



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
March 22, 2018
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

- A. Review Variance Case No. 18-01-VB for 5 Oakridge Drive* (pp. 2-36)
 - 1. Public Hearing
 - 2. Discuss & Recommendation to City Council
- B. Review/Approve January 25, 2018 Meeting Minutes* (p. 37)
- C. Comp Plan Update* (pp. 38)
 - 1. No action required
- D. Consider Building Permit Escrow Fees / Ordinance Amendments for Damages to Public Property* (pp. 39-53)
 - 1. Discuss & Recommendation to City Council
- E. Discuss Amending Section 304 Zoning Code Variances and Appeals* (pp. 54-57)
 - 1. Discuss & Recommendation to City Council

ADJOURN

* Denotes items that have supporting documentation provided

MEMORANDUM

DATE: March 22, 2018

TO: Birchwood Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Variance Case No. 18-01-VB



Birchwood Village

Dear Commissioners,

Enclosed is a variance application from Christopher & Mary Sorenson (Case No. 18-01-VB) for a side-yard setback variance for a newly constructed eave and gutter at 5 Oakridge Drive. The eave and gutter projects beyond the maximum allowable 2 feet into the required side-yard setback of 10 feet. To complicate matters more, the existing foundation of the home is only 7 feet from the north side-yard property line, making it a non-conforming structure. Accordingly, the following Birchwood Ordinances apply:

- Section 301.050.1 & 5 (see enclosed); and
- Section 302.020.1 & 2 (see enclosed)

Notices have been mailed to each of the neighboring properties (1, 3 & 5 Oakhill Ct.; 1-5, 7 & 9 Oakridge Dr.; 4-6 Five Oaks Ln.; 176, 180, 182 & 184 Cedar St.) and the DNR in accordance with Section 304.060 of Birchwood City Code (see enclosed sample notice letter). No response had been received at the time this packet was assembled on Monday March 19, 2018, but the Commission should anticipate responses during the variance hearing.

Variance Requirements

During a recent DNR training, I learned that the State's variance requirements in Minn. Stat. 462 has changed and that Birchwood's criteria for approving variances are outdated. Enclosed is a thorough explanation from the DNR of these criteria changes (see enclosed email).

Since State law supersedes our local ordinances, Commissioners will need to apply the new state criteria located in Minn. Stat. 462.357 (see enclosed) rather than those in Section 304 of Birchwood City Code.

To assist Commissioners in using these new criteria, the DNR has provided guidelines (enclosed). Although these guidelines state that they are for shoreland & floodplains, the criteria applies to all municipal variances, not just to those effecting shoreland and floodplains.

I have provided Commissioners with the enclosed "Variance Findings Form," borrowed from the DNR, to assist Commissioners in applying the State variance criteria to Variance Case No. 18-01-VB. Also enclosed are the relevant sections from the Birchwood 2030 Comp Plan.

Request/Recommendation

Staff requests Commissioners:

- 1) Proceed with the public hearing; and
- 2) Review, discuss & approve or deny enclosed Variance No. 18-01-VB.

Regards,
Tobin Lay

Tobin Lay

From: Petrik, Daniel (DNR) [daniel.petrik@state.mn.us]
Sent: Monday, March 19, 2018 9:08 AM
To: Tobin Lay
Cc: Sorensen, Jenifer (DNR); Bauman, Matthew (DNR)
Subject: FW: Variance Elements
Attachments: Section 304 ZONING CODE VARIANCES AND APPEALS.pdf

Hi Tobin,

Jen forwarded your questions on variances to me. I'm glad you were able to attend one of our recent workshops on variances. Here some additional information that will hopefully clarify these questions for you.

The Minnesota Legislature update the variance criteria in 2010 that applies to ALL (not just shoreland) variance applications considered by cities and counties. The criteria are the same for cities and counties. You can find the city criteria in [Minn. Statutes Chapter 462.357 Subd. 6](#). These criteria are the "minimum standards" to use when evaluating variances, however, local governments can apply more strict standards and additional standards if they choose. The [DNR also has information explaining the variance](#) criteria and will be good background for you in considering how to update your variance criteria.

The key set of criteria are known of as practical difficulties and deal with:

- Reasonable manner not permitted by the ordinance
- Unique circumstances not created by the owner
- Essential character of the locality

Additionally, "economic considerations" alone cannot constitute practical difficulties

Additionally, the statute states that:

- Variances must be in harmony with the general purposes and intent of the ordinance
- Variances be consistent with the comprehensive plan, and

In your ordinance Section 304.040 2.

- Item a. is similar to the unique circumstances criterion, except item a. doesn't mention that the unique situation or peculiarity wasn't created by the owner. However, item b goes on to state that the conditions causing the need for the variance are not created by the applicant's action or solution, which is very good, especially including the applicant's solution and requiring the applicant to demonstrate no other reasonable solution exists.
- Item c. is not similar to any of the statutory criteria and is problematic as it appears to be a potential weakening of the statutory criteria. Using the general concept of rights is vague and therefore problematic in this item. The Supreme Court has held repeatedly that there are no regulatory takings of property rights as long as a reasonable use remains. Property owners are not entitled to the same rights to build a walk out home (for example) just because the neighbor has a walk out home, if building that walk out were to be in violation of the zoning ordinance.
- Item d. deals specifically with water drainage and is not similar to how the statutory criteria are worded, however, the DNR believes that how water moves across or through a site is an "essential character of the

locality.” In any case this would be viewed as a higher standard and within the power of local governments to include in their list of criteria.

- Item e. dealing with light and air are issues that the statute also refers to and is a good addition.
- Item f. is also a good clarifying item.
- Item g. is a good interpretation and application of the “economic considerations” standard from statute.
- Your criteria seems to be missing the “reasonable manner” and “essential character” practical difficulties criteria as well as the two additional provisions dealing with the ordinance and comprehensive plan. I’d suggest you amend your criteria to include these and to strongly consider removing item c. Also, statute states that **all** the criteria must be met in order to approve a variance. Your criteria implies that all must be met, but further clarification wouldn’t hurt.

Dan Petrik

Land Use Specialist | Shoreland and River Related Programs

Minnesota Department of Natural Resources

500 Lafayette Road

St. Paul, MN, 55155-4032

Phone: 651-259-5697

Fax: 651-296-1811

Email: daniel.petrik@state.mn.us



From: Sorensen, Jenifer (DNR)

Sent: Friday, March 16, 2018 5:17 PM

To: Petrik, Daniel (DNR) <daniel.petrik@state.mn.us>; Bauman, Matthew (DNR) <matthew.bauman@state.mn.us>

Subject: FW: Variance Elements

Dan or Matt –

Can either of you help me answer Tobin’s question (below)?

Thanks for your help on this –

Jen

Jenifer Sorensen

East Metro Area Hydrologist (Ramsey and Washington Counties)

Division of Ecological and Water Resources

Minnesota Department of Natural Resources

1200 Warner Road

St Paul, MN 55106
Phone: 651-259-5754
Email: jenifer.sorensen@state.mn.us

From: Tobin Lay [<mailto:Tobin.Lay@cityofbirchwood.com>]
Sent: Friday, March 16, 2018 5:03 PM
To: Sorensen, Jenifer (DNR) <jenifer.sorensen@state.mn.us>
Subject: Variance Elements

Hello Jenifer,

I have questions about the elements for granting a variance. In the recent DNR training that I went to, I was taught that the variance elements have changed for areas within the shoreland overlay. The new elements differ from the original elements required under Birchwood's variance ordinance and since most of Birchwood falls within the shoreland overlay, I'm concerned that our variance requirements might need updating.

Attached is Birchwood's variance code. The elements of I'm talking about are listed in 304.040.2. Will you please explain the 5 new variance elements for shoreland overlay and advise if those would conflict or supersede Birchwood's elements within the shoreland overlay area. What is the area that falls under the shoreland overlay? Thanks!

Tobin Lay
City Administrator/Clerk
City of Birchwood Village, MN
office: (651) 426-3403
fax: (651) 426-7747
email: tobin.lay@cityofbirchwood.com
website: <http://www.cityofbirchwood.com/>



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Shoreland & Floodplain Variance Guidance Series

The Basics: What Communities Need to Know

This document provides an overview of the statewide regulations governing development and land use along lakes and rivers; the roles of local governments in enforcing these regulations; and what local governments need to know when considering variances to these regulations.

The Variance Guidance Series

Considering variances is an important but very challenging job. The DNR – in collaboration with the League of Minnesota Cities, Association of Minnesota Counties, and the Minnesota Council on Environmental Advocacy – has developed a series of resources to help local governments make informed decisions on variances affecting Minnesota’s shorelands, floodplains, and designated riverways. The purpose of the series is to:

- Ensure that Minnesota’s lakes and rivers are not compromised through the variance process,
- Guide communities in balancing legal protection of water resources with property use,
- Minimize legal challenges, and
- Empower communities to enforce their shoreland, floodplain, and riverway ordinances through better understanding of the variance process and state laws governing variances.

Why do we have Shoreland & Floodplain Regulations?

The health of Minnesota’s lakes and rivers are affected by our activities in the watershed. How we develop land and alter the landscape affects water quality and the health of fish and animal habitat associated with water bodies.

The DNR oversees five statewide programs that regulate the use of land abutting lakes and rivers: Shoreland Management, Floodplain Management, Wild and Scenic Rivers, Lower St. Croix National Scenic Riverway, and the Mississippi River Corridor Critical Area. While the specific purposes of each program vary, their common goal is to guide development in a manner that protects public waters for all Minnesotans.

Under each program, the DNR establishes, through rule, minimum land use standards that communities must adopt and enforce through local zoning ordinances. The responsibility for protecting our lakes and rivers lies largely with local governments and the decisions they make in administering and enforcing their ordinances. Local governments have some flexibility in adopting zoning regulations to address specific concerns within the context of local goals and policies, but they must look beyond local needs to protect public water resources for everyone.



What are Variances? Why are they Granted?

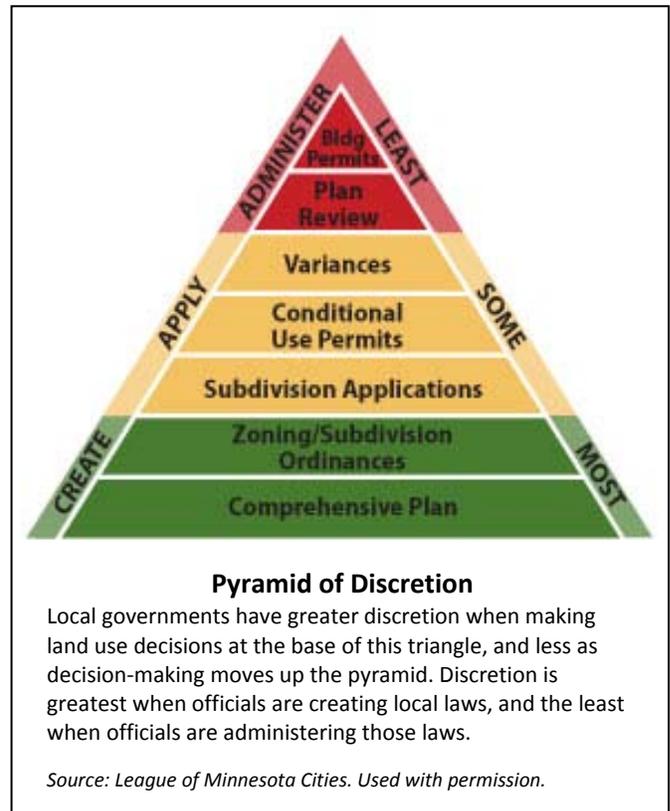
Variances are a means for departing from the strict enforcement of an ordinance as applied to a specific property. Variances may be approved for **area** or **dimensional standards** such as structure setbacks, limitations on impervious surface, bluff protection, lot size, grading and filling, and other similar provisions, but only if all criteria under state law are met. State law prohibits allowing, by variance, any **use** that is not allowed in a zoning district.

