



# Dane County Planning & Development

Division of Zoning

## GUIDELINES FOR VARIANCE APPLICATIONS DANE COUNTY BOARD OF ADJUSTMENT

### Introduction

The County Zoning Ordinance is adopted and enacted by the Dane County Board of Supervisors.

The Dane County Board of Adjustment is the body that reviews and makes decisions on requests for variances from the County Zoning Code. The Board of Adjustment is comprised of five citizen members.

The Board of Adjustment's general grant of authority is found in Section 59.99(c), Wis. Statutes, as follows:

"To authorize upon appeal in specific cases such variance from the terms of the ordinances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice shall be done."

A zoning ordinance cannot anticipate every land use question that will arise in a community. The Board of Adjustment's authority to grant a variance gives the ordinance limited flexibility. The Board of Adjustment acts as a quasi-judicial administrative arm of the County Board. It is the Board of Adjustment's duty to preserve the zoning ordinance without modification as far as possible while ensuring substantial justice for the individual. The variance procedure allows the general rules to be varied in response to unusual circumstances, which constitute a legal hardship.

**PLEASE SEE THE SEPARATE DESCRIPTION OF THE THREE-STEP TEST FOR VARIANCE APPEAL HARDSHIPS, ATTACHED.**

### **Additional Information Regarding Standards Followed by the Dane County Board of Adjustment in Considering Variance Applications**

1. It is the responsibility of the applicant who is seeking the variance to provide "proof" that enforcement of the Zoning Code will result in a legal hardship. A variance cannot be granted as a convenience to the property owner.
2. The legal hardship must come from the Zoning Code. A self-imposed hardship cannot serve as justification for a variance; i.e., the problem was self-created by the action or negligence of the applicant; the applicant commenced work on a project without required permits or had failed to inform himself on permit requirements, etc.
3. The legal hardship or difficulty stated as the reason why a variance is necessary must be peculiar to the zoning parcel in question and different from that of other area parcels. The applicant for a variance must clearly show the Board that the request is due to the very unusual qualities of his property.
4. The expenditure of money does not constitute a legal hardship. In other words, the courts do not recognize financial hardship as a basis upon which a Board of Adjustment can give a variance (i.e., the fact that a structure erected in violation of the Zoning Code would be expensive to move, that an alternative location which would be in compliance with the Zoning Code might be somewhat more expensive on which to build, etc.). The courts have uniformly held that, when a hardship was created by the applicant's own acts, he is not entitled to relief.

## Dane County Zoning -- Variance Application Guidelines, Page 2 of 2

5. Zoning Code violations by others in the area, nonconformity of structures on other properties or other variances given in the area do not automatically entitle an applicant to approval of his variance request. What constitutes a legal hardship and substantial justice is a matter to be determined by the Board from the facts and circumstances of each individual appeal.
6. In granting variances, the Board of Adjustment may impose special conditions to ensure that the public welfare will not be damaged.
7. Under certain fact circumstances, a variance may be approved on the basis that it is necessary in order to secure the applicant the right of rights that are enjoyed by other property owners in the same area.
8. A variance will not be granted simply because there is no objection to it or because those who do not object outnumber those who do.

