

## ZONING BOARD OF APPEALS AGENDA

Tuesday, October 1, 2019  
5:00 PM

- 1) Site Inspections
  - a. Approximately 5:05 pm – Frederickson – N9649 Bies Road
- 2) Return to Municipal Building – Approximately 5:25pm
- 3) Call to Order
- 4) Roll Call
- 5) Pledge of Allegiance
- 6) Approve Minutes
  - a. September 3, 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 – Frederickson, N9649 Bies Road
- 9) Close Public Hearing and Reconvene Regular Meeting
- 10) Items for Discussion and Possible Action
  - a. Variance – Frederickson, N9649 Bies Road
  - b. Variance –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: September 24, 2019

**Zoning Board of Appeals Minutes**  
September 3, 2019

- 1) Site Inspections: Zoning Board members met on-site at 5:00pm. Viewed the following properties:
  - a. N6775 State Highway 55 – Ben Scheurer
- 2) Return to Village Hall: Returned to Village Hall from site inspections at 5:25pm.
- 3) Call to Order: Meeting was called to order at 5:27pm.
- 4) Roll Call: Present: Craig Majewski, John Jung, Tom Capper, Scott Chicoine, 1 seat vacant.  
Excused: None.  
Staff present: Mark Mommaerts, AICP (Planner).
- 5) Pledge of Allegiance: Pledge was recited.
- 6) Approve Minutes: Motion (Capper/Majewski) to approve the June 18, 2019 minutes. Motion carried unanimously.
- 7) Public participation: There was no public comment.
- 8) Convene Meeting and Enter Public Hearing: The Public Hearing was opened at 5:30pm. The following petitions were heard:
  - a. Variance – Ben Scheurer – N6775 State Highway 55. The hearing notice was included as part of the record. The staff memo was reviewed and included as part of the record. An email dated August 23, 2019 at 8:59am from Ben Scheurer (Petitioner) was included as part of the record. Gerald Bloedorn, N6779 State Highway 55, spoke about his concerns with drainage and gutters. Mr. Bloedorn stated that he would be fine if the gutters on the proposed shed were at least 7-feet from the property line. Chairperson Chicoine asked what the setback was from his shed to the property line. Mr. Bloedorn responded that his shed is 8-feet from the property line. Board member Capper asked how the setback would be enforced if approved. Planner Mommaerts stated that the Zoning Board can conditionally approve the variance with a specific setback requirement that the applicant would have to follow or else be in violation of the approval and the code. There were general questions from the Zoning Board regarding the proposed structure, site, and code requirements.

9) Close Public Hearing and Reconvene Regular Meeting: The Public Hearing was closed and the regular meeting reconvened at 5:44pm.

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

- a. Variance – Ben Scheurer – N6775 State Highway 55. Motion (Majewski/Jung) to postpone action until the October 1<sup>st</sup> meeting so that the applicant can be present. Motion carried unanimously.

11) Adjourn: Motion (Jung/Majewski) to adjourn at 5:45pm. Motion carried unanimously.

*Dated: September 4, 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:**

October 1, 2019

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**Title:**

Variance - Frederickson

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**Issue:**

Should the Zoning Board of Appeals approve a variance request to construct an accessory building closer than the accessory building setback requirement?

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**Background and Additional Information:**

The applicant is requesting a variance from the side yard setback requirements for an accessory building that has been constructed. The property is located at N9649 Bies Road, Tax ID 42324. The property is zoned General Agricultural [AG]. The AG zoning district requires a 25-foot side yard setback for accessory buildings. The building is currently setback approximately 10-feet from the property line.

In July 2018, a zoning permit was issued for a new home on the property. As part of the zoning permit, a site plan was required to show the location of the home on the property and the setback distances from the property line. The site plan only illustrated the home, driveway, and mound location. Staff received a call in late winter that a shed was causing flooding problems on an adjacent property. Staff notified the property owner that a permit was not obtained for this. There was a meeting between the builder and the Village building inspector, staff noted that this property was zoned AG and that a 25-foot setback was required.

Staff received information from the applicants that earlier discussions with the building inspector from December indicated that the setback was 8-feet and that a permit was not needed. The building inspector does not recall saying this. The building inspector does not issue zoning permits, however, during this time staff was out of the office due to personal reasons. This may be a case of misinformation or misunderstanding.

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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.]:**

Variances 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 is an allowable use in the AG zoning district, and the location does not affect public ROW.*
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 that miscommunication between the builder/owner and the Village may have contributed to the building being placed in the wrong location.*
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 is the only case were a miscommunication or misunderstanding of the code requirements may have occurred.*
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 hardship is self-created, but only because of a possible miscommunication of the zoning rules.*

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**Recommended Action:**

Based on the information provided, staff recommends approval of the Variance request with the following conditions:

1. A zoning permit application be submitted and approved.
2. All zoning provisions, other than side yard setback, shall be met.
3. Side yard to be graded so that there is no pooling or ponding of runoff on the property line or on the adjacent property.

