



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
April 27th, 2023
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve Mar 26 PC Meeting Minutes* (pp. 2-5)
- B. 2023-03-VB (529 Lake) Variance* (pp. 6-44)
 - 1. Public Forum
 - 2. Review Variance Application
 - 3. Review City Engineer Memo
 - 4. Make Recommendation to Approve, Amend, or Deny
- C. New Variance Application Form Review* (pp.45-51)
- D. Impervious Surface Code Revisions* (pp.52-69)
 - 1. Discuss Proposed ORDINANCE REPEALING AND REPLACING 302.050 IMPERVIOUS SURFACES IN THE CITY CODE
 - a. Review and Discuss Ordinance
 - b. Make Recommendation to Approve, Amend, or Deny
 - 2. Discuss ORDINANCE AMENDING 302.020 LAND USE IN THE CITY CODE
 - a. Review and Discuss Ordinance
 - b. Make Recommendation to Approve, Amend, or Deny
 - 3. Discuss ORDINANCE AMENDING THE FEE SCHEDULE
 - a. Review and Discuss Ordinance
 - b. Make Recommendation to Approve, Amend, or Deny
- E. Variance Findings Form Review* (pp.70-73)

ADJOURN

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 3/23/2023

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: — Andy Sorenson - Chairman, Joe Evans, Michelle Maiers-Atakpu, Michael McKenzie, Michael Kraemer

COMMISSIONERS ABSENT: None

OTHERS PRESENT: Nadja Gale 419 Wildwood Ave, Doug Cole – friend of Nadja Gale

TO ORDER Meeting called to order by Chairman Andy Sorenson at 7:00 PM.

1. PUBLIC FORUM

2. APPROVE AGENDA

- a. McKenzie moved, 2nd by Evans, to approve the agenda as presented. Vote: Yes – 5, No – 0. Motion to approve agenda passed.

3. REGULAR AGENDA

a. Item A – Review/Approve January 26, 2023, Meeting Minutes

- i. Motion by Maiers-Atakpu, 2nd by Evans to correct spelling of Michael Kraemer’s name and approve the amended minutes. Vote: Yes – 5, No – 0, Motion to approve the corrected minutes passed.

b. Item B – 419B Wildwood Ave Sewer and Water Discuss Options – Nadja Gale.

- i. Nadja Gale addressed the Planning Commission seeking input on ideas of how to resolve a sanitary sewer service issue serving her property. She indicated that her property and the adjacent property were served by a common sewer riser while City code requires each property to be served by their own individual riser and sanitary service.
- ii. Ms Gale indicated she was having trouble locating a responsive contractor she suspects due in part to the perceived depth of excavation needed to install a new riser and service line to serve her property. (She was not sure of the actual city sewer main depth.)
- iii. Planning Commission suggested she work with City Engineer Steve Thatcher to identify the as-built depth to the mainline sewer so contractors can accurately respond to the potential scope of work needed.
- iv. Commission suggested Ms. Gale work with the City Administrator to identify any alternative options to the one house/one service policy in fact the excavation depth needed to hookup is excessive and may create an undue hardship.

c. Item C – Ordinance 2023-02-01 Removing Solar Panels from CUP Code

- i. Discussion:
 - 1. The Commission reviewed the Minnesota Solar Model Ordinance provided in the packet.
 - 2. The Commission reviewed the proposed Ordinance 2023-02-01 amending Section 301.070 Conditional Uses to eliminate the need for CUP for solar systems which are attached to the roof and are within the bounds of the roof surface.
 - ii. **Commission Action:** Advisory motion by McKenzie and 2nd by Sorenson to support the proposed modification to City Code 301.070 CONDITIONAL USES, as presented, **provided** the City Code 306.060 SOLAR ENERGY SYSTEMS - Item 2 is simultaneously modified to add an Item c. stating: *“The basis of the Birchwood SOLAR ENERGY SYSTEMS Code shall be tied by reference to the Minnesota Solar Model Ordinance”.*
 - 1. The Commission felt that by blanket exempting the roof mounted systems from the CUP process (without referencing the Minnesota Solar Model Ordinance) the City Code does not go far enough to address best practices such as matching roof slopes and other esthetic considerations. Advisory Vote on the motion Yes – 5, No—0. Motion passed.
- d. Item D – Variance Application (Form) Discussion
- i. **Commission Action:** It was determined that the sample document included in the packet did not include any new edits for consideration as was indicated in the packet agenda.
 - ii. Advisory motion by Maiers-Atakpu and 2nd by Evans to table the discussion until the proposed revisions and edits are identified in the document. Advisory vote: Yes – 5 No – 0 Motion to table the item passed.
- e. Item E – Code Item 208A: Right of Way Code Revision Discussion
- i. Item 1 - Discuss Proposed Ordinance regarding fee schedule.
 - 1. **Commission Action:**
 - a. Advisory motion by Maiers-Atakpu, 2nd by Soreson to support the Fee Schedule as presented **with the recommended addition** of a fee item under RIGHT OF WAY FEES table, entitled Right of Way Degradation Escrow in the amount of \$3000.
 - i. Right of Way Degradation is identified in the proposed changes to Right of Way Code 208A under Section 208A and specifically section 208A.130 PERMIT FEES -1. Excavation Permit Fees, Item b. Degradation costs if applicable.
 - ii. It is opinion of Commission that adding this fee item 208A.130.1.b warrants consideration since

damage can occur to pavement and/or right of way due to actions of equipment even if there is no Excavation occurring.

- iii. Advisory motion vote to support the proposed fee schedule and the addition of the Right of Way Degradation Escrow in the amount of \$3000. Vote: Yes- 5, No – 0 Motion passed.

ii. Item 2 – Discuss Proposed Ordinance RE: City Code 615

- 1. The repeal of Chapter 309 removes the prohibition of roll-off or portable, on-demand storage containers in streets. It is felt that the prohibition is still in the best interest of the City and suggest adding this prohibition to Chapter 615 of City Code.

2. **Commission Action:**

- a. Advisory motion by McKenzie, 2nd by Evans to supporting the addition of Item 615.060 TEMPORARY OUTDOOR STORAGE CONTAINERS prohibition as presented. Vote: Yes – 5, No – 0.

iii. Item 3 - Discuss Proposed Ordinance RE: Enacting City Code 208A

- 1. Discussion: Repeal Chapters 208 and 309 of the City Code and replace them with a new Chapter 208A dealing with right of way activity permitting, in particular as it relates to installation and maintenance of public utilities and communication systems.

- a. This new Chapter 208A being proposed is modeled to better reflect Minnesota Statutes 237 (the “Act”) and is proposed to be interpreted consistently with Minn. R. 7819.0050=7819.9950 and Minn. R., ch 7560.

2. **Commission Action:**

- a. Advisory motion by Sorenson, 2nd by Maiers-Atakpu to support adoption of Chapter 208A as proposed. Advisory Vote: Yes – 5, No – 0 Motion passed.

4. 302.045 Structural Height Restrictions – City Code Revision

a. **Commission Action:**

- i. After considerable discussion the Commission felt more clarity was needed to properly understand what was being proposed as methods of determining allowable building height limitations based on roof slope and suggested the topic be tabled until the next meeting.

- ii. Motion to table by Sorenson, 2nd by Maiers-Atakpu. Vote: Yes 0 – 5. No – 0. Motion to table passed.

5. 304.035 Variances

a. **Commission Action:**

- i.* Advisory motion by Sorenson, 2nd by Maiers-Atakpu to support the adoption of the proposed ordinance amending the existing variance ordinance section 304.035 Revocation and Termination of Variances to allow for a potential one-year extension of variance duration. Vote: Yes – 5, No – 0. Motion passed.

6. ADJOURN 9:10 PM

- a.** Motion by Sorenson, 2nd by Evans to adjourn meeting. Vote: Yes – 5, No – 0. Motion passed.



City of Birchwood Village
Petition for Variance Application

207 Birchwood Ave, Birchwood, MN 55110
Phone: 651-426-3403 Fax: 651-426-7747
Email: info@cityofbirchwood.com

FOR OFFICIAL USE ONLY

Application Received Date: 3-23-2023 Amount Paid: \$ \$3600.00
Payment Type (Circle One): Cash / Check / Money Order / Credit Card
Check/Money Order # 42365 / # 5644
Application Complete? Yes No If no, date application was deemed complete: _____
Signature of City Planner: Steve W. Hatch Date: 3/27/23

Completed requests for variances submitted prior to the first Thursday of the month will be considered by the Planning Commission at its next meeting on the fourth Thursday of the month. Requests submitted after the first Thursday of the month will be considered at the following meeting. All final decisions on variance applications are made by the City Council, which meets on the second Tuesday every month.

- Name of Applicant(s) SUSAN WELLES
Address 3227 26TH AVE. N.
City GOLDEN VALLEY State MN Zip Code 55422
Business Phone 612-998-8404 Home Phone _____
- Address of Property Involved if different from above: 529 LAKE AVE.
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
SANDRA KRIZ. BUEKLE & DAVID BUEKLE
I AM THE PROJECT DESIGNER.
- Specific Code Provision from which Variance is requested: 302.055.2.a.4

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
THE OBJECTIVE FOR THIS VARIANCE APPLICATION IS TO ALLOW HOMEOWNERS TO STABILIZE THEIR LAKE SHORE. AT PRESENT WE ARE PROPOSING TO INSTALL SEVERAL 6"X6" TIMBER RETAINING WALLS AND PLACE NEW RIP-RAP AT THE SHORELINE TO PRESERVE HILLSIDE RUN-OFF & PROTECT FROM ANNUAL REPERCUSSIONS FROM ICE-OUT & RISE AND

FALL OF THE LAKES ELEVATION.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- Single Dwelling
- Garage
- Tennis Court
- Grading/Filling
- Other (describe) _____
- Double Dwelling
- Addition
- Pool

8. Using the criteria from the City Code for a variance (see last page), explain why a variance is justified in this situation and describe what "Practical Difficulties" exist:

***SEE REVERSE SIDE OF APPLICATION.**

9. Describe any measures the Applicant is proposing to undertake if the variance is granted, including measures to decrease the amount of water draining from the property:

ONCE RETAINING WALLS ARE IN PLACE, NEW LEVEL AREAS WILL BE PLANTED TO CAPTURE WATER THAT PRIOR WOULD HAVE DRAINED DIRECTLY INTO W.B.L.

10. Describe any alternatives the Applicant considered (if any) that do not require a variance:

NO ALTERNATIVES OTHER THAN RETAINING CONSIDERED. IN THE PAST OWNER HAD ATTEMPTED TO PLANT ON SLOPE BUT IT PROVED TOO STEEP TO BE EFFECTIVE IN TERMS OF STABILIZING THE

11. Can an emergency vehicle (Fire Truck or Ambulance) access all structures on the property after the proposed change? Yes No

HILLSIDE OR CAPTURING RAINWATER. THIS HAS RESULTED IN PROPOSING RETAINING & RIP RAP.

DEAR COMMISSIONERS, CITY COUNCIL MEMBERS,

THE PROPERTY AT 529 LAKE AVE HAS A CHALLENGING INCLINE ALONG THE SHORE OF W. BEAR LAKE. IN THE PAST THE HOMEOWNERS HAVE ATTEMPTED TO PLANT AND MAINTAIN PLANTINGS ALONG THE INCLINE TO STABILIZE THE SLOPE AND PROVIDE AREAS FOR STORMWATER TO BE CAPTURED BEFORE ENTERING W.B.L.

THE VERTICLE CHALLENGES THE SLOPE PRESENTS HAS PROVEN TO BE AN OBSTACLE IN MAINTAINING PLANTING AND CONTROLLING STORMWATER RUN-OFF. AS WITH MANY LAKESHORE PROPERTIES IN BIRCHWOOD (INCLUDING BOTH NEIGHBORING ADJACENT LOTS TO 529), THE INTRODUCTION OF RETAINING WALLS HAS BECOME A PROVEN STANDARD FOR DEALING WITH STEEP SLOPING SHORELINES.

MY CLIENT WISHES TO INSTALL A TIERED RETAINING WALL SYSTEM OF ~~WOOD~~ TREATED 6"X6" TIMBERS TO HEIGHTS OF 4' OR LESS TO BE COMPLIANT WITH CITY CODE. THIS WILL ENSURE AGAINST AND COMBAT SOIL EROSION AND HELP TO STABILIZE THE EXISTING SLOPE. THE ADDED HORIZONTAL PLANES BETWEEN THE TIERED RETAINING WALLS WILL BE PLANTED WITH NATIVE PERENNIALS TO SLOWDOWN AND HELP CONTAIN STORMWATER RUN-OFF ALONG THE SLOPE BEFORE IT ENTERS THE LAKE. WE ARE ALSO PROPOSING TO INSTALL NEW RIP-RAP AT THE BASE OF THE SLOPE ALONG THE SHORELINE NOT TO EXCEED 3' ABOVE O.H.W OR GREATER THAN 3:1 RATIO LANDWARD PURSUANT TO CITY GUIDELINES. ALL APPROPRIATE GRADING AND FILTER BLANKETS TO BE INSTALLED AS REQUIRED. THE INTRODUCTION OF THE RIP-RAP WILL HELP TO MITIGATE AND MINIMIZE EROSION CAUSED BY ICE OUT AND SEASONAL WATER LEVEL FLUCTUATIONS.

TO ACCOMPLISH THE ABOVE PROPOSAL IT WILL BE NECESSARY TO MOVE AND REDISTRIBUTE SOIL ALONG THE SHORELINE SLOPE. WE INTEND TO INSTALL THE NEW RETAINING AND RIP-RAP WITHOUT CAUSING A NET GAIN OR LOSS OF SOIL TO THE PROPERTY. PURSUANT OF CITY CODE 302.055.2.a.4 WE ASK FOR A VARIANCE TO GRADE AND FILL IS NEEDED TO MEET OUR GOALS. RESPECTFULLY, *John Wilkos*

12. Does the proposed change bring any other nonconforming use into conformity with the City Building Code? Yes No

If yes, explain: _____

13. Are there other governmental regulations that apply to the proposed action, including requirements of the Rice Creek Watershed District? Yes No

If yes, please identify the regulations AND attach evidence demonstrating compliance:

14. Please provide the applicable information in the following Table:

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface (25% of item 1)			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Percent Impervious Surface			

15. Please attach the following:

- Legal description of property.
- Plot plan drawn to scale showing existing and proposed new and changed structures on the lot. Also show existing structures on adjacent lots.

↑
SEE ATTACHED SURVEY.

Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

- A. Variances shall only be permitted
 - i. when they are in harmony with the general purposes and intent of the ordinance and
 - ii. when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

NOTICE:

***The City and its representatives accept no responsibility for errors and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.**

***The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit.**

***Under penalty of perjury the applicant declares that the information provided in and enclosed herewith is complete and all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.**

Signature of Applicant: Susan Welles

Date: 3.23.23

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
 ~of~ 529 LAKE AVENUE
 BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
 DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
- DENOTES GUY WIRE
- DENOTES MAILBOX
- DENOTES POWER POLE
- DENOTES TELEPHONE PEDESTAL
- DENOTES STEPPING STONE
- DENOTES PROPOSED ELEVATION
- DENOTES DIRECTION OF DRAINAGE
- DENOTES EXISTING CONTOURS
- DENOTES PROPOSED CONTOURS
- DENOTES RETAINING WALL
- DENOTES SILT FENCE
- DENOTES FENCE
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PAVER SURFACE

NOTES

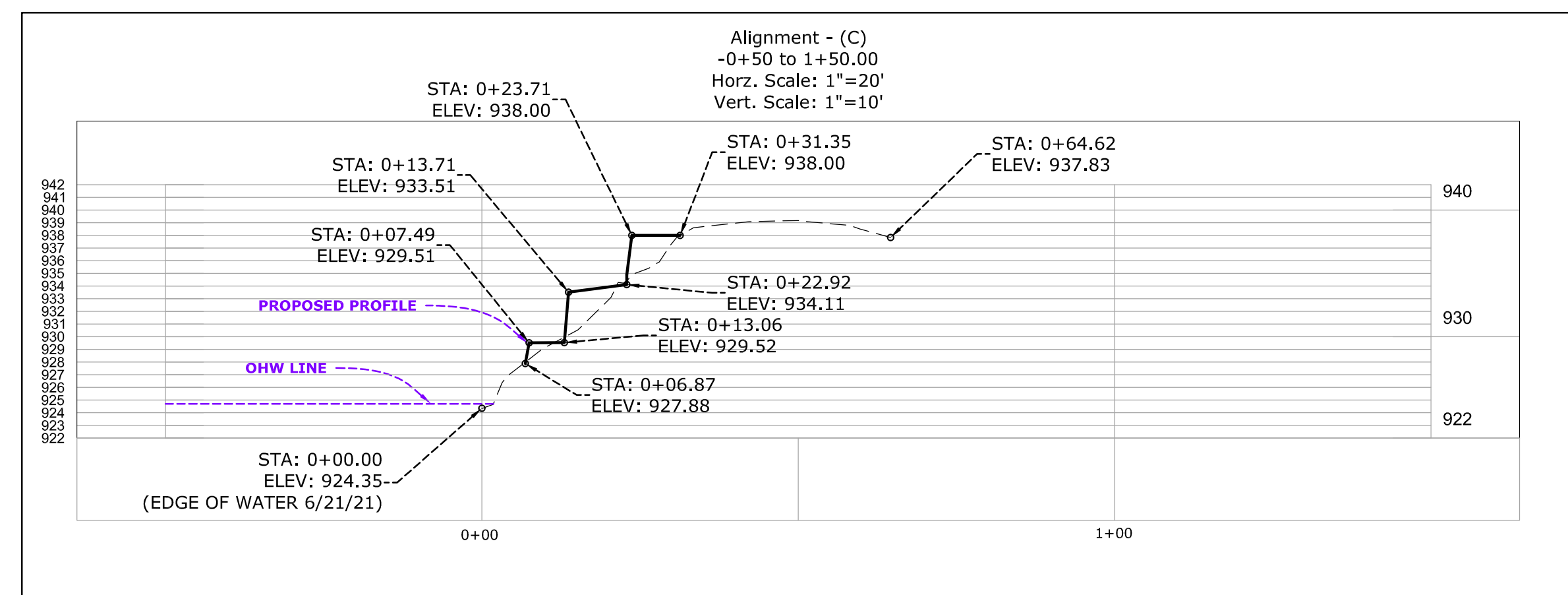
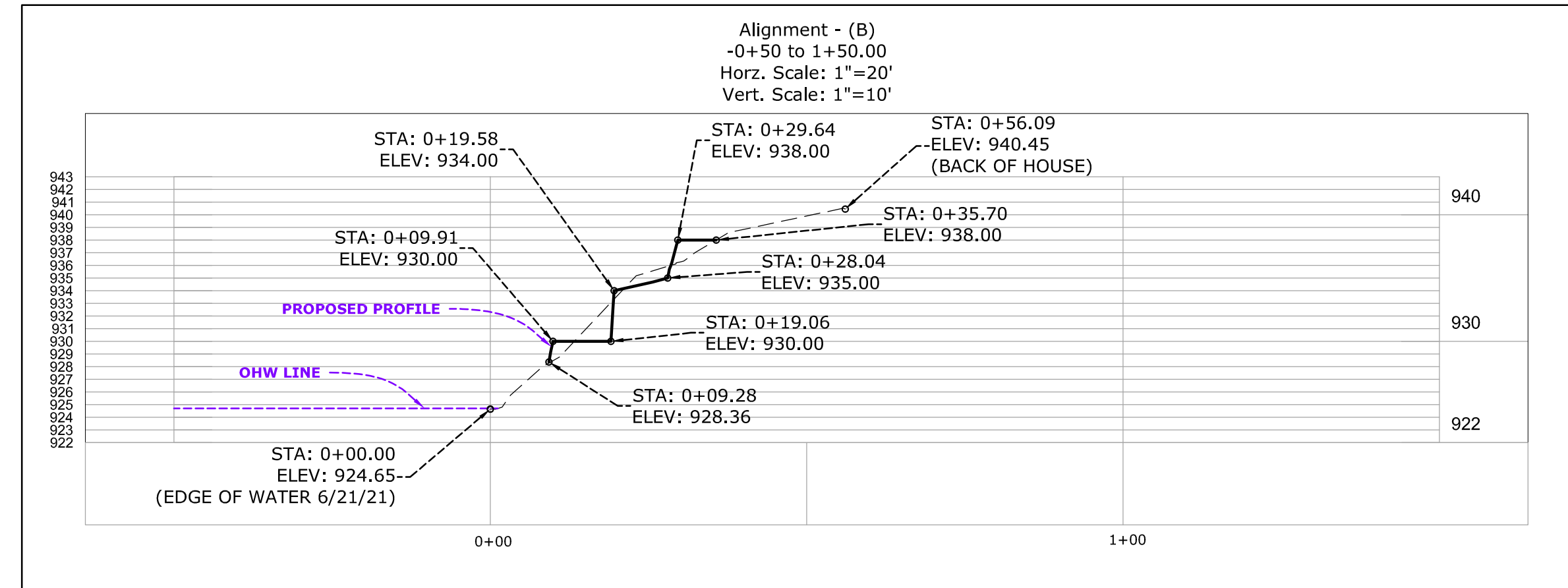
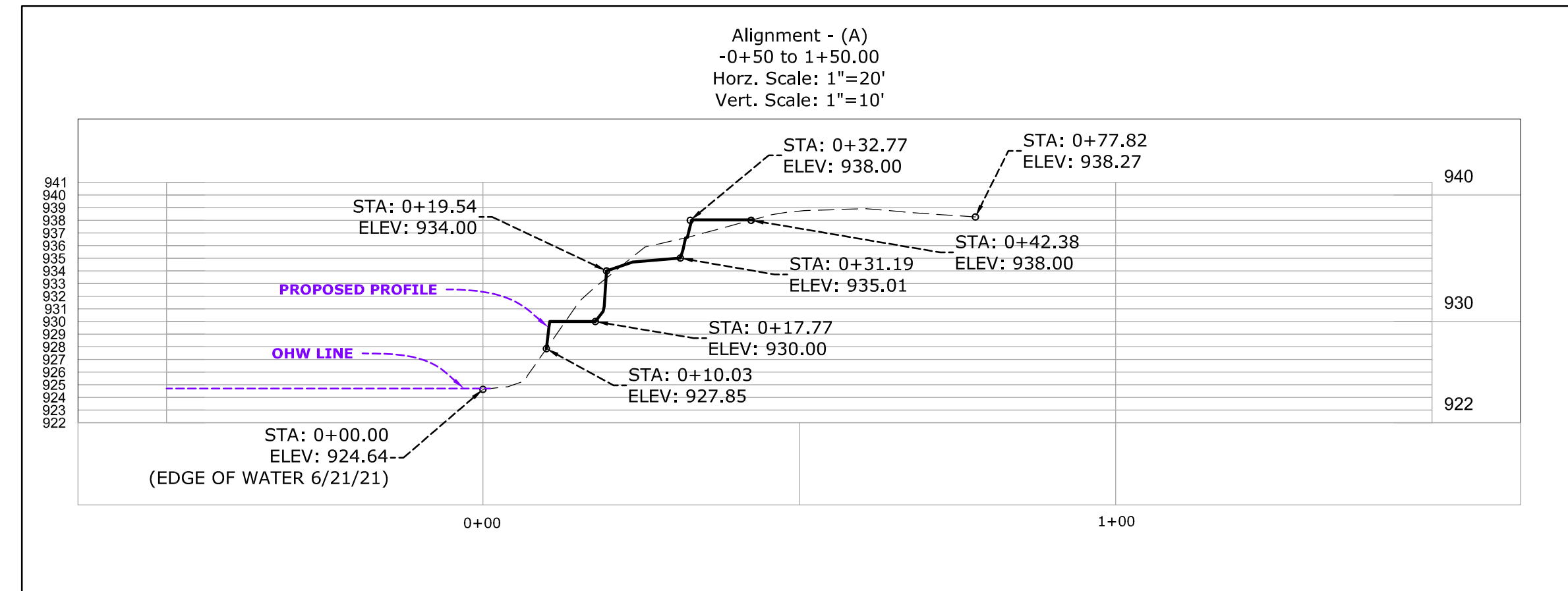
- Field survey was completed by E.G. Rud and Sons, Inc. on 06/21/2021.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

EXISTING IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE AND GARAGE	1,515 S.F.
DRIVEWAY	1,669 S.F.
CONCRETE	420 S.F.
RETAINING WALL/ROCK EDGING	167 S.F.
SHED	108 S.F.
STEPPING STONES	41 S.F.
TOTAL IMPERVIOUS SURFACE	3,920 S.F.
PERCENT IMPERVIOUS	30.3%

PROPOSED IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE, GARAGE, STOOP AND WELL ROOM	2,289 S.F.
CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
PROPOSED CONCRETE DRIVEWAY	1,189 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	3,888 S.F.
PROPOSED PERCENT IMPERVIOUS	30.1%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

EARTHWORK SUMMARY

2d Area	Cut	Fill	Net
948.7 Sq. Ft.	25.48 Cu. Yd.	24.71 Cu. Yd.	Balance

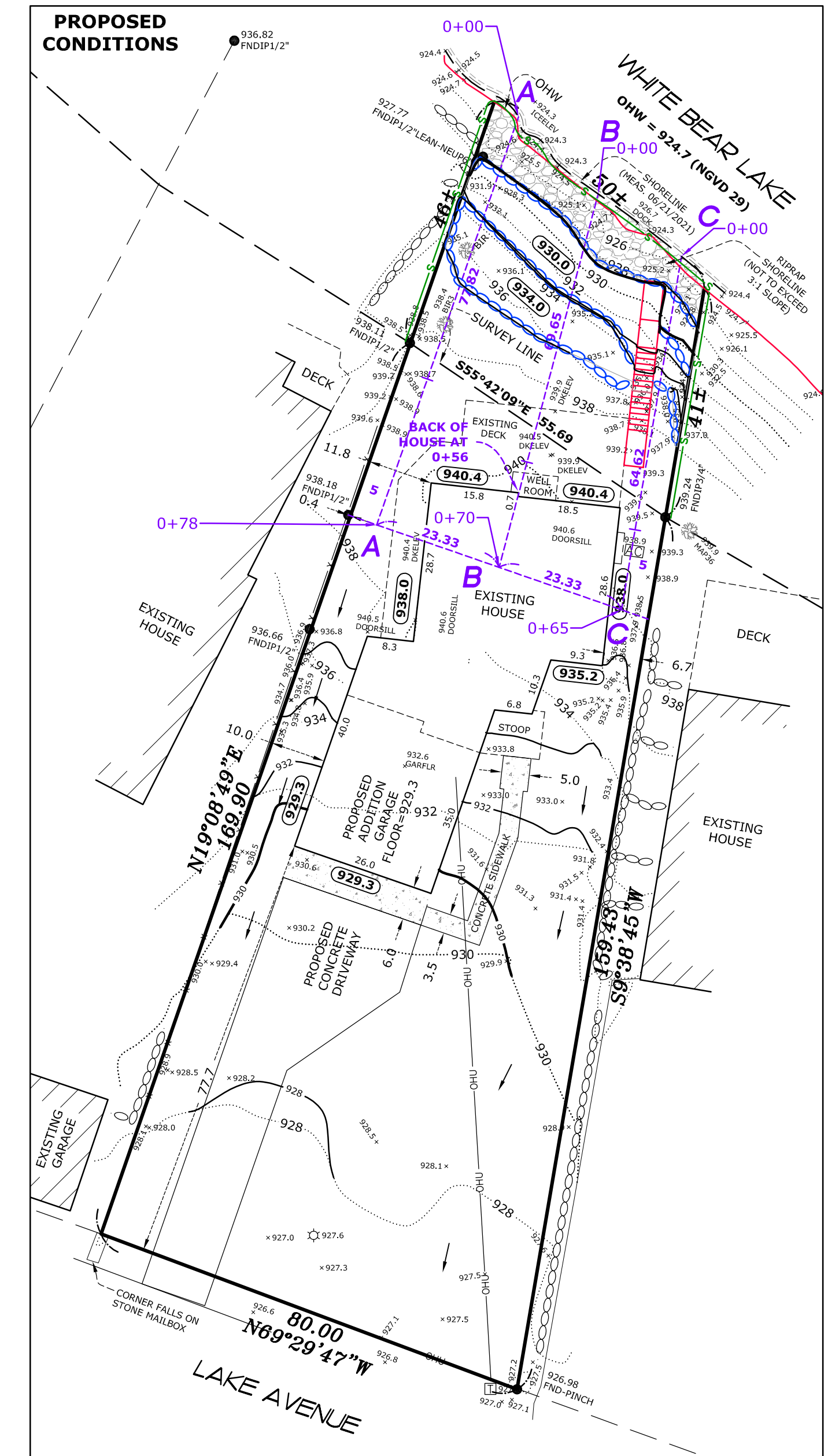
(SUMMARY PRESUMES THAT ANY EXCESS MATERIAL WILL BE SPREAD ACROSS THE REAR YARD)

HOUSE ELEVATIONS

MAIN FINISHED FLOOR = 940.6
 ENTRY FINISHED FLOOR = 936.3
 EXISTING BASEMENT = 932.9
 NEW BASEMENT = 931.1
 GARAGE FLOOR = 929.3

BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
 Elevation = 997.64
 Datum = (NGVD29)



NORTH

GRAPHIC SCALE



1 INCH = 20 FEET

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
 Date: 3/21/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1	3-17-23	CITY COMMENTS	CMB
2	3-21-23	CONCRETE DRIVEWAY	CMB
3			

E. G. RUD & SONS, INC.
 EST. 1977
 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 Lino Lakes, MN 55014
 Tel. (651) 361-8200 Fax (651) 361-8701

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM**

TO: Rebecca Kellen, City of Birchwood Village Administrator-Clerk

FROM: Thatcher Engineering, Inc.

DATE: March 27, 2023

REGARDING: Variance Application

APPLICANT: Susan Welles, 3227 26th Avenue North, Golden Valley, MN 55422

PROPERTY OWNER(S): Sandy Kriz Buerkle and David Buerkle

LOCATION: 529 Lake Avenue, Birchwood Village, MN 55110

BACKGROUND

On or about March 9, 2023, the City Birchwood Village (City) received a Conditional Use Permit Application and Zoning Permit Application for the installation of retaining walls and land disturbance activity at 529 Lake Avenue (Application #1) signed by Susan Welles. Application #1 is in Appendix #1. On March 15, 2023, Thatcher Engineering, Inc. (TEI) received a retaining wall and land disturbance activity plan dated March 9, 2023 (Plan #1), in PDF format, from Susan Welles. TEI understands that Plan #1 is part of Application #1. Plan #1 is in Appendix #2 and shows the following:

1. The existing impervious surface coverage is 30.3% and the proposed impervious surface coverage will be 20.8% which is below the 25% maximum allowed by City Code 302.050 because of the proposed installation of a permeable paver driveway.

2. A variance application is required from the City Code to do the proposed work because City Code 302.055.2.a.4 states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland." The Plan shows grading and filling within 20 feet of the ordinary high water level of WBL.

City received a large paper copy of Plan #1 that TEI has not yet received or reviewed, but it likely has the same information in the PDF formatted copy of Plan #1.

On March 23, 2023, the City received an application for one (1) variance for 529 Lake Avenue signed by Susan Welles (Applicant) on March 23, 2023 (Application #2). Application #2 is in Appendix #3 and shows the following:

1. The existing impervious surface coverage is 30.3% and the proposed impervious surface coverage will be 30.1% which is greater than the 25% maximum allowed by City Code 302.050.
2. The proposed impervious surface coverage in Application #2 (Variance Application) is greater than the proposed impervious surface coverage in Application #1 because the proposed driveway in Application #2 is concrete (not a permeable paver driveway as proposed in Application #1).

Application #2 (Variance Application) shows that the property owner intends to do the following:

1. Install a tiered retaining wall system of treated 6-inch by 6-inch timbers. The height of each tier will be four (4) feet or less. The proposed height of each retaining wall tier meets the City Code maximum height requirement (4-feet).
2. Install new rip rap at the shoreline in accordance with City Code requirements.

The Applicant is making the request because they would like to:

1. Stabilize their lakeshore.
2. Preserve hillside runoff and protect it from annual repercussions from ice-out and the rise and fall of the lake water elevation.
3. After the retaining wall system is installed, the new level areas will be planted to capture water that prior to the retaining walls would have drained directly into White Bear Lake (WBL). In the past, owners had attempted to plant on the slope but it proved too steep to be effective in terms of stabilizing the hillside or capturing rainwater.

