

**Eau Claire County**  
**Board of Land Use Appeals**  
721 Oxford Avenue, Room 1277 • Eau Claire, Wisconsin  
Monday, April 25, 2016 • 5:30 PM

**AGENDA**

1. Call to order
2. A request for a 33-foot variance for the required 100-foot minimum front yard setback for a structure from a state highway in the RH District (Town of Brunswick) VAR-0002-16 / Discussion – Action **p. 2 - 18**
3. Review / Approval of Minutes from November 2, 2015 / Discussion – Action **p. 19 - 21**
4. Adjournment

Post: 4/21/2016

- Media, Committee members, Rod Eslinger

Please note: upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 715/839-4710 (FAX) 715/839-1669 or (TDD) 715/839-4735 or by writing to the ADA coordinator, Human Resources Department, Eau Claire County Courthouse, 721 Oxford Ave., Eau Claire Wisconsin 54703.



# EAU CLAIRE COUNTY BOARD OF LAND USE APPEALS

## STAFF ANALYSIS AND RECOMMENDATION

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**VARIANCE NUMBER:** VAR-0002-16

**COMPUTER NUMBERS:** 004-1129-01-000

**PUBLIC HEARING DATE:** April 25, 2016

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**STAFF CONTACT:** Rod Eslinger, Land Use Manager

**OWNER:** Dennis and Nancy Janisewski, S 6072 Sun Dance Place, Eau Claire, Wisconsin, 54701

**APPLICANT:** Same as owner.

**SITE LOCATION:** S 6072 Sun Dance Place, Eau Claire, WI 54701

**ZONING DISTRICT:** RH, Rural Home District

**LEGAL DESCRIPTION:** Lot 10 Rim Rock Hills, Section 11, T26N-R10W, Town of Brunswick

**REQUEST:** The request is for a 33-foot variance from the right-of-way setback line of State Highway 37 to allow the construction of a 26-foot by 26-foot addition to the existing residence 67-feet from the right-of-way.

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### SUMMARY

The applicants are proposing to add a 26-foot by 26-foot addition onto their existing residence 67-feet from the road right-of-way of State Highway 37. The minimum setback from a Class B Highway is 150 feet from the centerline or 100 feet from the right-of-way line, whichever is greater.

The application materials reveals that the proposed addition will consist of a 26-foot by 16-foot living room area with a 26-foot by 10-foot porch. The site plan labeled as "existing" shows the current footprint of the house to be 93-feet from the right-of-way of State Highway 37. The narrative states the house was constructed in the spring of 1978. The Town of Brunswick adopted County Zoning on March 12, 1983. Since house was constructed before March 12, 1983 and does not conform to the highway setback requirements, it is considered a legal nonconforming structure.

The property is accessed off of Sun Dance Place, an interior subdivision road that gains access from State Highway 37.

The house conforms to all other county setback requirements. The applicants own and live in the house at S 6072 Sun Dance Place. The parcel is 1.27 acres.

**BACKGROUND**

ADJACENT ZONING & LAND USES:

DIRECTION	ZONING	LAND USE
North	A2	Electrical Substation
West	A2 and AP	Agricultural field and storage shed
South	RH	Single family use
East	RH	Single family use

AUTHORITY:

Chapter 18.31 of the zoning code establishes the Board of Land Use Appeals and its authority. Variances granted by the Board of Land Use Appeals are required to meet the standards as defined by the code. The Board must find that do to literal enforcement of the code an “unnecessary hardship would result. Unnecessary hardship is defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district, caused by such facts such as rough terrain or soil conditions uniquely applicable to the property and not generally other properties in the same zoning district.

The statutory authority for the Board of Land Use Appeals is found in Wis. Stats. 59.694.

**APPLICABLE ZONING REGULATIONS**

**Section 18.01.010 Purpose.** This section describes the purpose of the zoning code. Generally, the purpose of the zoning ordinance is as follows: to separate incompatible land uses from one another; to maintain public health and safety; to protect and conserve natural resources; to prevent overcrowding; to preserve property values; and to maintain the general welfare of the citizens.

**Section 18.07.001 Purpose.** The RH rural homes district is established to provide for suburban large-lot development with individual on-site water and sewage disposal facilities. The standards set out in this chapter shall apply in the district.

**Section 18.22.001 Purpose.** The purpose of this chapter is to promote the public safety, welfare and convenience by easing congestion on the public highways through a system of standards and regulations for limiting access to public highways and establishing setbacks from highway right-of-way.

**Section 18.22.020 B. Class B Highways.** All federal or state highways not designated as Class A highways are designated as Class B highways.

1. Setbacks. The setback for Class B highways shall be 150 feet from the centerline or 100 feet from the right-of-way line, whichever is greater.

**VARIANCE STANDARDS**

**Section 18.31.020 C. 6. Standards for Granting Variances.** The following are standards and principals to guide the board's decisions:

a. *The burden is upon the appellant to prove the need for a variance.*

The petitioner must prove that the strict letter of the restrictions governing highway setbacks for the 26-foot by 26-foot addition would unreasonably prevent them from using the property for the uses

that are allowed in the zoning district or would render conformity with such restrictions unnecessarily burdensome.

*b. Pecuniary hardship, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales are not sufficient reasons for getting a variance.*

The applicant indicated that the house was constructed prior to the date the town adopted county zoning (March 12, 1983) with the design intent so that the dwelling could be expanded in the future.