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**Attachments:**

- Variance Application
- Site Plan
- Photos of Shed
- Letter from Gene Frederickson
- Email from Travis DeValk
- Signatures from adjacent property owners

Town/Village of Harrison

W5298 Hwy 114  
Menasha, WI 54952  
Phone: 920.989.1062

V19-009

VARIANCE &  
ADMINISTRATIVE APPEAL  
APPLICATION

Applicant Information			
Applicant Name (Indiv., Org. or Entity) <b>COBBLE CREEK LLC</b>		Authorized Representative <b>GENE FREDERICKSON</b>	Title <b>OWNER</b>
Mailing Address <b>W 4755 CREEKVIEW ROAD</b>		City <b>KAUKAUNA</b>	State <b>WI</b>
E-mail Address		Telephone (include area code) <b>920-585-7884</b>	Postal Code <b>54130</b>
E-mail Address		Fax (include area code)	Fax (include area code)
Landowner Information (if different than Applicant)			
Name (Organization or Entity) <b>SAME</b>		Contact Person	Title
Mailing Address		City	Postal Code
E-mail Address		Telephone (include area code)	Fax (include area code)
Project or Site Location			
Site Name (Project): <b>DICK FREDERICKSON HOME</b>		Location ID(s): <b>42324</b>	
Site Address / Location: <b>N9649 BIES ROAD</b>		Plat / CSM / Lot No.: <b>B, Cobble Creek</b>	
Quarter: <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE <input checked="" type="checkbox"/> NE	Section: <b>6</b>	Township: <b>20 N</b>	Range: <b>19 E</b>
Legal Description: <b>LOT 8 COBBLE CREEK</b>			
Current Zoning: <b>AGRICULTURAL AG</b>		Proposed Zoning: <b>AGRICULTURAL</b>	
Current Uses: <b>VACANT LAND</b>		Proposed Uses: <b>SINGLE FAMILY HOME w/ DETACHED GARAGE</b>	
Lot Dimensions: Front: <b>173.29</b> Side: <b>305.02</b> Rear: <b>173.27</b> Side: <b>303.2</b> Lot Area: <b>52692</b> <input type="checkbox"/> acres or <input checked="" type="checkbox"/> square feet			
Variance or Administrative Appeal Petition (see reverse side also)			
List which code section(s) requesting variance from or decision appealing: <b>17-81(m)(2)(b)</b>	Describe the Reason(s) for the Request (attach separate document if needed): <b>SIDE YARD SETBACK - DETACHED GARAGE BUILT TO CLOSE TO SIDE YARD LOT LINE</b>		
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 <i>Gene Frederickson</i>		Date Signed <b>4-11-19</b>	
Landowner Signature (required)		Date Signed	

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 29 2019</b>   <b>HARRISON PLANNING</b> </div>	Fee Received \$ <b>350.<sup>00</sup></b>	Receipt No: <b>8783</b>
Application Received		Date Paid: <b>8/29/19</b>	Taken By: <i>gm</i>

**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: THE SETBACK WAS

PROVIDED BY THE BUILDING INSPECTOR IN ERROR AS 8 FEET. THE GARAGE WAS PLACED 10 FEET FROM PROPERTY LINE. THE BUILDING INSPECTOR STATED THAT NO PERMIT WAS NECESSARY.

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: THERE IS NO HARM TO THE PUBLIC.

THE NEIGHBOR TO THE NORTH HAS NO PROBLEM WITH THE SHED IN ITS CURRENT LOCATION.

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.

