



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
September 24, 2020
7:00 P.M.

CALL TO ORDER

In light of the Governor's Executive Order regarding social-distancing and restrictions on gatherings, the Planning Commission of The City of Birchwood Village is conducting its meeting using interactive web-based technology. Pursuant to Minnesota Statutes, Chapter 13D. 021 Subdivision 1(1) the City of Birchwood is declaring that, "an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic..."

The meeting will be conducted using the *Zoom* meeting platform, which allows for video-conferencing or teleconferencing, and the details of that are directly below for participating. If you plan to attend it is suggested that you familiarize yourself with the technology in advance. If you plan to participate than you must either:

1. send your name, topic you plan to speak on, and the phone number you will be calling from to City Hall by noon the day before the meeting; or
2. join the meeting no later than 6:45pm to coordinate with the Moderator.

The Moderator of the meeting shall be City Administrator Tobin Lay and all participants, except Planning Commissioners, shall have their microphones muted unless recognized by the Commission Chair, whose microphone will remain active for the entire meeting. Public Hearings shall be honored using this technology.

The Birchwood Village Planning Commission is inviting you its September 24 Zoom meeting.

Time: Sept 24, 2020 7:00 PM Central Time

Join Zoom Meeting:

<https://us02web.zoom.us/j/86265985189?pwd=N3hVcVpJekJyL1V4eGtTVW9oZHFFdz09>

Meeting ID: 862 6598 5189

Passcode: 384079

Phone: +1 312 626 6799

APPROVE AGENDA

REGULAR AGENDA

- A. Review/Approve August 27, 2020 Meeting Minutes* (p. 3)
- B. Review/Approve August 31, 2020 Meeting Minutes* (p. 5)
- C. Review C.U.P. & Variance Case No. 20-04-VB for 251 Wildwood Avenue* (pp. 7-73 & 87-90)
 - 1. Public Hearing
 - 2. Discuss & Recommendation to City Council
- D. Review Variance Findings Form* (pp. 75-77 & 87-90)
 - 1. Review and Discuss
- E. City Council Request: Guidance on Sec. 302.070 Fence Ord.* (pp. 79-85)
 - 1. Discuss & Recommendation to City Council

ADJOURN

CASE NO. 20-04-VB 251 WILDWOOD AVE

Administrator Memo ----- p. 7
CUP Application ----- pp. 9-10
Variance Application ----- pp. 11-52
Planner CUP Memo ----- pp. 53-56
Planner Variance Memo ----- pp. 57-61
City Codes ----- pp. 63-64
Public Comments (3) ----- pp. 65-73
Variance Findings Form (blank) ----- pp. 87-90

* Denotes items that have supporting documentation provided

CITY OF BIRCHWOOD VILLAGE
PLANNING COMMISSION MEETING
AUGUST 27 2020 MEETING MINUTES

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

OTHERS PRESENT: Cathy Wandmacher, Tobin Lay

Chair John Lund called meeting to order 7:02 PM

APPROVE AGENDA- Chair John Lund motioned to approve agenda, Michael Kraemer 2nd
All ayes motion passed

REGULAR AGENDA

A. Review and approve July30 2020 minutes.

Chair John Lund motioned to approve, Michael Kraemer 2nd, all ayes
Motion passed

B. Review Variance Case No. 20-20-VB for 415 Wildwood Avenue* (pp. 3-36)

1. Public Hearing - No public present - Letter from Jim Berg and Josephine Sims in support of patio was noted.

2. Discuss and Recommend to City Council

Chair John Lund motioned to recommend approval of variance request with condition:

- A. That a maintenance agreement be entered in to maintained the rain gardens and parts A thru K under section 302.050.1.
- B. Registering with Washington County and the city of Birchwood Village and
- C. Project time line of one year.

2nd by Jozsef Hegedus, all ayes, motion passed.

C. Review Variance Case No.20-40-VB for 251 Wildwood Avenue* (pp.41-79 & 84-87)

1. Public Hearing - no public present
2. Discuss and recommend to city council,

Chair John Lund motioned to table until next planning Commission meeting, September 24 due to incomplete request application. Applicant to provide detailed plans and changes to steps. Michael Kraemer 2nd. All ayes motion passed.

ADJOURN

9:20 PM Motion was made by John Lund, 2nd by Andy Sorenson, all ayes, motion passed.

CITY OF BIRCHWOOD VILLAGE
PLANNING COMMISSION MEETING
AUGUST 31 2020 MEETING MINUTES

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

OTHERS PRESENT: Tobin Lay, Dick Galena, Janet Cristan, Rick Cristan, Jay Johnson

Chair John Lund called meeting to order 7:00 PM

APPROVE AGENDA- Commissioner Michael Kraemer motioned to approve agenda, Commissioner Mark Foster 2nd. All ayes motion passed.

REGULAR AGENDA

A. Review Variance Case NO.20-03-VB for 701 Hall Ave.

Variance request tabled to September 24, 2020 per applicant's request

B. Review Variance Case No. 20-05-VB for 221 Wildwood Ave.

1. Public Hearing

Next door neighbor Dick Galena expressed disapproval of variance request, stating he felt the garage should be built in compliance with up to date 10' back set. Although he also stated he is a reasonable person and might compromise to a 6' set back. He also would have liked to have seen other possible options instead of just the one.

2. Discuss and Recommend to City Council

All commissioners denied the 2' 6" side yard setback as requested

Mark Foster motioned to approve 6' side yard setback compromise, Jozsef 2nd. 3 voted aye and 2 voted no.

Motion passed.

All commissioners voted yes for 20' prevailing street set back

ADJOURN

8:45 PM Mark motioned to adjourn, Jozsef 2nd. All ayes, motion passed.

MEMORANDUM



TO: Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Variance Case No. 20-04-VB for 251 Wildwood Ave.
DATE: September 21, 2020

Hello Planning Commissioners,

Please be advised that based on the feedback from the Commission in August, the applicant, Brock Harmon, has amended his variance request. The request has been divided into 1) a Variance Request for retaining walls within the OHW setback and 2) a Conditional Use Permit (C.U.P.) for the rip rap and steps to the lake. The applicant no longer seeks to build a storage shed or pervious flooring.

The enclosed materials support both the Variance Request and C.U.P. Please note that the materials also include a section for Zoning Permit – disregard as there is no Zoning Permit for this request.

Request/Recommendation

Commissioners will need to do the following:

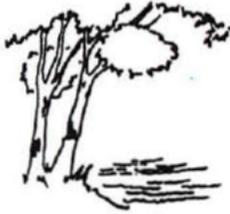
- 1) Hear and recommend on the C.U.P.; and
- 2) Hear and recommend on the Variance Request.

Thanks!

Regards,
Tobin Lay
City Administrator

REGULAR C: CUP APPLICATION

* PLEASE SEE WORD DOC WITH ADDITIONAL DETAILS AND SUPPORT. THANKS.
- Brock



City of Birchwood Village
Conditional Use Permit Application

207 Birchwood Ave, Birchwood, MN 55110
Phone: 651-426-3403 Fax: 651-426-7747
Email: info@cityofbirchwood.com

FOR OFFICIAL USE ONLY

Application Received Date: 9/12/20 Permit No. _____

Fees: City: \$ \$100.00 Planner: \$ 1,980.00 Escrow: \$ 3,000.00

TOTAL OWED: \$ 5,080.00 Amount Paid: \$ _____

Payment Type (circle): Cash / Check / Money Order / Credit Card Check No. _____

General Provisions:

<input type="checkbox"/> Cert. of Insurance or Cash Escrow	<input type="checkbox"/> Soil Investigation Report or Shoring Plan
<input type="checkbox"/> Existing Conditions Report	<input type="checkbox"/> Demolition Notifications
<input type="checkbox"/> Construction Signage	<input checked="" type="checkbox"/> Stormwater / Erosion Control Plan

Special Approvals:

DNR: <input type="checkbox"/> required <input checked="" type="checkbox"/> received	RCWD: <input type="checkbox"/> required <input checked="" type="checkbox"/> received
WBLCD: <input type="checkbox"/> required <input checked="" type="checkbox"/> received	Washington County: <input type="checkbox"/> required <input type="checkbox"/> received

Other: _____

Signature of City Planner: Steve Schuth Date: 9/17/20

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

- Name of Applicant(s) Brock Harmon (son of Trude Harmon)
 Address 251 Wildwood Avenue
 City Birchwood State MN Zip Code 55110
 Business Phone _____ Home Phone [REDACTED]
- Address of Property Involved if different from above: SAME
- Name of Property Owner(s) if different (describe Applicant's interest in the property): _____
5 GENERATIONS OF FAMILY OWNERSHIP. GOAL TO PRESERVE LAKEFRONT THAT IS ERODING FROM HIGH WATER LEVELS.

Permit For: Land Disturbance Swimming Pool Tennis Court Solar Energy Home Occupation

Area / Volume / Capacity / Type of Use: INSTALL RIP-RAP WITH STEPS FOR SHOULDERLINE

Sq. Feet: 300 Length: 50' Width: 6' Height: 6" TO 18"

Legal of Site Location: LOT 10, BLOCK 5, LAKEWOOD PARK FIRST DIVISION, WASHINGTON COUNTY, MN

PIN: 30.030.21.21.0036 Proximity to Wetlands or Lakeshore: AT SHOULDERLINE OF WBL

Setbacks: Front Yard N/A Rear Yard 0' FOR R-R + STEPS Side Yards 10' FOR STEPS 10' FOR STEPS
0' FOR R-R & 0' FOR R-R

Proposed % Impervious Surface of the Lot (upon completion): 10.6%

Description of Use (attach scaled site plan): RIP-RAP WITH STEPS FOR SHOULDERLINE

- RIP-RAP INSTALL W/ STABILIZING FILTER FABRIC AND 6"-18" CLEAN FIELD STONE

- 2 SETS OF STEPS (3 STEPS EACH) FOR SAFE ACCESS BETWEEN WATER + SHOULDER

- PREFORMED STEPS 6" TALL BY 36-38" WIDE AND 18-20" DEEP

- STEPS ARE HELD / SUPPORTED THROUGH INSTALL OF HELICAL SCREW PILING (PER STEPS)

SEE SUPPORTING DOCUMENTATION:

- SCALED SITE PLAN - PAGE A-1, LOWER PORTION OF DIAGRAM

- MANY ADDITIONAL SUPPORTING REFERENCES.

Notice:

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

*The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit.

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

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

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

Signature of Applicant: Brian J. [Signature] Date: 9/3/2020

REGULAR C: VARIANCE REQUEST



City of Birchwood Village
Petition for Variance Application

207 Birchwood Ave, Birchwood, MN 55110
Phone: 651-426-3403 Fax: 651-426-7747
Email: info@cityofbirchwood.com

* PLEASE SEE WORD DOC
WITH ADDITIONAL DETAILS
AND SUPPORT. THANKS.
- Brock

FOR OFFICIAL USE ONLY	
Application Received Date: <u>9/12/20</u>	Amount Paid: \$ <u>300.00</u>
Payment Type (Circle One): Cash / Check / Money Order / Credit Card	
Check/Money Order # _____	
Application Complete? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If no, date application was deemed complete: _____	
Signature of City Planner: <u>[Signature]</u>	Date: <u>9/17/20</u>

* THIS IS REVISED PER
CHANGES MADE AFTER
AUGUST 2020 PLANNING
COMMISSION MEETING
WHERE REVIEW OF
THE VARIANCE WAS
TABLED.

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

1. Name of Applicant(s) BROCK HARMON (SON OF TRUDE HARMON)
 Address 251 WILDWOOD AVE
 City BIRCHWOOD State MN Zip Code 55110
 Business Phone _____ Home Phone [REDACTED]

2. Address of Property Involved if different from above: SAME

3. Name of Property Owner(s) if different from above and describe Applicant's interest in the property: 5 GENERATIONS OF FAMILY OWNERSHIP. EARL TO ~~SAFE~~ SAFELY USE 'HILL AREA' FOR DOCK MATERIALS, AS HIGH WATER LEVEL HAS IMPACTED USEABLE AREAS.

4. Specific Code Provision from which Variance is requested: 302.020.2; 302.020.4.c; 302.020.5; 302.055.2.a.4; & 302.070.5

5. Describe in narrative form what the Applicant is proposing to do that requires a variance:
2 RETAINING WALLS TO CREATE FLAT AREAS OF SIZE NEEDED TO SAFELY STORE HEAVY DOCK MATERIALS. THESE RETAINING WALLS TO BE WITHIN 50' OHWL SETBACK FROM WBL.

SEE SUPPORTING DOCUMENTATION:

- SCALED SITE PLAN - PAGE A-1, UPPER PORTION OF DIAGRAM ^{Page 1 of 4}
- MANY ADDITIONAL SUPPORTING REFERENCES

6. Type of Project:

- New Construction (empty lot)
- Addition
- Demolition
- Landscaping -- 4' RETAINING WALLS
- Repair or removal of nonconforming structure
- Other (describe) _____

7. Type of Structure Involved:

- Single Dwelling
- Garage
- Tennis Court
- Grading/Filling -- RETAINING WALLS
- Other (describe) _____
- Double Dwelling
- Addition
- Pool

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

SUBDIVISION 1 - JUSTIFICATION - CONSISTENT WITH COMPREHENSIVE PLAN OF BIRCHWOOD TO PROMOTE SAFETY, BY CREATING FLAT SPACES ON TO HILL FOR SAFER STORAGE OF DOCK MATERIALS

SUBDIVISION 2 - PRACTICAL DIFFICULTIES

- DOCK MATERIALS NEED TO BE WITHIN 50' SETBACK FOR USE, AND NEED TO BE STORED ON FLAT SURFACE AND REASONABLE HEIGHT FOR SAFETY.
- CLOSE LOCATION OF HILL TO SHORE CAUSING HARDSHIP FOR MANAGING DOCK MATERIALS ON SLOPE OF HILL.
- MINIMIZE LAND DISTURBANCE AND VISUAL IMPACT BY BUILDING INTO HILL AND EXPANDING NATURAL TERRACING ON HILLSIDE.

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

• CREATE GRADE FLAT GROUND -- NATURAL VEGETATION WITHIN THE RETAINING WALLS PROMOTE WATER ABSORPTION AND REDUCE POTENTIAL EXISTING RUNOFF DUE TO STEEP BANK.

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

NONE - DOCK MATERIALS NEED TO BE KEPT WITHIN THE 50' CHWL SETBACK TO FACILITATE ANNUAL INSTALLATION + REMOVAL FROM/TO STORAGE

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

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

If yes, explain: _____

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

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

RCWD, MNDNR, WBLCD (SEE SUPPORTING DOCUMENTATION)

ALL IN COMPLIANCE

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

	EXISTING	PROPOSED	CHANGE
1. Total Square Footage of Lot	13,294.3	13,294.3	0
2. Maximum Impervious Surface (25% of item 1)	3323.6	3323.6	0
3. Roof Surface	CABIN 1017.7 GARAGE 329.9	CABIN 1017.7 GARAGE 329.9	0
4. Sidewalks	0	0	0
5. Driveways	0	0	0
6. Other Impervious Surface	0	RETAINING WALLS 66.0	66.0
7. Total of Items 3-6	1347.6	1413.6	66.0
8. Percent Impervious Surface	10.1%	10.6%	0.5%

15. Please attach the following:

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

SEE VARIANCE SECTION, PAGE E-4

SEE DIAGRAM SECTION PAGE A-12

SEE SUPPORTING DOCUMENTATION



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

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

SUBD. 1.

