

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
 APPEAL FOR VARIANCE  
 STAFF REPORT**

**DATE:** September 9, 2020

**FILE NO.:** BA59

**OWNERS:** John and Julie Kita  
 N30 W29389 Hillcrest Drive  
 Pewaukee, WI 53072

**APPLICANT:** Brian Gilmore  
 Gilmore Builders, LLC.  
 W307 N5480 Anderson Road  
 Hartland, WI 53029

**TAX KEY NO.:** DELT 0773.981

**LOCATION:**  
 The subject property is located in part of the NE ¼ of Section 14, T7N, R18E, Town of Delafield. More specifically, the property is located at N30 W29389 Hillcrest Drive. The property has frontage on Pewaukee Lake.

**REQUEST:**  
 Variances from **Section 3(o) Non-conformance to Offset** provisions, **Section 3(o) Non-conformance to Shore Setback** provisions, **Section 3(h)(2) Wetland Setback** provisions and **Section 37(c) Delafield Shoreland Overlay District Shore Setback** requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a second story addition over an existing attached garage as well as add a covered front porch to the principal residence.

**ZONING CLASSIFICATION:** R-3 Residential District and DSO Delafield Shoreland Overlay District.

**LOT CONFIGURATION:**  
 The property is 58,878 sq. ft. in size, and has approximately 55 ft. of frontage on Pewaukee Lake. The lot does not abut Hillcrest Drive and access is via the adjacent lot to the west. The existing and required average lot width, average lot depth and lot size are shown in the following table.

	Average Lot Width	Average Lot Depth	Lot Size
Existing	51 ft. +/-	590 ft. +/-	58,878 sq. ft.
Required	84 ft. (for lots served by sewer)	n/a	14,000 sq. ft.

**PREVIOUS BOARD OF ADJUSTMENT ACTION ON THE SUBJECT PROPERTY:**

On November 15, 2007, in BA07:072, the Board approved variances from the shore setback, floodplain setback and the remodeling a non-conforming structure in excess of 50% of fair market value provisions of the Ordinance to allow a prior owner to repair and remodel the main residence, construct a larger deck on the main residence and construct an attached garage addition between the main residence and existing second residence to convert the two residences into one larger residence. The proposed improvements appear to have been constructed.

It should be noted that Condition No. 1 of Board approval BA07:072 stated:

*Except for the garage addition, no expansion of the footprint of the residences is permitted.*

**PENDING ACTIONS:**

None

**PROPOSAL AND STAFF ANALYSIS:**

The property is served by municipal sewer and a private well. The property slopes from the road down to the lake. There is a waterway that runs all the way through the property. The 2007 staff report noted that there are wetlands located in most areas on both sides of the creek; the wetland also encompasses most of the northern half of the property. The property also has scattered springs.

The current residence is comprised of two former residences. In 2007, a prior owner was granted variances (noted above) to connect both structures with attached garage space. This variance was utilized and the garage was constructed. Key conditions of that variance included prohibitions on any additional footprint expansion beyond the garage as well as a requirement that the resulting improvements could no longer be used as multiple dwelling units.

The petitioners are proposing to add a second story addition over the existing attached garage to add 1,080 sq. ft. of additional second story living space. In addition to achieving additional living space, the 2nd story improvements are designed to provide more convenient access from the lake side living space to the living space on the other side of the garage.

The table below summarizes the existing and proposed improvements. A site plan showing existing and proposed improvements is attached as Exhibit A. Building plans showing the proposed improvements are attached as Exhibit B.

	1 <sup>st</sup> floor (sq. ft.)	2nd floor (sq. ft.)	Attached garage (sq. ft.)	Basement (sq. ft.)	Beds	Baths
Existing	2,189	2,189	1,080	464	4	3
Proposed	+75	+1,080	No change	No change	4	4 (+1)

The proposed covered entry and 2<sup>nd</sup> story addition require variances from the Non-conformance to Offset, Non-conformance to Shore Setback, Wetland Setback, and Delafield Shoreland Overlay District Shore Setback requirements, as summarized in the following table:

PROVISION	SFPO	EXISTING	NON-CONFORMING ? 3.17/ 3(o)	PROPOSED	REQUIRED	VARIANCE?
ROAD SETBACK	3 (h) (1) (C)	373 ft. +/-	N	373 ft.	35 ft.	N
OFFSET (E)	3 (h) (3) (A)	.4 ft.	Y	.4 ft.	14 ft.	Y For vertical addition and cov'd entry
OFFSET (W)	3 (h) (3) (A)	28.8 ft.	N	28.8 ft.	14 ft.	N
TOTAL BUILDING FOOTPRINT	3 (j) (5) (B)	4,839 sf (8.2%)	N	4,914 sf (+75 sf. cov'd entry) (8.3%)	10,303 max. (17.5%)	N
ACCESSORY FOOTPRINT	3 (j) 4	0 sf (det. Gar removed)	N	0	0	N
BLDG HEIGHT	3 (i)	30 ft.	N	26 ft.	35 ft.	N
SHORE SETBACK to Lake	3 (h) (2)	70' (home) 60' (deck)	Y	116 ft. (cov'd entry)	130 ft. min. with averaging	Y for cov'd entry
DSO – SHORE SETACK to Lake	37(c)	70' (home) 60' (deck)	Y	116 ft. (cov'd entry)	130 ft. min. with averaging	Y for cov'd entry
SHORE SETBACK to waterway (ditch)	3 (h) (2)	4' (home)	Y	+/- 26 ft. (cov'd entry)	75 ft.	Y for cov'd entry
WETLAND SETBACK	3(h)(2)	4 ft. +/-	Y	+/- 26 ft. (cov'd entry)	~ 37.5 ft. with averaging	Y for cov'd entry
IMPERVIOUS SURFACE	3 (t)	15,673 SF (26.7)		15,721 (26.7%)	17,663 SF max. (30%)	N

**PETITIONERS' COMMENTS:**

The petitioners' comments are attached as Exhibit C.

**STAFF RECOMMENDATION:**

The Planning and Zoning Division staff recommends **denial** of the request for variances from the nonconformance to offset provisions, the nonconformance to shore setback provisions, wetland setback provisions and the Delafield Shoreland Overlay District shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a second story addition over an existing attached garage as well as add a covered front porch to the principal residence. This recommendation is based upon the analysis of the below tests for a variance, as analyzed below.

**AREA VARIANCE TEST CRITERIA ANALYSIS**

State law, case law, and County ordinances require that the petitioner demonstrate that their request meet the following tests for a variance. The below Staff analysis assesses the merits of the subject application relative to the tests:

- 1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. Unnecessary hardship is proven by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on special conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary, and the purposes of the Ordinance shall be observed.**

The springs, wetlands, lake and waterway clearly create special conditions unique to the property. Having said that, the test for unnecessary hardship is based on whether strict compliance with all Ordinance requirements prevent the owners from utilizing the property for a permitted purpose, due to those special conditions.

The R-3 District requires a minimum home size of 1,100 sq. ft. Thus, with over 4,300 sq. ft. of existing living space and 1,080 sq. ft. of existing enclosed and attached garage space, the petitioners are clearly able to utilize the property for a permitted single-family residential purpose (use).

An undesirable interior layout and challenging access between living spaces have been provided as part of the justification for relief. However, this was a choice by the (previous) owner to connect two residences with a garage, was based on personal considerations, and should not be considered grounds for hardship. Furthermore, the Board granted relief in 2007 to add over 1,000 sq. ft. of additional garage space and conditioned that approval on no additional footprint expansion.

Lastly, it should be noted that the non-conforming provisions of the Ordinance would allow the owners to substantially remodel the interior of the residence and garage to improve access and address other concerns.

- 2. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

The existing residence is severely non-conforming to the offset and shore setback provisions. It should also be noted that this residence is located significantly closer to the lake than the adjacent residence and nearby pattern of development. Due to its non-conformance to shore setback, it serves as an available setback averaging point for adjacent lots. If approved, an additional \$225,000 of improvements will be invested into the residence, which will likely extend the life cycle of the non-conforming structure. In addition, state and county setback standards exist in part to protect the nearby natural resources from runoff impacts of development. Those setback standards are also intended to buffer views of those structures from the water.

