
COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

March 28, 2022

TO: Carver County Board of Adjustment & Young America Town Board

FROM: The Land Management Department

SUBJECT: Application for a Variance (Increased Sign Square Footage, Electronic Changeable Copy Sign)

FILE #: PZ20220010

APPLICANT & OWNER: Emanuel Lutheran Church

SITE ADDRESS: 18175 County Road 50, 55339

VARIANCE TYPE: Increased Square Footage for Signage, Electronic Changeable Copy Sign

PURSUANT TO: Carver County Code: Chapter §154.20, §154.23

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 11-032-0200

BACKGROUND:

1. The Emanuel Lutheran Church owns an approximate 16.6-acre parcel, which is located in the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section 32, Young America Township. In 1992, Conditional Use Permit #8648 was granted to the Emanuel Lutheran Church and School to “approve the site plan and operational plan for the church facility and allow for the construction of a gymnasium and church addition” on the subject parcel. The property is improved with a church, parking lot, a building containing a school and day care center, and a cemetery. The property is located within the Agricultural Zoning District and the CCWMO (Bevens Creek watershed).
2. Emanuel Lutheran Church is requesting to exceed the maximum allowed square footage of signage on their property and maximum sign square footage allowed for a single sign with a sign that is 94 square feet in size. In addition, the variance request is to allow a sign with electronic changeable copy. The sign has already been erected. The sign exceeds the maximum standard of 32 square feet of surface area per sign, exceeds the maximum standard of 36 square feet of surface area for the total signage on a property, and is a sign that has electronic changeable copy, which is not authorized by the Sign Code; therefore, a variance has been requested.

LEGAL BACKGROUND:

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)

§ 154.20 SIZE.

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

§ 154.22 ELECTRICAL SIGNS.

- (A) Electrical signs may be permitted, but devices giving off intermittent, flashing or rotating beam of light shall be prohibited. Flood lighting shall be focused upon the sign. No lighting for signs shall directly reflect light beams onto any public street or residential structure. Signs may not be illuminated beyond any lot line.
 - (B) Electrical signs must be installed in accordance with the current electrical code and a separate permit from the building official must be obtained prior to placement.
- (Ord. 58-2007, passed 3-27-07)

§ 154.23 UNAUTHORIZED SIGNS.

The following signs are unauthorized signs:

- (A) Any sign, signal, marking or device which purports to be or is an imitation of or resembles any official traffic-control device or railroad sign or signal, or emergency vehicle signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.
 - (B) All off-premise signs.
 - (C) Signs painted, attached or in any other manner affixed to trees, rocks, or similar natural surfaces, or attached to public utility poles, bridges, towers, or similar public structures.
 - (D) Changeable copy signs.
 - (E) Private signs, other than public utility warning signs, are prohibited within public rights-of-way and easements, or on any other public property unless the sign is specifically authorized by the responsible public authority.
 - (F) Any sign(s) placed near the intersection of public roads, or public roads and railroads, in such a manner as to cause any obstruction of vision to a motorist and/or pedestrian as determined by the appropriate road authority.
 - (G) Any sign containing obscene pictures or wording.
- (Ord. 58-2007, passed 3-27-07; Am. Ord. 70-2010, passed 1-25-11)

§ 154.27 HEIGHT.

The top of a sign, including its superstructure, if any, shall be no higher than the roof of the building to which such sign may be attached or 35 feet above ground level, whichever height is less; except that the height of any changeable sign which is attached to or an integral part of a functional structure, such as a water tower, smokestack, radio or TV transmitting tower, beacon or similar structure shall be no higher than such structure. Signs, including any superstructure standing or erected free of any building or other structure, shall not exceed an overall height of 35 feet from ground level and shall be located on land in an area which is landscaped or if such land is part of an approved parking area, it shall be surfaced or paved as required in the zoning code.

§ 154.35 NONCONFORMING SIGNS; COMPLIANCE.

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

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

STAFF ANALYSIS:

1. In 1992, the County Board approved Conditional Use Permit #8648 which allowed the Emanuel Lutheran Church and School to construct a gymnasium and church addition, as well continue to operate the church, which has been on the property since at least 1899. Previously a non-illuminated monument sign, which became nonconforming when the sign code was adopted, stood at the same location of the new sign. During the summer/fall of 2021 the church replaced the sign with a new sign that is the subject of this application. The submitted Variance application notes that the "overall sign is shorter and has less square-footage area than the original sign which had been in place for decades." The Sign Ordinance

specifies that when a nonconforming sign is destroyed by any means to an extent greater than 50% of its replacement cost, and no building permit has been applied for within 180 days of its removal, the new sign needs to conform to current rules.

2. After receiving a complaint about the new sign, Land Management staff researched the matter and discovered that no sign permit and no building permit had been issued prior to the sign's construction. Also, no electrical permit was issued. Staff sent a letter, dated November 9, 2021, to the church requesting communication on how the property could be brought back into compliance with applicable codes. On February 11, 2022, the church submitted a variance application.
3. The applicant's request is to allow a 15-foot-tall monument sign with a total signage area of 94 square feet. The sign's height is below the maximum structure height allowed; however, the sign exceeds the total allowable square footage for the property by 58 square feet and the single sign allowable square footage by 62 square feet. The signage includes a 30.3 square-foot electronic message board which is considered an unauthorized use pursuant to Section 154.23 (D) of the Sign Ordinance. The sign is located on the east side of the property near Hwy. 5/25, approximately 3.3 feet from the public right-of-way. The sign location meets the required 3-foot setback. There are at least three other freestanding signs identifying the different uses on the property, as well as signage on the buildings. All other signage features are existing, considered legal nonconforming signs, and are not being viewed as part of the variance request.
4. The applicant's letter, submitted as part of the application on February 28, 2022, explains their request. The church would like a lighted sign to replace their previous non-lighted sign. The previous sign's dimensions were 11'6" wide and 17'9" tall. The letter states that the new sign is smaller with an overall dimension of 8 feet by 11.5 feet and stands at 15 feet tall. The new sign possesses "an 8' x 3'8" lighted section which allows for changeable text."
5. The letter does not describe a practical difficulty related to the variance requests. The zoning code does have variance review criteria for after-the-fact variance applications, which are applicable when construction has already occurred. Although the variance letter references that a person from the church reached out to County staff prior to the sign construction, it does not appear that the applicant made much of an attempt to comply with the applicable regulations since no sign, building, or electrical permits were obtained prior to construction. It appears that a substantial investment of money has been made. The construction is fully completed. There are not similar structures in the area. At this point in time, the burden of complying with the zoning code significantly outweighs the benefit to the county if the applicant were to comply with zoning code standards.
6. The granting of the variance for increased signage and an electronic changeable copy sign would not be in conflict with the intent of the Comprehensive Plan or materially, adversely affect the health or safety of persons residing or working in the area adjacent to the property, or detrimental to the public welfare or injurious to property or improvements in the areas adjacent to the property. The sign, having electronic changeable copy, is in conflict with the intent of the zoning code, which does not authorize this type of sign. The sign appears to alter the character of the neighborhood which consists of agricultural uses, the institutional church and school, as well as scattered residences.
7. The sign is adjacent to Hwy. 5/25, where MNDOT is the road authority. The sign is subject to MNDOT rules, which are based MN Statutes. On February 11, 2021, Scott Thompson, P.E. MnDOT District 7 Traffic Engineer, indicated "Proposed electronic signs located adjacent to the State's Trunk Highways must conform with the requirements outlines below. These requirements are based on Minnesota Statute 173.15, and Code of Federal Regulations 23 750.108 (C). The sign must:
 - Be located outside of any public rights-of-way
 - Comply with all Federal State, and Local laws, regulations, rules and ordinances
 - Not utilize distracting flashing or moving lights. Displayed digital content must not change more frequently than once every six seconds (scrolling is not allowed)
 - Not purport to or resemble an official traffic control device, sign, or signal
 - Not interfere with a driver's view of approaching, merging or intersecting traffic
 - Not use the word 'stop' or 'danger'

- Not advertise anything beyond activities occurring on the premises upon which the sign is located. No paid advertising or advertising for other community events.
8. The Young America Town Board reviewed and recommended approval of the request during their February 8, 2022, Town Board meeting. The Board commented, "Township Board was unanimous in both requests for size of sign and lighted sign. No issues for them."

