



## REPORT TO THE BELOIT BOARD OF APPEALS

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**Meeting Date:** September 14, 2021

**Agenda Item:** 4(a)

**File Number:** BOA-2021-02

**Applicant:** Richard Bergmann

**Owner:** Richard Bergmann

**Location:** 1343 Highland Avenue

**Existing Zoning:** R-1B, Single-Family Residential District

**Existing Land Use:** Single-Family Dwelling

**Parcel Size:** 0.14 Acre

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### Request:

Richard Bergmann has filed an application requesting an Area Variance to Section 6.3.3(b)(1) of the City of Beloit Zoning Ordinance to allow a pergola within a side setback area in an R-1B, Single-Family Residential District, for the property located at 1343 Highland Avenue.

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### Request Overview/Background Information:

In late 2019, the applicant constructed a carport without a Building Permit within a side setback area. In November 2020, the Board of Appeals denied the applicant's application for a variance to allow the carport to remain in the side setback area. The applicant is now seeking a variance to allow the carport to be converted into a pergola. The Board's role is not to determine the applicant's guilt or innocence on the permit matter, but rather to evaluate whether the criteria for obtaining an Area Variance have been met.

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### Key Issues:

- Section 6.3.3(b)(1) of the Zoning Ordinance states that attached accessory structures are subject to the same setbacks that apply to the principal building (house). In the R-1B District, the interior side setback is at least 5 feet. The total of both side setbacks must equal 20% of lot width or 20 feet, whichever is less. The carport (proposed pergola) in question is attached to the house and essentially right on the property line with a zero setback.
- The subject property is 0.14 acre in size and includes a 1,413 square-foot single-family home and 1-stall detached garage. The house was constructed in 1946 on a standard 50-foot City lot.
- The attached Public Notice was sent to nearby property owners within 150 feet. As of this writing, Planning staff has not received any comments or concerns.
- **Wisconsin Supreme Court Standards for Area Variances**  
The Wisconsin Supreme Court has established a standard for granting variances to zoning regulations. For "area" variances, the property owner and/or applicant has the burden of proving that the standard for granting an area variance has been met. In order to grant an area variance, the Board of Appeals must determine that **all of the following criteria** of section 2-903 are satisfied:
  - (a) Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density would create a hardship by either:
    - (1) unreasonably preventing the owner from using the property for a permitted purpose; or
    - (2) rendering conformity with such regulations unnecessarily burdensome.
  - (b) The hardship is unique to the property.
  - (c) The hardship is not self-created.
  - (d) The variance will not undermine the purpose of the ordinance or the public interest.
  - (e) The variance will not permit a use of land that substantially changes the character of the neighborhood.
- The attached Findings of Fact evaluate this application against the above standards.

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### Consistency with Comprehensive Plan:

- The Comprehensive Plan recommends Single-Family Residential – Urban uses and a zoning district classification of R-1B for the subject property.

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### Sustainability:

- **Reduce dependence upon fossil fuels** – N/A
- **Reduce dependence on chemicals and other manufacturing substances that accumulate in nature** – N/A
- **Reduce dependence on activities that harm life sustaining eco-systems** – N/A
- **Meet the hierarchy of present and future human needs fairly and efficiently** – N/A

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**Staff Recommendation:**

The Planning & Building Services Division recommends **consideration** of the requested Area Variance to Section 6.3.3(b)(1) of the City of Beloit Zoning Ordinance to allow a pergola within a side setback area in an R-1B, Single-Family Residential District, for the property located at 1343 Highland Avenue, based upon the established criteria of Section 2-903 of the Zoning Ordinance and the attached Findings of Fact.

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**Fiscal Note/Budget Impact:** N/A

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**Attachments:** Findings of Fact, Location Map, Photos, Application, Sketch, Public Notice, and Mailing List.

# CITY OF BELOIT

## FINDINGS OF FACT

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### **Area Variance to Section 6.3.3(b)(1) of the Zoning Ordinance to allow a pergola within a side setback area in an R-1B, Single-Family Residential District, for the property located at 1343 Highland Avenue.**

In order to grant an area variance, the Board of Appeals must determine that all of the following criteria of section 2-903 are satisfied:

- (a) Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density would create a hardship by either:
  - (1) Unreasonably preventing the owner from using the property for a permitted purpose; or
  - (2) Rendering conformity with such regulations unnecessarily burdensome.

