



Board of Adjustment

Notice of Public Meeting

Tuesday, March 19, 2023 at 5:00 PM

City Council Chambers, City Hall

10 West State Street, Marshalltown IA

1. Call To Order & Roll Call

Engle

Schulze

Sanchez

Thurston

Vacant

2. Review And Approval Of Meeting Minutes For 10/31/2023

Documents:

[BOARD OF ADJUSTMENT MIN 10312023.PDF](#)

3. PUBLIC HEARING: Variance Request - 519 S 5th St - Jesus & Brenda M Villa

Documents:

[519 S 5TH ST_03192024.PDF](#)

[EMAIL COMMENTS.PDF](#)

[VARIANCE APPLICATION PACKET.PDF](#)

[BUILDING PLANS AND SETBACKS.PDF](#)

[PARCEL LOT.PDF](#)

[LEGAL DESCRIPTION.PDF](#)

[IOWA STATE OUTREACH VARIANCE WORKSHEET.PDF](#)

4. PUBLIC HEARING: Variance Request - 834 & 836 W Merle Hibbs Blvd - Timothy D & Sara L Nichols

Documents:

[834 AND 836 W MERLE HIBBS BLVD_03192024.PDF](#)

[VARIANCE APPLICATION.PDF](#)

[IOWA STATE OUTREACH VARIANCE WORKSHEET.PDF](#)

MISSION STATEMENT

The City of Marshalltown collaborates to provide a welcoming, safe, vibrant, and growing community.

Board of Adjustment

Meeting Minutes – October 31st, 2023

Meeting was called to order at 5:00 PM in the City Council Chambers at 10 W. State Street

1. Roll Call:

Present: Schulze, Engle, Thurston, and Wenner

Absent: None (one vacant spot)

2. Select Chair Person

Wenner motion to select Thurston as chair person

Second by Schulze

All approve on chair person

3. Meeting Minutes from 3/21/2023

Wenner motion to approve

Second by Schulze

All approve and accept minutes

4. PUBLIC HEARING: Variance Request – 609 Iowa Ave W – Summit Locations- Wesley Rutledge

Chair declared the public hearing open. No Public hearing. The public hearing was closed. Chad Hager, Real Estate Manager from Summit Locations, presented on the proposed variance application for 609 Iowa Ave W. Wager is requesting a variance for a billboard sign to exceed the maximum height by 4FT to 34FT. The reason Summit Locations said that Nagle sign the adjacent property owner would cover part of the signs and the lower grade level on the proposed location. Wager stated that the sign will have strict guidelines it would need to follow by the state as well as the landlord. These restrictions are no advertizing for gambling, alcohol, political, or profanity. Billboard would be for advertising for smaller business such as downtown. Wager said that 22% percentage of the signage would be covered and would be a unique circumstance and not be self-imposed. Wenner asked about safety if sign would fall could it damage the neighboring buildings. Wager said it could be a possibly. Schulze and Wenner asked about the incorrect address which had 811 Iowa Ave W but will be changed to 609 Iowa Ave W. Hector Hernandez-Morales, city planner, stated that the variance application and minutes will be updated to reflect the correction.

Wenner motion to approve the variance for 609 Iowa Ave W, Summits Location. Schulze seconded the motion. 3-1 Thurston single vote who opposed. Motion Carried.

Meeting Adjourned at 5:51 pm

MARSHALLTOWN

— I O W A —

TO: Board of Adjustment

FROM: Hector Hernandez, City Planner

DATE: March 19, 2024 – Meeting Date

SUBJECT: VARIANCE request for 519 S 5th St

Request: An application for a variance request has been received from Jesus & Brenda Villa property owners of 519 S 5th St. The request is to allow a 4' side setback to an adjacent residential property.

Current Zoning Classification: Current Zoning Classification is General Industrial (GI). General industrial is manufacturing, processing, storage, and distribution activities generally incompatible with residential, civic, and other public uses. Certain industrial uses that produce off-site noise, odor, dust and/or other visible and sensory impacts are permitted only after public hearings and review to assure protection of surrounding property, persons, and the general public interest.

Comprehensive Plan Designation: The proposed land use in the Marshalltown Comprehensive Plan 2030 is industrial.

Staff Review: Table 156.B.005-1 Nonresidential and Mixed-Use District Lot and Building Standards under General Industrial (GI) setback for the side are list as 10'. Under the table in Notes list for nonresidential uses, applies if adjacent to a residential use or zoning district. 0' for nonresidential uses if adjacent to any other use or zoning district.

Prohibitions and Exceptions. Some requests for relief are not within the jurisdiction of the Board, and are therefore, either prohibited or not subject to this Section. The prohibited requests are:

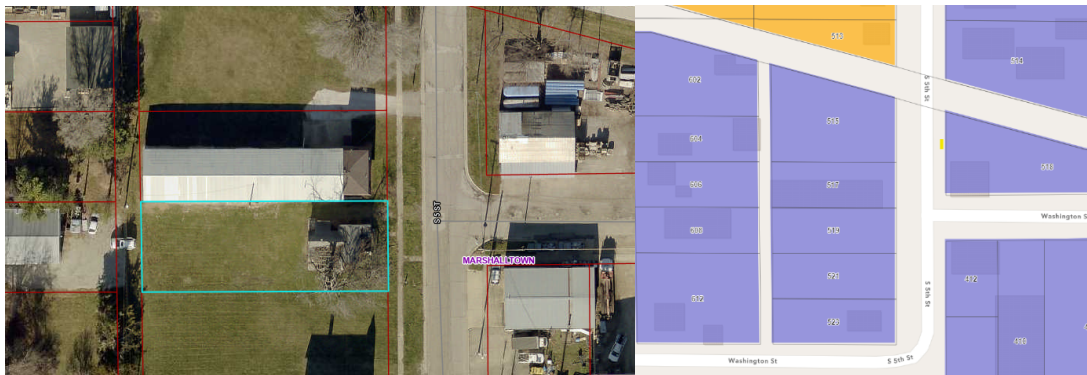
- a) **Use.** Variances that would allow a use in a district in which the use is prohibited or which would constitute a change in district boundaries;
- b) **Limited Use or Special Use.** Variances that would modify any requirements that are set out in Section 156.C.004, Limited Use Standards and Section 156.C.005, Special Use Standards;
- c) **Nonconformities.** Variances that would have the effect of making existing nonconforming structures, site improvements, parking, or landscaping conforming;
- d) **Conditions of Approval.** Variances from the terms of one or more conditions of approval imposed by a development review body described in Article I, Development Review Bodies. Modifications to conditions of approval shall be sought from the body that granted the approval.
- e) **City's Code of Ordinances.** Variances that would modify any requirements within the City's Codes of Ordinance, including but not limited to the Building Code.
- f) **Other Laws or Regulations.** Variances to state or federal laws are prohibited unless such authority is expressly granted to the City.

Housing & Community Development

24 North Center Street, Marshalltown, IA 50158 - Tel. (641) 754-5756 - Fax (641) 754-5742
The City of Marshalltown collaborates to provide a welcoming, safe, vibrant, and growing community.

C. Review Criteria

- a) **Not Self Imposed.** The granting of the Variance is not based on a hardship which is self-imposed;
- b) **Not Based on Cost.** The hardship is not based solely on the cost of complying with the regulation, but is based on the particular physical surroundings, shape, or topographical conditions of the subject property;
- c) **Unique Circumstances.** The hardship is based on circumstances that are unique to the property for which the Variance is sought and not circumstances common to other properties;
- d) **Minimum Necessary Relief.** The Variance requested is the minimum necessary that will make possible a permitted use of the land, building, or structure;
- e) **Commonly Enjoyed Rights.** A literal interpretation of the provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located; and
- f) **Not A Special Privilege.** Granting the variance will not confer on the applicant any special privilege that is denied to other lands or structures in the same district.



A. Effect of Approval

- a) **Particular Variation.** Issuance of a variance shall authorize only the particular variation that is approved in the variance request. A variance shall run with the land and not be affected by a change in ownership.
- b) **Other Approvals.** Development authorized by the variance shall not be carried out until the applicant has secured all other development approvals required by this ZO. Approval of a variance does not guarantee that the development shall receive subsequent approval for other development review applications unless the relevant and applicable portions of this Zoning Ordinance or any other applicable provisions are met.

Plan & Zoning Commission Recommendation: In order to approve a Variance, the Board of Adjustment shall make affirmative findings on all of the applicable decision criteria listed above.

The attached Variance Fact Sheet from ISU Extension is included for reference from the recent board training

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Zimbra**hhernandez@marshalltown-ia.gov**

Proposed Variance 519 S. 5th Street

From : Jill Craft <jill@jnjcraft.com>

Wed, Feb 21, 2024 09:41 AM

Subject : Proposed Variance 519 S. 5th Street**To :** hhernandez@marshalltown-ia.gov

CAUTION: This email originated from outside of the City of Marshalltown. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The proposed variance for 519 S. 5th Street, we are in disagreement with this variance being allowed, we disagree with the size of the building that is proposed and do not think a variance should be granted to allow them to build closer to the lot line(s).

The owner knew what the lot size was and where the property lines were.

The owner knew what the ordinance and building codes are in Marshalltown before he purchased the property since he formally worked for the City of Marshalltown.

Will a holding pond be required with a building this size with the paved drive?

Having a building closer to the lot line on the North would make maintenance upkeep harder to the north property owner and possibly increase the north property owners insurance cost. On the South lot line there would not be enough room for trucks to make the turn without impeding onto the lot south of 519 S 5th Street, causing maintenance issues and damage to the property for the owner of 521 S 5th Street.

I recommend that the variance not be granted and that the original set-backs and ordinances are to be followed.

