



Town of Mesilla, New Mexico

PUBLIC HEARING and SPECIAL MEETING

of the

BOARD OF ADJUSTMENT

AGENDA

MARCH 3, 2021

BOA PUBLIC HEARING

THE TOWN OF MESILLA BOARD OF ADJUSTMENT, WILL HOLD A PUBLIC HEARING ON **WEDNESDAY, MARCH 3, 2021 AT 1:00 P.M.** TELECONFERENCE AT Phone: 1-346-248-7799, Meeting ID: 603 754 4231, Passcode: 193857 TO OBTAIN PUBLIC INPUT ON THE FOLLOWING:

V21-001: Submitted by Russel Hernandez, a request for the following Variances for residential property at 2808 Snow Road:

1. Variance to expansion of a use on a legal non-conforming property to allow construction of an addition on a dwelling on a 0.314 acre residential property in the RA zone (3 acre minimum lot size required) (MTC 18.60.120), and
2. Variance to setbacks to allow construction of porch with-in the required 30 foot front and rear setbacks of this property (MTC 18.60.080)

ADJOURNMENT OF THE PUBLIC HEARING

BOA SPECIAL MEETING

THE TOWN OF MESILLA BOARD OF ADJUSTMENT, WILL HOLD A SPECIAL MEETING ON **WEDNESDAY, MARCH 3, 2021 IMMEDIATELY AFTER THE PUBLIC HEARING** AT Phone: 1-346-248-7799, Meeting ID: 603 754 4231, Passcode: 193857

PLEDGE OF ALLEGIANCE

ROLL CALL AND DETERMINATION OF A QUORUM

BOARD OF ADJUSTMENT BUSINESS

V21-001: Submitted by Russel Hernandez, a request for the following Variances for residential property at 2808 Snow Road:

1. Variance to expansion of a use on a legal non-conforming property to allow construction of an addition on a dwelling on a 0.314 acre residential property in the RA zone (3 acre minimum lot size required) (MTC 18.60.120); and
2. Variance to setbacks to allow construction of an extension of the dwelling and a porch with-in the required 30 foot front and rear setbacks of this property (MTC 18.60.080)

ADJOURNMENT OF THE MEETING

NOTICE:

Posted 2/17/21 at the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristramn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.

**BOARD OF ADJUSTMENT
PUBLIC HEARING
MARCH 3, 2021
CASE V21-001**

V21-001: Submitted by Russel Hernandez, a request for the following Variances for residential property at 2808 Snow Road:

- 1. Variance to expansion of a use on a legal non-conforming property to allow construction of an addition on a dwelling on a 0.314 acre residential property in the RA zone (3 acre minimum lot size required) (MTC 18.60.120); and**
- 2. Variance to setbacks to allow construction of an extension of the dwelling and a porch with-in the required 30 foot front and rear setbacks of this property (MTC 18.60.080)**

DESCRIPTION OF REQUEST:

The subject property is a 0.314 acre parcel zoned RA that currently contains a dwelling, a combination garage and guest house, and a storage building. The applicant would like to construct an addition to the dwelling that will connect the existing dwelling with the existing garage/guest house (see attached site plan). This will result in the two main structures on the property being combined into one structure. The resulting structure will be surrounded on three sides by a covered porch that will extend into the required setbacks of 30 feet at the front and rear of the property.

The proposed plans have two issues that need to be addressed. The first issue is that the property is only 0.314 acres in size in a zoning district (RA) that requires properties to be three acres or greater. According to the PZHAC, the property is therefore legal non-conforming in size. Since the PZHAC has determined that legal non-conforming uses cannot be expanded, the existing structures cannot be expanded since they are on a legal non-conforming property. The second issue is that portions of the requested addition will extend into the required setbacks for the property.

The purpose of this variance case is to request a variance to each of these issues. The first is a variance to the determination that the property is “legal non-conforming”, since the property has existed legally as a small property before the Code existed. According to the applicant’s showings, this is a “government imposed hardship” that did not exist before 2021. (See “Required Showings for Variances” below, provided by the applicant.)

The second variance is a variance to the front and rear setbacks. According to the applicant, most of the addition that intrudes into the rear setbacks meets the requirements of MTC 18.60.080 which allows additions to existing buildings or structures that do “...not project further into any yard than any substantial portion of the existing building or structure.” “Substantial Portion” is defined as “50 percent or more of the length of the wall.” Since the existing structure to be extended is 67 feet long, this section of the Code would allow an addition of 33.5 feet. The proposed addition is 38 feet long, therefore a variance is required for only 3.5 feet of the addition under this section of the Code.

With respect to the front setbacks, MTC 18.60.250 – “Front yard requirements deemed met”, the proposed addition meets the average setbacks of the existing dwellings with the same block as the subject property, according to the applicant (see below). (These measurements have been confirmed by staff.)

Consistency with the Code:

The following “Code References” that apply specifically to this request were provided by the applicant as part of his application:

Code References (Answers in red provided by the applicant):

MTC 18.85.010 Variances may be granted

In accordance with MTC 18.85.040 Required showing for variance:

A. That there are exceptional or extraordinary circumstances or conditions applicable to the property.

The property located at 2808 Snow Rd is presently located in the RA zone on a .30 parcel of land. The property has been the size prior to the adoption of MTC and current zoning maps and does not meet the lot size requirements for the RA zone (Government imposed hardship).

B. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, and denied to the property in question.

Due to the size of the lot and the requirements for the RA zone, the property in question is not able to possess the same rights as the surrounding properties due to its inherent size.

C. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity.

Structures on the current property at 2808 Snow Rd (as well as structures on surrounding properties located at 2932, 2950, 3026, & 3066 Snow Rd) are already set on the property as legal nonconforming structures since they were erected prior to MTC adoption. The property at 2808 Snow road is uniquely isolated in the exact size of the property as there are not any other properties in the surrounding areas that meet the EXACT size of the parcel in question.

D. A nonconforming use of neighboring lands or structures shall not be considered grounds for the issuance of a variance. [Ord. 94-06 § 1; prior code§ 11-2-7.4]

The size of the property in question is unique as it does not meet the size requirements for the zone in which it is located. This is a government imposed hardship upon the property. It is the only property of its size within the vicinity, making this property uniquely isolated.

18.60.250 Front yard requirements deemed met

Any front yard requirement is met when the depth of the front yard at least equals the average of that established by front yards of existing buildings within the same block or zone. [Ord. 94-06 § 1; prior code§ 11-2-5.25]

Properties at 2932, 2950, 3026, & 3066 are all located along Snow Rd and have front setbacks of 10' or less (two of these properties are also legal non-conforming per current zoning map).

18.60.080 Alteration of nonconforming buildings as to yard regulations

A building or structure which does not conform to the yard regulations may be structurally altered; provided, such alteration does not change the horizontal exterior dimensions, or the addition either conforms to the applicable yard regulations or does not project further into any yard than any substantial portion of the existing building or structure. "Substantial portion" for the purpose of this section shall mean 50percent or more of the length of the wall. [Ord. 94-06 § 1; prior code § 11-2-5.8]

- The proposed addition will not project further than any existing structures presently on the property.
- The length of the proposed addition is 38' on the West end, with the current combined structures length 129', which fully encompasses the proposed addition and does not apply to the 50 percent length of the wall.
- The South end of the structure is 38' (current combined structures length is 63', of which 15' of the proposed structure is not encompassed in the length of existing structures. The requested length does however fall under the requirement of 50% of the wall.

Further Code Requirements:

18.85.150 Setting hearings.

All applications for variances, or special use permits as provided in this title, shall be set for public hearing by the planning commission or board of adjustment. The date of the first hearing shall be not less than 30 days nor more than 45 days from the time of filing the application. [Ord. 94-06 § 1; prior code § 11-2-9.5]

The application was accepted by Staff as complete on Monday January 28, 2021. (37 days prior to this hearing).

