

**In The Matter Of:**  
*Village of Shorewood*  
*Board of Appeals*

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*October 11, 2016*

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STATE OF WISCONSIN  
MILWAUKEE COUNTY  
VILLAGE OF SHOREWOOD  
BOARD OF APPEALS

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October 11, 2016 - 5:34 p.m.

Village of Shorewood Village Hall  
3930 North Murray Avenue  
Shorewood, Wisconsin 53211

Reported by Diane C. Milanowski

BOARD MEMBERS PRESENT:

Michael Paulson, Chairman  
Carlos Pastrana  
Lance Mueller

ALSO PRESENT:

Ericka Lang, Planning and Development Director  
Nathan J. Bayer, Village Attorney

1	Shorewood Board of Appeals Appellants	PAGE NO.
2		
3	1. 2500 East Olive Street, Rick Dassow	9
4	Appeal of building inspector order to reduce	
5	fence height within the front yard zoning	
6	setback at residential property 2500 East	
7	Olive Street	
8		
9	2. 3564-66 North Frederick Avenue, Steve Martinie	29
10	Appeal of building inspector denial to install	
11	an air-conditioning unit within the zoning	
12	street side yard setback at residential	
13	property 3564-66 North Frederick Avenue	
14		
15	3. 1701-03 East Menlo Boulevard, James Curro	43
16	Appeal of building inspector denial to install	
17	parking slab without a garage at residential	
18	property 1701-03 East Menlo Boulevard	
19		
20	4. 4324 North Woodburn Street, Doug Eiring	60
21	Appeal to construct detached garage above	
22	zoning maximum area allowed at residential	
23	property 4324 North Woodburn Street	
24		
25		

1 P-R-O-C-E-E-D-I-N-G-S (5:34 p.m.)

2 MR. PAULSON: I'll call the meeting to  
3 order. It's 5:34. Would the clerk call the role,  
4 please. Or you call, I guess?

5 MS. LANG: I'm just going to say your  
6 names. Michael Paulson.

7 MR. PAULSON: Present.

8 MS. LANG: Lance Mueller.

9 MR. MUELLER: Present.

10 MS. LANG: Carlos Pastrana.

11 MR. PASTRANA: Present.

12 MR. PAULSON: And I'll be acting chair  
13 for this meeting. Has staff provided public  
14 notice?

15 MS. LANG: Yes, it was posted and  
16 published according to local and state law  
17 requirements.

18 MR. PAULSON: Okay. Item No. 4, do we  
19 have a motion to approve the August 9th, 2016  
20 meeting minutes as delivered in your packets?

21 MR. MUELLER: So moved.

22 MR. PASTRANA: Second.

23 MR. PAULSON: All in favor?

24 (Vote taken.)

25 MR. PAULSON: Okay. Minutes are

1 approved. Before we have the attorney review the  
2 standards, I will be acting chair today, so let me  
3 just walk through our process as we do it.

4 For each one of these we will have the --  
5 This is a quasi judicial sort of proceeding. In  
6 other words, we do create a record, we're not  
7 going to type it up, we're not going to create a  
8 transcript unless there's some further court  
9 proceeding or unusual circumstance that requires  
10 us to actually type it up. But we do have a court  
11 reporter here today who will transcribe all of the  
12 testimony.

13 And what we'll basically do is for each  
14 item staff will present the outline of facts, the  
15 initial application for a building permit,  
16 describe the circumstances, describe the appeal,  
17 and give the staff position, which is basically in  
18 the staff memo. The members of the board will  
19 have a chan -- an opportunity to ask staff any  
20 clarifying questions they might have.

21 Then each of the applicants will have an  
22 opportunity to testify. You'll be sworn under  
23 oath, and you can give the relevant facts as you  
24 see them to support your appeal. This is pretty  
25 informal. We aren't -- There's not going to be

1 any cross-examination or anything like that, but  
2 the board members will have an opportunity to ask  
3 you questions to clarify to make sure we  
4 understand exactly what the circumstances are.

5 We'll ask if there's any member of the  
6 public who wants to make a statement on that  
7 particular application. We'll close the hearing  
8 portion of it.

9 And then following the rules as set forth  
10 by the Village Attorney in the Village Code and in  
11 Wisconsin Statutes, the members of the board will  
12 discuss the issue and will reach a determination  
13 whether your variance is going to be granted or  
14 not. And we'll do it right here out in the open,  
15 no quiet sessions or behind-the-scenes discussion  
16 or any of that, it will all be out front for you  
17 to hear. And then so you'll have a decision right  
18 away.

19 It will be followed up with staff by some  
20 written documentation or whatever, whether it's  
21 granted or denied, so you'll have something in  
22 writing as well within a few days. But you'll  
23 have an oral determination. And if there are some  
24 mechanics to be worked out, we'll probably work  
25 those out right here as to what the next step

1           ought to be.

2                         That's the way the proceeding will go.  
3           We'll take -- Since everybody is here, we'll take  
4           them in the order that they are on the agenda.  
5           But before we get to that, Mr. Bayer.

6                         MR. BAYER:   Okay.  The first application,  
7           Board of Appeals Application that's on the agenda  
8           tonight is a request for a variance.  And just for  
9           the benefit of everyone that's here, I know that  
10          the Board of Appeals members are very familiar  
11          with the standards, but I want to make sure that  
12          everybody does.

13                        A request for a variance is essentially  
14          an admission that yes, the condition on our  
15          property violates the code, the building code;  
16          however, we're asking based upon special  
17          circumstance or special conditions on our property  
18          that you grant us a -- make a special exception  
19          for us.

20                        And under 535, or the Village code, which  
21          is the zoning regulations, the Board of Appeals  
22          specifically has been granted the power to give  
23          such variances as will not be contrary to the  
24          public interest.  And it says, where, owing to  
25          special conditions, a literal enforcement of the

1 building code will result in either a practical  
2 difficulty or some form of unnecessary hardship.

3 So that will basically be the focus of  
4 the requests for the variance tonight, the  
5 board -- or excuse me, the Board of Appeals is  
6 going to be focusing on those criteria.

7 Now, under Section 535-58 there are some  
8 specific findings that must be made and placed  
9 into the minutes in the record before a variance  
10 can be granted. And those findings that have to  
11 be made by the Board of Appeals are that there's  
12 an exceptional circumstance related to the  
13 property or the structure that generally does not  
14 apply to other properties. In other words, we're  
15 not creating a new rule for everybody, this is  
16 indeed an exception to the rule.

17 And also the second thing that must be  
18 found and recorded in the -- in the minutes is the  
19 absence of detriment. In other words, the Board  
20 of Appeals has to find that granting this variance  
21 to this particular property won't be a detriment  
22 to the surrounding property, either on the left or  
23 the right, or the neighborhood or the community as  
24 a whole in Shorewood. So those are the two  
25 findings that need to be made.

1                   And for the benefit of everybody, if  
2                   you're looking along, if you have a copy of the  
3                   code here, those are Sections 535-55, which  
4                   outlines the powers of the -- of the Board of  
5                   Appeals, and also 535-58, which includes the  
6                   specific findings that must be made in order to  
7                   grant a variance.

8                   So the testimony that will be taken  
9                   tonight and the questions that will be asked will  
10                  all be going towards determining whether there is  
11                  indeed absence of a detriment and exceptional  
12                  circumstances that would support awarding the  
13                  variance in this particular case.

14                  MR. PAULSON: Thank you. Okay. The next  
15                  item on the agenda is Item No. 6, the Public  
16                  Hearing in the Appeal of the building inspector  
17                  order to reduce the fence height within the front  
18                  yard zoning setback at residential property 2500  
19                  East Olive. Will staff please present this  
20                  matter.

21                  MS. LANG: Technically I'm supposed to  
22                  be sworn in. Can you swear me in?

23                  MR. BAYER: Sure. Do we have the --

24                  MS. LANG: Here, just read that. I'm  
25                  going to raise my right hand.

1                   ERICKA LANG, being first duly sworn,  
2 testified as follows:

3                   MS. LANG: So the Village received a  
4 Board of Appeals Application on August 23rd, 2016  
5 from the property owners, Mr. and Mrs. Tom Gough,  
6 G-o-u-g-h, that live at -- reside at the property  
7 2500 East Olive. They are appealing the  
8 correction notice from the building inspector, as  
9 the agenda said, to reduce the fence height to 4  
10 feet. Right now it's slightly above 5 feet.

11                   I'm actually going to read verbatim the  
12 codes that my memo says so it's accurate in the  
13 record. So two codes apply here. Per Building  
14 Code 225-8(2), All fences erected or constructed  
15 in the front setback area as established under the  
16 provisions of Zoning Code 535-19E(5) of the  
17 Village Code shall be limited to a height of no  
18 more than 4 feet; provided, however, that on  
19 corner lots, where adjacent to a public walk or  
20 street, all fences erected or constructed to a  
21 height of more than 4 feet shall conform to the  
22 building setback provisions of that section I just  
23 said.

24                   So the property is zoned R-6, which is a  
25 one- and two-family zoning district. And so the

1 front zoning setback for that zoning district is  
2 25 feet or the average of the existing setbacks on  
3 the side of the street where the property is  
4 located, between the two closest intersection  
5 streets, whichever is greater.

6 I'm going to reference -- I gave you an  
7 aerial photo of the property, and I drew a yellow  
8 line across the front yard. So this is a corner  
9 property for the record. And so that shows you  
10 what our code and what staff interprets of where  
11 the front yard's boundary is.

12 The house is set back 32 feet from the  
13 front yard property boundary. The fence is  
14 actually less than 16 feet from the front yard  
15 boundary. And since it's 25 feet or ahead of that  
16 into the front yard, it must conform to that  
17 zoning section I just referenced of 4 feet in  
18 height.

19 My memo does say the specific that the  
20 fence height does vary 5 feet 1 inches, to 5 feet  
21 7 inches.

22 And there's a survey in your packet  
23 that actually shows a yellow line. It is not  
24 accurately drawn, for the record, but the fence  
25 portion that applies, not just the horizontal

1 section, it's also the wraparound too, that would  
2 be 9 feet back to be at that 25 feet back from  
3 the front yard boundary, if that makes sense.

4 I think that's all the facts I have  
5 surrounding this item. And then lots of pictures.  
6 You can see it does look like a nice fence.  
7 That's it.

8 MR. PAULSON: Do you have any questions?  
9 I have a couple just for clarifying. Based on  
10 your -- the staff position that this is front  
11 yard, so that the fence must be back at least 25  
12 feet?

13 MS. LANG: Correct.

14 MR. PAULSON: But if I --

15 MS. LANG: You know, that does sound like  
16 a bit of a contradiction because the yellow line  
17 is at the house line, which is traditionally what  
18 the front yard is, but then it throws in this  
19 average of blocks if it's hard to determine. So  
20 there's only another house on the block, if I am  
21 correct, that -- which is much farther ahead and  
22 closer to the sidewalk.

23 When staff received it, we felt that the  
24 application, we were verbally discussing it with  
25 the contractor, we felt that it met the spirit of

1 the code, that being 25 feet back would suffice to  
2 meet the zoning requirements. So it's up to you.

3 MR. PAULSON: As opposed to the average  
4 between this property of 2500 (sic) feet, which is  
5 something like 31 feet back, and the neighboring  
6 house, which is, if I'm just eyeballing --

7 MS. LANG: Probably 25 --

8 MR. PAULSON: -- is something like 10 or  
9 12 feet back, the front edge of that neighboring  
10 house.

11 MS. LANG: You're right, it does appear  
12 that way because the current fence of this  
13 applicant is 16 feet back from the property  
14 boundary.

15 MR. PAULSON: So it's --

16 MS. LANG: That's --

17 MR. PAULSON: -- giving it the benefit of  
18 the doubt --

19 MS. LANG: Right.

20 MR. PAULSON: -- it would be, let's say,  
21 15 feet. It's probably actually less, but if it's  
22 15 feet and the house is 31 feet, the average of  
23 that would still be 25-1/2. So using that  
24 average, the fence as built 16 feet is still  
25 closer to the street than the setback ordinance

1 requires; is that correct, in staff view?

2 MS. LANG: I'd have to actually draw some  
3 numbers here. I didn't take it to that extent of  
4 analysis, because I did not measure the house next  
5 door. Since the code says 25 feet or average, and  
6 I knew the house was set back 32 feet, and the  
7 fence is at 16 feet, I felt it had to meet that 25  
8 feet. I hope I'm not speaking in circles. So  
9 I'm --

10 MR. PAULSON: Well, what I'm trying to  
11 establish here is which is -- which is greater,  
12 25 feet or the average?

13 MS. LANG: Right.

14 MR. PAULSON: And it almost looks like  
15 if we assume it's -- if we assume that the  
16 neighboring house is 16 feet, yeah, the average is  
17 still going to be more than 25 feet, between 31 --

18 MS. LANG: The few -- Let's just assum --

19 MR. PAULSON: No, I take that back.

20 MS. LANG: You know, I should have -- I  
21 should have measured the neighbor's house. I  
22 apologize. But if you're saying it's 10 feet, and  
23 this is 32 feet, the average would be 21 feet.

24 MR. PAULSON: 21 feet.

25 MS. LANG: Right.

1                   MR. PAULSON: So the greater is still  
2 going to be 25. So unless the neighboring house  
3 is at least 19 feet back, and clearly from the  
4 photo it's not 19 feet back, 25 feet is the  
5 appropriate standard for setback in staff view --

6                   MS. LANG: Yes --

7                   MR. PAULSON: -- interpretation of the  
8 ordinance.

9                   MS. LANG: -- in staff view.

10                  MR. PAULSON: Okay. That's clear, I  
11 think.

12                  And then the other -- Ms. Lang, the other  
13 issue, and I think I understand what your  
14 testimony was, not only is the part of the fence  
15 that parallels Olive Street too close, but also  
16 the little bit of a wing between -- that  
17 perpendicular would also have to be reduced to  
18 4 feet if we were to find a 25-foot setback  
19 requirement, correct?

20                  MS. LANG: Correct.

21                  MR. PAULSON: The wings, I think I -- you  
22 referred to them as, okay. Further questions?

23                  MR. PASTRANA: How many other houses does  
24 the fencing impact in any way, just the one house  
25 next to it?

1 MS. LANG: Correct.

2 MR. PASTRANA: And that's the owner of  
3 the other house is the one whose e-mail is in this  
4 packet?

5 MS. LANG: Yes. Several people actually  
6 called and provided written -- in support of this  
7 applicant. So it would be an Olive address. I  
8 did not confirm if all the comments -- I mean,  
9 only people within 100 feet were sent a notice of  
10 this to weigh in.

11 MR. PAULSON: So I think in the packet  
12 we had a written -- a handwritten notice from the  
13 residents at 2501 East Olive, and a written copy  
14 of an e-mail from residents at 4214 North Stowell.  
15 Well, those are the two items I'm aware of.

16 MR. PASTRANA: Right.

17 MR. BAYER: Chairman Paulson, I forgot  
18 to mention, before we take the vote I just want to  
19 remind you, we should pause and then reflect the  
20 portion of the public hearing, and just ask if  
21 there's any public comment. And we'll do that  
22 first on the other ones just to get that out of  
23 the way before there's any discussion.

24 MR. PAULSON: Oh, okay.

25 MR. BAYER: Just because that's the way

1           it's noticed or agenda'd. So I just forget to  
2           mention that when I mentioned the standards, so I  
3           apologize.

4                       MR. PAULSON: So any other questions of  
5           staff?

6                       MR. MUELLER: No.

7                       MR. PAULSON: For the applicant?

8                       MR. DASSOW: Yeah.

9                       MR. PAULSON: Please swear him in.

10                      MS. LANG: Oh, yes. Okay. Rick, raise  
11           your right hand.

12                      MR. PAULSON: Don't worry about the  
13           microphone, it's not working.

14                      RICHARD DASSOW, being first duly sworn,  
15           testified as follows:

16                      MR. PAULSON: Would you please state your  
17           name and occupation?

18                      MR. DASSOW: Rick Dassow, the owner of  
19           Ideal Property Management.

20                      MR. PAULSON: And you are here  
21           representing the applicants?

22                      MR. DASSOW: Tom and Laura Gough. We  
23           constructed this fence on the premise of I did  
24           apply for a fence permit, we replaced this -- This  
25           fence that we constructed was a replacement of a

1 fence of comparable height that was built in 1998.

2 So when this was applied for, being a  
3 corner lot and no back yard, the -- my client, the  
4 homeowner, believes the side yard is their back  
5 yard. That -- That's -- There's 5 to 9 foot  
6 variance on the back on the northern side of this  
7 home, so they really have no rear yard, so to  
8 speak. So this southern side yard is their --  
9 what they classify as their rear yard.

10 And I thought everything was on board as  
11 far as the fence. I can see clearly why this  
12 would be classified as the front yard because it  
13 exceeds the front face of the building. I guess  
14 replacing the existing fence of comparable height  
15 didn't raise an eyebrow in my eyes.

16 And the hardship is the security of  
17 grandchildren according to the homeowner. And  
18 that's their number one premise of reconstructing  
19 this fence with a secure gate.

20 MR. PAULSON: Was the preexisting  
21 fence -- Is the new fence the same height as the  
22 preexisting fence?

23 MR. DASSOW: It is. This variance of  
24 fence height accommodates the elevations where the  
25 top line or top edge of the fence is parallel and

1 plumb.

2 MR. PAULSON: Okay. So it's -- it's  
3 only -- The fact that there is a slight variance  
4 is only because the yard slopes slightly, but it's  
5 at the same eye level, if you will, of the prior  
6 fence?

7 MR. DASSOW: Of the prior fence.

8 MR. PAULSON: Okay. So there has been no  
9 increase in the overall height of the fence?

10 MR. DASSOW: Not at all. The previous  
11 fence was lattice at the top 18 inches, which can  
12 be construed still as the same fence.

13 MR. PAULSON: In looking at the picture  
14 as drawn, it looks like the neighboring property  
15 on Olive Street, its garage -- call it the street  
16 edge of that garage is roughly comparable to the  
17 street -- to the edge of this fence?

18 MR. DASSOW: Correct.

19 MR. PAULSON: Any further questions?  
20 It seems -- The facts seem fairly straightforward  
21 here. But questions?

22 MR. PASTRANA: Do you know if when the  
23 house was purchased if -- if it was -- Do you know  
24 when the house was purchased by your clients?

25 MR. DASSOW: Approximately 24 years ago.

1 MR. PASTRANA: Did they build the old  
2 fencing?

3 MR. DASSOW: They did.

4 MR. PASTRANA: Okay. Was that --

5 MR. DASSOW: In 1998.

6 MR. PASTRANA: In '98.

7 MR. DASSOW: So 18 years ago.

8 MR. PASTRANA: Before then do you know  
9 what there was, if there was a fence that was  
10 within code or --

11 MR. DASSOW: I don't re -- I don't know  
12 that.

13 MR. MUELLER: You didn't build the fence  
14 in 1988 -- or '98?

15 MR. DASSOW: No, I didn't.

16 MR. MUELLER: Did you measure it --

17 MR. DASSOW: I did.

18 MR. MUELLER: -- before you put this one  
19 in? And it was 5 feet, give or take, for some  
20 elevation --

21 MR. DASSOW: Correct.

22 MR. MUELLER: -- is my understanding.

23 MR. PAULSON: Okay. Anything -- Any  
24 further questions?

25 MS. LANG: Chairman Paulson, if I may

1 add that -- I mean, this fence code and the 4-foot  
2 height has been on the codes for decades.

3 MR. PAULSON: I know. So the prior fence  
4 was probably in violation.

5 MS. LANG: Right, nonconforming.

6 MR. PAULSON: Not probably, but it was in  
7 violation. Okay. Anything further to say?

8 MR. DASSOW: I don't think so. I just --  
9 I don't know if it's much of an argument that the  
10 client, Tom and Laura Gough, are stating that they  
11 do not have a rear yard. I don't know if that's  
12 an argument. Their front yard -- the front face  
13 of the house is the front face of the house, which  
14 faces Olive, so --

15 MR. PAULSON: That's --

16 MR. DASSOW: That's all I have to say.

17 MR. PAULSON: Okay. Thank you.

18 MR. DASSOW: Thank you.

19 MR. PAULSON: Is there anyone else who  
20 wants to give any testimony on this particular  
21 matter?

22 Hearing none, testimony is closed.

23 And now for discussion, observations.

24 MR. PASTRANA: I find it interesting that  
25 the prior fence was also in violation of code

1 probably -- or certainly. I wonder what height  
2 the previous fence was, so -- Not that it makes a  
3 difference actually, but --

4 MR. MUELLER: Yeah, I mean, it strikes me  
5 that when I look at it, whether the hardship is  
6 due to physical limitation. You know, I think we  
7 have that satisfied here, as we've done in the  
8 past, we've got a corner lot with the back yard  
9 basically being on the side of the house. So I  
10 don't have a problem with that.

11 Do I think that granting the variance  
12 would not harm the public interest? I think it's  
13 in the public interest to keep the fence as  
14 constructed. There's been some input, and that  
15 seems positive and it would be consistent with the  
16 community.

17 The challenge that I think we face often  
18 that we have is whether or not an unnecessary  
19 hardship exists because compliance is unreasonably  
20 burdensome. And I'm not sure how to address that,  
21 Mike. I'd welcome your comments on it.

22 I mean, it strikes me that compliance is  
23 unreasonably burdensome if you view that as  
24 perhaps a privacy or security concern for the  
25 children or for the grandchildren, whoever might

1 be using that back yard. And is that -- does that  
2 justify the heightened fence, and the burden --

3 Alternatively, I think it would be  
4 unreasonably burdensome, it strikes me, to allow  
5 these people not to basically repair or  
6 reconstruct that fence if it was that height to  
7 begin with. That's the other angle that I  
8 consider on it, but I think we oftentimes struggle  
9 with this -- with this third element. And so  
10 those are my preliminary thoughts.

11 MR. PAULSON: Yeah. When I originally  
12 looked at this, I'm struck by this is sort of a  
13 normal, at least not atypical corner lot for  
14 Shorewood, where you're going to have this 25-foot  
15 setback issue. And there's nothing at least on  
16 the topography of this particular lot that strikes  
17 me as particularly unusual.

18 On the other hand, the one thing that I  
19 see that makes this sort of unique is the fact  
20 that we are dealing with only two properties on  
21 this Olive Street section of the -- of the block,  
22 and that the neighboring property is considerably  
23 closer to Olive Street than this particular house.

24 It doesn't change the setback issue, it  
25 still reading the code literally is a 25-foot

1 setback requirement.

2 On the other hand, it's clear that a  
3 5-foot fence here, given the neighboring house  
4 that's 21 story -- 20 feet or more higher, we're  
5 not causing an unusual intervention in  
6 streetscape, if you will, or where this is an  
7 unusual extension into the streetscape.

8 And my concern is how we can distinguish  
9 this property from the many other corner lots  
10 where we're always -- or any other front yard  
11 where we don't want 5-foot fences. The Zoning  
12 Code is very clear that there ought not be any  
13 there.

