

**CITY OF CHARLEVOIX**  
**ZONING BOARD OF APPEALS MINUTES**  
**Wednesday, April 11, 2012 - 6:00 p.m.**  
210 State Street, City Hall, 2<sup>nd</sup> Floor Council Chambers, Charlevoix, MI

**(A) CALL TO ORDER**

The meeting was called to order by Chair Greg Withrow at 6:01 p.m.

**(B) PLEDGE OF ALLEGIANCE**

**(C) ROLL CALL**

Members Present: Ann Gorney, Patricia Miller, Greg Withrow, Richard Clem, Larry Sullivan (alt.)

Members Absent: Gary Anderson

Staff Present: City Planner Michael Spencer

Clerk: City Clerk Carol A. Ochs

Alternate Larry Sullivan was designated as a voting member.

**(C) APPROVAL OF AGENDA**

City Planner Spencer asked the Board to add the nomination of officers to the agenda. There were no objections. The Agenda was approved as amended.

**(D) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST**

None.

**(E) NOMINATION OF OFFICERS**

Motion by Miller, second by Gorney, to appoint Greg Withrow as Chair and Richard Clem as Vice Chair. Motion approved 4-0; Withrow and Clem abstained.

The Board had been provided with the City Conflict of Interest Policy. Chair Withrow asked members to read and be aware of the policy.

**(F) APPROVAL OF MINUTES**

The Board reviewed the January 18, 2012 minutes.

Motion by Clem, second by Miller, that the January 18, 2012 minutes be approved as corrected. Motion approved 5-0; Gorney abstained.

**(G) NEW BUSINESS**

1. Public Hearing for Project 2012-02 ZBA. Variance request from Bruce and Alison Haney, 302 W. Hurlbut

- a. Staff Presentation

City Planner Mike Spencer briefly reviewed the staff report and answered questions from the board. The property is a corner lot, but because of the City right of way, the actual parcel boundaries are several feet from the edge of the streets. Setbacks are measured from the edge of the property line, not the street. Members discussed how the project would align with other structures in the neighborhood. An existing porch has been removed for underlying repairs, but it is still considered as part of the structure footprint for the board's point of view. The Chair invited the applicant to make their presentation.

- b. Presentation by Applicant (if requested)

Builder Rick Wertz reviewed the project and answered questions from the board. Mr. Wertz reviewed how the requested setback variances compare to neighboring homes. The Planner informed the board that the alignment with adjacent structures allowance in the ordinance does not apply to houses on corner lots. The steps do not extend out any further than the porch, and according to Mr. Wertz will actually be one step less further out than the original porch that was removed on Hurlbut. The Planner confirmed that steps would be subject to the setback

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES

Wednesday, April 11, 2012 - 6:00 p.m.

Page 2

requirement. Mr. Wertz's drawings show measurements to the edge of the eaves, but the Planner also confirmed the one foot eave overhangs do not need to be included in the setback/variance measurement. The porch will have a roof and floor, but it is an open porch.

c. Call for Public Comment

Chair Withrow opened the public hearing on Project 2012-02 ZBA at 6:35 p.m.

There were no comments.

The Chair closed the public hearing at 6:35 p.m.

d. ZBA Determination of Findings of Fact

The board discussed setback variances in general and wondered if there were ways to lessen the need for variance requests in the future. The Planner briefly reviewed changes to the ordinance, and stated the revised zoning ordinance will have setbacks that better reflect the actual setbacks in use in the City.

The board discussed what would be considered reasonable in comparison with neighboring properties and the minimum variance necessary. The Planner explained that the board, in this case, is not providing an interpretation of the code, but would, if it chooses to grant the variance, be providing relief from the code in the form of a variance. The board needs to decide if this variance is excessive or would be out of place with the neighborhood or if it is not the minimum variance necessary to complete the project. Variances can be allowed in special circumstances.

