

**CITY OF ALBERT LEA**  
**BOARD OF ZONING APPEALS**  
**ADVISORY BOARD**  
7/13/2016 11:30 a.m.  
Room 109/111

**AGENDA**

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF THE AGENDA
3. APPROVAL OF MINUTES
4. PUBLIC HEARINGS
  - a. David & Lynn Schultz, 503 Park Avenue - request for a variance from the 35% maximum impervious surface requirement in shorland zone
5. NEW BUSINESS
  - a. ELECTION OF OFFICERS
6. COMMISSIONER COMMUNICATIONS
7. STAFF COMMUNICATIONS
8. ADJOURNMENT

June 1, 2016

Minutes of the Board of Appeals Meeting

Albert Lea, Minnesota

Vice Chairman David Klatt called the hearing to order on Wednesday, June 1, 2016 at 11:34 a.m. in the Multi-Purpose room #109 on the lower level of the City Center.

**Board Members Present:**

Craig Hoium

Douglas Conn- Chairman

David Klatt- Vice Chairman

Paul Stieler

Margaret Ehrhardt

Matt Maras

Larry Baker –Ex Officio

**Absent Board Members:**

Richard Sydnes-Abstain

**Staff Present:**

Molly Patterson-Lundgren, Planner

Rob Rice, Building Official

Jennifer Nelson, Office Assistant

Staff report prepared by Molly Patterson-Lundgren, Planner WSB & Associates, Inc. become part of these minutes by reference.

**Appeal:**

Jared Dawson and George Dress

Lots 3, 4, 5, 6 & 7 of Block 1 Summerdale 2<sup>nd</sup> Addition

(located on the cul-du-sac at the northern end of Hale Dr.)

**Interested Parties:**

Jared Dawson, 72056 255<sup>th</sup> St

Curtis Jensen, 1806 Hale Dr.

## **Background**

The property was platted in 1999, which was a re-plat of a previous out lot and included this area which is adjacent to the wetland complex to the north. Within this wetland complex is a stream which is classified as protected water by the DNR and under the city shoreland standards. The shoreland standards apply to lands within 300 feet of an OHWL and the definition of OHWL and the definition of OHWL includes the delineated boundary of any wetlands associated with the protected water.

The underlying zoning district is R-1. Duplexes in the R-1 district require a Conditional Use Permit (CUP). An application for the CUP is scheduled for a review at the public hearing of the Planning Commission on June 7<sup>th</sup>. The duplexes are proposed to be constructed on what is an existing 3 plus platted lots (Lots 4, 5, 6 and a portion of lot 3, Block 10). The total area of the combined property is 56,034 square feet. Once foundations are set, the proposal is to split these properties so that each of the four dwelling units will sit on their own parcel of land and are attached on one side to the adjacent duplex. An administrative survey process is proposed to reconfigure the existing lots.

The portion of the area is also covered in floodplain. The elevation of 1220 has been determined to be the base flood elevation (1% or 100 year elevation). The proposed buildings would be outside of this, several feet higher than the 1220 elevation. Some backfill is proposed within the floodplain which will require additional review but does not require any variance.

## **Variance Requested**

Jared Dawson and George Dress are requesting a variance to construct two duplexes on lots 3, 4, 5, 6, & 7 of Block 1 Summerdale 2<sup>nd</sup> Additions, located on the cul-du-sac at the northern end of Hale Drive. His proposal would require three variances including: lot width in a shoreland, front setback and setback from the ordinary high water level (OHWL). George Dress is the property owner and is a co-applicant on this request.

## **Findings**

### **OHWL Setback**

One of the two variances requested from the shoreland standards is the setback from the OHWL. This variance would apply to the east unit on the northeast side of the property. Setbacks from the OHWL for structures which are connected to public sewers along rivers and streams are required to be 50 feet. A corner of the structure in this area would not meet this requirement with the corner of the building coming as close as 32.58 feet (a variance of 17.42 feet).

### **Harmony with Official Controls & Comprehensive Plan**

The Comprehensive Plan calls for this area to be residential. The Plan also identifies the need to protect the waters and wetlands of the community and points out the sense of identity these natural features provide to the community. The proposed development

provides detailed plans for erosion control to protect the water quality of the wetland during construction.

#### Practical Difficulties

The configuration of the lots around the arched cul-du-sac and the curving of the stream and wetland create a tight configuration for a building envelope on lot 6. The Golf Course to the west further constrains how these lots were laid out and was developed in 1949 and expanded in 1965 prior to the time when such resource protections elements were considered.

#### Character of the Locality

While the neighborhood was originally platted for single family detached homes, duplexes and other sing-family attached homes have been built there over the several past years. Lot six as platted would only allow for a building envelope which is 30 feet deep (a structure 30 foot deep front to back) in order to meet all required setbacks. This would require a residential structure which is configured with its long side to the street which would be out of character of the locality.

#### **Lot Width**

The lot width variance is also related to shoreland standards and would be for the west unit proposed to be constructed on lot 4 and a portion of lot 3. The required lot width for duplexes along rivers and streams where there is public sewer is 115 feet. The proposal is for a lot which will be 72.27 feet (a variance of 42.73 feet).

#### Harmony with Official Controls & Comprehensive Plan

The width of the proposed east lot is 127.15 feet, beyond the minimum 115 feet required. All lots (and portions) combined is an average of 99.71 feet wide for each duplex structure. Lot width for the underlying R-1 zone is 60 feet.

#### Practical Difficulties

Because of the tight configuration on the east lot, the proposal is to shift the structures westward. This creates the deficient lot width issue.

#### Character of the Locality

As mentioned previously, the proposed duplexes are consistent with the development patterns and architectural character of the existing neighborhood.

#### **Front Setback**

Under the R-1 zone, structures are required to meet a 25 foot setback from the front property boundary. The proposed eastern duplex structure would not meet this requirement. The proposal would place the structure just over 23 feet setback from the lot line (a variance of 1.86) feet).

#### Harmony with Official Controls & Comprehensive Plan

While the proposed would not meet the exact setback requirements, the amount of difference from what is required would likely be visually indiscernible.



### Practical Difficulties

The proposed location moving the structure to the front of the lot creating this issue is the location of the 1% (100 year) floodplain boundary which has been determined as topographic elevation 1220. In order to keep the proposed structure out of the floodplain, the structure would be just under two feet closer to the front property line than what is required.

### Character of the Locality

The difference in front setbacks between the two duplexes will likely be visually indiscernible and the proposed structures are of the same character as the rest in the neighborhood.

### General Variance Issue Analysis

The stated purpose of the shoreland standards is to reduce the effects of overcrowding and overdevelopment, to prevent pollution of waters of the community, to minimize flood damages, to maintain property values, and to maintain natural characteristics of shorelands and adjacent water areas. Even with the issuance of the variances, these purposes can still be met due to other factors in the configuration of this and adjacent properties. Overcrowding and overdevelopment will not be created with the issuance of these variances due to the presence of the open golf course and the open space wetland area which is platted as Outlot A of the subdivision. The outlot is a separate parcel owned by the same owner as the property in question (George Dress) and is not developable. The wetland will therefore remain open space in perpetuity. With appropriate storm water management, the public waters and wetlands will be protected from the impact of development. The shoreland impact summary submitted which will be reviewed in more detail under the CUP for the project to ensure that it addresses these issues to prevent water pollution. The location of the eastern structure (and the reason for the requested front setback variance) is to avoid development of structures within the floodplain. The requested variances will allow the new units to be in harmony with the established character of the locality which will in turn help to maintain property values. The proposed development is of relative low intensity and will not have a negative impact on the natural characteristics of the protected waters/wetland.

As required in the shore land standards, the DNR local area hydrologist has been contacted and provided information regarding the requested variances and their comments on the variance request may be provided. These will be forwarded to the members of the BOA if comments are provided by the DNR. In addition to staff analysis provided above, the applicant has provided comments regarding the different standards for issuance of a variance.

### Staff Recommendation

Based on the analysis above, staff is recommending approval of the requested variances allowing for the construction of the two duplexes as proposed in the application material submitted. Additional comments from the DNR or other appropriate agencies or the public may prompt the addition of or revisions to the conditions however, staff notes that

the applicant has already addressed issues and potential concerns within the submission of their final application.

**Public Hearing was opened at 11:35 a.m.**

Jared Dawson advised he has been working with his development project the last 12 years which includes 49 units to this date. He indicated that George Dress (the property owner) would have like to have seen six units on this proposed site, but due to the constraints of this lot they are going for four units.

Molly Patterson-Lundgren advised the constraints on this lot are two different sets of regulations which include the flood plain and the overlaying shoreland standards. For the Shoreland standards, the DNR issued flexibility in what the City of Albert Lea adopted as part of the zoning code. The Ordinary High Water Level (OHWL) is the boundary of public waters and wetland. The wetland has been delineated, so in this case the wetland boundary becomes the Ordinary High Water Level for the stream..

Matt Maras brought up his concern of the lot width requirement. Molly Patterson-Lundgren advised she was more concerned with the impervious surface requirement being met (which it is) than the requirements of lot width regarding jeopardizing pollution of the waters. This reasoning is part of why she is recommending approval.

Craig Hoium asked how much fill will be required if any. Dawson advised he will use a skid loader to taper off. Dawson advised he should not need over 1,000 cubic yards of fill.

Molly Patterson-Lundgren also indicated that the City of Albert Lea Environmental Engineer, Phil Wacholz advised this amount of fill would be a negligible impact on this area. The shoreland impact plan will be followed and will include a double silt fence for erosion control.

Molly Patterson-Lundgren advised that building the four units as quads at the same square footage as proposed but on the combined property would meet the lot width requirement

Molly explained that state law requires local governments to adopt shoreland standards which have been created by the DNR. The City adopts the standards and enforces them. Patterson-Lundgren notified the DNR May 16<sup>th</sup> as a requirement but hasn't heard any response. She advised there was also verbal conversation prior to May 16<sup>th</sup>.

Kurt Jensen commented regulations are set up for a purpose and should be adhered to, he advised he used to do survey work and that's all he had to say.

Larry Baker brought up how this would affect insurance rates for these properties. The 1220 elevation has been determined to be the base flood elevation or 100-year elevation. The buildings will be 8 ½ feet higher making the proposed elevation 1228.5 . One foot

above the 1220 elevation should be insurable. David Klatt advised flood insurance is probably required unless paying cash. This could trigger additional FEMA requirements.

When asked about basement elevations and potential walkouts, Jared indicated that these buildings will be slab on grade.

Margaret Ehrhardt asked if constructing a berm would be helpful to lower insurance cost or flood risk. Molly Patterson-Lundgren informed that it is possible to do flood proofing with structures such as a berm or a wall and then go through FEMA to have the property deemed as no longer in flood plain. This requires a formal map amendment but would not be necessary or the best approach in this case. This same type of activity could also occur by building on fill. In this case the applicant is building the structure outside of (at a higher elevation) than the flood elevation.

**Public Hearing closed at 12:04 p.m.**

### **Discussion**

Paul Stieler made a motion to recommend to the City Council approval of the variances as requested for the development of two duplex structures (including 4 units) allowing for:

- *Setback from OHWL of 17.42 feet,*
- *Lot width of 42.73 feet, and*
- *Front setback of 1.86 feet.*

*With the conditions that*

- 1. The CUP is approved by Planning Commission and City Council,*
- 2. DNR Submits a letter of approval (email is sufficient),*
- 3. As long as site plan is followed as detailed in the application.*

*based on the following findings of fact:*

- 4. The proposed residential use fits with the comprehensive plan and the proposed design and mitigation features will help to protect the quality of the natural environment which is identified as a significant element in the City of Albert Lea.*
- 5. The configuration of the platted street, protected waters & wetlands, floodplain boundary and previously developed adjacent parcels creates a situation of practical difficulties for the applicant to develop and use their property in a reasonable manner as permitted by official controls,*
- 6. Some of this development was completed prior to or early in the adoption of shoreland standards, was approved by state or local government at the time of platting and is not due to actions of the property owner,*
- 7. The proposed duplexes will continue with the existing character of the locality.*

The motion was seconded by Matt Maras based on the above findings. Motion was approved on a 5-0 voice vote, with Commissioner Doug Conn abstaining from the vote.