14 I mean, it's clear -- I mean, except for  
15 violating the literal provisions of the code and  
16 our general standard of no 5-foot fence in the  
17 front yard, I don't see any other detriment from  
18 granting a variance here.

19 I'm struggling with the requirement in  
20 the code that we find exceptional circumstances,  
21 something unusual or extraordinary or exceptional  
22 with this particular property. Because clearly  
23 literally it would not have been a hardship, nor  
24 is any particular hardship claimed to actually  
25 build a 4-foot fence in this particular location.

1                   And it's also clear from that vertical --  
2                   from the aerial photograph that the layout of the  
3                   yard is set up to maximize the use of this side --  
4                   side yard, front yard, without obstructing the  
5                   intersection, the view of the intersection, nor  
6                   the view of the neighbors. So a fence would not  
7                   impose a hardship.

8                   To put it the other way, on the flip side  
9                   of it, it's not going to impose a hardship in any  
10                  direction.

11                  You can see how we are struggling here.  
12                  Any other comments in light of what I've said?

13                  MR. MUELLER: No, I agree with that. As  
14                  I think about it, I feel like the -- it strikes me  
15                  that the hardship is associated with the fact that  
16                  there was this preexisting fence that was present.  
17                  Whether or not that was conforming, you know, it  
18                  stood for almost 20 years without -- sounds like  
19                  without action from the neighborhood or --

20                  MR. PASTRANA: Right.

21                  MR. MUELLER: -- from the Village. And  
22                  so barring something unusual, the property owner  
23                  could have kept that dilapidated fence in place  
24                  potentially and remained in compliance. So it  
25                  strikes me that not permitting them to replace and

1 improve that aging structure would work an  
2 unreasonable hardship and may be unnecessary.

3 And so, you know, it's a difficult case  
4 for me that -- that way, that lends itself to  
5 finding that there's exceptional circumstances  
6 here that distinguish it from other cases, coupled  
7 with the fact that it's an unusual, you know,  
8 corner lot as we've addressed.

9 I think I'd be satisfied based upon  
10 that that the exceptional circumstance is not  
11 applicable to others and that their compliance  
12 would be unreasonably burdensome.

13 The second factor about no detriment to  
14 surrounding properties and it's in the public  
15 interest, I think there's evidence in the record  
16 to satisfy that as clearly a good thing, not  
17 contrary to the Village.

18 So based on that, I would be in favor of  
19 making such a finding. And I guess I could go  
20 ahead and make a motion to --

21 MR. PAULSON: Okay.

22 MR. MUELLER: -- approve the request.

23 MR. PASTRANA: Second.

24 MR. PAULSON: Do we have any further  
25 discussion now that we have a motion on the table?

1                   And I want to make sure that the two  
2 documents from the neighbors that were part of the  
3 packet are made part of the file so that they are  
4 part of the record.

5                   MS. LANG: Yes, it's already attached.

6                   MR. PAULSON: All right. Any further  
7 discussion?

8                   MR. PASTRANA: I mean, I think in a way  
9 it would almost be in effect punishing the owner  
10 for instead of just painting the existing fence,  
11 actually replacing it, like you said, which is  
12 actually an improvement. And I think the spirit  
13 of the section of the code can't outweigh that,  
14 you know, that the fact that the owner actually  
15 tried to spruce up the property, if you will. So  
16 I agree, I would move to approve the variance as  
17 well as second.

18                   MS. LANG: Chairman Paulson, if I may. I  
19 just -- I'm questioning the reasoning behind that  
20 because the premise is that staff didn't -- these  
21 are my words, not yours -- do their job. We don't  
22 actively enforce nonconforming items, we wait till  
23 they get to a stage of unrepair, or in this case  
24 of replacement. If this is the precedent, I don't  
25 know how we can ever --

1 MR. PAULSON: Yeah.

2 MS. LANG: -- justify us saying now you  
3 need to conform to current code, you know.

4 MR. PAULSON: And I don't think that was  
5 the implication --

6 MR. MUELLER: No.

7 MR. PAULSON: -- of either of the  
8 members, that the current code is not enforceable,  
9 if there were a preexisting violation, that we  
10 couldn't force residents to come up to code. So  
11 no, that's not the implication.

12 The implication, as I understand it, is  
13 that in this particular case given the shape of  
14 the lot, the use of the side yard, and its  
15 relationship both to the intersection and to the  
16 adjoining property, it constitutes an unusual  
17 circumstance that would justify the granting of a  
18 variance in the eyes of the members.

19 MR. BAYER: By way of context, just as  
20 an example, if you have a property that has either  
21 a building constructed on it or a condition on it  
22 that predates adoption of a code, and so it's an  
23 allowable nonconforming use; say, you know, the  
24 classic example, you have a bar that ends up in a  
25 residential area after growth. If the -- There's

1 a threshold past which you can no longer continue  
2 the nonconforming use of it. If it burns to the  
3 ground, you can't put another bar there.

4 And so just by way of background because  
5 of the way the discussion was going, a precedent  
6 of nonconform -- accepted nonconforming use  
7 under -- under the code and under the State  
8 Statutes doesn't necessarily support a continuing  
9 use past -- you know, past certain -- But I just  
10 give that as background and context to the  
11 discussion.

12 MR. PAULSON: Any further discussion?

13 MR. PASTRANA: No.

14 MR. MUELLER: (Shakes head.)

15 MR. PAULSON: Could staff call the roll?

16 MS. LANG: Sure.

17 MR. PAULSON: Go ahead.

18 MS. LANG: Ready to vote. All right.

19 Carlos Pastrana?

20 MR. PASTRANA: I approve the variance.

21 MS. LANG: Lance Mueller?

22 MR. MUELLER: I'll vote yes.

23 MS. LANG: And Michael Paulson?

24 MR. PAULSON: No. But it doesn't change  
25 the fact that the motion for a variance is

1 granted, so you can keep the fence the way it is.  
2 Thank you.

3 MR. DASSOW: All right. Thank you.

4 MR. PAULSON: That concludes this matter.  
5 The Village Attorney --

6 MR. BAYER: I'll just note that also the  
7 next requested item under agenda item No. 7 is  
8 also a request for a variance, and the same  
9 criteria would apply when deciding whether to  
10 grant the variance.

11 And because there's a public hearing  
12 associated with these, and because the packet went  
13 out with all of the information, just to make it  
14 real clean for the record and for the minutes, my  
15 recommendation would just be to open it up for --  
16 to open up the public hearing, see if there's any  
17 comments, close the public hearing, and then go  
18 into our --

19 MR. PAULSON: All right.

20 MR. BAYER: Right.

21 MR. PAULSON: For the record, I will open  
22 the public hearing on item No. 7, which is, Appeal  
23 of the building inspector denial to install an  
24 air-conditioning unit within the zoning side yard  
25 setback at the residential property 3564 and 66

1 North Frederick Avenue.

2 Opening the public hearing. Is there any  
3 member of the public who wishes to speak on this  
4 matter?

5 MR. BAYER: Other than the applicant.

6 MR. PAULSON: Other than the applicant.  
7 Hearing none, we'll close the public hearing and  
8 we'll go to the formal hearing before the Board of  
9 Appeals. And staff previously sworn will present  
10 this matter.

11 MS. LANG: Okay. Well, the Village of  
12 Shorewood received a Board of Appeals Application  
13 September 9th of this year from property owners  
14 Steve and Ziou (phonetic) -- Xiu --

15 MR. MARTINIE: Xiu is fine.

16 MS. LANG: -- Xiu Qiong Martinie.

17 And I can give you -- Would you like the  
18 spellings now?

19 THE REPORTER: Now or later, it doesn't  
20 matter.

21 MS. LANG: And they're appealing the  
22 denial of placing an HVAC air-conditioning unit  
23 within the street side yard setback. So the  
24 applicant is requesting a variance to that  
25 requirement.

1           The property is a two-family  
2 side-by-side, so they're townhomes. And as it  
3 said, they're located on a corner property in the  
4 R-6 zoning district. And the AC unit, you have an  
5 aerial and you have a survey in your packet, and  
6 it shows it proposed on the northern side. So  
7 that's the northern unit, the side-by-side, which  
8 is the corner street side.

9           Per Zoning Code Section 535-19F(5), it  
10 states that the side, so that's -- I'm sorry. Sub  
11 5 sub C sub 2 -- Is that how you say it?

12           MR. BAYER: Sub C sub 2.

13           MS. LANG: Sub 2. It says for the side  
14 street side setback, 25 percent of the width of  
15 the lot but not less than 10 feet, provided that  
16 the buildable width of the lot shall not be less  
17 than 20 feet. Okay.

18           So in my last paragraph in the memorandum  
19 I go through the calculations, so I'm just going  
20 to read through that. So any structure on this  
21 parcel that must be 31.25 feet back from the  
22 street side property boundary. So if you look at  
23 the survey, the width of the lot is 125 feet wide,  
24 and the house is located 19.7 feet averaged --  
25 which is averaged, from the side boundary along

1 Menlo Avenue. The AC unit would be completely  
2 within the side yard setback. Given the house is  
3 not set back 31.25 feet from the property  
4 boundary, it's considered a legal nonconforming  
5 structure.

6 Let me see if I gave you any additional  
7 materials worth noting. We have the denial  
8 letter, we have the application, the aerial and  
9 the survey. No, that's all I have to add to this  
10 one.

11 MR. PAULSON: Okay. Any questions of  
12 staff?

13 MR. PASTRANA: Just to be clear, on the  
14 aerial photograph the -- where exactly is the  
15 unit? I mean -- I don't mean the house, I mean  
16 the air-conditioning unit.

17 MS. LANG: Do you have the survey in  
18 your packet? There's a little yellow square. I  
19 should have printed that in color for you.

20 MR. PAULSON: It's --

21 MS. LANG: It should be --

22 MR. PAULSON: Just after the photograph.

23 MR. PASTRANA: Right. Here. Just --

24 MR. PAULSON: On the front, yes. There's  
25 a little X.

1                   MR. PASTRANA: Yeah, I just want to look  
2 at that and figure it out.

3                   MS. LANG: Oh, okay.

4                   MR. PASTRANA: I think I can now, yes.  
5 Okay. I see the cover for it, so okay. I think I  
6 have it. Put it here.

7                   MR. PAULSON: And this area where the  
8 proposed unit is to be placed is behind an  
9 existing -- existing 4-foot fence?

10                  MS. LANG: I don't know. I'm going to  
11 have to let the applicant say.

12                  MR. PASTRANA: I was going to ask how  
13 tall the fence is.

14                  MS. LANG: Yeah, I -- I didn't provide a  
15 front view picture of the house. That --

16                  MR. PAULSON: Yes, it is.

17                  MS. LANG: Is it on-line?

18                  MR. PAULSON: Yeah.

19                  MS. LANG: Okay. I don't always keep  
20 every copy, piece of material in my personal  
21 packet, so -- Is there a fence in the picture?

22                  MR. PAULSON: There is a fence in the  
23 picture, and it looks to be 4 feet or less in  
24 height. Not meaning to introduce another issue.

25                  MR. MARTINIE: I haven't measured it.

1                   MR. PASTRANA: I have a question. What  
2 would -- What could cure this effect and put them  
3 in compliance with the code; window  
4 air-conditioners, is that the only way?

5                   MS. LANG: Or putting it in the back  
6 yard, but actually --

7                   MR. PASTRANA: There's not much of a back  
8 yard.

9                   MS. LANG: From the picture we have,  
10 there's -- 4 feet is the rear. So it would be in  
11 the rear setback as well, if they put it back  
12 there.

13                   MR. PASTRANA: When you say "back there,"  
14 what do you mean because I don't see --

15                   MS. LANG: Back in the rear yard, which  
16 is only 4 feet, their back yard.

17                   MR. PASTRANA: Okay.

18                   MS. LANG: So -- And the zoning rear  
19 setbacks in the R-5 and R-6 residential district  
20 is 3 feet, so it absolutely would be in the rear  
21 setback if it was proposed there. And so that  
22 would also come here in your consideration.

23                   MR. PASTRANA: And there's no issue with  
24 it being so close to the other house?

25                   MR. PAULSON: Yeah, there --

1 MS. LANG: Can you restate that question?

2 MR. PASTRANA: There would be no issue  
3 with the unit -- with the air-conditioning unit  
4 being so close to the 2105 house?

5 MS. LANG: You mean behind it?

6 MR. PASTRANA: Yeah.

7 MS. LANG: No, there would be an issue.  
8 It would be in the --

9 MR. PASTRANA: Right.

10 MS. LANG: -- rear setback, so it  
11 would -- they would also appeal that if that would  
12 have been the ideal location.

13 MR. PASTRANA: Right.

14 MR. BAYER: I think what he was asking,  
15 is there anywhere that you could put it?

16 MR. PASTRANA: Exactly.

17 MS. LANG: Oh. The other side, but that  
18 would not be very functional now, would it? On  
19 the other -- on the side of the other unit on the  
20 southern end of the parcel.

21 MR. BAYER: And that would comply with --

22 MS. LANG: Between the garage. Yeah.  
23 Between the garage and the house.

24 MR. PASTRANA: Okay.

25 MS. LANG: That would be about it.

1 MR. PASTRANA: Right.

2 MR. PAULSON: Any further questions?  
3 Your turn.

4 MR. MARTINIE: Okay.

5 MR. PAULSON: Would please state your  
6 name for the -- and address for the record?

7 MR. MARTINIE: Steve Martinie.

8 MS. LANG: Oh, yes. I don't usually do  
9 this job.

10 STEVE MARTINIE, being first duly sworn,  
11 testified as follows:

12 MR. MARTINIE: Thank you for taking time  
13 to hear this appeal. As you heard, the property  
14 is on the corner again, and it is a side-by-side  
15 duplex. And it was built in 1927, I believe, in  
16 the early 20s, which is apparently before there  
17 were setback requirements in the Village of  
18 Shorewood. So the issue basically is the existing  
19 building is closer to the street than is ideal by  
20 the code.

21 The reason we want to have  
22 air-conditioning is it's a rental property and it  
23 obviously -- summer is not too far away, as you  
24 remember, and air-conditioning helps comfort, it's  
25 good for the health sometimes. I actually had

1 severe allergies as a child, so it helps with  
2 that. It reduces the effect of humidity, like  
3 mold. It increases the property value so you can  
4 raise my taxes. It -- It can reduce noise. And I  
5 realize it also makes some noise, but also reduce  
6 noise in the sense of windows are more likely  
7 closed, and noise not going in and out of the  
8 building. It can help reduce crime in the sense  
9 that open windows can be an invitation or  
10 perceived invitation by criminals.

11 And this particular property is two  
12 blocks from the corner of UW-M. And as a result,  
13 it draws a lot of interest from the students.  
14 And there are many fine students and fine student  
15 tenants, but our preference is to rent to  
16 families. And this is a feature that particularly  
17 would -- since it's a large unit, it tends to lead  
18 to a bigger unit, so it commands higher rent, and  
19 having this feature would make it more attractive  
20 to families or to tenants.

21 And some of our tenants have used window  
22 air-conditioners which are less attractive,  
23 they're less energy efficient, they're noisy, and  
24 they tend to strain existing circuits on the  
25 electric of the property.

1                   The -- Of course, to have an  
2                   air-conditioner you have to have a condenser,  
3                   which has to be outside for exhausting the hot  
4                   air. And there are -- this building does have  
5                   four sides, but two are pretty much nonstarters.  
6                   The front yard is certainly not an attractive  
7                   place to put it, and contrary to the code.

8                   The back yard, as we mentioned before, is  
9                   just very, very small. I'm not sure if it would  
10                  be very close to or on the lot line. And it would  
11                  be under the windows of the adjacent building.  
12                  And although that building has very little  
13                  distance to look to the west, it does have windows  
14                  on that side. So that's not attractive.

15                 That leaves the south side. The north  
16                 side -- The south side has a rather small side  
17                 yard, so this would certainly kind of dominate or  
18                 at least inconvenience the tenants. And they're  
19                 not the ones who are benefiting from this  
20                 air-conditioner being put in, it's for the north  
21                 side. And it requires the line-sets to go through  
22                 their unit.

23                 We try to keep the units as integral as  
24                 possible. They basically share a common wall and  
25                 a common utility space, otherwise they're pretty

1 much independent. And as Justin explained, it  
2 would require the line to go across existing  
3 sidewalk, which would be problematic too.

4 So that leaves the north side, which is  
5 what we're proposing. The -- That would be the  
6 shortest route for the line-sets. It would be  
7 behind existing fence, so it wouldn't be seen  
8 readily from the street. And it would be furthest  
9 away from the neighboring properties.

10 The proposal where the X is on the  
11 survey is further to the west of the side of that  
12 north wall of the house, and it will -- that  
13 side's some distance from the adjacent property,  
14 and it would probably be farther from their  
15 windows as many existing completely legal, you  
16 know, conforming air-conditioners tend to be  
17 right now.

18 So I think that, you know, the benefits  
19 to the air-conditioning will meet the public  
20 benefit test.

21 And the detriment will -- is -- will be  
22 strongly mitigated by the location of it, away  
23 from the existing neighboring property, and it's  
24 near no other property because it's a corner unit.

25 MR. PAULSON: Do you have any questions?

1                   MR. PASTRANA: The air-conditioning unit  
2 benefits both parts of the -- of the duplex or  
3 just one?

4                   MR. MARTINIE: Just the one. We treat  
5 them as separate units, and it benefits the north  
6 side. The south happens to have some por -- some  
7 of the portable push air-conditioner units, but  
8 they're not, you know, satisfactory like central  
9 air.

10                  MR. PASTRANA: Does it sort of impact  
11 what you -- you know, the rent you charge for each  
12 unit, the fact that one of them has an  
13 air-conditioning -- central air-conditioning, the  
14 other one doesn't?

15                  MR. MARTINIE: I think at the present  
16 time the rents are like \$50 difference.

17                  MR. PASTRANA: \$50 difference.

18                  MR. MARTINIE: But we signed this lease  
19 before we pushed the air-conditioning forward. It  
20 was not a problem at the time.

21                  MR. PAULSON: Any other questions?

22                         And I take it there is -- the only  
23 other -- When you're talking about putting it on  
24 the south side, it would be behind the garage in  
25 that somewhat small space behind the garage?

1                   MR. MARTINIE: It would have to be on  
2 the south side. There is a fenced-in area  
3 above -- the garage is -- there's a wall beside  
4 the garage, and it would be on the area above the  
5 wall, I believe.

6                   MR. PAULSON: Okay.

7                   MR. MARTINIE: So it would basically be  
8 on the same -- actually a little bit closer to the  
9 property on Menlo because of the walkway than this  
10 proposed location. So either location would be  
11 close to that rental property. It runs the whole  
12 length of our property.

13                  MR. PAULSON: I look at this one as one  
14 of those unusual circumstances where the  
15 configuration of the lot and the configuration of  
16 the building is such that there's no other  
17 practical location for the condenser unit,  
18 except -- no reasonable location except in the  
19 proposed unit -- proposed location on the north  
20 side. It's -- Any other location would either  
21 require a comparable variance, or impose further  
22 restrictions on the use of the property.

23                  So in my view we have unusual and special  
24 circumstances where literal enforcement does cause  
25 a practical difficulty. Given the size of this --

1           these structures and the shape of the lot, this is  
2           not something that we're going to be seeing very  
3           often. This is not a standard issue of lot  
4           configuration or zoning setbacks because of the  
5           corner lot configuration here.

6                        And given that we are putting a unit  
7           behind a fence in the location that's essentially  
8           the most removed of any location on this property  
9           from adjacent properties, there is clearly no  
10          detriment to either the community or the adjacent  
11          properties in my view.

12                       So I would support a motion to grant the  
13          variance for those reasons.

14                      MR. PASTRANA: I'll second.

15                      MR. PAULSON: I guess I made the motion,  
16          and it's seconded. Any further discussion?

17                      Okay. Call the roll, please.

18                      MS. LANG: Carlos Pastrana.

19                      MR. PASTRANA: Yes.

20                      MS. LANG: Lance Mueller.

21                      MR. MUELLER: Yes.

22                      MS. LANG: Chairman Paulson.

23                      MR. PAULSON: Yes. The variance is  
24          granted.

25                      MR. MARTINIE: Thank you.

1                   MR. PAULSON:   Enjoy.   Or have your  
2                   tenants enjoy their air-conditioning.

3                   Okay.   Item No. 8, we'll call the public  
4                   hearing for the appeal of a building inspector  
5                   denial to install a parking slab without a garage  
6                   at residential property 1701-03 North Menlo  
7                   Boulevard.

8                   MR. CURRO:   East.

9                   MR. PAULSON:   East Menlo -- Yeah, that's  
10                  true.   There is no north/south Menlo.   Is there  
11                  any member of the public, other than the  
12                  applicants, who wish to speak?

13                  Seeing none, we'll close the public  
14                  hearing and we'll open our hearing.   The staff,  
15                  having previously been sworn, please present this  
16                  matter.

17                  MS. LANG:   The Village received this  
18                  Board of Appeals Application on September 6th of  
19                  this year -- 7th, I'm sorry, of this year from  
20                  Mr. James Curro, who is in the audience here.

21                  They are appealing the decision of the  
22                  building inspector's denial to construct a parking  
23                  slab in the rear property, and that's because our  
24                  code states that driveways must lead to garages  
25                  for one and two-family districts.   So this

1 property is an R-6 zoning district, which allows  
2 one and two-family dwellings. Per Code Section  
3 535-9F(4) under Site Restrictions it says,  
4 Driveways shall not be constructed unless they  
5 lead to a garage.

6 And then there's another applicable code  
7 in the Zoning Code, which is 535-47A(4)(b), under  
8 Schedule of requirements which states, Two-family  
9 dwellings: One space in an improved garage per  
10 dwelling unit, which this then requires a  
11 two-family dwelling to have a two-family garage,  
12 and allows up to a two-car parking slab.

13 So here the application and the building  
14 application was for a parking slab but there is no  
15 garage. And per the Village of Shorewood property  
16 records, there was never a garage on this site.

17 The site is a bit unique because in the  
18 rear yard there is a slope, so I just want to go  
19 through some of the property's dimensional  
20 numbers. So the lot is 47.55 feet wide. A  
21 reminder that lots have to be a minimum of 40 feet  
22 wide, so that's good there. And it's 109.99 feet  
23 deep.

24 I gave you lots of pictures of the  
25 property and some of the surrounding properties

1 on that side street along Menlo. There's actually  
2 quite a few properties on that block that don't  
3 have garages, and I'm assuming because of the  
4 slope at the rear of them. So it's -- I would say  
5 I measured approximately 20 feet of the rear lot  
6 is sloped. All right. So that leaves what, 89  
7 feet that's not. I gave you a contour map that  
8 shows that I think it's every 2 feet the line  
9 represents, so there is about a 7- to 8-foot drop  
10 down from the main level of the property.

11 I did add in my memorandum to you that  
12 garages are usually at minimum 20-by-20 feet,  
13 which is 400 square feet. In the opinion of  
14 staff, there is room for a garage, but again,  
15 there has never been a garage there. The house  
16 was built in 1943 without a garage, making it a  
17 legal nonconforming use of a lot.

