

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday,
December 11, 2019 at 7:00 PM in Council Chambers, Second Floor, John Bryan
Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387

7:00 CALL TO ORDER

ROLL CALL

REVIEW OF AGENDA

COMMUNICATIONS

Marie Miller re: Variance Request

7:05 REVIEW OF MINUTES

Minutes for BZA Meeting of March 17, 2019

7:10 PUBLIC HEARINGS

A variance seeking relief from section 1260.04(a)(3) setback of accessory structures and
1260.04(a)(5) height of accessory structures per Chapter 1260 General Provisions.

Property owner Brett Henderson – 335 West Davis Street - R-B, Moderate Density
Residential District

Parcel ID #F19000100040005100

8:00 AGENDA PLANNING

8:05 ADJOURNMENT

**VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
MINUTES**

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, March 17, 2019

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Ellis Jacobs, Acting Chair.

ROLL CALL

Ellis Jacobs, Acting Chair, Alternate Richard Zopf and new members Dino Pallotta and Anthony Salmonson were present, as was the Zoning Administrator for the Village, Denise Swinger, and Solicitor Chris Conard. Matt Reed was absent.

REVIEW OF MINUTES

Minutes for BZA Meeting of January 9, 2019. Zopf MOVED and Jacobs SECONDED a MOTION TO ADOPT THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a voice vote.

REVIEW OF AGENDA

There were no changes made to the agenda.

PUBLIC HEARINGS

A variance seeking relief from section 1248.03 Lot and Width Requirements - Parcel ID #F19000100100012100 and F19000100100012200 in the R-B, Moderate Density Residential District. The property owners Carl Maneri – 343 S. Stafford Street and Judith Hempfling 225 W. Limestone Street, seek to reduce the non-conformity on two lots through a replat of their abutting properties.

Jacobs OPENED THE PUBLIC HEARING. There being none present wishing to comment, Jacobs CLOSED THE PUBLIC HEARING.

Jacobs then read through the variance standards, with roll call following each question, with the result as follows:

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(2) Whether the variance is substantial; Zopf: Yes; Reed: No; Jacobs: No.

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; Zopf: No; Reed: No; Jacobs: No.

(4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection; ; Zopf: No; Reed: No; Jacobs: No.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(7) Whether the existing conditions from which a variance is being sought were self-created; Zopf: Yes; Reed: Yes; Jacobs: No.

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Zopf: No; Reed: Yes; Jacobs: Yes.

Jacobs then CALLED THE MOTION. The MOTION PASSED 2-1, with Zopf voting against.

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Reed MOVED and Zopf SECONDED a MOTION to adjourn. The MOTION PASSED 3-0. Meeting ADJOURNED at 7:50pm.

Ellis Jacobs, Acting Chair

Attest: Judy Kintner, Clerk



TO: Board of Zoning Appeals
FROM: Denise Swinger, Zoning Administrator
DATE: December 4, 2019
RE: BZ19-03 – re: Height and Setback Variance

Variance Request

A variance seeking relief from section 1260.04(a)(3) setback of accessory structures and 1260.04(a)(5) height of accessory structures. Property owner Brett Henderson – 335 West Davis Street. Parcel ID #F19000100040005100 - R-B, Moderate Density Residential District.

The property (land) at 335 W. Davis Street is owned by the community land trust Yellow Springs Home, Inc. and Mr. Henderson owns the home and any accessory structures on it.

Notification Of Public Hearing – A public hearing notification was provided in accordance with the Village’s zoning regulations including publication in the Yellow Springs News, mailed notice to abutting and adjacent neighbors of the property, and the posting of a sign on the property about the public hearing.

Background

On August 9, 2013, a zoning permit #2013-26 was issued to Yellow Springs Home, Inc. for an 11 x 18-foot accessory structure (**Exhibit A**). The diagram indicated a 7-foot setback from the building’s side yard lot line. The permit was issued by a former zoning employee. The permit does not indicate the height.

The zoning code was updated in September 2013. The height of accessory structures changed depending on the roof design. Section 1260.04 (a) (5) provides different heights depending on the roof design for this structure is a shed roof which cannot be taller than 12 feet. Prior to the zoning code update, the height limit under Section 1278.02 (c) was 15 feet (**Exhibit B**).

Based on Greene County GIS mapping of properties, the accessory structure was not completed until sometime in late 2017/early 2018 (**Exhibit C**).

The current zoning code requires that permits must have substantial progress made within one year from the date of issuance and complete within two years according to Section 1272.03(b) “Zoning Permit Approval; Time Limit” of the codified ordinances. The previous zoning code stated that it must be completed in two years, with construction starting in the first year under Section 1242.02 (b) (**Exhibit D**).

Mr. Henderson was notified of the shed setback issue in a certified letter dated September 25, 2019 (**Exhibit E**).

Mr. Henderson sent his plan to Yellow Springs Home, Inc. and the Village to move the structure on October 11, 2019 (**Exhibit F**).

Yellow Springs Home, Inc. requested that Mr. Henderson gain approval for moving or expanding upon the shed which requires a new permit from Village zoning (**Exhibit G**), or remove the shed.

The current zoning code indicates that when a structure is modified or relocated, a new permit is required. Section 1272.01(a)(1) states, *“A zoning permit shall be required and shall be obtained from the Zoning Administrator by the property owner or his or her agent:*

- (1) Prior to the construction, occupancy or use of any proposed structure or addition to an existing structure, or prerequisite to the continued occupancy of a newly altered, reconstructed, enlarged or relocated structure.”*

Mr. Henderson submitted a new permit application to the Village zoning office on October 17, 2019 in which he intended to move the shed to a different location on the property (**Exhibit H**).

Staff denied the permit based on the height only, which was indicated on the drawings to be 18 feet. Staff did not deny it based on the setback because his drawing showed an eight-foot setback from the side yard lot line at the roof's edge (**Exhibit I**).

After receipt of an email informing Mr. Henderson that the permit was denied, Mr. Henderson responded on October 23, 2019 with a request for a variance hearing and indicated that he wanted to submit the application as a solar project (**Exhibit J**).

Staff received via email the variance application on October 31, 2019 (**Exhibit K**). Staff then sent a second letter to Mr. Henderson on November 8, 2019 to clarify the violations (**Exhibit L**).

Mr. Henderson acknowledged receipt of the letter in an email on November 13, 2019 where he responded that his intent in the variance request is to keep the structure in its current location (**Exhibit M**). In this email, he indicates that he has trimmed two feet off the roof overhang, leaving two feet from the property line at the roof edge. This makes the variance request three feet to the side yard setback.

Previous Zoning Code - 1278.02(b) *“Accessory structures may be erected in a rear yard if such structures are kept at least ten feet from the rear and five feet from side property lines.”*

Current Zoning Code – 1260.04(a)(3) *“Accessory buildings and structures may be erected in a rear yard if set back at least ten feet from the rear and five feet from the side property lines.”*

The Village determines setbacks by what is defined in the current zoning code as the *“Building Envelope.”* The *“Building Envelope”* definition is, *“The maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements.”* The previous zoning code determines setbacks by what was defined as *“Building, edge.”* The *“Building, edge”* definition is, *“The horizontal limit of a building, including the drip or eave line of all roofs, carports, permanent awnings and decks.”*

Mr. Henderson also indicated in his November 13, 2019 email that he will take off the reflector attachment on top, which would bring the structure down to a height of 12'10". He has not done this and the current height of the structure is either 18 feet per his drawing submitted with the permit application (**Exhibit H**) or 17 feet which he indicated via email (**Exhibit J**).

Staff Response to Variance Application

Since Mr. Henderson chose to use the variance application to express his frustrations with the Village's zoning office, staff is responding to his allegations. In Mr. Henderson's variance application (**Exhibit K**), he states that the solar structure built under the 2013 zoning code be grandfathered in to function as the *“bifacial solar racking system”* it was engineered to be. *The original permit was issued to Yellow Springs Home, Inc. and there is no indication on the permit or in Mr. Henderson's files that stated the shed's purpose at the time the permit was issued* (**Exhibit A**).

Mr. Henderson further states the shed's purpose should also be "*a greenhouse, and workshop/storage shed/tiny house.*" This shed cannot be used as a "tiny house" because Mr. Henderson has not gone through the conditional use hearing process for an accessory dwelling unit. It is also not built to the standards required by Greene County Building Regulations to function as an accessory dwelling unit. It is staff's understanding that he must also receive approval from Yellow Springs Home, Inc. prior to adding structures on the property, and we have not received any approval from Yellow Springs Home, Inc. that he could use this shed for the purpose of a tiny house.

Mr. Henderson also indicates in his variance application that he is using this shed for the storage of panels in his solar business. Mr. Henderson lists 335 W. Davis Street as the address for his company. If he is now having truck deliveries and staff in and out of his residence, he is also in violation of zoning's *Home Occupations* code as Mr. Henderson has not applied for a conditional use hearing to operate his business in a residential district. Having delivery trucks dropping off supplies, in addition to any staff involved in the business at his residence, needs to be vetted by the Planning Commission so that the residents in the neighborhood have an opportunity to voice any concerns or request conditions for the approval.

Mr. Henderson states, "*It is unfortunate that the Village has been repeatedly trying to make me take this one down, too*" in his reference to an existing shed that had to be removed prior to the construction of the house due to its proximity to where the new house was going to be located.

Staff has made numerous attempts to remedy neighbor concerns over the structure's safety beginning in December 2017, when we received calls from two nearby property owners that during a wind event, the shed structure's exterior was flapping and making banging noises. Mr. Henderson confirmed this in an email dated December 24, 2017 (**Exhibit N**). The property owners were worried about their safety and that of their properties. Mr. Henderson said he had a structural engineer look at the shed and would provide a report on its structural integrity. Staff did not receive this letter until the following July, 2018 (**Exhibit O**) when he was interested in the installation of a fence along a shared driveway and a parking pad in front of his home (**Exhibit P**). It was at that time, staff pointed out the structure's height of 20 feet on the diagram and responded that accessory structures cannot be taller than 18 feet. Mr. Henderson replied that the height was actually 17 feet (**Exhibit Q**). Staff did not analyze it further for the type of roof. On July 30, 2018, staff contacted Greene County Building Regulations official Al Kuzma, who indicated due to its size (11X17) being under 200sf, they had no authority as they measure by the building footprint only. Mr. Kuzma did state that if Mr. Henderson were to put solar panels on it, that would bring it back under their authority (**Exhibit R**). Because Mr. Henderson showed solar panels on his diagram from his July 10, 2018 email to modify the shed (**Exhibit P**), staff checked on the structure at that time, and found no solar panels installed. This is confirmed in the 2018 aerial photo (**Exhibit C**).

Staff sent another certified letter dated August 30, 2018 (**Exhibit S**) requesting a new permit and outlining that Mr. Henderson needed to comply with the structural engineer's letter regarding re-enforcement of the shed's supports or the Village would begin the public nuisance process under 1470.02 (a) of the Building and Housing Code. Fourteen days were given per the code for Mr. Henderson to renew the accessory structure permit and to install the framing supports to make the structure sound. Mr. Henderson said he never received the letter and the postal service returned it to the Village.

To declare a structure a public nuisance requires a minimum of two other entities to agree. Because the structure was outside of Greene County Building Regulations authority at that time, staff decided not to pursue it because we did not think we would be able to get both the Dept. of Health and the Fire Dept. to agree.

Recently, in another matter with the Village regarding Mr. Henderson's property line and the Village's Right-Of-Way, a photo was taken on August 20, 2019 and no solar panels were on the structure. On October 24, 2019 staff observed a partial installation and subsequently on November 5, 2019, an array of solar panels were observed (**Exhibit T**). In the November 8, 2019 certified letter to Mr. Henderson (**Exhibit L**), he was told to remove the panels until the Village receives proof that the shed is structurally sound and can support the weight of the panels. As of December 4, 2019, Mr. Henderson has not removed them (**Exhibit U**).

VARIANCE CRITERIA

1278.04 Variances

The Board's power to grant variances from the dimensional provisions of the zoning code, including by way of example, lot size, width, setbacks, parking requirements and height, shall be in harmony with the intent and purposes of the code, as provided below.

(a) Variance Standards. Variances from the terms of the code shall be granted only where the applicant shows that the strict application of a zoning requirement causes practical difficulties in the use of the property. The factors to be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties in the use of the property include, but are not limited to:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) Whether the variance is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection;
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- (7) Whether the existing conditions from which a variance is being sought were self-created; and
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

(b) The Board shall determine, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner.

STAFF RECOMMENDATION

Staff recommends that the Board of Zoning Appeals **DENY** the variance request based on the height and setback violations.

If you have any questions, please feel free to call me at 767-1702 or email dswinger@vil.yellowsprings.oh.us.

Respectfully submitted,

Denise Swinger
Zoning Administrator



Village of Yellow Springs

ZONING/UTILITY TAP PERMIT

Village of Yellow Springs, Ohio

As required by Section 1240 of the Village Zoning Code: A zoning permit shall be required and obtained prior to any change of use of structure or of land. The following information is necessary to initiate the acquiring of such permit.

PERMIT NUMBER: 2013-26Applicant Name Yellow Springs Home, Inc. Phone: 937-767-2790Property Owner Name: Yellow Springs Home, Inc. Phone: 937-767-2790Property Address: 335 West Davis StreetReal Estate Tax Map Identification: Book 1, Map _____ Parcel I.D.# E19000100040005100Present Zoning: Residence 'B' Present Use: ResidentialProposed Project: Rear accessory foundation + structure, approx. 1984 feet

Note: A plot plan showing property dimensions, existing and proposed structure dimensions and their respective location on the property, street frontage and building height must be included in this drawing. This sketch does not need to be drawn to scale but must include the outlined information.

Notes/Special Conditions: 11'x18' shed, minimum 10' from rear & 5' from side property lines, etc.Does the project include any subsurface dwelling space: Yes _____ No X

If the answer above is YES, both applicant and owner must sign before a permit will be issued:

I/We acknowledge that subsurface conditions (shallow bedrock, high water table) in Yellow Springs can cause wet or flooded basements/lower levels occasionally.

Emily Seibel
 Applicant Signature

Emily Seibel
 Owner Signature (when required)

 Approved by Village: Lana Ernst Title: Zoning Administrator

| | | |
|-------|----------------------------|-------------|
| Fees: | Zoning | <u>\$10</u> |
| | Water Tap/Meter | _____ |
| | Sewer Tap | _____ |
| | TOTAL | <u>\$10</u> |

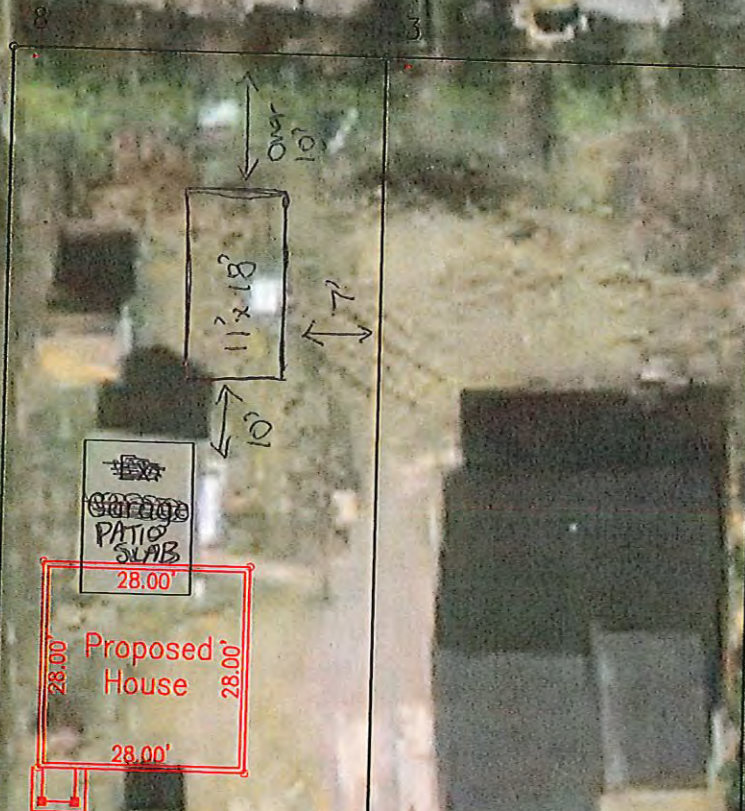
RECEIVED: PD \$10.00 CASH
 From Emily Seibel ES



Cosler Engineering, LLC

3171 Beaver Vu Drive - Suite E
Beavercreek, Ohio 45434
Ph (937)426-9913 - Fax 426-3390
mcosler@sbcglobal.net

N



Lot Line and Street Line

Existing Sidewalk

WEST DAVIS STREET
(60 FEET WIDE)

0 20 40 60 80 120



GRAPHIC SCALE IN FEET

VILLAGE OF YELLOW SPRINGS
100 DAYTON STREET
YELLOW SPRINGS, OH 45387

FOR :PERMITS
FROM:HOME, INC.

DRW:1 OP:CASH

AMT DUE : 10.00
AMT TEND: 10.00 CASH
CHANGE : .00

08-09-13 9:46 PT340086 88
84

THANK YOU

- (b) In the case of an accessory structure where an automobile entrance would be gained and would be utilized off of an existing publicly dedicated and commonly used alley, such accessory structure may be located on the rear lot line if parking space plans have been approved by the Zoning Administrator.
- (c) The height of an accessory structure shall not exceed fifteen feet, except when a dwelling unit is included in the structure, in which case the height shall not exceed twenty-four feet, and the distance of such structure from any principal buildings on the same or an adjacent lot shall be at least ten feet. (Ord. 81-12. Passed 7-6-81; Ord. 95-5. Passed 5-1-95.)
- (d) No accessory structure, with the exception of unroofed structures used for recreational purposes, shall be constructed which has a lot area coverage greater than 600 square feet or six percent, whichever is larger. (Ord. 81-11. Passed 7-6-81.)
- (e) Dwelling units are permitted in accessory structures only in Residence Districts and only when the following conditions are met:
 - (1) The established density of the Residence District where the dwelling is proposed is maintained.
 - (2) The total habitable space in the accessory structure does not exceed 750 total gross square feet.
 - (3) No new curb cuts are permitted in conjunction with the dwelling. (Ord. 94-9. Passed 6-6-94.)

