

**CITY OF PEORIA
ZONING BOARD OF APPEALS MEETING
APRIL 14, 2011
CITY HALL, 419 FULTON STREET, ROOM 400 —1:30 PM**

REVISED AGENDA

- 1. ROLL CALL**
- 2. APPROVAL OF MARCH 10, 2011, MINUTES**
- 3. REGULAR BUSINESS**

CASE NO. ZBA 2934 – Continued from the meeting held on March 10, 2011

Petitioners Joe Menefee & Dave Whitehurst for P & W Builders are requesting a variance from the City of Peoria Zoning Ordinance: Article 18, *Retaining Walls*, to allow retaining walls to be constructed greater than 3 feet in height for the properties located at Lots 25, 26, 27, 28 and 30 in Autumn Ridge Subdivision.

CASE NO. ZBA 2935

Petitioners Allen & Pam Durr are requesting two variances from the City of Peoria Zoning Ordinance: Article 7.6.e, to allow a building addition to encroach 15 feet into the required 25-foot front yard on Southgate Road and 3 feet into the required 25-foot front yard on High Point Road. The property is located at 136 E. High Point Road.

- 4. CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS**
- 5. ADJOURNMENT**

Inquiries: Gene Lear, (309) 494-8604 or glear@ci.peoria.il.us

: OFFICIAL PROCEEDINGS :

: OF THE CITY OF PEORIA, ILLINOIS :

DRAFT

A Zoning Board of Appeals Meeting was held on Thursday, March 10, 2011, at approximately 1:30 p.m., City Hall, 419 Fulton Street, Council Chambers, Room 400, with Chairperson Weaver presiding.

ROLL CALL

The following Zoning Board of Appeals Commissioners were present: Chairperson Weaver; and Commissioners Blackwell; Ierulli; Jackson; and Kouri – 5. Absent: Commissioners Barry and Wagner.

Staff Present: Corporation Counsel Randy Ray, Gene Lear, and Polly Stainback

MINUTES

Commissioner Jackson moved to approve the minutes of the meeting held on February 10, 2011, as printed; seconded by Commissioner Ierulli.

Approved by viva voce vote 5 – 0.

ZBA 2934**VOTE TO RECONSIDER AND POSSIBLE ACTION**

Petitioners Joe Menefee & Dave Whitehurst, representing P & W Builders, are requesting that the Zoning Board of Appeals reconsider Case No. ZBA 2934, which was originally heard on February 10, 2011, based on concerns regarding the following: 1) The lot numbers needing a variance; 2) Concerns over the Staff recommendation; and 3) The original intent of the Ordinance as it pertains to the required height of retaining walls. If the reconsideration is approved, the Petitioners are requesting reopening Case No. 2934 to grant a variance from the City of Peoria Zoning Ordinance: Article 18, *Retaining Walls*, to allow retaining walls to be constructed greater than 3 feet in height for the properties located at Lots 25 and 30, containing existing retaining walls, and Lots 26, 27, and 28, not having retaining walls, all in Autumn Ridge Subdivision.

Chairperson Weaver announced Case No. ZBA 2934.

Randy Ray, Corporation Counsel, City of Peoria, Legal Department, explained the motion should be made first, and then Commissioners could proceed with discussion.

MOTION:

Commissioner Ierulli motioned to reconsider Case No. ZBA 2934. The motion was seconded by Commissioner Kouri.

Commissioner Ierulli indicated that he made the motion per Staff's request.

Gene Lear, Senior Urban Planner, City of Peoria, Planning and Growth Management, read Case No. ZBA 2934 into the record.

DELIBERATION:

Commissioner Blackwell questioned why Commissioners would reconsider their decision. He referred to the Petitioners' photographs which were distributed to Commissioners and commented that each case is considered on its own merit. He mentioned that the photographs appear to be photographs of other walls with a similar issue. He said he saw no reason to reconsider his vote. Commissioner Jackson concurred.

