

CARVER COUNTY BOARD OF ADJUSTMENT

Regular Meeting – **Wednesday, June 7, 2023**
Commissioners' Meeting Room
2nd Floor Human Services Bldg
Government Center – Chaska

AGENDA

7:00 p.m.

1. Approve minutes of May 3, 2023 meeting

Pages 1-1 through 1-3
 2. **File #20230023**- Public hearing on request by Kurt & Molly Ohnsorg for a variance. (Exceed Allowable Personal Storage Space)
San Francisco Township

Pages 2-1 through 2-10

Issue Order #PZ20230023 – Kurt & Molly Ohnsorg
 3. **File #20230019**- Public hearing on request by Joe White of B H Aggregate Services, Inc., representing Robert & Jenifer Weerts and Jean F Beuning Revocable Trust, for a variance. (Reduced Setback from Property line)
Hollywood Township

Pages 3-1 through 3-12

Issue Order #PZ20230019 – B H Aggregate Services, Inc.
- Other Business**

CARVER COUNTY BOARD OF ADJUSTMENT
Regular Meeting May 3, 2023
Minutes

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

Members Absent: None

Members Late: None

Staff Present: Donovan Hart

Pursuant to due call and published notice thereof, the May 3, 2023, meeting of the Carver County Board of Adjustment was called to order by Chairman Bruner at 7:00 p.m.

Chairman Bruner announced the roll call indicated six members are present and acknowledged the vacant seat has not yet been filled.

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

Minutes – Chairman Bruner asked if there were any corrections to the minutes from the April 5, 2023, meeting. A motion was made by Bielefeldt to approve the minutes of the April 5, 2023, meeting as written. Gorra seconded the motion for approval. All voted aye. Motion carried.

Public Hearing - File #20230015 – Loren & Susan Kohls – Chairman Bruner called the public hearing to order at 7:02 p.m. to consider the application of Loren & Susan Kohls for a variance pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for reduced road frontage, width/depth ratio, and shoreland lot width pursuant to Chapter 152 of the County Code. The property is in Sections 2 & 11 of Watertown Township.

The following were present: Loren Kohls, Susan Kohls, John Jopp, Jennifer Enos

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated March 13, 2023

Exhibit F – Staff Report addressed to the Board of Adjustment and Watertown Town Board dated April 24, 2023, and all attachments

Hart stated the applicants own an approximate 65-acre parcel which consists mostly of tillable farmland, pasture, and wetlands. They are proposing to create an approximate 28-acre parcel on the east side of Oak Lake with the approximately 132 feet of road frontage at the end of Navajo Ave. The current road

frontage would not meet the required width to depth ratio. The lot also does not meet the width requirement of 200 feet for a shoreland lot. Hart used an aerial view and survey to illustrate the proposed parcel. The plight of the landowner is due to circumstances unique to the property and not created by the landowner. The property is divided by a regional trail with only minimal access on the southern portion. The applicant is proposing to use this property in a reasonable manner. Granting the variance would not conflict with the intent of the Comprehensive Plan or the Carver County Zoning Code. The remnant parcel would remain a conforming parcel. The request would not cause a substantial change in the character of the neighborhood, nor would it have a negative impact on government services. The Watertown Town Board reviewed and recommended approval of the request at their April 3, 2023, meeting. Hart read the proposed conditions for consideration if the request is approved. If the Board of Adjustment determines that a practical difficulty has not been identified, then reasons to support the denial must be stated.

Mr. Kohls stated the circumstances surrounding the request were in existence when they purchased the property. It was always their intent to make this parcel available for someone to build a house and enjoy the view of the lake.

Jennifer Enos, realtor for the applicant, stated she felt they had taken all of the necessary steps required to get to this meeting and asked that they be granted the variance to create the lot for someone to build on and enjoy the property.

Chairman Bruner, speaking as Watertown Town Board supervisor, confirmed the Township's recommendation for approval of the request.

No one from the public had any comments about this request.

A motion was made by Bielefeldt and seconded by Wakefield to close the public hearing. Bruner called for a vote on the motion. All voted aye. Motion carried. The public hearing was closed at 7:10 p.m.

Bielefeldt asked if there was only 1 building eligibility on this tract.

Hart replied that there currently is no building eligibility on the parcel but granting the variance would allow the applicants to apply for an additional density 'one lot incentive' on the parcel.

A motion was made by Bielefeldt to **approve and issue Order PZ20230015** for a variance to create a parcel with reduced road frontage, reduced lot width and width/depth ratio pursuant to Section 152.033 (D) of the Carver County Zoning Code, for property legally described on the attached Exhibit "A", with the following conditions:

1. A Minor Subdivision application shall be submitted and approved prior to the recording of any deed(s). The parcels shall be subdivided in accordance with the County Zoning Code requirements including but not limited to, a completed Minor Subdivision application, a survey and SSTS compliance.
2. Prior to the Minor Subdivision completion, the applicant shall comply with any Watertown Township road access requirements. If required, the dedication of a right-of-way easement of the township road shall be reviewed and approved by Watertown Township and Carver County, prior to recording. The easement area shall be privately maintained until such time as the Watertown Town Board takes over maintenance responsibilities.

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

Other Business

Robert Dauwalter, 10975 Little Ave, stated he was granted a variance (PZ20220018) last year for reduced setback for construction of a home addition. Since that time, he has had difficulty getting a contractor hired to do the project and is asking for an extension of his variance for 1 year.

A motion was made by Gorra and seconded by Selken to grant a one-year extension of variance PZ20220018 to May 4, 2024. All voted aye. Motion carried.

Adjournment

A motion was made by Bielefeldt and seconded by Wakefield to adjourn. All voted aye. The meeting was adjourned at 7:16 p.m.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

May 26, 2023

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

FROM: The Land Management Department

SUBJECT: Application for a Variance (Additional Personal Storage Square Footage)

FILE #: PZ20230023
APPLICANT: Kurt & Molly Ohnsorg
PROPERTY OWNER: Kurt & Molly Ohnsorg
SITE ADDRESS: 6185 Co Rd 50 Carver, MN 55315
VARIANCE TYPE: Personal Storage Square Footage
PURSUANT TO: County Code Section 152.073 (A)(3)
LEGAL DESCRIPTION: See attached Exhibit "A"
PARCEL #: 08-002-1800

BACKGROUND:

1. Kurt & Molly Ohnsorg own an approximate 5.71-acre parcel located in the East Half (E½) of the Northwest Quarter (NW¼) of Section 2, San Francisco Township. The property has been improved with a single-family home, pool, and other accessory buildings. The property is located in the Agricultural Zoning District and the Carver County Water Management Organization (CCWMO) - Bevens Creek Watershed.
2. Mr. & Mrs. Ohnsorg are requesting a variance to exceed the total allowable personal storage square footage on the subject property. The proposed building would be 40' x 80' (3,200 square feet) and would result in a total of 5,834 square feet of personal storage area on the parcel. The request would exceed the permitted personal storage square-footage by 834 square feet for a parcel of this size; therefore, a variance has been requested pursuant to Section 152.073 (A)(3) of the Carver County Zoning Code.
3. Previously, applicant requests for accessory structures exceeding the allowable square-footage area pursuant to the Zoning Code were processed as Conditional Use Permits (CUP's) and were reviewed by the Carver County Planning Commission. As part of the 2021 Zoning Code updates, these types of requests were re-categorized as a variance. As a variance application, it is now reviewed by the Board of Adjustment with the application evaluated using the "grounds for variance" criteria found in Section 152.215 (D) & (F) of the Zoning Code.

