



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov

NOTICE OF PUBLIC HEARING

Town of Berlin
Board of Appeals

Pursuant to the requirements of §108-191 of the Code of the Town of Berlin, notice is hereby given that a public hearing will be conducted by the Berlin Board of Zoning Appeals in the Mayor and Council Chambers of Berlin Town Hall, 10 William Street, Berlin, Maryland on

WEDNESDAY, August 23rd, 2023 @ 5:30PM

1. Approval of Minutes – April 12th, 2023
2. 10343 Old Ocean City Blvd – Requesting a Special Exception to Section 108-671 and 108-670

Any questions regarding the above agenda items shall be directed to the Berlin Department of Planning and Zoning at 410-641-4143.

Any persons having questions about the above-referenced meeting or any persons needing special accommodations should contact Dave Engelhart at 410-641-4143. Written materials in alternate formats for persons with disabilities are made available upon request. TTY users dial 7-1-1 in the State of Maryland or 1-800-735-2258 outside Maryland.

Town of Berlin
Board of Zoning Appeals
April 12th, 2023

Chairman Joe Moore called the April 12th, 2023, Board of Zoning Appeals meeting to order at 5:30PM. The members present were Joe Moore, Woody Bunting, and Doug Parks. Staff present were Mrs. Ivy Wells, of Economic Development for the town and the Permit Coordinator Carolyn Duffy. Absent from the meeting was Planning Director Dave Engelhart.

Chairman Joe Moore stated that there are three members present for tonight's meeting which constitutes a quorum. The first matter on the agenda is the approval of the minutes from February 8th, 2023. Chairman Joe Moore called for a motion to approve. Mr. Doug Parks made the motion to approve the minutes from the February 8th, 2023. Mr. Woody Bunting seconded the motion. He stated he was not present at that meeting, but he had read the minutes. Chairman Joe Moore stated Carolyn takes very detailed minutes and they are accurate. He also stated he would like to defer item #2 the Election of Chairman & Vice Chairman. He thought this should be done by the full board and not just the three that are present.

Chairman Joe Moore stated before them they have the application of Brett & Megan Hines. Mr. Engelhart has said they are requesting a special exception from the building setbacks lines for the proposed construction of a mixed-use building. Chairman Moore stated the board members have the application and the applicants are requesting a variance for construction of a mixed-use building with residential. However, due to the size of the lot with an irregular triangular shape they are requesting a variance from the required setbacks to the building to the curb which will allow them to maximize the entire space of the building.

Chairman Moore explained with respect to section 108-165 of the Berlin Code which said that when the enforcement of the requirements of the article would involve practical difficulty or would cause unnecessary hardship to carry out the spirit and purpose of the chapter the board may upon a proper application grant such variance from the terms of the chapter as will read such hardship. He said as for the record the board may also attach their two such conditions regarding the location, character, and other features of the proposed structure as they deem necessary. He said in the interest of the purpose of the chapter and in the public interest. With that introduction Chairman Moore asked the applicants to stand and raise their right hand. He then swore in Mr. Brett Hines, 21 Jefferson Street property owner and Mr. Eric Pfeffer of 111 West Street, Berlin Maryland. Mr. Eric Pfeffer, representing the Hines as their architect, was present to discuss the site plan.

Mr. Hines stated they would like to build a mixed-use residential building and it is a small lot. He stated it would require some negotiation on how they can find a good use for the space. He stated they are requesting to look at variances and setbacks from what the code requires. Chairman Moore stated you are required to provide to the board whether the denial from the board would cause practical difficulty for your use and enjoyment of your property. Mr. Pfeffer stated without the setbacks the area is only 3783 square feet. The buildable lot area with 10ft. setbacks on Gay Street and Jefferson is reduced down to 1536 sq ft which makes it impossible to build a structure worth building that would have any economic liability in the long term.

Chairman Moore asked me to show the site plan on the screen. Mr. Hines stated that Mr. Jeff Auxers studio was next to the lot. He stated they both had agreed to leave some space between the buildings due to the access of mechanical needs and egress for the units to provide parking in the widest part of the lot. Mr. Hines said there is a zero-foot setback on that. Chairman Moore asked Carolyn if what they were seeing on the screen was considered part of the record for the board. I replied yes. Mr. Hines asked if the site plan at this point was conceptual due to the uniqueness of the lot not able to design without having some idea of what the variances are. He stated they had put a lot of time into this, but this is not the final building. Chairman Moore stated you know this board does not have site plan approval that is Planning Commission. Chairman Moore asked if the property was in the Historic District. Mr. Hines replied yes, it is. Chairman Moore asked if he had been before the Planning Commission or Historic District Commission. Mr. Pfeffer stated to get there they needed to know the footprint of the building. He said they had postponed getting the plans because of the expense. Chairman Moore stated that the variance would determine the configuration of the building. Chairman Moore stated if they would grant approval, it is just due to the application of tonight. He said it does not constitute the approvals of anything other than you have requested a setback variance.

