**MINUTES**
**BREVARD BOARD OF ADJUSTMENT**
**June 9, 2015**

The Brevard Board of Adjustment met in regular session on Tuesday, June 9, 2015 at 7:00 PM in Council Chambers of City Hall.

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| Members Present: | Judith A. Mathews, Chair<br>Carol Dillingham<br>Tad Fogel<br>Tom Tartt<br>Mike Young<br>Josh Burdette |
| Members Absent: | Allen Delzell, Vice Chair |
| Staff Present: | Josh Freeman, Planning Director<br>Daniel Cobb, Asst. Planning Director<br>Janice H. Pinson, Board Secretary<br>Mike Egan, Board Attorney |
| Others: | Doug Harris, New Paradigm Homes, LLC |

## I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 7:02 PM, Board and Staff Members introduced themselves. Chair, J. Mathews certified that a quorum of the Board was present and that Tad Fogel would be the voting alternate member because he heard all of the evidence at the May meeting.

## II. Approval of Agenda

J. Mathews requested a Motion to approve the Agenda. C. Dillingham moved to approve, seconded by Tad Fogel, unanimously approved.

## III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the May 12, 2015 meeting. Motion was made to approve minutes as written by Tom Tartt, seconded by C. Dillingham, unanimously carried.

**IV. Old Business – Continued from May 12, 2015 Meeting:**

**A. Consideration of Application for Variance (#15-126) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 405 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4492-000.**

**B. Consideration of Application for Variance (#15-127) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 415 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4475-000.**

Greg Hunter, 462 West Probart Street, presented himself to the Board as a possible party to the proceeding.

M. Egan, Board Attorney, asked if Mr. Hunter wanted to become a party to the proceeding. Mr. Hunter needed to have an interest in kind more than the general public at large.

Mr. Hunter explained that his home was 50 yards or less from the property and for this reason he would be impacted differently from the public at large.

J. Mathews determined that Doug Harris, Josh Freeman and Daniel Cobb were sworn from the prior meeting.

Greg Hunter was sworn.

After questioning of Mr. Hunter by the Board and further discussion, Mr. Hunter stated that he had no desire to be an expert witness.

J. Mathews stated that it appeared that Mr. Hunter was present to state his opinion on the Board's decision in the matter.

Mr. Hunter removed himself as a party to the matter without the necessity of a vote of the Board.

J. Mathews asked if Staff had any comments before D. Harris presented the information and alternatives requested at the previous meeting. J. Freeman stated he stipulated to the record.

D. Harris stated that he was before the Board to show them what alternatives they considered and to verbally outline the drawings as built, as well as, the different alternatives that were considered.

He stated that they measured the topography of both sites and created a three dimensional model of the lay of the land, showing the property lines, set back area and area inside the set back. He showed the Board four (4) options including visual aids. He further explained each option in detail and for each showed the volume of the encroachment into the setback area. He explained

that the option that was chosen created the least volume of encroachment of all others that were considered. Options 1-5 are attached hereto, labeled Exhibit "A" and incorporated herein by reference.

D. Harris stated that the design that included a retaining wall would require that fill be placed against wood and there were also drainage concerns with this plan. It was determined that to use the retaining wall plan would not require a variance. This being confirmed by J. Freeman, Staff.

D. Harris stated that they had come before the Board stating that they knew they got the cart before the horse, but that they did apologize to the Board.

J. Burdette asked D. Harris several building related questions, pointing out the changes made to the structures that differed from the original site plan.

T. Tartt asked for D. Harris to help him understand from the beginning to now, what changed to make the stairs become an issue.

D. Harris explained that they did not have a topographical survey, they took field measurements and that they had measurements for the sewer tap but when they went to make the tap to get a positive flow into the sewer line they had to raise the floor system of the house to make it work and therefore changing the original design for the houses.

D. Harris stated that he realized the Board's concerns about setting precedence.

J. Mathews stated that each case stands on its own.

J. Mathews asked D. Harris at what point before the final inspection did they realize the encroachment and notify the Planning Department of the setback violation.

