

Tuesday, October 3, 2023

5:00 PM

McFarland Municipal Center
Community Room

AGENDA

You are invited to this meeting through a Zoom webinar. The public may attend in-person or remotely through the webinar or telephone options listed below.

PLEASE CLICK THE LINK BELOW TO JOIN THE ZOOM WEBINAR:

<https://us02web.zoom.us/j/83229039521>

Or by Telephone: +1 (312) 626-6799

Webinar ID:

Press *9 to raise/lower hand. Press *6 to mute/unmute.

1. CALL TO ORDER, ROLL CALL.
2. PUBLIC APPEARANCES.
 - a. This is an opportunity for members of the public to address the Board of Zoning Appeals for items that are not on the agenda. Please remember this is a hybrid meeting conducted in person and through the Zoom online meeting platform. Meeting attendees wishing to address the Board about items not on the agenda may do so at this time. Zoom attendees should type their name and address in the Question and Answer feature within the Zoom online meeting platform at this time. Members of the public who are present in person and wish to address the Board should fill out a public comment form and turn into the meeting chairperson. When you are called upon to speak, state your name, address, and provide your comments to the Board for their consideration. Please adhere to the 3-minute time limit. Additionally, you may send your public comments to community.development@mcfarland.wi.us to be included as part of the meeting.

Members of the public may also speak during their selected agenda item as they designate on the public comment form or in the Question and Answer feature on Zoom.
3. APPROVAL OF MINUTES.
 - a. Motion to approve the minutes of the August 24, 2023 Board of Zoning Appeals meeting.
4. ANNOUNCEMENT OF PROCEEDINGS
 - a. Review of meeting proceedings.
5. PUBLIC HEARING
 - a. Public Hearing on a request by CHS for a variance to the front yard setback requirements of Sec. 62-72 for the M-IC Zoning District to construct an approximate 15' x 14'6" building addition at 4103 Triangle Street, McFarland, WI.
6. BUSINESS.
 - a. Discussion and action on a request by CHS for a variance to the front yard setback requirements of Sec. 62-72 for the M-IC Zoning District to construct an approximate 15' x 14'6" building addition at 4103 Triangle Street, McFarland, WI.

7. SCHEDULE NEXT MEETING DATE.

- a. To be determined

8. ADJOURNMENT.

Any person who has a qualifying disability as defined by the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format should contact the McFarland Municipal Center at (608)838-3153, 5915 Milwaukee Street, McFarland, Wisconsin, or village.clerk@mcfarland.wi.us by 2:00 p.m. at least 5 business days prior to the meeting so that any necessary arrangements can be made to accommodate each request. If the meeting or request is less than 5 business days from the meeting, requests for accommodations may still be made and reasonable efforts will be made to accommodate each request.

Board of Zoning Appeals

Working Draft Minutes

August 24, 2023

Members Present: Gordon Kinder, Joe Rademacher (A), John Robertson, Ken Brost, Blake Draper,

Members Absent: Art Luetke

Staff Present: Andrew Bremer, Jim Trebian, Karen Knoll

1. CALL TO ORDER

Kinder called the meeting to order at 4:01 p.m. Kinder noted that alternate member, Joe Rademacher who joined at 4:05 p.m. will be serving in place of Art Luetke who is absent.

Kinder requested any members who had a conflict of interest to identify so at this time.

None were noted.

2. PUBLIC APPEARANCES.

None.

3. APPROVAL OF MINUTES.

- a. Motion to approve the minutes of the June 21, 2023 Board of Zoning Appeals meeting.

Motioned by Robertson and seconded by Draper to approve the minutes. Motion passes

5-0.

4. ANNOUNCEMENT OF PROCEEDINGS

Kinder and Bremer provided background on the purpose and authority of the Board of Zoning Appeals, the announcement of proceedings, and procedure for the meeting as

included in packets. Bremer indicated that parties wishing to speak in regard to this request will be taken in the order of those in person will be allowed to speak first, they will then take those appearing via ZOOM, and any letters received will be read in after that point.

5. PUBLIC HEARING

a. Public Hearing for a request by Mike and Candice Pennekamp for a variance to the front, street, and rear yard minimum setback requirements of Sec. 62-70 to construct a replacement two-story single-family dwelling in the location of the existing foundation of the two-story single-family dwelling at 4503 Beckler Street, McFarland, WI. Property zoned R-1B.

Kinder opened the public hearing at 4:13 p.m.

Applicant Opening Statement. Chris Landerud, of Landerud Plan & Design, LLC, 4426 Mahoney Road indicated he is representing Mike and Candice Pennekamp, recited the oath before providing his opening statement. The Pennekamps hired Landerud to explore opportunities for them for the property, it is zoned R-1B and they understand it is currently non-conforming, with the setbacks being encroached upon. They envisioned using the exact same footprint, the property is currently a two-bedroom two story structure, they are proposing to replace it in the same footprint as a two story two-bedroom structure and add garage parking on the main level with living space above. Landerud concurs this is a small lot; he feels their proposal meets all the zoning requirements except for the already encroached upon setbacks.

Staff Opening Statement. Bremer recited the oath before providing the staff report to the Board. Bremer indicated the Building Inspector had joined the meeting via ZOOM and is available for any questions or testimony if needed. Bremer provided staff's review of the variance request, that staff felt not all six of the requirements for obtaining a variance under the municipal code were met and therefore the application should be denied. Staff does not question the current residence needs work, and the home proposed is a much nicer home. The lot is small non-conforming, you could not build a home on this lot and meet all of the setbacks, however, there has not been enough evidence provided showing why the home could not be built like for like which would not require a variance as a legal nonconforming structure and, it was not shown why granting of this variance is the minimum amount of relief necessary. The staff report includes property conditions, zoning, size of the property along with setbacks and what is and is not conforming. Bremer reviewed them with the information as provided in packets.

No comments or questions from the Board members regarding staff review.

Applicant Case. Landerud indicated the case he wishes to make is the request for a variance is a non self-inflicted hardship, the hardship is they have a non-conforming lot which the owners cannot do anything with unless they are granted a variance. Landerud stated he finds the current home charming, but when asked why they do not rebuild as is, is due to structural issues with the home, current technology and building code does not support it. He feels the Pennekmaps cannot rebuild this home exactly as it currently is, walls would have to be thicker, doors wider, etc. They need relief in order to maintain the character of

the neighborhood and in building a new two-bedroom two story home. Landerud advised the proposed living space is actually smaller than the existing one, the Pennekamps would be maintaining affordable housing in the Village, with a smaller, safer, more energy efficient two-bedroom home in place of what is currently there. Landerud feels it would be an improvement to the neighborhood and understands this is a complicated project. Landerud indicated he did not have any witnesses wishing to speak in for or against the proposal and the Pennekamps, owners of the property, did not wish to speak at the public hearing.

Staff Case. Bremer provided staff summary as provided in packets. The zoning code provides six standards which must be met, Bremer reviewed the standards and staff's opinions on them as to how they have either been met or failed to be met by submitted application. Staff does not agree with the applicant's statement that the proposed structure will maintain the nonconforming setbacks as the proposal increases the amount of the cubic volume of the structure that is nonconforming to the setbacks. The existing home can be utilized for its permitted use, and if it is in such poor condition, it can be razed and rebuilt on the existing foundation like for like. Bremer stated the Landerud provided examples of what he feels is precedent, however the structure they referred to (5018 Card) conforms to all R-1B minimum setbacks, and the applicant has not provided any additional information as to why replacing the home like for like without increasing cubic volume nonconformity would result in a home which was less safe, less energy efficient and less affordable than the proposed structure. Other structures indicated as precedent do not include garages as the proposed structure does. The proposed structure would also result in the loss of at least

one on street parking stall for the neighborhood in order to accommodate the three-car garage. Bremer reviewed the standard of the hardship not being self-imposed, while the lot is non-conforming the applicant likely knew that when they made the purchase. Bremer included supplemental information in the packet regarding the variance is not based on desire to increase the value or income potential. The applicant states it is their intention to use the property for personal use, ownership and their enjoyment of lake access.

Kinder opened up the meeting to comments from the Board.

Robertson questioned what the Pennekamps actual intention is for this residence as they also own the property next door at 4501 Beckler Street and another full-time residence in the community. Landerud replied in working with the Pennekamps what they do with this property will depend on what they are able to do with the property based on this meeting, Landerud feels ownership and how they use the property is not a factor of zoning. Landerud said if they can improve the house, they would occupy it. Rademacher inquired about the testimony of bringing affordable housing, that would indicate that they are looking for use of this property as a rental, is that correct? Landerud advised that is not correct, the ownership of the property has nothing to do with zoning, the reason Landerud brought it up was replacing a two bedroom two story home with a two bedroom two story home provides housing in the Village of which there is a small inventory of, most of the housing in the Village is 3 -4 bedrooms and much larger, what they are proposing is an affordable housing option. Rademacher found it hard to believe that what they are proposing would maintain this as affordable housing, especially with a three-car garage.

