



## **STAFF REPORT**

DATE: 9/9/19

REGULAR

ITEM#: 4A – PUBLIC HEARING

MOTION

**TO:** Planning Commission  
**FROM:** Ben Prchal, City Planner  
**AGENDA ITEM:** Variance Requests for 8126 Hill Trail N  
**REVIEWED BY:** Ken Roberts, Planning Director

### **BACKGROUND:**

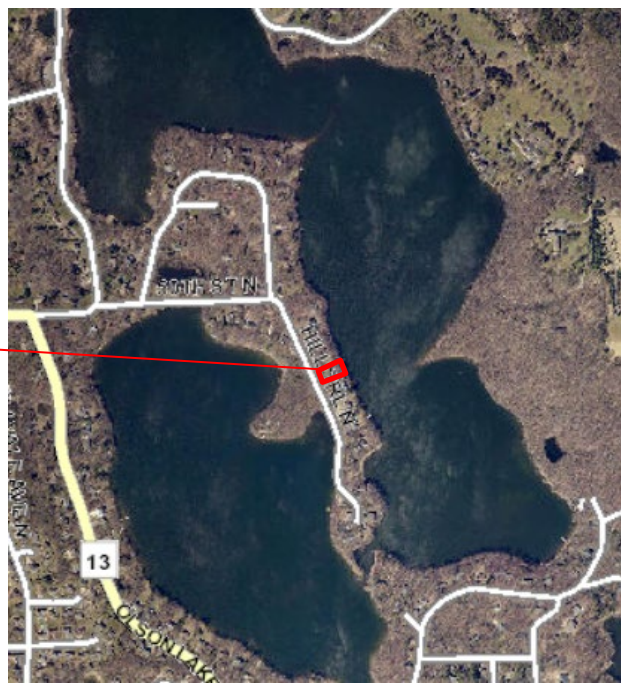
The City has received several variance requests from Tim and Lacey Mercil (Applicant), for the property located at 09.029.21.22.0008 (addressed as 8126 Trail), owned by Mike and Ruth Schrantz. They are requesting City approval of the variances in order to construct a new home on the property. They are seeking relief from the City Code's minimum setback from the top of bluff, the setback from the ordinary highwater line (OHWL), the maximum amount of impervious surface, minimum lot size in the riparian zone, and the 20,000 sq. ft. septic field requirement. The applicant had previously submitted their variance application in April of 2019. After discussing the project with the applicant, they decided to pull their application due to complications on determining a viable drainfield. Since April the applicants have been working with Washington County to get an approved septic permit for the property, which they now have. Please know that Staff has been working with the applicant and the numbers in the narrative do not match the survey that is under review.

### **ISSUE BEFORE COMMISSION:**

The Commission is being asked to hold a public hearing, review and make recommendation on the above mentioned variance requests.

### **REVIEW/ANALYSIS:**

<i>PID</i>	09.029.21.22.0008
<i>Existing Land Use/Zoning:</i>	Single-family detached residential home guided for Rural Single Family.
<i>Surrounding Land Use/ Zoning:</i>	Surrounded by single family homes guided for Rural Single Family / Rural Single Family
<i>History:</i>	The property is part of the Lane's on Demontreville development and has been vacant for many years. The plat for the development was signed in 1927/28.
<i>Deadline for Action:</i>	Application Complete – 8/9/2019 60 Day Deadline – 10/8/2019 Extension Letter Mailed – N/A 120 Day Deadline – N/A
<i>Applicable Regulations:</i>	<ul style="list-style-type: none"> <li>• Article V - Zoning Administration and Enforcement</li> <li>• Article XVIII – Shoreland Management Overlay District</li> <li>• Table V, Section 16, Chapter Four of the Washington County Development Code</li> <li>• Article XI – Rural Districts</li> </ul>



### PROPOSED VARIANCES

**Variance Requests.** The applicant is requesting to build a single family home with a foundation size of 44 feet wide by 29.75 feet long which is 1,309 sq. ft. The following table outlines the code requirement and the proposed figure for the variance request.

