

**CLARKE COUNTY BOARD OF ZONING APPEALS
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January 25, 2021 Meeting Packet**

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Clarke County Board of Zoning Appeals

MEETING AGENDA

Monday, January 25, 2021 (10:00AM)

Berryville/Clarke County Government Center – Main Meeting Room

1. **Approval of Agenda**
2. **Organizational Meeting -- Election of 2021 Officers – Chair and Vice-Chair**
3. **Approval of Minutes – November 23, 2020 Meeting**
4. **BZA-20-01.** Brian Legge (owner/appellant) is appealing the Zoning Administrator's August 31, 2020 Notice of Violation that the appellant's newly constructed garage is in violation of the required 50 foot setback from the edge of a primary highway right of way with 5,000 or more trips per day per §3-A-3-c (Minimum Yard Requirements) of the Clarke County Zoning Ordinance. The subject property is located at 140 White Post Road, Tax Map #28A-A-66, White Post Election District, zoned Rural Residential (RR) and Historic Overlay (H).
5. **Other Business**
6. **Adjourn**



Clarke County Board of Zoning Appeals

Meeting Minutes -- **DRAFT**

Monday, November 23, 2020 – 10:00 AM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
Anne Caldwell (Chair)	✓	Alain Borel	✓
Howard Means (Vice Chair)	✓	Clay Brumback	✓
Laurie Volk	✓		

E – Denotes electronic participation

L – Denotes arrived late

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Temporary Planner/Zoning Official), and Debbie Bean (Clerk).

OTHERS: Caryn Breeden (Applicant)

CALL TO ORDER: Mr. Stidham called this meeting to order at 10:00 a.m.

1. Organizational Meeting

Mr. Stidham stated that Charles Kackley resigned from the Board of Zoning Appeals after serving 52 years on the Board. He said that due to his age and with the COVID-19 pandemic he felt it was time for him to step down.

Mr. Stidham also introduced Jeremy Camp as the Temporary Planner/Zoning Official. He also stated that Clay Brumback is here today as the alternate for the Board of Zoning Appeals for this meeting. He said that until the Board of Supervisors is able to recommend an appointment for Mr. Kackley’s position and the Court is able to appoint that person, Mr. Brumback will be serving as a voting member.

a. Election of Officers – Chair and Vice-Chair

Mr. Stidham stated that this is the first Board of Zoning Appeals meeting of this calendar year when election of officers is conducted. Mr. Stidham asked for nominations of Chair to the Board of Zoning Appeals for 2020.

A motion to approve the election of Anne Caldwell as the Chair to the Board of Zoning Appeals for 2020 was adopted unanimously.

Motion to Approve the election of Anne Caldwell as the Chair of the Board of Zoning Appeals for 2020:			
Caldwell	AYE	Borel (Seconded)	AYE
Means (Moved)	AYE	Brumback	AYE
Volk	AYE		

Chair Caldwell asked for nominations of Vice Chair to the Board of Zoning Appeals for 2020.

A motion to approve the election of Howard Means as Vice Chair to the Board of Zoning Appeals for 2020 was adopted unanimously.

Motion to Approve the election of Howard Means as the Vice Chair of the Board of Zoning Appeals for 2020:			
Caldwell	AYE	Borel (Seconded)	AYE
Means	AYE	Brumback	AYE
Volk (Moved)	AYE		

b. 2021 Meeting Schedule

Mr. Stidham stated that due to the difficulty of getting the Board members together for a meeting with a short notice it would work better to have a monthly meeting schedule. He recommended the monthly meeting date to be the 3rd Monday of each month at 10:00 a.m. The members would only be notified if there would be a meeting in a particular month. The members agreed that this is a good idea. Chair Caldwell suggested that since most meetings do not occur in August each year it would be a good idea for this Board not to have an August meeting. The members all agreed to the idea.

A motion to approve the 2021 Meeting Schedule as amended was adopted unanimously.

Motion to Approve the 2021 Meeting Schedule as amended was adopted:			
Caldwell	AYE	Borel (Seconded)	AYE
Means (Moved)	AYE	Brumback	AYE
Volk	AYE		

c. Adoption of Electronic Meeting Participation Procedures

Mr. Stidham said that given the situation with COVID-19 and not having everybody feel comfortable attending public meetings, we have been having other Boards and Committees adopt electronic meeting policies per Code of Virginia requirements. He said that if the Board approves the Resolution to Adopt Electronic Meeting Policy and the verbiage in Attachment A, the members of the Board will be able to participate electronically in future meetings if they comply with the policy. He said that in order to be able to have electronic participation you have to have a physical quorum present in the meeting room. He said that in the case of the Board of Zoning Appeals, a minimum of three members must be physically present to constitute a quorum. He said that if the Board wants to participate electronically they would need to contact the Chair with the reason for participating in a meeting remotely on or before the date of the meeting. He said it would be up to the Chair to determine whether the member’s request complies with the electronic meeting requirements and to approve or deny the request accordingly. He said that attendance would be noted in the official minutes.

Board member Volk asked if this is the policy that is in place with other Boards throughout the County. Mr. Stidham said that the Board of Septic and Well Appeals and the Planning Commission have adopted these regulations. Ms. Volk asked if any of the Boards meetings are

entirely virtually. Mr. Stidham said you can meet entirely virtually if it is an official meeting as defined by the state code but there still needs to be a quorum physically present.

Mr. Stidham said that we need a motion to adopt the following resolution:

**BOARD OF ZONING APPEALS
RESOLUTION TO ADOPT ELECTRONIC MEETING POLICY**

WHEREAS, the Clarke County Board of Zoning Appeals proposes to adopt a written policy allowing for and governing participation of its members by electronic communication means pursuant to Code of Virginia §2.2-3708.2, and

WHEREAS, the proposed policy shall include an approval process for such participation, subject to the express limitations of Code of Virginia §2.2-3708.2,

AND WHEREAS, the proposed policy once adopted shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

NOW THEREFORE, BE IT RESOLVED THAT *the Clarke County Board of Zoning Appeals does hereby adopt the Electronic Meeting Policy included as Attachment A to this resolution, effective this 23rd day of November, 2020*

Mr. Stidham stated that once the Resolution is voted on the Board will be able to participate at future meetings electronically if they comply with the policy. Mr. Stidham stated he can answer any questions the Board may have.

Chair Caldwell said there being no questions she called for a motion.

A motion to approve Resolution to Adopt Electronic Meeting Policy was adopted unanimously.

Motion to Approve Resolution to Adopt Electronic Meeting Policy was adopted:			
Caldwell	AYE	Borel (Seconded)	AYE
Means (Moved)	AYE	Brumback	AYE
Volk	AYE		

2. Approval of Agenda

A motion to approve the Board of Zoning Appeals agenda as presented by Staff was adopted unanimously.

Motion to Approve the Board of Zoning Appeals agenda as presented by Staff:			
Caldwell	AYE	Borel	AYE
Means (Moved)	AYE	Brumback	AYE
Volk (Seconded)	AYE		

3. Approval of Minutes - December 20, 2019 Meeting

Chair Caldwell called for a motion to approve the minutes of December 19, 2019. Commissioner Volk noted one edit needed on page 5 of 5 in the main paragraph, the fourth line from the bottom. She said the word “being” should be “been”. The Board agreed to make this change.

Chair Caldwell asked if there were any other changes and there being none she called for a motion.

A motion to approve the Board of Zoning Appeals meeting minutes of December 20, 2019 with one edit noted was adopted 3-0-2.

Motion to Approve the Board of Zoning Appeals meeting minutes of December 20, 2019 with one edit noted was adopted:			
Caldwell	AYE	Borel	ABSTAIN
Means (Moved)	AYE	Brumback	ABSTAIN
Volk (Seconded)	AYE		

4. BZA-20-02, Caryn Breeden. Request approval of a 12 foot variance from the 50 foot setback requirement from the centerline of a secondary highway per Section 3-A-2-c of the Zoning Ordinance. The purpose of the request is to construct a carport. The property is located at 254 Good Shepherd Road, Tax Map #26B-A-4, is approximately 0.5 acre in size, and is zoned Forestal-Open Space-Conservation (FOC).

Mr. Stidham presented the Staff report for this item. He said that Staff recommends approval of the applicant’s request for a 12 foot variance from the 50 foot setback from the centerline of a secondary highway per Section 3-A-2-3 of the Zoning Ordinance. He stated that Staff finds that the applicant has demonstrated compliance with the second condition of Section 7-A-3-e-2 (*that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance*) and compliance with all five review criteria set forth in Section 7-A-3-e-2(a) through (e) to warrant the granting of the requested variance.

Chair Caldwell asked the Board members if they have any questions. There being none Chair Caldwell opened the public hearing. There being no public comments Chair Caldwell closed the public hearing and called for a motion.

A motion to approve the Board of Zoning Appeals variance request for Caryn Breeden as presented was adopted unanimously.

Motion to Approve BZA-20-02, Caryn Breeden Board of Zoning Appeals variance request as presented:			
Caldwell	AYE	Borel (Seconded)	AYE
Means (Moved)	AYE	Brumback	AYE
Volk	AYE		

Chair Caldwell said that she wants to make a comment to the applicant. She stated that she appreciates such a well done and thorough application. Ms. Breeden stated that she received a lot of help from Ryan Fincham.

5. OTHER BUSINESS:

Mr. Stidham stated that the Board of Zoning Appeals public hearing meeting (Brian Legge) scheduled for December 18, 2020 has been moved to January 25, 2021 at 10:00 a.m. He said that the meeting packet for this public hearing will go out sometime in January in advance of that meeting.

He said that Staff will send out the minutes for today’s meeting sometime in December.

Chair Caldwell stated that there being no other business she called for a motion to adjourn.

A motion to adjourn the meeting was approved at 10:20 a.m.

Motion to Adjourn			
Caldwell	AYE	Borel	AYE
Means (Seconded)	AYE	Brumback (Moved)	AYE
Volk	AYE		

Anne Caldwell (Chair)

Debbie Bean (Clerk)



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Board of Zoning Appeals (BZA) members