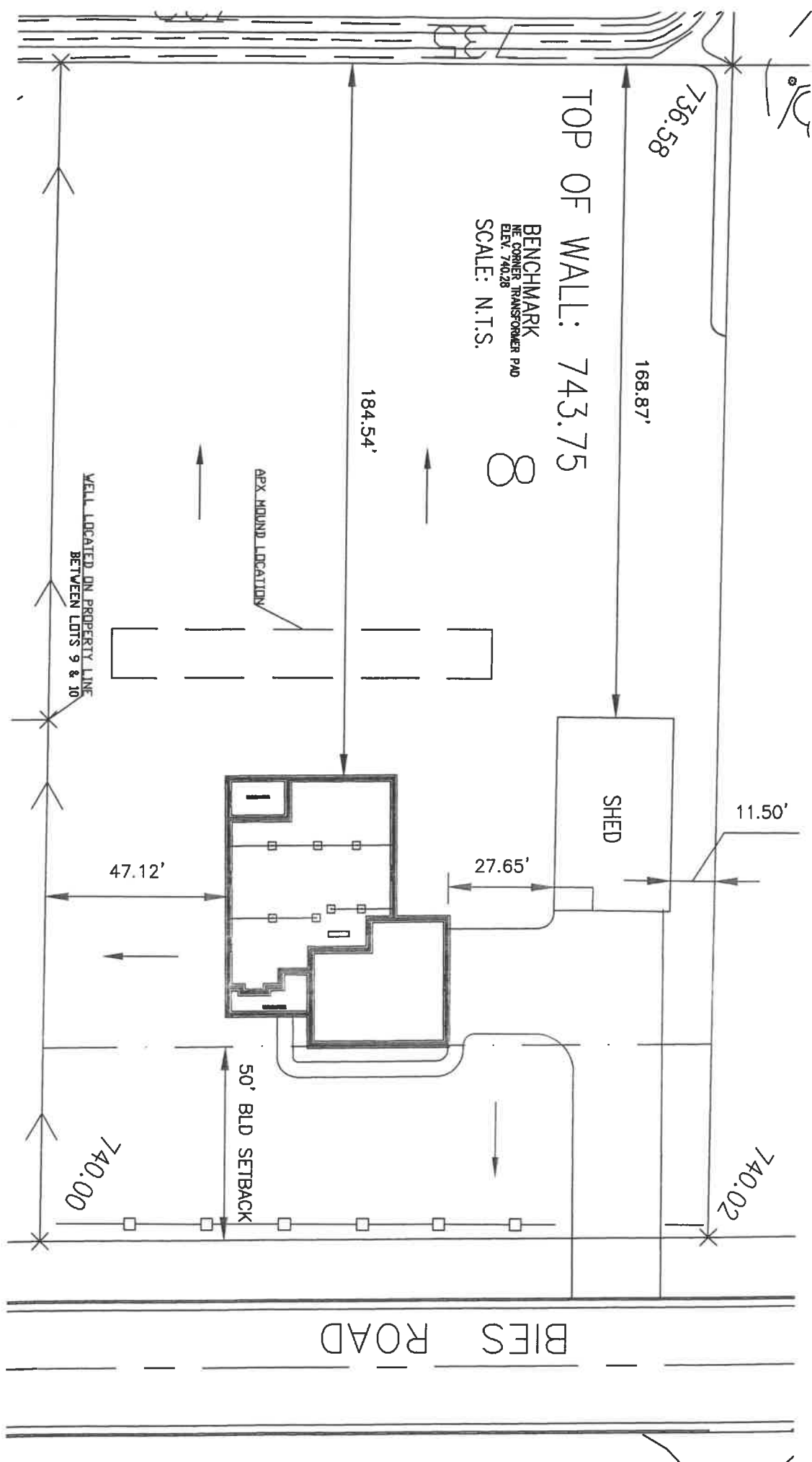
The unnecessary hardship is, and is present because: THE SHED HAS BEEN BUILT & LOCATED BY INFORMATION PROVIDED

BY VILLAGE BUILDING INSPECTOR. BUILDING INSPECTOR STATED NO PERMIT WAS NECESSARY & SIDE YARD SETBACK WAS 8 FEET. AFTER THE SHED WAS BUILT, VILLAGE PLANNER NOTIFIED TRAVIS DEVALK (BUILDER) THAT A ZONING WAS NEEDED. ZONING PERMIT WAS PRESENTED BY TRAVIS DEVALK TO BUILDING INSPECTOR, BUILDING INSPECTOR STATED TO TRAVIS DEVALK THAT SHED LOCATION LOOKED FINE. THE VILLAGE PLANNER WALKED INTO THE ROOM & SAID THIS AREA IS ZONED A4, NOT SINGLE FAMILY & 25' SIDE YARD SETBACK IS NEEDED.

**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.





BENCHMARK  
NE CORNER TRANSFORMER PAD  
ELEV: 743.75  
SCALE: N.T.S.

8

TOP OF WALL: 743.75

736.58

168.87'

184.54'

11.50'

SHED

47.12'

27.65'

50' BLD SETBACK

740.00

740.02

BIES ROAD

WELL LOCATED ON PROPERTY LINE  
BETWEEN LOTS 9 & 10

PEX HOUND LOCATION







I, Gene Frederickson, had called Paul Birshbach from the Village of Harrison, to get setback information in regards to an accessory building on Lot 8 of Cobble Creek prior to excavation of the structure. Paul had told me over the phone that the setback for Lot 8 was 8 feet from side yard lot line. We had placed it 10 feet from there to give us enough room for the accessory building and retaining wall.

A handwritten signature in cursive script, appearing to read "Gene Frederickson". The signature is written in black ink on a white background.

## Troy Frederickson

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**From:** mdevalk2@new.rr.com  
**Sent:** Wednesday, April 10, 2019 9:31 PM  
**To:** Troy Frederickson  
**Subject:** Information on Permit for Dick's Garage

To whom it may concern:

Recently I was asked to build a garage for Dick Frederickson. The foundation was poured prior to me being asked to construct the garage by Gene Frederickson Excavating. Mark Mommaerts from the town of Harrison Building and Zoning called me and indicated that there wasn't a permit pulled for this project. I went to pull the permit and sat in Paul Birschbach's office and gave him all the paperwork for the project. Paul indicated everything looked good and brought the paperwork to Mark. Mark came back into the room and said that the building needed to be 25 feet off the lot line. Paul said no it didn't; it only had to be 10 feet off the lot line. Mark replied, it has to be 25 feet off the lot line, it's zoned agricultural.


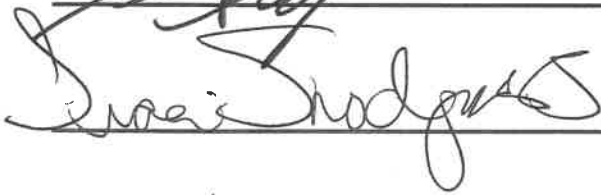
Please let me know if you have any questions.

