



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
December 19th, 2024
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve November 20, 2024, PC Meeting Minutes* (pp. 2-6)
- B. 4 Five Oaks Lane Concept Plan Review* (pp. 7-16)
- C. 131 Wildwood Concept Plan Review* (pp. 17-25)
- D. Planning Commission Discuss and Make Recommendations on Administrative Appeals – Ryan Hankins
 - 1. Administrative Appeal Fee* (p. 26)
 - 2. An Ordinance Amending Ordinance No. 310 and Titled “Administrative Appeals.” * (pp. 27-29)
 - 3. An Ordinance Amending the City Fee Schedule* (p. 30)
 - 4. Appeal of Administrative Decision Form* (pp. 31-32)

ADJOURN

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 11/20/2024

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: – Andy Sorenson - Chairperson, Michael Kraemer, Casey Muhm, Michael McKenzie, Michelle Maiers-Atakpu

COMMISSIONERS ABSENT: None

OTHERS PRESENT: Susan Mahoney, Larry Mahoney, Jack Kramer – City Building Official, Ben Wikstrom – City Planner, Rebecca Kellen – City Administrator, Debbie and Jim Harrod (via Zoom meeting)

1. CALL TO ORDER: Chairman Sorenson called meeting to order at 7:00 PM.
2. PUBLIC FORUM
 - a. None
3. APPROVE AGENDA
 - a. Motion by Maiers-Atakpu, 2nd by Muhm to approve agenda. Vote: Yes -5, No – 0. Motion passed.
4. REGULAR AGENDA
 - a. Item A – Review/Approve October 24, 2024 Planning Commission Meeting Minutes.
 - i. Motion by Muhm, 2nd by Maiers-Atakpu to approve the minutes. Vote: Yes – 5, No – 0, Motion passed.
 - b. Item B – Appeal Regarding Approval of the Building Permit at 483 Lake.
 - i. Review of Appeal
 1. Input was received from Larry and Susan Mahoney, Jack Kramer – City Building Official, and Ben Wickstrom – City Planner, and Deb Harrod.
 - ii. Recommendation on the Appeal for the City Council.
 1. Based on discussion and input from the Mahoney’s, city staff present, and the Planning Commission, the Appeal review process was set up to review, discuss and evaluate the Appeal based on the applicable Village Codes that were determined to reflect and respond to the issues presented in the Mahoney Appeal Letter dated October 24, 2024. Larry and Susan Mahoney were asked at the beginning of the Appeal Review process to add any ordinances or requirements to their appeal that they believed should be addressed. The Mahoney’s were asked if the code

standards proposed to be addressed (and listed below) composed their appeal, and they did not add additional standards.

a. The city codes that were suggested as applicable to the Appeal included the following:

- i.* 302.070 (2) – Notification to Neighbors (for Fence Construction}
- ii.* 302.020 – Structure Location Requirements (Setback Requirements)
- iii.* 302.050 – Impervious Surfaces and Lot Coverage
- iv.* 302.070 (4) – Fence Height
- v.* 304.040 – Variance Requirements and Criteria

2. Planning Commission Findings

a. 302.070 (2) – Notification to Neighbors (for Fence Construction)

i. **Claim:** Zoning code requires neighbors to be notified of construction.

- 1. **Planner’s Memo Response:** ..”The zoning ordinance requires notification of neighbors with whom a property line is shared when a fence is being constructed along that line; a building permit does not require notification of neighbors.”

ii. **Claim:** Wall being constructed is not a continuation or like replacement of what was previously a privacy fence and labeled as such on previous plans.

- 1. **Planner’s Memo Response:** ...” What was previously on the site and what is being constructed in no way meets the ordinance definition of a fence. What someone labeled it on a building permit sketch previously has no bearing on the definition or determination. It is a structure built onto a deck, as it was before. Whether or not it is a like replacement is the purpose of this hearing,” ... “While the level of opaqueness does not define the structure, the fact that it is a wall rather than a fence is important, as a wall has no opaqueness requirement, regardless of height, placement, setback, etc.”

iii. Planning Commission Recommendation:

Advisory motion by McKenzie, 2nd by Maiers-Atakpu that the appeal claims of “improper notification for fence construction” and “The wall being constructed is not a continuation of like replacement” be denied. Commission supports the staff determined the structure is being built in the same footprint and the replacement deck vertical structure meets the definition of a wall and not a fence and thus has no opaqueness requirements thus the addition of siding is not an expansion of a non-conforming use. Advisory vote: 5 – yes, 0 – No.

b. 302.020 – Structure Location Requirements (Setback Requirements)

i. **Claim:** This will add 20 feet of siding, 5 feet from line, making 104 feet of continuous siding.

1. **Planner’s Memo Response:** “Part of this is the appeal to the City; the question is whether the siding is an expansion of a legal, non-conforming structure. The length of the siding has no bearing on the decision. For clarification, the house may be 5’ from the property line, but the deck and wall are not. Based on information from previous permits and court decisions, the deck is estimated to be 7.75’ from the property line and is being built in the same location.”

ii. **Planning Commission Recommendation:** Motion by Maiers-Atakpu and 2nd by Sorenson that the appeal be denied on this point since the deck structure can legally be re-built in its original location and the length of the siding has no bearing on the decision. Advisory vote 5 – yes, 0 – No.

c. 302.050 – Impervious Surfaces and Lot Coverage

i. **Claim:** Pergola will have a roof and increase impervious.

1. **Planner Memo Response:** “This is false; the pergola has screen material on all sides, including the ceiling/roof. There will be no

increase in impervious, and the amount of impervious on the subject property has not been investigated.

ii. Planning Commission Recommendation:

Planning Commission recommends denying the appeal related to this claim. This claim is false and the inaccuracy of the claim was verbally acknowledged by the Mahoney's at the meeting. Advisory motion by Muhn and 2nd by Sorenson declaring this claim of increased impervious is a moot point that should be denied in the appeal. Advisory Vote: 5 – yes, 0 – no.

d. 302.070 (4) – Fence Height

i. Claim: (Raised verbally by Susan Mahoney at the Planning Commission meeting.) The newly constructed vertical wall component on the replacement deck appears taller than the previous wall component.