Variations allow the property owner to use his/her property in a manner that is not allowed by the ordinance, but is basically consistent with the established regulations with minor variations. Occasionally, a situation will arise where the regular application of ordinance requirements is inappropriate or unfair. In these situations, a variance may provide an equitable solution. Variations should be rare and for reasons of exceptional circumstance.

Local Authority and Discretion

Local governments have two types of authority in making decisions. When adopting or amending a zoning ordinance, a city council or county board is exercising so-called “legislative” authority. Here, the body is advancing health, safety, and welfare by making rules that apply throughout the entire community. When acting legislatively, the body has broad discretion and will be afforded considerable deference by any reviewing court.

In contrast, when administering an existing zoning ordinance and considering a variance, discretion is much more limited. When considering a variance application, the local unit of government is exercising “quasi-judicial” authority. Here, the local government is making a judge-like determination about whether an individual variance application meets all of the legal criteria. Decisions on variances are often made by a body called the board of adjustment and appeals; in some communities the planning commission serves this function. The board’s decision may be appealed, so it is important to make legally sound decisions.



State Criteria for Variances

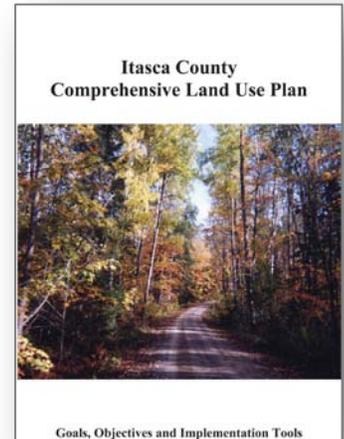
In 2011 the State Legislature revised the laws that govern the granting of variances (Minnesota Statutes, section 394.27, subd. 7 for counties, and section 462.357, subd. 6 for municipalities). Local governments may grant a variance if **all five** of the following criteria are satisfied:

- Would granting the variance be *consistent with the comprehensive plan*?
- Would granting the variance be *in harmony with the general purposes and intent of the ordinance*?
- Are there *unique circumstances to the property* not created by the landowner?
- Would granting the variance allow the *essential character* of the locality to stay the same?
- Does the property owner propose to use the property in a *reasonable manner not permitted by the ordinance*?

The last three criteria address whether **practical difficulties** exist in complying with the ordinance. Minnesota statutes state that economic considerations alone cannot create practical difficulties.

Evaluating Variances against the Statutory Criteria

Shorelands, floodplains, and riverways are sensitive areas that need special consideration because **public resources** are at stake. Local governments must consider each criterion on its own merit, and make findings and conclusions based on the following considerations:



1) The variance is consistent with the comprehensive plan.

The comprehensive plan serves as a citizen-derived policy foundation for the zoning ordinance. Comprehensive plans include goals and policies for protecting natural resources. They may also contain maps that identify areas of high risk or with high ecological value where development should be avoided or carefully planned. The variance request must consider these goals, policies, and maps.

Considerations: Which goals and policies apply? Is allowing deviation from the ordinance consistent with these goals and policies? Why/why not?

2) The variance is in harmony with the purposes and intent of the ordinance.

A variance decision is a balancing test that requires weighing the need of an individual property owner against the interests of other shoreland residents and all state residents. Ordinances will typically state the purpose for a particular set of standards or requirements. (Note: If the purposes for specific standards are not clearly articulated in the local ordinance, a resource for determining the purposes is the *Statement of Need and Reasonableness (SONAR)* that accompanied the statewide rules on which the ordinance standards are based.

Considerations: What are the purposes and intent of the Ordinance? What is the particular standard being deviated from intended to prevent or protect? Will deviating from the required standard on this property undermine the purposes and intent? Why/why not?

3) The problem is due to unique circumstances of the property not created by the landowner.

Unique circumstances relate to physical characteristics of the land such as lot shape and dimensions. Unique circumstances do **not** include personal matters unrelated to the property itself, such as health difficulties, a growing family, or design preferences, or changes made to the property by the property owner that prevent compliance with the ordinance.

Steep slopes, floodplains, riparian vegetation, and erodible soils are common, and not usually unique, in shoreland areas. Owning and developing land in these sensitive areas requires acknowledgment of these conditions and designing with them in mind; that is the point of shoreland and floodplain regulations.

Considerations: What distinguishes this property from other properties subject to the shoreland regulations to justify deviation from the requirements when others must comply? Has the applicant demonstrated that no feasible alternatives exist that would not require a variance? Is the application motivated by economic concerns or design preferences?

4) The variance, if granted, will not alter the essential character of the locality.

This criterion requires assessing whether the resulting structure or land disturbance will alter the hydrology, soil stability, vegetation, aesthetics, and landscape features on the site, or be out of place or scale, or otherwise inconsistent with the surrounding area.

Considerations: How does the size and character of the structure compare to other structures in the area or expectations as described in the comprehensive plan or other policy

documents? To what extent does the structure encroach into sensitive natural areas such as bluffs or shores? Is significant soil disturbance or vegetation removal required? What is the long-term risk from changing hydrology and increasing erosion and subsequent sediment in public waters? Do the structure and shoreline alterations affect the character of the area?

5) The proposal puts the property to use in a reasonable manner.

The standards in the local ordinance are established to protect public water resources and adjoining property. It may not be reasonable to deviate from them if doing so would undermine those protections. For example, a minor deviation on a setback may not reduce the protective function of the setback, but a major deviation would. Variance requests should only be considered reasonable when no other alternatives exist, particularly if the public water at stake is impaired or at risk of becoming impaired.

Considerations: *How substantial is the request in relation to the standard? What might be considered a reasonable deviation from the rules in a non-riparian area could have significant impacts in a riparian zone. How justifiable are the reasons for the variance request in the context of sensitive shoreland areas and the potential impacts on public waters?*



Owner's design preference for a walkout is not reasonable in a sensitive bluff area.

A Note on Floodplains...

FEMA requires that in floodplains, the requirements of 44 Code of Federal Regulations (CFR), Section 60.6 (variances and exceptions) be met. These requirements specify that variances: 1) can only be granted for lots of one-half acre or less; 2) cannot cause any flood stage increase or additional threats to public safety; 3) cannot cause extraordinary public expense; and 4) the variance is the minimum necessary to afford relief. Specific language that complies with FEMA's requirements is provided in the DNR's sample floodplain ordinances.

Minnesota Rules, part 6120.6100 also talk about allowing variances where there is "undue hardship" if consistent with state and national laws and programs. It also specifies that "although variances may be used to modify permissible methods of flood protection, no variance shall provide for a lesser degree of flood protection than stated in these standards." This has been interpreted to mean that a variance can be given to allow an alternate form of flood protection not allowed in the local government's floodplain ordinance (e.g., "wet" instead of "dry" floodproofing of principal non-residential structures), but the level of floodproofing must always be to the regulatory flood protection elevation.

The community granting the variance must always be mindful of FEMA's additional variance criteria noted above and that variances that modify the method of floodproofing will likely result in expensive flood insurance premiums.

Making a Decision

After evaluating the variance application against the criteria, several outcomes can occur:

- If the applicant fails to prove that **all** criteria are met, then the variance should be denied.
- If the applicant demonstrates that **all** criteria are met, then the variance may be granted.
- If findings support granting the variance, but the project will impact the public resource, then the variance may be granted but conditions should be imposed to mitigate the impacts.

Conditions of Approval

If findings support granting the variance, impacts to the lake or river and riparian areas should be considered in developing appropriate conditions to mitigate them. Minnesota law allows communities to impose conditions when granting a variance as long as the conditions are **directly related and roughly proportional to the impact created by the variance.**

When the variance involves nonconforming lots of record in shorelands, Minnesota law¹ states that communities **shall require** the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setbacks, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.



Vegetative restoration may be an appropriate condition to mitigate the impacts associated with a variance.

Variance conditions serve to ensure that the intent of the regulation is met or to mitigate the impact of the proposed activity. Through thoughtful conditions that can be enforced long-term, the intent of the regulation can often be achieved.

Best Practices in Considering Variances

In making a quasi-judicial decision that is likely to stand up in court, the decision-making body should apply the following best practices, some of which are required by law. Following these practices will also increase public acceptance of the decision, though not necessarily agreement with the decision.

Support the decision with “findings of fact”

The local government should make “findings of fact.” Findings of fact is a legal term for simply saying “the reasons used to support a decision.” Findings are very important. To be legally defensible, findings should not just state that legal criteria have been met, but explain *how* the criteria are met. The purpose for making findings is to bridge the gap between the facts and the ultimate decision. Variance findings should explain how the relevant facts support or do not support the legal criteria described above. The DNR’s “[Formula for Variance Findings](#)” will help guide the development of good findings. An “[example of Good Findings](#)” was developed with the formula to demonstrate what good findings might look like.

Discrimination and prejudice should not play a role in deciding on a variance request, nor should a poll of those attending a public meeting. General statements of support or opposition should not be used as a finding of fact. Statements made by the public that are concrete and factual relating to the criteria can be useful in developing findings. Findings should be more than a mere recitation of statutory criteria; they must provide the factual basis that leads to a rational conclusion.

¹ Minnesota Statute, section 462.357, subd. 1e, item (i)

Create a public record that supports the decision

Minnesota law requires that the reasons for a variance decision be articulated in the record. A written document (such as the DNR's "Formula for Variance Findings") clearly stating the findings and adopted by the community is recommended to supplement meeting minutes. The law also **requires written findings** whenever an application is denied. Findings should explain the decision by listing relevant facts, addressing each of the legal criteria, and explaining how each criterion is/is not satisfied as part of the conclusions.

Use an open and transparent process for making the decision

Facts or evidence used for making findings should be available for the public to observe and review. Typical sources for gathering relevant evidence include: the variance application documents, documents submitted by the public (paper or digital), public meetings and hearings. Holding a public hearing is an important component in developing the record and eliciting facts. State statute requires that counties hold a public hearing for variances.



Notices of public hearings should be sent to nearby property owners, the DNR, and other interested parties. The body making the decision should discuss the facts, deliberate on the decision and make the decision at a public meeting. Public officials should refrain from prejudging a situation or advocating for a decision before the facts are established. The burden of proof that a variance is warranted lies with the applicant, not the board, planning commission, or staff.

Under all statewide land use programs, local governments are required to provide the DNR with copies of notices for public hearings to consider variance requests, as well as the final decisions. Decisions should include the complete record for the decision, including findings of fact.

A variance application is subject to Minnesota's "60-day rule²." This means that a variance request must be approved or denied within 60 days from the date the application was submitted. The rule allows one 60-day extension, if done in writing and within the initial 60-day period. Failure to approve or deny a request within the statutory time period is deemed an approval.

