

Meeting Date: August 25, 2021

Present: Michael Keupp, Zoning Board of Appeals Chairman
Ann Hardeman, Board Member
Nicholas Vorolieff, Board Member
Tom Zarecki, Board Member
Mike Mersand, Board Member

Also Present: Lauri Taylor, Mayor
Jonathan Bardavid, Village Council
Caren LoBrutto, Village Planner
Curt Johnson, Architect for Applicant

On, *Wednesday, August 25th, 2021* at 7:00 PM, the **Zoning Board of Appeals** met in the meeting room at the Village Hall on 9 Memorial Avenue, Pawling NY. The Meeting was called to order by Vivian Nikolatos, Secretary and began with roll call as indicated above and The Pledge of Allegiance.

22 Walnut Street

Carl and Francis Traina

Area Variance from Chapter 98 Schedule C – Area and Bulk Schedule for R3 Zoning District

- **Minimum front yard setback of 25 feet required, 8 feet proposed, Variance of 17 feet requested.**
- **Minimum side yard setback of 15 feet required, 7 feet proposed, Variance of 8 feet requested.**
- **Aggregate side yard setback of 40 feet required, 34 feet proposed, Variance of 6 feet requested.**

Chairman Michael Keupp introduced Curt Johnson, Architect for the Applicant. Mr. Johnson provided the Board with a map of the site and presented a description the proposed project and the property. This is a single family residence built in 1880, which predates all Zoning. It's located in the R3 Zoning District and its preexisting non-conforming in terms of lot size and also the location of the existing building on the lot. The map points out the current zoning regulations and the building envelope where you're allowed to build within. The existing house is completely outside that area so anything they would want to do would require a Variance. The existing structure is 850 square feet and what's being proposed is an expansion of the main dwelling out the back of a one story for a living room, kitchen and bathroom, not any closer to neighboring property lines. It's a very tiny house and we're trying to build the new addition next to the existing house to not rely on any structural from the existing dwelling. Parking would be

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Down on Walnut Street. As was observed at the site, they are built into the hillside so there are stairs that go up to a plateau of what is the majority of the lot in the back of the house which is where the construction would take place.

Chairman Keupp referred to the Board for questions or comments.

With no questions or comments from the Board, Chairman Keupp reviewed the Applicant's response to the five questions listed under "Area Variance" of the application which can be found posted on the Village of Pawling website. After reviewing the five criteria, Chairman Keupp referred to the Board for feedback.

Board Member Nicholas Vorolieff said as it appears from the drawing, the design is simply taking the left and right side of the home and just going straight back so that the front view is still the same width with and the extension is going straight out.

Mr. Johnson explained, pretty much, as you come up the stairs to the lot, we're extending to the left side of the stairs and adding a little covered entry.

Chairman Keupp asked Mr. Johnson to review the Short Environmental Assessment Form which is also part of the application posted on the Village of Pawling website.

Chairman Keupp made a motion to open the meeting to public comment. The motion was seconded by Member Nicholas Vorolieff. All were in favor.

Audience member, Village of Pawling Trustee Earl Slocum said he hopes the board will approve it.

Audience member Natasha Rubirosa of 30 Elm Street, said she is concerned with the fact that she hasn't had access to the plans to truly formulate how this project is going to impact the neighborhood and how this will affect Variance requests on other properties moving forward and asked if there is a way to see the plans online.

Village Council Jonathan Bardavid and Chairman Keupp suggested the applications to be posted to the Village of Pawling website moving forward. Mr. Bardavid then proceeded to explain to Ms. Rubirosa that Variances are granted "per project." To the extent that the Zoning Board makes a decision, they are granting Variance's as to this project based on five criteria under the law as applied to this specific project. To the extent that there is a property next to you that someone wanted to come and do something non-conforming, they would have to come forward with plans and have to establish the same five criteria and make their arguments based on their specific site. They would have to follow the same legal process. This is only going to allow the Traina's to the extent that the ZBA grants it, these Variances on the property located at 22 Walnut Street.

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Audience member Jeanette Daniels explained that she lives adjacent to the 22 Walnut Street project and is extremely concerned because 22 Walnut Street is located up the hill from her house. She said she appreciates the improvements to the property the Traina's are doing; however, Ms. Daniels is concerned because the site plan that she was able to view does not show that there was a permanent fence and shed erected close to her property line. She asked if these items should have been documented on the present site plan and wanted to know why it isn't and if this is considered non-conforming and in violation of the Village Code. She asked if the proper permit, CO and Variances were obtained for the shed that was built so close to her property line which they were never notified of. She also requested that, if the Variance is granted, that the proper vegetation screening be put in place to provide privacy for the adjacent properties. She said when the addition is erected they will be able see into her kitchen, living room, bedrooms and whole entire yard. Ms. Daniels also expressed her concern for the precedence being set by allowing large structures to be built on such small properties such as this one.

Mr. Johnson said he did pull up the tax record and it does show on the tax forms that the shed was installed in 2021, so he believes there is a permit and CO issued for that. He doesn't know for sure but it is indicated on the tax rolls.

Chairman Keupp asked if it was possible to put in some vegetation screening.

Mr. Johnson replied, he is sure that can be done along that southerly property line between the shed and the fence where the upper property is.

Ms. Daniels asked about the gutters and wants to know which way the water will flow. She's concerned about the water flowing into her property and causing a flood in her driveway.

Mr. Johnson replied, that the water can't be discharged to adjacent properties. It would either be discharged to the back or the front.

Ms. Daniels asked if the discharged water is ok to go into the swamp.