Travis  
Travis De Valk Builders, LLC  
920-209-2855

we Tim & Traci Snodgrass

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

  
\_\_\_\_\_  
  
\_\_\_\_\_

DATE: 9/3/19

Brian Drorak  
\_\_\_\_\_

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

  
\_\_\_\_\_  
  
\_\_\_\_\_

DATE: 9/2/19

<sup>we</sup>  
X Kurt and Heidi Frederickson

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

Kurt Frederickson

Heidi Fred

DATE: 9-1-19

<sup>we</sup>  
X Zacharia Frederickson Jeremia Frederickson

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

[Signature]

Jeremia Frederickson

DATE: 9/2/19



Jeff & Donna Frederickson  
N9648 Bies Rd.  
Kaukauna, WI.  
54130

1. Jeff & Donna Frederickson

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

Jeff Frederickson

Donna M. Frederickson

DATE: Sept. 6, 2019

1. Aaron<sup>W</sup> Frederickson & Andy Frederickson

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

Aaron Frederickson

Andrew Frederickson

DATE: 9-6-19

we Jay + Janis Bowers

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.



DATE: 9/2/19



HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

I CRAIG J. HUSS

HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

Craig Huss

DATE: 9-2-2019

I \_\_\_\_\_

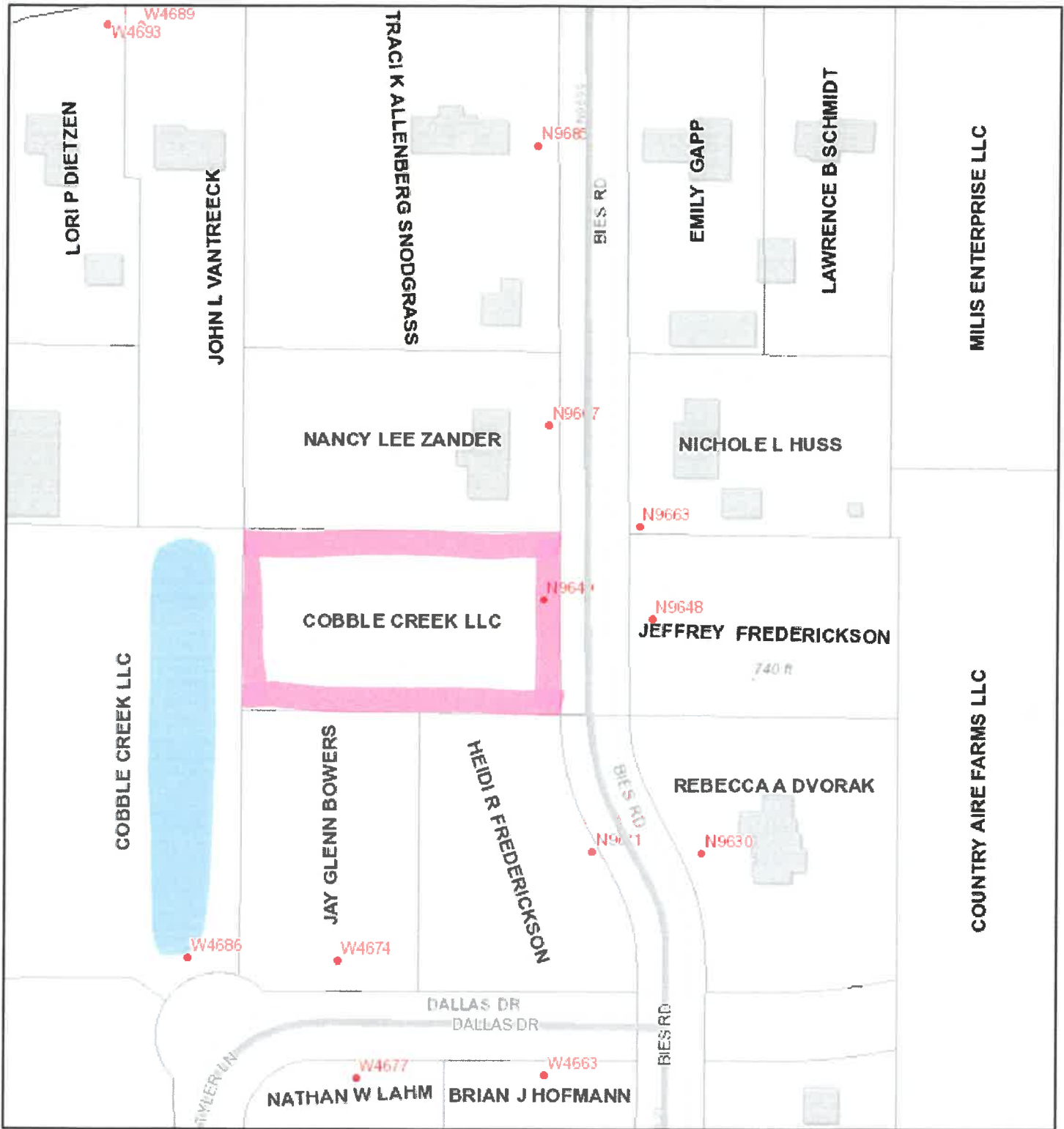
HAVE NO OBJECTION TO RICHARD FREDERICKSON'S OUT BUILDING AT

N9649 BIES ROAD, KAUKAUNA, WISCONSIN.

