# *CARVER COUNTY BOARD OF ADJUSTMENT*

Regular Meeting – **Wednesday, August 7, 2024**
Commissioners' Meeting Room
2nd Floor Human Services Bldg
Government Center – Chaska

## AGENDA

7:00 p.m.

1. Approve minutes of July 3, 2024 meeting
   Pages 1-1 through 1-3

2. **File #20240028**- Public hearing on request by Craig & Kimberly Foster for a variance. (Reduced Setbacks for SSTS)
   **Waconia Township** Pages 2-1 through 2-25
   Issue Order #PZ20240028 – Craig & Kimberly Foster

3. **File #20240031**- Public hearing on request by Katherine & Jill Wachholz for a variance. (Reconfiguration of Non-Conforming Parcels)
   **Waconia Township** Pages 3-1 through 3-12
   Issue Order #PZ20240031 – Jill Wachholz

4. **File #20240030**- Public hearing on request by Joe White, representing B H Aggregate Services, Inc. for a variance.
   (Reduced Setback from Existing Residence)
   **Watertown Township** Pages 4-1 through 4-11
   Issue Order #PZ20240030 – B H Aggregate Services, Inc.

5. **File #20240029**- Public hearing on request by William Dietz for a variance.
   (Property Homestead Requirement)
   **Watertown Township** Pages 5-1 through 5-13
   Issue Order #PZ20240029 – William Dietz

6. **File #20240024**- Public hearing on request by Tim Erhart for a variance.
   (Property Homestead Requirement)
   **Laketown Township** Pages 6-1 through 6-14
   Issue Order #PZ20240024 – Tim Erhart

**Other Business**

# COUNTY OF CARVER
# PUBLIC SERVICES DIVISION
***Department of Environmental Services***

July 26, 2024

**TO:** Carver County Board of Adjustment & Waconia Town Board

**FROM:** The Environmental Services Department

**SUBJECT:** Application for a Variance (SSTS Setback)

**FILE #:** PZ20240028
**APPLICANT:** Craig & Kimberly Foster
**OWNER:** Craig & Kimberly Foster
**SITE ADDRESS:** 7419 West Shoreline Dr., Waconia, MN 55387
**VARIANCE TYPE:** Reduced setback to a septic/grinder tank from a structure, property line, and road right-of-way
**PURSUANT TO:** Carver County Code Section 52.022
**LEGAL DESCRIPTION:** See attached Exhibit "A"
**PARCEL #:** 09-849-0030

## BACKGROUND:

1. Craig & Kimberly Foster own an approximately 0.27-acre parcel located in Government Lot 2 in the North Half (N½) of the Southeast Quarter (SE¼) of Section 10, Waconia Township. The property is improved with a single-family residence and a detached garage, which are separated by West Shoreline Drive. The parcel is part of Wageners Subdivision No. 3, which was platted in 1942, and is located in the Agricultural Zoning District, Shoreland Overlay District (Lake Waconia), and the Carver County Water Management Organization (CCWMO) - Carver Creek watershed.

2. The applicant is requesting a variance that would allow them to install a new Subsurface Sewage Treatment system (SSTS), consisting of a 500-gallon grinder tank, 3,000-gallon septic tank, 1,000-gallon pump tank, and a 38-foot x 78-foot mound drainfield. The new grinder tank would be placed approximately 5 feet from a permanent structure, 2 feet from the south property line, and 5 feet from the road right-of-way. Chapter 52 of the County Code requires a minimum 10-foot setback from a structure, property line, and road right-of-way to a grinder tank. 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 |
|---|---|---|---|
| Structure(s) | 10 | 20 | - |
| Property lines & road rights-of-way | 10 | 10<br>Above grade systems will be measured from the toe of the slope. | |

## 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. Craig and Kimberly Foster purchased the property in fall of 1995 to reside in the existing residence. The property was purchased with the existing house, as well as a detached garage. In 1985, a variance to the septic ordinance was approved to allow a holding tank system to be installed rather than a standard septic system. The holding tank currently servicing the house was installed in 1999.

2. Craig & Kimberly Foster previously made variance applications (PZ20240019 & PZ20240015) that were approved by the Board of Adjustment on May 1, 2024, for reduced setbacks to a structure, property line, and road right-of-way pertaining to the new septic system, as well as reduced side yard structure setback & to increase the percentage of impervious surface on a shoreland lot to accommodate home and site improvements.

3. The owners' letter dated April 8, 2024, describes the desire to install a new Subsurface Sewage Treatment System (SSTS) to facilitate planned home improvements on the property. Carver County Chapter 52 of the County Code requires a 10-foot setback for tank(s) to a structure, property lines, and road right-of-way. Approval of the variance would allow the owners to install a system in compliance with state and local rules. Further, approval of the variance would allow the new grinder tank to be placed approximately 5 feet from the structure, 2 feet from the south property line, and 5 feet from the West Shoreline Drive Road right-of-way, reflecting an approximate 5-foot, 8-foot, and 5-foot variance respectively.

4. The submitted site plan, dated June 2023 shows the location of the system and its proximity to the structure, property line, and road right-of-way. The site plan shows the grinder tank approximately 5 feet from the structure and road right-of-way, and 2 feet to the south property line. Other than the requested variances, there is also a variance required with the Minnesota Department of Health to allow the new sewer line within 20 feet of the existing well. Other than these variances, the proposed system meets the required setbacks to property lines, structures, and wells.

5. A declaration of septic easement was completed by Melchert Hubert Sjodin Law Firm and recorded on June 25, 2024, to allow the new septic system access to both parcels (09-849-0030 & 09-010-2310).

6. On July 24, 2024, Craig & Kim Foster received approval from the Minnesota Department of Health to install a new sewer line no less than 14 feet from the well servicing the property.

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 Waconia Town Board reviewed and recommended approval of the request at their July 8, 2024, Town Board meeting without any additional conditions.

10. On July 23, 2024, staff received an email from Lane Braaten at the City of Waconia. Mr. Braaten stated "*Thank you for the opportunity to comment on the variance request for 7419 Shoreline Drive. I would offer the opinion that any shoreland/shoreline variance request should require some, if not all, of the shore impact zone to be restored to native vegetation and protected. This condition has been a consistent finding and condition of Waconia's Planning Commission and City Council and should be applied to those properties located within the townships as well.*"

**BOARD CONSIDERATION:**

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the reduced tank 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 grinder tank shall not encroach any closer to the structure, property line, and road right-of-way than as approved as part of this variance application (Approx. 5 feet from the house and road right of way, and approx. 2 feet from the south property line).

2. Owners shall receive the required variance from the Minnesota Department of Health to install a sewer line closer than 20 feet to an existing well.

3. Owners shall receive an easement to allow the new septic system access to both parcels (09-849-0030 & 09-010-2310).

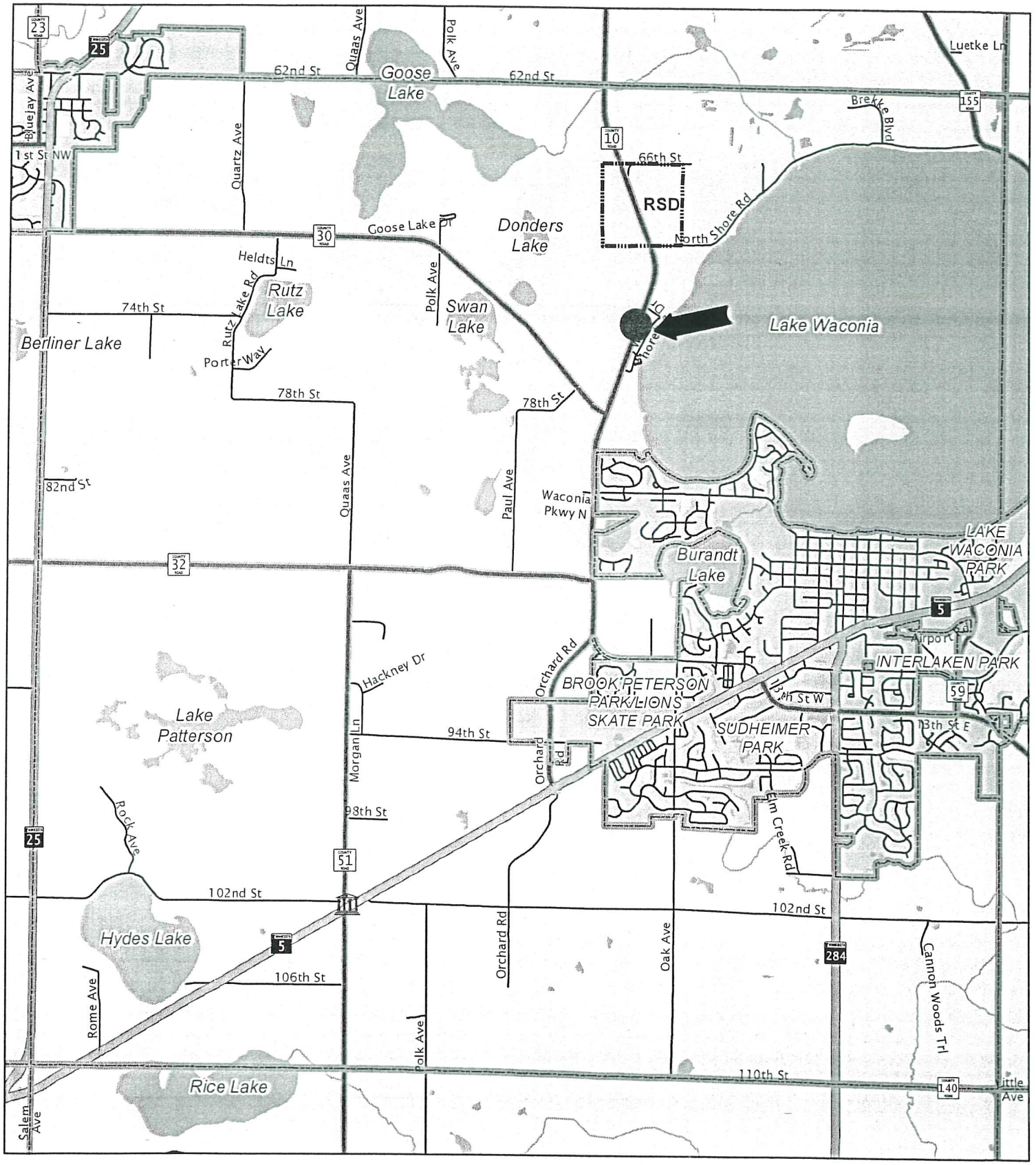
4. If the Board of Adjustment recommends approval of the variance application for reduced setbacks to a septic/grinder tank from a structure, property line, and road right of way, the previous variance PZ20240019 (Document Number A772727) would be terminated upon final approval (and recording) of the new variance PZ20240028. Therefore, PZ20240028 would supersede any prior approvals.

**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.

# WACONIA 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.

0 1 2 Miles

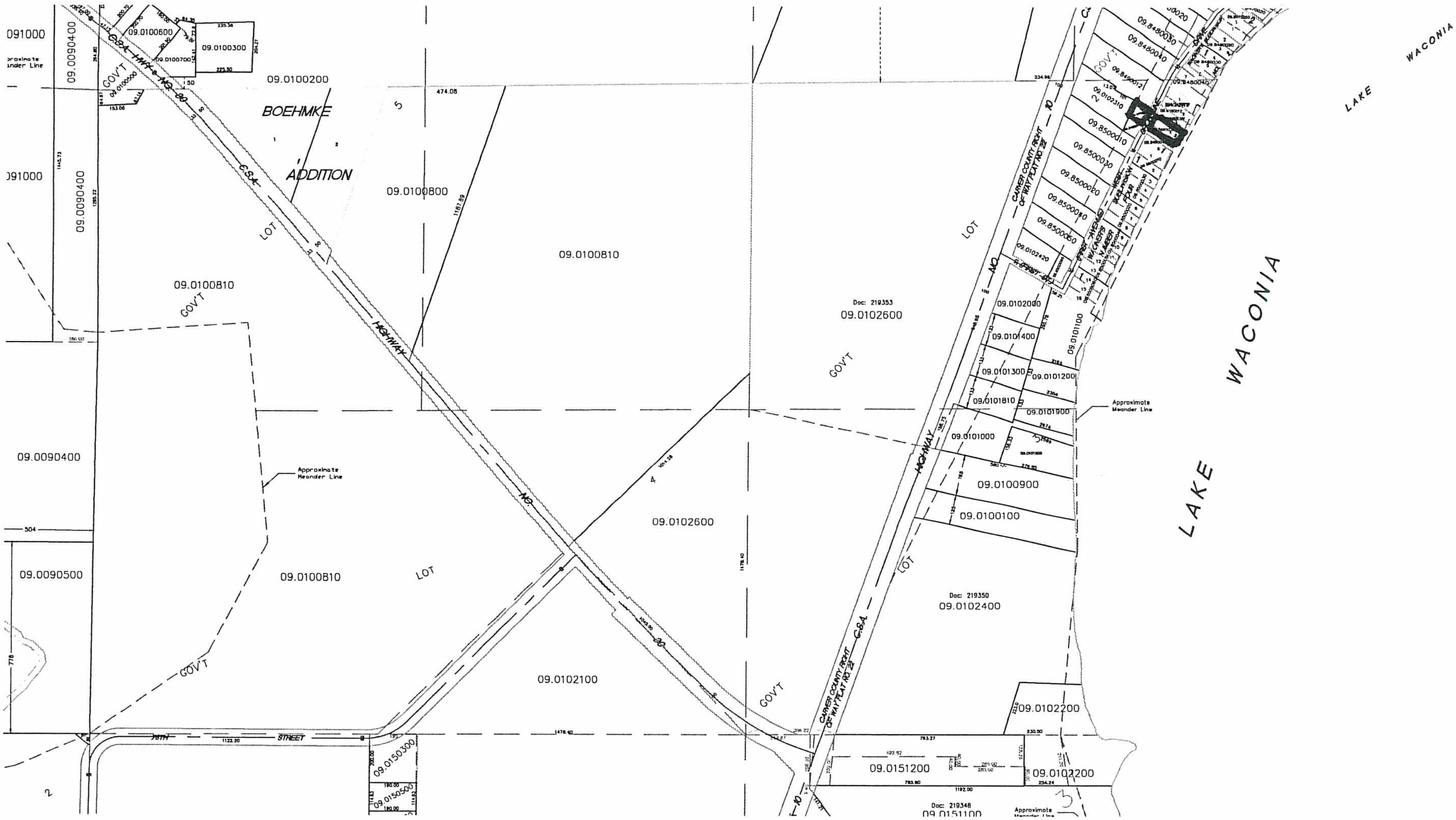
N W E



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.

# S 1/2 SEC. 10, T.116, R.25




Surveying & Mapping Office
Carver County Gov. Center
600 East Fourth Street
Chaska MN 55318

Nov 14, 2023

2-6

*for Aug 7 Mtg.

Craig and Kim Foster

7419 West Shoreline Dr.

Waconia, MN 55387

4/8/2024

Dear Board of Adjustment and Waconia Township:

Our current septic system is comprised of a 1500 gallon holding tank. We plan to install a new Subsurface Sewage Treatment System (SSTS) with a 500 gallon grinder tank, 3000 gallon septic tank, 1000 gallon pump tank, and a 38' x 78' mound drainfield to facilitate planned home improvements. The only sufficient site available on the property has the grinder tank placed where the current holding tank is within the 10' setback from a house, lot line, and Road Right-of-Way.

Due to the small lot size, and required setbacks we are requesting 3 variances. The current system design has the grinder/pump tank located in the front yard. The tank would be placed approximately 5' from a permanent structure, 2' from the south property line, and 5' from West Shoreline Drive Road Right-of-Way with leeway for construction related issues. Therefore we are requesting variances to reflect the setbacks above.

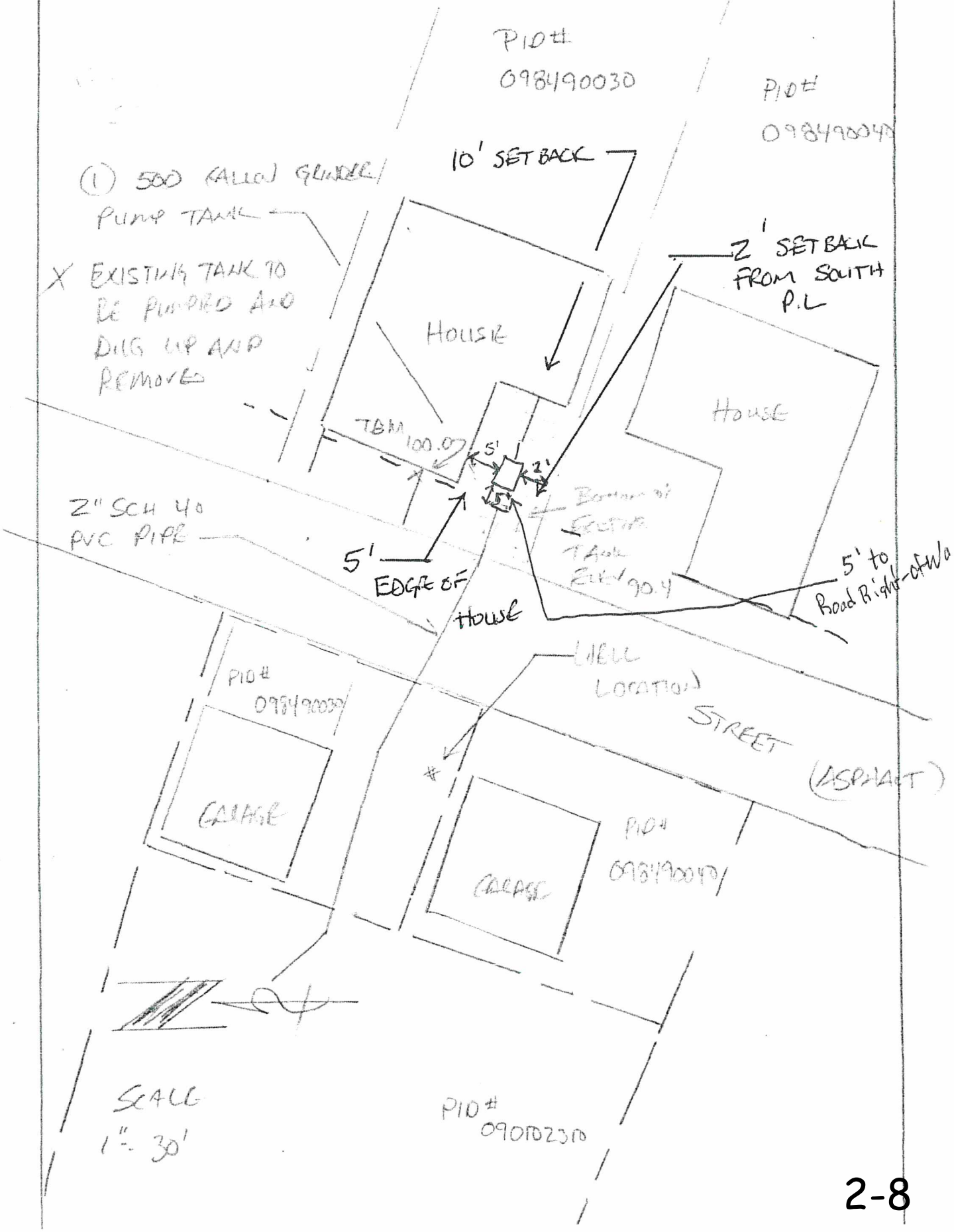
In reading the practical difficulty from the ordinance we feel we are using the property in a reasonable manner, and the variance will not alter the character of the property except to comply with Carver County and Chapter 7080 requirements. The new system will not impact any neighbors.