Draper inquired about the statement if not building this plan as proposed Pennekamps cannot do anything with the lot, per code there are minimal non-conformity changes is it your position the plan you have submitted is the minimal expansion amount that the non-conforming at the minimum or is it beyond that amount. Landerud replied and questioned what is the minimum relief, there are items such as building with a flat roof, what is the smallest home someone can live in, what is the smallest car someone needs, etc., yes, the house could be smaller. Landerud indicated he had looked at other homes and felt they could have been built smaller when they were built. Could this house be built smaller, yes. Landerud reviewed the property at 5913 Lake Edge Road. Kinder pointed out properties are not specific to the lot for which they are applying for the variance, they need to keep specific to the property which they are applying for the variance. Brost inquired if Landerud knew what the cubic living space of the existing house was, the livable space. Landerud replied the existing square footage of the home is approximately 1444 square feet, but he did not have specifics on the ceiling height, as he did not measure them, he believes they are seven feet in height. The proposed is 1168 square feet with eight-foot ceilings. Brost felt living space is the issue. Landerud advised that the square footage living space is 19% less, he does not have the cubic square footage. Bremer reviewed the information the applicant provided which is included in the packets under existing property conditions.

Draper asked Landerud in regard to his looking around the neighborhood, staff has indicated this project would increase the non-conformity. Were you able to interpret the Village code when you were working on this project to see that it would be non-

conforming? Landerud replied he does not know the exact answer to that as he does not feel the code spells it out and Dane County and other municipalities all interpret it differently. He is gathering information based on what he reads in the code, what he sees in the neighborhood and how Dane County interprets things. Landerud advised when he met with Bremer, he understood how the Village interprets the code and is open to ideas. Landerud stated that his opinion is the Village code does not specify cubic footage or height, but that is an interpretation made by the Board of Zoning Appeals and Staff.

Kinder polled members to see if there were any further questions.

Bremer summarized his question was confirmed by Landerud that it would be possible to design a house that while it may still not be conforming, would not be as non-conforming as what is being proposed at this time. Bremer review the next steps in the hearing process.

Kinder polled members to see if they had any questions for staff.

Draper asked of Bremer does he share Landerud's opinion of the Village code that it does not specify height or cubic volume of a structure. Bremer responded he does not and referred to Sec. 62-150 (b) (2) "ordinary repairs and alterations, as well as structural alterations, may be made to a nonconforming building or structure that is nonconforming as to bulk, provided said ordinary repairs, alterations and structural alterations do not increase the nonconformity to the regulations of the district in which it is located." Which covers you cannot increase the non-conformity per code without a variance. While the

living space may be decreasing the applicant proposes adding a three-car garage and the code does not differentiate between the non-conforming space as garage or living space, it is the entire structure. Bremer summarized there is minimum setbacks for a building, maximum height requirements for a building, buildings are expected to meet both.

Landerud asked about the minimum relief possible, he feels if they followed the zoning code, they could make the structure much larger, what actually is minimum relief? Bremer stated the Board looks at what is presented in keeping with the spirit of the code with the particular lot, also the addition of a three-car garage, is that in keeping with minimal relief.

Knoll read in for the record statements received:

Denise and Eric Faust – 4504 Field Avenue – emailed a letter of support.

Todd MacDonald and Jennifer Sonnentag – 5022 Card Avenue – emailed a letter in opposition.

All parties addressing the Board recited the oath prior to speaking:

Dee Lancour – 5018 Card Avenue – spoke in favor of the proposal but also had concerns.

Jody Armstrong – 5019 Card Avenue – spoke in opposition.

Concerns were height of the proposed structure, blocking of the neighbor's views of the lake, loss of on street parking, whether the property would be used as a rental or have an apartment in it.

Bremer indicated testimony heard from the applicant's representative when there was a question about a potential apartment Landerud stated no, the Pennekamps did not intend to have an apartment, nor were they building an apartment building.

Kinder asked if any parties online wished to address the Board of Zoning Appeals, with no one indicating they wished to speak Kinder closed the public hearing at 5:26 p.m.

6. BUSINESS.

a. Discussion and action on a request by Mike and Candice Pennekamp for a variance to the front, street, and rear yard minimum setback requirements of Sec. 62-70 to construct a replacement two-story single-family dwelling in the location of the existing foundation of the two-story single-family dwelling at 4503 Beckler Street, McFarland, WI. Property zoned R-1B.

Kinder surveyed the Board members for additional comments or concerns.

Draper felt this was a reasonable request, but there is reasonable concern over the parking issue and if there was consideration to a design which would better accommodate the loss of a parking space due to the proposal. It would be helpful for the applicant to consider a design which did not remove any parking from the neighborhood. Kinder feels someone could rebuild on that site without a variance, the proposed three car garage and height above it would create an imposing structure. Brost felt if the living space is smaller than the current building has it would meet minimum relief.

Kinder moved to denying the request as submitted referencing Village staff's written summary provided in the packet.

1. Denial of the variance would not unreasonably prevent the owner from using the property for a permitted purpose. The owner may reconstruct the home to its same size and location without the need for a variance.
 2. The granting of the variance would be so general or recurrent in nature as to suggest the Zoning Code should be changed. There are other nonconforming lots with nonconforming structures that could similarly request a variance to increase the cubic volume of nonconforming structures.
 3. The applicant has not provided any additional information as to why replacing the existing home like for like without the cubic volume increase in nonconformity would result in a home that was less safe, less energy efficient or less affordable than the proposed structure.
 4. The applicant has not provided specific justification for what specific construction and building code requirements require the cubic volume increase in the nonconformity of the proposed home.
 5. The applicant has not provided justification as to why the proposed design is the minimum amount of relief necessary.
 6. Harm to public interests, including the removal of at least one on-street parking space, potential solar access and Lake Waubesa viewshed impacts to adjacent properties.
- Rademacher seconded the motion.

The following rationale was provided by each Board member.

- Rademacher voted yes to deny the request based on the neighborhood would be denied parking spaces, ability to see the lake, the proposal is not a proper way to handle this structure.
- Robertson voted yes for the motion to deny as proposed, there are alternatives available to this proposal.
- Draper voted nay against the motion due to ambiguity in the concept of minimum relief, making a livable space within current building code beyond what the current volume, size and height of the existing structure, due to the totality of all of those are arguments and some ambiguity in the zoning code.
- Kinder voted yes, he concurs with staff comments, the owner has right to rebuild something there within the footprint, the code is not what us up for discussion, the loss of parking on the street hurts neighborhood and public. Feels something workable can be done on this site.
- Brost - nay to the motion, if all in the neighborhood handled parking in this way there would not be a problem with parking.

Motion passes 3-2. Kinder indicated staff would send a letter to the applicant regarding the outcome of the meeting. Encouraged applicant to work with Director Bremer on possible alternative designs to address the concerns raised at the meeting.

7. SCHEDULE NEXT MEETING DATE.

- a. To be determined.

8. ADJOURNMENT.

Brost motioned to adjourn, seconded by Draper. Motion passed 5-0. Meeting adjourned at 5:41 p.m.

Board of Zoning Appeals - Announcement of Proceedings

This script is meant to be reviewed at the beginning of the Board of Zoning Appeals meetings so that applicants and members of the public who are not familiar with Board of Zoning Appeals learn 1) what a Board of Zoning Appeals is 2) what Wisconsin laws require that Board of Zoning Appeals base their decisions on and 3) what to expect during a Board of Zoning Appeals public hearing.

The Board of Zoning Appeals (BZA) functions like a court, and must follow state laws and local zoning ordinances. The BZA cannot change or ignore any part of the zoning ordinance or state laws, but must apply the laws as written. The BZA may only grant a variance, special exception or administrative appeal if the applicant provides evidence showing that they meet all of the standards for that decision. The legal standards the BZA will use to decide on each Area Variance application have been provided to the applicant and are found within Sec. 62-366(e) of the Village of McFarland Municipal Code of Ordinances, and as provided on page three.