Mr. Woody Bunting stated one drawing has a five-foot setback from the south side. Chairman Moore stated that was from the Habitat for Humanity project. Mr. Bunting said the only request was for a five-foot set back off of Jefferson Street. He asked what are you requesting? They replied they are requesting a ten-foot reduction so a zero setback. Mr. Bunting asked from both streets. Mr. Pfeffer replied zero setback from the property lines that join the neighboring property to the northeast. He said they are not proposing to build out to the tip of the property. Mr. Bunting said he would have been okay with the five feet off both streets but was not aware you were asking for zero. He thought that seemed like a lot. Mr. Hines said to the best of his knowledge without having the property surveyed it would be about one foot and on the other side about three foot if they could build up to that point.

Chairman Moore asked what the building was to the lot coverage. Mr. Hines replied he was not sure yet as he had not calculated it. Mr. Woody said he had a problem with five feet off both streets, the previous site plan required four parking spaces. Mr. Bunting stated you don't have a lot of details and you request a Tap House. Mr. Bunting stated with a Tap house a lot of people are going to come and will need a place to park. He said wondering where this is going to occur. Mr. Bunting said you are looking for a variance and you have no details which is very hard to decide. Mr. Pfeffer stated it is very tricky because they need the variance, they didn't want to come to the board with a design and have to take five feet off of it. He stated he knew it would be easier to come and ask for a special variance request. Mr. Bunting said he was wondering if it would have been easier for them to have gone to the Planning Commission to get their input to see what they would have been willing to consider. Chairman Joe Moore stated he had missed the fact that it was zero setbacks from both sides. That's why he asked Mr. Bunting because he's not a surveyor. He stated the consideration that the board has is the determination he had thought. He stated when you go to the Planning Commission that it would be within the parameters and would be a determination or refiguration of the site plan. But what it appears to be is you want a zero setback so you can then determine what you're going to do with the site. He stated that he was not sure that is the right way to do it. He stated for the record the Planning Commission can make site plan considerations subject to as we can to approval of other

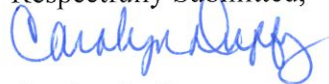
requirements necessarily that would be the Historic District Commission but also if they determine that the zero setbacks for a site plan that was not detrimental to the surrounding properties, and they could do that and then we could make our determination. Chairman Moore stated this is your decision to ask for a postponement of the determination of the board until some of these questions can be answered. Chairman Moore stated in some cases there is prohibition on when you can come back, he asked Ms. Duffy was that correct. I then replied yes.

Chairman Moore said he didn't want to delay them if they wanted the determination tonight. But you have so many questions and you want the board to give you zero setbacks until you figure out what to do with the lot. He stated he was not sure if they shouldn't have gone to the Planning Commission first to get their input. He said if they approved it tonight the Planning Commission is not bound to do anything except not to deny the zero setback that you would have requested from the board. They may have questions like parking, the configuration of the property, the use which is their purview. The concept he stated is everybody is entitled to the use of their land. Chairman Moore said the practical difficulty you don't have to show the denial with take away all use of the land, but you are obligated under Maryland Law to show a practical difficulty would deprive you of a beneficial use of the land that would otherwise be allowed. Chairman Moore said his notion is if the board would go along, he would not object to a postponement until you decide to come back to the board. Whether that is before or after site plan it seems there are a lot of questions here that remain.

Mr. Hines asked what would be the best way to go with this. Chairman Moore stated Mr. Engelhart would discuss with you what he feels is the best way to go. Mr. Hines said that had been their console meeting with Dave on how to approach this. Chairman Moore told Mr. Hines you have heard the questions so if you want us to vote tonight that will be your call. Mr. Bunting stated he agreed with the chairman and if you want us to proceed it might be a different motion. Mr. Pfeffer said they would like to postpone it but would like to know the next step. Chairman Moore replied they are not giving advice and you have heard our concerns. Mr. Hines said he had one more question. Chairman Moore stated not sure of what you're asking unless you have a severe time restraint it's up to you. Mr. Bunting said you did not state enough details.

Chairman Moore asked the public if anyone wanted to be heard before the postponement is considered. No one replied. Mr. Woody Bunting made the motion to the table. Mr. Doug Parks seconded the motion. Meeting Adjourned at 6:01PM

Respectfully Submitted,



Carolyn Duffy

Staff Report to the Berlin Board of Appeals

Meeting Date: August 23, 2023

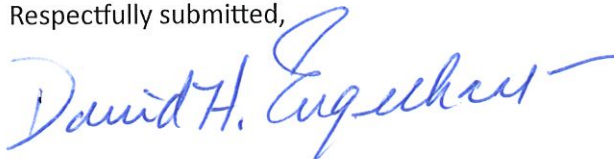
5:30 PM

Our appeal tonight is for a Special Exception received from Ms. Kim Skeeter for her property located at 10343 Old Ocean City Boulevard. The property is located within the B-2 Shopping District, but has a Non-Conforming single family home on the parcel, which was in existence when the Zoning Ordinance was adopted by the Town. The home is in a state of disrepair and beyond rehabilitation for occupancy due to structural and foundation failures.