*According to the applicant, the pergola will provide safe travel to/from vehicles and/or the garage in the winter months due to snow & ice accumulation. The Board should evaluate this argument and whether it prevents the owner from using the property, creates an unnecessary burden, or simply creates inconvenience.*

- (b) The hardship is unique to the property.

*There is nothing unique about the subject property in terms of size & layout. While there is not space for a carport/pergola that meets setbacks, that fact is shared by nearly all of the neighboring properties on the block. The Board should evaluate whether the subject property is unique in terms of size, topography, or other physical characteristics (e.g. steep slopes, wetlands, floodplains, etc.).*

- (c) The hardship is not self-created.

*According to the Wisconsin Supreme Court in Arndofer vs. Sauk County Board of Adjustment (1991), a condition personal to the landowner, such as inconvenience, is not a hardship. The Board should evaluate whether the inability to have a pergola creates true hardship or a mere inconvenience given the applicant's personal circumstances. While the case of whether or not the applicant needed a permit will be settled in Municipal Court, the plain facts of this Variance case demonstrate that the carport/pergola has already been constructed, and is undeniably in the side setback area.*

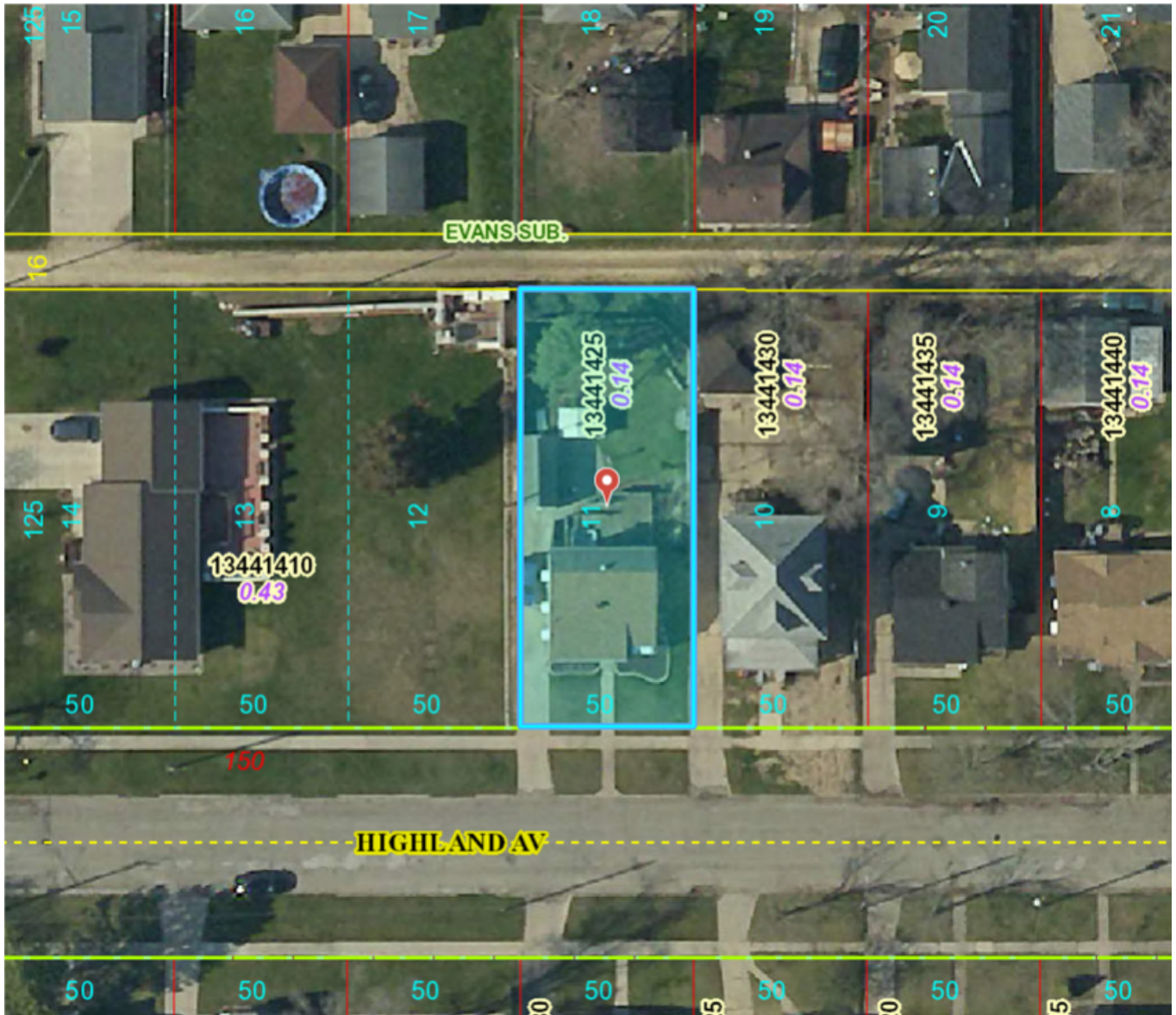
- (d) The variance will not undermine the purpose of the ordinance or the public interest.

