### OFFICIAL MEETING NOTICE & AGENDA

The City of Stoughton will hold a meeting of the Board of Appeals on Thursday April 30, 2015 at 5:00 p.m. or as soon as this matter may be heard in the Public Safety Building, Council Chambers, Second Floor, 321 S. Fourth Street, Stoughton, Wisconsin.

#### **AGENDA**:

- 1. Call meeting to order.
- 2. Elect Vice-Chair
- 3. Elect Secretary
- 4. Consider approval of the December 18, 2014 minutes.
- 5. Scot Schafer, owner of the property at 1016 Summit Avenue, Stoughton, Wisconsin, has requested a variance from zoning code section, 78-105(2)(e)8bJ, "Rear lot line to house: Minimum 20 feet", to construct an upper story addition to the rear of the home.
- 6. Adjournment. 4/14/15mps

#### PACKETS SENT TO BOARD MEMBERS:

Russ Horton, Chair David Erdman, Secretary Bob McGeever Bob Barnett, Vice-Chair Aaron Thomson Jeff Cunningham, Alternate #1 Vacant, Alternate #2

cc: Mayor Donna Olson (Packet)
City Clerk Lana Kropf (via-email)
Receptionists (via-email)
Zoning Administrator Michael Stacey (3 packets)
Stoughton Newspapers (via-fax)
derickson@madison.com
Scot Schafer, 1016 Summit Avenue, Stoughton
Department Heads (via-email)
Council Members (via-email)
Steve Kittelson (via-email)
City Attorney Matt Dregne (Packet)
Derek Westby (via-email)
Debbie Blaney

IF YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE, PLEASE CALL MICHAEL STACEY AT 608-646-0421

"IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE, PLEASE CALL 873-6677 PRIOR TO THIS MEETING."

NOTE: AN EXPANDED MEETING MAY CONSTITUTE A QUORUM OF THE COUNCIL.

Board of Appeals Meeting Minutes Thursday, December 18 2014, 5:00 p.m. Public Safety Building, Council Chambers, 321 S. Fourth Street, Stoughton WI.

Members Present: Russ Horton, Chair; David Erdman, Secretary; Bob McGeever; Bob Barnett;

and Aaron Thomson

<u>Members Absent and Excused:</u> Josh Twedt <u>Staff:</u> Michael Stacey, Zoning Administrator

Guests: Jim Blouin; Scott Nelson; Fred Waldburger

1. Call meeting to order. Horton called the meeting to order at 5:00 pm.

2. Kathleen Johnson and Scott Nelson, owners of the property at 509 Hill Street, Stoughton, Wisconsin, have requested a variance from zoning code section, 78-105(2)(e)8bL, "Side lot line to accessory structure: Four feet from property line, four feet from alley." Horton introduced the request and opened the public hearing.

Scott Nelson, 124 S. Franklin Street explained the variance request and provided pictures of a pk stake that proved to be invalid according to the most recent survey. Mr. Nelson stated he referenced a property stake that had been used for the installation of an adjacent fence.

No one registered to speak.

Stacey stated that this request and other similar issues like this have prompted a new policy for how site plans and inspections are processed. In the future, applicants will have to provide a site plan and have their property inspected to acknowledge lot stakes have been located prior to construction of any building, addition or fencing. Stacey gave a review of the 3 tests that must be met according to state statutes for the approval of a variance as follows:

Unnecessary hardship: We believe, in this case, the ordinance is not unreasonable and does not prevent the owner from using the property for a permitted purposed. A plan was submitted and a permit was issued for the construction of a detached garage at 509 Hill Street. The owner used a front corner stake for reference which turned out to be invalid. No other stakes were found. When an inspection was done to verify the garage setback, a survey was then required. The survey indicated the existing front stake is invalid. The conclusion is the garage is slightly over the lot line by a few inches. The hardship here is that assumptions were made related to the one stake that was found and there is apparently some history of confusion related to surveys in this area.

Unique property limitation: The lot size is similar to many in the community. There are no unique property features.

Protection of the Public Interest: There does not appear to be any real positive or negative impacts to the community as a whole. We have not heard any negative comments from the public related to this request. There are not many good alternatives to correcting this non-compliance.

McGeever stated the lot stake issue is pretty common in historic areas of the community. Horton closed the public hearing.

Motion by **Barnett** to approve the variance request as presented, 2<sup>nd</sup> by **McGeever**.

