



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
March 29, 2018
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

- A. Review Variance Case No. 18-01-VB for 5 Oakridge Drive*
 - 1. Public Hearing
 - 2. Discuss & Recommendation to City Council

ADJOURN

* Denotes items that have supporting documentation provided

MEMORANDUM

DATE: March 29, 2018

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



Dear Commissioners,

Enclosed is the amended variance application from Christopher & Mary Sorenson (Case No. 18-01-VB) per your request during last week's Planning Commission meeting.

This request is for a variance to expand the non-conforming use both vertically and horizontally at 5 Oakridge Drive. The vertical expansion is for construction of a master suit above the garage that will correct a design flaw in the original roof and eyebrow over the garage. The horizontal expansion is for construction of a new eyebrow/eave over the north side of the home.

The existing foundation of the home is non-conforming because it extends at least three (3) feet into the side-yard setback; at seven (7) feet instead of the required ten (10). This non-conformance effects at least three (3) feet of the now completed 2nd story master suit above the garage and a now completed eyebrow/eave along the north side of the home. Accordingly, the following Birchwood Ordinances apply:

- Section 301.050 (see enclosed); and
- Section 302.020 (see enclosed)

Notices were 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 at least ten (10) days prior to last week's Commission meeting in accordance with Section 304.060 of Birchwood City Code. One response has been received at the time this packet was assembled on Monday March 26, 2018, and is enclosed for your consideration.

Variance Requirements

As was discussed last week, the elements for considering/approving variances have been changed in State Statute and trumps Birchwood's requirements, either in whole or in part.

Since the Commission has not yet recommended amendments to Birchwood's variance requirements in Section 304 to City Council, staff has invited City Attorney Kantrud to attend this meeting to assist the Commission in navigating these two sets of requirements. The applicants have responded to both sets in their request (enclosed). Both sets of variance requirements have been enclosed for your use in this hearing. Thanks!

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



INFORMATION MEMO

Land Use Variances

Learn about variances as a way cities may allow an exception to part of their zoning ordinance. Review who may grant a variance and how to follow and document the required legal standard of “practical difficulties” (before 2011 called “undue hardship”). Links to a model ordinance and forms for use with this law.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

I. What is a variance

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located.

II. Granting a variance

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

III. Legal standards

When considering a variance application, a city exercises so-called “quasi-judicial” authority. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

A. Practical difficulties

“Practical difficulties” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

RELEVANT LINKS:

[2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6.](#)

[Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010).

[Minn. Stat. § 462.357 subd. 6.](#)
[Minn. Stat. § 394.27, subd. 7.](#)

See Section I, *What is a variance.*

See Section IV-A, *Harmony with other land use controls.*

3. Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

B. Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. After a long and contentious session working to restore city variance authority, the final version of HF 52 supported by the League and allies was passed unanimously by the Legislature. On May 5, Gov. Dayton signed the new law. It was effective on May 6, the day following the governor’s approval. Presumably it applies to pending applications, as the general rule is that cities are to apply the law at the time of the decision, rather than at the time of application.

The 2011 law restores municipal variance authority in response to a Minnesota Supreme Court case, *Krummenacher v. City of Minnetonka*. It also provides consistent statutory language between city land use planning statutes and county variance authority, and clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

In *Krummenacher*, the Minnesota Supreme Court narrowly interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test is not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance. The new law changes that factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. Also included is a sentence new to city variance authority that was already in the county statutes.

RELEVANT LINKS:

[Issuance of Variances](#), LMC model ordinance.

[Variance Application](#), LMC model form.
[Adopting Findings of Fact](#), LMC model resolution.

[Minn. Stat. § 462.357, subd. 6.](#)

See LMC information memo, [Taking the Mystery out of Findings of Fact](#).

[Minn. Stat. § 462.357, subd. 6.](#)

C. City ordinances

Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first. In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute.

The models linked at the left reflect the 2011 variance legislation. While they may contain provisions that could serve as models in drafting your own documents, your city attorney would need to review prior to council action to tailor to your city's needs. Your city may have different ordinance requirements that need to be accommodated.