TEI understands that the lot will continue to contain one dwelling unit.

The existing structure (house with attached garage) is a non-conforming pre-existing structure because of the following:

1. The existing structure is set back 6.7 feet from the south side yard lot line which is less than the City Code required minimum setback of 10 feet.
2. The existing structure is set back 27 feet from the Ordinary High Water Level of White Bear Lake which is less than the City Code required minimum setback of 50 feet.

REQUEST

The Application requests the following variance:

Variance Request #1 (Grading or Filling): The Applicant is requesting a variance from City Code 302.055.2.a.4 - Grading or filling within twenty feet of the ordinary high water level of any lake, pond, or wetland.

City Code 302.055.2.a.4 states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland." A variance is needed from this requirement because the Application shows grading and filling within 20 feet of the ordinary high water level of WBL.

SITE CHARACTERISTICS

The lot area is 12,921 square feet with steep slopes according to the Plan prepared by E. G. Rud and Sons, Inc. dated March 21, 2023 (Application #2 – Variance Application). The lot is narrow (about 50.0 feet wide at White Bear Lake and about 80 feet at Lake Avenue) and contains a single-family residence with attached garage.

PRACTICAL DIFFICULTY

The lot is small with steep slopes and extremely narrow and long.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 394.27 subdivision 7 states:

Variations shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variations are consistent with the comprehensive plan. Variations may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties...

CITY CODE REQUIREMENTS FOR PERMITTING VARIANCES

Sec 304.040 of the City Code states:

Standards for Variances. Variances may be granted when the applicant for the variance establishes:

1. That there are practical difficulties in complying with the zoning ordinance;
2. That the proposed structure or use is in harmony with the general purposes and intent of the ordinance; and
3. That the proposed structure or use is consistent with the City's comprehensive plan.

"Practical difficulties", as used in connection with the granting of a variance, means that i.) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, ii.) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and iii.) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

ANALYSIS

Variance Request #1 (Grading or Filling): The Applicant is requesting a variance from City Code 302.055.2.a.4 Grading or filling within twenty feet of the ordinary high water level of any lake, pond, or wetland. A variance is needed from this requirement because the Application shows grading and filling within 20 feet of the ordinary high water level of WBL.

A variance for retaining wall setback from White Bear Lake is also required for the following reason:

City Code 302.020.4.b states: "Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls." A variance is needed from this requirement because Application #2 (Variance Application) shows retaining walls within 50 feet of the ordinary high water level of WBL.

A variance for impervious surface is required for the following reason:

The work proposed increases the impervious surface coverage of the lot because the existing impervious surface coverage (29%) will increase to 30.1%. Page 6 of the City Council meeting minutes dated March 8, 2022 state that the City Council approved a variance request to reduce the impervious surface from 30.3% to 29%. The meeting minutes are in Appendix #4.

Substandard Lot

The Application states that the lot is substandard by area (12,921 square feet). However, a variance is not needed from the minimum lot size requirement because the lot size (12,921 square feet) is more than the City Code required minimum lot size of 9,000 square feet (15,000 feet x 60%). Also, a variance is not needed from the minimum lot width requirement because the lot width at the front building line for the existing structure (approximately 67 feet) is more than the City Code required minimum lot width of 48 feet (80 feet x 60%) for a lot containing one dwelling unit.

Placement of natural rock riprap

City Code 302.055.2.a.6 states: "Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet."

REASONS FOR RECOMMENDING VARIANCE APPROVAL

Variance request #1:

1. The lot is small with steep slopes and extremely narrow and long.
2. This project would preserve the essential character of the locality.

REASONS FOR RECOMMENDING VARIANCE DENIAL

Variance request #1:

1. A primary goal of the City of Birchwood Village's Zoning Ordinance is "to ensure that a non-conforming use is not intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code."
2. The following could be argued:
 - a. That the Application is not in harmony with the general purposes and intent of the ordinance.
 - b. That the variance is not consistent with the comprehensive plan.
 - c. That the Applicant for the variance has not established that there are practical difficulties in complying with the zoning ordinance.

ADDITIONAL INFORMATION

Additional information or variance requests from other City Code requirements may be required by the City depending on the work proposed by the Applicant and the information provided to show the proposed work.

CONDITIONS

In accordance with City Code 304.035, a variance shall become null and void one year after it was granted, unless made use of within the year or such longer period as prescribed by the Council.

In accordance with City Code 302.050.1.k., a variance shall not be valid unless the applicant properly records the variance at the property records office at Washington County and a copy of the recording is properly returned to the City for verification.

If approved, a requested variance may be approved subject to the following conditions:

1. All application materials, maps, drawings, and descriptive information submitted with this application shall become part of the building permit.
2. Land alteration may not cause adverse impact upon abutting property.

APPENDIX 1

NOTICE:

The City and its representative accept no responsibility for error and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.

The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit

Any changes to this application will make the permit voidable unless amendments are approved by the City with prior consent. The applicant will provide (separate documents, surveys, and calculations) to the City, showing the affected areas, grade plane, change in elevation, and imperious surface.

The applicant shall comply with all provision of the State Building, Plumbing, Mechanical, Electrical, and Fire Codes, as well as all City Ordinances governing zoning and buildings. The State of Minnesota regulates all electrical work. The continued validity of this permit is contingent upon the applicant's compliance of all work done and materials used, with the plans and specifications herewith submitted, and with the applicable ordinances of the City.

Under penalty of perjury the applicant declares that the information provided in and enclosed herewith is complete and all documents represented are true and correct representations of the actual project building which will be built in conformance with such representation.

Applicant's signature Susan Welles Date 3-9-23

Applicant's printed or typed name SUSAN WELLES

Owner/Applicant Statement - To be completed only when the homeowner is the permit applicant

I understand the State of Minnesota requires residential contractors, residential remodelers and residential roofers be licensed to work in the State unless they qualify for a specific exemption from the licensing requirements. By signing this statement, I certify that I am building or improving this dwelling myself. I claim to be exempt from state licensing requirements because I am not in the business of building on speculation or for resale. I certify I have not built or improved any other residential structures in the State within the past twelve months. I also acknowledge that, because I do not have a state license, I forfeit any mechanic's lien rights to which I may otherwise have been entitled under MS 514.01.

I further acknowledge I may be hiring independent contractors to perform certain aspects of the improvements on this dwelling, and I understand some of these contractors may be required to be licensed by the State. I understand unlicensed residential contracting, residential remodeling and residential roofing activity is a misdemeanor under Minnesota law, and I forfeit my rights to reimbursement from the Contractors Recovery Fund in the event any contractors I hire are unlicensed.

Homeowner's Signature: _____ Date: _____

Contact the Minnesota Department of Commerce, Enforcement Division to determine if a contractor is licensed or exempt or to check on contractor status. Metro: (651) 296-2594, Outstate: 1 (800) 657-3602, www.commerce.state.mn.us/mainbc.htm

For office use only:

Special Approvals	req	rec	Cert of insurance or cash Escrow	Permit Fees
Washington County			Soil Investigation Report or Shoring Plan	City Plan Review Fee \$
Rice County			Existing Conditions Report	Planner Review Fee \$
WBL Conservation Dist			Demolition Notification	State Surcharge Fee \$
Dept Natural Resource (DNR)			Construction Signage	Permit Escrow Fee \$ 3,000.00
City Council			Stormwater/Erosion Control Plan	TOTAL \$

APPENDIX 2

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
~of~ 529 LAKE AVENUE
BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
- DENOTES GUY WIRE
- DENOTES MAILBOX
- DENOTES POWER POLE
- DENOTES TELEPHONE PEDESTAL
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- DENOTES SILT FENCE
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- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PAVER SURFACE

NOTES

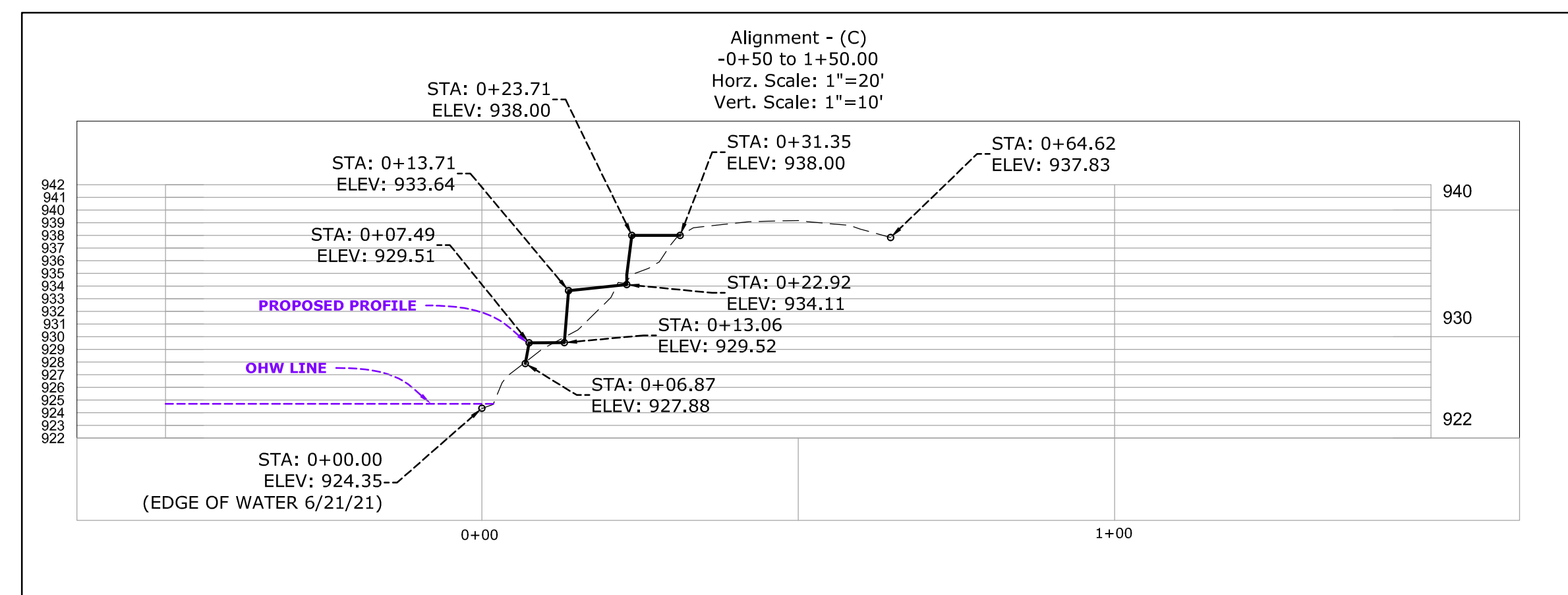
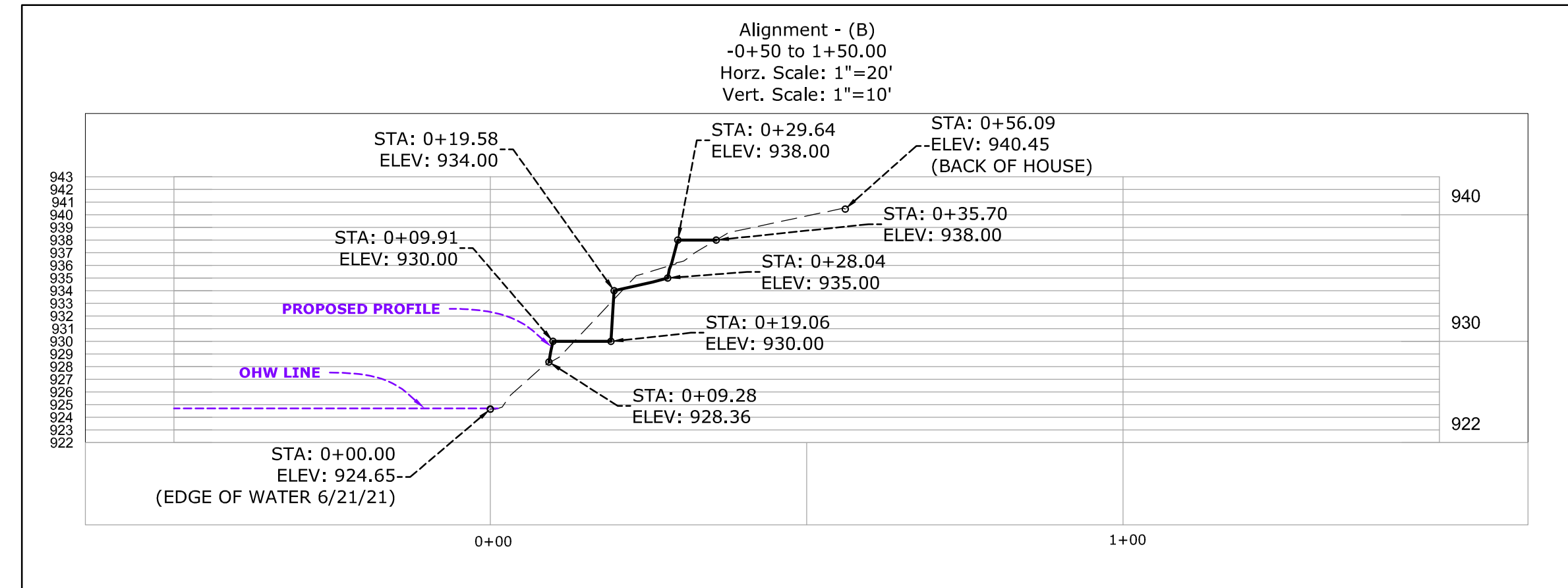
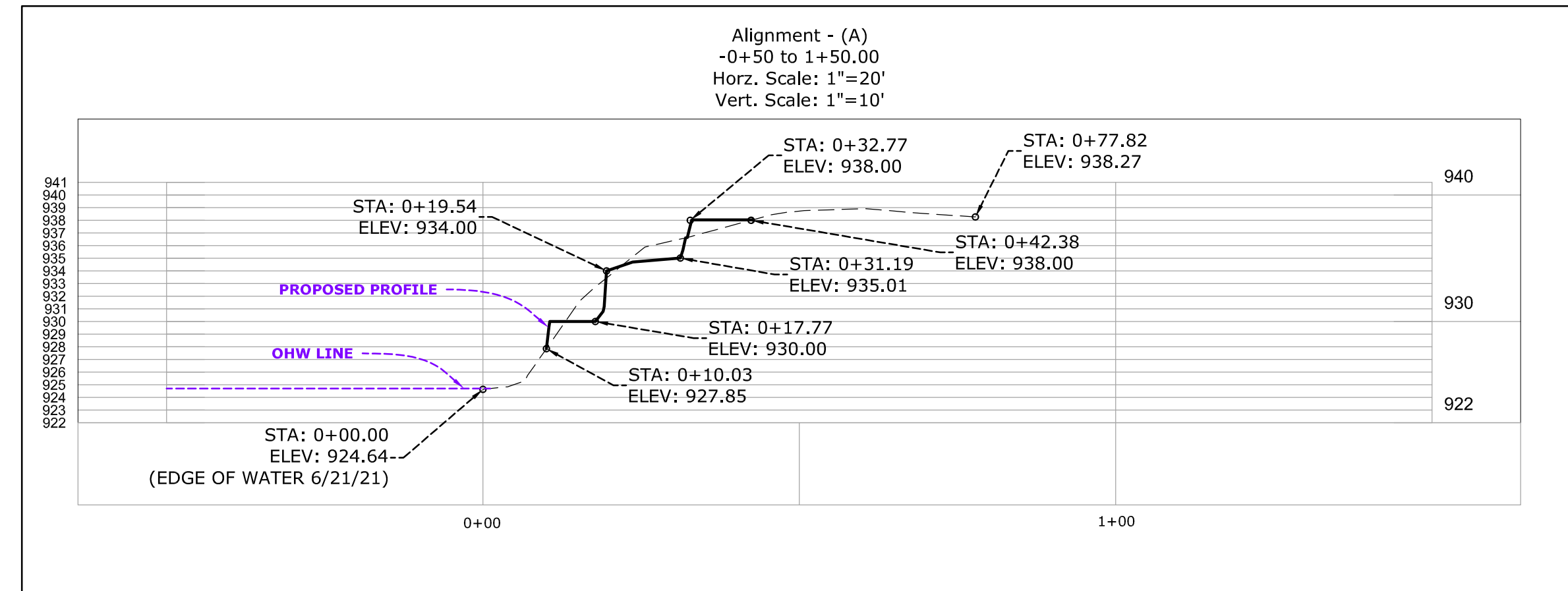
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- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

