

## ZONING BOARD OF APPEALS AGENDA

Tuesday, September 3, 2019  
5:00 PM

- 1) Site Inspections
  - a. Approximately 5:05 pm – Ben Scheurer, N6775 State Highway 55
- 2) Return to Municipal Building – Approximately 5:25pm
- 3) Call to Order
- 4) Roll Call
- 5) Pledge of Allegiance
- 6) Approve Minutes
  - a. June 18, 2019
- 7) Public Participation (Non-Agenda Harrison Related Items)

*Please be advised per State Statute Section 19.84(2), information will be received from the public; be further advised that there may be limited discussion on the information received; however, no action will be taken under public comments.*
- 8) Convene Meeting and Enter Public Hearing– Approximately 5:30pm
  - a. Variance – Ben Scheurer, N6775 State Highway 55
- 9) Close Public Hearing and Reconvene Regular Meeting
- 10) Items for Discussion and Possible Action
  - a. Variance – Ben Scheurer, N6775 State Highway 55
- 11) Adjourn

Any person with hearing disabilities or requiring special accommodations to participate in the meeting should contact the Clerk's Office (920-989-1062) at least 24-hours prior to the meeting. This is a public meeting. As such, a quorum of the Village Board, Plan Commission, or Committees may be in attendance. However, the only business to be conducted is for the Zoning Board of Appeals.

Posted: August 27, 2019

**Zoning Board of Appeals Minutes**  
June 18, 2019

- 1) Call to Order: Meeting was called to order at 5:00pm.
- 2) Site Inspections: Departed from Village Hall to conduct site inspections at 5:02pm. Viewed the following properties:
  - a. N8315 Northshore Road – Steve Winter
- 3) Roll Call: Present: Craig Majewski, John Jung, Tom Capper, Scott Chicoine, 1 seat vacant.  
Excused: None.  
Staff present: Mark Mommaerts, AICP (Planner).
- 4) Return to Village Hall: Returned to Village Hall from site inspections at 5:30pm.
- 5) Pledge of Allegiance: Pledge was recited.
- 6) Election of Vice-Chair: Motion (Capper/Jung) to nominate John Jung as Vice-Chair. Motion carried unanimously.
- 7) Election of Secretary: Motion (Jung/Capper) to nominate Craig Majewski as Secretary. Motion carried unanimously.
- 8) Approve Minutes: Motion (Majewski/Jung) to approve the May 1, 2018 minutes. Motion carried unanimously.
- 9) Public participation: There was no public comment.
- 10) Convene Meeting and Enter Public Hearing: The Public Hearing was opened at 5:34pm. The following petitions were heard:
  - a. Variance – Steve Winter – N8315 Northshore Road. The hearing notice was read into the record. The staff memo was reviewed and included as part of the record. Testimony was taken from Steve Winter (Petitioner) who spoke in favor of the variance request. Mr. Winter stated his concerns about combining the properties and then splitting it back into the original lots in the future. He stated the lot is unique because of the slopes to Lake Winnebago. He also stated there will be an issue with future lot splits if the properties are combined because of the fire hydrant location and the current 33-foot of road frontage requirement. He stated that the left

the hole from the basement from the house that was torn down. There were general questions from the Zoning Board regarding the proposed structure, site, and code requirements. No testimony was given in opposition.

11) Close Public Hearing and Reconvene Regular Meeting: The Public Hearing was closed and the regular meeting reconvened at 5:45pm.

12) Items for Discussion and Possible Action: The following items were discussed:

a. Variance – Steve Winter – N8315 Northshore Road. The Zoning Board of Appeals found the following:

1. The variance is not contrary to the public interest because the structure will meet all required setbacks and the property is located at the end of a private road.
2. That accessory buildings, similar to the proposed shelter, are allowed accessory uses in the RS-1 zoning district.
3. That slopes along Lake Winnebago affect the amount of usable land for these parcels.
4. That other properties in the RS-1 zoning district are allowed accessory buildings/structures.
5. That the variance request is not self-created.
6. That the drainage ditch and fire hydrant location is a hardship specific to this property and is not shared generally by other properties.