Horton stated the only question is whether it meets the property limitation test and the invalid lot stake is enough for him to vote in favor of the motion.

Motion carried 5 - 0.

3. Jim Blouin, 600 W. Main Street, Stoughton, Wisconsin, has requested a variance from zoning code section, 78-706(5), "Exterior parking or storage of recreational vehicles such as mobile homes, boats, trailers, campers, snowmobiles and ATV's."

Horton introduced the request and opened the public hearing.

Jim Blouin, 600 W. Main Street provided a diagram, pictures and explained the variance request. Mr. Blouin stated all of his neighbor's are in favor of the request. Mr. Blouin brought in a concrete paver to show what he is requesting to put under the tires of the trailers.

Fred Waldburger 616 W. Main Street spoke in favor of the request.

Stacey stated the following: The issue of parking recreational vehicle and trailers comes up every year in late fall when property owners seek places to store campers, boats and trailers. The parking of these types of vehicles and trailers is a city wide issue not just an issue for Mr. Blouin. A variance is not the way to address this issue. It was recommended that Mr. Blouin request an amendment to the ordinance which he did and the Planning Commission was not in favor of a change. Staff is now working to propose a change to the ordinance that would allow the storage of recreational vehicles and trailers in the rear yard.

Stacey gave a review of the 3 tests that must be met according to state statutes for the approval of a variance as follows:

Unnecessary hardship: We believe, in this case, the ordinance is not unreasonable and does not prevent the owner from using the property for a permitted purposed. The intent of the ordinance is to limit the number of recreational vehicles and trailers on a residentially zoned lot.

Unique property limitation: The lot is similar to many properties within the City of Stoughton. There are no unique property limitations.

Protection of the Public Interest: There does not appear to be any real positive impacts for the community. We have received complaints from several residents related to this issue though not specific to Mr. Blouin's property. Mr. Blouin could comply with the requirements of the ordinance.

McGeever recalled when he was involved in creating that ordinance and remembered the intent being to have recreational vehicles stored on a driveway.

Fred Waldburger asked if this could be a conditional use.

Jim Blouin stated his home has been there for 160 years and he can't believe the request could be denied because of a couple people complaining in the community.

Stacey stated a conditional use is a different type of process though conditions could be placed on a variance approval. Stacey also said the fact people are complaining is irrelevant since State Statutes requires a variance be approved if it meets the unnecessary hardship, property limitations and public interest tests.

Motion by **McGeever** to deny the variance request, 2<sup>nd</sup> by **Barnett**.

Erdman stated he is going to vote to deny the request because it does not meet the statutory requirements for approval.

Horton is also in favor of denial because it does not meet the criteria.

Thomson agrees with Horton and will vote against the request.

Motion carried 5 - 0.

#### 4. Adjournment.

Motion by **Erdman** to adjourn at 5:50 pm,  $2^{nd}$  by **Barnett**. Motion carried 5-0.

Respectfully Submitted, Michael Stacey

Scot Schafu 1014 Summit Ave 262-880-5072

## Board of Appeals - Variance Information & Application City of Stoughton

A variance is a relaxation of a standard in a zoning ordinance and is decided by the Zoning Board of Appeals. The Board is a quasi-judicial body because it functions similar to a court. The Board is appointed and governed by the State of Wisconsin zoning enabling law, contained in 62.23 Wis. Stats. The five regular members and two alternates of the Board are citizens appointed by the Mayor and approved by Council, who give their time without compensation. The Board's duty is not to compromise ordinance provisions for a property owner's convenience rather to apply legal criteria provided in state laws, court decisions and the local zoning ordinance to a specific fact situation. The board may only approve a variance request that meets the "Three Step Test" which is part of the application process. Typically, there are five voting members present for a hearing and it takes a majority of a quorum or three affirmative votes to approve a variance when five members are present. There must be at least four board members present to conduct a hearing. The alternates are used in case of an absence or conflict of interest. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden. There are two types of variances; a "use variance" would allow a landowner to use a property for an otherwise prohibited use; while an "area variance" provides an incremental relief (normally small) from a physical dimensional restriction such as a building height or setback.

#### Next Steps:

Complete the variance review and approval form (attached) and submit a fee according to the current fee schedule;

Locate and mark lot corners and/or property lines, the proposed building footprint and all other features of your property (if applicable) related to your request so that the planning staff and/or Board members may inspect the site. There are copies of plats in the planning office at City Hall that may help an applicant locate property stakes with the use of a metal detector. In some cases a surveyor may need to be hired.