Sections 108-670 (3), (4) and 108-671 of the Town Code detail the limits which buildings may be repaired and still continue with the existing Non-Conforming Use. Ms. Skeeter seeks to demolish the existing unsafe structure and replace it with a new home.

Staff recommends the granting of the Special exception due to the unsafe condition of the existing home.

Respectfully submitted,



David H. Engelhart

Planning Director

- (4) Specific lot area, width, yard, height, density, setbacks and coverage regulations shall be determined upon approval of the site development plan.

(Code 1977, § 107-52(E); Ord. No. 2000-10, 9-25-2000)

Sec. 108-644. Open space.

Open space and common areas shall be provided and shall comply with sections 108-716 and 108-717.

(Code 1977, § 107-52(F); Ord. No. 2000-10, 9-25-2000)

Sec. 108-645. Landscaping, fencing and screening.

Landscaping, fencing and screening related to the uses within the site and as a means of integrating the proposed development into its surroundings shall be planned and presented to the planning and zoning commission for approval, together with required plans for the development. A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed, pursuant to section 108-718. A grading and drainage plan shall also be submitted to the planning and zoning commission with the application.

(Code 1977, § 107-52(G); Ord. No. 2000-10, 9-25-2000)

Sec. 108-646. Signs.

Signs shall be regulated pursuant to article X of this chapter.

(Code 1977, § 107-52(H); Ord. No. 2000-10, 9-25-2000)

Sec. 108-647. Site plan review requirements.

All planned unit developments shall comply with site plan review requirements.

(Code 1977, § 107-52(I); Ord. No. 2000-10, 9-25-2000)

Secs. 108-648—108-667. Reserved.

ARTICLE VII. NONCONFORMANCES

Sec. 108-668. Conformance required.

Except as hereinafter specified, no land, building, structure or premises shall hereinafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered, except in conformity with the regulations herein specified for the district in which it is located.

(Code 1977, § 107-11; Ord. No. 2000-10, 9-25-2000)

Sec. 108-669. Continuation of existing uses.

Except as provided in section 108-670, any lawful use, building or structure existing at the time of the enactment of this chapter, including a seasonal use, may be continued, even though such use, building or structure may not conform with the provisions of this chapter for the district in which it is located.

(Code 1977, § 107-12; Ord. No. 2000-10, 9-25-2000)

Sec. 108-670. Nonconforming uses.

No existing building or premises devoted to a use not permitted by this chapter in the district in which such building or premises is located, shall be enlarged, extended, substituted or structurally altered unless the use thereof is changed to a use permitted in the district in which such building or premises is located, except as follows:

(1) *Substitution.*

- a. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification.
- b. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed back to a less restricted use.

- c. When authorized by the board of appeals according to the provisions of section 108-164, a nonconforming use of land may be changed to another nonconforming use, or a nonconforming use of a building may be changed to one of a less restricted classification.

(2) *Discontinuance.*

- a. No building, structure or premises where a nonconforming use has ceased for one year or more or where the nonconforming use has ceased and changed ownership shall again be utilized as a nonconforming use.
- b. All nonconforming uses of land not involving any building or structure having an assessed value for tax purposes of more than \$2,000.00 at the time of becoming nonconforming, must comply within one year of becoming nonconforming.

(3) *Extensions.*

- a. A building devoted to a nonconforming use may be completed or extended, and other buildings may be erected in addition thereto, for uses necessary and incidental to the continuation of the existing use, provided that such additions and extensions are located on the same premises or on adjoining premises on the date such building became nonconforming, and provided that the floor areas of such additions and extensions shall not exceed, in aggregate, 35 percent of floor area of the existing building devoted to a nonconforming use. Any other extension of a nonconforming building or use of land shall be subject to the board of appeals approval as provided in section 108-164. The

extension or completion of a building or the construction of additional buildings as herein provided shall not be deemed to extend or otherwise affect the date when such nonconforming use or building must be changed or removed, if subject to any of the provisions of subsection (2) of this section.

- b. A nonconforming use may be extended throughout those parts of a building which were manifestly designed or arranged for such use prior to the effective date of the ordinance from which this chapter is derived, or any amendments to this chapter, provided that no structural alterations are made except as required by law.
- c. Any dwelling lawfully existing at the time of enactment of this chapter, not located on a lot having frontage on a street as required herein, may be continued and may be enlarged, without increasing the number of dwelling units therein, provided that no such addition shall extend closer to the street than the setback line for the existing building.