IV. Other considerations

A. Harmony with other land use controls

The 2011 law also provides that: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.” This is in addition to the three-factor practical difficulties test. So a city evaluating a variance application should make findings as to:

- Is the variance in *harmony with* the purposes and intent of the ordinance?
- Is the variance *consistent with the comprehensive plan*?
- Does the proposal put property to use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

B. Economic factors

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the three statutory factors are met.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

C. Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

D. Conditions

A city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

V. Variance procedural issues

A. Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

B. Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

RELEVANT LINKS:

[Minn. Stat. § 15.99.](#)

[Minn. Stat. § 15.99, subd. 2.](#)

See LMC information memo,
*Taking the Mystery out of
Findings of Fact.*

[Minn. Stat. § 15.99, subd. 2.](#)

Jed Burkett
LMCIT Land Use Attorney
jburkett@lmc.org
651.281.1247

C. Time limit

A written request for a variance is subject to Minnesota's 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval.

D. Documentation

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

VI. Variances once granted

A variance once issued is a property right that "runs with the land" so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

VII. Further assistance

If you have questions about how your city should approach variances under this statute, you should discuss it with your city attorney. You may also contact League staff.

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?

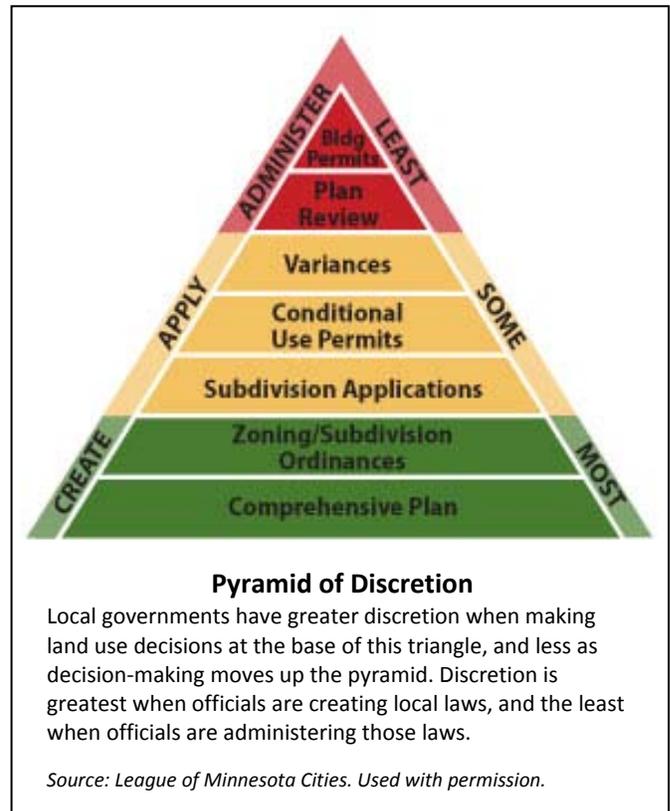
Variances are a means for departing from the strict enforcement of an ordinance as applied to a specific property. Variances may be approved for **area** or **dimensional standards** such as structure setbacks, limitations on impervious surface, bluff protection, lot size, grading and filling, and other 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

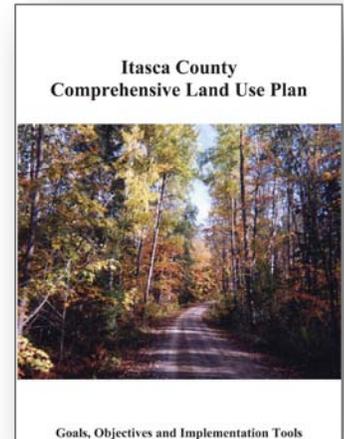
In 2011 the State Legislature revised the laws that govern the granting of variances (Minnesota Statutes, section 394.27, subd. 7 for counties, and section 462.357, subd. 6 for municipalities). Local governments may grant a variance if **all five** of the following criteria are satisfied:

- 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

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.

Subd. 6a. Normal residential surroundings for persons with disabilities. It is the policy of this state that persons with disabilities should not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. For purposes of subdivisions 6a through 9, "person" has the meaning given in section [245A.02, subdivision 11](#).

Subd. 7. Permitted single family use. A state licensed residential facility or a housing with services establishment registered under chapter 144D serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts [9502.0315](#) to [9502.0445](#) to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

Subd. 8. Permitted multifamily use. Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

Subd. 9. Development goals and objectives. In adopting official controls after July 1, 2008, in a municipality outside the metropolitan area, as defined by section [473.121](#), subdivision 2, the municipality shall consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives:

EXISTING BIRCHWOOD REQUIREMENTS

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.



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).

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 24, 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.)

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

Address 5 Oakridge Drive

City Birchwood Village

^{Cell} Business Phone 320-420-2207 Home Phone 651-262-1919

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.