### VARIANCE APPLICATION INSTRUCTIONS

#### THE FOLLOWING INFORMATION MUST BE SUBMITTED BEFORE ANY VARIANCE APPLICATION WILL BE ACCEPTED:

- A. A written statement which includes:
    1. Name and address of applicant (and agent, if any).
    2. Address, location, tax parcel number, and legal description of the property.
    3. Detailed description of the proposed project (new building, alteration or addition to existing building, etc.)
  - B. Completed "Variance Application" form describing alternatives and listing hardships. Your appeal must meet all three of the "steps" to be approved. SEE ATTACHED FORM.
  - C. Site plan: A detailed site plan, prepared by a Registered Land Surveyor, is required in most cases. It must be accurate, drawn to an easily measurable scale, and must show all lot lines and dimensions, locations and dimensions of all existing and proposed structures (including any additions and alterations) and their setbacks from lot lines. The site plan must include the location of any septic system, well, driveway, accessory building and other physical features of the property. Other information may be required, such as topographic data, calculation of percentages of lot coverage, etc.
  - D. Floor plans and elevations of the existing and/or proposed structure(s) -- may be preliminary.
  - E. A letter from the Town Clerk or Administrator, acknowledging that the applicant or agent has informed the Town of their intent to apply for a Variance. (Required by Dane County Board of Adjustment directive of 09/28/1997: Staff may not accept a Variance Appeal application without a letter from the Town. *Explanation:* Board action on an Appeal may be delayed if the Town has not had an opportunity for input.)
- THE APPLICATION MUST BE FILED IN THE DANE COUNTY ZONING DEPARTMENT NO LATER THAN \_\_\_\_\_ TO BE SCHEDULED FOR PUBLIC HEARING ON \_\_\_\_\_
  - VARIANCE APPLICATION FEE IS \$350.00.
  - APPEAL OF ZONING ADMINSTRATOR'S INTERPRETATION FEE IS \$165.00.

**NOTE: If Appeal is granted, a Zoning Permit must be obtained within one year, or variance(s) will expire.**  
**Dane County Ordinance 10.26(9)**



# Dane County Planning & Development

## Division of Zoning

Appeal No. 3677  
 Date Received \_\_\_\_\_  
 Date of Public Hearing \_\_\_\_\_

### VARIANCE APPLICATION:

**Owner:** Tom Bobek  
**Mailing Address:** 3115 Hawks Haven Trail  
DeForest, WI 53532  
**Phone Number(s):** 608-220-1975  
**Email Address:** bobek0005@yahoo.com

**Assigned Agent:** same as above  
**Mailing Address:** \_\_\_\_\_  
 \_\_\_\_\_  
**Phone Number(s):** \_\_\_\_\_  
**Email Address:** \_\_\_\_\_

**To the Dane County Board of Adjustment:**

Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.

Parcel Number: 012-0911-224-9500-6 Zoning District: C1 Acreage: 1.366  
 Town: Bristol Section: 22, T9N, R11E 114 S E114 SE  
 Property Address: 6925 Elder Lane  
 CSM: 9796 Lot: 1 / Subdivision: \_\_\_\_\_ Block/Lot(s): \_\_\_\_\_  
 Shoreland: Y / (N) / Floodplain: Y / (N) / Wetland: Y / (N) / Water Body none  
 Sanitary Service: Public / Private (Septic System)

Current Use: none (under construction)

**Proposal:**

**NOTE:** You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

**REQUIRED BY ORDINANCE**

Section	Description	Required	Proposed or Actual	Variance Needed
10.17	HIGHWAY SETBACK CLASS <del>C</del>	20	0'	14'
		30	2'	28'

**2. Floor Plans and Elevations:** Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

**3. Town Acknowledgment:** Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

**APPLICANT SIGNATURE:**

*The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.*

Signature Required: Thomas J. Bobek Date: 4-14-16

Print Name: THOMAS J. BOBEK

Specify Owner or Agent: \_\_\_\_\_

Agent must provide written permission from the property owner

**STAFF INFORMATION:**

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

Site Plan

Floor Plans

Elevations

Fee \_\_\_\_\_ Receipt No. \_\_\_\_\_

Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Director, Division of Planning Operations, Department of Planning and Development

H:\Zoning\Board of Adjustment\Checklists and Forms\VARIANCE APPLICATION FORM – CURRENT 04162008.doc

**PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:**

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below:

(A) Alternatives you considered that comply with existing standards: If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

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(B) Alternatives you considered that require a lesser variance: If you reject such alternatives, provide the reasons you rejected them.

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(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

*Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome.*

*An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home or claiming that they need more outbuilding space than that permitted to store personal belongings). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.*

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(3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. The required Site Plan and/or Survey submitted with your application must show these features.

*Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance.*

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(4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.

*These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.*

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#### **REQUIRED PLANS AND SPECIFICATIONS:**

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. In most cases, a survey by a Registered Land Surveyor is needed. The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
  - Scale and North arrow
  - Road names and right-of-way widths
  - All lot dimensions
  - Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
  - Proposed new construction, additions or structural alterations.
  - For property near lakes, rivers or streams:
    - Location of Ordinary High Water Mark (OHWM) Elevation
    - Location of Floodplain Elevation
  - For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
  - Topographic survey information may be desirable or necessary.
  - Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
  - For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

In order to have a competitive area restaurant, we need to add a deck to the existing property. This deck will accommodate guests waiting to be seated inside the restaurant and will be only used "weather permitting". We are trying to create a relaxing atmosphere for the guest that is waiting to eat a meal.