Further Considerations

Be aware of the rules for Open Meetings, Conflicts of Interest, the 60-day Rule, and the constitutional limits on government regarding Takings, Due Process and Equal Protection.

Resources on Variances

Additional resources, including example variance requests, FAQs, sample variance forms and resolutions, sample mitigation scoring systems, review checklists, stormwater management best management practices, native plant listings, rare species information, training opportunities, and more, visit:

http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html

References

Statewide Wild & Scenic River and Lower St. Croix Rules – *Minnesota Rules, Chapter 6105*

Statewide Shoreland Management & Floodplain Management Rules- *Minnesota Rules, Chapter 6120*

Variance Criteria for Counties - *Minnesota Statutes, §394.27, subd. 7*

Variance Criteria for Municipalities - *Minnesota Statutes, §462.357, subd. 6*

² MS 15.99 Time Deadline for Agency Action

2017 Minnesota Statute 462.357

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. **Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.** Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. **The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.** The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. **The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.**



BIRCHWOOD VILLAGE

Variance Findings Form

This is part of a series of documents taken from the DNR to help local governments make good variance decisions.
The complete series may be found at http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html.

#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; check SONAR if not sure).

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 unique circumstances to the property not created by the landowner?

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 feasible 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 - if there are unique circumstances, describe whether they were created by some action of property owner).

REQUEST FOR VARIANCE

1. Date of Application: March 5, 2018

(Requests for variances submitted prior to the 15th of the month will be considered by the Planning Commission at its next meeting on the first Tuesday of the month. Requests submitted after the 15th will be considered at the following meeting. All final decisions on variance applicants are made by the city council, which meets on the second Tuesday of every month.)

Submit
\$300.
Planning Committee
meets 4th Thurs.

2. Name of Applicant(s) Christopher & Mary Sorenson

Address 5 Oakridge Drive

City Birchwood Village Birchwood Ridge 1st Add Lot 18

Business Phone Chris' Cell 320.420-2207 Home Phone Mary's Cell 320.420.2206

3. Address of Property Involved if different from above

4. Name of Property Owner(s) if different from above and describe applicant's interest in the property.

owner

5. Specific Code Provision from which Variance is Requested. 301.050.1 &

6. Describe in narrative form what the applicant is proposing to do that requires a variance. 302.020.1

overhang along north side of home for protected handicap access to home.

SIGNATURE OF APPLICANT(S) _____

Chris Sorenson

Mary Sorenson

7. Type of Project

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

8. Type of Structure Involved

- | | | | |
|-----------------|---------------------|----------------------------|-------|
| Single Dwelling | _____ | Double Dwelling | _____ |
| Garage | <u>✓ North face</u> | Addition | _____ |
| Tennis Court | _____ | Pool | _____ |
| Grading/Filling | _____ | Other Accessory (describe) | _____ |

9. Using the criteria in the city code for a variance (set forth in the attached sheet), explain why a variance is justified in this situation and describe what hardship would result from denial of the variance.

please see attached

10. 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.

The overhang will be drained to a
downspout into a perforated drain
tile which percolates into the soil

11. Describe any alternatives the applicant considered (if any) that do not require a variance.

please see attached

12. Can an emergency vehicle (Fire Truck or Ambulance) access all structures on the property after the proposed change? Yes No
13. Does the proposed change bring any other nonconforming use into conformity with the city building code? Yes No

If yes, explain _____

14. 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.

15. Please provide the applicable information in the following Table

	Existing	Proposed	Change
1. Total Square Footage of Lot	14,916		
2. Maximum impervious surface (25% of item 1)	3729		
3. Roof Surface	1980		
4. Sidewalks	128		
5. Driveways	1000		
6. Other impervious surface	269		
7. Total of items 3-6	3377		
8. Percent impervious surface	22.6%		

No Change

16. Please attach the following:
- a. Legal description of property
 - b. Plot Plan drawn to scale showing existing and proposed structures on the lot. Also show structures on adjacent lots.

Variance Application

Christopher and Mary Sorenson

5 Oakridge Drive, Birchwood Village MN

Responses to MN DNR Criteria and Birchwood Village MN Criteria

Item#9 - Using MN DNR Criteria

Five criteria are recommended by the Minnesota DNR when considering variances to shoreland and flood plain usage. Though not directly related to this property, Mr. Lay suggested them as a good framework for our variance request.

1. Harmony with the general purpose and intent of the ordinance
2. Consistent with the comprehensive plan
3. Unique circumstances to the property not created by the landowner
4. Allow the essential character to remain the same
5. Use the property in a reasonable manner not permitted by the ordinance

Addressing MN DNR Criteria

Copied from DNA Point #1 - The ordinance is designed to allow existing structures that predate current set back guides to be used as intended before the changes, and to allow regulated improvement of structures as needed, ie. adding a pitched roof to a flat-roofed structure requires a variance from 301.050.1 (remodeling a structure which is non-conforming). This is a safe, managed method of allowing existing structures to be modified, not condemned and torn down. The eyebrow is a sound design feature in any application. It simply is being added to an existing home that is non-conforming with current set back rules. The house was built with a 7 foot set back; the current set back is 10 feet. The house was also built without a service door on the front of the garage.

Point 2. The 2010 Birchwood Village Comprehensive plan has 10 points.

1. Maintain the residential nature of the community
2. preserve natural woodlands and wetlands characteristics
3. maintain and improve municipal services
4. maintain the autonomy of Birchwood Village as a governmental agency
6. preserve existing traditions such as July 4th parade . . .
7. reduce energy usage by 1% year
8. regularly track and maintain all city property, structures and assets
9. increase volunteerism
10. increase communication of community happenings/projects
11. prepare for emergencies

Only the first item of the comprehensive plan relates to this variance request. As we considered our home purchase we had to consider handicap accessibility. Many homes in our community

are not handicap accessible. We specifically chose this home because its lot, house design and parking allowed for handicap accessibility. We turned down at least 6 other homes in the area which could not be altered to accommodate a walker and a wheelchair. Handicapped individuals need access to homes in the Village. This community needs homes which are accessible to the mobility impaired. This variance fits the residential nature of the community.

Point 3. This variance is requested to ensure a safe, accessible entry to the home for those visiting in wheelchairs and walkers. An eyebrow is needed to keep ice off of the walkway which is the access point for those with mobility impairment. A ramp in the front of a house is very difficult to design aesthetically and is unwelcome by the mobility impaired individuals I know. Several have said that it makes them feel like an easy mark for thieves. A ramped front entry would be impossible to keep clear of ice and snow unless it were covered. The side entrance and small ramp in the garage is essential to allow mobility impaired family and friends access to the home and the back yard gathering spaces. This home happens to have been built with a shorter set back (7 feet, not 10 feet) than is currently the standard. There was no service door (or usable place for a service door) on the front of the house. The foundation is not being moved closer to the neighbor.

Point 4. The eyebrow preserves the essential character of this fine 1965 home.

Point 5. The eyebrow is a reasonable accommodation for handicap guests or residents to the home. The variance is reasonable.

Item #11

The alternative to this eyebrow is a covered ramp on to the front entry. The stoop on the front would need to be expanded and the ramp would need to be quite long, extending (and perhaps zig-zagging) into the yard. The problem with a set back would exist there as well, in addition to the aesthetic, snow and ice issues and security issues mentioned in point # 3 of item 9.

The other way that we could bring mobility impaired individuals into our house is to pull a car out and bring them through the overhead door. This is how we will have to do it if the variance is denied. Our mobility impaired family and friends don't like that much attention. They simply will avoid stopping by, which is what happened.

Variance Application

Christopher and Mary Sorenson

5 Oakridge Drive

Birchwood Village

Item#9 - Using Birchwood, MN 304.040.2 Criteria a-g

- a. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- b. 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 on proof for showing that no other reasonable design solution exists.
- c. The variance is proved necessary in order to secure for the applicant the right or rights that are enjoyed by other owners in the same area of the district.
- d. The granting of a variance will result in no increase in the amount of water draining from the property.
- e. 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.
- f. No variance shall be granted simply because there are no objections or because those who do not object out number those who do.
- g. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

Addressing Birchwood MN 304.040.2

- a. Copied from DNR Point #1 - The ordinance is designed to allow existing structures that predate current set back guides to be used as intended before the changes, and to allow regulated improvement of structures as needed, ie. adding a pitched roof to a flat-roofed structure requires a variance from 301.050.1 (remodeling a structure which is non-conforming). This is a safe, managed method of allowing existing structures to be modified, not condemned and torn down. The eyebrow is a sound design feature in any application. It simply is being added to an existing home that is non-conforming with current set back rules. The house was built with a 7 foot set back; the current set back is 10 feet. The house was also built without a service door on the front of the garage.
- b. Copied from DNR Item #11 - The alternative to this eyebrow is a covered ramp on to the front entry. The stoop on the front would need to be expanded and the ramp would need to be quite long, extending (and perhaps zig-zagging) into the yard. The problem with a set back would exist there as well, in addition to the aesthetic, snow and ice issues and security issues mentioned in point # 3 of item 9. The other way that we could bring mobility impaired individuals into our house is to pull a car out and bring them through the overhead door. This is how we will have to do it if the variance is denied. Our mobility impaired family and friends don't like that much

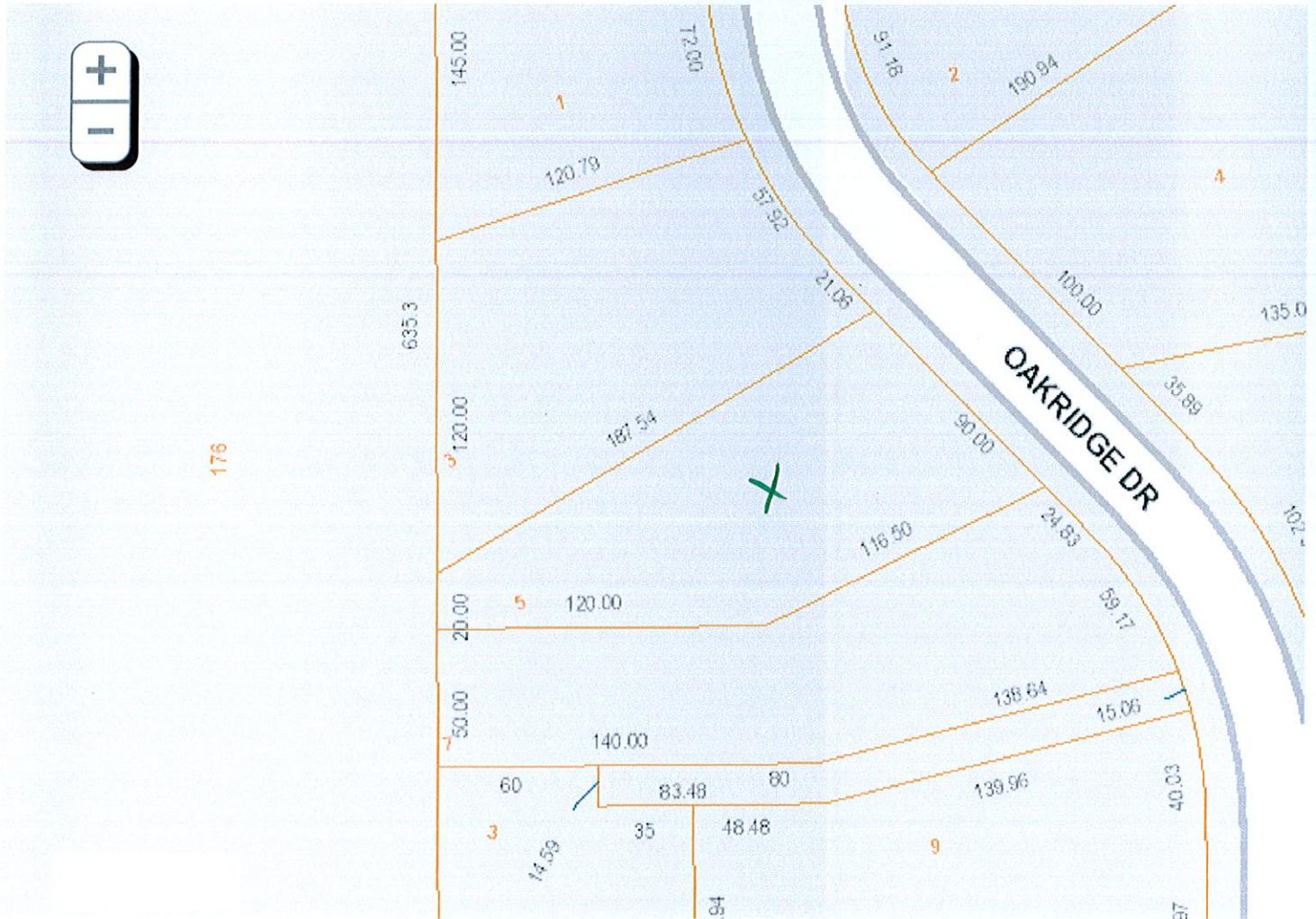
attention. They simply will avoid stopping by, which is what happened.