5. Specific Code Provision from which Variance is Requested. 301.050 ~ 302.020

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

correcting a design flaw (shallow pitched roof meeting eyebrow over garage); adding a master suit above garage. New roof design will correct flaw and be 12" above the old roof. (per request of Sept. 1, 2017)

SIGNATURE OF APPLICANT(S) _____

Mary Sorenson

7. Type of Project

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

8. Type of Structure Involved

- addition over garage + eyebrow on the N side of garage*
- Single Dwelling X _____
 - Garage _____
 - Tennis Court _____
 - Grading/Filling _____
 - Double Dwelling _____
 - Addition _____
 - Pool _____
 - 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.

see attachments

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.

from the property gutters placed/routed into
drain tile to improve perc
into the soil

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

any vertical/horizontal
construction to this structure
requires a variance. (non-conforming)

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	3377		
7. Total of items 3-6	22.6%		
8. Percent impervious surface			

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.

Request for Variance regarding Birchwood Village Code 301.050

Christopher and Mary Sorenson – March 24, 2018

Variance Application Item #9 – *(explanations addressing the eyebrow have already been submitted and are also attached to this application)*

Addressing Birchwood Village Codes for the Addition to the Structure at 5 Oakridge Drive

- a. **Special conditions or circumstances** - All parties believed the structure met the set back code and a building permit was granted. The special condition/circumstance, which applies in this case, is that the side set back is roughly 7 feet on the north side of the house, not the current code standard of 10 feet.
- b. **The current situation, which requires a variance**, was not created by the current owners.
- c. **This variance allows for corrections of a design flaw** in the roof line, allowing for proper maintenance and preservation of the building. The roof decking and northeast corner of the garage was rotted from water penetration. A new roof design was needed with increased height and pitch.
- d. **A variance will not result in an increase of water draining from the property.**
- e. **The addition allows** for an adequate supply of light and air to adjacent neighbors and does not diminish or impair established property values within the surrounding area, It does it affect the public health, safety or welfare of city residents.
- f. **Does not apply**
- g. **Financial gain or loss.** Left unchanged this design flaw would continue to erode the structure. According to the Minnesota Statute, “Economic considerations alone do not constitute practical difficulties.” We are unsure how this applies to us.

Addressing Minnesota DNR criteria AND Minnesota Statute 462.357

1. Harmony with the general purpose and intent of the ordinance. The ordinance allows for modifications/alterations for non-conforming structures.
- 2 The request is consistent with the city’s comprehensive plan. Only the first item relates to this request. That item states, “Maintain the residential nature of the community.” The structure will remain a single family dwelling.
- 3 See letters (a) and (d) from the Birchwood Village list of variance criteria above. To summarize, the structure has a pre-existing side set back of roughly 7 feet versus the current code set back of 10 feet. The current owners did not create the current circumstance. The current structure does not change the essential character of the locality.
- 4 Economic considerations – addressed in (g) above
- 5 The practical difficulties in this case are as follows. The set back is less than the current code standard and any vertical or horizontal construction to this non-conforming structure requires a variance according to Birchwood building code.

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 Mary's Cell Home Phone 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 & 302.020.1

6. Describe in narrative form what the applicant is proposing to do that requires a variance.
overhang along north side of home for protected handicap access to home.

SIGNATURE OF APPLICANT(S) [Signature]
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.

Eye brow p.1

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 outnumber 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.

Variance Application regarding eyebrow on north side of home.
Christopher and Mary Sorenson
5 Oakridge Drive
Birchwood Village

Item#9-

Five criteria are recommended by the Minnesota DNR when considering variances to shore land 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

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. This is a safe, managed method of allowing existing structures to be modified, not condemned and torn down. The overhang 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.

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
5. preserve existing traditions such as July 4th parade . . .
6. reduce energy usage by 1% year
7. regularly track and maintain all city property, structures and assets
8. increase volunteerism
9. increase communication of community happenings/projects

10.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 overhang 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 than is currently the standard. The foundation is not being moved closer to the neighbor.

