



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
February 20, 2020
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

- A. Review Variance Case No. 20-01-VB for 15 Birchwood Lane* (pp. 3-39; 45-48)
 - 1. Public Hearing
 - 2. Discuss & Recommendation to City Council
- B. Review/Approve January 23, 2020 Meeting Minutes* (p. 41)
 - 1. Confirm Nominal & Accessory Structures Recommendation* (p. 42)
- C. Recommend Address Assignment for Cedar St. Vacant Lot* (p. 43)

ADJOURN

Variance Materials

Staff Memo – p. 3

Variance Application – pp. 4-10

House Plans – pp. 11-15

Survey – pp. 16-19

Sec 304 Variances – pp. 21-23

Sec 302 Zoning Code – pp. 25-39

Variance Findings Form – pp. 45-48

* Denotes items that have supporting documentation provided

MEMORANDUM



Birchwood Village

TO: Birchwood Village Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Variance Case No. 20-01-VB
DATE: February 14, 2020

Dear Commissioners,

Enclosed is a Variance applications from Greg & Kathy Sherwood (Case No. 20-01-VB) for the following variances to allow demolition and rebuild of the principal structure at 15 Birchwood Lane that allows for two-stories on top of a walkout with proper roof slope, ceiling heights and rear deck access:

- A 42" variance from the 10-foot side yard setback requirement for a suspended deck walkway from the front yard to the back deck (attached to the principal structure), per 302.020;
- A 42" variance from the 2-foot eave exception in 302.020.1 to allow the entire front porch to be covered; and
- A 26" variance from the 30-foot structure height limitation, per 302.045.

This matter came before the Commission on January 23, 2020 and was tabled due to Commissioners finding the application packet to be incomplete. The enclosed materials are inclusive of the additional information requested by the Commission. Please disregard the impervious calculations in the January 27, 2020 memo from Jason Rud – these figures were altered due to adjustments in the house plan and are corrected on the enclosed survey documents.

Notices were mailed to each of the neighboring properties within 200 ft. and to the DNR and RCWD prior to the January 23rd hearing, as required. The only response was from neighbor Allen Christian, who attended and participated in the January 23rd hearing.

As this item was tabled during the January 23rd meeting, another public hearing should take place at this meeting. Please remember to open and close the public hearing prior to your discussion and recommendation.

In addition to the application materials, I've also enclosed Sections 302 & 304, and the Variance Findings Form to help guide you in your review. Variance requests may only be recommended if the Commission finds that the applicant has satisfied all of the criteria in Section 304.040.

Request/Recommendation

Staff requests Commissioners:

- 1) Review, discuss & approve or deny enclosed Variance No. 20-01-VB.

Thanks!

Regards,
Tobin Lay



CITY OF BIRCHWOOD VILLAGE
 207 Birchwood Avenue, Birchwood, MN 55110
 Phone: 651-426-3403 / Fax: 651-426-7747

PAID
JAN 13 PAID

REQUEST FOR VARIANCE

FOR OFFICIAL USE ONLY

Application Received Date: 1/13/2020 Amount Paid: \$ 309.04

Payment Type (Circle One): Cash / Check / Money Order / Credit Card

Check/Money Order # 2408 & 8148

Application Complete? Yes No If no, date application was deemed complete: _____

Signature of City Planner: [Signature] Date: 1/22/20

Completed requests for variances submitted prior to the first Friday of the month will be considered by the Planning Commission at its next meeting on the fourth Thursday of the month. Requests submitted after the first Friday of the month will be considered at the following meeting. All final decisions on variance applications are made by the City Council, which meets on the second Tuesday every month.

1. Name of Applicant(s) Greg & Kathy Sherwood

Address 15 Birchwood Lane

City Birchwood Village State MN Zip Code 55110

Business Phone 651-271-6112 Home Phone 651-270-9699

2. Address of Property Involved if different from above: n/a

3. Name of Property Owner(s) if different from above and describe Applicant's interest in the property:
n/a

4. Specific Code Provision from which Variance is requested: 302.020 & 302.045, 302.020.1

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
The applicant is proposing to add a walkway/deck on the West side of the property. This would encroach into the side yard setback by 42". The client is proposing a design that is 26" over the maximum avg. height of 30' (32' 2" max.).

Variance of 5.6 feet for eve on front west side of porch (if required) A.A.

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Single Dwelling | <input type="checkbox"/> Double Dwelling |
| <input type="checkbox"/> Garage | <input type="checkbox"/> Addition |
| <input type="checkbox"/> Tennis Court | <input type="checkbox"/> Pool |
| <input type="checkbox"/> Grading/Filling | |
| <input type="checkbox"/> Other (describe) _____ | |

8. Using the criteria from the City Code for a variance (see last page), explain why a variance is justified in this situation and describe what "Practical Difficulties" exist:
See the attached Appendix to this document.

The form for this variance application did not allow for all the text we needed
to provide an explanation, so we typed it up an an Appendix.

9. Describe any measures the Applicant is proposing to undertake if the variance is granted, including measures to decrease the amount of water draining from the property:
Same as above (#8) - please see Appendix

10. Describe any alternatives the Applicant considered (if any) that do not require a variance:
Same as above (#8) - please see Appendix

11. Can an emergency vehicle (Fire Truck or Ambulance) access all structures on the property after the proposed change? Yes No

12. Does the proposed change bring any other nonconforming use into conformity with the City Building Code? Yes No

If yes, explain: The impervious surface coverage will go from 27.1% to 25%, as the applicant will add engineered pervious pavers, making sure these are approved by the city.

13. Are there other governmental regulations that apply to the proposed action, including requirements of the Rice Creek Watershed District? Yes No

If yes, please identify the regulations AND attach evidence demonstrating compliance:

14. Please provide the applicable information in the following Table:

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot	11,854	11,854*	0
2. Maximum Impervious Surface (25% of item 1)	25%	25%*	0
3. Roof Surface	1825	2733*	908*
4. Sidewalks		0	
5. Driveways	1385	0	-1385*
6. Other Impervious Surface		230.5*	230.5*
7. Total of Items 3-6	3210	2953.5*	-256.5*
8. Percent Impervious Surface	27.1%	25%*	-2.1%*

* SEE REVISED CALCULATIONS ON ATTACHED "IMPERVIOUS CALCULATION EXHIBIT"

15. Please attach the following:

- Legal description of property.
- Plot plan drawn to scale showing existing and proposed new and changed structures on the lot. Also show existing structures on adjacent lots.

Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

- A. Variances shall only be permitted
 - i. when they are in harmony with the general purposes and intent of the ordinance and
 - ii. when the variances are consistent with the comprehensive plan.
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

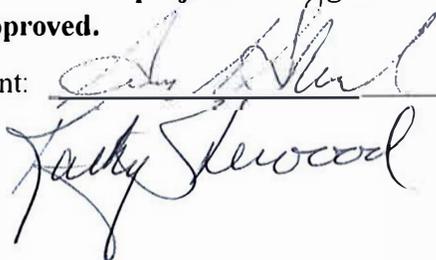
NOTICE:

***The City and its representatives accept no responsibility for errors and/or damages caused due to incomplete and/or inaccurate information herein. It is the responsibility of the applicant to ensure the accuracy and completeness of this information.**

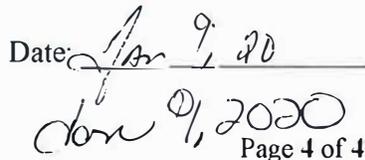
***The City will hold applicant responsible for any damage to public streets & roadways in the course of construction, landscape, excavating, filing and grading operations.**

***Under penalty of perjury the applicant declares that the information provided in and enclosed herewith is complete and all documents represented are true and correct representations of the actual project/building that will be built in conformance with such representation if approved.**

Signature of Applicant: _____



Date: _____


Jan 9, 2020
Page 4 of 4

Appendix to City of Birchwood Village Request for Variance Form

Please note: We have answered 8, 9 & 10 from the Variance form in free text format because the PDF template on the City website did not allow us to add more lines and shrank the text to a tiny font as we typed our responses. Thank you for your understanding.

8. Using the criteria from the City Code for variance (see last page), explain why a variance is justified in this situation and describe what “Practical Difficulties” exist:

First, we would like to commend the village for developing City Codes that clearly aim to protect the *‘feel’* of the neighborhood, the views of neighboring properties, and the environmental responsibility for the lake. The existing home/cabin on this property is failing. There were multiple “significant” issues found on inspection including a failing foundation, inappropriately designed and ill-maintained concrete lot drainage mechanisms, floor joists on 24” or greater centers with significant cracks and settling, lake water / drainage backing up into the basement, and significant black mold. As such, the costs to repair and restore this home far exceed building from scratch.

We intend to make every effort to design our new home to fit in and blend seamlessly with the lovely neighborhood. As well, we will have the opportunity to significantly improve the health of the lake by removing old and dysfunctional impervious materials, replacing them with pervious materials, and addressing non-compliant run-off and drainage issues from the former structures. In the end, we have the goal of building a new cottage that will look like it’s “always been there”. This lot is small, steep and very narrow, so we are doing our best to design a new home to comply with the Village codes, however, we have two items that we need to request a variance for:

302.020 Structure Location Requirements

The very narrow lawns on either side of the home that provide access from the front yard to the back are steep with heavy tree coverage. Given this topography, there is no way to get from the front yard to the back without either building landscaping stairs (which would also require a variance due to the extremely narrow width of the lot or building a suspended narrow deck walkway from the front to the back deck. We feel the cantilevered deck walkway is more environmentally friendly solution in that water would drip from the deck board spaces to the lawn beneath vs. building a stair that would act as a high- volume water channel. The current home has a narrow (3’wide) pervious deck type walkway (main level suspended over the West

side lawn by 42") that leads from the front porch to the back deck, with a small staircase from the deck to the back lawn. We would like to incorporate this feature into the new home.

302.045 Structural Height Restrictions

As you know, the Birchwood Village City Code maximum average height restriction for a home is 30.' This narrow and steep lot naturally facilitates a walk-out basement on the lake side, where the front of the home is at ground level. Given the topography of this lot, it is impossible for us to design a home that has standard ceilings and still allow for adequate floor joists, HVAC runs, and roof structure. The architects have tried and tried to make it work, but the best we can do is 6' outer walls sloping up to 8' ceilings on the upper floor. Additionally, the roof slope when incorporating a 30' maximum average height is so low that we have concerns about snow accumulation.

Several homes on Birchwood Lane have similar topographical challenges and are clearly out of compliance with the 30' restriction (which was added to the codes after these homes were presumably built).

Of greatest importance when requesting a height variance is the impact on the neighbors. We fully understand and embrace the idea that you don't want people building structures that maximize, through height, lake views for one home while obstructing the views of surrounding homes further from the lake. In the case of this lot, which is directly on the lake, there are no homes across the street /behind us. There is a steep hill, with the old farmhouse on the corner of South Shore & Wildwood, which is set far back from Birchwood Lane, and is placed at an elevation significantly higher than our property. The addition of 26", which would allow us to build a narrow, low-profile two-story home with proper roof slope and ceiling heights, would in no way impinge on any neighboring views of the lake.

In summary, we need twenty-six inches to make it work given the topography of this lot.

Possibly 302.020.1 Structural Location Requirements

It is unclear if this variance is required. The maximum eve called out in this requirement is 2 feet. The roof structure on the front and west side of the design shows a two feet eve. If the roof section is considered an eve and not a part of the roof, then the "eve" measures 5'6". This may not be a consideration for the committee, but it is included in the spirit of completeness.

