BOARD OF ZONING APPEALS
Agenda

August 5, 2015
10:00 A.M.
Cape Charles Civic Center
500 Tazewell Avenue

1. **Call to Order; Roll Call**

2. **Invocation and Pledge of Allegiance**

3. **Public Comments**

4. **Consent Agenda**
   A. Approval of Agenda Format
   B. Approval of Minutes of May 21, 2015

5. **New Business**
   A. Board of Zoning Appeals 2014-2015 Annual Report
   B. Variance Application – 309 Jefferson Avenue – Change of Use Pursuant to Zoning Ordinance Sections 2.5.1 and 2.5.4

6. **Adjourn**

DRAFT

Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center
May 21, 2015
9:30 a.m.

At 9:32 a.m. in the Cape Charles Civic Center, Chairman Gene Kelly called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann, newly appointed member Diane D'Amico, Bill Murphy and Jay Wiegner. Also present were Town Planner Larry DiRe, Assistant Town Clerk Amanda Hurley and applicant Herbert Thom. There were three members of the public in attendance.

Gene Kelly led the Board in the recitation of the Pledge of Allegiance.

PUBLIC COMMENTS
There were no public comments to be heard nor any additional written comments submitted prior to the meeting.

CONSENT AGENDA
Motion made by Jay Wiegner, seconded by Gene Kelly to accept the agenda format as presented. The motion was approved by unanimous consent.

The Board reviewed the minutes from the January 7, 2015 Public Hearing and Meeting.

Motion made by Pete Baumann, seconded by Gene Kelly, to approve the minutes from the January 7, 2015 Public Hearing and Meeting as presented. The motion was approved by majority vote with Diane D'Amico abstaining.

NEW BUSINESS

A. *Variance Application – 119 Fig Street – New Accessory Building and Setback Requirements*
The lot was not a standard shape of 40 x 140 square feet. The lot in question was 35.30 feet across the front and 80 feet deep on each side. A previously existing accessory building identified on the survey plat/site plan as "metal garage" was located on a footprint that did not conform to the required setbacks for an accessory building. Accessory use buildings were a by-right use on conforming lots in the R-1 district. The applicant was proposing to construct a building similar in size on that footprint.

Diane D'Amico questioned the concrete pad and Gene Kelly stated that part of it appeared to be on the property behind 119 Fig Street.

Mr. Herbert Thom stated that he was going to place the accessory building in the same footprint because that seemed the best place to put it due to the lot size.

Pete Baumann stated that the accessory building footprint was askew and it appeared very close to the property lines. Mr. Thom stated that he could adjust the building so it was square.

Jay Wiegner asked how long it had been since the old shed was removed and Mr. Thom stated that it had been a month, but he removed it because he felt it was a liability.

Bill Murphy asked how far the structure was from the house because the ordinance stated that "The accessory building shall not be closer than fifteen feet (15') from the main building." Mr. Thom stated that the shed would have probably been 12'-15' from the house.

Gene Kelly invited Mr. Bruce Evans to speak. Mr. Evans asked if anyone had read the pre-existing non-conforming use ordinance which was a grandfather clause. Mr. Evans stated that the building was gone but the slab was still there and that could be taken into consideration whether it was approved as a pre-existing non-conforming use or as a variance.

There was much discussion and Larry DiRe stated that a footprint did not constitute a use but a foundation did.

Bill Murphy asked if moving the building up to conform to the setback requirements would be an issue and Mr. Thom stated that it would be a hardship if he had to conform to the existing ordinance.

Mr. Thom sketched the site plan to show the accessory building squared one foot to the property line.

Motion made by Gene Kelly, seconded by Jay Wiegner, to approve the variance application for 119 Fig Street as presented. The motion was approved by unanimous consent.

B. Informational Presentation – Cape Charles Baptist Church proposed parking lot addition

Staff had been informed of the Cape Charles Baptist Church's interest in an off-street parking lot. There was a vacant lot, zoned R-1 directly south across Randolph Avenue that the church was interested in securing. As the proposed project moved forward, the church would possibly need to appear before the BZA.

Jay Wiegner stated that the plans were not definite.

Motion made by Gene Kelly, seconded by Pete Baumann, to adjourn the Board of Zoning Appeals Meeting. The motion was approved by unanimous consent.

_____
Chairman Gene Kelly

_____
Assistant Town Clerk

DRAFT

Town of Cape Charles
Board of Zoning Appeals

2014-2015 Annual Report
(July 1, 2014-June 30, 2015)

Gene Kelly
Chairman

Jay Wiegner
Vice Chairman

2014-2015 Board of Zoning Appeals Members

Gene Kelly, Chairman

Jay Wiegner, Vice Chairman

Pete Baumann

Diane D'Amico

Bill Murphy

2014-2015 Staff

Robert Testerman (July – November 2014)

Lawrence DiRe, Town Planner (beginning February 2015)

Introduction

Section 15.2-2308.C of the Code of Virginia states the following, "The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year."