The board reviewed the standards and findings of fact provided by staff. Under item (4)(a), the board amended sentence to read "There is no other location on the property to construct a front porch. There are three letters in support of the project from Lorie DeGrazia, Mark Saidman, and John Haggard. There has been no opposition to the project. Member Sullivan stated that he is not sure the project fits the definition of being the "minimum necessary" in that the front porch wraps around to the side porch. Staff has presented that this project is infilling between two existing porches, even though one has been removed to facilitate repairs. The board discussed that "minimum necessary" is subjective. The porch will be 7'6" – is that a reasonable dimension for a reasonable porch? The board needs to consider usability as well as impact on neighbors and dimensions. Under item (5)(a), the board amended sentence to read "The ZBA finds that placement of the home does not allow for the construction of a front porch at a different location..." The board generally agreed that this is a reasonable, small, acceptable porch. The board discussed placing a restriction prohibiting enclosure of the porch in the future; the applicant had no objections to the restriction of keeping the porch open. The board generally concluded that a special restriction relative to enclosing porch is appropriate.

e. Motion

Motion by Clem, second by Miller, to approve Project 2012-02 ZBA based on the findings of fact contained herein with the following condition: The porch shall not be enclosed at any point in the future.

Motion adopted by the following yea and nay votes:

Ayes: Members Gorney, Miller, Withrow, Clem, and Sullivan

Nays: None

The Chair called a brief recess from 7:10-7:13 p.m.

**(G) OLD BUSINESS**

1. Review of Draft By-Laws

The board reviewed the by-laws as presented. Staff and the board reviewed and made some changes and corrections. The Attorney is drafting a section on rehearing that will be added. There were some concerns about being able to attend or schedule the minimum training of one per year. The Planner

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES

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Page 3

will work to notify the board about outside training as well as arranging for training at regular meetings via presentations or webinars.

Motion by Miller, second by Clem, that the board accept the revisions as corrected and approve the ZBA By-Laws.

Motion adopted by unanimous voice vote.

**(H) ADJOURNMENT**

Motion by Miller, second by Clem, that the meeting be adjourned.

Motion adopted by unanimous voice vote.

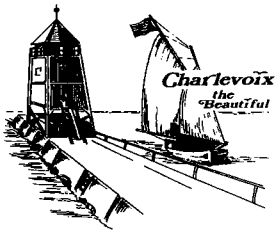
The meeting was adjourned at 7:50 p.m.

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Greg Withrow, Chairperson

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Carol A. Ochs, City Clerk



**CITY OF CHARLEVOIX**  
210 STATE ST. CHARLEVOIX, MICH. 49720

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OFFICE OF PLANNING AND ZONING  
Mike Spencer, City Planner/ Zoning Administrator  
210 State Street Charlevoix, MI. 49720  
[mspencer@cityofcharlevoix.org](mailto:m Spencer@cityofcharlevoix.org)  
Phone: (231)547-3265 Fax: (231)547-3617

**ZONING BOARD of APPEALS DECISION AND ORDER**

**April 11, 2012**

Bruce Haney  
302 W. Hurlbut  
Charlevoix, MI 49720

Dear Mr. Haney,

As you are aware, the Zoning Board of Appeals held a public hearing on April 11, 2012 to review your application for a variance from City of Charlevoix Zoning Ordinance. The variance application was approved with the findings and conditions contained herein. This document serves as formal notification of the ZBA decision in accordance with the City of Charlevoix Zoning Ordinance and the Michigan Zoning Enabling Act.

Please keep in mind that the variance approval is for a period not greater than six months from the date of the decision. Section 5.286(7) states:

*(7) Expiration of Variances.* Each variance granted under the provisions of this Chapter shall become null and void six (6) months after the variance is authorized, unless construction or occupancy allowed by such variance or permit has commenced and is being carried to completion. However, the zoning board of appeals may grant a six (6) month extension upon the submission of a letter by the applicant providing reasonable evidence as to why the project cannot be commenced within the allowed time, and provided further, that an additional six (6) month approval extension may be granted by the zoning board of appeals upon the personal presentation by the applicant of reasonable evidence as to why the project cannot be commenced within the allowed time.

Please contact the City Planning Office at 547-3265 if you have any questions or concerns.

Regards,

Greg Withrow  
Chairman of the Zoning Board of Appeals

<b>AGENDA TITLE:</b>	<b><u>Project 2012-02 ZBA Variance Request: 302 W. Hurlbut</u></b>
<b>PUBLIC HEARING DATE:</b>	Wednesday, April 11, 2012 6:00 PM

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|------------------|--|
| <b>EXHIBITS:</b> | <ol style="list-style-type: none"><li>1. Variance application form.</li><li>2. Site Plan.</li><li>3. Elevation drawings. North and East Elevations. (Proposed)</li><li>4. Elevation drawings. North and East Elevations. (Existing)</li><li>5. Letter of support from property owner at 220 W. Hurlbut.</li><li>6. Project file: 2012-02 ZBA and all contents.</li><li>7. Letter from Haggards Plumbing and Heating dated April 1.</li><li>8. Email from Mark Saidman from April 10.</li><li>9. Comparison of other front yard setbacks submitted by Rick Wertz, Contractor for Applicant. Pictures included.</li><li>10. City of Charlevoix Zoning Ordinance.</li></ol> |
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**STAFF REPORT:**

