

HASTINGS BOARD OF ADJUSTMENT

A meeting of the Hastings Board of Adjustment has been scheduled for Tuesday, June 14, 2022 at 7:30 AM in the City Building, 220 North Hastings Avenue.

AGENDA:

1. Call to Order
 2. Roll Call
 3. Public Notice Notice by the Chair of the Board of Adjustment that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was posted on the bulletin boards in the City Building, that each member and the Chairman received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available fo public inspection and that said meeting is held in open session.
 4. Communications and Appearance Request
 5. Unfinished Business
 - a. Continued Appeals or Requests
 - b. Tabled Appeals or Requests
 - i. Public hearing for a request for an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska

Motion for approve an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska
 - c. Postponed Appeals or Requests
 - d. Unfinished Items
 6. New Appeals or Requests
 7. Miscellaneous
 - a. Other Items
 - i. Approval of updated City of Hastings Board of Adjustment Rules and Procedures, Revision dated 6/14/2022
 - ii. Election of Officers: Chair; Vice-Chair
 - iii. Approval of Minutes from 1-17-18 and 5-19-22 meetings
 - b. Committee Reports
 - c. Chair's Report
 - d. Staff Report
 - e. Audience Participation
8. Adjournment

Department: Development Services
Staff Contact: Brian Hurskainen
Board of Adjustment Meeting Date: 6/14/2022
File No: 2022-028
Prepared By: Clara McCully, Administrative Assistant

AGENDA ITEM SUMMARY SHEET

Description of Item:

Public hearing for a request for an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska

Motion to approve an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska

Names of People/Business affected by this action:

The applicant, the people of Hastings, and the City.

Why Board of Adjustment action is required:

Neb. Rev. Stat. 19-910 (1) The board of adjustment appointed pursuant to section 19-907 shall, subject to such appropriate conditions and safeguards as may be established by the city council or village board of trustees, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulation.

Type of action requested:

Motion

Suggested motion:

Motion for approval for an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska

Deadlines associated with action:

Not Applicable

Department head comments:

The applicant is appealing the denial of a building permit to build an attached garage at 403 Lakeside Drive.

A Building Permit Application, dated February 28, 2022, (Exhibit E) is included in the information packet (attached). There was a letter sent by the Building Inspector (Exhibit F) on March 18, 2022 noting that:

“he addition may not reduce the distance between the lot line and the building line” (Hastings City Code Section 34-604)

The current zoning of the property is R-1, Urban Single Family and must meet the setbacks of the zone except for nonconformities listed in Section 34-604. The setbacks are based off of the south lot line being the front per the definition of Lot, corner in City Code; “A lot abutting upon two or more streets, at their intersection. A corner lot shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the Building Inspector.” Per the R-1 code, with this being a corner lot, a minimum of 15 feet along the street side. Exhibit ‘A’ shows that the Assessor’s Office has the home being built in 1946, which was well before the nonconformities section of the code was written in 2009. Per Section 34-604 “Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful.” With the house being older than the code section they would be allowed to add onto the structure as long it didn’t make the nonconformity worse.

Exhibit ‘B’ is a site plan of the subject property, showing the proposed addition. The plan shows the current line of the building at 10’ while the addition increases the nonconformity to 6.5’.

Variances must meet all 4 requirements found in Neb Rev Statue 19-910 (2): No such variance shall be authorized by the board of adjustment unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board of

adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(a) The strict application of the zoning regulation would produce undue hardship:

There is a slight slope on the driveway from the street that I noticed from driving by the site and shown on Exhibit 'C', a picture from Google Maps. It is unclear how the additional garage space would fix the problem of an icy driveway or vehicles bottoming out. The driveway and slope could be altered without the garage.

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity:

A similar slope is shared with all properties along Lakeside drive as shown on Exhibit 'D', the floodplain map. The slope is designed on purpose to have water flow into Heartwell Park.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance

This is an older area of town that has most of the homes built in the 1940's. There are several that don't meet the setbacks of today and that's why we have the nonconformity section to allow them to be legal in the eyes of the code. The goal of that section is to maintain what is already there and let people use those structures, but also establish limits to not make things worse.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

Exhibit 'A' shows that the driveway as it sits was constructed in 1946; over the decades the house has still been usable with everything as it sits. This request appears to be a request of convenience rather than necessity. If the applicant would like to change the driveway to be a little flatter or less curved, a garage is not required to accomplish fixing this problem.

Recommendation:

Staff recommends a motion of disapproval for an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska

Exhibit A

403 LAKESIDE DR,

Deed: ALLEN-PICKETT GREGORY & JESSICA
 Contract:
 CID#: 3765-07-1-1555.00-000-0108
 DBA:
 MLS: 284-11458

Map Area: 1006 RINGLAND
 Route: 000-000-000
 Tax Dist: ES9 NR2 SD18 CRA HASTINGS
 Plat Page: 6-18
 Subdiv: 1555.00-COUNTRY CLUB ADD

Checks/Tags: S
 Lister/Date:
 Review/Date:
 Entry Status:

Legal: Section: ; Twp: 07; Rng: 09; Block: ; Lot: 80; Deeded Acres: 0.000
 1555.00-W65' LOT 80 COUNTRY CLUB ADD 0.16 AC

Dist TIF Fund: NONE Neighborhood: Status: 01 - Improved Location: 01 - Urban
 School Base: 01-0018 Greenbelt Acres: Use: 01 - Single Family City Size: 03 - 12,001 - 100,000
 Affiliated Code: [EMPTY] Greenbelt Loss: Zoning: 01 - Single Family Lot Size: 01 - 1 sf - 10,000 sf

Land

Land Basis	Front	Rear	Side 1	Side 2	R. Lot	SF	Acres	Depth/Unit	EFF/Type	Qual./Land						
SqFt X Rate						6,100.00	0.140			SF-3.00						
SF x Rate 2						1,000.00	0.020			SF-3.00						
Subtotal						7,100.00	0.160									
Grand Total						7,100.00	0.160									

Street

Utilities

Zoning

Land Use

SqFt X Rate	None	None	Not Applicable	Not Applicable
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Sales

Building Permits

Values

Date	\$ Amount	NUTC	Recording	Date	Number	Tag	\$ Amount	Reason	Type	Override
12/07/2021	\$255,000	C00	2021 5391						Land	\$21,300
06/11/2019	\$129,500	C00	2019 1772						Dwlg	\$138,176
02/08/2019	\$125,000	C00	2019 0707						Impr	\$0
12/04/2018	\$165,000	D01	2018 4146						Exempt	\$0
									Total	\$159,476

Res. Structure		Finish				Plumbing		Addition		Garage	
Occ. Code	101	Ttl Rooms Above #	0	Bedrooms Above #	4	Full Bath		Addition	1 of 1	Garage	1 of 1
Occ. Descr.	Single-Family / Owner Occupied	Ttl Rooms Below #	0	Bedrooms Below #	0	Shower Stall Bath		Year Built	1946	Style	Att Fr.
Year Built	1946	Living Qtrs. (Multi)	324			Toilet Room		EFA	73	W X L	0' X 0'
EFA / EFYr	73 / 1946					Lavatory		EFA Year	1946	Area (SF)	286
Arch. Dsgn	N/A	Foundation	None			Water Closet		Style	2 Sty Fr.	Year Built	1946
Style	1 Story Frame	Exterior Walls	Frame, Siding, Vinyl			Sink		Area (SF)	324	EFA	73
AreaSF	1,309 /	Roof	Comp Shingle			Shower Stall/Tub		Condition	Normal	EFF Year	1946
		Interior Finish	None			Mtl St Sh Bath		Bsmt (SF)	324	Condition	NML
		Flooring	None			Mtl Stall Shower		NoBsmt Flr(SF)		Bsmt (SF)	
		Non-base Heating		Fireplace		No Bathroom		Heat	No	Qtrs Over	None
		Floor/Wall #	0	Masonry, 1 Sty	2	Wet Bar		AC	No	Qtrs Over (SF)	
		Pipeless #	0			Whirlpool Bathroom		Attic (SF)		Qtrs AC (SF)	
		Hand Fired (Y/N)	No			Whirlpool Tub				Door Opnrs	
Condition	NML	Space Heat #	0			No Hot Water Tank				Stalls- Bsmt / Std	
		Appliances				No Plumbing					
		Range Unit	Built-In Vacuums			Sewer & Water Only					
Basement	None	Oven - Single	Intercom System			Water Only w/Sink					
No Bsmt Flr.	0	Oven - Double	Bl Stereo(SpkrsOnly)			Hot Tub					
Heat	Yes	Dishwasher				Bidet					
AC	Yes	Microwave				Fbgls Service Sink					
Attic	None	Trash Compactor				Urinal					
		Jennair				Sauna					
		Security System				W'Pool Bath w/Shower					
						Plumbing (Incl in Base)	6				
						Plumbing (Addtn'l Fixts)	2				



Bldg / Addn	Description	Units	Year						
	101 — Single-Family / Owner Occupied								
	1 Story Frame	1,309							
	Adjustment for basement - None								
#1	Bsmt Fin - Living Qtrs. (Multi) (Avg)	324 Tbl							
	Base Heat								
	Add Central Air	1,309							
	Deck #1: Wood Deck-Med	128 SF							
	Deck #2: Concrete Patio-Med	235 SF							
	Deck #3: Concrete Patio-Med	25 SF							
	Deck #4: Concrete Patio-Med	288 SF							
	Deck #5: Concrete Patio-Med	91 SF							
	Deck #6: Wood Deck-Med	162 SF							
	Plumbing	8							
#1	Fireplace: Masonry, 1 Story	2							
	Garage: Att Frame	286 SF	1946						
Adtn	2 Story Frame	324 SF	1946						
	Basement area	324 SF							

Prior Year	Comment	Value Type	Location	Class	Land	Dwlg	Impr	PP	Total Value
2021	FINAL VALUES 12-2-21	BofE	Urban	Single Fam	\$21,300	\$138,176	\$0		\$159,476
2020	12-4-2020 FINAL VALUE	BofE	Urban	Single Fam	\$21,300	\$138,176	\$0		\$159,476
2019	2019 FINAL VALUES 12-05-19	BofE	Urban	Single Fam	\$21,300	\$130,355	\$0		\$151,655
2019	Certified 5/31/2019	BofE	Urban	Single Fam	\$21,300	\$130,355	\$0		\$151,655
2018	FINAL CORRECTED VALUES 12/21/18	BofE	Urban	Single Fam	\$14,910	\$130,355	\$0		\$145,265
2018	FINAL VALUES 11-30-2018	BofE	Urban	Single Fam	\$14,910	\$130,355	\$0		\$145,265
2017		Appr	Rural	Single Fam	\$14,910	\$122,975	\$0		\$137,885
2016		Appr	Rural	Single Fam	\$14,910	\$122,975	\$0		\$137,885
2015		Appr	Rural	Single Fam	\$14,910	\$119,395	\$0		\$134,305
2014		Appr	Rural	Single Fam	\$14,200	\$119,395	\$0		\$133,595
2013		Appr	Rural	Single Fam	\$14,200	\$114,805	\$0		\$129,005
2012		Appr	Rural	Single Fam	\$14,200	\$114,805	\$0		\$129,005
2011		Appr	Rural	Single Fam	\$7,100	\$111,460	\$0		\$118,560