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

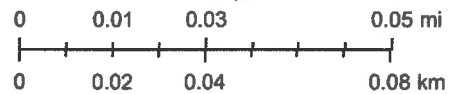
# Calumet County Parcel



9/18/2019, 9:17:57 AM

1:2,257

- |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|
| Calumet Roads Cartographic | State Highways             | County Highways            |
| Federal Highways           | County Highways            | Local Roads                |
| State Highways             | Local Roads                | Calumet Roads Cartographic |
| County Highways            | Calumet Roads Cartographic | Federal Highways           |
| Calumet Roads Cartographic | Federal Highways           | State Highways             |
| Federal Highways           | State Highways             | County Highways            |



County of Outagamie, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Calumet County Land Information Office

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**ZONING BOARD OF APPEALS MEETING**

**VILLAGE OF HARRISON**

**From:**

Mark J. Mommaerts, AICP, Planner

**Meeting Date:**

October 1, 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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(New information from previous memo listed in **Bold...**)

**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.

**This item was postponed from the September meeting to allow the applicant to address the Zoning Board with answers to any questions. The applicant has submitted information regarding a proposed water diversion plan, or drainage plan, that is a combination of high capacity gutters/downspouts and drain tile.**

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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
- **Email from Ben Scheurer (Aug 23<sup>rd</sup> at 8:59AM)**
- **Email from Ben Scheurer (Sept 13<sup>th</sup> at 5:24PM, includes attachments from two previous emails around the same date/time)**

## Mark Mommaerts

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**From:** Ben Scheurer <bscheurer@crmeyer.com>  
**Sent:** Friday, September 13, 2019 5:24 PM  
**To:** Mark Mommaerts  
**Subject:** Water drainage

Hello Mark

I sent you two emails regarding the water diversion plan for my proposed garage at N6775 State rd. 55. I feel the combination of high capacity gutters/downspouts from Pinnow paired with the drain tile plan from Hintz excavation would be more than an exceptional plan to make sure there is no added water infiltration on my neighbors shed.

Thanks Ben  
Sent from my iPhone





**PINNOW SHEET METAL, INC.**  
 740 LEEWARD COURT WEST  
 OSHKOSH, WI 54901  
 231-8632 731-4031 923-2225  
 Fax: 920-231-0492

Please refer to the following number when ordering		<b>No 20394</b>
Estimate Date <i>9.13.19</i>	Order Date	Ready Date

FULLY INSURED      www.bigwhitebus.com - website  
 info@bigwhitebus.com - email

TO: *Ben Scheurer*  
*16775 State Rd 55*  
*Menasha, WI 54952*

Contact Person: *Ben*  
 Home Phone: \_\_\_\_\_  
 Work/Cell Phone: *479-0395*  
 E-mail: *bscheurer@armeyer.com*

JOB SITE:

- COLOR: \_\_\_\_\_  5" Seamless K-style Gutter (.032 aluminum, with baked on enamel paint)
- COLOR: \_\_\_\_\_ *124*  6" Seamless K-style Gutter (.032 aluminum, with baked on enamel paint)
- COLOR: *White* \_\_\_\_\_  2"x3" Downspouts (.019 aluminum) with flip-up runoffs (If applicable)
- COLOR: \_\_\_\_\_ *3le*  3"x4" Downspouts (.019 aluminum) with flip-up runoffs (If applicable)
- COLOR: \_\_\_\_\_  4"x5" Downspouts (.024 aluminum)

<input type="checkbox"/> Labor and material to install new <b>GUTTERS AND DOWNSPOUTS</b>	ON HOUSE \$ _____	ON GARAGE \$ <i>7600.00</i>
<input type="checkbox"/> Add to upgrade to all <b>3"x4" DOWNSPOUTS</b>	ON HOUSE \$ _____	ON GARAGE \$ <i>Included</i>
<input type="checkbox"/> Add to <b>REMOVE AND HAUL AWAY</b> old eave troughs	ON HOUSE \$ _____	ON GARAGE \$ _____
<input type="checkbox"/> <b>COVER OPTION</b>	ON HOUSE \$ _____	ON GARAGE \$ _____
<b>TOTAL</b>	ON HOUSE \$ _____	ON GARAGE \$ _____

*Install a 6" high volume gutter on both sides of the 62' runs on garage with the larger 3x4 downspouts.*

○→ INDICATES DOWNSPOUT (○=3") (●=4") WITH DIRECTION OF RUNOFF (→)  
 — SOLID LINES INDICATE LOCATION OF GUTTERS.

*Thank You!*

Please review the above diagram - any changes in location of gutters, downspouts or runoffs must be made at time of order or we will do as diagramed. Take notice that this is an estimate of the price for the work quoted and once we begin work, we may discover conditions that cause the actual price to be greater than above estimate. This estimate is valid for 30 days, thereafter it is subject to change without notice. **P.S.M., INC. IS NOT RESPONSIBLE FOR DAMAGE TO GUTTER APRON WHEN REMOVING OLD EAVES.**



Leaf Solution Xtreme gutter guards prevent gutters from clogging with leaves and debris to make sure they function properly. This prevents stagnant water, a breeding area for mosquitoes, and the accumulation of highly flammable dry pine needles in drought conditions and areas prone to forest fires.

