

CARVER COUNTY BOARD OF ADJUSTMENT

Regular Meeting – **Wednesday, November 1, 2023**
Commissioners' Meeting Room
2nd Floor Human Services Bldg
Government Center – Chaska

AGENDA

7:00 p.m.

1. Approve minutes of October 4, 2023 meeting
Pages 1-1 through 1-12
2. **File #20230038**- Public hearing on request by Mary Psihos & Greg Cassidy for a variance. (Setback – SSTS to Bluff)
San Francisco Township Pages 2-1 through 2-9
Issue Order #PZ20230038 – Mary Psihos & Greg Cassidy
3. **File #20230040**- Public hearing on request by Michael Vanderlinde for a variance. (Setback – SSTS to OHW)
Watertown Township Pages 3-1 through 3-10
Issue Order #PZ20230040 – Michael & Wanda Vanderlinde
4. **File #20230041**- Public hearing on request by Paul Smothers for a variance. (Side Yard Setback)
Laketown Township Pages 4-1 through 4-11
Issue Order #PZ20230041 – Paul & Ann Smothers
5. **File #20230042**- Public hearing on request by Chris Anderson, representing Bongards' Creameries for a variance. (Sign Size, Single Sign & Parcel)
Benton Township Pages 5-1 through 5-15
Issue Order #PZ20230036 – Bongards Creameries

CARVER COUNTY BOARD OF ADJUSTMENT
Regular Meeting October 4, 2023
Minutes

Members Present: Gerald Bruner, Robin Bielefeldt, Amanda Gorra, Scott Selken, Jeff Thompson, Scott Wakefield, Steve Washburn

Members Absent: None

Members Late: None

Staff Present: Jason Mielke, Christina Neel

Pursuant to due call and published notice thereof, the October 4, 2023, meeting of the Carver County Board of Adjustment was called to order by Chairman Bruner at 7:00 p.m.

Chairman Bruner announced the roll call indicated all seven board members are present.

Agenda – Chairman Bruner asked if there were any additions or deletions to the agenda. Hearing none, he asked for a motion to approve the agenda. A motion was made by Wakefield to approve the agenda as printed. Bielefeldt seconded the motion for approval. All voted aye. Motion carried.

Minutes – Chairman Bruner asked if there were any corrections to the minutes from the September 6, 2023, meeting. A motion was made by Bielefeldt to approve the minutes of the September 6, 2023, meeting as written. Gorra seconded the motion for approval. All voted aye. Motion carried.

Public Hearing - File #20230030 – Ryan Seifert – Chairman Bruner called the public hearing to order at 7:01 p.m. to consider the application of Ryan Seifert for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to exceed the maximum personal storage space pursuant to Chapter 152 of the County Code. The property is in Section 1 of Dahlgren Township.

The following were present: Ryan Seifert

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated August 23, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Dahlgren Town Board dated September 21, 2023, and all attachments.

Exhibit G – Letter submitted by a neighbor dated October 4, 2023

Neel stated the applicant owns an approximate 7.25-acre parcel improved with a single-family dwelling and a 40 x 78 accessory structure. The applicant is requesting a variance to exceed the total allowable personal storage space on the parcel with the construction of a 50-foot x 100-foot accessory structure for personal use. This structure would increase the personal storage space on the property to approximately 8,376 square feet, or 3,376 square feet over the maximum allowed by the Zoning Code. The proposed structure would house a boat and two trailers as well as containing a sport court in half of the building.

The proposed location of the structure will meet all required setbacks and is screened by trees on two sides and a large hill. Kristen Larson, Carver County Water Resources Program Specialist, reviewed the request and determined a permit from the CCWMO will not be required. Erin Smith, Community Development Director for the city of Carver submitted no comments about the request. The plight of the landowner is due to circumstances created by the landowner. Granting of the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional structure. It would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property or be detrimental to the public welfare or injurious to property in the area. Dahlgren Township reviewed the request at their August 14, 2023, meeting and recommended approval without any additional comments or conditions. Neel read the proposed conditions for consideration if the permit is recommended for approval to the County Board. She stated if the Board determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial need to be identified.

Ryan Seifert, 5330 Glens Rd, explained the existing accessory structure has been divided and finished as a 'man cave' which doesn't allow him the storage he needs for his recreational equipment. He currently has a boat and trailer that are stored at a different location, and he would like to keep all items on his property. He also has two young sons who are athletes and is looking to building the sport court for their recreational enjoyment.

Chairman Bruner asked Vice-Chair Gorra to read the letter received October 4, 2023, from the neighbor Karen Wickenhauser. Ms. Gorra read the letter of support for the request.

Jeff Thompson, speaking as Dahlgren Township supervisor, confirmed the applicant's appearance at their August meeting and the Board's unanimous support of the request.

There were no comments from the public concerning this request.

A motion was made by Washburn and seconded by Wakefield to close the public hearing. Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:08 p.m.

Bielefeldt stated he cannot identify any circumstances unique to the property for this request and feels the situation is created by the landowner. He will not be in support of this request.

Thompson reiterated the Township Board's unanimous support of this request and stated he will be supporting it as a member of the Board of Adjustment.

A motion was made by Thompson to **approve and issue Order PZ20230030** for a variance to exceed the allowable personal storage square-footage by 3,376 square feet pursuant to Section 152.073 (A)(4) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. The permit is subject to administrative review. The proposed structure shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.

2. The permittee shall obtain the appropriate building permit(s) prior to the construction of the proposed structure. All work shall be done in accordance with the submitted plan and shall comply with the approved variance and plans. The proposed structure shall comply with all required setbacks from property lines, existing buildings, and Subsurface Sewage Treatment System (SSTS) locations.
3. No additional accessory structures or additions shall be allowed, based on the total personal structure square footage currently allowed on the property, without the approval and issuance of a new variance.

The motion for approval was seconded by Gorra. Chairman Bruner called for a vote on the motion. Thompson, Gorra, Bruner, Selken, Washburn & Wakefield voted aye. Bielefeldt voted nay. Motion carried.

Public Hearing - File #20230034 – Richard Hasse – Chairman Bruner called the public hearing to order at 7:09 p.m. to consider the application of Richard Hasse for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to exceed the maximum personal storage space pursuant to Chapter 152 of the County Code. The property is in Section 31 of Camden Township.

The following were present: Richard Hasse, Karri Hasse

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated September 5, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Camden Town Board dated September 21, 2023, and all attachments.

Neel stated the applicants own an approximate 5.05-acre parcel improved with a single-family dwelling, and several former agriculture buildings. The applicants are requesting a variance to exceed the total allowable personal storage space on the property with the construction of a 32-foot x 48-foot structure to replace a building lost due to storm damage. The total amount of personal storage space on the property, including the proposed 32 x 48 structure, would be approximately 6,586 square feet, or 1,586 square feet over the amount allowed by the Zoning Code on a parcel of this size. The applicant's letter states the proposed new structure would contain the items previously stored in the shed damaged by a storm. The damaged structure will be removed. The proposed new structure would meet all of the setback requirements. Jacob McLain, Carver County Senior Environmentalist, reviewed the application and confirmed a replacement SSTS design and location has been submitted. He sees no concerns with the proposed location of the new structure. The plight of the landowner is due to circumstances created by the landowner. Granting of the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional structure. It would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property or be detrimental to the public welfare or injurious to property in the area. The Camden Town Board reviewed the request at their September 14, 2023, meeting and recommended approval without any additional comments or conditions. Neel read the proposed conditions for consideration if the request is recommended for approval to the County Board. If the Board of Adjustment determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial must be stated.

Richard Hasse, 10680 Yale Av, had no additional comments at this time.

Chairman Bruner asked if the applicant had read and agrees with the proposed conditions.

Mr. Hasse confirmed he has read and agrees with the proposed conditions.

No one representing the Camden Town Board was present for comments.

There were no comments from the public concerning this request.

Wakefield made a motion to close the public hearing. Selken seconded the motion. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:17 p.m.

Bielefeldt stated the plight of the landowner is due to circumstances created by the landowner and not unique to the property and he will not support the variance request.

Wakefield asked if the hoop structure houses some agricultural equipment and hay.

Mr. Hasse stated there are horses can go into the hoop structure and he also stores a tractor and hay in there.

Wakefield stated he is in support of the request.

Thompson stated he understands replacing the shed that was damaged by the storm and feels it will be an improvement to the property to keep things stored inside.

Bruner stated he visited the site and saw the damaged structure. He is in support of the variance.

A motion was made by Wakefield to **approve and issue Order PZ20230034** for a variance to exceed the allowable personal storage square-footage by 1,586 square feet pursuant to Section 152.073 (A)(4) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. The permit is subject to administrative review. The proposed structure shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.
2. The permittee shall obtain the appropriate building permit(s) prior to the construction of the proposed structure. All work shall be done in accordance with the submitted plan and shall comply with the approved variance and plans. The proposed structure shall comply with all required setbacks from property lines, existing buildings, and Subsurface Sewage Treatment System (SSTS) locations.
3. No additional accessory structures or additions shall be allowed, based on the total personal structure square footage currently allowed on the property, without the approval and issuance of a new variance.

Gorra seconded the motion for approval. Chairman Bruner called for a vote on the motion. Wakefield, Gorra, Bruner, Selken, Washburn and Thompson voted aye. Bielefeldt voted nay. Motion carried.

Public Hearing - File #20230037 – Thomas & Krystal Swartzter – Chairman Bruner called the public hearing to order at 7:18 p.m. to consider the application of Thomas & Krystal Swartzter for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to exceed the maximum personal storage space pursuant to Chapter 152 of the County Code. The property is in Section 33 of Waconia Township.

The following were present: Thomas Swartzter

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated September 5, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Waconia Town Board dated September 8, 2023, and all attachments.

Exhibit G – Letter from Kevin & Linda Kleman dated October 4, 2023

Mielke stated the applicants recently purchased an approximate 16-acre parcel and are in the process of constructing a house with a 1,604-square foot attached garage. The applicants are requesting a variance to exceed the total allowable personal storage space on the property with the construction of a 60-foot x 120-foot accessory structure. This would result in approximately 8,180 square feet of personal storage space which exceeds the maximum allowed by the Zoning Code by approximately 1,200 square feet. The applicants letter states the structure would house personal property for recreational use and personal use items needed to maintain the property. The location of the proposed structure will meet all of the required setbacks. Lori Brinkman, Carver County Senior Environmentalist, reviewed the application and stated, “*The holding tank and household SSTS were constructed with connection to the shop in mind.*” The applicant had planned to put a bathroom in the structure. Kristen Larson, Carver County Water Resources Analyst, stated a permit is required when 1 acre or more of new impervious surface is created on the site. The submitted information indicates 1.14 acres of impervious surface is proposed to be added to the site. Granting of the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional structure. It would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property or be detrimental to the public welfare or injurious to property in the area. The Waconia Town Board reviewed the request at their August 28, 2023, meeting and recommended approval without any additional comments or conditions. Mielke read the proposed conditions for consideration if the permit is recommended for approval to the County Board. If the Board of Adjustment determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial must be stated.

Thomas Swartzter, 10970 Polk Av, explained the drainage flow from the grading of the shed pad as indicated on the aerial map and indicated the surrounding area will be seeded with grass. A portion of the parcel will remain as an existing hay field.

Mielke reiterated the CCWMO reviews the impervious surfaces and how the runoff is being treated.

Chairman Bruner asked the applicant if he has read and agrees with the proposed conditions.

Mr. Swartzter replied he has read and agrees with the proposed conditions.

Wakefield, speaking as a member of the Waconia Town Board, confirmed the Township's recommendation for approval of the request.

There were no comments from the public concerning this request.

Bielefeldt made a motion to close the public hearing. Gorra seconded the motion. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:30 p.m.

Bielefeldt stated the plight of the landowner is due to circumstances created by the landowner and he will not be in support of the request.

Wakefield asked if there is a screening requirement for an accessory structure.

Mr. Swartzer replied he will likely plant some trees. Referring to the site plan, he indicated there is a mature tree line on the west and south sides of the property. He also noted the elevation of the house is about 10 feet higher than the shed location, so traffic traveling southward on Polk Av will likely not be able to see the shed because it will be blocked by the house on the north side. He stated the building will be color matched to the house and the garage doors will look the same to be aesthetically pleasing.

Mielke clarified there is no requirement for screening of personal storage structures. The screening requirement applies to buildings, outside storage, or operational areas associated with a business activity.

Bruner stated he visited the site and saw the tree line on the west and south sides. He stated the house location is higher and should help with screening the shed. He will be supporting the variance request.

A motion was made by Thompson to **approve and issue Order PZ20230037** for a variance to to exceed the allowable personal storage square-footage by 1,180 square feet pursuant to Section 152.073 (A)(5) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. The permit is subject to administrative review. The proposed structure shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.
2. The permittee shall obtain the appropriate building permit(s) prior to the construction of the proposed structure. All work shall be done in accordance with the submitted plan and shall comply with the approved variance and plans. The proposed structure shall comply with all required setbacks from property lines, existing buildings, Subsurface Sewage Treatment System (SSTS) locations, and CCWMO standards and required permitting.
3. No additional accessory structures or additions shall be allowed, based on the total personal structure square footage currently allowed on the property, without the approval and issuance of a new variance.

Washburn seconded the motion for approval. Chairman Bruner called for a vote on the motion. Wakefield, Gorra, Bruner, Selken, Gorra and Thompson voted aye. Bielefeldt voted nay. Motion carried.

Public Hearing - File #20230036 –Nick Kubasch – Chairman Bruner called the public hearing to order at 7:32 p.m. to consider the application of Nick Kubasch for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to subdivide a parcel with reduced road frontage and width to depth ratio pursuant to Chapter 152 of the County Code. The property is in Section 29 of Hollywood Township.

The following were present: Nick Kubasch, Travis Kubasch, Alissa Kubasch

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated September 4, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Hollywood Town Board dated September 21, 2023, and all attachments.

Mielke stated the Kubasch family owns two adjacent parcels in Hollywood Township; one is a 106.23-acres ‘land only’ parcel and the other is a 13.77-acre parcel with 2 houses and several agricultural buildings. Nick Kubasch, residing on the 13.77-acre parcel is proposing to increase the homestead parcel by purchasing 19.78 acres of the land only parcel to create a 33.55-acre parcel with the buildings. This would result in the land only parcel having less than the required road frontage to meet the required 1:5 width to depth ratio. A conditional use permit was issued in 1993 to declare the 13.77-acre parcel a farm for zoning purposes. Increasing the parcel size over 20 acres would remove the need for that CUP. The second house on the property is planned to be removed in the coming weeks. Mielke used aerial maps to illustrate the existing site, the proposed expansion, and the remaining parcel with reduced road frontage and excessive width to depth ratio. The proposed remnant parcel has approximately 235 feet of road frontage and would need 500 feet to be a conforming parcel. The newly created 33.55-acre homestead parcel would be conforming. The applicant’s letter states 4 reasons for the proposed parcel configuration and clarified the reduced road frontage still allows adequate access for the tillable land from an existing field approach. Lori Brinkman, Carver County Senior Environmentalist, reviewed the request and stated, *“If the mobile structure is removed, the 2-bedroom mound (mobile structure SSTS) could be preserved for future use and be considered the alternate location provided it passes a compliance inspection and soil borings show that it can be expanded into a 4-bedroom mound to match the house sizing. The septic tanks associated with that mound would have to be abandoned when the mobile home is demolished or removed.”* Information about this request was sent to MnDOT for review, as they are the road authority for Hwy 7 accesses. No comments have been received at this time. Granting of the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional structure. It would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property or be detrimental to the public welfare or injurious to property in the area. The Hollywood Town Board reviewed the request at their September 11, 2023, meeting and recommended approval without any additional conditions or comments. Mielke read the proposed conditions for consideration if the permit is recommended for approval to the County Board. If the Board of Adjustment determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial must be stated.