*c. The plight of the applicant must be unique, such as a shallow or steep parcel of land or situation caused by other than his or her own action.*

The applicant constructed the 1,200 square foot home in the spring of 1978 before zoning was adopted by the town. The house was constructed with the idea that it could be expanded in the future.

*d. The hardship justifying a variance must apply to the appellant's parcel or structure and not generally to other properties in the same district.*

Granting of this variance may lead to other similar variance requests in the future given the fact there are other parcels along the state trunk system with nonconforming structures in all zoning district.

*e. Variances allowing uses not expressly listed, as permitted or conditional uses in a given zoning district shall not be granted.*

This is not a use variance request. The underlying RH District allows single family residences as a permitted use.

*f. The variance must not be detrimental to adjacent properties.*

This variance would likely not be detrimental to adjacent properties.

*g. The variance must by standard be the minimum necessary to grant relief.*

The minimum relief has been requested.

*h. The variance will not be in conflict with the spirit of this subtitle or other applicable ordinances, nor contrary to state law or administrative order.*

The variance request will be contrary to state law or administrative order.

*i. The variance shall not permit any change in established flood elevations or profiles.*

The property is not in the floodplain.

*j. Variances shall not be granted for actions, which require an amendment to Chapter 18.20, the Floodplain Overlay District.*

This variance request does not require amendments to Chapter 18.20.

k. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE.

The property is not in the floodplain.

l. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

The minimum relief necessary has been requested. It is not likely approving the variance will create risks to public safety or cause nuisances costs for rescue and relief efforts.

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### **RELEVANT CASE LAW**

In 2004, the Wisconsin Supreme Court decided two cases of relevance regarding area variances. In the first case, STATE EX REL. ZIERVOGEL V. WASHINGTON COUNTY BOARD OF ADJUSTMENT, CASE NO. 02-1618 (2004), the Supreme Court reaffirmed the definition of the statutory term “unnecessary hardship” set forth in the Snyder case as follows: “We have stated that unnecessary hardship is present when compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner for using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”

In the second case, STATE OF WISCONSIN VS. WAUSHARA COUNTY BOARD OF ADJUSTMENT, CASE NO. 02-2400 (2004), the Supreme Court stated that the 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 the variance.

In the second case in 2005, LAMAR CENTRAL OUTDOOR, INC. VS. BOARD OF ZONING APPEALS OF CITY OF MILWAUKEE, 2005 WI 117 (Wis. Sup. Ct. July 12, 2005), the Supreme Court held that a board of appeals may not simply grant or deny an application with conclusory statements that the application does or does not satisfy the statutory criteria, but shall express, on the record, its reasoning why an application does or does not meet the statutory criteria.

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### **STAFF RECOMMENDATION AND FINDINGS:**

In evaluating this variance application, the Board must consider the twelve ordinance standards for granting a variance and relevant Wisconsin case law. An approval or denial requires that the board state its reasoning why an application did or did not meet the statutory criteria.

An unnecessary hardship exists when compliance would render conformity with such restrictions unnecessarily burdensome. To determine if a hardship is present, an evaluation of the purpose statements for the zoning code and sections 18.07 and 18.22 is required.

*A hardship is not present because compliance with the strict letter of the restrictions governing setbacks would not render conforming to such restriction unnecessarily burdensome.*

Another consideration for granting a variance is to determine if unique physical property limitations exists.

*The hardship is not unique to this property. Other properties in this district may have similar issues and granting this variance may set a precedent for future variance requests.*

*The variance request is not related to unique physical characteristics of the property, but rather, to a condition the property was developed prior the town adopting county zoning.*

Granting this variance will not result in harm to public interests.

*The variance would not likely cause an increased risk to public safety or result in harm to public interests, but granting of this variance may lead to other similar variance requests in other zoning districts in the future given the fact there are other parcels along the state trunk system with nonconforming structures.*

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## **FINDINGS**

If the Board denies the variance request, the Board may incorporate any or all of the following findings in its decision:

- The literal enforcement would not create an unnecessary hardship that would prevent the applicant from using the property for the allowable uses in the RH District. A reasonable use of the property has already been established.
- No unique physical limitation exists on this property, such as a steep slope, wetland, drainage area that would prevent the compliance with the ordinance.
- The request does not meet the county variance standards.

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If the Board approves the variance request, the Board may incorporate any or all of the following findings in its decision:

- Single family structures are a permitted use in the RH District.
- The home was constructed (Spring of 1978) prior to the Town of Brunswick adopting county zoning (March 12, 1983).
- The home and proposed construction conforms to all other zoning setbacks.
- The request does generally meet the county variance standards.
- There are no safety related matter that would impact those traveling along State Highway 37 as the applicants property is elevated above the traveled road way.
- The literal enforcement of the ordinance would require that the applicant move the existing structure to a code compliant location on the property which would be impracticable.

## **Conditions**

- The applicant shall obtain all necessary permits/approvals, including but not limited to the following, land use, erosion control, sanitary, address, access and uniform dwelling code approval.

If the Board approvals the request, the following findings may be used to support the decision.