Board and Staff Updates

Diane D'Amico was appointed to the Board for a term expiring October 31, 2019(May 2015).

There was a staff change to the Board of Zoning Appeals in 2014. Town Planner Rob Testerman, AICP resigned to take a similar position in another jurisdiction (November).

Variance and Exceptions

Approved, zoning exception for a portion of the Bay Creek Nicklaus Golf Course for shoreline protection and erosion and sediment control measures (January 2015); zoning variance for an accessory building at 119 Fig Street for side and rear yard setback, distance to main building setback, and lot coverage (May 2015).

Denied, none.

Board of Zoning Appeals Staff Report

From: Larry DiRe

Date: August 5, 2015

Item: 5B - Variance Application – 309 Jefferson Avenue – Change of Use Pursuant to Zoning Ordinance Sections 2.5.1 and 2.5.4

Attachments: Application with narrative, survey plat\site plan, general vicinity lot map, building photos and drawings

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Background

This lot is in the Residential-1 zoning district, and is not a standard lot shape of 40 x 140 (5600 square feet). The lot in consideration before the Board is 33.19 feet across, and 80 feet deep (2654 square feet). A previously existing, non-conforming commercial use was located on the lot, within the footprint of the existing building. The previous commercial use was a barber shop, sometimes considered among "personal services" usage but not defined as such in the Town Zoning Ordinance. The current water\sewer utility account lists the usage as "commercial."

Application Specifics

The applicant intends placing a new commercial operation (restaurant) not continuing the barber shop or other personal services usage within the footprint of the existing building, while doing some cosmetic and structural improvements to the building. The footprint area will not change. The applicant is seeking relief from the requirements of Article II Sections 2.5.1 and 2.5.4. Those sections state the following:

"***Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits***
A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." A non-conforming use, building, or structure may be continued provided by the following.
1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.
2. No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.
3. No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.

4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.
5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.
6. If any such non-conforming use or structure ceases for any reason for a period of more than four years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.

B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof."

"Section 2.5.4 Change of Use
The use of a non-conforming building or structure may be changed to the same use or a use of a more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restrictive nature, it shall not thereafter be changed to a use of a less restrictive nature with the exception of existing duplexes specifically designed as such."

Variance Criteria

Section 2.9 of the Zoning Ordinance states the following definition of variance:

> *"the permission to depart from the literal requirements of this zoning ordinance. A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishments or expansions of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence (or existence) of non-conformities in the zoning district or adjoining districts*."

Section 2.6.2 B of the Zoning Ordinance states the following guidance in determining the basis for variance:

> *"When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of the adoption of this ordinance, or where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence*

heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant. All variances shall be in harmony with the intended spirit and purpose of the ordinance."

Section 2.6.2 B of the Zoning Ordinance provides the following guidance in determining the need to grant variances:

"No such variance shall be authorized by the board unless it finds all of the following conditions exist:

1. *That the strict application of the ordinance would produce undue hardship.*
2. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity*
3. *That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."*

Recommendation

Determine if all three of the conditions outlined in Section 2.6.2 B of the Zoning Ordinance exist, and determine if the Board of Zoning Appeals will issue a variance.

MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA

Application for Zoning Variance

Date 6/1/2015

Permit No._____
Fee: $250.00

Applicant John L. Hanson Signature John L. Hanson
Address 23148 Parson's Circle Cape Charles, VA 23310 Telephone 443-221-9160

Owner John L. Hanson, Dawn Hanson, Carol Selby
Address 23148 Parson's Circle City Cape Charles State VA ZIP Code 23310

Contractor Owner
Address See above City_____ State_____ ZIP Code_____
Town License No._____ State License No._____

Location of Improvement 309 Jefferson Ave, Cape Charles, VA 23310
Lot No. 84C Block No._____ Lot Size 40(L) x 34(W) Lot Area 1360 sq ft
Type of Improvement Renovation
Proposed Use Restaurant
Estimated Construction Costs $50,000.00

Dimension of Structure or Improvement Width 29'9" Length 32'6" Height 12'
Total Square Footage_____

Structure or Improvement will be set back
_____ from front property line
_____ from side property line
_____ from side property line on corner lot
_____ from rear property line

Town Water Permit_____ **Town Sewer Permit**_____

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer, and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Owner/Agent John L. Hanson

BUILDING PERMIT

Issuance of the Zoning Variance in itself does not permit the applicant, owner, or contractor to proceed with the improvements noted above. Improvements can proceed only after issuance of a building permit from the Cape Charles Building Official, whose office is in the Municipal Building at 2 Plum Street in Cape Charles and who can be reached at 757-331-2176.

