



COMMUNITY  
GROWTH  
INSTITUTE

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## MEMO

Date: April 4, 2011

To: Alexandria Town Board

From: Ben Oleson, Community Growth Institute  
Zoning Administrator, Alexandria Township

Re: Zoning Administrator's Report

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The Planning Commission held its regular meeting on March 28, 2011. No public hearings were scheduled. However, the Planning Commission did discuss the interpretation of a particular section of the ordinance and state statute relating to existing nonconformities (existing uses or buildings that do not meet the requirements of the zoning ordinance). They have provided a recommendation as to how they feel the Township should interpret these regulations.

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**Background:** Staff received a call in August/September 2010 from a landowner who wished to put up a new storage building on their farmstead site. The property is located along the east side of Lake Jessie and is within the Residential Shoreland Zoning district. The zoning regulations for that zoning district limit a property that is less than five acres in size to no more than two detached accessory buildings and to no more than a total of 1,500 square feet of detached accessory buildings. The particular parcel on which the building is proposed is about 3.5-4 acres in size. The same landowners also own approximately 77 acres across East Lake Jessie Drive SE, which has been farmed in the past, but Staff understands is currently enrolled in CRP and other conservation programs.

Since the property already contained a large barn (approx. 1,250 sq ft) and several smaller detached accessory buildings, Staff informed the landowners that their planned building could not be allowed without a variance. Over the course of several more phone calls, we explored options that included combining the applicant's three parcels into one parcel (so that they would have greater than 5 acres), purchasing approximately 1-1.5 acres adjacent to the farmstead parcel so that it would equal 5 acres or more, and building the shed across the road on the 57 acre parcel. Staff did not hear back from the landowners until the last few weeks.

The landowners contacted Staff again in March 2011 to discuss their options. They noted that they could not combine the parcel with land across the road because it would impact their eligibility for the conservation programs. They stated that they couldn't build a building across the road for the same reason. And they discussed that they had been removing other detached accessory buildings on the property and making other efforts to clean-up and improve the property. They also stated that the existing barn did not have overhead doors that would allow for storage of farm machinery and that the existing barn is historic and that they had recently restored much of the building to ensure it remained viable.

Staff reviewed the ordinance again, but also discussed a state statute that allows for replacement, but not expansion, of existing nonconformities. We noted that this statute typically applies to individual buildings, but that the Legislature potentially meant for it to be interpreted more broadly.

The applicable statute allows that a "lawful use or occupation of land or premises ... may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion." (MN Statutes 462.357, Subd. 1e)

The argument in favor of interpreting this statute to apply to the landowner's situation, in Staff's opinion, is as follows:

1. The only nonconformities that are involved are:
  - a. More than two detached accessory buildings
  - b. More than 1,500 sq ft of detached accessory buildings
2. The nonconformity on more than two detached accessory buildings would be eliminated (if allowed to construct the building they want, they would still only have two detached accessory buildings).
3. The nonconformity on more than 1,500 sq ft of detached accessory buildings would not be expanded, per se, if the Township were to state that they do not consider it to be an expansion as long as the total square footage of land covered by detached accessory structures does not change. For instance, if there were 5 buildings covering 1,400 sq ft before, replacing them with one 1,400 sq ft building would not be considered an expansion.
4. The statute doesn't apply if a building is "discontinued" for more than one year. Several of the buildings were torn down last year, but the one year time frame does not appear to have expired yet.
5. The statute clearly would allow the landowner to replace every one of the detached accessory structures they have now (or tore down less than one year ago) as long as they were exact replacements.
6. In essence, the "problem" with the property right now would not be made worse. One nonconformity (# of detached accessory structures) would be made better and one (# of square feet of detached accessory structure) would not be made worse.

The argument against interpreting the statute to apply to the landowner's situation, in Staff's opinion, is as follows:

1. The statute is intended to apply to individual buildings – not to a property in total. Each building is a separate nonconformity and thus none of the buildings can be expanded.
2. While the ordinance does allow detached accessory structures on lots less than five acres to have a sidewall height twelve (12) feet, not all of the structures being

replaced had a height of twelve feet and thus the replacement building would be an expansion (in height) not allowed by the statute.