9. Describe any measure the Applicant is proposing to undertake if the variance is granted, including measure to decrease the amount of water draining from the property:

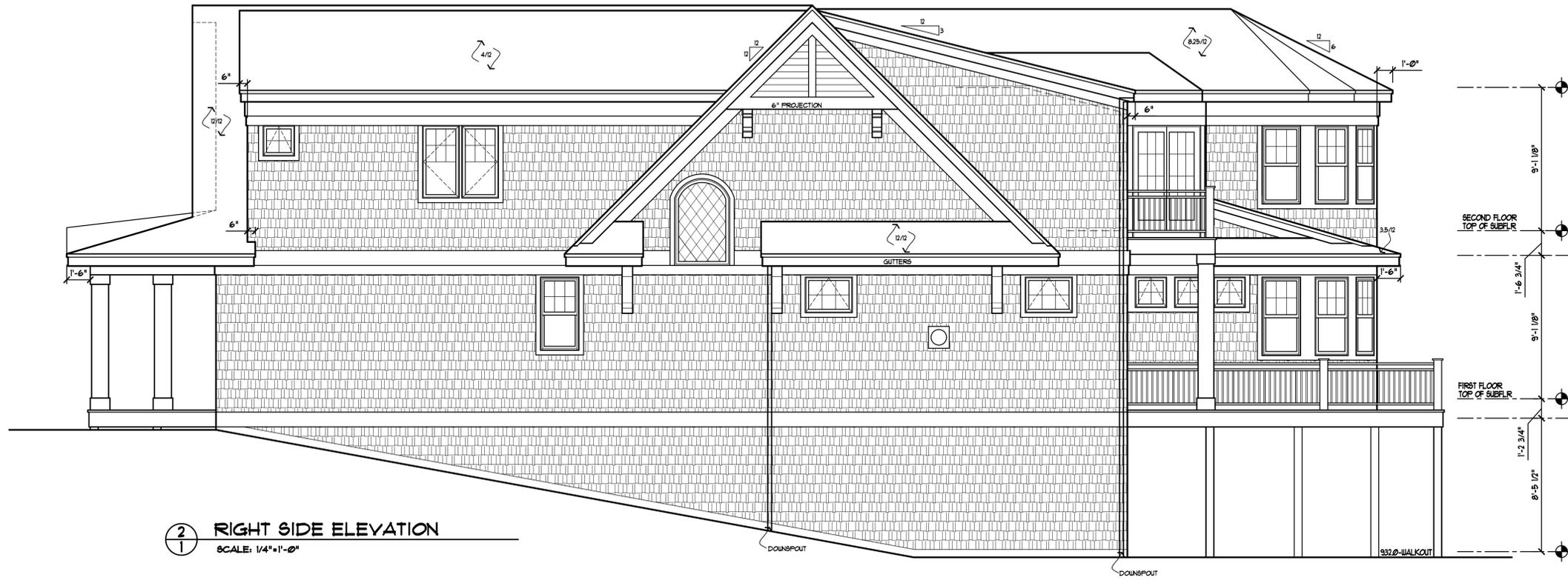
We are working with the natural topography of the lot and plan to make no changes to the current lawn slope. That said, we plan to convert all possible current impervious surfaces

(driveways, patios, walkways and decking) to pervious materials that will better allow the water to seep into the ground vs. running directly into the lake. The existing home on the property has significant drainage issues, failing gutters and failing concrete run-off mechanisms that do not meet today's standards for environmental protection. These will all be address through the rebuild and will be inspected as a matter of course through the building permit process.

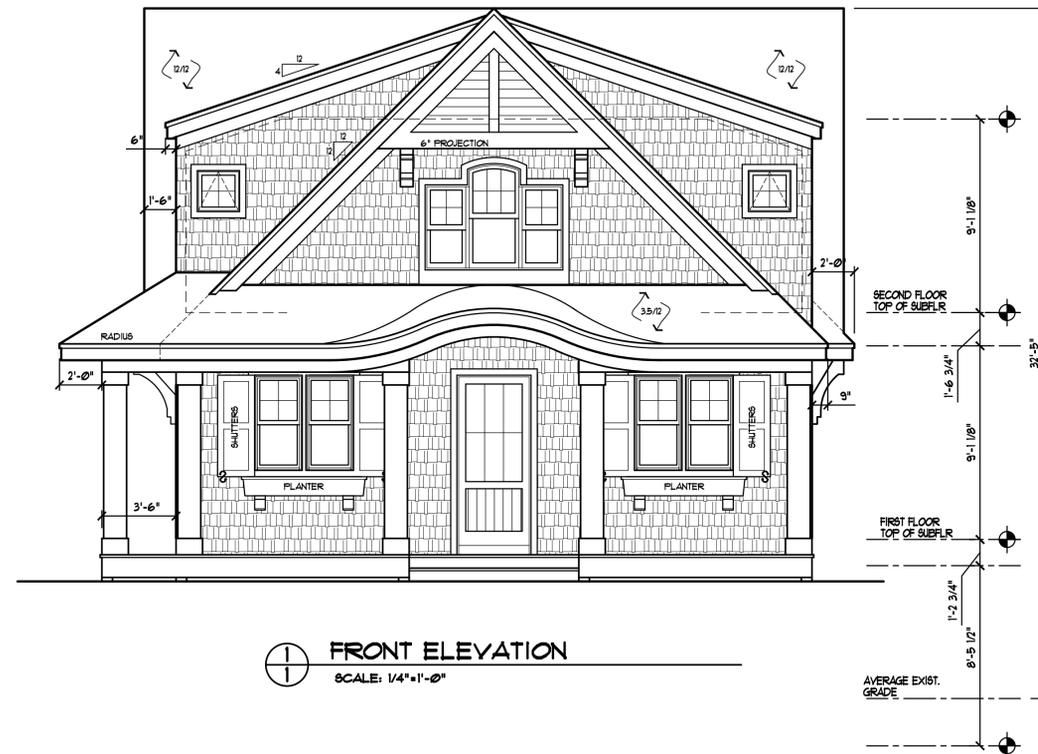
10. Describe any alternatives the Applicant considered (if any) that do not require a variance:

We spent months since purchasing the home, working with the architects to design a neighborhood appropriate cottage that complies with the 30' limitation. The resulting designs either forced a compromise on the ceiling height on all floors or required a nearly flat roof. The designs had no street appeal – rather they looked like a flat-roofed French pole barn... We tried lowering the ceiling heights on the second floor to add a slope to the roof but were only able to get the external walls to 6 feet height, and the centerline (maximum peak) of the house to 8 feet.

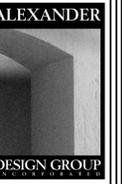
Regarding the West side deck/walkway, there is only one other solution that we have come up with. We would have to request a different variance to put landscaping stairs from the front yard to the back, but we felt this was not as environmentally friendly as a suspended deck walkway where the rain can fall through for moisture absorption in the soil.



2
1
RIGHT SIDE ELEVATION
SCALE: 1/4"=1'-0"



1
FRONT ELEVATION
SCALE: 1/4"=1'-0"



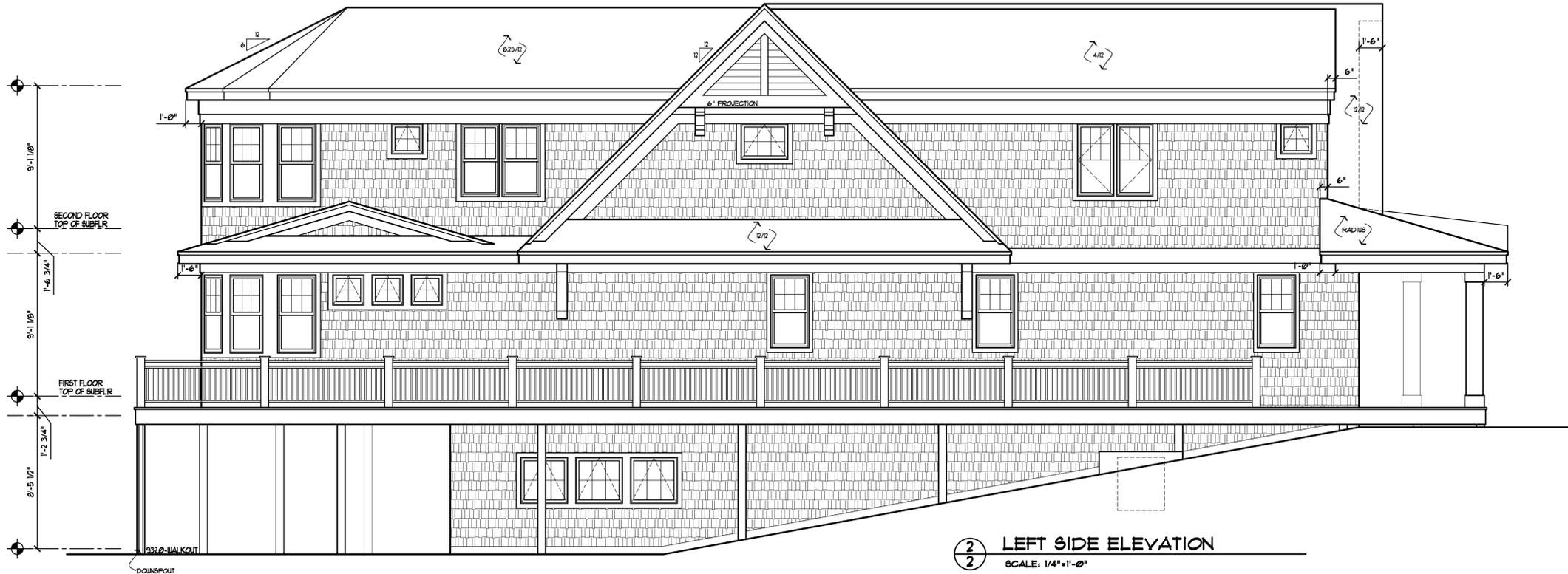
401 EAST LAKE STREET
WAYZATA, MN 55391
Phone: 952.473.8777
FAX: 952.473.8222

ISSUE DATE:
10 FEBRUARY 2020
PREVIOUS ISSUE DATES:

DRAWING DESCRIPTION:
ELEVATIONS

VARIANCE SET

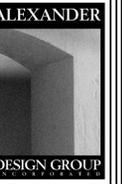
SHERWOOD RESIDENCE
15 BIRCHWOOD LN
BIRCHWOOD, MN
MICHEL'S HOMES



2 LEFT SIDE ELEVATION
SCALE: 1/4"=1'-0"



1 REAR ELEVATION
SCALE: 1/4"=1'-0"



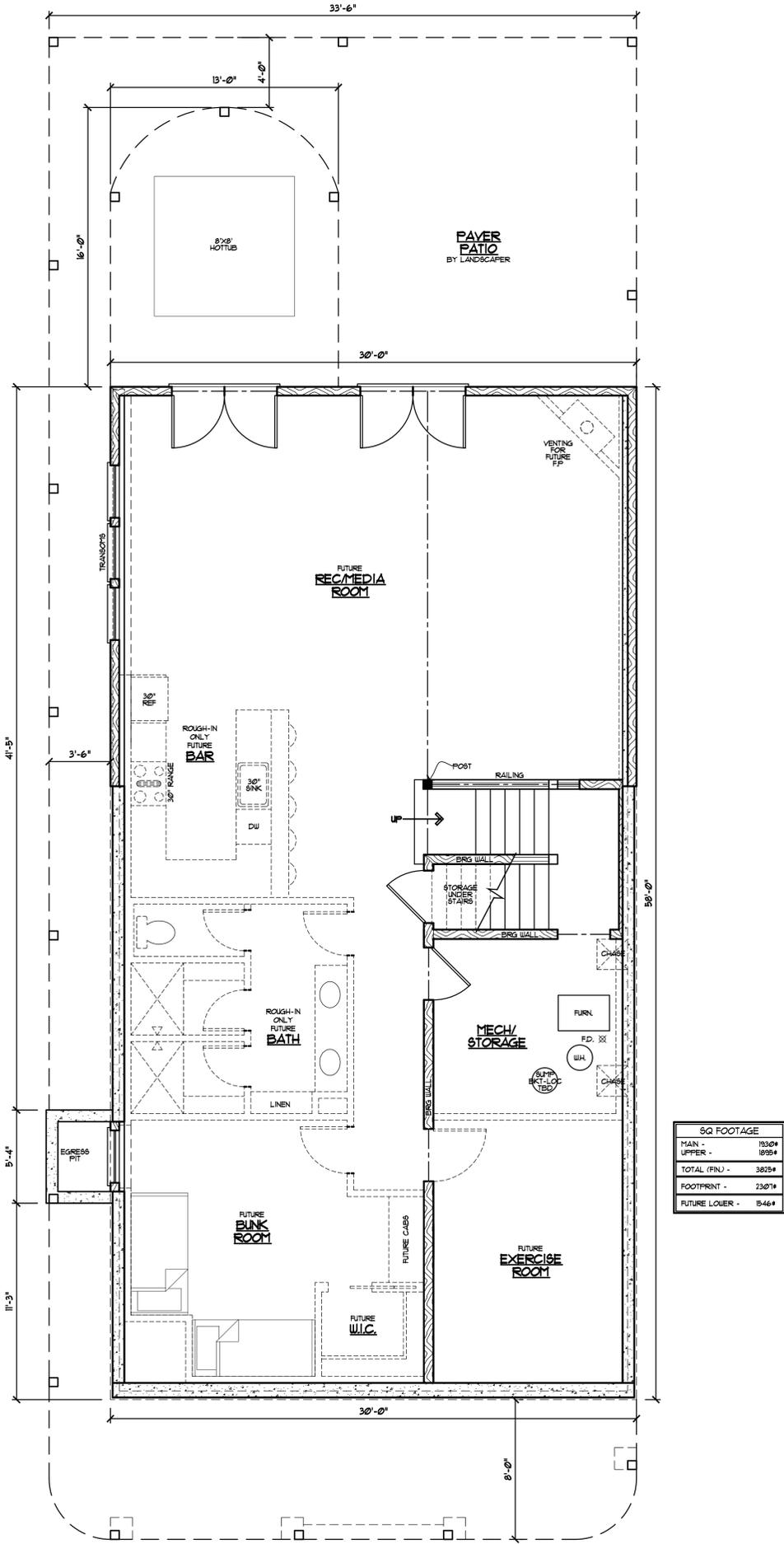
401 EAST LAKE STREET
WAYZATA, MN 55391
Phone: 952.473.8777
FAX: 952.473.8222

ISSUE DATE:
10 FEBRUARY 2020
PREVIOUS ISSUE DATES:

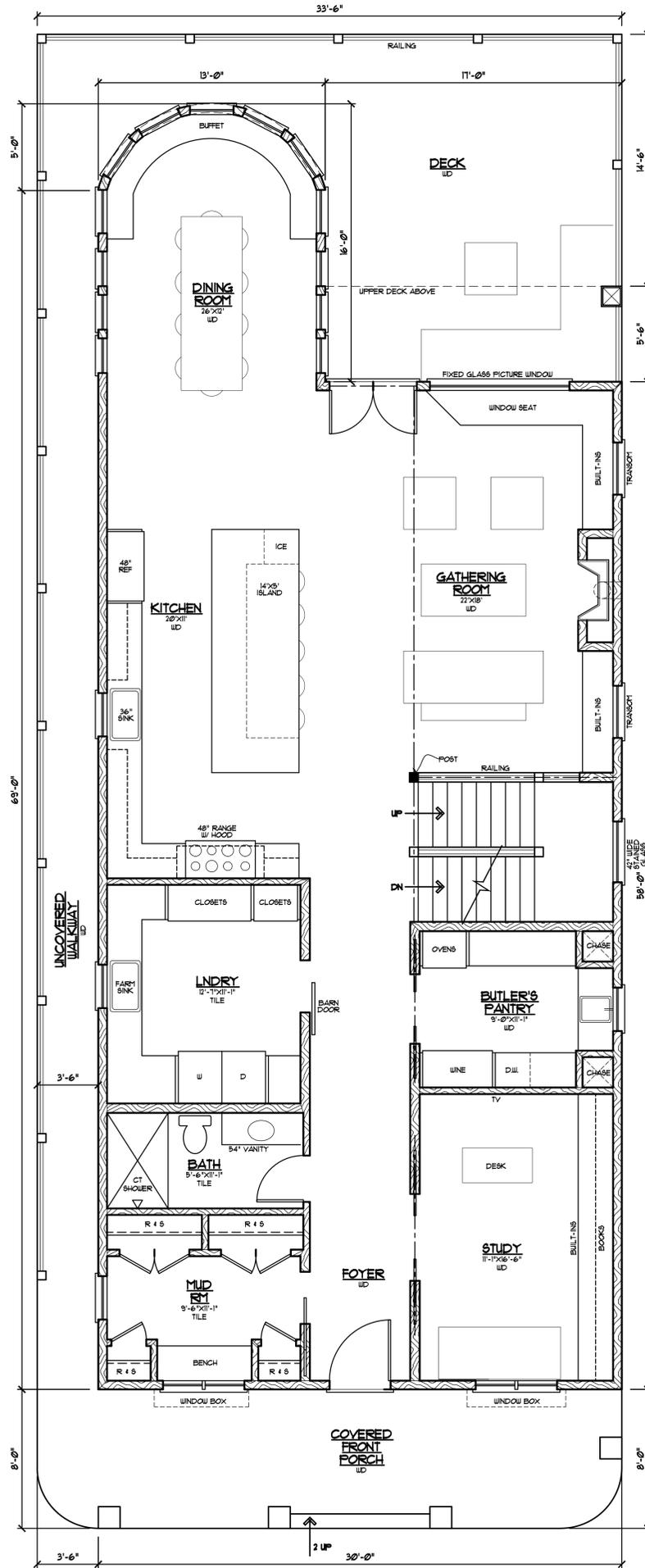
DRAWING DESCRIPTION:
ELEVATIONS

VARIANCE SET

SHERWOOD RESIDENCE
15 BIRCHWOOD LN
BIRCHWOOD, MN
MICHEL'S HOMES

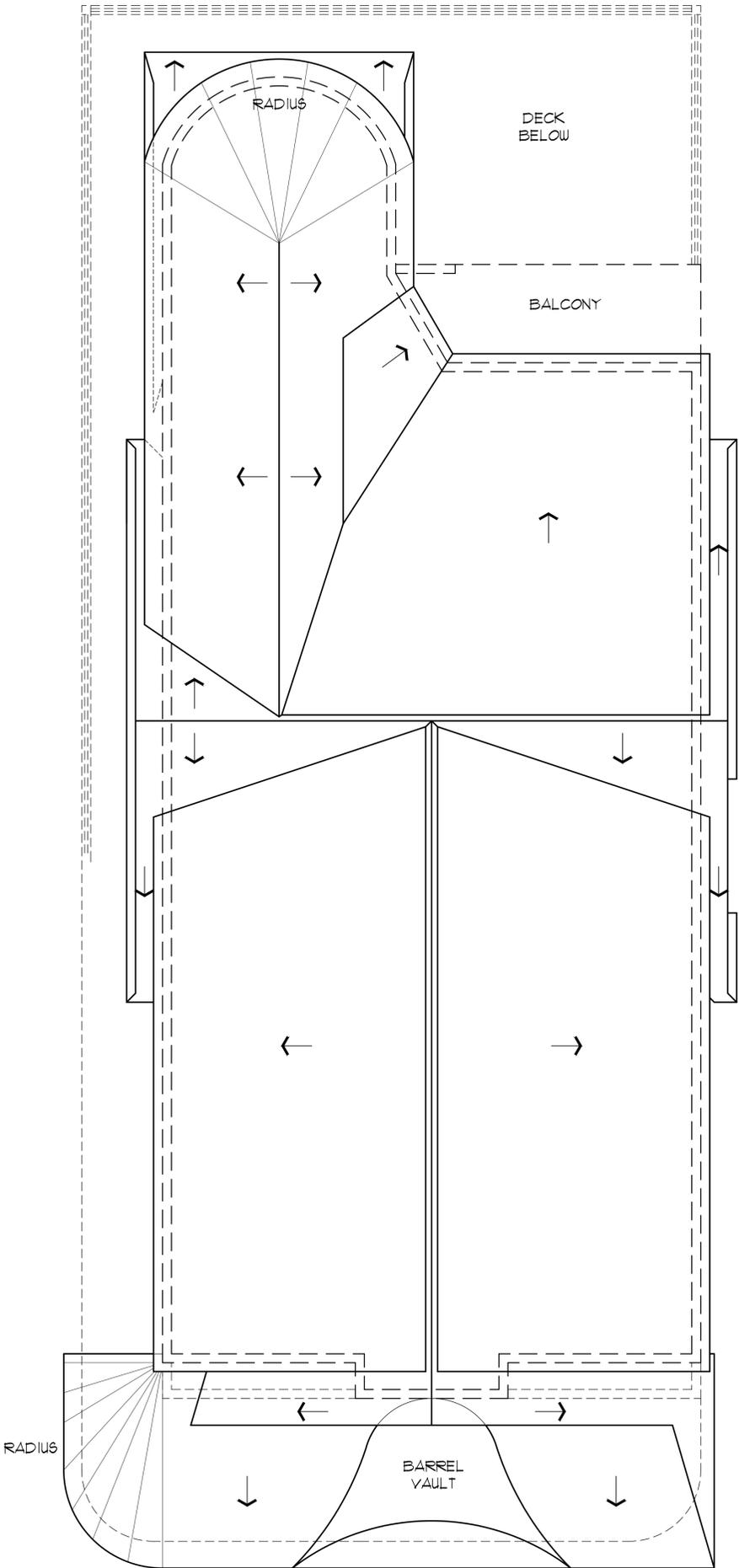


① FUTURE LOWER LEVEL FLOOR PLAN
 ③ SCALE: 1/4"=1'-0"

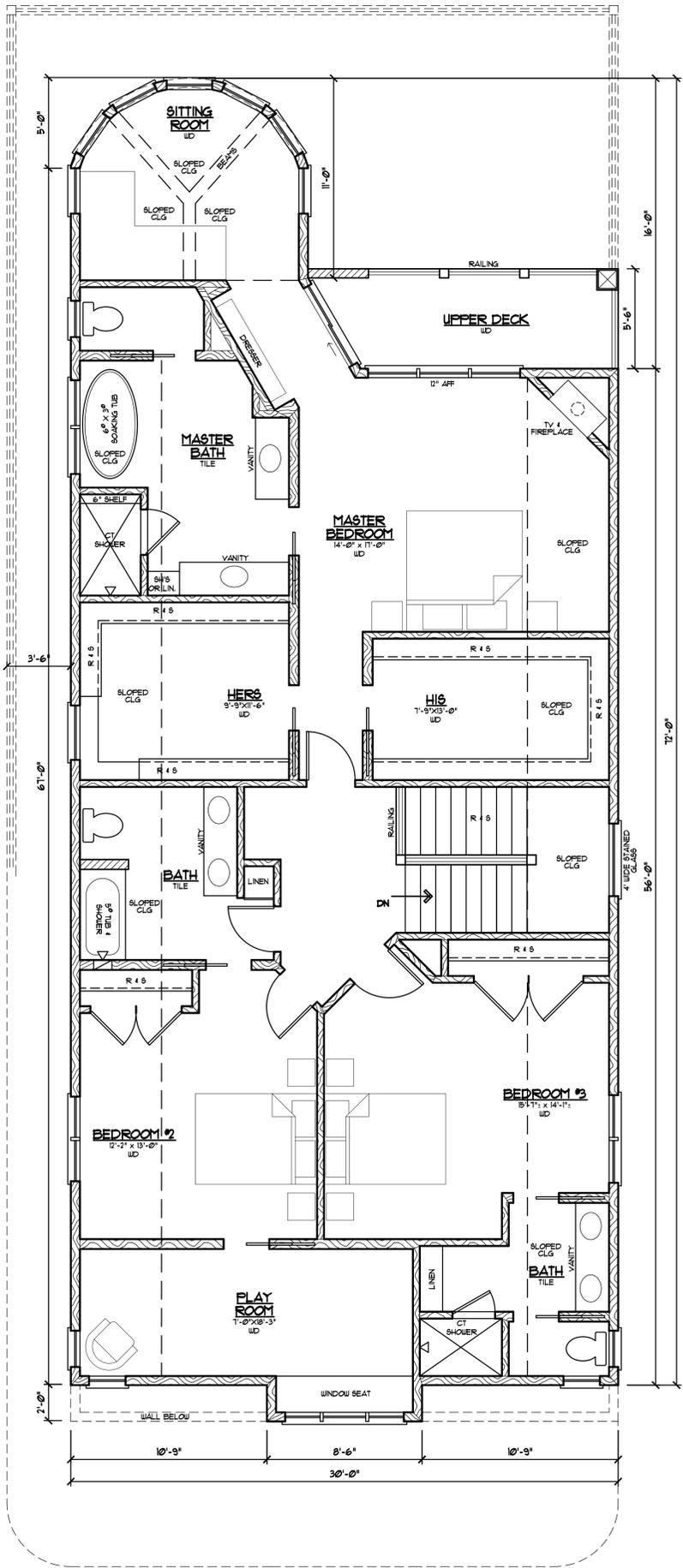


SQ FOOTAGE	
MAIN -	1830#
UPPER -	1995#
TOTAL (FIN) -	3825#
FOOTPRINT -	2307#
FUTURE LOWER -	546#

1
4 MAIN LEVEL FLOOR PLAN
SCALE: 1/4"=1'-0"