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

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

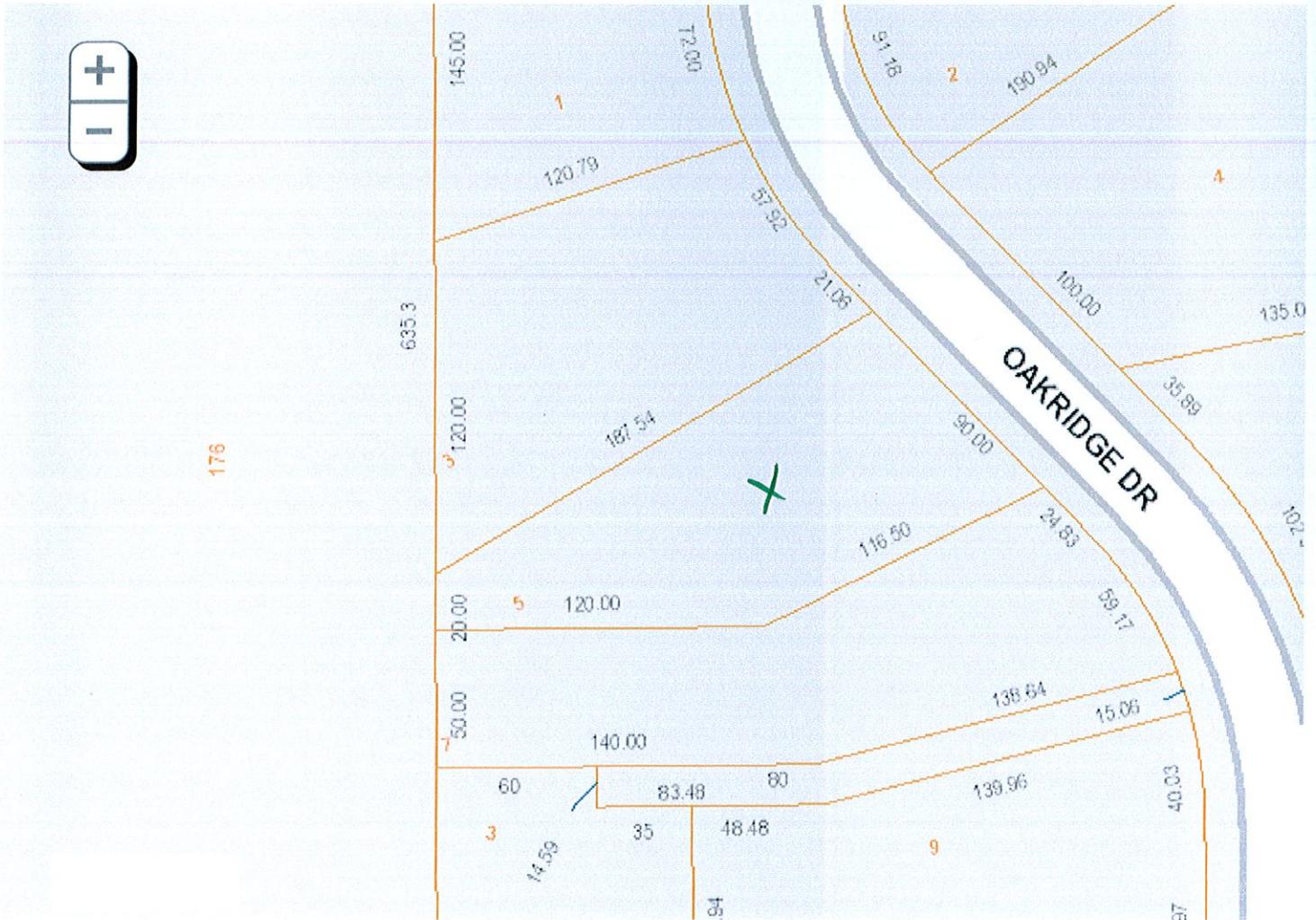
Item #11

The alternative to this overhang 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 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.