Motion (Jung/Majewski) to approve the variance request based on the findings.

Motion carried unanimously.

13) Adjourn: Motion (Majewski/Jung) to adjourn at 5:40pm. Motion carried unanimously.

*Dated: June 19, 2019*

*Prepared by: Mark Mommaerts, AICP, Planner*

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Craig Majewski, Secretary      Date  
Zoning Board of Appeals

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**ZONING BOARD OF APPEALS MEETING**

**VILLAGE OF HARRISON**

**From:**

Mark J. Mommaerts, AICP, Planner

**Meeting Date:**

September 3, 2019

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**Title:**

Variance - Scheurer

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**Issue:**

Should the Zoning Board of Appeals grant a variance request to construct an accessory building/structure closer than the accessory building setback requirement allows?

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**Background and Additional Information:**

The applicant, Ben Scheurer, is requesting a variance in order to construct a 28'x60' accessory building closer to the side lot line than the required 25-foot setback. The applicant currently owns approximately 5-acres of land at N6775 Harrison Road, Tax ID 38576. The property is zoned General Agricultural [AG]. The AG zoning district requires a 25-foot setback from side property lines for accessory buildings. The rear portion of the property is wooded. The sanitary system and well are located behind the house approximately 30-40 feet from the northern property line. Aerial images suggest that this property intended to construct an accessory building near the lot line. Included with this memo is an aerial image from 1992 indicating a paved area similar to that shown in the 2018 aerial image.

The applicant wishes to place the accessory building approximately 5-feet from the north side property line. All other provisions of the zoning ordinance seem to be met, including the number and size of accessory buildings. The applicant submitted a statement in support of the variance application, which is attached to this memo.

At the time of this memo, staff received only one call regarding a concern about the accessory building. The concern was due more to drainage and drainage patterns than the distance to the property line. Drainage concerns can be addressed with grading and direction of gutters.

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**Zoning Ordinance:**

Sec. 117-81 (m) (2)b.

(m) *Yard requirements.*

(2) *Accessory structures.*

a. *Front yard.* There shall be a minimum front yard of 50 feet, measured from the front lot line or right-of-way line, or from the right-of-way line of an officially mapped street.

b. *Side yard.* There shall be a minimum side yard of 25 feet on each side, measured from the side lot line.

- c. *Rear yard.* There shall be a minimum rear yard of 25 feet, measured from the rear lot line.
- d. *Shore yard.* There shall be a minimum shore yard of 75 feet, measured from the ordinary high water mark (OHWM) of any navigable waterway.
- e. *Distance from other structures.* Accessory buildings or structures shall not be constructed or located closer than ten feet to any other structure on the lot, unless such building or structure receives a town building permit that meets the provisions of COMM 21.08, Wis. Admin. Code, relating to fire separation and dwelling unit separation.

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**Conclusions of Law/Requirements for a Variance [Section 117-360.]:**

Variations shall only be granted when the Zoning Board finds that:

1. The variance is not contrary to the public interest and that such a variance will be in general harmony with the purposes and intent of this [Zoning] ordinance.  
*Staff finds that the variance is not contrary to the public interest because the accessory building location as proposed will reduce environmental impacts.*
2. The variance will not permit the establishment of a use which is not permitted or permissible in the district.  
*Staff finds that accessory buildings, similar to the proposed building, are allowed accessory uses in the AG zoning district.*
3. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.  
*Staff finds previous code requirements allowed for an accessory building to be closer to the property line than current code and that placement of sanitary systems and well was likely based on the lesser setbacks.*
4. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.  
*Staff finds that other properties in the AG zoning district are allowed accessory buildings/structures.*
5. The hardship is not shared generally by other land or buildings in the area.  
*Staff finds that the adjacent property has an accessory building approximately 5-10 feet from the property line.*
6. The hardship results from the strict application of this ordinance and is not the result of self-created or self-imposed circumstances.  
*Staff finds that the variance request is not self-created.*

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**Recommended Action:**

Based on the information provided, staff recommends approval of the Variance request. Staff recommends that the building be located as far from the property line as possible, but no closer than the requested 5-feet. Staff also recommends that storm gutters are directed away from the property line to reduce drainage concerns along the property line.

