

CITY OF
PORTAGE
A Place for Opportunities to Grow

ZONING BOARD OF APPEALS

June 14, 2010

CITY OF PORTAGE ZONING BOARD OF APPEALS

Monday, June 14, 2010

(7:00 pm)

**Portage City Hall
Council Chambers**

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES:

- * May 10, 2010

OLD BUSINESS:

NEW BUSINESS:

- * ZBA# 09-22, 10095 South 12th Street: Valerie Misasi is requesting a) approval for a private stable with one horse on 1.2 acres where a minimum two acres is required; b) a variance from the required 125 foot setback for manure to be located 45 feet from the north, south and east property lines; c) a variance to retain a 576 square foot detached accessory building and construct an attached 216 square foot lean-to structure, which exceeds the permitted accessory building area by 312 square feet; d) a variance to permit the raising of 10 chickens on a 1.2 acre parcel where 10 acres is required for general agriculture/farm; or e) a Temporary Use Permit to keep the chickens for a 12-month period (with the option to request one 12-month extension).

Election of Officers

STATEMENT OF CITIZENS:

ADJOURNMENT:

MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet

CITY OF PORTAGE ZONING BOARD OF APPEALS
Minutes of Meeting – May 10, 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. Approximately 8 people were in the audience.

MEMBERS PRESENT: Henry Kerr, Rob Linenger, Betty Schimmel, Marianne Singer, Donald Mordas, Daniel Rhodus (alt.), Timothy Bunch (alt.)

MEMBERS EXCUSED: Lowell Seyburn

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 Mordas seconded a motion to approve the April 14, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA# 09-20, 5419 Meredith Drive: Staff summarized the request for a variance to a) retain exterior light fixtures that are oriented in an unshielded position throughout the development; and a variance to b) exceed the light intensity level greater than 0.3 foot-candles along the north property line. Carol Bodnar, on behalf of Devonshire Meredith LLC, was present to explain the request which is to retain light fixtures that were recently repaired or replaced with similar pre-existing lights. Kerr noted it is regrettable their electrician did not work with the city to ensure code compliance. In response to Kerr, staff noted screening is not required between multiple-family and one-family developments, but the applicant and an adjacent neighbor on Hanover Street have discussed erecting a privacy fence.

A public hearing was opened. Mr. Blake Bancroft, 4709 Hanover Street, asked where the lighting exceeds maximum light levels, and the purpose of using unshielded fixtures. Staff responded the lighting exceeds intensity levels along the north property line. Bodnar explained the lighting is intended to address safety and crime prevention, and that since her ownership, police calls have been reduced. Bancroft cited a number of studies that indicate lighting does not prevent crime, has an adverse impact on humans, animals and vegetation, and consumes unnecessary energy. Bancroft objected to the variances and suggested standards to reduce glow and light trespass. Bancroft submitted letters of opposition from the following: Barb Lipsey, 4715 Hanover Street; Kelli Palmer, 4615 Hanover Street; Millie Newson, 5501 Meredith Street; Jason Barber, 4533 Hanover Street; David Strine, 4510 Hanover Street; Dan Hazell, 4633 Hanover Street. Carrie Richmond, 4624 Hanover Street recognized the efforts of Devonshire Meredith LLC, but noted the Neighborhood Watch group has been instrumental in reduce crime, and that she supports neighboring property owners adversely impacted by the bright lights. Bodnar clarified that other than the north property lines, all lights meet the Zoning Code intensity levels. There being no further comments, the public hearing was closed.

Singer asked if the lights can be shielded. Staff indicated yes or adjusted downward to meet the code. Linenger asked if there was a one-for-one replacement of exterior lights. Staff responded yes. Mordas asked if the lights were adjusted downward, would the applicant install additional new lights and would that increase the light intensity. Staff responded that it is likely additional wall and pole mounted lights would be needed to have the same amount of exterior lighting, but all new lights would have to meet code. Without a photometric light plan, staff indicated it is not possible to specify if the overall light intensity or “glow” would be reduced. Mordas asked if the lights on the south side of unit 9 were eliminated, would it resolve the neighbors concerns. Staff indicated that may helpful.

A motion was made by Linenger, supported by Mordas, to approve a variance to: a) retain exterior light fixtures that are oriented in an unshielded position throughout the development, and b) to exceed the light intensity level greater than 0.3 foot-candles along the north property line, conditioned upon: 1) all exterior lights remain located and positioned as now existing and the exterior lights along the west and south property lines remain fixed in position so as to meet the maximum light intensity and glare prevention requirements of the Zoning Code, except that the light fixtures on the following buildings be provided with additional custom shielding that meet the Zoning Code or replaced with conforming light fixtures: the south end of unit 9; east end of unit 11, west and south end of unit 12, south end of unit 13 and south end of unit 14; and 2) exterior lights on the north sides of the buildings along the north property line be replaced to meet the Zoning Code maximum light intensity and glare requirements if the property to the north develops with residential use(s) in the future. The variance is granted for the following reasons: 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 the age and location of existing multiple-family residential buildings, and the presence of legally non-conforming light fixtures based on a one-for-one light replacement that the applicant has performed; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent or the 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, Kerr-Yes, Schimmel-Yes, Mordas- Yes, Singer-Yes, Mordas-Yes, Bunch-Yes, Rhodus-Yes) the motion carried 7-0.

ZBA# 09-21, 716 West Van Hoesen Boulevard: Staff summarized the request for a variance to enlarge a non-conforming dwelling to construct an 81 square-foot covered porch 17 feet from the front (east) property line where a minimum 27-foot setback is required. Teresa Millar was present to explain that the request, and that she has used gutters, heat tape and other efforts to prevent ice build up on the ground in front of the main entry of the house. The proposed roof extension will resolve the existing safety hazard. Kerr indicated her house seemed closer to the road than others on the block. Millar responded the house across the street on Nevada is actually closer to the property line than her house. In response to Kerr, staff confirmed that building lot cover is not a problem for the property and proposed covered entryway.