Standard	Required	Proposed	Variance from Code
Structure setback from OHWL of Recreational Development (RD) Lake, Averaging is allowed	66.5 ft. average (100 ft.)	64 ft.	2.5 ft.
Structure setback from Top of Bluff on a Recreational Development Lake	30 ft.	24 ft.	6 ft.
Minimum septic area	20,000 sqft.	3,000 sqft. (Mound system, County approved)	17,000 sqft.
Impervious surface	15%	20.5%	5.5%
Lot Width RS	125 ft.	99.99 ft.	25.01 ft.
Minimum lot area RS District Riparian Lot	1.5 acres  .91 acres	0.48 acres	1.01 acres  .43 acres

**Standards Met.** The following table outlines the standards that are met on the property.

The Applicant has an approved septic permit from Washington County. Beyond that, City Staff is only looking to ensure that the septic is located an appropriate distance from the water and review the sizing requirement.

Standard	Required	Proposed
All septic related setbacks have been approved via the septic permit issued by Washington County.	County Enforced	Standard Met
<b>Standards that are met are outlined below</b>		
Sewage tank setback from water supply wells	50 ft.	50 ft.
Drainfield setback from occupied structure	20 ft.	24 ft.
Sewage tank setback from occupied structure	10 ft.	32 ft.
Drainfield setback from property lines	10 ft.	10 ft. or more
Sewage system setback from the OHWL of Recreational (RD) Lake	75 ft.	120 ft.
Side yard setback	10 ft.	11/54 ft.
Front yard setback	30 ft.	94 ft.
Rear Yard setback	40 ft.	64 ft.

**Reason for Variance Requests.** These variance requests are mostly due to the lot size of the property. The lot was established prior to current zoning criteria and prior to the ownership by the applicant's family. The initial establishment of the Lanes Demontreville Country Club subdivision was established in 1925. The lots are very small by today's standards, which has caused issues for homeowners in the area. The small lots coupled with the shoreland standards has added an additional burden for new and existing home owners in the area.

#### **Setback from High Water Line and Bluff.**

##### Highwater Line Setback 154.800 table 17-3

As previously mentioned in the above table, the proposed house is setback 64 feet from the OHWL of Lake Demontreville. The code requires a 100 ft. setback for structures from Recreational Development lakes. However, Section 154.800 12. of the Shoreland Management Overlay District allows some relief and states the following:

*154.800 12 c. Setback averaging.* Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the OHWL, provided the proposed structure is not located in a shore impact zone or in a bluff impact zone;

The proposed home would be outside the impact zone by 11 ft. but the setback from the OHWL of the houses on the adjacent lots averages to 66.5 ft. Unfortunately, the proposed home would be setback 64 ft. which is 2.5 ft. shy of being allowed without a variance. Because the proposed design cannot meet the average setback, a variance is required. With setback averaging being a possibility Staff likes to consider sightline impacts to the neighboring homes. The location of the home as compared to homes to the north and south is shown below and will likely not inhibit lake views for neighboring properties.

