

Zoning Board of Appeals Minutes

October 1, 2019

- 1) Site Inspections: Zoning Board members met on-site at 5:00pm. Viewed the following properties:
 - a. Variance - N9649 Bies Road - Frederickson
- 2) Return to Village Hall: Returned to Village Hall from site inspections at 5:15pm.
- 3) Call to Order: Meeting was called to order at 5:25pm.
- 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 (Jung/Capper) to approve the September 3, 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 – N9649 Bies Road - Frederickson. The hearing notice was included as part of the record. The staff memo was reviewed and included as part of the record. Dave Schmalz, McMahan Associates, spoke in favor of the variance stating that he told Gene Frederickson to construct the building with the gutters directed towards the rear of the property and to grade the property in the front towards the road. Nancy Zander, N9667 Bies Road, spoke against the variance stating that the building is an eye sore and oversized and too tall. She has concerns about stormwater runoff and lack of swale between the two properties. Doug Enter spoke against the variance with concerns about the shed obstructing views and the property being built higher than the neighbor's. Dick Frederickson, N9649 Bies Road, spoke in favor of the variance and stated that the property will be landscaped to drain away from neighbor, mostly towards the back pond.

9) Close Public Hearing and Reconvene Regular Meeting: The Public Hearing was closed and the regular meeting reconvened at 5:37pm.

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

a. Variance – N9649 Bies Road – Frederickson. The Zoning Board found the following:

1. 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. That accessory buildings, similar to the proposed building, are allowed accessory uses in the AG zoning district.
3. That miscommunication between the builder/owner and the Village may have contributed to the building being placed in the wrong location.
4. That other properties in the AG zoning district are allowed accessory buildings/structures.
5. That is the only case were a miscommunication or misunderstanding of the code requirements may have occurred.
6. That the hardship is self-created, but only because of a possible miscommunication of the zoning rules.

Motion (Majewski/Jung) to conditionally approve the variance 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.

Motion carried unanimously.

b. Variance – Ben Scheurer – N6775 State Highway 55. Chairman Chicoine asked the applicant to discuss the storm sewer and drainage. Mr. Scheurer explained that the building will have high capacity gutters and downspouts and that the drainage slopes towards the back of the property away from the neighbor's shed. The excavator does not think a stormwater pit will be needed because of the grade. ZBA Jung asked if a condition to revisit this in the future can be done. Planner Mommaerts stated that it could be added to a motion. ZBA Majewski asked about snow/ice concerns. Mr. Scheurer stated that there will be a shingled roof so it should not be a concern as there will be minimal ice sheets or snow sheets. Patricia Bloedorn, N6779 Hwy 55, asked how drainage will be enforced in the future. Planner Mommaerts stated that a condition to revisit the drainage pit after a year could be added to the variance. Mr. Scheurer stated that he would be willing to readdress the drainage in the future, but wanted to make clear that the adjacent property owner had admitted to water problems in their shed in the past. The Zoning Board found the following:

1. That the variance is not contrary to the public interest because the accessory building location as proposed will reduce environmental impacts.

2. That accessory buildings, similar to the proposed building, are allowed accessory uses in the AG zoning district.
3. That 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. That other properties in the AG zoning district are allowed accessory buildings/structures.
5. That the adjacent property has an accessory building approximately 5-10 feet from the property line.
6. That the variance is not self-created.

Motion (Majewski/Jung) to conditionally approve the variance with the following conditions:

1. The gutter and downspout system proposed by the applicant shall be installed and drain to the rear of the property.
2. The Zoning Board will revisit this item at a meeting approximately 11 months after completion of the accessory building to address drainage concerns, if any.
3. The proposed accessory building shall be no closer than 6-feet from the property line with a 1-foot overhang. The edge of the overhang shall be at least 5-feet from the property line.

Motion carried unanimously.

11) Adjourn: Motion (Jung/Capper) to adjourn at 6:09pm. Motion carried unanimously.