- Opening of Public Hearing.** The public hearing will be opened by the Chair.
 - Witness appearing during the public hearing will be asked to state their name, address, and the following oath:

I solemnly and sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

- Summary of Appeal.** Village Staff will summarize the appeal requested.
- Opening Statements.** Either party can waive their opportunity for an opening statement.
Please adhere to a 5-minute time limit.
 - Applicant (or applicant's agent)
 - Zoning Administrator
- Applicant's Case.** The applicant shall present its case including the reasons and evidence to support why they think they meet the standards for approval of the application. Please adhere to a 15-minute time limit.
 - Witnesses. The applicant may call witnesses.
 - Zoning Administrator Questions. Village Staff may ask questions of the applicant or their witnesses (cross examination).
 - BZA Questions. The BZA may ask questions of the applicant, its agents, or Village staff (examine witnesses).
 - Applicant Redirect. Applicant may provide re-direct testimony of their witnesses.
- Zoning Administrator's Case.** The Village Zoning Administrator, or representative, will review the staff report in the meeting packet and summarize reasons and evidence to support or deny the application. Please adhere to a 15-minute time limit.
 - Witnesses. The Zoning Administrator may call witnesses. Any witnesses of the Zoning Administrator will be sworn in before testifying.
 - Applicant Questions. The Applicant may ask questions of Village Staff or their witnesses (cross examination).

- BZA Questions. The BZA may ask questions of the applicant, its agents, or Village staff (examine witnesses).
- Zoning Administrator Redirect. Village Staff may provide re-direct testimony of their witnesses.
- Opinion Testimony (general public).** The Board of Zoning Appeals may accept opinion testimony and written testimony from interested parties, which shall not be subject to cross-examination, however, any party may introduce any rebuttal testimony addressing any factual issues raised.
 - Written Testimony. Public statements provided to Village Staff prior to the meeting will be read or included in the meeting packet.
 - In-Person Testimony. Members of the public may present opinion testimony for or against the appeal application. Please adhere to a 3-minute time limit.
 - Virtual (Zoom) Testimony. Members of the public may present opinion testimony for or against the appeal application. Please adhere to a 3-minute time limit.
- Opinion Testimony Rebuttal**
 - Applicant. The Applicant may provide rebuttal testimony addressing any questions for factual issues raised during the opinion testimony.
 - Zoning Administrator. The Zoning Administrator may provide rebuttal testimony addressing any questions for factual issues raised during the opinion testimony.
- Closing Statements.** Either party can waive their opportunity for a closing statement. Please adhere to a 5-minute time limit.
 - Applicant
 - Zoning Administrator
- Close the Public Hearing.** The Chair will close the public hearing.
- Business.** The BZA will deliberate the application or appeal and decide¹ whether the applicant has met the standards for approval. Final decisions shall be made by a majority of the members present. In making its determination, the BZA shall state reasons for the BZA's determination.

The Board of Zoning Appeals shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

Following the meeting Village Staff will provide a written summary of the BZA's decision to the applicant. Any person aggrieved by any decision of the BZA may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the offices of the Board of Zoning Appeals.

¹ Per Sec. 62-365(a) the BZA shall render its decision either at the termination of the hearing or within 30 days thereafter.

Sec. 62-366(e) Standards for Granting Area Variances.

- (1) Unnecessary hardship. Variances shall be granted only where the applicant demonstrates the existence of an unnecessary hardship. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. When considering any variance, the Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. Variances may not be granted where they are contrary to the public interest or where granting the variance would violate the spirit of the regulation. A use variance may not be granted unless it is proved that there can be no reasonable use of the property absent a variance. The Board of Zoning Appeals shall consider the following factors to determine whether an unnecessary hardship exists to justify issuance of an area variance:
 - a. The purpose of the zoning restriction in question;
 - b. The effect of the restriction on the property; and
 - c. The effect of a variance on the neighborhood and the larger public interest.
- (2) Hardship may not be self-imposed. Variances may not be granted to remedy self-imposed hardships.
- (3) Hardships must be unique to the property. Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted.


VILLAGE OF
McFarland
SUMMARY SHEET

MEETING DATE: Tuesday, October 3, 2023

SECTION: Business

DEPARTMENT: Community Development

CONTACT: Andrew Bremer, Comm & Eco Dev Director

AGENDA ITEM: Public Hearing on a request by CHS for a variance to the front yard setback requirements of Sec. 62-72 for the M-IC Zoning District to construct an approximate 15' x 14'6" building addition at 4103 Triangle Street, McFarland, WI.

PREVIOUS ACTION:

ISSUE SUMMARY:

CHS Petroleum, owner and applicant, is requesting a variance for an attached addition to an existing building located approximately 15' of the front lot line within the front yard at 4103 Triangle Street. The proposed addition will be 15' x 14'6", with a building footprint measuring 217.5 square feet. The addition will include an ADA-compliant restroom and eyewash shower facilities available for staff and drivers. The attached addition includes a door, connecting the attached facility to the existing building's tool room. Note, this is not a relocation or repurposing of the June 21 BZA approved accessory structure. The proposed addition will include metal siding and paint consistent with the existing building.

For this request, the applicant must acquire both a site design review permit from the Plan Commission and be granted a variance by the Board of Zoning Appeals (BZA), as the proposed addition does not meet the minimum front yard building setback of 35 feet in the M-IC District. The Plan Commission is scheduled to consider the site design review permit at their October 17 meeting.

RELEVANT PREVIOUS APPROVALS

In January 2012, the applicant was granted a 7' variance to the 35' front yard setback to construct a new truck/unload rack building, set 28' from the right-of-way adjacent to Triangle Street. The following year, in January 2013, the applicant was granted a 13' variance to the 35' front yard setback for the reconstruction of an electrical building, set 22' from the right-of-way. On June 21, 2023, the BZA approved a variance for a 12'x18' shed approximately 5'-6" to the front lot line, inside the 35' front yard setback.

EXISTING PROPERTY CONDITIONS

The property is 8.1 acres and zoned M-IC Manufactured Intensive Commercial. The property has nine existing structures on the property, which include: six petroleum storage tanks, a drive-through loading bay for tanker vehicles, an office building, and an electrical structure. There is a security fence which wraps around the entire property's lot line. Adjacent to the north is a



similar property owned and operated by Sunoco, a petroleum manufacturer also zoned M-IC. Adjacent to the east are three undeveloped parcels of land within the City of Madison. The adjacent property to the south is owned by CHS and consists of a landscaping business, also zoned M-IC. Adjacent to the west is Triangle Street, and further is US HWY 51.

STANDARDS FOR GRANTING A VARIANCE - Comments Regarding Applicant's Responses

The BZA variance application includes six questions, or standards, for review and approval of a variance (area) application. For the BZA to grant a variance, it must find all six items are met. The applicant's responses are provided in the packet. The following are staff's comments regarding the applicants' responses, and whether, in staff's opinion, the responses or desired development meets the standards.

1a. The Purpose of the Zoning Restriction in Question. The Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. The granting of the variance should not be so general or recurrent in nature as to suggest the Zoning Code should be changed. Describe why granting of the variance will not undermine the general intent and purpose of the Zoning Code and the specific purpose of the regulation in question?

- The Applicant has stated that due to site constraints, such as access to the tank farm and safe/efficient access to the facility, and connecting to existing infrastructure, the addition can not be constructed in other areas of the site. In Staff's opinion, there are physiographical limitations that prevent the addition from being located further into the property to meet the minimum front setback requirements. The area east of the driveway located within the tank containment berms is classified as Class 1 Div 2 environments and requires additional personal protective equipment (PPE) and atmospheric monitoring equipment per CHS policy and OSHA regulations to access. Staff observed that the building to the north is not a fully enclosed structure and review of the current Village utility GIS shows the building does not include water or sanitary lateral connections. The main office building includes existing office spaces, a tool room, and existing connections to water and sanitary utilities. The selected location of the attached addition to the main office building appears to provide the most support to daily operations and onsite staff. An alternative to placing the proposed addition on the south-facing wall of the main office building would impact existing parking. In Staff's opinion, the applicant is proposing the minimum amount of relief as the proposed addition is setback as far as possible from the front lot line while consistent with the existing site constraints while providing the ideal location for the intended users. In Staff's opinion, the applicant's response is reasonable.

1b. The Effect of the Restriction on the Property. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Describe the effect of the zoning restriction on



your property and how this impacts the reasonable use of your property or would render conformity unnecessarily burdensome?

- Staff concurs with the applicant that the existing building sits within the required setback area. Currently, truck drivers have to enter the main office building to use the restroom. This presents operational disturbances and safety concerns as drivers then have access to other areas of the building. Alternative locations, as described in 1a, appear to render conformity as unnecessarily burdensome. In Staff's opinion, the applicant's response is reasonable.