2
5 **ROOF PLAN**
SCALE: 1/4"=1'-0"



SQ FOOTAGE	
MAIN -	800#
UPPER -	895#
TOTAL (FIN) -	3805#
FOOTPRINT -	2307#
FUTURE LOWER -	1546#

1
5 **UPPER LEVEL FLOOR PLAN**
SCALE: 1/4"=1'-0"



6776 Lake Drive NE, Suite 110
Lino Lakes, MN, 55014
Phone: (651) 361-8200
Fax: (651) 361-8701
www.egrud.com

To: City of Birchwood

From: Jason Rud

Date: January 27, 2020

Re: 15 Birchwood Lane Survey

To supplement our recently completed survey work for new home construction at 15 Birchwood Lane, we are providing this additional narrative for clarification.

IMPERVIOUS COVERAGE:

The impervious coverage is provided for both pre and post construction conditions. The post construction status includes the existing garage, future home, and porch. The total impervious coverage is proposed to be reduced from 3,210 square feet (27.1%) to ~~2,700~~ square feet (~~20.1%~~). *See enclosed survey document*

Furthermore, the area for the proposed paver surface has been included for your reference, but it has not been included as part of the impervious coverage.

SITE GRADING:

For this site we have taken the approach of matching the existing site contours. We are not proposing any changes to the general drainage and elevations of the existing yard. Our house is set to tie in and match the existing contours as shown. In addition, we have noted the proposed gutter and deck drainage system to carry water from the home, and to the north.

EROSION CONTROL/ROCK ENTRANCE:

We are proposing silt fence around the entire perimeter of the project, together with a rock construction entrance.

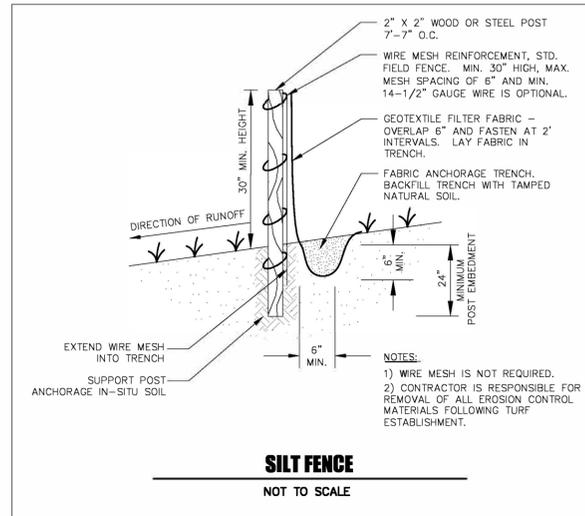
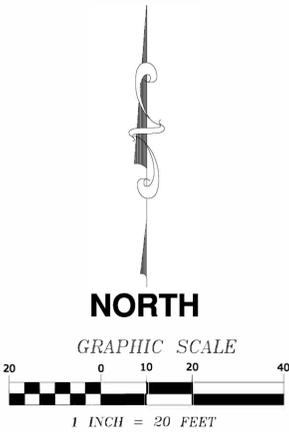
Thank you for the opportunity to be of assistance. Please feel free to call me at 651-361-8200 with any additional questions or comments regarding this information.

Jason E. Rud, PLS #41578
jrud@egrud.com

January 27, 2020
Date

CERTIFICATE OF SURVEY

~for~ MICHELS CONSTRUCTION
 ~of~ 15 BIRCHWOOD LANE
 BIRCHWOOD, MN



- LEGEND**
- DENOTES IRON MONUMENT FOUND
 - DENOTES IRON MONUMENT SET
 - ▲ DENOTES FOUND PKNAIL
 - 1011.2 DENOTES EXISTING ELEVATION
 - DENOTES AIR CONDITIONING UNIT
 - DENOTES ELECTRICAL BOX
 - DENOTES GUY WIRE
 - DENOTES HYDRANT
 - DENOTES POWER POLE
 - DENOTES RETAINING WALL
 - DENOTES OVERHEAD WIRE
 - DENOTES SILT FENCE
 - DENOTES BITUMINOUS SURFACE
 - DENOTES PROPOSED PAVER SURFACE



AVERAGE GRADE AROUND HOUSE CALC.

	L.O.W.	A.W.E.	(L.O.W. X A.W.E.)
WALL 1	30.00	940.00	28200.00
WALL 2	58.00	937.61	54381.38
WALL 3	15.00	934.70	14020.50
WALL 4	16.00	933.00	14928.00
WALL 5	15.00	932.00	13980.00
WALL 6	+ 74.00	936.00	+ 69264.00
	208.00		194773.88

$194773.88 / 208 = 936.41$

BENCHMARK

TOP NUT OF HYDRANT AT EAST COUNTY LINE ROAD AND BIRCHWOOD LANE. ELEVATION = 948.45 (NGVD 29)

936.41 = AVERAGE PROPOSED GRADE AROUND HOUSE

L.O.W. = LENGTH OF WALL
 A.W.E. = AVERAGE WALL ELEVATION

NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 09/06/19.
- Bearings shown are on Washington County datum.
- Parcel ID Number: 19-030-21-33-0019.
- Curb shots are taken at the top and back of curb.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

(10 AND 9 FOOT POURED WALL WALKOUT)

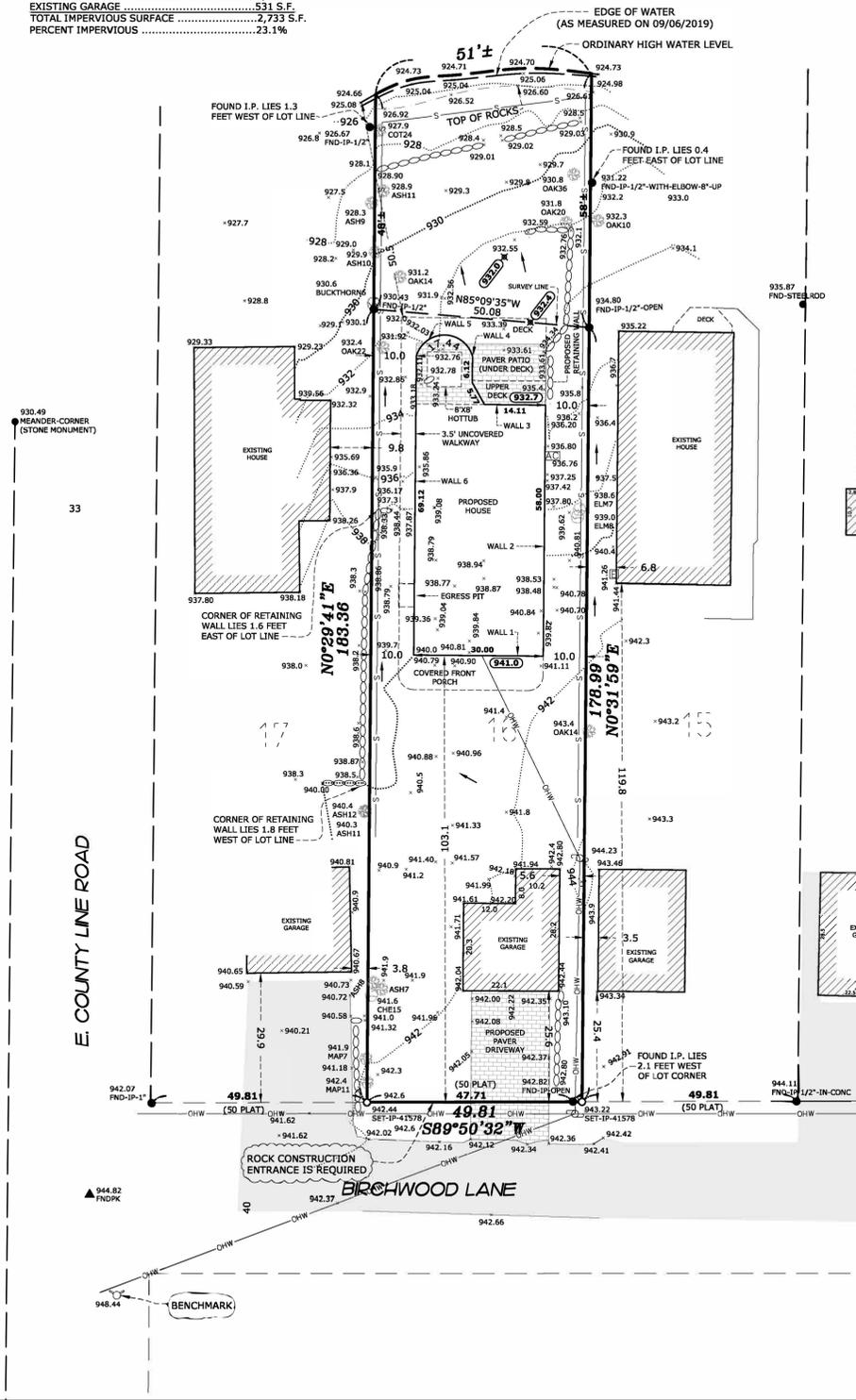
PROPOSED ELEVATIONS

MAIN FLOOR = 943.4
 TOP OF 10 FOOT WALL = 942.7
 LOWEST FLOOR = 933.2
 TOP OF FOOTING = 932.7

PROPOSED SITE PLAN

PROPOSED IMPERVIOUS SURFACE CALCULATIONS
 TOTAL LOT AREA (ABOVE OHWL)11,854 S.F.
 PROPOSED HOUSE + COVERED PORCH2,202 S.F.
 EXISTING GARAGE531 S.F.
 TOTAL IMPERVIOUS SURFACE2,733 S.F.
 PERCENT IMPERVIOUS23.1%