Dated: October 2, 2019

Prepared by: Mark Mommaerts, AICP, Planner

Craig Majewski, Secretary Date
Zoning Board of Appeals

ZONING BOARD OF APPEALS MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

May 13, 2020

Title:

Variance – BelGioioso Cheese

Issue:

Should the Zoning Board approve 2 variance requests for setbacks and for height?

Background and Additional Information:

The applicant, BelGioioso Cheese, Inc., is requesting a pair of variances in order to construct a dryer tower at their plant at N8495 Hwy 55, Parcel Ids 40072, 40074, 40078, & 40070.

BelGioioso Cheese uses the plat to process whey into other marketable products. BelGioioso Cheese took ownership of the property in 2006, however, the buildings have been in existence before zoning. The property is currently zoned Industrial & Manufacturing [IM]. The IM zoning district requires a minimum setback of 30-feet from the road property line or ROW line. The IM zoning district also limits the height of the principal building to 45-feet. Several additions have been added to the building, that either meet the zoning requirements or have receive variance approval.

BelGioioso Cheese is proposing additions to a couple of areas of the building. One addition is a proposed tower for a dryer. This addition is proposed to be approx. 96-feet x 96-feet (9210-square feet) in area and 120-feet tall. The other addition proposed is a warehouse addition, 5,300-square feet in area and 27-feet tall. Both additions require a variance from the 30-foot front yard setback. Each addition is proposed to be 10-feet from the ROW line. This matches portions of the existing building. There are parts of the existing building that are closer than 10-feet. The dryer tower requires a variance from the 45-foot height limitation. The tower is proposed to be 120-feet. A smaller, evaporator tower, was approved in 2018 under an exemption for height. However, due to the size, location, and total height of the proposed dryer tower, a variance is needed.

The applicant has included a written narrative in support of the variance request from C. Renier Architects, Inc. They claim the property is unique since the building pre-dates the current zoning code. It is also unique due to the process utilized for transforming whey into other products. They claim there is no harm to the public interest because there are already two towers exceed the height limitation and portions of the building already exceed the setback requirements. Without the additions, they claim that the plant will not be able to function as needed and production will be moved to another facility. They claim there is an unnecessary hardship for economic reasons and production reasons due to the natural evolution of the whey process.

Staff has asked for an analysis of light/shading on the home to the north due to the proposed height of the dryer tower. Staff's only concern is the impact the dryer tower height may have on this home.

Zoning Ordinance:

Section 117-90 – Industrial & Manufacturing [IM]

(m) *Building height and stories.*

(1) *Principal structure.* The principal building or structure shall not exceed 45 feet in height.

(2) *Accessory structures.* Accessory building or structures shall not exceed 24 feet in height.

(n) *Yard requirements.*

(1) *Principal and accessory structure.*

a. *Front yard.* There shall be a minimum front yard of 30 feet, measured from the front lot line, or from the right-of-way line of an officially mapped street, whichever is greater. Front yard reductions may be provided pursuant to [section 117-49\(c\)\(6\)](#), front yard reduction.

b. *Side yard.* There shall be a minimum side yard of 20 feet on each side, measured from the side lot line, or 50 feet if abutting a residential zoning district.

c. *Rear yard.* There shall be a minimum rear yard of 20 feet, measured from the rear lot line, or 50 feet if abutting a residential zoning district.

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. Shore yard reductions may be provided pursuant to [section 117-49\(c\)\(7\)](#), shore yard reduction.

e. *Distance from other structures.* Buildings or structures shall not be constructed or located closer than ten feet to any other structure on the lot.

Conclusions of Law/Requirements for a Variance (Section 117-360):

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] chapter.

Setback Variance: Staff finds that the setback variance will not harm the general public as the building currently encroaches into the setback area further than the proposed additions.

Height Variance: Staff has concerns that the height of the proposed tower will cause harm to the adjacent property to the north by causing shadows/limiting sunlight onto the property. Staff also has concerns regarding the fall zone if the tower were to collapse on the roadway will cause harm to public interests utilizing the roadway.

