

CARVER COUNTY BOARD OF ADJUSTMENT

Regular Meeting – **Wednesday, October 5, 2022**

Commissioners' Meeting Room

2nd Floor Human Services Bldg

Government Center – Chaska

AGENDA

7:00 p.m.

1. Approve minutes of September 7, 2022 meeting
Pages 1-1 through 1-3
2. **File #20220039**- Public hearing on request by Evan Carlson for a variance.
(Reduced Setback - New Feedlot from Property Line)
Laketown Township Pages 2-1 through 2-11
Issue Order #PZ20220039 – Richard & Joan Carlson Trust & Evan Carlson
3. **File #20220037**- Public hearing on request by Charles Mooty for a variance.
(Reduced Setback - Structure from Side Yard)
Laketown Township Pages 3-1 through 3-20
Issue Order #PZ20220037 – Charles Mooty

Other Business

CARVER COUNTY BOARD OF ADJUSTMENT
Regular Meeting September 7, 2022
Minutes

Members Present: Gerald Bruner, Robin Bielefeldt, Frank Mendez, Virgil Stender, Joe Polunc, Amanda Gorra, Kellen Schmidt

Members Absent: None

Members Late: None

Staff Present: Jason Mielke

Pursuant to due call and published notice thereof, the September 7, 2022, 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 members are present.

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

Minutes – Chairman Bruner asked if there were any corrections to the minutes from the August 3, 2022, meeting. A motion was made by Stender to approve the minutes of the August 3, 2022, meeting as written. Gorra seconded the motion for approval. Bruner, Mendez, Stender, Polunc, Gorra, Schmidt voted aye. Bielefeldt abstained as he was absent from the August 3, 2022, meeting. Motion carried.

Public Hearing - File # 20220036 – Richard Shelly/Matt Hawkinson & Brianne Wawrzyniak – Chairman Bruner called the public hearing to order at 7:01 p.m. to consider the application of Richard Shelly, on behalf of Matt Hawkinson & Brianne Wawrzyniak, pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for reduced setback to the OHW for a structure pursuant to Chapter 152 of the County Code. The property is in Sections 5 & 8 of Laketown Township.

The following were present: Richard Shelly, Matt Hawkinson, Brianne Wawrzyniak, Peter Parris

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 15, 2022

Exhibit F – Staff Report addressed to the Board of Adjustment and Laketown Town Board dated August 26, 2022, and all attachments

Mielke stated a site plan was available for everyone at the back table, as only the contractor's proposed building plan was included in the packet. The applicants own an approximate 4.91-acre parcel improved with a house with detached garage and other personal storage outbuildings. The applicant, Richard Shelly, a hired project manager for a house addition construction project, is the applicant representing the owners. With a growing family, the owners would like to expand the size of the house which would not meet the 100-foot setback for a structure from the OHW of a DNR Protected Recreational Development Lake (Parley Lake). He explained that the existing house is also within the required setback, but a variance is required when expanding the non-conformity of a structure. The proposed construction would be set approximately 60-feet from the OHW of the lake, which is not as close as the existing house structure but is an encroachment on the required setback. The applicants describe a practical difficulty in that any addition to the existing structure would be an encroachment to the 100-foot setback requirement. The proposed addition will consist of two bedrooms, one full bathroom, one half-bathroom, and an office. The proposed location onto the house is the most practical and takes into consideration the aesthetics and character of the area. The owners have received a certificate of compliance on a new septic system which was sized to accommodate the additional bedrooms. Granting the variance would not conflict with the intent of the Comprehensive Plan, nor alter the cause a substantial change to the character of the neighborhood, or negatively impact any governmental services. Granting the variance does not adversely affect the health or safety of persons residing or working in the area adjacent to the property. The request was submitted to the DNR for comments and no comments or concerns were returned. Laketown Township reviewed the request at their August 5, 2022, meeting and recommended approval, including the following three comments:

- The existing home is located within the current setback for a recreational development lake (47 feet to 64 feet).
- This addition will be on the back side of the current house, not extending toward the lake any more than the current home.
- No closer encroachment to the lake is permitted.

Mielke read the proposed conditions for consideration if the Board of Adjustment determines that a practical difficulty has been identified and that a variance for reduced shoreland setback would serve in the interest of justice. He stated there were three conditions and he suggested adding a fourth one. He read the proposed fourth condition, *"Any grading and/or filling activity on the property shall be completed in accordance with the regulations of the Minnehaha Creek Watershed District (MCWD), if applicable."* He stated this would be appropriate since the property lies within the jurisdiction of the Minnehaha Creek Watershed District and is standard on all requests within their district. If the Board of Adjustment determines that a practical difficulty has not been identified, then reasons for denial need to be stated to support denial of the request.

Mr. Shelly and the owners had no additional comments about the information presented. They acknowledged they agree with the three proposed conditions and the additional fourth one as stated.

Pete Parris, Laketown Township supervisor, confirmed their review and discussion of the request and the board's unanimous recommendation for approval.

A motion was made by Bielefeldt and seconded by Gorra to close the public hearing. Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:13 p.m.

Bielefeldt stated he had visited the site and agrees there is a practical difficulty in that this is the only location for an addition to the house.

Bruner stated he had also visited the property and agreed with that this is the only logical location for a house addition.

Gorra also viewed the site and concurred with Bielefeldt and Bruner about the proposed addition.

A motion was made by Bielefeldt to **approve and issue Order PZ20220036** allowing for reduced shoreland setback pursuant to Section 152.034(D) of the Carver County Zoning Code on property legally described on the attached Exhibit "A", with the following conditions:

1. The permittee shall obtain the appropriate building permit(s) prior to the construction of the proposed addition. All work shall be done in accordance with the submitted and approved building permit plans.
2. All construction activities shall be done in accordance with the submitted site plan(s). The new construction shall not encroach any closer to the OHW of Parley Lake than approved (i.e. 60± feet) as part of this permit application.
3. No additional expansions shall be permitted without obtaining all necessary building permits and/or Variances.
4. Any grading and/or filling activity on the property shall be completed in accordance with the regulations of the Minnehaha Creek Watershed District (MCWD), if applicable.

The motion for approval was seconded by Schmidt. Chairman Bruner called for a vote on the motion. All voted aye. Motion carried.

Other Business

Schmidt announced that this would be his last meeting as he is resigning for medical reasons. He hopes to return to the board to serve again in the future. Mielke and the board members thanked him for his service and will look forward to having him return to serve again in the future.

Adjournment

Having completed the agenda items and seeing no other business, a motion was made by Mendez and seconded by Schmidt to adjourn. All voted aye. The meeting was adjourned at 7:16 p.m.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Environmental Services

September 26, 2022

TO: Carver County Board of Adjustment & Laketown Town Board

FROM: The Environmental Services Department

SUBJECT: Application for a Variance (Reduced Setbacks to Property Lines for a New Feedlot)

FILE #: PZ20220039

APPLICANT: Evan Carlson

OWNER: Evan Carlson and the Richard and Joan Carlson Trust

SITE ADDRESS: 8XXX County Road 10 East, Waconia, MN 55387

VARIANCE TYPE: Reduced Setback to Property Lines for a New Feedlot

PURSUANT TO: Carver County Code Section 54.46 (C) (1)

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 07-029-0620

BACKGROUND:

1. Evan Carlson owns an approximately 20.38-acre parcel located in the East Half of the Southwest Quarter (E½ of SW¼) of Section 29, Laketown Township. The property consists of crop production land, pasture ground, and a small, wooded area in the northwest corner of the parcel. The property is located within the Agricultural Zoning District and the CCWMO (Carver Creek Watershed).
2. The applicant is requesting a variance that would allow him to register and operate a new feedlot of 10 animal units or more (llamas) approximately 178 feet from the south property line. Chapter 54 of the County Code requires new feedlots of 10 animal units or more to be located a minimum of 200 feet from any property line. Therefore, a variance for reduced setbacks pursuant to Chapter 54 – Section 54.46 (C) (1) has been requested.

LEGAL BACKGROUND:

§ 54.04 DEFINITIONS.

NEW ANIMAL FEEDLOT. An animal feedlot constructed and operated at a site where no animal feedlot existed previously or where a pre-existing animal feedlot has been abandoned or unused for a period of five years or more.

§ 54.46 SETBACKS.

(B) For the purpose of this section, when measuring from a road, the edge of the right-of-way line shall be considered the property line.

(C) New feedlots.

- (1) A setback of 200 feet shall apply to all new feedlots of ten animal units or more from rear, front, and side property lines.

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. Evan Carlson, the applicant, purchased the property in 2021, and constructed a partial confinement barn and an open lot for his feedlot (llamas) operation. The property contains approximately ten acres of pasture, and the applicant would like to increase the number of llamas to effectively graze the pasture areas. Mr. Carlson leases llamas to kids in 4-H, and increasing the number of animals would provide flexibility in meeting the needs of the program as it continues to grow. The current operation consists of 33 llamas, totaling 9.9 animal units, and Mr. Carlson would like to expand the operation to up to 50 llamas (15 animal units). The property is not currently registered as a feedlot by the County because it falls below the County Code threshold of 10 animal units.
2. The applicant's letter dated August 19, 2022, describes a practical difficulty exists based on the location of the existing open lot area. Evan constructed the partial confinement barn meeting the minimum required setback in case he wanted to expand; however, he did not take the lot area into account when measuring the setback from the road right-of-way line. In his letter, Mr. Carlson states, "*The only party that would be affected by this is the County as I am far enough away from my neighbors.*" Chapter 54 of the County Code requires new feedlots of 10 animal units or more to be located a minimum of 200 feet from all property lines. Approval of the variance would allow Mr. Carlson to operate a new feedlot within an approximate 178-foot setback to the south property line, reflecting an approximate 22-foot variance.