Respectfully submitted,

*Ben Greenberg*

Ben Greenberg  
Senior Land Use Specialist  
Phone: 262-548-7790

Reviewed and approved by:

*Jason Fruth*

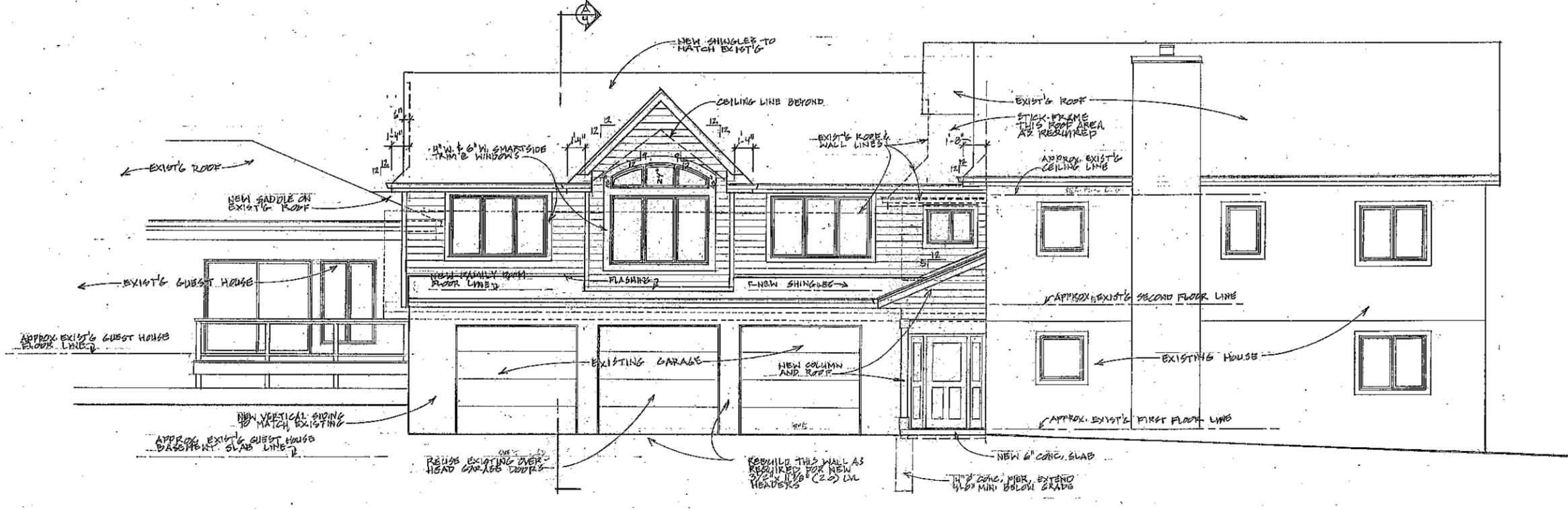
Jason Fruth  
Planning and Zoning Manager

