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Town of Stafford
Zoning Board of Appeals
Veterans Meeting Room
Warren Memorial Town Hall
May 9, 2024

Members Present: Dennis Kaba, Chair
Janene Berriault
Arlene Avery
Danele Rhoads
Judith Mordasky, alternate

Also Present: Andy Marchese, ZEO
Ralph Faber, applicant
Attorney Ken Slater, Halloran & Sage (Stafford town attorney)
Attorney John Parks
David Perkins, former Stafford ZEO
Public

Public Hearing (continued)

Variance Request:
Applicant: Ralph Faber, 30 Colburn Rd, Stafford, CT
Owner: Norma & Ralph Faber, 30 Colburn Rd, Stafford, CT
Location: 30 Colburn Rd – Map: 18, Lot: 31, Zone: AA
Section 4.9 Dimensional Standards for residence districts – A Variance of 17.5 feet from northern side yard boundary line where a 20-foot side yard setback is required to allow for the construction of a garage.

Dennis Kaba, Chair re-opened the public hearing at 7:00 p.m., establishing a quorum with Dennis Kaba, Chair; Janene Berriault, Danele Rhoads, Arlene Avery, and seating alternate member Judith Mordasky for Aaron Hoffman. He read the legal notice and explained the two-part process of the public hearing. It was noted that Stafford's town attorney, Ken Slater of Halloran and Sage was in attendance.

The applicant Ralph Faber provided some background for his variance request. He had hired Julianos Pool company to have an in-ground pool installed, and he read from an email he received from the pool company (Exhibit A). The variance applied for to install the pool was not approved as the Town had indicated they had to get a topography survey. Work was started on the pool installation and they were issued a cease and desist order. It was determined the pool had to be dug up and moved and Ralph Faber had that done.

Ralph Faber later had the survey done and said he could provide copies of it. Andy Marchese, ZEO, confirmed ZBA members each already had a copy of the survey prepared by surveyor Stanley Szestowicki dated September 28 2023 in their packets. Ralph Faber also noted he had receipts for notifications to abutters.

Ralph Faber read pertinent parts of a letter from then-ZEO David Perkins (Exhibit B) saying what he needed to do and that it had to be approved by the building inspector.

Ralph Faber provided pictures of the bad erosion that was created as a result of the pool installation and removal (Exhibit C). This, he said, was a hardship and he needed to make his property safe. He said he got in touch with David Perkins as well as the building official, Glenn Setzler and was told he needed to apply for a permit. He said he applied for and got a permit to increase the height of his barn near the pool with no increase to the footprint of the existing building. He provided a copy of the receipt for the building permit (Exhibit D). He also provided additional photos (Exhibit E).

Ralph Faber explained that the pool was installed so close to the barn that there was no room to walk around it and people would hit their heads on the roof of it. He provided additional photos (Exhibit F). Ralph Faber said he was under the impression that when he paid for the permits, they were approved and that the health department had signed off as well. He said they began work on the barn but then received a summons to court. After he received it, he stopped work on the barn.

Danele Rhoads recapped what she understood he was saying. She said she understood that Julianos Pool Company took care of applying for the pool permit, and the Fabers believed the pool company, as an established professional, had handled it properly. She said they installed the pool too close to the neighbor's property, so they filed for a variance, but that variance request failed. So, they moved the pool to where the Town told them they could have it installed to be in compliance with zoning regulations. However, the patio was put above the foundation, so they got a permit to change the building to shore things up. She understood that what Ralph Faber was saying was that David Perkins and Glenn Setzler told him it was his responsibility to resolve the resulting erosion issue. Ralph Faber installed rock, but every time it rained, it washed out. He said they needed to change the trajectory of the building and applied for a permit, and that after he got it, he was doing repairs. They then received a summons to court from the Town with a cease and desist order, so they stopped work on the barn.

Dennis Kaba asked when the Fabers received the summons to court. Ralph Faber said it was two years ago in July. Danele Rhoads said, so it has been unconstructed for two years now? Ralph Faber said they still need to do the walls and gutters.

John Parks, an attorney with a practice in Somers said Ralph Koplar, an abutter to the Faber property, asked him to investigate the situation. He said the application is incomplete, that where the application asks if there were previous applications, there is no answer. He said this is relevant because Ralph Faber knew where the setback line was. He read the definition of a hardship, noting it must be something beyond the control of the party involved. He said if the applicant is adding something that is causing a problem, then it is not a hardship. Attorney Parks

said all the abutters share the same topography so the Faber's property is not unique. He said if a hardship is self-created, then a ZBA cannot grant a variance. He said the applicant in this case did multiple constructions and violated the setback. He said it justifies the denial of a variance. Attorney Parks discussed case law (Pollard vs. ZBA) providing a copy (Exhibit G). He said if the ZBA granted this variance, it would be overturned in court. He also provided additional information on the Pollard vs. ZBA case (Exhibit H). He suggested ZBA members study this case law. He said an abutter has the standing to bring an appeal.

Danele Rhoads asked what if the hardship was brought on by the Town? Attorney Parks said the Town did not bring on this hardship. The hardship was caused by the activity of the applicant. He said the hill on the property was already there.

Norma Faber said the Town issued a permit for the pool and if the town didn't think it was feasible, they would have denied it.

Attorney Parks said the applicant is here because he is increasing the size of the building beside the pool. It was clarified at that time that the footprint of the structure would remain the same.

Former Stafford ZEO David Perkins discussed the zoning violation at 30 Colburn Road, providing a series of pictures (Exhibit I). He said on December 3, 2023 he went out to the property to find where the setback line was. He showed a picture of where the pool was illegally installed and one where the corrected location of the pool was then installed and the building there. The exhibit included pictures of the built property in relation to the pipe and where the setback line goes through the building and also the actual setback line. The pictures show the building is much bigger than it was originally. He provided a picture of the backside of the building and a roadside picture that shows where the setback line is. Another page showed the original structure. Another showed the encroachment into the setback area delineated by a blue trapezoid. He said the footprint of the barn is the same, but the height is much taller, about eight feet taller.

David Perkins provided a copy of the application that was made for a zoning permit on September 2, 2021 (Exhibit J), but he said the drawing provided did not show the setbacks. He said the permit was never approved. He said there was a site plan prepared for the pool and he could have used it to plot for the new building, but David Perkins never received that.

David Perkins said he told him to stop the work on the barn on November 15 and issued a cease and desist order in December. However, Ralph Faber proceeded with working on the building through February, March and April. Eventually, on June 27th, the Town took him to court. David Perkins said last week they got a judgement from the court stating that the plaintiff had satisfied their burden of proof. The barn was built without legal authority from the town and the Fabers are now asking for relief four years later. He said the judge said to make the building conforming, take it down, or get a variance. But the hardship is self-created. He provided a copy of the court decision (Exhibit K) and a notebook with all the Superior Court paperwork (Exhibit L).

Erik Schaefer, the abutter at 34 Colburn Road, said there is a certain procedure that must be followed when you build a structure on your property. He said you have to apply for the proper permits and then, once they are approved, you can start the work. He said this structure is built with non-conventional lumber and mafia block foundations. He said he did not see how it meets codes. He said he was saying this to show that the Fabers have a pattern of behavior. They do what they want and then come in for a variance later. Erik Schaefer said his property is changed forever because they did not follow proper procedure. He said after the boundary was known, they continued to abuse it. He talked about a wood burning stove the Fabers have on their property and a problem with running dirt bikes. He said there were a whole host of events that happened that shouldn't have. He said you can't have two sets of standards for residents to follow; otherwise, you are cutting the legs off the Building Department.

David Roy of 33 Forest Road said the Fabers run a tree service on their property and don't hide it. He said it is a commercial entity and they use an air hammer, bring in stumps and have skid steers. He doubted they had the appropriate permits. He said Juliano Pools was working on the property late at night because, he assumed, they didn't have a permit. He complained about the Fabers' wood burning stove and where it was located on their property. He said if a building is allowed to be built improperly and with improper materials, it opens the door for a free for all.

Ralph Koplar of 28 Colburn Road said he has a picture of the barn under discussion on his phone from May 22, 2015 which shows its size at that time. He said it will show the difference in size between then and what it is now. Attorney Slater asked him to email it to the town so a copy could be included in the record as an exhibit. Ralph Koplar did so.

Norma Faber, 30 Colburn Road, said the smelly smoke from a wood stove that Dave Roy was complaining about was from a stove in Ralph Koplar's barn, not from their stove. She provided a picture (Exhibit M) and said that barn is located 18 feet from the setback of her property.

Attorney Slater said they are getting off track, and everyone needs to keep their conversations to the variance application before the Board.

Danele Rhoads said she understood all the various sentiments being expressed, noting it was a lot to take in. She asked if there was a dispute about the footprint of the barn in question. David Perkins said there is a foundation under the structure—blocks and something else—so, they are different materials, but he said he felt the footprint had not changed.

Norma Faber said the height of the barn does not impact the neighborhood. She said it has stopped the erosion problem. She said without increasing the height of the barn, they would continue to have erosion and mud. She said if they don't get the variance and have to take it down, then the erosion will continue and they don't know how to fix it otherwise.

Rocko Magistri of 117 Colburn Road noted that Ralph Faber is his brother-in-law. He said the footprint has not changed and that they just increased the height about eight feet. He said this discussion seems more about politics with the town and neighbors who have a grudge. He said, regarding Juliano Pools, it should not matter that they live on a hill. The Fabers consulted with a company that handles these types of issues. He said if anyone should be responsible, it is Juliano

Pools, not this family. He said the garage is not falling down and there is nothing wrong with the wood. It is just the neighbors and town messing with them.

Erik Schaefer, 34 Colburn Road, reiterated that there are certain procedures one has to do to build. He said with the pool situation, things ran amuck in his yard. They cut trees down and changed the shape of his (Erik Schaefer's) property, which he found upsetting. He said he had a gentlemen's agreement with Ralph Faber that he would make things right, but then one thing after another happened. He said this is why there is animosity. He said everything requires approvals from the town and you need to follow codes. He said the barn was once a single bay garage, but then they added to it in 2015 and then built it up eight feet higher.

Andy Marchese, ZEO, reminded everyone that they were here tonight because of a non-conforming structure and because Ralph Faber added height to it.

David Perkins asked to see the Zoning/Building permit. He said it was not approved. He said an application goes to the health department, building and zoning and they ask for a site plan showing the current and proposed conditions. He said permits were not approved for health, zoning or building, and as a result, when he saw work being done, he told them to stop. He said this is what Attorney Parks was talking about. The hardship is self-created.

Attorney Ken Slater of Halloran and Sage said he is the town attorney and is here to answer any questions they may have. He said he became the town attorney after the lawsuit was filed by the previous town attorney, Attorney Muska. He initiated the lawsuit because the Fabers did not have a permit. Attorney Slater said there was an evidentiary hearing and he was before the court several more times. He was also there for the trial. He said the judge ordered the barn be taken down. He said Attorney Parks, with the example of the 1982 Pollard case, provided the reasoning. This is a self-created hardship.

Attorney Slater said a permit was never issued for the barn and that David Perkins told them to stop work on it, but the Fabers continued to build anyway. He said if the ZBA grants this variance, it will get reversed. He said they cannot grant a variance even if what happened was an accident. He referred to another example in case law.

Ralph Koplar, 28 Colburn Road, provided copies of the printed out picture of the street view of the structure as it stood in 2015 (Exhibit M). He said the structure was built in stages. In 2015, it was a one-bay garage. Then there was a space beside it, and then a block wall with a lean-to to make the one-bay garage into a two-bay garage. He said then the pool was built, and then the entire structure was taken down.

Ralph Faber said, however, that the foundation remained the same. He did not increase the foundation. He said until all this came up, he did not have any surveys done on anything.

Norma Faber said when they hired Juliano Pools, there were no surveys. She said they assumed the property line was the fence. She apologized to Erik Schaefer for their mistake and said when they discovered this, they offered to buy the portion of Erik Schaefer's land that Julianos had destroyed.

Erik Schaefer, 34 Colburn Road, said he and Ralph Faber had a gentlemen's agreement that he would remove the barn, but he did not. He said Ralph Faber agreed to put up a white vinyl fence from the road to the woodline. However, after that offer, they did nothing to mend fences. He reiterated that their problem is a self-made hardship.

Dave Roy, 33 Forest Road, asked what does "cease and desist" mean. Attorney Slater said it means, "Stop."

Ralph Faber said he never got a cease and desist order. He said there was never anything stapled to his door.

Attorney Slater reviewed the Superior Court paperwork in Exhibit L. He said the cease and desist order was issued by certified mail (Exhibit 4 in the court paperwork) and was signed for. He said the Fabers also received the court summons. Ralph Faber said no one in his family signed for a cease and desist order.

Dr. David Mordasky, 21 Buckley Highway said the issue before them is about a building where the applicant is asking for a variance. He said there doesn't appear to be any hardship that he can discern, and the attorney has said if they approve the variance request it will be reversed in court. He said it is time for the ZBA to do their job and make a decision.

Rocko Magistri, 117 Colburn Road, said he believed everyone could agree that the erosion problem started when Julianos dug to install the pool. He said they caused the problem. He said David Perkins told the Fabers it was their problem to figure out how to fix the erosion. He said the Fabers did what they had to do to stop the erosion. He said he felt the town has some liability for this problem as well.

Ross Faber of 306 Leonard Road, said he is Ralph Faber's brother. He asked that people just consider the facts around the application and not the irrelevant information. He said his brother tried to do all he could to fix the problem.

Ralph Faber II of 15 Bass Drive in Enfield said with regard to the court notice the Fabers received, they did not know if it was the real deal or not. He said the judge didn't sign anything and with computer espionage these days, you can't be sure if things are real. He said the Fabers paid for surveys for what the town wanted them to do and they tried to stop the erosion. He asked what harm the building is causing.

Andy Marchese referred to Rocko Magistri's comment that the town told Ralph Faber to figure it out—it is your problem. He said the town is here to help with applications. He said this is all about process. He said they didn't get a health department permit. They did not get a permit from the building department. They did not get a zoning permit. He said we tell homeowners to hire professionals if they need help. He said the permits that were applied for were not approved. He said the then-ZEO issued a stop work order. He said they were told that they needed comprehensive building plans, and so the permits were not granted due to insufficient

information provided. He said they requested more information including a comprehensive survey and building plans. He explained the process that the Fabers needed to follow.

Joseph Bellenger of 111 Hampden Road said when the Fabers first bought their property, it was in poor shape and they improved it substantially. He said they hit some unfortunate roadblocks with people in the system and they were not given a guiding hand. He said they tried to do their best with what they were handed.

Erik Schaefer, 34 Colburn Road, said he has no issue with a garage. He said he agreed with Andy Marchese that this is about procedure. He said when he talked about those other issues, it was just trying to show that it was a pattern of behavior on the Fabers' part.

Ralph Faber II, 15 Bass Drive, Enfield, said Erik Schaefer didn't even know where his property line was before all this started.

Erik Schafer, 34 Colburn Road, said that was why they had a gentlemen's agreement. He said he extended an olive branch to Ralph Faber.

Attorney Slater reminded everyone that all dialogue should be directed to the Board.

Danele Rhoads asked David Perkins what he told the Fabers to do about the erosion problem. David Perkins said he did not see how adding a roof to the barn would fix the erosion problem. He said with regard to erosion, he would have told them to talk to a professional.

Danele Rhoads asked how the garage was stopping the erosion problem.

Andy Marchese reminded the Board that they were not here this evening to talk about an erosion problem. They are here about a structure. He said the Town did not give Julianos guidance about how to put in the pool and the Fabers could have dealt directly with Julianos about the problem they created.

Dave Roy, 33 Forest Road, said he agreed. He said the Board needs to make a decision about the structure.

Sarah Magistri, 117 Colburn Road, said Ralph Faber is her brother. She said when you hire a professional, you expect the company to do their work legally and correctly. She said her brother spent money to have six surveys done. She said he is not being malicious. She said to predetermine that if he is granted the variance, he will lose in court is not fair. She said everyone has the right to be heard.

Joseph Bellenger, 111 Hampden Road, said if Ralph Faber continued to let the water run down the hill and not try to stop the erosion, his house could have been damaged also. He said Ralph Faber was always trying to do the right thing.

Andy Marchese said there is a process to addressing erosion through the health, building and zoning departments and this process was not followed. He said sometimes when you take matters

into your own hands, you can make a situation worse. He reiterated that the proper permits were not obtained.

Ralph Faber, 34 Colburn Road, said the health department signed off on the application. Andy Marchese said he had receipts for the applications but not approved permits. He asked Ralph Faber if he had an approved building/zoning permit. Ralph Faber said no, and that they never got one for the pool installation either. He said he thought the receipts were the approvals. He said when he paid for them at the town he was told he was all set. Andy Marchese noted he was issued a cease and desist order. Ralph Faber said they didn't sign for that letter.

Arlene Avery referred to the application for the Zoning Permit (Exhibit J). She said there is a line at the bottom of the application that says, "permit issued by_____" and it is unsigned.

Danele Rhoads asked Ralph Faber if, when he received the court papers, if he stopped work. Ralph Faber said he did.

Dave Roy, 33 Forest Road, said it is the sole responsibility of a homeowner to make sure permits are taken out when work is done on their property. Danele Rhoads said she might not have known that either and it probably wouldn't hurt to provide an informational session for residents at some point.

Judith Mordasky made a motion to close the public hearing.

Jodi S. of Stafford Springs said they were in a similar situation when they had a contractor who started work on their property without first securing a permit. She said it worked out but there is sometimes confusion around these things.

Dr. David Mordasky, 21 Buckley Highway, said there is a motion on the floor to close the public hearing.

Janene Berriault seconded the motion.

Arlene Avery said the variance she had in her packet referred to Section 8.14, which is about zoning amendments. Dennis Kaba said his paperwork said the same. Andy Marchese said the application on March 21, 2024 refers to Section 4.9, Dimensional Standards for Residential Districts. He said this was what was run in the legal notice.

With a motion on the floor to close the public hearing and a second made, the Board voted on the motion. All were in favor. Motion carried.

Regular Meeting:

1. Call to order
2. Establish a quorum
3. Approval of April 11, 2024 Meeting Minutes
4. Public Hearing Deliberation
5. Adjournment

1. **Call to Order**
   The Regular Meeting of the Stafford ZBA began immediately following the public hearing at 8:56 p.m.

2. **Establish a quorum**
   A quorum was established with Dennis Kaba, Chair; Janene Beriault, Arlene Avery, Danele Rhoads, and seating Judith Mordasky, alternate, for Aaron Hoffman.

3. **Approval of April 11, 2024 Meeting Minutes**
   Arlene Avery made a motion to approve the April 11, 2024 meeting minutes as written, seconded by Danele Rhoads. All were in favor. Motion carried.

4. **Public Hearing Deliberation**
   Judith Mordasky said we all like our neighbors, but a Variance should not be a tool of convenience. She said state regulations state that non-conformities should not be enlarged, expanded or extended and this Variance asks to extend a non-conforming structure. She said also that the slope is not unique to his property. She said she felt this was a self-imposed hardship, and that they have to keep in mind the rights of neighbors.

   Danele Rhoads said the work done on the barn was an effort to solve a problem. She said the litigation over it seemed egregious to her. She said they can approve the Variance request as a Board if they choose to.

   Judith Mordasky said, however, that the hardship was self-created. She said all the neighbors in that area have that same topography. She noted they run into the same steep slope issues out at Staffordville Lake.

   Danele Rhoads suggested they allow the eight-foot height extension on the structure. She said she wants to consider all the factors involved. She said while it does sound like the Pollard case law is clear, she could still dissent. She said she felt bad for the Fabers and felt the town activity was egregious. She said Ralph Faber misunderstood the process required.

   Arlene Avery said she felt the hardship was self-created. She referred to the zoning permit (Exhibit J) and that the permit was un-signed.

   Dennis Kaba said he also felt the hardship was self-imposed. He blamed Juliano Pools for starting it all. He said if they approve the Variance, it will only get overturned.

Janene Berriault said it is a tough situation, but she was also against approving the Variance request.

Arlene Avery made a motion, seconded by Judith Mordasky, to deny the request for a variance of 17.5 feet from the northern side yard boundary line where a 20-foot side yard setback is required to allow for the construction of a garage. The reason for the denial was due to a hardship not being established as it was a self-created difficulty. The applicant also never got a permit for the work performed.

Arlene Avery, Judith Mordasky, Dennis Kaba, and Janene Berriault voted in favor of the denial of the variance. Danele Rhoads was opposed to the denial. Motion carried.

5. **Adjournment**
Arlene Avery made a motion, seconded by Janene Berriault, to adjourn the meeting. All were in favor. Motion carried. The May 9, 2024 meeting of the Stafford Zoning Board of Appeals was adjourned at 9:05 p.m.

Respectfully submitted,

Annie Gentile

Annie Gentile
Recording Secretary

Ex: A

Gmail

Ralph Faber <torquewrench99@gmail.com>

30 Colburn Rd. Stafford Springs, Ct

1 message

Jamie Herrick <jamie@julianospools.com> Thu, Apr 11, 2024 at 12:34 PM
To: "torquewrench99@gmail.com" <torquewrench99@gmail.com>

To Whom It May Concern,

The Faber family purchased an inground pool on February 19th, 2019. We applied for a permit right away and we began to excavate the hill. The town did not respond until 3 weeks later with a cease and desist order. The Faber's were told to get a topography survey, an engineered blueprint for a locking block retaining wall, and an A-2 survey. It was then discovered that the pool was installed 12' from the north side boundary. A variance was applied for and was not approved by the Zoning Board of Appeal. We then were told by the zoning enforcement officer and building inspector where to move the pool because they would not lift the cease and desist order unless we adhered to all their new demands. The Zoning Enforcement Officer and building inspector decided to ignore the topography survey and the retaining wall blueprint. The elevation of the new pool is above the foundation of the barn next to it. Instead of a locking block retaining wall, the Zoning Enforcement Officer and building inspector decided that they wanted a boulder wall instead. We followed all of the demands of the town and installed the pool the way it is now.

Exhibit B

Town of Stafford

1 Main Street, Warren Memorial Town Hall
Stafford Springs, CT 06076-1208

ZONING ENFORCEMENT OFFICER
(860) 684-1793 · zoning@staffordct.org

3/3/2019

Owners:
Ralph and Norma Faber
30 Colburn Road
Stafford Springs, CT 06076

Applicant/Contractor:
Juliano's Pools, LLC
321 Talcottville Road
Vernon, CT 06066

RE: 30 Colburn Road, Stafford, CT Map 18 Lot 31

Thank you for the steps that you have taken to construct a compliant pool. Now that spring is upon us, I offer the following comments outlining tasks to be completed in order to receive a Certificate of Zoning Compliance:

Drainage from the western hill empties into a dry well.
Finish the grading of the western hill side so slopes are no more than 2:1 and seed with an erosion control seed mixture as soon as the weather is warm.
The embankment at the eastern side below the pool must be finished with a slope and wall approved by the building inspector.
The driveway is to be completed in accordance with the town ordinance for driveways number 2-5. You will need a driveway permit from the Public Works Department.
All sidewalks adjacent to the pool and permanent fencing are to be installed.

Prior to issuance of a Certificate of Occupancy, an improvement location survey by a licensed land surveyor commonly known as an "As Built Plan," is to be done at a scale of 1" = 40" or sufficient to show structures as they relate to the project site and boundary lines, and shall be prepared and sealed by a licensed surveyor. This survey shall show, but not be limited to the following:

1. Dimensioned footprint of all structures or improvements located on the subject lot, above or below ground, including all decks, sidewalks, fences, walls and overhangs, and relationship of each to the property lines and building setback lines..
2. Elevations in two foot intervals.

3. Location of wetlands per approved IWWC permit (if applicable)
4. Location of on-site well and or septic system (if applicable)
5. Location of any drywells; drains and other erosion control structures and their point of discharge.
6. Location of any easements located on the property.

Soil and Erosion Control measures to be maintained until all disturbed areas are permanently stabilized.

Sincerely,
David Perkins



Zoning Enforcement Officer

Cc Building Inspector
Public Works

#1

EXHIBIT C







Gmail

Ralph Faber <torquewrench99@gmail.com>

Your Receipt

2 messages

EXHIBIT D

support@pointandpay.com <support@pointandpay.com> Thu, Sep 2, 2021 at 9:50 AM
To: torquewrench99@gmail.com

Greetings,

The Town of Stafford thanks you for your payment. For questions about your account, please call 860-684-1775

Your payment ID is: 99742993

Items Paid For:

Description: Building Permits
Amount Paid: $50.00
Account Number: 56671~7172~STAFFORD~0~Building Permit for 30 COLBURN RD

Customer Information:

First Name: Ralph
Last Name: Faber
Address Line 1: 30 Colburn Rd
Address Line 2:
City: Stafford
State: Connecticut
Zip Code: 06076
Phone Number: 8608741159
Email Address: torquewrench99@gmail.com

Payment Information:

Subtotal: $50.00
Fee Total: $2.00
Total: $52.00
Datetime: 09/02/2021 09:50:41

---

support@pointandpay.com <support@pointandpay.com> Thu, Sep 2, 2021 at 9:57 AM
To: torquewrench99@gmail.com

Greetings,

The Town of Stafford thanks you for your payment. For questions about your account, please call 860-684-1775

Your payment ID is: 99743405

Items Paid For:

Description: Building Permits
Amount Paid: $110.00
Account Number: 56668~615~STAFFORD~1~Zoning for 30 COLBURN RD

Customer Information:

First Name: ralph
Last Name: faber
Address Line 1: 30 colburn rd
Address Line 2:
City: Stafford
State: Connecticut
Zip Code: 06076
Phone Number: 8608741159
Email Address: torquewrench99@gmail.com

Payment Information:

Subtotal: $110.00
Fee Total: $3.03
Total: $113.03
Datetime: 09/02/2021 09:57:44

Gmail

Ralph Faber <torquewrench99@gmail.com>

PermitLink electronic payment confirmation from the TOWN OF STAFFORD, CT

2 messages

donotreply@permitlinkonline.com <donotreply@permitlinkonline.com> Thu, Sep 2, 2021 at 9:51 AM
To: torquewrench99@gmail.com

Your payment has been received in the amount of 50.00
for a Building Permit located at this address: 30 COLBURN RD

---

donotreply@permitlinkonline.com <donotreply@permitlinkonline.com> Thu, Sep 2, 2021 at 9:58 AM
To: torquewrench99@gmail.com

Your payment has been received in the amount of 110.00
for a Zoning Permit Application located at this address: 30 COLBURN RD

2

EXHIBIT E







EXHIBIT F



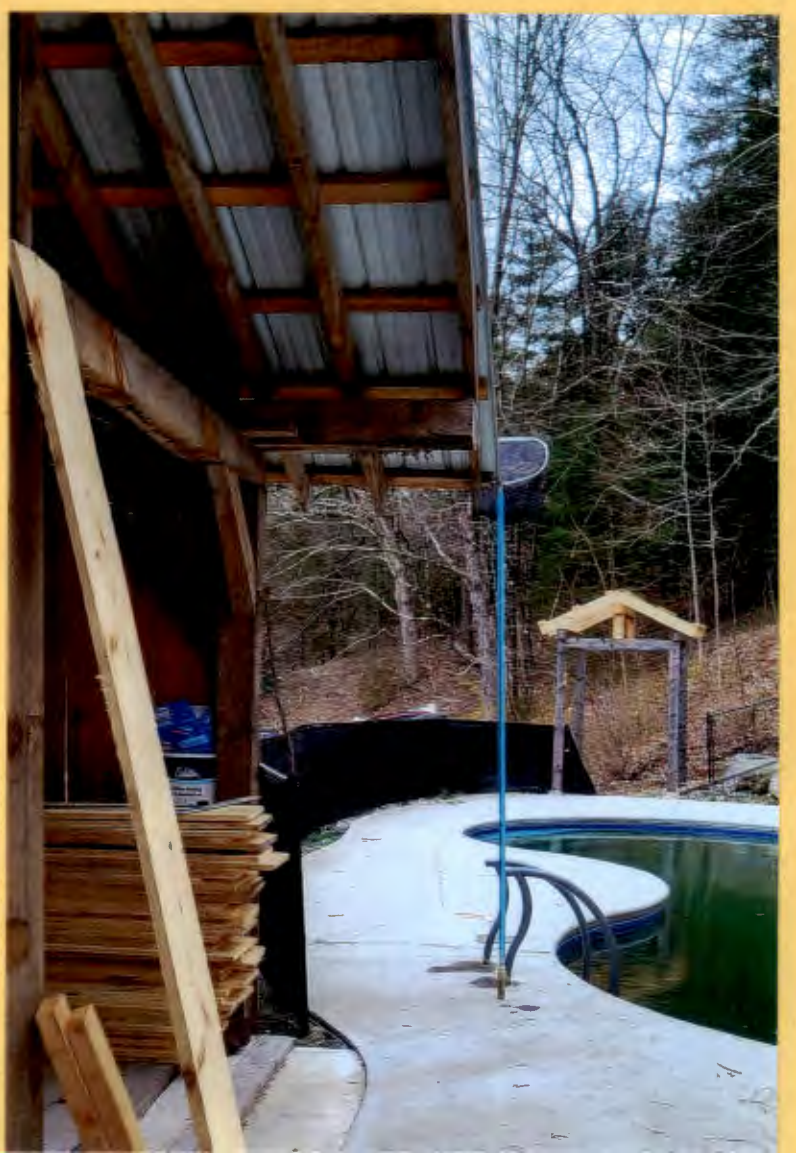


EXHIBIT 6

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By

ROBERT A. FULLER

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the comprehensive plan and hardship is shown.[12] If the use to be allowed by the variance is consistent with other uses in the area, the first part of the variance test is met, such as where houses in the area of the applicant's property were built on lots which were of the same size or smaller and with similar setbacks.[13] It is difficult, however, to satisfy the second part of the test, "exceptional difficulty or unusual hardship."[14] An interesting feature of the two part test for a variance is the situation of the undersized residential lot in a subdivision or neighborhood with similar undersized lots. The existence of similar lots may amount to compliance with the comprehensive plan but make it difficult or impossible to prove unusual or unique hardship.[15] The board can act based upon the observation of the site by board members.[16]

§ 9:3 Hardship requirement

The hardship which justifies a zoning board of appeals to grant a variance must be one that originates in the zoning ordinance and arises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved.[1]

While the statute and comparable special acts, which were derived initially from provisions in statutes of other states, refer to "exceptional difficulty or unusual hardship," the supreme court

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[12]Devaney v. Board of Zoning Appeals of City of New Haven, 143 Conn. 322, 122 A.2d 303 (1956) (use variance for parking upheld).