BOARD CONSIDERATION:

If the Board of Adjustment determines that a practical difficulty has been identified, and that approving the variance for an increase in individual sign square footage and an increase in total sign square footage would serve in the interest of justice, the following conditions should be attached:

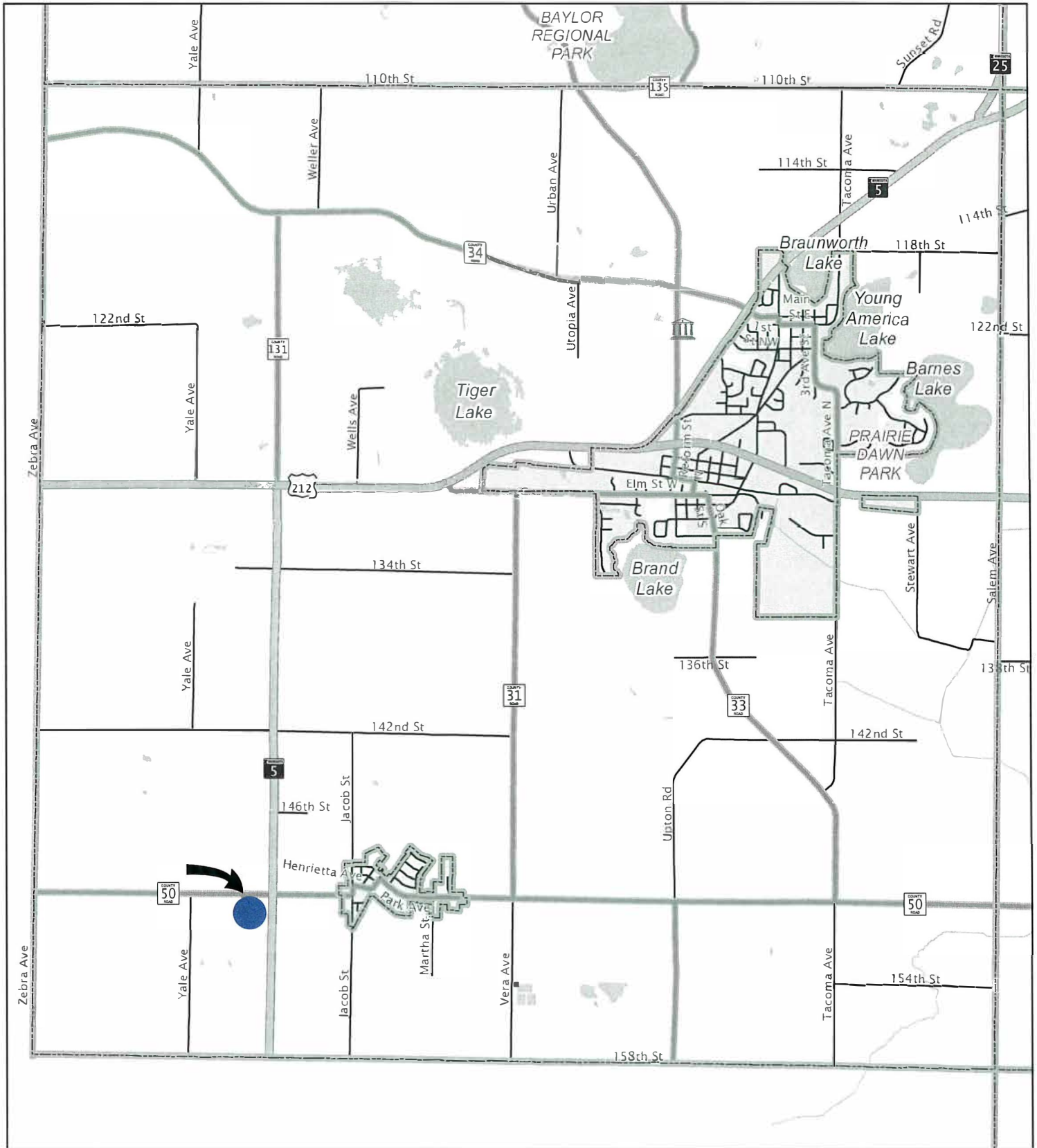
1. The permittee shall obtain the appropriate permit(s) for the sign, including but not limited to the appropriate sign, building and electrical permits. All work shall be done in accordance with the submitted and approved plans.
2. No additional signage or expansion of signage related to the primary use of the property shall be permitted without obtaining all necessary building permits and/or variances, if applicable.
3. The permittee shall obtain any required permitting from MNDOT and comply with all MNDOT rules for signs adjacent to state trunk highways.
4. The sign must have automatic dimming technology installed that adjusts the device's brightness levels in response to changes in ambient light.
5. The electronic changeable copy shall not change more than once in a 24-hour period.
6. The permittee shall comply with all Carver County Zoning Code (Chapter 152) and Sign Ordinance (Chapter 154) requirements.

