



Scott County
Board of Adjustment
Monday, July 13, 2020
6:30PM

Scott County Government Center
County Board Room
200 Fourth Avenue West
Shakopee, MN



Scott County

July 13, 2020

Board of Adjustment

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**SCOTT COUNTY
BOARD OF ADJUSTMENT**

**Scott County Government Center
200 Fourth Avenue West
Shakopee, Minnesota**

**Monday, July 13, 2020
County Board Room at 6:30 PM**

AGENDA

I. ROLL CALL AND INTRODUCTIONS

II. APPROVAL OF PREVIOUS MINUTES FROM MARCH 9, 2020 BOA

III. PUBLIC HEARING – 6:30 PM DONALD GIESEN VARIANCE (PL#2020-032)

- A. Request for a Variance to Increase a Legal Non-conforming Structure by 63% of the Existing Square Footage, Which is Over the 50% Expansion Allowed by Ordinance.

Location:	Section 36
Township:	Helena
Current Zoning:	A-1

IV. GENERAL & ADJOURN



SCOTT COUNTY
BOARD OF ADJUSTMENT
MEETING MINTUES

Scott County Government Center
200 Fourth Avenue West
Shakopee, Minnesota

Monday, March 9, 2020
6:30 PM

I. ROLL CALL AND INTRODUCTIONS

Chair Hartmann opened the meeting at 6:30 PM with the following members present: Ray Huber, Gary Hartmann, Ed Hrabe, Lee Watson, Thomas Vonhof, and Barbara Johnson. Donna Hentges was absent with notice.

County Staff Present: Brad Davis, Planning Manager; Marty Schmitz, Zoning Administrator; Greg Wagner, Principal Planner; Nathan Hall, Associate Planner; Mary Von Eschen, Environmental Services; Deb Brazil, Administration; Tom Wolf, County Board Commissioner; and Deputy Clerk to the Board, Barb Simonson.

II. APPROVAL OF NOVEMBER 12, 2019 BOARD OF ADJUSTMENT MINUTES.

Motion by Commissioner Johnson; Second by Commissioner Vonhof to approve the November 12, 2019 BOA minutes. The motion carried unanimously.

III. PUBLIC HEARING 6:30 PM AUSTIN SEPTIC VARIANCE (PL#2020-008)

1. Request for a Variance from the required ten (10) foot property line setback to one (1) foot and from the required ten (10) foot structure setback to two (2) feet to install a septic holding tank.

Location: Section 8
Township: Blakeley
Current Zoning: A-1

Nathan Hall presented the staff report for this application. The specific details within the staff report and a video are available on the Scott County Website: [March 9, 2020 Board of Adjustment Agenda Packet](#). (To view the staff report on the website, click on the download arrow and click on Agenda, Save and Open. Next open the bookmark at the top of the page and click on the Austin Variance project.)

Comments and Questions from the Commissioners:

Commissioner Huber inquired as to the depth of the tank and how much cover on the top is required. *Mr. Hall referred the matter to the Environmental Services Staff present at the meeting.*

Mary Von Eschen, Environmental Services Staff approached the podium and reported the tank size to be 6.5 feet wide by 13 feet long with a depth of 4 feet. There will be 2 feet of cover on the top, anything less than that would require additional insulation.

Commissioner Hartmann inquired if the area is subject to flooding. *Ms. Von Eschen reported that it is not as it is above the flood area. The existing tank is in the railroad right of way.*

Commissioner Johnson asked how the insulation effects the tank space. *Ms. Von Eschen explained the insulation is usually about 2 inches of Styrofoam around the tank and does not affect the tank space.*

Commissioner Johnson asked if the addition of the Hamlet zoning overlay would change the setbacks on this project. *Mr. Hall explained the overlay zoning being proposed for the Hamlet does not change the underlying zoning of A-1 or the setbacks that are in place.*

Chair Hartman opened the meeting up to the public:

Resident Arlene Albrecht (24785 Chatfield Dr) is concerned about:

- How the variance will affect her property
- How the proposed Hamlet zoning overlay may affect any business that may want to come onto the prime property which is located on a corner
- Could the home on the subject property become a duplex
- What can happen if the tank does not get pumped and where does it back up if not pumped

Mary Von Eschen, from Environmental Services responded that it is a holding tank not a septic system with a drainfield. There is not a setback from septic system to septic system. For a new well there is a 50-foot setback and the applicant is placing the holding tank on the small place they have available. They will be having engineers looking at the footings and placement to ensure it will not affect neighboring property. If the tank did not get pumped and had a backup, it would back up into the home.