1278.03 EXCEPTIONS TO AREA, YARD AND HEIGHT REQUIREMENTS.

(a) Height Limits. Height limits specified elsewhere in this Zoning Code shall not apply to:

- (1) Churches, schools, hospitals and such public buildings as libraries, museums, art galleries, fire stations or public buildings of a cultural, recreational or administrative nature.
- (2) Barns, silos or other buildings or structures on farms; church spires, belfries, cupolas and domes; monuments; transmission towers; windmills; chimneys; smokestacks; flagpoles; and radio towers, masts and aerials. Such structures shall be limited to 100 feet in height in any case.
- (3) Such structures as are needed by industry where the manufacturing process requires a greater height, provided, however, that all such structures above the heights otherwise permitted in the district shall not occupy more than twenty-five percent of the area of the lot and shall be distant not less than twenty-five feet in all parts from every lot line.

B. Shall be a minimum width of 15 feet constructed with a base substantial enough to support vehicles to 40,000 pounds gross vehicle weight (GVW).

C. Curb cuts and driveway aprons must be made of concrete per Village of Yellow Springs Public Works Department standards.

D. Residential access driveways shall be at least three feet from side property lines and construction shall ensure that drainage is sloped away from adjacent properties.

E. Utility easements for storm, sewer, water, electric and gas are to be maintained along the back and side yard property lines as it was in the original subdivision.

F. Free from overhead obstructions to a height of 13 feet 6 inches and side-to-side obstructions to a width of 8 feet from the center line of the driveway.

G. Any incline, decline, dip, hump and/or curve must take into consideration the turning radius, ground clearance, and traveling envelope of all vehicles to include emergency vehicles.

H. Addresses for properties on private drives or road access easements must be clearly marked and visible from the public street.

(2) Any driveway in excess of 1,000 feet in length shall, in addition to the conditions/standards outlined in division (a)(1) of this section, be required to also meet the following conditions:

A. Have a vehicle pull-off near the mid-point, and additional pull-offs for every 500 feet thereafter.

B. Have a turnaround at the end suitable for use by emergency vehicles.

(3) Driveway connections crossing drainage swales must conform to Greene County specifications complete with concrete headwalls as called for by Sections 816 and 817 of the Greene County Subdivision Regulations, as amended. Should the driveway require a culvert, pipe or bridge, no zoning permit will be issued until a recommendation is received from the Village of Yellow Springs Public Works Department. It is recommended that a pre-manufactured culvert, pipe or bridge be used. If a custom design is used, then it must be designed by a professional engineer and approved by the Village of Yellow Springs Public Works Department before construction.

(b) Outdoor Storage. Outdoor storage of merchandise, equipment, supplies, products or other materials shall only be permitted in those districts and under the conditions specifically authorized by this code. Storage of household items in Residential Districts is permitted in the rear yard only and if not in violation of other laws (nuisance, litter and trash).

(c) Recreational Vehicle Parking. It shall be unlawful for any person to park or cause to be parked any mobile home or recreational vehicle on any street, alley, highway, or other public place in the Village, except for the expeditious loading and unloading of the vehicle. This provision shall not prohibit the temporary occupancy for periods up to 72 hours of a recreational vehicle; provided the recreational vehicle contains sleeping accommodations, is parked on a lot in a Residential District, and is for the use of the owner of that lot or guests of the owner.

(d) Storage and Repair of Vehicles.

(1) The repair, restoration and maintenance of vehicles in any Residential District shall be conducted entirely within an enclosed building, except for those activities that can be and are completed in less than seven days. All such repair shall take place on private property and may not be conducted within the public right-of-way.

(2) It shall be unlawful for the owner, tenant or lessee of any building or lands within the Village to permit the open storage or parking of any inoperable motor vehicle, machinery or equipment, or parts thereof, outside of an enclosed garage or enclosed building, for a period of more than 48 hours. An inoperable motor vehicle for purposes of this subsection shall include motor vehicles which, by reason of dismantling, disrepair or other cause, are incapable of being propelled under their own power, or are unsafe for operation on the streets and highways of this state because of the inability to comply with the State Motor Vehicles and Traffic Code, or do not have a current license and registration, as required for operation by the State Motor Vehicles and Traffic Code.

(3) It shall be unlawful for the owner, tenant or lessee of any lot or building in a Residential District to permit the open storage or parking outside of a building of semi-truck tractors and/or semi-truck trailers, bulldozers, earth carriers, cranes or any other similar equipment or machinery, unless parked for purposes of construction being conducted on that lot.

(Ord. 2018-42. Passed 11-5-18.)

1260.04 USES.

(a) Accessory Buildings and Structures.

(1) Accessory buildings or garages shall be considered to be part of the principal building and subject to all setback requirements of the principal building, if structurally and architecturally integrated into the building or if attached by an enclosed breezeway or similar enclosed structure not greater than ten feet in length. Detached accessory buildings shall be located at least ten feet from any principal building.

(2) Accessory buildings and structures shall not be erected in any front yard.

(3) Accessory buildings and structures may be erected in a rear yard if set back at least ten feet from the rear and five feet from the side property lines.

(4) An accessory building or structure designed for and containing a vehicle entrance to be accessed from an existing publicly dedicated and commonly used alley may be located on the rear lot line, if parking space plans have been approved by the Zoning Administrator.

(5) The height of an accessory structure shall not exceed 18 feet when a hip or gable roof is used, 15 feet when a mansard or gambrel roof is used and 12 feet when a flat or shed roof is used, except when a dwelling unit is included in the structure, in which case the height shall not exceed 24 feet.

(6) Accessory structures shall not exceed 66% of the principal building's gross floor area or 800 square feet, whichever is less.

(7) An accessory building or accessory structure shall not be constructed or occupied on a lot before the principal building or use on the lot is constructed.

(8) Accessory buildings and structures in planned unit developments shall be subject to the same requirements as in the Residential Districts.

EXHIBIT C - 2013

Customized Property Map



EXHIBIT C - 2014

Customized Property Map



EXHIBIT C - 2015

Customized Property Map



EXHIBIT C - 2017

Customized Property Map



EXHIBIT C - 2018

Customized Property Map



the Zoning Administrator shall issue a zoning permit for any building, structure or premises existing on the effective date of this Zoning Code, certifying, after inspection, the extent and kind of use made of the building, structure or premises and whether such use conforms to the provisions of this Zoning Code.

(Ord. 81-11. Passed 7-6-81.)

1242.02 APPLICATION FOR ZONING PERMIT; ISSUANCE OF BUILDING PERMITS; TIME LIMITS.

(a) Prior to the beginning of construction pertaining to the erection, construction, reconstruction, moving, alteration or addition to any building or structure, a zoning permit shall be secured from the Zoning Administrator by the property owner or his or her agent.

(b) Issuance of a zoning permit shall precede the issuance of a building permit. A zoning permit shall be considered valid for purposes of obtaining a building permit for a period of six months from the date of issuance by the Zoning Administrator. If no building permit has been granted within this period, another zoning permit must be applied for prior to issuance of a building permit.

(c) Every application for a zoning permit shall be accompanied by a scale drawing in duplicate showing the actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part; the location, size and height of any building or structure to be erected or altered; off-street parking; the existing and intended use of each building or structure or part thereof; the number of families or housekeeping units the building is designed to accommodate; and, when no buildings are involved, the location of the present use and proposed use to be made of the lot and such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Code. All dimensions shown on submitted plans shall be based upon an actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started. One copy of such plans shall be returned to the owner when such plans have been approved by the Zoning Administrator, together with such zoning permit as may be granted.

(d) Building permits issued locally, or by other agencies as authorized by Yellow Springs, shall be granted with the stipulation that work permitted shall be substantially under way within one year of issuance and complete within two years of issuance. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, such permit shall expire and be revoked by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until appropriate new permits have been obtained or extensions have been granted.

(Ord. 81-11. Passed 7-6-81.)

1272.03 ZONING PERMIT APPROVAL; TIME LIMIT.

(a) If the zoning permit is approved, the Zoning Administrator shall certify a copy of the approved plans as approved and return it to the applicant, along with the approved permit. A true copy of the approved plans shall be retained by the Zoning Administrator.

(b) For the purposes of obtaining a building permit, a zoning permit shall be valid for 12 months from the date of issuance. If a building permit is not obtained within that period, the zoning permit shall lapse and a new zoning permit request and approval is required before a building permit may be issued.

(c) A building permit shall be obtained and substantial progress made within one year of issuance of the zoning permit, unless a different time period is specified elsewhere in this zoning code. If the project is not substantially complete within two years of issuance of the zoning permit, the zoning permit shall expire. The approving body for the original application (the Zoning Administrator, Planning Commission or Village Council, as applicable) may grant extensions of up to one year if the applicant can show that delays in completion of the project are due to circumstances not under control of the applicant (e.g., weather, delays in receiving materials, etc.).

(d) Any permit or license issued in conflict with this zoning code shall be null and void.

(Ord. 2013-19. Passed 9-16-13.)

EXHIBIT E



100 Dayton Street
Yellow Springs, OH 45387

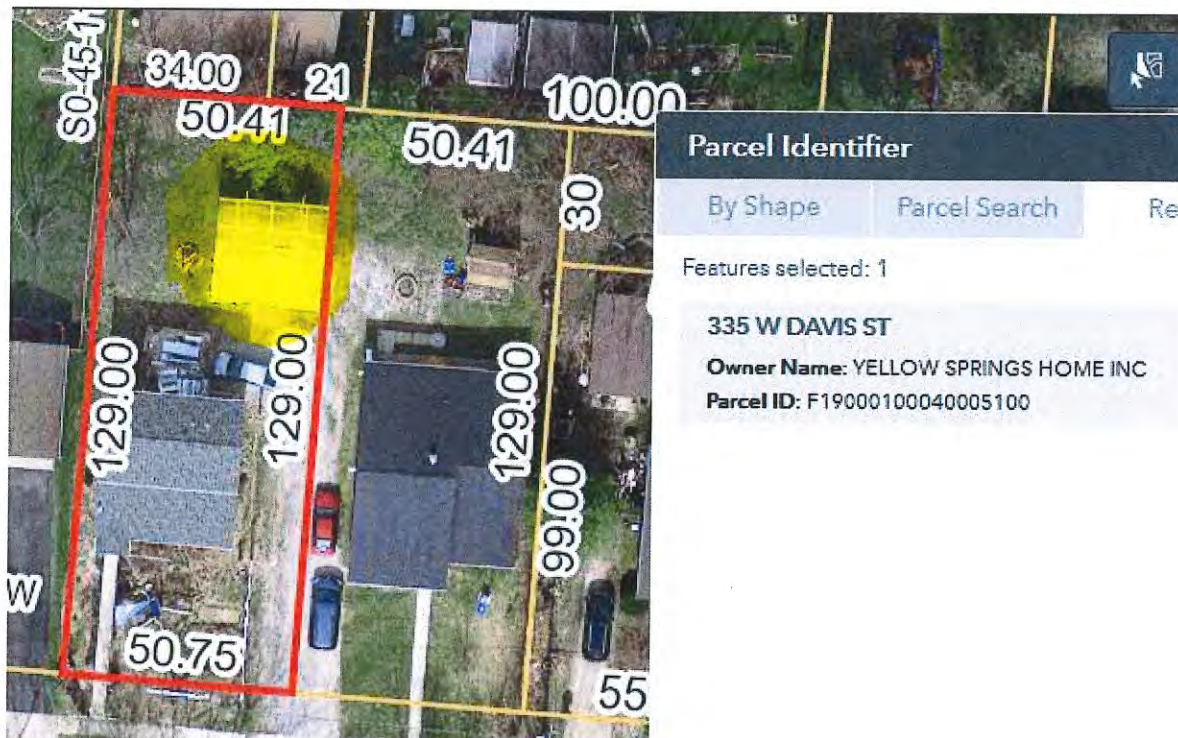
September 25th, 2019

Brett Henderson
335 W Davis St
Yellow Springs, OH 45387

RE: Parcel ID # F19000100040005100 – 335 W Davis St – Yellow Springs Home, Inc.

Mr. Henderson:

This is regarding the accessory structure in the rear yard of your property - 335 W. Davis Street. Under section 1248.02 Definitions, ***Building envelope***; *The maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements* is the basis upon which the minimum setback for any structure is determined. In zoning district R-B, there is a minimum side yard setback requirement of five (5) feet. We received a permit in 2013, that included a drawing indicating that this structure would be built 7 feet back from the side property line. However, based on aerial information from Greene County GIS the shed is in violation of this requirement as it is directly abutting the property line.



(b) All structures and their placement on a lot shall conform to the minimum dimensional requirements listed in [Table 1248.03a](#).

Table 1248.03a Dimensional Requirements: Residential Districts

| Zoning District | Maximum Building Height (Ft./stories) | Minimum Yard Setbacks (Ft.) | | | | Max. Lot Coverage (%) |
|-----------------|---------------------------------------|-----------------------------|-------|-------|------|-----------------------|
| | | Front | Side | | Rear | |
| | | | Total | Least | | |
| R-B | 35/2.5 | 20 | 15 | 5 | 20 | 40 |

According to the Village's zoning code, you have thirty (30) days to bring the property into compliance with the ordinance. If you have not complied after this date, the matter will be referred to the Municipal Prosecutor. Any owner, person or entity that is found to be in violation or assists in the violation of this zoning code shall, for each violation or noncompliance, be guilty of a fourth degree misdemeanor and be subject to a fine on one hundred dollars (\$100.00). Each day during which a violation occurs shall be a separate offense.

Josue Salmeron
Village Manager

cc: Yellow Springs Home, Inc.

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | | <p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery 7/27/19</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> | |
| <p>1. Article Addressed to:</p> <p>Brett Henderson 335 W Davis St Yellow Springs, OH 45387</p> | | | |
| <p>2. Article Number (Transfer from service label)</p> <p>7015 3430 0000 6395 2291</p> | | <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> | |



9590 9402 3827 8032 4322 48

Denise Swinger, Zoning Manager

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Friday, October 11, 2019 5:01 PM
To: Christopher Bongorno; Josue Salmeron, Village Manager
Cc: Kineta Sanford; Chris Hall; Emily Seibel; Denise Swinger, Zoning Manager; Brian Housh, Council President; Johnnie Burns, Director of Public Works
Subject: Re: Re. 9/21 Notice of Zoning Violations, 335 W. Davis St.
Attachments: 6' setback.jpg; back doors.jpg; Moved + one moved.jpg; Moved Shed 20'.jpg; Tracks to move valustakrak on casters.jpg; Birdseye10_11_19.jpg; Finished stone.jpg

Hello All,

Reporting in with a plan for the remaining issues with 335 W Davis.

The attached photos illustrate plan to fill in the front area where posts are with #4 stone. The posts will be cut to below 6" below grade. I had the Miller Pipeline crew, along with nudges from other Village officials, try and knock over the posts in right of way. They were able to loosen one, but the other 2 snapped off at the base, leaving 2'-4' still above ground. I was hoping to saw these off about 6" below grade.

If okay with this plan, I can have stone poured over the existing fill in front yard with 2 weeks. This will be a nice stone accent, parking pad, and water drainage solution.

Also attached is diagram showing plan for moving shed 20' to the West, with plans for additional structure that is setback 6' from the east property line (both the foundation and the roof).

Thank you for your consideration of this plan.

Brett

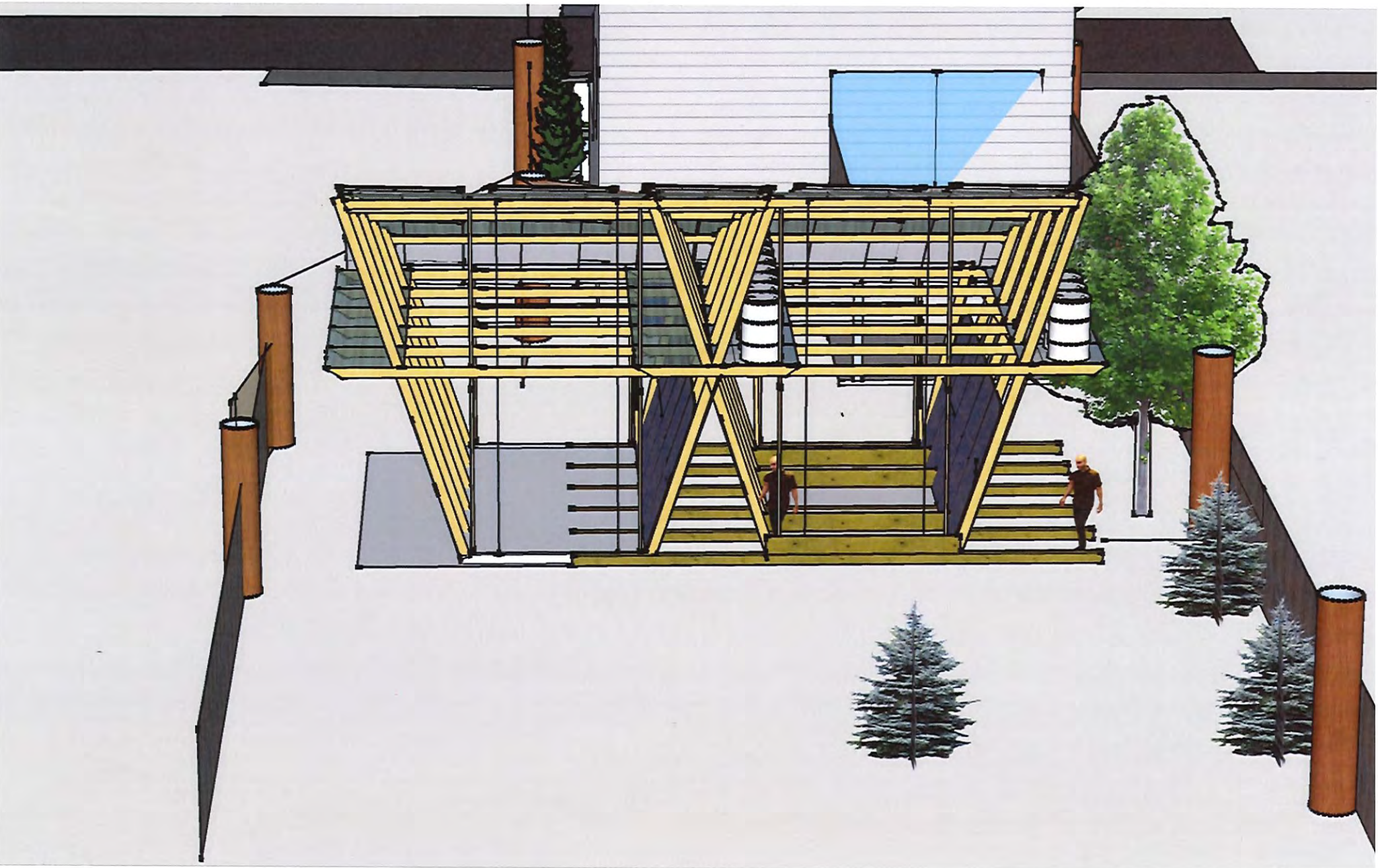


From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Monday, September 23, 2019 8:44 AM
To: Christopher Bongorno <cbongorno@gmail.com>; Josue Salmeron, Village Manager <JSalmeron@vil.yellowsprings.oh.us>
Cc: Kineta Sanford <kinetas.yshome@gmail.com>; Chris Hall <chrish.homeinc@gmail.com>; Emily Seibel <emily@yshome.org>; Denise Swinger, Zoning Manager <DSwinger@vil.yellowsprings.oh.us>; Brian Housh, Council President <BHoush@vil.yellowsprings.oh.us>; Johnnie Burns, Director of Public Works <JBurns@vil.yellowsprings.oh.us>
Subject: Re: Re. 9/21 Notice of Zoning Violations, 335 W. Davis St.