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

OR

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

YOUNG AMERICA TOWNSHIP



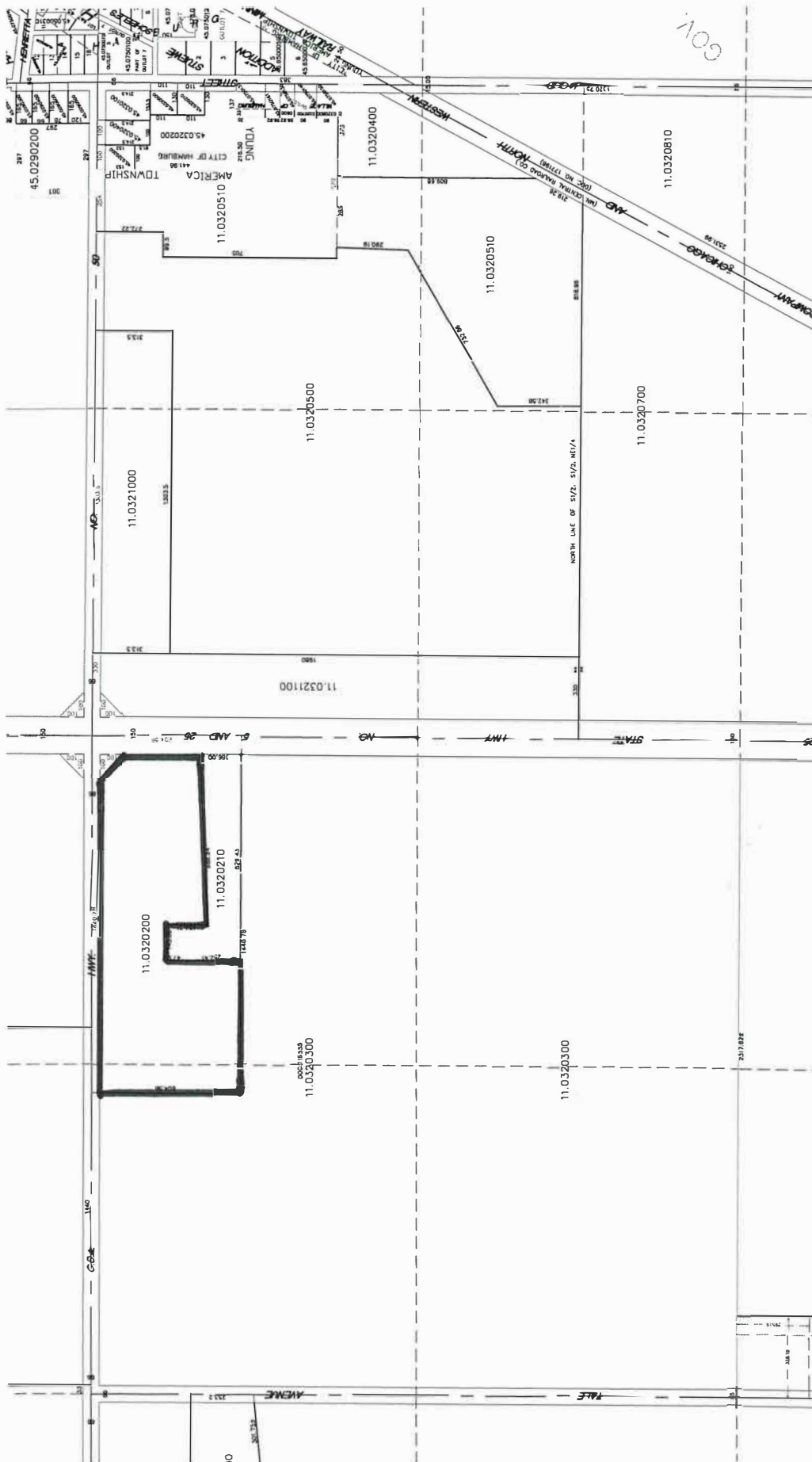
This map was created using Carver County's Geographic Information Systems (GIS), it is a compilation of information and data from various City, County, State, and Federal offices. This map is not a surveyed or legally recorded map and is intended to be used as a reference. Carver County is not responsible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

0 1 2 Miles



Map Created by Carver County GIS

THIS IS NOT A LEGALLY RECORDED PLAT.
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AS THEY APPEAR IN THE CLERK COUNTY
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IS ONLY TO BE USED FOR REFERENCE
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INACCURACIES CONTAINED THEREIN.



To: Carver County Board of Adjustment,

My name is Doug Stuedeman. I am a trustee at Emanuel Lutheran Church and am representing the church in this variance application.

Emanuel Lutheran Church, Hamburg received a donation from a member to replace its existing sign on the west side of HWY 25. The donor wished to replace the original 11'6" x 17'9" (204 square ft) sign with a smaller sign of 8' x 15' (120 square ft) that has an 8' x 3'8" lighted section which allows for changeable text.

An Emanuel representative had spoken with a county official who had stated the county would be "ok" with the sign as long as it was smaller than the original and adhered to all state guidelines. Unfortunately, it was never communicated that a sign with changeable text was not allowed outside of city limits in Carver County.

Therefore, Emanuel Lutheran Church would like to request the following:

- 1) The church requests a variance to install a sign that is 92 square feet.
- 2) The church requests a variance to install a sign with a 30 square foot electronic message center that allows for changeable "non-scrolling" text to announce church, school, and fundraising events.
- 3) The church requests a variance to install a 92 square feet sign to add to the square footage of the other existing legal nonconforming signs on the parcel that exceed 36 square feet of signage.

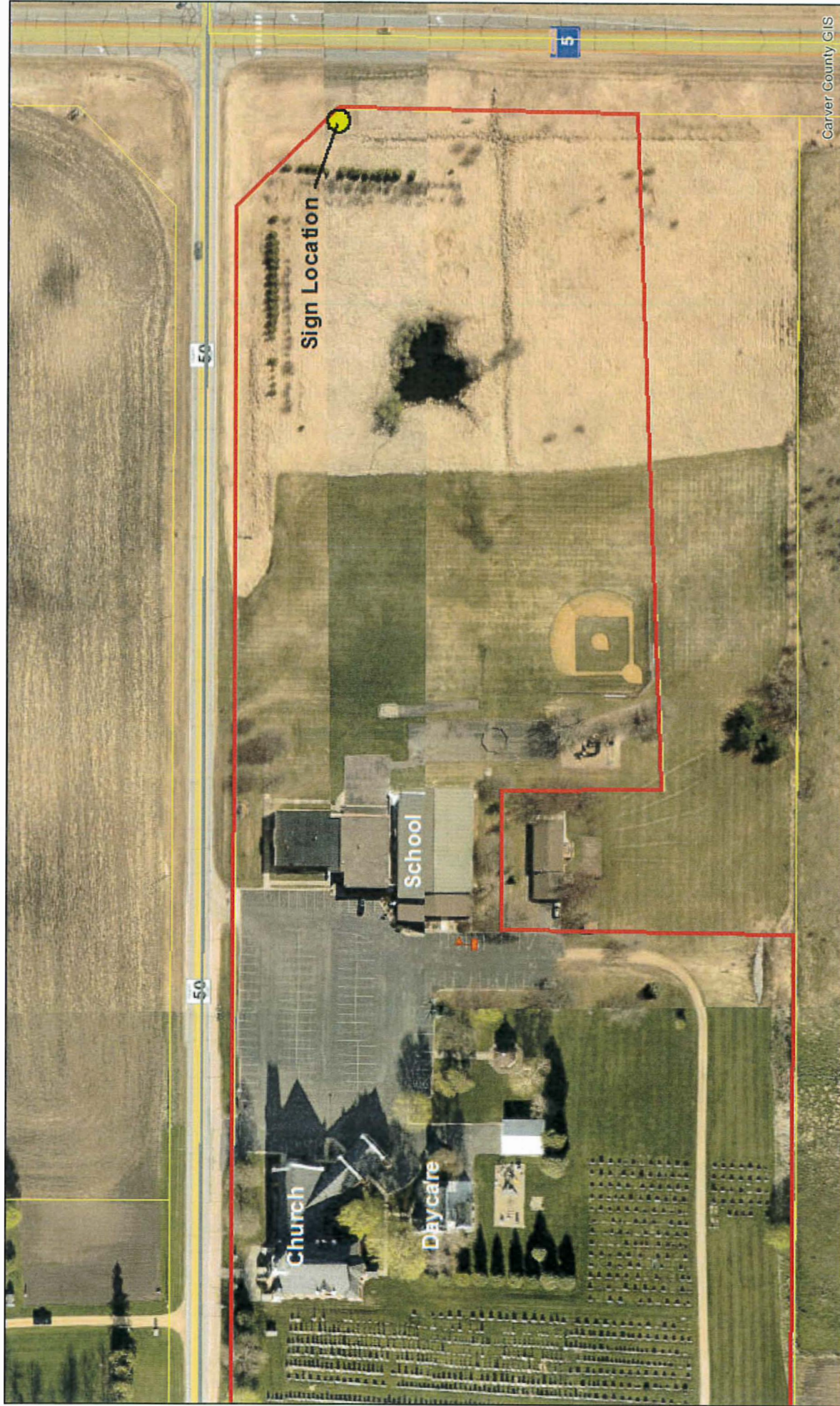
There are no property conditions that are against an existing ordinance. The sign location is greater than 3' outside of the "right of way".