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

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

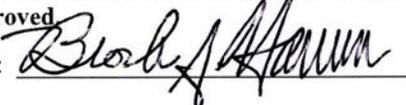
- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no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

NOTICE:

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

***The City will hold applicant responsible for any damage to public property that occurs in the course of performing the activities of this permit.**

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

Signature of Applicant: 

Date: 9/3/2020

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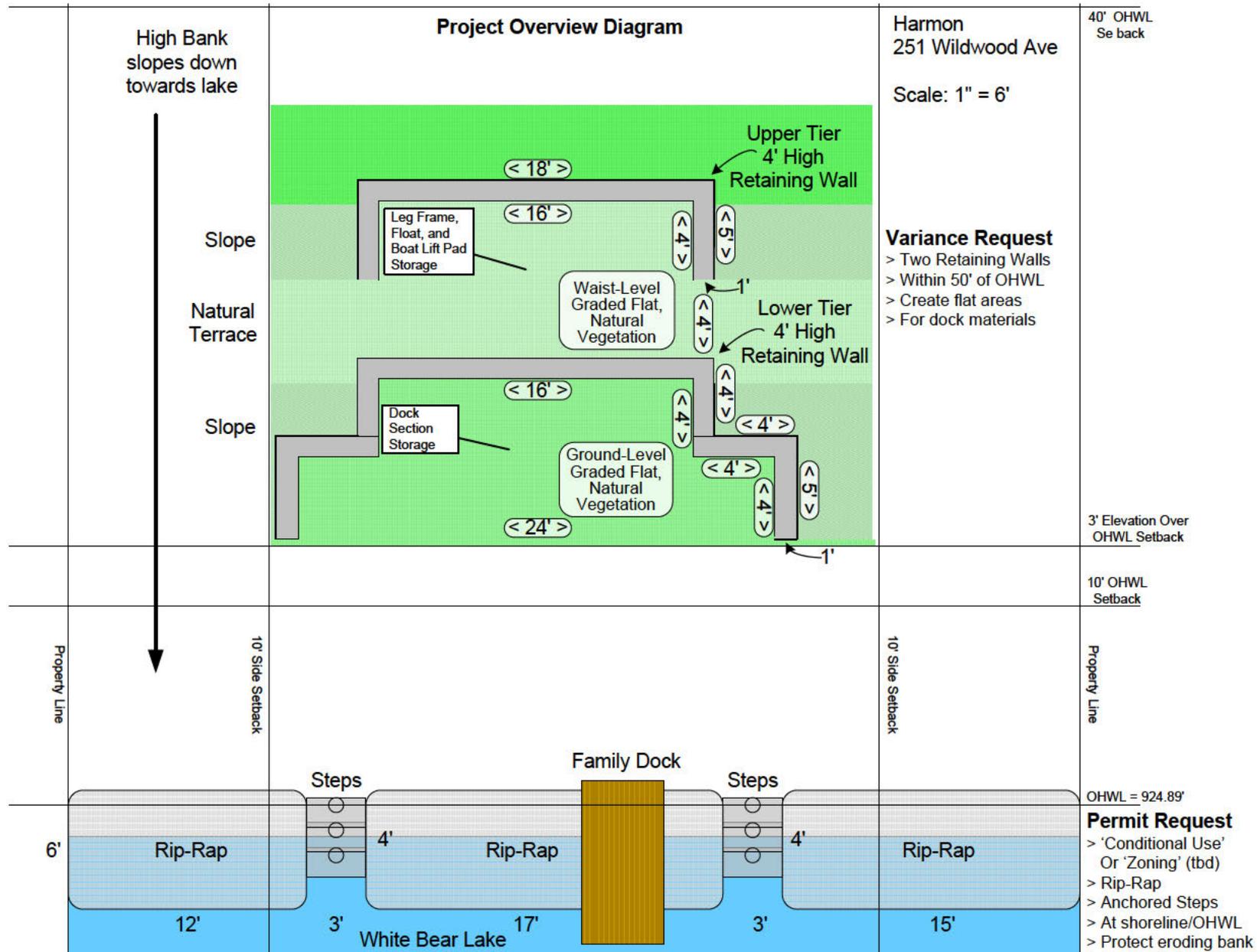
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A. DIAGRAMS

1. PROJECT OVERVIEW DIAGRAM [VARIANCE, PERMIT RELATED]:



2. SHOWING SLOPE OF EXISTING BANK AND RETAINING WALL CONCEPT [VARIANCE RELATED]:

Slope of Existing Bank



Retaining Wall Concept



Forced Tall and Cantilevered Stacking



Modular Block Retaining Wall

- > Versa-Lok block units
- > Maximum 4' high, including top cap
- > ¾" Clear rock
 - >> For base material under blocks
 - >> Compact in 2" layers for maximum compaction
 - >> For drainage system behind retaining walls
- > Drainage system to also include:
 - >> 4" sock tile
 - >> 6" colored wall grates

**➔ Flat Ground within Retaining Walls
creates Safer Solution**

3. SHOWING RIP-RAP AND STEPS [PERMIT RELATED]:

Concept Photo – Rip-Rap and Steps

- > Protect eroding bank
- > Provide safe access between lake and shore



Rip-Rap

- > ~ 20 tons of 6" – 18" Fieldstone clean rock
- > Stabilizing/Filter fabric material under the rock

Steps

- > Also see Helical Screw Piles for anchoring



Dimensions: 36" - 38" x 18" - 20" x 6" , ~ 125 lbs

RockStep is reinforced concrete with polymer additives for ultra-strong construction. It has a greater abrasive resistance than limestone or poured concrete, and is crack resistant.

Features:

- > Broken face texture covers 3 vertical sides and the back side has a weather-edge finish
- > Requires no heavy equipment
- > For residential and commercial use
- > Available in gray, tan, brown, charcoal, and blue slate to meet your needs
- > Made of reinforced concrete with polymer additives for ultra-strong durability
- > Ideal for lakefronts, high slopes, raised patios, and terraced yards
- > Uniform 6" height for consistent, safe rise

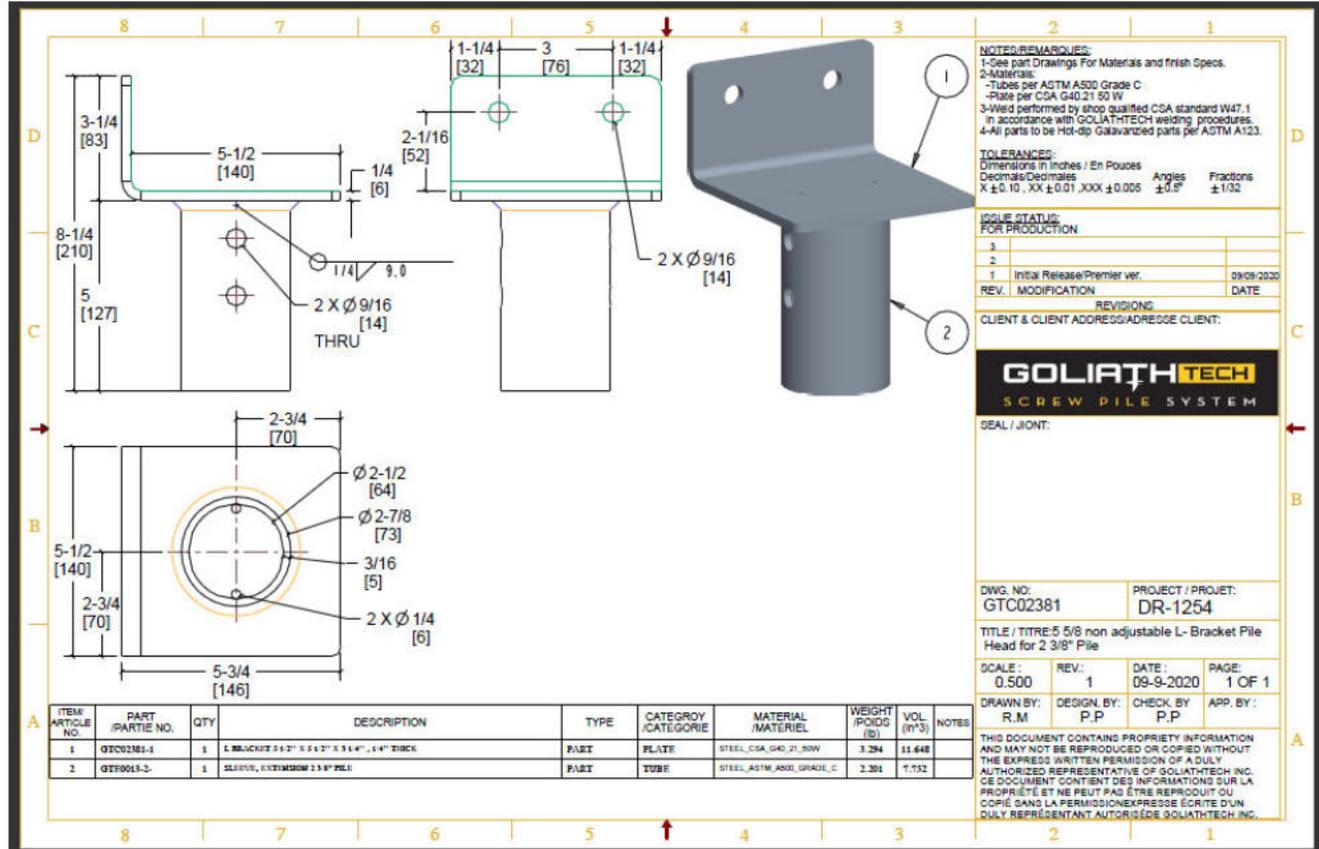
4. SHOWING HELICAL SCREW PILES [PERMIT RELATED]:

Helical Screw Piles

- > Support and anchor each step
- > 7 foot long, 2 3/8" diameter shaft, with 9" diameter screw section
- > As recommended by Steve Thatcher, City Engineer, to meet city code for step anchor/piling

Resembling a large screw, **Helical Screw Piles** are installed 7' deep into the ground, beneath the ground freezing level, to solidly support the structure of your project.

L-Bracket that bolts to top of Helical Screw Pile, and to the step, in order to provide the step with piling support and anchor.



5. MINNESOTA DNR RIP-RAP PUBLICATION [PERMIT RELATED]:

Minnesota DNR -- Rip-Rap Publication

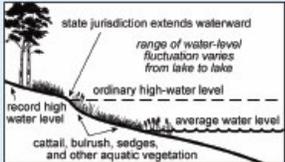
Shoreline Alterations: Riprap



Is an individual permit required?

For most projects constructed *below* the ordinary high-water level* (OHWL) of public waters, an individual Public Waters Work Permit is required by the Minnesota Department of Natural Resources (DNR).

Riprap exception: An individual permit from the DNR is not required for riprap placement if the conditions outlined in this information sheet are followed.



Shoreline cross section.

If you have questions concerning the contents of this information sheet, contact your local DNR Area Hydrologist. See contact information on reverse side.

Please note that local units of government and other agencies may require a permit for this project.

*For lakes and wetlands, the OHWL is the highest elevation that has been maintained as to leave evidence on the landscape. It is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the OHWL is the top of the bank of the channel. For reservoirs and flowages, the OHWL is the operating elevation of the normal summer pool.

What can I do to keep my shoreline from washing away?

If your shoreline is eroding, any of the following events may be destabilizing your soil, resulting in erosion: fluctuating water levels, increased wave or wake action, ice pushes, loss of natural vegetation, and human activity. Protecting your shoreline from erosion may not require you to replace natural shoreline with a high-cost, highly engineered retaining wall or riprap. There are affordable, low-impact methods to stabilize your shoreline and still protect property values, water quality, and habitat. The Minnesota Department of Natural Resources (DNR) encourages you to consider planting native vegetation to control shoreline erosion, enhance aesthetic values, and contribute to better water quality in your lake (see Lakescaping information sheet).



Shoreline stabilized with riprap and enhanced with a vegetative buffer.

Both riprap and retaining walls can reduce erosion, but they can be expensive and negatively affect lakes by creating a barrier between upland areas and the shoreline environment. Riprap should only be used where necessary and never to replace a stable, naturally vegetated shoreline. Additionally, installing riprap on a stream or river bank is a special condition that may require professional advice to ensure that the structure will stand up to the fluctuations in water levels and flowing conditions.

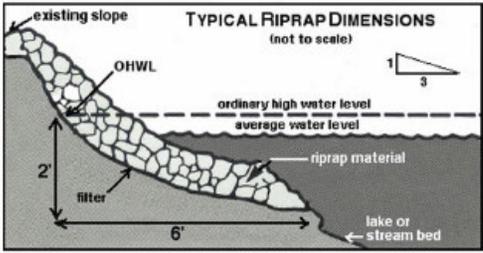
Natural rock riprap consists of coarse stones randomly and loosely placed along the shoreline. You should consult your DNR Area Hydrologist to determine whether your shoreline needs riprap to stop erosion. If there is a demonstrated need, such as on steep slopes, you may want to consider placing riprap or a combination of riprap and vegetation. In most cases, vegetation planted in the rocks will stabilize the riprap and improve the appearance of your shoreline. Naturalizing your shoreline is the most important contribution you can make to enhance water quality, maintain fishery resources, and provide wildlife habitat.

Shoreline Alterations: Riprap/ revised March 2012 Page 1 of 2

Shoreline Alterations: Riprap

Installation of riprap is allowed only where there is a demonstrated need to stop existing erosion or to restore an eroded shoreline. An individual DNR Public Waters Work Permit is *not* required if the installation meets all of the following conditions:

- The riprap must not cover emergent aquatic vegetation, unless authorized by an aquatic plant management permit from the DNR's Division of Fisheries.
- Only natural rock (cannot average less than 6 inches or more than 30 inches in diameter) may be used that is free of debris that may cause pollution or siltation. Concrete is not allowed.
- A filter of crushed rock, gravel, or filter fabric material must be placed underneath the rock.
- The riprap must be no more than 6 feet waterward of the ordinary high-water level (OHWL; see sidebar on page 1).
- The riprap must conform to the natural alignment of shore and must not obstruct navigation or the flow of water.
- The minimum finished slope waterward of the OHWL must be no steeper than 3 to 1 (horizontal to vertical).
- The riprapped area must be no more than 200 linear feet of shoreline along lakes and wetlands or, along shorelines of streams, must be less than five times the average width of the affected watercourse.
- The site must not be a posted fish spawning area, designated trout stream, or along the shore of Lake Superior.



What are some other issues to consider?

A row of boulders at the water's edge is *not* considered natural rock riprap. Rows of stacked boulders function as a retaining wall, and installation would *require* an individual permit from the DNR. Retaining walls are very damaging to the near-shore environment. Retaining walls cause wave action that scours the lakebed, displacing bottom sediment and creating an extremely sterile environment. The cumulative effect of numerous wall structures on a lake reduces critical habitat for fish and wildlife resources and much of the food chain they depend on. Retaining walls require structural maintenance and are frequently damaged by ice action and undermined by wave action.

Riprap is not maintenance free and does not eliminate ice heaving, but it is easier to return the rocks to their original positions than to repair a wall. Consider planting within the riprap to add color, interest, and diversity. Live cuttings and plant plugs can be planted within riprap to provide additional slope stability and give your shoreline a more natural appearance.

© 2003 State of Minnesota, Department of Natural Resources. Prepared by DNR Ecological and Water Resources. Based on Minnesota Statutes 103G, Public Waters Work Permit Program Rules Chapter 6115.