3. Kristen Larson, Water Resources Program Specialist, of the Carver County Planning and Water Management Department, conducted a wetland review of the property on September 15, 2022, and did not identify any wetlands classified as Type III or greater (circular 39 wetland classification system) or a special protection area where setbacks would apply for a new feedlot.
4. The applicant submitted a feedlot registration form to be processed by the County Feedlot Officer if the request is approved.
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 Laketown Town Board reviewed and recommended approval of the request at their August 22, 2022, Town Board meeting contingent upon a maximum of 50 llamas (15 animal units).

BOARD CONSIDERATION:

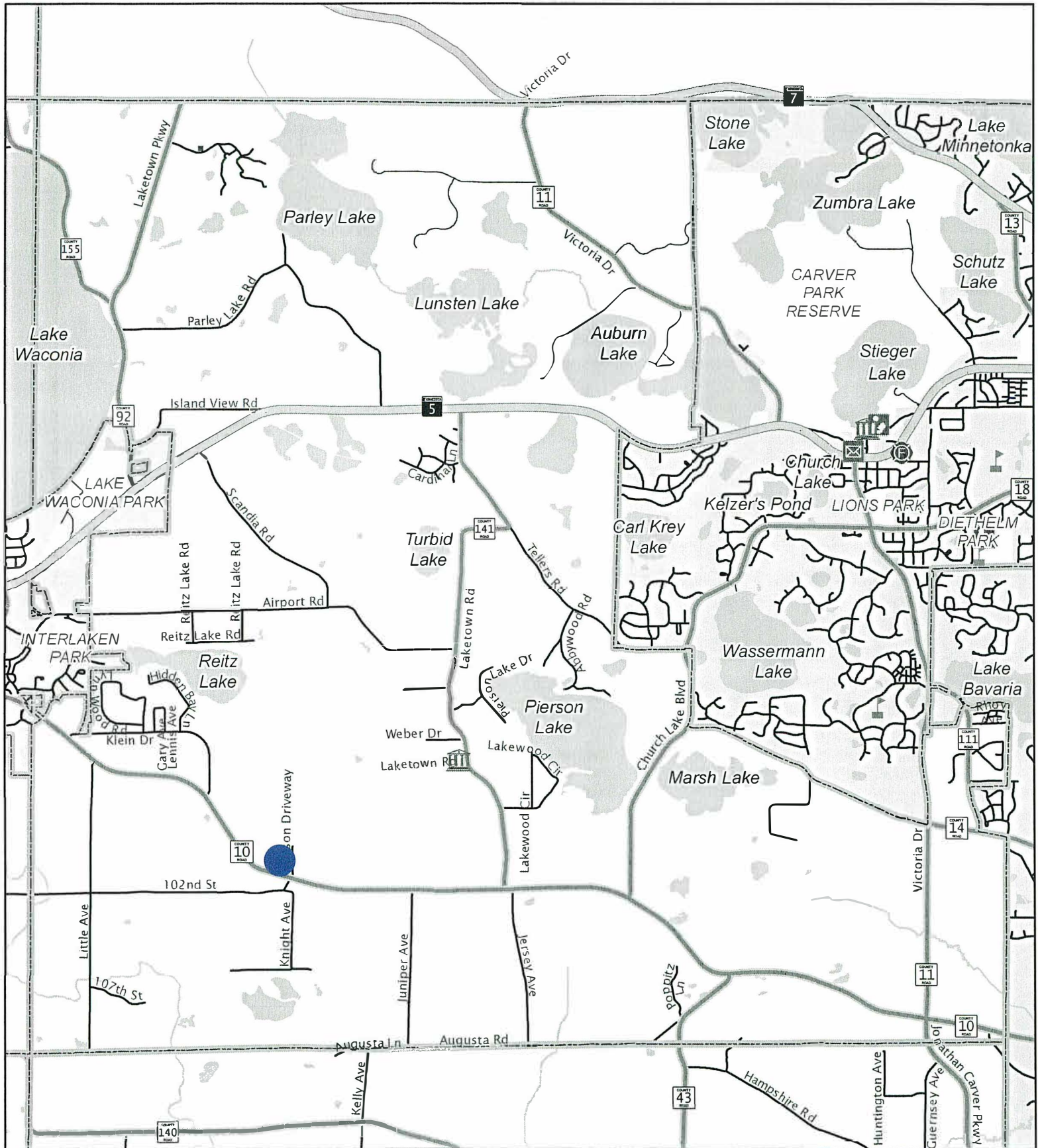
If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the reduced feedlot setback would serve in the interest of justice, the following conditions should be considered:

1. The feedlot shall not exceed a maximum of 50 llamas (15 animal units), as required by the Laketown Town Board.
2. The applicant must operate and maintain any short-term manure stockpile such that manure is removed from the site and land applied in accordance with Minn. Rules 7020.2225, within one year of the date when the stockpile was initially established pursuant to Minn. Rules 7020.2125 (A). A vegetative cover must be established on the site for at least one full growing season prior to reuse as a short-term stockpiling site.
3. Pursuant to Minn. Rules 7020.2125 (C), manure stockpile sites must not be located within 300 feet of flow distance and at least 50 feet horizontal distance, to waters of the state, sinkholes, rock outcroppings, open tile intakes, and any uncultivated wetlands which are not seeded to annual farm crops or crop rotations involving perennial grasses or forages.
4. Parcel #07-029-0620 is separate from the Interim Use Permit (IUP #PZ20200003) issued on March 3, 2020 to parcel 07-029-0900 and may not be included in operations of the agri-tourism and educational large scale activity (Carlson's Lovable Llamas).
5. All feedlot activities shall be done in accordance with the submitted site plan(s). The new feedlot shall not encroach any closer to the road right-of-way line than is approved as part of this permit application (Approx. 22 feet from the south property line).

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

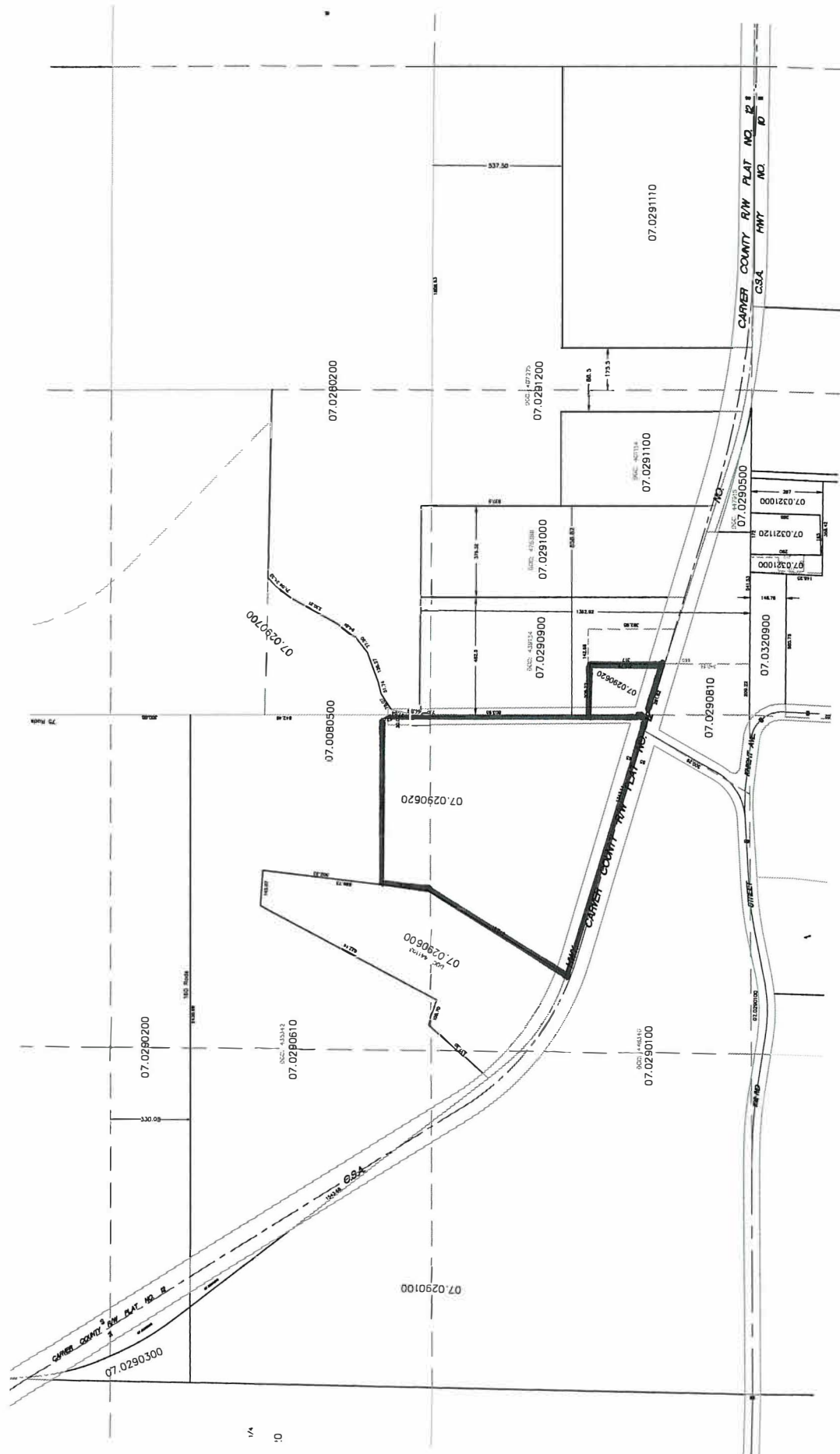


This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible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