Thank you for your consideration in this matter.

Craig & Kim Foster

7419 West Spring P. | LOCATION MAP | C. HENTGES 6/23

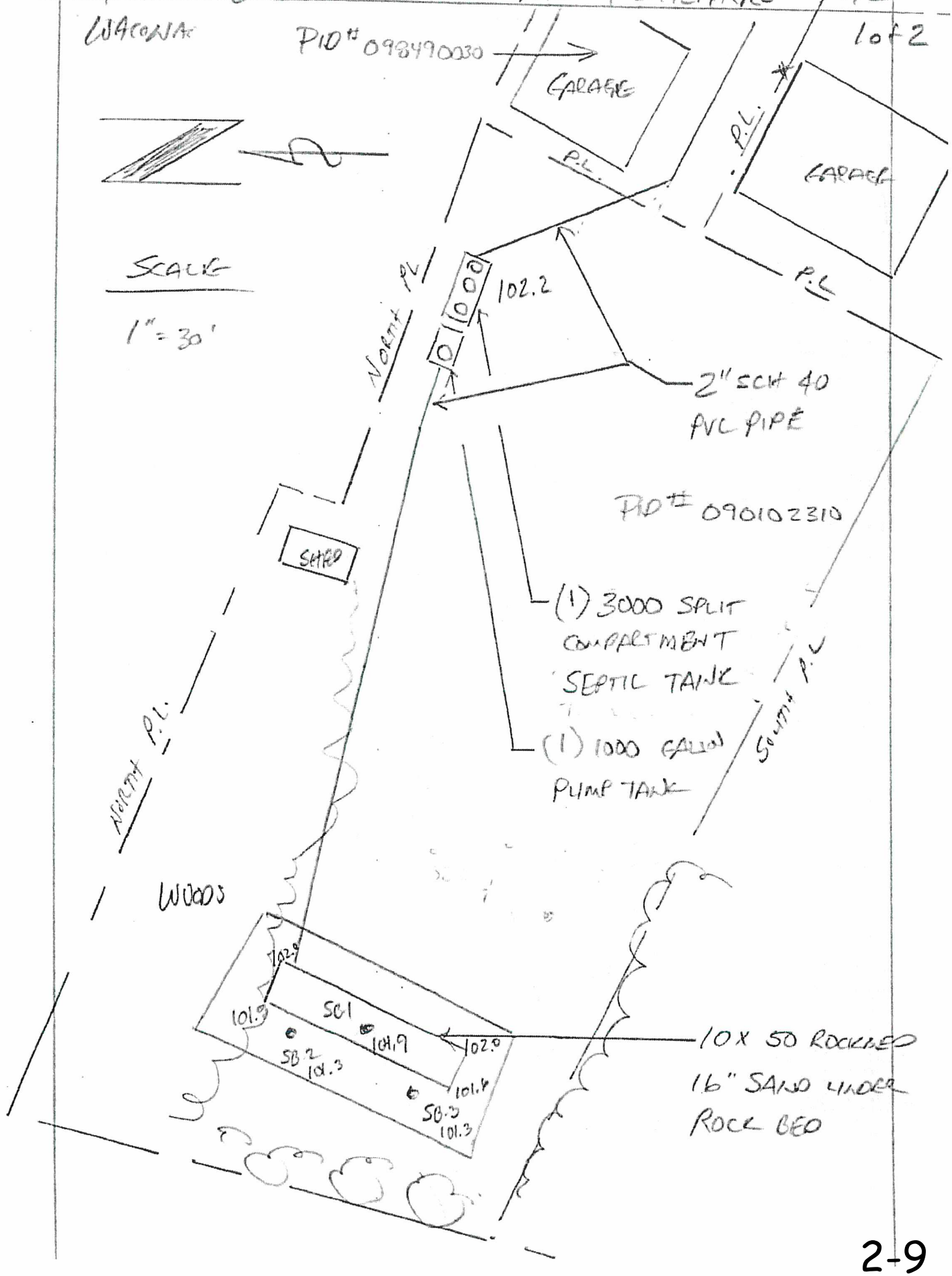
WACOM 1 2 of 2



7419 West Shoshone | LOCATION MAP | C. HENTGES | 6/23

WACONIA

1 of 2



**From:** Jason Mielke
**Sent:** Tuesday, July 9, 2024 12:18 PM
**To:** Jacob McLain; Lori Brinkman
**Cc:** Brad Hanzel; Nancy Buckentine; 1goose@frontiernet.net
**Subject:** FW: Craig and Kim Foster

**Follow Up Flag:** Follow up
**Flag Status:** Completed

Jacob, Lori,

I received the following email from Sue Goede, Waconia Township Clerk. Pertains to the Foster SSTS variance request.

**Jason Mielke**
**Carver County Land Use Manager**
D: 952-361-1817 | O: 952-361-1820
jmielke@carvercountymn.gov
**www.carvercountymn.gov**

Carver County Public Services Division
Land Management Department
Government Center, Admin Bldg
600 East 4th Street Chaska, MN 55318-2101

**From:** Sue & Larry Goede <1goose@frontiernet.net>
**Sent:** Tuesday, July 9, 2024 11:31 AM
**To:** Jason Mielke <jmielke@carvercountymn.gov>
**Subject:** Craig and Kim Foster

**EXTERNAL EMAIL:** Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Craig and Kim Foster attended the Waconia Township meeting Monday July 8th 2024, regarding explained to the board what is happening with his remodeling The County approved just with an easement instead of combing the PID'S, change from combining parcel to allowing an easement for the septic system, Motion Mark Wickenhauser, Seconded Dave Grandy Motion Carries

Thanks Sue Goede Waconia Township Clerk

Document Number: **A772727**

Filed and/or Recorded on
May 8, 2024 3:39 PM

Office of the County Recorder/Registrar of Titles
Carver County, Minnesota
Kaaren Lewis, County Recorder

Deputy NV

| | |
|---|---|
| Document Recording Fees | $ 0.00 |
| ***Document Total*** | $ 0.00 |

Requesting Party: CARVER COUNTY LAND MANAGEMENT
Pages: 5

This cover page has been added to this document by Carver County Land Records
and is now an official part of this recorded document

CARVER COUNTY

**COUNTY OF CARVER**
*State of Minnesota*

**FILE #:** PZ20240019
**APPLICANT:** Craig & Kimberly Foster
**OWNER:** Craig & Kimberly Foster
**SITE ADDRESS:** 7419 West Shoreline Dr., Waconia, MN 55387
**VARIANCE TYPE:** Reduced setback to a septic/grinder tank from a structure, property line, and road right of way
**PURSUANT TO:** Carver County Code Section 52.022
**LEGAL DESCRIPTION:** See attached Exhibit "A"
**PARCEL #:** 09-849-0030 & 09-010-2310

**Drafted by:** Environmental Services
**Return to:** Environmental Services

# BOARD OF ADJUSTMENT
# FINDINGS OF FACT AND ORDER

A public hearing was held on this matter on May 1, 2024, 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. Craig & Kimberly Foster own an approximately 0.27-acre parcel located in Government Lot 2 in the North Half (N½) of the Southeast Quarter (SE¼) of Section 10, Waconia Township. The property is improved with a house and attached garage, as well as a detached garage and an additional vacant parcel (PID 09-010-2310), which are separated by West Shoreline Drive. The parcel is part of Wageners Subdivision No. 3, which was platted in 1942, and is located in the Agricultural Zoning District, Shoreland Overlay District (Lake Waconia), and the Carver County Water Management Organization (CCWMO) - Carver Creek watershed.

2. The applicant is requesting a variance that would allow them to install a new Subsurface Sewage Treatment system (SSTS), consisting of a 500-gallon grinder tank, 3,000-gallon septic tank, 1,000-gallon pump tank, and a 38-foot x 78-foot mound drainfield. The new grinder tank would be placed approximately 5-feet from a permanent structure, 2-feet from the south property line, and 5-feet from the road right-of-way. Chapter 52 of the County Code requires a minimum 10-foot setback from a structure, property line, and road right-of-way to a grinder tank. Therefore, a variance for reduced setbacks pursuant to Chapter 52 – Section 52.022 has been requested.

3. Craig and Kimberly Foster purchased the property in fall of 1995 to reside in the existing residence. The property was purchased with the existing house, as well as a detached garage. In 1985, a variance to the septic ordinance was approved to allow a holding tank system to be installed rather than a standard septic system. The holding tank currently servicing the house was installed in 1999.

4. The owners' letter dated April 8, 2024, describes the desire to install a new Subsurface Sewage Treatment System (SSTS) to facilitate planned home improvements on the property. Carver County Chapter 52 of the County Code requires a 10-foot setback for tank(s) to a structure, property lines, and road right-of-way. Approval of the variance would allow the owners to install a system in compliance with state and local rules. Further, approval of the variance would allow the new grinder tank to be placed approximately 5-feet from the structure, 2-feet from the south property line, and 5-feet from the West Shoreline Drive Road right-of-way, reflecting approximate 5-foot, 8-foot, and 5-foot variances respectively.

5. The submitted site plan, dated June 2023, shows the location of the system and its proximity to the structure, property line, and road right-of-way. The site plan shows the grinder tank approximately 5-feet from the structure and road right-of-way, and 2-feet to the south property line. Other than the requested variances, there is also a variance required with the Minnesota Department of Health to allow the new sewer line within 20-feet of the existing well. Other than these variances, the proposed system meets the required setbacks to property lines, structures, and wells.

6. 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.

7. 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.

8. The Waconia Town Board reviewed and recommended approval of the request at their April 8, 2024, Town Board meeting without any additional conditions.

9. The Board of Adjustment has considered all the factors required by Section 152.215 of the Carver County Code and finds that the grounds for a variance are hereby satisfied.

## ORDER #PZ20240019

**IT IS HEREBY ORDERED:** That the application of Craig and Kimberly Foster for a Variance for reduced septic tank setback from a structure, property line, and road right-of-way according to Section 52.022 of the Carver County Code, for property legally described on the attached Exhibit "A", is hereby **approved**. The Board of Adjustment further orders approval with the following conditions:

1. The SSTS shall be located according to the final design approved by Carver County Environmental Services. The new grinder tank shall not encroach any closer to the structure, property line, and road right-of-way than as approved as part of this variance application (Approx. 5-feet from the house and road right of way, and approx. 2-feet from the south property line).

2. Parcels PID 09-849-0030 & PID 09-010-2310 shall be combined to facilitate the installation of the septic system on one combined parcel.

3. Owners shall receive the required variance from the Minnesota Department of Health to install a sewer line closer than 20-feet to an existing well.

Gerald Bruner
Gerald Bruner (May 8, 2024 07:15 CDT)
Gerald Bruner, Chairman
Carver County Board of Adjustment

**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.**

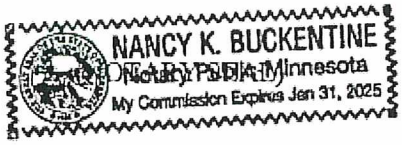
State of Minnesota

County of Carver

I certify that the foregoing document, BOARD OF ADJUSTMENT FINDINGS OF FACT AND ORDER, dated May 1, 2024, and containing four (4) pages is a true and correct copy of an electronic document bearing one or more electronic signatures this 8th day of May, 2024.

Nancy K Buckentine

Nancy K Buckentine
Signature of Notary Public



Document Number: **A774501**

Filed and/or Recorded on
Jun 26, 2024 2:33 PM

Office of the County Recorder/Registrar of Titles
Carver County, Minnesota
Kaaren Lewis, County Recorder

Deputy TH/RR

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| Document Recording Fees | $ 46.00 |
| ***Document Total*** | $ 46.00 |

Requesting Party: CRAIG FOSTER
Pages: 7

This cover page has been added to this document by Carver County Land Records
and is now an official part of this recorded document

**DECLARATION OF SEPTIC EASEMENT**

This Declaration of Septic Easement ("**Easement**") is made effective June 25TH, 2024, by Craig M. Foster and Kimberly A. Foster aka Craig Foster and Kim Foster, spouses married to each other (collectively the "**Declarant**").

WHEREAS, Declarant is the owner of certain real property upon which their home and garage are located in Carver County, Minnesota, and legally described on the attached Exhibit A ("**Parcel A**"), and

WHEREAS, Declarant is also the owner of certain vacant real property located immediately adjacent to and northwest of Parcel A in Carver County, Minnesota, and legally described on the attached Exhibit B ("**Parcel B**" and collectively with Parcel A as the "**Parcels**"), and

WHEREAS, Declarant desires to create a permanent, appurtenant, exclusive easement over, under and across a portion of Parcel B for the purpose of constructing and utilizing a septic system to serve the dwelling located on Parcel A, and to assure the continuous, uninterrupted, and satisfactory operation and maintenance of the septic system.

NOW, THEREFORE, Declarant hereby declares that the Parcels shall be owned, held, transferred, and mortgaged subject to and encumbered by the following:

1. Recitals. The Recitals set forth above are hereby incorporated into the terms of this Easement, as if fully set forth herein.

2. Septic Easement. Declarant declares a permanent, appurtenant, exclusive easement over, under, upon and across a portion of Parcel B for the benefit of Parcel A as generally depicted on the attached Exhibit C (the "**Easement Area**"), primarily for Declarant's construction, upgrade and use of a septic system to be located thereon, including but not limited to, all pipes, lines, tanks, drainfields, soil absorption fields, filters, pumps, gauges, connections, chambers, electrical wiring and other necessary septic mechanics associated therewith and a part thereof (the "**Septic System**").

3. Binding. This Easement shall run with the Parcels and be binding on all parties having any right, title or interest in the Parcels or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

4. Applicable Law. This document shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned has caused this Declaration of Septic Easement to be executed and effective as of the day and year first above written.

Craig M. Foster aka Craig Foster

Kimberly A. Foster aka Kim Foster

STATE OF MINNESOTA )
)SS.
COUNTY OF CARVER )

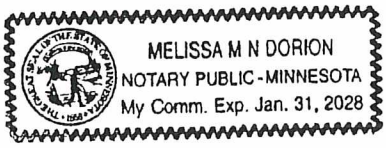
The foregoing instrument was acknowledged before me this 25th day of June, 2024, by Craig M. Foster, married to Kimberly A. Foster.

Notary Public

MELISSA M N DORION
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2028

STATE OF MINNESOTA )
)SS.
COUNTY OF CARVER )

The foregoing instrument was acknowledged before me this 25TH day of June, 2024, by Kimberly A. Foster, married to Craig M. Foster.




Notary Public

**THIS INSTRUMENT WAS DRAFTED BY/RETURN TO:**
Melchert Hubert Sjodin, PLLP (rmh)
121 West Main Street, Suite 200
Waconia, MN 55387
952.442.7700

**EXHIBIT A**
**Parcel A**

Lot Four (4), Block One (1), Wagener's Subdivision No. 3, also known as Wagener's Third Addition, in and for Carver County, Minnesota.

The Northeasterly Half of Lot Five (5), Block One (1), Wagener's Subdivision No. 3, in and for Carver County, Minnesota, also described as follows: Commencing at the most Northerly corner of said Lot Five (5); thence running Southeasterly along lot line 130.00 feet to the most easterly corner of said Lot 5; thence running Southwesterly a distance of 21.65 feet to a point; thence running Northwesterly, parallel to said first described line a distance of 130.00 feet to the most westerly line of said Lot 5; thence running Northeasterly along lot line to point of beginning.

That part of Government Lot 2, Section 10, Township 116 North, Range 25 West of the Fifth Principal Meridian lying northeasterly of the northwesterly extension of the Southwesterly line of the Northeasterly ½ of Lot 5, Block 1, Wagener's Subdivision No. 3 and lying Southwesterly of the Northwesterly extension of the Northeasterly line of Lot 4, Block 1, Wagener's Subdivision No. 3 and lying within the boundaries described as follows: That part of Government Lots 1 and 2, Section 10, Township 116 North, Range 25 West of the Fifth Principal Meridian, described as commencing at a point on the Northwesterly line of First Avenue in Wagener's Subdivision No. 2 where the Northeasterly line of Lot 2, Block 1, said Wagener's Subdivision, if extended, will intersect the Northwesterly line of said First Avenue; thence running Southwesterly along the Northwesterly line of said First Avenue a distance of 130 feet to the actual point of beginning; thence continuing South 34 degrees 51 minutes West, along the Northwesterly line of said First Avenue, a distance of 132.42 feet; thence South 25 degrees 25 minutes West; along the Northwesterly line of First Avenue in Wagener's Subdivision No. 3, a distance of 962.90 feet to the Northeasterly line of First Street in Wagener's Subdivision No. 4; thence North 60 degrees 50 minutes West along the Northeasterly line of said First Street, a distance of 60 feet; thence North 25 degrees 25 minutes East a distance of 1103.22 feet to point on a line bearing North 55 degrees 09 minutes West from the point of beginning; thence South 55 degrees 09 minutes East, a distance of 82.68 feet to the point of beginning.

**EXHIBIT B**
**Parcel B**

That part of the following described tract which lies between the northwesterly extension of the southerly line of Lot 3 and the northwesterly extension of the southerly line of Lot 6, WAGENER'S SUBDIVISION NO. 3, according to the plat thereof on file and of record in the office of the County Recorder, Carver County, Minnesota:

That part of Governments Lots 1 and 2, Section 10, Township 116, Range 25, Carver County, Minnesota, lying southeasterly of the centerline of County State Aid Highway No. 10, and which lies northeasterly of the northeasterly line of First Street as platted in WAGENER'S SUBDIVISION NO. 4, according to the recorded plat thereof, and which lies southwesterly of the southwesterly line of Elm Street as plated in WAGENER'S SUBDIVISION, according to the recorded plat thereof, and which lies northwesterly of the following described line:

Commencing at a point on the northwesterly line of said First Avenue in WAGENER'S SUBDIVISION NO. 2 where the northwesterly extension of the northeasterly line of Lot 2, Block 1 of said WAGENER'S SUBDIVISION NO., 2, according to the recorded plat, intersects said northwesterly line of First Avenue; thence on an assumed bearing of South 35 degrees 13 minutes West along the northwesterly line of said First Avenue 130.00 feet to a point for descriptive purposes only is referred to as "Point A"; thence continuing South 35 degrees 13 minutes West, along the northwesterly line of said First Avenue 132.42 feet; thence South 25 degrees 25 minutes West along the northwesterly line of said First Avenue 962.90 feet to the northeasterly line of First Street; thence North 60 degrees 50 minutes West along the northeasterly line of First Street 60.00 feet to the point of beginning of said line to be described; thence North 25 degrees 25 minutes East 1103.22 feet on a line to hereinafter be referred to as Line "A", to the intersection with a line extended northwesterly from said "Point A" and measured at a right angle to the northwesterly line of said First Avenue, distant 82.68 feet from "Point A"; thence continue Northwesterly on said extended line distant 114.43 feet as measured from said "Point A"; thence Northeasterly, along a line, to a point on the southwesterly line of Block 3, WAGENER'S SUBDIVISION, according to the recorded plat, said line if extended northeasterly would intersect the northeasterly line of said Block 3, at a point 195 feet northwesterly of the most easterly corner of said Block 3; thence Northwesterly along the southwesterly line of said Block 3, to the most westerly corner of said Block 3; thence Northeasterly along the northwesterly line of said Block 3 to the most northerly corner of said Block 3 and said line there terminating.