Jill & John Craft
jill@jnjcraft.com
641-751-7997

MARSHALLTOWN

I O W A

HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT

36 North Center Street, Marshalltown, IA 50158

Ph: 641-754-5756 Fax: 641-754-5742

www.marshalltown-ia.gov

Variance Application Packet

Purpose: Zoning regulations include specific development standards. There are occasions, however, when the strict application of such standards may be inappropriate because of unique characteristics of the property. The variance procedure is designed to permit minor adjustment to the zoning regulations where there are unique or extraordinary circumstances applying to a parcel of land or building that prevent the property from being used to the extent intended by the zoning. Unique circumstances may include factors such as the size, shape, topography, vegetation, wetlands, or other unique characteristics of the land.

Pre-Application Meeting: The applicant is required to meet with the Zoning Administrator prior to submitting an application to discuss the feasibility of the request as well as any possible alternatives that may eliminate the need for a variance or improve the chance of the variance being granted. A preliminary site plan should be brought to this meeting to review the project design as it relates to the zoning requirements.

Application Packet: Applications will not be accepted unless complete. All required items must be submitted with the application. Failure to complete and submit all the required materials as a part of this application will result in a delay in accepting your application until it is complete.

Submission Deadline: The complete application with fee must be submitted by 4:30 p.m. three weeks prior to the scheduled meeting date to the Housing & Community Development Department Office, located at 36 N. Center Street.

Board Meetings: The Board of Adjustment considers the facts presented by the applicant in the application and testimony given at the public hearing, and makes the final decision, based on the standards in the Ordinance. The Board meetings are tentatively scheduled for 5:00 p.m. on the third Tuesday of each month in the City Council Chambers, second floor of City Hall, 10 W. State Street. Attendance at the meeting is required.

It is the burden of the property owner to provide sufficient facts with this application and at the Board of Adjustment meeting to support a finding that all the standards for approval have been met. The concurring vote of three (3) members of the Board is necessary to decide any issue before the board regardless of the number of members present at the meeting. The Board is a five (5)-member board. Appeals to the decision of the Board of Adjustment can be made in District Court.

Notifications: The City will place a sign on the property to notify the public that a variance request has been submitted. The sign includes the city's phone number so that concerned individuals will have an opportunity to learn about the proposal and can present information on this matter to the board at the public hearing. A notice of public hearing is also published in the newspaper.

Date Submitted & Fee Paid: _____

Hearing Date: _____

Variance Application Form

36 N. Center Street, Marshalltown, IA 50158 Ph: 641-754-5756 Fax: 641-754-5742

www.marshalltown-ia.gov

All items listed must be submitted with this application:

Failure to complete and submit all the required materials as a part of this application will result in a delay in accepting your application until it is complete.

✓ **A site plan, drawn in ink and to scale, which clearly shows the variance being sought. This site plan shall not be larger than 11" X 17." And must include:**

- Dimensioned property lines indicating any easements;
- Location & identification of adjacent streets and alleys;
- Location and size of all existing and proposed buildings and structures (include distances to all property lines and distances between buildings and structures.);
- Dimensioned driveways and parking areas; and
- Any other pertinent information necessary to fully understand the need for a variance.

✓ **Site photographs** showing all views of the property, including any special features such as topography and existing and adjacent structures. **Please note:** Materials submitted with the application or presented as evidence during the public hearing will not be returned and must be kept as a part of the public record.

✓ **Completion of all of the following questions included in this application.**

✓ **Legal description of the property.** The property owner should have a copy of the legal description. If not, owners may obtain a copy of the recorded deed, which contains the legal description, from the Marshall County Recorder's Office for a fee.

✓ **Application fee.** A fee of **\$150 for owner-occupied residential properties** and a fee of **\$200 for any other property** is required payable to "City of Marshalltown." The fee must be paid when the application is submitted to the Housing Department.

Please type or print legibly in ink.

Property Address:

519 S 5th Street

Owner:

Jesus & Brenda M Villa

Mailing Address:

309 W Southridge Rd.

Phone:

641-485-5616 or 641-691-0574

Fax:

Email Address:

brenda_minjares@yahoo.com or javilla8@gmail.com

Owner's Agent (if applicable):

Agent Phone:

Agent Fax:

All of the following questions must be answered. The board will use this information to review your request. Additional information may be attached if necessary. Contact the Housing & Community Development Director at 641-754-5756 with any questions.

The applicant makes the following request:

We are humbly requesting the aforementioned property of 519 S. 5th St., Marshalltown, IA 50158, be granted nonresidential privileges of 0' setback for building standards--as depicted & explained in Table 156.B.005-1 of Chapter 156 - Zoning. The property address is in a "general industrial" area and is south of a "house" or a barn in structure (517 S. 5th St.) which is attached to a home. Our +

Please state your hardship.

As you may see from the site plans, there is not enough vertical property to follow the 10' residential setback from the north property, and the hope is to build a barn-in style building similar to the surrounding properties of 519 S. 5th St, for storage of electrical products & personal items. A residential property will not be built on 519 S. 5th Street +

In order to grant a variance, the Board of Adjustment must make a finding of unnecessary hardship. The hardship must be related to the physical aspects of the property and not a personal hardship. The granting of a variance should not merely serve as a convenience to the applicant. **To support a finding of unnecessary hardship, the board must find, based upon your evidence, that all of the following are met:**

1. **The land in question cannot yield a reasonable return if used only for a purpose allowed in the district.** State how you will lose all beneficial use and/or enjoyment of the property if the variance is not granted. You may include supporting evidence from a professional appraiser, real estate professional, or other professional. The Board may require documentation of loss of value in order to grant this variance.

The property cannot be used under the current residential zoning ordinance (without a variance). It will be impossible to house my beloved (ill) father's belongings once his home is sold and to expand my small electrical business. The electrical demand is high at this time, but I can only do so much with limited resources and lack of storage space. We are currently struggling to stock & inventory essential products. Servicing my (tall) work van can only be done outdoors at this time, and this poses a great challenge in extreme temperatures. Daily +

2. **This variance is required because of the unique circumstances of this property and not the general conditions of the neighborhood.** The applicant must show that physical circumstances (such as an odd-shaped lot or difficult topography) on the property are unique to this property and unlike other properties in the vicinity. Also, the hardship should not be self-inflicted.

The surrounding buildings have been in existence prior to the latest zoning and building standards and thus, could be built right over property lines as evidenced by the attached visual aids with 517 S. 5th St. If this variance is granted, our proposed structure would be built at least 4' away from the northern property line.

3. **The proposal will not alter the present character of the area or seriously affect any adjoining property.** The applicant must show that the proposal is compatible with the character of the surrounding area.

This proposal shall not affect any surrounding properties and it will actually help the image of the area with an updated & new barn-in structure, resembling near-by properties.

4. **The variance will not be in contrary to the public interest.** The applicant must present information to indicate the variance will not impair an adequate supply of light and air to adjacent property, will not unreasonably increase the congestion in public streets or endanger public safety, nor will it devalue nearby property.

The proposal is not intended to affect public interest or endanger public safety. The proposed structure shall be built according to city storm water & fire code requirements and does not intend to block adequate light and air supply to the neighboring properties. In addition, increased traffic or jeopardizing public safety is not the intention--the construction of the above building will mirror surrounding structures and will perhaps increase the value of nearby properties. The plan is to build a fire wall along the north side of the building to reduce any potential fire risk to the neighbor on the north side (517 S. 5th Street).

5. **The general intent and purpose of the Zoning Ordinance is protected.** A variance must be consistent with the intent of the Zoning Ordinance and the Comprehensive Plan. Is there another option which you could pursue that would not require a variance? If alternatives exist which do not require a variance, the proposal would not be consistent with the intent of the Zoning Ordinance and Comprehensive Plan.

We do not have an alternative plan or property with the dimensions of 519 S 5th street that would satisfy our wishes to preserve of my ill father's personal belongings, and electrical business needs. We do intend on following zoning ordinances and the comprehensive plan, shall our proposal be approved by the city council

Additional Comments and Information:

Attach additional information as necessary.

As evidenced by the signature(s) below, I (we) certify that I (we) have been denied a building/zoning permit, that I (we) have submitted all the required information to appeal for a variance, and that said information is factual.

Owner Signature: Jesus Villa	Date: 2/8/24
-OR- Agent Signature:	Date:

** Complete answers **

The applicant makes the following request:

We are humbly requesting the aforementioned property of 519 S. 5th St., Marshalltown, IA 50158, be granted nonresidential privileges of 0' setback for building standards--as depicted & explained in Table 156.B.005-1 of Chapter 156 - Zoning. The property address is in a "general industrial" area and is south of a "shouse" or a barn-in structure (517 S. 5th St.), which is attached to a home. Our potential barn-in building would be at least 4' away from the north adjacent building--which sits directly over the property line.

Please state your hardship.

As you may see from the site plans, there is not enough vertical property to follow the 10' residential setback from the north property, and the hope is to build a barn-in style building similar to the surrounding properties of 519 S. 5th St, for storage of electrical products & personal items. A residential property will not be built on 519 S. 5th Street.

In order to grant a variance, the Board of Adjustment must make a finding of unnecessary hardship. The hardship must be related to the physical aspects of the property and not a personal hardship. The granting of a variance should not merely serve as a convenience to the applicant. **To support a finding of unnecessary hardship, the board must find, based upon your evidence,**

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The property cannot be used under the current residential zoning ordinance (without a variance). It will be impossible to house my beloved (ill) father's belongings once his home is sold and to expand my small electrical business. The electrical demand is high at this time, but I can only do so much with limited resources and lack of storage space. We are currently struggling to stock & inventory essential products. Servicing my (tall) work van can only be done outdoors at this time, and this poses a great challenge in extreme temperatures. Daily organization and routine maintenance is currently done on my personal driveway. Additionally, many of our products are stored in our personal garage and this is (again) taking the space from our personal cars and makes it further inconvenient when transporting our newborn.

