

CASCADE ZONING BOARD OF ADJUSTMENT MEETING
AGENDA
MONDAY, OCTOBER 2, 2023
6:15 P.M.

Cascade City Hall, 320 1st Ave West, Cascade

1. Call to Order.
2. Roll Call.
3. Approve the Agenda
4. Public Comment
5. Approve Minutes August 23 and 30, 2023
6. Comment from Variance Applicants Rick and Deb Kerper
7. Consideration of a front setback variance in R-1 Single Family District to have a 20 ft setback for a new garage instead of the required 25 ft. at 200 y^d Ave SE
8. Adjournment.

Zoning Board of Adjustment Minutes
August 23, 2023

The August 23, 2023 Zoning Board of Adjustment meeting was called to order at 6:00 p.m. at the Cascade City Hall by Chairperson Hoffmann.

Board members present were Linda Hoffmann, Merlin McDermott, Suzanne Otting, Clay Gavin and Ross Orr.

Others Present: Lisa Kotter, Rick and Deb Kerper, Don and Judy Takes and Ivan Kurt.

Motion Orr, second Otting to approve the agenda as presented. Motion carried, all ayes.

Motion Gavin, second Otting to open the public hearing for a 5 -foot single family residential variance at 300 Taylor Street SE.

Administrator Kotter explained the request to the Board. Applicant Rick Kerper also spoke to the Board about the request.

Motion Gavin, second Otting to close the public hearing.

Motion by Hoffmann, second by Gavin to adjourn the meeting at 6:50 p.m. in order to give the Board an opportunity to tour the site on August 30, 2023 -all ayes.

Respectfully submitted,

Lisa A. Kotter
City Administrator

**Zoning Board of Adjustment Minutes
August 30, 2023**

The August 30, 2023 Zoning Board of Adjustment meeting was called to order at 6:00 p.m. at the property of Rick and Deb Kerper, 200 3rd Avenue Southeast, Cascade to tour their property for purposes of a variance consideration by Chairperson Hoffmann. At 6:45 p.m. the Board left this site and took a five-minute recess to get back to the Cascade City Hall at 320 1st Avenue West, Cascade to continue the meeting. Board members present were Linda Hoffmann, Merlin McDermott, Suzanne Otting, Clay Gavin and Ross Orr.

Others Present: Lisa Kotter, Rick and Deb Kerper, Mandy Frasher, Peter Smith.

Motion Otting, second Orr to approve the agenda as presented. Motion carried, all ayes.

The Board toured the garage and yard area to observe the physical site that the Board must consider for a variance to go five feet closer to the Taylor Street SE right of way then is permitted.

The Board reconvened the meeting at City Hall at 6:50 p.m.. The issue of ADA compliance was raised by the applicants and their family members. Administrator Kotter suggested postponing the decision until the next meeting to consult with the City's legal counsel.

Motion by Hoffmann, second by Gavin to adjourn the meeting at 7:08 p.m. in order to wait for a legal opinion from Lynch Dallas law firm– all ayes.

Respectfully submitted,

Lisa A. Kotter
City Administrator

CITY OF CASCADE, IOWA
STAFF REPORT

| | |
|--------------------|---|
| Meeting date/time: | Monday October 2, 2023, at 6:00 P.M. |
| Applicant: | Rick & Deb Kerper |
| Address: | 200 3rd Avenue SE |
| Zoning: | R,1 Single,Family Residential |
| Use: | Single, Family Residence |

GENERAL INFORMATION:

REQUEST:

Applicants seek a variance to applicable R,1 single,family zoning regulations to allow a proposed garage addition to encroach approximately 4 feet into the established 25,foot front yard setback otherwise applicable to all property within the **R,1 Single,Family Zoning District.**

Applicants allege the requested variance is necessary to render their property handicap accessible and that they are entitled to the requested variance as a "reasonable accommodation" under the Federal Fair Housing Amendments Act ("FHAA") and the Iowa Civil Rights Act.

**STANDARDS
AND CRITERIA:**

165.11(R,1)(E), Minimum front yard requirement.... 25-feet.
165.34(3) Variances , A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

A. A written application for a Variance is submitted demonstrating:

- 1) That such conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
- 2) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
- 3) That the special conditions and circumstances do not result from the actions of the applicant.
- 4) That granting the Variance requested will not confer on the applicant any special privilege that is denied by this Ordinance, to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands,

structures, or buildings in the same district, and no permitted use of land, structures or building in other districts shall be considered grounds for the issuance of a variance.