1. The Harrod's builder indicated through the Harrods (on the Zoom call) that the newly constructed wall structure is 1.5" shorter than the previous wall structure. The Planning Commission asked that the builder submit that statement in writing to the City Council.

ii. Planning Commission Recommendation: The Appeal be denied relative to this claim upon written verification from builder.

e. 304.040 – Variance Requirements and Criteria

i. Claim: Pergola is a non-conforming structure built on a non-conforming deck, so a variance is required.

1. Planner's Memo Response: "The building inspector and I ensured that the pergola is not supported by the wall. It is supported by footings below and inside the footprint of the deck. Other types of construction may have been possible – such as a pergola kit one would place on the deck, or using post base anchors on the surface of the deck or notched construction on the deck

joists, etc. – but this construction type makes the most sense and isn't non-conforming."

- ii. **Planning Commission Recommendation:** Motion by McKenzie and 2nd by Maiers-Atakpu to decline the appeal on this claim as the pergola is a free-standing structure, was identified and paid for as part of the building permit and is not an expansion of the legal non-conforming structure. Advisory vote: 5 – yes, 0 – no.

f. **Planning Commission Recommendation Summary**

- 1. It is the recommendation of the Planning Commission that the Administrative Appeal of the Building Permit for deck reconstruction and pergola construction at 483 Lake Ave as filled by the Mahoney's in their letter dated October 24, 2024, be denied in its entirety.

ADJOURN 8:14 PM

- c. Motion by Muhm, 2nd by Maiers-Atakpu to adjourn meeting. Vote: Yes - 5, No – 0. Motion passed.

memo

To: Birchwood Village Planning Commission
Rebecca Kellen, City Administrator

From: Ben Wikstrom, Planning Consultant

CC:

Date: December 19, 2024 Meeting

Re: 4 Five Oaks Lane Concept Plan (future variance discussion)

UPDATE FOR DECEMBER 19 MEETING

Following feedback from the Planning Commission at the October meeting, the applicant has revised his plans to show a setback from the right-of-way of 27', which would require a 3-foot variance to the required 30-foot setback. There is some expansion of width of the proposed addition, but it would meet the side yard setback requirement.

A survey will be required to determine the exact measurements at the time of application for a variance, along with calculations of the existing and proposed impervious surface on the lot to determine permitting requirements.

Staff and the applicant will be present at the meeting to discuss the most recent plans. The original memo follows in its entirety.

Background Information and Lot Requirements

Trevor Morehead is considering applying for a variance from the required front yard setback to allow construction of a home addition. The addition would be placed over the existing driveway extending outward from the garage; the existing garage is approximately 51' from the right-of-way, and the addition is proposed to be 30' in length, which would leave a 21-foot setback from the right-of-way. The ordinance requires a 30-foot setback from the front right-of-way.

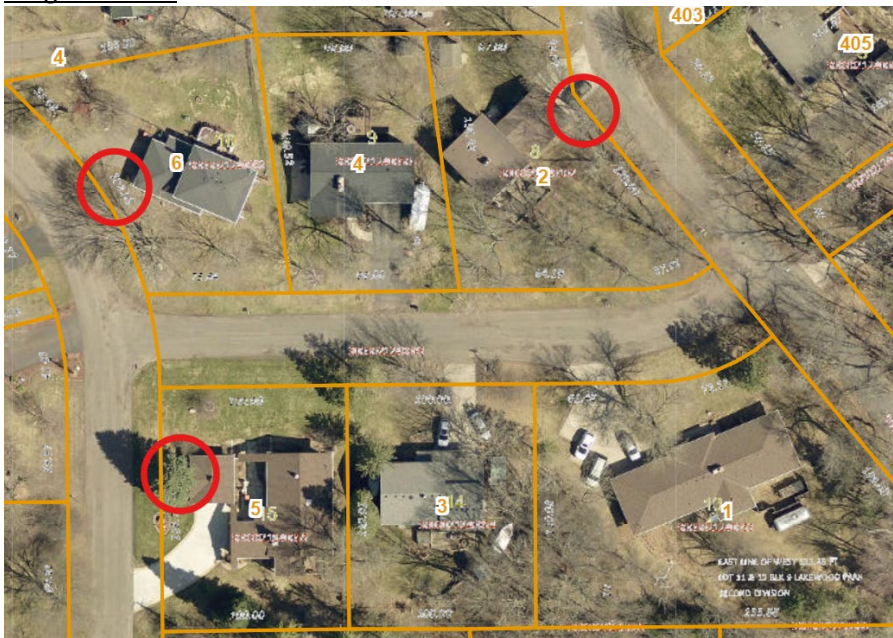
The property is 12,356 s.f. in size, according to Washington County property records, and is 90' in width, both of which are conforming to the zoning ordinance.

Aerial Image



NOTE: house to east has non-conforming setback

Neighborhood



6 Five Oaks Lane (west of subject property): approximate setback from ROW is 18'
2 Five Oaks Lane (east of subject property): approximate setback from ROW is 10'
5 Five Oaks Lane (southwest of subject property): approximate setback from ROW is 16'
Other two properties on same block appear to be conforming

Process

The purpose of a concept plan review is for the applicant to get feedback from the Planning Commission regarding a potential project. No opinions offered by commissioners are to be taken as definitive intentions regarding a future vote on any application.

Recommendation

Staff has no recommendation for a concept review. The commission should review the sketches with the applicant to offer feedback on the project, and give initial opinions on the validity of the proposal. Because this would be a variance application, the ultimate (assuming the applicant formally applies for a variance) recommendation to the City Council by the Planning Commission should be mindful of some general criteria for the granting of a variance:

- Is there a practical difficulty in complying with the ordinance?
- Was the need for the variance created by the applicant (meaning, is there something unique about this property, house location, etc. that is in place to contribute to a practical difficulty that wasn't the result of an action taken by the current owner)?
- Is this a reasonable request?
- Would the variance, if granted, alter the character of the neighborhood?

If the applicant decides to move forward, a survey will be required to ensure the correct measurements and exact proposed setbacks, no increase in impervious surface, etc. The commission may wish to require architecturally-rendered plans showing the house addition, and other information they deem necessary in order to make a decision/recommendation on a variance application.