FROM: Brandon Stidham, Planning Director

RE: BZA-20-01, Brian Legge

DATE: January 15, 2021

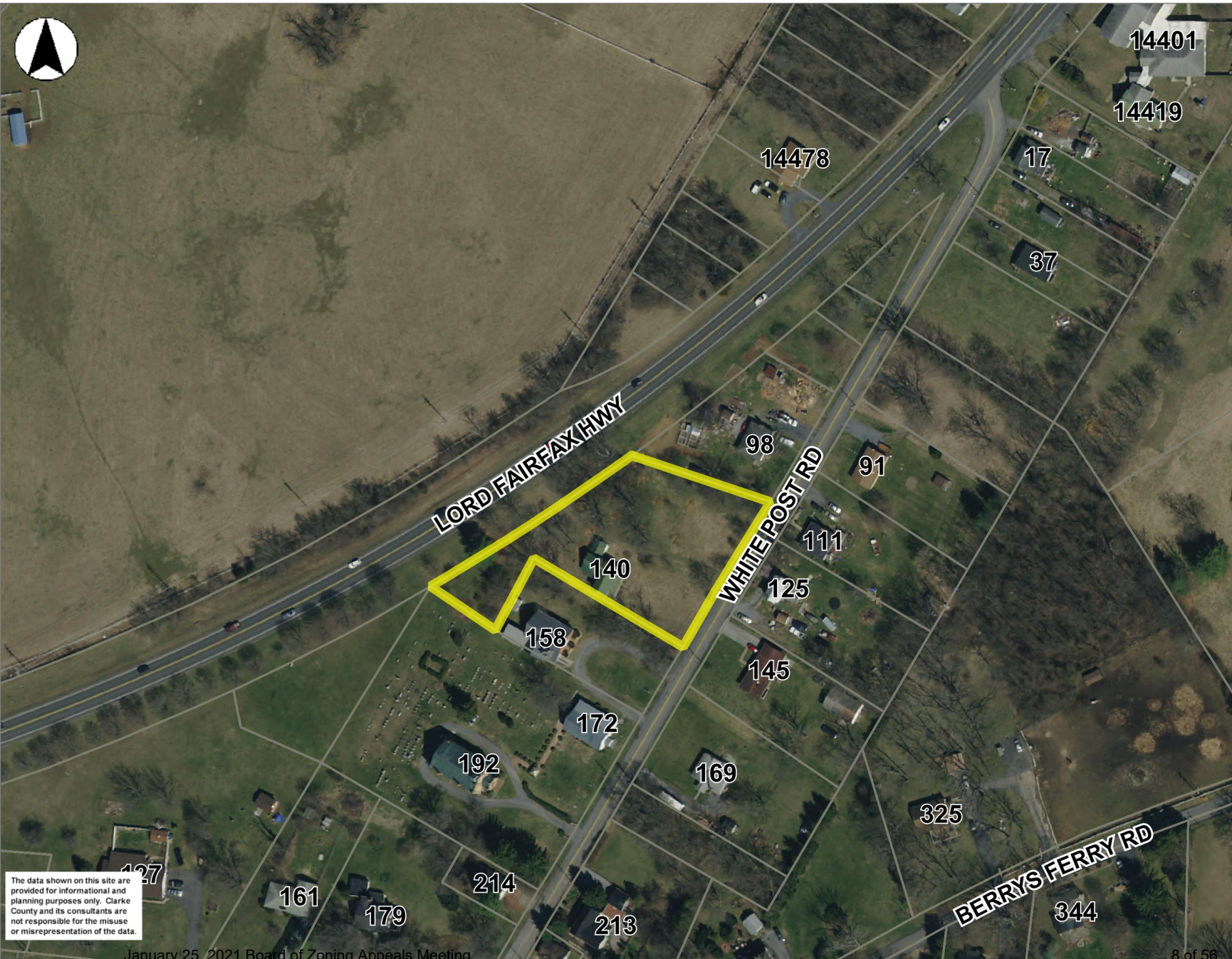
Item #4 on your meeting agenda is an appeal filed by appellant Brian Legge (BZA-20-01). The purpose of this memo is to outline a recommended procedure for the BZA to use in considering this appeal. The procedure is similar to the one used in the most recent appeal case that was heard in August 2017.

1. Staff introduction of appeal
2. Chair opens the Public Hearing
3. Presentation on behalf of the Zoning Administrator
4. Appellant's presentation
5. Additional comments on behalf of the Zoning Administrator
6. Additional comments from the Appellant
7. Comments from members of the public
8. Chair closes the Public Hearing
9. BZA discussion and action on the appeal

County Attorney Bob Mitchell will be representing the Zoning Administrator in this appeal. As a reminder, please be aware of the rules regarding ex parte communications that are set forth in §7-A-1-n of the Zoning Ordinance. If you will not be able to attend the January 25 BZA meeting, please let me know as soon as possible.



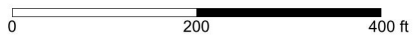
- Public
- Points of Interest
- Parcels
- Parcels With Orthos
- Towns
- Clarke County Boundary
- Major Roads
 - Interstate
 - US Highway
 - State Highway
- Surrounding Counties Open
- Surrounding Counties Non



The data shown on this site are provided for informational and planning purposes only. Clarke County and its consultants are not responsible for the misuse or misrepresentation of the data.

January 25, 2021 Board of Zoning Appeals Meeting

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Printed on 01/15/2021 at 10:30 AM

3-A-3-c Minimum Yard Requirements

	Parcels with less than 15,000 sq. ft.	Parcels with 15,000 sq. ft. or more
(1/16/01)		
(12/17/02)		
(11/16/04)	From the edge of a private access easement	15 feet*
(10/18/11)	From the centerline of a secondary highway	40 feet*
(2/16/16)	From the edge of a primary highway right of way	
	With less than 5000 trips per day	15 feet*
	With 5000 or more trips per day	40 feet*
	From side property lines	5 feet
	From rear property lines	25 feet
	(structures 200 sq. ft. or less)	5 feet
	From intermittent streams	0 feet
	From perennial streams, springs, & sinkholes	100 feet

*add 10 feet for entrance side of garages, carports, or other structures used to house vehicles

3-A-3-d Maximum Residential Structure Size for property in a County Sewer Service Area
 (7/19/05) The maximum heated floor area of a dwelling shall not exceed: 2,000 sq ft or 10% of the lot area, whichever is greater.

3-A-3-e Maximum Lot Coverage by All Impervious Surfaces: 30 percent

3-A-3-f Maximum Height of All Structures: 35 feet, except on parcels
 (11/16/04) with a width of less than 75 feet, structures shall not exceed a height of 25 feet, and as otherwise provided.

3-A-3-g Critical Environmental Areas (CEAs)
 (7/19/05)

1. CEAs are 100-year flood plains, slopes in excess of 25 percent, and the area within 100 feet of perennial streams, perennial springs, and the discernable edge of sinkholes.
2. Structures requiring building permits shall not be located in CEAs.
3. CEAs shall not be included in maximum or minimum lot area or any density calculations, or be used to meet open space requirements.

3-A-3-h Additional Regulations
 (8/15/06) The height of an accessory building shall not exceed 12 feet.

3-A-3-i Access Easement Areas
 (2/19/08) Areas covered by access easements shall not be included in maximum or minimum lot area or any density calculations, or be used to meet open space requirements.

3-A-4 Open Space Residential District – OSR
 Intent: The Open Space Residential (OSR) District is created to preserve and protect two sensitive areas in the Town of Berryville and within the precincts of the Berryville Area Plan: 1. existing residential properties and estates which have cultural and/or historical value, and 2. property with critical environmental features including 100 year flood plains, sink holes, slopes in excess of 15% and, rock outcrops. The maximum density of one residence per ten net developable acres establishes this district as one with a low-density



- NOTES:
- 1) TAX MAP PARCEL: 28A-A-68
 - 2) NO TITLE REPORT FURNISHED, EASEMENTS OTHER THAN THOSE SHOWN HEREON MAY EXIST.
 - 3) IMPROVEMENTS OTHER THAN NEWLY CONSTRUCTED GARAGE NOT SHOWN.

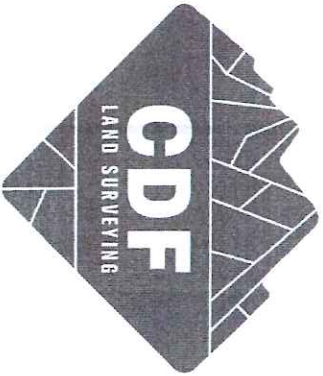
GARAGE AS-BUILT
 LAND OF
**BRIAN K. LEGGE AND
 TARA M. CROSEN**
 DEED BOOK 643 PAGE 215
 GREENWAY MAGISTERIAL DISTRICT
 CLARKE COUNTY, VIRGINIA



DATE: AUGUST 3, 2020 SCALE: 1" = 40'



1520 COMMERCE STREET, #309
 WINCHESTER, VIRGINIA 22601
 540 974-4268
 christopher@cdfsurveying.com





Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

CERTIFIED MAIL: 7019 1640 0001 8812 7220

NOTICE OF VIOLATION

Notice Date -- August 31, 2020
Owner of Record - Brian K. Legge & Tara Crosen
140 White Post Road
White Post, VA 22663
Property Address -- 140 White Post Road
Tax Map # -- 28A-A-66

A Notice of Violation dated April 9, 2020 was sent to you regarding violations of a Certificate of Appropriateness granted by the Clarke County Historic Preservation Commission. In that letter, I also indicated that it had been alleged that the newly constructed garage was located within the required 50 foot setback area from the edge of a primary highway right of way with 5,000 or more trips per day. Please note that I have confirmed with VDOT officials that Rt. 340 traffic exceeds 5,000 trips per day.

You have provided the attached as-built survey dated August 3, 2020 by Christopher D. Furstenu (Lic. No. 2727) which shows the location of the constructed garage structure. The as-built survey shows that the garage is located 35.9 feet from the edge of the Rt. 340 Primary Highway easement. Thus, the garage location is 14.1 feet within the required setback area. The zoning permit application which you submitted on November 4, 2019 clearly shows the required 50 foot setback and the proposed garage location outside the setback area and within the required building envelope.

Therefore, the garage location is in violation of County Zoning Ordinance Section §3-A-3-c Rural Residential (RR) Zoning District minimum yard requirements (setbacks).

You are hereby notified that you have the right to appeal this administrative determination to the Clarke County Board of Zoning Appeals (BZA) within thirty (30) days of the date of this determination letter by filing with the Zoning Administrator and the BZA a notice of appeal specifying the grounds thereof and by paying the appeal fee of \$750.00. This administrative determination shall be final and unable to be appealed if not done so within 30 days. Any additional information regarding the filing of an appeal may be obtained in the Zoning office.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ryan Fincham".

Ryan Fincham,
Clarke County Zoning Administrator

Copy: Commonwealth Attorney

Request for Administrative Appeal and Variance

Brian Legge appeals from the August 31, 2020 Notice of Violation found against his property located at 140 White Post Road, White Post, Virginia 22663 (Tax Map ID 28A-A-66).

Summary of Grounds of Appeal: Mr. Legge is in the process of obtaining evidence and information from the Virginia Department of Transportation to confirm whether Route 340 traffic exceeds 5,000 trips per day, thus subjecting Mr. Legge's property to the 50-foot setback requirement.

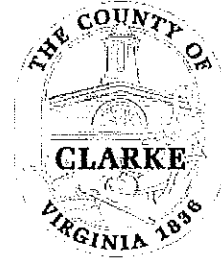
Request for Variance: Mr. Legge further requests a variance in the event that the Board of Zoning Appeals does not overturn the Zoning Administrator's determination of the notice of violation.

Request for Hearing Date: Mr. Legge further requests that a hearing be scheduled at least sixty (60) days from the date of this appeal to afford him sufficient time to obtain results from any traffic studies or other information necessary to his appeal.

A Statement of Justification shall be submitted in supplement prior to the Board of Zoning Appeals Hearing.