- (4) *Replacing damaged buildings.* Any nonconforming building or structure, or group of related buildings comprising one enterprise or establishment and under one ownership, which may become damaged more than 60 percent of its then-fair-market value, exclusive of the foundation, by accidental fire, flood, explosion, war, riot or act of God, shall not be restored or reconstructed and used as before such happenings, but if less than 60 percent damaged, it may be restored or reconstructed and used as before, provided that this is done within one year.

(Code 1977, § 107-13; Ord. No. 2000-10, 9-25-2000)

Sec. 108-671. Unsafe buildings.

Nothing in this article shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by proper authority.

(Code 1977, § 107-14; Ord. No. 2000-10, 9-25-2000)

Secs. 108-672—108-700. Reserved.**ARTICLE VIII. SUPPLEMENTARY
DISTRICT REGULATIONS****Sec. 108-701. Lot requirements.**

Except as otherwise provided by this chapter:

- (1) Every building or group of related buildings shall be located on a lot, as herein defined, having at least the area, width, lot area per family and yards herein prescribed for the district in which such building is located.
- (2) No lot shall be used for dwelling purposes which does not abut for at least 40 feet on a street, as herein defined, except as provided in section 108-240.
- (3) Not more than one dwelling structure shall be located on a lot as herein defined, except as provided for in divisions 4 and 5 of article VI of this chapter.

(Code 1977, § 107-16; Ord. No. 2000-10, 9-25-2000)

Sec. 108-702. Accessory buildings in residence districts.

(a) No accessory building shall be located in any required court or in any yard other than a rear yard except as provided hereinafter. Accessory buildings shall be distant at least six feet from alley lines and from any other building on the same lot and at least six feet from lot lines of adjoining lots, which are in any R District.

(b) Accessory buildings, except stables, may be erected as a part of the principal building or, if at least six feet therefrom, may be connected thereto by a breezeway or similar structure, provided that all yard requirements for a principal building are complied with.

(c) In any R District, where a corner lot adjoins in the rear a lot fronting on the side street and located in an R District, no part of any accessory building on such corner lot shall be nearer the side street lot line than the least depth of the front yard required along such side street for a dwelling on such adjoining lot; and in no case shall any part of such accessory building be nearer to the common lot line than the least width of a side yard required for the principal building.

(Code 1977, § 107-17; Ord. No. 2000-10, 9-25-2000)

Sec. 108-703. Reduction of required yard.

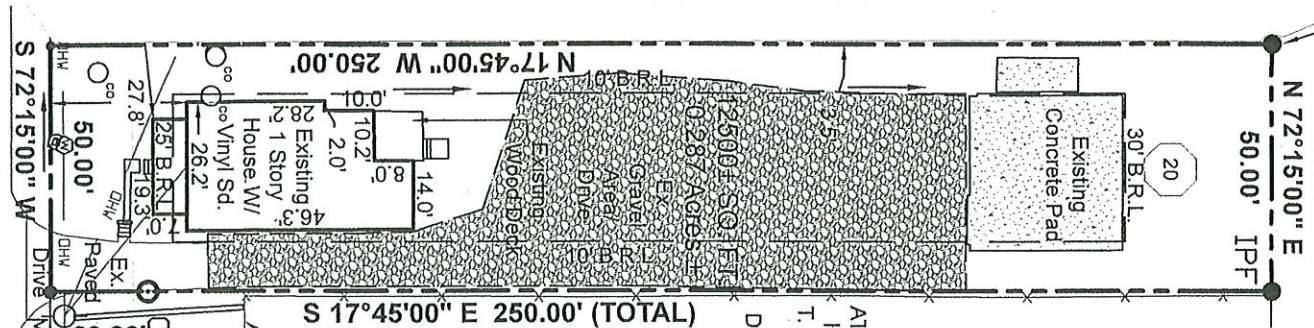
No lot shall be reduced in area so as to make any yard or any other open space less than the minimum required by this chapter, and if already less than the minimum required, said yard or open space shall not be further reduced. No part of a yard or other open space provided about any building or structure for the purpose of complying with the provisions of this article shall be considered as part of a yard or other open space required under this article for any other building or structure.

(Code 1977, § 107-18; Ord. No. 2000-10, 9-25-2000)