Mr. Johnson said that it's gutter water. We're not talking about a whole lot of water. That area is pretty much impervious existing because of the patio in the back.

Ms. Rubirosa said that water cannot be discharged to the front. She had a conversation with the Building Department who said that any structure that is erected either on Walnut or on Elm Street cannot be discharged to the sewers in the front.

Mr. Johnson said they could probably put in a dry well so that if there is any serious flow of water it will have somewhere to go.

Chairman Keupp motioned to close public comment. The motion was seconded by Member Tom Zarecki. All were in favor.

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Chairman Keupp mentioned that another neighbor, Napoleon Villatoro, is in favor of the project and, again, asked Mr. Johnson if something can be done about the vegetation screening for privacy and the water discharge.

Mr. Johnson replied, he is sure that both can be addressed.

Chairman Keupp asked if anyone on the Board had any questions or concerns.

Board Member Nicholas Vorolieff and Ms. Daniels then had a brief discussion regarding her proximity to the property and the placement of the fence and the shed.

Village Attorney Jonathan Bardavid suggested to follow up with the Building Department to discern whether or not the shed was properly permitted. If it's determined that there is a violation, this would be a process for the Building Department to handle. He advised the Board that should this be the case, they may want to hold off on any decisions until the matter is resolved. Mr. Bardavid also suggested that Mr. Johnson inform the applicants of the concerns that were raised during the meeting.

Mr. Johnson agreed and said he will discuss with the applicants.

Chairman Keupp motioned to adjourn the Public Hearing until the next ZBA meeting (September 22, 2021.) So that the issues with the shed can be addressed by the Building Department. The motion was seconded by Member Tom Zarecki. All were in favor.

Pawling Commons

63 East Main Street

Planning Board Referrals/Interpretations

1. Whether a variance is required for building placement in Schedule B, for "0 ft required", meaning no setback permitted, on the lot frontage for buildings 71 and 67 and if a variance is required should one be granted?
2. Whether a variance is required for a maximum of 84' building depth in Schedule B from the side of the building that faces the street, to the rear of the building as it faces the street for buildings 71 and 67 and if a variance is required should one be granted?
3. Whether a variance is required for 90% minimum building coverage on the lot frontage in Schedule B for buildings 71 and 67 and if a variance is required should one be granted?
4. Whether a variance is required for height as it is measured from the fronting street elevation in Schedule B to the maximum building height in Schedule C for buildings 71 and 67 and if a variance is required should one be granted?

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The Zoning Board will consider an interpretation for the following questions and, if necessary area variances are required as follows:

Continuing the Public Hearing on Pawling Commons, Chairman Keupp reviewed the above mentioned four referrals regarding building height and placement by the Planning Board during the July 13, 2021 Planning Board meetings.

Mr. Johnson presented the Board with his written interpretations and a copy of 2020 Building Code of NYS, Chapter 2 Definitions, First Version: Nov 2019, Building Height and Grade Plane.

Village Council Jonathan Bardavid asked Mr. Johnson if it is the Applicant's position that depth is measured from wherever the front door is to what would be to the rear of the building or is the Applicant presenting an argument that states the Variance should be granted because the Planning Board required they turn the building to the side of the lot?

Mr. Johnson replied that he thinks that is up for interpretation. He said the Code is not clear to him.

After a discussion regarding where to measure depth from and what exactly the Applicants are asking for, Mr. Bardavid asked Mr. Johnson for confirmation that the applicants are asking for a Variance for #3 the 90%.

Mr. Johnson confirmed, yes.

Addressing the Board, Chairman Keupp asked if anyone else had any questions for Mr. Johnson.

Board Member Mike Mersand asked for clarification on whether or not each of the Variance questions had to be answered twice, one for each building (Building 71 and 67).

Chairman Keupp replied, yes.

Mr. Bardavid explained that the purpose of the interpretation questions are to get more of a general sense of where to measure building height from. He said the issue is, "do you measure from the front to the rear or do you measure from the street to the back of the property?" If it's determined that measurement is taken from the street to the back of the property, then the ZBA would have to take a look at the two buildings. The ZBA would then have to consider if whether or not one or both buildings are in compliance and then determine if a Variance would be required for one or the other or both buildings. Mr. Bardavid further explained that the ZBA can separate the questions out for example on #4. The question is, "What is the fronting street elevation?" Then the ZBA would have to consider the height of both the 71 building and the 67 building and if a Variance is required for one or both of those buildings. He and Caren LoBrutto have been working on a memo to the ZBA that outlines this which they intend to circulation to the ZBA soon and also provide a copy to the applicant. If the applicant wants to make comments, the ZBA will have it in advance of the next meeting.

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Chairman Keupp asked if anyone else had any questions. He reminded everyone that the Public Hearing is still open on this but he thinks this is going to be the last shot for any public comments. He asked Mr. Bardavid if they would have to make a motion to reopen in the future.

Mr. Bardavid said the Public Hearing on the pending matter before the ZBA to grant the Variance to allow for the third building on the lot is still open. To the extent that people haven't been heard on that, they can be heard tonight and then you should open up a public hearing on these questions but if someone hasn't already been heard on the initials, they should be heard. The only other question is, before we open up the Public Hearing, do you want the Applicant to make their argument for granting the Variance, assuming that Variances are required for expediency to allow you to answer the question and then move into the Variance issue?

Chairman Keupp moved to continue the Public Hearing on the original application to allow the third building on the site.