After submitting the application and fee, a planning staff member will contact the Board Chair to determine a hearing date. The Board typically will meet on the first Monday of the month as necessary, though in some cases a hearing may be necessary on a different date at the discretion of the Board Chair. Once a date has been determined, planning staff will publish a notice of the request for a variance in the city's official newspaper noting the location, reason and time of the public hearing. All property owners within 300 feet of your property and any affected state agency will also be given notice of the hearing. At the hearing, any party may appear in person or may be represented by an agent and/or attorney. The burden will be on the property owner or applicant to provide information upon which the Board may base its decision. The owner and/or representative must convince the Board to make a ruling in the owner/applicant's favor. City planning staff will provide a review of the variance request as it relates to the Three Step Test. The Board must make its decision based only on the evidence provided at the time of the hearing. The owner or representative must be present at the hearing to explain the request and answer questions because the board may not have sufficient evidence to rule in favor of the request and must then deny the application.

Note: While Wisconsin Statutes do not specifically prohibit *use variances*, there are a number of practical reasons why they are not advisable:

- <u>Unnecessary hardship must be established in order to qualify for a variance</u>. This means that without the variance, no reasonable use can be made of the property.
- Many applications for use variances are in fact administrative appeals. Often the Board of Appeals is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a use variance but an appeal of the administrator's interpretation of ordinance text.
- Zoning amendments are a more comprehensive approach than use variances. Elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses or may undermine comprehensive plan and/or ordinance objectives. Cities have approval authority for zoning ordinance amendments.
  - o Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
  - o Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.

#### Area and Use Variance Decision Process

Step 1: Consider alternatives to the variance request.

#### Step 2: Determine if all three statutory variance criteria are met.

Area Variance – Provides an Increment of relief (normally small) from a dimensional restriction such as building height, area, setback, etc.

Use Variance – Permits a landowner to put property to an otherwise prohibited use.

- 1. Unnecessary Hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Consider these points:
- Purpose of zoning restriction
- Zoning restriction's effect on property
- Short term, long term and cumulative effects of variance on nelghborhood and public interest.
- 1. Unnecessary Hardship exists when no reasonable use can be made of the property without a variance.

- 2. Unique physical property limitations, such as steep slopes or wellands must prevent compliance with the ordinance. The circumstances of an applicant, such as a growing family, elderly parents, or a desire for a larger garage, are not legitimate factors in deciding variances.
- 3. No harm to public Interests A variance may not be granted which results in harm to public interests. Public interests can be determined from the general purposes of an ordinance as well as the purposes for a specific ordinance provision, Analyze short-term, long-term and cumulative impacts of variance requests on the neighbors, community and statewide public interest.

Step 3: Grant or deny request for variance recording rationale and findings.

# City of Stoughton Procedural Checklist for Variance Review and Approval (Requirements per Section 78-910)

This form is designed to be used by the Applicant as a guide to submitting a complete application for a variance and by the City to process said application. Part II is to be used by the Applicant to submit a complete application; Parts I - IV are to be used by the City as a guide when processing said application.

I. Recordation of Administrative Procedures for City Use.

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		by compliance	with the standards set out S	ection 78-	910(3)1-6. (	See part III below

#### III Justification of the Proposed Variance for City Use.

What exceptional or extraordinary circumstances or special factors are present which apply only to
the subject property? The response to this question shall clearly indicate how the subject property
contains factors which are not present on other properties in the same zoning district.

Describe the hardship or that of other properties, and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel; unusual topography or elevation; or because the property was created before the passage of the current, applicable zoning regulations, and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, green space, and setback requirements are observed.

There are no extraodingry factors related to the property
Other than The distance from the back of the hivie tol
the lot line currently is 16ft. It is our intention
to add a 2nd floor addition to the existing first floor
footprint, of which we understand to be non-conforming

#### NOTES:

- Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.
- Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the
  sale of portions of a property reducing the remainder of said property below buildable size
  or cutting-off existing access to a public right-of-way or deed restrictions imposed by the
  owner's predecessor in title are considered to be such self-imposed hardships
- Violations by, or variances granted to, neighboring properties shall not justify a variance
- The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)
- 2. In what manner do the factors identified in 1. above, prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