EXISTING IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE AND GARAGE	1,515 S.F.
DRIVEWAY	1,669 S.F.
CONCRETE	420 S.F.
RETAINING WALL/ROCK EDGING	167 S.F.
SHED	108 S.F.
STEPPING STONES	41 S.F.
TOTAL IMPERVIOUS SURFACE	3,920 S.F.
PERCENT IMPERVIOUS	30.3%

PROPOSED IMPERVIOUS SURFACE CALCULATIONS

TOTAL LOT AREA ABOVE O.H.W.	12,921 S.F.
HOUSE, GARAGE, STOOP AND WELL ROOM	2,289 S.F.
CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	2,699 S.F.
PROPOSED PERCENT IMPERVIOUS	20.9%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

EARTHWORK SUMMARY

2d Area	Cut	Fill	Net
948.7 Sq. Ft.	25.48 Cu. Yd.	24.71 Cu. Yd.	Balance

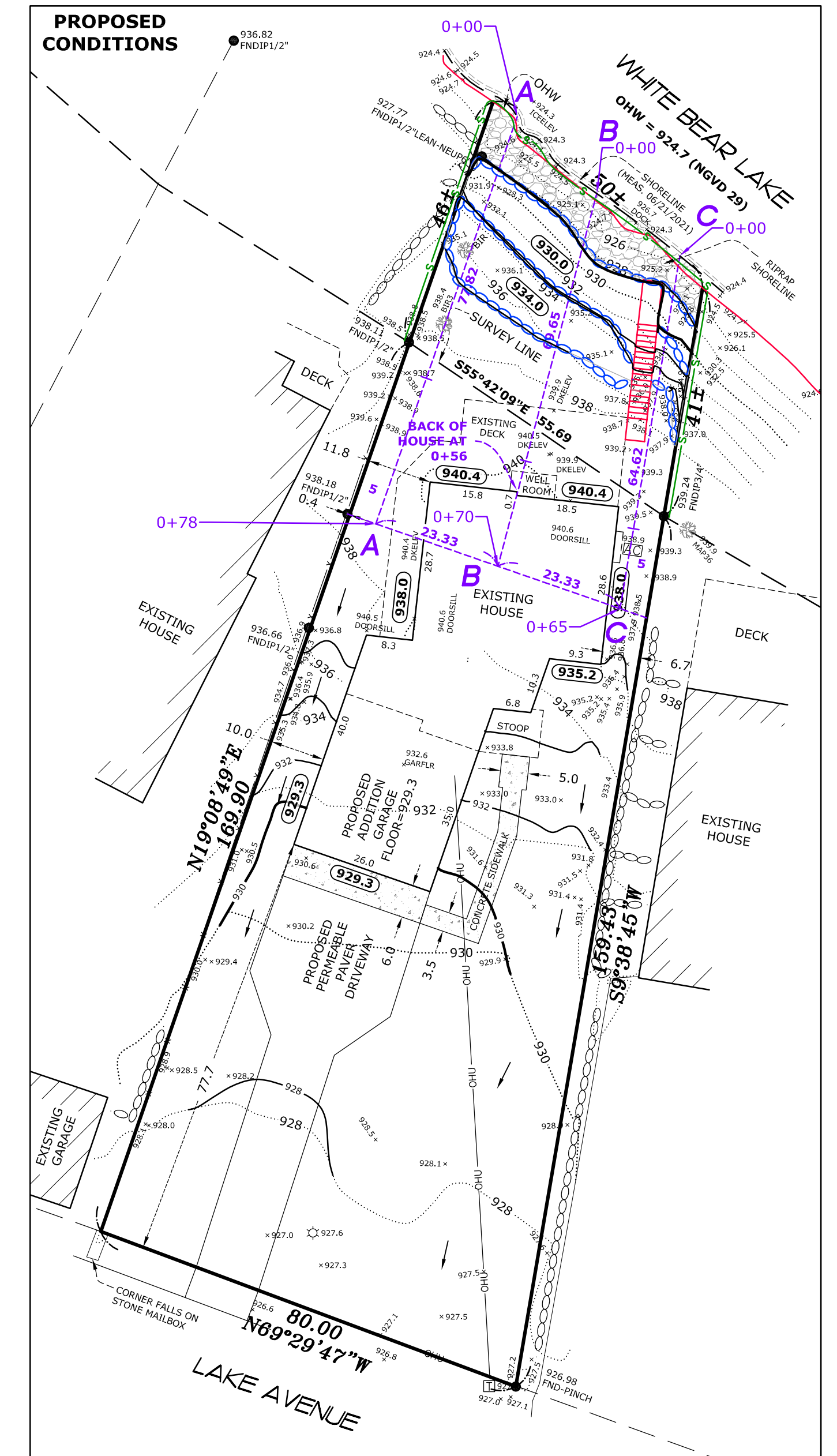
(SUMMARY PRESUMES THAT ANY EXCESS MATERIAL WILL BE SPREAD ACROSS THE REAR YARD)

HOUSE ELEVATIONS

MAIN FINISHED FLOOR = 940.6
ENTRY FINISHED FLOOR = 936.3
EXISTING BASEMENT = 932.9
NEW BASEMENT = 931.1
GARAGE FLOOR = 929.3

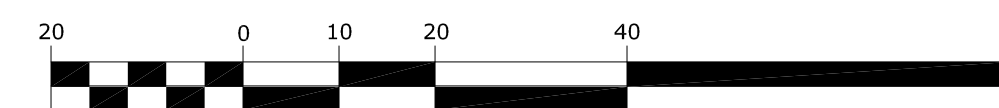
BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
Elevation = 997.64
Datum = (NGVD29)



NORTH

GRAPHIC SCALE



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
Date: 3/9/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1			
2			
3			

E. G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701

APPENDIX 3



City of Birchwood Village
 Petition for Variance Application

207 Birchwood Ave, Birchwood, MN 55110
 Phone: 651-426-3403 Fax: 651-426-7747
 Email: info@cityofbirchwood.com

FOR OFFICIAL USE ONLY	
Application Received Date: <u>3-23-2023</u>	Amount Paid: \$ <u>\$3600.00</u>
Payment Type (Circle One): Cash / Check / Money Order / Credit Card	
Check/Money Order # <u>42365 / # 5644</u>	
Application Complete? Yes <input type="checkbox"/> No <input type="checkbox"/> If no, date application was deemed complete: _____	
Signature of City Planner: _____	Date: _____

Completed requests for variances submitted prior to the first Thursday of the month will be considered by the Planning Commission at its next meeting on the fourth Thursday of the month. Requests submitted after the first Thursday of the month will be considered at the following meeting. All final decisions on variance applications are made by the City Council, which meets on the second Tuesday every month.

- Name of Applicant(s) SUSAN WELLES
 Address 3227 26TH AVE. N.
 City GADEN VALLEY State MN Zip Code 55422
 Business Phone 612-998-8404 Home Phone _____
- Address of Property Involved if different from above: 529 LAKE AVE .
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
SANDRA KRIZ. BUEKLE & DAVID BUEKLE
I AM THE PROJECT DESIGNER .
- Specific Code Provision from which Variance is requested: 302.055.2.a.4

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
THE OBJECTIVE FOR THIS VARIANCE APPLICATION IS TO ALLOW HOMEOWNERS TO STABILIZE THEIR LAKE SHORE . AT PRESENT WE ARE PROPOSING TO INSTALL SEVERAL 6'X6" TIMBER RETAINING WALLS AND PLACE NEW RIP-RAP AT THE SHORELINE TO PRESERVE HILLSIDE RUN-OFF & PROTECT FROM ANNUAL REPERCUSSIONS FROM ICE-OUT & RISE AND

FALL OF THE LAKES ELEVATION.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- Single Dwelling
- Garage
- Tennis Court
- Grading/Filling
- Other (describe) _____
- Double Dwelling
- Addition
- Pool

8. Using the criteria from the City Code for a variance (see last page), explain why a variance is justified in this situation and describe what "Practical Difficulties" exist:

***SEE REVERSE SIDE OF APPLICATION.**

9. Describe any measures the Applicant is proposing to undertake if the variance is granted, including measures to decrease the amount of water draining from the property:

ONCE RETAINING WALLS ARE IN PLACE, NEW LEVEL AREAS WILL BE PLANTED TO CAPTURE WATER THAT PRIOR WOULD HAVE DRAINED DIRECTLY INTO W.B.L.

10. Describe any alternatives the Applicant considered (if any) that do not require a variance:

NO ALTERNATIVES OTHER THAN RETAINING CONSIDERED. IN THE PAST OWNER HAD ATTEMPTED TO PLANT ON SLOPE BUT IT PROVED TOO STEEP TO BE EFFECTIVE IN TERMS OF STABILIZING THE

11. Can an emergency vehicle (Fire Truck or Ambulance) access all structures on the property after the proposed change? Yes No

HILLSIDE OR CAPTURING RAINWATER. THIS HAS RESULTED IN PROPOSING RETAINING & RIP RAP.

DEAR COMMISSIONERS, CITY COUNCIL MEMBERS,

THE PROPERTY AT 529 LAKE AVE HAS A CHALLENGING INCLINE ALONG THE SHORE OF W. BEAR LAKE. IN THE PAST THE HOMEOWNERS HAVE ATTEMPTED TO PLANT AND MAINTAIN PLANTINGS ALONG THE INCLINE TO STABILIZE THE SLOPE AND PROVIDE AREAS FOR STORMWATER TO BE CAPTURED BEFORE ENTERING W.B.L.

THE VERTICLE CHALLENGES THE SLOPE PRESENTS HAS PROVEN TO BE AN OBSTACLE IN MAINTAINING PLANTING AND CONTROLLING STORMWATER RUN-OFF. AS WITH MANY LAKESHORE PROPERTIES IN BIRCHWOOD (INCLUDING BOTH NEIGHBORING ADJACENT LOTS TO 529), THE INTRODUCTION OF RETAINING WALLS HAS BECOME A PROVEN STANDARD FOR DEALING WITH STEEP SLOPING SHORELINES.

MY CLIENT WISHES TO INSTALL A TIERED RETAINING WALL SYSTEM OF ~~WOOD~~ TREATED 6"X6" TIMBERS TO HEIGHTS OF 4' OR LESS TO BE COMPLIANT WITH CITY CODE. THIS WILL ENSURE AGAINST AND COMBAT SOIL EROSION AND HELP TO STABILIZE THE EXISTING SLOPE. THE ADDED HORIZONTAL PLANES BETWEEN THE TIERED RETAINING WALLS WILL BE PLANTED WITH NATIVE PERENNIALS TO SLOWDOWN AND HELP CONTAIN STORMWATER RUN-OFF ALONG THE SLOPE BEFORE IT ENTERS THE LAKE. WE ARE ALSO PROPOSING TO INSTALL NEW RIP-RAP AT THE BASE OF THE SLOPE ALONG THE SHORELINE NOT TO EXCEED 3' ABOVE O.H.W OR GREATER THAN 3:1 RATIO LANDWARD PURSUANT TO CITY GUIDELINES. ALL APPROPRIATE GRADING AND FILTER BLANKETS TO BE INSTALLED AS REQUIRED. THE INTRODUCTION OF THE RIP-RAP WILL HELP TO MITIGATE AND MINIMIZE EROSION CAUSED BY ICE OUT AND SEASONAL WATER LEVEL FLUCTUATIONS.

TO ACCOMPLISH THE ABOVE PROPOSAL IT WILL BE NECESSARY TO MOVE AND REDISTRIBUTE SOIL ALONG THE SHORELINE SLOPE. WE INTEND TO INSTALL THE NEW RETAINING AND RIP-RAP WITHOUT CAUSING A NET GAIN OR LOSS OF SOIL TO THE PROPERTY. PURSUANT OF CITY CODE 302.055.2.a.4 WE ASK FOR A VARIANCE TO GRADE AND FILL IS NEEDED TO MEET OUR GOALS. RESPECTFULLY, *John Wilkes*

12. Does the proposed change bring any other nonconforming use into conformity with the City Building Code? Yes No

If yes, explain: _____

13. Are there other governmental regulations that apply to the proposed action, including requirements of the Rice Creek Watershed District? Yes No

If yes, please identify the regulations AND attach evidence demonstrating compliance:

14. Please provide the applicable information in the following Table:

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface (25% of item 1)			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Percent Impervious Surface			

15. Please attach the following:

- Legal description of property.
- Plot plan drawn to scale showing existing and proposed new and changed structures on the lot. Also show existing structures on adjacent lots.

↑
SEE ATTACHED SURVEY.

Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

- A. Variances shall only be permitted
 - i. when they are in harmony with the general purposes and intent of the ordinance and
 - ii. when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

NOTICE:

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***The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit.**

***Under penalty of perjury the applicant declares that the information provided in and enclosed herewith is complete and all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.**

Signature of Applicant: Susan Welles

Date: 3.23.23

RETAINING WALL EXHIBIT

~for~ HUSNIK HOMES
~of~ 529 LAKE AVENUE
BIRCHWOOD, MN

Lot 7, Block 2, LAKEWOOD PARK 3RD
DIVISION, Washington County, Minnesota.

LEGEND

- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING ELEVATION
- DENOTES GUY WIRE
- DENOTES MAILBOX
- DENOTES POWER POLE
- DENOTES TELEPHONE PEDESTAL
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NOTES