18 So I gave you aerials of the block, as I  
19 said, pictures of other properties as well. The  
20 survey has a markup of the proposed slab in  
21 yellow, and I added some additional dimensions on  
22 that survey. And that's all staff has for now.

23 MR. PAULSON: Do you have any questions?

24 MR. MUELLER: No questions.

25 MR. PASTRANA: (Shakes head.)

1                   MR. PAULSON:  If the garage were built,  
2                   what would a -- let's say it would be a two-car  
3                   garage, which would be roughly 20-by-20?

4                   MS. LANG:  Correct.

5                   MR. PAULSON:  So this proposed -- And  
6                   the Zoning Code would also permit in addition to  
7                   that 20-by-20 garage, another 20-by-20, roughly,  
8                   parking slab?

9                   MS. LANG:  Correct.

10                  MR. PAULSON:  And the proposed -- based  
11                  on your diagram here, I can't compute area real  
12                  accurately, given that it's at a diagonal, but it  
13                  would seem to me that the proposed coverage of  
14                  this proposed slab based on your diagram would be  
15                  roughly comparable to the coverage or somewhat  
16                  less than the coverage -- lot coverage of a garage  
17                  with a two-car parking slab?

18                  MS. LANG:  Yeah.  The applicant did  
19                  provide a larger scale of the proposed slab, that  
20                  it's 20 feet wide and 40 feet deep, but then,  
21                  right, it doesn't take in that angle either, which  
22                  I can quick calculate.  It's a little bigger, in  
23                  my opinion.

24                  MR. PAULSON:  Okay.  But --

25                  MS. LANG:  That's where I'm going with --

1                   MR. PAULSON:  -- in the same general  
2                   order of magnitude that a garage and two-parking  
3                   slab -- two-car parking slab --

4                   MS. LANG:  Yes.

5                   MR. PAULSON:  -- would have?  And in  
6                   addition, the land behind the proposed slot, at  
7                   least as I read your diagrams and read your  
8                   presentation, is essentially unusable because of  
9                   a vertical slope?

10                  MS. LANG:  As is, correct.

11                  MR. PAULSON:  And looking at your aerial  
12                  photo of Menlo Boulevard, it looks to me like  
13                  several of the properties on this block do not  
14                  have garages, but do have parking slabs of  
15                  approximately the same dimension as this proposed  
16                  slab?

17                  MS. LANG:  About the same dimensions?

18                  MR. PAULSON:  In a -- I'm not trying to  
19                  equate square footage or ask for a precise  
20                  equivalence, but rather are they generally -- does  
21                  it look like the adjacent -- some of the  
22                  neighboring properties have slabs that look  
23                  roughly comparable to the gravel slab that is  
24                  currently existing on this location?

25                  MS. LANG:  Yes.  Yes, they do.

1                   MR. PAULSON: Okay. And immediately  
2 behind this property is the housing complex and  
3 parking and access roads for the housing complex  
4 behind it, the -- the multi-tenant high-rise, if  
5 you will?

6                   MS. LANG: Correct. And that's about  
7 400 units in two buildings.

8                   MR. PAULSON: Okay.

9                   MR. PASTRANA: Is it just -- You know,  
10 1627 and 1613 appear to have concrete slabs  
11 already built, right, you said?

12                  MS. LANG: Correct.

13                  MR. PASTRANA: It could be a -- right,  
14 correct, could be an aerial shot of the garage  
15 roof actually. But 1627 seems to have a concrete  
16 slab built in, for sure.

17                  MR. MUELLER: Right.

18                  MR. PAULSON: Okay.

19                  MS. LANG: That property actually came  
20 before -- Never mind. It has a variance for this.

21                  MR. PASTRANA: It does?

22                  MS. LANG: Three months ago, four months  
23 ago.

24                  MR. BAYER: I don't know if that's the  
25 property.

1 MS. LANG: This is.

2 MR. PAULSON: Okay. Any further  
3 questions of staff?

4 The applicants?

5 MR. CURRO: Hi.

6 MS. LANG: I just want to clarify now  
7 that memory's coming back. It was 1623 that was  
8 granted a variance. (staff correction:  
property is 1627-29 Menlo)

9 MR. PAULSON: To --

10 MS. LANG: Because they did not find  
11 enough room because of the depth of the house to  
12 get a garage in there and to park adequately.

13 MR. PAULSON: So they were granted a  
14 variance to --

15 MS. LANG: To replace their parking slab  
16 and driveway that did not lead to a garage, and it  
17 was determined because of the depth of the  
18 dwelling it did not allow for construction.

19 MR. PAULSON: And this was at which  
20 address, just --

21 MS. LANG: 16 --

22 MR. MUELLER: I've got 1627 and 29. Is  
23 it a duplex there?

24 MS. LANG: Maybe this doesn't matter for  
25 the record. I apologize. I just thought it would

1 be fresh in Mr. Paulson's mind and Mr. Mueller.

2 I don't know if you were --

3 MR. MUELLER: I remember it.

4 MS. LANG: You were. Okay. You remember  
5 it?

6 MR. MUELLER: I do.

7 MR. PASTRANA: Is it your --

8 MS. LANG: It was this year.

9 MR. MUELLER: Yeah.

10 MR. PASTRANA: Is it your position that  
11 that variance is unusual in any way from this one,  
12 from this request?

13 MS. LANG: I differentiate it because the  
14 lot was narrower and because of the depth of the  
15 house went back farther. So to me it's different.  
16 I didn't know if a member was going to bring it up  
17 and say, you know, this is what we did there, so I  
18 just wanted to point the difference out.

19 MR. PASTRANA: Okay.

20 MR. PAULSON: Now you'll be sworn.

21 Ericka?

22 MS. LANG: Okay. My job. I'm failing my  
23 job here.

24 JAMES CURRO, being first duly sworn,  
25 testified as follows:

1 MR. PAULSON: Please state your name.

2 MR. CURRO: James J. Curro. I'm the  
3 co-owner with my wife Elizabeth Sharp, and I'm  
4 also the contractor. Concrete. Jim's Home  
5 Improvement. I'm a concrete contractor.

6 So when we bought the house in 2000, the  
7 original driveway stopped at the back of the house  
8 where the -- right where the house ends. And  
9 those patios that you see on there were not there.  
10 There was 10 feet of back yard. The yards weren't  
11 divided or anything, and then it was just trees  
12 and slope all the way down to the other property,  
13 to that alley back there.

14 So being in the concrete business, I was  
15 told then if I did want to build a wall at the  
16 base down there, that would require a footing,  
17 that I could do tree -- timbers, you know,  
18 railroad ties. And I brought in giant railroad  
19 ties. And I got those up to a level which still  
20 gave me like 20 feet.

21 We had a bunch of trees removed, and then  
22 I just started dumping dirt and concrete. And I  
23 essentially made our yard, you know, the depth it  
24 is now, and then with the railroad ties.

25 And then I proceeded to pour the two

1 patios, build the fence, because we lived at 1701,  
2 so we wanted -- you know, we were owner occupied,  
3 we wanted to have our yard private. And the  
4 tenants, even though you share a driveway, the  
5 tenants have their own patio and their area. And  
6 then over the -- So that's the original concrete  
7 drive. There was never anything past there.

8 And over time I just always -- you know,  
9 I put gravel down there, and then found out, you  
10 know, you can't park on pavement and you have to  
11 get it poured. And, of course, it's like the  
12 painter who was the last to paint his house, I'm  
13 the last to pour concrete.

14 So initially I've been approved to -- way  
15 back then I was approved to pour concrete. And  
16 then we hemmed and hawed because we thought we  
17 were going to stay there, let's build a garage  
18 because we'll use the garage and we'll give the  
19 tenants an outdoor parking space.

20 So I went up with that idea even as -- up  
21 till last year because -- or a couple years ago.  
22 No, last year. Because it would be more expensive  
23 for me to -- if I'm going to pour concrete to do a  
24 garage slab.

25 But then now that we have two really good

1 tenants in there, we bought another single-family  
2 house that we live in, and that's going to stay a  
3 rental unit until, you know, we would sell it.

4 I remeasured for the -- for the garage,  
5 and to do a 20-by-20 garage I'd actually be losing  
6 a space because from the back of the house to the  
7 front of the garage it would be hard to get -- it  
8 would be hard to get one around this way. I'd  
9 have to -- I could take out that little section of  
10 grass there, but I'd really essentially be losing  
11 a space, if not two, and then you'd have to have a  
12 shared garage with tenants.

13 And -- and then there's the main wire --  
14 there's wires that come from that one post that  
15 are -- that would have to be moved because the  
16 roof would -- the roof would be in the way.

17 And so I just thought it's so much  
18 more -- it's actually more efficient for us to  
19 just have, you know, four parking -- four spaces  
20 they could drive into. There's still a little  
21 yard for the tenants on the east side, a little  
22 grass area I'm going to kind of make a little  
23 nicer there. And -- And then, yeah, like I said,  
24 it's just going to be -- it's just going to be  
25 four parking spaces.

1                   And then our tenant -- or our neighbor  
2                   like three doors down had the exact same thing,  
3                   except they had -- they had concrete and they just  
4                   replaced it. And then they came for a variance  
5                   and were granted it.

6                   And the only part I disagree with on that  
7                   is it was basically exactly the same. They're the  
8                   same houses. Where -- Where I start the garage,  
9                   because I can't start it right at the back of  
10                  the -- you know, where the slope is, it's about,  
11                  I'd say, 5 feet off of there. And if you come 20  
12                  feet from that, it just -- it just really leaves  
13                  me no room, you know. I mean, it would be nice to  
14                  have a garage if it was a single-family, but in  
15                  this case I just want concrete.

16                 MR. PAULSON: Okay. And I take it from  
17                 the application that you are proposing concrete to  
18                 go where there is existing gravel, essentially  
19                 over where the existing gravel is?

20                 MR. CURRO: Yeah, it's, you know, the  
21                 back of the house. Here's the existing driveway  
22                 ends here, and just like that diagram shows, I'm  
23                 going to go on an angle to that little shed pad  
24                 and then come across. And then I have to stay --

25                 The other thing too is on the east side

1 I have to stay 3 feet off the fence line. So that  
2 brought my -- When I measured, that brought my 20  
3 feet further west than I would have wanted to be  
4 with the garage. And it just -- it really -- If  
5 there's a garage there, you're going to pretty  
6 much have two -- two parking spaces unless you  
7 have someone who wants to move out of the way or  
8 maybe go a little to the right, you know. But the  
9 way -- if I just pour all concrete, you know, I  
10 have more parking.

11 But again, I mean, I can -- I can pour a  
12 garage, you know, cheaper because I'm the  
13 contractor, but it's just I'd be losing -- I'd be  
14 losing spaces over there. And that's not  
15 attractive to tenants, especially for -- you know,  
16 we get a decent amount of rent there because  
17 they're side-by-side, it's a townhouse.

18 MR. PAULSON: Any questions?

19 MR. MUELLER: No questions from me.

20 MR. PASTRANA: None.

21 MR. PAULSON: Thank you. Anyone else  
22 want to testify in this matter?

23 Seeing none; comments?

24 MR. MUELLER: You know, I think the usual  
25 analysis in terms of hardship and the physical

1 limitations, I see the topography as a limitation.  
2 The fact that it's an old multi -- multi-family  
3 dwelling.

4 MR. PASTRANA: Right.

5 MR. MUELLER: And so I see the physical  
6 limitations there.

7 The necessary hardship, you know, along  
8 the same -- same lines, I'd say you'd potentially  
9 be losing parking spaces if you'd be constructing  
10 the garage.

11 And then in terms of whether or not it's  
12 consistent with the public interest, at least one  
13 or more properties along that very block have  
14 cement slabs as indicated. So just looking at the  
15 property overview and the way that it backs up  
16 there, I think that this slab as proposed would be  
17 consistent with the public interest. Those are my  
18 initial thoughts.

19 MR. PAULSON: I would tend to concur that  
20 the -- given the restricted area of it, of the  
21 buildable usable parking portion of this lot, that  
22 this seems to be a practical consideration, given  
23 that putting in an actual garage with the rear  
24 slope limitations would cause a problem.

25 I do recognize that this is different

1           than the variance that was granted for a neighbor  
2           down the street, given that the lot dimensions  
3           are different, a narrower lot, but nevertheless,  
4           this is a unique circumstance with this location  
5           of this particular property severely limited by  
6           that backward slope and the amount of buildable  
7           area, so that -- And this is clearly not the sort  
8           of situation that's going to be recurring except  
9           along this particular block.

10                       MR. PASTRANA: Right.

11                       MR. PAULSON: And then it essentially  
12           becomes a case-by-case determination for each  
13           individual lot and what purpose is intended to be  
14           met. There clearly does not seem to be any  
15           detriment either to the -- to the general public  
16           interest, given that it was preexisting parking on  
17           gravel.

18                       MR. PASTRANA: Right.

19                       MR. PAULSON: Continued parking on  
20           concrete, if anything, is an improvement.  
21           Certainly it's not going to be adversely affecting  
22           either of the neighbors, certainly not the  
23           neighbors to the south, and given the fences and  
24           given the locations of the neighbors on either  
25           side. So I could agree that this is a unique

1           circumstance.

2                       Imposing the obligation to build a garage  
3           to me would impose an unreasonable hardship of  
4           reducing the available parking on a multi-tenant  
5           property, so that in my view we are meeting the --  
6           both requirements of 55 -- 555-5A (sic). So I  
7           would move that this variance be granted.

8                       MR. MUELLER: Second.

9                       MR. PAULSON: Roll call?

10                      MS. LANG: You're voting?

11                      MR. PAULSON: Yeah. I moved and it was  
12           seconded.

13                      MR. BAYER: Any further discussion or  
14           anything?

15                      MS. LANG: You asked if there was  
16           discussion?

17                      May I just clarify some things for the  
18           record? I just want to clarify that the picture  
19           that you see in there does show a fence down the  
20           middle of the rear yards. I don't want that to be  
21           construed as that's all of the space that the  
22           property has.

23                      MR. PAULSON: Oh, no. I recognize that  
24           that's --

25                      MS. LANG: And -- Pardon?

1 MR. PASTRANA: No, I'm aware of that.

2 MS. LANG: Okay. And you're right, the  
3 other property that was granted variance had a  
4 nonconforming lot width of 35 feet, and this one  
5 has 47 feet and 12-foot wide parking driveway.

6 And I just wanted to make the members  
7 aware of that we have about two dozen properties  
8 I'd say that don't have garages in the Village.

9 We have a very high number of rental  
10 properties, we're right next to UW-M. And in the  
11 ten years I've been here there's been overcrowding  
12 issues. And that's another reason why we would --  
13 we're striving, the staff is striving to get this  
14 opportunity to require garages where there is none  
15 when -- when it fits because we have received  
16 complaints when there is no garage and stacking  
17 and stacking and stacking of cars on lots. I can  
18 certainly provide records on that, complaints on  
19 that.

20 It is the staff's opinion that a two-car  
21 garage would fit on this investment property lot  
22 without having to touch the bluff area because of  
23 the width and because of the wider driveway that  
24 allows for an easy turning radius.

25 That's all I wanted to clarify.

1 MR. PAULSON: Okay. In light of staff's  
2 comments and in light of the prior discussion,  
3 is there any further discussion on the motion?

4 MR. PASTRANA: No.

5 MR. PAULSON: Roll call.

6 MS. LANG: Okay. Carlos Pastrani.

7 MR. PASTRANA: Yes. Pastrana.

8 MS. LANG: Pastrana. I apologize.

9 MR. PASTRANA: That's fine.

10 MS. LANG: Lance Mueller.

11 MR. MUELLER: Yes.

12 MS. LANG: And Michael Paulson.

13 MR. PAULSON: Yes.

14 MR. CURRO: Thank you, guys.

15 MR. PAULSON: Thank you.

16 Now we go to the public hearing on item  
17 No. 9, the Appeal to construct a detached garage  
18 above the zoning maximum area allowed at  
19 residential property 4324 North Woodburn Street.

20 Other than the applicant, is there any  
21 member of the public who wishes to speak to this  
22 matter?

23 Hearing none, we'll close the public  
24 hearing and move towards the formal part of our  
25 hearing. And will staff present this matter?

1 MS. LANG: Okay. The Village received a  
2 Board of Appeals Application August 30th of 2016  
3 from the property owner Douglas Eiring, who is  
4 with us this evening. He submitted a building  
5 application to raze his existing detached garage,  
6 and replace it with a larger detached garage.  
7 That building application was denied because the  
8 proposed garage exceeds the allowable size for the  
9 size of the lot that his single-family home is on.

10 The property is in an R-6 zoning  
11 district, which is a one- and two-family zoning  
12 district, and per Zoning Code Section 535-19F(6)  
13 allows up to 10 percent of the lot for an  
14 accessory structure in that district. Okay.

15 So the numbers show that the lot is 40  
16 feet wide, typical for an R-5 and R-6 district, by  
17 124.15 feet deep. That totals 4,960 square feet  
18 for the total lot. 10 percent of the lot would  
19 equate to 493 square feet. The proposed garage is  
20 576 square feet, which is a difference of 83  
21 square feet above what is allowed.

22 This is a single-family house, so by the  
23 Zoning Code they are allowed -- they are required  
24 one -- a one-car garage and up to one additional  
25 parking slab on the side. The proposal is for a

1 two-car garage. And I provided you with an aerial  
2 survey. The building application and elevations  
3 were provided to see what the proposal is.  
4 Pictures. That's all I have.

5 MR. PAULSON: And for the record, Ericka,  
6 would you please do the calculation of what 500 --  
7 what percentage 576 is of the total lot? In  
8 the -- Off the top of my head, I think it comes  
9 out to something like 12 percent, but -- or less.  
10 But I'd just like the number in the record.

11 MS. LANG: 11.6.

12 MR. PAULSON: Pardon?

13 MS. LANG: 11.6 percent of the total lot.

14 MR. PASTRANA: 11.6, right.

15 MR. PAULSON: Any questions of staff on  
16 this matter?

17 MR. PASTRANA: So to state the obvious,  
18 we're talking 1.6 percent over, right?

19 MS. LANG: Correct.

20 MR. PAULSON: Any further questions of  
21 staff at this point?

22 Applicant? Thank you for your patience.

23 MR. EIRING: Oh, I'm fine.

24 DOUGLAS EIRING, being first duly sworn,  
25 testified as follows:

1                   MR. EIRING: I have a whole big thing I  
2 was going to talk about, but we're going to keep  
3 it very informal. We did accept the denial and we  
4 told our builder, go ahead with a smaller garage.  
5 And he took down our little garage and put the  
6 outline of what the new smaller garage would look  
7 like.

8                   And after having seen it, my family and  
9 I all agreed that it was too small for what we  
10 needed. And what we need is a larger garage  
11 because my wife is disabled, she's handicapped.  
12 She has a State-issued handicap designation. She  
13 has spinal stenosis and lupus and it's not getting  
14 any better.

15                   And I have just, as a matter of fact, got  
16 rid of my old car and purchased a minivan that  
17 will accommodate a wheelchair or a scooter. That  
18 looks like it's going to be a scooter, that has  
19 worked out well in the past when we've rented them  
20 at State Fair and Disney and other venues that  
21 we've been to where she's had to walk a lot. So  
22 that is definitely coming up in our future.

23                   To that end, in order to accommodate a  
24 minivan and a side or rear-loading ramp for the  
25 scooter, we do require a larger garage. In a

1 nutshell, that's about it.

2 I have investigated the ramps, they are  
3 anywhere from 5 to 12 feet depending upon the  
4 angle of departure and bringing it back down.  
5 Certainly a 12-foot ramp is not what I require,  
6 but it would also be handy to have a ramp -- We  
7 live in a one-story home, and a ramp that would  
8 accommodate the minivan would also accommodate the  
9 front steps on a temporary basis.

10 I don't see a need at this time for  
11 bringing an electric scooter into the house  
12 because the house is fairly small and there are  
13 things that Laura can hold onto as she navigates  
14 through the house. So truth be known, I don't  
15 think a scooter would fit in there, but we will  
16 see what happens perhaps with maybe a wheelchair  
17 in the future. That is my main reason for wanting  
18 a larger garage.

19 MR. PASTRANA: When you said that the  
20 contractor kind of drew the outline of the smaller  
21 garage, what -- do you know the dimensions of that  
22 smaller garage outline?

23 MR. EIRING: Yes, it was approximately  
24 22-by-24. They shaved 2 feet off of the width.  
25 And that brought us within compliance of the code.

1 But having not seen it, I just wasn't aware how  
2 really small it looked.

3 MR. PASTRANA: 24-by-22 is actually -- I  
4 think it still would be in excess of the code.

5 MR. EIRING: Well --

6 MR. PAULSON: Close.

7 MR. EIRING: -- somewhere pretty close.  
8 I mean, maybe 21-1/2. It was within the ballpark  
9 there.

10 MR. PASTRANA: Okay.

11 MR. PAULSON: All right. Looking at the  
12 aerial photographs of the neighborhood, it does  
13 appear that -- again, without trying to measure  
14 precisely, it does appear that several of the  
15 neighboring garages are roughly the size of what  
16 you are proposing?

17 MR. EIRING: Hm-hmm. Yes. And I have --

18 MR. PAULSON: In particular the one -- I  
19 don't know if it's -- which direction is north on  
20 the picture I'm looking at. South of the -- Your  
21 immediate neighbors to the south --

22 MR. EIRING: Hm-hmm.

23 MR. PAULSON: -- looks like it would be  
24 roughly a 24-foot wide garage.

25 MR. EIRING: That is. And I think the

1 one actually to the north might be also. I did  
2 survey my five neighbors whose property would  
3 impact basically ours, the two next door and the  
4 three behind, and they had no concerns with the  
5 garage of this size.

6 MR. PASTRANA: So the bigger garage, if  
7 it were the same size as your neighbor's, it would  
8 be in violation of the code as a function of the  
9 percentage of your lot?

10 MR. EIRING: Hm-hmm.

11 MR. PAULSON: Yeah. Whether the  
12 neighbors are or not --

13 MR. PASTRANA: Right.

14 MR. PAULSON: -- we can't tell from this.

15 MR. PASTRANA: Right.

16 MR. EIRING: I didn't bring that into the  
17 equation.

18 MR. PASTRANA: Right. It's not really  
19 relevant.

20 MR. PAULSON: And it wouldn't change --

21 MR. PASTRANA: No.

22 MR. PAULSON: -- ultimately anything.  
23 Any questions of the applicant?

24 MR. EIRING: My wife and I have  
25 determined also, we've been in that house for over

1           30 years and raised a family there. That's where  
2           we're going to stay. That is a house that we have  
3           determined that because it is a single-story and  
4           we're comfortable in there, that's where we're  
5           going to continue to live for a long time  
6           hopefully.

7                       MR. PAULSON: Okay. Thank you. Nothing  
8           further from the applicant?

9                       MR. EIRING: No.

10                      MR. PAULSON: No further testimony,  
11           seeing no one else in the audience.

12                      MR. EIRING: It's getting late, and what  
13           I have here is not really generic.

14                      MR. PAULSON: Okay. Discussion.

15                      The reason for the proposed property --  
16           garage is obvious. There's no real detriment to  
17           the neighborhood or the public interest. We're  
18           looking for a de minimis violation, if you will,  
19           of the surface area requirements.