LEGAL BACKGROUND:

§ 152.073 PERMITTED ACCESSORY USES AND STRUCTURES.

Within the agriculture district the following uses shall be permitted uses and/or accessory uses [Note—Certification of zoning compliance is required for any structure subject to the State Building Code and any structure or land use specifically requiring an administrative permit, certificate of zoning compliance, conditional use permit or any other type of certification by the Department. The Department may provide certification of zoning compliance for those structures and/or land uses that do not typically require certification when requested by a landowner for his or her own property.]:

- (A) Accessory storage structures including sheds, attached and detached garages, detached porches, detached recreational buildings and detached hobby structures: These structures shall be used only by the occupants of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and for the keeping of animals and appurtenant equipment and supplies, and as otherwise regulated by this chapter. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale or pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this chapter. The following standards apply unless a conditional use permit was issued prior to August 1, 2021, or a variance has been issued allowing for additional square footage.
- (4) Parcels greater than five acres and less than or equal to ten acres – a total of 5,000 square feet of area is permitted in a combination of a garage and accessory structures.
- (6) Existing agricultural structures are not included in the area calculations for the total square footage of accessory structures unless the agricultural buildings (such as a machine shed) are suitable for use as garages or residential accessory structures.
- (7) The area calculation for an attached garage shall be made using the outside dimensions (footprint or foundation) of the structure only. The area calculation for a detached structure shall include the gross area for all levels of the building.
- (8) Each residential parcel in the County shall be given a personal storage credit of 624 square feet to represent a standard (24' x 26') 2-car garage. This credit shall not be included in the calculation for personal storage.

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. As shown on the attached site map (dated: May 1, 2023), the current personal storage square-footage on the property is approximately 3,258 square feet. This includes the attached garage (802 square feet), small shed (12' x 18' = 216 square feet), pool house (24' x 14' = 336 square feet), and a pole shed (68' x 28' = 1,904 square feet). Given that the Zoning Code allows a credit for attached garage space up to 624 square feet, the total amount of existing personal storage square-footage is 2,634. The Zoning Code allows a parcel of this size a total of 5,000 square feet of personal storage area to be permitted in a combination of attached garage and accessory structure(s). The proposed 40' x 80' (3,200 square-foot) accessory structure would increase the amount of personal storage square footage to 5,834 square feet; or approximately 834 square feet more than the Zoning Code allows without a variance on a property of this size.
2. The applicants' letter (dated May 1, 2023) states they currently do not have enough storage space on the property to adequately store all personal items within an enclosed building. They take great pride in keeping their property well maintained and having their personal belonging inside allows for increased security. The applicants explain that the existing structures have garage doors that are approximately 82" high, which is not tall enough for their enclosed trailer, camper and truck with topper. The letter states that the family participates in motorcycle racing and camping, so it is essential to keep all of their vehicles safely stored indoors. The applicants have stated, *"we find it to be incredibly wasteful to tear down an existing building to replace it with something larger and taller and instead would be better off to build a new structure."*
3. The proposed structure would be located north of the existing shed in a location that would meet all required setbacks to property lines and the property's septic system.
4. The plight of the landowner is due to circumstances created by the landowner. The applicant purchased the property in 2019 and the lot acreage only provides a limited amount of personal storage space. The standard established in the Zoning Code is 5,000 square feet maximum for allowable personal storage square footage for parcels greater than five acres and less than or equal to ten acres. However, each variance application request is based on its own merit, property uniqueness, and reasons described by the applicant.
5. 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 building would not alter the character of the neighborhood, nor would government services be negatively impacted by the additional storage structure.
6. The granting of the variance would not materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicants and it would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
7. The San Francisco Town Board reviewed and recommended approval of the request during their May 15, 2023, Town Board meeting. The request was approved unanimously, and the Board did not have any additional comments or conditions.

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance to exceed the personal storage square-footage on the property pursuant to Section 152.073 (A)(3) of the Carver County Zoning Code, would serve in the interest of justice, the following condition should be considered and attached to the approved variance:

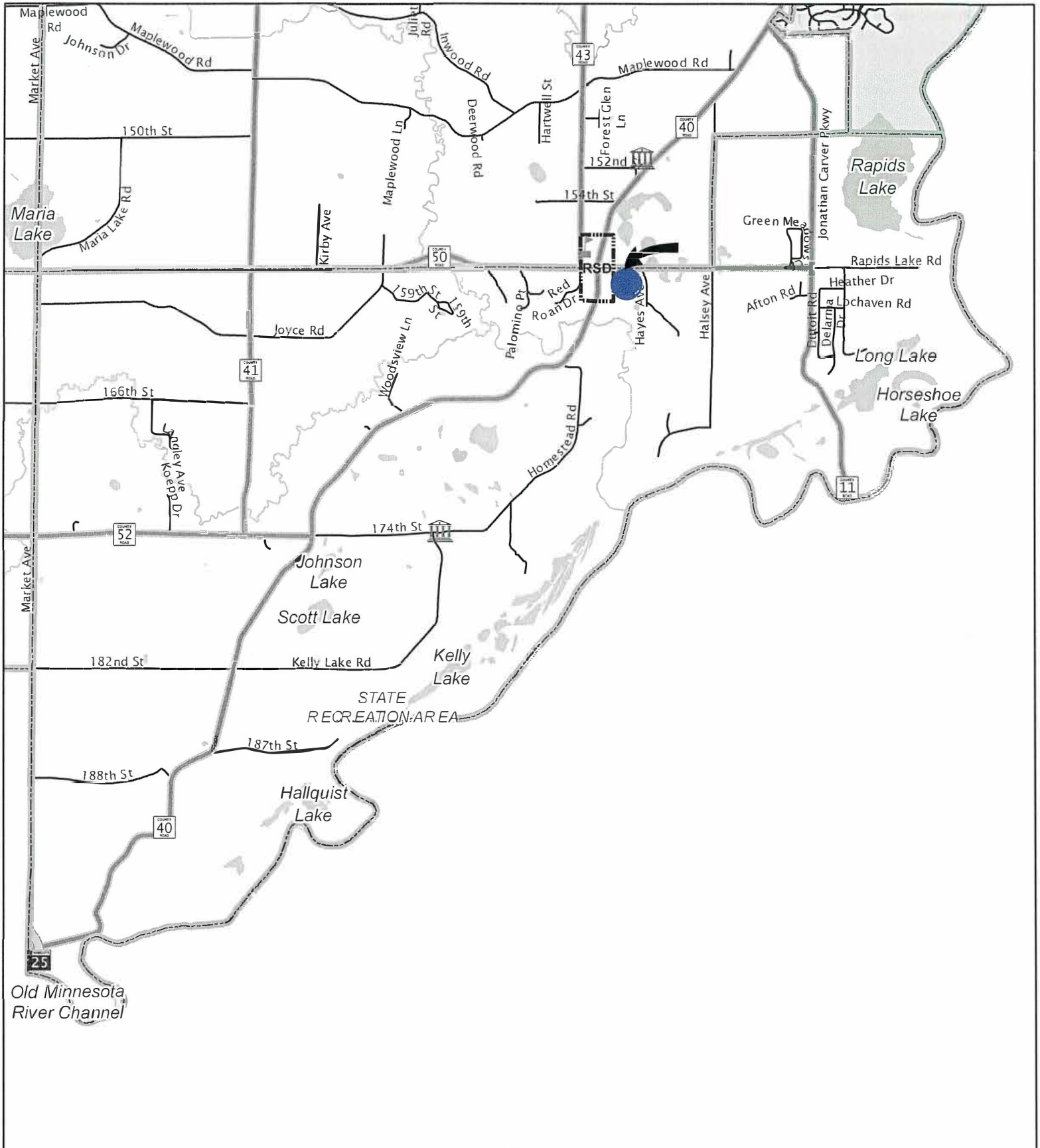
1. The permit is subject to administrative review. The proposed structure shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters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

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 variance would not serve in the interest of justice, the Board of Adjustment would need to identify reasons to support the denial.