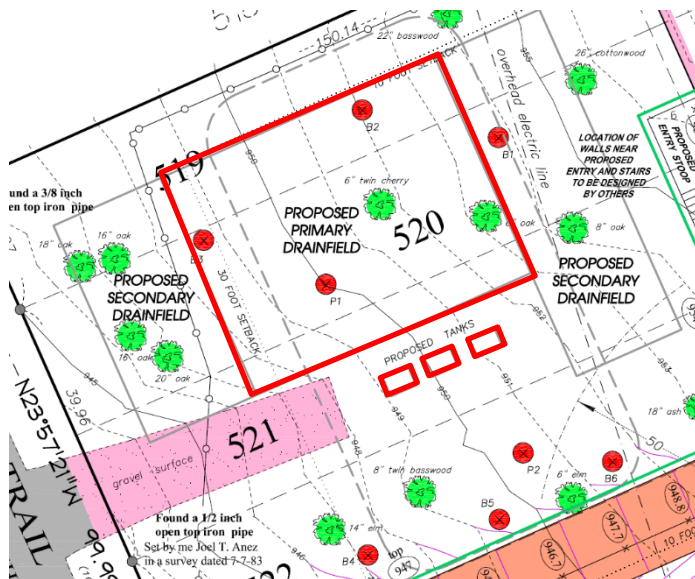


### Top of Bluff 154.800 table 17-3

The shoreland management section of the code requires that structures maintain a setback of 30 ft. from the top of a bluff. The applicant is proposing a setback of 24 ft. which is 6 ft. shy of the required 30 ft. mark. They are showing an impact zone of 20 ft. which the home is clear of but the proposed patio is not. The patio is outside of the shoreland impact zone by 4 ft. but is clearly not outside of the bluff impact zone.

### **Minimum Septic Size. Section 154.404**

The Zoning Code requires that all lots within the rural districts maintain at least 20,000 square feet of land suitable for septic drainfields and area sufficient for two separate distinct drainfield sites. This is an impossible expectation for this lot because it is 19,712 sq. ft. in size. Because the City does not involve themselves with the permitting of septic systems an approved septic permit from Washington County is be required for this property. Fortunately the applicant has been proactive in working with Washington County and has received an approved permit. Staff spoke with Washington County Staff, who permits septic, systems and it was relayed that the proposed system will be able to function and meet their setback requirements.



### **Impervious Surface. 154.800 Table 17-3**

The RS district has a maximum impervious surface percentage set at 25% (154.401 table 9-1). The lot easily meets this standard. However, the impervious surface standard for a un-sewered lot abutting an RD lake is 15% (154.800 table 17-3), which is why there is a need for a variance. The applicant is requesting a variance of 5.5% to have an impervious surface area of 20.5% on the property.

### **Lot Size and Width 154.402 and 154.800**

Both the RS district and the shoreland management codes require larger lots than what the applicant is working with. The RS district requires a minimum lot of 1.5 acres and the shoreland code requires a minimum lot of .91 acres. The lot is 19,712 sq. ft. and was established well before the zoning code was put into place, which is a common theme amongst homes in the development.

### Rural District 154.402

The minimum lot size within the Rural Single Family zoning district is 1.5 acres. There is a provision within the Zoning Code that states that "...any such lot or parcel of land which is in a residential district may be used for single-family detached dwelling purposes, provided the area and width of the lot are within 60% of the minimum requirements of this chapter; provided, it can be demonstrated safe and adequate sewage treatment systems can be installed to serve the permanent dwelling..." The subject lot does not

meet this requirement as it is 0.48 acres (20,706 sq. ft.), which is only 32% of 1.5 acres. Therefore, a variance is required to use the lot for a single family detached dwelling. However, being that Washington County has issued the lot a septic permit, safe sewage treatment is deemed to be present.

The design of the home is capable of meeting the setback requirements of “this section” which is 154.402 of the code and outlines the setbacks to the front, side, and rear lot lines.

Shoreland Standard 154.800 12.