B.ZAP-20-01
Acct # 5882

CLARKE COUNTY
LAND DEVELOPMENT APPLICATION



Applicant Brian Legge
Applicant's Address 140 White Post Road
White Post VA 22663
City State Zip Code
Applicant's E-Mail Address _____
Agent (Contact Person) Timothy R. Johnson, Esq. Phone 540-352-4672
Agent's Company The Law Offices of Timothy R. Johnson, PLC
Agent's Address 20-B E. Main Street, Berryville, Virginia 22611
Current Property Owner Brian Legge
Owner's Address 140 White Post Road, White Post, VA 22663 Phone 704-450-5805
Correspondence to be sent to: Applicant Owner Agent Other
Tax Map Parcel Number 28A-A-66 Magisterial District White Post
General Project Location 140 White Post Rd Site size (gross/net acreage) ~1.0 acre

Check Appropriate Request:

PLANNING COMMISSION
 Major Subdivision
 Minor Subdivision (1 or 2 lots)
 Administrative Subdivision (parcels > 100 acres)
 Boundary Line Adjustment
 Site Plan
 Site Plan Amendment
 Erosion & Sediment Plan
 Storm Water Plan
 Maximum Lot Size Exception

PLANNING COMMISSION & BOARD of SUPERVISORS
 Rezoning
 Special Use Permit
 Comprehensive Plan Amendment
 Zoning Ordinance Text Amendment
 Subdivision Ordinance Text Amendment
 Other

BOARD OF ZONING APPEALS
 Administrative Appeal
 Variance
 Special Exception

BOARD OF SEPTIC & WELL APPEALS
 Administrative Appeal
 Variance

BERRYVILLE AREA DEVELOPMENT AUTHORITY
 Site Plan
 Site Plan Amendment

HISTORIC PRESERVATION COMMISSION
 Certificate of Appropriateness

Complete as applicable:

Name of Subdivision, Development, or Proposal _____
Proposal/Request See attached sheet.
Existing Zoning _____ Proposed Zoning _____ # of Proposed Lots _____

Applicant: The information provided is accurate to the best of my knowledge. I acknowledge that any percolation tests, topographic studies, or other requirements of the Health Official or Zoning Administrator will be carried out at my expense. I understand that the County may deny, approve, or conditionally approve that for which I am applying. I certify that all property corners have been clearly staked and flagged.
Applicant's Signature [Signature] Timothy R. Johnson Date 9/30/2020

Owner: I have read this completed application, understand its intent, and freely consent to its filing. If this application is for the purpose of subdivision, I understand that further subdivision of this property will not be permitted within twelve (12) months of approval of this action, unless an Exploratory Sketch Plan is submitted with this application. Furthermore, I grant permission to the Planning Department and other authorized government agents to enter the property and make such investigations and test as they deem necessary.
Owner's Signature [Signature] Timothy R. Johnson Date 9/30/2020

101 Chalmers Court
Berryville, VA 22611

www.clarkecounty.gov

Authorized by Brian Legge
[Signature]

(540) 955-5132
Fax (540) 955-5180

Clarke County Government
TREASURERS OFFICE
101 Chalmers Ct
Berryville, VA 22611
(540) 955-5160
Welcome

003054-0008 Register 10/01/2020 09:02AM

PERMITS / INSPECTIONS

Appeal: Brd of Zoning
Appeals - FEE
2020 Item: BZAP-20-01|BZAP
Balance due: 0.00
Balance unpaid: 0.00 750.00

750.00

Subtotal 750.00
Total 750.00

CHECK 750.00
Check Number 3044

Change due 0.00

Paid by: CROSEN TARA M

Thank you for your payment

CUSTOMER COPY
DUPLICATE RECEIPT

Re: Legge - Notice of Violation

From : Ryan Fincham
<rfincham@clarkecounty.gov>

Mon, Oct 05, 2020 04:03 PM

 1 attachment

Subject : Re: Legge - Notice of Violation

To : Timothy Johnson
<trjohnson@trjlegal.com>

Cc : Brandon Stidham
<bstidham@clarkecounty.gov>

Good afternoon-

Your "Request for Administrative Appeal and Variance" on behalf of your client (Brian Legge) and the required \$750 appeal fee was received within the 30-day timeline for the right to appeal an administrative determination by the Zoning Administrator to the Clarke County Board of Zoning Appeals (BZA).

Your request regarding a delay of the required BZA public hearing on the appeal for at least sixty days (approximately November 30th) has been granted. You will be advised when the BZA hearing has been set. Please be advised that if information is to be submitted to staff for review prior to the public hearing, it should be submitted at least 21 days in advance of the BZA hearing date.

The Request for Administrative Appeal and Variance has been accepted as an Administrative Appeal only. A future potential variance request, if so desired in the future pending the outcome of the appeal, would require a separate application for variance and the fee.

Thank you-

Ryan Fincham, CZA
Senior Planner & Zoning Administrator
Clarke County, Virginia
(540) 955 - 5131

Re: Legge - Notice of Violation

From : Ryan Fincham <rfincham@clarkecounty.gov> Wed, Sep 30, 2020 03:28 PM
Subject : Re: Legge - Notice of Violation
To : Timothy Johnson <trjohnson@trjlegal.com>

Received.

Thanks-

Ryan Fincham, CZA
Senior Planner & Zoning Administrator
Clarke County, Virginia
(540) 955 - 5131

"This correspondence is intended to provide information only and does not constitute a decision or determination pursuant to Section 15.2-2311 of the Code of Virginia."

From: "Timothy Johnson" <trjohnson@trjlegal.com>
To: "Ryan Fincham" <rfincham@clarkecounty.gov>
Cc: "Anne Williams" <awilliams@clarkecounty.gov>
Sent: Wednesday, September 30, 2020 3:03:14 PM
Subject: Re: Legge - Notice of Violation

Mr. Fincham,

Please find attached Mr. Legge's request for an appeal of the Notice of Violation issued on August 31, 2020 and an accompanying request for a variance. Mr. Legge advised me that he spoke with you earlier today and that you agreed that if he can bring the \$750 check tomorrow morning that the appeal will be considered timely filed. Thank you for your attention to this matter.

- Tim

On Wed, Sep 30, 2020 at 9:36 AM Ryan Fincham <rfincham@clarkecounty.gov> wrote:
Good morning-

After review of the County Zoning Ordinance, I offer the following:

Pursuant to Clarke County Zoning Ordinance 7-A-2-c, the 30-day appeal period is not subject to an extension. However, pursuant to Clarke County Zoning Ordinance 7-A-2-f, a hearing must be scheduled within 90 days of the appeal in order for the Board to make its decision, and the 90-day deadline can be extended through mutual agreement between the BZA Board and the appellant.

If your client wishes to appeal, please remit the required application and \$750 fee with an appeal request by today's deadline.

Respectfully-

Ryan Fincham, CZA
Senior Planner & Zoning Administrator
Clarke County, Virginia
(540) 955 - 5131

From: "Timothy Johnson" <trjohnson@trjlegal.com>
To: "Ryan Fincham" <rfincham@clarkecounty.gov>
Cc: "Anne Williams" <awilliams@clarkecounty.gov>
Sent: Monday, September 28, 2020 2:00:52 PM
Subject: Re: Legge - Notice of Violation

Ryan,

I am requesting an extension of Brian Legge's notice of violation concerning his property located at 140 White Post Road, White Post, Virginia 22633. The deadline to file an appeal of the violation is September 30, 2020. On Mr. Legge's behalf, I am requesting a 30-day extension.

1. I was recently retained to represent his interests in this matter, and do not have sufficient time before this Wednesday to fully and properly investigate the matter *and* file an appropriate appeal including a statement of justification.

2. As I also understand, the primary Planning Department issue relates to a setback requirement concerning the building being located within the setback space from Route 340. My client has already communicated with Travis Duncan (VDOT) concerning this issue, and as I understand it, the setback requirement may differ depending on the number of vehicles that travel 340. I believe my client has requested that a traffic study be conducted by VDOT, and that Mr. Duncan agreed to it to be completed within the next few weeks. If the study can have an impact on the setback issue, it may affect the Planning Department's determination of a notice of violation.

Please advise as soon as possible whether this request may be granted. Thank you.

- Tim

STATEMENT OF JUSTIFICATION



January 25, 2021

For Brian K. Legge's Clarke County Board of Zoning Appeal Application

Address: 140 White Post Road, White Post, Virginia 22663
(Unincorporated Clarke County); Tax Map ID #: 28A-A-66

Zoning Classification: Rural Residential, White Post Magisterial District

Property Description: 1.09 acres located within the White Post Historic District; Single-family residence with the detached garage that is the subject of this appeal; Mr. Legge and his wife reside at the property as their principal residence; located adjacent to White Post Methodist Church along south property boundary line, adjacent to Lord Fairfax Highway (Route 340) along western property boundary line; road access to White Post Road along eastern property boundary line; ~\$190,000 cost to build garage

STATEMENT OF JUSTIFICATION

FOR BRIAN K. LEGGE'S CLARKE COUNTY BOARD OF ZONING APPEAL APPLICATION

Dear Board of Zoning Appeals:

SUMMARY OF APPEAL

Brian K. Legge appeals the former Zoning Administrator's (Ryan Fincham) August 31, 2020 Notice of Violation ("NOV" herein attached as Exhibit 1). The alleged violation stems from a detached garage situated on the property encroaching approximately fourteen (14) feet into a setback area of fifty (50) feet along the Route 340 corridor. Mr. Legge asserts as a defense to this purported violation that:

- (1) the Clarke County Planning Department was notified via the Building Department of when the concrete footings were poured and provided an opportunity to measure and inspect prior to further construction but refused to inspect;
- (2) numerous structures in the same neighborhood do not comply with the setback requirement from Route 340 and have not been subject to the same level of scrutiny;
- (3) the only substantive change to the design and construction was an expansion of six (6) feet of the width of the building which has contributed toward the encroachment; and
- (4) the underlying measurements approved on November 4, 2019 were not addressed by any of Mr. Legge's retained contractors (i.e. experts in construction) prior to pouring footings, framing, and subsequent construction.

If the Board of Zoning Appeals ("BZA") does not overturn the former Zoning Administrator's decision, it is respectfully requested that the BZA grant a variance on the grounds of hardship based on those same reasons cited above and now that the structure has been substantively complete for more than nine months and that it would be cost-prohibitive to rebuild and impractical to move the building. Mr. Legge pursues such a variance in good faith and such hardship was not caused by his own doing, granting such a variance will not be of substantial detriment to any adjacent property, and that such a variance would not require a change in the use (proposed or actual) of the property. Any aesthetic or safety concerns can be addressed by the installation of foliage near on the property between the garage structure and Route 340.

FACTUAL STATEMENTS

Prior Interactions with the Clarke County Planning Department and Clarke County Historic Preservation Commission

Prior to filing for a zoning permit to build the subject garage, Mr. Legge communicated with Alison Teetor (then Zoning Administrator) regarding what would be needed to obtain approval both for the Clarke County Zoning Ordinance generally and to obtain a Certificate of Appropriateness from the Clarke County Historic Preservation Commission (White Post Historic District). Discussions primarily concerned matters of aesthetic design to have the building approved for a Certificate of Appropriateness rather than concerns regarding the setback.

The Clarke County Historic Preservation Commission considered Mr. Legge's application for a Certificate of Appropriateness on two separate occasions for which the garage was presented in different locations around the property on each occasion. Ultimately, his second application where the garage is generally currently located was approved. Mr. Legge and the Planning Department extensively communicated throughout this time to ensure that what would be built would be compliant.

Approved Plan and Required Setback Area

On November 4, 2019, Mr. Legge submitted his application for a zoning permit with his survey from Marsh and Legge Land Surveyors P.L.C. attached (Exhibit 2). Per the permit, the garage was to be built as an 'L'-shape with a longest-length side of forty-eight (48) feet and a maximum width of thirty-two (32) feet. The structure was not to be squared off in the northwest corner to avoid encroaching on the required setback area from Route 340. The same day that Mr. Legge submitted the Zoning Permit application, it was approved by Alison Teetor.

Per prior surveys, Route 340 (Lord Fairfax Highway) maintains a one hundred ten (110) foot diametrical right-of-way easement. It is unclear whether the centerline of the as-built highway presents the radial fifty-five (55) foot right-of-way area or whether such prior surveys accurately depict the location of the right-of-way regardless of where the road was actually built. (See Exhibit 3 for the original and still controlling July 11, 1983 recorded boundary survey.) Regardless, Route 340's right-of-way is treated as spanning at least fifty-five (55) feet onto Mr. Legge's property from the centerline. Clarke County's Zoning Ordinance 3-A-3-c tacks on an additional fifty (50) feet from the edge of a primary highway right-of-way where five thousand (5,000) or more trips are made per day. Accordingly, Mr. Legge's garage would be required to be at least one hundred and five (105) feet from the centerline of Route 340 if the centerline were treated as the center of the right-of-way. Per the approved plan and permit, the proposed garage would fit within the required setback area.