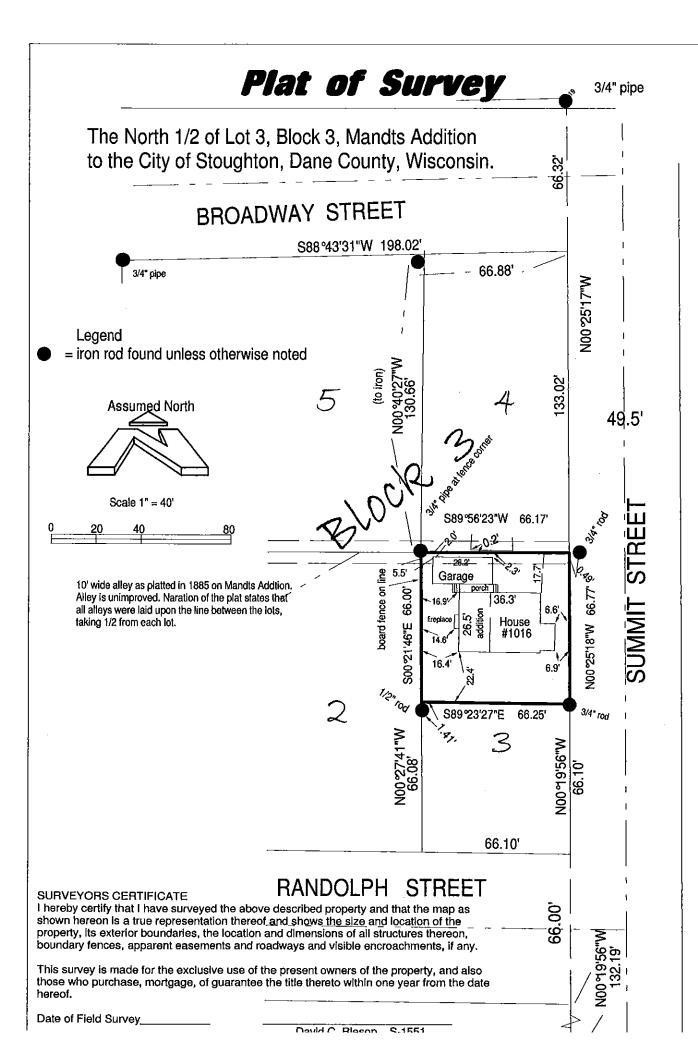
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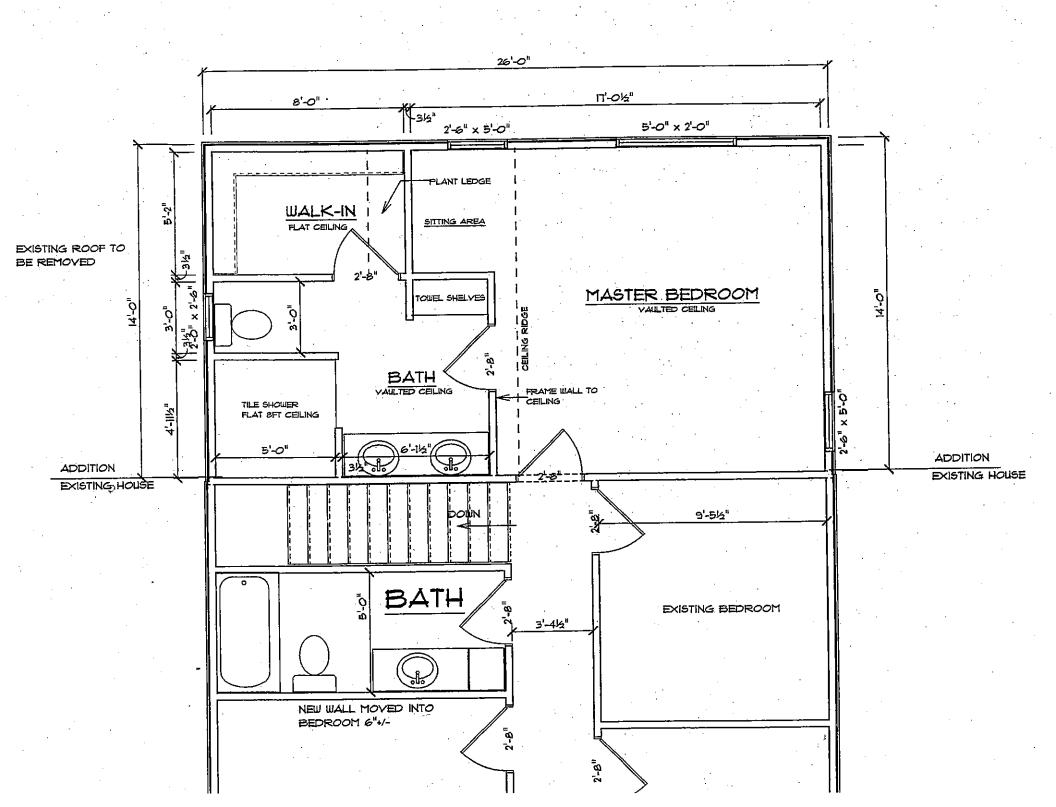
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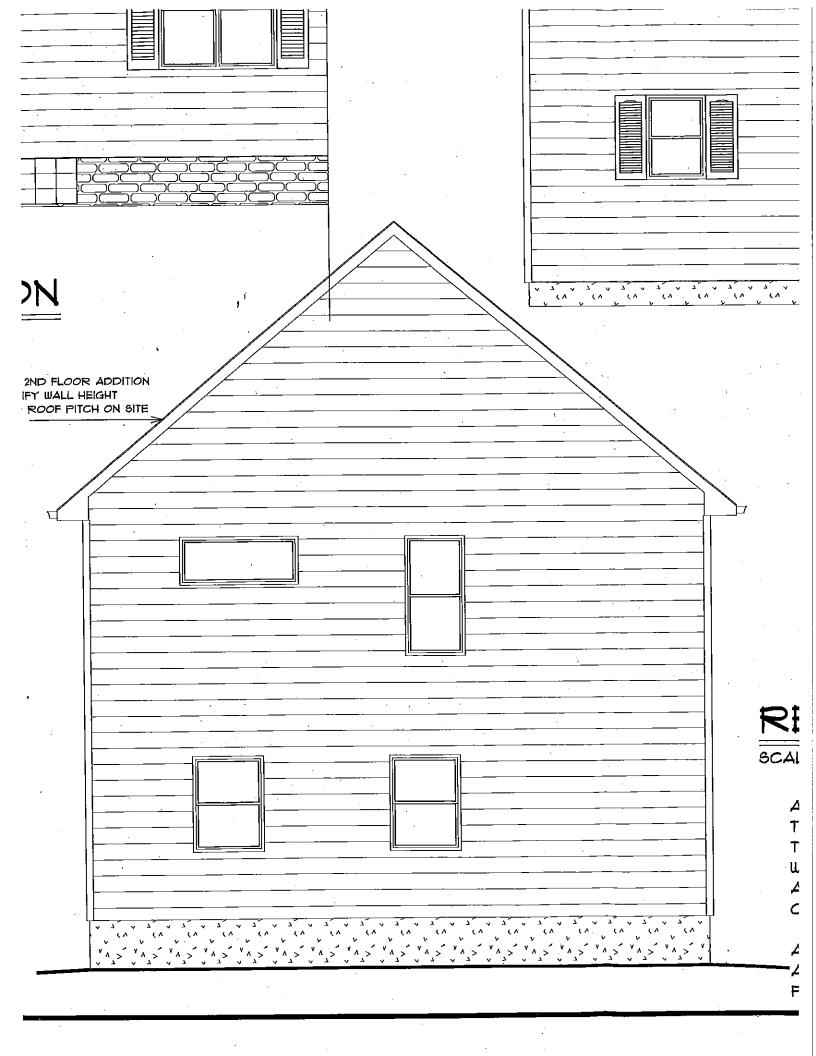
IV. Final Application Packet Information for City Use.	
Receipt of Final Application Packet by Zoning Administrator	Date: <u>4(3(15</u> By: <u>mp=</u>
Notified Neighboring Property Owners (within 300 feet)	Date: By:
Notified Neighboring Township Clerks (within 1,000 feet)	Dater By: NA
Class 1 legal notice sent to official newspaper by Zoning Admir	nistrator Date: 4[1615 By: LANA
Class 1 legal notice published on 4-16-15	By: <u>LANA</u>
•	
I certify that the information I have provided in this application is Board of Appeals members and/or City of Stoughton staff may e question.  Signed: (owner)	
Date: 4-2-2015	