Commissioner Vonhof asked for verification that septic systems and tanks are sized to the residence. *Ms. Von Eschen confirmed they are typically sized to the residence however in this case the property had some size limitations so the most appropriately sized tank for the space will be used which is 3,000 gallons. If it is smaller, then it will need pumping more often.*

Commissioner Johnson asked for clarification on the concern the home may become a duplex and about the potential for the property to become commercial.

Applicants Joshua and Elizabeth Austin approached the podium and explained the first issue they are addressing is the septic tank. At this time, they have not discussed or made plans to change the property into a duplex. They are first tackling the septic issue. If in the future, should they want to pursue a change to a duplex, they would go through the proper channels.

Planning Manager Brad Davis reported that the property is currently zoned A-1 and at this time that zone only allows a single-family home. In addition, regarding the commercial use questions, Mr. Davis reported the proposed overlay zoning, allowing more commercial uses, would require more lot size area than the subject property has at this time. For example, it would take 2 or 3 lots put together and a properly sized standard septic system for the properties to be considered for commercial use. The applicants acknowledged this information.

Noting no further comments from the public there was a motion by Commissioner Vonhof; second by Commissioner Huber to close the public hearing. The motion carried unanimously.

Motion by Commissioner Watson; second by Commissioner Huber to approve the variance based on the findings listed in the staff report, to recommend approval of the requested variance from the required ten (10) foot property line setback to one (1) foot and from required ten (10) foot structure setback to two (2) feet to install a septic holding tank, prior to issuing a permit for the holding tank, the applicant shall receive approval from a licensed civil/structural engineer stating that the placement of the holding tank does not pose a threat to the nearby structures. Also noting Blakeley Town Board recommended approval at their January 2020 meeting.

The motion carried unanimously.

Criteria for Granting Variance:

1. *The conditions causing the hardship are unique to the property, applicant, or licensee*

The conditions causing the hardship are due to the small size of the property, the location of the home and well, and the status of the existing septic system. The conditions are unique to the subject property.

2. *The variance is proved necessary in order to secure for the applicant right of rights that are enjoyed by other persons in the same area or district.*
The variance would allow the applicant to have a compliant Type II septic system for the home and to use the property in a similar manner to others in the same neighborhood and zoning district.
3. *Granting of the variance will not be contrary to the public interest or be damaging to the rights of other persons or properties in the same area or district.*
Granting of the variance will allow a replacement system and help eliminate a non-compliant system or discharge that could impact neighboring properties.
4. *The granting of the variance will not be contrary to the policy and intent of the ordinance or detrimental to the public health, safety, and welfare.*
Granting the variance is not contrary to the intent of the ordinance and will be a benefit to the public health, safety, and general welfare by eliminating a non-compliant septic system.
5. *No variance shall be granted simply because there are no objections, because those who do not object outnumber those who do, or for any reason other than a proved hardship.*
The small lot size and necessary replacement of the septic system appears to be a hardship and that sanitary sewer service is not available to this area of the County.

Conditions of Approval:

1. Prior to issuing a permit for the holding tank the applicant shall receive approval from a licensed civil/structural engineer stating that the placement of the holding tank does not pose a threat to the nearby structures.

VI. ELECTIONS OF OFFICERS FOR THE BOARD OF ADJUSTMENT

Motion by Commissioner Johnson; second by Commissioner Vonhof to nominate the same Officers as the prior year. Commissioner Hartmann read the nominations on the record and requested 3 times for any further nominations. No further nominations were made. Motion to close the nominations made by Commissioner Vonhof and second by Commissioner Hrabe. Both motions carried unanimously. A vote was held, and the vote was unanimous. The Officers elected are Chairman Gary Hartmann, Vice Chair Ray Huber and Secretary of the Board Barb Simonson

VII. GENERAL & ADJOURN

Motion by Commissioner Johnson; second by Commission Watson to adjourn the meeting at 6:54 PM. The motion carried unanimously.

Gary Hartmann
Chair, Board of Adjustment

Date

Barbara Simonson
Deputy Clerk to the Board



STAFF REPORT PREPARED FOR TOWNSHIPS & COUNTY BOARD OF ADJUSTMENT

GOVERNMENT CENTER 114 · 200 FOURTH AVENUE WEST · SHAKOPEE, MN 55379-1220
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Don & Lisa Giesen Variance

Request:

- A) A variance to increase a legal non-conforming structure by 63% of the existing square footage, which is over the 50% expansion allowed by Ordinance.

Greg Wagner, Principal Planner, is the project manager and is available for questions at 952-496-8360.

