



AGENDA OF THE PLANNING COMMISSION  
SPECIAL MEETING  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
March 6, 2025  
6:45 P.M.

Remote location: 809 Costa Place, Lehigh Acres, FL

Remote link:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YzE3ZWY5NzltMzdjNy00OWE0LTgzZjYtMjl3NWE1ZTdhY2Rj%40thread.v2/0?context=%7b%22id%22%3a%228848ebe8-132c-42bb-a1a7-d8e309415408%22%2c%22oid%22%3a%22772ea352-4ce2-4d03-b5a3-a26bfdfe60cc%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzE3ZWY5NzltMzdjNy00OWE0LTgzZjYtMjl3NWE1ZTdhY2Rj%40thread.v2/0?context=%7b%22id%22%3a%228848ebe8-132c-42bb-a1a7-d8e309415408%22%2c%22oid%22%3a%22772ea352-4ce2-4d03-b5a3-a26bfdfe60cc%22%7d)

1. Call to Order
2. Public Forum
3. Approve Agenda
4. Regular Agenda
  - a. 131 Wildwood Ave. (pages 4-36)
    - i. *Undersized lot (7590 sq. ft. vs 9000 sq. ft. minimum) (Planner's note: 15,000 s.f. min.)*  
*See Zoning Code Requirements section 302.015*
      1. Assign Conditions
      2. Approve or Deny Variance
    - ii. *Garage east side yard setback of 5 ft. (code calls for 10 ft.)*  
*See Zoning Code Requirements section 302.020 (2)*
      1. Assign Conditions
      2. Approve or Deny Variance
    - iii. *Garage Road right of way setback of 16 ft. (code calls for 30 ft.)*  
*See Zoning Code Requirements section 302.020 (2)*
      1. Assign Conditions
      2. Approve or Deny Variance
    - iv. *House west side yard setback of 8.5 ft. (code calls for 10 ft.)*  
*See Zoning Code Requirements section 302.020 (2)*
      1. Assign Conditions
      2. Approve or Deny Variance
    - v. *House height of < 30 ft. (method A) /< 35 ft. max (code calls for no higher than the previous home max height of ~ 25 ft.)*

*See Zoning Code Requirements section 301.050 (C3) – highlighted above*

*Per Zoning Code Requirements section 302.045 (2 & 4) proposed house and garage*

**CONFORM** with 302.045 (2 & 4) (Height and Max Height)

1. Assign Conditions
  2. Approve or Deny Variance
- vi. *Retaining walls requested within the 50 ft. OHW setback requirement (see site plan)*
1. Assign Conditions
  2. Approve or Deny Variance
- vii. *IMPERVIOUS SURFACE COVERAGE PERMIT. Section 302.050 (4) 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 property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner.*
- viii. One item that should be discussed at the meeting, beyond those things mentioned above, is the deck on the lake side.
- ix. Approve Findings of Fact
1. Is the request reasonable with the general purposes and intent of the ordinance? Why or why not?
  2. Are there special conditions or circumstances that are peculiar to the land, structure, or building involved? Why or why not?
  3. Were the special conditions or circumstances created by the applicant's action or design solution? Why or why not?
  4. Will granting a variance result in any increase in the amount of water draining from the property? Why or why not?
  5. 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? Why or why not?
  6. A variance must not be granted simply because there are no objections or because those who do not object outnumber those who do.
  7. Is the applicant proposing a reasonable use for the property under terms of the Zoning Code? Why or why not?
- b. 425 Lake Ave. (Pages 37-55)
- i. *302.050, Impervious Surfaces and Lot Coverage.*
    1. Assign Conditions
    2. Approve or Deny Variance
  - ii. *302.055.2.a.4, Land Disturbance Activity Standards – no grading or filling shall be permitted within 20 feet of the OHWL of the lake.*
    1. Assign Conditions

2. Approve or Deny Variance
- iii. *302.055.2d7b3, requires protective buffer strip of vegetation at least 16.5' back from the OWHM.*
  1. Assign Conditions
  2. Approve or Deny Variance
- iv. Approve Findings of Fact
  1. Is the request reasonable with the general purposes and intent of the ordinance? Why or why not?
  2. Are there special conditions or circumstances that are peculiar to the land, structure, or building involved? Why or why not?
  3. Were the special conditions or circumstances created by the applicant's action or design solution? Why or why not?
  4. Will granting a variance result in any increase in the amount of water draining from the property? Why or why not?
  5. 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? Why or why not?
  6. A variance must not be granted simply because there are no objections or because those who do not object outnumber those who do?
  7. Is the applicant proposing a reasonable use for the property under terms of the Zoning Code? Why or why not?

5. Adjourn



**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.*

A. Applicant's Name:

*Joe and Therese Galatowitsch*

Telephone:

Home:

Work/Cell: *651-983-4470*

B. Address (Street, City, State, ZIP): *27 Pine Road, North Oaks, MN 55127*

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

Telephone

Home:

Work/Cell:

D. Location of Project: *131 Wildwood Ave, Birchwood, MN 55110*

E. Legal Description:

*See attached*

F. Description of Proposed Project:

*See attached*

G. Specify each section of the City Code for which a variance is sought. (Variances are not to be granted for the provisions of 301.050 but instead may be granted for other sections of chapters 200 or 300 that cause the existing or proposed structure or use to be non-conforming).

*See attached*

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

*See attached*

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.

*See attached*

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?

*See attached*

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

Yes       No

Why or why not?

*See attached*

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

Yes       No

Why or why not?

*See attached*

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

Yes       No

Why or why not?

*See attached*

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

Yes       No

Why or why not?

*See attached*

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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

Please include the information in the following table. *See attached*

	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: 1/27/25

Fee Owner's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**304.020 Variance Application Requirements.** Before consideration of a variance, an application for variance shall be made on forms provided by the City Clerk. The application shall be accompanied by the required information described below and by all required fees. Each application must include at a minimum:

- a) The legal description and address of parcel.
- b) Name, address, and phone number of applicant (and of the owner if owner is not the applicant).
- c) Plot plan drawn to scale. Elevation contour lines are required.
- d) Plan showing existing and proposed new and changed structures on the lot.
- e) Existing structures on adjacent lots.
- f) A certificate by a registered professional land surveyor verifying the location of all buildings, setbacks, and building coverage.
- g) A certificate by a registered professional land surveyor certifying other facts that in the opinion of the City are necessary for evaluation of the application.
- h) A separate enumeration of each section of the code to which a variance is requested along with a demonstration that the criteria set forth in section 304.040 are met for each enumerated section.
- i) Evidence demonstrating compliance with regulations of other governmental units when required by provisions of this code, State Law, or regulations of other governmental units. Non-limiting examples of government units which may have applicable regulations include the State of Minnesota, Rice Creek Watershed District, Minnesota Department of Natural Resources, White Bear Lake Conservation District, and the Minnesota Pollution Control Agency.
- j) Other documentation as applicable and as required by the City Code for the type of variance sought (see for example the impervious surface requirements of 302.050)



## City of Birchwood Village Variance Application – Supporting documentation

### Section E:

All that part of Lot 1 of Birchwood and of Wildwood Avenue, vacated and of Lot "A" Block 3 of Lakewood Park, First Division bounded as follows:

On the North by White Bear Lake; on the west by a line parallel with the westerly line of Lot 1 of Birchwood and 105 feet easterly therefrom and extended to the north line of Wildwood Avenue as laid out on the plat of Lakewood Park First Division; on the south by said Wildwood Avenue; on the east by the easterly line of said Lot "A" extended to White Bear Lake. Being a parcel of land fifty feet front on White Bear Lake and running back fifty feet in width to the said Wildwood Avenue. Washington County, Minnesota.

### Section F:

1. Replace previous house and garage with similarly located structures
2. Improve set-back non-conformance
3. Stabilize the steep slope and improve the riparian area including existing structures and riprap
4. Improve stormwater management and infiltration of impervious areas
5. Build an attractive and environmentally responsible home

### Section G:

1. Lot size:
  - a. 302.010. LOT REQUIREMENTS. All lots created after the date of enactment of this ordinance must conform to the following dimensions, utilizing only that land above the ordinary high-water level of any lake, pond, or wetland. **1. Minimum lot size per dwelling unit: Lots abutting lake or wetland: 15,000 sq. ft. APPLIES** All other lots 12,000 sq. ft.
  - b. **302.015. UNDERSIZED LOTS** Any lot of record as of January 1, 1975, which remains in its then-existing dimensions and which does not meet the requirements of this Code may nevertheless be utilized for single-family detached dwelling purposes provided the requirements of 302.010 are at least 60% of those as required. **APPLIES, Requires Variance**
2. New home and garage to be built under section 301.050
  - a. **2. Non-Conforming Pre-Existing Structure: A structure existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control. APPLIES**
  - b. 2. Non-Conforming Pre-Existing Use: A use or occupation of land existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control. **B. A non-conforming pre-existing structure or use existing at the time of the adoption of an additional zoning control may be continued, including through repair, replacement, restoration, maintenance, or improvement, APPLIES** unless: 1. the non-conforming pre-existing structure or non-conforming pre-existing use is discontinued for a period of more than one year;; or 2. the non-conforming structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged.

- c. **C. A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except: EXCEPTION APPLIES** 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; **Requires Variance** 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; - **Requires Variance**
3. **STRUCTURAL SETBACK REQUIREMENTS SECTION 302.020. GENERAL REQUIREMENTS. All structures must be located so that minimum setback requirements are met or exceeded. All measurements (in feet) as set forth below shall be determined by measuring from the foundation of the appropriate structure perpendicular to the appropriate lot line. Variances required (see below)**
4. **IMPERVIOUS SURFACE COVERAGE PERMIT. Section 302.050 (4) 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 property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner. Permit Required**
5. Variances being sought:
- a. Undersized lot (7590 sq. ft. vs 9000 sq. ft. minimum)
    - i. See Zoning Code Requirements section 302.015
  - b. Garage east side yard setback of 5 ft. (code calls for 10 ft.)
    - i. See Zoning Code Requirements section 302.020 (2)
  - c. Garage Road right of way setback of 16 ft. (code calls for 30 ft.)
    - i. See Zoning Code Requirements section 302.020 (2)
  - d. House west side yard setback of 8.5 ft. (code calls for 10 ft.)
    - i. See Zoning Code Requirements section 302.020 (2)
  - e. House height of < 30 ft. (method A) /< 35 ft. max (code calls for no higher than the previous home max height of ~ 25 ft.)
    - i. See Zoning Code Requirements section 301.050 (C3) – *highlighted above*
    - ii. Per Zoning Code Requirements section 302.045 (2 & 4) proposed house and garage **CONFORM** with 302.045 (2 & 4) (Height and Max Height)
  - f. Retaining walls requested within the 50 ft. OHW setback requirement (see site plan)
    - i. See Zoning Code Requirements section 302.020 (2 & 4)

Lot, Structures, Setbacks, Impervious	Previous	Proposed	Improvement	Code	Deviation	Details	Variance
Lot size (sq. ft.)	7590	7590	0	9000	-1410	Lakeside lot minimum = 60% x 15,000	Yes
House west side Setback (ft.)	8.5	8.5	0	10.0	-1.50	Proposed house is 0.6 ft. narrower	Yes
House East Side Setback (ft.)	7.4	11.5	4.1	10.0	1.50	All of east side is well back from ordinance	No
House height (ft.)	25	35	-10	Previous	10.00	Consistent with new construction height ordinance	Yes
Deck west side setback (ft.)	4.5	8.5	4	10.0	-1.50	Proposed deck aligns with side of house	No
Deck east side setback (ft.)	3.0	16	13	10.0	6.00	Eliminate side yard deck, add front porch	No
House OHW setback (ft.)	45.3	45.3	0	50.0	-4.70	Maintain setback, align house with side lot lines	No
Lakeside deck OHW setback (ft.)	33.3	36.3	3	50.0	-13.70	Proposed deck is 9' deep vs 12' for previous	No
Garage street ROW setback (ft.)	0	16	16	30.0	-14.00	Significant improvement from previous	Yes
Garage east side setback (ft.)	4.5	5	0.5	10.0	-5.00	Slight improvement from previous	Yes
Uncovered decks and wooded walkways (sq. ft.)	630	235	-395	-	-	Front, back, and sides	No
Off-street parking area (sq. ft.)	0	512	512	-	-	16 x 32 ft. (inc. walkway and side setback)	No
Off-street parking spaces	0	up to 4	up to 4	-	-	Average vehicle: 14.7 x 5.8 ft.	No
Impervious coverage (sq. ft.)	2141	2265	124	1898	368	Regulation = 25% (1898), Proposed = 30%	Permit
Riparian zone natural plantings (sq. ft.)	900	900	0	484	416	8% of riparian area for each 1% over 25%	Required
Retaining walls within riparian zone	Yes	Yes	Functional	50.0	-	Improve erosion control and safe lake access	Yes

## Section H:

- Requesting undersized lot variance consistent with statutory use of lot to support a single-family home of similar size and character as existing homes on similarly sized and adjacent lots
- Requested garage side yard variance moves the garage 5 ft. closer to the side yard on the EAST side of the lot vs. ordinance and 0.5 ft less non-conforming vs. the non-conforming pre-existing garage
- Requested garage road setback variance moves the garage 14 ft. closer to the road right of way vs. ordinance and 16 ft less non-conforming vs. the non-conforming pre-existing garage
- Requested house side yard variance moves the house 1.5 ft. closer to the side yard on the WEST side of the lot vs. ordinance and more non-conforming vs. the non-conforming pre-existing house by virtue of aligning the proposed home parallel to the side yard lot line.
- All non-conforming setbacks from the east side of the non-conforming pre-existing house are fully conforming with the proposed home.
- Requested house height variance increases the height of the house by approximately 10 ft. over the non-conforming pre-existing single-story house, but NOT higher than required by zoning codes for new construction structures and is similar in height to adjacent properties.
- Install retaining walls ( $\leq 4'$  high) within the 50 ft. setback from the OHW level.

