

**CITY OF MUSKEGO  
ZONING BOARD OF APPEALS  
AGENDA**

10/27/2022

6:00 PM

Muskego City Hall, W182 S8200 Racine Avenue

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**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**STATEMENT OF PUBLIC NOTICE**

**APPROVAL OF THE MINUTES**

Approval of the Minutes of the July 22, 2021 Meeting.

[ZBA Minutes 20210722.pdf](#)

**NOTICE OF CLOSED SESSION** PLEASE TAKE NOTICE that the Board of Appeals of the City of Muskego may convene, upon passage of the proper motion, into closed session pursuant to Section 19.85(1)(a) of the State Statutes for the purpose of deliberating concerning cases which were the subject of a quasi-judicial hearing; said cases being the appeals described below. The Board of Appeals will then reconvene into open session.

**NEW BUSINESS**

**Appeal #01-2022**

Petitioner: James & Nancy Moeller

Property: W179 S6700 Muskego Drive / Tax Key No. 2174.863

REQUESTING: Under the direction of Section 400-18 of the Municipal Code (Zoning – Zoning Board of Appeals), the petitioner seeks the following variance:

Chapter 400-23 A. – Building Location

*Location restricted. No building shall be hereafter erected, structurally altered or relocated on a lot except in conformity with the following locational regulations as hereinafter specified for the district in which it is located.*

A front/right-of-way setback of 40-feet is required from the eastern side lot line along Ranch Drive. The petitioner seeks a setback of 16.6 feet from the east side lot/right-of-way line for the allowance of a garage addition and is therefore requesting a 23.4-foot variance from the required front/right-of-way setback along Ranch Drive.

[ZBA 01-2022 SUPPLEMENT Moeller.pdf](#)

[ZBA 01-2022 MAP.pdf](#)

[ZBA 01-2022 SUBMITTAL Moeller.pdf](#)

**OPEN SESSION**

## **MISCELLANEOUS BUSINESS**

### **ADJOURN**

#### **NOTICE**

IT IS POSSIBLE THAT MEMBERS OF AND POSSIBLY A QUORUM OF MEMBERS OF OTHER GOVERNMENTAL BODIES OF THE MUNICIPALITY MAY BE IN ATTENDANCE AT THE ABOVE-STATED MEETING TO GATHER INFORMATION; NO ACTION WILL BE TAKEN BY ANY GOVERNMENTAL BODY AT THE ABOVE-STATED MEETING OTHER THAN THE GOVERNMENTAL BODY SPECIFICALLY REFERRED TO ABOVE IN THIS NOTICE.

ALSO, UPON REASONABLE NOTICE, EFFORTS WILL BE MADE TO ACCOMMODATE THE NEEDS OF DISABLED INDIVIDUALS THROUGH APPROPRIATE AIDS AND SERVICES. FOR ADDITIONAL INFORMATION OR TO REQUEST THIS SERVICE, CONTACT MUSKEGO CITY HALL, (262) 679-4100.

CITY OF MUSKEGO  
ZONING BOARD OF APPEALS  
MINUTES  
07/22/2021  
6:00 PM  
Muskego City Hall, W182 S8200 Racine Avenue



**CALL TO ORDER**

Chairperson Blumenfield called the meeting to order at 6:00 PM.

**PLEDGE OF ALLEGIANCE**

Those present recited the Pledge of Allegiance.

**ROLL CALL**

Present: Dr. Blumenfield, Mr. Boschert, Mr. Dyszelski, Dr. Kashian, and Mr. Schneiker  
Excused: Mr. Robertson and Mr. Harenda.

**STATEMENT OF PUBLIC NOTICE**

The meeting was noticed in accordance with the open meeting laws.

**NOTICE OF CLOSED SESSION** *PLEASE TAKE NOTICE that the Board of Appeals of the City of Muskego may convene, upon passage of the proper motion, into closed session pursuant to Section 19.85(1)(a) of the State Statutes for the purpose of deliberating concerning cases which were the subject of a quasi-judicial hearing; said cases being the appeals described below. The Board of Appeals will then reconvene into open session.*

**OLD BUSINESS**

**NEW BUSINESS**

**Appeal # 01-2021** Petitioner: Mitch Golla on behalf of the Golla Trust

Property: W180 S8091 Pioneer Drive / Tax Key No. 2222.986

REQUESTING: Under the direction of Section 400-18 of the Municipal Code (Zoning – Zoning Board of Appeals), the petitioner seeks the following variance:

Chapter 400-167C.(2)(a) – Accessory Structure Size Limits

(2) Area. Subject to the open space requirements of the zoning district, the total square footage of all accessory structures subject to this section is permitted as follows:

(a) Square footage permitted by right: the greater of 720 square feet or 60% of the assessed floor area of the principal structure.

A total accessory structure size limit on the above noted property is 720 square feet in area. The petitioner seeks to be allowed to keep two existing accessory structures, totaling 997 square feet, on

their recently split 0.459 acre property and is therefore requesting a 277 square foot variance from the maximum total allowed accessory structure size limit.

Dr. Kashian swore in the following:  
Mitch Golla, Petitioner, 642 East Village Green Court, Oak Creek  
Rick Petfalski, Mayor City of Muskego  
Aaron Fahl, Associate Planner

Mitch Golla explained that they are petitioning for the variance in order to keep the outbuildings on a recently split parcel. The hardship is that they are being wrongfully penalized for having a small house. The house is only 767 square feet regulated under prior minimum housing standards as the current minimum standards are 1,100 square feet for a single-family house. The small house size does not allow for the necessary storage, where the additional outbuilding size allows for this storage area including 2 vehicles, lawnmower, snowblower, tools and other items. Being required to move the outbuildings is an unnecessary burden, or hardship. The petitioner is not asking for anything new, but to keep the existing outbuildings.