**I. PROPOSAL:**

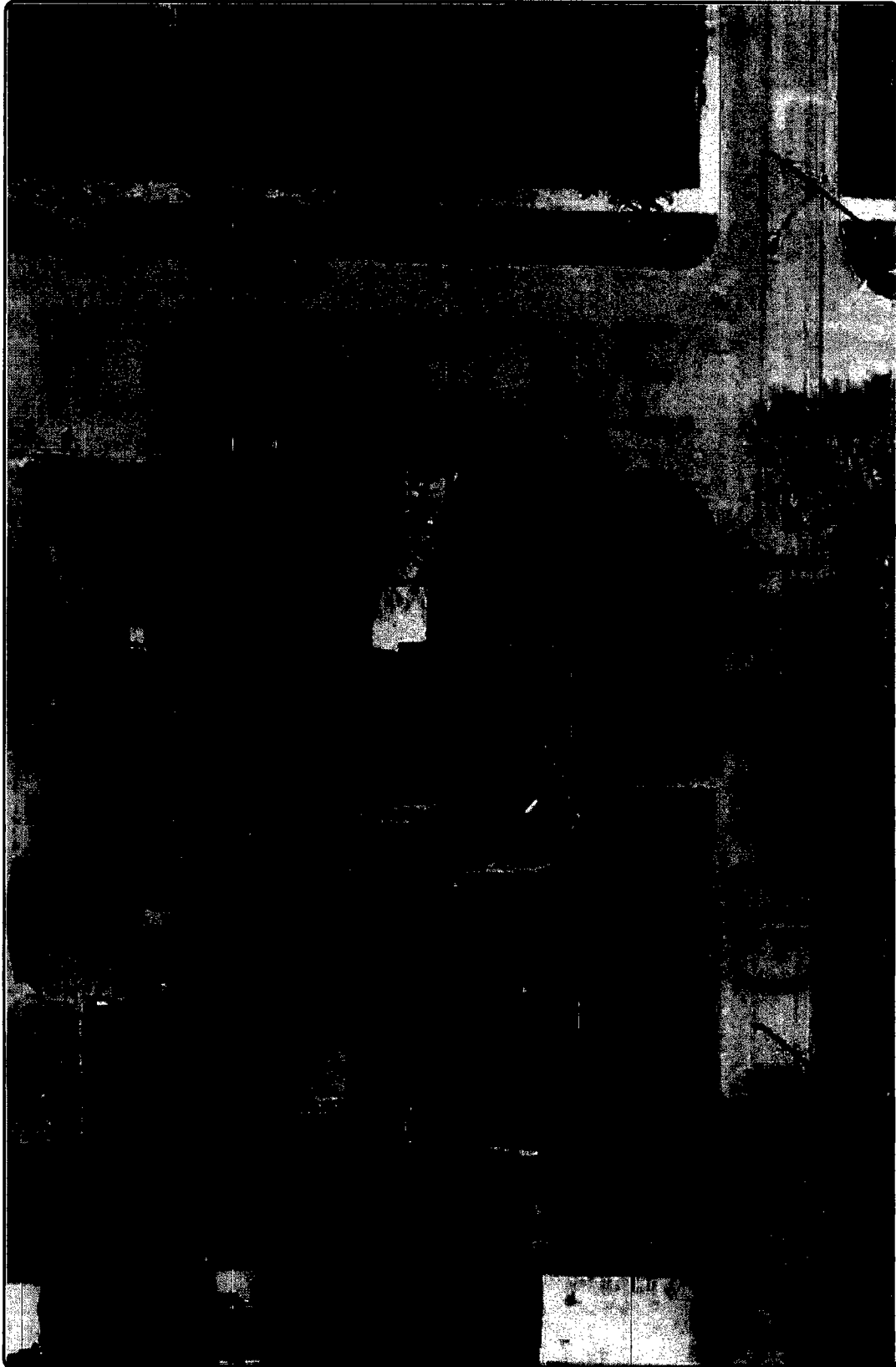
The applicants, Bruce and Alison Haney, are requesting a dimensional variance from the City of Charlevoix Zoning Ordinance for the construction of a covered porch at 302 W. Hurlbut Avenue. The proposed addition totals roughly 219 square feet, with eaves, and is proposed for the northeast side of the home. The proposed addition does not meet the setbacks required for front and side yards in an R-2 Zone. (Sections 5.43(2) and (3))


- Front Yard Setback Requirement: 25 feet. Applicant is asking for 12'2". (To West Hurlbut Avenue property line.)
- Side Yard Setback Requirement: 15 feet. Applicant is asking for 12'3". (To Grant Street property line.)