SAN FRANCISCO TOWNSHIP

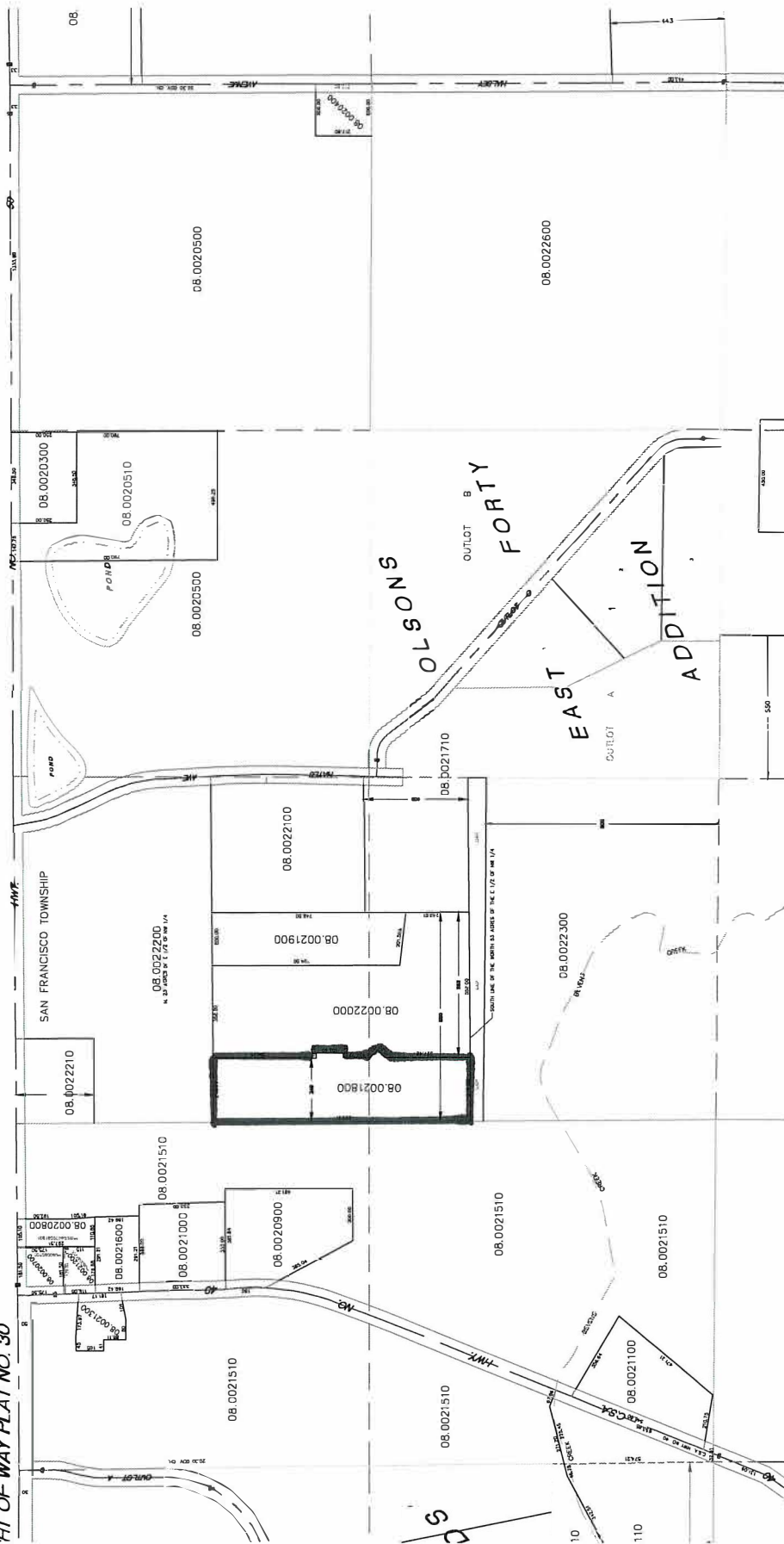


This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible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



Map Created by Carver County GIS

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



May 1, 2023

Dear Carver County Board of Adjustment,

Let me start by introducing ourselves and giving some background on our situation. We are Kurt and Molly Ohnsorg and we've lived at 6185 County Road 50 in rural Carver since October 2019. Kurt was raised in a family that was very passionate about motorcycles, racing and camping together as a family. Now that we've started a family of our own, we're looking forward to passing these passions onto our children and spending time together riding at the motorcycle track and camping as a family.

When we bought our property nearly 4 years ago, we felt like we won the lottery. We bought the property from a family that built the house and existing storage structures and raised their family here over the course of 30+ years. They were ready to move on and have another family come in to raise their children here. The property is everything we dreamed of with beautiful views, close proximity to family, and room for children to roam. However, current storage structures on the property do not serve our needs. All structures on the property have garage door openings that are approximately 82" high. As such, they cannot accommodate our personal enclosed trailer, camper, and Ford F-150 with a topper. This requires us to park these vehicles and trailers in the yard, subjecting them to the elements, security risks and adding clutter to our yard.

We are writing you today to request a variance from section 152.073 of the Carver County Code of Ordinances. Per the code, our parcel of 5.71 acres within the agriculture zone is allowed 5,000 square feet of accessory storage structures. Existing storage structures come to a total of 2,634 square feet (including credit for attached garage), leaving us with 2,366 square feet of allowable space. Existing accessory storage includes 802 sq ft attached garage, 12' x 18' building, 24' x 14' building and 68' x 28' building. We are proposing building a 40'x80' pole shed on our property, which would bring our total square footage of accessory storage structures to 5,834. Our proposed shed size would exceed current limits by just ~17%. As such we are not materially altering the nature of our property and are reasonably following the intent of the code and comprehensive plan. We take great pride in keeping our property well maintained and having a pole shed to park personal trailers, campers, and trucks would keep clutter out of our yard and increase security while still allowing us to enjoy the natural beauty of our land.

As previously mentioned, we do have existing storage structures on the property with the largest of them being located on the Eastern edge of our property, northeast of our home. This structure is a well-built and beautifully maintained detached garage that is ~25 years old. The detached garage is not tall enough to accommodate enclosed trailers and campers, nor is it deep enough to house a camper given its current construction. This structure is currently used to store cars, motorcycles and ATVs. Our concrete driveway connects to the western side of the detached garage. As such, we find it to be incredibly wasteful to tear down such a building to replace it with something larger and taller and instead would be better off to build a new structure.