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## **EXHIBITS**

1. Staff report
2. Variance application

**Eau Claire County**  
**Department of Planning and Development**  
 Eau Claire County Courthouse  
 721 Oxford Avenue, Room 3344  
 Eau Claire, Wisconsin 54703  
 (715) 839-4741

Application Accepted:	3/22/2016
Accepted By:	Rod Eslinger
Receipt Number:	45876
Town Hearing Date:	
Scheduled Hearing Date:	4/25/2016
Application No:	VAR-0002-16
Appl Status:	Pending

**Eau Claire County Variance Application**

<b>Owner/Applicant Name(s):</b> Dennis P & Nancy R Janisewski	<b>Address:</b> (ow) S 6072 SUN DANCE PL EAU CLAIRE	<b>Telephone:</b> 715-834-8056(C)
<b>Agents Name:</b>		
<b>Site Address(es):</b> S 6072 SUN DANCE PL EAU CLAIRE		
<b>Zoning District(s):</b> RH	<b>Code Section(s):</b> 18.22.020.B.1.	
<b>Property Description:</b> Sec 11 Twn 26 Rge 10	<b>Town of Brunswick</b>	<b>Lot Area:</b>
<b>Overlay District:</b> Check Applicable	<input type="checkbox"/> Shoreland	<input type="checkbox"/> Flood Plain
	<input type="checkbox"/> Airport	<input type="checkbox"/> Wellhead Protection
		<input type="checkbox"/> Non-Metallic Mining
<b>PIN</b> 1800422610113302009	<b>Alternate No</b> 004112901000	<b>Parcel No</b> 26.10.11.117:1C
<b>Legal (partial)</b> LOT 10 RIM ROCK HILLS TOWN OF BRUNSWICK		
<b>General Description:</b> OWNER IS APPLYING FOR A 33 FOOT VARIANCE TO BUILD A 26' X 26' ADDITION ONTO THE BACK OF THE EXISTING HOME. THE ADDITION WILL CONSIST OF A 26' X 16' ENLARGED LIVING AREA WITH A FULL BASEMENT AND A 26' X 10' PORCH.		
<b>Code Description:</b> 18.22.020.B.1.; SETBACK OFF OF A CLASS B HIGHWAY		

I certify by my signature that all the information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Eau Claire County Department of Planning and Development to enter my property for the purpose of collecting information to be used as part of the public hearing process. I further agree to withdraw this application if substantive false or incorrect information has been included.

Owner/Agent Signature *see attached application* Date \_\_\_\_\_  
 Check if DATCAP must be notified \_\_\_\_\_ Check if DNR to Receive Copy \_\_\_\_\_

At the public hearing, the applicant may appear in person or through an agent or an attorney of his/her choice. The applicant/agent/attorney may present testimony, evidence and arguments in support of the application. All site plans, pictures, etc. become the property of the Department, and will remain in the file.

VAR-0002-16



Eau Claire County
Department of Planning and Development
Eau Claire County Courthouse
721 Oxford Avenue, Room 3344
Eau Claire, Wisconsin 54703
(715) 839-4741

Table with 2 columns: Field Name, Value. Fields include Application Accepted (3/22/16), Accepted By (Jared Grande), Receipt Number (45876), Town Hearing Date, and Scheduled Hearing Date.

VARIANCE APPLICATION

Property Owner Name: Dennis P. Jansewski; Phone# 715-834-8056
Mailing Address: 56072 Sundance Place, Eau Claire, WI 54701
Email Address: dennj1@charter.net

Agent Name:
Phone#:
Mailing Address:
Email Address:

SITE INFORMATION

Site Address: 56072 Sundance Place, Eau Claire, WI 54701
Property Description: SW 1/4 SW 1/4 Sec. 11, T 26 N, R 10 W, Town of Brunswick
Zoning District: RH; Code Section(s):
Overlay District: Check Applicable; Shoreland; Floodplain; Airport; Wellhead Protection; Non-Metallic Mining
Computer #(s): 004-1129-01-000

Lot 10 Rim Rock Hills - Town of Brunswick

GENERAL APPLICATION REQUIREMENTS

Applications will not be accepted until the applicant has met with department staff to review the application and determine if all necessary information has been provided. All information from the checklist must be included.

- Checklist items: A detailed written statement that specifically identifies what is being requested. Written argument that justifies the need for the variance... The applicant must flag/stake the property/project corners... A scaled site plan of the site and surrounding area... Provide a \$500.00 application fee (non-refundable), payable to the Eau Claire County Treasurer.

I certify by my signature that all information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Eau Claire County Department of Planning and Development to enter my property for the purpose of collecting information to be used as part of the public hearing process. I further agree to withdraw this application if substantive false or incorrect information has been included.

Owner/Agent Signature

[Handwritten signature]