Re: Addition Varance

From Trevor Morehead <more0195@gmail.com>

Date Thu 11/14/2024 8:23 AM

To Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>; Emily Roth <emilyroth0206@gmail.com>

Cc Ben Wikstrom <benwikstrom@gmail.com>

 6 attachments (361 KB)

Elevation View Addition Front.pdf; Existing Property - 4 Five Oaks Ln.pdf; Elevation View Existing Front.pdf; Elevation View Existing Side.pdf; Elevation View New Side.pdf; New Addition - 4 Five Oaks Ln.pdf;

Rabecca and Ben,

Please see revised concept plans to send to the planning commission. We have reduced the needed variance from the front property line from 10 feet to 3 feet. We have also changed the street side/front dimension from 22 feet wide to 30 feet wide (this should not need a variance as we will be 10 feet from the side property line).

On Tue, Oct 15, 2024 at 10:56 AM Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com> wrote:

Hi Trevor and Ben,

I have attached the plans that will be included in the Planning Commission packet for the Concept review at 4 Five Oaks Lane, along with Ben's write up. Please let me know if there are any additional documents that should be added to that packet. I will be putting that together tomorrow. Thank you.

Rebecca Kellen, MBA

City Clerk-Administrator

City of Birchwood Village, MN

office: (651) 426-3403

fax: (651) 426-7747

email: rebecca.kellen@cityofbirchwood.com

website: <http://www.cityofbirchwood.com/>



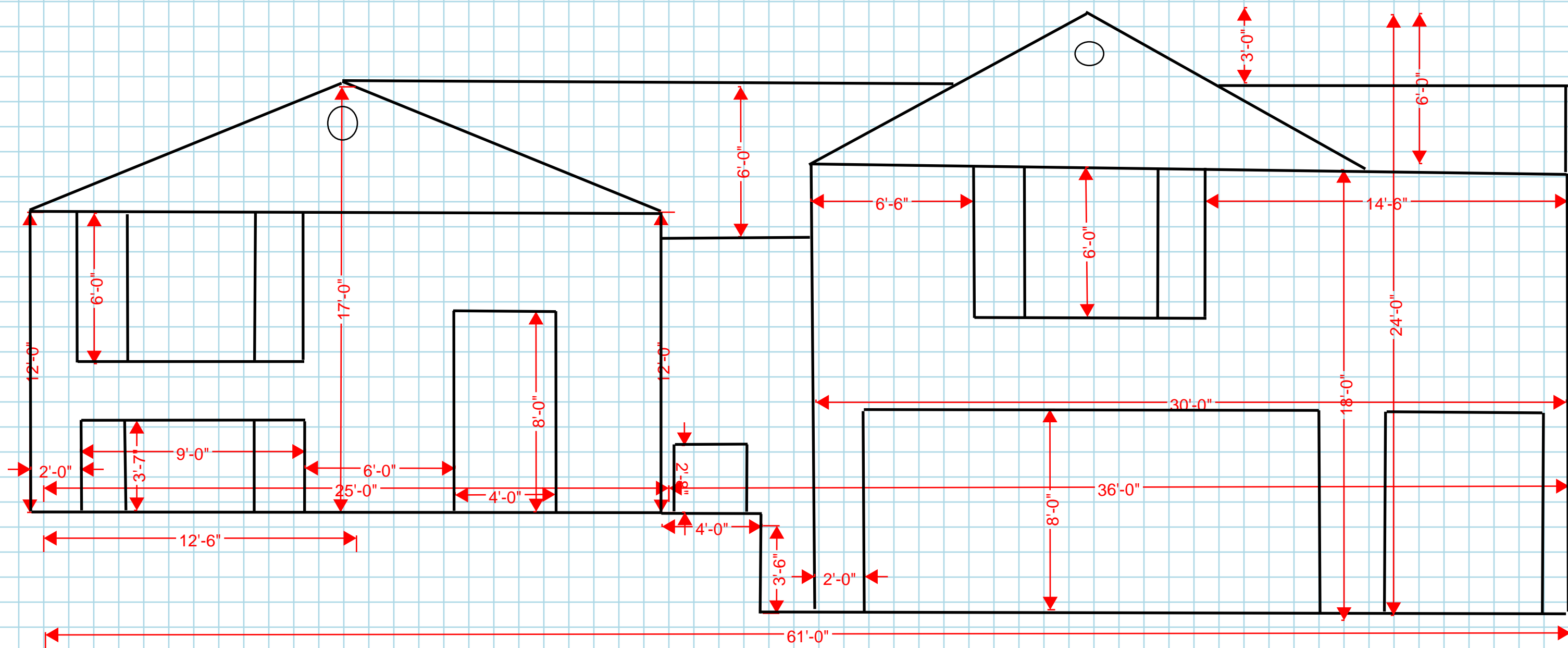
Confidentiality Notice: The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure. They are intended for the sole use of intended recipient(s). Any unauthorized review, use, disclosure, distribution or copying is prohibited. The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. SEC. 2517(4). If you are not the intended recipient, please contact the sender by replying to this e-mail and destroying/deleting all copies of this message.