## Section J:

1. Each variance request is in harmony with the purposes and intent of the ordinance
  - a. The undersized lot variance is consistent with the ordinance by facilitating this historically residential (lot of record) lake lot's continued modern residential use.
  - b. The garage side yard variance request is **less non-conforming** compared to the non-conforming pre-existing garage side yard location (5 ft. vs. 4.5 ft.) and thereby facilitates 11% wider access between the garage and the side yard.
  - c. The garage road right of way variance request is **less non-conforming** compared to the non-conforming pre-existing garage road right of way location (by 16 ft.) and therefore is creating less non-conformance vs. the non-conforming pre-existing garage. The garage road right of way variance request is sufficiently removed from the road right of way to create off-street parking spaces on the lot thereby relieving ROW parking and future road improvement complexities.
  - d. The proposed house and attached deck are situated parallel to both the east and west side yard lot lines, thereby eliminating 'pinch points' that limit emergency or practical use access on both sides of the house. The front and side decks of the previous house pinched the space along both the east and west side yards to less than 5 ft. on BOTH sides. The proposed house has no deck structures that extend beyond the proposed house side yard setbacks of 8.5 and 11.5 ft. The east side yard will provide more than 10 ft. of width to facilitate access to the lake for emergency and general access requirements.
  - e. The house height variance request is **within the ordinance height requirements for new construction** but is above the non-conforming pre-existing home height. Part of the intent of the ordinance related to height for non-conforming structures is its impact on neighboring homes and lots. Homes on both the west and east lot boundary are as high or higher compared to the proposed home and are situation as close or closer to the OHW

line compared to the proposed home and decks on this lot, thereby eliminating any risk of encroachment or obstruction by approving the requested height variance.

- f. Adding retaining walls within the 50 ft. setback area will facilitate fulfilling the required 40% riparian buffer area (per the impervious surface ordinance related to impervious surface between 25 and 30% coverage). Additionally, retaining walls will facilitate greatly improved stormwater infiltration of the steep (> 50%) riparian slope and prevent further erosion of soil and large inflows of unfiltered contaminants into the lake.
2. Yes, the variance requests are consistent with the comprehensive plans
    - a. The proposed development of this small lakeside lot is consistent with the comprehensive plans and with the intent to maintain a homestead community that works in aesthetic and environmental harmony with the surrounding lands and lake.
  3. Yes, the variance requests put the property to use in a reasonable manner
    - a. Furthering the historical residential use of this lot by allowing construction of a modern home is a reasonable use of the property and is consistent with how similarly sized lakefront properties are utilized in the community.
    - b. A lakefront home requires unique storage requirements. There are many demands for large storage space to protect, secure, and hide lake enjoyment related equipment and devices. A sufficiently large garage (proposed 21 x 28) is therefore essential to accommodating the unique requirements of lakeside living. Additionally, without the variance, situating a garage directly in front of the home's front entry creates a difficult burden related to observing activities on the street and obscuring access to the house for residents and guests.
    - c. The requested garage variance creates several off-street parking spaces on the lot that would not be available by replacing the non-conforming pre-existing garage with a new garage in the historical location.
    - d. The house west side yard variance request is reasonable. The west side yard elevation is much higher than the east side such that routine west side access from the street side to the lake side of the lot is very problematic. Therefore, access to the lake and between the house and the garage on the east side is the only practical pathway. With required egress window wells, walkway, and steps, access on the east side is relative restricted and the additional space will facilitate emergency and practical access on the east side yard. It also reduces the visual and physical overlap (as viewed from the street) between the home entry and the west side of the garage.
    - e. The house height variance request is necessary for practical use of the lot. Without the ability to extend the house to a usable second story the effective use of the lot to build a practical single-family dwelling is greatly diminished.
    - f. The retaining walls in the riparian area greatly facilitate safe access to the lake as they are part of the necessary structural system of retaining wall and steps that co-exist to support itself and establish long-term erosion control and robust stormwater infiltration.
  4. Yes, there are circumstances unique to the property.
    - a. The lot itself is very small and narrow (in fact about half the size of conforming lots today (7590 sq. ft. vs, 15,000 sq. ft.)). Considering all zoning requirements, without variances, the building envelope for the house, porches, decks, garage, and access between the house and garage is less than 2200 sq. ft.

- b. This small lot is also a lakeside lot with a steep riparian slope, old unsafe and non-functional steps and retaining walls that have practical considerations and limitations for reasonable use, lake access, erosion, runoff control, and safety
- c. The non-conforming pre-existing home, decks, and garage footprint, as well as the old riparian hardscape structures, perpetuates several zoning and set-back related difficulties that these variances are designed to remedy.
  - i. Granting the requested variances has the following impacts:
    1. **Increasing non-conforming** area by about 125 sq. ft. (side yard for west side of new house and east side of new garage)
    2. **Reducing non-conforming** areas associated with the non-conforming pre-existing house, garage, and decks by about 575 sq. ft.
    3. **Net decrease in total non-conforming** area of more than 450 sq. ft. (~ 6% of total lot area and 36% of non-conforming pre-existing structures)
    4. **Full compliance** with setback ordinance on the east side of the house
    5. **Creation** of several off-street parking spaces
    6. **Elimination** of narrow pinch points (< 5 ft.) on both east & west side yards
    7. **Meaningful separation** of the garage from the road ROW (16 ft.)
    8. **Impervious surface infiltration** ~ 100% vs. 0%
    9. **Reduction** of annual stormwater runoff into the lake by over 40%
- d. To achieve these goals, we have squeezed the house and garage sizes, locations, and setbacks to optimize reasonable use of the lot, while preserving the intent of the ordinances, reducing non-conformance, ensuring safe access, managing stormwater, and creating an aesthetically attractive and functional property.
  - i. The undersized lot variance request is implicitly related to the unique circumstances of the property and historical residential use of the property creates the statutory justification for this variance request
  - ii. The side yard variance request for the garage is, in part driven by the small size of the lot (7590 sq. ft.) and the relatively narrow lot width (49.8 ft.). If the garage would comply with the side yard setback, it would overlap and cover most of the front of the house situated behind it. This would perpetuate a 'garage dominated' or 'snout house' street view rather than a more balanced and integrated view of the house and garage together.
  - iii. The road right of way variance request is necessitated by the small lot size and the relatively short usable length of the lot. At ~ 150 ft, the lot provides very little room to accommodate road, lake and side yard setback requirements and a reasonably sized and situated house and garage.
  - iv. The house west side yard variance request is necessitated by the much higher elevation of the **west** side yard and the size of required egress windows wells and walkways on the **east** side of the house. This situation creates a challenge for reasonable use on the **east** side of the house without some additional east side yard space created by moving the house westward by 18 inches.
  - v. The house height variance request is necessitated by the small lot size, requiring a second story to enable building a home that is of a practical size, is similar to adjacent homes, and is consistent with the tax value of the lot itself.

- vi. The retaining walls in the 50 ft. OHW setback zone are necessitated by controlling the steep slope, reducing uncontrolled run-off and erosion, satisfying the required 40% riparian buffer zone, and facilitating safe access to the lake.
5. Yes, the variances will maintain the essential character of the locality.
- a. The variance requests being made here are much less non-conforming than the previous home and garage and much more in keeping with the essential character of the locality.
  - b. The finished home and garage will fit very well within the character and locations of the surrounding homes on their respective lots. They will also be an attractive addition to the locality from a 'street and lake presence' perspective.

Section L:

- Yes, the impervious surface of the lot will exceed 25%
  - Total impervious surface will be no more than 30% after the project, but 100% of impervious surface runoff will be infiltrated on the lot.
    - Proposed landscape plan to construct ~ 315 sq. ft. of rain gardens
    - The primary rain garden in the front yard will receive run off from the front yard, west side of the house roof, and garage roof via gutters and underground piping or French drain style conveyance
    - On site infiltration tests will be completed to ensure that the rain garden is sized to remove 100% of the retention volume within 48 hours (per ordinance).
  - Additionally, ~ 70% of riparian area will be designated for natural plantings (vs. 40% required by ordinance)
    - Retaining walls and natural plantings on riparian slope will eliminate 40% of annual stormwater runoff into the lake

<b>Impervious Analysis</b>	<b>Existing</b>	<b>Proposed</b>	<b>Change</b>	<b>Comment</b>
Total lot (sq. ft.)	7590	7590	0	Per survey
Max. Impervious (sq. ft.)	1898	1898	0	25% per ordinance
Structure impervious (sq. ft.)	1856	2080	+371	House, porch, and garage footprint
Sidewalks (sq. ft.)	285	185	-120	Steps only (pervious pavers for walks)
Driveways (sq. ft.)	0	0	0	Pervious pavers
Other Impervious (sq. ft.)	0	0	0	Retaining walls excluded
Total Impervious (TI) (sq. ft.)	2141 (28%)	2265 (30%)	+124	Requires permit but not variance
Retention Volume (cu. ft.)	196	208	+12	(TI x 1.1)/12
Rain Garden (RG) (sq. ft.)	0	315	+315	8" ponding depth
RG infiltration rate (cu. ft.)	0	210	+210	(RG x 8)/12 (24-hour infiltration rate)
Impervious runoff infiltrated	0%	100%	+100%	Infiltration rate > TI runoff
Percent Impervious Surface	28%	0%	-27%	Most impervious runoff infiltrated

Impervious Analysis	Previous	Proposed	Difference	% Diff.	Absolute	Details
House footprint (sq. ft.)	1280	1410	130	10%	18.6%	30.6 x 38 => 28.2 (average) x 50
Garage footprint (sq. ft.)	576	588	12	2%	7.7%	24 x 24 => 21 x 28
Steps only	285	185	-100	-35%	2.4%	Retaining walls not considered impervious
Covered porches	0	82	82	-	1.1%	12.5 x 6.5 ft. covered front entry
<b>Total Impervious (sq. ft.)</b>	<b>2141</b>	<b>2265</b>	<b>124</b>	<b>6%</b>	<b>29.8%</b>	Total impervious (Previous = 28%)

Stormwater Management Analysis	Previous	Proposed	Difference	% Diff.	Factors	Details
General lawn area (< 5% grade)	3449	4690	1241	36%	0.45	Estimated soil infiltration rate: 0.45 in./hour
Rain garden/bioswale areas (sq. ft.)	0	315	315	-	8	Ponding depth of 8 inches (~ 24 hour infiltration)
<b>Total runoff management areas</b>	<b>3449</b>	<b>5005</b>	<b>1556</b>	<b>45%</b>		Excludes impervious and > 50% slope areas
Lot infiltration capacity/event (LIC) (cu ft.)	259	562	303	117%	632	Lot receives 634 cu. ft. from a 1" rainfall event
Portion of 1" rainfall events infiltrated (%)	41%	89%	48%	117%		Ability to infiltrate a 1" rainfall event
Maximum rainfall event infiltration capacity (In.)	0.4	0.9	0.5	117%		Considering all infiltration areas
Percentage of rainfall EVENTS infiltrated	60%	84%	24%	40%		Per MN stormwater volume-frequency maps
Percentage of rainfall VOLUME infiltrated	25%	56%	31%	124%		Per MN stormwater volume-frequency maps
Average monthly lot runoff volume (cu. ft.)	1,304	765	-539	-41%	2.75	WBL average precipitation = 2.75 inches/month
Average monthly runoff flowing into WBL (cu. ft.)	978	574	-404	-41%		Based on lot topography ~ 75% flows to WBL

# CERTIFICATE OF SURVEY

~for~ **JOE GALATOWITSCH**  
 ~of~ **131 WILDWOOD AVENUE**  
**BIRCHWOOD, MN**

## EXISTING LEGAL DESCRIPTION

All that part of Lot 1 of BIRCHWOOD and of Wildwood Avenue, vacated and of Lot "A", Block 3, of LAKEWOOD PARK FIRST DIVISION bounded as follows:

On the North by White Bear Lake; on the west by a line parallel with the westerly line of Lot 1 of BIRCHWOOD and 105 feet easterly therefrom and extended to the north line of Wildwood Avenue as layed out on the plat of LAKEWOOD PARK FIRST DIVISION; on the south by said Wildwood Avenue; on the east by the easterly line of said Lot "A" extended to White Bear Lake.

Being a parcel of land fifty feet front on White Bear Lake and running back in width to the said Wildwood Avenue.

## IMPERVIOUS COVERAGE

TOTAL LOT AREA (TO OHW) ..... 7,590 S.F.  
 PROPOSED HOUSE ..... 1,481 S.F.  
 PROPOSED STAIRS ..... 185 S.F.  
 PROPOSED GARAGE ..... 588 S.F.  
 TOTAL IMPERVIOUS SURFACE ..... 2,254 S.F.  
 PERCENT IMPERVIOUS ..... 29.7%

## SURVEY NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. in January of 2025.
- Bearings shown are on Washington County datum.
- Parcel ID Number: 19-030-21-33-0003 and 30-030-21-22-0025.
- This survey was prepared with the benefit of title work, and is based upon information found in the commitment for title insurance prepared by Edina Realty Title, Inc, File No. 2233094, dated effective November 24, 2024 at 12:00 A.M.
- Landscape design (retaining walls, rain garden, steps) provided by others.

## LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 41578
- x 952.36 DENOTES EXISTING SPOT ELEVATION
- DENOTES GUY WIRE
- DENOTES POWER POLE
- DENOTES FENCE
- DENOTES RETAINING WALL
- DENOTES EXISTING CONTOURS
- DENOTES PROPOSED CONTOURS
- DENOTES OVERHEAD UTILITY
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PERVIOUS PAVER SURFACE

## TREE DETAIL

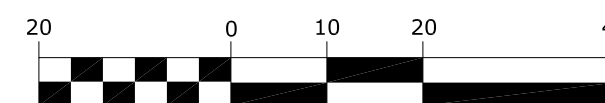
- DENOTES ELEVATION
- DENOTES TREE QUANTITY
- DENOTES TREE SIZE IN INCHES
- DENOTES TREE TYPE

## BENCHMARK

DNR PAINT MARK ON SLAB OF PUMPHOUSE AT MATOSKA PARK  
 ELEVATION: 928.74 (MSL 1912)



### GRAPHIC SCALE



1 INCH = 20 FEET

## CONSTRUCTION NOTES

- \* BUILDER TO VERIFY HOUSE DIMENSIONS, SEWER DEPTH AND FOUNDATION DEPTH.
- \* DRIVEWAYS ARE SHOWN FOR GRAPHIC PURPOSES ONLY. FINAL DRIVEWAY DESIGN AND LOCATION TO BE DETERMINED BY CONTRACTOR.
- \* FINISHED GRADE ADJACENT TO HOME SHALL BE 0.5 FEET BELOW TOP OF BLOCK EXCEPT AT DRIVEWAY AND PATIO.

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: 1/27/2025 License No. 41578

(9 FOOT POURED WALL WALKOUT)

## PROPOSED ELEVATIONS

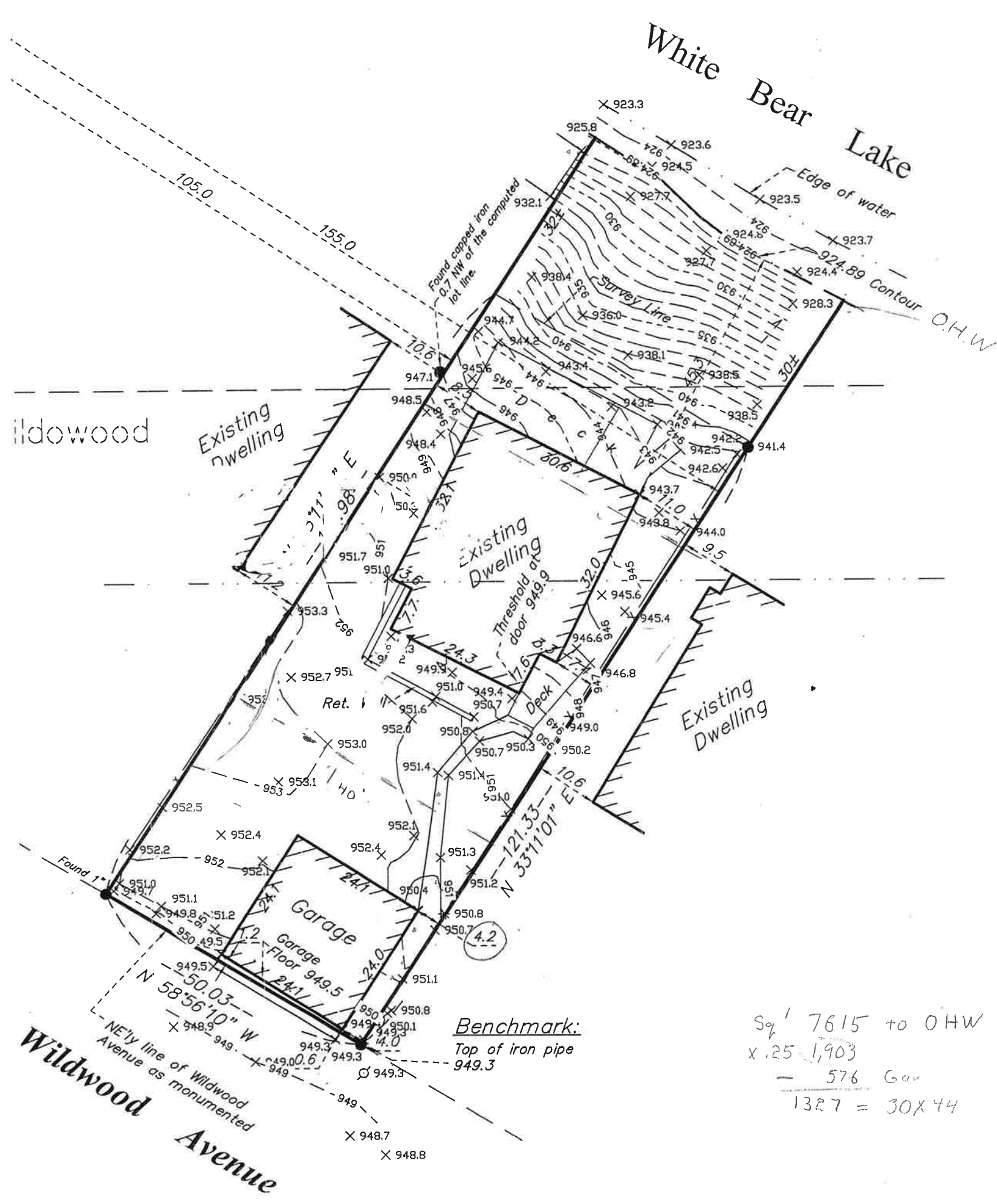
TOP OF BLOCK = 951.5  
 LOWEST FLOOR = 942.8  
 TOP OF FOOTING = 942.5

DRAWN BY:	RAF/CMB	JOB:	250047HS	DATE:	01/23/25
CHECK BY:	JER	FIELD CREW:	DT / CT		
1					
2					
3					
NO.	DATE	DESCRIPTION			BY

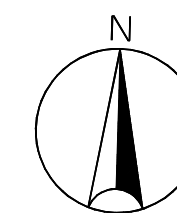
**E.G. RUD & SONS, INC.**  
 EST. 1977  
 Professional Land Surveyors  
 6776 Lake Drive NE, Suite 110  
 Lino Lakes, MN 55014  
 Tel. (651) 361-8200 Fax (651) 361-8701

NORTH





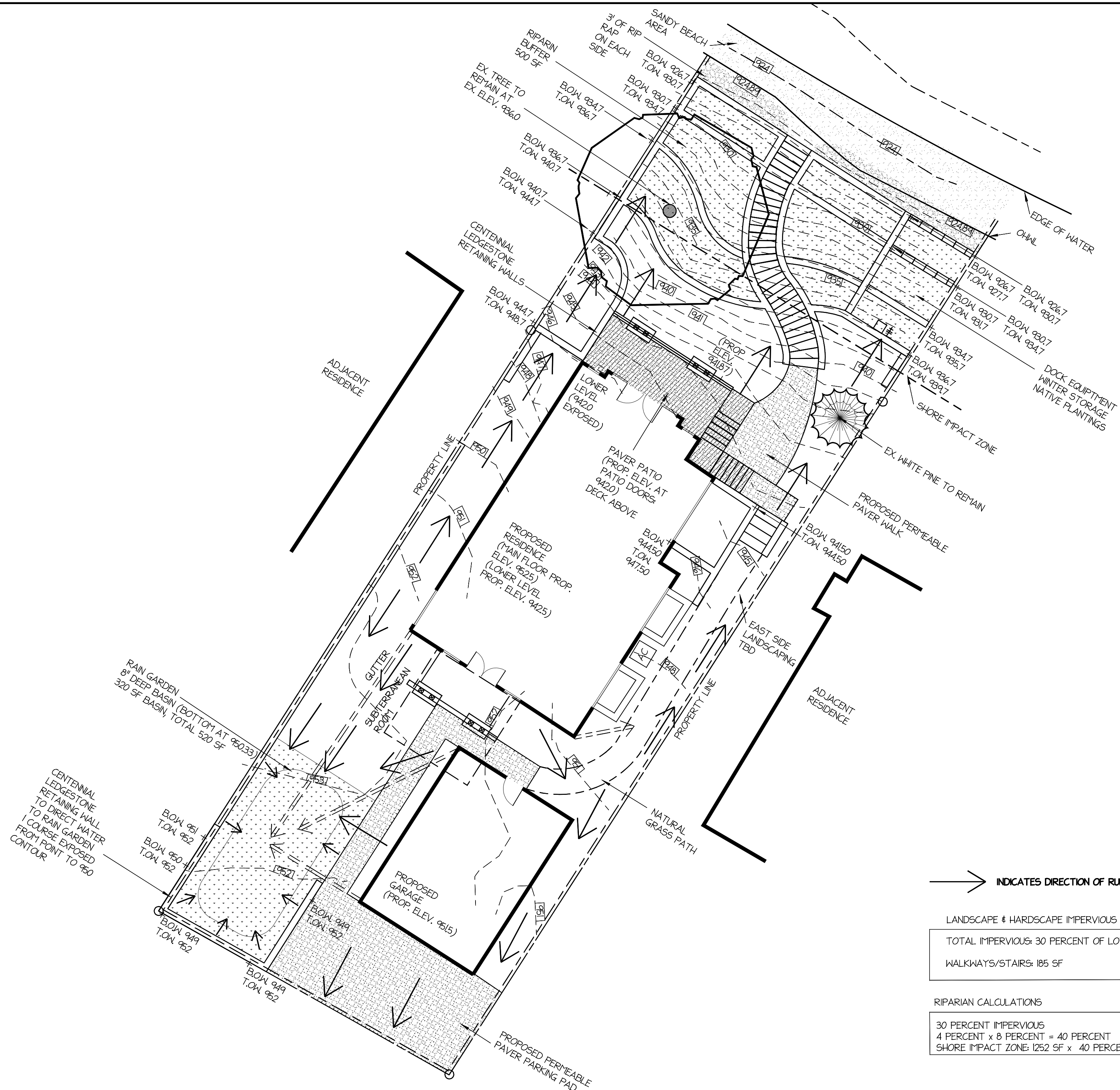
Sq' 7615 to OHW  
 x .25 1,903  
 - 576 Gar  
 1327 = 30X44



NORTH

**GALATOWITSCH RESIDENCE - HARDSCAPE & FLOW**  
131 WILDWOOD AVE. WHITE BEAR LAKE, MN 55110

SCALE: 1/10  
DATE: JAN. 27TH, 2025  
DRAWING #: 1 OF 1



→ INDICATES DIRECTION OF RUNOFF FLOW

LANDSCAPE & HARDSCAPE IMPERVIOUS CALCULATION:

TOTAL IMPERVIOUS: 30 PERCENT OF LOT

WALKWAYS/STAIRS: 185 SF

RIPARIAN CALCULATIONS

30 PERCENT IMPERVIOUS  
4 PERCENT x 8 PERCENT = 40 PERCENT  
SHORE IMPACT ZONE: 1252 SF x 40 PERCENT = 500 SF

JOSEPH GALATOWITSCH  
THERESE GALATOWITSCH  
27 PINE ROAD  
NORTH OAKS, MN 55127

Fidelity Account®

349

80-568/10

1/27/25

Date

Pay to the  
Order of

City of Birchwood Village

\$ 3,000.-

Three thousand & no/100

Dollars



UMB Bank, N A  
Kansas City, MO

For

Therese Galatowitsch



Family by family, home by home, since 1973

Birchwood  
PLANNING Commission  
Workshop

131 Wildwood Ave.

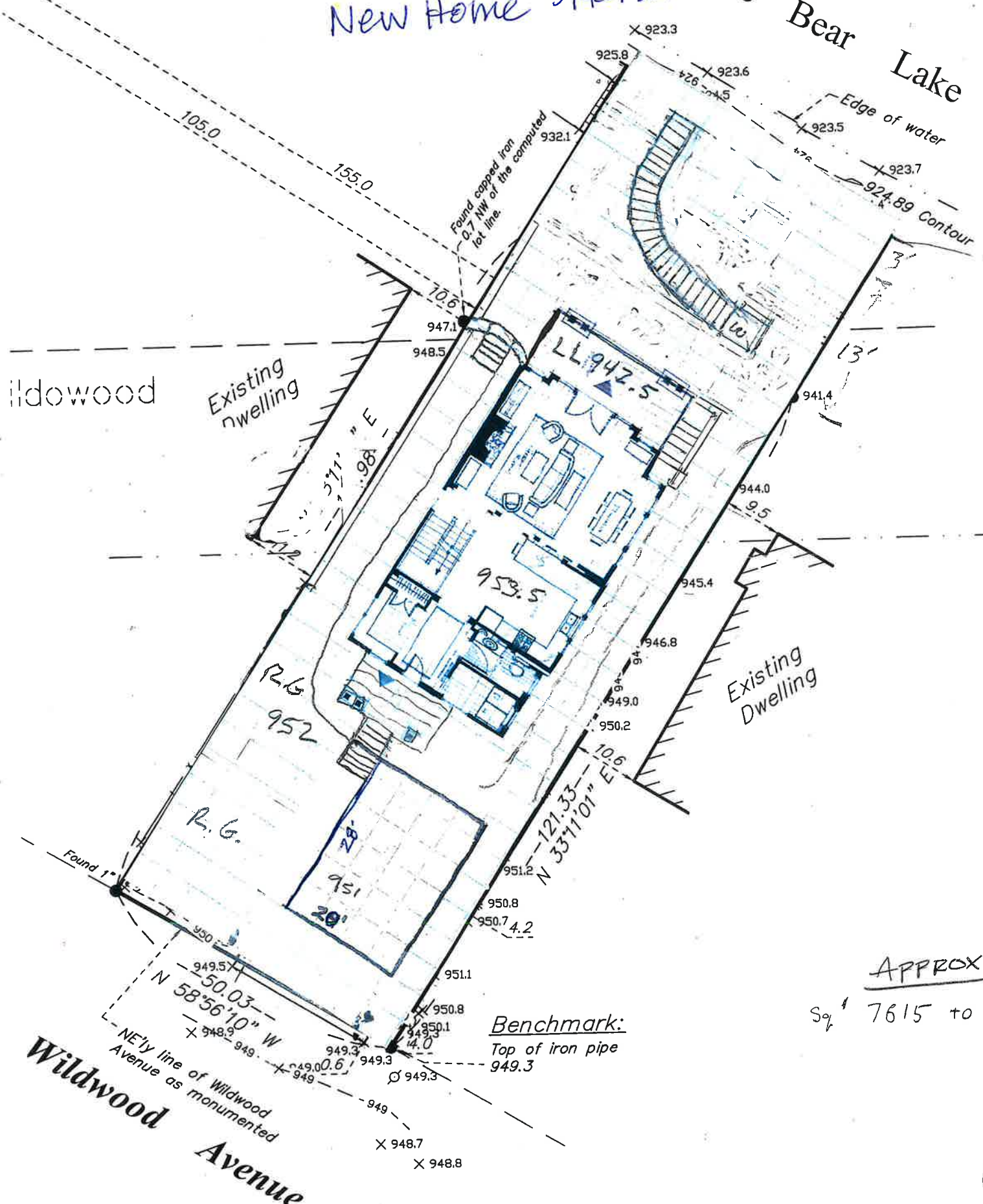
Applicant JOE and Therese GALatowitsch

Agenda of Issues for discussion

- 1) We propose A GARAGE sideyard setback of Five feet.  
It was 4.2 feet
- 2) We propose the GARAGE street side setback  
from property corner of 10 feet. It was 0 zero  
feet
- 3) We propose the New Home sideyard setbacks  
of 10 feet on each side. It was 7.4<sup>ft</sup> on  
the House and 2.5<sup>ft</sup> on the entry door deck
- 4) We propose the setback from the Normal  
High water Line be what it was, see Attached  
SURVEY

# Proposed New Home Site Plan

White Bear Lake



Wildwood

Existing well

Existing Dwelling

APPROX

Sq' 7615 to C

Wildwood Avenue

Benchmark:  
Top of iron pipe  
949.3

NE'y line of Wildwood Avenue as monumented  
N 58°56'10" W  
50.03'  
948.9  
949.3  
949.0  
949.6  
949.3

571' " E  
98'

N 33°11'01" E  
10.6'

R.G.  
952

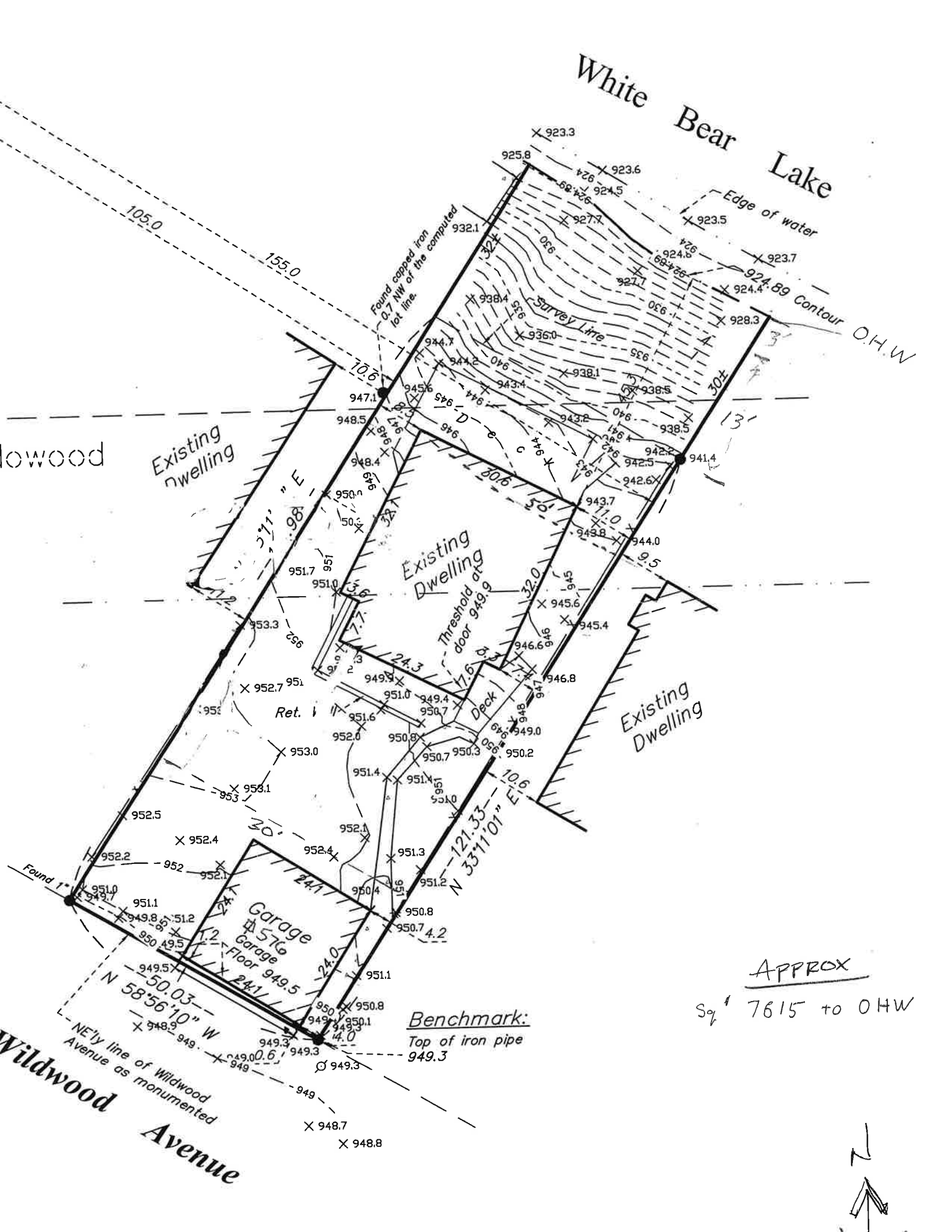
R.G.

28'  
951  
20'

X 948.7  
X 948.8

7

# White Bear Lake



Existing well

Existing Dwelling

Existing Dwelling

Garage

Garage Floor

Benchmark:  
Top of iron pipe  
949.3

APPROX  
Sq' 7615 to O.H.W

Wildwood Avenue



105.0  
155.0

Found capped iron  
0.7 NW of the computed  
lot line.

Edge of water

924.89 Contour O.H.W

Survey Line

Threshold at  
door 949.9

Ret.

Deck

Found 1" ...  
N 58°56'10" W  
50.03  
NE'ly line of Wildwood  
Avenue as monumented

Wildwood Avenue











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# **STAFF REPORT**

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**Meeting Date(s):** February 27, 2025 Planning Commission  
March 11, 2025 City Council

**Scope:** Variances -  
**Applicant:** Joe and Therese Galatowitsch, owners

**Representative:** Len Pratt, Pratt Homes  
**Property Location:** 131 Wildwood Avenue

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Report prepared by Ben Wikstrom, Planning Consultant

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## **ATTACHMENTS**

1. Application with narrative
2. Survey/site plans
3. Photographs

## **BACKGROUND**

Len Pratt of Pratt Homes, representing property owners Joe and Therese Galatowitsch, has submitted application for multiple variances in order to redevelop the property at 131 Wildwood Avenue.

The principal structure and garage were torn down in 2024; the applicants will be using the same or increased setbacks that the previous structures had. However, the replacement and expansion, along with landscaping and stabilization work within the ordinary high water line setback area and impervious surface installation, makes approvals beyond standard permitting necessary.

The property as it looked in 2023 can be seen in the aerial below, from Washington County. A more precise look at the (previously) existing conditions is shown in the survey attached to the application.



## **SURROUNDING USES**

North: White Bear Lake  
East: Single-family home  
South: Wildwood Avenue and single-family homes  
West: Single-family home

## **PROPOSED CONSTRUCTION**

The applicants intend to construct a two-story home with a walkout basement, an attached deck, a new detached garage, and landscaping and retaining walls. The house plans have not been finalized by the time of application, but the site plan overlaid on a survey and a landscape and hardscape plan are attached to the application.

From the applicants' narrative, the following is a list of variances and approvals that are necessary:

### Variances being sought:

- a. *Undersized lot (7590 sq. ft. vs 9000 sq. ft. minimum) (Planner's note: 15,000 s.f. min.)*
  - i. *See Zoning Code Requirements section 302.015*
- b. *Garage east side yard setback of 5 ft. (code calls for 10 ft.)*
  - i. *See Zoning Code Requirements section 302.020 (2)*
- c. *Garage Road right of way setback of 16 ft. (code calls for 30 ft.)*
  - i. *See Zoning Code Requirements section 302.020 (2)*
- d. *House west side yard setback of 8.5 ft. (code calls for 10 ft.)*
  - i. *See Zoning Code Requirements section 302.020 (2)*
- e. *House height of < 30 ft. (method A) /< 35 ft. max (code calls for no higher than the previous home max height of ~ 25 ft.)*
  - i. *See Zoning Code Requirements section 301.050 (C3) – highlighted above*
  - ii. *Per Zoning Code Requirements section 302.045 (2 & 4) proposed house and garage **CONFORM** with 302.045 (2 & 4) (Height and Max Height)*
- f. *Retaining walls requested within the 50 ft. OHW setback requirement (see site plan)*
  - i. *See Zoning Code Requirements section 302.020 (2 & 4)*

and

*IMPERVIOUS SURFACE COVERAGE PERMIT. Section 302.050 (4) 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 property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner.*

Each of these variances and approvals will be discussed separately in the section below.



There are many instances of non-conformities in the surrounding neighborhood, as evident in this Washington County aerial.

## **VARIANCES**

As you will remember from prior applications, recommendations and decisions on variances are to be considered based on these criteria, as excerpted from the zoning 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.*

Perhaps a clearer understanding of how "practical difficulties" are determined is found by a League of Minnesota Cities summary of their relation to State Statute:

#### A. *Practical difficulties*

*"Practical difficulties" is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.*

##### 1. *Reasonableness*

*The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or that does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.*

##### 2. *Uniqueness*

*The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.*

### 3. Essential character

*The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.*

The application details six variances necessary for construction of the proposed home and garage, and installation of the retaining walls. Each variance will be listed separately below, followed by the pertinent ordinance language as shown in the application or as excerpted from the ordinance, the applicants' comments relating to each, and finally, staff comment, if necessary.

#### **a. Undersized lot (7590 sq. ft. vs 9000 sq. ft. minimum) (Planner's note: 15,000 s.f. min.)**

##### Ordinance

- a. 302.010. LOT REQUIREMENTS. All lots created after the date of enactment of this ordinance must conform to the following dimensions, utilizing only that land above the ordinary high-water level of any lake, pond, or wetland. **1. Minimum lot size per dwelling unit: Lots abutting lake or wetland: 15,000 sq. ft. APPLIES** All other lots 12,000 sq. ft.
- b. **302.015. UNDERSIZED LOTS Any lot of record as of January 1, 1975, which remains in its then-existing dimensions and which does not meet the requirements of this Code may nevertheless be utilized for single-family detached dwelling purposes provided the requirements of 302.010 are at least 60% of those as required. APPLIES, Requires Variance**

##### Applicants' comments

*Requesting undersized lot variance consistent with statutory use of lot to support a single-family home of similar size and character as existing homes on similarly sized and adjacent lots.*

*The undersized lot variance is consistent with the ordinance by facilitating this historically residential (lot of record) lake lot's continued modern residential use.*

##### Staff comment

The applicants have been made aware that a condition of approval will be to combine the two lots making up this property. This combination will leave the property well short of the required 15,000 s.f. minimum size and 80-foot width for parcels abutting a lake. However, it is a lot of record, and is similar in size and width to many parcels along the shore of the lake. This variance is generally considered procedural, as the applicants are allowed to replace an existing non-conforming home (even if it met all setbacks, the fact that the lot is undersized makes this a non-conforming situation). The expansion of some parts of the home makes this and other variances necessary, as well.

(See the more detailed ordinance language as outlined in the next section as it relates to this requirement.)

For the next three variances, the following table applies:

<u>Lot line or Land Boundary</u>	<u>Fences and Landscaping Barriers</u>	<u>Driveways &amp; Walkways</u>	<u>All Other Structures</u>
Municipal Street and County Road Front, Back, and Side Lot Line	10 ft.	0	30 ft.
Municipal street or County Road Front, Back, And Side Lot Line for Non address side of Corner lot	10 ft.	0	25 ft.
Ordinary High Water Level of Lost Lake	75 ft.	75 ft.	75 ft.
Ordinary High Water Level of White Bear Lake, Hall's Marsh, and other wetlands	50 ft.	50 ft.	50 ft.
All Other Lot Lines	0 ft.	1 ft.	10 ft.