Thank you Josue and Chris for your time Friday morning to discuss the issues Village has with my property in greater detail. I also appreciate the the grace period to bring the property into compliance.

Denise,

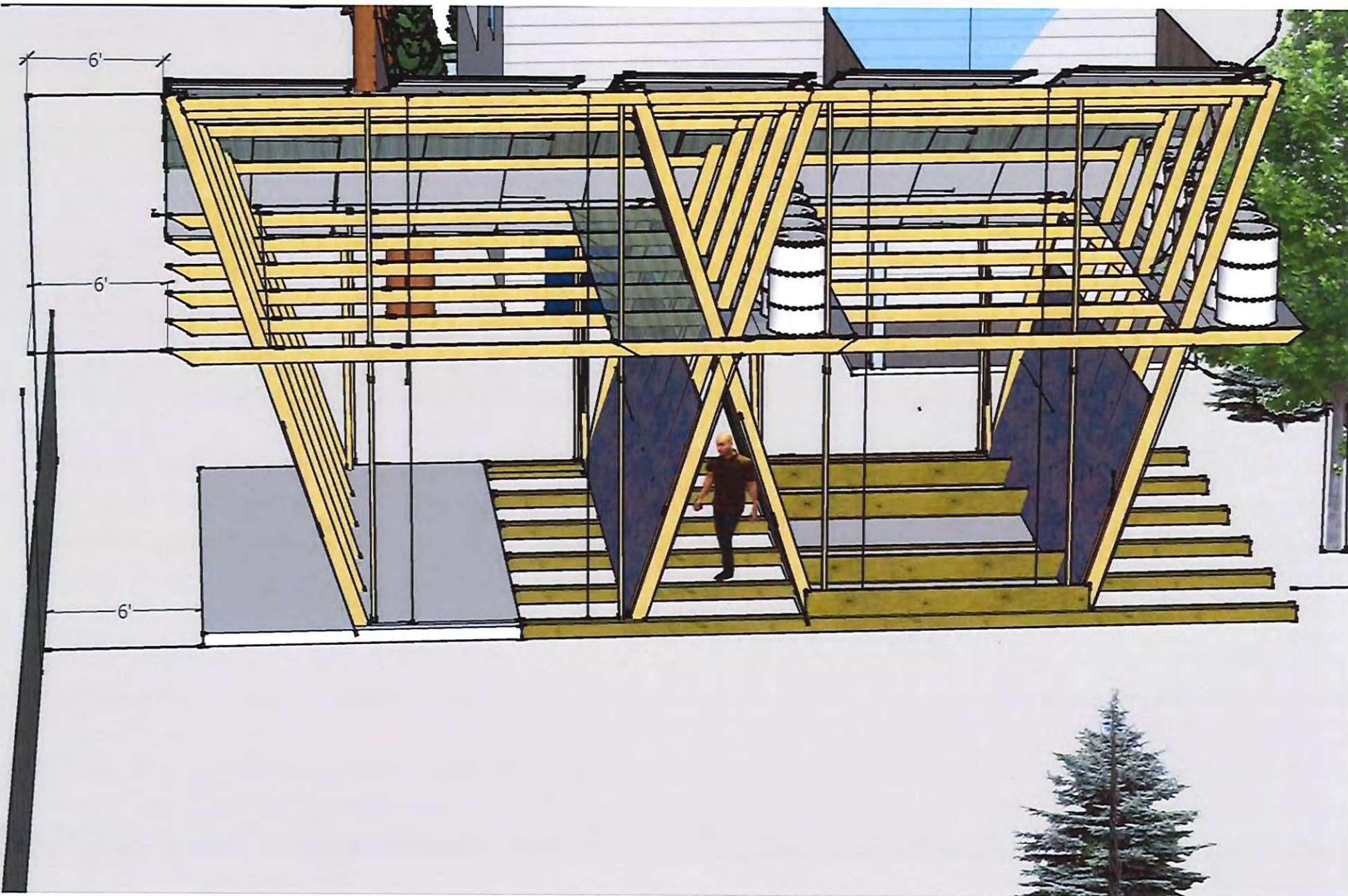
I am hoping you can answer this question regarding a front yard fence. Would the fence need to be out of the Village right of way? I ask because that is just one of the reasons I installed the posts in front yard.

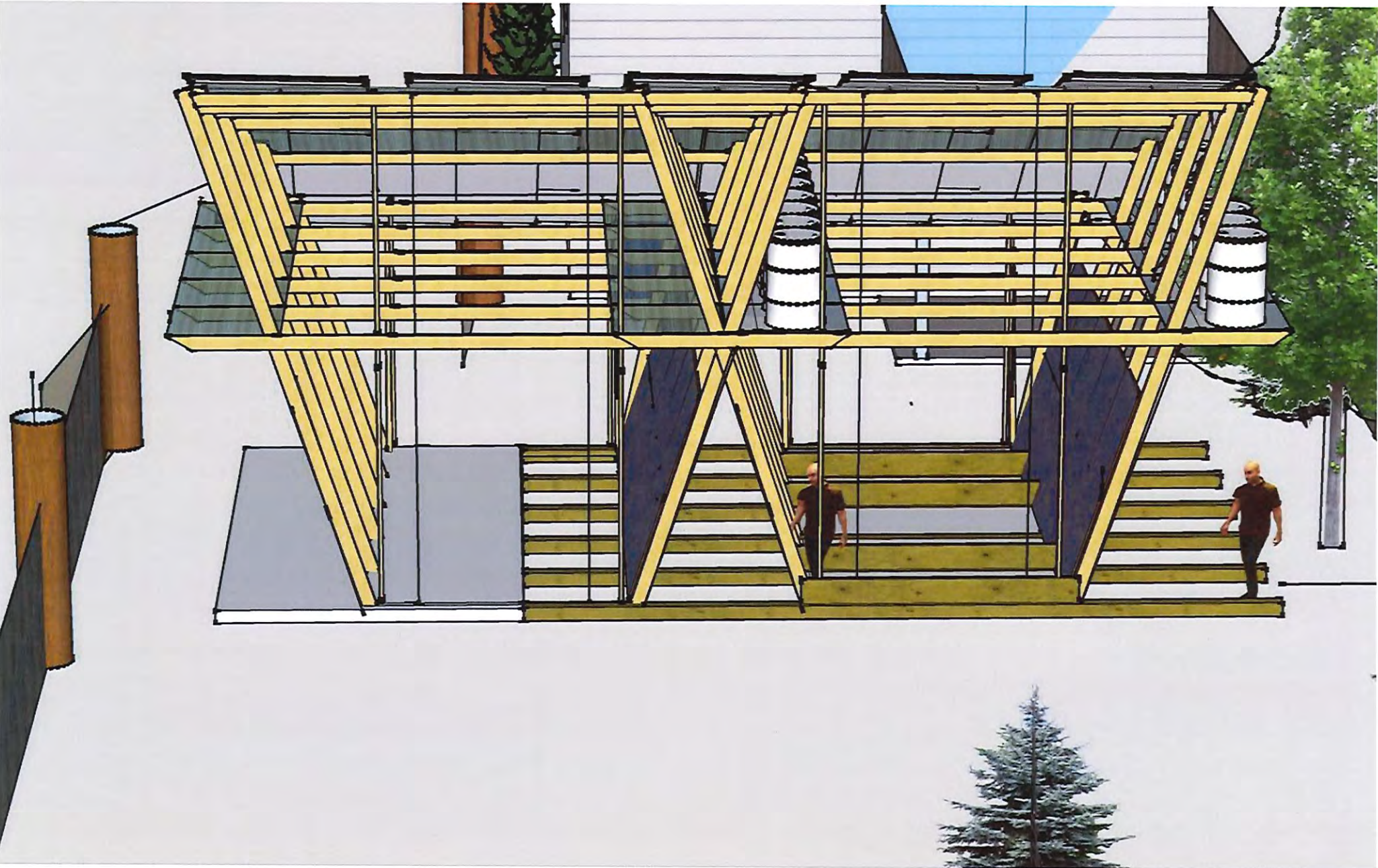


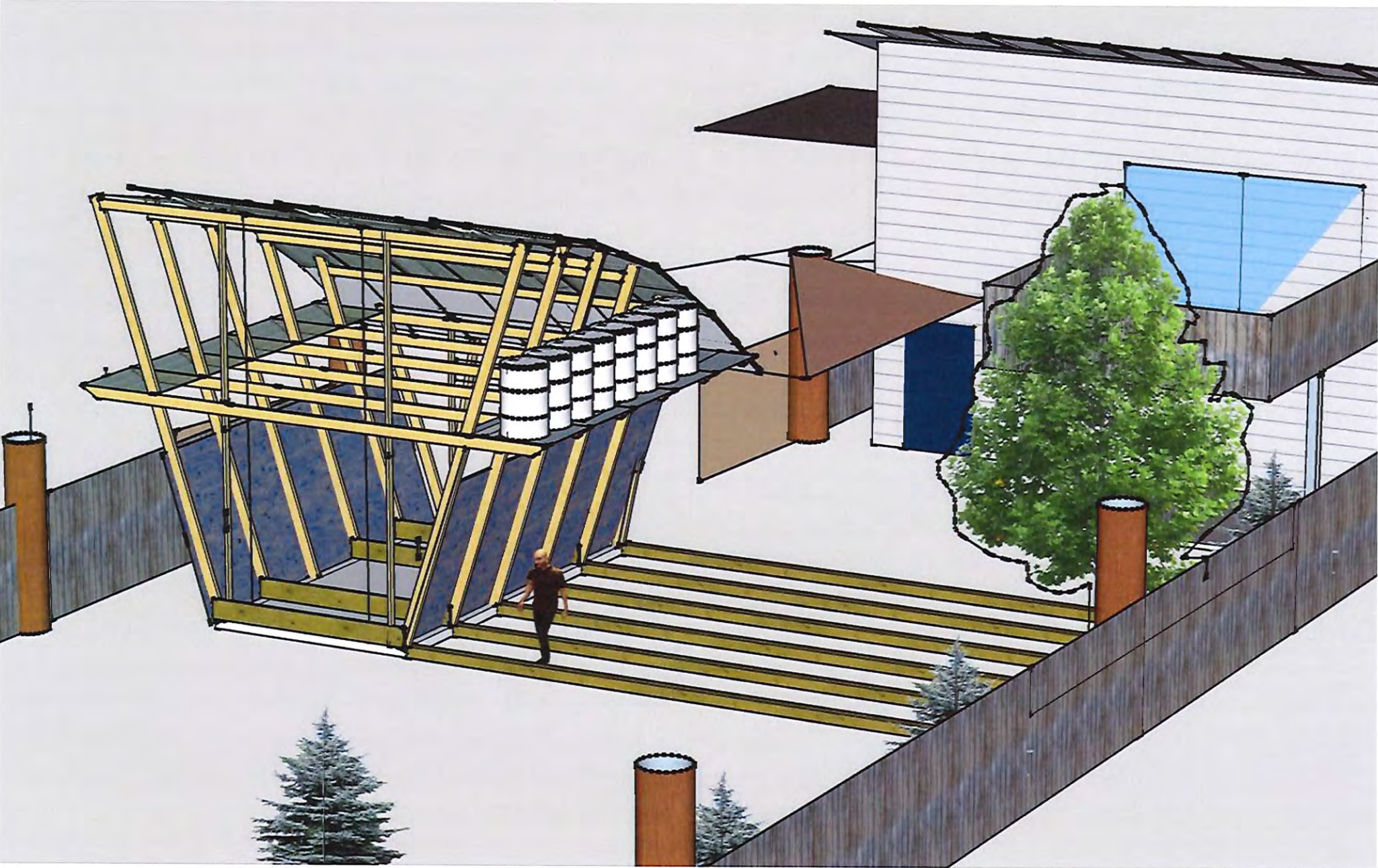
6'

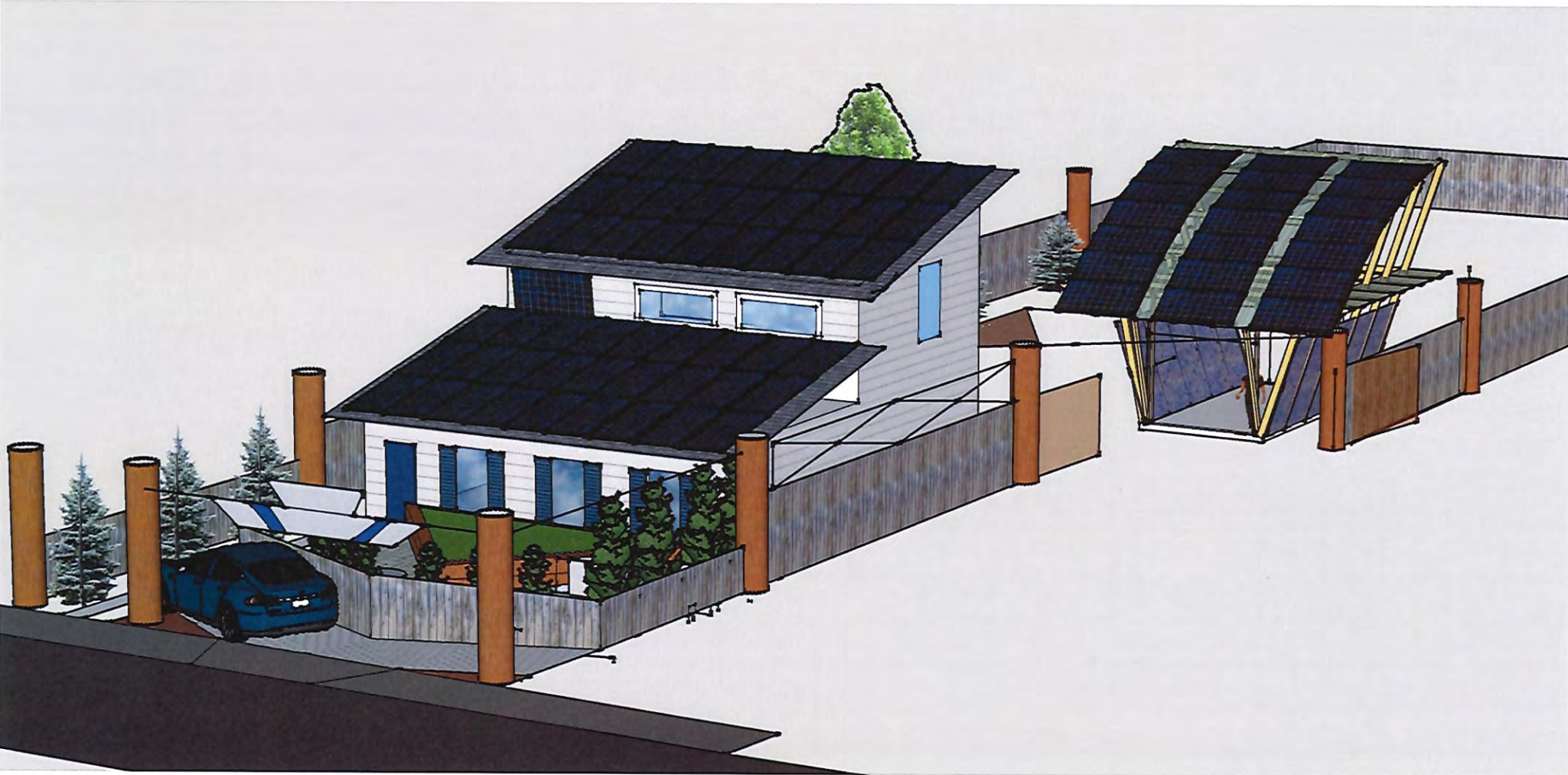
6'