From: Trevor Morehead <more0195@gmail.com>

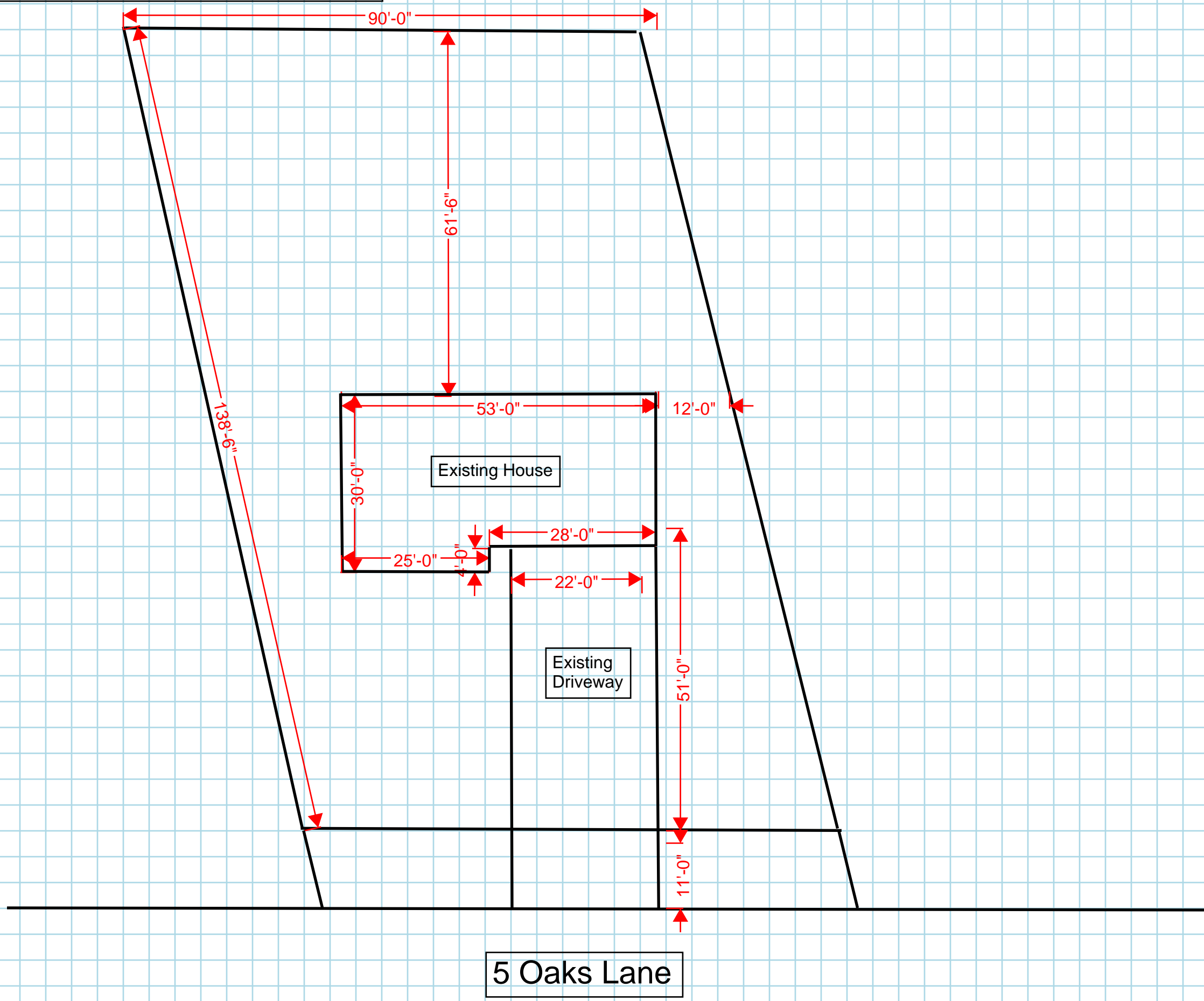
Sent: Wednesday, September 25, 2024 2:48 PM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