### **Appeal**

David and Tamara Jepson

21362 775<sup>th</sup> Ave (located behind trails west of 777<sup>th</sup> Ave)

**Interested Parties:**

None

**Background**

The Jepson's would like to construct a 24x30 detached shed on their property for personal storage. They already have a detached garage which is over 1,000 square feet as well as a small (approximately 250 sq. ft.) garden shed. Their property is located on the east side of I35 north of Loves Travel. It is shown at 4.8 acres on the Coutny web site and is zoned R-1. According to their application, the family has lived on the property for 16 years. It was annexed into the City in 2004.

**Variance Requested**

Dave and Tamra Jepson of 21362 775<sup>th</sup> Avenue are requesting a variance to allow them to have more than 900 square feet aggregate of accessory structures as required in Sec. 74-13 (b)(1)a of the Zoning Ordinance.

**Analysis**

It is the role of the board of appeals "to hear and recommend to the city council the issuance of variances from the requirements of any official control". Variances shall only be permitted when they:

- Are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan
- Present "Practical Difficulties." As used in connection with the granting of a variance, this means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner.
- Will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of appeals may recommend and the city council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

The 900 square foot maximum aggregate area allowed for accessory structures applies to residential zoning districts only but applies evenly across all residential areas and is not dependent or related to the size of the parcel.

**Findings**

*Harmony with Official Controls & Comprehensive Plan*

While long term plans call for land use in the area to meet the interchange land use district intentions, there is no time line for such action. The minimum size lot allowed in the R-1 district is 7,200 square feet. In the case of the Jepson's their property is 4 x larger than this minimum. Equating the maximum coverage to lot size to accessory size as a

ratio, a lot of the applicant's size would allow for over 3,000 square feet of accessory dwelling. This factor along with the applicant's proposal to meet the maximum size of structure allowed of 24x30 along with maintaining any setback requirements indicated that the proposal is in harmony with land use and other official controls.

#### *Practical Difficulties*

Given the size of the property and the rural nature of the neighborhood, it would seem that what the owner proposes for the property is reasonable but simply not permitted by an official control; the plight of the landowner is due to circumstances surrounding the annexation of the property into City limits which was not created by the landowner.

#### *Character of the Locality*

The neighborhood is removed from the main part of the City, separated by the freeway. With the large lots and remote sense the additional accessory structures are not likely to be noticed and fit into the current character of the locale.

#### **Staff Recommendation:**

Based on the analysis above, staff is recommending approval of the requested variances allowing for the construction of more than 900 square feet of accessory structures on this one property, for up to one additional structure at 720 square feet (the 24x30 size indicated in the application).

#### **Public Hearing was opened at 12:10 p.m.**

Molly Patterson-Lundgren pointed out this property is located in a fairly rural part of the city.

Doug Conn remembers when Loves was built and stated no one was happy about being annexed.

Dave Klatt brought up the concern of the owner could possibly split the lot in the future to sell.

Craig Hoium asked if a deed restriction will be placed on the property.

Craig Hoium questioned if the current land use and zoning corresponds with the comprehensive plan. He advised the land North of the Holiday Inn was planned as an industrial park.

Rob Rice advised the proposed plan meets building code for wind loads and strapping. The structure will have more of the appearance of a shed than a carport.

Rob Rice and Molly Patterson-Lundgren advised applicant never brought up the use of the shed as an animal shelter. Rob Rice advised the shed would be used for seasonal items, daycare equipment and personal storage. City code further regulates the keeping of farm animals within the city as well.

Paul Stieler asked if the location of the storage shed should be tied in with the motion. Rob Rice advised the structure would still be required to follow current setbacks.

**Public Hearing was closed at 12:20 p.m.**

Douglas Conn made a motion to recommend to the City Council approval of the variance allowing for more than 900 square feet aggregate of accessory structures at 21362 775<sup>th</sup> Avenue based on the following findings of fact:

- 1. The proposed residential use fits with the comprehensive plan and official controls. While long term land use planning calls for interchange related commercial activity, in the more short term the current residential use and R1 zoning are anticipated to remain.*
- 2. The property owners purchased the property and a few years prior to it being annexed into the city to provide space for a development near to this parcel which did not come to fruition.*
- 3. The character of the locale continues to be rural in nature with neighbors having additional and larger size accessory structures similar to what is requested here. This essential character is anticipated to continue into the foreseeable future.*

The motion was seconded by Matt Maras based on the above findings. Motion was approved on a 6-0 voice vote.

**Staff Communications**

Staff wanted to advise the BOA members a variance request was submitted for 503 Park Ave and a meeting will be scheduled for July 6<sup>th</sup> or July 13th, 2016 at 11:30 a.m. Staff will send out a notice.

**Adjournment**

David Klatt made a motion to adjourn which was seconded by Matt Maras; motion passed unanimously. The meeting adjourned at 12:25 p.m.

Respectfully Submitted,

Molly Patterson-Lundgren  
City Planner

## *Memorandum*

**To:** *Board of Appeals, City of Albert Lea  
Chad Adams, City Manager*

**From:** *Molly Patterson-Lundgren, Planner  
WSB & Associates, Inc.*

**Date:** *July 13 2016*

**Re:** *Request for Variance from impervious coverage limitations on a riparian lot*

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### **Request**

David and Lyn Schultz propose to remove an existing attached two stall garage and construct a home addition and a new attached three stall garage on their property at 503 Park Avenue. This proposed addition would take place on a portion of the property which is currently used for the existing garage, an outdoor parking area and a flower bed. The property is 14,992 square feet in size and sits directly on Fountain Lake. Because this project will produce more impervious surface than allowed per lot (under the shoreland standards), the Schultz's are requesting a variance from the impervious coverage standard.

### **Background**

The property is located on the West side of Park Avenue with the back yard adjacent to Fountain Lake. The zoning district is R-1 with a shoreland overlay. The shoreland overlay requires in residential areas that impervious surface coverage of lots must not exceed 35% of the lot area. The 14,992 square foot property would allow for a maximum impervious coverage of 5,247 square feet. The property currently contains 6,072 square feet of imperviousness as indicated in the application and shown below. Based on the plans for the addition, more impervious surface would be added for a total of 6,536 or approximately 43% of the total property.

<b><u>Impervious Area (square feet)</u></b>	<b><u>Allowed</u></b>	<b><u>Existing</u></b>	<b><u>Proposed</u></b>
House		1,872	1,872
Garage		672	936
Parking		504	0
Approach / Driveway		1,908	2,016
Impervious Landscaping		1,116	1,116
New Addition			836
Total	5,247	6,072	6,536

It is the role of the board of appeals “to hear and recommend to the city council the issuance of variances from the requirements of any official control”. Variances shall only be permitted when they:

- Are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan
- Present "*Practical Difficulties*." As used in connection with the granting of a variance, this means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner.
- Will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of appeals may recommend and the city council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

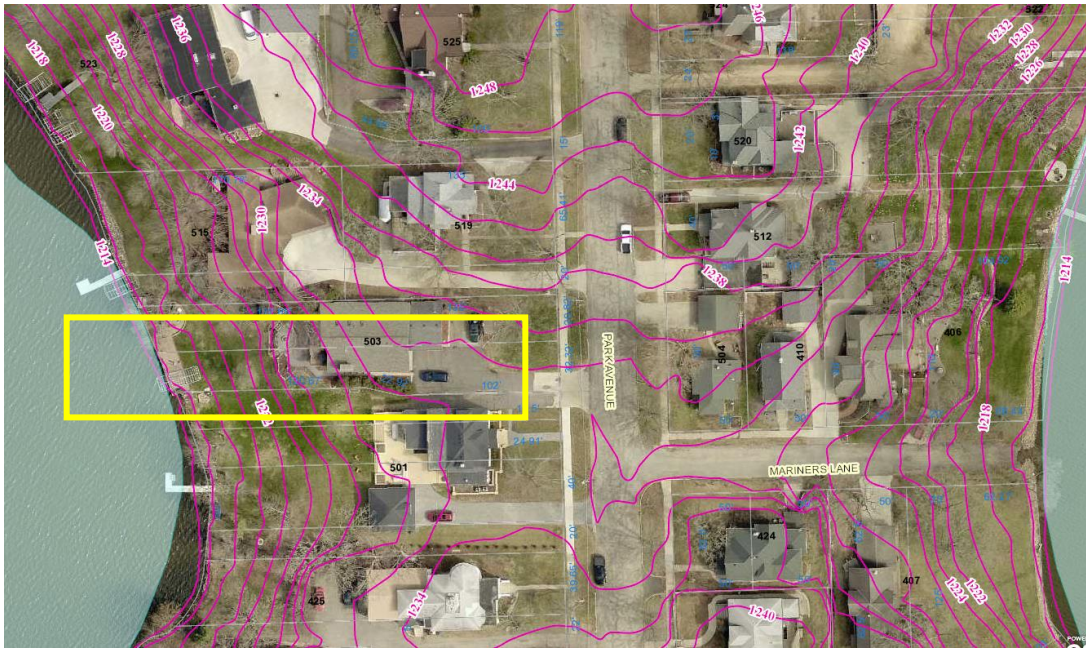
Further, in the shoreland overlay zone specifically, variances “may be granted in extraordinary cases, but only when the proposed use is determined to be in the public interest. The following additional criteria shall apply within shoreland areas:

- (1) The use shall not result in the placement of an artificial obstruction which shall restrict the passage of storm and floodwater in such a manner as to increase the height of flooding, except obstructions approved by the U.S. Army Corps of Engineers in conjunction with sound floodplain management.
- (2) The use shall not result in incompatible land uses or which shall be detrimental to the protection of surface and ground water supplies.
- (3) The use shall be in keeping with land use plans and planning objectives for the city or which shall increase or cause danger to life or property.
- (4) The use shall be consistent with the objectives of encouraging land uses compatible with the preservation of the natural land forms, vegetation and wetlands within the city.
- (5) There shall be a hardship [now called practical difficulty] as defined in section 74-2.
- (6) No permit or variance shall be issued unless the applicant has submitted a shoreland impact plan as required and set forth in section 74-975. In granting any variance, the city council may attach such conditions as they deem necessary to insure compliance with the purpose and intent of this division.”

### **Analysis**

The maximum allowed impervious coverage is 35% in The City of Albert Lea shoreland zone. This percentage is higher than suggested in the state model standards which is 25%. The subject property currently has an impervious coverage of approximately 40%. The Applicant is requesting to increase the amount of new impervious coverage by 464 square feet and thus there would be an impervious coverage of 43%.





### *Harmony with Official Controls & Comprehensive Plan*

The Comprehensive Plan calls for this area to be residential. The Plan also identifies the need to protect the waters of the community and points out the sense of identity these natural features provide to the City. The proposed building addition is on the street facing side of the lot and based on the two foot contours provided by Freeborn County, the area where runoff will flow will be away from the Lake. With the location of the proposed modifications, there will be no visual impact to those on the public water (one purpose of the shoreland standards). Also potential damage to water quality will be less than if the area drained to the lake. There may be additional opportunity for water treatment on site as well with the development of rain garden type landscape elements.

