



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2914
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of the City Clerk

BOARD OF APPEALS
Thursday, April 1, 2021
6:00 PM
Virtual Meeting

Agenda

ELECTRONIC MEETING NOTICE: Pursuant to the current recommendation of the CDC limiting the size of public gatherings and the various federal and state orders implementing that recommendation, and to help protect our community from the Coronavirus (COVID-19) pandemic, this meeting will be held virtually through the GoToMeeting platform with each member accessing the meeting remotely. Citizens may also join the meeting online or by phone.

Please go to <https://global.gotomeeting.com/join/333400765> to join the meeting online or call into the meeting by telephone by dialing 1-866-899-4679 and enter access code 333-400-765.

WRITTEN PUBLIC COMMENTS may be submitted in advance of the meeting. Written comments should be directed to the City Clerk's Office at least 2 hours prior to the meeting by email at cfochs@ci.mequon.wi.us or addressed to the intended committee. Written public comment may also be deposited in the drop box at City Hall on 11333 N. Cedarburg Road, Mequon at least 2 hours prior to the meeting. Comments received timely will be forwarded to all members of the body for their consideration.

VERBAL PUBLIC COMMENTS and PUBLIC HEARING APPEARANCES will be accepted only from members of the public who register in advance. Registration shall be made by sending an email to City Clerk Caroline Fochs at cfochs@ci.mequon.wi.us or by leaving a message at 262-236-2912 no later than 2 hours prior to the meeting.

Reasonable accommodations will be made for those citizens who are unable to attend the meeting in the methods identified above upon at least two hours' notice. Notice can be given to the City Clerk's Office at 262-236-2914.

- 1) Call to Order, Roll Call
- 2) Approve meeting minutes of October 1, 2020

3) Hear evidence concerning; debate, deliberate and decide the request of:

a) Applicant: David and Jean Johnson

Owners: David and Jean Johnson

Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by David and Jean Johnson requesting a variance from Sections 58-238(c), 58-238(j) and 58-416(c) of the Mequon Code of Ordinances in order to decrease the offset of the property line and increase the allowable square footage of an accessory structure at 3330 W. Freistadt Road.

4) Adjourn

Dated: March 19, 2021

/s/ Kathleen Massey, Chairman

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting. Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM.



Virtual Meeting
Mequon, WI 53092
Phone: 262-236-2914
Fax: 262-242-9655

draft

www.ci.mequon.wi.us

Office of the City Clerk

**BOARD OF APPEALS
Thursday, October 1, 2020
6:00 PM
Virtual Meeting**

Minutes

1) Call to Order, Roll Call

Chairman Massey called the meeting to order at 6:01 PM.

Present:

Chair Kathleen Massey
Vice Chair William Komisar
Board Member Thomas Flanagan
Board Member Lori Kornblum
Board Member Robert Stern
Board Member Joseph Russell -- **Absent**
Board Member Ramona Larson -- **Absent**

Also present: Attorney Brian Sajdak, City Clerk Caroline Fochs, City Inspector Mike Hadley, press and interested public.

Chairman Massey explained the rules of virtual meetings per Mayor Wirth's Proclamation.

2) Approve meeting minutes of September 3, 2020

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Board Member Komisar
SECONDED BY: Board Member Stern

AYES:	Massey, Flanagan, Kornblum, Stern
ABSTAIN:	Komisar

3) Hear evidence concerning; debate, deliberate and decide the request of:

Applicant: Jeffrey Pomerantz
Owners: Jeffrey and Susan Pomerantz
Appeal: Petition by Attorney Kirsten Hildebrand on behalf of homeowners Jeffrey and Susan Pomerantz residing at 12335 N. Woodfield Court appealing the Orders of Correct Condition of Premises dated June 5, 2020.

Attachment: 10-01-20_Draft BOA minutes (6060 : BOA minutes 10-01-20)

This appeal was withdrawn by the appellant prior to the meeting.

4) Board of Appeals Training Session Conducted by City Attorney Sajdak

City Attorney Sajdak reviewed the Zoning Board handbook with the Board and provided guidance on the Board's roles and responsibilities.

5) Adjourn

Motion to adjourn at 7:52 PM.

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Board Member Stern

SECONDED BY: Board Member Kornblum

AYES: Massey, Komisar, Flanagan, Kornblum, Stern

Respectfully Submitted,
Kathy Andrykowski

Attachment: 10-01-20_Draft BOA minutes (6060 : BOA minutes 10-01-20)



11333 N. Cedarburg Rd 60W
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Department of Community Development: Inspections Division

MEMORANDUM ADDENDUM

To: Board of Appeals
From: Jac Zader, Assistant Director of Community Development
Date: March 26, 2021
Subject: Johnson Appeal for property located at 3330 W Freistadt Road

Background: On March 11, 2021, an application for variance was submitted for the property located at 3330 W Freistadt Road. The request was related to the lack of compliance with the side yard offset and maximum size of an accessory structure.

Variance:

The request for variance did not specify a hardship or address any code sections where staff has erred in its interpretation of the denial. The report prepared by Chief Inspector, Mike Hadley dated March 21, 2021 addressed the issue of noncompliance to the offset requirements and maximum size allowance for a detached storage structure. Neither the applicant nor Inspector Hadley referenced Section 58.62 (d) of the zoning code which is pertinent to this case. The code section states as follows:

All structures classified as legal conforming and legal nonconforming prior to February 18, 1994, or the enactment of an amendment to this chapter shall be classified and considered as legal conforming subsequent to the change. Any established structure that is damaged or destroyed may be rebuilt at its previous size and location unless located within the city's ultimate road right-of-way or within a documented easement area. Such damaged or destroyed structures that are located within the city's ultimate road right-of-way or within a documented easement area shall be rebuilt in accordance with a planning commission approved location.

Since the original structure collapsed due to heavy snow, the applicant would have the legal standing to utilize this code section if the building were being rebuilt at its previous size and location. However, since the structure is smaller and not located in the same location as the previous structure, this section is not applicable. Staff recognizes that the current request reduces the size of the building and provides a greater offset than the previous building which overall makes the structure closer to compliance with the code than the previous structure. Accordingly, staff is supportive of the appeal request. In addition, staff will be looking at modifying the above code language that would address this issue, eliminating the need for similar proposals from seeking a variance in the future.