Copied from DNR Point 3 - This variance is requested to ensure a safe, accessible entry to the home for those visiting in wheelchairs and walkers. An eyebrow is needed to keep ice off of the walkway which is the access point for those with mobility impairment. A ramp in the front of a house is very difficult to design aesthetically and is unwelcome by the mobility impaired individuals I know. Several have said that it makes them feel like an easy mark for thieves. A ramped front entry would be impossible to keep clear of ice and snow unless it were covered. The side entrance and small ramp in the garage is essential to allow mobility impaired family and friends access to the home and the back yard gathering spaces. This home happens to have been built with a shorter set back (7 feet, not 10 feet) than is currently the standard. There was no service door (or usable place for a service door) on the front of the house. The foundation is not being moved closer to the neighbor.

- c. The variance provides for safe, mobility impaired access to the house; a basic human right and one which is available in some homes in the neighborhood.
- d. There will be NO increase in the amount of water draining from the property. There is a French drain in place for the down spout. Additionally the original print showed 43 feet of eyebrow along the face of the building, which has been deleted. This eyebrow is 26 feet.
- e. Adding the eyebrow does not impair the neighbor's supply of light or air, does not diminish the neighbor's property value or impair the health, safety or welfare of the City residents.
- f. Requires no response
- g. There is no financial gain or loss.



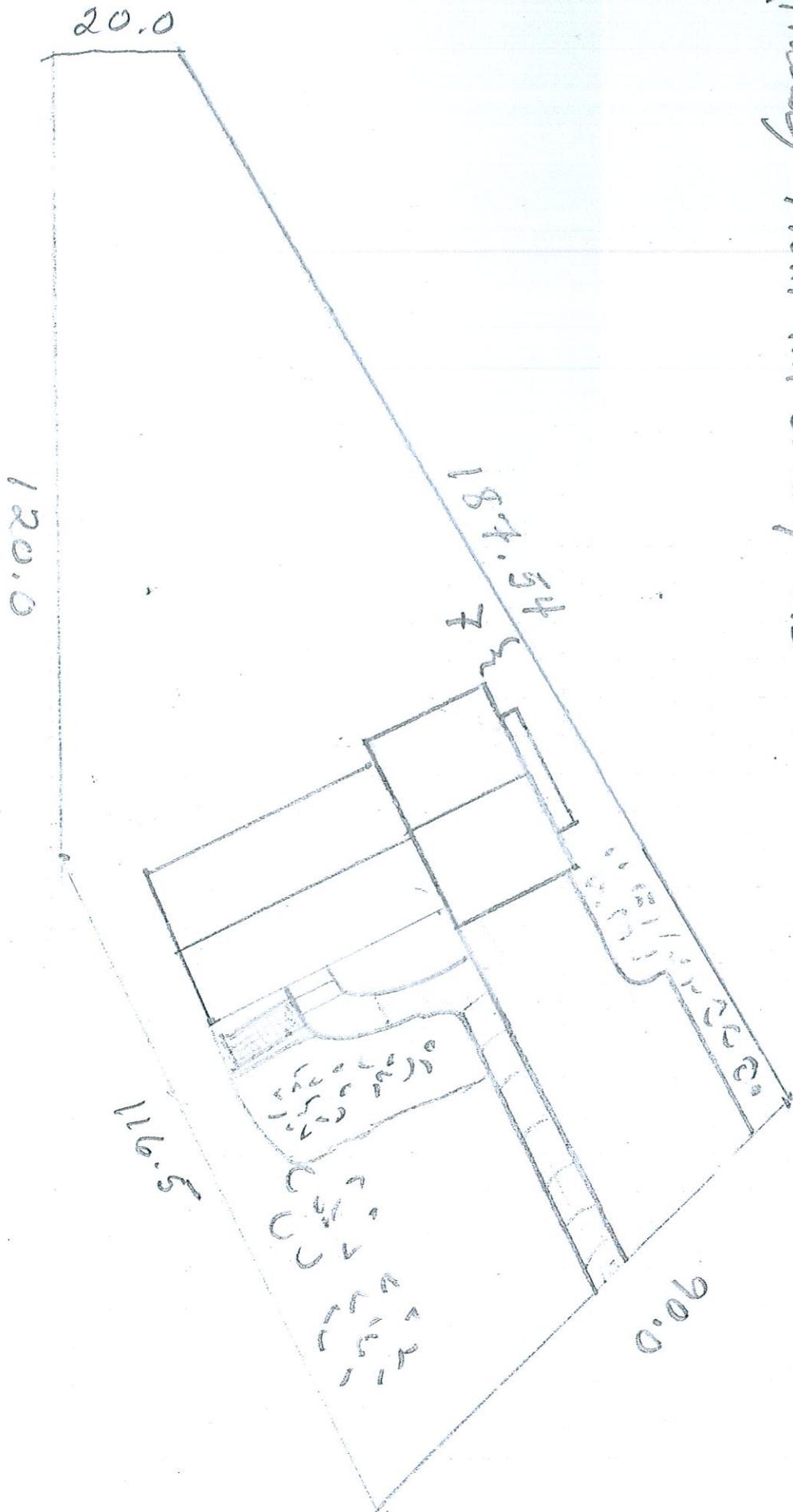
Property Viewer



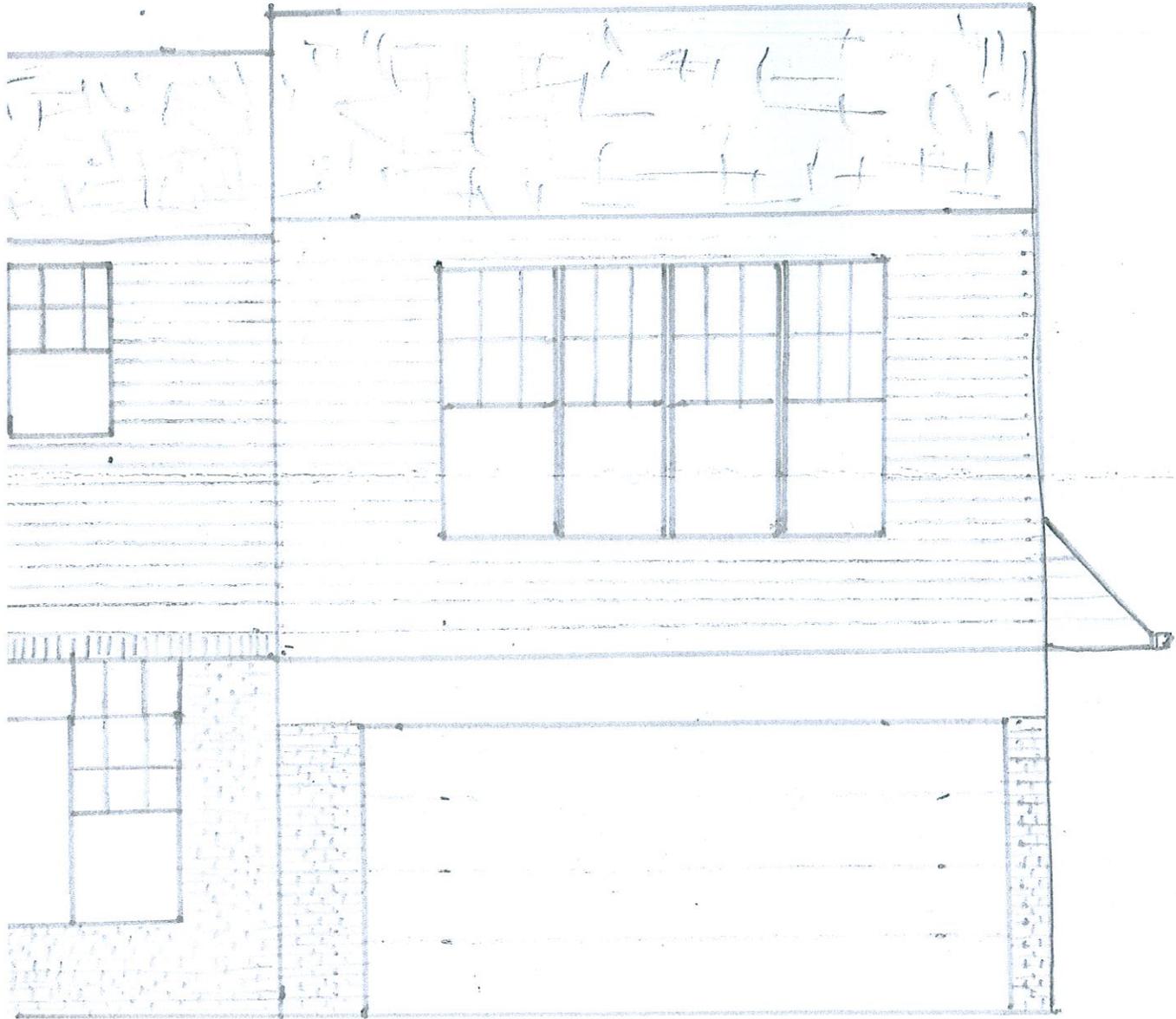
Legal Description: Birchwood Ridge 1st Add. Lot 18