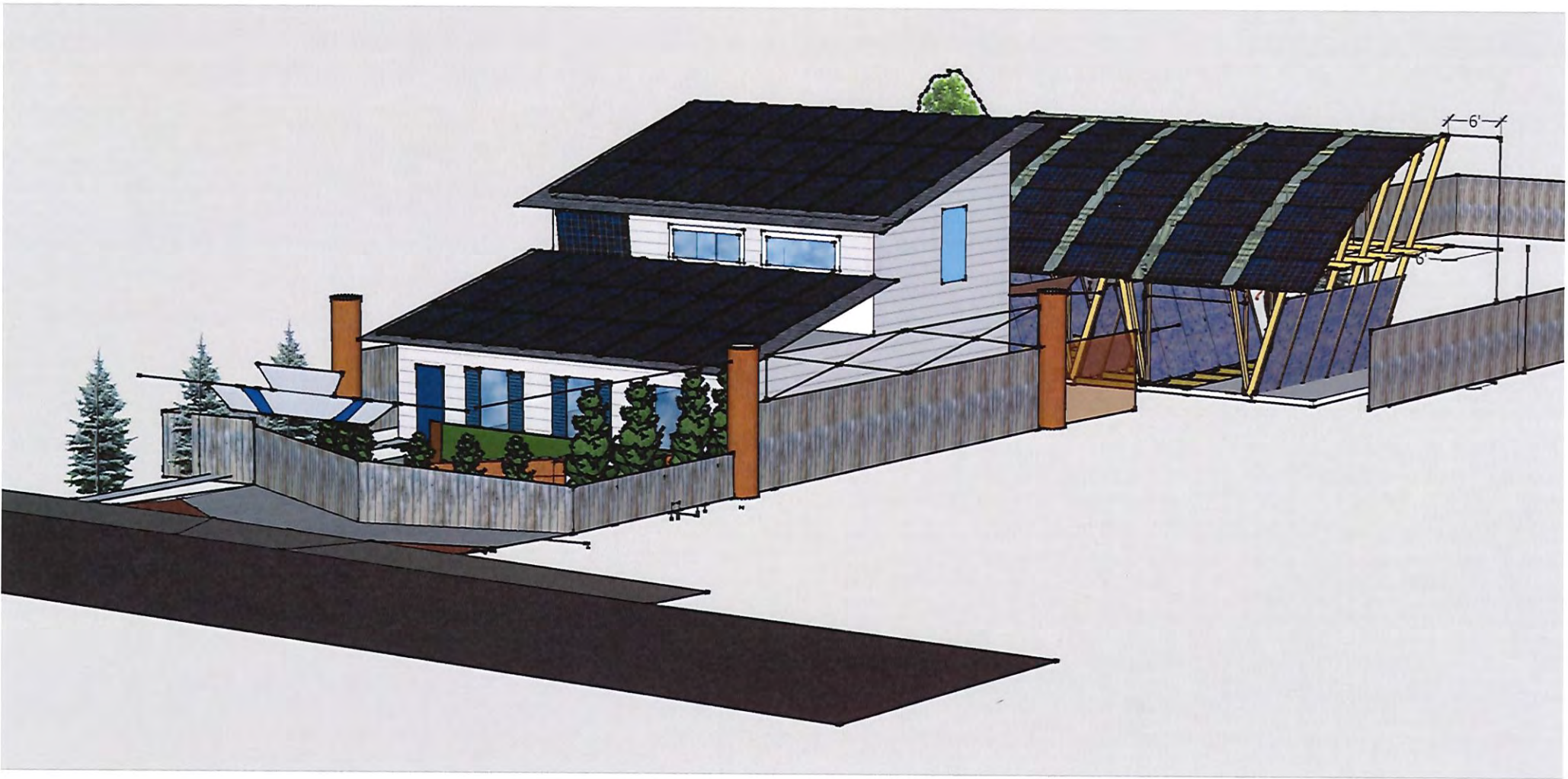
6'











From: Emily Seibel [<mailto:emily@yshome.org>]

EXHIBIT G

Sent: Monday, October 14, 2019 2:23 PM

To: Brett Henderson <brett@yellowspringssolar.com>

Cc: Josue Salmeron, Village Manager <JSalmeron@vil.yellowsprings.oh.us>; Chris Hall <chrish.homeinc@gmail.com>; Denise Swinger, Zoning Manager <DSwinger@vil.yellowsprings.oh.us>; Johnnie Burns, Director of Public Works <JBurns@vil.yellowsprings.oh.us>; Isis Henderson <isisazarene@gmail.com>

Subject: Re: Re: 9/21 Notice of Zoning Violations, 335 W. Davis St.

Hi Brett,

We appreciate the time and care you put into the proposed plan for moving the rear shed. We also want to thank you for your cooperation in working with the Village of Yellow Springs to cure the zoning violations as presented in the August letter. Unfortunately, based on the inspection report prepared recently for a potential resale at your request, our inspector found a number of structural and safety issues, outlined in a letter we sent to you and Isis on October 4.

Due to safety concerns, we have to enforce the ground lease—the shed constitutes a violation of the ground lease based on Section 7.3, *Construction and Alteration*.

If you would like to pursue gaining approval for moving and expanding upon the rear shed(s) as suggested in your previous email, please refer to the steps outlined in section 7.3, *Construction and Alteration*, of your ground lease. These steps must be followed in order to request authorization for the accessory structure(s). The board has the authority to approve the request. Until such time as that happens, the shed constitutes a standing violation of the ground lease.

Based on the ground lease violation notice, you have 60 days from October 4 to remove the shed. Failure to do so would result in ground lease default as outlined in section 11, *Default*, of your ground lease. Additionally, the Village has given you a 30-day window from September 26 to either remove or relocate the shed, citing a setback violation.

It should be noted that the appraised value will increase should the shed be removed—if you remove the shed, we will work with the appraiser to adjust the appraised value at no charge to you.

Please let me know if you would like to explore options for assistance with shed removal and/or seeking board approval. We again acknowledge the progress you've made to date and are here to support you in bringing the property into both zoning and ground lease compliance. I invite any questions you may have.

Thank you,
Emily

--
Emily Seibel
Executive Director
Yellow Springs Home, Inc.
P.O. Box 503
Yellow Springs, Ohio 45387
Phone/Fax: 937-767-2790
www.yshome.org

Affordable Homes for Generations

DISCLAIMER:

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, and disclosure or distribution is

EXHIBIT H

Denise Swinger, Zoning Manager

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Thursday, October 17, 2019 5:05 PM
To: Denise Swinger, Zoning Manager; emily@yshome.org; Chris Hall
Cc: Josue Salmeron, Village Manager
Subject: Zoning Application for Relocation of Shed at 335 W Davis
Attachments: New Location Setbacks.jpg; Please_DocuSign_zoning_permit_shed_move.pdf; Front.jpg; Rear view.jpg; Side view.jpg

Hi Denise,

I would like to submit the attached zoning application and drawings for the relocation of my shed at 335 W Davis St. I have included dimensions for shed and the new setbacks from the west property line.

Thank you, and please let me know what additional documents I may need to submit.

I recognize that I still need to bring the structure up to code per structural engineer's specs, but I would like to get the zoning at least approved, so that I don't invest money in structural to then be asked to remove because of zoning. If we could make zoning permit conditional on satisfying structural P.E.'s specs, that would be great.

Brett





Village of Yellow Springs
100 Dayton Street, 45387
PHONE: (937) 767-1702
FAX: (937) 767-3720
Permit Application

Permit #: _____

As required by Section 1272 of the Village Zoning Code: A zoning permit shall be required and obtained prior to any change of use of structure or of land. The following information is necessary to review and issue such permit. A Building Permit may also be required from Greene County Dept. of Building Regulations. Please contact them at (937) 562-7420 for verification.

TYPE: (Check all that apply)

☐ SINGLE-FAMILY
☐ MULTI-FAMILY
☒ ACCESSORY STRUCTURE
☐ OTHER (Please Specify): _____

- Property Address and/or Parcel ID: 335 W Davis St
- Property Owner: Brett Henderson
Address: 335 W Davis St. Yellow Springs, OH 45387 Phone: 937-206-4632
- Contractor: Yellow Springs Solar
Phone: 937-206-4632
- Does the project include any subsurface dwelling space: Yes ☐ No ☒
If the answer above is YES, both applicant and owner must sign before a permit will be issued:
- TOTAL ESTIMATED COST OF PROJECT (LABOR AND MATERIALS): \$500
- The owner of this property and undersigned do hereby certify that the information and statements given on this application, drawings, and specifications are to the best of their knowledge, true and correct and I/we acknowledge that subsurface conditions (shallow bedrock, high water table) in Yellow Springs can cause wet or flooded basements/lower levels occasionally.

DocuSigned by:

F8AA76F9D8DB476...

Signature of Applicant

Address: 335 W Davis St. Yellow Springs, OH 45387

E-mail: brett@yellowspringsolar.com

Title: Homeowner

Date: 10/17/19

Note: A plot plan showing property dimensions, existing and proposed structure dimensions and their respective location on the property, street frontage and building height must be included in this drawing. This sketch does not need to be drawn to scale but must include the outlined information. Use Attachment A for utility review.

DO NOT WRITE BELOW THIS LINE [OFFICE USE]

APPROVAL AND FEES

- FEES:
Zoning \$ _____
Water \$ _____
Sewer \$ _____
Other \$ _____
Total \$ _____