A public hearing was opened. No one was present to speak for or against the request. A letter of support from Rod O'Brien, 623 West Van Hoesen Boulevard, was read into the record. There being no further comments, public hearing was closed.

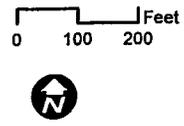
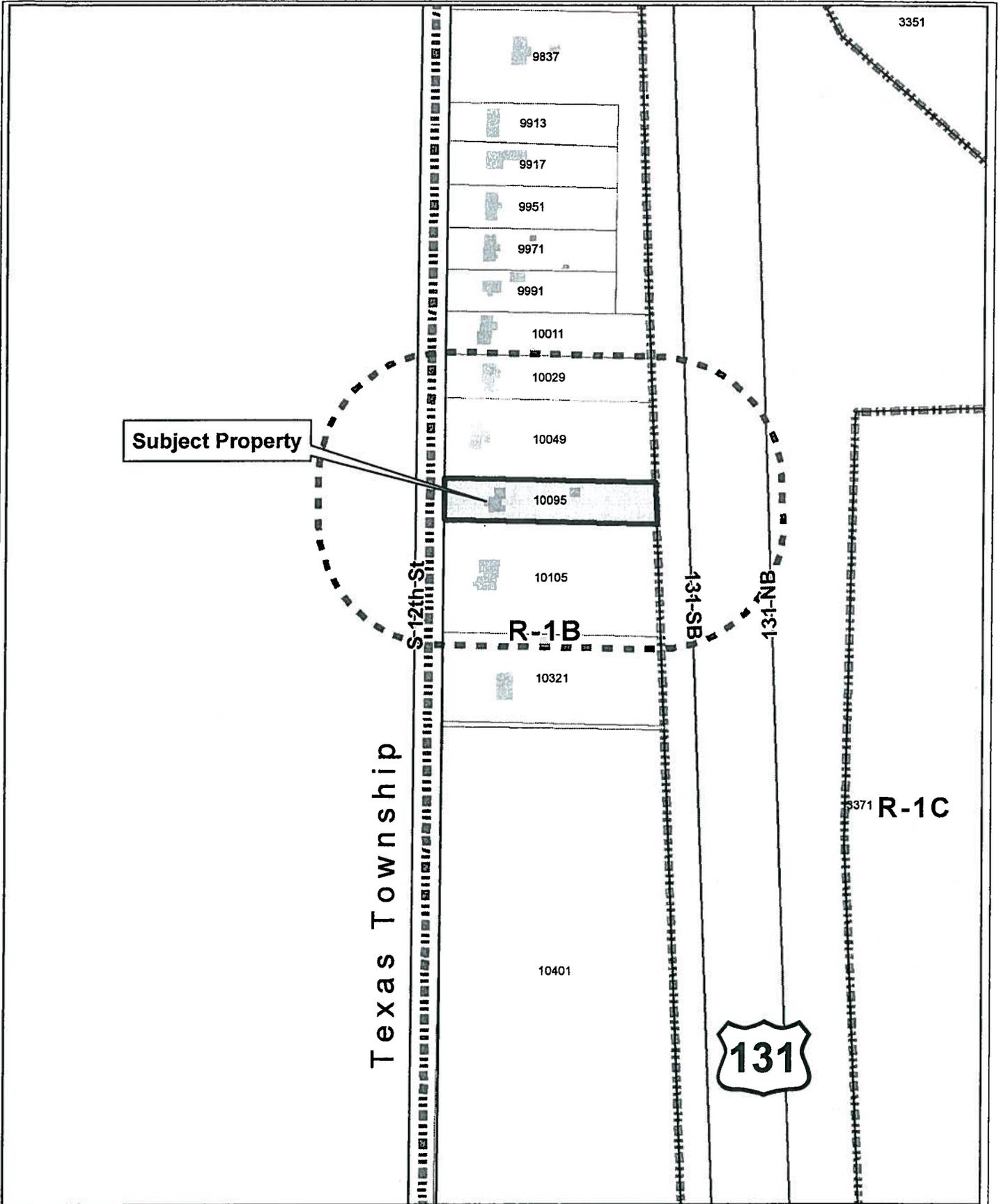
A motion was made by Linenger, supported by Schimmel, to grant a variance to enlarge a non-conforming dwelling to construct an 81 square-foot covered porch 17 feet from the front (east) property line where a minimum 27-foot setback is required for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the location of the dwelling on the lot and location/design of the main front entry of the dwelling; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to improve the safety, functionality and appearance of the dwelling, which is similar to that possessed by other properties in the same zoning district and vicinity; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not 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, Kerr-Yes, Schimmel-Yes, Mordas-Yes, Singer-Yes, Mordas-Yes, Bunch-Yes, Rhodus-Yes.) motion carried 7-0.

STATEMENT OF CITIZENS: Kerr noted that Election of Officers will be included on the June 3, 2010 agenda.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:20 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services



ZBA 09-22
10095 South 12th Street



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MAY 18 2010

COMMUNITY DEVELOPMENT

Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 5/18/10
 Name of Applicant VALERIE MIBASI Print Valerie Mibasi Signature
 Applicant's Address 10095 S. 12th STREET Phone No. (269) 372-2342
 Name of Property Owner (if different from Applicant) SAME
 Address _____ Phone No. _____

Address of the Property that is the subject of this Application:
 Street Address 10095 S. 12th STREET
 For Platted Property: Lot _____ of _____ 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: POLE BARN
24' x 24'

Application Fee pd (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): 24' x 24' POLE BARN THAT HAS ALREADY BEEN CONSTRUCTED BY PREVIOUS OWNER

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>09-22</u>	Filing Date: <u>5/11/2010</u>	Tentative Hearing Date: <u>6/14/2010</u>
Previous Application Filed Regarding This Property: <u>NONE</u>		

A

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.)

POLE BARN ALREADY BUILT 24' x 24'

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)

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.)