Dr. Blumenfield asked if the petitioner was aware of the restrictions on lot sizes, where the petitioner stated no, he was not aware. Then the petitioner stated that when they were in process of the lot division they were informed late in the process of the restrictions. They were not aware of this issue until the second engineering review.

Dr. Blumenfield asked if before the land was subdivided they were aware of the restrictions the City had. The petitioner said yes at the last minute they were made aware.

Dr. Blumenfield asked if the petitioner had worked with anyone with the knowledgeable of the City regulations. The petitioner stated that he worked with their surveyor and Adam, the Planning Manager.

Dr. Blumenfield asked if before the subdivision went to Council that there was an issue. The petitioner stated that they were presented with options of changing the lot lines or try for a variance in front of the Board of Appeals.

The hardship is that they are being wrongfully penalized for a small house.

Mr. Boschert asked for clarification of the number of outbuildings and what is being used in the outbuildings. The petitioner stated that the yard tools and various tools are one of the outbuildings and they would not fit in the other outbuilding and be organized.

Dr. Kashian asked what they are looking for, which the petitioner stated they wanted to keep the outbuildings that they currently have. Dr. Kashian said that the City allowed them to subdivide the property knowing that the subsequent result is that the petitioner would need to remove an outbuilding. Dr. Kashian said that the City allowed the property to be split knowing that it was non-conforming. Dr. Kashian questioned how the City would allow this to happen and then tell them they have to tear down an outbuilding. Dr. Kashian said that if this was an urgent event it would be necessary prior to splitting the land.

Mr. Boschert asked for a sequence of events for when the land was subdivided and when they were made aware of the city requirements.

Mayor Petfalski stated that the Golla's wished to subdivide their property and very late in the process the accessory structure issue arose. It really wouldn't make any sense for them to redo their land division when there was an option to come before the Zoning Board of Appeals for a hopeful chance to grant the variance. Without the variance they will need to go back and redraw the property lines that may not be in the City's best interest. The Mayor stated that when drafting the accessory structure ordinances as an alderman twenty years ago the intent wasn't to limit the amount of accessory structures but to allow for more square footage. The did not take into consideration the small footprint of some homes at that time. The argument of being penalized for a small home is actually true and if thought of at the time of drafting the ordinance it would have been taken care of and may in the future. If you look at the structures on the property now, it would be the same as what they are allowed by right if the house was built to minimum standards. The accessory structures are not causing any issues with setbacks or anything else and the reason there are accessory structure regulations is so there aren't overly cluttered yards.

Once they were made aware of the needed changes to the subdivision they could have made the changes but the mayor thought they were better off coming to the Board of Appeals to work this out. He also thought having the petitioner redraw the property lines would be a disservice to the community.

Dr. Blumenfield asked if Mayor Petfalski was aware of the hardship requirement for variance approvals. Mayor Petfalski stated that he is aware of the authority of the Board and it is based on the Boards interpretation of a hardship.

Mr. Boschert asked Mayor Petfalski to elaborate on the hardship. Mayor Petfalski stated that the hardship is the allowable structures for the property. The spirit of the ordinance when written for the total square footage of the overall structures, which if all square footage is added up, they are exactly where they would be if the house was built to 1,100 square feet. The other hardship is that the City allowed the CSM to go through without requiring them to tear down the accessory structure before being approved. Now that it is approved the City is requiring them to remove square footage from the accessory structure.

Mr. Boschert asked if a land division triggers enforcement of all revised building codes.

Associate Planner Fahl stated that there was a two-lot Certified Survey Map that was approved and recorded and the accessory structures are more than what is allowed based on the smaller lot size. When this was a larger lot all of the accessory structures were fine. The new lot is smaller and thus only 720 square feet of accessory structures are allowed on the new lot. The two accessory structures have been there over 70 years with the house at the same timeframe. It may have been noted late that the outbuildings exceeded the limit, there is a note on the recorded Certified Survey Map about removing or reducing the footprint of the accessory structures within six months of the recording of the Certified Survey Map. As the mayor said it may have been noted later and they would need to redraw the property lines, but the note is on the recorded document so to say they were not aware is questionable. Associate Planner Fahl explained that an accessory structure bonus is allowed when the property is larger than 40,000 square feet or the house is larger than 1,200 square feet and neither condition exist on the new lot. The small existing house not allowing for storage is a self-imposed hardship. Staff did not feel there was a hardship based on the zoning code and therefore recommended denial of the appeal.

Mr. Boschert asked a land division trigger enforcement of all current building codes. Associate Planner Fahl said that during a land division is when the City would look at issues like this and would enforce Zoning codes not building codes.

Mr. Boschert asked that then there is no grandfathered clause. Associate Planner Fahl said that no, there is no grandfathering in this case because the recent land split. The structures were fine before the land split because of the property size bonus of 40,000 square feet or larger. The building codes back then allowed for a smaller house, but it was the lot size where the bonus comes from to meet the ordinance. The minimum lot size of 20,000 square feet does not allow for this bonus.

Mr. Boschert asked if the denial goes forward, what are the other options available for the petitioner. Associate Planner Fahl said that if the appeal is denied the first option is to remove the structures or decrease the square footage and the second option is to redraw property lines that may or may not be advantageous to the City.