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**Attachments:**

- Variance Application
- Aerial Maps, 2018 color, 1992 black and white



# Calumet County, WI

## Legend

- Address Point
- County Boundary
- Wisconsin Water
- Unincorporated Community
- Town Boundary
- Point of Interest
- Parcel Boundary
- Property Hook
- PLSS Section
- State Parks
- County Parks
- Lake
- River and Stream
- Major Roads
- Local Roads
- Local Roads
- Municipal Streets
- Trail
- Railroad

Color 2018

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



DISCLAIMER: This map is not guaranteed to be accurate, correct, or complete and conclusions drawn are the responsibility of the user.

Author:	
Date Printed:	08/21/19 12:56 PM
Source:	





# Calumet County, WI

## Legend

- Address Point
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- Wisconsin Water
- Unincorporated Community
- Town Boundary
- Point of Interest
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Black and White 1992

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



DISCLAIMER: This map is not guaranteed to be accurate, correct, current, or complete and conclusions drawn are the responsibility of the user.

Author:	
Date Printed:	02/19 10 PM
Source:	



## STATEMENT IN SUPPORT OF VARIANCE APPLICATION

Mr. Scheurer seeks a variance from Section 117-81(m)(2)b. of the Village of Harrison zoning code which imposes a 25 foot setback requirement for accessory structures in the General Agricultural District. Mr. Scheurer wishes to locate a 28 foot by 60 foot garage at the west end of the existing driveway to be set 5 feet from the north side-yard property boundary. (See the attached site plan).

As further described in the written statements below, no other reasonable or practical place exists to place the proposed garage due to the location of the existing home, driveway, septic drain field and woods behind the home.

### (1) Unique Property Limitations.

The subject property has unique limitations due to the existing location of the home, driveway, and septic drain field all of which limit the practical and reasonable locations for a detached accessory building. The natural place to build an accessory building of the type contemplated is at the west end of the existing driveway along the north property line. The next most reasonable place would be somewhere behind the house, however, this is where the septic tank and drain-field are located and would further create an unattractive view from the existing home, obstructing the view of the wooded areas of the property to the west.

The home, driveway, well and septic systems were installed in 1975 when the property was zoned by Calumet County. At that time, accessory structures, provided they were located in the rear yard, were permitted to be located within 3 feet of the side-yard lot line. Thus, the original construction of the existing improvements were situated in a sensible location in light of the existing regulations and in a manner that would have easily accommodated future potential accessory structures at the end of the existing driveway. In order to comply with the 25 foot setback requirement the structure would have to be set much further back to the rear of the property necessitating the creation of a great deal more impervious driveway surface and, perhaps, the clearing of valuable trees.

### (2) No Harm to Public Interests.

In this case, permitting the variance, rather than harming the public interest, will actually serve to enhance that interest. The property is located in the General Agriculture District. The main purpose of that district is to "maintain, preserve, and enhance open land areas historically used for agricultural purposes." Allowing the variance will permit the proposed accessory structure to be located in closer vicinity to already existing residential structures on the subject property and neighboring property. As compared to a new construction site



further to the rear and away from the side-yard property line, the proposed location would better serve to maintain the open and rural character of the surrounding lands.

The immediate vicinity of the home on the subject property when viewed along with the residential improvements on the property to the north, already create an appearance of a local pocket of more dense residential development than exists in the area surrounding these two parcels. Allowing the variance (which setback would be consistent with the single family residential district) would further serve to confine the residentially improved area to the immediate vicinity of the existing residential improvements. The proposed location of the accessory structure would be close to and compatible with the neighbor's existing accessory structure to the north thereby maintaining the compact nature of this localized single-family residential area. Such siting would be much more compatible with the purpose of the ordinance rather than forcing improvements to spread further out thereby impairing the open and rural character of the surrounding area.

(3) Unnecessary Hardship.