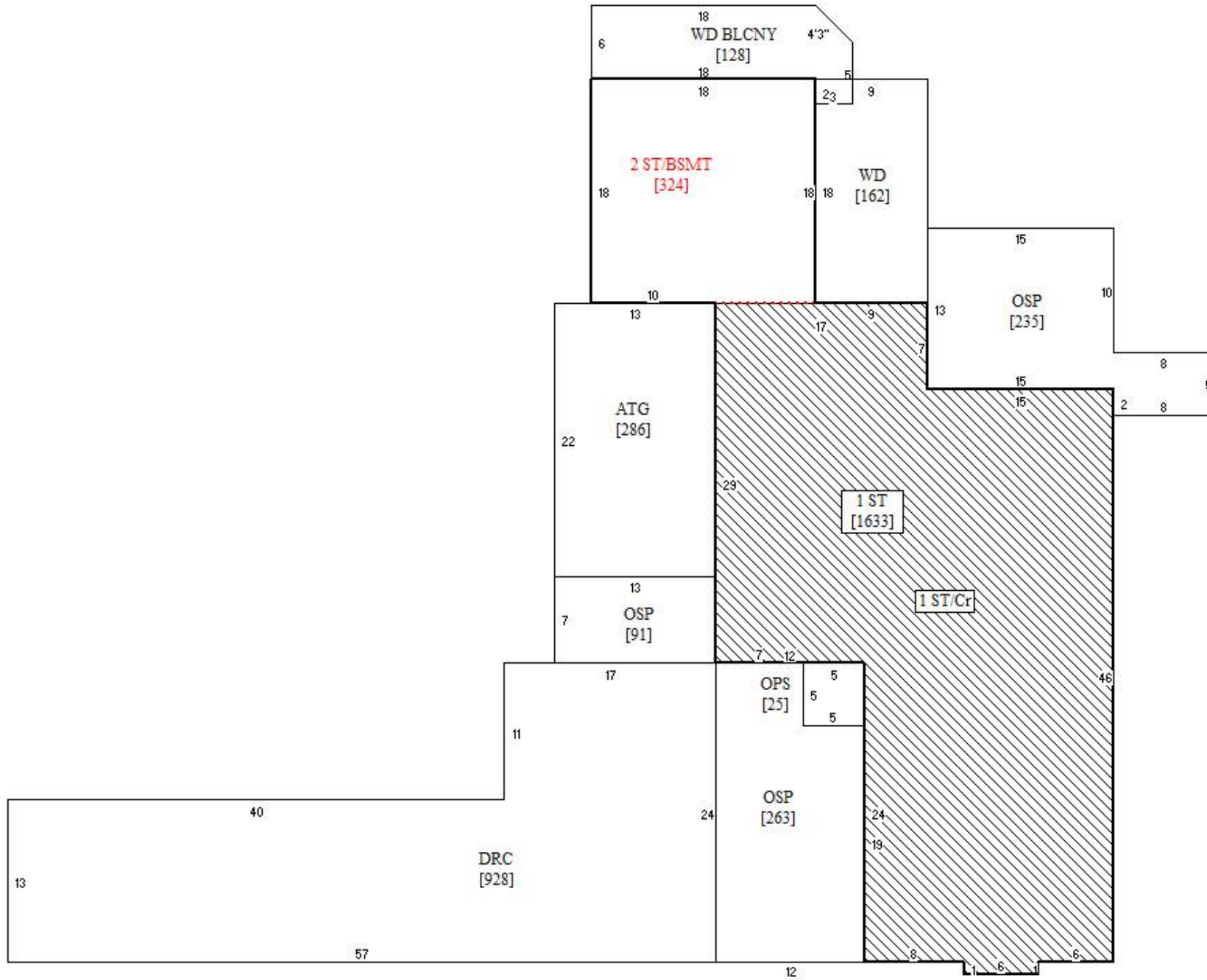


Exhibit B



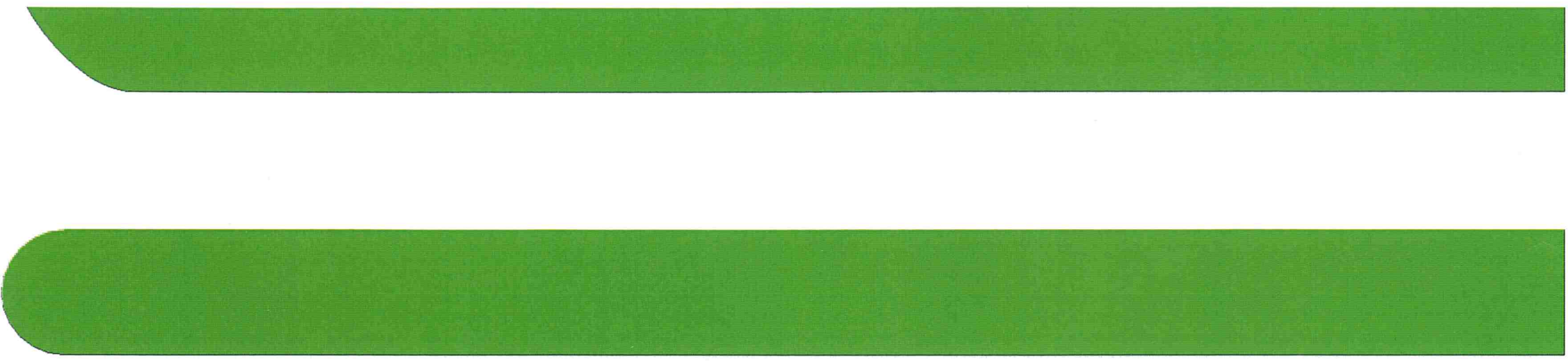
contact: Todd Brown (402) 460-7047
 cicada223@gmail.com