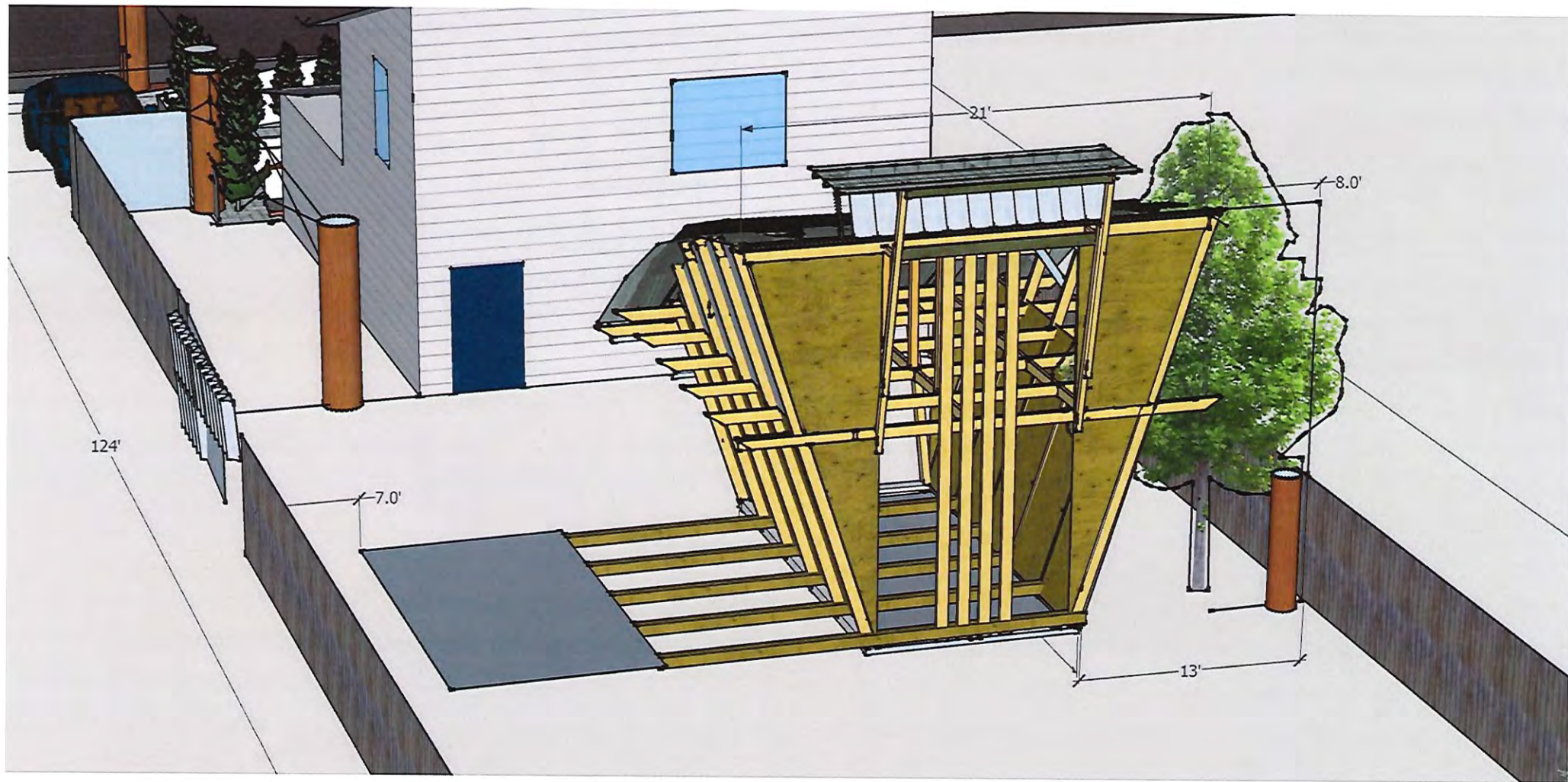
Fee Received \$ _____

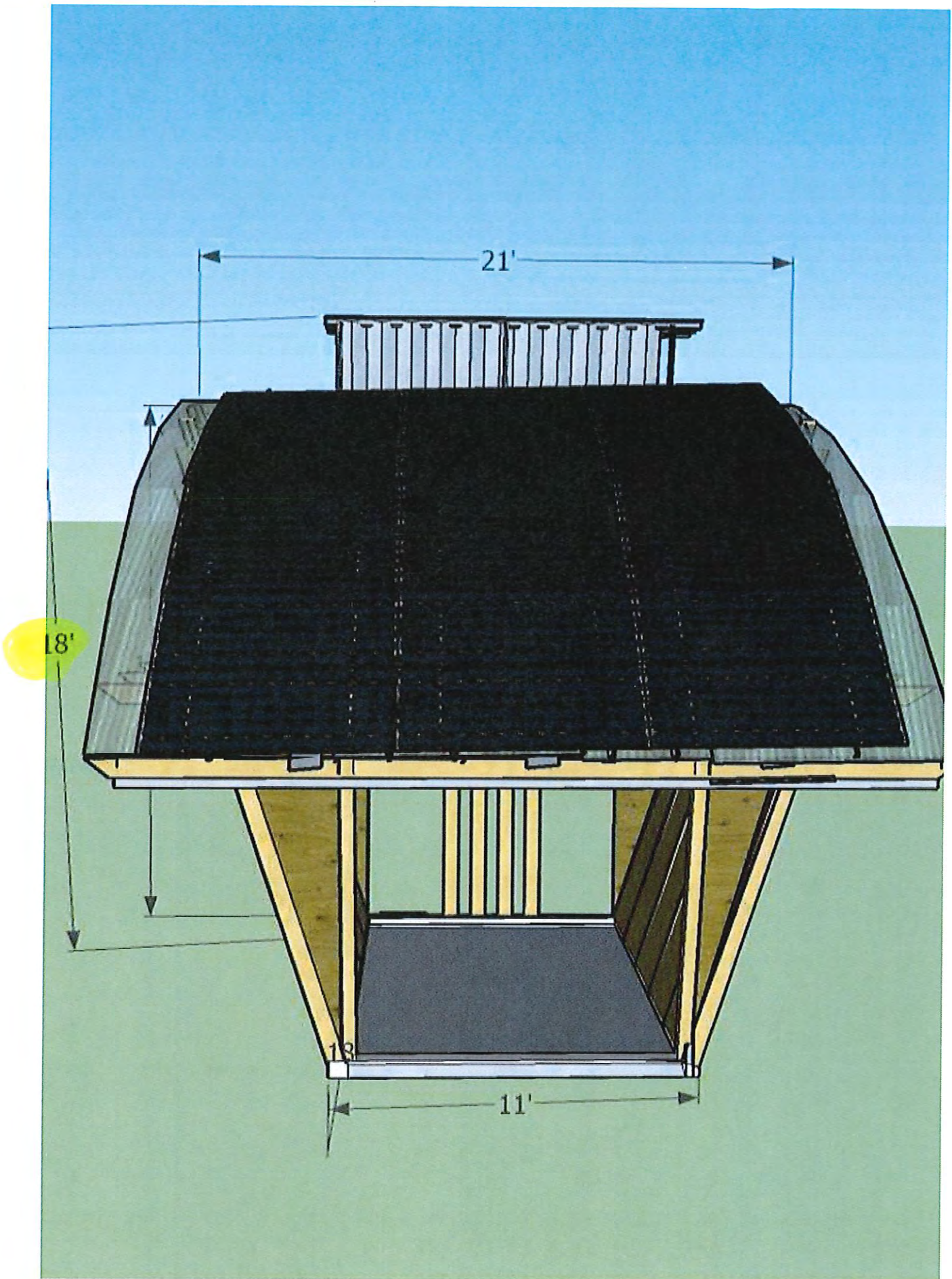
2. ZONE: _____

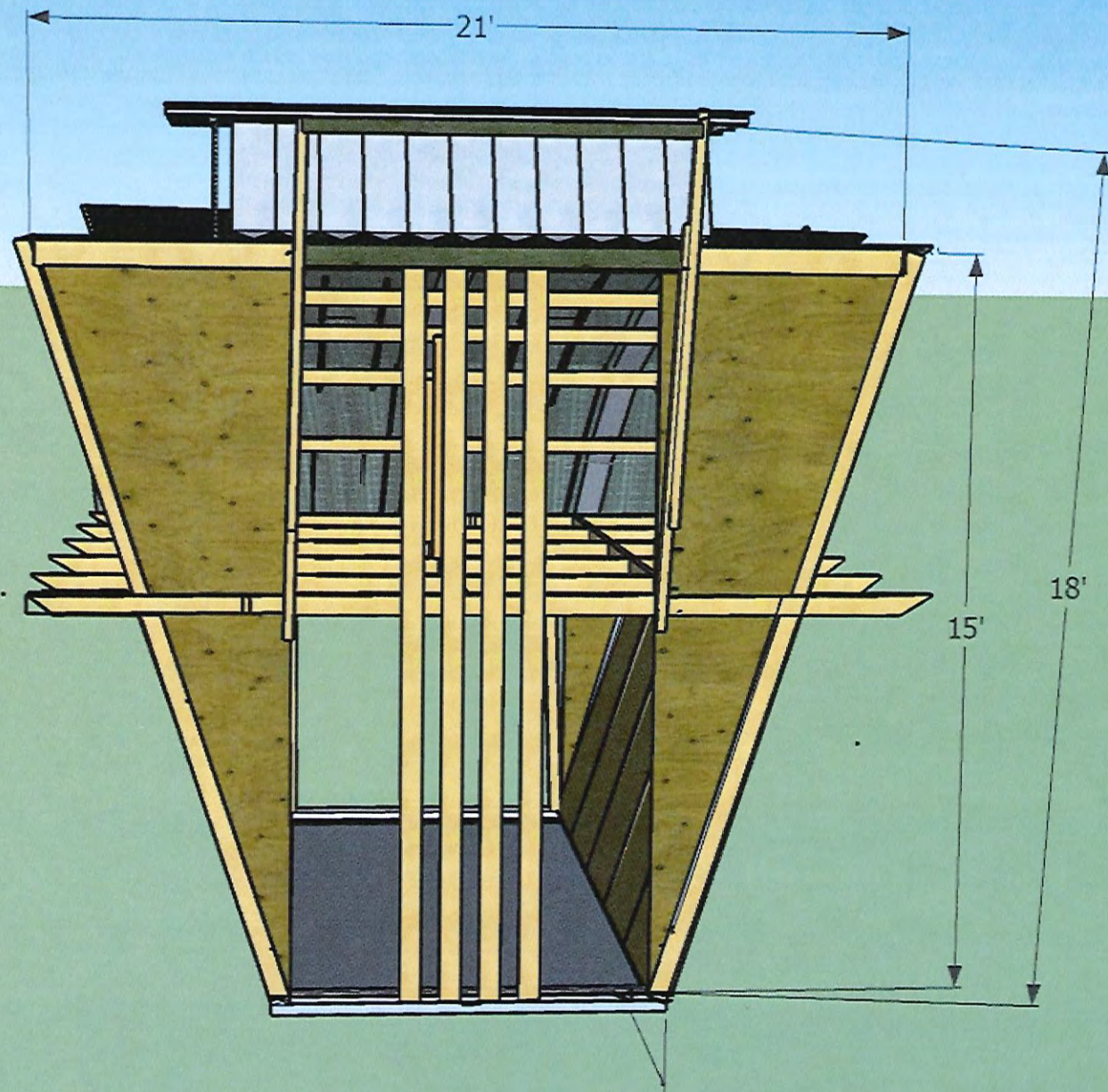
3. CONDITIONS OF APPROVAL

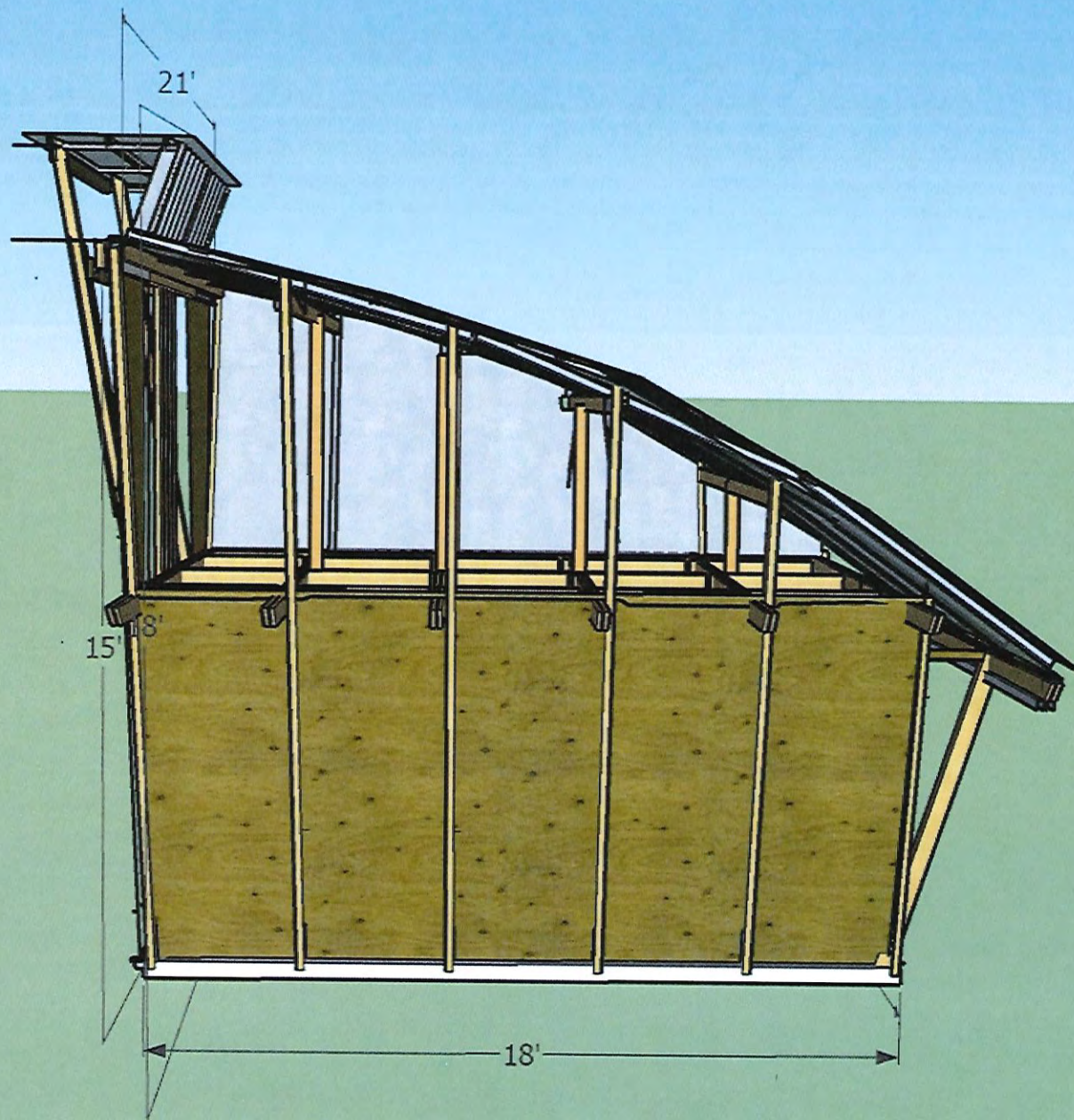
ZONING OFFICIAL NAME & TITLE DATE

Permit denied - Height violation









From: Denise Swinger, Zoning Manager <DSwinger@vil.yellowsprings.oh.us>

EXHIBIT I

Sent: Tuesday, October 22, 2019 12:25 PM

To: Brett Henderson <brett@yellowspringssolar.com>; emily@yshome.org <emily@yshome.org>; Chris Hall <chrish.homeinc@gmail.com>; Isis H. <isisazarene@gmail.com>

Cc: Josue Salmeron, Village Manager <JSalmeron@vil.yellowsprings.oh.us>

Subject: RE: Zoning Application for Relocation of Shed at 335 W Davis

Brett,

I received your zoning permit for the existing accessory structure you wish to relocate on your property.

The original permit issued in 2013 to Emily Seibel of YS Home, Inc. was for an 11' X 18' shed. It is my understanding that you have made significant modifications to this structure since, although the footprint remains 11' X 18' or 198 sq. ft. These modifications caused the structure's side yard setback to change from a 7 foot to a zero setback. Our zoning code requires that we consider the building envelope which is the maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements. From your diagram, you show that your structure, which measures 21' X 18' at the top, will be setback from the property line 8 feet if moved to its new location in your back yard. If this is the case, your shed's new location would be in compliance with the zoning code's setback requirement of five feet from the side yard lot line and ten feet from the rear yard lot line.

Although the accessory structure meets the size and setback requirements, I can't approve the permit due to the height of the structure. The zoning code states, "*The height of an accessory structure shall not exceed 18 feet when a hip or gable roof is used, 15 feet when a mansard or gambrel roof is used and 12 feet when a flat or shed roof is used.*" This roof design appears to be most like a shed roof. You will need to follow the current zoning requirements and either reduce the height to 12 feet or modify the design to a hip or gable roof in order to keep the 18 foot height.

Another concern is with the shed's structural integrity. After a storm producing high winds caused neighbors to call our office regarding the integrity of your accessory structure, we asked that you have a structural engineer evaluate it. We received a copy of a letter dated July 12, 2018 in which your structural engineer recommended that you add framing supports to meet the ORC requirements for snow, solar panel and wind loads. You indicated that you would add those framing supports to the structure. Did this happen?

Thanks!

Denise

EXHIBIT J

Denise Swinger, Zoning Manager

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Wednesday, October 23, 2019 1:36 PM
To: Denise Swinger, Zoning Manager; emily@yshome.org; Chris Hall; Isis H.
Cc: Josue Salmeron, Village Manager
Subject: Re: Zoning Application for Relocation of Shed at 335 W Davis

Hi Denise,

Thank you for your reply. I would like to submit the application as a solar project, and seek a conditional use zoning variance to use this structure for my solar racking system, as it was designed. You sent me an email in 2018 telling me my structure was over the limit at that time, which was 18'. I provided the accurate dimension of 17' and you said it was fine then -based on the standard then. So you have since changed the zoning code so that my shed is now in violation? This is not right to keep attacking me over this. I have yet to put in the reinforcements, because of exactly this reason...you keep changing the standards, and figuring out new ways to try and get me to take down the structure. One of the reasons I was seeking this permit, was to get the once and for all I could keep it, if I did add the extra reinforcements.

How do I submit for a zoning variance to use this structure as a conditional use for the installation of solar panels?

Thank you,

Brett





Case #: B2-19-03 [OFFICE USE]
 Zoning District: R-B

Village of Yellow Springs
 100 Dayton Street, 45387
 PHONE: (937) 767-1702
 FAX: (937) 767-3720
Board of Zoning Appeals
Application

TYPE OF REQUEST: (Check one)

☒ X VARIANCE

☐ ADMINISTRATIVE APPEAL

OTHER (Please Specify): _____

1. Property Address and/or Parcel ID: 335 W Davis St., Yellow Springs, OH 45387

2. Property Owner: Brett Henderson and Home Inc.

Address:

Phone: 937-206-4632

3. Description of request: Requesting that solar structure built to 2013 zoning code be grandfathered in, or a conditional use variance granted for structure to function as the bifacial solar racking system it was engineered to be, as well as a greenhouse, and workshop/storage shed/tiny house. The shed was built using all upcycled materials, except for the clear multi-wall polycarbonate greenhouse panels for roof. This material was also selected for the purpose of circulating water through its channels, to cool solar panels and pre-heat water. This material also allows light to pass into the space below for growing plants, and reflecting back up to the backside of solar panels for greater efficiency than normal system. The walls of structure are angled to allow for greatest reflectivity. This reflective performance feature of walls allow for that expense to be accounted for in the tax credit discount - which is limited to those costs that are vital to the performance of solar. The height of main structure is 12'10" - 10" over the 12' limit I was recently made aware of. This limit did not exist when I built the structure and when the pad was permitted for me to erect a shed. This pad was poured during the construction of the house because the existing storage structure had to be torn down because of a zoning issue. That was a huge loss to the property that we intended to purchase and so a pad was poured and permit granted for me to be able to replace it with one that I built. It is unfortunate that the Village has been repeatedly trying to make me take this one down too. The height of this structure was made to max out the capability of my upcycled, hand hewn oak barn beams from the 1800's, so that my solar panels would get up out of the shade from my house in front and the trees to West. The shed is situated as close to property line as possible to avoid shade from trees and also for dual use of utility posts I installed for construction process, as fence posts. The height is also important to allow for a garden in the upper portion, while allowing for storage and parking in lower section. I also added a 5' structure to support a reflector panel that reflects more light onto the solar and greenhouse chamber. I am willing to take this portion down if a variance can be approved for me to keep the main structure.

In 2018, Village zoning thought I was in height violation based on an error on one of my drawings stating that structure was over 20 feet tall. At the time, the limit was 18 feet in height. I went out and measured to get actual, and it was under 18 feet, and so I was able to keep shed at that time. I would like to also request public records from the Zoning admin's email - verifying that I complied with the existing height standard around 7/16/2018. Apparently the Village changed its zoning code or the interpretation of it, because of this, and is now coming after me again saying I am over the height allowance. Zoning appears to have changed its interpretation of setback requirements too, so that it is no longer based on foundation/footprint, but on the roof overhang too.

This structure is currently serving as my company's storage facility for materials needed to construct 32 solar projects over the next 2 months. The structure, in addition to functioning as the support for my own personal solar, is also supporting the installation of 32 other (and growing) solar projects. It seems that the Village Zoning enforcement is at odds with the climate action priorities the Village has publicly stated it cares about. All of my efforts on my property have been with the intention of combating climate change, while also producing the most functionality possible. We need to come up with alternatives to cutting grass as the norm. We need to figure out ways to manage the water we will be inundated with in the near future. We need to implement ways to reflect light back up to space. We need to figure out ways to upcycle material. We need to figure out ways to produce our own clean energy and food. These were all the priorities that I have upheld in the management of my property...and at the risk of public scorn. You all most likely support Greta Thunberg's calls to radical action and the treatment of climate change as the emergency that it is, and yet you persecute those who take it upon themselves to actually innovate and implement radical actions, at the risk of being judged and persecuted based on an old model of zoning values built on keeping property values up in terms of dollars - instead of overall planetary value based on health and sustainability. What good are your property values if the properties and you are all underwater in 10 years?

The owner of this property and undersigned do hereby certify that the information and statements given on this application, drawings, and specifications are to the best of their knowledge, true and correct.

Signature of Applicant:

Title:

Address:

Date:

E-mail:

DO NOT WRITE BELOW THIS LINE [OFFICE USE]

Zoning Classification: R-B

Fee: \$100 *pd.*
11/4/19

Hearing Date:

Request Denied or Approved:

Zoning Official Name & Title: _____

EXHIBIT L



100 Dayton Street
Yellow Springs, OH 45387

November 8, 2019

Brett Henderson
335 W. Davis Street
Yellow Springs, OH 45387

RE: Parcel ID#F19000100040005100

Mr. Henderson:

You currently have three zoning violations on your property that must be addressed. The first two zoning violations and how to bring your shed into compliance items we have discussed. For the purpose of clarity, I will summarize the status of your case.

The first zoning violation was noticed in a letter to you from the Village Manager dated September 25, 2019 citing section 1248.02 that requires a minimum setback for structures in the R-B District of five feet from the side yard lot line. To further clarify, in section 1260.04(a)(3) the zoning code defines accessory buildings and structures may be erected in a rear yard if the setback is at least ten feet from the rear and five feet from the side. Because the shed's building footprint complies with the original permit for a seven-foot setback, the zoning violation determination was based on the Zoning Code's definition of a building envelope under 1284.02 - ***Building envelope; The maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements.*** The accessory structure currently encroaches the east side yard property line with a zero setback on the property line.

The second violation pertains to the roof height of the structure, which exceeds the maximum height allowed by the Yellow Springs Zoning Code under section 1260.04(a)(5) "*The height of an accessory structure shall not exceed 18 feet when a hip or gable roof is used, 15 feet when a mansard or gambrel roof is used and 12 feet when a flat or shed roof is used...*"

On October 17, 2019 you submitted plans to move the accessory structure to the west side yard property line and were required by Yellow Springs Home, Inc. to get a new permit issued. Because you intend to relocate this structure, section 1272.01(a)(1) in the Village's zoning code also requires the issuance of a new permit:

1272.01 (a) A zoning permit shall be required and shall be obtained from the Zoning Administrator by the property owner or his or her agent:

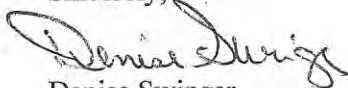
(1) Prior to the construction, occupancy or use of any proposed structure or addition to an existing structure, or prerequisite to the continued occupancy of a newly altered, reconstructed, enlarged or relocated structure;

Staff denied the permit under 1260.04(a) (5) as the current design of your accessory structure's roof is a shed roof which cannot be higher than 12 feet. You indicated the height of your roof at 17 feet.

You have applied for a variance to the accessory structure's height. In the plan submitted to move the accessory structure to the west side yard property line, you made a commitment to correct the setback violation indicating the structure would meet the five foot required setback. Since you are seeking a variance on the shed roof height, and you have committed to moving the shed to meet the proper set back requirement, a zoning permit can only be issued if the Board of Zoning Appeals rules favorably on your variance request to the structure's height.

There is now a third violation (see photo attached). You recently added solar panels to this structure. Solar panels are considered a structure under 1284.08 Definitions: Structure; and a separate permit for their use is required. The report from your engineer indicated the shed is not structurally sound for solar and wind loads. The solar panels need to be removed until such time that proof has been provided by your structural engineer that the shed is structurally sound and can support the weight of the solar panels you intend to install on the roof shed. This evidence, along with a zoning permit for use of the solar panels will be required. To be clear, the solar panels must be removed because they were installed without a permit and the structure supporting the solar panels is not structurally sound. Section 1272.05(b)(2) B gives 30 days to bring the property into compliance. The solar panels must be removed within 30 days or you will be cited to Mayor's Court for the zoning violation.