20                      The applicant has some unusual  
21           circumstances that are obviously not generally  
22           applicable, so they are -- there are in that sense  
23           some unique circumstances, all of which would  
24           benefit the public safety, welfare and justice  
25           supported by our Zoning Code. Do I have a motion?

1                   MR. BAYER: To clarify, I just want to  
2                   make sure for the record that you are submitting  
3                   the correct findings for the -- for the minutes,  
4                   or for the record. But when you're talking about  
5                   exceptional circumstances, it says that there must  
6                   be exceptional, extraordinary or unusual  
7                   circumstances or conditions applying to the lot,  
8                   parcel or structure. So I want to make sure  
9                   you're making a record with respect to the lot,  
10                  parcel or structure.

11                  MR. MUELLER: And that's my concern,  
12                  Mike, really.

13                  MR. PAULSON: I know.

14                  MR. MUELLER: I think it's a -- You know,  
15                  I think we're looking for something here, the  
16                  challenge to that. The appellant is a no-brainer,  
17                  right. But I think we've got to look at what the  
18                  physical limitations of the property are that  
19                  necessitate this. That's what I'm struggling  
20                  with.

21                  You know, I don't know if the lot size  
22                  seems unusually small, or you guys have any  
23                  insights into what the issue with the particular  
24                  lot itself is?

25                  MR. PAULSON: It's a 40-foot lot, so it

1 has standard width.

2 MR. PASTRANA: Right.

3 MR. MUELLER: And sir, what we're  
4 struggling with, as Counsel said, our decision I  
5 think has to be based upon something we need to  
6 associate with the --

7 MR. PASTRANA: The lot.

8 MR. MUELLER: -- the property, the real  
9 estate, the property itself --

10 MR. PASTRANA: Not the owner.

11 MR. MUELLER: -- as compared to the  
12 owner's circumstances. Even though we're all --  
13 There's no question we're sympathetic. And so  
14 that's what we're working to identify here.

15 MR. PASTRANA: Which is why we're trying  
16 to identify it.

17 MR. MUELLER: That's right.

18 MR. PAULSON: Which is why I phrased  
19 things the way I did, to totally avoid making any  
20 representations one way or another on that, but I  
21 got caught.

22 MR. BAYER: Can you think of anything  
23 unusual about the lot or the structure or the --  
24 or the parcel that would be unique about it as  
25 opposed to any of the other lots that might help

1 the issue?

2 MR. EIRING: Other than the fact that  
3 the -- the 10 percent, I was informed that if I  
4 need extra room, there could be a slab put next  
5 to the new garage, which would actually take up a  
6 lot more than 10 percent of the green space, and  
7 to me makes absolutely no sense whatsoever. It  
8 doesn't fulfill my need, and it certainly goes  
9 counter to the 10 percent rule. I wonder exactly  
10 how much of the Village is actually 10 percent  
11 green space.

12 There was something in here regarding  
13 special circumstances, and I think -- I didn't  
14 check into State Statutes regarding what is, you  
15 know, applicable for someone who is handicapped.  
16 I would think that a ramp, a handicap ramp in the  
17 front of the house may be in violation of a code  
18 for someone who is putting in a regular stairway,  
19 but that the circumstances would grant a variance  
20 or a --

21 MR. MUELLER: Maybe I could ask Counsel  
22 this question. When I look at the Variance  
23 Granting Criteria form that we have, it says you  
24 have to indicate how the hardship is due to the  
25 physical limitations of the property rather than

1 the circumstances of the appellant, paren,  
2 economic, family, personal and physical. But  
3 then there's brackets that say other than  
4 certified disability.

5 MR. BAYER: Where are we looking?

6 MR. MUELLER: On the Board of Appeals  
7 Application, Variance Granting --

8 MR. EIRING: This is a certified  
9 disability.

10 MR. MUELLER: -- under No. 1.

11 MR. PASTRANA: Right.

12 MR. BAYER: Are we on the first page now?

13 MR. MUELLER: Yeah.

14 MR. PASTRANA: So that could be read as  
15 a certified disability being an exception to the  
16 personal circumstances not applying.

17 MR. MUELLER: Right. Do you know where  
18 that -- I guess I don't know where that language  
19 came from.

20 MR. BAYER: Yeah, this is --

21 MS. LANG: 1983 policy.

22 MR. BAYER: Well, I mean, I can tell you  
23 that there are -- Now, there may be Americans With  
24 Disabilities Act considerations that may trump  
25 local zoning under federal law. That's entirely

1 possible. But the -- And we may get there at some  
2 point. But the power granted to the Board of  
3 Appeals is specifically enumerated in --

4 MR. PAULSON: Yeah.

5 MR. BAYER: -- you know, in the ordinance  
6 and under state law. It grants the local  
7 municipality the power to create such a board, and  
8 then review items under limited jurisdiction,  
9 which this would be it.

10 Now, there's federal preemption in some  
11 cases where you could come in and when you make  
12 the application you could say you're preempted  
13 under federal law, you can't make me get a -- you  
14 can't make me apply even for a -- you know, an  
15 application for a building permit, or you can't  
16 deny my building permit from the get-go. That's  
17 a different issue. So this is the first time  
18 this has come up. I don't remember --

19 MR. PASTRANA: You better stick with the  
20 issue.

21 MR. BAYER: What you could do is you  
22 could defer the matter, and I could address -- I  
23 mean, I could at your request prepare a memorandum  
24 for the next meeting addressing the Americans With  
25 Disabilities and how that affects the jurisdiction

1 of the Board of Appeals.

2 MR. PASTRANA: Also, the origin of the  
3 language in the Variance Granting Criteria form,  
4 why specifically -- I mean, your suspicions are  
5 like it's federal preemption because of the ADA,  
6 but still, I mean, like why that caveat was made.

7 MR. BAYER: Correct. I'm just trying to  
8 find that on the very -- Is it on the first page  
9 of the application?

10 MS. LANG: Hm-hmm.

11 MR. BAYER: I'm trying to see where that  
12 is.

13 MS. LANG: That's the building permit.

14 MR. BAYER: Oh, I'm sorry, I'm looking at  
15 the building permit. Excuse me for a moment while  
16 I find the correct page here.

17 MR. MUELLER: Yeah, I think the narrow --  
18 possibly the narrow question is whether or not the  
19 Board of Appeals can lawfully consider and  
20 lawfully take into account a certified disability  
21 in determining whether or not there's a hardship  
22 that would support the granting of a variance.

23 MR. PAULSON: Absent a particular unique,  
24 unusual circumstance related to the property  
25 itself.

1 MR. PASTRANA: Right.

2 MR. PAULSON: What we're trying to do is  
3 find something related to the property that will  
4 let us --

5 MR. EIRING: Obviously it's too small  
6 for the garage we intend to put up.

7 MR. PASTRANA: Yeah, that would still be  
8 a circumstance relating to the owner.

9 MR. PAULSON: Yeah, that's personal.

10 MR. BAYER: Well, the other question is,  
11 I don't -- And I apologize, I should have seen  
12 this coming, but when it says certified  
13 disability, that is a term of art that is not  
14 otherwise defined in the application. And I don't  
15 see -- I don't believe that's a term of art that's  
16 defined in the Village Code either. I'm going to  
17 do a quick search within the code.

18 MR. PASTRANA: Right.

19 MR. PAULSON: But it may be under state  
20 law. And we clearly have under state law a  
21 certified disability.

22 MR. BAYER: Certainly.

23 MR. PAULSON: So --

24 MR. BAYER: Is there documentation to  
25 that effect in the application? I don't --

1                   MR. PAULSON: We have the sworn testimony  
2 of the applicant.

3                   MR. MUELLER: Well, it says certified  
4 disability per her doctor in the application  
5 itself.

6                   MR. PAULSON: I'm not terribly worried  
7 about that.

8                   MR. PASTRANA: I think we're better off  
9 waiting for him to research the issue personally.  
10 Although I really wish that weren't the case,  
11 but --

12                   MR. BAYER: Well, you could adjourn the  
13 matter.

14                   MR. MUELLER: Well, I think -- we  
15 don't have the -- We can't order you to research  
16 it, can we? I think we just have to --

17                   MR. BAYER: You can make a request.

18                   MR. MUELLER: -- defer the matter and --

19                   MR. BAYER: I mean, I can -- Certainly  
20 staff can direct me to prepare a memorandum that  
21 would address it specifically. I'm just searching  
22 the Village Code now, seeing if we have that term.  
23 I don't believe we do, but -- I'm just going to  
24 see if it pops up anywhere in the existing code.

25                   MR. EIRING: Mr. Griffiths has informed

1 me -- Now, I am without a garage, and I have a car  
2 that's full of things that were in the garage, and  
3 I have a house that's full of things that were in  
4 the garage.

5 MR. PAULSON: And you've got weather  
6 constraints I understand.

7 MR. EIRING: Yes. He said generally  
8 about the end of October is it for starting. So I  
9 would like to get him started with the foundation  
10 as soon as possible.

11 MR. PAULSON: Let's see.

12 MR. PASTRANA: To be the last one, huh?

13 MR. EIRING: I missed the September  
14 meeting by one day to put in an application for  
15 it.

16 MR. BAYER: That's not coming up as a  
17 term of art in the State Statutes either. It's  
18 interesting.

19 MR. PAULSON: I think it's clear what  
20 was intended.

21 MR. PASTRANA: I'll Google something. I  
22 mean, I wonder if there's case authorities  
23 saying -- you know, applying the ADA to this sort  
24 of a case, but I don't know.

25 MR. PAULSON: Well, just -- I'm just

1 reading the provisions of the Statute -- of the  
2 Village Code, which says that we have the power  
3 to grant appeals of variances so as not to be  
4 contrary to public interest where, owing to  
5 special conditions, unspecified, the literal  
6 enforcement result in practical difficulty or  
7 unnecessary hardship, so that the spirit and  
8 purpose of this chapter shall be observed and the  
9 public safety, welfare and justice secured.

10 I think if that were the standard, we'd  
11 have no problem here.

12 MR. PASTRANA: No.

13 MR. PAULSON: We have special  
14 circumstances, public interest. The question is  
15 can we make a finding of exceptional circumstances  
16 applying to the lot, parcel or structure that do  
17 not apply generally or to other properties in the  
18 same district, and that the granting of the  
19 variance would not be so general recurrent as to  
20 suggest that this chapter should be changed.

21 And I think the argument here would be  
22 that the issue is the structure of the garage  
23 itself. We have special circumstances related to  
24 this particular garage proposal. We're not  
25 talking the lot, we're not talking the parcel,

1 we're talking to the proposed structure, which  
2 would be unique -- it's a unique proposal for a  
3 structure to meet admittedly a specific need, a  
4 need to the -- admittedly to the applicant as  
5 opposed to a need related to the specific  
6 property.

7 But the exceptional circumstances  
8 language is ambiguous as to whether those special  
9 structural circumstances must be caused because of  
10 the property or the lot. Given that ambiguity,  
11 given the need, given the potential for a  
12 requirement to -- potential of a federal  
13 requirement --

14 MR. PASTRANA: Right.

15 MR. PAULSON: -- for handicapped  
16 accessibility, and given the unique nature of the  
17 structural requirements in this particular case,  
18 I think we can make a finding of exceptional  
19 circumstances which would justify a de minimis  
20 exception or violation, if you will, violation  
21 being far too strong a word in the current  
22 circumstances, a de minimis exception, and the  
23 variance could be granted under those  
24 circumstances.

25 So on that basis I am willing to move to

1 grant this variance.

2 MR. PASTRANA: I'll second.

3 MR. PAULSON: Any further discussion?

4 MS. LANG: Vote?

5 MR. PAULSON: Vote.

6 MS. LANG: Okay. Carlos Pastrana.

7 MR. PASTRANA: Yes.

8 MS. LANG: Lance Mueller.

9 MR. MUELLER: No on this one.

10 MS. LANG: All right. And Michael  
11 Paulson.

12 MR. PAULSON: Yes.

13 MS. LANG: Yes. Okay. I'm going to get  
14 to the bottom of that source.

15 MR. PAULSON: So your variance has been  
16 granted.

17 MR. EIRING: Thank you very much, ladies  
18 and gentlemen. My wife and I appreciate it.

19 MR. PAULSON: And before we take a motion  
20 to adjourn, I'd like to apologize to the court  
21 reporter for talking over -- for all of us talking  
22 over each other. Thank you for bearing with us.

23 MR. MUELLER: Motion to adjourn.

24 MR. PASTRANA: Second.

25 MR. PAULSON: All in favor, say aye.

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(Vote taken.)  
MR. PAULSON: Hearing is closed at 7:19.  
(Hearing adjourned at 7:19 p.m.)

\* \* \* \* \*

1 STATE OF WISCONSIN )  
2 WAUKESHA COUNTY ) SS.

3 I, Diane C. Milanowski, a Notary Public in  
4 and for the State of Wisconsin, do hereby certify that the  
5 above Village of Shorewood Board of Appeals was taken before  
6 me, on October 11, 2016, at the Shorewood Village Hall, 3930  
7 North Murray Avenue, Shorewood, Wisconsin, commencing at  
8 5:34 p.m.

9 That it was taken in machine shorthand by  
10 myself, and that the foregoing proceedings constitute a true  
11 and correct transcription of my original machine shorthand  
12 notes taken at said hearing.

13 I certify that I am not a relative or  
14 employee or counsel to any of the parties hereto, nor a  
15 relative or employee of their counsel, and have no  
16 interest in the outcome or events of said action.

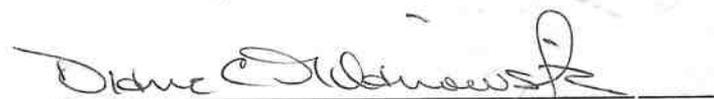
17  
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19 Dated this 29th day of October, 2016.

20  
21

22

23

  
NOTARY PUBLIC - STATE OF WISCONSIN

24

My commission expires January 6, 2018.

25

	<b>25-foot (3)</b> 14:18;22:14,25 <b>29 (1)</b> 49:22		<b>admission (1)</b> 6:14 <b>admittedly (2)</b> 78:3,4 <b>adoption (1)</b> 27:22 <b>adversely (1)</b> 57:21 <b>aerial (9)</b> 10:7;24:2,31:5; 32:8,14;47:11;48:14; 62:1;65:12 <b>aerials (1)</b> 45:18 <b>affecting (1)</b> 57:21 <b>affects (1)</b> 72:25 <b>after (3)</b> 27:25;32:22;63:8 <b>again (4)</b> 36:14;45:14; 55:11;65:13 <b>agenda (5)</b> 6:4;7:8;15:9;9; 29:7 <b>agenda'd (1)</b> 16:1 <b>aging (1)</b> 25:1 <b>ago (5)</b> 18:25;19:7;48:22, 23;52:21 <b>agree (3)</b> 24:13;26:16; 57:25 <b>agreed (1)</b> 63:9 <b>ahead (5)</b> 10:15;11:21; 25:20;28:17;63:4 <b>air (2)</b> 38:4;40:9 <b>air-conditioner (3)</b> 38:2,20; 40:7 <b>air-conditioners (3)</b> 34:4; 37:22;39:16 <b>air-conditioning (12)</b> 30:22;32:16;35:3; 36:22,24;39:19;40:1, 13,13,19;43:2 <b>allergies (1)</b> 37:1 <b>alley (1)</b> 51:13 <b>allow (2)</b> 22:4;49:18 <b>allowable (2)</b> 27:23;61:8 <b>allowed (3)</b> 60:18;61:21,23 <b>allows (4)</b> 44:1,12;59:24; 61:13 <b>almost (3)</b> 13:14;24:18; 26:9 <b>along (6)</b> 8:2;31:25;45:1; 56:7,13;57:9 <b>already (2)</b> 26:5;48:11 <b>Alternatively (1)</b> 22:3 <b>although (2)</b> 38:12;75:10 <b>always (3)</b> 23:10;33:19; 52:8 <b>ambiguity (1)</b> 78:10 <b>ambiguous (1)</b> 78:8 <b>Americans (2)</b> 71:23;72:24 <b>amount (2)</b> 55:16;57:6 <b>analysis (2)</b> 13:4;55:25 <b>angle (4)</b> 22:7;46:21; 54:23;64:4 <b>another (8)</b> 11:20;28:3; 33:24;44:6;46:7;53:1; 59:12;69:20 <b>anyone (2)</b> 20:19;55:21 <b>anything (9)</b> 5:1;19:23; 20:7;51:11;52:7;57:20; 58:14;66:22;69:22	<b>anywhere (3)</b> 35:15;64:3; 75:24 <b>apologize (6)</b> 13:22;16:3; 49:25;60:8;74:11; 79:20 <b>apparently (1)</b> 36:16 <b>appeal (8)</b> 4:16,24;8:16; 29:22;35:11;36:13; 43:4;60:17 <b>appealing (3)</b> 9:7;30:21; 43:21 <b>Appeals (17)</b> 6:7,10,21;7:5, 11,20;8:5;9:4;30:9,12; 43:18;61:2;71:6;72:3; 73:1,19;77:3 <b>appear (4)</b> 12:11;48:10; 65:13,14 <b>appellant (2)</b> 68:16;71:1 <b>applicable (4)</b> 25:11;44:6; 67:22;70:15 <b>applicant (15)</b> 12:13;15:7; 16:7;30:5,6,24;33:11; 46:18;60:20;62:22; 66:23;67:8,20;75:2; 78:4 <b>applicants (4)</b> 4:21;16:21; 43:12;49:4 <b>application (24)</b> 4:15;5:7; 6:6,7;9:4;11:24;30:12; 32:8;43:18;44:13,14; 54:17;61:2,5,7;62:2; 71:7;72:12,15;73:9; 74:14,25;75:4;76:14 <b>applied (1)</b> 17:2 <b>applies (1)</b> 10:25 <b>apply (6)</b> 7:14;9:13;16:24; 29:9;72:14;77:17 <b>applying (4)</b> 68:7;71:16; 76:23;77:16 <b>appreciate (1)</b> 79:18 <b>appropriate (1)</b> 14:5 <b>approve (4)</b> 3:19;25:22; 26:16;28:20 <b>approved (3)</b> 4:1;52:14,15 <b>Approximately (4)</b> 18:25; 45:5;47:15;64:23 <b>area (13)</b> 9:15;27:25;33:7; 41:2,4;46:11;52:5; 53:22;56:20;57:7; 59:22;60:18;67:19 <b>argument (3)</b> 20:9,12; 77:21 <b>around (1)</b> 53:8 <b>art (3)</b> 74:13,15;76:17 <b>associate (1)</b> 69:6 <b>associated (2)</b> 24:15;29:12 <b>assum (1)</b> 13:18 <b>assume (2)</b> 13:15,15 <b>assuming (1)</b> 45:3 <b>attached (1)</b> 26:5 <b>attorney (3)</b> 4:1;5:10;29:5 <b>attractive (5)</b> 37:19,22; 38:6,14;55:15
<b>§</b>		<b>8</b>		
<b>\$50 (2)</b> 40:16,17	<b>3</b>	<b>8 (1)</b> 43:3 <b>83 (1)</b> 61:20 <b>89 (1)</b> 45:6 <b>8-foot (1)</b> 45:9		
<b>1</b>	<b>3 (2)</b> 34:20;55:1 <b>30 (1)</b> 67:1 <b>30th (1)</b> 61:2 <b>31 (3)</b> 12:5,22;13:17 <b>31.25 (2)</b> 31:21;32:3 <b>32 (3)</b> 10:12;13:6,23 <b>35 (1)</b> 59:4 <b>3564 (1)</b> 29:25	<b>9</b>		
<b>1 (2)</b> 10:20;71:10 <b>1.6 (1)</b> 62:18 <b>10 (10)</b> 12:8;13:22;31:15; 51:10;61:13,18;70:3,6, 9,10 <b>100 (1)</b> 15:9 <b>109.99 (1)</b> 44:22 <b>11.6 (3)</b> 62:11,13,14 <b>12 (3)</b> 12:9;62:9;64:3 <b>124.15 (1)</b> 61:17 <b>125 (1)</b> 31:23 <b>12-foot (2)</b> 59:5;64:5 <b>15 (2)</b> 12:21,22 <b>16 (6)</b> 10:14;12:13,24; 13:7,16;49:21 <b>1613 (1)</b> 48:10 <b>1623 (1)</b> 49:7 <b>1627 (3)</b> 48:10,15;49:22 <b>1701 (1)</b> 52:1 <b>1701-03 (1)</b> 43:6 <b>18 (2)</b> 18:11;19:7 <b>19 (2)</b> 14:3,4 <b>19.7 (1)</b> 31:24 <b>1927 (1)</b> 36:15 <b>1943 (1)</b> 45:16 <b>1983 (1)</b> 71:21 <b>1988 (1)</b> 19:14 <b>1998 (2)</b> 17:1;19:5	<b>9 (3)</b> 11:2;17:5;60:17 <b>98 (2)</b> 19:6,14 <b>9th (2)</b> 3:19;30:13			
	<b>4</b>	<b>A</b>		
<b>2</b>	<b>4 (9)</b> 3:18;9:9,18,21;10:17; 14:18;33:23;34:10,16 <b>4,960 (1)</b> 61:17 <b>40 (3)</b> 44:21;46:20;61:15 <b>400 (2)</b> 45:13;48:7 <b>40-foot (1)</b> 68:25 <b>4214 (1)</b> 15:14 <b>4324 (1)</b> 60:19 <b>47 (1)</b> 59:5 <b>47.55 (1)</b> 44:20 <b>493 (1)</b> 61:19 <b>4-foot (3)</b> 20:1;23:25;33:9	<b>above (5)</b> 9:10;41:3,4; 60:18;61:21 <b>absence (2)</b> 7:19;8:11 <b>Absent (1)</b> 73:23 <b>absolutely (2)</b> 34:20;70:7 <b>AC (2)</b> 31:4;32:1 <b>accept (1)</b> 63:3 <b>accepted (1)</b> 28:6 <b>access (1)</b> 48:3 <b>accessibility (1)</b> 78:16 <b>accessory (1)</b> 61:14 <b>accommodate (4)</b> 63:17, 23;64:8,8 <b>accommodates (1)</b> 17:24 <b>according (2)</b> 3:16;17:17 <b>account (1)</b> 73:20 <b>accurate (1)</b> 9:12 <b>accurately (2)</b> 10:24;46:12 <b>across (3)</b> 10:8;39:2;54:24 <b>Act (1)</b> 71:24 <b>acting (2)</b> 3:12;4:2 <b>action (1)</b> 24:19 <b>actively (1)</b> 26:22 <b>actual (1)</b> 56:23 <b>actually (24)</b> 4:10;9:11; 10:14,23;12:21;13:2; 15:5;21:3;23:24;26:11, 12,14;34:6;36:25;41:8; 45:1;48:15,19;53:5,18; 65:3;66:1;70:5,10 <b>ADA (2)</b> 73:5;76:23 <b>add (3)</b> 20:1;32:9;45:11 <b>added (1)</b> 45:21 <b>addition (2)</b> 46:6;47:6 <b>additional (3)</b> 32:6;45:21; 61:24 <b>address (6)</b> 15:7;21:20; 36:6;49:20;72:22; 75:21 <b>addressed (1)</b> 25:8 <b>addressing (1)</b> 72:24 <b>adequately (1)</b> 49:12 <b>adjacent (6)</b> 9:19;38:11; 39:13;42:9,10;47:21 <b>adjoining (1)</b> 27:16 <b>adjourn (3)</b> 75:12;79:20,23 <b>adjourned (1)</b> 80:3		
	<b>5</b>			
	<b>5 (8)</b> 9:10;10:20,20;17:5; 19:19;31:11;54:11; 64:3 <b>5:34 (2)</b> 3:1,3 <b>500 (1)</b> 62:6 <b>535 (1)</b> 6:20 <b>535-19E5 (1)</b> 9:16 <b>535-19F5 (1)</b> 31:9 <b>535-19F6 (1)</b> 61:12 <b>535-47A4b (1)</b> 44:7 <b>535-55 (1)</b> 8:3 <b>535-58 (2)</b> 7:7;8:5 <b>535-9F4 (1)</b> 44:3 <b>55 (1)</b> 58:6 <b>555-5A (1)</b> 58:6 <b>576 (2)</b> 61:20;62:7 <b>5-foot (3)</b> 23:3,11,16			
	<b>6</b>			
	<b>6 (1)</b> 8:15 <b>66 (1)</b> 29:25 <b>6th (1)</b> 43:18			
	<b>7</b>			
	<b>7 (3)</b> 10:21;29:7,22 <b>7- (1)</b> 45:9 <b>7:19 (2)</b> 80:2,3 <b>7th (1)</b> 43:19			