2. The variance will not permit the establishment of a use which is not permitted or permissible in the district.

Setback Variance: Staff finds that the proposed use of the property will not change.

Height Variance: Staff finds that the proposed use of the property will not change.

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.

Setback Variance: Staff finds that the property is unique in that the existing building currently encroaches into the front setback requirement. The proposed additions will not further encroach into the setback.

Height Variance: Staff finds that the process used to transform whey into other marketable forms is unique to this building and property.

4. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district.

Setback Variance: Staff finds that the building currently does not meet setback requirements, denial of the setback variance would deprive the applicant of a right they currently have.

Height Variance: Staff finds that there are exemptions for height limitations for bell towers, cooling towers, antennas, and other similar structures. The refining process for the whey product necessitates a larger building footprint than the exemptions typically allow. The building currently has several towers that exceed the height limitation.

5. The hardship is not shared generally by other land or buildings in the area.

Setback Variance: Staff finds that the building was constructed prior to zoning setbacks and its setbacks are unique to the area.

Height Variance: Staff finds that due to the nature of the building use, as a whey processing plant, it is unique to the area.

6. The hardship results from the strict application of this chapter and is not the result of self-created or self-imposed circumstances.

Setback Variance: Staff finds that the variance request is not self-created.

Height Variance: Staff finds that the variance request is not self-created.

Recommended Action:

Based on the information provided, staff recommends approval of the variance if engineering analysis confirms the fall zone of the tower will not be in the public road right-of-way.

Attachments:

- Variance Application
- Written Narrative
- Plan Set

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) C. RENIOR ARCHITECTS, INC.		Authorized Representative CHRIS RENIOR	Title OWNER/ARCHITECT
Mailing Address 348 MAIN AVE.		City DE PERE	State Postal Code WI. 54115
E-mail Address CHRIS@RENIORARCH.COM		Telephone (include area code) (920) 330-0500	Fax (include area code) _____
Landowner Information (if different than Applicant)			
Name (Organization or Entity) BELGIOIOSO CHEESE INC.		Contact Person AMY BELAND	Title PROJECT MANAGER
Mailing Address 4200 MAIN ST.		City GREEN BAY	State Postal Code WI. 54311
E-mail Address AMY.BELAND@BELGIOIOSO.COM		Telephone (include area code) (920) 863-2123	Fax (include area code) _____
Project or Site Location			
Site Name (Project): BELGIOIOSO SHORWOOD PLANT		Location ID(s): 40072	
Site Address / Location: N 8495 HWY 55, MENASHA, WI, 54952		Plat / CSM / Lot No.: 131-0000-0000000-000-0-201824-00-110B	
Quarter: <input type="checkbox"/> NW <input checked="" type="checkbox"/> NE <input type="checkbox"/> SW <input type="checkbox"/> SE		Section: 24	Township: 20 N Range: 18 E
Legal Description: 137-139, 142847 NE 1/4 NE 1/4 SEC. 24-20-18 COM NE 1/4 SEC. 24, WIRDS, S19 RDS, E11 RD.			
Current Zoning: INDUSTRIAL		Proposed Zoning: INDUSTRIAL	
Current Uses: WHEY PLANT		Proposed Uses: WHEY PLANT	
Lot Dimensions: Front: 291.18 Side: 206.66 Rear: 313.5 Side: 280.5 Lot Area: 1.85 <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):	
ZENING ORD. REQUIRES A MAX. 45' HEIGHT & A 30' SETBACK REG.		WE ARE REQUESTING TO ADD A DRYING TOWER THAT WILL BE 145' TALL OR A VARIANCE OF 100' AND A SETBACK OF 10' OFF SCHAEFER ROAD OR A VARIANCE OF 20'	
Fees			
<input checked="" type="checkbox"/> \$350.00			
Certification & Permission			
Certification: 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 & desist orders.			
Permission: 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.			
Applicant Signature CHRIS RENIOR		Date Signed 3/4/2020	
Landowner Signature (required) Amy Beland Project Manager		Date Signed 3-13-20	

120' tall
(REV. 4-13-20)

LEAVE BLANK - FOR MUNICIPAL USE ONLY			
Application Withdrawal Signature (required):		Date Signed:	Reason:
Date Complete		Fee Received \$	Receipt No:
Application Received:		Date Paid:	Taken By:

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 ATTACHMENT

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 ATTACHMENT

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 ATTACHMENT

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.