DNR Contact Information



DNR Ecological and Water Resources website and a listing of Area Hydrologists: <http://dnr.dnr.gov/waters>

DNR Ecological and Water Resources
500 Lafayette Road, Box 32
St. Paul, MN 55155
(651) 259-5100

DNR Information Center

Twin Cities: (651) 296-6157
Minnesota toll free: 1-888-646-6367
Telecommunication device for the deaf (TDD): (651) 296-5484
TDD toll free: 1-800-657-3929

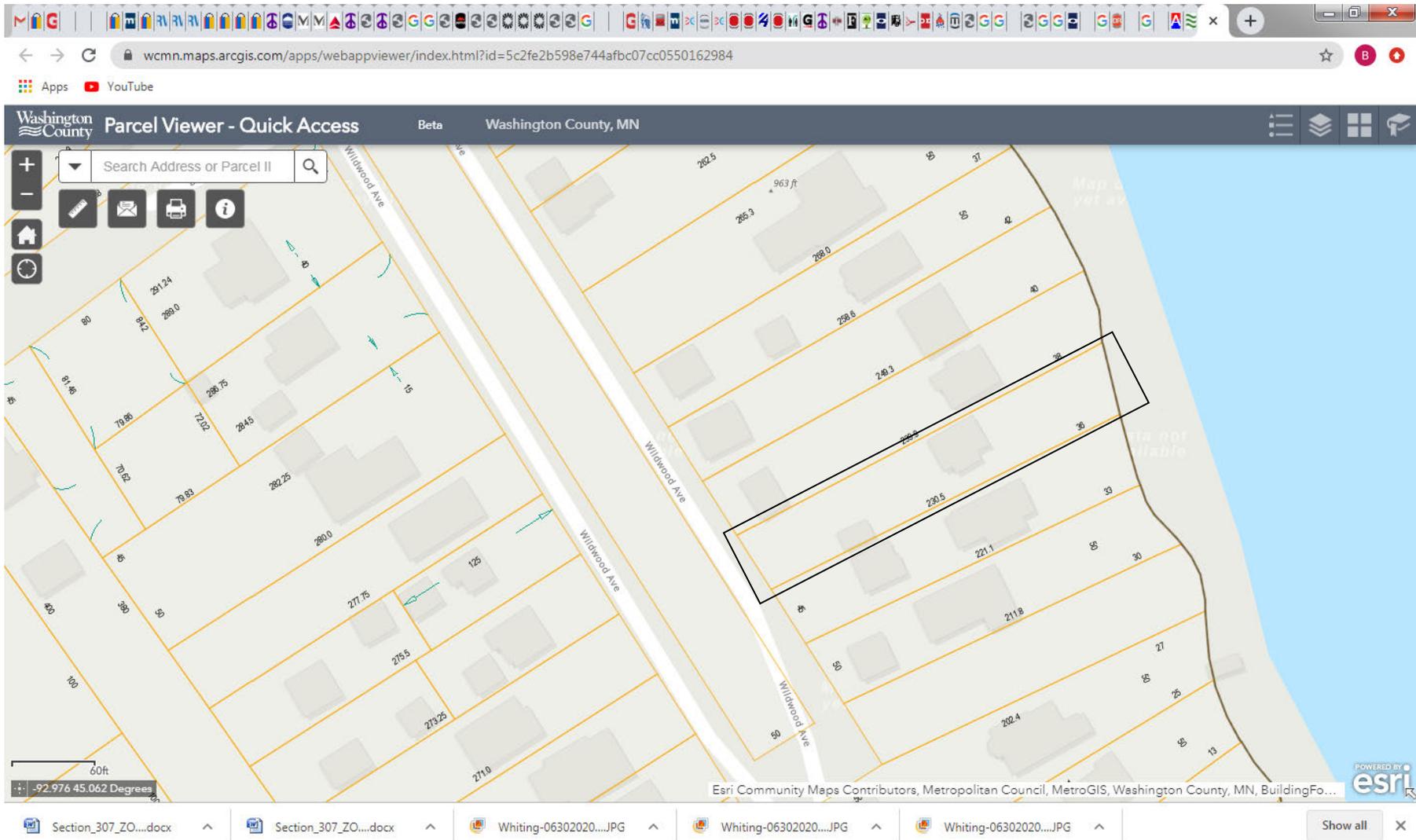
Equal opportunity to participate in and benefit from programs of the Minnesota Department of Natural Resources is available regardless of race, color, national origin, sex, sexual orientation, marital status, status with regard to public assistance, age, or disability. Discrimination inquiries should be sent to Minnesota DNR, 500 Lafayette Road, St. Paul, MN 55155-4049; or the Equal Opportunity Office, Department of the Interior, Washington, DC 20240.

This information is available in an alternative format on request.

© 2011 State of Minnesota, Department of Natural Resources

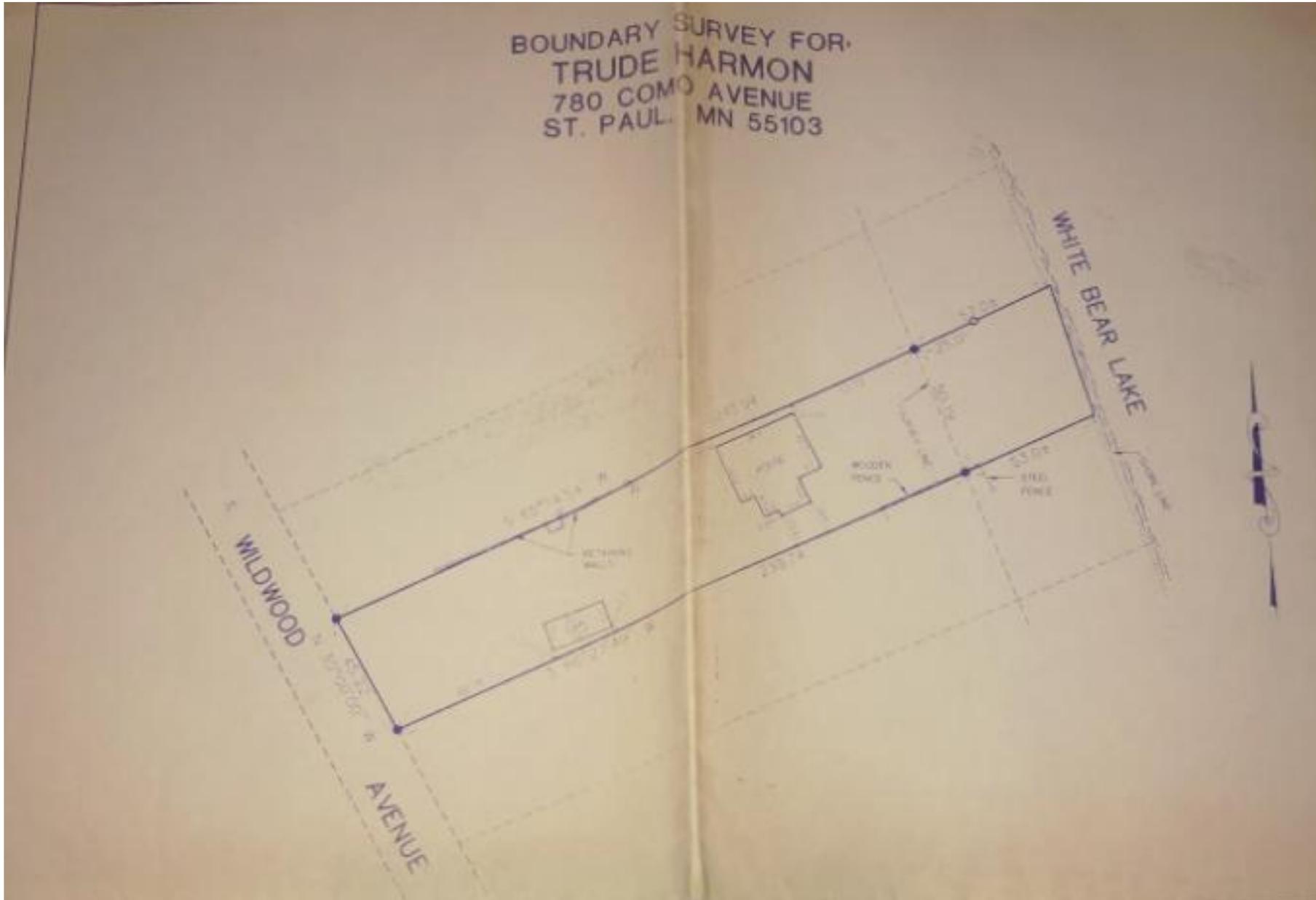
Shoreline Alterations: Riprap/ revised March 2012 Page 2 of 2

6. SHOWING NEIGHBORING PROPERTIES [VARIANCE, PERMIT RELATED]:



7. SHOWING BOUNDARY SURVEY [VARIANCE, PERMIT RELATED]:

Boundary Survey supports Washington County Online version used for calculations.



8. SHOWING LOT SIZE CALCULATION [VARIANCE, PERMIT RELATED]:

The screenshot displays a web browser window with the URL `wcmn.maps.arcgis.com/apps/webappviewer/index.html?id=5c2fe2b598e744afbc07cc0550162984`. The application is titled "Parcel Viewer - Quick Access" and is for "Washington County, MN". A search bar at the top left contains the text "Search Address or Parcel ID". The main map area shows a street grid with "Wildwood Ave" labeled. A specific parcel is highlighted in dark grey with a blue border. A "Measurement" pop-up window is open on the right side of the map, showing the following information:

- Measurement Result: 13,294.3 Sq Feet (US)
- Unit: Sq Feet (US)
- Clear button
- Footer: Press CTRL to enable snapping

The map also includes a scale bar for 60 feet and a coordinate display at the bottom left: `-92.977 45.062 Degrees`. The bottom of the browser window shows a taskbar with several open files: "Section_307_ZO....docx", "Whiting-06302020....JPG", and "Whiting-06302020....JPG". The Esri logo is visible in the bottom right corner of the application interface.

9. SHOWING CABIN SIZE CALCULATION [VARIANCE, PERMIT RELATED]:

The screenshot displays a web browser window with the URL `wcmn.maps.arcgis.com/apps/webappviewer/index.html?id=5c2fe2b598e744afbc07cc0550162984`. The application is titled "Parcel Viewer - Quick Access" and is for "Washington County, MN". The map shows a parcel with a grey cabin footprint outlined in blue. The parcel boundaries are marked with orange lines and labeled with dimensions: 239.9, 230.5, 221.1, 50, and 30. A "Measurement" popup window is open, showing the result "1,017.7 Sq Feet (US)" and a "Clear" button. The application interface includes a search bar, navigation tools, and a scale bar (20ft). The bottom of the browser shows several open tabs and a taskbar.

10. SHOWING GARAGE SIZE CALCULATION [VARIANCE, PERMIT RELATED]:

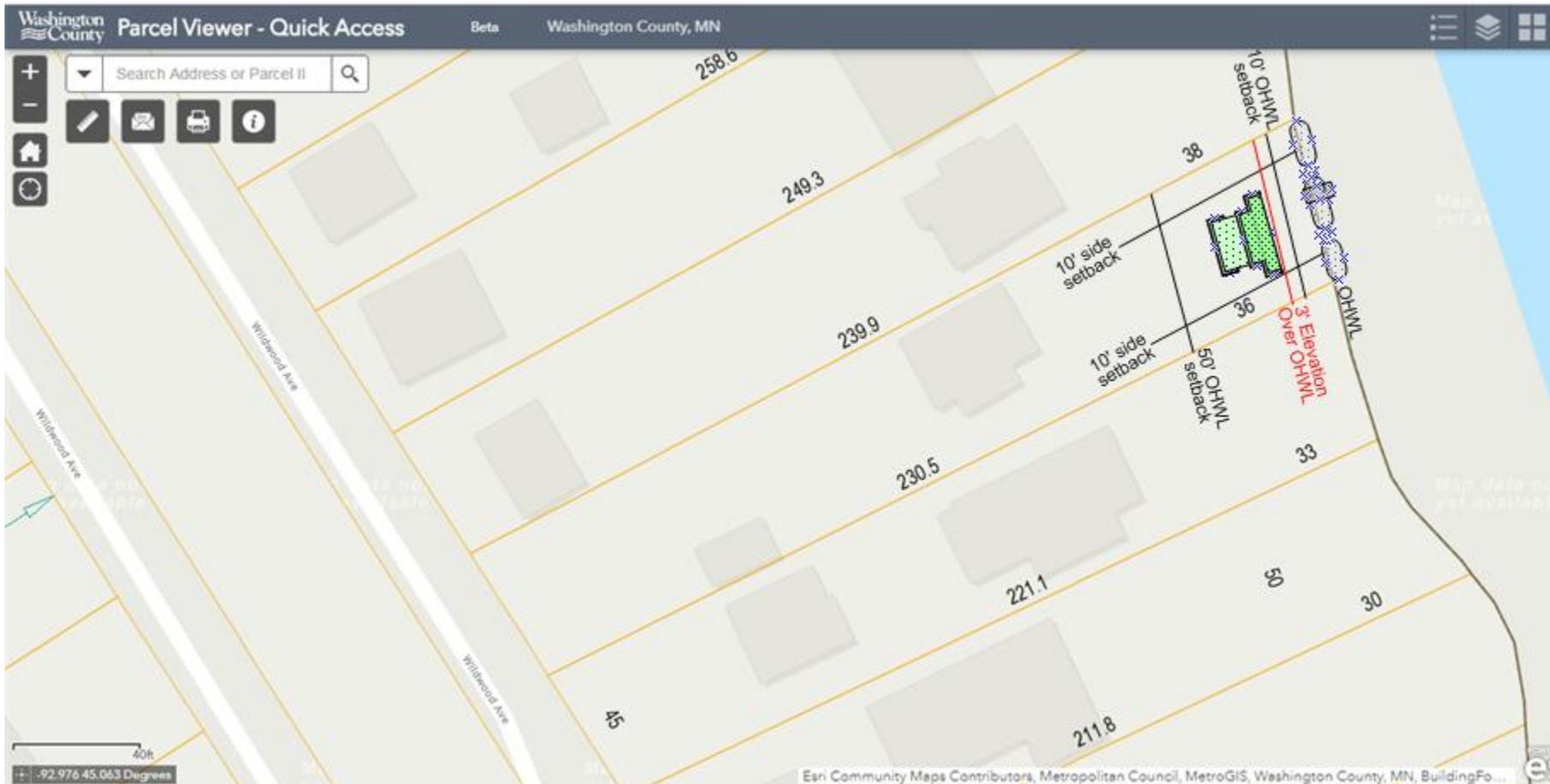
The screenshot displays a web browser window with the URL `wcmn.maps.arcgis.com/apps/webappviewer/index.html?id=5c2fe2b598e744afbc07cc0550162984`. The application is titled "Washington County Parcel Viewer - Quick Access" and is in "Beta" mode for "Washington County, MN". The interface includes a search bar, navigation tools, and a map showing a parcel with a blue outline. The parcel's dimensions are labeled as 239.9, 230.5, and 221.1. A measurement window is open, showing a result of 329.9 Sq Feet (US) with a "Clear" button. The map also shows a scale bar for 20ft and a coordinate of -92.97745.062 Degrees. The bottom of the browser shows several open tabs and a taskbar.

11. SHOWING LOCATION OF PROPOSED RETAINING WALLS WITH ELEVATIONS [VARIANCE RELATED]:



12. SHOWING PLOT PLAN [VARIANCE, PERMIT RELATED]:

- Shows existing structures and proposed project items and setbacks. Also shows existing structures on adjacent lots



B. REFERENCE EMAILS / CONTENTS

1. FROM TOBIN LAY (CITY ADMINISTRATOR)

Contents of 7/30/2020 email from Tobin Lay (Birchwood City Administrator) to Brock Harmon:

Please see the response below from the City Planner. Accordingly, you will need to file (first) for a Variance Request (see attached form). The Codes you'd be seeking a variance from are at least the following:

- 300.020.1 – Accessory Structure dimensions
- 302.020.1, 2, 4.c – Setback requirements
- 302.020.5 – Structures in wetlands
- 302.030 – High water elevations
- 302.040.2 – Storage shed dimensions
- 302.045 – Structure height limitations

Additional Codes that you may need to request a variance – depending on your plan – could include the following:

- 302.050 – Impervious Surface (only if your lot will meet or exceed 25% impervious for the entire lot upon completion of your project)
- 302.055.2.d.2, 5, 7 (only if you need to clear cut trees or remove vegetation)
- 302.070.5 – Retaining Wall Height (only if any part of the retaining wall will exceed 4 ft tall)
- 302.080 – Stairs to the lake (only if you plan to put stairs in to the lake and your plan does not confirm with this Section). Be sure to review 302.080 to make sure your plan conforms with those requirements. Otherwise, you may want to include that in your variance request as well.