Deardorf v. Bd. of Adjustment of Plan. & Zoning Comm'n, 118 N.W.2d 78 (1962) - To qualify for a variance a landowner must show:

- (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;
- (2) the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood ...; and
- (3) the use to be authorized by the variance will not alter the essential character of the locality.

Graziano, v. Board of Adjustment, 323 N.W.2d 233 (Iowa 1982) – Elaborates on the Deardorf standard as follows:

- Lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of his land. (Emphasis added).
- The burden is on the applicant to show all three of the elements and a failure to demonstrate one of them requires the board to deny the application. (Emphasis added).
- [The]...applicant must show, among other things, his plight is due to unique circumstances and is not of his own making.” (Emphasis added).

Greenawalt v. Zoning Bd. of Adjustment of City of Davenport, 345 N.W.2d 537, 542 (Iowa 1984) – Elaborates on the Deardorf standard as follows:

- All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.

42 U.S.C. § 3604(f)(3)(B) – Under the FHAA discrimination includes “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” (Emphasis added).

Schaw v. Habitat for Human. of Citrus Cnty., Inc., 938 F.3d 1259, 1266 (11th Cir. 2019) – “If a plaintiff’s request is facially reasonable, the burden shifts to the defendant, who must prove that the accommodation would nonetheless impose an “undue burden” or result in a ‘fundamental

alteration' of its program.”

SUMMARY/
RECOMMENDATION:

200 3rd Avenue SE consists of an oversized 80'x206' lot upon which is presently situated an approximately 1,888 square foot two-story single-family residential dwelling including an attached 700 square foot two-car garage. Applicants seek to construct an approximately 38' x 38' (1,444 square foot) addition to their existing attached garage, citing potential plans to convert .

The property's R-1 zoning provides for a 25-foot front yard setback. The existing dwelling's front building line is set back approximately 26 feet. The Applicants propose an off-set front building line for their anticipated garage addition that would be set back approximately 21 feet (or would encroach roughly 4 feet into the property's required front-yard setback). The Applicants allege the requested variance is necessary to render their property handicap accessible and allow them to maneuver around vehicles within the nearly 1,500 square foot garage addition.

The Board of Adjustment has conducted a site visit to the property as part of these proceedings. The property is large with ample open space and the driveway slope is not severe.

There is nothing unique about the Property that would preclude the Applicants from siting the garage an additional 4 feet further back from Taylor Street SE; nor is there anything precluding Applicants' from reducing the depth of the garage addition from 38 feet to approximately 34 feet. There is similarly nothing precluding Applicants from installing a man door facing Taylor Street SE; from providing access through the existing garage; or from expanding the proposed garage addition to the southeast if they require additional room to maneuver around their preferred garage contents. Additionally, the Applicants have not adequately explained how or why two 12' x 8' overhead garage doors would be insufficient to provide access to disabled individuals.

Suffice to say the Applicants have countless options when it comes to configuring their proposed garage addition to make it handicap accessible that do not include encroaching into the established 25-foot front yard setback. Applicants have failed to demonstrate that their requested variance is facially reasonable or necessary to afford them equal opportunity to use and enjoy their dwelling, such that it might be necessary for the City to provide an accommodation.

Nor is the requested variance necessary for the Applicant's to yield a reasonable return on the Property to the extent it is already being put to productive single-family residential use and can continue to be put to such absent the requested variance.

For these reasons it is the staff's recommendation that the Board deny the Applicants' request for a variance.

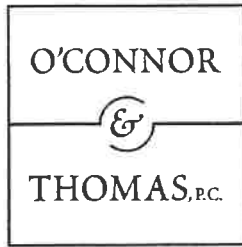
Prepared by:



Lisa Kotter - Zoning Administrator

October 2, 2023

Date



ATTORNEYS &
COUNSELORS AT LAW

Est. 1840

September 28, 2023

Via U.S. Mail and E-Mail: sleidinger@lynchdallas.com

Attorney Steven C. Leiding
Lynch Dallas, P.C.
P.O. Box 2457
Cedar Rapids, IA 52406-2457