Staff's primary recommendation to the Township is that whatever interpretation the Township makes, it should seek to apply it as consistently as possible. If the Board approves the Planning Commission's recommendation, and doesn't specify otherwise, Staff would apply the same thinking to other similar situations dealing specifically with Section V.K of the Zoning Ordinance (Staff would limit the applicability of this interpretation just to Section V.K since applying it to other sections of the ordinance may involve totally separate issues that would need to be reviewed separately).

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**Planning Commission Recommendation:** The Planning Commission discussed the arguments for and against generally as outlined above (the discussion was purely conversational – Staff did not provide a written summary before or at the meeting of these arguments) and recommends the statute and the Township ordinance be interpreted to allow for the landowner of this property to replace the multiple existing, or recently torn down, detached accessory structures with a single detached accessory structure that is equivalent in its footprint to the combined footprints of the detached accessory structures that are already removed or would be removed.

The exact dimensions of the other buildings have not been confirmed. The Commission's understanding was that these would need to be verified – either through site inspections for visual evidence, review of Assessor records, old photos of the buildings or site, or other reasonable means.

There is also some question as to whether an old house, that has been abandoned for years and was torn down in 2010, could count towards the allowable square footage of a new building. Douglas County issued a conditional use permit in 2005 to allow for the construction of the building that is now a cabin, provided that the old house was removed by December 1, 2010. Given that there was a specific condition requiring that the building be removed, and because the ordinance would not have allowed for another accessory building, Staff would not recommend that the old house be part of the calculation of allowable space now. If it is to be counted, Staff would recommend that be determined through the variance process – not an over-the-counter permit based on an interpretation of MN Statutes 462.357, Subd. 1e.

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**Town Board Direction:** At this point, Staff is raising this issue only for the Board's consideration and discussion. There are three options for how this matter could be addressed, and Staff is looking for direction from the Board as to which it prefers:

1. Staff could administratively interpret the applicable statute and ordinances to mean that, for the purposes of Section V.J.1.c (Accessory Buildings – limit on total floor area), a landowner may replace multiple detached accessory structures with one larger detached accessory structure provided that:
  - a. The pre-existing buildings to be removed were legal nonconformities.
  - b. No new nonconformities are created (i.e. the replacement building must meet all other applicable ordinances and requirements). For one example, the new structure could not exceed a sidewall height of twelve (12) feet or a roof pitch of 6/12, as this is these are the maximums allowed by the

ordinance and the previous buildings being replaced did not exceed either of these requirements.

- c. No existing nonconformities are made worse. For instance, if X sq ft (or X ft of width, or height) of a building was not meeting a required setback previously, the new building should not increase the amount of square feet (or feet of width, or height of building) that is not meeting the required setback.
- d. For this particular property/situation, the total square footage of the replacement building cannot exceed the total square footage of the buildings that are being removed. The Zoning Administrator shall take reasonable steps to confirm the dimensions of the buildings that have been, or will be, torn down.

Under this scenario, it would then be an over-the-counter decision and no public hearings or official Board action would be necessary. Staff would work to confirm how many square feet of building are being removed and then permit the construction of a new building sized so that there is no net increase in floor space as compared to the combined total.

2. The Town Board could direct Staff to obtain legal advice from the Township Attorney before issuing any permit (and either bring the Attorney's advice back to the Board for review, or just have them state that they feel the interpretation is a reasonable one that is legally defensible).
3. The Town Board could indicate that it does not feel that MN Statutes 462.357, Subd. 1e applies to this situation. In this case, Staff would indicate to the landowner that a variance would be necessary if their proposed building is to be constructed. They could either appeal that decision as per the Township Zoning Ordinance (Section VI.K) or apply for a variance.