Village Trustee Earl Slocum stated that he lives right across the street and said that anything Anthony Casola has done has always been first class and he would very much like to see this whole project move forward because when he sits on his front porch, it's not a great site to look at a blacktop parking lot. He is absolutely in favor of the whole project. He exclaimed, "How long has everyone in Pawling been talking about the AG Market being empty!" The Board has an opportunity now to do something about it. This has been going for 25 or 30 years now and said "It's time to make a decision and make it happen!"

Commenting on Mr. Slocum's statement, Planning Board Member Robert Pfister said part of the reason that it looks like it does there is because they haven't kept up on maintenance of the building. There is no reason someone couldn't have fixed up the AG Market, the facade and the roof all these years.

Mr. Slocum replied that we need tax dollars and that property is going to pay a lot taxes. There is a 12 million dollar sewer treatment project that needs to be paid for and this project will be paying for that. It's all good, there isn't anything negative about it. It's all tax dollars coming in

For the water and the sewer project. The Village has water problems that need to be paid for and this project is going to help pay for those things as well as bring more revenue into the Village.

In response to the maintenance issue that Mr. Pfister brought up, Mr. Johnson explained that Mr. Morini, the previous owner of the site, had engineered an agreement with the bank to occupy the AG Market as offices for the bank. There was a ten year lease on that that just recently expired. He said their hands were tied by the bank lease because they held that lease on that building to renovate it to their liking and never acted on that lease.

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Chairman Keupp agreed.

Mr. Johnson continued, as that building deteriorated, unfortunately, the rest of the site kind of went with it so we're looking for this opportunity to bring it all up again.

Ms. Rubirosa asked if these are rentals or co-ops and how many apartments?

Mr. Johnson replied 53 a mix of one/two bedrooms.

Ms. Rubirosa asked how many stories.

Mr. Johnson replied, 4 stories.

Chairman Keupp added that a total of 53 apartments are in both the new building and the old AG Market building.

Ms. Rubirosa asked if the bottom floor will be commercial.

Mr. Johnson replied the AG building will be commercial and the third building will be all residential.

Mr. Bardavid added that there is an application before the Planning Board for a Special Permit to all for the third building.

Ms. Daniels asked if the project is approved, will the renting of apartments be dependent on whether or not the water system is fixed. Because right now we're still in a water crisis. I understand Earl's point. We need the money, yes, I totally understand that and I agree that we need to have some kind of revenue coming in to help us pay some of these bills.

Mr. Bardavid explained that all developers in the Village are told from the beginning that no CO will be issued until the Village has sufficient water supply. In this case, you can't exceed the

Average volume that has been used for the property. The developer can make a decision whether to wait for the Village water project to be complete, which is close, or start building now and wait for the Village to catch up.

Mr. Pfister said we are allowed only one principle building per lot. That's what our Zoning regulations allow and they are asking for three so I still feel like it's a large "ask." Mr. Pfister said he does have an email stating that it is a large "ask" to add a third principled building on a lot that is only allowed one.

Chairman Keupp made a motion to close the public hearing. The motion was seconded by Member Tom Zarecki. All were in favor.

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Mr. Bardavid said that it's his understanding that the Zoning Board still needs some additional time to review this Variance and suggested Chairman Keupp make a motion to table the Variance until the next meeting.

Chairman Keupp made a motion to table the Variance until the next meeting (September 22, 2021) after the board reviews this information in more detail. The motion was seconded by Member Tom Zarecki. All were in favor.

Mr. Bardavid advised the ZBA that the Public Hearing can be opened for Mr. Johnson if he wanted to present any arguments for granting the Variances.

Member Nicholas Vorolieff asked Mr. Johnson if there is anything additional he wanted to add. Mr. Johnson said he thinks he just spelled out a few things and said there is some ambiguity in the Code and if the ZBA can make a decisions one way or another so they can address if and where a Variance is necessary.

Mr. Bardavid said that it's a matter of preference of the Board. In this sense, it's his understanding at this point in the meeting that the applicant is interested in moving this along.

Mr. Johnson agreed and said yes, if they need a Variance they want to apply for a Variance.

Mr. Bardavid said the question is, "Do you want to wait for this Board to give you their interpretation which will not be tonight and then address this issue from there or would you rather present your argument in favor of a Variance that way the Board could take them up one at a time?"

Mr. Johnson replied that they would like to isolate what Variances will be needed than address each one.

Chairman Keupp made a motion to open the floor to public comment on the interpretation referrals. The motion was seconded by Mr. Vorolieff. All were in favor.

Chairman Keupp explained that the interpretations were referred to the ZBA by the Planning Board and then asked if anyone had any questions regarding the interpretations referral.

Audience member Steve DeGennero who lives on Coulter Avenue stated that he was part of the group that worked on the comprehensive plan and to the extent it helps with the interpretation part, the Urban Regs were written specifically for the downtown area (Charles Colman Blvd.) The intent was that the Urban Regs were to be used as a guideline for future development, not cast in stone pictures.

Mr. Pfister presented the Board with written review of the Urban Regulations as it pertains to this project.

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07132021 ZBA Meeting PC-Handout RP.pdf

Chairman Keupp made a motion to close the Public Hearing on these interpretation referrals. The motion was seconded by Member Tom Zarecki. All were in favor.

ADJOURNMENT

Chairman Keupp made a motion to adjourn. The motion was seconded by Member Tom Zarecki. All were in favor.