18.85.160 Notices.

Notice of time and place of public hearings for variance or special use permit may be given by posting one sign in front of the property and posting additional signs at 300-foot intervals for large properties with 600 feet or more frontage. The posted notice shall contain the heading "Notice of Proposed Variance," "Special Permit" or "Notice of Proposed Special Permit," in letters at least one inch in height. The notice shall also contain information about the location of the property, the proposed

use and the time and place at which the public hearing will be held. All owners of property located within 100 feet radius of the external boundaries of the property shall be notified by registered mail. [Ord. 94-06 § 1; prior code § 11-2-9.6]

A sign meeting the requirements listed above was posted at the front of the property on Wednesday, February 17, 2021. Additionally, there were five separate property owners within 100 feet of the subject property (see attached notification map and letter) that were notified by Certified Mail of the variance request.

There have been no negative written responses from any of the notified property owners.

Impacts on the Surrounding Area:

Of the ten different property owners notified because they own property within one hundred feet of the properties involved in this variance (as required by Code Section 18.85.160 – Notices), there have been no negative written responses to the request. As stated above, staff has received four letters and a petition in support of the dwelling.

Required Findings That Need to be Met (in addition to other possible Findings resulting from the Public Hearing):

- **The Board of Adjustments (BOA) has jurisdiction to hear this request.**
- **Notification requirements of the MTC have been met.**
- **The requested variances are necessary to overcome a real hardship of the property.**
- **Approval of the requested variances will not be detrimental to the Town of Mesilla.**
- **The requirements of the MTC have been met with respect to granting variances.**
- **Granting the variance will be consistent with the MTC.**
- **Approval of the requested variance will not be detrimental to the Town of Mesilla.**


TOWN OF MESILLA
REQUEST FOR VARIANCE

OFFICIAL USE ONLY:
 Case # _____
 Fee \$ _____

CASE NO. _____ ZONE: _____ SUBMITTED DATE: _____

Russel Hernandez _____ 575-496-6514 _____
 Name of Applicant Applicant's Telephone/Cell Number


28083 Snow Rd _____ Las Cruces _____ NM _____ 88005 _____
 Mailing & Physical Address City State Zip Code

Property Owner(s) Name (if different than above) _____

Mailing & Physical Address _____ City _____ State _____ Zip Code _____

Description of Variance Requested: SEE ATTACHED - TO BUILD ADDITION TO HOME AS DESCRIBED: SHOWN (WITH SET BACKS) TO LEGAL-NON-CONFORMING LOT LOCATED C. 28083 SNOW RD.

Justification for Request: SEE ATTACHED - GOVERNMENT IMPOSED HARASSHIP

 _____
 Property Owner Signature (if different than Applicant) Applicant Signature

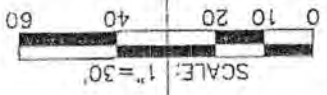
FOR OFFICAL USE ONLY

- | | | | |
|-------|--|-----|---|
| PZHAC | <input type="checkbox"/> Administrative Approval (N/A) | BOT | <input type="checkbox"/> Approved Date: _____ |
| | <input type="checkbox"/> Approved Date: _____ | | <input type="checkbox"/> Disapproved Date: _____ |
| | <input type="checkbox"/> Disapproved Date: _____ | | <input type="checkbox"/> Approved with Conditions |
| | <input type="checkbox"/> Approved with conditions | | |

