



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
December 28th, 2023
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve November 30 2023 PC Meeting Minutes* (pp. 2-3)

- B. 23-05-VB (23 Birchwood Lane) Variance
 - 1. Public Forum
 - 2. Review Variance Application* (pp. 4-17)
 - 3. Review City Planner Memo* (pp. 18-22)
 - 4. Commission Finding of Fact* (pp. 23-26)
 - 5. Commission Recommendation

ADJOURN

* Denotes items that have supporting documentation

MEETING MINUTES (Draft)

(Joint Birchwood Council Special Meeting and Planning Commission Regular Meeting)

City Hall - 7:19 PM Regular Meeting 10/26/2023

Submitted by Michael Kraemer – secretary

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

COMMISSIONERS ABSENT: none

OTHERS PRESENT: Birchwood Council, Ben Wickstrom – City Planner, Marcus Johnson – BMI – City Engineer, Jack Kramer – City Building Official, Rebecca Kellen – City Administrator,

TO ORDER: Meeting called to order by Chairman Andy Sorenson at 7:19 PM. Council meeting was already in session from 6:45 closed meeting.

1. PUBLIC FORUM

- a. No one present

2. APPROVE AGENDA

- a. Motion by Maiers-Atakpu, 2nd by Sorenson to approve agenda. Vote: Yes – 5, No – 0. Motion to approve agenda passed.

3. REGULAR AGENDA

- a. Item A – Review/Approve Oct 26, 2023 Planning Commission Meeting Minutes

- i. Motion by Evans, 2nd by Maiers-Atakpu, to approve the minutes. Vote: Yes – 5, No – 0, Motion to approve the minutes passed.

- b. Item B – Planning Commission Term Expiration

- i. Terms expiring as of December 2023 include:
 - 1. Michelle Maiers-Atakpu
 - 2. Michael Kraemer
 - 3. Mike McKenzie – replacement for Ryan Hankins term
 - 4. Joe Evans submitted letter of resignation as of December 31,2023.
 - ii. Appointments to Planning Commission will be open city wide. Persons interested in being appointed should submit a letter of interest to City Administrator.

4. Joint Council/Planning Commission Workshop Agenda

- a. The joint workshop reviewed the job description, role, duties, authority, and responsibility of City staff (including the City Planner, City Clerk, City Engineer, City Building Official) and the role of the Planning Commission and City Council as it relates to the following:

- i. *Administration and review of permit applications for completeness, time lines and related issues.*

1. OUTCOME. It is anticipated that newly developed automated software (draft rollout 9/2023], and appointment of designated city administrator, city engineer, city planner and city building official will accomplish needed follow through and closeout.
- ii. *Administration of construction and permit follow up, enforcement, closeout and related issues.*
 1. OUTCOME. It is anticipated that newly developed automated software (draft rollout 9/2023], and appointment of designated city administrator, city engineer, city planner and city building official will accomplish needed follow through, enforcement and closeout.
- iii. *Administration of our variance and CUP application processes.*
 1. OUTCOME. It is anticipated that newly developed automated software (draft rollout 9/2023], and appointment of designated city administrator, city engineer, city planner and city building official will accomplish needed follow through and closeout.
- iv. *Periodic City Code review processes and related issues? (I.e., Do we have a policy for periodic code review and upgrades? Who can propose suggested edits, additions, deletions? What is the venue and protocol for such suggestions?)*
 1. OUTCOME. It is anticipated that appointment of designated city administrator, city engineer, city planner and city building official will accomplish needed review, follow through, and documentation.
- v. *City policy and enforcement protocol (timeliness, completeness) related to meeting packets, agendas, public notifications, supporting document submittals, etc.*
 1. OUTCOME. Appointment of designated city administrator, city engineer, city planner and city building official has already demonstrated process improvements, follow through, and documentation.

5. ADJOURN 8:28 PM

- a. Motion by McKenzie, 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: 11-14-23 Amount Paid: \$ 3460.00
 Payment Type (Circle One): Cash / Check / Money Order / Credit Card
 Check/Money Order # 1443 # 166
 Application Complete? Yes No 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) Joe Becker / Rosewood Construction
 Address 2275 McKnight Rd N #8
 City North St. Paul State MN Zip Code 55109
 Business Phone 651-260-2368 Home Phone _____
- Address of Property Involved if different from above: 23 Birchwood Lane,
Birchwood Village, MN 55110
- Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
Greg & Vic Liengswangwong
- Specific Code Provision from which Variance is requested: Sec. 302
- Describe in narrative form what the Applicant is proposing to do that requires a variance:
Applicant is applying for home owner who would like to have a composite deck constructed that breaches the set back requirements set forth by authorities.

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) deck
- 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:

The current setbacks limit the size of a deck to only 5' on the west side of the house and to only 3' on the north side of the house. 'Practical Difficulties' would consist of not being able to use the deck for normal deck use functions like eating or relaxing at a table or reclining on a chaise.

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:

Considering the deck boards are at a minimum 1/4" apart, rain water will drain properly through proposed deck.

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

This would involve constructing a 5' wide or 3' wide deck which is impractical.

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

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	11,875.5	same	-0-
2. Maximum Impervious Surface (25% of item 1)	2,968.9	same	-0-
3. Roof Surface	2,047.7	same	-0-
4. Sidewalks	1,517.04	same	-0-
5. Driveways	948.58	same	-0-
6. Other Impervious Surface	548.2	same	-0-
7. Total of Items 3-6	5,061.6	same	-0-
8. Percent Impervious Surface	42.6	same	-0-

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.