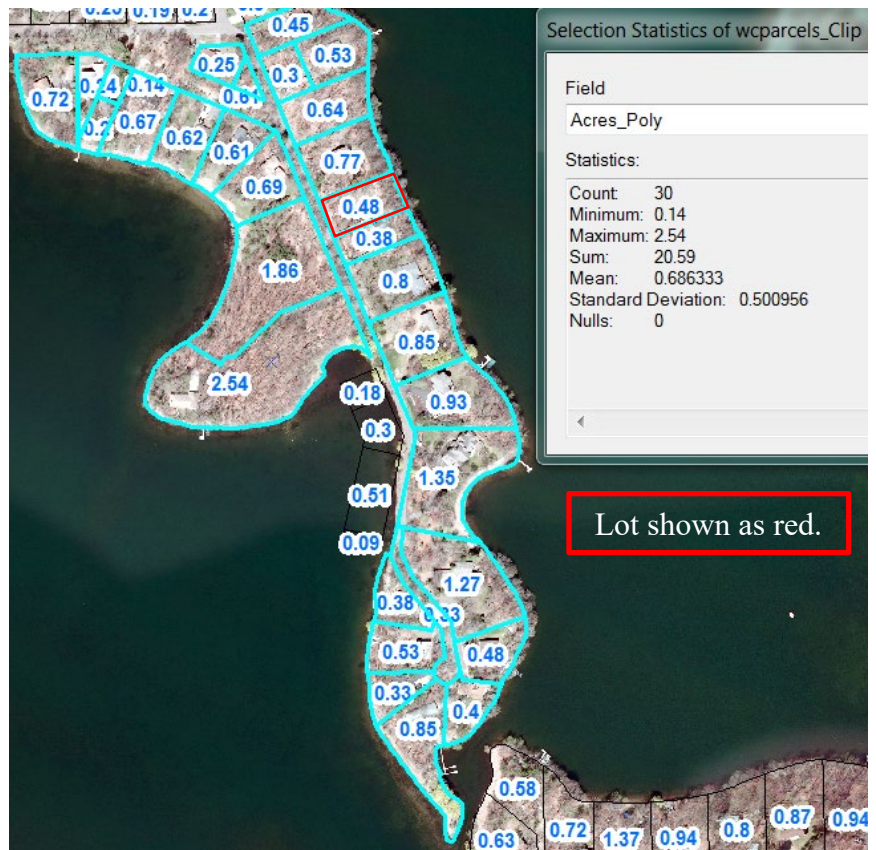
The minimum lot size for an unsewered single family detached dwelling within the shoreland district is 40,000 square feet. The lot size of the subject parcel is 20,706 square feet. The lot also does not meet the minimum shoreland district standards in Subdivision 12 of the shoreland ordinance which states that “All legally established nonconformities as of the date of this ordinance may continue, but will be managed according to Minnesota Statutes, Section 462.357 Subd. 1e and other regulations of this community for alterations and additions; repair after damage; discontinuance of use; and intensification of use.” Additionally, MN Statute 462.357 subd 1(e) subdivisions (d) through (j) specifically deal with shoreland lots of record that do not meet the requirements for lot size or lot width.

*Subdivision 1(e) states that a nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:*

- (1) all structure and septic system setback distance requirements can be met;*
- (2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and*
- (3) the impervious surface coverage does not exceed 25 percent of the lot.*

The lot is very close to meeting the requirement of the Statute but still falls short.

The map shows acreage of surrounding properties and more specifically shows the average (mean) of all the lots along the peninsula.



## AGENCY REVIEW

**Engineering Review.** The City Engineer has reviewed the proposed variances. Some of the Engineering comments are incorporated below.

1. **Septic System.** I am concerned with the accuracy of the submittal in regards to the proposed primary and secondary septic systems. The survey shows a primary system and two secondary drain-field areas. However, the septic design document shows the proposed mound system needing to be 75 feet x 40 feet. These dimensions would allow for only a primary system with no secondary system being available.

*This is relevant information and the City should consider primary and secondary sites for residential lots. However, the City does not perform permitting, inspection, or site review for septic systems. Washington County has determined that the site with the approved septic system is adequate for single family use.*

2. **Driveway.** The driveway exceeds the City maximum grade of 10.0% (proposed at 10.4%). The proposed grades are improved over previous design submittals but should a driveway grade variance be part of the application?

*93.26 G) Driveway grade.* Driveways exceeding a grade of 10% must be approved by the City Engineer. Exceptions must demonstrate an inability to meet the 10% maximum grade due to extenuating circumstances. *Staff does not believe a variance is required for the proposed driveway.*

3. **Impervious Surfaces.** The narrative presents impervious surface as 3,735 SF. When I scale the proposed survey I get over 2,500 SF for the driveway and it appears that they did not include the proposed entry and stoop (at approx. 220 SF). In short my calculations are approx. 4,420 SF impervious or 22.4%. You should have the applicant update the application or revise the survey to conform with the impervious surfaces.

