

**STAFF REPORT**

DATE: 10/1/19

REGULAR

TO: City Council
FROM: Ben Prchal, City Planner
AGENDA ITEM: Variance Requests for 8126 Hill Trl. 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 Hill 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 sqft. 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. The City Council should be aware that the numbers in the narrative will not match the survey, due to revisions.

ISSUE BEFORE THE CITY COUNCIL:

Does the City Council believe the variance requests should be approved?

REVIEW/ANALYSIS:

PID 09.029.21.22.0008

Existing Land Use/Zoning: Single-family detached residential home guided for Rural Single Family.

Surrounding Land Use/Zoning: Surrounded by single family homes guided for Rural Single Family / Rural Single Family

History: 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.

Deadline for Action: Application Complete – 8/9/2019
60 Day Deadline – 10/8/2019
Extension Letter Mailed – N/A
120 Day Deadline – N/A

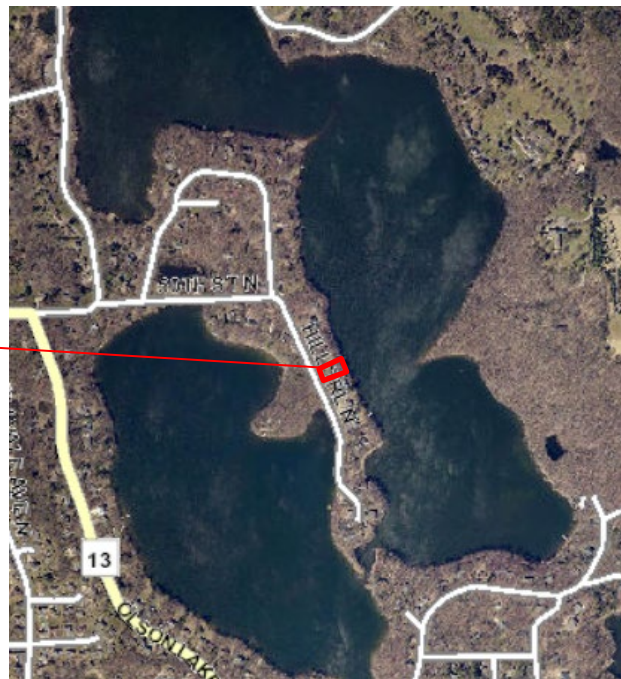
Applicable Regulations:

- Article V - Zoning Administration and Enforcement
- Article XVIII – Shoreland Management Overlay District
- Table V, Section 16, Chapter Four of the Washington County Development Code
- Article XI – Rural Districts

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% Revised Plan 19.5%	5.5% or 4.5%
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
Standards that are met are outlined below		
Septic 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. The 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 in 1925 which would have had vastly different expectations than today. 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 positioned next to Recreational Development lakes. However, Section 154.800 12. of the Shoreland Management Overlay District allows the possibility of 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 (50% of the setback) by 14 ft. but the setback from the OHWL of the houses on the adjacent lots averages to 66.5 ft. Unfortunately, the proposed home is 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.

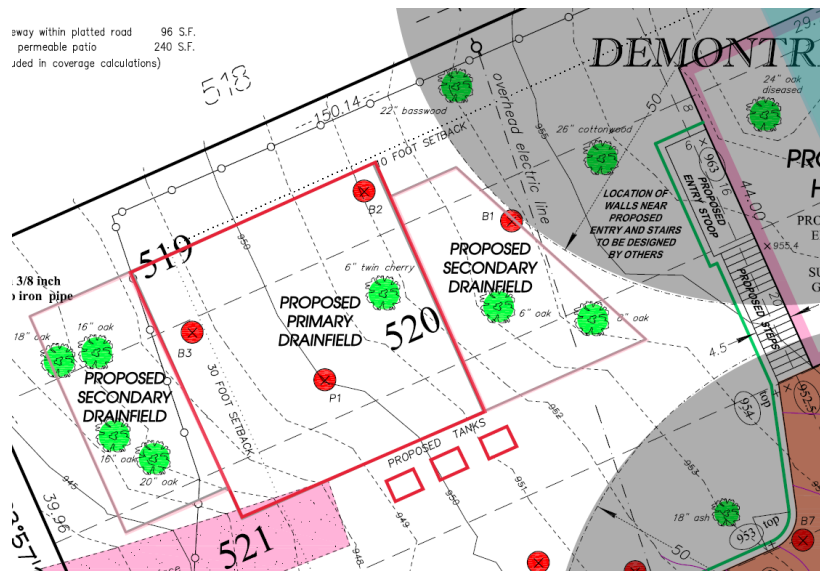


Top of Bluff 154.800 table 17-3

The shoreland management section of the code requires structures to 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 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 sqft. in size. Because the City does not involve themselves with the permitting of septic systems an approved septic permit from Washington County is 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 properly function for the home 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 4.5% to have an impervious surface area of 19.5% 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 sqft. 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 (19,712 sqft.), which is 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.