**b. Garage east side yard setback of 5 ft.**

Ordinance

*See table above. 10-foot setback applies.*

Applicants' comments

*Requested garage side yard variance moves the garage 5 ft. closer to the side yard on the EAST side of the lot vs. ordinance and 0.5 ft less non-conforming vs. the non-conforming pre-existing garage.*

*The garage side yard variance request is **less non-conforming** compared to the nonconforming pre-existing garage side yard location (5 ft. vs. 4.5 ft.) and thereby facilitates 11% wider access between the garage and the side yard.*

Staff comment

The applicants' comments are correct, in that this is an improvement to a non-conforming situation versus a rebuild in the same location, as is allowed. While the garage footprint will take a slightly different shape, the overall size is slightly smaller, and the movement further from the property line, while not coming fully into conformance, is seen as an improvement that obviously does not increase the non-conformity. Many garages in the neighborhood meet neither the side yard nor the street side setback(s), so the character of the neighborhood is not an issue. This is a reasonable request, and the lot width and size are not a result of actions by the applicants. Should this variance

be denied, the applicants would likely construct a garage in the previously existing location, which would be allowed but be a worse situation, aesthetically and practically, than what it proposed.

**c. Garage Road right of way setback of 16 ft.**

Ordinance

See table above. 30-foot setback applies.

Applicants' comments

*Requested garage road setback variance moves the garage 14 ft. closer to the road right of way vs. ordinance and 16 ft less non-conforming vs. the non-conforming pre-existing garage.*

*The garage road right of way variance request is **less non-conforming** compared to the non-conforming pre-existing garage road right of way location (by 16 ft.) and therefore is creating less non-conformance vs. the non-conforming pre-existing garage. The garage road right of way variance request is sufficiently removed from the road right of way to create off-street parking spaces on the lot thereby relieving ROW parking and future road improvement complexities.*

Staff comment

See staff comment on the previous variance; the same points and logic apply to this request.

**d. House west side yard setback of 8.5 ft.**

Ordinance

See table above. 10-foot setback applies.

Applicants' comments

*Requested house side yard variance moves the house 1.5 ft. closer to the side yard on the WEST side of the lot vs. ordinance and more non-conforming vs. the non-conforming preexisting house by virtue of aligning the proposed home parallel to the side yard lot line.*

*All non-conforming setbacks from the east side of the non-conforming pre-existing house are fully conforming with the proposed home.*

*The proposed house and attached deck are situated parallel to both the east and west side yard lot lines, thereby eliminating 'pinch points' that limit emergency or practical use access on both sides of the house. The front and side decks of the previous house pinched the space along both the east and west side yards to less than 5 ft. on BOTH sides. The proposed house has no deck structures that extend beyond the proposed house side yard setbacks of 8.5 and 11.5 ft. The east side yard will provide more than 10 ft. of width to facilitate access to the lake for emergency and general access requirements.*

Staff comment

Similar to the previous two variance requests, this would be an improvement of the non-conformity that existed. The length of wall on the west side that is within 8.5' of the



property line would increase because of the proposed alignment, but the house would be more centered on the lot and not have the “pinch points” as referenced in the applicants’ comments. Again in this situation, a rebuild using the existing footprint would be a worse situation, aesthetically and practically, than what is proposed. The request is reasonable, especially when considering the previous layout weighed against the improvements to or elimination of non-conformities. The side-yard setbacks of 8.5’, while not conforming, and 11.5’, total a 20-foot side yard area, and considering the number of non-conforming side yard setbacks in the neighborhood, this is not an immaterial measurement, especially on a lot of 50’ in width. With the walkway and egress windows proposed on the east side of house, the 1.5-foot “tradeoff” makes sense and is a reasonable request; bringing one side into compliance while not increasing the non-conforming closest measurement on the other side is important when reviewing the reasonableness of the request. Obviously, the character of the neighborhood would not be greatly impacted by a house with 8.5-foot and 11.5-foot side yards.

**e. House height of < 30 ft. (method A) /< 35 ft. max**

Ordinance

(non-conforming ordinance/statute allow no higher than the previous home max height of ~ 25’)

**C. A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except: EXCEPTION APPLIES** 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; **Requires Variance** 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; - **Requires Variance**

Section 302.045 will not be reviewed, as the house plans are not finalized.

Applicants’ comments

*Requested house height variance increases the height of the house by approximately 10 ft. over the non-conforming pre-existing single-story house, but NOT higher than required by zoning codes for new construction structures and is similar in height to adjacent properties.*

*The house height variance request is **within the ordinance height requirements for new construction** but is above the non-conforming pre-existing home height. Part of the intent of the ordinance related to height for non-conforming structures is its impact on neighboring homes and lots. Homes on both the west and east lot boundary are as high or higher compared to the proposed home and are situation as close or closer to the OHW line compared to the proposed home and decks on this lot, thereby eliminating any risk of encroachment or obstruction by approving the requested height variance.*

Staff comment

The applicants’ narrative comments are that the proposed house will be lower than the ordinance-allowed height for new structures; this will be reviewed to ensure compliance

at the time of the building permit. However, this variance is necessary because of the non-conforming status; if the applicants intend to use the previous, non-conforming setbacks, then the height of the non-conforming portions of the structure should not exceed the previous structure's height. In this case, with the improvements to the non-conformities, and considering the negligible encroachments of the required setbacks, staff believes it is a reasonable request to allow a height that meets the current ordinance requirements. The applicants state that the neighboring homes are higher than what will be proposed for this property, which would alleviate any concerns about impact to the neighborhood character. The need for the variance is not a result of the applicants' actions, since the old house "established" the height maximum. Again, proposing a structure within current regulations would seem to be a fair resolution since the encroachments are not egregious and houses of this height were allowed nearby and would be possible without a variance with slightly modified design. The variance is only necessary because of the previous structure, which wasn't designed like the current residences all along the lake, and wasn't meant to be used in the same manner.

**f. Retaining walls requested within the 50 ft. OHW setback requirement (see site plan)**

Ordinance

Section 302.020

b. 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.

Applicants' comments

*Adding retaining walls within the 50 ft. setback area will facilitate fulfilling the required 40% riparian buffer area (per the impervious surface ordinance related to impervious surface between 25 and 30% coverage). Additionally, retaining walls will facilitate greatly improved stormwater infiltration of the steep (> 50%) riparian slope and prevent further erosion of soil and large inflows of unfiltered contaminants into the lake.*

Staff comment

It appears from the proposed landscape and hardsurface plan that all requirements for buffer areas and impervious mitigation will be met with this plan; it will be further reviewed by the Planner and Engineer to ensure compliance with the impervious allowance of 25-30%. This variance is necessary to allow construction of the walls within the OHWL setback area. More detail is available on the attached plan, while discussion of the design of this area should occur at the meeting(s). Staff does not see a problem with the proposed design, and it is similar to other tiered yards along the shoreline; whether other options are available is not known, but the proposal seems reasonable and in keeping with the spirit and intent of the ordinance.

One note to keep in mind is that the design should not necessarily be allowed if the intent (of the applicant) is only to meet the requirements necessary for increased impervious; the proposed design should be viewed as a standalone request. In other words, requesting a variance for retaining walls in order to have more impervious surface elsewhere on the property is not a reason to approve the variance, and would be a situation created by the intentions or actions of the owner.

In addition to the variances requested by the applicants, they will be requesting an increase in the impervious surface over what previously existed, and what is allowed by ordinance. The proposed impervious percentage is 29.8, which falls within the window allowed by staff review and approval. The City Engineer and Planner will review the plans to ensure compliance with the ordinance; anything greater than 30% or mitigation plans that don't meet requirements (within the 25-30% window) would necessitate a Conditional Use Permit application. The raingarden location and a grading and drainage plan will be reviewed as part of this process.

#### Ordinance

IMPERVIOUS SURFACE COVERAGE PERMIT. Section 302.050 (4) 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 property owner complies with, and demonstrates compliance with, the requirements of Section 302.050(6) to the satisfaction of the City Planner.

#### **GENERAL INFORMATION**

For more information on how the non-conforming ordinance and statutes apply, here is an excerpt from the ordinance:

New home and garage to be built under section 301.050

**a. 2. Non-Conforming Pre-Existing Structure: A structure existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control. APPLIES**

b. 2. Non-Conforming Pre-Existing Use: A use or occupation of land existing at the time of the adoption of a zoning control that was lawful prior to the time of the adoption of the zoning control but does not comply with that control.

**B. A non-conforming pre-existing structure or use existing at the time of the adoption of an additional zoning control may be continued, including through repair, replacement, restoration, maintenance, or improvement, APPLIES** unless: 1. the non-conforming pre-existing structure or nonconforming pre-existing use is discontinued for a period of more than one year;; or 2. the non-conforming structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged.

c.

**C. A non-conforming pre-existing structure or non-conforming pre-existing use may not be moved or expanded except: EXCEPTION APPLIES** 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; **Requires Variance** 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; - **Requires Variance**

### **STAFF COMMENT**

The section directly above was added only to illustrate the complexity of the application. In general, the applicants are requesting approvals – through the variance process – of a very reasonable set of plans that will enhance this stretch of the shoreline and will not, in any way, have a deleterious effect on the character of the neighborhood.

As stated in some of the individual variance reviews above, the applicants could rebuild something with the exact setbacks of the previous structures, and not go through this process (though the allowed height, if the variance was denied, would be very limiting in other ways). Staff views all of the proposals as improvements to the layout of the site, and as reasonable; the Planning Commission agreed with this view at the meeting reviewing the conceptual plans for this project.

One item that should be discussed at the meeting, beyond those things mentioned above, is the deck on the lake side. The previous posts are evident on the survey, and this has been discussed with the applicant, but staff would like a better understanding of the plans (to ensure that another variance isn't needed, as much as anything) and how they relate to the previous structure; the OHWL setback for decks has been a contentious issue for the City.

Staff would encourage the commissioners and council members to read the applicants' narrative in the attached application; it is a thorough outline of their plans, and explains the reasoning for certain decisions in the design process. Additionally, there are more comments (than were excerpted above) answering the questions asked of any applicant regarding the variance process and how their proposal meets the criteria necessary for approval. It is a very well-written and logical narrative that will be helpful in fully understanding the proposed variances.

### **RECOMMENDATION**

Staff recommends approval of the variances for 131 Wildwood Avenue, assuming further discussion and satisfactory resolution regarding the retaining walls and landscape design, along with clarification on the proposed deck.

Should the Planning Commission recommend approval or denial at this meeting, staff will prepare a memo for the March City Council meeting outlining the findings for the recommendation; often, the commission will agree with the staff report and recommendation and the findings will be taken from within, but the commission is encouraged to provide comment to supplement the findings.



**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.

A. Applicant's Name: Carson Schifsky Telephone: 651.260.3248  
Home:  
Work/Cell:

B. Address (Street, City, State, ZIP):  
PO Box424 Lake Elmo MN 55042

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C. Property Owner's Name (If different from above): Robert davidson Telephone:  
Home:  
Work/Cell: (651) 900-9289

D. Location of Project:  
425 Lake Avenue

E. Legal Description: SubdivisionName LAKEWOOD PARK 3RD DIVISION Lot 5 Block 1 SubdivisionCd 25442 Subdivision  
Name LAKEWOOD PARK 3RD DIVISION Lot 4 Block 1 SubdivisionCd 25442  
THE EAST HALF OF LOT 4, BLOCK 1, LAKEWOOD PARK THIRD DIVISION,  
WASHINGTON COUNTY, MINNESOTA. ALSO: LOT 5, BLOCK 1, LAKEWOOD PARK THIRD  
DIVISION, E

F. Description of Proposed Project: Retaining Wall construction and steps access to lake.

G. Specify each section of the City Code for which a variance is sought. (Variances are not to be granted for the provisions of 301.050 but instead may be granted for other sections of chapters 200 or 300 that cause the existing or proposed structure or use to be non-conforming).

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

- 302.050, Impervious Surfaces and Lot Coverage.
- 302.055.2.a.4, Land Disturbance Activity Standards – no grading or filling shall be permitted within 20 feet of the OHWL of the lake.
- 302.055.2d7b3, requires protective buffer strip of vegetation at least 16.5' back from the OWHM.

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? Helping prevent erosion of the hillside into the lake.

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

Yes  No

Why or why not? No major changes affect the comp plan.

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

Yes       No

Why or why not?

Yes, we are adhering to as many ordinances as we can to build a wall that will help prevent erosion.

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

Yes       No

Why or why not?

Hillside is very steep and washing out. This creates a maintenance issue.

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

Yes       No

Why or why not?

The wall features will be aesthetically pleasing and help maintain the character of the neighborhood.

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

Please include the information in the following table.

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot	12,713		
2. Maximum Impervious Surface			
3. Roof Surface	3,832		
4. Sidewalks			
5. Driveways			
6. Other Impervious Surface	182	284	
7. Total of Items 3-6	4,014		
8. Impervious Surface Infiltrated			
9. Item 8 subtracted from Item 7			
10. Percent Impervious Surface			2.2%

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.