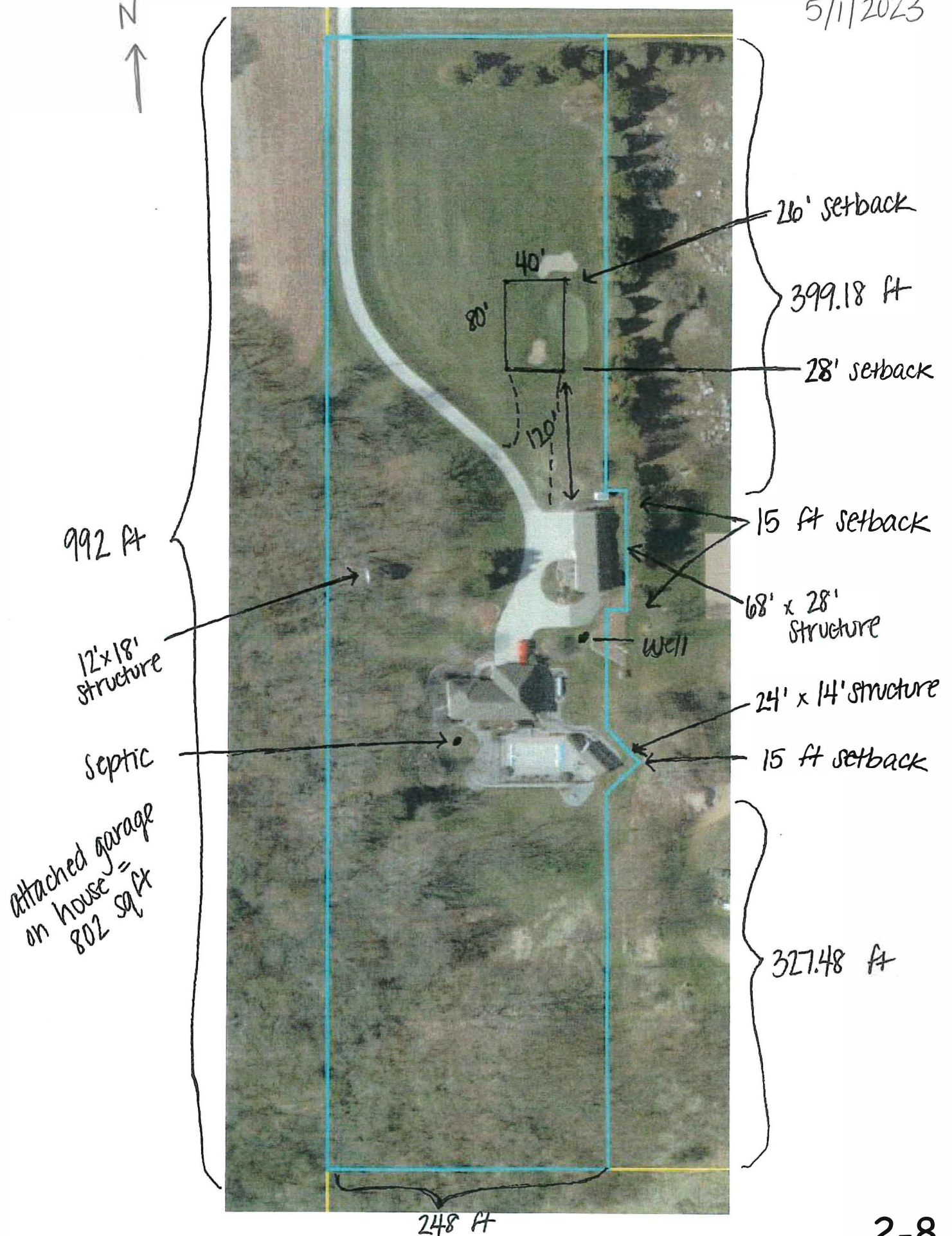
The proposed pole shed is intended for personal use to securely store enclosed trailers and campers for our growing family for years to come. Our current intent is to call this property our "forever home" and we'd like to build a structure that allows us room to grow. As our children get older and our hobbies evolve, we'd like the ability to have storage room for a larger camper and larger enclosed trailer in addition to the equipment used to maintain our property. The total length of a larger camper + pickup can exceed 64 feet. Our goal is to build a pole shed large enough that would allow us to comfortably store an upgraded camper and truck in our future as well as all equipment regularly used to maintain our property (Bobcat, lawn mowers, lawn tractors, etc.). The positioning of the structure would also make it easier to pull trailers down the driveway and provide a place to back up or turn around. The current layout of our driveway and detached garage can make this difficult for larger rigs.

As a residence in the agriculture zone, there are a number of surrounding properties with a number of outbuildings and pole sheds. Adding a pole shed to our property would not alter the character of our locality.

Kurt & Molly Ohnsorg



5/1/2023





Township Presentation & Recommendation Form

PARCEL # 080021800	Permit # P720230023	
Owner's Name: Kurt Ohnsorg	Owner's Mailing Address: 6185 County Road 50	
City: Carver	Owner State: MN	Owner Zip: 55315
Applicant (if other than owner):	Site Address: 6185 County Road 50, Carver MN	

Type of Request: ☐ CUP ☐ IUP ☐ Preliminary Plat ☐ Final Plat ☒ Variance ☐ Appeal		
Description of Request: Requesting a variance to build an 80' x 40' pole shed on our property, which would bring total storage square footage to 5,834. Per section 152.073 of the Carver County Code of Ordinances, current code would allow 5,000 total square footage for accessory storage structures. Existing storage structures on the property have garage door openings that 82" high and are not tall enough to accommodate our enclosed trailer, camper and F-150 with a topper. The proposed pole shed would allow for secured storage of our personal trailers, campers and trucks.		
Date of County Public Hearing: June 7, 2023	Date of Township Meeting: May 15, 2023	

Actions:

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

****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 Signature of Township Official 	Date: 5/15/23 Date: 5/15/23
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Chairman San Francisco Twp

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 08-002-1800

File# PZ20230023

APPLICANT/OWNER: Kurt T Ohnsorg & Molly J Ohnsorg

* * * * *

Part of the South 30 acres of the North 53 acres of the East Half of the Northwest Quarter of Section 2, Township 114, Range 24, Carver County, Minnesota, described as follows:
Commencing at the southwest corner of said Northwest Quarter of Section 2; thence on an assumed bearing of South 89 degrees 24 minutes 47 seconds East along the South line of said Northwest Quarter, 1,306.55 feet to the West line of said East Half of the Northwest Quarter; thence North 00 degrees 22 minutes 41 seconds West along said West line 945.53 feet to a point on the South line of said North 53 acres of the East Half of the Northwest Quarter, said point being the point of beginning of the tract to be described; thence North 89 degrees 28 minutes 41 seconds East along said South line, 248.00 feet to the East line of the West 248.00 feet of the South 30 acres of the North 53 acres of the East Half of the Northwest Quarter; thence North 00 degrees 22 minutes 41 seconds West along said East line, 327.48 feet; thence North 45 degrees 22 minutes 25 seconds East, 40.56 feet; thence North 45 degrees 30 minutes 02 seconds West, 41.00 feet to said East line; thence North 00 degrees 22 minutes 41 seconds West along said East line, 104.72 feet; thence North 89 degrees 28 minutes 41 seconds East, 18.10 feet; thence North 00 degrees 22 minutes 41 seconds West, 103.40 feet; thence South 89 degrees 28 minutes 41 seconds West, 18.10 feet to said East line of the West 248.00 feet; thence North 00 degrees 22 minutes 41 seconds West along said East line, 399.18 feet to the North line of said South 30 acres of the North 53 acres of the East Half of the Northwest Quarter; thence South 89 degrees 28 minutes 41 seconds West along said North line, 248.00 feet to the West line of said East Half of the Northwest Quarter; thence South 00 degrees 22 minutes 41 seconds East along said West line, 992.01 feet to the point of beginning.
This tract contains 5.71 acres of land and is subject to any and all easements of record.
And an easement for road purposes over and across the Westerly 33 feet of the North 23 acres of the East Half of the Northwest Quarter of Section 2, Township 114 North, Range 24 West, measured parallel with the West line thereof.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

May 26, 2023

TO: Carver County Board of Adjustment & Hollywood Town Board

FROM: The Land Management Department

SUBJECT: Application for a Variance (Reduced Mining Setback – Property Line)

FILE #: PZ20230019

APPLICANT: Joe White (B.H. Aggregate Services, Inc.)