Birchwood Lot 14 Subdivision Cd 25052
 Birchwood Add

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.**

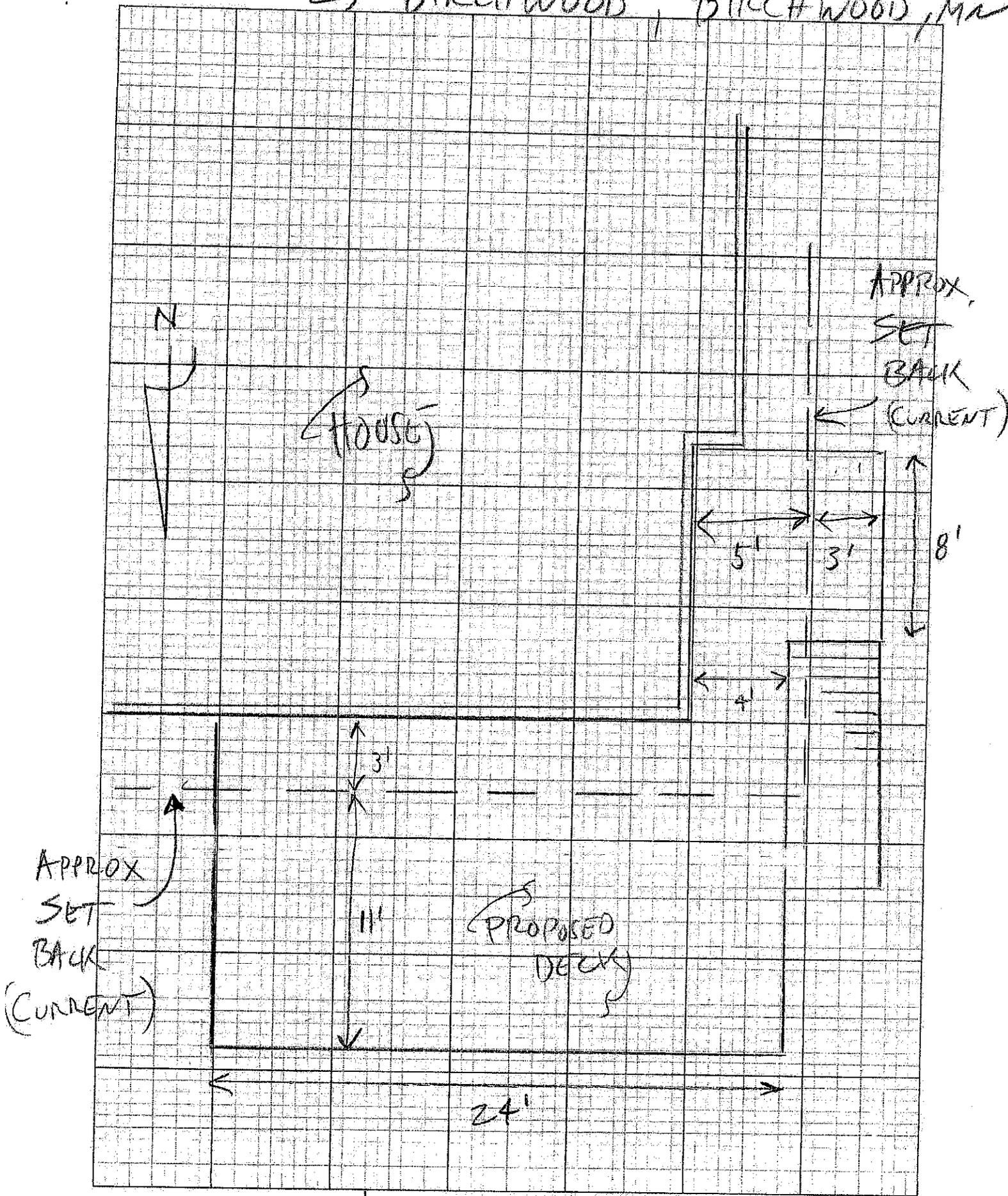
Signature of Applicant:



Date:

11-8-23

23 BIRCHWOOD, BIRCHWOOD, MA

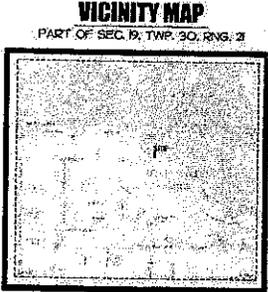
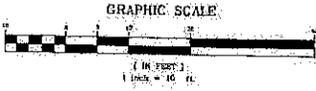


SET BACKS

CERTIFICATE OF SURVEY

-for- GREG LIENGSWANGWONG
-of- 23 BIRCHWOOD LANE

NORTH



WASHINGTON COUNTY, MINNESOTA
(NO SCALE)

LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES GAS METER
- ⊕ DENOTES POWER POLE
- DENOTES EXISTING SPOT ELEVATION
- ⊖ DENOTES ELECTRIC METER
- ▨ DENOTES STONE RETAINING WALL
- ▩ DENOTES BLOCK RETAINING WALL
- ▧ DENOTES EXISTING CONTOURS
- ▦ DENOTES OVERHEAD WIRE
- ▥ DENOTES CONCRETE SURFACE
- ▤ DENOTES BITUMINOUS SURFACE
- ▣ DENOTES ASPHALT

NOTES

Field survey was completed by E.G. Rud and Sons, Inc. on 7/29/15.
Boundaries shown are in Washington County, Minn.

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 review upon receipt of a current title commitment or an attorney's title opinion.

LEGAL DESCRIPTION

Lot 14, 8 Birchwood, Washington County, Minnesota.