1c. The Effect of a Variance on the Neighborhood and Larger Public Interest. Describe why granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

- Access to the existing fire hydrant nearby would not be impeded by the proposed location of the accessory structure. Additionally, Triangle Street also does not include sidewalks or walkways for pedestrian traffic at this time and the addition is located within the existing security fence. There are no known emissions, lights, or sound being emitted from the addition that would cause a disturbance to the adjacent properties. In Staff's opinion, the applicant's response is reasonable.

2. Hardship must not be self-imposed. Variances may not be granted to remedy self-imposed hardships. Describe why you feel the hardship is not self-imposed?

- The applicant has indicated that the addition is to support the health and welfare of staff. Currently, truck drivers have to enter the main office building to use the restroom. This presents operational disturbances and safety concerns as drivers then have access to other areas of the building. The applicant has previously stated the site was originally designed prior to Village zoning requirements and the unique characteristics of the use/site require placement of the addition along the existing driveway within the front yard setback area. In Staff's opinion, the applicant's response is reasonable.

3. Hardship Must Be Unique To The Property. Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district. The conditions upon which a petition for a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity. Describe the circumstances that exist which make this issue unique to the property?

- Staff observed that the adjacent property to the north, 4009 Triangle Street (7.1 acres), would be most comparable to the applicant's property in regards to its physical characteristics and current use. Both properties are gas and petroleum manufacturers,



both have similarly aligned petroleum storage tanks, a water retention stream in the rear yard, adjacent to the City of Madison, and both properties include a curved driveway for tanker vehicle accessibility. However, the curvature of Triangle Street provides 4009 Triangle Street with a larger front yard space, while 4103 Triangle Street does not receive this benefit. This detail would provide 4103 Triangle Street with a characteristic unique to its location. The applicant has stated that placing the addition outside of the setback impedes the use of the site as a petroleum depot. In Staff's opinion, the applicant's response is reasonable.

4. The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property.

- The applicant has indicated that construction of the addition is to provide an ADA compliant restroom and eyewash shower. Currently, truck drivers have to enter the main office building to use the restroom. This presents operational disturbances and safety concerns as drivers then have access to other areas of the building. In Staff's opinion, the request for a variance does not appear to be based on increasing the value of the site. Staff concurs that the addition will provide an ADA compliant restroom and eyewash shower, while minimizing activity navigating through the tool room and offices. Drivers choosing to use the proposed space, may do so without disrupting the onsite staff. In Staff's opinion, the applicant's response is reasonable.

PUBLIC COMMENTS

The Department did not receive any written comments or concerns prior to the publication of this packet.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

Terminal and Triangle Street District, 2005. The property is located within the Meinders/Triangle Subdistrict of the Terminal and Triangle Street District Plan. The area connects the planned single family residential communities of the City of Madison with the variety of industrial and commercial purposes of the Village. The overview for the subdistrict states, "The overall focus will be on manufacturing, distribution, offices, and support uses, with a greater emphasis on high-quality buildings and site design."

Comprehensive Plan, 2017. The Future Land Use Map 6 identifies the property as Industrial. The submittal does not include a change to the current use and remains consistent with the planned use.

ORDINANCE REFERENCE:

Sec. 62-366. - Variances

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

Discussion only. Action on the variance request will be considered under Agenda Item 6.a. after



completion of the public hearing.

ATTACHMENTS:

1. 4103 Triangle Street_CHS Variance App_08.31.2023
2. 4103 Triangle Street Addition Location

**Application for Administrative Appeal,
Use Variance, and Area Variance**

TO: The Board of Zoning Appeals, Village of McFarland, WI

Per Sec. 62-363(e), a filing fee of \$450.00 is required with each application submittal. The Applicant is responsible for publication fees and notification charges, plus actual legal, engineering and financial consulting costs incurred by the Village, to be billed later. No permits can be issued until all monies owed are paid. Filing fee is non-refundable.

NOTE: The Village recommends all Applicants read the "Letter to Applicants" as supplemental to the purpose and intent of this application. Applicants are encouraged to submit additional pages to answer application questions in full as needed.

Name of Appellant/Applicant	CHS
Address	4103 Traingle St. McFarland WI 53558
Owner's name/address (if different than Applicant)	
Phone	608-630-7925
Email	Derek.Pirkl@chsinc.com
Address of Property	4103 Traingle St. McFarland WI 53558
Parcel No.	071037383203
Lot #	NA
Lot Size	8.1 acres
Current Use of Property	Petroleum pipeline terminal
Proposed Use of Property	Petroleum pipeline terminal
Zoning Classification	M-IC

Applicants should complete Sections #1, #3, and #4 and either Sections 2A, 2B, or 2C on the following pages.

- 1) **Prior Appeals/Variations.** Has there been a past appeal or application with respect to this property? Yes No (If yes, provide a summary of the previous appeal below.)

Disposition of previous appeal: Approved

Date of decision in previous case: 2023, 2013 & 2012

How does this appeal differ from the previous request?
Similar request for a different project.

- 2) **Stating the purpose and grounds of your appeal.**
Check the box (A, B or C) which best meets the relief request of your appeal then answer only those questions within that section. You may include an attached sheet with your response if there is not enough space.

(A) Administrative Appeal.

This request is for a review of zoning ordinance and/or petition of order, requirement, decision, or determination of administrative official. Please include any additional documentation, letters or forms you received which is associated with this appeal. Use the lines provided below stating the reasons why you claim this order, requirement, decision, or determination is erroneous.

1) Date of notice of such decision received by applicant: NA

2) In the lines below, provide a summary of the order of administrative official from which appeal was taken:

NA

3) In the lines below, provide reasoning why the requirement, decision, or determination is erroneous.

NA

(B) Use Variance

Any use variance granted shall be limited to the specific use described in the BZA decision and shall not permit variances in yard, area, or other requirements of the districts in which located.

- 1) Is this property located in a designated Floodplain or Wetland and Conservancy District? Yes No
- 2) Has the applicant previously applied for a zoning amendment or a conditional use permit? Yes No
(If yes, provide the following information in the lines below.)

Date when request was determined: NA

Was this request approved? Yes No

Describe the specific proposed use of the subject property for which a use variance is requested:

NA

- 3) Describe why no lawful and feasible use of the subject property can be made in the absence of such a variance.

NA

(C) Area Variance.

An area variance is a request for a modification(s) to a dimensional, physical, or locational requirement such as setback, frontage, height, bulk, or density restriction for a structure.

Describe the area variance you are requesting, including the specific section(s) of the Zoning Code:

Zoning classification M-IC, 35' building setback requirement

Sec. 62-366(e) Standards for Granting a Variance. In the lines below, answer each question thoroughly for each item listed. For the Board- of Zoning Appeals to grant a variance, it must find that all conditions are met.

1. Unnecessary Hardship.

- a. The Purpose of the Zoning Restriction in Question. The Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. The granting of the variance should not be so general or recurrent in nature as to suggest the Zoning Code should be changed. Describe why granting of the variance will not undermine the general intent and purposes of the Zoning Code and the specific purpose of the regulation in question?

The proposed variance does not question the existing zoning of the property or the purpose of the zoning code. The project is an addition to ~~an existing structure to provide an ADA compliant restroom and eyewash shower for the health and safety of staff and drivers.~~ Due to site constraints, such as access to the tank farm and safe/efficient access to the facility, and connecting to existing infrastructure the addition can not be constructed in other areas of the site.

- b. The Effect of the Restriction on the Property. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Describe the effect of the zoning restriction on your property and how this impacts the reasonable use of your property or would render conformity unnecessarily burdensome?

The existing building sits within the required setback. The addition is placed to tie in to existing infrastructure. Moving the addition will impede the functional use of the property, blocking primary drive isles to the terminal.

- c. The Effect of a Variance on the Neighborhood and Larger Public Interest. Describe why granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

The building addition is aligned with existing site infrastructure and within site fencing. Therefore the addition will not block or encroach upon other properties or public right of ways.

2. **Hardship May Not Be Self-Imposed.** Variances may not be granted to remedy self-imposed hardships. Describe why you feel the hardship is not self-imposed?

The project is an addition to an existing building to support the health and welfare of staff. Placing the addition outside of the required set back blocks the flow of traffic and impedes upon the overall function of the site.

3. **Hardship Must Be Unique To The Property.** Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district. The conditions upon which a petition for a variance are unique to the property for which the variance is being sought and that such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity. Describe the circumstances that exist which make this issue unique to the property?

The existing building sits within the 35' setback requirement. Placing the addition outside of the setback impedes the use of the site as a petroleum depot.

4. **Purpose Must Not Be Financially Motivated.** Describe why the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property?

Construction of the addition is to provide an ADA compliant restroom and eyewash shower.