Dr. Kashian asked if he were to subdivide a lot and the location of the house was grandfathered in, would the City retroactively have him move the house. Associate Planner Fahl said no, the land division wouldn't be allowed if it would make the house more non-conforming. Dr. Kashian asked how the board is making this more non-conforming. Associate Planner Fahl said that they are asking to keep the existing buildings, not add anything. Mr. Kashian said that the City is making a statement that those who own non-confirming lots cannot make improvements to their property. Associate Planner Fahl said that no, this wasn't non-confirming before the land split.

Mr. Kashian said this is a failure of administrative process. He said it is incredibly easy to look at a plat map early in the process and add up the numbers and divide early in the process. Mr. Kashian said it should have never gotten to the end of the process. Associate Planner Fahl said it was an oversight.

**DELIBERATIONS:**

Mr. Boschert wanted clarification from Mr. Kashian that because there is administrative failure that that bypasses the three-step test.

Mr. Kashian said that he thinks the Board has an obligation as standards are only applicable if you establish the standards throughout the process. There was a failure in the process and so the board needs to make amends for it. The hardship is not self-imposed by the landowner, but it wasn't mitigated by the community. In the future the City needs to be crystal clear in the process to guide the community before they put money on the table and go down a path that is obviously not a path they wanted to go down. They could add on to the house to have more square footage of accessory structure, but these are not solutions in the 8<sup>th</sup> or 9<sup>th</sup> inning and the Board needs to recognize this.

Mr. Schneiker said that in the past topography was identified as a hardship as well as storage and asked if there is a basement. Yes, there is a basement. As for garage sizes, standards now are for two-car garages, which justifies the size of the garage.

Mr. Dyszelski asked if there can be a limit on the approval, i.e. something where when the house is sold the accessory structure would need to be removed. Dr. Blumenfield said no.

Mr. Boschert then said that he understands the administrative failure, but struggling with unnecessary hardship. Dr. Kashian said this meeting was unnecessary and the City needs to reflect on how the process works with guiding people so they don't go down a path like this. They could have subdivided this without telling the City and then the City would show up and tell them they have to tear the building down. It is giving guidance to the community as soon as they can. It is a learning moment.

Mr. Boschert then asked why he is being asked to play the role of legislature then.

Dr. Blumenfield then said that this is a unique situation. She understands the house is small, but also understands what exists there according to the statement provided as the hardship and it seems as though there is a lot less being stored there and they could store in a different way if they did not get a variance. Everyone knew this was unique prior to approval and there was going to be issues with the amount of land and floor area with the two/three outbuildings, yet it went forward. It is not the Boards role if that should have been done 20 years ago or stop the subdivision process and fix the ordinance at that time. Mr. Golla said they knew the situation and they could have changed it, the City knew the issue and said they have an option to appeal the issue to the Zoning Board of Appeals. The Board is charged with finding a hardship that is not self-imposed under state law so the variance can be granted. The Board needs to find a hardship legally on behalf of the Board, City and homeowners. The Board does their best job to make sure that what they have to work with is as lenient, and acceptable to the property owners, the City and the Board as possible. So they need to find a hardship and based on the testimony, Dr. Blumenfield does not believe there is a hardship to justify voting in favor of for something that could have been changed before there was an issue.

Mr. Kashian made a motion to approve Appeal #01-2021 for Mitch Golla at W180 S8091 Pioneer Drive / Tax Key No. 2222.986 to be allowed to keep two existing accessory structures, totaling 997 square feet, on their recently split 0.459 acre property and is therefore a 277 square foot variance from the maximum total allowed accessory structure size limit. Mr. Boschert seconded. Upon a roll call vote Appeal 01-2021 was approved 3-2 with Mr. Boschert, Dr. Kashian and Mr. Schneiker voting yes and Dr. Blumenfield and Mr. Dyszelski voting no.

**CLOSED SESSION**

**OPEN SESSION**

**APPROVAL OF THE MINUTES**

Approval of the Minutes of the June 25, 2020 Meeting.

Dr. Kashian made a motion to approve the minutes of the June 25, 2020 meeting. Mr. Dyszelski seconded. Motion to approve the minutes passed unanimously.

## **MISCELLANEOUS BUSINESS**

### **ADJOURN**

Mr. Dyszelski made a motion to adjourn. Mr. Boschert seconded. Motion to adjourn passed unanimously.

Respectfully submitted,

Aaron Fahl, AICP  
Associate Planner

**City of Muskego**  
**City Representative Brief**  
**Zoning Board of Appeals Supplement 01-2022**

*For the meeting of: October 27, 2022*

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**REQUESTING:**

1. Under the direction of Chapter 400-23 A. – Building Location

*Location restricted. No building shall be hereafter erected, structurally altered or relocated on a lot except in conformity with the following locational regulations as hereinafter specified for the district in which it is located.*

A front/right-of-way setback of 40-feet is required from the eastern side lot line along Ranch Drive. The petitioner seeks a setback of 16.6 feet from the east side lot/right-of-way line for the allowance of a garage addition and is therefore requesting a 23.4-foot variance from the required front/right-of-way setback along Ranch Drive.

**APPELLANT:** James & Nancy Moeller

**LOCATION:** W179 S6700 Muskego Drive / Tax Key No. 2174.863

**CITY'S POSITION PRESENTED BY:** Adam Trzebiatowski AICP, City Representative

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**BACKGROUND**

Based on aerial photographs, the owner of this property installed a shipping-type container adjacent to their garage during the 1990's. Typically shipping-type containers are not allowed on properties as they do not meet the architectural requirements for accessory structures, which a container of that type would have been considered. The shipping-type container on site was never approved to be located on site. Sometime since 2020 the owners removed the shipping container and constructed an addition to the garage. A building permit is required for an addition to an accessory structure, including a garage, which was never applied for, reviewed, approved or inspected in this case. Chapter 400-167 of the Zoning Code identify restrictions for which the detached accessory structures in residential districts may be allowed including location, area, height, the number of accessory structures, architectural requirements and use of the accessory structures.