BENCHMARK

TOP OF HYDRANT AT EAST COUNTY LINE ROAD AND WILDWOOD AVENUE.
ELEVATION = 864.66 (NGVD 29)

IMPERVIOUS SURFACE CALCULATIONS

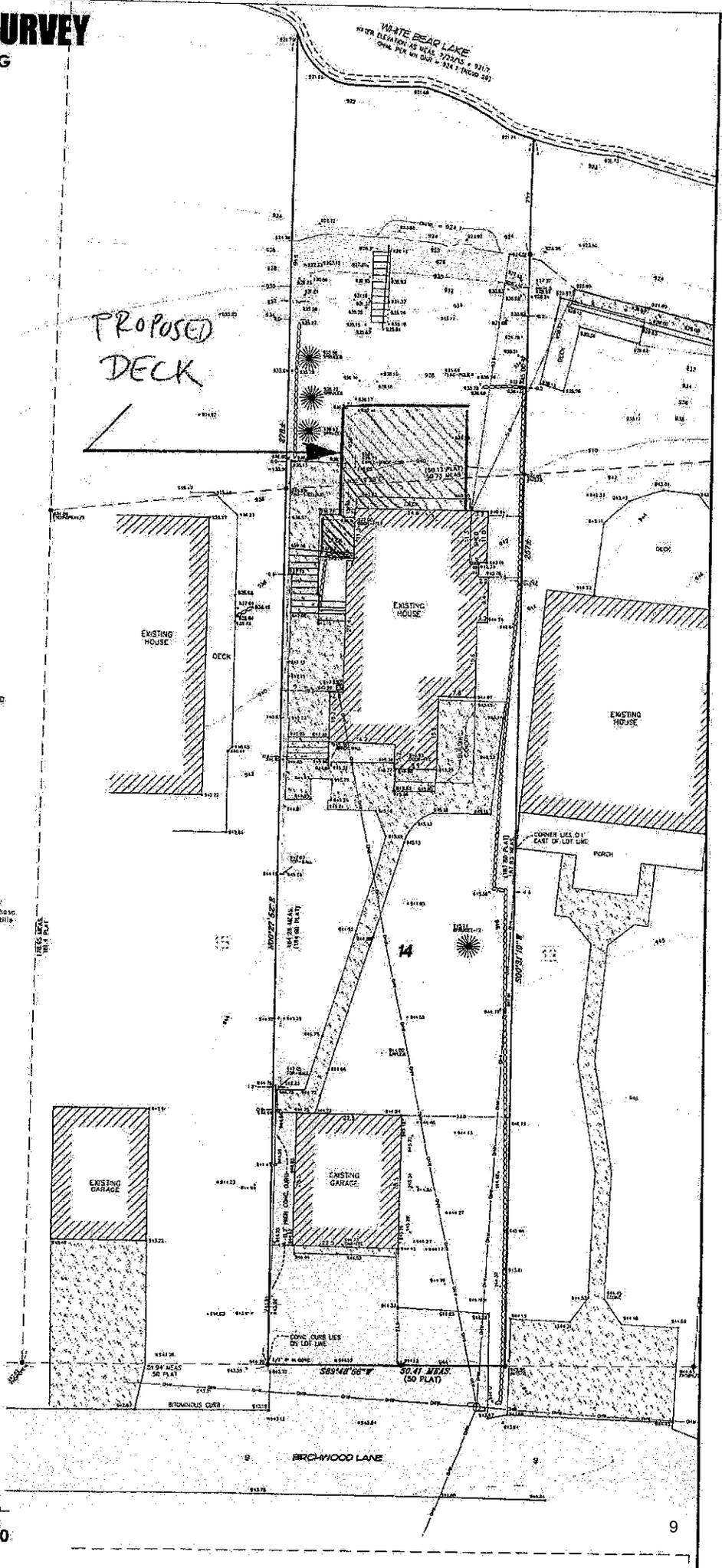
TOTAL LOT AREA (ACROSS OWNERS)	11,875.50 SF. (0.27 ACRES)
EXISTING HOUSE	1,325.45 SF.
EXISTING GARAGE	842.02 SF.
EXISTING DRIVE	46.55 SF.
EXISTING DRIVEWAY	845.66 SF.
EXISTING CONCRETE	1,817.04 SF.
EXISTING STEPS	150.73 SF.
EXISTING RETAINING WALLS	450.73 SF.
TOTAL IMPERVIOUS SURFACE	5,961.60 SF.
PERCENT IMPERVIOUS	42.64%

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.

Date: 7/29/15 License No. 415278

CREATED BY	DATE	DESCRIPTION	BY
1. E.G. RUD	7/29/15	SURVEY	ER
2.			
3.			
4.			

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



Date: 11/08/2023 - 11:25 AM

Design ID: 312959794959

Estimated Price: \$24,134.07

*Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.