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.)

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.)

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.)

YES, PREVIOUS OWNER BUILT POLE BARN AND DID NOT GET ANY PERMITS.

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

Valerie Matus
Signature of Applicant

5/18/10
Date



ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 5/10/10
 Name of Applicant VALERIE MISAZI Valerie Misazi
Print Signature
 Applicant's Address 10095 S. 12th STREET / SCHOOLCRAFT Phone No. (269) 372-2342
 Name of Property Owner (if different from Applicant) SAME
 Address _____ Phone No. _____

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

Street Address 10095 S. 12th ST. SCHOOLCRAFT 49087
 For Platted Property: Lot _____ of _____ 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. I WOULD LIKE TO HAVE MY DAUGHTER'S HORSE ON PROPERTY

Application Fee 135.00 (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 HORSE ON PROP. Area 1.2 ACRES Yards _____
 Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): I ONLY HAVE 1.2 ACRES AND WANT MY DAUGHTER'S HORSE ON PERSONAL PROPERTY. MY NEIGHBORS TO THE SOUTH OF ME ARE WILLING TO LET ME USE SOME OF THEIR PROPERTY
 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>09-22-109-10000018</u>	Filing Date: <u>5/11/10</u>	Tentative Hearing Date: <u>06/14/10</u>
Previous Application Filed Regarding This Property:		

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COMMUNITY DEVELOPMENT

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.)

I ONLY HAVE 1.2 ACRES, WOULD LIKE HORSE ON PROPERTY. BOTH MY NEIGHBORS, THE ALDRICH'S AND THE SPRUIEL'S ARE O.K. WITH ME HAVING A HORSE.

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)

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.)

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.)

MY PROPERTY BACKS UP TO U.S. 131, THE LAND ACROSS THE STREET BELONGS TO THE BINGHAM'S AND ARE NOT SELLING TO DEVELOPERS, AND MY NEIGHBORS TO THE SOUTH + NORTH OF ME ARE FINE WITH HAVING A HORSE.

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.)

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.)

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

MY DAUGHTER, ANNIE, IS A SPECIAL NEED CHILD, THE HORSE WAS GIVEN TO HER FROM HER AUNT. RIDING THE HORSE IS VERY THERAPEUTIC TO MY DAUGHTER. BOARDING THE HORSE MEANS WE CAN NOT SEE HER AS OFTEN. AND I THINK SEEING A HORSE OUT MY KITCHEN WINDOW WOULD BE EXCITING. THE HORSE IS "ROSA"

Valerie Miatasi
Signature of Applicant

5/10/10
Date



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CITY OF PORTAGE A Place for Opportunities to Grow

COMMUNITY DEVELOPMENT

Department of Community Development

ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date 5/18/10
Name of Applicant VALERIE MURPHY
Applicant's Address 10055 S 125 ST
Name of Property Owner (if different from Applicant)
Address SAME
Address of the Property that is the subject of this Application:

Street Address SAME
For Platted Property: Lot of 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: LEAN-TO BUILT ON SIDE OF POLE BARN OR SEPARATE

Application Fee pd (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): WANT A LEAN-TO FOR "HORSE" ON 10055 S 125 STREET / SCHWELKOPT

Appeal of Administrative Decision: Article Section Paragraph
Reason for Request: WANT HORSE ON PROPERTY AND NEED LEAN-TO FOR PROTECTION FOR THE HORSE

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: LEAN-TO / HAVE ALSO DRAWINGS OF THE LEAN-TO EITHER ON SIDE OF POLE BARN OR AT LEAST 10' AWAY FROM BARN

FOR STAFF USE

Table with 3 columns: Application Number, Filing Date, Tentative Hearing Date; and 1 row: 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.)
HAVE 1.2 ACRES OF LAND FOR HORSE, USED 2 ACRES AND
NEIGHBOR TO THE SOUTH OF ME IS WILLING TO LET ME
USE SOME OF THEIR LAND @ 1.5 ACRES.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
YES, WE WOULD BE SHARING SOME LAND
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
~~NO~~ ?
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.)
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.)
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.)
NO TRAFFIC
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.)
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)

Valerie Matus
Signature of Applicant

5/18/10
Date

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MAY 18 2010

COMMUNITY DEVELOPMENT

**VALERIE MISASI
10095 S 12TH STREET
SCHOOLCRAFT, MI 49087**

TO THE BOARD OF APPEALS,

I AM APPLYING FOR 3 REQUESTS, "A" POLE BARN, "B" HORSE ON PROPERTY, AND "C" LEAN-TO FOR THE HORSE.

A) A 24' X 24' POLE BARN THAT HAD BEEN ALREADY CONSTRUCTED BY THE PREVIOUS OWNER AND DID NOT GET THE NECESSARY PERMITS.

B) MY NEXT REQUEST IS TO HAVE A HORSE ON MY PROPERTY. THIS HORSE WAS GIVEN TO MY DAUGHTER AS A GIFT FROM HER AUNT IN COLORADO AND THIS HORSE IS VERY THERAPEUTIC TO MY DAUGHTER. I HAVE TALKED TO BOTH MY NEIGHBORS ON EACH SIDE OF ME AND THEY HAVE GIVEN THEIR BLESSINGS. MY NEIGHBORS TO THE SOUTH OF ME (THE ALDRICH'S) HAVE OFFERED TO LET ME USE A PORTION OF THEIR LAND FOR THE HORSE TO USE. I HAVE 1.2 ACRES AND THEY HAVE 3 ACRES, I WOULD BE USING ALMOST 2 ACRES OF THEIR LAND.