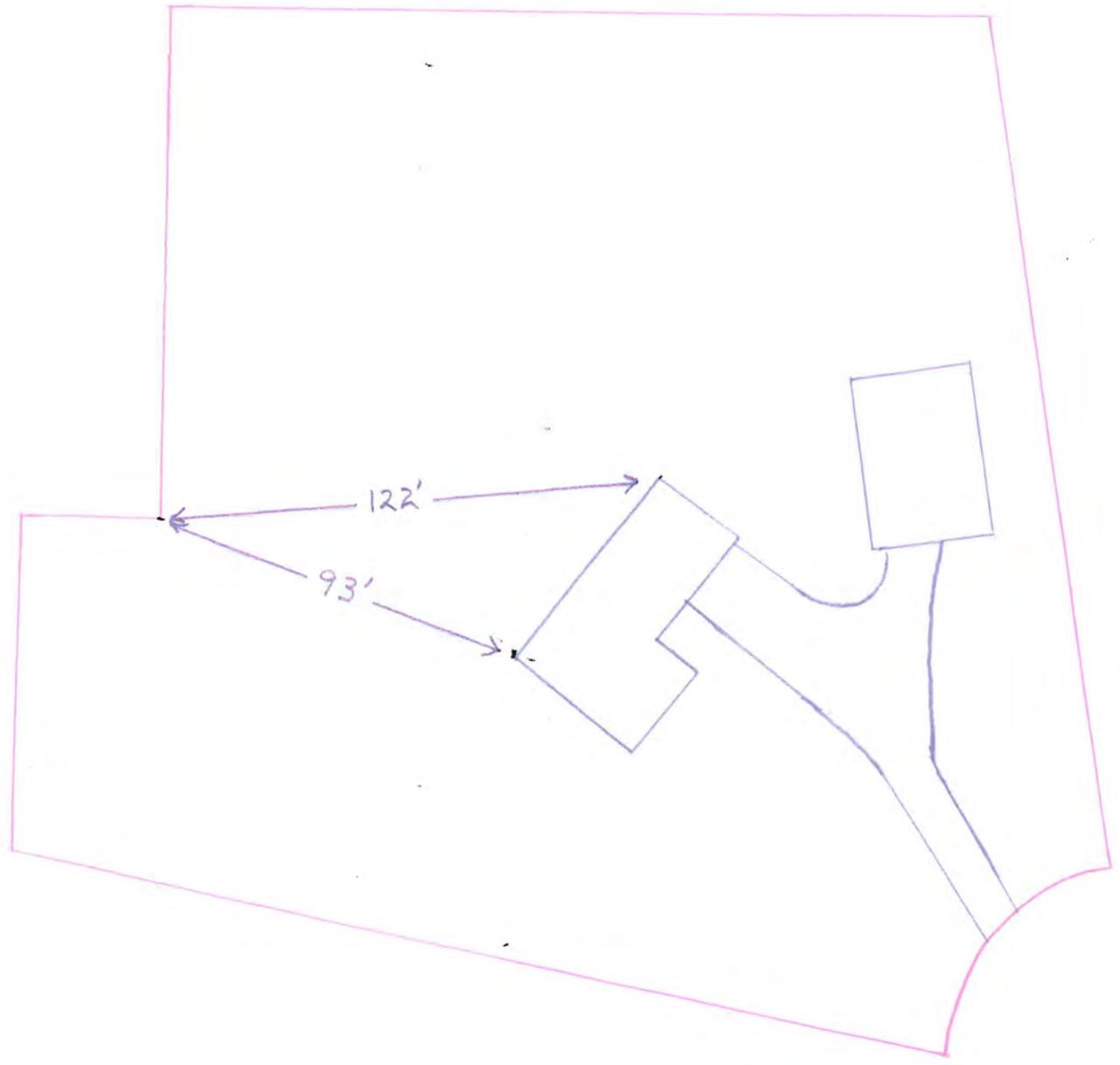
Date 3/22/16

At the public hearing, the applicant may appear in person or through an agent or an attorney of his/her choice. The applicant/agent/attorney may present testimony, evidence and arguments in support of the application. All site plans, pictures, etc. become the property of the Department, and will remain in the file.

I would like to apply for a 33 foot variance to build a 26 foot by 26 foot addition onto the back of my home. The addition will consist of a 26 foot by 16 foot enlarged living area, with a full basement, and a 26 foot by 10 foot porch.