Nick Kubasch, 18030 Hwy 7, had no additional comments at this time.

Chairman Bruner asked the applicant if he had read and agrees with the proposed conditions.

Mr. Kubasch confirmed he has read and agrees with the proposed conditions of the permit.

No one representing the Hollywood Town Board was present for comments.

There were no comments from the public concerning this request.

Wakefield made a motion to close the public hearing. Bielefeldt seconded the motion. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:43 p.m.

Bielefeldt stated the parcels are currently conforming and approving the proposed subdivision would create a non-conforming parcel, which is a circumstance created by the landowner. He stated he would not be supportive of the request.

Bruner stated he visited the site and understands what the family is intending to preserve as the family heritage. He felt it is a reasonable request.

A motion was made by Wakefield to **approve and issue Order PZ20230036** for a variance allowing the creation of a new lot with a reduced road frontage and excessive width/depth ratio pursuant to Section 152.033 (D)(1) & (4) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code requirements including by not limited to, a completed Minor Subdivision Application, Survey, and SSTS Compliance.
2. The subject properties shall comply with MNDOT access requirements and obtain access permit(s), if necessary.

Selken seconded the motion for approval. Chairman Bruner called for a vote on the motion. Wakefield, Selken, Bruner, Gorra and Thompson voted aye. Bielefeldt voted nay. Motion carried.

Public Hearing - File #20230035 – David & Phyllis Johnson – Chairman Bruner called the public hearing to order at 7:45 p.m. to consider the application of David & Phyllis Johnson for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request to subdivide a parcel with reduced road frontage and width to depth ratio pursuant to Chapter 152 of the County Code. The property is in Section 2 of Young America Township.

The following were present: David Johnson, Ron Trick

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated September 7, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Young America Town Board dated September 21, 2023, and all attachments.

Mielke stated the applicants own an approximate 80-acre parcel improved with a single-family dwelling, and several agriculture buildings. The applicants are requesting a variance to subdivide approximately 10 acres as a residential parcel which would results in the remnant parcel having less than the required road frontage and exceed the required 1:5 width to depth ratio. Mielke used an aerial photo to illustrate the proposed subdivision and road frontage. He explained that the original parcel had limited road frontage because the township road ends at the parcel corner. He explained the applicant would dedicate a parcel of land to the township to be used as future public road right of way for access to the parcels. Mielke clarified that the dedicated piece land does not have to be developed as a public roadway right now but is recognized as right of way for a future road if that should become necessary. At this time, the access remains privately maintained. He stated this dedication is a common practice on parcels with very limited access to a public road which allows the landowner the ability to use the available building eligibility on their land. The dedicated area would be sufficient to provide adequate road frontage to the new 10-acre parcel but is not enough to accommodate the remnant parcel and therefore the variance is requested. The applicant's letter indicates the practical difficulty is with the limited road frontage to the parcel, which is a circumstance not created by the landowner. Mielke illustrated a similar variance granted to the adjacent parcel to the north of this subject parcel. Lori Brinkman, Carver County Senior Environmentalist, reviewed the request and stated "the existing building site's SSTS is compliant with a new mound in 2021. The new lot requires primary and alternate septic locations." The application was reviewed by Taylor Huinker, DNR Area Hydrologist, who reported she had no comments about the request. Granting the variance does not appear to conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood. The 66-foot x 454-foot easement appears to be reasonable to create a new conforming lot and allow some road frontage for the remnant parcel. The Young America Town Board reviewed the request and unanimously recommended approval at their September 12, 2023, meeting, citing the following conditions, "Driveway will be public use with private maintenance." Mielke read the proposed conditions for consideration if the permit is recommended for approval to the County Board. If the Board of Adjustment determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial must be stated.

David Johnson, 15585 114th St, had no additional comments and thanked staff for their help in this process.

Ron Trick, Young America Town Board supervisor, stated Mr. Johnson attended two meetings and explained his proposal. The Town Board voted unanimously to recommend approval of the request and he encouraged the Board of Adjustment to do the same.

There were no comments from the public concerning this request.

Gorra made a motion to close the public hearing. Bielefeldt seconded the motion. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:58 p.m.

Bielefeldt asked if the current parcel is a conforming parcel.

Mielke used an aerial map and illustrated the limited road frontage of the existing parcel which makes it a legal non-conforming parcel.

Bruner stated he visited the site and will support the variance request.

A motion was made by Bielefeldt to **approve and issue Order PZ20230035** for a variance allowing the creation of a new lot with a reduced road frontage and excessive width/depth ratio pursuant to Section 152.033 (D)(1) & (4) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code requirements including but not limited to, a completed Minor Subdivision Application, Survey, SSTS Compliance, and road easement description.
2. Prior to the Minor Subdivision approval, the township road easement (or deed) shall be dedicated to Young America Township, and recorded at the County Recorder's Office, providing for a minimum of 66 feet x 454 feet. The dedication as a right-of-way extension of the township cartway would be pursuant to the approved site plan providing frontage to all parcels. The extension shall be reviewed and approved by the Young America Town Board and Carver County, prior to recording. The township cartway extension shall be privately maintained pursuant to Young America Town Board requirements.

Gorra seconded the motion for approval. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried.

Public Hearing - File #20230033 – James Odegaard – Chairman Bruner called the public hearing to order at 8:01 p.m. to consider the application of James Odegaard for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for reduced setback for a structure from a road pursuant to Chapter 152 of the County Code. The property is in Section 31 of San Francisco Township.

The following were present: James Odegaard, Molly Odegaard

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated August 28, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and San Francisco Town Board dated September 21, 2023, and all attachments.

Exhibit G – Email received from Ken Sieber on September 25, 2023

Neel stated James & Molly Odegaard own an approximate 3.88-acre parcel of vacant land which has a building eligibility, an existing driveway access and a wetland near the middle of the lot. The applicants are requesting a variance which would allow them to apply for building permits to construct a new house on the lot which would not meet the required 125-foot front yard setback for a structure from the road center (County Rd 40). The applicant's letter describes a practical difficulty in trying to find a building location that would meet all of the setbacks on the triangularly shaped lot. There are also 2 oak trees on the property that are over 100 years old that they wish to preserve. The pocket wetland also limits the building area as it takes up a large portion of the unwooded acreage on the lot. Neel used an aerial map to illustrate the proposed location of the single-family house and attached garage approximately 105 feet from the road center. Based on the limited available space and the unique lot shape, the owners and their builder have chosen this site which minimizes impacts to all setbacks and maintains the character of the neighborhood. The proposed location would use the existing driveway access and meet all other setbacks. Kristen Larson, Carver County Water Resources Program Analyst, reviewed the application and stated the applicants will need to include the delineated wetland with a 20-foot buffer on the site plan for the house permit. Either an erosion/sediment control permit or stormwater permit will be needed, depending upon the amount of impervious surface and disturbed area at the site. Taylor Huinker, DNR Area Hydrologist, reviewed the application information and stated the DNR does not foresee any issues with the proposed house location. Jacob McLain, Carver County Senior Environmentalist, stated there

was no SSTs information received at this time and encouraged the applicants to have site map drawn to ensure the primary and alternate SSTs sites will meet all required setbacks. Jack Johanson, Carver County Transportation Planner, stated “Public Works has reviewed the variance request and is in support of approval. There appears to be no conflict with upcoming roadway projects along County Rd 40 at this location that would be reason to deny.” Granting of the variance would not conflict with the intent of the Comprehensive Plan nor would it alter the character of the neighborhood, nor would government services be negatively impacted by the additional structure. It would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property or be detrimental to the public welfare or injurious to property in the area. The San Francisco Town Board reviewed the request at their August 21, 2023, meeting and “recommended approval with the approval of County and Highway Department”. Neel read the email from Ken Sieber which stated his support for the request. Neel read the proposed conditions of consideration if the request is recommended for approval to the County Board. If the Board of Adjustment determines a practical difficulty has not been identified, the reasons supporting a recommendation for denial must be stated.

James Odegaard, 18127 Kelly Lake Rd, confirmed that the submitted site plan has everything drawn to scale. He noted the large oak trees and stated they want to stay away from the canopy of those trees and away from the root system. He clarified that the access to the property is a field access at this time and he has had conversations with Jack Johanson who is suggesting the driveway access be put at a different location to be done at the time of the County Rd 40 project. He stated they are working with Public Works concerning other issues with the County Rd 40 improvements.

Mielke further explained there is a road reconstruction project planned for County Rd 40 from Hwy 25 to County Rd 52 which will remove some of the curves and require right of way acquisition. He stated the road setbacks and right of way have changed since the lot was created in 1999. He stated the applicant did not create the hardship just to stay away from the oak trees. The road project work and changes are beyond their control.

Mr. Odegaard stated when Molly purchased the lot, the setback from the road was 85 feet. That requirement changed in 2021 to the current 125 feet. He noted there are other houses along County Rd 40 that are about 85 feet from the road center and the proposed house location about 20 feet more than that.

Mielke added that as a part of the 2021 Zoning Code changes, Public Works requested that the setback information be based on the future road classification right of way in order to preserve more area for future road upgrades and right of way acquisitions. He stated the applicant is correct in stating the setback used to be 85 feet and is now increased to 125 feet.

Scott Selken, speaking as San Francisco Town Board Supervisor, stated the Town Board wanted to know the opinion from Public Works on the reduced setback. He confirmed the Town Board voted unanimously to approve if it was supported by Public Works.

There were no comments from the public concerning this request.

Bielefeldt made a motion to close the public hearing. Wakefield seconded the motion. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 8:13 p.m.

Gorra recognized the practical difficulty with the irregularly shaped lot and wetland area and with no opposition from any of the other reviewing agencies, she stated she would support the variance request.

Bielefeldt asked if the septic location information was available for this site.

Neel stated the septic plans are generally submitted along with the house plans for construction.

Mielke stated the lot was created as a buildable lot with soil borings and septic locations identified when the plat was created in 1999. The applicant has had a septic designer at the site for more current soil borings and with the knowledge of the Environmental Services staff concerning the lot, there will be a location for the septic system. The septic design has not been drawn up at this time.

Bielefeldt stated his concern if the septic system design would meet all of the required setbacks or if a variance would be needed because of the location of the house.

Mielke clarified if a septic variance is needed, there would be separate variance request for reduced setbacks according to the septic ordinance. This lot was created as a buildable lot and Environmental Services will be reviewing the details of the septic system design when it is submitted.

Mr. Odegaard confirmed when he met with the septic designer on the site, he was told there should be no problem with designing a primary and alternate site for the septic system.

Bruner stated he visited the site and also spoke to the neighbor who had no objection to the request.

A motion was made by Bielefeldt to **approve and issue Order PZ20230033** for a variance allowing the construction of a new single-family home and attached garage with a reduced front setback pursuant to Section 152.034 (D) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", is hereby **approved** with the following conditions:

1. The permittee shall obtain the appropriate building permits and septic permit(s) prior to the construction of the single-family home, if applicable. An erosion/sediment control plan or stormwater plan shall also be prepared, submitted, and implemented in accordance with the CCWMO Water Rules (Chapter 153) as part of the building permit application process.
2. All construction activities shall be done in accordance with the submitted site plan dated August 28, 2023. Any portion of the home/garage shall not encroach any closer to the centerline of County Road 40 than approved (i.e. 105± feet) as part of this permit application.
3. No additional expansions shall be permitted without obtaining all necessary building permits and/or variances.

Selken seconded the motion for approval. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried.

Other Business

Mielke mentioned delays with the USPS mail delivery and packet information arriving to board members later than desirable. He encouraged the board members to take advantage of the email with attachments and the County website as resources to use to get the information if the mailed copy does not reach them in time. Mielke also informed the members of some anticipated requests for the next meeting.

Adjournment

A motion was made by Bielefeldt to adjourn. Motion was seconded by Washburn. Bruner called for a vote on the motion. All voted aye. Motion carried. The meeting was adjourned at 8:36 p.m.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Environmental Services

October 13, 2023

TO: Carver County Board of Adjustment & San Francisco Town Board

FROM: The Environmental Services Department

SUBJECT: Application for a Variance (SSTS Setbacks)

FILE #: PZ20230038

APPLICANT: Mary Psihos & Greg Cassidy

OWNER: Mary Psihos & Greg Cassidy

SITE ADDRESS: 18125 Kelly Lake Rd, Carver, MN 55315

VARIANCE TYPE: Reduced Setback to a Bluff for a SSTS

PURSUANT TO: Carver County Code Section 52.022

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 08-021-0120

BACKGROUND:

1. Mary Psihos & Greg Cassidy own an approximately 6.33-acre parcel located in the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 21, San Francisco Township. The property is improved with a house and attached garage. The property is located in the Agricultural zoning district and the CCWMO (Bevens Creek Watershed). A portion of the property, but not the proposed location of the septic system, is located in the Shoreland Overlay District of the Minnesota River.
2. The applicant is requesting a variance that would allow them to install a new Subsurface Sewage Treatment System (SSTS), consisting of a septic tank, pump tank, and drain field, approximately 25-feet from a bluff. Chapter 52 of the County Code requires a minimum 50-foot setback from a bluff to the tank(s) and soil treatment area. Therefore, a variance for reduced setbacks pursuant to Chapter 52 – Section 52.022 has been requested.

LEGAL BACKGROUND:

§ 52.022 SSTS SETBACKS.

SSTS must be designed and installed to comply with the following minimum setback distances measured in feet:

Feature	Tank(s)/Sealed Privy	Soil Treatment and Dispersal Area/Unsealed Privy	Building Sewer or Supply Pipes
Bluff. (Average grade 25% slope and has a 25' rise in elevation.)	50	50	-

BOARD OF ADJUSTMENT

§ 152.210 CREATION.

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

§ 152.215 VARIANCES.

- (D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.
- (1) A variance shall only be permitted when the following can be found as fact:
 - (a) The variance is in harmony with the general purpose and intent of the official control.
 - (b) The variance is consistent with the intent of the comprehensive plan.
 - (2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:
 - (a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 - (b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 - (c) The variance will not alter the essential character of the locality.
 - (d) The practical difficulty includes more than economic considerations alone.
- (F) *Other provisions related to variances.*
- (1) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
 - (2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.
 - (3) Variances shall be granted for earth shelter construction as defined in MN State Statute section 216C.06, subdivision 14, when in harmony with the official controls.
 - (4) The board of adjustment may impose conditions on the granting of any variance pursuant to subsection 152.216 (B).
 - (5) Granting of the variance shall not have the effect of violating a state or federal rule or law.
 - (6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.
 - (7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.
 - (8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
- (Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

STAFF ANALYSIS:

1. Mary Psihos and Greg Cassidy purchased the property in 2004 to reside in the existing residence. The property was purchased with the existing house, garage, and septic system on the property. The septic system was inspected in 2020 in anticipation of a property transfer and was found to be failing to protect ground water (FTPGW) and failing to meet the required 3-feet of separation for sewage treatment. Systems that are FTPGW carry a 3-year timeline for upgrade or replacement.
2. The applicant's letter, dated September 18, 2023, describes a practical difficulty that exists due to the difficult terrain of the site and extremely limited options for a replacement septic system to be installed. Gregory Halling, a licensed SSTS Advanced Designer, noted in a document dated August 29, 2023 that the only suitable site on the property is located within the 50-foot setback of the bluff. Chapter 52 of the County Code requires a 50-foot setback of tanks and soil treatment areas to a bluff (average grade 25% slope and a minimum 25' rise in elevation). Approval of the variance would allow the applicants to install a new SSTS with an approximate 25-foot setback to the bluff, reflecting an approximate 25-foot variance.
3. The submitted site plan, dated September 26, 2023, shows the location of the system and its proximity to the bluff, property line, current SSTS system, and the dwelling. The site plan shows the seepage bed approximately 25' to the edge of the bluff. Other than the requested variance to the bluff, the proposed system meets the required setbacks to the property line, structures, and wells.