*The figures used in the narrative do not match the most recent survey for the request. Though the numbers may not the intent in the narrative remains the same. Furthermore, the engineering numbers are very close to the ones on the most recent survey.*

4. **Drainage.** The driveway drains a significant area directly to the public street (Hill Trail) with no real drainage provisions at the street. However this is consistent with what is happening with adjacent properties in the area. Also, the new impervious surface does not exceed 6,000 SF and does not require a VBWD permit for rate and volume control.

**Review by Minnesota Department of Natural Resources (MNDNR).** The application was sent to the MNDNR and their comments are attached. They are also recommending the City apply some conditions to the approval.

- Modify existing construction design (to minimize variance to percent impervious and other requested variances).
- Direct rain gutter discharges into a rain garden (infiltration basin designed to capture and infiltrate runoff).
- Include a condition that requires that the shoreline remain in a natural state and that no future development is allowed in the Shore Impact Zone on this property (no patio, water-oriented accessory structure, beach, fire pit, stairs, etc).

*These seem to be fairly standard comments. It is their responsibility to look out for the shoreline and do their best to protect the lakes, which means limiting the amount of impervious surface within the shoreland district(s).*

## ADJACENT VARIANCES

**8114 Hill Trail.** (2013) – Received a variance to build a house on a lot that was sub-standard in size with a septic system that also did not meet the City sizing requirements. The variance was for the following:

- The construction of a single family home on a lot not considered a buildable lot of record per the Lake Elmo Zoning Ordinance; and
- The installation of a subsurface sewage treatment system on a lot that does not contain the necessary area suitable for a septic system as required by the Lake Elmo Zoning Ordinance.

**8130 Hill Trail. (2017)** – The applicant was seeking approval to expand a non-conforming structure and modify the septic area. The septic site also needed a variance because setbacks could not be met. The details are listed below:

- Septic dispersal area 10 from the property line (variance to allow 4 feet from the southern property line).
- Septic dispersal area 20 feet from the shoreland bluffline (variance to allow 15 feet).
- Septic dispersal area 75 feet from the Ordinary High Water Level (variance to allow 50 feet).
- Septic dispersal area 10 feet from a non-occupied structure (variance to allow 6 feet).
- A variance to allow expansion of a non-conforming structure not meeting the minimum required structure setback from the Ordinary High Water Level on a lot not meeting minimum lot size requirements of the Rural Single Family zoning district. The expansion includes an expansion to an existing deck; frost footings to the northwest corner of the house; an addition to the house to match the current house width; an entry roof adjacent to an existing deck attached to the garage; a walkway connecting the garage and house; and a screened porch, as indicated in the site plan dated 7/24/17.

**8114 Hill Trail** 22.1% impervious surface

**7972 Hill Trail** 17% impervious surface

**8130 Hill Trail** was for septic and structure setbacks, impervious surface dropped from 27 to 25%

**8056 Hill Trail** 25.4% impervious (variance for setbacks, connected to City 201 system)

### RECOMMENDED FINDINGS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.017 before an exception or modification to City Code requirements can be granted. These criteria are listed below, along with comments from Staff regarding applicability of these criteria to the applicant's request.

- 1) Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties - "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