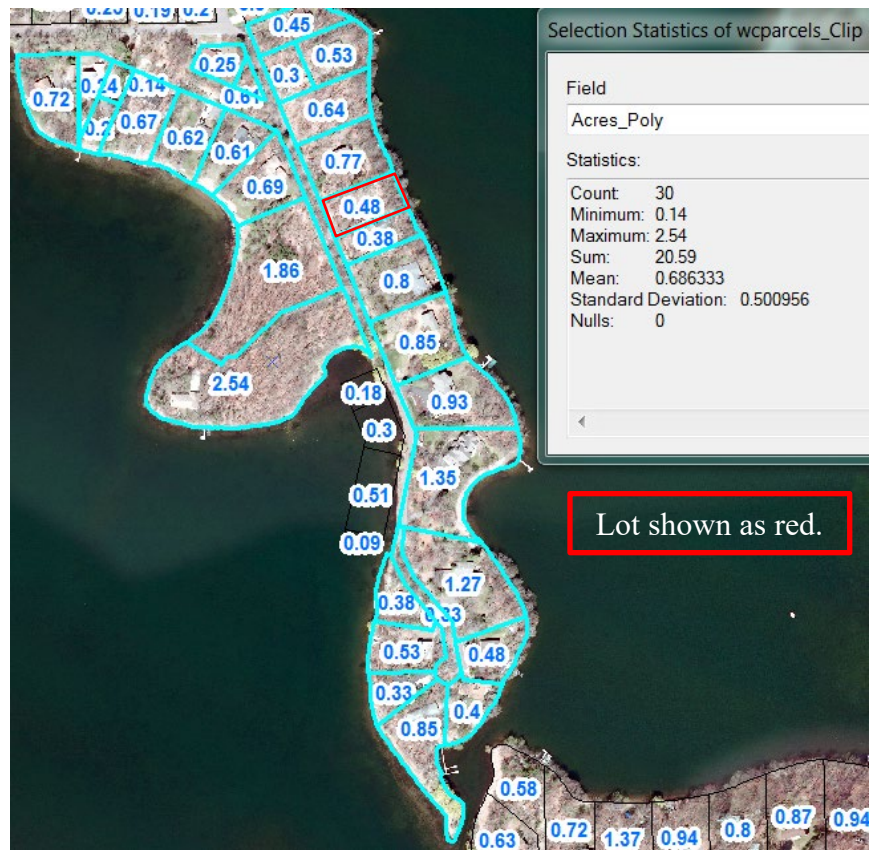
The minimum lot size for an unsewered single family detached dwelling within the shoreland district is 40,000 square feet. The lot size of the subject parcel is 20,706 square feet. The lot also does not meet the minimum shoreland district standards in Subdivision 12 of the shoreland ordinance which states 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.

The applicant has corrected the grade of the driveway to be 10%.

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, due to revisions. Though the numbers may not match the intent in the narrative remains the same.

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:** *With respect to the proposed variance for setback from the OHWL, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 due to geographic constraints, neighboring wells, and the required site for a septic. 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:** *With respect to the proposed variance for the setback from the top of bluff, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 of bluff. The situation of the home does seem reasonable when factoring in all other conditions on site. The standard is met.

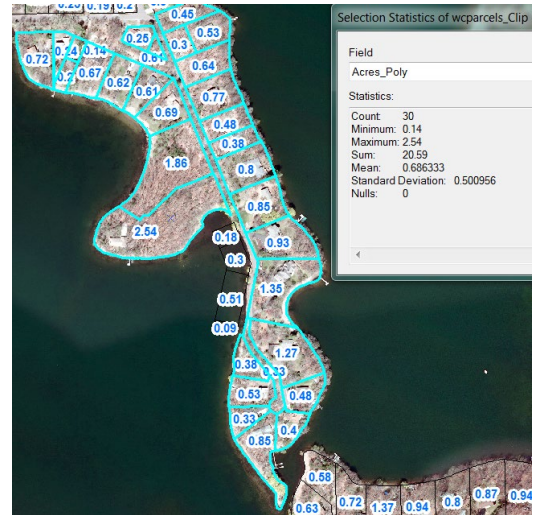
- **Variance for Maximum Impervious Surface:** *With respect to the proposed variance for the requested increase in impervious surface, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. The 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:** *With respect to the proposed variance for the reduction in septic area, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 septic permits from Washington County, 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:** *With respect to the proposed variance for a reduction in lot size, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 lake, impact zones, septic size requirements 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.*

