

PLANNING COMMISSION
MEETING

February 21, 1985
7:30 p.m.

School District Board Room

I. Approval of Minutes

January 3, 1985

II. PUBLIC HEARING

Request for Variance to Front and Rear Yard Setback Requirements
in the MDRH Zone - Walter Korb

PLANNING STAFF REPORT

TO: City of Sherwood
Planning Commission
FROM: Benkendorf & Associates
Sally Rose, Consulting City Planner

DATE: February 12, 1985
HEARING DATE: February 21, 1985
SUBJECT: Variance Request
Walt Korb

I. PROPOSAL DATA

Applicant: Mr. Walter Korb

Request: Variance to front and rear yard setback requirements in the MDRH zone.

Location: Tax Lot 5800, Map 2S1 32BD, 335 S.W. Sherwood Blvd. (corner of Sherwood Blvd. and S. Columbia Street)

II. BACKGROUND INFORMATION

Mr. Korb has owned the subject property for some time. He recently purchased a 1,600 square foot house which he intended to move to the subject site and place permanently on the property. He applied to the City Building Official for a foundation permit. The permit was granted, but soon thereafter it was revoked because Mr. Korb had not submitted an accurate drawing of his property. Some years ago, Mr. Korb sold a portion of his lot to the City for additional right-of-way for S. Sherwood Blvd. Mr. Korb submitted a drawing of this **original** lot for his building permit. When this inconsistency was discovered, it became apparent that the proposed house could not meet the MDRH setback requirements, necessitating a variance application. Mr. Korb has since moved the house to the site where it is now sitting on blocks.

The setback requirements which pertain to Mr. Korb's property are set forth below:

- o Front yard (east property line abutting S. Sherwood Blvd.) - 20 feet
- o Rear Yard (west property line) - 20 feet
- o Side Yard - Corner (north property line abutting Columbia Street) -15 feet
- o Side Yard - Interior (south property line) - 5 feet

Comparing these requirements to Mr. Korb's site plan (which is not drawn to scale), it can be seen that the proposal does not meet the 20 foot front yard or the 20 foot rear yard setback. The proposal is for a 19'-4" front yard setback and a 5 foot rear yard setback. Therefore, the application is actually for two variances.

Mr. Korb has submitted the following information to support his application:

- o Completed application for Land Use Action
- o Typed two page narrative dated January 22, 1985, signed by Mr. Korb
- o Site Plan of unspecified scale
- o Sketch map prepared by surveyor dated January 18, 1985
- o City of Sherwood Map
- o Portion of Assessors Map

It is our understanding that Mr. Korb has contacted at least some of the Planning Commission members regarding this application. As you are aware, this is a **quasi-judicial** process in which ex parte contact is not allowed. That is, it is inappropriate to discuss the matter prior to the public hearing and Planning Commission members cannot use information gained outside the public hearing to make a decision. Therefore, Planning Commission members should disclose at the beginning of the public hearing if such communication occurred, the nature of that communication and whether that communication will prejudice the Planning Commission member's decision.

III. FINDINGS OF FACT

1. The Site Plan illustrates that the southeast corner of the structure is proposed to be setback 19'-4" from the front or east property line. The required front yard setback is 20 feet. The proposed setback varies due to changes in the dimensions

of the structure and the lot. Since the site plan does not indicate a scale, it is difficult to precisely determine the entire proposed front yard setback.

2. The Site Plan illustrates a proposed 5 foot setback from the west or rear property line. The required rear yard setback is 20 feet.
3. The site is a corner lot located at the intersection of Columbia Street and S. Sherwood Blvd. Columbia Street is not improved to City standards.
4. The subject property is slightly over 5,000 square feet.
5. The proposed structure is reported by the applicant to be 1,600 square feet although no dimensions are shown on the Site Plan.
6. There is adequate City water and sewer service available to the site.
7. The site is zoned MDRH with a minimum lot size of 5,000 square feet.
8. In 1971, Mr. Korb sold a portion of his property abutting S. Sherwood Blvd. to the City for a "right-of-way easement."
9. Mr. Korb received a foundation permit from the City Building Official which was revoked when it was discovered that Mr. Korb had not submitted a site plan accurately illustrating the dimensions of his property. The foundation was never constructed.
10. The proposed structure was purchased from another location and moved to the subject site where it now sits on blocks.
11. There are no topographical extremes associated with the subject site.
12. Other lots in the vicinity vary in size from under 5,000 square feet to approximately 1/2 acre.