Except a parcel described as beginning at the intersection of said northwesterly extension of the southwesterly line of Lot 3, Block 1, WAGENER'S SUBDIVISION NO. 3 and said Line "A"; thence deflecting northwesterly to the left from said northwesterly extension of the southwesterly line of Lot 3, Block 1, WAGENER'S SUBDIVISION NO. 3, an angle of 7 degrees 19 minutes 35 seconds, a distance of 101.00 feet; thence deflecting to the right 92 degrees 49 minutes 52 seconds, a distance of 13.07 feet to said northwesterly extension of the southwesterly line of Lot 3, Block 1, WAGENER'S SUBDIVISION NO. 3; thence southeasterly along said northwesterly extension to the point of beginning.

## EXHIBIT C
## Easement Area

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 Date: 6/25/2024

DEPARTMENT OF HEALTH

*Protecting, Maintaining and Improving the Health of All Minnesotans*

RECEIVED
JUL 25 2024
By:

July 24, 2024

Refer to: TN 6530
MPCA SSTS License 2926

Craig Foster
Kim Foster
7419 West Shoreline Drive
Waconia, Minnesota 55387

Andy Kleindl
Jim's Excavating, LLC
12175 County Road 51
Cologne, Minnesota 55332

Dear Mr. and Mrs. Foster and Mr. Kleindl:

Subject: Variance from Minnesota Rules, Chapter 4725, for Installation of a Buried Sewer at 7419 West Shoreline Drive, Waconia, Carver County, Minnesota, Parcel Number 098490030

This letter is in response to the request to the Minnesota Department of Health (MDH) for a variance from Minnesota Rules, chapter 4725, to install an approved buried sewer on the subject property at a location less than 20 feet from an existing water-supply well, Minnesota Unique Well Number 616605 (subject well), located on the subject property.

Minnesota Rules, part 4725.4450, subpart 1, item E (12) requires that a water-supply well must be no less than 50 feet from a buried sewer. Minnesota Rules, part 4725.4450, subpart 1, item G (5) does allow a well to be located no less than 20 feet from a buried sewer that serves one building or two or less single-family residences, provided that the sewer is not a collector or municipal sewer, does not serve a facility handling infectious or pathological wastes, and is constructed of plastic or cast iron meeting the materials and pressure testing specifications of the Minnesota Rules, chapter 4714 (Minnesota Plumbing Code).

Minnesota Statutes, section 103I.205, subdivision 6 requires that a person may not place, construct, or install, an actual or potential source of contamination any closer to a well than the isolation distances prescribed by the commissioner of health by rule unless a variance has been prescribed by rule.

The proposed sewer installation is part of a new subsurface sewage treatment system (SSTS); all other components of the SSTS will meet the required isolation distances from all wells. Installation of this system will eliminate the property's reliance on a sewage holding tank. The proposed sewer will be constructed of 2-inch diameter Schedule 40 PVC meeting the requirements of ASTM D1785 and/or ASTM D2665 and installed not less than 14 feet from the subject well. The 2-inch sewer will be installed inside a continuous length of 4-inch diameter HDPE pipe at all points within 50 feet of the subject well. The 4-inch pipe will be installed using

directional boring equipment, and the ends of the 4-inch pipe will be sealed to the 2-inch pipe using 4-inch x 2-inch Fernco flexible PVC reducing couplings.

Information provided with the variance application indicates the subject well is a 4-inch diameter plastic-cased well with casing extending to a depth of 189 feet. The well is reportedly 194 feet deep and has a static water level of 82 feet. The geology at the site includes yellow clay from 2 to 17 feet, blue clay from 17 to 31 feet, and grey clay with gravel from 31 to 179 feet, all of which overlie the glacial sand and gravel aquifer in which the well is completed.

On July 3, 2024, Robert Nielsen, MDH Marshall District Office Hydrologist, inspected the subject property to evaluate the proposed sewer installation with Mr. Andrew Kleindl, representing Jim's Excavating, LLC, and Craig Foster, property owner. Mr. Nielsen reported that there is no practical way to route the proposed sewer from the home to the soil treatment area without locating the sewer as proposed. Obstacles to compliance include the garage footings, the electrical supply to the garage, and the general layout of structures and concrete driveways on the property, which is divided by West Shoreline Drive.

Based on Mr. Nielsen's inspection, information provided in the variance application, information provided by Mr. Andrew Kleindl, and in accordance with Minnesota Rules, chapter 4725, **a variance is granted to install the proposed sewer on the subject property not less than 14 feet from the subject water-supply well.** The variance is granted because there is no practical alternative location for the sewer that complies with all required isolation distances. The proposed location appears to provide the greatest available separation from the subject well.

Because the isolation distances between the proposed potential contaminant source and existing water-supply well are less than required in rule, additional construction methods and precautions are required to reduce the potential for contamination of the well and groundwater. The following list of additional conditions and requirements should provide the necessary additional protection for the well and groundwater.

The variance is granted with the following conditions:

1. Jim's Excavating, LLC must notify Robert Nielsen, MDH Marshall District Office Hydrologist, at 507-476-4227 or Mark Malmanger, MDH Northern-Southwestern Regional Supervisor, at 218-308-2118 at least 24 hours prior to beginning installation of the sewer to schedule an inspection.

2. The new sewer installed between the house and the existing holding tank must be located as far as practicable, but **not less than 14 feet** from the subject well.

3. Jim's Excavating, LLC must verify that all new buried sewers located less than 50 feet from any water-supply well are constructed of approved materials and have been successfully pressure tested in accordance with Minnesota Plumbing Code requirements. Pressure testing must be performed by a Minnesota licensed and bonded plumber or pipe layer (building sewer only) who shall provide a signed statement identifying the sewer materials

and documenting that the sewer lines were successfully tested, as per Minnesota Plumbing Code requirements.

**A copy of a pressure test reporting form is enclosed for your convenience. Please return a scanned image of the completed document to Mr. Nielsen at robert.nielsen@state.mn.us.**

4. All other provisions of Minnesota Rules, chapter 4725, are in effect.

Alternative measures or conditions attached to a variance have the force of law and effect of applicable rule. If a party violates the alternative measures or conditions attached to the variance, the party is subject to enforcement actions and penalties provided in the applicable law or rule. This variance is conditioned upon the applicable acceptance of and compliance with the conditions of the variance. Failure by the applicant to comply with the conditions prescribed in the variance will result in the immediate expiration of the variance.

If you have any questions or require further information, please contact Mr. Nielsen at 507-476-4227 or Mr. Malmanger at 218-308-2118.

Sincerely,

Teresa L. Purrington

Digitally signed by Teresa L. Purrington
Date: 2024.07.24 13:29:53 -05'00'

Teresa Purrington, Manager
Well Management Section
Environmental Health Division
P.O. Box 64975
St. Paul, Minnesota 55164-0975

TLP:JJ:RCN:kmm
Enclosure: Buried Sewer Construction and Testing Certification
cc: Lori Brinkman, Carver County Environmental Services
Robert Nielsen, MDH
Mark Malmanger, MDH

# EXHIBIT "A" – LEGAL DESCRIPTION

## PID NUMBER: 09-849-0030 File# PZ20240028

## APPLICANT/OWNERS: Craig M Foster and Kimberly A Foster

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

Lot Four (4), Block One (1), Wagener's Subdivision No. 3, also known as Wagener's Third Addition, according to the map or plat thereof on file and of record in the office of the County Recorder in and for Carver County, Minnesota.

The Northeasterly Half of Lot Five (5), Block One (1), Wagener's Subdivision No. 3, according to the plat thereof on file and of record in the office of the County Recorder in and for Carver County, Minnesota, also described as follows: Commencing at the most Northerly corner of said Lot Five (5); thence running Southeasterly along lot line 130.0 feet to the most easterly corner of said Lot 5: thence running Southwesterly a distance of 21.65 feet to a point; thence running Northwesterly, parallel to said first described line. a distance of 130.00 feet to the most westerly line of said Lot 5; thence running Northeasterly along lot line to point of beginning.

That part of Government Lot 2, Section 10, Township 116 North, Range 25 West of the Fifth Principal Meridian lying northeasterly of the northwesterly extension of the Southwesterly line of the Northeasterly ½ of Lot 5, Block 1, Wagener's Subdivision No. 3 and lying Southwesterly of the Northwesterly extension of the Northeasterly line of Lot 4, Block 1, Wagener's Subdivision No. 3 and lying within the boundaries described as follows: That part of Government Lots 1 and 2, Section 10, Township 116 North, Range 25 West of the Fifth Principal Meridian, described as commencing at a point on the Northwesterly line of First Avenue in Wagener's Subdivision No. 2 where the Northeasterly line of Lot 2, Block 1, said Wagener's Subdivision, if extended, will intersect the Northwesterly line of said First Avenue; thence running Southwesterly along the Northwesterly line of said First Avenue, a distance of 130 feet to the actual point of beginning; thence continuing South 34 degrees 51 minutes West, along the Northwesterly line of said First Avenue, a distance of 132.42 feet; thence South 25 degrees 25 minutes West, along the Northwesterly line of First Avenue in Wagener's Subdivision No. 3, a distance of 962.90 feet to the Northeasterly line of First Street in Wagener's Subdivision No. 4; thence North 60 degrees 50 minutes West along the Northeasterly line of said First Street, a distance of 60 feet; thence North 25 degrees 25 minutes East, a distance of 1103.22 feet to point on a line bearing North 55 degrees 09 minutes West from the point of beginning; thence South 55 degrees 09 minutes East, a distance of 82.68 feet to the point of beginning.

DRAFTED BY: Carver County Planning & Zoning Department

# COUNTY OF CARVER
# PUBLIC SERVICES DIVISION
***Department of Land Management***

July 26, 2024

**TO:** Carver County Board of Adjustment & Waconia Town Board

**FROM:** The Land Management Department

**SUBJECT:** Application for a Variance (Reduced Road Frontage and Width to Depth Ratio, Reconfiguration of Non-Conforming Lot)

**FILE #:** PZ20240031
**APPLICANT:** Jill Wachholz
**PROPERTY OWNERS:** Betty, Jill, and Katherine Wachholz
**SITE ADDRESSES:** 9065 & 9025 Highway 25, Waconia, MN 55387
**VARIANCE TYPE:** Reduced Road Frontage and Width-to-Depth Ratio, Change to Non-Conforming Lot
**PURSUANT TO:** County Code Sections 152.033 (A) (D)(1) & (4)
**LEGAL DESCRIPTION:** See attached Exhibit "A"
**PARCELS #:** 09-019-0100 & 09-019-0130

## BACKGROUND:

1. Betty Wachholz, Trustee of W.B. Wachholz Family Trust, owns an approximate 55.59-acre parcel located in the South Half (S½) of Section 19, Waconia Township. Katherine and Jill Wachholz own the adjoining approximate 21.65-acre parcel directly to the south. The southern property is improved with an existing single-family home with an existing Conditional Use Permit for a Large-Solar Energy System (PZ20170029). The north property consists of a storage building, crop fields under production, and wetlands abutting Lake Patterson. The properties are located in the Agricultural Zoning District, Shoreland Overlay District of a Natural Environment Lake (Lake Patterson), and the Carver County Water Management Organization (CCWMO) – Carver Creek watershed.

2. Both properties were granted a variance (PZ20150033) to allow for a minor subdivision (re-configuration) of approximately 76.24 acres, thus creating two legal non-conforming parcels that do not meet the required width-to-depth ratio nor the minimum road frontage requirements.

3. The applicant is requesting a variance that would allow for a minor subdivision and reconfiguration of the existing lots. The intent of the minor subdivision is to reconfigure each property to better reflect the existing uses. If approved, the smaller parcel, containing the home and shed, would meet all required setbacks, road frontage, and width-to-depth ratio requirements. However, the remnant piece containing the community solar garden, agricultural land and wetlands would not meet the County's requirement for road frontage or width-to-depth ratio. Therefore, a variance has been requested pursuant to Sections 152.033 (D) (1) & (4) of the Carver County Zoning Code.

## LEGAL BACKGROUND:

**§ 152.033 LOT REQUIREMENTS.**

(A) *Generally.* A new lot shall not be created unless it conforms to all of the following requirements. Any action that changes the size, configuration, or shape of a lot is considered to be creating a new lot. The only exception is where changes are being made to correct discrepancies in a legal description or to recognize actual occupation.

(D) *Road frontage, lot width and depth.*

(1) *Road frontage.* All new lots shall have frontage on a public road or be attached to an adjacent parcel having the required road frontage; minimum road frontage is 125 feet.

(2) *Minimum width.* One hundred twenty-five feet with 125 feet of frontage on a public road existing at the time of application or the minimum width required to maintain width to depth ratio, whichever is greater. The minimum width of a specified lot must be maintained for the entire depth of the lot except where the lot is located on a cul-de-sac.

(3) *Minimum lot depth.* One hundred twenty-five feet.

(4) *Width to depth ratio.* Depth of the lot shall not exceed five times the width. Road frontage of 500 feet or more will support a lot of any depth.

(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.

(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. The applicant is proposing a reconfiguration of two existing parcels to more accurately describe the land use which would include all buildings on one legally conforming property. The County Code typically requires the platting process (Major Subdivision) be completed for any subdivision request that does not meet the criteria for the minor subdivision as follows: the subdivision must meet the frontage requirement on an existing road; and the subdivision would not require the construction of any public improvements or new road. The approval of the variance would negate the major subdivision requirement.

2. The applicant is proposing to reconfigure the two properties, as shown in the site plan, dated July 12, 2024. Currently, the property containing the home and solar array has 236.66 feet of road frontage, and the larger ag parcel has 263.34 feet of road frontage. With the proposed reconfiguration, the 5-acre property containing the home and machine shed will have approximately 326 feet of road frontage, which will meet the required width-to-depth ratio. The proposed parcel boundaries allow for conforming structure setbacks for the existing structures. Per Section 152.033 (D)(4), the depth of a lot may not exceed 5 times the width or have at least 500 feet of road frontage to support any depth. The north parcel will be approximately 72.24 acres with 174 feet of road frontage. To meet the depth of the proposed ag parcel, 500 feet of road frontage is needed, thus the applicant is requesting a 326' foot variance, intensifying an existing nonconformity.

3. In the applicant's letter dated July 12, 2024, the applicant explains that they wish to join the home site with the machine shed on the adjacent parcel to reflect the family's use of the land and create a conforming 5-acre parcel. The remaining agricultural land would then be combined with the land containing the solar array.

4. The request was reviewed by Jacob McLain, Carver County Senior Environmentalist – Subsurface Sewage Treatment Systems (SSTS). Mr. McLain reported in an email (dated July 25, 2024) that the existing home has a compliant septic systems and Certificates of Compliance on file.

5. On July 19, 2024, this request was reviewed by Taylor Huinker, Area Hydrologist at Minnesota Department of Natural Resources, who stated the DNR sees no concerns regarding the proposed lot reconfiguration.

6. The plight of the landowners is due to circumstances created by the landowners. The land was split in 2015 after being granted a variance, creating two legal non-conforming lots. However, each variance application request is based on its own merit, property uniqueness, and reasons described by the applicant. As confirmed in his narrative, the applicant seeks to use the land in a reasonable manner for which it has been used for many years. The proposed residential lot originally was created as a lot of record (prior to July 1, 1974) and has been modified over time to continue to allow the current land use which did not meet lot requirements. The approval of the variance would create one conforming lot; therefore, reducing the number of non-conformities in the area.

7. The applicant is proposing to use the property in a reasonable manner and in harmony with the general purpose and intent of the official control. The official control in this matter is to ensure adequate access is provided to accommodate future development. Although one proposed lot does not meet the road frontage standard and has an excessive width-to-depth ratio, reconfiguring the properties appears to be a reasonable request and meets the parcel configuration standards for the residential parcel, as well as the intent of the regulations.

8. The granting of the variance does not appear to be in conflict with the intent of the Comprehensive Plan. The neighborhood is comprised of agricultural uses, residences, and wetland areas. The request would not cause a substantial change in the character of the neighborhood, nor would it have a negative impact on government services.

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 Waconia Town Board reviewed the request at their July 22, 2024, Town Board meeting, and recommended denial. The Town Board stated the request *"Does not meet road frontage requirements and the 5-acre lot will make non-compliant road frontage even worse."*

**BOARD CONSIDERATION:**
If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for reduced road frontage, excessive width/depth ratio, and reconfiguring lots to create a continued nonconforming lot would serve in the interest of justice, the following condition should be attached to the approved variance:

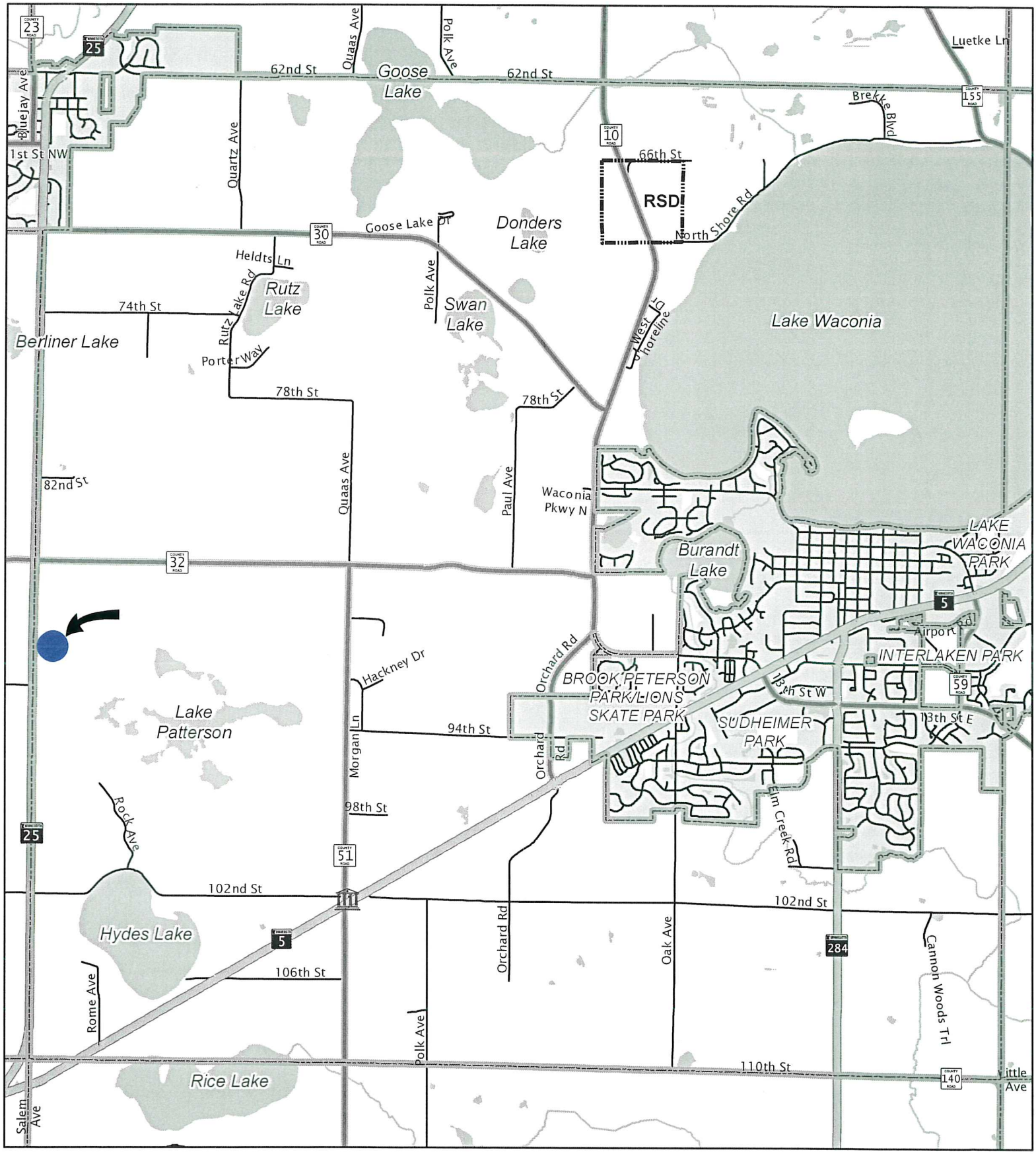
1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code application requirements including by not limited to, a completed Minor Subdivision Application, Survey, SSTS Compliance, and easements, if applicable.