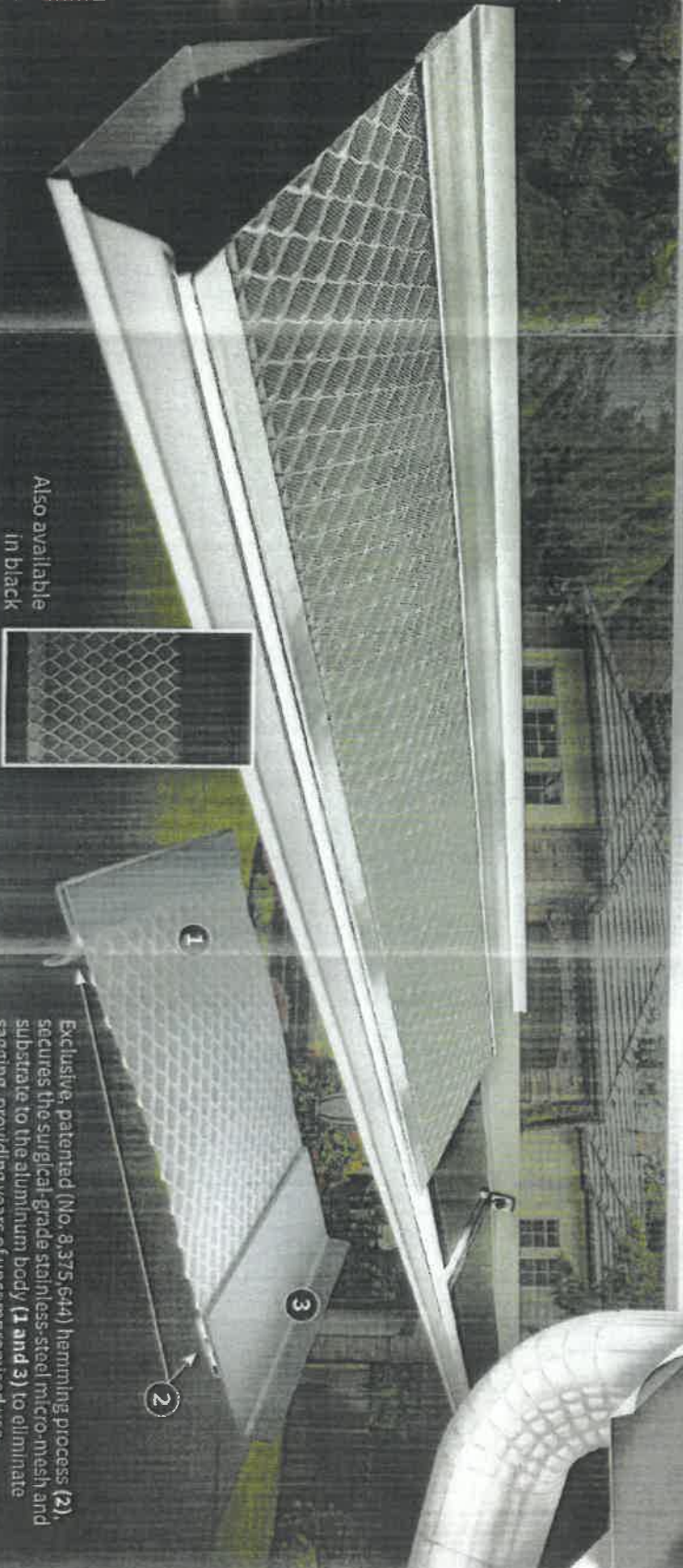
Blocks virtually everything from entering and clogging gutters, while providing free flow of rainwater or melting snow.

## Protects Gutters from

- Leaves
- Twigs
- Pine Needles
- Shingle Debris
- Oak Tassels
- Asphalt Grit
- Rodents
- Nests
- Stagnant Water
- Roof Granules
- Pollen
- AND MORE



Stainless-steel mesh, optimally-sized, and a substrate material are hemmed into a heavy-duty aluminum body to keep Xtreme gutter guards tight and eliminate sagging. Easily installed on all types of roofs and made to uncompromising standards, Xtreme has a 20-year warranty. Installations are finished with a complete variety of miters and caps for ends and downspouts.



Also available in black

- .42 Stainless-Steel Mesh (Surgical-Grade)
- 440-Micron Opening
- Heavy-Duty, .024-Grade Aluminum Body
- Durable Substrate Material

**HANDLES 60 GALLONS OF WATER PER MINUTE**

### Product Availability

- Fascia OR Under-Shingle Mount Installation
- For 5" or 6" Gutters
- Colors: MILL SILVER or BLACK

Exclusive, patented (No. 8,375,644) hemming process (2), secures the surgical-grade stainless-steel micro-mesh and substrate to the aluminum body (1 and 3) to eliminate sagging, providing years of uncompromised use.

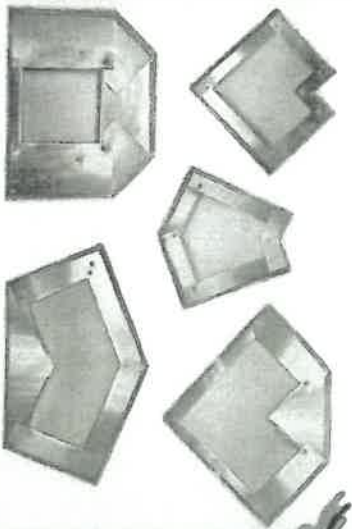


Leaf Solution Xtreme gutter guards can be mounted to the fascia or under the shingle.