<p><b>atypical (1)</b> 22:13  <b>audience (2)</b> 43:20;67:11  <b>August (3)</b> 3:19;9:4;61:2  <b>authorities (1)</b> 76:22  <b>available (1)</b> 58:4  <b>Avenue (2)</b> 30:1;32:1  <b>average (9)</b> 10:2;11:19;12:3,22,24;13:5,12,16,23  <b>averaged (2)</b> 31:24,25  <b>avoid (1)</b> 69:19  <b>awarding (1)</b> 8:12  <b>aware (4)</b> 15:15;59:1,7;65:1  <b>away (4)</b> 5:18;36:23;39:9,22  <b>aye (1)</b> 79:25</p>	<p><b>better (3)</b> 63:14;72:19;75:8  <b>between (6)</b> 10:4;12:4;13:17;14:16;35:22,23  <b>big (1)</b> 63:1  <b>bigger (3)</b> 37:18;46:22;66:6  <b>bit (4)</b> 11:16;14:16;41:8;44:17  <b>block (7)</b> 11:20;22:21;45:2,18;47:13;56:13;57:9  <b>blocks (2)</b> 11:19;37:12  <b>bluff (1)</b> 59:22  <b>board (22)</b> 4:18;5:2,11;6:7,10,21;7:5,5,11,19;8:4;9:4;17:10;30:8,12;43:18;61:2;71:6;72:2,7;73:1,19  <b>both (3)</b> 27:15;40:2;58:6  <b>bottom (1)</b> 79:14  <b>bought (2)</b> 51:6;53:1  <b>Boulevard (2)</b> 43:7;47:12  <b>boundary (8)</b> 10:11,13,15;11:3;12:14;31:22,25;32:4  <b>brackets (1)</b> 71:3  <b>bring (2)</b> 50:16;66:16  <b>bringing (2)</b> 64:4,11  <b>brought (4)</b> 51:18;55:2,2;64:25  <b>build (7)</b> 19:1,13;23:25;51:15;52:1,17;58:2  <b>buildable (3)</b> 31:16;56:21;57:6  <b>builder (1)</b> 63:4  <b>building (26)</b> 4:15;6:15;7:1,8;16:9;8,13,22;17:13;27:21;29:23;36:19;37:8;38:4,11,12;41:16;43:4,22;44:13;61:4,7;62:2;72:15,16;73:13,15  <b>buildings (1)</b> 48:7  <b>built (7)</b> 12:24;17:1;36:15;45:16;46:1,48;11,16  <b>bunch (1)</b> 51:21  <b>burden (1)</b> 22:2  <b>burdensome (4)</b> 21:20,23;22:4;25:12  <b>burns (1)</b> 28:2  <b>business (1)</b> 51:14</p>	<p>30:17;33:4;35:1;37:3,4,8,9;46:22;55:11,11;59:17;64:13;69:22;71:22;73:19;75:16,17,19,20;77:15;78:18  <b>car (2)</b> 63:16;76:1  <b>Carlos (5)</b> 3:10;28:19;42:18;60:6;79:6  <b>cars (1)</b> 59:17  <b>case (9)</b> 8:13;25:3;26:23;27:13;54:15;75:10;76:22,24;78:17  <b>case-by-case (1)</b> 57:12  <b>cases (2)</b> 25:6;72:11  <b>caught (1)</b> 69:21  <b>cause (2)</b> 41:24;56:24  <b>caused (1)</b> 78:9  <b>causing (1)</b> 23:5  <b>caveat (1)</b> 73:6  <b>cement (1)</b> 56:14  <b>central (2)</b> 40:8,13  <b>certain (1)</b> 28:9  <b>certainly (10)</b> 21:1;38:6,17;57:21,22;59:18;64:5;70:8;74:22;75:19  <b>certified (7)</b> 71:4,8,15;73:20;74:12,21;75:3  <b>chair (2)</b> 3:12;4:2  <b>Chairman (4)</b> 15:17;19:25;26:18;42:22  <b>challenge (2)</b> 21:17;68:16  <b>chan (1)</b> 4:19  <b>change (3)</b> 22:24;28:24;66:20  <b>changed (1)</b> 77:20  <b>chapter (2)</b> 77:8,20  <b>charge (1)</b> 40:11  <b>cheaper (1)</b> 55:12  <b>check (1)</b> 70:14  <b>child (1)</b> 37:1  <b>children (1)</b> 21:25  <b>circles (1)</b> 13:8  <b>circuits (1)</b> 37:24  <b>circumstance (9)</b> 4:9;6:17;7:12;25:10;27:17;57:4;58:1;73:24;74:8  <b>circumstances (24)</b> 8:12;23:20;25:5;41:14,24;67:21,23;68:5,7;69:12;70:13,19;71:1,16;77:14,15,23;78:7,9,19,22,24  <b>claimed (1)</b> 23:24  <b>clarify (6)</b> 5:3;49:6;58:17,18;59:25;68:1  <b>clarifying (2)</b> 4:20;11:9  <b>classic (1)</b> 27:24  <b>classified (1)</b> 17:12  <b>classify (1)</b> 17:9  <b>clean (1)</b> 29:14  <b>clear (7)</b> 14:10;23:2,12,14;24:1;32:13;76:19  <b>clearly (8)</b> 14:3;17:11;</p>	<p>23:22;25:16;42:9;57:7,14;74:20  <b>clerk (1)</b> 3:3  <b>client (2)</b> 17:3;20:10  <b>clients (1)</b> 18:24  <b>close (12)</b> 5:7;14:15;29:17;30:7;34:24;35:4;38:10;41:11;43:13;60:23;65:6,7  <b>closed (3)</b> 20:22;37:7;80:2  <b>closer (5)</b> 11:22;12:25;22:23;36:19;41:8  <b>closest (1)</b> 10:4  <b>Code (46)</b> 5:10;6:15,15,20;7:1;8:3;9:14,16,17;10:10;12:1;13:5;19:10;20:1,25;22:25;23:12,15,20;26:13;27:3,8,10,22;28:7;31:9;34:3;36:20;38:7;43:24,44,2,6,7;46:6;61:12,23;64:25;65:4;66:8;67:25;70:17;74:16,17;75:22,24;77:2  <b>codes (3)</b> 9:12,13;20:2  <b>color (1)</b> 32:19  <b>comfort (1)</b> 36:24  <b>comfortable (1)</b> 67:4  <b>coming (4)</b> 49:7;63:22;74:12;76:16  <b>commands (1)</b> 37:18  <b>comment (1)</b> 15:21  <b>comments (6)</b> 15:8;21:21;24:12;29:17;55:23;60:2  <b>common (2)</b> 38:24,25  <b>community (3)</b> 7:23;21:16;42:10  <b>comparable (6)</b> 17:1,14;18:16;41:21;46:15;47:23  <b>compared (1)</b> 69:11  <b>complaints (2)</b> 59:16,18  <b>completely (2)</b> 32:1;39:15  <b>complex (2)</b> 48:2,3  <b>compliance (6)</b> 21:19,22;24:24;25:11;34:3;64:25  <b>comply (1)</b> 35:21  <b>compute (1)</b> 46:11  <b>concern (3)</b> 21:24;23:8;68:11  <b>concerns (1)</b> 66:4  <b>concludes (1)</b> 29:4  <b>concrete (15)</b> 48:10,15;51:4,5,14,22;52:6,13,15,23;54:3,15,17;55:9;57:20  <b>concur (1)</b> 56:19  <b>condenser (2)</b> 38:24;17:17  <b>condition (2)</b> 6:14;27:21  <b>conditions (4)</b> 6:17,25;68:7;77:5  <b>configuration (4)</b> 41:15,15;</p>	<p>42:4,5  <b>confirm (1)</b> 15:8  <b>conform (3)</b> 9:21;10:16;27:3  <b>conforming (2)</b> 24:17;39:16  <b>consider (2)</b> 22:8;73:19  <b>considerably (1)</b> 22:22  <b>consideration (2)</b> 34:22;56:22  <b>considerations (1)</b> 71:24  <b>considered (1)</b> 32:4  <b>consistent (3)</b> 21:15;56:12,17  <b>constitutes (1)</b> 27:16  <b>constraints (1)</b> 76:6  <b>construct (2)</b> 43:22;60:17  <b>constructed (7)</b> 9:14,20;16:23,25;21:14;27:21;44:4  <b>constructing (1)</b> 56:9  <b>construction (1)</b> 49:18  <b>construed (2)</b> 18:12;58:21  <b>context (2)</b> 27:19;28:10  <b>continue (2)</b> 28:1;67:5  <b>Continued (1)</b> 57:19  <b>continuing (1)</b> 28:8  <b>contour (1)</b> 45:7  <b>contractor (5)</b> 11:25;51:4,5;55:13;64:20  <b>contradiction (1)</b> 11:16  <b>contrary (4)</b> 6:23;25:17;38:7;77:4  <b>co-owner (1)</b> 51:3  <b>copy (3)</b> 8:2;15:13;33:20  <b>corner (13)</b> 9:19;10:8;17:3;21:8;22:13;23:9;25:8;31:3,8;36:14;37:12;39:24;42:5  <b>Correct (18)</b> 11:13,21;13:1;14:19,20;15:1;18:18;19:21;46:4,9;47:10;48:6,12,14;62:19;68:3;73:7,16  <b>correction (1)</b> 9:8  <b>Counsel (2)</b> 69:4;70:21  <b>counter (1)</b> 70:9  <b>couple (2)</b> 11:9;52:21  <b>coupled (1)</b> 25:6  <b>course (2)</b> 38:1;52:11  <b>court (3)</b> 4:8,10;79:20  <b>cover (1)</b> 33:5  <b>coverage (4)</b> 46:13,15,16,16  <b>create (3)</b> 4:6,7;72:7  <b>creating (1)</b> 7:15  <b>crime (1)</b> 37:8  <b>criminals (1)</b> 37:10  <b>criteria (4)</b> 7:6;29:9;70:23;73:3  <b>cross-examination (1)</b>  <b>cure (1)</b> 34:2  <b>current (4)</b> 12:12;27:3,8;78:21</p>
<b>B</b>				
<p><b>back (36)</b> 10:12;11:2,2,11;12:1,5,9,13;13:6,19;14:3,4;17:3,4,6;21:8;22:1;31:21;32:3;34:5,7,11,13,15,16;38:8;49:7;50:15;51:7,10,13;52:15;53:6;54:9,21;64:4  <b>background (2)</b> 28:4,10  <b>backs (1)</b> 56:15  <b>backward (1)</b> 57:6  <b>ballpark (1)</b> 65:8  <b>bar (2)</b> 27:24;28:3  <b>barring (1)</b> 24:22  <b>base (1)</b> 51:16  <b>based (7)</b> 6:16;11:9;25:9,18;46:10,14;69:5  <b>basically (10)</b> 4:13,17;7:3;21:9;22:5;36:18;38:24;41:7;54:7;66:3  <b>basis (2)</b> 64:9;78:25  <b>Bayer (32)</b> 6:5,6;8:23;15:17,25;27:19;29:6,20;30:5;31:12;35:14,21;48:24;58:13;68:1;69:22;71:5,12,20,22;72:5,21;73:7,11,14;74:10,22,24;75:12,17,19;76:16  <b>bearing (1)</b> 79:22  <b>becomes (1)</b> 57:12  <b>begin (1)</b> 22:7  <b>behind (1)</b> 26:19;33:8;35:5;39:7;40:24,25;42:7;47:6;48:2,4;66:4  <b>behind-the-scenes (1)</b>  <b>believe (4)</b> 36:15;41:5;74:15;75:23  <b>believes (1)</b> 17:4  <b>benefit (5)</b> 6:9;8:1;12:17;39:20;67:24  <b>benefiting (1)</b> 38:19  <b>benefits (3)</b> 39:18;40:2,5  <b>beside (1)</b> 41:3</p>	<b>C</b>	<p><b>calculate (1)</b> 46:22  <b>calculation (1)</b> 62:6  <b>calculations (1)</b> 31:19  <b>call (9)</b> 3:2,3,4;18:15;28:15;42:17;43:3;58:9;60:5  <b>called (1)</b> 15:6  <b>came (3)</b> 48:19;54:4;71:19  <b>can (32)</b> 4:23;7:10;8:22;11:6;17:11;18:11;23:8;24:11;26:25;28:1;29:1;</p>	<p><b>23:22;25:16;42:9;57:7,14;74:20</b>  <b>clerk (1)</b> 3:3  <b>client (2)</b> 17:3;20:10  <b>clients (1)</b> 18:24  <b>close (12)</b> 5:7;14:15;29:17;30:7;34:24;35:4;38:10;41:11;43:13;60:23;65:6,7  <b>closed (3)</b> 20:22;37:7;80:2  <b>closer (5)</b> 11:22;12:25;22:23;36:19;41:8  <b>closest (1)</b> 10:4  <b>Code (46)</b> 5:10;6:15,15,20;7:1;8:3;9:14,16,17;10:10;12:1;13:5;19:10;20:1,25;22:25;23:12,15,20;26:13;27:3,8,10,22;28:7;31:9;34:3;36:20;38:7;43:24,44,2,6,7;46:6;61:12,23;64:25;65:4;66:8;67:25;70:17;74:16,17;75:22,24;77:2  <b>codes (3)</b> 9:12,13;20:2  <b>color (1)</b> 32:19  <b>comfort (1)</b> 36:24  <b>comfortable (1)</b> 67:4  <b>coming (4)</b> 49:7;63:22;74:12;76:16  <b>commands (1)</b> 37:18  <b>comment (1)</b> 15:21  <b>comments (6)</b> 15:8;21:21;24:12;29:17;55:23;60:2  <b>common (2)</b> 38:24,25  <b>community (3)</b> 7:23;21:16;42:10  <b>comparable (6)</b> 17:1,14;18:16;41:21;46:15;47:23  <b>compared (1)</b> 69:11  <b>complaints (2)</b> 59:16,18  <b>completely (2)</b> 32:1;39:15  <b>complex (2)</b> 48:2,3  <b>compliance (6)</b> 21:19,22;24:24;25:11;34:3;64:25  <b>comply (1)</b> 35:21  <b>compute (1)</b> 46:11  <b>concern (3)</b> 21:24;23:8;68:11  <b>concerns (1)</b> 66:4  <b>concludes (1)</b> 29:4  <b>concrete (15)</b> 48:10,15;51:4,5,14,22;52:6,13,15,23;54:3,15,17;55:9;57:20  <b>concur (1)</b> 56:19  <b>condenser (2)</b> 38:24;17:17  <b>condition (2)</b> 6:14;27:21  <b>conditions (4)</b> 6:17,25;68:7;77:5  <b>configuration (4)</b> 41:15,15;</p>	<p><b>calculate (1)</b> 46:22  <b>calculation (1)</b> 62:6  <b>calculations (1)</b> 31:19  <b>call (9)</b> 3:2,3,4;18:15;28:15;42:17;43:3;58:9;60:5  <b>called (1)</b> 15:6  <b>came (3)</b> 48:19;54:4;71:19  <b>can (32)</b> 4:23;7:10;8:22;11:6;17:11;18:11;23:8;24:11;26:25;28:1;29:1;</p>