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## **Applicable Ordinances and Statutes:**

### **FROM ALEXANDRIA TOWNSHIP ZONING ORDINANCE**

## **SECTION V. PERFORMANCE STANDARDS**

### **J. ACCESSORY BUILDING**

To provide a higher development standard and to control the size and number of accessory buildings in a residential setting. This section shall be applicable to all parcels of land within the Urban Residential or shoreland districts that contain five acres or less.

1. General Provisions.
  - a. No detached accessory structure shall be utilized for human habitation unless specifically approved as a guest cottage.
  - b. A garage not exceeding 1200 square feet shall be considered an integral part of the principal building if it is attached to the principal building or is connected to it by a covered passageway. As such, an attached garage is not included as an accessory building and is exempt from the provisions in this subsection

- c. The floor area of all accessory structures shall not exceed 1500 square feet total. Semi-enclosed or roofed structures, such as attached lean-tos, gazebos, screen porches/patios or other similar structures shall be considered accessory structures for the purposes of this section.63 Up to 1200 square feet of an attached garage shall not count against the 1500 square foot limit.
- d. No permit shall be issued for the construction of more than two (2) accessory storage buildings, even if the total allowable square footage (1500 square feet) has not previously been exceeded.
- e. The maximum sidewall height of a detached accessory building shall not exceed twelve (12) feet. Attached accessory buildings are not subject to this maximum sidewall height.
- f. The roof pitch of a detached accessory building is not to exceed 6/12.
- g. Galvanized surfaces shall be prohibited on all accessory buildings.
- h. No detached accessory structure shall be over one story in height.

## **SECTION VI. ADMINISTRATION**

### **K. APPEALS.**

- 1. General.
  - a. An appeal from any order, requirement, decision or determination of any administrative official charged with enforcing this Ordinance may be made to the Board of Adjustment. An appeal must be filed within thirty (30) days after the time the administrative determination is made. The appeal stops all proceedings on the action appealed unless the Board of Adjustment certifies that the stay would cause imminent threat to life or property. The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may direct the issuance of a permit.
- 2. Procedure.
  - a. Appeals shall be filed with the Zoning Administrator.
  - b. The Zoning Administrator shall refer the appeal to the Board of Adjustment for a public hearing and cause notice of such hearing to be properly published in the legal newspaper not less than ten (10) days prior to the hearing.
  - c. Property owners within five-hundred (500) feet of the affected property or the ten (10) properties nearest the affected property (whichever would provide notice to the greatest number of owners) shall be given notice of the date the Board of Adjustment will consider said application, although failure of any property owner to receive such notification shall not invalidate the proceedings. Notice shall be given the governing body of any city the incorporated limits of which lie within two (2) miles of the appeal and to the Town Board of the Township.
  - d. The applicant or a representative shall appear before the Board of Adjustment and answer any questions concerning the appeal.
  - e. A decision shall be made by the Board of Adjustment within sixty (60) of the date the appeal was received by the Zoning Administrator, or within a

longer period if extended in accordance with the provisions of Minnesota Statutes 15.99. All decisions by the Board of Adjustment in hearing appeals from any administrative order, requirement, decision or determination shall be final except that any aggrieved person or persons or any department, board of commission of the jurisdiction of the State shall have the right to appeal to the District Court in the Township in which the land is located on questions of law and fact within thirty (30) days after the approval or denial of the variance.

- f. A certified copy of any order resulting from the Board's decision on an appeal shall be filed with the Township Recorder or Registrar of Titles by the Zoning Administrator.

**FROM MINNESOTA STATE STATUTES**

**462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.**

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**Subd. 1e. Nonconformities.**

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

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If you have questions or concerns on the items in this report or any other issues, please do not hesitate to contact us. You can reach me by email at [oleson@communtygrowth.net](mailto:oleson@communtygrowth.net) or by phone at 866-900-3064.



25 feet 10 m

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Sylvia Luetmer Parcel number 03-1863-000

Justification for granting permit to construct Agricultural storage building

Submitted 4-28-2011

Reasons for granting permit:

We have consistently worked to improve the property and would like to continue to do so.

Improve visual esthetics of the property – housing old machinery in new shed and demo two more old unsightly buildings

Need for appropriate size storage building

The Barn is historic and has been straightened/painted/new roof to save the building from collapse.