Emanuel Lutheran Church wishes to thank the Board of Adjustment for considering this application.

Cordially,

Doug Stuedeman

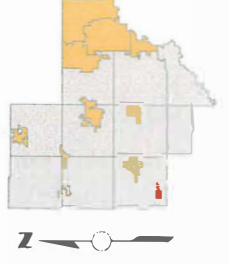
EMANUEL LUTHERAN CHURCH & SCHOOL PROPERTY

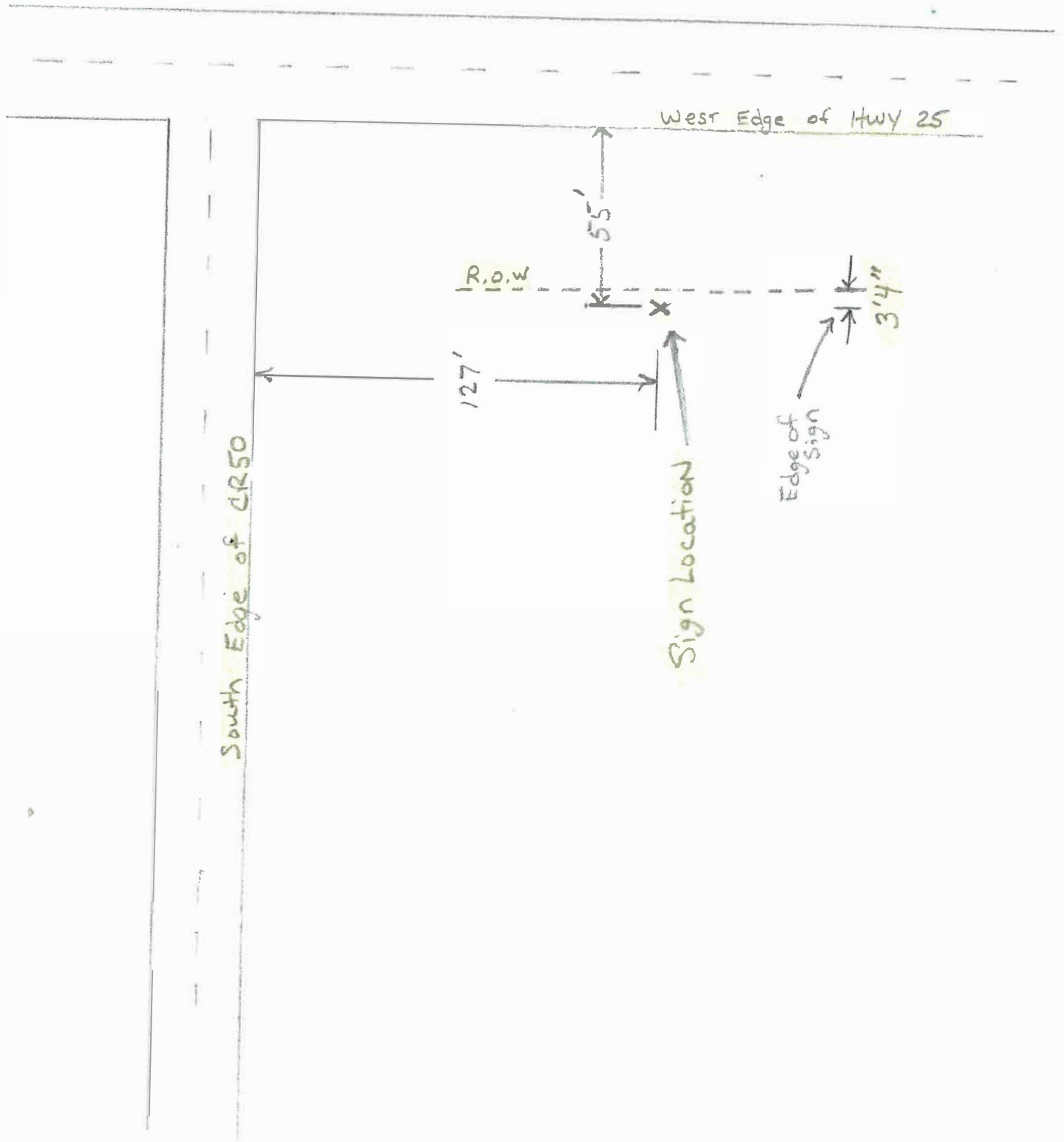


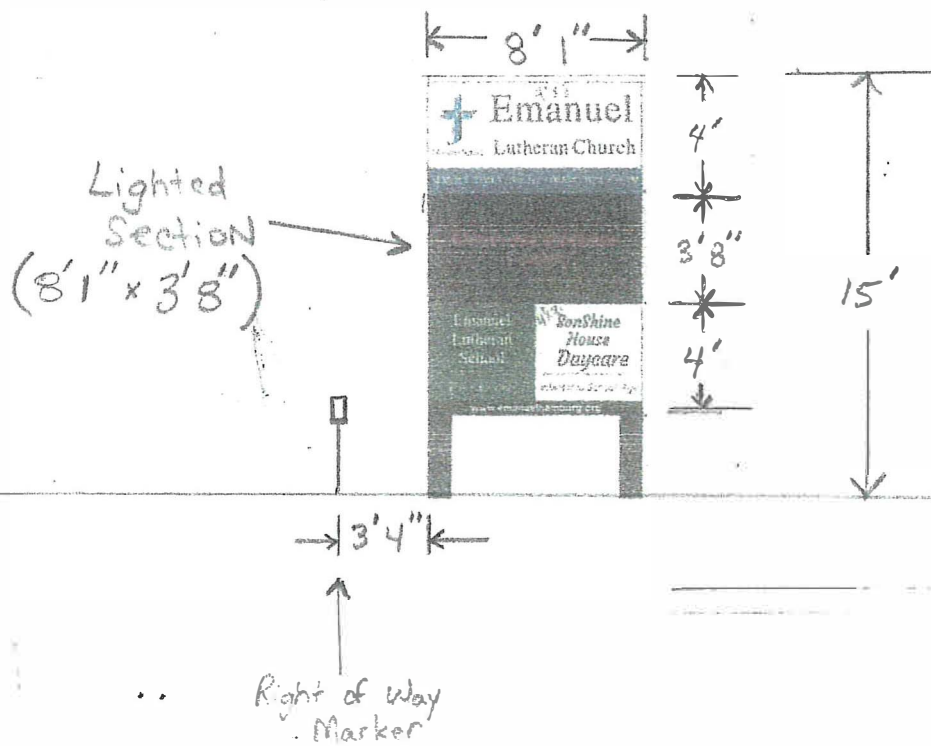
Date: 3/28/2022



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Emanuel
Lutheran Church



Emanuel
Lutheran School
Pre-K thru 8th

SonShine
House
Daycare
Infant thru School-Age
www.emmanuelhamburg.org

RW

3-14-2022

3-14-2022



3-16-2022





Township Presentation & Recommendation Form

PARCEL # <u>11.0320200</u>	Permit # <u>P22022 0010</u>
Owner's Name: <u>Emanuel Lutheran Church</u>	Owner's Mailing Address: <u>18175 County Rd 50</u>
City: <u>HAMBURG</u>	Owner State: <u>MN</u> Owner Zip: <u>55339</u>
Applicant (if other than owner): <u></u>	Site Address: <u>18175 County Rd 50</u>