*The Board should evaluate whether allowing the pergola will set a precedent for future variance requests, particularly in cases where structures are constructed in advance of any approvals or permits.*

- (e) The variance will not permit a use of land that substantially changes the character of the neighborhood.

*The carport is adjacent to the largest property on the block, which actually faces McKinley Avenue and consists of three 50-foot lots along Highland Avenue (Lots 12-14). The carport/pergola is right on the applicant's lot line, but this is mitigated by the size of the neighboring property and the distance to the neighbor's house – more than 90 feet. The Board should evaluate whether the zero-setback pergola might change the character of the neighborhood if individual houses either existed or were proposed on the adjacent 50-foot Lot 12 since that is theoretically possible.*

# Location Map



**Photos (Provided by Applicant)**







# CITY of BELOIT

## Planning & Building Services Division

100 State Street, Beloit, WI 53511 Phone: (608) 364-6700 Fax: (608) 364-6609

### Board of Appeals Application Form

(Please Type or Print)

File Number: BOA-2021-02

1. Property Address: 1343 Highland Ave.
2. Tax Parcel Number(s): 1344T425
3. Legal description: Lot: L-11 Block: EVANS SUB BEING PART OF Subdivision: B 5 WILLARD AND GOODHUES AD.

If property has not been subdivided, attach a copy of the complete legal description.

4. Owner of record: Richard A + Joy L. Bergmann Phone: 608-290-0904 (cell)  
1343 Highland Ave. Beloit WI 53511  
(Address) (City) (State) (Zip)

5. Applicant's Name: Richard A. Bergmann  
1343 Highland Ave. Beloit WI 53511  
(Address) (City) (State) (Zip)

NA 1 608-290-0904 rickbergmann@charter.net  
(Office Phone #) (Cell Phone #) (E-mail Address)

6. Present zoning: R-1B Present use: single residential
7. Proposed use (if different): NA
8. Purpose of application:  "Area" Variance  "Use" Variance  
 Administrative Appeal  Administrative Appeal – Contested Case Proceedings
9. Code from which relief is sought or appeal is taken:

Zoning Ordinance  Floodplain Ordinance

10. State specific sections of code and Variance(s) requested: (Use separate sheet if necessary)

6.3.3 (b) (1) Side yard set back  
I am requesting approval to convert an existing  
structure to a pergola.

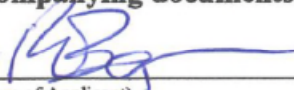
11. State specific hardship experienced by the applicant: (Use separate sheet if necessary)

My wife and I are in our 70s with back, leg and  
balance issues. We both require the use of walkers.  
911 has been called several times to assist us due to  
falls. Some falls have resulted in a trip to the E.R.  
Without a barrier we fear injury from falling over the  
retaining wall at the edge of our driveway (a 3 1/2 foot  
drop). We also need protection from falling due to ice and snow.



12. In order for this application to be considered complete, the applicant must attach a scale drawing (1" = 20' usually works best) showing the location of property lines and their dimensions, existing buildings and improvements, all abutting properties and improvements thereon, and the proposed changes or additions. You are required to furnish a legible drawing with enough detail that will adequately advise and inform the Board.

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

 / Richard A. Bergmann / 7/13/21  
 (Signature of Applicant) (Print name) (Date)

The owner's signature below grants permission for the applicant to apply for the variance and permission for the Board of Appeals and City staff to inspect the subject building(s) and/or property.