Staff Recommendation:

Staff is supportive of the appeal request.

Jac Zader,
 Assistant Director of Community Development

Attachment: Staff memo J. Zader (6089 : Johnson Appeal Additional Materials)

Caroline Fochs

Subject: FW: Follow up - Meeting 3/24/21 3330 Freistadt Rd

From: Robert Strzelczyk <rstrzelczyk@ci.mequon.wi.us>
Sent: Wednesday, March 24, 2021 8:00 PM
To: Jac Zader <JZader@ci.mequon.wi.us>
Cc: Mayor <Mayor@ci.mequon.wi.us>; Caroline Fochs <cfochs@ci.mequon.wi.us>; Kimberly Tollefson <KTollefson@ci.mequon.wi.us>
Subject: Follow up - Meeting 3/24/21 3330 Freistadt Rd

Hi Jac,

Please share this email with the Board of Appeals ASAP prior to the meeting. Note: I have also cc'd the Mayor since I am requesting an ordinance review by the Public Welfare Committee.

First and foremost thank you to the board of appeals for your time and everything you do for the city. I am writing today because I visited David and Jean Johnson's property at 3330 W. Freistadt Rd. and have some points for consideration when reviewing this:

- The old structure on the property collapsed due to snowfall and the residents are rebuilding due to the building being damaged beyond repair.
- The new structure would be an improvement in aesthetics over the old building and this should be taken into consideration.
- The new structure would be smaller than the destroyed structure and therefore has less impact on the property than the previous one.
- The new structure would be IN THE SAME FOOTPRINT of the destroyed structure.
- The resident has THE RIGHT to build on the same footprint a larger building with the existing setback to replace the destroyed building.
- The resident is currently requesting to have the new structure shifted in the footprint furthest from the property line, however it would be best to center it on the old footprint at the end of the driveway pictured. This shift is their preferred location, please consider allowing it as a condition.
- They have a letter of approval to build closer to the property line from the adjacent business property and I don't ever see the use of this property changing in the future.
- The adjacent property is a commercial business with a large structure equally close to the property line that is not aesthetically pleasing (pictured)

I would request APPROVAL to allow Mr and Mrs Johnson to construct a replacement building anywhere within the footprint. If setback is your main concerns please allow for the building to be centered on the driveway so they don't have to tear that up and replace it. If you choose to not allow that placement please approve the building as shown in your packet. Although they are zoned residential they are surrounded by commercial with a displeasing building and gas pumps for the golf course right next door. The Johnson's didn't remove the building due to desire to upgrade, they're merely replacing a building that was destroyed due to a roof collapsing.

I feel that the intent of the law is being followed by allowing a smaller structure in the same footprint, centered on the driveway or shifted and I would prefer to allow the resident to choose the location if you would be accommodating. I would also like for this ordinance to please be reviewed by the Public Welfare committee citing this as an example, so

Attachment: Email from Alderman Strzelczyk (6089 : Johnson Appeal Additional Materials)

that the city can give some flexibility to applicants replacing buildings due to reasons beyond their control. Thank you for your consideration and please feel free to reach out to me if you have any questions.

Thank you,

Robert J. Strzelczyk

City of Mequon - District 1 Alderman
rstrzelczyk@ci.mequon.wi.us

Notice: Any email sent to, or received from, the City of Mequon or any official of the City of Mequon (if such email is related to such official's office) should be presumed to be a public record that will be retained by the City or such public official and will be subject to disclosure under the Wisconsin Open Records Law. This includes the email address, the contents of the message and any attachments.

Attachment: Email from Alderman Strzelczyk (6089 : Johnson Appeal Additional Materials)



Attachment: Email Photo from R. Strzelczyk (6089 : Johnson Appeal Additional Materials)

BOARD OF APPEALS VARIANCE APPLICATION**CITY OF MEQUON, WISCONSIN**

Applicant: David & Jean Johnson Address: 3330 W. Freistadt Rd
 City/zip: Mequon, WI 53092
 Owner: David & Jean Johnson Address: (same)
 City/zip: (same)
 Contact Person/Name: Jean Johnson
 Phone Number: 262-424-3483 (c) Email: jeandave@wi.rr.com

TO THE BOARD OF APPEALS:

The above hereby requests a variance to City of Mequon Code Sec. #: 58-238(c) & j)
 regarding: 58-416(c)

3330 W. Freistadt Rd, Mequon, WI 53092
 (street address or legal description)

in order to: Replace collapsed 72' x 45.5' steel pole barn with smaller
56' x 36' steel pole barn

APPLICANT MUST PROVIDE:

Application form
 \$215 filing fee

1 copy each of the following documents

- ✓ 1. Copy of denial letter if any, or a description of the denial
2. Letter explaining hardship or practical difficulty in complying with the ordinance requirement(s)
3. Detailed dimension drawing of/and indicating area where appeal/variance is requested
4. Elevation drawings if appropriate (4 views)

FOR OFFICE USE ONLY

Receiving Officer: <u>Kathy Andrykowskie</u>	Received Date: <u>3/11/2021</u>
Parcel #: <u>140-131-400-100</u>	Hearing Date: <u>4/1/2021</u>
Zoning District: <u>R-3</u>	Receipt #: <u>003358-0039</u>
Alderman & District #: <u>Ald. Strzelczyk, Dist #1</u>	Published: <u>3/18/2021</u>

- c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.



11333 N. Cedarburg Rd 60W
 Mequon, WI 53092-1930
 Phone (262) 236-2925
 Fax (262) 242-9655
mhadley@ci.mequon.wi.us

INSPECTION DIVISION

March 8, 2021

David and Jean Johnson
 3330 W Freistadt Rd
 Mequon, WI 53097

Dear David & Jean:

I am writing regarding the property you own at 3330 W. Freistadt Road and the denial of your building permit application, to construct a smaller 36' x 56' accessory structure on a portion of an existing footprint. The property is in the R-3 zoning district and listed on the Landmarks Commission and subject to their guidelines. Your desire to construct a new structure in the same area but with a different footprint now makes it subject to current zoning requirements. The proposed structure does not comply with the required 20' offset to the property line and size restrictions. Since the house does not have an attached garage, you are permitted the following under Sec 58-238(c) and that the proposed structure of 2016 sq. ft. does not meet the following:

Any property having a residence without an attached garage shall be permitted one principal detached garage not to exceed 800 square feet in area.