#### **FINDINGS:**

- **Variance from Minimum Structure Setback from OHWL:** *The property was platted and established prior to current development standards and has a short depth, and so half the lot is within the required setback for a structure from the Ordinary High Water Level. Therefore, a structure and its utilities could not be constructed on the subject lot without a variance. The Applicant is proposing to construct a single family detached dwelling on the property, which is a permitted use within the Rural Single Family Zoning District and is not uncommon in the area. The standard is met.*
- **Variance Setback from Top of Bluff:** *The property was platted and established prior to current standards and because the existing code was not in place the lot has a short depth, and so adequate spacing was not provided during the subdivision process. Geographical features were not taken into account and so the top of bluff is now posing as an issue. The proposed home will still have a 24 ft. buffer from the top. The situation of the home does seem reasonable when factoring in all other conditions with the bluff. The septic area would support a single family detached dwelling on the property, which is a permitted use within the Rural Single Family Zoning District. The standard is met.*
- **Variance for Maximum Impervious Surface:** *The applicant does not appear to have intentionally gone over the allotted impervious surface allocation. Regardless of intent the proposal still does exceed the allowed percentage of 15%. However, repositioning the home would cause setback issues with the septic system. There can be conditions applied to the approval that*

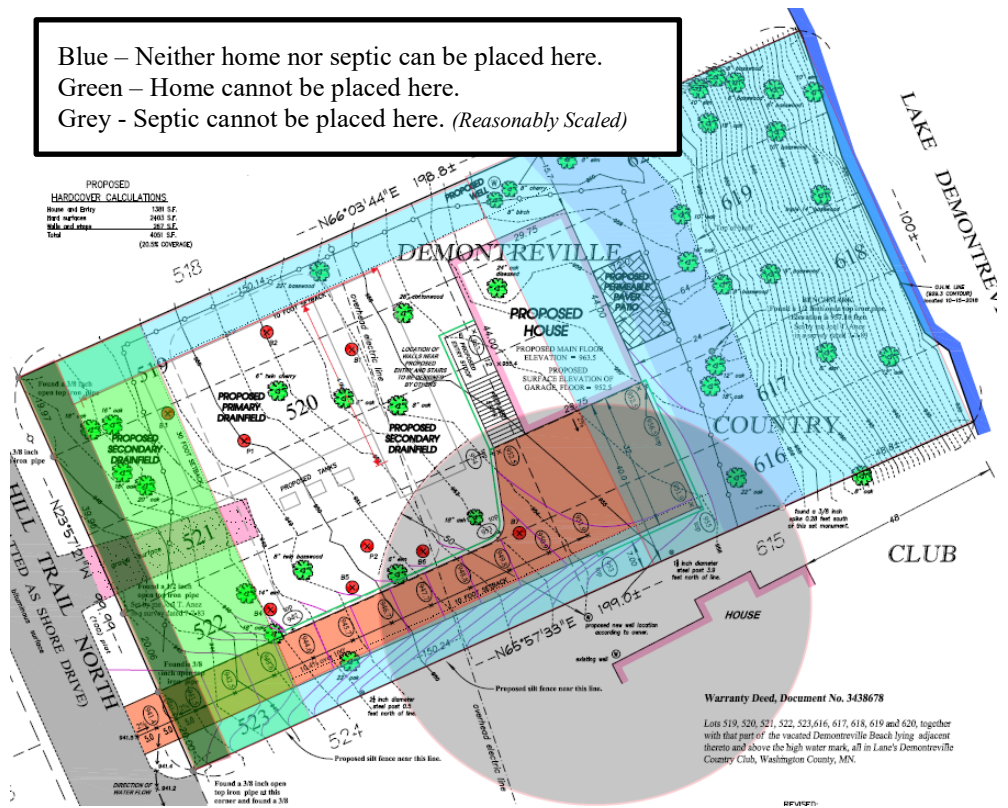
would help mitigate the impervious surface on the lot. The request is reasonable. The standard is met.

- **Variance from Minimum Septic Area:** The required 20,000 square feet of septic is larger than the lot itself. The Applicant is proposing to construct a mound system, which will not require as large of a drainfield area as would a Type I System. Provided the Applicant obtains the required permits, the proposed septic area will suffice for a mound system to support a single family home, which is a permitted use in the Rural Single Family Zoning District. The request for a decrease in needed septic area is reasonable and is supported by the fact that the system can support the home. The standard is met.
- **Variance from Minimum Lot Size:** Again the property was platted and purchased by the Applicant’s family prior to the current development standards. Because of this, there was no influence over the size of the lot. Furthermore, the thought of 100 ft. setbacks from the lakes did not seem to be present when the lake shore lots were created, making compliance difficult for today and the future. The Applicant is proposing to construct a single family detached dwelling on the property, which is a permitted use within the Rural Single Family Zoning District. The standard is met.