D. Harris stated 2 or 3 weeks prior, at which time he talked with his partner about the situation and determined that a subcontractor had built the steps and was not aware that steps could not encroach into the setback.

Upon further questioning of the Applicant. M. Egan, Board Attorney, reminded the Board that Mr. Harris and his partner's performance was not an issue before the Board but whether or not there was an impractical hardship created by not granting the requested variance.

J. Mathews asked if Staff had any further questions.

J. Freeman stated he had no rebuttal but a question as to Option 4, as to whether or not there were practical ways to deal with water that could be addressable and ask him to speak to it more.

D. Harris stated as the houses are designed now that they have good positive flow away from the houses. There is not any concentrated flow and that this is not an insolvable problem but it is a less simple one when you start diverting water. He stated that he felt the stairs as built were

more aesthetically pleasing to the back yard and the neighborhood, and that he felt that these are the standards that the ordinance speaks to.

J. Mathews ask if there were any questions of Staff. There were none.

J. Mathews ask Greg Hunter if he wished to testify. He stated that he had no comment.

J. Burdette asked J. Freeman if Option 4 required a variance.

J. Freeman stated that Option 4 would not require a variance. He further explained that the landscape timbers filled with earth would not require a permit from the City of Brevard. It could have been the original design and not require a permit.

J. Mathews closed the hearing.

J. Mathews reminded the board members that they have to have a positive affirmation of the following standards to grant a variance:

1. An unnecessary hardship would result from the strict application of the regulations.

2. The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances, as well as, hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis to grant a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self- created hardship

4. The requested variance is consistent with the spirit, purpose and intent of the regulations. Such that public safety is secured and substantial justice achieved. Substantial justice is not achieved when the granting of the variance would be injurious to the neighborhood or to the general welfare.

She further stated that the Board need to be guided by the following principles:

The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public.

The hardship relates to the applicant's land rather than personal circumstances.

The hardship is unique or nearly so rather than one shared by many surrounding properties.

The hardship is not the result of the applicant's own actions.

The fact that the property could be utilized more profitably or conveniently by the granting of the variance than without is not the basis for granting the variance.

She further stated, we have to ask ourselves these questions:

Is the hardship the result of the applicant's own actions?

Is the variance necessary or are there other reasonable and practical alternatives to grant secondary access to the property?

The Board deliberated on the principles for granting a variance. It was the general consensus of the Board that the hardship was the result of the applicant's own actions.

C. Dillingham made the following motion:

With regard to the request by New Paradigm Homes for a variance from the rear yard setback requirement contained Section 2.3.C of the Unified Development Ordinance, I move the Board to find (a) unnecessary hardship would result from the strict application of the regulations; (b) the hardship results from conditions that are peculiar to the property, such as location, size or topography; (c) the hardship did not result from actions taken by the applicant or the property owner; and (d) the requested variance is consistent with the spirt, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application.

Motion seconded by M. Young. Upon vote the motion failed unanimously.

M. Egan asked the Board if they wanted to review the Order that was prepared in the matter of Bryson Development & Mgt., Ltd., Case No. SUP-15-119 or just allow the Chair to sign. The Board agreed that the Chair could sign the Order as presented.

**VI. Other Business –**

M. Young requested that the Board continue the discussion on extensions of special use permits.

D. Cobb explained to the Board the current process does not limit the number of times an extension of a special use permit can come before the Board. If the Board wants to change, the process would be to submit a text amendment to the Planning Board for recommendation to City Council. City Council would then make the decision to approve or not and then there would need to be an amendment to the Board's Rule of Procedure to reflect any changes.

M. Young requested of M. Egan, Board Attorney, how common it was to limit the number of times an extension of a special use permit is heard and what was his experience in other municipalities.

M. Egan explained that he has never experienced a board limiting the number of times that they heard an application for extension of a special use permit.

J. Freeman requested direction from the Board.

The Board determined after discussion that they did not want to request any change to the current procedure.