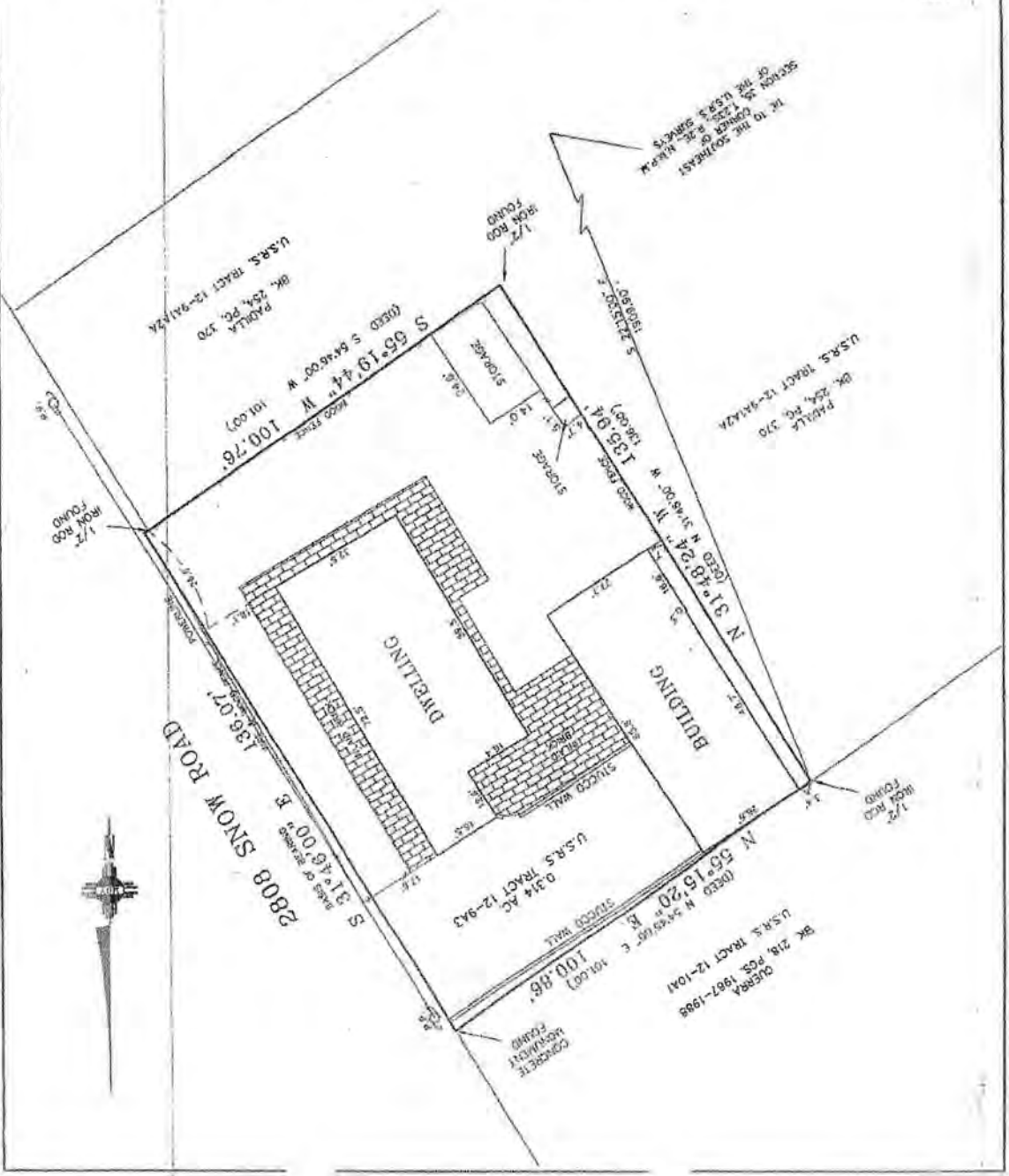
CONDITIONS: _____

VARIANCE ISSUED BY: _____ ISSUE DATE: _____

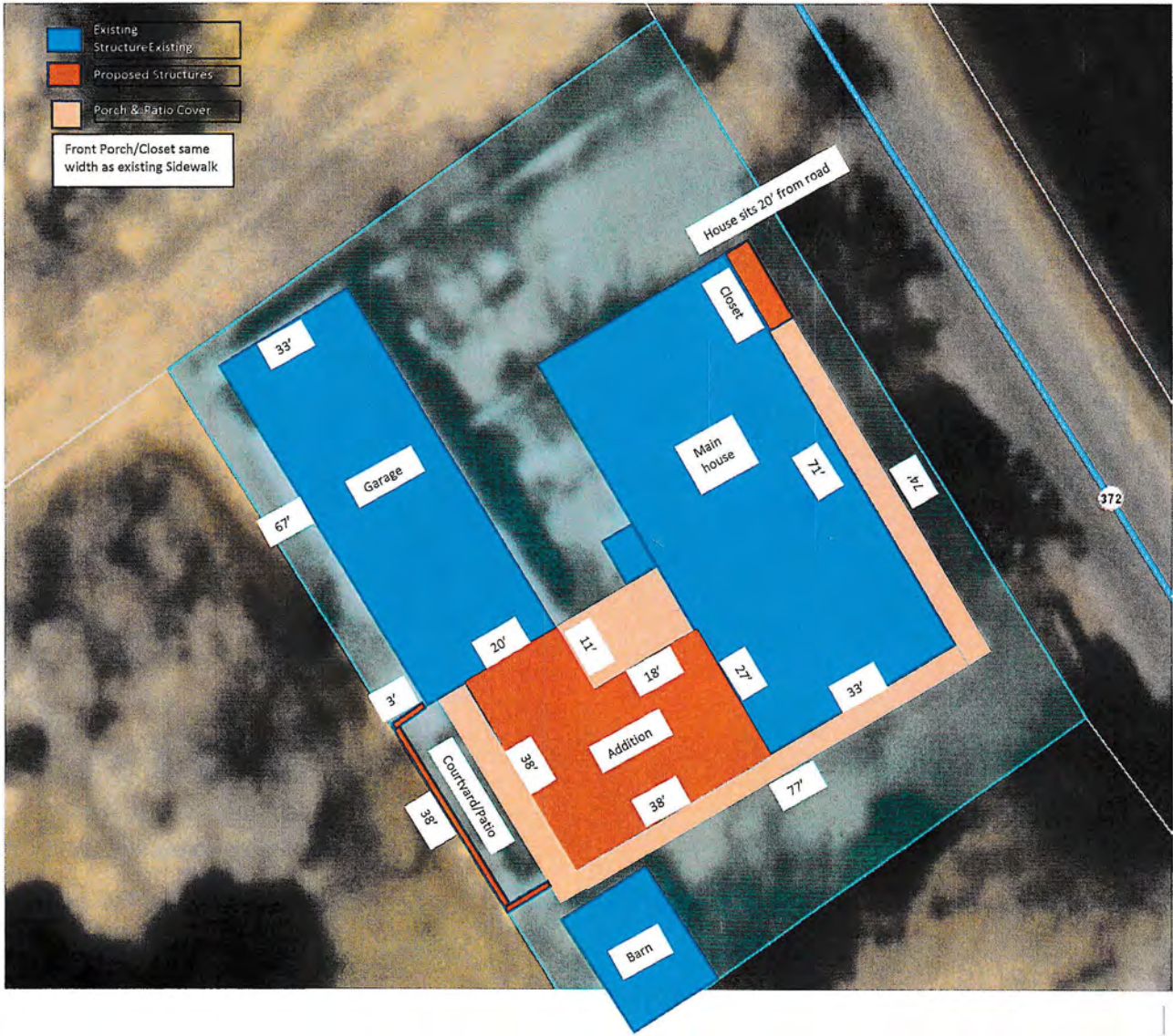
FORWARD INFORMATION FOR COUNTY CLERK



NOTES:
FLOOD ZONE "X", AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD, IN MAP NO. J5013C0833 E, EFFECTIVE SEPTEMBER 27, 1991.
THIS SURVEY MAKES NO GUARANTEES AS TO THE ACCURACY OF THE ABOVE INFORMATION, THE LOCAL F.L.M.A. AGENT SHOULD BE CONTACTED FOR VERIFICATION.



VERIFICATION IN THE DEPARTMENT OF THIS PLAN DERIVES FROM



January 11, 2021

Re: Variance request for 2808 Snow Road

Members of the board:

The request for a variance has been submitted due to unnecessary hardship inherent with the land. This is a government imposed hardship as the size of the property is inherent with the land and does not meet the zoning requirements for the zone in which it is located. The property was established prior to the codification of MTC.

The current property is located at 2808 Snow Rd, in which the zoning map shows this property being in the RA zoning along Snow road. The property in question has been fully established as legal non-conforming prior to the 1978 adoption of MTC. The lot in size is .31 acre and is located in within the RA Zone on the zoning map.

The request for a variance is to allow for the building of an addition to the property in which RA zoning setbacks will not be met due to the size of the lot on which it is located. The proposed structures will not extend past the structures currently on the property in accordance with MTC 18.60.080. All other building applications for the proposed structure will be consistent with the requirements within the RA zone. Please reference attached references for specific variance request.

The purpose of the remodel is due to the growth of our family. We are in the process of adoption of 3 children and as the house presently is accessed (2 bedrooms, 1 bathroom), there needs to be more room for 2 adults and 3 children to live comfortably within the residence.

Respectfully Submitted,

Russell Hernandez & Christopher Schaljo

Code References:

MTC 18.85.010 Variances may be granted

When practical difficulties and unnecessary hardships inherent with the land, or actions inconsistent with the general purpose of this title occur due to the strict interpretation and enforcement of any of its provisions, the board of adjustment, upon its own motion may, or upon the application of any interested person, shall initiate proceedings for consideration of a variance from the provisions of this title with conditions as may be necessary to assure that the purpose of this title will be observed, and that the health, safety, and welfare of the community be secured, and that substantial justice be done, not only to the applicant, but to the persons other than the applicant, who might be affected by such variance. [Ord. 94-06 § 1; prior code § 11-2-7.1]

In accordance with MTC 18.85.040 Required showing for variance:

A. That there are exceptional or extraordinary circumstances or conditions applicable to the property.

The property located at 2808 Snow Rd is presently located in the RA zone on a .30 parcel of land. The property has been the size prior to the adoption of MTC and current zoning maps and does not meet the lot size requirements for the RA zone (Government imposed hardship).

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18.05.160 Existing Uses

The existing use of all buildings, improvements, and premises not in conformity with the standards or requirements of the zoning district in which they are located, as stated in this title, and which uses are legal, or for which permits or variances were granted under previous ordinances, may continue as nonconforming uses or variances as defined within this title, and subject to the provisions regulating such uses. [Ord. 2009-05 § 1; Ord. 94-06 § 1; prior code § 11-2-1.4]

- Improvements to this lot may continue as nonconforming uses as such that they have been granted under previous ordinances (existing structures)



Town of Mesilla, New Mexico

February 22, 2021

Dear Property Owner,

In accordance with the Town of Mesilla regulations governing variances (MTC 18.85.160), I am notifying you, as a neighboring property owner within 100 feet of the subject property, that the town of Mesilla Board of Adjustment (BOA), will hold a Public Hearing and Special Meeting on **Wednesday, March 3, 2021 at 1:00 p.m. by Teleconference at phone: 1-346-248-7799, meeting ID: 603 754 4231, passcode: 193857** to obtain public input on the following:

V21-001: Submitted by Russell Hernandez, a request for the following Variances for residential property at 2808 Snow Road:

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2. Variance to setbacks to allow construction of porch with-in the required 30 foot front and rear setbacks of this property (MTC 18.60.080)

Anyone who is concerned with this matter may address the PZHAC at the Public Hearing, or write to them at:

**TOWN OF MESILLA
Larry Shannon Community
Development Department
PO Box 10
Mesilla, NM 88046**

Letters must be received before the Public Hearing. In addition to mailing the letter, comments may be e-mailed to Larry Shannon at larrys@mesillaNM.gov. E-mailed comments should be received by staff at least one hour before the start of the meeting. You may also contact me at 575- 524-3262 or 575-288-5357.