### *Practical Difficulties*

As mentioned in the application, the lot is long and narrow and therefore does present some difficulties in the arrangement of buildings and parking on site. Meeting the "practical difficulties" standard also means that the owner proposes to use the property in a reasonable manner not permitted by an official control and the plight of the landowner is due to circumstances unique to the property not created by the landowner. The applicant has provided an indication of practical difficulties.

### *Character of the Locality*

Staff is of the opinion that the proposed site modifications will not alter the essential character of the locality, in particular when viewed from the Lake. No changes will be made to the lake side. Also, many of the lots are developed with building setbacks closer to the street than what the existing is for this property.

### *Shoreland Issues*

Stated purposes of the shoreland standards include reducing the effects of overcrowding and overdevelopment along a public water, to prevent pollution of waters of the community, to minimize flood damages, to maintain property values, and to maintain natural characteristics of shorelands and adjacent water areas. The nature of this area is a developed residential

neighborhood with no natural characteristics except for the lake itself. With the development proposed on the street side of the property the purpose of maintaining aesthetics of development as experienced from the water are met. The impervious surface standard was included in the requirements to prevent the excessive amount of runoff which will cause erosion and transport of pollutants to public water which then degrades water quality. One of the requirements for the City to issue a variance within the shoreland zone is that the applicant provides a “shoreland impact plan” (Section section 74-975 City Code). This is a plan that provides provisions for sediment control, stormwater management, and maintenance of landscaped features. This plan will also affirmatively disclose what, if any, change will be made in the natural condition of the earth, including loss or change of earth ground cover, destruction of trees, grade courses and wetlands. The purpose of the shoreland impact plan is to eliminate and minimize potential pollution, erosion and siltation as much as possible. Staff recommends that the Board discuss this with the applicant to determine if some additional stormwater management elements (e.g. a rain garden) might be added to the property to offset the additional impervious surface being proposed. Another potential option considered by staff was the use of impervious pavement to offset the additional surfaces. Based on the comments from the DNR, this technique is not being recommended alone. However, it may still provide some benefit and options for the applicant in conjunction with the rain garden.

#### **Staff Recommendation:**

Based on the analysis above, staff is recommending approval of the requested variance allowing for additional impervious surface, but only on the condition that some stormwater management features be included in the project. The details of this plan should be worked out with the City Engineers Department and a shore impact plan which illustrates these features should be created and provided to the City which would become part of the file on the recorded variance.

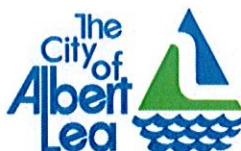
#### **Recommended Motion:**

*To recommend to the City Council approval of the variance for additional impervious surface up to 6,536 square feet with the following conditions:*

- 1. The applicant will work with the City Engineers Department to determine appropriate stormwater management elements to be included in the project to mitigate the impact of hard surfaces on the property. The purpose of these elements will be to prevent excessive amounts of runoff that may cause erosion and transport of pollutants to the public water*
- 2. The City Engineers Department will provide general guidance but it shall be the responsibility of the applicant to provide within a shore impact plan submitted to the City the details of the stormwater management elements. This shore impact plan must be approved by the City Engineer prior to issuance of a building permit.*

*Approval of the variance is based on the following findings of fact:*

- 1. The proposed residential use fits with the comprehensive plan and the proposed design and mitigation features will help to protect the quality of the natural environment which is identified in the plan as a significant resource in the City of Albert Lea.*
- 2. The impervious surface requirement is contained within the shoreland overlay zone and with the location of the project there will be no visual impact to those who use the lake for recreation and enjoyment.*
- 3. The addition of stormwater management elements as approved by the City Engineer will mitigate & prevent (and my decrease) the pollution of public waters from this property.*



VA2014-004

## City of Albert Lea Request for Development Services

Type of Service	Fee
1. Request to change zoning classification of land or zoning text	\$500.00 + \$700.00 escrow
2. Request for a Conditional Use Permit	\$500.00 + \$700.00 escrow
3. Request for a Planned Development District	\$500.00 + \$700.00 escrow
4. Preliminary Plat	\$500.00 + \$100/lot
5. Final Plat	\$500.00 + \$700.00 escrow
6. Administrative Plat Survey	\$500.00
7. Planning and Zoning Certification	\$100.00
8. Variance from Zoning Ordinance	\$500.00
9. Street, alley, public way, or utility easement vacation	\$500.00 + \$700.00 escrow
10. Orderly Annexation	\$500.00 + \$700.00 escrow
11. Interstate Development District Review	No fee
12. Administrative Site Plan Review	No fee
13. Request for an Interim Use Permit	\$500.00 + \$700.00 escrow

**Total**Address and general location: 503 Park AveLegal Description: (Attach) See Attachment Parcel# Lot 36 (503)Applicant Name: David & Lyn Schultz Phone: (W) 507 202 5082 (H) 507 202 5082Email Address: David Schultz@smfantasticgames.comAddress: 503 Park Ave, Albert Lea MN 56007Owner's Signature David A. Schultz Date: 5/26/16

Please Return to: City of Albert Lea-Inspections/Community Dev.  
221 East Clark St  
Albert Lea, MN 56007  
Phone: 507-377-4340  
jnelson@ci.albertlea.mn.us

Fees Updated January 2016

For Office Use Only	
Check# <u>14299</u>	\$ <u>500.00</u>
Cash	
Credit Card#	
Date Received	



May 25, 2016

David and Lyn Schultz  
503 Park Avenue  
Albert Lea, MN 56007  
Telephone: 507-202-5082

Board of Appeals of the Zoning and Building Ordinance  
221 East Clark Street  
Albert Lea, MN 56007

Subject: Request for approval of permit for a specific event.

Requesting a variance to exceed the thirty-five percent square foot structural restriction on lakeshore property.

We are requesting approval for a variance to allow for us to exceed the current restriction placed on lake shore property for home structure to not go in excess of thirty-five percent of the square feet of one's lot. We find practical difficulty staying within the zoning ordinance; please consider the following reasons:

- 1) Our lot size is long and narrow, extending from Park Ave westward to Fountain Lake. Lot 36; thence westerly a distance of 102 feet, at a deflection angle of 89 degrees 42.5' left, on a line parallel to the south line of said Lot 36 to a point which is marked by a Judicial Landmark labeled 'E', as described in said Certificate of Title No. 4300; thence northwesterly a distance of 22.92 feet, at a deflection angle of 13 degrees 53' right, to a point which is marked by a Judicial Landmark labeled 'D', as described in said Certificate of Title No. 4300; thence westerly a distance of 118.10 feet. At a deflection angle of 13 degrees 53' left, on a line parallel with the south line of said Lot 36 to the easterly shoreline of Fountain Lake, which point is referenced by a Judicial Landmark labeled 'C' as described in said Certificate of Title No. 4300 and set 1.60 feet east of said shoreline, and there terminating. The square foot allocation of Lot 36 =  $14,992 \times 35\% = 5,247$  (Page 14 Abstract).
- 2) The proposed remodel project will not extend west towards Fountain Lake. Our backyard facing Fountain Lake while viewed from Fountain Lake will remain unchanged (Fig 3, page 3).
- 3) The proposed remodel project will stay within the required set back from Park Ave (Fig 7, page 7).
- 4) The proposed remodel project will stay within the required set back on the north and south property line.
- 5) The proposed project will allow all vehicles to be parked within a garage and will allow entering Park Avenue forward facing versus backing onto Park Avenue (pages 10 - 12).
- 6) The proposed project will utilize the parking area east of our existing garage including a 10'x24' area of grass and flowers adjacent the parking area (Fig 8, page 8).
- 7) The proposed project will include a three stall garage utilizing and enclosing east asphalt parking area. The existing two stall garage has only an 80 inch opening, which unfortunately does not accommodate a full size SUV or truck (Fig 5, page 5).
- 8) The existing home, garage, parking area, approach and driveway utilizes 5,355 square feet of Lot 36, not including back landscape patio (Fig 4, page 4).
- 9) The existing home, new home addition, new garage, new approach area and new driveway will utilize 5,420 square feet of Lot 36 not including back landscape patio (Fig 9, page 9).
- 10) The variance, if granted, will not alter the essential character of the locality; furthermore, we believe the project will increase the value of the properties in our locality while allowing the needed and desired improvements to our home (page 17).

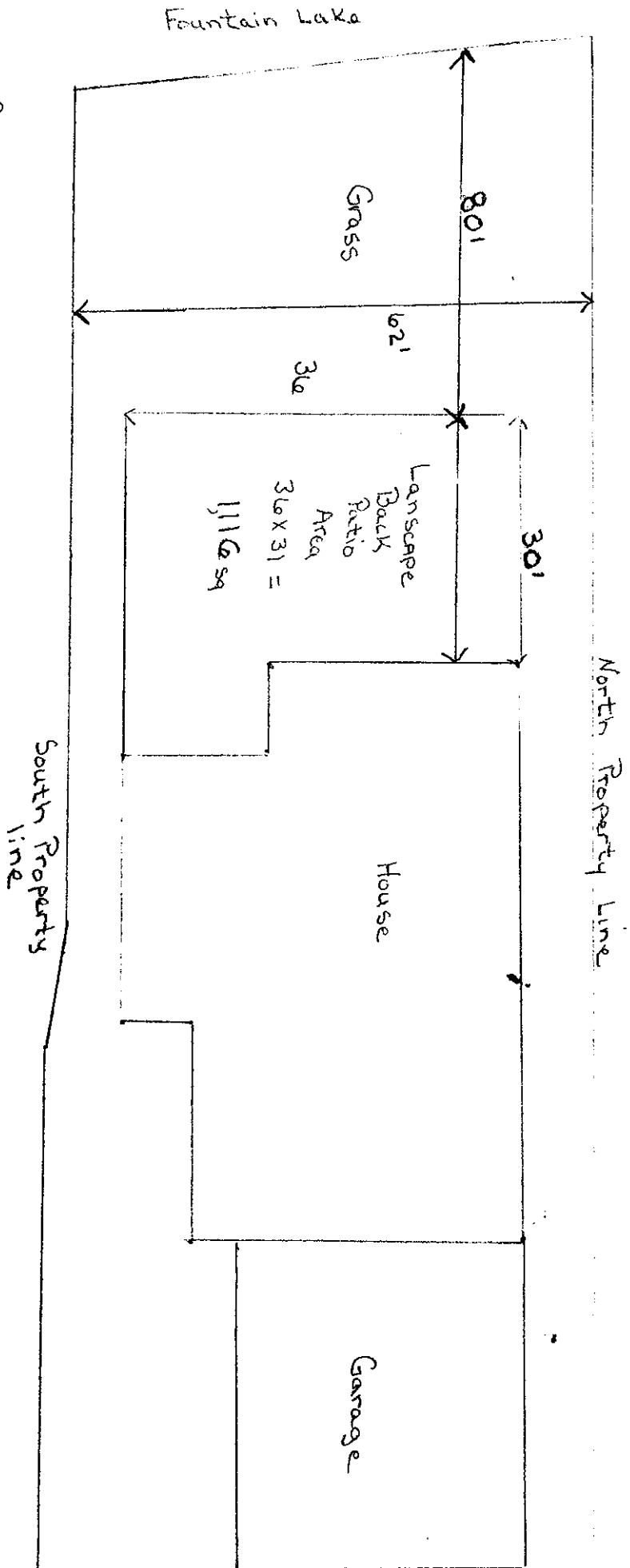
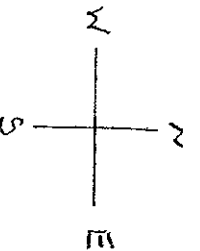
We appreciate your time and consideration. If you need any further information, do not hesitate to call or email.