13. There are houses on the lots abutting the subject site to the west and south. The house to the west is set back 5 feet from the east property line.
14. The applicant has not submitted any evidence indicating that exceptional or extraordinary circumstances apply to his property.
15. The applicant has not submitted evidence that the requested variances are necessary for the preservation of a property right.
16. The applicant has not submitted evidence that the requested variances will not be materially detrimental to the purposes of the Community Development Code.
17. The applicant's narrative argues that he is experiencing a hardship in that he has prepared foundation plans, paid fees and moved his house to the site.

IV. REVIEW CRITERIA

- A. Chapter 2, Section 8.03 (attached) of the Community Development Code sets forth the findings the Planning Commission is to make in reviewing an application for a variance.
- B. Chapter 2, Section 2.09 G of the Community Development Code sets forth the setback requirements in the MDRH zone.

V. STAFF RECOMMENDTION AND CONCLUSIONARY FINDINGS

Based upon the Findings of Fact and Conclusionary Findings set forth below, the staff recommends **denial** of the requested variances to the front and rear yard setback requirements of the MDRH Planning Designation Area at 2S 1 32BD, Tax Lot 5800.

- A. There are no exceptional or extraordinary circumstances which apply to the subject site but not to other properties in the same vicinity or Planning Designation Area. The lot size meets the standards of the MDRH Designation, the lot shape is not

unique and there are no extreme topographical conditions. The mere fact that the applicant chose to sell a portion of his property, resulting in a smaller parcel, is not an indication that exceptional or extraordinary circumstances exist. Nor is it exceptional or extraordinary that a foundation permit was granted and then revoked. The original permit was based on information provided by the applicant which was found to be inaccurate.

- B. The variance is not necessary for the preservation of a property right of the application. The subject lot complies with the standards of the MDRH Designation and therefore can be put to any use allowed in that Planning Designation area. Just because this particular house does not fit the site does not mean that a property right is lost or threatened. A smaller structure could be placed on the site while meeting all setback requirements.
- C. The requested variance may be materially detrimental to the purposes of the Community Development Code and the property in the vicinity. One of the purposes of setback requirements is to maintain open areas within a neighborhood. Especially with regard to the requested rear yard setback, the variance requested does not result in a land use which maintains open areas. The requested variance may also be materially detrimental to other property in the vicinity, namely the parcel abutting the site to the west, since crowding of the two structures would result.
- D. The hardships that the applicant is experiencing (cost of securing permits, moving the structure and inability to obtain insurance) are self-imposed. The applicant chose to purchase the subject structure prior to working out siting details, chose to move the structure to the site prior to obtaining all required permits and chose to submit an inaccurate site plan to the Building Official.
- E. Although the applicant's hardship does not arise from a specific violation of the Community Development Code, there would be no hardship had the applicant undertaken development of the site with an intent to comply with the standards of the City's Code.

E. Review Body Action (Section 4.05)

1. Planning Commission Action

The Planning Commission shall conduct a public hearing pursuant to Chapter 1 Section 7.00 and take action to approve the variance with or without conditions or deny the application.

8.03 REQUIRED FINDINGS

No variance request shall be granted unless each of the following is found:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same Planning Designation Area or vicinity, and result from lot size or shape, legally existing prior to the date of this ordinance, topography, or other circumstances over which the applicant has no control.
- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same Planning Designation Area or vicinity.
- C. The authorization of the variance will not be materially detrimental to the purposes of this ordinance, or to property in the Planning Designation Area or vicinity in which the property is located, or otherwise conflict with the goals, objectives and policies of the Comprehensive Plan.
- D. The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship.
- E. The hardship does not arise from a violation of this ordinance.

8.04 TIME LIMIT ON A VARIANCE

Authorization of a variance shall be void after 1 year unless substantial construction pursuant thereto has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed 1 year, on request.

Information for variance at 335 S. Sherwood Blvd.

This lot is zoned for medium density residential. All existing land within 300' is single family residential use. Approximate sizes of lot vary from 50' to 100' to 64' by 100' and a few odd sizes a little larger.

Easements on my lot are shown on the survey dated Jan. 18, 1985. This easement was given to the City of Sherwood by me in Oct., 1971

There are no slide hazards or slopes on this property or erosion problems. The drainage is very good with a small creek or storm sewer running just behind the property. There is no flood problem on this lot, and there are no trees or vegetation on this lot, also no rock out cropping of any kind. There are no pollution sources from this property, now, or from the proposed use of this property. There are no parks or proposed parks in the area.