4. The approved SSTS design will place the new soil treatment area in a location that will allow it to function properly.
5. The granting of the variance would not conflict with the intent of the Comprehensive Plan and/or County Ordinances and would not alter the character of the neighborhood.
6. The granting of the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
7. The San Francisco Township Board reviewed and recommended approval of the request at their September 18, 2023, Town Board meeting without any additional conditions.

BOARD CONSIDERATION:

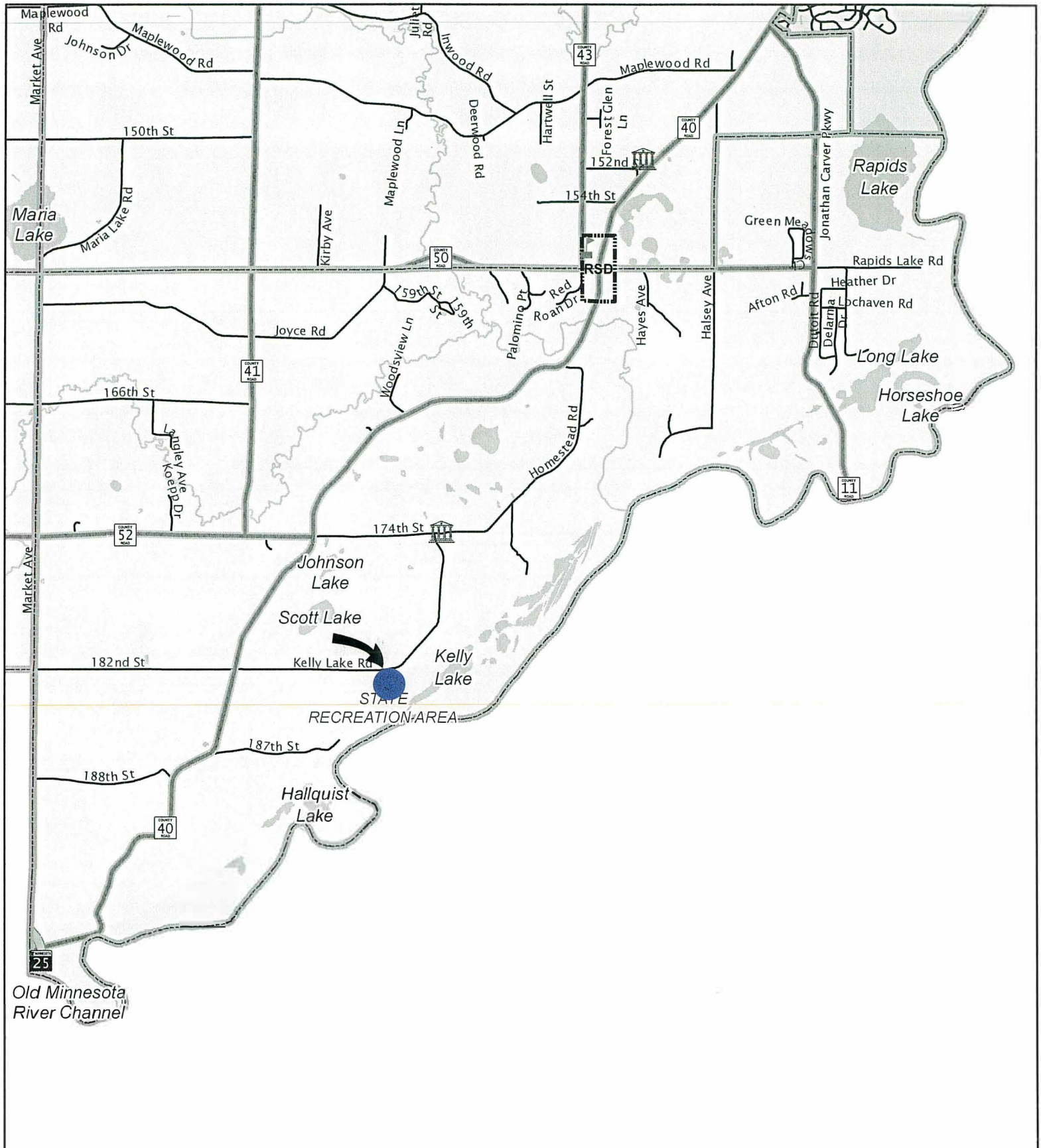
If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the reduced feedlot setback would serve in the interest of justice, the following conditions should be considered:

1. The SSTS shall be located according to the final design approved by Carver County Environmental Services. The new tank and soil treatment area shall not encroach any closer to the bluff than as approved as part of this variance application (Approx. 25-feet from the bluff edge).

OR

If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

SAN FRANCISCO TOWNSHIP

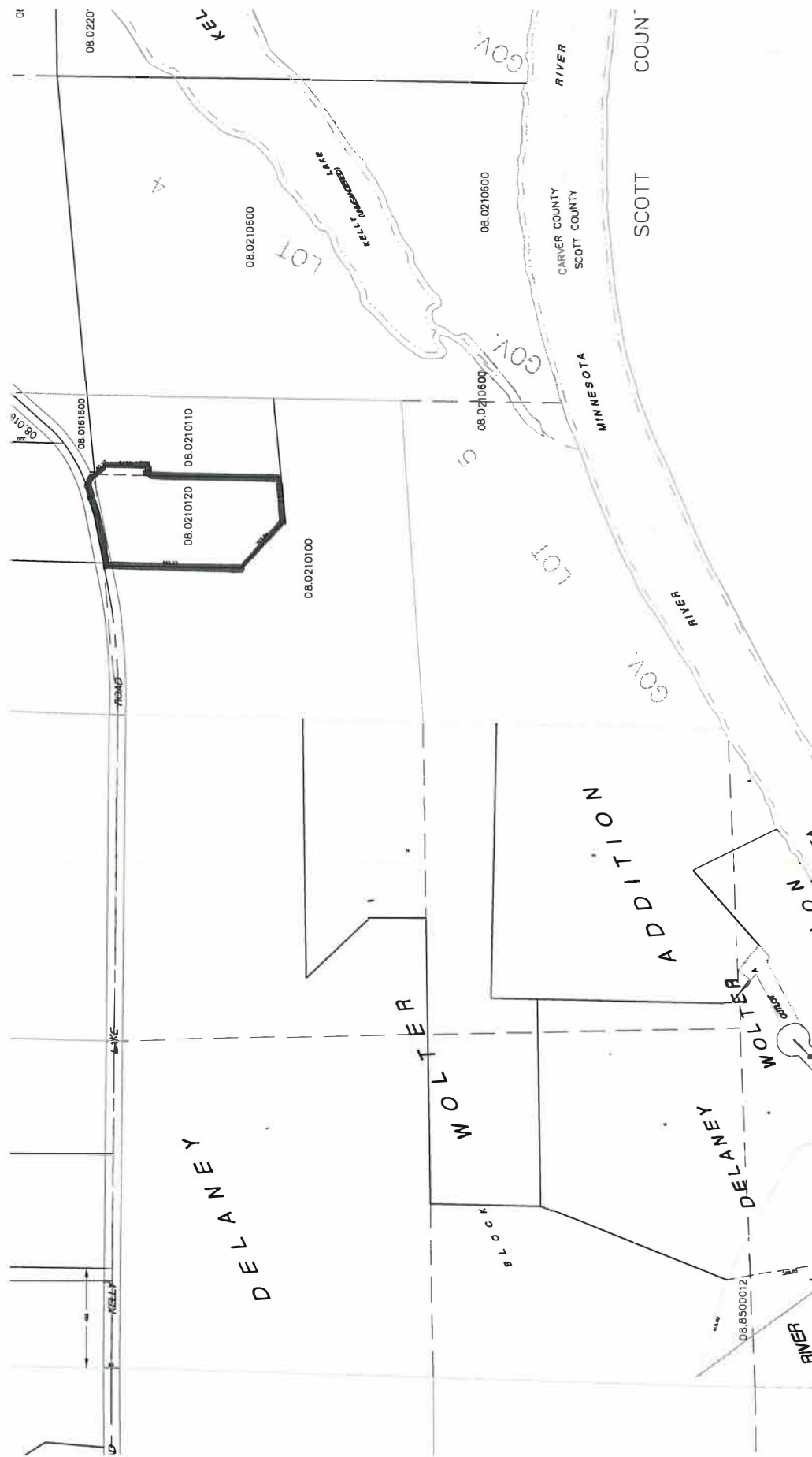


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Map Created by Carver County GIS

N 1/2 SEC. 21, T.114, R.24



Gregory Cassidy & Mary Psihos

18125 Kelly Lake Rd.

Carver, MN 55315

9/18/2023

Dear Board of Adjustment and San Francisco Township:

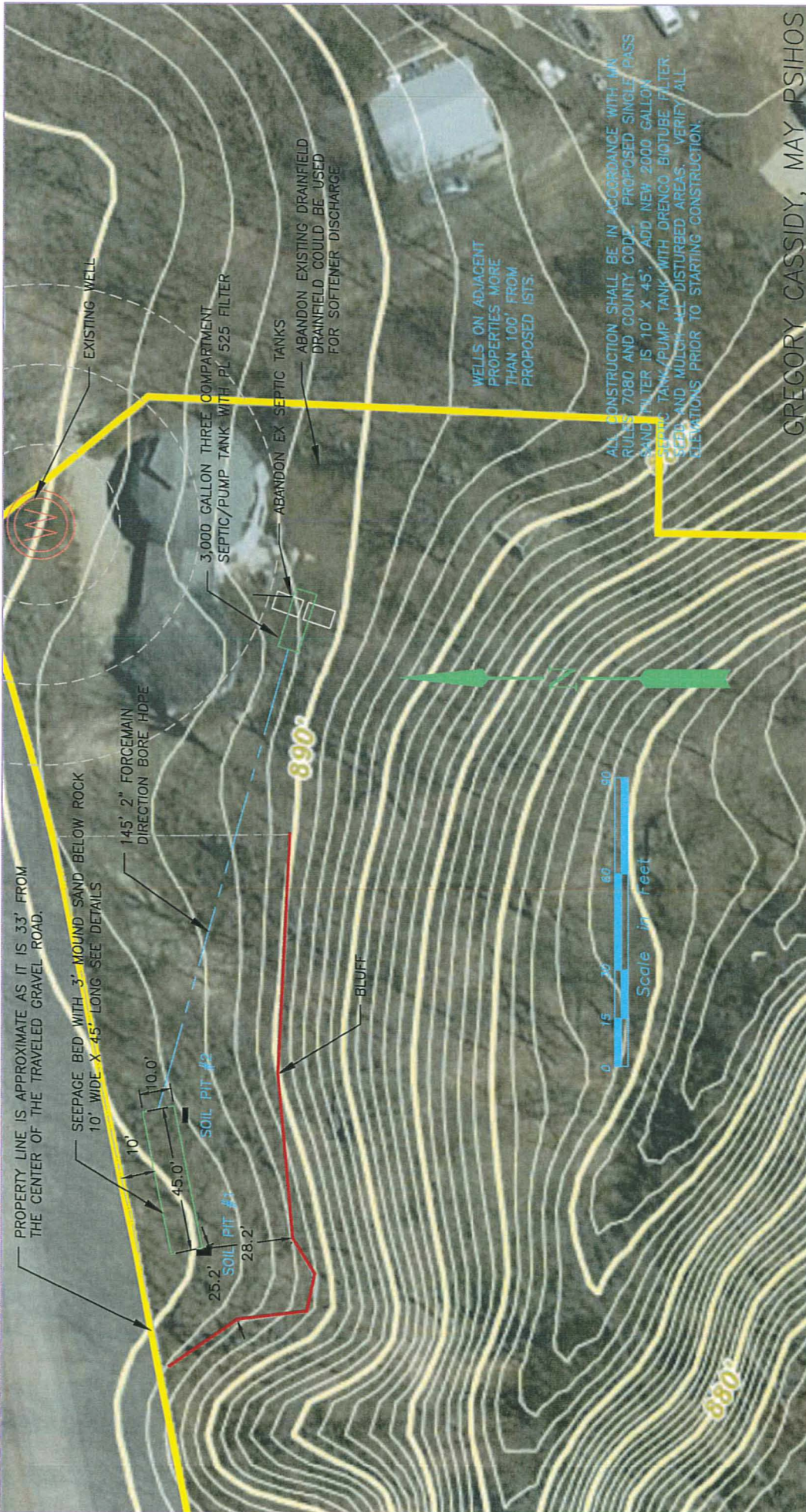
A Subsurface Sewage Treatment System (SSTS) compliance inspection was completed August 7, 2020 for a possible sale of the home and found that the existing trenches had less than 12" to redoximorphic features. The existing trenches are close to the bluff, so an alternate site was considered. The only sufficient site available on the property is located within the 50' setback of a bluff, which is the required setback, with no other sites available as determined by Carver County Environmental Services and advanced designer Gregory Halling #C914.

We are proposing to install a new Type III system that is within the 50' setback to a bluff, due to the difficult terrain of the site. The bottom of the rockbed of the new seepage bed will be installed 28.2 feet from the existing bluff on the property. Therefore we are requesting a variance to have the new SSTS system installed at 28 feet from the bluff due to the difficult terrain.

In reading the practical difficulty from the ordinance we feel we are using the property in a reasonable manner, and the variance will not alter the character of the property except to comply with Carver County and Chapter 7080 requirements. The new system will not impact any neighbors.

Thank you for your consideration in this matter.

Gregory Cassidy & Mary Psihos



GREGORY CASSIDY, MAY PSI/HOS

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a MPCA certified advanced designer. Date <u>9/6/23</u> Certification No <u>C-914</u> <i>Gregory R. Cassidy</i>	Issued	Halling Engineering, Inc. CIVIL ENGINEERS 1121 LANDINGS LANE, WATERTOWN, MN 55388 Phone 952.440.1680 • Fax 952.461.3308	ISTS PLAN 18125 KELLY LAKE ROAD CARVER, MN SHEET 1 OF 2
PROJECT NO: 516.01	DRAWING FILE: BASE51601		



Township Presentation & Recommendation Form

PARCEL # <u>08.021.0120</u>	Permit # <u>PZ20230038</u>
Owner's Name: <u>Mary Psinos</u>	Owner's Mailing Address: <u>1812 Ke : Lake Road</u>
City: <u>Carver</u>	Owner State: <u>Minnesota</u> Owner Zip: <u>55315</u>
Applicant (if other than owner): <u>CO OWNER</u> <u>Greg Cassidy</u>	Site Address: <u>18125 Kelly Lake Rd Carver MN 55315</u>

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request: <u>Variance for setback to bluff & Kelly Lake Rd.</u>						

Date of County Public Hearing: <u>11/1/2023</u>	Date of Township Meeting: <u>9/18/23</u>
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Actions:

Township Action Taken: ☒ Recommends approval and use of the Township Road (if applicable) with the following comments: ☐ Recommends denial for the following reasons: ☐ No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:	<u>Approve Variance to Bluff Setback.</u>
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****Important:** I understand that I must appear at the Town Board meeting to present my request and obtain their recommendation prior to appearing before the County Planning Commission or Board of Adjustment.

