

# **OFFICIAL MEETING NOTICE & AGENDA**

The City of Stoughton will hold a meeting of the **Board of Appeals** on **Monday November 7, 2016** at **5:00 p.m. or as soon as this matter may be heard** in the **Public Safety Building, Council Chambers, Second Floor, 321 S. Fourth Street**, Stoughton, Wisconsin.

## **AGENDA:**

1. Call meeting to order.
2. Consider approval of the Board of Appeals minutes of May 5, 2016.
3. Todd Nelson has requested a variance from the Multi-Family Residential -24 zoning code section, 78-105(2)(h)7bF, " Side lot line to house: 20 feet" and section 78-105(2)(h)7bH, "Rear lot line to house: 50 feet". This request is to allow a rezoning request to move forward which could change the zoning from the existing I - Institutional zoning to MR-24 Multi-family residential zoning at 1940 Jackson Street. The existing side yard setback is 15.9 feet while the existing rear yard setback is 41 feet.
4. Adjournment.  
10/25/16mps

## **PACKETS SENT TO BOARD MEMBERS:**

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

cc: Mayor Donna Olson (via-email)	Department Heads (via-email)
City Clerk Lana Kropf (via-email)	Council Members (via-email)
Receptionists (via-email)	Steve Kittelson (via-email)
Zoning Administrator Michael Stacey (3 packets)	City Attorney Matt Dregne (via-email)
Stoughton Newspapers (via-fax)	Derek Westby (via-email)
Todd Nelson, (via-email)	derickson@madison.com
Kelli Krcma (via-email)	

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

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

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

**Board of Appeals Meeting Minutes**

**Thursday, May 5, 2016, 5:00 p.m.**

**Public Safety Building, Council Chambers, 321 S. Fourth Street, Stoughton WI.**

**Members Present:** Russ Horton, Chair; David Erdman, Secretary; Bob McGeever; Bob Barnett, Vice-Chair; Jeff Cunningham, Alt #1 and Donna Vogel, Alt #2.

**Members Absent:** Aaron Thomson

**Staff:** Michael Stacey, Zoning Administrator

**Guests:** Terri Zeman and Jamie Bush

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

Roll call was taken by Interim Secretary Donna Vogel.

David Erdman, Secretary arrived at 5:03pm.

2. **Consider approval of the Board of Appeals minutes of April 11, 2016.**

Motion by **McGeever** to approve the minutes of April 11, 2016 as presented, 2<sup>nd</sup> by **Barnett**.

Motion carried 5 – 0.

3. **Elect Vice-Chair.**

Motion by **McGeever** to nominate Bob Barnett as Vice-Chair, 2<sup>nd</sup> by **Erdman**. Motion carried 5 – 0.

4. **Elect Secretary.**

Motion by **McGeever** to nominate David Erdman as Secretary, 2<sup>nd</sup> by **Barnett**. Motion carried 5 – 0.

5. **Jamie Bush, owner of the property at 1017 Nygaard Street, Stoughton, Wisconsin, has requested a variance from zoning code sections, 78-105(4)(b)8a, “Minimum landscape surface ratio: 25 percent” and 78-610, “Landscaping requirements for bufferyards” to allow a building addition.**

Horton introduced the request and opened the public hearing.

Jamie Bush explained the intent for variance request is to make his business more of a family oriented restaurant than a bar so he can compete with potential new future businesses.

Barnett questioned alcohol consumption outdoors. Mr. Bush stated the plan is to have outdoor dining including alcohol consumption.

No one registered to speak.

Stacey gave an overview of the history of the proposed addition for Deaks and a review of the 3 tests that must be met according to state statutes for the approval of a variance as follows:

**Unnecessary hardship:** We believe, in this case, the ordinance does create a hardship on the applicant since the zoning ordinance was updated after the property was originally developed. The property originally met all zoning requirements. The addition will not add any more impervious area than currently exists. The current bufferyard is approximately 10 feet and the landscaping and fencing do meet the bufferyard requirements. The applicant could meet these requirements by reducing the amount of parking which would not be a good solution for a property that is already in need of more parking for the use.

**Unique property limitation:** The lot is small for this type of use within a Planned Business district but otherwise flat and rectangular. There are no other unique property limitations related to slope, shape or environmental issues.