You could alter your plans to meet all of these Code requirements but you would still have to obtain a variance permit from the City Council in order to build the structure within the 50 ft Lake Setback.

Please complete and return to me the attached variance request form, \$300 check to the City (variance request fee – non-refundable), and supplemental documentation. Include:

- a site plan of your lot drawn to scale with existing and proposed structures on your lot, existing structures on your abutting neighbors' lots, along with setback measurements
- The legal description for your lot.
- Evidence that your plan is in compliance with RCWD, WBLCD, and DNR (include the email responses from them saying that they do not require a permit)

In order to be heard at the Aug 27th Planning Commission meeting, I'll need your completed packet no later than Aug 6th.

If the Planning Commission determines that your packet is complete, they will hear your request as planned – otherwise, they will specify what additional info they require and table the variance request until the additional info has been supplied.

After the Planning Commission reviews your request, it will be heard at the following City Council meeting. Those meetings are the 2nd Tue of each month.

If the City Council approves your request, then you would record the variance permit with the Washington County Recorder and return a copy of that recording to the City along with your Building Permit Application (attached). There will be no need for a Conditional Use Permit.

You can find all of the City Codes here: <https://www.cityofbirchwood.com/codes>

And all of the permit forms here: <https://www.cityofbirchwood.com/permits>

2. FROM STEVEN THATCHER (CITY PLANNER)

Contents of 7/30/2020 email from Steven Thatcher (City Planner) to Tobin Lay (Birchwood City Administrator) regarding review of Harmon proposed Shoreline Reinforcement and Accessory Structure:

Thatcher Engineering, Inc. (TEI) understands the applicant’s current plan (Plan) includes the following:

1. Reinforcement of the shoreline to minimize further erosion due to the high water.
 - a. The applicant provided a photo that shows Rip Rap (large rocks) and concrete steps from the top of the Rip Rap down to and into White Bear Lake (WBL).
 - b. It’s unclear whether or not construction of concrete steps from the top of the Rip Rap down to and into WBL is included in the Plan.
2. Construct a detached storage shed structure (Shed) and a couple of approximately 4 foot high retaining walls (Walls) to manage off season dock equipment storage on the hill that sits between the cabin and the water.
 - a. Shed:
 - i. Will be 234 square feet (13 feet x 18 feet) with no footings.
 - ii. The floor plan shows the following:
 1. A LEG frame and float storage shed (Shed)
 2. Waist high pervious pavers.
 3. Ground level pervious decking (Dock Section Storage) that will be 10 feet wide by 24 feet long.
 4. Upper block retaining wall.
 5. Lower block retaining wall.
 6. A legend that states: “2x6 wall”
 - a. It’s unclear what type of material is proposed for the 2x6 wall.
 - iii. Will be within the City Code’s 50 foot WBL setback.
 - iv. It’s unclear whether or not the Shed will have a roof.
 - b. Walls:
 - i. It’s unclear whether or not the Walls function as part of three (3) of the walls of the Shed.
 1. Typically the walls of a LEG frame and float storage shed cannot support the lateral forces of soil on it.
 - ii. It’s unclear how high the wall of the Shed that is furthest away from WBL will be above the existing or proposed ground surface.
 - iii. No concrete footings.
3. Landscaping that slopes toward WBL.

The City Code states the following:

1. Section 300.020 DEFINITIONS. For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:
 - a. “1. Accessory Structure. A non-habitable one-story detached accessory structures (e.g., tool sheds, storage sheds) provided the floor area does not exceed 144 square feet and a maximum wall height of 12 feet measured from the ground to the top of the top plate.”
 - b. “20. Garage. A building or portion of a building used by the tenants of the building on the premises which is designed primarily for the storage of motor vehicles. A detached garage is an accessory structure.”
 - c. “53. Structure. Anything which is built, constructed or erected: an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character including, but not limited to decks, buildings, cabins, manufactured homes, factories, sheds, screen porches, gazebos, platforms, shelters, pergolas, pools, whirlpools, detached garages, car ports, lean-tos, greenhouses, ice fishing houses, towers, and other similar items, except aerial

or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, poles and other supporting facilities.”

2. Section 301.065 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.)”
3. Section 301.070 CONDITIONAL USES. “Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. CONDITIONAL USE PERMITS. 1. A Conditional Use Permit shall be required for the following projects: a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.”
 - a. The note at end of Section 301.070 states: “NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.”
4. Section 301.080 Zoning Permit. “If a Building or Conditional Use Permit is applied for and issued, the applicant is not required to apply for a Zoning Permit.
5. Section 302.020. STRUCTURE LOCATION REQUIREMENTS
 - a. 2. MINIMUM SETBACK REQUIREMENTS:
 - i. The minimum setback requirement from the Ordinary High Water Level of White Bear Lake (WBL) to Fences, Driveways, Walkways and All Other Structures is 50 feet.
 - b. 4. SETBACK REQUIREMENTS EXCEPTIONS.
 - i. “Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.”
6. Section 302.040 STRUCTURE REQUIREMENTS.
 - a. “2. The maximum square footage of a storage shed is 144 square feet. No person shall place automobiles, vans, or trucks in a storage shed.”
7. Section 302.045 STRUCTURAL HEIGHT RESTRICTIONS.
 - a. Structure Height Limitation of a detached storage shed is 12 feet.
8. Section 302.050 IMPERVIOUS SURFACES.
 - a. “1. Limitation. Impervious surface coverage of lots shall not exceed twenty-five (25) percent of the lot area unless the applicant satisfies the following conditions to obtain a variance:”
9. Section 302.070 CITY FENCE ORDINANCE.
 - a. “5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.”
10. Section 302.080 STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS.
 - a. “A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3.”

TEI's analysis is as follows:

1. The Shed is not a classified as a Garage by City Code because the Shed is not designed primarily for the storage of motor vehicles. Therefore, the Shed is an Accessory Structure.
 2. A Variance application is required because of the following:
 - a. The Plan includes work and retaining walls within 50 feet of the Ordinary High Water Level of WBL.
 - b. The Shed is 234 square feet which is larger than the maximum square footage of a storage shed which is 144 square feet.
 - c. The Shed height may not be higher than the structure height limitation of a detached storage shed which is 12 feet.
 3. Additional information is needed from the applicant to determine whether or not:
 - a. The impervious surface coverage of the lot after construction meets City Code requirements which is that the impervious surface shall not exceed twenty-five (25) percent of the lot area.
 - b. The Plan meets City Code requirements including Section 302.055 LAND DISTURBANCE ACTIVITY STANDARDS. and Section 302.080 STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS.
-

3. FROM STEVEN THATCHER (CITY ENGINEER)

Contents of 09/03/2020 email from Steven Thatcher (City Engineer) to Brock Harmon:

Brock,

Thank you for the email.

You requested that Thatcher Engineering, Inc. (TEI) respond to Items #2 and #3 in the email.

Item #2: TEI understands the following: Within the lower retaining wall area (10 foot x 24 foot) you are planning a deck (Deck) that consists of the following:

1. Ground-level brown-treated deck-boards separated to enable drainage.
2. Six (6) inch deep gravel base using 3/4" angular clear rock for drainage beneath the Deck.

Item #2 Questions: TEI understands that your questions are as follows:

1. What separation is required distance between the Deck boards (1/8", 1/4")?
2. Do you need to conduct permeability calculations for the Deck area?
3. If Deck area needs permeability calculations, can I supply the calculations?

TEI's answers to Item #2 Questions:

1. The City Code does not have a required distance between the Deck boards.
2. It the opinion of TEI that you do not need to conduct a permeability calculations for the Deck for this variance application because the impervious surface coverage of the lot after the proposed work is completed will likely not exceed twenty-five (25) percent of the lot area.

Item #3: TEI understands the following: You are planning two (2) stairs from the ground surface through the Rip-Rap to White Bear Lake that consist of the following:

1. Each stair will have 36" wide steps.
2. Each stair will most likely use three (3) steps. However, each stair may have a maximum of four (4) steps (depending on the final size of the steps).
3. The lowest step will have four (4) earth anchors (one under each corner).
4. The remaining steps would have two (2) earth anchors (one under each of the two rear corners, as the front of the step would rest on the step below).
5. Stone looking manufactured step.

Item #3 Questions: TEI understands that your questions are as follows:

1. Does the Earth Anchor meet City Code requirements?
2. If the Earth Anchor does not meet City Code requirements, identify what would be needed.
3. Let me know what additional information you need from me (if any).

TEI's answers to Item #3 Questions:

1. It is the opinion of TEI that the proposed Earth Anchor does not meet the requirement of City Code 302.080.2.f "Stairways shall be anchored and supported with pilings or footings."
2. Several local companies have experience installing Helical Screw Piles (example attached). It is the opinion of TEI that Helical Screw Piles installed by an experienced contractor meet the "supported with pilings" part of City Code 302.080.2.f "Stairways shall be anchored and supported with pilings or footings." However, more information is needed to show how the stairways will be anchored to the Helical Screw Piles. You may need an Architect or Professional Engineer to provide that information.

Also, it is TEI's opinion that your proposed Deck including angular clear rock for drainage beneath the Deck is a pervious pavement system and therefore must be 25 feet from the ordinary high water level (OHWL) because City Code 302.050 Section 1e states: "No pervious pavement system is permitted in the Shore Impact Zone. (The Shore Impact Zone is the land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the required structure setback. The required structure setback from the OHWL in the City of Birchwood Village is 50 feet, and the Shore Impact Zone is 25 feet.)"

Please let me know if you want further information.

Thanks,

Steve

Steven Thatcher, PE
Thatcher Engineering Inc.

6201 Creek Valley Road

Edina, MN 55439

Phone: 612-781-2188 Cell: 612-867-7234 Fax: 612-781-2188 Web: www.thatcher-eng.com

4. JULY 2020 XCHG WITH RICE CREEK WATERSHED DISTRICT (RCWD)

Contents of July 2020 email exchange between Rice Creek Watershed District (RCWD) and Brock Harmon:

Brock Harmon <brock.harmon7@gmail.com>

Fri, Jul 10, 1:37 PM

to Kelsey, Nicholas, stephan@shorelinelandscaping.net

Hi Kelsey --

Thanks for your call today regarding my plans for 251 Wildwood Avenue, City of Birchwood Village, MN (on the south shore of WBL).

Per your request, I have attached the following:

- > Photo of rip-rap concept for shoreline (50' shoreline)
- > 'Floorplan' of retaining walls / shed
- > 3D Site-Drawing with cut-aways

I estimate the total surface area of the land that is disturbed to be about 600 square feet.

Please let me know if you have other questions/comments. I look forward to your team's response to my plans.

Thank you.

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com
BJHarmon, Inc.

3 Attachments



Kelsey White

Tue, Jul 14,
7:15 PM

to me, stephan@shorelinelandscaping.net

Hello Brock,

Thank you for providing the details for the proposed rip rap, retaining wall, and shed Based on your description of the project on your property at 251 Wildwood Avenue in Birchwood Village, MN.

It appears that an area less than 10,000 ft² will be disturbed. Additionally, no wetland impacts or floodplain fill are proposed; therefore, a RCWD permit is not required.

Please note that this decision does not indemnify you from enforcement action if the scope of the project changes, or a violation of District Rules or other laws is found to have occurred as a result of this project. Please take care to ensure that no sediments are deposited down gradient of the site, and that any soils disturbed during construction are stabilized within 14 days of project completion. Permits may be required from other agencies including, but not limited to, the City of Birchwood Village and the Minnesota Department of Natural Resources.

Thank you,

Kelsey White
Permit Review Technician
Rice Creek Watershed District
4325 Pheasant Ridge Dr. NE, #611
Blaine, MN 55449-4539
Ph: 763-398-3084
kwhite@ricecreek.org

[Please consider following the RCWD on Facebook.](#)



Brock Harmon <brock.harmon7@gmail.com>

Tue, Jul 14,
8:38 PM

to Nicholas, Tobin, Kelsey, stephan@shorelinelandscaping.net

Hi Kelsey --

Thank you for your project review and feedback

- 1) Yes, the plan is for less than 10,000 sq ft to be disturbed, and there are no wetland impacts or floodplain fill proposed. Thank you for identifying that an RCWD permit is therefore not required.
- 2) The scope of the project is not expected to change. I will keep you informed if the scope were to change. .
- 3) I am including my contractor and the City of Birchwood Village in this email chain for their awareness of your feedback.
- 4) The MN DNR is supportive of the proposed rip-rap without an individual DNR permit. The other portion of the project is outside of their area of concern.
- 5) I am also in contact with the WBLCD. Upon hearing back from that group, I will contact the City of Birchwood Village with a summary of these findings to determine next steps with the City.

Thank you for your support!

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com
BJHarmon, Inc.

5. JULY 2020 XCHG WITH MINNESOTA DEPARTMENT OF NATURAL RESOURCES (MN DNR)

Contents of July 2020 email exchange between Minnesota Department of Natural Resources (MN DNR) and Brock Harmon:

Inquiry re: preserving White Bear Lake shoreline and enhancing property

Inbox



Brock Harmon <brock.harmon7@gmail.com>

Thu, Jul 9, 2:41 PM

to MN-DNR

Hi --

My family has a cabin in the City of Birchwood Village on the south shore of WBL. With the rising water level (a good thing vs years past), my shoreline is eroding and I have less room for off-season dock equipment.

With a contractor, I have created a plan to reinforce the shoreline and to place a retaining wall / storage shed between the cabin and the shoreline. Tobin, the City Administrator for the City of Birchwood Village, instructed that I contact your group, the Rice Creek Watershed District, and the White Bear Lake Water Conservation District in advance of completing a permit request with Birchwood.

Please let me know my next steps for understanding your (MN-DNR) process to review my plan and determine actions to take.

You may reach me at:

Email: brock.harmon7@gmail.com

Phone: 651-483-5854 (I am presently working from home, so please leave a voicemail if you cannot get through to me.)

Thank you very much!

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com

BJHarmon, Inc.



MN_Info (DNR)

Sun, Jul 12,
12:07 PM

to me

Good Afternoon Brock,

Thank you for contacting the Minnesota DNR.

Your e-mail has been forwarded to our Hydrologist in your area to respond. Our staff are often out of the office for extended periods of time while they are doing field work. They may not be available to answer your question right away. If you have not heard from them within 48 hours (excluding weekends & holidays), please contact us again either via email or by calling 888-646-6367 M – F 8:00 am – 6:00 pm and on Saturday 8:00 am – 4:30 pm.

Have a nice day!

Carly

Information Consultant | Office of Communication & Outreach

Minnesota Department of Natural Resources

500 Lafayette Rd

St. Paul, MN, 55155

Phone: 888-646-6367

Email: Info.dnr@state.mn.us

From: Brock Harmon [mailto:brock.harmon7@gmail.com]

Sent: Thursday, July 9, 2020 2:42 PM

To: MN_Info (DNR) <info.dnr@state.mn.us>

Subject: Inquiry re: preserving White Bear Lake shoreline and enhancing property

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.



Brock Harmon <brock.harmon7@gmail.com>

Mon, Jul 13,
7:49 AM

to MN_Info

Good morning Carly --

Thank you for your note. I look forward to connecting with the appropriate member of your staff to review my concerns and plans.

Thanks!

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com

BJHarmon, Inc.