- 3) **Site Inspection.** Do you grant permission for the Board of Zoning Appeals and staff, either individually or as a group, to enter onto the subject property for a site inspection?
 Yes No
- 4) **Site Plan.** Per Sec. 62-363(c) of the Municipal Code of Ordinance, each application for appeal must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon and the requested change or addition.

DISCLAIMER

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.


Signature of Applicant

8/31/2023
Date

Addition to CHS Petroleum Triangle Street McFarland, WI 53558

Applicable Code: IBC (2015)
IBC Use Group : B
Construction Type VB, One Story
Building Area: 1550 SqFt
Occupant Load: 16



Review 7-20-23

SHEET INDEX

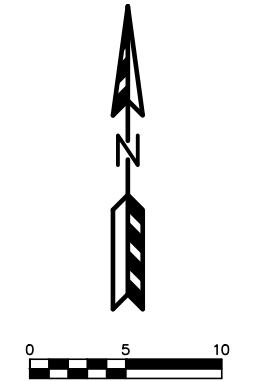
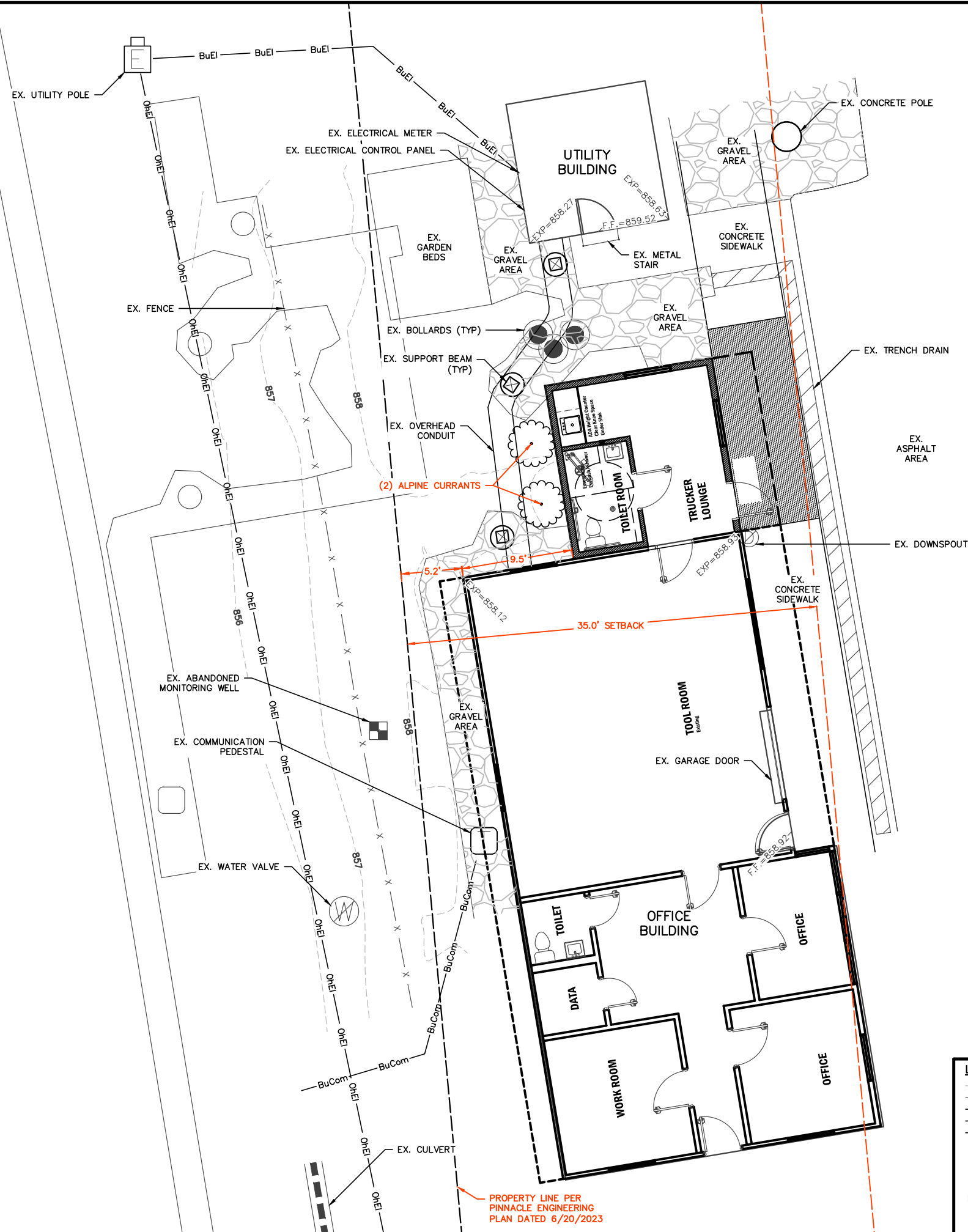
SHT.	DESCRIPTION
	COVER
C1.0	SITE PLAN
A1.0	FOUNDATION PLAN
A1.1	FLOOR PLAN
A1.2	FRAMING PLAN
A2.1	ELEVATIONS
A3.1	SECTION



LOCATION PLAN



TRIANGLE STREET



(2) ALPINE CURRANTS

35.0' SETBACK

PROPERTY LINE PER
PINNACLE ENGINEERING
PLAN DATED 6/20/2023

LEGEND FOR COMMON LINES:

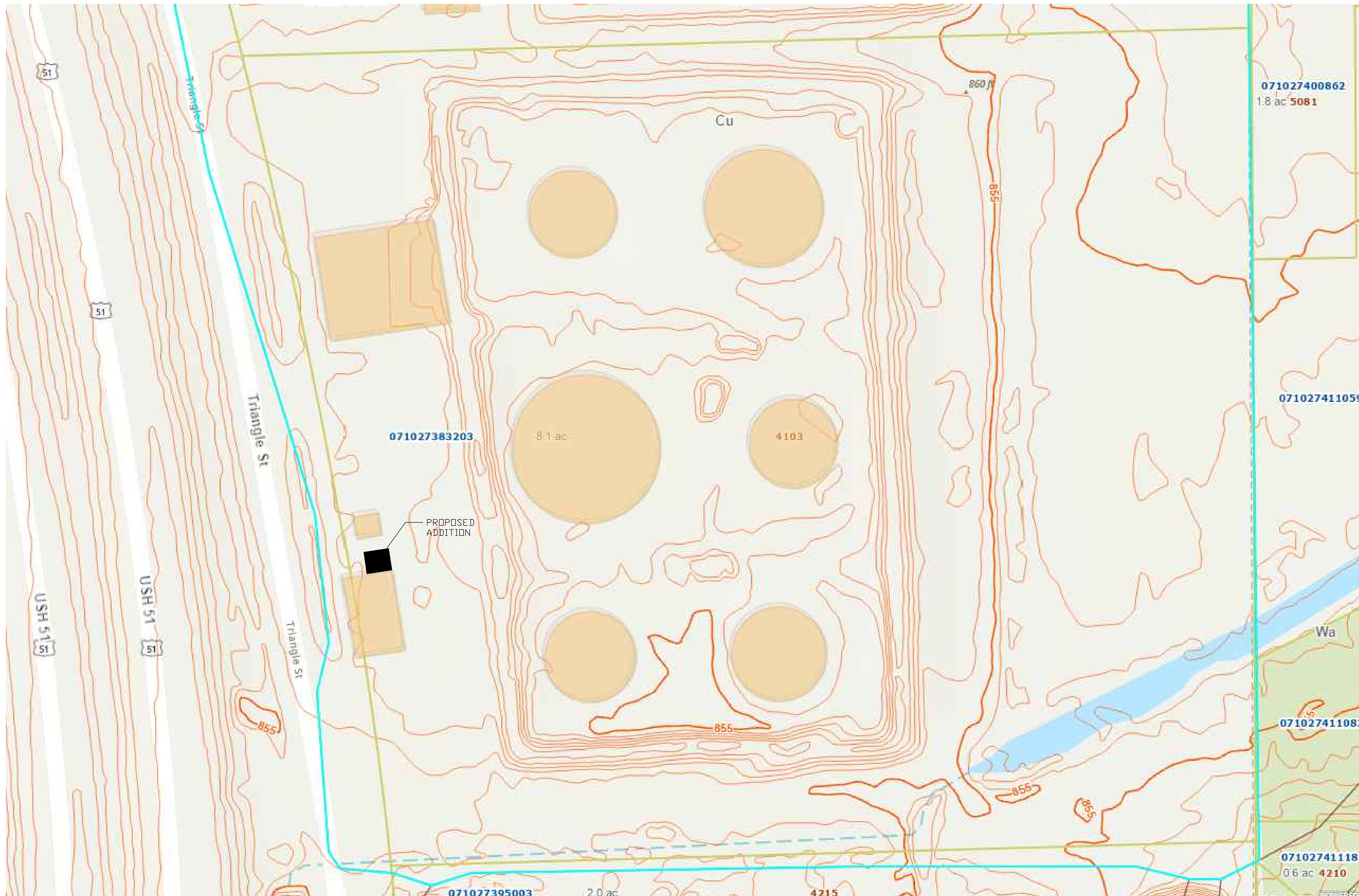
- - - 857 - - -	- EXISTING MINOR CONTOUR
- x - x - x -	- EXISTING FENCE
- BuCom -	- EXISTING BURIED COMMUNICATION LINE
- BuEl -	- EXISTING BURIED ELECTRIC LINE
- OhEl -	- EXISTING OVERHEAD ELECTRIC LINE
-EXP=858.93	- ELEVATION AT OUTSIDE CORNER OF BUILDING
-FF=859.52	- ELEVATION AT DOOR