**Protection of the Public Interest:**

There does not appear to be any real positive impacts to the public at large in relation to safety or environmental. You could argue that aesthetically the building will be better for customers or the public in general.

We have heard from some area neighbor's about noise and potential traffic issues related to this site. The conditional use permit was issued contingent on no music being allowed at the outdoor patio area. The applicant has offered to install more plantings along the parking area to limit vehicle lights shining on homes. There have been no real noise issues or complaints in the past that we know of.

The applicant is trying to remain competitive for the future with other potential restaurants opening in Stoughton.

Horton closed the public hearing.

Motion by **Erdman** to approve the variance request as presented, 2<sup>nd</sup> by **McGeever**. Motion carried 5 – 0. (Barnett, Erdman, McGeever, Horton and Cunningham)

- 6. Terri Zeman, owner of the property at 524 S. Van Buren Street, Stoughton, Wisconsin, has requested a variance from zoning code section, 78-105(2)(e)8bL, " Side lot line to accessory structure: Four feet from property line, four feet from alley" to allow installation of a carport.**

Horton introduced the request and opened the public hearing.

Terri Zeman explained the variance request is due to the inability to construct a carport on the side of their garage and meet the 4-foot setback rather the front of the carport would be 3 feet 2 inches from the lot line. The carport is needed because the neighbor has large pine trees that drip sap on their vehicles.

Barnett questioned the location of the lot stake and the closeness of the adjacent shed. Stacey noted there are many non-conformances in historic district such as fences and shed close to or over the lot lines.

Erdman questioned if the carport could be moved back to meet code. Ms. Zeman stated the carport would still be non-compliant.

No one registered to speak.

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

**Unnecessary hardship:** We believe, in this case, the ordinance does not necessarily create a hardship on the applicant. The intent of the accessory structure code section is related to having safe and adequate separation between properties. Dripping of tree sap is not really a hardship. Similarly, requesting a variance to keep a vehicle inside from rain or potential hail is not a hardship.

**Unique property limitation:** The lot is quite large compared to other residential properties within older areas of the community. It is fairly flat and rectangular. There is no real unique property limitation or special condition that many other residential properties would not also have. There are no steep slopes, the lot is not irregularly shaped and there are no wetlands or other environmental type issues onsite.

**Protection of the Public Interest:** There does not appear to be any real positive impacts to the public at large in relation to aesthetics, safety, or environmental. We have not heard from anyone about this request. There does not appear to be any environmental, aesthetic or safety concerns with the request. Alternatives may be to cover boats or vehicles with a cover of some sort or find an alternative to parking in that location.

Horton closed the public hearing.

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

Horton stated there seems to be alternatives and the request does not meet the standards to be approved so he cannot support the request.

Erdman concurs and has some concerns about approving the variance.

Motion failed 2-3 (Barnett and Cunningham voted yes; Erdman, McGeever and Horton voted no)

## 7. Adjournment.

Motion by **McGeever** to adjourn at 5:35 pm, 2<sup>nd</sup> by **Horton**. Motion carried 5 – 0.

Respectfully Submitted,  
Michael Stacey

## OFFICIAL NOTICE

Please take notice that Todd Nelson has requested a variance from zoning code section, 78-105(2)(h)7bF, "Side lot line to house: 20 feet" and section 78-105(2)(h)7bH, "Rear lot line to house: 50 feet". This request is to allow a rezoning request to move forward which could change the zoning from the existing I - Institutional zoning to MR-24 Multi-family residential zoning at 1940 Jackson Street. The existing side yard setback is 15.9 feet while the existing rear yard setback is 41 feet.

The property at 1940 Jackson Street is formally described as follows:  
Parcel number: 281/0511-063-1334-7, with a legal description of: HILL-OLSON ADDN TO HILLCREST LOT 184 and parcel number: 281/0511-063-1345-4, with a legal description of: HILL-OLSON ADDN TO HILLCREST LOT 185.  
(This property description is for tax purposes. It may be abbreviated)

Notice is hereby given that the Board of Appeals will conduct a hearing on this matter on Monday November 7, 2016 at 5:00 p.m., or as soon after as the matter may be heard in the Council Chambers, Second Floor, Public Safety Building, 321 S. Fourth Street, Stoughton.