Any property may have, in addition to any permissible garage, one detached storage structure not exceeding one percent of the property area provided the parcel is not divisible under the current zoning classification. 1% of 1.25 acres = 544.5 square feet

Code Section 58-238(c) and 58-238(j)
 Code Section 58-416(c)

Please remember the following information if you decide to request a variance:

1. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner.
2. The hardship cannot be self-created.
3. The Board of Appeals is to evaluate the hardship considering the purpose of the zoning restriction at issue.
4. A variance cannot be contrary to the public interest.
5. The property owner bears the burden of proving unnecessary hardship.

I have enclosed an application for the Board of Appeals which should be returned to the City Clerk with a check for \$215.00.

If you have any further questions, feel free to call me at 262-236-2925 during normal business hours.

Respectfully,

Mike Hadley

Mike Hadley
 Building Inspections Supervisor

cc: Pa Phouala Vang, City Planner
 City of Mequon City Clerk's Office
 Karen Heil, Inspections Coordinator

Attachment: Johnson packet (6082 : Packet)

BOARD OF APPEALS VARIANCE APPLICATION

David and Jean Johnson

3330 W. Freistadt Road

Mequon, WI 53092

Replace a 72 ft by 45.5 ft steel pole barn (collapsed with weight of snow) with a smaller 56 ft by 36 ft steel pole barn.

The existing building was 1.5 ft from east lot line. New building would be within existing footprint but moved to 10 ft from east lot line (see attached drawing).

This is a 150 year old Mequon Landmark property. The location of the existing 150 year old smoke house/ice house make it impossible to move farther away from lot line.

Golf course property surrounds property on all 4 sides. See written letter attached from "The River Club of Mequon" stating they have no problem with proposed shed location.

The size of the building is necessary to the upkeep of the property as much maintenance equipment, ladders, workbench area, painting area, storage area, and other space is needed to keep up the property. No indoor work area is possible in a 150 year old home (old small basement). Also garden maintenance equipment, lawn mowers, etc., etc., need space.

Also, there is no garage on property for our cars. ✚

Thank you,

262-424-3483

jeandave@wi.rr.com

Attachment: Johnson packet (6082 : Packet)

March 8, 2021

City of Mequon, Architectural Board
11333 N Cedarburg Rd.
Mequon, WI 53092

Re: Replacement of 45 ft x 72 ft shed at
3330 W. Freistadt Rd, Mequon, WI

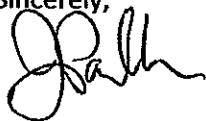
To Whom It May Concern,

"The River Club of Mequon" owns property bordering 3330 W. Freistadt Rd on all sides.

We have no problem with the owners replacing their 45.5 ft by 72 ft shed destroyed by snow damage.
The destroyed shed was 1.5 ft from their east lot line.

They would like the replacement shed to be smaller (36 ft by 56 ft) and to be 10 ft off our east lot line.
This is agreeable to us.

Sincerely,



GERALD T. PANELLA
SUPERINTENDENT
RIVER CLUB OF MEQUON
414-218-9958

Attachment: Johnson packet (6082 : Packet)