RE: Rick and Deb Kerper Variance Request – 200 3rd Avenue, S.E., Cascade, IA 52033

Dear Steve:

I am writing to follow up on our telephone conversation from last week concerning the Kerpers' request for a variance from the City of Cascade's setback requirements. We believe the City's analysis of the request using the three-part Greenwalt test is flawed because it fails to consider the request as one for a reasonable accommodation under the Fair Housing Amendments Act and the Iowa Civil Rights Act. The federal Fair Housing Amendments Act ("FHAA") makes it unlawful to "discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap." 42 U.S.C. § 3604(f)(1). The Act defines discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). The Iowa Civil Rights Act ("ICRA"), particularly Iowa Code Section 216.8A, contains nearly identical provisions protecting persons with disabilities from discrimination in housing.

Both the FHAA and the ICRA apply to the City of Cascade and its zoning rules and regulations. Rick Kerper is seeking a variance from the City's setback requirement as a reasonable accommodation for his disability. Mr. Kerper has lived with his wife at their home at 200 3rd Avenue, S.E., for more than twenty years. He recently became paralyzed below the waist on the left side of his body and needs to make modifications to his home so he can continue living there. These modifications include turning the existing garage into a bedroom, installing a lift, and adding a new, bigger, handicap-accessible garage. The proposed handicap-accessible garage

Christopher C. Fry | ext. 261 | cfry@oconnorandthomaslaw.com

1000 Main Street | Dubuque, Iowa 52001 | Phone 563.557.8400 | Fax 888.391.3056

JOHN C. O'CONNOR
CHAD C. LEITCH
DAVIN C. CURTISS **
PAUL J. SIGWARTH †

PETER D. ARLING *§†
JOSHUA P. WEIDEMANN*
CHRISTOPHER C. FRY†

STEPHANIE R. FUEGER **
MCKENZIE R. BLAU **†
TONYA A. TRUMMI †

ALYSSA M. CARLSON
ALEX L. HOFER
IAN P. BARTELT

O'CONNOR & THOMAS, P.C.

Attorney Steven C. Leidinger
Lynch Dallas, P.C.
September 28, 2023
Page 2

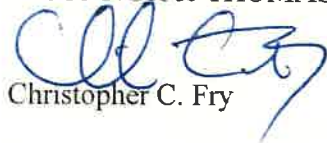
would include a side door that will allow Mr. Kerper to access the garage and the home. However, a side door cannot be installed unless the front of the new garage is at least 5 feet in front of the existing garage, and only 15 feet from the property line. Thus, the installation of the side door requires a variance from the current 20-foot setback requirement. This variance is necessary to afford Mr. Kerper an equal opportunity to use and enjoy the home he has been living in for more than twenty years. The requested accommodation would not cause any undue financial or administrative burdens upon the City of Cascade, nor will it result in any fundamental alteration in the nature of the City's zoning program. Rather, it will simply allow a long-time Cascade resident to continue living in the place he has called home despite his new disability.

Please consider the Kerpers' request for a variance as a reasonable accommodation and analyze it using the framework of the Fair Housing Amendments Act and the Iowa Civil Rights Act, rather than just the three-part Greenwalt test.

Should you have any questions or wish to discuss this matter further, please feel free to contact me. Thank you.

Very truly yours,

O'CONNOR & THOMAS, P.C.


Christopher C. Fry

CCF:cmm

cc: City of Cascade Board of Adjustment Members:
Clay Gavin
Linda Hoffmann
Merlin McDermott
Ross Orr
Suz Otting

Board of Adjustment Hearing Application
City of Cascade

Hearing No.: _____

Hearing Fee: 2000 CHK# 60421

1. Name and address of applicant: Rick & Deb Kerper
200 3rd Ave SE
Cascade, IA 52033 5638523899
(Phone Number)

2. Nature of the Request: _____ Interpretation and review of decision of zoning administrator.
(Check which applies) (Complete Section I of Application)
_____ Special Use or Exception Permit as required by the Zoning Ordinance. (For Solar Energy Systems)
(Complete Section II of Application)
 Variance to a requirement of the Zoning Ordinance.
(Complete Section III of Application)

3. Location and dimensions of property: 200 3rd Ave SE
(Street Address)
lot t80 x 206 16480 sf
(Width, Depth, and Area in sq. ft.)