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

Published: October 27, 2016 HUB

**Board of Appeals – Variance Information & Application**  
City of Stoughton

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

**Next Steps:**

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

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

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

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

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

## Area and Use Variance Decision Process

**Step 1: Consider alternatives to the variance request.**

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

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

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

**1. Unnecessary Hardship** exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Consider these points:

- Purpose of zoning restriction
- Zoning restriction's effect on property
- Short term, long term and cumulative effects of variance on neighborhood and public interest.

**1. Unnecessary Hardship** exists when no reasonable use can be made of the property without a variance.

**2. Unique physical property limitations** such as steep slopes or wetlands must prevent compliance with the ordinance. The circumstances of an applicant, such as a growing family, elderly parents, or a desire for a larger garage, are not legitimate factors in deciding variances.

**3. No harm to public interests** A variance may not be granted which results in harm to public interests. Public interests can be determined from the general purposes of an ordinance as well as the purposes for a specific ordinance provision. Analyze short-term, long-term and cumulative impacts of variance requests on the neighbors, community and statewide public interest.

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

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

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

### I. Recordation of Administrative Procedures for City Use.

Pre-submittal staff meeting scheduled:

Date of Meeting: \_\_\_\_\_ Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Follow-up pre-submittal staff meetings scheduled:

Date of Meeting: 10/17/16 Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Date of Meeting: \_\_\_\_\_ Time of Meeting: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Application form filed with Zoning Administrator Date: \_\_\_\_\_ By: \_\_\_\_\_

Application fee of \$ 400 received by Zoning Administrator Date: 10/17/16 By: MPS

Professional consultant costs agreement executed (if applicable): Date: \_\_\_\_\_ By: \_\_\_\_\_

### II Application Submittal Packet Requirements for Applicants Use.

Prior to submitting the final complete application as certified by the Zoning Administrator, the Applicant shall submit 1 initial draft application packet for staff review, followed by one revised draft final application packet based upon staff review and comments.

Initial Packet (1 copy to Zoning Administrator)

Date: 10/17/16 By: MPS

↓ Draft Final Packet (1 copy to Zoning Administrator)

Date: \_\_\_\_\_ By: \_\_\_\_\_

- ↓
- (a) A map of the subject property:
  - Showing all lands for which the variance is proposed.
  - Map and all its parts are clearly reproducible with a photocopier.
  - Map scale not less than one inch equals 800 feet.
  - All lot dimensions of the subject property provided.
  - Graphic scale and north arrow provided.
- (b) A map, such as the Planned Land Use Map, of the generalized location of the subject property to the City as a whole.
- (c) A written description of the proposed variance describing the type of specific requirements of the variance proposed for the subject property.
- (d) A site plan of the subject property as proposed for development.
- (e) Written justification for the requested variance consisting of the reasons why the Applicant believes the proposed variance is appropriate, particularly as evidenced by compliance with the standards set out Section 78-910(3)1- 6. (See part III below.)

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

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

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

Both the North (46.9') and West (15.9') do not  
meet the MR-24 minimum set backs of 50' + 20'.  
The property is currently zone Institutional which does  
not conform to the adjacent properties

#### NOTES:

- Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.
- Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property reducing the remainder of said property below buildable size or cutting-off existing access to a public right-of-way or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships
- Violations by, or variances granted to, neighboring properties shall not justify a variance
- The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)

2. In what manner do the factors identified in 1. above, prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

New owner would like to change zoning to MR-24  
to be able to build into studios + 1 Bedroom rental  
units. All properties adjacent are of similar zoning.

3. Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.

No. All Adjacent Properties are zoned either PD-5IP, MR-10 and MR-24.

4. Would the granting of the proposed variance as depicted on the required site plan (see (d), above), result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions, and policies of the Zoning Ordinance, the Comprehensive Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.

No Impact. A Re-zoning fits within the neighborhood.

5. Have the factors which present the reason for the proposed variance been created by the act of the Applicant or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan, or orientation, lot pattern, or grading) after the effective date of the Zoning Ordinance (see Section 78-011.) The response to this question shall clearly indicate that such factors existed prior to the effective date of the Ordinance and were not created by action of the Applicant, a previous property owner, or their agent.