**Adjourn**

Motion to adjourn by M. Young, seconded by C. Dillingham, unanimously carried and meeting adjourned at 8:28 PM.

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Judith A. Mathews, Chairman

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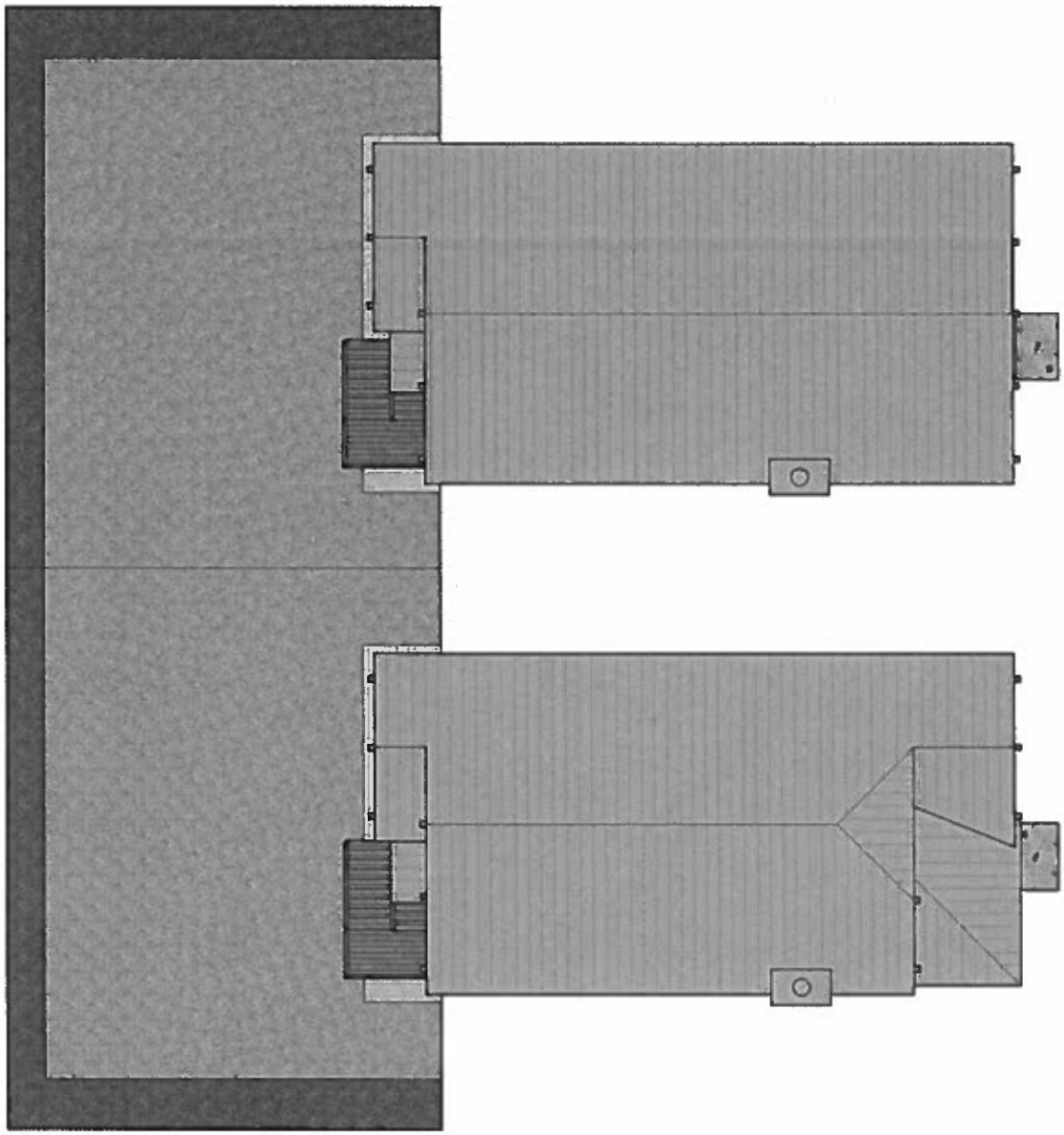
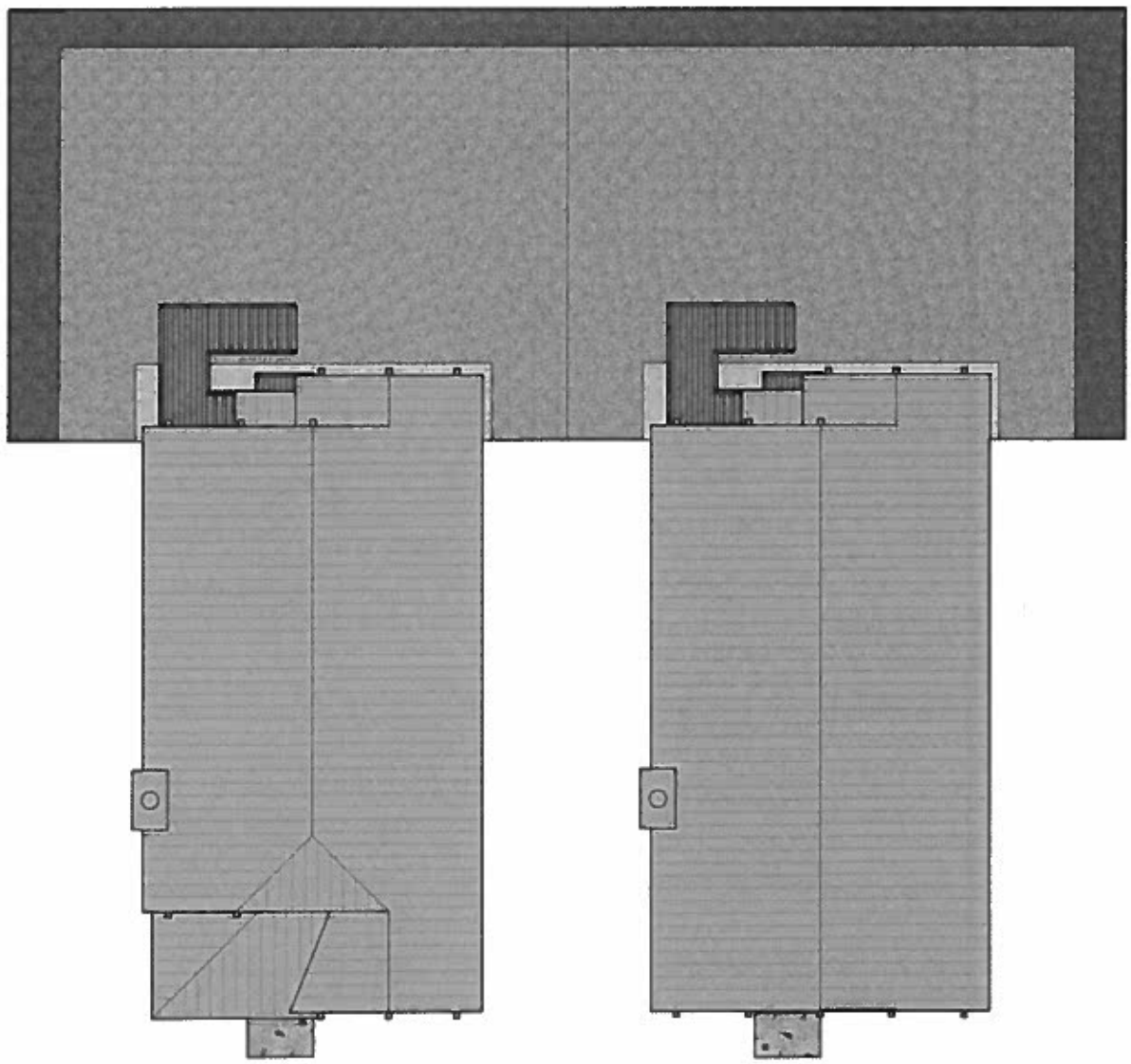
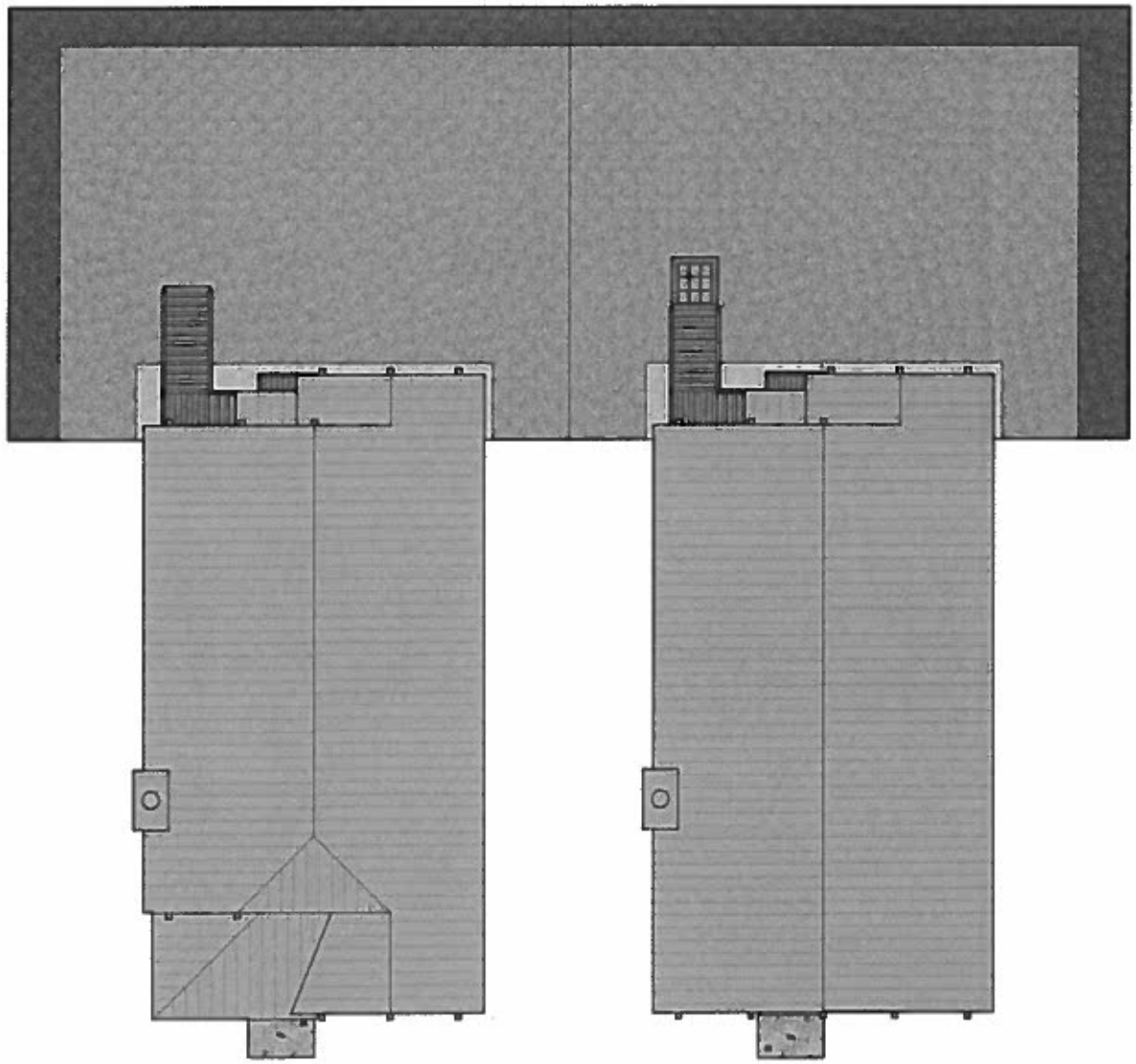