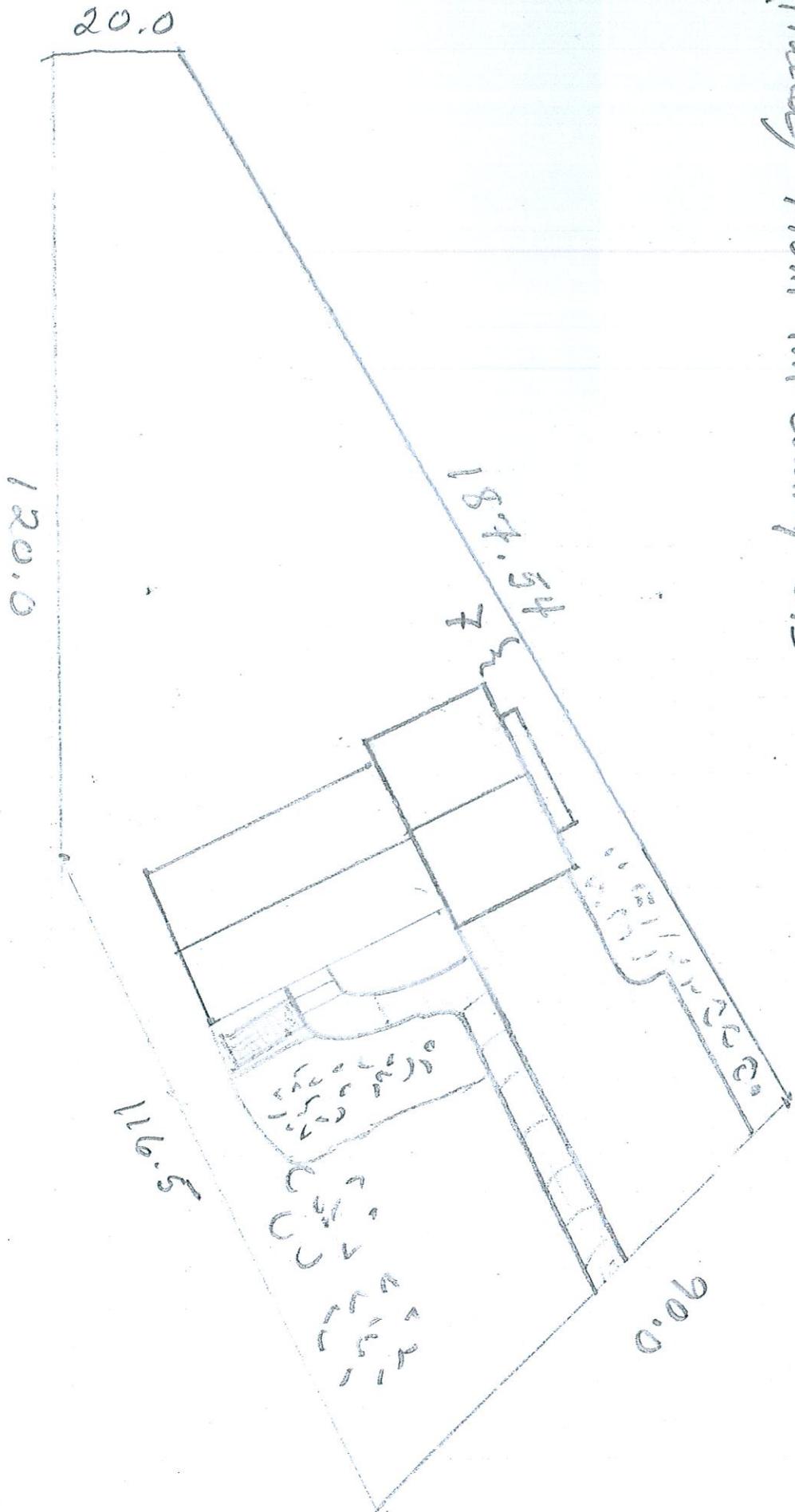
Property Viewer