Date Approved_____ **Date Denied**_____

Zoning Administrator_____

Application for Zoning Variance

July 6, 2015

Submitted by the Applicants:
John Hanson, Dawn Hanson & Carol Selby
23148 Parsons Circle
Cape Charles, VA 23310
443-221-9160

To the Cape Charles Board of Zoning Appeals:

1. Statement of Ownership and Interest
    a. The applicants are the owners of the property situated at 309 Jefferson Ave., Cape Charles, VA. The applicants also own the adjacent lot (no street number assigned).
    b. The legal description of 309 Jefferson Ave. is as follows:
    "Beginning at the northeast corner of Strawberry Street and Jefferson, thence running in a northerly direction thirty-four feet (34 ft.) along Strawberry Street to a certain stob, thence in an easterly direction forty feet (40 ft.) to Lot No. 81, thirty-four feet (34 ft.)to Jefferson Ave., and thence in a westerly direction along Jefferson Ave. to the point beginning [from deed]."
    c. The applicants acquired the above-described property on June 1, 2015, property is owned, in whole, without a mortgage.
    d. The business use of the property for more or less of fifty years has been as a barber shop; according to residents the barbershop moved in August 2014. Current owners see the potential to open a restaurant selling food items such as: ice cream products, snow balls, cold sandwiches, pizza and soft drinks.
    e. The building consists of a cinder block section and a wooden section; the roof is rotten through, the applicants plan includes renovation of the block section, tear-down with replacement of the wooden section and a new roof over both sections.
2. The applicants request the following variances:
    a. Section of Zoning Ordinances concerned: Section 2.5 Non-Conforming Uses:
        i. Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits;
        ii. Section 2.5.4 Change of Use.
    b. Description of proposed use restrictions sought to be varied:
        i. Waiver allowing for the continuation of non-conforming use variance;
        ii. Waiver for change of use from barbershop to restaurant.
    c. Statement of variance sought: To obtain approval to continue the current non-conforming use variance and permits and to allow a change of use to restaurant.
3. Reason for the request:
    a. The strict applications of the above referenced provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Ordinance of the Town of Cape Charles.
        i. None of the applicants are licensed barbers; while the applicants could hire a barber; the business generated would not provide adequate income for the applicants.

ii. Many businesses must depend on the tourist season to support themselves for the rest of the year; the tourist season doesn't provide a similar customer base for a barbershop.
iii. The on-going goals of Cape Charles include the support for new business growth that will in turn contribute to the financial well-being of the town.

b. The extraordinary conditions applying to the property involved relate to the continuation of use of the property as a barbershop; this condition is exceptionally restrictive to the opening of an equally suitable business on the property that is of benefit to the local community and also a tourist satisfier.
c. The granting of a variance to allow the use of the property as a restaurant will not be of a substantial detriment to public interest, or to the property or improvements in the zoning area concerned and the character of the district will not be changed by the granting of the variance.
    i. It is expected that the majority of customers will travel the 2 blocks from the beach to the property by foot.
    ii. At the suggestion of the Town Planner, the owners will use the adjacent lot for off-street parking.
    iii. The planned operating hours of the restaurant are mid-morning to early evening and as such would not contribute to unusual traffic and activity in the community.
d. Section of the Zoning Ordinances affected:
    i. Section 2.5.1 (B) Non-Conforming Uses;
    ii. Section 2.5.4 Change of Use.

4. The applicants request a continuation of the current non-conforming use variance for 309 Jefferson Ave. The applicants request a change of use from barbershop to restaurant. The applicants believe that the plan to open a restaurant at this location is in line with the town's goals to increase retail business ownership and provide limited food services to the tourists and residents on the north-end of the beach.
5. Property improvements to be made on granting of non-conforming use & change of use variances; all improvements will be made to meet or exceed building codes.
    A. Exterior
        a. Remove the wooden section of the building and leave the cinder block section;
        b. Rebuild new section on existing footprint, replacement will have a door and a window that matches the existing window on Jefferson Ave;
        c. Remove heating system chimneys located on block section;
        d. Across the front of the 2 sections, apply brick façade approximately 3 feet high; continue the brick on the Strawberry St. side. Add 12"brick pillars above the brick wall, at the right and left side-edges of the front of the building facing Jefferson Ave.;
        e. Stucco in a neural color will be applied to the front of both sections of the building facing Jefferson Ave. and the side facing Strawberry St.;
        f. Back of building and the side facing the church will be painted a neutral color in keeping with the community;
        g. The 3rd window back on the church side and the window on the back closest to the church will be closed in.
    B. Interior
        a. Renovate interior of the block section of the building, replace sheet rock on walls and ceiling;

b. Update the plumbing and electrical service for restaurant use;
c. Update the existing bathroom in the block section;
d. As per health inspector visit; add required smooth, cleanable surface on walls in designated food prep area;
e. Replacement structure to include:
    i. Handicapped accessible bathroom for customers;
    ii. Sheet rock on walls and ceilings;
    iii. Tiled floors;
    iv. HVAC system for air conditioning and heating.