**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.

# WACONIA TOWNSHIP

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0 1 2 Miles

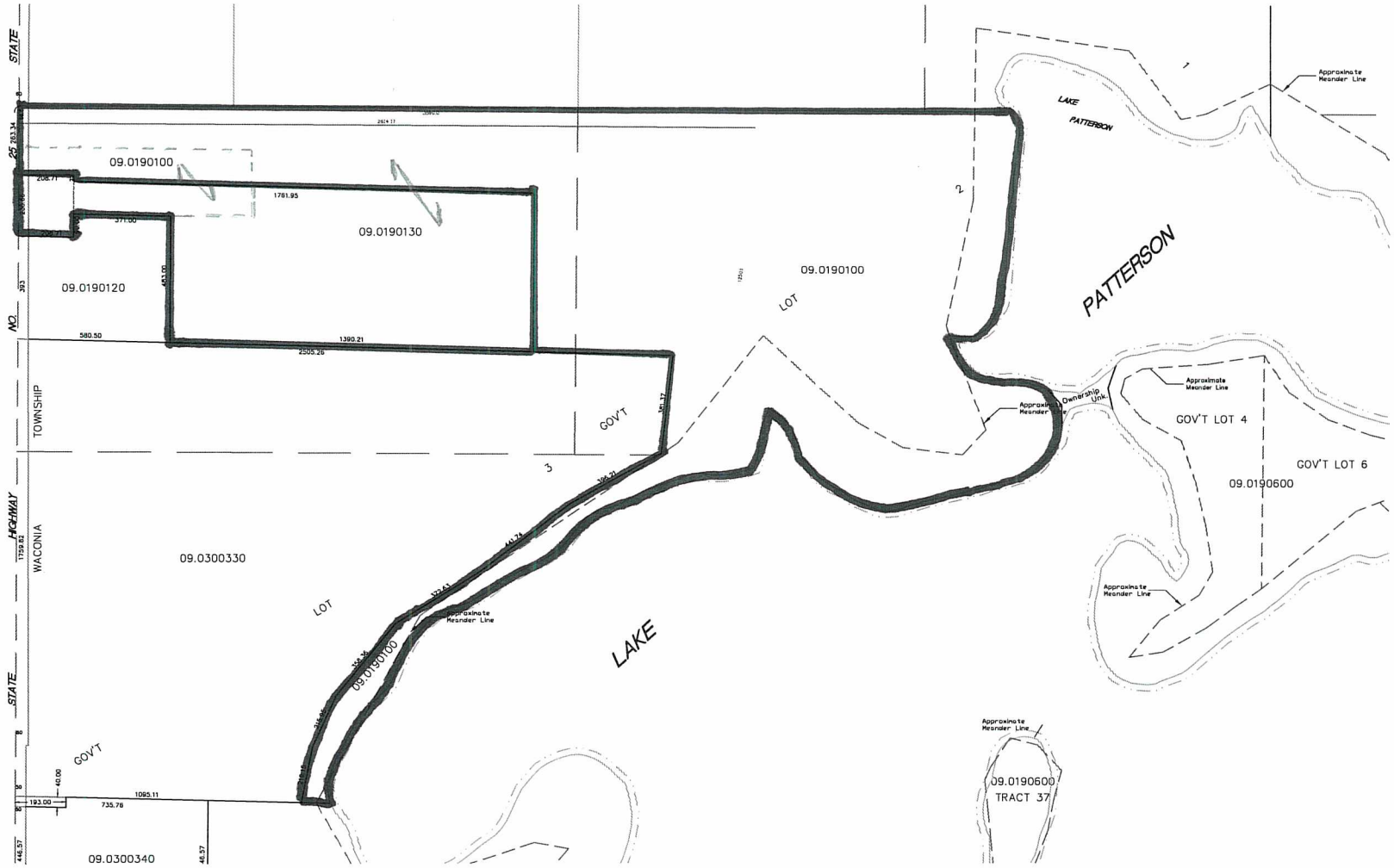
N W E S

3-5

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.

# S 1/2 SEC. 19, T.116, R.25





Surveying & Mapping Office
Carver County Gov. Center
600 East Fourth Street
Chaska MN 55318


Mar 27, 2023

Wayne Wachholz, Katherine & Jill Wachholz

100 E Lake Street

Waconia, MN 55387

612-802-2903

July 12, 2024

Board of Adjustment

Subject: Application for a Variance

Carver County Government Center

600 E 4th Street

Chaska, MN 55318

Dear Carver County Board of Adjustment,

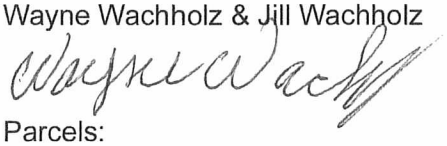
The Wachholz family owns 2 parcels located on Highway 25 in Waconia Township.

We would like to request an adjustment to the property lines on the 2 parcels to join the home building site with the machine shed located on the adjacent parcel. The modification would join approximately 2 acres of parcel 090190100 with approximately 3 acres of parcel 090190130 to create a common building site on approximately 5 acres.

We would like to request that the remainder of parcel 090190130 which consists of agricultural land and an existing solar array to be joined with parcel 090190100.

Sincerely,

Wayne Wachholz & Jill Wachholz



Parcels:

090190100: W B Wachholz Trust 2095 Highway 25 Cologne MN GOVT LOTS 2 & 3 & N1/2 SW1/4 EXC: 1-BEG AT SW CORN SECT 19 TH N1*W ON W LINE OF SW1/4

090190130: Katherine & Jill Wachholz 9065 HIGHWAY 25 Cologne MN P/O NW1/4 SW1/4 DESC AS: COMM AT THE NW CORNER OF SW1/4; TH S ALONG W LINE 263.34' TO PT

# WACHHOLZ VARIANCE REQUEST - LOT RE-CONFIGURATION (PARCEL)

Date: 7/12/2024

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CARVER COUNTY

0 200 400 800 1,200 1,600 ft

3-8

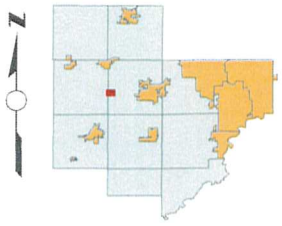
# WACHHOLZ VARIANCE REQUEST - LOT RE-CONFIGURATION

Date: 7/12/2024

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.

CARVER COUNTY

0 100 200 400 600 800 ft



CARVER COUNTY

# Township Presentation & Recommendation Form

**PARCEL #** 09-019-0100/09-019-0130 **Permit #** PZ 2024 0031

**Owner's Name:** WAYNE W ACHHOLZ

**Owner's Mailing Address:** 100 E LAKE ST

**City:** WACONIA

**Owner State:** MN

**Owner Zip:** 55387

**Applicant (if other than owner):** JILL WACHHOLZ

**Site Address:** 9865 Hwy 25 Cologne MN

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

**Description of Request:**

Reconfigure 2 existing parcels which one will not meet the Rd Frontage, Width/Depth Ratio

**Date of County Public Hearing:** Aug 7, 2024 BOA **Date of Township Meeting:** 7-22-24

**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:

does not meet Rd frontage requirements — 5 acre lot will make non-compliant road frontage even worse

**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.

Jill Wachholz Wayne W Wachholz — Date 7-22-24

Signature of Applicant

Dawn Schaf — Date 7-22-24

Signature of Township Official

# EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 09-019-0100** **File# PZ20140031**

**APPLICANT: Jill Wachholz**
**OWNER: W B Wachholz Family Trust,**
**Betty Wachholz Trustee**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

Government Lots 2 and 3 & the North Half of the Southwest Quarter of Section 19, Township 116, Range 25, Carver County, Minnesota, EXCEPTING the following three (3) parcels:

Exception 1: Beginning at the Southwest corner of Section 19, thence North 1 degree West on the west line of the Southwest Quarter of Section 19, 1,759.82 feet; thence East 2,505.06 feet thence South 5 degrees West 381.37 feet; thence South 59 degrees West 396.21 feet; thence South 51 degrees West 441.74 feet; thence South 56 degrees West 372.63 feet; thence South 37 degrees West 358.36 feet; thence South 23 degrees West 215.95 feet; thence South 9 degrees West 219.15 feet to the South line of the Southwest Quarter; thence West on the South line 1095.11 feet to the place of beginning.

Exception 2: Beginning at the southwest corner of Section 19, thence North 1 degree West on the West line of the Southwest Quarter of Section 19, 1759.82 feet to the point of beginning; thence East 580.5 feet; thence North 1 degree West, 483 feet; thence West 471 feet; thence South 1 degree East 90 feet; thence Westerly to a point on the West line of the Southwest Quarter which is 500 feet Southerly of the Northwest corner of the Southwest Quarter of Section 19; thence Southerly along the West line of the point of beginning.

Exception 3: Part of the Northwest Quarter of the Southwest Quarter described as: Commencing at the northwest corner of the Southwest Quarter; thence South along the West line 263.34 feet to the point of beginning; thence South 89 degrees East 208.71 feet; thence South parallel to the West line 25 feet; thence South 88 degrees East 1761.95 feet; thence South parallel to the West line to a line bearing South 88 degrees East from a point on the West line, distant 1759.82 feet Northerly of the Southwest corner of Section 19;, said point hereinafter referred to as Point A; thence North 88 degrees West 1390.21 feet to a point 580.50 feet Easterly of said Point A; thence North parallel with West line 483 feet; thence North 88 degrees West 371 feet; thence South 90 feet; thence Westerly to a point on said West line which is 500 feet Southerly of the Northwest corner of said Southwest Quarter; thence North along West line 236.66 feet to the point of beginning.

DRAFTED BY: Carver County Land Management Department

## EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 09-019-0130** **File# PZ20240031**

**APPLICANT: Jill Wachholz**
**OWNERS: Katherine E Wachholz & Jill N Wachholz**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

That part of the Northwest Quarter of the Southwest Quarter of Section 19, township 116, Range 25, Carver County, Minnesota, described as follows:
Commencing at the northwest corner of said Southwest Quarter; thence on an assumed bearing of South 00 degrees 14 minutes 59 seconds West along the west line of said Southwest quarte, a distance of 263.34 feet to the point of beginning of the tract to be described; thence South 89 degrees 45 minutes 01 seconds East 208.71 feet; thence South 00 degrees 14 minutes 50=9 seconds West, parallel with said west line 25.00 feet; thence South 88 degrees 31 minutes 41 seconds East;1761.95 feet; thence South 00 degrees 14 minutes 59 seconds West, parallel with said west line to a line bearing South 88 degrees 31 minutes 41 seconds East from a point on said west line, distant 1759.82 feet northerly of the southwest corner of said Section 19, said point hereinafter referred to as Point A; thence North 88 degrees 31 minutes 41 seconds West 1390.21 feet to a point 580.50 feet easterly of said Point A; thence North 00 degrees 14 minutes 59 seconds East, parallel with said west line 483.00 feet; thence North 88 degrees 31 minutes 41 seconds West 371.00 feet; thence South 00 degrees 14 minutes 59 seconds West, parallel with said west line 90.00 feet; thence westerly to a point on said west line which is 500.0 feet southerly on the northwest corner of said Southwest quarter; thence North 00 degrees 14 minutes 59 seconds East along said west line 236.66 feet to the point of beginning.

**DRAFTED BY: Carver County Land Management Department**

# COUNTY OF CARVER
# PUBLIC SERVICES DIVISION
***Department of Land Management***

July 26, 2024

**TO:** Carver County Board of Adjustment & Watertown Town Board

**FROM:** The Land Management Department

**SUBJECT:** Application for a Variance (Reduced Mining Setback – property line, neighboring residence)

**FILE #:** PZ20240030
**APPLICANT:** Joe White (B.H. Aggregate Services, Inc.)
**OWNERS:** Thomas and Jody Luebke
Wyatt and Lindsay Getten
**SITE ADDRESS:** 54XX Co Rd 23, Watertown Township
5475 County Road 23, Mayer, MN 55360
**VARIANCE TYPE:** Mining within required setbacks to property line and neighboring residences
**PURSUANT TO:** County Code, Chapter 152, Section 152.082 (C)(1)(iv)
**LEGAL DESCRIPTIONS:** See attached Exhibit "A"
**PARCELS #:** 10-031-1420 & 10-031-1410

## BACKGROUND:

1. Thomas and Jody Luebke own an approximate 24.6-acre parcel in the North Half (N½) of the Northwest Quarter (NW¼) of Section 31, Watertown Township. The parcel currently consists of agricultural fields, woodlands, and Crow River shoreline. The project also includes an approximate 6.51-acre parcel owned by Wyatt & Lindsay Getten that is improved with a residence and several detached accessory structures, and Crow River shoreline. The properties are located in the Agricultural Zoning District, Shoreland Overlay District of the Crow River, Floodplain Overlay District of the Crow River, and the Carver County Water Management Organization (CCWMO) - Crow River watershed.

2. Joe White of B.H. Aggregate Services seeks to create a new gravel mining operation encompassing an approximate 8.86-acre area for the extraction of sand and gravel resources which would then be processed for use as base material for private and public construction projects in the area, including the reconstruction and expansion of Hwy 212 (Cologne to Norwood Young America). The Interim Use Permit (IUP) application (#PZ20240026) was recently recommended for approval by the Planning Commission with the mining boundaries shown in the variance application. The IUP application will be submitted for final approval by the Carver County Board after Board of Adjustment review and decision on this application, with mining boundaries consistent with the Board of Adjustment's decision.

3. The project is expected to operate late summer and fall of 2024. In order to maximize the area of excavation on the Luebke parcel, which is located on both sides of the Gettens' driveway, the applicant requests permission to mine within the 50-foot required mining setbacks on the Luebke parcel. In addition, the applicant seeks to mine within the 500-foot setback from two residence not on the mine property; therefore, a variance has been requested pursuant to Section 152.082 (C)(1)(iv) of the Carver County Zoning Code.

## LEGAL BACKGROUND:

**§ 152.082 INTERIM USE PERMIT-AG DISTRICT.**
*(C) Activities (For the purpose of this section, conditional use permit activities may also be considered and processed as interim uses).*

(1) Mining and/or land reclamation involving 10,000 cubic yards or more (allowed in AG Preserve if the principal use remains ag and restoration is suitable for farming).

2. Minimum requirements for the operation.

(iv) **Mining shall not take place within 50 feet of a property line.** All slopes at property lines shall maintain a 2.5:1 slope or flatter. The setback from the assumed road right-of-way shall be a minimum of 50 feet. **The setback from all homes shall be a minimum of 500 feet, excluding the residence of the mine owner and/or permittee.** The setback from a bluff shall be a minimum of 100 feet.

## 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 applicant's engineer, Carlson McCain, Inc., has submitted a site plan (dated July 8, 2024) that illustrates the variance request. In the southern part of the proposed excavation area, the boundary of mining activities is shown to be approximately 175 feet at its closest point to an existing house (5655 Co Rd 23 - Klemp). In the northern part of the proposed excavation area, the boundary of mining activities is shown to be approximately 344 feet at its closest point to a house located north across Hwy 7 (5385 Co Rd 123 – the Luebke homeplace). Lastly, in the northwestern part of the proposed excavation area, the boundary of mining activities is shown to be approximately 425 feet at its closest point to a house located across Hwy 7 (5350 Co Rd 123 – Boettcher). The mining activities comply with the 50-foot setback from the property boundary in this southern area. However, in the northern part of the mine, Mr. White proposes to excavate gravel within 50 feet of the subject (Luebke) property on both sides of the Getten (5475 Co Rd 23) driveway. Since the Gettens signed the variance application and the mine's operational area includes the driveway because mining equipment will be traversing it as part of the mining activities, the 500-foot mining setback to a neighboring house is not in effect. The Gettens will maintain use of the driveway for the duration of the mine's lifetime.

2. The submitted narrative (dated July 11, 2024) describes the variance requests related to mining closer than 500 feet to an adjacent property residence and within 50 feet of a property line. Mr. White states the reason for encroaching upon the setbacks is "to utilize all available resources and not waste resources." The narrative also includes a reference to the support for mining activities in the 2040 Comprehensive Plan and the practical difficulty consists of the aggregate deposits pre-existing the establishment of property lines, construction of homes, and adoption of the zoning code setbacks.

3. The Planning Commission addressed the operational aspects of the proposed gravel pit in their review of the IUP application. The mining plan and narrative submitted as part of the IUP application describe the mining operation. It consists of an approximate 8.86-acre excavation area in which approximately 158,500 cubic yards of material would be removed. No mining activities will occur in the floodplain. The haul route for the trucks to the Hwy 212 construction site will only include state and county roads – not gravel roads. The reclamation plan will allow the mining area to be returned to agricultural use. As is customary, several proposed staff recommendations for conditions of the submitted mining IUP for this property involve road access (road authority is Carver County Public Works), Carver County Water Management Organization permitting, Carver County Soil & Water Conservation District review, and MNDOT intersection safety requirements and recommendations.

4. The plight of the landowner is due to circumstances only partially created by the landowner. The applicant seeks to extract aggregate resources on a property where the proximity of a home and property lines were created long after the gravel deposit was located there. The practical difficulty exists in the pre-existing condition of gravel deposits that are located within areas that later become setbacks defined by the zoning code.