OWNERS: Robert & Jenifer Weerts, Jean F Beuning Revocable Trust

SITE ADDRESS: 17XXX Hwy 7 & 5120 Vega Avenue, New Germany 55367

VARIANCE TYPE: Excavating within Mining Setback

PURSUANT TO: County Code, Chapter 152, Section 152.082 (C)(1)(b)2(iv)

LEGAL DESCRIPTIONS: See attached Exhibit "A"

PARCEL #: 06-028-0101 & 06-028-0122

BACKGROUND:

1. Robert & Jenifer Weerts and Jean Beuning own approximate 84.9 and 36.5-acre parcels, respectively, in the North Half (N½) of the Southeast Quarter (SE¼) of Section 28, Hollywood Township. The application involves two parcels of current and proposed mining sites. The northern parcel is currently improved with a single-family dwelling, several accessory structures, with one of the structures containing a commercial dog kennel (Conditional Use Permit – CUP # PZ20030020), and dog run areas. The southern parcel consists of an active gravel pit, agricultural production land, a wooded area, wetlands (which include a Bureau of Water and Soil Resources wetland banking project), and a pond created from an ongoing mining project (Conditional Use Permit - CUP #PZ20070059). The properties are located in the Agricultural Zoning District and the Carver County Water Management Organization (CCWMO) - Crow River watershed.
2. Joe White of B.H. Aggregate seeks to expand an existing sand & gravel mining operation and create a new gravel pit on the adjoining parcel. In order to have a single continuous area of excavation, he requests permission to mine within the 50-foot required mining setbacks on the two subject parcels (the shared property line); therefore, a variance has been requested pursuant to Section 152.082 (C)(1)(b)2(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.

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(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 provided the project description and site plans to County Staff for an upcoming Carver County Planning Commission meeting (Interim Use Permit – IUP) request. The project description details (dated May 23, 2023) identify the total production of the mine would be approximately 188,250 cubic yards of material to be exported as aggregate product. The applicant estimates that the mine will export an average of 25,000 cubic yards per year, which may increase up to 75,000 cubic yards in a high-demand year. At this rate, the mine's operational life is an estimated 3-6 years.

2. The Mining site plan (dated May 23, 2023) shows the planned 5.55-acre excavation area, with accompanying stockpiling area and perimeter silt fence on the north side to protect the nearby wetlands on the northern parcel. The submitted Mining Plan shows a single mine pit spanning the property boundary between the two parcels. The proposed pit does maintain the required 500-foot setback from adjacent residential structures not in the subject properties existing at the time of application of the site's existing CUP.
3. There are wetlands on the properties and a wetland delineation on the northern parcel was approved in August 2022. The approved wetland boundary is shown on the Mining Plan. All mining activities are shown outside the required 30-foot setback from wetlands. The proposed mine operation proposes to utilize the existing truck access on Co Rd 33 via PID #06-028-0400. The operational area(s) would be screened through a mixture of trees on the northern/eastern perimeter of the mining area and the remoteness of the site from neighboring residences. The nearest residence not on the subject property is about 970 feet from proposed mining activities, far exceeding the required 500' setback.
4. The existing permit (CUP #PZ20070059) for gravel mining on the southern parcel allowed for the removal of approximately 10,000 to 15,000 cubic yards of material per year until the full removal of the estimated 100,000 cubic yards on the property. The applicant reports that the only remaining gravel left in the current pit not within the 50' mining setback is under the lakebed, where there is not a financial benefit to remove it. The applicant has submitted an Interim Use Permit (IUP) application to allow for the expansion of the gravel pit on the two parcels. If the variance is not approved, the mining activities would not be allowed within the mining setback areas. The future extent of mining activities would be regulated by a newly approved IUP; or if the IUP is denied, the existing CUP would still allow mining activities on the southern parcel.
5. Jack Johansen, Transportation Planner with Carver County Public Works, reviewed the submitted materials on May 23, 2023, and stated that Public Works would review the access off of County Road 33 during the future IUP application.
6. Jacob McLain, Senior Environmentalist with Carver County Environmental Services, reviewed the submitted materials on May 18, 2023. He stated that the site plan to be submitted with the IUP would need to show an alternative SSTS site for the Beuning property.
7. The plight of the landowner is due to circumstances created by the landowner. However, each variance application request is based on its own merit, property uniqueness, and reasons described by the applicant. The applicant seeks to extract aggregate resources on a neighboring property using an existing truck access and haul route. The ability to mine within the setback areas enables that additional gravel to be mined, which it otherwise would not be mined since truck access through Ms. Buening's property, as long as she is the owner, is infeasible due to high traffic volume – estimated at 50 cars per day – from Ms. Buening's commercial dog kennel operation.
8. 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. In addition, after mining activities are completed on the site, a valued natural amenity, the lake, will be enlarged to benefit natural habitats.
9. 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 building would not alter the character of the neighborhood, nor would government services be negatively impacted by the additional storage structure.
10. 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.

11. The Hollywood Township Town Board reviewed and recommended approval for this request during their May 8, 2023, Town Board meeting with the following comment: “Variance is approved as long as County has approved.”

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 for mining activity pursuant to Section 152.082 (C)(1)(b)2(iv) of the Carver County Zoning Code, would serve in the interest of justice, the following conditions should be attached to the approved variance:

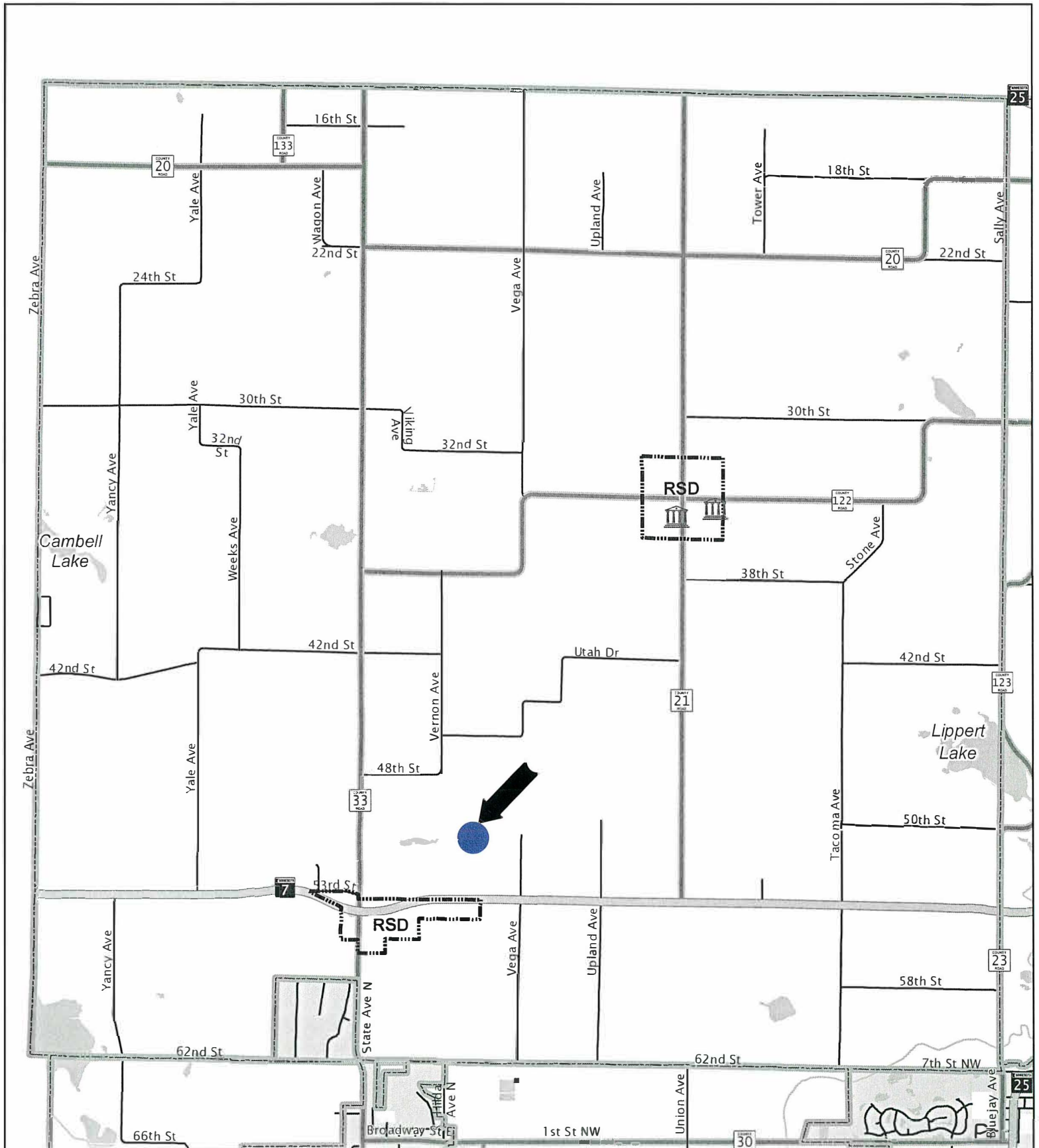
1. The applicant must obtain an Interim Use Permit (IUP) issued by the Carver County Board of Commissioners to conduct mining activities within the mining setback areas that are the subject of the variance request. All work shall be done in accordance with the approved permit. If the applicant fails to obtain an IUP, then the approved variance shall be null and void. The absence of a variance does not impact the mining activities allowed by #PZ20070059.
2. Mining activities within the mining setback areas shall only be conducted in excavation areas identified in the site plan dated May 23, 2023, 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.

HOLLYWOOD 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



Map Created by Carver County GIS

S 1/2 SEC. 28, T.117, R.26

THIS IS NOT A LEGALLY RECORDED PLAT.
THIS MAP IS A COMPILATION OF RECORDS
FROM THE PUBLIC RECORDS OF THE COUNTY
OFFICES AND OTHER SOURCES. THIS MAP
IS FOR INFORMATIONAL PURPOSES ONLY.
FOR A LEGALLY RECORDED PLAT, PLEASE
CONTACT THE COUNTY AND ITS AGENTS
WHICH ARE CONTAINED THEREIN.



B.H. Aggregate Services Inc.

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

April 4th 2023

To: Carver County Board Of Adjustment

Re: Variance Request for Potential Interim Use Permit

B.H. Aggregate Services Inc is requesting a Variance to Interim Use Permit in Ag District (152.082)

“Mining shall not take place within 50 feet of a Property Line”

There is a current Interim Use Permit in place on the Vinkemeier property which require the 50 foot setback. We are proposing an Interim Use Permit on the Beuning Property which adjoins the Vinkemeier property on the north side. As part of that proposed Interim use permit we will be proposing to mine through both property lines and creating a body of water on part of the mined property including the adjoining property line.

Both Property owners are in favor of mining through the property line to create one body of water instead of two separate bodies of water.

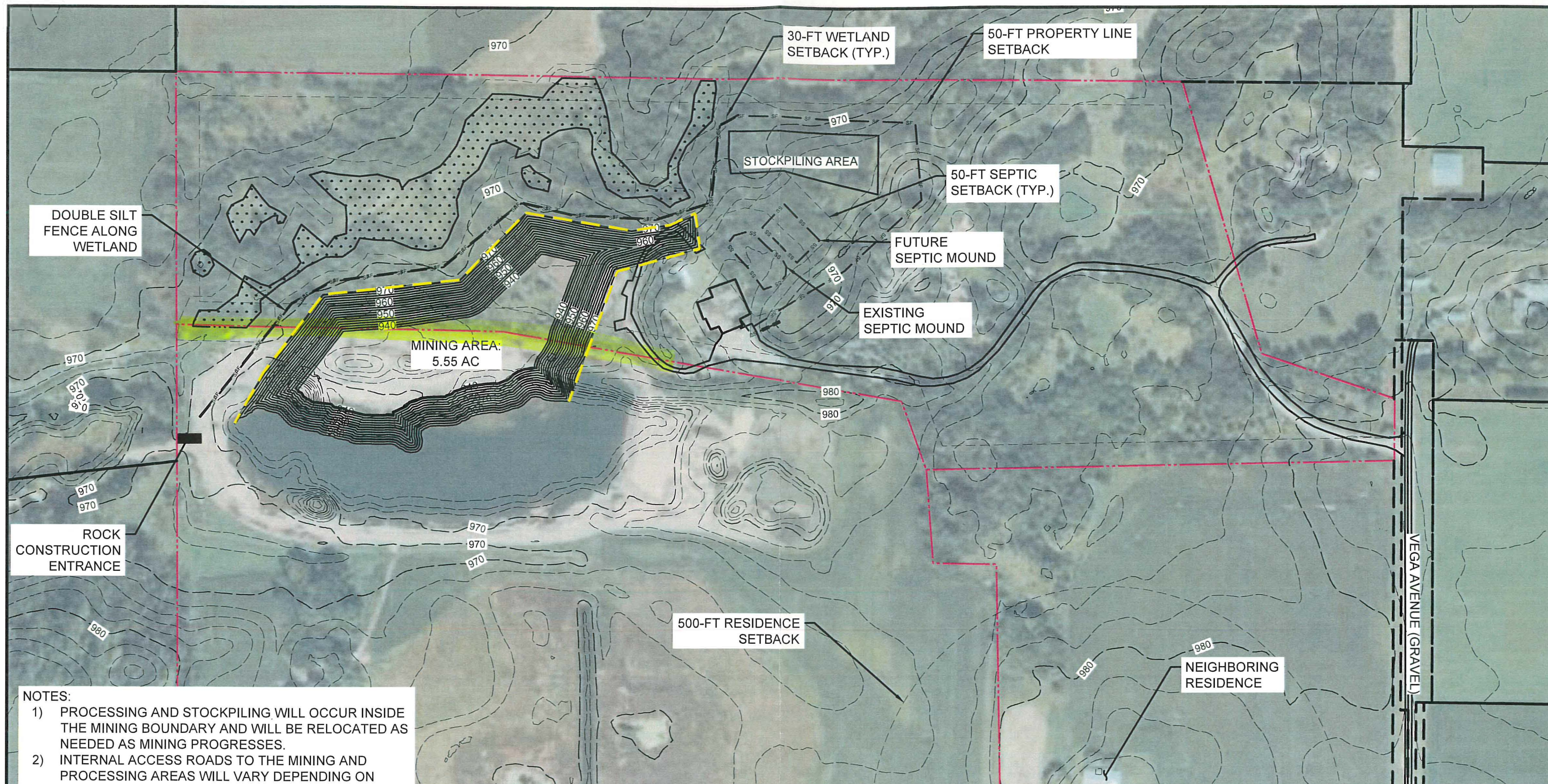
Thank You in advance for your Consideration of our proposed Variance Request.