PROPOSED ADDITION

403 LAKESIDE DRIVE

DEC 2021

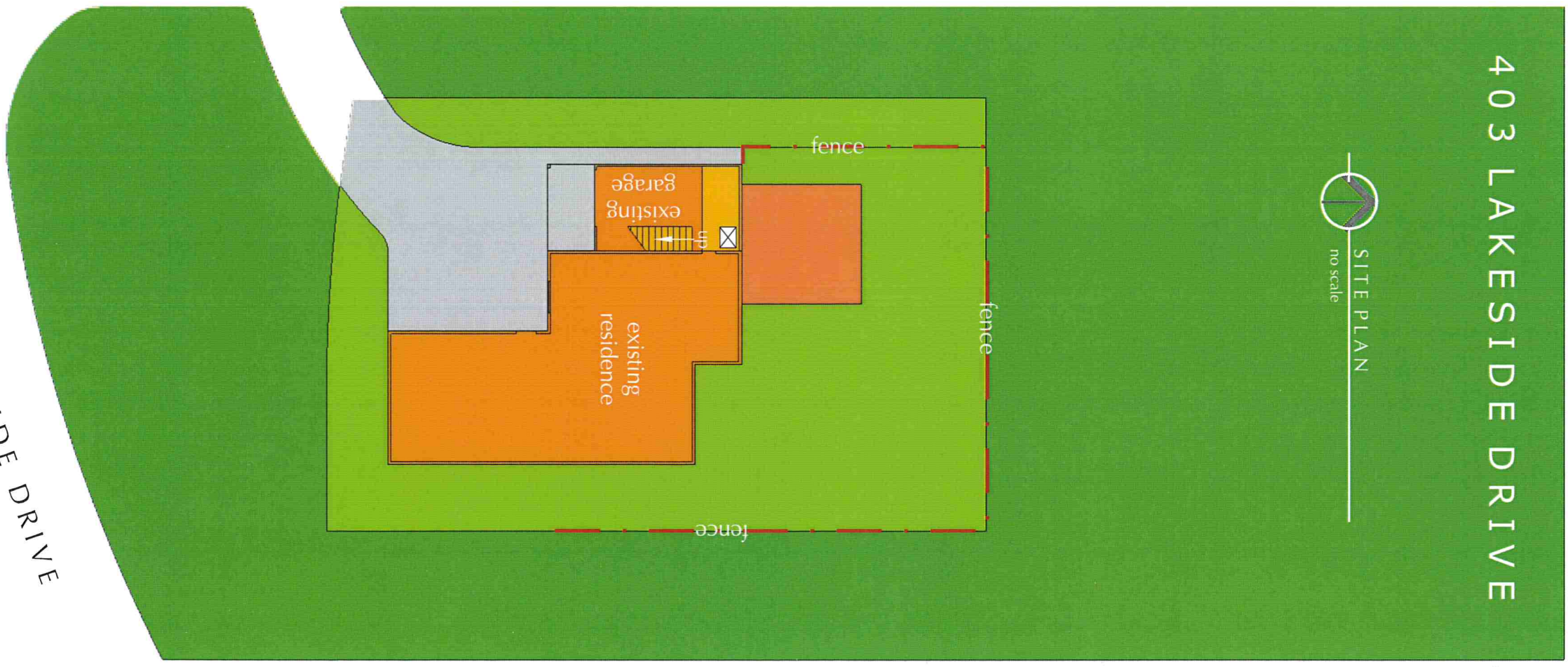


CALIFORNIA AVE

403 LAKESIDE DRIVE



SITE PLAN
no scale



LAKESIDE DRIVE

EXISTING RESIDENCE

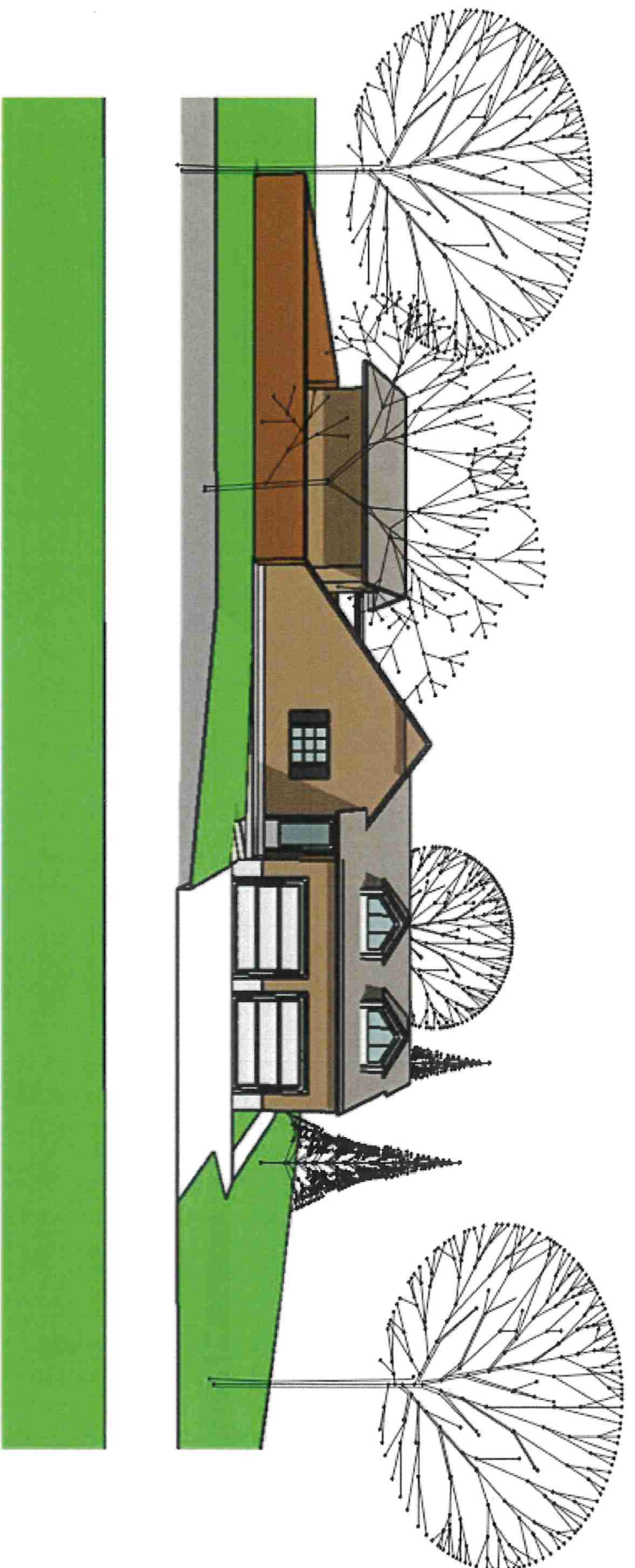


contact: Todd Brown (402) 460-7047
cicada223@gmail.com

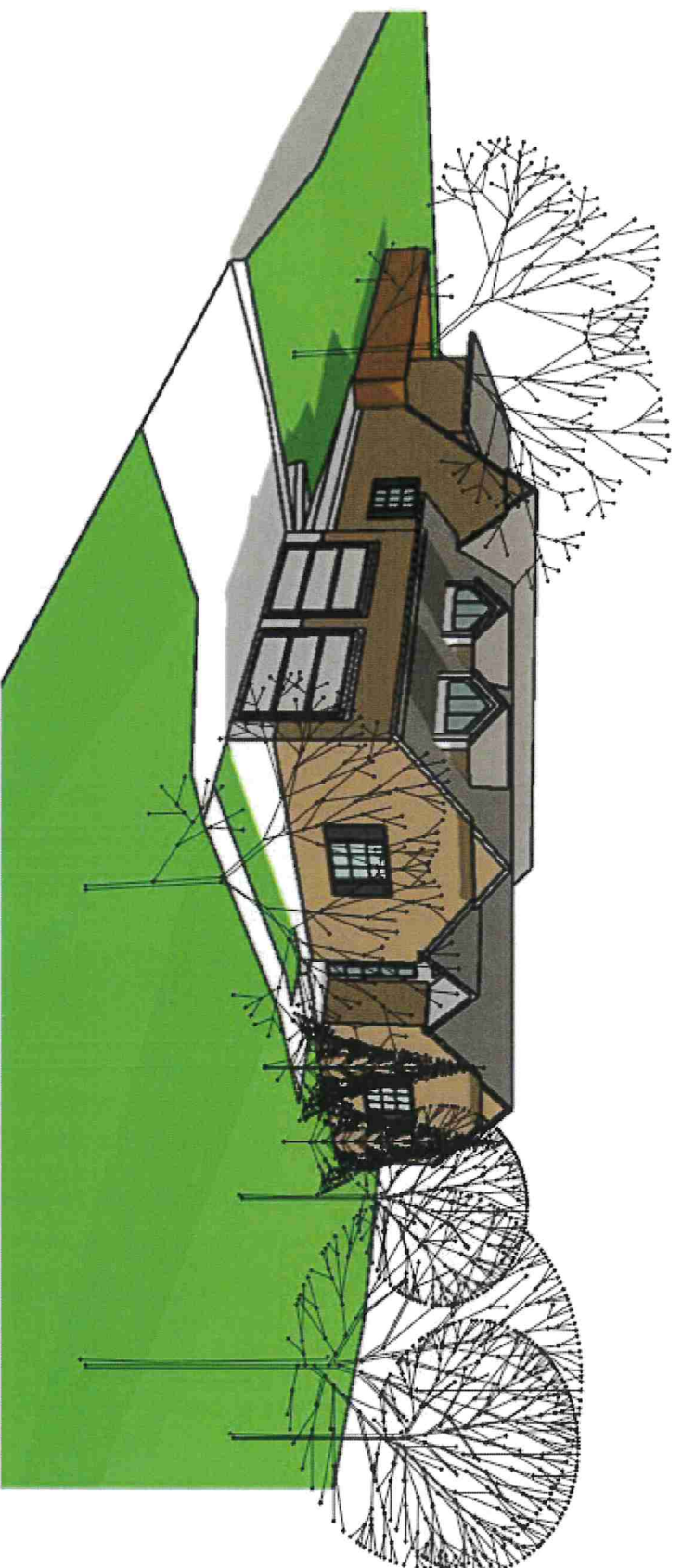
403 LAKESIDE DRIVE

DEC 2021

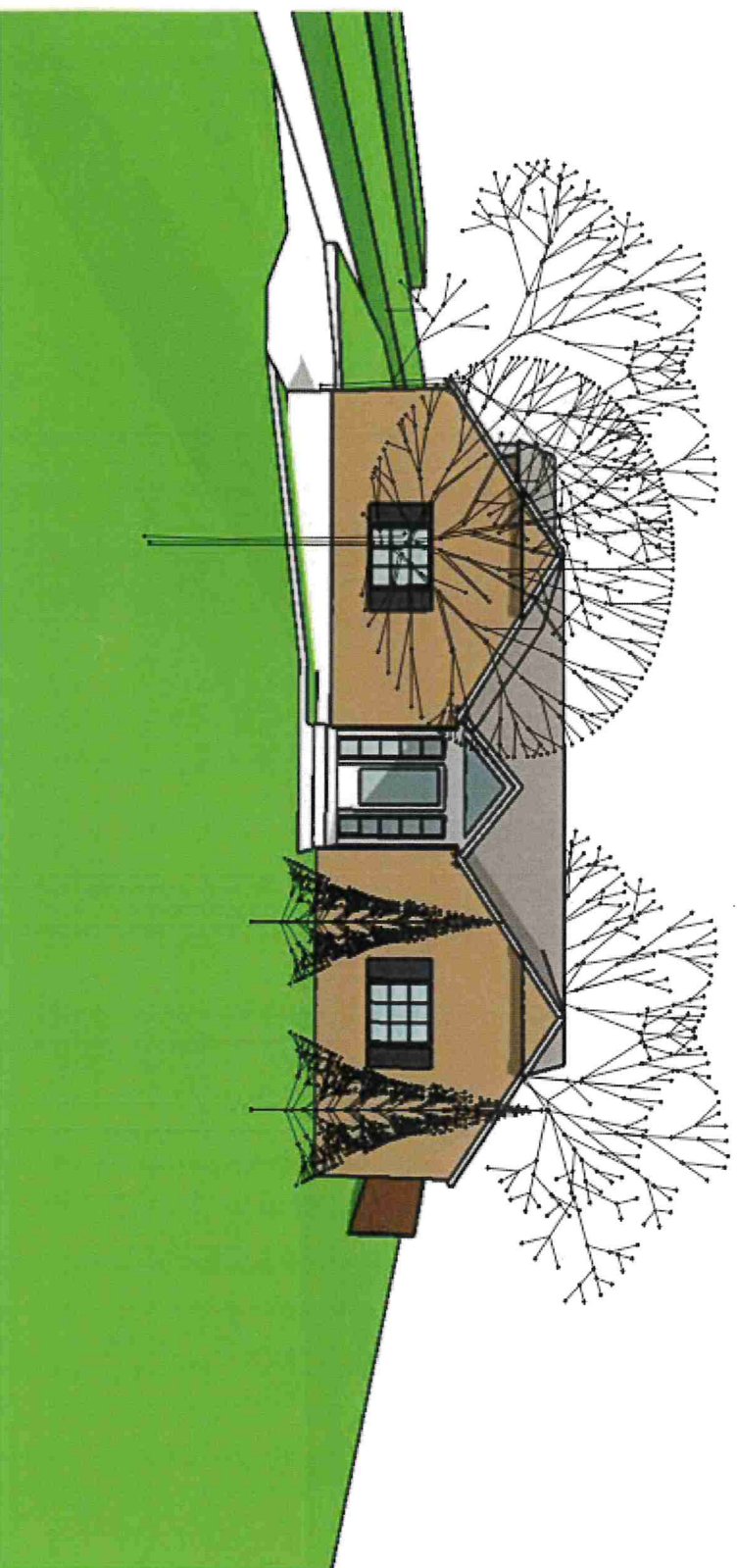
1



WEST ELEVATION



CORNER PERSPECTIVE

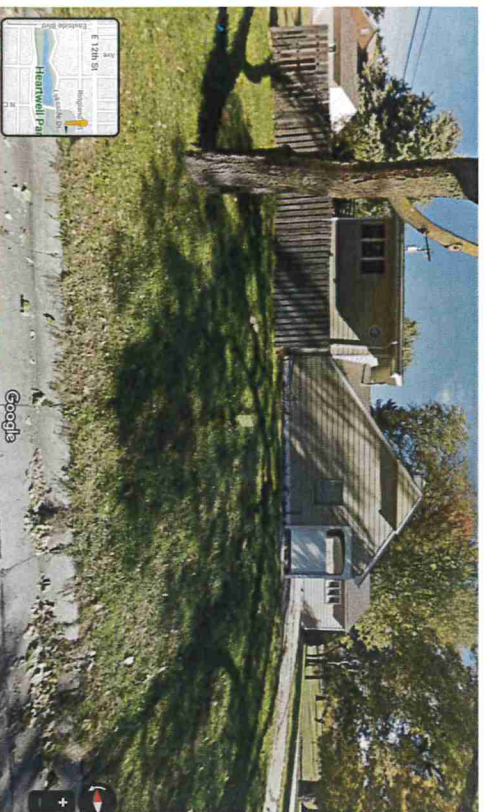


FRONT ELEVATION

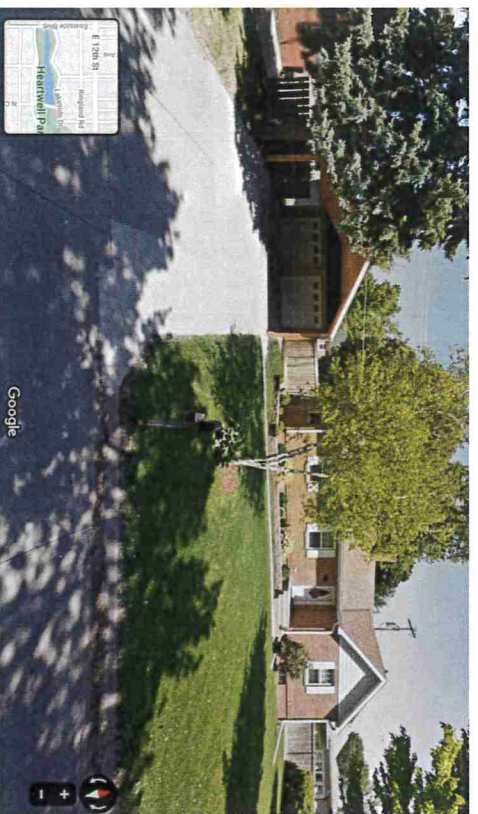




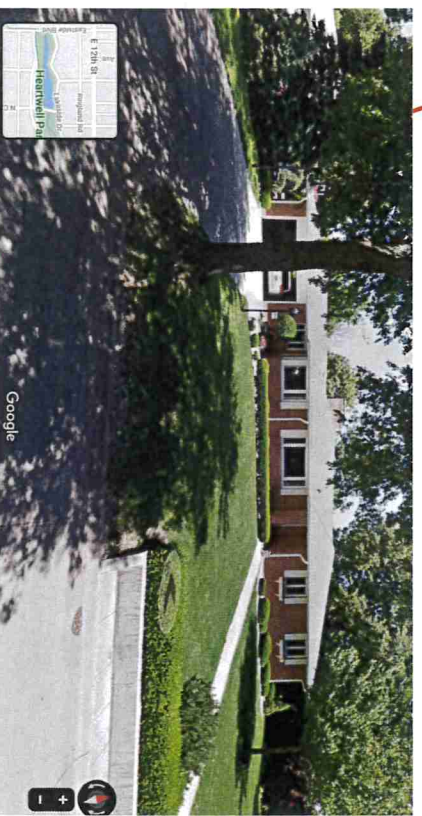
201 LAKESIDE



403 LAKESIDE



421 LAKESIDE



511 LAKESIDE



COMPARABLES



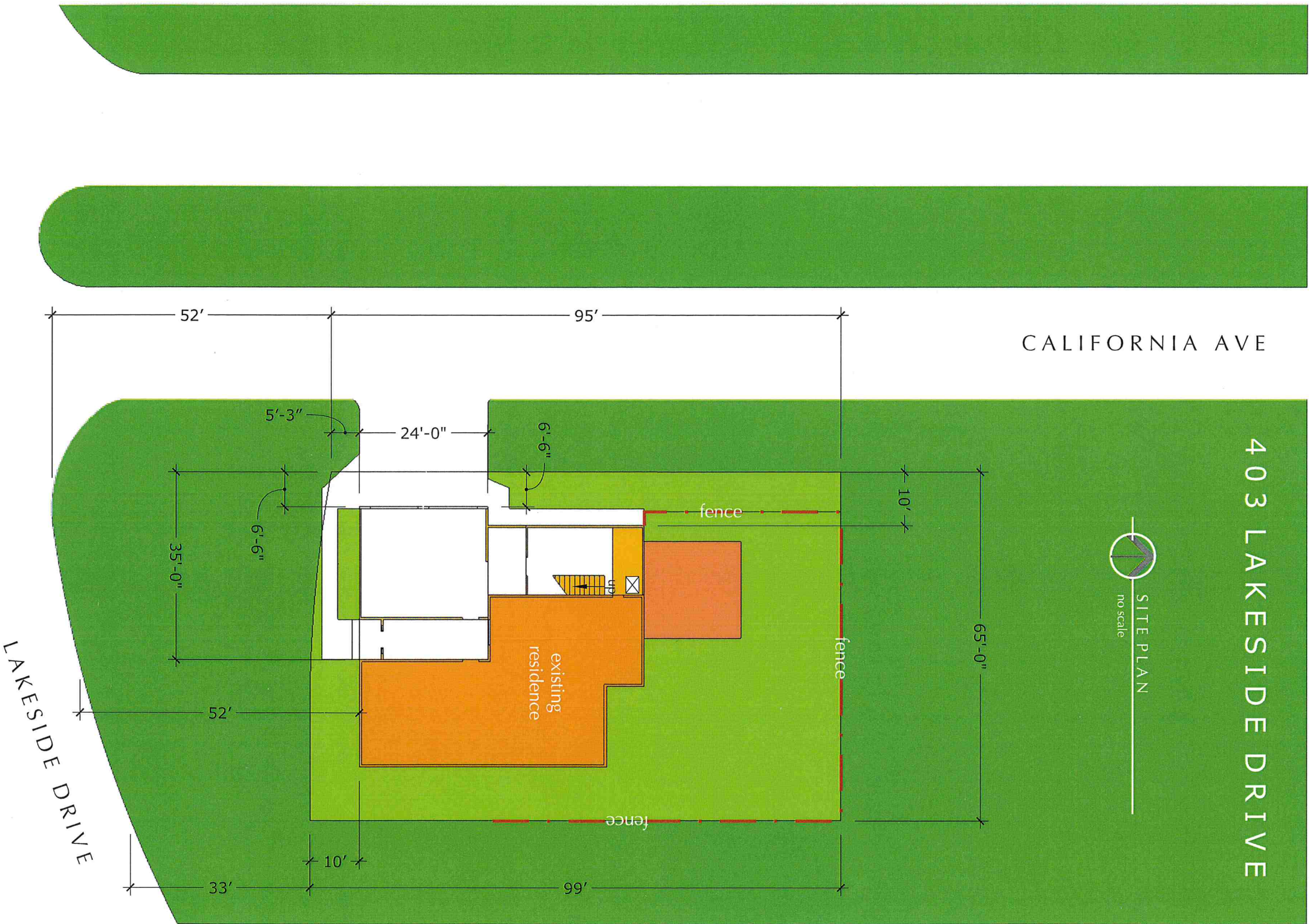
contact: Todd Brown (402) 460-7047
cicada23@gmail.com