C) MY LAST REQUEST, IF ONLY REQUEST "B" HAS BEEN APPROVED, IS TO HAVE A LEAN-TO BUILT NEXT TO THE POLE BARN, SIZE WOULD BE 18' X 10' OR IF THE FOOTINGS ON THE POLE BARN ARE NOT IN COMPLIANCE, THE LEAN-TO WOULD BE BUILT AT LEAST 10' AWAY FROM THE POLE BARN. I AM SUBMITTING SOME DRAWINGS MY FRIEND, JACK TAYLOR, DREW UP FOR ME. WE WILL HAVE SIDING ON THE LEAN-TO, LIKE THE POLE BARN SO THE STRUCTURE WILL BLEND IN WITH THE HOME AND POLE BARN.

Victoria Georgeau - another appeal

From: Val Misasi <valmisasi@yahoo.com>
To: <georgeav@portagemi.gov>
Date: 5/20/2010 8:26 AM
Subject: another appeal

To Vicki,

Per our conversation yesterday, 5/19/10, I need to put in for one more variance.

This would be for my chickens. I have 10 hens in my fenced back yard, and it was to my understanding that one could have chickens in Portage. I bought these chickens, they were a day old, with both my neighbors permission. I have put nearly \$2,000.00 of my money to fence and protect these chickens from predators.

My daughter enjoys feeding these chickens and my neighbors love eating the fresh and natural eggs.

I keep the coop clean and pick up the droppings on a regular basis.

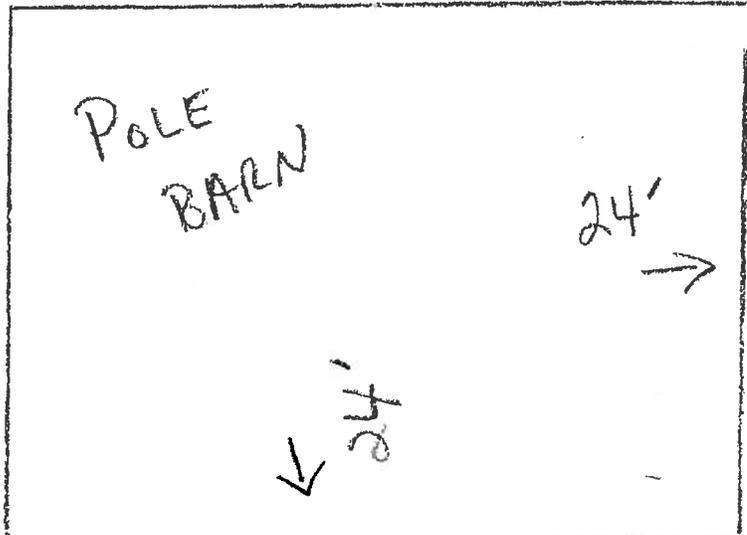
I am asking for a year variance, with an extension of a year following if my chickens do live that long.

Val Misasi

WEST

SOUTH

NORTH



OPEN
BUILD
LEAN-TO

18'

12'

EAST

8' HIGH

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MAY 12 2010

COMMUNITY DEVELOPMENT

COMMUNITY DEVELOPMENT

MAY 12 2010

RECEIVED

at address

10095 S. 12th STREET

SCHOOLCRAFT, MI

49087

131-115

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MAY 11 2010

COMMUNITY DEVELOPMENT

May 10, 2010

City of Portage

Re: Horse residing on city property

Our address is 10105 S 12th Street Schoolcraft MI 49087. We are offering a large portion of our open property to Val Misasi for the purpose of housing her horse. There was previously a horse on this property when my daughter participated in Kalamazoo County 4-H and rode for WMU's Equestrian Team. The posts remain, so we will be reconfiguring them slightly, to also include a portion of Val's property immediately to the north of ours. Our property is over 3 acres in size. We have no objection to a horse being on our property or any property nearby and are excited to have them.

Regards,



Sandy Aldrich
10105 S 12th St
Schoolcraft MI 49087
269 353 4601

10049 S. 12th Street
Schoolcraft, MI 49087

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COMMUNITY DEVELOPMENT

City of Portage
Planning & Development Services
7900 S. Westridge
Portage, MI 49002

To whom it may concern:

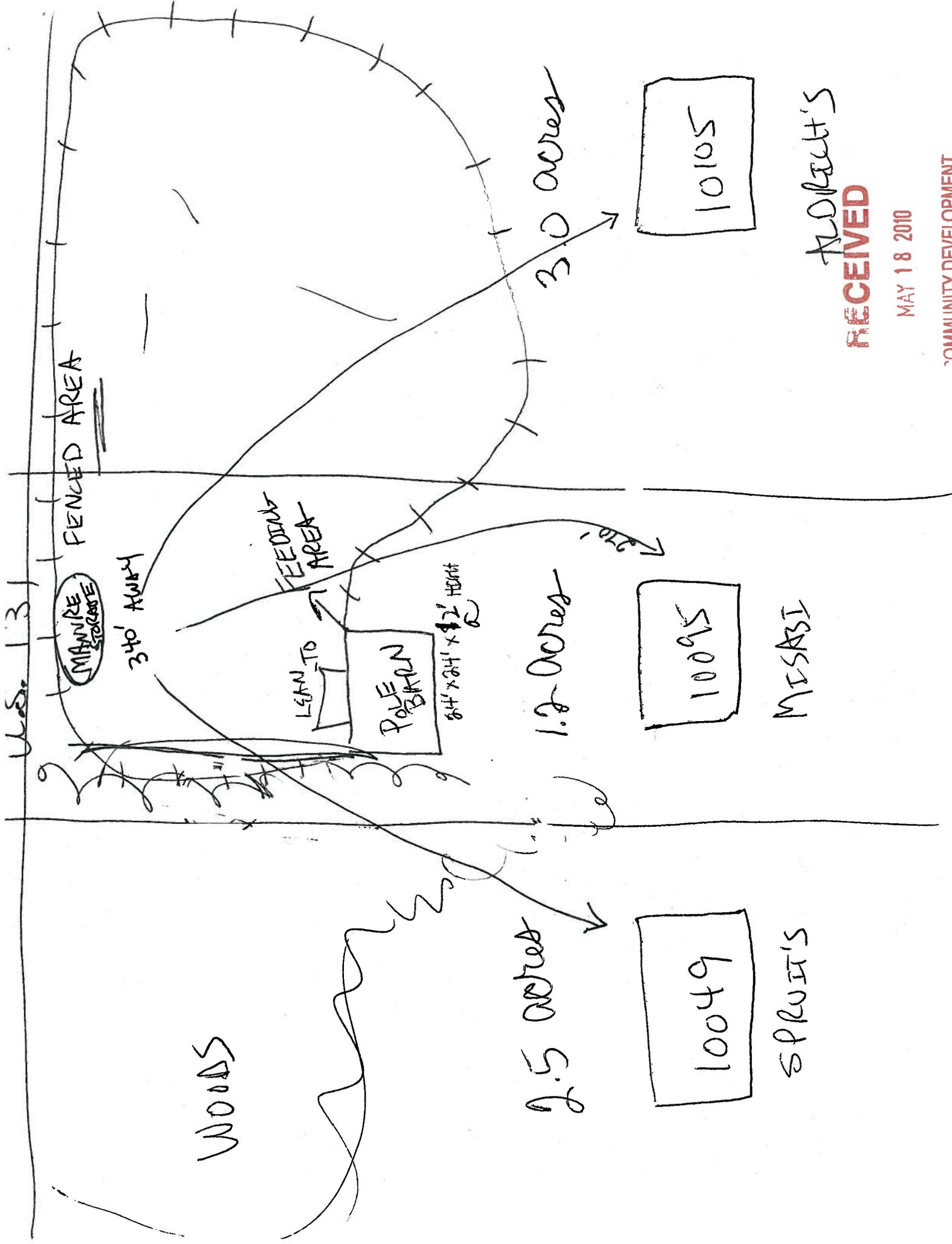
As residents of 10049 S. 12th Street and next door neighbors of Valerie Misasi at 10095 S. 12th Street, we have absolutely no objection to her having a horse on her property. We fully support her request.