Sincerely,



Larry Shannon
Community Development Coordinator
Town of Mesilla

V21-001 NOTIFICATION MAP



Applicant: Russel Hernandez – 2808 Snow Road, Las Cruces, NM 88005

PROPERTY OWNERS (within 100 feet):

1. Michael J. Castillo, 2700 Snow Road, Las Cruces, NM 88005-4440
2. Edward L. Dimatteo, PO Box 393, Mesilla, NM 88046
3. Baltazar S. Flores, 2917 Snow Road, Las Cruces. NM 88005
4. Susan A. Krueger, PO Box 1143, Mesilla, NM 88046-1143
5. Juan and Armida Padilla, PO Box 654, Mesilla, NM 88046-0654

TOWN OF MESILLA
APPLICATION FOR RESIDENTIAL BUILDING PERMIT
 2231 Avenida de Mesilla, P.O. Box 10, Mesilla, NM 88046 (505)524-3262 extension 109

CASE NO. _____ ZONE: _____ CODE: _____ APPLICATION DATE: _____

RUSSELL HERNANDEZ 575-496-6514
 Name of Applicant Telephone Number

2808 SLOW RD LASCRUDES NM 87205
 Street Address City State Zip Code

TBD
 Contractor Name and Address

Contractor Telephone Number _____ Contractor Tax I.D. Number _____ Contractor License # _____

LOCATION & DESCRIPTION OF PROPOSED WORK:
ADDITION TO HOME TO ADD BATHROOM, 2 BEDROOMS, LIVING SPACE, MASTER CLOSET, WRAP AROUND PORCH

Estimated Cost: \$120,000

[Signature]
 Signature of Applicant

Date: 01/05/2021

*With the exception of administrative approvals, all permit applications must undergo a review process from staff, PZHAC and BOT before issuance of a building permit.
 Recorded proof of ownership with legal description of property (deed or current tax bill) along with verification of legally subdivided status of the property are required.
 Plan sheets are to be no larger than 11 x 17 inches.*

PZHAC	<input type="checkbox"/> Administrative Approval	BOT	<input type="checkbox"/> Approved
	<input type="checkbox"/> Approved		<input type="checkbox"/> Disapproved
	<input type="checkbox"/> Disapproved		<input type="checkbox"/> Approved with condition
	<input type="checkbox"/> Approved with conditions		

CONDITIONS: _____

FEE: REVIEW: _____ ISSUE DATE: _____

PERMIT: _____ ISSUE DATE: _____

This application includes:

1. Plot plan with legal description to show existing structures, adjoining streets, driveway(s), improvements & setbacks. Verification shall show that the lot was legally subdivided through the Town of Mesilla or that the lot has been in existence prior to February 1972.
2. Foundation Plan with details
3. Floor Plans showing rooms, their uses and dimensions
4. Cross Sections of walls.
5. Roof and floor framing plan. (If manufactured trusses, submit layout of trusses and stamped engineer design plan.)
6. Drainage plan.
7. Architectural style and color scheme (Historical and commercial zones only.)
8. Proof of sewer service or a copy of septic tank permit; proof of water service (well permit or statement from Public Utility providing water service.)

Google Maps 2808 Snow Rd



Map data ©2020, Map data ©2020 20 ft

EXISTING HOUSE

COVERED PORCH

HALL

Bedroom

Bedroom

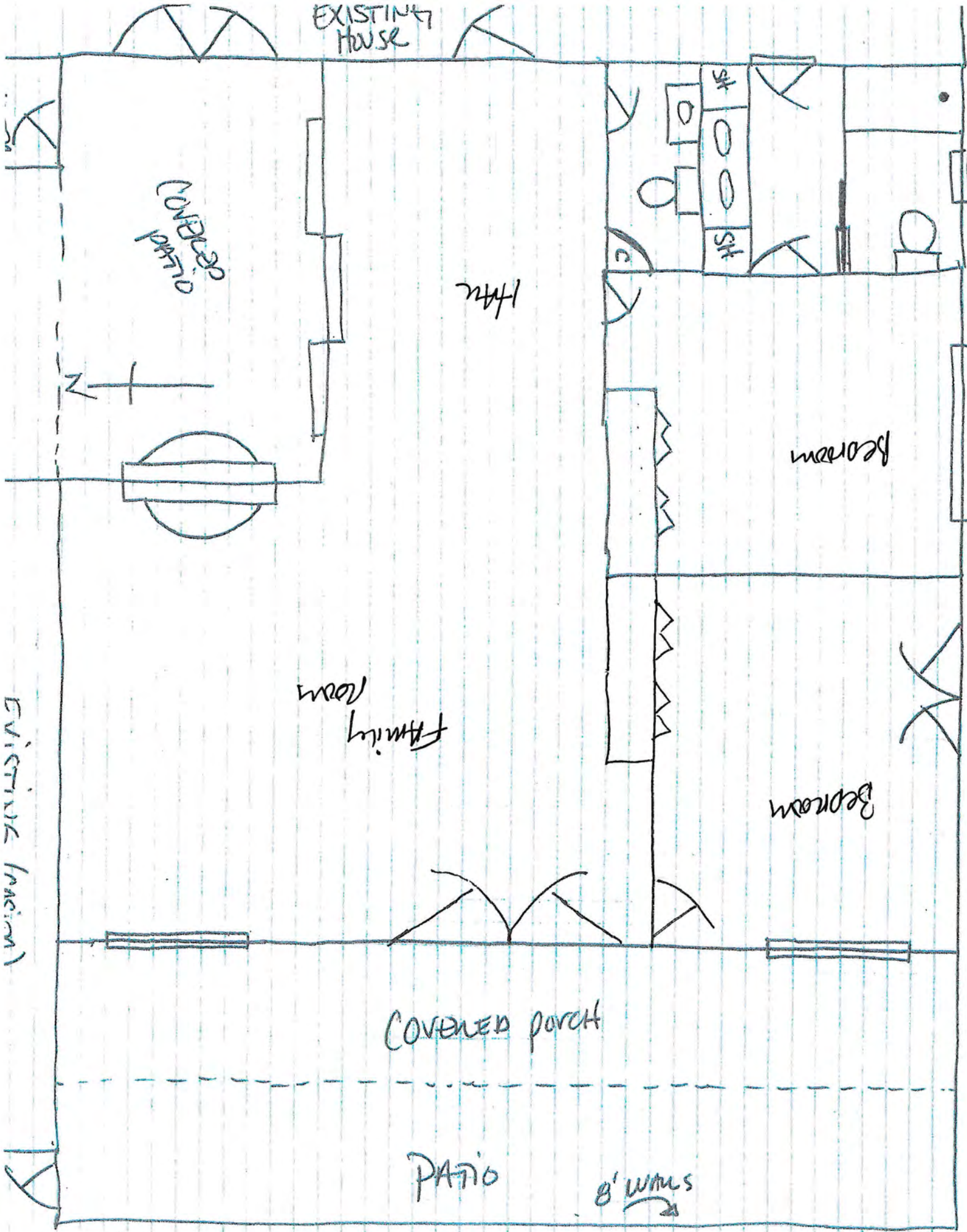
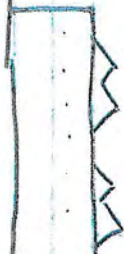
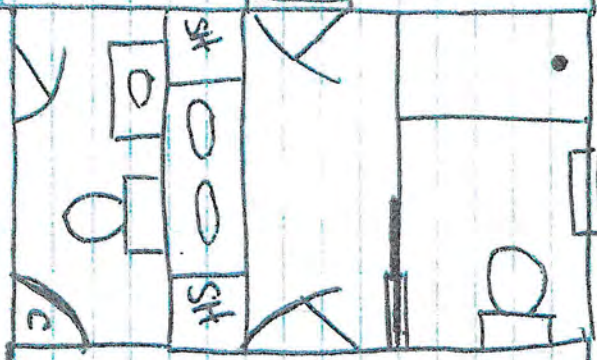
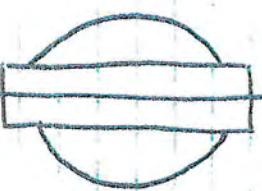
Family Room