[13]Eagan v. Zoning Bd. of Appeals of Old Lyme, 20 Conn. App. 561, 568 A.2d 811, 813 (1990) (area and setback variances upheld).

[14]General Statutes § 8-6(a)(3).

[15]Francini v. Zoning Bd. of Appeals of Town of Old Lyme, 228 Conn. 785, 791, 639 A.2d 519, 522 (1994); Verrillo v. Zoning Board of Appeals of Town of Branford, 155 Conn. App. at 729–732, 111 A.3d 520–522.

[16]Mrowka v. Board of Zoning Appeals of Town of Plainville, 134 Conn. 149, 154, 55 A.2d 909, 912 (1947); Dubiel v. Zoning Bd. of Appeals of Town of East Hartford, 147 Conn. 517, 522, 162 A.2d 711, 714 (1960); Hlavati v. Board of Adjustment of City of New Britain, 142 Conn. 659, 666, 116 A.2d 504, 507 (1955).

[Section 9:3]

[1]Archambault v. Wadlow, 25 Conn. App. 375, 594 A.2d 1015, 1019 (1991) (nonconforming undersized lot arose with enactment of zoning regulations, and requesting a variance was not a self-created hardship); Mandanici v. Zoning Bd. of Appeals of City of Shelton, 50 Conn. App. 308, 311, 717 A.2d 287, 288 (1998); Whittaker v. Zoning Bd. of Appeals of Town of Trumbull, 179 Conn. 650, 658, 427 A.2d 1346, 1350 (1980); Pollard v. Zoning Bd. of Appeals of City of Norwalk, 186 Conn. 32, 40, 438 A.2d 1186, 1190 (1982); Smith v. Zoning Bd. of Appeals of Town of Norwalk, 174 Conn. 323, 327, 387 A.2d 542, 545 (1978); McMahon v. Board of Zoning Appeals of City of New Haven, 140 Conn. 433, 442, 101 A.2d 284, 289 (1953).

indicated in *Devaney v. Board of Zoning Appeals of City of New Haven*[2] that no court has ever regarded the words "practical difficulties" as having any significance in themselves or that they amount to a separate standard for allowing variances, and the phrase must be construed as a whole. This concept remains unchanged in later cases.[3] Connecticut does not follow other states which apply "unnecessary hardship" to use variances and "practical difficulties" to area variances.

Proof of the existence of practical difficulty or unusual hardship is a condition precedent to the granting of a variance.[4] The applicant has the burden of proving hardship peculiarly affecting his land by the application of the zoning ordinance.[5] The applicant must show that because of some peculiar characteristic of his property, the strict application of the zoning regulations results in an unusual hardship as opposed to the general impact which the regulation has on other properties in the zone.[6] How the property is assessed for tax purposes is not necessarily controlling on whether there is hardship for a variance.[7] Paying taxes on two abutting parcels but only being able to use one is not hardship.[8] Having one of the highest tax bills because of the formula used by the town for assessing property is not a sufficient hardship to allow the division of one irregularly shaped parcel into two lots.[9] Increased tax revenues for the municipality

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[2]Devaney v. Board of Zoning Appeals of City of New Haven, 132 Conn. 537, 541, 45 A.2d 828, 829 (1946).

[3]See Celentano, Inc. v. Board of Zoning Appeals of New Haven, 149 Conn. 671, 673, 184 A.2d 49, 50 (1962); Sonn v. Planning Commission of City of Bristol, 172 Conn. 156, 160, 374 A.2d 159, 161 (1976).

[4]Spencer v. Zoning Bd. of Appeals of Town of Stratford, 15 Conn. App. 387, 389, 544 A.2d 676, 677 (1988); Miclon v. Zoning Bd. of Appeals of Town of Windsor Locks, 173 Conn. 420, 423, 378 A.2d 531, 532 (1977); Nash v. Zoning Bd. of Appeals of Town of East Hartford, 165 Conn. 576, 577, 345 A.2d 35, 35 (1973); Ward v. Zoning Bd. of Appeals of Town of Hartford, 153 Conn. 141, 144, 215 A.2d 104, 106 (1965).

[5]Bloom v. Zoning Bd. of Appeals of City of Norwalk, 233 Conn. 198, 207, 208, 658 A.2d 559, 564 (1995); Scobie v. Idarola, 155 Conn. 22, 23, 229 A.2d 361, 361 (1967); Kelly v. Zoning Bd. of Appeals of Town of Hamden, 21 Conn. App. 594, 575 A.2d 249, 252 (1990).

[6]233 Conn. 198 at 207, 658 A.2d at 564; Dolan v. Zoning Bd. of Appeals of Town of Fairfield, 156 Conn. 426, 430, 242 A.2d 713, 714 (1968).

[7]Santos v. Zoning Bd. of Appeals of Town of Stratford, 100 Conn. App. 644, 652, 918 A.2d 303 (2007); Norwood v. Zoning Bd. of Appeals of the Town of Branford, 62 Conn. App. 528, 535–37, 772 A.2d 624 (2001).

[8]Spencer v. Zoning Bd. of Appeals of Town of Stratford, 15 Conn. App. 387, 391, 544 A.2d 676, 678 (1988).

[9]Bigley v. Board of Zoning Appeals of Town of Stratford, 1995 WL 263727 (Conn. Super. Ct. 1995).

are not a ground for a variance.[10] The hardship required for a variance must be one that originates in the zoning ordinance.[11] Where condemnation of a liquor business occurred, denial of a variance of the separation distance provision was not hardship caused by the ordinance.[12]

A person is not entitled to a variance where the hardship claimed is not different in kind from that generally affecting property in the same zoning district, namely the hardship is not unique or unusual.[13] Where there had been a change in the zoning regulations which reduced the usable lot area where a residence could be constructed, there was no unique hardship which justified a variance because it also affected other properties in the zone, and the fact that an estate had to sell the property for financial reasons and the regulation would result in a smaller residence on the lot if the existing one was replaced was only a personal hardship which was not a valid reason for a variance.[14] The failure of the municipality to enforce the zoning ordinance in the past is immaterial since the board cannot consider estoppel or laches in deciding whether a variance should be granted but is

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[10]Dixon v. Zoning Bd. of Appeals of Town of Milford, 19 Conn. Supp. 349, 353, 113 A.2d 606, 608 (C.P. 1955).

[11]Pollard v. Zoning Bd. of Appeals of City of Norwalk, 186 Conn. 32, 39, 438 A.2d 1186, 1190 (1982); Scobie v. Idarola, 155 Conn. 22, 23, 229 A.2d 361, 361 (1967).

[12]Maraczi v. Zoning Bd. of Appeals of City of Bridgeport, 155 Conn. 500, 234 A.2d 824 (1967).

[13]Chapman v. Zoning Bd. of Appeals of Town of Old Lyme, 23 Conn. App. 441, 581 A.2d 745, 746 (1990) (denial of variance where all the other lots in the area were also nonconforming); Green v. Zoning Bd. of Appeals of Town of Westport, 4 Conn. App. 500, 503, 495 A.2d 290, 291 (1985); Carini v. Zoning Bd. of Appeals of Town of West Hartford, 164 Conn. 169, 172, 319 A.2d 390, 392 (1972); Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 238, 303 A.2d 743, 744 (1972); B.I.B. Associates v. Zoning Bd of Appeals of City of Stamford, 161 Conn. 596, 281 A.2d 823 (1971); Belknap v. Zoning Bd. of Appeals of Town of Easton, 155 Conn. 380, 383, 232 A.2d 922, 924 (1967); Ward v. Zoning Bd. of Appeals of Town of Hartford, 153 Conn. 141, 143, 146, 215 A.2d 104, 105, 107 (1965); Spencer v. Zoning Bd. of Appeals of Town of Stratford, 15 Conn. App. 387, 391, 544 A.2d 676, 678 (1988); Murphy, Inc. v. Board of Zoning Appeals of Town of Wilton, 147 Conn. 358, 360, 161 A.2d 185, 186 (1960); Makar v. Zoning Bd. of Appeals of Town of Fairfield, 150 Conn. 391, 396, 397, 190 A.2d 45, 47, 48 (1963); Bright v. Zoning Bd. of Appeals of Town of Fairfield, 149 Conn. 698, 706, 183 A.2d 603, 606 (1962); Michler v. Planning and Zoning Bd. of Appeals of Town of Greenwich, 123 Conn. App. 182, 187, 1 A.3d 1116 (2010); Verrillo v. Zoning Bd. of Appeals of Town of Branford, 155 Conn. App. 657, 682, 111 A.3d 473, 493 (2015).

[14]Michler v. Planning and Zoning Board of Appeals of Town of Greenwich, 123 Conn. App. at 187.

limited by the terms of the zoning ordinance and statutory requirements.[15]

The hardship that must exist for a variance is a hardship on the individual property owner, and the board cannot grant a variance for a hardship suffered by the town as a whole[16] or by a general hardship to the neighborhood.[17] The fact that the board granted a variance to another lot owner on the same street in a virtually identical situation is not a valid basis for granting a variance.[18]

Absent a situation amounting to confiscation, financial loss or the potential of financial advantage to the applicant is not the proper basis for a variance and does not constitute hardship.[19] Loss of competitive advantage is not sufficient for a variance.[20] A variance also should not be granted to allow the property owner to implement modern technology to expand a use to allow a business to remain competitive[21] because the regulations did not impose an unusual or unique hardship. Financial considerations are relevant only in those exceptional situations where applica-

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[15]Carini v. Zoning Bd. of Appeals of Town of West Hartford, 164 Conn. 169, 173, 319 A.2d 390, 392 (1972).

[16]Finch v. Montanari, 143 Conn. 542, 546, 124 A.2d 214, 215 (1956).

[17]Ward v. Zoning Bd. of Appeals of Town of Hartford, 153 Conn. 141, 146, 215 A.2d 104, 107 (1965); Kelly v. Zoning Bd. of Appeals of Town of Hamden, 21 Conn. App. 594, 598, 575 A.2d 249, 252 (1990).

[18]Haines v. Zoning Bd. of Appeals of Town of Oxford, 26 Conn. App. 187, 191, 599 A.2d 399, 401 (1991).

Hoffer v. Zoning Bd. of Appeals of Town of Oxford, 64 Conn. App. 39, 43, 779 A.2d 214, 217 (2001) (the prior granting of variances to others has no bearing on whether there was hardship for the particular variance requested).

[19]Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 239, 303 A.2d 743, 745 (1972); Carlson v. Zoning Bd. of Appeals of Town of Berlin, 158 Conn. 86, 89, 255 A.2d 841, 843 (1969); Berlani v. Zoning Bd. of Appeals of Town of Plainville, 160 Conn. 166, 171, 276 A.2d 780, 782, 2 Env't. Rep. Cas. (BNA) 1155 (1970); Laurel Beach Ass'n v. Zoning Bd. of Appeals of City of Milford, 166 Conn. 385, 387, 349 A.2d 834, 835 (1974); Shell Oil Co. v. Zoning Bd. of Appeals of Town of Bloomfield, 156 Conn. 66, 70, 238 A.2d 426, 428 (1968); Makar v. Zoning Bd. of Appeals of Town of Fairfield, 150 Conn. 391, 396, 190 A.2d 45, 47 (1963); Spencer v. Zoning Bd. of Appeals of Town of Stratford, 15 Conn. App. 387, 392, 544 A.2d 676, 679 (1988); Benoit v. Zoning Bd. of Appeals of Town of Enfield, 148 Conn. 443, 446, 172 A.2d 71, 73 (1961); Paul v. Board of Zoning Appeals of City of New Haven, 142 Conn. 40, 43, 110 A.2d 619, 620 (1955); Heady v. Zoning Bd. of Appeals for Town of Milford, 139 Conn. 463, 467, 94 A.2d 789, 791 (1953).

Durkin Village Plainville, LLC v. Zoning Bd. of Appeals of Town of Plainville, 107 Conn. App. 861, 875, 946 A.2d 916 (2008).

[20]Forbes v. Zoning Bd. of Appeals of Town of West Haven, 146 Conn. 547, 550, 153 A.2d 458, 459 (1959).

[21]Berlani v. Zoning Bd. of Appeals of Town of Plainville, 160 Conn. 166, 170, 171, 276 A.2d 780, 782, 2 Env't. Rep. Cas. (BNA) 1155 (1970).

tion of the zoning regulations to the property either destroys or drastically reduces its value for any of the uses to which it could reasonably be put and where the regulations as applied bear so little relationship to the purposes of zoning that application of the regulations to the property have a confiscatory or arbitrary effect.[22]

However, financial hardship amounting to confiscation requires more than evidence that the property can only be sold for a price substantially lower than if a variance were granted, and there must be some evidence of alternative uses for the property or the extent of the financial impact on the property if the variance is denied.[23] In order for a claim of financial hardship amounting to confiscation to succeed, there must be evidence as to the value of the property before the zoning board of appeals or additional evidence presented on the confiscation claim in the trial court based on the provision in General Statutes § 8-8(k) allowing evidence necessary for the equitable disposition of the appeal, and the trial judge had discretion to deny a motion filed after the appeal had been decided.[24]

Where the effect of applying the regulations to the property is so severe as to amount to practical confiscation, that is sufficient hardship to allow and even require the zoning board of appeals to grant a variance.[25] There is an extensive discussion of the two confiscation tests, the practical confiscation test and the balanc-

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[22]Vine v. Zoning Bd. of Appeals of Town of North Branford, 281 Conn. 553, 561, 916 A.2d 5, 11 (2007); Grillo v. Zoning Bd. of Appeals of City of West Haven, 206 Conn. 362, 369, 537 A.2d 1030, 1033 (1988); Berlani v. Zoning Bd. of Appeals of Town of Plainville, 160 Conn. 166, 171, 276 A.2d 780, 782, 2 Env't. Rep. Cas. (BNA) 1155 (1970); Carlson v. Zoning Bd. of Appeals of Town of Berlin, 158 Conn. 86, 89, 90, 255 A.2d 841, 843, 844, (1969); Goldreyer v. Board of Zoning Appeals of City of Bridgeport, 144 Conn. 641, 645, 136 A.2d 789, 791 (1957); Jersey v. Zoning Bd. of Appeals of City of Derby, 101 Conn. App. 350, 357, 921 A.2d 683, 689 (2007).

[23]Santos v. Zoning Bd. of Appeals of Town of Stratford, 100 Conn. App. 644, 650–51, 918 A.2d 303 (2007).

[24]Garlasco v. Zoning Board of Appeals, 101 Conn. 451, 462–63, 922 A.2d 227 (2007).

[25]Archambault v. Wadlow, 25 Conn. App. 375, 594 A.2d 1015, 1019 (1991); Stankiewicz v. Zoning Bd. of Appeals of Town of Montville, 15 Conn. App. 729, 733–35, 546 A.2d 919, 921–22 (1988), judgment aff'd, 211 Conn. 76, 556 A.2d 1024 (1989) (overruled in part on other grounds by Gibbons v. Historic District Commission of Town of Fairfield, 285 Conn. 755, 941 A.2d 917 (2008)); Smith v. Zoning Bd. of Appeals of Town of Norwalk, 174 Conn. 323, 387 A.2d 542 (1978); Chevron Oil Co. v. Zoning Bd. of Appeals of Town of Shelton, 170 Conn. 146, 152, 365 A.2d 387, 390 (1976); Culinary Institute of America v. Board of Zoning Appeals of City of New Haven, 143 Conn. 257, 261, 121 A.2d 637, 639 (1956); Malmstrom v. Zoning Bd. of Appeals of City of Hartford, 152 Conn. 385, 390, 207 A.2d 375, 377 (1965); Lessner v. Zoning Bd. of Appeals of Town of Manchester, 151 Conn. 165, 171, 195 A.2d 437, 439 (1963); Libby v. Board of

ing test, as they apply to variances in the *Verrillo* case; the decision held that a variance was not required under either of those tests and there was no hardship since there was some reasonable use of the property.[26] On the subject of confiscation from zoning ordinances, see §§ 54:1 et seq. Hardship for a variance can exist where there is proof that there is no market for the property without the requested variance, and the granting of a variance by a zoning board of appeals to allow a rooming house was upheld where the building was functionally obsolete and could not attract retail businesses and commercial offices which existed on other properties in the area and were permitted uses in the zone.[27] This is particularly true when the owner's problem resulted from an act of public authorities, such as condemning of all or part of the property.[28] The State does not have to show hardship in an application when it condemns property and applies for a variance of the lot area requirements of the zoning regulations, but if a variance is not obtained prior to the condemnation, the State must compensate the property owner pursuant to General Statutes § 48-24 for any remaining contiguous property which does not meet the area regulations as a result of the condemnation.[29]

When the State intends to condemn property and files for a zoning variance under General Statutes § 48-24, it does not have to submit evidence of unusual hardship in the taking of the property.[30]

The confiscation test is not the exclusive test for hardship; a variance may be granted if the literal enforcement of a regulation

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Zoning Appeals of City of New Haven, 143 Conn. 46, 51, 118 A.2d 894, 896 (1955).

[26]Verrillo v. Zoning Board of Appeals of Town of Branford, 155 Conn. App. 657, 699–711, 111 A.3d 473, 503–510.

[27]Collins Group, Inc. v. Board of Zoning Appeals of City of New Haven, 32 Conn. L. Rptr. 341, 2002 WL 1559087 (Conn. Super. Ct. 2002), judgment aff'd, 78 Conn. App. 561, 827 A.2d 764 (2003).

[28]Smith v. Zoning Board of Appeals of Town of Norwalk; Nielsen v. Board of Appeals on Zoning of City of Bridgeport, 129 Conn. 285, 289, 27 A.2d 392, 393 (1942); Mabank Corp. v. Board of Zoning Appeals of City of Stamford, 143 Conn. 132, 136, 120 A.2d 149, 151 (1956) (overruled in part on other grounds by, Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 303 A.2d 743 (1972)). But see Rogers v. Zoning Bd. of Appeals of Town of Orange, 154 Conn. 484, 488, 489, 227 A.2d 91, 93, 94 (1967).

Couture v. Bristol Zoning Bd. of Appeals, 34 Conn. L. Rptr. 351, 2003 WL 1874728 (Conn. Super. Ct. 2003).

[29]Smith v. Zoning Bd. of Appeals of Town of Norwalk, 174 Conn. 323, 327, 328, 387 A.2d 542, 545, 546 (1978).

[30]Smith v. Zoning Bd. of Appeals of Town of Norwalk, 174 Conn. 323, 327, 328, 387 A.2d 542, 545 (1978); Couture v. Bristol Zoning Bd. of Appeals, 34 Conn. L. Rptr. 351, 352, 2003 WL 1874728 (Conn. Super. Ct. 2003).

causes exceptional difficulty or hardship because of some unusual characteristic of the property.[31] There was a deprivation of reasonable use where the narrowness and topography of the property provided only a limited area for a commercial building, and the possibility of using a rundown house for residential purposes as a nonconforming use did not prevent a variance where the denial of one would deprive the owner of reasonable use of the property.[32] A zoning regulation which required as a condition for granting a variance that the property did not have any reasonable use was illegal as exceeding statutory authority.[33]

Topographic conditions on the property involved in the application may be the basis for granting a variance as long as other properties in the area do not have the same problem.[34] The location of the property may also create hardship.[35] Under some circumstances, uncertainty as to the proper application of a zoning regulation may create an unnecessary hardship which would justify the granting of a variance.[36] However, a later case states that uncertainty of the zoning ordinance does not support the finding of undue hardship needed for a variance, distinguishing *Leveille*, but not discussing *Shell Oil*.[37] The arbitrariness of a decision of the zoning enforcement officer is not a hardship because

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[31]Giarrantano v. Zoning Bd. of Appeals of City of Norwich, 60 Conn. App. 446, 453, 760 A.2d 132, 136 (2000); Jersey v. Zoning Bd. of Appeals of City of Derby, 101 Conn. App. 350, 358–59, 921 A.2d 683 (2007) (confirming that either test allows a variance).

[32]Giarrantano v. Zoning Bd. of Appeals of City of Norwich, 60 Conn. App. 446, 454, 760 A.2d 132, 136 (2000) (case remanded to determine if the comprehensive zoning plan would be substantially affected by a variance).

[33]Jersey v. Zoning Bd. of Appeals of City of Derby, 101 Conn. App. 350, 359–60, 921 A.2d 683 (2007).

[34]Stillman v. Zoning Bd. of Appeals of Town of Redding, 25 Conn. App. 631, 637, 596 A.2d 1, 4 (1991); Kelly v. Zoning Bd. of Appeals of Town of Hamden, 21 Conn. App. 594, 575 A.2d 249, 252 (1990); Miclon v. Zoning Bd. of Appeals of Town of Windsor Locks, 173 Conn. 420, 423, 424, 378 A.2d 531, 532 (1977); Talmadge v. Board of Zoning Appeals of City of New Haven, 141 Conn. 639, 643, 644, 109 A.2d 253, 255 (1954); Plumb v. Board of Zoning Appeals of City of New Haven, 141 Conn. 595, 601, 108 A.2d 899, 902 (1954); Fiorilla v. Zoning Bd. of Appeals of City of Norwalk, 144 Conn. 275, 280, 129 A.2d 619, 622 (1957).

[35]Plumb v. Board of Zoning Appeals of City of New Haven, 141 Conn. 595, 601, 108 A.2d 899, 902 (1954).

[36]Shell Oil Co. v. Zoning Bd. of Appeals of Town of Bloomfield, 156 Conn. 66, 70, 238 A.2d 426, 428 (1968); Leveille v. Zoning Bd. of Appeals of Town and City of Meriden, 145 Conn. 468, 472, 144 A.2d 45, 47 (1958) (uncertainty as to zone boundary).

[37]Mezick v. Zoning Bd. of Appeals of Town of Monroe, 1994 WL 411327 (Conn. Super. Ct. 1994); Wnuk v. Zoning Bd. of Appeals of City of New Britain, 225 Conn. 691, 698–99, 626 A.2d 698, 701–02 (1993).

if the ordinance does not prohibit the proposed use, then the use is allowed and a variance is inappropriate.[38]

A variance which will eliminate a nonconforming use is an independent ground for approving the variance.[39] The reduction of existing nonconforming uses[40] or the change of one nonconforming use to another one which has less impact on the neighborhood[41] may also constitute a ground for granting a variance in some situations. A variance was upheld where it reduced three nonconforming lots to two lots, which were a less offensive use and more conforming to the zoning regulations.[42] However, a variance could not be granted based on the concept of a reduction in or change to an existing nonconforming use where the reduction or change was for a nonconforming use on another property and was not essential to the reduction in nonconformity on the property for which the variance was requested, and it could have been implemented without the variance.[43]

The granting of a variance was upheld in an appeal for an addition on a house which located the addition further away from the front lot line than the original house which was nonconforming as to the front yard setback distance even though the addition slightly increased the total amount of the house which was over the 60 foot front setback line; this decision arguably extends the nonconforming use concept too far.[44] A variance of several zoning regulations, including allowing a 9.5 foot setback variance of the 25 foot setback from coastal resources, to allow the removal of an existing structure and the construction of a larger one was upheld on the ground of hardship because of the unusual trapezoidal shape of the lot and the fact that some of the variances would decrease the nonconformity of the existing setbacks

[38]225 Conn. at 697, 626 A.2d at 701.

[39]Stancuna v. Zoning Bd. of Appeals of Town of Wallingford, 66 Conn. App. 565, 572, 785 A.2d 601, 607 (2001).

[40]Hescock v. Zoning Bd. of Appeals of Town of Stonington, 112 Conn. App. 239, 258–61, 962 A.2d 177 (2009) (new construction would reduce nonconformities and present less of a hazard in a flood zone).

[41]Adolphson v. Zoning Bd. of Appeals of Town of Fairfield, 205 Conn. 703, 708–10, 535 A.2d 799 (1988).

[42]Vine v. Zoning Bd. of Appeals of Town of North Branford, 281 Conn. 553, 559, 562, 916 A.2d 5 (2007), citing Adolphson v. Zoning Bd. of Appeals of Town of Fairfield, 205 Conn. 703, 708–10, 535 A.2d 799 (1988), and Stancuna v. Zoning Bd. of Appeals of Town of Wallingford, 66 Conn. App. 565, 572, 785 A.2d 601, 607 (2001).

[43]Lavoie v. Voluntown Zoning Bd. of Appeals, 48 Conn. L. Rptr. 610, 2009 WL 3739374 (Conn. Super. Ct. 2009), on reargument, 49 Conn. L. Rptr. 153, 2010 WL 398640 (Conn. Super. Ct. 2010).