EXISTING UTILITY NOTES:
EXISTING UTILITIES SHOWN HEREON WERE REQUESTED THROUGH DIGGERS HOTLINE WITH TICKET #20232919061 AND WERE MARKED BY OTHERS AND ADDED TO THE PLAN ON JULY 25, 2023.

4103 TRIANGLE STREET - BUILDING ADDITION
PROPOSED SITE PLAN
 SHEET: C-2
 DATED: AUGUST 30, 2023

QUAM ENGINEERING, LLC
 Residential and Commercial Site Design Consultants
 www.quamengineering.com
 4604 Siggelkow Road, Suite A - McFarland, Wisconsin 53558
 Phone (608) 838-7750; Fax (608) 838-7752

CONSULTANTS



PROJECT LOCATION:
CHS PETROLEUM TERMINAL
4103 TRIANGLE ST
McFARLAND WI 53558

ISSUED:

SD	0000
DD	0000
CD	0000
000	0000
000	0000

REVISIONS/ ADDENDA:

001	0000
002	0000
000	0000
000	0000

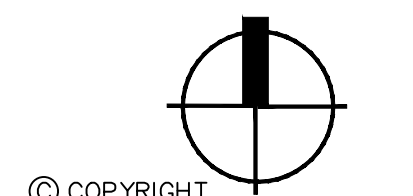
SCALE: AS NOTED

DATE: 07/05/2023

CONTRACT DOCUMENTS

C2

PLAN NORTH



© COPYRIGHT

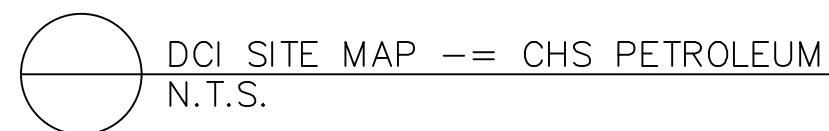
NOTES

UTILITIES:

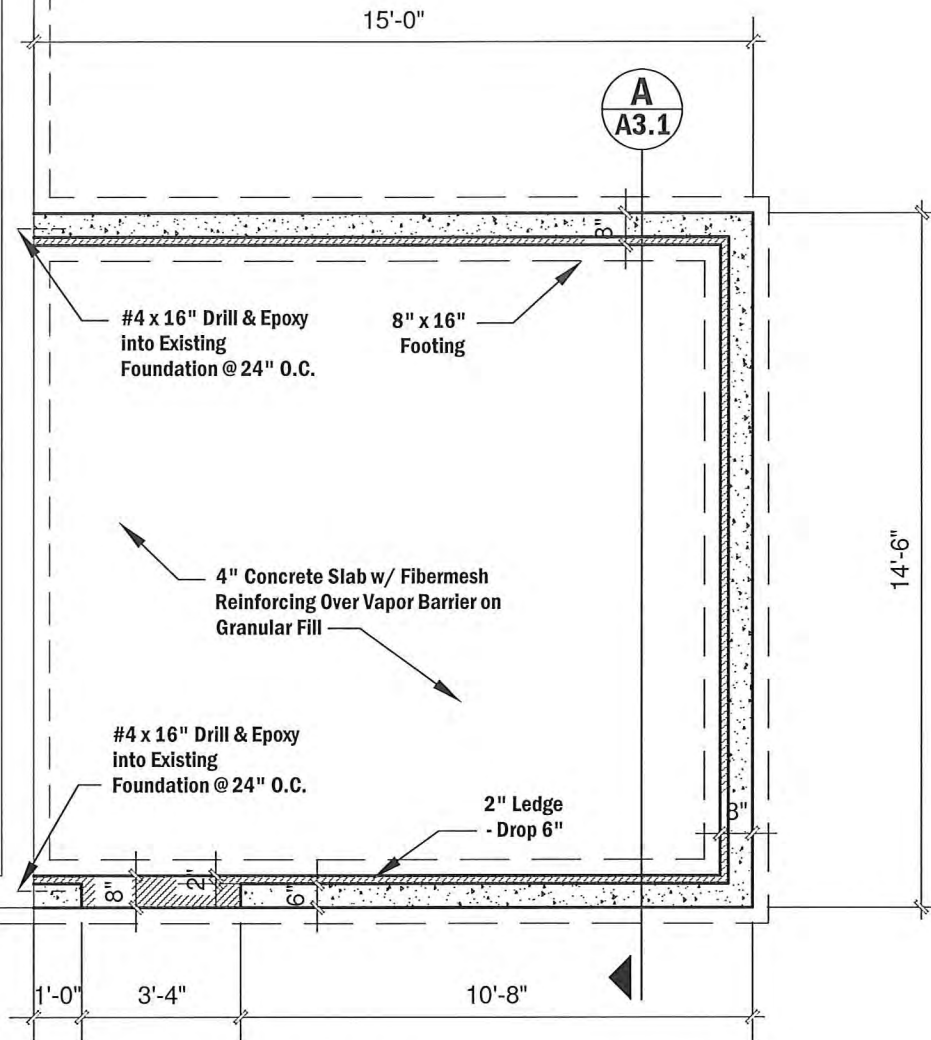
ELECTRICAL: THE ADDITION WILL CONNECT TO EXISTING. NO ADDITIONAL SERVICE OR INFRASTRUCTURE IS REQUIRED.

PLUMBING/WASTE: THE ADDITION WILL CONNECT TO EXISTING. NO NEW INFRASTRUCTURE IS REQUIRED.

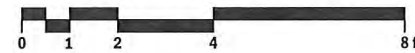
BUILDING SET BACK REQUIREMENTS:
THE EXISTING BUILDING AND PROPOSED ADDITION FALLS WITHIN THE BUILDING SETBACK AREA. VARIANCE TO BE REQUESTED DUE TO EXISTING CONDITIONS.



EXISTING BUILDING



FOUNDATION PLAN



architecture
3220 syano road, suite 103
madison, WI 53713
608.277.0585
www.gmkarch.com