Map Created by Carver County GIS

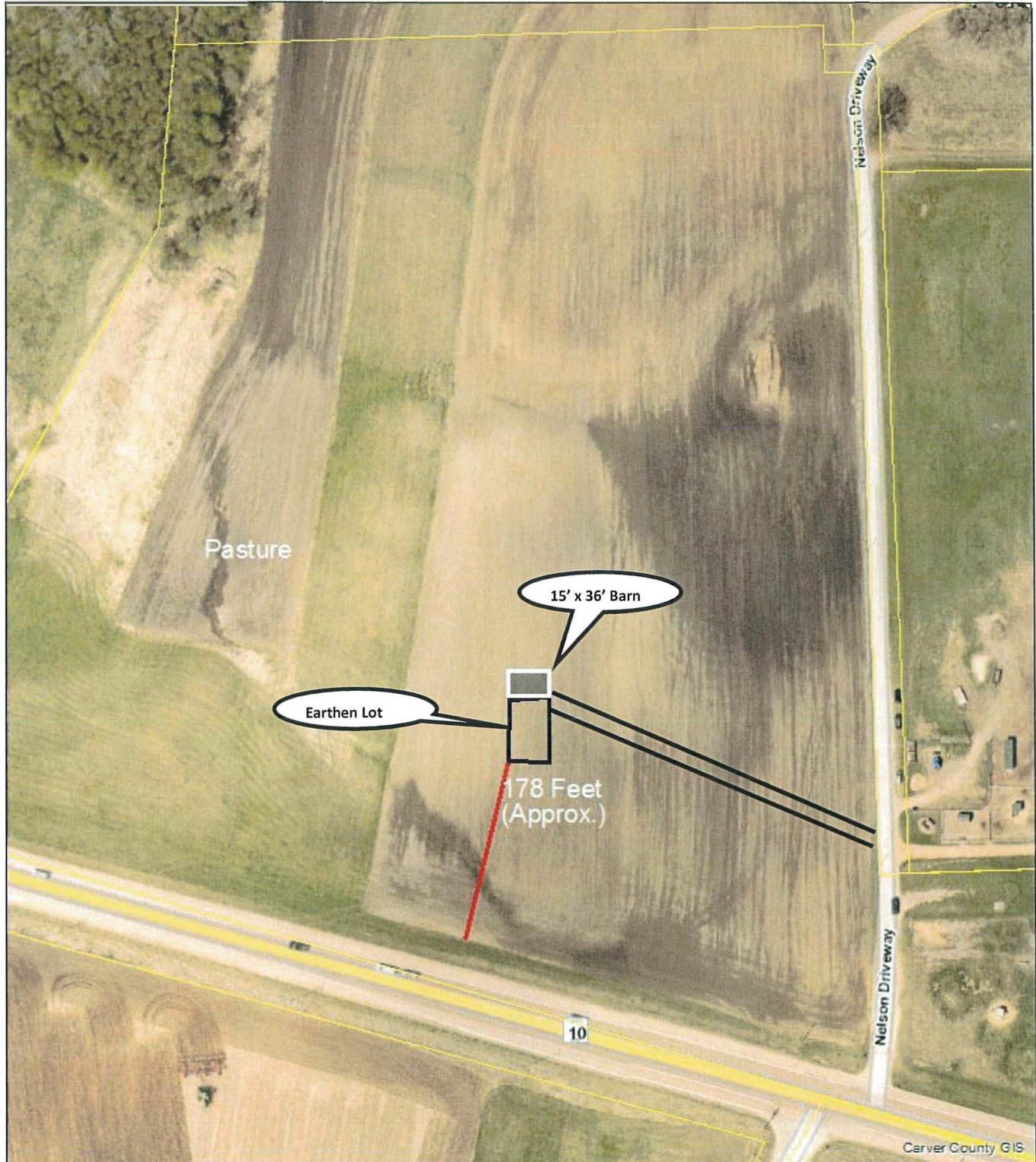
THIS IS NOT A LEGALLY RECORDED PLAT.
THIS MAP IS A COMPILATION OF RECORDS
AS THEY APPEAR IN THE CARVER COUNTY
OFFICES AND OTHER SOURCES. THIS MAP
IS ONLY TO BE USED FOR REFERENCE
PURPOSES. THE COUNTY AND ITS AGENTS
ARE NOT RESPONSIBLE FOR ANY
INACCURACIES CONTAINED THEREIN.



I am asking for a feedlot permit to expand the amount of animals I am allowed on my property. Right now I can have 33 llamas maximum (10 animal units) on my ~10 acres of pasture and they can not keep up with the grass. If I could be able to add approximately 15 animals to my property I think that would help with this issue. Also, we lease llamas to kids in 4-H and the program is always growing so it is nice to have some flexibility to meet these needs.

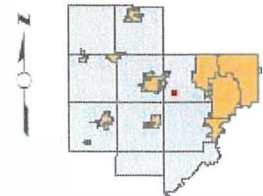
When I built my shed I made sure I was well outside of the setback from the road, but did not take into account my barnyard fence. Without a feedlot permit my barnyard is fine, but now I am roughly 10 feet too close to the right of way. The only party that would be effected by this is the county as I am far enough away from my neighbors. So I am asking for a variance to make this happen.

CARLSON SITE MAP (07-029-0620)



Date: 9/22/2022

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CARVER
COUNTY

Public Services Division
Carver County
Government Center 600
East 4th Street
Chaska, MN 55318-2102

Data Collection Sheet for Registration (New and/or Existing sites)

For Delegated Counties

AUG 29 2022

BY:

Instructions: The following pieces of data are required to complete the online registration service process. The online registration service can be found here: <https://webapp.pca.state.mn.us/services/login>. This form will **NOT** be processed if sent to the MPCA. Registrations are required to be processed only through the online registration service. Counties may ask for more information pertaining to their County Ordinances as needed. Counties would need to add the following qualifier if they were to add county specific data to this form "This data is being collected for County purposes only and would not be required to meet MN 7020 rules for registration." ***Disclaimer - What is entered in the online registration system is the official registration information. This is only a data collection sheet. This is not an official MPCA Form.**

Facility name and address ☐ The information below reflects a change to the name of an existing registered facility.

Facility name: Evan Carlson Farm Registration number: _____
Facility Address: West of 8380 Co. Rd. 10 E Parcel ID number: 070290620
City: Waconia State: MN Zip code: 55387
Phone: 612-875-0303 Email: crlnec@yahoo.com

Ownership information ☐ The information below reflects a change of ownership of an existing registered facility.

Contact Person ☐ Same as feedlot name and address
Name: Evan Carlson
Address: West of 8380 Co. Rd. 10 E
City: Waconia State: MN
Phone: 612-875-0303 Zip: 55387
Email: crlnec@yahoo.com

Feedlot Owner ☒ Same as feedlot contact
Name: _____
Address: _____
City: _____ State: _____
Phone: _____ Zip: _____
Email: _____

Facility locational information

County: Carver City/Township: Laketown

Township (26-71 or 101-168)	Range (1-51)	Section (1-36)	¼ Section (NW, NE, SW, SE)	¼ of ¼ Section (NW, NE, SW, SE)
<u>116</u>	<u>24</u>	<u>29</u>	<u>SW</u>	<u>SE</u>

Any surface waters or tile intakes within 1,000 feet of the facility? (If Yes, indicate types below) ☐ Yes ☒ No
☐ Lake/Pond larger than 25 acres ☐ Wetland ☐ Drainage ditch ☐ River/Stream/Creek ☐ Tile intake
 Is any part of the facility within 300 feet of a river/stream? ☐ Yes ☒ No
 Any part of the facility located within a delineated flood plain (100 year flood)? ☐ Yes ☒ No
 Any part of the facility located within designated shoreland? ☐ Yes ☒ No
 Any part of the facility within 300 feet of a known sinkhole? ☐ Yes ☒ No

Facility operations information (indicate components that are currently part of your livestock or poultry operation)

Animals on pasture for part of the year ☒ Yes ☐ No
 Open lots (dirt, concrete, other) that are designed as animal holding areas ☒ Yes ☐ No
 Buildings that are designed for animal confinement or as animal holding areas ☒ Yes ☐ No
 If yes to either above, what is the shortest distance from an animal holding area to a well? (including unused or unsealed wells) ~2,000 feet
 A liquid manure storage structure ☐ Yes ☒ No
 A manure stockpile (solid manure storage area) ☐ Yes ☒ No
 If yes to either above, what is the shortest distance from a manure storage area to a well? (including unused or unsealed wells) _____ feet

If you closed a liquid manure storage area or permanent manure stockpile since your last registration, complete the following:

Date closed: _____ ☐ Liquid storage ☐ Solid storage
 Date closed: _____ ☐ Liquid storage ☐ Solid storage

Number of animals at the facility

If you currently do **not** maintain animals at the site, list the date that you last had animals (mm/dd/yyyy): _____

Enter in column E the maximum number of animals that you have maintained (standing herd or flock size) at the facility at any given time **in the past five years**. Then calculate the animal units in column F by multiplying the value in column E by the value in column B. No changes are needed in columns C and D as this is the information currently on file with the MCPA.