Commissioner Jackson questioned if there were additional lots with walls. Mr. Lear responded, "No," that the package before the Commissioners was the package that the Petitioners distributed; and he imagined the photographs were other walls within the City.

Commissioner Ierulli asked that Corporation Counsel Randy Ray be allowed to address Commissioners on matters, if any, that he thought needed to be addressed before the vote, and to allow P & W Builders to address the Commission.

Corporation Counsel Ray explained that for reconsideration, someone on the prevailing side had to make the motion. He stated that a variance could not be granted and reconsidered the next month; the only thing that could be reconsidered was a denial. He also indicated that he believed that Mr. Lear made sure that proper notification was given. He pointed out that if the motion to reconsider passed, then the process would be at the original motion.

Chairperson Weaver mentioned the Petitioners' confusion regarding the original letter that was mailed to them and the fact they did not come fully prepared at the last meeting. He referred to the fact that he offered them an opportunity to defer if they did not feel prepared, but they chose to proceed with their case.

Chairperson Weaver granted Privilege of the Floor to Petitioner Menefee to discuss reasons for reconsideration.

Ms. Stainback swore in those planning to give testimony.

Joe Menefee, Petitioner, representing P & W Builders, apologized for not coming fully prepared last time. He indicated they had an excellent working relationship with Mr. Lear. He mentioned receiving Staff's letter and then stopping "doing their homework." He discussed the following three points:

1. Letter from Staff: When they received Staff's letter, they had the impression that they had Staff's backing.
2. Misinterpretation regarding the other lots because they were placed on the same variance application: It was never their intention to run a wall down the entire lots; the only lots they were ever concerned about were the two lots with

existing walls. The second wall is between Lots 28 and 30, but technically, on Lot 30. It was never their intent to build walls on the other lots. He also mentioned the following main points:

- The photographs distributed showing other walls were not to complain about them, but rather to show that P & W is doing what everyone else does to make a lot work.
 - In this particular case, in order to further their investment in the area, they felt it required those existing walls.
 - In researching retaining walls with others doing this type of business, no one told them that they could not go over three feet.
 - The walls were put up and then they learned there was an Ordinance.
3. Intent of the Ordinance: Mr. Lear's interpretation regarding the reason for the Ordinance was "safety." Mr. Menefee said he believed, based on what he knew about his own landscaping wall, that walls were intended to be no larger than three feet because if they were over three feet, there was a lot of work to do so that walls do not fall.
- Mr. Menefee stated that their lot backs up to a neighbor, who not only supports the wall, but helped plant the bushes. Although the neighbor was not able to make it to the meeting today, it was his understanding that the neighbor sent a letter of support.

Mr. Menefee indicated the information above is the type of information they would have had if they had known what they were up against, as far as the City's recommendation. He stated that they wanted to let Commissioners know their interpretation of the Ordinance; what they intended to do; and the reason that they wanted the variance in the first place, which was because of the depth of the lots, not because they were trying to excavate the entire subdivision.

In discussion with Chairperson Weaver regarding a summary of the reasons for reconsideration, Mr. Menefee stated: Not prepared; Mr. Lear's interpretation of safety as the intent of the Ordinance; and the misinterpretation that they were trying to come across the back of the lots. He commented that he thought Mr. Lear was trying to be helpful, but he thought there was prejudice in what they were trying to do. As far as aesthetics, they took a big gamble because the home is not contracted and they would be selling it. They were trying to make the house more saleable.

In discussion with Commissioner Jackson regarding the other lots, Mr. Menefee reiterated that they never planned to put retaining walls on the other lots. He referred to one of the distributed photographs which they did not build and commented on its being a better example for a reason for a variance. He said their variance would only affect two homes,

Chairperson Weaver summarized Mr. Menefee's reasons and commented on each reason as follows:

- Not prepared: The petitioners were given an opportunity to come back, but decided to present their case.
- Prejudice during discussion: "We see that a lot." Once the case is closed, the petitioner wishes they had clarified some issues.