2. This variance is required because of the unique circumstances of this property and not the general conditions of the neighborhood. The applicant must show that physical circumstances (such as an odd-shaped lot or difficult topography) on the property are unique to this property and unlike other properties in the vicinity. Also, the hardship should not be self-inflicted.

The surrounding buildings have been in existence prior to the latest zoning and building standards and thus, could be built right over property lines as evidenced by the attached visual aids with 517 S. 5th St. We don't have the same privileges as the adjacent neighbor(s) to build close to the property line with the current ordinance. If this variance is granted, our proposed structure would be built at least 4' away from the northern property line.

3. The proposal will not alter the present character of the area or seriously affect any adjoining property. The applicant must show that the proposal is compatible with the character of the surrounding area.

This proposal shall not affect any surrounding properties and it will actually help the image of the area with an updated & new barn-in structure, resembling near-by properties—making it compatible in character.

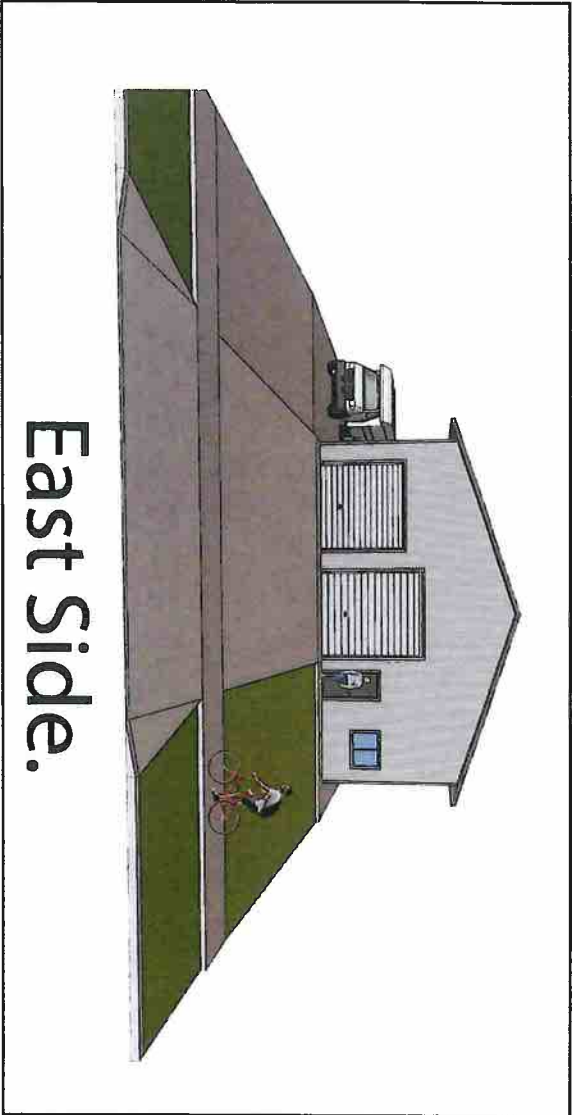
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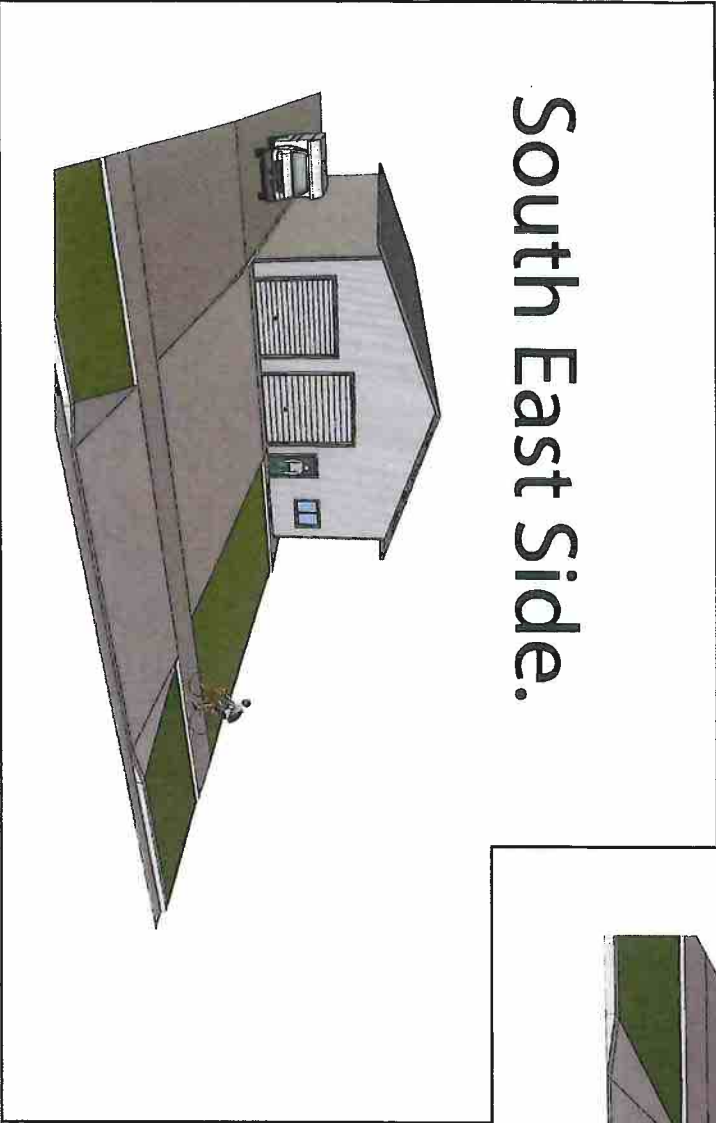
5. The general intent and purpose of the Zoning Ordinance is protected. A variance must be consistent with the intent of the Zoning Ordinance and the Comprehensive Plan. Is there another option which you could pursue that would not require a variance? If alternatives exist which do not require a variance, the proposal would not be consistent with the intent of the Zoning Ordinance and Comprehensive Plan.

We do not have an alternative plan or property with the dimensions of 519 S 5th street that would satisfy our wishes to preserve of my ill father's personal belongings, and electrical business needs. We do intend on following zoning ordinances and the comprehensive plan, shall our proposal be approved by the City of Marshalltown.

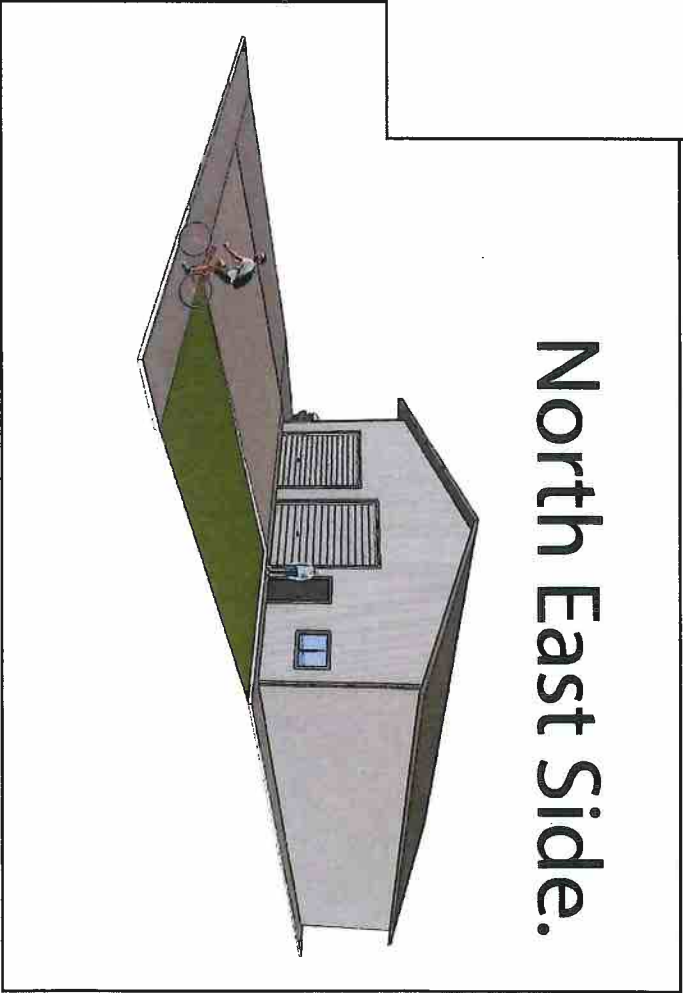
SIDES 3D



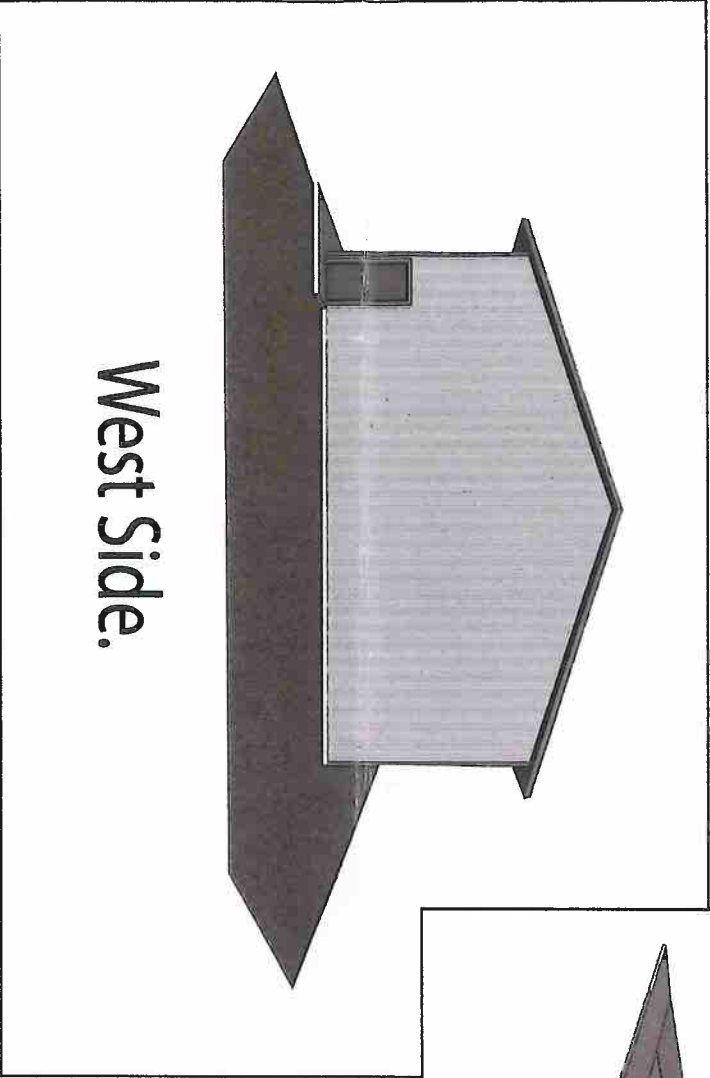
East Side.