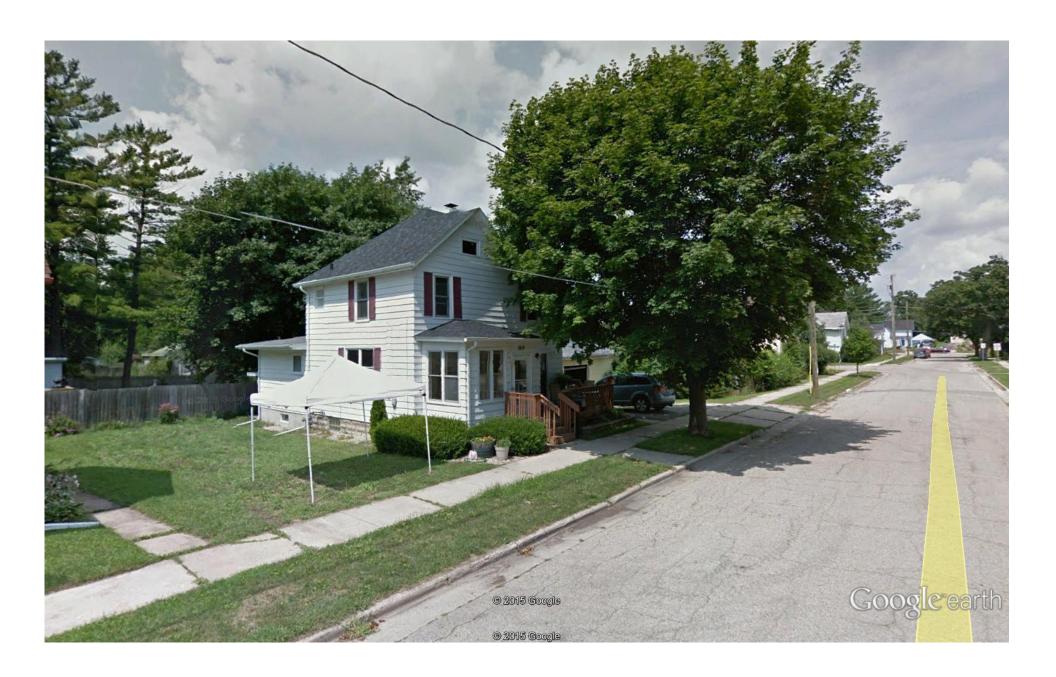
Remit to:
City of Stoughton
Department of Planning & Development
Zoning Administrator
381 E. Main Street
Stoughton, WI. 53589