The original detached accessory structure was constructed sometime in the 1950's or early 1960's. Our property files do not include a permit for the original structure, but the original structure is not what is at issue. Because the original detached accessory structure was constructed prior to the current Zoning Code adoption, it is considered a legal non-conforming structure, meaning that the structure may remain as-is and be properly maintained, but the code states "*No such structure shall be expanded or enlarged except in conformity with the regulations of the district in which it is located, unless said expansions or enlargements do not get any closer than their existing distance to any lot line and shall not exceed 50% of the assessed value*", according to Chapter 400-34 B.

The parcel in question is zoned ERS-3, Existing Suburban Residence District. The property is located at the corners of Muskego Drive, Earl Drive and Ranch Drive, near the northeast portion of Little Muskego Lake. Section 400-23 A. of the code states that no building shall be hereafter erected, structurally altered or relocated on a lot except in conformity with the regulations specified for each district. The setback from the lot lines adjacent to any right-of-way, as identified in in the ERS-3 Existing Suburban Residence District, is 40 feet from the property/right-of-way lines. For this lot, that distance applies to the lot lines

adjacent to all three streets. The location of the unapproved addition to the detached accessory structure is where the variance is being requested.

More specifically, the petitioner is seeking the following variance:

A front/right-of-way setback of 40-feet is required from the eastern side lot line along Ranch Drive. The petitioner seeks a setback of 16.6 feet from the east side lot/right-of-way line for the allowance of a garage addition and is therefore requesting a 23.4-foot variance from the required front/right-of-way setback along Ranch Drive.

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## DISCUSSION

Based upon the information submitted, staff does not see a valid hardship, based on case law and State Statutes, to allow the addition to the existing legal non-conforming detached accessory structure to reduce the street setback 23.4 feet. The addition to the legal non-conforming structure was completed without any permits or review by the City. If a permit would have been applied for, at that time the petitioner would have been made known that the planned addition did not meet the Zoning Code standards and would not have been allowed. Staff would have then, and as part of this process now, been offered alternative options that the owner could move forward with to expand the legal non-conforming detached accessory structure in a way that would not make the structure more legal non-conforming and not require this variance.

The owner has stated in their submittals that they believe there are two hardships causing the need for the variance including:

- *No other location would be practical due to grade differences or elevation and would create major construction to the garage and would impede with the electrical line.*
- *The request is to keep what has been constructed there. The proposal does not look at add or expand anything new.*

Relating to the reasons that the applicant has noted in their application and noted above for their request, here is a summary of the variance standards that are applicable to this case:

1. Zoning Case Law states that “self-imposed hardships” and “circumstances of the applicant” are not grounds for granting a variance. The ERS-3 Zoning District 40-foot street setback applies to many properties in the City and normal storage should be able to be contained in a 454.7 SF structure (which is the existing garage size). The desire for a larger garage is cited in the zoning variance literature as something that should not factor in deciding variance cases as it is a circumstance of the applicant. There is no “right” to have a certain amount of enclosed storage or to have that enclosed storage in a certain location, unless the proposed location meets all zoning regulations.
2. The hardship needs to be the same no matter who lives in the home, regardless of how the owners use the property. There are many homes around the lake that have legal non-conforming structures due to the timeframe that the neighborhoods were originally developed. Submitting the required paperwork for an addition to a legal non-conforming detached accessory structure is required throughout the City and through the review process of obtaining a building permit would reveal the that the location of the addition to the existing structure would not be sufficient based on the Zoning Code.
3. Zoning Case Law states that “lack of objections from neighbors does not provide grounds for granting a variance”, if applicable. No objections have been received as of the drafting of this document, but that alone is not grounds to grant a variance.
4. Zoning Case Law states that the Board may only grant the minimum variance needed, if they are even going to grant any variance. In a case like this where the addition to the legal non-conforming structure was constructed without any building permits and fully within the 40-foot street setback, there does not seem to be an applicable minimum variance since the original building is within the street setback. If the petitioner would have submitted the required information for a building permit for review, this location would have been identified as an issue

during that review and staff would have worked with the petitioner to find a location where the addition or separate detached accessory structure would have met the Zoning Code.

5. Zoning Case Law states that “financial hardship” does not justify granting of a variance. As that applies to this request, any financial impact to relocate and/or remove the unapproved addition is not ground for granting the variance. Also, the cost of any work to the property to prep the land for an addition to the garage is part of any normal construction process/cost and as such said cost is not grounds for granting the variance.
6. Per the *Zoning Board Handbook (2<sup>nd</sup> Addition, 2006)*, using the three-step test which looks at unnecessary hardship, unique property limitations, and no harm to public interest, the following can be found:
  - a. *Unnecessary Hardship* – Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for the permitted purpose (leaving the property owners without any use that is permitted for the property) or would render conformity with such restrictions “unnecessarily burdensome”. The applicants believe compliance would be unnecessarily burdensome and unreasonable to relocate the lean-to storage to achieve compliance. Removing the addition to the building would still provide storage outside the home, while bringing the property into compliance as a legal non-conforming structure.
  - b. *Unique Property Limitations* – Unnecessary hardship must be due to physical limitations of the property. The applicants believe that grade differences or elevation would create major construction to the garage. The photos show that the addition to the detached accessory structure may be lower than the existing structure. However, it appears as though the addition to the legal non-conforming structure, that was constructed without permits or review, has been constructed lower than the original garage without a consistent flat floor so there would be no reason that if the addition was placed to meet the Zoning Code that there would be any significant grade issues that would cause issue. Lean-to’s, or any additions, do not need to be at the same floor height of surrounding structures.
  - c. *No Harm to Public Interest* – A variance may not be granted which results in harm to public interest. There is no harm to the public interest whether the accessory structures are present on site or not, regardless of size.