A	B	C	D	E	F
Animal type	Animal unit factor	Current Registration Info <i>No changes Required</i>		Registration Update <i>MAKE CHANGES HERE</i>	
		Number of animals (head)	Animal Units (B x C)	Number of animals (head)	Animal Units (B x E)
Dairy Cattle >1000 lbs	1.40				
Dairy Cattle <1000 lbs	1				
Dairy Cattle - Heifer	0.70				
Dairy Cattle - Calf	0.20				
Beef Cattle - Slaughter/Stock	1				
Beef Cattle - Feeder/heifer	0.70				
Beef Cattle - Cow & calf pair	1.20				
Beef Cattle - Calf	0.20				
Veal Cattle - Calf	0.20				
Swine >300 lbs	0.40				
Swine 55-300 lbs	0.30				
Swine <55 lbs	0.05				
Horses	1				
Sheep, Lambs	0.10				
Chickens - liquid manure	0.0330				
Chickens - Broilers >5 lbs	0.0050				
Chickens - Broilers <5 lbs	0.0030				
Chickens - Layers >5 lbs	0.0050				
Chickens - Layers <5 lbs	0.0030				
Turkeys >5 lbs	0.0180				
Turkeys <5 lbs	0.0050				
Ducks - dry manure	0.01				
Ducks - liquid manure	0.01				
Other animals (not listed above - specify in space below):					
<u>llamas</u>	<u>0.3</u>			<u>33</u>	<u>50</u>
			Current Total AU	<u>9.9</u>	Updated Total AU <u>15</u>

Signature (person completing the form) and Submittal

Print name: Evan Carlson
 Signature: Evan Carlson

Title: owner
 Date: 8-29-22



Township Presentation & Recommendation Form

PARCEL # 070290620	Permit # PE20220039
Owner's Name: Evan Carlson	Owner's Mailing Address: crlnec@yahoo.com
City: Waconia	Owner State: MN Owner Zip: 55387
Applicant (if other than owner):	Site Address: West of 8380 Co. Rd. 10 E Waconia, MN

Type of Request: ☐ CUP ☐ IUP ☐ Preliminary Plat ☐ Final Plat ☒ Variance ☐ Appeal	
Description of Request: See Attachment	
Date of County Public Hearing: 10-5-22	Date of Township Meeting: 8-22-22

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:

Request for variance has been approved contingent upon a 50 llama maximum if a feedlot application is submitted.

****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 8-22-22
Signature of Applicant	
	Date 8-22-22
Signature of Township Official	

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 07-029-0620

File# PZ20220039

APPLICANT: Evan Carlson

OWNERS: Richard and Joan Carlson Trust

**(Richard Carlson and Joan Carlson, Trustees) and
Evan R Carlson**

* * * * *

That part of the Southwest Quarter and part of the Southeast Quarter of Section 29, Township 116, Range 24, Carver County, Minnesota, described as follows: Commencing at the Southeast corner of said Southwest Quarter; thence South 88 degrees 11 minutes 34 seconds West, (bearings based on Carver County Coordinate System NAD 81 1986 Adjustment) along the south line of said Southwest Quarter, a distance of 879.09 feet; thence North 05 degrees 11 minutes 34 seconds East, a distance of 1,339.83 feet to the point of beginning; thence continue North 05 degrees 11 minutes 34 seconds East, a distance of 184.40 feet; thence North 88 degrees 20 minutes 41 seconds East, a distance of 668.00 feet; thence South 01 degrees 37 minutes 50 seconds East, a distance of 47.07 feet; thence North 88 degrees 20 minutes 41 seconds East, a distance of 30.00 feet to a point on the east line of said Southwest Quarter and being 1,172.49 feet south of the Northeast corner of said Southwest Quarter; thence South 01 degrees 37 minutes 50 seconds East along said east line, a distance of 803.95 feet; thence North 88 degrees 47 minutes 38 seconds East, a distance of 209.22 feet; thence South 01 degrees 37 minutes 50 seconds East, a distance of 319.76 feet to the easterly extension of the former centerline of Carver County State Aid Highway No. 10 as described below; thence North 73 degrees 41 minutes 15 seconds West along said easterly extension and the centerline, a distance of 1,343.14 feet to the intersection of a line which bears South 29 degrees 35 minutes 48 seconds West from the point of beginning; thence North 29 degrees 35 minutes 48 seconds East along said line, a distance of 672.61 feet to the point of beginning.

The former centerline of said Carver County State Aid Highway No. 10 is more particularly described as follows: Commencing at a point on the West line of said Section 29, which is 1,353.0 feet South of the Northwest corner of said section; thence South along said section line, a distance of 902.4 feet to a point; thence deflecting left along a 5 degree curve with a delta angle of 38 degrees 20 minutes, a distance of 770.00 feet to a point; thence continuing Southeasterly along tangent of said 5 degree curve, a distance of 1,715.30 feet to a point; thence deflecting left along an 8 degree curve with delta angle of 34 degrees 53 minutes, a distance of 429.00 feet to a point; thence continuing East, Southeasterly along tangent of said 8 degree curve to the east line of said Southwest Quarter of said Section 29.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

September 27, 2022

TO: Carver County Board of Adjustment & Laketown Town Board

FROM: The Land Management Department

SUBJECT: Application for a variance (Reduced Front & Side Yard Setbacks and Expanding a Non-conformity)

FILE #: PZ20220037

APPLICANTS: Charles & Elizabeth Mooty

OWNERS: Charles & Elizabeth Mooty

SITE ADDRESS: 6825 Abbywood Lane Chaska, MN 55318

PERMIT TYPE: Reduced Front and Side Yard Setbacks & Expanding a Non-conforming structure

PURSUANT TO: County Code Sections 152.034 (D) & 152.135

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 07-022-3510

BACKGROUND:

1. Charles & Elizabeth Mooty own an approximate .78-acre parcel located in the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section 22, Laketown Township. The property is improved with a house and three small outbuildings. The parcel is located in the Agricultural Zoning District, Shoreland Overlay District (Pierson Lake), and the Minnehaha Creek Watershed District.
2. The applicant is requesting a Variance to reduce the required front yard from the centerline of a local road and required side side yard structure setbacks in the Shoreland District (based on the *Future Functional Class of Road as Shown in Roadway Systems Plan Figure 4.13*). The request would consist of a front yard setback from 68 feet to 62 feet and side yard setback from 15 feet to 7.8 feet to accommodate a proposed house addition consisting of a pump room, bedroom and office expansion, and an additional bathroom and bathroom shower. The proposed structure would be closer to the centerline of a street and the eastern property line than what is permitted by the Zoning Code; therefore, a variance 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.* All structures unless exempted above; and signs and parking areas near a public right-of-way:

Side Lot Line Setbacks	All Districts	15 feet		
<i>Future Functional Class of Road as Shown in Roadway Systems Plan Figure 4.13</i>	<i>Setback from Centerline</i>	<i>Reduced Setback*</i>	<i>R-O-W</i>	<i>Reduced R-O-W</i>
Front Setbacks				
Local roads in Shoreland District	68	N/A	66	

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

§ 152.135 NONCONFORMITIES.

- (A) All legally established nonconformities as of the date of this ordinance may continue, but will be managed according to M.S. §394.36, subd. 5 and other regulations of this county for alterations and additions; repair after damage; discontinuance of use; and intensification of use.
- (B) Construction on nonconforming lots of record is subject to the following criteria:
- (1) Lots of record in the Office of the County Recorder on the date of July 1, 1974, that do not meet the minimum lot size and width standards specified by § 152.033 may be allowed as building sites without variance from lot size requirements provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this chapter are met.
 - (2) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
 - (3) If, in a group of two or more contiguous lots under the same owner, any individual lot does not meet the minimum lot size and width standards specified by § 152.033, the lot must not be considered a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the minimum lot size and width standards as much as possible.
- (C) Additions/expansions to nonconforming structures. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback and other requirements of § 152.034. Any deviation from these requirements must be authorized by a variance.

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. The existing home was constructed in 1955 prior to the Carver County Code requirements and was purchased by the Mooty family in 1994. The home is approximately 71 feet from the ordinary high water mark of Pierson Lake. The setback for structures from a Recreational Development Lake is 100 feet. As a result, the structure is considered to be legal, non-conforming. The subject parcel is non-conforming as it does not meet the required minimum lot size or width for a parcel on a Recreational Development Lake.
2. Section 152.034 (D) of the County Zoning Code requires that the nearest corner of any structure, in all zoning districts, meets or exceeds a 68-foot reduced setback from a local road in the Shoreland area and meet or exceed a 15-foot side yard setback from a property line. Currently the home is about 7.8 feet from the eastern property line. In 2013 an after-the-fact variance (#PZ20130015 - attached) was issued by Carver County, allowing a bedroom addition with a 7.8-foot setback that was constructed without a building permit or County review. In 2018, seeking to replace the cabin with a house, the applicants applied for and received a variance (#PZ20180029) to locate the cabin about 67-feet from OHWL and 7.8 feet from the eastern property line. No building permit was issued for this proposal and the variance expired after one year. The current application seeks to expand the house no closer to the side property line than permitted by the 2013 variance, but since the proposed construction is within the required setback area, a variance is still required. The proposed front yard of 62 feet is to locate a pump room, a utility room for water filters, a water softener, etc., within the required 68-foot setback for the centerline of a local road (i.e. township cartway).
3. The subject property is on Abbywood Lane, which is designated a local road by the 2040 Comprehensive Plan, in the County Public Works Future Functional Class figure (Figure 4.13). The County Zoning Code, adopted in July 2021, categorized this type of road as a local road in the Zoning Code setbacks table. Unlike other road classifications within Carver County, Public Works does not permit a reduced setback for local roads, only the required 68' setback.
4. The applicant has submitted a letter (dated: September 13, 2022) explaining the conditions that led to this request. Based on the letter, a practical difficulty exists due to the non-conforming lot in addition to a nonconforming side yard setback on the side of the lot where construction is proposed. The letter states that a front yard setback is also being proposed. The neighbors to the east have submitted a letter stating that they do not object to the placement of the addition this distance to the property line. The neighbor living in the house to the west also submitted a letter of support.
5. The property's septic system is served by the Metropolitan Council Sewer Interceptor (201 system), which is maintained by Laketown Township. Lori Brinkman, Senior Environmentalist with the Carver County Environmental Services Department, reviewed the proposal and provided the following review comments. "The Township Ordinance 20-02 states: 'Existing homes shall not be expanded in any way that would require additional sewage capacity.' MN Rule 7080-bases Subsurface Septic Treatment Systems (SSTS)-sizing for residential structures on the number of bedrooms, so based on the information presented and on file they have a 3 bedroom home and after the addition they will have a 3 bedroom home, including the office. I would classify the office as a potential bedroom by definition for a total of 4 bedrooms. The definition can be found in MN Rule 7080.1100, Subp.9 which states, "*Bedroom means, for the sole purpose of estimating design flows from dwellings, an area that is: A. a room designed or used for sleeping; or B. a room or area of a dwelling that has a minimum floor area of 70 square feet with access gained from the living area or living area hallway. Architectural features that affect the use as a bedroom under this item may be considered in making the bedroom determination*". The additional bedroom is an expansion prohibited by the Laketown Township septic ordinance." Staff informed Mr. Mooty of this bedroom determination and he responded that the intent is to use