C. RENIER ARCHITECTS, INC.

348 MAIN AVENUE
DE PERE, WI 54115
PHONE: (920) 330-0500

Date: March 4, 2020

Attachment #1

1) Unique Property Limitations:

BelGioioso bought the property in 2006, but the current whey plant has been in operation at this site since prior to 1986. It pre-dates the current zoning ordinance which was enacted in 2008. There is a strict process for transforming raw whey into products that have value and the existing site, building flow & shape directly responds to this process. The existing evaporator building is very close to the existing north lot line.

2) No Harm to Public Interests:

A new drying tower at this existing plant will not harm the public interest. On the contrary, not being able to add this drying tower would have a harmful effect on the community. The drying tower will allow BelGioioso Cheese Inc. to compete within the global whey products market, so the existing plant can remain viable. If they cannot upgrade the plant with a new drying tower it is likely that current operations at this site may need to be discontinued which would have a direct effect on the community and the village tax base. Also, the effect of the new drying tower will not dramatically change the situation as there are two existing towers already. We are proposing to position the new drying tower as far as possible to the south or as far as possible away from the north lot line. We intend to maintain a 10' setback from the Schaefer Road R.O.W..

3C) Unnecessary Hardship:

We are requesting this variance because BelGioioso must stay competitive in the whey products market. If not there would be ramifications on their cheese production as well. Because of production requirements, we have very limited choices in the location and shape of the proposed tower. This is the natural evolution of this process and plant.

C. RENIER ARCHITECTS, INC.

348 MAIN AVENUE
DE PERE, WI 54115
PHONE: (920) 330-0500

Date: March 4, 2020

Attachment #1

1) Unique Property Limitations:

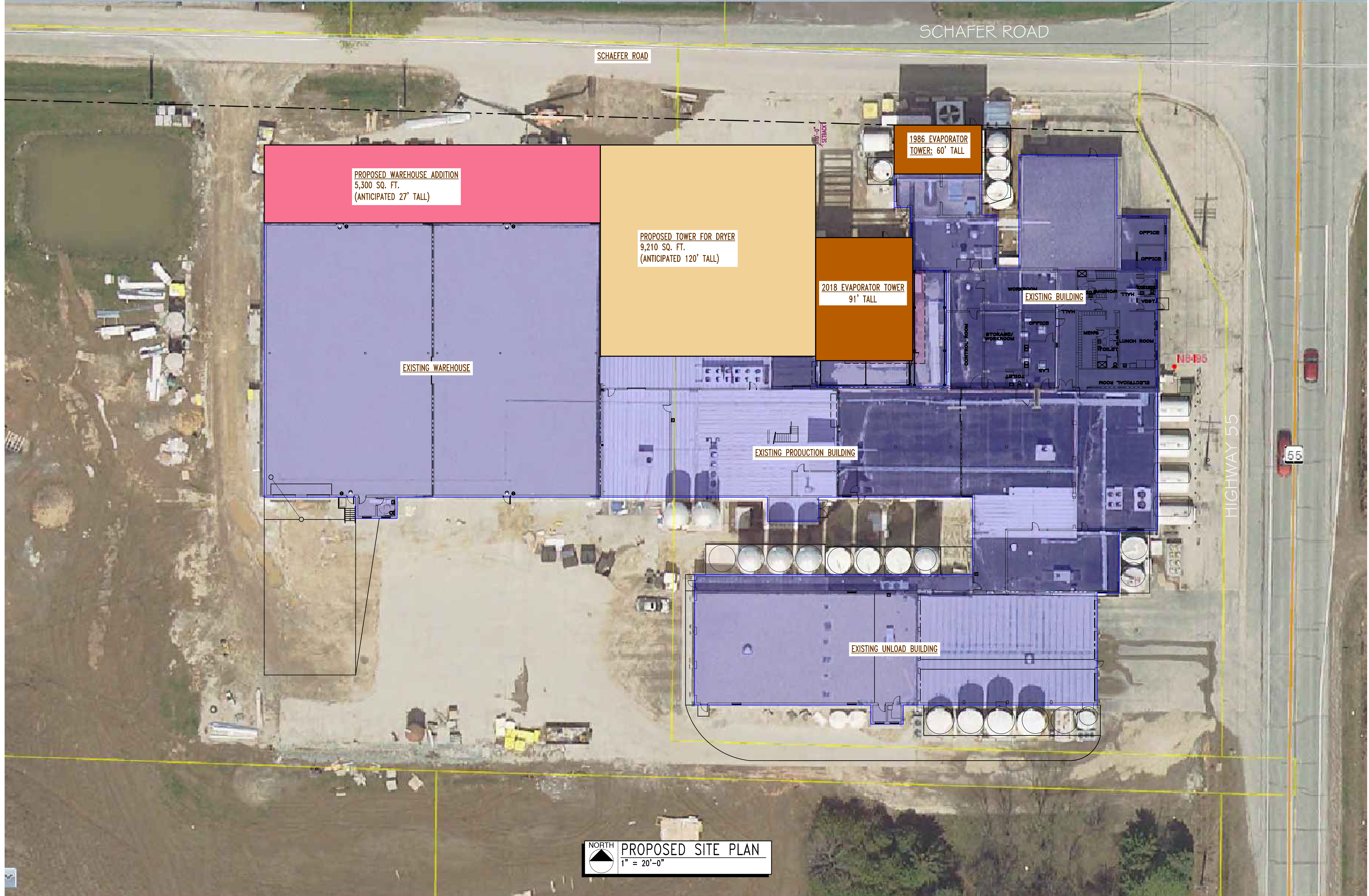
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PROPOSED SITE PLAN
 1" = 20'-0"

DESIGN / BUILD
 GENERAL CONTRACTING
 STEEL FABRICATION
BUTLER
 METAL BUILDINGS
 www.schuhconstruction.com

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 348 MAIN AVENUE
 DE PERE, WISCONSIN 54115
 PH: (920) 330-0500 FAX: (920) 330-0504

PROJECT:
BELGIOIOSO - SHERWOOD
DRYER PROJECT
 N8495 STATE RD 55
 MENASHA, WI 54952

PROJECT NO.:
20-165

SHEET NO.:
C1

X:\shermans\p\BELGIOIOSO\DRYER - ALL JOB\Sherwood\addendum\20 - Dryer1 - Drawings\p\CT - Rev. 10/20/20\10-10-20\10-10-20.dwg, Plot on 10/10/20 10:45:06 AM, Plotter: P1000, Plot Size: 11.00 x 17.00 inches