General Information:

Applicant:	Donald & Lisa Giesen	Site Location:	27901 Church Avenue
Property Owner:	Donald & Lisa Giesen	Township:	Section 36, Belle Plaine
Public Hearing Date:	July 13, 2020	Action Deadline:	August 1, 2020 (60 Day)

Zoning/Comprehensive Plan Information:

Zoning District:	Agricultural Preservation District, A-1	Comprehensive Land Use Plan:	Agricultural Preservation
Overlay Zoning District:	None	School District:	New Prague #721
Watershed District:	Scott WMO	Fire District:	New Prague
Ordinance Sections:	Chapters 3 & 25	Ambulance District:	North Memorial

Report Attachments:

1. Site Location Map
2. Aerial Photo Map
3. Applicant's variance request narrative
4. Site Drawing
5. Building Plans/Elevations

Request: A variance to increase a legal non-conforming structure by 63% of the existing square footage, which is over the 50% expansion allowed by Ordinance.

Comprehensive Plan- The property is located within the Agricultural Preservation Area.

Adjacent Land Use/Zoning- North – 80 acre agricultural parcel, zoned A-1
South – Union Hill Church, Le Sueur County
East – Union Hill Baseball Field, zoned A-1
West – ½ acre residential parcel, zoned A-1

Existing Conditions- The 5-acre parcel consists of a 1930's home and detached accessory buildings on the south 1.5 acres, and the north 3.5 acres is open agricultural crop land.

Ordinance Requirements- Front Yard Setback: 150 feet from the centerline of a County or State road, or 100 feet from the County or State road right-of-way, whichever is greater.
Side Yard Setback: 30 feet
Rear Yard Setback: 60 feet

Proposed Setbacks- Front Yard Setbacks: 58.5 feet from County Road centerline; 77.5 feet from State Highway road right-of-way
Side Yard Setback: Over 1000 feet to north property line.
Rear Yard Setback: 75 feet to east line

Legal Non-Conformity- A structure not meeting a required setback is considered a legal non-conforming structure and may be enlarged by up to 50% of the total square footage of the structure provided the expansion does not further reduce the distance to the applicable lot line.

Proposed Expansion- The existing structure is 2,048 square feet (sq. ft.) and the applicants propose to expand to 3,332 sq. ft., which is an increase of 63%, but do not propose to encroach further into the setbacks.

Public Notice- Notices were sent to property owners within 500 feet of the site.

Background-

Don and Lisa Giesen are requesting a variance to expand an existing single-family home by adding an attached garage and bonus living space above the garage area. The home, located at 27901 Church Avenue, was built in 1930 as part of a farmstead on the property. The property also includes a detached 2-stall garage to the southeast, a barn, and other storage buildings to the north and east. Mr. Giesen and his family recently purchased the property from his parents and have a long family history in the Union Hill hamlet as outlined in the attached variance narrative. They are looking to improve the home and add on an attached garage and additional living space on the east end of the structure.

The 2,048 square foot (sq. ft.) home is located 58.5 feet from the centerline of County Road 7 (Church Avenue) and 77.5 feet from the State Highway 19 right-of-way. The setback from both roads is 150 feet from road centerline or 100 feet from road right-of-way, whichever is greater, meaning the home is a legal non-conforming structure since it does not meet these setbacks. A legal non-conforming structure may be expanded or enlarged by up 50% of the total square footage provided such expansion does not decrease the distance between the structure and the applicable lot line or road right-of-way.

Site Photo: View looking north at the subject property in Union Hill



Analysis:

The requested variance is to expand the legal non-conforming structure by 63% of the existing square footage, or an increase from 2,048 sq. ft. to 3,332 sq. ft. by adding an attached garage with living space above the garage area. The expansion would be on the east side of the home and would not encroach any closer to the state or county roads. As part of the variance request the property owners are planning to remove the detached garage that is approximately 40 feet from the State Highway 19 right-of-way, and they will also be removing the driveway access north of the home.

The Giesens outlined their family ties to the Union Hill hamlet area in their narrative, and also explained the purpose of the variance, which is to expand the old farmhouse and remodel it into a more current structure for their 5-person family. They reached out to County staff earlier this year to review options for expanding the home and improving the property. By removing the detached garage, it eliminates a structure 40 feet from the road right-of-way. County Highway staff is requesting elimination of one of the three accesses to the property. The access north of the home was chosen as it is not able to easily be used by the home due to septic tanks and the property well. The south driveway will remain for the home, and then a field access on the north side of the building site and edge of the farm field will remain.