More Information? [leafsolutionusa.com](http://leafsolutionusa.com)

## Miters and Accessories

To complete the installation, there is a complete selection of caps and miters, including a high-capacity inside miter.



## Leaf Solution Wand

For periodic maintenance to rid gutter guards of any surface accumulation,

the Leaf Solution Wand generates a high-velocity

spray using a standard

garden hose. Telescopes to

13' for first and second story cleaning. On-Off valve.



TELESCOPES  
TO 13 FEET!

20  
YEAR  
WARRANTY

## Twenty-Year Warranty

Leaf Solution USA warrants to you that the product is free from defects in material and workmanship during manufacture and that the finish on the product will not chip or blister under conditions of ordinary wear. This warranty is limited to the terms and conditions, exclusions and limitations, requirements and legal rights stated in its full description located at [leafsolutionusa.com/warranty](http://leafsolutionusa.com/warranty).

Leaf Solution  
clogged gutters? We're the Solution.

[leafsolutionusa.com](http://leafsolutionusa.com)

Authorized Dealer

# Clogged Gutters? We're the Solution!



Leaf Solution  
**XTRAME**  
GUTTER GUARD

**Hintz Trucking LLC**

W1797 Greiner Rd  
Kaukauna, WI 54130

Phone # 920-716-1305

muslymanbrian@aol.com

# Estimate

Date	Estimate #
9/11/2019	496

Name / Address
Ben Sheurer N6775 State Rd 55 Menasha WI 54952

			Project
Description	Qty	Rate	Total
install storm sewer. We are planning on hard piping all down spouts from the new building and discharging into a 8'x8'x8' pit, filled with 3/4 clear stone and draitile. This should mitigate 100% of the new buildings watershed	300	12.00	3,600.00
bid subject to change pending black dirt and erosion control measures			<b>Total</b>
			\$3,600.00

## Mark Mommaerts

---

**From:** Ben Scheurer <bscheurer@crmeyer.com>  
**Sent:** Friday, August 23, 2019 8:59 AM  
**To:** Mark Mommaerts  
**Subject:** neighbor agreement

Good Morning Mark

After I spoke with you yesterday I was able to have a conversation with my neighbor Jerry Bloedorn regarding the set back of my proposed garage. After learning about the one foot overhang rule( per our conversation) Jerry and I agreed on a 6' set back. This will put my building at 7' with a 2' overhang. Or at 6' with a 1' overhang. Either way it will place the roof edge in the same location that Jerry is happy with. I will be putting gutters and proper drainage to make sure water is handled properly for both of our out buildings. Jerry was also concerned with sheets of snow coming off a steel roof and piling up by his garage creating water infiltration in his garage upon melt. I propose to construct with an asphalt shingle roof for a more residential look. Jerry and I agreed there will not be a snow problem with the combination of our agreed 6' set back and a shingle roof. Let me know if to have any questions or need anything from Jerry or I?