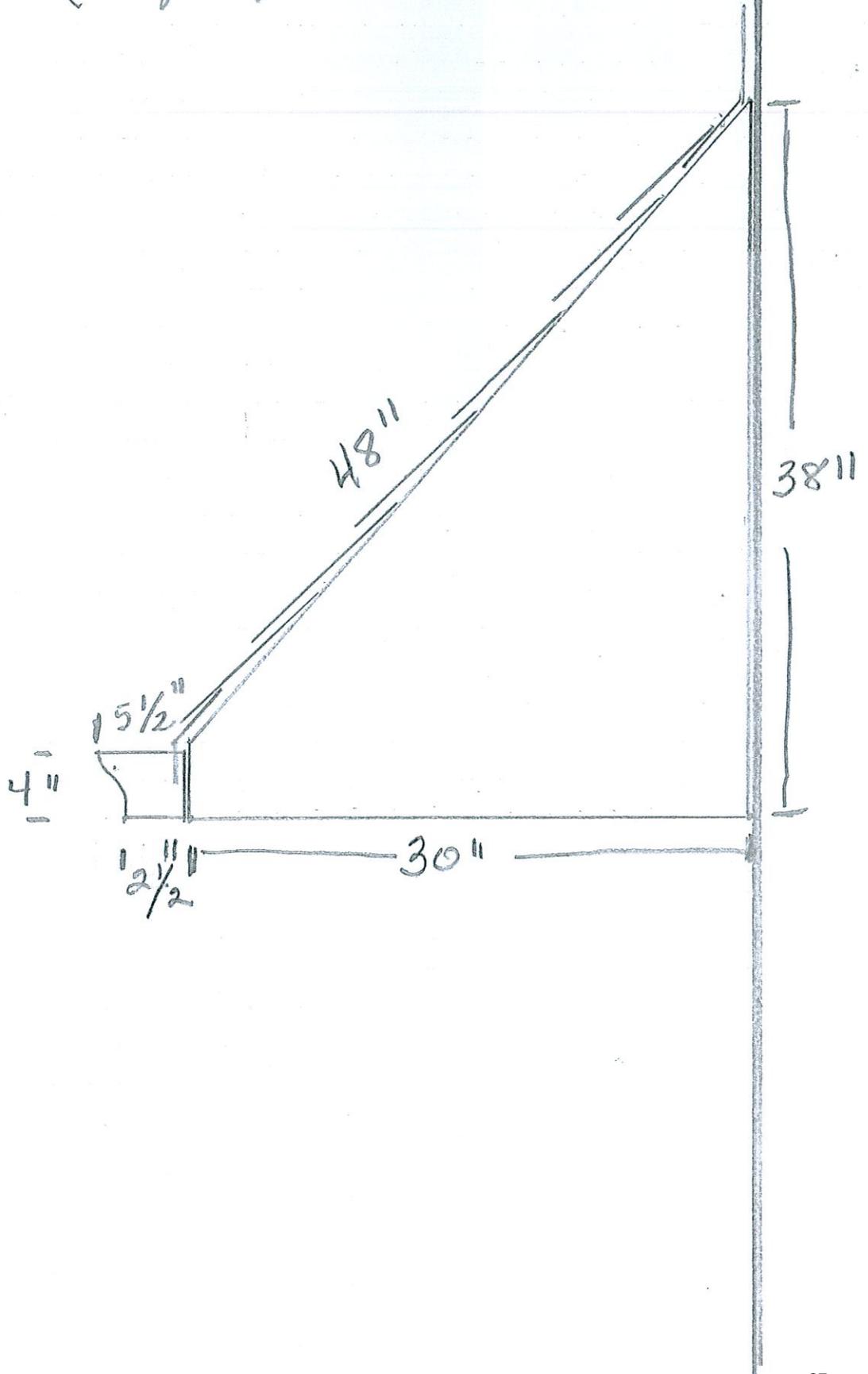
5 Oakridge Drive
Parcel ID # 30030230021
(Traced) From WA County GIS



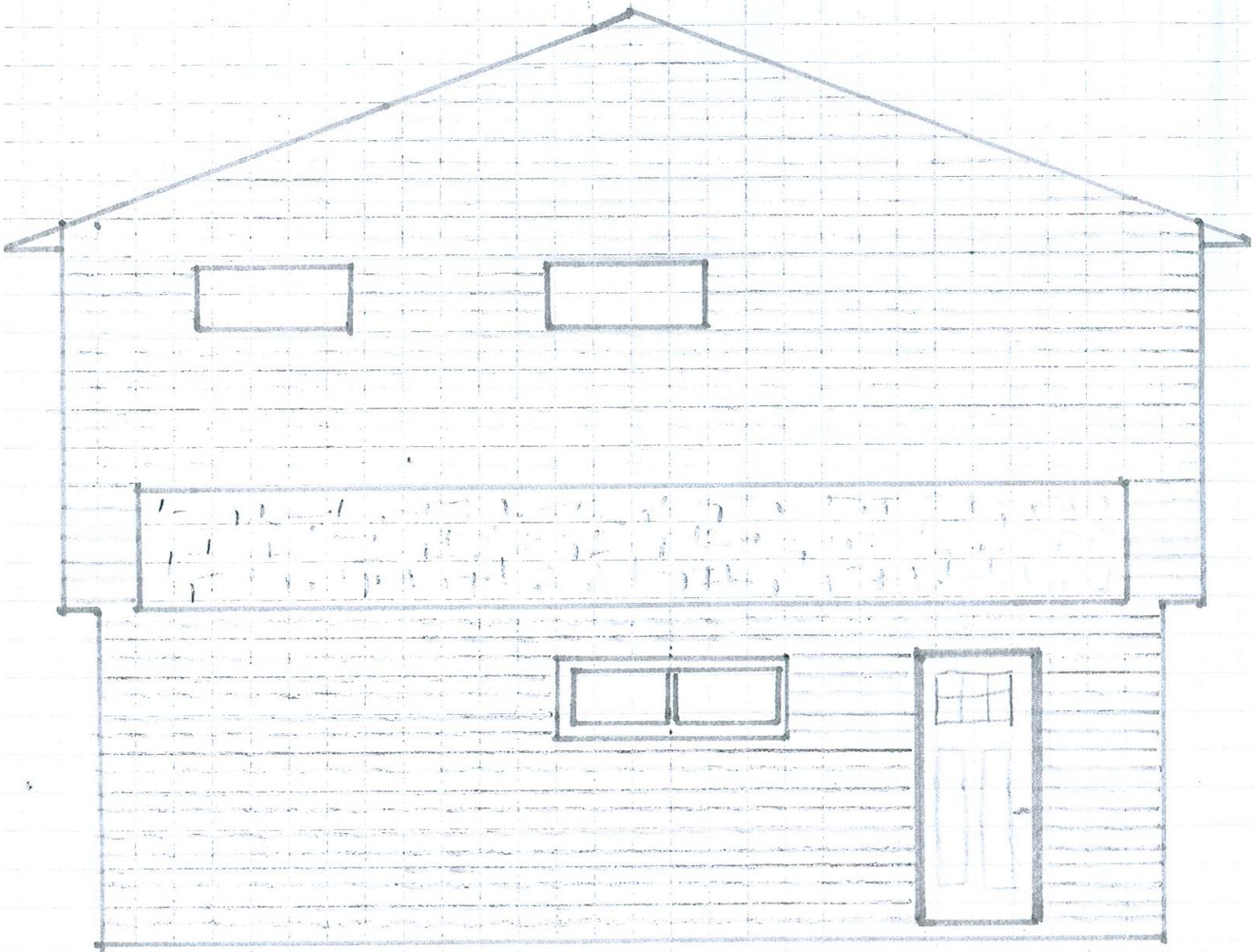
$$1 \text{ ft} = \square$$

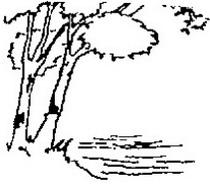


2" = □ (1 square)



1 foot = \square (1 square)





CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 (tel) / 651-426-7747 (fax)
www.cityofbirchwood.com

Re: **CITY OF BIRCHWOOD VILLAGE PLANNING COMMISSION NOTICE OF
PUBLIC HEARING ON REQUEST FOR A VARIANCE: 5 OAKRIDGE DRIVE**

March 9, 2018

Addressee

Dear...

The Birchwood Planning Commission, **at its March 22, 2018 meeting**, will be considering a request by Christopher & Mary Sorenson (Case No. 18-01-VB) for a side-yard setback variance for a newly constructed eave and gutter that project beyond the maximum allowable 2 feet into the required yard setback of 10 feet. The meeting starts at 7:00pm.

The Planning Commission will meet and discuss this variance at City Hall located at 207 Birchwood Ave. The Planning Commission will put forward a recommendation to the City Council to either recommend or deny this variance request.

This meeting will allow for any public input regarding the project at 5 Oakridge Drive. You can submit your concerns to the City Clerk prior to 12p.m. Tuesday, March 20 by email or written letter. Email address is Tobin.Lay@CityofBirchwood.com; written letters can be dropped off at City Hall. If you have any questions about this process or these instructions, call City Hall at 651-426-3403.

Regards,

Tobin Lay
City Administrator

SECTION 301. ZONING CODE: GENERAL PROVISIONS

301.050. NON-CONFORMING USES. A non-conforming use may be continued so long as it remains otherwise lawful, subject to the provisions of paragraphs (1) through (7) below, in order to ensure that the non-conforming use will not be intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code.

1. A non-conforming use shall not be enlarged, modified, changed, extended (either horizontally or vertically) or structurally altered, unless such changes bring the non-conforming use into conformity with the Zoning Code. (Exception: A non-conforming use, lawfully located within 60% of all required setbacks, may be structurally altered if the alterations do not change the horizontal or vertical dimensions of the structure and otherwise conform to the Zoning Code.)

2. A non-conforming use shall not be moved to any other part of the parcel of land upon which the same was constructed unless the move would bring the structure and its use into conformity with the Zoning Code.

3. If a non-conforming use is damaged or destroyed to an extent of 50% or more of its replacement cost for any reason (including remodeling or rebuilding), according to the estimate of the building inspector as approved by the City Council, any reconstruction must conform to the provisions of the Zoning Code. (Exception: If the non-conforming use that is to be reconstructed came into being as the result of a previously granted variance, the Council, after review, may continue the variance if the owner demonstrates that the conditions under which that variance was granted continue to exist.)

4. Normal maintenance of a structure that represents a non-conforming use is permitted, including necessary non structural repairs and incidental alterations which do not physically extend or intensify the non-conforming use.

5. Notwithstanding paragraph (1) above, a structure representing a non-conforming use may be expanded, provided:

a. That such expansion does not increase the non-conformity in any dimension (vertical or horizontal), does not create a new non-conforming use, and in itself conforms with the Zoning Code; and

b. The sum of the setbacks on either side of the structure is not LESS than 20 feet.

6. When any non conforming use of land or of a building or structure shall be abandoned or discontinued for a period in excess of one year, such land, building, or structure shall thereafter be used only as allowed by this Code.

7. No provision of this section shall be interpreted as negating the provisions of 302.015 (Undersized Lots).

301.055. PROVISION FOR VARIANCES. Where enforcement of the strict provisions of the Zoning Code would cause undue hardship a variance may be granted to allow deviation from the requirements, in accordance with Minnesota Statutes, Chapter 462. (See Section 304. VARIANCES AND APPEALS.)

SECTION 302. ZONING CODE: REQUIREMENTS AND PERFORMANCE STANDARDS

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>TYPE OF STRUCTURE</u>		
	<u>Fences</u>	<u>Driveways & Walkways</u>	<u>All Other Structures</u>
Lot line or Land Boundary			
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.