The deck will be built along the wall of the restaurant into the parking area between the steps and the corner of the building. This will not interfere with any traffic flow on the road or around the building. Even though the actual distance between the deck and property line is approximately 6', the actual distance between the building and the edge of the pavement is approximately 27'. The proposed deck will not extend past the existing building line. The proposed area for the deck cannot be used for anything because of the close proximity of the main entry. The proposed deck will also be accessible to wheelchairs. The other side of the entry accommodates a state approved ADA ramp. There is no other alternative for a deck addition except in the proposed area.

It is very important for us to add this deck in order to stay competitive with the area restaurants.



**DANE COUNTY ZONING DIVISION**  
**Department of Planning & Development**

**DANE COUNTY BOARD OF ADJUSTMENT**  
**2016 MEETING SCHEDULE**

for  
**VARIANCE APPEAL APPLICATIONS & ADMINISTRATIVE APPEALS**

<b>Application Deadline 2<sup>nd</sup> Tuesday</b>	<b>Public Hearing 4<sup>th</sup> Thursday</b>	<b>Site Inspection 2<sup>nd</sup> Thursday</b>
December 14, 2015	January 28, 2016	January 14, 2016
January 12, 2016	February 25, 2016	February 11, 2016
February 9, 2016	March 17, 2016* RM 354	March 10, 2016
March 8, 2016	April 28, 2016	April 14, 2016
April 12, 2016	May 26, 2016	May 12, 2016
May 10, 2016	June 23, 2016	June 9, 2016
June 14, 2016	July 28, 2016	July 14, 2016
July 12, 2016	August 25, 2016	August 11, 2016
August 9, 2016	September 22, 2016	September 8, 2016
September 13, 2016	October 27, 2016	October 13, 2016
October 11, 2016	November 17, 2016* (3 <sup>rd</sup> Thur.) RM 354	November 10, 2016
November 8, 2016	December 15, 2016* (3 <sup>rd</sup> Thur.) RM 354	December 8, 2016
December 13, 2016	January 26, 2017	January 12, 2017

*\*NOTE: November, and December Public Hearings are scheduled on the third Thursday of each month, one week earlier than usual, because of conflicts with holidays. These meetings will be held in room 354 of the City-County Building.*

**Board of Adjustment Public Hearings begin at 6:30 P.M., in Room 357,  
City-County Building, 210 Martin Luther King, Jr. Boulevard, Madison, WI.**

**QUESTIONS? Visit the Dane County Website  
at <http://www.countyofdane.com/PLANDEV/zoning/variance.aspx>  
or call or email 608-266-4266 or [zoning@countyofdane.com](mailto:zoning@countyofdane.com).**