The barn does not have double doors or high enough ceilings to use as machinery storage.

Much machinery now sitting out side or in old unsightly structures

80 Acres is now owned by Luetmers and is under contracts that require maintenance equipment.

*Wash  
1496*

History

2005

Demolished Old Shed filled with antique farm machinery

Permit issued to construct small garage and dwelling on above site with variance granted to leave old uninhabited dwelling stand until 2010 for purposes of storing family belongings.

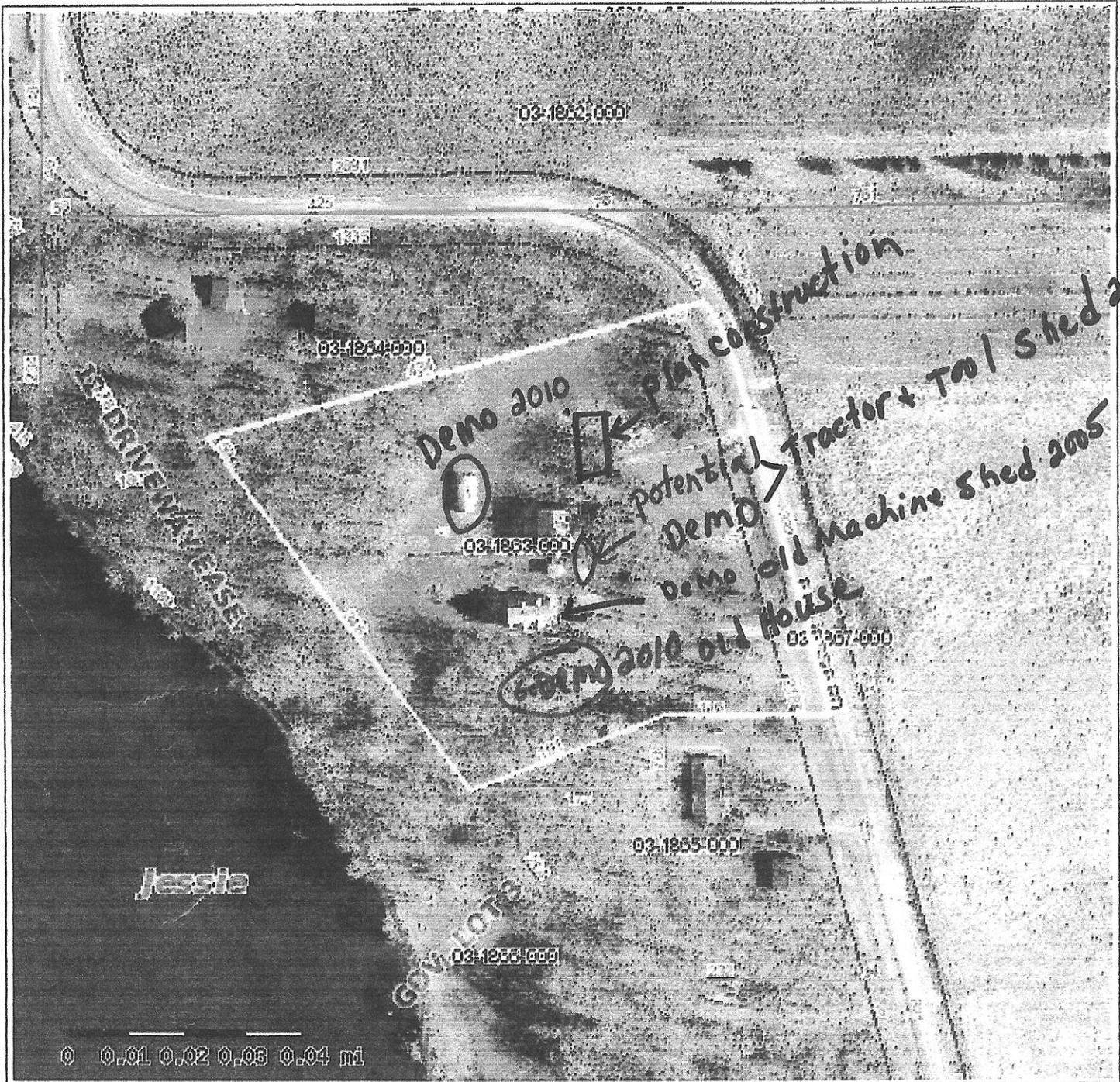
*Existing  
barn  
is  
1250 sq ft  
or so.*