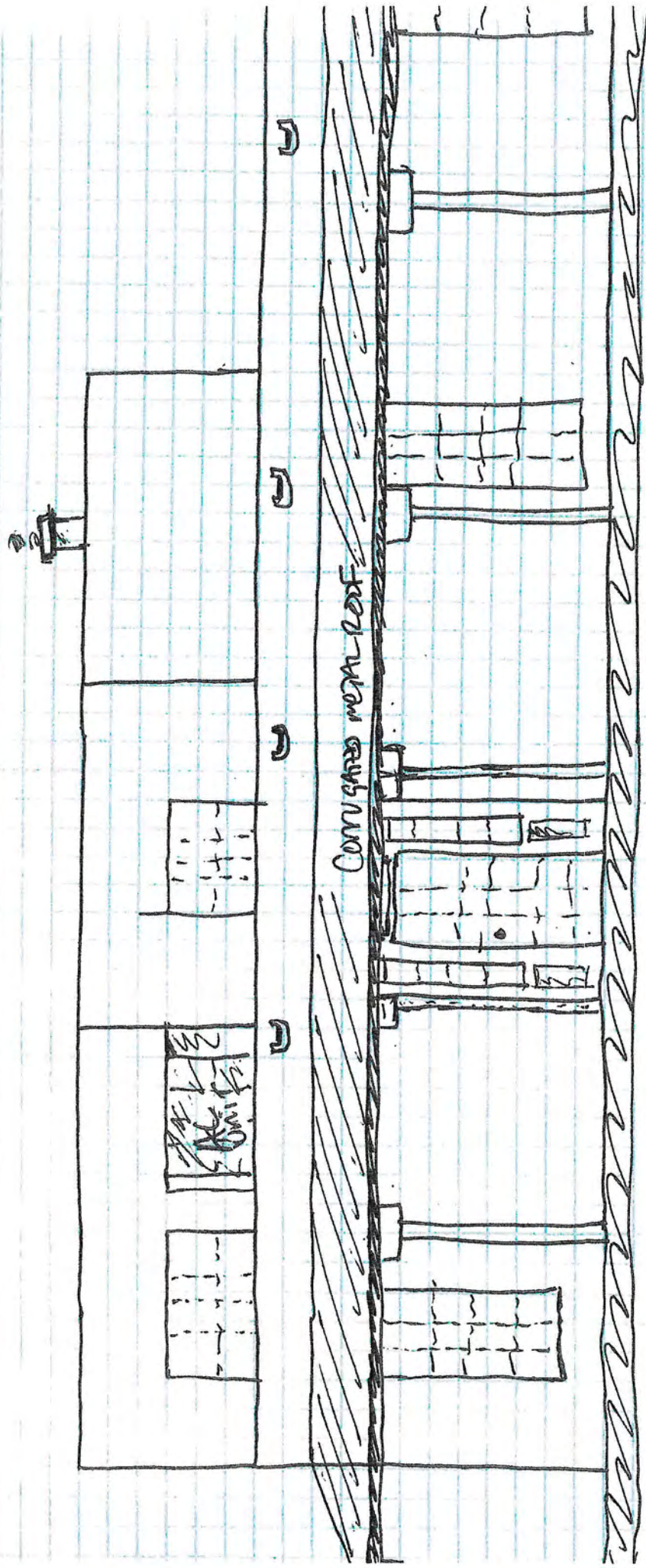
COVERED PORCH

PATIO

8' WINDS

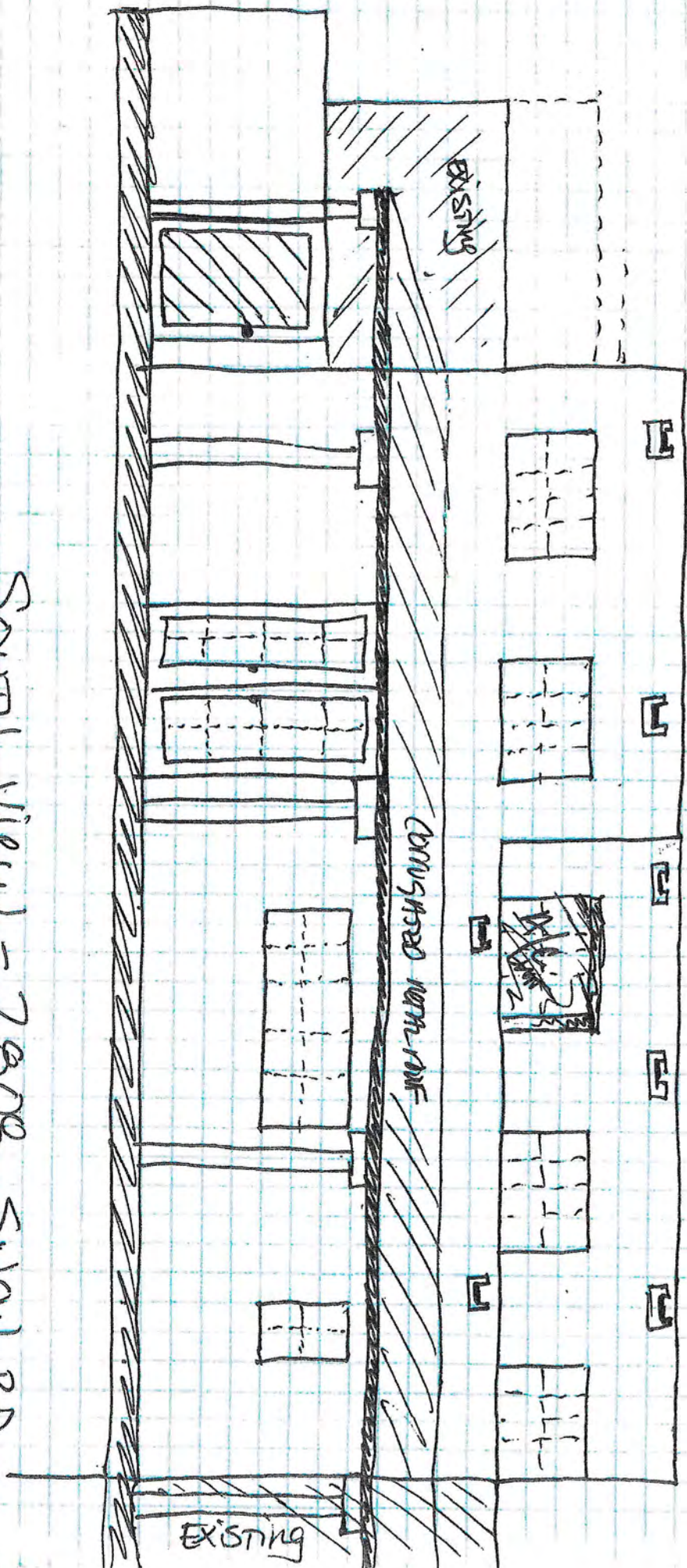
EXISTING (main)