In discussion with Mr. Menefee, Chairperson Weaver said by the time Commissioners went into deliberation, they knew they were only dealing with two lots.

Chairperson Weaver indicated that Mr. Menefee may have a valid argument regarding, No. 3. Interpretation of safety as the intent of the Ordinance because Commissioners relied on it as a safety issue, and Mr. Menefee presented it as a construction issue.

In discussion with Chairperson Weaver, regarding proof that Commissioners decided improperly by making it a safety issue, Mr. Menefee described in detail how a wall has to be constructed to ensure there is not so much push in the design. He said without the proper measures, the walls could wash out and ruin the landscape and also be a serious safety issue, but it would be more of a construction issue. He said the construction blocks they used were not the typical residential construction blocks, which was the reason they used them in the first place. He said he did not know if they were given enough credit for the actual structure.

Mr. Menefee stated that from their standpoint, if it is an arbitrary enforcement, and only a complaint-driven Ordinance that nobody is aware of. He said he thought they were "persecuted" because the interpretation was that they should have known about this regulation; but in talking with other people, he did not see how they should have known this. He also stated that once it was brought forward, they had to go ahead with the variance.

Chairperson Weaver granted Privilege of the Floor to Mr. Neaveill.

Greg Neaveill, a nearby homeowner, stated that he did not think they should be here today and that he thought Commissioners made the right decision, which was fair. He said he did not think that not being prepared was an excuse. He expressed concern that two Commission members who voted to deny the variance were absent today. He commented that in presenting their case, they had a chance to rebut everything that he said.

Lynn Reynolds, nearby homeowner, indicated her neighbor is the person who the Petitioner said was very happy with the wall. She said the neighbor had been very unhappy because his yard was washing away. She said she had no problem with the wall because it is attractive. She indicated that she could not imagine their having to tear it all down. She also said it was a very nice house.

In discussion with Mr. Lear, Chairperson Weaver acknowledged that this was not an open hearing.

Referring to the issue of whether or not there was prejudice, Commissioner Blackwell said that had no bearing in looking at the two walls. He said he was not prejudice.

Commissioner Ierulli asked Mr. Lear if he had any other issues that needed to be addressed. Mr. Lear referred to the issues that have come forth today and at the last meeting and said that it is never Staff's intent for anyone to be confused. He said that if the Commissioners also thought there was confusion, it was Staff's position to give them an opportunity to reconsider; and if so, both sides could make a presentation. He explained that if Commissioners felt they made the correct decision, then it stopped there.

Commissioner Jackson expressed concern regarding the letter distributed at today's meeting. Referring to the second paragraph, she said it appeared confusing to her that when P & W came in for two lots, Staff said that because the lots were similar, they might as well put them all together. She said she had voted to deny the variance, but was now giving her decision a second thought. She indicated the need for more communication from Commissioners, regarding if they also were confused that Staff asked for something which possibly was not needed. Commissioner Kouri indicated his agreement.

There being no more comments, Chairperson Weaver called for a vote.

The motion to reconsider Case No. ZBA 2934 passed by roll call vote 4 to 1.

Yeas: Ierulli, Jackson, Kouri, Weaver;
Nays: Blackwell.

Mr. Neaveill suggested postponing the case until next month. Mr. Lear indicated that would be within the confines of the Commission.

In discussion with Chairperson Weaver, Mr. Lear said that because it was listed on the agenda as an action item, they could vote today should they choose.

Commissioner Blackwell indicated that he would like to have all the Commissioners present, as well as others who may want to speak. Chairperson Weaver and Commissioners Ierulli and Jackson concurred.

Motion:

Commissioner Jackson motioned for deferral of Case No. ZBA 2934 until the next Regular Meeting on Thursday, April 14, 2011, at 1:30 p.m., City Hall, Room 400, 419 Fulton Street. The motion was seconded by Commissioner Blackwell.