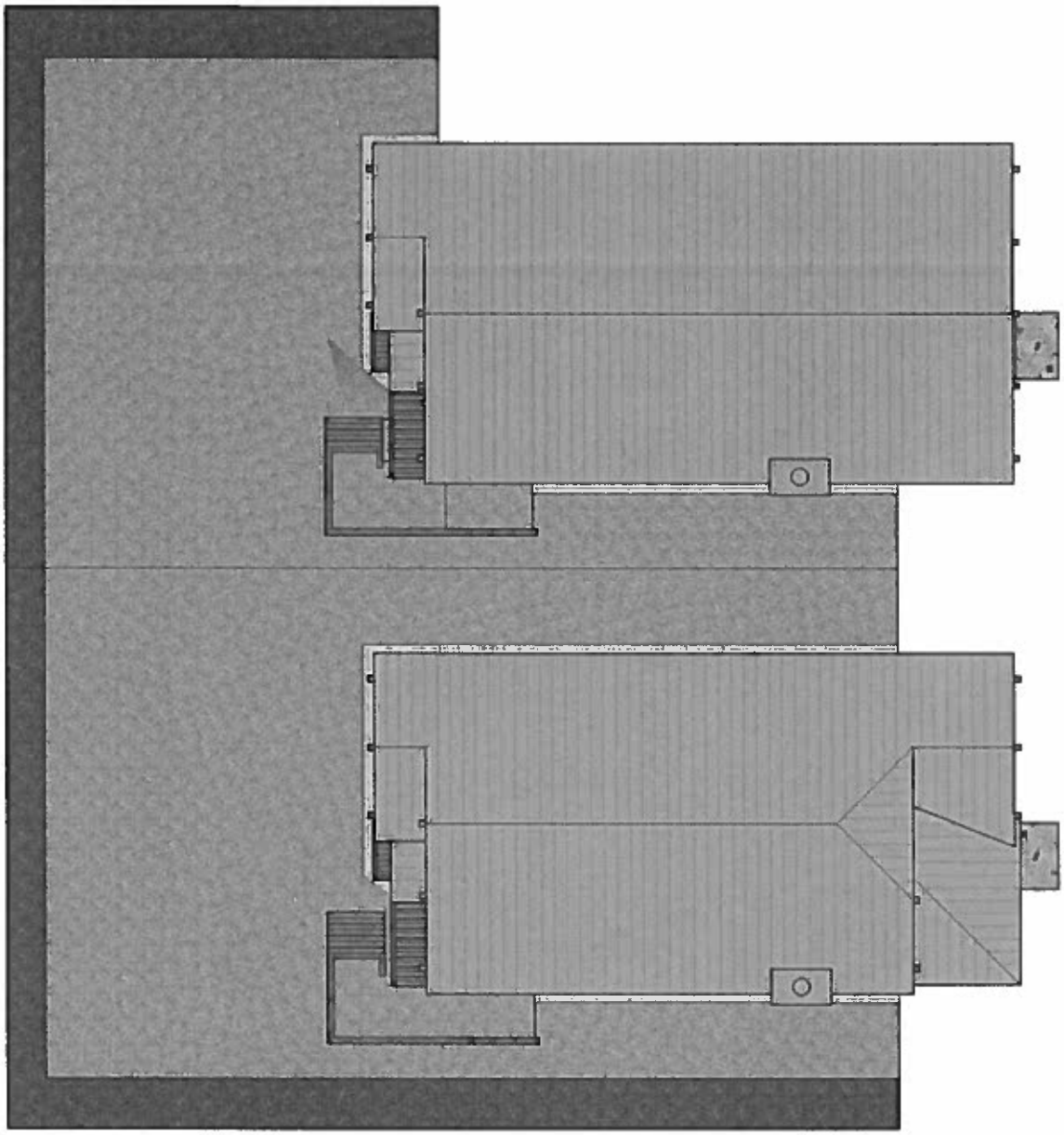
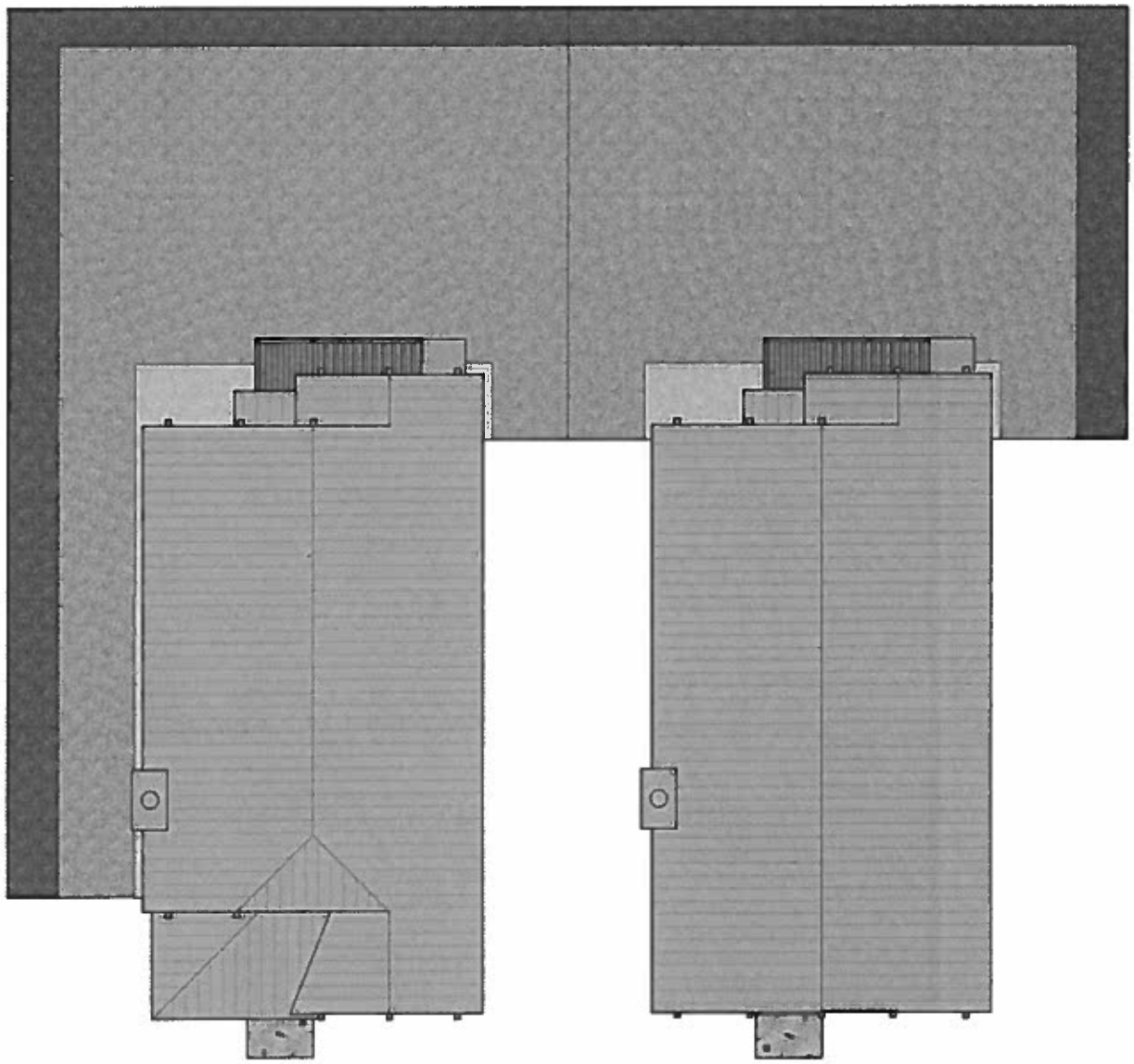
Janice H. Pinson, Board Secretary

OPTION 1 – AS BUILT

EXHIBIT "A"

OPTION 2 – TURNBACK STEPS
WITH LANDING

OPTION 3 – TURNBACK STEPS WITH WIDE LANDING

OPTION 4 – RETAINING WALL

OPTION 5 – REVERSE L-STAIR