[44]Mead v. Zoning Bd. of Appeals of City of Stamford, 50 Conn. L. Rptr. 687, 2010 WL 4276698 (Conn. Super. Ct. 2010).

from the property line.[45] The exception allowing a variance for the reduction of nonconforming uses recognized in the *Adolphson* case did not apply where the size of a nonconforming structure was proposed to be increased and a variance was requested from a zoning regulation which prohibited such expansion.[46]

The concept that the grounds for the variance must arise from circumstances beyond the applicant's control is related to the concept that variances cannot be granted for a self-created hardship. Where a hardship is self-created, the zoning board of appeals cannot properly grant a variance.[47] This also occurs where a predecessor in title created a nonconformity or zoning violation.[48] However, if the hardship was created by the enactment or amendment of the zoning regulations and a predecessor in title to the property owner could have sought a variance, the subsequent owner can also request a variance and is not precluded by the self-created hardship or purchase with knowledge limitations on variances.[49] It has been held that where the zoning board of appeals denies a variance application on grounds of self-created hardship, that even though the applicant has the burden of proof on the appeal, the board has the burden of proof on self-created hardship, which is analogous to a special defense.[50] These cases often concern location of structures or lot division lines. Connecticut does not recognize a good faith exception to the hardship rule for variances, which is allowed in some other

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[45]Sunset Manor Ass'n v. Town of Branford, 55 Conn. L. Rptr. 53, 2012 WL 6122068 (Conn. Super. Ct. 2012).

[46]Verrillo v Zoning Board of Appeals of Town of Branford, 155 Conn. App. 657, 728, 111 A.3d 473, 519, 520.

[47]Pollard v. Zoning Bd. of Appeals of City of Norwalk, 186 Conn. 32, 39, 40, 438 A.2d 1186, 1189, 1190 (1982); Abel v. Zoning Bd. of Appeals of City of Norwalk, 172 Conn. 286, 289, 374 A.2d 227, 228 (1977); M. & R. Enterprises, Inc. v. Zoning Bd. of Appeals of Town of Southington, 155 Conn. 280, 282, 231 A.2d 272, 273 (1967); Highland Park, Inc. v. Zoning Bd. of Appeals of Town of North Haven, 155 Conn. 40, 43, 229 A.2d 356, 357 (1967); Booe v. Zoning Bd. of Appeals of City of Shelton, 151 Conn. 681, 683, 202 A.2d 245, 246 (1964); Wil-Nor Corp. v. Zoning Bd. of Appeals of City of Norwalk, 146 Conn. 27, 31, 147 A.2d 197, 199 (1958); Hadik v. Zoning Bd. of Appeals of Town of Norwalk, 146 Conn. 737, 738, 150 A.2d 606, 606 (1959).

[48]Santos v. Zoning Bd. of Appeals of Town of Stratford, 100 Conn. App. 644, 652, 918 A.2d 303 (2007).

[49]Santos v. Zoning Bd. of Appeals of Town of Stratford, 100 Conn. App. 644, 652, 918 A.2d 303 (2007); Kulak v. Zoning Bd. of Appeals of City of Stamford, 184 Conn. 479, 482, 440 A.2d 183 (1981).

[50]Dupont v. Zoning Bd. of Appeals of Town of Manchester, 33 Conn. L. Rptr. 209, 2002 WL 31415204 (Conn. Super. Ct. 2002), judgment rev'd on other grounds, 80 Conn. App. 327, 834 A.2d 801 (2003).

states.[51] Whether a variance can or should be granted depends upon the facts of each case. The decisions referred to below are generally but not entirely consistent with each other.

Self-created hardship is not a sufficient reason for a variance because the hardship does not arise from the application of the zoning regulations per se but from the zoning regulations coupled with an individual's personal needs, preferences, and circumstances.[52] Self-created hardship exists when the problem is caused by someone hired by the property owner.[53] In one case, it has been held that an honest error made by surveyor who was an independent contractor hired by property owner's architect was not a self-created hardship[54] without referring to other cases which hold that an error made by someone hired by the property owner is imputed to the owner. This deviation is arguably an equitable exception from the harsh rule in the earlier cases, but the legal distinction is questionable.[55] Where a building was constructed in violation of the zoning regulations but in good faith reliance on the erroneous issuance of a building permit, there was sufficient hardship to allow a variance since the building was built before the mistake was discovered, and the error was not a self-created hardship.[56] There was no hardship for rear and side yard variances to construct a swimming pool and deck after a building permit had been granted based upon an inaccurate survey where there was no proof that the pool and deck could not be reconstructed to conform to the zoning regulations.[57] However, it was held in another case that where a prior owner had illegally

[51]Osborne v. Zoning Bd. of Appeals, Town of Guilford, 11 Conn. L. Rptr. 621, 1994 WL 271858 (Conn. Super. Ct. 1994), judgment rev'd on other grounds, 41 Conn. App. 351, 675 A.2d 917 (1996).

[52]Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 239, 303 A.2d 743, 745 (1972).

[53]Highland Park, Inc. v. Zoning Bd. of Appeals of Town of North Haven, 155 Conn. 40, 43, 229 A.2d 356, 357 (1967); Pollard v. Zoning Bd. of Appeals of City of Norwalk, 186 Conn. 32, 41, 42, 438 A.2d 1186, 1190, 1191 (1982); Grogan v. Zoning Bd. of Appeals of Town of Old Lyme, 9 Conn. L. Rptr. 11, 1993 WL 126504 (Conn. Super. Ct. 1993); Morikawa v. Zoning Bd. of Appeals of Town of Weston, 126 Conn. App. 400, 411, 11 A.3d 735 (2011) (error by general contractor).

[54]Osborne v. Zoning Bd. of Appeals of Town of Guilford, 41 Conn. App. 351, 354, 355, 675 A.2d 917, 918, 919 (1996).

Philpot v. Zoning Bd. of Appeals of Town of Woodbridge, 2003 WL 21659693 (Conn. Super. Ct. 2003).

[55]Morikawa v. Zoning Bd. of Appeals of Town of Weston, 126 Conn. App. 400, 411, 412, 11 A.3d 735 (2011), citing similar cases and distinguishing Osborne v. Zoning Board of Appeals.

[56]Gallagher v. Wallingford Zoning Bd. of Appeals, 18 Conn. L. Rptr. 544, 1997 WL 32781 (Conn. Super. Ct. 1997).

[57]Durkin Village Plainville, LLC v. Zoning Bd. of Appeals of Town of Plain-

established a five unit residential facility when the zoning regulations only allowed two units that the self-created hardship rule applied even though the buyer was not aware of the problem.[58] The desire to subdivide property into two lots is a voluntary hardship created by the applicant requiring denial of a variance.[59] There was only a voluntary economic hardship where a zoning board of appeals denied a setback variance from wetlands which precluded a four lot subdivision of the property so that it could only be developed for only one lot, which was only a mere disappointment in use which was insufficient for a variance.[60] A sale of part of a tract which leaves the remainder as a nonconforming lot is a self-created hardship.[61]

The construction of a deck on a building in violation of the zoning setback is a self-created hardship which justifies the denial of a variance.[62]

In one case, where the property owner commenced construction while a variance allowing it was being appealed and the appeal was later sustained because of defective notice, the owner's reckless conduct in proceeding with construction was considered self-created hardship when the board denied the second variance application.[63] Where a building permit was issued for construction of a building, and the zoning regulations were then amended to prohibit the use unless construction had begun prior to the effective date of the amendment and was completed within two years after it, failure to build within these time limits was a self-created hardship and a variance was not properly issued for an

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ville, 107 Conn. App. 861, 868–872, 946 A.2d 916 (2008), distinguishing Osborne v. Zoning Bd. of Appeals of Town of Guilford, 41 Conn. App. 351, 675 A.2d 917 (1996).

[58]Lazarides v. City of Norwalk Zoning Bd. of Appeals, 42 Conn. L. Rptr. 125, 2006 WL 2773461 (Conn. Super. Ct. 2006).

[59]Aitken v. Zoning Bd. of Appeals of Town of Branford, 18 Conn. App. 195, 206, 557 A.2d 1265, 1270 (1989); Rice v. Old Saybrook Zoning Bd. of Appeals, 38 Conn. L. Rptr. 842, 845, 2005 WL 758159 (Conn. Super. Ct. 2005).

Dupont v. Zoning Bd. of Appeals of Town of Manchester, 80 Conn. App. 327, 330, 331, 834 A.2d 801, 804 (2003), citing this text.

[60]Frances Erica Lane, Inc. v. Board of Zoning Appeals of Town of Stratford, 149 Conn. App. 115, 129, 130, 88 A.3d 580 (2014), certification denied, 311 Conn. 956, 97 A.3d 985 (2014), citing this text.

[61]Mesick v. Zoning Board of Appeals of Guilford, 1 Conn.Super.Ct.Rpts. 78 (1986).

[62]Just Bee, LLC v. Black Point Beach Club Zoning Bd. of Appeals, 2003 WL 21675943 (Conn. Super. Ct. 2003).

[63]McGavin v. Zoning Bd. of Appeals of Town of Westport, 26 Conn. Supp. 251, 255, 217 A.2d 229, 232 (C.P. 1965).

extension.[64] Denial of a variance to allow maintaining of a swimming pool in violation of the setback regulations is proper, and any hardship of the property owner in relocating it was self-created.[65]

Where a variance was given because the owner relied on an improperly granted building permit and the removal of a dormer and porch were required, there was no hardship to support the variance because (1) the owners were not entitled to a variance before their improvements were made and (2) limitations imposed by the shape of the lot did not in and of themselves create a hardship.[66] There was no hardship for a variance of the maximum building coverage provision on a legal undersized lot where the owner wanted more living space in a larger building.[67]

Where the zoning regulations have a merger provision for adjacent lots, and the owner conveys one of them away, there is a self-imposed hardship which precludes a variance for the seller's remaining land and for a buyer of the lot who received a conveyance of one of the lots with knowledge of the zoning regulation.[68] However, where a lot was purchased with inadequate frontage based on prior opinion of town counsel that undersized lots which predated zoning could be built upon, there was no self-created hardship which precluded a variance.[69] Self-created hardship should not be applied where the regulations create a hardship themselves and the other requirements for a variance are met, and the hardship is the same as if the applicant or his agent had not acted without a variance.

Personal hardship is not a ground for the granting of a variance.[70] However, where a buyer of property does not purchase it with knowledge of the problem and the hardship arises as the result of a voluntary act by one other than the person whom the

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[64]Farrington v. Zoning Bd. of Appeals of Noank Fire Dist., 177 Conn. 186, 189, 413 A.2d 817, 818 (1979).

[65]Hadik v. Zoning Bd. of Appeals of Town of Norwalk, 146 Conn. 737, 738, 150 A.2d 606, 606 (1959).

[66]Bloom v. Zoning Bd. of Appeals of City of Norwalk, 233 Conn. 198, 209, 210, 658 A.2d 559, 565 (1995).

[67]McCarthy v. Zoning Board of Appeals, Town of North Branford, 1996 WL 499173 (Conn. Super. Ct. 1996).

[68]Kores v. Canton Zoning Bd. of Appeals, 2 Conn. L. Rptr. 586, 1990 WL 276648 (Conn. Super. Ct. 1990).

[69]Lessner v. Zoning Bd. of Appeals of Town of Manchester, 151 Conn. 165, 195 A.2d 437 (1963).

[70]Berkman v. Board of Appeals on Zoning, 135 Conn. 393, 399, 400, 64 A.2d 875 (1949); Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 239, 240, 303 A.2d 743, 745, 746 (1972); Pollard v. Zoning Bd. of Appeals of City of Norwalk, 186 Conn. 32, 44, 438 A.2d 1186, 1192 (1982).

variance will benefit, the zoning board of appeals within its discretion may grant a variance although it is not required to do so.[71] Where the construction of deck on a house by the prior property owner which made the house nonconforming as to coverage was a zoning violation and a self-created hardship, and the board concluded that the subsequent purchaser had no knowledge of the violation and granted a variance which allowed the deck to remain, it was upheld on appeal.[72] A prior application to the zoning commission which resulted in a zone change is not considered a self-created hardship barring a variance of another zoning regulation.[73]

The applicant for a variance must show that because of some peculiar or unique characteristic of his property, the strict application of the zoning regulation produces an unusual hardship as opposed to the general impact which the regulation has on other properties in the zone.[74] In a proper case, the location of the property, its unusual soil conditions, topography, and drainage problems may make it unsuitable for residential use and allow a variance for a nonresidential use.[75] Where a lot was not suitable for residential use because the health department would not approve a septic system for it, the land could not be sold for a reasonable price to an adjacent landowner for use as a side yard, and there was no reasonable alternative use of the lot, there was an unusual hardship which required the board to grant a variance, with conditions, to allow a nonresidential use in the zone.[76] In addition, since the use was a permitted use in the zone, the

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[71]Belknap v. Zoning Bd. of Appeals of Town of Easton, 155 Conn. 380, 384, 232 A.2d 922, 924 (1967) (undersized lot caused by defect in title created by a predecessor in title to the applicant); Whittaker v. Zoning Bd. of Appeals of Town of Trumbull, 179 Conn. 650, 657, 658, 427 A.2d 1346, 1350, 1351 (1980); Vine v. Zoning Bd. of Appeals of Town of North Branford, 281 Conn. 553, 561, 916 A.2d 5 (2007).

[72]Whitehead v. East Haven Zoning Bd. of Appeals, 2004 WL 1462829 (Conn. Super. Ct. 2004).

[73]Lawrence and Memorial Hosp., Inc. v. Zoning Bd. of Appeals of City of New London, 22 Conn. App. 291, 300, 301, 577 A.2d 740, 744, 745 (1990).

[74]Berlani v. Zoning Bd. of Appeals of Town of Plainville, 160 Conn. 166, 170, 276 A.2d 780, 782, 2 Env't. Rep. Cas. (BNA) 1155 (1970); Belknap v. Zoning Bd. of Appeals of Town of Easton, 155 Conn. 380, 383, 232 A.2d 922, 924 (1967); Garibaldi v. Zoning Bd. of Appeals of City of Norwalk, 163 Conn. 235, 238, 303 A.2d 743, 744, 745 (1972); B. I. B. Associates v. Zoning Bd. of Appeals of City of Stamford, 163 Conn. 615, 316 A.2d 414 (1972); Dlugos v. Zoning Bd. of Appeals of Trumbull, 36 Conn. Supp. 217, 221, 416 A.2d 180, 182 (Super. Ct. 1980).

[75]Pike v. Zoning Bd. of Appeals of Town of Hampton, 31 Conn. App. 270, 274, 624 A.2d 909, 911 (1993), citing this text. Goldreyer v. Board of Zoning Appeals of City of Bridgeport, 144 Conn. 641, 645, 136 A.2d 789, 791 (1957).

[76]Pike v. Zoning Bd. of Appeals of Town of Hampton, 31 Conn. App. 270, 276, 624 A.2d 909, 912 (1993).

court rejected a conclusion that a variance would be contrary to the comprehensive plan.[77] A variance granted by a zoning board of appeals has been upheld where no house could be built on an irregularly shaped lot even though a prior structure on the lot had been demolished, because a house was an appropriate use in a residential zone, and the demolition of the structure was not directly related to whether a variance should be granted, since the application would be the same if the old structure (a garage and summer apartment unit) had been in place, since the hardship was the shape of the lot; a claim of self created hardship was rejected because the demolition of the structure violated no zoning laws and was not germane to the hardship for the type of variance requested.[78]

In some cases, the board within its discretion can find that the configuration of a lot and the location of the well and septic system is a hardship unique to the property.[79] A side yard variance for an addition on a house was upheld where the septic tank was in the front yard, and the size of the property, the leaching field for the septic system, and proximity to a river prevented construction in another location.[80] A variance was upheld where the hardship was the necessity for the relocation of a septic system for a carriage house where it and the main residence were historic structures on the property which existed prior to zoning in the town.[81] A setback variance was upheld based upon topographical conditions on a parcel of land where the shape of the property and the location of wetlands in the middle of it limited the area where structures could be located.[82] Where a confiscation situation will occur, a variance granted by the board will be upheld even if the hardship is not unique to the neighborhood where the buyer of a lot relied upon advice from zoning officials based upon advice of town counsel (that the frontage of the lot did not prevent issuance of permits even though it did not meet current zoning regulations).[83] Where the property is a valid nonconforming lot, and a building could not conform to the

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[77]31 Conn. App. at 277, 624 A.2d at 913.

[78]O'Neill v. Madison Zoning Bd. of Appeals, 24 Conn. L. Rptr. 176, 1999 WL 185128 (Conn. Super. Ct. 1999).

[79]Stillman v. Zoning Bd. of Appeals of Town of Redding, 25 Conn. App. 631, 637, 596 A.2d 1, 4 (1991).

[80]Fitzgerald v. Griswold Zoning Bd. of Appeals, 2010 WL 745477 (Conn. Super. Ct. 2010).

[81]Cody v. Town of New Cannan Zoning Bd. of Appeals, 41 Conn. L. Rptr. 312, 2006 WL 1149181 (Conn. Super. Ct. 2006).

[82]Fifteen North Plains Indust. Road, LLC v. Wallingford Planning and Zoning Com'n, 2004 WL 2439734 (Conn. Super. Ct. 2004).

[83]Lessner v. Zoning Bd. of Appeals of Town of Manchester, 151 Conn. 165,

setback requirements, denial of a variance which prevented all use of the lot was a practical confiscation.[84] There was no hardship to justify a variance of a setback provision to build a house in one location on a lot because of tidal wetlands where a house could be located on the lot and still conform to the setbacks.[85] There was a hardship which supported the granting of a variance and allowed the reconstruction of a cottage destroyed by Hurricane Irene containing the same square footage and located within the same building footprint.[86] A setback variance and a finding of hardship was upheld where the State required the property owner to move the proposed structure away from the tidal wetlands line and measured the setback from the mean high waterline because the State owned the land up to that point.[87]

A variance was denied for insufficient hardship to add a second story over the zoning setback on a nonconforming building where the lot was not so small and narrow as to make it completely unbuildable.[88] The concept of topographic hardship did not justify setback variances to change a commercial use to another and larger commercial use, and there was no evidence that the existing use could not be continued.[89] For topographic conditions to amount to hardship which allows a variance, the hardship must relate to the condition of the land and not where a building is placed so that steep slopes do not amount to topographic hardship if the building could have been placed at another location on the property and comply with the zoning regulations.[90]

A variance granted by a zoning board of appeals for a vacant lot was upheld even though it was possible to build a house which was smaller than the proposed structure without a variance where the size of the lot, a storm drainage easement, the fact

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169, 195 A.2d 437, 438 (1963).

[84]Archambault v. Wadlow, 25 Conn. App. 375, 383, 594 A.2d 1015, 1020 (1991).

[85]Jaser v. Zoning Bd. of Appeals of City of Milford, 43 Conn. App. 545, 548, 684 A.2d 735, 737 (1996).

[86]West Lordship Beach Corp. v. Stratford Bd. of Zoning Appeals, 2013 WL 4734876 (Conn. Super. Ct. 2013).

[87]O'Connell v. Zoning Bd. of Appeals of City of Milford, 2013 WL 5716841 (Conn. Super. Ct. 2013).

[88]Moon v. Zoning Bd. of Appeals of Town of Madison, 291 Conn. 16, 26, 27, 966 A.2d 722 (2009).

[89]Guendelsberger v. New Milford Zoning Bd. of Appeals, 47 Conn. L. Rptr. 290, 292, 2009 WL 765521 (Conn. Super. Ct. 2009).

[90]Morikowa v. Zoning Bd. of Appeals of Town of Weston, 47 Conn. L. Rptr. 177, 2009 WL 566489 (Conn. Super. Ct. 2009), judgment aff'd, 126 Conn. App. 400, 11 A.3d 735 (2011).

that the lot abutted a river, and the setback lines were unique features of the lot which prevented construction of a house reasonably similar in size to the other houses in the area.[91] However, the zoning board of appeals failed to make the specific written findings required by a section of the zoning regulations, and the court remanded the variance to the board based on General Statutes § 8-8(l) with instructions that it make the findings necessary under the zoning regulation.[92] Where the zoning board of appeals denied a variance of the minimum lot size and frontage provisions for a lot in a residential zone on the ground that there was no unusual hardship, rejecting the claim of the water company which owned the lot that high radon levels in the well required it to close the well, the decision was upheld because there was insufficient proof that the denial of the variance would destroy the property for all reasonable uses, and in the absence of expert testimony or other evidence that the well had to be discontinued because of the high radon levels, the board was not required to accept the claim that the well had to be closed on the basis of public health and safety concerns.[93] In another case, a claim of practical confiscation was rejected and a variance was overturned on appeal where there was insufficient evidence that the zoning regulations did not greatly decrease or practically destroy the value of the property for any of the uses to which it could reasonably be put in the zone.[94]

Where a house could be located on a lot to comply with a 42 foot setback for the zone, there was no hardship for a variance approving a 20 foot setback.[95] Difficulty caused by the location of the septic system on the property and a restrictive covenant limiting areas where a structure would be built were not considered hardship caused by the zoning regulations sufficient to allow a variance in one case.[96] It has been held that a variance cannot be granted for aesthetic reasons because that is not a hardship where there were other remedies and options to construct a build-

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[91]Carberry v. Zoning Bd. of Appeals of City of Stamford, 30 Conn. L. Rptr. 537, 2001 WL 1374753 (Conn. Super. Ct. 2001), opinion clarified, 2001 WL 1479124 (Conn. Super. Ct. 2001).

[92]Carberry v. Zoning Bd. of Appeals of City of Stamford, 30 Conn. L. Rptr. 537, 542, 2001 WL 1374753 (Conn. Super. Ct. 2001), opinion clarified, 2001 WL 1479124 (Conn. Super. Ct. 2001).

[93]Rural Water Co., Inc. v. Zoning Bd. of Appeals of Town of Ridgefield, 287 Conn. 282, 947 A.2d 944 (2008).

[94]Caruso v. Zoning Bd. of Appeals of City of Meriden, 150 Conn. App. 831, 841, 93 A.3d 617 (2014), certification granted in part, 314 Conn. 912, 100 A.3d 849 (2014).

[95]Flaherty v. Zoning Board of Appeals of Branford, 3 Conn.Ops. 521 (1997).

[96]Allen v. Zoning Bd. of Appeals of Town of Danbury, 155 Conn. 506, 511, 235 A.2d 654, 656 (1967).

ing on the lot.[97] A claim by a private school that it had to comply with a federal sex discrimination law and build a new gymnasium which outgrew its location was not considered an unusual hardship sufficient to justify a variance of the density and setback regulations.[98] The fact that a zoning board of appeals may have granted somewhat similar variances on prior occasions to other applicants is not controlling[99] unless the record clearly shows a pattern of unreasonable discrimination.[100]

An applicant for modification of a condition attached to a variance must prove hardship, and only evidence that a material change in circumstances has made the condition unreasonable is insufficient.[101]

Several cases have discussed the difficulties of adding on to existing residences where the expansion is over the zoning setbacks, which physically restrict where the addition can be built, and there are problems of building without infringing on the setbacks. In one case, where a two car detached garage was approved, the zoning board of appeals initially gave no reason for the variance but claimed on appeal that the location of the existing garage in a flood plain (a topographic problem) caused it to flood; on appeal, the trial court found a self-created hardship because the property owner had converted the existing garage into a storage area.[102] A variance was upheld where the owner of a residential lot wanted to add a two car garage over the side yard setback in a neighborhood where most other properties had two car garages.[103] A variance from setbacks and lot coverage for a garage was overturned on appeal because there was no hardship where the owners had a garage on the lot which they wanted to convert into an apartment for an elderly parent, and the fact that the slope of the lot made it difficult to build another garage on the lot did not justify the variance on grounds of a topographic

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[97]Cooper v. City of Norwalk, 1996 WL 526887 (Conn. Super. Ct. 1996).

[98]Whitneyville Civic Ass'n, Inc. v. Chorney, 1996 WL 502175 (Conn. Super. Ct. 1996).

[99]Aitken v. Zoning Bd. of Appeals of Town of Branford, 18 Conn. App. 195, 205, 557 A.2d 1265, 1270 (1989); Ward v. Zoning Bd. of Appeals of Town of Hartford, 153 Conn. 141, 146, 215 A.2d 104, 107 (1965).

[100]Carini v. Zoning Bd. of Appeals of Town of West Hartford, 164 Conn. 169, 172–74, 319 A.2d 390, 392–93 (1972).

[101]Fleet Nat. Bank v. Zoning Bd. of Appeals of Town of Winchester, 54 Conn. App. 135, 141, 734 A.2d 592 (1999); Jaffe v. Town of Westport Zoning Bd. of Appeals, 37 Conn. L. Rptr. 309, 2004 WL 1615960 (Conn. Super. Ct. 2004).

[102]Armstrong v. Zoning Bd. of Appeals of Town of Westport, 1998 WL 851466 (Conn. Super. Ct. 1998).

[103]Merlo v. Zoning Bd. of Appeals of Wethersfield, 16 Conn. L. Rptr. 394, 1996 WL 166348 (Conn. Super. Ct. 1996).

hardship.[104] In another case, a variance for an addition to a house was upheld where it could only be constructed within the setbacks.[105] Both cases relied upon the appellate court decision in *Stillman v. Zoning Board of Appeals of Redding*,[106] which was later questioned in *Bloom v. Zoning Board of Appeals*.[107]

A setback variance was upheld for approval of the location for a new garage when it was discovered that the driveway to the existing garage was on adjacent land and had to be discontinued when it was fenced off by the owner of the abutting parcel, and due to topographic conditions on the property including steepness of the grade of the land, a new driveway could not be constructed to access the existing garage without causing safety problems.[108]

Where the design of a proposed building had a roofline which exceeded the height limitation in the zoning regulations, there was no hardship which would allow a variance even though an existing adjacent structure was the same height and the new building was consistent with the neighborhood.[109]

There was sufficient hardship for a variance where the zoning setback line on a vacant lot which existed before there were zoning regulations in the town limited the owner to a 10 foot wide building.[110]

A side yard setback variance to allow the expansion of a house was upheld where the zoning board of appeals found that there was a hardship due to the location of an existing deck and pool at the rear of the house, and the location of the septic system and leaching fields on the other side of the house which were there when the owners bought the property, and the board found that abutting owners would not be adversely affected by the variance.[111]

The granting of variances for a garage and additions to a house with historic significance was upheld where the owners purchased

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[104]Remesch v. Town of Andover, 2003 WL 22709024 (Conn. Super. Ct. 2003).

[105]Brown v. Zoning Bd. of Appeals of Town of Fairfield, 22 Conn. L. Rptr. 406, 1998 WL 417592 (Conn. Super. Ct. 1998).

[106]Stillman v. Zoning Bd. of Appeals of Town of Redding, 25 Conn. App. 631, 596 A.2d 1 (1991).

[107]Bloom v. Zoning Bd. of Appeals of City of Norwalk, 233 Conn. 198, 210, 658 A.2d 559, 565 (1995).

[108]Theodorides, Sr. v. New Milford Zoning Bd. of Appeals, 2003 WL 22390683 (Conn. Super. Ct. 2003).

[109]Esposito v. Zoning Bd. of Appeals of Town of Hamden, 25 Conn. L. Rptr. 315, 2000 WL 157893 (Conn. Super. Ct. 2000).

[110]Stancuna v. Zoning Bd. of Appeals of Town of Wallingford, 66 Conn. App. 565, 785 A.2d 601 (2001).

[111]Kelley v. Willington Zoning Bd. of Appeals, 29 Conn. L. Rptr. 551, 2001 WL 649444 (Conn. Super. Ct. 2001).

the property believing that they could build a garage based upon a variance granted 20 years earlier which ran with the land, and the location of the house and driveway limited where a garage could be built; the court concluded that these limitations were not personal to the owners and would exist no matter who owned the property.[112]

It was held in one case that the zoning board of appeals exceeded its authority in granting a variance where there was a boundary line dispute in litigation with an abutting property owner, because there would be no hardship until the case was lost by the applicant, and the variance was not ripe for adjudication; the trial court's reasoning was that this was only a potential hardship so that the variance would not be necessary if the applicant prevailed in the boundary line dispute litigation.[113] This decision is questionable, because at the time of the variance application it was arguable that there was hardship and a variance was required, and the standing to request a variance should be based on the then existing situation and not possible future events.