The Town of Cape Charles is a unique setting that combines activities of daily life with the excitement of a large tourist population in the summertime. We believe that the addition of a restaurant that provides cooling summer refreshments to the tourists on the north-end of the beach and to the community year round is needed in this underutilized section of town.

Respectfully,

John Hanson

John Hanson

Dawn Hanson

Dawn Hanson

Carol Selby

Carol Selby

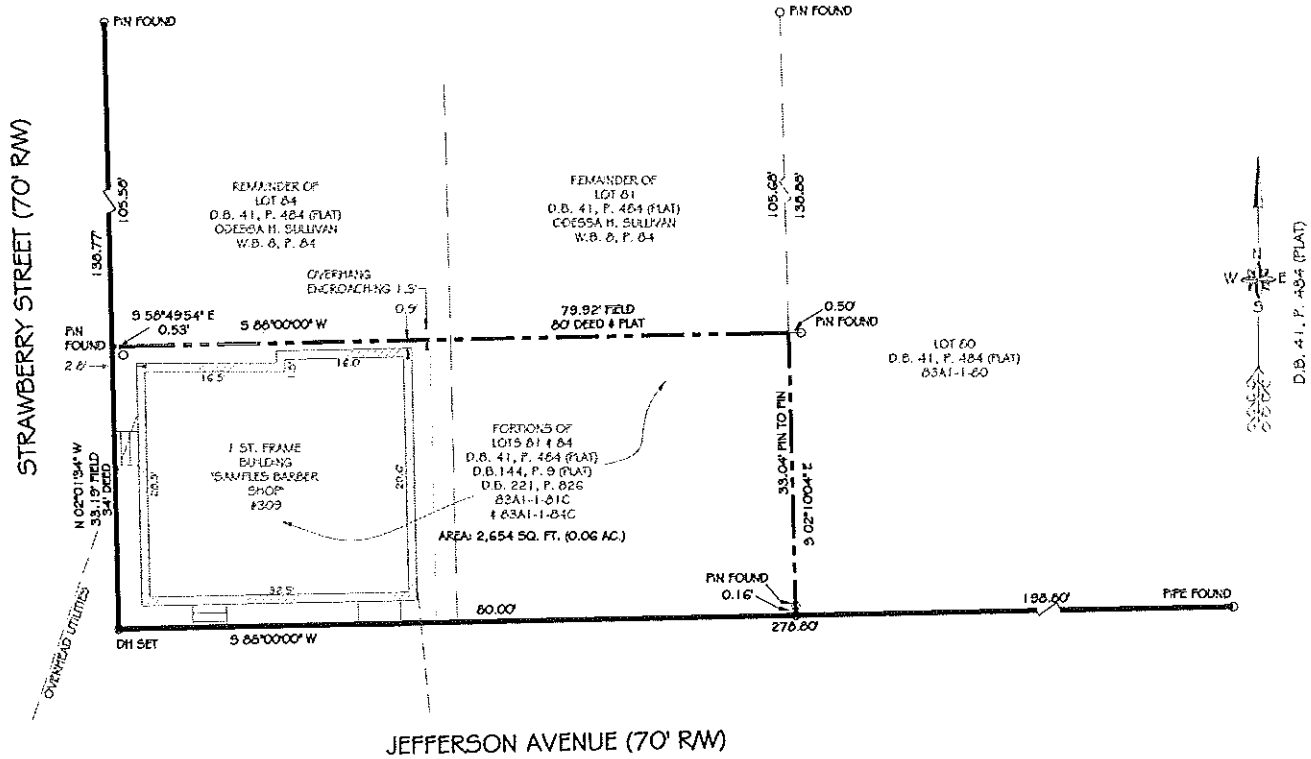
GENERAL NOTES:

1. TAX PARCEL: 83A1-1-81C & 83A1-1-84C
2. OWNERS: JOHN L. HANSON JR & DAWN M. HANSON
3. SOURCE OF TITLE: INST #150000734.
4. A SURVEY WAS PERFORMED ON THIS PROPERTY IN JULY 2015 WITH A BOUNDARY CLOSURE WHOSE PRECISION EXCEEDS 1:10,000.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, ENVIRONMENTAL HAZARDS, CEMETERIES AND UNDERGROUND STRUCTURES NOT OBSERVED DURING THE COURSE OF THE SURVEY.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 51131C 0295 E, DATED 8-28-2008, THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE X. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAP AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAPS. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
7. PLAT REFERENCES:
A) MAP OF THE TOWN OF CAPE CHARLES (D.B. 41, P. 484 - PLAT)
B) PROPERTY TO BE CONVEYED BY ROSS SAWYER WILSON TO JOHN SAMPLE, JR. (D.B. 144, P. 09)