Staff finds that the variance request is reasonable for improving an existing home to a size and function consistent with new single-family homes. The expansion is going away from the side of the setback encroachment, and the applicants have agreed to make other site improvements that help bring other aspects of the property into compliance, specifically access management and removal of a non-conforming detached accessory structure.

Township Recommendation:

The Belle Plaine Town Board will be making a recommendation at their July 7, 2020 monthly meeting. A copy of the recommendation will be forwarded ahead of the public hearing.

Staff Recommendation:

Based on the representations, information, and site drawing provided by the applicant, staff recommends approval of the variance to increase the size of a legal non-conforming structure by 63% of the existing square footage.

Criteria for Approval:

1. *Granting the variance will not conflict with the Comprehensive Plan.*

The proposal is in conformance with the Scott County 2040 Comprehensive Plan goals and policies for promoting public health, safety, and general welfare.

2. *Exceptional or extraordinary circumstances apply to the property which do not generally apply to other properties in the same zoning district or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property since the enactment of this Ordinance had no control.*

Most of the parcels in the Union Hill hamlet are legal non-conforming lots of record created before current zoning ordinance standards, and the existing home was built in the 1930's as part of the original farmstead.

3. *The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.*

Other properties construct homes with attached garages, which is the standard for today's homes versus older farm homes from the 1930's. This variance will allow an attached garage and additional family living space to be added to an older home.

4. *That the special conditions or circumstances do not result from the actions of the applicant.*

The need for the variance is due to the location of the existing home that was constructed in 1930 when Church Avenue was a rural country road. This home was built before current county zoning ordinance standards requiring larger structure setbacks.

5. *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district.*

Granting of the requested variance would not confer on the applicants any special privilege. They would be able to expand their family home to a similar size and style as other homes in rural Scott County.

6. *The variance requested is the minimum variance which would alleviate the practical difficulty.*

The requested variance allows a slightly larger expansion of a non-conforming structure than the 50% expansion allowed by Ordinance. The expansion will be opposite of the existing setback encroachment so it will not further decrease the setback, and the applicants are also removing a detached garage that currently encroaches into another setback.

7. *The variance would not be materially detrimental or will not essentially alter the character of the property in the same zoning district.*

The variance would not be materially detrimental or alter the character of the property, nor of the Union Hill hamlet area that consists of other single-family homes.

8. *Economic considerations alone do not constitute a practical difficulty.*

There are no economic considerations involved in this variance request. They are also incurring the costs for removal of a driveway access and demolition of an accessory building as part of their site improvements.