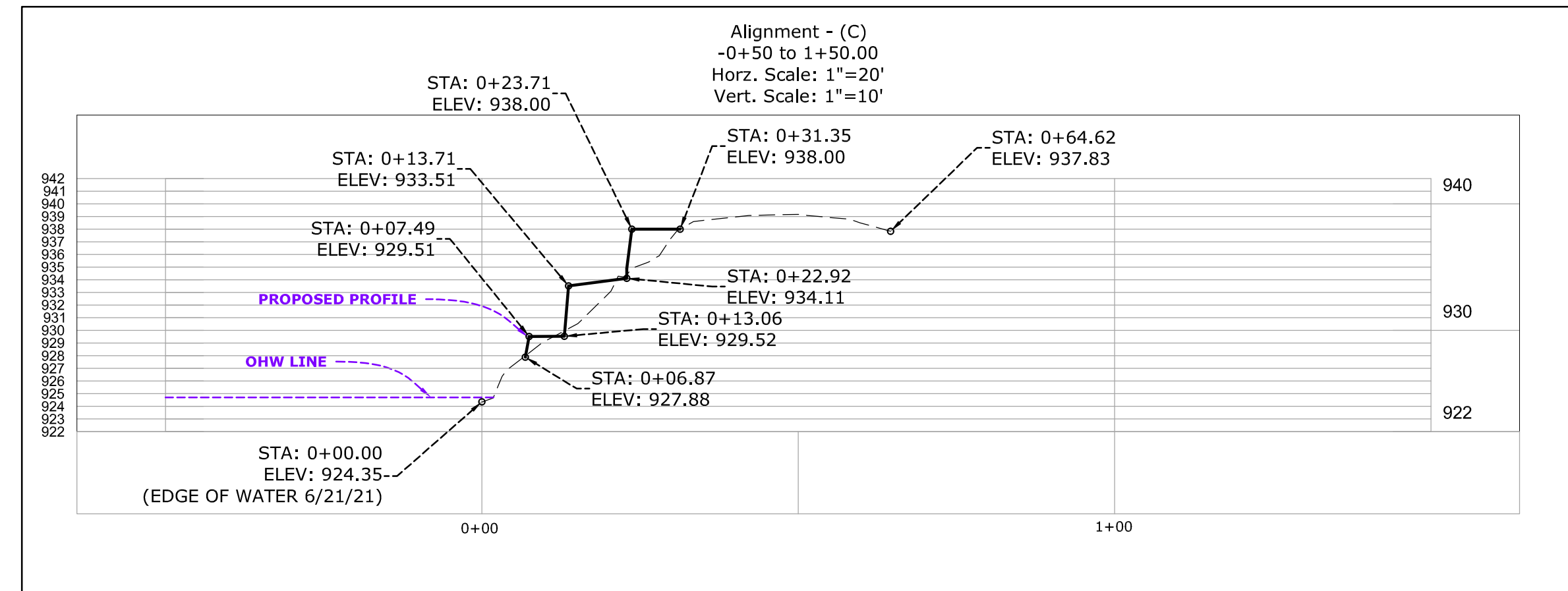
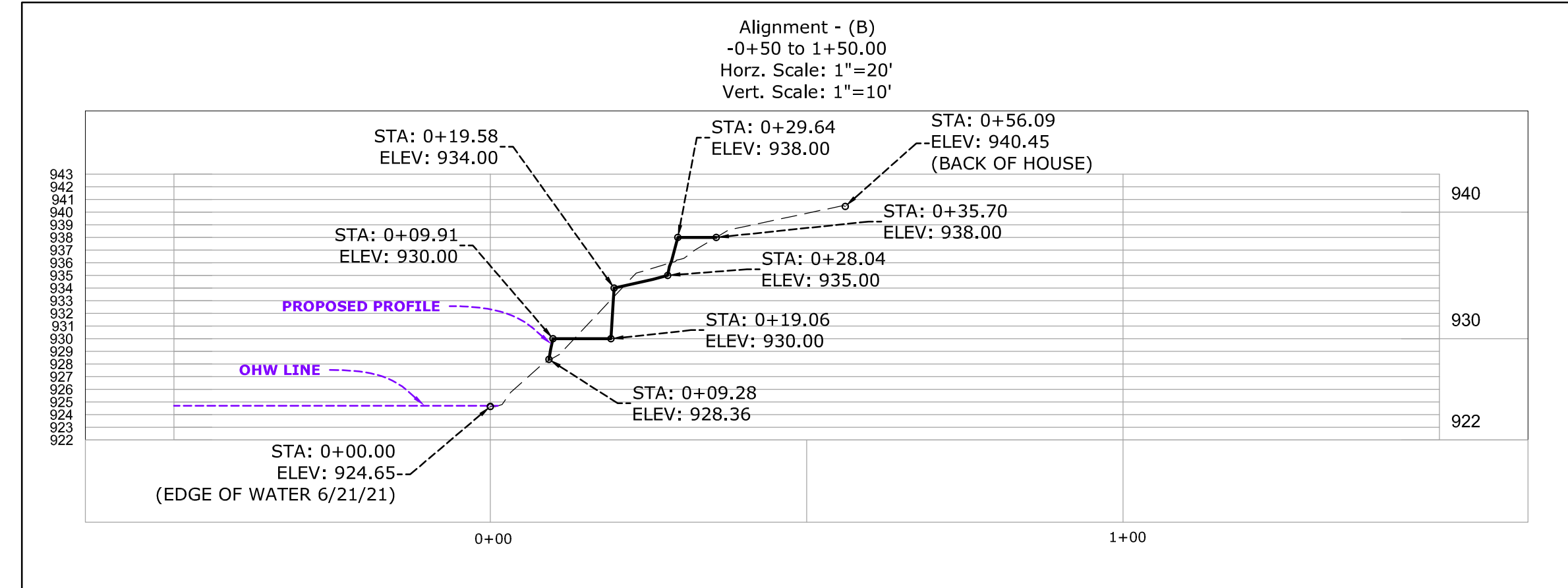
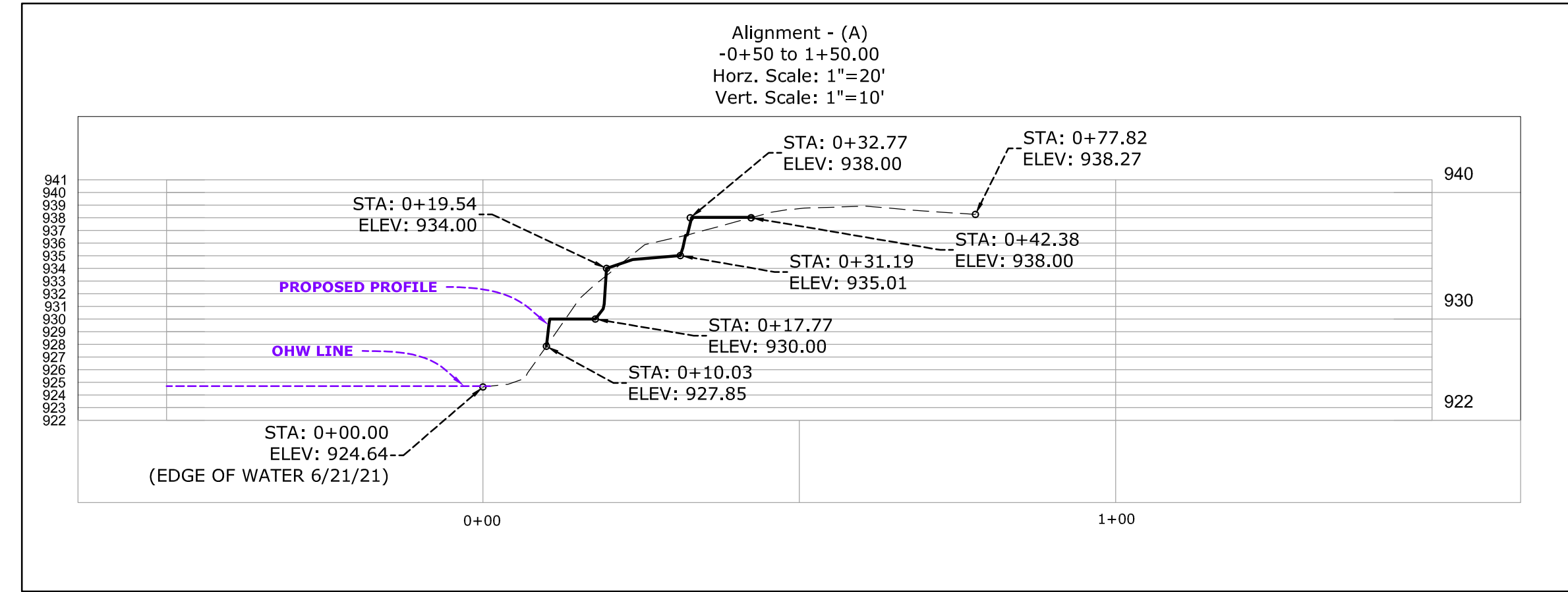
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- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

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PROPOSED IMPERVIOUS SURFACE CALCULATIONS

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CONCRETE	314 S.F.
TOTAL IMPERVIOUS SURFACE	2,603 S.F.
PERCENT IMPERVIOUS	20.1%
PROPOSED WALLS	96 S.F.
PROPOSED CONCRETE DRIVEWAY	1,189 S.F.
TOTAL PROPOSED IMPERVIOUS SURFACE	3,888 S.F.
PROPOSED PERCENT IMPERVIOUS	30.1%



EARTHWORK NOTES

- * EARTHWORKS ARE CALCULATED TO TOP OF WALL AND FINISHED GRADE WHERE APPLICABLE.
- * NO ADJUSTMENT HAS BEEN MADE TO ACCOUNT FOR SWELLING/SHRINKAGE.

EARTHWORK SUMMARY

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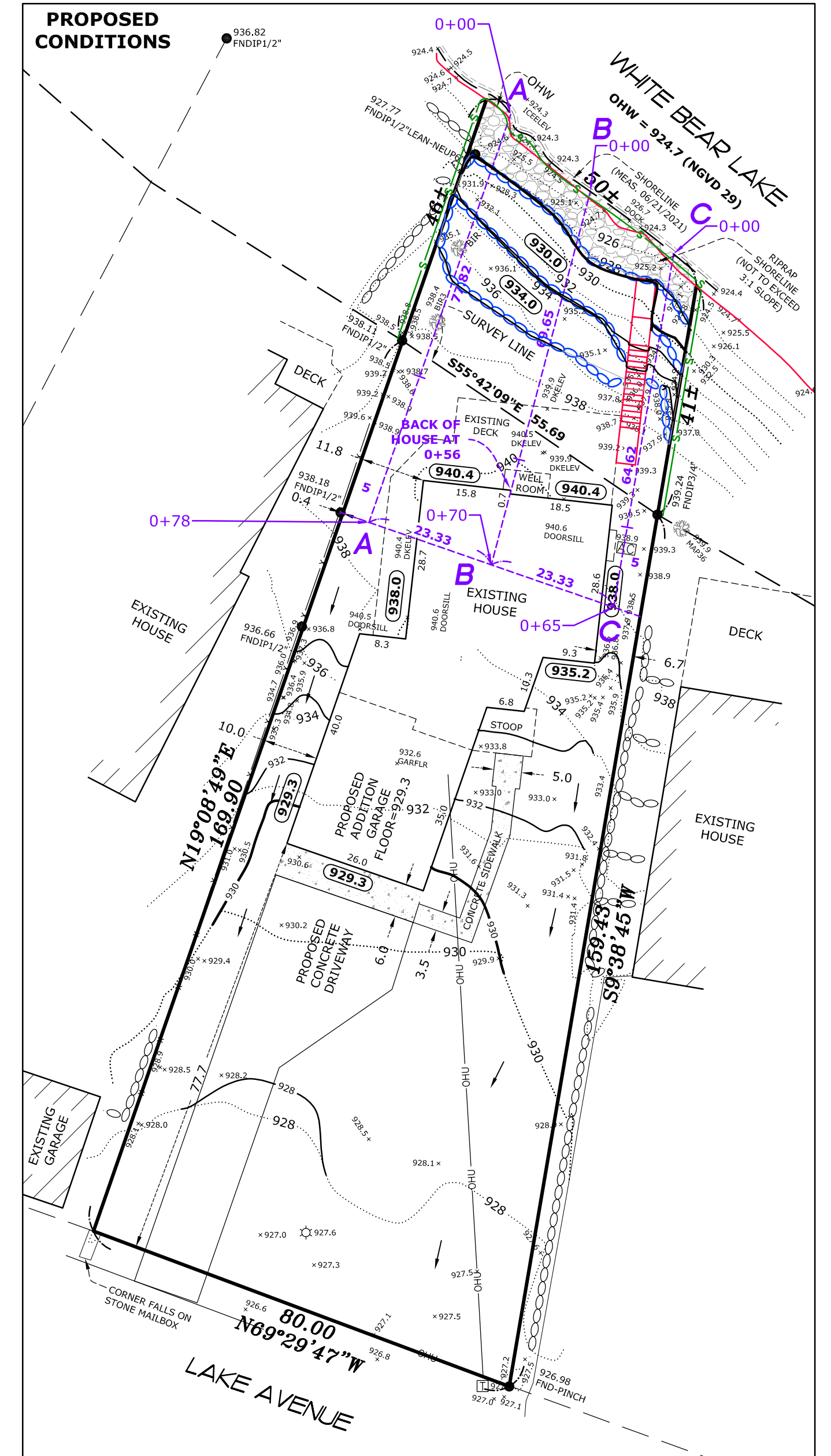
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GARAGE FLOOR = 929.3

BENCHMARK

BENCHMARK: Top nut of hydrant located near 115 Birchwood Avenue.
Elevation = 997.64
Datum = (NGVD29)



NORTH

GRAPHIC SCALE



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD
Date: 3/21/2023 License No. 41578

NO.	DATE	DESCRIPTION	BY
1	3-17-23	CITY COMMENTS	CMB
2	3-21-23	CONCRETE DRIVEWAY	CMB
3			

E. G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701

APPENDIX 4

CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
BIRCHWOOD, MINNESOTA

MINUTES OF THE CITY COUNCIL MEETING
VIA TELECONFERENCE
MARCH 8, 2022, 7:00 P.M.

MEMBERS:

Mary Wingfield	Mayor
Jon Fleck	Councilmember
Mark Foster	Councilmember
Justin McCarthy	Councilmember
Kevin Woolstencroft	Councilmember

STAFF:

Andy Gonyou	City Administrator
H. Alan Kantrud	City Attorney
Steve Thatcher	City Engineer

GUESTS:

Ryan Hankins	Planning Commission Vice Chairman
--------------	-----------------------------------

Minutes prepared by Anh Nguyen of Minutes Solutions Inc. from an audio recording.

1. **CALL TO ORDER**

In light of the status of the ongoing COVID-19 health pandemic, the City of Birchwood Village is conducting its March 2022, meeting using interactive web-based technology. Pursuant to *Minnesota Statutes, Chapter 13D.021 Subdivision 1(1)*, the City of Birchwood Village is declaring that, "an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic...".

Mayor Wingfield called the meeting to order at 7:00 p.m.

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to approve the agenda, as amended. All in favor; motion carried.

Mayor Wingfield requested the addition of the following items to the agenda:

- Planning Commission Discussion

- T.A. Schifsky & Sons Bid
- Ring Camera for City Hall
- Fence Tower Announcement
- Impervious Surface Code Adopted by the City of Mahtomedi

City Administrator Andy Gonyou requested that the following item be deferred until the April 2022 Council meeting:

- Approval of the Regular Meeting Minutes from February 8, 2022

4. OPEN PUBLIC FORUM

James Nelson, 256 Wildwood Avenue, requested that Council meetings resume to in-person as community members are eager to speak to the Council in person. He referred to the Birchwood Village newsletter and expressed concern regarding Mayor Wingfield reporting that Birchwood Village has never regulated content on signs. He noted this was a contradiction to the treatment he received as a result of his sign.

James Nelson reported that his sign followed size limitations and was not erected for more than 30 days in a calendar year, yet he was not provided an opportunity for polite discussion before being issued a citation. He reported that he would be attending the next in-person Council meeting with the support of fellow residents.

5. ANNOUNCEMENTS

- A. **Social Media:** Follow Birchwood Village on Facebook @BirchwoodCityHall or on Twitter @CityofBirchwood.

6. ADMINISTRATIVE PRESENTATION

- A. **Sheriff Report:** A report of law enforcement incidents and citations for February 2022, was provided for the Council's review.
- B. **Planning Commission Regular Meeting Minutes:** The minutes of the February 10, 2022, Planning Commission meeting was provided for the Council's review.

7. CITY BUSINESS – CONSENT AGENDA

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the consent agenda as presented. All in favor; motion carried.

- A. **Approval of the Special Meeting Minutes:** The meeting minutes of the February 15, 2022, special Council meeting was provided for the Council's review and approval.
- B. **Approval of the Treasurer's Report:** The Treasurer's Report for the period ending March 3, 2022, was provided for the Council's review and approval.

8. **CITY BUSINESS – REGULAR AGENDA**

A. **176 Cedar Street Lot Split**

a. **Public Hearing:** Steve Schad expressed concern regarding the number of trees that will be removed to accommodate the construction of houses. He queried the management of the potential water runoff. He was not in favor of the lot split and requested that the Council strictly adhere to city codes regarding water management and tree removal, and that variances regarding lot setbacks not be approved.

b. **On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to close the public hearing. All in favor; motion carried.**

c. **Council Deliberation:**

On a motion made by Councilmember Fleck, seconded by Councilmember Woolstencroft, it was resolved to approve the lot split at 176 Cedar Street. All in favor; motion carried.

Mayor Wingfield requested that the builder, Paul Husnik of Husnik Homes, direct any questions to the City Attorney, H. Alan Kantrud, or the City Administrator, Andy Gonyou.

B. **Planning Commission Discussion**

a. *ACTION – Councilmember McCarthy will incorporate the feedback from the Planning Commission into a maintenance agreement for review at the next Council meeting in April 2022.*

ACTION – Councilmember McCarthy will send Ryan Hankins a draft of the maintenance agreement before the next Council meeting.

Ryan Hankins reported that the Planning Commission has done considerable work on the impervious surface code including transitioning to conditional use permits, refining language, and clarifying how the City Engineer evaluates the code. The Planning Commission requested feedback from the Council regarding the aforementioned changes, as well as guidance on pervious pavement surfaces.

C. **Variance Case No. 22-01-VB**

a. **Council Deliberation:**

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to deny the driveway variance request on the basis that it does not meet practical difficulty and the solution presented by the applicant is due to the applicant's own initiative. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the south side yard setback of 7.9 feet on the basis of practical difficulties due to a narrow lot. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve the variance request for the north side yard setback of 7.5 feet for the cantilever bump out and 8.5 feet for the existing structure as presented on the basis of practical difficulties due to a narrow lot that expands towards the lake, and for the preservation of the existing sightlines for the neighbors, and on the condition that the house not be expanded closer to the lake and be recorded with Washington County. All in favor; motion carried.