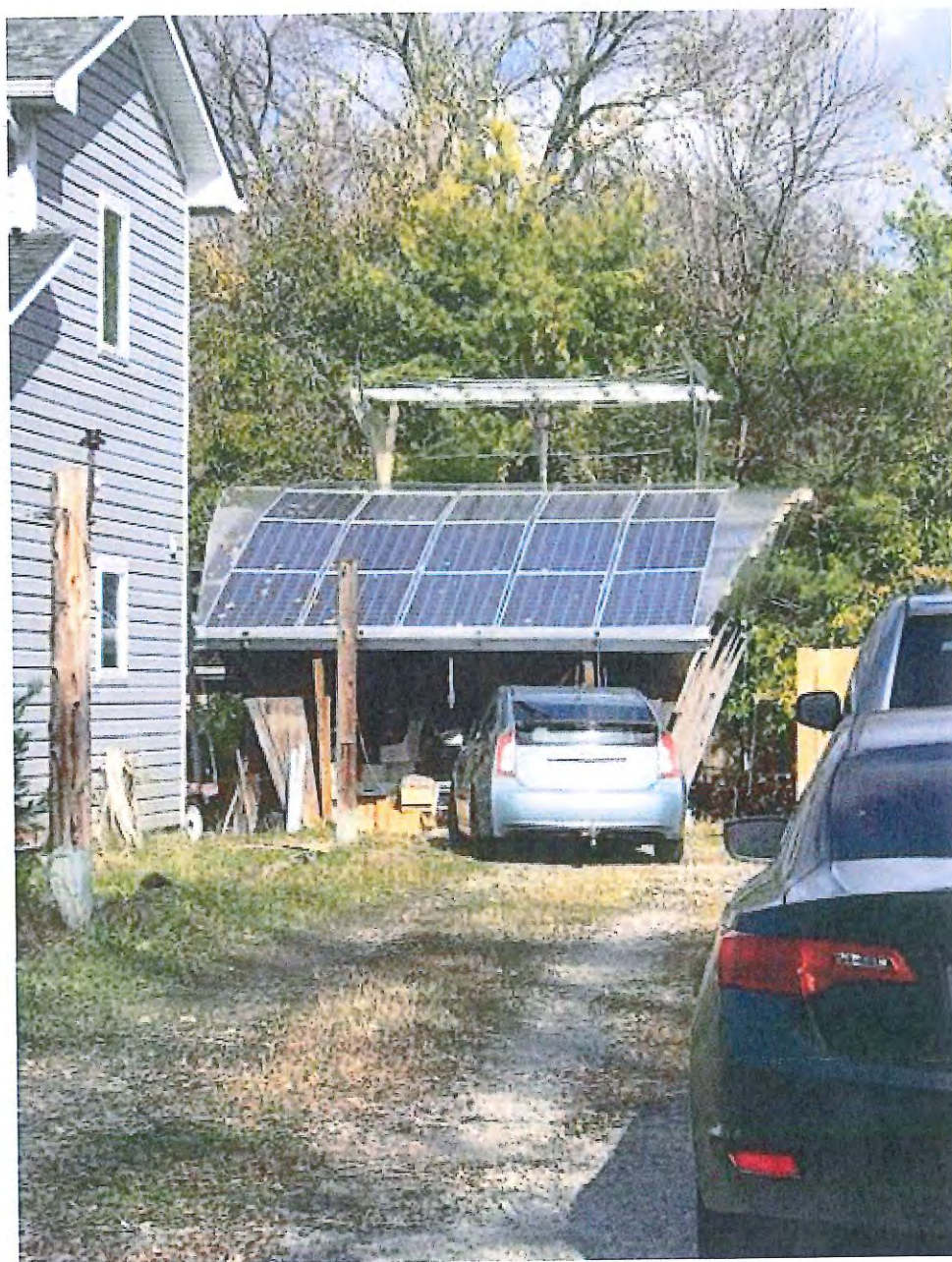
Sincerely,



Denise Swinger
Zoning Administrator
Village of Yellow Springs

Encl.

Cc: Yellow Springs Home, Inc.





**Village of
Yellow Springs**

Planning and Zoning Department
100 Dayton Street
Yellow Springs, OH 45387

ADDRESS SERVICE REQUESTED

Brett Henderson
335 W Davis St
Yellow Springs, OH
45387



**Village of
Yellow Springs**

Planning and Zoning Department
100 Dayton Street
Yellow Springs, OH 45387

ADDRESS SERVICE REQUESTED

| | |
|--|---------------|
| U.S. Postal Service™ | |
| CERTIFIED MAIL® RECEIPT | |
| Domestic Mail Only | |
| For delivery information, visit our website at www.usps.com ®. | |
| OFFICIAL USE | |
| TELEPHONE SPRINGS OH 45387 | |
| Certified Mail Fee | \$0.00 |
| Extra Services & Fees (check box, add fee as appropriate) | |
| <input checked="" type="checkbox"/> Return Receipt (hardcopy) | \$3.80 |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$0.00 |
| <input type="checkbox"/> Adult Signature Required | |
| <input type="checkbox"/> Adult Signature Restricted Delivery | |
| Postage | \$0.55 |
| Total Postage and Fees | \$4.35 |
| Postmark Here 11/08/2019 | |
| Sent To Brett Henderson | |
| Street and Apt. No., or PO Box No. 335 W Davis St | |
| City, State, ZIP+4® Yellow Springs, OH 45387 | |
| PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions | |

5114 121E 0000 0910 6102



**Village of
Yellow Springs**

Planning and Zoning Department

100 Dayton Street

Yellow Springs, OH 45387

ADDRESS SERVICE REQUESTED

Brett Henderson
335 W Davis St
Yellow Springs, OH
45387



**Village of
Yellow Springs**

Planning and Zoning Department

100 Dayton Street

Yellow Springs, OH 45387

ADDRESS SERVICE REQUESTED

Yellow Springs Home, Inc.
202 S. Winter St.
Yellow Springs, OH
45387

Denise Swinger, Zoning Manager

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Wednesday, November 13, 2019 1:11 PM
To: Denise Swinger, Zoning Manager; Emily Seibel; Isis Henderson
Cc: Josue Salmeron
Subject: Re: 335 W. Davis St Zoning Violations Letter 11/8/2019

Hi Denise,

Thank you for the date of BZA hearing. I also received letter requesting solar panels be removed. I just wanted to clarify your summary of details in that letter. My variance request is for both height and setback violations. I am seeking a variance for the structure to remain where it is. I have trimmed 2 feet off the side roof, so there is currently a roof setback greater than zero. I am also taking off the reflector attachment on top, which would bring structure down to height of 12'10".

I also would like to request clarification on how you calculate building envelope 1284.02, where you say the maximum three dimensional volume....since I am lowering the height of my structure and the width of my structure....the volume calc should be different.

I still have a 7' setback at foundation, and 2 feet at the roof.

Thank you,

Brett



From: Denise Swinger, Zoning Manager <DSwinger@vil.yellowsprings.oh.us>
Sent: Wednesday, November 13, 2019 12:03 PM
To: Emily Seibel <emily@yshome.org>; Brett Henderson <brett@yellowspringssolar.com>; Isis Henderson <isisazarene@gmail.com>
Cc: Josue Salmeron <salmeron.josue@gmail.com>
Subject: RE: 335 W. Davis St Zoning Violations Letter 11/8/2019

Emily,

A formal notice will be sent sometime next week, but Judy Kintner has confirmed with me that the BZA hearing will be held on Wednesday, December 4th at 7:00PM.

Denise

From: Emily Seibel [mailto:emily@yshome.org]
Sent: Wednesday, November 13, 2019 11:34 AM
To: Z Brett Henderson <brett@yellowspringssolar.com>; Isis Henderson <isisazarene@gmail.com>

Denise Swinger, Zoning Manager

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Sunday, December 24, 2017 9:36 AM
To: Denise Swinger; isisazarene@gmail.com
Cc: Patti Bates, YSO Village Manager
Subject: Re: accessory structure

Hi Denise,

Thank you for making me aware of the complaints and concerns.

After the initial complaint I stopped working on the shed and left the roof panels only partially fastened until I figured out the details of how I was going to mount the solar.

I did have a structural engineer look at the shed and he recommended some reinforcements to meet building codes. I was trying to come up with some innovations that we solve these weak spots.

The fastening down of the roof was not one of weak spots, it was just that I was holding off making the penetrations through roof panels until I sure about how I would finish the structure underneath.

The high winds lifted one of the panels up where only 2 screws were holding that corner down. I woke up in the middle of the night to it flapping up and down noisily, and rushed outside to fasten it down securely. I can understand how that panel flapping up and down would have caused my neighbors concern.

I have been waiting on better weather to reconnect panels and fasten down everything to its finished state, but as it is now, I am confident the panels cannot lift up again.

The engineering sign-off is expensive, so I have been waiting to finalize design before involving him again. This notice will accelerate my plans to complete the design, construction, and then have him provide a stamped engineering letter.

Please let me know if there is a deadline for getting you the structural letter.

Thank you and I wish you a happy 2018.

Brett

EXHIBIT O

**WILLIAM L. JOHANAN P.E.
144 CROWN POINT MEADOWS
CENTERVILLE, OHIO 45458
(937) 286-2664**

July 12, 2018

Mr. Brett Henderson
Yellow Springs Solar
335 W. Davis
Yellow Springs, Ohio

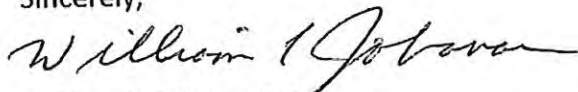
Subject: STRUTURAL EVALUATION OF SHED AT 335 W. DAVIS, YELLOW SPRINGS, OHIO.

Dear Brett,

At your request we performed an onsite structural evaluation of the existing rear shed building at the above residence. With the addition of the framing supports (SEE ATTACHED DRAWING) the structure will meet the requirements of the Ohio Residential Code; i.e. snow load of 20 psf., 2.94 psf. solar panel load, and a 90 mph wind load.

Please call with any questions that you or the County/City may have. Thank you.

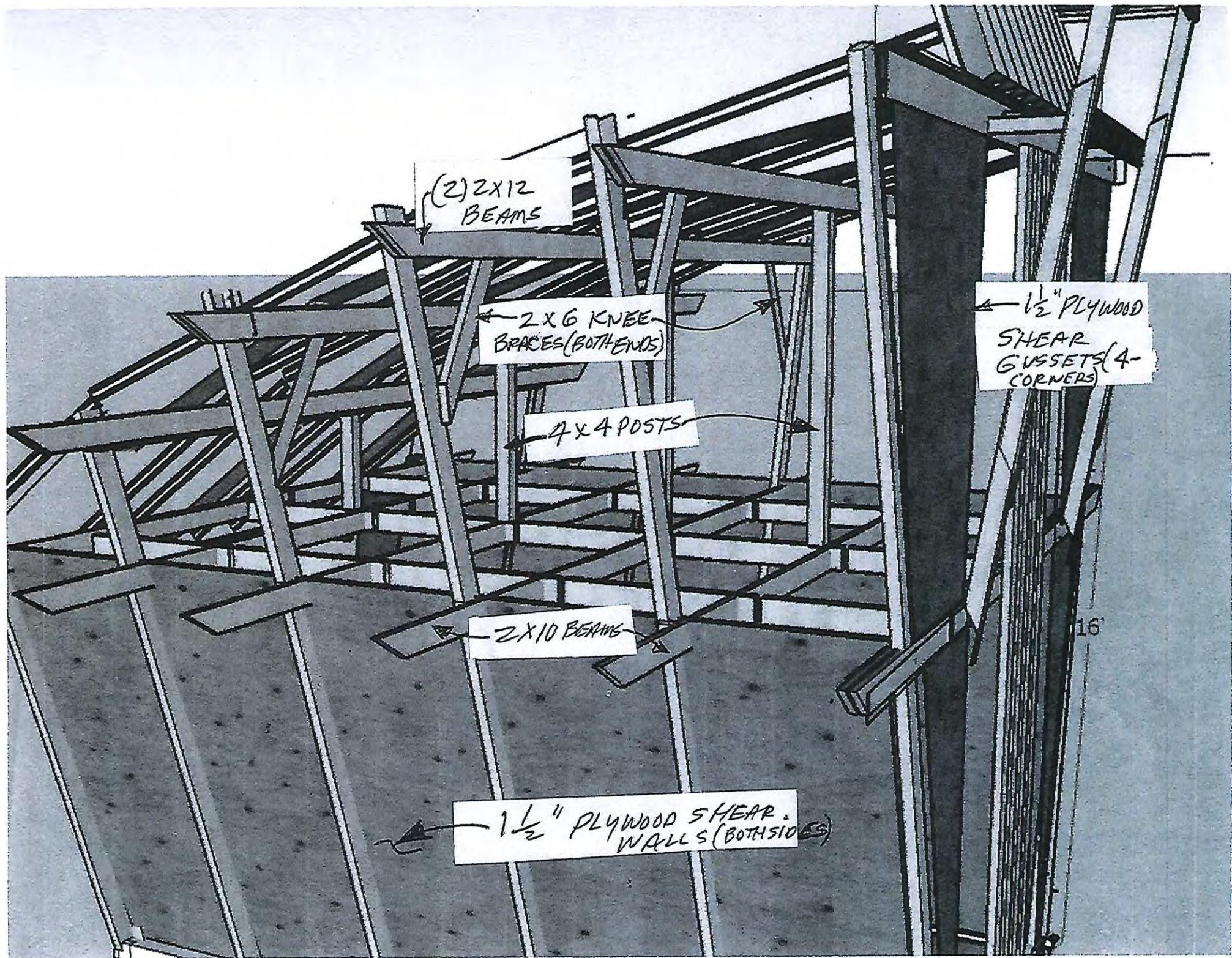
Sincerely,

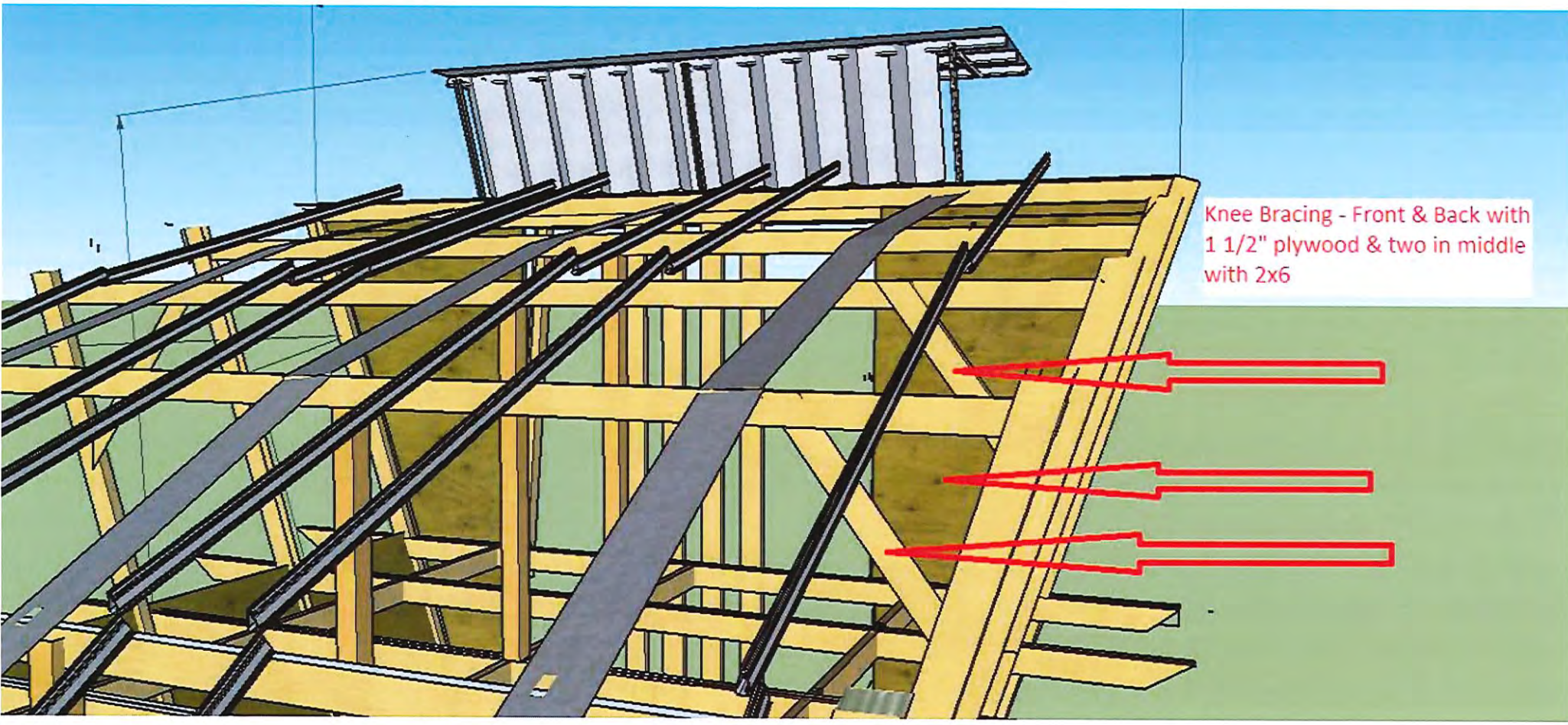


William L. Johanan P.E.