Exhibits: A-C

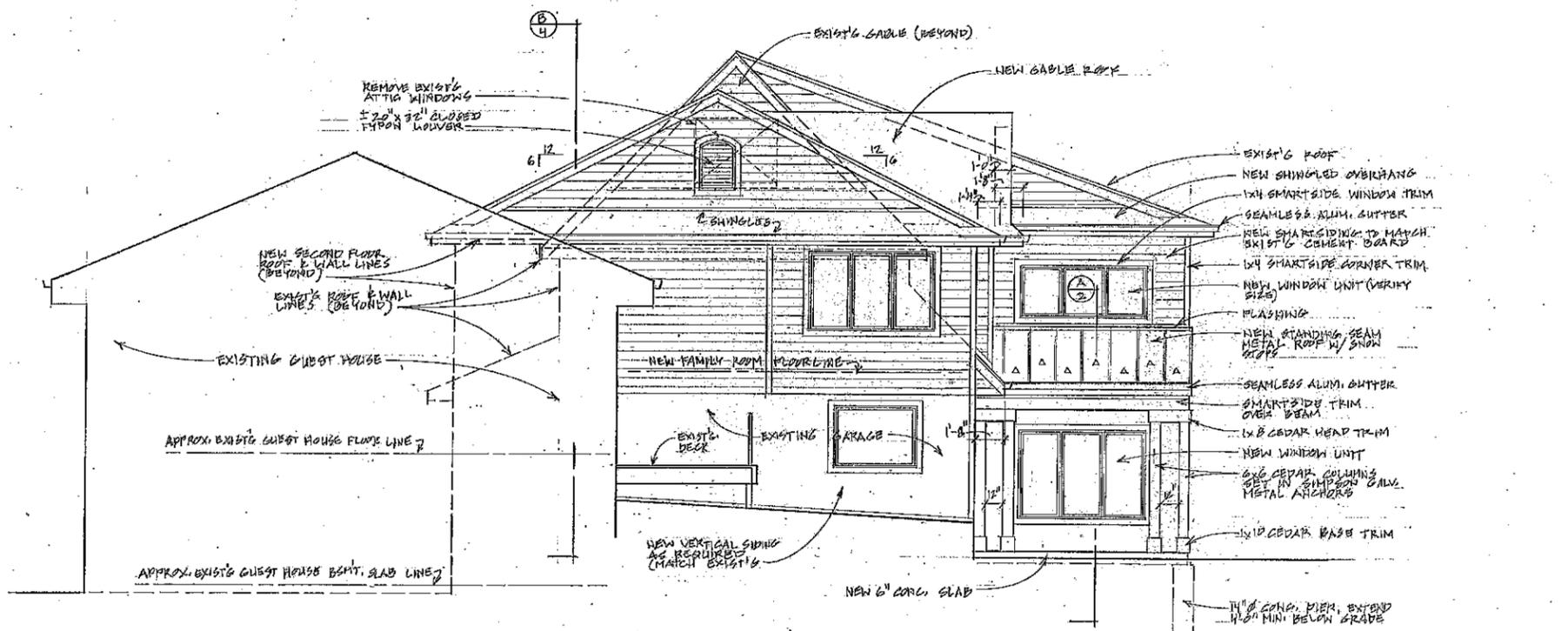


RECEIVED  
8/4/2020  
DEPT PARKS  
& LAND USE

**EXHIBIT "B"**



**RIGHT (WEST) ELEVATION**  
1/4" = 1'-0"



**FRONT (NORTH) ELEVATION**  
1/4" = 1'-0"

- INDEX TO DRAWINGS**
- 1 TITLE SHEET, FRONT AND RIGHT ELEVATIONS
  - 2 LEFT ELEVATION, ENTRY SECTION
  - 3 FIRST AND SECOND FLOOR PLANS
  - 4 BUILDING AND STAIRWAY SECTIONS



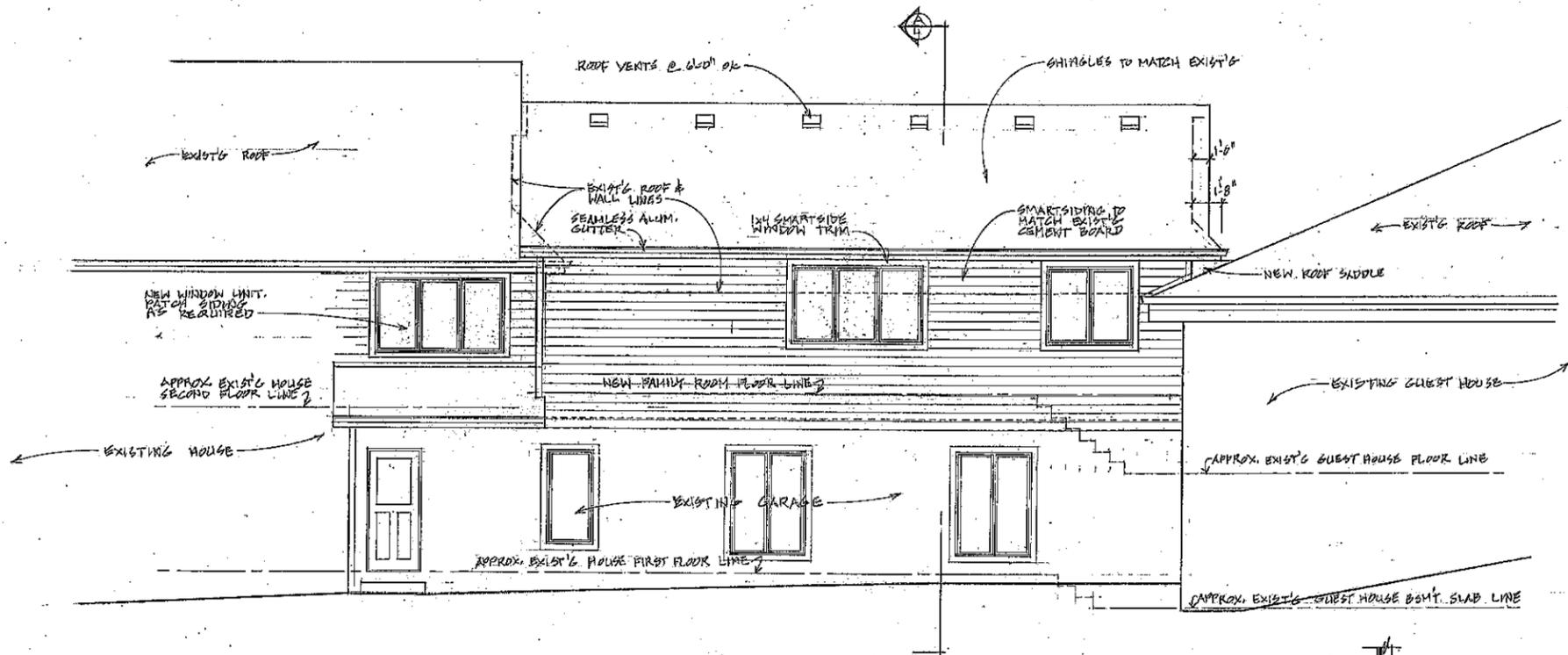
**DON E. KRAFT, ARCHITECT LLC**  
256 SIMON DRIVE, HARTFORD, WI 53027  
262-995-2356  
dekraftarchitect@aol.com

