meet the front setback (21 square feet) is minimal. The applicant also contends that retaining the northwest corner of the dwelling would be in keeping with the neighborhood as there are other buildings closer to the road on other properties. Finally, as the old kitchen in the original portion of the house was not operable, an existing kitchen in the northwest area of the dwelling was retained, and the applicant notes reducing this portion of the house would adversely impact the floor plan.

While rehabilitation of the northwest portion of the dwelling has started in order to address Building Code deficiencies, conforming alternatives to address Zoning Code standards are available to the applicant. As indicated previously, the northwest corner of the addition can be eliminated, and additional floor area, if needed, can be constructed in compliance with the Zoning Code on other areas of the dwelling. If the Board were to find that a practical difficulty exists, a variance can be authorized.

PRACTICAL DIFFICULTY: None noted by staff. Irregular lot size; minimum variance necessary; no adverse impact on neighboring properties noted by applicant. See Suggested Motion form.

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 22, 2009

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Two people were in the audience.

MEMBERS PRESENT: Robert Atkins, Timothy Bunch, David Felicijan, Henry Kerr, Rob Linenger, Donald Mordas, Betty Schimmel, Marianna Singer

MEMBERS EXCUSED: Lowell Seyburn

IN ATTENDANCE: Vicki Georgeau, Deputy Director of Neighborhood Services, Charlie Bear, Assistant City Attorney

NEW BUSINESS:

ZBA# 08-29, 4726 Deep Point Drive: Staff summarized the request for a) a variance to enlarge or alter a nonconforming building into the side yard setback where eight-feet is required to retain an addition on the east side of the dwelling; and b) a variance to enlarge or alter a nonconforming building into the front setback where 27 feet is required to retain an addition on the west side of the dwelling. Scott Sampson was present to explain his request, that he has a purchase agreement for the foreclosed property, and wishes to retain the additions and would renovate the house to comply with the Building Code. Kerr and Atkins noted the east addition extends to the property line and variance requested is large. Sampson noted he prefers to keep the house as is, but is willing to remove the east four feet to line up with the original dwelling setback of five feet near the southeast corner. Mordas inquired if the applicant considered building within the setback range on the southwest area of the lot. Sampson indicated he desires to keep the house close to the original location and design. Kerr asked if the applicant would be willing to return the house to its original footprint. Sampson indicated the area would be too small for year-round living. Singer and Schimmel inquired regarding the foundation and footings. Sampson indicated the west side is on piers and is easily accessible to reconstruct/correct. The east side of the house is on a slab, but would also be fixed to meet Building Code. With regard to flooding on the lot, Sampson indicated the west side of the property presents problems with building. Felicijan indicated a concern regarding lack of hardship. The applicant noted the original house size, the configuration of the property and drainage problems on the west side of the lot, and location of original house pose a hardship.

A public hearing was opened. Dan Jackson, 4802 Deep Point Drive, spoke in opposition to the variance request to retain the addition on the east side of the house, but does not object to the variance requested on the west side of the dwelling. As no further comments were received, the public hearing was closed.

A motion was made by Felicijan, supported by Atkins, to deny a) a variance to enlarge or alter a nonconforming building into the side yard setback where eight-feet is required to retain an addition on the east side of the dwelling; and b) a variance to enlarge or alter a nonconforming building into the front setback where 27 feet is required to retain an addition on the west side of the dwelling for the following reasons: there are no exceptional or extraordinary circumstances that do not apply generally to other properties in the same zoning district; the variance would be detrimental to adjacent property and the surrounding neighborhood, and the variance would materially impair the intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. After additional discussion and upon roll call vote: Linenger-Yes, Singer-Yes, Kerr-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Bunch-Yes. Motion carried 7-0. In response to an inquiry from the applicant, Kerr encouraged Mr. Sampson to work with staff on options available to address the City Code violations.

OTHER BUSINESS: None.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 7:32 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services

TO: Zoning Board of Appeals **DATE:** June 12, 2009
FROM: Jeffrey M. Erickson, *JME* Director of Community Development
SUBJECT: ZBA #08-29, Scott Sampson, 4726 Deep Point Drive; R-1A One Family Residential
CODE SECTION: 42-133 Nonconforming Buildings, p. 42:44;
42-350, Schedule of Regulations, p. 42:87-89

APPEAL: Requesting a) a variance to enlarge or alter a nonconforming building into the side yard setback where eight-feet is required to retain an addition on the east side of the dwelling; and b) a variance to enlarge or alter a nonconforming building into the front setback where 27 feet is required to retain an addition on the west side of the dwelling.

**STAFF RECOM-
MENDATION:**

The applicant is requesting the variance per the enclosed application, letter of explanation, floor plans and survey. The 10,742 square foot lake front property is improved with a 2,005 square foot dwelling and 506 square foot attached garage. The property is in foreclosure. The original portion of the dwelling, built in 1925, is nonconforming with regard to the east side yard setback and minimum floor area. The east side yard setback is five-feet where eight feet is required and the living area is 876 square feet where 1,120 square feet is required. In 1988, the previous owner received a variance to construct a garage which was 884 square feet in area and has a 10-foot front yard setback. While the previous owner was denied a variance to construct an addition to the dwelling in 1989, two nonconforming additions were subsequently constructed with no permits: 1) a 431 square foot addition on the east side of the dwelling with a side setback of less than one foot at the southeast corner and five feet at the northeast corner where eight feet is required; and 2) a 320 square foot addition on the west side of the dwelling with a 22-foot front setback where 27 feet is required. In addition, 378 square feet of the garage was converted to living area at some point after 1989 by the previous owner.

The city became aware of the nonconforming additions in response to a citizen complaint. The construction includes improper footings/foundations and improper roof construction in violation of the Building Code. Additional Building Code violations such as electrical, mechanical and plumbing may also have to be addressed to retain the dwelling additions.

With regard to request a) the nonconformity is significant, as the southeast corner has virtually no setback from the side property line and is only seven feet from the dwelling to the east. In addition, the scope of work needed to bring the addition into compliance with the Building Code is extensive. Approval of the requested variance is not recommended. If the east dwelling addition was modified to remove the easterly four feet as also suggested by the applicant, the setback at the southeast corner of the dwelling would be approximately in line with the setback of the original dwelling and comply with the Zoning Code at the northeast corner of the dwelling. If the Board were to find a practical difficulty with regard to a lesser variance that required the removal of the easterly four feet of the dwelling addition, a variance can be authorized.

With regard to request b) however, conforming alternatives are available to the applicant. As shown on the floor plan, if the northwest corner of the addition were removed to comply with the front setback, only a closet and small area of the room would be eliminated. Also, additional floor area can be constructed in compliance with the Zoning Code southeast of the west part of the dwelling. In addition, the scope of work needed to bring the addition into compliance with the Building Code is extensive. Approval of the requested variance is not recommended.

**PRACTICAL
DIFFICULTY:**

Location of legally nonconforming dwelling and garage on lot, and storm water accumulation on west side of lot, as noted by applicant. See attached Board Suggested Motion Form.

SUGGESTED NON-USE VARIANCE MOTION FORM

Mr. Chairman:

I move, in regard to ZBA # _____, the application by _____
for a variance from _____

be:

a. granted for all of the following reasons:

- 1a. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to _____, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

-or-

b. denied for one of more of the following reasons:

- 1b. There are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district;
- 2b. The variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as _____.
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

c. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, **and that action of the Board be final and effective immediately.**