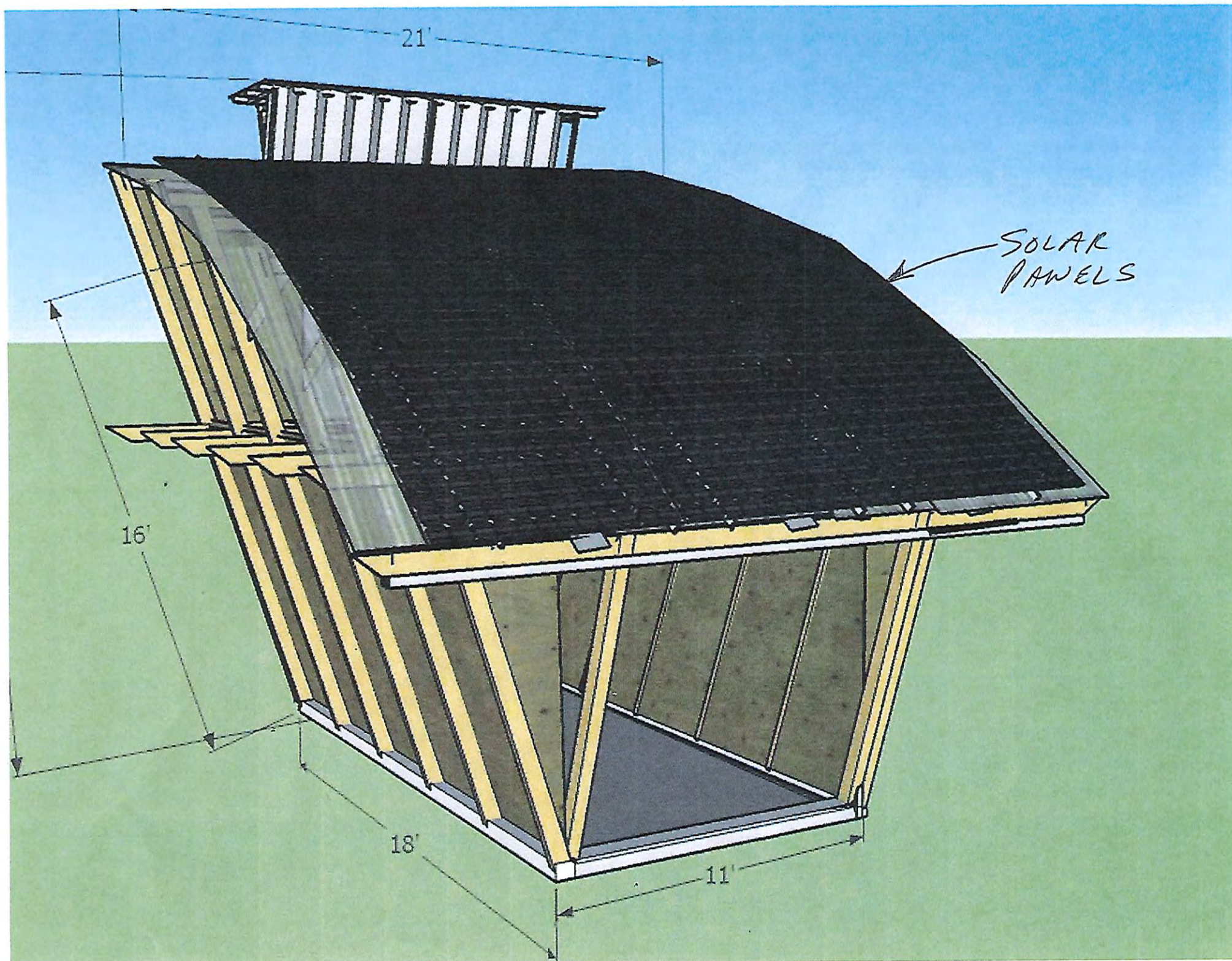
attachments- general design drawing and solar layout drawing







Knee Bracing - Front & Back with
1 1/2" plywood & two in middle
with 2x6



From: Brett Henderson [mailto:brett@yellowspringssolar.com]

EXHIBIT P

Sent: Tuesday, July 10, 2018 2:15 PM

To: isisazarene@gmail.com; Denise Swinger <DSwinger@vil.yellowsprings.oh.us>; Chris Hall <chrish.homeinc@gmail.com>

Cc: Dayna Yearwood <vitallife2000@gmail.com>; emily@yshome.org

Subject: Re: Fence Layout with Gate and Shed....

Hi Denise and Home Inc.,

Here is rough draft of what we would like to get approval for at 335 W Davis St.

do apologize for neglecting the progress of these plans [REDACTED]

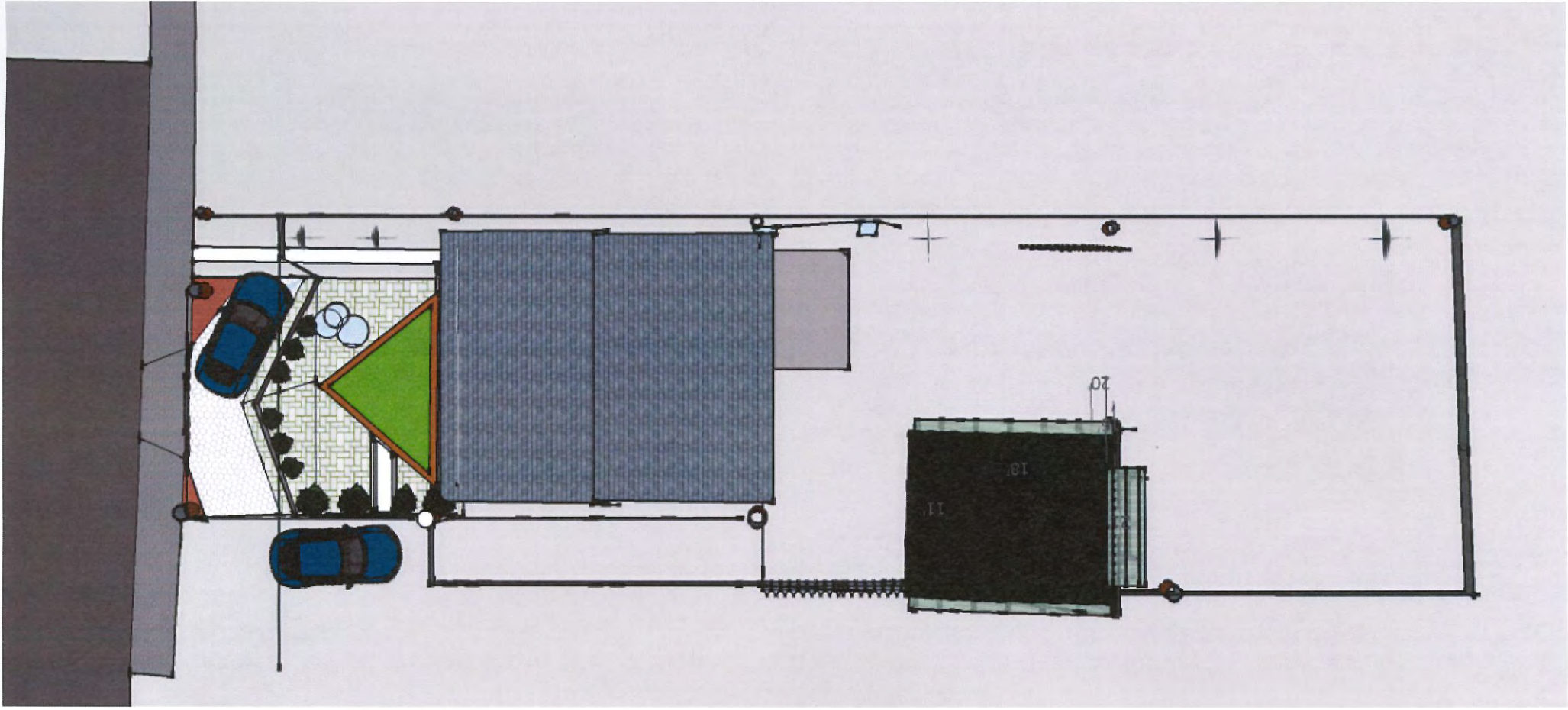
The structural verification letter from P.E., for solar shed, will follow by Friday.

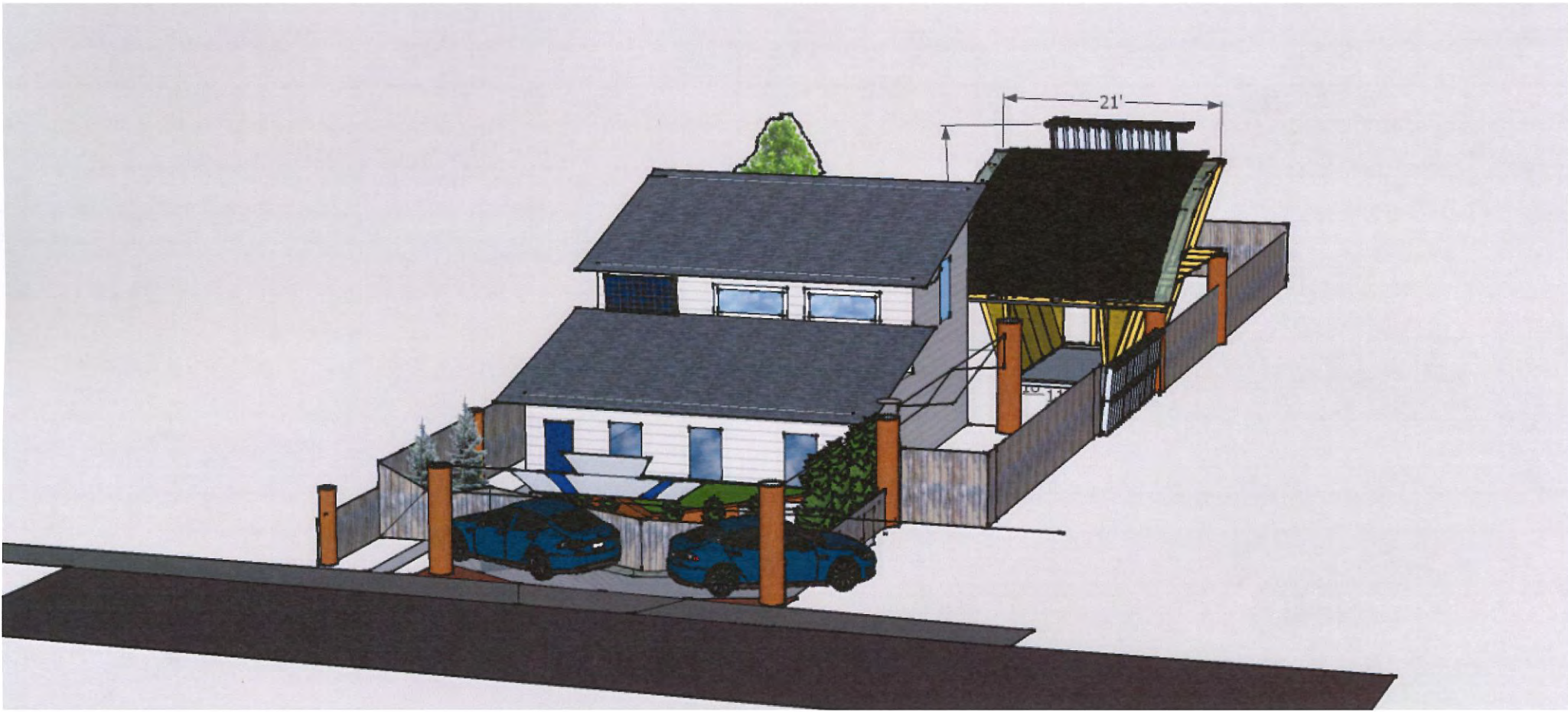
I am proposing we amend our shared driveway agreement with Campbells. We think it would be mutually agreeable to stop the shared driveway at the start of our house(s). We can then extend our fence into the middle of the driveway from the front of house all the way back....this gives us more room between fence and house on that side. The Campbells have mentioned wanting to turn their back into yard, so that should be great with them.

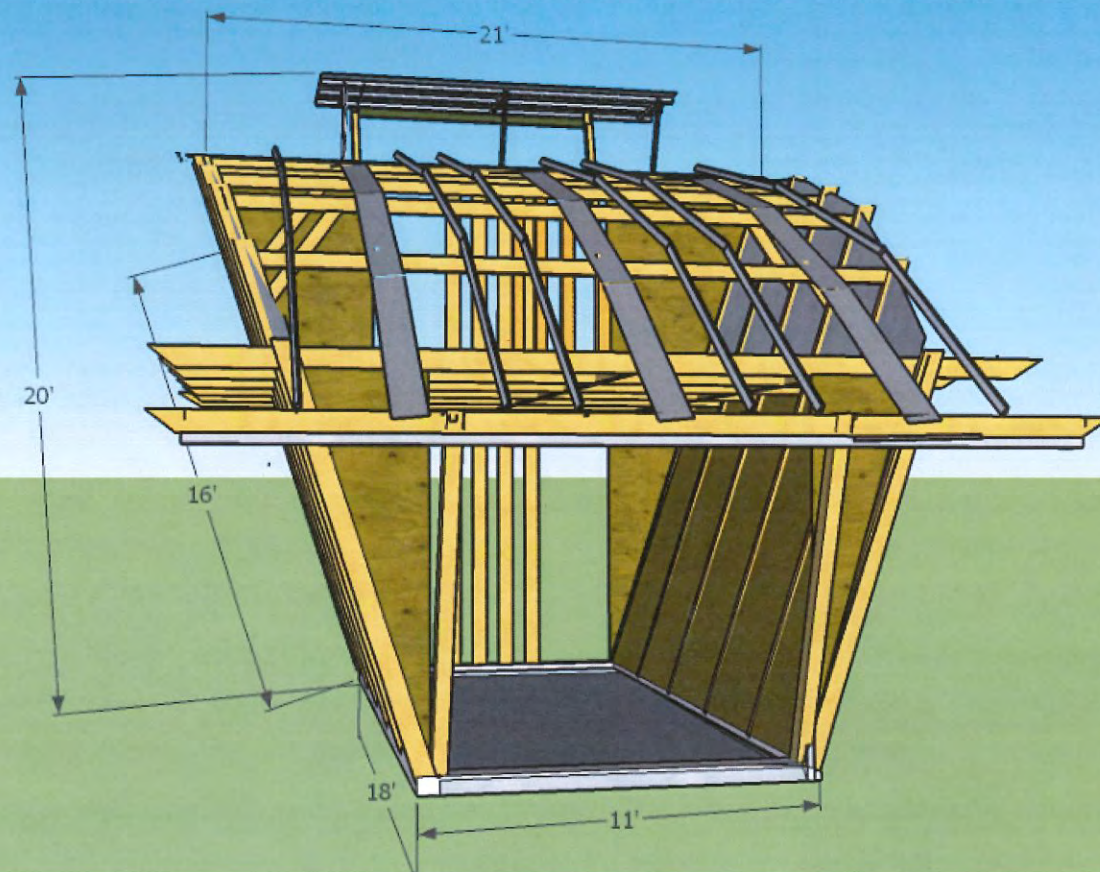
We would like to put our parking in front of house, where the Campbell's park, and also where Mitzy's drive and parking area is.

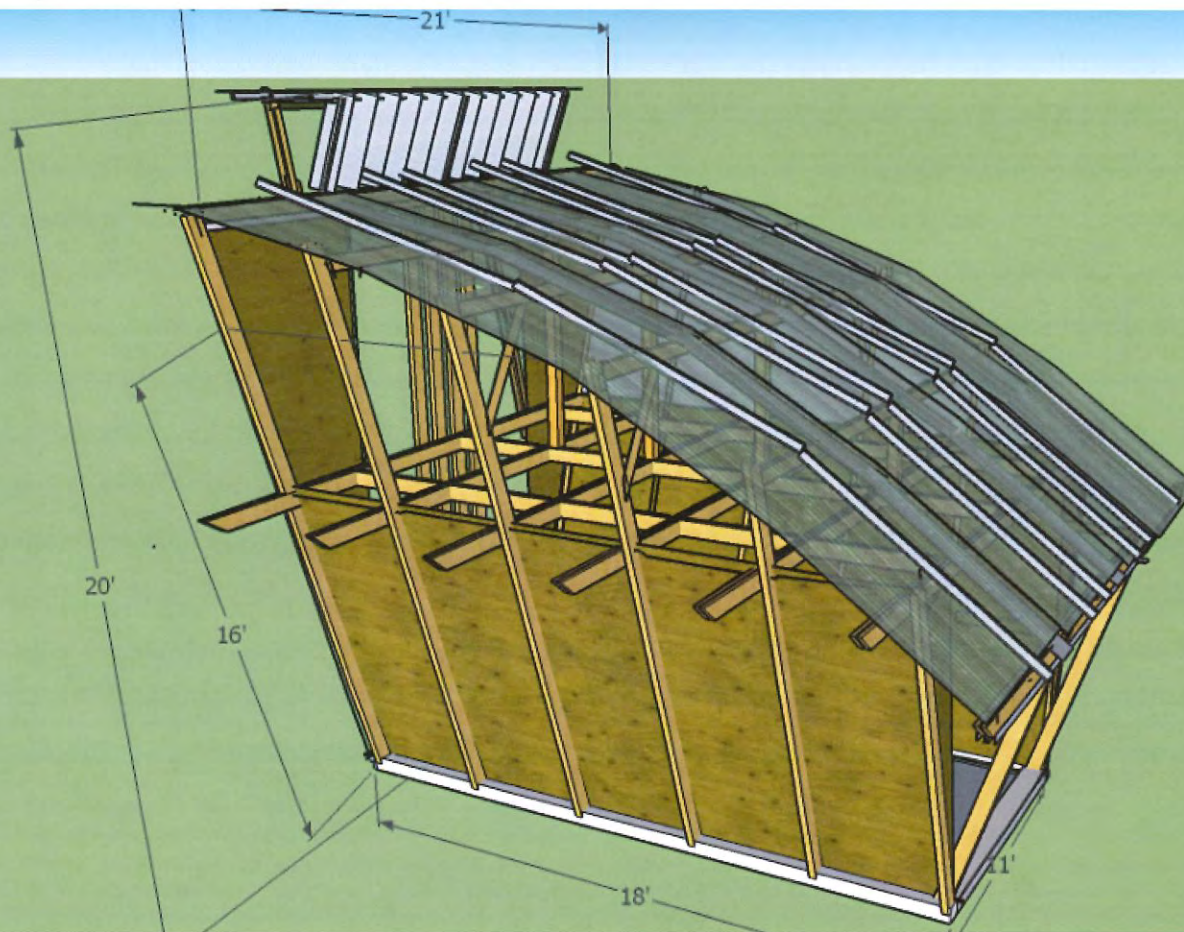
Lastly, I would like to get permission to extend the 6' fence that borders Mitzy, past the front of our house another 20'.. We would then taper down to 4' for the last 8', to allow visibility at the end of her driveway. This is technically our front yard, but it is her backyard. I also feel like that would give us privacy from what feels like a major thoroughfare of foottraffic throughout the day. We would like to feel we have more privacy. I would think Mitzy would be great with having to see less of our yard.