The denial of a variance was upheld where the property owner of a large parcel of land sold the development rights to the State, making it impossible for the owners to subdivide the property to create another lot for a second residence; the court held that the failure to have a second residence on one lot, which was not allowed by the zoning regulations, was not unique, was only a personal financial hardship, and did not amount to an unconstitutional taking of the land.[114]

A variance for land along the shore was upheld where the zoning board of appeals found hardship because of beach erosion, and the location and size of the residence were changed from two prior applications which had been denied, since the hardship arose from forces of nature and the unusual characteristics of the property, and even though the owner had added some acreage to the parcel.[115] A height variance for historic buildings which were in disrepair and designed for a use which was no longer economically feasible was upheld, where the board had concluded that

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[112]Weber v. Town of Ridgefield Zoning Bd. of Appeals, 2004 WL 1463924 (Conn. Super. Ct. 2004). See also Cody v. Town of New Cannan Zoning Bd. of Appeals, 41 Conn. L. Rptr. 312, 2006 WL 1149181 (Conn. Super. Ct. 2006) (upholding a variance based on preserving historic structures).

[113]DeMarchant v. Middletown Zoning Bd. of Appeals, 33 Conn. L. Rptr. 541, 2002 WL 31928600 (Conn. Super. Ct. 2002).

[114]John and Joan Linderman Trust v. Franklin Zoning Bd. of Appeals, 34 Conn. L. Rptr. 279, 2003 WL 1477294 (Conn. Super. Ct. 2003).

[115]Overshore Ass'n, Inc. v. Zoning Bd. of Appeals of Town of Madison, 2002 WL 31501896 (Conn. Super. Ct. 2002).

the location on the parcel and its orientation to other buildings created a unique hardship, and there was no adverse impact on the neighborhood from granting the variance.[116] A setback variance for an addition to commercial manufacturing use was upheld where there was evidence that the manufacturing processes required proximity to the existing structure, and inland wetlands on the property restricted where the addition could be built.[117]

A variance to build an addition on a house for a second dwelling unit for an elderly relative of the owner with medical problems was denied because it was a personal hardship, and the cost to the relative of living somewhere else was an economic hardship which was insufficient to support a variance.[118]

Where an existing inn purchased an adjacent parcel for purposes of expansion of the building, the uniqueness of the original parcel did not justify a finding of hardship for setback variances and a variance to extend the business zone boundary further into the adjacent residential zone on the adjacent, recently acquired parcel.[119]

A variance was improperly granted to expand a building which housed a nonconforming commercial use in a residential zone even though the property had been held in continuous ownership by the same person since the enactment of zoning in the town because this was only a personal hardship and did not meet the basic zoning concept that zoning regulations must directly affect land, not the owners of land.[120] The appellate court also distinguished cases which held that a variance could be granted to change an established nonconforming use to a less nonconforming use or to eliminate a nonconforming use, because under the evidence before the zoning board of appeals the business use would be expanded, even though there were some benefits from the variance, and it would allow the owner to operate the busi-

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[116]Maiorano v. New Haven Bd. of Zoning Appeals, 2003 WL 294598 (Conn. Super. Ct. 2003).

[117]Simons Co. v. City of Shelton, 2003 WL 1874760 (Conn. Super. Ct. 2003).

[118]Panebianco v. Borea, 2003 WL 1227961 (Conn. Super. Ct. 2003). See also Lagasse v. Zoning Bd. of Appeals of Town of Andover, 2003 WL 22903869 (Conn. Super. Ct. 2003), variance for an addition to an existing house was not justified because one of the owners was partially disabled and had difficulty climbing stairs.

[119]Stember v. Zoning Bd. of Appeals for Norwalk, 2004 WL 616118 (Conn. Super. Ct. 2004), on reargument, 2005 WL 246124 (Conn. Super. Ct. 2005).

[120]Horace v. Zoning Bd. of Appeals, 85 Conn. App. 162, 167, 168, 855 A.2d 1044, 1048 (2004).

ness more efficiently and remain competitive, that was legally insufficient to prove hardship.[121]

Even though a lot with a house on it was not conforming as to its width and depth, there was no hardship shown by the owner for a new proposed house which would be *basically* located within the building footprint of the existing house which was not supported by the record, there was no showing that it was different in kind from others in the zoning district, and there was no evidence that a house could not be built in conformity with the zoning regulations which applied to the property.[122]

A setback variance was upheld for a house on a small lot which did not meet the minimum lot size for the zone of 20,000 square feet because without a variance the house would be the size of a two or three car garage, which was impractical, and other houses in the area were also on small nonconforming lots, which met the requirement that a variance cannot adversely affect the comprehensive plan.[123]

A variance allowing three lots to use two accessways rather than having direct frontage on a street was overturned because there was no hardship and the property could be developed without a variance even though there would be better sight lines on the street and the proposed accessway was more practical and less expensive.[124]

Where the zoning board of appeals did not decide the question of whether a vacant parcel of land designated as "remaining land" in a subdivision was a building lot, and there had been no application for and the denial of a certificate of zoning compliance, the decision of the trial court that the lot was not an approved subdivision lot under General Statutes § 8-26a was not reviewed on appeal; there is no legal basis for a variance on the ground that the parcel was not approved as a building lot, and there is no hardship for an illegal lot, where the purchase with knowledge rule applied, and since there was no evidence that the prop-

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[121]Horace v. Zoning Bd. of Appeals, 85 Conn. App. 162, 169–172, 855 A.2d 1044, 1049–1050 (2004), distinguishing Adolphson v. Zoning Bd. of Appeals of Town of Fairfield, 205 Conn. 703, 712, 535 A.2d 799, 803 (1988) and Stancuna v. Zoning Bd. of Appeals of Town of Wallingford, 66 Conn. App. 565, 572, 785 A.2d 601, 606 (2001).

[122]Curran, Executor v. Zoning Board of Appeals of City of Milford, 117 Conn. 458, 465, 979 Ad.2d 599 (2009).

[123]MacDonald v. Town of Waterford, 2004 WL 1326071 (Conn. Super. Ct. 2004).

[124]Georgetown North Owners, Inc. v. Planning & Zoning Bd. of Appeals of Town of Greenwich, 2004 WL 1966272 (Conn. Super. Ct. 2004).

erty would be valueless without a variance, the denial of the variance was upheld.[125]

Connecticut does not recognize an exception to the hardship rule allowing de minimus variances, which is applied in some other states.[126]

Variance applications are frequently filed to allow the use of vacant undersized lots where the applicant-owner also has title to an adjacent lot. Many municipalities have merger provisions whereby two or more adjacent undersized lots are considered as one parcel for zoning purposes. The effect of merger provisions on the issue of hardship for a variance on an undersized vacant lot is discussed in § 53:6. On confiscation as a ground for a variance, see § 54:13.

In one case, the denial of a variance was reversed based on the ground of denial of fundamental fairness, which usually applies to procedural claims and not on the merits of the decision of a land use agency, where variances had been granted for three other adjacent undersized lots to allow the construction of single family residences, and all four lots were shown on a map recorded prior to enactment of zoning in the town.[127] The denial of a variance was upheld for failure to establish hardship where a smaller house could be built on the property which would probably comply with the zoning regulations even though the location of the septic system would preclude the proposed three bedroom house.[128] A variance was upheld on grounds of a unique hardship for construction of a boathouse which was a permitted use on a small island which was nonconforming as to its size in a zone which had 50 foot setbacks, where an existing boathouse was to

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[125]Curran v. Zoning Bd. of Appeals of City of Milford, 117 Conn. App. 458, 463, 464, 979 A.2d 599 (2009).

[126]Verrillo v. Zoning Bd. of Appeals of Town of Branford, 155 Conn. App. 657, 695, 111 A.3d 473, 501 (2015); Morikawa v. Zoning Bd. of Appeals of Town of Weston, 126 Conn. App. 400, 413, 11 A.3d 735 (2011); Wine Seller Spirits v. Zoning Bd. of Appeals of Town of Fairfield, 40 Conn. L. Rptr. 814, 2006 WL 696135 (Conn. Super. Ct. 2006) (refusing to recognize this concept in a liquor outlet separation distance appeal); Judelson v. Town of Madison Bd. of Appeals, 41 Conn. L. Rptr. 672, 2006 WL 2089430 (Conn. Super. Ct. 2006) (but upholding a variance for a small increase in the height of a roof where the purchaser of the property was not aware of a zoning violation); Morikawa v. Zoning Bd. of Appeals of Town of Weston, 47 Conn. L. Rptr. 177, 2009 WL 566489 (Conn. Super. Ct. 2009), judgment aff'd, 126 Conn. App. 400, 11 A.3d 735 (2011); Ransom v. Zoning Bd. of Appeals Town of New Milford, 42 Conn. L. Rptr. 336, 2006 WL 3491654 (Conn. Super. Ct. 2006); Long Shore, LLC v. Madison Zoning Bd. of Appeals, 52 Conn. L. Rptr. 359, 362, 2011 WL 3672021 (Conn. Super. Ct. 2011).

[127]Vichi v. Town of Stonington Zoning Bd. of Appeals, 51 Conn. L. Rptr. 679, 2011 WL 1734431 (Conn. Super. Ct. 2011).

[128]Green Falls Associates, LLC v. Zoning Bd. of Appeals of Town of Montville, 138 Conn. App. 481, 494, 53 A.3d 273 (2012).

be demolished and reconstructed at a higher elevation, and the island was too small for any structure to meet the separation distance from the high watermark.[129]

§ 9:4 The purchase with knowledge rule and its exceptions

If the purchaser of property who acquired it with knowledge of the zoning regulations attempts to devote it to a use which is not allowed by the regulations, in other words an illegal use (and which is not a nonconforming use), he is barred from obtaining a variance under the purchase with knowledge rule.[1]

Where a lot becomes undersized as a result of action of the zoning commission in changing the ordinance, the property owner may obtain a variance.[2]

A person who buys a nonconforming lot or who acquires property with a nonconforming use caused by a change in the zoning regulations has the same right to obtain a variance as the seller of the property and is not barred from obtaining a variance by the purchase with knowledge rule.[3] Since zoning considers the use of the land and not the owner, the purchaser of land is not

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[129]Schulhof v. Zoning Bd. of Appeals of City of Norwalk, 144 Conn. App. 446, 456–459, 74 A.3d 442 (2013).

[Section 9:4]

[1]Abel v. Zoning Bd. of Appeals of City of Norwalk, 172 Conn. 286, 289, 374 A.2d 227, 228 (1977); Spencer v. Zoning Bd. of Appeals of Town of Stratford, 15 Conn. App. 387, 391, 544 A.2d 676, 678 (1988); Clapp v. Zoning Bd. of Appeals of City of Milford, 29 Conn. Supp. 4, 6, 268 A.2d 919, 920 (C.P. 1970); Baccante v. Zoning Bd. of Appeals of City of Bridgeport, 153 Conn. 44, 48, 212 A.2d 411, 413 (1965); Celentano v. Zoning Bd. of Appeals of City of Hartford, 136 Conn. 584, 587, 73 A.2d 101, 102 (1950); Cimino v. Zoning Bd. of Appeals of Town of Woodbridge, 117 Conn. App. 569, 580, 979 A.2d 1048 (2009).

[2]Kulak v. Zoning Bd. of Appeals of City of Stamford, 184 Conn. 479, 482, 440 A.2d 183, 184 (1981); Johnny Cake, Inc. v. Zoning Bd. of Appeals of Town of Burlington, 180 Conn. 296, 300, 301, 429 A.2d 883, 885, 886 (1980); Whittaker v. Zoning Bd. of Appeals of Town of Trumbull, 179 Conn. 650, 658, 427 A.2d 1346, 1350 (1980); Schultz v. Zoning Bd. of Appeals of Town of Berlin, 144 Conn. 332, 130 A.2d 789 (1957).

[3]Johnny Cake, Inc. v. Zoning Bd. of Appeals of Town of Burlington, 180 Conn. 296, 300, 301, 429 A.2d 883, 885, 886 (1980); Kulak v. Zoning Bd. of Appeals of City of Stamford, 184 Conn. 479, 482, 440 A.2d 183, 184 (1981); Petruzzi v. Zoning Bd. of Appeals of Town of Oxford, 176 Conn. 479, 483, 408 A.2d 243, 246 (1979).

Sydoriak v. Prospect Zoning Bd. of Appeals, 2004 WL 1153749 (Conn. Super. Ct. 2004), judgment aff'd, 90 Conn. App. 649, 879 A.2d 494 (2005); Garlasco v. Zoning Bd. of Appeals of Town of Bridgewater, 40 Conn. L. Rptr. 562, 2006 WL 225276 (Conn. Super. Ct. 2006), judgment aff'd, 101 Conn. App. 451, 922 A.2d 227 (2007) (lot without frontage on a road where the zoning regulations had a direct frontage requirement).

EXHIBIT (H) ~~Exib~~

fastcase

438 A.2d 1186

186 Conn. 32

Jesse POLLARD et al.

v.

ZONING BOARD OF APPEALS OF the CITY OF NORWALK et al.

Supreme Court of Connecticut.

Argued Nov. 13, 1981.
Decided Jan. 5, 1982.

[186 Conn. 33] Robert A. Fuller, Norwalk, with whom was Louis S. Ciccarello, Norwalk, for appellants (defendants Robert Vadas et al.).

Vincent D. Flaherty, Norwalk, with whom, on the brief, was Thomas J. Ryan, Danbury, for appellees (plaintiffs).

Before [186 Conn. 32] HEALEY, PARSKEY, ARMENTANO, SHEA and DALY, JJ.

[186 Conn. 33] ARTHUR H. HEALEY, Associate Justice.

The defendants, Robert Vadas and Donald Vadas, have appealed from a judgment of the Superior Court overruling a decision of the Norwalk zoning board of appeals granting a variance of a lot width requirement to the defendants.

The defendants are beneficiaries of the estate of Nellie J. Hodges. For many years, the decedent owned a certain parcel of land known as No. 8 Camp Street in Norwalk upon which her one family house was located. This property, when acquired by Nellie J. Hodges and her husband James H. Hodges, was described in the deed as having a frontage on Camp Street of "one hundred feet more or less." The property is located in a C-Residence zone which allows one and two family houses to be constructed on lots with a minimum width at the street frontage of fifty feet. [1]

Following the death of Nellie J. Hodges, the executrix of her estate, Maysie Aussenhofer, hired a licensed surveyor, Dennis Deilus, to survey the [186 Conn. 34] property for the purpose of subdividing it into two separate lots, each with a frontage on Camp Street of fifty feet. Deilus prepared a survey which subdivided the parcel into two lots. The lot containing the house was designated as No. 8 Camp Street and was shown on the Deilus survey map to have a frontage on Camp Street of 53.71 feet. The second lot, which was vacant, was designated as No. 61/2 Camp Street and was shown on this map to have frontage on Camp Street of 50.03 feet. [2] The surveyor's map prepared by Deilus which indicated these measurements was dated June 2, 1977, and was filed in the Norwalk land records. [3]

Chat

The house and lot located at No. 8 Camp Street were subsequently sold to the plaintiffs Robert and Betsy Turner by warranty deed which referred to the Deilus subdivision map then filed in the Norwalk land records. On September 8, 1977, the executrix sold the vacant lot No. 61/2, also by warranty deed which referred to the Deilus map, to Anthony Romano who later conveyed a one-half interest to his partner, Nicholas Spagnuolo. This parcel is the subject of the present litigation. The new owners, Romano and Spagnuolo, hired their own surveyors, to survey the property in preparation for the commencement of construction on the vacant lot. These surveyors based their survey on the prior Deilus [186 Conn. 35] survey which was the only map on record at the time. While performing the survey, the owner of the adjacent property on the other side of No. 61/2 Camp Street, Mrs. Katherine Russo of No. 6 Camp Street, notified the surveyors that they had staked the boundary line of No. 61/2 Camp Street three feet onto her property. Russo called the surveyor's attention to a map of her property previously prepared by her own surveyor, Leo Leonard, and also showed them an iron pin driven into the ground which marked the boundary line between the two pieces of property. The line which the surveyors for Romano and Spagnuolo had staked was three feet inside her boundary line, marked by the iron pin. The map prepared by Leonard had not been recorded, nor was it disclosed to or discovered by Deilus.

Between September 12-14, 1977, and after Russo had informed the surveyor hired by Romano and Spagnuolo of the possible boundary line error, the vacant lot at No. 61/2 was cleared and, after excavation, the concrete slab was poured and the blocks for foundation walls were erected. Since the foundation was placed approximately two feet inside what Russo claimed was her property line, she obtained an injunction prohibiting further work on No. 61/2 Camp Street. It was eventually determined that Russo's survey was correct and that the Deilus survey was in error. This error left the lot at No. 61/2 Camp Street with frontage of 46.40 feet and a width of 48.84 feet at the point 70 feet from the front line of the property, thereby resulting in a violation of the minimum frontage and side yard setback requirements.

On December 30, 1977, Romano and Spagnuolo applied to the Norwalk zoning board of appeals [186 Conn. 36] seeking side yard setback and lot width variances in order to allow construction of a two family house. The applicants claimed hardship in that they "purchased a lot and constructed a foundation in reliance on professional engineering data" which later proved erroneous, obviously maintaining that they relied on the incorrect Deilus survey. Many residents opposed this application and the board denied the application on March 16, 1978, because "no hardship had been shown." [4]

On April 14, 1978, Romano and Spagnuolo again applied to the zoning board of appeals but only for a variance of the minimum lot width requirement, having subsequently decided to move the location of the structure to avoid the necessity of obtaining a side yard setback variance. This second application also differed from their first application in that a variance for only a single family house was sought in the second application. The applicants justified this second request for a variance on the grounds that "the surveyor for the Estate of Nellie Hodges created the error, and the parcel is now unbuildable unless the variance is granted." The board voted on a motion to deny the application on June 15, 1978. Two members voted in favor of this resolution and three voted against it. No other action was taken on this second application. [5]

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In the meantime, Maysie Aussenhofer, the executrix of the estate of Nellie J. Hodges, was sued in a [186 Conn. 37] rescission action by Romano and Spagnuolo demanding return of the purchase price. As a result, Robert and Donald Vadas, as beneficiaries of the estate, reacquired the subject property from Romano and Spagnuolo. [6] On August 14, 1979, Robert and Donald Vadas applied to the board requesting a variance of the lot width requirements for the purpose of constructing a single family house. [7] The basis upon which the applicants claimed a hardship was that because of the surveyor's error, it would be "unfair to deny the owners the right to construct a one family house on the parcel of land" because, without the variance, the property would be useless. On September 20, 1979, after hearing similar arguments to those presented at the two previous hearings, the zoning board of appeals granted the requested variance by a 4-1 vote finding that "the hardship is an error created originally by a survey conducted by Mr. Deilus ...."

The plaintiffs are property owners adjacent to or located within one hundred feet of the subject property. See General Statutes § 8-8. They appealed the decision of the zoning board of appeals to the Superior Court alleging that the defendant zoning board of appeals acted illegally in reversing its [186 Conn. 38] previous denial of the

variance application. The court sustained the plaintiff's appeal finding that the zoning board could not reverse its previous decision "without a showing of a change in circumstances, and where the hardship was self created and consisted solely of a financial loss to the defendants Robert and Donald Vadas." From this judgment sustaining the plaintiffs' appeal, upon the granting of certification, the defendants Robert and Donald Vadas appealed to this court.

EXHIBIT H

The defendants have basically set forth five claims of error. They argue: (1) that all of the necessary prerequisites for a variance were established; (2) that denial of the variance would amount to a confiscation of the property; (3) that the 2 to 3 vote to deny the second application was not a valid denial which would invoke the "material change in circumstances" test for successive applications; (4) that a 1977 amendment to General Statutes § 8-6 changes prior case law; and (5) that the trial court abused its discretion in substituting its judgment for that of the zoning board of appeals. Our resolution of the first of these issues is dispositive of this appeal.

The defendant's first claim is that the trial court erred in overruling the zoning board's decision because all of the prerequisites for the granting of a variance were satisfied. Specifically, the defendants claim that the trial court erred in finding that the defendant zoning board of appeals acted illegally in granting the variance where the only hardship shown was self-created and consisted solely of financial loss to the defendants Robert and Donald Vadas. "A local zoning board has the power to grant a variance under General Statutes § 8-6(3) where two basic conditions are satisfied: '(1) the [186 Conn. 39] variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan.' Smith v. Zoning

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Board of Appeals, 174 Conn. 323, 326, 387 A.2d 542 (1978)." (Footnote omitted.) Whittaker v. Zoning Board of Appeals, 179 Conn. 650, 655, 427 A.2d 1346 (1980). The trial court, as part of its holding, found that part two of this test was not satisfied in that any alleged hardship was self-created. We agree.

In Smith v. Zoning Board of Appeals, supra, we stated that "(i)t is well settled that the hardship must be different in kind from that generally affecting properties in the same zoning district, and must arise from circumstances or conditions beyond the control of the property owner." Id., 327, 387 A.2d 542. "Where the hardship involved 'arises as the result of a voluntary act by one other than the one whom the variance will benefit, the board may, in the sound exercise of its liberal discretion, grant the variance.' Belknap v. Zoning Board of Appeals, 155 Conn. 380, 384, 232 A.2d 922 (1967). Where the claimed hardship arises from the applicant's voluntary act, however, a zoning board lacks the power to grant a variance. Abel v. Zoning Board of Appeals, 172 Conn. 286, 289, 374 A.2d 227 (1977); Booe v. Zoning Board of Appeals, 151 Conn. 681, 683, 202 A.2d 245 (1964); Spalding v. Board of Zoning Appeals, 144 Conn. 719, 722, 137 A.2d 755 (1957); Devaney v. Board of Zoning Appeals, 132 Conn. 537, 544, 45 A.2d 828 (1946). The hardship which justifies a board of zoning appeals in granting a variance must be one that originates in the zoning ordinance; Booe v. Zoning Board of Appeals, supra; cf. Devaney v. [186 Conn. 40] Board of Zoning Appeals, supra; Highland Park, Inc. v. Zoning Board of Appeals, 155 Conn. 40, 43, 229 A.2d 356 (1967); and arises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved. Misuk v. Zoning Board of Appeals, 138 Conn. 477, 481, 86 A.2d 180 (1952); McMahon v. Board of Zoning Appeals, 140 Conn. 433, 442, 101 A.2d 284 (1953); see Berlani v. Zoning Board of Appeals, 160 Conn. 166, 170, 276 A.2d 780 (1970)." Whittaker v. Zoning Board of Appeals, supra, 179 Conn. 657-58, 427 A.2d 1346. " '(S)elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' 2 Yokley, Zoning Law & Practice (3d Ed.) § 15-8, p. 159." Abel v. Zoning Board of Appeals, supra, 172 Conn. 289, 374 A.2d 227; see Garibaldi v. Zoning Board of Appeals, 163 Conn. 235, 239, 303 A.2d 743 (1972). We have recently addressed the "self-created hardship" exception for variances. In Johnny Cake, Inc. v. Zoning Board of Appeals, 180 Conn. 296, 300, 429 A.2d 883 (1980), we stated that "(w)here the applicant or his predecessor creates a nonconformity, the board lacks power to grant a variance." (Emphasis added.) See also Kulak v. Zoning Board of Appeals, --- Conn. ---, --- A.2d ---- (42 Conn.L.J., No. 52, pp. 4, 5) (1981).

The defendants claim that the self-created hardship rule does not apply here because, first, the hardship was caused by the surveyor, Deilus, and not the estate and, second, even if the surveyor's mistake were imputed to the estate, it should not be further imputed to them as beneficiaries of the estate. The defendants interpret the self-created hardship rule as applying only to the deliberate conduct or voluntary purchase of the subject property by

the owner. In support of this claim, they point out that neither the executrix nor the defendants[186 Conn. 41] themselves had knowledge of the defects in the Deilus survey until after the injunction was granted to Katherine Russo.

The fact that the surveyor, Deilus, and not the defendants or the executrix committed the error which resulted in the hardship is not critical. In Highland Park, Inc. v. Zoning Board of Appeals, supra, an error was made by a surveyor or foundation contractor, employed by the plaintiff corporation, [8] which caused a house to be constructed on a lot so that it was positioned in violation of the applicable zoning regulations.

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The zoning board of appeals denied a variance request saying that the condition underlying the appeal was "self-inflicted." The trial court dismissed the appeal. In sustaining the trial court upon appeal, we stated that "any hardship present in the situation is due to the property owner's own error, or the error of those employed by the owner, and does not arise from the application of the zoning regulations themselves." Id., 155 Conn. 43, 229 A.2d 356.

At the time of Deilus' actions, the defendants were the legal owners of the subject property. "On the death of an owner, title to real estate at once passes to his heirs, subject to being defeated should it be necessary for the administration of the estate that it be sold by order of the court, and subject to the right of the administrator to have 'possession, care and control' of it during the settlement of the estate, unless the probate court shall otherwise [186 Conn. 42] order.... The administrator does not have title to the real estate; ... his rights in it cease at the settlement of the estate." Brill v. Urey, 159 Conn. 371, 375, 269 A.2d 262 (1970), quoting O'Connor v. Chiascione, 130 Conn. 304, 306, 33 A.2d 336 (1943). In short, an administrator does not have title to real estate; in case of the death of the owner, title to real estate at once passes to his heirs subject to the right of administration. O'Connor v. Chiascione, supra; see Lundberg v. Kovacs, 172 Conn. 229, 232n, 374 A.2d 201 (1977); Bowen v. Morgillo, 127 Conn. 161, 168, 14 A.2d 724 (1940); Blodgett v. Bridgeport City Trust Co., 115 Conn. 127, 144, 161 A. 83 (1932); 3 Locke & Kohn, Conn. Probate Practice § 26. The trial court found that "(t)his alleged hardship occurred after the death of Nellie J. Hodges when the defendants Robert and Donald Vadas acquired title to the parcel as devisees under her will. As beneficiaries of the (e)state (sic) the subdivision would result in a benefit to them, and they cannot be treated as innocent victims of the acts of the surveyor or fidicuariy (sic) of the estate."

The hardship, in this case, arose as the result of voluntary acts on behalf of one whom the variance would benefit and, therefore, was self-created. See Highland Park, Inc. v. Zoning Board of Appeals, supra; Deer-Glen Estates v. Board of Adjustment & Appeal, 39 N.J.Super. 380, 121 A.2d 26 (App.Div.1956). [9] The voluntary acts were those of the [186 Conn. 43] executrix, [10] for the benefit of the defendants, in employing the errant surveyor, in seeking to create a two lot subdivision, and in conveying the subdivided No. 8 Camp Street to the Turners so as to leave the defendants with an undersized lot. [11] The defendants cannot now disclaim the consequences of the executrix's actions when they were fully aware, as legal owners of the property, of the situation and

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would enjoy any benefits to be derived. [12] The defendants are not without remedy and, in fact, the record indicates that the estate and [186 Conn. 44] the surveyor are presently engaged in litigation. Obviously, any relief obtained by the estate will accrue to the defendants.

The defendants claim that this result is unfair because they had no knowledge of the errors in the Deilus survey and because the hardship arose from circumstances beyond their control. However, as between the defendants, on the one hand, who held legal title to the property, and the executrix, who hired the errant surveyor and conveyed the property away, and, on the other hand, the city of Norwalk, whose zoning regulations have been violated, the burden must fall on the former two parties. "Personal hardships, regardless of how compelling or how far beyond the control of the individual applicant, do not provide sufficient grounds for the granting of a variance." Garibaldi v. Zoning Board of Appeals, supra, 163 Conn. 239-40, 303 A.2d 743. "It is not the function or responsibility of the board of appeals to seek ways to extricate (the applicant) from his self-created difficulties." 3 Yokley, Zoning Law & Practice (4th Ed.) § 21-5.