4 Five Oaks Ln - Addition Elevation View - Front

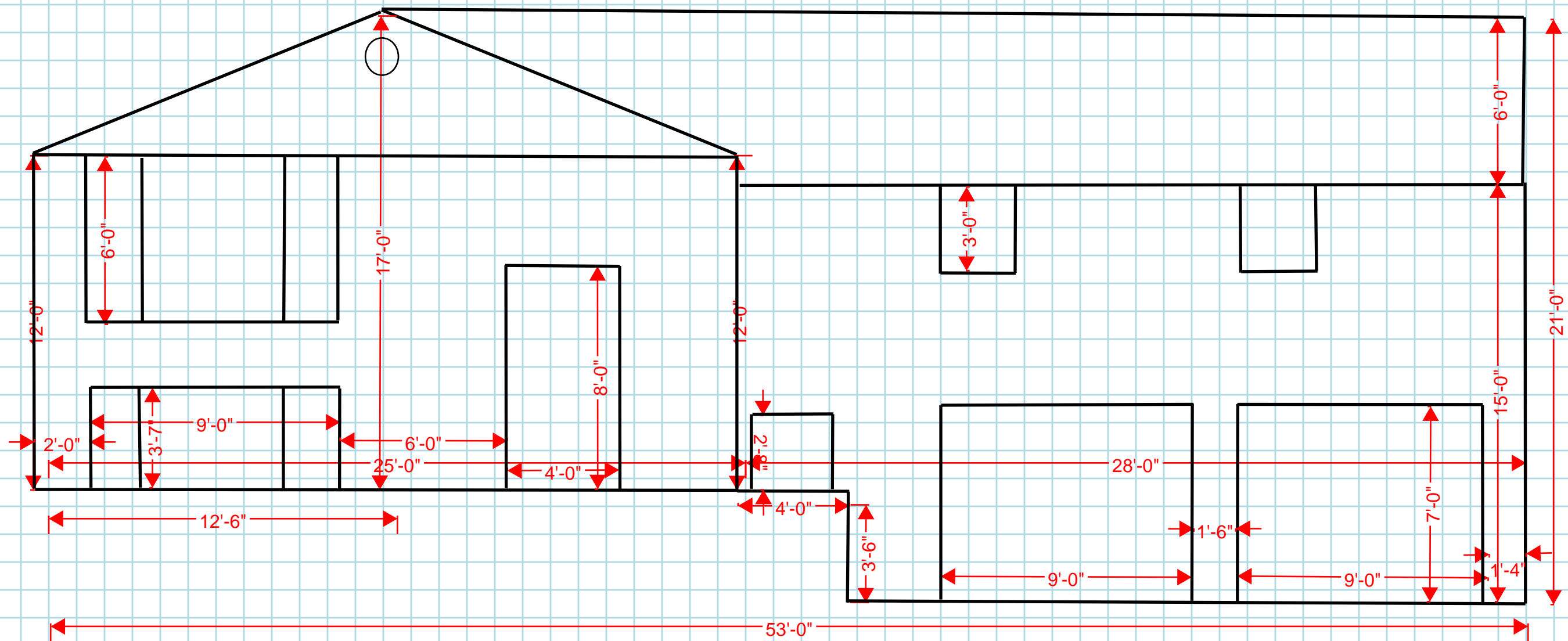


4 Five Oaks Ln - Existing Plot View

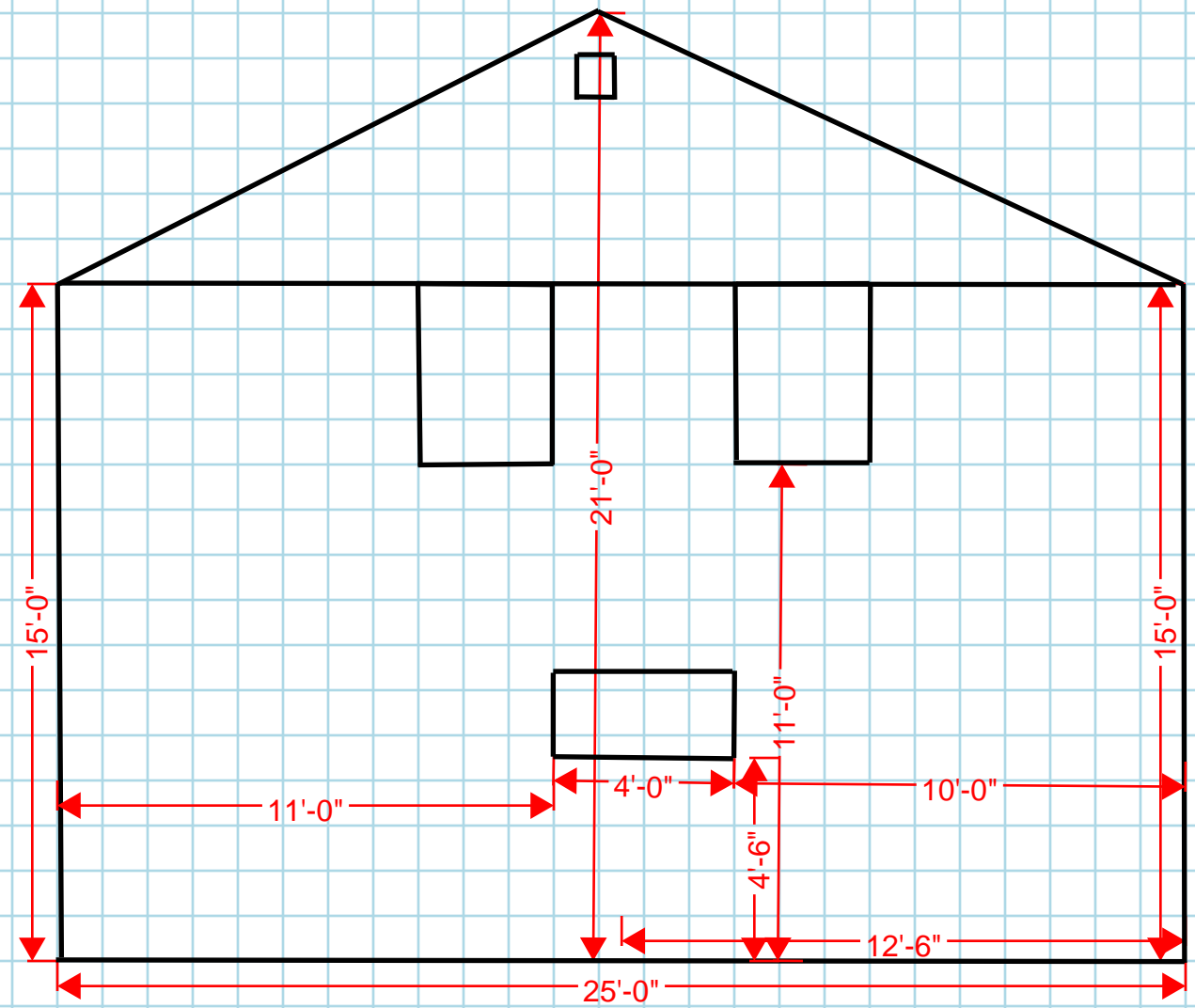


5 Oaks Lane

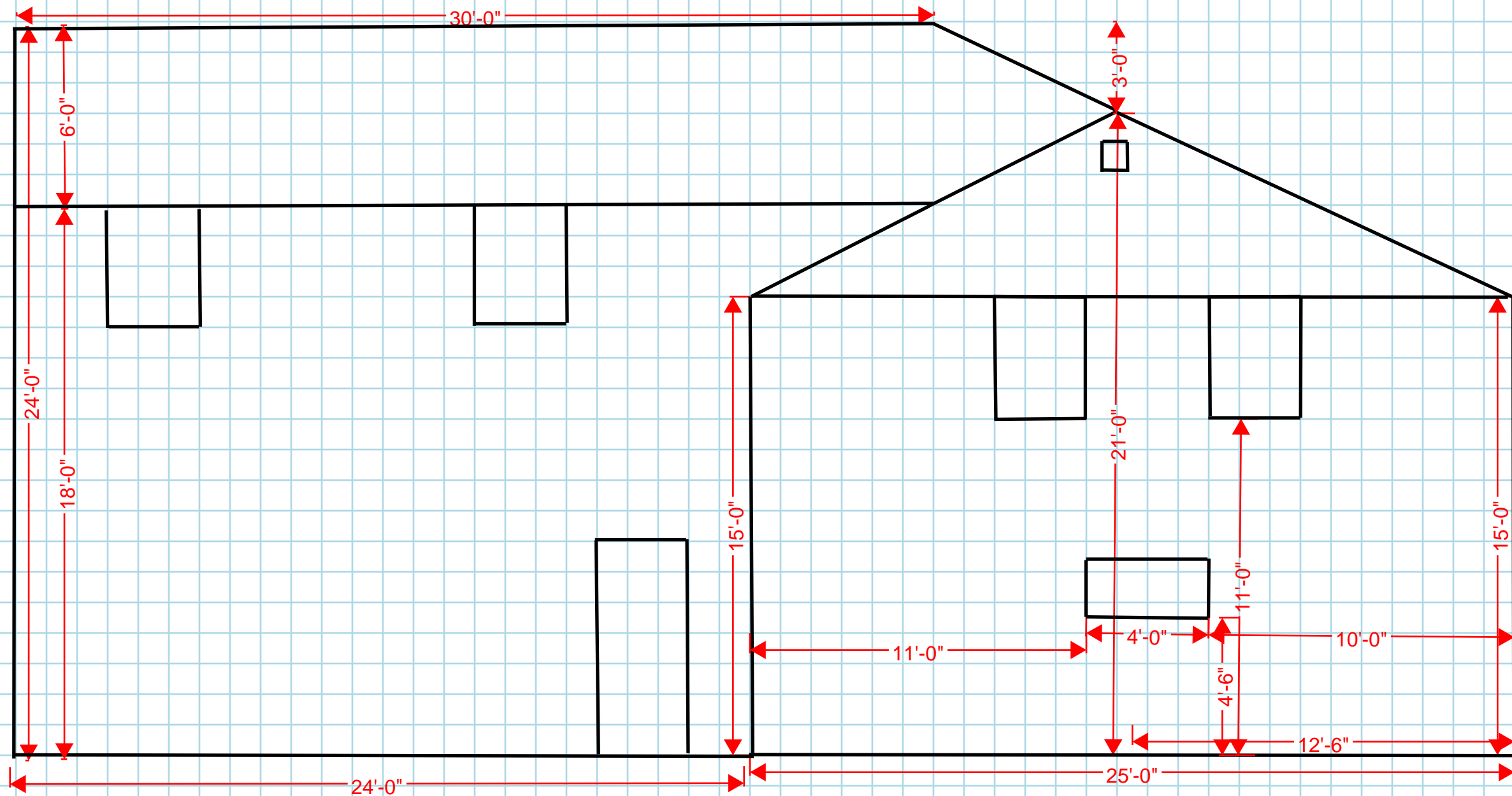
4 Five Oaks Ln - Existing Elevation View - Front