3
A3.2 WINTER — AFTERNOON SUN
NOT TO SCALE DECEMBER 20



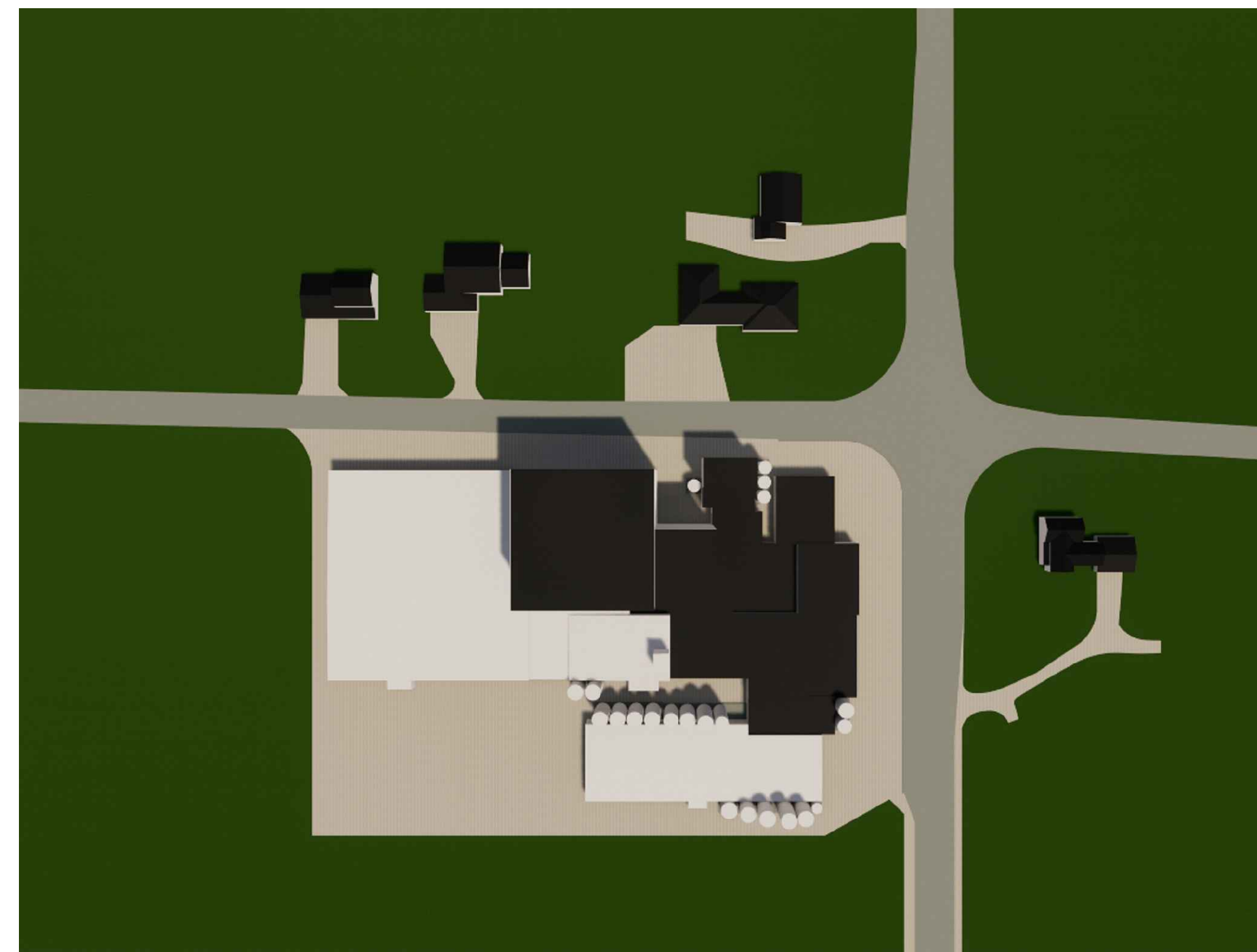
2
A3.2 WINTER — MID-DAY SUN
NOT TO SCALE DECEMBER 20