5. The variance application, with an accompanying Interim Use Permit (if approved), advances a Carver County Comprehensive Plan land use goal LU-12 to "Maintain the ability to access aggregate resources while meeting other land use and natural resource goals."

6. The granting of the variance would not conflict with the intent of the Comprehensive Plan's Fundamental Land Use Goal to "Maintain the County's unique and rural agricultural character." The proposed mining would not alter the character of the neighborhood, nor would government services be negatively impacted by the additional mined area.

7. 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 it would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties. Inconveniences of noise and dust are common impacts of mining activities, but they are of a limited duration with the proposed gravel pit.

8. The Watertown Township Town Board reviewed and recommended approval for this request during their July 1, 2024, Town Board meeting referencing *"details per Interim Use application"*.

**BOARD CONSIDERATION:**
If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for the reduced property line setback and reduced distance to a residence on a neighboring property for mining pursuant to Section 152.082 (C)(1)(iv) 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 applicant must obtain an Interim Use Permit (IUP) issued by the Carver County Board of Commissioners to conduct mining activities within the mining setback areas that are the subject of the variance request. All work shall be done in accordance with the approved permit. If the applicant fails to obtain an IUP, then the approved variance shall be null and void. The absence of a variance requires the IUP permittee to comply with all required mining setbacks and the permit's operations plan must be adjusted accordingly.

2. No mining activities shall occur closer than 175± feet from the existing house to the southwest of the proposed mine, 344± feet from the existing house to the north (across Hwy 7), 425± feet from the existing house to the northwest (across Hwy 7), and no closer than to the Whetten property line in the area of the residential driveway as shown in the approved IUP mining plan.

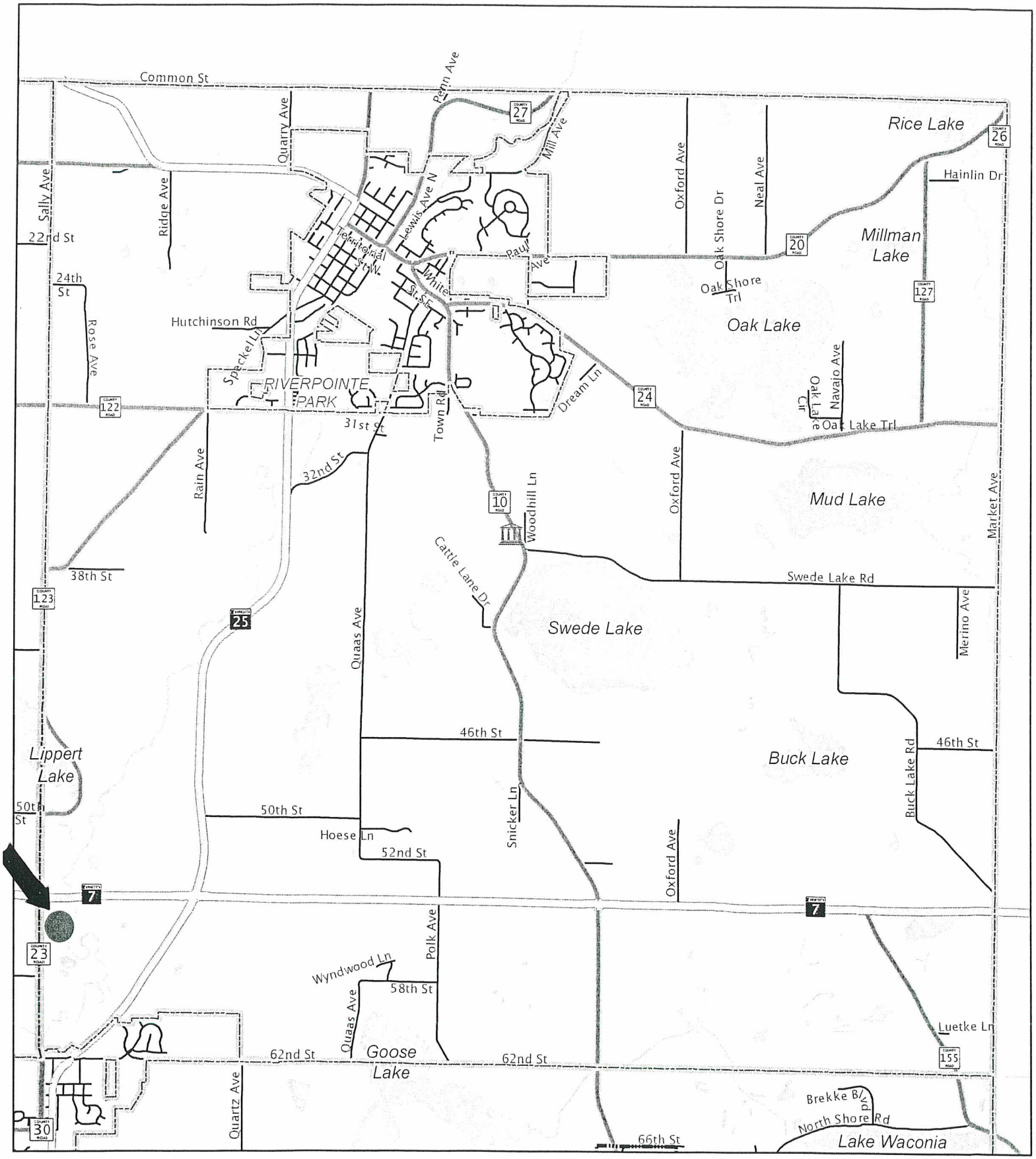
3. Mining activities within the mining setback areas shall only be conducted in excavation areas identified in the site plan dated July 8, 2024, or any revised site plan approved as part of the IUP request.

**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.

# WATERTOWN 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.

0 1 2 Miles

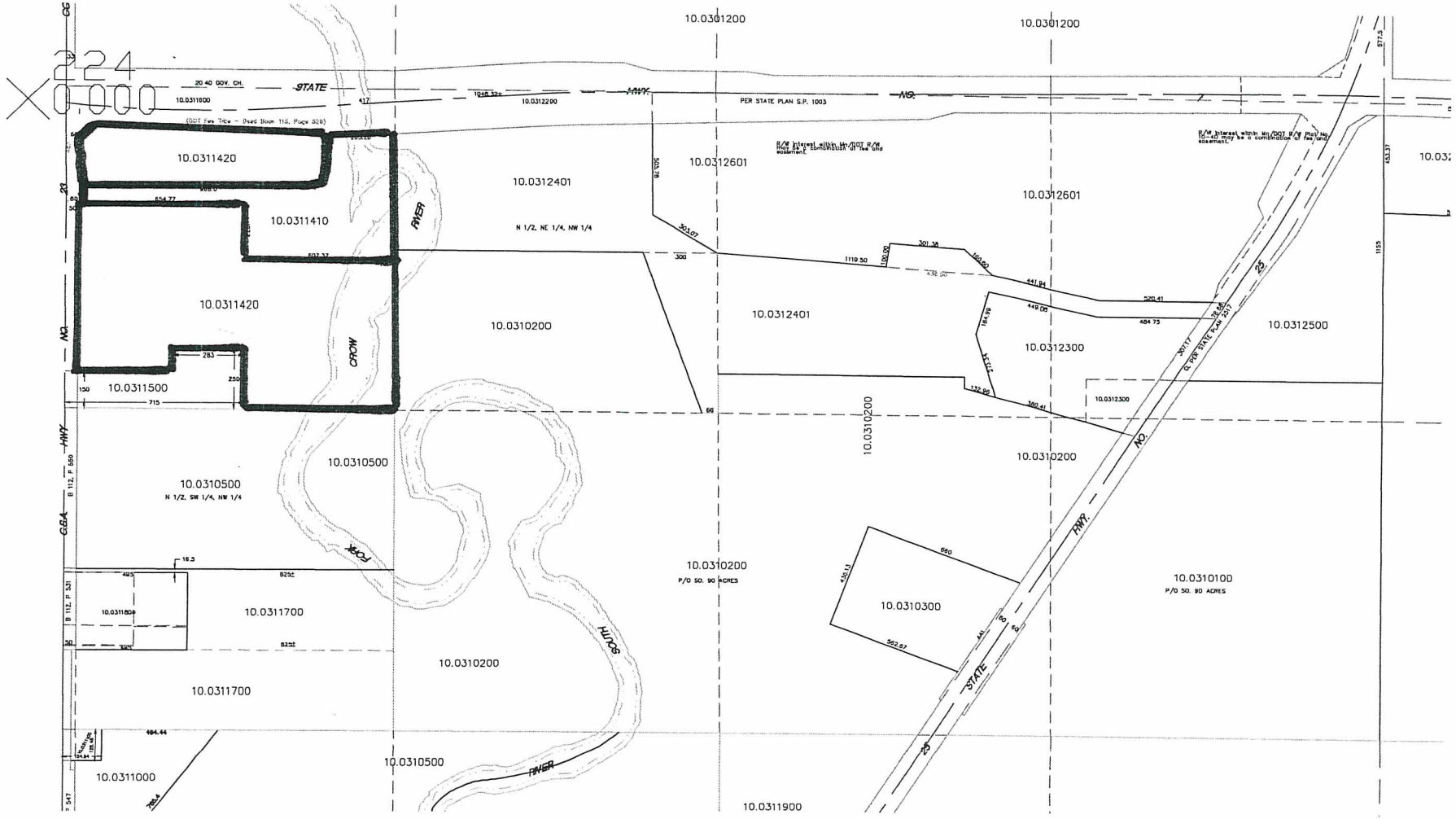
N W E S



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.

# N 1/2 SEC. 31, T.117, R.25



# B.H. Aggregate Services Inc.

10492 135th Street Kimball Mn, 55353 Phone 320-557-6015 Email Whitefarmjoe@gmail.com

July 11, 2024

To: Carver County Board of Adjustment

Re: IUP request for Tom Luebke Property (Variance Requests)

BH Aggregate is proposing to mine sand and gravel on property owned by Tom and Jody Luebke, For the Highway 212 project. In order to utilize all available resources and not waste resources with would like to mine within the required 500 foot set back from a residence, and to mine within a 50' set back from adjoining property owners. There is 2 adjoining property owner who is within this setback and will require a variance.

The affected Property Owner: Jason Klemp

Jason Klemp to the south of Mining area, Jason's property has also been mined over the years to utilize the resources. Tom and Jody Luebke are to the north.

The Carver County 2040 Comprehensive Plan recognizes gravel mines as one of the few non-residential non-agricultural land uses of a commercial nature that is appropriate in the County. The plan classifies it as Large scale activity with unique land or location needs similar to a marina or ski slope.

The Practical difficulty related to this variance request is that the aggregate materials were deposited by natural forces prior to establishment of property lines and constructed homes. Mining within the setbacks referenced in this variance request will allow us to quickly excavate all materials available and be consistent with owners wishes to not have an open gravel pit for an extended amount of time.

We believe this request is in the best interest of all parties for the utilization of these natural resources.

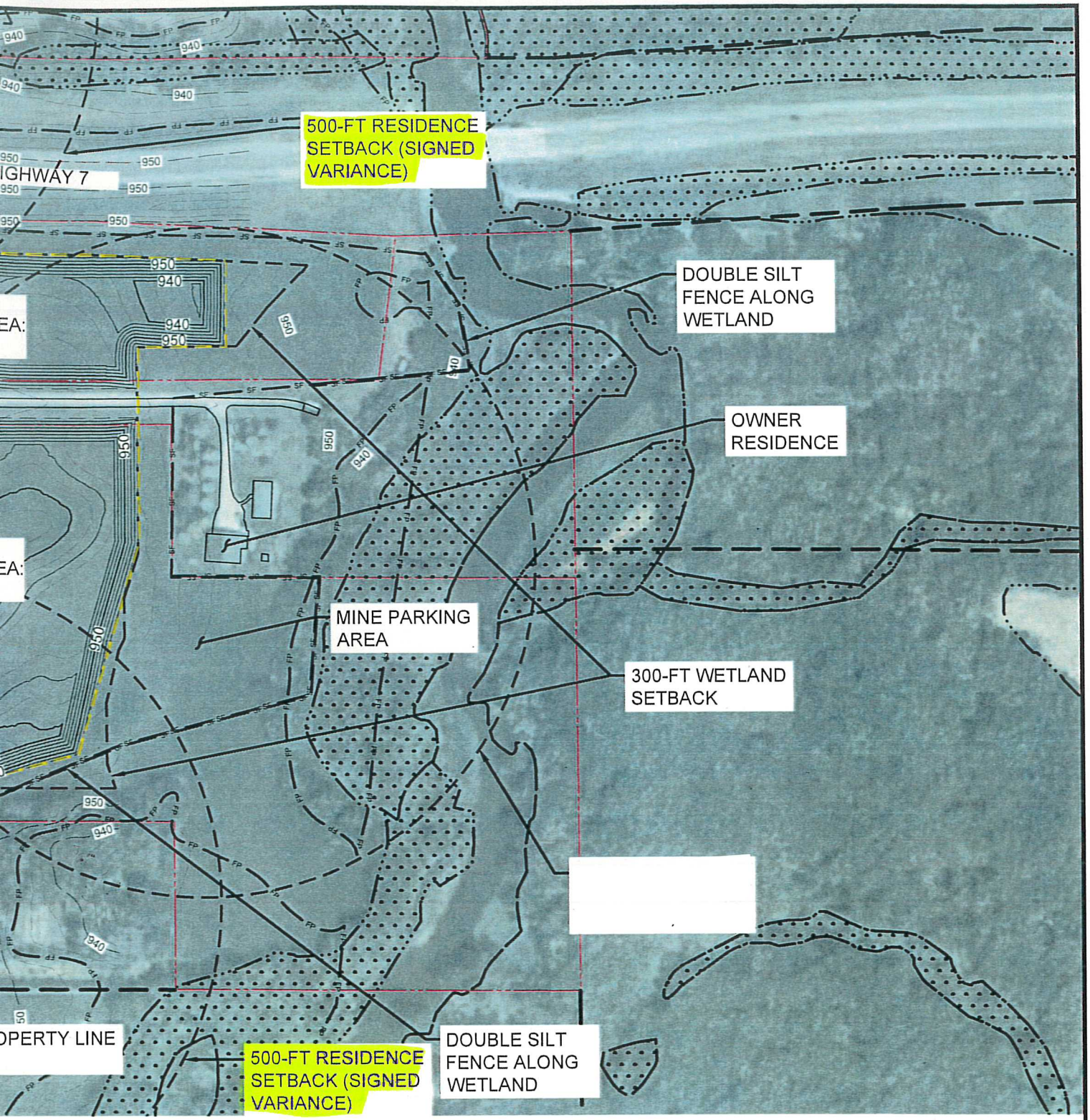
Please consider our request for this variance.

Thanks,

Joe White

BH Aggregate

320-557-6015




ND

- MINING BOUNDARY
- SETBACK
- WETLANDS
- SILT FENCE
- PHASE BOUNDARY

BACKGROUND AERIAL SOURCE: GOOGLE EARTH

N

0 50 100 200
SCALE IN FEET

# Variance Site Plan

**B.H. AGGREGATE SERVICES, INC.**
10492 135th Street
Kimball, MN 55353

CARVER COUNTY

# Township Presentation & Recommendation Form

PARCEL # 00311420 Permit # PZ2024 00030

Owner's Name: Tom + Jody Luebke

Owner's Mailing Address: 5475 cty Rd 33

City: Mayer

Owner State: MN

Owner Zip: 55360

Applicant (if other than owner): B.H. Aggregate Services INC

Site Address: 5475 cty Rd 33 Mayer

Type of Request: ○ CUP ○ IUP ○ Preliminary Plat ○ Final Plat ◉ Variance ○ Appeal

Description of Request:

Requesting a variance to mine within the 500' setback Required in ordinance.

Date of County Public Hearing: 8/7/24 Date of Township Meeting: 7-1-24

## 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:

Details per Conditional Use app

**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 Date 6-30-24

Signature of Township Official Date 6-30-24

# EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 10-031-1420** **File# A20240030**

**APPLICANT: Joe White, representing B H Aggregate Services, Inc.**
**OWNER: Thomas W Luebke & Jody L Luebke**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

The Northwest Quarter of the Northwest Quarter of Section 31, Township 117, Range 25, Carver County, Minnesota, EXCEPTING therefrom the following described tract of land; Commencing at the northwest corner of said Section 31; thence on an assumed bearing of South 00 degrees 13 minutes 08 seconds East along the West line of said Northwest Quarter, 410.00 feet; thence South 89 degrees 59 minutes 20 seconds East, 60.00 feet to a point on the easterly right of way of State Highway 7, said point being the point of beginning of said exception to be described; thence continuing South 89 degrees 59 minutes 20 seconds East, 968.00 feet; thence North 07 degrees 04 minutes 55 seconds East, 215.25 feet to the southerly right of way line of State Highway Number 7; thence North 88 degrees 40 minutes 17 seconds East along said southerly right of way line, 265.26 feet to the East line of said Northwest Quarter of the Northwest Quarter; thence South 00 degrees 23 minutes 35 seconds East along said East line, 516.41 feet; thence North 89 degrees 45 minutes 30 seconds West, 607.37 feet; thence North 00 degrees 13 minutes 08 seconds West, 228.14 feet; thence North 89 degrees 59 minutes 20 seconds West, 654.77 feet to said easterly right of way line of State Highway No. 7; thence North 00 degrees 13 minutes 08 seconds West along said easterly right of way line, 66.00 feet to the point of beginning.

ALSO EXCEPTING therefrom the following described tract of land: The southerly 150 feet of the westerly 715 feet of the Northwest Quarter of the Northwest Quarter, Section 31, Township 117, Range 25, together with the northerly 100 feet of the southerly 250 feet of the Easterly 283 feet of the westerly 715 feet of said Northwest Quarter of the Northwest Quarter of Section 31, Township 117, Range 25.

ALSO EXCEPTING therefrom the right of way in the existing State Highway Number 7.

This tract contains 24.60 acres of land and is subject to any and all easements of record.

**DRAFTED BY: Carver County Land Management Department**

## EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 10-031-1410** **File# PZ20240030**

**APPLICANT: Joe White, representing B H Aggregate Services, Inc.**
**OWNER: Wyatt Getten & Lindsay Getten**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

Commencing at the northwest corner of said Section 31; thence on an assumed bearing of South 00 degrees 13 minutes 08 seconds East along the West line of said Northwest Quarter, 410.00 feet; thence South 89 degrees 59 minutes 20 seconds East, 60.00 feet to a point on the easterly right of way of State Highway 7, said point being the point of beginning of said exception to be described; thence continuing South 89 degrees 59 minutes 20 seconds East, 968.00 feet; thence North 07 degrees 04 minutes 55 seconds East, 215.25 feet to the southerly right of way line of State Highway Number 7; thence North 88 degrees 40 minutes 17 seconds East along said southerly right of way line, 265.26 feet to the East line of said Northwest Quarter of the Northwest Quarter; thence South 00 degrees 23 minutes 35 seconds East along said East line, 516.41 feet; thence North 89 degrees 45 minutes 30 seconds West, 607.37 feet; thence North 00 degrees 13 minutes 08 seconds West, 228.14 feet; thence North 89 degrees 59 minutes 20 seconds West, 654.77 feet to said easterly right of way line of State Highway No. 7; thence North 00 degrees 13 minutes 08 seconds West along said easterly right of way line, 66.00 feet to the point of beginning.