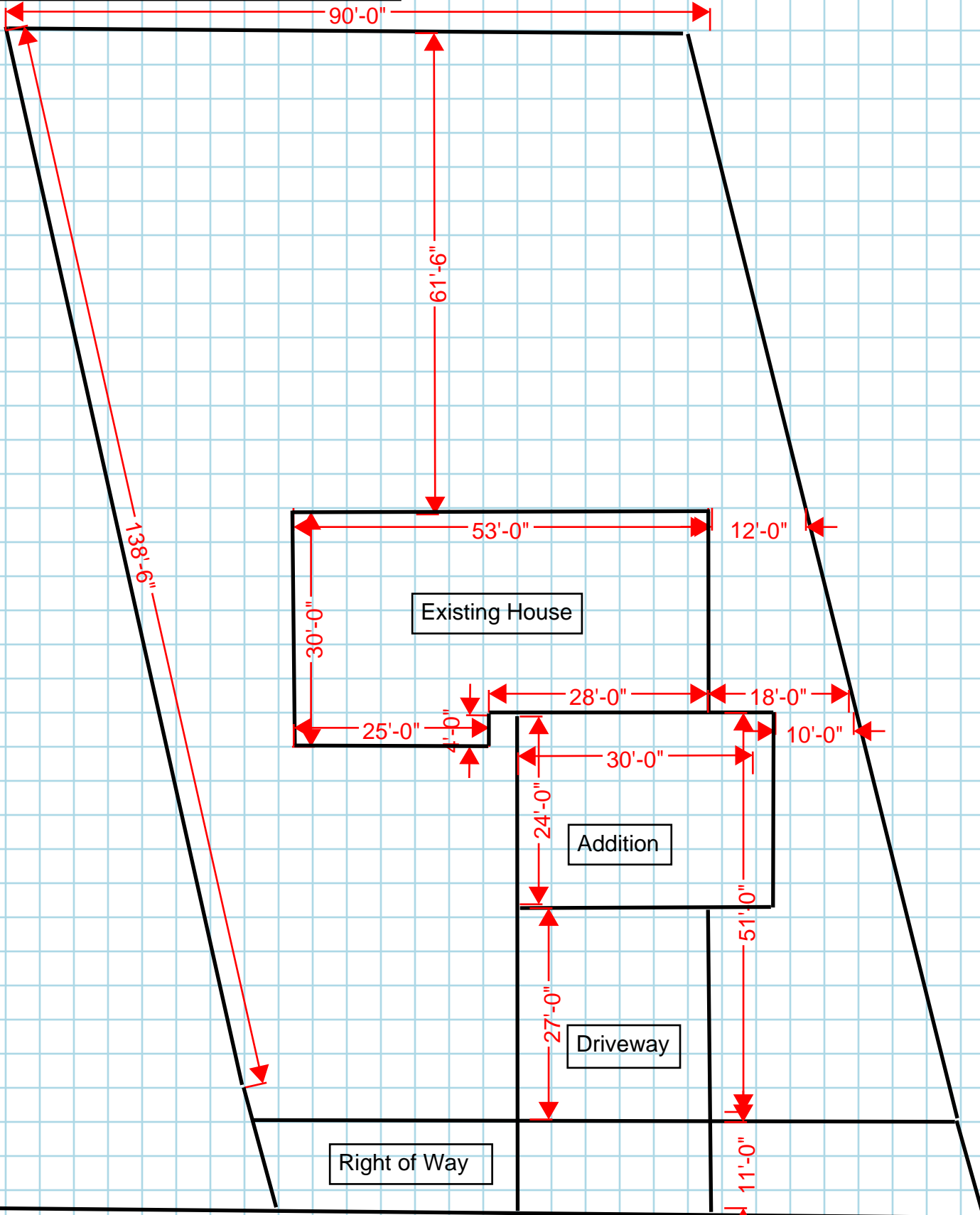
4 Five Oaks Ln - Existing Elevation View - Side



4 Five Oaks Ln - Addition Elevation View - Side



4 Five Oaks Ln - Addition Plot View



5 Oaks Lane

memo

To: Birchwood Village Planning Commission
Rebecca Kellen, City Administrator

From: Ben Wikstrom, Planning Consultant

CC:

Date: December 19, 2024 Meeting

Re: 131 Wildwood Avenue Concept Plan (future variance discussion)

Background Information and Lot Requirements

Len Pratt, as a contractor on behalf of his clients, will be present to review new house and garage plans for the property at 131 Wildwood Avenue.