The motion passed unanimously by roll call vote 5 to 0.

Yeas: Blackwell, Ierulli, Jackson, Kouri, Weaver;
Nays: None.

2011 ZONING COMMISSION ANNUAL REPORT – RECEIVE AND FILE

Chairperson Weaver announced the request to receive and file the 2011 Zoning Commission Annual Report.

Motion:

Commissioner Ierulli motioned to receive and file the 2011 Zoning Commission Annual Report. The motion was seconded by Commissioner Blackwell.

The motion was approved unanimously by viva voce vote 5 to 0.

CITIZENS' OPPORTUNITY TO ADDRESS THE ZONING BOARD OF APPEALS

There were no citizens to address the Zoning Board of Appeals.

ADJOURNMENT

Commissioner Blackwell moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Kouri.

The motion was approved unanimously by viva voce vote 5 to 0.

The Zoning Board of Appeals Meeting adjourned at approximately 2:10 p.m.

Gene Lear, Senior Urban Planner
Planning and Growth Management Department

/ps

TO: City of Peoria Zoning Board of Appeals Commissioners
THRU: Site Plan Review Board
FROM: Olajide Giwa, Senior Urban Planner
DATE: April 1, 2011
**SUBJECT: RECOMMENDATION FROM STAFF AND SITE PLAN REVIEW BOARD FOR
CASE NO. ZBA 2935**

PETITIONER: Petitioners Allen & Pam Durr

LOCATION: 136 E. High Point Road

BACKGROUND:

Petitioners Allen & Pam Durr are requesting two variances from the City of Peoria Zoning Ordinance, Article 7.6.e, *Yard Requirements*, to allow a building addition to encroach 15 feet into the required 25-foot front yard on Southgate Road and 3 feet into the required 25-foot front yard on High Point Road. The property is located at 136 E. High Point Road in the R3 Single-Family Residential District.

SPRB CONCLUSIONS AND RECOMMENDATIONS:

After reviewing the Petitioners' application and performing a site inspection, SPRB does not support the variance request for the following reasons:

1. The stated hardship of two front yards is not unique.
2. The property can yield a reasonable economic return if the variance is not granted.
3. The current owner would be creating the practical difficulty.
4. The granting of the variation will alter the essential character of the neighborhood.



CITY OF PEORIA
APPLICATION FOR VARIANCE/ZONING BOARD OF APPEALS

For Office Use Only
Date _____
Received: _____
Time: _____
Initials: _____

I. **PROPERTY INFORMATION:**

- A. Street address: 136 East High Point Road Zip Code + 4 61614
- B. Tax ID number: 14-16-127-004
- C. Legal description (required to be on attached form, "Attachment A", Legal Description, typed, single-spaced, one inch (1") margins) High Point Sec 2 NW 1/4 Sec 16
Range 8E, Township 9 Lot 64 + NW 1/4 20'
LOT 65
(96-10978)
- D. Area (square feet or acres): _____
- E. Current property use: Residential
- F. Current zoning district: R3

II. **APPLICANT(S):**

- A. Name: Allen + Pam Durr
- B. Company name: _____
- C. Address (Street, City, Zip + 4): 136 East High Point Road 61614
- *E-mail Address: allen@wbei.us
- D. Daytime phone number: 309-370-3656
- E. Interest in subject property: ☒ Owner ☐ Representative
- F. Applicant(s) signature(s): [Signature] Date: 3-17-11
Pamela Durr Date: 3/17/11

III. **OWNER(S) OF SUBJECT PROPERTY:**

- A. Name: Allen + Pam Durr
- B. Company: _____
- C. Address (Street, City, Zip): 136 East High Point Road 61614
- *Email Address: allen@wbei.us
- D. Daytime phone number: 309-370-3656
- E. Owner(s) signature(s): [Signature] Date: 3-17-11

*PLEASE NOTE: EMAIL WILL BE USED FOR ALL CORRESPONDENCE UNLESS OTHERWISE REQUESTED.