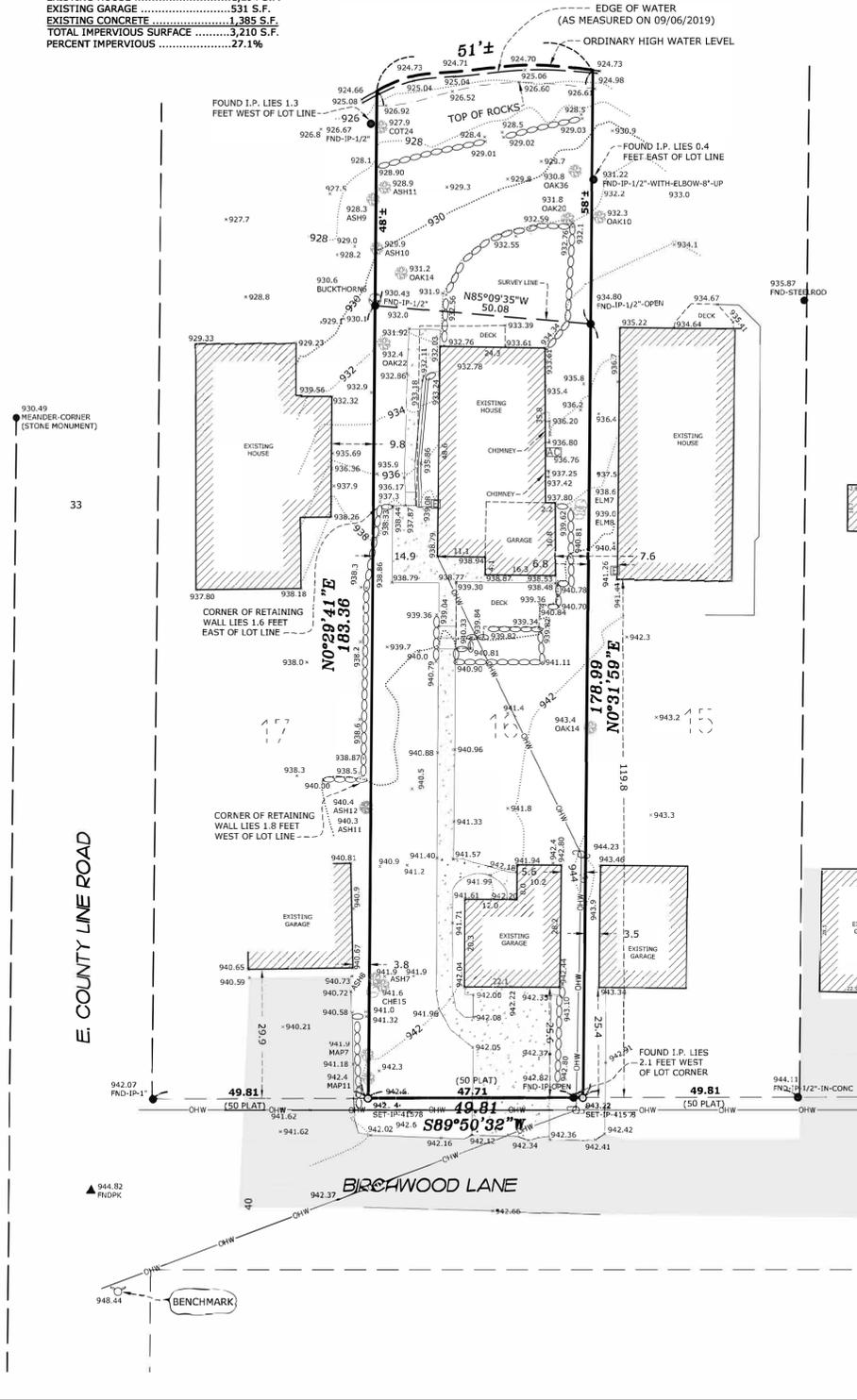
WHITE BEAR LAKE
 OHWL = 924.7
 (NGVD 29)



EXISTING CONDITIONS

EXISTING IMPERVIOUS SURFACE CALCULATIONS
 TOTAL LOT AREA (ABOVE OHWL)11,854 S.F.
 EXISTING HOUSE1,294 S.F.
 EXISTING GARAGE531 S.F.
 EXISTING CONCRETE1,385 S.F.
 TOTAL IMPERVIOUS SURFACE3,210 S.F.
 PERCENT IMPERVIOUS27.1%

WHITE BEAR LAKE
 OHWL = 924.7
 (NGVD 29)



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

JASON E. RUD

Date: 01/10/2020 License No. 41578

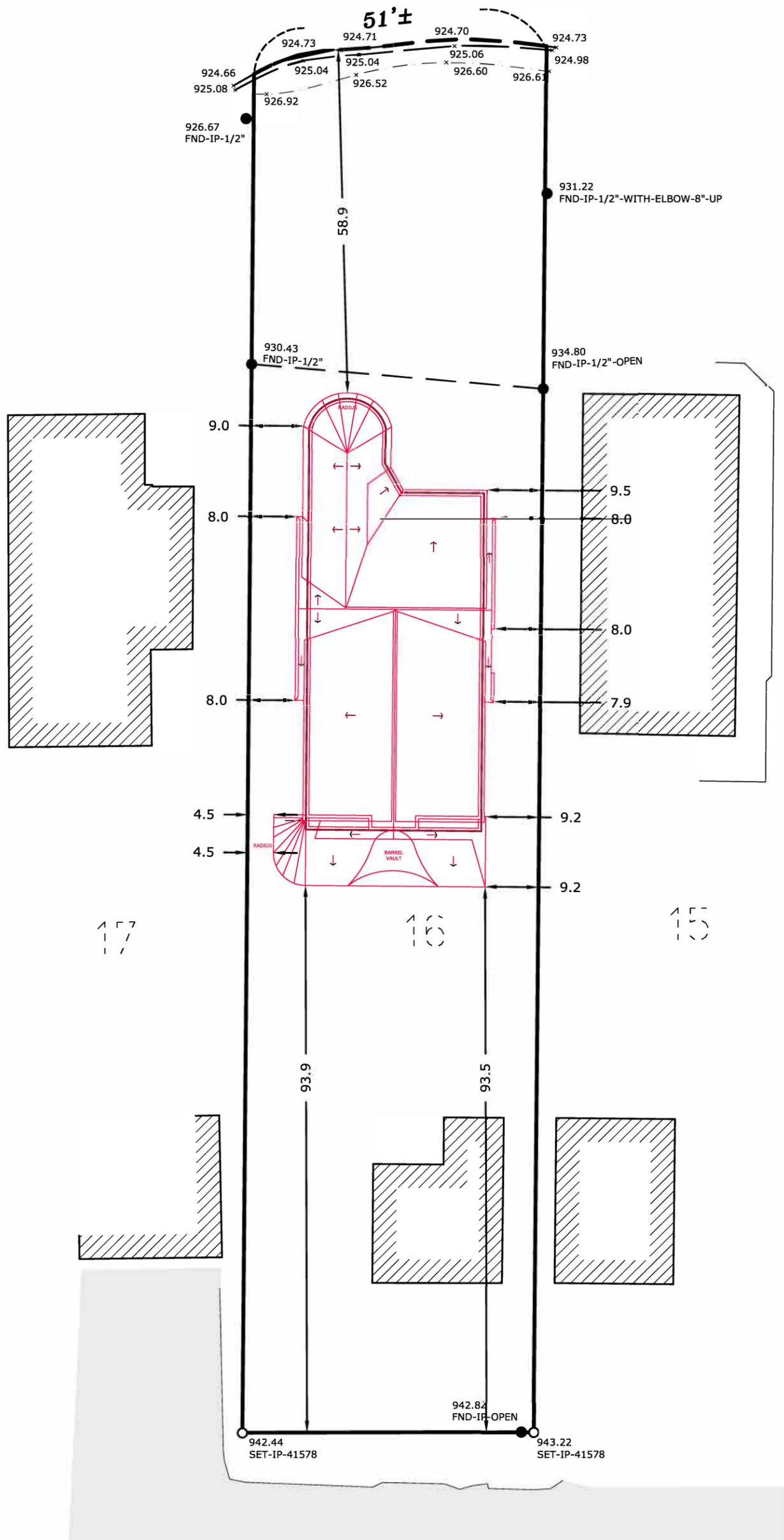
NO.	DATE	DESCRIPTION	BY
1	01/10/20	ADDED PROPOSED HOUSE	BCD
2			
3			

E. G. RUD & SONS, INC.
 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 Lino Lakes, MN 55014
 Tel. (651) 361-8200 Fax (651) 361-8701

Lot 16, BIRCHWOOD, Washington County, Minnesota.

ROOF OVERHANG EXHIBIT

~for~ MICHELS CONSTRUCTION
 ~of~ 15 BIRCHWOOD LANE
 BIRCHWOOD, MN



Lot 16, BIRCHWOOD, Washington County, Minnesota.

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

By: 
 Minnesota License No. 41578

Dated 11th day of February 2020.

BEARING DATUM: Washington				SCALE: 1" = 20'
REVISIONS				JOB NO. 19696HS
1				DATE: 02-11-20
2				DRAWN BY: BCD
3				CREW: DT/CT
NO.	DATE	DESCRIPTION	BY	



E. G. RUD & SONS, INC.
 Professional Land Surveyors
 6776 Lake Drive NE, Suite 110
 Lino Lakes, MN 55014
 Tel. (651) 361-8200 Fax (651) 361-8701
 www.egrud.com 19

304. ZONING CODE: VARIANCES AND APPEALS

304.010 BOARD OF APPEALS. The City Council is hereby established as the Board of Appeals (Board) and shall have the power to hear and decide appeals in which it is alleged that there is an error in any administrative order, requirement, decision or determination made in the interpretation or enforcement of the Zoning Code.

304.020 APPEALS OF ADMINISTRATIVE DECISIONS.

1. A person who deems himself aggrieved by an alleged error in any order, requirement, decision or determination made in the interpretation and enforcement of the Zoning Code, may appeal to the Board by filing a written appeal with the City Clerk within 30 days after the date of such order, requirement, decision or determination. The appeal shall fully state the order to be appealed and the relevant facts of the matter.

2. The Board shall conduct a public hearing within 60 days after the filing of a written appeal. The Board shall make its decision after considering the oral and written views of all interested persons expressed at the public hearing.

304.030 PETITIONS FOR VARIANCES. The Planning Commission is hereby established to hear and advise the Council on requests for variances from the literal provisions of the Zoning Code. The owner or owners of land to which the variance relates may file a petition for a variance with the Clerk. The petition shall be made on forms provided by the City Clerk. The petition shall be accompanied by plans described below and by all required fees. The City may require the petitioner to submit a certificate by a registered professional land surveyor verifying the location of all buildings, setbacks and building coverage, and certifying other facts that in the opinion of the City are necessary for evaluation of the petition.

304.040 VARIANCE REQUIREMENTS AND CRITERIA. Petitions for Variances must include all Required Information and demonstrate that Criteria for each Variance are met.

1. Required Information.

a. Legal description and address of parcel. Name, address, and phone number of applicant (and of the owner if owner is not the applicant).

b. Plot plan drawn to scale. Elevation contour lines may be required.

c. Plan showing existing and proposed new and changed structures on the lot. Existing structures on adjacent lots must also be shown.

d. Evidence demonstrating compliance with the Rice Creek Watershed District's and other Governmental Units' regulations may be required. (See Section 303.040.)

2. Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

A. Variances shall only be permitted

- i. when they are in harmony with the general purposes and intent of the ordinance and
- ii. when the variances are consistent with the comprehensive plan.

B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

304.050

VARIANCE HEARING AND RECOMMENDATION BY THE PLANNING COMMISSION. Within 60 days after the City determines that a variance petition is complete, and all required fees and information, including plans, drawings and surveys, have been received, the Planning Commission shall conduct a public hearing and after hearing the oral and written views of all interested persons, the

Planning Commission shall make its recommendation to the City Council by a majority vote at the same meeting or at a specified future meeting thereof.

304.060 NOTICE OF HEARINGS.

1. Notice of variance hearings shall be mailed not less than ten (10) days before the date of the hearing to the person who filed the petition for variance, to the Minnesota Department of Natural Resources, and to each owner of property situated wholly or partially within 200 feet of the property lines to which the variance relates.

2. A notice of hearing for appeals of administrative decisions shall be published in the official newspaper of the City not less than ten days before the hearing. A notice shall also be mailed to the appellant.

3. No new notice need be given for any hearing which is continued to a specified future date.

304.070 FINAL DECISION. The Council shall decide all appeals of administrative decisions and petitions for variances. The decision shall be made not later than 30 days after the date of the hearing. Notice of the decision shall be mailed to the applicant with regard to any denial and explanation as to why.

304.080 FORM OF ACTION TAKEN AND RECORD THEREOF. The Council shall maintain a record of its proceedings relative to the petition for variance or appeal which shall include the minutes of its meetings and final order concerning the variance petition or appeal of administrative decision. When applicable, notice of the final order shall be sent to the Minnesota Department of Natural Resources within ten (10) days.