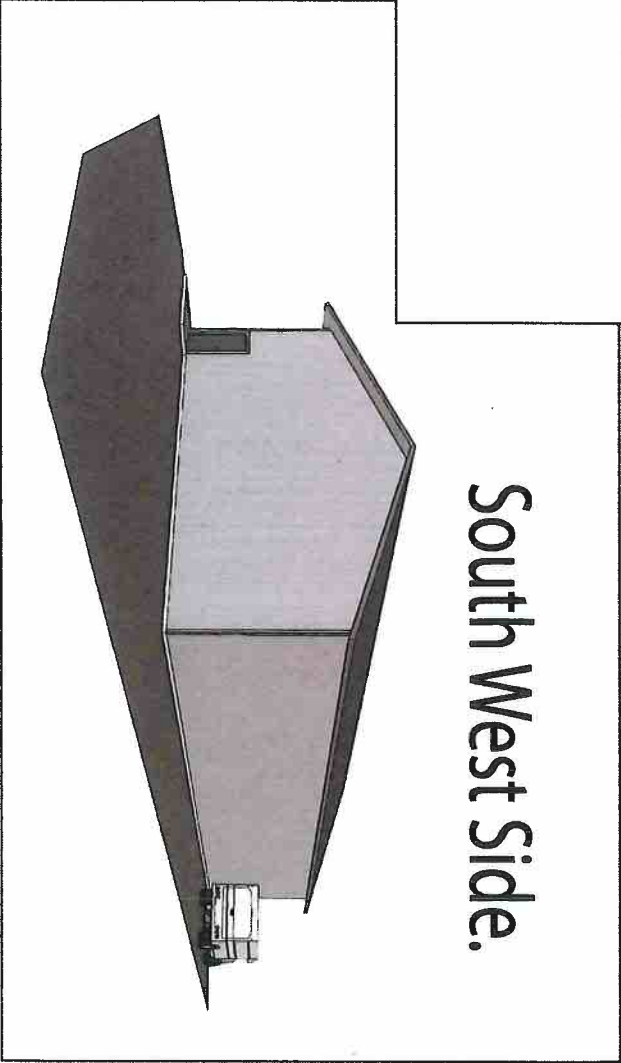
South East Side.



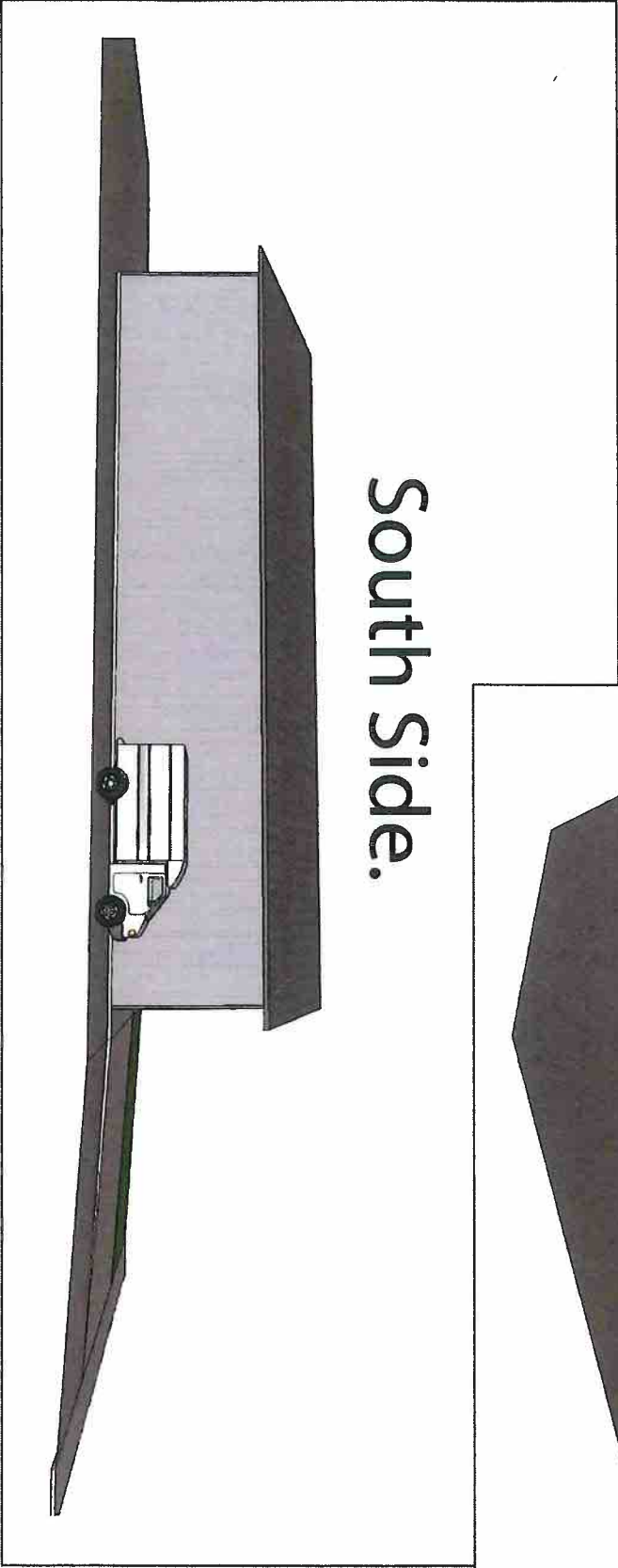
North East Side.



West Side.

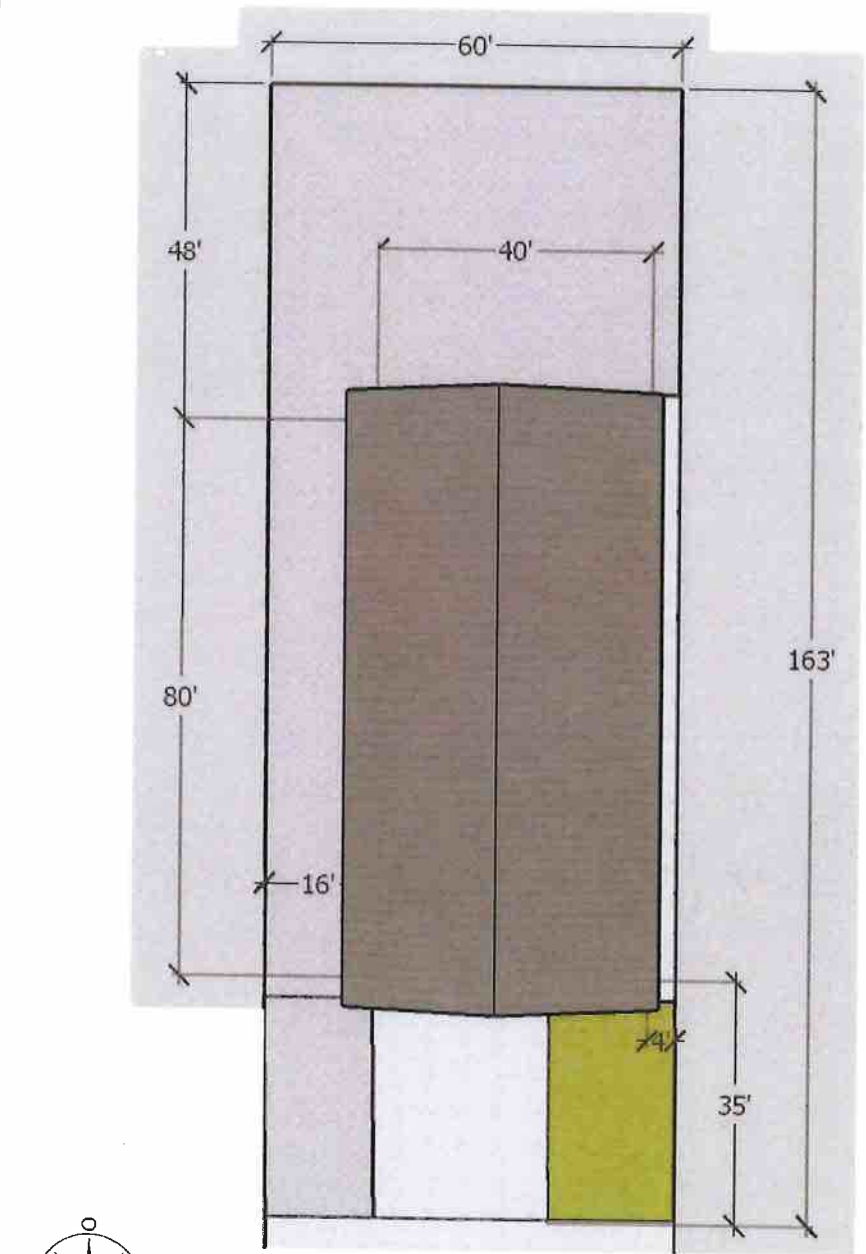


South West Side.