304.020 Variance Application Requirements. Before consideration of a variance, an application for variance shall be made on forms provided by the City Clerk. The application shall be accompanied by the required information described below and by all required fees. Each application must include at a minimum:

- a) The legal description and address of parcel.
- b) Name, address, and phone number of applicant (and of the owner if owner is not the applicant).
- c) Plot plan drawn to scale. Elevation contour lines are required.
- d) Plan showing existing and proposed new and changed structures on the lot.
- e) Existing structures on adjacent lots.
- f) A certificate by a registered professional land surveyor verifying the location of all buildings, setbacks, and building coverage.
- g) A certificate by a registered professional land surveyor certifying other facts that in the opinion of the City are necessary for evaluation of the application.
- h) A separate enumeration of each section of the code to which a variance is requested along with a demonstration that the criteria set forth in section 304.040 are met for each enumerated section.
- i) Evidence demonstrating compliance with regulations of other governmental units when required by provisions of this code, State Law, or regulations of other governmental units. Non-limiting examples of government units which may have applicable regulations include the State of Minnesota, Rice Creek Watershed District, Minnesota Department of Natural Resources, White Bear Lake Conservation District, and the Minnesota Pollution Control Agency.
- j) Other documentation as applicable and as required by the City Code for the type of variance sought (see for example the impervious surface requirements of 302.050)



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: \_\_\_\_\_

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# **STAFF REPORT**

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**Meeting Date(s):** February 27, 2025 Planning Commission  
March 11, 2025 City Council

**Scope:** Variances – See Report  
**Applicant:** Schifsky Companies, LLC

**Representative:** Carson Schifsky  
**Property Location:** 425 Lake Avenue

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Report prepared by Ben Wikstrom, Planning Consultant

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## **ATTACHMENTS**

1. Application
2. Letter of Approval for previous variances (2024)
3. Plans
4. Pictures

## **BACKGROUND**

Schifsky Companies, LLC (Carson Schifsky) has applied for multiple variances to allow construction of a retaining wall on the property located at 425 Lake Avenue.

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: Lake Avenue and City park  
West: Single-family home

In 2024, the applicant received approval of two variances, to allow construction of a retaining wall within the 50-foot setback from the Ordinary High-Water Line, and to allow the wall to exceed 4' in height. At that meeting, it was determined that the project would need additional variances. After review of the plans and the discussion at the meeting, and conference with the City Attorney, it was determined that variances to the following sections of the zoning ordinance were necessary:

1. 302.050, *Impervious Surfaces and Lot Coverage*.
2. 302.055.2.a.4, *Land Disturbance Activity Standards – no grading or filling shall be permitted within 20 feet of the OHWL of the lake*.
3. 302.055.2d7b3, *requires protective buffer strip of vegetation at least 16.5' back from the OWHM*.

It should be noted that at the time of approval of the 2024 variances, the intent of the property owner had changed from a more typical retaining wall to a boulder wall; since that time, the owner has decided to revert to a retaining wall using stone and mortar. Renderings show the proposed wall later in this report.

As always, variances are to be considered in relation to the criteria listed in 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.*

Perhaps a clearer understanding of how "practical difficulties" are determined is found by a League of Minnesota Cities summary of their relation to State Statute:

*A. Practical difficulties*

*"Practical difficulties" is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.*

**1. Reasonableness**

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or that does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

**2. Uniqueness**

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

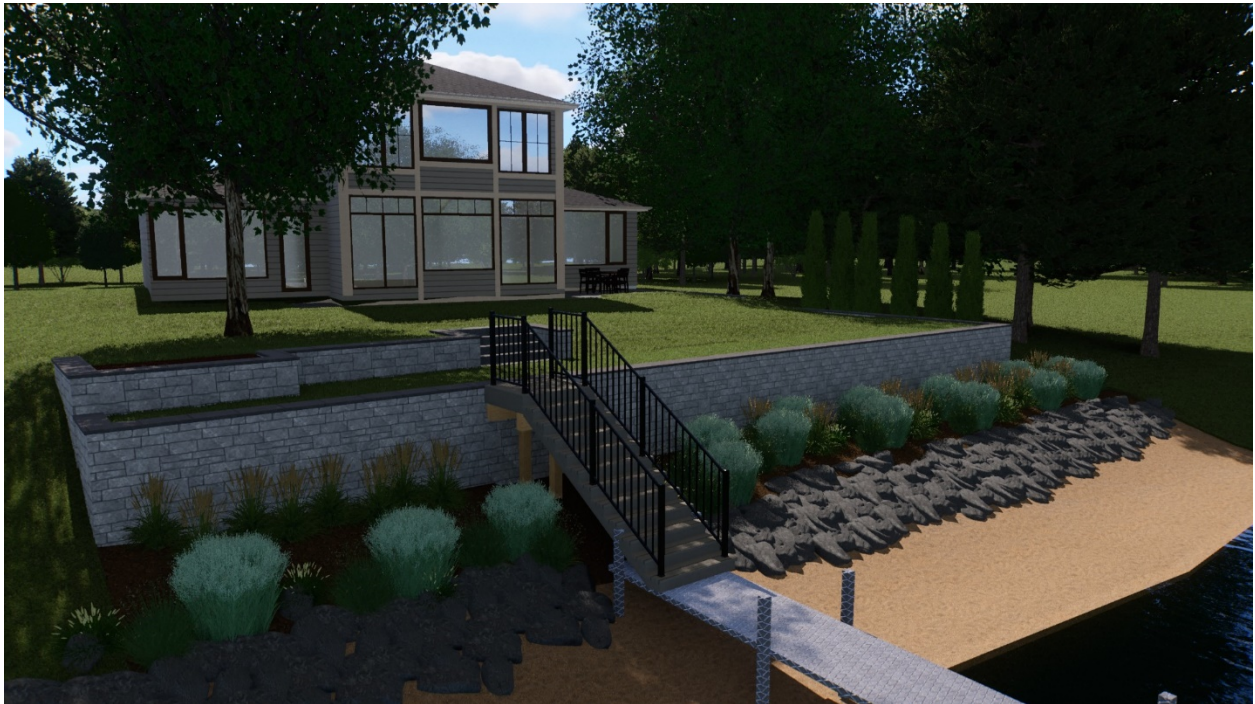
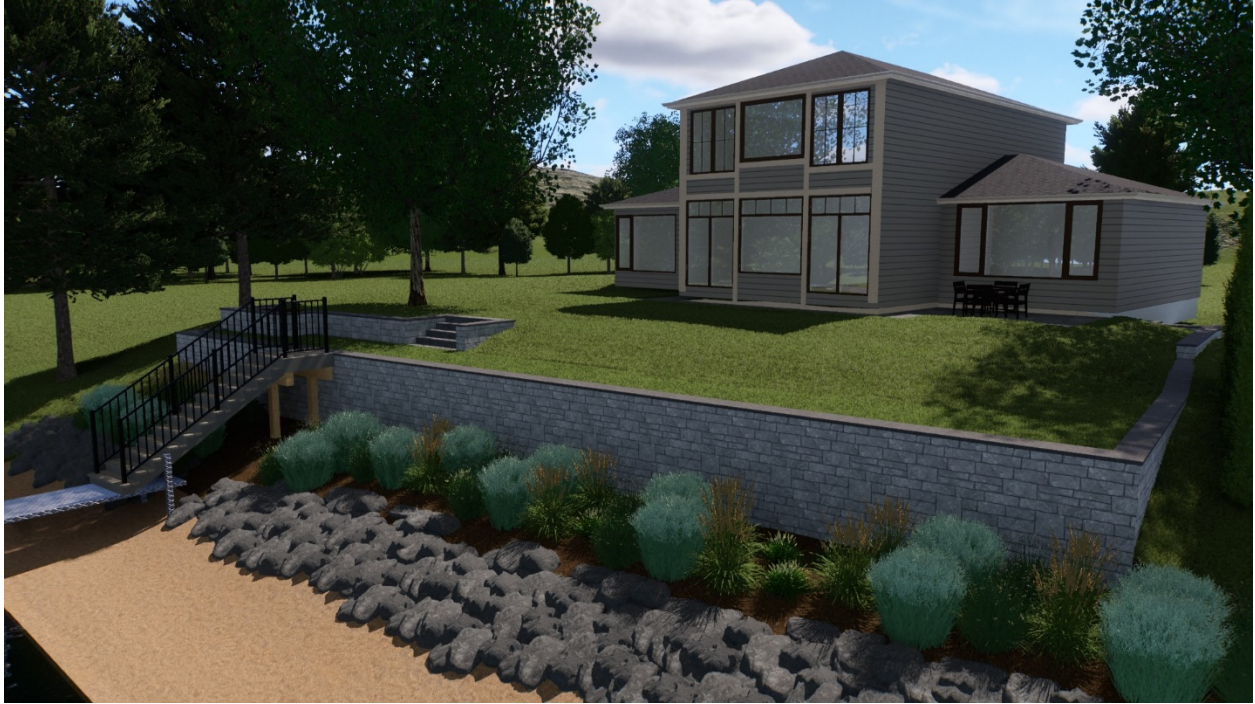
**3. Essential character**

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

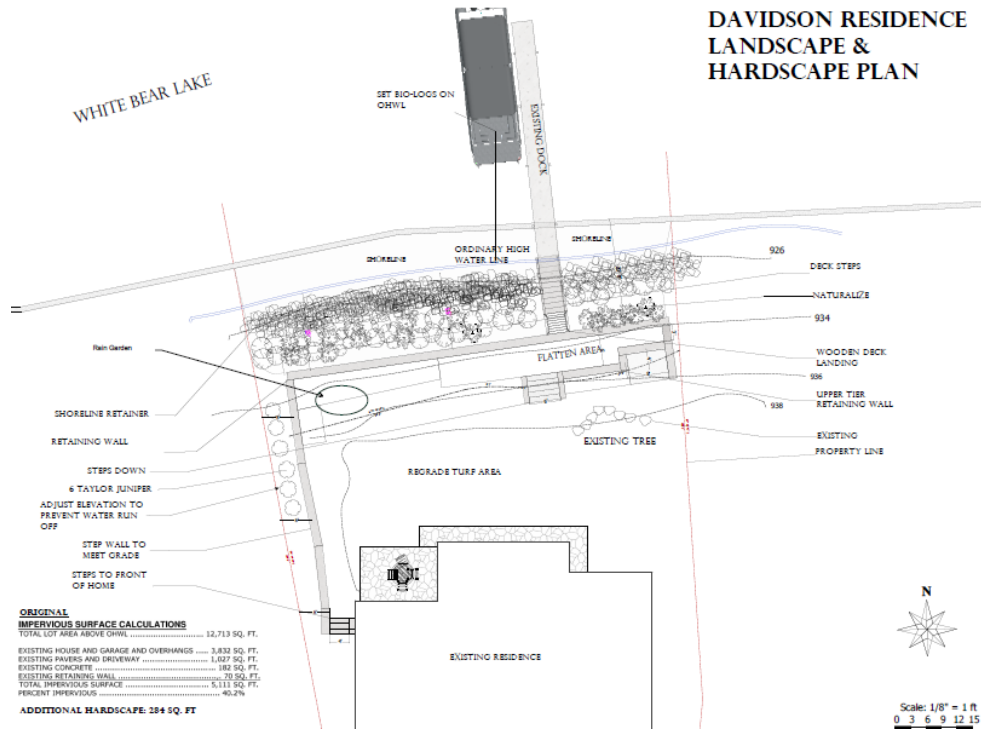
**PROPOSED CONSTRUCTION**

The applicant is proposing to construct the retaining wall to mitigate erosion problems that are occurring on site. The area of impact is shown on the pictures below, followed by a rendering of the site and wall.

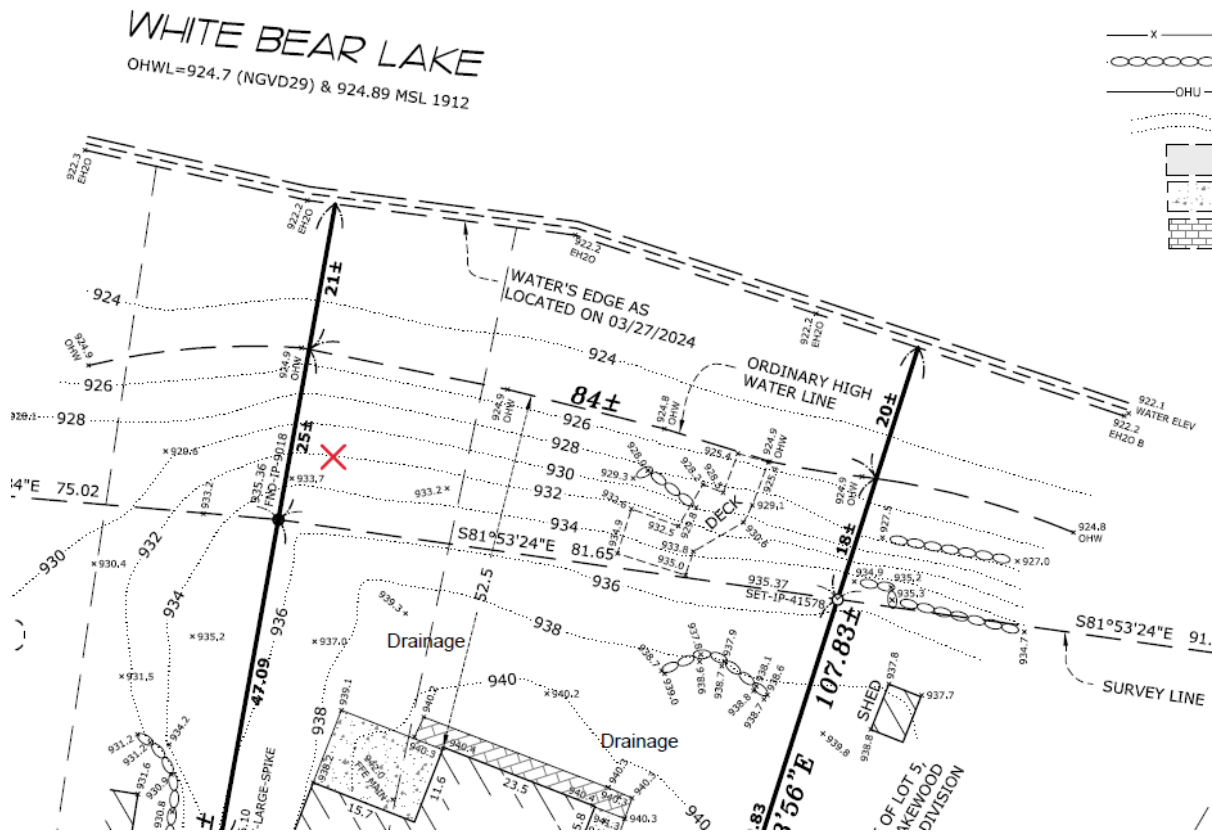




Some clarification will be needed from the applicant regarding the changes in proposed materials, as well as the tiering of the wall and locations. The plan submitted is shown here (as always, see the attachments for a clearer depiction):



And a portion of the existing conditions survey:



## **VARIANCES**

Each of the requested variances is listed below, followed by staff comment.