DRAFTED BY: Carver County Land Management Department

# COUNTY OF CARVER
# PUBLIC SERVICES DIVISION
***Department of Land Management***

July 26, 2024

**TO:** Carver County Board of Adjustment & Watertown Town Board

**FROM:** The Land Management Department

**SUBJECT:** Application for a Variance to Homestead Status for a Public Equestrian Facility

**FILE #:** PZ20240029
**APPLICANT:** William and Teena Dietz and Alexie Dietz
**OWNER:** William, Teena & Alexie Dietz dba Serenity Acres Holdco, LLC
**SITE ADDRESS:** 11185 County Road 24, Watertown MN 55388
**VARIANCE TYPE:** Homestead status exemption
**PURSUANT TO:** County Code, Chapter 152, Section 152.079 (A)(5)
**LEGAL DESCRIPTION:** See attached Exhibit "A"
**PARCEL #:** 10-014-0900

## BACKGROUND:

1. William, Teena & Alexie Dietz of Serenity Acres Holdco, LLC own 16.6 acres located in the Northwest Quarter (NW¼) of the Northwest Quarter (NW¼) of Section 14 of Watertown Township. The property is improved with an existing home, an accessory structure (former farmstead), a barn with an attached indoor riding arena, four (4) small horse run-ins, and grazing pasture. The site is located within the Agriculture Zoning District, Shoreland Overlay District (Oak Lake), and the Carver County Water Management Organization (CCWMO) – Crow River watershed.

2. An existing Conditional Use Permit (CUP #PZ20140031) was issued to the property to allow an equestrian facility with boarding and training up to eighteen (18) horses. When the current owners bought the property in March 2023, they chose to establish the property ownership in a Legal Limited Corporation (LLC).

3. The applicants are requesting a variance for a public equestrian facility in which a principle of the business would reside on the property, but due to a technical policy decision by the Assessor's Office LLC-owned properties cannot be homesteaded. Thus, the property does not qualify for homestead status, a requirement of the existing CUP and a home/farm-based business. This after-the-fact variance request is pursuant to Section 152.079 (A)(5) of the Carver County Code, which reads as follows:

## LEGAL BACKGROUND:

**§ 152.079 CONDITIONAL USES–ACTIVITIES CENTERED AROUND A HOME OR A HOME/FARM COMBINATION.**

(A) Minimum criteria for issuance of permit:
- (1) Minimum five-acre lot size; unless another size is specified under a particular provision;
- (2) Sewage can be managed in accordance with Chapter 52 of this code of ordinances;
- (3) Land is not subject to the land use restrictions of an AG preserve covenant;

(4) The activity shall be located on a hard surfaced (blacktop or concrete) road unless written approval for location on a township road is given by the affected township or townships. The town board may condition its approval of access to a gravel road on agreements with the applicant regarding dust control, maintenance, or similar issues. The terms of the agreement shall be such that the agreement is in force so long as the permit is in effect;

(5) **There is a single-family home on the parcel occupied as a homestead by a principal of the activity; or a single-family home will be constructed or homesteaded before the CUP for the activity is issued.**

## 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.

(A) Prior to submission of a variance application, the person applying for a variance shall submit a concept plan and meet with the Department to discuss the application. Through the pre-application, the Department may summarize the informational requirements and issues related to the specific variance request.

(B) *Application.* The person applying for a variance shall submit to the Department a completed variance application stating the practical difficulty present, and provide all other information required by the Department. The Department shall prepare a report and refer the application to the County Board of Adjustment for consideration.

(C) *Public hearing.* The Board of Adjustment shall hold a public hearing on the request pursuant to § 152.285.

(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.

## STAFF ANALYSIS:

1. County Code requires that a principle of the business resides on and homesteads the property on which a home/farm-based business, such as a public equestrian facility, is located. Further, an approval condition of the CUP for the property states: "The Permittee shall maintain homestead status on the property." With any CUP, to determine if this condition is met the common practice of the Land Management Department is to refer to the property records administered by the Assessor's Office. If the Assessor has classified the property as homesteaded, that provides Land Management staff with the needed proof the CUP permittee meets the homesteading requirement. Currently, the Assessor's Office classifies the applicants' property as not homesteaded.

2. The applicants' submitted narrative (dated July 1, 2024) states: *"An owner of the property does live on the property, but the Assessor's Office rules don't recognize the residency."* The narrative explains the rationale for LLC ownership structure and defines the Assessor's Office strict standards for homesteading as a practical difficulty:

   *"Per the advice of legal counsel at the time of entity formation, an LLC structure offers the strongest liability protection related to potential adverse events associated with this business model. In order to preserve this lability protection of the LLC entity, we view the inability to meet the Assessor's Office definition of homesteading as a practical difficulty. We would maintain an owner living at the property and still meet all the other conditions of the existing conditional use permit. We believe that we meet the intent of the zoning code's homestead requirement but don't have the official homestead status as defined by the Assessor's Office."*

3. The Assessor's Office maintains strict rules on classifying a property as homesteaded. In an email dated July 17, 2024, Vanessa Thompson, Assistant County Assessor, writes: *"According to Department of Revenue guidelines we are not able to grant Residential Homestead to an LLC."* The Department's guidance states:

   *"Residential property owned by a business entity such as an LLC or a corporation is not eligible for a homestead. Only agricultural, resort, and hotel/motel properties which are owned by business entities are eligible for homestead treatment due to specific provisions granted in law. (See Minnesota Statutes, sections 273.124, subdivisions 8, 14, 17, and 273.13, subdivision 22, paragraph (c))."*

4. The submitted describes the applicants' desire for liability protection. Limiting legal exposure is a reasonable action for an owner and operator of a public equestrian facility since horse riding is an activity with known risks for human injury. For instance, it is common for riders to wear helmets for safety. Research of other commercial horse boarding facilities reveals that many owners place the ownership of the properties in trusts. Though the Dietzs did not choose to place their property into a trust, they otherwise meet the criteria the Assessor's Office uses to determine if a trust-owner property can be classified as homesteaded. Trust-owned Homestead classification requirements are:

   - Own (Be listed as the owner of the property)
   - Occupy (Live and reside at the property, and utilize as your primary domicile)
   - MN Resident
   - Trust document provided showing they are the Grantor.
   - Proof of residency (Driver's License)

5. William and Teena's daughter Alexie lives on the property. The applicants have submitted the LLC organizing document that identifies Alexie as an owner of the operation. A condition of variance approval would be that Alexie provide proof of residency through a driver's license and a document, such as a bank statement, to prove the stable property is her address.

6. If the Variance is approved, the applicant intends to apply to the Planning Commission for a CUP for an amendment to the current CUP to include the equine therapy practice as part of the CUP, pursuant to the Zoning Code. The submitted site plan and operations plan of the business activity would be reviewed by the Planning Commission as part of a CUP request.

7. Due to no change of use or potential construction linked to the variance request, no review comments were sought, and thus no comments received, from Carver County Public Works (road access) or the CCWMO (stormwater or sediment and erosion control permitting).

8. 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 homestead requirement for home/farm-based businesses. Although this request does not meet the specific standards, it appears to meet the intent of the regulations, which is to increase owner sense of responsibility for the property and to heighten an owner's awareness of their business activities on surrounding properties and make efforts to mitigate those impacts. An owner of the operation will live full-time on the property.

9. The plight of the landowner is due to circumstances created by the landowner, common practice of Land Management homestead status verification, and the Assessor's Office policy consistent with State Statute. However, each variance application request is based on its own merit, property uniqueness, and reasons described by the applicant. As confirmed in his narrative, the applicant seeks to use the land in a reasonable manner consistent with the existing CUP.

10. The granting of the variance would not materially or adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and should not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

11. The granting of the variance does not appear to be in conflict with the intent of the Comprehensive Plan and/or County Ordinances and would not alter the character of the neighborhood. The neighborhood is comprised of a mixture of agricultural and residential uses. The first CUP for a public horse boarding facility was issued in 2011. An approval of the variance request would not change the physical circumstances of the property.

12. The Watertown Town Board reviewed the request at their July 1, 2024, meeting and recommended approval without comment or additional conditions.

**BOARD CONSIDERATION:**

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance to allow for the operation of a public equestrian facility with an owner of the business residing on the property without the property being classified as homesteaded by the Assessor's Office pursuant to Section 152.079 (A)(5), would serve in the interest of justice, the following conditions should be considered part of the permit:

1. An owner of the public equestrian facility shall reside on the property and provide verification in the form of a driver's license, an ownership document confirming ownership status and a bank statement verifying the address of the owner as the subject property. The residency of an owner shall be maintained for the life of the CUP.

2. If the ownership of the property changes, or the ownership type changes, this variance shall become null and void.

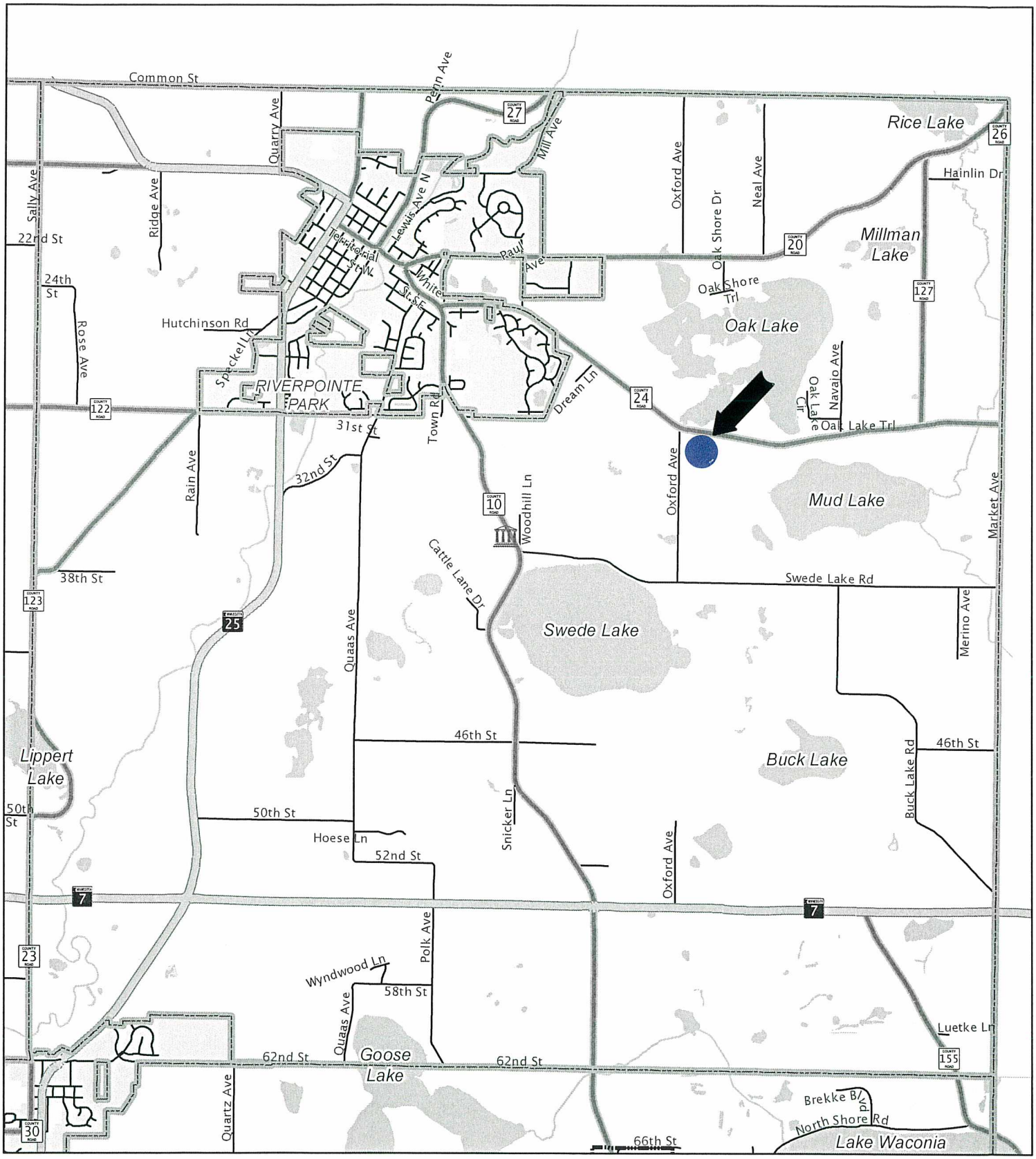
3. A Conditional Use Permit application for a new CUP shall be submitted, reviewed and approved. If the CUP application is denied by the County Board, the existing CUP #PZ20140031 shall remain valid, and all conditions of the variance and permit shall be complied with. The public equestrian facility and/or property shall meet all other requirements of the Carver County Zoning Code and MN State Building Code.

**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.

# WATERTOWN 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.

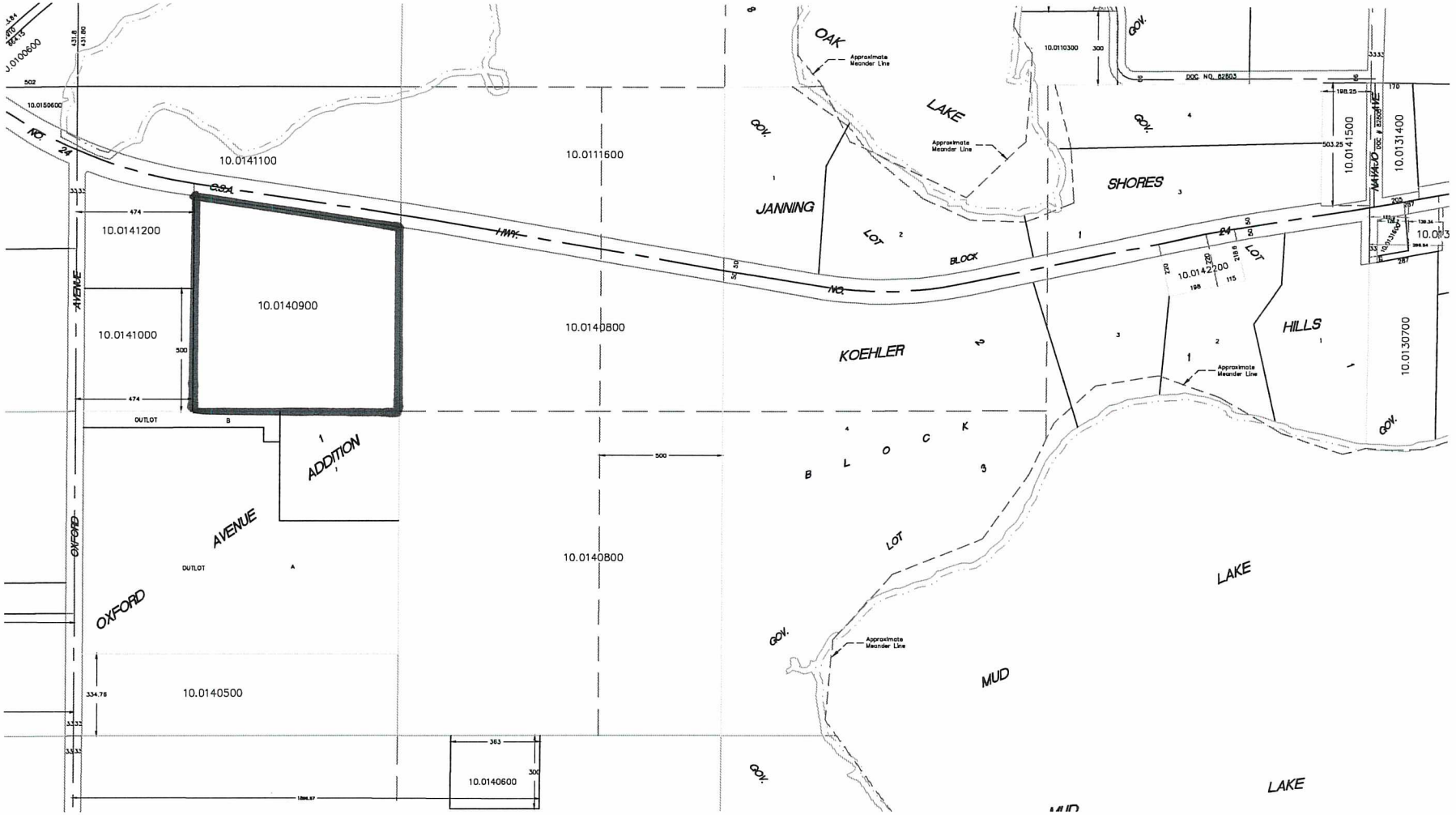
0 1 2 Miles

N W E S

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.

# N 1/2 SEC. 14, T.117, R.25




Surveying & Mapping Office
Carver County Gov. Center
600 East Fourth Street
Chaska MN 55318

May 02, 2024

July 1, 2024

To my neighbors, and representatives of Watertown Township and Carver County:

We purchased the property at 11185 County Road 24 in Watertown, MN through a newly formed LLC, Serenity Acres Holdco, LLC. In the spirit of the prior owners (Red Door Ranch), it is our intent to continue to provide public equine boarding services, with the addition of equine therapy services.

The property currently has a Conditional Use Permit (CUP #PZ20140031) that allows for the property to function as a public horse boarding facility. One of the conditions of the CUP, common to all the home-based businesses, is that an owner of the business live on the premises. An owner of the LLC does live on the property, but the Assessor's Office rules don't recognize that residency. The Assessor's Office will not grant homestead status to an LLC that owns a property.

**Per the advice of legal counsel at the time of entity formation, an LLC structure offers the strongest liability protection related to potential adverse events associated with this business model. In order to preserve this liability protection of the LLC entity, we view the inability to meet the Assessor's Office definition of homesteading as a practical difficulty. We would maintain an owner living at the property and still meet all the other conditions of the existing conditional use permit. We request a variance to waive the CUP condition (§ 152.079 (A)(5)) to homestead the property, as defined by the Assessor's Office. We believe that meet the intent of the zoning code's homestead requirement but don't have the official homestead status as defined by the Assessor's Office.**

As referenced before, Serenity Acres Holdco, LLC is the entity that owns the property. The owners of Serenity Acres Holdco, LLC are specific members of the Dietz family, namely William, Teena, and Alexie Dietz. Our goal for the use of the property is to continue to operate as an equine boarding facility in the same exact manner as the prior owners, and as approved in Conditional Use Permit #PZ20140031 with full adherence to the conditions set in the existing conditional use permit. In addition, we will use the grounds and facilities to offer an equine therapy and emotional counseling practice. The sessions occur in a very quiet, therapeutic environment, so they will not create any disruption with neighbors or horse boarders.

Attached, please find the Operational Plan to provide more details of the Serenity Acres horse boarding and equine therapy operations.

