

CITY OF WEST DES MOINES STAFF REPORT COMMUNICATION

Meeting Date: July 19, 2023

ITEM: 1065 SE Browns Woods Drive – Variance to accommodate ground mounted solar panels – Lynnae S. Marty Hentzen – VAR-006006-2023

REQUESTED ACTION: Variance of Prohibition of Solar Array forward of the Rear Wall of the Primary Structure and Placement of an Accessory Structure in the Front Yard

Applicant's Request: The applicant, Nathan Hamersley with 1Source Solar, on behalf of the property owner, Lynnae S. Marty Hentzen, Trustee of the Lynnae S. Marty Hentzen Trust and Successors in Trust, is requesting a variance to allow an accessory structure to be located in the front of the rear wall of the primary structure and in the front yard to accommodate the placement of ground mounted solar panels.

History: According the Polk County Assessor website, the house on the property was constructed in 1969, prior to annexation into the City of West Des Moines.

Staff Review and Comment: Staff would summarize the following key points of interest:

- **Board of Adjustment Deferral:** The property owner asked the Board to defer this item from the June 21, 2023 until the next Board of Adjustment meeting on July 19th, to allow for additional testimony and other board members to be present. As noted at the Board meeting on June 21st, staff has discussed with the property owner and solar company consideration of other options for locating the panels on her property but the requested location in the front yard is the desired location. Staff has no further comments besides what has already been presented to the Board and included in the staff report.
- **City Code Requirement as Relates to Request:** City Code Title 9, Chapter 14, Section 14, Subsection D1a(3) indicates that a Small Solar Energy System (SSES) cannot be located in front of the rear wall of the primary structure, even if it meets the front yard setback requirements. Also, City Code Title 9, Chapter 14, Section 6, Subsection B1 indicates that a detached accessory structure shall meet the front yard setback required for the principal structure along each street frontage; however, in no instance shall the detached accessory structure exceed past the front plane of the principal building.

The applicant is requesting approval of variances that would allow for the installation of ground mounted solar panels forward of both the front and rear walls of the dwelling thus placing it in the front yard.

Per code, a ground mounted solar energy system must be located in accordance to the regulations for detached accessory structures as provided in Chapter 14 (Accessory Structures) of the Zoning Ordinance or not less than one (1) foot from the property line for every one (1) foot of the system height measured at its maximum height, whichever is

more restrictive. For Residential Estates (RE) zoning districts the setbacks for a detached accessory structure is 50' for the front yard (same as front yard setback for the dwelling) and 5' for the side and rear yards. Even though the solar panels exceed the required 50' setback for detached accessory structure setbacks per code, the solar array cannot be located in front of the front and rear walls of the primary structure. The intended location of the array more than provides one foot of setback for the height of the structure.

The applicant initially desired to place the array on the roof, however, the type of roof shingles used did not allow for such. The property is heavily treed thus limiting the possible locations within the property. The applicant looked at placing the array on the ground south of the dwelling (behind the front and rear wall planes); however, the property is set up to accommodate horses and the location would have impacted that area suitable for the horses. The proposed location was determined by the solar consultant to be the best location to maximize energy production without unnecessary expense.

- **Solar Energy System Permit Required:** It is important to note that this variance does not specifically grant approval of the solar energy systems (SES) itself. The applicant must obtain a SES permit, showing compliance with the SES requirements set in city code, prior to the installation of this system. The applicant has submitted this permit, which has been reviewed by the city, but it is on hold pending the Board's decision regarding this variance.
- **Variance vs Zoning Exception:** In the fall of 2020, city code was amended to provide an alternative to the variance process (AO-004860-2020). This amendment created the Zoning Exception process specifically for existing residential properties wanting to make improvements. A zoning exception is similar to a variance in that it is a relaxation of the applicable zoning requirement; however, a variance requires the applicant show there is an "unnecessary hardship," while an applicant must only show there is a "practical difficulty" for a zoning exception request. Specifically defined allowable Zoning Exceptions only apply to existing single-family zoned and developed properties. Relief from zoning regulations for undeveloped single-family lots, as well as requests associated with non-single-family zoned parcels must be considered as a variance. Neither a variance nor a zoning exception is permission to circumvent zoning regulations just because a resident wants an improvement: the necessary findings applicable to each request (variance or zoning exception) must be made in granting the request.

City Council Subcommittee: This item was presented to the Development and Planning City Council Subcommittee as an upcoming project only. There was no discussion on the request as the City Council does not have authority over variance or zoning exception requests.

Variance Findings: To grant the variance, all of the following findings must be made, or conditions and limitations, as the Board deems necessary, imposed to allow it to make said findings.

1. That the granting of the variance shall not be contrary to the public interest.
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land

- has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property;
- b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.
3. That the spirit of the ordinance shall be observed when the variance is granted; and
 4. Substantial justice shall be done as a result of granting the variance.

It is the responsibility of the applicant to prove to the satisfaction of the Board that the above findings can be made. The applicant's findings to grant the variance and staff's findings, are included herein for the Board's consideration in making their decision.