### 1. 302.050, Impervious Surfaces and Lot Coverage

The impervious surface increase is due only to the top of wall; the applicant has stated that no additional hardsurface will be constructed. Many cities will not consider the minimal width of the top of a retaining wall as increased impervious surface, as the impact on stormwater management – which was the impetus for impervious surface ordinance development – is negligible and the construction of these walls will help to mitigate the erosion problems. However, Birchwood Village does not specify any such exceptions within the ordinance, and the City Council directed staff to require a variance for that increase in impervious surface following the 2024 approvals.

It is the opinion of staff that the 284 square foot increase in impervious surface is reasonable considering the positive impact of the wall on erosion; that it is not a result of actions by the property owner; and that it will not negatively impact the character of the neighborhood. The addition of the buffer strip and native plantings at the base of the wall will enhance the filtration of any water resulting from the addition of the wall width, as well as providing aesthetic relief to the wall massing.

### 2. 302.055.2.a.4, Land Disturbance Activity Standards – no grading or filling shall be permitted within 20 feet of the OHWL of the lake

This variance is necessary as a matter of procedure, as any construction of the wall will occur within the 20-foot setback. During the previous meetings, it was determined that a separate variance from this requirement was necessary, rather than as part of the variance to allow the construction of the wall within the 50-foot OHWL setback.

Staff views this request as reasonable considering the location of the existing slope and necessary placement of the wall to mitigate the erosion problem; agrees that the proposed location is not a result of any action by the applicant, as can be seen in the pictures of the existing shoreline; and doesn't view the proposed land disturbance or placement of the wall as having a negative impact on the character of the neighborhood.

### 3. 302.055.2d7b3, requires protective buffer strip of vegetation at least 16.5' back from the OWHM

The top of wall, as proposed, is measured to be 15.5' from the OHWL, while the bottom of the wall will be slightly closer. There will be a protective buffer strip, as can be seen in the renderings and the planting plan, which will accomplish the intended goal and be behind the rip rap of the shoreline.

If the location of the wall is allowed, this variance request is seen as reasonable, not resulting from any action by the landowner, and not in conflict with the character of the neighborhood.

## **APPLICANT COMMENT**

See the application (attached) for comments from the applicant related to the variance requests.

## **STAFF ANALYSIS**

The applicant worked with the City to ensure application for the remaining necessary variances. In an email to the applicant, staff made the following observation of the process that will be followed prior to construction of the wall.

“Also, note at the end of City Code Section 301.070, the language that states the following:

*NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.”*

## **STAFF COMMENT**

As stated earlier in the report, the design of the wall has changed from a boulder wall (at the time of earlier variance approvals) back to a stone/block and mortar design. The renderings show a good depiction of the proposed materials. One adjacent neighbor was concerned with the height of the wall and hard corner near their property, but the City Council approved a variance to the wall height and was appeased by the change to a boulder wall. In a letter outlining the findings for approval, no mention of the boulder-type construction was made, so the applicant can change the design. However, if the commission or council believes this will have a negative impact on the character of the neighborhood as it relates to the current applications, a discussion of the design should ensue.

Concerning the current applications, the proposed retaining wall meets the criteria for the variances, and will address a problem with erosion that is evident on the site. The applicant must receive approval from the Rice Creek Watershed District (was in process last year, and may be complete), and any approval of the variance should be contingent on receiving that approval. Any other applicable approvals (WBCD, DNR) are also required prior to construction.

## **STAFF RECOMMENDATION**

Staff recommends approval of the variances at 425 Lake Avenue, based on the following findings:

1. A retaining wall is necessary to mitigate an erosion problem on the slope to the lake within the OHWL setback.
2. A retaining wall is a reasonable request to mitigate the problem.
3. The character of the neighborhood would not be altered with approval of the variances.
4. Neighborhood property values will not be diminished with approval of the variances and construction of the wall.
5. The slope of the property, creating the need for the wall and variances, was not established by the applicant.
6. If the applicant receives approval of all necessary jurisdictional permits, the City concurs that the proposed construction is necessary and reasonable.
7. The deck area to be replaced must be of the same size as or smaller than the existing structure.





207 Birchwood Avenue  
Birchwood Village, MN 55110  
651-426-3403 (tel) / 651-426-7747 (fax)  
Info@CityofBirchwood.com  
www.CityofBirchwood.com

July 18, 2024

Schifsky Companies, LLC  
Attn: Carson  
5640 Memorial Drive  
Stillwater, MN 55082

Re: Variance (2024-01-VB)

Dear Carson,

A decision has been made by the Birchwood Village City Council regarding your variance request – Variance Case No. 24-01-VB for the property 425 Lake, Birchwood Village.

On Tuesday July 9th, 2024, the Birchwood Village City Council considered your variance requests from City Code Sec. 302.020.02 (*which requires a 50' minimum setback from the White Bear Lake OHWL for all construction*) and from City Code Sec. 302.070.5 (*which limits the height of retaining walls to 4'*) to allow the installation of a retaining wall that is proposed to be built within the 50' setback from White Bear Lake and at a height exceeding 4', at the property located at and commonly known as 425 Lake Avenue.

The City Council approved the variances based on the following:

1. There is a practical difficulty due to the extreme slope in front of the property towards White Bear Lake.
2. The condition which results in the need for a variance was not created by the applicant's actions or design solutions.
3. Granting of the variance will result in no increase in the amount of water draining from the property.
4. Granting of the variance will not impair the supply of light and air to adjacent property or unreasonably diminish property values within the surrounding area.
5. Granting of the variance will not impact the health, welfare, or safety of the residents of the city.
6. Granting of the variance is a reasonable use of the property.

The City Council approved the variances based on the following conditions:

1. Applicant receives approval of all necessary jurisdictional permits.

2. Applicant secures all applicable construction permits for the wall and stairway.
3. Applicant receives approval of the design parameter, calculations, and plans by the City engineer, City planner, and City building official as applicable.
4. Stairway and landing reconstruction shall meet all Code requirements.
5. No increase in runoff onto adjacent properties.
6. Applicant (property owner) shall register the parcels/PIDs into a single lot/PID with Washington County per DNR regulation.

During the meeting, while the variances were considered, it was determined that additional variances may be necessary to proceed with the retaining wall, as proposed. These include the following suggested variances (and there may be additional variances needed) but it is up to you to determine which variances are necessary; they may include, at least:

1. 302.050, Impervious Surfaces and Lot Coverage.
2. 302.055.2.a.4, Land Disturbance Activity Standards – no grading of filling shall be permitted within 20 feet of the OHWL of the lake.
3. 302.055.2d7b3, requires protective buffer strip of vegetation at least 16.5' back from the OWHM.
4. 302.080, stairs or lifts to lake or water body – landings may be permitted at a minimum interval of 20'

Once you have determined the additional variances that are required, you will have to apply for them. You may request all variances on one application, but please be sure to list each variance separately. Once the City receives the application and supporting documentation and the City deems the application complete, it will be able to determine the timing of the review by the Planning Commission and consideration by the City Council. You are not able to proceed with any construction until all variances are granted, and a permit is issued.

Please let me know if you have any questions and I look forward to receiving your Variance Application(s). Assistance with the Code is available through direct contact and independent consultation with the City Planner, Ben Wikstrom, and is highly encouraged. Mr. Wikstrom reviews Applications at the expense of the City but is available, at your cost, to provide pre-application advice.

Regards,

Rebecca Kellen  
City Administrator

# CERTIFICATE OF SURVEY

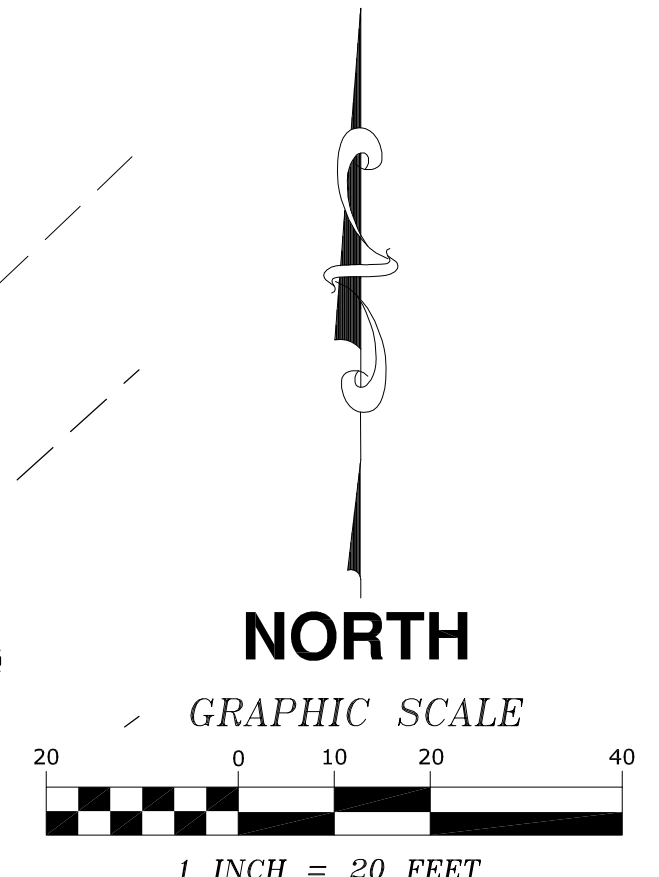
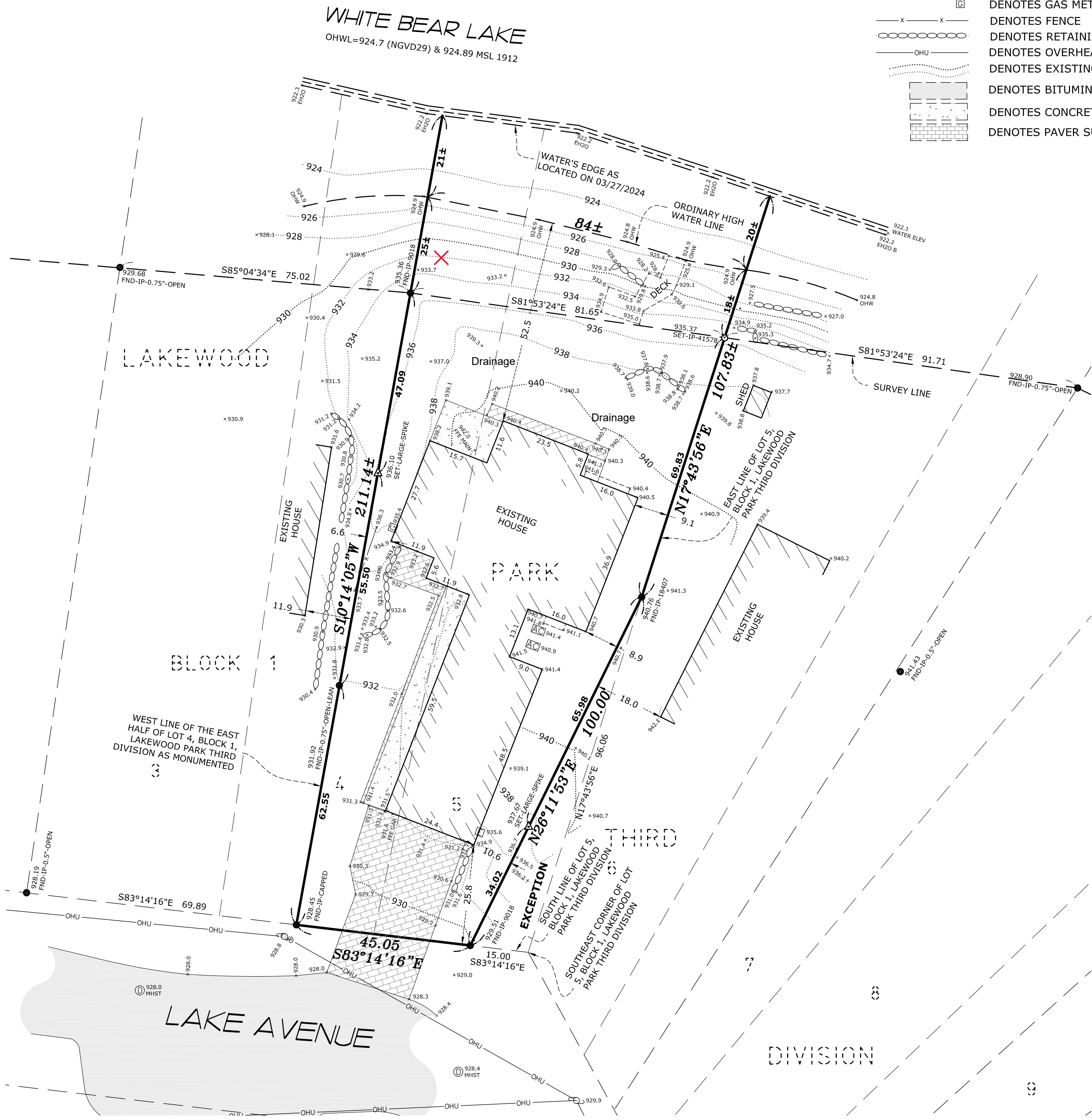
~for~ **BLAISER POOLS**  
 ~of~ **425 LAKE AVENUE**  
**BIRCHWOOD, MN**

## BENCHMARK

DNR PAINT MARK ON SLAB OF  
 PUMPHOUSE AT MATOSKA PARK  
 ELEVATION: 928.74  
 DATUM: MSL 1912

## LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 41578
- △ DENOTES SET PKNAIL
- ⊠ DENOTES AIR CONDITIONING UNIT
- ⊞ DENOTES ELECTRICAL BOX
- x 952.36 DENOTES EXISTING SPOT ELEVATION
- ⊕ DENOTES POWER POLE
- ⊙ DENOTES STORM SEWER MANHOLE
- ⊞ DENOTES GAS METER
- x — x — DENOTES FENCE
- ○ ○ ○ ○ — DENOTES RETAINING WALL
- OHU — DENOTES OVERHEAD UTILITY
- ⋯ DENOTES EXISTING CONTOURS
- ▒ DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES PAVER SURFACE



### PROPERTY DESCRIPTION: Per Warranty Deed Doc. No. 845086

The East Half of Lot 4, Block 1, LAKEWOOD PARK THIRD DIVISION, Washington County, Minnesota.