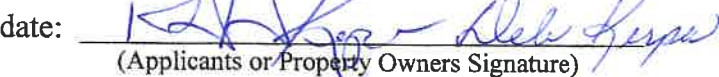
4. Legal description of property: lot 1-81, lot 1-82, 83 ex ne 60 ft
(Lot Number (s), Block Number (s), Subdivision Name)

5. Present zoning classification: R-1
(Example A-1, R-1, C-2, M-1)

6. Existing and Proposed Uses of the Property: Residential with proposed ad on garage

7. Attach a plat showing the location, dimensions, and use of the property and all property within 200 feet thereof including streets, alleys, and other prominent physical features.

6. Attach the names and addresses of all property owners within 200 feet of property to be re-zoned.

7. Signature and date:  8-3-23
(Applicants or Property Owners Signature) (Date)

8. Application Fee \$200

SECTION II

REQUEST FOR SPECIAL EXCEPTION as required by Section _____ of the Cascade Zoning Ordinance.

1. What is the proposed Special Exception (attached plat plan)? _____

2. How will the proposed Special Exception be compatible with adjacent properties and other properties in the zoning classification district?

3. The Special Exception will not be detrimental to the character of the neighborhood because:

SECTION III

165.11 R-1 per administrator

REQUEST FOR VARIANCE of Section 6-10-6 online ord of the Cascade Zoning Ordinance under which the Zoning Administrator refused to issue a permit.

1. What is the nature of the variance request: cannot meet setback requirement by 5 feet
(Example: cannot meet setback requirements, cannot meet height restrictions, etc.)

2. Applicant is unable to make reasonable use of his/her property for the following reasons.

The proposed garage addition includes extra space for handicap acessability around vehicles

The front portion towards schillings will include outside access as well as a bathroom

furnace and utilities. We need the additional 5 feet to maneuver wheel chair and or walker
for handicap acessability. We ourselves, already. are limited motility. We are also
listed as respite care for our Grandson that has some disabilities.

3. The requested variance will not alter the essential character of the neighborhood for the following reasons:

Will not alter the neighborhood in any way. Just a garage addition to existing residential property

4. The proposed variance requested will continue to maintain the purposes and intent of the zoning classification district and adjacent properties for the following reasons:

Nothing changes, still R1 with more property tax collected due to improvments

Supplemental Variance Questions

1. Please explain how the narrowness, shallowness, irregular shape, topography, and/or natural characteristics of your lot prevents lawful location of your proposed development on the lot i.e.

The set backs hinder us from making our proposed garage handicap accessible to rest property. A 24.5 ft pickup parked in garage without setback will not allow us handicap accessibility to move around to the rest of our property.

2. Explain and show how the requirement to maintain the required setbacks is a physical hardship upon you and denying you reasonable use of your property.

We plan to add a lift to the old garage to gain access to the upper level of our house and also possibly making current garage into a bedroom. If we do not receive a variance on this garage dimensions we will not have handicap access to that part of our residence

3. Explain and show how the hardship identified above is not one created or caused by your own doing.

We are simply trying to add on to our residence and this is the only way we can accomplish it for accessibility

4. Explain and show that there are no other reasonable options for placing the structures you want to build on your lot that meets the required setbacks.

There is no other way to attach to our existing garage and house.

5. Explain and show that the variance you are requesting is the minimum necessary to permit reasonable use of your property.

Just need 5 extra feet to make handicap accessible

6. Explain and show how your variance request will not be contrary to the intent of the Zoning District you are in.

Does not change anything in R-1

7. Explain and show how your variance request will not cause a substantially adverse effect upon adjacent properties – like lowering property values, creating something that does not fit into the neighborhood, creating a neighborhood eyesore, creating a commercial use in the R-1 district, etc.