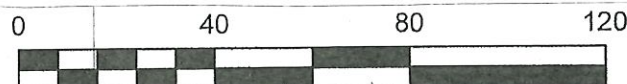
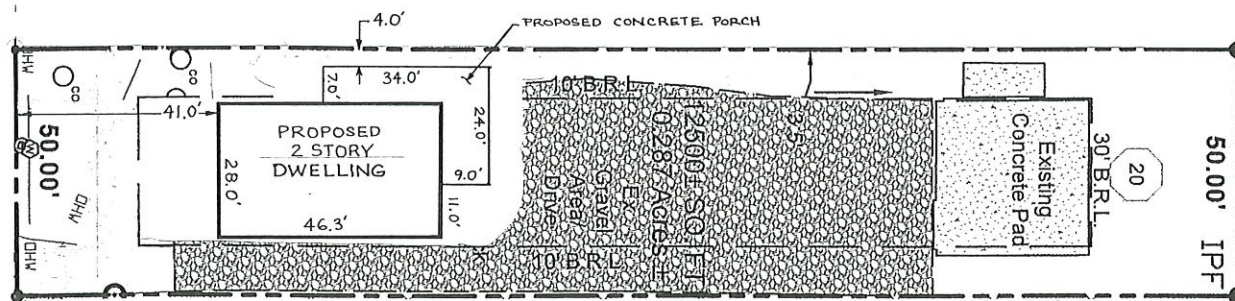
Sec. 108-704. Off-street parking and loading.

In every district, spaces for off-street parking and for loading or unloading of vehicles shall be provided in accordance with the requirements in divisions 2 and 3 of article IX of this chapter. Off-street parking and loading areas may oc-

EXISTING STRUCTURE LOCATIONS

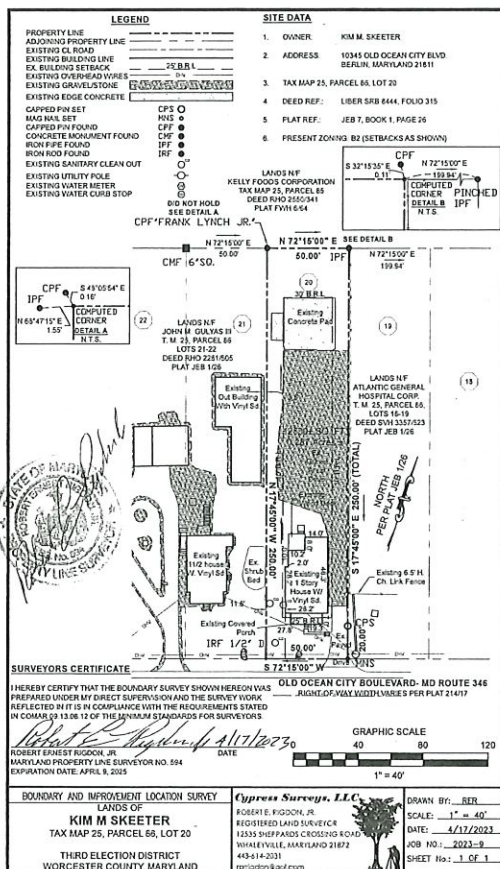


PROPOSED STRUCTURE LOCATIONS



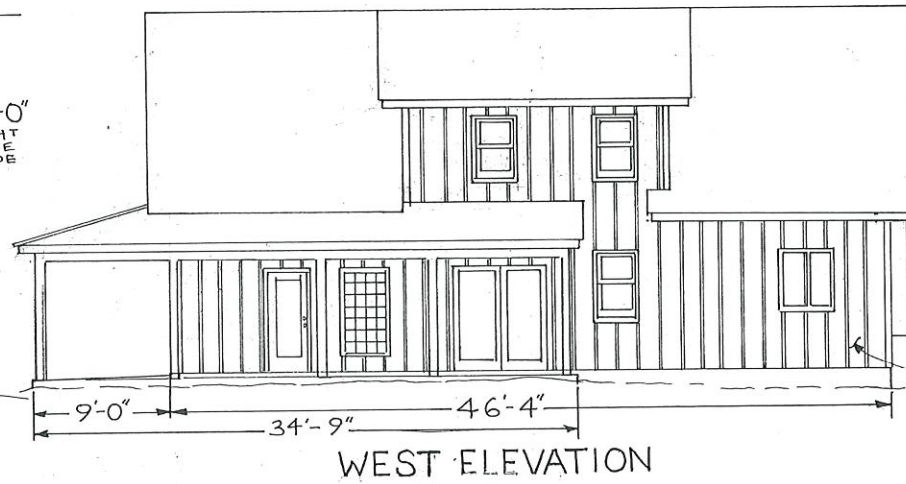
GRAPHIC SCALE 3" = 40'