Lead Staff Member: Kate DeVine

Staff Report Reviews:

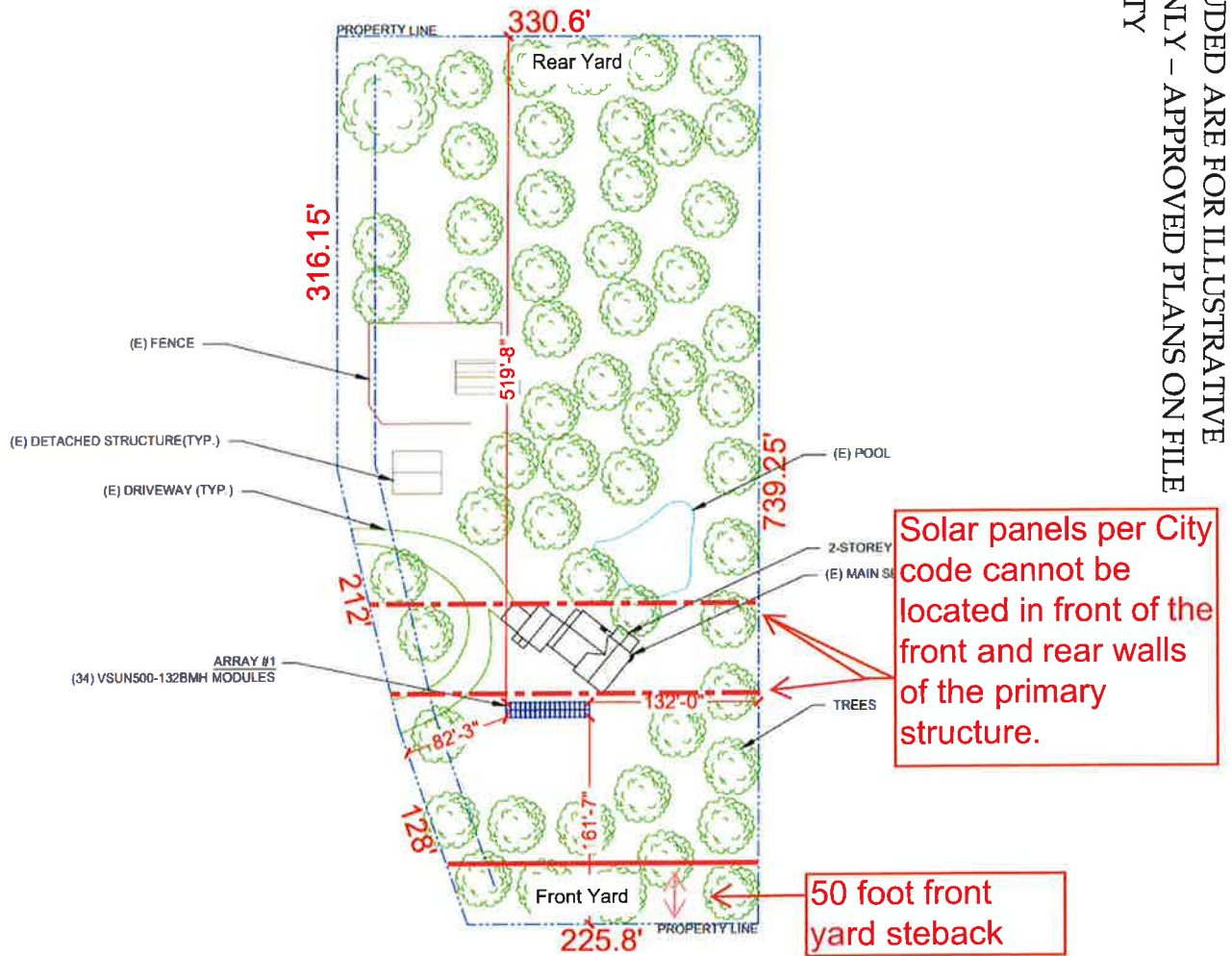
<input checked="" type="checkbox"/> Development Coordinator or Director	<input checked="" type="checkbox"/> Legal Department
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Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	June 2, 2023
Date(s) of Mailed Notices	June 2, 2023

Subject Property





The location of the ground array shown on the Site Permit Plan is not exact. The location of the array is approximate to +/- 10-15'. Array will be placed in accordance with city rules and regulations so as not to disrupt community guidelines.

Applicant's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
APPLICANT RESPONSE: *We believe the granting of the variance is not contrary to the public interest due to the special conditions of where the array is proposed to be built. The area is heavily covered in thick brush and trees from all directions, except the homeowners. The view of the solar array is completely obstructed from main roads and neighbors so as not to attract any attention as those going by will simply not see the array. We also believe the special condition of where the road and the driveway entry present a challenge due to the main road not being the entry for their home but rather an entryway for their driveway which is over 220' from the main road. Due to the location and the extremely limited visibility of the solar array we believe it still resides in the public interest and not against it. (See attached photos)*
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

APPLICANT RESPONSE:

- a. *We believe the subject property is not being used to yield a reasonable return for the following reasons: solar power is to be generated for self-consumption and not distribution purposes, self-generation of power is green technology that reduces carbon footprint to city and state and is not being installed for a higher valuation of their property.*
- b. *The plight of the property owner comes to us after attempting to first install solar on the roof of the property and were not able to do so due to the type of shingle that was used in manufacturing. 1SourceSolar moved to a ground array considering the vast area of the property and the extremely limited visibility of the array once it was constructed. The property owner (Lynnae Marty-Hentzen) has been very patient during the process of the proposed solar and has already incurred expenses in preparation for solar that include lost generation time per kW/hr., clearing of brush and trees for ground array. The property does have room to put a solar ground array to the Northern part of the property which comes at an additional \$6000.00+ cost to the homeowner which is not cost feasible to the homeowner or for the efficiency of the solar ground array system. This property is*

horse ready and the array in the coral will diminish the value of the property significantly due to the main selling point in the future. The property owner has currently incurred and will incur expenses to date of \$77,004.00 for the proposed project which includes first solar payment, loss of kW/hr. produced from proposed ground array in cost relation to price of utility kW/hr. and clearing of brush and trees for proposed solar ground array location.