**SITE:**

The subject property address is 302 W. Hurlbut Avenue. This lot is roughly 61 X100 and is located on the on the southwest intersection of Grant Street and West Hurlbut Ave.

Air Photo from 2004 (Porch location and size is approximate.)



Sheet <b>1</b> of 1	Project No.:	Sheet Title:	Date:	Drawn By:	 <b>CITY OF CHARLEVOIX</b> 210 STATE ST. CHARLEVOIX, MICH. 49729 (231) 547-3265 <b>PLANNING GIS</b> FAX (231) 547-3617 Coordinate System = NAD 83 Michigan State Plane, Central Zone, International Foot
		Project:	Scale:	Checked By:	

## II. REVIEW STANDARDS - FINDINGS OF FACT - CONDITIONS OF APPROVAL:

The following section is taken directly from the Section 5.286(4) of the Zoning Ordinance. During the public hearing the ZBA must make findings of fact to determine if the proposal meets each of the following standards. The ZBA must find that this proposal meets all of the following standards based on findings of fact before considering a motion to approve. Staff has written the following recommended findings of fact as a starting point. The ZBA may add, modify, or delete any of the following findings.

### *(4) Variance General Standards.*

- (a) *The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, area, or topography and is not due to the applicant's personal or economic situation.*

The ZBA finds that that the need for the requested variance is due to unique circumstances of the property. The small lot size and the placement of the home, which was built prior to zoning, creates a hardship that does not allow enough space to construct the porch while meeting the setback requirements. The tax assessment records indicate the home was constructed prior to 1900 when setbacks were not a requirement of the City. There is no other location on the property to construct a front porch. There is no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation.

- (b) *The need for the requested variance is not the result of action taken by the property owner or previous property owners that was in violation of zoning regulations in effect at the time the action was taken (self-created).*

The ZBA finds that this variance is not the result of action taken by the current or the previous property owner that was in violation of the zoning regulations in effect at the time. This variance request is not self-created since the property and structures were in the same size, shape, and proportion before the City of Charlevoix enacted the zoning ordinance. The tax assessment records indicate the home was constructed prior to 1900, before the existing zoning was enacted in 1978.

- (c) *The requested variance is the minimum variance necessary to grant substantial relief to the applicant while at the same time minimizing any adverse impacts to other property owners in the general neighborhood or zoning district.*

The ZBA finds that the applicant is requesting the minimum variance necessary and will not create any adverse impacts to other properties in the neighborhood or zoning district. Approval of the variance will not result in any sight distance problems with automobiles or pedestrians on the street intersections. The proposal was discussed with City Department heads including the police and fire department who did not express any public safety concerns. At roughly 219

square foot (with eaves), the porch is a modest size for a residential property, and not out of place in the current neighborhood. Given the size and location of the proposal the ZBA does not anticipate any adverse impacts to other property owners in the neighborhood or zoning district. The front porch will be an architectural improvement to the home and improve the esthetics of the neighborhood.

(6) *Conditions of approval.*

(a) *The Board may attach reasonable conditions with the approval of a variance. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:*

1. *Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.*
2. *Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.*
3. *Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.*

(5) *Special Findings.*

(a) *Dimensional Variances. To obtain a variance from the dimensional requirements of this Ordinance (area setback, frontage, height, bulk, density, or other dimensional requirements), the applicant must establish that strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.*

The ZBA finds that placement of the home does not allow for the construction of a front porch at a different location on the property that would meet the setback requirements. Approval of the variance will not result in any sight distance problems with automobiles or pedestrians on the street intersections. The applicants are proposing modest sized porch typical for a residential property, and not out of place in the current neighborhood. Given the size and



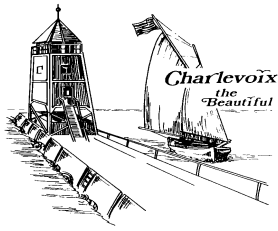
location of the proposal the ZBA does not anticipate any adverse impacts to other property owners in the neighborhood or zoning distinct.