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to deny the variance request for impervious surface on the basis that it does not meet practical difficulty and exceeds 25% impervious surface as per city code. Councilmember Foster voted no. Motion carried.

Mayor Wingfield noted that the Council needs to be cognizant of the city's 60-day policy as the application was submitted on February 8, 2022, and will expire before the next Council meeting in April 2022.

Ryan Hankins reported that the Planning Commission recommended to approve all variance requests except the minimum setback requirement for the driveway due to reasonable use for the property under the current zoning code.

The Council expressed concern regarding the driveway being too close to the neighbor and the potential for runoff into the neighboring property.

H. Alan Kantrud confirmed that the variance request for the south side yard would set a new setback of 7.9 feet and the city code allows a maximum projection of 2 feet from the setback. The builder, Kyle Hunt, noted that the fireplace has a 1-foot projection from the setback.

Mayor Wingfield accepted the 8.5 feet setback from the lot on the condition that the house, including bump outs, cantilevers, or eaves, does not approach closer than 8 feet to the lot line to allow open space for neighbors on either side to build if they wish.

The applicant confirmed that he had no intention of encroaching towards the lake in the future and agreed to record the stipulation with Washington County for property records.

Steve Thatcher confirmed the project has an impervious surface of 29.56% and 42.7% including the pervious pavers. Mayor Wingfield reminded the Council that an impervious surface over 35% has not been historically permitted by the Council. The application is incompatible with the city's open space, values, and the Council's decisions in the past. Mayor Wingfield expressed concern regarding

setting a precedent and reiterated that the Council imposed a standard to deny any variance request over 25% impervious surface. Mayor Wingfield denied the request based on the builder's inability to mitigate the impervious surface down to 25% as per city code or to present a practical difficulty.

H. Alan Kantrud advised the Council to follow past precedent but noted that it is not acceptable to inject terms that are not included in the city code to the applicant's current variance request. He confirmed that if the builder can decrease the impervious surface to 25% or less, it is within city code and a variance is not required.

The Council agreed to waive the application fee if another variance request is required for the same issue.

D. Variance Case No. 22-02-VB

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember Fleck, it was resolved to approve the variance request to erect a fence 61 feet back from Birchwood Lane on the west property line and 50 feet south of the White Bear Lake high water mark, on the basis that the county line road is intended to keep property far back from the right of way but East County Line Road turns away from the lot and presents a practical difficulty, and on the condition that permission is obtained from Washington County. All in favor; motion carried.

Mary Jane LaVigne, a resident of Birchwood Village, expressed concern that a variance was granted, without proper notification to neighbors, for the construction of the applicant's driveway given its close proximity to a busy intersection. She objected to the fence citing interference with green space and no practical difficulty to warrant a fence.

Mayor Wingfield confirmed that the city code permits a fence not within 20 feet of the right of way. She noted that the Council had previously indicated that the side yard setback to the county line did not apply to the applicant because Feistner Beach intervened the county road and the property. This was erroneous and Feistner Beach does not sit in between East County Line Road and the property.

The applicant agreed to move the start of the fence to the back of the garage. This would be 61 feet away from the right of way of Birchwood Lane and on the property line until 50 feet south of the White Bear Lake high water mark.

A letter of no objection from Washington County is required before the applicant can obtain a fence permit, as recommended by H. Alan Kantrud.

- b. Approve Resolution 2022-06, Authorizing Extension:** A resolution was passed on March 8, 2022, to authorize a 60-day extension for decision in the variance case of 22-02-VB, thus extending the deadline to May 24, 2022.

E. Variance Case No. 22-03-VB

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember McCarthy, it was resolved to approve the variance request to modify the roof to allow the encroachment as requested. All in favor; motion carried.

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve the variance request to reduce the impervious surface from 30.3% to 29%. All in favor; motion carried.

Ryan Hankins noted that the variance request will update the roof to meet current energy efficiency standards.

Steve Thatcher reported that the applicant has agreed to a maintenance agreement for their raingarden.

F. Wildwood Avenue Lift Station

a. Update from City Engineer: Steve Thatcher reported that he is preparing the plans and specifications, to be ready by May 3, 2022. The surveying of existing structures in the area will be completed weather permitting.

A notice will be posted in the newspaper and bids will be opened on June 7, 2022. The bids will be reviewed at the Council meeting on June 14, 2022. The contractor would start no earlier than the weekend of July 4, 2022, with completion aimed for December 5, 2022.

Mayor Wingfield reported no funding from the state. Any funding support would be in the form of low interest loans. She noted that the Council recovered funds from the removal of the Birchwood Lane Lift Station for the past three years, but would have to continue the capital improvement plan to cover the \$500,000 expenditure for the project.

Mayor Wingfield reiterated that the current Wildwood Avenue Lift Station is not OSHA compliant and is a liability. Steve Thatcher also noted that the above ground lift station is in a hazardous position next to the road.

G. Second Reading of Ordinance 2022-02-01, Amending Section 404

a. Public Hearing:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Foster, it was resolved to close the public hearing. All in favor; motion carried.

Councilmember McCarthy reported that unused definitions, a screen requirement, and inaccurate cross references to state billing code were removed.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-01, Amending Section 404. All in favor; motion carried.

c. Approve Resolution 2022-05, Summary Publication:

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to approve Resolution 2022-05, Summary Publication. All in favor; motion carried.

H. Second Reading of Ordinance 2022-02-03, Repealing Section 301.065

a. Public Hearing:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember Fleck, it was resolved to close the public hearing. All in favor; motion carried.

Councilmember McCarthy reported that requirements for obtaining variances and administrative appeals were separated, refined, and streamlined. He noted that Section 301.065 referred to an old standard that was not removed from the city code.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember Woolstencroft, seconded by Councilmember McCarthy, it was resolved to approve Ordinance 2022-02-03, Repealing Section 301.065. All in favor; motion carried.

c. Order Publication: ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-03, Repealing Section 301.065.

I. Second Reading of Ordinance 2022-02-04, Amending Section 302.055

a. Public Hearing:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. All in favor; motion carried.

Councilmember McCarthy reported that unnecessary verbiage was removed.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-04, Amending Section 302.055. Councilmember Fleck abstained. Motion carried.

- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-04, Amending Section 302.055.*

J. Second Reading of Ordinance 2022-02-05, Repealing and Replacing Section 304

a. Public Hearing:

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

Councilmember McCarthy reported that repealing and replacing Section 304 provided more clarity for applicants to easily understand city code with respect to variances.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to approve Ordinance 2022-02-05, Repealing and Replacing Section 304. Councilmember Fleck abstained. All in favor; motion carried.

- c. Approve Resolution 2022-04, Summary Publication:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Resolution 2022-04, Summary Publication. Councilmember Fleck abstained. All in favor; motion carried.

K. Second Reading of Ordinance 2022-02-06, Adding Section 310

a. Public Hearing:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

Councilmember McCarthy reported that the old administrative appeals section was removed and placed into a separate section.

There were no comments for the public hearing.

b. Council Deliberation and Approval:

On a motion made by Councilmember McCarthy, seconded by Councilmember Foster, it was resolved to approve Ordinance 2022-02-06, Adding Section 310. All in favor; motion carried.

- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-06, Adding Section 310.*

L. Second Reading of Ordinance 2022-02-07, Adding Irrigation Standards

a. Public Hearing:

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft, it was resolved to close the public hearing. Councilmember Fleck abstained. All in favor; motion carried.

There were no comments for the public hearing.

- b. Council Deliberation:** Mayor Wingfield reported that the addition of irrigation standards was required to ensure the city's water system remains safe, and that the burden remains on any landowner with an irrigation system to properly provide a backflow valve to prevent contamination of city water.
- c. Order Publication:** *ACTION – Andy Gonyou will order the publication of Ordinance 2022-02-07, Adding Irrigation Standards.*

M. COVID-19 Protocols

a. Council Deliberation:

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to return to in-house meetings and to rescind the mask mandate following the adjournment of the Council meeting on March 8, 2022. Councilmember Fleck abstained. All in favor; motion carried.

The Council discussed resuming with in-person meetings at City Hall based on the current status of the COVID-19 situation. Andy Gonyou expressed his support for in-person meetings.

N. Councilmember Reports

a. Mayor Wingfield

- i) Streetlights:** *ACTION – Mayor Wingfield will confirm that there is no charge for Xcel Energy to replace the bulbs for the streetlights at the east end of Wildwood Park with LED bulbs.*

ACTION – Mayor Wingfield will request that Xcel Energy install a longer arm at the streetlight for better lighting on the road at no charge.

ACTION – Councilmember McCarthy will speak to his neighbors regarding the two private streetlights at the end of his street.

ACTION – Mayor Wingfield will request that the city workers trim the tree on Owl Street that is currently obstructing the streetlight as reported by Councilmember Foster.

Mayor Wingfield noted that street lighting should be uniform. The Council authorized Mayor Wingfield to arrange for the streetlight bulbs in question to be changed.

- ii) **Dog Licenses:** *ACTION – Andy Gonyou will amend the fee schedule to reflect that dog license are valid for three years and will present it to the Council at the next Council meeting.*

Mayor Wingfield noted that the rabies vaccine is valid for three years, which does not coincide with the city's dog license of two years. The Council agreed it would be an administrative burden not to have the license coincide with the vaccine.

Mayor Wingfield reported that part of the fee from dog licenses is allocated to dog patrolling at a cost of \$80 per month.

- iii) **Data Practices Requests:** *ACTION – Andy Gonyou will draft a data practices request policy to be included on the consent agenda for the next Council meeting.*

Mayor Wingfield suggested that staff inform the Council when a data practice request is received. This will help determine how much staff time is allocated to data practices requests and how often the requests are received.

- iv) **Snow Plowing Services:** *ACTION – Mayor Wingfield will inform the snow plowing contractor that the clean-up work on March 9, 2022, is not required.*

Mayor Wingfield reported that the snowfall to date is 20.8 inches and expenses on snow plowing to date is \$17,000. The budget for snow plowing is \$22,000. The city has not been billed for the most recent heavy snowfall. The Council agreed that additional clean-up is not required given the warmer weather.

v) **T.A. Schifsky & Sons Bid:**

On a motion made by Mayor Wingfield, seconded by Councilmember Woolstencroft, it was resolved to approve the bid provided by T.A Schifsky & Sons for crack filling, patching, and watermain breaks, to be completed in May 2022. All in favor; motion carried.

ACTION – Mayor Wingfield will confirm that street sweeping can be completed in tandem with the work by T.A. Schifsky & Sons.

Mayor Wingfield noted a potential surcharge based on current oil prices.

vi) **Ring Camera for City Hall:** The Council agreed to install a Ring camera at City Hall.

Mayor Wingfield reported that the camera would monitor the front of City Hall, the garage across the street, and the bell tower at a monthly cost of \$3.

vii) **Fence Tower Announcement:** Mayor Wingfield reported that the fence post will be erected at the water tower receiver in a few weeks.

viii) **Impervious Surface Code Adopted by the City of Mahtomedi:** *ACTION – Mayor Wingfield will obtain the ordinance from Mahtomedi's city attorney and will present it to the Council, the Planning Commission, and the City Attorney for review.*

b. **Councilmember McCarthy**

i) **Sign Ordinance:**

On a motion made by Councilmember McCarthy, seconded by Councilmember Fleck, it was resolved to suspend the enforcement of Section 601 effective immediately. All in favor; motion carried.

ACTION – Andy Gonyou will include the repealing of the current sign ordinance for public hearing on the agenda for the next Council meeting.

Councilmember McCarthy presented a proposal to repeal the city's current sign ordinance. He noted constitutional concerns along with concerns that the current ordinance allows commercial signage with no time limit compared to non-commercial signage. He is working on a content neutral, size-based, revised ordinance and will present it at the next Council meeting.

H. Alan Kantrud advised city staff not to enforce the current sign ordinance, no criminal citations be issued pursuant to the sign ordinance, and no complaints regarding the sign ordinance be entertained pending the formal repeal of the ordinance at the next Council meeting. H. Alan Kantrud confirmed that a second reading can be waived as there is no state law requiring two readings.

- ii) **Administrative Complaint Procedure:** Councilmember McCarthy reported a misinterpretation of the city's ordinance by the public and the media. A revision is pending.
- ii) **Hall's Marsh Update:** Councilmember McCarthy reported that the Priebe Lake Inlet structure was completed; however, the dam eroded overnight and resulted in running water from the pipe into Hall's Marsh. A meeting with the Rice Creek Watershed District (RCWD) was held regarding the breach in which Councilmember McCarthy reiterated that the RCWD requires permission from Birchwood Village to draw down Priebe Lake.

A RCWD workshop was held on March 7, 2022, where staff were directed to develop a comprehensive plan and will be working with Birchwood Village. Councilmember McCarthy confirmed that a letter was sent to the RCWD, the City of White Bear Lake, and the City of Mahtomedi as previously discussed.

9. **NEXT MEETING**

The next Council meeting will be held at a date and time to be determined.

10. **ADJOURNMENT**

On a motion made by Councilmember McCarthy, seconded by Councilmember Woolstencroft and carried unanimously, it was agreed that there was no further business of the Council to transact; the meeting was closed at 10:39 p.m. by Mayor Wingfield.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the members of the Birchwood Village City Council. This document shall not be considered to be a verbatim copy of every word spoken at the meeting.


 Mayor Mary Wingfield

04/12/2022
 Date


 City Administrator Andy Gonyou

04/12/2022
 Date



To: Birchwood Planning Commission
From: Ryan Hankins
Re: New Variance Application Form

The following variance application form hews more closely to our variance requirements. The City Attorney has reviewed it. Since this is a template for the Planning Commission, I would like to get your feedback as well, before making it official!

If you have variance

Please let me know of any suggestions.



**CITY OF BIRCHWOOD VILLAGE
VARIANCE APPLICATION**

**207 Birchwood Ave., Birchwood, MN 55110
651-426-3403 • info@cityofbirchwood.com**

FOR OFFICIAL USE ONLY
(per Minn. Stat. 15.99)

Application Received Date: _____

Amount Paid: \$ _____

Date of Payment: _____

Payment Type:

- Cash
- Check (Number: _____)
- Credit Card

Application Complete:

Yes

No - Other

Deficiency: _____

Date of Determination: _____

Date Notice of Deficiency Sent: _____

Application Withdrawn by Applicant
Date: _____

- Variance Deadline Extended, because:
- Applicant requested extension.
- City staff require additional time to evaluate the application.
- The state or another agency must review the application.
- The application was received too late for city staff to process and place on the agenda of the next Planning Commission meeting.

Date Variance Extension Letter Sent: _____

Length of Extension: _____ days

*Completed applications for variances submitted on or before the **first of each month** will generally be considered by the Planning Commission at its next meeting on the fourth Thursday of that month. Applications submitted after the first of the month will generally be considered the following month.*

Upon recommendation of the Planning Commission, the City Council will consider and decide the variance application at the City Council's next meeting.

A. Applicant's Name:

Telephone:

Home:

Work/Cell:

B. Address (Street, City, State, ZIP):

C. Property Owner's Name (If different from above):

Telephone

Home: _

Work/Cell:

D. Location of Project:

E. Legal Description:

F. Description of Proposed Project:

G. Specify each section of the City Code for which a variance is sought: _____

H. Explain how you wish to vary from the applicable provisions of the ordinance:

I. Please attach a site plan or accurate survey as may be required by ordinance, a Plot plan drawn to scale showing existing and proposed new and changed structures on the lot, and existing structures on adjacent lots.

J. Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance?

Yes

No

Why or why not?

2. In your opinion, is the variance consistent with the comprehensive plan?

Yes

No

Why or why not?

3. In your opinion, does the proposal put property to use in a reasonable manner?

- Yes No

Why or why not?

4. In your opinion, are there circumstances unique to the property?

- Yes No

Why or why not?

5. In your opinion, will the variance maintain the essential character of the locality?

- Yes No

Why or why not?

K. Are other governmental permits required for the project, including requirements of the Rice Creek Watershed District? Please attach copies of permits, or evidence they are unnecessary.

- Yes No

Which permits are required?

L. After the proposed project, will the impervious surface of the lot exceed 25 percent?

- Yes No

If so, include the information in the following table.

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot			
2. Maximum Impervious Surface			
3. Roof Surface			
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface			
7. Total of Items 3-6			
8. Impervious Surface Infiltrated			
9. Item 8 subtracted from Item 7			
10. Percent Impervious Surface			

The Planning Commission and City Council must make affirmative findings on each of the five criteria in question J in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria have been satisfied.