Thank you,

David and Lyn Schultz

Fig 1

Existing  
Back yard

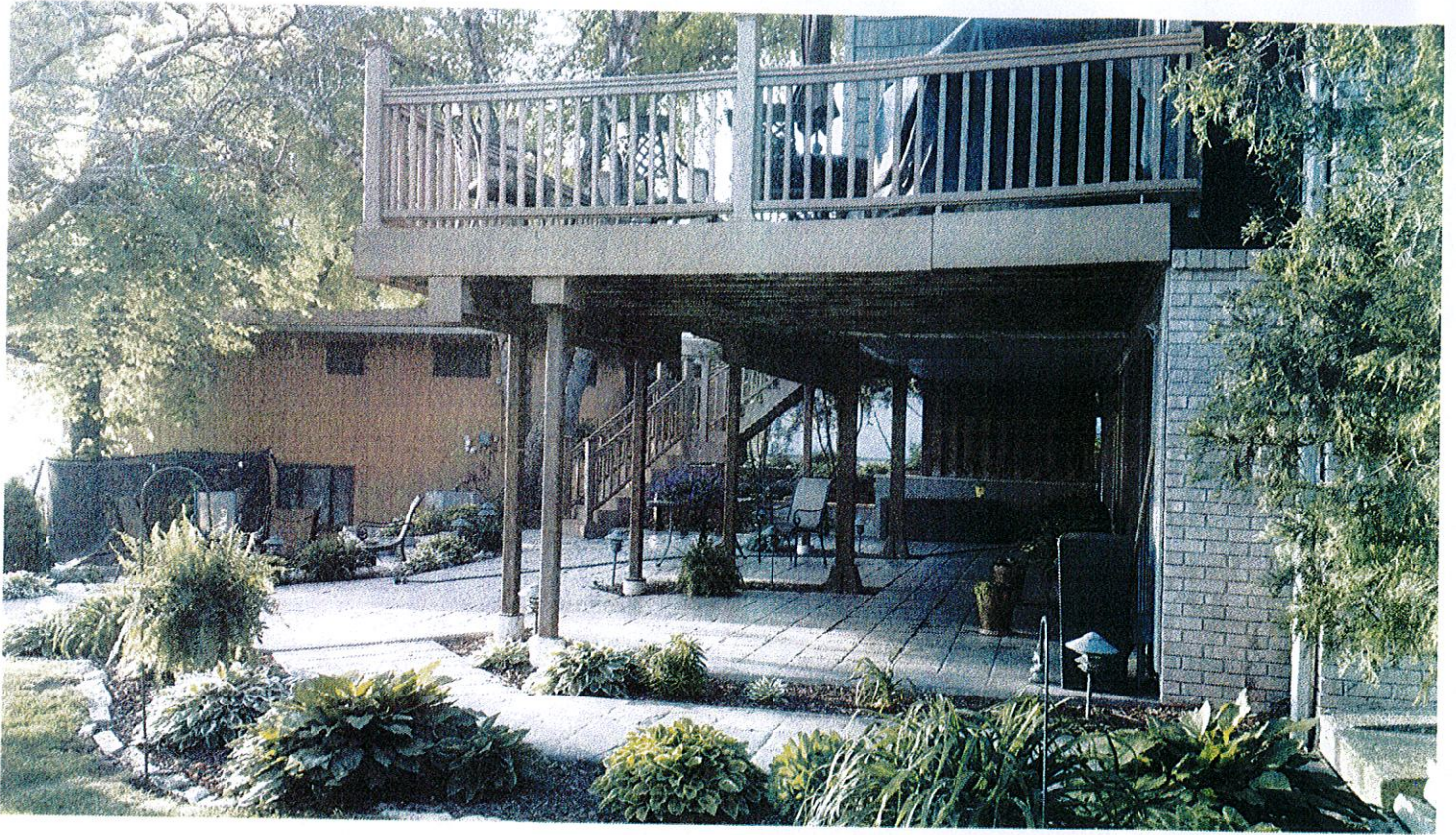


Grass Area:  $80 \times 62 = 4,960 \text{ sq feet}$

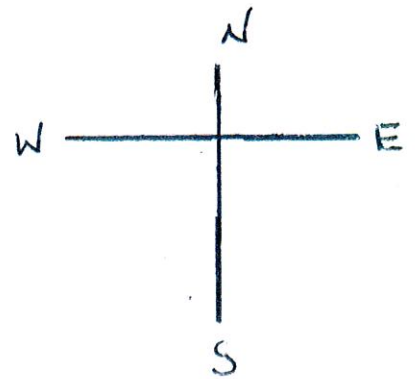
Distance from west outside wall of house to fountain = 110 feet



Fig 2



Back Patio Landscape area measures  $30 \times 36 = 1,116$  sq feet





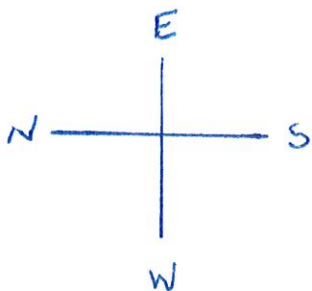


Distance from west outside wall of house to Fountain Lake measures 110 feet

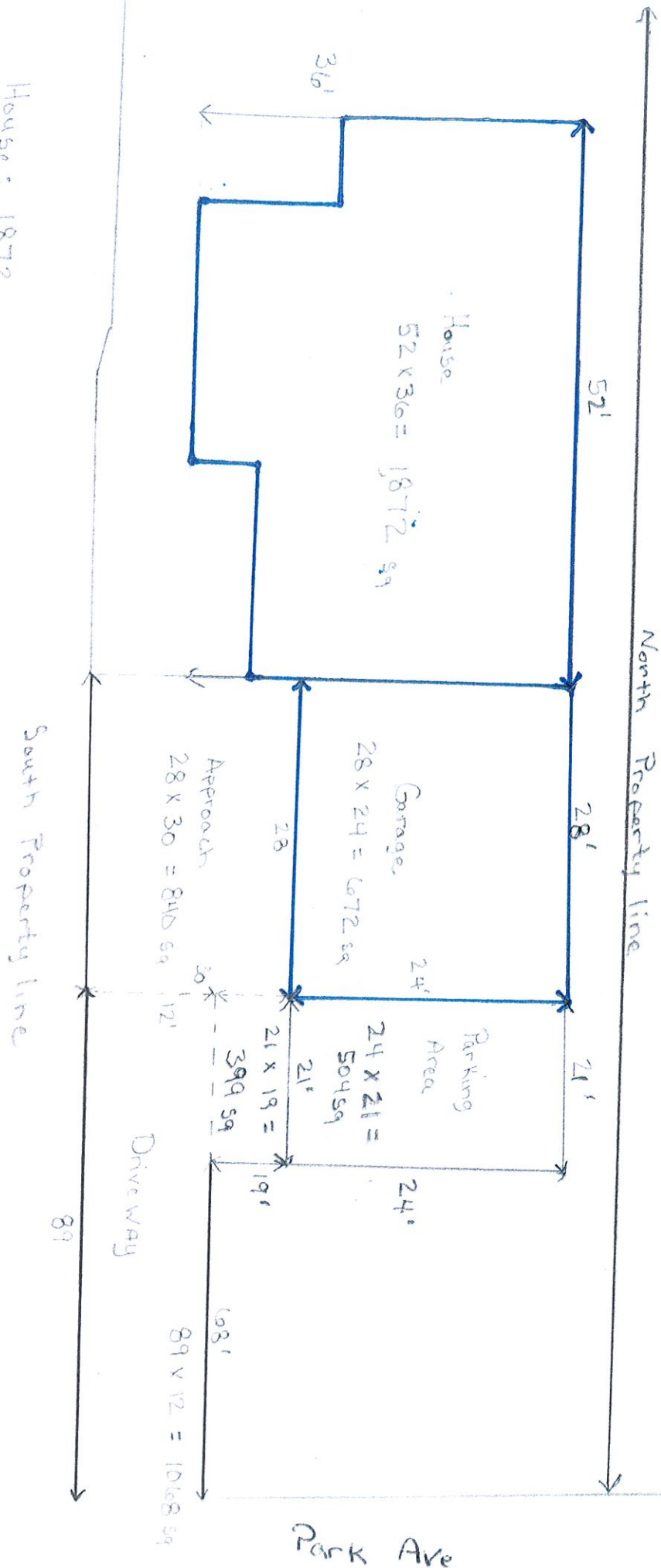
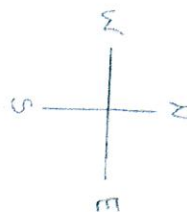
Distance from patio landscape to Fountain Lake measures 80 feet

Distance from North Property line to South Property line measures 62 feet

Total Square Footage of Grass Area :  $62 \times 80 = 4960$



## Existing House &amp; Garage

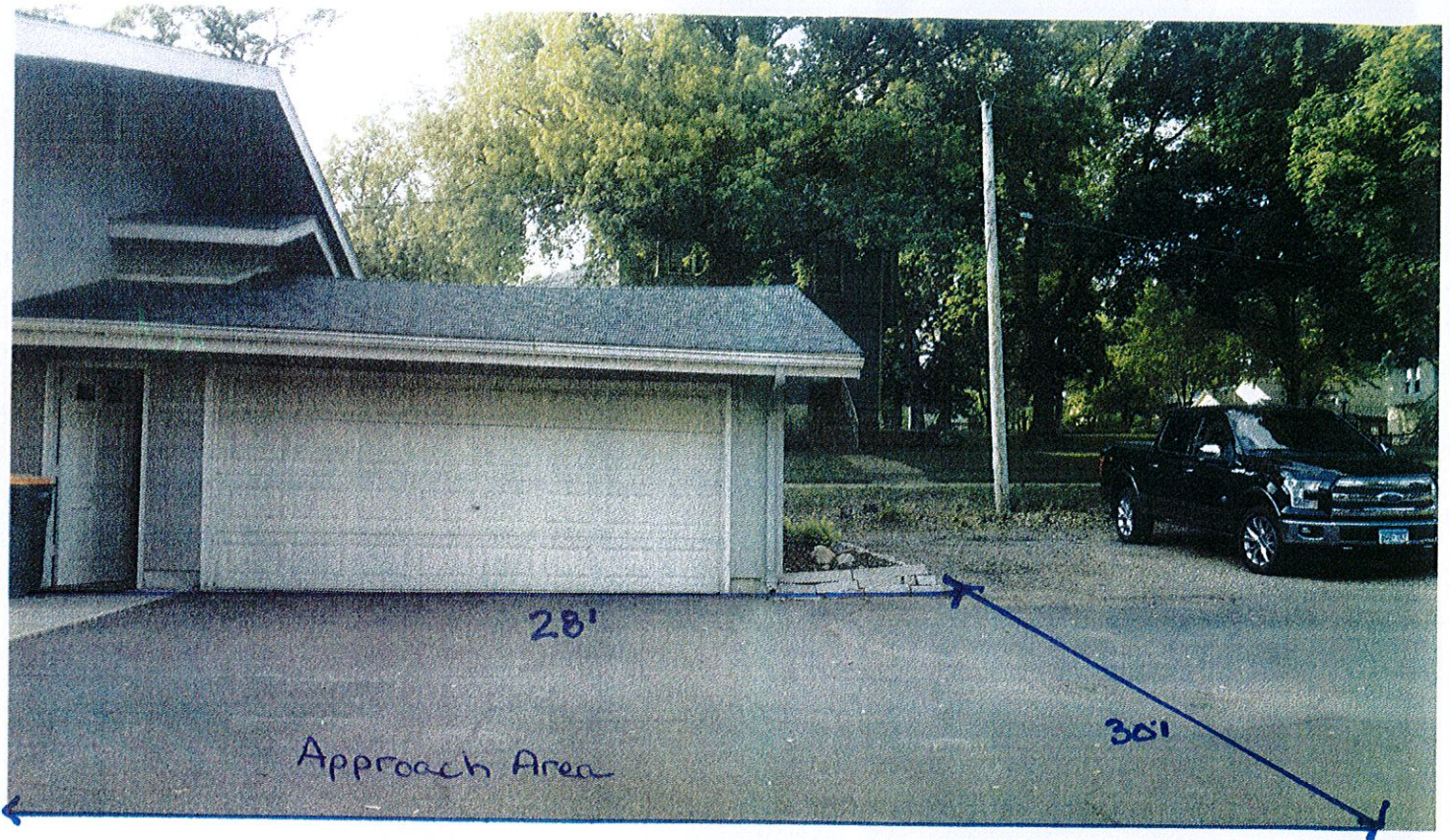


5,355

House: 1,872  
 Garage: 672  
 Parking Area: 903  
 Approach: 840  
 Driveway: 1,068