2) **Unique Circumstances.** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

**FINDINGS:**

- **Variance from Minimum Structure Setback from OHWL:** The property was platted and purchased by the Applicant’s family prior to current standards. As with many lake lots they are typically smaller in size and did not leave enough space to meet the required 100 ft. setback. To reasonably place and design the home around this standard would have created a burden in itself. Furthermore, septic systems are required to maintain a 75ft. setback from the OHWL.
- **Variance Setback from Top of Bluff:** The property was platted and purchased by the Applicant’s family prior to current standards. Again, because of the topography, limited size, and septic requirements the development elsewhere on the parcel becomes difficult.



- **Variance for Maximum Impervious Surface:** Because the area has developed in an organic manner the wells for the surrounding properties were justifiably placed in a location that was advantageous for them. With that said septic systems must be at least 50 ft. away from a well. Because of the location of well on the lot to the south, the proposed septic is required to be on the northern side of the applicant’s lot. This then leaves a limited area for the home which must also be 20 ft. from that system. Because the septic system must be located on the eastern side of the lot a longer driveway is required which helps push the property over the allowed 15%. The standard is met.
- **Variance from Minimum Septic Area:** The expectation for this standard is impossible as the required size is more than the property itself. To that, the City does not permit, inspect, or perform compliant inspections.



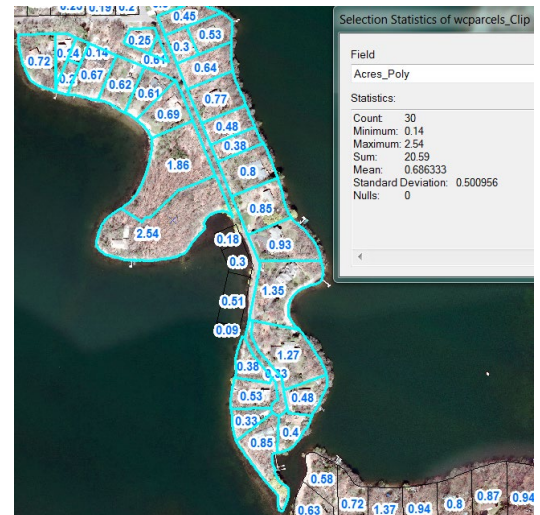
If the permitting authority has granted approval through their process, the expectation to maintain 20,000 sq. ft. would appear unnecessary. The standard is met.

- **Variance from Minimum Lot Size:** *The property is below the 60% threshold for being considered as a buildable lot. However, the lots that were created with the original development were very small and over the years, though very minimally, have become more conforming than their original state. Concerns can be generated from not meeting setback requirements but the home does not conflict with the RS district setbacks and septic system has been permitted and is issued as being safe. Although the lot is small the home can be safely built. The standard is met.*

3) **Character of Locality.** The proposed variance will not alter the essential character of the locality in which the property in question is located.

#### **FINDINGS:**

- **Variance from Minimum Structure Setback from OHWL:** *Some homes meet the setback from the HOWL but many neighboring homes do not meet the required setback. Using averaging the home it is only 1.5 ft. closer to the OHWL than what is allowed. It seems unreasonable to think a difference of 1.5 ft. could be sensibly noticed. For better or worse the setback is not unusual to the area. The standard is met.*
- **Variance Setback from Top of Bluff:** *The neighboring homes will have a geographically different situation on their lot but again, setback averaging would have been an option for the property and the home in its proposed location would not appear to be substantially different than the neighboring properties. The standard is met.*
- **Variance from Impervious Surface:** *The requested increase in impervious surface is also not unique to the area. Again, due to the sizes of the lots and shoreland requirements many properties exceed the impervious requirements. The standard is met.*
- **Variance from Minimum Septic Area:** *The size of the septic area will not visually alter the essential character of the locality. The standard is met.*
- **Variance from Minimum Lot Size:** *Very few lots affiliated with the Lanes Demontreville Country Club are capable of meeting the sizing requirement. Although not ideal to the code, lots that are smaller in size are more likely to fit in with the character. The standard is met.*