MENARDS

Design & Buy™ DECK

How to recall and purchase your design at home:



OR

1. On Menards.com, enter "Design & Buy" in the search bar
2. Select the Deck Designer
3. Recall your design by entering Design ID: 312959794959
4. Follow the on-screen purchasing instructions

How to purchase your design at the store:

1. Enter Design ID: 312959794959 at the Design-It Center Kiosk in the Building Materials Department
2. Follow the on-screen purchasing instructions

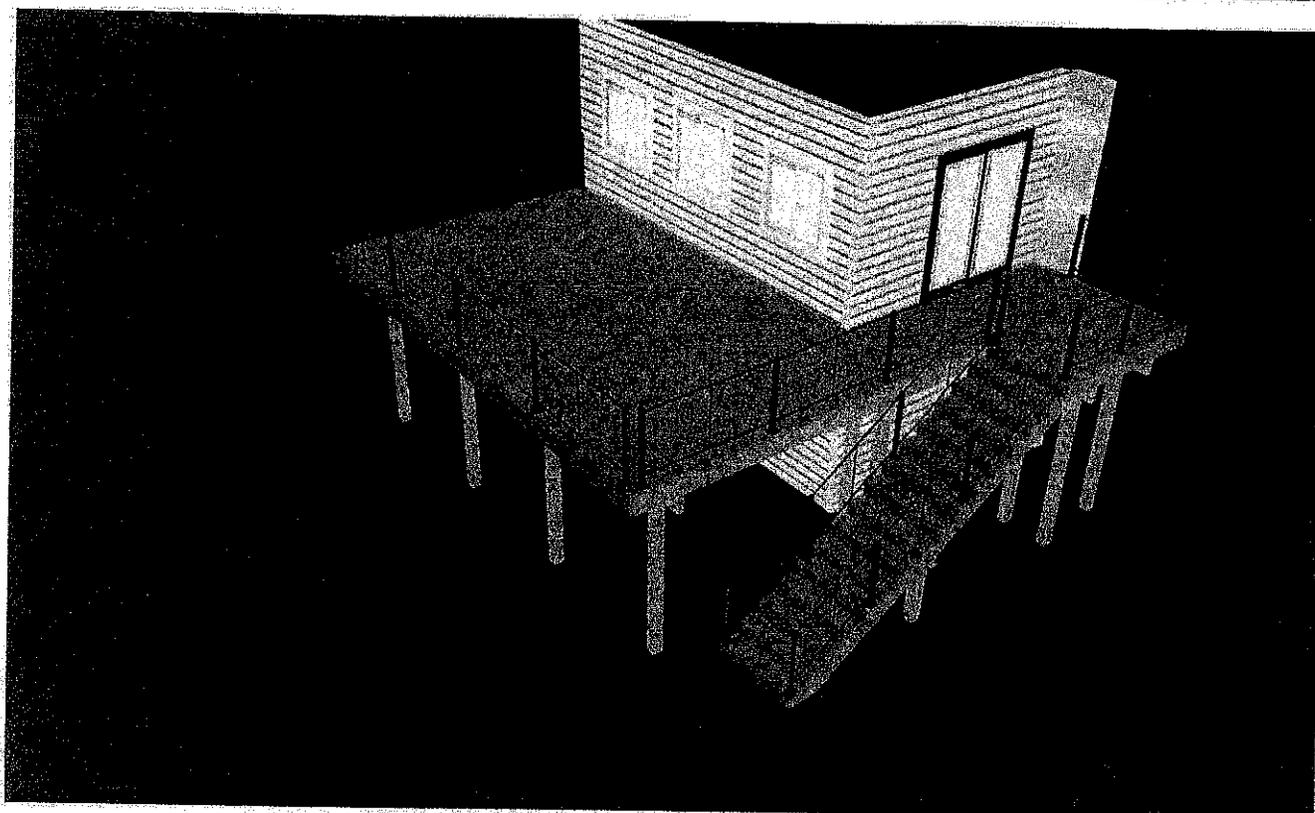


Illustration intended to show general deck size and shape. Some options may not be shown for picture clarity.

Estimated Price: \$24,134.07

*Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.

Layout dimension sheets are intended as a construction aid. Not all options selected are shown.

Final design should be performed by a registered professional engineer to ensure all applicable building codes and regulations are met.

This is an estimate. It is only for general price information. This is not an offer and there can be no legally binding contract between the parties based on this estimate. The prices stated herein are subject to change depending upon the market conditions. The prices stated on this estimate are not firm for any time period unless specifically written otherwise on this form. The availability of materials is subject to inventory conditions. MENARDS IS NOT RESPONSIBLE FOR ANY LOSS INCURRED BY THE GUEST WHO RELIES ON PRICES SET FORTH HEREIN OR ON THE AVAILABILITY OF ANY MATERIALS STATED HEREIN. All information on this form, other than price, has been provided by the guest. Menards is not responsible for any errors in the information on this estimate, including but not limited to quantity, dimension and quality. Please examine this estimate carefully. MENARDS MAKES NO REPRESENTATIONS, ORAL, WRITTEN OR OTHERWISE THAT THE MATERIALS LISTED ARE SUITABLE FOR ANY PURPOSE BEING CONSIDERED BY THE GUEST. BECAUSE OF THE WIDE VARIATIONS IN CODES, THERE ARE NO REPRESENTATIONS THAT THE MATERIALS LISTED HEREIN MEET YOUR CODE REQUIREMENTS.