With both the public equestrian facility and the equine therapy/emotional counseling services, we are excited to offer these wonderful benefits to the Watertown community.

Thank you for taking the time to review our proposal. Feel free to contact us with any questions or further discussion.

Sincerely,

Bill Dietz Wdietz1799@gmail.com Teena Dietz teenzhappy@gmail.com

# *Serenity Acres Operational Plan*

***Description of Activity/Operation***

- Equestrian boarding facility accommodating up to 18 horses, 3 of which are ours
- Equine therapy/emotional counseling
- Reference to Public Equine Boarding Facility (County Code, Chapter 152, Section(s) 152.079 C5)
- Public boarding will utilize pastures, stables, riding arena, tack room, feed storage room, shop
- Equine therapy/emotional counseling will utilize pastures, office room in riding arena, riding arena, offices in main house, offices in farm office building

***Hours of Operation***

- Start Time: 9AM
- Finish Time: 9PM

***Employees***

- Number of Employees: 1 full-time; 4-5 part-time (the sum of hours of all part time employees would equate to approximately 0.5 FTE)
- Number of Employees Reporting To Site: 2, at different times (morning & evening chores)
- Number of resident family members working in operation: 4

***Vehicles & Storage***

- Number of vehicle trips in & out of site per day: 4-6
- Number of parking spaces available: 8
- Number of business vehicles: 1
- Types of business vehicles: pick-up, horse trailers, lawn mower, Tool Cat, tractor, Bobcat
- Outside storage needed: horse trailers, hay tents, pick-up
- Materials stored on site: hay
- Items stored in buildings: mower, tractor, Bobcat, Tool Cat, attachments, forklift

***Sanitary Facilities***

- ADA unisex restroom in riding arena
- Bathrooms in house

***Waste Management Used***

- Septic system

***Screening Proposed***

- ☐ Existing tree line

***Signs***

- ☐ Serenity Acres sign at driveway entry, in accordance with county provisions and setback rules

***Persons Other Than Owners That Would Access The Site***

- ☐ Boarders, per an online schedule to limit the number on the property at one time
- ☐ 1 morning employee for chores
- ☐ 1 evening employee for chores
- ☐ 1 equine therapy/emotional counseling client, typically 1-2 times per day
- ☐ Occasional small therapy groups

LEGAL DESCRIPTION:

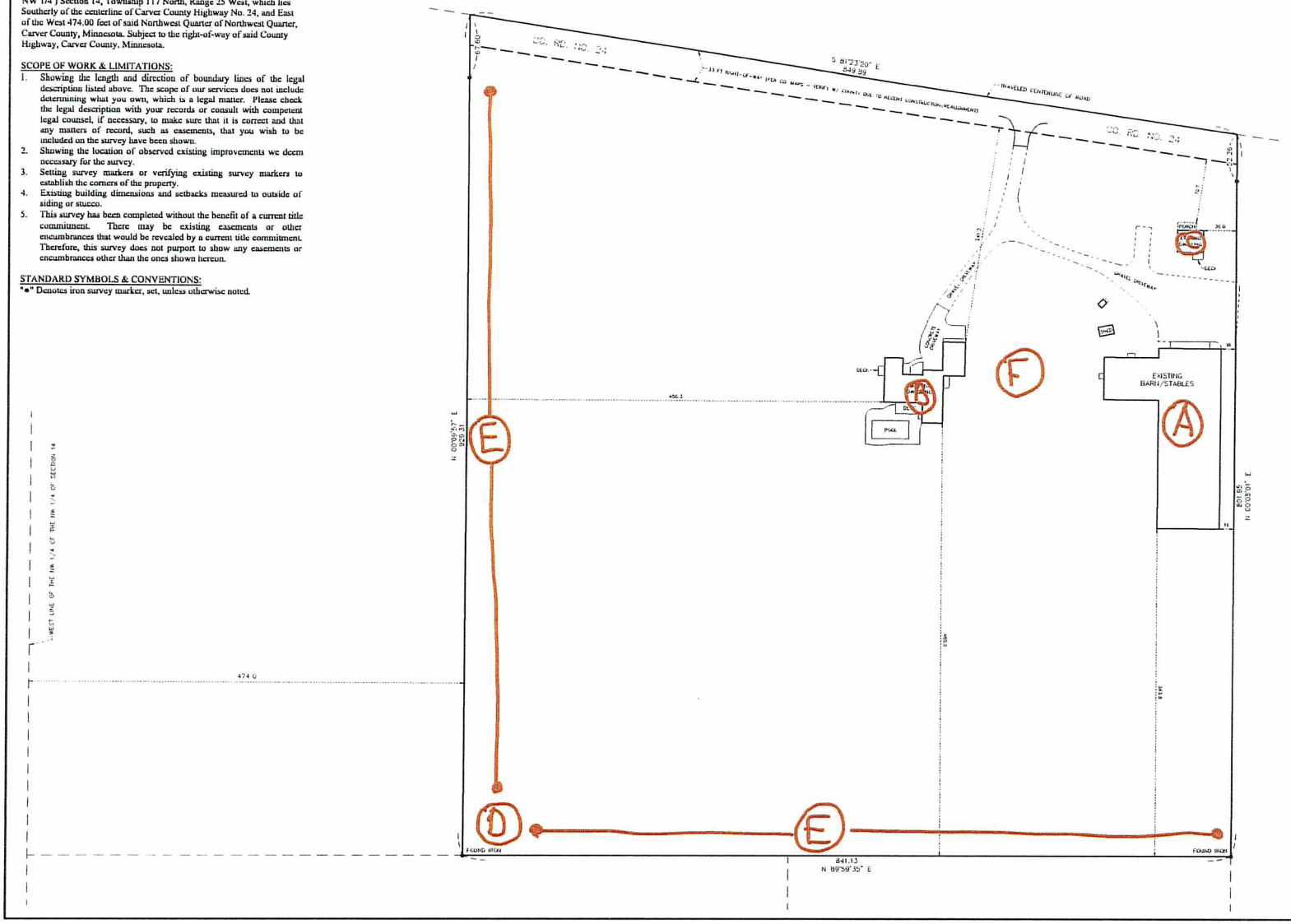
That part of the Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4 ) Section 14, Township 117 North, Range 25 West, which lies Southerly of the centerline of Carver County Highway No. 24, and East of the West 474.00 feet of said Northwest Quarter of Northwest Quarter, Carver County, Minnesota. Subject to the right-of-way of said County Highway, Carver County, Minnesota.

SCOPE OF WORK & LIMITATIONS:

1. Showing the length and direction of boundary lines of the legal description listed above. The scope of our services does not include determining what you own, which is a legal matter. Please check the legal description with your records or consult with competent legal counsel, if necessary, to make sure that it is correct and that any matters of record, such as easements, that you wish to be included on the survey have been shown.
2. Showing the location of observed existing improvements we deem necessary for the survey.
3. Setting survey markers or verifying existing survey markers to establish the corners of the property.
4. Existing building dimensions and setbacks measured to outside of siding or stucco.
5. This survey has been completed without the benefit of a current title commitment. There may be existing easements or other encumbrances that would be revealed by a current title commitment. Therefore, this survey does not purport to show any easements or encumbrances other than the ones shown hereon.

STANDARD SYMBOLS & CONVENTIONS:

"●" Denotes iron survey marker, set, unless otherwise noted.




Advance
Surveying & Engineering, Co.

17917 Highway No. 7
Minnetonka, Minnesota 55345
Phone (952) 474-7854
Web: www.advsur.com

I HEREBY CERTIFY THAT THIS PLAN, SURVEY OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA

Wayne W. Prouhs

#43503
LICENSE NO.

MARCH 19, 2024
DATE

DRAWING ORIENTATION & SCALE

CLIENT /JOB ADDRESS

*WILLIAM DIETZ*

*11185 CO. RD. 24*
*WATERTOWN, MN*

| DATE | REVISION DESCRIPTION |
|---|---|
| | |

SURVEYED DATE:
MARCH 18, 2024

DRAFTED DATE:
MARCH 19, 2024

SHEET TITLE
*EXISTING SURVEY*

SHEET SIZE: 22 X 34

DRAWING NUMBER
*240232 WP*

SHEET NUMBER
S1

SHEET 1 OF 1

# *Serenity Acres Holdco, LLC*

## *Survey Legend*

| Reference | Description |
|---|---|
| A | Indoor Riding Arena/Therapy Room: used for individual and small group therapy sessions |
| B | Farm House: Rooms used for therapy sessions, gathering rooms used for small group sessions, house used for occasional retreats |
| C | Farm Office Building: offices used for administration and therapy |
| D | Butterfly Garden: Used in nature walks with clients during spring/summer/fall season |
| E | Nature Paths: Used in nature walks with clients during spring/summer fall season |
| F | Outdoor Yard: Used for outdoor therapeutic sessions |

CARVER COUNTY

# Township Presentation & Recommendation Form

| | |
|---|---|
| **PARCEL #** 10-014-0900 | **Permit #** PZ 2024 0029 |
| Owner's Name: Serenity Acres Holdco, LLC | Owner's Mailing Address: 11185 County Road 24 |
| City: Watertown | Owner State: MN / Owner Zip: 55388 |
| Applicant (if other than owner): | Site Address: |

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

Description of Request:

Request variance related to the homesteading requirement for the CUP since the property is owned by an LLC entity for liability purposes (per the narrative)

**Date of County Public Hearing:** 8/7/24 **Date of Township Meeting:** 7/1/24

**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.

Signature of Applicant — Date 7/1/2024

Signature of Township Official — Date 7-1-24

## EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 10-014-0900** **File# PZ20240029**

**APPLICANTS: William Dietz, Teena Dietz, & Alexie Dietz**
**OWNER: Serenity Acres Holdco, LLC (a MN LLC)**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

That part of the Northwest Quarter of the Northwest Quarter (NW1/4 of NW1/4) of Section 14, Township 117 North, Range 25 West, which lies Southerly of the centerline of Carver County Highway No. 24 and East of the West 474.00 feet of said Northwest Quarter of the Northwest Quarter, Carver County, Minnesota.
Subject to the right-of-way of said County Highway, Carver County, Minnesota.

DRAFTED BY: Carver County Land Management Department

# COUNTY OF CARVER
# PUBLIC SERVICES DIVISION
***Department of Land Management***

July 26, 2024

**TO:** Carver County Board of Adjustment & Laketown Town Board

**FROM:** The Land Management Department

**SUBJECT:** Application for a Variance to Homestead Status for a Contractor's Yard

**FILE #:** PZ20240024
**APPLICANT:** Tim Erhart
**OWNER:** Tall Grass Properties LLC (Tim and Dawne Erhart)
**SITE ADDRESS:** 8850 Island View Road, Waconia, MN 55387
**VARIANCE TYPE:** Homestead status exemption
**PURSUANT TO:** County Code, Chapter 152, Section 152.079 (A)(5)
**LEGAL DESCRIPTION:** See attached Exhibit "A"
**PARCEL #:** 07-008-0200

## BACKGROUND:

1. Tall Grass Properties, LLC (Tim and Dawne Erhart) owns approximately 73.48 acres located in the West Half (W½) of the Southwest Quarter (SW¼) of Section 8 of Laketown Township. The property is improved with an existing single-family home with attached garage, a metal shed, and a large barn, along with cropland under production, and wooded acreage. The site is located within the Agriculture Zoning District and the Minnehaha Creek Watershed District (MCWD).

2. The applicant is requesting a variance in order to apply for an Interim Use Permit to operate a Contractor's Yard on a property that is not homesteaded. The owner of the landscaping business resides on the property, but the property owner does not. State Statute does not allow a renter to homestead a property. Thus, the property does not qualify for homestead status, a requirement of a home/farm-based business. The property owner desires to retain the renter with a landscaping business and does not plan to homestead the property. This after-the-fact variance request is pursuant to Section 152.079 (A)(5) of the Carver County Code, which reads as follows:

## LEGAL BACKGROUND:

**§ 152.079 CONDITIONAL USES–ACTIVITIES CENTERED AROUND A HOME OR A HOME/FARM COMBINATION.**

(A) Minimum criteria for issuance of permit:
- (1) Minimum five-acre lot size; unless another size is specified under a particular provision;
- (2) Sewage can be managed in accordance with Chapter 52 of this code of ordinances;
- (3) Land is not subject to the land use restrictions of an AG preserve covenant;
- (4) The activity shall be located on a hard surfaced (blacktop or concrete) road unless written approval for location on a township road is given by the affected township or townships. The town board may condition its approval of access to a gravel road on agreements with the applicant regarding dust control, maintenance, or similar issues. The terms of the agreement shall be such that the agreement is in force so long as the permit is in effect;
- (5) **There is a single-family home on the parcel occupied as a homestead by a principal of the activity; or a single-family home will be constructed or homesteaded before the CUP for the activity is issued.**

## BOARD OF ADJUSTMENT

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

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(C) *Public hearing.* The Board of Adjustment shall hold a public hearing on the request pursuant to § 152.285.

(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.

## STAFF ANALYSIS:

1. County Code requires that a principle of the business resides on and homesteads the property on which a home/farm-based business, such as a Contractor's Yard for a landscaping business, is located. With any CUP/IUP, to determine if this condition is met the common practice of the Land Management Department is to refer to the property records administered by the Assessor's Office. If the Assessor has classified the property as homesteaded, that provides Land Management staff with the needed evidence that the CUP/IUP permittee meets the homesteading requirement. Currently, the Assessor's Office classifies the applicants' property as not homesteaded.

2. The applicant's submitted narrative (dated June 4, 2024) explains that the property is owned by Tall Grass Properties, LLC. Tim and Dawne Erhart are the owners of Tall Grass Properties, LLC and live within the County. The subject property was purchased as *"an agricultural investment with potential future residential development opportunities."* The sole business owner of True N' Fair Tree Care is Matt Wentzlaff, who lives in the home under a lease from the Erharts. Mr. Wentzlaff has searched for alternative sites for storing work vehicles and equipment but have not been successful. The narrative describes the proposed business activity and scope of the site, which would be further examined during the Interim Use Permit application to the Planning Commission. The applicant also states:

*"Upon reading the County Code, it appears the intent of the 'homestead' requirement is to not allow a disconnected business from operating on the property. Since the renter of the house is the owner of the business, there is daily, active control of all business activities by the one person that most benefits from the IUP... It is not the property conditions, but rather the ownership of the property as is relates to the code definitions hat prevent the perms to be strictly met. Mr. Erhart is active in the management of this property and is motivated to find a solution that allows Mr. Wentzlaff the opportunity to run his small business serving the nearby community".*

3. The Carver County Assessor's Office maintains strict rules on classifying a property as homesteaded. In an email dated July 11, 2024, Chris Donley, Administrative Assistant with the Assessor's Office, wrote "per Minnesota State Statute, a renter cannot homestead the property since they are not an owner. Additionally, an LLC cannot apply for homestead status." A second email, dated July 17, 2024, Vanessa Thompson, Assistant County Assessor, writes: "According to Department of Revenue guidelines we are not able to grant Residential Homestead to an LLC." The Department's guidance states:

   *"Residential property owned by a business entity such as an LLC or a corporation is not eligible for a homestead. Only agricultural, resort, and hotel/motel properties which are owned by business entities are eligible for homestead treatment due to specific provisions granted in law. (See Minnesota Statutes, sections 273.124, subdivisions 8, 14, 17, and 273.13, subdivision 22, paragraph (c))."*

5. A site plan, dated May 14, 2024, show the existing conditions of the property, and labels each structure on site. The applicant and owner and not proposing any new structures at this time, and a potential contractor's yard at the site would meet all setback and screening requirements as listed in the Carver County Zoning Code.

6. If the Variance is approved, the applicant intends to apply to the Planning Commission for a IUP for a Contractor's Yard, pursuant to the Zoning Code. The submitted site plan and operations plan of the business activity would be reviewed by the Planning Commission as part of a IUP request.

7. Matt Wentzlaff currently resides at the subject property and is identified as an owner of the operation, True N Fair Tree Care. A condition of variance approval would be that Mr. Wentzlaff provide proof of residency through a driver's license and a document, such as a bank statement or a copy of the lease, to prove the subject property is his address.

8. The granting of the variance is not in harmony with the general purpose and intent of the official control. The official control in this request is the homestead requirement for home/farm-based business. Although this request does not meet the specific standards, it appears to meet the intent of the regulations, which is to increase owner sense of responsibility for the property and to heighten a business owner's awareness of their business activities on surrounding properties and make efforts to mitigate those impacts. An owner of the operation will live full-time on the property.

9. The plight of the landowner and the applicant is due to circumstances created by the landowner and the applicant, common practice of Land Management homestead status verification, and the Assessor's Office policy consistent with State Statute. However, each variance application request is based on its own merit, property uniqueness, and reasons described by the applicant.

10. The granting of the variance would not materially or adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and should not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

11. The granting of the variance does appear to be in conflict with the intent of the Comprehensive Plan and/or County Ordinances. The intent of the homesteading requirement is to avoid and discourage absentee ownership commercial business activities located throughout the unincorporated areas in the County. When a property is homesteaded, the owner is claiming the property as their primary domicile, where they own, occupy, file taxes, receive mail, etc.

12. The neighborhood is comprised of a mixture of agricultural, recreation, and residential uses. An approval of the variance request would not change the physical circumstances of the property.

13. On July 22, 2024, this request was reviewed by Lane Braaten, Community Development Director with the City of Waconia, who stated there are no concerns, as the business use would no be a permanent installation within the City's growth area.

14. The Laketown Town Board reviewed the request at their July 9, 2024, meeting and recommended approval unanimously. The Board stated:

    *"Board voted in unanimous support for the Interim Use Permit requested to allow True N Fair Tree Care to operate at 8850 Island View Road in Laketown Township – with business owner and his family residing on site – subject to expire when/if business owner moves. Board unanimously believes the requested IUP and Variance request should be granted as it meets the intent of "owner occupied" with the business owner residing on site as their primary address –avoiding commercial property in rural areas without business owner living on site (also noting unenforced CUPs where business owner is not living on site)."*

**BOARD CONSIDERATION:**

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance to allow for the operation of a contractor's yard with an owner of the business residing on the property without the property being classified as homesteaded pursuant to Section 152.079 (A)(5), would serve in the interest of justice, the following conditions should be considered part of the permit:

1. An owner of the landscaping business associated with the contractor's yard shall reside on the property and provide verification in the form of a driver's license, an ownership document confirming ownership status and a bank statement verifying the address of the owner as the subject property. The residency of an owner shall be maintained for the life of the IUP.