Submitted by:

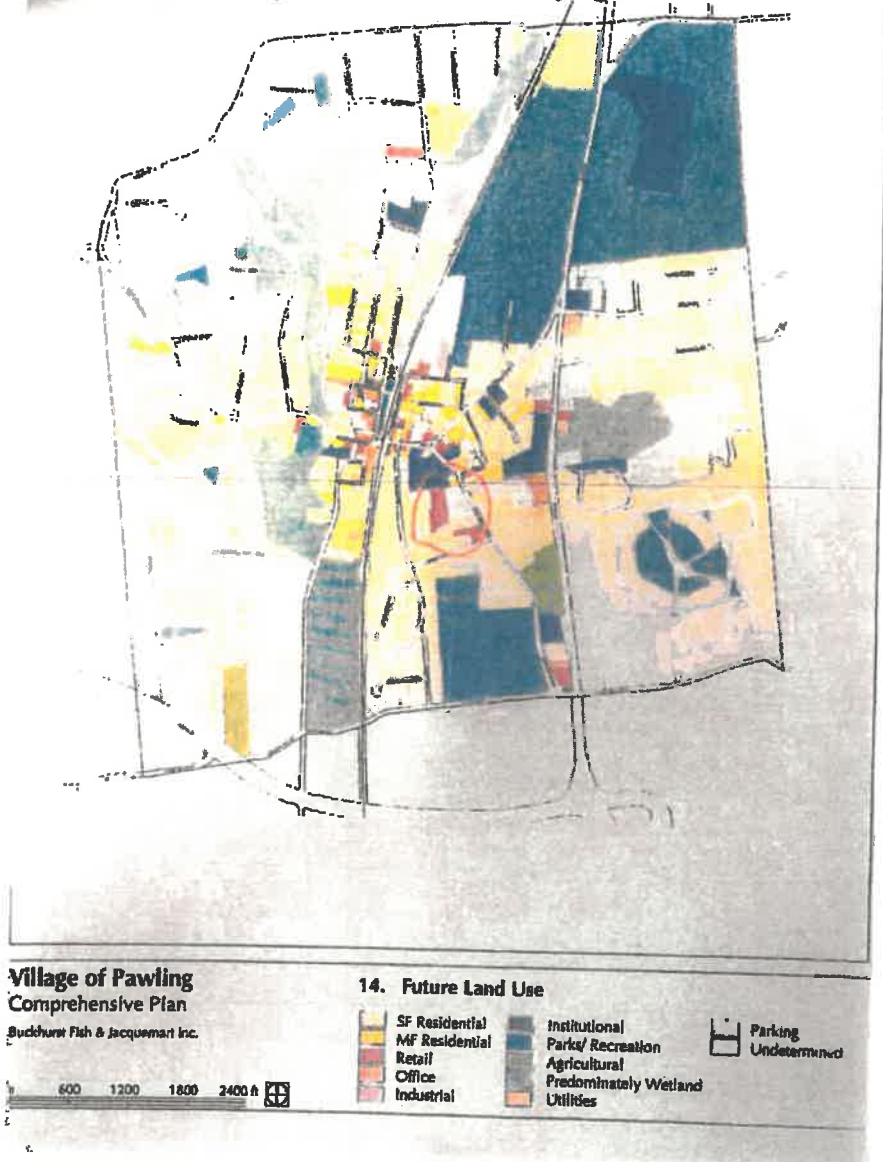
Vivian Nikolatos, Secretary

R Pfister

Dear board and members of the community,

The comprehensive plan or Master plan really has parts that read like a comprehensive manual. The urban regs are one of those parts. My experience as a carpenter dealing with architects, engineers, and building "requirements", help me to understand this build out of the village. Notice I said building "requirements" not building maximum or minimum, I don't want to confuse anybody. Just as the applicant is "required" to submit a complete application.

I am not saying any building should be on the street for this project and the MP didn't intend it to. As is shown on page 60.