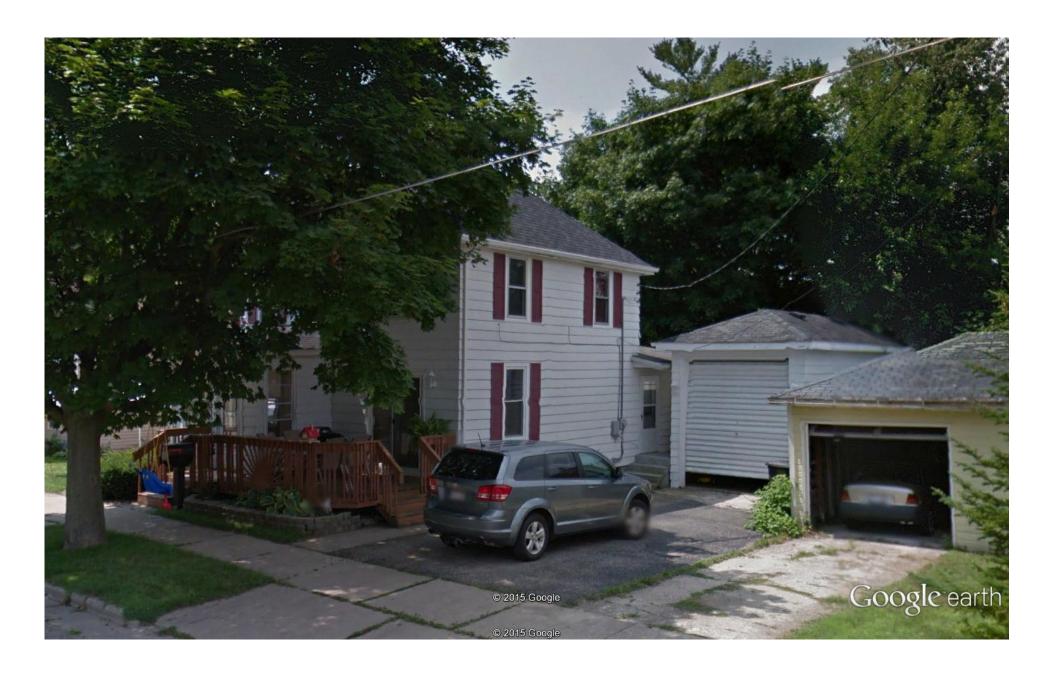
Questions? Call the Zoning Administrator at 608-646-0421