**ALSO: Lot 5, Block 1, LAKEWOOD PARK THIRD DIVISION, EXCEPT a triangular piece, commencing at the Southeast corner of Lot 5, thence Westerly along the South line of said Lot 5, a distance of 15 feet; thence Northeasterly to a point where a diagonal line 100 feet in length would intersect the East line of said Lot 5, thence Southerly along said East line of said Lot 5 to the point of beginning, Washington County, Minnesota.**

**IMPERVIOUS SURFACE CALCULATIONS**  
 TOTAL LOT AREA ABOVE OHWL ..... 12,713 SQ. FT.  
 EXISTING HOUSE AND GARAGE AND OVERHANGS ..... 3,832 SQ. FT.  
 EXISTING PAVERS AND DRIVEWAY ..... 1,027 SQ. FT.  
 EXISTING CONCRETE ..... 182 SQ. FT.  
 EXISTING RETAINING WALL ..... 70 SQ. FT.  
 TOTAL IMPERVIOUS SURFACE ..... 5,111 SQ. FT.  
 PERCENT IMPERVIOUS ..... 40.2%

### NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 03/27/2024.
- Bearings shown are on the Washington County Coordinate System.
- Parcel ID Number: 30-030-21-13-0011 & 30-030-21-13-0012.
- 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.
- Due to field work being completed during the winter season there may be improvements in addition to those shown that were not visible due to snow and ice conditions characteristic of Minnesota winters.

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*  
 JASON E. RUD  
 Date: 04/04/2024 License No. 41578

DRAWN BY: BCD	JOB NO: 24.0225BT	DATE: 03/28/2024	
CHECK BY: DSH	FIELD CREW: DT/RW		
1			
2			
3			
NO.	DATE	DESCRIPTION	BY

**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

# DAVIDSON RESIDENCE LANDSCAPE & HARDSCAPE PLAN

WHITE BEAR LAKE

SET BIO-LOGS ON  
OHWL

EXISTING DOCK

SHORELINE

ORDINARY HIGH  
WATER LINE

SHORELINE

926

DECK STEPS

NATURALIZE

934

WOODEN DECK  
LANDING

936

UPPER TIER  
RETAINING WALL

938

EXISTING

PROPERTY LINE

Rain Garden

FLATTEN AREA

SHORELINE RETAINER

RETAINING WALL

STEPS DOWN

6 TAYLOR JUNIPER

ADJUST ELEVATION TO  
PREVENT WATER RUN  
OFF

STEP WALL TO  
MEET GRADE

STEPS TO FRONT  
OF HOME

EXISTING TREE

REGRADE TURF AREA

EXISTING RESIDENCE

**ORIGINAL**

**IMPERVIOUS SURFACE CALCULATIONS**

TOTAL LOT AREA ABOVE OHWL ..... 12,713 SQ. FT.

EXISTING HOUSE AND GARAGE AND OVERHANGS ..... 3,832 SQ. FT.

EXISTING PAVERS AND DRIVEWAY ..... 1,027 SQ. FT.

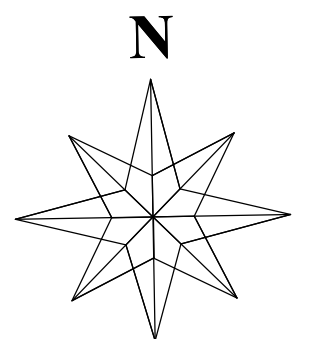
EXISTING CONCRETE ..... 182 SQ. FT.

EXISTING RETAINING WALL ..... 70 SQ. FT.

TOTAL IMPERVIOUS SURFACE ..... 5,111 SQ. FT.

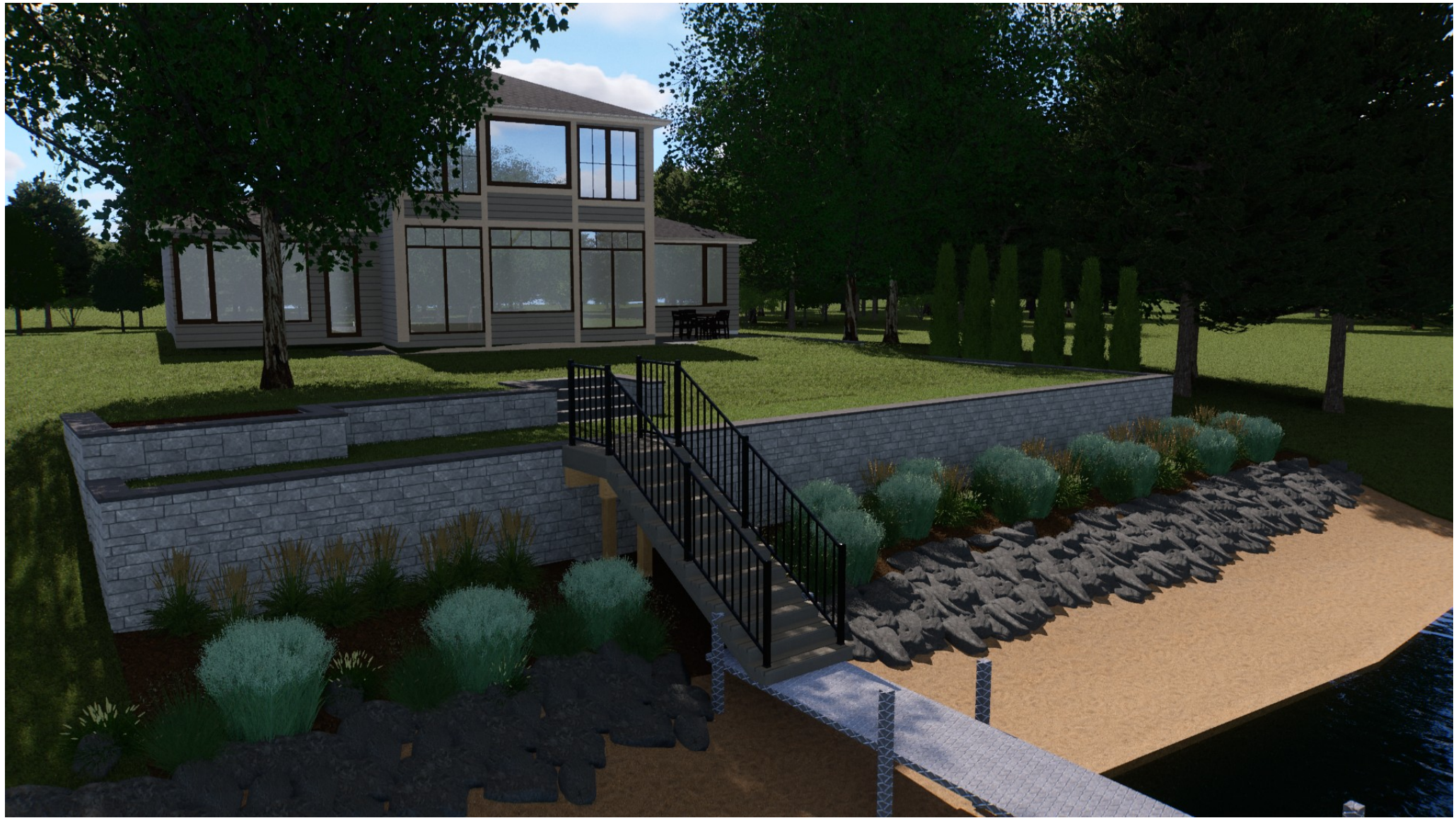
PERCENT IMPERVIOUS ..... 40.2%

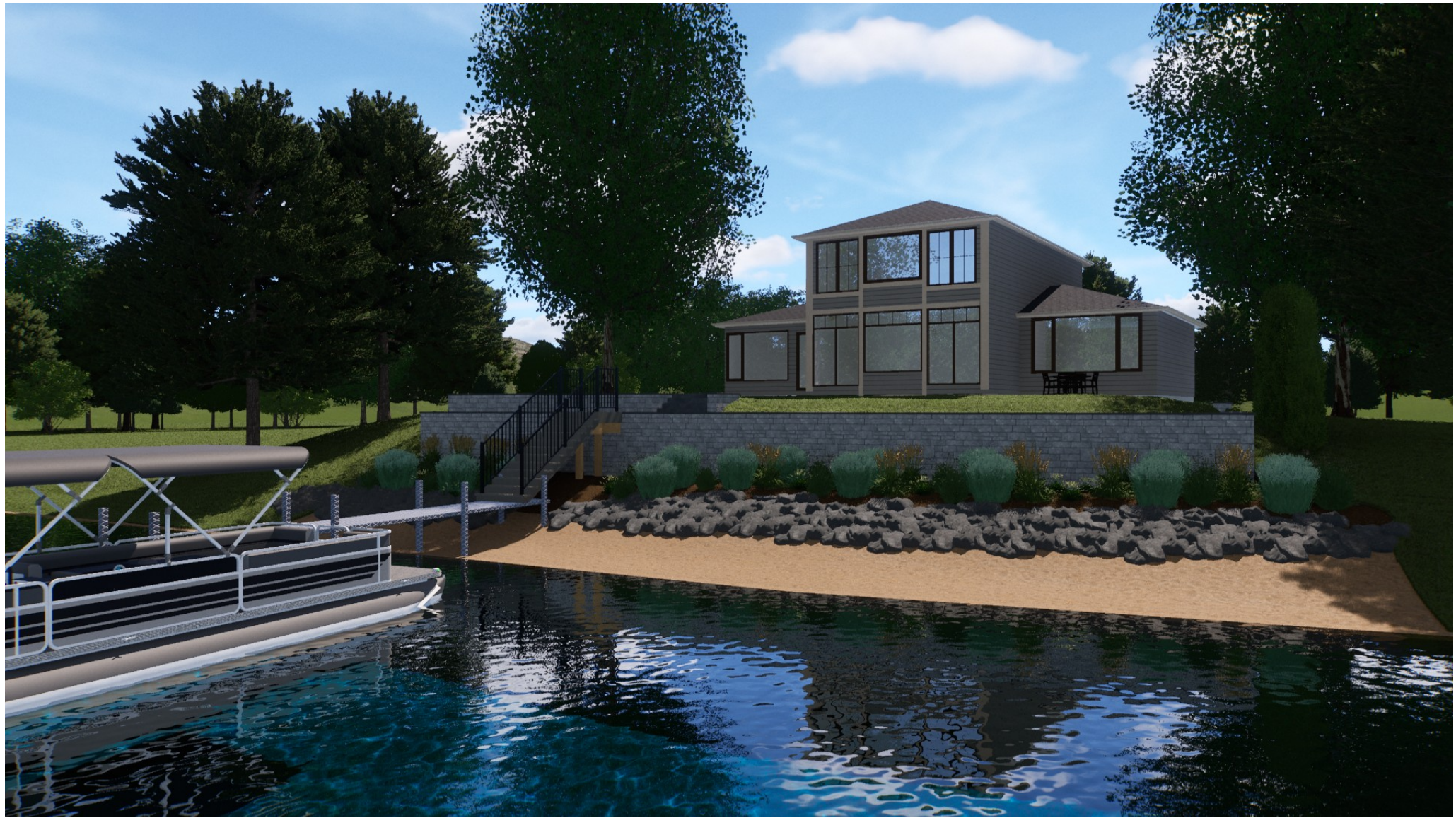
**ADDITIONAL HARDSCAPE: 284 SQ. FT**



Scale: 1/8" = 1 ft  
0 3 6 9 12 15







# BIRCHWOOD VILLAGE

## Variance Findings Form

**#1: Is the request reasonable 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** reasonable with the general purpose and intent of the specific Ordinance **because:** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (explain how the proposal is reasonable with or undermines the purpose of the ordinance).

**#2: 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 property 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).*

**#3: 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:**

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

**#4: 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:**

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

**#5: 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:**

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

**#6: 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:

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

**#7: Is the applicant proposing a reasonable use for the property under terms of the Zoning Code?**

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

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\_\_\_\_\_ (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 recommendation? (Approve or Deny)**

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**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.)

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***conditions continued***

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