As it relates to options on this site for additional storage that do not require a variance, there are a few. There is the possibility to place an addition on the north or west sides of the structure. These options would not need a location variance, while still providing additional storage. There also is the option to place a detached structure (shed and/or accessory structure) on the property. Also, there is no “right” to have a certain amount of enclosed storage. The property already contains a 20’ x 22’ detached garage and some type of apparent smaller storage shed, that does not appear to have been approved by the City (which is not part of this variance request).

As it relates to a noted electrical line, the property survey does not show an electrical line. If that is going to be used as a possible hardship, it would need to be shown on the survey so it can properly be documented. If it’s an aboveground line, then there is less chance of impact since these lines can sometimes have things under them and they can also be relocated. If the electrical that has been noted is underground, then it would need to be formally located for further review. Underground lines can also be relocated. In reviewing photos of the site, it was noticed that there is an overhead electrical line, which does not appear to be an issue as it relates to an addition on the north side of the garage. Also, it does not appear to be an issue with an addition on the west side of the garage since the line is much higher than the addition height.

The Board needs to be very careful when viewing requests relating to structures built without permits. These requests need to be viewed as if the requested variance item (in this case the addition) is not yet built. Having a structure illegally constructed before the request for a variance is not a reason to grant a variance or claim any type of hardship (physical or financial) related to relocating/moving it. Also, the Board needs to be careful to review these as to not set a precedent that structures/additions built without permits can just remain. The City does not want it conveyed that unpermitted structures are just allowed

to remain as that is a disservice to all that follow the code requirements upfront and apply for permits before any work is started on site.

Based on the outcome of the Boards decision, if the variance is not granted, then the addition to the detached accessory structure would need to be removed within a reasonable timeframe as assigned by the Board. If the variance is granted as request, a building permit application with formal building plans and a survey must be submitted for permit review. Building permit fees for structures built without permits, also known as after-the-fact permits, are assessed triple permit fees from the Inspection Department. The building permit review process will check to ensure that all other code requirements are met as it relates to planning/zoning, engineering and building inspection. This includes, but is not limited to items such as checking the allowed accessory structure size, open space requirements, construction code compliance, the cost/value of construction cost, etc. As it relates to the cost/value of construction costs, we know that the current garage, even before the unapproved addition, is legal non-conforming. This means that there is a limit to how much the cost of any addition is allow to be. The code stated limit is that all material costs of the addition/expansion cannot exceed 50% of the assessed value of said structure. This does not include labor costs. As part of the preparation of this document it was determined by the Assessor's Office that the existing detached garage has a value of \$5,300. This means that the retail cost of all material for the addition cannot exceed \$2,650. If all code requirements are met and the permit(s) are issued, then the property owners will need to promptly call for proper inspections in order to close out the permit. If the inspections indicate any building code compliance issues, those must be promptly addressed since these issues stem from a violation. The City has not conducted any building inspections yet and we are not aware of the level of compliance, or lack thereof, as it relates to how the addition was built per the Building Code.

**Please see the applicant's full submittal for full details on their request.**

*NOTE: Please remember that the City must base their recommendation upon a valid hardship as defined by State Law and Zoning Case Law. Zoning Case Law states that a hardship must be unique to the property, it cannot be self-created, and must be based upon conditions unique to the property rather than conditions personal to the property owner(s). Case Law also states that a hardship should be something that would unreasonably prevent the owner from using their property for the permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Zoning Board of Appeals needs to find a valid hardship in order to be able to approve a variance request.*