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:** *With respect to the proposed variance for setback from the OHWL of the structure, the proposed variance will not alter the essential character of the locality. Some homes in the area meet the setback from the HOWL but many neighboring homes do not meet the required setback. Using averaging the home is only 2.5 ft. closer to the OHWL than what is allowed. It seems unreasonable to think a difference of 2.5 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:** *With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not alter the essential character of the locality. 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 if the setback could be met. The standard is met.*
- **Variance from Impervious Surface:** *With respect to the proposed variance for the increase in impervious surface, the proposed variance will not alter the essential character of the locality. 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 developed properties exceed the impervious requirements. The standard is met.*
- **Variance from Minimum Septic Area:** *With respect to the proposed variance for the reduction in septic area, the proposed variance will not alter the essential character of the locality. 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:** *With respect to the proposed variance for the reduction in lot size, the proposed variance will not alter the essential character of the locality. 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. 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:** *With respect to the proposed variance for the setback from the OHWL, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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:** *With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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 Impervious Surface:** *With respect to the proposed variance for the increase in impervious surface, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*
- **Variance from Minimum Septic Area:** *With respect to the proposed variance for the reduction in septic area, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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:** *With respect to the proposed variance for the reduction in lot size, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*

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.

Planning Commission Comments

The Planning Commission recommended approval of all of the variance requests and recommended that the applicant reduce the impervious surface amount or will mitigate the discharge of water that would mitigate the 5% needed to meet the code. The Commission also recommends that the applicant redesign the septic so that both the primary and secondary drainfields meet the needed 50ft. setback from all wells. The Commission amended condition 4, added a 6th condition, and recommended approval by a 4-0 vote.

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. (Already Satisfied)
4. Decrease the amount of impervious surface on site or mitigate the amount of run off that would come from the amount of impervious surface that is over the allowed 15%.
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).
6. The applicant must redesign the drainfields so that a 50 ft. setback from neighboring wells can be maintained for both the primary and secondary drainfields.
7. Approval of the discussed variances will expire on October 1st, 2020.

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

“Motion to approve the request from Tim and Lacey Mercil for variances to construct a new home on the property located at 8126 Hill Trail (09.029.21.22.0008). The variances are for: Minimum Structure Setback Requirement from the OHWL, Minimum Structure Setback from the Top of Bluff, Maximum Impervious Surface, Minimum Septic Area, and Minimum Lot Size; and shall be subject to recommended conditions of approval.”

ATTACHMENTS:

- 1) Narrative and Survey
- 2) MN DNR Comments
- 3) Location Map
- 4) City Engineer Comments (Incorporated into the Report)
- 5) Septic Permit
- 6) Neighboring Comments
- 7) Resolution 2019-071

RECEIVED

MAR 29 2019

CITY OF LAKE ELMO

Land Use Application Information
8126 Hill Trail N Lake Elmo
Prepared by Tim & Lacey Mercil

a. A list of all current property owners

Mike & Ruth Schrantz – Current Owners/Sellers
Tim & Lacey Mercil - Buyers

b. Legal description of the property:

Lots 519, 520, 521, 522, 523, 616, 617, 618, 619 and 620 Part of vacated Beach lane, lane's Demontreville County Club Section 9, Township 29 North, Range 21 West, City of Lake Elmo, Washington County, Minnesota

Parcel ID: 09.029.21.22.0008
Parcel Size: .452 Acres / 19,712 sq. ft

c. State the provision(s) of the Lake Elmo City Code for which you seek a variance. *(For example, Section 300.07 Zoning Districts, Subd (4b3) – Minimum District Requirements)*

Build home on .452 acres rather than 1.5 acres
Build home with impervious surface area of:

House & Entry	= 1,360 / 6.9%
Driveway	= 2,076 / 10.5%
Retaining Walls	= 299 / 1.5%
Totals	= 3,735 s.f and/or 18.9%

d. A specific written description of the proposal and how it varies from the applicable provisions of Lake Elmo Code.