Gleason, John (DNR) <john.gleason@state.mn.us>

Mon, Jul 13,
9:46 AM

to me, MN_Info

Mr. Harmon:

Thank you for your inquiry. DNR regulates the lake, beginning at the Ordinary High Water level which for White Bear lake is 924.89 ft (datum MSL 1912.) So, any work at this elevation or below is subject to DNR regulation; above that elevation it is regulated by the City. (The watershed district rules may apply to areas both above and below the OHW). So If the retaining wall is above the OHW, then no DNR permit is required. The state rules regarding retaining walls make it difficult to get a DNR permit so I recommend it be placed above the OHW which sounds like the plan based on your description. If you do want to place it at or below the OHW, let me know and I can provide more information on requirements.

If you are considering riprap, here is a link to DNR brochure that describes the state rules and criteria in which no DNR permit is required. The primary prerequisite is that the shoreline must be actively eroding. https://files.dnr.state.mn.us/publications/waters/shoreline_alterations_riprap.pdf

There is a real-time lake level gage on White Bear Lake here https://www.dnr.state.mn.us/waters/csg/site_report.html?mode=getsitereport&site=82016700. The most current water level recording is 925.14 ft which is 0.25 ft above the OHW. So you or your contractor may find the gage information helpful in determining if the project location relative the OHW.

Regards,

Jack

John (Jack) Gleason

HARMON – 251 WILDWOOD AVENUE –PERMIT & VARIANCE REQUEST SUPPORT – SEPTEMBER, 2020

South District Hydrologist Supervisor | Central Region | Ecological and Water Resources

Minnesota Department of Natural Resources

1200 Warner Rd

St. Paul, MN 55106

Phone: 651-259-5753

Email: john.gleason@state.mn.us

From: Brock Harmon <brock.harmon7@gmail.com>

Sent: Thursday, July 9, 2020 2:42 PM

To: MN_Info (DNR) <info.dnr@state.mn.us>

Subject: Inquiry re: preserving White Bear Lake shoreline and enhancing property

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Hi --



Brock Harmon <brock.harmon7@gmail.com>

Mon, Jul 13,
10:43 AM

to Tobin, stephan@shorelinelandscaping.net, John, MN_Info

Hi John --

Thank you for your feedback.

1) The retaining wall is to be above the OHWL ==> therefore this is outside of DNR jurisdiction.

2) The shoreline is actively eroding. The plan is to use riprap (no retaining wall) to stabilize the shoreline.

> The documentation at the link you provided is helpful and is to be followed, so that no individual DNR permit is needed.

3) I am including my contractor and the City of Birchwood Village in this email chain for their awareness of your feedback.

Thank you!

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com

BJHarmon, Inc.

6. JULY 2020 XCHG WITH WHITE BEAR LAKE CONSERVATION DISTRICT (WBLCD)

Contents of July 2020 email exchange between White Bear Lake Conservation District (WBLCD) and Brock Harmon:

Brock Harmon <brock.harmon7@gmail.com>

Jul 15, 2020,
6:04 PM

to Scott, White

Hi Kim -- Thanks for the note to talk to Scott.

Hi Scott --

Regarding this project, I have contacted the DNR and also Rice Creek Watershed District. They have indicated that I do not need a permit from either of them.

- DNR
- 1) Along the shoreline will be rip-rap (no retaining wall on the shoreline), per the DNR direction for installing rip-rap without an individual permit
 - 2) The retaining wall / shed is up away from the water, so is not part of the DNR area of concern

- RCWD
- 1) Only a small amount of land (~600 sq ft) is expected to be disturbed for the retaining wall / shed, and there are no wetland impacts or floodplain fill proposed.
 - 2) Per the RCWD, a permit from them is therefore not required.

I am attaching three items that may help clarify my plan for your review:

- > Photo of rip-rap concept for shoreline (50' shoreline)
- > 'Floorplan' of retaining walls / shed
- > 3D Site-Drawing with cut-aways

I am attempting to work with the existing/natural rolling slope for locating the retaining walls and minimizing the amount of soil to move. The address = 251 Wildwood Ave in Birchwood.

Scott, please confirm your receipt of this email and let me know what further information you may need for the WBLCD review of this project plan.

Thank you!

-- Brock
email: brock.harmon7@gmail.com
phone: 651-483-5854 [land-line, has answering machine if I am unable to get to the phone, no texting (sorry)]

Brock Harmon
email: brock.harmon7@gmail.com
BJHarmon, Inc.

3 Attachments



Scott Costello

Jul 15, 2020,
6:32 PM

to me, White

Hi Brock,

The WBLCD has no jurisdiction here. We cover only what can go in the water, like docks and boats. If you have clearance from the DNR and RCWD, you are good to go to Birchwood for whatever they require.

HARMON – 251 WILDWOOD AVENUE –PERMIT & VARIANCE REQUEST SUPPORT – SEPTEMBER, 2020

I have a friend who is installing riprap in the Snyder Bay Area of the lake, and he told me he did get a DNR permit. But if you asked them and they said you don't need one, go with that.

Be glad you don't live in the City of White Bear Lake—they have gotten very fussy about shoreline and retaining walls near the lake.

Good luck with your project!

Sent from Scott Costello's iPhone

On Jul 15, 2020, at 6:05 PM, Brock Harmon <brock.harmon7@gmail.com> wrote:

<IMG_4640.jpeg>

<Harmon Floorplan 07102020.pdf>

<Harmon - Shed Design Pic 1_2.jpg>



Brock Harmon <brock.harmon7@gmail.com>

Jul 15, 2020,
9:12 PM

to Tobin, stephan@shorelinelandscaping.net, Scott, White

Hi Scott --

Thank you very much for your review of my project and confirmation that WBLCD does not have jurisdiction on this project.

I am cc'ing Tobin at the City of Birchwood Village, along with my contractor, so that they are in the loop with your feedback too.

Thanks for your support!

-- Brock

Brock Harmon
email: brock.harmon7@gmail.com
BJHarmon, Inc.

C. CONDITIONAL USE PERMIT REQUEST -- DETAILS

1. APPLICANTS:

- 1) Name: Brock Harmon (Son of Trude Harmon)
- 2) Address: 251 Wildwood Avenue, City of Birchwood Village, MN 55110
- 3) Home Phone (Brock) – 651-483-5854

2. ADDRESS OF PROPERTY IF DIFFERENT FROM ABOVE

- 1) SAME

3. APPLICANTS' INTEREST IN THE PROPERTY

- 1) Continuation of five generations of family ownership and use, since early 1900s
- 2) Goal to preserve lakefront that is eroding from higher water levels
- 3) Goal to enable full and reasonable enjoyment of lake property

4. PERMIT FOR:

- 1) Land Disturbance:
 1. See 'Description of Use'

5. AREA/VOLUME/CAPACITY/TYPE OF USE:

- 1) Install Rip-Rap with Steps for Shoreline:
 1. See 'Description of Use'

6. DIMENSIONS:

- 1) Sq. Feet: 300 sq. ft.
- 2) Length: 50 foot length of shoreline
- 3) Width: 6 foot width at shoreline, crossing OHWL per MN-DNR guidelines
- 4) Height: From 6" up to 18"

7. LEGAL SITE LOCATION:

- 1) Description: Lot 10, Block 5, Lakewood Park First Division, Washington County, Minnesota
- 2) PIN: 30.030.21.21.0036
- 3) Proximity to Wetlands or Lakeshore: At the shoreline of White Bear Lake

8. SETBACKS:

- 1) Front Yard – n/a to project
- 2) Rear Yard – OHWL – 0 feet for Rip-Rap and Steps
- 3) Side Yard (1) – 10 feet for Steps, 0 feet for Rip-Rap
- 4) Side Yard (2) -- 10 feet for Steps, n/a for Rip-Rap

9. PROPOSED PERCENT IMPERVIOUS SURFACE OF THE LOT (UPON COMPLETION):

- 1) 10.6% [see Variance Section, page E-3 for calculation details]:

10. DESCRIPTION OF USE:

1) **Rip-Rap with Steps for Shoreline**

- a. Rip-Rap installation to include stabilizing/filter fabric and 6"-18" clean field stone along 50' shoreline
 - i. We have already lost 2-3 feet of water's edge bank due to higher lake levels and wave action
 - ii. Follow MN-DNR guidelines for addressing stabilization of actively eroding shoreline
- b. Two sets of steps (to obtain safe access between water and shore amongst Rip-Rap)
 - i. Install 2 sets of 3 – 6" tall risers of RockStep Units through the rock shoreline.
 - ii. Units are preformed, 6" tall by 36-38" wide and 18-20" deep
 - iii. Steps to be anchored and supported through installation of helical screw pilings as suggested by Steven Thatcher, City Engineer

2) **Attach Scaled Site Plan**

- a. See Diagrams Section, Page A-1, lower portion of diagram

3) **See Diagrams Section [A] for additional references**

D. ZONING PERMIT REQUEST -- DETAILS

1. APPLICANTS:

- 1) Project Address: 251 Wildwood Avenue, City of Birchwood Village, MN 55110
- 2) Permit Applicant:
 - a. Name: Brock Harmon (Son of Trude Harmon)
 - b. Home Phone: (Brock) 651-483-5854
- 3) Contractor
 - a. License No: TBD
 - b. Expiration Date: TBD
- 4) Homeowner (if different):
 - a. Name: Same
 - b. Home Phone: Same

2. PROJECT WORK

- 1) TYPE: Installation of Rip-Rap and Steps at Shoreline
- 2) VALUATION: ~ \$ 7,000.

3. DIMENSIONS:

- 1) Sq. Feet: 300 sq. ft.
- 2) Length: 50 foot length of shoreline
- 3) Width: 6 foot width at shoreline, crossing OHWL per MN-DNR guidelines
- 4) Height: From 6" up to 18"

4. LEGAL SITE LOCATION:

- 1) Description: Lot 10, Block 5, Lakewood Park First Division, Washington County, Minnesota
- 2) PIN: 30.030.21.21.0036
- 3) Proximity to Wetlands or Lakeshore: At the shoreline of White Bear Lake

5. SETBACKS:

- 1) Front Yard – n/a to project
- 2) Rear Yard – OHWL – 0 feet for Rip-Rap and Steps
- 3) Side Yard (1) – 10 feet for Steps, 0 feet for Rip-Rap
- 4) Side Yard (2) -- 10 feet for Steps, n/a for Rip-Rap

6. PROPOSED PERCENT IMPERVIOUS SURFACE OF THE LOT (UPON COMPLETION):

- 1) 10.6% [see Variance Section, page E-3 for calculation details]:

7. REMOVAL OF TREES AND/OR VEGETATION:

- 1) No – The Rip-Rap and Steps will be along the shoreline

8. POTENTIAL FOR DAMAGE TO CITY PROPERTY:

- 1) No – Work is being performed at the 'rear' of the property (lakeside).

9. DESCRIPTION OF WORK (including the intended use and occupancy of the proposed work):

1) **Rip-Rap with Steps for Shoreline**

- a. Rip-Rap installation to include stabilizing/filter fabric and 6"-18" clean field stone along 50' shoreline
 - iii. We have already lost 2-3 feet of water's edge bank due to higher lake levels and wave action
 - iv. Follow MN-DNR guidelines for addressing stabilization of actively eroding shoreline
- b. Two sets of steps (to obtain safe access between water and shore amongst Rip-Rap)
 - iv. Install 2 sets of 3 – 6" tall risers of RockStep Units through the rock shoreline.
 - v. Units are preformed, 6" tall by 36-38" wide and 18-20" deep
 - vi. Steps to be anchored and supported through installation of helical screw pilings as suggested by Steven Thatcher, City Engineer

2) **Attach Scaled Site Plan**

- a. See Diagrams Section, Page A-1, lower portion of diagram

3) **See Diagrams Section [A] for additional references**

E. VARIANCE REQUEST – DETAILS – REVISED FROM AUG 2020 DOC, AS PLAN HAS CHANGED

1. APPLICANTS:

- 1) Name: Brock Harmon (Son of Trude Harmon)
- 2) Address: 251 Wildwood Avenue, City of Birchwood Village, MN 55110
- 3) Home Phone (Brock) – 651-483-5854

2. ADDRESS OF PROPERTY IF DIFFERENT FROM ABOVE

- 1) SAME

3. APPLICANTS’ INTEREST IN THE PROPERTY

- 1) Continuation of five generations of family ownership and use, since early 1900s
- 2) Goal to enable reasonable usage of ‘hill area’ for dock materials, as higher water levels have reduced or eliminated previously useable areas.
- 3) Goal to consolidate and improve functionality, safety and appearance of haphazard storage on hill that slopes down to WBL
- 4) Goal to enable full and reasonable enjoyment of lake property

4. SPECIFIC CODE PROVISIONS FROM WHICH VARIANCE IS REQUESTED:

- 1) ITEMS CAUSING VARIANCE REQUEST:
 1. The Plan includes retaining walls within 50 feet of the Ordinary High Water Level of WBL
- 2) LIST OF CITY CODES CONTAINING SPECIFIC PROVISIONS RELATED TO THE VARIANCE REQUEST:
[See City Codes section for details of all codes related to the Project itself]
 1. City Code 302.020 Section 4c.
 - a. Requesting a variance from the requirement that states: “Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.”

5. DESCRIPTION OF PROPOSAL THAT REQUIRES A VARIANCE:

- 1) **Retaining Wall** and graded flat ground to store heavy dock related materials.
 - a. Two 4’ high retaining walls that follow the natural terracing of the land that is within the 50’ setback from White Bear Lake.
 - b. Retaining Walls are to be located more than 10 feet from the OHWM.
 - c. Retaining Walls are to be located more than 3 feet elevation above OHWM.
 - d. Retaining Walls are to be set into hill to minimize visual impact.
 - i. Top of Retaining Walls to be only marginally higher than the ground on the uphill side
 - e. Storage to include: Dock Sections, Dock Leg Frames, Boat Lift Pads, Floats
 - f. Provides for open space on shore for Boat Lift off-season storage
 - g. Designed to minimize runoff (see section 9)
 - h. Landscaping within an area that slopes towards WBL
 - i. WBL is not considered a wetland

6. TYPE OF PROJECT:

- 1) Landscaping – Addition of maximum 4’ high Retaining Walls

7. TYPE OF STRUCTURE INVOLVED:

- 1) Grading/Filling – Retaining Walls

8. USING THE CRITERIA FROM THE CITY CODE FOR A VARIANCE, EXPLAIN WHY A VARIANCE IS JUSTIFIED IN THIS SITUATION AND DESCRIBE WHAT “PRACTICAL DIFFICULTIES” EXIST:

- 1) Subdivision1 – Variance Justification for this Situation
 - a. Consistent with the Comprehensive Plan of the City of Birchwood to promote public health, safety and welfare, by creating flat spaces into hill for safer storage of heavy dock materials
- 2) Subdivision2 – Practical Difficulties that exist
 - a. Special Conditions or Circumstances exist which are peculiar to the land, structure or building involved
 - i. Close location of hill to shore causing hardship for managing dock materials on slope of hill.
 - b. Condition which results in the Variance Request is not created by the applicant’s action or design solution
 - i. Heavy dock materials need to be relatively close to the water (within the 50’ setback) and are unsafe when stacked very high and/or on sloped surfaces.
 - c. No increase in the amount of water draining from the property
 - i. Graded flat ground and natural vegetation within the retaining walls to promote water absorption and reduce potential existing runoff due to steep bank
 - ii. Retaining wall perimeter drain tile to direct water (that may assign a load to the wall) to the flat ground area below the retaining wall
 - d. Project would not impair an adequate supply of light and air to adjacent property, nor unreasonably diminish or impair established property values within the surrounding area, nor impair the public health, safety or welfare of the residents of the city.
 - i. This project is set into the hillside, to follow the natural terracing of the hill and minimize visual impact
 - ii. This change will increase safety and may raise property values through the reduction of haphazard storage of dock materials on the hillside today

9. DESCRIBE ANY MEASURES THE APPLICANT IS PROPOSING TO UNDERTAKE IF THE VARIANCE IS GRANTED, INCLUDING MEASURES TO DECREASE THE AMOUNT OF WATER DRAINING FROM THE PROPERTY:

- 1) Create graded flat ground -- natural vegetation within the retaining walls promote water absorption and reduce potential existing runoff due to steep bank.