A COMPREHENSIVE PLAN FOR BIRCHWOOD VILLAGE

I. INTRODUCTION

A. Location and Historical Setting

The City of Birchwood Village is a small community of single family homes situated on the south shore of White Bear Lake (Figure 1). It is approximately 214 acres in size and at the end of 2000 had an estimated population of 968.

By Municipal Code, there are no retail or commercial activities in the community. Convenient access to these activities is available in the neighboring communities of White Bear Lake, Mahtomedi, Willernie and White Bear Township.

First incorporated as a Village in the year 1921, a subsequent act of the State Legislature converted the "Village" to a "City of the Fourth Class." Residents felt, however, that the term "Village" was so much a part of the community that it was amended to "Birchwood Village, a City of the Fourth Class." In this comprehensive plan, the names Birchwood Village, Birchwood, and the Village all have the same meaning and are used interchangeably.

Birchwood first developed as a community of summer recreation cottages built by residents of the Saint Paul area in early 1900's. Initial subdivisions were along the lakeshore, and this area is now characterized by a potpourri of old homes that have been extensively remodeled, and new homes where the original structure has been demolished. The newer subdivisions away from the lake have larger lots and are more homogeneous in appearance but have retained the flavor of the Village by preserving the natural features of the area.

The community was at one time served by the Twin City Lines streetcar which passed through the Village on its way from Saint Paul to White Bear Lake and Mahtomedi. The significant difference in lot sizes between the older and newer areas of the community, reflect the influence of changes in transportation modes.

There are no historic resources and properties within the community of Birchwood. The City will create a policy of preservation should any resources or properties be named historic.

B. Governmental Structure

Birchwood Village is a City of the Fourth Class, with a City Council form of government. Elected at large, the City Council consists of the Mayor and four council members. Each has ongoing responsibilities between meetings.

The City has two part-time employees, the city clerk and a treasurer. The elected officials, appointed officials and other residents provide many volunteer hours to the City to perform needed services.

Some municipal services such as sewer maintenance, police and fire protection, and building inspections/planning are contracted primarily from the City of White Bear Lake.

A Planning Commission advises the City Council on land use matters, variances and changes in ordinances. Currently, residents seeking a variance present their application and plans to the White Bear Planning Department. Their review is forwarded to the Planning Commission for review and recommendation to the City Council. The Council often asks the Planning Commission to review proposed ordinances and make recommendations to the Council.

The following policy guidelines establish what the community desires to achieve.

Goals:

1. Maintain residential nature of the community.
2. Preserve natural woodlands and wetlands characteristics.
3. Maintain and improve municipal services to insure the health, safety and general well being of Birchwood residents.
4. Maintain the autonomy of Birchwood Village as governmental entity.

5. Preserve existing traditions such as the July 4th parade, plant exchange, and village-wide garage sale.
6. Reduce energy usage by 1% per year.
7. Regularly track and maintain all city property, structures and assets.
8. Increase voluntarism in Birchwood.
9. Increase communication of community happenings and projects.
10. Prepare for emergencies.

It is apparent from the goals that evolved for the last three Comp Plans and this plan that the residents like what they have and have little or no desire for a change. This comprehensive plan endeavors to preserve the governmental, and environmental, traditions and characteristics of the City of Birchwood Village.

C. Demographic Characteristics

The number of households in the City has increased only 10% in the past 28 years from 326 in 1980 to 357 in 2000. The new construction in the City has been teardown homes replaced by new construction. During this same period, the population has decreased 9% from 1059 in 1980 to 968 in 2000. The Metropolitan Council forecasts an increase of 13 households by the year 2020 to 370, but a continued decrease in population. The decrease in the population is based upon the assumption that, according to recent demographic trends, the average persons-per-household will gradually decrease in developed communities composed predominantly of single-family housing. Since Birchwood has few remaining vacant lots available for building purposes, the projected increase in households for the years 2010 and 2020 are probably inaccurate. The City anticipates no additional households through 2020.

The Metropolitan Council projects a slow decrease in the population of Birchwood to 950 in 2010 and stabilizing at 930 through 2030. The Metropolitan Council also sees the number of households stabilizing at 370 through 2030.

The City of Birchwood Village will face problems in the next decade adjusting to a slowly aging population. Some issues we face might include: an increased need for public services; residents leaving during the winter months which will leave vacant homes; fewer volunteers to help out; a decreased use of the parks because there will be fewer children; and a greater need to make facilities handicapped accessible. An additional issue might be the number of residents living on fixed incomes; this will cause problems (for residents) when the City needs to finance infrastructure repairs, upgrades or replacements.

Another demographic trend is the increased income disparity between members of Birchwood. As the homes on White Bear Lake become more and more expensive, only the wealthy will be able to afford to live on the lake. The increased value will squeeze out many of the traditional summer cottages and residents with lower incomes. Also, as (all) property becomes more and more valuable, and our residents age, their disposable income will stabilize or decrease, but their property taxes will increase. This will become one more factor which might squeeze our long-time older residents out of their homes.

D. Employment

The City prohibits commercial and industrial development. The City employs two part-time employees and several seasonal, part-time park and recreation employees. Residents may have a business in their home under certain restrictive conditions.

II. LAND USE PLAN

A. Policy Guidelines

The following policy guidelines establish what the community desires to achieve.

1. Maintain the existing character of the community through the orderly growth of remaining buildable land.
2. Prohibit the development of commercial, industrial and high density residential uses.

3. Prohibit development on wetlands and other natural features that perform important protective functions in their natural state.
4. Eliminate all evidences of environmental blight, including but not limited to blighted housing and water pollution through strict enforcement of the municipal code.
5. Maintain a high quality and affordable residential environment.
6. Ensure that all new housing conforms to the accepted standards of planning, design and construction, including standards that respect natural hydrology and unique physical features.
7. Require that the protection of wetlands and lakeshore be an integral part of land development.
8. Avoid the removal of healthy trees. Where removal is unavoidable, replanting shall be required one for one.
9. Prevent alteration which would inhibit the role of wetlands, lakeshore or open space in the hydrologic system or an ecological system.

The primary intent of the land use policy guidelines is to foster, improve and preserve the existing character of the community. The zoning ordinance encourages maintaining present use in developed areas. Since the community is situated on White Bear Lake, Halls Marsh and Lost Lake, the zoning ordinance includes the necessary regulation to manage shoreline and wetlands. New development or rehabilitation is encouraged to preserve as many natural features as possible.

B. Natural Resources

Birchwood is basically rolling and hilly. Slopes gradually increase in percent of grade as the land rises away from White Bear Lake. At the highest elevation the lake flows out at the north end toward Bald Eagle Lake. The terrain elevation rises to a height of over 1,010 feet at the west and south boundaries of Birchwood where it then levels out to a plateau. As the terrain rises there are slopes of 15% - 24%. Most areas have slopes that are no more than 12% - 15%. A 12% slope is considered erodible if the natural vegetation and ground cover is removed.

Tighe-Schmitz Park is an extremely low area. Before it was filled in, it was described as a bog, wetland and swamp. It was filled in during the 1950's. When there are large amounts of rain, this park serves as a holding area for excess water. Part of the park is being used as a permanent rain garden. This garden needs yearly nurturing.

The City has also constructed a rain garden on the Birch Easement. This rain garden compliments the natural outflow of water into the lake. This rain garden needs yearly nurturing.

The native soils are predominantly various types of sand. Close to the lake, the Kingsly fine sandy loam predominates. It is considered to have a slight degree of limitation for building. Some erosion hazard is evident on steeper slopes. The outcrop of rock that goes through here is called the Birchwood Outcrop.

The south-central portion of the City contains Pemroy loamy fine sand. This soil type presents a severe erosion hazard when found on slopes greater than 12%, which are found in that area. This soil also tends to be rather impermeable.

Detailed information on surface soil types is available from the Washington County Soil and Water Conservation District. Some ledge rock is encountered at scattered locations throughout the City of Birchwood Village.

Aquatic vegetation is found in the marsh areas. Land that was once open farmland in the southwest area now has a variety of trees as part of the landscaping.

Birchwood is extensively wooded and it appears most of the trees are of the Oak - Maple and Oak groups. Concern is expressed for the Oak - Elm groups of trees in that there appears to be no effective solution to Oak Wilt and Dutch Elm Disease which have infected area trees. Concern is also expressed for the loss of trees and tree limbs due to either inclement weather or aging of the city tree stock. Another major issue is the invasive species, buckthorn. Because this species is so invasive, the Washington County Sentence to Service crews spend several weekends every year cutting buckthorn. While Sentence to Service is free, the City must spend money disposing of the wood.

Another invasive species is purple loosestrife. This plant has replaced many native species (and animals) in Halls Marsh. There is no easy answer to eradicating this plant. The City is working with several volunteers and organizations to remove this plant.

White Bear Lake itself is probably the community's most valuable natural resource, providing recreational activities both summer and winter, and acting as an effective moderator of ambient temperatures. The sloping terrain toward the lake provides many homes with sweeping vistas of open space. The City and the citizens of Birchwood should be cognizant of this resource when applying chemicals.

C. Development Concept

The City of Birchwood is designated as a "developed community" geographic planning area in the *2030 Regional Development Framework*. The development concept of Birchwood Village is entirely residential. Relevant official controls for land planning are summarized in the Implementation Chapter. No retail or commercial business activities are permitted, save a few professionals who office out of their private homes in a manner that generates minimal vehicular traffic. Birchwood ordinances permit duplex dwellings. Several existing parcels contain more than one dwelling; these parcels do not conform to the zoning ordinance. Seven parcels have two dwelling units.

Figure II illustrates the extent to which Birchwood is currently developed. The city has 421 tax parcels. Remaining large parcels could be subdivided into about an additional 18 buildable parcels. In terms of land development potential, Birchwood is over 95% developed.

D. Housing Plan

The City is not part of the state's subsidized allocation plan. If we need help preserving the housing we have we would work with other government entities.

Housing Principles

The City of Birchwood Village supports:

1. A balanced housing supply, with housing available for people at all income levels.
2. The accommodation of all racial and ethnic groups in purchase, sale, rental, and location of housing within the community.
3. A variety of housing types for people in all stages of the life cycle.
4. A community of well-maintained housing and neighborhoods.

Housing Goals

General housing goals include the continued maintenance of all dwelling units in a habitable and presentable condition. This is currently achieved on an ongoing basis within the framework of the municipal code.

The City of Birchwood Village proposes to:

1. Maintain its current level of housing affordability - as best it can, given potential market forces on a completely developed city adjoining White Bear Lake.
2. Maintain its single family detached housing density.

There are few housing rehabilitation opportunities in the City, and subsidized rehabilitation activity is unlikely. A reason for this is the willingness of property owners to invest private money in making housing improvements.

Housing Supply - Current Housing Stock

The City of Birchwood Village is a small community located on the south shores of White Bear Lake within Washington County and has a population of 968 people. The City's housing consists mainly of single family homes,

with no vacant land remaining for further development. Any new housing construction will result through possible division of existing lots or through replacement of existing structures.

In general, the housing stock is good, but because most of the units are older, maintenance and rehabilitation is of great concern. Thirty-seven percent of Birchwood's housing was built before 1939, and 53% between 1940 and 1979. Of these, 82% of Birchwood's housing units are owner occupied and 18% are renter occupied, with a vacancy rate of 4%. Seventy percent of the housing units in Birchwood are valued between \$ 100,000 and \$250,000 not including the land.