Request for construction of a single-family home with a foundation size of: 1,360 on a lot that is .452 acres - which is below the 20,000 s.f minimum lot size

e. A narrative regarding any pre-application discussions with staff, and an explanation of how the issue was addressed leading up to the application for a variance.

Prior to submission of the application owners Ruth & Mike Schrantz & Tim Mercil met with Planning director: Ben Prchal on January 4th & March 22nd 2019 to gain guidance on the variant procedure to initiate a new build on the property.

f. Explain why the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration.

Need to purchase land from current owners. Purchase is contingent on getting a variance. All adjacent lots already have homes so no adjacent vacant land

g. Explain why the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

The lot will not be marketable if a house cannot be built on it.

h. Justify that the granting of the variance would not alter the essential character of the neighborhood.

Granting the variance would not alter the essential character of the neighborhood as one adjacent house (8130 Hill Trail N) is on .38 acres while the other adjacent house (8120 Hill Trail N) is on .76 acres. The subject lot of .452 acres is comparable in size to all other homes in the immediate area. A new septic of more current design would probably exceed the performance of the older neighboring systems.

CERTIFICATE OF SURVEY

LOTS 519, 520, 521, 522, 523, 616, 617, 618, 619, AND 620,
PART OF VACATED BEACH LANE,
LANE'S DEMONTREVILLE COUNTRY CLUB,
SECTION 9, TOWNSHIP 29 NORTH, RANGE 21 WEST,
CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA

BOUNDARY, SITE PLAN,
and
TOPOGRAPHY SURVEY

PRELIMINARY

SURVEY PREPARED FOR :
TIMOTHY C. MERCIL

3246 Twin Lakes Road
Little Canada, MN 55127

SITE ADDRESS
8126 Hill Trail North
Lake Elmo, Mn 55042

PID OF SURVEYED PARCEL: 09.029.21.22.0008

LAKE NOTES

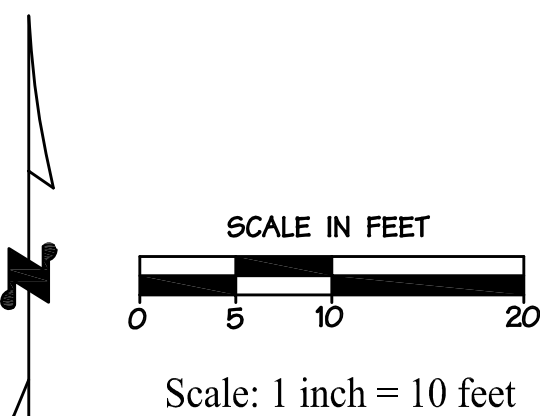
Ordinary High Water elevation is 929.3 feet.
100 year flood elevation is 931.0 feet
RECREATION DEVELOPMENT LAKE
MN Protected Waters 82-101
Water surface elevation on 10-15-2018
was 929.2 feet
Datum is NGVD 1929 (feet)

LEGEND

- Orientation of the bearing system is based on the southwest line of Lot 519 having a bearing of N23°57'21"W.
- Distances are in feet and decimals of a foot.
- Elevations are based on National Geodetic Vertical Datum 1929 adjustment.
- Contours are at one foot intervals.
- Denotes a 1/2 inch inside diameter iron pipe monument set, marked by a plastic cap inscribed ANEZ LS 13775.
 - Denotes a found monument, described as shown.
 - (plat) Denotes the dimension on the recorded plat of LANE'S DEMONTREVILLE COUNTRY CLUB.
 - OHW Denotes ordinary high water
 - Denotes utility pole
 - x Denotes existing spot elevation.
 - (952.5) Denotes proposed elevation.
 - B2 Denotes location of soil boring.
 - P2 Denotes location of percolation hole.
 - Denotes proposed contour.
 - Denotes proposed 48 inch high maximum retaining wall, unless otherwise noted.
 - Denotes proposed silt fence.
 - Denotes 20 foot wide bluff impact zone.
 - Denotes proposed hard surface.

NOTE

This survey used the found monuments as shown and also information from a previous boundary and topography survey for John J. Flanagan and Steve Grabski by Lake Elmo Land Surveyors Inc. and signed by me, Joel T. Anez, on July 7, 1983.



AREA ABOVE O. H. W.
0.452 acres±
(19,712 sq. ft.)

PROPOSED HARDCOVER CALCULATIONS

House	1309 S.F.
Entry	96 S.F.
Driveway	2171 S.F.
Walls	180 S.F.
Steps	95 S.F.
Total	3851 S.F. (19.5% COVERAGE)

New Driveway within platted road 96 S.F.
Proposed permeable patio 240 S.F.
(not included in coverage calculations)

THE HOUSE ON THIS ADJOINING PARCEL IS 85 FEET FROM THE O.H.W. LINE AND APPROXIMATELY 85 FEET FROM THIS LINE.