South Side.

MEASURES



S 5th St.

FRONT ELEVATION



ELEVATION

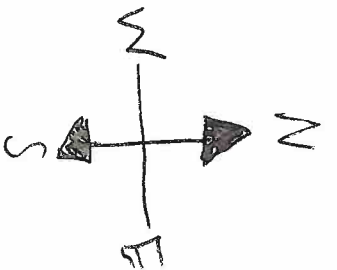


MEASURES

Mr. Jesus Villa 519 S 5th St.

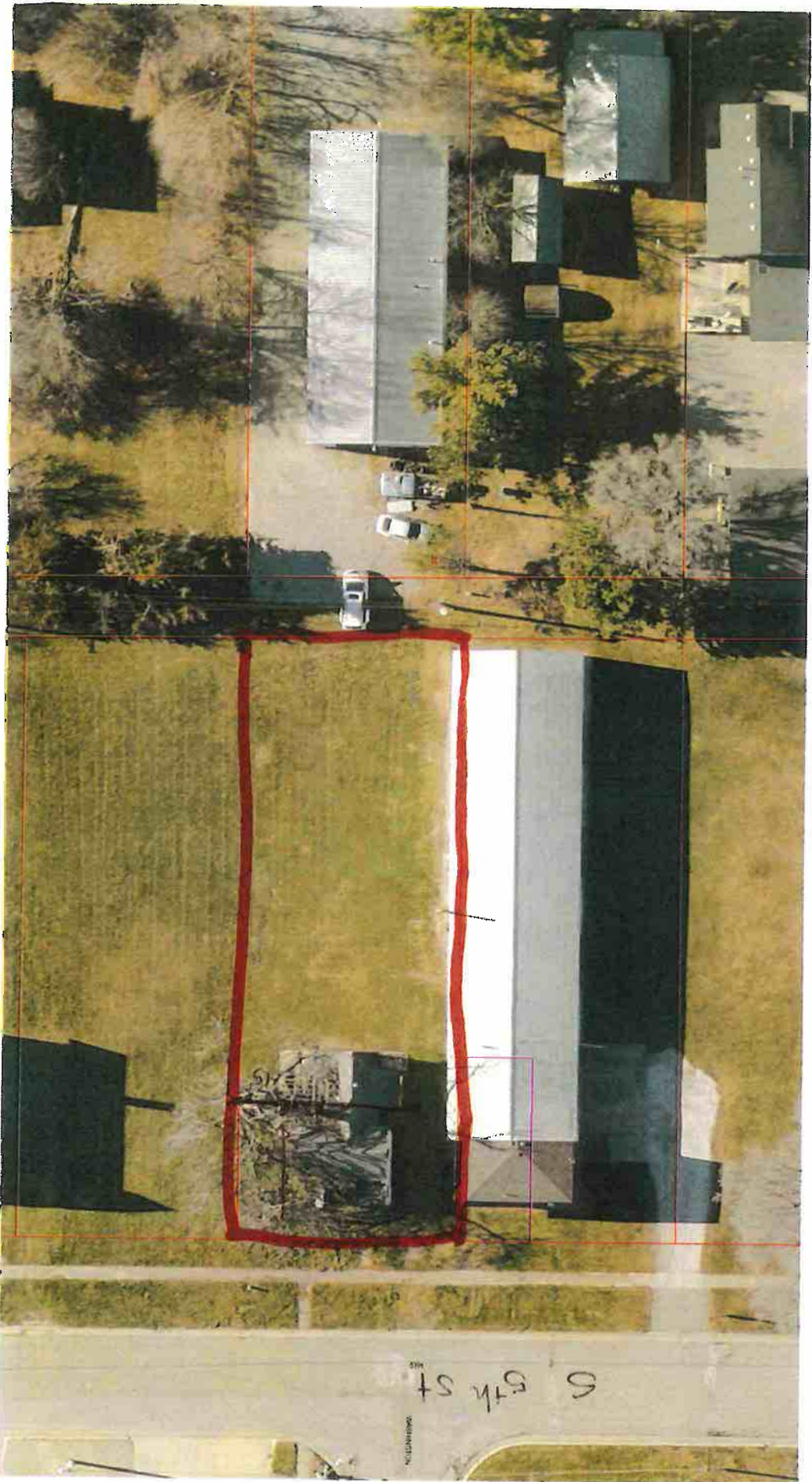
A.2. SHOP VOLTA ELECTRIC. Date: 01-03-2024

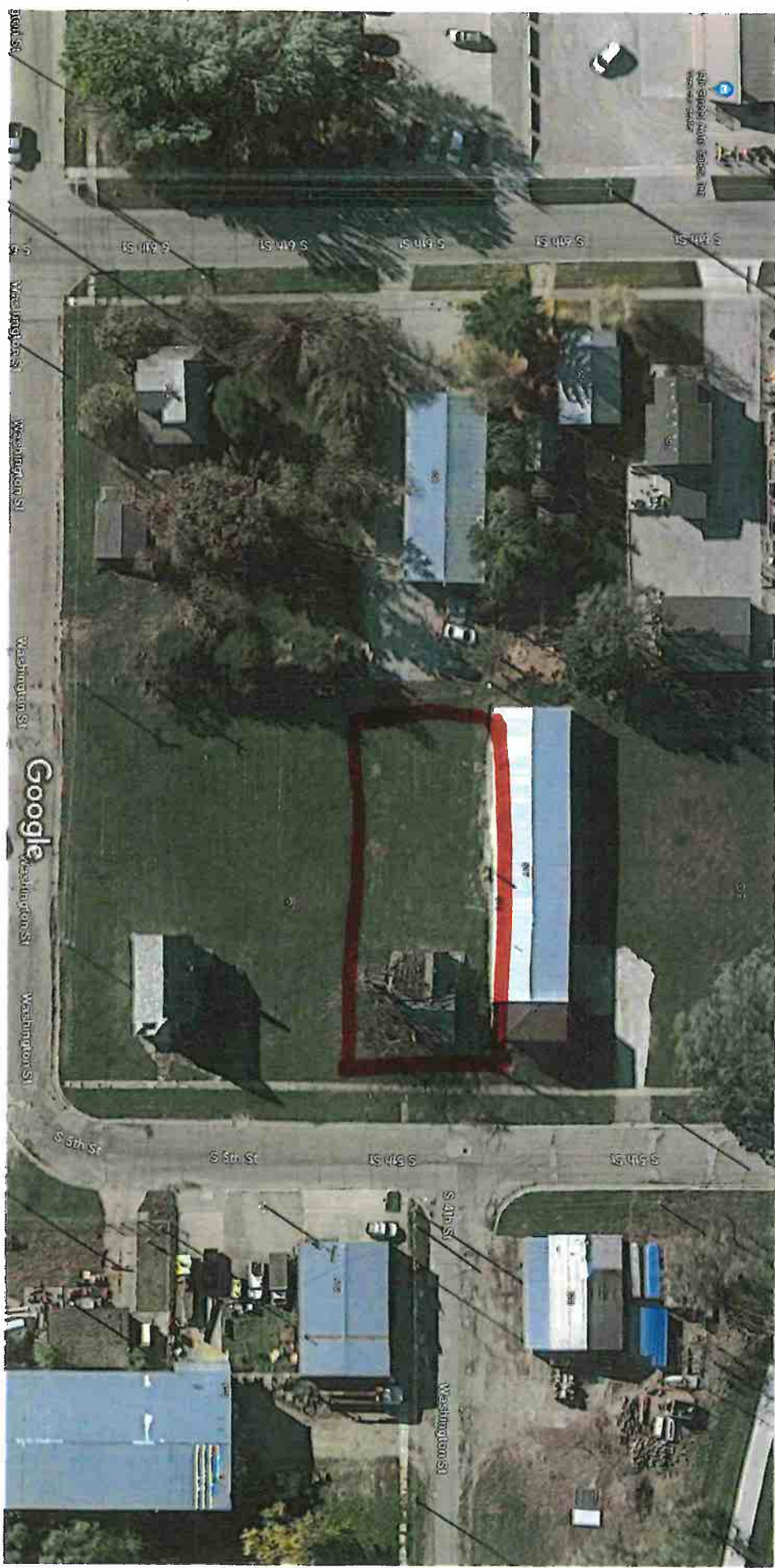




519 S 5th St.

S 6th St.





519 S 5th St.

Preparer: Steven C. Leidinger of Lynch Dallas, P.C.
526 Second Avenue SE, Cedar Rapids, IA 52406 Phone: (319) 365-9101
Return To: City of Marshalltown, 24 N Center St, Marshalltown, IA 50158
Taxpayer Information: Jesus and Brenda M. Villa, 309 W Southridge Road, Marshalltown, IA 50158

WARRANTY DEED

For the consideration of One Dollar (\$1.00) and other good and valuable consideration, **CITY OF MARSHALLTOWN, IOWA**, an Iowa municipal corporation ("Grantor"), does hereby convey to **JESUS and BRENDA M. VILLA**, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common ("Grantees"), the following described the real property in Marshall County, Iowa:

**LOT 4 IN BLOCK 1 IN WOODWORTH AND MEEKER'S ADDITION TO
THE TOWN OF MARSHALL, MARSHALL COUNTY, IOWA.**

Subject nevertheless to all easements, covenants, conditions, and restrictions of record, including any and all utility easements.