2. If the ownership of the property changes, or the ownership type changes, this variance shall become null and void.

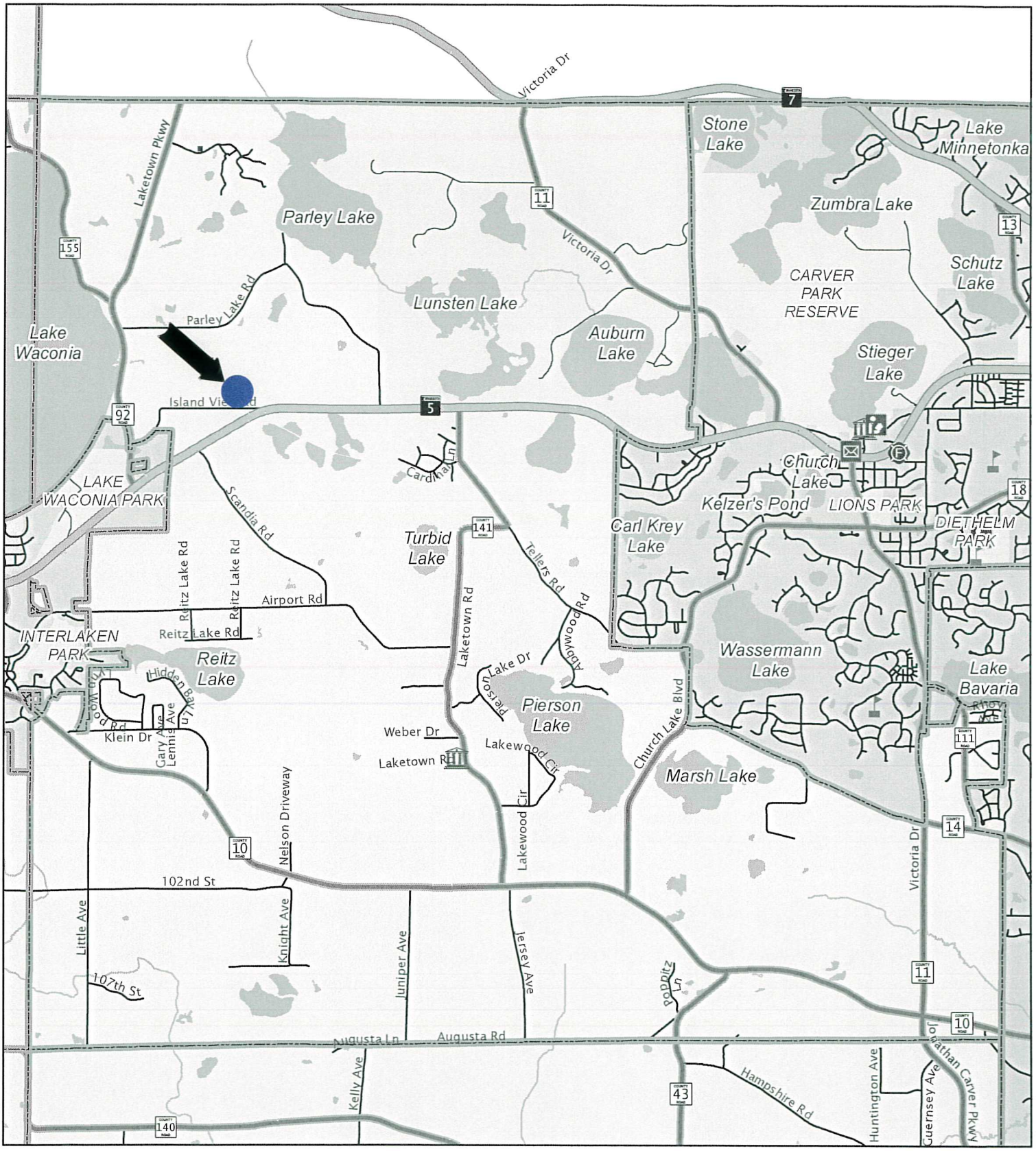
3. An application for an Interim Use Permit shall be submitted, reviewed, and approved. If the IUP application is denied by the County Board, variance shall be null and void.

**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

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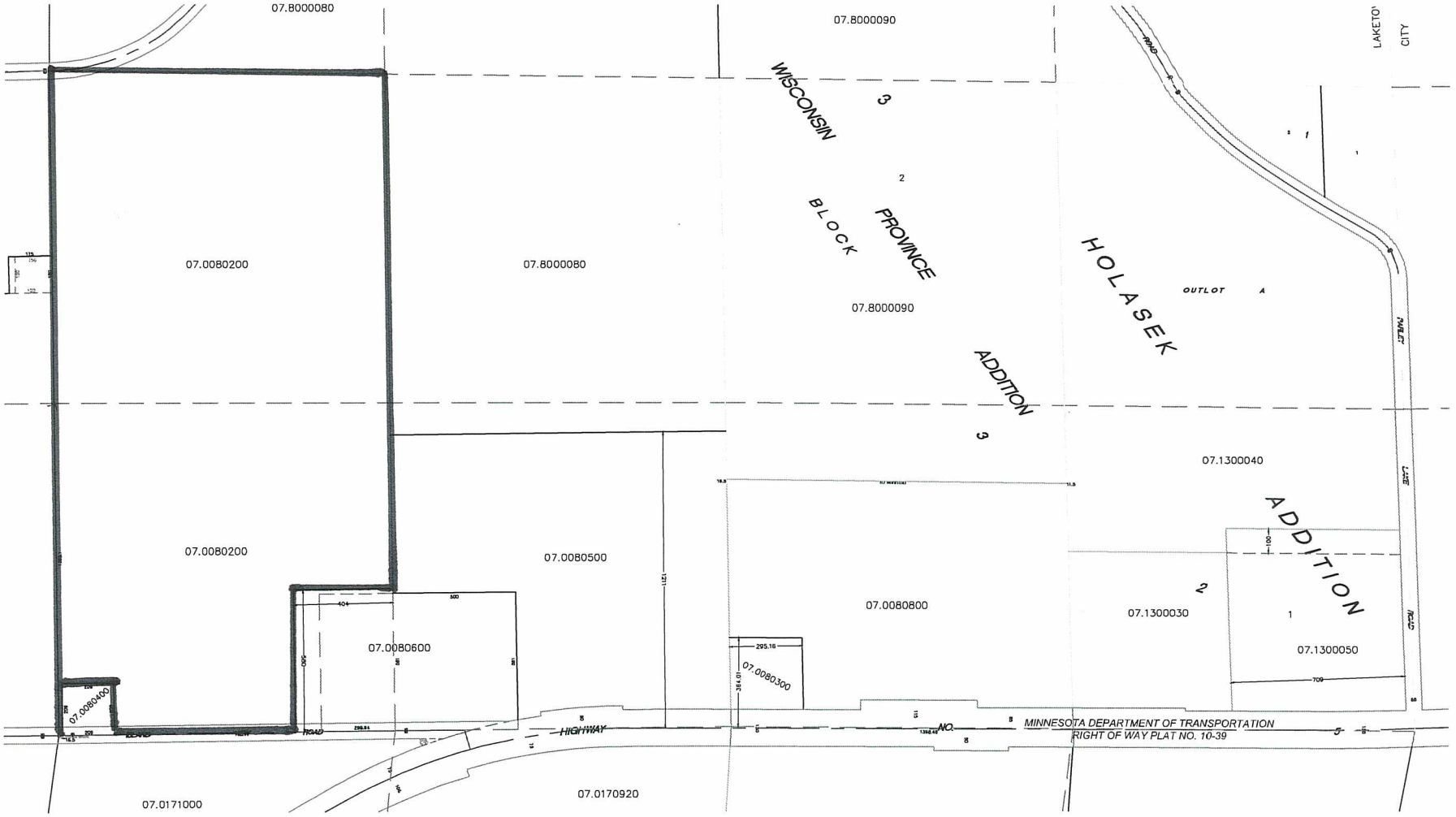
0 1 2 Miles

N W E S

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.

# S 1/2 SEC. 8, T.116, R.24




Surveying & Mapping Office
Carver County Gov. Center
600 East Fourth Street
Chaska MN 55318

May 02, 2024

8850 Island View Road, Waconia
Variance request for Interim Use Permit
June 4, 2024

The proposal is for an Interim Use Permit for a Contractors Yard per 152.079 (C) (10). See attached IUP Letter for complete details.

Practical Difficulty, Background, and Variance Justifcation:
All terms and conditions of 152.079 can be met with one exception. Section 152.079(5) states that "There is a single -family home on the parcel occupied as a homestead by a principal of the activity". The principal of the activity (business owner) occupies the house on the property full-time. The County code does not define "homestead", but a common definition of the term is "the home and adjoining land occupied by a family". County staff interprets the definition of homestead in the code as the same as the State definition regarding property tax status.

The property is owned by Tall Grass Properties, LLC. Tim and Dawne Erhart are the owners of Tall Grass Properties, LLC and are long term Carver County property owners and residents. The subject property was purchased as an agricultural investment with potentail future residential development opportunities. Rental of the house is good for the property, the owner, the renter, and the County.

The business owner (100%) is Matt Wentzlaff. Matt lives in the home on the property as his sole residence. Matt is under a lease from Erharts. The IUP would allow the operation of a "Contractor's Yard" which facilitates Matt's small business and would terminate upon Matt no longer living on the property.

Mr Erhrat and Mr Wentzlaff have searched for alternate sites for vehicle storage and have been unable to find something that meet the business needs and County requirements.

The property could be homesteaded (for tax purposes) by either registering the LLC with Department of Agriculture, or by a contract for deed sale. Both of these seem like inappropriate work-arounds to the code, so we believe a

variance is more appropriate. The tax status definition is clearly intended for owner occupied properties.

If the proposed business activity was "agriculture", there could be unregulated equipment regardless of property ownership. The property is currently farmed by Marlyn Loehrs. Mr Loehrs does not keep any equipment on the property. The proposed tree service vehicles used by Matt are not totally dissimilar to what could be on a typical agricultural property.

Upon reading the County Code, it appears that the intent of the "homestead" requirement is to not allow a disconnected business from operating on the property. Since the renter of the house is the owner of the business, there is daily, active control of all business activities by the one person that most benefits from the IUP.

The conditions that exist on the property such that the terms of the ordinance cannot be met:
It is not the property conditions, but rather the ownership of the property as it relates to the code definitions that prevent the terms to be strictly met. Mr Erhart (Owner) is active in the management of this property and is motivated to find a solution that allows Mr. Wentzlaff the opportunity to run his small business serving the nearby community.

8850 Island View Road, Waconia
Interim Use Permit Proposal "Future"
June 4, 2024

• A description of the activity/operation is being proposed and related section of the Land Use Ordinance: The property will be utilized as a Contractor's Yard as defined in 152.079 (C) (10). Specifically for True 'N' Fair Tree Care, an expert tree service serving the West Metro area. https://www.tftrees.com/
True 'N' Fair is owned and operated by Matt Wentzlaff. Matt resides in the home on the property at 8850 Island View Road.
No onsite operations except parking, daily movement of equipment and vehicles and limited equipment maintenance

• Hours of operation (i.e. start time, quitting time, winter hours and summer hours):
M-F 6:00 am – 7:00 pm
Sat 8:00 am – 3:00 pm
Sun 8:00 am – 3:00 pm (Typically no work on Sunday)
Winter hours are typically reduced from above due to daylight limitations.
Trips are generally at the start and end of each work day.

• # of employees, # of employees reporting to the site & number of family members working in operation: No more than 6 employees reporting to the site plus one Owner/resident

• Number of trips generated in & out of site each day (one vehicle would generate two (2) trips per day):
Maximum 14 Business trips per day plus 12 employee trips per day

• Number & types of business related vehicles & personal vehicles:
Maximum of 6 business related vehicles plus 2 personal vehicles

• Number of parking spaces available on the site:
No improved parking spaces, but room for up to 6 vehicles adjacent, north of, the existing metal shed

• Use of new and existing structures including type and size:
Indoor storage of tools, supplies and misc equipment in existing metal shed.

• Storage needed as part of operation (indoor & outdoor) and location of operational area(s):
No materials stored on site
Only operational vehicles and tree service equipment (chippers, trailers, lifts, etc) outside, adjacent the metal shed
Limited, very short-term storage for vehicles under repair

• Materials stored on the site (list types and indicate storage area on the site plan): None, except limited tools and supplies inside metal shed.

• Water services, sewage disposal and waste management used: N/A

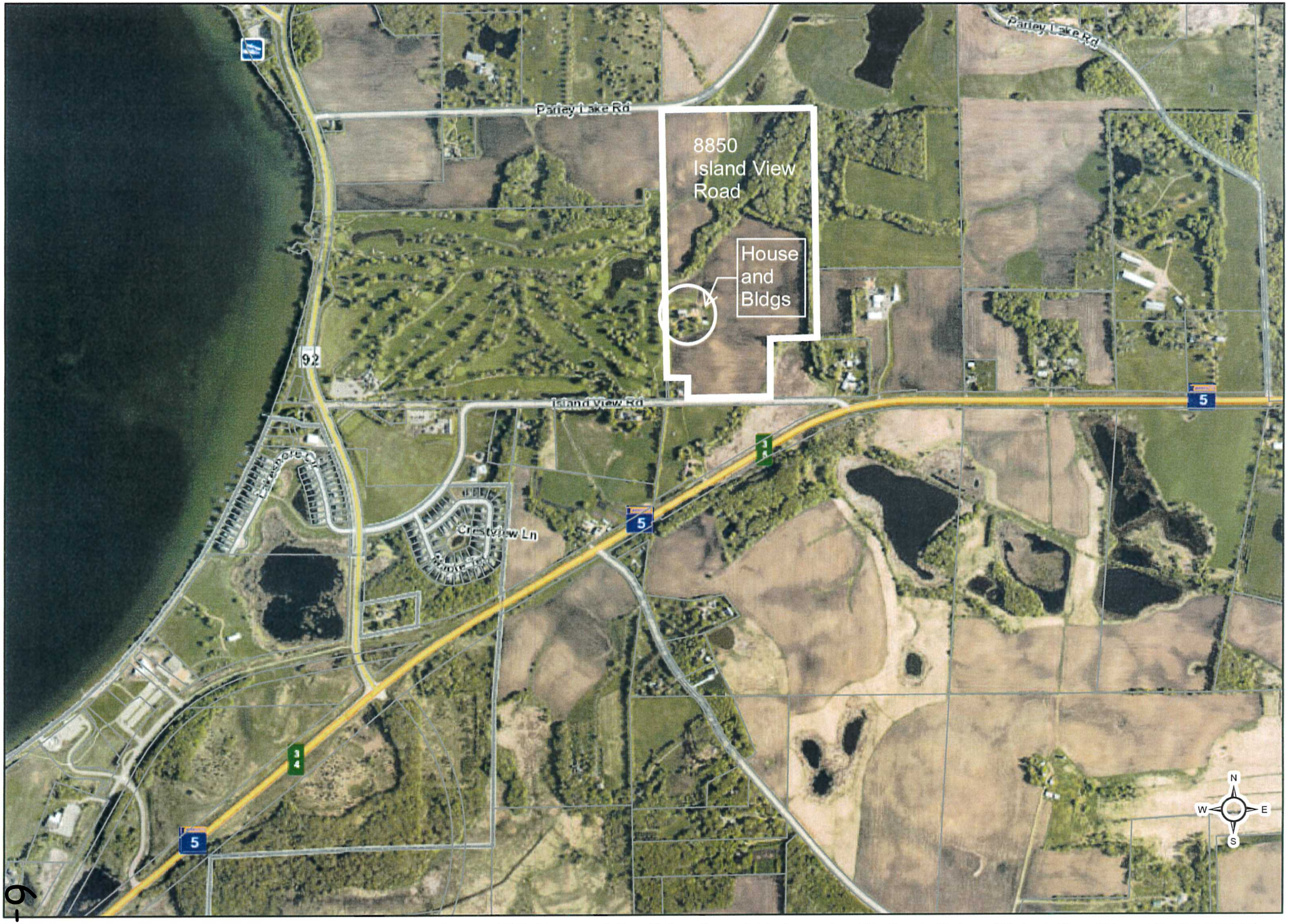
• Area & capacity of parking area, access to site:
Approximately 50' x 40' = 2000 SF area for outdoor parking adjacent to the metal shed.
All access is via the existing driveway to 8850 Island View Rd to and from Island View Road

• Screening proposed:
The existing metal shed and existing trees provide screening from the south and southeast
No residences or streets to the east or north
Existing trees, existing house+garage, and grade provides screen from the west (no residences or streets, only golf course)
Closest residence: 700 feet (south)
No additional screening proposed

• Signage being utilized including size, type, locations: None

• Describe in detail, person(s) other than owner that would access the site (i.e. customers, employees, public): No customers and no public. Only the allowed maximum employees and the business owner/resident. Very infrequent equipment service providers.

Interim Use:
The business operator is Matt Wentzlaff. Matt resides in the existing home on the property. The permitted Interim Use shall expire upon Matt no longer living on the property.




6-11

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Map Date: 5/14/2024

6-12

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Map Date: 5/14/2024

CARVER COUNTY

# Township Presentation & Recommendation Form

| | |
|---|---|
| PARCEL # 070080200 | Permit # PZ0240024 |
| Owner's Name: Tall Grass Properties, LLC/Tim Erhart | Owner's Mailing Address: 9611 Meadowlark Ln |
| City: Chanhassen | Owner State: MN / Owner Zip: 55317 |
| Applicant (if other than owner): | Site Address: 8850 |

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

Description of Request:

Interim Use Permit for Contractors yard
Variance regarding ownership/operator

Date of County Public Hearing: 8/6/24

Date of Township Meeting: ~~07.24.2024~~ 7/9/24 @ 6:00pm

$75.00 fee due in advance of the meeting

## 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:

Township Board plans to be present for comment at the County hearing.

Board voted in unanimous support for the Interim Use Permit requested to allow True N Fair Tree Care to operate at 8850 Island View Road in Laketown Township – with business owner and his family residing on site – subject to expire when/if business owner moves. Board unanimously supports parameters set forth in application letter such as business hours, number of work vehicles, and requests Carver County include requirement for business owner to participate in annual dust control at 100% cost for 1st application and 50% cost for 2nd application for 1600' (starting at driveway access and ending at Hwy 5). Board unanimously believes the requested IUP and Variance request should be granted as it meets the intent of "owner occupied" with the business owner residing on site as their primary address - avoiding commercial property in rural areas without business owner living on site (also noting unenforced CUPs where business owner is not living on site).

**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 — Date

Signature of Township Official — Date 07/09/24

LEANNE POULIOT KUNZE
Clerk/Treasurer, Laketown Twp., Carver Co., MN
Notarial Officer (ex-officio notary public)
My term is indeterminate

## EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 07-008-0200** **File# PZ20240024**

**APPLICANT: Tim Erhart**
**OWNERS: Tall Grass Properties I, LLC (a MN LLC) &**
**Tall Grass Properties II, LLC (a MN LLC)**

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

The West Half of the Southwest Quarter of Section 8, Township 116, Range 24, EXCEPTING THEREFROM the following described piece of land: The South 580.00 feet of the East 404.00 feet of the West Half of the Southwest Quarter of Section 8, Township 116, Range 24, Carver County, Minnesota, and ALSO EXCEPTING: Commencing at a point 1 rod east from the southwest corner of Section 8, Township 116, Range 24, running thence East along section line 209 feet; thence North parallel to West line of said Section, 209 feet; thence West 209 feet; thence South parallel to and one rod distant from said Section line, 209 feet to the place of beginning, subject to Island View Road and Parley Lake Road.

DRAFTED BY: Carver County Land Management Department