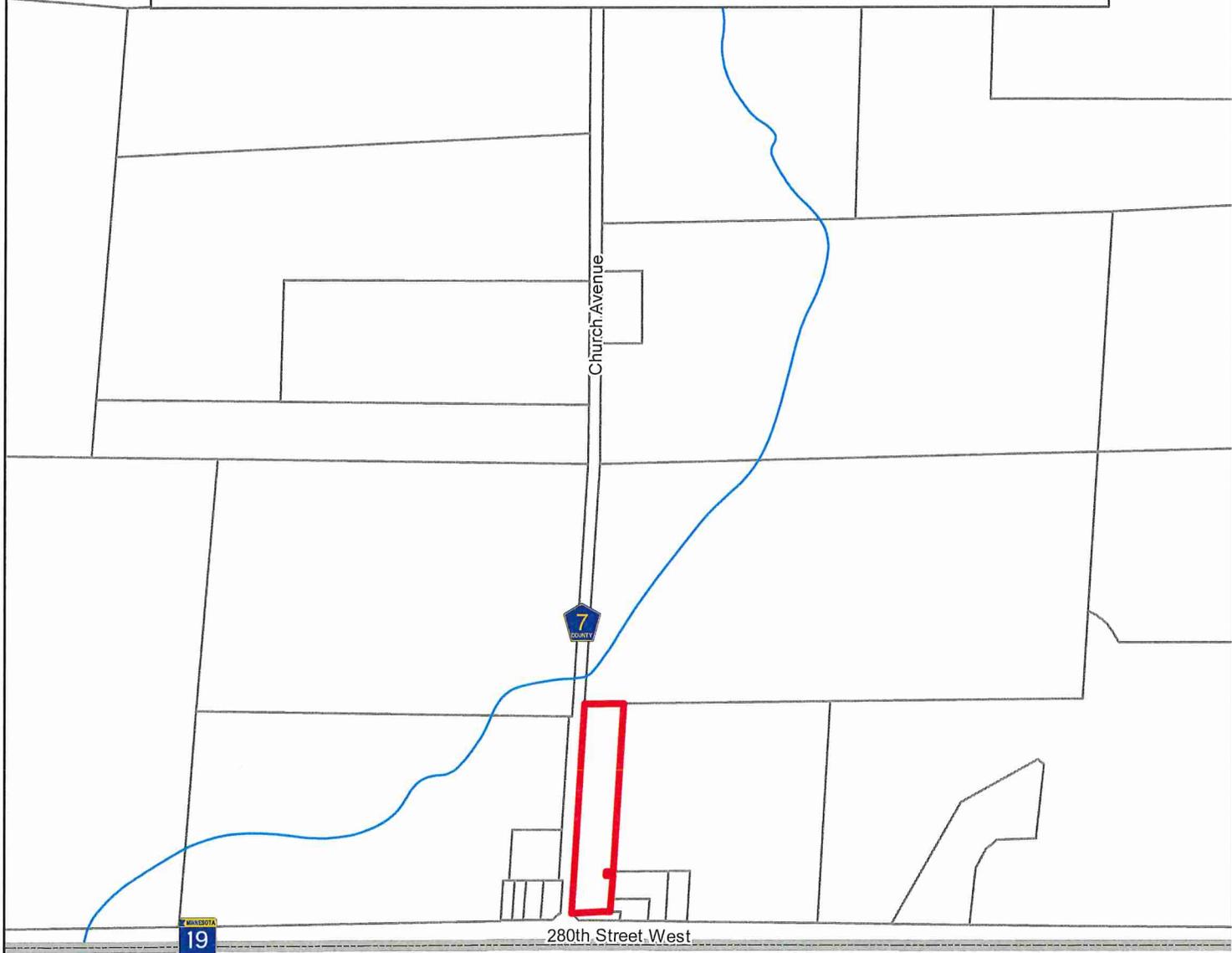
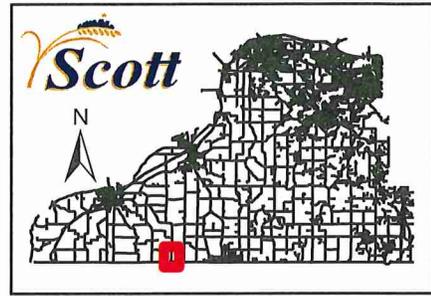
Board of Adjustments/Township Alternatives:

1. Approve the variance request as recommended by zoning staff based on the hardship criteria as detailed in this report.
2. Approve the variance request with amendments to the requested variance and to the hardship criteria.
3. Table the variance request for a specific reason.
4. Deny the variance request for a specific reason.

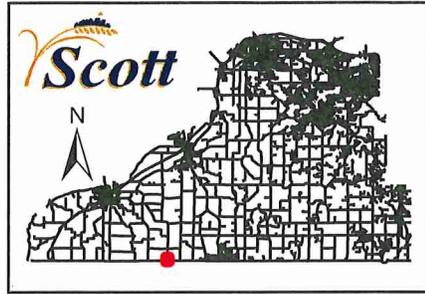
Suggested Motion for Board of Adjustments or Township Board:

Based on the criteria for variance consideration I recommend approval of the requested variance to increase a legal non-conforming structure by 63% of the existing square footage, which is over the 50% expansion allowed by Ordinance.

**BELLE PLAINE TOWNSHIP
SECTION 36
DONALD GIESEN
REQUEST FOR VARIANCE**



**BELLE PLAINE TOWNSHIP
SECTION 36
DONALD GIESEN
REQUEST FOR VARIANCE**



Church Avenue

280th Street West

Complete Legal Description

5.79 Acres
Section 36 Township 113 Range 024
SW ¼ SW ¼ COM SW COR, N 165' TO
POB, E 231', N 02-59-59 E 1092.77 TO N
LINE, W 231.20' TO W LINE,

Description of Request

We are adding a new garage completely remodeling the inside of the existing. We plan to put a bonus room above the new garage and add a 2nd story to the part of the existing home that does not have a 2nd floor.

Current Footprint of home is 1487.08 Sqft, new attached garage is planned for 1485.8 Sqft. Current Living space is 2048.28 (1,487.08 +561.2) Sqft and after remodel will be 3,331.59 (1,487.08 +1,844.51) which is an increase of 62.7%

As part of this permit and variance we will tear down an old detached garage which is in the Highway 19 right away setback

As part of this permit and variance we will remove the driveway north of the house. The main driveway for the home will remain in the same location on the south side of the home, the driver will drive in and garage will be on the North side of driveway. There will be a turn around to the east of the garage, so cars will no longer back out of the driveway.