South Sherwood Boulevard runs directly in front of this lot, in a North-South direction with a fifty foot ride away and is paved and in good condition. This street is a main street going out of Sherwood, toward Newberg.

The street directly on the North side of the lot is South Columbia St., a dead end street under 200' in length and is in poor condition with large pot holes.

Public transportation, the Tri-met bus stop is about 500' North of the property, and the local post office is about the same distance from the lot. The water and sewer lines are in place along Columbia St. on the North boundary of the lot. The N. W. Natural gas line is also along Columbia Street.

This house I propose to put on this lot has a floor area of 1600' square feet and is a three bedroom home, that I believe will be a very nice addition to the neighborhood. As shown on the survey dated Jan. 18, 1985, the distance from the property line and street center vary a little bit but are shown to be 15' on Southern corner of lot and 16' on Northern corner, leaving a lot size of more than 5000 square feet. The city has more that a 50' right of way at this time on South Sherwood Blvd.

I am requesting a variance of 15' on the West boundary of our lot to give the necessary set backs from the property line. I now have 5' set back from the boundary of the lot.

The circumstances now applying to my lot size are apparently because of the easement I gave to the city in 1971. I was led to believe that this easement would not jepordize the use of my lot because of the size of the lot after the easement was given.

I am now asking for the variance just to be allowed to put the house on it's foundation as requested. This will not change the use of the lot as it was planned for on the comprehensive plan.

Now, there is a definite hardship imposed upon me because of this variance that I can do nothing about. I applied to the city, actually over a month before I placed a bid on the house, to be sure it could be moved on to this property. I prepared a foundation design that was accepted and paid for, and the permit was issued to move the house and set it on the foundation. also paid for the water and sewer connection to allow the occupancy of the house. Now, after I have completed all of these requirements, I am now told I can not set the house down on the foundation. This now puts me in a very serious financial hardship as I have no place to put this house without the variance. I cannot protect myself in any way, because I am unable to purchase insurance on the value of the house until I have it on a permanent foundation, and the services connected. This variance will alleviate the hardship that was placed upon me, and there was not a violation on my part in any instance. I have complied with all instructions, I have received from the city.

Walt Rosh

Jan. 22, 1985

2S132BD

5400 Columbia Hardwood and moulding company 12700 S. W. Hall Blvd. Tigard, Ore. 97223
 5500 Same
 5600 Same
 6000 Charles Petersen 25485 N. E. Boones Ferry Rd. Aurora, Ore. 97002
 5900 Same
 5990 Gary Petersen Sherwood, Ore.
 6100 Donna Smith 2450 S. KIHEI Road #202 Kiehi, Ha.
 6201 Rudy Olson P. O. Box 196 Sherwood, Ore. 97140
 6200 Richard Oliphant Rt. 3, Box 236 C Sherwood, Ore. 97140
 6400 Rudy Olson P. O. Box 196 Sherwood, Ore. 97140
 6300 Erika Vanhove 6603 S. W. Orchid Portland, Ore. 97223
 4900 Noel Ferry 640 W. Division St. Sherwood, Ore. 97140
 4901 Jerry Watson 590 S. Sherwood Blvd. Sherwood, Ore. 97140
 4800 Clara Hanna Box 374 Sherwood, Ore. 97140
 4801 Noel Ferry 640 W. Division St. Sherwood, Ore. 97140
 4802 Same
 4600 Hazel Fitch 2631 N. W. Upshur #40 Portland, Ore. 97201
 4700 Dora Denley Box 182 Sherwood, Ore. 97140
 5301 David Hartley 12015 S. W. 118th Ave. Tigard, Ore. 97223
 5201 Dave Amato & Assoc. P. O. Box 19576 Portland, Ore. 97219
 5002 Olive Gribble 675 Park Row Sherwood, Ore. 97140
 5000 Same
 5001 Ruth Stole 8456 S. Henz Road Canby, Ore. 97013
 4701 GERALD FITCH P.O. BOX