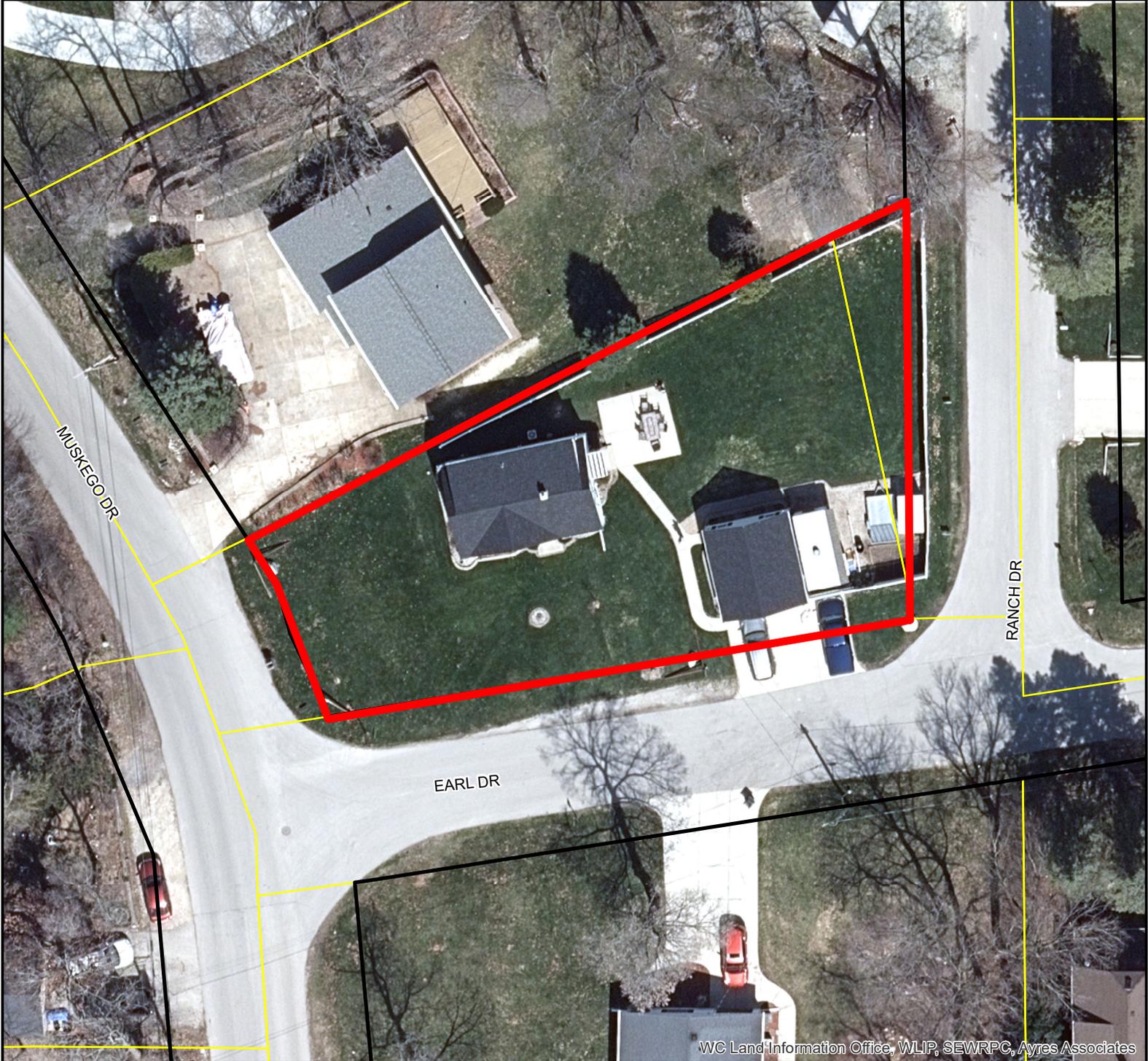
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**BASED UPON THE FOREGOING, THE CITY RESPECTFULLY REQUESTS:**

**Denial of Appeal 01-2022 as proposed, allowing a detached accessory structure addition to be within the setback 16.6 feet from the east property line, which would be a 23.4-foot variance; citing that the addition to the detached accessory structure could be relocated to a different side of the original structure and meet the Zoning Code or removed altogether. The hardships stated are self-imposed/self-created. There is no code requirement requiring more storage on site.**

# Appeal #01-2022

## Supplemental Map



WC Land Information Office, WLIP, SEWRPC, Ayres Associates

James & Nancy Moeller  
W179 S6700 Muskego Drive

-  Agenda Item(s)
-  Right-of-Way
-  Properties



0 30 60 Feet

Prepared by City of Muskego Planning Department

Print Application



# DIMENSIONAL VARIANCE APPLICATION PACKET

## PLANNING SERVICES - COMMUNITY DEVELOPMENT

**Applicant** (Please Print or Type)

Date: 10/3/2022

Name: James & Nancy Moeller

Business Name:

Address: W179 S6700 Muskego DK

City: Muskego

State: WI

Zip Code: 53150

Phone Number: 262-613-2368 (5m)

Fax Number:

Mobile Number:

E-mail Address: MoellerNancy@hotmail.com

**Property Owner** (Please Print or Type) *This section can be left blank if the same as above.*

Name:

Business Name:

Address:

City:

State:

Zip Code:

Phone Number:

Fax Number:

Mobile Number:

E-mail Address:

**Please fill out the information below regarding the proposed dimensional variance.**

Location/Address: W179 S6700 Muskego DK Muskego WI 53150

Tax Key Number(s): MSKC 2174863

Describe the Variance Request:

Asking for acceptance for garage addition from Rensel Dr of 23.4 feet

Describe the effects on the property if the variance is not granted:

Faces practical difficulties as a result of zoning

**Hardship**

List the specific hardship(s) relating to your variance request:

Other than the Existing proposal being Presented no other location would be practical due to grade differences or Elevation and would create major construction to the garage and would impede with the Electric line

**Alternatives**

Describe alternatives to your proposal, such as other locations, designs and construction techniques, etc.

Alternatives that you considered that comply with existing regulations:

Due to existence of garage of how it sits and where the Leanto is there was no other alternative due to the level of the Existing site.

Reasons for not pursuing the alternative(s) listed above:

would change existing grade of property, also would create foundation difficulties, drainage issues and create major construction to the garage.

Alternatives that you considered that require a lesser variance: (if applicable)

To detach Existing Structure from the garage

Reasons for not pursuing the request for a lesser variance: (if applicable)

Architectural cohesive with the Existing garage

**Three-Step Test**

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

Do unique physical characteristics of your property prevent compliance with the ordinance? Explain?

Existing zoning regulations warrants for any type of Lean to Variance

Would granting of the variance be contrary to the public interest? Explain?

Absolutely not, current structure is not visible to general public or neighbors

Why would not getting the variance unreasonably prevent you from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome?

Unreasonable to relocate Lean to Storage to achieve compliance Financially

If this form has been filled out electronically, please click on the "Print Application" button on the top of page 1 or to the right of this text.

Print Application

Once the application is printed/filled out it can be submitted to the Planning Services Division along with any applicable information required for your submittal. Please see the attached sheet to ensure that the proper supporting documents are submitted along with this completed form.