that space as an office. He stated that he would modify the floor plan or install the appropriate architectural feature(s) to ensure that the office space was not classified as a bedroom.

6. 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 68-foot front yard setback and 15-foot side yard setback. Although this request does not meet the specific standards, it appears to meet the intent of the regulations.
7. The granting of the variance would not conflict with the intent of the Comprehensive Plan, would not alter the character of the neighborhood, nor would government services be negatively impacted if proper modifications were made to the office space to not increase SSTS load on the 201 system.
8. The neighborhood is comprised of residences on the lake with a variety of non-conformities. The request would not cause a substantial change in the character of the neighborhood nor would it result in a detriment to neighboring properties. Many neighboring properties have existing structures that do not meet the required 68-foot front yard setback or 15-foot 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. Minnehaha Creek Watershed District reviewed the proposed construction and offered no comments. The applicants would be required to contact the Minnehaha Creek Watershed District, for a determination as to whether or not permitting for the placement of the addition (i.e. elevations, water drainage and/or BMP's) would be required.
11. This request was sent to Minnesota Department of Natural Resources (MnDNR) for review; however, no comments or concerns have been received.
12. The Laketown Town Board has reviewed the side yard setback variance request at their August 22, 2022 meeting and recommended approval. A second Laketown Town Board meeting was needed to include a review for the front yard setback variance request. At their September 26th meeting the Town Board recommended approval of the front yard variance "contingent upon the designated office space comply with Carver County Zoning Code for offices and that this home is recorded as 3 bedroom with 1 office."

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for a reduced front yard and side yard setbacks pursuant to Sections 152.034 (D) and expanding a non-conforming structure pursuant to Section 152.135 of the Carver County Zoning Code, would serve in the interest of justice, the previous Variance #PZ20180029 (recorded as Doc. No. A671271) that became null and void due to inactivity would be terminated upon final approval (and recording) of the new Variance #PZ20220037. Therefore, Variance #PZ20220037 would supersede any prior approvals, and the following conditions should be attached to the approved variance:

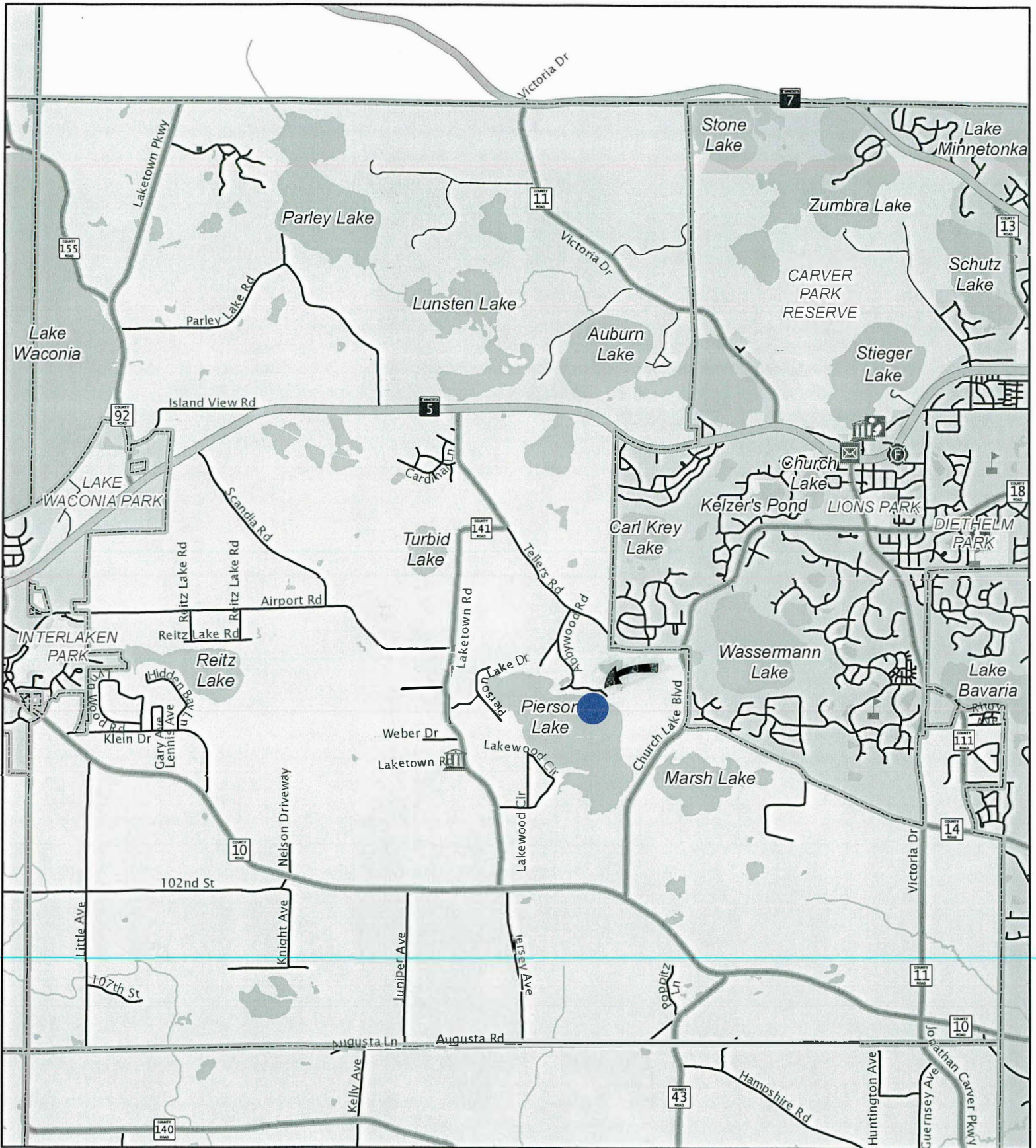
1. All construction activities shall be done in accordance with the submitted site plan and shall obtain all necessary building permit approvals. The new construction shall not encroach any closer to the centerline of the road than approved (~~Approx. 62 feet from the center of Abbywood Lane~~) as part of this permit application. Additionally, the new construction shall not encroach any closer to the east property line than approved (Approx. 7.8 feet). All work shall be done in accordance with the submitted and approved building permit plans.
2. Prior to the issuance of a building permit, the property owners shall have the east property line of the subject parcel identified and marked by a licensed surveyor to ensure the proposed structure does not encroach closer than 7.8 feet from the east property line.
3. The new construction shall not increase the number of bedrooms beyond the current number (3).

4. The Permittee shall obtain the appropriate SSTS permits and comply with the Laketown Township septic ordinance standards prior to the issuance of any new construction building permit(s).
5. The Permittee shall obtain any necessary permits from the Minnehaha Creek Watershed District, if applicable.
6. No additional expansions within the required setback(s) shall be permitted without obtaining all necessary building permits and/or variances, if applicable.