2S132CA

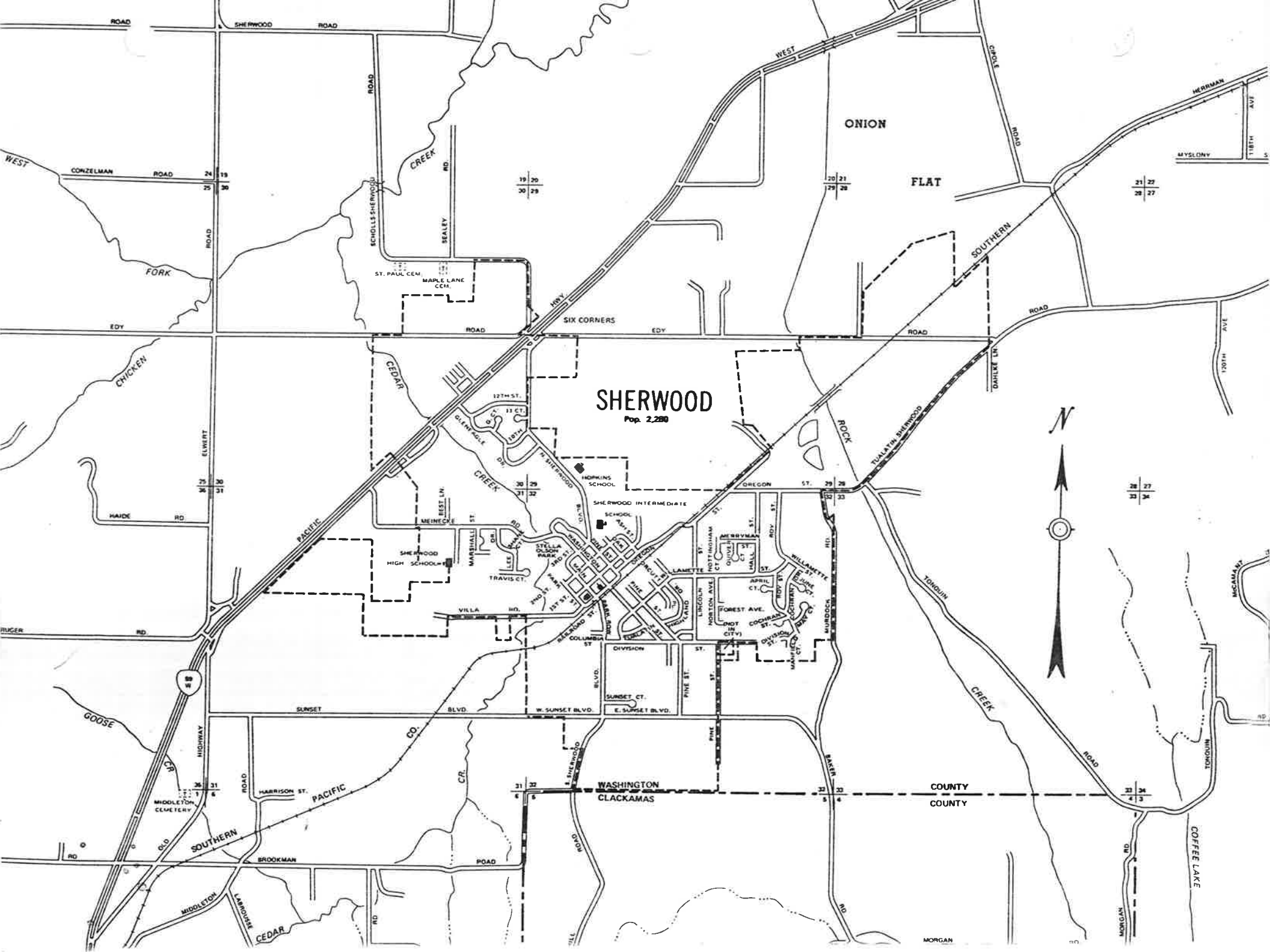
2300 Richard Feldman 495 E. Willamette Sherwood, Ore. 97140
 2400 John A Boulton 35101 S. W. Ladd Hill Road Wilsonville, Ore. 97070

2S132CD

100 Beatrice Reinhardt P. O. Box 4006 Marquam, Ore. 97362
 200 Same
 700 Steven Thomas 105 S. E. Willamette, Sherwood, Ore. 97140