Fig 5



Existing Garage to be removed:  $28 \times 24 = 672 \text{ sq ft}$

Existing Approach area will be turned back into lawn

Approach area:  $28 \times 30 = 840 \text{ sq feet}$

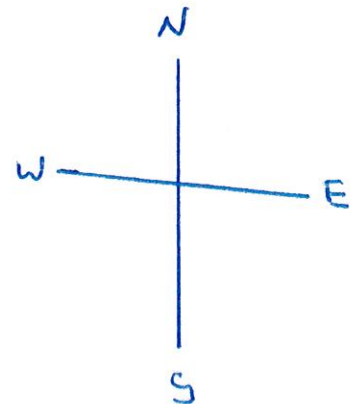
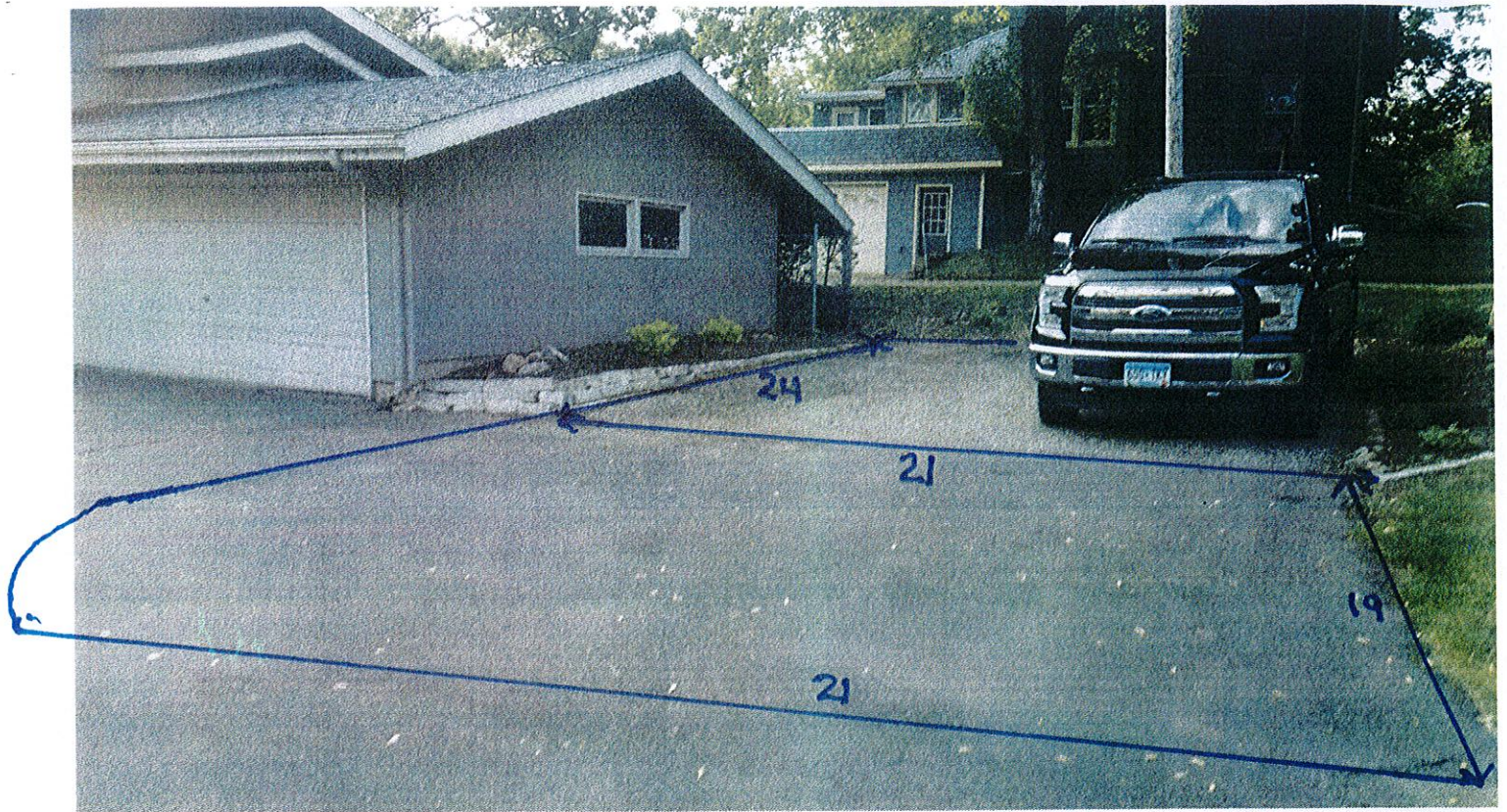




Fig 6



Existing Parking Area will be used for new house  
Addition & new garage.  $21 \times 24 = 504$  sq feet

Approach area in front of parking area measures  
 $21 \times 19 = 399$  sq feet

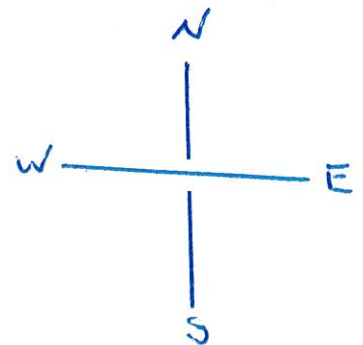




Fig 7



From Park Ave West to flag measures 58' 4"

Flag represent east outside wall of new garage

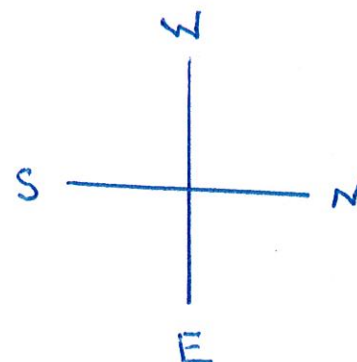
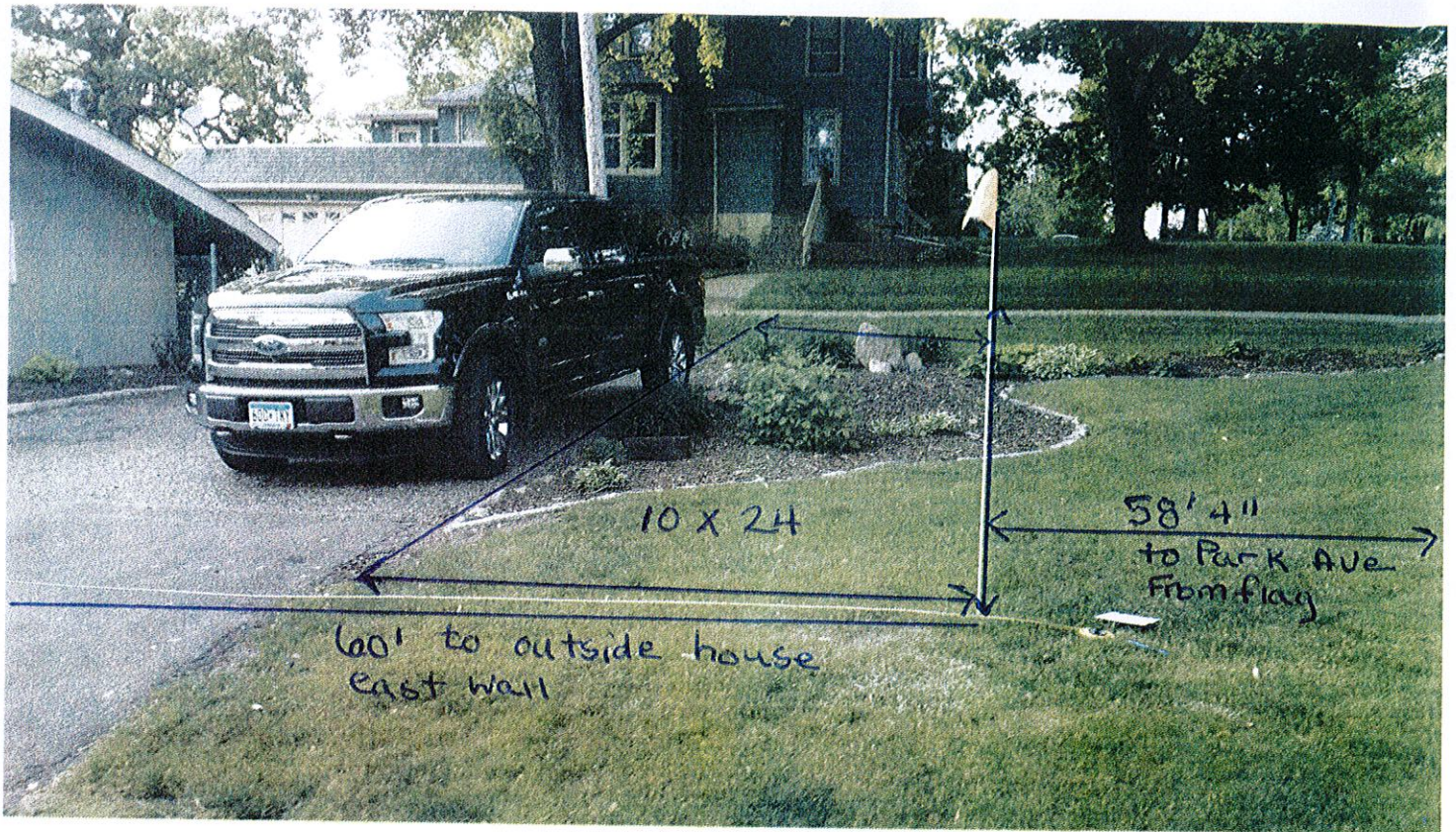
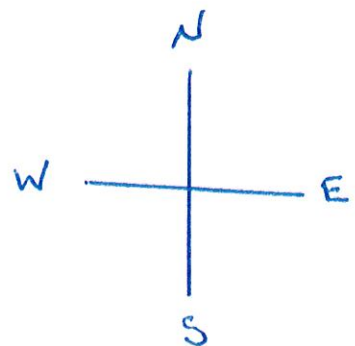