SURVEYOR'S CERTIFICATION

I, MARSHALL B. PARKS, A LICENSED LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT WAS MADE BY ME AT THE DIRECTOPN OF THE OWNERS AND THAT THIS SURVEY IS ENTIRELY WITHIN THE BOUNDARIES OF LAND COVERED BY THE DEED DESCRIBED HEREON AND THAT MONUMENTATION IS ACTUALLY IN PLACE OR WILL BE SET AT POINTS MARKED AS SHOWN HEREON AND THAT THEIR LOCATIONS ARE CORRECTLY SHOWN. THIS SURVEY IS CORRECT AND COMPLIES WITH THE MINIMUM PROCEDURES AND STANDARDS ESTABLISHED BY THE VIRGINIA BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS, AND LANDSCAPE ARCHITECTS.

COMMONWEALTH OF VIRGINIA
MARSHALL B. PARKS
LAND SURVEYOR



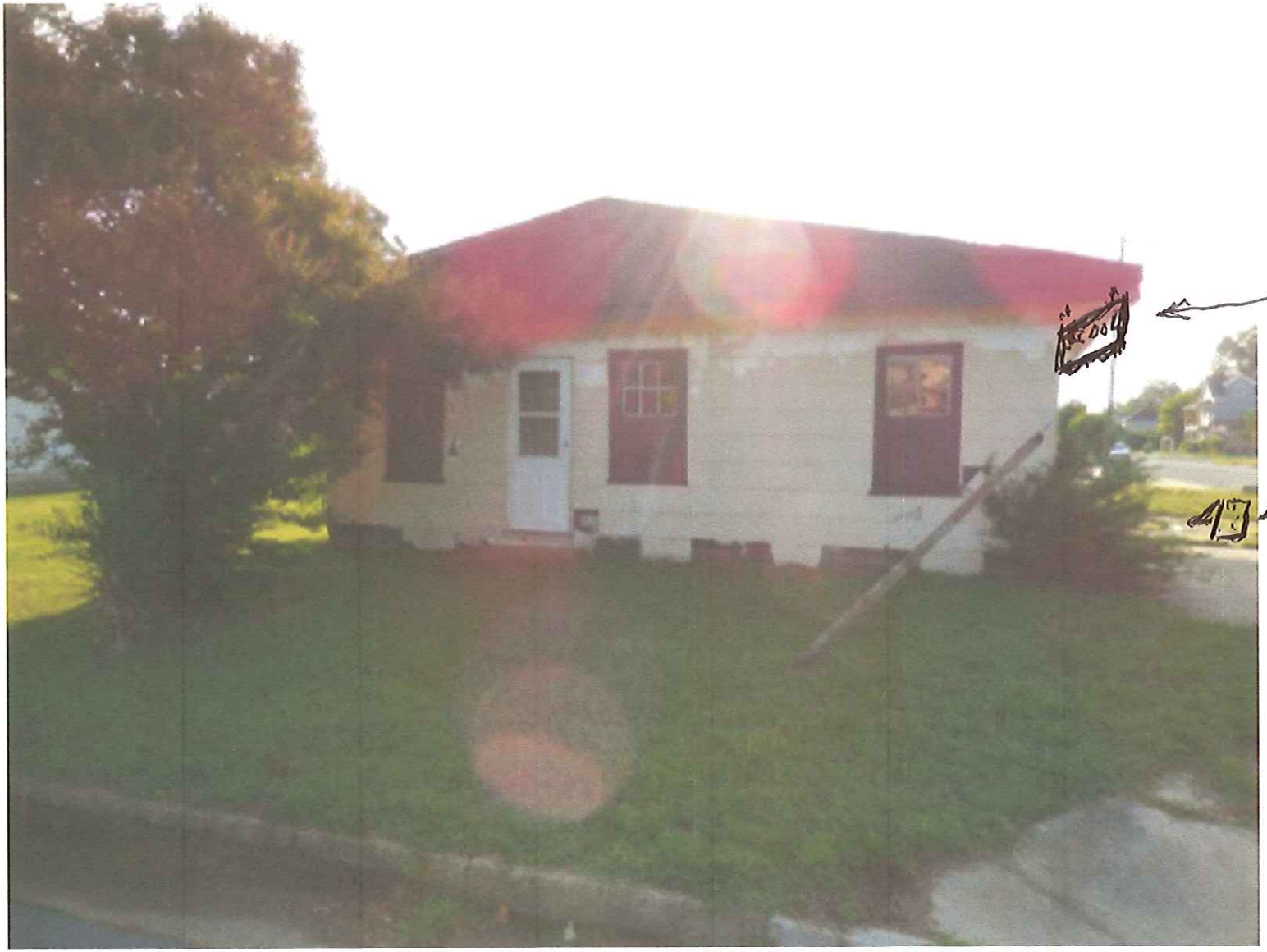
ACCOMACK-NORTHAMPTON SURVEYING & MAPPING
16034 Melomgkin Road Bloxom Va 23308
Mail Address: P.O. Box 4 Modest Town, VA 23412
Phone: (757) 709-4192