Thank You

# Calumet County, WI

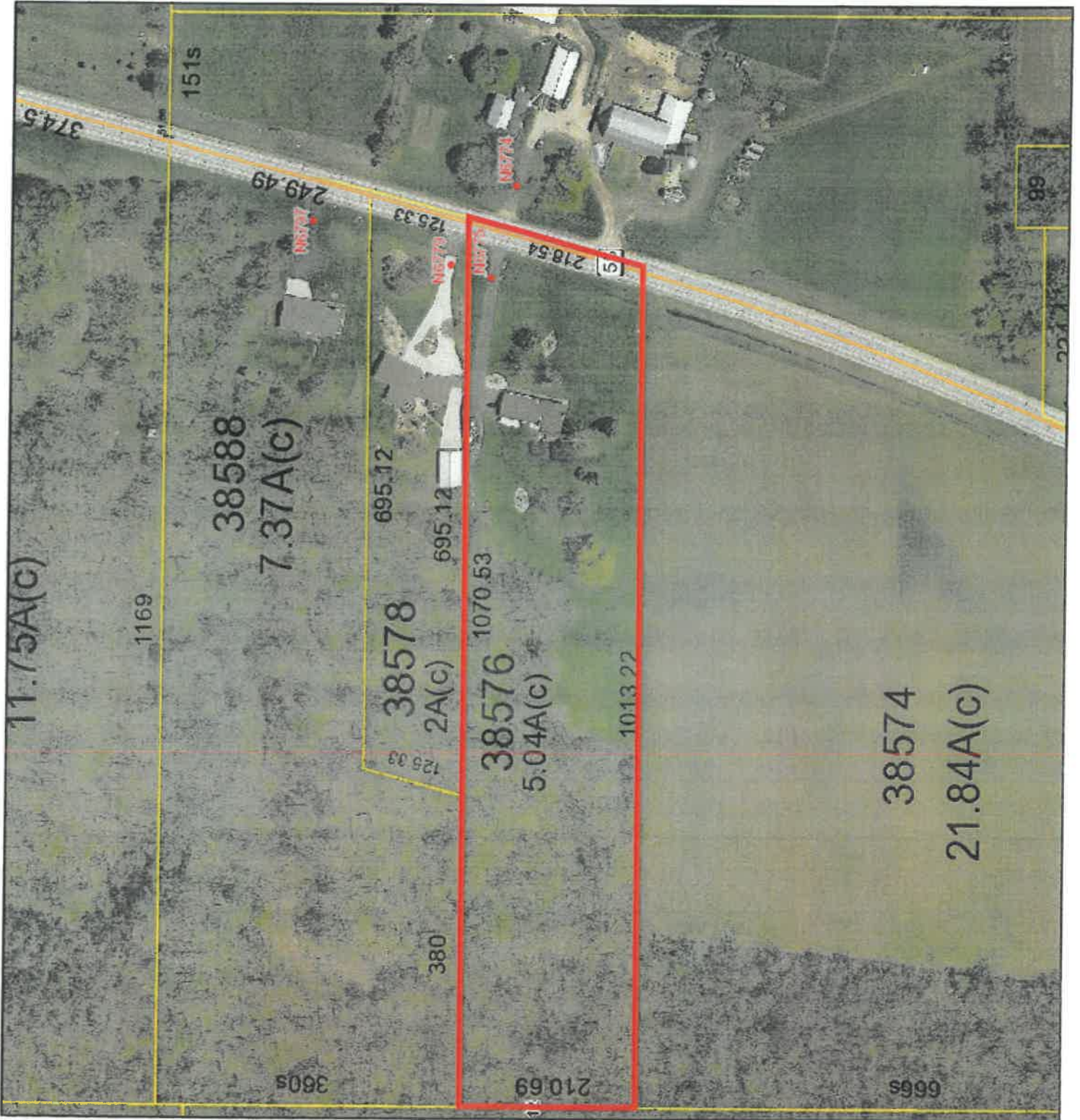
## Legend

- 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, current, or complete and conclusions drawn are the responsibility of the user.

Author:	
Date Printed:	08/21/19 12:50 PM
Source:	



# 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
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- Major Roads
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- Local Roads
- Municipal Streets
- Trail
- Railroad
- 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 conditions drawn are the responsibility of the user.

Author:	
Date Printed:	8/27/18 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.


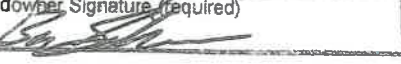
As the Supreme Court has made clear, the determination of whether a hardship exists must always be considered with reference to the purpose of the regulation in question. *Waushara County Board of Adjustment*, at ¶35. As the court has further explained; “[b]y definition, all variances depart from the 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) <b>Matthew J. Fleming</b>		Authorized Representative	Title <b>Attorney</b>
Mailing Address <b>33 E. Main Street, Suite 500</b>		City <b>Madison</b>	State <b>WI</b> Postal Code <b>53703</b>
E-mail Address <b>mfleming@murphydesmond.com</b>		Telephone (include area code) <b>(608) 258-5606</b>	Fax (include area code) <b>(608) 257-2508</b>
Landowner Information (if different than Applicant)			
Name (Organization or Entity) <b>Ben Scheurer</b>		Contact Person	Title <b>Land Owner</b>
Mailing Address <b>N6775 State Road 55</b>		City <b>Menasha</b>	State <b>WI</b> Postal Code <b>54952</b>
E-mail Address		Telephone (include area code) <b>(920) 479-0395</b>	Fax (include area code)
Project or Site Location			
Site Name (Project): <b>Garage</b>		Location ID(s): <b>131-38576</b>	
Site Address / Location: <b>N6775 State Road 55</b>		Plat / CSM / Lot No.: <b>Lot 1, CSM No. 364</b>	
Quarter: <input type="checkbox"/> NW <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE	Section: <b>12</b>	Township: <b>19</b> N	Range: <b>18</b> E
Legal Description: <b>Lot 1, CSM No. 364</b>			
Current Zoning: <b>General AG</b>		Proposed Zoning: <b>NA</b>	
Current Uses: <b>Single Family Residential</b>		Proposed Uses: <b>NA</b>	
Lot Dimensions:      Front: 218.4 Side: 1070.58 <del>210.69</del> Side: 1013.22 <del>221</del> 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):		
<b>Section 117-81(m)(2b)</b>	<b>see attached</b>		
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 <b>8/1/19</b>	
Landowner Signature (required) 		Date Signed <b>8/1/19</b>	

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; width: fit-content; margin: 0 auto;"> <p><b>RECEIVED</b></p> <p><b>AUG 06 2019</b></p> <p><b>HARRISON PLANNING</b></p> </div>	Fee Received \$ <b>350.<sup>00</sup></b>	Receipt No: <b>8701</b>
Application Received:		Date Paid: <b>8-6-19</b>	Taken By: <b>ym</b>

**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

60'  
28'

Village of Harrison

12



DISCLAIMER: This map is not guaranteed to be accurate, correct, complete, or up-to-date. Users assume all responsibility of its use.



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, appearing to read "Roy N. Fine".

Roy N. Fine

RNF:lbg  
36422.190825  
Village of Harrison lt  
Enclosures

4839-0765-0206, v. 1