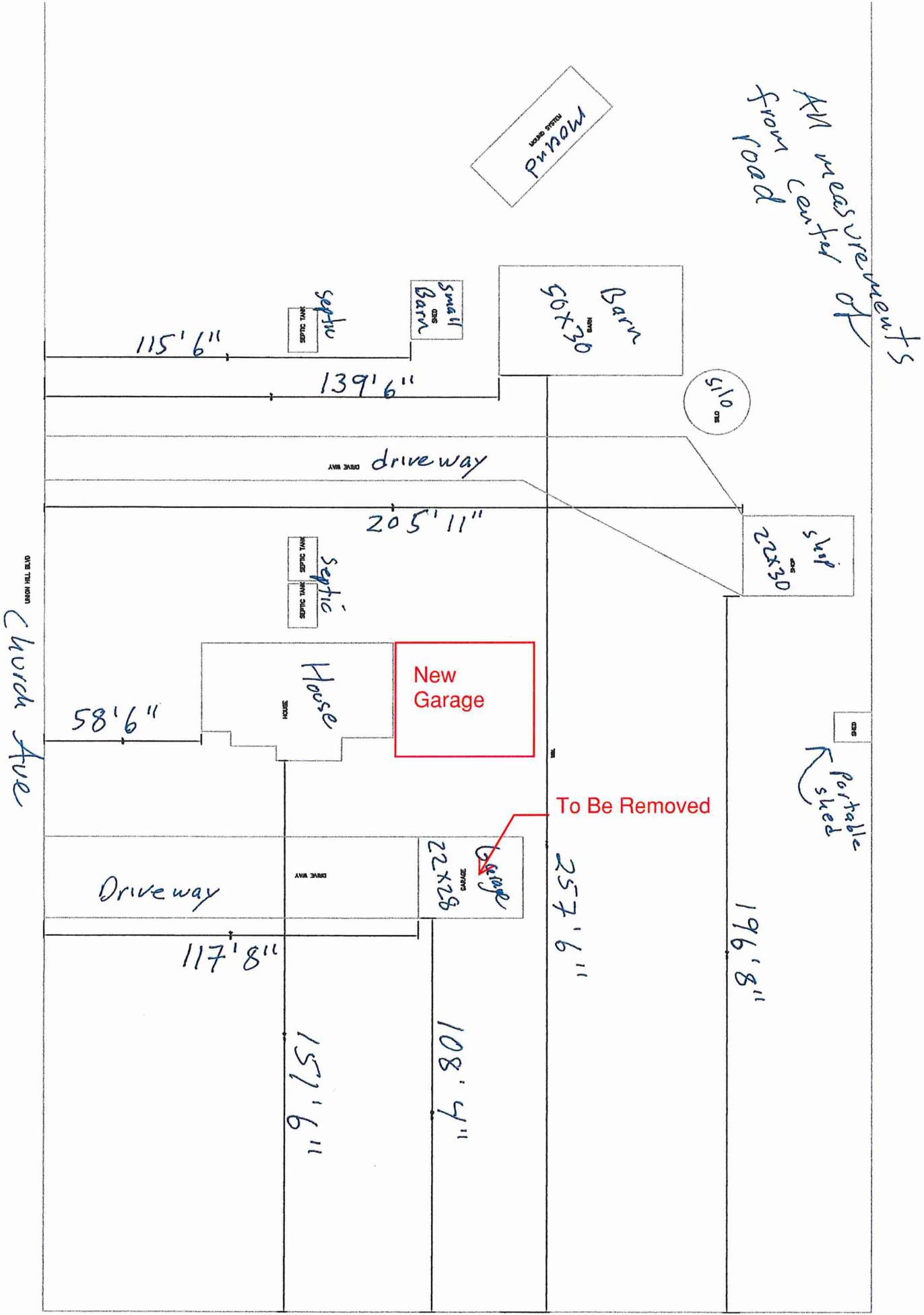
The Reason (The Story of why we want to remodel and move to Union Hill)