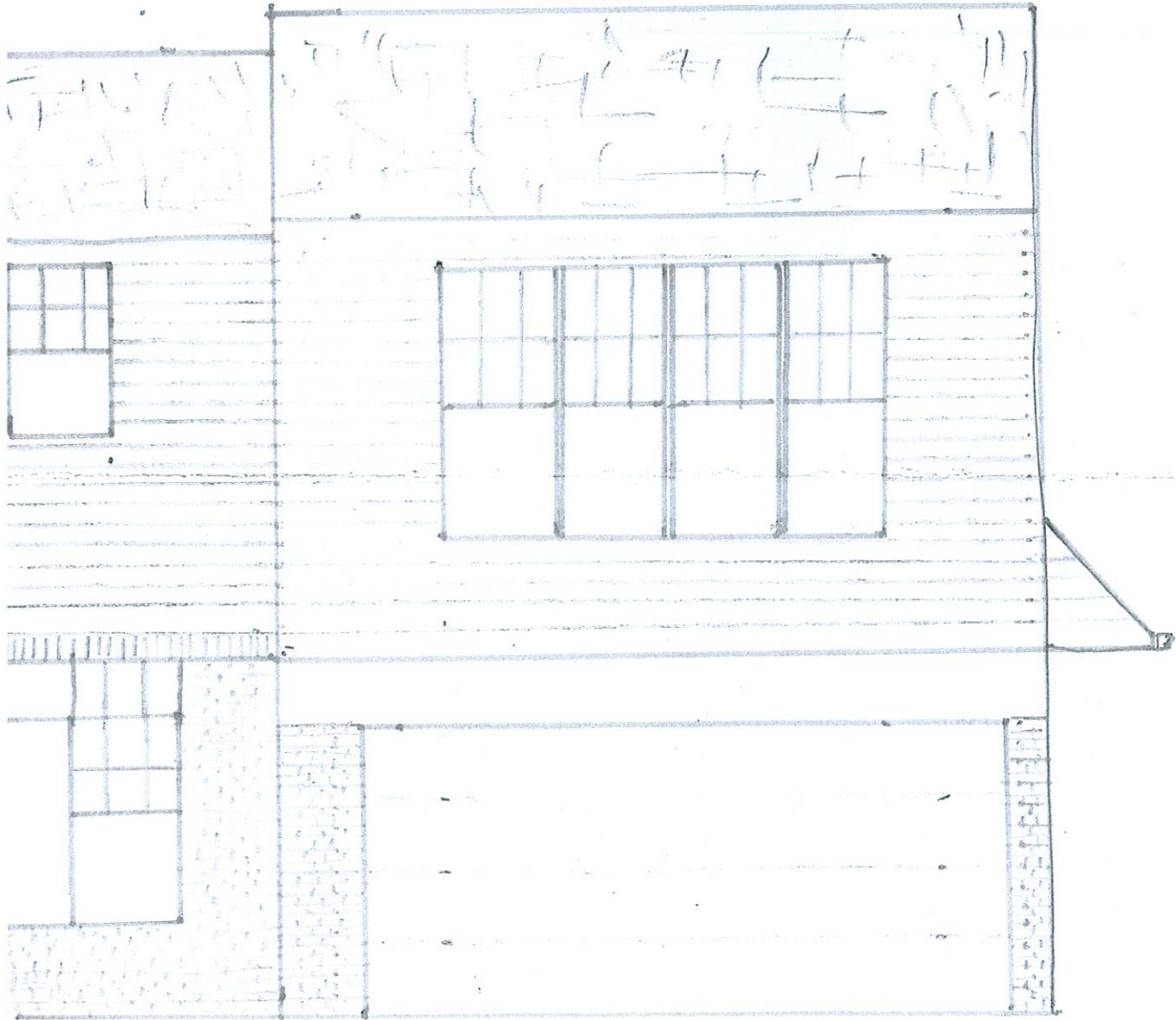
Legal Description: Birchwood Ridge 1st Add. Lot 18