10. DESCRIBE ANY ALTERNATIVES THE APPLICANT CONSIDERED (IF ANY) THAT DO NOT REQUIRE A VARIANCE:

- 1) None – The Dock materials need to be kept within the 50’ shoreline setback to facilitate annual installation and removal. As the (fortunate) water level of WBL has risen, there is less area available for Dock materials.

11. CAN AN EMERGENCY VEHICLE (FIRE TRUCK OR AMBULANCE) ACCESS ALL STRUCTURES ON THE PROPERTY AFTER THE PROSED CHANGE?:

- 1) YES.

12. DOES THE PROPOSED CHANGE BRING ANY OTHER NONCONFORMING USE INTO CONFORMITY WITH THEH CITY BUILDING CODE? IF YES, EXPLAIN:

- 1) NO.

13. ARE THERE OTHER GOVERNMENTAL REGULATIONS THAT APPLY TO THE PROPOSED ACTION, INCLUDING REQUIREMENTS OF THE RICE CREEK WATERSHED DISTRICT?

1) YES

IF YES, PLEASE IDENTIFY THE REGULATIONS AND ATTACH EVIDENCE DEMONSTRATING COMPLIANCE:

1) Rice Creek Watershed District (RCWD):

a. Regulation/Response Summary:

i. “It appears that an area less than 10,000 ft2 will be disturbed. Additionally, no wetland impacts or floodplain fill are proposed; therefore, **a RCWD permit is not required.**”

b. See Email chain for further detail if needed (below in Section C, Sub-Section 3)

2) Minnesota Department of Natural Resources (MN DNR):

a. Regulation/Response Summary:

i. “DNR regulates the lake, beginning at the Ordinary High Water level which for White Bear lake is 924.89 ft (datum MSL 1912.) So, any work at this elevation or below is subject to DNR regulation; above that elevation it is regulated by the City. (The watershed district rules may apply to areas both above and below the OHW). So **if the retaining wall is above the OHW, then no DNR permit is required.** The state rules regarding retaining walls make it difficult to get a DNR permit so I recommend it be placed above the OHW which sounds like the plan based on your description.”

ii. “If you are considering riprap, here is a link to DNR brochure that describes the state rules and criteria in which **no DNR permit is required.** The primary prerequisite is that the shoreline must be actively eroding. https://files.dnr.state.mn.us/publications/waters/shoreline_alterations_riprap.pdf”

b. See Email chain for further detail if needed (below in Section C, Sub-Section 4)

3) White Bear Lake Conservation District (WBLCD):

a. Regulation/Response Summary:

i. “**The WBLCD has no jurisdiction here.** We cover only what can go in the water, like docks and boats. If you have clearance from the DNR and RCWD, you are good to go to Birchwood for whatever they require.”

b. See Email chain for further detail if needed (below in Section C, Sub-Section 5)

14. PLEASE PROVIDE APPLICABLE INFORMATION IN THE FOLLOWING TABLE:

	EXISTING	PROPOSED	CHANGE
1) Total Square Footage of the Lot	13,294.3	13,294.3	0
2) Maximum Impervious Surface (25% of #1)	3,323.6	3,323.6	0
3) Roof Surface (sq ft)	Cabin 1,017.7 Garage 329.9	Cabin 1,017.7 Garage 329.9	0 0
4) Sidewalks	0	0	0
5) Driveways	0	0	0
6) Other Impervious Surface	0	Ret. Wall 66.0	66.0
7) Total of Items #3 - #6	1,347.6	1,413.6	66.0
8) Percent Impervious Surface	10.1%	10.6%	0.5%

[See Diagrams #1, #8, #9, #10 for sources of size calculations]

15. :PLEASE ATTACH THE FOLLOWING:

- 1) Legal Description of Property
 - a. Lot 10, Block 5, Lakewood Park First Division, Washington County, Minnesota
 - b. Parcel Number of Property: 30.030.21.21.0036
- 2) Plot Plan drawn to scale showing existing and proposed, new and changed structures on the lot
Also show existing structures on adjacent lots
 - a. See attached Diagram #12 on page A-12, based on County GIS website

F. CITY CODES

1. PROJECT RELATED CITY CODES:

1) PROJECT RELATED CITY CODE DETAILS:

[Section highlighted yellow is the Specific Code Provision related to the Variance Request itself]

1. **Section 300.020 DEFINITIONS.** For the purpose of Chapters 300 through 399 certain terms and words are hereby defined as follows:
 - a. “38. Ordinary High Water Level. An elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.”
 - b. “45. Setback. The minimum horizontal distance between a structure and an ordinary high water level, street, road or highway right-of-way or property line.”
 - c. “59. Wetland. An area where water stands near, at, or above the solid surface during a significant portion of most years, saturating the solid surface and supporting a predominantly aquatic form of vegetation. . . . White Bear Lake is not included as a "wetland" within this definition.”
2. **Section 301.065 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.)”
3. **Section 301.070 CONDITIONAL USES.** “Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. **CONDITIONAL USE PERMITS.** 1. A Conditional Use Permit shall be required for the following projects: a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.”
 - a. The note at end of Section 301.070 states: “NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.”
4. **Section 301.080 ZONING PERMIT.** “If a Building or Conditional Use Permit is applied for and issued, the applicant is not required to apply for a Zoning Permit.
5. **Section 302.020. STRUCTURE LOCATION REQUIREMENTS**
 - a. **2. MINIMUM SETBACK REQUIREMENTS:**
 - i. The minimum setback requirement from the Ordinary High Water Level of White Bear Lake (WBL) to Fences, Driveways, Walkways and All Other Structures is 50 feet.
 - b. **4. SETBACK REQUIREMENTS EXCEPTIONS.**
 - i. “c. Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.”
 - c. **5. STRUCTURES IN WETLANDS.**
 - i. “No structures are allowed within any wetlands.”
6. **Section 302.050. IMPERVIOUS SURFACES**

- a. "1. Limitation. Impervious surface coverage of lots shall not exceed twenty-five (25) percent of the lot area unless the applicant satisfies the following conditions to obtain a variance: "

7. Section 302.055. LAND DISTURBANCE ACTIVITY STANDARDS

- a. " 6. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet. "

8. Section 302.070. CITY FENCE ORDINANCE

- a. " 5. Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building. "

9. Section 302.080. STAIRS AND LIFTS TO LAKE OR WATER BODY - STANDARDS

- a. "A stairway or lift to enable access from land properties to White Bear Lake or pond or recreational body of water shall be constructed and maintained in compliance with the standards and requirements of Section 302.080 parts 2 and 3."
- b. "2. Standards and requirements for stairways are as follows:"
 - i. a. Stairways may not exceed 44 inches in width.
 - ii. b. Landings may be permitted at a minimum vertical interval of 20 feet.
 - iii. c. Landings may not exceed 32 square feet in area.
 - iv. d. Handrails are recommended, however they shall not unduly obstruct the view by neighboring properties.
 - v. e. Canopies or roofs are not permitted on stairways or landings.
 - vi. f. Stairways shall be anchored and supported with pilings or footings.
 - vii. g. The applicant must submit a plan for the stairway to the City of Birchwood Village showing all necessary construction data including location, design, dimensions and construction materials before construction may begin.
 - viii. h. Steps must comply with all setback requirements except the setback from the high water mark. "

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM
Conditional Use Permit Application**

TO: Birchwood Village Planning Commission

FROM: Thatcher Engineering, Inc.

DATE: September 17, 2020

APPLICANT: Brock Harmon (Trude Harmon's son), 251 Wildwood Avenue, Birchwood Village

REGARDING: Conditional Use Permit Application

LOCATION: 251 Wildwood Avenue

BACKGROUND

On September 12, 2020, the Applicant submitted a Conditional Use Permit (CUP) application dated September 3, 2020 to the City of Birchwood Village.

REQUEST

The Applicant requests a CUP for the following:

1. Riprap rock and two (2) stairways (3 steps per stairway) for the White Bear Lake shoreline.
2. Land disturbance activity (LDA) where the slope of the land is toward a lake and the alteration is closer to the lake than the structure setback requirement, per Code Section 301.070.1.a.
3. Land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume, per Code Section 301.070.1.b.

The purpose of the riprap rock is to preserve the lakefront from soil erosion because of high water level. The purpose of the two (2) stairways is to provide safe access through the riprap rock from the land to the lake. The location of the proposed riprap rock and both stairways is shown in the Applicant's 38 page supporting document dated September 2020.

CITY MAY IMPOSE CONDITIONS

The City may impose conditions as follows:

1. If it grants the Conditional Use Permit, the Council may impose conditions it considers necessary to protect the public health, safety and welfare (Code Section 306.080.7).

SITE CHARACTERISTICS

The subject lot is 13,504 square feet in size according to the Washington County web site. The lot is approximately 235 feet deep and 50 feet wide and contains a single-family residence. The lot has access to White Bear Lake which has an ordinary high water level of 924.7 based on City Code.

CITY CODE REQUIREMENTS FOR PERMITTING CUP's

City Code Section 301.070 states:

CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. CONDITIONAL USE PERMITS.

1. A Conditional Use Permit shall be required for the following projects:

- a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.
- b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
- c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.
- d. Any tennis court.
- e. Any solar energy system for heating, cooling, electrical generation or other purposes.

NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.

ANALYSIS

The lot has challenges because of the slope to the lake. It's unclear if the slope to the lake on this lot is steeper than the slope to the lake on other lots because a certificate by a registered professional land surveyor with elevation contour lines (the lines show slope to the lake) has not been provided by the Applicant.

Page A-4 of the Applicant's 38 page supporting document dated September 2020 states: "As recommended by Steve Thatcher, City Engineer, to meet city code for step anchor/piling."

1. Steve Thatcher, City Engineer, cannot make recommendations to property owners in the City because it would be a conflict of interest. However, it is the opinion of Thatcher Engineering, Inc. (TEI) that the proposed Helical Screw Piles and L-Brackets installed by an experienced contractor meet the requirements of Code Section 302.080.2.f "Stairways shall be anchored and supported with pilings or footings."

Page B-6 of the Applicant's 38 page supporting document dated September 2020 states: "I estimate the total surface area of the land that is disturbed to be about 600 square feet." The land disturbance activity is estimated by TEI to be greater than four hundred (400) square feet based on the same page.

REASONS FOR RECOMMENDING CUP APPROVAL

CUP requests #1, #2, and #3:

1. The proposal is consistent with the City's Comprehensive Plan.
2. The proposal is consistent with existing and future land uses in the area.
3. The proposal conforms to the Zoning Code requirements.
4. That the proposed action will not:
 - a. Impair an adequate supply of light and air to adjacent property,
 - b. Unreasonably diminish or impair established property values within the surrounding area,
 - c. In any other respect impair the public health, safety or welfare or the residents of the City.
 - d. Depreciate values in the area.
 - e. Over-burden neither the existing public services nor the capacity of the City to serve the area.

- f. Alter traffic generation beyond the capabilities of the streets serving the site.

REASONS FOR RECOMMENDING CUP DENIAL

CUP requests #1, #2, and #3:

1. The proposal is not consistent with the City's Comprehensive Plan.
2. The proposal is not consistent with existing and future land uses in the area.
3. The proposal does not conform to the Zoning Code requirements.
4. The proposed action will:
 - a. Impair an adequate supply of light and air to adjacent property,
 - b. Unreasonably diminish or impair established property values within the surrounding area,
 - c. In any other respect impair the public health, safety or welfare or the residents of the City.
 - d. Depreciate values in the area.
 - e. Over-burden the existing public services or the capacity of the City to serve the area.
 - f. Alter traffic generation beyond the capabilities of the streets serving the site.

CONDITIONS

1. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet (Code Section 302.055.2.a.6).
2. Each CUP issued by the City shall be recorded with the County Recorder (Code Section 306.080.9).
3. A Conditional Use Permit shall become null and void one year after it was granted, unless made use of within the year, or a longer period of time if prescribed by the Council at the time the permit is issued (Code Section 306.090.2).
4. If approved, a CUP may be approved subject to the following conditions:
 - a. The Council may require posting of a bond or other guarantee to insure compliance with its conditions (Code Section 306.080.8).
 - b. All application materials, maps, drawings and descriptive information submitted with this application shall become part of the CUP.
 - c. Land alteration may not cause adverse impact upon abutting property.

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM
Variance Application**

TO: Birchwood Village Planning Commission

FROM: Thatcher Engineering, Inc.

DATE: September 17, 2020

APPLICANT: Brock Harmon (Trude Harmon's son), 251 Wildwood Avenue, Birchwood Village

REGARDING: Variance Application

LOCATION: 251 Wildwood Avenue

BACKGROUND

On September 12, 2020, the Applicant submitted a revised application dated September 3, 2020 to the City of Birchwood Village. The Applicant's original application was dated August 5, 2020.

REQUEST

Variance request #1: The Applicant is requesting a thirty-five (35) foot variance from Code Section 302.020.2 to install two (2) retaining walls.

1. The Applicant requests a variance from the requirement that states that "All Other Structures" must be setback as follows:
 - a. 50 feet from the ordinary high water level of White Bear Lake.

Variance request #2: The Applicant is requesting a thirty-five (35) foot variance from Code Section 302.020.4.c to install two (2) retaining walls.

1. The Applicant requests a variance from the requirement that states: "Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls."

Variance request #3: The Applicant is requesting a five (5) foot variance from Code Section 302.055.2.a.4 for the grading needed to install the east (lake side) retaining wall.

1. The Applicant requests a variance from the requirement that states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland."

Variance request #4: The Applicant is requesting a twenty (20) foot variance from Code Section 302.055.2.a.4 to install riprap.

1. The Applicant requests a variance from the requirement that states: "No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland.

The purpose of this Variance Application is to seek approval to build two (2) retaining walls, install riprap, and conduct grading. The location is shown in the Applicant's 38 page supporting document dated September 2020.

CITY MAY REQUIRE ADDITIONAL INFORMATION

The City may require additional information from the Applicant as follows:

1. 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 (Code Section 304.030).
2. Elevation contour lines may be required on the plot plan that is drawn to scale (Code Section 304.040.1.b).

SITE CHARACTERISTICS

The subject lot is 13,504 square feet in size according to the Washington County web site. The lot is approximately 235 feet deep and 50 feet wide and contains a single-family residence. The lot has access to White Bear Lake which has an ordinary high water level of 924.7 based on City Code.

PRACTICAL DIFFICULTY

- 1) Slope to the lake.
- 2) See application for additional information.

STATUTORY REQUIREMENTS FOR PERMITTING VARIANCES

Minnesota State Statute 462.357 allows for a variance to be permitted only when:

- (1) The proposed use is in harmony with the general purposes and intent of the City's zoning ordinance;
- (2) The variance is consistent with the City's comprehensive plan; and,
- (3) The applicant establishes that there are practical difficulties in complying with the zoning ordinance.

Statutory criteria used to establish a practical difficulty include:

- (1) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;

- (2) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- (3) The variance, if granted, will not alter the essential character of the locality.

CTY CODE REQUIREMENTS FOR PERMITTING VARIANCES

Code Section 304.040 states:

Variations 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 variations so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

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

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

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

ANALYSIS

The lot has challenges because of the slope to the lake. It's unclear if the slope to the lake on this lot is steeper than the slope to the lake on other lots because a certificate by a registered professional land surveyor with elevation contour lines (the lines show slope to the lake) has not been provided by the Applicant.

Page A-4 of the Applicant's 38 page supporting document dated September 2020 states: "As recommended by Steve Thatcher, City Engineer, to meet city code for step anchor/piling."