GARAGE REMODEL AND SECOND FLOOR ADDITION TO:  
**THE KITA RESIDENCE**  
N80 W29389 HILLCREST DRIVE  
TOWN OF DELAFIELD, WAUKESHA COUNTY, WI

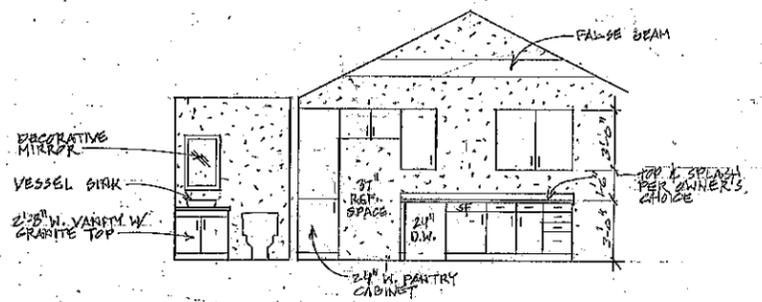
REVISIONS:

DATE: 2-17-20  
SHEET: 1 OF 4

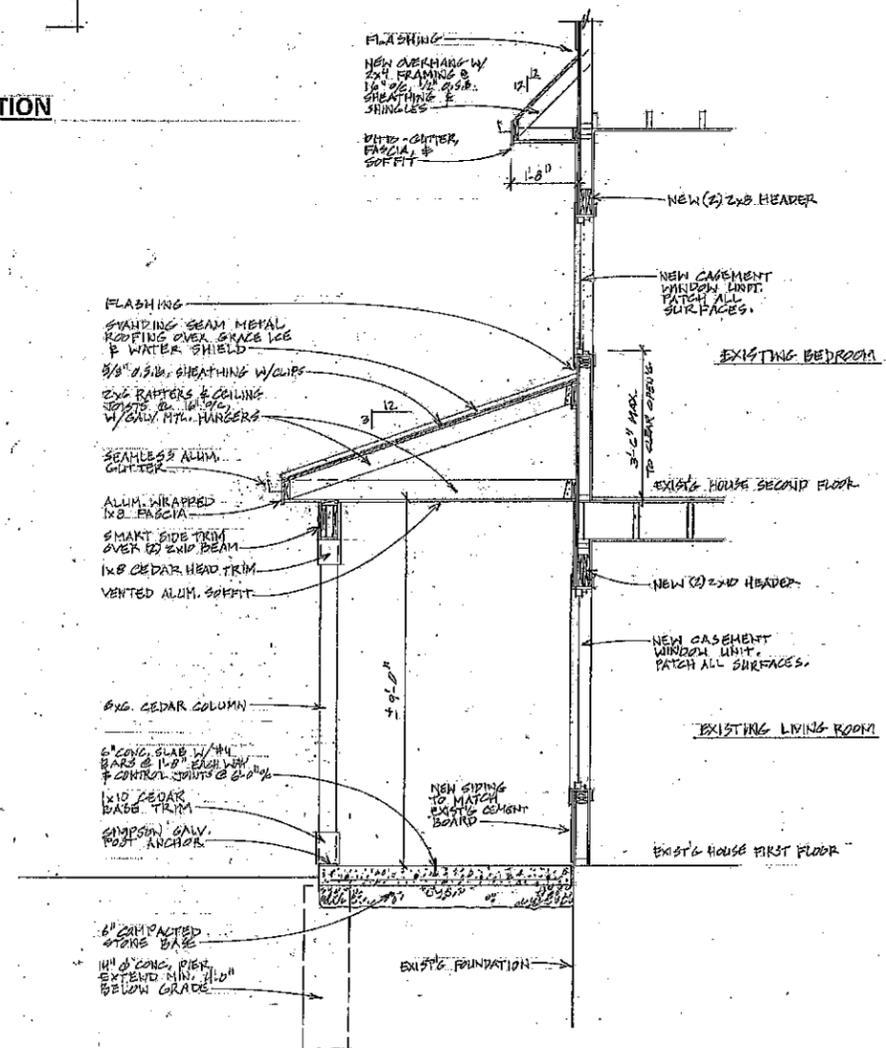
**EXHIBIT "B"**



**LEFT (EAST) ELEVATION**  
1/4" = 1'-0"



**INTERIOR ELEVATIONS**  
1/4" = 1'-0"



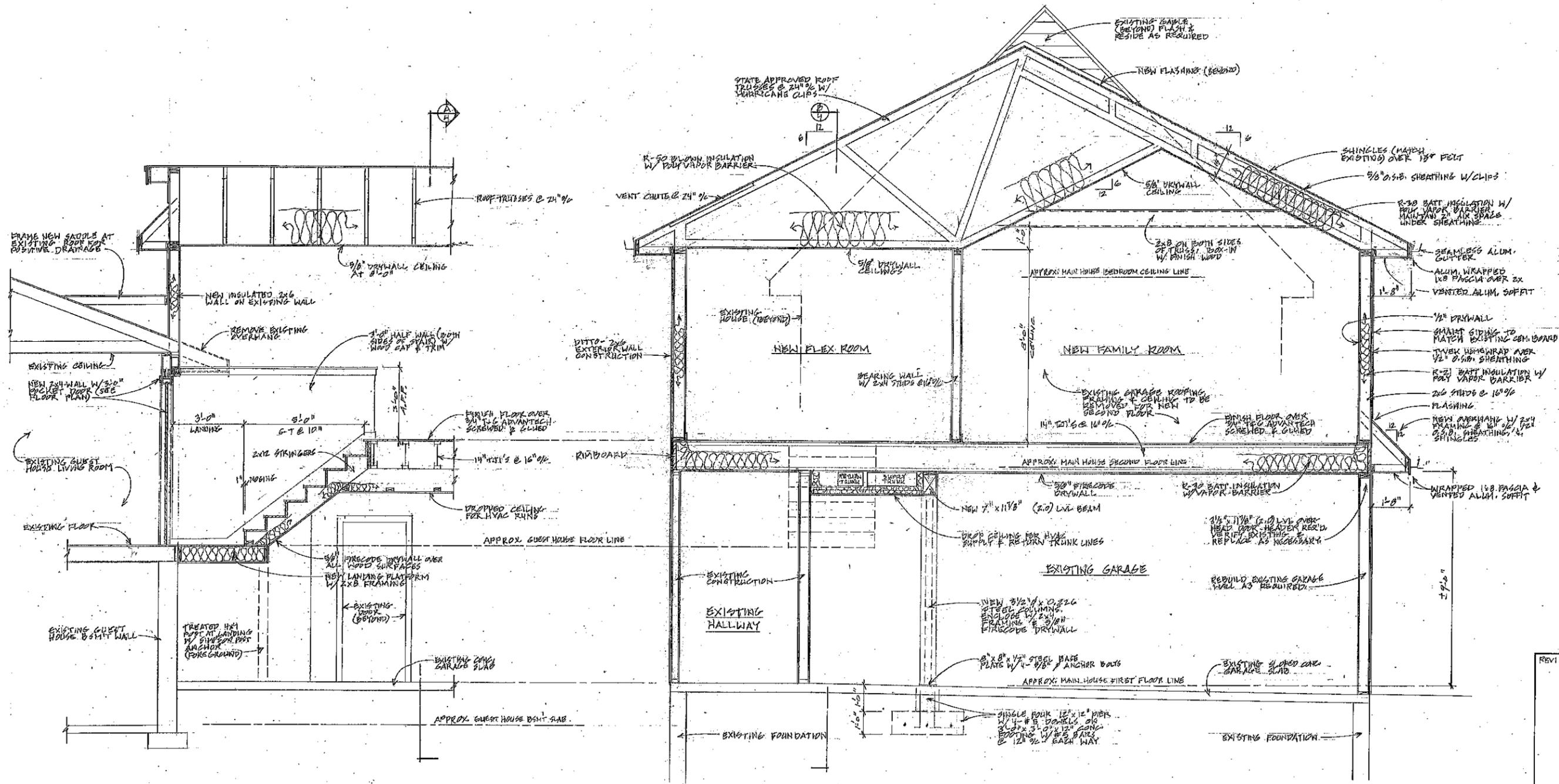
**ENTRY SECTION A/2**  
1/2" = 1'-0"