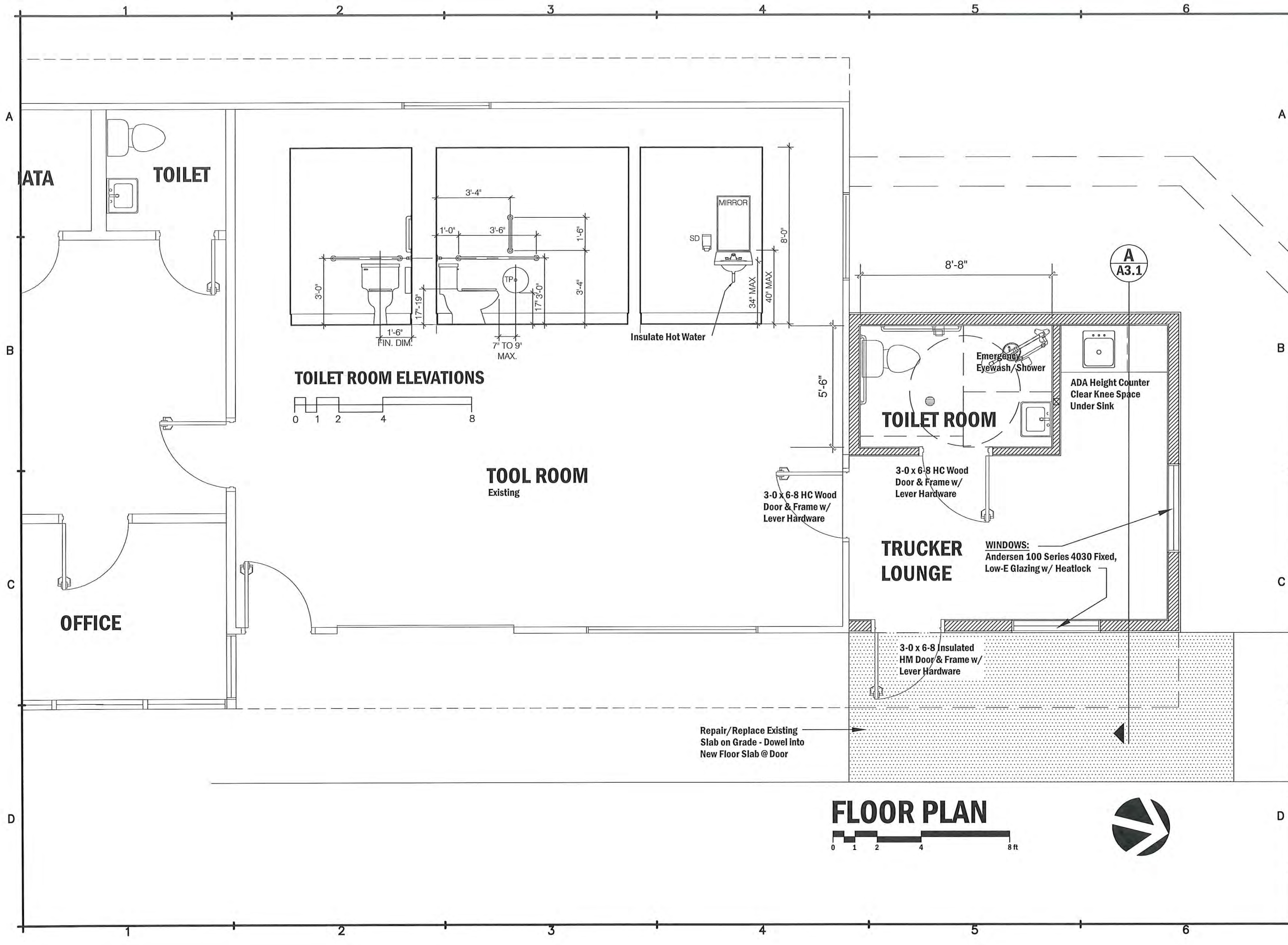
Office Addition

Triangle Street
McFarland, WI 53558

Comm. No. K2305
Issued For Date
REVIEW 7-20-23

FOUNDATION PLAN

A1.0



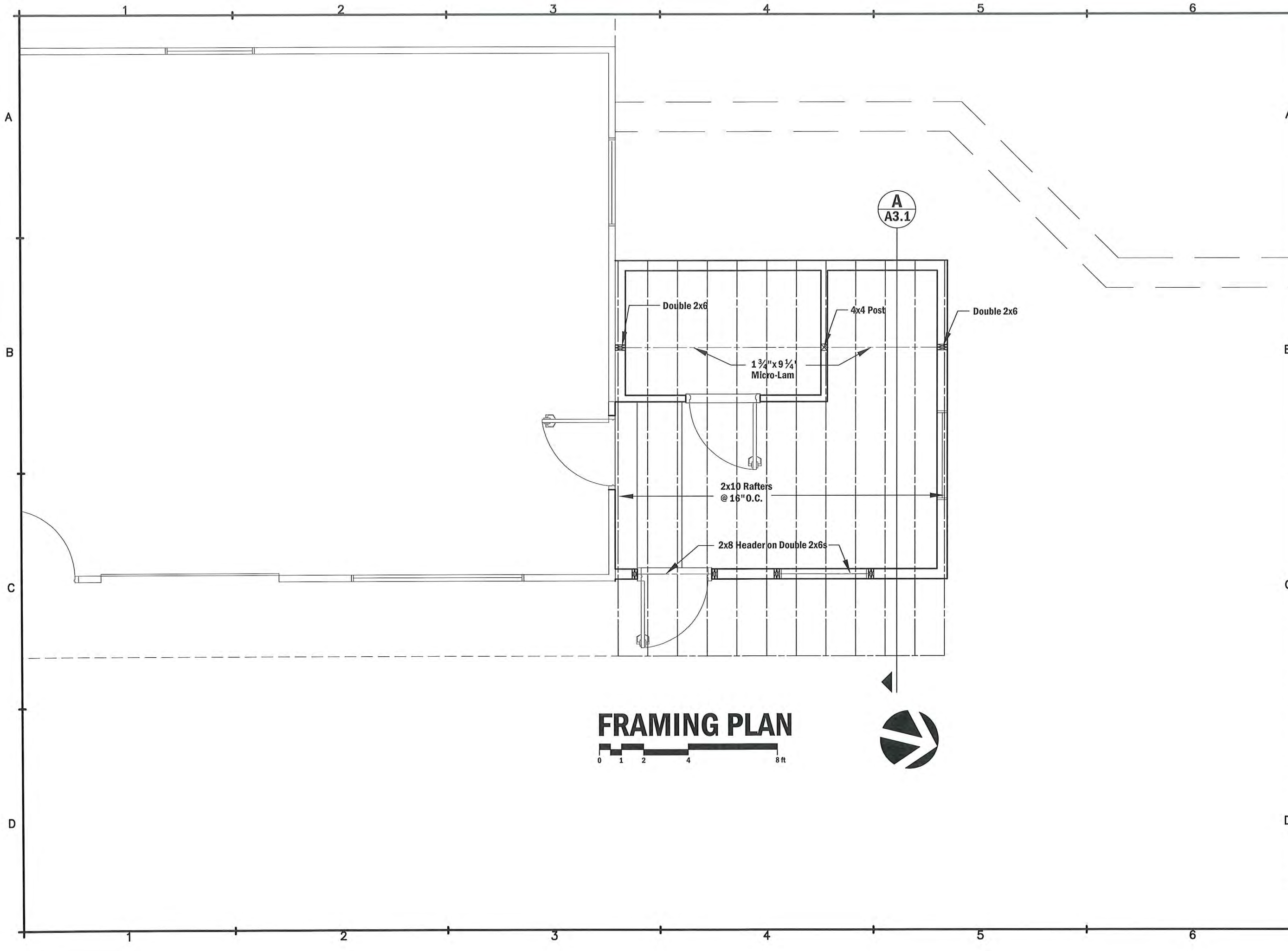
Office Addition

Triangle Street
McFarland, WI 53558

Comm. No. K2305
Issued For Date
REVIEW 7-20-23

FLOOR PLAN

A1.1



FRAMING PLAN



architecture
 3220 syene road, suite 103
 madison, WI 53713
 608.277.0585
 www.gmkarch.com

Office Addition

Triangle Street
 McFarland, WI 53558

Comm. No.	K2305
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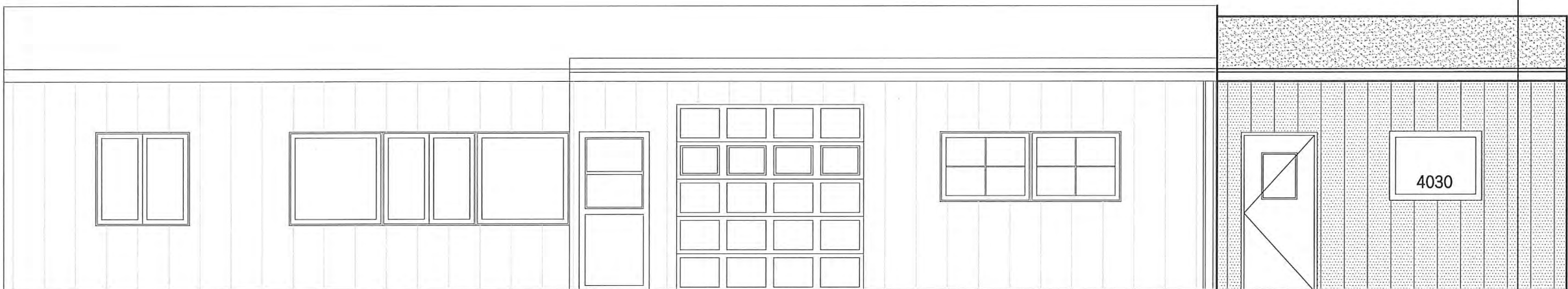
FRAMING PLAN