If you have any questions or concerns, please contact us at 375-9556.

Thank you,

Patrick A. Sprunt

Mary C. Sprunt



10049

SPRUIT'S

10095

MISASI

10105

ADJECT'S

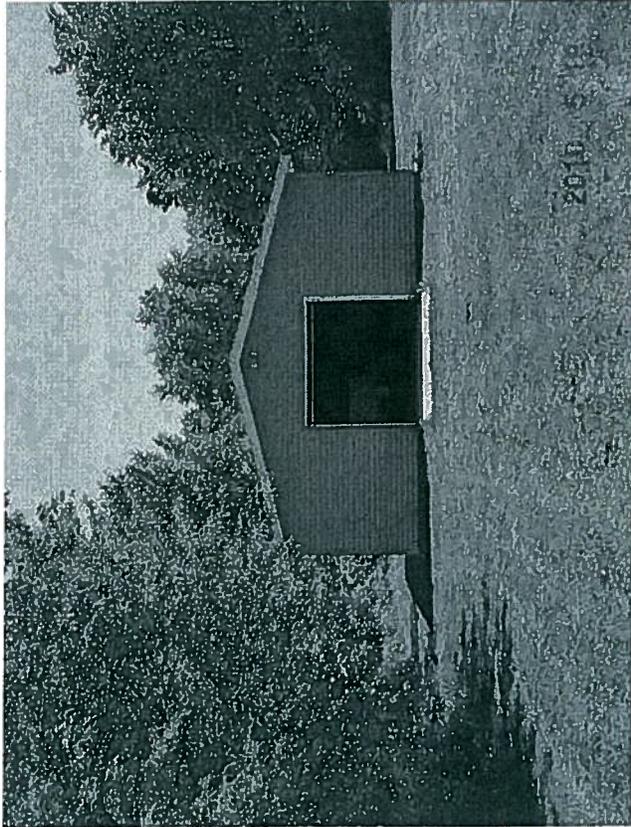
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MAY 18 2010