REVISIONS

SHEET:  
2 OF 4



# EXHIBIT "B"



**STAIRWAY SECTION B/4**  
1/2" = 1'-0"

**BUILDING SECTION A/4**  
1/2" = 1'-0"

# EXHIBIT "C"

Attachment #1

John and Julie Kita

Variance Request

## Detailed and complete description of proposed work and intended uses.

We would like to build a second story addition above our existing garage. The main purpose of the addition is to provide access between the living spaces of the two, separate houses that form our residence. This is necessary because prior to a 2008 remodel, our home was actually two separate, individual houses. A variance at that time (dated 11/14/2007) allowed the previous owner to construct a 3 car garage between the two houses, thereby creating a "single family residence". This proposed addition has been designed to actually join the living spaces of these two structures via a second story addition over the garage, which will give our home a seamless, traditional look that will blend in with the other homes in the neighborhood.

Right now the only way to get from our living space in House #1 to the living space in House #2 is either by going out the front door of House #1, walking about 150 ft. up the driveway and entering through the front door of House #2, or by going out the back door of House #1, through a 40 ft. unheated garage hallway, through the basement/garage of House #2 and up a flight of stairs. The new addition will make House #2 accessible from the living space of House #1, and will also be used as a gathering space when we have friends and family over to watch a football game, celebrate a holiday, or watch a movie, and want to be all together, all in one space.

The addition's 36' x 29' footprint will be consistent with the terms of the 2007 variance. We plan to remove the garage roof and eliminate the garage attic. We will raise the roof of the garage by 9', but stay 3' below the main home's roofline, and the entire addition will remain within the footprint of the existing garage. The space will be divided into a 17' x 36' living space, with a small bar area, an 11' x 12' office, and a 6' x 6' powder room.

Additionally, this proposed addition will solve a safety issue by providing a second point of egress for House #1, as a fire on the first floor could potentially block the open stairway, which is the only exit from the second floor bedroom areas.

Note: As part of this plan we will also be replacing 3 windows and adding a front porch roof (4' x 12') to tie the new garage roofline to the front of House #1.

**EXHIBIT "C"**

John and Julie Kita

Area Variance Request

**Compliance with the ordinance would cause the owner to experience an unnecessary hardship.**

We are requesting an area variance because we have a unique situation with our very unique home(s). We believe our request is consistent with the terms of the area variance granted by Waukesha County in 2007 to the previous owner.

Our property was once part of the Zinn family parcel on Pewaukee Lake. As such, it was home to a variety of structures over the past 100 years, including at one time six homes and cottages. Over the years several structures were torn down, and the parcel was divided up into lots. In 2007 there were two homes, both rental units, and a detached garage on the property. The property is non-conforming because it does not meet current setback standards, including shoreline and floodplain setbacks. The previous owner was granted a variance (dated 11/14/07) to allow him to remodel the two homes and to build a three car garage between the two houses, thereby converting the two rental units into a "single family residence".

Unfortunately, having a single residence that is actually two homes, separated by a 3 car garage has presented our family with a number of challenges, or hardships, that we are trying to overcome. We have lived here for eight years, and it has become increasingly difficult for our family to fully utilize a home that occupies two separate living places. We have learned that connecting two properties via a 3 car garage so that it may be called a single family residence does not, in fact, make it a home that is user-friendly for a single family to live in. Adding a room over the existing garage will serve to join both halves of our home by providing a convenient, easy access from the main home's upstairs hallway to the family room and living space located in House #2.