The Building Set backs were created by a previous owner/Builder.

7. 6. Does the proposed variance involve the regulations of Section 78-203, Appendix C (Table of Land Uses)? The response to this question shall clearly indicate that the requested variance does not involve the provisions of this Section.

Its not. Just set back. No use variance

**IV. Final Application Packet Information for City Use.**

Receipt of Final Application Packet by Zoning Administrator Date: 10/14/16 By: MPS  
Notified Neighboring Property Owners (within 300 feet) Date: 10/26/16 By: MPS  
Notified Neighboring Township Clerks (within 1,000 feet) Date: \_\_\_\_\_ By: \_\_\_\_\_ N/A  
Class 1 legal notice sent to official newspaper by Zoning Administrator Date: 10/12/16 By: MPS  
Class 1 legal notice published on 10-27-16 By: MPS

I certify that the information I have provided in this application is true and accurate. I understand that Board of Appeals members and/or City of Stoughton staff may enter and inspect the property in question.

Signed: (owner)   
Date: 10/12/16

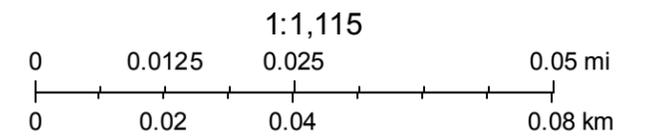
Remit to:  
City of Stoughton  
Department of Planning & Development  
Zoning Administrator  
381 E. Main Street  
Stoughton, WI. 53589

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



October 25, 2016

- House Number
- CSM Text
- Plat Labels
- Tax Parcels



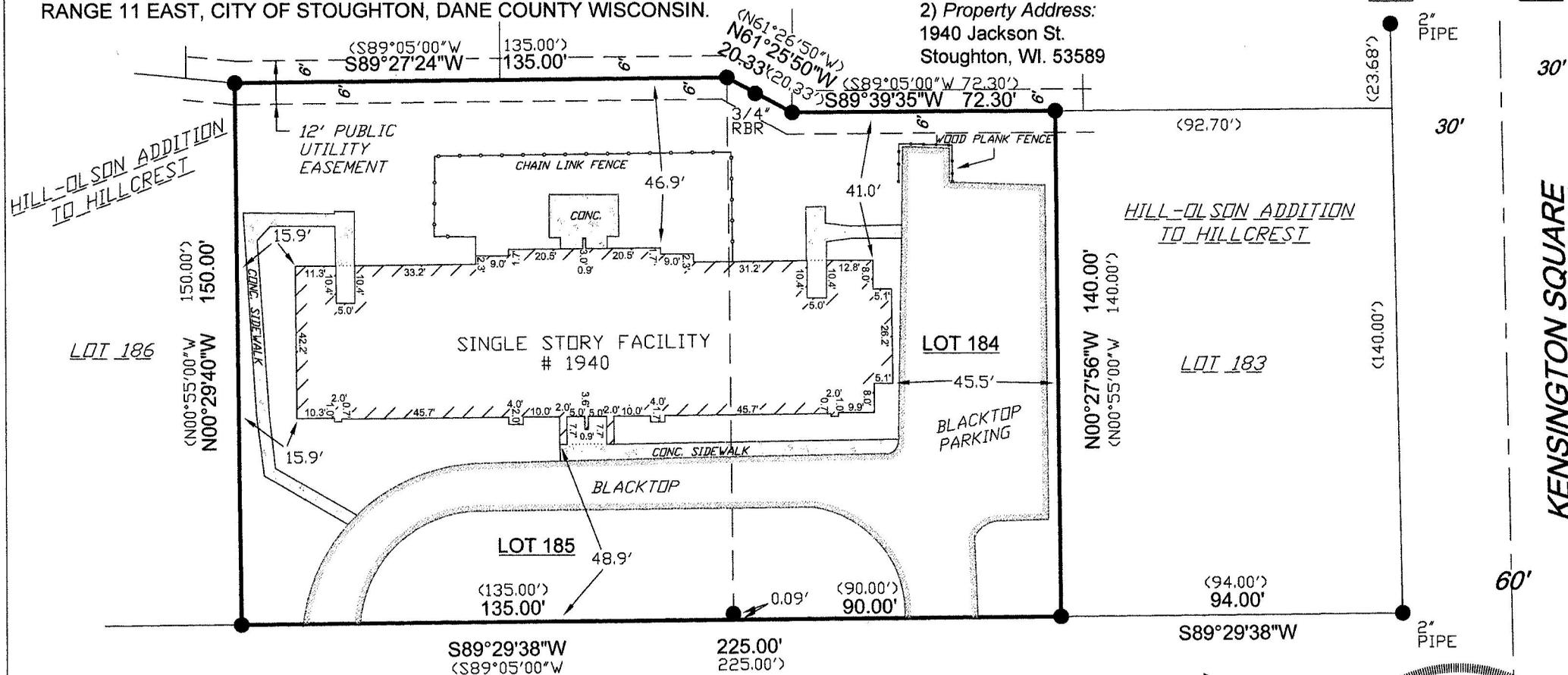
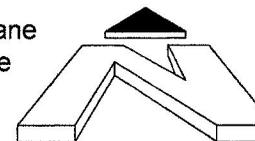
Planning  
 Sources: Esri, HERE, DeLorme, Intermap, increment P Corp.,  
 GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL,  
 Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong),  
 swisstopo, MapmyIndia, © OpenStreetMap contributors, and the