An addition to our property will only add value to our property and to the neighborhood

8. Explain and show how your variance request will not alter the essential character of the surrounding area.

All remains residential with houses and garages

9. Explain and show how your variance request will not increase the hazard from fire, flood, poor visibility at street intersection, or other similar dangers.

will absolutely not create a flood issue or obstruct view at intersection

10. Explain and show how your variance request will not increase traffic congestion or exceed the traffic carrying capacity of the streets serving the area.

the variance will not create more traffic in any way

11. Explain and show how your variance request will not produce nuisance conditions to the occupants of nearby premises, whether by reason of dust, noise, fumes, odors, vibrations, smoke or lights.

there will not be any additional noise, dust, fumes, odors etc due to this addition

Property owners within 200 feet

Steve & Karla Garrett

205 4th Ave SE

Cascade, IA 52033

Rick & Deb Kerper

200 3rd Ave SE

Cascade, IA 52033

Peter & Rebecca Smith

213 Taylor St SE

Cascade, IA 52033

Rose Holmes

212 Taylor ST SE

Cascade, IA 52033

odney

Cascade, IA 52033

Joseph & Christiana Merfeld

300 Polk St SE

Cascade, IA 52033

Ying Guan Kauder

304 Polk St SE

Cascade, IA 52033

Phillip & Jenifer Mihalakis

308 Polk St Se

Cascade, IA 52033

Rodney Gavin

316 Polk St SE

Cascade, IA 52033

Dubq Co.
Beacon

ArcGIS Web Map

The Lim 1st for Rick & Deb Key
date: 5-15-23

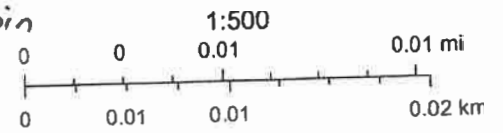


5/12/2023, 12:14:35 PM

□ Tax Parcels

- * Above area "A" is wall lines of existing garage
- * Above area "B" is proposed wall lines for garage addition
- * See Building Plans for dimensions and details