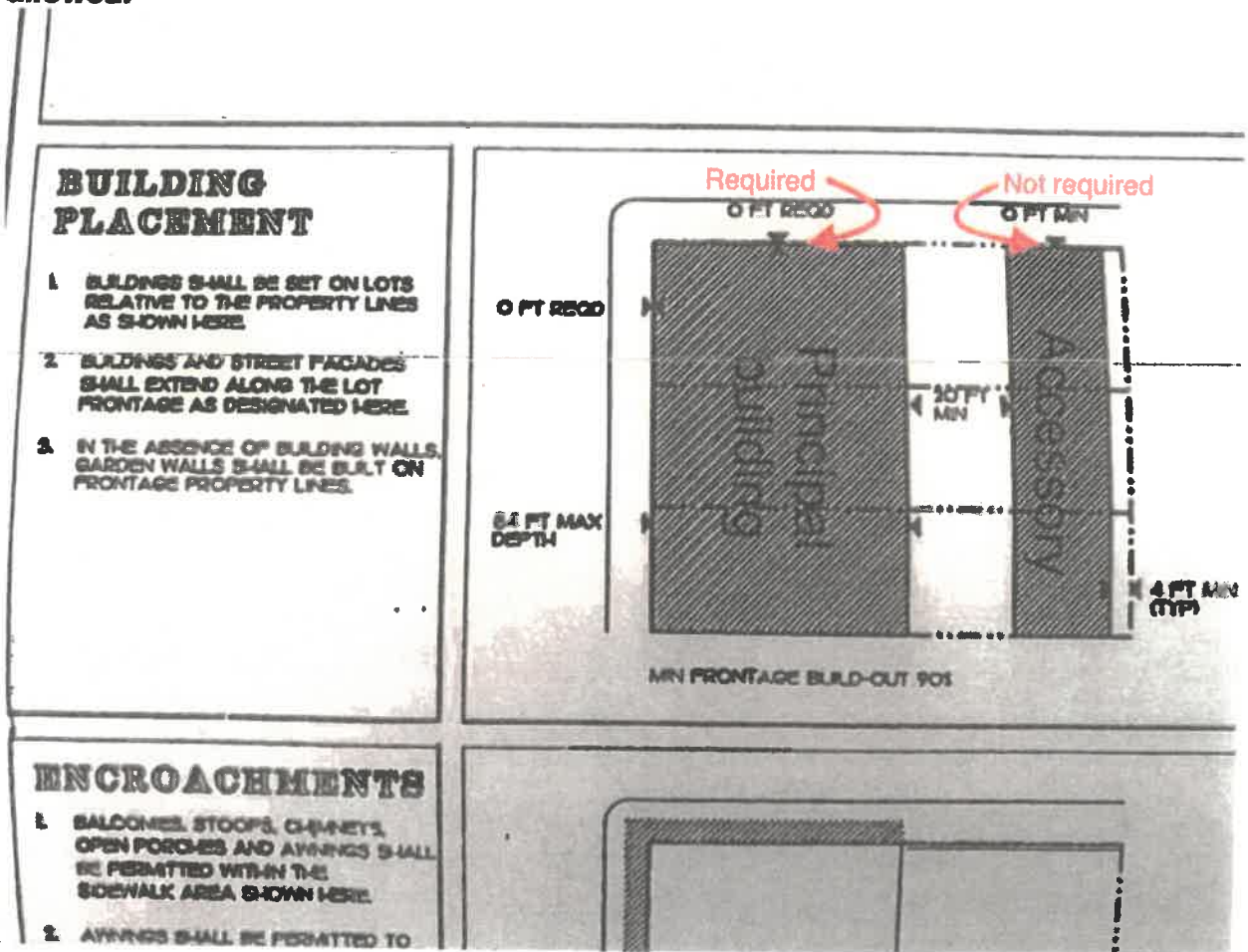
The Urban Regs however must be adhered to and when a applicant wants relief they ask for a variance. Some conditions are easy to get relief for, when the ZBA weighs their criteria. Seeing how this is a unique lot for the B1, certain variances may be granted.

1) it is cited in the MP that Type 1 is meant to be on the street.
Pg 74.

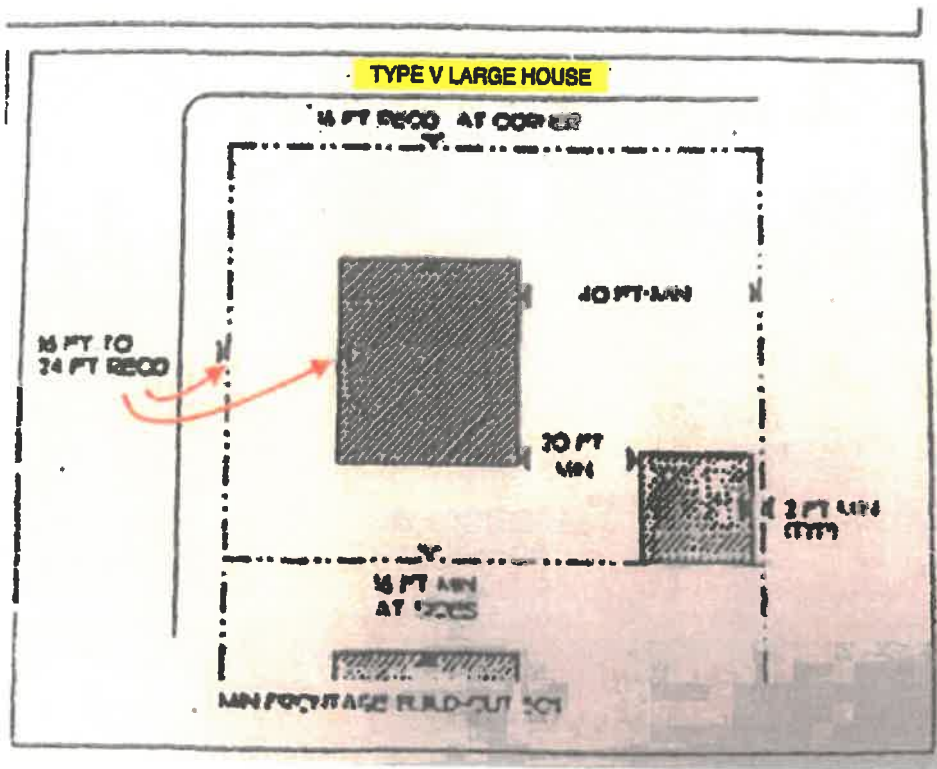
Using the Dutcher House and the Rogers buildings as models, (shown below) the Village Center Plan advocates new buildings which are of a similar height, massing, proportion, and material, and hold the street wall along Colman Boulevard. (These are detailed in the Urban Regulations.) All new construction would thus be contextual with the best architectural

How could it be regulated if is anything but, 0' required=NO SETBACK PERMITTED. Pg 74 establishes intent to why it was written this way in the urban regs.

Secondly It is delineated and shown for an accessory building where 0' min is allowed.