Since we find that any hardship was self-created, the zoning board was without power to grant a variance under any circumstances. Kulak v. Zoning Board of Appeals, supra, 5; Booe v. Zoning Board of Appeals, supra, 151 Conn. 683, 202 A.2d 245. Therefore, we need not address the defendants' remaining claims of error.

There is no error.

In this opinion the other Judges concurred.

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1 Building Zone Regulations of the City of Norwalk, Conn., § 118.100, "Minimum Size of Plot, Width." (Am.1979)

2 The total amount of frontage does not materially differ from the description in the deed by which Nellie J. Hodges and her husband acquired title which stated the frontage measurements as "one hundred feet more or less."

3 In order to subdivide the property into two lots, it was necessary to acquire an initial variance from the Norwalk zoning board of appeals because the existing dwelling house was within the minimum side yard setback distance of six feet from the newly drawn property line. This variance was granted on July 7, 1977, Zoning Board of Appeals Case No. 77-0707-01. The disposition of this variance is not at issue here.

4 Zoning Board of Appeals Case No. 78-0119-01. The vote was 4-1 in favor of denial.

5 Zoning Board of Appeals Case No. 78-0504-04. Our disposition of this appeal does not require that we reach the issue raised by the 2 to 3 vote on the resolution to deny the application. General Statutes § 8-7 requires the concurring vote of four members of a zoning board of appeals to grant a variance.

6 Although the Vadas brief indicates that "the executrix of the (Hodges) estate was sued in a rescission action and required to reacquire the lot," the application filed August 14, 1979, and which is the subject of this appeal lists Romano and Spagnuolo as the "owner(s)" and Robert Vadas and Donald Vadas as the "applicant(s)." That application also indicates that after the rescission action was brought, the applicants (Vadas) filed a cross complaint against the surveyor Deilus and that in connection with the lawsuit the applicants "had repaid substantially all of the purchase price back to Romano and Spagnuolo, who still remain the legal owners of the property, subject to the final resolution of the lawsuit."

7 Robert and Donald Vadas had previously applied for a similar variance on June 1, 1979, but this application was withdrawn after repeated postponements of the hearing.

8 The individual plaintiff-appellant in Highland Park was the principal stockholder, director, president and chief executive officer of the corporate appellant, Highland Park, Inc. See Highland Park, Inc. v. Zoning Board of Appeals, 155 Conn. 40, 42, 229 A.2d 356 (1967); see also Records & Briefs A-467, p. 117.

9 In Deer-Glen Estates v. Board of Adjustment & Appeal, 39 N.J.Super. 380, 121 A.2d 26 (App.Div.1956), the court affirmed the rejection by the zoning board of appeals of the owner-applicant's petition for a variance which claimed that the owner's architect made a mistake in laying out the building on the premises which was practically completed at the time the variance was sought. The court found that the hardship complained of was "self-imposed" or "self-created" and that the owner could not successfully claim the mistake of the architect and his own negligence as the basis for granting a variance.

10 The defendants have stated that the executrix and, ultimately, the defendants themselves should not be forced to bear the consequences of the independent contractor's mistake. In fact, it appears from the record that neither any party nor the trial court ever mentioned or raised this issue at trial. We have repeatedly stated that we will not consider claims of error unless there has been compliance with § 3063 of the Practice Book. Burritt Mutual Savings Bank v. Tucker, --- Conn. ---, --- A.2d ---- (42 Conn.L.J., No. 41, pp. 13, 15) (1981); Capozzi v. Luciano, 174 Conn. 170, 173-74, 384 A.2d 359 (1978).

We note, however, that even if it were established that Deilus was an independent contractor for certain purposes, it would not preclude a finding that he was also an agent or employee of the executrix for other purposes arising out of the same relationship. See 41 Am.Jur.2d, Independent Contractors §§ 2, 18; 19 A.L.R. 270, § 20; Restatement (Second), Agency § 2(3).

11 We have considered this latter act alone as sufficient justification for denying a variance application. See Booe v. Zoning Board of Appeals, 151 Conn. 681, 202 A.2d 245 (1964).

12 Even if we assume, for these purposes only, that the executrix was a "predecessor" of the defendants, under Johnny Cake Inc. v. Zoning Board of Appeals, supra, we would reach the same conclusion that the defendants are barred from a variance by the self-created hardship rule. Since it cannot be denied that the executrix voluntarily hired the surveyor, she would be barred from obtaining a variance; see Highland Park, Inc. v. Zoning Board of Appeals, supra. If a predecessor would be barred from obtaining a variance by his voluntary acts, then his successor would face a similar situation given the same set of circumstances. See Johnny Cake Inc. v. Zoning Board of Appeals, supra, 180 Conn. 309, 429 A.2d 883; see also George E. Barnes Land Corporation v. Board of Adjustment of Wyckoff Township, 174 N.J.Super. 301, 416 A.2d 431 (1980) (affirming denial of variance finding claimed hardship was self-created where plaintiff's predecessor in title had caused the nonconformity from which the plaintiff sought relief by a variance).

APPLICATION FOR A ZONING PERMIT

EXHIBIT J

TOWN OF STAFFORD, CT

1 Main Street, Stafford Springs, CT 06076

APPLICATION DATE: 09/02/2021 **FEE RCVD.:** 110.00 **BY:** **ISSUED:** **PERMIT #:** Draft

PURPOSE OF PERMIT: Accessory Structure **DIMENSIONS:** 15x30

EXPANSION OF EXISTING USE/CHANGE OF USE: repair Garage

STREET LOCATION: 30 COLBURN RD **MAP:** 18 **BLK:** 31 **LOT:** 0

IS THIS PROPERTY IN PA490? **YEAR CLASSIFIED:**

APPLICANT'S NAME: Ralph Faber **ADDRESS:** 30 Colburn Rd Stafford CT 06076

PRIMARY CONTACT NAME: **PHONE NUMBER:** 8608741159

PROPERTY OWNER'S NAME: FABER RALPH E +NORMA S **ADDRESS:** 30 COLBURN RD

APPROVED: FABER RALPH E+NORMA S **DATE:** 09/02/2021 **ACKNOWLEDGED:** Ralph Faber **DATE:** 09/02/2021

Property Owner Applicant

LOT DESCRIPTION AND LOCATION OF STRUCTURE

LOT SIZE: **FRONTAGE ON ROAD:** **ROAD IS:** Town Owned

ZONING DISTRICT: **PROPERTY USE:**

PROPOSED DEVELOPMENT IS LOCATED ON APPROVED OR CONDITIONALLY APPROVED SUBDIVISION:

COPY OF MYLAR SUBMITTED:

SETBACKS OF PROPOSED STRUCTURE

FRONT: **LEFT SIDE:**

REAR: **RIGHT SIDE:**

Town Fee =	$ 50.00
State Fee =	$ 60.00
TOTAL PERMIT FEE =	$ 110.00

OTHER NECESSARY APPROVALS

WETLANDS PERMIT: **DATE APPROVED:**

APPROVAL FROM HEALTH DEPARTMENT: PLEASE ATTACH WRITTEN APPROVAL

DRIVEWAY PERMIT: **IF YES, DATE SUBMITTED TO HIGHWAY FOREMAN:**

By signing this form, you agree to allow members of the commission and the agent access to the property to evaluate the application or conditions of the application.

If the information provided by the applicant subsequently proves to be false, deceptive, incomplete and/or inaccurate, this permit may be modified, suspended or revoked.

ZONING ENFORCEMENT OFFICER COMMENTS:

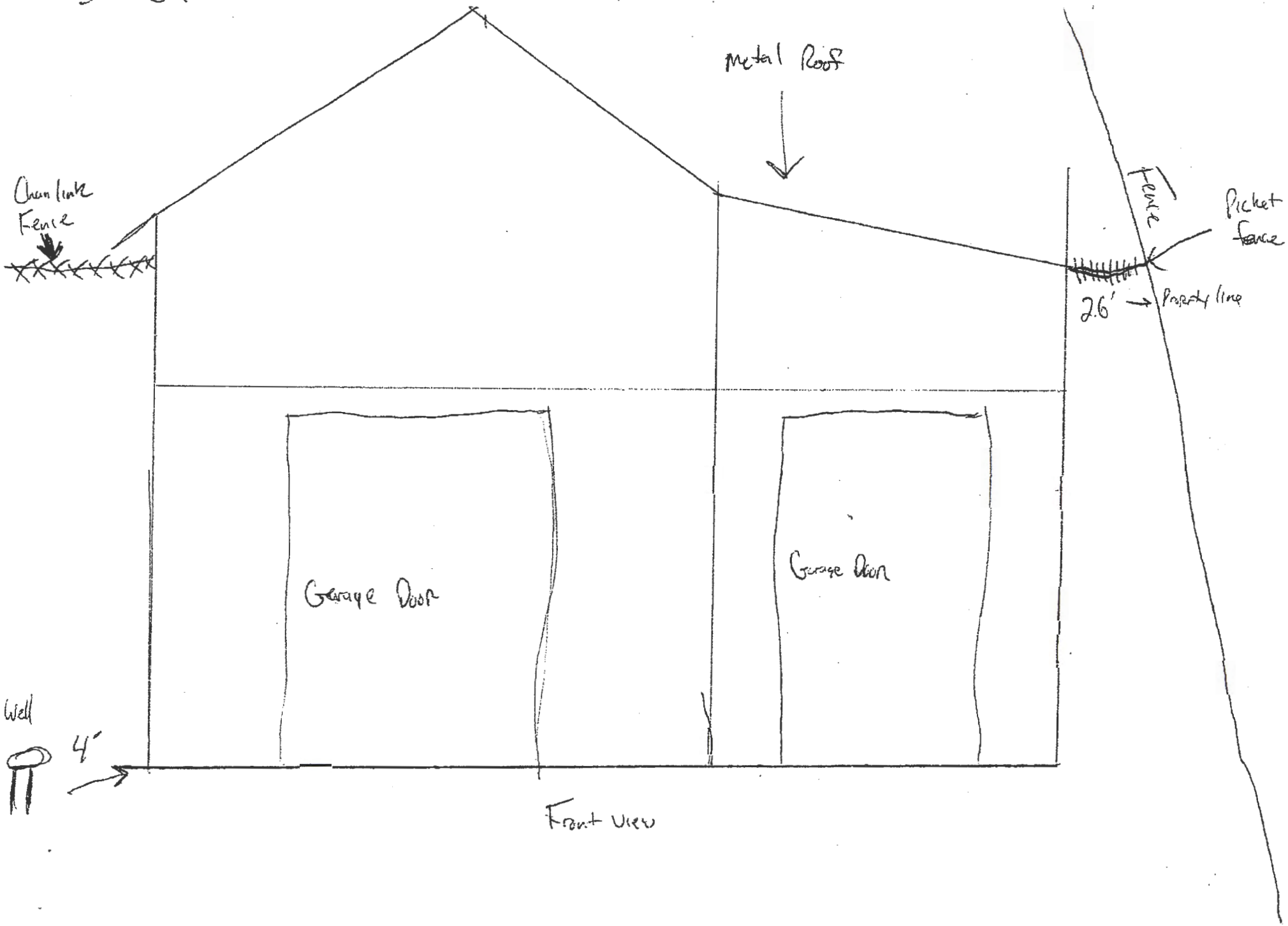
See page 2.

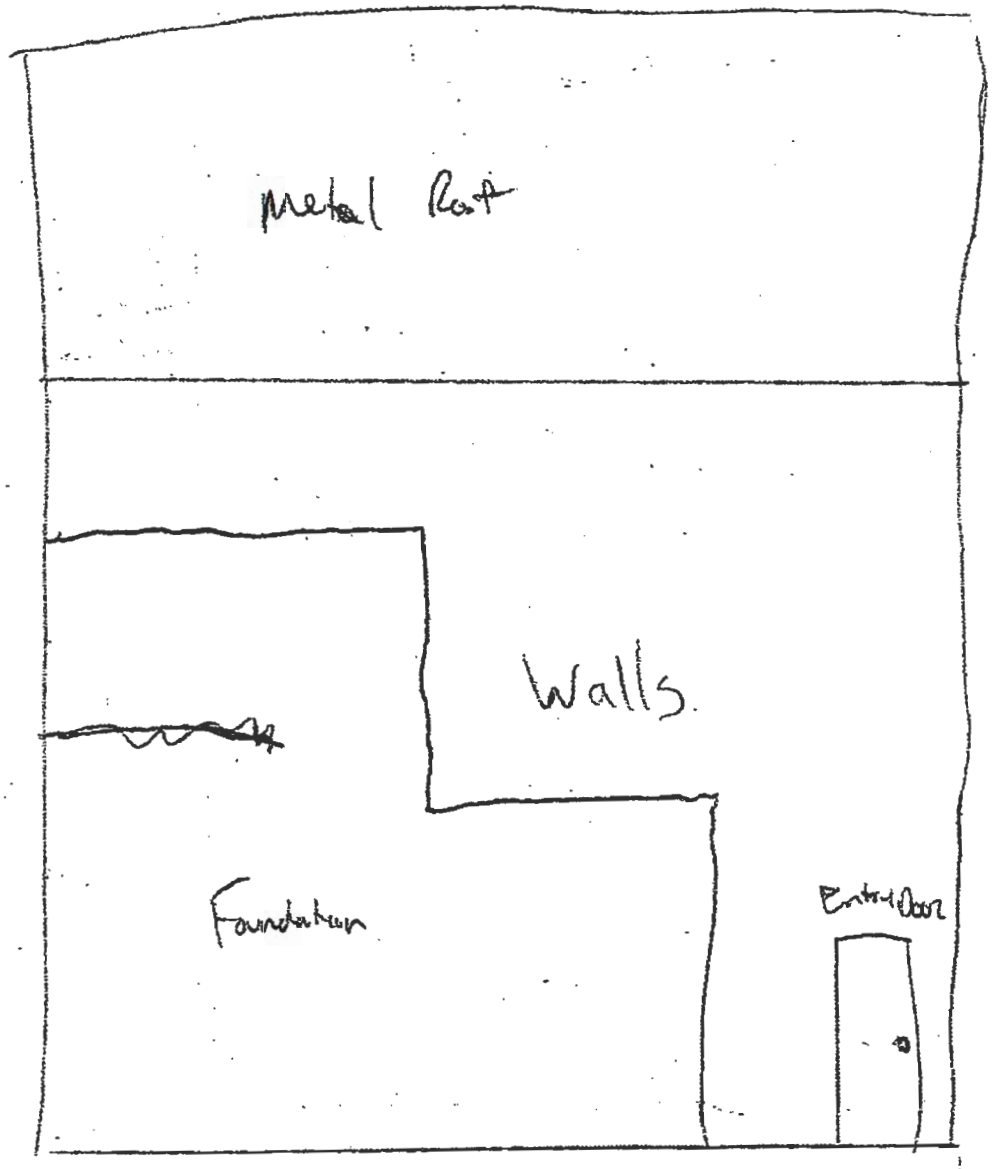
PLAINTIFF'S EXHIBIT
Date 10-26-22 / ☐ FULL ☐ ID Initials
Docket # CV22-6025086

PERMIT ISSUED BY: **NAME:**

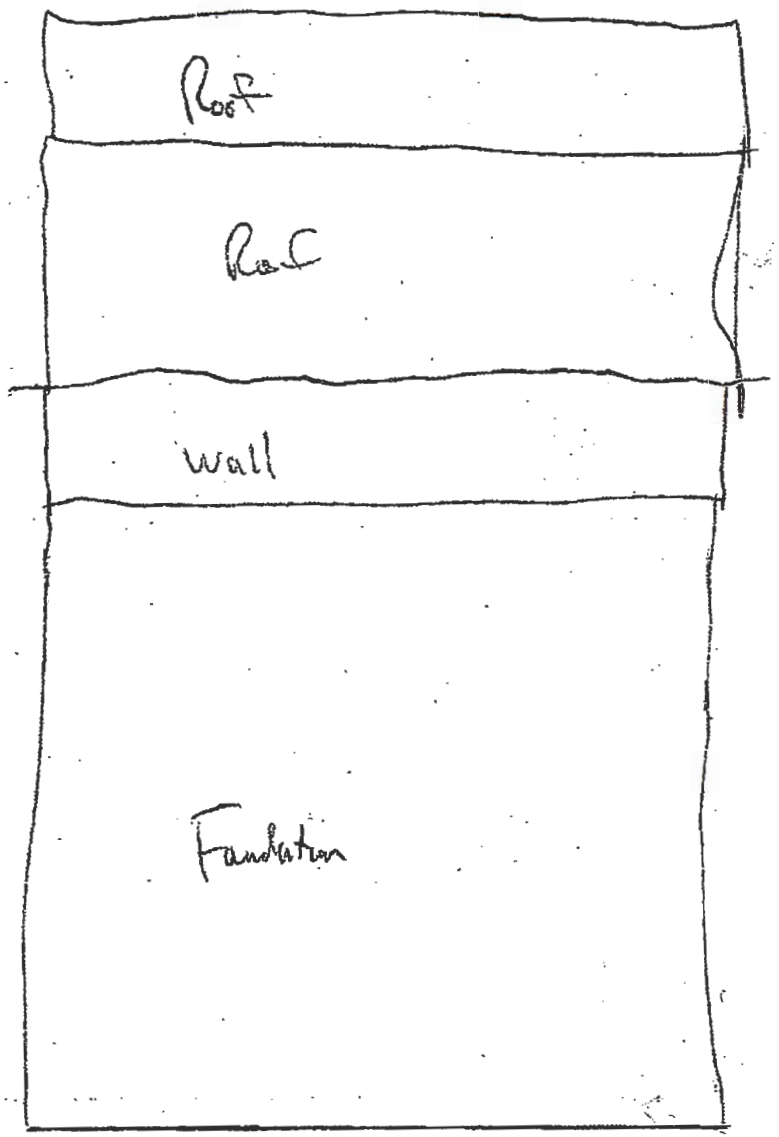
Zoning Enforcement Officer

30 Colburn Rd Barn Repair Plan





South Side View



North Side View

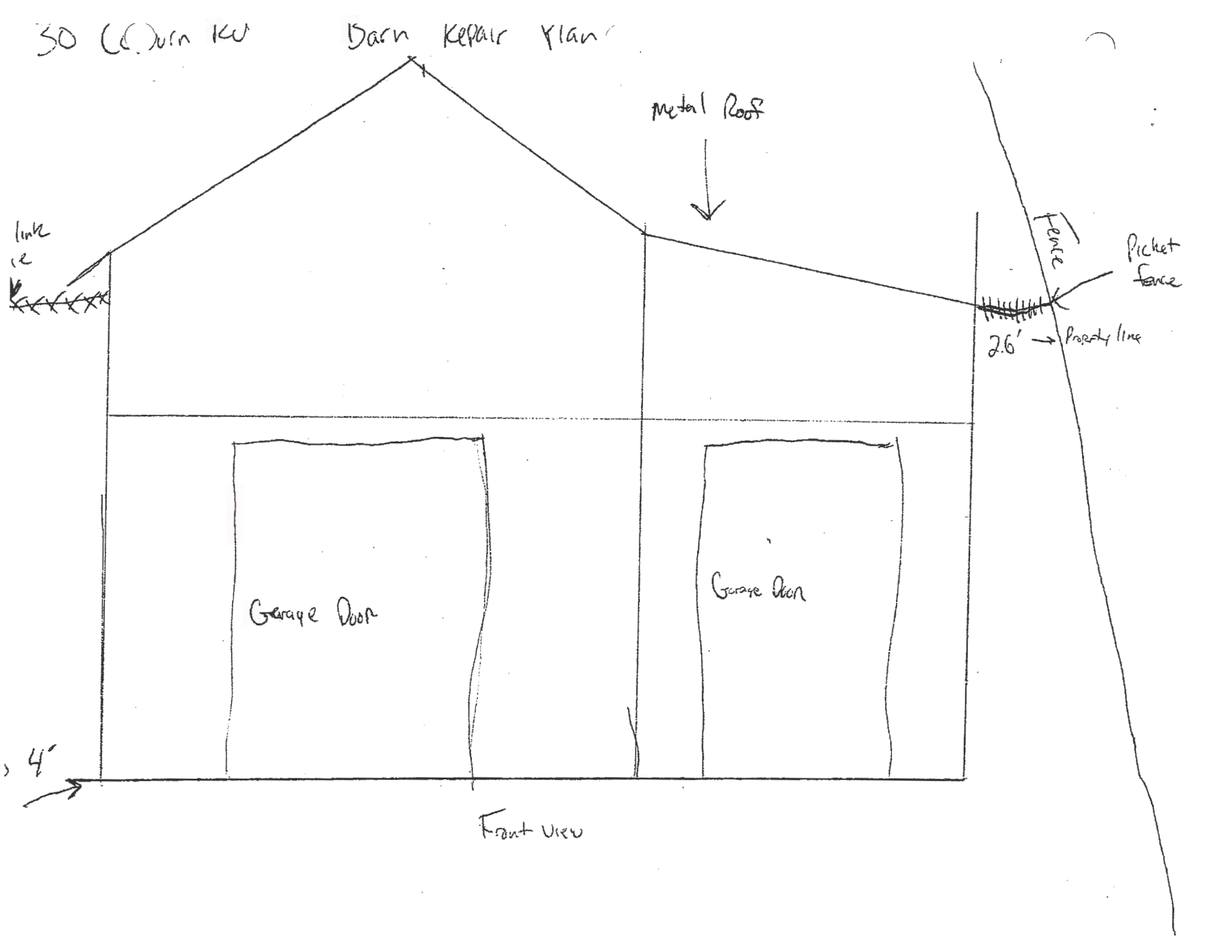

50 (c.)urn Ku
Barn Repair Plan
Metal Roof
link
ie
Fence
Picket
fence
2.6'
Property line
Garage Door
Garage Door
4'
Front View

EXHIBIT K

DOCKET NO: TTD-CV-22-6025086-S	:	SUPERIOR COURT
DAVID PERKINS	:	J.D. OF TOLLAND
VS.	:	AT ROCKVILLE
RALPH FABER, ET AL.	:	APRIL 16, 2024

JUDGMENT

After considering all of all the testimony and exhibits introduced into evidence, the court concludes that the plaintiff has satisfied its burden of proof and hereby enters judgment as follows:

I. INJUNCTIVE RELIEF

The defendants shall have sixty (60) days from the date of the judgment to demolish and remove in its entirely (or bring into full compliance as determined by the plaintiff) the structure on 30 Colburn Road, Stafford, Connecticut, constructed without a zoning or building permit and depicted in the photographs introduced into evidence as Exhibits 5-11 and 27.

II. CIVIL PENALTIES

Civil penalties in the sum of $21,175 are awarded to the plaintiff pursuant to Conn. Gen. Stat. § 8-12 for the 847 days of zoning violations from the date of the issuance of the cease and desist order directing the defendants to cease construction of the structure at issue on December 14, 2021 through April 9, 2024 calculated at the rate of $25 per day.

II. MONETARY RELIEF

The attorneys' fees requested by the plaintiff in the sum of $5,698.00 are not awarded at this time based on the court's determination that the defendants' repeated failures to abide by the plaintiff's cease and desist order were not done deliberately. However, the court shall retain jurisdiction over this matter and may enter future orders to enforce or supplement its judgment as necessary.

Dated at Rockville, Connecticut this 16th day of April, 2024.

BY THE COURT

MATTHEW DALLAS GORDON. J.

EXHIBIT L

DAVID PERKINS, ZONING ENFORCEMENT OFFICER	:	SUPERIOR COURT
VS.	:	JUDICIAL DISTRICT OF TOLLAND
RALPH FABER ET AL	:	JUNE 27, 2022

COMPLAINT

1. The Town of Stafford has adopted a comprehensive zoning ordinance which regulates the use and construction of structures and buildings within the Town of Stafford.
2. The plaintiff David Perkins, Zoning Enforcement Officer has been designated by the Stafford Planning and Zoning Commission as the officer having jurisdiction to enforce the provisions of said zoning ordinance and to prevent the erection, construction, alteration, conversion, maintenance or use of any building or structure in violation of said ordinance.
3. Section 8.1 of the Stafford Zoning Regulations provides that "No structure shall be erected, expanded, or structurally altered and no land use shall be established until a permit has been issued."
4. The defendants Ralph Faber and Norma Faber are the owners of a certain piece or parcel of land located at 30 Colburn Road in the Town of Stafford.
5. In September, 2021, the defendants began the construction or alteration of a garage on their property at 30 Colburn Road.
6. An application to obtain a permit for said construction was denied, so that the defendants have never received a permit to construct said structures, as required by Section 8.1 of the Stafford Zoning Regulations.
7. On November 15, 2021, the plaintiff sent to the defendants an email ordering the defendants to stop work on said property.

ADISO & MUSKA, L.L.C.
ATTORNEYS AT LAW
2 EAST MAIN STREET
P.O. BOX 22
STAFFORD SPRINGS, CT
06076
JURIS NO. 406173

8. On December 14, 2021, the plaintiff issued a cease-and-desist order ordering the defendants to cease the reconstruction of the accessory building on their property. Said cease-and-desist order was sent by certified mail and received by the defendants on December 15, 2021.
9. The defendants have not taken an appeal of said cease-and-desist order as provided for in Connecticut General Statute Sec. 8-7.
10. The defendants have continued to proceed with the construction or alteration of the structures on their property in violation of Safford Zoning Regulation 8.1 and the cease-and-desist order.

ADISO & MUSKA, L.L.C.
ATTORNEYS AT LAW
2 EAST MAIN STREET
P.O. BOX 22
TAFFORD SPRINGS, CT
06076
JURIS NO. 406173

WHEREFORE THE PLAINTIFF CLAIMS:

1. A temporary and permanent injunction enjoining the defendants from continuing to erect, construct or alter the structures at 30 Colburn Road, which is the subject of this complaint, in accordance with C.G.S. Sec. 8-12.
2. A temporary and permanent injunction ordering the defendants to remove the structures which has been erected or constructed in violation of the Stafford Zoning Regulations in accordance with C.G.S. Sec. 8-12.
3. A judgment for a civil fine in accordance with C.G.S. Sec. 8-12.
4. Such other relief as may be equitable and appropriate to enforce the provisions of the Stafford Zoning Regulations.

Dated at Stafford Springs, Connecticut, this 27th day of June, 2022.

THE PLAINTIFF
DAVID PERKINS
ZONING ENFORCEMENT OFFICER

By _____
Edward Muska
His Attorney

ADISO & MUSKA, L.L.C.
ATTORNEYS AT LAW
EAST MAIN STREET
P.O. BOX 22
AFFORD SPRINGS, CT
06076
JURIS NO. 406173

STATE OF CONNECTICUT)
) ss. Stafford
COUNTY OF TOLLAND)

Personally appeared, DAVID PERKINS, Zoning Enforcement Officer for the Town of Stafford, the subscriber, who made oath to the truth of the matters contained in the aforesaid petition and complaint.

David Perkins

Subscribed and sworn to before me this 27th day of June, 2022.