There is no known private burial site, well, solid waste disposal site, underground storage tank, hazardous waste, or private sewage disposal system on the property as described in Iowa Code section 558.69, and therefore the transaction is exempt from the requirement to submit a groundwater hazard statement.

This transfer is exempt from revenue stamps and Declaration of Value pursuant to Iowa Code §428A.2(19) this being a deed executed by public officials in the performance of their official duties.

This transfer was approved by the City Council of the City of Marshalltown, Iowa, Resolution No. 2023-041.

Grantor does hereby covenant with Grantees, and successors in interest, that Grantor holds the real estate by title in fee simple; that it has good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances except as may be above stated; and Grantor covenants to warrant and defend the real estate against the lawful claims of all persons except as may be above stated.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated this _____ day of May 2023.

CITY OF MARSHALLTOWN, IOWA,
an Iowa municipal corporation

By:

Attest:

Joel T.S. Greer, Mayor

Alicia Hunter, City Clerk

STATE OF IOWA,
COUNTY OF MARSHALL, ss:

This instrument was acknowledged before me on the _____ day of May 2023, by **Joel T.S. Greer**, as Mayor for the City of Marshalltown, Iowa known to me to be the same individual named in and who executed the foregoing document and acknowledged that he executed the same as his voluntary act and deed on behalf of the City of Marshalltown.

Notary Public in and for said State

STATE OF IOWA,
COUNTY OF MARSHALL, ss:

This instrument was acknowledged before me on the _____ day of May 2023, by **Alicia Hunter**, as City Clerk for the City of Marshalltown, Iowa known to me to be the same individual named in and who executed the foregoing document and acknowledged that she executed the same as her voluntary act and deed on behalf of the City of Marshalltown.

Notary Public in and for said State

Table 156.B.005-1

Nonresidential and Mixed-Use District Lot and Building Standards

(See Figures 156.B.005-1 and -2, below)

Housing/Building Type ¹	Maximum Gross Density (Units / Acre)	Common Civic or Open Space / Landscape Surface Area Ratio ²	Minimum Lot ³		Maximum Building		Minimum/Maximum Setbacks ⁴			
			Area	Width	Height	Frontage Build Out	Front	Side Street	Side ^{5,6}	Rear ⁶
Graphic Legend			A	B	C	D	E	F	G	H

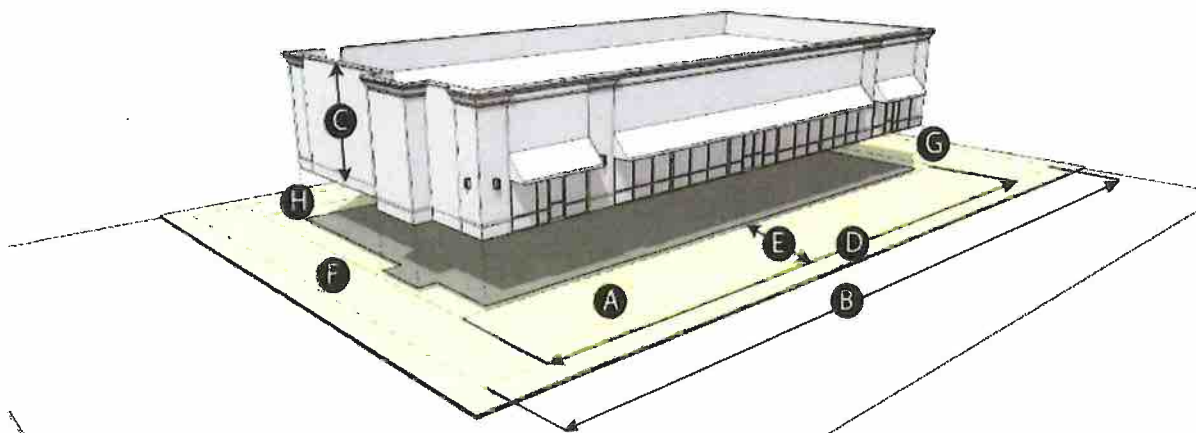
2. Minimum common civic or open space is calculated based on a percentage of the overall subdivision and applies to residential and mixed-use districts. Landscape surface area ratio is calculated based on a percentage of the lot and applies to nonresidential developments.
3. Minimum lot area is calculated on a "per dwelling unit" basis. Minimum lot width is calculated for the entire lot.
4. Where "##/##" is shown, the first number (including zero) is the minimum setback and the second number is the maximum. If only one number is shown, then maximum setback does not apply.
5. Zero feet is the side setback for the shared party wall between townhouse units.
6. For nonresidential uses, applies if adjacent to a residential use or zoning district. 0' for nonresidential uses if adjacent to any other use or zoning district.
7. The maximum number of stories and/or height of an apartment, commercial, or mixed-use buildings may be increased by Special Use Permit as set forth in [Section 156.C.005, Special Use Permit Standards](#).

Figure 156.B.005-1

Housing and Building Type Illustrations

Commercial Building

Minimum Lot		Maximum Building		Minimum / Maximum Setbacks			
A = Area	B = Width	C = Height	D = Frontage Build Out	E = Front	F = Street Side	G = Side	H = Rear



(City of Marshalltown)
Zoning Ordinance
Handbook - 212 pp

Variances

The board of adjustment has the power to:

Authorize upon appeal in specific cases such **variance** from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. Iowa Code §§ 335.15 (counties) and 414.12 (cities).

A variance is an authorization to allow a landowner to do something that is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner. Iowa courts have set out specific criteria that must be satisfied before the zoning board of adjustment may find that an unnecessary hardship exists, sufficient to grant a landowner a variance. The landowner must satisfy all three parts of the test to be granted a variance:

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2. The plight of the landowner is due to unique circumstances and not to general conditions in neighborhood, and
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Remember that a variance should protect a landowner's property right, not grant a landowner a special privilege unavailable to other landowners.

MARSHALLTOWN

I O W A

TO: Board of Adjustment

FROM: Hector Hernandez, City Planner

DATE: March 19, 2024 – Meeting Date

SUBJECT: **VARIANCE request for 834 & 836 W Merle Hibbs Blvd**

Request: An application for a variance request has been received from Timothy D & Sara L Nichols property owners of 834 & 836 W Merle Hibbs Blvd. The request is to allow to be built within the 25' Setback.

Current Zoning Classification: Current Zoning Classification is Medium-Density Residential (RM). Medium-Density Residential is single-family and duplex homes, townhomes, or small multiple-family developments at a density of 6-18 units per acre. The infill option promotes efficient use of land, infrastructure, and other resources and allows for additional density and land uses compared to conventional.

Comprehensive Plan Designation: The proposed land use in the Marshalltown Comprehensive Plan 2030 is residential.

Staff Review: Table 156.B.005-1 Residential District Lot and Building Standards under Medium Residential (RM) setbacks for the rear are 25' and for the side 5 for Single-Family Attached.

Prohibitions and Exceptions. Some requests for relief are not within the jurisdiction of the Board, and are therefore, either prohibited or not subject to this Section. The prohibited requests are:

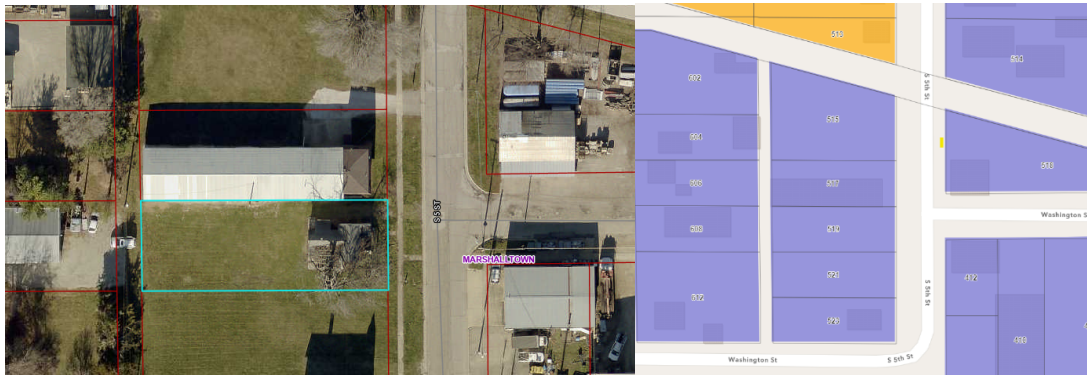
- a) **Use.** Variances that would allow a use in a district in which the use is prohibited or which would constitute a change in district boundaries;
- b) **Limited Use or Special Use.** Variances that would modify any requirements that are set out in Section 156.C.004, Limited Use Standards and Section 156.C.005, Special Use Standards;
- c) **Nonconformities.** Variances that would have the effect of making existing nonconforming structures, site improvements, parking, or landscaping conforming;
- d) **Conditions of Approval.** Variances from the terms of one or more conditions of approval imposed by a development review body described in Article I, Development Review Bodies. Modifications to conditions of approval shall be sought from the body that granted the approval.
- e) **City's Code of Ordinances.** Variances that would modify any requirements within the City's Codes of Ordinance, including but not limited to the Building Code.
- f) **Other Laws or Regulations.** Variances to state or federal laws are prohibited unless such authority is expressly granted to the City.

C. Review Criteria

Housing & Community Development

24 North Center Street, Marshalltown, IA 50158 - Tel. (641) 754-5756 - Fax (641) 754-5742
The City of Marshalltown collaborates to provide a welcoming, safe, vibrant, and growing community.