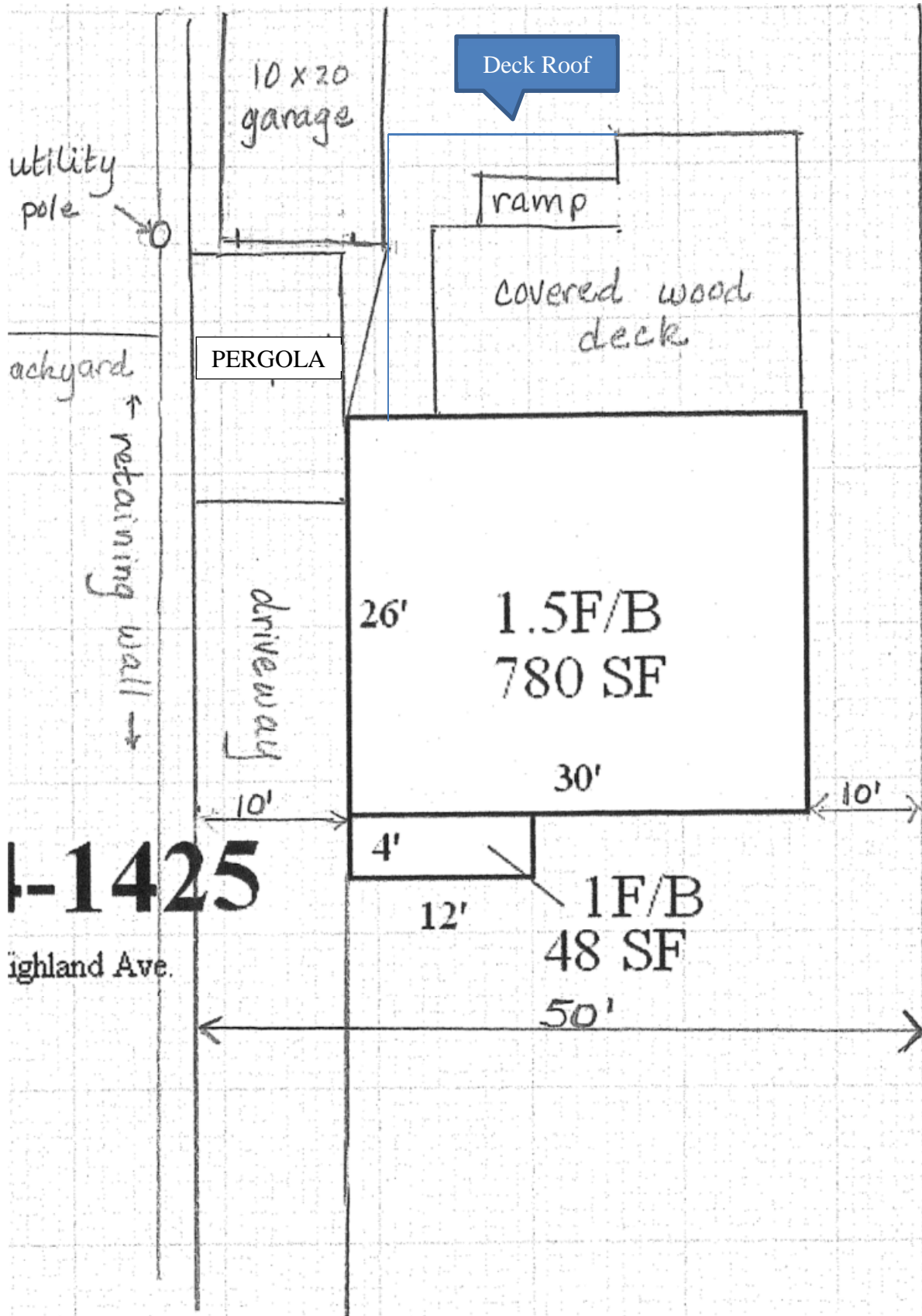
 / Richard A. Bergmann / 7/13/21  
 (Signature of Owner) (Print name) (Date)

The applicant acknowledges that this application is not deemed filed until dated and receipt acknowledged by a person authorized to receive the application. The applicant is entitled to receive a copy of the acknowledged application once it is officially reviewed and accepted.