The City and its representatives accept no responsibility for errors and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.

The applicant declares that they are familiar with application fees and other associated costs and with the procedural requirements of the City Code and other applicable ordinances, and that, with the exception of the City Code listed in question G, the proposed project conforms to the City Code, that the information provided in and enclosed herewith is complete and that all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.

Applicant's Signature: _____

Date: _____

Fee Owner's Signature: _____

Date: _____

Planning Commission Findings of Fact

Does the project have practical difficulties not created by the owner?

- Yes
- No

1. What is the practical difficulty?

- The parcel is too narrow.
- The parcel is too small.
- The parcel is elevated too little above the OHWL.
- The front lot line is too short.
- The property has an unusual slope or topography.
- Some other practical difficulty exists (state the difficulty).
- The primary practical difficulty is that the cost of conformance is too high.
- The primary purpose is to increase the value of the land.

2. Was the practical difficulty created by the owner or the design solution?

- Yes
- No

3. Is there a reasonable use for the property without the variance? Why or why not?

- A dwelling of reasonable size can be designed in some other way.
- No reasonable use for the property exists.
- Some other reasonable use for the property exists (state the use).

4. Are the circumstances that prevent reasonable use unique to the property?

- There are extraordinary physical surroundings, shape or topographical conditions of the specific parcel, that go beyond mere inconvenience.
- The circumstances generally do not apply to other similar properties.

5. If the variance is granted, will it alter the essential character of the locality?

- The proposed variance impairs an adequate supply of light or air to adjacent property.
- The variance allows sufficient access to structures within the confines of the lot.
- The proposed variance increases street congestion.
- The variance alters the essential character of the locality in some other way. How?

6. Is the variance in harmony with the purposes and intent of the ordinance?

1. What is the intent of the ordinance?

- Yes
- No

2. Does the variance maintain the intent?

- Yes
- No

3. Does the applicant's design compensate for the impact of the non-conformity on the intent of the ordinance? How?

- Yes
- No

4. Does the variance increase the risk of fire, compared to conformity?

- Yes
- No

7. Is the variance consistent with the comprehensive plan? Why or why not?

- Maintain the existing character of the community through preservation of the single-family residential land use and neighborhood patterns
- Preserve, protect and educate the community about the value and preservation of the City's natural areas including woodlands, wetlands, and lakes.
- Work to identify opportunities to reduce energy usage by 10% per year.
- Continue to support efforts to maintain a balanced housing supply and focus on opportunities to provide housing for people at all income levels.
- Embrace and welcome diversity in all of its neighborhoods and support such diversity in both owner-occupied and renter-occupied housing
- Encourage and promote lifecycle housing within the existing housing stock, and in any new or redeveloping areas of the community.

- Maintain and enhance the existing housing stock that supports diversity in both owner-occupied and renter-occupied housing to promote the long-term sustainability of the community.
- Protect the existing single-family detached housing density and neighborhood quality.

Yes

No

8. Will the proposed variance endanger public safety or diminish property values nearby?

Yes

No

9. Does the planning commission recommend any conditions be attached to the grant of the variance?

Yes

No

Link from Justin McCarthy to review for Ord Discussion:

[Restore Your Shore \(RYS\) | Minnesota DNR \(state.mn.us\)](#)

ORDINANCE 2023 – XX-XX

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE REPEALING AND REPLACING 302.050 IMPERVIOUS SURFACES
IN THE CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that section 302.050 IMPERVIOUS SURFACE of the Municipal Code of the City of Birchwood Village is hereby repealed and replaced with the following:

302.050 Impervious Surfaces and Lot Coverage

1. **Intent.** High levels of impervious surface coverage on lots create excessive stormwater runoff, destroys animal habitat and reduces the natural character of the land. For these reasons, the Minnesota Department of Natural Resources (DNR) requires Cities with shoreland to regulate impervious surface. Stormwater runoff from properties pollutes public waters, erodes land, destroys natural vegetation and can create nuisances to other properties. In addition, the City of Birchwood Village has limited stormwater management facilities throughout the City. As a result, to reduce the unwanted harmful effects of stormwater, it is the policy of the City of Birchwood Village that each property within the City manage its own stormwater to limit runoff into streets, waterways, and neighboring properties. As one way of limiting the stormwater runoff from each property, the City seeks to reduce the impervious surface of properties in the City. Minimizing impervious surface causes more stormwater to be absorbed into the soil and less to flow off the property. This reduces erosion, pollution of public waters and damage to other properties within the City from stormwater.
2. **Definitions.** The following definitions are used in this section:
 - a. **Impervious Surface** is defined as a ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface. Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Impervious surfaces may also result from compacting unpaved or ungraveled driveways and parking areas. For purposes of this section, pervious pavement systems are not considered

impervious surfaces. Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs is not considered impervious surfaces. Further, any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be calculated as the area of the surface, times the pervious fraction of the surface.

- b. **Impervious Surface Coverage** is defined as the percentage of a lot covered by impervious surfaces.
 - c. **Retention Volume** is defined as the volume of 1.1 inches of stormwater from the post-construction impervious surfaces. For example, if the lot is 15,000 square feet and the post construction impervious surface coverage is 35%, the Retention Volume would be 30% of 15,000 or 4,500 sq feet * 1.1 inches or 412.5 cubic feet of water that would need to be infiltrated within 48 hours or less.
 - d. **Stormwater management structures and best management practices** include any surface water management system or practice that is designed, constructed, or implemented to control stormwater by collecting, conveying, storing, absorbing, inhibiting, treating, using, infiltrating, or reusing water. Example stormwater management structures include rain gardens, infiltration basins, and bioswales.
3. **Impervious Surface Limitation.** Impervious Surface Coverage shall not exceed twenty-five (25) percent of the lot area unless the provisions of either 302.050(4) or 302.050(5) are met.
 4. **Impervious Surface Coverage Permit.** Projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not exceed thirty (30) percent shall be permitted if the applicant complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner. Applicants who are dissatisfied with the decision of the City Planner may seek a review of the decision in accordance with the requirements and procedures of section 310.
 - a. Applicants unable or unwilling to comply with 302.050(6) to the satisfaction of the City Planner are not entitled to a permit under this section, but instead may seek a variance according to subsection 302.050(5).
 5. **Variance.** Projects that result in impervious surface coverage that exceeds thirty (30) percent, or those projects that result in impervious surface coverage that exceeds twenty-five (25) percent but does not meet the requirements of 302.050(6) may be permitted if the applicant obtains a variance. To apply for a variance, the applicant shall comply with, and demonstrate compliance with, the requirements of subsection 302.050(6), or shall explain how and why the Applicant is unable or unwilling to comply with subsection 302.050(6). In addition to the requirements of subsection 302.050(6), the applicant must follow the procedures and meet the standards defined in Section 304 for obtaining a variance, including demonstrating to the satisfaction of the City Council that a practical difficulty exists.
 - a. **Applicant unable to meet the requirements of 302.050(6).** Any applicant unable or unwilling to meet the requirements of 302.050(6) may still apply for a

variance and have the variance application heard according to section 304. In this case, Applicant shall enumerate which requirements of section 302.050(6) the Applicant does not comply with and explain why the Applicant does not comply with each requirement. Additionally, the City Planner shall note in the City Planner's report that the Applicant is unable or unwilling to comply with 302.050(6) and shall enumerate the reasons (if known) that the applicant is unable or unwilling to comply with 302.050(6). Applicants are strongly encouraged to comply with 302.050(6).

6. **Requirements.** The following are requirements for applying for a variance from the impervious surface coverage requirements, or for obtaining a permit under 302.050(4).
 - a. **Stormwater Management Plan.** The applicant shall provide a stormwater management plan that:
 - i. Documents the proposed development including all impervious surfaces and direction of runoff.
 - ii. Includes calculations showing the Retention Volume.
 - iii. Documents proposed structures and/or best management practices that infiltrate the Retention Volume within a forty-eight (48) hour period or less and meet the requirements of 302.050(7).
 - iv. For variances, provides results from application of the most recent version of the Minnesota MIDS (Minimum Impact Design Standards) Calculator (available on the Minnesota Pollution Control Agency's website), the U.S. Environmental Protection Agency's National Stormwater Calculator, HydroCAD, or another similar stormwater design calculator approved by the City Planner that show that the proposed stormwater management practices meet the required infiltration standard.
 - v. For variances, documents that the rate and volume of stormwater runoff from the property from a hundred year storm is not increased after the proposed project has been completed.
 - b. **Implementation and Maintenance Agreement.** The applicant shall include an implementation and maintenance agreement signed by the property owner or owners for the approved stormwater management practices and structures and for any riparian buffer required under section 6(c). The agreement must include the requirements of 302.050(8).
 - c. **Riparian Lots.**
 - i. **Riparian Buffer Required.** Lots abutting a shoreline of White Bear Lake must install and maintain a riparian buffer zone within the Shore Impact Zone if one does not already exist.
 - a. The buffer shall consist of trees, shrubs, or low ground cover of native plants and understory consistent with natural cover shorelines in accordance with the Minnesota DNR's "Restore Your Shore" guidance.
 - b. The buffer shall cover eight (8) percent of the shore impact zone for every one (1) percent of impervious surface exceeding 25%.

- c. Applicants must provide a plan showing the proposed or existing location and size of the Riparian Buffer and the plantings required under (i)(a).
 - d. **Requirement to Record.** The variance or permit shall not be valid unless and until the applicant properly records the variance, permit, and the maintenance agreement with the property records at the Washington County Recorder's Office and submits a copy of the recording to the City for verification.
7. **Requirements of Structures and/or Best Management Practices.** Structures and best management practices used to obtain a permit or variance shall be designed to infiltrate the Retention Volume within forty-eight hours or less. Said structures and best management practices must meet the following requirements:
- a. Comply, where applicable, with the Minnesota Pollution Control Agency's Minnesota Stormwater Manual, National Pollutant Discharge Elimination System (NPDES) stormwater standards, Interlocking Concrete Pavement Institute Manual, or with standards otherwise required by the City Planner.
 - b. Provide a means to visually verify that all structures and best management practices are in working order as approved by the City Planner.
 - c. The base of installed infiltration structures or practices must be a minimum of three feet above the established ground water table or the OHWL of White Bear Lake, whichever is higher.
 - d. The site design must comply with section 302.055 and must minimize changes in ground cover, loss of natural vegetation, and grade change as much as possible.
8. **Maintenance Agreements**
- a. **Requirements of Maintenance and Implementation Agreement for Stormwater Management Structures.** Maintenance agreements required by section 302.050 must contain the following provisions, be signed by the property owner, be recorded as provided for in 302.050(6)(c) and be approved by the City.
 - i. An agreement to implement all stormwater management best practices and construct the stormwater management structures as identified in the stormwater management plan.
 - ii. An identification of the performance standards of the stormwater management structures or best management practices. The applicant will identify the proposed testing protocol and standards to determine how the performance of the structures or best management practices are to be judged.
 - iii. An identification of the type of maintenance and the maintenance intervals.
 - iv. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the stormwater management structures or stormwater best management practices in a condition consistent with the performance standards for which they were originally designed.
 - v. An identification of the Responsible Party who is responsible for maintenance of the stormwater management best practices and structures. The applicant shall notify the City within 30 days of any changes to the responsible party.
 - vi. An agreement that this agreement runs with the land and shall bind future successors in title.

- vii. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the stormwater management structures and best management practices.
- viii. An agreement that should any stormwater management structures or best management practices not be implemented, or fail to operate in a condition consistent with the performance standards for which they were originally designed or pose a threat to public safety, public health, or property as determined by the City Planner, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The applicant agrees to pay the costs of any such work performed by the City.
- ix. An agreement to provide to the City, every five years, documentation that the maintenance required by this agreement was completed and to pay the required fee to the City.

b. Requirements for Maintenance and Implementation Agreement for Riparian Buffer

- i. An agreement to implement and preserve the riparian buffer in perpetuity or until the impervious surface coverage of the lot is reduced to 25% or less.
- ii. An identification of the type of maintenance and the maintenance intervals to preserve the riparian buffer.
- iii. An agreement to perform the identified maintenance and any other repairs, replacement, or other necessary work to maintain the riparian buffer in a condition consistent with the original design.
- iv. An identification of the Responsible Party who is responsible for maintenance of the riparian buffer. The applicant shall notify the City within 30 days of any changes to the responsible party.
- v. An agreement that this agreement runs with the land and shall bind future successors in title.
- vi. An agreement to allow the City and its representatives the right-of-entry on the property for the purposes of inspecting the riparian buffer.
- vii. An agreement that should the riparian buffer not be implemented, change character in a way that deviates substantially from the purpose of the original design, or pose a threat to public safety, public health, or property as determined by the City, the City may, after reasonable notice to the responsible party, perform any work necessary in order to implement, or bring the structures into a condition consistent with the original design or to eliminate any threat to public safety, public health, or property. The applicant agrees to pay the costs of any such work performed by the City.

9. **Requirement to implement.** Upon receiving the variance and/or permit under this section, the property owner must construct all proposed structures; all proposed best management practices in accordance with the stormwater management plan; and create all proposed riparian buffers. The proposed structures, implemented best management practices, and riparian buffers shall be constructed as approved by the City Council or

City Planner and with any modifications directed by the City Council in granting any necessary variance. Failure to construct all proposed structures, riparian buffers, or to implement all best management practices will render the variance or permit invalid and any improvements constructed pursuant to said variance or permit will be illegal. The City may demolish and remove such improvements at the expense of the property owner. In the alternative, the City may construct the proposed improvements, implement the best management practices, or implement the riparian buffer, and charge the property owner costs for doing so. Such costs may be assessed to the property taxes of the property. This requirement shall run with the property and shall be binding upon all future property owners.

10. **Requirement to perform maintenance.** The property owner is required to perform, or cause to be performed all maintenance identified in the maintenance agreement, as well as any other additional work necessary to keep the stormwater management structures, best management practices, or riparian buffer in a condition consistent with the performance standards for which they were originally designed, including replacement of the structures, best management practices, or riparian buffer if necessary. The City may inspect the stormwater management structures, and/or records of best practices to ensure that the required maintenance is performed, and the City may inspect the riparian buffer to ensure that its condition is consistent with the original design. These requirements shall run with the property and shall be binding on upon all future property owners.
11. **City May Perform Maintenance or Replacement.** Should any stormwater management structure or best management practice fail to operate in a condition consistent with the performance standards for which it was originally designed or pose a threat to public safety, public health, or property as determined by the City, or should the riparian buffer deteriorate into a condition inconsistent with the original design, the City may, after reasonable notice to the responsible party, perform any work necessary in order to bring the riparian buffer, stormwater management structure, or best management practice into a condition consistent with the performance standards for which they were originally designed or to eliminate any threat to public safety, public health, or property. The costs of any such work may be assessed to the property owner and may be certified to Washington County for assessment against the property taxes of the property.
12. **Reasonable Notice.** For purposes of this section, reasonable notice normally means 45 days. If, however, the City Planner provides a written opinion that the condition of the Storm Water Management Structure or Riparian Buffer is a danger to public safety, public health, or public or private property, and that 45 days' notice would not be in the best interests of public safety; public health; or the protection of public or private property; the City Administrator shall reduce or eliminate this notice to the extent necessary to protect the public safety; public health; or public or private property.
13. **Certification Required, Maintenance Fee.** Every five years, any property owner obtaining either a permit or a variance shall document that the conditions in the maintenance agreement have been met and shall pay a maintenance fee of an amount set by the Council in order to cover the administrative burden on the City in ensuring

compliance with this section. This section applies to any maintenance agreement described in section 302.050.

14. **Remedy for Violations.** In addition to the remedies described above, such as in sections 302.050(9) and 302.050(11), violation of any portion this section, including the maintenance agreement provisions for both riparian buffers or stormwater management practices or structures, are also governed by Section 619.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this ___ day of _____ 2023.

ORDINANCE 2023 – XX-XX

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING 302.020 LAND USE IN THE CITY CODE**

The City Council of the City of Birchwood Village hereby ordains that:

Section 300.020 LAND USE of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

300.020. DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:

1. Accessory Structure. A non-habitable one-story detached accessory structures (e.g., tool sheds, storage sheds) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the ground to the top of the top plate.