Edward Muska
Commissioner of the Superior Court

ADISO & MUSKA, L.L.C.
ATTORNEYS AT LAW
2 EAST MAIN STREET
P.O. BOX 22
STAFFORD SPRINGS, CT
06076
JURIS NO. 406173

LIST OF EXHIBITS
JD-CL-28 Rev. 2-21

STATE OF CONNECTICUT
SUPERIOR COURT

LISTEXH

Type of Proceeding: **Temporary Injunction** Date(s) of Proceeding: **10/26/2022**

☒ All Exhibits are electronic ☐ Exhibits are both electronic and physical ☐ All Exhibits are physical

Court ☐ Geographic Area number ☒ Judicial District of: **Tolland** ☐ Housing Session | At (Town): **Rockville**

Name of Case: **David Perkins vs. Ralph Faber** | Name(s) of Clerk(s):

Name of Judge: **Matthew Gordon** | Name(s) of Court Reporter(s): | Docket Number: **CV22-6025086**

Plaintiff's Exhibits				Entered as Full or ID	Defendant's Exhibits				Entered as Full or ID
☐ ID ☐ Full	1.	App. for Zoning Permit	☒ Electronic ☐ Physical		☐ ID ☐ Full	A.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	2.	Email 11-15-2021	☒ Electronic ☐ Physical		☐ ID ☐ Full	B.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	3.	Cease & Desist Order	☒ Electronic ☐ Physical		☐ ID ☐ Full	C.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	4.	Certified Mail Receipt	☒ Electronic ☐ Physical		☐ ID ☐ Full	D.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	5.	Photo, 12-4-21	☒ Electronic ☐ Physical		☐ ID ☐ Full	E.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	6.	Photo, 12-21-21	☒ Electronic ☐ Physical		☐ ID ☐ Full	F.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	7.	Photo, 12-29-21	☒ Electronic ☐ Physical		☐ ID ☐ Full	G.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	8.	Photo, 1-3-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	H.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	9.	Photo, 5-10-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	I.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	10.	Photo, 5-18-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	J.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	11.	Photo, 5-23-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	K.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	12.	Photo, 5-25-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	L.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	13.	Photo, 6-25-22	☒ Electronic ☐ Physical		☐ ID ☐ Full	M.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	14.	Zoning Regulation	☒ Electronic ☐ Physical		☐ ID ☐ Full	N.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	15.		☐ Electronic ☐ Physical		☐ ID ☐ Full	O.		☐ Electronic ☐ Physical	
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☐ ID ☐ Full	25.		☐ Electronic ☐ Physical		☐ ID ☐ Full	Y.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	26.		☐ Electronic ☐ Physical		☐ ID ☐ Full	Z.		☐ Electronic ☐ Physical	

Plaintiff's physical exhibits returned to | Date | Defendant's physical exhibits returned to | Date

Receipt acknowledged *(Attorney for Plaintiff)* | Date | Receipt acknowledged *(Attorney for Defendant)* | Date

LIST OF EXHIBITS
JD-CL-28 Rev. 2-21

STATE OF CONNECTICUT
SUPERIOR COURT

LISTEXH

Type of Proceeding: **Hearing on the Record** Date(s) of Proceeding: **October 20, 2023**

☒ All Exhibits are electronic ☐ Exhibits are both electronic and physical ☐ All Exhibits are physical

Court ☐ Geographic Area number ____ ☒ Judicial District of: **Tolland** ☐ Housing Session

At *(Town)*: **Rockville**

Name of Case: **David Perkins v. Ralph Faber**

Name(s) of Clerk(s):

Name of Judge:

Name(s) of Court Reporter(s):

Docket Number: **TTD-CV-22-6025086-S**

Plaintiff's Exhibits				Entered as Full or ID	Defendant's Exhibits				Entered as Full or ID
☐ ID ☐ Full	1.		☐ Electronic ☐ Physical		☐ ID ☐ Full	A.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	2.		☐ Electronic ☐ Physical		☐ ID ☐ Full	B.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	3.		☐ Electronic ☐ Physical		☐ ID ☐ Full	C.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	4.		☐ Electronic ☐ Physical		☐ ID ☐ Full	D.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	5.		☐ Electronic ☐ Physical		☐ ID ☐ Full	E.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	6.		☐ Electronic ☐ Physical		☐ ID ☐ Full	F.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	7.		☐ Electronic ☐ Physical		☐ ID ☐ Full	G.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	8.		☐ Electronic ☐ Physical		☐ ID ☐ Full	H.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	9.		☐ Electronic ☐ Physical		☐ ID ☐ Full	I.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	10.		☐ Electronic ☐ Physical		☐ ID ☐ Full	J.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	11.		☐ Electronic ☐ Physical		☐ ID ☐ Full	K.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	12.		☐ Electronic ☐ Physical		☐ ID ☐ Full	L.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	13.		☐ Electronic ☐ Physical		☐ ID ☐ Full	M.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	14.		☐ Electronic ☐ Physical		☐ ID ☐ Full	N.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	15.	**Email Faber to Slater 9/26**	☒ Electronic ☐ Physical		☐ ID ☐ Full	O.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	16.	**Email Slater to Faber 9/26**	☐ Electronic ☐ Physical		☐ ID ☐ Full	P.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	17.	**Email Slater to Faber 9/27**	☐ Electronic ☐ Physical		☐ ID ☐ Full	Q.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	18.	**Email Faber to Slater 9/28**	☐ Electronic ☐ Physical		☐ ID ☐ Full	R.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	19.	**Email Slater to Faber 9/28**	☐ Electronic ☐ Physical		☐ ID ☐ Full	S.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	20.	**Email Faber to Slater 9/28**	☐ Electronic ☐ Physical		☐ ID ☐ Full	T.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	21.	**Email Slater to Faber 9/28**	☐ Electronic ☐ Physical		☐ ID ☐ Full	U.		☐ Electronic ☐ Physical	
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Plaintiff's physical exhibits returned to	Date	Defendant's physical exhibits returned to	Date
Receipt acknowledged *(Attorney for Plaintiff)*	Date	Receipt acknowledged *(Attorney for Defendant)*	Date

LIST OF EXHIBITS
JD-CL-28 Rev. 2-21

STATE OF CONNECTICUT
SUPERIOR COURT

LISTEXH

Type of Proceeding: **Hearing on the Record** Date(s) of Proceeding: **November 21, 2023**

☒ All Exhibits are electronic ☐ Exhibits are both electronic and physical ☐ All Exhibits are physical

Court ☐ Geographic Area number ☒ Judicial District of: **Tolland** ☐ Housing Session

At *(Town)*: **Rockville**

Name of Case: **David Perkins v. Ralph Faber, et al.**

Name(s) of Clerk(s):

Name of Judge:

Name(s) of Court Reporter(s):

Docket Number: **TTD-CV-22-6025086-S**

Plaintiff's Exhibits				Entered as Full or ID	Defendant's Exhibits				Entered as Full or ID
☐ ID ☐ Full	1.		☐ Electronic ☐ Physical		☐ ID ☐ Full	A.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	2.		☐ Electronic ☐ Physical		☐ ID ☐ Full	B.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	3.		☐ Electronic ☐ Physical		☐ ID ☐ Full	C.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	4.		☐ Electronic ☐ Physical		☐ ID ☐ Full	D.		☐ Electronic ☐ Physical	
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☐ ID ☐ Full	22.	Email Parks to Slater 09/28	☒ Electronic ☐ Physical		☐ ID ☐ Full	V.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	23.	Email Faber to Slater 10/20	☒ Electronic ☐ Physical		☐ ID ☐ Full	W.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	24.	Email Slater to Faber 10/27	☒ Electronic ☐ Physical		☐ ID ☐ Full	X.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	25.	Email Perkins toSlater10/27	☒ Electronic ☐ Physical		☐ ID ☐ Full	Y.		☐ Electronic ☐ Physical	
☐ ID ☐ Full	26.	Email Faber to Slater 11/19	☒ Electronic ☐ Physical		☐ ID ☐ Full	Z.		☐ Electronic ☐ Physical	

Plaintiff's physical exhibits returned to	Date	Defendant's physical exhibits returned to	Date
Receipt acknowledged *(Attorney for Plaintiff)*	Date	Receipt acknowledged *(Attorney for Defendant)*	Date

LIST OF EXHIBITS *(Continued)*

JD-CL-28A Rev. 2-21

LISTEXH

Name of case	Docket number
David Perkins v. Ralph Faber, et al.	**TTD-CV-22-6025086-S**

				Entered as Full or ID					Entered as Full or ID
☐ ID ☐ Full	27	Story of 30 Colburn Road Zoning Violation	☒ Electronic ☐ Physical		☐ ID ☐ Full			☐ Electronic ☐ Physical	
☐ ID ☐ Full	28	Aerial Map dated 4/11/22	☒ Electronic ☐ Physical		☐ ID ☐ Full			☐ Electronic ☐ Physical	
☐ ID ☐ Full	29	Aerial Map dated 4/2/23	☒ Electronic ☐ Physical		☐ ID ☐ Full			☐ Electronic ☐ Physical	
☐ ID ☐ Full	30	As Build Plan	☐ Electronic ☐ Physical		☐ ID ☐ Full			☐ Electronic ☐ Physical	
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APPLICATION FOR A ZONING PERMIT

TOWN OF STAFFORD, CT

1 Main Street, Stafford Springs, CT 06076

Z

APPLICATION DATE: 09/02/2021 **FEE RCVD.:** 110.00 **BY:** **ISSUED:** **PERMIT #:** Draft

PURPOSE OF PERMIT: Accessory Structure **DIMENSIONS:** 15x30

EXPANSION OF EXISTING USE/CHANGE OF USE: repair Garage

STREET LOCATION: 30 COLBURN RD **MAP:** 18 **BLK:** 31 **LOT:** 0

IS THIS PROPERTY IN PA490? **YEAR CLASSIFIED:**

APPLICANT'S NAME: Ralph Faber **ADDRESS:** 30 Colburn Rd Stafford CT 06076

PRIMARY CONTACT NAME: **PHONE NUMBER:** 8608741159

PROPERTY OWNER'S NAME: FABER RALPH E +NORMA S **ADDRESS:** 30 COLBURN RD

APPROVED: FABER RALPH E+NORMA S **DATE:** 09/02/2021 **ACKNOWLEDGED:** Ralph Faber **DATE:** 09/02/2021

Property Owner Applicant

LOT DESCRIPTION AND LOCATION OF STRUCTURE

LOT SIZE: **FRONTAGE ON ROAD:** **ROAD IS:** Town Owned

ZONING DISTRICT: **PROPERTY USE:**

PROPOSED DEVELOPMENT IS LOCATED ON APPROVED OR CONDITIONALLY APPROVED SUBDIVISION:

COPY OF MYLAR SUBMITTED:

SETBACKS OF PROPOSED STRUCTURE

FRONT: **LEFT SIDE:**

REAR: **RIGHT SIDE:**

Town Fee =	$ 50.00
State Fee =	$ 60.00
TOTAL PERMIT FEE =	$ 110.00

OTHER NECESSARY APPROVALS

WETLANDS PERMIT: **DATE APPROVED:**

APPROVAL FROM HEALTH DEPARTMENT: PLEASE ATTACH WRITTEN APPROVAL

DRIVEWAY PERMIT: **IF YES, DATE SUBMITTED TO HIGHWAY FOREMAN:**

By signing this form, you agree to allow members of the commission and the agent access to the property to evaluate the application or conditions of the application.

If the information provided by the applicant subsequently proves to be false, deceptive, incomplete and/or inaccurate, this permit may be modified, suspended or revoked.

ZONING ENFORCEMENT OFFICER COMMENTS:

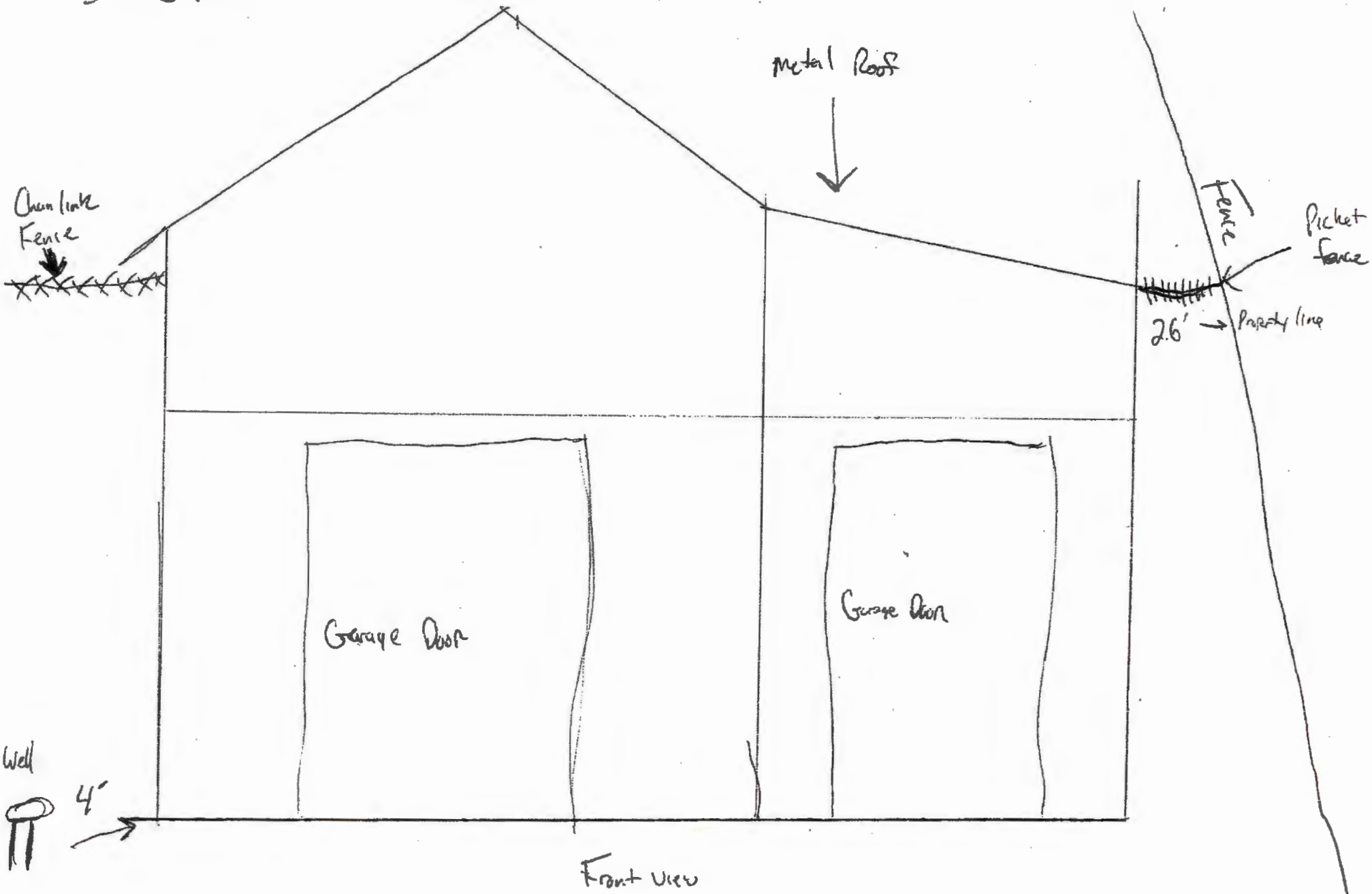
See page 2.

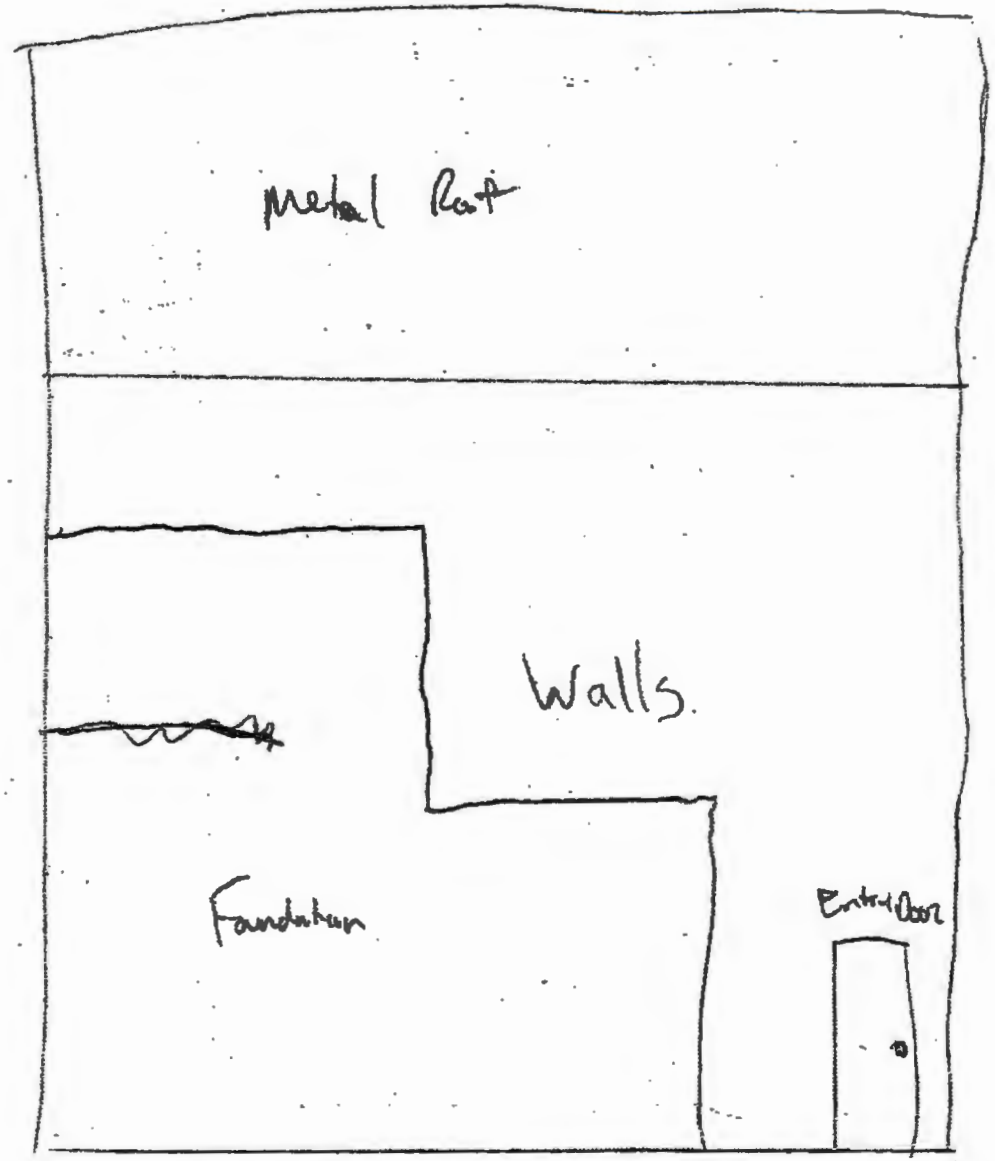
PLAINTIFF'S EXHIBIT
Date 10-26-22 / ☐ FULL ☐ ID Initials
Docket # CV22-6025086

PERMIT ISSUED BY: **NAME:**

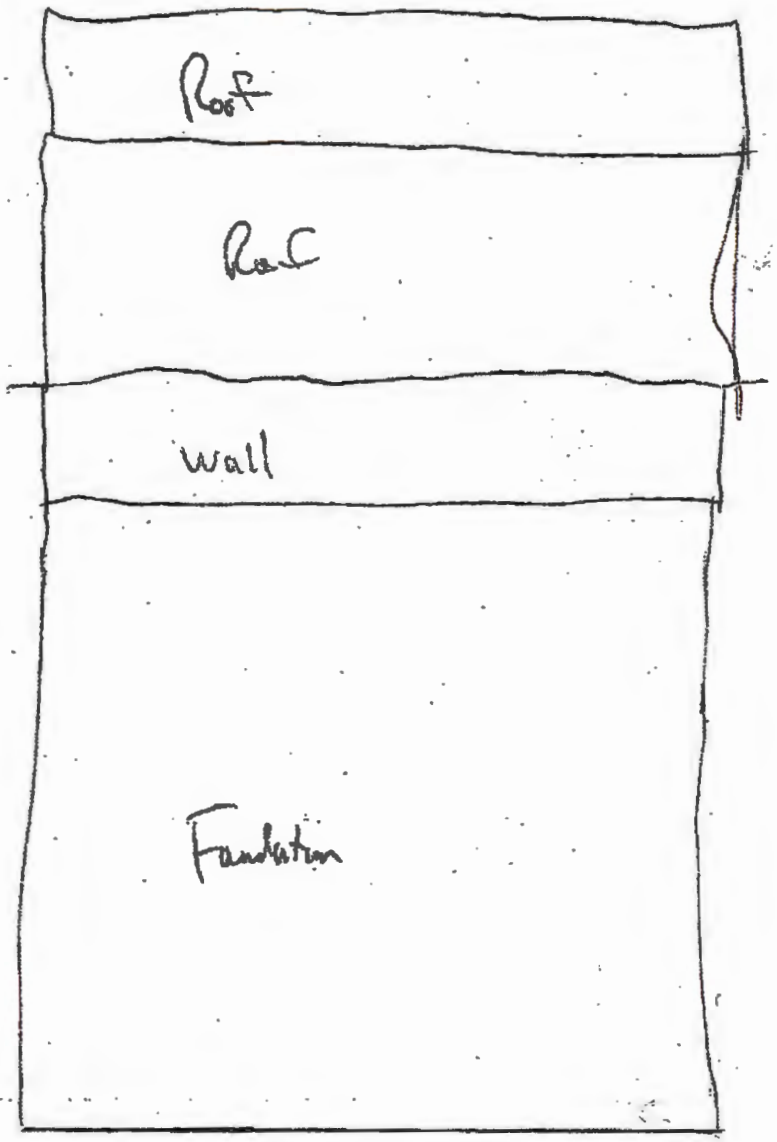
Zoning Enforcement Officer

30 Colburn Rd Barn Repair Plan



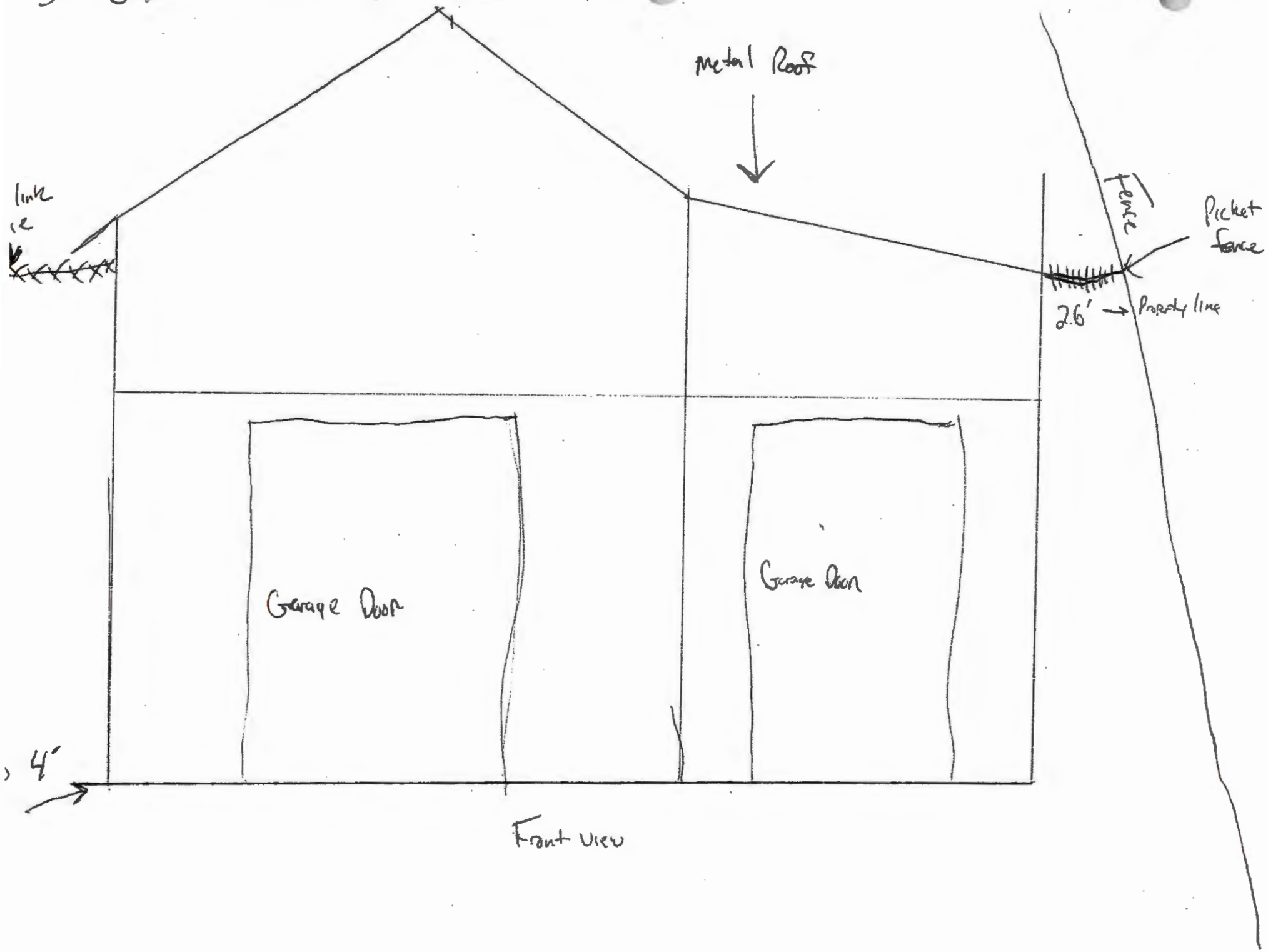


South
Side View



North side
View

30 Colburn Ave Barn Repair Plan



David Perkins

From: David Perkins
Sent: Monday, November 15, 2021 4:30 PM
To: torquewrench99@gmail.com
Cc: Glenn T. Setzler
Subject: 30 colburn garages

It appears that you are starting work on the garages without permits. You did apply for permits but they were placed on hold....see below. Don't continue work until you have opdated your application and received permits.

David Perkins, CZEO
1 Main Street
Stafford, CT 06076
860-684-1793
Staffordct.org

-----Original Message-----
From: David Perkins
Sent: Thursday, September 9, 2021 11:58 AM
To: 'torquewrench99@gmail.com' <torquewrench99@gmail.com>
Cc: Glenn T. Setzler <buildingofficial@staffordct.org>
Subject: FW: Email from Copier

I have your application to repair the garages. See the attached pictures showing the height of the roofs. Note that the roof on the north bay appears to be almost flat. Please prepare plans showing the actual height of the roofs and how they match what was there before. What is the height of the fencing leaning against the south garage roof?

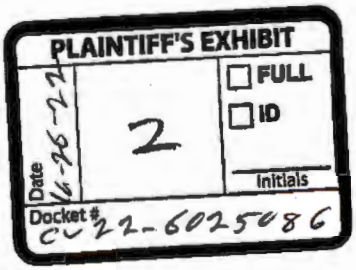
David Perkins, CZEO
1 Main Street
Stafford, CT 06076
860-684-1793
Staffordct.org

-----Original Message-----
From: copier@staffordct.org [mailto:copier@staffordct.org]
Sent: Thursday, September 9, 2021 11:32 AM
To: David Perkins <dperkins@staffordct.org>
Subject: Email from Copier

==========

Please Open the attached document.
This document was sent to you using ES8473 MFP

Resolution: 200 dpi
Color Mode: Auto
Document Size: LetterLEF



Town of Stafford

1 Main Street, Warren Memorial Town Hall
Stafford Springs, CT 06076-1208

ZONING ENFORCEMENT OFFICER
(860) 684-1793 · zoning@staffordct.org

December 14, 2021 **Certified Mail** 7008 1300 0001 6674 4409

Owners:
Ralph and Norma Faber
30 Colburn Road
Stafford Springs, CT 06076

RE: 30 Colburn Road, Stafford, CT Map 18 Lot 31

Cease and Desist Order

You are hereby ordered to cease reconstruction of an accessory building on your property at 30 Colburn Road. You are violating zoning regulation 8.1:

"No structure shall be erected, expanded, or structurally altered and no land use shall be established until a permit has been issued…"

You applied for a zoning permit on 9/2/2021. The zoning permit has not been approved. You were ordered to stop work at the site by me via email on 11/15/2021, but continue to improve the structure.

You applied for a building permit on 9/2/2021. This permit was denied on 12/2/2021 due to failure to provide requested information. You were also informed by the building official to stop work.