2S132BC

6800 Columbia Hardwood and Moulding Co. 12700 S. W. Hall Blvd. Tigard, Ore. 97223



SHERWOOD

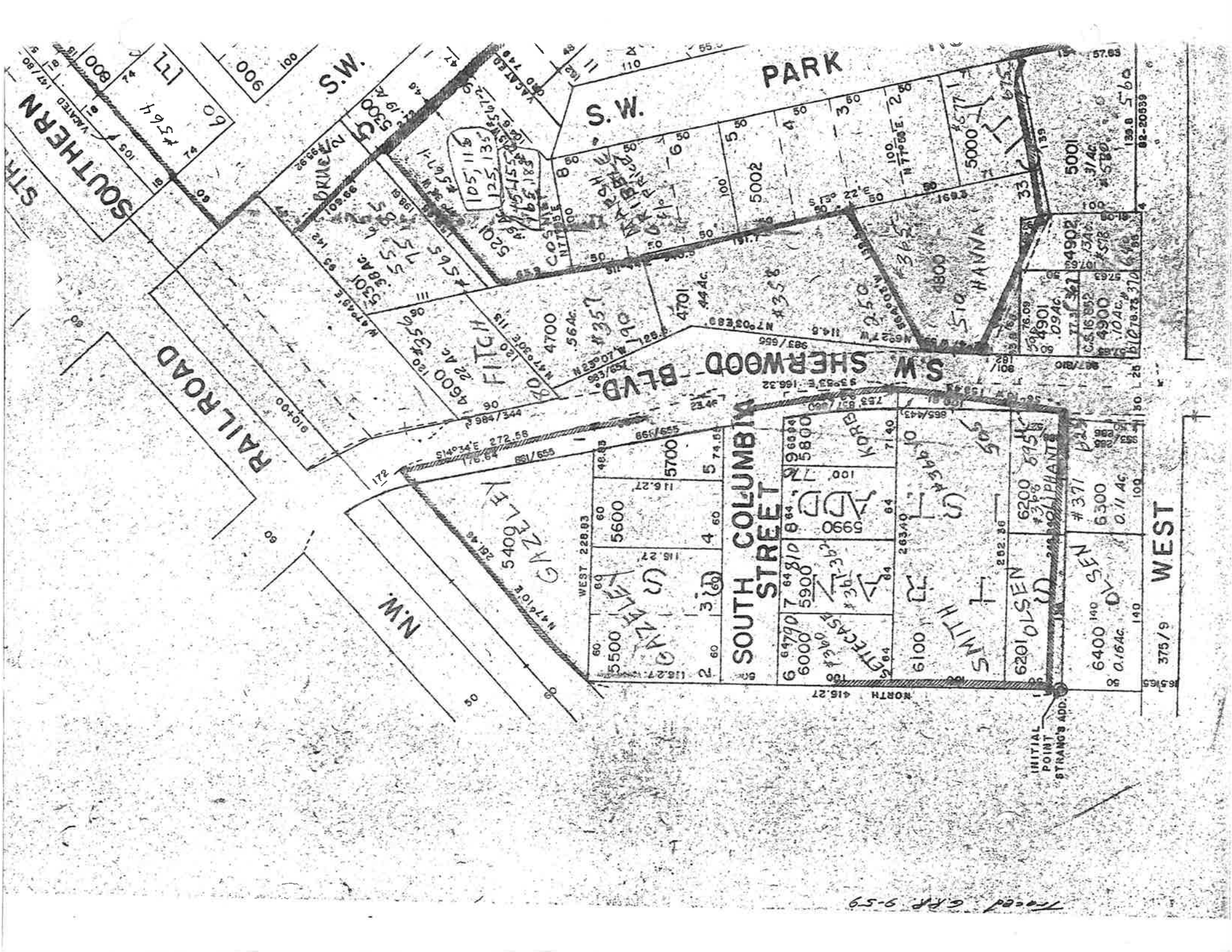
Pop. 2,280



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COUNTY
COUNTY

MORGAN



SOUTHERN
RAILROAD

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PARK
S.W. SHERWOOD BLVD
SOUTH COLUMBIA STREET
S.W. HANNA
S.W. PHANT

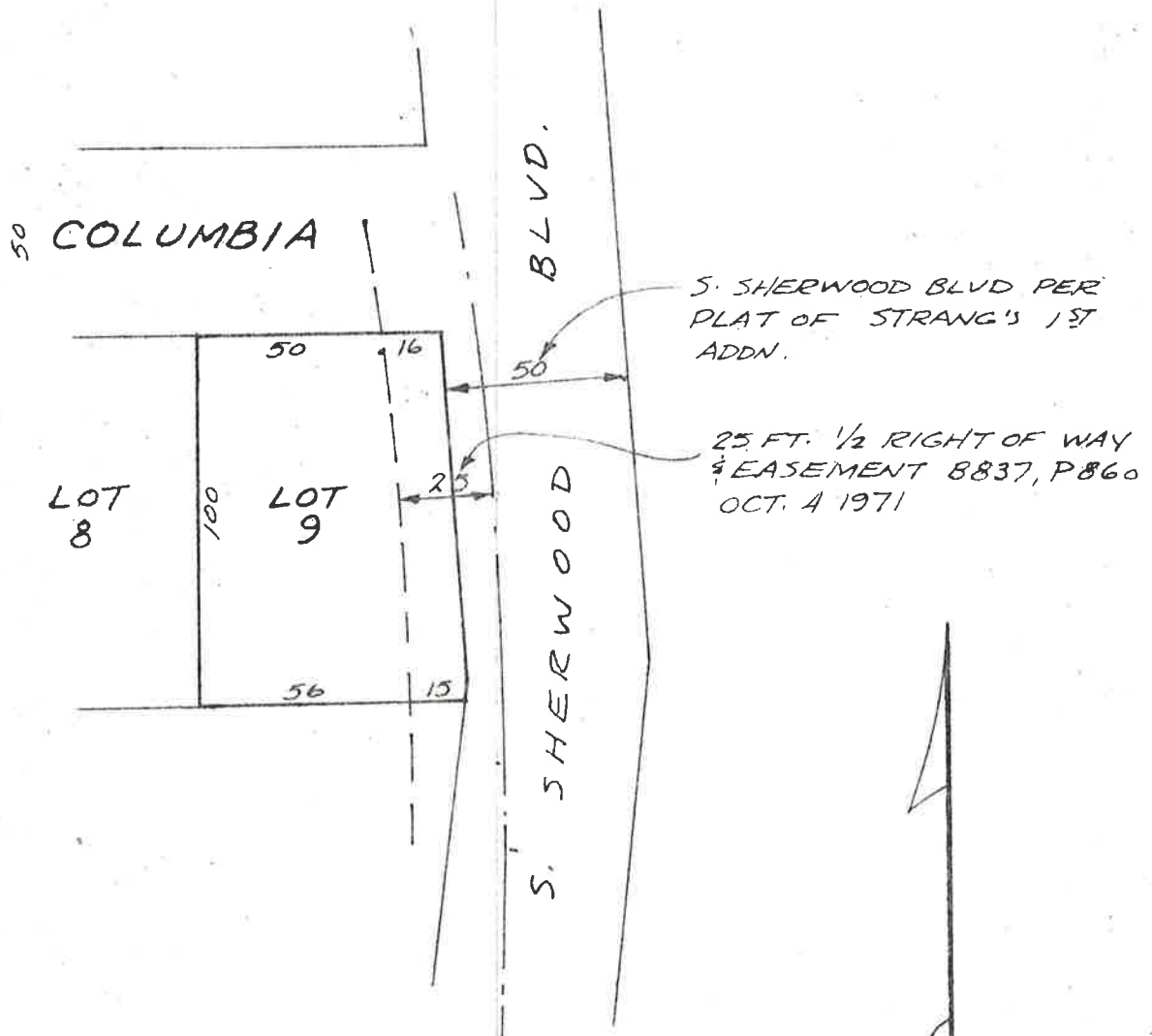
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Traced G.R. 9-59

INITIAL POINT STRANG'S ADD.

WEST

JANUARY 18 1985



REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature]
RICHARD W. MURSELL
693

LOCATION OF 8837 P860 RIGHT OF WAY WAS PROJECTED GRAPHICALLY FROM SURVEY 16,852 & DISTANCES FROM THIS DEED TO LINES OF LOT 9 SCALED & NOTED HEREON.

1" = 50'
12 JAN 85

SKETCH MAP OF SHERWOOD BLVD
IN
NW 1/4 SEC. 32 T25 R1W WM.

PREPARED FOR
MR. WALT KORB
SHERWOOD, OR.

PREPARED BY
R.W. MURSELL, PLS
8800 TALA WA DRIVE
TUALATIN OR 97062

APPROVED MINUTES

Sherwood Planning Commission
Minutes
February 21, 1985

The meeting of the Sherwood Planning Commission was called to order by the Vice Chairman, David Crowell, at 7:35 p.m. Planning Commission members Clarence Langer, Dwight Minthorne, Cathy Navarra, Mo Turner and Sally Howard were present. Sally Rose, Consulting Planner of Benkendorf & Associates was also present.

Mr. Crowell asked if there were any corrections to the minutes for the meeting of January 3, 1985. There being no corrections the minutes were approved as submitted.