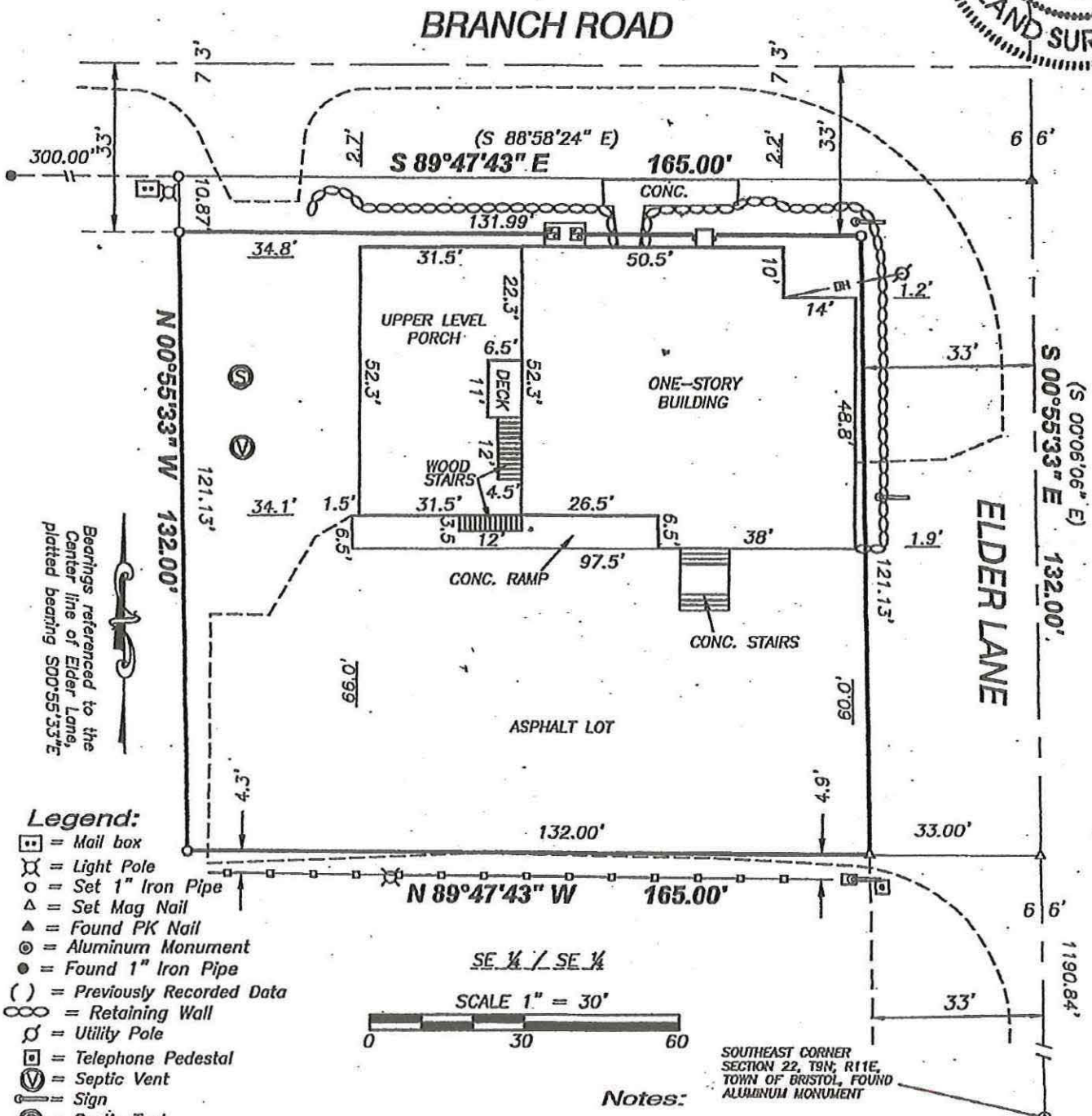
and is correct to the best of my knowledge and belief.

*Daniel V. Birrenkott* 8-7-2014  
 Daniel V. Birrenkott  
 Wisconsin Registered Land Surveyor No. S-1531.

**Description:**

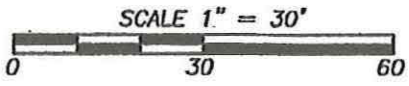
Part of the Southeast 1/4 of the Southeast 1/4 of Section 22, T9N, R11E, in the town of Bristol, Dane County, Wisconsin, described as follows: Beginning at the Northeast corner of said Southeast 1/4 Southeast 1/4; thence running west on the North line thereof 165 feet; thence South 132 feet; thence East parallel with said North line to the East line of said Section 22; thence North on said East line 132 feet to the point of beginning.