<p>currently (1) 47:24 <b>CURRO (8)</b> 43:8,20;49:5; 50:24;51:2,2;54:20; 60:14</p>	<p><b>direction (2)</b> 24:10;65:19 <b>dirt (1)</b> 51:22 <b>Disabilities (2)</b> 71:24;72:25 <b>disability (7)</b> 71:4,9,15; 73:20;74:13,21;75:4 <b>disabled (1)</b> 63:11 <b>disagree (1)</b> 54:6 <b>discuss (1)</b> 5:12 <b>discussing (1)</b> 11:24 <b>discussion (15)</b> 5:15;15:23; 20:23;25:25;26:7;28:5; 11,12;42:16;58:13,16; 60:2,3;67:14;79:3 <b>Disney (1)</b> 63:20 <b>distance (2)</b> 38:13;39:13 <b>distinguish (2)</b> 23:8;25:6 <b>district (10)</b> 9:25;10:1;31:4; 34:19;44:1;61:11,12, 14,16;77:18 <b>districts (1)</b> 43:25 <b>divided (1)</b> 51:11 <b>doctor (1)</b> 75:4 <b>documentation (2)</b> 5:20; 74:24 <b>documents (1)</b> 26:2 <b>dominate (1)</b> 38:17 <b>done (1)</b> 21:7 <b>door (2)</b> 13:5;66:3 <b>doors (1)</b> 54:2 <b>doubt (1)</b> 12:18 <b>Douglas (2)</b> 61:3;62:24 <b>down (9)</b> 45:10;51:12,16; 52:9;54:2;57:2;58:19; 63:5;64:4 <b>dozen (1)</b> 59:7 <b>draw (1)</b> 13:2 <b>drawn (2)</b> 10:24;18:14 <b>draws (1)</b> 37:13 <b>drew (2)</b> 10:7;64:20 <b>drive (2)</b> 52:7;53:20 <b>driveway (6)</b> 49:16;51:7; 52:4;54:21;59:5,23 <b>driveways (2)</b> 43:24;44:4 <b>drop (1)</b> 45:9 <b>due (2)</b> 21:6;70:24 <b>duly (5)</b> 9:1;16:14;36:10; 50:24;62:24 <b>dumping (1)</b> 51:22 <b>duplex (3)</b> 36:15;40:2; 49:23 <b>dwelling (4)</b> 44:10,11; 49:18;56:3 <b>dwellings (2)</b> 44:2,9</p>	<p><b>edge (4)</b> 12:9;17:25;18:16, 17 <b>effect (4)</b> 26:9;34:2;37:2; 74:25 <b>efficient (2)</b> 37:23;53:18 <b>Eiring (22)</b> 61:3;62:23,24; 63:1;64:23;65:5,7,17, 22,25;66:10,16,24; 67:9,12;70:2;71:8; 74:5;75:25;76:7,13; 79:17 <b>either (13)</b> 7:1,22;27:7,20; 41:10,20;42:10;46:21; 57:15,22,24;74:16; 76:17 <b>electric (2)</b> 37:25;64:11 <b>element (1)</b> 22:9 <b>elevation (1)</b> 19:20 <b>elevations (2)</b> 17:24;62:2 <b>Elizabeth (1)</b> 51:3 <b>else (3)</b> 20:19;55:21;67:11 <b>e-mail (2)</b> 15:3,14 <b>end (3)</b> 35:20;63:23;76:8 <b>ends (3)</b> 27:24;51:8;54:22 <b>energy (1)</b> 37:23 <b>enforce (1)</b> 26:22 <b>enforceable (1)</b> 27:8 <b>enforcement (3)</b> 6:25; 41:24;77:6 <b>Enjoy (2)</b> 43:1,2 <b>enough (1)</b> 49:11 <b>entirely (1)</b> 71:25 <b>enumerated (1)</b> 72:3 <b>equate (2)</b> 47:19;61:19 <b>equation (1)</b> 66:17 <b>equivalence (1)</b> 47:20 <b>erected (2)</b> 9:14,20 <b>ERICKA (3)</b> 9:1;50:21;62:5 <b>especially (1)</b> 55:15 <b>essentially (7)</b> 6:13;42:7; 47:8;51:23;53:10; 54:18;57:11 <b>establish (1)</b> 13:11 <b>established (1)</b> 9:15 <b>estate (1)</b> 69:9 <b>even (4)</b> 52:4,20;69:12; 72:14 <b>evening (1)</b> 61:4 <b>ever (1)</b> 26:25 <b>every (2)</b> 33:20;45:8 <b>everybody (4)</b> 6:3,12;7:15; 8:1 <b>everyone (1)</b> 6:9 <b>everything (1)</b> 17:10 <b>evidence (1)</b> 25:15 <b>exact (1)</b> 54:2 <b>exactly (5)</b> 5:4;32:14; 35:16;54:7;70:9 <b>example (2)</b> 27:20,24 <b>exceeds (2)</b> 17:13;61:8 <b>except (5)</b> 23:14;41:18,18; 54:3;57:8 <b>exception (5)</b> 6:18;7:16;</p>	<p>71:15;78:20,22 <b>exceptional (11)</b> 7:12;8:11; 23:20,21;25:5,10;68:5, 6;77:15;78:7,18 <b>excess (1)</b> 65:4 <b>excuse (2)</b> 7:5;73:15 <b>exhausting (1)</b> 38:3 <b>existing (17)</b> 10:2;17:14; 26:10;33:9,9;36:18; 37:24;39:2,7,15,23; 47:24;54:18,19,21; 61:5;75:24 <b>exists (1)</b> 21:19 <b>expensive (1)</b> 52:22 <b>explained (1)</b> 39:1 <b>extension (1)</b> 23:7 <b>extent (1)</b> 13:3 <b>extra (1)</b> 70:4 <b>extraordinary (2)</b> 23:21; 68:6 <b>eye (1)</b> 18:5 <b>eyeballing (1)</b> 12:6 <b>eyebrow (1)</b> 17:15 <b>eyes (2)</b> 17:15;27:18</p>	<p><b>felt (3)</b> 11:23,25;13:7 <b>fence (55)</b> 8:17;9:9;10:13, 20,24;11:6,11;12:12, 24;13:7;14:14;16:23, 24,25;17:1,11,14,19,21, 21,22,24,25;18:6,7,9, 11,12,17;19:9,13;20:1, 3,25;21:2,13;22:2,6; 23:3,16,25;24:6,16,23; 26:10;29:1;33:9,13,21, 22;39:7;42:7;52:1; 55:1;58:19 <b>fenced-in (1)</b> 41:2 <b>fences (4)</b> 9:14,20;23:11; 57:23 <b>fencing (2)</b> 14:24;19:2 <b>few (3)</b> 5:22;13:18;45:2 <b>figure (1)</b> 33:2 <b>file (1)</b> 26:3 <b>find (8)</b> 7:20;14:18;20:24; 23:20;49:10;73:8,16; 74:3 <b>finding (4)</b> 25:5,19;77:15; 78:18 <b>findings (5)</b> 7:8,10,25;8:6; 68:3 <b>fine (5)</b> 30:15;37:14,14; 60:9;62:23 <b>first (10)</b> 6:6;9:1;15:22; 16:14;36:10;50:24; 62:24;71:12;72:17; 73:8 <b>fit (2)</b> 59:21;64:15 <b>fits (1)</b> 59:15 <b>five (1)</b> 66:2 <b>flip (1)</b> 24:8 <b>focus (1)</b> 7:3 <b>focusing (1)</b> 7:6 <b>followed (1)</b> 5:19 <b>following (1)</b> 5:9 <b>follows (5)</b> 9:2;16:15; 36:11;50:25;62:25 <b>foot (1)</b> 17:5 <b>footage (1)</b> 47:19 <b>footing (1)</b> 51:16 <b>force (1)</b> 27:10 <b>forget (1)</b> 16:1 <b>forgot (1)</b> 15:17 <b>form (3)</b> 7:2;70:23;73:3 <b>formal (2)</b> 30:8;60:24 <b>forth (1)</b> 5:9 <b>forward (1)</b> 40:19 <b>found (2)</b> 7:18;52:9 <b>foundation (1)</b> 76:9 <b>four (5)</b> 38:5;48:22;53:19, 19,25 <b>Frederick (1)</b> 30:1 <b>fresh (1)</b> 50:1 <b>front (27)</b> 5:16;8:17;9:15; 10:1,8,11,13,14,16; 11:3,10,18;12:9;17:12, 13;20:12,12,13;23:10, 17;24:4;32:24;33:15;</p>
<b>D</b>				
<p><b>DASSOW (21)</b> 16:8,14,18, 18,22;17:23;18:7,10, 18,25;19:3,5,7,11,15, 17,21;20:8,16,18;29:3 <b>day (1)</b> 76:14 <b>days (1)</b> 5:22 <b>de (3)</b> 67:18;78:19,22 <b>dealing (1)</b> 22:20 <b>decades (1)</b> 20:2 <b>decent (1)</b> 55:16 <b>deciding (1)</b> 29:9 <b>decision (3)</b> 5:17;43:21; 69:4 <b>deep (3)</b> 44:23;46:20; 61:17 <b>defer (2)</b> 72:22;75:18 <b>defined (2)</b> 74:14,16 <b>definitely (1)</b> 63:22 <b>delivered (1)</b> 3:20 <b>denial (6)</b> 29:23;30:22; 32:7;43:5,22;63:3 <b>denied (2)</b> 5:21;61:7 <b>deny (1)</b> 72:16 <b>departure (1)</b> 64:4 <b>depending (1)</b> 64:3 <b>depth (4)</b> 49:11,17;50:14; 51:23 <b>describe (2)</b> 4:16,16 <b>designation (1)</b> 63:12 <b>detached (3)</b> 60:17;61:5,6 <b>determination (3)</b> 5:12,23; 57:12 <b>determine (1)</b> 11:19 <b>determined (3)</b> 49:17; 66:25;67:3 <b>determining (2)</b> 8:10;73:21 <b>detriment (9)</b> 7:19,21;8:11; 23:17;25:13;39:21; 42:10;57:15;67:16 <b>diagonal (1)</b> 46:12 <b>diagram (3)</b> 46:11,14; 54:22 <b>diagrams (1)</b> 47:7 <b>difference (5)</b> 21:3;40:16, 17;50:18;61:20 <b>different (4)</b> 50:15;56:25; 57:3;72:17 <b>differentiate (1)</b> 50:13 <b>difficult (1)</b> 25:3 <b>difficulty (3)</b> 7:2;41:25;77:6 <b>dilapidated (1)</b> 24:23 <b>dimension (1)</b> 47:15 <b>dimensional (1)</b> 44:19 <b>dimensions (4)</b> 45:21; 47:17;57:2;64:21 <b>direct (1)</b> 75:20</p>	<p><b>direction (2)</b> 24:10;65:19 <b>dirt (1)</b> 51:22 <b>Disabilities (2)</b> 71:24;72:25 <b>disability (7)</b> 71:4,9,15; 73:20;74:13,21;75:4 <b>disabled (1)</b> 63:11 <b>disagree (1)</b> 54:6 <b>discuss (1)</b> 5:12 <b>discussing (1)</b> 11:24 <b>discussion (15)</b> 5:15;15:23; 20:23;25:25;26:7;28:5; 11,12;42:16;58:13,16; 60:2,3;67:14;79:3 <b>Disney (1)</b> 63:20 <b>distance (2)</b> 38:13;39:13 <b>distinguish (2)</b> 23:8;25:6 <b>district (10)</b> 9:25;10:1;31:4; 34:19;44:1;61:11,12, 14,16;77:18 <b>districts (1)</b> 43:25 <b>divided (1)</b> 51:11 <b>doctor (1)</b> 75:4 <b>documentation (2)</b> 5:20; 74:24 <b>documents (1)</b> 26:2 <b>dominate (1)</b> 38:17 <b>done (1)</b> 21:7 <b>door (2)</b> 13:5;66:3 <b>doors (1)</b> 54:2 <b>doubt (1)</b> 12:18 <b>Douglas (2)</b> 61:3;62:24 <b>down (9)</b> 45:10;51:12,16; 52:9;54:2;57:2;58:19; 63:5;64:4 <b>dozen (1)</b> 59:7 <b>draw (1)</b> 13:2 <b>drawn (2)</b> 10:24;18:14 <b>draws (1)</b> 37:13 <b>drew (2)</b> 10:7;64:20 <b>drive (2)</b> 52:7;53:20 <b>driveway (6)</b> 49:16;51:7; 52:4;54:21;59:5,23 <b>driveways (2)</b> 43:24;44:4 <b>drop (1)</b> 45:9 <b>due (2)</b> 21:6;70:24 <b>duly (5)</b> 9:1;16:14;36:10; 50:24;62:24 <b>dumping (1)</b> 51:22 <b>duplex (3)</b> 36:15;40:2; 49:23 <b>dwelling (4)</b> 44:10,11; 49:18;56:3 <b>dwellings (2)</b> 44:2,9</p>	<p><b>edge (4)</b> 12:9;17:25;18:16, 17 <b>effect (4)</b> 26:9;34:2;37:2; 74:25 <b>efficient (2)</b> 37:23;53:18 <b>Eiring (22)</b> 61:3;62:23,24; 63:1;64:23;65:5,7,17, 22,25;66:10,16,24; 67:9,12;70:2;71:8; 74:5;75:25;76:7,13; 79:17 <b>either (13)</b> 7:1,22;27:7,20; 41:10,20;42:10;46:21; 57:15,22,24;74:16; 76:17 <b>electric (2)</b> 37:25;64:11 <b>element (1)</b> 22:9 <b>elevation (1)</b> 19:20 <b>elevations (2)</b> 17:24;62:2 <b>Elizabeth (1)</b> 51:3 <b>else (3)</b> 20:19;55:21;67:11 <b>e-mail (2)</b> 15:3,14 <b>end (3)</b> 35:20;63:23;76:8 <b>ends (3)</b> 27:24;51:8;54:22 <b>energy (1)</b> 37:23 <b>enforce (1)</b> 26:22 <b>enforceable (1)</b> 27:8 <b>enforcement (3)</b> 6:25; 41:24;77:6 <b>Enjoy (2)</b> 43:1,2 <b>enough (1)</b> 49:11 <b>entirely (1)</b> 71:25 <b>enumerated (1)</b> 72:3 <b>equate (2)</b> 47:19;61:19 <b>equation (1)</b> 66:17 <b>equivalence (1)</b> 47:20 <b>erected (2)</b> 9:14,20 <b>ERICKA (3)</b> 9:1;50:21;62:5 <b>especially (1)</b> 55:15 <b>essentially (7)</b> 6:13;42:7; 47:8;51:23;53:10; 54:18;57:11 <b>establish (1)</b> 13:11 <b>established (1)</b> 9:15 <b>estate (1)</b> 69:9 <b>even (4)</b> 52:4,20;69:12; 72:14 <b>evening (1)</b> 61:4 <b>ever (1)</b> 26:25 <b>every (2)</b> 33:20;45:8 <b>everybody (4)</b> 6:3,12;7:15; 8:1 <b>everyone (1)</b> 6:9 <b>everything (1)</b> 17:10 <b>evidence (1)</b> 25:15 <b>exact (1)</b> 54:2 <b>exactly (5)</b> 5:4;32:14; 35:16;54:7;70:9 <b>example (2)</b> 27:20,24 <b>exceeds (2)</b> 17:13;61:8 <b>except (5)</b> 23:14;41:18,18; 54:3;57:8 <b>exception (5)</b> 6:18;7:16;</p>	<p><b>F</b> <b>face (4)</b> 17:13;20:12,13; 21:17 <b>faces (1)</b> 20:14 <b>fact (10)</b> 18:3;22:19;24:15; 25:7;26:14;28:25; 40:12;56:2;63:15;70:2 <b>factor (1)</b> 25:13 <b>facts (4)</b> 4:14,23;11:4; 18:20 <b>failing (1)</b> 50:22 <b>Fair (1)</b> 63:20 <b>fairly (2)</b> 18:20;64:12 <b>familiar (1)</b> 6:10 <b>families (2)</b> 37:16,20 <b>family (3)</b> 63:8;67:1;71:2 <b>far (3)</b> 17:11;36:23;78:21 <b>farther (3)</b> 11:21;39:14; 50:15 <b>favor (3)</b> 3:23;25:18;79:25 <b>feature (2)</b> 37:16,19 <b>federal (5)</b> 71:25;72:10,13; 73:5;78:12 <b>feel (1)</b> 24:14 <b>feet (77)</b> 9:10,10,18,21;10:2, 12,14,15,17,20,20;11:2, 2,12;12:1,4,5,9,13,21, 22,22,24;13:5,6,7,8,12, 16,17,22,23,23,24;14:3, 4,4,18;15:9;19:19;23:4, 31:15,17,21,23,24; 32:3;33:23;34:10,16, 20;44:20,21,22;45:5,7, 8,12,13;46:20,20; 51:10,20;54:11,12; 55:1,3;59:4,5;61:16,17, 17,19,20,21;64:3,24</p>	<p><b>felt (3)</b> 11:23,25;13:7 <b>fence (55)</b> 8:17;9:9;10:13, 20,24;11:6,11;12:12, 24;13:7;14:14;16:23, 24,25;17:1,11,14,19,21, 21,22,24,25;18:6,7,9, 11,12,17;19:9,13;20:1, 3,25;21:2,13;22:2,6; 23:3,16,25;24:6,16,23; 26:10;29:1;33:9,13,21, 22;39:7;42:7;52:1; 55:1;58:19 <b>fenced-in (1)</b> 41:2 <b>fences (4)</b> 9:14,20;23:11; 57:23 <b>fencing (2)</b> 14:24;19:2 <b>few (3)</b> 5:22;13:18;45:2 <b>figure (1)</b> 33:2 <b>file (1)</b> 26:3 <b>find (8)</b> 7:20;14:18;20:24; 23:20;49:10;73:8,16; 74:3 <b>finding (4)</b> 25:5,19;77:15; 78:18 <b>findings (5)</b> 7:8,10,25;8:6; 68:3 <b>fine (5)</b> 30:15;37:14,14; 60:9;62:23 <b>first (10)</b> 6:6;9:1;15:22; 16:14;36:10;50:24; 62:24;71:12;72:17; 73:8 <b>fit (2)</b> 59:21;64:15 <b>fits (1)</b> 59:15 <b>five (1)</b> 66:2 <b>flip (1)</b> 24:8 <b>focus (1)</b> 7:3 <b>focusing (1)</b> 7:6 <b>followed (1)</b> 5:19 <b>following (1)</b> 5:9 <b>follows (5)</b> 9:2;16:15; 36:11;50:25;62:25 <b>foot (1)</b> 17:5 <b>footage (1)</b> 47:19 <b>footing (1)</b> 51:16 <b>force (1)</b> 27:10 <b>forget (1)</b> 16:1 <b>forgot (1)</b> 15:17 <b>form (3)</b> 7:2;70:23;73:3 <b>formal (2)</b> 30:8;60:24 <b>forth (1)</b> 5:9 <b>forward (1)</b> 40:19 <b>found (2)</b> 7:18;52:9 <b>foundation (1)</b> 76:9 <b>four (5)</b> 38:5;48:22;53:19, 19,25 <b>Frederick (1)</b> 30:1 <b>fresh (1)</b> 50:1 <b>front (27)</b> 5:16;8:17;9:15; 10:1,8,11,13,14,16; 11:3,10,18;12:9;17:12, 13;20:12,12,13;23:10, 17;24:4;32:24;33:15;</p>

<p>38:6;53:7;64:9;70:17 fulfill (1) 70:8 full (2) 76:2,3 function (1) 66:8 functional (1) 35:18 further (20) 4:8;14:22;18:19; 19:24;20:7;25:24;26:6; 28:12;36:2;39:11; 41:21;42:16;49:2;55:3; 58:13;60:3;62:20;67:8, 10;79:3 furthest (1) 39:8 future (2) 63:22;64:17</p>	<p>71:7;73:3,22;77:18 grants (1) 72:6 grass (2) 53:10,22 gravel (5) 47:23;52:9; 54:18,19;57:17 greater (3) 10:5;13:11;14:1 green (2) 70:6,11 Griffiths (1) 75:25 ground (1) 28:3 growth (1) 27:25 guess (5) 3:4;17:13;25:19; 42:15;71:18 guys (2) 60:14;68:22</p>	<p>12:6,10,22;13:4,6,16, 21;14:2,24;15:3;18:23, 24;20:13,13;21:9; 22:23;23:3;31:24;32:2, 15;33:15;34:24;35:4, 23;39:12;45:15;49:11; 50:15;51:6,7,8;52:12; 53:2,6;54:21;61:22; 64:11,12,14;66:25; 67:2;70:17;76:3 houses (2) 14:23;54:8 housing (2) 48:2,3 huh (1) 76:12 humidity (1) 37:2 HVAC (1) 30:22</p>	<p>interpretation (1) 14:7 interprets (1) 10:10 intersection (4) 10:4;24:5, 5;27:15 intervention (1) 23:5 into (10) 7:9;10:16;23:7; 29:18;53:20;64:11; 66:16;68:23;70:14; 73:20 introduce (1) 33:24 investigated (1) 64:2 investment (1) 59:21 invitation (2) 37:9,10 issue (16) 5:12;14:13;22:15, 24;33:24;34:23;35:2,7; 36:18;42:3;68:23;70:1; 72:17,20;75:9;77:22 issues (1) 59:12 Item (10) 3:18;4:14;8:15,15; 11:5;29:7,7,22;43:3; 60:16 items (3) 15:15;26:22;72:8</p>	<p>land (1) 47:6 LANG (104) 3:5,8,10,15;8:21, 24;9:1,3;11:13,15;12:7, 11,16,19;13:2,13,18,20, 25;14:6,9,12,20;15:1,5; 16:10;19:25;20:5;26:5, 18;27:2;28:16,18,21, 23;30:11,16,21;31:13; 32:17,21;33:3,10,14,17, 19;34:5,9,15,18;35:1,5, 7,10,17,22,25;36:8; 42:18,20,22;43:17; 46:4,9,18,25;47:4,10, 17,25;48:6,12,19,22; 49:1,6,10,15,21,24; 50:4,8,13,22;58:10,15, 25;59:2,60:6,8,10,12; 61:1;62:11,13,19; 71:21;73:10,13;79:4,6, 8,10,13 language (3) 71:18;73:3; 78:8 large (1) 37:17 larger (5) 46:19;61:6; 63:10,25;64:18 last (6) 31:18;52:12,13,21, 22;76:12 late (1) 67:12 later (1) 30:19 lattice (1) 18:11 Laura (3) 16:22;20:10; 64:13 law (6) 3:16;71:25;72:6, 13;74:20,20 lawfully (2) 73:19,20 layout (1) 24:2 lead (4) 37:17;43:24;44:5; 49:16 lease (1) 40:18 least (7) 11:11;14:3;22:13, 15;38:18;47:7;56:12 leaves (4) 38:15;39:4; 45:6;54:12 left (1) 7:22 legal (3) 32:4;39:15;45:17 lends (1) 25:4 length (1) 41:12 less (9) 10:14;12:21;31:15, 16;33:23;37:22,23; 46:16;62:9 let (4) 4:2;32:6;33:11;74:4 let's (5) 12:20;13:18;46:2; 52:17;76:11 letter (1) 32:8 level (3) 18:5;45:10;51:19 light (3) 24:12;60:1,2 like (30) 5:1;11:6,15;12:5,8; 13;14;18:14;24:14,18; 26;11;30:17;37:2;40:8, 16;47:12,21;51:20; 52:11;53:23;54:2,22; 62:9,10;63:7,18;65:23; 73:5,6;76:9;79:20</p>
<p style="text-align: center;"><b>G</b></p>	<p style="text-align: center;"><b>H</b></p>	<p style="text-align: center;"><b>I</b></p>	<p style="text-align: center;"><b>J</b></p>	<p style="text-align: center;"><b>K</b></p>
<p>garage (68) 18:15,16;35:22, 23;40:24,25;41:3,4; 43:5;44:5,9,11,15,16; 45:14,15,16;46:1,3,7, 16;47:2;48:14,49:12, 16;52:17,18,24;53:4,5, 7,12;54:8,14;55:4,5,12; 56:10,23;58:2;59:16, 21;60:17;61:5,6,8,19, 24;62:1;63:4,5,6,10,25; 64:18,21,22;65:24; 66:5,6,67:16;70:5; 74:6;76:1,2,4;77:22,24 garages (7) 43:24;45:3,12; 47:14;59:8,14;65:15 gate (1) 17:19 gave (6) 10:6;32:6;44:24; 45:7,18;51:20 general (4) 23:16;47:1; 57:15;77:19 generally (5) 7:13;47:20; 67:21;76:7;77:17 generic (1) 67:13 gentlemen (1) 79:18 get-go (1) 72:16 giant (1) 51:18 given (16) 23:3;27:13;32:2; 41:25;42:6;46:12; 56:20,22;57:2,16,23, 24;78:10,11,11,16 giving (1) 12:17 goes (1) 70:8 good (4) 25:16;36:25; 44:22;52:25 Google (1) 76:21 Gough (3) 9:5;16:22;20:10 G-o-u-g-h (1) 9:6 grandchildren (2) 17:17; 21:25 grant (7) 6:18;8:7;29:10; 42:12;70:19;77:3;79:1 granted (15) 5:13,21;6:22; 7:10;29:1;42:24;49:8, 13;54:5;57:1;58:7; 59:3;72:2;78:23;79:16 granting (9) 7:20;21:11; 23:18;27:17;70:23;</p>	<p>hand (4) 8:25;16:11;22:18; 23:2 handicap (2) 63:12;70:16 handicapped (3) 63:11; 70:15;78:15 handwritten (1) 15:12 handy (1) 64:6 happens (2) 40:6;64:16 hard (3) 11:19;53:7,8 hardship (16) 7:2;17:16; 21:5,19;23:23,24;24:7, 9,15;25:2;55:25;56:7; 58:3;70:24;73:21;77:7 harm (1) 21:12 hawed (1) 52:16 head (3) 28:14;45:25;62:8 health (1) 36:25 hear (2) 5:17;36:13 heard (1) 36:13 hearing (21) 5:7,8;16:15;20: 20;22;29:11,16,17,22; 30:2,7,7,8;43:4,14,14; 60:16,23,24,25;80:2,3 height (15) 8:17;9:9,17,21; 10:18,20;17:1,14,21, 24;18:9;20:2;21:1; 22:6;33:24 heightened (1) 22:2 help (2) 37:8;69:25 helps (2) 36:24;37:1 hemmed (1) 52:16 Here's (1) 54:21 Hi (1) 49:5 high (1) 59:9 higher (2) 23:4;37:18 high-rise (1) 48:4 Hm-hmm (4) 65:17,22; 66:10;73:10 hold (1) 64:13 home (4) 17:7;51:4;61:9; 64:7 homeowner (2) 17:4,17 hope (1) 13:8 hopefully (1) 67:6 horizontal (1) 10:25 hot (1) 38:3 house (46) 10:12;11:17,20;</p>	<p>idea (1) 52:20 Ideal (3) 16:19;35:12; 36:19 identify (2) 69:14,16 immediate (1) 65:21 immediately (1) 48:1 impact (3) 14:24;40:10; 66:3 implication (3) 27:5,11,12 impose (4) 24:7,9;41:21; 58:3 Imposing (1) 58:2 improve (1) 25:1 improved (1) 44:9 improvement (3) 26:12; 51:5;57:20 inches (3) 10:20,21;18:11 includes (1) 8:5 inconvenience (1) 38:18 increase (1) 18:9 increases (1) 37:3 indeed (2) 7:16;8:11 independent (1) 39:1 indicate (1) 70:24 indicated (1) 56:14 individual (1) 57:13 informal (2) 4:25;63:3 information (1) 29:13 informed (2) 70:3;75:25 initial (2) 4:15;56:18 initially (1) 52:14 input (1) 21:14 insights (1) 68:23 inspector (4) 8:16;9:8; 29:23;43:4 inspector's (1) 43:22 install (2) 29:23;43:5 instead (1) 26:10 integral (1) 38:23 intend (1) 74:6 intended (2) 57:13;76:20 interest (11) 6:24;21:12,13; 25:15;37:13;56:12,17; 57:16;67:17;77:4,14 interesting (2) 20:24;76:18</p>	<p>James (3) 43:20;50:24; 51:2 Jim's (1) 51:4 job (4) 26:21;36:9;50:22, 23 judicial (1) 4:5 jurisdiction (2) 72:8,25 justice (2) 67:24;77:9 justify (4) 22:2;27:2,17; 78:19 Justin (1) 39:1</p> <p style="text-align: center;"><b>L</b></p> <p>ladies (1) 79:17 Lance (5) 3:8;28:21;42:20; 60:10;79:8</p>	