- c. *We believe this does not alter the essential character of the neighborhood due to the extremely low visibility of the proposed array, proper brush and tree coverage for viewing obstruction are in place currently. Passersby and adjacent homeowners will not be visually affected by ground array. The accessory structure is 2nd to the primary structure which makes this a unique situation regarding the area of the solar to be placed. The main intent of this install is to follow code and comply with regulations that stay true to the character and spirit of the community without infringing on outlines options by the city ordinance.*
3. That the spirit of the ordinance shall be observed when the variance is granted; and
APPLICANT RESPONSE: *We believe the spirit of the ordinance is still observed by not bringing an "eyesore" the neighboring houses, drivers, and passerby that is aesthetically done and have taken all the necessary steps in creating a solar ground array that will not impact the community or its neighbors. In lieu of the proposed solar ground array, a notice was sent to the current property owners' residents within 370' of proposed ground array which there are no homes that are within that area. We believe the notice does not apply in this case due to no homes being affected by the visual impact of the proposed ground array within the notice vicinity.*
4. Substantial justice shall be done as a result of the granting of the variance.
APPLICANT RESPONSE: *We believe substantial justice will be done as a result of granting the variance by allowing the property owner not to receive substantial monetary loss of expenses already paid for in preparation of solar to be installed in the proposed location. The cost and energy efficiency of another proposed location for a ground array comes with an additional and substantial cost which makes the location undesirable from a solar and homeowner perspective. Furthermore, the citizens of the surrounding area will not know that there is a solar array in their neighborhood producing green power providing all the benefits that come with clean energy.*

Staff's Findings

A variance shall only be granted if all of the following findings are made; or if conditions and limitations, as the Board deems necessary, are imposed to allow it to make said findings. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

1. That the granting of the variance shall not be contrary to the public interest:
STAFF'S RESPONSE: *The granting of the variance will not be contrary to the public interest. The applicant's drawings and photos show the proposed solar panels to be screened from SE Browns Wood Drive and the private driveways to the east and west. If the applicant were to put the solar panel behind the house, the solar panel would be more visible to the neighbors from the driveway.*
2. That without the granting of the variance, and due to special conditions, a strict application of the zoning regulations as they apply to the subject property will result in an unnecessary hardship. An "unnecessary hardship" exists when:
 - a. The subject property cannot yield a reasonable return from any use or improvement permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to increase the value in the subject property; and
 - b. The plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and
 - c. The use or construction to be authorized by the variance will not alter the essential character of the neighborhood.

STAFF'S RESPONSE: *The Board could find that an "Unnecessary hardship" can be illustrated in that without the granting of the variance the subject property may be prohibited from placing renewable energy sources on the property, thus resulting in the property to not yield a reasonable return. Additionally, the plight of the owner is due to unique circumstances not of the owner's making and not due to the general conditions in the neighborhood; and the use or construction to be authorized by the variance will not alter the essential character of the neighborhood. Staff would note the following for this finding:*

- a. *The applicant has explored other options for the location of the solar panels that include on the roof and located behind the front of the house near the detached accessory structure and fenced in area. According to the applicant, if solar panels were placed near the detached accessory structure and fenced in area it could affect the "horse ready" area on the property. The applicant has determined the best location for the solar panel would be the front of the house since the other locations would have a higher cost associated with them.*
- b. *This property does have a significant amount of tree cover on the lot and is a horse ready property that is located within City limits, making it a unique property. The other locations that have been considered would require trees to be removed in order to allow for the solar panels and would hinder the potential horse ready area on the property. Staff would note that with the newly adopted Comprehensive Plan, the City established a policy to make best efforts to protect natural areas, such as mature tree covered property. The location of the solar panel in the front yard*

would be screened by the trees and shrubs along SE Browns Woods Drive and the driveway to the property.

- c. *The use of residential solar energy systems are becoming more popular given their environmental benefits and new technologies making them more affordable. The proposed solar array location in the front yard will not alter the essential character of the neighborhood.*
3. That the spirit of the ordinance shall be observed when the variance is granted; and
STAFF'S RESPONSE: *The requested variance does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the Residential Estates (RE-3A) zoning district. The size of the solar panel in the applicant's request is not large, falling in the average for residential solar applications for the City has seen.*
4. Substantial justice shall be done as a result of the granting of the variance.
STAFF'S RESPONSE: *The granting of the variance will allow the solar panel to be placed in the ideal location to accommodate the solar energy system given the unique characteristics of the property including the horse ready status and the heavily wooded site.*

Prepared by: Kate Devine, City of West Des Moines Development Services Dept., PO Box 65320,
West Des Moines, Iowa 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION BOA-2023-10

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, (APPROVING / DENYING) THE VARIANCE REQUEST TO ALLOW AN ACCESSORY STRUCTURE TO BE LOCATED FORWARD OF THE FRONT AND REAR WALLS OF THE PRINCIPAL STRUCTURE ON THAT PROPERTY LOCATED AT 1065 SE BROWNS WOODS DRIVE

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the property owner, Lynnae S. Marty Hentzen, Trustee of the Lynnae S. Marty Hentzen Trust and Successors in Trust, has requested approval of a Variance from Title 9, Zoning, Chapter 14 (*Accessory Structures*), Section 14 (*Solar Energy Systems*), Subsection D (*Bulk Regulations*), prohibiting a Small Solar Energy System (SSES) be located in the front of the rear wall of the primary structure and Title 9, Chapter 14, Section 6, Subsection B1 requiring a detached accessory structure meet the minimum front yard setback required for the principal structure along each street frontage and be located behind the front wall of the primary structure to allow a solar array to be located in the front yard of the property located at 1065 SE Browns Woods Drive and legally described as:

The South 739.26 feet of the West 331.64 feet of the East ½ of the SE ¼ of Section 22 Township 78 Range 25, West of the 5th P.M., Polk County, Iowa, (except that part lying West of the road easement and except the South 45 feet road easement.