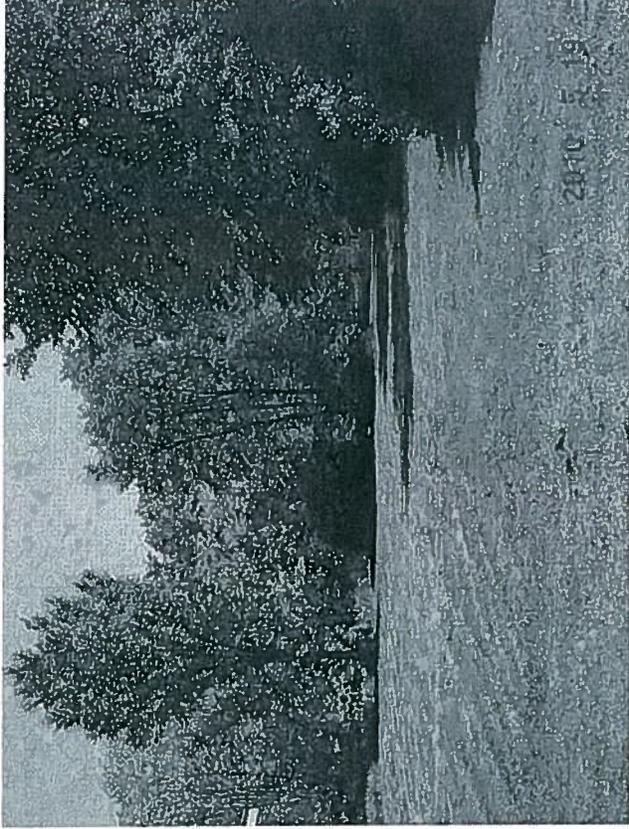
COMMUNITY DEVELOPMENT



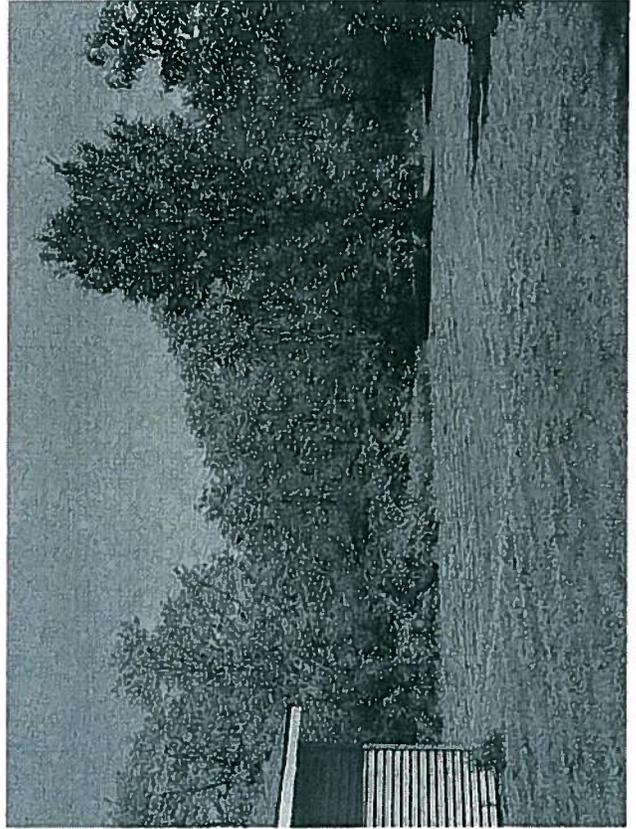
Pole barn, view to east



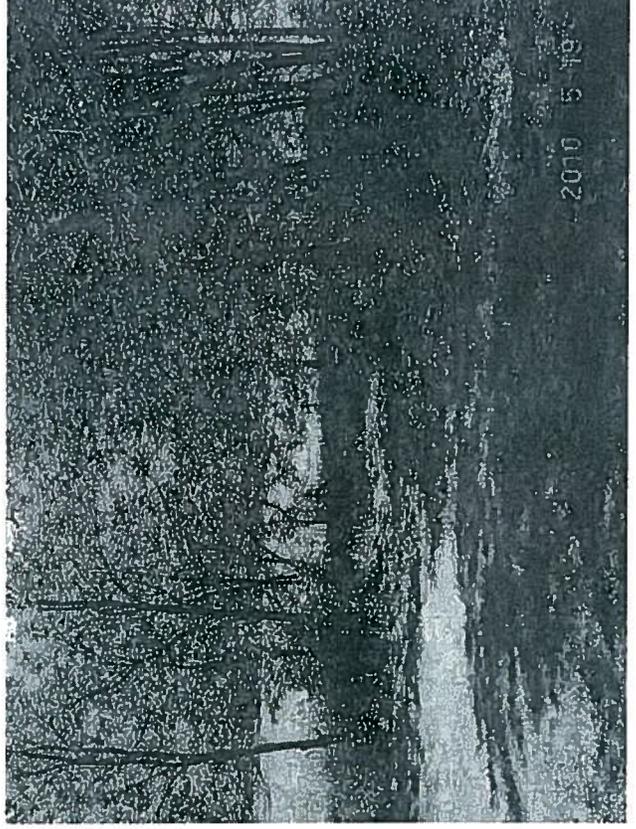
View to east, behind pole barn



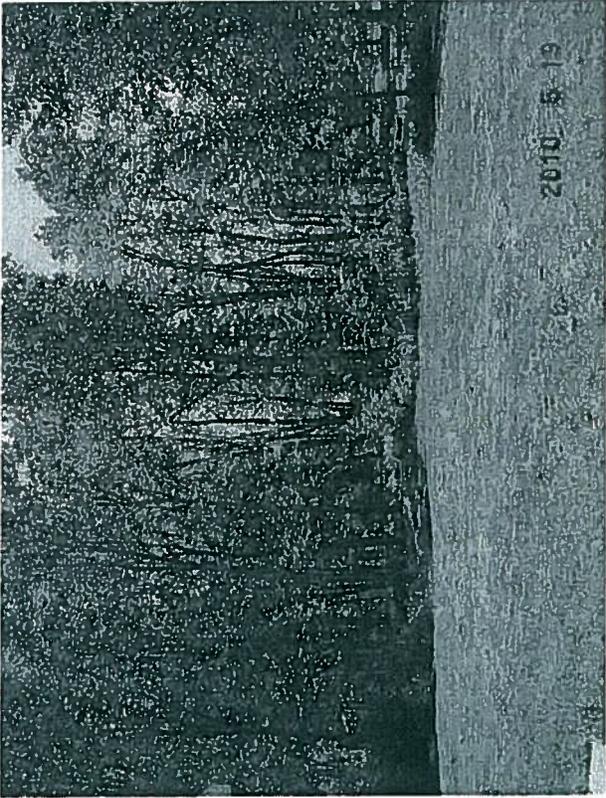
View to northeast



Manure storage area on south east side of parcel