#### DEPARTMENT OF PLANNING & DEVELOPMENT REVIEW

Name and Address of Applicant: Scot Schafer

1016 Summit Avenue Stoughton, WI. 53589

THE FOLLOWING IS THE SPECIFIC ZONING ORDINANCE SECTION(S) THE APPLICANTS ARE REQUESTING RELIEF FROM:

SR6 district requirements: 78-105(2)(e)8bJ, "Rear lot line to house: Minimum 20 feet."

#### **Summary of Request**

The applicant/owner is requesting a variance from the SR6 – Single Family Residential, rear yard setback requirement for a proposed rear upper story addition. The proposed addition will not expand beyond the current envelope of the home. The addition is proposed to be 16.4 feet from the rear lot line while 20 feet is the minimum requirement.

DATE OF APPLICATION: April 3, 2015

DATE PUBLISHED: April 16, 2015

DATE NOTICES MAILED: April 13, 2015

DATE OF HEARING: April 30, 2015

FACTUAL AND LEGAL BASIS FOR THE DEPARTMENT OF PLANNING & DEVELOPMENT RECOMMENDATIONS, BASED UPON THE **STANDARDS FOR VARIANCES**:

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

The property at 1016 Summit Avenue is zoned SR-6 – Single Family Residential. The particular shape, surroundings or topographical conditions are not the issue in this case. Rather, it is a matter of the applicant/owner wanting to expand a currently legal non-conforming home. The lot is very small (approx. 66'  $\times$  66') which is why the home became non-conforming. The assumption is that at one point the home was allowed to be placed where it is on the lot in compliance with the standards at the time of construction. The zoning code has changed over time to render the structure non-conforming.

2. The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zone classification.

The conditions upon which the application is based are generally not applicable to single family properties within the City of Stoughton. This is a unique situation specific to this property. In theory, these types of non-conforming structures are supposed to be eliminated over time but in reality no one is tearing down homes to comply with the zoning code. We have to find ways to help people maintain and expand them if necessary. What happens in reality is the home owner gets frustrated, sells the home and moves on.

3. The purpose of the variance is not based exclusively upon a desire for economic or other material gain by the applicant or owner.

We believe, the purpose of the variance is not based on the desire of the applicants to gain economically or for any other material gain.

4. The alleged difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

The difficulty or hardship is caused by a very small lot with an existing legal non-conforming structure. The applicant was likely unaware of the non-conformance when purchasing the property. Changes to the zoning code over time have rendered the home legal non-conforming.

5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvement in the neighborhood in which the property is located.

We believe the granting of the variance will not be detrimental to the public welfare. The proposed addition will not expand beyond the current envelope of the home. To date, we have received no complaints regarding this request.

6. The proposed variance will not impair the use and enjoyment of adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

We believe the proposed variance should not impair the use and enjoyment of adjacent property.

#### **OFFICIAL NOTICE**

Please take notice that Scot Schafer, owner of the property at 1016 Summit Avenue, Stoughton, Wisconsin, has requested a variance from zoning code section, 78-105(2)(e)8bJ, "Rear lot line to house: Minimum 20 feet."

The property at 1016 Summit Avenue is formally described as follows: Parcel number: 281/0511-084-2603-4, with a legal description of: MANDTS ADDN BLOCK 3 N. 66 FT. LOT 3 (This property description is for tax purposes. It may be abbreviated)

The applicant is requesting a variance to allow a second story expansion which is proposed to not be beyond the current foundation of the home.

Notice is hereby given that the Board of Appeals will conduct a hearing on this matter on Thursday, April 30, 2015 at 5:00 p.m., or as soon after as the matter may be heard in the Council Chambers, Second Floor, Public Safety Building, 321 S. Fourth Street, Stoughton.

For questions related to this notice contact the City Zoning Administrator at 608-646-0421

Published: April 16, 2015 HUB