A1.2

1 2 3 4 5 6

A

A



B

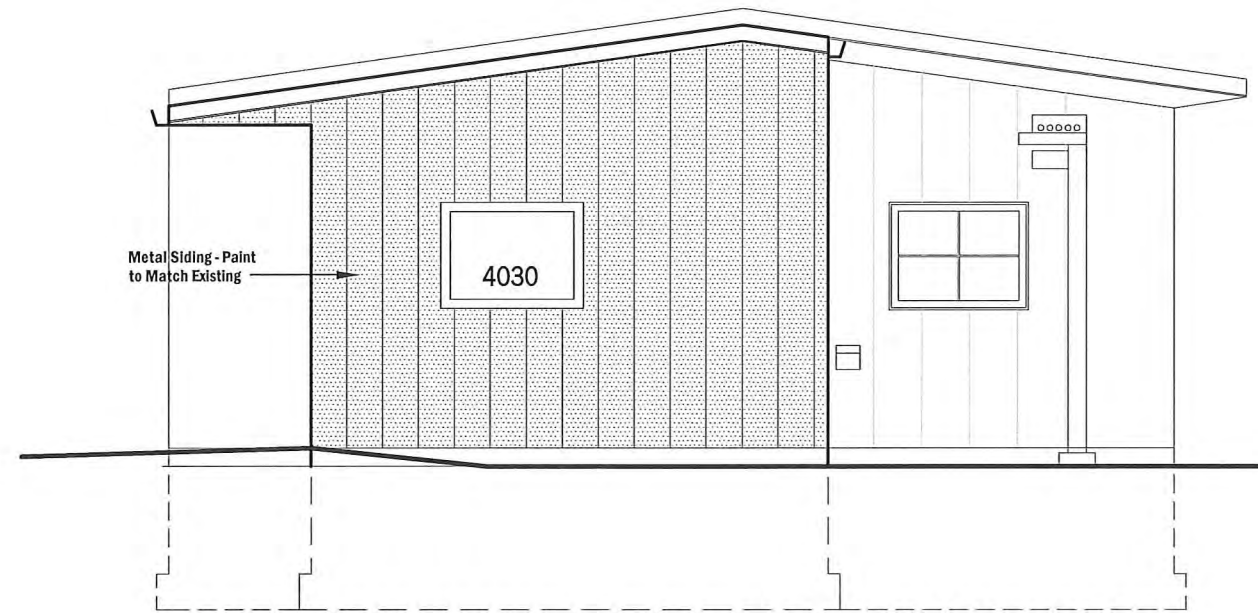
B

EAST ELEVATION



C

C



NORTH ELEVATION



WINDOWS:
Andersen 100 Series 4030 Fixed,
Low-E Glazing w/ Heatlock

D

D

1 2 3 4 5 6



architecture
3220 sjene road, suite 103
madison, WI 53713
608.277.0585
www.gmkarch.com

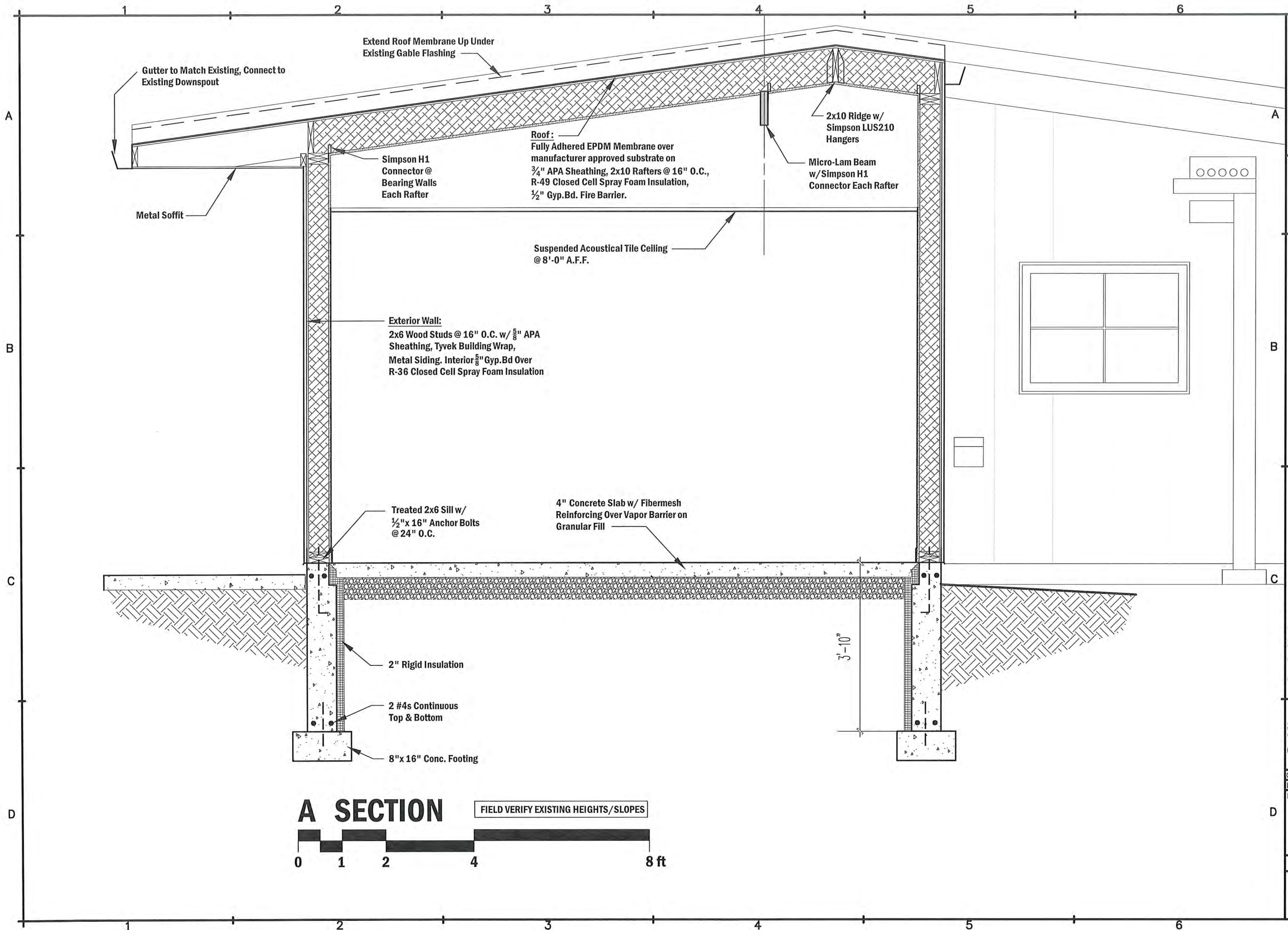
Office Addition

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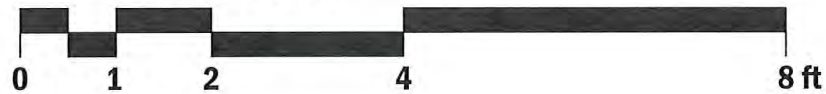
ELEVATIONS

A2.1



A SECTION

FIELD VERIFY EXISTING HEIGHTS/SLOPES



Office Addition

Triangle Street
McFarland, WI 53558

Comm. No.	K2305
Issued For	Date
REVIEW	7-20-23

SECTION

A3.1




VILLAGE OF
McFarland
SUMMARY SHEET

MEETING DATE: Tuesday, October 3, 2023

SECTION: Business

DEPARTMENT: Community Development

CONTACT: Andrew Bremer, Comm & Eco Dev Director

AGENDA ITEM: Discussion and action on a request by CHS for a variance to the front yard setback requirements of Sec. 62-72 for the M-IC Zoning District to construct an approximate 15' x 14'6" building addition at 4103 Triangle Street, McFarland, WI.

PREVIOUS ACTION:

ISSUE SUMMARY:

Background regarding this agenda item is found under Agenda Item 5a.

FINANCIAL/BUDGET IMPACT:

None.

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

Motion, second, to approve a variance to the front yard setback requirements of Sec. 62-72 for the M-IC Zoning District to construct an approximate 15' x 14'6" building addition at 4103 Triangle Street, McFarland, WI.

Staff recommends a motion to approve the variance request as presented by CHS. In Staff's opinion, the applicant's response to all the standards for granting an area variance under Sec. 62-366(e) of the Municipal Code are reasonable. Staff's justification for recommending approval of the variance includes:

1. The layout of the petroleum tanks predates the Village zoning regulations and the characteristics of those tanks and related apparatus, including applicable federal safety design requirements, limit locations on the property to place the restroom addition in compliance with the front yard setback requirements.
2. Alternative locations for the construction of an accessory structure within the property would diminish the effective use and intent of the restroom addition.
3. The request for a variance places the addition as far back from the front lot line as possible within the existing site constraints.
4. The desire for the building addition is not financially motivated.



ATTACHMENTS:

None