Type of Request: ☐ CUP ☐ IUP ☐ Preliminary Plat ☐ Final Plat ☐ Variance ☐ Appeal
Description of Request: <u>Emanuel Luth Church would like to request a variance to allow for a new sign that (overall) exceeds the 7' height limit and 32 square foot area limit, has an 8'1" x 3'8" lighted section, but the overall sign is shorter and has less square area than the original sign it is replacing that has been there for decades</u>
Date of County Public Hearing: <u>March 2</u> Date of Township Meeting: <u>Feb 8</u>

Actions:

Township Action Taken: ☒ Recommends approval and use of the Township Road (if applicable) with the following comments: ☐ Recommends denial for the following reasons: ☐ No recommendation, but will comment on the request at the Planning Commission or Board of Adjustment hearing:
<u>Township Board was unanimous on both requests above for size of sign and lighted sign.</u> <u>No issues for them.</u>

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

<u>Ray Stuedemann</u> Signature of Applicant	Date <u>2/8/2022</u>
<u>Bradley Schrupp</u> Signature of Township Official	Date <u>2/8/22</u>

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 11-032-0200

File# PZ20220010

APPLICANT/OWNER: Emanuel Lutheran Church

* * * * *

Commencing on the quarter section stake between Sections 32 and 29 of Township 115, Range 26, Carver County, Minnesota; thence running West on said Section line, the distance of 21.83 chains; thence running South parallel with North and South division line of Section 32, 9.16 chains; thence East parallel with Section line between Sections 29 and 32, the distance of 21.83 chains; thence North on the North and South division line, 9.16 chains to the place of beginning, containing 20 acres of land.

EXCEPTING THEREFROM all that part of the Northwest Quarter of Section 32, Township 115, Range 26, Carver County, Minnesota, described as follows: Commencing at the northeast corner of said Northwest Quarter of Section 32; thence on an assumed bearing of North 89 degrees 42 minutes 32 seconds West along the North line of said Northwest Quarter, 891.72 feet; thence South 02 degrees 56 minutes 53 seconds West, 162.82 feet; thence South 30 degrees 28 minutes 48 seconds West, 77.07 feet; thence South 00 degrees 00 minutes 35 seconds East, 122.88 feet; thence South 89 degrees 42 minutes 32 seconds East, 30.38 feet to the point of beginning of the tract to be described; thence South 00 degrees 42 minutes 30 seconds West, 252.41 feet; thence South 89 degrees 42 minutes 32 seconds East, 829.43 feet; thence North 00 degrees 42 minutes 30 seconds East, 166.00 feet; thence South 87 degrees 47 minutes 22 seconds West 686.64 feet; thence North 00 degrees 42 minutes 30 seconds East, 164.31 feet; thence North 89 degrees 42 minutes 32 seconds West, 143.66 feet; thence South 00 degrees 42 minutes 30 seconds West, 47.93 feet to the point of beginning. This tract contains 3.368 acres of land and is subject to any and all easement of record.

COUNTY OF CARVER
PUBLIC SERVICES DIVISION
Department of Land Management

March 28, 2022

TO: Carver County Board of Adjustment

FROM: The Land Management Department

SUBJECT: Extension Request for Approved Variance (Front Yard & Reduced Lake Setbacks)

FILE #: PZ20200024

APPLICANTS/OWNERS: Michael & Tammy Wojtasiak

SITE ADDRESS: 7380 West Shoreline Drive, Waconia

VARIANCE TYPE: Shoreland setback & front yard setback

PURSUANT TO: Carver County Code: Chapter 152.034 D & 152.119

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 09-848-0040

BACKGROUND:

1. Mike & Tammy Wojtasiak own an approximate 1.24-acre parcel which is located in the East Half (E½) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) in Section 10, Waconia Township. Subject parcel is part of Wagener's Subdivision #2, which was platted in 1933. The property is improved with a house, detached garage and land w/septic system. The parcel is located in the Agricultural Zoning District, Shoreland Overlay District (Lake Waconia) and the CCWMO (Carver Creek watershed).
2. In June of 2020 Mr. & Mrs. Wojtasiak applied for variances to allow them to replace the existing outdated residence with a new house. The proposed house did not meet the required 68-foot (Local Road) front yard setback from the centerline of West Shoreline Drive or the required Zoning Code Ordinary High Water (OHW) setback of 75 feet from Lake Waconia.
3. The applicant's proposal consisted of placing the new residential house approximately 40 feet from the centerline; therefore, reflecting a 28-foot variance. West Shoreline Drive was platted with only a 32-foot right-of-way (66 feet is the current standard). Secondly, applicant's proposal consists of placing the new residential house with a deck approximately 45 feet from the established OHW; therefore, reflecting a variance of approximately 30 feet. On July 1, 2020 the Carver County Board of Adjustment approved #PZ20200024, granting the requesting variances.
4. Citing "significant cost impacts from the pandemic" and the need for construction redesign, in June 2021 Mr. Wojtasiak requested a one-year extension on the variance approval, as allowed by the zoning code. At the July 7, 2021 meeting the BOA approved the one-year extension.
5. In a letter dated March 22, 2022, Mr. Wojtasiak submitted a request for an additional one-year extension.

LEGAL BACKGROUND:

§ 152.217 EXPIRATION/EXTENSION OF VARIANCE.

If the work, as permitted by the variance, is not completed within one year after the granting of the variance, then the variance shall become null and void, unless a request for extension of time in which to complete the work has been granted by the Board of Adjustment. In order to obtain an extension, the applicant must file a written request with the Department

at such time as the request can be placed on the Board of Adjustment agenda prior to the expiration of the variance. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance. There shall be no charge for the filing of the request.

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

STAFF ANALYSIS:

1. In his variance request letter Mr. Wojtasiak describes the difficulties of significant cost increases, cost-based home design modifications, delays in obtaining building materials, and labor shortages, as reasons contributing to the delay in completing the work authorized by the variance.
2. Mr. Wojtasiak reports that since BOA approved the first variance extension in July 2021, he has reviewed the original house plans with builder and architect and made some modifications to reduce the cost to build the structure. His letter describes work to bid and pre-order materials so that materials are available for the proposed summer 2022 construction. He reports that “we sold our home in Maple Grove (March 2022) and have moved full-time into Waconia to take advantage of the Seller’s market to cover the additional costs considered in the Waconia home build process.”

BOARD CONSIDERATION:

This is not a public hearing; however, if the Board of Adjustment determines that the applicant’s variance approval warrants an extension, the following conditions should be attached:

1. The variance approval shall be extended July 1, 2023.
2. The applicant shall comply with all conditions of Order #PZ20200024.