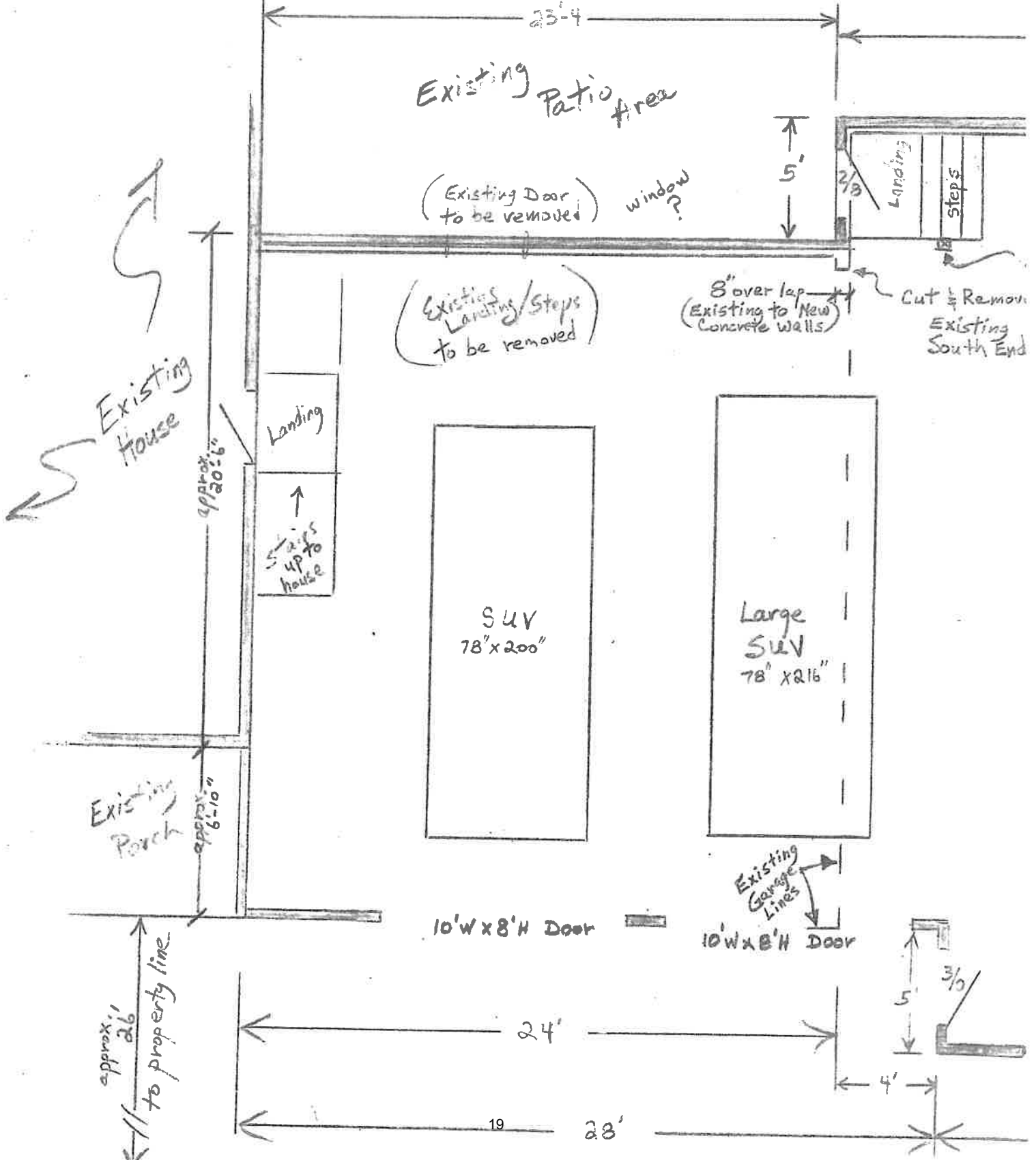
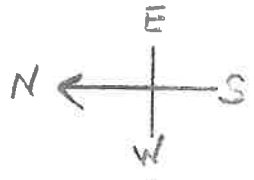
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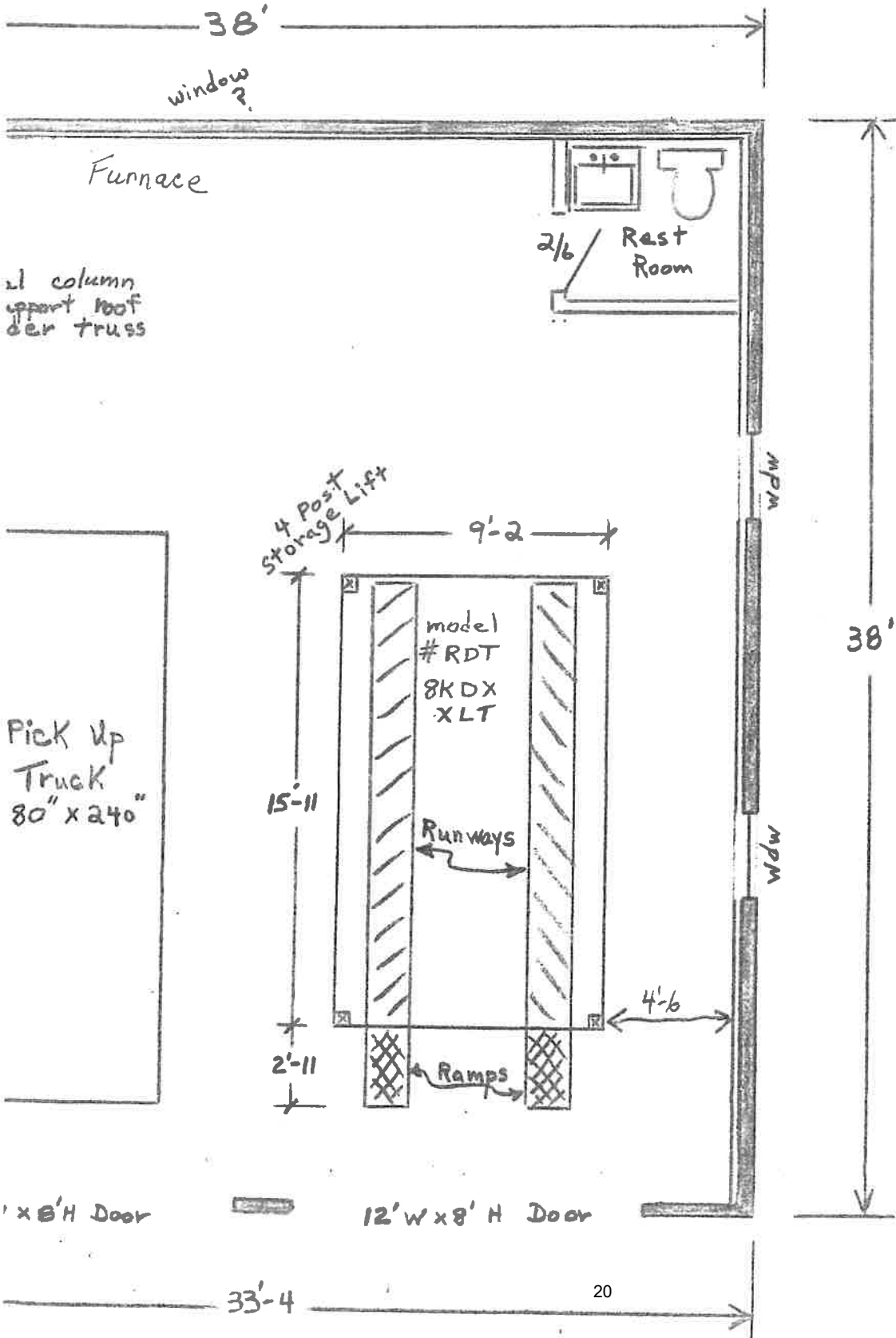
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|-----------------------|
| Cascade Lbr. Co. |
| for Rick & Deb Kerper |
| date: 5-16-23 |