- a) **Not Self Imposed.** The granting of the Variance is not based on a hardship which is self-imposed;
- b) **Not Based on Cost.** The hardship is not based solely on the cost of complying with the regulation, but is based on the particular physical surroundings, shape, or topographical conditions of the subject property;
- c) **Unique Circumstances.** The hardship is based on circumstances that are unique to the property for which the Variance is sought and not circumstances common to other properties;
- d) **Minimum Necessary Relief.** The Variance requested is the minimum necessary that will make possible a permitted use of the land, building, or structure;
- e) **Commonly Enjoyed Rights.** A literal interpretation of the provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located; and
- f) **Not A Special Privilege.** Granting the variance will not confer on the applicant any special privilege that is denied to other lands or structures in the same district.



A. Effect of Approval

- a) **Particular Variation.** Issuance of a variance shall authorize only the particular variation that is approved in the variance request. A variance shall run with the land and not be affected by a change in ownership.
- b) **Other Approvals.** Development authorized by the variance shall not be carried out until the applicant has secured all other development approvals required by this ZO. Approval of a variance does not guarantee that the development shall receive subsequent approval for other development review applications unless the relevant and applicable portions of this Zoning Ordinance or any other applicable provisions are met.

Plan & Zoning Commission Recommendation: In order to approve a Variance, the Board of Adjustment shall make affirmative findings on all of the applicable decision criteria listed above.

The attached Variance Fact Sheet from ISU Extension is included for reference from the recent board training

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MARSHALLTOWN

— I O W A —

HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT

36 North Center Street, Marshalltown, IA 50158

Ph: 641-754-5756 Fax: 641-754-5742

www.marshalltown-ia.gov

Variance Application Packet

Purpose: Zoning regulations include specific development standards. There are occasions, however, when the strict application of such standards may be inappropriate because of unique characteristics of the property. The variance procedure is designed to permit minor adjustment to the zoning regulations where there are unique or extraordinary circumstances applying to a parcel of land or building that prevent the property from being used to the extent intended by the zoning. Unique circumstances may include factors such as the size, shape, topography, vegetation, wetlands, or other unique characteristics of the land.

Pre-Application Meeting: The applicant is required to meet with the Zoning Administrator prior to submitting an application to discuss the feasibility of the request as well as any possible alternatives that may eliminate the need for a variance or improve the chance of the variance being granted. A preliminary site plan should be brought to this meeting to review the project design as it relates to the zoning requirements.

Application Packet: Applications will not be accepted unless complete. All required items must be submitted with the application. Failure to complete and submit all the required materials as a part of this application will result in a delay in accepting your application until it is complete.

Submission Deadline: The complete application with fee must be submitted by 4:30 p.m. three weeks prior to the scheduled meeting date to the Housing & Community Development Department Office, located at 36 N. Center Street.

Board Meetings: The Board of Adjustment considers the facts presented by the applicant in the application and testimony given at the public hearing, and makes the final decision, based on the standards in the Ordinance. The Board meetings are tentatively scheduled for 5:00 p.m. on the third Tuesday of each month in the City Council Chambers, second floor of City Hall, 10 W. State Street. Attendance at the meeting is required.

It is the burden of the property owner to provide sufficient facts with this application and at the Board of Adjustment meeting to support a finding that all the standards for approval have been met. The concurring vote of three (3) members of the Board is necessary to decide any issue before the board regardless of the number of members present at the meeting. The Board is a five (5)-member board. Appeals to the decision of the Board of Adjustment can be made in District Court.

Notifications: The City will place a sign on the property to notify the public that a variance request has been submitted. The sign includes the city's phone number so that concerned individuals will have an opportunity to learn about the proposal and can present information on this matter to the board at the public hearing. A notice of public hearing is also published in the newspaper.

Date Submitted & Fee Paid: _____

Hearing Date: _____

Variance Application Form

36 N. Center Street, Marshalltown, IA 50158 Ph: 641-754-5756 Fax: 641-754-5742

www.marshalltown-ia.gov

All items listed must be submitted with this application:

Failure to complete and submit all the required materials as a part of this application will result in a delay in accepting your application until it is complete.

- ✓ **A site plan, drawn in ink and to scale, which clearly shows the variance being sought. This site plan shall not be larger than 11" X 17." And must include:**
 - Dimensioned property lines indicating any easements;
 - Location & identification of adjacent streets and alleys;
 - Location and size of all existing and proposed buildings and structures (include distances to all property lines and distances between buildings and structures.);
 - Dimensioned driveways and parking areas; and
 - Any other pertinent information necessary to fully understand the need for a variance.
- ✓ **Site photographs** showing all views of the property, including any special features such as topography and existing and adjacent structures. **Please note:** Materials submitted with the application or presented as evidence during the public hearing will not be returned and must be kept as a part of the public record.
- ✓ **Completion of all of the following questions included in this application.**
- ✓ **Legal description of the property.** The property owner should have a copy of the legal description. If not, owners may obtain a copy of the recorded deed, which contains the legal description, from the Marshall County Recorder's Office for a fee.
- ✓ **Application fee.** A fee of **\$150 for owner-occupied residential properties** and a fee of **\$200 for any other property** is required payable to "City of Marshalltown." The fee must be paid when the application is submitted to the Housing Department.

Please type or print legibly in ink.

Property Address: 834-836 W Merle Hibbs, Marshalltown, IA 50158(MERLE HIBBS WEST SUBLOT 8, MERLE HIBBS WEST SUBLOT 7)	
Owner: Timothy D & Sara L Nichols	
Mailing Address: 2209 Sugar Creek Ln, Marshalltown, IA 50158	
Phone: 641-750-0117	Fax:
Email Address: tim@tim-nichols.com	
Owner's Agent (if applicable):	
Agent Phone:	Agent Fax:

All of the following questions must be answered. The board will use this information to review your request. Additional information may be attached if necessary. Contact the Housing & Community Development Director at 641-754-5756 with any questions.

The applicant makes the following request:

Allow the duplex to be 3' inside the 35' front lot setback, 4' within the rear setback and 1' inside west side setback to build a duplex that conforms to the other duplex's in the association and is outside of the flood plain.

Please state your hardship.

Setbacks due to it being the end lot does not allow for building duplexes that conform to the other duplex's in the association while located outside of the flood plain.

In order to grant a variance, the Board of Adjustment must make a finding of unnecessary hardship. The hardship must be related to the physical aspects of the property and not a personal hardship. The granting of a variance should not merely serve as a convenience to the applicant. **To support a finding of unnecessary hardship, the board must find, based upon your evidence, that all of the following are met:**

1. **The land in question cannot yield a reasonable return if used only for a purpose allowed in the district.** State how you will lose all beneficial use and/or enjoyment of the property if the variance is not granted. You may include supporting evidence from a professional appraiser, real estate professional, or other professional. The Board may require documentation of loss of value in order to grant this variance.

The proximity of the land to the flood plain creates a situation where if a duplex that conforms to the other duplex's in the association is built it was be placed in a flood zone which will significantly devalue the property since flood insurance will be required by lenders.

2. **This variance is required because of the unique circumstances of this property and not the general conditions of the neighborhood.** The applicant must show that physical circumstances (such as an odd-shaped lot or difficult topography) on the property are unique to this property and unlike other properties in the vicinity. Also, the hardship should not be self-inflicted.

The end lot size and flood plain location makes it too small by a few feet to meet the zoning requirements for setbacks.

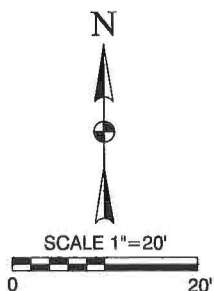
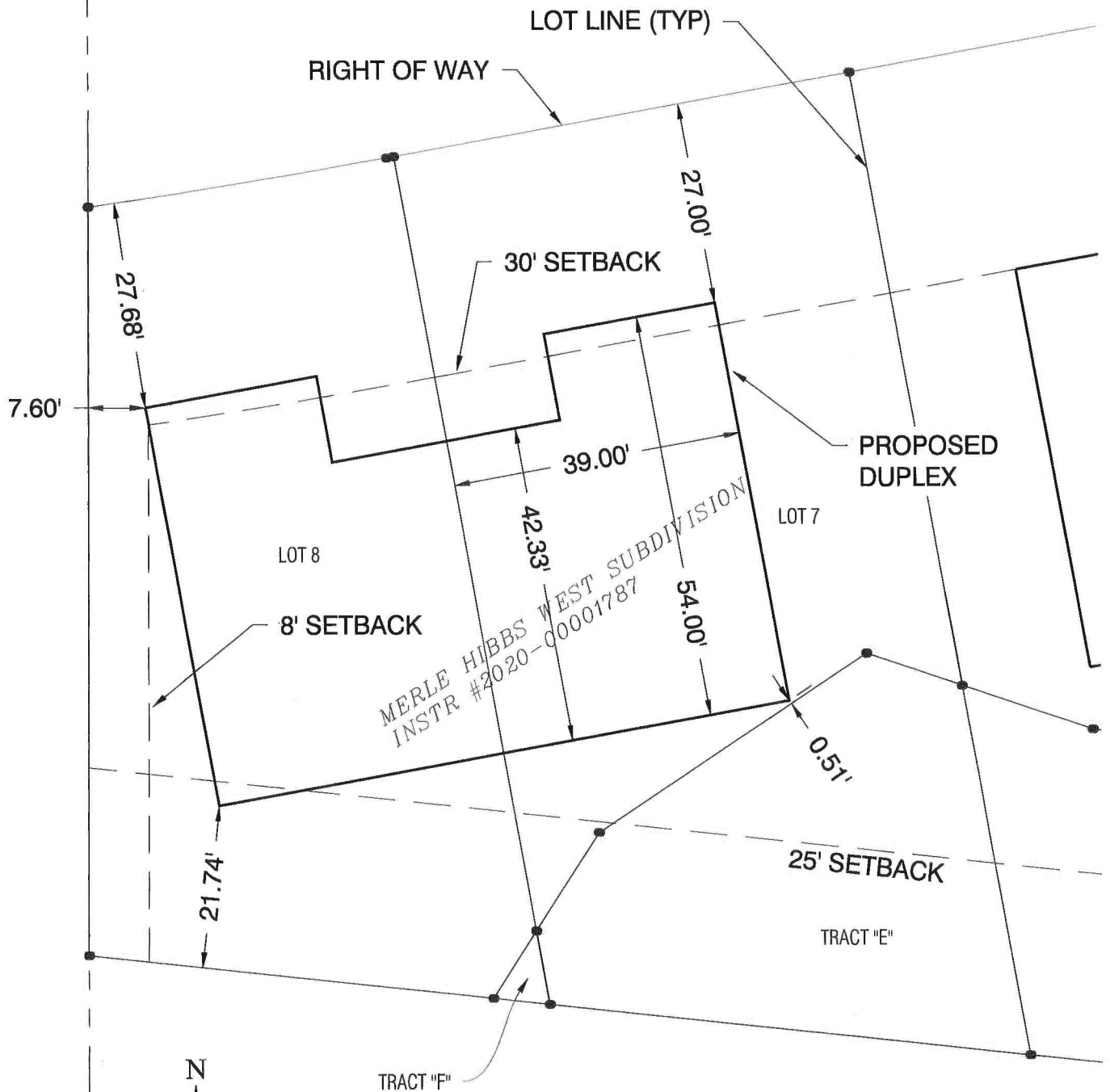
3. **The proposal will not alter the present character of the area or seriously affect any adjoining property.** The applicant must show that the proposal is compatible with the character of the surrounding area.
The variance will allow the duplex to be built in an identical manner as the neighboring duplexes in the association.
4. **The variance will not be in contrary to the public interest.** The applicant must present information to indicate the variance will not impair an adequate supply of light and air to adjacent property, will not unreasonably increase the congestion in public streets or endanger public safety, nor will it devalue nearby property.
The variance will allow for continuity of appearance in the neighborhood and is beneficial to the public interest.
5. **The general intent and purpose of the Zoning Ordinance is protected.** A variance must be consistent with the intent of the Zoning Ordinance and the Comprehensive Plan. Is there another option which you could pursue that would not require a variance? If alternatives exist which do not require a variance, the proposal would not be consistent with the intent of the Zoning Ordinance and Comprehensive Plan.
The intent of the lot development in this area was to allow for the development of duplexes of similar appearance this variance allows for that to occur.