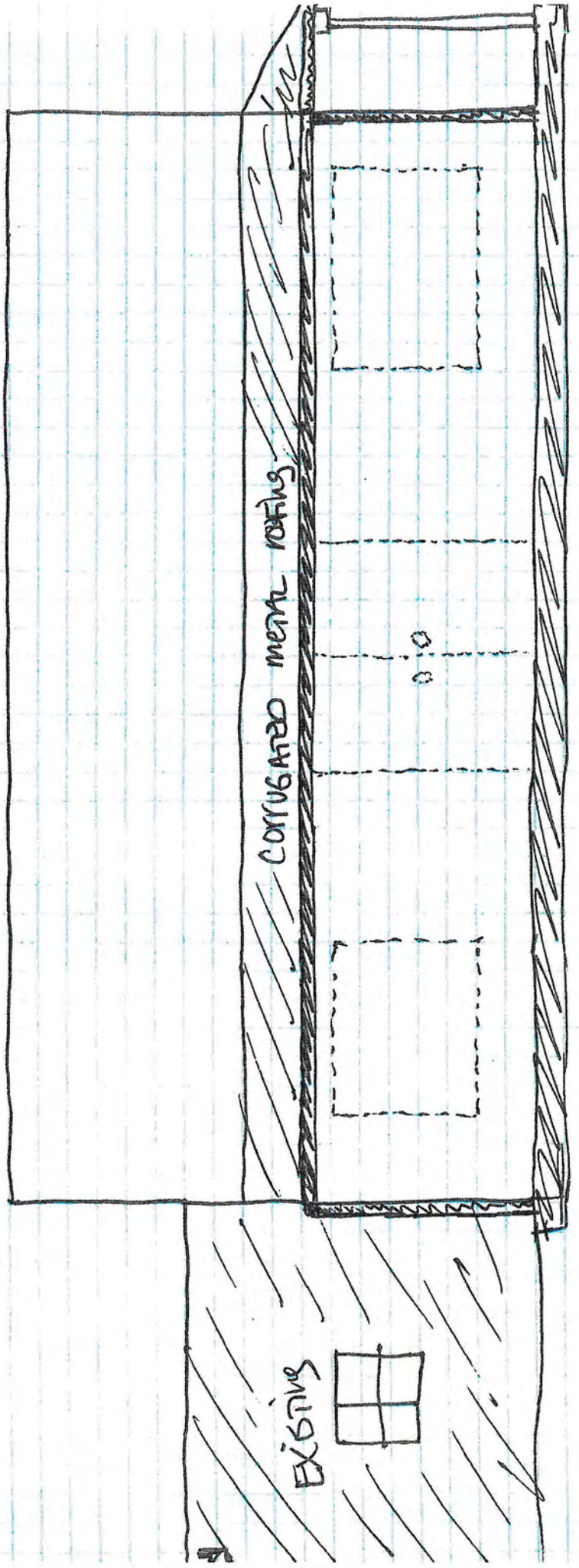




EAST VIEW - 2008 SPAN (M)