Notice of Violation

Between November 4, 2019 and April 9, 2020, Mr. Legge retained several contractors to build the garage including E.R. Neff Excavating, Inc. (concrete footings) and D.K. Construction Custom Carpentry LLC (framing). Prior to every major construction event, the Clarke County Building

Department was contacted by the respective contractors to inspect the work being performed, including the concrete footings being poured, framing, electricity, and insulation. Presumably, the Clarke County Planning Department has access to the inspection log of the Building Department and would have constructive notice of these events.

On April 9, 2020, a Notice of Violation was issued regarding violations of the Certificate of Appropriateness granted by the Clarke County Historic Preservation Commission (not being addressed by this appeal). In that letter, it was referenced that there was a concern that the structure was built within the setback area.

In May 2020, the former Zoning Administrator, Ryan Fincham, and Mr. Legge discussed the concerns that the garage was built larger than what was proposed per a neighbor's complaint. By that time, the structural framework was complete. Mr. Legge reviewed the building's dimensions and realized that the structure's width extended from thirty-two (32) feet to thirty-eight (38) feet, and that the same directional width of the cut-in area changed from twelve (12) feet as planned to sixteen (16) feet. As a result, the structure was built presumably six (6) feet larger spanning toward the setback area.

On May 15, 2020, Alison Teetor inspected the property with Mr. Legge's consent. That same day, Mr. Fincham emailed Mr. Legge advising that an as-built survey would be required to verify that the structure is not located within the setback area. (See Exhibit 4.) Mr. Legge obtained a survey performed by Christopher D. Furstenau dated August 3, 2020 (the "CDF Survey"),¹ and such survey was provided to the Planning Department on or before August 9, 2020. (See Exhibit 5.)

On August 31, 2020, Mr. Fincham issued the NOV. The NOV relies upon the CDF Survey to establish that the garage is located 35.9 feet from the edge of the Route 340 right-of-way, and accordingly, is in violation of the setback requirement.

JUSTIFICATION FOR A FINDING OF COMPLIANCE, AND IN THE ALTERNATIVE, A REQUEST FOR A VARIANCE

Mr. Legge Substantially Complied with the Plan Presented in the Permit

Discrepancies in Surveys

First and foremost, it should be noted that the Clarke County Planning Department has not yet conducted its own independent investigation to establish whether there is a zoning violation other than by Mr. Legge providing information to the Planning Department at their request. All surveys used were provided by Mr. Legge, and no on-the-ground measurements have been taken by the Planning Department staff related to the setback issue. (It is acknowledged that there have been on-the-ground measurements taken of structure dimensions, but not of purported boundary lines in relation to the garage.)

¹ Marsh and Legge refused to perform an as-built survey.

STATEMENT OF JUSTIFICATION

There also appears to be a discrepancy between the several surveys concerning the property (Exhibits 2, 3, and 5). Exhibit 2 (Marsh & Legge) is the survey that was submitted with the zoning permit application. The submitted plan fails to depict courses and distances along the boundary line running along Route 340. Further, there appear to be several discrepancies regarding the courses that are depicted in Exhibit 2 compared to Exhibits 3 (Original plat) and 5 (CDF Survey). In Exhibits 3 and 5, the courses and distances along the White Post Road, and northern and southern (neighbors') boundaries match. However, either the courses or distances are different on the Marsh & Legge survey for each of the boundaries. Further, on the survey used by Mr. Fincham to cite a setback violation of 14.1 feet, there are specific concerns of that survey's accuracy given that the survey fails to depict critical monumentation, namely, the as-built residential home that preexisted the garage, which would give further context to how the garage was built so far into the setback area (if it is as far as depicted). Accordingly, there are concerns that despite Mr. Legge obtaining two surveys of the property, there may be discrepancies as to their accuracies.

Contractor Error in Construction and No Early Detection of Error by Government Officials

Mr. Legge can offer no specific explanation for why the building was not built according to the approved permit. Neither of his two primary contractors whose work would have been most likely to identify and address any substantial derivations from the proposed permit have offered a clear explanation for why the plan's dimensions were not honored. The derivations appear to be a six-foot (6') increase in width of the building. Although it has not been measured, it also seems that the breezeway was not built with the four (4) foot gap that was depicted in the Marsh and Legge survey, but rather, an approximate ten (10) foot gap. Combined, such derivations may explain how the structure encroached approximately fourteen (14) feet into the setback area (if the CDF Survey is accurate).

Mr. Legge has been consulting with his contractors to identify where an error may have been made. There is current litigation involving D.K. Construction related to this matter.

Further, despite the Clarke County Building Department receiving notice of major events such as pouring of concrete footings, framing, and insulation and electrical, at no time did any Clarke County official measure the footings or the framework of the building in context of the approved plan. Presumably, the Clarke County Planning Department had notice of such events and could have requested access to measure the location of the building but did not do so at any time prior to May 2020. Since no official detected any deviations of the building's construction from the permitted plan prior to April 2020 despite several opportunities to do so, the building was substantially completed by that time. If the error had been caught earlier in the construction phase, it is highly likely that such error could have been corrected at minimal cost at the time. (See Exhibit 6 for current pictures of the structure's exterior and interior to demonstrate completion status.)

Numerous Structures in the White Post District Do Not Meet the Setback Requirement

Mr. Legge's property is not unique in that it purportedly fails to meet the setback requirement within the White Post Historic District. By visual observation and simple review of a distance measuring

using geographic information systems and satellite mapping, numerous properties along Route 340 near Mr. Legge’s property do not meet the setback.

Assuming Route 340 has a fifty-five (55) foot radial right-of-way, and that all properties along Route 340 within the Rural Residential zoning classification must keep all structures outside of a fifty (50) foot setback from the edge of Route 340’s right-of-way, then no structures should exist within one hundred and five (105) feet of the centerline of Route 340, radially. The following properties appear to maintain structures that would generally not meet the requirement (and are depicted in Exhibit 7):²

1. 14280 Lord Fairfax Highway: building corner within 70 feet from centerline
2. 14401 Lord Fairfax Highway: church building corner within 75 feet from centerline
3. 14402 Lord Fairfax Highway: residence corner within 95 feet of centerline
4. 14420 Lord Fairfax Highway: residence corner within 70 feet of centerline
5. 14478 Lord Fairfax Highway: residence located within 70 feet of centerline
6. 14725 Lord Fairfax Highway: post office located within 80 feet from centerline
7. 14767 Lord Fairfax Highway: commercial building within 80 feet of centerline
8. 98 White Post Road (adjacent neighbor): Shed located within 70 feet of centerline
9. 17 White Post Road: residence within 90 feet of centerline

Considering that the White Post Historic District only has seventeen lots that front Route 340 with structures on them, it appears that more than half of those properties enjoy structures situated within the required setback area of Route 340. And comparable to many of those structures, the as-built garage is located *further* outside the setback area than many of those structures (90.1 feet from centerline for comparison). Accordingly, the BZA should find that despite the most technical of violations, substantively, the structure conforms to the setback norms of the White Post Historic District.

Conclusion

For the foregoing reasons, Mr. Legge requests that the BZA find that his property substantially conforms to the zoning ordinance, and accordingly, that the Zoning Administrator’s determination of a violation be overturned.

Standards for Granting a Variance

Per Clarke County Zoning Ordinance § 7-A-3e: “a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- a. the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

² Mr. Legge raises this issue to the BZA’s attention not as a complaint to bring zoning enforcement against these properties, but rather, to highlight that the Rural Residential setback requirement is problematic for many properties in this area and that only his property is being singled out.

STATEMENT OF JUSTIFICATION

- b. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- c. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- d. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- e. the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of §15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of §15.2-2286 at the time of the filing of the variance application.”

If the BZA Will Not Overturn the Violation, a Variance is Appropriate

In the alternative to overturning the Zoning Administrator’s determination of a violation, Mr. Legge requests that the Board of Zoning Appeals grant him a variance for the setback requirement. As the arguments for overturning have been laid out in the prior section (pp. 3-5), those arguments are restated here insofar as they may be applied in the context of the standards considered for granting a variance.

Mr. Legge Will Suffer Financial and Lifestyle Hardship if a Variance Is Not Granted

Mr. Legge incurred approximately one hundred and ninety thousand dollars (\$190,000.00) constructing the garage.³ If Mr. Legge were required to accommodate the Zoning Ordinance by strict adherence to the code, his garage would either need to be demolished or moved as there is no practical means to “rebuild” a section of it strictly to conform to the zoning ordinance without likely needing to demolish the majority of the structure. Further, there would be a large section of concrete slab beneath where the structure would have existed that would be inordinately expensive to remove. Moving the structure is also not possible since there is only approximately ten (10) feet of space between the garage and the residence, which would still not put the structure back far enough to clear the setback area.

Considering that more than half of the properties with buildings fronting Route 340 within the White Post Historic District (rural residential zoning) violate the setback requirement much more substantially than Mr. Legge’s structure, the garage’s location should not trigger any unique requirement to demolish or move it. Rather, an appropriate remedy could be to require Mr. Legge to place foliage between the garage and Route 340. (He intended to build a privacy fence for additional aesthetic and sound-reduction benefits, but has waited on the result of this matter before proceeding. He would consider the addition of foliage if it would appease any of the BZA’s concerns.)

³ Mr. Legge would agree to the property’s tax assessment value being increased immediately by that amount upon approval of his as-built garage.

Since the garage has been substantially completed, Mr. Legge spends approximately twenty (20) to twenty-five (25) hours per week in his garage performing welding and automotive repair work (non-commercial) for himself, family, and friends. It would be a substantial hinderance to his ability to live and perform such work at home (especially given the workplace restrictions that have been imposed during COVID-19) if he was no longer able to use the garage that was built.

For these reasons, Mr. Legge requests that the BZA recognize that without a variance, Mr. Legge and his wife (Tara Crosen) would experience significant hardship.

Mr. Legge Acted in Good Faith With the Planning Department and Did Not Create the Problem

Mr. Legge has cooperated with the Planning Department throughout this matter. Whenever he was requested to provide information, he not only provided such information, but also retained experts at personal cost to prepare the underlying materials to support his requests. He has allowed the Planning Department and Building Department staff to enter onto his property whenever requested to conduct inspections. And he has diligently engaged those same staff members to try to resolve issues as they were presented.

The discrepancies between the three surveys affecting the property are inexplicable, and it is not certain whose (if anyone's) is the most accurate depiction of the property. Regardless of the accuracy of the surveys presented, those were items prepared and presented by some of Mr. Legge's experts whom he relied on to ensure that the structure would be compliant with the Zoning Ordinance.

Likewise, Mr. Legge cannot explain why the structure was not built according to the submitted plan, but at least one lawsuit is pending related to construction of the garage. Despite the failure to build the garage's dimensions according to the plan, and despite several opportunities for either the Clarke County Building Department or Planning Department to note inconsistencies with the proposed design during construction, no staff member brought such an issue to Mr. Legge's attention.

For these reasons, Mr. Legge requests that the BZA recognize that Mr. Legge has acted in good faith with the Planning Department and was not responsible for the problem that was created.

Adjacent and Nearby Properties Will Not Be Detrimentially Harmed by Granting the Variance

As the garage has been substantially completed since April 2020, none of the adjacent or nearby properties have been able to assert verified instances of how the garage has detrimentally affected their respective properties. If anything, the addition of the garage (if finally approved) will increase Mr. Legge's property value, and accordingly, the surrounding neighbors' properties.