Mr. Crowell opened the public hearing on a request for a variance to front and rear yard setback requirements in the MDRH zone made by Mr. Walter Korb. Sally Rose explained that the lot is a corner lot located at South Sherwood and Columbia Streets. It is in a medium high density residential zoning and is slightly in excess of the minimum lot requirements. There is a need for two variances as the setback requirements for front and back yards are 20 feet. Mr. Korb proposes a front yard of 19' 4" and a 5' back yard. Sally Rose explained the history of the situation stating that Mr. Korb purchased the house which was located on the Goodman property in front of the new library. After purchasing the house Mr. Korb moved it to the site and put it on blocks. Several years back Mr. Korb sold a portion of the property to the City for additional right of way but the site plan he submitted to the City was based on the original dimensions of the lot before the sale of the right of way. This is where the confusion occurred and when this came before the City the foundation permit was revoked. Ms. Rose further explained that there are five variance standards that have to be met before a variance is allowed and she reviewed these with the commission. Ms. Rose felt that based on the information submitted by Mr. Korb she would recommend denial because it did not show that any of the five standards had been met.

Sally Rose advised the commission that decisions are to be made only on information that is presented at a public hearing and not on hearsay evidence. Discussion was held as to whether there was prior communication on this matter.

Mr. Dave Crowell stated that Mr. Korb had telephoned him and presented his side of the story but Mr. Crowell did not feel that this would prejudice his decision.

Cathy Navarra stated that Mr. Gary Peterson had contacted her to seek information about the process and she did not feel this would affect her decision.

Mr. Clarence Langer stated that Mr. Korb and Mr. Peterson had contacted him by telephone but he did not feel it would affect his decision.

Mr. Mo Turner stated that he had been contacted by Mr. Korb

and they went over the information but he did not feel it would affect his decision.

Mr. Minthorne stated that he had been contacted by Mr. Peterson but did not feel this would affect his decision on the matter.

Sally Howard stated that she had not been contacted by anyone.

Mr. Crowell opened the hearing for proponent testimony.

Mr. Walter Korb stated that it was his understanding that he gave the City an easement not a right of way. He did not sell this to the City and received no money. Mr. Korb stated that at that time he was represented by the same attorneys as the City. Mr. Korb advised that he gave this fifteen feet to the city with the idea that it would not jeopardize the use of the property. This was done so that the City could straighten out the street. Mr. Korb felt that he has done everything that the City has told him to do. He talked with the Building Inspector before he bought the house to see if the house could be moved onto the lot and was told that he could do that. He hired a surveyor to help determine where the easement was in relation to the lot. The Building Inspector requested a special foundation design be drawn up, which he had done. The City then requested an Engineer's seal on the design which he obtained. The City then issued the permit. Mr. Korb stated that he then went and made the transaction to purchase the house as he had the necessary permits to move and relocate the house. The day after the house was moved he was contacted by the City and told he could move the house but not to put it on the foundation because they had not decided where the foundation should be put. He was then told that he would have to get a variance to set the house on the lot. Mr. Korb felt that he had received very little cooperation from City Hall in getting the necessary paper work finished. Mr. Korb further advised the Planning Commission members that the Building Inspector had given him their names so he called several of them to explain what happened. The house is sitting on the lot deteriorating and can not be insured until it is on the foundation. He felt that he had done everything the City had requested in order to go about this legal, it has cost him a considerable amount of money and he has now been told that he can not put the house on the lot until he receives a variance. Had he known this in the beginning he would never have purchased the house. He received all the necessary permits and was given to understand that everything was alright. He felt that he had submitted an accurate drawing of the property as it was the only one that he had but it did not show the 15' given to the City.

Cathy Navarra asked if the City had contacted Mr. Korb about the problem before he moved the house. Mr. Korb stated that he was contacted after he moved it. He had no indication of any problem until after he had done everything that he was requested to do before he bought the house.

Mr. Crowell stated that when Mr. Korb had called him he was told by Mr. Korb that the City had stopped him before the house had been moved.

Mr. Korb stated that he was told he could move the house but not put it on the foundation.

Sally Rose stated that Mr. Korb, the building official and the City Attorney got together for a meeting on December 28, 1984. Ms. Rose then read a letter from Mr. Derryck Dittman to Leonard Kosaka dated January 4, 1985 which discussed the problem of the variance requirement and gave the sequence of events with regard to the right of way purchase. The letter stated that in October, 1971 the Korbs executed a document giving the City the right to purchase the right of way for \$275.00. Sally Rose felt that Mr. Korb was aware of all of this on December 28, 1984.