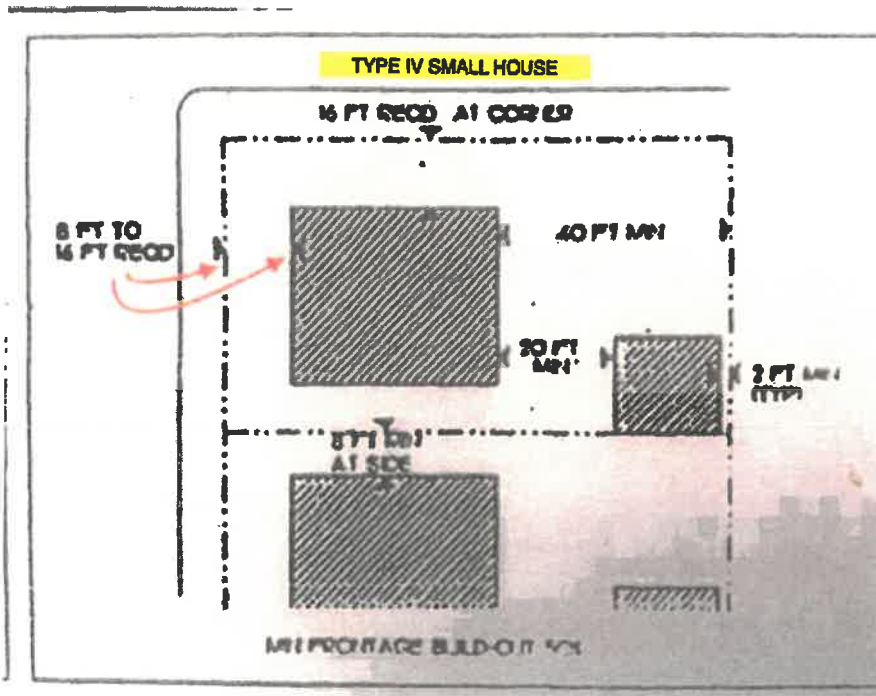


For accessory structures it can be from 0' to where the bulk and area regs apply for the rest of the building lot. A setback more than 0' is permitted for accessory structures only. In every other instance of building types it is consistent with these parameters for "required". "Required" doesn't mean it should say maximum or minimum when it is both so, it is simply what is required.

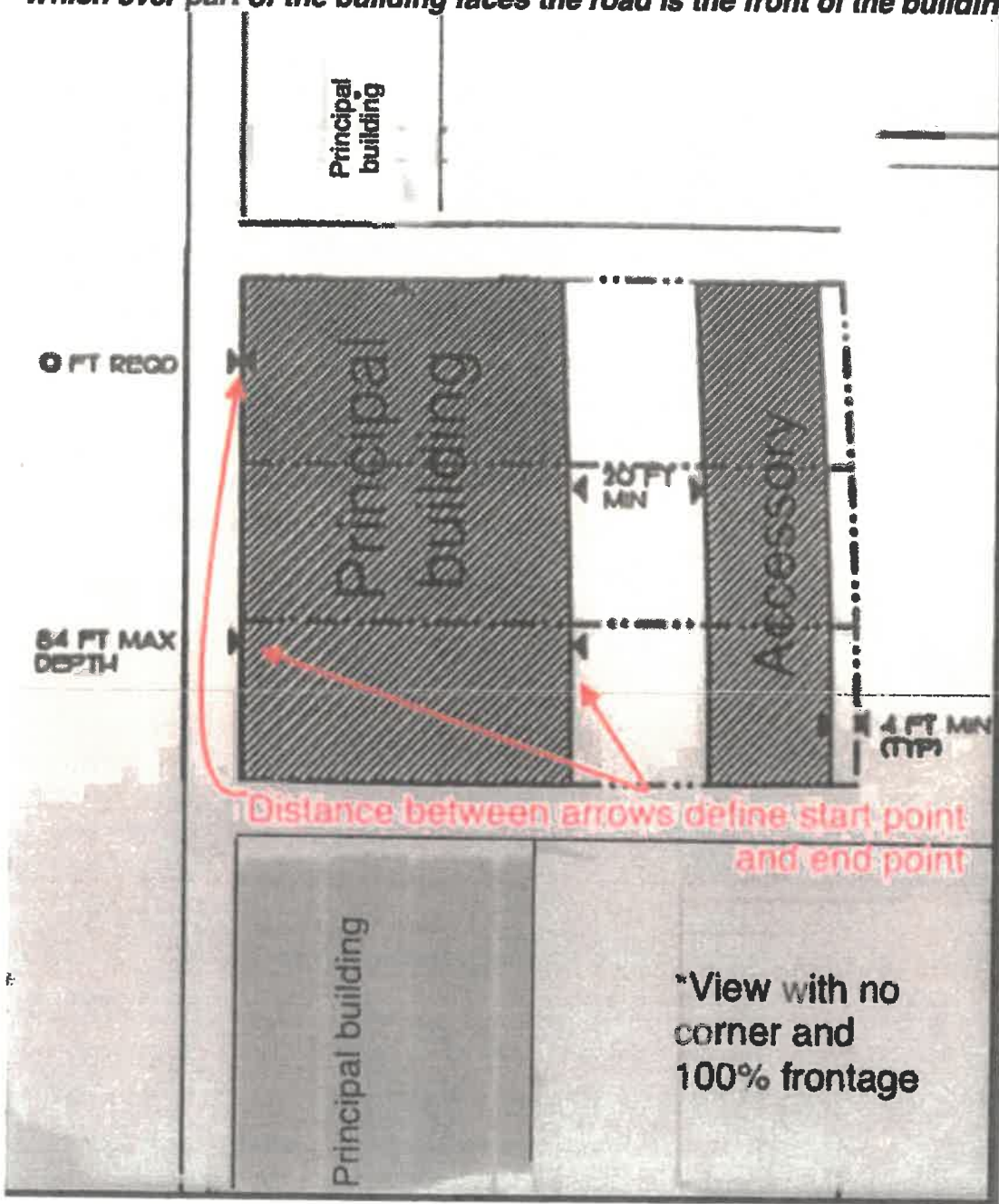


Nowhere in the urban regulations are you allowed to put your house in the area of

your neighbors back yard so these requirements do not leave open ended maximums or minimums. Just as type 1 does not allow an open ended minimum for a principal structure.