4) **Adjacent Properties and Traffic.** The proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

#### **FINDINGS.**

- **Variance from Minimum Structure Setback from OHWL:** *The proposed location of the home will not impair an adequate supply of light or inhibit lake views of adjacent properties. The proposed home is a two bedroom home and therefore will not significantly increase congestion. The proposed home will not substantially diminish or impair property values within the neighborhood. The standard is met.*
- **Variance Setback from Top of Bluff:** *The location of the home on the bluff will not impair an adequate supply of light or inhibit lake views of adjacent properties. The proposed home is a two bedroom home and therefore will not significantly increase congestion. The proposed home will not substantially diminish or impair property values within the neighborhood. The standard is met.*
- **Variance from Minimum Septic Area:** *The size of the septic area will have no effect on the supply of light and air to adjacent properties, increase congestion, or diminish or impair property values within the neighborhood. The standard is met.*

- **Variance from Minimum Lot Size:** *The size of a lot would not seem to have a direct impact on the supply of light or wind that a neighboring property would obtain. It is unknown how the size of the lot would have a financially negative impact on neighboring properties. The standard is met.*
- **Variance from Impervious Surface:** *A correlation between light and wind and impervious surface has not been established. Furthermore the requested amount of impervious surface would not seem to decrease neighboring properties. The standard is met.*

### **SUMMARY**

The applicants are requesting several variance approvals to build a single family home on an existing lot of record. While the number of requested variances may appear large, this report outlines all the limiting factors affecting the construction of a house on this property. The applicant has worked closely with City Staff and Washington County to design a home, septic system and a driveway for this property that minimizes the proposed variances while meeting all other development standards. The proposed plans fit the character of the neighborhood while maximizing compliance with City, County, and State development standards.

### **RECOMMENDED CONDITIONS**

1. That the Applicant obtain all applicable permits including but not limited to a City building permit including a grading, erosion control, and storm water management plan approved by the City Engineer.
2. The Applicant must reach out to the Valley Branch Watershed District regarding the project prior to grading or construction to confirm that a permit is not required for their requirements.
3. That the Applicant obtain a Washington County Subsurface Sewage Treatment System (SSTS) permit prior to issuance of a building permit.
4. Direct rain gutter discharges away from the lake or into a rain garden (infiltration basin designed to capture and infiltrate runoff) located on site.
5. The shoreline shall remain in a natural state and that no future development is allowed in the Shore Impact Zone on this property (no patio, water-oriented accessory structure, beach, fire pit, stairs, etc within 50 ft. from the OHWL).

### **FISCAL IMPACT:**

The proposed variance is not expected to have fiscal impact to the City.

### **OPTIONS:**

The Commission may:

- Recommend approval of the proposed variances, subject to recommended findings and conditions of approval.
- Amend recommended findings and conditions of approval and recommend approval of the variances, subject to amended findings and conditions of approval.
- Move to recommend denial of all variances, citing findings for denial.

## RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council approval of the requested variances:

***“Move to recommend approval of the request from Tim and Lacey Mercil for variances to construct a new home on the property located at 8126 Hill Trail. The variances are for: Minimum Structure Setback Requirement from the OHWL; Minimum Structure Setback from the Top of Bluff; Minimum Impervious Surface, Minimum Septic Area, and Minimum Lot Size; and shall be subject to recommended conditions of approval as outlined in the Staff report.”***

## ATTACHMENTS:

- 1) Application and Survey
- 2) MN DNR Comments
- 3) Location Map
- 4) City Engineer Comments (Incorporated into the Report)
- 5) Septic Permit
- 6) Neighboring Comments