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on July 19, 2023, the Board of Adjustment held a duly noticed public hearing to consider the application for a Variance (VAR-006006-2023).

WHEREAS, based upon a review of the submitted variance request, the Board of Adjustment finds (**In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings**) _____ as attached at Exhibit B;

NOW, THEREFORE, the Board Of Adjustment of the City of West Des Moines does resolve that a Variance Request to allow a variance of the prohibition of accessory structure in the front yard resulting in ground mounted solar panels located in the front of the rear wall of the primary structure is (**approved / denied**).

PASSED AND ADOPTED on July 19, 2023.

Angie Pfankuch, Chairperson

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on July 19, 2023, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. The applicant/property owner receiving City staff approval of a Solar Energy System Permit prior to installation of the solar array.

Exhibit B
Board of Adjustment Findings

Exhibit C
Site Photos



Figure 1



Figure 2



Figure 3

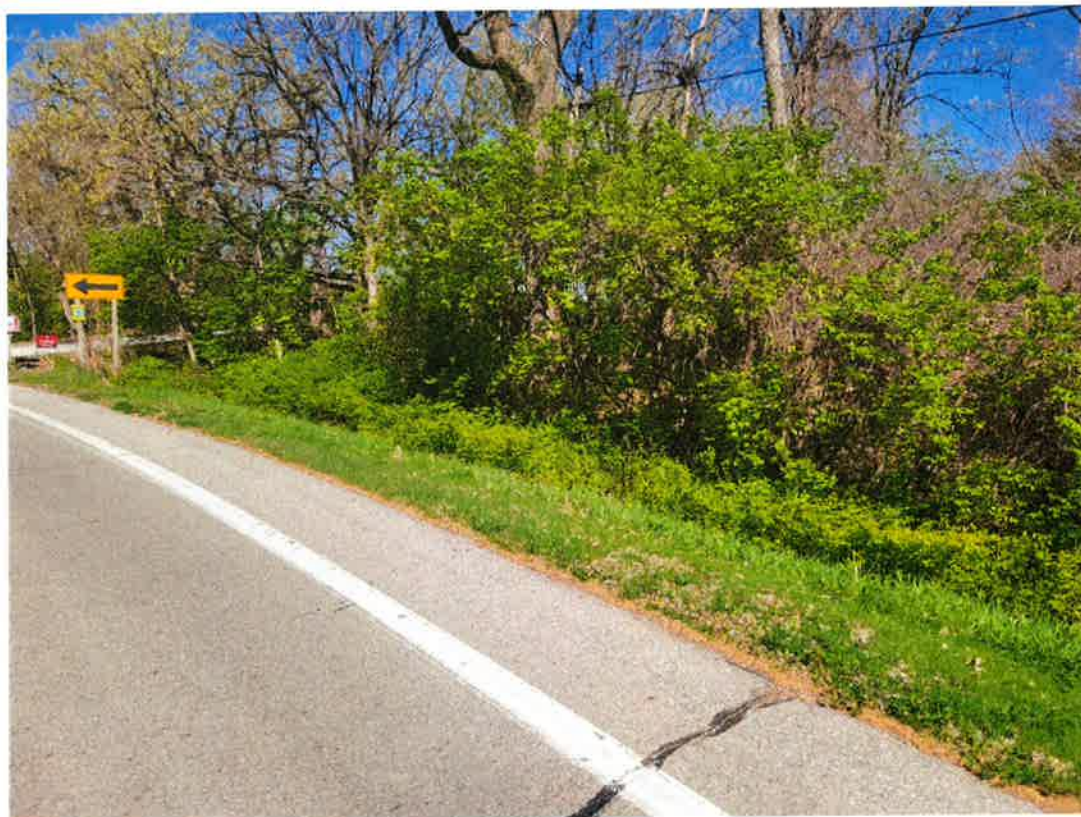


Figure 4



Figure 5