403 LAKESIDE DRIVE

DEC 2021

403 LAKESIDE DRIVE

CALIFORNIA AVE



SITE PLAN
no scale

PROPOSED ADDITION



contact: Todd Brown (402) 460-7047
cicada23@gmail.com

403 LAKESIDE DRIVE

DEC 2021

Exhibit C



W Calhoun

Exhibit D

ArcGIS Web Map



5/11/2022, 2:00:38 PM

-  Limits
-  OneMile
-  TwoMile
-  Wellhead Protection Boundary
-  Monitoring Well
-  Addresses
-  Parcels
-  Institutional Control Area Boundary

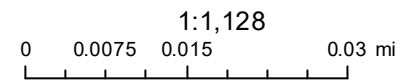


Exhibit E



Permit #: 20220169

Permit Date: 02/28/22

Permit Type:

Issue Date:

Permit Type: Building

Type of Work: Addition

Building Used As: Residential

Basement:

Location of Work: 403 Lakeside Drive

Secondary Location:

Applicant Name: Greg and Jessica Allen-Pickett

Applicant Address: 403 Lakeside Drive

City: Hastings

State: NE

Zip: 68901

Phone Number: [REDACTED]

Email: [REDACTED]

Description of Work: Garage Addition to dwelling with new entry - 632 sq. ft.

Fence Type:

Fence Materials:

Fence Height:

of Gates: 0

Special Conditions:

Project Cost: 0

Square Feet: 632

Number of Stories: 1

Ground Area: 0

Total Fixtures: 0

Roof Type:

Insulation Type:

Sign Type:

Illuminated:

Sprinklers: None

Air Conditioning: 0

Meter Needed:

Phase:

Voltage:

Amps:

Water Meter Quantity : 0

Water Meter:

Water Tap:

Sewer Tap:

Garage:

Geothermal Well: None

Name:

fee: 0.00

Primary Occupancy: R-3 Residential Single Family Dwelling

Status: Denied

Assigned To: Trevor Terwey

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
010011560	403 LAKESIDE DR		ALLEN-PICKETT GREGORY & JESSICA	██████████	R-1 Urban Single Family Residential

Plan Reviews

Date	Review Type	Description	Assigned To	Review Status
03/09/2022	Hastings Utilities		Brian Tran	In Review

Valuations

Valuation Name	Factor	Amount
U Utility, miscellaneous - VB	632.0	\$30,835.28

Fees

Fee	Description	Notes	Amount
Building Permit - Residential			\$111.01
Total			\$111.01

Payments

Date	Paid By	Description	Payment Type	Accepted By	Amount
03/09/2022	Greg D Allen-Pickett	347593			\$111.01
Outstanding Balance					\$0.00

Uploaded Files

Date	File Name
03/21/2022	11053018-Allen-Picket Letter.docx
03/18/2022	11045415-Allen-Picket Letter.docx
03/09/2022	10914661-403 lakeside permit revised site.pdf
02/28/2022	8d06ea33c598a97fd73b52351bd0d212_403_lakeside_permit.pdf

Exhibit F



March 18, 2022

Greg & Jessica Allen-Pickett
403 Lakeside Dr
Hastings, NE 68901

Re: Application for a Building Permit to construct an attached garage.

Dear Applicant:

The application for the permit at 403 Lakeside Dr. has been carefully reviewed. Unfortunately, your project does not meet the criteria as set forth in Hastings City Code and has been denied. Please review the following information regarding your addition.

Hastings City Code Sec. 34-604 – Nonconforming Structures

(d). Nothing in these regulations shall prevent the issuance of a permit to expand an existing nonconforming single family residential structure located in a residential zoning use district, **providing the addition conforms to the use, setback**, height, parking and other regulations applicable to the residential district in which the building is located.

(f) Additions to such structure may be constructed in conformance with all of the following restrictions:

- (i) Such addition must be an addition to a single family dwelling;
- (ii) The addition may continue along the existing building line of the structure as it existed at the time of the application for a building permit for said addition, provided that the addition **may not reduce the distance between the lot line and the building line** from that which existed at the time of the application for a building permit for said addition;
- (iii) **The addition may not encroach into any required side, front or back yard setback** when there was no such encroachment by the original structure at the time of the application for a building permit for said addition;
- (iv) The addition may not be constructed closer than three feet to any lot line.

If you have any questions or concerns about these conditions, or if you have alternatives to any of the above conditions that you would like to discuss, please contact me at your earliest convenience.

Sincerely,
Trevor Terwey
Building Inspector

220 North Hastings Avenue
Inspection: (402) 461-2302



www.cityofhastings.org

Hastings, Nebraska 68901
Planning: (402) 461-2302
Fax: (402) 461-2304

Sec. 34-604. Nonconforming structures.

- (1) Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - (a) Except as described in Section 34-604(1)(f), no such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
 - (b) Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than 60 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.
 - (c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
 - (d) Additions to existing nonconforming single family residential structures. Nothing in these regulations shall prevent the issuance of a permit to expand an existing nonconforming single family residential structure located in a residential zoning use district, providing the addition conforms to the use, setback, height, parking and other regulations applicable to the residential district in which the building is located.
 - (e) Nothing in this section shall prevent the expansion or alteration of an existing structure which has a nonconforming setback (minimum yard) resulting from a governmental taking action, provided the addition conforms to the use building setback, building height, parking and other regulations applicable to the district in which the building is located.
 - (f) Additions to such structure may be constructed in conformance with all of the following restrictions:
 - (i) Such addition must be an addition to a single family dwelling;
 - (ii) The addition may continue along the existing building line of the structure as it existed at the time of the application for a building permit for said addition, provided that the addition may not reduce the distance between the lot line and the building line from that which existed at the time of the application for a building permit for said addition;
 - (iii) The addition may not encroach into any required side, front or back yard setback when there was no such encroachment by the original structure at the time of the application for a building permit for said addition;
 - (iv) The addition may not be constructed closer than three feet to any lot line.

(Ord. No. 3446-1/95 and 4233-11/2009)

Sec. 34-202. R-1 Urban Single Family Residential Districts.

- (1) *Intent.* This district is intended for urban single-family residential areas with low to medium population densities where public sewer and water service is available. Structures and uses required to serve governmental, education, religious, non-commercial recreational, and other needs of such areas are permitted within such districts or are permissible as conditional uses subject to restrictions intended to preserve and protect their single-family residential character.
- (2) *Allowed uses.* See Table 200-1 in Section 34-200.
- (3) *Minimum lot requirements.*
 - (a) *Lot area*—7,000 sq. ft.
 - (b) *Lot width*—70 ft.
- (4) *Minimum yard requirements.*
 - (a) *Front yard*—25 ft.
 - (b) *Side yard*—There shall be a side yard on each side of a building not less than ten percent of the width of the lot; except that such side yard shall not be less than seven feet, and need not be more than 25 feet.

Buildings on corner lots shall provide a side yard on the street side of not less than 15 feet; provided, that this regulation shall not be so interpreted as to reduce the buildable width of a corner lot in separate ownership on August 26, 1968 to less than 35 feet.
 - (c) *Rear yard*—The depth of the rear yard shall be at least 20 percent of the depth of the lot, but such depth need not be more than 30 feet, except that for a corner lot, the rear yard setback shall be the same as for the interior side yard, as described in the preceding subsection (b). See Exhibit No. 2, Appendix A.
- (5) *Minimum dwelling size.*
 - (a) 650 square feet of living floor area.
- (6) *Maximum lot coverage by all buildings.*
 - (a) The maximum lot coverage by all buildings shall not exceed forty (40%) percent.
- (7) *Maximum height of structures.*
 - (a) Except as otherwise provided in this chapter, the maximum height of a principal structure shall be 35 feet above grade.
 - (b) The maximum height of an accessory structure shall not exceed the height of the principal structure by more than 25 percent.

(Code No. 3139-8/89, 3215-6/91, 3269-7/92, 3276-9/92, 3428-10/94, 3861-6/2002 and 4233-11/2009)



Board of Adjustment Procedure

The Board of Adjustment meets monthly at 7:30 a.m. in the City Council Chambers.

Any questions, please give Teri Salmen a call at 461-2302.

The following is the order of procedure that must be followed for applying for a variance:

1. Apply for a building permit. Permit must be denied.
2. Complete application for variance.
3. Submit:
 - a) application for variance
 - b) site plan
 - c) narrative of your variance
 - d) denied permit
 - e) a typed list of adjacent property owner(s) and address along with property owner(s) across the street

4. Filing fees must accompany submittals -

Appeal	\$200.00
Appeal - construction without building permit	\$250.00
Appeal - construction with building permit, but not in conformance	\$250.00

7. Make check payable to the City of Hastings.

220 North Hastings Avenue
Inspection: (402) 461-2302
Health: (402) 461-2305

P.O. Box 1085



www.cityofhastings.org

Hastings, Nebraska 68902-1085
Planning: (402) 461-2345
Fax: (402) 461-2304

B. Granting of this petition would permit Please See attached page 1

NEBRASKA STATE STATUTES STATE IN PART THAT:

“NO VARIANCE SHALL BE AUTHORIZED UNLESS THE BOARD FINDS THAT THE CONDITION OR SITUATION OF THE PROPERTY CONCERNED OR THE INTENDED USE OF THE PROPERTY IS NOT OF SO GENERAL OR RECURRING A NATURE AS TO MAKE REASONABLE PRACTICABLE THE FORMULATION OF A GENERAL REGULATION TO BE ADOPTED AS AN AMENDMENT OF THE ZONING REGULATIONS.”

BEFORE A VARIANCE MAY BE GRANTED, THE APPLICANT MUST PROVE THAT EACH OF THE FOLLOWING FOUR (4) CONDITIONS HAVE BEEN FULFILLED. ANSWER EACH OF THE CONDITIONS IN DETAIL, USING ADDITIONAL SHEETS IF NECESSARY.

THE UNDERSIGNED ALLEGES THAT:

1. The strict application of the Zoning Regulations would produce undue hardship; in that:
Please See attached page 2

2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; in that
Please See attached page 2

A. The existing situation is:

The property at 403 Lakeside Drive is built up on a hill with a very steep, narrow, and curved driveway. The driveway is so steep and curved that most passenger vehicles bottom out entering and exiting the driveway. The driveway also becomes unusable when there is snow on the ground. In the event of snow, the owners of the property have to park their cars on the street and then walk up to the house on foot. This also means that the cars parked on the street can be a traffic hazard and a hindrance for snow removal.

The narrow and steep driveway currently leads to a one car garage that does not have enough space to park even one car due to the presence of a furnace and a permanent, fixed staircase that leads to attic storage. The narrow and steep driveway also exits very close to the corner of California and Lakeside which creates a safety issue with traffic coming around that corner as vehicles are exiting the driveway coming down a steep curved slope. The curve and slope both limit visibility to oncoming traffic. With icy or snow conditions, cars backing out of the driveway can slide down the driveway out of control and strike traffic coming around the corner.

B. Granting of this petition would permit:

The construction of a usable two car garage and fixing the driveway to minimize the slope and take out the curve for visibility, safety, and accessibility. This would allow the homeowners and visitors to park their cars off the street without bottoming out, and also to use the driveway and garage in the event of a snow storm instead of parking on the street. It would also eliminate the safety hazard of the narrow, steep driveway exiting very close to the corner of California and Lakeside by moving the driveway entrance 10 feet further north on California, eliminating the curve, and minimizing the slope. This project would also contribute positively to the beauty and character of the neighborhood through its design and by the homeowners storing their cars in the garage and not on the street.