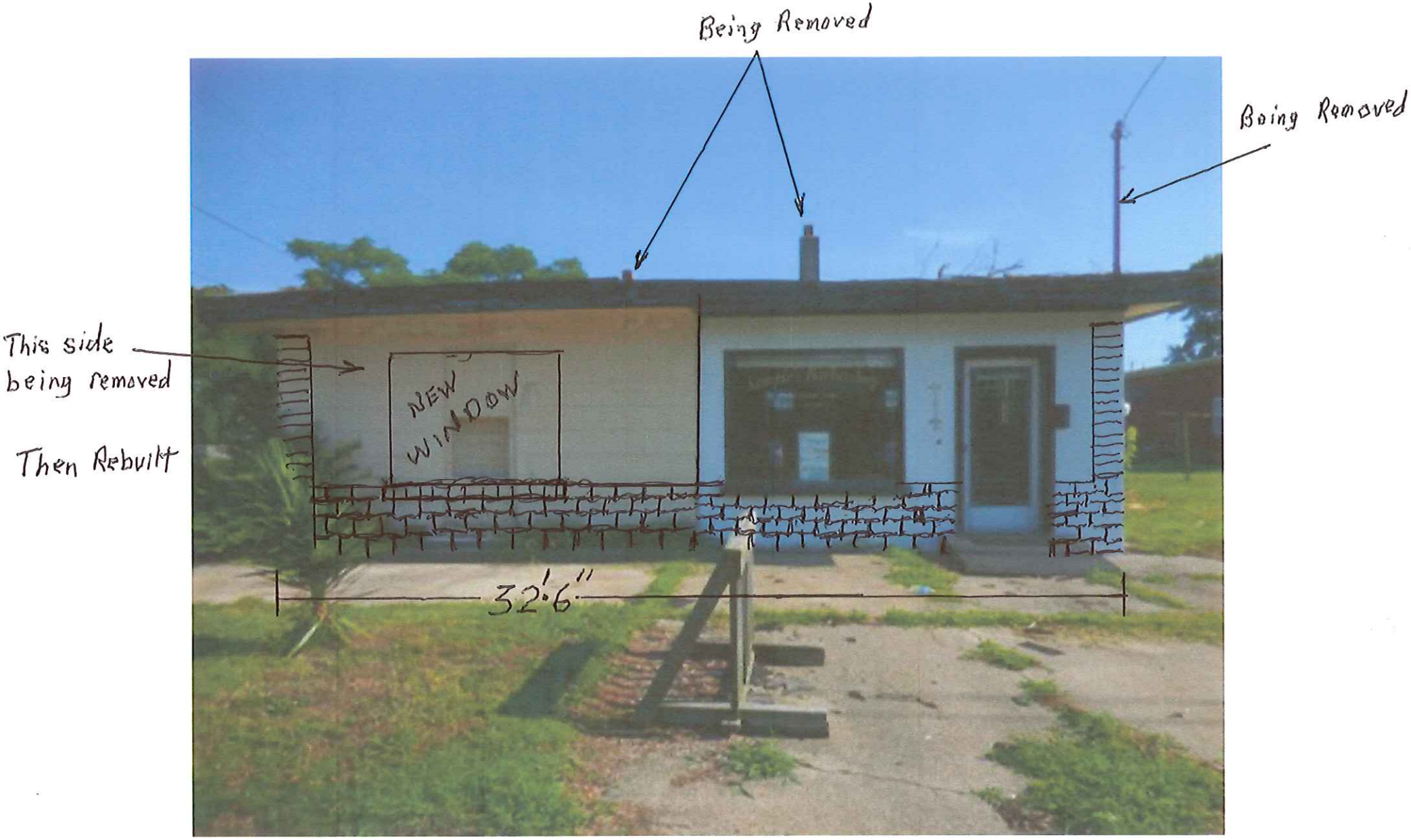
DRAWN BY: CROCKETT	SCALE: 1" = 10'
CHKD BY:	BACK TRV BY: CROCKETT
FIELD BOOK:	JOB NUMBER 346