<u>Larry Schmitt</u> Signature of Applicant	<u>Chairman Safford</u> Chairman Safford
<u>Mary Psinos</u> Signature of Applicant	

Date 9/18/23

Date 9/18/23

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 08-021-0120

File# PZ20230038

APPLICANTS/OWNERS: Gregory W Cassidy & Mary G Psihos

* * * * *

That part of the Southwest Quarter of the Southeast Quarter of Section 16, Township 14, Range 24, Carver County, Minnesota, lying south of the center line of Kelly Lake Road as now located, EXCEPT the East 323.11 feet.

ALSO

That part of the Northwest Quarter of the Northeast Quarter of Section 21, Township 114, Range 24, Carver County, Minnesota, described as follows: Beginning at the southwest corner of the North 760.00 feet of the East 323.69 feet of said Northwest Quarter of the Northeast Quarter; thence on an assumed bearing of South 84 degrees 14 minutes 19 seconds West, parallel with the north line of said Northwest Quarter of the Northeast Quarter, a distance of 171.27 feet; thence North 47 degrees 24 minutes 45 seconds West, a distance of 265.84 feet; thence North 0 degrees 56 minutes 11 seconds East, parallel with the east line of said Northwest Quarter of the Northeast Quarter, a distance of 565.22 feet to the north line of said Northwest Quarter of the Northeast Quarter; thence North 84 degrees 14 minutes 19 seconds East along said north line of the Northwest Quarter of the Northeast Quarter, a distance of 371.27 feet to the intersection with a line parallel with and 323.69 feet west of the east line of said Northwest Quarter of the Northeast Quarter as measured at right angles from said east line; thence South 39 degrees 22 minutes 48 seconds East 60.17 feet; thence South 2 degrees 22 minutes 11 seconds West 159.73 feet; thence North 89 degrees 03 minutes 49 seconds West 35.00 feet to the West line of the East 323.69 feet; thence South 0 degrees 56 minutes 11 seconds West, parallel with said east line of the Northwest Quarter of the Northeast Quarter, a distance of 599.59 feet to the point of beginning.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Environmental Services

October 13, 2023

TO: Carver County Board of Adjustment & Watertown Town Board

FROM: The Environmental Services Department

SUBJECT: Application for a Variance (SSTS Setbacks)

FILE #: PZ20230040

APPLICANT: Michael Vanderlinde

OWNER: Michael & Wanda Vanderlinde

SITE ADDRESS: 2940 Oak Lake Cir, Watertown, MN 55388

VARIANCE TYPE: Reduced Setback to a OHW for a SSTS

PURSUANT TO: Carver County Code Section 52.022

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 10-011-0400

BACKGROUND:

1. Michael & Wanda Vanderlinde own an approximately 1.03-acre parcel located in the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 11, Watertown Township. The property is improved with a house with an attached garage, as well as a detached garage. The property is located in the Agricultural Zoning District, CCWMO (Crow River Watershed), and the Shoreland Overlay District (Oak Lake).
2. The applicant is requesting a variance that would allow them to install a new Subsurface Sewage Treatment System (SSTS), consisting of a septic tank, pump tank, and drain field, approximately 130-feet from the ordinary high watermark (OHW) of Oak Lake. Chapter 52 of the County Code requires a minimum 150-foot setback from a OHW of a natural environment lakes to the tank(s) and soil treatment area. Therefore, a variance for reduced setbacks pursuant to Chapter 52 – Section 52.022 has been requested.

LEGAL BACKGROUND:

§ 52.022 SSTS SETBACKS.

SSTS must be designed and installed to comply with the following minimum setback distances measured in feet:

Feature	Tank(s)/Sealed Privy	Soil Treatment and Dispersal Area/Unsealed Privy	Building Sewer or Supply Pipes
Ordinary high watermark of natural environment lakes	150	150	-

BOARD OF ADJUSTMENT

§ 152.210 CREATION.

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

§ 152.215 VARIANCES.

- (D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.
- (1) A variance shall only be permitted when the following can be found as fact:
 - (a) The variance is in harmony with the general purpose and intent of the official control.
 - (b) The variance is consistent with the intent of the comprehensive plan.
 - (2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:
 - (a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 - (b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 - (c) The variance will not alter the essential character of the locality.
 - (d) The practical difficulty includes more than economic considerations alone.
- (F) *Other provisions related to variances.*
- (1) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
 - (2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.
 - (3) Variances shall be granted for earth shelter construction as defined in MN State Statute section 216C.06, subdivision 14, when in harmony with the official controls.
 - (4) The board of adjustment may impose conditions on the granting of any variance pursuant to subsection 152.216 (B).
 - (5) Granting of the variance shall not have the effect of violating a state or federal rule or law.
 - (6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.
 - (7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.
 - (8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
- (Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

STAFF ANALYSIS:

1. Michael & Wanda Vanderlinde purchased the property in 1984 and built the existing residence consisting of a house with an attached garage, as well as a detached garage. The applicants would like to install a new SSTS located to the southeast of the house.
2. The applicant's letter, dated October 1, 2023, describes a practical difficulty that exists based on the elevations on the property and restrictions of the ordinary high watermark (OHW) of Oak Lake. The narrative explains that the higher elevation of the north side of the lot, the location of the driveway and the significantly increased depth of a mound system in a compliant location determine the only feasible location of the new tanks approximately 130' to the OHW.
3. The submitted site plan, dated October 1, 2023, shows the layout of the property. The site plan shows the location of the house, accessory structure, driveway, existing drain field location, well, proposed SSTS system and system proximity to OHW. Apart from the proposed variance, the proposed SSTS system meets the required setbacks.
4. Chapter 52 of the County Code requires a 150-foot setback of tanks and soil treatment areas to the OHW of natural environment lakes. Approval of the variance would allow the applicants to install a new SSTS system without having to run sewer lines under the driveway, which will allow for better system function. Further, approval of the variance would allow the new SSTS system within an approximate 130-foot setback of the OHW, reflecting an approximate 20-foot variance.

5. Taylor Huinker, Department of Natural Resources (DNR) Area Hydrologist, reviewed the application, and in an email dated October 12, 2023, reported that she had no comments.
6. The approved SSTS design will place the new soil treatment area in a location that will allow it to function properly.
7. The granting of the variance would not conflict with the intent of the Comprehensive Plan and/or County Ordinances and would not alter the character of the neighborhood.
8. The granting of the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
9. The Watertown Town Board reviewed and recommended approval of the request at their October 2, 2023, Town Board meeting without any additional conditions.

BOARD CONSIDERATION:

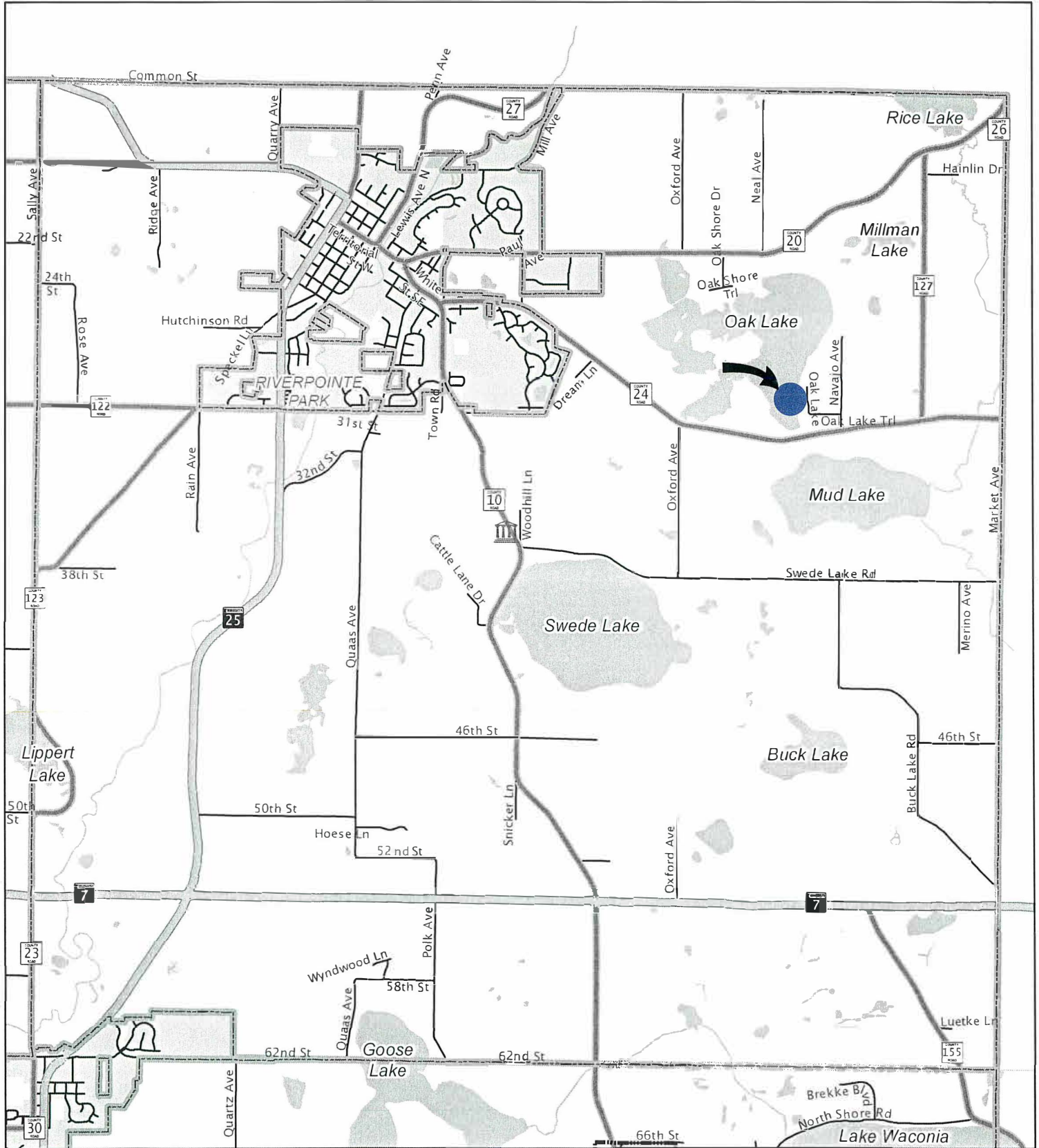
If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the reduced SSTS setback would serve in the interest of justice, the following conditions should be considered:

1. The SSTS shall be located according to the final design approved by Carver County Environmental Services.
2. The new tank and soil treatment area shall not encroach any closer to the OHW of Oak Lake than as approved as part of this variance application (Approx. 130 feet from the OHW).

OR

If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

WATERTOWN TOWNSHIP

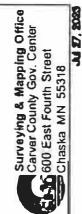


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Map Created by Carver County GIS

S 1/2 SEC. 11, T.117, R.25



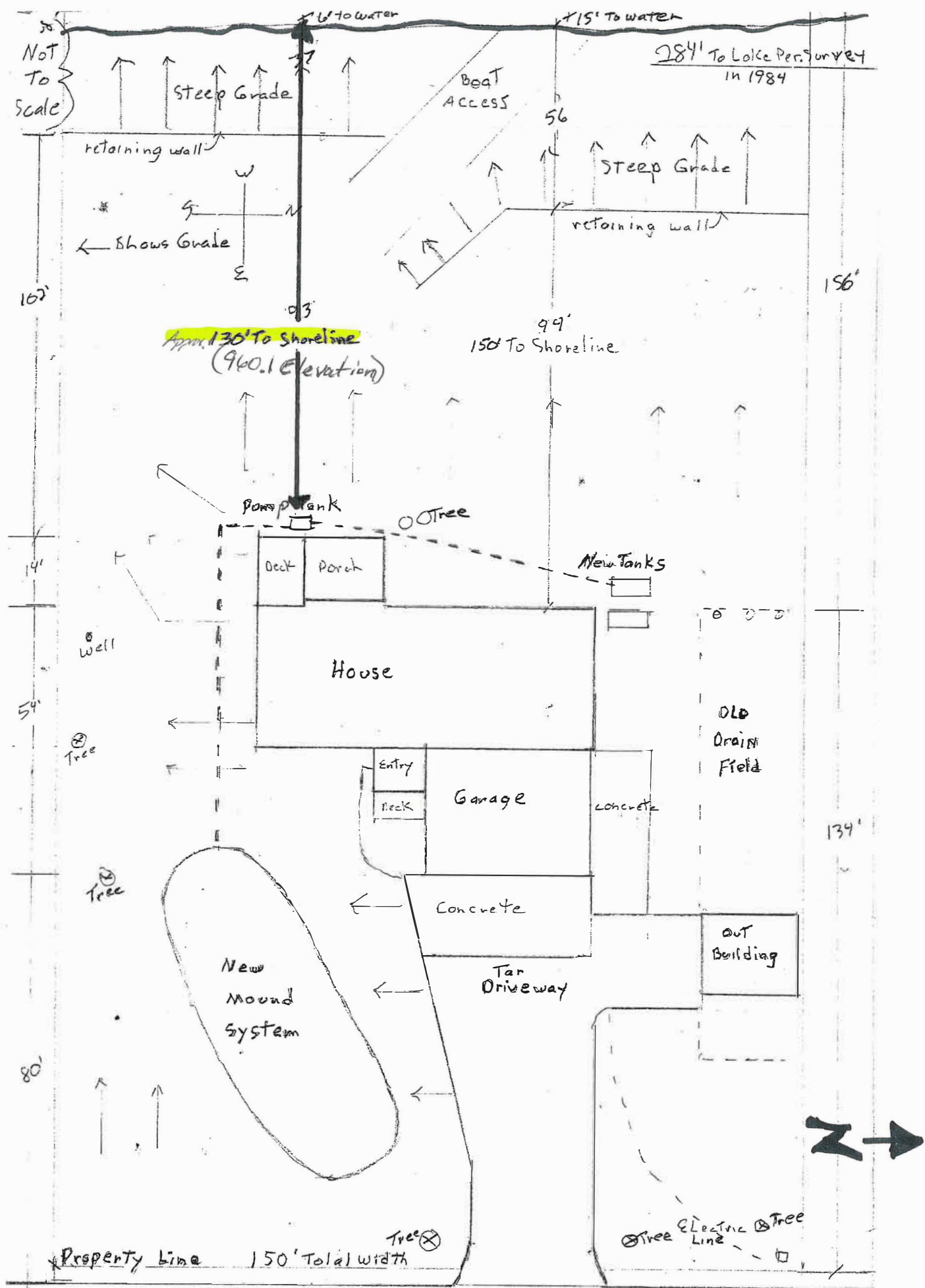
October 1, 2023

My name is Mike Vanderlinde,

I am requesting a Variance for a new septic system on our property at 2940 Oak Lake Circle Watertown MN. 55388. We are requesting this variance due to the county setbacks will element the use of half our lot also the remaining land to work with is also an issue. The north side of the driveway is 4' higher than base of mound system on south side of driveway. I do not want to run the drain lines under the tar driveway for fear of freeze up and there will be significant extra expense due to having to dig through 40' of tar driveway and redoing the tar, also the tanks will have to be extremely deep to get the back drain to the pump tank, also there will be well over 100' of drain lines from main tanks to pump tank on north side of house which needs to be insulated which is another added expense.