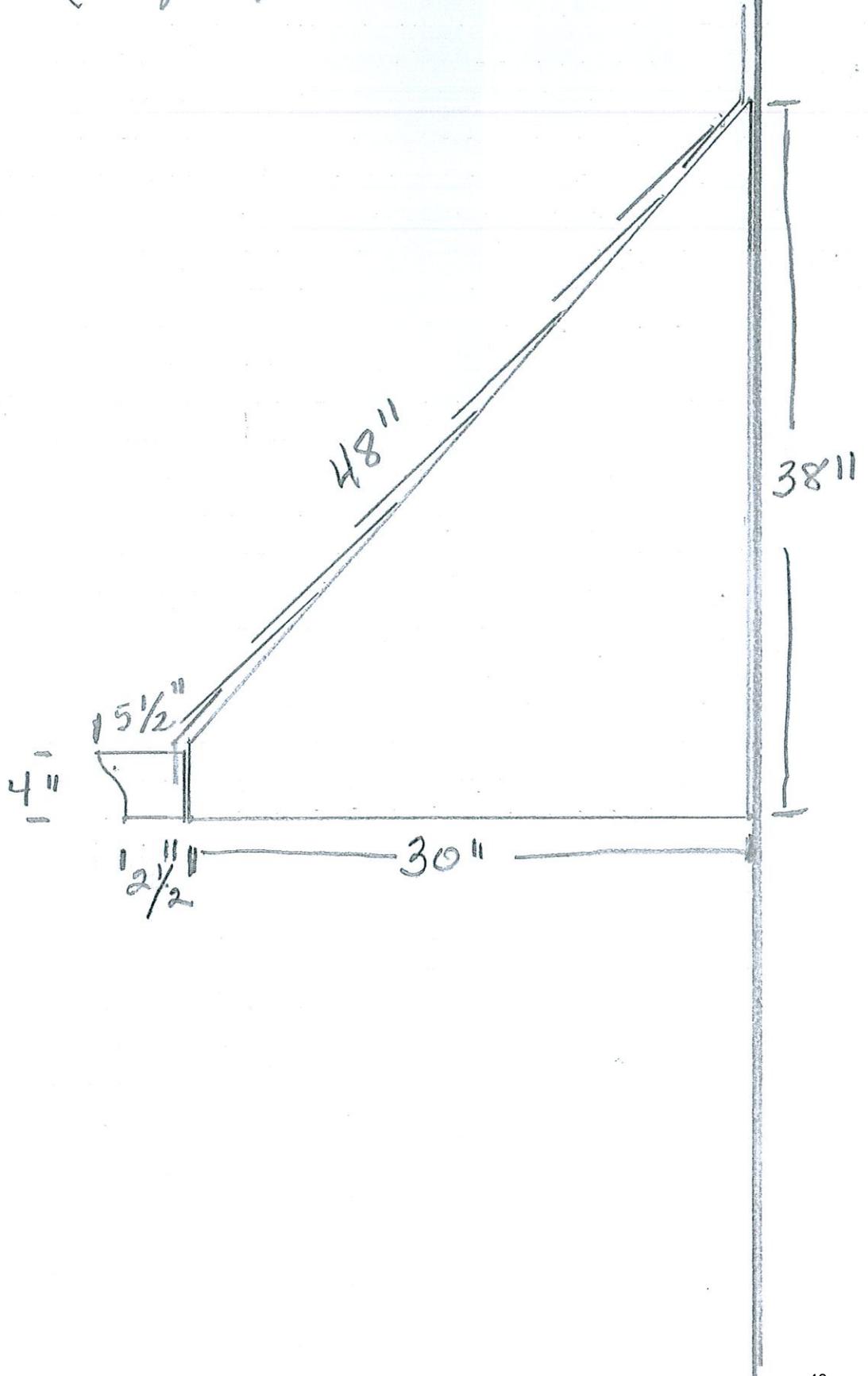
5 Oakridge Drive
Parcel ID # 30030230021
(Traced) From WA County GIS