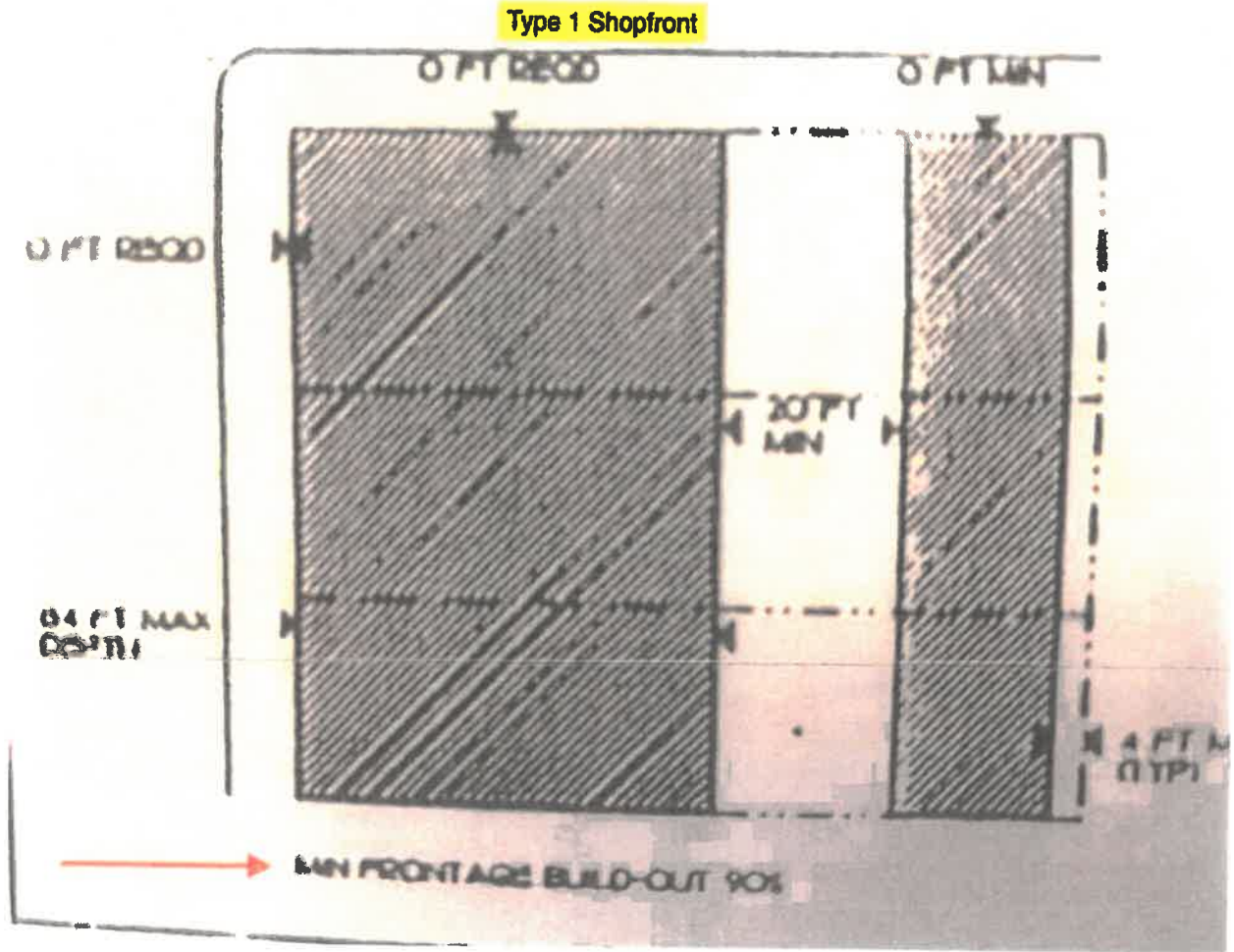
2) 84' max depth is the rear of the building from the front, in relation to the frontage. 84' goes with the building if a setback is granted for a principal building. Which ever part of the building faces the road is the front of the building.



Buildings more than 84' deep raises concern for safety of the occupants, and a size and scale that's appropriate for the village.

3) Minimum Frontage Build-out 90%

This "requires" the building must occupy a minimum of 90% of the lots frontage.



4) During the MP conception and still today the height of buildings are a controversial issue throughout the community. Duany said, "the social welfare of village residents is closely linked to the experience of living in an encompassing natural, rural setting". We should be adhering to 98-6.

§98-6. Interpretation of provisions.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. In the event of a conflict in the terminology of any section or part thereof of this chapter, the more restrictive provisions shall control.

Buildings/Structures appear be measured to the highest point of a building from the street elevation. If antennas apply, enormous roof lines would also apply. As described in the definitions of the zoning code.

BUILDING - A structure designed to be used as a place of occupancy, storage or shelter. The term "building" shall include the term "structure" as well as receiving and transmitting commercial radio, television and other utility communication towers.

Fortunately, local zoning codes decide how to determine maximum heights.

Bend, Oregon measures to the highest point on the building.

Ridgefield, CT has 6 pages defining building heights and use top of parapet walls but define mean roof height for gabled structures.