Installing on the west side of house the land has natural slope to make the system natural flow from main tanks to pump tank then to mound system, and leaving me access to Oak Lake.

Thank you for your time,
Mike and Wanda Vanderlinde



Oak Lake Circle

October 1, 2023

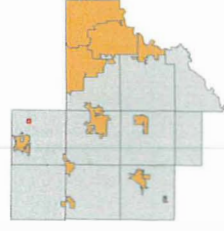
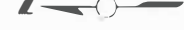
VANDERLINDE SSTS VARIANCE REQUEST

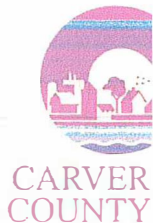


3-8

Date: 10/20/2023

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Township Presentation & Recommendation Form

PARCEL # 100110400	Permit # PZ-20230040
Owner's Name: Mike & Wanda Vandenburg	Owner's Mailing Address: 2940 Oak Lake Circle, Watertown
City: Watertown Township	Owner State: Minn.
Applicant (if other than owner): 	Owner Zip: 55388
	Site Address: 2940 Oak Lake Circle, Watertown

Type of Request: ☐ CUP ☐ IUP ☐ Preliminary Plat ☐ Final Plat ☒ Variance ☐ Appeal

Description of Request:
 A Variance due to the setback eliminating one half of the lot for use. The North side of lot is 4' higher than Base of mound. I don't want to run line under driveway for fear of freeze up and significant extra costs. The West side has a natural slow flow system.

Date of County Public Hearing: 11-1-23 **Date of Township Meeting:** 10-2-23

Actions:

Township Action Taken:

- ☒ Recommends approval and use of the Township Road (if applicable) with the following comments:
- ☐ Recommends denial for the following reasons:
- ☐ No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:

****Important:** I understand that I must appear at the Town Board meeting to present my request and obtain their recommendation prior to appearing before the County Planning Commission or Board of Adjustment.

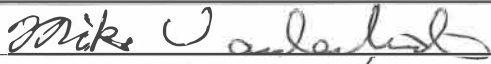
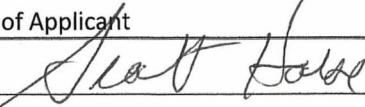
	Date
Signature of Applicant	
	Date 10-2-23
Signature of Township Official	3-9

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 10-011-0400

File# PZ20230040

**APPLICANT/OWNER: Michael H Vanderlinde &
Wanda J Vanderlinde**

The North 150 feet of the South 600 feet of that part of Government Lot 1, Section 11, Township 117 North, Range 25 West of the 5th Principal Meridian, lying westerly of a line described as follows: Commencing at the Southeast corner of said Section; thence West along the South line of said Section, a distance of 1130 feet; thence deflecting right 90 degrees to the North line of the South 300 feet of said Lot; said point being the point of beginning of the line being described; thence deflecting right 10 degrees to the North line of said South 600 feet and there ending.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Land Management Department

October 20, 2023

TO: Carver County Board of Adjustment & Laketown Town Board
FROM: The Land Management Department
SUBJECT: Application for a Variance (Reduced Setback to Side Property Line)

FILE #: PZ20230041
APPLICANT: Paul Smothers
PROPERTY OWNERS: Paul W and Ann C Smothers
SITE ADDRESS: 8555 Reitz Lake Rd, Waconia, MN 55387
VARIANCE TYPE: Reduced Structure Setback to Side Property Line
PURSUANT TO: Carver County Code: Section 152.034 (D)
LEGAL DESCRIPTION: See attached Exhibit "A"
PARCEL #: 07-020-1300

BACKGROUND:

1. Paul and Ann Smothers own an approximate 1.85-acre parcel located in the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) of Section 20, Laketown Township. The property is improved with a single-family home built in 1950, a small shed, a screened porch by the lake, and a detached garage that is currently used as a woodworking shop. The parcel is located in the Agricultural Zoning District, Shoreland Overlay District (Reitz Lake), and the Carver County Water Management Organization (CCWMO) – Carver Creek watershed.
2. Mr. Smothers is requesting a variance which would allow him to apply for building permits to construct a new detached garage on the subject property. The proposed storage structure would not meet the required 15-foot side yard setback from the east property line (approximately 10 feet). Therefore, a reduced structure side yard setback has been requested pursuant to Section 152.034 (D) of the Carver County Zoning Code.

LEGAL BACKGROUND:

§ 152.034 SETBACKS.

(D) Table of setback requirements.

Side Lot Line Setbacks	All Districts	15 feet
------------------------	---------------	---------

(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 97-2021, passed 7-20-21)

BOARD OF ADJUSTMENT

§ 152.210 CREATION.

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

§ 152.215 VARIANCES.

- (D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.
- (1) A variance shall only be permitted when the following can be found as fact:
 - (a) The variance is in harmony with the general purpose and intent of the official control.
 - (b) The variance is consistent with the intent of the comprehensive plan.
 - (2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:
 - (a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 - (b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 - (c) The variance will not alter the essential character of the locality.
 - (d) The practical difficulty includes more than economic considerations alone.
- (F) Other provisions related to variances.
- (1) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
 - (2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.
 - (3) Variances shall be granted for earth shelter construction as defined in MN State Statute section 216C.06, subdivision 14, when in harmony with the official controls.
 - (4) The board of adjustment may impose conditions on the granting of any variance pursuant to subsection 152.216 (B).
 - (5) Granting of the variance shall not have the effect of violating a state or federal rule or law.
 - (6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.
 - (7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.
 - (8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
- (Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

STAFF ANALYSIS:

1. Paul and Ann Smothers have owned the property since 2003. The property has existed in its current size and configuration since prior to 1974. The applicant's proposal consists of constructing a new detached garage on the eastern boundary of the property. Section 152.034 of the County Zoning Code requires a 15-foot side yard setback from any side property line. The closest point of the proposed garage would be 10 feet from the eastern property line; therefore, reflecting an approximate 5-foot variance.
2. The applicant's letter (dated September 26, 2023) describes the practical difficulty in finding a location for the proposed garage that would meet all setbacks and avoid some of the unique characteristics (topography) of the property. They explain that the existing 30' x 32' detached garage has been used as a woodworking shop and does not provide the necessary space for parking vehicles. The proposed 14' x 32' detached garage would be used to store vehicles and "lake-related items" for the family's personal use only. The location was chosen to utilize the existing driveway as well as prevent tree removal and avoid underground electrical lines.

3. The provided site plan (dated September 26, 2023) shows the location and dimensions of the proposed detached garage and the existing accessory structures. There is a total of 1,128 square feet of current personal storage square footage (a 30'x32' detached garage/wood shop and a 12' x 14' shed). The proposed personal storage with the additional detached garage would be 1,576 square feet. The zoning code allows a total of 2,500 square feet of personal accessory storage square footage for a parcel of this size. Based on the limited space and unique lot shape, the property owners and their builder have proposed a plan which minimizes impacts to all setbacks and maintains the character of the neighborhood. The proposed location would utilize the existing driveway and meet all other setbacks.
4. This request was reviewed by Taylor Huinker, DNR Area Hydrologist, on October 16, 2023. Ms. Huinker stated that the DNR does not foresee any issues with the proposed garage location.
5. The granting of the variance is in harmony with the general purpose and intent of the official control. The official control in this request is the required side yard setback section of the County Zoning Code. Although this request does not meet the specific standards, it appears to meet the intent of the regulations.
6. The plight of the landowner is due to circumstances created by the landowner; however, the applicant purchased the property in 2003 with the lot having a limited amount of space for personal storage structures and garages. As time has passed, the Smothers have utilized the current accessory structure space to the best of their abilities and now have a need for additional storage space which would meet the allowable square footage for the property. As is the case with all variance requests, each variance application is based on its own merit, property uniqueness, and reasons described by the applicant.
7. The neighborhood is comprised of agricultural land, residential homes & activities along the shoreline of Reitz Lake. There are similarly situated structures on other properties in the immediate area. This request would not cause a substantial change in the character of the neighborhood.
8. The granting of the variance would not conflict with the intent of the Comprehensive Plan, nor will government services be negatively impacted by the location of the structure with the proposed reduced side yard setback.
9. The granting of the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
10. The applicant attended the October 9, 2023, Laketown Town Board meeting to present their proposed structure plans. The Laketown Town Board reviewed and tabled the item until the October 23, 2023, meeting, as they requested the applicant speak to the neighbor to the east prior to providing a recommendation. Any updates from the Township and/or the recommendation form will be presented at the Board of Adjustment meeting.

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for reduced side yard setback on the property pursuant to Section 152.034 (D) of the Carver County Zoning Code, would serve in the interest of justice, the following conditions should be attached to the approved variance:

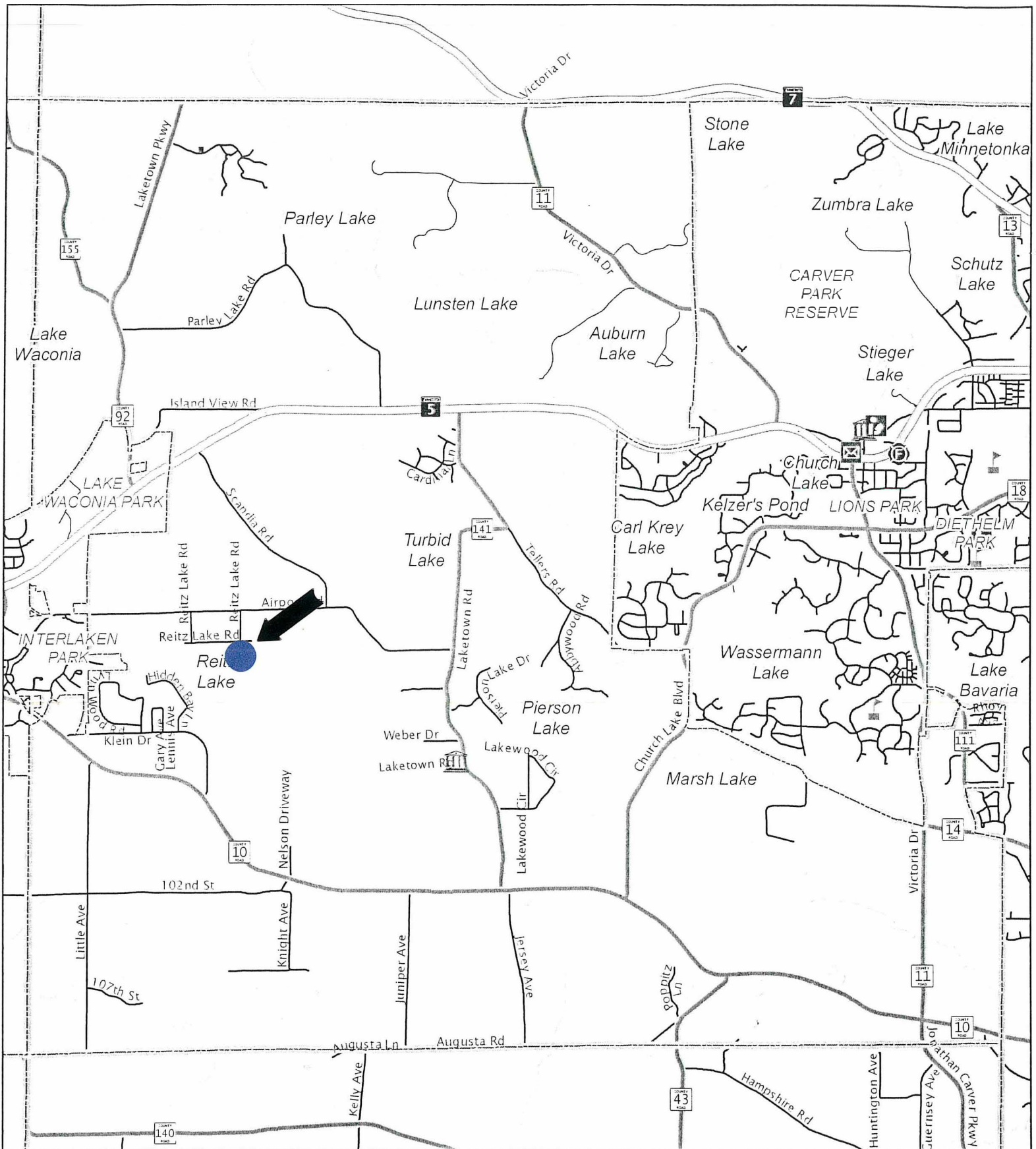
1. The permittee shall obtain the appropriate building permits (including site grading) prior to the construction of the detached garage, if applicable. An erosion/sediment control plan or stormwater plan shall also be prepared, submitted, and implemented in accordance with the CCWMO Water Rules (Chapter 153) as part of the building permit application process, if applicable.
2. All construction activities shall be done in accordance with the submitted site plan dated September 26, 2023. Any portion of the garage shall not encroach any closer to the side property line than approved (i.e. 10± feet) as part of this permit application.
3. No additional expansions shall be permitted without obtaining all necessary building permits and/or variances.

NOTE: The Board of Adjustment may consider it necessary to protect the public health, safety, and welfare; therefore, imposing additional conditions on granting the variance. Any conditions should bear a rough proportionality to the impact created by the variance.

OR

If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

LAKETOWN TOWNSHIP



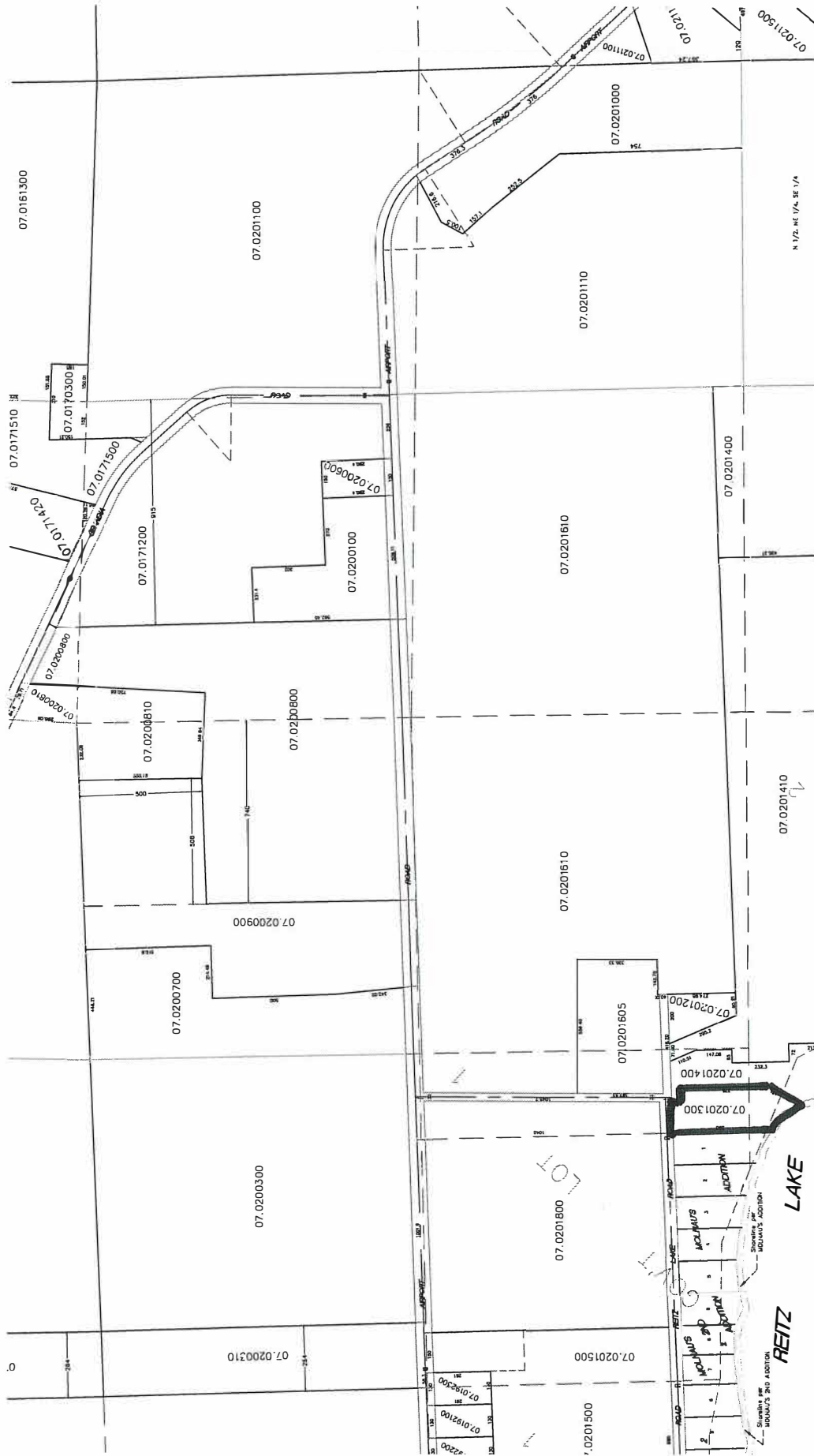
This map was created using Carver County's Geographic Information Systems (GIS); it is a compilation of information and data from various City, County, State, and Federal Offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible for any inaccuracies contained herein.