Fig 8

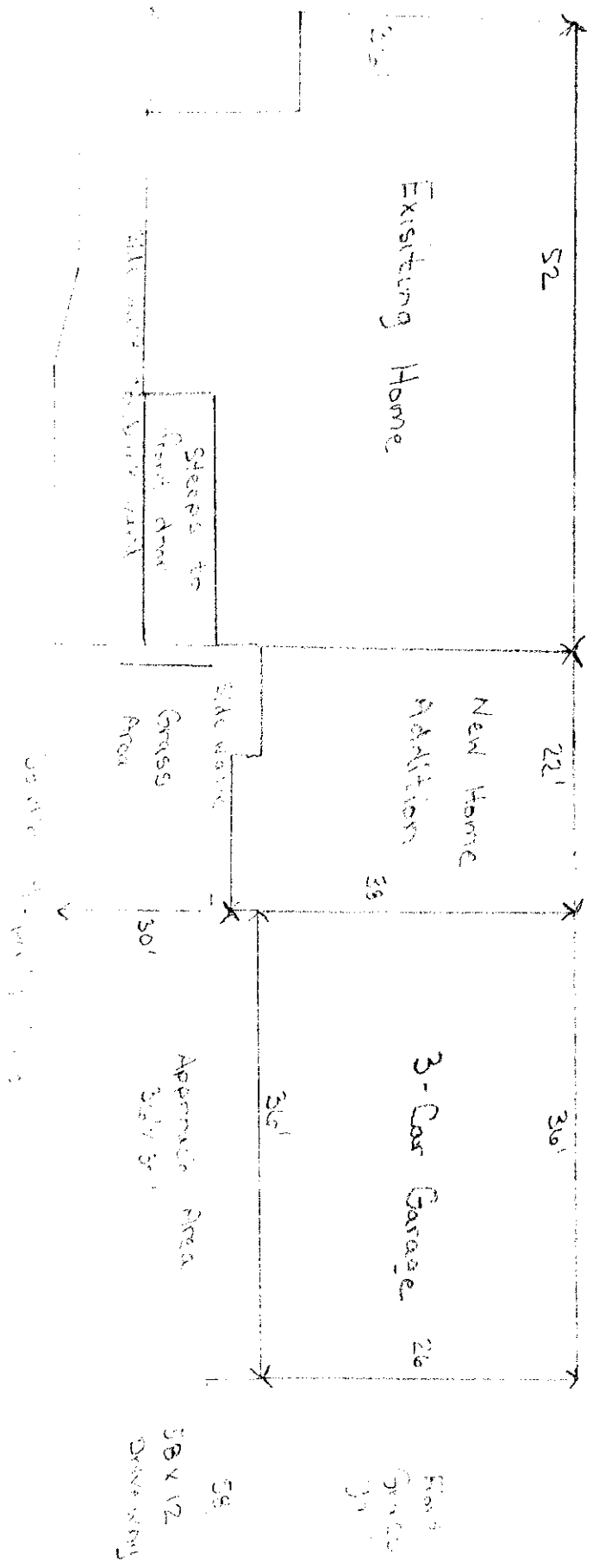


Flag represents the end of new addition & garage measuring 60' from east outside wall of existing house to flag. Area from parking area to flag measures  $10' \times 24' = 240$  sq feet



# New Edition & New Garage

North Property line



Existing Home:  $52 \times 36 = 1,872$

New Home Addition:  $22 \times 38 = 836$

3-Car Garage:  $36 \times 26 = 936$

New Home Addition:  $36 \times 30 = 1,080$

Stairs to front door:  $58 \times 12 = 696$

5,420 sq. ft.

Square Footage Property = 14,294

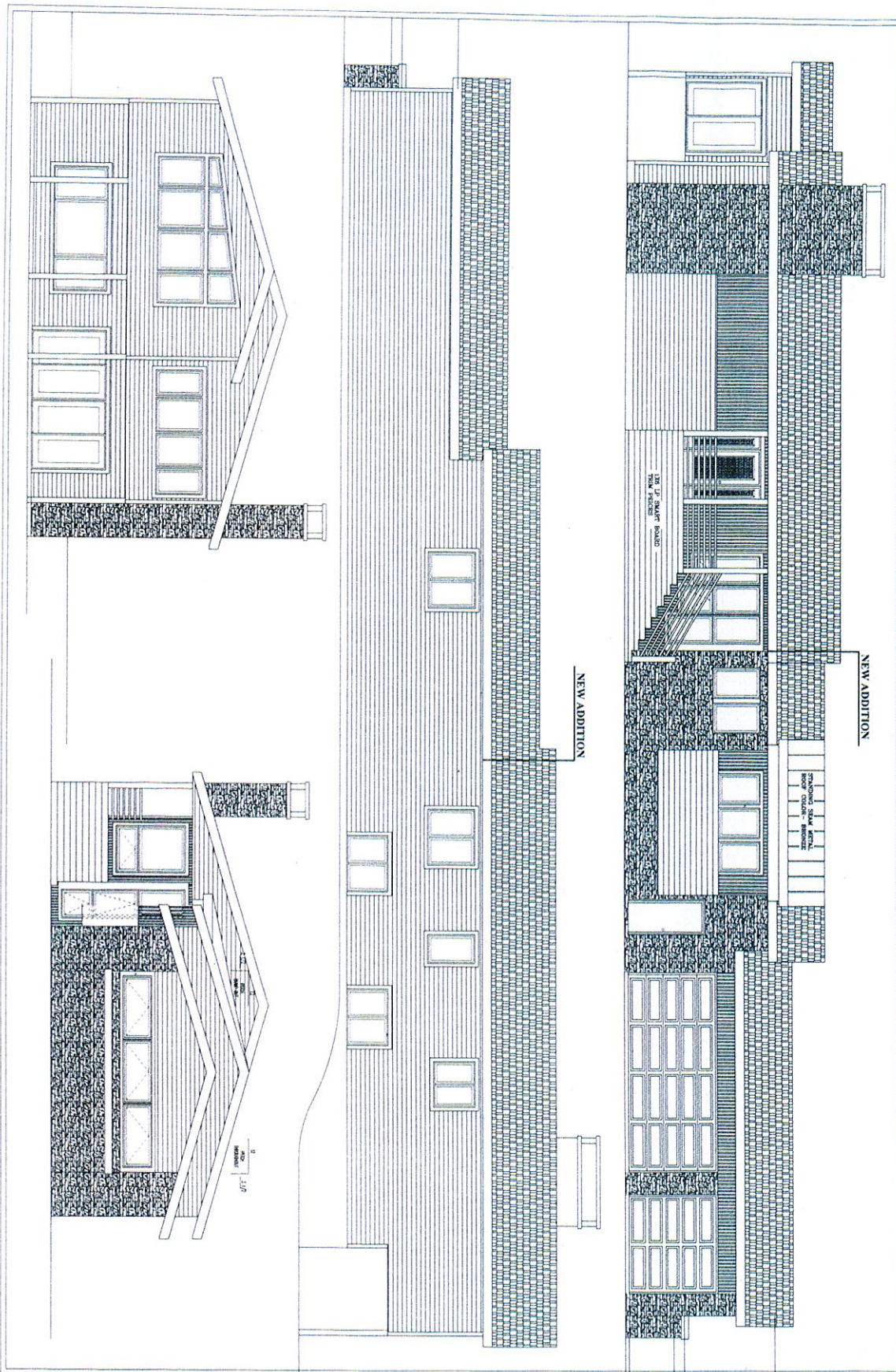
$\times 3576 = 5,247$

Proposed Addition = 5,420

Square Footage Property = 5,247

173 sq. feet





REVISIONS:

DATE: 3-3-13

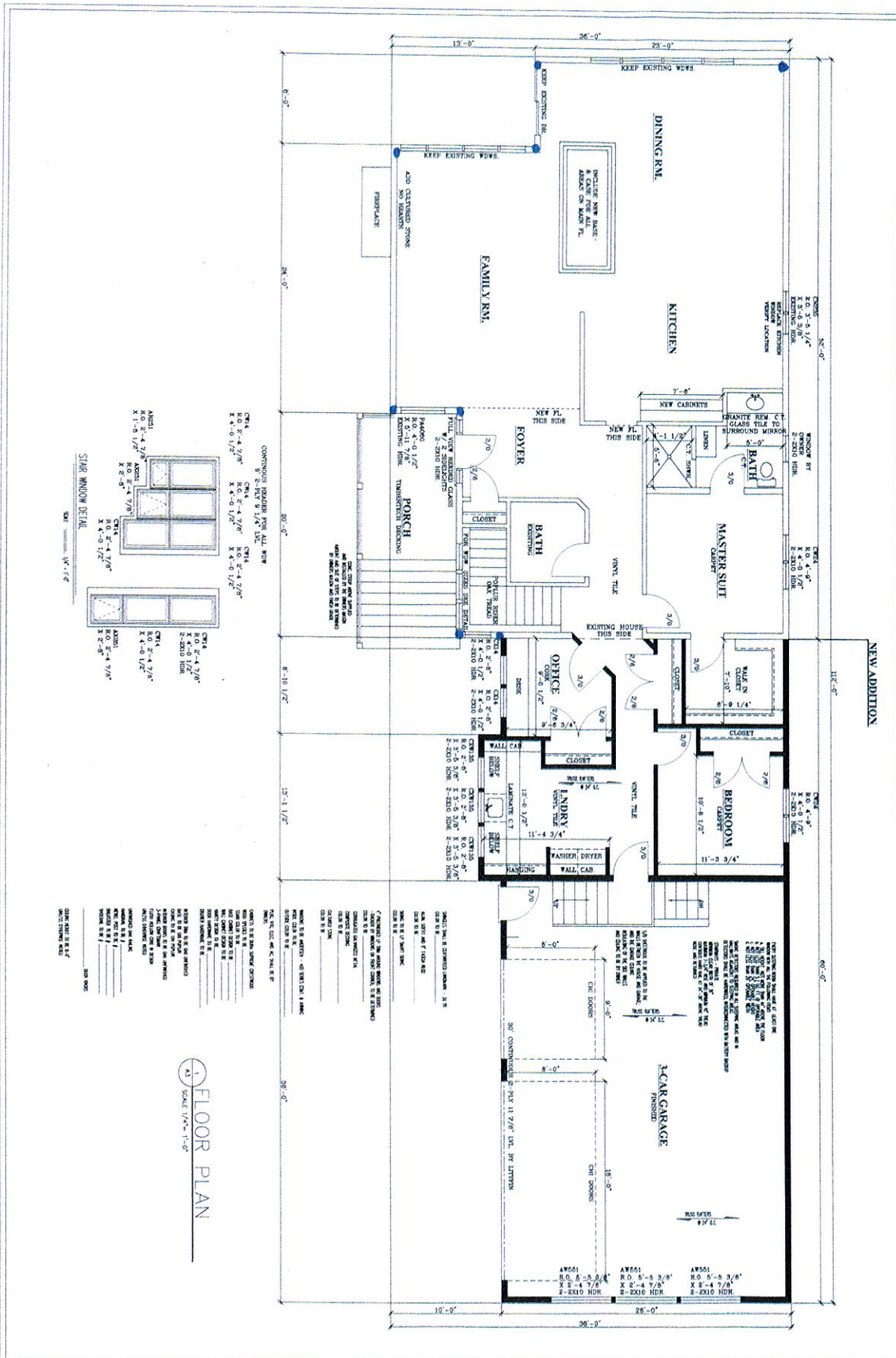
SHEET: A1

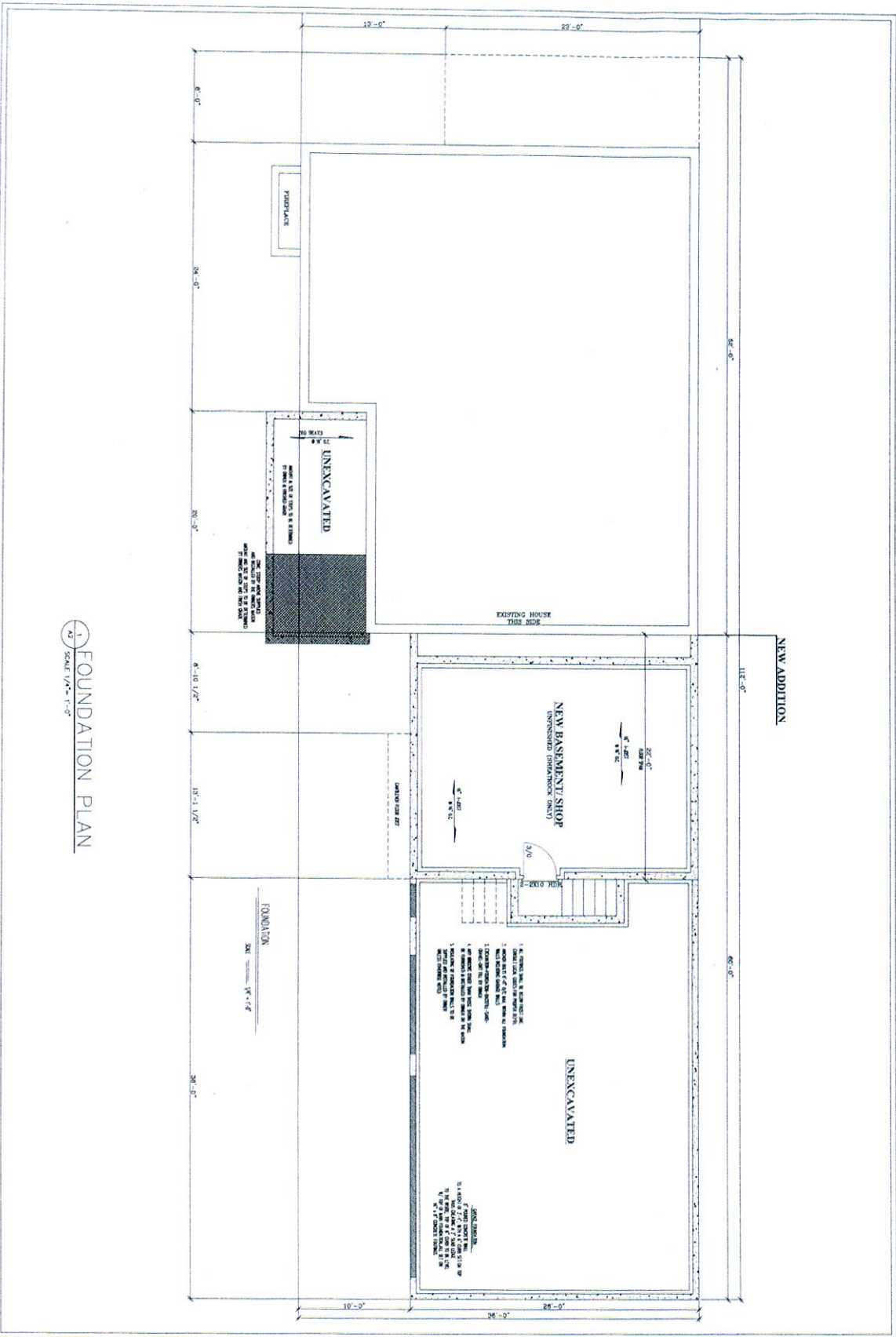
**SCHULTZ**

DAVID, & LISA

ALBERT LEA, MINNESOTA



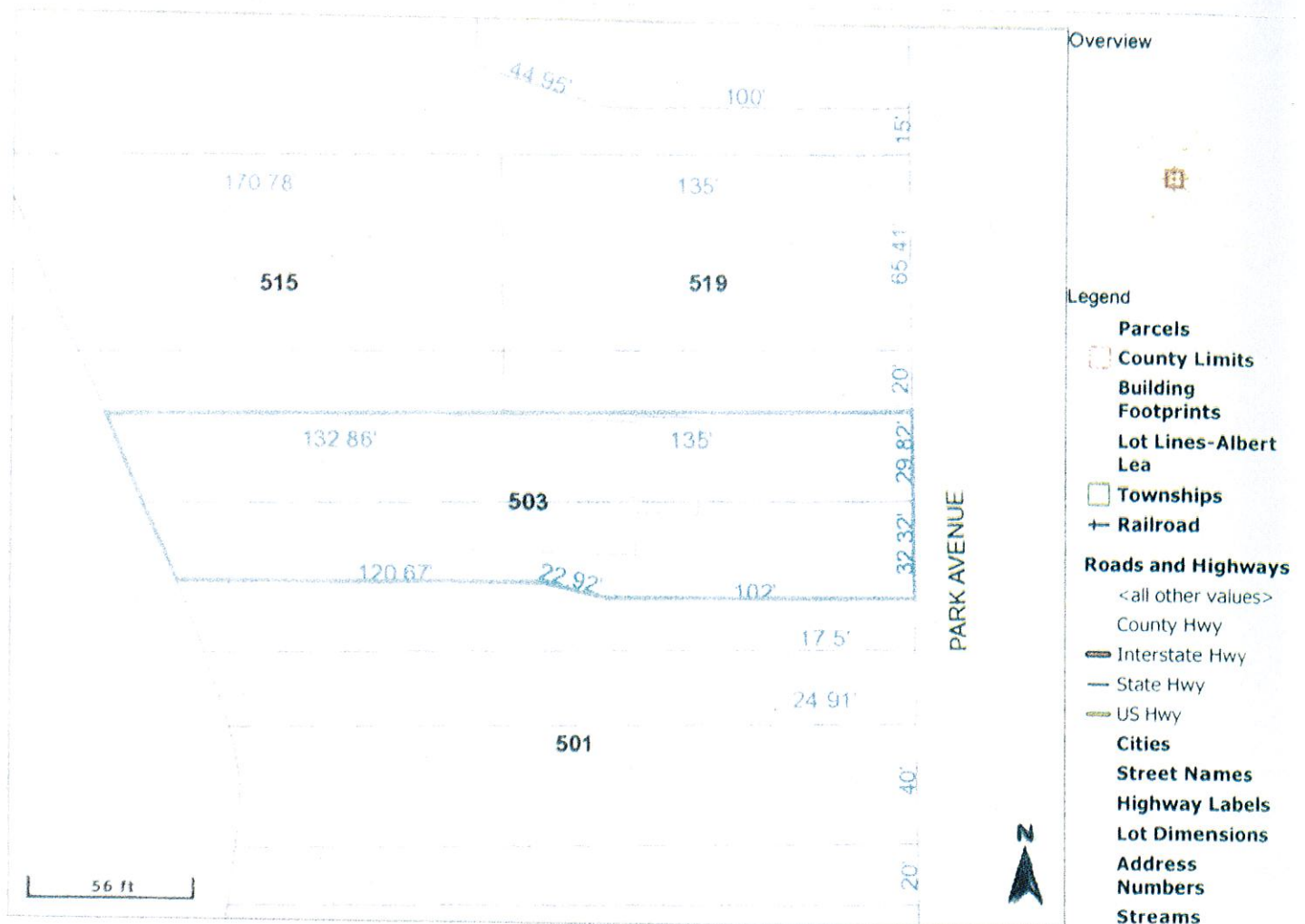




SHEET <b>A2</b>	REVISIONS: DATE: 3-3-13	SCHULTZ DAVID, & LISA	ALBERT LEA, MINNESOTA
	CONTRACTOR TO BE SURE AT THE TIME OF THE FOUNDATION WORK IS COMPLETED THE FOUNDATION SHALL BE PROTECTED BY A FENCE AND GATE TO BE MAINTAINED AT ALL TIMES THE FOUNDATION SHALL BE PROTECTED BY A FENCE AND GATE TO BE MAINTAINED AT ALL TIMES		



Date Created: 9/10/2013



Parcel ID 341240130  
 Sec/Twp/Rng n/a  
 Property Address 503 PARK AVE  
 ALBERT LEA

Alternate ID n/a  
 Class 201 - RESIDENTIAL  
 Acreage n/a

Owner Address SCHULTZ, DAVID A & LYN L  
 503 PARK AVE  
 ALBERT LEA, MN 56007

District n/a

Brief Tax Description ARMSTRONG'S ADDITION REV DESC NO. 2074 A SPECIFIC PART OF ARMSTRONG'S ADD CITY OF ALBERT LEA  
 (Note: Not to be used on legal documents)

Last Data Upload: 9/9/2013 11:32:02 PM



developed by  
 The Schneider Corporation  
[www.schneidercorp.com](http://www.schneidercorp.com)

No. 20225

# Abstract of Title

To the following Real Estate in Freeborn County, Minnesota:

Lot 35 in the Plat of Armstrong's Addition, as the same is platted and recorded in the Office of the County Recorder of Freeborn County, Minnesota; less the north 20 feet thereof, (said North 20 feet measured parallel with East line of Lot 35), together with Lot 36 in said Plat of Armstrong's Addition, less all that part of Lot 36, which lies south of the following described line:

Commencing at a Judicial Landmark labeled 'F', as described in Certificate of Title No. 4300 filed in Volume 12 page 151 in the Office of the Registrar of Titles, Freeborn County, Minnesota; which Judicial Landmark is 17.50 feet north of the southeast corner of said Lot 36;

thence westerly a distance of 102.00 feet, at a deflection angle of  $89^{\circ}42.5'$  left, on a line parallel to the south line of said Lot 36, to a point which is marked by a Judicial Landmark labeled 'E', as described in said Certificate of Title No. 4300;

thence northwesterly a distance of 22.92 feet, at a deflection angle of  $13^{\circ}53'$  right, to a point which is marked by a Judicial Landmark labeled 'D', as described in said Certificate of Title No. 4300;

thence westerly a distance of 118.10 feet, at a deflection angle of  $13^{\circ}53'$  left, on a line parallel with the south line of said Lot 36 to the easterly shoreline of Fountain Lake, which point is referenced by a Judicial Landmark labeled 'C', as described in said Certificate of Title No. 4300, and set 1.60 feet east of said shoreline, and there terminating.