Here is what we are faced with on a daily basis: Our main living space is in House #1. The family room, however, is located in House #2. In order to use the family room, we have to leave the main house and either go outside and walk 150 ft. up the driveway and enter through the front door of House #2 or go through a 40 ft. long unheated garage hallway, a basement/garage area and up a flight of stairs. (In the winter this means putting on your coat and boots to go from your kitchen to your family room!)

Once in the family room of House #2, the hardship continues, because you are now in a separate structure, and no one in the main house can see you or hear you. This lack of accessibility and physical distance from the main house means that we are not fully able to use our entire home as a single family residence is meant to be used. It splits up family gatherings because the two living spaces are so far apart. Our nieces and nephews, (and potential grandchildren) can't watch a movie, play pool or just enjoy the family room unless an adult is present. Any accident or emergency would go unanswered because of the distance and inability to communicate easily between the two houses. Our proposed addition would solve this problem, and provide a comfortable, family gathering space while serving as a bridge from one side of the house to the other.

A case in point is my 91 year old mother. She is a widow who currently lives in her own home. She would love to spend more with us, but uses a walker and is unable to climb the stairs to the bedrooms in the main house. While she can easily navigate the front entry step into House #2, and would love staying there, she feels very vulnerable being there by herself as it would not be safe for her if she fell or

## EXHIBIT "C"

called out for help, because no one in the main house could hear her. The current Covid-19 crisis has really hit home on that issue with our family. My mother has COPD and has been in her home, alone, since it began in March. As much as we have done our best to help her from a distance, it has become increasingly obvious that she will soon have to move to a place with more hands-on assistance available when she needs it. By building a room above the garage, and providing easy access between the two houses, the living space in House #2 would be the perfect place for her. She would have her Independence in her own space, but would still be connected to our family life. We could see her, talk to her, and help her as needed because our home would be totally accessible from one side to the other.

Another issue that concerns us is a safety issue. There is only one exit from the second floor of the main house, and that is down a floating staircase in the middle of the first floor. If there was a fire, this stairway could become a blazing inferno, as it is completely open, top to bottom, front to back. No one would be able to safely exit the second floor bedroom areas. Having a room over the garage would provide an extra measure of safety in case of a fire, as it would provide a second point of egress from the bedroom areas of House #1 in case of an emergency.

We believe connecting the living spaces of the two homes should have been addressed as part of the variance request granted in 2007. We are not asking for anything more than was originally granted in 2007. We are not increasing the non-conformity of the property because the entire addition will be built over the existing garage structure. Therefore the proposed addition will not extend beyond the existing structure's footprint. It will not be any closer to the shore, floodplain or navigable waterway than what is already there, nor will it add to any increased run-off, as the roof surface area would remain unchanged. The roofline of the addition will be three feet lower than the main roofline so that sightlines of any neighbors will not be affected. We tried to design a structure that will have zero, or very minimal additional effect on the environment, neighbors or greater lake community, and still allow us to use our home to the full extent needed by our family. We believe it is the best solution to the situation, and will allow us to utilize the entire structure as a real single family residence as intended under the current zoning ordinances.

## EXHIBIT "C"

Attachment #3

### Area Variance Request

**Granting of the variance will not adversely affect the public interest, or be detrimental to neighboring properties or natural resources in the area.**

The addition would be built over the existing garage, which was properly permitted by a variance granted in 2007, and constructed in 2008. It will not expand any part of either House #1 or House #2, nor will it expand any other part of the home's footprint. The distance from the shore, floodplain and waterway would remain the same.

This addition will have no adverse effect on the public interest because it is located over 450' from the roadway, and is not adjacent to any public lake access points. It will be built over the existing garage, facing the driveway on the west side of the home. The public's view of the house from the lake will be unchanged, as the roofline of the addition will be behind the main house and will be 3' lower than the main house roofline. The new roof will cover the same surface area as the current garage roof, so there will not be an increase in run-off or additional impervious surface area, and it should have no detrimental effect on any natural resources in the area.

We have discussed our plans with our immediate neighbors, and they support our request for a variance. (See letters as attachment #4). The neighboring homes are 60' (west side) and 100' (east side) away and because this addition is on the side of our home, it does not compromise anyone's view of the lake or their ability to enjoy their own property. The architectural style of the addition is designed to seamlessly join both sides the home, and when built, should blend in beautifully with the other homes in the neighborhood.