# Plat of Survey

LOTS 184 & 185 OF HILL - OLSON ADDITION TO HILLCREST LYING IN PART OF THE NE 1/4 OF THE SW 1/4 OF SECTION 06, TOWNSHIP 05 NORTH, RANGE 11 EAST, CITY OF STOUGHTON, DANE COUNTY WISCONSIN.

**NOTES:**  
 1) Prepared for:  
 Todd Nelson  
 710 Clyde St.  
 Stoughton, WI. 53589  
 2) Property Address:  
 1940 Jackson St.  
 Stoughton, WI. 53589

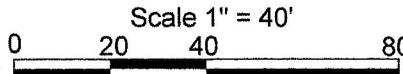
Referred to the Dane County Coordinate System.



### Surveyors Certificate

I, David C. Riesop, Wisconsin Registered Land Surveyor, hereby certify that I have surveyed, mapped and monumented the lands as described hereon, and that such map is a true and correct representation of the boundaries of the lands surveyed, including any features shown hereon, and that I have fully complied with the State of Wisconsin Administration Code Number 7.01 in surveying and mapping the same, to the best of my knowledge and belief.

*David C. Riesop* 10/13/2016  
 David C. Riesop S-1551



Legend:  
 ● = 1" pipe found unless otherwise noted  
 ( ) Parentheses indicate recorded as values.



**Wisconsin Mapping, LLC**

surveying and mapping services  
 306 West Quarry Street, Deerfield, Wisconsin 53531  
 (608) 764-5602

Dwg. No. 4934-16 Date 10/07/2016  
 Sheet 1 of 1

Google Maps 1940 Jackson St



Image capture: Aug 2011 © 2016 Google

Stoughton, Wisconsin

Street View - Aug 2011

Google Maps 2003 Jackson St



Image capture: Aug 2011 © 2016 Google

Stoughton, Wisconsin

Street View - Aug 2011









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

*The conditions upon which the application is based are generally not applicable to other institutionally zoned properties within the City of Stoughton.*

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

*We believe the purpose of the variance is for the applicant to help the current owner find a better use of the property since it has been vacant for some time.*

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

*We have been informed, the difficulty or hardship is caused by changes in the demand for certain types of assisted living facilities. The ordinance does have differing setbacks from Institutional to Multi-Family Residential. The structure was built in compliance with previous zoning requirements.*

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

*We believe the granting of the variance should not be detrimental to the public welfare. It is arguably more detrimental to the public that the property remains vacant. A rezoning, CSM and conditional use permitting process would still be required to be able to have a multi-family residential use at this location and two processes requires a public hearing.*

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

*We believe the proposed variance should not impair the use and enjoyment of adjacent property. The neighboring properties are primarily multi-family residential.*