PROPOSED DECK

Date: 11/08/2023 - 11:25 AM

Design ID: 312959794959

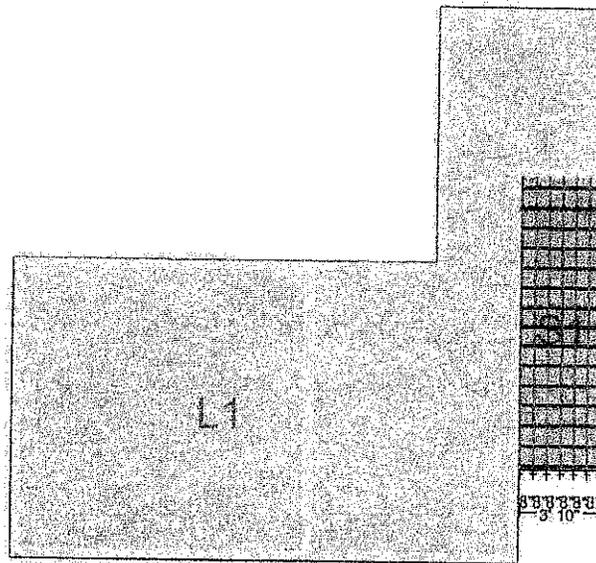
Estimated Price: \$24,134.07

**Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.*

MENARDS

Design & Buy™ DECK

L1 - Stair Framing



S1 - Stringer

Label	Length	Count
A	15' 6"	7

STRINGERS = 8" O.C. PER TREX

Date: 11/08/2023 - 11:25 AM

Design ID: 312959794959

Estimated Price: \$24,134.07

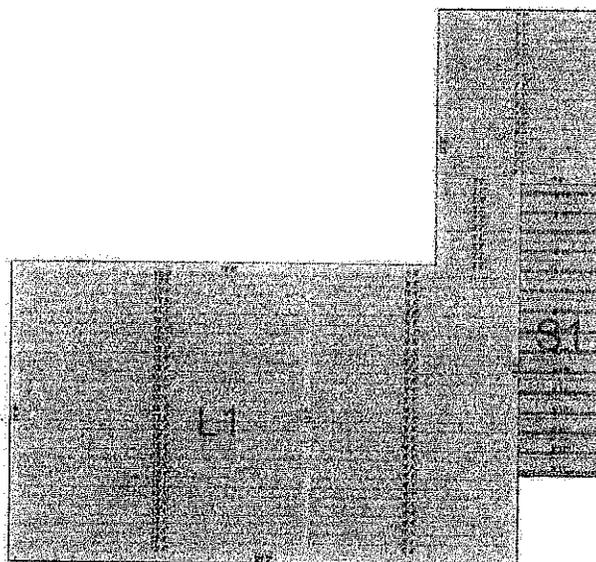
**Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.*

MENARDS®

Design & Buy™

DECK

L1 - Deck Boards and Treads



Lengths displayed are provided as general guide. The deck board lengths and/or quantities may need to be adjusted based on framing or the deck board splice pattern you prefer. Please confirm deck board lengths estimated and quantities prior to the start of your project.

Deck Board

Length	Count	Length	Count	Length	Count	Length	Count
13' 4"	30	9' 4"	30	7' 1"	16	3' 2"	10

Pictureframe

Length	Count	Length	Count	Length	Count	Length	Count
18' 5"	1	14' 0"	1	12' 5"	1	7' 11"	1
23' 2"	1	19' 6"	1	7' 1"	1	3' 6"	1

Date: 11/08/2023 - 11:25 AM

Design ID: 312959794959

Estimated Price: \$24,134.07

*Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.

MENARDS

Design & Buy™ DECK

L1 - Railing Posts

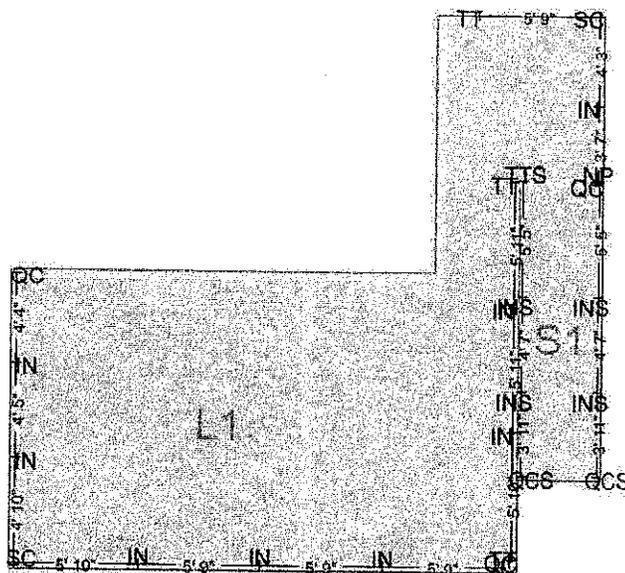


Illustration does not represent all available railing post placement options.
Railing post dimensions are on center.

L1

Label	Count
TT - Threaded Terminal	3
IN - Intermediate	8
QC - Quick Connect	3
SC - Single Corner	2
NP - Newel Pass Through	1
TTS - Threaded Terminal Stair	1