03/22/2022

From: Michael Wojtasiak
7380 W. Shoreline Dr.
Waconia, MN 55387

To: Carver County Land Management

Re: Request for extension of variance

My wife, Tammy, and I own a property located at 7380 W. Shoreline Dr in Waconia. In 2020, we received approval for our requested setback variance in order to accommodate the construction of a new home. As a result of the pandemic and the significant labor/material costs and supply chain constraints that followed, we postponed our build and are requesting an additional extension to our variance approval which expires in July 2022.

Background

As we were finalizing our plans and preparing permit applications to build last summer (2021), our builder indicated that he was experiencing significant cost increases and delays in building materials and labor shortages (*for example: 6-8-month lead times on doors and windows, garage doors, elevated costs in plumbing supplies, etc.*) that would have impacted our completion within the original variance extension and overall project costs.

Steps Taken to Start Construction in 2022

We reviewed our original plans with our builder & architect and made some modifications to our design related to selected amenities to reduce our cost to build. The updated design will remain within the approved setbacks. Further, we are currently working with our builder to bid and pre-order materials to ensure availability when needed for our build which will commence this summer (2022). Additionally, we sold our home in Maple Grove (March 2022) and have moved full-time into Waconia to take advantage of the Seller's market to cover the additional costs considered in the Waconia home build process.

We kindly request your approval for the extension of our variance to provide an opportunity to not only build a more cost-efficient home; but do so in a manner that can be completed within a reasonable amount of time. Assuming our request is approved, we will be applying for building permits and beginning construction this summer with estimated completion by April 2023.

Thank you for your consideration,

Michael L. Wojtasiak

Document Number: **A699661**

Filed and/or Recorded on
Jul 8, 2020 1:03 PM

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

Deputy JW	Pkg ID: 7175566
Document Recording Fees	\$ 0.00

Document Total	\$ 0.00
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Requesting Party: CARVER COUNTY - LAND MANAGEMENT
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



COUNTY OF CARVER
State of Minnesota

FILE #: PZ20200024

APPLICANTS/OWNERS: Michael & Tammy Wojtasiak

SITE ADDRESS: 7380 West Shoreline Drive, Waconia

VARIANCE TYPE: Shoreland setback & front yard setback

PURSUANT TO: Carver County Code: Chapter 152.034 D & 152.119

LEGAL DESCRIPTION: See attached Exhibit "A"

PARCEL #: 09-848-0040

Drafted by: Land Management

Return to: Land Management

BOARD OF ADJUSTMENT
FINDINGS OF FACT AND ORDER

A public hearing was held on this matter on July 1, 2020, 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. Mike & Tammy Wojtasiak own an approximate 1.24-acre parcel which is located in the East Half (E½) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) in Section 10, Waconia Township. Subject parcel is also known to be part of Wagener's Subdivision #2, which was platted in 1933. The property is improved with a house, detached garage and land w/septic system. The parcel is located in the Agricultural Zoning District, Shoreland Overlay District (Lake Waconia) and the CCWMO (Carver Creek watershed).
2. Mr. & Mrs. Wojtasiak are requesting Variances which would allow them to replace the existing outdated residence with a new house. The proposed house would not meet the required 68-foot (Local Road) front yard setback from the centerline of West Shoreline Drive, or the required Zoning Code Ordinary High Water (OHW) setback of 75 feet from Lake Waconia; therefore, reduced setback variances have been requested pursuant to Sections 152.034 (E) and 152.119 (A) of the Carver County Zoning Code.
3. Mr. & Mrs. Wojtasiak purchased the property in 2016. Based on when the parcel was created (1933), their parcel is considered to be a legal non-conforming lot of record pursuant to the Carver County Zoning Code. The existing house is also considered to be a legal non-conforming structure pursuant to the Shoreland regulations of the Carver County Zoning Code. Therefore, the removal/replacement of an existing structure must meet the current Carver County Zoning Code standards or be successful in obtaining the necessary Variance(s) for any reduced setback(s).

4. The Wojtasiaks would like to demo the existing house which was constructed in the 1960's. The current house has provided the Wojtasiaks with many structural challenges over the past few years (i.e. mechanical failures, basement flooding, heating & air problems, etc.), all of which would require significant remodeling to correct properly. The applicants have been working with an architect over the past several months to design a new house which would significantly increase the usage and value of the existing property, improve compliance with existing setbacks from the lake, and assure the house is safe, energy efficient and less costly to maintain.
5. The Zoning Code requires a 68-foot front yard setback from the centerline of the local road to a structure. The applicant's proposal consists of placing the new residential house approximately 40 feet from the centerline; therefore, reflecting a 28-foot variance. West Shoreline Drive was platted with only a 32-foot right-of-way (66 feet is the current standard). In other words, the setback from the right-of-way would be approximately 24 feet. The applicant is proposing to increase the lake setback from what is currently in place; therefore, decreasing the setback distance from the road. The proposed road setback appears to be in line with other area structures in the neighborhood.
6. The established OHW for Lake Waconia is 963.1, pursuant to the MN DNR. The Zoning Code structure setback requirement from the OHW is 75 feet. The applicant's proposal consists of placing the new residential house with a deck approximately 45 feet from the established OHW; therefore, reflecting a Variance of approximately 30 feet. This setback would allow the house (w/deck) to be located outside of the Shore Impact Zoning of Lake Waconia which is defined as "land located between the ordinary high water level of a public water, and a line parallel to it at a setback of 50% of the structure setback". As stated in the front yard setback finding, the applicant is proposing to decrease the front yard (road) setback in order to allow for an increase to the lake setback from what is currently in place. The new house proposal would also place the new deck further away for the lake than the current deck.
7. The applicant's letter (dated: June 8, 2020) addresses their practical difficulty for needing a variance. The existing house is starting to show signs of disrepair and would require significant remodeling. The practical difficulty is also due to the small size of the buildable area of the lot, setbacks from the lake and local road running through the middle of the property. The above-mentioned factors make the replacement of an updated house difficult/challenging. Many of the other homes in the neighborhood have been updated with similar concepts. The house was constructed in the 1960's and the lot(s) were created in the 1930's, which was well before land use regulations. The applicant did not create the hardship and updating the home may actually improve its compatibility with the neighborhood.
8. The new house would be required to comply with all Subsurface Sewage Treatment System (SSTS) standards (i.e. obtain county approval). The house design plan would be reviewed once submitted to the Carver County Environmental Services staff to verify all requirements of MN Rule 7080-7083 and Chapter 52 of the Carver County Code of Ordinances.
9. Any grading and/or filling activity on the property shall be completed in accordance with the CCWMO Water Management guidelines, if applicable. Any and all site improvements shall be completed pursuant to Chapter 153 – Water Resource Management.
10. The Waconia Town Board is the local road authority for West Shoreline Drive. The property owner and contractors would be required to comply with all road usage/access requirements.
11. This request was sent to Jason Spiegel, MNDNR Area Hydrologist, for review; however, no comments were received.
12. The granting of the variance would not be in conflict with the intent of the Comprehensive Plan and would not alter the character of the neighborhood.
13. 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 applicants and would not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the properties.
 - The Waconia Town Board reviewed and recommended approval of the reduced setbacks during their June 8, 2020, Town Board meeting.