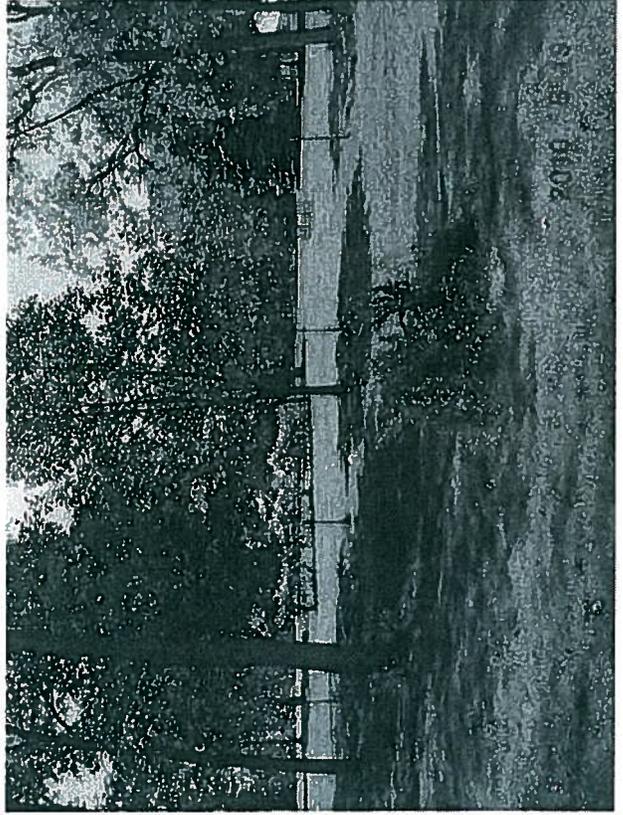
View to south



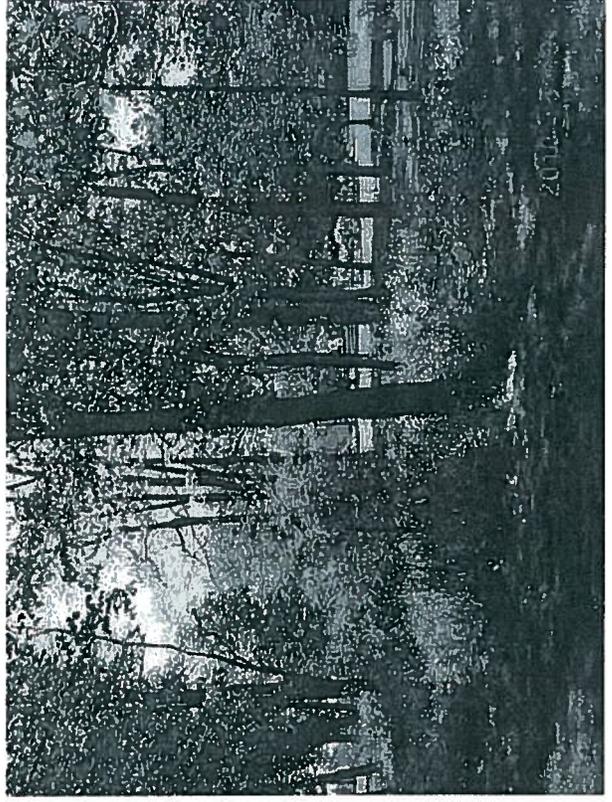
View to southeast



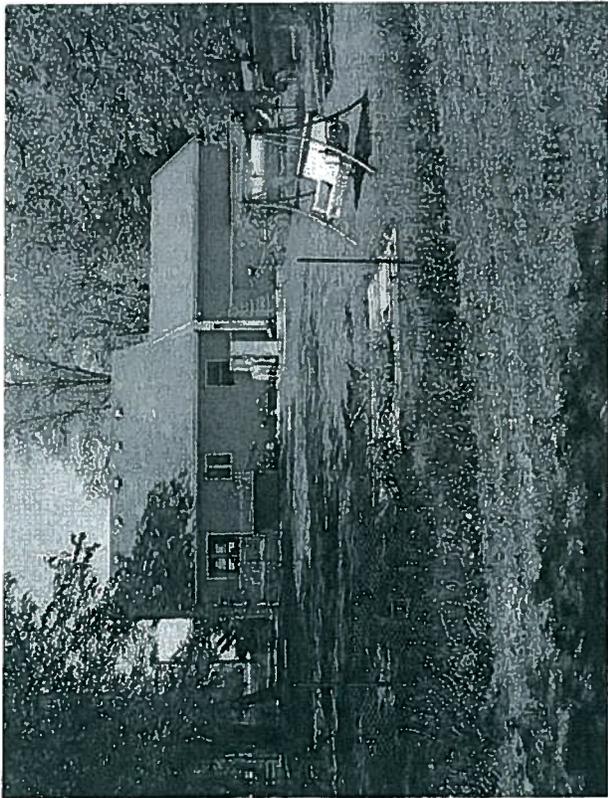
View to proposed pasture area on neighboring parcel



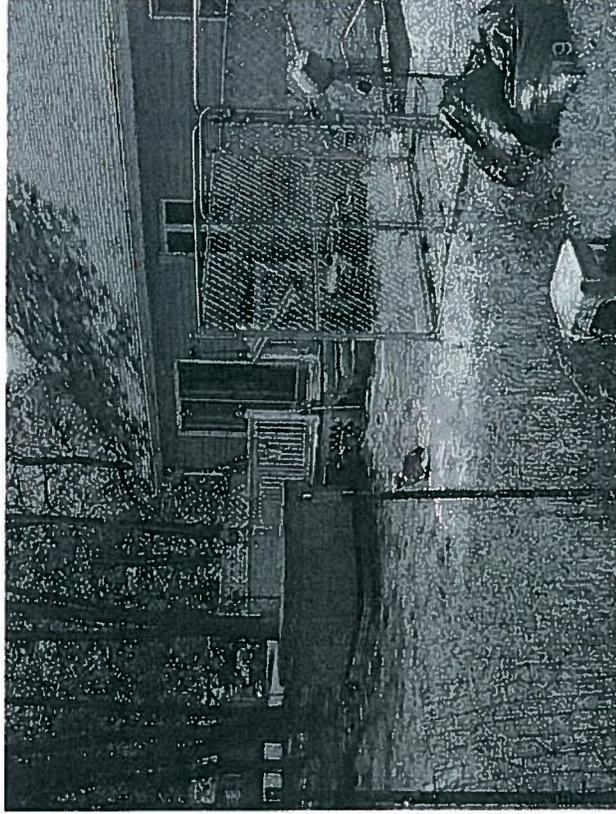
View to proposed pasture area on neighboring parcel