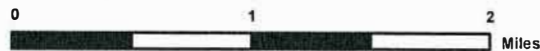
OR

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

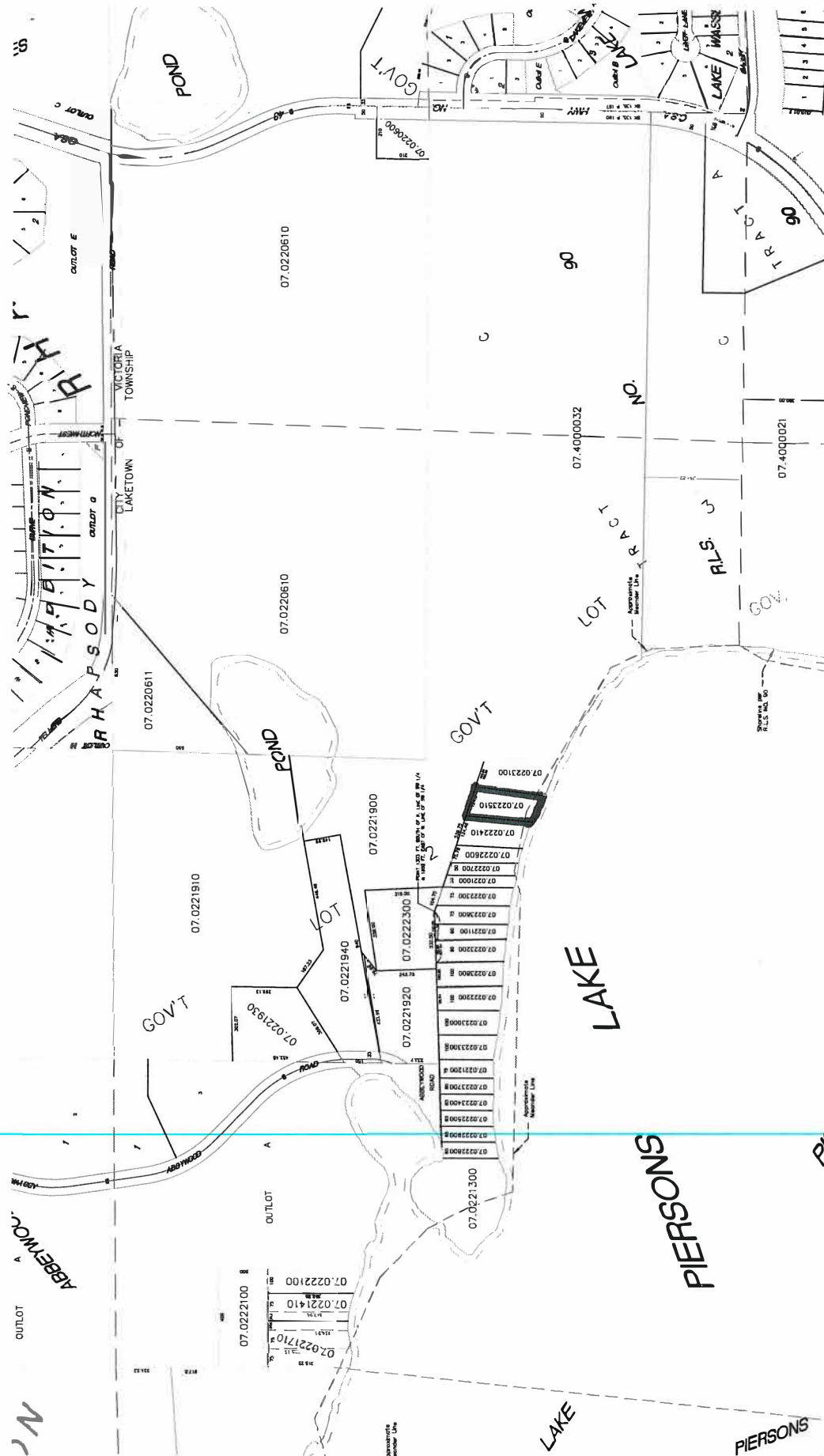


This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible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



Map Created by Carver County GIS

THIS IS NOT A LEGALLY RECORDED PLAT.
THIS MAP IS A COMPILATION OF RECORDS
AS THEY APPEAR IN THE CARVER COUNTY
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PURPOSES. THE COUNTY AND ITS AGENTS
ARE NOT RESPONSIBLE FOR ANY
INACCURACIES CONTAINED THEREIN.



September 13, 2022

Carver County Board of Adjustment
Chaska Government Center
600 East 4th Street
Chaska, MN 55318

6825 Abbywood Lane, Pierson's Lake, Carver County

The proposed project at 6825 Abbywood Lane, is an expansion of the current cabin to provide an improved retreat opportunity for our family. The primary goal of the project is to add new bedroom space, storage space and bathroom space. The square footage of the addition is about 360 square feet. Our family has enjoyed the cabin for 28 years. The current cabin exists on a non-conforming lot, with a non-conforming side yard setback on the eastern boundary. This side yard setback (7' in lieu of the required 15') was granted by previous variance.

Our proposal is to add two new bedrooms, eliminate one bedroom for hallway space and added storage space, and convert one bedroom into an office space, and add one $\frac{3}{4}$ bathroom and add $\frac{1}{2}$ bathroom. Thus the proposed remodel would have three bedrooms, one office space and two additional partial bathrooms.

We are requesting a variance to maintain the existing east side yard setback of 7' vs 15' and to have a setback variance to the north road of 62' vs 68'. We have included 2 letters of support from the neighbors who own the property to the east side and from the owner of the property to the west.

Our proposed project is in keeping with the scale of the neighborhood and appropriate to the original architectural design as well as to the character of the Pierson's Lake community. The exterior of the structure will use the same style of siding and we will add energy efficient windows in line with the current windows. The height of the structure will be the same as current.

1) What is being proposed and related to section of the Land Use Ordinance:

The current proposal is to add on to the north side of the current cabin structure and add a small portion to the east side (but no closer to the east boundary than our current structure). The eastern existing easterly setback has been approved by a prior variance and we would like to continue the setback to 7' versus the 15' typical side yard setback.

The structure addition to the north is towards an existing private road. We are also asking for a variance from the 68 foot setback from the center of the road to permit our structure to be 62 feet from the center line. There is no structural addition to the lakeshore of Pierson's Lake. In addition, the addition does not impact the current well or the previously upgraded septic system connected to the 201 Community Septic system.

2) What has been identified as a practical difficulty or particular hardship:

The original cabin was built in the 1950's with only one bathroom and small bedrooms. We would like to upgrade the structure to today's standards and provide living accommodations with more comfort and privacy. The current conditions are simply uncomfortable and challenging.

3) Any pertinent background information

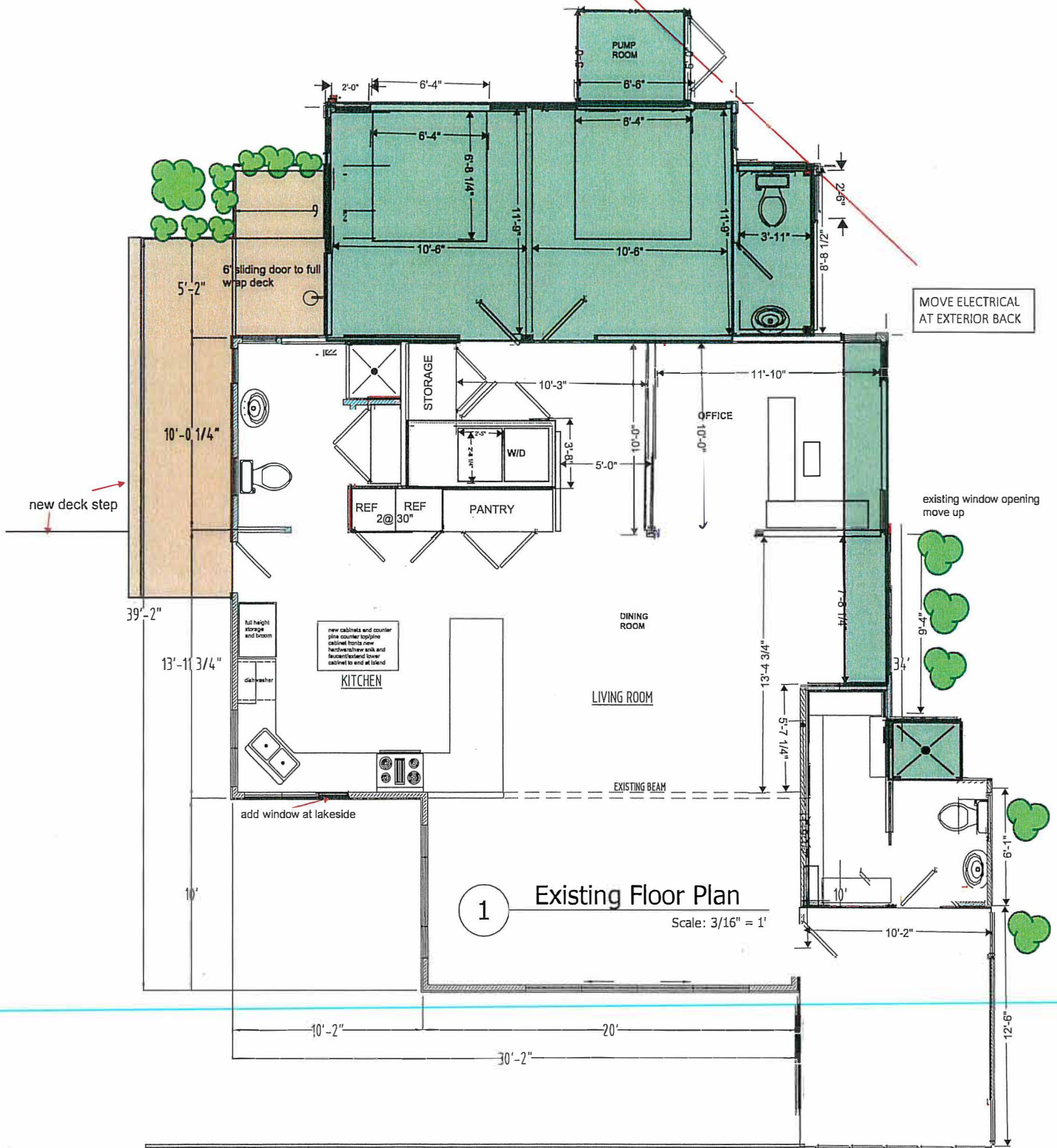
This has been a family retreat for over 28 years and we are seeking to make these improvements to facilitate many more years of family vacations. We have had long standing and excellent relationships with our neighbors to the east (Curran's) and to the west (Carr's). Letters of support are attached.