Found a 1/2 inch iron pipe marked with a plastic cap inscribed ANEZ RLS 13775 Set by me Joel T. Anez in a survey dated 7-7-83

BENCHMARK Found a 1/2 inch open top iron pipe. Elevation is 957.16 feet. Set by me Joel T. Anez in a survey dated 7-7-83

found a 3/8 inch spike 0.28 feet south of this set monument.

LOCATION OF WALLS NEAR PROPOSED ENTRY AND STAIRS TO BE DESIGNED BY OTHERS

proposed new well location according to owner.

Proposed silt fence near this line.

Proposed silt fence near this line.

Found a 3/8 inch open top iron pipe at this corner and found a 3/8 inch spike 0.06 feet south of this corner

Warranty Deed, Document No. 3438678

Lots 519, 520, 521, 522, 523, 616, 617, 618, 619 and 620, together with that part of the vacated Demontreville Beach lying adjacent thereto and above the high water mark, all in Lane's Demontreville Country Club, Washington County, MN.

REVISED:
July 29, 2019 added 12 by 20 foot permeable paver patio to drawing.

REVISED:
September 9, 2019. Steps and entryway correctly labeled as 6 feet but drafted as 8 feet. Drafted correctly the steps and entryway and then corrected driveway and wall accordingly.

REVISED:
September 18, 2019. Steps and entryway moved to within 8 feet of house corner. Driveway width changed to 11 feet and slope to 10%. Secondary drainfield adjusted to meet well setback.

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

Landmark Surveying Inc.
PRELIMINARY
Joel T. Anez Minnesota License No. 13775 Date July 11, 2019

SURVEY PREPARED BY:
Landmark Surveying, Inc.
21070 Olinda Trail North - P.O. Box 65
Scandia, Minnesota 55073
Office number: 651-433-3421
E-mail address: inthefield@frontier.net

4/17/2019

Ben Prchal
City Planner
3880 Laverne Avenue North
Lake Elmo, MN 55042

RE: Shoreland Variance Requests at 8126 Hill Trail North, Lake Elmo (Lake DeMontreville - 82010100)

Ben –

The primary goal of limiting impervious surfaces within shoreland districts is to reduce the amount of runoff directed into Minnesota waters. Runoff from impervious surfaces travels over the land and carries pollutants such as nutrients, sediment, bacteria, pesticides, heavy metals, and organic wastes. Studies have consistently shown a strong, direct connection between the percentage of impervious surface in a watershed and water quality degradation. As impervious surface area expands, so does the volume of runoff, phosphorus, and sediment entering waters, causing nuisance algae blooms, reducing public enjoyment, and harming aquatic plants and animals.

This project would increase impervious surface to 18.9%, where the maximum impervious surface allowed for unsewered lots is 15% under the City's shoreland ordinance. Please use the attached MNDNR guidance on variances to maximum impervious surface in shoreland districts when evaluating this variance request against statutory criteria and developing a findings of fact. If findings support granting the variance, impacts to Lake DeMontreville should be considered in developing appropriate conditions to mitigate those impacts.

If a variance is granted for this project, MNDNR recommends that the City of Lake Elmo include conditions on the variance that mitigate for an increase in percent impervious surface. Examples of appropriate mitigation conditions include:

- 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).

Thank you for the opportunity to comment on this variance request.

Sincerely,



Jenifer Sorensen
MNDNR
East Metro Area Hydrologist
1200 Warner Road
St. Paul, MN 55106
651-259-5754 | jenifer.sorensen@state.mn.us