Map Created by Carver County GIS

THIS IS NOT A LEGALLY REPRODUCED PLAT.
THIS MAP IS A COMPILED OF RECORDS
AS SHOWN IN THE PUBLIC RECORDS
OFFICES AND OTHER SOURCES. THIS MAP
DOES NOT REPRESENT THE OFFICIAL
RECORDS OF THE COUNTY AND ITS AGENTS
NOR DOES IT REPRESENT THE
RECORDS OF THE COUNTY.

N 1/2 SEC. 20, T.116, R.24



September 26, 2023

Carver County

Board of Adjustment

To Whom It May Concern:

I am requesting a 5-foot variance on the east line of my property for the purpose of building a 14'x32' garage for additional storage. The following Land Use Ordinance allows a 15-foot setback, and the east line of the proposed garage currently has a 10-foot setback. We are unable to position the planned garage any further to the west due to underground electrical lines, as well as the existing asphalt driveway would be impaired. (Please see enclosed photos) I am enclosing a copy of the survey of the property and I have had the east line marked by a licensed professional surveyor with Premier Land Surveying out of Victoria.

§ 152.034 SETBACKS.

(A) *No reduction in setback.* No setback existing upon the effective date of this chapter shall be reduced in area or dimension so as to make the setback less than the minimum required by this chapter.

(B) *Existing buildings on new lots.* Any new lot created that contains existing buildings must be configured so that all setback requirements from new lot lines are met.

(D) *Table of setback requirements.* All structures unless exempted above; and signs and parking areas near a public right-of-way:

Side Lot Line Setbacks	All Districts	15 feet
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Our property sits on 1.87 acres on Reitz Lake, and the purpose of an additional garage is for the storage of vehicles and lake related items. We have a 24'x 32' garage, that I use as a woodworking shop, and so does not allow for the parking of vehicles, etc. I feel the position of this proposed garage will fit nicely with the current garage and home. The east side of the property slopes into a ravine, so there is nice drainage.

In closing, I am asking that the Carver County Board of Adjustment grant my request for a variance, so that we may proceed with the building plans, etc.

Sincerely,



Paul Smothers

8555 Reitz Lake Road

Waconia, MN 55387

REITZ LAKE ROAD

N 89°30'E 180.2 (Deed)
N 89°36'44"E
127.08 (Meas.)

S 00°04'33" W
19.99 (Meas.)

53
53.95
N 88°53'95"E
(Meas.)

EXISTING HOUSE
15' x 20'

SEPTIC TANK

WELL

12' x 14' SHED

14' x 32'

Proposed
Acc. Structure

S 00°14'08"E 374.84 (Meas.)
S 00°00'00"E 395 (Deed)

PRESENT SHORELINE

SURVEY LINE

12' x 18' screen porch

N 52°46'25"W 175.11'
S 28°46'52"W 92.82'
S 29°01'W 143.1' (Meas.)
131.1' (Deed)

I hereby certify that this report was prepared by direct supervision and I am a Registered Land Surveyor of the State of Minnesota.
Edward J. O'Neil
Edward J. O'Neil
Date _____ Registered _____

9/24/23

CHERYL GUNTHER

Requested By:

Survey part of Gov't Lot 1 and Gov't Lot 2, Section 20, Township 116, Range 24, Carver County, Minnesota.

- Denotes iron monument found
- Denotes iron pipe set and marked R.L.S. No. 14343
- Denotes soil boring
- Denotes percolation test hole

Checked By:

Scale:

Drawn By:

1" = 40'

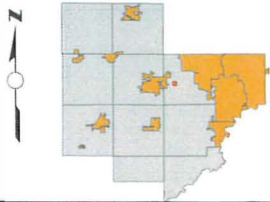
Date:

T. M. H.

SMOTHERS REDUCED SETBACK VARIANCE



Date: 10/20/2023
This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible for any inaccuracies contained herein.





Township Presentation & Recommendation Form

PARCEL # <u>07.0201300</u>	Permit # <u>P220220041</u>
Owner's Name: <u>Paul Smothers</u>	Owner's Mailing Address: <u>8555 Reitz Lk. Rd.</u>
City: <u>Waconia</u>	Owner State: <u>Mn</u>
	Owner Zip: <u>55387</u>
Applicant (if other than owner): 	Site Address: <u>8555 Reitz Lk. Rd.</u>

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request: <u>Requesting a 5-foot Variance to the East line of Property to construct a 14' x 32' garage</u>						
Date of County Public Hearing: <u>11.07.2023</u>			Date of Township Meeting: ^(1st) <u>10.09.23</u> _(2nd) <u>10.24.23</u>			

Actions:

Township Action Taken:

- ☐ Recommends approval and use of the Township Road (if applicable) with the following comments:
- ☐ Recommends denial for the following reasons:
- ☐ No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:

****Important:** I understand that I must appear at the Town Board meeting to present my request and obtain their recommendation prior to appearing before the County Planning Commission or Board of Adjustment.

	Date <u>9/5/23</u>
---	--

Signature of Township Official

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 07-020-1300

File#PZ20230041

APPLICANT/OWNER: Paul W Smothers & Ann C Smothers

* * * * *

Part of Government Lots One (1) and Two (2), Section Twenty (20), Township One Hundred Sixteen (116), Range Twenty-four (24), Carver County, Minnesota, described as follows: Commencing at the Northwest corner of said Section Twenty (20); thence due South, along the West line of said Section Twenty (20), a distance of 1,322 feet to the centerline of the Town Road; thence North 89 degrees 30 minutes East, along said centerline, a distance of 1,001.9 feet; thence due South on a line parallel with said West line, a distance of 1,440 feet, more or less, to the shore line of Reitz Lake and the point of beginning of the tract herein described; thence due North along said Last described line, a distance of 395 feet, more or less, to a point on said line 1,045 feet due South of said centerline of road; thence North 89 degrees 30 minutes East, a distance of 180.2 feet; thence due South, parallel with said West line, a distance of 395 feet; thence South 29 degrees 01 minutes West, a distance of 131 feet, more or less, to said shore line; thence Northwesterly, along said shore line, to said point of beginning, EXCEPT the East 53 feet of the North 20 feet thereof.

Also, easement for road purposes over said excepted East 53 feet of the North 20 feet, and over a 33-foot wide tract of land the centerline of which is described as follows: Commencing at a point on the Easterly projection of the North line of the above described tract, a distance of 143.7 feet North 89 degrees 30 minutes East from the Northwest corner of said Tract; thence North 1 degree 40 minutes East, a distance of 1,012.7 feet to the South line of said Town Road and there terminating.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

October 20, 2023

TO: Carver County Board of Adjustment & Benton Town Board

FROM: The Land Management Department

SUBJECT: Application for a Variance (Increased Sign Square Footage, Single Sign & Entire Parcel)

FILE #: PZ20230042

APPLICANT: Chris Anderson, Bongards' Creameries

OWNER: Bongards' Creameries

SITE ADDRESS: 13200 Co Rd 51 NYA, MN 55368

VARIANCE TYPE: Increased Square Footage for Signage, Single Sign and Parcel

PURSUANT TO: Carver County Code: Chapter 154.20 & 154.35

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 01-017-2610

BACKGROUND:

1. Bongards' Creameries currently owns two parcels totaling an approximate 192 acres in Southwest Quarter (SW¼) of Section 16 and Southeast Quarter (SE¼) of Section 17, Benton Township. The parcels are improved with a number of buildings that consist of a dairy processing facility (CUP #PZ20220019), storage buildings, a retail store, office space, a large-scale solar energy system (CUP #PZ20150041), fuel storage facilities, a wastewater treatment center and multiple parking areas. The property is located in a Rural Service Overlay District (Bongards) and the Carver County Water Management Organization (CCWMO) - Carver Creek Watershed.
2. Bongards' Creameries is requesting a variance to re-allocate legal nonconforming signage square footage to construct a new freestanding sign on the east side of the Highway 212 and Co Rd 51 intersection and re-locate an existing freestanding sign on the west side of the intersection due to reduced sign visibility as a result of the Phase 2 Highway 212 road reconstruction and intersection improvements set to begin in the 2024. The square footage of the freestanding signs exceeds the allowable square footage for a single sign and allowable sign square footage for the parcel; therefore, a variance has been requested.

LEGAL BACKGROUND:

§ 154.20 SIZE.

- (A) No sign shall exceed 32 square feet of surface area. The size of a two-sided sign shall be calculated based on the surface area of only one of the sides, provided the sign surfaces are completely flush (i.e. back to back).
- (B) No parcel shall have signage exceeding a total aggregate of 36 square feet of surface area for all signs.
(Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

§ 154.35 NONCONFORMING SIGNS; COMPLIANCE.

It is recognized that signs exist within the county which were lawful before this chapter was enacted, which would be prohibited, regulated or restricted under the terms of this chapter or future amendments. It is the intent of this chapter that nonconforming signs shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other signs or uses otherwise prohibited by this chapter. It is further the intent of this chapter to permit legal nonconforming signs existing on the effective date of this chapter, or amendments thereto, to continue as legal nonconforming signs provided such signs are safe, are maintained so as not to be unsightly, and have not been abandoned or removed subject to the following provisions:

- (A) No sign shall be enlarged or altered in a way which increases its nonconformity.
 - (B) Should such sign or sign structure be destroyed by any means to an extent greater than 50% of its replacement cost and no building permit has been applied for within 180 days of when the property was damaged, it shall not be reconstructed except in conformity with the provisions of this chapter.
 - (C) Should such sign or sign structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the requirements of this chapter.
 - (D) No existing sign devoted to a use not permitted by the zoning code in the zoning district in which it is located shall be enlarged, extended or moved except in changing the sign to a sign permitted in the zoning district in which is it located.
 - (E) When a structure loses its nonconforming status, all signs devoted to the structure shall be removed and all signs painted directly on the structure shall be repainted in a neutral color or a color which will harmonize with the structure.
- (Ord. 58-2007, passed 3-27-07)

BOARD OF ADJUSTMENT

§ 152.210 CREATION.

The Board of Adjustment is hereby established and invested with the authority as is hereinafter provided and as provided by M.S. §§ 394.21 through 394.37, as they may be amended from time to time.

(Ord. 47, passed 7-23-02; Am. Ord. 97-2021, passed 7-20-21)

§ 152.215 VARIANCES.

- (D) *Grounds for variance.* The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall be granted in accordance with M.S. Chapter 394, as it may be amended from time to time, in cases where the applicant establishes that there is a practical difficulty in the way of carrying out the strict letter of any official control.
 - (1) A variance shall only be permitted when the following can be found as fact:
 - (a) The variance is in harmony with the general purpose and intent of the official control.
 - (b) The variance is consistent with the intent of the comprehensive plan.
 - (2) In addition, a variance may be granted when the applicant establishes a practical difficulty in complying with the official control. A practical difficulty is established when the following items are found as fact:
 - (a) The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 - (b) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 - (c) The variance will not alter the essential character of the locality.
 - (d) The practical difficulty includes more than economic considerations alone.
- (E) In consideration of an after-the-fact variance request, and in addition to the criteria listed in § 152.215(D), the Board of Adjustment shall take into consideration and weigh the following:
 - (1) Whether or not the applicant acted in good faith or attempted to comply with this chapter.
 - (2) Whether a substantial investment of money has been made.
 - (3) Whether the construction is fully completed.
 - (4) Whether there are similar structures or similarly situated structures in the area.
 - (5) Whether the benefit to the county is outweighed by the burden on the applicant, if the applicant is required to comply with this chapter.
- (F) Other provisions related to variances.
 - (1) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
 - (2) Inadequate access to direct sunlight for solar energy systems is considered a practical difficulty.
 - (3) Variances shall be granted for earth shelter construction as defined in MN State Statute section 216C.06, subdivision 14, when in harmony with the official controls.
 - (4) The board of adjustment may impose conditions on the granting of any variance pursuant to subsection 152.216 (B).
 - (5) Granting of the variance shall not have the effect of violating a state or federal rule or law.
 - (6) *Floodplain standards.* A variance issued to property within the Floodplain Overlay District must meet the requirements set forth in §§ 152.143 through 152.156.
 - (7) *Shoreland Overlay District.* A variance issued to property within the Shoreland Overlay District must meet the requirements set forth in §§ 152.108 and 152.135.