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

ORDER # PZ20200024

IT IS HEREBY ORDERED: That the application of Michael & Tammy Wojtasiak for a Variance to replace the existing outdated residence with a new house with reduced setbacks pursuant to Sections 152.034 & 152.119 of the Carver County Zoning Code, for the property legally described on the attached Exhibit "A", is hereby approved. The Board of Adjustment further orders approval with the following conditions:

1. The permittee shall obtain the appropriate building permit(s) and septic permit(s) prior to the construction of the residential house. A grading plan and erosion/sediment control plan shall also be prepared, submitted and implemented in accordance with the CCWMO Water Rules (Chapter 153) as part of the building permit application process. The lowest floor elevation for the house must meet to the Carver County Zoning Code Shoreland Regulations.
2. All construction activities shall be done in accordance with the submitted site plan(s). The new construction shall not encroach any closer to the OHW of Lake Waconia than approved as part of this permit application.
3. No additional expansions shall be permitted without obtaining all necessary building permits and/or Variances.

DocuSigned by:

Mark Willems

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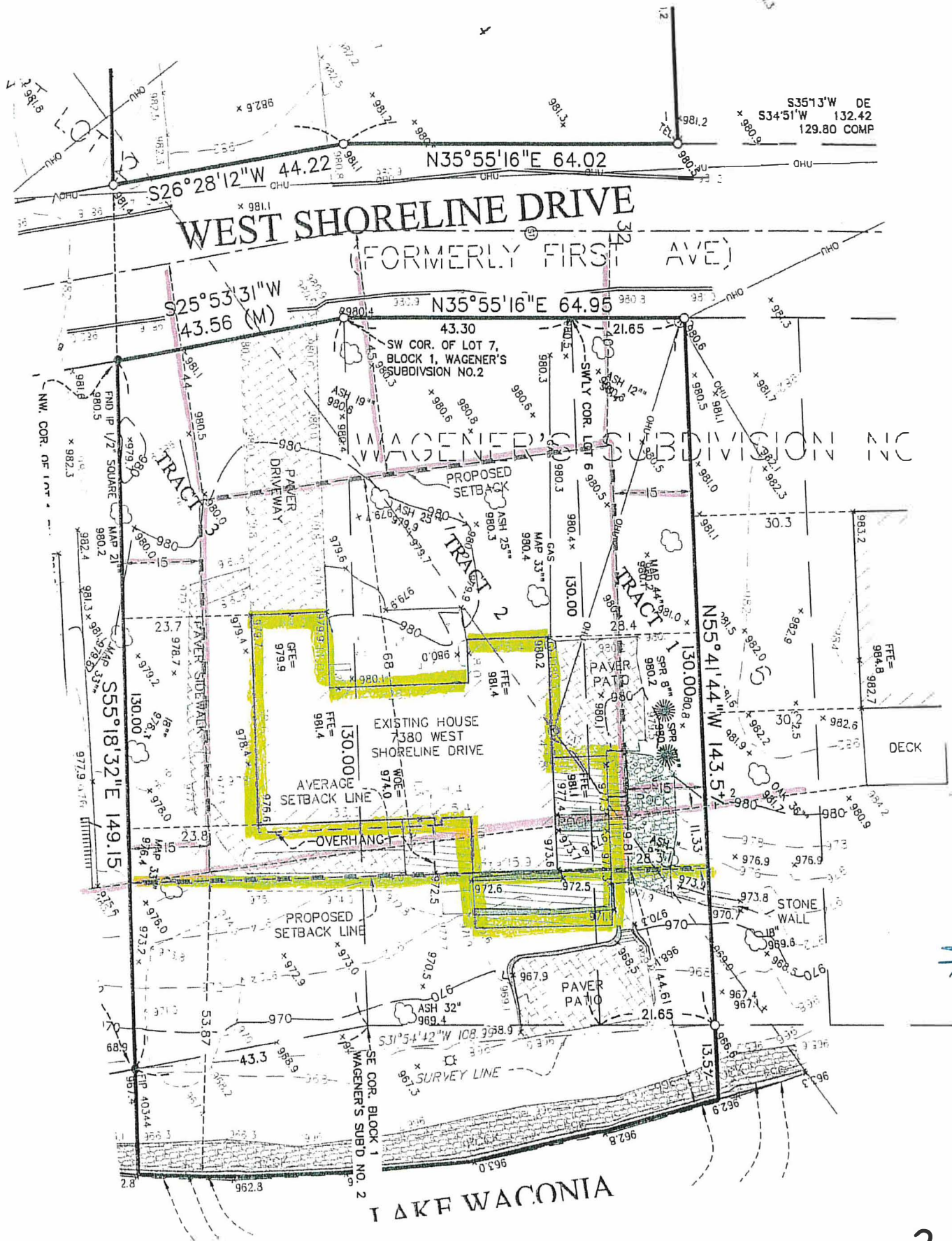
Mark Willems, Chairman
Carver County Board of Adjustment