1. The strict application of the Zoning Regulations would produce undue hardship; in that:

- The current driveway and access to the garage is challenging to navigate and can cause damage to cars due to its steep angle, creating an undue hardship.
- The current driveway and garage are rendered unusable with snowfall, which creates an undue hardship.
- The current driveway creates a potential safety hazard given its steep slope, curve, and proximity to the corner of California and Lakeside, creating an undue hardship for the homeowners.
- There is no way to redesign the driveway in its current location due to the steep slope of the yard.
- The current garage is not usable and there's no way to make it accessible given the current configuration of the driveway, which produces undue hardship.

The homeowners are requesting a variance to build into the setback in order to locate a garage and driveway on the property that are safer and usable, particularly in inclement weather. The homeowners have worked with an architect to come up with a plan that maintains the character and charm of the house and neighborhood while allowing the construction of a two car garage that maintains access to the existing windows and natural light in the home. Strict application of the zoning regulation would produce undue hardship because it would not allow for the new garage to be built as designed.

2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; in that:

- Other properties do not have such steep slopes in the yard, making the current driveway and garage access uniquely challenging to navigate without damaging vehicles and impossible to use in inclement weather.
- Other properties in the same zoning district and vicinity don't have a steep and curved driveways and garage access that exit close to an intersection, creating a safety hazard.
- This property is surrounded by a significant amount of city right of way. The lot size is 6,175 square feet and the right of way adjacent to the property, which appears to be part of the lot and is maintained by the homeowners, is approximately 6,500 square feet. This makes the property unique.

Each of these unique features to the property creates a hardship that is not shared generally by other properties in the same zoning district and the same vicinity. This request would allow for a variance to the setback rules that is unique to this property and would not set a precedent for future variances.

3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; in that:

The homeowners have worked with an architect to create a design that complements the existing character of the home and the neighborhood.

- When looking at other properties on the block it appears that 6 of the 10 properties with frontage on Lakeside Drive between California and Elm have 2 car garages.
- The setback that the variance addresses is not towards adjacent property, the setback is towards the right of way and the street. Therefore the approval of this variance, and the construction of the garage will not have a negative impact on adjacent properties.
- Given the amount of right of way surrounding the lot, the request for a variance in setback will not give the appearance that the garage is anywhere close to the edge of the property.
- The design maintains the plane of the house in the front and matches the plane of the poured concrete apron on the side of the house.
- The property at 201 Lakeside, on the corner of Lakeside and Pine also has the same design and layout that we are proposing with the front door facing Lakeside and a two car garage around the corner. That property has 5'6" between the face of the garage and the lot line. Our design proposes 9' between the face of the garage and the lot line.

4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice; in that:

- Access to the driveway and garage without damaging a vehicle is not a matter of convenience, profit, or caprice. Damaging vehicles as we enter and exit due to the slope of the driveway is a hardship.
- Not being able to use the current driveway and garage when there is snow on the ground due to its slope and curve is also a demonstrable and exceptional hardship.
- The curve and slope of the driveway and proximity to the intersection of California and Lakeside also creates a hardship for the homeowners as it presents a potential safety hazard when we back out of our driveway, particularly if someone is coming around the corner quickly or if there is any snow or ice on the steeply sloped driveway.

The new proposed driveway would be set 10 feet further north on California and would be less steep and not curved. This will create safer conditions for us to enter and exit our property.

The garage will also provide us a place to store our vehicles, which will help contribute to the general look of the neighborhood by not having multiple vehicles parked in front of the house and on the street.

Adjacent Property Owners:

405 Lakeside Drive
Pamela and Albert Boner

400 Ringland Road
Allen Simpson

319 Lakeside Drive
Darrell and HoneyLou Bonar

318 Ringland Road
Sarah Henry



Adjacent Property Owners

60ft

-98.377 40.596 Degrees

Department: Development Services
Staff Contact: Brian Hurskainen
Board of Adjustment Meeting Date: 6/14/2022
File No: 2022-045
Prepared By: Clara McCully, Administrative Assistant

AGENDA ITEM SUMMARY SHEET

Description of Item:

Approval of updated City of Hastings Board of Adjustment Rules and Procedures, Revision dated 6/14/2022

Names of People/Business affected by this action:

The Board of Adjustment

Why Board of Adjustment action is required:

Neb. Rev. Stat. 19-908 –The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914.

Type of action requested:

Motion

Suggested motion:

Motion to approve updated City of Hastings Board of Adjustment Rules and Procedures, Revision dated 6/14/2022

Deadlines associated with action:

Not applicable

Department head comments:

The changes are to help clean up some inconsistencies within the current rules as well as requested changes. One change is adding an additional alternate member to avoid not having 5 members present for meetings. Another change is adding a yearly meeting to decide officers and setting the time at 7:30 am. We are also proposing to remove the section about audience comments not being a part of the record. This was a discussion we had with the City Attorney. Additionally, you will see a change to remove the timeline requirement, which better aligns with state statute directives. The rest of the changes deal with updating the agenda and using gender-neutral wording. Attached is a copy of the rules with the changes highlighted in red.

Recommendation:

Staff recommends approval of updated City of Hastings Board of Adjustment Rules and Procedures, Revision dated 6/14/2022

RULES OF PROCEDURES

BOARD OF ADJUSTMENT HASTINGS, NEBRASKA

ARTICLE I – AUTHORITY AND DUTIES

SECTION 1. Authority. The City of Hastings Board of Adjustment (hereinafter called “Board”) exists under authority of the ordinances of the City of Hastings, Nebraska, and any amendments thereto.

Hasting City Code Section 34-705. Board of Adjustment.

In accordance with the provisions of Nebraska State Statutes Section 19-907 there is hereby established a Board of Adjustment, hereinafter referred to as the Board. The Board shall consist of five (5) regular members plus two (2) additional members designated as alternates who shall attend and serve only when one of the regular members is unable to attend or serve for any reason, each to be appointed for a term of three (3) years and removable for cause by a majority of the elected members of the City Council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any office becoming vacant. Only one (1) member of the Board shall be appointed from the membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in their immediate loss of membership on the Board and require the appointment of another Planning Commissioner to the Board. The Board shall adopt rules for the conduct of its meetings.

SECTION 2. Duties. The duties of the City of Hastings Board of Adjustment shall be those set forth under Nebraska State Statutes and the Hastings City Code, together with such other responsibilities as may be assigned to it by the City Council of the City of Hastings, Nebraska.

Hastings City Code Section 34-706. Powers and duties.

The Board of Adjustment shall in accordance with the provisions of Nebraska Revised Statutes, Section 19-910, have only the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation relating to the location of structures.

(2) To hear and decide, in accordance with the provisions of this Chapter, requests for interpretation of this Chapter or the official Zoning Map.

(3) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this Chapter would result in peculiar and exceptional practical difficulties to or exceptional

and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Chapter.

(4) No such variance shall be authorized by the Board unless it finds that all four of the following conditions have been found to exist and the merits of the situation support such authorization.

(a) The strict application of the zoning regulations would produce undue hardship.

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

In addition, no variance shall be authorized unless the Board finds that the condition or situation of property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

In no instance, shall a variance be granted which would allow the use of land or a building which is not permitted within the zoning use district in which the property is located.

In exercising the above mentioned powers, the Board may, in conformity with the provisions of Sections 19-901 to 19-915 of the Nebraska Revised Statutes, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any regulation or to effect a variation in such regulation.

SECTION 3. Membership. The Board shall consist of five (5) voting members, appointed in accordance with the requirements of the Nebraska State Statutes and the Hastings City Code.

SECTION 4. Rules. In all matters not otherwise provided for by statute, ordinance, or these rules, the most recent edition of Robert's Rules of Order, as interpreted by the Board's presiding officer, shall govern the conduct of Board meetings.

- a. Meetings. Meetings of the Board may be called at any time by the Chair or by two members. Written notice of all meetings shall be given in accordance with the Nebraska open meetings law, Section 84-1408 et seq., Nebraska Revised Statutes. All meetings will be held at the Hastings City Building, unless notice as to the holding of a meeting at another location is given in accordance with Nebraska law.
- b. Meetings of the Board shall be scheduled on a regular yearly basis at 7:30 a.m., unless otherwise communicated. At its regular meeting each year, the Board shall elect from its members a chairman and vice-chairman. Special meetings may be held at the call of the chairman or in their absence, the vice chairman. The chairman or in their absence the vice chairman may compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicate such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Development Services Department and shall be a public record.
- c. Cancellation. Whenever it is determined that a quorum is not available for a meeting, the Chair of the Board may dispense with such meeting, and all business scheduled for such meeting will be automatically continued to the next meeting. The Chair of the Board also may dispense with a scheduled meeting in the event of natural disaster, snow emergency, or similar causes. In the event of cancellation for any reason, the Chair may require re-notification to interested parties by the Board as the Chair deems appropriate.

ARTICLE II – OFFICERS AND STAFF

SECTION 1. Quorum. Four (4) voting members of the Board shall constitute a quorum. No business shall be transacted nor shall a public hearing be opened at any meeting of the Board unless a quorum is in attendance.

SECTION 2. Voting.

- a. Majority. No action of the Board shall be official and effective unless such action is authorized at a regular or special meeting by a majority of the Board members present and voting at such meeting, except as provided in Article I above regarding appeals taken, interpretation of any map, or a request for a variance.
- b. Method. All votes of the Board on matters requiring a public hearing shall be by voice vote or electronic ballot. Secret ballot votes shall not be permitted except when voting for the Chair and vice-Chair. A voice vote, with record as to the vote cast by each member, shall only be allowed when the electronic voting machine is inoperative.

- c. Conflict of interest. A Board member may not participate in a hearing or decision concerning a matter in which he has a direct or indirect financial interest. A member shall declare for the record such known conflict or interest. Questions as to whether such conflict exists shall be determined by the Chair. When there is uncertainty as to the applicability of this section, the member shall be automatically disqualified. The Board shall enter in its records the fact that a member has been disqualified. Members are required to disclose any personal or non-financial interest in any matter before the Board, and may abstain from participation and voting on such matter. A member who has a conflict of interest shall leave the Board table. Such member may join the audience but may not give testimony on the matter before the Board. Nothing in this section shall prevent a member of the Board from presenting a petition on his/her own behalf, but members shall not appear before the Board on behalf of others.
- d. Required. Except as provided in subsection 2(c) of this Article, all Board members present shall vote on each matter for which a hearing is held. An abstention for any other reason shall have the same effect as a negative vote.
- e. Absentee. Absentee or proxy voting shall not be permitted. Members must be present for the hearing in order to be eligible to vote on any matter. In the event that a member is absent for part of a public hearing, such member's eligibility to vote on the matter shall be at the discretion of the presiding officer.

SECTION 3. Order of Business. The order of business of regular meetings of the Board shall be as listed below, except that said order of business may be changed by the Chair upon the consenting vote of a majority of those members present and voting.

- 1. Call to order
- 2. Roll Call
- 3. Pledge of Allegiance
- 4. Motion to adopt current agenda
- 5. Notice by the Chair of the Board of Adjustment that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was posted on the bulletin boards in the City Building, that each member and Chairman received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available for public inspection and that said meeting is held in open session.
- 6. Public notice reading
- 7. Approval of Minutes
- 8. Unfinished business
 - a. Continued appeals or requests

- b. Tabled appeals or requests
 - c. Postponed appeals or requests
 - d. Unfinished items
9. Public Hearing
- a. Ex parte communication
 - b. New appeals or requests
10. Miscellaneous
- a. Other items
 - b. Committee Reports
 - c. Chair's Report
 - d. Staff Report
 - e. Public comment
11. Adjournment

ARTICLE III – HEARING ON APPEALS OR REQUESTS FOR APPROVAL
OF ALTERNATE MATERIALS OR FOR REASONABLE INTERPRETATION
OR MODIFICATIONS OF THE CITY'S BUILDING OR CONSTRUCTION CODES

SECTION 1. Time of hearing. The hearing on an appeal or request shall be held within a reasonable amount of time after a notice of appeal or request is filed with the City of Hastings. Any appellant shall be given at least ten (10) days advance written notice of the time, date and place of said hearing.

SECTION 2. Procedure of Hearing.

- a. Opening the appeal or request. The Chair shall call the number of the item scheduled for hearing and declare the hearing open.
- b. Order of testimony. The order of testimony shall be as follows:
 - 1. Background and comments by the chief building official and the city planner, or their representative, of the City of Hastings
 - 2. Presentation of appeal or request by appellant
 - 3. Rebuttal if allowed by Chair
 - 4. Summation by the appellant
- c. Evidence. In any appeal before the Board, the Nebraska rules of evidence shall not apply in the presentation of evidence. Such evidence as shall be deemed

relevant by the Chair may be submitted in oral or written form, whether or not the persons presenting such evidence are present at the hearing. Oral evidence shall be taken only upon the oath of affirmation of the offering witness.