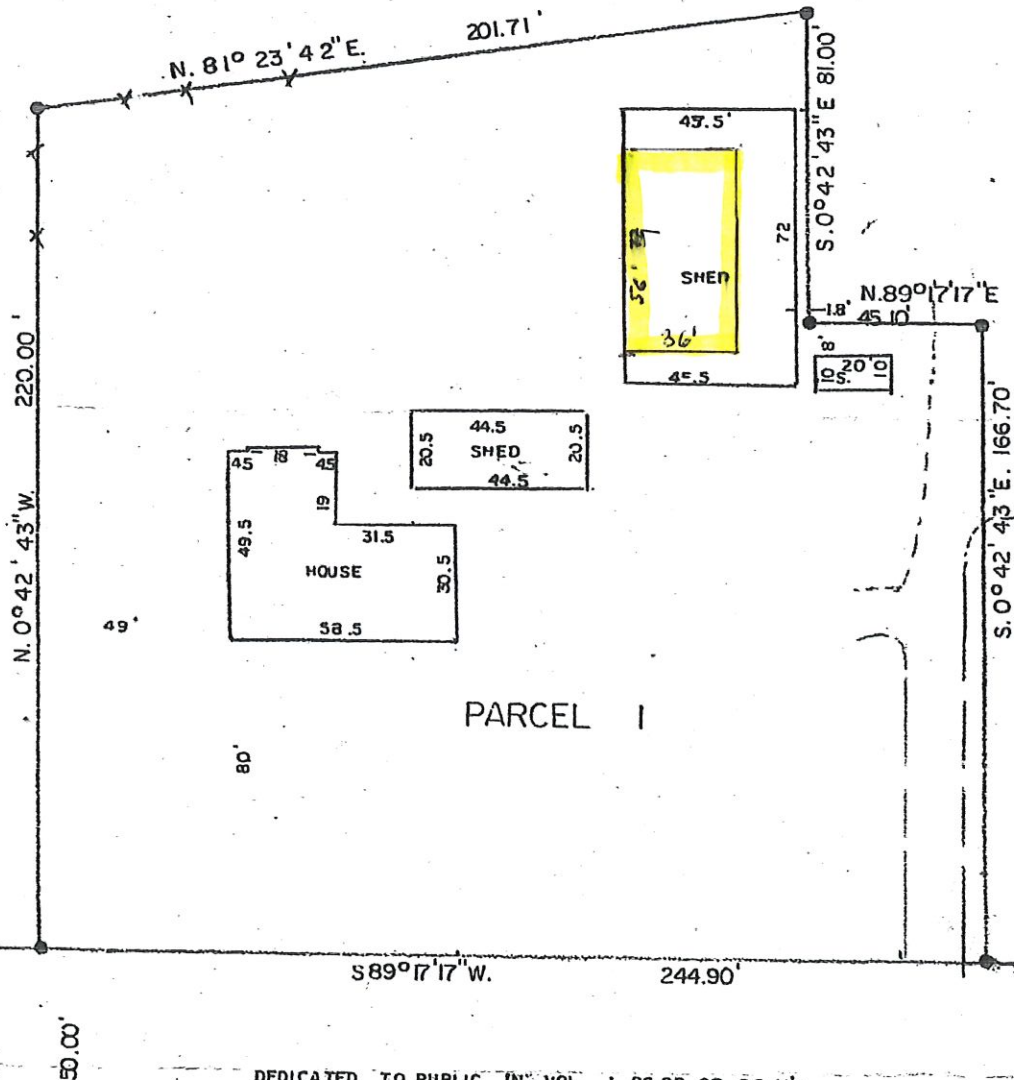
D & H LAND SURVEYS

SHEBOYGAN, WISCONSIN

PLAT OF SURVEY

For Carl Thiernann

Being a resurvey of Parcel 1 of a Certified Survey Map recorded in Volume 1 on page 98 of C.S.M's. located in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 13, T.9N., R.21E., City of Mequon, Ozaukee County, WI.



DEDICATED TO PUBLIC IN VOL. 1 PG. 98 OF C.S.M's.

Attachment: Johnson packet (6082 : Packet)

MBMI
GC License

DC-069500742

MORTON BUILDINGS, INC.

252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

Job:

Date:

3/2/2021

Page:

2 of 9

Building #1 Specifications

Building Info	Style	Width	Height	Length	Truss Spacing	Roof Pitch	Lower Chord	Peak Height	Soffit Height
	306	36'	11'	56'	8'	4/12	1/12	18' 6.5"	11' 9"

306 36'x11'x56' (#1) - Building Use: Suburban - Storage

Foundation

Columns in the ground Treated columns with Morton's Galvanized Support Stilt System and Readi-Mix Concrete footings
Treated Wood splashboard system, mounted at grade to column.

Siding

West, South, East, North wall(s) Fluoroflex™ 1000 Hi-Rib Steel Minimum .019 (Fastened with EPDM Washer Nails)

Wainscot

West, South, East, North with 36" tall Fluoroflex™ 1000 Hi-Rib Steel Minimum .019 wainscot (Fastened with Stainless Steel Screws)

Roof

Hi-Rib Steel Minimum .019 (Fluoroflex™ 1000) (Fastened with EPDM Washer Nails) with Vent-A-Ridge
Structure has not been designed for installation of anything which could retain snow on the roof.

2

3'6" Square Cupola, Non Functional with 'M' 30" Weathervane

Overhangs

West, East wall(s) 1' Wide Vented Sidewall Overhang with Standard 6" fascia, T#78
South, North wall(s) 1' Wide Non Vented Endwall Overhang with Standard 6" fascia

Walk Doors

1 A

3' x 6'8" MB 910 Plain Flat Leaf Walk Door(s) in swing left hinge with lockset

Windows

2 B

3'4"x4'0" MB Single Hung Window(s) with 14" x 47" open louvered shutter(s) with low E glass with argon (Top of window approx. 7' 8" ft above grade)

Overhead Door Opening

1 C

12'0" x 10'0" Overhead Door Opening (Requires a minimum 12' 2" X 10' 1" panel), OHD/Operator requires 6" Headroom, Available Headroom is 1' 8"