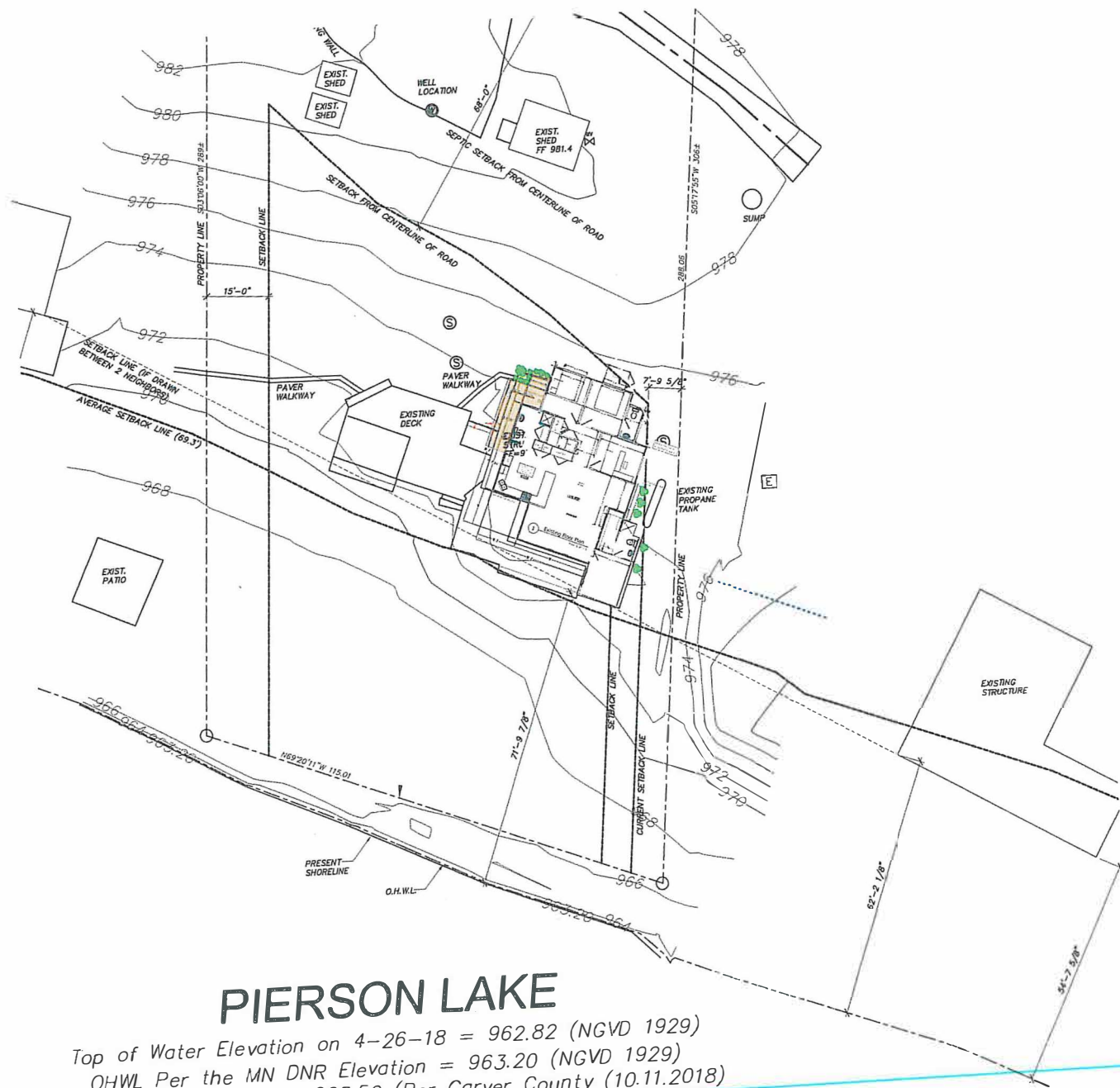
4) The conditions that exist on the property such that the terms of the ordinance cannot be met:

The existing cabin already has a variance for the master bedroom to the east. It is impractical to rebuild this portion of the cabin. We have maintained the same setback distance of 7' for the northeast corner of the addition to keep the new variance inline with the old variance.

Thank you for your consideration of our proposed project.

Charles and Elizabeth Mooty
cwmooty@gmail.com
612-220-9627





August 21, 2022

To Whom It May Concern:

The Curran Family has occupied the property at 6815 Abbywood Lane for over 58 years. For almost 30 years of that time, Chuck and Liz Mooty have been our neighbors. The Mooty's are the best neighbors anyone could ask for. They maintain their property and have made vast improvements to it.

I have seen the plans for their new addition to accommodate their growing family. It is our opinion it will make their property more attractive.

Their new addition will not affect our property or interfere with our life style. Our house is on the east side of our property, approximately 60 feet from their house and the new addition. There is also a row of bushes as a barrier on the west side of our property.

In the future if we were to rebuild, as the property line angles west away from us, this would leave us plenty of room for a nice big side yard far away from the Mooty's home.

We have no objection to the expansion of their home.

Sincerely,



Dennis and Lori Curran
6815 Abbywood Lane
Laketown Twp MN. 55318

To Laketown Township

August 2022

The Carr/Mooty families' have had so many wonderful memories on Pierson Lake since 1994.

As family relatives, (Elizabeth Mooty and Ann Carr are sisters) we hope to spend the rest of our summers as next door neighbors and family on the beautiful Pierson Lake. Our weekends at the lake during the summer months have and will continue to be our favorite times of our year/lives with our families together on the lake.

Overall, we love the way the Mooty's have designed the modifications to their cabin. They are in keeping with the original look and feel- having it still feel like a lake cabin.

Everything they have ever done is done with quality and beauty. We do not believe it will interfere in any way with our cabin or the way we have lived for 25+ years.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Carr", written over the printed name.

Ann and Mike Carr
6845 Abbywood Lane
Chaska, MN 55318



Township Presentation & Recommendation Form

PARCEL # <u>07.0223510</u>	Permit # <u>P720220037</u>
Owner's Name: <u>CHARLES + ELIZABETH ADOTZ</u>	Owner's Mailing Address: <u>3501 ZENITH AVE S</u>
City: <u>MINNEAPOLIS</u>	Owner State: <u>MN</u>
	Owner Zip: <u>55416</u>
Applicant (if other than owner): <u></u>	Site Address: <u></u>

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request: <u>VARIANCE REQUEST FOR SIDE YARD SETBACK ON OUR PROPERTY AT 6825 ABBYWOOD LANE</u>						
Date of County Public Hearing: <u>10/5/22</u>			Date of Township Meeting: <u>8/22/22</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:	
<u>Approved 7 ft. setback</u>	

****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>[Signature]</u> Signature of Applicant	Date <u>8/22/22</u>
<u>[Signature]</u> Signature of Township Official	Date <u>8-22-22</u>



Township Presentation & Recommendation Form

PARCEL #	07.0223510	Permit #	DE20220037
Owner's Name:	Mooty, Charles	Owner's Mailing Address:	3501 Zenith Ave S
City:	Minneapolis	Owner State:	MN
		Owner Zip:	55416
Applicant (if other than owner):		Site Address:	6825 Ashbywood Lane

Type of Request:	☐ CUP	☐ IUP	☐ Preliminary Plat	☐ Final Plat	☒ Variance	☐ Appeal
Description of Request:						
THE REQUEST IS FOR A ROADSIDE VARIANCE OF 6 FEET ON THE NORTH SIDE OF 62 FT VS THE SETBACK REQ OF 68 FT						
Date of County Public Hearing:	10/18/2022	Date of Township Meeting:	9/26/2022			

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:

Approval is contingent upon the designated office space complying with Carver County zoning code for offices, and that this home is recorded as 3 bedroom with 1 office.