<p>likely (1) 37:6 limitation (2) 21:6;56:1 limitations (5) 56:1,6,24; 68:18;70:25 limited (3) 9:17;57:5;72:8 line (9) 10:8,23;11:16,17; 17:25;38:10;39:2,45;8; 55:1 lines (1) 56:8 line-sets (2) 38:21;39:6 literal (4) 6:25;23:15; 41:24;77:5 literally (2) 22:25;23:23 little (13) 14:16;32:18,25; 38:12;41:8;46:22;53:9, 20,21,22;54:23;55:8; 63:5 live (4) 9:6;53:2;64:7;67:5 lived (1) 52:1 local (3) 3:16;71:25;72:6 located (3) 10:4;31:3,24 location (13) 23:25;35:12; 39:22;41:10,10,17,18, 19,20;42:7,8;47:24; 57:4 locations (1) 57:24 long (1) 67:5 longer (1) 28:1 look (11) 11:6;21:5;31:22; 33:1;38:13;41:13; 47:21,22;63:6;68:17; 70:22 looked (2) 22:12;65:2 looking (10) 8:2;18:13; 47:11;56:14;65:11,20; 67:18;68:15;71:5; 73:14 looks (6) 13:14;18:14; 33:23;47:12;63:18; 65:23 losing (5) 53:5,10;55:13, 14;56:9 lot (46) 17:3;21:8;22:13,16; 25:8;27:14;31:15,16, 23;37:13;38:10;41:15; 42:1,3,5;44:20;45:5,17; 46:16;50:14;56:21; 57:2,3,13;59:4,21;61:9, 13,15,18,18;62:7,13; 63:21;66:9;68:7,9,21, 24,25;69:7,23;70:6; 77:16,25;78:10 lots (7) 9:19;11:5;23:9; 44:21,24;59:17;69:25 lupus (1) 63:13</p>	<p>make (18) 5:3,6;6:11,18; 25:20;26:1;29:13; 37:19;53:22;59:6;68:2, 8;72:11,13,14;75:17; 77:15;78:18 makes (5) 11:3;21:2; 22:19;37:5;70:7 making (4) 25:19;45:16; 68:9;69:19 Management (1) 16:19 many (4) 14:23;23:9; 37:14;39:15 map (1) 45:7 markup (1) 45:20 MARTINIE (14) 30:15,16; 33:25;36:4,7,10,12; 40:4,15,18;41:1,7; 42:25 material (1) 33:20 materials (1) 32:7 matter (16) 8:20;20:21;29:4; 30:4,10,20;43:16; 49:24;55:22;60:22,25; 62:16;63:15;72:22; 75:13,18 maximize (1) 24:3 maximum (1) 60:18 may (9) 19:25;25:2;26:18; 58:17;70:17;71:23,24; 72:1;74:19 Maybe (5) 49:24;55:8; 64:16;65:8;70:21 mean (21) 15:8;20:1;21:4, 22;23:14,14;26:8; 32:15,15,15;34:14; 35:5;54:13;55:11;65:8; 71:22;72:23;73:4,6; 75:19;76:22 meaning (1) 33:24 measure (3) 13:4;19:16; 65:13 measured (4) 13:21;33:25; 45:5;55:2 mechanics (1) 5:24 meet (4) 12:2;13:7;39:19; 78:3 meeting (6) 3:2,13,20;58:5; 72:24;76:14 member (5) 5:5;30:3; 43:11;50:16;60:21 members (7) 4:18;5:2,11; 6:10;27:8,18;59:6 memo (3) 4:18;9:12;10:19 memorandum (4) 31:18; 45:11;72:23;75:20 memory's (1) 49:7 Menlo (7) 32:1;41:9;43:6, 9,10;45:1;47:12 mention (2) 15:18;16:2 mentioned (2) 16:2;38:8 met (2) 11:25;57:14 Michael (4) 3:6;28:23; 60:12;79:10</p>	<p>microphone (1) 16:13 middle (1) 58:20 might (4) 4:20;21:25;66:1; 69:25 Mike (2) 21:21;68:12 mind (2) 48:20;50:1 minimis (3) 67:18;78:19,22 minimum (2) 44:21;45:12 minivan (3) 63:16,24;64:8 minutes (6) 3:20,25;7:9,18; 29:14;68:3 missed (1) 76:13 mitigated (1) 39:22 mold (1) 37:3 moment (1) 73:15 months (2) 48:22,22 more (12) 9:18,21;13:17; 23:4;37:6,19;52:22; 53:18,18;55:10;56:13; 70:6 most (1) 42:8 motion (10) 3:19;25:20,25; 28:25;42:12,15;60:3; 67:25;79:19,23 move (5) 26:16;55:7;58:7; 60:24;78:25 moved (3) 3:21;53:15; 58:11 Mrs (1) 9:5 much (9) 11:21;20:9;34:7; 38:5;39:1;53:17;55:6; 70:10;79:17 Muelier (49) 3:8,9,21;16:6; 19:13,16,18,22;21:4; 24:13,21;25:22;27:6; 28:14,21,22;42:20,21; 45:24;48:17;49:22; 50:1,3,6,9;55:19,24; 56:5;58:8;60:10,11; 68:11,14;69:3,8,11,17; 70:21;71:6,10,13,17; 73:17;75:3,14,18;79:8, 9,23 multi (1) 56:2 multi-family (1) 56:2 multi-tenant (2) 48:4;58:4 municipality (1) 72:7 must (9) 7:8,17;8:6;10:16; 11:11;31:21;43:24; 68:5;78:9</p>	<p>need (11) 7:25;27:3;63:10; 64:10;69:5;70:4,8;78:3, 4,5,11 needed (1) 63:10 neighbor (2) 54:1;57:1 neighborhood (4) 7:23; 24:19;65:12;67:17 neighboring (11) 12:5,9; 13:16;14:2;18:14; 22:22;23:3;39:9,23; 47:22;65:15 neighbors (8) 24:6;26:2; 57:22,23,24;65:21; 66:2,12 neighbor's (2) 13:21;66:7 never (4) 44:16;45:15; 48:20;52:7 nevertheless (1) 57:3 new (4) 7:15;17:21;63:6; 70:5 next (9) 5:25;8:14;13:4; 14:25;29:7;59:10;66:3; 70:4;72:24 nice (2) 11:6;54:13 nicer (1) 53:23 no-brainer (1) 68:16 noise (4) 37:4,5,6,7 noisy (1) 37:23 nonconform (1) 28:6 nonconforming (8) 20:5; 26:22;27:23;28:2,6; 32:4;45:17;59:4 none (7) 20:22;30:7;43:13; 55:20,23;59:14;60:23 nonstarters (1) 38:5 nor (2) 23:23;24:5 normal (1) 22:13 North (12) 15:14;30:1; 38:15,20;39:4,12;40:5; 41:19;43:6;60:19; 65:19;66:1 north/south (1) 43:10 northern (3) 17:6;31:6,7 note (1) 29:6 nothing (2) 22:15;67:7 notice (4) 3:14;9:8;15:9,12 noticed (1) 16:1 noting (1) 32:7 number (3) 17:18;59:9; 62:10 numbers (3) 13:3;44:20; 61:15 nutshell (1) 64:1</p>	<p>74:5 occupation (1) 16:17 occupied (1) 52:2 October (1) 76:8 off (5) 54:11;55:1;62:8; 64:24;75:8 often (2) 21:17;42:3 oftentimes (1) 22:8 old (3) 19:1;56:2;63:16 Olive (9) 8:19;9:7;14:15; 15:7,13;18:15;20:14; 22:21,23 one (30) 4:4;14:24;15:3; 17:18;19:18;22:18; 32:10;40:3,4,12,14; 41:13,13;43:25;44:2,9; 50:11;53:8,14;56:12; 59:4;61:24,24;65:18; 66:1;67:11;69:20; 76:12,14;79:9 one- (2) 9:25;61:11 one-car (1) 61:24 ones (2) 15:22;38:19 one-story (1) 64:7 on-line (1) 33:17 only (10) 11:20;14:14;15:9; 18:3,4;22:20;34:4,16; 40:22;54:6 onto (1) 64:13 open (6) 5:14;29:15,16,21; 37:9;43:14 Opening (1) 30:2 opinion (3) 45:13;46:23; 59:20 opportunity (4) 4:19,22;5:2; 59:14 opposed (3) 12:3;69:25; 78:5 oral (1) 5:23 order (7) 3:3;6:4;8:6,17; 47:2;63:23;75:15 ordinance (3) 12:25;14:8; 72:5 origin (1) 73:2 original (2) 51:7;52:6 originally (1) 22:11 other (44) 4:6;7:14,14,19; 14:12,12,23;15:3,22; 16:4;22:7,18;23:2,9,10, 17;24:8,12;25:6;30:5,6; 34:24;35:17,19,19; 39:24;40:14,21,23; 41:16,20;43:11;45:19; 51:12;54:25;59:3; 60:20;63:20;69:25; 70:2;71:3;74:10;77:17; 79:22 others (1) 25:11 otherwise (2) 38:25;74:14 ought (2) 6:1;23:12 ours (1) 66:3 out (14) 5:14,16,24,25; 15:22;29:13;33:2;37:7;</p>
<p style="text-align: center;"><b>M</b></p> <p>made (8) 7:8,11,25;8:6; 26:3;42:15;51:23;73:6 magnitude (1) 47:2 main (3) 45:10;53:13; 64:17</p>	<p style="text-align: center;"><b>N</b></p> <p>name (3) 16:17;36:6;51:1 names (1) 3:6 narrow (2) 73:17,18 narrower (2) 50:14;57:3 nature (1) 78:16 navigates (1) 64:13 near (1) 39:24 necessarily (1) 28:8 necessary (1) 56:7 necessitate (1) 68:19</p>	<p style="text-align: center;"><b>O</b></p> <p>oath (1) 4:23 obligation (1) 58:2 observations (1) 20:23 observed (1) 77:8 obstructing (1) 24:4 obvious (2) 62:17;67:16 obviously (3) 36:23;67:21;</p>	<p>others (1) 25:11 otherwise (2) 38:25;74:14 ought (2) 6:1;23:12 ours (1) 66:3 out (14) 5:14,16,24,25; 15:22;29:13;33:2;37:7;</p>	

<p>50:18;52:9;53:9;55:7; 62:9;63:19 <b>outdoor (1)</b> 52:19 <b>outline (4)</b> 4:14;63:6; 64:20,22 <b>outlines (1)</b> 8:4 <b>outside (1)</b> 38:3 <b>outweight (1)</b> 26:13 <b>over (8)</b> 52:6,8;54:19; 55:14;62:18;66:25; 79:21,22 <b>overall (1)</b> 18:9 <b>overcrowding (1)</b> 59:11 <b>overview (1)</b> 56:15 <b>owing (2)</b> 6:24;77:4 <b>own (1)</b> 52:5 <b>owner (9)</b> 15:2;16:18; 24:22;26:9,14;52:2; 61:3;69:10;74:8 <b>owners (2)</b> 9:5;30:13 <b>owner's (1)</b> 69:12</p>	<p>20;32:13,23;33:1,4,12; 34:1,7,13,17,23;35:2,6, 9,13,16,24;36:1,40:1, 10,17;42:14,18,19; 45:25;48:9,13,21;50:7, 10,19;55:20;56:4; 57:10,18;59:1;60:4,7,7, 8,9;62:14,17;64:19; 65:3,10;66:6,13,15,18, 21;69:2,7,10,15;71:11, 14;72:19;73:2;74:1,7, 18;75:8;76:12,21; 77:12;78:14;79:2,6,7, 24 <b>Pastrani (1)</b> 60:6 <b>patience (1)</b> 62:22 <b>patio (1)</b> 52:5 <b>patios (2)</b> 51:9;52:1 <b>PAULSON (153)</b> <sup>3:2,6,7,12,</sup> 18,23,25;8:14;11:8,14; 12:3,8,15,17,20;13:10, 14,19,24;14:1,7,10,21; 15:11,17,24;16:4,7,9, 12,16,20;17:20;18:2,8, 13,19;19:23,25;20:3,6, 15,17,19;22:11;25:21, 24;26:6,18;27:1,4,7; 28:12,15,17,23,24;29:4, 19,21;30:6;32:11,20, 22,24;33:7,16,18,22; 34:25;36:2,5;39:25; 40:21;41:6,13;42:15, 22,23;43:1,9;45:23; 46:1,5,10,24;47:1,5,11, 18;48:1,8,18;49:2,9,13, 19;50:20;51:1;54:16; 55:18,21;56:19;57:11, 19;58:9,11,23;60:1,5, 12,13,15;62:5,12,15,20; 65:6,11,18,23;66:11,14, 20,22;67:7,10,14; 68:13,25;69:18;72:4; 73:23;74:2,9,19,23; 75:1,6;76:5,11,19,25; 77:13;78:15;79:3,5,11, 12,15,19,25;80:2 <b>Paulson's (1)</b> 50:1 <b>pause (1)</b> 15:19 <b>pavement (1)</b> 52:10 <b>people (3)</b> 15:5,9;22:5 <b>Per (7)</b> 9:13;31:9;44:2,9, 15;61:12;75:4 <b>perceived (1)</b> 37:10 <b>percent (10)</b> <sup>31:14;61:13,</sup> 18;62:9,13,18;70:3,6,9, 10 <b>percentage (2)</b> <sup>62:7;66:9</sup> <b>perhaps (2)</b> 21:24;64:16 <b>permit (7)</b> <sup>4:15;16:24;46:6;</sup> 72:15,16;73:13,15 <b>permitting (1)</b> 24:25 <b>perpendicular (1)</b> <sup>14:17</sup> <b>personal (4)</b> 33:20;71:2,</p>	<p>16;74:9 <b>personally (1)</b> 75:9 <b>phonetic (1)</b> 30:14 <b>photo (3)</b> <sup>10:7;14:4;47:12</sup> <b>photograph (3)</b> <sup>24:2;32:14,</sup> 22 <b>photographs (1)</b> 65:12 <b>phrased (1)</b> 69:18 <b>physical (6)</b> <sup>21:6;55:25;</sup> 56:5;68:18;70:25;71:2 <b>picture (7)</b> <sup>18:13;33:15,21,</sup> 23;34:9;58:18;65:20 <b>pictures (4)</b> <sup>11:5;44:24;</sup> 45:19;62:4 <b>piece (1)</b> 33:20 <b>place (2)</b> 24:23;38:7 <b>placed (2)</b> 7:8;33:8 <b>placing (1)</b> 30:22 <b>please (9)</b> <sup>3:4;8:19;16:9,</sup> 16;36:5;42:17;43:15; 51:1;62:6 <b>plumb (1)</b> 18:1 <b>pm (2)</b> 3:1;80:3 <b>point (3)</b> <sup>50:18;62:21;72:2</sup> <b>policy (1)</b> 71:21 <b>pops (1)</b> 75:24 <b>por (1)</b> 40:6 <b>portable (1)</b> 40:7 <b>portion (4)</b> <sup>5:8;10:25;</sup> 15:20;56:21 <b>position (3)</b> <sup>4:17;11:10;</sup> 50:10 <b>positive (1)</b> 21:15 <b>possible (3)</b> <sup>38:24;72:1;</sup> 76:10 <b>possibly (1)</b> 73:18 <b>post (1)</b> 53:14 <b>posted (1)</b> 3:15 <b>potential (2)</b> <sup>78:11,12</sup> <b>potentially (2)</b> <sup>24:24;56:8</sup> <b>pour (6)</b> <sup>51:25;52:13,15,</sup> 23;55:9,11 <b>poured (1)</b> 52:11 <b>power (4)</b> <sup>6:22;72:2,7;77:2</sup> <b>powers (1)</b> 8:4 <b>practical (5)</b> <sup>7:1;41:17,25;</sup> 56:22;77:6 <b>precedent (2)</b> <sup>26:24;28:5</sup> <b>precise (1)</b> 47:19 <b>precisely (1)</b> 65:14 <b>predates (1)</b> 27:22 <b>preempted (1)</b> 72:12 <b>preemption (2)</b> <sup>72:10;73:5</sup> <b>preexisting (5)</b> <sup>17:20,22;</sup> 24:16;27:9;57:16 <b>preference (1)</b> 37:15 <b>preliminary (1)</b> 22:10 <b>premise (3)</b> <sup>16:23;17:18;</sup> 26:20 <b>prepare (2)</b> <sup>72:23;75:20</sup> <b>Present (10)</b> <sup>3:7,9,11;4:14;</sup> 8:19;24:16;30:9;40:15; 43:15;60:25</p>	<p><b>presentation (1)</b> 47:8 <b>pretty (5)</b> <sup>4:24;38:5,25;</sup> 55:5;65:7 <b>previous (2)</b> <sup>18:10;21:2</sup> <b>previously (2)</b> <sup>30:9;43:15</sup> <b>printed (1)</b> 32:19 <b>prior (5)</b> <sup>18:5,7;20:3,25;</sup> 60:2 <b>privacy (1)</b> 21:24 <b>private (1)</b> 52:3 <b>probably (7)</b> <sup>5:24;12:7,21;</sup> 20:4,6;21:1;39:14 <b>problem (4)</b> <sup>21:10;40:20;</sup> 56:24;77:11 <b>problematic (1)</b> 39:3 <b>proceeded (1)</b> 51:25 <b>proceeding (3)</b> <sup>4:5,9;6:2</sup> <b>P-R-O-C-E-E-D-I-N-G-S (1)</b> 3:1 <b>process (1)</b> 4:3 <b>properties (15)</b> <sup>7:14;22:20;</sup> 25:14;39:9;42:9,11; 44:25;45:2,19;47:13, 22;56:13;59:7,10;77:17 <b>property (72)</b> <sup>6:15,17;7:13,</sup> 21,22;8:18;9:5,6,24; 10:3,7,9,13;12:4,13; 16:19;18:14;22:22; 23:9,22;24:22;26:15; 27:16,20;29:25;30:13; 31:1,3,22;32:3;36:13, 22;37:3,11,25;39:13, 23,24;41:9,11,12,22; 42:8;43:6,23;44:1,15, 25;45:10;48:2,19,25; 51:12;56:15;57:5;58:5, 22;59:3,21;60:19;61:3, 10;66:2;67:15;68:18; 69:8,9;70:25;73:24; 74:3;78:6,10 <b>property's (1)</b> 44:19 <b>proposal (5)</b> <sup>39:10;61:25;</sup> 62:3;77:24;78:2 <b>proposed (19)</b> <sup>31:6;33:8;</sup> 34:21;41:10,19,19; 45:20;46:5,10,13,14, 19;47:6,15;56:16;61:8, 19;67:15;78:1 <b>proposing (3)</b> <sup>39:5;54:17;</sup> 65:16 <b>provide (3)</b> <sup>33:14;46:19;</sup> 59:18 <b>provided (6)</b> <sup>3:13;9:18;</sup> 15:6;31:15;62:1,3 <b>provisions (4)</b> <sup>9:16,22;</sup> 23:15;77:1 <b>public (32)</b> <sup>3:13;5:6;6:24;</sup> 8:15;9:19;15:20,21; 21:12,13;25:14;29:11, 16,17,22;30:2,3,7; 39:19;43:3,11,13; 56:12,17;57:15;60:16, 21,23;67:17,24;77:4,9,</p>	<p>14 <b>published (1)</b> 3:16 <b>punishing (1)</b> 26:9 <b>purchased (3)</b> <sup>18:23,24;</sup> 63:16 <b>purpose (2)</b> <sup>57:13;77:8</sup> <b>push (1)</b> 40:7 <b>pushed (1)</b> 40:19 <b>put (14)</b> <sup>19:18;24:8;28:3;</sup> 33:6;34:2,11;35:15; 38:7,20;52:9;63:5; 70:4;74:6;76:14 <b>putting (5)</b> <sup>34:5;40:23;</sup> 42:6;56:23;70:18</p>
<b>Q</b>				
<p><b>Qiong (1)</b> 30:16 <b>quasi (1)</b> 4:5 <b>question (7)</b> <sup>34:1;35:1;</sup> 69:13;70:22;73:18; 74:10;77:14 <b>questioning (1)</b> 26:19 <b>questions (21)</b> <sup>4:20;5:3;8:9;</sup> 11:8;14:22;16:4;18:19, 21;19:24;32:11;36:2; 39:25;40:21;45:23,24; 49:3;55:18,19;62:15, 20;66:23 <b>quick (2)</b> 46:22;74:17 <b>quiet (1)</b> 5:15 <b>quite (1)</b> 45:2</p>				
<b>R</b>				
<p><b>R-5 (2)</b> 34:19;61:16 <b>R-6 (6)</b> <sup>9:24;31:4;34:19;</sup> 44:1;61:10,16 <b>radius (1)</b> 59:24 <b>railroad (3)</b> <sup>51:18,18,24</sup> <b>raise (4)</b> <sup>8:25;16:10;17:15;</sup> 37:4 <b>raised (1)</b> 67:1 <b>ramp (6)</b> <sup>63:24;64:5,6,7;</sup> 70:16,16 <b>ramps (1)</b> 64:2 <b>rather (3)</b> <sup>38:16;47:20;</sup> 70:25 <b>raze (1)</b> 61:5 <b>re (1)</b> 19:11 <b>reach (1)</b> 5:12 <b>read (6)</b> <sup>8:24;9:11;31:20;</sup> 47:7,7;71:14 <b>readily (1)</b> 39:8 <b>reading (2)</b> <sup>22:25;77:1</sup> <b>Ready (1)</b> 28:18 <b>real (4)</b> <sup>29:14;46:11;67:16;</sup> 69:8 <b>realize (1)</b> 37:5 <b>really (10)</b> <sup>17:7;52:25;</sup> 53:10;54:12;55:4;65:2; 66:18;67:13;68:12; 75:10</p>				