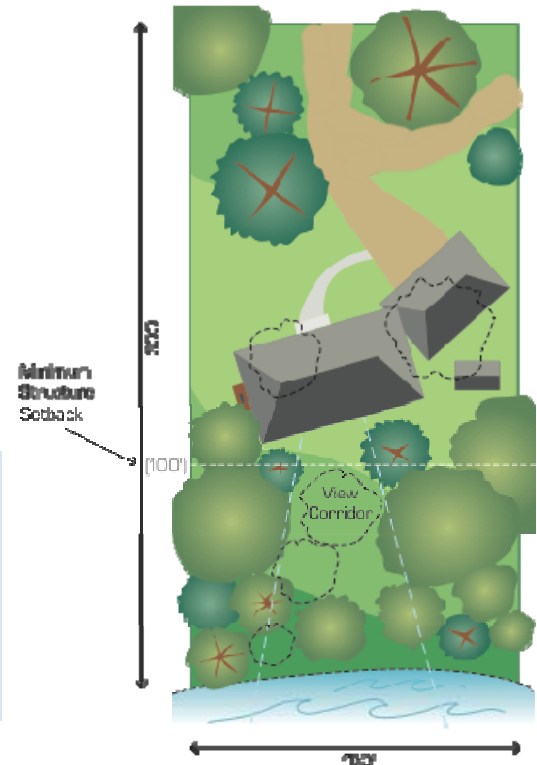
This is one of a series of examples developed as guidance for considering variance requests along lakes and rivers. Consult your local shoreland and floodplain ordinances.

Why are impervious surface coverage limits important?

In the protection of water quality, the management of rainwater on individual lots is one of our most important tasks. Rainwater that does not infiltrate into the ground or evaporate runs downhill to lakes, wetlands, or rivers. As impervious surface coverage increases, the rate and amount of runoff and pollutants entering public waters increases. When runoff from impervious surface coverage is not addressed, pollution increases and the diversity of aquatic life is reduced. Local governments have limited discretion to deviate from - or grant a variance to - impervious surface limits. They may do so only if *all* of the variance criteria established in state statutes and their local ordinances are met. In evaluating such requests, local governments must examine the facts, determine whether all statutory and local criteria are satisfied, and develop findings to support the decision. If granted, local governments may impose conditions to protect resources. An example impervious surface variance request, with considerations, is provided below.

Example Impervious Surface Variance Request

A property owner wishes to build a large lakehome on a conforming lot. The lake lot includes a private driveway with a spur to the neighbor's lot, which was placed to avoid an adjacent wetland. The building plans for the new construction plus the existing private road spur to the neighbor's property would exceed the impervious surface limit provision in the local ordinance.



Considerations for Findings

A good record and findings help keep communities out of lawsuits and help them prevail if they find themselves in one. In evaluating the facts and developing findings for this variance request, *all* of the following statutory criteria must be satisfied, in addition to any local criteria:

- Is the variance in harmony with the purposes and intent of the ordinance?**
 Considering a variance request is a balancing test that requires weighing the need of an individual property owner against the purposes of the shoreland regulations for protecting the public interest. These purposes are derived from Minnesota Shoreland Rules, which established impervious surface caps to prevent excessive runoff from constructed surfaces. Such excessive runoff causes erosion, transport of pollutants to public waters thereby degrading water quality. **Considerations:** *Will deviating from the required limit on this property undermine the purposes and intent of the ordinance? Why or why not? Is it possible to mitigate the consequences of additional impervious surface on-site such that additional runoff will not be produced? Would this mitigation be in harmony with the purposes and intent of the ordinance? Why or why not?*
- Is the variance consistent with the comprehensive plan?**
 The local comprehensive plan establishes a framework for achieving a community's vision for the future. Most plans contain goals and policies for protecting natural resources and shorelands, as well as maps that identify areas of high risk or with high ecological value where development should be avoided. The variance request must be considered with these goals and policies in mind. Maps should be consulted to determine if the property is within any areas identified for protection. **Considerations:** *Which goals and policies apply? Is allowing additional impervious surface and runoff consistent with these goals and policies? Why or why not?*

- **Are there *unique circumstances* to the property not created by the landowner?**

Unique circumstances relate to physical characteristics of the land - such as lot dimensions, steep slopes, poor soils, wetlands, and trees. These *do not* include physical limitations or personal circumstances created by the property owner that prevent compliance with the impervious surface provision, such as size of home or design preferences. Consider what distinguishes this property from other shoreland properties to justify why the applicant should be able to deviate from the provision when others must comply. **Considerations:** *What physical characteristics are unique to this property that prevent compliance with the requirement? Were any difficulties in meeting the impervious surface limit created by some action of the applicant? Has the applicant demonstrated no other feasible alternatives exist that would not require a variance, such as increasing the setback to reduce driveway length or reducing the lakehome's footprint?*

- **Will the variance, if granted, alter the essential character of the locality?**

Consider the size of the proposed structure, the extent of encroachment, and how it relates to the shoreline and hydrology of the riparian area. A large addition located close to the shoreline can detract from the natural appearance and character of the lake and its riparian areas and degrade water quality by altering topography, drainage, and vegetation in the riparian area, negatively affecting recreational, natural, and economic values. **Considerations:** *Does the variance provide minimal relief or a substantial deviation from the required setback? Does it affect the natural appearance of the shore from the lake? Does it affect the hydrology of the riparian area?*