304.090 REVOCATION. A violation of any condition set forth or required in granting a variance shall be a violation of this Code and automatically terminates the variance. A variance shall become null and void one year after it was granted, unless made use of within the year or such longer period prescribed by the Council.

"AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005."

"AMENDED BY ORDINANCE 2018-04-01; OCTOBER 9, 2018."

302. ZONING CODE: REQUIREMENTS AND PERFORMANCE STANDARDS

302.010. LOT REQUIREMENTS. All lots created after the date of enactment of this ordinance must conform to the following dimensions, utilizing only that land above the ordinary high water level of any lake, pond, or wetland.

1. Minimum lot size per dwelling unit:

Lots abutting lake or wetland: 15,000 sq. ft.

All other lots 12,000 sq. ft.

2. Minimum lot width at front building line and at the ordinary high water level of any lake or wetland:

Lots containing two dwelling units: 135 ft.

All other lots: 80 ft.

302.015. UNDERSIZED LOTS. Any lot of record as of January 1, 1975, which remains in its then-existing dimensions and which does not meet the requirements of this Code may nevertheless be utilized for single-family detached dwelling purposes provided the requirements of 302.010 are at least 60% of those as required.

“AMENDED BY ORDINANCE 2019-03-02; JUNE 11, 2019.”

302.020. STRUCTURE LOCATION REQUIREMENTS

1. GENERAL REQUIREMENTS. All structures must be located so that minimum setback requirements are met or exceeded. All measurements (in feet) as set forth below shall be determined by measuring from the foundation of the appropriate structure perpendicular to the appropriate lot line.

Exceptions: Front, back, side street and other lot line setback requirements shall not apply to chimneys, flues, belt courses, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not project more than two (2) feet into a required yard setback.

2. MINIMUM SETBACK REQUIREMENTS:

<u>Lot line or Land Boundary</u>	<u>TYPE OF STRUCTURE</u>		
	<u>Fences</u>	<u>Driveways & Walkways</u>	<u>All Other Structures</u>
Municipal Street Front, Back, and Side	20 ft.	0	40 ft.
County Road Front, Back, and Side	20 ft.	0	50 ft.
Ordinary High Water Level of Lost Lake	75 ft.	75 ft.	75 ft.
Ordinary High Water Level of White Bear Lake, Hall's Marsh, and other wetlands	50 ft.	50 ft.	50 ft.
All Other Lot Lines	0 ft.	1 ft.	10 ft.

The ordinary high water levels of three water bodies have been established to be the following:

ORDINARY HIGH WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	924.7 (NGVD, 1929)
DNR ID #82-134	Lost Lake	925.6 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	924.7 (NGVD, 1929)

3. ACCESSORY STRUCTURES. No accessory building or structure, unless an integral part of the principal structure shall be erected, altered, or moved to, within five (5) feet of the principal structure except fences, driveways, walkways, and decks which may be as close as actually abutting the principal structure.

4. SETBACK REQUIREMENTS EXCEPTIONS.

a. Street and Highway Setbacks: If structures on adjacent lots, existing as on January 1, 1975, have lesser street or highway setbacks from those required, the minimum setback of a new structure may conform to the prevailing setback in the immediate vicinity. The City Council shall, upon recommendation of the Planning Commission, determine the necessary minimum front yard setback in such areas.

- b. Dock and Pier Setbacks: Setback requirements from the ordinary high water levels shall not apply to piers and docks. Locations of piers and docks shall be controlled by applicable state and local regulations.
- c. Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.
- d. Nominal Structures: Front, back, side street and other lot line setback requirements shall not apply to nominal structures such as small arbors, moveable yard furniture, moveable docks, storage boxes, dog houses, mail boxes, library small boxes, lock boxes, flagpoles, lawn ornaments and other similar items, which shall be exempt from setback regulations, but not including decks, platforms, or shelters such as pergolas.

“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”

5. STRUCTURES IN WETLANDS. No structures are allowed within any wetlands.

“AMENDED BY ORDINANCE 1997-2; AUGUST 12, 1997.”

“AMENDED BY ORDINANCE 2003-1; FEBRUARY 12, 2003.”

302.030. HIGH WATER ELEVATIONS. All buildings shall be located such that the lowest floor surface is at a level at least three (3) feet in elevation above the highest known water level of any lake, pond, or wetland adjoining the lot. For three water bodies the high known water levels are:

HIGHEST KNOWN WATER LEVELS (Feet Above Mean Sea Level)

DNR ID #82-167	White Bear Lake	926.7 (NGVD, 1929)
DNR ID #82-134	Lost Lake	927.0 (NGVD, 1929)
DNR ID #82-480W	Hall's Marsh	926.7 (NGVD, 1929)

302.040. STRUCTURE REQUIREMENTS.

- 1. Each dwelling unit must have a floor area of at least 900 square feet.
- 2. The maximum square footage of a storage shed is 144 square feet. No person shall place automobiles, vans, or trucks in a storage shed.

302.045 STRUCTURAL HEIGHT RESTRICTIONS

1. STRUCTURAL HEIGHT LIMITATION: The maximum height of a structure as calculated by Method A or Method B (see below) is as follows:

<u>Structure type</u>	<u>Structure Height Limitation</u>
Principal Structure/attached garage	30 feet
Detached garage	18 feet
Detached storage shed	12 feet

“AMENDED JUNE 14, 2016”

“AMENDED DECEMBER 13, 2016”

METHOD A: (Most applicable to 3-dimensional structures, e.g. houses and garages.) The maximum height of a structure is the difference between the elevation of the highest point of the structure and the average elevation of the grade plane. The grade plane shall be calculated based on the method shown in Exhibit A below. Elevation points at the ground level shall be evenly distributed along each façade.

“AMENDED JUNE 14, 2016”

METHOD B: (Most applicable to structures which are mainly 1- or 2-dimensional, e.g. towers and walls.) The maximum height of a structure is the difference in elevation between any point on the structure and the ground directly below that point.

2. Grading/Fill Limitation

The existing grade of the property shall not be raised around a new building or foundation in order to comply with the height requirements of this code.

“AMENDED JUNE 14, 2016”

3. Tallest Point Limitation

Regardless of the structure height limitations for principal structures specified in section 302.045 subsection 1 above, the lowest point on the façade to the tallest point of a structure shall not exceed 35 feet. Also, the tallest point of an attached garage shall not exceed the height of the tallest point of the principal structure.

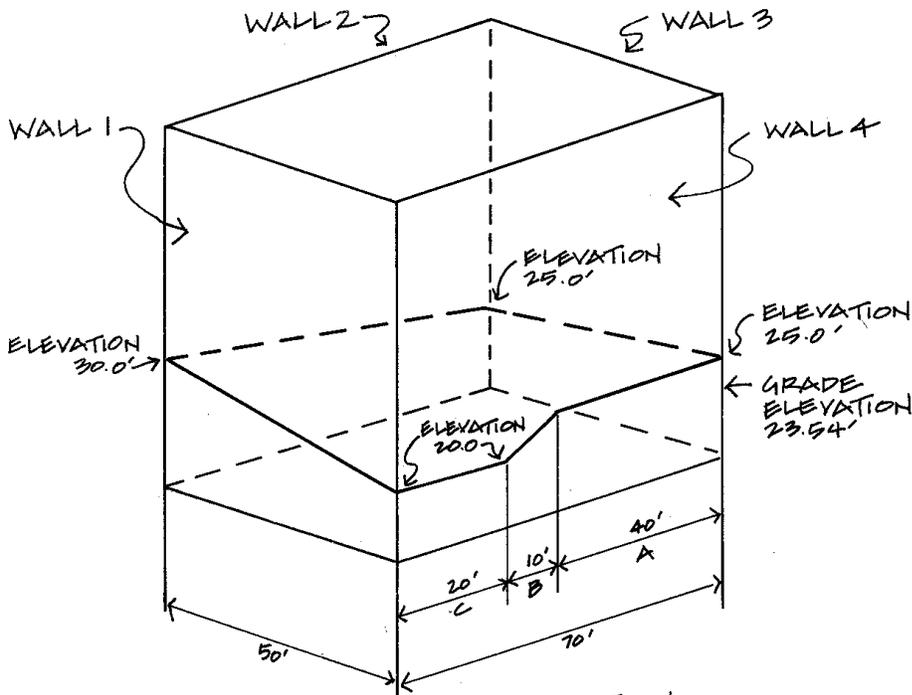
“AMENDED JUNE 14, 2016”

4. Exceptions.

The structure height and tallest point limitations established herein shall not apply to chimneys and flues provided the footprint or horizontal area of the chimney or flue does not exceed 16 square feet and the top of the chimney or flues and does not extend more than three feet above the tallest point of the structure.

Exhibit A:

ILLUSTRATION 10: GRADE, GRADE ELEVATION



GRADE = AVERAGE GROUND ELEVATION

$$\text{WALL 1} \quad \frac{20.0 + 30.0}{2} \times 50 = 1250$$

$$\text{WALL 2} \quad \frac{30.0 + 25.0}{2} \times 70 = 1925$$

$$\text{WALL 3} \quad \frac{25.0 + 25.0}{2} \times 50 = 1250$$

$$\text{WALL 4} \quad \text{A-} \quad 25.0 \times 40 = 1000$$

$$\text{B-} \quad \frac{25.0 + 20.0}{2} \times 10 = 225$$

$$\text{C-} \quad 20.0 \times \frac{20}{240} = \frac{400}{5650}$$

$$\text{GRADE} = \frac{5650}{240} = 23.54$$

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000”

“AMENDED BY ORDINANCE 2003-1; FEBRUARY 12, 2003”

“AMENDED BY ORDINANCE: JUNE 14, 2016.”

“AMENDED BY ORDINANCE: DECEMBER 13, 2016.”

302.050 IMPERVIOUS SURFACES.

1. Limitation. Impervious surface coverage of lots shall not exceed twenty-five (25) percent of the lot area unless the applicant satisfies the following conditions to obtain a variance:
 - a. The applicant shall submit a stormwater management plan for the site that analyzes the proposed development including the area(s) of impervious surfaces, direction of runoff, proposed best management practices to manage runoff, and stormwater retention that the best management practices will achieve.
 - b. The stormwater management plan shall include structures and/or best management practices for the mitigation of stormwater impacts on receiving waters in compliance with the City's Surface Water Management Plan, or as approved by the City Engineer, so that the site design includes stormwater management practices that control the stormwater runoff volumes, and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from impervious surfaces.
 - c. The applicant shall utilize the most recent version of the Minnesota MIDS (Minimum Impact Design Standards) Calculator (available on the Minnesota Pollution Control Agency's website), the U.S. Environmental Protection Agency's National Stormwater Calculator, or another similar stormwater design calculator approved by the city to complete the plan and show that the proposed stormwater management practices meet the required infiltration standard. The applicant shall submit the calculator results to the City with the stormwater management plan.
 - d. The applicant shall provide documentation that the proposed stormwater management methods meet the required standard, will be designed and installed consistent with the City's Surface Water Management Plan, NPDES stormwater standards, and the Minnesota Pollution Control Agency's Minnesota Stormwater Manual.
 - e. No pervious pavement system is permitted in the Shore Impact Zone. (The Shore Impact Zone is the land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required structure setback. The required structure setback from the OHWL in the City of Birchwood Village is 50 feet, and the Shore Impact Zone is 25 feet.)
 - f. Site design shall comply with the City's zoning code 302.055, and shall minimize changes in ground cover, loss of natural vegetation, and grade change as much as possible.
 - g. The base of installed infiltration structures or practices must be a minimum of three (3) feet above the established ground water table or the Ordinary High Water Level of White Bear Lake, whichever is higher.