As previously stated, more than half of the properties fronting Route 340 with buildings on them within the White Post Historic District are already in violation of the setback requirement. If Mr. Legge's garage were to be included in that list, it would not be a unique "standalone" structure for the area, and accordingly, could not detriment the aesthetic or community character.

STATEMENT OF JUSTIFICATION

Mr. Legge has obtained several letters of support from some of his neighbors, attached as Exhibit 8. Mr. Legge intends to supplement with additional letters of support prior to the hearing or otherwise asking neighbors to appear and voice their support for his garage.⁴

Accordingly, granting a variance for Mr. Legge's structure would not detrimentally harm any other adjacent neighbor or nearby neighbor's property interests.

The Setback Affects Numerous Properties, But Does Not Require Amendment to the Ordinance

The setback issue can affect up to thirty-three (33) parcels of land that front Route 340. However, of those properties, only sixteen (16) appear to have structures on them. And of those sixteen (16) with structures, at a quick glance, only nine (9) of them (excluding Mr. Legge's property) appear to violate the setback requirement. Some, if not most of the properties, may be 'grandfathered' in, now. Accordingly, it would not be necessary to amend the Rural Residential section of the Clarke County Zoning Ordinance as such ordinance addresses not only the White Post Historic District, but other similar sections of Clarke County (i.e. Millwood, Shenandoah Retreat, etc.), and that the very few properties that may be subject to the same problem that Mr. Legge's property has can be accommodated by a variance, if needed.

Granting the Variance Does Not Result in a Changed Use of the Property that Is Not Permitted

The granting of the requested variance does not change Mr. Legge's or any successor's use of the property. The same restrictions applicable to primary residences within the Rural Residential zoning section of the Zoning Ordinance would remain in effect.

A Special Exception Permit Does Not Apply

A special exception permit is not applicable to this situation.

Conclusion

For the foregoing reasons, Mr. Legge requests that if the BZA does not find that his property substantially conforms to the zoning ordinance, that he be granted a variance from the setback requirement and that the garage be deemed approved as-is.

CONCLUSION

Mr. Legge greatly appreciates this Board of Zoning Appeal's consideration toward reading this Statement of Justification and attention to this matter. Mr. Legge consents to a BZA site inspection with due notice provided.

⁴ The White Post Methodist Church has orally indicated that they intend to support him and that a letter would be forthcoming. The White Post Methodist Church is the adjacent neighbor who would have most likely been adversely affected by the location and size of the garage.

Accordingly, Mr. Legge respectfully requests that this Board of Zoning Appeals:

(1) overturn the Zoning Administrator's decision to find his garage structure in violation of the Clarke County Zoning Ordinance; or

(2) in the alternative, grant Mr. Legge a variance to allow his completed garage to remain where it is located upon reasonable conditions issued by this Board.

On behalf of Mr. Legge, thank you for your consideration of this appeal and Mr. Legge's requests. Mr. Legge is open to the BZA conducting a site inspection with due notice. Mr. Legge may further supplement this Statement of Justification as more information may become available. Please do not hesitate to contact me if you have any questions or concerns.

Truly yours,



Timothy R. Johnson

The Law Offices of Timothy R. Johnson, PLC
20-B E. Main Street
Berryville, Virginia 22611
P: (540) 352-4672
F: (540) 595-3500
E: trjohnson@trjlegal.com
Counsel for Brian K. Legge



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

CERTIFIED MAIL: 7019 1640 0001 8842 7220

NOTICE OF VIOLATION

Notice Date -- August 31, 2020
Owner of Record - Brian K. Legge & Tara Crosen
140 White Post Road
White Post, VA 22663
Property Address -- 140 White Post Road
Tax Map # -- 28A-A-66

A Notice of Violation dated April 9, 2020 was sent to you regarding violations of a Certificate of Appropriateness granted by the Clarke County Historic Preservation Commission. In that letter, I also indicated that it had been alleged that the newly constructed garage was located within the required 50 foot setback area from the edge of a primary highway right of way with 5,000 or more trips per day. Please note that I have confirmed with VDOT officials that Rt. 340 traffic exceeds 5,000 trips per day.

You have provided the attached as-built survey dated August 3, 2020 by Christopher D. Furstenau (Lic. No. 2727) which shows the location of the constructed garage structure. The as-built survey shows that the garage is located 35.9 feet from the edge of the Rt. 340 Primary Highway easement. Thus, the garage location is 14.1 feet within the required setback area. The zoning permit application which you submitted on November 4, 2019 clearly shows the required 50 foot setback and the proposed garage location outside the setback area and within the required building envelope.

Therefore, the garage location is in violation of County Zoning Ordinance Section §3-A-3-c Rural Residential (RR) Zoning District minimum yard requirements (setbacks).

You are hereby notified that you have the right to appeal this administrative determination to the Clarke County Board of Zoning Appeals (BZA) within thirty (30) days of the date of this determination letter by filing with the Zoning Administrator and the BZA a notice of appeal specifying the grounds thereof and by paying the appeal fee of \$750.00. This administrative determination shall be final and unable to be appealed if not done so within 30 days. Any additional information regarding the filing of an appeal may be obtained in the Zoning office.

Respectfully,

A handwritten signature in black ink, appearing to read "Ryan Fincham".

Ryan Fincham,
Clarke County Zoning Administrator

Copy: Commonwealth Attorney

Clarke County

ZONING PERMIT



Tax Map # 38A-A-66 Date: 11/4/19 Telephone: 704-450-5805

Applicant: BRIAN K. LEEGE

Address: 140 WHITE POST

Owner's Name: BRIAN K. LEEGE

The purpose of this permit: () Build () Enlarge () Remodel () Other

GARAGE

Size of structure: 20x48x130 Contractor: BRIAN K. LEEGE

Proposed use of structure: Storage, Work Shed

Signature of applicant: Brian K. Leege Date: 11/4/19

OFFICE USE ONLY

Description of structure and/or use: garage

Street address: Same as above Zoning: RR, H

Historic District: Yes -

Minimum required setbacks Front: 50 Side: 10 Rear: 25 50 (Rt 340)

Setbacks provided F 100+ LS 10' RS 100+ R 50

Site Plan? attached Water/Sewer Taps? _____

Flood Plain? NA Easements? _____

Conditions: _____ Well Setback: public water

Zoning permit is hereby: () Granted () Denied
For the structure and/or use described herein.