10 0 10 20 30
GRAPHIC SCALE – FEET

PHYSICAL SURVEY
PORTIONS OF
LOTS 81 AND 84
MAP OF THE
TOWN OF
CAPE CHARLES
CAPEVILLE DISTRICT
NORTHAMPTON COUNTY, VIRGINIA
MAD FOR: JOHN L. HANSON JR & DAWN M. HANSON
JULY 4, 2015

Tax Map #	Name	Location
83A1-1-84B/83A1-1-81B	Odessa Sullivan	606 Strawberry St (behind 309 Jefferson Ave)
83A1-1-80/83A1-1-77/83A1-1-76	GEN ASSEM O/T CHURCH O/T LORD JESUS	Jefferson Ave (next to property) PO Box 3880, Philadelphia, PA 19146
83A1-1-86/83A1-1-87	Wayne & Cheryl Downing	Jefferson Ave (across Strawberry from 309 Jefferson Ave) PO Box 198, Cheriton, VA 23316
83A1-8-C/83A1-8-G	Wayne Hall	Jefferson Ave (directly across the street from 309 Jefferson Ave) 848 Paynes Mill Rd, Troy VA 22974
83A1-1-197/83A1-1-200	Pauline White, Madeline Martin	Jefferson Ave (catty corner to 309 Jefferson Ave) 427 E. Gorgas Lane, Philadelphia 19119


Sign
CC COOL
Folbing
Sign
Jefferson Ave
Strawberry Ave



Front

Jefferson Ave.