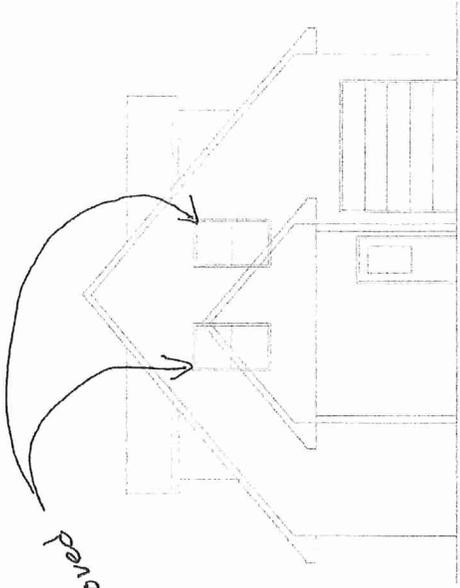
We (Don and Lisa) completely remodeled our "retirement" home in New Prague while we lived there for the past 21 years(1999-present). Both Lisa's parents (Karen (Krautkremer) and Julian Pauly) grew up in the country outside of Jordan, MN. Don's dad (Don) grew up on the property just east of their current residence by the 3rd base dugout of Union Hill Baseball field. Don's mom (Ruth) grew up 3 miles north of Union Hill on County Road 7. Don's parent's (Don and Ruth) moved back to Union Hill in their current home (27901 Church Ave, NP) in 1992. Don's dad, Don was in the Union Hill Choir (22 years), was on the Union Hill Cemetery board (18 years), did maintenance on the Union Hill Church, but his passion was the Union Hill Baseball field. He spent hours working and providing leadership on the Union Hill Baseball Field that he was named Scott County Outstanding Senior Citizen for 2007 and named to the MN Amateur Baseball Hall of Fame in 2012 and in 2012 The Union Hill Baseball Association renamed the field to "Don Giesen Field at Union Hill Park".

The past few years Don's dad (he turned 80 on May 21) has not been able to help at the Church, cemetery, or baseball field due to physical limitations. Don and his son (Nick) started taking care of the field again in 2019 along with others.

Don and Lisa made the decision in the fall of 2019 to move to Don's parents home at 27901 Church Ave. Don started talking with Greg Wagner (Scott County Zoning Administration) in February 2020 on plans to remodel this current home, at that time it was in the next couple of years.

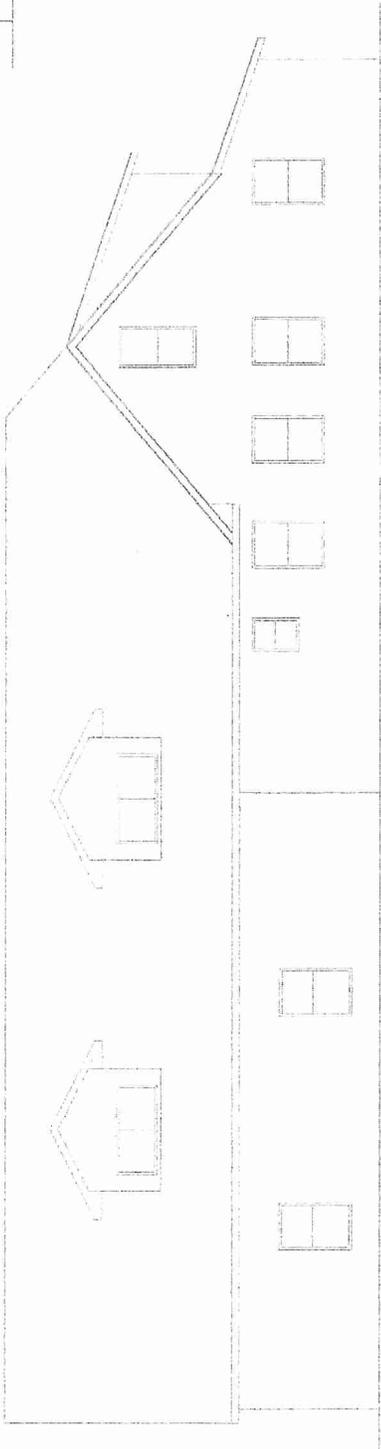
Don's mom Ruth passed away on April 25 and Don's dad is scheduled to move to Assisted Living (would have happened mid-April if not for Covid 19). Don and Lisa made the decision to speed up the timeline and turn the current home into their "new" retirement home and move to Union Hill. Don for the past two years has been helping maintain "Don Giesen Field" and have talked with a Cemetery Board member about getting involved. Lisa has already been voted in as the Concession stand manager for the Union Hill Baseball Association start in the 2021 season.