1. Steve Thatcher, City Engineer, cannot make recommendations to property owners in the City because it would be a conflict of interest. However, it is the opinion of TEI that the proposed Helical Screw Piles and L-Brackets installed by an experienced contractor meet the requirements of City Code 302.080.2.f "Stairways shall be anchored and supported with pilings or footings."

The plan on page A-11 of the Applicant's 38 page supporting document dated September 2020 (attached) shows the retaining walls within the Code required minimum distance of 50 feet from the Ordinary High Water Level (OHWL).

1. This plan was used by Thatcher Engineering, Inc. (TEI) to determine that the distance from the 50 foot OHWL setback to the lake side of the east retaining wall is thirty-five (35) feet. Therefore, the Applicant's request is for a 35 foot variance from the Code requirement.

The same plan (page A-11) shows that grading is needed to install the east (lake side) retaining wall and that this grading is within the City Code required minimum distance for grading of 20 feet from the OHWL.

1. This plan was used by TEI to determine that the distance from the 20 foot OHWL setback to the grading is five (5) feet. Therefore, the Applicant's request is for a 5 foot variance from the City Code requirement.

REASONS FOR RECOMMENDING VARIANCE APPROVAL

Variance requests #1 to #4:

1. The lot has challenges because of the slope to the lake.
2. This project would preserve the essential character of the locality.

REASONS FOR RECOMMENDING VARIANCE DENIAL

Variance requests #1 to #4:

1. A primary goal of the City of Birchwood Village's Zoning Ordinance is "to ensure that a non-conforming use is not intensified and that, over time, the non-conforming use will, where possible, be brought into conformity with the Zoning Code." The following could be argued:

- a. That they are not in harmony with the general purposes and intent of the ordinance.
- b. That the variances are not consistent with the comprehensive plan.
- c. That the applicant for the variance has not established that there are practical difficulties in complying with the zoning ordinance.

CONDITIONS

If approved, a requested variance may be approved subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of the building permit.
2. Per Code Section 304.090, the variance shall become null and void if the project has not been completed or utilized within one year after the date it was granted, subject to petition for extension by the City Council.
3. Land alteration may not cause adverse impact upon abutting property.

VARIANCE REQUEST

302.020. STRUCTURE LOCATION REQUIREMENTS

2. MINIMUM SETBACK REQUIREMENTS:

		<u>TYPE OF STRUCTURE</u>	
Lot line or		Driveways &	All Other
<u>Land Boundary</u>	<u>Fences</u>	<u>Walkways</u>	<u>Structures</u>
Ordinary High Water			
Level of White Bear			
Lake, Hall's Marsh,			
and other wetlands	50 ft.	50 ft.	50 ft.

4. SETBACK REQUIREMENTS EXCEPTIONS.

- c. **Retaining Wall Setbacks: Front, back, side street and other lot line setback requirements shall not apply to retaining walls except that the ordinary high water level setback requirements shall apply to retaining walls.**

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

302.055. LAND DISTURBANCE ACTIVITY STANDARDS.

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

2. The following are Specific Standards:

a. Land Use Standards

- 4. **No grading or filling shall be permitted within twenty (20) feet (measured horizontally) of the ordinary high water level of any lake, pond, or wetland.**

302.070 CITY FENCE ORDINANCE.

- 5. **Retaining Walls. Solid walls in excess of four (4) feet high shall be prohibited unless they are part of a building.**

CONDITIONAL USE PERMIT

301.070. **CONDITIONAL USES.** Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306. **CONDITIONAL USE PERMITS.**

1. A Conditional Use Permit shall be required for the following projects:
 - a. **Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such waters than the structure setback requirement. See Note at end of Section 301.070.**
 - b. **Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.**
 - c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 1/2) feet of water.
 - d. Any tennis court.
 - e. Any solar energy system for heating, cooling, electrical generation or other purposes.

NOTE: A separate Conditional Use Permit is not required for a land disturbance activity in conjunction with construction as part of a building permit as granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Sections 302.050 **IMPERVIOUS SURFACES** and 302.055 **LAND DISTURBANCE ACTIVITY STANDARDS.**

Tobin Lay

From: Ken Broen
Sent: Friday, August 28, 2020 9:46 AM
To: BVInfoEmail
Subject: Case no. 20-02-VB - Variance Request for 251 Wildwood Ave
Attachments: Construction damage causes and remedies.docx

Caution: This email originated outside our organization; please use caution.

Birchwood Planning Commission
Variance request for property at 251 Wildwood Ave.
case no. 20-02-VB

Dear Planning Commission:

We have studied the variance request and drawings for the property at 251 Wildwood Ave specified in the August 11, 2020 letter from the planning commission and have a couple of concerns related to the variance request from 302.020.1,2 and 4c and Sec. 300.020.1. and 302.040.2.

1. Structure near the lake

The lots in this part of Birchwood are not very wide and as a result have an intimate connection and shared views of the lake. Placing a structure as requested will have a negative effect on our shared enjoyment of the lake, and adverse effect on the property values of the houses close by. Setting a precedence of allowing structures similar to the one requested will have the potential to diminish to overall charm of Birchwood.

2. Soil disturbance

The property at 251 Wildwood Ave, and those which are adjacent, have many very mature oak trees which have so far survived Oak Wilt. We are concerned that the damage to the root system of the trees immediately adjacent (within a few feet) to the proposed excavation will kill or weaken those trees resulting in a new infestation of Oak Wilt which will spread to the properties next door, and throughout the neighborhood. (please see the attached document from the Minnesota DNR - *Construction damage causes and remedies - Tree Planting and Care*) Implementing the suggestions to minimize this root damage would not be possible in this situation, since all this construction will be within the dripline of these heritage oak trees.

Thank you for allowing our concerns to be heard,

Ken Broen and Rosalie Tallen
243 Wildwood Ave.

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Construction damage causes and remedies - Tree Planting and Care

Any wound to the roots, stem or main branches of a tree, caused during construction, is considered construction damage. These wounds can occur during any building activities around trees that cover the soil, disturb the soil, or simply driving near the tree with heavy equipment. Construction damage can occur on projects as small as paving a patio.

Why are construction activities so hard on trees? Trees get into trouble when they become low on energy reserves, when their roots can't get enough oxygen or water or when more than 40% of their root system is lost. As you can see from the list above, most of the damage due to construction happens to the root system. Developing a site is seldom possible without hurting tree roots to some extent. Roots are one of the most vital parts of the tree. They are responsible for nutrient, oxygen and water uptake and anchoring the tree in the soil. In addition, energy rich chemicals are stored in the roots. Trees draw on these energy reserves to get them through emergencies like drought, defoliation, insect attack or construction damage.

Because of their location, roots are more easily wounded than you would think. Fifty percent of the root system is in the top one foot of soil and over 90% of the root system is in the top three feet. The root system extends well beyond the tree's dripline, often extending a distance equaling two to three times the tree's height. A single pass by a cement truck or dump truck can sever or crush the roots.

Diagnosis Conspicuous symptoms of construction damage may occur within weeks of the damage but are more likely to take years to appear. The long-term delay causes landowners to attribute losses to other causes or to remain unknown. Most of the time there is no obvious damage to the stem or the branches! Damage remains hidden under the soil in the root system.

Wilted or scorched leaves or needles and drooping branches are usually the first symptoms of construction damage. In deciduous trees, these symptoms may be followed by early fall coloration and premature leaf drop. Damaged conifers will drop excessive amounts of inner needles. In later years, there may be yellowed and dwarfed leaves, low leaf density, twig and branch die back. Other indicators might include massive branch die back, epicormic branches (suckering on the main stem), flowering out of season or production of an abnormally large amount of seed. These responses are defense mechanisms for ensuring species survival and often indicate that the individual tree is experiencing extreme stress and is near death.

Damage: causes and possible remedies The best way to avoid losing trees to construction damage is prevention. However, if the damage is already done, you may still have time to take some remedial actions.

Scraped trunks, broken branches and wilted leaves are symptoms that appear quickly. Small wounds to the trunks are not serious but may act as entry points for fungi which cause decay later on. Wounds exceeding 50% of the tree's diameter are serious. There may not be enough tissues left to conduct food down or water up and the tree will decline and may die. The strength of the stem may also be weakened. A tree with a stem wound destroying more than 50% of the wood diameter, is hazardous and should be cut down. Broken branches should be pruned back to their main branches using the proper pruning techniques. Painting wounds or pruning scars actually increases decay organism activity, so it isn't recommended except for oaks to prevent oak wilt disease infection in May and June.

Severed roots can be the result of lowering the grade, new construction or trenching. This type of damage has few remedies. Severing roots reduces water and nutrient uptake, eliminates stored energy and may compromise the stability of the tree. When the grade is lowered by more than two inches, vital feeder roots are eliminated, nutrient rich topsoil is removed and the remaining root system is severely wounded. If enough of the root system is destroyed or detached, the tree will die. As a general rule, 20% of the root system can be destroyed before the tree will show signs of injury. If 40% of the root system is lost, the tree will probably die. It should also be removed because it is hazardous.

For all types of digging operations, cleanly cut exposed or severed roots to promote rapid wound closure. Vibratory plows and chain trenchers leave cleaner cuts than bulldozers and backhoes. When working inside the dripline, use only hand tools. Instead of trenching, tunnel under the root system when it is necessary to work inside the dripline. Minimize the impact of root severing by avoiding construction during hot, dry weather, keeping trees well-watered before and after digging and covering exposed roots with soil or mulch as soon as possible.

Smothered roots have their oxygen supply cut off. The most common method of smothering roots is through changing the grade, that is, adding more topsoil or fill dirt to the existing contour of the area. This cuts off the water supply, too. For some tree species, like red oak, only a few inches of fill is enough to do serious damage. Roots can also be smothered by "temporary" piles of soil placed inside a tree's dripline or by pools of water impounded by construction activities.

If the tree is already showing symptoms of advanced decline, it probably cannot be saved. If it appears mostly healthy and there is more than ten inches of fill anywhere inside the dripline, restore the area to its original contour by removal of all the fill. Avoid soil compaction, only use hand tools to remove the last ten inches of fill.

Soil compaction is by far the most common way construction damage can harm and kill trees. Tree roots need crumbly, well-aerated soil to grow and to obtain oxygen, water and nutrients. Lacking good soil aeration, roots suffocate and tree health declines. Leaf wilt, early fall coloration, branch die back, overall decline and tree death are symptoms of soil compaction. Diagnosing compaction can be difficult because it can take quite a while for symptoms to appear; trees can die five years after the original damage.

Most soil compaction is caused by construction equipment. One pass by a heavy tractor or truck is all it takes. Compaction can also be caused by stockpiled building materials and excessive foot traffic. By controlling equipment traffic patterns, soil compaction can be prevented. Reroute traffic away from trees, put up protective fences and signs, mulch the equipment routes with several inches of wood chips and locate materials storage areas well away from the dripline of the trees you want to save.

Compaction can be partially alleviated by drilling a series of two inch diameter holes to a depth of 12 to 18 inches. Begin three feet from the trunk and continue drilling holes at two foot intervals in concentric rings around the tree and continue to at least the dripline. Each hole may be refilled with sand, peat moss or mulch. Don't recap the hole with a sod plug. There are other alternatives, such as soil injections of air or pressurized water, available from some professional tree care services.

Poisoned roots occur from improper handling, disposal or spills of materials used during construction. Chemical spill damage can be prevented by filling gas tanks, cleaning paint brushes and repairing equipment well outside the tree dripline. Debris and chemical waste should be hauled away, not burned or buried on the site. Cement trucks should never be rinsed out over root systems.

Exposure to new conditions occurs to the remaining trees when removing a large number of trees around them. Heavily wooded sites should be thinned gradually over a two to three-year period to reduce exposure shock.

Save groups of trees, rather than individuals. Tree crowns can act like sails with winds from new directions and if not securely anchored by the roots, the trees can topple over. Prune away branches that act like sails.

Prevention is the key

Nearly everyone recognizes the value of trees in providing shade, ornament and protection. All too frequently, the trees that make a site attractive are damaged or killed during construction by inadequate protection or carelessness. Sometimes it is possible to remedy the situation, but it is always better and more economical to prevent damage than to remedy it. Here is a short list of prevention activities to consider:

PLAN - Formulate a plan. Select which trees can be saved and which trees should be removed. Try to save islands of trees rather than individuals. Talk about your plans with contractors/workers. Make a map so plans are clear to everyone. Control traffic patterns by fencing off areas to be protected. Post signs that say "Off limits." Water trees regularly before, during and after construction activities. Visit the construction site and monitor for signs of tree damage.

TIMING - Cut trees down during the fall and winter because the "saved" trees are extremely vulnerable to wounding during the spring. Use chainsaws to fell trees near the trees you want to save. Avoid felling trees into the trees you want to save. Avoid pushing trees over with bulldozers because it rips up neighboring trees' roots. If you want to keep the wood for firewood (from elms, oaks, pines or birches), keep it covered tightly during the first growing season.

ROOTS - Avoid trenching inside the dripline by going around the tree rather than under it. Use tunneling rather than trenching inside the dripline. Use porous paving materials such as brick or flagstone rather than concrete or asphalt. **Don't raise the grade more than a few inches inside the dripline. Avoid lowering the grade more than two inches inside the dripline.** Never pile soil or construction materials inside the dripline, even temporarily. Don't limit root growth by "boxing" in an average sized tree.

AFTERWARDS - Monitor for damage and take remedial actions. Use proper pruning techniques to remove dead and dying branches. Don't wound trees by topping, tipping or pruning with flush cuts or stub cuts. Wait two years before fertilizing damaged trees, then use a low nitrogen product. It's a waste of time to paint tree wounds (except oaks in May and June). Water trees regularly.

Tobin Lay

From: Peggy Witthaus
Sent: Thursday, August 27, 2020 3:36 PM
To: BVInfoEmail
Cc: Peggy Witthaus
Subject: COMMENTS: Variance Request for 251 Wildwood Ave
Attachments: Construction damage to trees and shrubs.docx

Caution: This email originated outside our organization; please use caution.

To: Birchwood Planning Commission
RE: Variance request for case no. 20-02-VB
Trude Harmon property at 251 Wildwood Ave

Dear Planning Commision:

This note is in response to the August 11, 2020 letter outlining four variance requests by the property owner at 251 Wildwood Avenue. We reviewed the request, variance paperwork and drawings for the project and have several concerns with the proposal.

Variance from Sec. 300.020.1. and 302.040.2

Proposed structure is too large, would impede neighboring views and would require land disturbance into the natural grade of the hill. The size departs significantly from current code. Given available property exists to the street side of the home, would recommend exploring other storage options on the property.

Variance from 302.020.1,2 and 4c

To my knowledge there have been no exceptions in many years to the WBL Ordinary High Water Level Setbacks. We are in complete agreement with the limitations outlined in the current code to maintain a 50' setback for structures / retaining walls. We have an obligation to protect the lake and maintain a buffer for run off from the lawn and stormwater. In addition, there is a high potential for damage to mature trees / root structure if property owners are allowed to dig into this area, to accommodate a storage shed and retaining wall. (See attached document on construction damage to trees.) On a narrow lot this would be a challenge to mitigate tree damage and would negatively impact the root structure of large, mature trees on our property, as well.

Variance from Sec.302.080.2

We have no issue if new stairs are built at 48" width.

Respectfully,

Peggy and Craig Witthaus
259 Wildwood Avenue

--

Preventing construction damage to trees and shrubs

Wooded lots are an added value when selecting a site for building a home, just as mature trees add appeal to an already existing home. Homes that are constructed in the midst of trees take advantage of the aesthetic and environmental value of the property. The cost and care of preventing tree damage during construction protects those assets. Careful planning and preparation before construction begins may help to preserve and protect existing trees from unnecessary damage.