Zoning Administrator: Alison Teeboc Date: 11/4/19

Fee: \$2000 Check #: _____

Town/County Government Center
101 Chalmers Court
Berryville, VA 22611

www.clarkecounty.gov
voice 540-955-5132
fax 540-955-5180

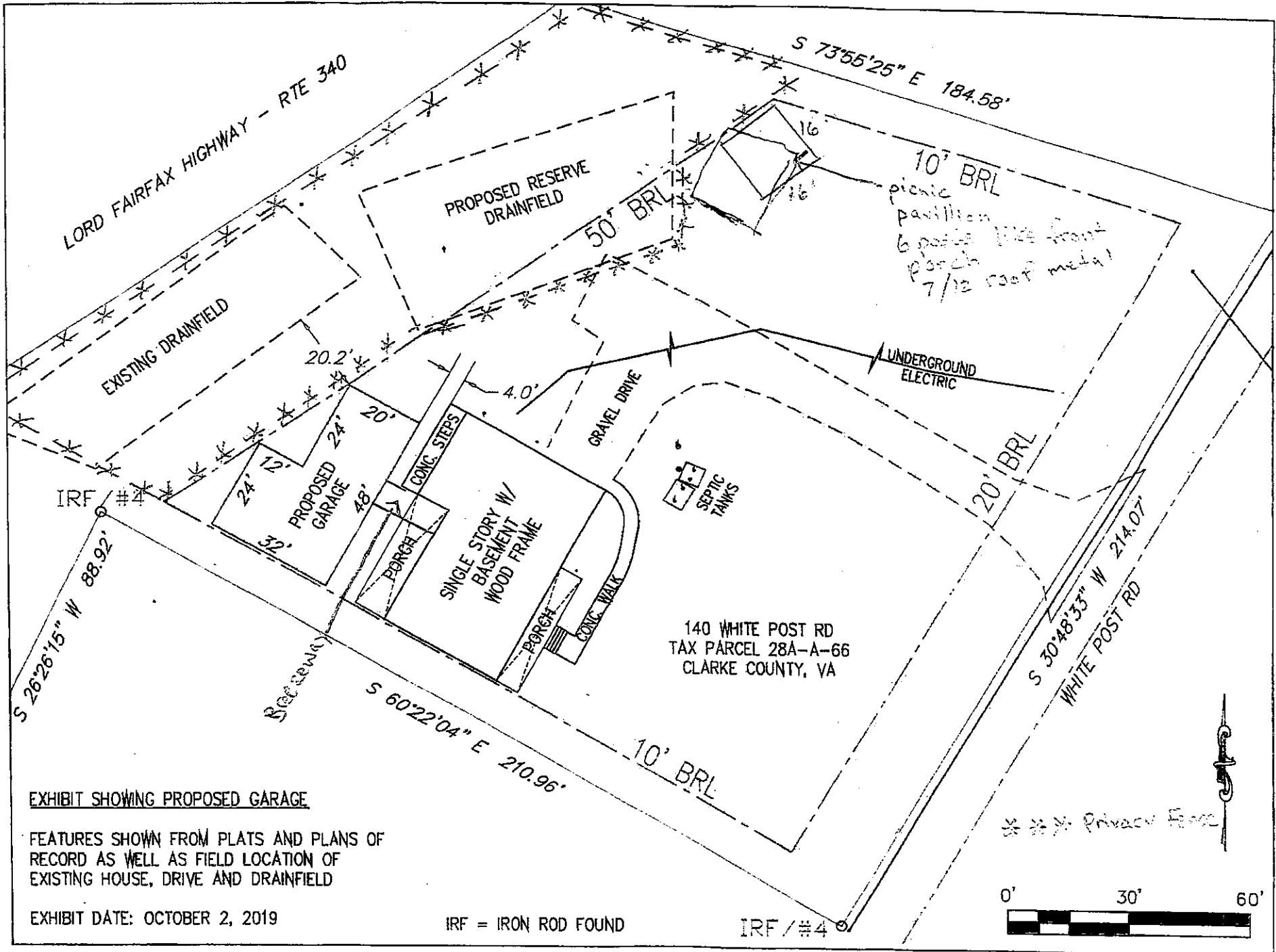


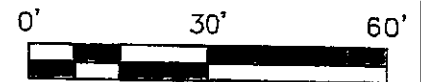
EXHIBIT SHOWING PROPOSED GARAGE

FEATURES SHOWN FROM PLATS AND PLANS OF RECORD AS WELL AS FIELD LOCATION OF EXISTING HOUSE, DRIVE AND DRAINFIELD

EXHIBIT DATE: OCTOBER 2, 2019

IRF = IRON ROD FOUND

IRF / #4



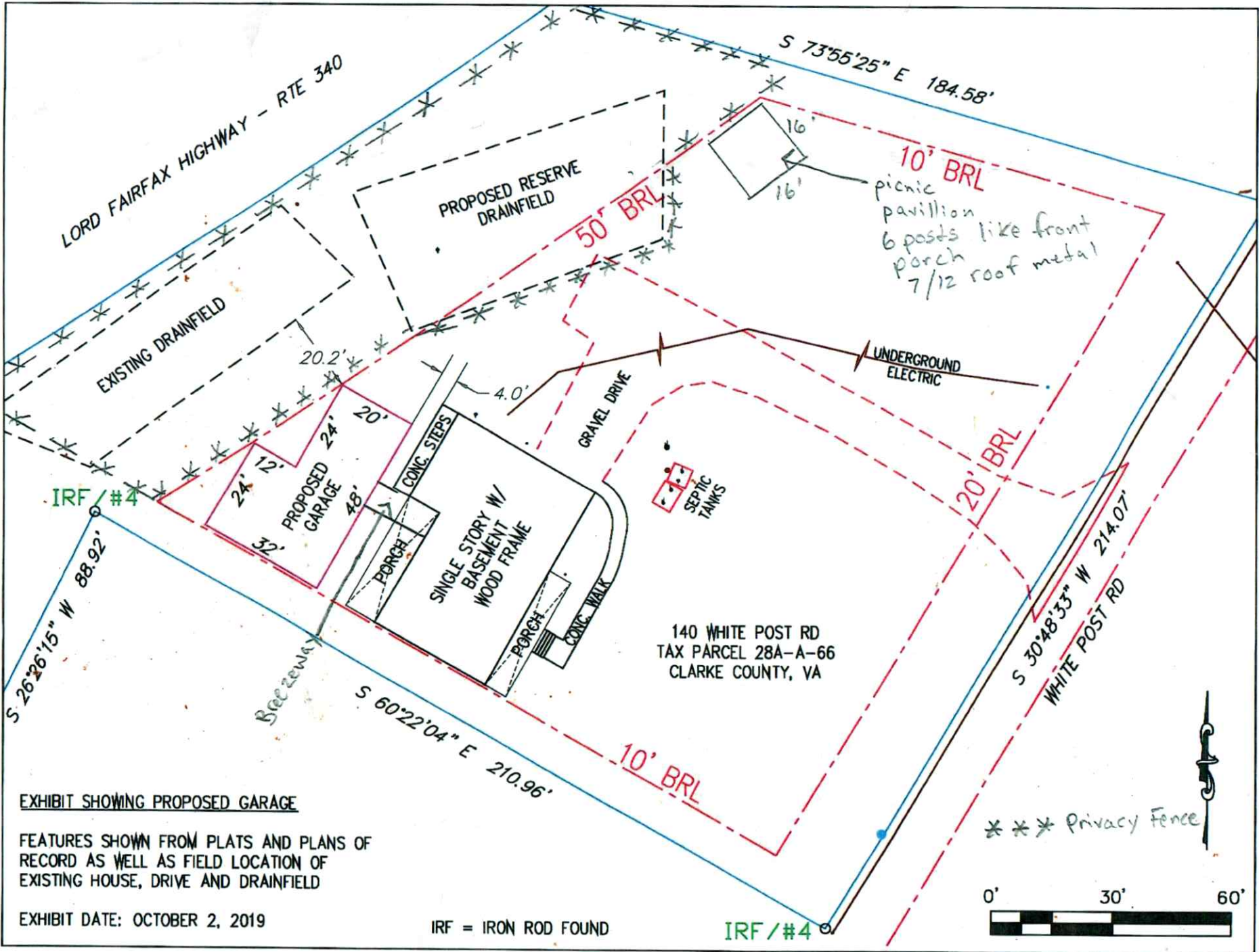


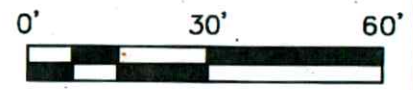
EXHIBIT SHOWING PROPOSED GARAGE

FEATURES SHOWN FROM PLATS AND PLANS OF RECORD AS WELL AS FIELD LOCATION OF EXISTING HOUSE, DRIVE AND DRAINFIELD

EXHIBIT DATE: OCTOBER 2, 2019

IRF = IRON ROD FOUND

IRF / #4



From: Ryan Fincham <rfincham@clarkecounty.gov>
Date: May 15, 2020 at 1:49:55 PM EDT
To: brianklegge@mail.com
Cc: Alison Teetor <ateetor@clarkecounty.gov>
Subject: Setbacks

Good afternoon-

Based upon observations made at the site visit today by Alison Teetor and your acknowledgement of the constructed garage footprint being larger than the approved 1,248 square foot shown on the zoning permit approval, an as-built survey plat showing the location and size of the garage structure from a licensed surveyor will be required to assure compliance of the garage to all required zoning setbacks.

According to observations made at the site visit, the constructed 16' by 16' pavilion was located in a slightly different location than shown on the zoning permit approval, but the size of the pavilion appears correct and the constructed location appears to meet zoning setbacks. The constructed location for the pavilion can be shown on the as-built plat, or a new zoning permit sketch can be provided by you showing the constructed location of the pavilion and the required setbacks.

Thank you-

Ryan Fincham,
Senior Planner & Zoning Administrator
Clarke County, Virginia
(540) 955 - 5131

NOTES:

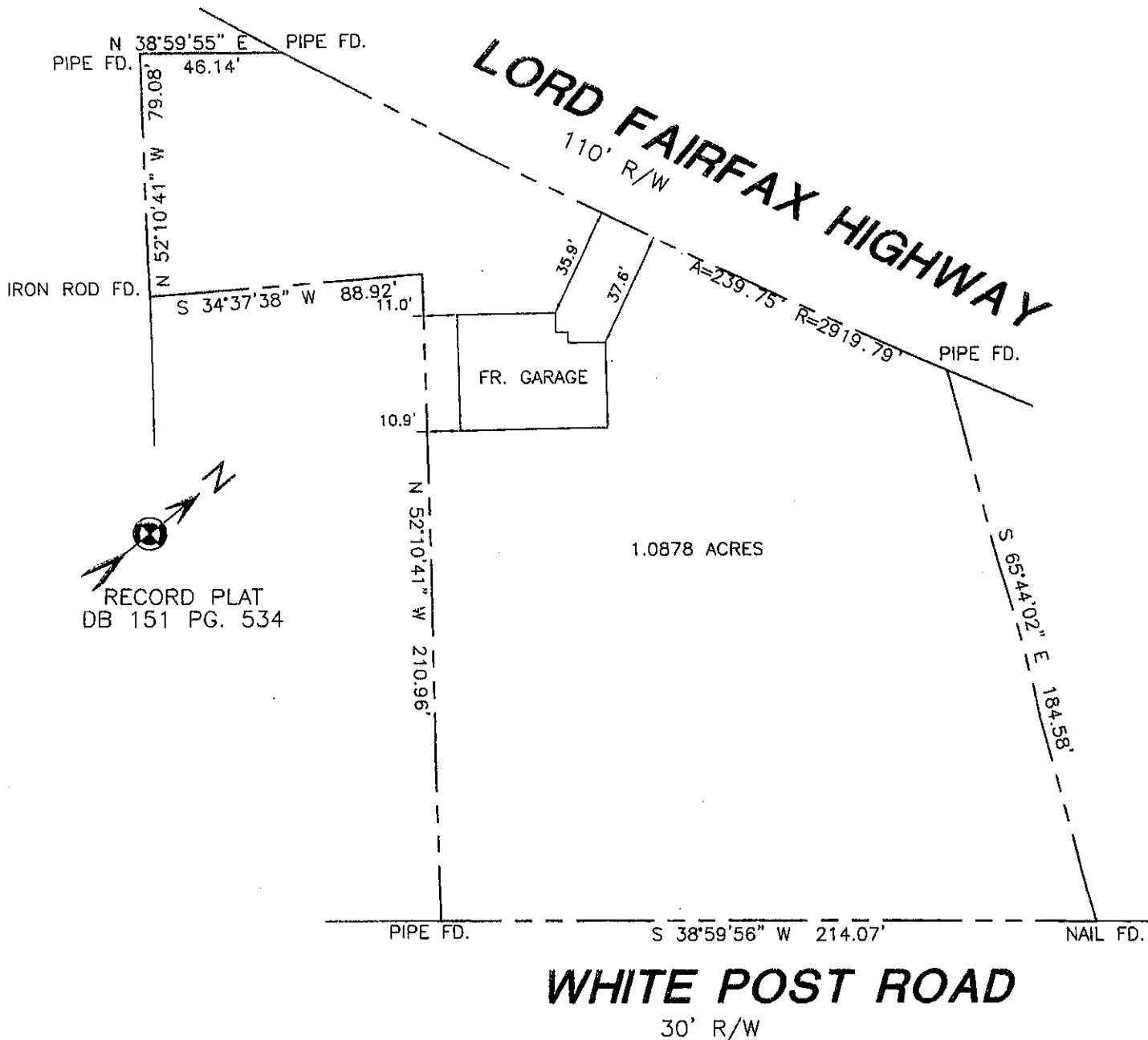
- 1) TAX MAP PARCEL: 28A-A-66
- 2) NO TITLE REPORT FURNISHED, EASEMENTS OTHER THAN THOSE SHOWN HEREON MAY EXIST.
- 3) IMPROVEMENTS OTHER THAN NEWLY CONSTRUCTED GARAGE NOT SHOWN.

GARAGE AS-BUILT

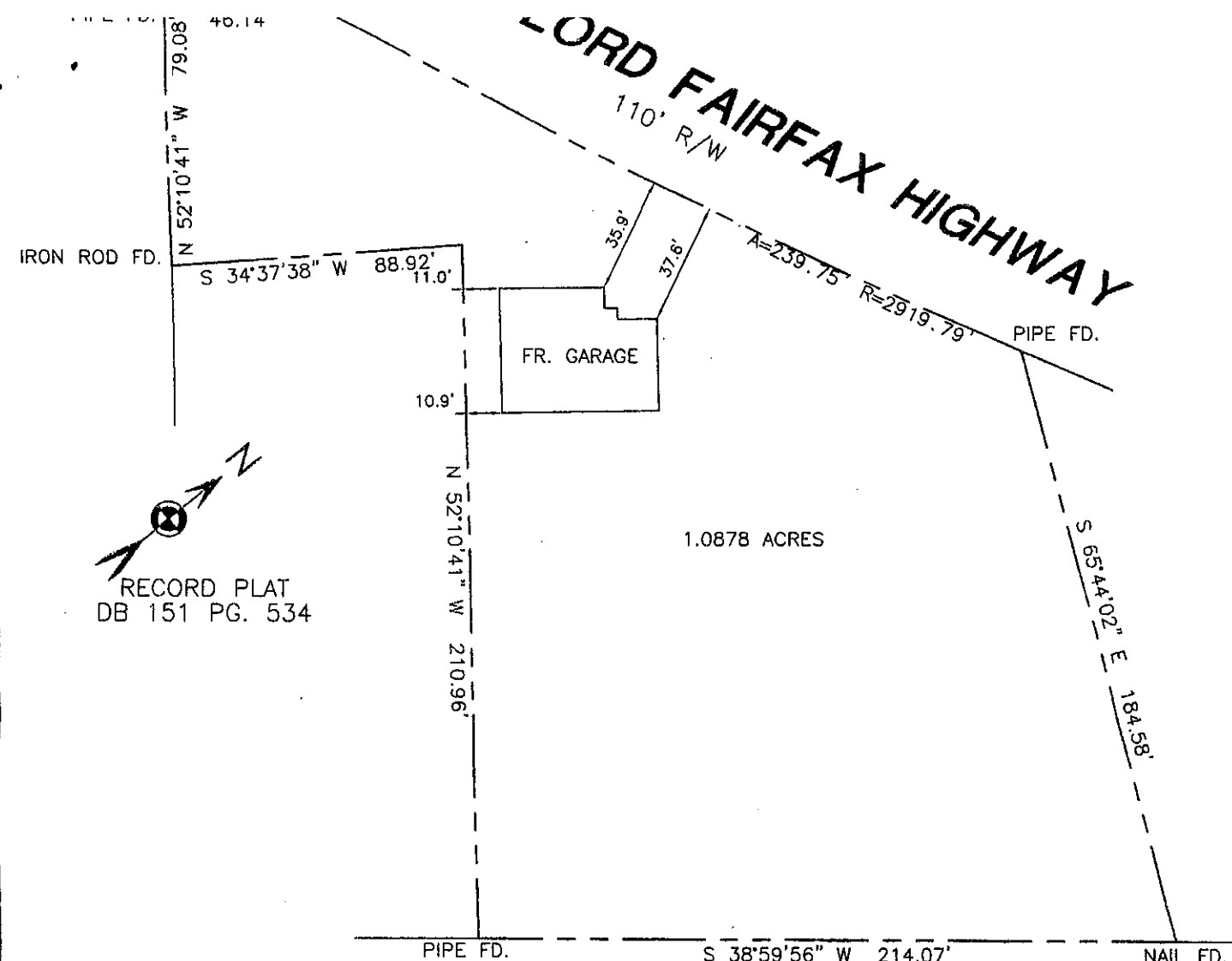
LAND OF

**BRIAN K. LEGGE AND
TARA M. CROSEN**

DEED BOOK 643 PAGE 215
GREENWAY MAGISTRERIAL DISTRICT
CLARKE COUNTY, VIRGINIA



LORD FAIRFAX HIGHWAY



RECORD PLAT
DB 151 PG. 534

WHITE POST ROAD

30' R/W

DATE: AUGUST 3, 2020 SCALE: 1" = 40'