In order to lift this order, you must provide me with enough information so that I can determine whether or not your project complies with state statutes and town zoning regulations. You may rebuild a nonconforming structure, but only so that it does not become more nonconforming. It appears that portions of the building are being built larger than the previously nonconforming building. You may be required to remove portions of the structure in order for a permit to be issued.

PLAINTIFF'S EXHIBIT
Date 10-26-22 | 3 | ☐ FULL ☐ ID | Initials

Failure to abide by this order and failure to give the requested information will result in further enforcement activities which may include financial penalties.

Connecticut State Statute Section 8-7 provides an appeal process to this order.
Please be advised that the mere filing of such an appeal does not stay the execution of this order.

David Perkins
Zoning Enforcement Officer

Cc: Building Official

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ralph & Norma Faber
30 Colburn Rd
Stafford. CT 06076

9590 9402 6301 0274 0834 08

2. Article Number *(Transfer from service label)*

7008 1300 0001 6674 4409

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☑ Agent ☐ Addressee

B. Received by *(Printed Name)* [illegible] C. Date of Delivery 12·15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ralph & Nina Baker
30 Colburn Rd
Stafford CT 06076

9590 9402 6301 0274 0834 08

2. Article Number (Transfer from service label)

7008 1300 0001 6674 4409

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Agent
Addre

B. Received by (Printed Name)

C. Date of Deli
12/1

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
Adult Signature
Adult Signature Re
Certified Mail®
Certified Mail Rest
Collect on Deliver
Collect on Deliver
Insured Mail
Insured Mail Rest
(over $500)

Domestic Return Rec

USPS TRACKING#

9590 9402 6301 0274 0834 08

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

ZONING
TOWN of STAFFORD
1 MAIN ST
STAFFORD CT
06076


PLAINTIFF'S EXHIBIT
5
FULL
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Date
Docket

PLAINTIFF'S EXHIBIT
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PLAINTIFF'S EXHIBIT

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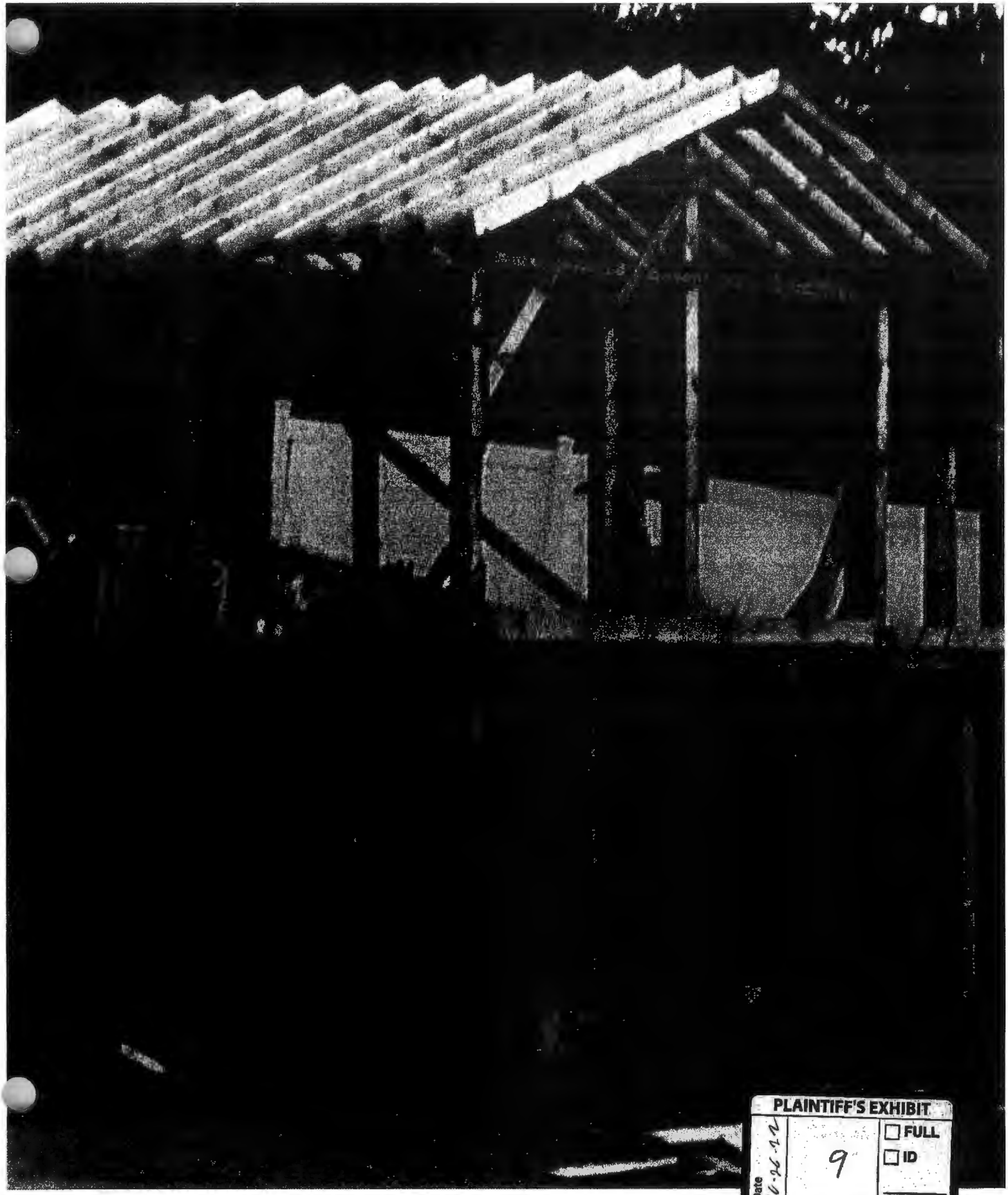
Date 12-26-22

Case # 2:22-cv-00184-LCB-CWB

7


PLAINTIFF'S EXHIBIT
8
FULL
ID
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Date
Docket #
CV 22-6025086

5/10/22



PLAINTIFF'S EXHIBIT

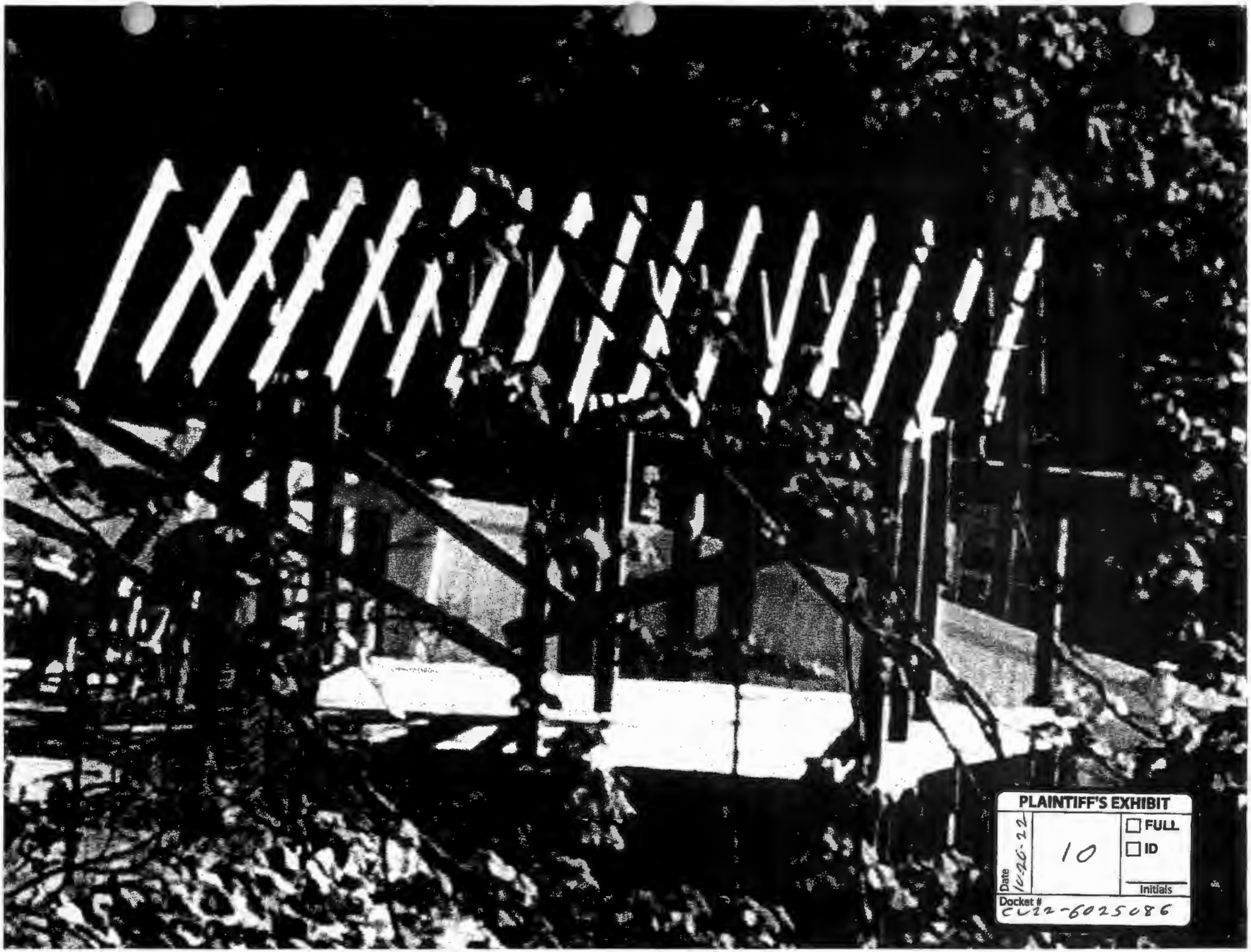
Date 10-26-22

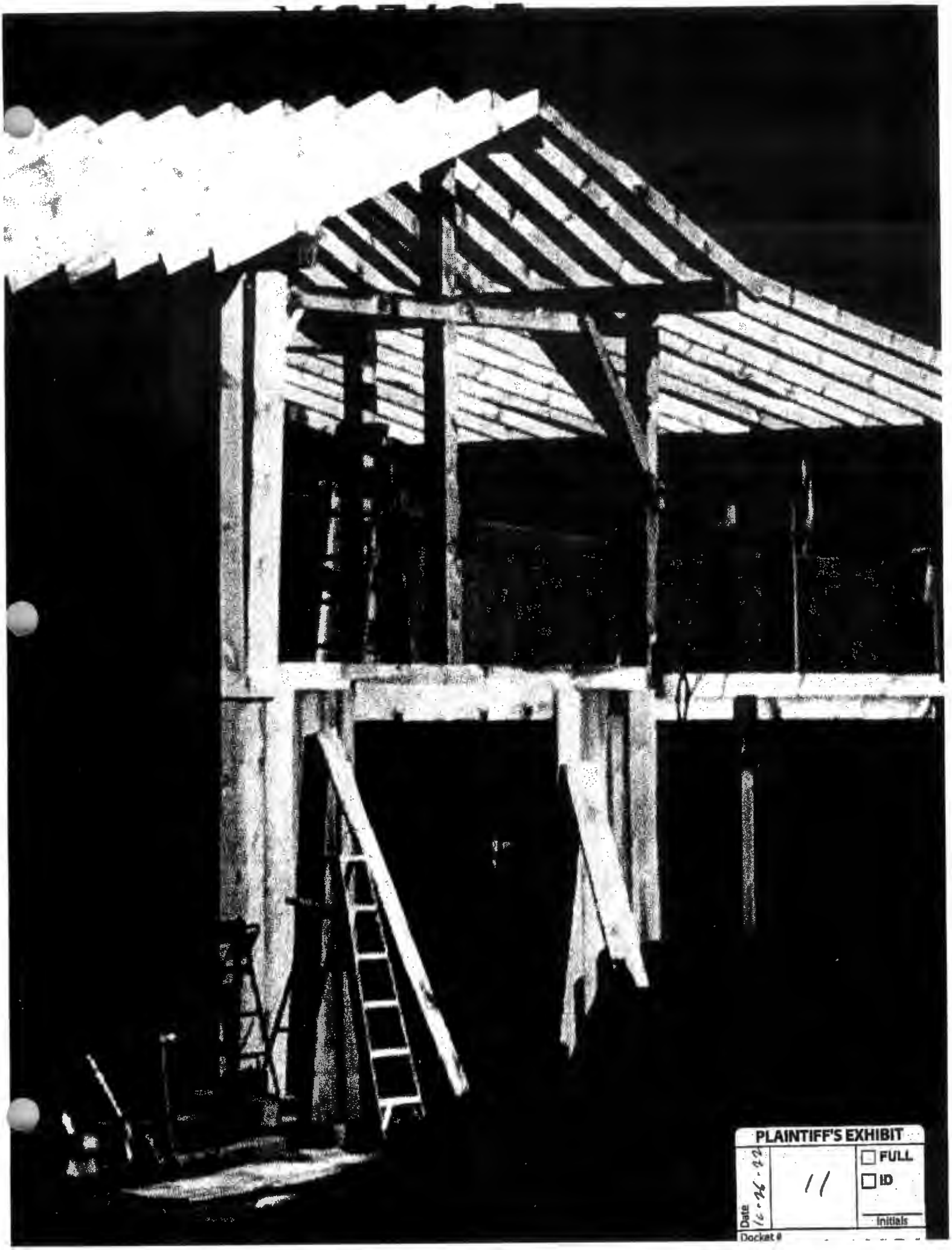
9

☐ FULL
☐ ID

Initials

Docket # CV22-6025086


PLAINTIFF'S EXHIBIT
Date 10-26-22
10
FULL
ID
Initials
Docket # CV22-6025086



PLAINTIFF'S EXHIBIT

Date		
12-22-22	11	☐ FULL ☐ ID
		Initials

Docket #



PLAINTIFF'S EXHIBIT
12
FULL
ID
Initials
Date 2-27
Docket# CV22-6025086

6/25/2022



PLAINTIFF'S EXHIBIT

13

☐ FULL
☐ ID

Date 10-26-22

Initials

Docket #

Kenneth R. Slater, Jr.

From: Ralph Faber <torquewrench99@gmail.com>
Sent: Tuesday, September 26, 2023 1:10 PM
To: Kenneth R. Slater, Jr.
Cc: bzmanager@staffordct.org
Subject: 30 Colburn Rd

External email >

Good afternoon. An as-built survey has been scheduled. Also I plan on attending the October ZBA meeting. The survey has not been printed out yet but we can use one of the older ones for the ZBA application. Once I Have an up to date blue print in my hands I will bring it in. Thanks Ralph Faber

EXHIBIT
15
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: Kenneth R. Slater, Jr.
Sent: Tuesday, September 26, 2023 1:50 PM
To: Ralph Faber
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: RE: 30 Colburn Rd

Ralph,

Thanks for the update. Until we know exactly what variance needed, there is no point going to the ZBA. Once you get the distances marked per the court order, David can use the photographic materials to determine the places where you increased the height within the setback. Until then, an application would not delineate the scope of the variance and would be premature and should be denied. Who did you engage to do the work?

Ken

HALLORAN SAGE

Kenneth R. Slater, Jr., Esq.
Halloran & Sage LLP
One Goodwin Square, 225 Asylum Street
Hartford, CT 06103-4303

E slater@halloransage.com
D 860.297.4662
F 860.548.0006
www.halloransage.com

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From: Ralph Faber <torquewrench99@gmail.com>
Sent: Tuesday, September 26, 2023 1:10 PM
To: Kenneth R. Slater, Jr. <Slater@halloransage.com>
Cc: bzmanager@staffordct.org
Subject: 30 Colburn Rd

External email >

EXHIBIT 16
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: Kenneth R. Slater, Jr.
Sent: Wednesday, September 27, 2023 4:40 PM
To: Ralph Faber
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: RE: 30 Colburn Rd

Mr. Faber,

Please be advised, in accordance with the orders of the Superior Court, that nothing related to the garage on your property will be placed on the agenda of the Stafford ZBA until you comply with the requirements of the court's orders. Consistent with your ignoring prior orders of the zoning enforcement officer and the June court order, you ignored my email yesterday that an application to the ZBA is premature because you do not yet have the necessary survey work completed and proceeded to town hall today to inform the clerk that you will be proceeding with an application in October. This matter is in litigation so the only point of contact you should have is me as ordered by the Court at the hearing on the 11th copied below.

To reiterate, nothing related to the barn that is the subject of the pending litigation will be on any future agenda of the ZBA until the court's requirements are met which start, as ordered in June and emphasized in the September court order, both copied below, with you engaging a surveyor to prepare a drawing showing the location of the barn on the lot in order to allow Mr. Perkins to determine which portions of the structure are at a height above the prior nonconforming structure. The court's more recent order states that your failure to hire the surveyor and to remain in communication with me, not the staff at town hall, may result in significant court fines and penalties. It has been over two weeks into the 30-day extension and to my knowledge you have not engaged a surveyor. When you do, please inform me as required by the court and please refrain from further communications with Town Hall staff regarding this matter which is before the Superior Court, not a local commission.

Regards,

Ken

EXHIBIT
17
TTD-CV-22-6025086-S

FABER, RALPH Et Al

9/11/2023

ORDER

ORDER REGARDING:
06/12/2023 115.00 ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

This matter shall be continued for approximately 30 days during which time the defendant shall retain a surveyor to take the measurements described by Mr. Perkins and remain in communication with Atty. Slater regarding the status of the variance application process.

NB- THE DEFENDANT'S FAILURE TO RETAIN A SURVEYOR TO TAKE THE MEASUREMENTS REQUIRED FOR THE VARIANCE, OR TO REMAIN IN COMMUNICATION WITH PLAINTIFF'S COUNSEL, OR TO FILE THE VARIANCE APPLICATION MAY RESULT IN THE COURT PROCEEDING WITH THE ENFORCEMENT PROCEEDINGS INITIATED BY THE PLAINTIFF, WHICH MAY RESULT IN THE IMPOSITION OF SIGNIFICANT FINES AND PENALTIES.

438572

Judge: MATTHEW DALLAS GORDON

FABER, RALPH Et Al

6/12/2023

ORDER

The following order is entered in the above matter:

ORDER:

This matter shall be continued for approximately three months to a date and time assigned by Civil Caseflow. In the meantime, Mr. Faber shall retain am engineer to mark both sides of the structure so that Mr. Perkins can measure the structure and then use the measurements and blueprints and other material already on file (together with the existing photographs of the prior structure and the new structure) to determine the extent to which the height of the new structure exceeds the applicable height limits.

Mr. Fabor shall remain in contact with Atty. Slater (and whichever town officials Atty. Slater designates) regarding the measurement of the existing structure and coordination of a presentation to the zoning board regarding a potential variance.

Judicial Notice (JDNO) was sent regarding this order.

438572

Judge: MATTHEW DALLAS GORDON

HALLORAN SAGE

Kenneth R. Slater, Jr., Esq.
Halloran & Sage LLP
One Goodwin Square, 225 Asylum Street
Hartford, CT 06103-4303

E slater@halloransage.com
D 860.297.4662
F 860.548.0006

Kenneth R. Slater, Jr.

From: Ralph Faber <torquewrench99@gmail.com>
Sent: Thursday, September 28, 2023 2:54 PM
To: Kenneth R. Slater, Jr.
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: Re: 30 Colburn Rd
Attachments: image003.jpg; image001.jpg; image002.jpg; image007.png; image002.jpg; image006.png; image004.jpg; image003.jpg; image001.jpg; image004.jpg

External email >

Just to confirm my last conversation with Sheree. I want to be placed on the ZBA agenda for october. She told me to contact Attorney Slater.I had a survey done and I am good to go. Read the last court order... OR TO FILE THE VARIANCE APPLICATION.

On Wed, Sep 27, 2023 at 4:40 PM Kenneth R. Slater, Jr. <Slater@halloransage.com> wrote:

Mr. Faber,

Please be advised, in accordance with the orders of the Superior Court, that nothing related to the garage on your property will be placed on the agenda of the Stafford ZBA until you comply with the requirements of the court's orders. Consistent with your ignoring prior orders of the zoning enforcement officer and the June court order, you ignored my email yesterday that an application to the ZBA is premature because you do not yet have the necessary survey work completed and proceeded to town hall today to inform the clerk that you will be proceeding with an application in October. This matter is in litigation so the only point of contact you should have is me as ordered by the Court at the hearing on the 11th copied below.

To reiterate, nothing related to the barn that is the subject of the pending litigation will be on any future agenda of the ZBA until the court's requirements are met which start, as ordered in June and emphasized in the September court order, both copied below, with you engaging a surveyor to prepare a drawing showing the location of the barn on the lot in order to allow Mr. Perkins to determine which portions of the structure are at a height above the prior nonconforming structure. The court's more recent order states that your failure to hire the surveyor and to remain in communication with me, not the staff at town hall, may result in significant court fines and penalties. It has been over two weeks into the 30-day extension and to my knowledge you have not engaged a surveyor. When you do, please inform me as required by the court and please refrain from further communications with Town Hall staff regarding this matter which is before the Superior Court, not a local commission.

Regards,

Ken

EXHIBIT
18
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: Kenneth R. Slater, Jr.
Sent: Thursday, September 28, 2023 3:51 PM
To: Ralph Faber
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: RE: 30 Colburn Rd

Mr. Faber,

The words "or to file a variance application" are not contained in order of the court but are, instead, part of the warning of the court to you that fines and penalties may be imposed you fail to retain a surveyor, fail to communicate with me or fail to file the variance application as required in the June order. Your obligations are stated clearly in the June order which mandates that: 1) you hire a professional to perform the necessary measurements to enable Mr. Perkins to determine what portion of the structure exceeds the height limitation, 2) you communicate those measurements to me so that I can arrange to have Mr. Perkins make that determination, and 3) once it is made, for you to coordinate with me to arrange a presentation regarding "a potential variance." There is no ambiguity in that order. You cannot unilaterally proceed to appear before the ZBA without performing the prior steps of providing me with the measurements and coordinating with me regarding a potential variance application.

Despite my directing you to the requirements of the order to communicate only with me in advance of any "potential" variance application and that no variance presentation can or will happen until the tasks required by the order are performed, you have again proceeded to town hall to demand to be on the October agenda. If you continue to defy the order of the court, I will be forced to file a motion for contempt.

If your engineer or surveyor has prepared a map with the necessary measurements as required by the order, please provide that to me as soon as possible and I will arrange to have it reviewed by Mr. Perkins in accordance with the court's order.

Regards,

Ken

HALLORAN SAGE

Kenneth R. Slater, Jr., Esq.
Halloran & Sage LLP
One Goodwin Square, 225 Asylum Street
Hartford, CT 06103-4303

E slater@halloransage.com
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F 860.548.0006
www.halloransage.com

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EXHIBIT 19
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: Ralph Faber <torquewrench99@gmail.com>
Sent: Thursday, September 28, 2023 4:30 PM
To: Kenneth R. Slater, Jr.
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: Re: 30 Colburn Rd

External email >

Those are not court orders but suggestions. If the ZBA would approve it before our Oct 20th court date then we should be all set on this issue. I hired an engineer for the survey and when he gives me the blue print I will give them to you. You do not represent me in this case so as far as a presentation for the variance goes, I will take care of that. I have already filed and paid for the variance per order of the judge. The ZBA is a separate entity from the zoning department so I should be able to bring my concerns to them anytime. I apologize if you feel I am defying you that is not my intention. I would just like to resolve this issue.
Sent from my iPhone

On Sep 28, 2023, at 3:51 PM, Kenneth R. Slater, Jr. <Slater@halloransage.com> wrote:

Mr. Faber,

The words "or to file a variance application" are not contained in order of the court but are, instead, part of the warning of the court to you that fines and penalties may be imposed you fail to retain a surveyor, fail to communicate with me or fail to file the variance application as required in the June order. Your obligations are stated clearly in the June order which mandates that: 1) you hire a professional to perform the necessary measurements to enable Mr. Perkins to determine what portion of the structure exceeds the height limitation, 2) you communicate those measurements to me so that I can arrange to have Mr. Perkins make that determination, and 3) once it is made, for you to coordinate with me to arrange a presentation regarding "a potential variance." There is no ambiguity in that order. You cannot unilaterally proceed to appear before the ZBA without performing the prior steps of providing me with the measurements and coordinating with me regarding a potential variance application.

Despite my directing you to the requirements of the order to communicate only with me in advance of any "potential" variance application and that no variance presentation can or will happen until the tasks required by the order are performed, you have again proceeded to town hall to demand to be on the October agenda. If you continue to defy the order of the court, I will be forced to file a motion for contempt.

If your engineer or surveyor has prepared a map with the necessary measurements as required by the order, please provide that to me as soon as possible and I will arrange to have it reviewed by Mr. Perkins in accordance with the court's order.

Regards,

Ken

EXHIBIT
20
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: Kenneth R. Slater, Jr.
Sent: Thursday, September 28, 2023 5:11 PM
To: Ralph Faber
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: RE: 30 Colburn Rd

Ralph,

It is literally impossible to have a variance approved in October. Aside from the fact that it will not be on the agenda for the reasons I have already described, the board is legally obligated to schedule and hold a public hearing before granting a variance. That would not happen until the November meeting even if you could get on the October 12 agenda.

You are not defying me. You are defying the court's order. And they are court orders, not suggestions. The court's order does not provide for me to represent you before the ZBA nor could I. It provides that after you communicate the measurements to me and after Mr. Perkins performs his calculations, you and I will communicate to coordinate a presentation on a possible variance application.

I will look forward to you providing the measurements as the first step towards a possible future variance application.

Regards,

Ken

HALLORAN SAGE

Kenneth R. Slater, Jr., Esq.
Halloran & Sage LLP
One Goodwin Square, 225 Asylum Street
Hartford, CT 06103-4303

E slater@halloransage.com
D 860.297.4662
F 860.548.0006
www.halloransage.com

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EXHIBIT
21
TTD-CV-22-6025086-S

Kenneth R. Slater, Jr.

From: John Parks <john@jhparkslaw.com>
Sent: Thursday, September 28, 2023 1:52 PM
To: Kenneth R. Slater, Jr.
Subject: RE: Perkins v. Faber

External email >

Good afternoon Ken – It was good talking to you earlier. As I mentioned, I represent Ralph Kopla.

Mr. Kopla is Mr. Faber's neighbor and he is tired of his neighbors repeated violations of both the Building and Zoning Regulations.

Applying for a variance is not an answer to this situation. There is no legal hardship here.

If a variance is applied for, I plan on attending the Zoning Board of Appeals hearing and establish for the Record the lack of a hardship.

If the ZBA should grant Mr. Faber's variance application, I will appeal the decision to the superior court.

From: Kenneth R. Slater, Jr. <Slater@halloransage.com>
Sent: Wednesday, September 27, 2023 8:19 PM
To: John Parks <john@jhparkslaw.com>
Subject: Re: Perkins v. Faber

Give me a call tomorrow.

Get Outlook for Android

From: John Parks <john@jhparkslaw.com>
Sent: Wednesday, September 27, 2023 1:42:54 PM
To: Kenneth R. Slater, Jr. <Slater@halloransage.com>
Subject: Perkins v. Faber

EXHIBIT
22
TTD-CV-22-6025086-S

Good afternoon Ken – I represent the owner of the property next door to Mr. Faber. I've been trying to find out what is going on with this. When I called the land use office in Stafford, they told me to contact you.

Kenneth R. Slater, Jr.

From: Ralph Faber <torquewrench99@gmail.com>
Sent: Friday, October 20, 2023 6:49 PM
To: Kenneth R. Slater, Jr.
Cc: bzmanager@staffordct.org; David Perkins; Mark Morrison
Subject: Re: 30 Colburn Rd
Attachments: 20231020164833470.pdf

External email >

He made to Action Blueprint today before they closed. see if this works.