(8) That the granting of the variance will not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.
(Ord. 47, passed 7-23-02; Am. Ord. 70-2010, passed 1-25-11; Am. Ord. 80-2015, passed 6-16-15; Am. Ord. 88-2018, passed 11-20-18; Am. Ord. 97-2021, passed 7-20-21)

STAFF ANALYSIS:

1. On June 14, 2022, the County Board approved Conditional Use Permit PZ220220019 which allowed the co-op creamery business to expand the facility with the construction of an independent boiler building and propane storage area, consolidate a number of Bongards'-owned parcels into a single parcel, and supersede the 2002 CUP (PZ20020064) to include a number of site improvements constructed since that CUP was issued. In 2022 Bongards' submitted CUP narrative documented the locations and size of the existing signage at the facility, both signage on the buildings and freestanding signs, for a total of 998.5 square feet of legal nonconforming signage. No new signage was proposed at that time. A condition of the Board Order stated: "The permittee shall not increase the square footage of signage on the property." The CUP identified the total square footage allowed on the property; however, the re-location of said signage (square footage) triggers the subject variance. No increase of square footage of signage is proposed with this variance application.
2. The Sign Regulations Ordinance specifies that when a sign be moved for any reason for any distance whatsoever, it shall thereafter conform to the requirements of this chapter. Due to the expansion of the Hwy 212 roadway and creation of stormwater management ponds, Bongards (through the road authority) is being required to move their existing freestanding sign of (legal) nonconforming size that is currently on their property near the Hwy 212 and Co Rd 51 intersection.
3. The submitted narrative (dated October 17, 2023) explains the circumstances prompting the variance request and the reasons for sign size and location. *"The current freestanding sign is required to be moved further west and south of Highway 212 reducing visibility at the completion of the construction project. Freestanding sign visibility for westbound traffic will be blocked by the overpass and distance. Freestanding sign visibility directly impacts foot traffic to Bongards' Cheese Store and other business-related messages such as employment opportunities."* The variance request is to add an additional sign on Bongards' property adjacent to Highway 212 to alert westbound travelers prior to passing the exit to the store. The Sign Square Foot Summary table lists the current Highway 212 free standing sign at 394.4 square feet and new free standing sign dimension at 14' x 28.5' (399 square feet). Thus Bongards' would maintain the current signage square footage for the property (998.5 square feet) as describe in the approval CUP. The narrative states that the proposed signs would be installed three feet from the public right-of-way. The signs would be a maximum 20-feet tall from surrounding grade. The location and height of the signs conforms to Sign Code standards. The signs will be illuminated by an external light source, same as the existing sign.
4. The submitted site plan (dated October 17, 2023) shows the planned layout of the reconstructed Highway 212 & Co Rd 51 intersection and overpass and the re-location of the existing Bongards' freestanding sign, as well as the proposed sign east of the proposed overpass on Bongards' property. Both signs will be on Bongards property on the southern side of Highway 212.
5. Jack Johansen, Transportation Planner for Carver County Department of Public Works, reviewed the variance application materials and in an email dated October 17, 2023, stated: "The applicant should continue to coordinate the location of the signs with Carver County Public Works as part of the Highway 212 Project."
6. The sign is adjacent to Highway 212, where the Minnesota Department of Transportation (MNDOT) is the road authority. The sign is subject to MNDOT rules, which are based Minnesota Statute 173.15, and Code of Federal Regulations 23 750.108 (C). The sign must:
 - Be located outside of any public rights-of-way.
 - Comply with all Federal State, and Local laws, regulations, rules, and ordinances.

- Not utilize distracting flashing or moving lights. Displayed digital content must not change more frequently than once every six seconds (scrolling is not allowed).
- Not purport to or resemble an official traffic control device, sign, or signal.
- Not interfere with a driver's view of approaching, merging, or intersecting traffic.
- Not use the word 'stop' or 'danger'.
- Not advertise anything beyond activities occurring on the premises upon which the sign is located. No paid advertising or advertising for other community events.

7. The Benton Town Board reviewed and recommended approval of the request during their October 12, 2023, Town Board meeting. The Board commented: "Voted unanimously to approve with County recommendations."

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for an increase in individual sign square footage and an increase in total sign square footage for the parcel on the Bongards' property identified as PID 01-017-2610 would serve in the interest of justice, the following conditions should be attached:

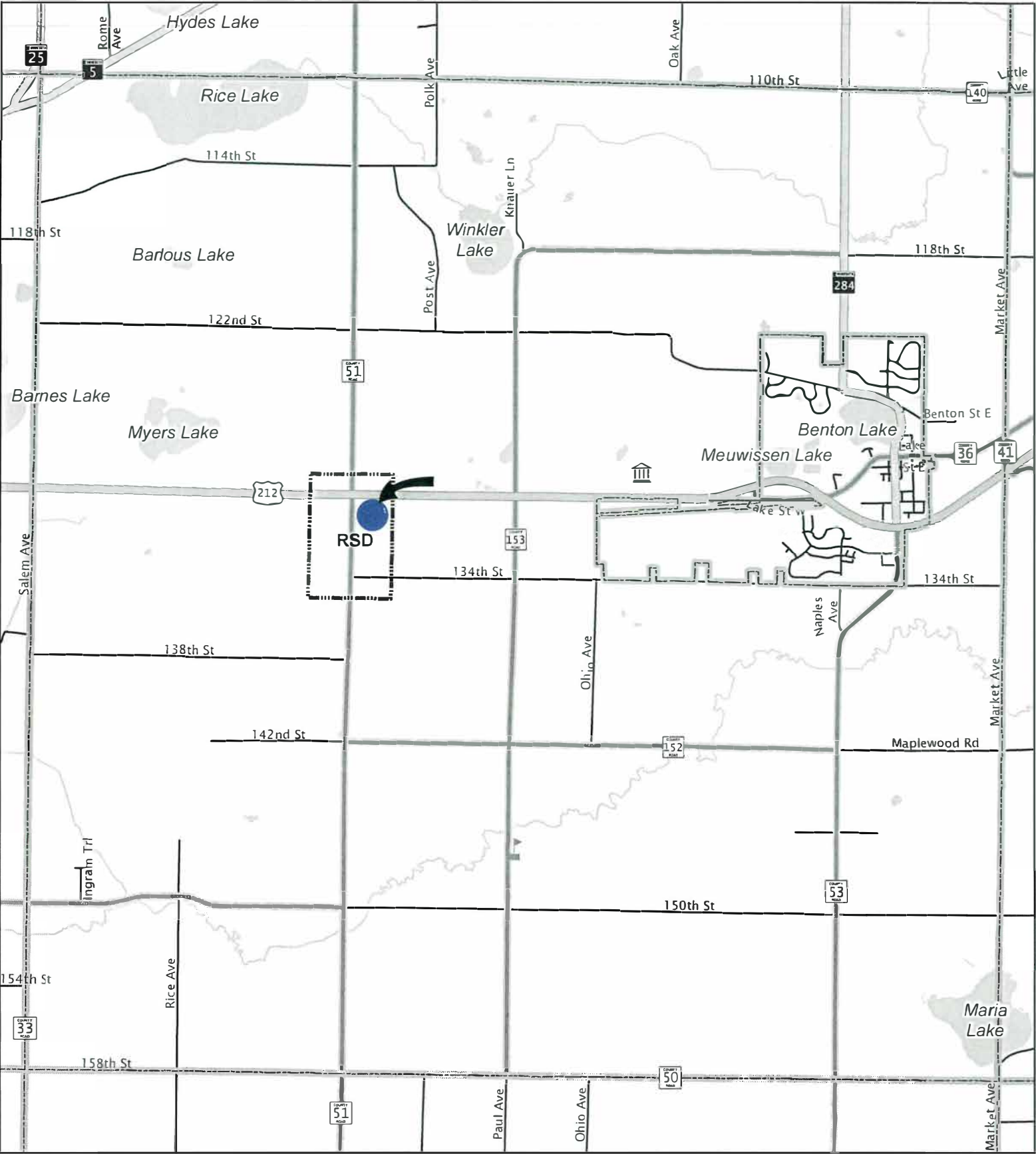
1. The permittee shall obtain the appropriate building permit(s) for the new signage and re-located sign, including but not limited to the appropriate sign, building and electrical permits. All work shall be done in accordance with the submitted and approved plans.
2. No additional signage or expansion of signage square footage related to the primary use of the property shall be permitted without obtaining all necessary building permits and/or variances and Conditional Use Permit amendment, if applicable.
3. The permittee shall obtain any required permitting from MNDOT and comply with all MNDOT rules for signs adjacent to state trunk highways.
4. The permittee shall comply with all Carver County Zoning Code (Chapter 152) and Sign Ordinance (Chapter 154) requirements.

NOTE: The Board of Adjustment may consider it necessary to protect the public health, safety, and welfare; therefore, imposing additional conditions on granting the variance. Any conditions should bear a rough proportionality to the impact created by the variance.

OR

If the Board of Adjustment determines that a practical difficulty has not been identified, and that approving the variances would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

BENTON TOWNSHIP



This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible for any inaccuracies contained herein.





October 17, 2023

Bongards' Creameries
13200 County Road 51
Norwood, MN 55368

Jeremy Widmer, Supervisor
Benton Township
11360 US-212
Cologne, MN 55322

Dear Mr. Widmer:

Bongards' Creameries requests a sign variance due to practical difficulties arising from the HWY 212 and County Road 51 improvements.

- The current free standing sign is required to be moved further west and south of HWY 212 reducing visibility at the completion of the construction project.
- Free standing sign visibility for westbound traffic will be blocked by the overpass and distance.
- Free standing sign visibility directly impacts foot traffic to Bongards' Cheese Store and other business related messages such as employment opportunities.
- Bongards' variance request is to add an additional double sided free standing sign to the east of the future HWY 212 overpass.
- The new free standing sign will allow traffic traveling west visibility to Bongards' facility prior to passing the exit.
- Bongards' current sign square footage is 998.55 square feet. Bongards' intent is not to exceed 998.55 square feet by removing signage currently on and/or in front of building structures.
- Free standing signs will remain three feet from the right of way.
- Free standing sign lighting will be directed on sign, consistent with current lighting.

Attached is a depiction of the general location of the current and future free standing signs.

If you have questions or would like additional information, please contact me.

Sincerely,

Chris Anderson

Chris Anderson
EHS Director
chris.anderson@bongards.com
(952) 277-5594

Signs Removed for New Free Standing Sign

Admin Office one direction 4 ft. x 6 ft., Water Tank 9 ft. 11 inch x 18 ft., Cooler facing Highway 212 20 ft. x 10 ft.

Sign Square Foot Summary

Current Sign Location	Current Sign Square Feet	Signs Removed for New Free Standing Sign	Estimated New Free Standing Sign Dimension: 14 ft. x 28 ft. 6 in.
Retail	8		
Retail	6.61		
Admin Office - Mounted	32		
Admin Office - One Directional	24	24	
Water Tank	178.5	178.5	
Building Facing Co. Rd. 51	200		
Cooler Facing Highway 212	200	200	
Current Highway 212 Free Standing Sign	349.44		
Total Square Feet	998.55	402.5	399

Signage noted in BONGARDS CREAMERIES Master Plan, April 21, 2022. Pages 6, 7, 8.

XII. SITE SINGAGE

Existing several small signs located throughout the property for navigational purposes, and site signage including the following:

- A. Retail Store: Two signs with 8 ft x 1 ft and 34 in x 28 in dimensions.

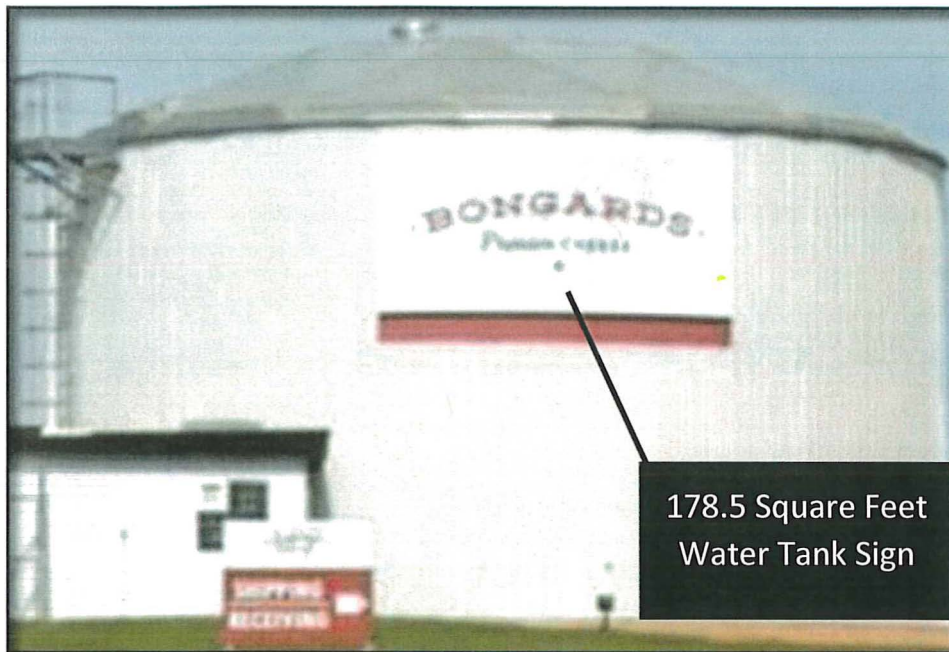


- B. Admin Office: One sign mounted to the existing building with 4 ft x 8 ft dimensions. One directional sign with the Bongards logo and 4 ft x 6 ft dimensions.

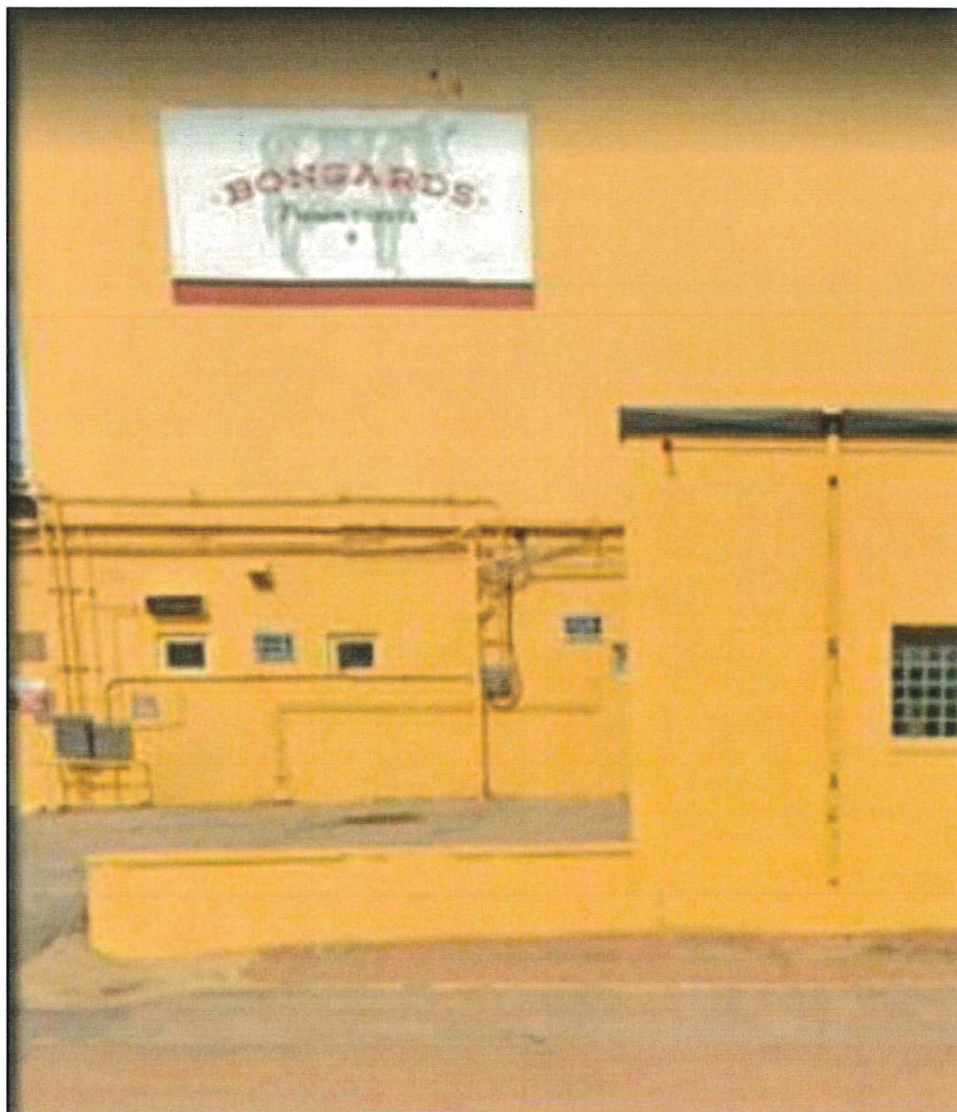


24 Square Feet
Office Sign

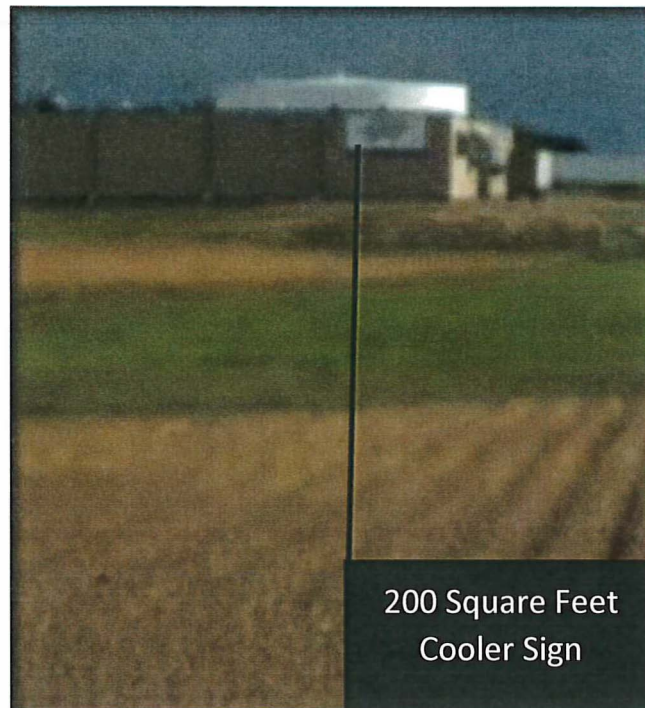
- C. Water Tank: One tank mounted sign with 9 ft 11in x 18 ft dimensions.