The Wisconsin Supreme Court in *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, ¶30, 271 Wis.2d 547, 679 N.W.2d 514 has held that the proper standard to apply to an area variance is:

Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

According to the court, boards of adjustment or boards of zoning appeals "have some very real flexibility in granting variances." *Id.* at ¶33. The court further stated:

"We conclude that, in evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking such variance. We further conclude that the facts of the case should be analyzed in light of that purpose, and that boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion." *Id.* at ¶35.

In this case, the set-back regulation in question forces Mr. Scheurer to either forego the construction of an otherwise lawful structure on his property or build it in a location that is far more difficult to access, use, and construct and would require him to create a great deal more impervious surface and, perhaps, destroy several valuable trees.



As the Supreme Court has made clear, the determination of whether a hardship exists must always be considered with reference to the purpose of the regulation in question. *Waushara County Board of Adjustment*, at ¶35. As the court has further explained; “[b]y definition, all variances depart from the purpose of the zoning ordinance and implicate the public interest, because they permit something that is otherwise strictly prohibited. But they do so to varying degrees and levels of acceptability, depending on the type of variance requested and the nature of the zoning restriction in question.” *Ziervogel v. Washington County Bd. Of Adjustment*, 2004 WI 23, ¶21, 269 Wis.2d 549, 676 N.W.2d 401.

In this case, the hardship and the purpose of the ordinance are mirror images of one another. Neither the Village, as expressed in its zoning code, nor Mr. Scheurer want to create unnecessary impervious surfaces or destroy the rural, open character of the property or the surrounding area. In this case, strict application of the side-yard setback, given the existing improvements and lot configurations created under a prior zoning code, actually create a situation where following the code’s restrictions work counter to the purpose of the regulation. Nothing in the law of variances or in the Village’s zoning code requires the Board of Zoning Appeals to demand that an accessory structure be located in an area that is both detrimental to the property owner and the public interest.

# Village of Harrison

W5298 Hwy 114  
Harrison, WI 54952  
Phone: 920-989-1062

# VARIANCE & ADMINISTRATIVE APPEAL APPLICATION

Applicant Information			
Applicant Name (Indiv., Org. or Entity) Matthew J. Fleming		Authorized Representative	Title Attorney
Mailing Address 33 E. Main Street, Suite 500		City Madison	State WI
			Postal Code 53703
E-mail Address mfleming@murphydesmond.com		Telephone (include area code) (608) 258-5606	Fax (include area code) (608) 257-2508
Landowner Information (if different than Applicant)			
Name (Organization or Entity) Ben Scheurer		Contact Person	Title Land Owner
Mailing Address N6775 State Road 55		City Menasha	State WI
			Postal Code 54952
E-mail Address		Telephone (include area code) (920) 479-0395	Fax (include area code)
Project or Site Location			
Site Name (Project): Garage		Location ID(s): 131-38576	
Site Address / Location: N6775 State Road 55		Plat / CSM / Lot No.: Lot 1, CSM No. 364	
Quarter: <input type="checkbox"/> NW <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE	Section: 12	Township: 19	N Range: 18 E
Legal Description: Lot 1, CSM No. 364			
Current Zoning: General AG		Proposed Zoning: NA	
Current Uses: Single Family Residential		Proposed Uses: NA	
Lot Dimensions: Front: 218.4 Side: 1070.58 Rear: 210.69 Side: 1013.22 Area: 5.04 <input checked="" type="checkbox"/> acres or <input type="checkbox"/> square feet			
Variance or Administrative Appeal Petition (see reverse side also)			
List which code section(s) requesting variance from or decision appealing:	Describe the Reason(s) for the Request (attach separate document if needed):		
Section 117-81(m)(2b)	see attached		
Fees			
<input checked="" type="checkbox"/> \$350.00			
Certification & Permission			
<p><b>Certification:</b> I hereby certify that I am the landowner of the property which is the subject of this Application. I certify that the information contained in this form and attachments is true and accurate. I understand that failure to comply with any or all of the provisions of the ordinances and/or permit may result in notices, fines / forfeitures, stop work orders, permit revocation and cease &amp; desist orders.</p> <p><b>Permission:</b> As landowner of the property, I hereby give the permit authority permission to enter and inspect the property to evaluate this application, to determine compliance with the ordinances and to perform corrective actions after issuing proper notice to the landowner.</p>			
Applicant Signature 		Date Signed 8/1/19	
Landowner Signature (required) 		Date Signed 8/1/19	