- **Does the proposal put property to use in a reasonable manner?**

Examine the reasons that the variance is requested and evaluate them in light of the purposes of the local shoreland ordinance and the public water resource at stake. Since the impervious surface cap is generally intended to reduce runoff to public waters, it may not be appropriate to allow large areas of constructed surfaces so close to the water. **Considerations:** *Has the applicant demonstrated that the proposed construction is reasonable in this location given the sensitive nature of the area and the purposes of the regulations? Why or why not?*

Note: *The last three criteria address practical difficulties. Economic considerations alone cannot create practical difficulties*

Range of Outcomes

Based on the findings, several outcomes can occur:

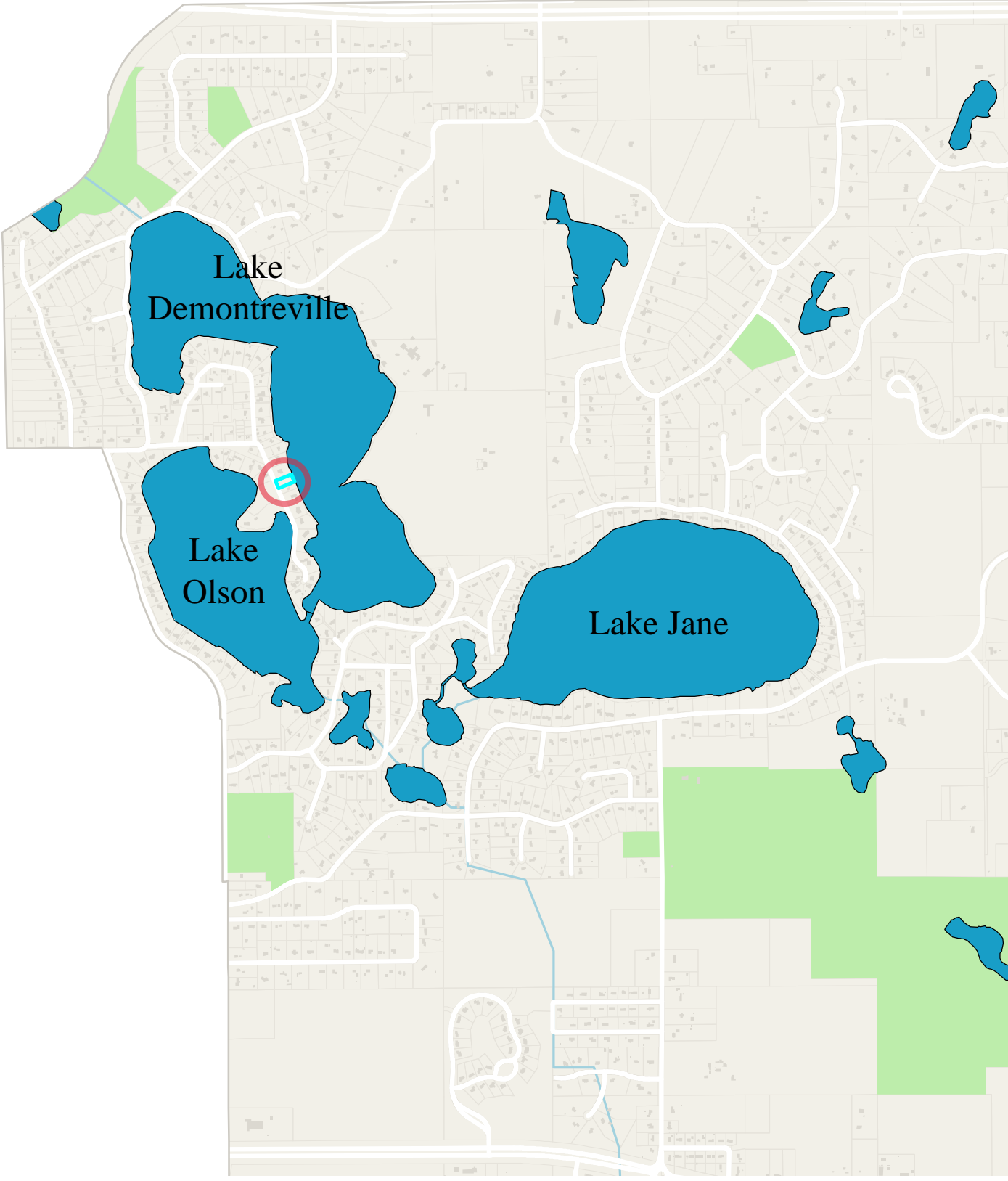
- If the applicant fails to prove that *all* criteria above are met, then the variance must be denied. For example, the local government could find that the building plans itself created the circumstances necessary for a variance rather than the any unique physical characteristics of the property.
- If the applicant demonstrates that *all* criteria are met, then the variance may be granted. For example, the local government could find that the construction footprint is reasonable, the circumstances are unique given the adjacent wetland, and the minor deviation in the impervious surface coverage does not alter the hydrology of the area (as determined through runoff calculations).
- If the variance is granted and the impervious surface in any way alters the hydrology of the area, then conditions may be imposed, such as to increase the structure setback from the lake by 15 feet to reduce the extent of the driveway and minimize the amount of impervious surface coverage over the limit.