LOT 1  
 CERTIFIED SURVEY  
 MAP NO. 9796



**Legend:**

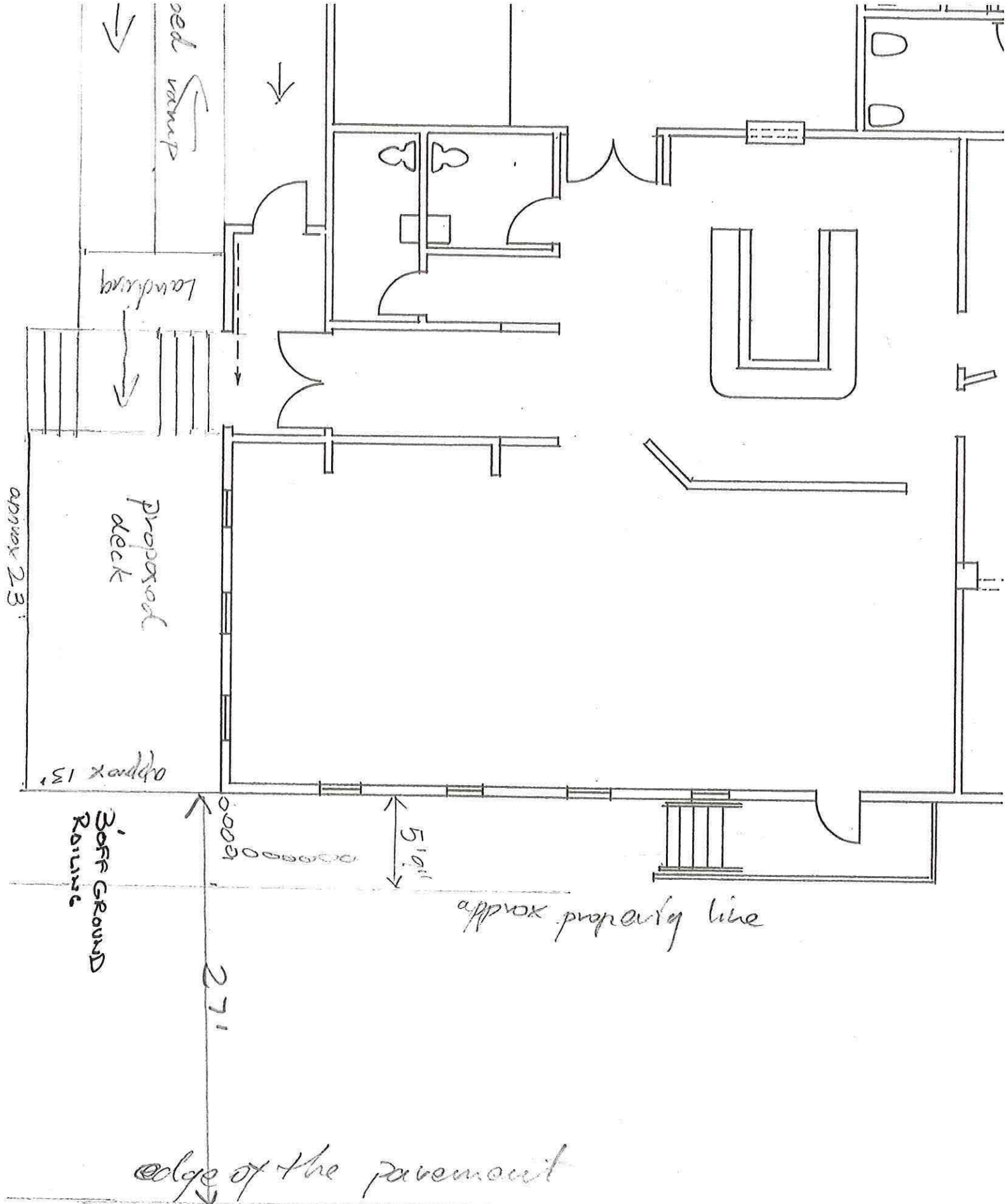
- ☐ = Mail box
- ⊗ = Light Pole
- = Set 1" Iron Pipe
- △ = Set Mag Nail
- ▲ = Found PK Nail
- ⊙ = Aluminum Monument
- = Found 1" Iron Pipe
- ( ) = Previously Recorded Data
- ∞ = Retaining Wall
- ⊕ = Utility Pole
- ☐ = Telephone Pedestal
- ⊙ = Septic Vent
- ⊕ = Sign
- ⊙ = Septic Tank
- ⊕ = Air Conditioner
- ☐ = Gas Meter
- = Split Rail Fence
- = Asphalt