Skylights

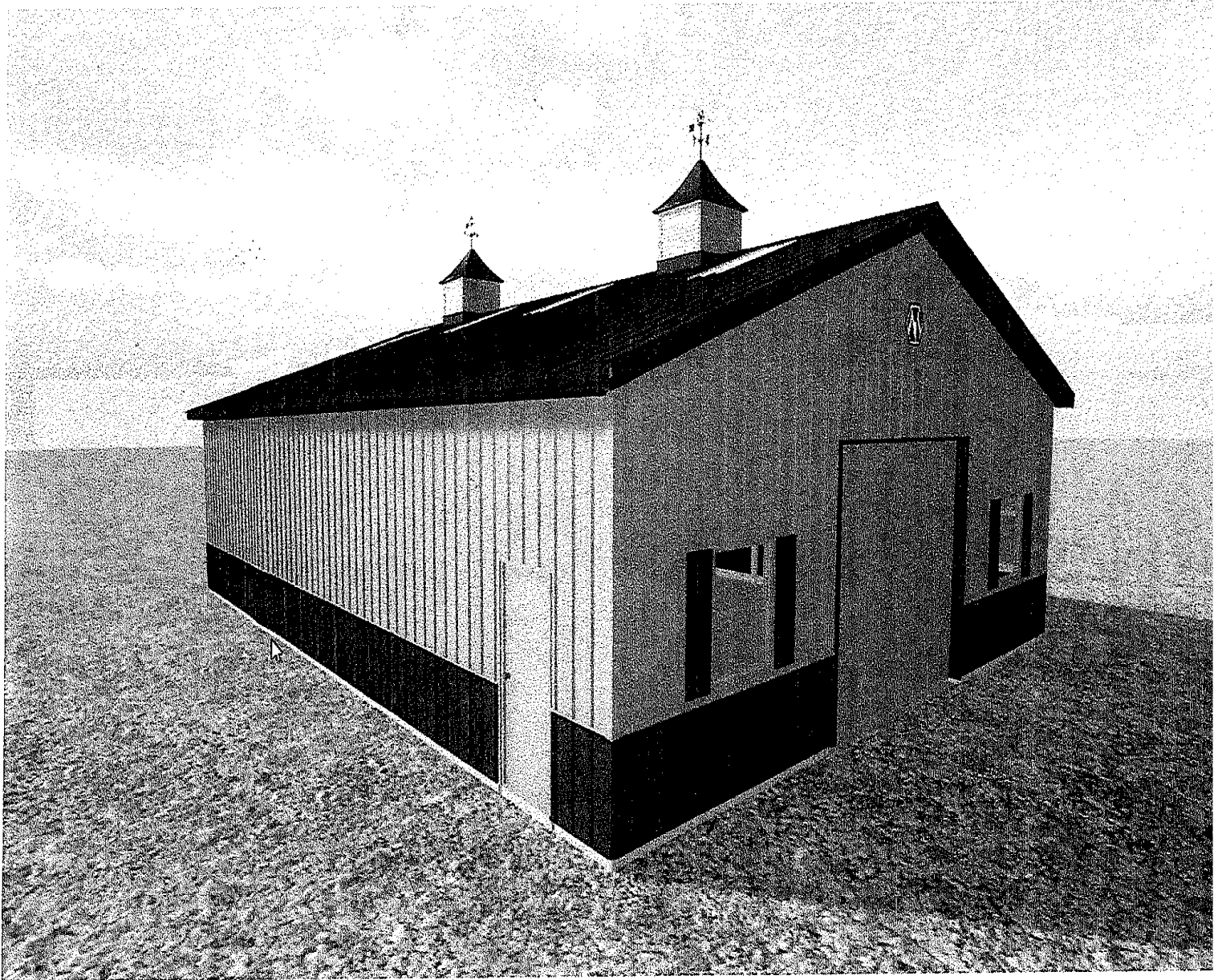
8

(Approx. 3' x 6'5") full skylight(s)

Subcontracts

Install (1) 12'2"W x 10'H Trinar beige raised panel Haas Model 600 series, (2) Thermo lites, 15" headroom requirement. ATSW 1/2 HP operator

Install 36' x 56' x 4" thick 5 1/2 bag 3500 psi concrete floor reinforced with fibermesh with vapor retarder,



Attachment: Johnson packet (6082 : Packet)

36' W x 56' L

MBMI
GC License

DC-059500742

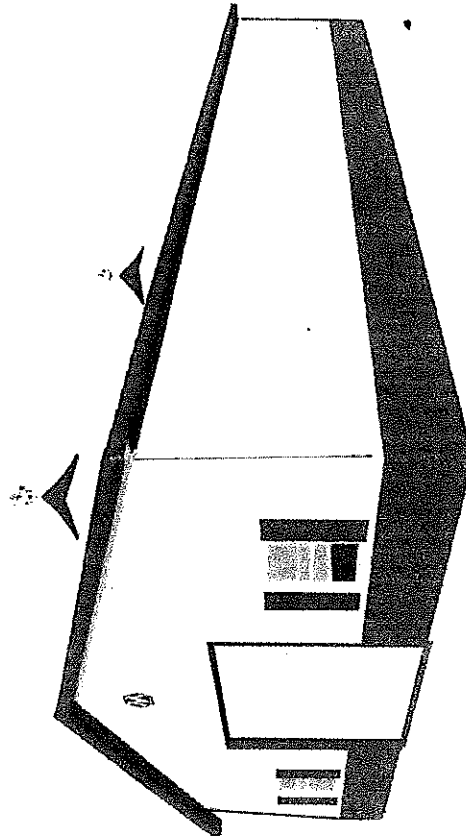
MORTON™ BUILDINGS, INC.

252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

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Date:
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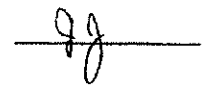
3/2/2021
5 of 9

306 36'x11'x56' South and East Walls



Attachment: Johnson packet (6082 : Packet)

91-10436-20210302-12390961-C628-8



Owner's Initials

MBMI
GC License:

DC-059500742

MORTON BUILDINGS, INC.

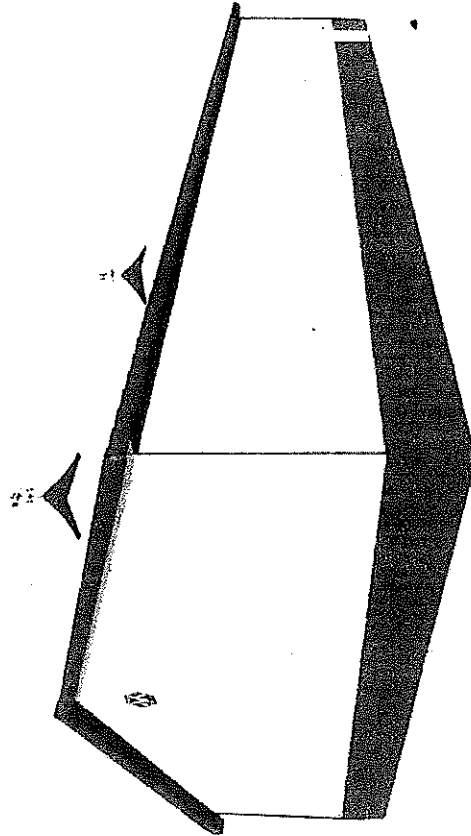
252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

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3/2/2021

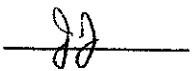
4 of 9

306 36'x11'x56' North and West Walls



Attachment: Johnson packet (6082 : Packet)

91-10436-20210302-12390961-C628-8



Owner's Initials



11333 N. Cedarburg Rd 60W
 Mequon, WI 53092-1930
 Phone (262) 236.2925
 Fax (262) 242.9655
 www.ci.mequon.wi.us

Department of Community Development: Inspections Division

MEMORANDUM

To: Board of Appeals
From: Mike Hadley, Building Inspection's Supervisor
Date: March 21, 2021
Subject: Johnson Appeal for property located at 3330 W Freistadt Road

Background: The appellant is requesting a variance for a reduction to the offset and size for an accessory structure to be located at 3330 W Freistadt Road

Variance:

The appellant is requesting a variance to 58-238(j) and 58-238(c)1b which requires an offset of 20 feet and one principal detached garage not to exceed 800 square feet.

- (j) *Minimum building offset.* No building or structure, hereafter erected, shall be placed closer than 20 feet to a side or rear lot line.
- (c)1b Any property having a residence without an attached garage shall be permitted one principal detached garage not to exceed 800 square feet in area.