Resident
308 Adams St
Cascade IA 52033

Resident
209 Taylor St SE
Cascade IA 52033

Comm Pres Church
216 Polk St SE
Cascade IA 52033

Resident
301 Polk St SE
Cascade IA 52033

Resident
205 4th Ave SE
Cascade IA 52033

Resident
316 Polk St SE
Cascade IA 52033

Resident
212 Taylor St SE
Cascade IA 52033

Resident
PO Box 51
Cascade IA 52033

Resident
304 Polk St SE
Cascade IA 52033

Resident
313 Polk St SE
Cascade IA 52033

Resident
317 Polk St SE
Cascade IA 52033

Resident
PO Box 141
Cascade IA 52033

Resident
300 Polk St SE
Cascade IA 52033

Resident
308 Polk St SE
Cascade IA 52033

Resident
208 Taylor St SE
Cascade IA 52033

Resident
204 3rd Ave SE
Cascade IA 52033

Resident
213 Taylor St SE
Cascade IA 52033

Resident
24393 Riverview Rd
Cascade IA 52033

Resident
208 Polk St SE
Cascade IA 52033



**YOU ARE RECEIVING THIS NOTICE AS YOU OWN
PROPERTY WITHIN 200 FEET OF 200 3RD AVENUE SE.**

Cascade Zoning Board of Adjustment
Public Hearing

Variance for Front Residential Setback
200 3rd Ave SE

A meeting is set for Wednesday, August 23, 2023 at 6:00 p.m. at which time the Cascade Board of Adjustment will hold a public hearing at the Cascade City Hall, 320 1st Avenue West. The request from Rick and Deb Kerper is for a variance to the required 25-foot front set back. The Kerpers are requesting a five-foot variance to place a new garage 20 feet from the front lot line. The application is available for review at City Hall. Written comments can be made at City Hall or by email at admin@citycascade.com.

Sincerely,

Lisa A. Kotter
City Administrator

STATE OF IOWA
DUBUQUE COUNTY

SS:

CERTIFICATE OF PUBLICATION

I, Lee Ann Leytem, of Woodward Communications, Inc., an Iowa corporation, publisher of the Cascade Pioneer, a newspaper of general circulation published in the City of Cascade, County of Dubuque and State of Iowa; hereby certify that the attached notice was published in said newspaper on the following dates August 9, 2023, and for which the charge is \$ 13.25.

Lee Ann Leytem

Subscribed to before me, a Notary Public in and for Dubuque County, Iowa, this 9th day of August 20 23.

 JONI LYNN HUSEMANN
Commission Number 847087
My Commission Expires 3-30-26

Joni Lynn Husemann
Notary Public in and for
Dubuque County, Iowa

Cascade Zoning Board of Adjustment
Public Hearing
Variance for Front Residential Setback
200 3rd Ave SE
A meeting is set for Wednesday August 23, 2023 at 6:00 p.m. at which time the Cascade Board of Adjustment will hold a public hearing at the Cascade City Hall, 320 1st Avenue West. The request from Rick and Deb Kerper is for a variance to the required 25-foot front set back. The Kerpers are requesting a five-foot variance to place a new garage 20 feet from the front lot line. The application is available for review at City Hall. Written comments can be made at City Hall or by email at admin@citycascade.com.
Lisa A. Kofler
City Administrator
8-9