Page 1 of 2

LEAVE BLANK - FOR MUNICIPAL USE ONLY			
Application Withdrawal Signature (required):		Date Signed:	Reason:
Date Complete	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>RECEIVED</b>   <b>AUG 06 2019</b>   <b>HARRISON PLANNING</b> </div>	Fee Received \$ 350.00	Receipt No: 8701
Application Received:		Date Paid: 8-6-19	Taken By: yjm

**Required Information** The following items are required attachments. An application will not be considered complete until all attachments are filed. (Please attach additional sheets if more room is needed.)

**Site Plan.** A detailed drawing, drawn to scale, indicating lot lines, roads, driveways, buildings/structures, setbacks and any other pertinent information shall be submitted.

**Project Plans.** A detailed drawing, drawn to scale, indicating all floor plans, elevations and any other pertinent information shall be submitted

**Photos (Optional).** Photographs of the site, building or project may be submitted as part of the application.

**Written Statements.** Statements responding to the following criteria shall be submitted.

1. **Unique Property Limitations.** Unique physical limitations of the property (i.e. steep slopes, wetlands, etc.) that prevent compliance with ordinance requirements can be considered for a grant of a variance. The circumstances of an applicant (i.e. growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by an ordinance amendment request.

Unique features of this property which prevent compliance with the terms of the ordinance include.

See Attached

2. **No Harm to Public Interests.** A variance may not be granted which results in harm to public interests. In applying this test, the Zoning Board of Appeals must consider the impact of the proposal and the cumulative impacts of similar projects on the interest of the neighbors, the entire community and the general public. These interests are listed in the Purpose and Intent section of the ordinance.

A variance will not be contrary to the public interests because:

See Attached

3. **Unnecessary Hardship.** An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (i.e. excavating a pond on a cant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The Zoning Board of Adjustment must consider the purpose and intent of the zoning restriction, the zoning restrictions effect on the property and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.

The unnecessary hardship is, and is present because:

See Attached

**Basis for Approval:** Variances shall only be granted when the Zoning Board finds:

1. The variance is not contrary to the public interest and that such a variance will be in general harmony with the purposes and intent of this ordinance.
2. The variance will not permit the establishment of a use which is not permitted or permissible in the district.
3. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district
4. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.
5. The hardship is not shared generally by other land or buildings in the area.
6. The hardship results from the strict application of this ordinance and is not the result of self-created or self-imposed circumstances.



**VILLAGE OF HARRISON**

W5298 HWY 114

MENASHA, WI 54952

Receipt Nbr: 8701

Date: 8/13/2019

RECEIVED FROM MURPHY DESMOND S.C.

\$350.00

<u>Type of Payment</u>	<u>Description</u>	<u>Amount</u>
Accounting	Zoning Permit Fee	350.00
	Zoning Permit Application Fee	

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TOTAL RECEIVED 350.00

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Receipt Memo: #258700

000.12

695.12

0.53

69'

28'