2010 Demo of old dwelling and other storage shed as well

2011 Requesting a permit to build agricultural storage pole shed to replace lost storage space with plans to demolish 2 additional small structures when adequate storage has been built.

*Answer =  $(8 \times 22) = 176$   
Shed 1 = 200  
Shed 2 = 350  
Calf Barn = 650  
Replaced by Home*

Douglas County, MN - Map



**PIN: 03-1863-000**

Taxpayer: LUETMER/SYLVA S

GIS Acres: 3.50

Water Acres: 0.00

ROW Acres: 0.30

Tax Desc.: 7.84 AC OF G.LOT 3 LYING W & S OF TWP RD  
EX N'LY 2.24 AC & S'LY 1.7 AC. AC 3.90

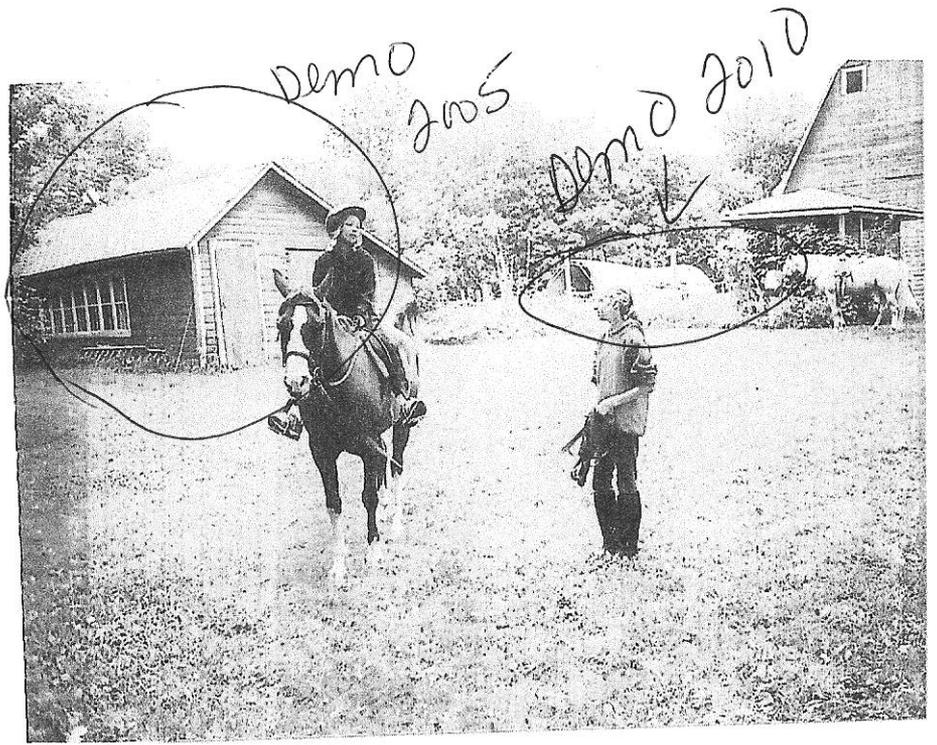
Plat Desc.:

Disclaimer: Douglas County does not warrant or guarantee the accuracy of the data.  
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Unable to park Machinery Inside



plan Demo  
if new building  
available

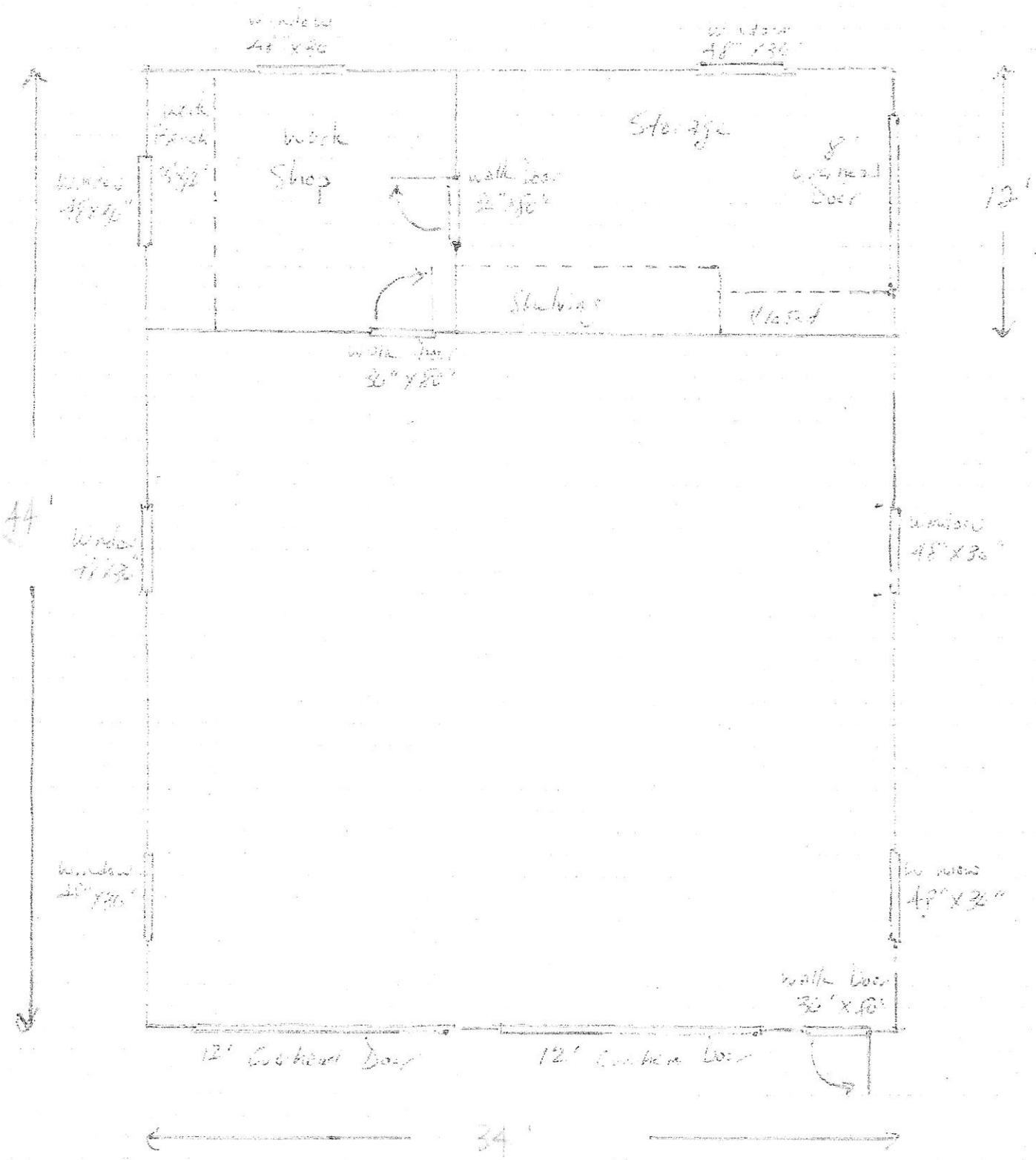


2nd  
View

NOTE: SYLVIA, MARYLAND  
 3009 E. LK JESSIE RD SE, ALEXANDRIA, MN 56308

34' X 44' - EQUIPMENT STORAGE SHED

1496 sq ft



Notes

Floating Slab  
 3' overhangs  
 " " " " " "

Fabric & Kick around perimeter  
 for Drainage  
 Insulate Shop & Storage Area