Zoning: Suburban Residential Detached: R-3

Offset, required: 20 feet

Offset, current: 1 1/2 feet

Offset, proposed: 10 feet

Structure:

Size required: 800 square feet.

Size of old damaged structure more than 3,200 square feet

Size proposed: 2016 square feet

Per Section 58-41 of Chapter 58, Zoning Code, the Board of Appeals shall determine if such variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done.

In Staff's opinion, in the variance request, the appellant does not list or provide any practical difficulty or hardship that is unique to the property that would support granting the variance. Other designs may provide equitable solutions and provide compliance to the code. This parcel is located within the R-3 zoning district. The lot area for the parcel is conforming to the code.

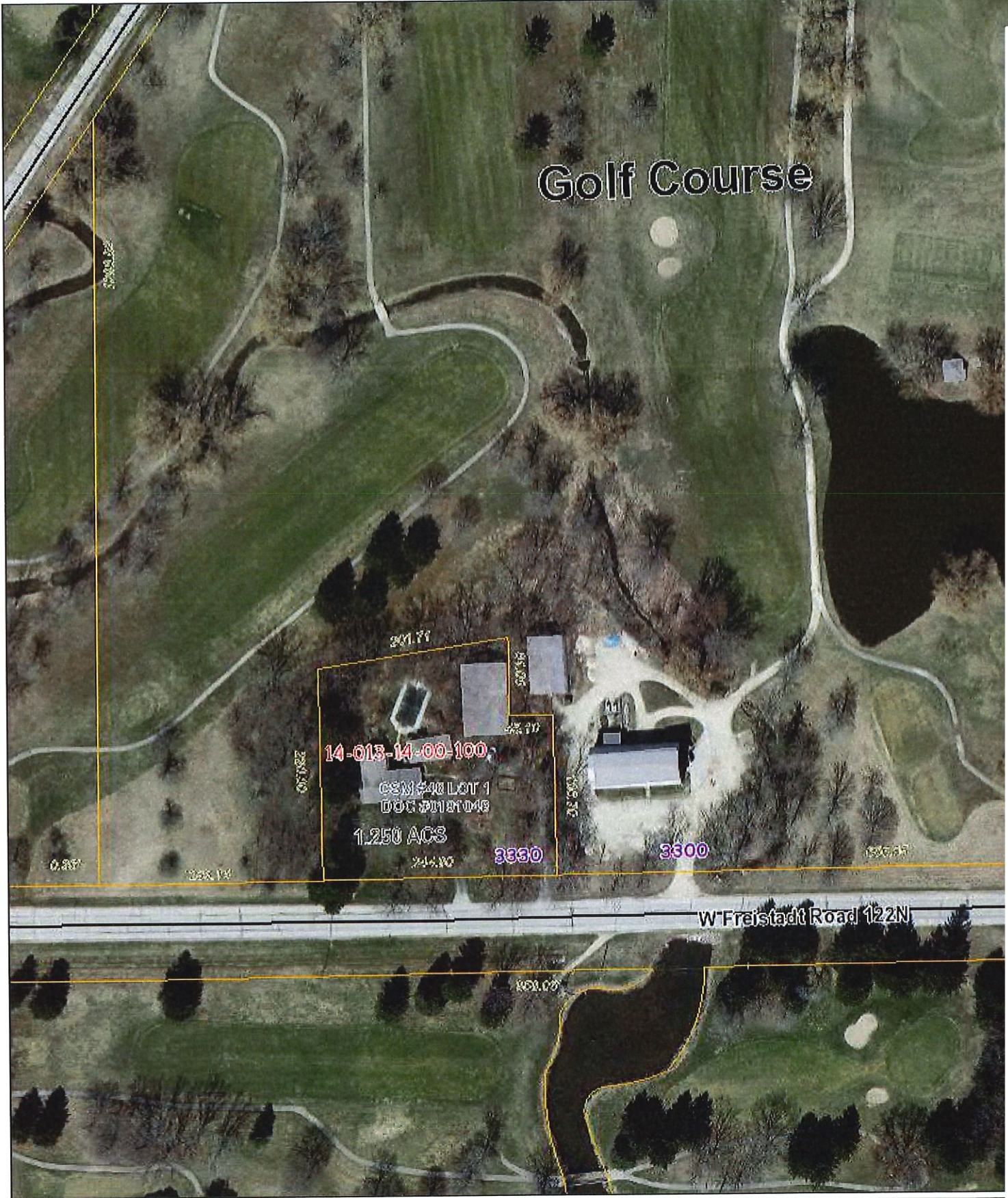
Staff Recommendation:

Staff makes no recommendation of the appeal.

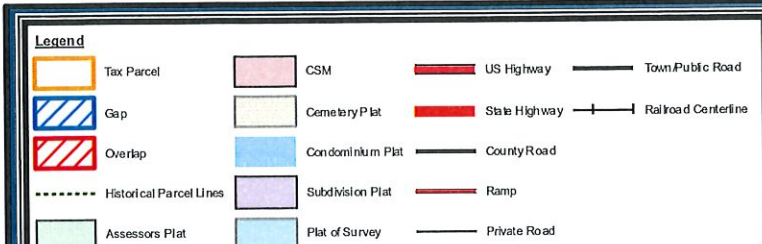
Mike Hadley

Mike Hadley, Building Inspection's Supervisor Department of Community Development:
 Inspections Division

Attachment: Johnson packet (6082 : Packet)



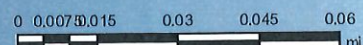
Attachment: Johnson packet (6082 : Packet)



Product of the LAND INFORMATION OFFICE

3/15/2021, 11:51:14 AM

3/15/2021, 11:51:14 AM



Packet Pg. 19

DISCLAIMER: This map is not a substitute for an actual field survey or onsite investigation.



DISCLAIMER: This map is not a substitute for an actual field survey or onsite investigation.



(a) *Purpose.* The R-3 district is intended to provide for large lot single-family detached residential development primarily within the area designated on the land use plan map as "urban service area." The district regulations are designed to reasonably accommodate large homes which may potentially be served by public sewerage facilities.