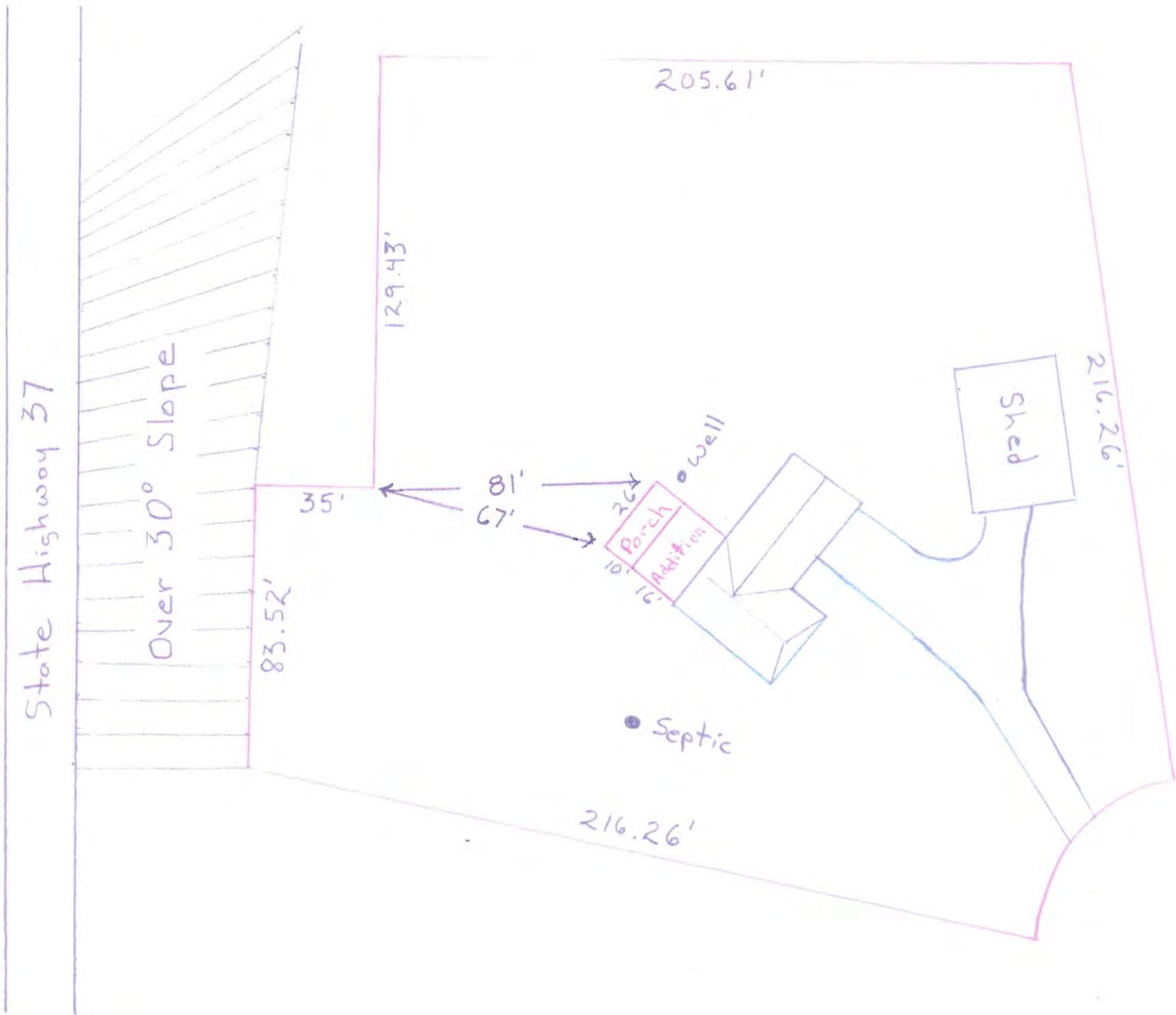
In the spring of 1978 I built a small home, under 1,200 sq feet, in Rim Rock Hills subdivision, in Brunswick township. The home was designed so that the living room and dining room could easily be expanded in the future. There were no zoning restrictions in Brunswick at that time to prohibit such an addition. In the spring of 2015 I went to apply for a building permit to finally enlarge our home, I quickly learned that we had a problem. On March 12, 1983 county zoning laws were adopted by the town of Brunswick. These zoning laws required a 100-foot setback from a state highway right of way. My back yard borders on State Highway 37. Part of my yard has the usual 50 foot right of way, which would not have caused a problem, but because of a hill, the rest of my yard has an 85-foot highway right of way. Mr. Eslinger, with Planning and Development, was very professional and explained these rules to me and gave me information, including a SETBACKS! sheet which listed all setbacks and shows how to figure these setbacks. He told me that it might be easier to purchase some land from the state, to gain the 100 foot setback, than to apply for a variance. Taking his advice, I went to the state and found out that they would sell me some land, because they have no plans of ever widening the road. However, they would only sell me a 40 foot long strip, 35 feet wide, because they wanted to retain ownership of all land on the actual slope of the hill. After surveying the 40 foot long strip, I found that if you followed a perpendicular line from the right of way, it would give me enough room to build the 26' x16' addition with a basement. I then concluded that the porch could be added with the one time, 500 foot rule that Mr. Eslinger had mentioned when we met. I then proceeded to purchase the 1,400 feet of land from the State. Finally, I was able to go back to the county and apply for a building permit. Mr. Eslinger, again being very professional, gave me the sad news that I had not acquired near enough land to get a building permit. I had used a straight line drawn from the highway right of way to calculate clearance for the addition, whereas, I should have drawn a 100 foot ark from the closest point of the right of way.