**III. ZBA DECISION:**

The City of Charlevoix Zoning Board of Appeals has the following options for the project number 2012-02 ZBA:

Motion by to approve Project 2012-02 ZBA based on the findings of fact contained herein with the following condition: The porch shall not be enclosed at any point in the future.

Motion passed 5-0



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210 STATE ST. CHARLEVOIX, MICH. 49720

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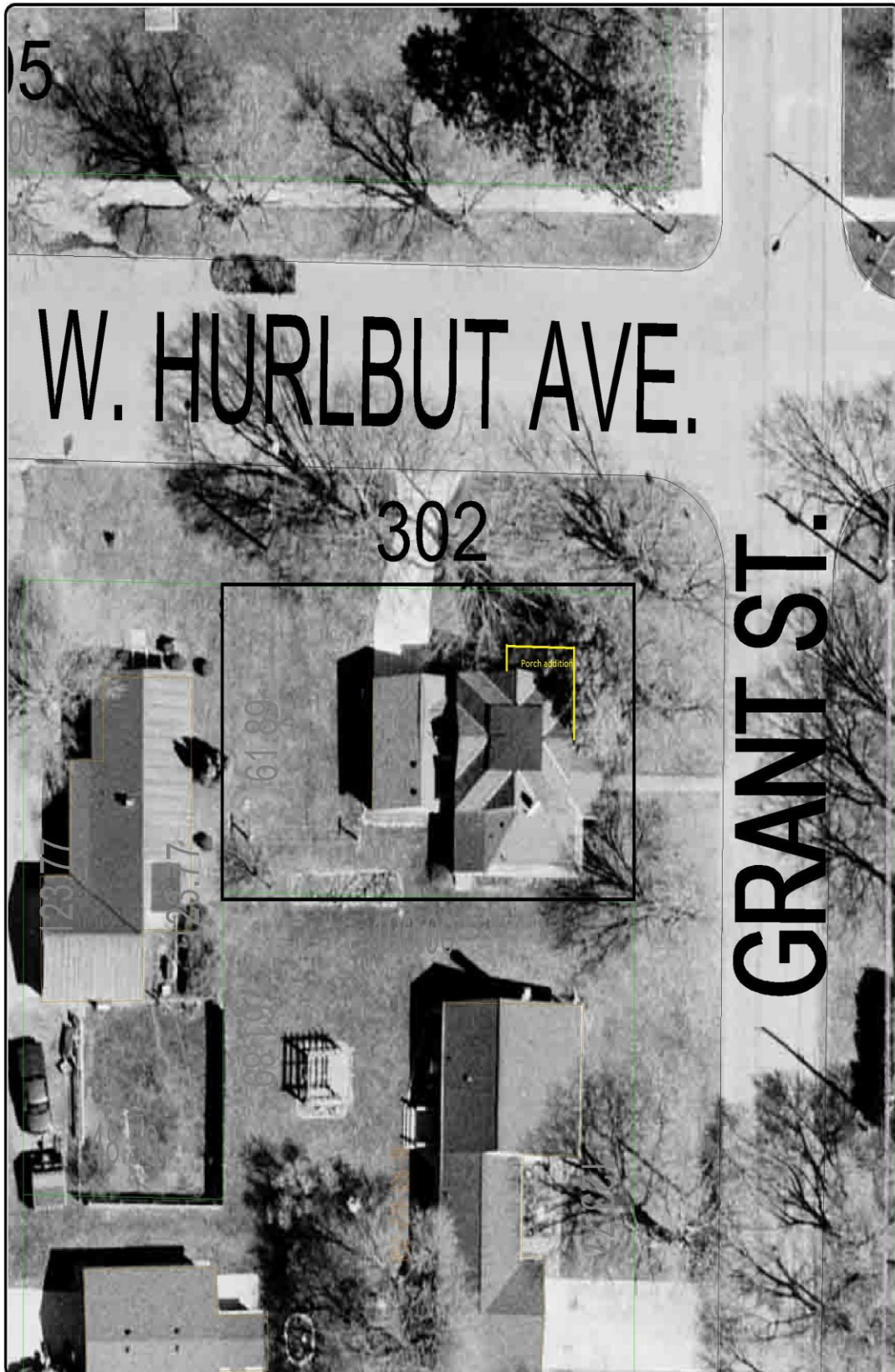
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