****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.

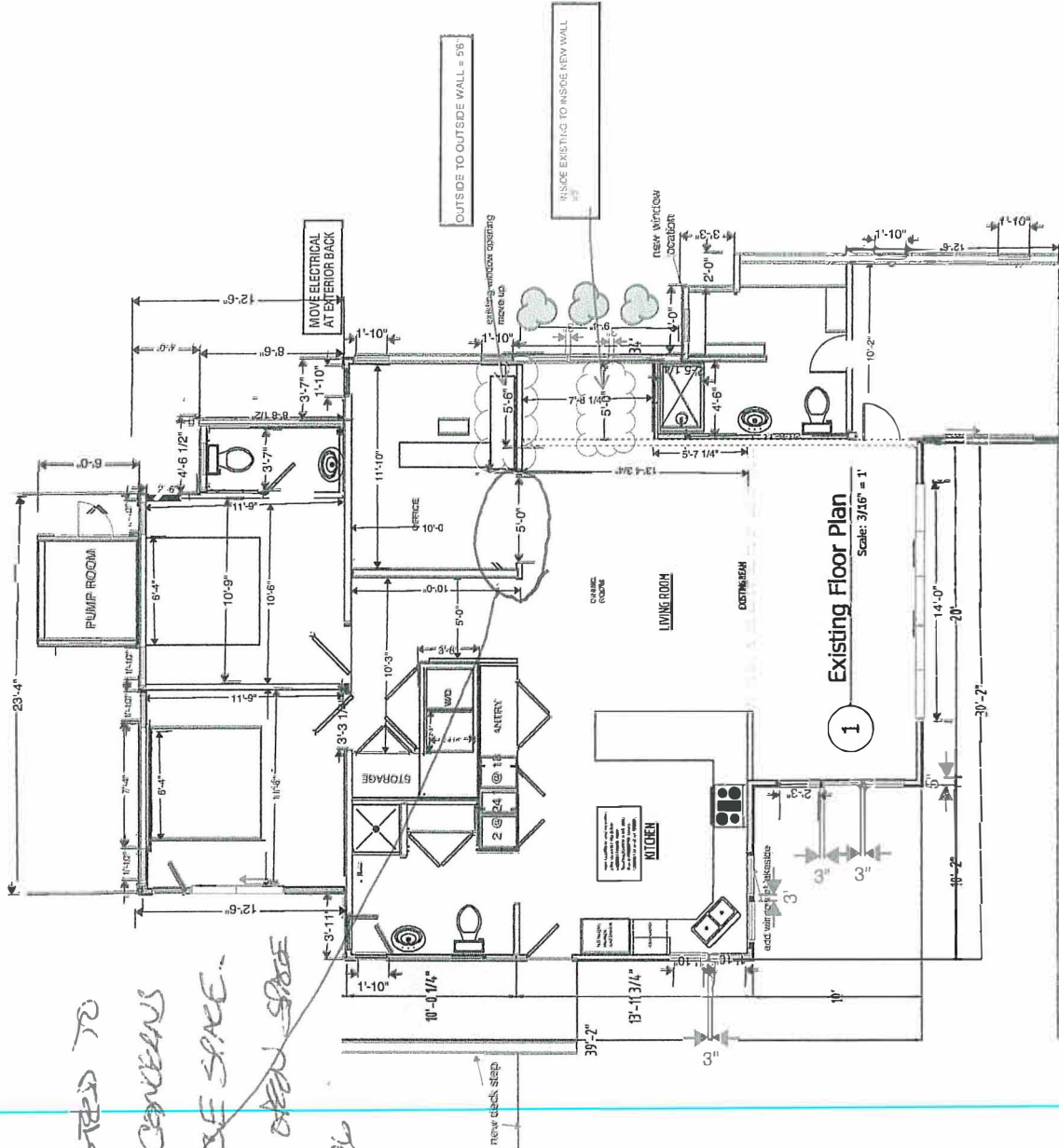
	Date 9-26-2022
	Date 9-26-2022

Signature of Applicant

Signature of Township Official

DENYME ADJUSTED TO
 COMPLY WITH CONCERNS
 OF THE OFFICE SPACE.
 CLEANING AND OPEN SPACE
 TO THE LIVING
 SPACE.

C. M. M. M.
 9/27/22



CONTACT:
 LIZ AND CHUCK MOOTY
 952-283-3477
 612-231-9647

OWNER:
 LIZ AND CHUCK MOOTY

PROJECT ADDRESS:
 5825 ABBYWOOD LANE
 VICTORIA, MN 55316

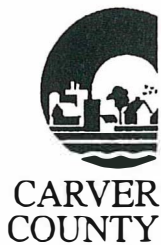
BUILDER:
 ABBYWOOD CARPENTRY
 GARY HELD

PROJECT NUMBER:
 20220817

DRAWN BY:
 ECD 8-17-22

SHEET NUMBER:
 1

TITLE OF DOCUMENT:
 FLOOR PLAN



COUNTY OF CARVER
State of Minnesota

Document No.
A 591106

OFFICE OF THE
COUNTY RECORDER
CARVER COUNTY, MINNESOTA

Receipt # RA 201400001411

Certified Recorded on **February 26, 2014 12:38 PM**

Fee: \$0



Mark Lundgren
County Recorder

FILE #: PZ20130015

APPLICANT/OWNER: Charles Mooty

SITE ADDRESS: 6825 Abbywood Lane

VARIANCE TYPE: Reduced Side Yard Setback & Expanding a Non-Conforming Structure

PURSUANT TO: County Code, Chapter 152, Section(s) 152.034 D & 152.119

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 07-022-3500

Drafted by: Land Management

Return to : Land Management

BOARD OF ADJUSTMENT

FINDINGS OF FACT AND ORDER

A public hearing was held on this matter on July 10, 2013, by the Carver County Board of Adjustment. Upon the evidence presented at said hearing by the applicant and other persons named and all the files, records, and proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. Charles Mooty owns an approximate 1.01 acre parcel located in the Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼) of Section 22, Laketown Township. The property is improved with a house and three small outbuildings. The parcel is located in the Agricultural Zoning District, Shoreland Overlay District (Pierson Lake) and the Minnehaha Creek Watershed District.
2. The subject parcel is non-conforming as it does not meet the required minimum lot size or width for a parcel on a Recreational Development Lake. A parallel request was that of the neighbor to the west (6845 Abbywood Lane – Carr/Mooty) to reconfigured three (3) non-conforming parcels into two (2) non-conforming parcels. The reconfiguration would result in a reduction of lot size to approximately .78 acres (per survey).
3. As part of the after-the-fact variance the applicant is requesting that he be allowed to retain a bedroom addition which was an expansion of a non-conforming structure, the closest point of which was constructed approximately eight (8) feet from the side property line without a permit. The Carver County Zoning Code does not allow the expansion of non-conforming structures and requires a side yard setback of 15 feet. Therefore, a variance for an expanded non-conforming structure with a reduced side yard setback was requested.
4. The existing home was constructed in 1955, prior to the Carver County Code requirements and was purchased by the Carr & Mooty family in 1994. The home is approximately 71 feet from the ordinary high water mark of Pierson Lake. The addition did not extend closer to the lake and would be in line with neighboring properties. The setback for structures from a Recreational Development Lake is 100 feet. As a result, the structure is considered to be legal, non-conforming. Mr. Mooty hired a contractor to complete the approximate 9' x 12' bedroom addition in 2010 which expanded the non-conforming structure by approximately 108 square feet. The addition was constructed without any review or permit approval by the Land Management Department, Environmental Services or the Building Official.

5. The County Zoning Code requires a side yard setback of 15 feet from the side property line. The setback of the bedroom addition at its closest point is approximately eight (8) feet from the easterly property line, reflecting a 7-foot variance. The furthest point of the bedroom addition is approximately twelve (12) feet from the easterly property line, reflecting a 3-foot variance.
6. The applicant submitted a letter explaining the conditions that led to the request. Based on the letter, a practical difficulty exists due to the tight timeframe in which construction was to occur and the limited buildable area on the non-conforming lot as well as owning the property jointly with family. Removal of the addition at this point in time would be problematic for the landowner. The neighbor to the east has submitted a letter stating that he does not object to the placement of the addition so close to the property line.
7. The property is served by the Metropolitan Council Sewer Interceptor (201 system). The proposed addition does not further encroach on the existing tanks located to the northwest of the existing home; however, the bedroom addition requires the installation of a larger (1,500 gallon) tank at the applicants' expense prior to the issuance of any building permits.
8. Government services should not be negatively impacted by the proposed structure; however, this is a privately maintained road and Laketown Township monitors the 201 system.
9. The need for a variance was created by the applicant as a building permit was not applied for and/or issued for the bedroom addition at which time the non-conforming status of the home, setback requirements, need for a larger septic tank would have been evaluated.
10. The granting of the variance is the minimum variance which would alleviate the practical difficulty and is not in conflict with the Comprehensive Plan. No additional structures or expansion would be permitted without a variance application.
11. The neighborhood is comprised of residences on the lake with a variety of non-conformities. The request would not cause a substantial change in the character of the neighborhood nor would it result in a detriment to neighboring properties. Many neighboring properties have existing structures that are set close to the water and/or do not meet the required 15-foot side yard setback.
12. The Laketown Town Board has reviewed the request at their June 24, 2013, Town Board meeting and recommended approval of the request provided the septic tank is brought into compliance (installation of 1,500 gallon tank).
13. The Board has considered all the factors required by Section 152.215C of the Zoning Code and finds that the grounds for a variance are hereby satisfied.

ORDER #PZ20130015

IT IS HEREBY ORDERED: That the application of Charles Mooty for a variance, allowing for a reduced setback from the side property line, pursuant to the Carver County Code for property legally described on the attached Exhibit "A" is hereby approved with the following condition:

1. The Permittee shall obtain the appropriate septic system permits and submit the necessary documentation for the removal of the existing tank and placement of a 1,500 gallon tank.
2. The Permittee shall obtain the appropriate building permit(s) for the construction of the bedroom addition on the subject property.
3. The Permittee shall obtain any necessary permits from the Minnehaha Creek Watershed District.

4. No additional structures or expansions shall be permitted without obtaining all necessary building permits and/or variances.

Lothar Wolter, Jr.
Lothar Wolter, Jr., Chair
Carver County Board of Adjustment

7-19-13
Date

IF ANY WORK OR ACTION, AS PERMITTED BY THIS ORDER IS NOT COMPLETED WITHIN ONE YEAR OF THE ISSUANCE OF THIS ORDER, THEN THIS ORDER SHALL BECOME NULL AND VOID UNLESS AN EXTENSION OF TIME IN WHICH TO COMPLETE THE WORK IS GRANTED BY THE BOARD OF ADJUSTMENT.

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 07-022-3510

File# PZ20220037

APPLICANT/OWNER: Charles W Mooty & Elizabeth C Mooty

* * * * *

That part of Government Lot 2, Section 22, Township 116, Range 24, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Government Lot 2; thence on an assumed bearing of South 01 degrees 28 minutes 39 seconds West, along the East line of said Government Lot 2, a distance of 1486.11 feet; thence North 73 degrees 39 minutes 01 seconds West, a distance of 108.99 feet to the point of beginning; thence continue North 73 degrees 39 minutes 01 seconds West, a distance of 124.00 feet; thence South 03 degrees 06 minutes 00 seconds West to the shoreline of Pierson Lake; thence Southeasterly along said shoreline to a line that bears South 05 degrees 17 minutes 55 seconds West from the point of beginning; thence North 05 degrees 17 minutes 55 seconds East to the point of beginning.