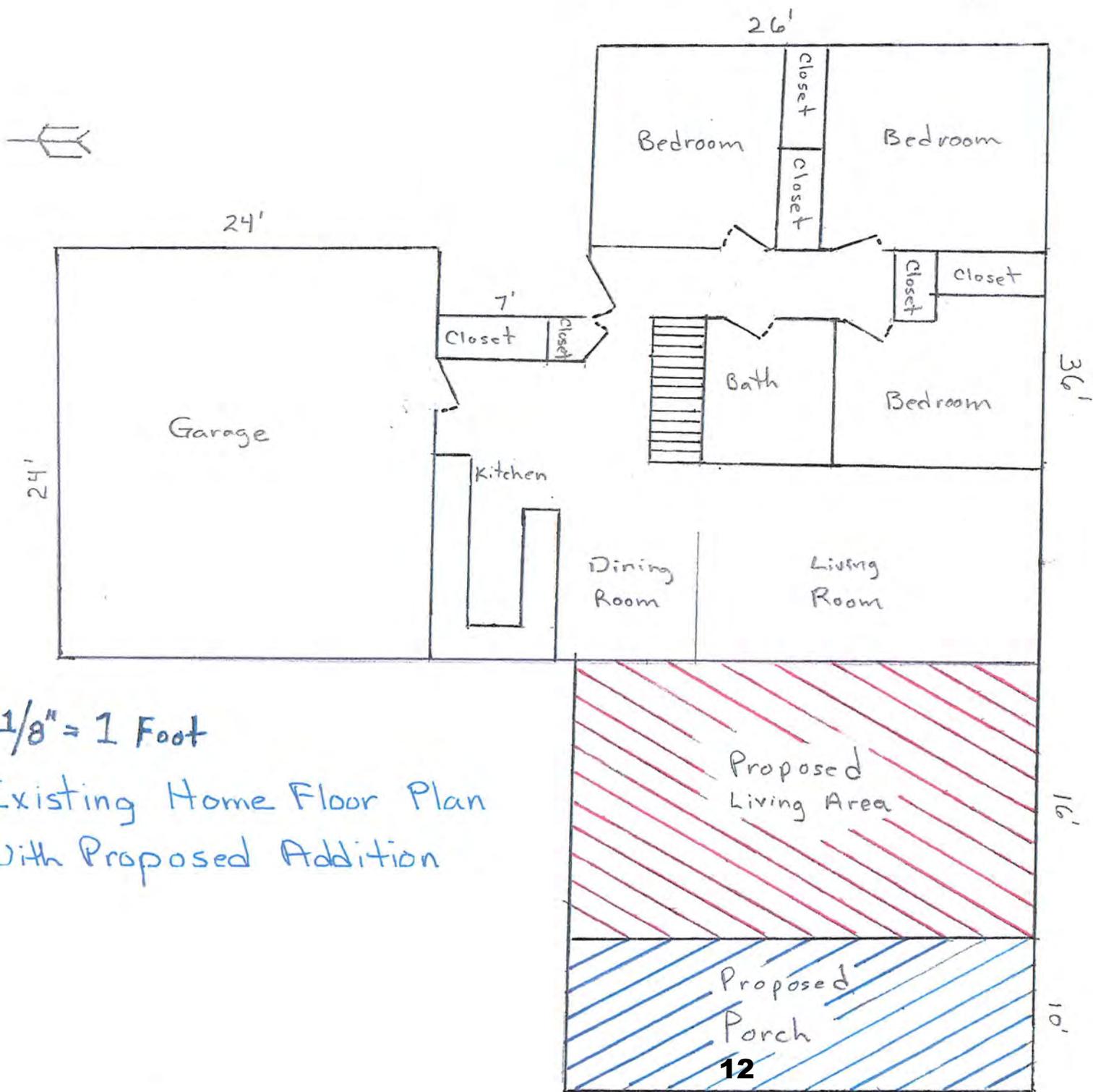
After taking a year, surveying and purchasing land to try to avoid applying for a variance, I feel I am left with no choice. At this time, I am requesting a variance be granted as my property is unique to the area, because of a steep hill, which has changed the highway right of way and the zoning laws did not exist when I designed and built my home. I feel that this is causing me an unnecessary hardship. I have also proceeded in good faith and even bought land in an attempt to comply to the current zoning laws.



Existing

1" = 40'





1/8" = 1 Foot

Existing Home Floor Plan  
with Proposed Addition

# Eau Claire County Parcel Mapping



1 inch = 40 feet

## PLSS Lines

- Meander Line
- Forty Line
- Quarter Section Line
- Section Line

## Parcel Lines

- Parcel Line
- Extended Parcel Line
- Tie Line
- Extended Tie Line
- Road Right-of-Way Lines

## Platted Lands

- Certified Survey Map
- Condominium Plat
- Assessors or Subdivision Plat

## Navigability

- Navigable
- Non-Navigable

Alternate Number = 026107103000  
Survey Map Index Number = S-2769

## Parcel Mapping Notes:

The horizontal datum is based on the Eau Claire County Coordinate System NAD\_1983\_HARN\_A41\_WI\_EauClaire\_Feet

This map is a collection of public record information and was prepared as an ongoing commitment to provide quality and up-to-date information to the public. This map is intended for information use only. Although significant care has been exercised to produce maps that safely mapping accuracy standards, these maps are only as accurate as the source data from which they were compiled. These maps are intended to be advisory and are NOT designed or intended to be used as a substitute for an accurate field survey, as performed by a Wisconsin Credentialed Land Surveyor, to determine precise property location.

Eau Claire County does not warrant, guarantee or make any representations regarding the use of, or results from the use of the data in terms of correctness, accuracy, reliability, currentness, or otherwise; and the user relies on the map and results solely at their own risk.

## Date:

Aerial Photography Flight Spring 2013  
Information Current January 1, 2013



Attached are signed statements from my two neighbors stating that they do not object to my building a 26 foot by 26 foot addition.

Date: 3/14/16

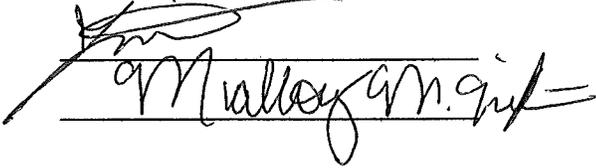
We, Phil and Sandy Birkel, do hereby state that we have no objection to our neighbors, Dennis and Nancy Janisewski, building a 26' by 16' addition with a basement, and a 26' by 10' attached porch onto the back of their home.