KIM M. SKEETER		
10345 OLD OCEAN CITY BLVD.		
SCALE VARIES	1 OF 3	HCR IV
BURLY BUILDING CO. INC.		7-15-23

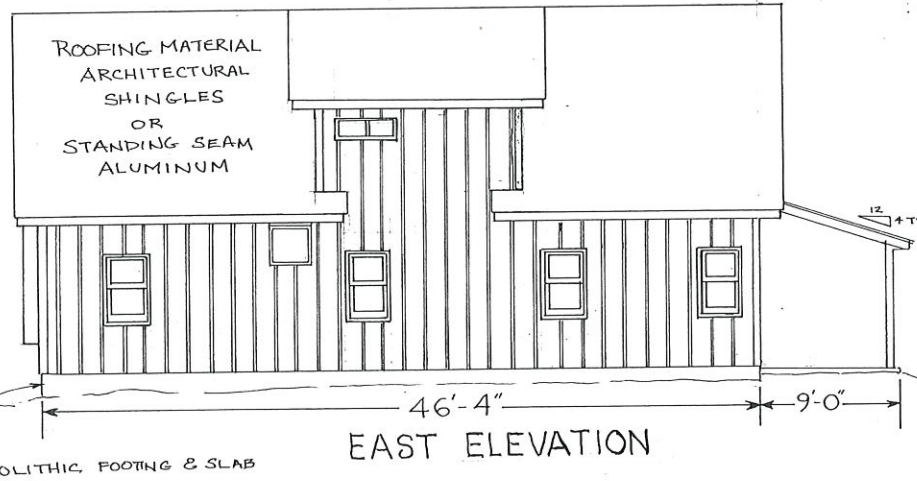
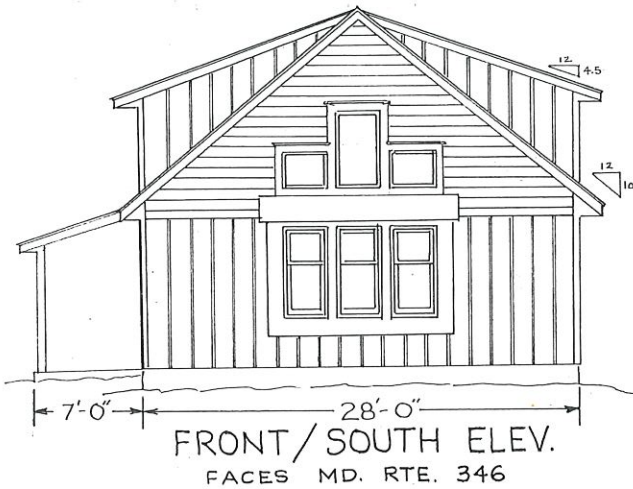




25'-0"
HEIGHT
ABOVE
GRADE



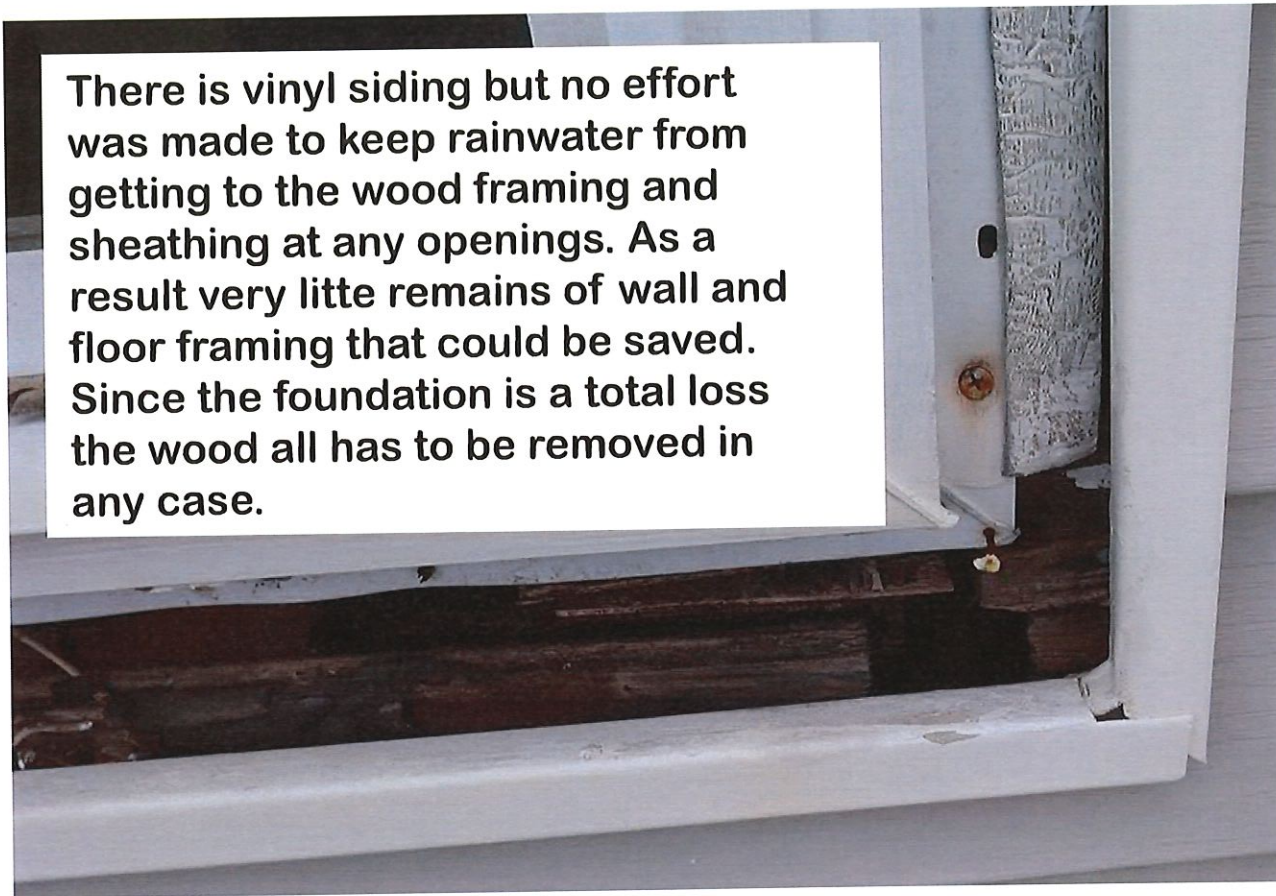
CEMENT BASED
BOARD & BATTEN
SIDING TYPICAL