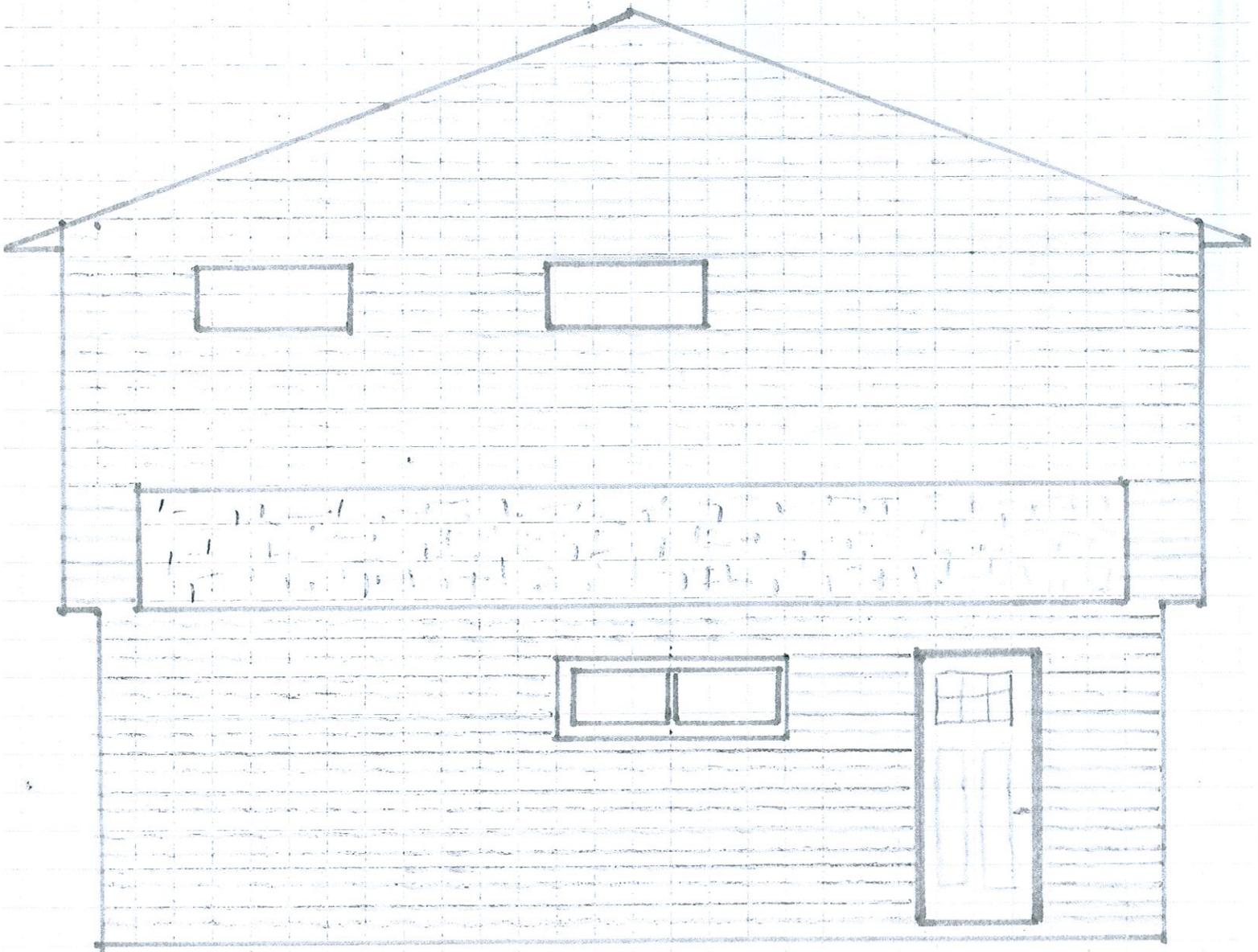
$$1 \text{ ft} = \square$$



2" = □ (1 square)



1 foot = \square (1 square)



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.

Tobin Lay

From: Trilby White [councilmembertrilby@gmail.com]
Sent: Thursday, March 22, 2018 12:37 AM
To: Tobin Lay
Cc: Douglas Danks
Subject: 5 Oakridge Variance Recusal

Dear Tobin and Doug,

Just want to let you know of my intention with respect to my official role in regard to this variance request.

Because the request before the Committee affects my property, and being a liaison to this committee and Councilperson. it is my intention to recuse myself from any deliberation/vote in consideration of the variance before the council.

Please note this does not exclude me from making a statement as to our personal interest/concerns as an affected adjacent property owner.

Tobin, please forward this to the interested parties.

Sincerely,

Trilby White
651-260-1917

Response to Variance Request at 5 Oakridge Dr

Lisa Rietveld & Trilby White, 3 Oakridge Dr.

Dear Commissioners,

Thank you for bringing this to our attention. We appreciate the opportunity to share our feedback. It is unfortunate that we are all in this position. Our concerns are in no way intended to offend or be taken personally. We've enjoyed a friendly relationship with Sorenson and their children and extended family for six years.

However, we are concerned that the plans for this extensive renovation DID NOT include a variance request for this structure at the time of initial review/approval, especially with the request stating they had planned for this type of access when they purchased this specific home.

We would like the commission consider how approving this variance impacts us and future property owners:

- 1 The immediate proximity of the overhang to our driveway encroaches on our privacy by creating an active pedestrian/utility area where adequate space is not provided and never intended
- 2 Runoff is increased where there is already inadequate drainage due to street elevation
- 4 Snow removal from the walkway onto our property compresses the natural snow cover in the swale between our homes that serves to drain spring melt and rain. The grade from our back yard to street has been reduced to a few degrees due to years of street overlay.
- 3 The variance does not realize any significant benefit over code. The distance required to travel "unsheltered" is essentially equal from a car in the driveway to either entrance
- 4 A variance should NOT be utilized to reduce the "aesthetic" impact on the applicants' property when it adversely affects the adjoining property.
- 5 A variance should NOT be granted for the occasional convenience of the applicant ("having to move a car"), when it impacts to adjacent property owners
- 6 This variance application does NOT having any detail of the intended access, leaving us with considerable concerns that this area. While that would not override our concerns, there's no indication of how it will be used and will they be building and/or storing a make shift ramp on the side of applicants garage to keep it out of their front yard
- 7 Approval will require us to erect fence at considerable cost to us, that will require a height and density variance to protect the functionality of the swale between our home due to snow removal and traffic as well to restore privacy to an active area of our property used daily by us and future homeowners.

Thank you for your consideration.
Trilby and Lisa