Thanks,

Joe White

BH Aggregate Services Inc.

320-557-6015

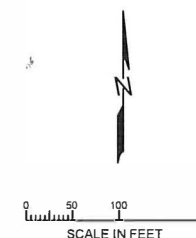


- NOTES:
- 1) PROCESSING AND STOCKPILING WILL OCCUR INSIDE THE MINING BOUNDARY AND WILL BE RELOCATED AS NEEDED AS MINING PROGRESSES.
 - 2) INTERNAL ACCESS ROADS TO THE MINING AND PROCESSING AREAS WILL VARY DEPENDING ON WHAT AREA THAT MINING IS OCCURRING.
 - 3) SILT FENCE WILL BE INSTALLED ON ALL DOWNSTREAM PERIMETERS AS NEEDED FOR EACH LAND DISTURBING ACTIVITY.
 - 4) DISTURBED AREAS WILL BE STABILIZED WITH MNDOT SEED MIXTURE 25-141 AT A SEEDING RATE OF 59 POUNDS PER ACRE, MNDOT CATEGORY 3N OR 3P EROSION CONTROL BLANKET AND COMMERCIAL FERTILIZER.

LEGEND

EXISTING CONTOUR IDX	---	960	---	MINING BOUNDARY	---
EXISTING CONTOUR INT	---	---	---	SETBACK	---
MINING CONTOUR IDX	---	960	---	WETLANDS	---
MINING CONTOUR INT	---	---	---	SILT FENCE	---
PROPERTY BOUNDARY	---	---	---		---

BACKGROUND AERIAL SOURCE: GOOGLE EARTH



1848 34TH AVE N
SUITE 112
PLYMOUTH, MN 55446
TEL (952) 246-3500
FAX (952) 246-3501
CARLSONMCCAIN.COM

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota

Print Name: Dan J. Wilke
Signature: *Dan Wilke*
Date: 11/1/2022 License #: 53182

Drawn: DJW
Designed: DJW
Date: 11/1/22

REV	DATE	BY	DESCRIPTION
0	11/1/22	DJW	ISSUED FOR IUP
1	4/26/23	DJW	PER COMMENTS
2	5/1/23	DJW	RELOCATED ROCK CONSTRUCTION EXIT & PARKING
3	5/23/23	DJW	ADJUSTED PER SEPTIC COMMENTS

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

VEGA PIT
Carver County, MN

MINING PLAN
IUP DRAWINGS

1 of 2
3-8



Land Use Application

Planning Commission

Board of Adjustment

☒ Conditional Use Permit ☐ Preliminary Plat
☐ Interim Use Permit ☐ Final Plat

☒ Variance
☐ Appeal

Application must have a Town Board acknowledgement signature to be complete

PARCEL # 060280101 ACRES 80.89 Permit #

Property Owner: Robert Weerts
 Last Name First Name MI
 Home Phone Work Phone e-mail
 Address PO Box 897 Winnebago MN 56098
 Street City State Zip
Applicant (if different from Owner): White Joe
 Last Name First Name MI
 Home Phone Work Phone 320-552-1483 e-mail white and joe@gmail.com
 Address 10492 13 5th Street Winnebago MN 55353
 Street City State Zip

Description of Request:

See attachment #1. Variance is approved as long as County has a plan approved.

I swear that all information submitted by me (or my agent representing me) as part of this request is true, correct, accurate and complete to the best of my knowledge. I hereby authorize the Carver County Planning Director and/or authorized agent to enter upon property subject to this application to gather information pertinent to this application.

I agree to reimburse the County pursuant to the Carver County Fee for Service Schedule for expenditures incurred for professional services and/or for staff time at \$60/hour. Initials:

In cases where M.S. 15.99 applies, the County hereby notifies the applicant that a decision may not be rendered within 60 days due to public hearing requirements and agency review. Therefore, the County is notifying the applicant that the County may extend the timeline for an additional 60 day review. (The applicant will be notified in writing if this were to occur.) A decision on the request shall be completed within 120 days unless additional review extensions are approved by the applicant.

Applicant's signature (if the property was purchased on a contract for deed, the Contract Holder must sign or approve the application) Date

Owner's signature (if other than Applicant, an owner must sign or other verification must be submitted such as a purchase agreement) Date

Township Official's signature (application and acknowledgement only - this does not indicate support; recommendation is separate) Date 5-8-23

OFFICE USE ONLY

Ordinance Section:
 Date application completed and filed w/Dept.: Public Hearing Date
 Minnesota Statute 15.99 (60 days) (120 days)
 Fee: \$ Receipt #:
 Cost Recovery? ☐ Yes ☐ No
 Property w/in Shoreland? ☐ Yes ☐ No
 Property w/in Floodplain? ☐ Yes ☐ No
 Property Homesteaded? ☐ Yes ☐ No
 Property has Feedlot Status? ☐ Yes ☐ No
 Septic compliance required? ☐ Yes ☐ No
 Water Plan Application? ☐ Yes ☐ No
 Property in Agricultural Preserve Program? ☐ Yes ☐ No
 Level 2 3

EXHIBIT "A" – LEGAL DESCRIPTION

**PID NUMBER: 06-028-0101
06-028-0122**

File# PZ20230019

**APPLICANT: B H Aggregate Services, Inc.
OWNERS: Robert D Weerts & Jenifer L Weerts &
Jean F Beuning Revocable Trust**

* * * * *

06-028-0101

The Southeast Quarter of Section 28, Township 117 North, Range 26 West, Carver County, Minnesota.