Additional Comments and Information:

Attach additional information as necessary.

As evidenced by the signature(s) below, I (we) certify that I (we) have been denied a building/zoning permit, that I (we) have submitted all the required information to appeal for a variance, and that said information is factual.

Owner Signature: 	Date: 2/19/2024
-OR- Agent Signature:	Date:



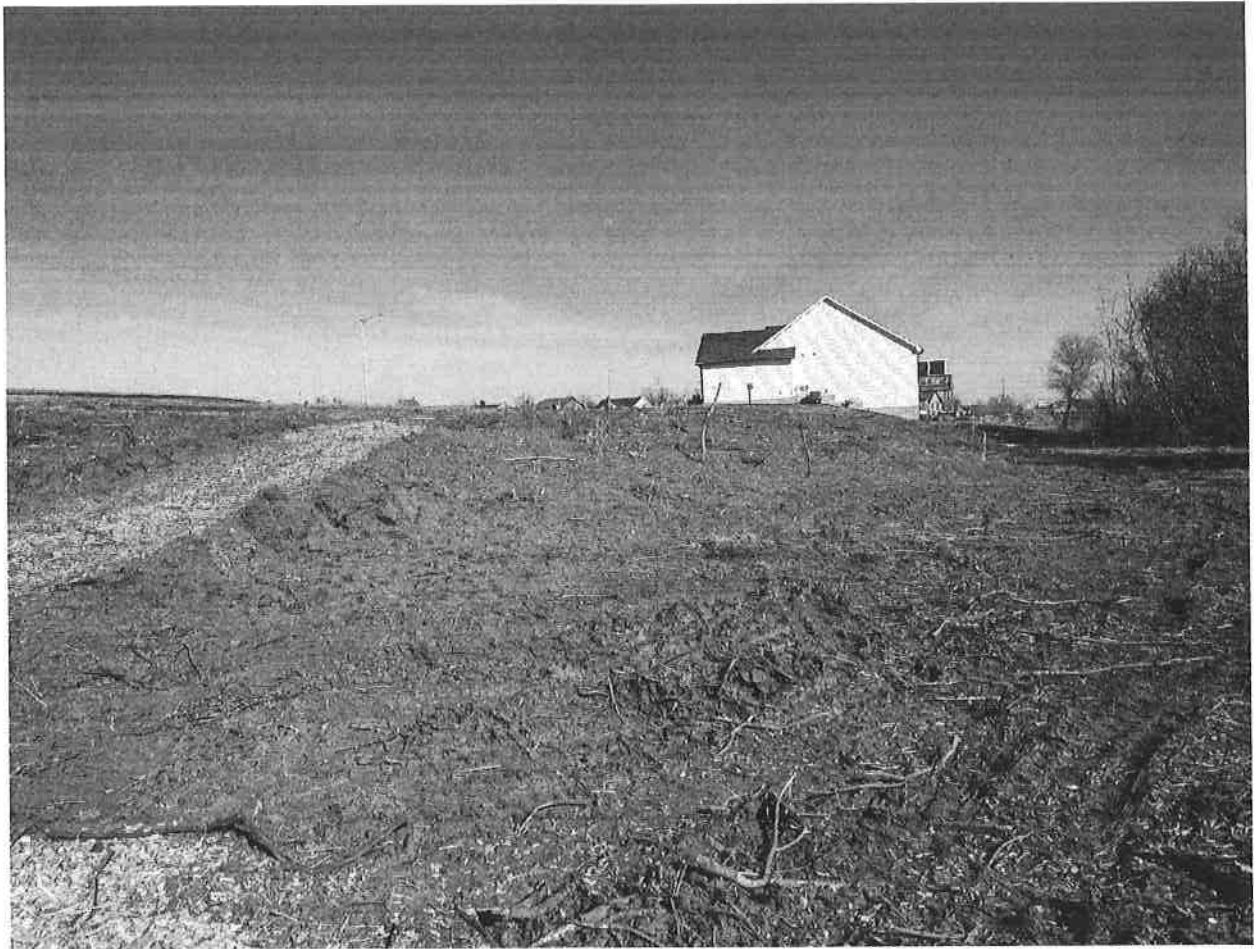
DUPLEX LAYOUT EXHIBIT
LOTS 7 AND 8
MERLE HIBBS WEST SUBDIVISION

PREPARED ON 2/19/2024



Clapsaddle-Garber Associates, Inc
16 East Main Street
Marshalltown, Iowa 50158
Ph 641-752-6701
www.cgaconsultants.com







Unique Doc ID: 4003848
Recorded: 8/10/2023 at 2:56:48.377 PM
County Recording Fee: \$17.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$20.00
Revenue Tax: \$30.40
Marshall County, Iowa
Nan Benson - Recorder
Doc. Number: 202300002979

WARRANTY DEED
Recorder's Cover Sheet

Preparer Information:

Benjamin J. Roth, 1400 University Ave., Suite D, Dubuque, IA 52001, Phone: 563-557-1611

Taxpayer Information:

Timothy D. Nichols and Sara L. Nichols, 2209 Sugar Creek Lane, Marshalltown, IA 50158

Return Document To:

Timothy D. Nichols and Sara L. Nichols, 2209 Sugar Creek Lane, Marshalltown, IA 50158

Grantors:

Bedrock Development Group, LLC

Grantees:

Timothy D. Nichols and Sara L. Nichols

Legal Description:

See Page 2

Document or instrument number of previously recorded documents:

N/A



WARRANTY DEED

For the consideration of Ten Dollar(s) and other valuable consideration, **Bedrock Development Group, LLC**, a limited liability company organized and existing under the laws of Iowa, does hereby Convey to **Timothy D. Nichols and Sara L. Nichols, husband and wife**, as joint tenants with full rights of survivorship and not as tenants in common, the following described real estate in Marshall County, Iowa:

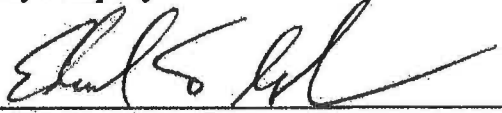
Lot 7, Merle Hibbs West Subdivision, located in Marshalltown, Marshall County, Iowa.

Grantors do Hereby Covenant with grantees, and successors in interest, that grantors hold the real estate by title in fee simple; that they have good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances except as may be above stated; and grantors Covenant to Warrant and Defend the real estate against the lawful claims of all persons except as may be above stated. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the real estate.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: July 24, 2023.

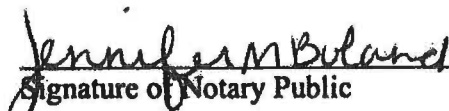
Bedrock Development Group, LLC, a limited liability company

By 
Ed Graham, Member

STATE OF IOWA, COUNTY OF Dubuque

This record was acknowledged before me on this 24th day of July 2023, by Ed Graham, as Member, of Bedrock Development Group, LLC, an Iowa limited liability company.




Signature of Notary Public

Unique Doc ID: 4003855
Recorded: 8/11/2023 at 9:14:48.190 AM
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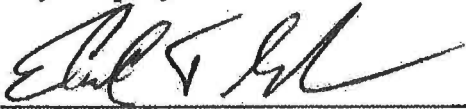
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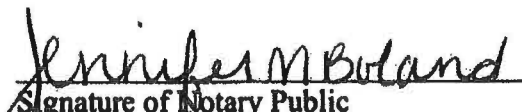
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