Mr. Korb stated that a resolution was signed and was the only instrument talked about in the attorney's office or the city's office.

Sally Howard asked Mr. Korb if money had changed hands. Mr. Korb stated that money did not change hands. He did state that some time prior to this he had purchased a house that was not hooked up to sewer and they swapped a sewer hook up for the easement.

There was discussion as to which site plan map Mr. Korb submitted to the City when he obtained the permit.

Mr. Mo Turner asked Mr. Korb if he had been issued the permit on the day they had a discussion. Mr. Korb stated he had received his permit for the foundation on December 27, 1984.

Mr. Crowell asked when the permit was revoked. Mr. Korb stated that it was never officially revoked. He was verbally told not to set it on the foundation sometime around January 10th.

Cathy Navarra was concerned as to why he was allowed to move the house. Sally Rose stated that he was told he could move the house but not set it on the foundation. He chose to move it. Mr. Crowell asked Mr. Korb if there was a necessity to move the house. Mr. Korb stated that he would have had to pay penalties of \$100.00 per day until it was moved.

The hearing was then opened to opponent testimony.

Mr. Gary Peterson stated that he lives behind the Korb property and was concerned about the fact that it would be so close to his house. When he built his house he had to figure out the necessary setbacks for their lot and they understood that if a house was ever put on the Korb lot they would need a 15' setback on the back. They expected there would be some open area and are concerned that the house will be too close and ruin their back yard. He did not like the overall appearance of the house being so close to his house.

Cheryl Peterson stated that when they built their house they had to do things the right way and she felt that Mr. Korb should be made to do things the right way also.

Mr. Korb felt that the design of the Peterson's house had nothing to do with what he was putting on his lot.

The hearing was closed to opponent testimony.

Cathy Navarra was concerned that if the variance was denied could he still build a smaller house on the property. Sally Rose stated that this was a buildable lot.

Discussion was held as to whether there was an official permit revocation and the differences in the terms "easement" and "right of way".

Cathy Navarra felt that if they denied the variance Mr. Korb should receive a refund of the permit fees. Sally Rose stated that she was not sure of the city's policy in this regard.

The Planning Commission then reviewed the Findings of Fact contained in the staff report. Mr. Minthorne questioned the findings Nos. 14, 15 and 17. Mr. Korb was stating that he did have extraordinary circumstances in that the house has been moved to the lot. Discussion was held and the planning commission agreed to the above fact and to the fact that Mr. Korb had not lost his property right as referred to in No. 15. There was agreement to No. 17.

Mr. Mo Turner was concerned with the fact that this was allowed to go so far before someone stopped it.

Mr. Clarence Langer was concerned as to Mr. Korb's options if the variance was denied. Sally Rose stated that he could move the house to another location, the garage could be removed and the house made smaller or he could appeal the decision to the City Council.

Mr. Korb stated that he had spent close to \$30,000 which he never would have spent if the City had not give him an o.k.

Mr. Gary Peterson felt that if they could reach a compromise it would be the best way to go. He stated that he and Mr. Korb had discussed this and had come up with some ideas.

Mr. Minthorne felt that everyone was sympathetic with Mr. Korb and a compromise would be fair to all parties but their job was to uphold the land use code.

The Planning Commission then reviewed the Staff Recommendation and Conslusionary Findings. It was agreed to change the word, "maybe" to "is" in paragraph C. In paragraph A add, "except a foundation permit was issued based on this information" to the end of the second sentence and delete the fourth sentence, "Nor is it exceptional or extraordinary that a foundation permit was granted and then revoked". Paragraph D should read as follows:

- D. The hardships that the applicant is experiencing (cost of securing permits, moving the structure and inability to obtain insurance) are partially self-imposed. The applicant chose to purchase the subject structure without accurately working out siting details, chose to move the structure to the site prior to obtaining all required permits and a certificate of planned compliance and submitted an inaccurate site plan to the Building Official.

Dwight Minthorne made a motion that while they were sympathetic to Mr. Korb's motion it is their duty to uphold the code and they find that the variance should be denied and to adopt the findings A through E as suggested by staff and modified in their discussion. Mo Turner seconded the motion. Motion passed unanimously.

Discussion was held as to what a variance was for and how changes could be made in the requirements and the code.

Meeting adjourned at 10:15 p.m.



Mary L. Holland, Minutes
Secretary