CORRESPONDENCE/COMMUNICATION TO BE SENT TO: Select only one

____ Applicant ☒ Owner

IV. VARIANCE INFORMATION:

A. 1. Variance being requested Front yard variance

2. From what section of the zoning ordinance is a variance being requested? 7.6. E

B. What unique or exceptional characteristics of your property prevent it from meeting the requirements in your zoning district? (Check applicable)

Too narrow ☒ Too small ____ Soil ____

Subsurface ____ Elevation ____ Slope ____

Too shallow ____ Shape ____ Other ____

C. What is your hardship? Please be specific. See attached letter

D. Are the conditions of the hardship, for which you are requesting a variance, true only of your property?

☒ Yes ____ No

If not, what number of properties are similarly affected? ____

E. If granted a variance in the form requested, will it be in harmony with the neighborhood and not contrary to the intent and purpose of the Zoning Ordinance?

☒ Yes ____ No

Please elaborate: See attached letter

V. FILING FEE (MUST ACCOMPANY APPLICATION):

Variance Application Fees for any property in the City shall be as set forth in the table below:

Zoning Ordinance Section 2.17.a (1) Variance Application Fees Table

Land Development Code Section 2.14.a Variance Application Fees Table:

<u>Variation Application Fees (Non-refundable)</u>	<u>Residential, Before Construction</u>	<u>Residential, After Construction</u>	<u>Non-Res., Before Construction</u>	<u>Non. Res., After Construction</u>
Administrative Variations all, (<20%)	\$150	\$300	\$300	\$600
Principal Structure, Major	\$350	\$700	\$475	\$950
Accessory Structure, Major	\$250	\$500	\$425	\$850
Signs & Multi-Family/Sub. Signs, Major	\$250	\$500	\$500	\$1,000
Fence, Major	\$250	\$500	\$425	\$850

_____ A. **MINOR VARIANCE** – Requires Administrative Approval
Ordinance Section: 2.12.b. (1) Minor Variations. Minor variations from height, yard (with the exception of transitional buffer yard requirements), bulk, lot area, and fence height provisions of this Ordinance that are less than twenty percent (20%) of the required standard. (For example, a variation from a required 20-foot yard setback in an amount of less than 4 feet is a minor variation.) No minor variation shall be allowed in a Form District.

✓ _____ B. **MAJOR VARIANCE** – Requires Public Hearing and ZBA Approval
Ordinance Section: 2.12.b.(2) Major Variations. All variations authorized by this Ordinance, which are not minor variations, shall be considered major variations. Any variation request of transitional buffer yard requirements shall be considered a major variation. Any variation in a Form District shall be considered a major variation.

VI. REQUIRED SITE PLANS:

_____ A. **MINOR VARIANCE**
Residential uses: Two (2) full-size copies, folded to a maximum dimension of 9" x 12"
All other uses: Ten (10) full-size copies, folded to a maximum dimension of 9" x 12"

✓ _____ B. **MAJOR VARIANCE**
All uses: Twenty (20) full-size copies, folded to a maximum dimension of 9" x 12", one (1) copy reduced to 8-1/2" x 11"