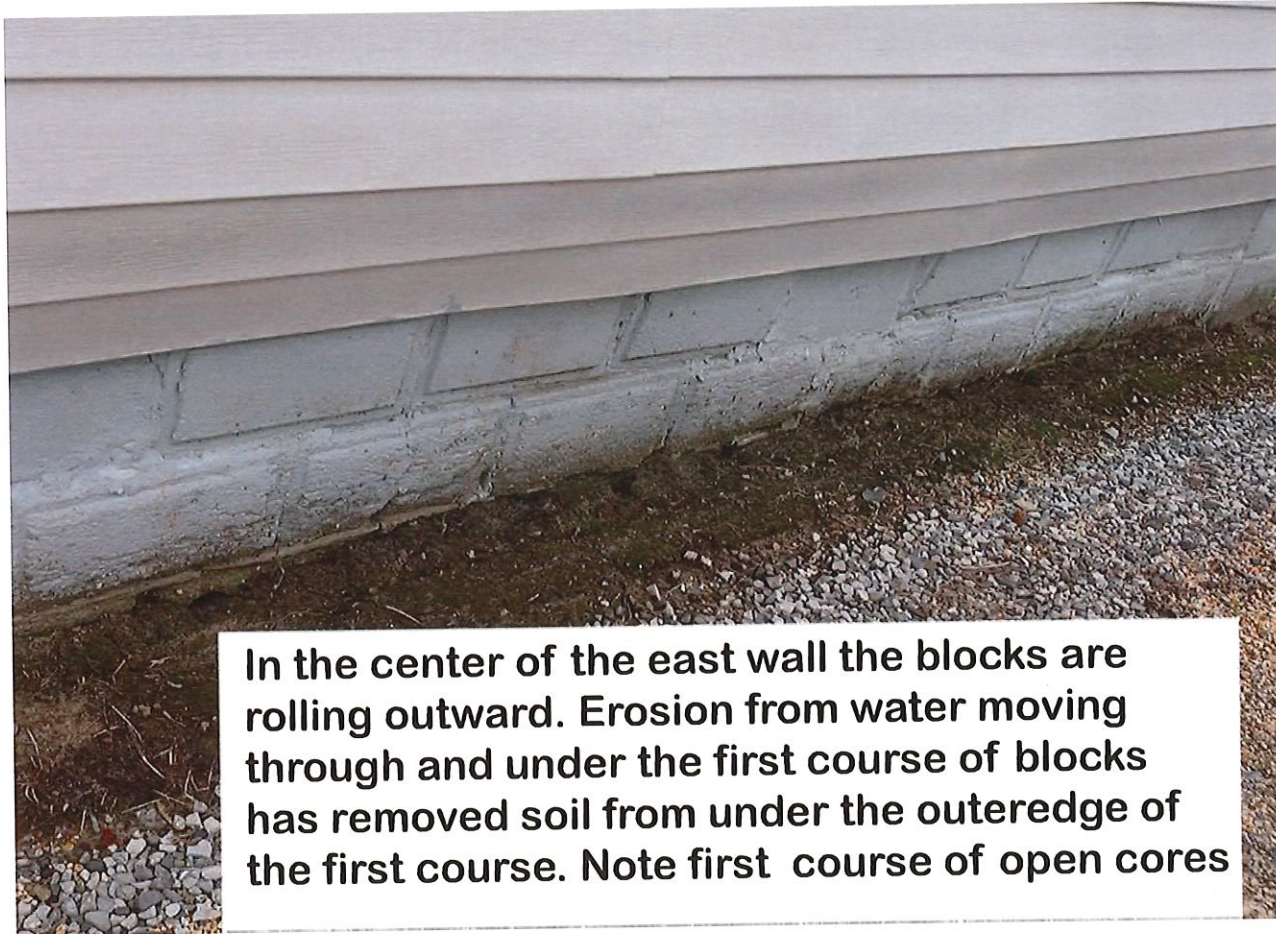


MONOLITHIC FOOTING & SLAB

KIM M. SKEETER	10345 OLD OCEAN CITY BLVD.
	1/4" = 1'-0"
	7-15-23
	BURLEY BUILDING CO. INC.