- d. Closing the hearing. After all testimony and other comments have been heard under the rules of this section, the presiding officer shall declare the hearing on the appeal or request closed and shall call for a motion. Additional testimony shall not be permitted after the close of the hearing. Any motion which has been made and seconded is open for discussion by the Board members, but such motion is closed to discussion by the appellant unless the Chair exercises the authority to permit such discussion by the appellant.
- e. Voting. Voting on a motion shall be by voice vote or electronic ballot of the members, in accordance with the provisions of Article II, Section 2(b) of these Rules. At the conclusion of the vote, the secretary shall report the recorded vote. The vote of each member shall become a part of the record on the appeal or request, and the vote of each member shall be disclosed by any Board officer or the staff to anyone requesting such information.

SECTION 3. Conduct of Hearing.

- a. Representation. The appellant may appear in person, by agent, or attorney, and may present any supporting witnesses, evidence, statements and arguments in favor of the appeal or request. Those persons in opposition or in favor of the appeal or request may appear in person, by agent or by attorney, and may present witnesses, evidence, statements and arguments. Any person interested in any appeal or request shall have the right but shall not be required to enter a written appearance in the hearing.
- b. Board participation. The Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements and arguments in the interest of a fair hearing.
- c. Identification. All persons wishing to be heard on any appeal or request must come before the Board and provide their names and addresses for the record.
- d. Commentary addressed to Board. All commentary at an appeal or request shall be addressed to the Board through its presiding officer. Such commentary shall not be permitted between opposing parties without the consent of such officer.
- e. Authority of presiding officer. The presiding officer shall have the authority to prohibit repetitious and irrelevant testimony and shall have authority to limit the length of testimony by each speaker deemed appropriate to a fair hearing.

- f. Orderly conduct. Every person appearing before the Board shall abide by the order and direction of the presiding officer. Discourteous, disorderly, or contemptuous conduct shall not be tolerated, and the presiding officer may take such action as is deemed necessary to prevent such conduct or to require the removal from the premises of any disorderly persons by the Hastings Police Department.
- g. Ex parte communication. Ex parte communication or contacts between a Board member and the appellant or officials of the City or members of the public are hereby authorized, provided that when such contacts occur, the occurrence and general substance of such contacts shall be disclosed to all parties at the next succeeding hearing, on the record.
- h. Hearing examiner. When authorized to do so by the Nebraska law or by the Hastings City Code, a hearing examiner may be appointed by the Chair. The conduct and duties of such hearing examiner shall thereupon be carried out in conformance with the applicable laws under which such appointment was made.

ARTICLE IV – DISPOSITION OF APPEALS OR REQUESTS

SECTION 1. Motions. The final disposition of any appeal or request duly filed and brought before the Board shall be in the form of a motion, properly adopted, specifically setting forth such disposition.

SECTION 2. Dismissal.

- a. Failure to appear. The Board may dismiss an appeal if the appellant or authorized representative does not appear to present and speak in favor of such appeal or request or if such appeal or request has been improperly filed.
- b. Lack of jurisdiction. The Board shall dismiss an appeal or request if it finds it has no jurisdiction over such matter.

SECTION 3. Withdrawal.

- a. Without prejudice. Any appeal or request may be withdrawn without prejudice provided a written request for withdrawal signed by the appellant or an authorized representative is received by the Board's staff at least (14) days before the scheduled hearing.
- b. With prejudice. Any request for withdrawal made less than fourteen (14) days before the scheduled hearing may be granted or denied by the Board. Such request may be in writing or oral and must state the reasons for the request. If

the Board votes to permit withdrawal, the appeal or request shall not again be placed on the agenda for hearing within a period of three (3) months from the date of the originally scheduled hearing, except upon a motion duly adopted by a majority of the members of the Board to permit such rescheduling.

- c. Not permitted. No appeal or request may be withdrawn after a motion has been made and seconded and a vote has been ordered by the presiding officer.

SECTION 4. Continuance

- a. Requests by interested parties. Any interested party may request a continuance in writing prior to the hearing and/or orally at the beginning of the hearing. The party requesting such continuance shall be required to show good and sufficient cause for such continuance, and it shall be within the discretion of the Board to grant or deny such request.
- b. Motion by Board. Any member of the Board may at any time move to continue the hearing of any appeal or request. Such a motion duly seconded and adopted shall continue the hearing to the time specified in the motion. The Board may include in the motion specific instruction for re-advertising and/or re-notification of interested parties. If such re-notification is required, the appellant may be required to pay the costs associated therewith. Requests of the Hastings City Council and officials of the City for recommendations shall not be continued except as provided in paragraph “c” below.
- c. Improper notice. If proper notice under applicable laws and Section VI of these rules has not been given, the Board shall continue the petition to allow time for proper notice to be given.

ARTICLE V – FILING PROCEDURES

SECTION 1. Application. Each appeal or request to the Board shall be on application forms prescribed by the chief building official and shall be accompanied by such information and exhibits as specified on such forms and/or required by applicable ordinances. Any communication purporting to be an appeal or request not on the prescribed forms or not containing the information required shall be considered incomplete and shall not be scheduled for hearing.

SECTION 2. Eligible Applicants. The owners of property included in any appeal or request before the Board must consent to the filing of the application. Such consent may be evidenced by the owner’s signature on said application or by a signature of a person having power of attorney authorizing such signature. In the case of property which is being purchased under a land contract, the signature of both, the contract purchasers and the contract sellers or their duly authorized agents, shall be required.

ARTICLE VII – COMMITTEE

SECTION 1. Authority. The Chair is hereby authorized to appoint permanent and temporary committees to facilitate the work of or advise the Board. Such committees may be comprised of Board members only, or they may include other interested parties. A Chair shall be appointed for each committee, and reports on their assignments shall be made a part of the record. The Chair of the Board may be a member or an ex officio member of any committee so appointed. The chief building official shall also be an ex officio member for each committee.

SECTION 2. Committee Meetings. The chief building official shall assist any and all committees established under this Section in scheduling the times and places for meetings.

ARTICLE VIII – RECORDS OF BOARD OF ADJUSTMENT

SECTION 1. Responsibility. It shall be the duty of the chief building official or their designee to maintain all Board files and records, including the official minutes of all meetings.

SECTION 2. Minutes. The chief building official shall prepare an accurate record of all hearings, official actions and committee meetings of the Board, and the minutes representing such record shall be made available within a reasonable time after such hearing or action to all members of the Board. Upon approval by the Board, copies of such minutes shall be made available to interested parties.

SECTION 3. Recordings. The chief building official may make or cause to be made electronic or digital or other mechanical recordings of the Board's proceedings. Such recording products shall remain on file in the chief building official's office for a period of not less than one year from the date of the hearing or determination, whichever is later. Such recordings shall not be removed from such office other than by order of a court of competent jurisdiction. Interested parties may listen to such recordings in the chief building official's office and may copy such recordings, under the supervision of the chief building official.

SECTION 4. Board Case Files. A file shall be maintained for each item placed on the agenda of the Board. Such files shall contain, as a minimum, the application form, and supporting conditions, or safeguards or other material related to the binding effects of the Board's action.

SECTION 5. Public Records. The records and files of the Board shall be public and shall be made available to the public.

ARTICLE IX – FEES

SECTION 1. Schedule of Fees. The Board shall recommend to the Hastings City Council a uniform schedule of fees to defray the administrative costs connected with processing and

hearing on appeals of actions of the chief building official or the city planner of the City of Hastings, Nebraska, and for other official acts.

SECTION 2. Payment Required. In no case shall the Board take action on any petition for which applicable fees have not been paid in full. No part of any fee paid pursuant to this section shall be returnable to the appellant unless authorized by the Hastings City Council.

SECTION 3. Waivers. Nothing herein shall be construed to require a fee for actions initiated in the public interest by the Board, the Hastings City Council or officials of the City of Hastings.

ARTICLE X – AMENDMENTS AND SUSPENSIONS

SECTION 1. Amendments. Amendments to the Rules of Procedure may be made by the Board at any meeting, provided, however, that the proposed amendment shall have been presented in writing at a previous meeting of the Board or the requirements of this Article have been waived by a majority of the Board as provided in Section 2 of this Article.

SECTION 2. Suspension of Rules. The suspension of any Rule of Procedure herein may be authorized by the Board at any regular or special meeting upon the affirmative vote of three (3) members, provided, however, that no rule which is required to comply with state or local law may be so suspended.

ARTICLE XI – SEVARABILITY

If any section, clause, provision, or portion of these rules shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision, or portion of these rules.

ARTICLE XII – CERTIFICATE OF ADOPTION

The foregoing Rules of Procedure of the City of Hastings Board of Adjustment are hereby adopted by the affirmative vote of the Board this ____ day of _____, 2022.

Chair

Vice- Chair

RULES OF PROCEDURES

BOARD OF ADJUSTMENT HASTINGS, NEBRASKA

ARTICLE I – AUTHORITY AND DUTIES

SECTION 1. Authority. The City of Hastings Board of Adjustment (hereinafter called “Board”) exists under authority of the ordinances of the City of Hastings, Nebraska, and any amendments thereto.

Hasting City Code Section 34-705. Board of Adjustment.

In accordance with the provisions of Nebraska State Statutes Section 19-907 there is hereby established a Board of Adjustment, hereinafter referred to as the Board. The Board shall consist of five (5) regular members plus ~~one (1) additional member~~ **two (2) additional members** designated as ~~an alternate~~ **alternates** who shall attend and serve only when one of the regular members is unable to attend or serve for any reason, each to be appointed for a term of three (3) years and removable for cause by a majority of the elected members of the City Council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any office becoming vacant. Only one (1) member of the Board shall be appointed from the membership of the Planning Commission and the loss of membership on the Planning Commission by such member shall also result in ~~his~~ **their** immediate loss of membership on the Board and require the appointment of another Planning Commissioner to the Board. The Board shall adopt rules for the conduct of its meetings.

SECTION 2. Duties. The duties of the City of Hastings Board of Adjustment shall be those set forth under Nebraska State Statutes and the Hastings City Code, together with such other responsibilities as may be assigned to it by the City Council of the City of Hastings, Nebraska.

Hastings City Code Section 34-706. Powers and duties.

The Board of Adjustment shall in accordance with the provisions of Nebraska Revised Statutes, Section 19-910, have only the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation relating to the location of structures.

(2) To hear and decide, in accordance with the provisions of this Chapter, requests for interpretation of this Chapter or the official Zoning Map.

(3) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under

this Chapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Chapter.

(4) No such variance shall be authorized by the Board unless it finds that all four of the following conditions have been found to exist and the merits of the situation support such authorization.

(a) The strict application of the zoning regulations would produce undue hardship.

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

In addition, no variance shall be authorized unless the Board finds that the condition or situation of property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

In no instance, shall a variance be granted which would allow the use of land or a building which is not permitted within the zoning use district in which the property is located.

In exercising the above mentioned powers, the Board may, in conformity with the provisions of Sections 19-901 to 19-915 of the Nebraska Revised Statutes, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any regulation or to effect a variation in such regulation.

SECTION 3. Membership. The Board shall consist of five (5) voting members, appointed in accordance with the requirements of the Nebraska State Statutes and the Hastings City Code.

SECTION 4. Rules. In all matters not otherwise provided for by statute, ordinance, or these rules, the ~~11th~~ **most recent** edition of Robert's Rules of Order, as interpreted by the Board's presiding officer, shall govern the conduct of Board meetings.

- a. Meetings. Meetings of the Board may be called at any time by the Chair or by two members. Written notice of all meetings shall be given in accordance with the Nebraska open meetings law, Section 84-1408 et seq., Nebraska Revised Statutes. All meetings will be held at the Hastings City Building, unless notice as to the holding of a meeting at another location is given in accordance with Nebraska law.
- b. Meetings of the Board shall be scheduled on a regular ~~monthly~~ **yearly** basis at **7:30 a.m., unless otherwise communicated. At its regular meeting each year, the Board shall elect from its members a chairman and vice-chairman.** Special meetings may be held at the call of the chairman or in ~~his~~ **their** absence, the vice chairman. The chairman or in ~~his~~ **their** absence the vice chairman may compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicate such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Development Services Department and shall be a public record.
- c. Cancellation. Whenever it is determined that a quorum is not available for a meeting, the Chair of the Board may dispense with such meeting, and all business scheduled for such meeting will be automatically continued to the next meeting. The Chair of the Board also may dispense with a scheduled meeting in the event of natural disaster, snow emergency, or similar causes. In the event of cancellation for any reason, the Chair may require re-notification to interested parties by the Board as the Chair deems appropriate.