- D. One building mounted sign facing Highway 51 with 20 ft x 10 ft dimensions.



- E. Cooler: One sign mounted to the existing cooler facing Highway 212 with 20 ft x 10 ft dimensions.

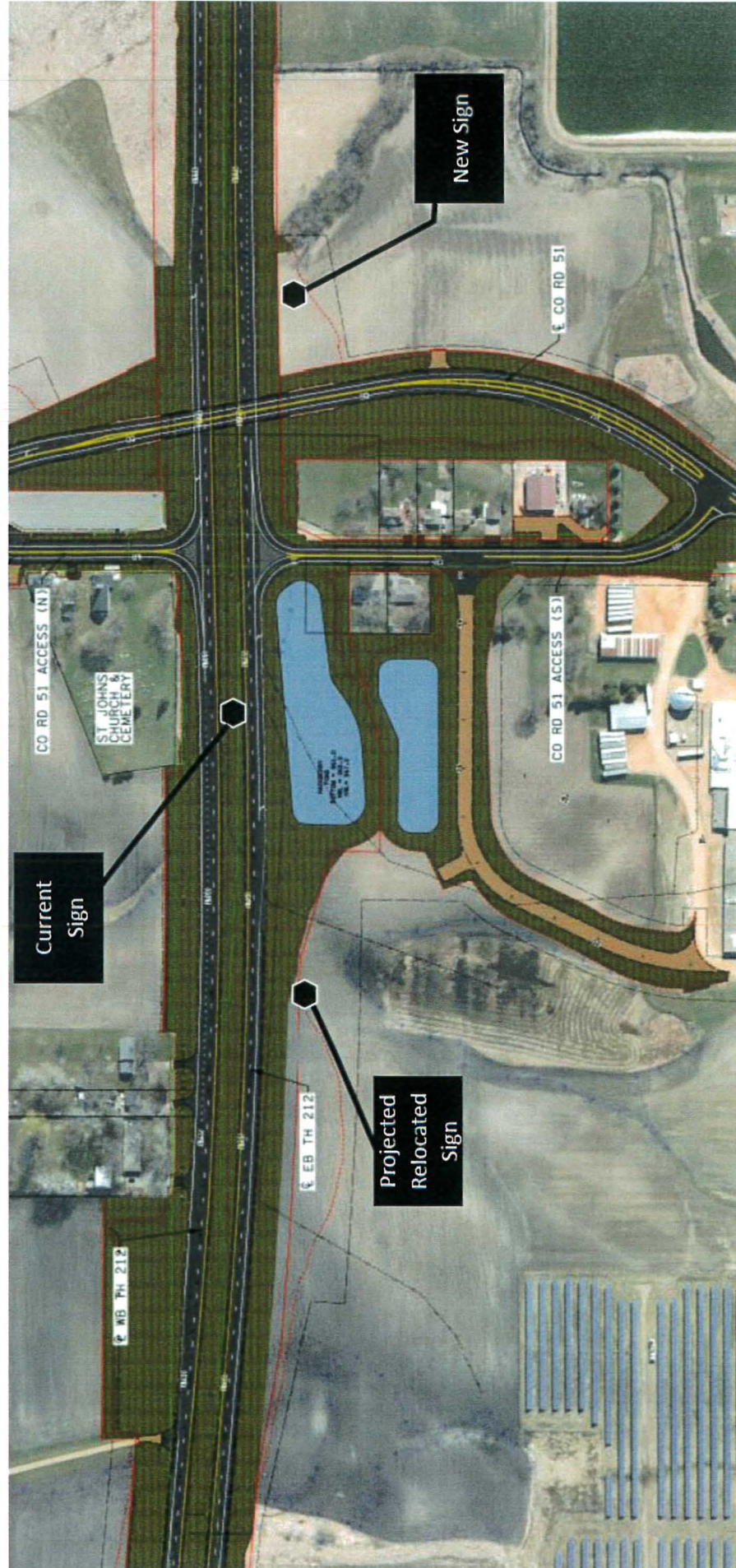


- F. One Sign located on the south side of Highway 212 with 14 ft 2 in x 24 ft 8 in dimensions.



SITE / PLOT PLAN

BONGARDS.
Premium CHEESE
EST. 1902



October 17, 2023



Township Presentation & Recommendation Form

PARCEL #	010172610	Permit #	V-P3-2023-0042	
Owner's Name:	Bongards' Creameries	Owner's Mailing Address:	13200 County Road 51	
City:	NYA	Owner State:	MN	Owner Zip:
				55138
Applicant (If other than owner):		Site Address:	13200 County Road 51	

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request:						
Bongards' Creameries requests a sign variance due to practical difficulties arising from HWY 212 Improvements. Moving the current billboard negatively impacts visibility from vehicle traffic traveling east and west. Billboard communication is key for retail customers and employment opportunities. The variance request is to add an additional sign to the east of the future HWY 212 overpass.						
Date of County Public Hearing:	11-1-23	Date of Township Meeting:	10/12/2023			

Actions:

Township Action Taken: ☒ Recommends approval and use of the Township Road (if applicable) with the following comments: ☐ Recommends denial for the following reasons: ☐ No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:	Voted Unanimously to approve with County Recommendations
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****Important:** I understand that I must appear at the Town Board meeting to present my request and obtain their recommendation prior to appearing before the County Planning Commission or Board of Adjustment.

Signature of Applicant: *Chris Anderson*

Date: 10-12-23

Signature of Township Official: *Chris Anderson*

Date: 10-12-23

Signature of Township Official

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 01-017-2610

File# PZ20230042

APPLICANT/OWNER: Bongards' Creameries

* * * * *

ABSTRACT LANDS:

PID: 01-016-1400

All that part of the following described tract of land which lies north of the north right-of-way line of the Chicago, Milwaukee and St. Paul Railway Company to-wit: Commencing at the Quarter Section line, between Sections 16 and 21, Township 115 North of Range 25 West; thence North along said Quarter Section line, 80 rods; thence West 53 1/3 rods; thence South 80 rods to said Section line; thence East on said Section line 53 1/3 rods to the place of beginning, containing 1.91 acres of land, more or less, situated in the Southwest Quarter of Section 16, Township 115 North of Range 25 West.

PID: 01-016-1700

A portion of the Southwest Quarter of the Southwest Quarter of Section 16, Township 115, Range 25, described as follows: Beginning at a point on the West line of said Section 16, that is 114.0 feet North of the intersection of the North line of the right-of-way of the Chicago, Milwaukee & St. Paul Railroad, as now located, with said West line of said Section 16; thence North 50.00 feet; thence East 115.0 feet; thence South 50.0 feet; thence West 115.0 feet to the point of beginning.

PID: 01-016-2800

That part of the Southwest Quarter of Section 16, Township 115 North, Range 25 West, described as follows: Commencing at a point on the West line of said Section 16, which point is 90.0 feet North of the intersection of the North line of the right-of-way of the Chicago, Milwaukee & St. Paul Railroad Company, as now located, with said West line of said Section 16; thence running North along said West Section line, a distance of 24.0 feet; thence running East, a distance of 58.0 feet to a point; thence running South, a distance of 24.0 feet; thence running West, a distance of 58.0 feet to the point of beginning.

PID: 01-016-2300

Beginning at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 16, Township 115 North of Range 25 West; thence East on the north line of said Northwest Quarter of the Southwest Quarter of said Section 16, a distance of 100 feet to a point and which said point is the point of beginning of the premises herein to be described and conveyed; thence continuing East on said line, a distance of 100 feet to a point; thence South at right angles with the last described line, a distance of 375 feet to a point; thence West at right angles with the last described line, a distance of 200 feet to a point; thence North at right angles with the last described line, a distance of 275 feet to a point in the West line of said Northwest Quarter of said Southwest quarter of said Section 16; thence in a Northeasterly direction to the point of beginning. Containing 1.61 acres of land, more or less, situated in the Northwest Quarter of the Southwest Quarter, Section 16, Township 115, Range 25.

Beginning at a point on the North line of the Northwest Quarter of the Southwest Quarter of Section 16, Township 115 North of Range 25 West, which said point bears East 200 feet from the Northwest corner of said Northwest Quarter of the Southwest Quarter, running thence South at right angles to said North line, a distance of 375 feet;

thence East parallel with said North line, a distance of 50 feet; thence North parallel to the West line of said Northwest Quarter of the Southwest Quarter, a distance of 375 feet to a point on the said north line; thence West 50 feet along said North line to the place of beginning. Containing 42/100 acres, more or less, situated in the Northwest Quarter of the Southwest Quarter of Section 16, Township 115, Range 25.

01-017-1800

Commencing at a point on the Section Line between Sections 16 & 17, Township 115 North, Range 25 West, said point being the North line of the Chicago, Milwaukee, & St. Paul Railway Company right-of-way; thence running North along said Section line, 181.5 feet; thence South 84 degrees 20 minutes West, 33 feet, making this the place of beginning; thence South 84 degrees 20 minutes West, 196 feet to a point; thence running North 66 feet to a point; thence running North 84 degrees 20 minutes East, 196 feet to a point; thence South 66 feet to the point of beginning.

TORRENS LANDS

PID: 01-016-0900

(Torrens COT 43353.0 Tract One)

The West Half of the Northeast Quarter of the Southwest Quarter (W1/2 NE1/4 SW1/4) of Section 16, Township 115, Range 25 West, Carver County, Minnesota.

(Torrens COT 43353.0 Tract Three)

That part of the Southwest Quarter of the Southwest Quarter of Section 16, Township 115, Range 25 West, Carver County, Minnesota, that lies within the following description:

Beginning at a point on the West line of the Southwest Quarter (SW1/4) of Section 16, Township 115, Range 25 West, Carver County, Minnesota, 1,395.8 feet North of the Southwest corner of said Southwest Quarter (SW1/4), thence running due East, a distance of 210.2 feet, thence running South 39° 36' West, a distance of 85.1 feet, thence running 0° 021/2' East, a distance of 13.3 feet, thence running North 89° 571/2' East a distance of 724.0 feet, thence running due South a distance of 465.5 feet to the northerly right-of-way line of the railroad, thence running South 74° 42' West a distance of 439.9 feet, to the point of curvature of said right-of-way line, thence running along said curve to the right (chord bearing) South 76° 021/2' West a distance of 176.6 feet, thence running North a distance of 66.0 feet, thence running Southwesterly along a curve parallel to the said right-of-way curve (chord bearing) South 78° 57' West a distance of 203 feet, thence running due North a distance of 34.7 feet, thence running due East a distance of 30 feet, thence running due North a distance of 50.0 feet, thence running due West a distance of 115.0 feet to the West line of the Southwest Quarter (SW1/4), thence running due North along said West line a distance of 581.8 feet, to the place of beginning.

(Torrens COT 43353.0 Tract Four)

Beginning at a point on the West line of the Southwest Quarter (SW1/4) of Section 16, Township 115, Range 25 West, Carver County, Minnesota, 494.5 feet north of the Southwest corner of said Southwest Quarter (SW1/4) the same being on the southerly right-of-way line of the railroad, thence South along said West line of said Southwest Quarter (SW1/4) a distance of 263.5 feet, thence running East and parallel to the South line of said Southwest Quarter (SW1/4) a distance of 148.5 feet, thence running South and parallel to the West line of said Southwest Quarter (SW1/4) a distance of 231 feet

to the South line of said Southwest Quarter (SW1/4), thence running East along said South line a distance of 731.5 feet, thence running North and parallel to the West line of said Southwest Quarter (SW1/4) a distance of 704.6 feet to the southerly right-of-way line of said railroad, thence running southwesterly along said right-of-way line to the place of beginning.

EXCEPTION #1: The North 40 feet of the South 271 feet of the West 148.5 feet of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of Section 16, Township 115, Range 25 West.

EXCEPTION #2: The East 100 feet of the West 248.5 feet of the South 155 feet of the Southwest Quarter (SW1/4) of Section 16, Township 115, Range 25 West.

EXCEPTION #3: Beginning at a point on the West line of the Southwest Quarter (SW1/4) of Section 16, Township 115, Range 25 West, Carver County, Minnesota, which point of 494.5 feet North of the Southwest corner of said Southwest Quarter (SW1/4), the same being on the Southerly right-of-way of the railroad; thence South along said West line of said Southwest Quarter (SW1/4) a distance of 223.5 feet to a point; thence running East and parallel to the South line of said Southwest Quarter (SW1/4) a distance of 194.89 feet to a point; thence Northerly and parallel to the West line of said Southwest Quarter (SW1/4) to the point of intersection with the Southerly right-of-way line of the said railroad; thence Southwesterly along the said right-of-way to the point of beginning and there ending.

EXCEPTION #4: That part of the West 194.89 feet of the Southwest Quarter of the Southwest Quarter of Section 16, Township 115, Range 25, Carver County, Minnesota, that lies North of the South 271.00 feet thereof and South of a line that is parallel with the South line of said Southwest Quarter of the Southwest Quarter drawn East from a point on the West line of said Southwest Quarter of the Southwest Quarter, distant 223.50 feet South from the intersection with the said West line and the Southerly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad.

EXCEPTION #5: The East 46.39 feet of the West 194.89 feet of the North 116.00 feet of the South 271.00 feet of the Southwest Quarter of the Southwest Quarter of Section 16, Township 115, Range 25, Carver County, Minnesota.

PID: 01-016-2100

(Torrens COT 43353.0 Tract Two)

Beginning at a point on the North line of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section 16, Township 115, Range 25 West, Carver County, Minnesota, 880 feet East of the Northwest corner of said South Half of the Southwest Quarter (S1/2 SW1/4), thence continuing east along the North line of the South Half of the Southwest Quarter (S1/2 SW1/4) a distance of 880 feet, thence running south and parallel with the West line of the South Half of the Southwest Quarter (S1/2 SW1/4) a distance of 216.4 feet to the northerly right-of-way line of the railroad, thence deflecting to the right at an angle of 74° 42' a distance of 912.3 feet along said right-of-way line, thence running north and parallel with the west line of said South Half of the Southwest Quarter (S1/2 SW1/4) a distance of 456.5 feet to the place of beginning.