EXCEPTING THEREFROM a strip of land 1 rod wide along the East side of the Northeast Quarter of the Southeast Quarter of said section;

ALSO EXCEPTING therefrom that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: All that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West, along the North line of said Southeast Quarter, a distance of 16.50 feet; thence on a bearing of South 0 degrees 36 minutes 03 seconds West, parallel with the East line of said Southeast Quarter, a distance of 798.66 feet; thence on a bearing of South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence on a bearing of North 19 degrees 45 minutes 00 seconds West, a distance of 155.00 feet to the point of beginning of a tract to be described; thence on a bearing of North 57 degrees 13 minutes 21 seconds West, a distance of 164.68 feet; thence on a bearing of North 88 degrees 34 minutes 15 seconds West, a distance of 423.51 feet to its intersection with a line bearing North 79 degrees 56 minutes 09 seconds West from the point of beginning; thence on a bearing of South 79 degrees 56 minutes 09 seconds East along last said line, a distance of 570.62 feet to the point of beginning;

ALSO EXCEPTING therefrom that part of the said Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Beginning at the Southeast corner of the said Southeast Quarter; thence on an assumed bearing of North 0 degrees 36 minutes 03 seconds East along the East line of said Southeast Quarter, 1,326.06 feet; thence North 89 degrees 11 minutes 21 seconds West, 16.50 feet; thence North 0 degrees 36 minutes 03 seconds East, 527.58 feet; thence South 89 degrees 12 minutes 26 seconds West, 1,008.32 feet; thence South 3 degrees 50 minutes 54 seconds East, 198.87 feet; thence South 88 degrees 48 minutes 19 seconds East, 134.45 feet; thence South 0 degrees 35 minutes 17 seconds East, 716.39 feet; thence South 87 degrees 12 minutes 41 seconds East, 127.46 feet; thence South 1 degree 51 minutes 33 seconds West, 914.10 feet to the South line of the said Southeast Quarter; thence South 89 degrees 48 minutes 51 seconds East along said South line, 752.51 feet to the point of beginning and there terminating;

AND ALSO EXCEPTING therefrom that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West along the North line of said Southeast Quarter, a distance of 16.50 feet to the point of beginning of the tract to be described; thence South 0 degrees 36 minutes 03 seconds West, parallel with the East line of said Southeast quarter, a distance of 798.66 feet; thence South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence North 19 degrees 45 minutes West, a distance of 155.00 feet; thence North 57 degrees 13

minutes 21 seconds West, a distance of 164.68 feet; thence North 88 degrees 34 minutes 15 seconds West, a distance of 1,402.64 feet to the West line of the Southeast Quarter of said Section 28; thence on a bearing of North along the said West line, a distance of 607.65 feet to the Northwest corner of the said Southeast Quarter; thence South 88 degrees 34 minutes 15 seconds East along the North line of said Southeast Quarter, a distance of 2,610.44 feet to the point of beginning and there terminating.

AND INCLUDING that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West along the North line of said Southeast Quarter, a distance of 16.50 feet; thence on a bearing of South 0 degrees 36 minutes 03 seconds West parallel with the East line of said Southeast Quarter, a distance of 798.66 feet; thence on a bearing of South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence on a bearing of North 19 degrees 45 minutes 00 seconds West, a distance of 155.00 feet; thence on a bearing of North 57 degrees 13 minutes 21 seconds West, a distance of 164.68 feet; thence on a bearing of North 88 degrees 34 minutes 15 seconds West, a distance of 423.51 feet to the point of beginning of the tract to be described; thence continue on a bearing of North 88 degrees 34 minutes 15 seconds West along last said line, a distance of 979.12 feet to the West line of said Southeast Quarter; thence on a bearing of North along last said line, a distance of 43.37 feet; thence on a bearing of South 88 degrees 34 minutes 15 seconds East, a distance of 694.72 feet to its intersection with a line bearing North 79 degrees 56 minutes 09 seconds West from the point of beginning; thence on a bearing of South 79 degrees 56 minutes 09 seconds West along last said line, a distance of 288.76 feet to the point of beginning.

06-028-0122

All that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West, along the North line of said Southeast Quarter, a distance of 16.50 feet to the point of beginning of the tract to be described; thence South 0 degrees 36 minutes 03 seconds West, parallel with the East line of said Southeast Quarter, a distance of 798.66 feet; thence South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence North 19 degrees 45 minutes West, a distance of 155.00 feet; thence North 57 degrees 13 minutes 21 seconds West, a distance of 164.68 feet; thence North 88 degrees 34 minutes 15 seconds West, a distance of 1,402.64 feet to the West line of the Southeast Quarter of said Section 28; thence on a bearing of North along the said West line, a distance of 607.65 feet to the Northwest corner of the said Southeast Quarter; thence South 88 degrees 34 minutes 15 seconds East along the North line of said Southeast Quarter, a distance of 2,610.44 feet to the point of beginning and there terminating.

AND

All that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West along the North line of said Southeast Quarter, a distance of 16.50 feet; thence on a bearing of South 0 degrees 36 minutes 03 seconds West, parallel with the East line of said Southeast Quarter, a distance of 798.65 feet; thence on a bearing of South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence on a bearing of North 19 degrees 45 minutes 00 seconds West, a distance of 155.00 feet to the point of beginning of the tract to be described; thence on a bearing of North 57 degrees 13 minutes 21 seconds West, a distance of 164.68 feet; thence on a bearing of North 88 degrees 34 minutes 15 seconds West, a distance of 423.51 feet to its intersection with a line bearing North 79 degrees 56 minutes 09

seconds West from the point of beginning; thence on a bearing of South 79 degrees 56 minutes 09 seconds East along last said line, a distance of 570.62 feet to the point of beginning.

EXCEPTING THEREFROM All that part of the Southeast Quarter of Section 28, township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence on an assumed bearing of South 0 degrees 36 minutes 03 seconds West along the East line of said Southeast Quarter, a distance of 679.00 feet; thence North 89 degrees 11 minutes 09 seconds West, a distance of 16.50 feet to the point of beginning fo the tract to be described; thence North 70 degrees 56 minutes 58 seconds West, a distance of 315.00 feet; thence North 15 degrees 58 minutes 36 seconds West, a distance of 600.00 feet to the North line of said Southeast Quarter; thence South 89 degrees 11 minutes 09 seconds East along said North line, a distance of 470.00 feet to a point 16.50 feet westerly of the Northeast corner of said Southeast Quarter; thence South 0 degrees 36 minutes 03 seconds West along a line parallel with the East line of said Southeast Quarter, a distance of 673.00 feet to the point of beginning and there terminating.

FURTHER EXCEPTING THEREFROM All that part of the Southeast Quarter of Section 28, Township 117, Range 26, Carver County, Minnesota, described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence westerly on an assumed bearing of North 88 degrees 34 minutes 15 seconds West along the North line of said Southeast Quarter, a distance of 16.50 feet; thence on a bearing of South 0 degrees 36 minutes 03 seconds West, parallel with the East line of said Southeast Quarter, a distance of 798.66 feet; thence on a bearing of South 89 degrees 12 minutes 26 seconds West, a distance of 1,008.32 feet; thence on a bearing of North 19 degrees 45 minutes 00 seconds West, a distance of 155.00 feet; thence on a bearing of North 57 degrees 13 minutes 21 seconds West, a distance or 164.68 feet; thence on a bearing of North 88 degrees 34 minutes 15 seconds West, a distance of 423.51 feet to the point of beginning of the tract to be described; thence continue on a bearing of North 88 degrees 34 minutes 15 seconds West along last said line, a distance of 979.32 feet to the West line of said Southeast Quarter; thence on a bearing of North along last said line, a distance of 43.37 feet; thence on a bearing of South 88 degrees 34 minutes 15 seconds East, a distance of 694.72 feet to its intersection with a line bearing North 79 degrees 56 minutes 09 seconds West from the point of beginning; thence on a bearing of South 79 degrees 56 minutes 09 seconds East along last said line, a distance of 288.76 feet to the point of beginning.