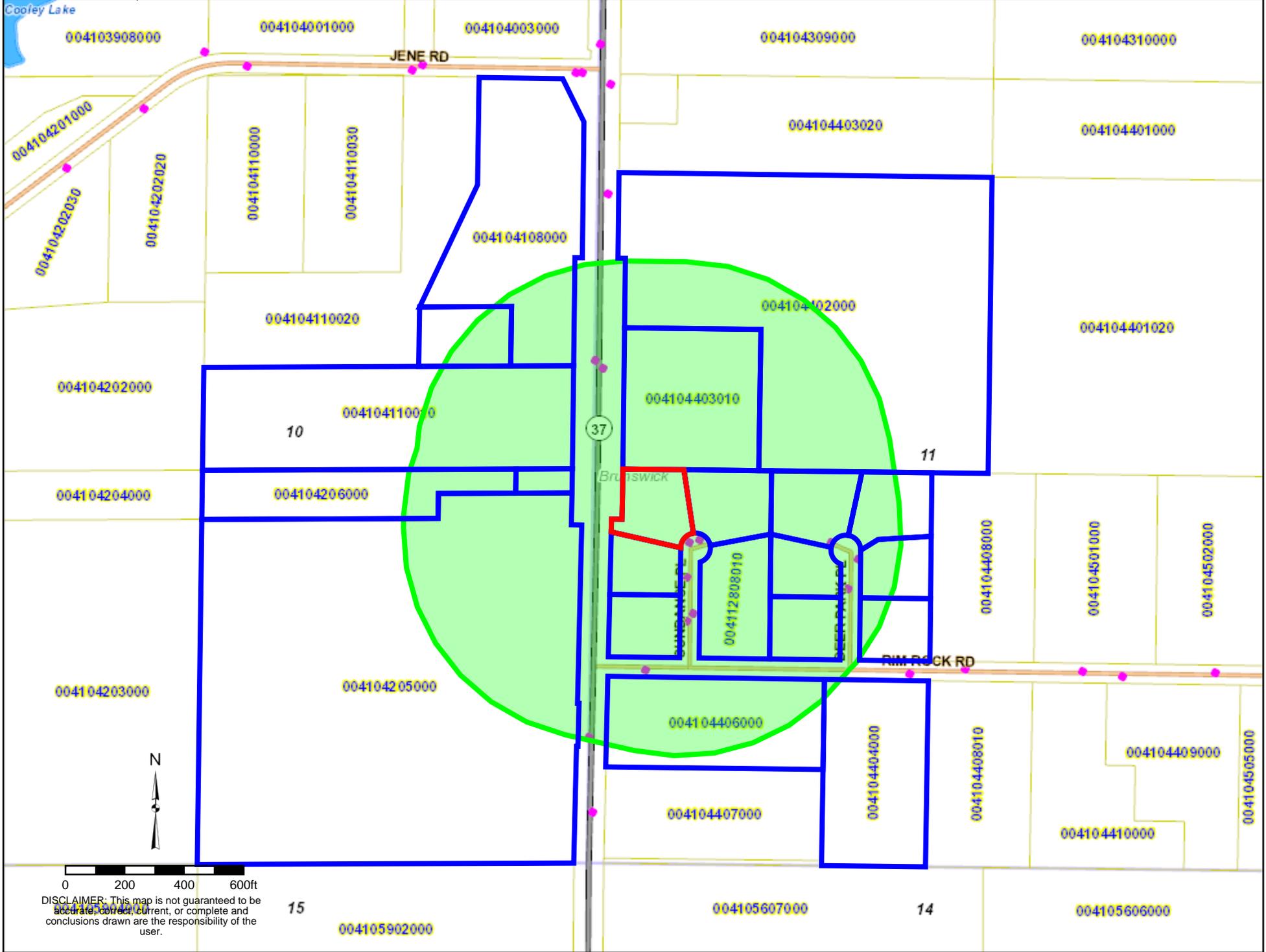
Philip J. Birkel  
Sandra A. Birkel

Good Luck Guys!

Date:

We, Jacobs & Malloy Niefert, do hereby state that we have no objection to our neighbors, Dennis and Nancy Janisewski, building a 26' by 16' addition with a basement, and a 26' by 10' attached porch onto the back of their home.

  
Malloy Niefert



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

VAR-0002-16 JANISEWSKI

Parcel Id	NAME	ADDRESS	CITY	STATE	ZIP
1800422610113302008	BIRKEL, PHILIP J & SANDRA A	S 6075 SUN DANCE PL	EAU CLAIRE	WI	54701-8636
1800422610113309004	BOHL, RONALD J & MARY L	S 6145 SUN DANCE PL	EAU CLAIRE	WI	54701
1800422610113302011	BRIAN, LARRY	S 6150 SUNDANCE PL	EAU CLAIRE	WI	54701-8636
1800422610113209000	DAIRYLAND POWER CO-OP	817 PO BOX	LA CROSSE	WI	54602-0817
1800422610104100002	FINSTAD, LYNN & NANCY (BROTT)	W 4055 JENE RD	EAU CLAIRE	WI	54701-8624
1800422610113309000	HORVAT, TIMOTHY J & CHARLOTTE I	W 3663 RIM ROCK RD	EAU CLAIRE	WI	54701-8634
1800422610113309002	JOHNSON, MARK G & LAURA L	S 6101 DEER PARK PL	EAU CLAIRE	WI	54701-8635
1800422610113300002	JOHNSON, ROSS A & PAULETTE J	W 3975 RIM ROCK RD	EAU CLAIRE	WI	54701-8634
1800422610104109000	KLOSS, LILLIAN M	W 4035 JENE RD	EAU CLAIRE	WI	54701-8624
1800422610113302005	NELSON, DOROTHY E	202 MT WASHINGTON AVE	EAU CLAIRE	WI	54703
1800422610113302000	NELSON, MARK R	420 S BARSTOW ST	EAU CLAIRE	WI	54701-3676
1800422610113302010	NIEFT, JACOB	S 6120 SUN DANCE PL	EAU CLAIRE	WI	54701-8636
1800422610104400001	RICHARDS, ALAN M & BONITA A	S 6226 STATE ROAD 37	EAU CLAIRE	WI	54701-8625
1800422610113302003	ROUFS, ANDREW	S 6090 DEER PARK PL	EAU CLAIRE	WI	54701-8635
1800422610113302004	SIMON, PAMELA R	S 6110 DEER PARK PL	EAU CLAIRE	WI	54701-8635
1800422610104400003	TOWN OF BRUNSWICK	S 7245 STATE HIGHWAY 37	EAU CLAIRE	WI	54701
1800422610104100004	ZIMMERMAN, EARL R & LINDA S	S 5994 STATE ROAD 37	EAU CLAIRE	WI	54701-8625