Please provide a legal description of the property here or as an attachment

Sl. No.	Question/Part	Ans.
1	1. a) Explain the following terms: i) <i>Protein</i> ii) <i>Enzyme</i> iii) <i>Coenzyme</i> iv) <i>Apoenzyme</i> v) <i>Holoenzyme</i>	Protein is a long chain of amino acids linked by peptide bonds. Enzyme is a biological catalyst that speeds up chemical reactions. Coenzyme is a non-protein molecule that assists in the function of an enzyme. Apoenzyme is the protein part of an enzyme without its coenzyme. Holoenzyme is the complete enzyme consisting of the apoenzyme and its coenzyme.
2	2. a) Explain the following terms: i) <i>Substrate</i> ii) <i>Product</i> iii) <i>Active site</i> iv) <i>Enzyme specificity</i> v) <i>Enzyme activity</i>	Substrate is the reactant in an enzyme-catalyzed reaction. Product is the result of the reaction. Active site is the region of the enzyme where the substrate binds. Enzyme specificity is the ability of an enzyme to catalyze a specific reaction. Enzyme activity is the rate at which an enzyme catalyzes a reaction.
3	3. a) Explain the following terms: i) <i>Enzyme kinetics</i> ii) <i>Michaelis-Menten equation</i> iii) <i>K_m</i> iv) <i>V_{max}</i> v) <i>Lineweaver-Burk plot</i>	Enzyme kinetics is the study of the rates of enzyme-catalyzed reactions. Michaelis-Menten equation is a mathematical model that describes the relationship between the rate of an enzyme-catalyzed reaction and the concentration of the substrate. K _m is the Michaelis constant, which is the substrate concentration at which the reaction rate is half of V _{max} . V _{max} is the maximum rate of the reaction. Lineweaver-Burk plot is a graphical representation of the Michaelis-Menten equation.
4	4. a) Explain the following terms: i) <i>Enzyme inhibition</i> ii) <i>Competitive inhibition</i> iii) <i>Non-competitive inhibition</i> iv) <i>Uncompetitive inhibition</i> v) <i>Allosteric inhibition</i>	Enzyme inhibition is the process by which the activity of an enzyme is reduced or stopped. Competitive inhibition occurs when an inhibitor binds to the active site of the enzyme, preventing the substrate from binding. Non-competitive inhibition occurs when an inhibitor binds to a site other than the active site, changing the shape of the active site. Uncompetitive inhibition occurs when an inhibitor binds to the enzyme-substrate complex. Allosteric inhibition occurs when an inhibitor binds to a site on the enzyme that is not the active site, causing a conformational change that reduces the enzyme's activity.
5	5. a) Explain the following terms: i) <i>Enzyme regulation</i> ii) <i>Allosteric regulation</i> iii) <i>Feedback inhibition</i> iv) <i>Covalent modification</i> v) <i>Enzyme induction</i>	Enzyme regulation is the process by which the activity of an enzyme is controlled. Allosteric regulation occurs when a molecule binds to a site on the enzyme that is not the active site, causing a conformational change that changes the enzyme's activity. Feedback inhibition occurs when the product of a reaction inhibits an enzyme involved in the reaction. Covalent modification occurs when a molecule is covalently attached to the enzyme, changing its activity. Enzyme induction occurs when a molecule causes the synthesis of a new enzyme.