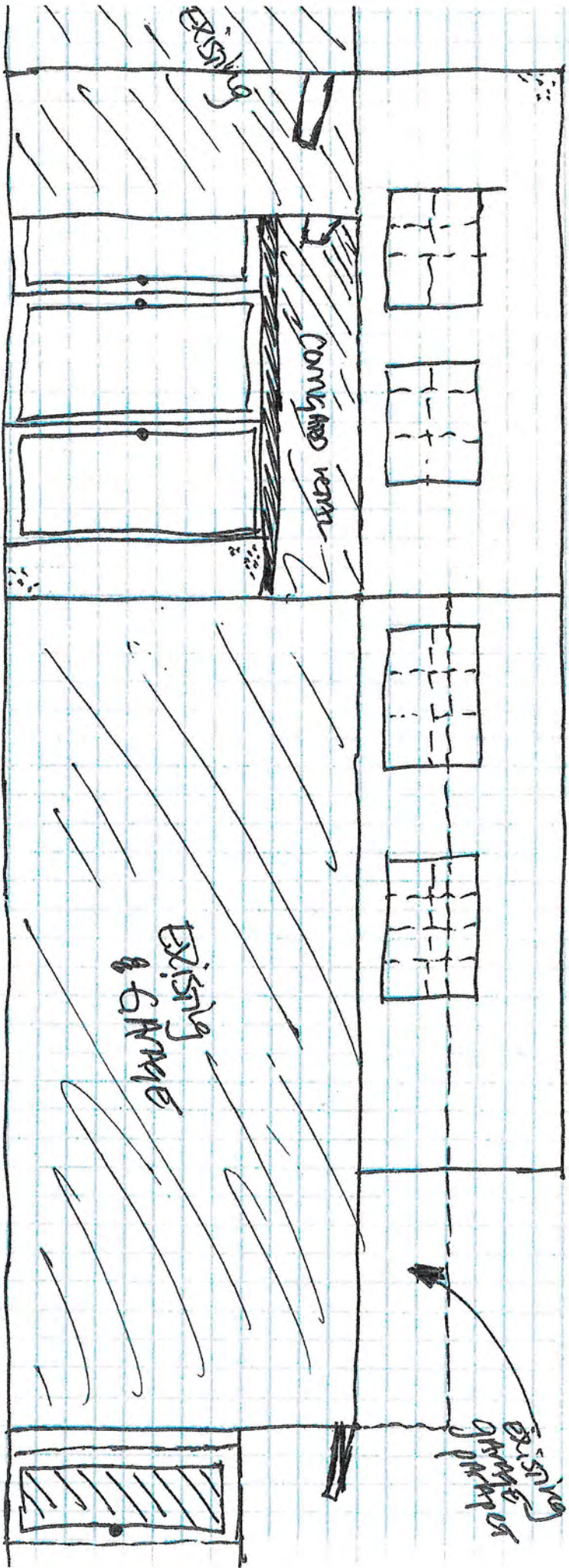
SOUTH VIEW - 2808 SNOW RD





WEST VIEW - 2808 SNOW RD

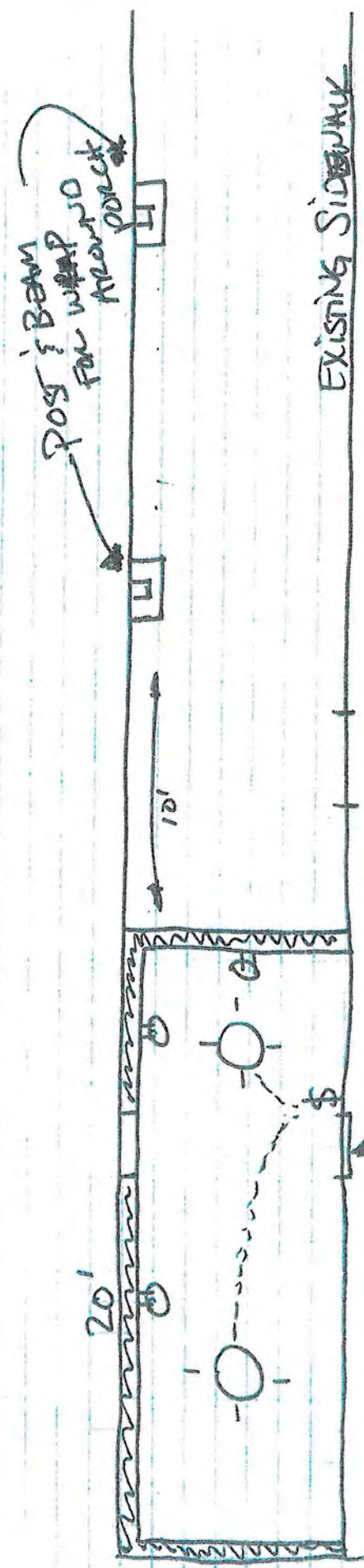
North View - 2808 Snow Rd



SNOW RD

3 3/4" ELEMENT

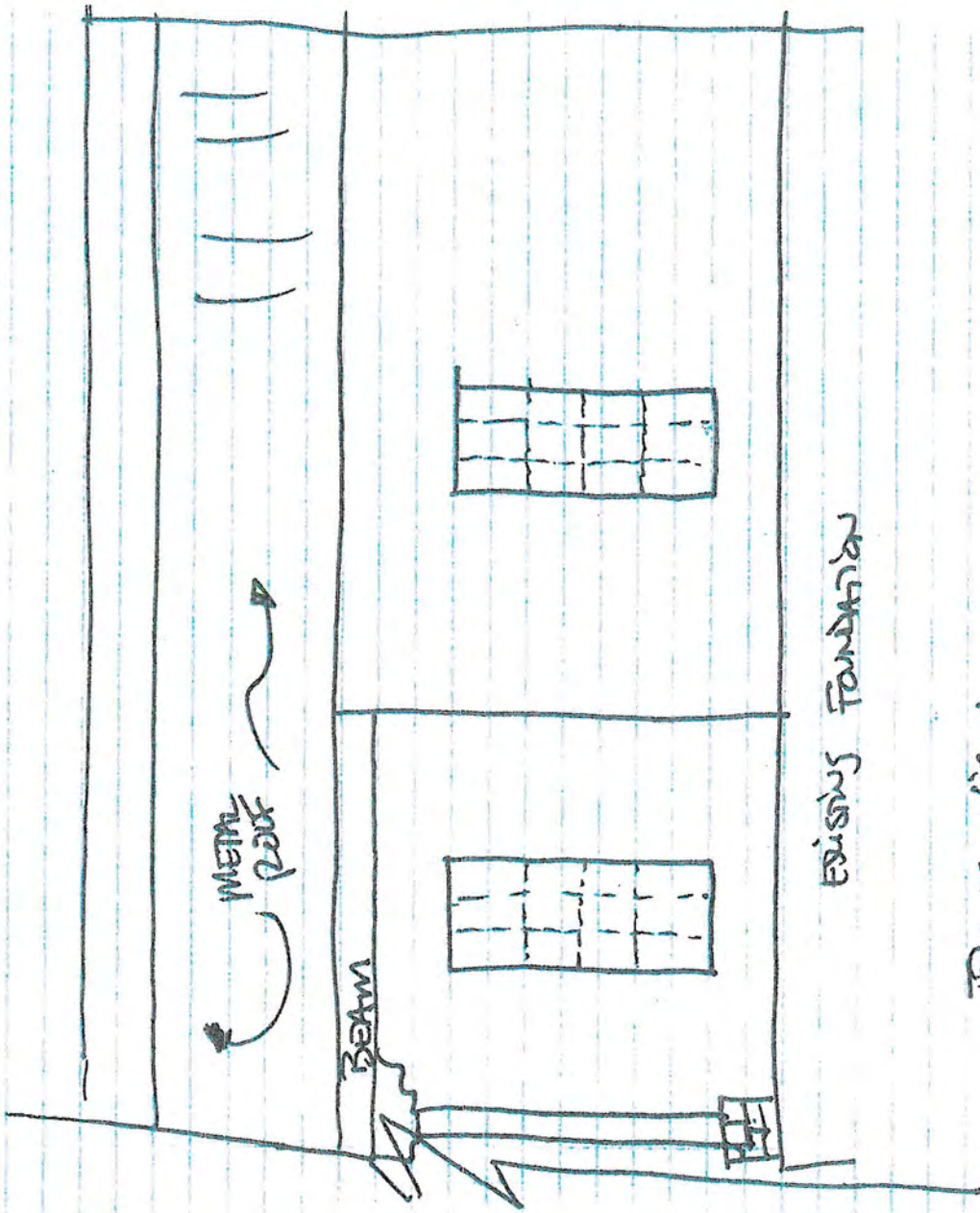
Picket FENCE ALONG ROAD



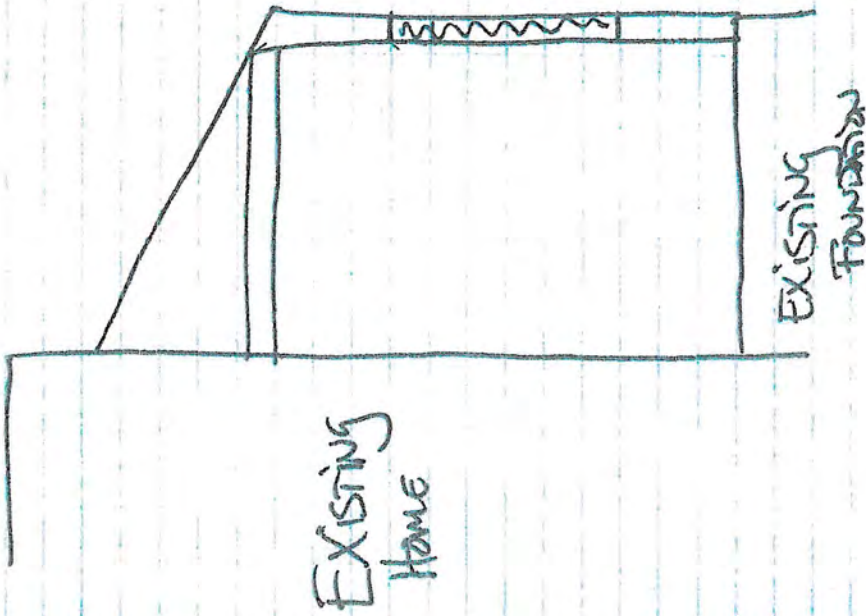
EXISTING HOME

EXISTING
WALLS
COVERED
SHOULD
BE
REMOVED

2808 SNOW RD
CLOSET ADDITION



FRONT VIEW



SIDE VIEW

SNOW RD

3 FT EASEMENT

PICKET FENCE ALONG ROAD

POST & BEAM FOR W/WRAP AROUND PORCH

EXISTING SIDEWALK

20'