7/7/2020 | 3:00:05 AM PDT

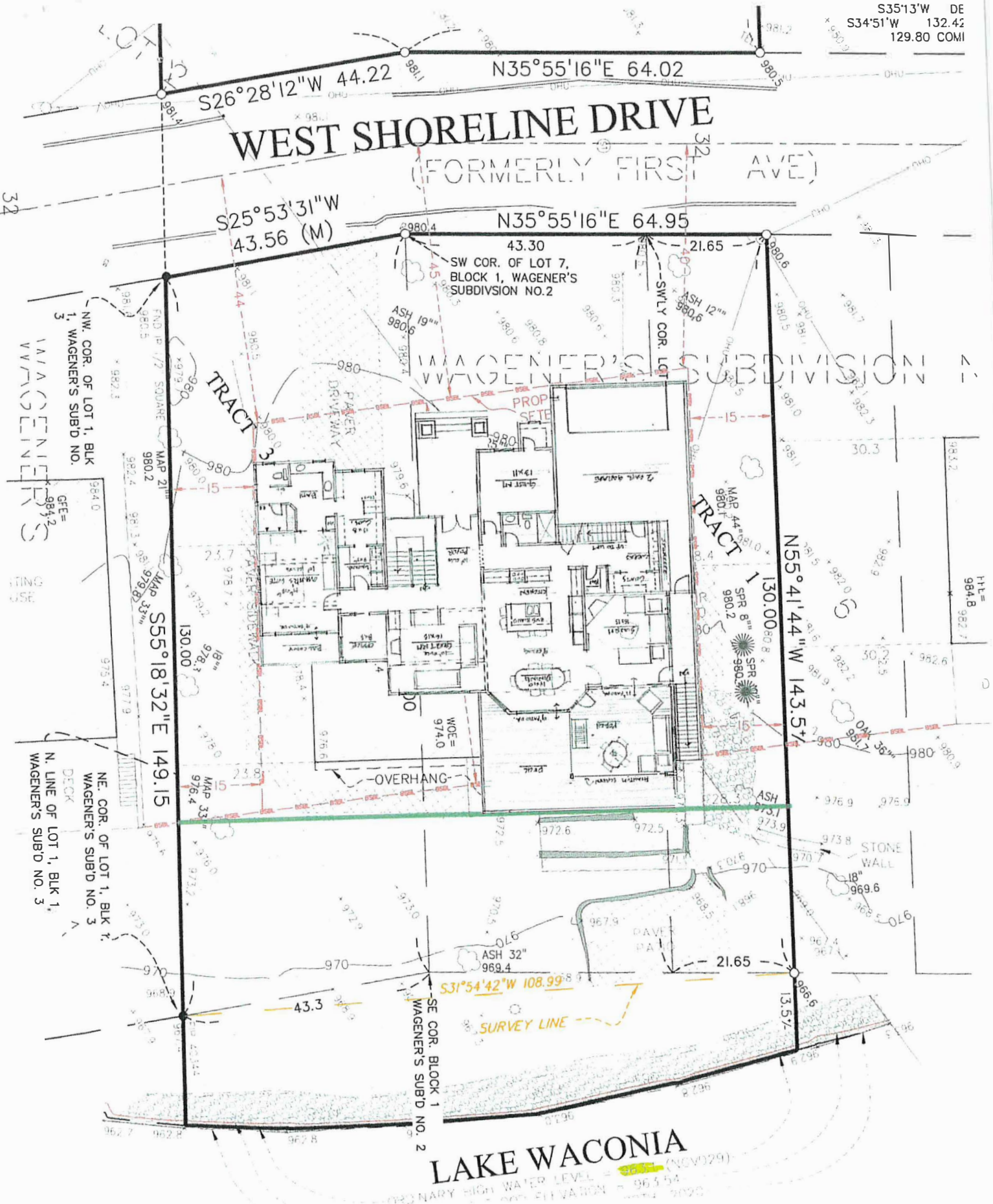
Date

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

Existing



S35°13'W DE
S34°51'W 132.42
129.80 COMI



LAKE WACONIA

ORDINARY HIGH WATER LEVEL = 965.54 (NOV129)
100% ELEVATION = 965.54

EXHIBIT "A" – LEGAL DESCRIPTION

PID NUMBER: 09-848-0040

File# PZ20200024

APPLICANTS/OWNERS: Michael & Tammy Wojtasiak

Those certain tracts of land in Wagener's Subdivision Number 2 and Government Lots 1 and 2, Section 10, Township 116 North, Range 25 West, as more particularly described as follows:

Tract 1

Commencing at a point 21.65 feet Northeasterly of the southwesterly corner of Lot 6, Block 1, Wagener's Subdivision Number 2 on the westerly line of said Lot 6; thence running Southwesterly 21.65 feet to the southwesterly corner of said Lot 6; thence Southeasterly on the line dividing Lots 6 and 7, said Block 1, a distance of 130 feet to the southeasterly corner of said Lot 6; thence Northeasterly along the easterly line of said Lot 6 a distance of 21.65 feet; thence Northwesterly a distance of 130 feet to the place of beginning.

Being the Southwesterly Half of Lot 6, Block 1, Wagener's Subdivision Number 2, according to the map or plat thereof, on file and of record, in the office of the Register of Deeds, in and for Carver County, Minnesota.

Tract 2

Lot 7, Block 1, Wagener's Subdivision Number 2, Carver County, Minnesota.

Tract 3

Beginning at the southeast corner of Block 1, Wagener's Subdivision Number 2; thence South 25 degrees 25 minutes West along the shore of Clearwater Lake a distance of 43.3 feet to an iron monument, said monument being the northeast corner of Lot 1, Block 1, Wagener's Subdivision Number 3; thence deflecting right 98 degrees 11 minutes along the north line of said Lot 1 bearing North 56 degrees 24 minutes West a distance of 130 feet to the Northwest corner of said Lot 1; thence deflecting right 98 degrees 11 minutes along the East line of First Avenue of said Wagener's Subdivision Number 3 and bearing North 25 degrees 25 minutes West a distance of 43.3 feet to an iron monument, said iron monument being the southwest corner of Lot 7, Block 1, Wagener's Subdivision Number 2 according to the plat first mentioned; thence deflecting right 88 degrees 23 minutes along the south line of said Lot 7 of said Subdivision Number 2 bearing South 56 degrees 24 minutes East a distance of 130 feet to an iron monument, the place of beginning for this description, the property thus described being all that land between aforementioned Wagener's Subdivision Number 2 and Wagener's Subdivision Number 3 and the boundaries of which are parallel to the lot boundaries of said Wagener's Subdivision Number 3.

Tract 4

That part of Government Lots 1 and 2, Section 10, Township 116 North, Range 25 West of the Fifth Principal Meridian, lying Northeasterly of the northwesterly extension of the northeasterly line of Lot 1, Block 1, Wagener's Subdivision Number 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 Northwestern line of First Avenue in Wagener's Subdivision Number 2, where the northeasterly line of Lot 2, Block 1, said Wagener's Subdivision Number 2, 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 Number 3, a distance of 962.90 feet to the northeasterly line of First Street in Wagener's Subdivision Number 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 a 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, EXCEPTING THEREFROM that part of Tracts "A" and "B" described below lying southerly of the northwesterly extension of the northeasterly line of Lot 4, Wagener's Subdivision Number 2, according to the recorded plat thereof and EXCEPTING THEREFROM that part of Tract "C" described below lying northerly of a line parallel to the northeasterly line of Lot 6, Wagener's Subdivision Number 2 and 21.65 feet southerly thereof (measured at right angles to said lot line), all according to the recorded plats of said subdivisions.

TRACT "A"

Commencing at a point on the northwesterly line of First Avenue in Wagener's Subdivision Number 2 where the northeasterly line of Lot 2 of Block 1, said Wagener's Subdivision Number 2, if extended, would intersect said northwesterly line of First Avenue; thence running Southwesterly, along said northwesterly line of First Avenue, a distance of 130.0 feet; thence Northwesterly, at right angles to the northwesterly line of First Avenue, a distance of 84 feet; thence Northeasterly, parallel to the northwesterly line of First Avenue, a distance of 130.0 feet; thence Southeasterly 84.0 feet to the point of beginning, situated in Government Lot 1, Section 10, Township 116, Range 25, containing approximately 0.25 acres, EXCEPTING the northeasterly 43.3 feet thereof.

TRACT "B"

Starting at the southwest corner of Block 3, Wagener's Subdivision; thence South 35 degrees 13 minutes West, along the northerly line of First Avenue in said Subdivision, a distance of 43.3 feet; thence North 50 degrees 21 minutes West a distance of 84 feet to the point of beginning of the land to be hereby conveyed; thence South 35 degrees 13 minutes West and parallel to the northerly line of First Avenue a distance of 130.0 feet; thence North 50 degrees 21 minutes West a distance of 31.75 feet; thence North 26 degrees 59 minutes East, a distance of 133.1 feet; thence South 50 degrees 21 minutes East, a distance of 57 feet to the point of beginning, EXCEPTING THEREFROM the Northeasterly 43.3 feet thereof, said land being a part of Government Lot 1, Section 10, Township 116, Range 25.

TRACT "C"

That part of Government Lots 1 and 2, Section 10, Township 116 North, Range 25 West, described as commencing at a point on the northwesterly line of First Avenue in Wagener's Subdivision Number 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 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 Number 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 a 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.

Tract 5

That part of Parcel "A" described below which lies between the northwesterly extension of the northerly line of Lot 1, Wagener's Subdivision Number 3 and the northwesterly extension of a line parallel to the southerly line of Lot 6, and 21.65 feet northerly thereof, Wagener's Subdivision Number 2, according to the plats thereof on file and of record in the office of the County Recorder, Carver County, Minnesota.

Parcel A

That part of Government 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 Number 4, according to the recorded plat thereof, and which lies southwesterly of the southwesterly line of Elm Street as platted 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 where the northwesterly extension of the northeasterly line of Lot 2, Block 1, Wagener's Subdivision Number 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 continue South 35 degrees 13 minute 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 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.