(b) *Permitted uses.*

- (1) Single-family detached dwellings.
- (2) Animals and animal-related uses specified in division 11 as permitted uses in the R-3 district.
- (3) Community living arrangements for eight or fewer persons in accordance with Wis. Stats. § 62.23(7)(i).
- (4) Long-term rental of a structure described in subsection (b)(1).

(c) *Permitted accessory uses.*

- (1) Private garages, carports, and paved parking areas shall be allowed provided that no garage or carport shall be erected prior to the erection of the principal building to which it is accessory. Garages and storage structures shall conform to the following:
 - a. Except as otherwise specifically provided below, no more than one principal garage; either attached or detached, shall be permitted on a lot.
 - b. Any property having a residence without an attached garage shall be permitted one principal detached garage not to exceed 800 square feet in area.
 - c. Any property having a residence which was constructed prior to year 2003 with an attached garage in which two full-sized personal automobiles cannot reasonably be stored side-by-side shall be permitted one principal detached garage not to exceed 675 square feet in area, provided no such garage structure shall be sited in front of an existing residence or in such other location as shall unreasonably affect or adversely impact the beauty and general enjoyment of existing residences or adjoining properties.
 - d. Any property may have, in addition to any permissible garage, one detached storage structure not exceeding one percent of the property area provided the parcel is not divisible under the current zoning classification. If the parcel is divisible under the current zoning classification, the structure shall not exceed one percent of the property's minimum lot size zoning requirement.
 - e. Enclosed vehicular storage space for not more than one vehicle may be rented to persons not resident on the lot, such space being defined as an area not to exceed 300 square feet.
- (2) Home occupations and professional offices which are clearly incidental to the principal residential use subject to the following:
 - a. The home occupation shall be carried on wholly within the principal residential building or within a building accessory thereto, and only by residents occupying the premises and one additional person not a resident on the premises.
 - b. No article or service shall be sold or offered for sale on the premises.
 - c. The home occupation shall not normally generate customer or client traffic to the residential premises.
 - d. Any off-street parking area shall be maintained reasonably dustless and adequately screened from adjoining residential properties.
 - e. The home occupation shall not include the conducting of any retail or wholesale business on the premises, nor the removal of sand, gravel, stone, topsoil or peat moss for commercial purposes.
 - f. The home occupation shall not include outside storage of materials or other operational activity resulting in offensive noise, vibration, smoke, dust, odors, heat or glare which may create a nuisance or be otherwise with the surrounding residential area.
- (3) Private outdoor recreational facilities normally accessory to a residential use.
- (4) Short-term rental of a structure described in subsection (b)(1).

(d) *Conditional uses.*

- (1) Public and private schools, child day care.
- (2) Churches and religious institutions.
- (3) Commercial use of historically significant structures.
- (4) Public and or private utility, transmission and distribution lines, poles, and other accessories provided that when the utility proposes a main inter-city transmission facility, the utilities shall give notice to the planning commission of such intention and of date of hearing before the public service commission, and before actual construction shall file with the planning commission a map description of the route of transmission line. Public and/or private utility installations less than three feet in height shall be subject only to City of Mequon staff approval and may be allowed subject to staff imposed conditions in section 58-238 regarding, among other things, effective screening from public view with all season vegetation.
- (5) Public or private outdoor recreational facilities.
- (6) Additional attached non-income producing living accommodation with separate bath and kitchen facilities for relatives of the individual(s) residing in the primary dwelling.
- (7) Guesthouse subject to, among other things, living quarters being within a detached accessory building which is located on the same lot with the principal residential structure. Furthermore, the guesthouse is intended for use by temporary guests of the residents and shall have no kitchen facilities, and not be rented or otherwise used as a separate dwelling.
- (8) Community living arrangements for nine or more persons in accordance with Wis. Stats. § 62.23(7)(i).
- (e) *Lot size.* The minimum lot size shall have an area of not less than one acre (43,560 square feet) with all or part of the lot being devoted to permitted residential use.
- (f) *Dwelling standards.* Single-family dwellings within the R-3 district shall have a 1,800-square-foot minimum living area measured from the outside of exterior walls (excluding cellars, basements, open porches, breezeways, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes).
- (g) *Building height.*
 - (1) The height of any dwelling unit shall not exceed 42 feet.
 - (2) The height of accessory structures shall not exceed 15 feet.
- (h) *Lot width and lot length.* The minimum average lot width and minimum average lot length shall be 150 feet.
- (i) *Minimum building setback.* All structures within the R-3 district shall be set back from the ultimate road right-of-way as follows:
 - (1) Local streets, 50 feet.
 - (2) Expressways-freeways, 200 feet.
 - (3) Primary arterials, 100 feet.
 - (4) Secondary arterials, 80 feet.
 - (5) Local arterials, 70 feet.
- (j) *Minimum building offset.* No building or structure, hereafter erected, shall be placed closer than 20 feet to a side or rear lot line.
- (k) *Lot coverage.* Not more than 15 percent of the lot may be covered by buildings or structures.

(Code 1957, § 3.07(5); Ord. No. 92-767, 8-4-1992; Ord. No. 96-878A, 6-11-1996; Ord. No. 96-890, 6-25-1996; Ord. No. 2001-1008, 3-13-2001; Ord. No. 2001-1017, § IX, 5-8-2001; Ord. No. 2003-1066, § V, 8-12-2003; Ord. No. 2005-1132, § III, 3-8-2005; Ord. No. 2005-1143, § 6, 9-13-2005; Ord. No. 2008-1238, § I, 4-8-2008; Ord. No. 2014-1417, § I, 4-8-2014; Ord. No. 2014-1430, § I(Att.), 10-14-2014; Ord. No. 2015-1445, § I(Att.), 4-14-2015; Ord. No. 2016-1487, § II, 1-10-2017; Ord. No. 2019-1543, Exh. B, 4-9-2019)

(a) *Purpose and intent.* The purpose and intent of regulating building and structure location is as follows:

- (1) To require the provision of a buffer zone between noise-intolerant land uses (e.g. residences, nursing homes, day care centers, schools, churches) and adjacent streets or highways to effectively attenuate noise and buffer such developments from the pollution and hazards attendant to vehicular traffic.
- (2) To require the provision of adequate physical separation between uses to minimize conflict.
- (3) To allow exposure to optimum amounts of light, air, and ventilation.
- (4) To attenuate noise, odors, fumes, and dust generated by land use before they infringe upon adjacent land use.
- (5) To provide aesthetic open space of sufficient size to accommodate landscaping and to soften, compliment, and enhance architectural design of buildings, parking areas, loading facilities, and utilities.
- (6) To provide adequate area for snow piling.
- (7) To insure adequate separation between pedestrian and vehicular circulation.
- (8) To promote cluster development and other internally oriented living, shopping and working environments, and to discourage strip development.
- (9) To provide adequate area to detain, retain, and facilitate surface drainage.
- (10) To protect and preserve the quality and quantity of ground water resources.
- (11) To prevent development which may result in unacceptable non-point source pollution.
- (12) To provide diversified and balanced growth.

(b) *Base setback line.* The following base setback lines are hereby established parallel to the centerline of all public streets and highways:

- (1) For all streets designated as "local streets", the base setback line shall be located 30 feet from the centerline of such street or 75 feet from the center point of a cul-de-sac unless otherwise specifically established by action of the common council.
- (2) For all streets and highways, other than those designated as "local" streets, a base setback line shall be located at a distance from the centerline of such street or highway equal to one-half the width of its ultimate right-of-way as established by the common council.
- (3) The width of frontage roads shall not be included in the above designated rights-of-way.

(c) *Setbacks.* Unless otherwise specified within an individual zoning district or in accordance with section 58-41, no building or structure shall be erected, constructed, structurally altered, or relocated on a lot closer to the base setback line than the minimum setback distance specified in the established zoning district.

- (1) *Frontage roads, service drives and parking areas setback.* Frontage roads, service drives, parking areas, etc., shall be set back a minimum of 25 feet from the adjacent base setback line.
- (2) *Setback from Lake Michigan Bluff.* All permanent structures, including in-ground swimming pools erected or constructed after January 1, 1988, on property that is contiguous to Lake Michigan shall be set back from the top of the bluff a distance based on a slope ratio of two feet horizontal distance to every one foot vertical distance measured from the toe of the bluff. In no case, however, shall a building be set back less than 75 feet from the top edge of bluff at the time of construction. Additions or alterations to structures that were erected or constructed prior to January 1, 1988, on property that is contiguous to Lake Michigan shall in no case reduce the existing setback from the edge of the top of the bluff to the existing structure.

All underground utilities including but not limited to sewer, water, gas, electric, or telephone shall be installed no closer than 75 feet from the top edge of the Lake Michigan bluff. Underground extensions of existing utilities shall not reduce the existing setback from the edge of the bluff if said utilities are closer than 75 feet to the top of the bluff. However, utilities located more than 75 feet from the top of the bluff may be extended underground to structures lacking the 75-foot setback from the top of the bluff. The city does not guarantee, warrant or represent that only those areas which lie

within the required setback area from the top of the bluff will be subject to damage resulting from bluff erosion or instability and hereby asserts that there is no liability on the part of the common council, its agencies or employees for any damages that may occur as a result of reliance upon and conformance with this section.

(d) *Setback exceptions.*

- (1) Additions to existing buildings which lack the required setback may be allowed if either:
 - a. The addition is set back at a distance greater than or equal to the average of the existing building setback and the required setback; or
 - b. The addition is set back at a distance at least equal to the building setback and the planning commission determines that the addition will neither impede any likely public improvements nor cause any hardship, inconvenience, or diminution in value to any adjacent properties and further determines that the addition will be harmonious with neighboring properties.
- (2) On corner lots, on record as of the effective date of the ordinance from which this section is derived, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than 30 feet.

(e) *Offsets.* The proximity of any portion of a structure to the side or rear lot lines shall be regulated as follows:

- (1) Except as specifically otherwise provided by ordinance, no structure shall hereinafter be erected, structurally altered, or relocated so that it is closer to any lot line than the offset distance specified by the regulations for the district in which it is located:
- (2) No non-residential structure shall be erected, structurally altered, or relocated on any property so that it is closer to the lot line of a residentially zoned property than the greater of (i) the distance set forth in paragraph (1) or (ii) one times the height of the non-residential structure as deemed pursuant to section 58-418.
- (3) Offset exceptions.
 - a. In the case of any lot of record which has a minimum average width less than that required by the district in which it is located, the offset from a side lot line may be reduced proportionally to the ratio of the actual minimum average width and the required minimum average width (i.e. actual width/required width) provided, however, that no offset shall in any case be less than 75 percent of the required offset.
 - b. Where a lot abuts a district boundary line, the offset from such line in the district of less restrictive use shall not be less than that required for the district of more restrictive use.
 - c. The required offset area on one property may be reduced if the offset area on the adjoining property is increased by deed restriction to include the required offset area plus the equivalent amount of offset area resulting from the adjacent reduction.
 - d. In the case of attached single-family, row, multiple-family, commercial, or industrial use structures, two or more buildings on adjoining lots may be erected with common or directly adjoining walls provided the requirements of the state industrial code relative to such construction are complied with and provided that at both ends of such row type buildings the applicable offset requirements shall be complied with.
 - e. Structures that are specifically Structures that are specifically excluded from offset regulations by ordinance including those structures excluded by section 58-419 are not subject to subsection (e).
 - f. Garages allowed as accessory uses to residences are subject to subsection (e)(1) but not subsection (e)(2) or (e)(3).
- (4) Any required offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse, and shall not be used for the storage or display of equipment, products, vehicles, or any other material.
- (f) *Driveway offsets.* Residential driveways shall be located no closer than three feet to a side or rear property line unless written approval is granted by the adjacent property owner.

(Code 1957, § 3.03(5); Ord. No. 96-878, 5-14-1996; Ord. No. 96-890, 6-25-1996; Ord. No. 2003-1065, § I, 4-8-2003; Ord. No. 2008-1238, § I, 4-8-2008; Ord. No. 2016-1488, § I(Att.), 1-10-2017)