Trees vary in their ability to tolerate damage. Among **the most sensitive are red oak, white oak, and sugar maple**. These species will require more protection during construction. More tolerant trees include bur oak, silver maple, poplars, and willows. In general, younger trees are able to withstand the changes of construction better than larger, mature trees.

The key to tree preservation is protecting the root system from damage. **The roots of trees are concentrated in the top several inches of soil. They spread at least as far as the branches, often much further. Disturbing the soil around a tree will cause serious damage to the root system, resulting in decline or death of the tree. Excavation, grade changes, retaining walls, traffic, and material storage (including soil) can all damage roots.** Even when trees are protected from direct disturbance, building in a wooded area imposes many indirect changes in the environment. These changes result in increased stress on the trees.

BEFORE CONSTRUCTIONS BEGINS

Take a tree inventory. In order to choose the best location for a house, pavement, and utilities, the exact location and condition of each tree must be determined. In some cases, the foundation shape and position may have to be selected specifically to avoid certain key trees.

Draw the plan on paper. Confine the sidewalks, driveway, construction vehicle access, work areas, grade changes, and utility trenches into the smallest area possible. All trees with significant portions of their roots in the disturbed areas should be removed prior to construction. Unless the lot is very large, most of the trees in the front of the house may have to be removed.

Choose the right contractors. Before you build, work with the builder to prevent damage to valuable trees. Tree protection will require that work be restricted to certain areas of the property, which may constitute additional costs but could be worth the expense.

PROTECTION DURING CONSTRUCTION

Clearly mark the ‘root protection zones’ before construction begins. The root systems of all trees to be saved should be well protected. An area of soil around each tree should be fenced off and protected from all disturbances. **The protected root zone should include one foot of radius for each inch of trunk diameter. This circle of protection need not be exactly equal around the tree, but it should be positioned so that no disturbance will occur closer to the tree than one-half the radius of the circle.** Individual zones should be joined into a larger “conservation area” wherever possible.

Mulch the “root protection zones” with wood chips. Trees and heavy construction equipment do not mix. A single pass by a vehicle or piece of construction equipment can irreparably damage the soil and roots. Ask your contractor to keep heavy equipment away from trees. For times when temporary heavy traffic over a root system cannot be avoided, apply a heavy layer of mulch or gravel, which will minimize compaction but not prevent compaction entirely. Mulch also helps insulate the rooting environment from changes imposed by opening the forest canopy. [Learn more >](#)

Watering during dry periods is important, both during and after construction. Shallow tree roots are sensitive to drought stress. Mulch will help reduce evaporation, but watering will be required during periods of scarce rainfall. Water the entire root zone slowly until the upper 8-12 inches are thoroughly moist.

Occasionally, special techniques are warranted to preserve a tree. A temporary soil excavation, such as for a utility installation or repair, may result in significant root loss, but if the soil is replaced soon afterwards there is opportunity for recovery. Augering under tree root systems, rather than trenching through them, or installing special aeration systems at the original soil surface below fill soil, are costly, but can be the difference between saving and losing a tree. (See Watering Trees and Shrubs leaflet.)

WHAT TO DO IF CONSTRUCTION DAMAGES TREES

Symptoms of trees suffering from construction damage may appear the next growing season or may take two to three years to appear. When roots are damaged, the tree is not able to take up enough water and nutrients to feed all the branches. This results in dieback in the top of the tree and near the ends of the branches. Some trees develop yellowing foliage as a result of nutrient deficiencies. The tree's overall health and vigor are slowed, resulting in small or sparse foliage.

Prune the crown to compensate for stress. A tree with a damaged root system is not able to sustain all of its branches and leaves. Reducing the number of leaves and branches will counterbalance the changes imposed on the root environment. All trees should be pruned by a qualified arborist who can remove the dead wood and selectively thin the live branches without disfiguring the tree. Regular pruning may be required every 3-5 years. [learn more >](#)

Mulch with organic material, such as woodchips or shredded bark, to encourage fine roots, which absorb nutrients, water, and oxygen. Ideally, extend a three to four inch layer of mulch as far out from the tree as practical, keeping mulch away from the base of the tree.

Fertilizing mature trees is not usually recommended as long as growth is adequate and nutrient deficiencies are not evident. Mulch recycles nutrients naturally. Heavy fertilization may stimulate excessive growth in the top and could counteract pruning intended to reduce the crown size. [learn more](#)

Water. Even if no symptoms appear, give extra care to trees following construction. Water well during dry periods.

Friday August 27, 2020

To: Planning commission and Birchwood Village Council

From: Marian Johnson, concerned resident at 237 Wildwood Ave.

Concerning: Request for variance to build a storage shed on the shore of the lake within the high water mark at 251 Wildwood Ave.

I strongly object to the building of any structure on the lakeshore that is closer than 50 feet. I have been here since 1955 and that has always been the rule. I have no wish to be looking at the back of a storage shed or building of any kind. This proposed shed would be within the site line of my front windows.

Granting this proposal would open the door for more requests and soon the shore would be lined not with well kept waterfronts, but with buildings. I have visited many lakes going to regattas and there are some that have allowed buildings on the waterfront and it results in an ugly view for residents and others enjoying the lake. We are all dealing with the high water at present, but it will be going back down as it has in the past.

With concern,
Marian Johnson,
237 Wildwood Ave.
Birchwood Village.



MEMORANDUM



TO: Planning Commission
FROM: Tobin Lay, City Administrator
SUBJECT: Review Variance Findings Form
DATE: September 21, 2020

Hello Planning Commissioners,

At the last Planning Commission meeting, Commissioners commented on the awkwardness of the Variance Findings Form. For this reason and at the request of Commissioner Andy Sorenson, I have added this item to this meeting's agenda for your discussion.

The idea of the Variance Findings Form originated from the DNR as an aide to Planning Commissions and City Council Members throughout Minnesota when reviewing variance requests. The form that you have before you now is a new iteration of the DNR's form that was adjusted to the unique requirements in Sec. 304.040.2 of Birchwood City Code.

This form is not a requirement – Commissioners and Council Members are not required to use it. However, state statutes do require that justification for variance request decisions be supported by writings. Accordingly, I strongly urge Commissioners to adopt and use some form for your review of variance requests; whether that form be the current form or an adjusted form of your own creation.

Enclosed is the current Variance Findings Form and Sec. 304.040.2 Variance Criteria for your use in this discussion.

Request/Recommendation

- 1) Please review the variance criteria in Sec. 304.040.2 and compare with the current Variance Findings Form; then
- 2) Make any adjustments to the current form that will improve its effectiveness in aiding the Commission in reviewing variance requests.

Regards,
Tobin Lay
City Administrator

304.040

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

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

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

SUBD. 1.

A. Variances shall only be permitted

i. when they are in harmony with the general purposes and intent of the ordinance and

ii. when the variances are consistent with the comprehensive plan.

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

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

i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.

ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.

iii. The granting of a variance will result in no increase in the amount of water draining from the property.

iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.

v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.

vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

MEMORANDUM



TO: Planning Commission
 FROM: Tobin Lay, City Administrator
 SUBJECT: City Council Request: Review 302.070 Fence Ord.
 DATE: September 21, 2020

Hello Planning Commissioners,

At the City Council's Sept. 8, 2020 meeting they requested that the Planning Commission review and provide guidance on Sec. 302.070, Fence Ordinance.

As you are aware, the residents of 701 Hall Avenue had filed a variance request that was scheduled to come before the Commission on Aug. 31, 2020 but was rolled to Sept. 21 at the applicant's request. The City Council briefly discussed the topic of this variance request and whether a deer fence, such as was used at 701 Hall Avenue, should be regulated by Sec. 302.070. They also wondered what other types of considerations, if any, should be made with regards to the fence ordinance.

Accordingly, the Council stayed the Administrative decision that lead to the 701 Hall Avenue variance request until such time as the City Council had an opportunity to review the Planning Commission's recommendation on the fence ordinance.

Enclosed are relevant City Codes: 302.070 (fence ordinance); 300.020.18 (fence definition); and 300.020.53 (structure definition). Also enclosed are photos of the deer fence at 701 Hall Avenue – to be used as an example.

Request/Recommendation

The City Council requests that Commissioners review Sec. 302.070 for considerations that should be amended in this or any other related Code, and:

- 1) If amendment is recommended, provide an amendment recommendation to the Council for consideration; or
- 2) If no amendment is recommended, provide a recommendation to the Council to leave Sec. 302.070 unchanged.

Regards,
 Tobin Lay
 City Administrator

302.070. CITY FENCE ORDINANCE.

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

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

“AMENDED BY ORDINANCE: DECEMBER 13, 2016.”

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

18. Fence. A permanent partition, structure, wall or gate erected as a dividing marker or enclosure.

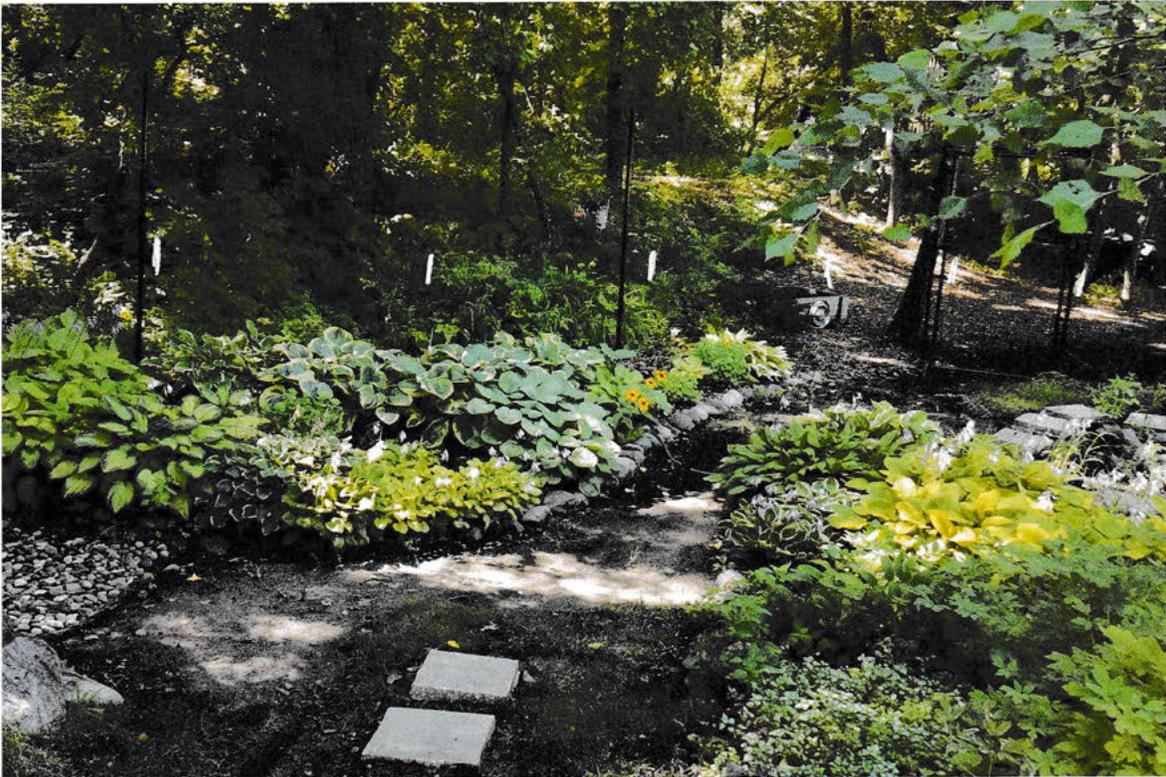
“AMENDED BY ORDINANCE 1997-3; AUGUST 12, 1997.”

53. Structure. Anything which is built, constructed or erected: an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character including, but not limited to decks, buildings, cabins, manufactured homes, factories, sheds, screen porches, gazebos, platforms, shelters, pergolas, pools, whirlpools, detached garages, car ports, lean-tos, greenhouses, ice fishing houses, towers, and other similar items, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, poles and other supporting facilities.

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

**REGULAR E
FENCE EXAMPLE**

Bud & Ruth Jensen 701 Hall Ave., Birchwood



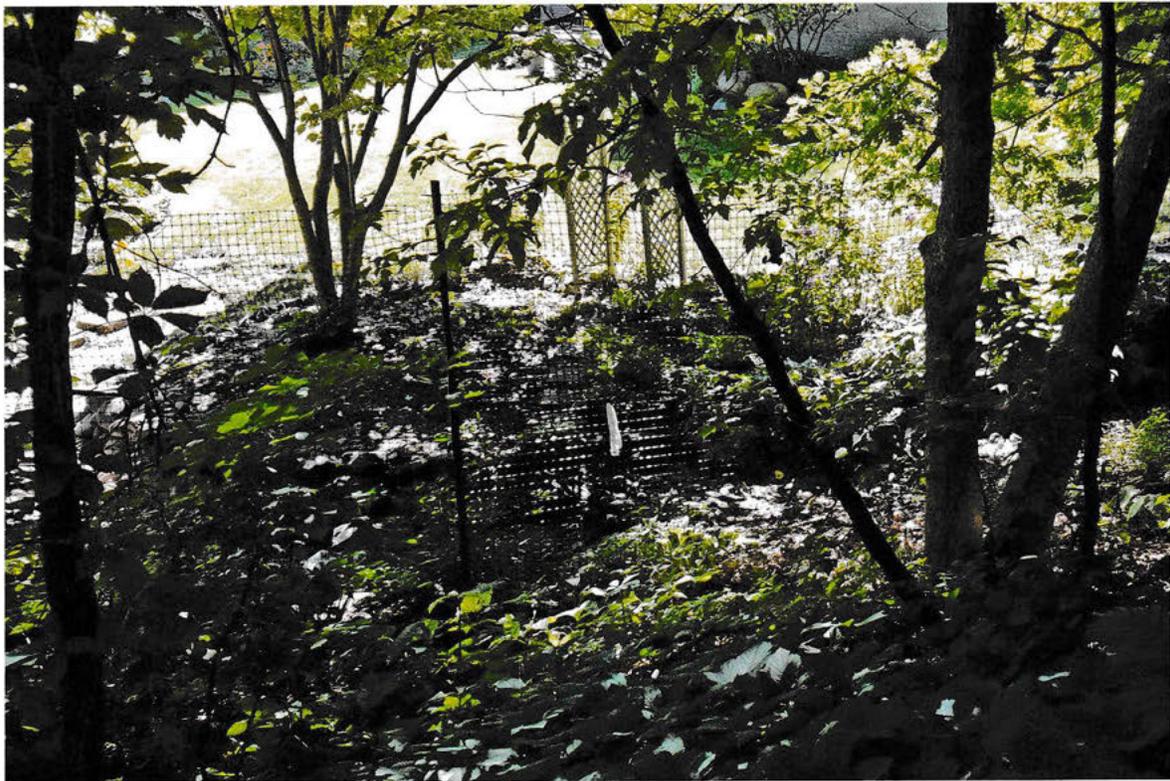
West fence and Back Gate



West front fence and Gate

Bud & Ruth Jensen 701 Hall Ave., Birchwood

East Fence



West fence seen from Jay Street

Bud & Ruth Jensen 701 Hall Ave., Birchwood



East back Gate



Back Fence



**REGULAR C & D
VARIANCE FINDINGS FORM**

BIRCHWOOD VILLAGE
Variance Findings Form
251 WILDWOOD AVENUE

EACH OF THE FOLLOWING CRITERIA MUST BE SATISFIED TO APPROVE

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

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

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

The proposed variance is for: _____

_____ (explain proposal and potential effects).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explain: _____

_____ (If you believe

that the decision has been determined simply because of the number of supporters or objections, explain how).

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

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

_____ (Describe how

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

What is your decision? (Approve or Deny)

Remember - ALL criteria MUST be satisfied to approve.

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

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