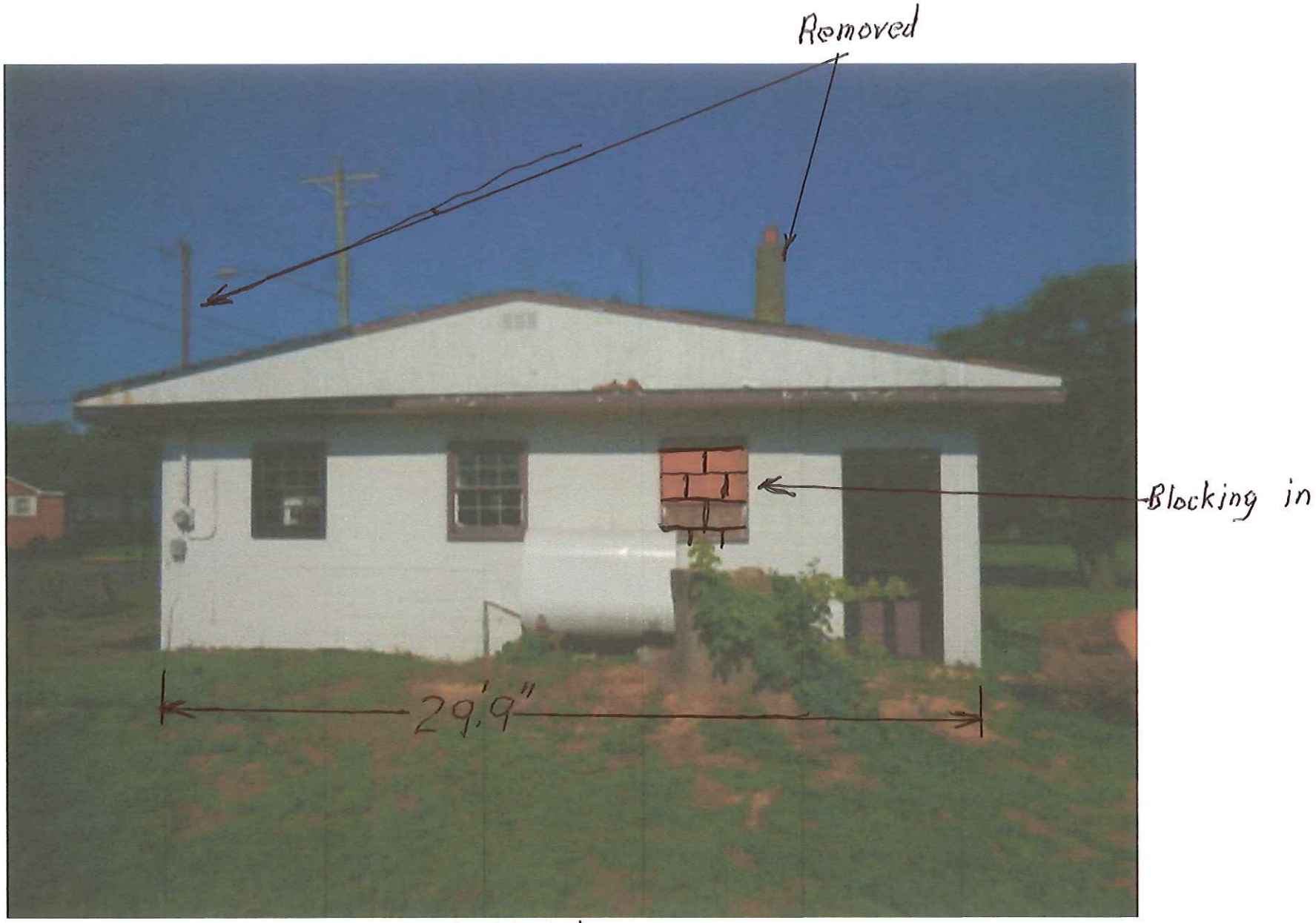
Being Removed

Blocking in Window

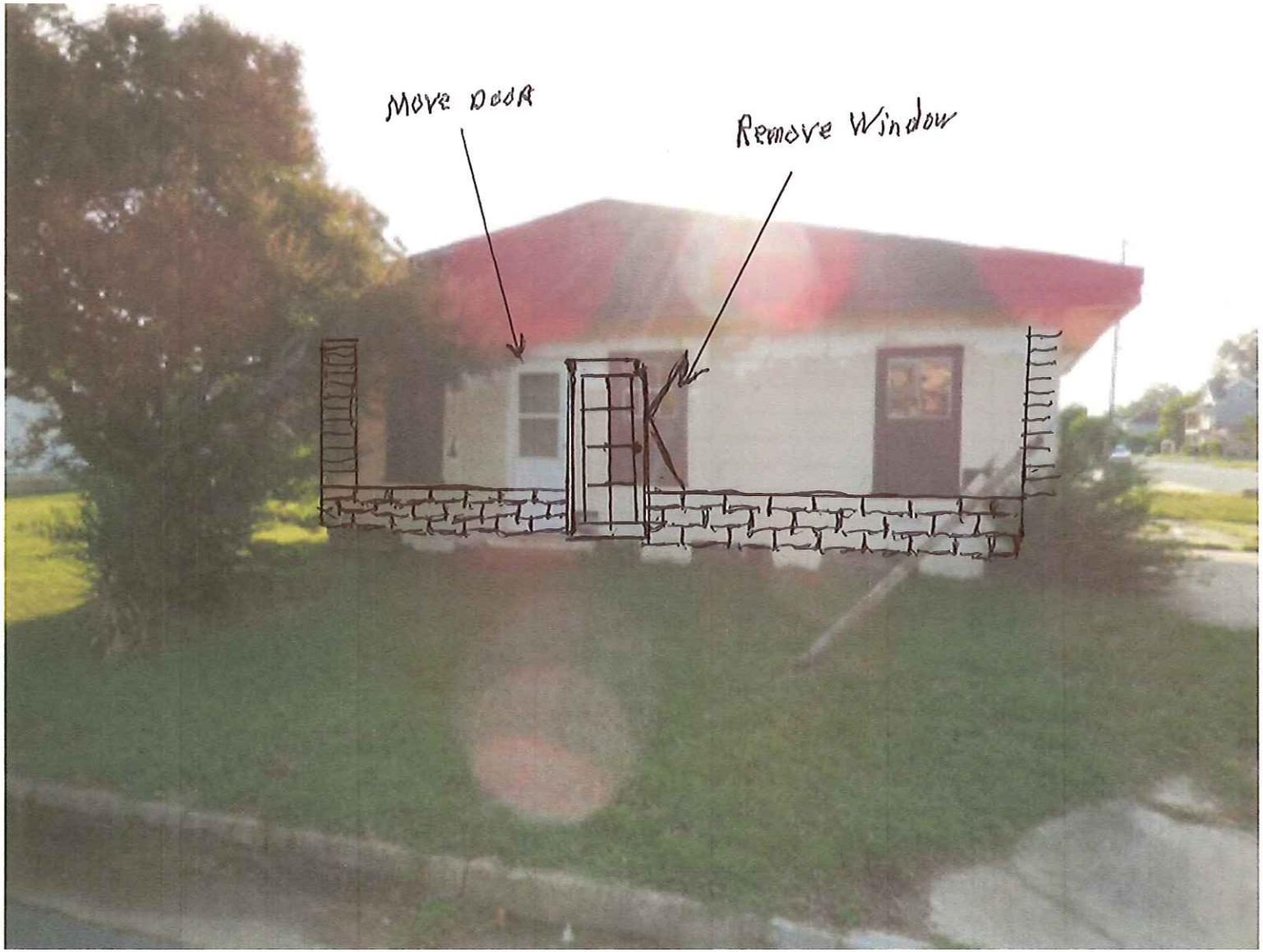
This side being Removed

Then Rebuilt

Back of Building



Right Side



Lift Side

Strawberry St