There is vinyl siding but no effort was made to keep rainwater from getting to the wood framing and sheathing at any openings. As a result very little remains of wall and floor framing that could be saved. Since the foundation is a total loss the wood all has to be removed in any case.

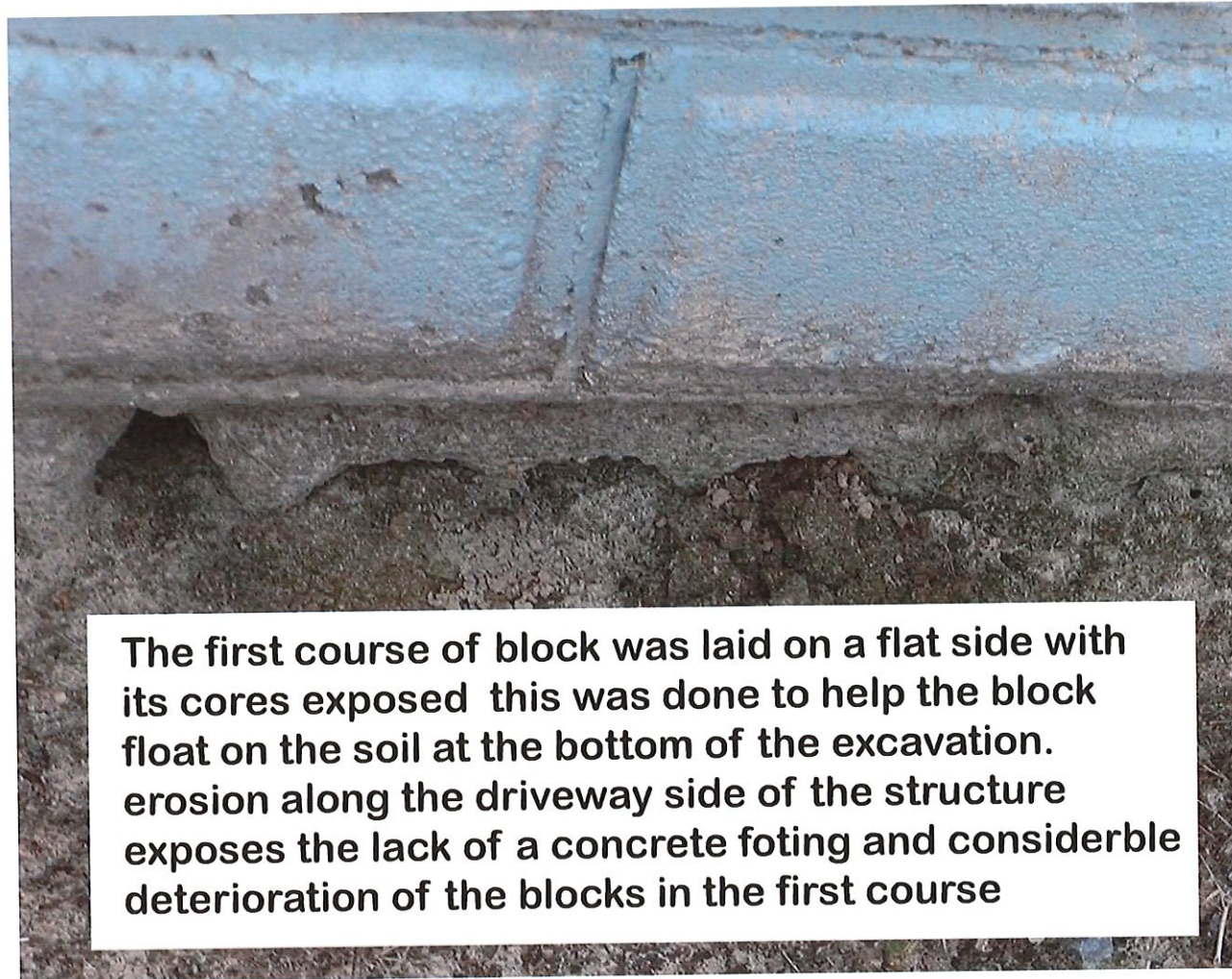




In the center of the east wall the blocks are rolling outward. Erosion from water moving through and under the first course of blocks has removed soil from under the outer edge of the first course. Note first course of open cores



In the center of the west wall a tree near the structure has completely deformed the block wall because there is no footings and the open cores of the first course provided no barrier to its roots.



The first course of block was laid on a flat side with its cores exposed this was done to help the block float on the soil at the bottom of the excavation. erosion along the driveway side of the structure exposes the lack of a concrete footing and considerable deterioration of the blocks in the first course

**Vertical Cracks on every corner show
that there is no foundation tying the
eaves edge walls to the gable end walls**