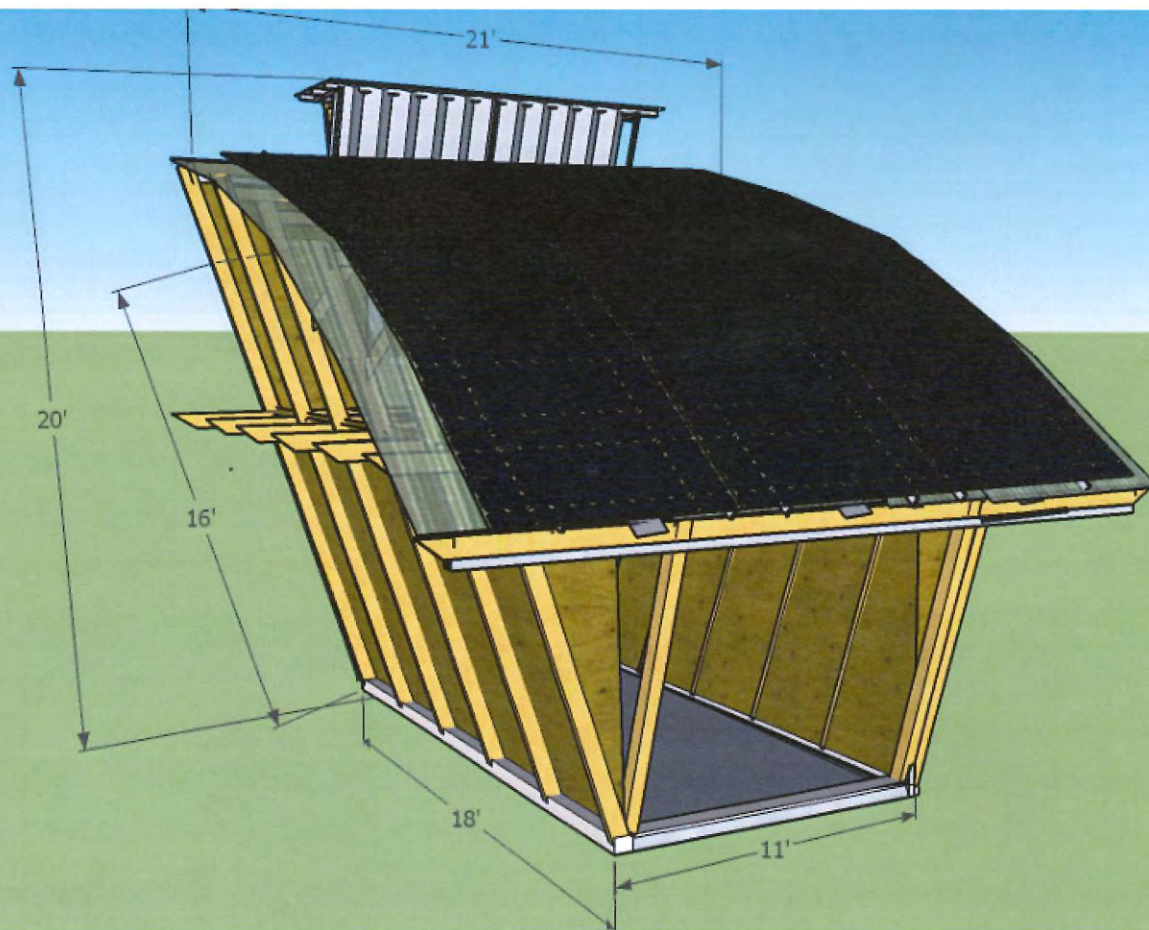
Thank you,
Brett











From: Denise Swinger <DSwinger@vil.yellowsprings.oh.us>
Sent: Monday, July 16, 2018 8:47 AM
To: Brett Henderson <brett@yellowspringssolar.com>
Subject: re: accessory structure/tall grass

EXHIBIT Q

Brett,

I received the drawings for your accessory structure and the letter from the structural engineer. Thank you. You mentioned that you intend to deconstruct and move it to another location on your property. Do you still intend to do that?

Per the engineer's recommendation, you will need to add framing supports in order to meet the requirements of the Ohio Residential Code. Please let me know when this will be completed.

Also, accessory structures cannot be taller than 18 feet. You indicated that yours is 21 feet so that will have to be modified. I don't know if attaching the solar panels directly to the roof will correct that height requirement, but please let me know what your intention is. I've attached an accessory structure permit for it as it will require modification.

Also, attached is a solar interconnection agreement for the solar panels you will be adding to the structure.

Lastly, I wanted to make sure you have cut the tall grass. I drove by last week and it hadn't been done yet. Please take care of this. Thanks!

Denise Swinger
Planning & Zoning Administrator
Village of Yellow Springs
(937) 767-1702

From: Denise Swinger
Sent: Monday, July 16, 2018 8:51 AM
To: Brett Henderson <brett@yellowspringssolar.com>
Subject: re: height of accessory structure

Brett,

My error...the height of your accessory structure on your drawing is 20 feet, not 21.

Denise Swinger
Planning & Zoning Administrator
Village of Yellow Springs
(937) 767-1702

Denise Swinger

From: Brett Henderson <brett@yellowspringssolar.com>
Sent: Monday, July 16, 2018 10:59 AM
To: Denise Swinger; isisazarene@gmail.com
Subject: Re: accessory structure/tall grass

Hi Denise,

I just went out and measured and the height to top of reflector on structure is 17'. I do not plan to move it for the time being. If we move in the future, I may take with me.

I have cut the grass on several occasions since you asked. I use a machete so it isn't perfect. I am hoping the fence will alleviate people's need to micromanage my yard and the plants I choose to let grow. Seems pretty nazi'esque for such a liberal town - racist against certain plants and people who choose to let their yards grow differently? Who would have thought? Our town celebrates backwards sexuality and uses of our bodies, but not in the personal preference of yard and vegetation beauty?

I am not cutting certain parts of my yard because I like the way it grows, the privacy it provides and the birds it feeds.

Can I move forward with putting fence and parking in front? When I get the materials for this, I will get the lumber to make the extra supports engineer specified.

Thanks,
Brett

YELLOW SPRINGS SOLAR

Brett Henderson
Project Optimizer
937-206-4632



<http://www.YellowSpringsSolar.com>

EXHIBIT R

Denise Swinger, Zoning Manager

From: Kuzma, Al <AKuzma@co.greene.oh.us>
Sent: Monday, July 30, 2018 3:47 PM
To: Denise Swinger
Subject: RE: 335 W. Davis Street

Hello, Denise;

Hello, Ms. Swinger;

The non-habitable accessory structure foot print is less than 200sf, therefore it appears to be exempt from the RCO. However, the installation of solar panels kick the structure back into the RCO.

The main objective is to verify the structural support of the solar panels is substantial enough to prevent a hazardous condition to the electrical system in an unregulated building collapse. Therefore, the building is required to have a Building and Electrical Permit. If the solar panels are not installed the Building Permit is not required. You would have to handle it from a zoning aspect.

In a quick review of the engineering, I would ask for further details, such as specific fastener requirements and patterns for fastening all structural members together. This is particularly important on the shear walls, especially using 1 ½" sheathing on both sides. I have seen nail patterns as close as 4" oc.

The other aspect that needs to be confirmed is 4 x4 post attachments and anchorage of posts and walls to the foundation to prevent uplift at 90 mph wind speed. None of those details are presented. Also, The solar panels will need to be secured to the structure for 90 mph wind speed. Since this is an alternative engineered design, the contractor and inspector have no RCO prescriptive details to go by

Thank you

AL Kuzma, CBO

EXHIBIT S



100 Dayton Street
Yellow Springs, OH 45387

August 30, 2018

Brett Henderson
335 W Davis St
Yellow Springs, OH 45387

Brett:

On Wednesday, July 18, 2018, I sent you an email advising you of the tall grass observed on your property. Any non-woody plant growth (grass/weeds) has to be less than nine inches. As of today, the grass is non-compliant with the Yellow Springs Village Ordinance Section 674.02 which states that property owners are required to keep grass and weeds over the entire property mowed to a height of no more than nine (9) inches.

According to the Village's zoning code, you have five (5) days from the date of this letter to bring the property into compliance with the code. Cutting the grass and weeds would bring the property into compliance. Failure to do so will result in the Village performing the work and billing you for the cost of remediation.

Additionally, the accessory structure that existed prior to the construction of the primary dwelling has been modified. Your civil engineer made a report that in order to be compliant with the Ohio Residential Code, extra framing supports were needed. In your email of July 16, 2018, you wanted to wait on adding the extra supports for the structure until the Village has approved the fence and shared driveway agreement so you could purchase the materials at the same time. We cannot make the safety of this structure contingent on approval of a fence or parking area in front of your property. As indicated in my July 18, 2018 email, an explanation was given outlining next steps that would need to be taken. To date, we have not heard what your plan is.

The enclosed application for the accessory structure needs to be completed showing the new height and any change in the building's footprint. If you intend to place solar panels on this structure as you showed in a previous drawing submitted to me, please indicate if and when they will be added.

The extra supports detailed in the engineer's report must also be added to the structure. If this is not done, we will have to deem the structure a public nuisance under Ch. 1470.02 (a) of the Yellow Springs Building and Housing Code, which will require inspections by Greene County Building Regulations, Miami Township Fire and Rescue and/or the Greene County Combined Health District.

Although the Village's zoning code gives you five (5) days to mow your grass, because of the additional requirement of the accessory structure permit renewal and the addition of framing supports to ensure the safety of the accessory structure, we will allow fourteen (14) days from the date of this letter for

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com[®].

YELLOW SPRINGS, OH 45387

| | |
|-------------------------------|---------------|
| Certified Mail Fee | \$3.45 |
| Postage | \$0.50 |
| Total Postage and Fees | \$6.70 |

Extra Services & Fees (check box, add fee as appropriate)

| | |
|--|--------|
| <input type="checkbox"/> Return Receipt (hardcopy) | \$2.75 |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$4.00 |
| <input type="checkbox"/> Adult Signature Required | \$0.00 |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 |

Sent To Brett Henderson
Street and Apt. No., or PO Box No. 335 W DAVIS ST
City, State, ZIP+4[®] YELLOW SPRINGS, OH 45387

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0314 05
AUG 30 2018
Postmark Here
08/30/2018
USPS 45314

completion. If these three requirements are not completed by Thursday, September 13, 2018, the Village of Yellow Springs will 1) cut the grass and bill you for the cost of remediation, and 2) begin the public nuisance process.

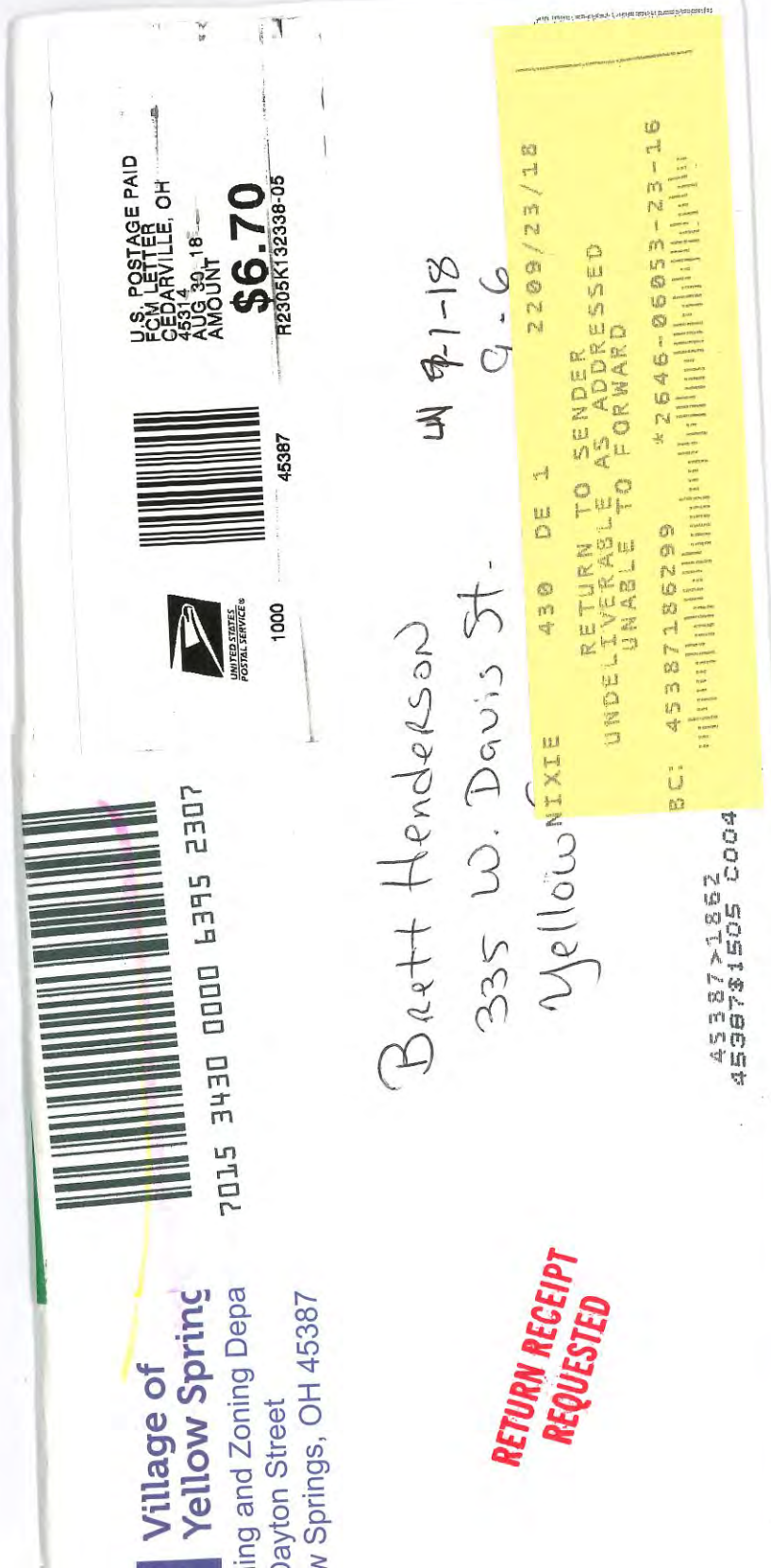
If I can be of any assistance please feel free to contact me at (937) 767-1702 or by email at dswinger@vil.yellowsprings.oh.us. Thank you.

Sincerely,

Patti Bates

Patti Bates
Village Manager

cc: Yellow Springs Home, Inc.



Mitzie Miller
426 S. Limestone Street
Yellow Springs, OH 45387

December 4, 2019

Village of Yellow Springs
Board of Zoning Appeals

Regarding property located at: 335 West Davis Street, Yellow Springs, OH

Regarding property owner (per Greene County Auditor): Home Inc., Resident: Brett Henderson

Regarding a variance seeking relief from: section 1260.04(a)(3) setback of accessory structures
section 1260.04(a)(5) height of accessory structures

The aforementioned accessory structure negatively impacts me in the following ways:

- Although I have constructed a six foot high privacy fence between property to block visibility, I see this excessively tall structure looming above the fence from every location in my rear yard. It is my opinion that this is an eye sore and seriously effects my property value. What started as a shed has grown up into something much bigger. The resident has built a perch above the roof and has been observed doing activities including chanting and pounding on the roof surface. My privacy has been seriously effected because this structure is so tall.
- I have safety concerns given the structure's materials and shoddy construction methods. A strong wind could cause the roof and/or adjacent materials to come off and enter my yard causing injury to a person, pet or damage property. My concern is based on reality as during a 2018-19 winter wind storm, construction materials had come loose, flapping in the wind and were at risk of detaching. On at least two occasions, I observed Mr. Henderson attempting to secure materials that had become loose. Once, after midnight during high winds, I was awoken by banging sounds and saw him on a ladder attempting to fix the loose construction materials by flashlight. Please see the attached photos #1 & #2.

I am adding the following information so that you will understand that Mr. Henderson has had a history of non-compliance with zoning ordinances. I have attempted to address zoning code violations (i.e., grass height, construction debris in yard, front yard parking) directly with the resident without success, which brought retaliation. I have attempted to address these issues with Home Inc. (since they are the official property owner), Village Mediation and finally, the VYS Zoning Office and the last two Village Managers. Additionally, I have had to involve the YS Police Department and had to request a no trespassing order against my neighbor. Mr. Henderson has been disrespectful to our neighborhood. The sidewalk in front of his house has been unsafe to walkers. Please see photos #3, #4 & #5)

I believe this is the time to give Mr. Henderson the message that zoning ordinances must be respected. I ask the Board of Zoning Appeals to not approval either of these variance requests.

Marie Miller

Marie "Mitzie" Miller



PHOTO #1



PHOTO #2



PHOTO
#3



PHOTO
#5

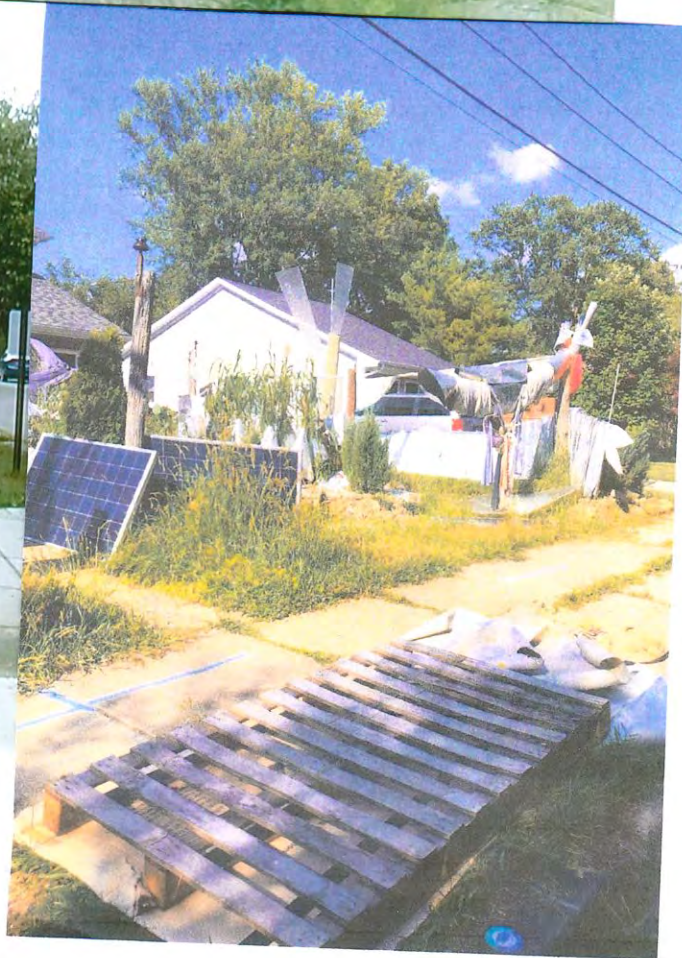


PHOTO
#4