<p>rear (15) 17:7,9;20:11; 34:10,11,15,18,20; 35:10;43:23;44:18; 45:4,5;56:23;58:20 rear-loading (1) 63:24 reason (4) 36:21;59:12; 64:17;67:15 reasonable (1) 41:18 reasoning (1) 26:19 reasons (1) 42:13 received (6) 9:3;11:23; 30:12;43:17;59:15; 61:1 recognize (2) 56:25;58:23 recommendation (1) 29:15 reconstruct (1) 22:6 reconstructing (1) 17:18 record (17) 4:6;7:9;9:13; 10:9,24;25:15;26:4; 29:14,21;36:6;49:25; 58:18;62:5,10;68:2,4,9 recorded (1) 7:18 records (2) 44:16;59:18 recurrent (1) 77:19 recurring (1) 57:8 reduce (5) 8:17;9:9;37:4,5, 8 reduced (1) 14:17 reduces (1) 37:2 reducing (1) 58:4 reference (1) 10:6 referenced (1) 10:17 referred (1) 14:22 reflect (1) 15:19 regarding (2) 70:12,14 regular (1) 70:18 regulations (1) 6:21 related (5) 7:12;73:24; 74:3;77:23;78:5 relating (1) 74:8 relationship (1) 27:15 relevant (2) 4:23;66:19 remained (1) 24:24 remeasured (1) 53:4 remember (4) 36:24;50:3, 4;72:18 remind (1) 15:19 reminder (1) 44:21 removed (2) 42:8;51:21 rent (4) 37:15,18;40:11; 55:16 rental (4) 36:22;41:11; 53:3;59:9 rented (1) 63:19 rents (1) 40:16 repair (1) 22:5 replace (3) 24:25;49:15; 61:6 replaced (2) 16:24;54:4 replacement (2) 16:25; 26:24 replacing (2) 17:14;26:11 reporter (3) 4:11;30:19;</p>	<p>79:21 representations (1) 69:20 representing (1) 16:21 represents (1) 45:9 request (7) 6:8,13;25:22; 29:8;50:12;72:23; 75:17 requested (1) 29:7 requesting (1) 30:24 requests (1) 7:4 require (6) 39:2;41:21; 51:16;59:14;63:25; 64:5 required (1) 61:23 requirement (6) 14:19; 23:1,19;30:25;78:12,13 requirements (7) 3:17; 12:2;36:17;44:8;58:6; 67:19;78:17 requires (4) 4:9;13:1; 38:21;44:10 research (2) 75:9,15 reside (1) 9:6 residential (6) 8:18;27:25; 29:25;34:19;43:6; 60:19 residents (3) 15:13,14; 27:10 respect (1) 68:9 restate (1) 35:1 restricted (1) 56:20 restrictions (2) 41:22;44:3 result (3) 7:1;37:12;77:6 review (2) 4:1;72:8 RICHARD (1) 16:14 Rick (2) 16:10,18 rid (1) 63:16 right (52) 5:14,17,25;7:23; 8:25;9:10;12:11,19; 13:13,25;15:16;16:11; 20:5;24:20;26:6;28:18; 29:3,19,20;32:23;35:9; 13;36:1;39:17;45:6; 46:21;48:11,13,17; 51:8;54:9;55:8;56:4; 57:10,18;59:2,10; 62:14,18;65:11;66:13, 15,18;68:17;69:2,17; 71:11,17;74:1,18; 78:14;79:10 roads (1) 48:3 role (1) 3:3 roll (4) 28:15;42:17;58:9; 60:5 roof (3) 48:15;53:16,16 room (4) 45:14;49:11; 54:13;70:4 roughly (7) 18:16;46:3,7, 15;47:23;65:15,24 route (1) 39:6 rule (3) 7:15,16;70:9 rules (1) 5:9 runs (1) 41:11</p>	<p style="text-align: center;"><b>S</b></p> <p>safety (2) 67:24;77:9 same (15) 17:21;18:5,12; 29:8;41:8;47:1,15,17; 54:2,7,8;56:8,8;66:7; 77:18 satisfactory (1) 40:8 satisfied (2) 21:7;25:9 satisfy (1) 25:16 saying (3) 13:22;27:2; 76:23 scale (1) 46:19 Schedule (1) 44:8 scooter (5) 63:17,18,25; 64:11,15 search (1) 74:17 searching (1) 75:21 Second (9) 3:22;7:17; 25:13,23;26:17;42:14; 58:8;79:2,24 seconded (2) 42:16;58:12 Section (10) 7:7;9:22;10:17; 11:1;22:21;26:13;31:9; 44:2;53:9;61:12 Sections (1) 8:3 secure (1) 17:19 secured (1) 77:9 security (2) 17:16;21:24 seeing (5) 42:2;43:13; 55:23;67:11;75:22 seem (3) 18:20;46:13; 57:14 seems (5) 18:20;21:15; 48:15;56:22;68:22 sell (1) 53:3 sense (5) 11:3;37:6,8; 67:22;70:7 sent (1) 15:9 separate (1) 40:5 September (3) 30:13; 43:18;76:13 sessions (1) 5:15 set (5) 5:9;10:12;13:6; 24:3;32:3 setback (18) 8:18;9:15,22; 10:1;12:25;14:5,18; 22:15,24;23:1;29:25; 30:23;31:14;32:2; 34:11,21;35:10;36:17 setbacks (3) 10:2;34:19; 42:4 Several (3) 15:5;47:13; 65:14 severe (1) 37:1 severely (1) 57:5 Shakes (2) 28:14;45:25 shall (5) 9:17,21;31:16; 44:4;77:8 shape (2) 27:13;42:1 share (2) 38:24;52:4 shared (1) 53:12</p>	<p>Sharp (1) 51:3 shaved (1) 64:24 shed (1) 54:23 Shorewood (5) 7:24;22:14; 30:12;36:18;44:15 shortest (1) 39:6 shot (1) 48:14 should (7) 13:20,21;15:19; 32:19,21;74:11;77:20 show (2) 58:19;61:15 shows (5) 10:9,23;31:6; 45:8;54:22 sic (2) 12:4;58:6 side (39) 10:3;17:4,6,8; 21:9;24:3,4,8;27:14; 29:24;30:23;31:6,8,10, 13,14,22,25;32:2; 35:17,19;38:14,15,16, 16,16,21;39:4,11;40:6, 24;41:2,20;45:1,53;21; 54:25;57:25;61:25; 63:24 side-by-side (4) 31:2,7; 36:14;55:17 sides (1) 38:5 side's (1) 39:13 sidewalk (2) 11:22;39:3 signed (1) 40:18 Since (4) 6:3;10:15;13:5; 37:17 single-family (4) 53:1; 54:14;61:9,22 single-story (1) 67:3 Site (3) 44:3,16,17 situation (1) 57:8 size (7) 41:25;61:8,9; 65:15;66:5,7;68:21 slab (19) 43:5,23;44:12,14; 45:20;46:8,14,17,19; 47:3,3,16,23;48:16; 49:15;52:24;56:16; 61:25;70:4 slabs (4) 47:14,22;48:10; 56:14 slight (1) 18:3 slightly (2) 9:10;18:4 slope (7) 44:18;45:4;47:9; 51:12;54:10;56:24; 57:6 sloped (1) 45:6 slopes (1) 18:4 slot (1) 47:6 small (8) 38:9,16;40:25; 63:9;64:12;65:2;68:22; 74:5 smaller (4) 63:4,6;64:20,22 some (22) 4:8;5:19,23;7:2, 7;13:2;19:19;21:14; 37:5,21;39:13;40:6,6; 44:19,25;45:21;47:21; 58:17;67:20,23;72:1,10 someone (3) 55:7;70:15,18 something (12) 5:21;12:5,8;</p>	<p>23:21;24:22;42:2;62:9; 68:15;69:5;70:12;74:3; 76:21 sometimes (1) 36:25 somewhat (2) 40:25;46:15 somewhere (1) 65:7 soon (1) 76:10 sorry (3) 31:10;43:19; 73:14 sort (6) 4:5;22:12,19; 40:10;57:7;76:23 sound (1) 11:15 sounds (1) 24:18 source (1) 79:14 south (8) 38:15,16;40:6,24; 41:2;57:23;65:20,21 southern (2) 17:8;35:20 space (9) 38:25;40:25; 44:9;52:19;53:6,11; 58:21;70:6,11 spaces (5) 53:19,25;55:6, 14,56,9 speak (4) 17:8;30:3;43:12; 60:21 speaking (1) 13:8 special (10) 6:16,17,18,25; 41:23;70:13;77:5,13, 23;78:8 specific (5) 7:8;8:6;10:19; 78:3,5 specifically (4) 6:22;72:3; 73:4;75:21 spellings (1) 30:18 spinal (1) 63:13 spirit (3) 11:25;26:12;77:7 spruce (1) 26:15 square (7) 32:18;45:13; 47:19;61:17,19,20,21 stacking (3) 59:16,17,17 staff (27) 3:13;4:14,17,18, 19;5:19;8:19;10:10; 11:10,23;13:1;14:5,9; 16:5;26:20;28:15;30:9; 32:12;43:14;45:14,22; 49:3;59:13;60:25; 62:15,21;75:20 staff's (2) 59:20;60:1 stage (1) 26:23 stairway (1) 70:18 standard (5) 14:5;23:16; 42:3;69:1;77:10 standards (3) 4:2;6:11; 16:2 start (2) 54:8,9 started (2) 51:22;76:9 starting (1) 76:8 state (12) 3:16;16:16;28:7; 36:5;51:1;62:17;63:20; 70:14;72:6;74:19,20; 76:17 State-issued (1) 63:12 statement (1) 5:6 states (3) 31:10;43:24;44:8</p>
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<p>stating (1) 20:10  <b>Statute (1)</b> 77:1  <b>Statutes (4)</b> 5:11;28:8;  70:14;76:17  <b>stay (5)</b> 52:17;53:2;54:24;  55:1;67:2  <b>stenosis (1)</b> 63:13  <b>step (1)</b> 5:25  <b>steps (1)</b> 64:9  <b>Steve (3)</b> 30:14;36:7,10  <b>stick (1)</b> 72:19  <b>still (11)</b> 12:23,24;13:17;  14:1;18:12;22:25;  51:19;53:20;65:4;73:6;  74:7  <b>stood (1)</b> 24:18  <b>stopped (1)</b> 51:7  <b>story (1)</b> 23:4  <b>Stowell (1)</b> 15:14  <b>straightforward (1)</b> 18:20  <b>strain (1)</b> 37:24  <b>street (18)</b> 9:20;10:3;12:25;  14:15;18:15,15,17;  22:21,23;30:23;31:8,  14,22;36:19;39:8;45:1;  57:2;60:19  <b>streets (1)</b> 10:5  <b>streetscape (2)</b> 23:6,7  <b>strikes (6)</b> 21:4,22;22:4,16;  24:14,25  <b>striving (2)</b> 59:13,13  <b>strong (1)</b> 78:21  <b>strongly (1)</b> 39:22  <b>struck (1)</b> 22:12  <b>structural (2)</b> 78:9,17  <b>structure (12)</b> 7:13;25:1;  31:20;32:5;61:14;68:8,  10;69:23;77:16,22;  78:1,3  <b>structures (1)</b> 42:1  <b>struggle (1)</b> 22:8  <b>struggling (4)</b> 23:19;24:11;  68:19;69:4  <b>student (1)</b> 37:14  <b>students (2)</b> 37:13,14  <b>Sub (6)</b> 31:10,11,11,12,12,  13  <b>submitted (1)</b> 61:4  <b>submitting (1)</b> 68:2  <b>suffice (1)</b> 12:1  <b>suggest (1)</b> 77:20  <b>summer (1)</b> 36:23  <b>support (6)</b> 4:24;8:12;15:6;  28:8;42:12;73:22  <b>supported (1)</b> 67:25  <b>supposed (1)</b> 8:21  <b>sure (10)</b> 5:3;6:11;8:23;  21:20;26:1;28:16;38:9;  48:16;68:2,8  <b>surface (1)</b> 67:19  <b>surrounding (4)</b> 7:22;11:5;  25:14;44:25  <b>survey (10)</b> 10:22;31:5,23;</p>	<p>32:9,17;39:11;45:20,  22;62:2;66:2  <b>suspicions (1)</b> 73:4  <b>swear (2)</b> 8:22;16:9  <b>sworn (11)</b> 4:22;8:22;9:1;  16:14;30:9;36:10;  43:15;50:20,24;62:24;  75:1  <b>sympathetic (1)</b> 69:13</p> <p style="text-align: center;"><b>T</b></p> <p><b>table (1)</b> 25:25  <b>take (13)</b> 6:3,3;13:3,19;  15:18;19:19;40:22;  46:21;53:9;54:16;70:5;  73:20;79:19  <b>taken (3)</b> 3:24;8:8;80:1  <b>taking (1)</b> 36:12  <b>talk (1)</b> 63:2  <b>talking (8)</b> 40:23;62:18;  68:4;77:25,25;78:1;  79:21,21  <b>tall (1)</b> 33:13  <b>taxes (1)</b> 37:4  <b>Technically (1)</b> 8:21  <b>tell (2)</b> 66:14;71:22  <b>temporary (1)</b> 64:9  <b>ten (1)</b> 59:11  <b>tenant (1)</b> 54:1  <b>tenants (12)</b> 37:15,20,21;  38:18;43:2;52:4,5,19;  53:1,12,21;55:15  <b>tend (3)</b> 37:24;39:16;56:19  <b>tends (1)</b> 37:17  <b>term (4)</b> 74:13,15;75:22;  76:17  <b>terms (2)</b> 55:25;56:11  <b>terribly (1)</b> 75:6  <b>test (1)</b> 39:20  <b>testified (5)</b> 9:2;16:15;  36:11;50:25;62:25  <b>testify (2)</b> 4:22;55:22  <b>testimony (7)</b> 4:12;8:8;  14:14;20:20,22;67:10;  75:1  <b>Thank (14)</b> 8:14;20:17,18;  29:2,3;36:12;42:25;  55:21;60:14,15;62:22;  67:7;79:17,22  <b>thing (6)</b> 7:17;22:18;25:16;  54:2,25;63:1  <b>things (5)</b> 58:17;64:13;  69:19;76:2,3  <b>think (45)</b> 11:4;14:11,13,21;  15:11;20:8;21:6,11,12,  17;22:3,8;24:14;25:9,  15;26:8,12;27:4;33:4,5;  35:14;39:18;40:15;  45:8;55:24;56:16;62:8;  64:15;65:4,25;68:14,  15,17;69:5,22;70:13,  16;73:17;75:8,14,16;</p>	<p>76:19;77:10,21;78:18  <b>third (1)</b> 22:9  <b>though (2)</b> 52:4;69:12  <b>thought (4)</b> 17:10;49:25;  52:16;53:17  <b>thoughts (2)</b> 22:10;56:18  <b>Three (3)</b> 48:22;54:2;66:4  <b>threshold (1)</b> 28:1  <b>through (6)</b> 4:3;31:19,20;  38:21;44:19;64:14  <b>throws (1)</b> 11:18  <b>ties (3)</b> 51:18,19,24  <b>till (2)</b> 26:22;52:21  <b>timbers (1)</b> 51:17  <b>time (7)</b> 36:12;40:16,20;  52:8;64:10;67:5;72:17  <b>today (2)</b> 4:2,11  <b>told (2)</b> 51:15;63:4  <b>Tom (3)</b> 9:5;16:22;20:10  <b>tonight (3)</b> 6:8;7:4;8:9  <b>took (1)</b> 63:5  <b>top (4)</b> 17:25,25;18:11;  62:8  <b>topography (2)</b> 22:16;56:1  <b>total (3)</b> 61:18;62:7,13  <b>totally (1)</b> 69:19  <b>totals (1)</b> 61:17  <b>touch (1)</b> 59:22  <b>towards (2)</b> 8:10;60:24  <b>townhomes (1)</b> 31:2  <b>townhouse (1)</b> 55:17  <b>traditionally (1)</b> 11:17  <b>transcribe (1)</b> 4:11  <b>transcript (1)</b> 4:8  <b>treat (1)</b> 40:4  <b>tree (1)</b> 51:17  <b>trees (2)</b> 51:11,21  <b>tried (1)</b> 26:15  <b>true (1)</b> 43:10  <b>trump (1)</b> 71:24  <b>truth (1)</b> 64:14  <b>try (1)</b> 38:23  <b>trying (7)</b> 13:10;47:18;  65:13;69:15;73:7,11;  74:2  <b>turn (1)</b> 36:3  <b>turning (1)</b> 59:24  <b>two (16)</b> 7:24;9:13;10:4;  15:15;22:20;26:1;  37:11;38:5;48:7;51:25;  52:25;53:11;55:6,6;  59:7;66:3  <b>two-car (6)</b> 44:12;46:2,17;  47:3;59:20;62:1  <b>two-family (8)</b> 9:25;31:1;  43:25;44:2,8,11,11;  61:11  <b>two-parking (1)</b> 47:2  <b>type (2)</b> 4:7,10  <b>typical (1)</b> 61:16</p> <p style="text-align: center;"><b>U</b></p>	<p><b>ultimately (1)</b> 66:22  <b>under (19)</b> 4:22;6:20;7:7;  9:15;28:7,7,7;29:7;  38:11;44:3,7;71:10,25;  72:6,8,13;74:19,20;  78:23  <b>understand (4)</b> 5:4;14:13;  27:12;76:6  <b>understanding (1)</b> 19:22  <b>unique (10)</b> 22:19;44:17;  57:4,25;67:23;69:24;  73:23;78:2,2,16  <b>unit (22)</b> 29:24;30:22;31:4,  7;32:1,15,16;33:8;35:3,  3,19;37:17,18;38:22;  39:24;40:1,12;41:17,  19;42:6;44:10;53:3  <b>units (4)</b> 38:23;40:5,7;48:7  <b>unless (4)</b> 4:8;14:2;44:4;  55:6  <b>unnecessary (4)</b> 7:2,21;18;  25:2;77:7  <b>unreasonable (2)</b> 25:2;  58:3  <b>unreasonably (4)</b> 21:19,23;  22:4;25:12  <b>unrepair (1)</b> 26:23  <b>unspecified (1)</b> 77:5  <b>until (1)</b> 53:3  <b>unusable (1)</b> 47:8  <b>unusual (15)</b> 4:9;22:17;  23:5,7,21;24:22;25:7;  27:16;41:14,23;50:11;  67:20;68:6;69:23;  73:24  <b>unusually (1)</b> 68:22  <b>up (24)</b> 4:7,10;5:19;12:2;  24:3;26:15;27:10,24;  29:15,16;44:12;50:16;  51:19;52:20,20;56:15;  61:13,24;63:22;70:5;  72:18;74:6;75:24;  76:16  <b>upon (4)</b> 6:16;25:9;64:3;  69:5  <b>usable (1)</b> 56:21  <b>use (9)</b> 24:3;27:14,23;  28:2,6,9;41:22;45:17;  52:18  <b>used (1)</b> 37:21  <b>using (2)</b> 12:23;22:1  <b>usual (1)</b> 55:24  <b>usually (2)</b> 36:8;45:12  <b>utility (1)</b> 38:25  <b>UW-M (2)</b> 37:12;59:10</p> <p style="text-align: center;"><b>V</b></p> <p><b>value (1)</b> 37:3  <b>variance (40)</b> 5:13;6:8,13;  7:4,9,20;8:7,13;17:6,  23;18:3;21:11;23:18;  26:16;27:18;28:20,25;</p>	<p>29:8,10;30:24;41:21;  42:13,23;48:20;49:8,  14;50:11;54:4;57:1;  58:7;59:3;70:19,22;  71:7;73:3,22;77:19;  78:23;79:1,15  <b>variances (2)</b> 6:23;77:3  <b>vary (1)</b> 10:20  <b>venues (1)</b> 63:20  <b>verbally (1)</b> 11:24  <b>verbatim (1)</b> 9:11  <b>vertical (2)</b> 24:1;47:9  <b>view (10)</b> 13:1;14:5,9;21:23;  24:5,6;33:15;41:23;  42:11;58:5  <b>Village (18)</b> 5:10,10;6:20;  9:3,17;24:21;25:17;  29:5;30:11;36:17;  43:17;44:15;59:8;61:1;  70:10;74:16;75:22;  77:2  <b>violates (1)</b> 6:15  <b>violating (1)</b> 23:15  <b>violation (9)</b> 20:4,7,25;  27:9;66:8;67:18;70:17;  78:20,20  <b>Vote (7)</b> 3:24;15:18;28:18,  22;79:4,5;80:1  <b>voting (1)</b> 58:10</p> <p style="text-align: center;"><b>W</b></p> <p><b>wait (1)</b> 26:22  <b>waiting (1)</b> 75:9  <b>walk (3)</b> 4:3;9:19;63:21  <b>walkway (1)</b> 41:9  <b>wall (5)</b> 38:24;39:12;41:3,  5;51:15  <b>want (15)</b> 6:11;15:18;23:11;  26:1;33:1;36:21;44:18;  49:6;51:15;54:15;  55:22;58:18,20;68:1,8  <b>wanted (6)</b> 50:18;52:2,3;  55:3;59:6,25  <b>wanting (1)</b> 64:17  <b>wants (3)</b> 5:6;20:20;55:7  <b>way (23)</b> 6:2;12:12;14:24;  15:23,25;24:8;25:4;  26:8;27:19;28:4,5;  29:1;34:4;50:11;51:12;  52:14;53:8,16;55:7,9;  56:15;69:19,20  <b>weather (1)</b> 76:5  <b>weigh (1)</b> 15:10  <b>welcome (1)</b> 21:21  <b>welfare (2)</b> 67:24;77:9  <b>weren't (2)</b> 51:10;75:10  <b>west (3)</b> 38:13;39:11;55:3  <b>whatever (1)</b> 5:20  <b>whatsoever (1)</b> 70:7  <b>wheelchair (2)</b> 63:17;64:16  <b>whether (12)</b> 5:13,20;8:10;  21:5,18;24:17;29:9;</p>
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<p>56:11;66:11;73:18,21; 78:8 <b>whichever (1)</b> 10:5 <b>whole (3)</b> 7:24;41:11;63:1 <b>whose (2)</b> 15:3;66:2 <b>wide (7)</b> 31:23;44:20,22; 46:20;59:5;61:16; 65:24 <b>wider (1)</b> 59:23 <b>width (7)</b> 31:14,16,23;59:4, 23;64:24;69:1 <b>wife (4)</b> 51:3;63:11;66:24; 79:18 <b>willing (1)</b> 78:25 <b>window (2)</b> 34:3;37:21 <b>windows (5)</b> 37:6,9;38:11, 13;39:15 <b>wing (1)</b> 14:16 <b>wings (1)</b> 14:21 <b>wire (1)</b> 53:13 <b>wires (1)</b> 53:14 <b>Wisconsin (1)</b> 5:11 <b>wish (2)</b> 43:12;75:10 <b>wishes (2)</b> 30:3;60:21 <b>within (10)</b> 5:22;8:17;15:9; 19:10;29:24;30:23; 32:2;64:25;65:8;74:17 <b>without (8)</b> 24:4,18,19; 43:5;45:16;59:22; 65:13;76:1 <b>wonder (3)</b> 21:1;70:9; 76:22 <b>Woodburn (1)</b> 60:19 <b>word (1)</b> 78:21 <b>words (4)</b> 4:6;7:14,19; 26:21 <b>work (2)</b> 5:24;25:1 <b>worked (2)</b> 5:24;63:19 <b>working (2)</b> 16:13;69:14 <b>worried (1)</b> 75:6 <b>worry (1)</b> 16:12 <b>worth (1)</b> 32:7 <b>wraparound (1)</b> 11:1 <b>writing (1)</b> 5:22 <b>written (4)</b> 5:20;15:6,12,13</p>	<p>50:8;52:21,22 <b>years (6)</b> 18:25;19:7; 24:18;52:21;59:11; 67:1 <b>yellow (5)</b> 10:7,23;11:16; 32:18;45:21</p>			
<b>Z</b>	<p><b>Ziou (1)</b> 30:14 <b>zoned (1)</b> 9:24 <b>zoning (24)</b> 6:21;8:18;9:16, 25;10:1,1,17;12:2; 23:11;29:24;31:4,9; 34:18;42:4;44:1,7; 46:6;60:18;61:10,11, 12,23;67:25;71:25</p>			
<b>X</b>				
<p><b>Xiu (3)</b> 30:14,15,16</p>				
<b>Y</b>				
<p><b>yard (41)</b> 8:18;10:8,13,14, 16;11:3,11,18;17:3,4,5, 7,8,9,12;18:4;20:11,12; 21:8;22:1;23:10,17; 24:3,4,4;27:14;29:24; 30:23;32:2;34:6,8,15, 16;38:6,8,17;44:18; 51:10,23;52:3;53:21 <b>yards (2)</b> 51:10;58:20 <b>yard's (1)</b> 10:11 <b>year (6)</b> 30:13;43:19,19;</p>				