Figure 6



Figure 7

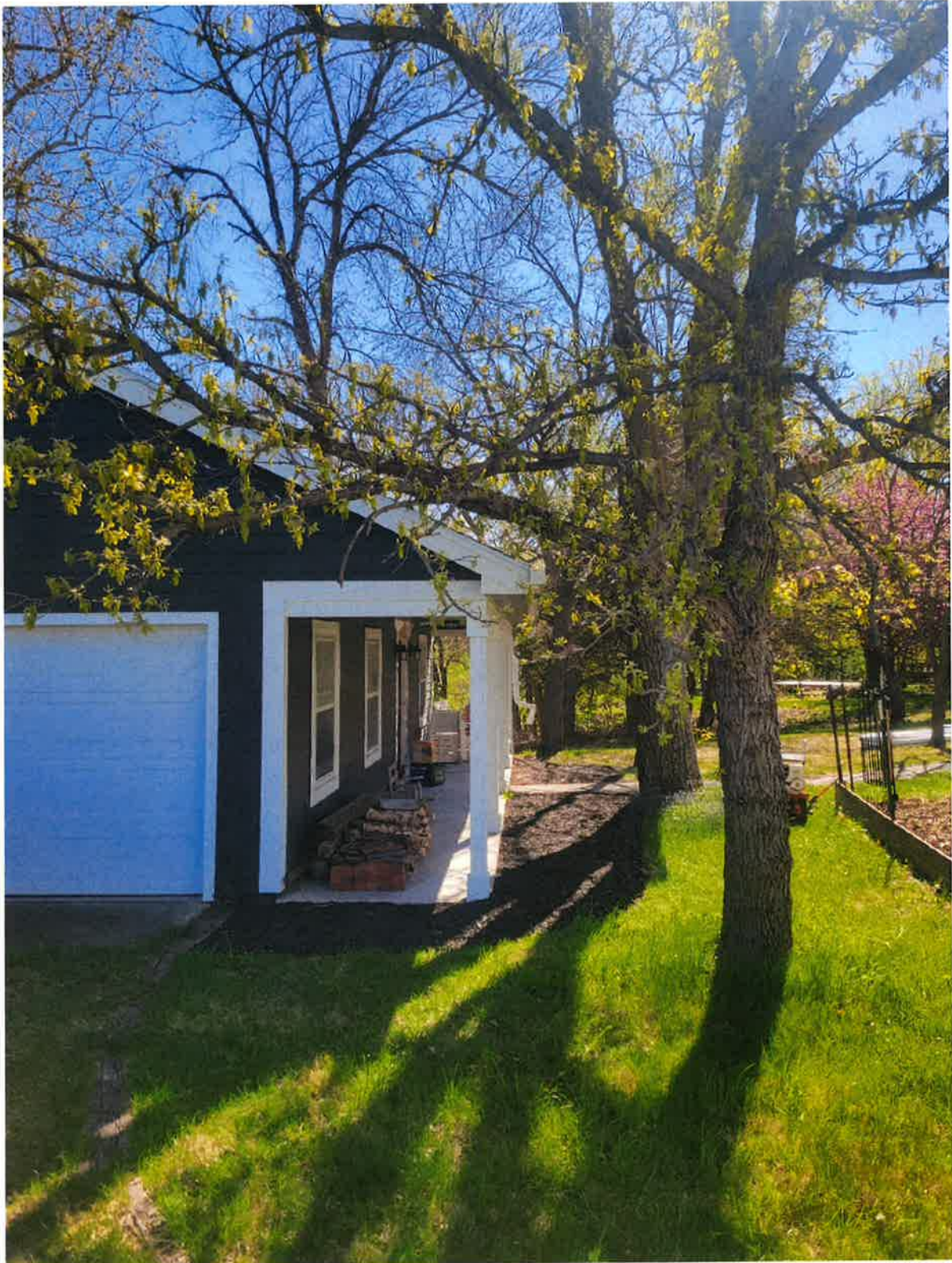


Figure 8



Figure 9



Figure 10

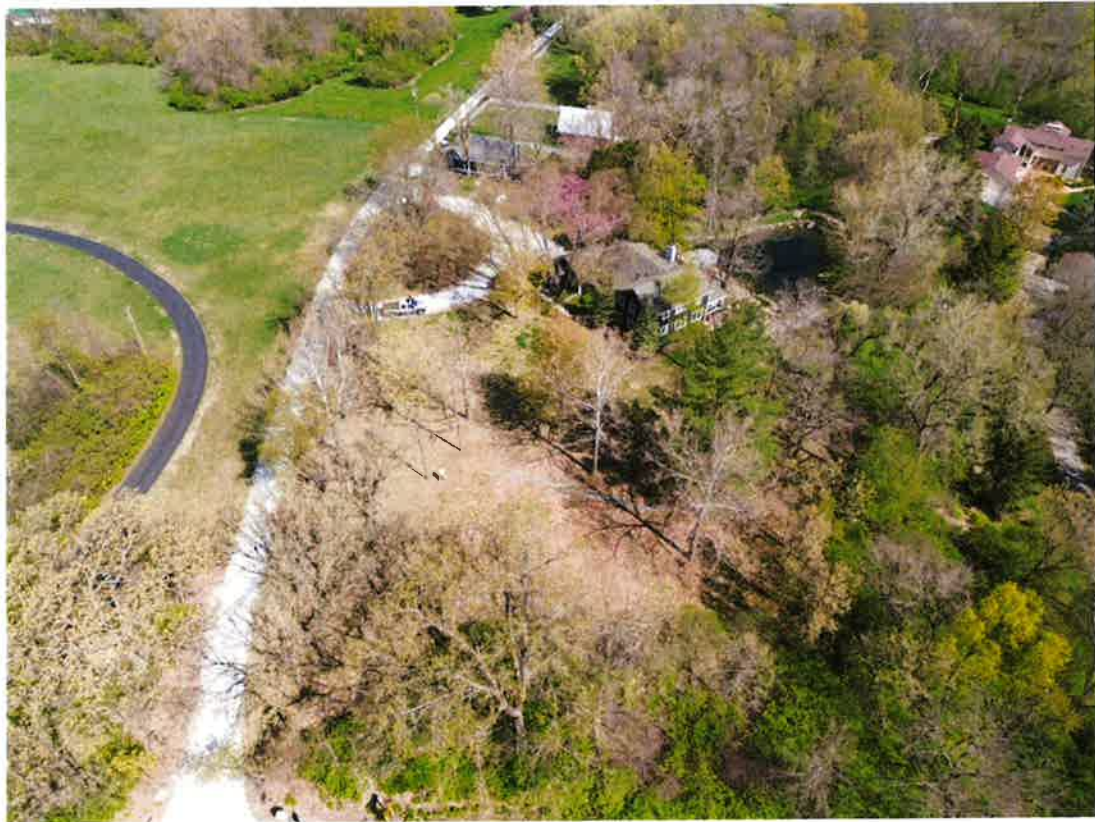


Figure 11

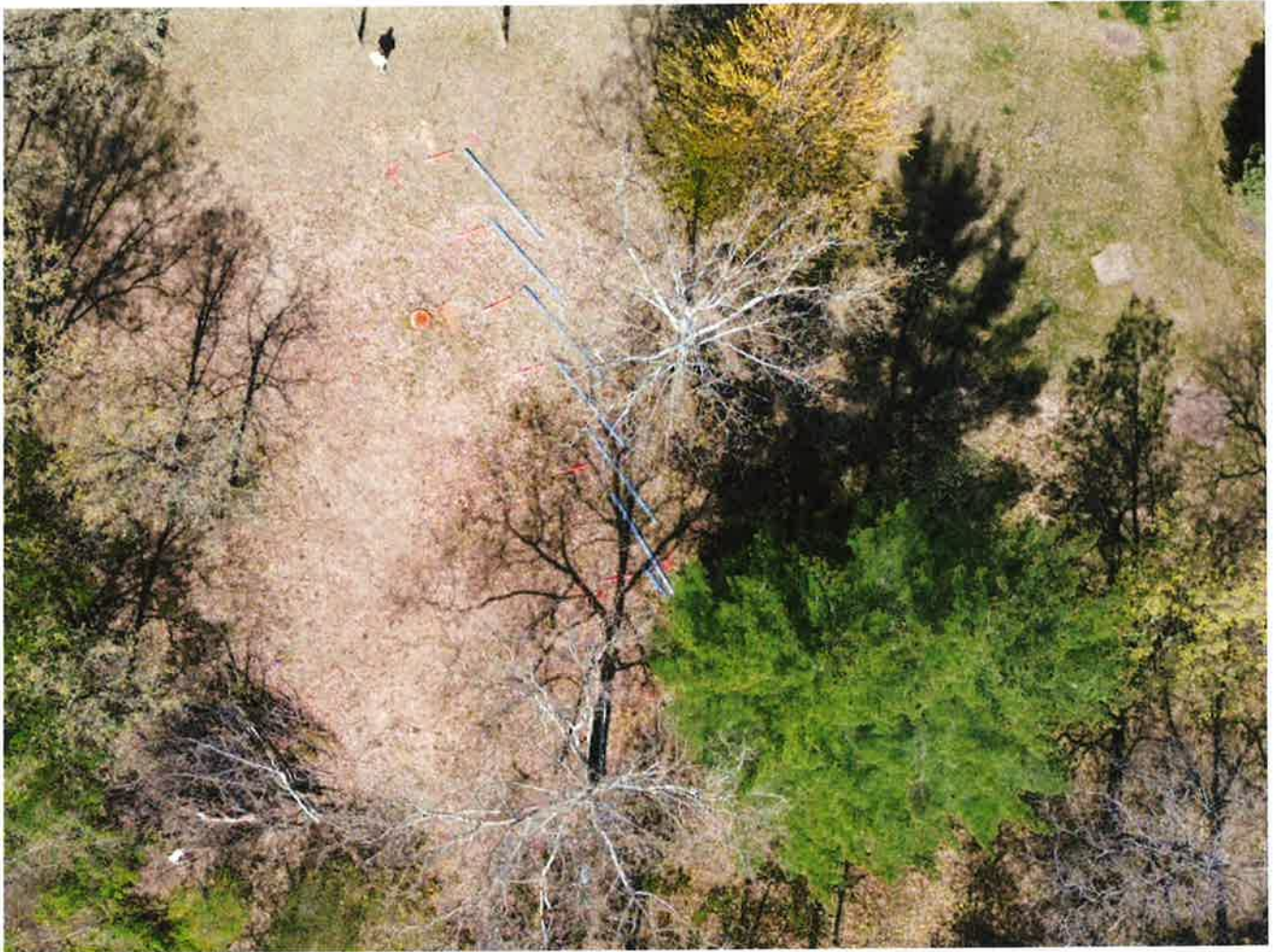


Figure 12



Figure 13

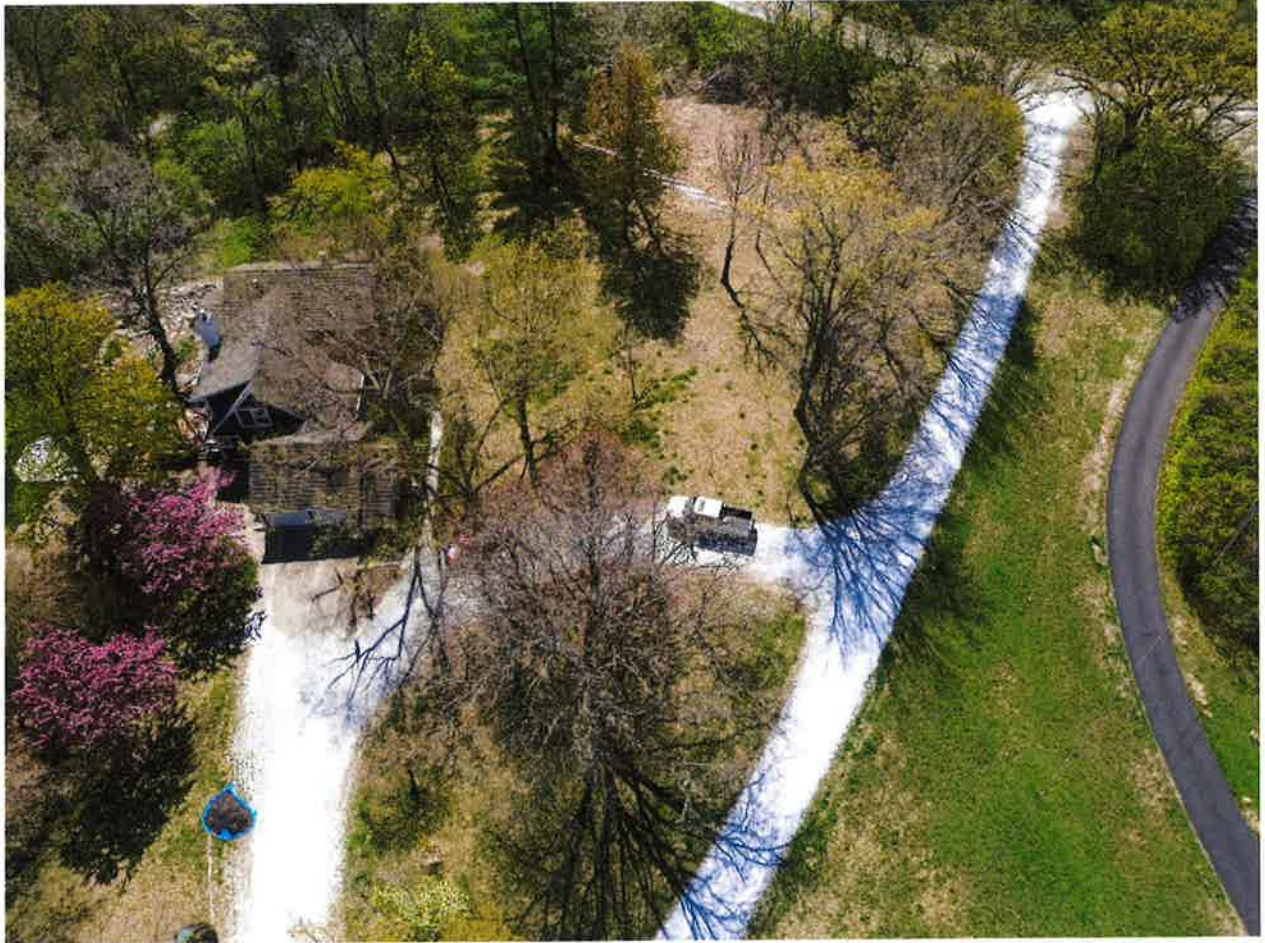


Figure 14

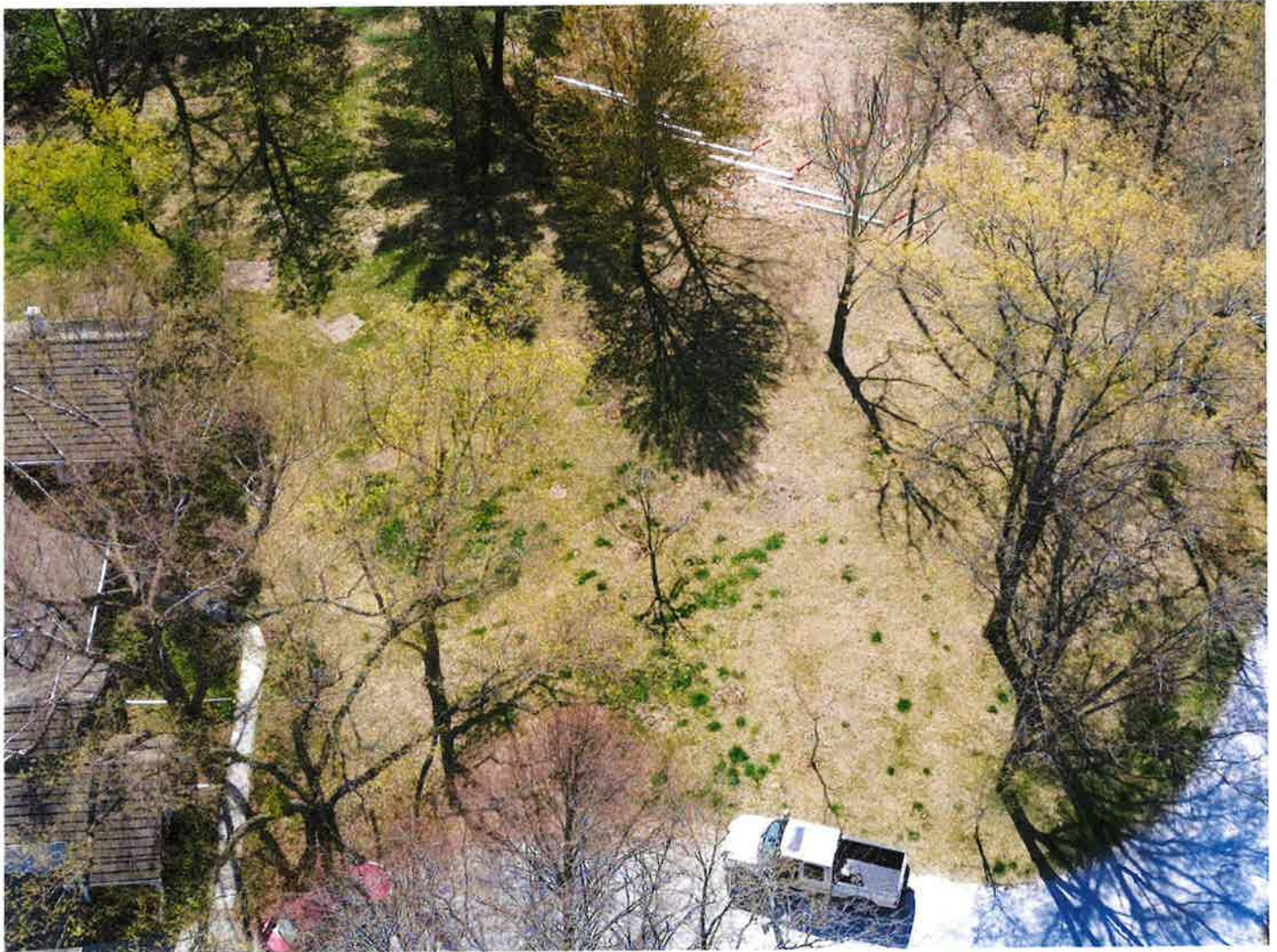


Figure 15

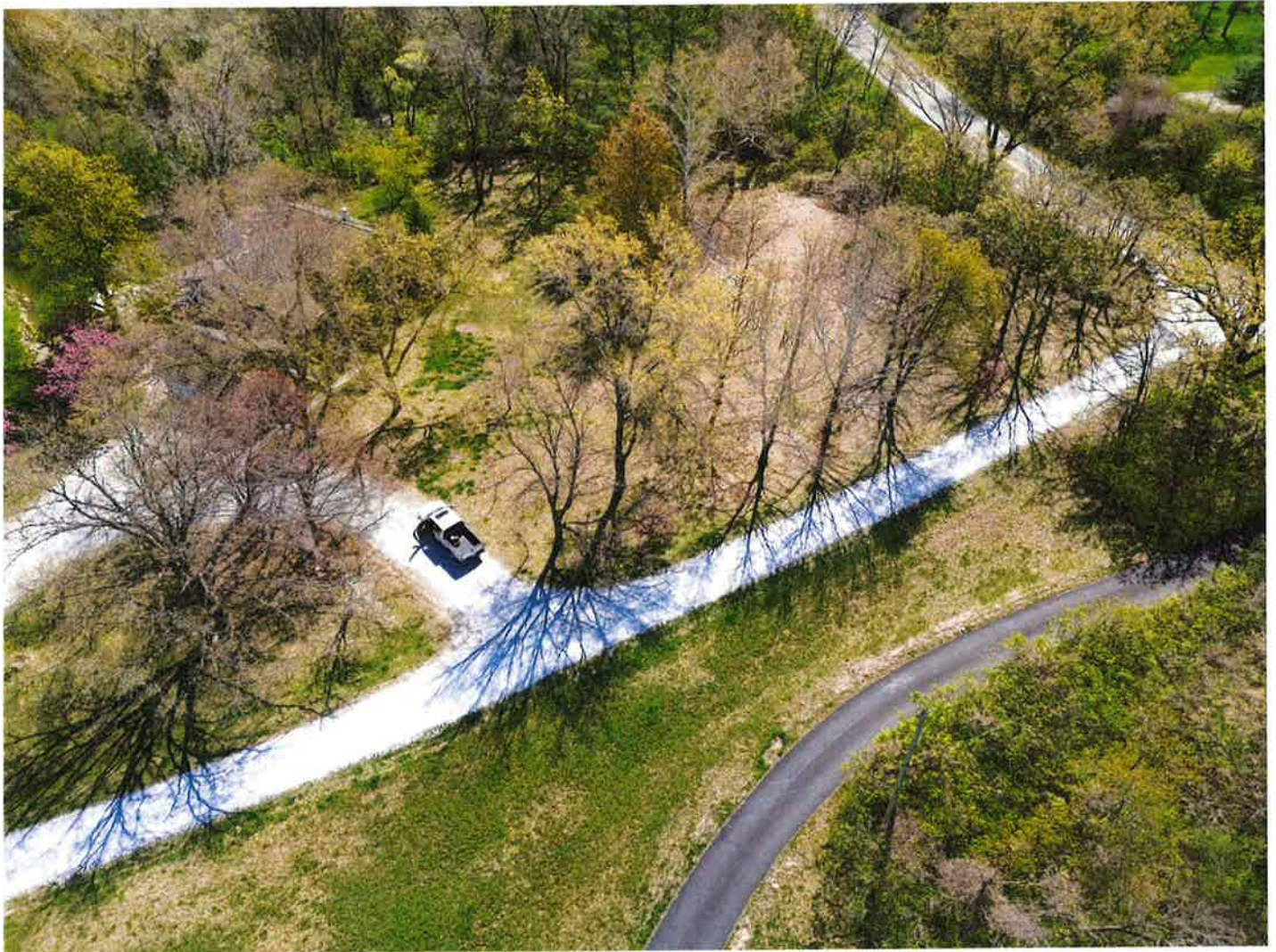


Figure 16

Lynne Martyr Hentzen solar project



Front view
of house
from the
lane

Solar array
is on an
unused area
on the
side yard



Another
new
proposed
solar
array
is on the
side yard
I am planning
to plant
short trees
(oak buds, etc.)
to help buffer
from drive/lane

Figure 17

Lynne Marty Hentzen



could possibly plant quick growing taller trees
on the back of the solar array
to buffer view from the house

Figure 18