S1

Label	Count
QCS - Quick Connect Stair	2
INS - Intermediate Stair	4

Date: 11/08/2023 - 11:25 AM

Design ID: 312959794959

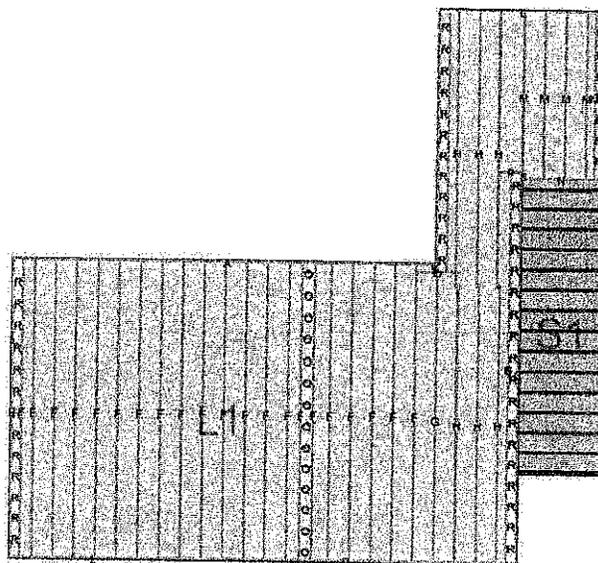
Estimated Price: \$24,134.07

**Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.*

MENARDS

Design & Buy™ DECK

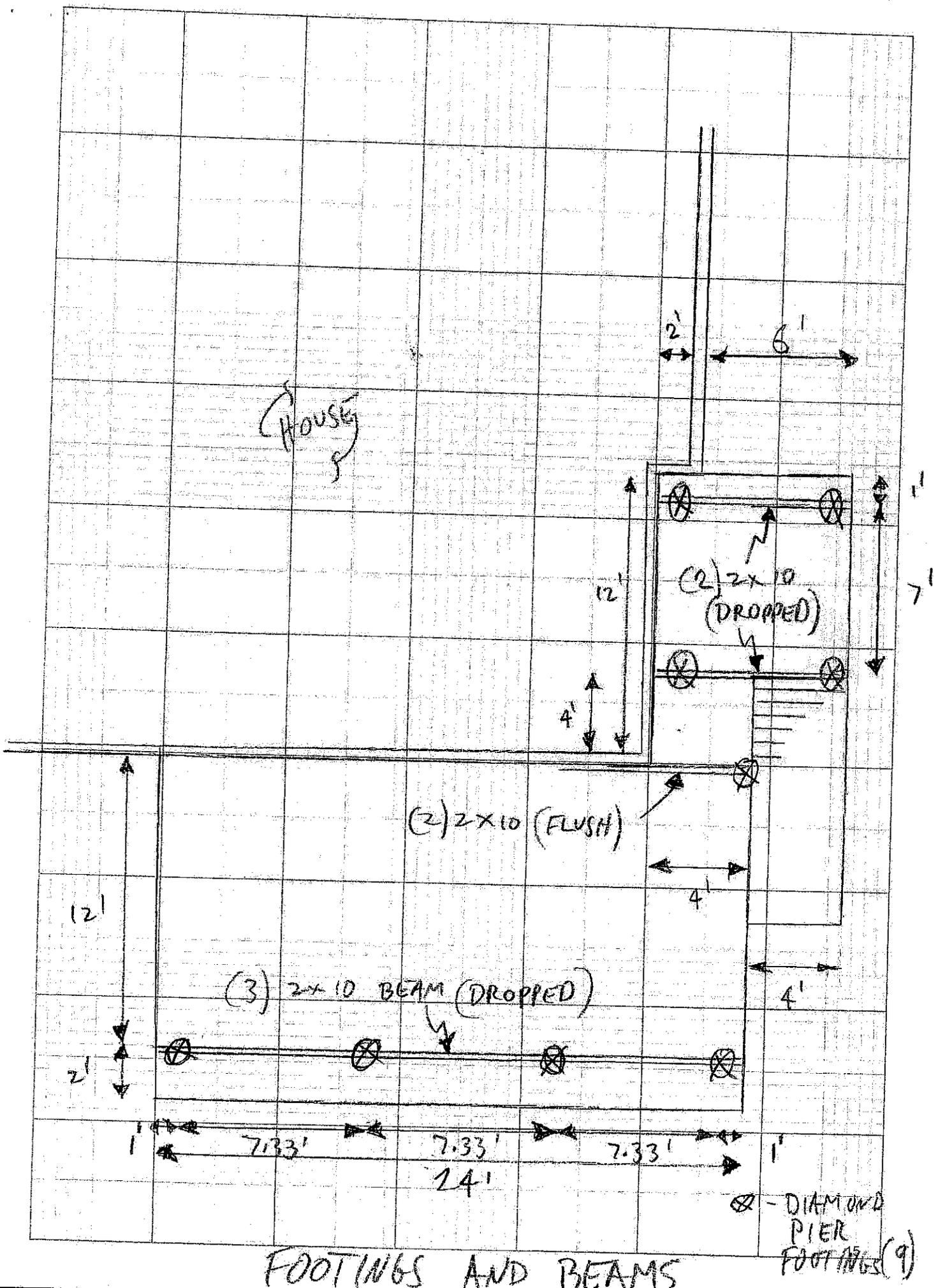
L1 - Joists



Lumber: 2 x 10 AC2

Joist Spacing: 12" on center

Label	Length	Count	Usage
A	20' 0"	1	Ledger Joist
B	18' 3"	1	Picture Frame Joist
C	18' 0"	1	Rim Joist
D	16' 0"	1	Rim Joist
E	14' 0"	1	Rim Joist
F	13' 9"	21	Divider Joist
G	13' 5"	1	Internal Joist
H	13' 0"	6	Internal Joist
I	12' 2"	1	Picture Frame Joist



Date: 11/08/2023 - 11:25 AM

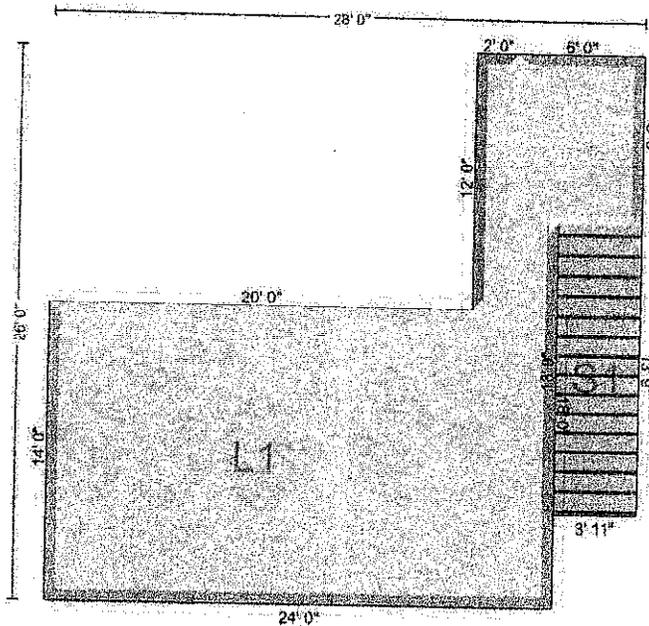
Design ID: 312959794959

Estimated Price: \$24,134.07

*Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.