ARTICLE II – OFFICERS AND STAFF

SECTION 1. Quorum. Four (4) voting members of the Board shall constitute a quorum. No business shall be transacted nor shall a public hearing be opened at any meeting of the Board unless a quorum is in attendance.

SECTION 2. Voting.

- a. Majority. No action of the Board shall be official and effective unless such action is authorized at a regular or special meeting by a majority of the Board members present and voting at such meeting, except as provided in Article I above regarding appeals taken, interpretation of any map, or a request for a variance.
- b. Method. All votes of the Board on matters requiring a public hearing shall be by voice vote or electronic ballot. Secret ballot votes shall not be permitted except

when voting for the Chair and vice-Chair. A voice vote, with record as to the vote cast by each member, shall only be allowed when the electronic voting machine is inoperative.

- c. Conflict of interest. A Board member may not participate in a hearing or decision concerning a matter in which he has a direct or indirect financial interest. A member shall declare for the record such known conflict or interest. Questions as to whether such conflict exists shall be determined by the Chair. When there is uncertainty as to the applicability of this section, the member shall be automatically disqualified. The Board shall enter in its records the fact that a member has been disqualified. Members are required to disclose any personal or non-financial interest in any matter before the Board, and may abstain from participation and voting on such matter. A member who has a conflict of interest shall leave the Board table. Such member may join the audience but may not give testimony on the matter before the Board. Nothing in this section shall prevent a member of the Board from presenting a petition on his/her own behalf, but members shall not appear before the Board on behalf of others.
- d. Required. Except as provided in subsection 2(c) of this Article, all Board members present shall vote on each matter for which a hearing is held. An abstention for any other reason shall have the same effect as a negative vote.
- e. Absentee. Absentee or proxy voting shall not be permitted. Members must be present for the hearing in order to be eligible to vote on any matter. In the event that a member is absent for part of a public hearing, such member's eligibility to vote on the matter shall be at the discretion of the presiding officer.

SECTION 3. Order of Business. The order of business of regular meetings of the Board shall be as listed below, except that said order of business may be changed by the Chair upon the consenting vote of a majority of those members present and voting.

1. Call to order
2. Roll Call
3. Pledge of Allegiance
4. Motion to adopt current agenda
5. Notice by the Chair of the Board of Adjustment that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was posted on the bulletin boards in the City Building, that each member and Chairman received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available for public inspection and that said meeting is held in open session.
6. Public notice reading

7. Approval of Minutes

~~8. Communications and appearance request~~

9. Unfinished business

- a. Continued appeals or requests
- b. Tabled appeals or requests
- c. Postponed appeals or requests
- d. Unfinished items

~~10. New appeals or requests~~ Public Hearing

- a. Ex parte communication
- b. New appeals or requests

11. Miscellaneous

- a. Other items
- b. Committee Reports
- c. Chair's Report
- d. Staff Report
- e. ~~Audience participation~~ Public comment

12. Adjournment

ARTICLE III – HEARING ON APPEALS OR REQUESTS FOR APPROVAL
OF ALTERNATE MATERIALS OR FOR REASONABLE INTERPRETATION
OR MODIFICATIONS OF THE CITY'S BUILDING OR CONSTRUCTION CODES

SECTION 1. Time of hearing. The hearing on an appeal or request shall be held ~~not less than ten (10) nor more than sixty (60) days~~ within a reasonable amount of time after a notice of appeal or request is filed with the City of Hastings. Any appellant shall be given at least ten (10) days advance written notice of the time, date and place of said hearing.

SECTION 2. Procedure of Hearing.

- a. Opening the appeal or request. The Chair shall call the number of the item scheduled for hearing and declare the hearing open.
- b. Order of testimony. The order of testimony shall be as follows:
 - 1. Background and comments by the chief building official and the city planner, or ~~his~~ their representative, of the City of Hastings
 - 2. Presentation of appeal or request by appellant

3. Rebuttal if allowed by Chair
 4. Summation by the appellant
- c. Evidence. In any appeal before the Board, the Nebraska rules of evidence shall not apply in the presentation of evidence. Such evidence as shall be deemed relevant by the Chair may be submitted in oral or written form, whether or not the persons presenting such evidence are present at the hearing. Oral evidence shall be taken only upon the oath of affirmation of the offering witness.
 - d. Closing the hearing. After all testimony and other comments have been heard under the rules of this section, the presiding officer shall declare the hearing on the appeal or request closed and shall call for a motion. Additional testimony shall not be permitted after the close of the hearing. Any motion which has been made and seconded is open for discussion by the Board members, but such motion is closed to discussion by the appellant unless the Chair exercises the authority to permit such discussion by the appellant.
 - e. Voting. Voting on a motion shall be by voice vote or electronic ballot of the members, in accordance with the provisions of Article II, Section 2(b) of these Rules. At the conclusion of the vote, the secretary shall report the recorded vote. The vote of each member shall become a part of the record on the appeal or request, and the vote of each member shall be disclosed by any Board officer or the staff to anyone requesting such information.

SECTION 3. Conduct of Hearing.

- a. Representation. The appellant may appear in person, by agent, or attorney, and may present any supporting witnesses, evidence, statements and arguments in favor of the appeal or request. Those persons in opposition or in favor of the appeal or request may appear in person, by agent or by attorney, and may present witnesses, evidence, statements and arguments. Any person interested in any appeal or request shall have the right but shall not be required to enter a written appearance in the hearing.
- b. Board participation. The Board members shall be provided adequate opportunity to examine witnesses and question any evidence, statements and arguments in the interest of a fair hearing.
- c. Identification. All persons wishing to be heard on any appeal or request must come before the Board and provide their names and addresses for the record. ~~Statements or comment from the audience shall not be allowed or accepted as part of the record.~~

- d. Commentary addressed to Board. All commentary at an appeal or request shall be addressed to the Board through its presiding officer. Such commentary shall not be permitted between opposing parties without the consent of such officer.
- e. Authority of presiding officer. The presiding officer shall have the authority to prohibit repetitious and irrelevant testimony and shall have authority to limit the length of testimony by each speaker deemed appropriate to a fair hearing.
- f. Orderly conduct. Every person appearing before the Board shall abide by the order and direction of the presiding officer. Discourteous, disorderly, or contemptuous conduct shall not be tolerated, and the presiding officer may take such action as is deemed necessary to prevent such conduct or to require the removal from the premises of any disorderly persons by the Hastings Police Department.
- g. Ex parte communication. Ex parte communication or contacts between a Board member and the appellant or officials of the City or members of the public are hereby authorized, provided that when such contacts occur, the occurrence and general substance of such contacts shall be disclosed to all parties at the next succeeding hearing, on the record.
- h. Hearing examiner. When authorized to do so by the Nebraska law or by the Hastings City Code, a hearing examiner may be appointed by the Chair. The conduct and duties of such hearing examiner shall thereupon be carried out in conformance with the applicable laws under which such appointment was made.

ARTICLE IV – DISPOSITION OF APPEALS OR REQUESTS

SECTION 1. Motions. The final disposition of any appeal or request duly filed and brought before the Board shall be in the form of a motion, properly adopted, specifically setting forth such disposition.

SECTION 2. Dismissal.

- a. Failure to appear. The Board may dismiss an appeal if the appellant or authorized representative does not appear to present and speak in favor of such appeal or request or if such appeal or request has been improperly filed.
- b. Lack of jurisdiction. The Board shall dismiss an appeal or request if it finds it has no jurisdiction over such matter.

SECTION 3. Withdrawal.

- a. Without prejudice. Any appeal or request may be withdrawn without prejudice provided a written request for withdrawal signed by the appellant or an authorized representative is received by the Board's staff at least (14) days before the scheduled hearing.
- b. With prejudice. Any request for withdrawal made less than fourteen (14) days before the scheduled hearing may be granted or denied by the Board. Such request may be in writing or oral and must state the reasons for the request. If the Board votes to permit withdrawal, the appeal or request shall not again be placed on the agenda for hearing within a period of three (3) months from the date of the originally scheduled hearing, except upon a motion duly adopted by a majority of the members of the Board to permit such rescheduling.
- c. Not permitted. No appeal or request may be withdrawn after a motion has been made and seconded and a vote has been ordered by the presiding officer.

SECTION 4. Continuance

- a. Requests by interested parties. Any interested party may request a continuance in writing prior to the hearing and/or orally at the beginning of the hearing. The party requesting such continuance shall be required to show good and sufficient cause for such continuance, and it shall be within the discretion of the Board to grant or deny such request.
- b. Motion by Board. Any member of the Board may at any time move to continue the hearing of any appeal or request. Such a motion duly seconded and adopted shall continue the hearing to the time specified in the motion. The Board may include in the motion specific instruction for re-advertising and/or re-notification of interested parties. If such re-notification is required, the appellant may be required to pay the costs associated therewith. Requests of the Hastings City Council and officials of the City for recommendations shall not be continued except as provided in paragraph "c" below.
- c. Improper notice. If proper notice under applicable laws and Section VI of these rules has not been given, the Board shall continue the petition to allow time for proper notice to be given.

ARTICLE V – FILING PROCEDURES

SECTION 1. Application. Each appeal or request to the Board shall be on application forms prescribed by the chief building official and shall be accompanied by such information and exhibits as specified on such forms and/or required by applicable ordinances. Any communication purporting to be an appeal or request not on the prescribed forms or not

containing the information required shall be considered incomplete and shall not be scheduled for hearing.

SECTION 2. Eligible Applicants. The owners of property included in any appeal or request before the Board must consent to the filing of the application. Such consent may be evidenced by the owner's signature on said application or by a signature of a person having power of attorney authorizing such signature. In the case of property which is being purchased under a land contract, the signature of both, the contract purchasers and the contract sellers or their duly authorized agents, shall be required.

ARTICLE VII – COMMITTEE

SECTION 1. Authority. The Chair is hereby authorized to appoint permanent and temporary committees to facilitate the work of or advise the Board. Such committees may be comprised of Board members only, or they may include other interested parties. A Chair shall be appointed for each committee, and reports on their assignments shall be made a part of the record. The Chair of the Board may be a member or an ex officio member of any committee so appointed. The chief building official shall also be an ex officio member for each committee.

SECTION 2. Committee Meetings. The chief building official shall assist any and all committees established under this Section in scheduling the times and places for meetings.

ARTICLE VIII – RECORDS OF BOARD OF ADJUSTMENT

SECTION 1. Responsibility. It shall be the duty of the chief building official or ~~his~~ **their** designee to maintain all Board files and records, including the official minutes of all meetings.

SECTION 2. Minutes. The chief building official shall prepare an accurate record of all hearings, official actions and committee meetings of the Board, and the minutes representing such record shall be made available within a reasonable time after such hearing or action to all members of the Board. Upon approval by the Board, copies of such minutes shall be made available to interested parties.

SECTION 3. Recordings. The chief building official may make or cause to be made electronic or digital or other mechanical recordings of the Board's proceedings. Such recording products shall remain on file in the chief building official's office for a period of not less than one year from the date of the hearing or determination, whichever is later. Such recordings shall not be removed from such office other than by order of a court of competent jurisdiction. Interested parties may listen to such recordings in the chief building official's office and may copy such recordings, under the supervision of the chief building official.

SECTION 4. Board Case Files. A file shall be maintained for each item placed on the agenda of the Board. Such files shall contain, as a minimum, the application form, and supporting conditions, or safeguards or other material related to the binding effects of the Board's action.

SECTION 5. Public Records. The records and files of the Board shall be public and shall be made available to the public.

ARTICLE IX – FEES

SECTION 1. Schedule of Fees. The Board shall recommend to the Hastings City Council a uniform schedule of fees to defray the administrative costs connected with processing and hearing on appeals of actions of the chief building official or the city planner of the City of Hastings, Nebraska, and for other official acts.

SECTION 2. Payment Required. In no case shall the Board take action on any petition for which applicable fees have not been paid in full. No part of any fee paid pursuant to this section shall be returnable to the appellant unless authorized by the Hastings City Council.

SECTION 3. Waivers. Nothing herein shall be construed to require a fee for actions initiated in the public interest by the Board, the Hastings City Council or officials of the City of Hastings.

ARTICLE X – AMENDMENTS AND SUSPENSIONS

SECTION 1. Amendments. Amendments to the Rules of Procedure may be made by the Board at any meeting, provided, however, that the proposed amendment shall have been presented in writing at a previous meeting of the Board or the requirements of this Article have been waived by a majority of the Board as provided in Section 2 of this Article.