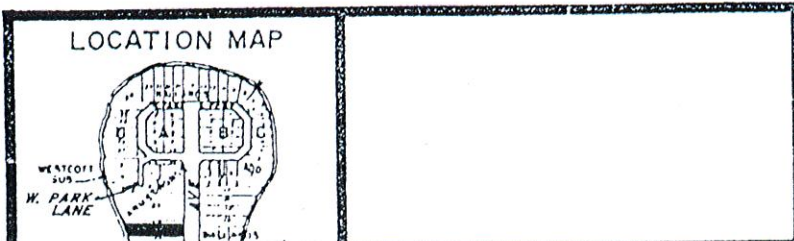
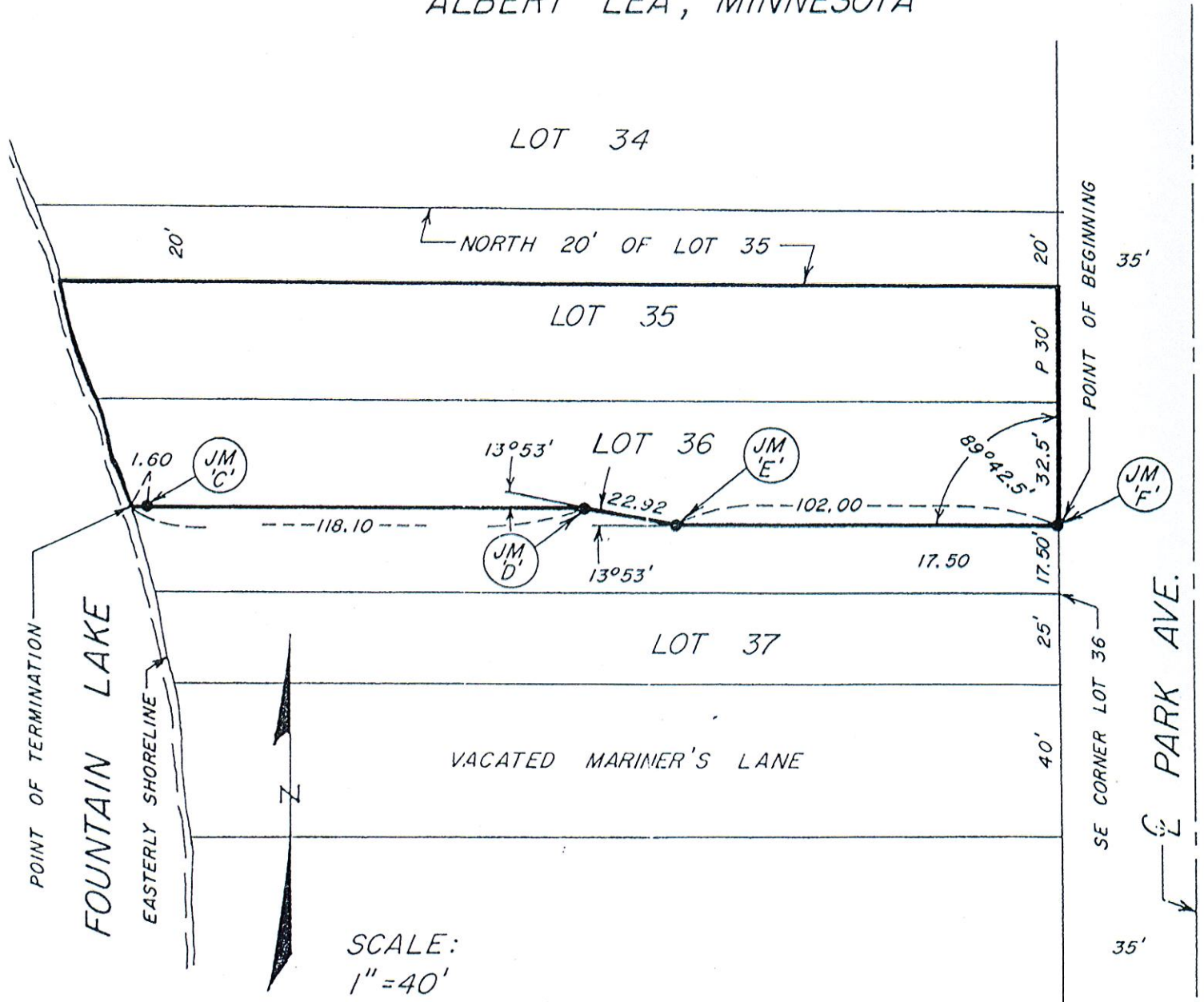
# Abstract of Title

*To the following described Real Estate situated in*

Lot Thirty-five (35), less the North Twenty (20) feet thereof; also Lot Thirty-six (35), less the South Thirteen (13) feet thereof, and also less the following described part of said Lot Thirty-six (35): Beginning at a point, which point is Thirteen (13) feet North and One Hundred Twenty-two (122) feet West of the Northeast corner of Lot Thirty-seven (37); thence North Ten (10) feet; thence West One Hundred Twenty-two (122) feet more or less to the shore of Fountain Lake; thence South along the shore of said Fountain Lake to a point which is Thirteen (13) feet North of the North line of said Lot Thirty-seven (37); thence East to the place of beginning; subject to Agreement recorded in Book 4 of Misc., page 163 in the office of the Register of Deeds, Freeborn County, Minnesota; all in Armstrong's Addition to the City of Albert Lea, as the same is platted and recorded in the office of the Register of Deeds, Freeborn County, Minnesota.

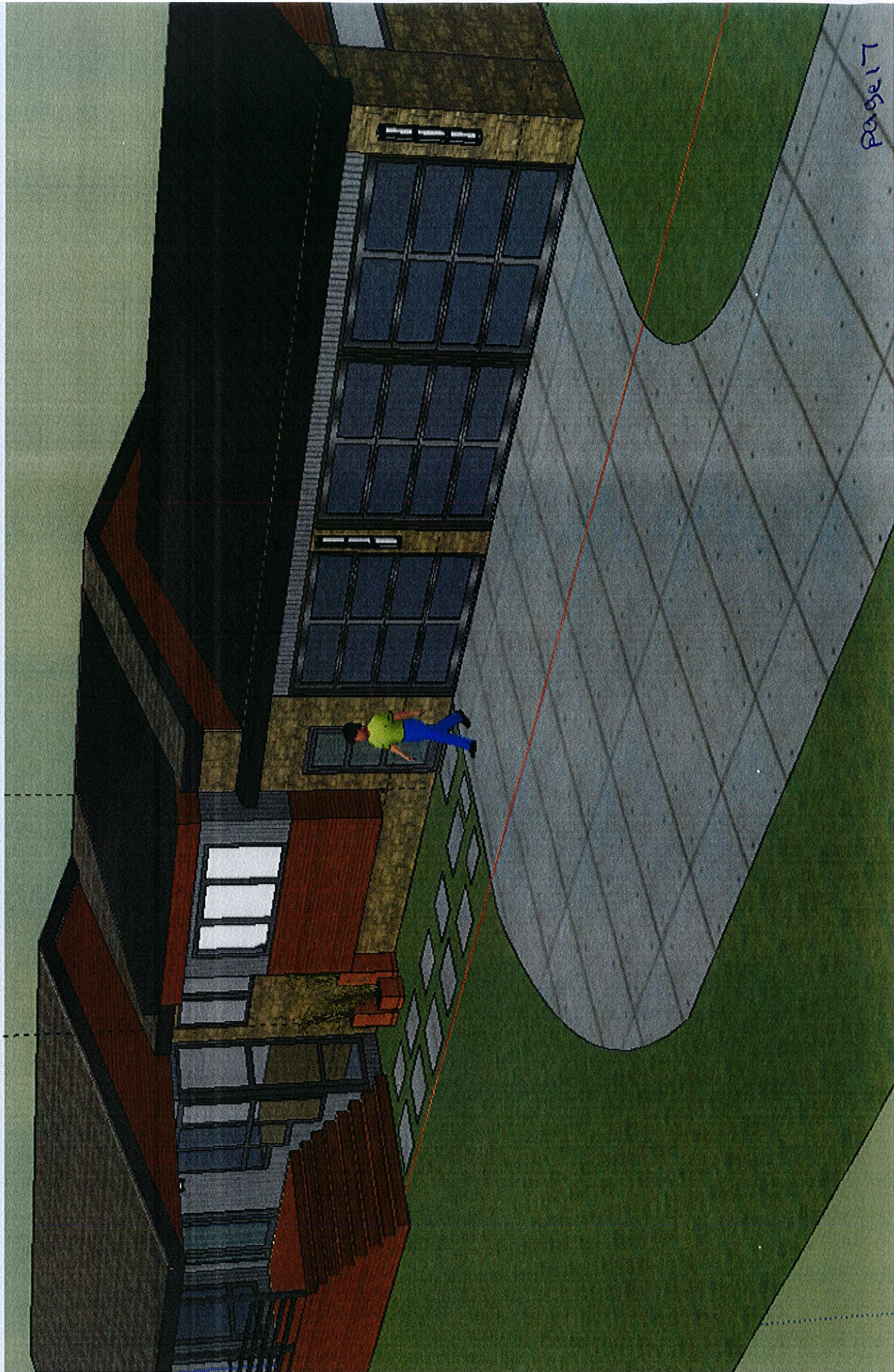
# DRAWING OF TRACT

## PART OF LOTS 35 & 36, ARMSTRONG'S ADDN. ALBERT LEA, MINNESOTA



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.













CITY OF ALBERT LEA, MINNESOTA

Date \_\_\_\_\_

SUBJECT: Request for approval of permit for a certain use.  
Request for modification, variation, or adjustment.

TO: Board of Appeals of the Zoning and Building Ordinance

1. The Board of Zoning Appeals is requested to make a finding in this specific case for Section 74-86 and Section 74-87 of the Zoning and Land Use Ordinance.

2. Request made to determine if \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Address

**BOARD OF APPEALS**

SUBJECT: Findings of the Board

Date \_\_\_\_\_

TO: City Council

1. Approved / Denied

\_\_\_\_\_  
Secretary of the Board

**CITY COUNCIL**

SUBJECT: Council Action

Date \_\_\_\_\_

TO: Applicant

1. Approved / Denied

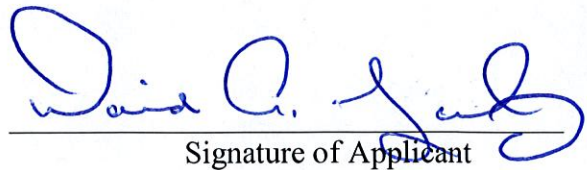
2. Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City Clerk

**A fee of \$500.00 must accompany this application**



Statements and reasons for appeal, or other data having a direct bearing on this appeal. (Please state the practical difficulty and reason for not conforming to the ordinance)

  
Signature of Applicant

Legal description of property: Please refer item one of  
the request for approval of permit for a specific  
event. Please also refer to Abstract of title page 14 & 15

Name of owner: David & Lyn Schultz

Address of owner: 503 Park Ave Telephone No. 507 202 5082

A plot plan showing size of lot and placement of building on the lot to scale and plans showing proposed work, shall be attached.

A letter of authority, or power of attorney shall be attached, in case the appeal is made by a person other than the actual owner of the property.

## **Required Findings**

Chapter 74 of the City Code (Zoning Ordinance) allows for the granting of variances from certain provisions of the zoning Ordinance. The Board shall make findings that a “practical difficulty” exists in the use of the property before a variance may be granted.

“Practical difficulty” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances.

1. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
2. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
3. The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone cannot create practical difficulties. Rather, practical difficulties exists only when the three statutory factors are met.

The Board of appeals shall consider the following factors when making its determination;

- Is the variance in *harmony with* the purposes and intent of the *ordinance*?
- Is the variance *consistent with* the *comprehensive plan*?
- Does the proposal put property use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

## **Conclusion and Staff Recommendation**

The staff recommends that the requested variance be granted for the following reasons:





MINNESOTA DEPARTMENT OF NATURAL RESOURCES  
SOUTHERN REGION  
261 HWY 15 SOUTH  
NEW ULM, MN 56073  
507-359-6000

June 30, 2016

Molly Patterson Lundgren, City Planner  
WSB & Associates Inc.  
23 2<sup>nd</sup> Street SW, Suite #200  
Rochester, MN 55902

Dear: Ms. Patterson - Lundgren:

RE: Schultz CUP Application 2016-004, 503 Park Avenue, Albert Lea, Minnesota

The following recommendations are offered for your consideration:

- 1.) My recommendation for nonconforming lots in the shoreland area is to make them less non-conforming not more non-conforming when owners propose improvements.
- 2.) The City's Shoreland Ordinance has already increased the impervious surface by 10% over the recommended maximum of 25%. Approving a conditional use permit application that increases the impervious to be greater than 35% is contrary to the purpose of the shoreland ordinance. The use of variances should be rare and not use regularly to enable unsustainable development to continue in environmentally sensitive areas.
- 3.) The applicant is claiming practical difficulty when they have several alternative options. The applicant could replace the existing garage and stay within the same footprint or remove other existing, impervious surfaces to counter the additional area attributed to the larger garage.
- 4.) The proposed improvement is relying on pervious pavement to support increases in overall impervious coverage. The DNR considers all pervious pavements to be 100 percent pervious. Pervious paving products are suitable alternatives for poured concrete or asphalt but should not be used to justify new, larger structures or increases in impervious coverage.

The development proposal is simply too large for the subject lot and the application for a conditional use permit should be denied. If you have questions call me at 507-362-8778.

Sincerely,

Daniel Girolamo  
Area Hydrologist

Cc: Todd Kolander, District Manager, DNR EWR  
mndnr.gov



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