In Birchwood, housing stock is affordable and meets the life cycle housing definition. These homes can be purchased and improved within a reasonable budget for moderate to upper income families. Most families residing within the City fall into the moderate income range.

Housing Implementation Program

To implement its housing goals, the City of Birchwood will investigate the following housing assistance, housing development, and housing rehabilitation/redevelopment programs.

Housing Assistance Programs

- *Metro HRA rental assistance program.
- *Mortgage assistance and below-market-rate home mortgage loans.
- *First-time home buyer programs.

Housing Maintenance, Rehabilitation and Redevelopment Programs

- *Home ownership rehabilitation, home improvement, and energy-efficient local programs.
- *Housing rehabilitation programs funded locally.
- *Twin Cities Habitat for Humanity
- *Section 202 (federal) for development of elderly housing.
- *Family Housing Fund
- *Community Clean-Up Days

Due to the physical limitations resulting from no remaining land available for residential development in the City, Birchwood could also consider a collaborative effort with surrounding communities for a "cluster" plan supported by the Livable Communities Act.

Local Official Controls and Approvals

The local zoning and subdivision ordinances in Birchwood do not presently conflict with the City's goals to provide affordable housing to low income families or the elderly. As conflicts become known through the approval process, local codes would be reviewed and revised as needed by the City Council at that point in time.

Tables 1-10 illustrate statistics relating to Birchwood's housing and residents.

E. Surface Water Management

The City is responsible for developing standards that prevent or mitigate pollutants as a result of development, new construction, remodeling or re-development. All new development, new construction, remodeling or re-development must conform to the National Urban Runoff Standards (NURP) standards, NPDES-SWPPP and the Minnesota Pollution Control Agency's best management practices for erosion and sedimentation control.

**CITY OF BIRCHWOOD VILLAGE
PLANNING COMMISSION MEETING
January 25, 2018**

MINUTES

COMMISSIONERS PRESENT: Chair Doug Danks, Vice Chair John Lund, Randy Felt, John Winters and Jozsef Hegedus.

OTHERS PRESENT: Andy Sorenson.

Chair Doug Danks called the meeting to order at 7:05 pm

APPROVE AGENDA – John Lund motioned to approve the agenda. Randy Felt seconded. Motion passed.

REGULAR AGENDA

A. Review/Approve December 5, 2017 Meeting Minutes.

John Lund motioned to approve meeting minutes; Jozsef Hegedus seconded.
Motion passed.

B. Organizational Business

1. Elect Officers. John Winters nominated Doug Danks for Chair. Jozsef Hegedus seconded. Doug Danks accepted. Motion passed. John Winters nominated John Lund Vice Chair. Randy Felt seconded. John Lund accepted. Motion passed.

2. Reschedule any regular 2018 meetings. John Winters recommended changing November 22nd meeting to November 29th. John Lund seconded. Motion passed.

3. Establish staggered terms for Commissioners.

Year One John Winters up 2018
Year One Randy Felt up 2018
Year Two John Lund up 2019
Year Two Doug Danks up 2019
Year Three Jozsef Hegedus up 2020.

John Winters motioned. Jozsef Hegedus seconded. Motion passed.

C. City Council Liaison Guidelines.

1. Recommend approval or amendments to City Council.
Doug Danks motioned to table until February meeting. John Winters seconded.
Motion passed.

D. Consider Building Permit Escrow Fees/Ordinance Amendments for Damage to Public Property.

Doug Danks motioned to table until February meeting.

ADJOURN

MOTION WAS MADE BY COMMISSIONER LUND AND SECONDED BY COMMISSIONER HEGEDUS TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 8 PM.

MEMORANDUM

DATE: March 22, 2018

TO: Birchwood Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Comp Plan Update – NO ACTION REQUIRED



Birchwood Village

Dear Commissioners,

As we enter into 2018, the year that Birchwood's Comp Plan is due, I'd like to update the Commission on the Comp Plan's progress. Below is my update:

Progress

The maps for the comp plan are completed and the writing of the land use portion has already begun. In an effort to streamline and speed up the process, the City's consultant has tasked her own interns with writing the comp plan, under her supervision.

Timeline

The timeline for the remainder of the comp plan is as follows:

- End of March – land use portions completed & start water management plan
- April 5 – good draft completed (written by interns)
- End of April – water management plan completed (written by interns)
- End of April/early May – Birchwood PC & volunteers review & edit draft
- May – public hearing
- June - submit to jurisdictional review

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: March 22, 2018

TO: Birchwood Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Building Permit Escrow Fees



Dear Commissioners,

Several months ago, while discussing the Right-of-Way (ROW) Ordinance for City Council's approval, Commissioners acknowledge the Council's concern about local residents damaging City ROW's and/or streets during construction or improvement projects.

At that time, the Commission decided against putting language in the ROW Ordinance to address the issue and instead decided to determine other areas of the City Code to address this issue.

At the request of Chairperson Doug Danks, I have included this agenda item for you to begin discussing. Doug asks Commissioners to think about:

how to how to incorporate escrow or charges for disturbing city property related to homeowner construction/landscaping projects, along with restricting storage of building materials, landscaping materials, soil and stockpiled excavation material on city property.

Enclosed are 1) the existing City building permit and 2) escrow language from a City of Grant ROW ordinance. The Grant ROW material was tweaked by Mayor Wingfield for the purposes of the ROW Ord. discussion earlier this year and was provided to the Planning Commission last September. Much if the Grant ROW material will not apply as it may already be covered under the ROW Ordinance currently being considered by the City Council.

Request/Recommendation

Staff requests Commissioners:

- 1) Discuss ideas for mitigating damages to public property.

Thanks!

Regards,
Tobin Lay

**City of Birchwood Village
BUILDING PERMIT APPLICATION**

**Jack Kramer – Building Official
10090 Oakgreen Avenue North
Stillwater, MN 55082
Office Ph. # 651-351-5051
Pager # 651-847-9157**

**Two Sets of Plans Received: _____
Date Issued: _____
Permit No: _____**

Project Address: _____

Permit Applicant: _____ Phone No: _____

▪ Contractor License No: _____ Expiration Date: _____

Homeowner: _____ Phone No: _____

Permit For: _____ Valuation \$: _____

Sq. Feet: _____ Length: _____ Width: _____ Height: _____

Legal of Site Location: _____

PID#: _____

Road Escrow: _____

Proximity to Wetlands or Lakeshore: _____

Setbacks: Front Yard _____ Rear Yard _____ Side/s Yard _____

Septic Inspector Approval: _____ Fee \$: _____

Description of Work (attach a site plan) _____

Special Approvals	Required	Received	Not Required
Washington County			
Rice Creek Watershed			
City Council			
Building Commissioner			

Plan Check Fee	\$
City Fee	\$
Plan Reviewer Fee	\$
State Surcharge Fee	\$
Building Permit Fee	\$

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

*** Any changes to this application will make the permit voidable unless amendments are approved by the City with prior consent. The applicant will provide (separate documents, surveys, and calculations) to the City with the building height, roof plane, grade plane, change in elevation, and impervious surface.**

Notice:

The applicant shall comply with all provisions of the State Building, Plumbing, Mechanical, Electrical, and Fire Codes, as well as all City Ordinances governing zoning and buildings. The State of Minnesota regulates all electrical work. The continued validity of this permit is contingent upon the applicant's compliance of all work done and materials used, with the plans and specifications herewith submitted, and with the applicable ordinances of the City.

***Under penalty of perjury all documents represented are true and correct representations of the actual building which will be built in conformance with such representation.**

Signature of Applicant: _____ Date: _____

Escrow Language Borrowed from Grant ROW Ordinance

CITY OF BIRCHWOOD VILLAGE FEE SCHEDULE—(amended)

ADDITIONAL CHARGES FOR ESCROW AMOUNTS

An escrow amount will be required at the time application fees and the application is received by the City's Consultant.

Subdivision	\$7000
Lot Split	N/A
Variance	\$3000
Conditional Use Permit (Amended and new)	\$3000
Conditional Use Permit (Renewal)	N/A
All Other Land uses	\$1000
Grading Permit Fees (under 100 cu. Yards)	\$200
(100+ cu. Yards)	\$3000

- * Unused escrow amounts will be returned to the applicant
- * For additional information, see also the Escrow Account Policies Form.

Escrow Language Borrowed from Grant ROW Ordinance

CITY OF BIRCHWOOD VILLAGE WASHINGTON COUNTY, MINNESOTA

ORDINANCE 2017- _____

An Ordinance Amending the City of Birchwood Village Code of Ordinances Enacting Chapter 309, Right-of-Way Land Use

The City Council of the City of Birchwood Village, Washington County, Minnesota, does hereby ordain as follows:

SECTION 1. ENACTING OF CHAPTER 309 RIGHT-OF-WAY LAND USE

That City Code Chapter 309 is hereby ENACTED as follows:

309.010 Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in good repair and free from unnecessary encumbrances. Accordingly, the city enacts this Section 1 of Chapter 309 of the Code establishing reasonable regulations concerning the placement and maintenance of facilities and equipment within the city's rights-of-way and obstructions of such rights-of-way.

This Section is intended to implement Minnesota Statutes Sections 237.162 and 237.163 Minnesota Rules 7819.0050-7819.9950, and other applicable laws governing use of rights-of-way. Pursuant to Minnesota Statutes, Sections 237.163 subdivision 2(b), and all authority granted to the city, the city hereby elects to manage rights-of-way within its jurisdiction.

309.020 Definitions.

Abandon Facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use.

Applicant means any person that has applied for a permit to excavate or obstruct a right-of-way.

City means the City of Birchwood Village, Minnesota, its elected officials, officers, employees and agents.

Commission means the Minnesota Public Utilities Commission.

Construction Performance Bond means any of the following forms of security provided at a permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;

- (3) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specific and in a form acceptable to the city.

Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation Cost means the cost, subject to Minnesota Rules 7819.1100, to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

Degradation Fee means the fee established by the city at the time of permitting in an amount estimated to recover the degradation cost.

Director means the City Engineer of the city, or his or her designee.

Delay Penalty is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Emergency means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Facility or Facilities means tangible asset in the public right-of-way required to provide utility service.

Local Representative means a local person authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within scope of this Section 1.

Management Costs means the actual costs the city incurs in managing its rights-of-way, including costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment for the use of the right-of-way or the fees and costs of any litigation or appeals relating to this Section 1.

Obstruct means to place any tangible object in the right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Patch or Patching means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this Section 1.

Person means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Public Right-of-Way or Right-of-Way has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

Restore or Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration Cost means the amount of money paid to the city by a right-of-way user to achieve the level of restoration according to plates 1 to 13 of Minnesota Rule 7819.1100 Subpart 1.

Right-of-Way User means any person who has or seeks to have its equipment or facilities located in any right-of-way.

Service or Utility Service means and includes (1) services provided by a public utility as defined in Minnesota Statutes 2168.02, subdivisions 4 and 6; (2) services of a telecommunications provided including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperate electric association organized under Minnesota Statutes, chapter 308A.

Temporary Surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's pavement management plan, in which case it is considered full restoration.

Trench means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement of adjacent pavement.