**I HEREBY CERTIFY THAT I HAVE READ AND FULLY UNDERSTAND THE DIMENSIONAL VARIANCE PROCEDURE AND FAILURE TO COMPLY WITH CITY REQUIREMENTS WILL RESULT IN THIS APPLICATION BEING WITHHELD FROM CONSIDERATION BY THE ZONING BOARD OF APPEALS.**

**PLEASE BE INFORMED THAT ANY LEGAL, ENGINEERING AND ADMINISTRATIVE FEES INCURRED BY THE CITY, IN THE PROCESS OF REVIEWING A PROPOSAL OR APPLICATION, BUT NOT INCLUDED IN THIS FEE SCHEDULE, WILL BE CHARGED BACK TO THE PETITIONER / APPLICANT / OWNER / DEVELOPER FOR 100% RECOVERY. (Ch. 3.085/Ord. #909)**

*James Moeller*

Signature of the Property Owner:

Signature of the Applicant (working as "Agent" for the owner):

James Moeller

Print Name:

Print Name:

10/3/2022

Date:

Date:

**For Planning Services Use Only**

Submittal Date:

Staff Signature:

Fees Paid:  Yes  No

Public Hearing/Meeting Date:

The need for a permit was not a consideration as the lean-to was built to replace the existing structure.

The uniqueness of the property and the garage is non-compliant which creates a factor that anything attached to the garage would be non-compliant in our understanding, which does not allow alternatives without a variance.

This then creates a hardship due to the way the lot sits

Any improvements to our property does not allow us to have better use of existing plot of land. We have provided pictures of structure and how it sits on plot of land.

Thank You

James + Nancy Moeller  
179 S6700 Mustang Dr  
Mustang, WI 53150

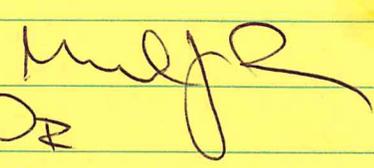
Jim + Nancy Moeller  
W179 56700 Muskego Dr

Do you approve of the Lean-to off  
the side of our garage

① Kim Stanton (no problem)  
W179 56714 Muskego Dr  
Muskego, WI 53150  
414-788-1796

② Kathy Beudey  
W180 56698 Muskego Drive  
Muskego, WI 53150  
262-212-2885

③ Michael L AXTmann  
W179 56618 Ranch DR  
Muskego WI 53150  
414 313-8614  
~~msd.l. ~~

④ MICHAEL DAY   
W179 56616 RANCH DR  
MUSKEGO WI 53150  
414-750-0258

⑤ Nancy Schmidt  
W179 56650 Ranch Dr  
Muskego WI 53150  
262-679-2159

⑥ TROY ADAMS  
 W17956730 MUSKEGO DR  
 MUSKEGO, WI 53150  
 414-704-4025

⑦ Jim & Anna Edlebeck  
 W18056835 MUSKEGO DR  
 MUSKEGO, WI 53150  
 920-737-7066