**Eau Claire County  
Board of Land Use Appeals**

721 Oxford Avenue, Room 1277 • Eau Claire, Wisconsin  
Monday, November 2, 2015 • 5:30 PM

**MINUTES**

**Members Present:** Randall Stutzman, Judy Bechard, Pat Schaffer, Karen Meier-Tomesh

**Members Absent:** Gary Eslinger

**Staff Present:** Rod Eslinger, Jared Grande, Jeanna Allen

1. Call to order

Chairman Stutzman called the meeting to order at 5:31 p.m., and verified that the meeting was properly noticed. Mr. Stutzman reviewed the order of the proceedings for the applicant and members of the audience.

2. A request for a variance to exceed the allowable dwelling units per government protracted Quarter-Quarter Section that was restricted as a result of rezoning to the AR District (Town of Clear Creek) VAR-0002-15 / Discussion – Action

Rod Eslinger, Land Use Manager for Eau Claire County, was sworn in by the chair. Mr. Eslinger briefly reviewed the request for the variance, noting the location of the property, as well as displaying an aerial photo of the property. He discussed the history of the parcel, including the issues concerning a rezoning petition that was granted in the 1990's. The approved rezoning is the purpose of the variance application, as the density regulations specified in the Eau Claire County Code 18.06.040 prohibit more than one dwelling unit on a government protracted Quarter-Quarter section in the A-1 district.

Paul Mirr, attorney for applicant, spoke in favor of the variance request, and was sworn in by Chairman Stutzman. Mr. Mirr stated that Mr. Eslinger's presentation covered the majority of the pertinent points, but did state that his client did not have control over the past actions of the property owner when the property was rezoned. He stated that it would be unnecessarily burdensome for his client to be required to build on an alternate Quarter-Quarter section. Further, he noted that the area designated as the proposed building site is not currently being farmed.

Lotty Macik, Chair – Town of Clear Creek, spoke in favor of the variance request, and was sworn in by Chairman Stutzman. Mr. Macik stated that the home proposed by the applicant would be an excellent addition to the tax base of the township.

No one else spoke in favor of the variance request.

Thomas E. Hibbard, neighboring property owner, spoke against the variance request, and was sworn in by Chairman Stutzman. Mr. Hibbard felt that there were other places on the 95 acres the applicant owns that would be more appropriate for a building site. He also stated that the proposed building site was "prime farm land."

No one else spoke in opposition to the variance request.

Mr. Eslinger presented the staff summary and reviewed the standards the Board must adhere to during deliberations.

The Board began deliberations at 6:01 p.m.

The Board paused deliberations at 6:11 p.m. to seek additional information.

Additional questions were asked of the Land Use Manager.

The Board reentered deliberations at 6:18 p.m.

The Board paused deliberations at 6:55 p.m. to seek additional information.

Mr. Eslinger provided clarification regarding the potential for a zoning change to the A-2 district, as well as clarification on section 18.06.040 of the Eau Claire County Code. There was discussion regarding the deed restriction enforcement tool, and how the lack of deed restriction has contributed to this property.

The Board reentered deliberations at 7:16 p.m.

The Board ended deliberations at 7:27 p.m.

**ACTION:** Motion by Randall Stutzman, 2<sup>nd</sup> by Judy Bechard, to deny the variance request for the following reasons:

- Based on fact that it would violate section 18.06.040 B., *Each government protracted quarter-quarter section under one ownership is eligible for one building site. Building site eligibility issued either by existing buildings or through the creation of a lot by a certified survey map. If a building lot is created from a quarter-quarter section, the remainder of the parcel shall not be eligible for building purposes.*
  - The standards would be that the loss of hardship or self-imposed situations, such as by: ignorance, deed restrictions, proceeding without a permit, or illegal sales are not sufficient reasons for obtaining a variance.
  - Alternative options are available to the applicant.
  - The strict letter of the law will not prevent the applicant from using the property.
- Motion carries, 3-yes, 0-no, 1-abstention.

3. WDNR recommendations on variance petitions related to shoreland and floodplain matters  
/ Discussion – Action

Mr. Eslinger reported that the Act 55 contained changes to shoreland zoning provisions. If the Planning and Development were to get a request in the future, it would be brought to the Board of Land Use Appeals for an opinion. This would allow the Board to offer an opinion, without being required to meet.

**ACTION:** Motion by Karen Meier-Tomesh, 2nd by Pat Schaffer, for county planning and development staff to work with the DNR on variance petitions that come forward related to shoreland and flood plain matters. Motion carries, 4-yes, 0-no, 0-abstention.

4. Review / Approval of Minutes from August 19, 2015 / Discussion – Action

**ACTION:** Motion by Pat Schaffer, 2<sup>nd</sup> by Karen Meier-Tomesh, to approve the minutes of the August 19, 2015 meeting as submitted. Motion carries, 4-yes, 0-no, 0-abstention.

5. Adjournment

**ACTION:** Motion by Judy Bechard, 2<sup>nd</sup> by Karen Meier-Tomesh, to adjourn at 7:35 p.m. Motion carries, 4-yes, 0-no, 0-abstention.

Respectfully submitted,

Jeanna Allen  
Clerk, Board of Land Use Appeals