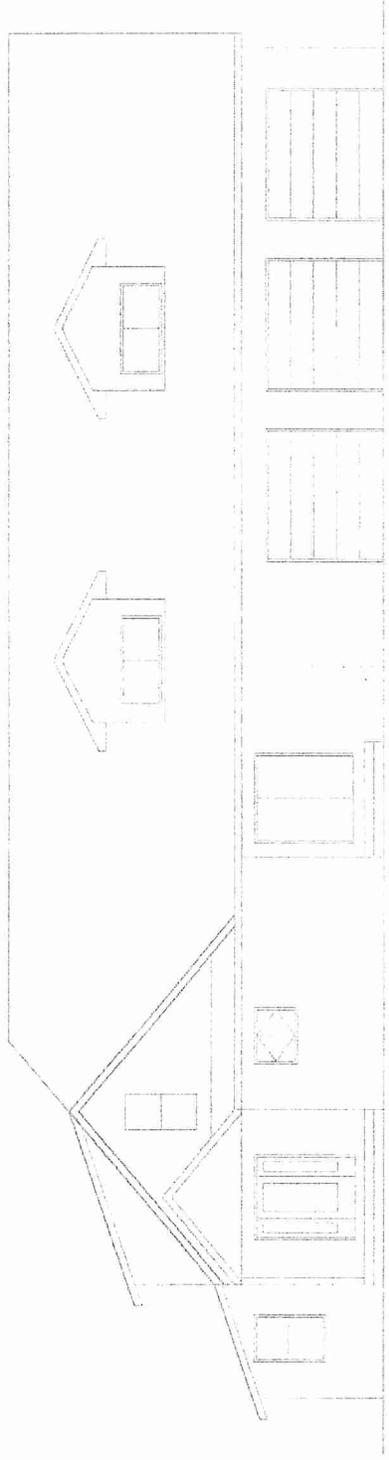


EAST ELEVATION
1/4" = 1'-0"

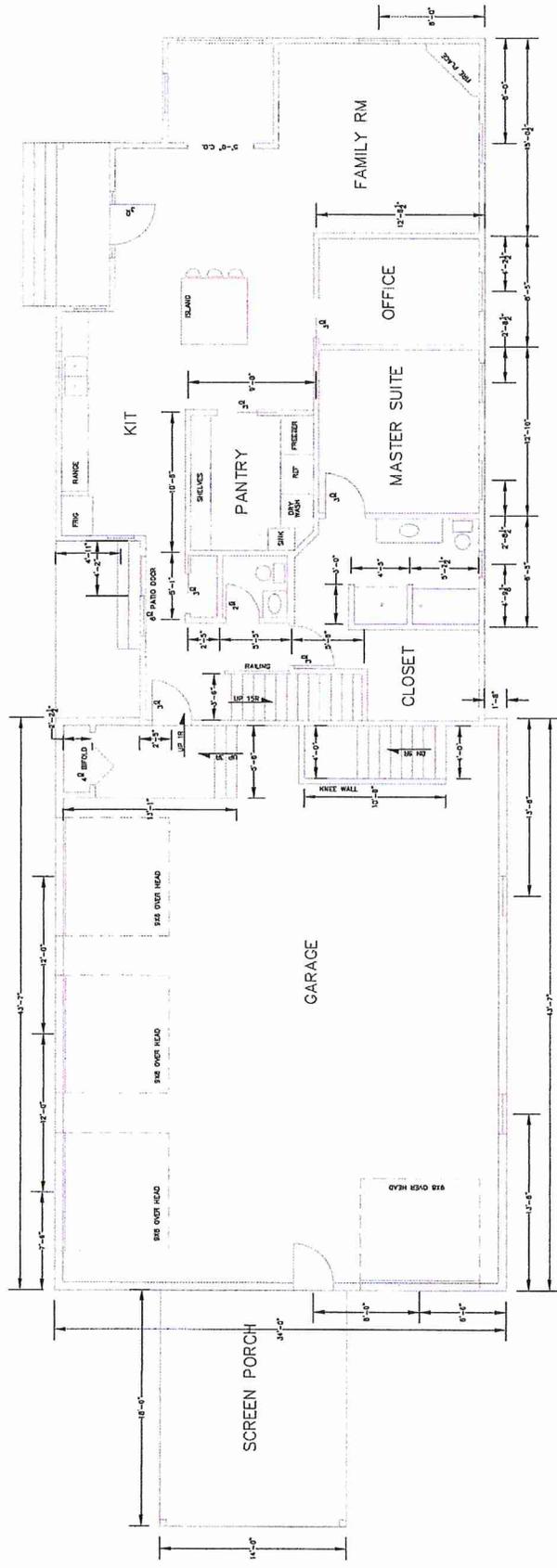
*Will be removed
windows
Houses removed*



NORTH ELEVATION
1/4" = 1'-0"



SOUTH ELEVATION
1/4" = 1'-0"



Windows removed