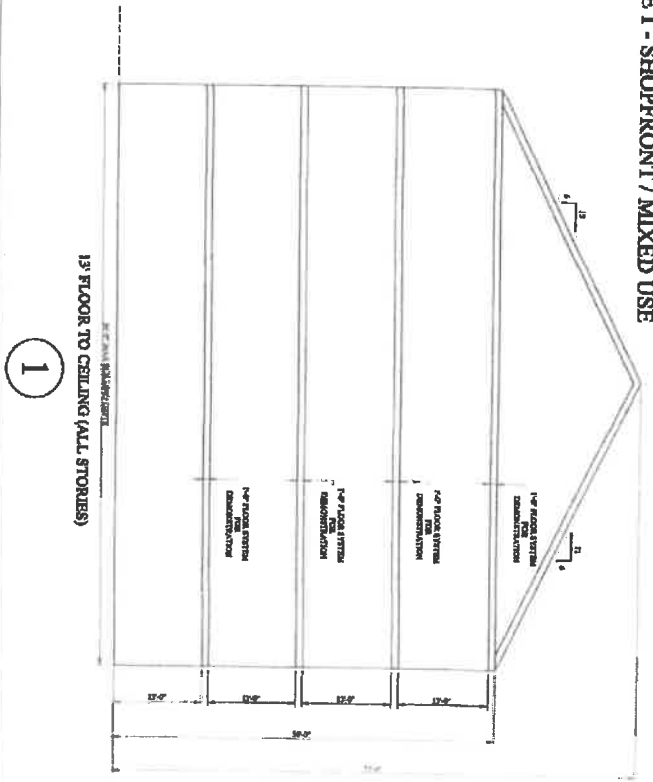
Broomfield, Colorado measures to the highest point in some districts and mean roof height in others.

Manhattan Beach, CA measures the average from the 4 corners of the lot to determine grade of a property.

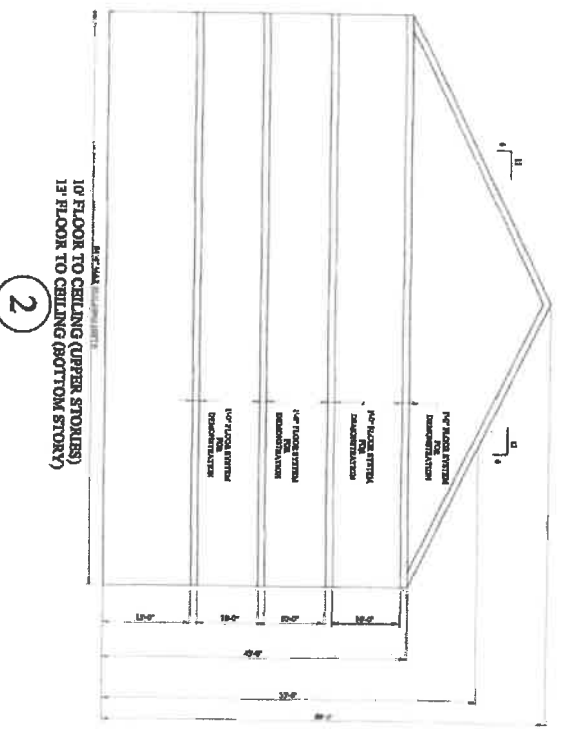
Virginia Beach, VA measures to top of ridge while Norfolk measures to mid point of a sloped roof.

Our code is one that takes a restrictive approach and says building heights are to be measured from the fronting street elevation not the fronting property elevation or grade plane. It is taken from a neutral place no one can manipulate. This was to protect the village from somebody raising the grade of their property to increase building height. The view of a few are a premium that the community pays dearly for. No where in our code is mean roof height mentioned or average roof height. Max building height is. Our hybrid of floors, height and the addition of transmission and receiving antennas establish this max height to the highest point of a structure. Only allowing architectural details to exceed this max height.

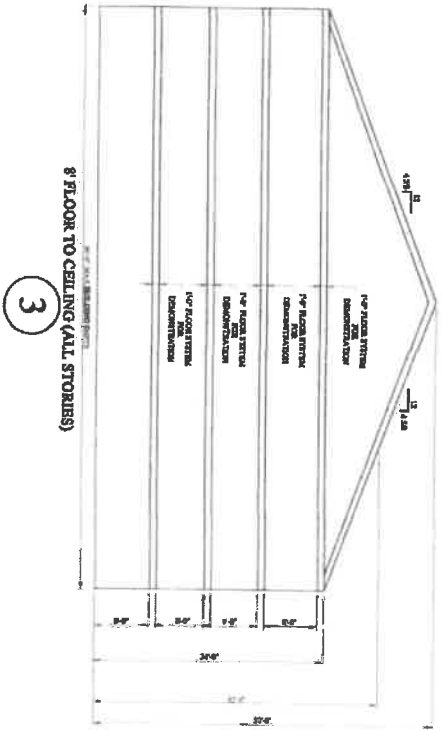
TYPE 1 - SHOPFRONT / MIXED USE



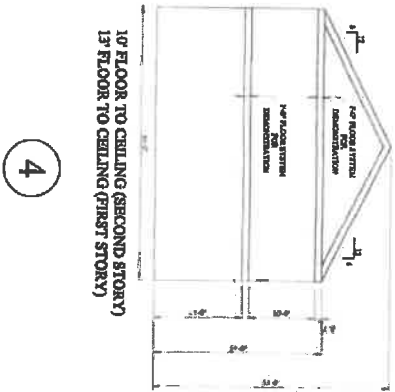
TYPE 1 - SHOPFRONT / MIXED USE



TYPE 1 - SHOPFRONT / MIXED USE



RESIDENTIAL



RESIDENTIAL