- h. The stormwater management practices shall be designed in accord with the Minnesota Stormwater Manual, American Concrete Pavement Association design criteria, Center for Watershed Protection, *Stormwater BMP Design Supplement for Cold Climates*, or other design guidance provided by the City.
- i. The stormwater management plan shall include the applicant's description of how the practices shall be maintained to function as designed for the long-term. The City may inspect the installation of the stormwater management system at the site.
- j. The applicant shall include the maintenance plan and a maintenance schedule for the approved stormwater management practices with the required permit application.
- k. The variance shall not be valid unless the applicant properly records the variance at the property records at Washington County and a copy of the recording is properly returned to the City for verification.

“AMENDED BY ORDINANCE 2017-01-01; DECEMBER 12, 2017”

302.055. LAND DISTURBANCE ACTIVITY STANDARDS.

See Sections 301.070 and 306.030 for Conditional Use Permits for Land Disturbance Activities.

- 1. The following are General Standards:
 - a. A combination of successive Best Management Practices may be used to achieve the standards and requirements of Section 302.055. Justification for the method(s) selected shall be provided by the applicant as part of the permit application.
 - b. When possible, existing natural drainage ways and vegetated soil surfaces must be used to convey, store, filter, and retain storm water runoff before discharge to public waters and wetlands.
 - c. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff, velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
 - d. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle storm water runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and man-made materials and facilities.

- e. Grading and filing shall be such that the highest practical amount of runoff water is retained on the parcel of land that is altered both during and after such alteration.
 - f. Fill or excavated material must not be placed in a manner that creates an unstable slope.
2. The following are Specific Standards:
- a. Land Use Standards
 - 1. No construction or alteration of new or existing structures or land topography shall be done so as to increase the rate of storm water runoff from the parcel as compared to the runoff rate before such construction or alteration unless:
 - (i) The City has a storm water drainage system which will accommodate this additional water flow without increasing the overall rate at which water leaves the City or enters public waters; and/or
 - (ii) Adequate storm water runoff measures and facilities are constructed to retain storm water on the lot and reduce the runoff rate such that the total rate from the lot is not increased; and/or
 - (iii) The construction or alteration results in a substantial reduction in storm water caused soil erosion on the lot, and the quantity of silt and/or other water borne pollutants leaving the lot is reduced.
 - 2. Fill shall be stabilized to accepted engineering standards for erosion control in accordance with recommendations of the Washington County Soil and Water Conservation District.
 - 3. Fill shall not be placed on areas lower in elevation than the ordinary high water level of any adjacent lake, pond or wetland; nor shall the final elevation of any excavation or grading be lower than the ordinary high water level.
 - 4. No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland.
 - 5. No filled or excavated slopes shall be greater than thirty (30) percent.
 - 6. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet.

b. Storm Water Control Structure Standards

1. When constructed facilities are used for storm water management, they must be designed and installed consistent with the field office technical guide of the Washington County Soil and Water Conservation Districts, Rice Creek Watershed District, and the National Urban Runoff Program (NURP).
2. New constructed storm water outfalls to public waters or wetlands must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
3. Drain Leaders. All newly constructed and reconstructed buildings with gutters and downspouts must have drain leaders routed to pervious areas wherein the runoff water can be allowed to infiltrate. The flow rate of water exiting the leaders shall be controlled so that no soil erosion occurs.

c. Requirements and Standards During Construction

1. Best Management Practices to minimize and control stormwater runoff, prevent erosion, and trap sediment shall be employed during construction in accordance with the recommendations of Washington Conservation District and/or as specified by the Minnesota Pollution Control Agency (MPCA) in its publication "Protecting Water Quality in Urban Areas."

(i) Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls. Water may not be discharged in a manner that causes erosion or flooding of the site or receiving channels or a wetland.

(ii) Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials and hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel, wetland, public water, or storm sewer system.

(iii) Tracking. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public road shall be removed by street cleaning (not by flushing) at the end of each work day.

(iv) Drain inlet protection. During construction until site erosion control measures are in place, all storm drain inlets shall be protected with straw bales, silt fences, or equivalent barriers.

(v) Channeled runoff water passing through the site from adjacent areas shall be diverted around disturbed areas if practical. Otherwise, the channel shall

be protected as described below. Sheetflow runoff from adjacent areas greater than ten thousand (10,000) square feet in area shall also be diverted around disturbed areas. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels.

2. No more than one-third (1/3) of the surface area of a lot shall be devoid of vegetative ground cover at any time. All Activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.
3. Temporary ground cover, (mulch) shall be used within 2 weeks of finish and permanent vegetative cover, sod and plantings shall be provided as soon as possible but not exceeding 1 year after the completion of finish grading.
4. During and after grading, filling, and excavating, stormwater runoff and erosion from the entire disturbed area must be controlled. Silt fences, straw bales or equivalent control systems must be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, silt fences shall be placed along the channel edges to reduce the quantity of sediment reaching the channel.
5. Any soil or dirt storage piles of material shall not be located with a downslope drainage length of less than twenty-five (25) feet from the toe of the pile to any roadway or drainage channel, public water, wetland, or lake.

All soil or dirt storage piles remaining must be stabilized by mulching, vegetative cover, tarps, or other means within seven days. Erosion from piles which will be in existence for less than seven days shall be minimized by placing straw bales or silt fence barriers around the piles.

Any soil or dirt storage piles (including those for in-street utility repair) located within or closer than twenty-five (25) feet to a roadway or drainage channel must be covered with tarps or suitable alternative control to minimize erosion at all times when not in actual use.

All soil and dirt piles not to be used in the final landscape shall be removed from the lot within thirty (30) days of being excavated. Preferably such soil and dirt should be hauled off when excavated and not piled on the lot.

6. Maintenance and inspection. The use of stormwater runoff and erosion control measures shall include Best Management Practices maintenance. The City Building Official shall inspect for compliance with this ordinance in conjunction with each construction inspection and periodically as part of the scheduled Erosion Control Maintenance Program. The City Building Official shall keep a log of inspections, deficiencies and corrective actions and shall inform the applicant of deficiencies and corrective actions required.

d. VEGETATIVE ALTERATIONS

1. Generally. The purpose of this section is to preserve, protect and reduce the loss of trees and other vegetation. The removal of woody, non-noxious, vegetation in the City shall be carried out in accordance with the following criteria:
2. Clear cutting. Clear cutting of trees shall be prohibited except as necessary for placing public facilities and roads and private and public structures. Clear cutting of trees shall also be allowed on land within twenty (20) feet of buildings and five (5) feet of driveways.
3. Removal of Trees – Replacement Required. Whenever significant trees, are to be removed, the following requirements shall apply.
 - a. Significant trees that are removed shall be replaced at a rate of one (1) tree replaced for each one (1) significant tree lost. Replacement trees shall be no less than two and one half (2 1/2) inches in diameter for deciduous trees and six (6) feet tall for coniferous trees. Replacement shall be completed within one (1) year of the removal of tree(s) or one (1) year of the conclusion of development or construction activities. For activities requiring permits, the City may require the applicant to provide the City with a cash deposit, surety bond or letter of credit to secure the applicant’s obligation to replace lost trees in an amount necessary to cover the cost of replacement trees.
 - b. When Part 2 allows clear cutting that is within ten (10) feet of a side or rear property lot line, the property owner shall provide vegetative screening reasonably equivalent to the original vegetative screening within a reasonable time after completion of the clear cutting.
4. Removal of Trees – No Replacement. On any parcel the removal of trees, limbs or branches, and other plants that are dead, diseased or pose safety hazards, and of all cottonwood, poplar family, box elder, green ash, silver maple, elm (Siberian and American), and buckthorn trees of any size, is permitted without replacement.
5. Buffer Strips. Existing vegetative buffer strips along any property lot lines shall be maintained, or made more dense, to provide vegetative screening. Replacement of vegetation type(s) is permitted as long as the resultant screening is reasonably equivalent to that provided by the original vegetation.

6. Sound Practices. All cutting, pruning and trimming of trees must be based on sound forest management practices for individual tree species. Upon request, the City will provide assistance in determining what practices are sound.
7. Vegetation Alterations on Lots Abutting Water. Limited removal or alteration of vegetation on lots abutting lakes, ponds, or wetlands, is allowed subject to the following standards:
 - a. Clear cutting or intensive clearing of vegetation is not allowed.
 - b. Limited clearing of trees, subject to 302.055.2.d.3 and 4, and shrubs, and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of buildings, stairways and landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
 - (i) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced.
 - (ii) Vegetation which is removed must be replaced with other vegetation which is equally effective in retarding water runoff and preventing erosion.
 - (iii) A protective buffer strip of vegetation at least 16.5 feet back from the ordinary high water mark shall be maintained abutting the shorelines of all lakes and wetlands.
 - (iv) All applicable requirements of the Minnesota Department of Natural Resources or other state agency are met.
8. Conduct of Activities. Land Disturbance Activities shall be conducted on no more than one-third (1/3) of the surface area of a lot at any time. All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time. Mulch, fiber matting, or similar ground cover shall be applied during the conduct of the Land Disturbance Activities to control erosion. Permanent vegetative cover, sod, or plantings shall be provided as soon as possible but not exceeding six months after the completion of Land Disturbance Activities.

“AMENDED BY ORDINANCE 2016-11: MAY 10, 2016.”

3. Variance. Any person who seeks a variance from any requirement of section 302.055 shall comply with the requirements of Chapter 304 (ZONING CODE: VARIANCES AND APPEALS).

Any use which lacks reasonable screening of development on lots abutting lakes, ponds, or wetlands, or which does not provide for adequate erosion control on any property within the City, is a nonconformity. When a development or building permit is sought for property with nonconforming vegetative or erosion conditions, a recovery plan must be submitted by the permit applicant and approved prior to permit issuance. The recovery plan must provide for reasonable screening of shoreland development, protection of soil from erosion, surface water shading and a schedule for implementation to meet the purposes of 302.055.2.d.

“AMENDED BY ORDINANCE 2016-11: MAY 10, 2016.”

302.060. VEGETATIVE ALTERATIONS (REPEALED)

“REPEALED BY ORDINANCE 2016-11: MAY 10, 2016.”

302.070 CITY FENCE ORDINANCE.

1. Zoning Permit. A Zoning Permit (see Sections 301.080.1.b and 307) shall be obtained from the City before installing or constructing any fence for any purpose. A site drawing showing the location of the fence shall be submitted with the permit application.
2. Notice to Neighbors. Any applicant for a Zoning Permit to construct a fence shall notify all abutting property owners at least five (5) days prior to submitting the application for a Zoning Permit.
3. Location. All fences shall be located entirely upon the property of the fence owner.
4. Height. No fence shall exceed six feet six inches (78”) in height above grade at any point. Posts shall not exceed 12 inches above the adjacent fence.
5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.
6. Materials. Fences in excess of four (4) feet in height shall be at least thirty percent (30%) open through the entire surface area of the fence. All fences shall be constructed and maintained in a substantial manner and of material reasonably suited for the purpose for which the fence is proposed to be used. That side of the fence considered to be the face (or most attractive side of the fence) shall face toward abutting properties.

“AMENDED BY ORDINANCE 1997-2; AUGUST 12, 1997.”

“AMENDED BY ORDINANCE: DECEMBER 13, 2016.”

302.080. STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS. A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3.

1. The applicant shall obtain a Zoning Permit before any construction takes place.
2. Standards and requirements for stairways are as follows:
 - a. Stairways may not exceed 44 inches in width.
 - b. Landings may be permitted at a minimum vertical interval of 20 feet.
 - c. Landings may not exceed 32 square feet in area.
 - d. Handrails are recommended, however they shall not unduly obstruct the view by neighboring properties.
 - e. Canopies or roofs are not permitted on stairways or landings.
 - f. Stairways shall be anchored and supported with pilings or footings.
 - g. The applicant must submit a plan for the stairway to the City of Birchwood Village showing all necessary construction data including location, design, dimensions and construction materials before construction may begin.
 - h. Steps must comply with all setback requirements except the setback from the high water mark.
3. Standards and requirements for lifts are as follows:
 - a. The primary function of a lift shall be for the transportation of persons up and down the slope.
 - b. No lift may be designed and used for the transport of boats or machinery on the hill face.
 - c. The applicant must provide the City of Birchwood Village with a plan showing all necessary construction data including location of the lift, design, size and dimensions before construction may begin.
 - d. The lift components shall be constructed and anchored in a manner that prevents it from shifting and from causing accelerated erosion.
 - e. The car of any lift may not exceed four feet by six feet.

f. The location of the transporting device and/or power source shall be screened.

“AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005.”

302.090. TEMPORARY FAMILY HEALTH CARE DWELLINGS.

1. OPT-OUT OF MINNESOTA STATUTES, SECTION 462.3593. Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Birchwood opts-out of the requirements of Minnesota Statutes, Section 462.3593.

“AMENDED BY ORDINANCE 2016-08-16; AUGUST 17, 2016”

“AMENDED BY ORDINANCE 1997-2; AUGUST 12, 1997.”

“AMENDED BY ORDINANCE 2000-1; FEBRUARY 8, 2000”

“AMENDED BY ORDINANCE 2003-1; FEBRUARY 12, 2003”

“AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005.”

“AMENDED BY ORDINANCE 2013-08-01; AUGUST 13, 2013.”

“AMENDED BY ORDINANCE 2016-11: MAY 10, 2016.”

“AMENDED BY ORDINANCE: JUNE 14, 2016.”

“AMENDED BY ORDINANCE 2016-08-16; AUGUST 17, 2016”

“AMENDED BY ORDINANCE: DECEMBER 13, 2016.”

“AMENDED BY ORDINANCE 2017-01-01; DECEMBER 12, 2017”

“AMENDED BY ORDINANCE 2019-03-02; JUNE 11, 2019.”

CITY OF BIRCHWOOD VILLAGE
PLANNING COMMISSION MEETING
JANUARY 23, 2020 MINUTES

COMMISSIONERS PRESENT: Chair John Lund, Jozsef Hegedus, Michael Kraemer, Mark Foster, Andy Sorenson

OTHERS PRESENT: Tobin Lay, Allen Christian, Greg Sherwood, Kathy Sherwood, Bob Michels,

Jozsef Hegedus called meeting to order at 7:05 pm

APPROVE AGENDA - Michael Kraemer motioned to approve, Mark Foster 2nd. Motion passed.

REGULAR AGENDA

A. Review Variance Case No.20-01-VB for Birchwood Lane

1. Public hearing

Tobin explained variance request. Michael Kraemer motioned to open public meeting, Mark Foster 2nd motion passed.

2. Discuss & Recommendation to City Council

Public hearing was opened. Neighbor Allen Christian asked about need for variance. Commissioners, Builder Bob Michels and property owners Greg and Kathy Sherwood Discussed reasons for variance request. Michael Kraemer motioned to close public hearing, Jozsef Hegedus 2nd, all ayes motion passed. Commissioner John Lund request to table discussion asking for more detail on drawings and pervious impervious specs. Vote was taken on whether the variance application was complete. Commissioners John Lund, Michael Kraemer, and Andy Sorenson voted that it was incomplete. Commissioners Mark Foster and Jozsef Hegedus voted that it was complete. Applicants were asked to supply requested details. Commissioners rescheduled February meeting to Feb 20th and tabled discussion until that date.

B. Review /Approve October 24, 2019 Meeting minutes

Commissioner Michael Kraemer motioned to approve, Mark Foster 2nd, all ayes. Motion passed.

C. Discuss Nominal Structures (302.020.4.d)

Commissioner Michael Kraemer motioned to add suggestion 2 and 3 respectively from his memo to ~~(203.040.2.A.1)~~ Sec. 300.020 definitions for Nominal Structure and ~~(203.040.2.A.2)~~ Accessory Structure. Commissioner John Lund 2nd, all ayes. Motion passed.

Adjourn at 9:17 pm. Motion was made by John Lund, 2nd by Jozsef Hegedus, all ayes. Motion passed. Meeting adjourned.

ORDINANCE 2020-02-01

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING AND ADDING DEFINITIONS
IN THE CITY LAND USE CODE**

The City Council of the City of Birchwood Village hereby ordains that Chapter 300 (Land Use) of the Municipal Code of the City of Birchwood Village is hereby amended to read as follows:

SECTION 300. LAND USE

300.020. DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:

1. ~~Accessory Use or Structure.~~ A non-habitable one-story detached accessory structures (tool sheds, storage sheds, etc.) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the finished floor level to the top of the top plate.~~A use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental thereto.~~

...

33. Nominal Structure. A non-habitable one-story detached accessory structures (tool sheds, storage sheds, playhouses, dog house, etc.) provided the floor area does not exceed 25 square feet and a maximum wall height of 10 feet measured from the finished floor level to the top of the top plate.

335. Official Map. The map established by the City Council showing the streets, highways and parks theretofore laid out, adopted and established by law and any amendments thereto adopted by the City Council and the subsequent filing of such approved plats.

6146. Significant Tree. A healthy coniferous tree six (6) feet or more in height or a healthy deciduous tree eight (8) inches or more in diameter.

The numbering on all subsequent terms are adjusted in correlation with these numbering changes.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this ___ day of _____, 2020

Attest:

Mary Wingfield, Mayor

Tobin Lay, City Administrator-Clerk

MEMORANDUM



Birchwood Village

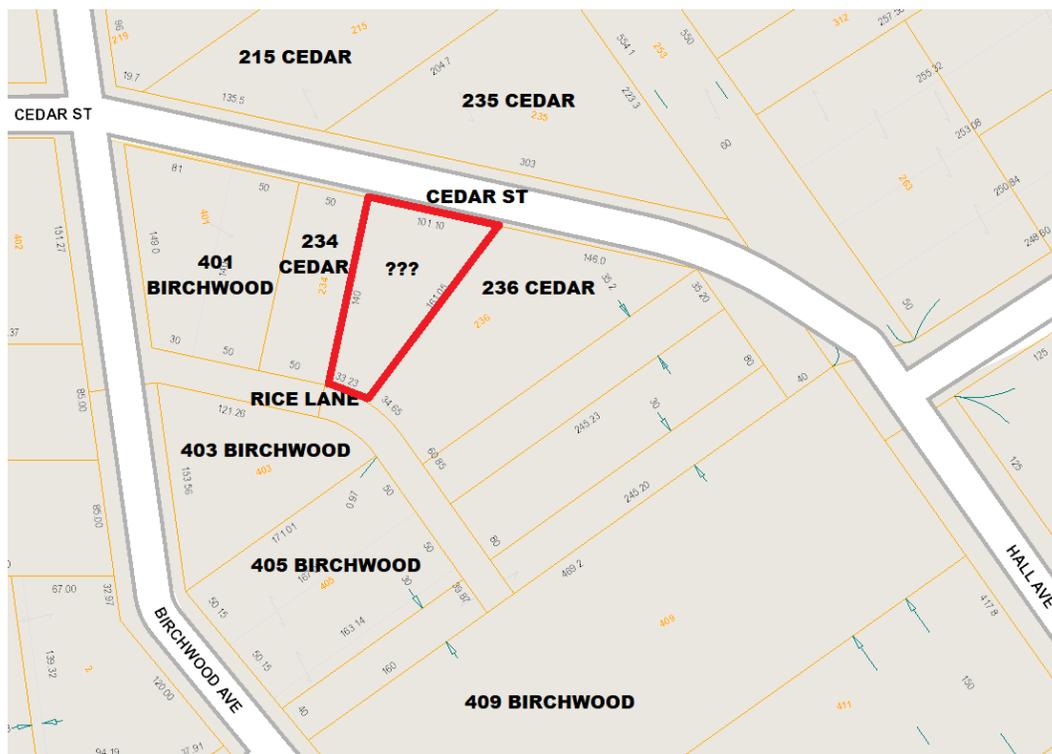
TO: Birchwood Village Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Address Assignment for Cedar St. Vacant Lot
DATE: February 14, 2020

Dear Commissioners,

The owners of the vacant lot between 234 & 236 Cedar St. have requested an address assignment. They are in the process of building a home on this lot and Xcel Energy will not install services until an address is assigned. Accordingly, a prompt recommendation from the Commission is requested.

A map of existing address assignments is provided below. Currently no homes abutting Rice Ln. have Rice Ln. addresses. Suggested assignments for this lot are as follows:

- 234 ½ Cedar St.;
- 238 Cedar St. (out of sequence);
- 240 Cedar St. (out of sequence);
- 235 Rice Ln.; OR
- Renumbering all homes on this block to bring them into sequence.



Letters have been mailed to residents of this block, inviting them to attend this meeting or submit feedback / recommendations.

Request/Recommendation

Staff requests Commissioners discuss & recommend an address assignment for this vacant lot. Thanks!



BIRCHWOOD VILLAGE

Variance Findings Form

EACH OF THE FOLLOWING CRITERIA MUST BE SATISFIED TO APPROVE

#1: Is the request in harmony with the general purposes and intent of the ordinance?

The specific Ordinance states _____
(state ordinance requirement), the purpose of which is to _____

(explain what the ordinance requirement is intended to prevent or protect).

The proposed variance is for: _____

(explain proposal and potential effects).

This variance is/is not in harmony with the purpose and intent of the specific Ordinance because: _____

(explain how the proposal is in harmony with or undermines the purpose of the ordinance).

#2: Would granting the variance be consistent with the comprehensive plan?

The Comprehensive Plan contains the following policies and goals regarding this request: _____

(list applicable policies, goals, and maps, including citations).

Granting the variance is/is not consistent with the comprehensive plan because: _____

(explain how; relate details of the request to specific policies, goals, and maps).

#3: Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?

There are/are no circumstances unique to the property that would prevent compliance with the specific Ordinance because: _____

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other reasonable alternative exists that would comply with the ordinance; explain what makes this property different from other properties to justify why this applicant should be able to deviate from the ordinance when others must comply).

#4: Were the special conditions or circumstances created by the applicant's action or design solution?

The conditions that resulted in the need for the variance **were/were not** created by the applicant **because:**

_____ (if there are special conditions or circumstances, describe whether they were created by some action of the applicant/property owner).

#5: Will granting a variance result in any increase in the amount of water draining from the property?

Granting the variance **will/will not** increase the amount of water that drains from the property **because:**

_____ (if granting the variance will increase the amount of water that drains from the property, explain how and how much it will increase).

#6: Will granting the variance impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City?

Granting the variance **will/will not** impair light and air to adjacent property, or diminish or impair property values in the area, or impair the public health, safety, or welfare of Birchwood residents **because:**

_____ (if granting the variance could be detrimental to neighbors or other Birchwood residents, explain how).

#7: A variance must not be granted *simply because there are no objections or because those who do not object outnumber those who do?*

Has this variance been granted only because of the number of objections to the request: Yes No

Explain: _____

_____ (If you believe that the decision has been determined simply because of the number of supporters or objections, explain how).

#8: Does reasonable use for the property exist under terms of the Zoning Code?

Reasonable use for the property **does/does not** exist under terms of the Zoning Code **because:** _____

_____ (Describe how the Zoning Code does or does not allow for reasonable use of the property. If reasonable use of the property *does* exist under terms of the Zoning Code, the applicant's financial gain or loss shall not be considered in your decision).

What is your decision? (Approve or Deny)

Remember - ALL criteria MUST be satisfied to approve.

If approved, what conditions will you impose? (Findings must support the conditions; explain the impacts of the proposed development and the conditions that address those impacts. Remember that findings must be directly related and proportional to the impacts created by the variance. Set specific timeframes and deadlines, and consider requiring the following to help ensure compliance with the conditions:

- *financial sureties to ensure that the required activities are completed within specified deadlines,*
- *as-built drawings and/or photos as proof of completion within the terms of the conditions, and/or*
- *long-term maintenance and operation agreements for stormwater best management practices and vegetation that must be protected or restored as a condition of approval, along with notices of restrictions recorded against properties to ensure that future property owners are aware of their responsibilities and don't unknowingly "undo" any conditions.)*