MENARDS

Design & Buy™ DECK



Deck Side Color Legend

	Open Side/No Railing		Railing
	Unattached Walls		Attached Walls

Illustration intended to show general deck size and shape. Some options may not be shown for picture clarity.

Estimated Price: \$24,134.07

*Today's estimated price. Future pricing may go up or down. Tax, labor, and delivery not included.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/14/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McNamara Company 1330 Highway 96 E White Bear Lake, MN 55110	CONTACT NAME: PHONE (A/C, No, Ext): (651) 426-0607	FAX (A/C, No): (651) 426-5790
	E-MAIL ADDRESS:	
INSURED ROSEBUD CONSTRUCTION, LLC 2276 McKnight Rd N, #8 North Saint Paul, MN 55109	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Selective Insurance Company	
	INSURER B : Superior Point	
	INSURER C :	
	INSURER D :	
	INSURER E :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (NSD WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	S 2413367	8/14/2023	8/14/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		S 2413367	8/14/2023	8/14/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		S 2413367	8/14/2023	8/14/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	105110.806	10/5/2023	10/5/2024	<input checked="" type="checkbox"/> PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Inland Marine		S 2413367	8/14/2023	8/14/2024	Rental Equip \$ 25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Birchwood Village is recognized as Additional Insured in regard to the General Liability.

CERTIFICATE HOLDER City of Birchwood Village Petition for Variance Application 207 Birchwood Avenue Saint Paul, MN 55110	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	--

STAFF REPORT

Meeting Date(s): December 28, 2023 Planning Commission
January 12, 2024 City Council

Scope: Front and Side Yard Setback Variances
Applicant: Liengswangwong property

Representative: Joe Becker, Rosebud Construction
Property Location: 23 Birchwood Lane

Report prepared by Ben Wikstrom, Planning Consultant

ATTACHMENTS

1. Application
2. Survey/site plan
3. Deck Plans

BACKGROUND

The Liengswangwong family and their builder are applying for a variance from the side and ordinary high water line setbacks to allow construction of a deck, landing, and stairway on the lake side of their home at 23 Birchwood Lane. The property can be seen in the aerial below, taken from the Washington County GIS website:



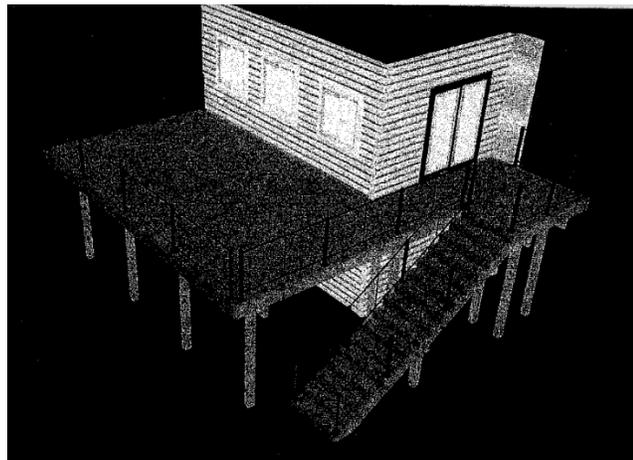
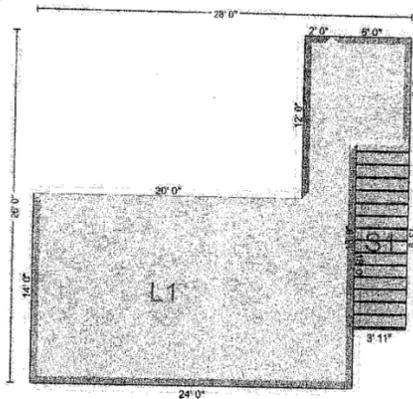
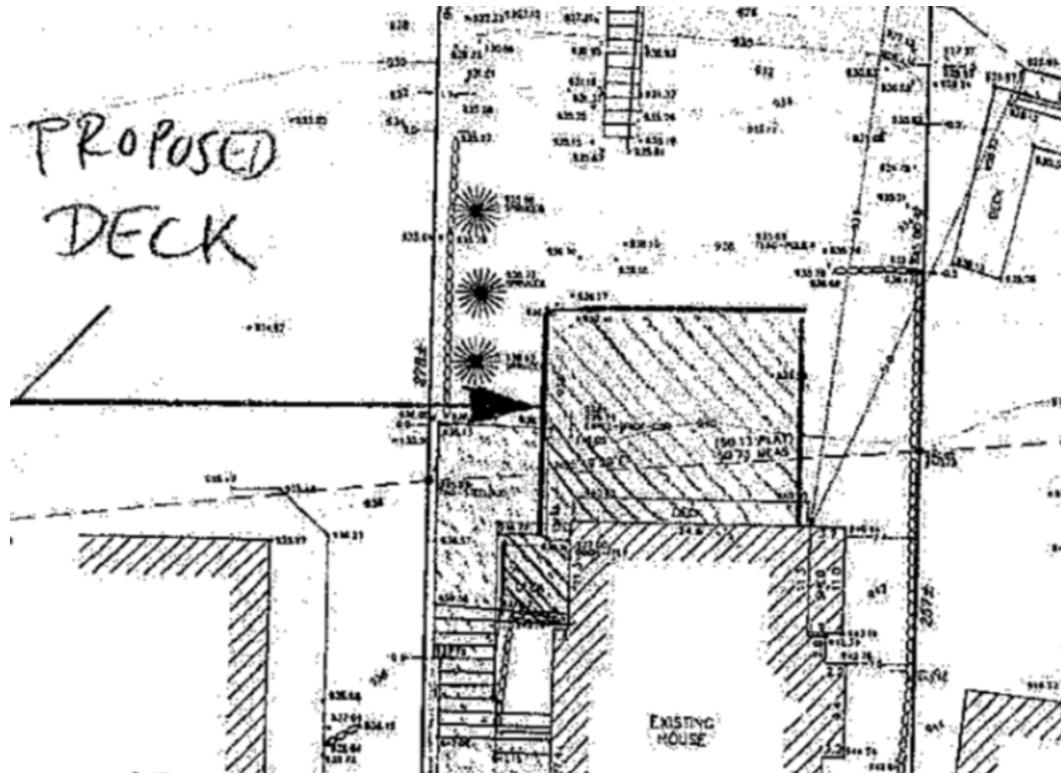
SURROUNDING USES