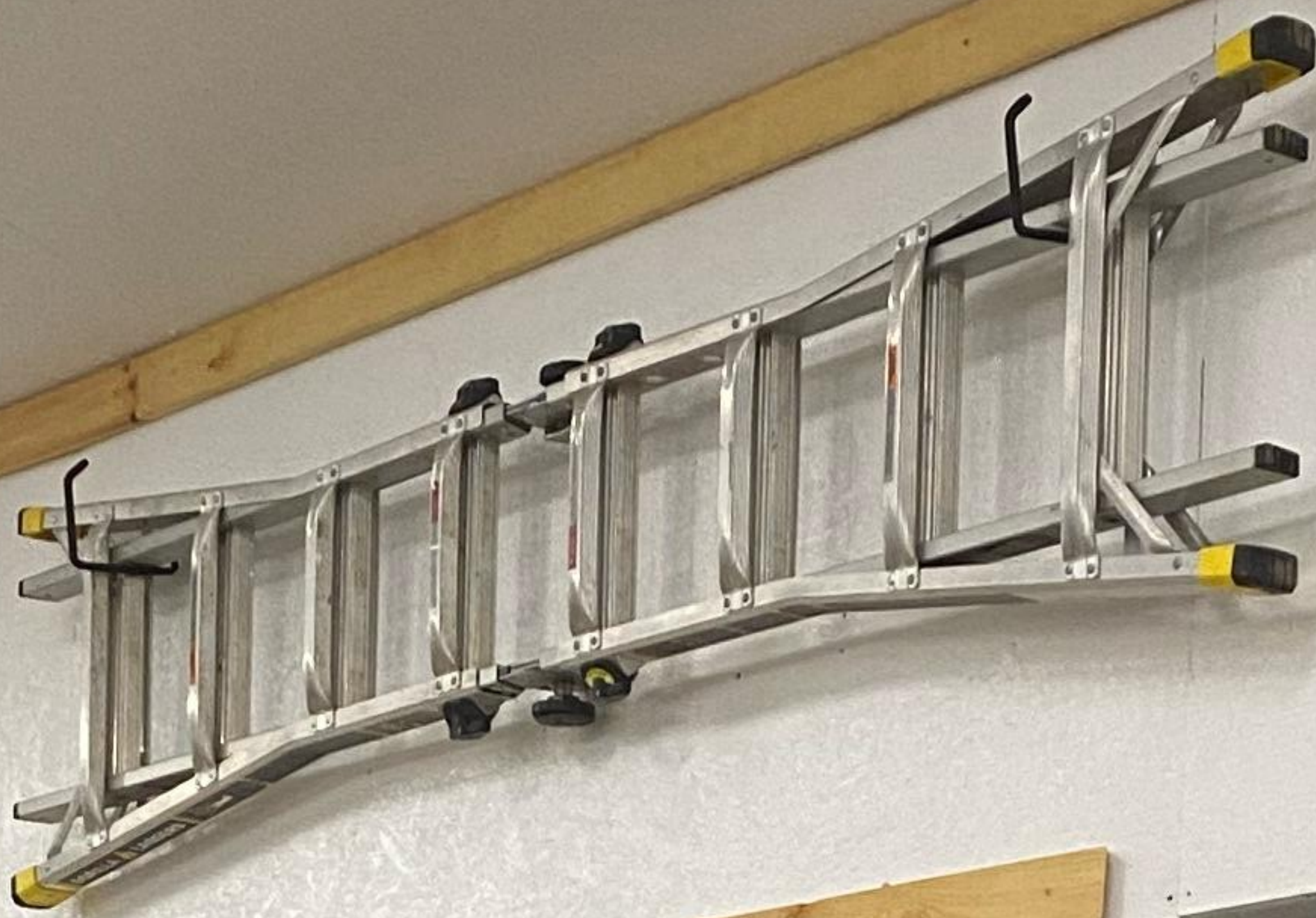
**1520 COMMERCE STREET, #309
WINCHESTER, VIRGINIA 22601
540 974-4268
christopher@cdfsurveying.com**

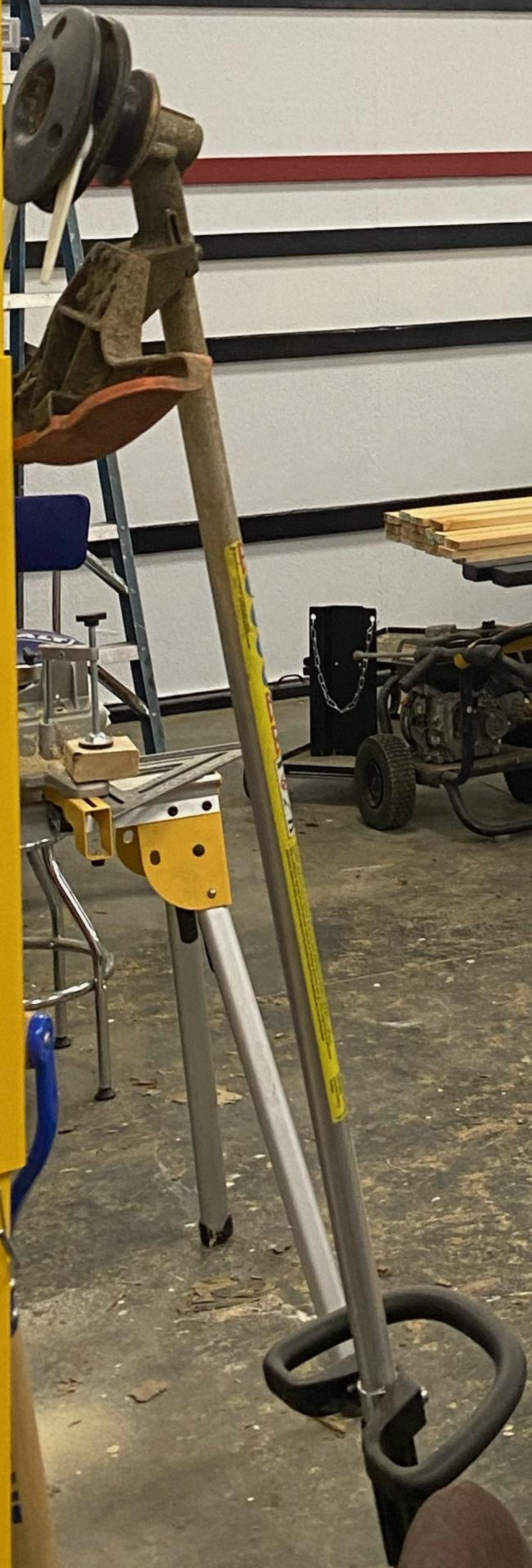


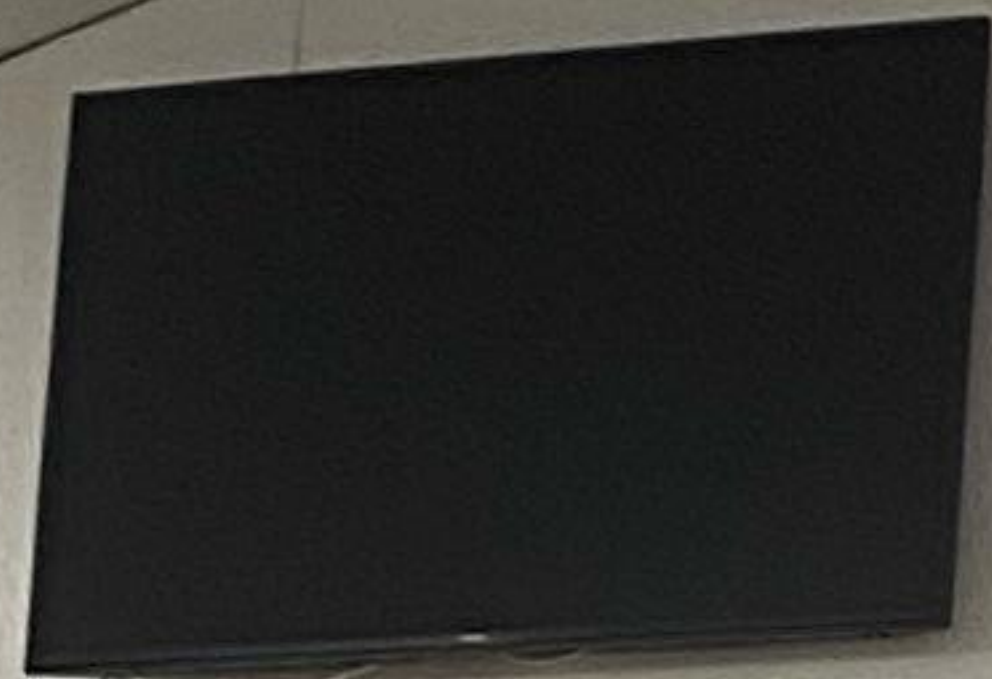












14402 Lord Fairfax Highway

Residence building corner within 95 feet from centerline of Route 340

Legend

Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length:	91.72	Feet
Ground Length:	91.88	
Heading:	130.15	degrees

Mouse Navigation Save Clear

14420 Lord Fairfax Highway

Residence building corner within 70 feet from centerline of Route 340

Legend



Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length: 67.81 Feet

Ground Length: 67.99

Heading: 131.00 degrees

Mouse Navigation Save Clear



100 ft

14725 Lord Fairfax Highway

Post office building within 80 feet from centerline of Route 340

Legend

Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length:	77.82	Feet
Ground Length:	77.83	
Heading:	338.89	degrees

Mouse Navigation Save Clear



14401 Lord Fairfax Highway

Church building corner within 75 feet from centerline of Route 340

Legend



Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length:	73.46	Feet
Ground Length:	73.47	
Heading:	304.33	degrees

Mouse Navigation Save Clear

14478 Lord Fairfax Highway

Residence's corner 70 feet from centerline of Route 340

Legend

Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length: 66.64 Feet

Ground Length: 66.73

Heading: 135.47 degrees

Mouse Navigation

Save Clear



14767 Lord Fairfax Highway

Building within 80 feet from centerline of Route 340

Legend



Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance between two points on the ground