The property is roughly 7,500 s.f. in size, according to Washington County property records, and is 50' in width, both of which are considered non-conforming to the zoning ordinance. Additionally, both the existing garage and house have non-conforming setbacks from property lines and, it would appear, from the ordinary high water line of White Bear Lake.

At issue is the replacement of the non-conforming structures. The following code excerpts would apply:

C. A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except:

- 1. If the expansion or move brings the non-conforming pre-existing structure or use into conformance with the zoning code; or*
- 2. The conforming portion of a non-conforming structure may be expanded provided that such modification or expansion does not increase the portion of the structure that is non-conforming, and provided that the modification otherwise conforms to the provisions of the zoning code; or*
- 3. The non-conforming portion of a non-conforming structure may be modified so long as the modification does not increase the horizontal or vertical size of the non-conforming portion.*

Staff will be present at the meeting to discuss the various non-conformities and how the non-conforming state statute and local ordinance apply. In particular, sections C.2 and C.3 shown above are applicable, although without house and deck plans and not knowing the exact setback from the OHWL, it is difficult to determine what modifications will be allowed and what would require a variance to the ordinance. The contractor's input will be helpful in the discussion.

In general, the plan is to increase the setbacks of the garage (lessening the non-conformity) and maintain or increase the setbacks of the principal structure. As can be seen in the excerpts above, increasing the size of the home is allowed in areas where the setbacks are conforming, and replacement is allowed in areas of non-conformity.

The other issue, as with nearly all lots along this stretch, is the impervious surface calculation. Once house plans are more clearly depicted on a survey, it will be determined what is allowed with or without a variance or conditional use permit.

A lot combination will likely be required prior to construction of the new home and garage (see aerial below).

Aerial Image



Neighborhood

As can be seen in the aerial above, many non-conforming setbacks – OHWL, street, and side yard - are present in the neighborhood. The existing house appears to align (in distance from the lake) with the neighboring houses along the same stretch of White Bear Lake.

Birchwood Planning Commission
Workshop

131 Wildwood Ave.
Applicant Joe and Therese Galatowitsch

Agenda of Issues for Discussion

- 1) We propose a garage side yard setback of 5 feet. It was 4.2 feet.
- 2) We propose the garage streetside setback from property corner of 10 feet. It was 0 feet.
- 3) We propose the new home side yard setbacks of 8.5 feet on the west side and 11.5 feet on the east side. This conforms to what historically was. See attached survey.
- 4) We propose the setback from the normal high-water line be what it historically was. See attached survey. As the enclosed photos indicate, each of adjoining neighboring homes have similar decks beyond the home setbacks.
- 5) The impervious surface area of the proposed new home, garage, driveway, shoreline stabilization and walkways will equal 30%. We intend to use previous pavers on driveway and will provide rain gardens as required in our landscape design.