Hearings are usually held in City Hall Forum, City Hall, 100 State Street at 7:00 P.M.

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Planning & Building Services Division for acceptance by the filing deadline date prior to a scheduled Board of Appeals meeting. This application must be submitted with the \$200.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, which is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff:**  
 Filing fee: \$200.00 Amount paid: \$200.<sup>00</sup> Meeting date: Aug 1<sup>st</sup>, 2021  
 Application accepted by: Drew Pennington Date: JUL 13 RECD  
 No. of notices: \_\_\_\_\_ X mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_  
 Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_



**1-1425**

Highland Ave.

1343 Highland

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COMMUNITY DEVELOPMENT DEPARTMENT

## **NOTICE TO THE PUBLIC**

September 1, 2021

To Whom It May Concern:

Richard Bergmann has filed an application requesting an Area Variance to Section 6.3.3(b)(1) of the City of Beloit Zoning Ordinance to allow an attached pergola within a side setback area in an R-1B, Single-Family Residential District, for the property located at:

**1343 Highland Avenue.**

In late 2019, the applicant constructed a carport without a Building Permit within a side setback area. The applicant is seeking a variance to allow the carport to be converted into a pergola.

The following public hearing will be held regarding this requested Variance:

**Board of Appeals:** Tuesday, September 14, 2021, at 7:00 PM or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

We are interested in your opinion. Due to COVID-19, members of the public are highly encouraged to provide oral or written comments to the Board via alternative means. You may mail your comments to the attention of Drew Pennington at 100 State Street or via email to [penningtond@beloitwi.gov](mailto:penningtond@beloitwi.gov). You may also call (608) 364-6711 to provide your comments over the phone. In-person attendance at City meetings may be limited.

You may submit a letter to the Board of Appeals, 100 State Street, Beloit, Wisconsin 53511, to either support or oppose the applicant's request. The Board of Appeals may grant an "Area" Variance **only** if it finds that all of the following facts are true:

- a. Compliance with the strict letter of the Zoning Ordinance regulating area, setbacks, frontage, height, bulk or density would create a hardship by either:
  1. unreasonably preventing the owner from using the property for a permitted purpose; or
  2. rendering conformity with such regulations unnecessarily burdensome.
- b. The hardship is unique to the property.
- c. The hardship is not self-created.
- d. The variance will not undermine the purpose of the ordinance or the public interest.
- e. The variance will not permit a use of land that substantially changes the character of the neighborhood.

For more information, contact Drew Pennington at [penningtond@beloitwi.gov](mailto:penningtond@beloitwi.gov) or (608) 364-6711.

BOA-2021-02, 1343 Highland Ave, Bergmann

SALVADOR JIMENEZ  
405 MCKINLEY AVE  
BELOIT, WI 53511

WISCONSIN INVESTMENT RENTALS LLC  
PO BOX 2571  
JANESVILLE, WI 53547

DEANNE E GILE  
421 MCKINLEY AVE  
BELOIT, WI 53511

MARILYN J & JOHN POFF  
135 E YOST DR  
BELOIT, WI 53511

KADAST PROPERTIES LLC  
PO BOX 652  
BELOIT, WI 53511

TIMOTHY A KYSER  
1342 HIGHLAND AVE  
BELOIT, WI 53511

CHRISTOPHER A YUHAS  
1342 EUCLID AVE  
BELOIT, WI 53511

DONALD H LAFAVOR  
420 LISTON AVE APT 100  
SOUTH BELOIT, IL 61080

MARIA E LUCERO  
1336 EUCLID AVE  
BELOIT, WI 53511

WILLIAM MOSHER  
1332 HIGHLAND AVE  
BELOIT, WI 53511

MAX & VIRGINIA RYKOWSKI  
234 PRAIRIE HILL DR  
SOUTH BELOIT, IL 61080

HOLLY ANN R HANNER  
1326 EUCLID AVE  
BELOIT, WI 53511

MICHAEL E & COURTNEY M HARRIS  
1337 HIGHLAND AVE  
BELOIT, WI 53511

CHARLES P BROWN  
1333 HIGHLAND AVE  
BELOIT, WI 53511

PATRICK & LYLA WARD  
1327 HIGHLAND AVE  
BELOIT, WI 53511