SECTION 2. Suspension of Rules. The suspension of any Rule of Procedure herein may be authorized by the Board at any regular or special meeting upon the affirmative vote of three (3) members, provided, however, that no rule which is required to comply with state or local law may be so suspended.

ARTICLE XI – SEVARABILITY

If any section, clause, provision, or portion of these rules shall be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision, or portion of these rules.

ARTICLE XII – CERTIFICATE OF ADOPTION

The foregoing Rules of Procedure of the City of Hastings Board of Adjustment are hereby adopted by the affirmative vote of the Board this ____ day of _____, 2022.

Chair

Vice- Chair

Department: Development Services
Staff Contact: Brian Hurskainen
Board of Adjustment Meeting Date: 6/14/2022
File No: 2022-046
Prepared By: Brian Hurskainen, City Planner

AGENDA ITEM SUMMARY SHEET

Description of Item:

Election of Officers: Chair; Vice-Chair

Names of People/Business affected by this action:

Board of Adjustment

Why Board of Adjustment action is required:

In accordance with City of Hastings Rules of Procedures, nomination of officers shall be made from the floor at the annual organizational meeting of each year, and the elections of officers shall follow immediately thereafter.

Type of action requested:

Motion

Suggested motion:

Deadlines associated with action:

Not applicable

Department head comments:

Chair - The Chair shall preside over Board meetings and on behalf of the Board, shall exercise general supervision over the affairs of the Board, the appointment of committees and representatives, the determination of points of order and procedure, and the signing of all official documents.

Vice-Chair - The Vice-Chair shall have authority to act as chairman of the Board during the absence or disability of the Chair.

The positions shall be effective at the following meeting.

Recommendation:

Staff recommends election of officers be established as prescribed in the Board of Adjustment Rules and Procedures.

Department: Development Services
Staff Contact: Brian Hurskainen
Board of Adjustment Meeting Date: 6/14/2022
File No: 2022-2021839
Prepared By: Brian Hurskainen, City Planner

AGENDA ITEM SUMMARY SHEET

Description of Item:

Approval of Minutes from 1-17-18 and 5-19-22 meetings

Names of People/Business affected by this action:

Board of Adjustment

Why Board of Adjustment action is required:

The rules of procedure require the approval of the last meeting minutes.

Type of action requested:

Motion

Suggested motion:

Deadlines associated with action:

Not applicable

Department head comments:

Minutes from last 2 meetings for approval by the Board as we did not approve minutes from the meeting in May

Recommendation:

Staff recommends approval of minutes from 1-17-18 and 5-19-22 meetings

CITY OF HASTINGS, NEBRASKA
MINUTES OF BOARD OF ADJUSTMENT
Thursday, May 19, 2022

Pursuant to due call and notice thereof, a meeting of the Hastings Board of Adjustment was conducted in the City Building, 220 North Hastings Avenue, on May 19, 2022.

Call to Order: The meeting was called to order at 1:18 p.m. by Chair Krueger with the following members present: Hinton, Krueger, Schwartzkopf, Myers.
Absent: Northrop.

Moved by Hinton, Seconded by Schwartzkopf, to adopt the current agenda for the Board of Adjustment meeting.

Roll call: Ayes: Hinton, Krueger, Schwartzkopf, Myers.

Nays: None.

Absent: Northrop.

The motion passed.

3. Public Notice: Notice by the Chair of the Board of Adjustment that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was posted on the bulletin boards in the City Building, that each member and the Chairman received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available for public inspection and that said meeting is held in open session.

4. Communications and Appearance Request

5. Unfinished Business

- a. Continued Appeals or Requests
- b. Tabled Appeals or Requests
- c. Postponed Appeals or Requests
- d. Unfinished Items

6. New Appeals or Requests

a. Public hearing for a request for an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska.

Motion to approve an appeal of Hastings City Code, Section 34-202(4) and Section 34-604(1) for an attached garage addition on a property commonly known as 403 Lakeside Drive Hastings, Nebraska.

Chair Krueger let the applicant know if they are denied they can appeal to district court. There needs to be a unanimous vote for the motion to pass since only four board members are present. It is Mr. Pickett's choice to continue or table.

Greg Allen-Pickett, 403 Lakeside Drive stated he would like to delay.

The chair stated they would like the next Board of Adjustment meeting at 7:30 am.

Mr. Allen-Pickett stated he would be happy to answer any questions and board members can come view his property.

Hinton asked if the Board could meet at Mr. Allen-Pickett's property and have him show it to the Board.

Lisa Parnell-Rowe stated Development Services can arrange a site visit for the Board.

Schwartzkopf asked if all board members had driven by wouldn't it save time to just do it individually.

Development Services Director Lisa Parnell-Rowe stated Development Services could set up a meeting for all members to go to the property but discouraged individual discussion with the property owner outside of the meeting. She will confer with Clint Schukei, City Attorney, and will let the Board know whether it is acceptable to discuss with the property owner individually.

Mr. Allen-Pickett stated he will postpone.

Moved by Hinton, seconded by Schwartzkopf, to table the appeal for the next Board of Adjustment meeting.

Roll call: Ayes: Hinton, Krueger, Schwartzkopf, Myers.

Nays: None.

Absent: Northrop.

The motion passed.

7. Miscellaneous

- a. Other Items
- b. Committee Reports
- c. Chair's Report

d. Staff Report: Parnell-Rowe asked if the Board of Adjustment would like updates to the rules of procedure.

Krueger asked if Parnell-Rowe would need that feedback prior to next meeting.

Parnell-Rowe agreed to receive the feedback prior to the next Board of Adjustment meeting.

- e. Audience Participation

8. Adjournment

Moved by Hinton, seconded by Schwartzkopf, to adjourn the meeting.

Chairman

Board of Adjustment

Minutes

January 17, 2018

Pursuant to due call and notice thereof, a meeting of the Hastings Board of Adjustment was conducted in the City Building, 220 North Hastings Avenue, City Council Chambers, Hastings, Nebraska, on January 17, 2018

The meeting was called to order at 7:30 a.m. by Chair Krueger with the following members present: Krueger, Hamburger, Myers, Wissing, Northrop. A quorum was present.

The Chair led the Board in the Pledge of Allegiance.

Moved by Hamburger, seconded by Northrop, to adopt the current agenda for the Board of Adjustment meeting. Roll Call: Ayes: Krueger, Hamburger, Myers, Wissing, and Northrop.

Public Notice – Official Notice of the Meeting was published in the Hastings Tribune on January 17, 2018. Pursuant to the Nebraska Revised Statute Section 84-1412, the public was advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is located in the offices of the Development Services Department. Also, a current copy of the Nebraska Open Meetings Act is posted which is accessible to members of the public.

Corrections to the minutes of the September 7, 2016 were discussed. Moved by Hamburger, seconded by Northrop, to approve the minutes with corrections. Roll Call: Ayes: Krueger, Hamburger, Myers, Wissing, and Northrop.

7.a. Request of Richard G. & Sharon A. Fluckey, to appeal the denial of a building permit based on Hastings City Code, Section 34-206(4) for an attached garage addition to dwelling at 201 West 4th Street, Hastings, Nebraska.

Richard Fluckey, 201 W. 4th St., Hastings, Nebraska. Mr. Fluckey commented they needed a larger garage than allowed by code because Mrs. Fluckey has MS and it is progressive. A good, safe place is needed for her to get into the house. We own the house next door and hired a contractor to pour the drive to the garage next door. The contractor started to pour the driveway and then dug footings. At that point the building inspector put a stop work on the project. Mr. Fluckey was told no permit was needed for the driveways, but footings needed to be inspected and permitted. The concrete could remain as a pad.

The Chair stated for the Board to approve the variance four conditions must be met as stated in the application. Those conditions are what the Board needs to address.

1. The strict application of the zoning regulation would produce undue hardship.
2. Such hardship is not generally shared by other properties in the same zoning district and the same vicinity.
3. The authorization of such variance will not be substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

The hardship cannot be from a person, it must be a hardship with the property. That is what the Board is charged with determining.

Mr. Fluckey stated the only hardship is when those properties were originally developed and built, they were built with the intention of doing what they are doing now. A staircase was laid in block on the back side which extends 4'-4" with the porch until we were ready to add a garage. That extends out 4'-4". Several storms with high winds occurred which damaged the garage, so we removed the existing garage.

The Chair asked the applicant what his proposal was.

Mr. Fluckey stated he would like to build the garage wide enough for a car and a ramp built on the back side of the porch. The garage would be 4" inside the property line on the front, and be closer to 10' on the back. We used the centerline on the old garage as the property line because it was a shared garage.

Mr. Northrop questioned the building inspector regarding the summary. It states since the properties are zoned R-3 Multiple-Family Residential, staff considered what could happen if two or all three of these properties were combined in one lot. The R-3 district allows multiple structures on one lot. If the three properties were combined, the garage addition could be built as proposed. Is it proposed as you would like it?

Mr. Evans stated yes, that is correct.

Mr. Northrop questioned what the cost would be to combine all the properties into one lot.

Mr. Evans stated there would be an administrative plat fee which is \$100.00, filing fees at \$40-\$50 and the surveying cost, which is the big cost. The downside of combining all three properties is they become one. You cannot sell off one parcel, you would have to sell all three houses. That was not agreeable with the applicant.

Mr. Myers referenced another Board of Adjustment case in which this occurred.

Mr. Northrop stated if Mr. Fluckey would combine all three lots into one, that would solve the problem.

Mr. Fluckey did explain that during discussions. The problem with combining all three lots, at our ages, is it will be an issue for the children.

Mr. Northrop asked if it could be re-subdivided at that time.

Mr. Evans stated at that time the garage addition would need to be removed.

Mr. Northrop stated the solution now would be to combine the three into one lot.

Mr. Myers commented the building itself and setbacks is what the Board needs to discuss.

Mr. Evans stated if all three lots were combined, the Fluckeys could proceed with the project. When they re-subdivide, there is going to be some issues. There would be two non-conforming lot sizes, so

it would be difficult to approve that plat to its current configuration, because they would now no longer be able to meet setbacks and minimum lot areas. As it is now, it enjoys non-conforming, grandfathered status. The setback for 201 W. 4th St., would be virtually impossible to meet if you re-subdivided and the lot area for both 201 W. 4th St., and 207 W. 4th would be impossible to meet as well. Yes, it would get them where they wanted to go, but also realize it is shortsided to do that and cause a future problem down the road. We did discuss this at length.

Mr. Northrop stated it can be done.

Mr. Evans concurred. There is a solution. Is it the best solution? Probably not.

Mr. Northrop question a solution for who?

Mr. Evans replied for the Fluckeys, short term, yes, it works. Long term, it is probably not a great idea. I am just trying to make everyone fully informed of the facts, whether it is their children or a new owner. Regardless, it is going to be problematic for the successors in title.

Mr. Fluckey stated it would take care of it. I understand.

Mr. Northrop stated he was trying to find a solution to the problem.

The Chair stated there are two options. Either combine the lots, or reduce the size of the garage.

Mr. Myers asked about the parking issues.

Mr. Evans replied yes. City code prohibits blocking the sidewalk. He would not have outdoor parking.

Moved by Hamburger to table the issue and work on a solution, seconded by Northrop.

The Chair commented a lift is possible versus a ramp, which would conserve on space.

The Chair stated we need to act on the variance at this meeting. He could still comply with the zoning regulations.

Mr. Northrop asked Mr. Fluckey if he would be willing to work with Dale Hamburger?

Mr. Fluckey stated he had no problem with working with him.

Mr. Myers stated there is no sense tabling this. We need to make a decision now.

Sharon Fluckey, 201 W. 4th Street, Hastings, Nebraska. The garage is being built for her. If we could work with Mr. Hamburger, I have a hardship that I could fall. I would also appreciate Mr. Hamburger working with us to achieve our goal.

The Chair asked for questions. There were none.

The Chair asked for discussion on the motion. There was none.

Mr. Evans asked for a future date? We would have to get together to deny the appeal because they found a solution.

Roll call: Ayes: Krueger, Myers, Northrop, Hamburger, Headley. Nays: None.

The Chair stated the Fluckeys would be notified when the next meeting will be held.

The Chair asked for new business. There was none.

The Chair asked for Staff comments. There was none.

The Chair asked for a motion to adjourn.

Moved by Northrop, seconded by Hamburger. Roll call: Ayes: Krueger, Myers, Northrop, Hamburger, Headley. Nays: None.

Tom Krueger, Chair