Map Length: 77.09 Feet

Ground Length: 77.12

Heading: 341.72 degrees

Mouse Navigation Save Clear



17 White Post Road

Residence's corner 90 feet from centerline of Route 340

Legend

Ruler

Line Path Polygon Circle 3D path 3D polygon

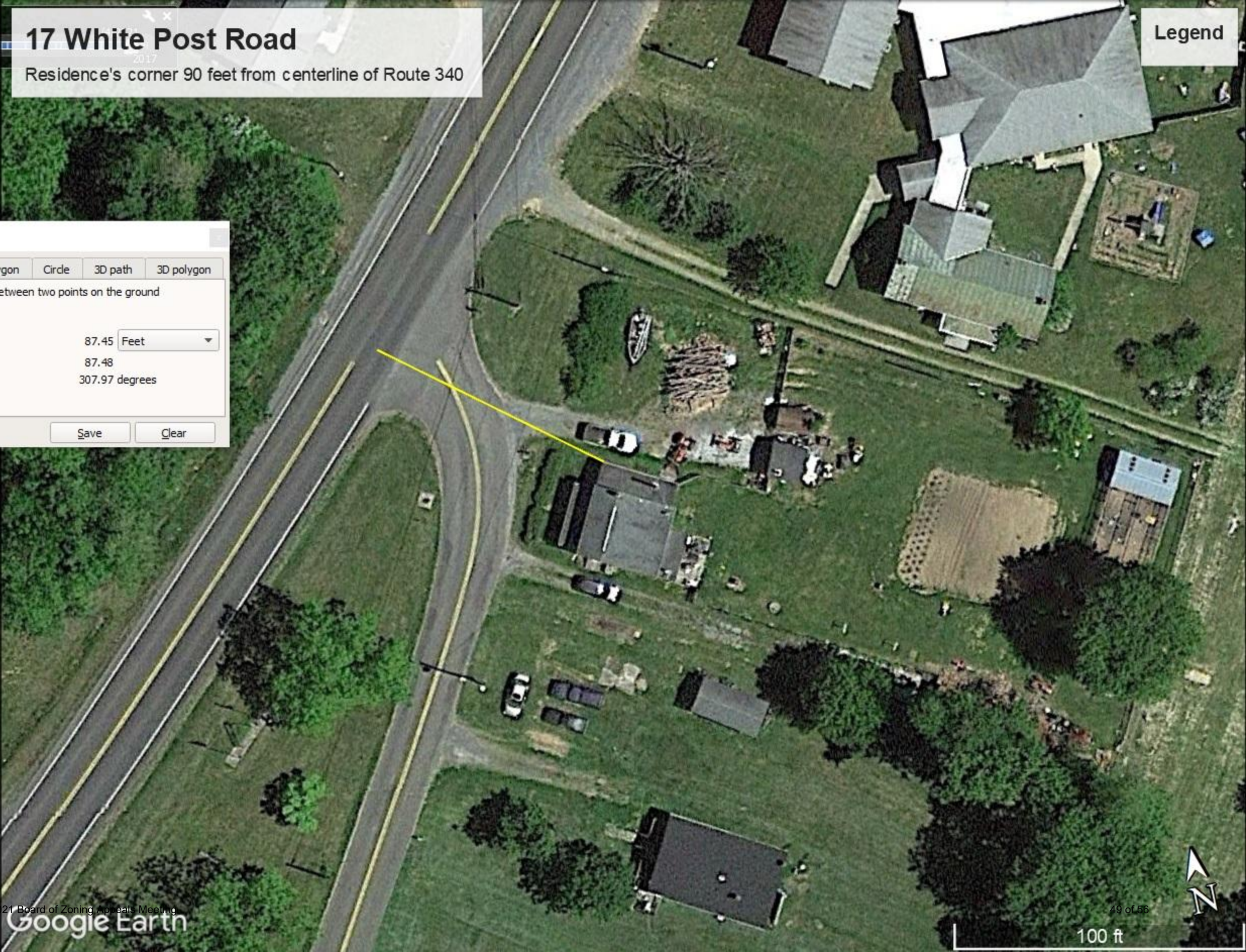
Measure the distance between two points on the ground

Map Length: 87.45 Feet

Ground Length: 87.48

Heading: 307.97 degrees

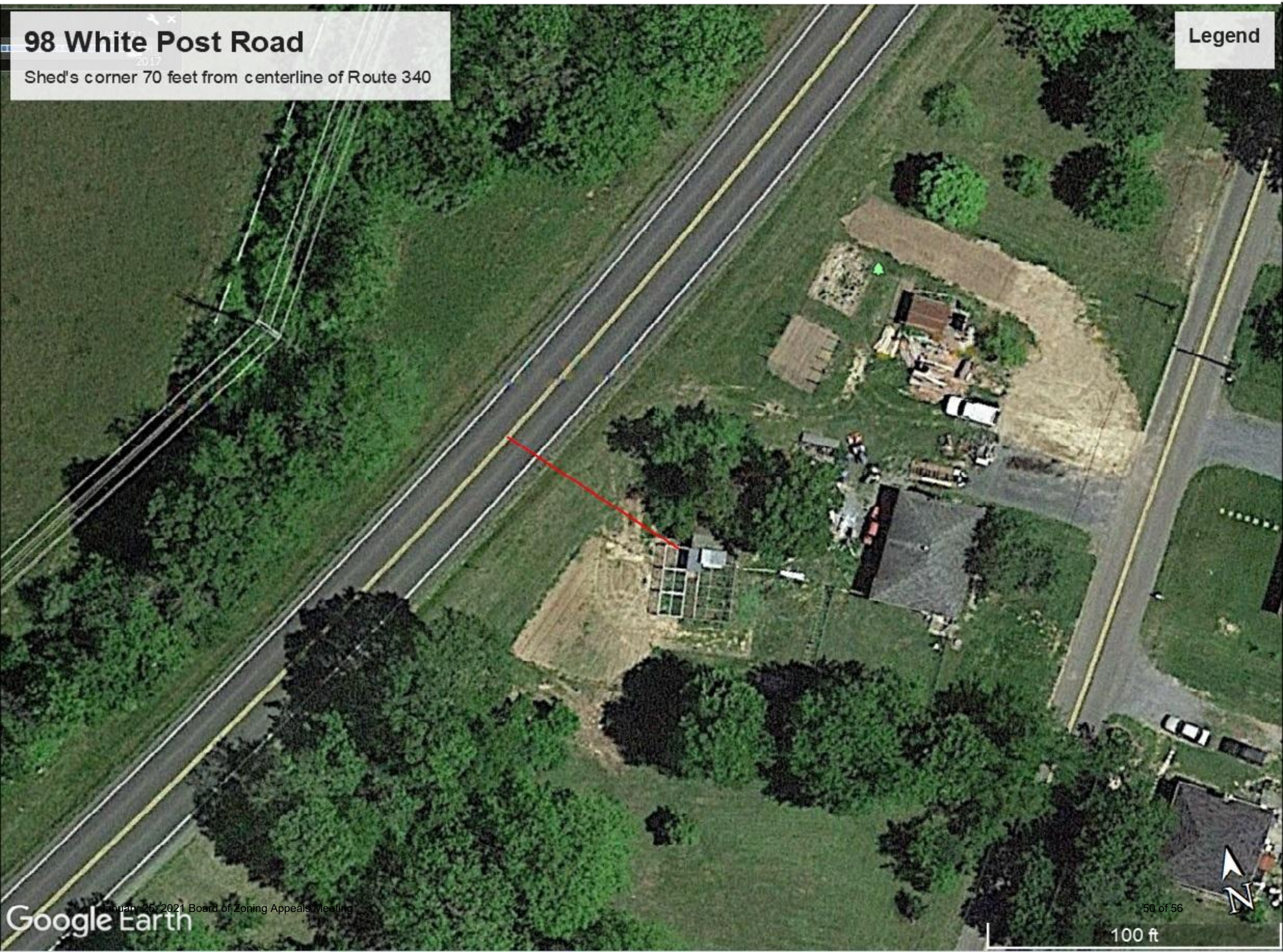
Mouse Navigation Save Clear



98 White Post Road

Shed's corner 70 feet from centerline of Route 340

Legend



14280 Lord Fairfax Highway

Building within 80 feet from centerline of Route 340

Legend



Ruler

Line Path Polygon Circle 3D path 3D polygon

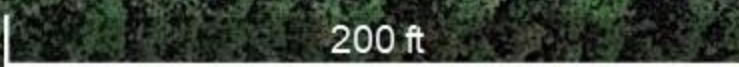
Measure the distance between two points on the ground

Map Length: 65.26 Feet

Ground Length: 65.27

Heading: 120.16 degrees

Mouse Navigation Save Clear



Richard Lawson

169 White Post Road

White Post, VA 22663

January 3, 2021

To Whom it May Concern:

Re: Barn owned by Brian Legge located at 140 White Post Road White Post, VA 22663

I am writing regarding the structure next to my property. The barn is maintained with regular upkeep and I do not consider it an eyesore in the neighborhood.

Thank you for your cooperation on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Richard Lawson". The signature is written in a cursive style with a long horizontal flourish at the end.

Dec 20, 2020

To whom it may concern:

My name is Jose Guzman and I live at 91 White Post Rd. I am neighbors with Brian Legge at 140 White Post Rd. He recently built a garage on his property, as his neighbor the building does not bother nor interfere with us at all. If you have any questions you can give me a call at 540-539-8404.

Thanks

Jose Guzman
Jose Guzman

Kathy Jones

111 White Post Road

White Post, VA 22663

January 3, 2021

To Whom it May Concern:

Re: Barn owned by Brian Legge located at 140 White Post Road White Post, VA 22663

I am writing regarding the structure next to my property. The barn is maintained with regular upkeep and I do not consider it an eyesore in the neighborhood.

Thank you for your cooperation on this matter.

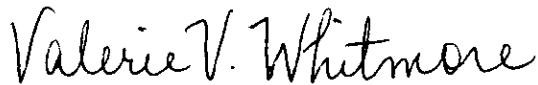
Yours sincerely,

January 4, 2020

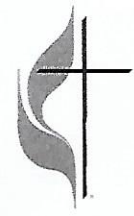
To Whom It May Concern:

The garage located at 140 White Post Road does not pose any problems to my property which is located at 145 White Post Road. The structure is built behind the main house and what I can see the garage matches the look of the house and is not an eyesore. I do not think that the garage devalues my property in any way.

Regards,

A handwritten signature in black ink that reads "Valerie V. Whitmore". The signature is written in a cursive, flowing style.

Valerie V. Whitmore



White Post United Methodist Church

P.O. Box 8
158 White Post Road
White Post, VA 22663

January 5, 2021

To whom it may concern,

I am writing this letter to show our support for our friend and neighbor, Mr. Brian Legge of 140 White Post Road. Specifically, I am writing to assure whatever powers may be that we do not protest the construction of the garage on his property which borders on our own. We currently have no intention of compelling him to change the design of the structure, nor to restrict his own reasonable use of it.

This letter comes at Mr. Legge's request, in response to the claim from some who believe that the structure is unsightly and/or that Mr. Legge's intended use of the facility will in some way hamper the quality of life of surrounding residents. We prefer instead to allow Mr Legge the freedom to do with his own property whatever he chooses, and that if sometime in the future his activities there do cause a problem to the community that we would cross that bridge if we actually come to it.

We have found Mr. Legge to be a friendly and cooperative person who makes a fine neighbor and we are confident that this condition will remain.

Yours in Christ, submitted very respectfully,

Harry G. Neidig III
Pastor, White Post UMC
703-589-5633