⑧ Sharon & Peter Passel  
 567 W17927 Pearl Dr  
 Muskego, WI 53150 262-679-3799

⑨ SHAWN & JUNE DOYNE  
 W17956721 MUSKEGO DR  
 MUSKEGO, WI 53150 414-788-7235  
 Mary

⑩ Bob P...  
 W17956690 RANCH DR  
 MUSKEGO WI ~~53150~~ 53150 262-679-3799

# Plat Of Survey

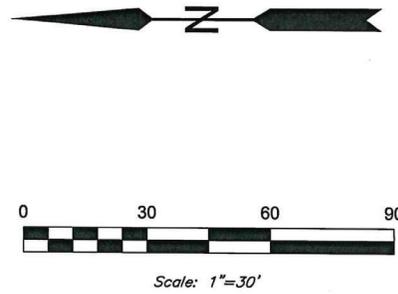
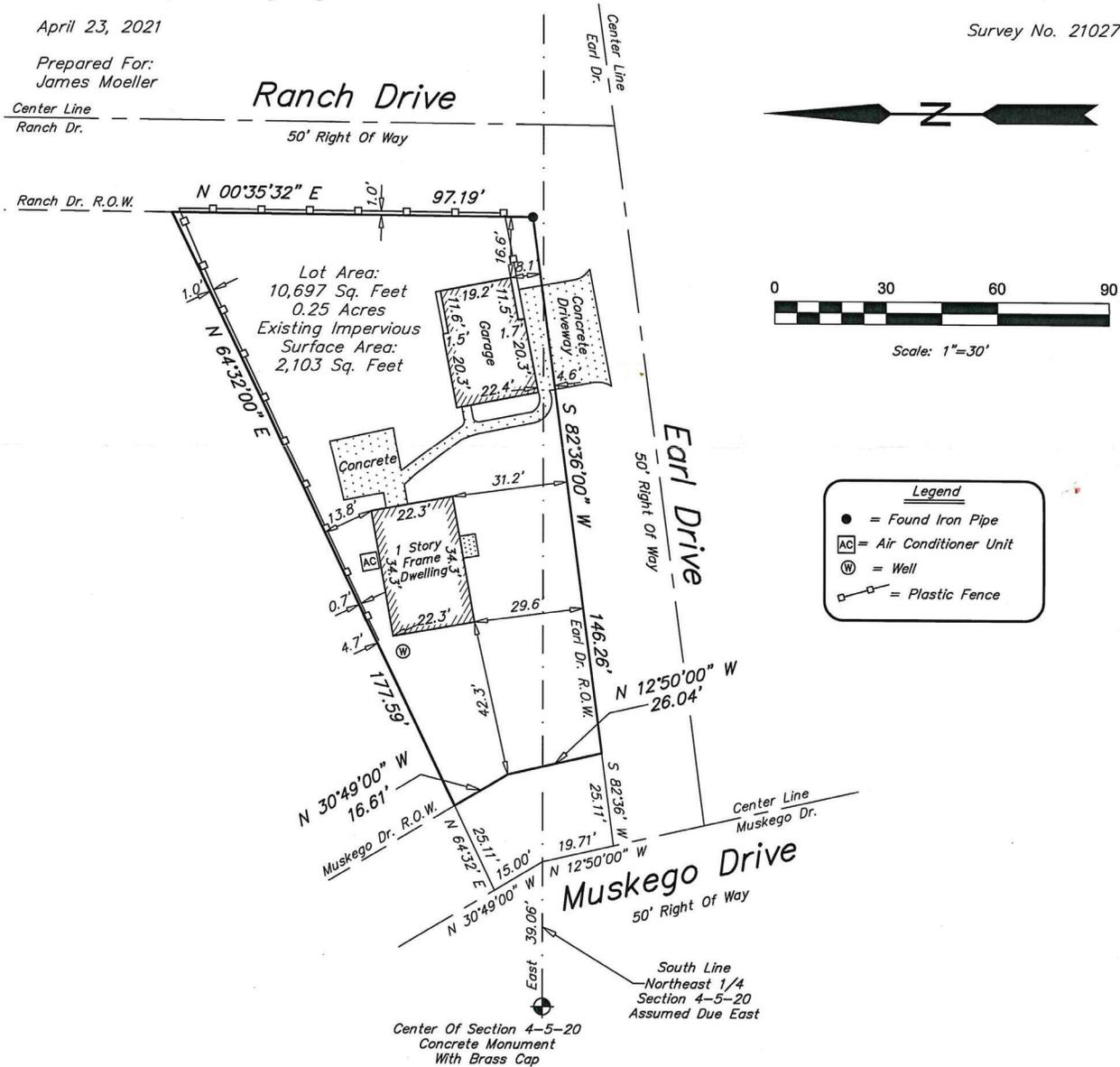
Property Address: W179S6700 Muskego Drive, Muskego, Wisconsin

**Property Description:** A parcel of land in the East 1/2 of Section 4, Town 5 North, Range 20 East, in the City of Muskego, bounded and described as follows, to-wit: Commencing at a point in the East and West 1/4 Section line through said Section 4, 39.06 feet East of the center of said Section 4 (said center being 2659.80 feet West of the East 1/4 corner of said Section 4) said point being in the Westerly line of said Lot 13; thence N 30°49' W, 15 feet to the Northwestern corner of said Lot 13; thence N 64°32' E, 178 feet to the Northeast corner of said Lot 13; thence S 13° E, 93.90 feet to the Southeast corner of said Lot 13; thence S 82°36' W, 170 feet to the Southwest corner of said Lot 13; thence N 12°50' W, 24.73 feet to the point of beginning. Known as Lot 13, Block 9, an unrecorded plat of Oak Ridge. EXCEPT for the Southerly 5 feet thereof conveyed to City of Muskego in deed recorded as Document No. 346240 for highway purposes. ALSO including easement rights contained in Deed in Volume 648 of Deeds at page 381 as Document No. 406391. ALSO part of the Northeast 1/4 of Section 4, Town 5 North, Range 20 East, in the City of Muskego, bounded and described as follows, to-wit: Commencing at a point in the East and West 1/4 Section line through said Section 4, 39.06 feet East of the center of said Section 4 (said center being 2659.80 feet West of the East 1/4 corner of said Section 4) said point being in the Westerly line of said Lot 13; thence N 30°49' W, 15 feet to the Northwestern corner of said Lot 13; thence N 64°32' E, 178 feet to the Northeast corner of said Lot 13, and being point of beginning; thence continuing N 64°32' E to a point in the West line of Ranch Road; thence South on and along the West line of Ranch Road to a point in the North line of Earl Place; thence S 82°36' W on and along the North line of Earl Place to a point in the Easterly line of said Lot 13; thence N 13° W on and along the Easterly line of said Lot 13 to the place of beginning.

April 23, 2021

Prepared For:  
James Moeller

Survey No. 21027

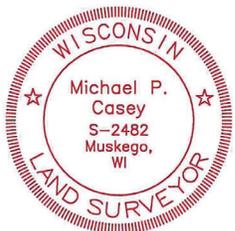


**Legend**

- = Found Iron Pipe
- AC = Air Conditioner Unit
- ⊕ = Well
- = Plastic Fence

Setting Of Missing Monumentation Waived By Client

**Southeast Survey LLC**  
 Professional Land Surveyors  
 W207S8240 Hillendale Drive  
 Muskego, WI 53150  
 Phone: 414-429-4862  
 Email: Mike@surveyse.com  
 Website: surveyse.com



I HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL VISIBLE STRUCTURES AND PRINCIPAL BUILDINGS THEREON, BOUNDARY FENCES, ROADWAYS AND VISIBLE ENCROACHMENT, IF ANY. THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR GUARANTEE THE TITLE THERETO WITHIN ONE (1) YEAR FROM THE DATE HEREOF. TITLE WAS NOT PROVIDED FOR THIS SURVEY, THEREFORE EASEMENTS THAT MAY EXIST PER TITLE ARE NOT SHOWN.

Signed Michael P. Casey  
 Michael P. Casey  
 Professional Land Surveyor S-2482