On Fri, Oct 20, 2023 at 3:37 PM Ralph Faber <torquewrench99@gmail.com> wrote:
I just called Stan. He is going to have the survey put on a thumb drive for monday. I informed him that you will be contacting him for further instructions.

On Thu, Sep 28, 2023 at 5:12 PM Kenneth R. Slater, Jr. <Slater@halloransage.com> wrote:

Ralph,

It is literally impossible to have a variance approved in October. Aside from the fact that it will not be on the agenda for the reasons I have already described, the board is legally obligated to schedule and hold a public hearing before granting a variance. That would not happen until the November meeting even if you could get on the October 12 agenda.

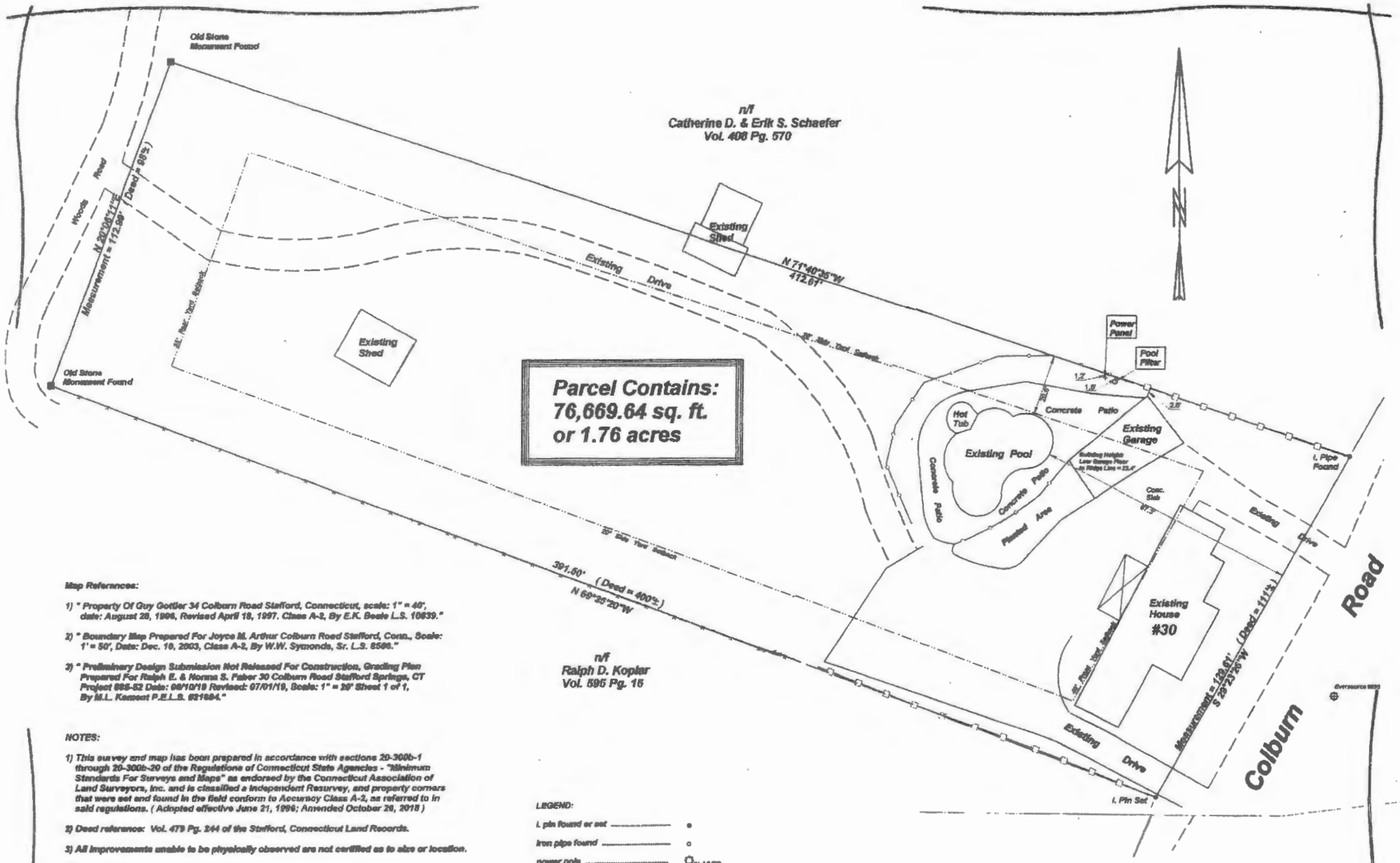
You are not defying me. You are defying the court's order. And they are court orders, not suggestions. The court's order does not provide for me to represent you before the ZBA nor could I. It provides that after you communicate the measurements to me and after Mr. Perkins performs his calculations, you and I will communicate to coordinate a presentation on a possible variance application.

I will look forward to you providing the measurements as the first step towards a possible future variance application.

Regards,

EXHIBIT
23
TTD-CV-22-6025086-S

Ken



Map References:

1) " Property Of Guy Gottier 34 Colburn Road Stafford, Connecticut, scale: 1" = 40', date: August 28, 1996, Revised April 18, 1997. Class A-2, By E.K. Beale L.S. 10639."

2) " Boundary Map Prepared For Joyce M. Arthur Colburn Road Stafford, Conn., Scale: 1' = 50', Date: Dec. 16, 2003, Class A-2, By W.W. Symonds, Sr. L.S. 8586."

3) " Preliminary Design Submission Not Released For Construction, Grading Plan Prepared For Ralph E. & Norma S. Faber 30 Colburn Road Stafford Springs, CT Project 665-52 Date: 06/10/19 Revised: 07/01/19, Scale: 1" = 20' Sheet 1 of 1, By M.L. Kennett P.E.L.S. #21694."

NOTES:

1) This survey and map has been prepared in accordance with sections 20-300b-1 through 20-300b-20 of the Regulations of Connecticut State Agencies - "Minimum Standards For Surveys and Maps" as endorsed by the Connecticut Association of Land Surveyors, Inc. and is classified a Independent Resurvey, and property corners that were set and found in the field conform to Accuracy Class A-2, as referred to in said regulations. (Adopted effective June 21, 1996; Amended October 26, 2018)

2) Deed reference: Vol. 479 Pg. 244 of the Stafford, Connecticut Land Records.

3) All improvements unable to be physically observed are not certified as to size or location.

4) Owners of Record: Ralph E. & Norma S. Faber .

5) Property is depicted on Stafford, Connecticut Assessors Map 618 Lot 31 .

6) Property is located in Zone: AA .

7) Property contains: 76,669.64 sq. ft. or 1.76 acres.

8) Property is legal non-conforming by present zoning regulations.

9) As-Built Survey performed September 19, through September 28, 2023 showing existing Pool improvements.

LEGEND:

I. pin found or set ..... ●
Iron pipe found ..... ○
power pole ..... ○
stockade fence ..... —□—□—□—
chain link fence ..... —○—○—○—
old stone monument ..... ▣

STATE OF CONNECTICUT STANLEY W. SZESTOWICKI NO. 7772 REGISTERED LAND SURVEYOR

" To my knowledge and belief, this map is substantially correct as noted hereon "

Stanley W. Szestowicki R.L.S. 7772

277 Goose Lane Tolland, Connecticut (860) 875-3341 cell (860) 995-7772

As = Built Plan Prepared For

Ralph E. & Norma S. Faber

30 Colburn Road Stafford Springs, Connecticut
September 28, 2023 Scale: 1" = 20'

20' 10' 0' 20'
Graphic Scale

5094AB

Kenneth R. Slater, Jr.

From: Kenneth R. Slater, Jr.
Sent: Friday, October 27, 2023 11:17 AM
To: Ralph Faber
Cc: 'lehm99@gmail.com'
Subject: FW: FABER SURVEY
Attachments: temp01449.PDF

Ralph,

Attached is a markup on the survey that shows the additional things that need to be shown on the plan and marked in the field. If the surveyor has any questions, please have him reach out to Dave.

Ken

HALLORAN SAGE

Kenneth R. Slater, Jr., Esq.
Halloran & Sage LLP
One Goodwin Square, 225 Asylum Street
Hartford, CT 06103-4303

E slater@halloransage.com
D 860.297.4662
F 860.548.0006
www.halloransage.com

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From: David Perkins <lehm99@gmail.com>
Sent: Friday, October 27, 2023 10:52 AM
To: Kenneth R. Slater, Jr. <Slater@halloransage.com>
Subject: FABER SURVEY

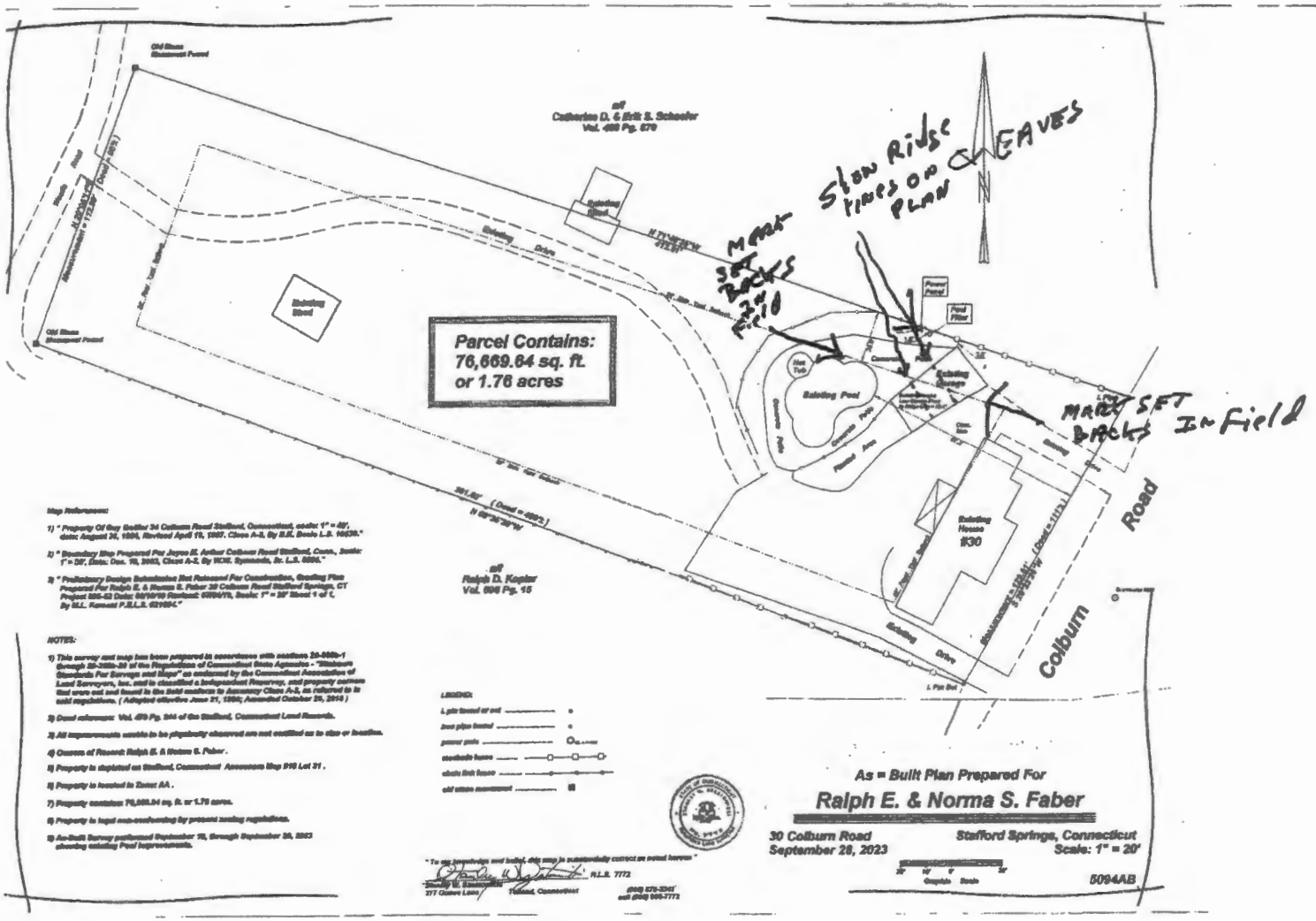
EXHIBIT
24

TTD-CV-22-6025086-S

External email >

ken

The survey should be updated to show the 2 ridge lines and eaves of the structure. The set back line needs to be delineated on both sides of the building in the field.
dcp


Slon Ridge
Lines on
Plan
EAVES
Mark
Set
Backs
In
Field
Parcel Contains:
76,669.64 sq. ft.
or 1.76 acres
Existing Pool
Existing House
#30
Colburn
Road
Existing Drive
Existing Shed
Existing Shed
Pool Pump
Pool Filter
Pool Heater
Pool Fence
Gas Tank
Existing Garage
Catherine D. & Britt S. Schaefer
Vol. 488 Pg. 579
Ralph D. Kepler
Vol. 606 Pg. 15
Old Stone Monument Found
Old Stone Monument Found
N 77°39'57" W
(Deed = N 77°39'57" W)
391.40'
(Deed = 400')
N 68°36'38" W
Map References
1) " Property Of Guy Gaither 34 Colburn Road Stafford, Connecticut, scale: 1" = 40', date: August 26, 1986, Revised April 15, 1987, Class A-2, By S.E. Beale L.S. 10630."
2) " Boundary Map Prepared For Joyce E. Arthur Colburn Road Stafford, Conn., Scale: 1" = 20', Date: Dec. 10, 2003, Class A-2, By W.M. Symonds, Sr. L.S. 6094."
3) " Preliminary Design Subdivision Not Released For Construction, Grading Plan Prepared For Ralph E. & Norma S. Faber 30 Colburn Road Stafford Springs, CT Project SDS-43 Date: 09/10/98 Revised: 03/04/19, Scale: 1" = 30' Sheet 1 of 1, By M.L. Kennard P.E.L.S. #21004."
NOTES:
1) This survey and map has been prepared in accordance with sections 20-300b-1 through 20-300b-20 of the Regulations of Connecticut State Agencies - "Minimum Standards For Surveys and Maps" as endorsed by the Connecticut Association of Land Surveyors, Inc. and is classified a Independent Resurvey, and property corners that were set and found in the field conform to Accuracy Class A-2, as referred to in said regulations. (Adopted effective June 21, 1996; Amended October 26, 2018)
2) Deed reference: Vol. 459 Pg. 344 of the Stafford, Connecticut Land Records.
3) All improvements visible to be physically observed are not omitted as to size or location.
4) Owners of Record: Ralph E. & Norma S. Faber .
5) Property is depicted on Stafford, Connecticut Assessors Map 910 Lot 31 .
6) Property is located in Zone AA .
7) Property contains 76,669.64 sq. ft. or 1.76 acres.
8) Property is legal non-conforming by present zoning regulations.
9) As-Built Survey performed September 19, through September 26, 2023 showing existing Pool improvements.
LEGEND:
I. pin found or set
Iron pipe found
power pole
manhole found
chain link fence
old stone monument
" To the best knowledge and belief, this map is substantially correct as noted hereon "
Timothy W. Stanmeister, R.L.S. 7772
217 Queen Lane, Tolland, Connecticut
(860) 875-3341
cell (860) 966-7772
As = Built Plan Prepared For
Ralph E. & Norma S. Faber
30 Colburn Road
Stafford Springs, Connecticut
September 28, 2023
Scale: 1" = 20'
Graphic Scale
5094AB

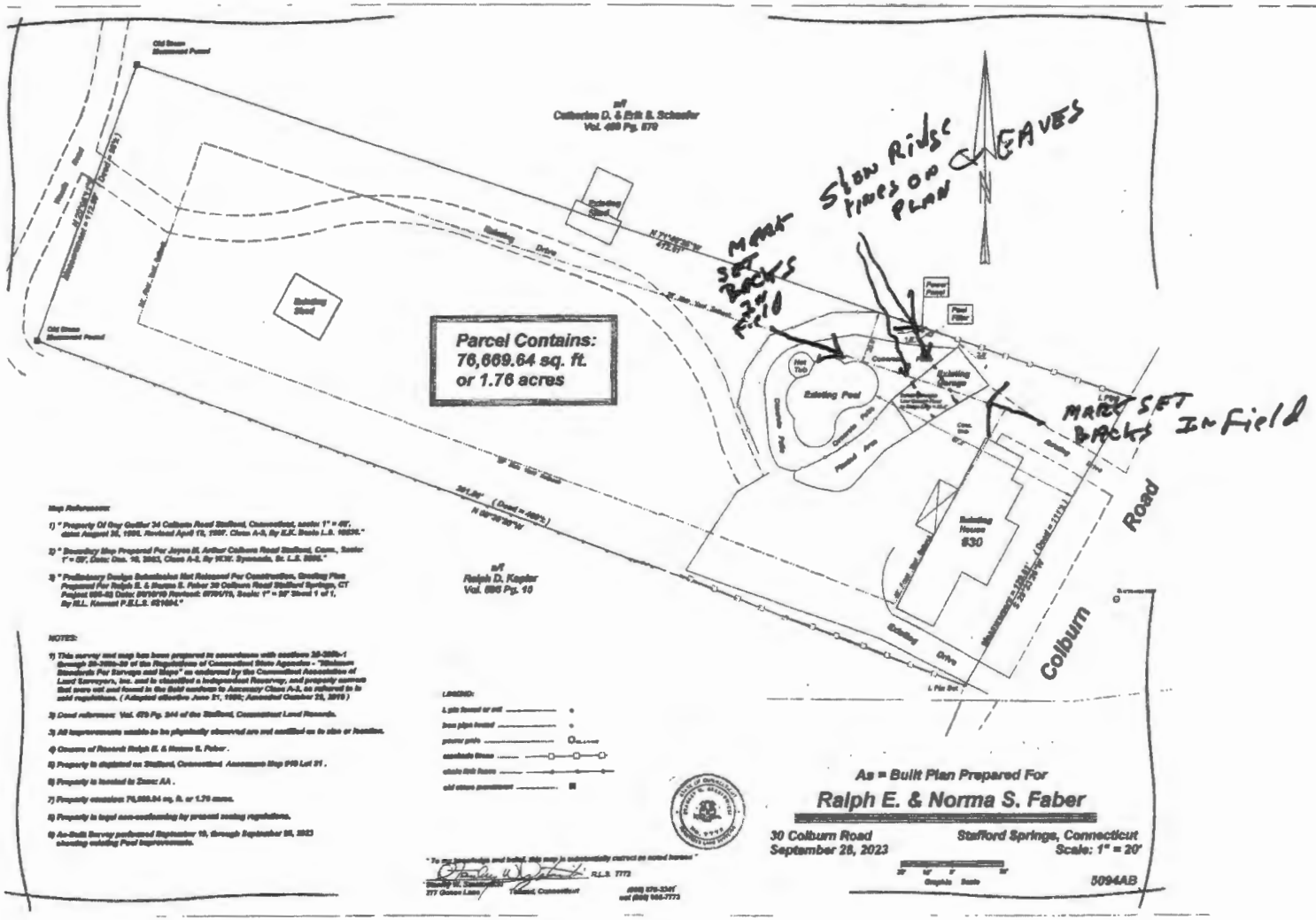
Kenneth R. Slater, Jr.

From: David Perkins <lehm99@gmail.com>
Sent: Friday, October 27, 2023 10:52 AM
To: Kenneth R. Slater, Jr.
Subject: FABER SURVEY
Attachments: temp01449.PDF

External email >

ken
The survey should be updated to show the 2 ridge lines and eaves of the structure. The set back line needs to be delineated on both sides of the building in the field.
dcp

EXHIBIT
25
TTD-CV-22-6025086-S



Map References:

1) " Property Of Guy Gutter 24 Colburn Road Stafford, Connecticut, scale: 1" = 40', date August 30, 1956. Revised April 15, 1997. Class A-2, By E.E. Stolo L.S. 10535."

2) " Boundary Map Prepared For Joyce M. Arthur Colburn Road Stafford, Conn., Scale: 1" = 50', Date: Dec. 10, 1963, Class A-2, By W.W. Symonds, Sr. L.S. 5806."

3) " Preliminary Design Subdivision Not Released For Construction, Grading Plan Prepared For Ralph E. & Norma S. Faber 30 Colburn Road Stafford Springs, CT Project 095-02 Date: 09/19/19 Revised: 07/20/20, Scale: 1" = 30' Sheet 1 of 1, By M.L. Kennell P.E.L.S. #21694."

NOTES:

1) This survey and map has been prepared in accordance with sections 20-300b-1 through 20-300b-20 of the Regulations of Connecticut State Agencies - "Minimum Standards For Surveys and Maps" as endorsed by the Connecticut Association of Land Surveyors, Inc. and is classified a Independent Resurvey, and property corners that were set and found in the field conform to Accuracy Class A-2, as referred to in said regulations. (Adopted effective June 21, 1996; Amended October 26, 2018)

2) Deed reference: Vol. 470 Pg. 344 of the Stafford, Connecticut Land Records.

3) All improvements visible to be physically observed are not certified as to size or location.

4) Owners of Record: Ralph E. & Norma S. Faber .

5) Property is depicted on Stafford, Connecticut Assessors Map 910 Lot 31 .

6) Property is located in Zone: AA .

7) Property contains: 76,669.64 sq. ft. or 1.76 acres.

8) Property is legal non-conforming by present zoning regulations.

9) As-Built Survey performed September 19, through September 26, 2023 showing existing Pool improvements.

LEGEND:

- Iron pipe found or set
- Iron pipe found
- Concrete monument found
- Drill hole found
- Utility pole
- Overhead Wires
- Chain link fence
- Stone wall

"To the best of my knowledge and belief, this map is substantially correct as noted hereon."

R.L.S. 7773

Stanley W. Symonski
277 Goose Lane, Guilford, Connecticut
(860) 670-3341
cell (860) 966-7773

Kenneth R. Slater, Jr.

From: Ralph Faber <torquewrench99@gmail.com>
Sent: Sunday, November 19, 2023 8:23 AM
To: Kenneth R. Slater, Jr.
Cc: lehm99@gmail.com
Subject: Re: FABER SURVEY

External email >

Stan will be coming back out the first week of December.

On Fri, Oct 27, 2023 at 11:35 AM Ralph Faber <torquewrench99@gmail.com> wrote:
Ok.

Sent from my iPhone

> On Oct 27, 2023, at 11:17 AM, Kenneth R. Slater, Jr. <Slater@halloransage.com> wrote:
>
> Ralph,
>
> Attached is a markup on the survey that shows the additional things that need to be shown on the plan and marked in the field. If the surveyor has any questions, please have him reach out to Dave.
>
> Ken
>
> <image001.jpg>
>
> Kenneth R. Slater, Jr., Esq.
>
> Halloran & Sage LLP
>
> One Goodwin Square, 225 Asylum Street
>
> Hartford, CT 06103-4303

EXHIBIT
26
TD-CV-22-6025086-S

E slater@halloransage.com

D 860.297.4662

F 860.548.0006

www.halloransage.com

Follow us on social media:

<image002.jpg>

<image003.jpg>

<image004.jpg>

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From: David Perkins <lehm99@gmail.com>
Sent: Friday, October 27, 2023 10:52 AM
To: Kenneth R. Slater, Jr. <Slater@halloransage.com>
Subject: FABER SURVEY

ken

The survey should be updated to show the 2 ridge lines and eaves of the structure. The set back line needs to be delineated on both sides of the building in the field.

dcp

<temp01449.PDF>

30 Colburn Road zoning violation

Structure built in setback area without zoning or building permits

David Perkins
December 5, 2023



Before and after. The pool in the 2019 photo was moved forward to comply with the setbacks. Note the location of the circled pipe.

EXHIBIT
27
TTD-CV-22-6025086-S



Circled pipe for clarity



Black marks are set back line





Setback line from rear



Original structure



Approximate area of non conformity


EXHIBIT
28
TTD-CV-22-6025086-S
nearmap
Mon Apr 11 2022
Imagery © 2024 Nearmap, HERE
10 ft


1
2
EXHIBIT
29
TTD-CV-22-6025086-S
nearmap
Sun Apr 2 2023

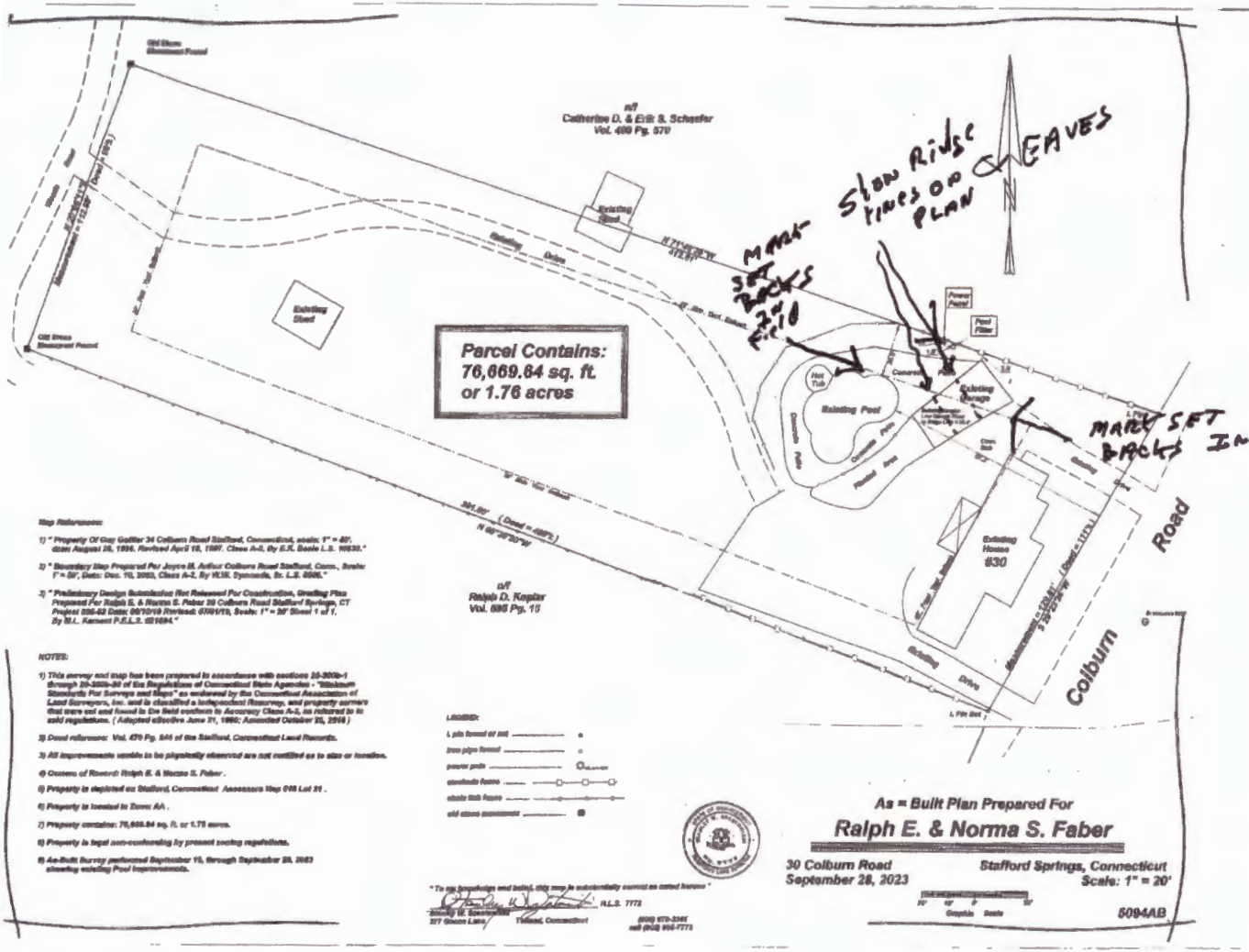


EXHIBIT
30
TTD-CV-22-6025086-S

EXHIBIT M