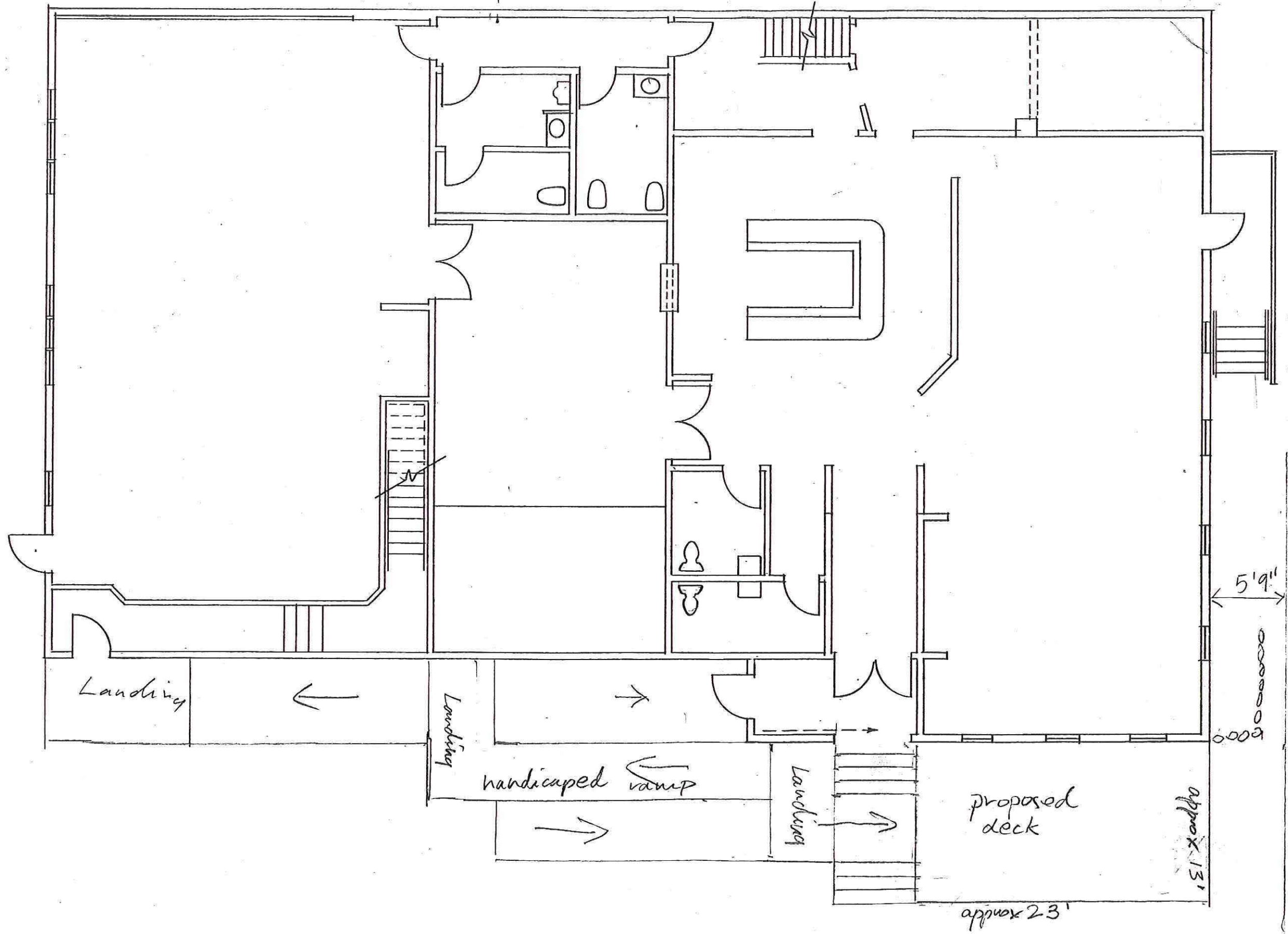
**Notes:**

This survey is subject to any and all easements and agreements both recorded and unrecorded.  
 The disturbance of a survey stake by anyone is in violation of Section 236.32 of Wisconsin Statutes.

SOUTHEAST CORNER SECTION 22, T9N, R11E, TOWN OF BRISTOL, FOUND ALUMINUM MONUMENT



Elder Ln



approx property line

edge of the pavement