Village of Harrison

12

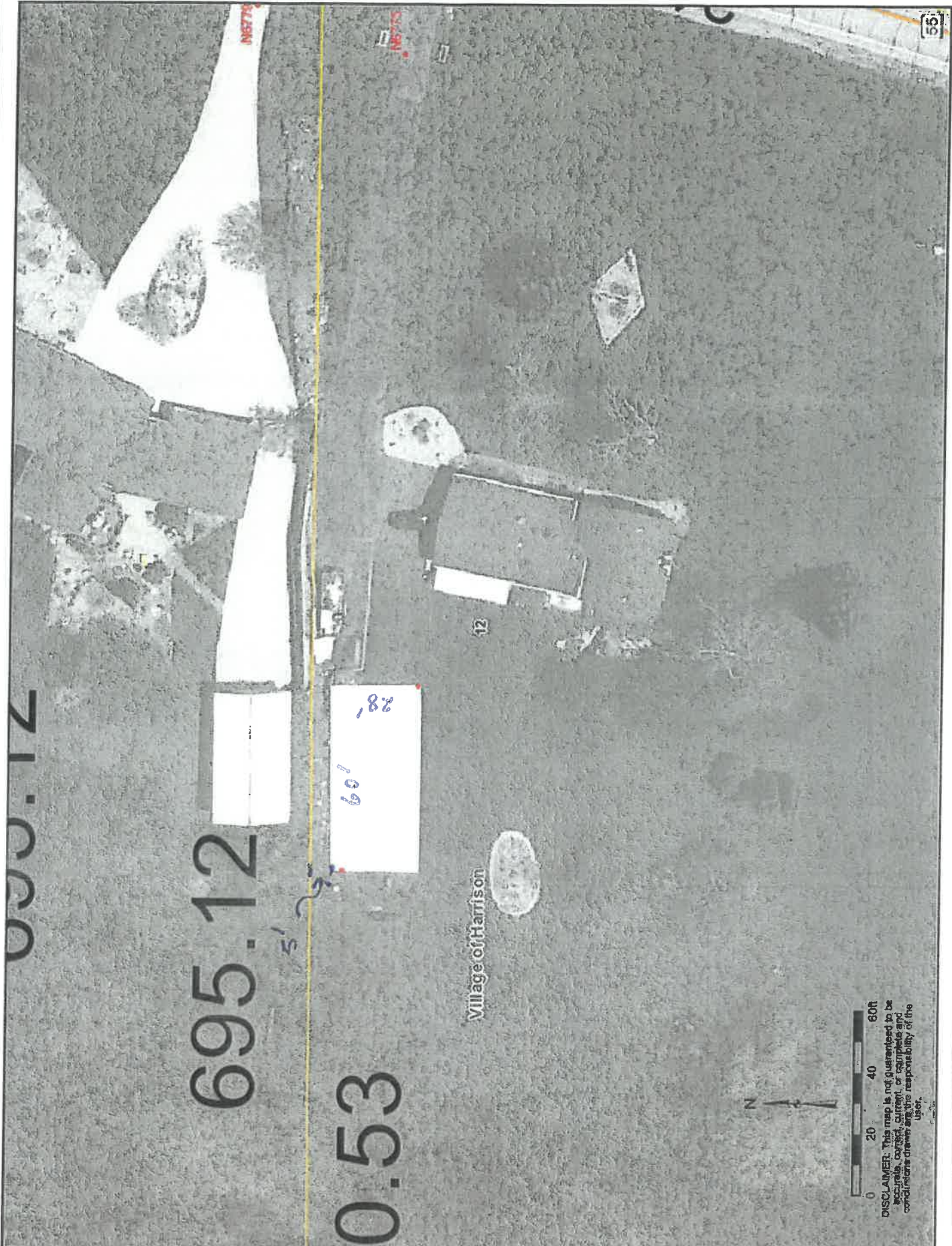
IN6773

IN6773

15



DISCLAIMER: This map is not guaranteed to be accurate, current, or complete and conditions drawn are the responsibility of the user.





33 East Main Street  
Suite 500  
Madison, WI 53703-3095  
**Mailing Address:**  
P.O. Box 2038  
Madison, WI 53701-2038  
**Phone:**  
608.257.7181  
**Fax:**  
608.257.2508  
www.murphydesmond.com

Roy N. Fine  
4650 W. Spencer Street, Suite 37  
Appleton, WI 54914-9106  
Appleton Phone 920.882.7630  
Madison Direct Line 608.268.5634  
Facsimile 608.257.2508  
rfine@murphydesmond.com

2 August 2019

Village of Harrison  
W5298 Hwy 114  
Harrison, WI 54952

Re: N6775 State Road 55

Dear Sir or Madam:

Enclosed please find the Variance & Administrative Appeal Application for the above mentioned property along with the Site Plan, Statement in Support of Variance Application, and a check for \$350.00. Please let us know as soon as possible the time and date when this application will be heard.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Roy N. Fine". The signature is stylized with a large, sweeping flourish at the end.

Roy N. Fine

RNF:lbg  
36422.190825  
Village of Harrison It  
Enclosures

4839-0765-0206, v. 1