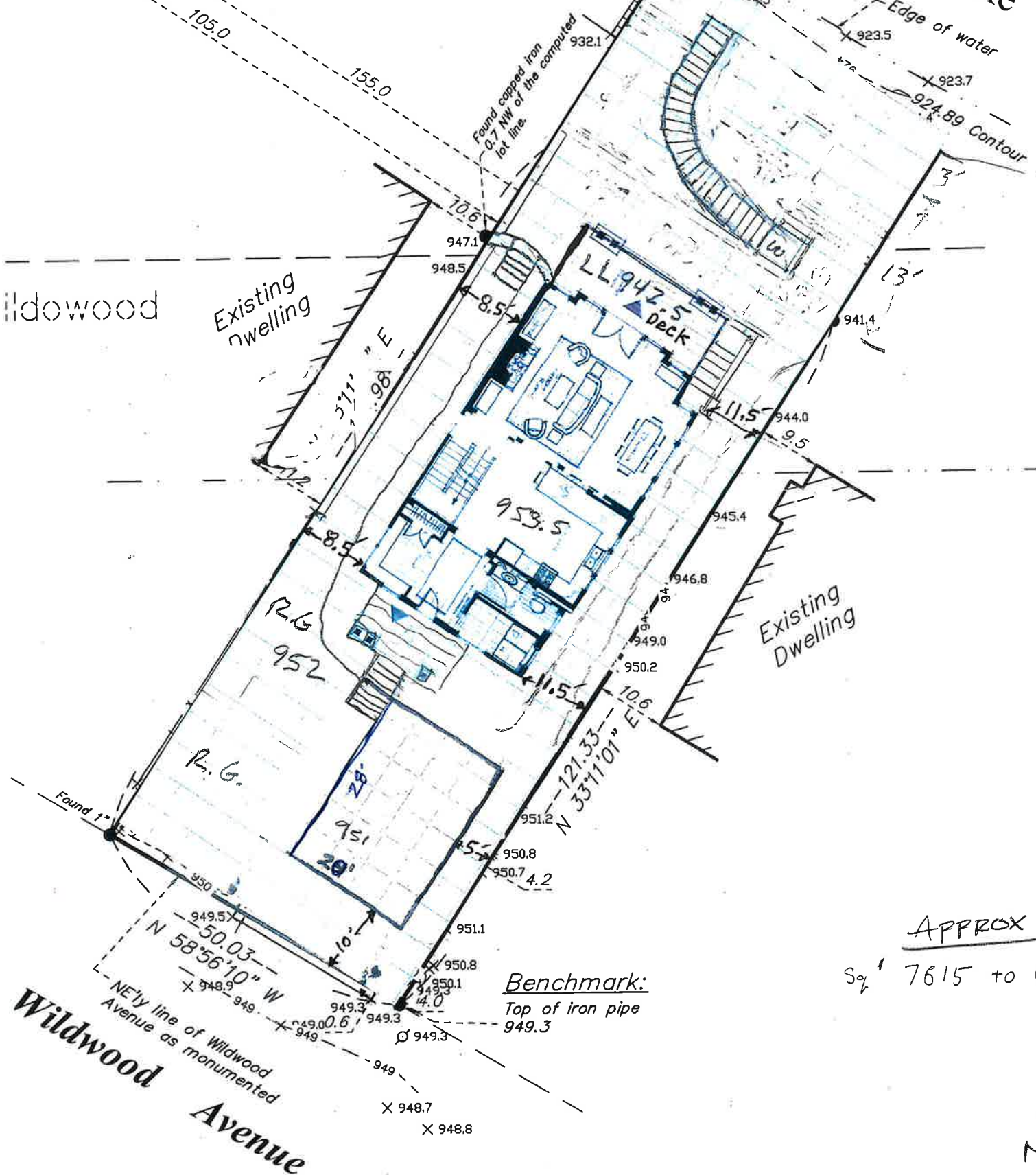
Respectfully submitted,



Len Pratt
Pratt Homes

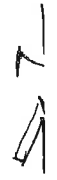
Proposed New Home Site Plan

White Bear Lake



APPROX
Sq' 7615 to C

Benchmark:
Top of iron pipe
949.3











To: Birchwood Planning Commission

From: Ryan Hankins

Please advise us on the following ordinance and form updates to our appeals. For reference, other cities charge the following for administrative appeals.

Mahtomedi \$250

White Bear Township \$35 fee + \$150 escrow

Dellwood \$200 + 1000 escrow

White Bear Lake \$150

Stillwater \$250

ORDINANCE NO. 2024-XX
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING ORDINANCE NO. 310 AND TITLED
“ADMINISTRATIVE APPEALS.”

The City Council of The City of Birchwood Village, Minnesota ordains:

Section 1. Ordinance No. 310 and titled “ADMINISTRATIVE APPEALS” is amended to read:

310. ADMINISTRATIVE APPEALS

310.010 **BOARD OF APPEALS AND ADJUSTMENTS.** As stated in Section 304.005, the City Council shall serve as the Board of Appeals and Adjustments. These powers include hearing and deciding appeals in which it is alleged that there is an error in any administrative order, requirement, decision, or determination made by an administrative officer in the interpretation or enforcement of Chapters 200 and 300 of this code.

310.015 **ADMINISTRATIVE APPEALS.** A person who deems themselves affected by an alleged error in any order, requirement, decision or determination (hereinafter, “administrative decision”) made in the interpretation or enforcement of any provision of chapters 200 and 300 of this code, may appeals the order, requirement, decision, or determination to the Board of Appeals and Adjustments.

310.020 **PROCEDURE FOR APPEALING AN ADMINISTRATIVE DECISION.** A person who wishes to appeal any order, requirement, decision, or determination made in the interpretation or enforcement of any provision of chapters 200 and 300 of this code may do so by filing a written appeal with the City Clerk within 30 days after the date of such order, requirement, decision or determination.

310.020.1 **APPEAL REQUIREMENTS.** For each order, requirement, decision, or determination appealed, a complete appeal shall include the following.

1. A completed appeal form provided by the City.
2. For each matter, a reference to the section of the City code, statute or other requirement that applicant is appealing. The specific numeric subsection references shall be included where applicable.
3. For each matter, a description of the decision made by the City.
4. For each matter, a detailed explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.
5. For each matter, a detailed explanation of how the appellant was affected by the City’s alleged error.

6. All evidence supporting the appeal.
7. The fee and escrow required for the appeal.

310.020.2 **APPEAL COMPLETENESS.** Upon submission of an appeal, City staff shall determine whether the appeal is complete. If the appeal is incomplete, City staff shall, within fourteen days, provide a written explanation to the appellant. The appellant shall then have ten days to complete and resubmit the appeal. If the appeal is not resubmitted or not complete, it shall be deemed abandoned and final.

310.020.3 **APPEAL FEE.** The appellant shall pay a fee in the amount specified in the City fee schedule. If specified in the fee schedule, the applicant shall provide an additional escrow for the City's expenses in evaluating the appeal. If the appeal is substantially sustained by the City Council, the fee and escrow shall be refunded to the appellant. In all cases, any unused portion of the escrow shall be refunded to the applicant.

310.025 **CITY COUNCIL HEARING.** Once the Planning Commission has had a reasonable opportunity to review and report to the City Council on the merits of the appeal, the City Council shall decide the appeal. Notice of the decision shall be mailed to the appellant and permittee. The City shall explain why the appeal was approved or denied. The Council shall maintain a record of its proceedings relative to the appeal, which shall include the minutes of its meetings and final order concerning the appeal. Where applicable, notice of the final order shall be sent to other government agencies such as the Minnesota Department of Natural Resources (DNR), as required by law.

310.030 **NOTICE OF HEARINGS.** A notice of hearings for appeals of administrative decisions shall be given to the appellant and shall be published in the official newspaper once at least ten days before the day of the hearing. If City permits or permit applications are subject to the appeal, the City shall provide a copy of the appeal to the permittee or applicant within five days of the date the City determines the appeal is complete.

Section 2. This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood, Minnesota this 13th day of February 2024.

Mayor

Attested:

City Clerk

ORDINANCE NO. 2024-XX
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
AN ORDINANCE AMENDING THE CITY FEE SCHEDULE

The City Council of the City of Birchwood Village hereby ordains that the fee schedule is amended by adding the following fee:

PLANNING AND ZONING FEES, ESCROWS AND DEPOSITS	Administrative Appeal Fee	310.020.3	\$300.00
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This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of The City of Birchwood, Minnesota this 13th day of February 2024.

Mayor

Attested:

City Clerk



CITY OF BIRCHWOOD VILLAGE
APPEAL OF ADMINISTRATIVE DECISION

207 Birchwood Ave., Birchwood, MN 55110

651-426-3403 • info@cityofbirchwood.com

A. Appellant's Name: Telephone:
Home:
Work/Cell:

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

C. Appeal 1

1. Reference to the section of the City code, statute or other requirement.. The specific numeric sections shall be included where applicable.

2. Description of the decision made by the City.

3. Explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.

4. Explanation of how the appellant was affected by the City's alleged error

D. Appeal 2

1. Reference to the section of the City code, statute or other requirement.. The specific numeric sections shall be included where applicable.
2. Description of the decision made by the City.
3. Explanation of why the appellant believes the order, requirement, decision, or determination made by the City is in error.
4. Explanation of how the appellant was affected by the City's alleged error

[Include additional sections for each matter appealed]