North: White Bear Lake
East: Single-family home
South: Birchwood Lane and single-family homes
West: Single-family home

PROPOSED CONSTRUCTION

The proposed deck has a main area of 24' in width by 14' in depth, with a landing of 8' in width and varying depth, a portion of which leads to a stairway that lands in the yard no closer to the lake than the deck. See the survey and the drawing and rendering below.

NOTE: The darkened/hatched area showing the proposed deck is drawn too large, according to the scale and described dimensions. More detail can be found in the discussion section.



APPLICANT COMMENT

From the application:

“The current setbacks limit the size of a deck to only 5’ on the west side of the house and only 3’ on the north side of the house. ‘Practical difficulties’ would consist of not being able to use the deck for normal deck use functions...”

This is not how practical difficulties are measured – as you will find below – but the applicant’s contention that a 3-foot wide deck is unreasonable is valid.

STAFF ANALYSIS

For an explanation of a variance analysis, here is an excerpt from the ordinance:

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.

STAFF COMMENT

Variances like those proposed are subjective based on the leanings of the Planning Commission and City Council. There are arguments to be made for both approval and denial. For instance, the findings for approval of the variances would read like the following:

1. The construction date of the house listed on the County website is 1902; the age of the house predates current ordinances and setbacks and the structure was not built by the applicant.
2. A lakeside deck is a reasonable request that requires a variance to allow a size that becomes usable space.
3. The character of the neighborhood would not be altered with approval of the variance.
4. Neighborhood property values will not be diminished with approval of the variance and construction of the deck.

5. The proposed structure will be built with decking spaced sufficiently so as not to increase impervious surface on the property.

Findings for denial would read as follows:

1. A 14' by 24' deck is not reasonably sized for a deck that requires a variance.
2. A deck in a different configuration could be constructed to lessen the variance and still be considered usable space.
3. The sightlines from the house to the deck would be impacted with approval of the variance and construction of the deck.
4. The homes along Birchwood Lane in the vicinity of the subject property meet the setbacks from the OHWL of White Bear Lake, as seen in the aerial below.



DISCUSSION

There are a number of items to consider during the discussion portion of the hearing or meeting.

1. Does the Planning Commission believe that homes are entitled to a deck, and that the proposed size is reasonable? The survey showing the proposed deck appears to not be drawn to scale, and the deck would be smaller than the area drawn (it appears the darkened, main part of the deck is drawn at approximately 26' X 22', whereas the drawings of the deck show 24' X 14'). However, the deck extends 14' from the home, which encroaches the setback by as much as 11', according to the application narrative. Is there a configuration that would allow a walkway from the sliding door around the northwest corner of the home to a deck that extends 10' or 12' toward the lake, and is centered on or on the east side of the house to a width less than 24'? Often a variance is requested to a desired or maximum size, with the ultimate, approved product reduced to a size that is acceptable to the commission or council.
2. Is the stairway considered a reasonable encroachment of the west lot line setback, considering the placement between the homes at the landing and highest portion of the

stairway (meaning, the stairway itself doesn't impact the sightline from the west as the stairs extend toward the lake)?

3. Considering that the properties along Birchwood Lane in the vicinity of the subject property generally meet the setback from the lake, is it a troublesome precedent to set in allowing a variance, or one to this extent?

The house on the subject property sits roughly 4' above the house to the west, and 4' below the house to the east, so lines of sight are impacted in terms of elevations. The house to the east, as can be seen in the aerial above and attached survey, is angled away from this property so the views may not be greatly affected from living area windows on that lot. The house to the west has approximately the same building line angle and the same setback as the subject lot, so the deck is somewhat in the line of sight from the property to west when looking northeast.

NOTE: If a variance is or variances are approved by the City Council to allow construction of the deck, the resolution should include language to approve a variance that allows improvement to and expansion of a legally non-conforming structure. The lot area is substandard in size and width based on today's ordinances for riparian lots. The ordinance requires riparian lots to be 15,000 square feet in minimum area and 80' wide, while this lot is roughly 11,800 square feet in area and 50' wide. Additionally, the setback on the east side of the house, which is required by ordinance to be 10', is substandard (the survey is unreadable, but the setback scales to roughly 7').



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.)*