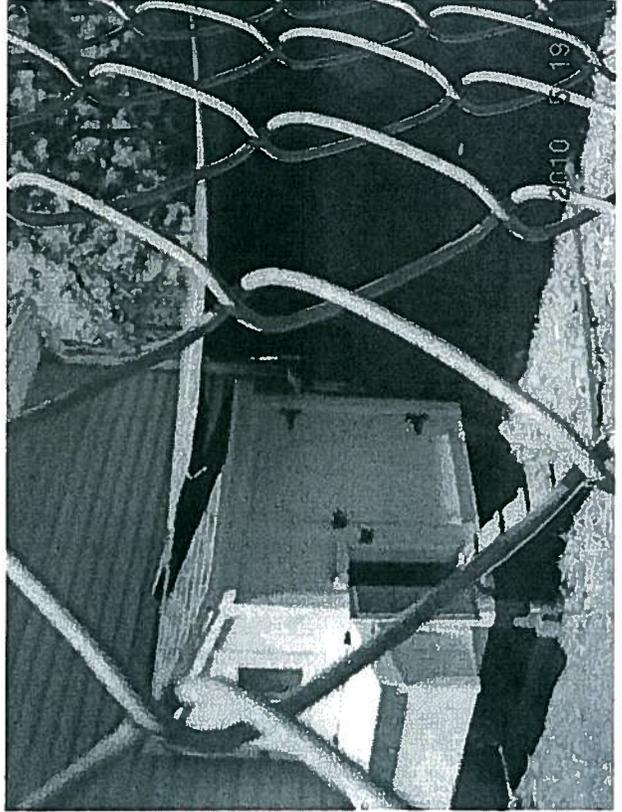
View to west of chicken enclosure



View of chicken enclosure



View of chicken coop



TO: Zoning Board of Appeals **DATE:** June 4, 2010

FROM: Jeffrey M. Erickson, Director of Community Development

SUBJECT: ZBA #09-22; Valerie Misasi; 10095 South 12th Street; R-1B, One Family Residential

CODE SECTION: 42-121, Accessory Buildings and Uses, p. CD 42:28-30
42-181, Principal Permitted Uses, p. CD 42:64
42-622(D), Temporary Uses, p. CD 42:140.3

APPEAL: Requesting a) approval for a private stable with one horse on 1.2 acres where a minimum two acres is required; b) a variance from the required 125 foot setback for manure to be located 45 feet from the north, south and east property lines; c) a variance to retain a 576 square foot detached accessory building and construct an attached 216 square foot lean-to structure, which exceeds the permitted accessory building area by 312 square feet; d) a variance to permit the raising of 10 chickens on a 1.2 acre parcel where 10 acres is required for general agriculture/farm; or e) a Temporary Use Permit to keep the chickens for a 12-month period (with the option to request one 12-month extension).

STAFF RECOMMENDATION:

The applicant is requesting the above approval and variances per the enclosed application, letter of explanation and site sketch. The 1.2 acre parcel is improved with a 1,560 square foot dwelling, 576 square foot attached garage and a nonconforming 576 square foot detached accessory building. The detached accessory building is nonconforming because when combined with the attached garage, the accessory building area on the parcel exceeds the ground floor living area of the dwelling (1,056 square feet) by 96 square feet. The properties to the north and south are developed with single-family dwellings, to the east is U.S. 131 right-of-way with State Game Area property across the highway, and the property to the west in Texas Township is undeveloped, and used/zoned for agricultural purposes.

Section 42-121(h)(3), grants the Zoning Board of Appeals the authority to reduce the area requirements for a private stable on a showing of noninterference with the rights of neighboring owners. Also, because the lot is 100 feet wide (but over 500 feet in depth), the 125-foot manure setback standard cannot be met. To minimize any potential impact on neighboring properties, the manure location is proposed within a stand of trees along the east side of the property, 45 feet from U.S. 131, and the north and south property lines. There is a mature tree line along the north side of the property, and the horse pasture, feeding and manure area are not visible from the north, east or west property lines. The property owner to the south has granted the applicant permission to utilize approximately two acres of land for additional horse pasture area. Given the rural character of the vicinity and support of neighboring property owners, approval by the Board to reduce the two acre minimum requirement for one horse is recommended. In addition, approval of the variance from the manure setback is recommended given the proposed location near U.S. 131, the mature trees along the north property line and support of the neighboring property owner to the south.

With regard to the existing nonconforming detached accessory building, it was constructed without a permit by a prior owner in approximately 2003. The applicant plans to use the building for vehicles/equipment, hay storage and so forth and, also, proposes to construct an unenclosed 12 foot by 18 foot lean-to structure attached to the south side of the building to provide wind, rain and sun shelter for the one horse. If the lean-to structure is not approved, the applicant seeks approval to retain the existing accessory building, which was understood to meet ordinance requirements when the property was purchased. While neighboring property owners support the request, neither are willing to sell additional land to the applicant so that a variance is not required. Existing tree lines and stands of trees help screen the view of the detached accessory building, particularly from properties to the east and west. The request to retain the existing accessory building will not impair the intent of the Zoning Code. The proposal to construct a 216 square foot lean-to structure on the south side of the building is not anticipated to have any adverse impact on adjacent property owners. If the Board finds a practical difficulty exists, a variance can be authorized.

Finally, the vicinity has a rural character, the property is bounded by U.S. 131 on the east side and agricultural across the street in Texas Township. The chicken enclosure and coop area is adjacent to the dwelling unit, which helps ensure that it remains well kept and clean, is not readily visible from surrounding properties and the adjacent property owners are in support of the variance request. Staff can recommend approval of the variance.

**PRACTICAL
DIFFICULTY:**

Stable approval request -- no interference with the rights and enjoyment of neighboring properties, proximity of U.S. 131, location of mature trees and rural character of vicinity, permission of adjacent property owner to the south to utilize their property for horse pasture area;

Manure location variance request -- proximity of U.S. 131, location of mature trees and rural character of vicinity;

Building authorization/variance request -- location of detached accessory building in proximity to U.S. 131 and mature trees that obstruct the view of the building;

Chicken enclosure/variance request – rural character and existing location/screening.

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.**