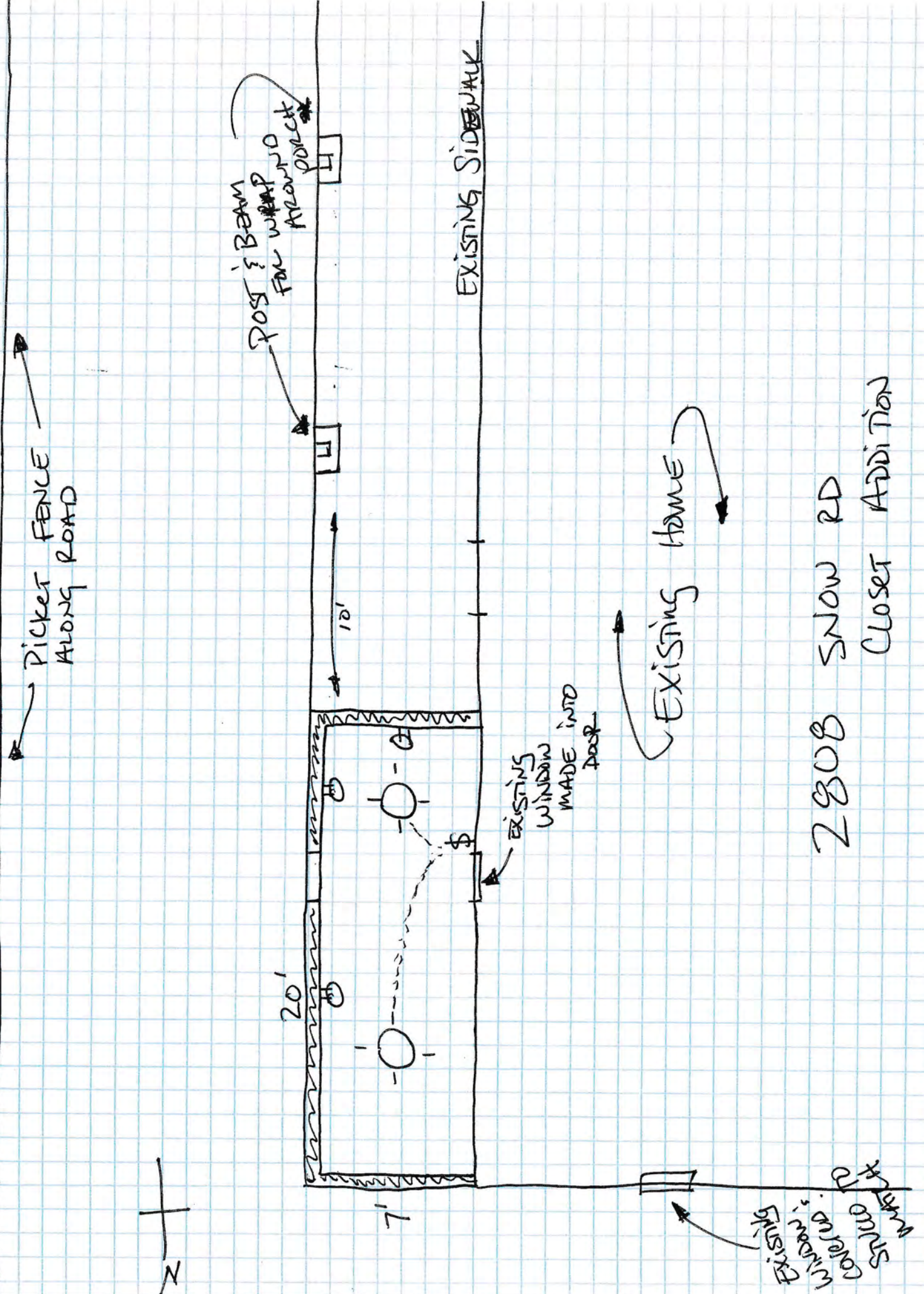
12'

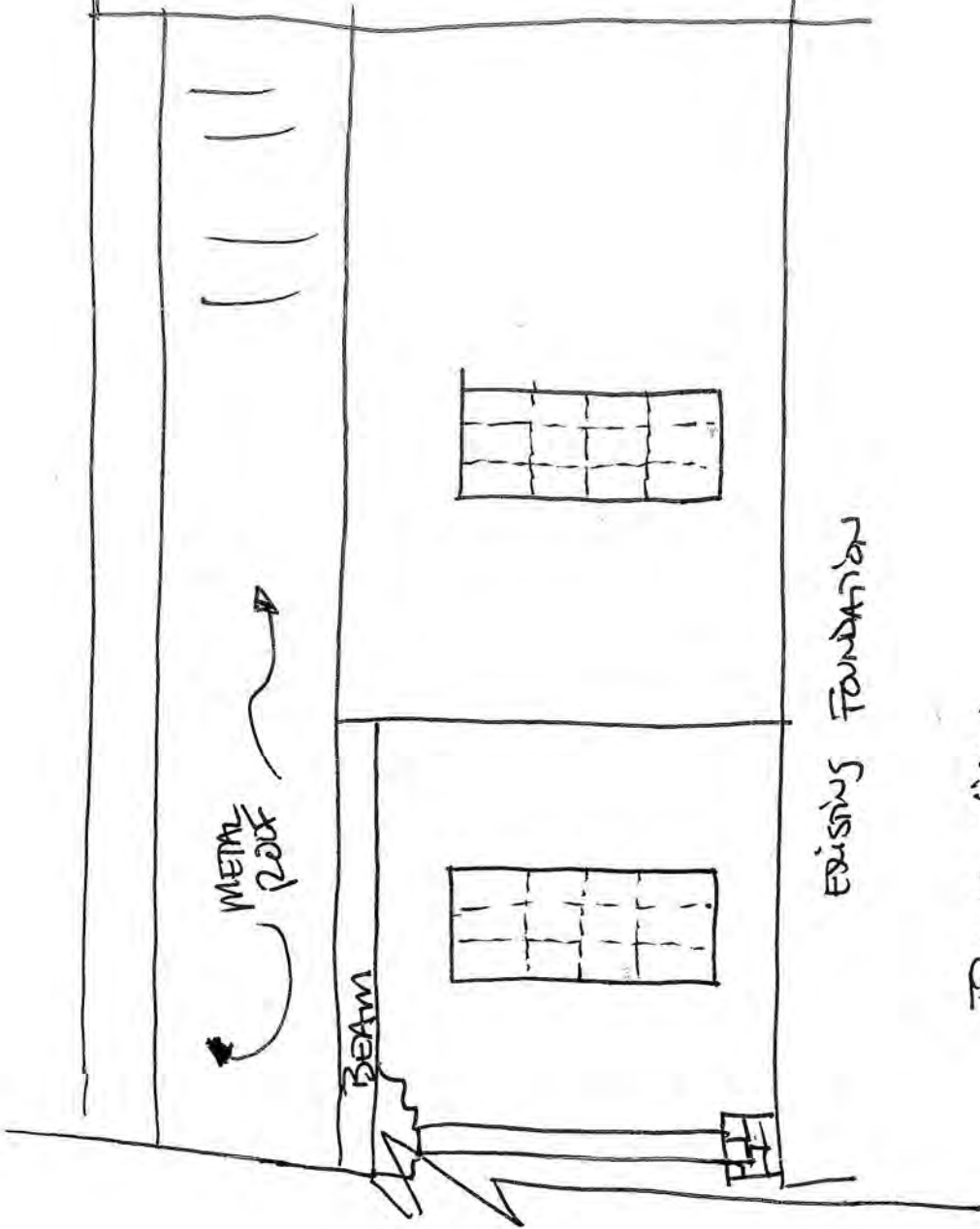
EXISTING WINDOW MADE INTO DOOR

EXISTING HOME

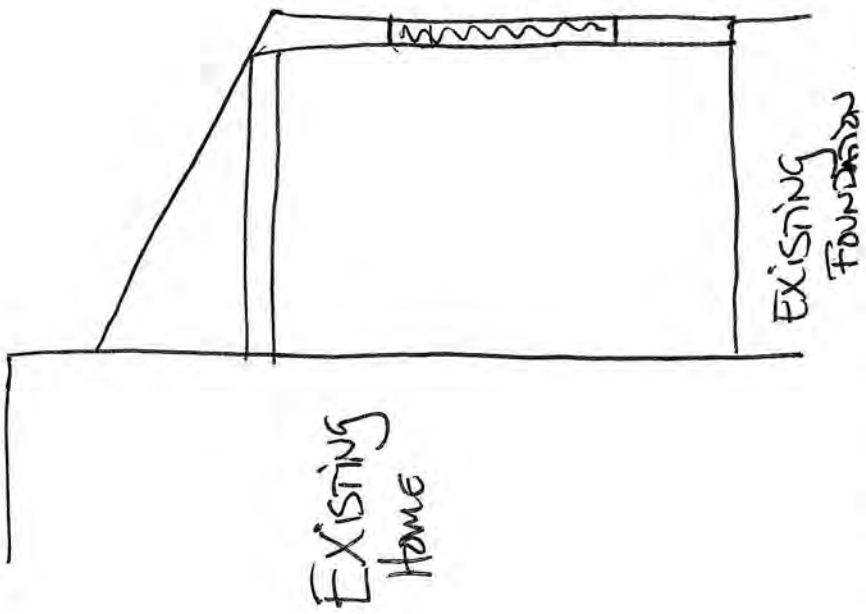
2808 SNOW RD
CLOSET ADDITION

EXISTING WINDOW COVERED UP
SNOW RD





FRONT VIEW



SIDE VIEW