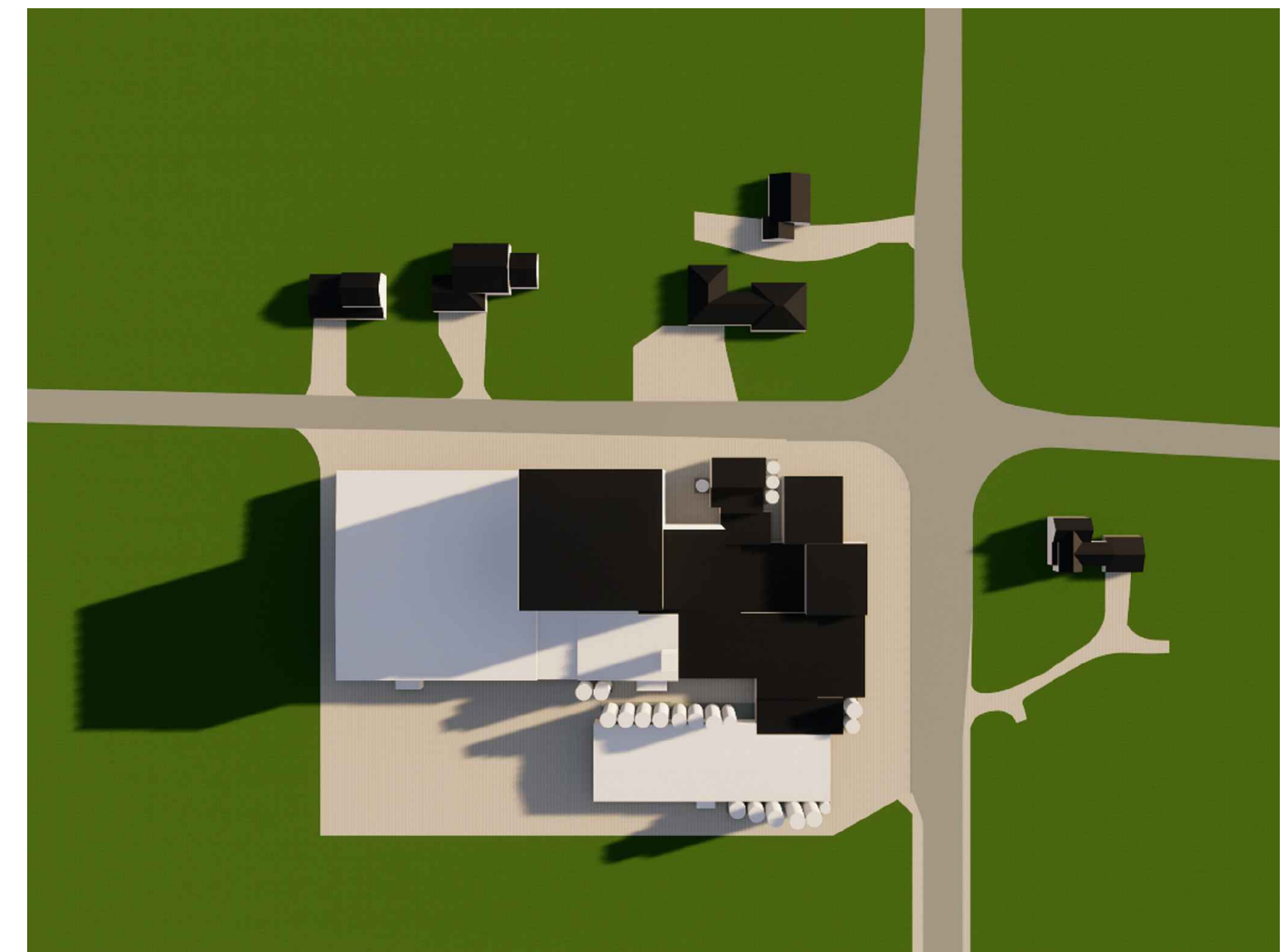
1
A3.2 WINTER — MORNING SUN
NOT TO SCALE DECEMBER 20



6
A3.2 SUMMER — AFTERNOON SUN
NOT TO SCALE JUNE 20



5
A3.2 SUMMER — MID-DAY SUN
NOT TO SCALE JUNE 20



4
A3.2 SUMMER — MORNING SUN
NOT TO SCALE JUNE 20

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PROJECT:
**BELGIOIOSO - SHERWOOD
DRYER PROJECT**
N8495 STATE RD 55
MENASHA, WI 54952

PROJECT NO.:
20-165

SHEET NO.:

A3.2