309.030 Administration

The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Engineer may delegate any or all of the duties hereunder.

309.040 Conduct Prohibited.

Except as authorized pursuant to a permit issued by the city, no person shall:

- (a) Obstruct or excavate any right-of-way.
- (b) Place any equipment, facilities, or structures in any right-of-way.
- (c) Deposit snow or ice on any right-of-way.

- (d) Erect a fence or other barrier on or across any right-of-way.
- (e) Obstruct any ditch in or abutting a right-of-way.
- (f) Place any advertisement or sign other than a traffic control sign or other governmental sign in any right-of-way.
- (g) Deface, mar, damage or tamper with any sign, marker, signal, monument, equipment facility, structure, material, tools, or any appurtenance in any right-of-way.
- (h) Drive a vehicle over, through, around, or past any fence, barrier, sign, or obstruction erected to prevent traffic from passing over the right-of-way, or portion of the right-of-way .

309.050 Registration and Right-of-Way Occupancy.

(a) *Registration.* Each right-of-way user, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the city. Registration will consist of providing registration information and paying a registration fee.

(b) *Registration prior to work.* No person may construct, install, repair remove, relocate any equipment or facilities or perform any other work in any right-of-way without first being registered with the city.

(c) *Exceptions.* Persons shall not be required to register, obtain permits or satisfy any other requirements under this Section for the following:

- (1) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots pursuant to a driveway permit, except repairs or restoration necessitated by utility cuts or other work;
- (2) Snow removal activities;
- (3) Placement of flexible fiberglass markers at the edge of the paved road to assist snow plow operators (metal posts are prohibited).

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

309.060 Registration Information.

(a) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

- (1) The right-of-way user's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of local representative accessible for consultation at all times. Current contact information shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
 - i. Verifying that an insurance policy has been issued to the right-of-way user by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
 - ii. Verifying that the right-of-way user is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the right-of-way user, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the right-of-way user, its officers, agents, employees and

- iii. Either naming the city as an additional insured or otherwise providing evidence satisfactory to the Administrator that the city is fully covered and will be defended;
- iv. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification off a coverage term;
- v. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this Section.
- vi. Evidencing adequate third part claim coverage and city indemnification for all actions included in Minnesota Rule part 7819.1250.

- (4) Such evidence as the city may require to demonstrate that the person is authorized to do business in Minnesota.
- (5) Such evidence as the city may require to demonstrate that the person is authorized to use or occupy the right-of-way.

(b) *Notice of Changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

309.070 Reporting Obligations.

(a) *Operations.* Each right-of-way user shall, at the time of registration and by December 1 of each year, file a construction and maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

- (b) *Plan.* The plan shall include, but not be limited to, the following information:
 - (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and
 - (2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

(c) *Failure to Include Projects in Plan.* The city may deny an application for a right-of-way permit for failure to include a project in the plan submitted to the city for next-year projects unless the right-of-way user demonstrates that it used commercially reasonable efforts to identify the project. The city may annually produce for inspection a list of all planned projects for inspection.

309.080 Permit Requirement.

(a) *Permit Required.* A permit is required to excavate the right-of-way, to place equipment of facilities in or on the right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The permit shall specify the extent and the duration of the work permitted.

(b) *Permit Extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

(c) *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, the city may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Permit Delay.* Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

309.090 Permit Applications.

An application for a permit is made to the city. Right-of-way permit applications shall contain, and will only be considered complete upon compliance with the following:

(a) Registration with the city pursuant to this Section.

(b) Submission of a completed permit application form including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(c) Payment of money due to the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;

(4) Franchise fees or other charges, if applicable.

(d) Payment of disputed amounts due to the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.

(e) Posting an additional or larger construction performance bond should the city deem the existing construction performance bond inadequate.

309.100 Issuance of Permit; Conditions.

(a) *Permit Issuance.* If the Applicant has satisfied the requirements of this Section 1, the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. The city may establish and define location and relocation requirements for equipment and facilities to be located in the right-of-way.

309.110 Permit Fee.

(a) *Fee Schedule and Fee Allocation.* The city's permit fees shall be designed to recover the city's actual costs and shall be based on an allocation among all users of the right-of-way, including the city.

(b) *Permit Fee Amount.* The city shall establish a permit fee sufficient to recover the following costs:

(1) The city's management costs;

(2) Degradation costs, if applicable

(c) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. Permit fees paid for a permit that the city has revoked for a breach are not refundable.

(d) *Application to Franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

309.120 Right-of-Way Patching and Restoration.

(a) *Timing.* The work to be done under a permit, and the required patching and restoration of the right-of-way, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee.

(b) *Patching.* The permittee must patch its own work.

(c) *Restoration.* The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or the city may restore the surface portion of right-of-way itself. If the city restores the surface portion of right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work. If the permittee restores the right-of-way itself, it shall at the time of filing the permit application post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

(d) *Degradation fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee in an amount identified by the city. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and degradation fee shall not include the cost to accomplish these responsibilities.

(e) *Standards.* The permittee shall perform patching and restoration according to the standards in Minnesota Rule 7819.1100, and with the materials specified by the city.

(f) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents upon notification from the city, using the method required by the city.

(g) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten (10) days from receipt of notice to cure said failure or failures. In the event the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

309.130 Other Obligations.

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to apply all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Statute 216D.01-.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with the applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) *Interference with right-of-way.* A permittee shall not so obstruct or interfere with the natural passage of water through the gutters or other waterways. Private vehicles must be parked in conformance with city parking regulations. Unless specifically authorized by a permit, trucks must be loaded and unloaded within the defined permit area.

(d) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and use traffic control procedures in accordance with the most recent manuals on uniform traffic control traffic control devices and traffic zone layouts published by the State of Minnesota.

309.140 Denial of Permit

The City may deny a permit for failure to meet the requirements and conditions of this Section, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use.

309.150 Installation Requirements.

The installation of facilities in the right-of-way and associated excavation, backfilling, patching, and restoration work shall be done in conformance with Minnesota Rule 7819.1100 and other applicable local requirements.

309.160 Inspection.

(a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

(b) *Site Inspection.* The permittee shall make the work site available to the city for inspection at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of Director.* The director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, or order the permittee to correct work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a "substantial breach" within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been timely corrected. If the violation is not timely corrected, the director may revoke the permit.

309.170 Work Done without a Permit.

(a) *Emergency Situation.* Each right-of-way user shall immediately notify the director of any event regarding its facilities that the right-of-way user considers to be an emergency. The right-of-way user may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the right-of-way user shall apply for the necessary permits and fulfill the rest of the requirements necessary to comply with this Section.

(b) If the city becomes aware of an emergency affecting facilities in the right-of-way, the city will attempt to contact the local representative of each potentially affected right-of-way user. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by affected right-of-way users.

(c) *Non-Emergency Situation.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the city council, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all the requirements of this Section

309.180 Revocation of Permits.

(a) *Substantial Breach.* The city reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of a permit'
- (2) An evasion or attempt to evade any material provision of a permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a permit;
- (4) The failure to complete work in a timely manner; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the director.

(b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of term or condition of any statute, ordinance, rule regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to notice of breach.* Within a time established by the director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(d) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

309.190 Mapping Data.

Each right-of-way user and permittee shall provide mapping informational a form required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

309.200 Relocation of Facilities.

A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

309.210 Interference by Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a right-of-way user's facilities to carry out the work without damaging right-of-way user's facilities, the city shall notify the local representative as early as is reasonable possible. The city costs associated therewith will be billed to that right-of-way user and must be paid within thirty (30) days from the date of billing. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

309.220 Right-of-Way Vacation.

If the city vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

309.230 Indemnification and Liability.

By registering with the city, or by accepting a permit under this Section, a right-of-way user or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

309.240 Abandoned and Unusable Facilities.

(a) Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way under this Section have been lawfully assumed by another right-of-way user.

(b) Removal. Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

309.250 Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

309.260 Reservation of Regulatory and Policy Powers.

A permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

309.270 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Section 1 is for any reason held invalid or unconstitutional by any court, regulatory body or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

309.280 Penalty.

Any person violating any provision of this Section 1 or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 619 of the City Code.

SECTION 2. SEVERABILITY.

In the event that court of competent jurisdiction adjudges any part of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included within that judgment.

SECTION 3. EFFECTIVE DATE.

This ordinance takes effect upon its adoption and publication according to law.

WHEREUPON, a vote, being taken upon a motion by Councilmember _____ and seconded by Councilmember _____ ,

Voting AYE:

Voting NAY:

Whereupon said Ordinance was declared passed adopted this __day of _____, 2017.

Mary Wingfield, Mayor

Attest: Tobin Lay, City Administrator

MEMORANDUM

DATE: March 22, 2018

TO: Birchwood Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Amending Section 304 Variances and Appeals



Birchwood Village

Dear Commissioners,

During a recent DNR training, I learned that the State requirements for variances have changed. Those changes supersede the requirements under Birchwood City Code Section 304. Accordingly, Section 304 must be amended to align with the new state requirements.

As the body that preliminarily hears variance requests and makes recommendations on such to the City Council, it makes the most sense for these amendments to begin with the Planning Commission.

Please see the enclosed email and supporting documentation from the DNR regarding the new State variance requirements (**pp. 3-15**) and discuss appropriate amendments accordingly. Please note that your amendments may be stricter than those required by the State but may NOT be more lenient.

At some point, and when the Planning Commission feels ready to do so, staff will invite the City Attorney to either attend a Commission meeting or review the Commission's recommendations in order to guide the Commission through this legal process.

Request/Recommendation

Staff requests Commissioners:

- 1) Review enclosed DNR email and supporting documentation; and
- 2) Discuss appropriate amendments to Birchwood City Code Section 304 Variances and Appeals.

Thanks!

Regards,
Tobin Lay

304. ZONING CODE: VARIANCES AND APPEALS

304.010. BOARD OF APPEALS. The Planning Commission is hereby established as the Board of Appeals (Board). When acting as the Board, the Planning Commission will have the power to hear and advise the Council on the following matters:

1. Requests for variances from the literal provisions of the Zoning Code; and
2. 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. PETITIONS FOR VARIANCES. 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.

304.030. APPEALS OF ADMINISTRATIVE DECISIONS. A person who deems himself aggrieved by an alleged error in any order, requirement, decision or determination made in the interpretation and enforcement of this ordinance, 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.

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. Variances may only be granted in Minnesota Statutes, Chapter 462.

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:

- a. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- b. 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.
- c. The variance is proved necessary in order to secure for the applicant the right or rights that are enjoyed by other owners in the same area of the district.
- d. The granting of a variance will result in no increase in the amount of water draining from the property.
- e. 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.
- f. No variance shall be granted simply because there are no objections or because those who do not object out number those who do.
- g. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

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

304.050. HEARING AND RECOMMENDATION BY THE BOARD.

1. Within 60 days after the City Clerk determines that a variance petition is complete, and all required fees and information, including plans, drawings and surveys, have been received, or within 60 days after the filing of an appeal of an administrative decision, the Board shall conduct a public hearing and after hearing the oral and written views of all interested persons, the Board shall make its recommendation 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 by the Board to a specified future date.

304.070. FINAL DECISION. The Council shall decide all petitions for variance and appeals. The decision shall be made not later than 30 days after the date of the hearing. .

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.