“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”

2. Basement. A story partly underground but having less than 1/2 of its clear height above finished grade.

3. Best Management Practices (BMPs). Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

Examples of BMPs can be found in the current versions of:

a. The Minnesota Pollution Control Agency publications, “Protecting Water Quality in Urban Areas”, and “Storm-Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm-Water and Snow-Melt Runoff on Wetlands”

b. The Metropolitan Council “Urban Small Sites BMP Manual” (available on disk or at: www.metrocouncil.org/environment/watershed/BMP/manual.htm (address current January 2005)),

c. The United States Environmental Protection Agency “Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices” (as a reference for BMPs)

d. The Minnesota Department of Transportation “Erosion Control Design Manual”.

4. Board. The Board of Appeals established in Section 304.010.
5. Boathouse. A structure designed and used solely for the storage of boats or boating equipment.
6. Building. Any structure which is built for the support, shelter or enclosures of persons, animals, chattels or movable property of any kind, which is permanently affixed to the land.
7. Building Line. A line parallel to the front lot line or the ordinary high water level at the required setback beyond which a structure may not extend.
8. Business. Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or which occupies time, attention, labor and materials or where services are offered for compensation.
9. Clearcutting. Complete removal of trees or shrubs or woody ground cover in a contiguous patch, strip, row, or block.
10. Conventional Energy System. Any energy system, including supply elements, furnaces, burners, tanks, boilers, related controls, and energy-distribution components, which uses any source(s) of energy other than solar energy. These sources include, but are not limited to gas, oil and electric heating but exclude windmills.
11. Deck. A horizontal, unenclosed platform with or without attached railings, seats, trellises or other features, either attached or functionally related to a principal use.
12. Driveway. See Parking Space.
13. Dwelling. Any building or structure, or part thereof, which is used or intended to be used for living or sleeping.
14. Dwelling Unit. A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping and cooking.
15. Easement. An interest in land owned by another that permits the owner of such interest the right of limited use or enjoyment of the land in which the interest exists.
16. Easement, Lake. Any tract of land running to and abutting the shoreline of White Bear Lake which is owned by the City, subject to the right of City residents to use for access to White Bear Lake.
17. Family. A family is:
 - a. An individual or 2 or more persons related by blood, marriage or adoption, living together or
 - b. A group of not more than 5 persons who need not be related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit.
18. Fence. A permanent partition, structure, wall or gate erected as a dividing

marker or enclosure.

“AMENDED BY ORDINANCE 1997-3; AUGUST 12, 1997.”

19. Final Plat. The final map, drawing or chart on which the subdivider's plan or subdivision is presented to the City Council for approval, and which, if approved, will be submitted to the County Recorder or Registrar of Deeds for recording.

20. Garage. A building or portion of a building used by the tenants of the building on the premises which is designed primarily for the storage of motor vehicles. A detached garage is an accessory structure.

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”

21. Ground floor area. The ground floor area of any dwelling shall be the sum of the gross horizontal areas of the first floor of living area for each dwelling unit. However, the ground floor area shall not include the basement.

22. Home Occupation. A lawful occupation carried on solely or primarily within a dwelling unit. The occupation is clearly incidental and secondary to the use of the building for dwelling purposes, and does not change the character of the dwelling or accessory structure.

23. Impervious Surface. ~~A ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface.~~

~~Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, swimming pools, sidewalks, patios, rooftops, and covered decks. Examples of impervious surfaces resulting from compacting are unpaved or ungraveled driveways and parking areas.~~

~~EXCEPTIONS 1: Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs, shall not be considered impervious surfaces.~~

~~EXCEPTION 2: Any surface approved by the City Engineer using applicable industry standards to be given credit as a “pervious surface” shall be calculated as the area of the surface, times the pervious fraction of the surface.~~

Impervious surface is defined in section 302.050.

“AMENDED BY ORDINANCE 2018-08-01; OCTOBER 9, 2018.”

24. Land Disturbance Activity (LDA). Any land change that may result in soil erosion from water or wind and the movement of sediments including, but not limited to, grading, excavating, and filling of land, and removal of vegetation.

EXCEPTION: Gardening or the planting of trees or shrubs shall not be considered to be a land disturbance activity.

25. Lodging Room. A room rented as sleeping and living quarters without cooking facilities either with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room.

26. Lot. A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease or separation

27. Lot of Record. A parcel of land, whether subdivided or otherwise legally described, as of January 1, 1975, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one principal building or principal use, together with any accessory buildings and such open spaces as required by Chapters 301 through 399, and having its principal frontage upon a street or the lake.

28. Lot, Corner. A lot situated at the junction of and abutting on 2 or more intersecting streets.

29. Lot Line. A property boundary line of any lot.

30. Lot Line, Front. That lot boundary abutting a public street. The owner of a lot abutting two streets may select either street as the front lot line.

31. Lot Width. The shortest distance between lot lines measured at the midpoint of the building line

32. Master Plan. Is a comprehensive plan and includes all plans of the City for land use, transportation facilities and community.

33. Nominal Structure. A non-habitable one-story detached accessory structure (e.g., tool sheds, storage sheds, playhouses, dog house) provided the floor area does not exceed 25 square feet and a maximum wall height of 10 feet measured from the ground to the top of the top plate.

“AMENDED BY ORDINANCE 2020-02-01; APRIL 14, 2020.”

34. Non-Conforming Use. **Non-Conforming Pre-Existing Structure or Use:** Any building or structure which was legally existing on January 1, 1975, or authorized by variance thereafter, which would not conform to the applicable conditions if the building or structure were to be erected under this Code. **Non-Conforming Illegal Structure, Use, or Lot:** A lot, building, structure, premises, or use illegally established when it was initiated, created, or constructed, which did not conform with the applicable conditions or provisions of the City Code for the area in which the structure or use is located.

“AMENDED BY ORDINANCE 2018-05-02; OCTOBER 9, 2018.”

35. Official Map. The map established by the City Council showing the streets, highways and parks theretofore laid out, adopted and established by law and any amendments thereto adopted by the City Council and the subsequent filing

of such approved plats.

36. Open Space. Land with no structures upon it.

37. Open Space Site. Any park, beach, open area, special use area, lake easement or other area owned, improved, maintained, operated or otherwise controlled by the City of Birchwood Village for recreational and natural resource preservation purposes.

38. Ordinary High Water Level. An elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

39. Owner. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having a proprietary interest in land, including a sufficient proprietary interest in land sought to be subdivided and/or to commence and maintain proceedings to subdivide the same under this ordinance.

40. Parking Space or Driveway. A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one standard automobile or which provides ingress or egress to the principal or accessory structure of a suitable width for an automobile.

41. Preliminary Plan. The preliminary map, drawing, or chart indicating the proposed layout of the subdivision to be submitted to the City Council for its consideration.

42. Public Utility Use. Transmission facilities of electric power, gas, water, telephone and cable TV.

43. Public Waters. "Public waters" means any waters as defined in Minnesota Statutes, section 105.37, subdivision 14 and 15. In Birchwood, these waters and their shoreland classifications are:

DNR ID #82-167, White Bear Lake, General Development

DNR ID #82-134, Lost Lake, Recreational Development

DNR ID #82-480W, Hall's Marsh, General Development

44. Roadway. The paved portion of the street.

45. Setback. The minimum horizontal distance between a structure and an ordinary high water level, street, road or highway right-of-way or property line.

46. Shoreland. Land located within 1,000 feet of the ordinary high water level of a lake, pond, or wetland.

47. Significant Tree. A healthy coniferous tree six (6) feet or more in height or a healthy deciduous tree eight (8) inches or more in diameter.

48. Solar Energy. Radiant energy (direct, diffuse, or reflected) received from the sun.

49. Solar Energy System. A set of devices whose primary purpose is to collect solar energy and convert or store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy.

50. Storage Shed. A storage shed is a detached accessory structure used to shelter household items as well as tools and machinery used for yard maintenance. A trailer, truck box or other vehicle with or without its wheels or in operable or inoperable condition shall not be allowed as a storage shed.

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000.”

51. Storm Water. Precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.

52. Street. The land between the road right-of-way lines. "Street" is also a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or however otherwise designated. The City Council shall determine when a given street is an "arterial street", "collector street", "cul-de-sac", "local

a. "Arterial Street" is a fast or heavy traffic street of considerable continuity and used primarily as a traffic artery for intercommunication among large areas.

b. "Collector Street" is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

c. "Cul-de-sac" or "Dead-end Street" is a minor street with only one outlet.

d. "Local Street" is a street used primarily for access to abutting properties.

e. "Private Street" is a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but is owned by one or more private parties.

f. "Width, Street" is the shortest distance between the lines delineating the right-of-way of a street.

53. Structure. Anything which is built, constructed or erected: an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character including, but not limited to decks, buildings, cabins, manufactured homes, factories, sheds, screen porches, gazebos, platforms, shelters, pergolas, pools, whirlpools, detached garages, car ports, lean-tos, greenhouses, ice fishing houses, towers, and other similar items, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, poles and other supporting facilities.

“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”

54. Structural Alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or foundation.

55. Subdivider. Is an individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under this Code to effect a subdivision of land hereunder for himself or for another.

56. Subdivision. Is the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land; provided that a division of land which may be ordered or approved by a court or effected by testamentary or intestate provisions, or a division of land for agricultural purposes into lots or parcels of ten acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

57. Variance. The same as that term is defined or described in Minnesota Statutes, Chapter 462. (Procedures and criteria for obtaining variances are provided in The Zoning Code, Chapter 304.)

58. Walkway. An unenclosed area used primarily for foot traffic. A walkway may be paved or covered by a platform which is constructed at grade level and which is at no point more than 1 foot above grade or 4 feet wide.

59. Wetland. An area where water stands near, at, or above the solid surface during a significant portion of most years, saturating the solid surface and supporting a predominantly aquatic form of vegetation. "Wetland" is further defined as a surface water feature which can be classified as a Type 2, 3, 4, 5, 6, 7, or 8 wetland per definitions in the United States Fish and Wildlife Service Circular No. 39 (1971 edition). White Bear Lake is not included as a "wetland" within this definition.

“AMENDED BY ORDINANCE 1995-2; MAY 9, 1995.”

60. Yard, Front. That open space which extends along at right angles to the front line to a depth or width specified in the set-back regulations.

61. Yard, Rear. That open space on the same lot with the principal building located between the rear line of the building and the rear lot line or the ordinary high water level of a lake, pond or wetland, and extending for the full width of the lot.

62. Yard, Side. The open space extending along the side lot between front and rear yards.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this ___ day of _____ 2023.

ORDINANCE 2023 – XX-XX

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE FEE SCHEDULE**

The City Council of the City of Birchwood Village hereby ordains that the fee schedule of the Municipal Code of the City of Birchwood Village is hereby amended as follows:

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE FEE SCHEDULE**

The PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS section of the fee schedule of the Municipal Code of the City of Birchwood Village is hereby amended to read:

PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS *subject to additional fees, in that section of the fee schedule. All planning and zoning permits require an additional refundable permit escrow when listed.	Conditional Use Permit (CUP) Application or Amendment *		306.010	\$460.00	
		Refundable Conditional Use Permit or CUP Amendment Escrow for permitting costs incurred by city		\$3,000.00	8/2021
	Interim Use Permit Application *		305.020, 305.040(6)	\$400.00	
		Refundable Interim Use Permit Escrow for permitting costs incurred by city	302.050	\$3,000.00	8/2021
	Street Vacation Application *			\$300.00	12/2023
		Refundable Street Vacation Escrow for permitting costs incurred by city	302.050	\$3,000.00	12/2023
	Variance Application *		304.020	\$600.00	4/2021
		Refundable Variance Escrow for staff review time incurred by city	302.050	\$3,000.00	
	Subdivision: Lot Split Application *		308.121	\$225.00	
		Refundable Lot Split Escrow for permitting costs incurred by City	301.055(2)	\$1,000.00	12/2023

Subdivision: Preliminary Plat Application *	308.040(3)	\$1,000.00	8/2021
Subdivision: Refundable Preliminary Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	8/2021
Subdivision: Final Plat Application *	308.050	\$1,000.00	8/2021
Subdivision: Refundable Final Plat Application Escrow for permitting costs incurred by city	301.055(2)	\$10,000.00	8/2021
Zoning Permit *	307.010	\$50.00	
Refundable Zoning Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	11/2021
Right-of-Way (ROW) Permit Application Fee *	309.061	\$300.00 + \$100.00/hour for plan review after two hours	1/2018
Refundable ROW Permit Escrow for permitting costs incurred by city	301.055(2)	\$3,000.00	11/2021
Right-of-Way Degradation Fee	309.080	Permit holder responsible for actual costs	
Move a building from its present location in Birchwood to any other site, whether or not the new site is within the City. *		\$500.00	12/2023
Refundable building move escrow for permitting costs incurred by city	301.055(2)	\$1,000.00	12/2023
Certificate of occupancy		\$25.00	12/2023
Public Property Access Limited License	607.235	\$50.00	1/2019
<u>Stormwater Management Maintenance Review</u>	<u>302.050(8)</u>	<u>\$200.00</u>	<u>XX/2023</u> <u>3</u>

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this ___ day of _____ 2023.



BIRCHWOOD VILLAGE

Variance Findings Form

EACH OF THE FOLLOWING CRITERIA MUST BE SATISFIED TO APPROVE

#1: Is the request in harmony with the general purposes and intent of the ordinance?

The specific Ordinance states _____
(state ordinance requirement), the purpose of which is to _____

(explain what the ordinance requirement is intended to prevent or protect).

The proposed variance is for: _____

(explain proposal and potential effects).

This variance is/is not in harmony with the purpose and intent of the specific Ordinance because: _____

(explain how the proposal is in harmony with or undermines the purpose of the ordinance).

#2: Would granting the variance be consistent with the comprehensive plan?

The Comprehensive Plan contains the following policies and goals regarding this request: _____

(list applicable policies, goals, and maps, including citations).

Granting the variance is/is not consistent with the comprehensive plan because: _____

(explain how; relate details of the request to specific policies, goals, and maps).

#3: Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?

There are/are no circumstances unique to the property that would prevent compliance with the specific Ordinance because: _____

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other reasonable alternative exists that would comply with the ordinance; explain what makes this property different from other properties to justify why this applicant should be able to deviate from the ordinance when others must comply).

#4: Were the special conditions or circumstances created by the applicant's action or design solution?

The conditions that resulted in the need for the variance **were/were not** created by the applicant **because:**

_____ (if there are special conditions or circumstances, describe whether they were created by some action of the applicant/property owner).

#5: Will granting a variance result in any increase in the amount of water draining from the property?

Granting the variance **will/will not** increase the amount of water that drains from the property **because:**

_____ (if granting the variance will increase the amount of water that drains from the property, explain how and how much it will increase).

#6: Will granting the variance impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City?

Granting the variance **will/will not** impair light and air to adjacent property, or diminish or impair property values in the area, or impair the public health, safety, or welfare of Birchwood residents **because:**

_____ (if granting the variance could be detrimental to neighbors or other Birchwood residents, explain how).

#7: A variance must not be granted *simply because there are no objections or because those who do not object outnumber those who do?*

Has this variance been granted only because of the number of objections to the request: Yes No

Explain: _____

_____ (If you believe that the decision has been determined simply because of the number of supporters or objections, explain how).

#8: Does reasonable use for the property exist under terms of the Zoning Code?

Reasonable use for the property **does/does not** exist under terms of the Zoning Code **because:** _____

_____ (Describe how the Zoning Code does or does not allow for reasonable use of the property. If reasonable use of the property *does* exist under terms of the Zoning Code, the applicant's financial gain or loss shall not be considered in your decision).

What is your decision? (Approve or Deny)

Remember - ALL criteria MUST be satisfied to approve.

If approved, what conditions will you impose? (Findings must support the conditions; explain the impacts of the proposed development and the conditions that address those impacts. Remember that findings must be directly related and proportional to the impacts created by the variance. Set specific timeframes and deadlines, and consider requiring the following to help ensure compliance with the conditions:

- *financial sureties to ensure that the required activities are completed within specified deadlines,*
- *as-built drawings and/or photos as proof of completion within the terms of the conditions, and/or*
- *long-term maintenance and operation agreements for stormwater best management practices and vegetation that must be protected or restored as a condition of approval, along with notices of restrictions recorded against properties to ensure that future property owners are aware of their responsibilities and don't unknowingly "undo" any conditions.)*