DURR RESIDENCE

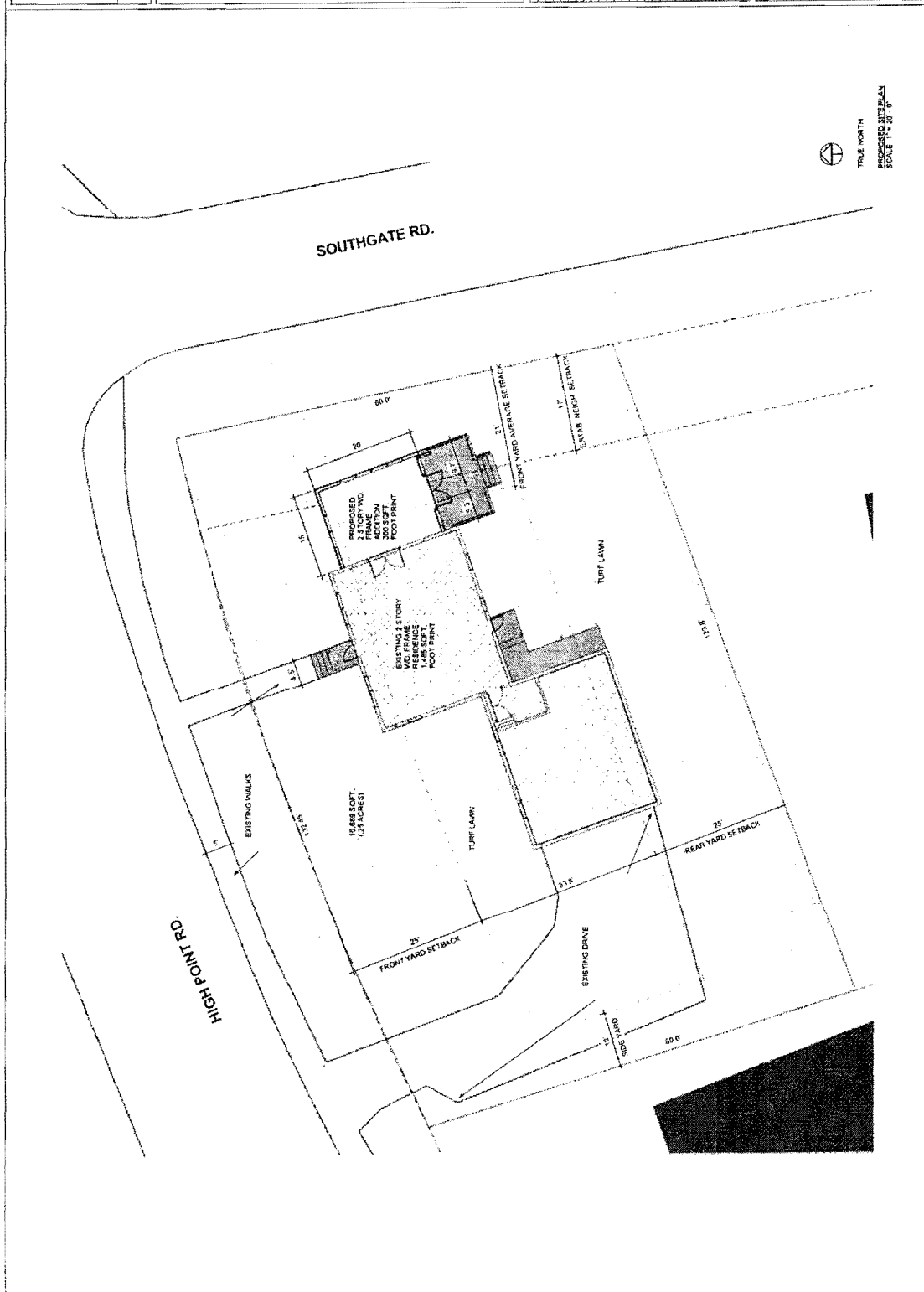
Additions to:

USED
PLAN

Field # 03-15-11

C1.2

Scale $1/8" = 1'-0"$



Dear Zoning Administrator,

The purpose of this letter is to provide information about our home and property in relation to our request for a major variance. Our home is located on the corner of E. High Point Rd. and the private road of Southgate Rd. Due to the arrangement of our home on the property, our hardship is that our side yard is considered a front yard as it faces Southgate Rd. It has a setback of 25 feet instead of 10 feet. This 25 foot setback limits the size of our renovation (creating a very narrow buildable area) and hence creates a hardship. We would like to reconstruct our sunroom (with an additional bedroom above) so that our home may be more energy efficient in relation to the remainder of the home. We would also like to enhance the home's original architecture as the current shed dormer is not true to its colonial style or harmony of the neighborhood.

Our next door neighbor, on Southgate Rd., has an attached garage at the front of the house that is 17 feet from their front yard property line. This would change our set back from 25 feet to 21 feet. We would like to encroach this newly calculated set back by 9.7 feet and establish our setback at 10 feet from the East property line.

Sincerely,
Allen and Pam Durr