Conditions on Variances

If findings support granting the variance, consideration must be given to the impacts on the public water and the riparian area and appropriate conditions to mitigate them. Conditions must be directly related and roughly proportional to the impacts created by the variance. Several examples are provided below:

- Modify construction designs (to minimize impact);
- Use permeable pavement systems for walkways, driveways, or parking areas (to reduce effective impervious surface area and infiltrate runoff);
- Direct rain gutter discharges away from the public waters and into infiltration basins (to reduce connected impervious coverage to allow additional areas for infiltration);
- Preserve and restore shoreline vegetation in a natural state (to intercept and filter runoff coming from structures and driveways); and/or
- Increase setbacks from the ordinary high water level (to provide infiltration near public waters).

More information at: www.dnr.state.mn.us/waters/watermgmt_section/shoreland/variances.html



Lake
Demontreville

Lake
Olson

Lake Jane

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

14949 62nd Street North P.O. Box 6

Stillwater, MN 55082-0006

Office: 651-430-6655 TTY: 651-430-6246 Fax: 651-430-6730

Community City Of Lake Elmo

Permit Number 2019-1243

Owner Schranz Michael G & Ruth G

Owner Address 5831 Hytrail Ave , Lake Elmo Mn 55042

Applicant Timothy Mercil

PERMISSION IS HEREBY GRANTED

To execute the work specified in this permit on the following identified property upon express condition that said persons and their agents, and employees shall conform in all respects to the provisions of Ordinance #206, Washington county Development Code, Chapter Four, Subsurface Sewage Treatment System Regulations. This permit may be revoked at any time upon violation of any of the provisions of said ordinance.

Project Address _____

Geo Code 0902921220008

Designer David R. Brown

Type of System: New Installation Mound

Design Criteria	Mound Sizing	Pressure Distribution
Percolation Rate: 40.00 MPI	Rock Bed Width: 10.00 Feet	Number of Laterals: 3
Depth to Restriction: 14 Inches	Rock bed Length: 45.00 Feet	Perforation Spacing: 3.0 Feet
Land Slope 9.00 %	Absorption Width: 24.00 Feet	Perforation Diameter: 7/32 Inch
Flow Rate: 450.00 GPD	Depth of Clean Sand: 1.80 Feet	Lateral Diameter: 1-1/2 Inches
	Downslope Dike Width: 20.50 Feet	Total Dynamic Head: 15 Feet
	Upslope Dike: 9.60 Feet	Pump 1: 26 GPM
	Length of Dike: 74.90 Feet	
Tank Sizes		
Tank 1: 1000 Gallons		
Tank 2: 1000 Gallons		
Pump Tank 1: 1000 Gallons		

Authorized Work/Special Conditions

The granting of this permit does not alleviate the applicant from obtaining any other Federal, State, or local permits required by law for this project.

Back-up area for second future on-site system must be protected from all traffic., Building sewer can be no closer than 20 feet from well and must be pressure tested Schedule 40 within 50 feet., Call at least 24 hours before the time you need an inspection., Domestic strength waste only. Industrial waste and hazardous wastes cannot enter the septic system., Effluent Filter & Alarm Required on outlet of last tank in series, Establish a vegetative cover over the soil treatment area within 30 days of the installation. Protect the soil treatment area from erosion until the vegetative cover is established., Install a meter to monitor wastewater flow., Installer must verify head and elevation so the proper pump size is used., Install individual sewage treatment system as per approved design in area tested and shown on the site plan., Install only when soil is below the plastic limit (dry soil conditions)., Insulate tank lids to a value of R-10 if tanks are 2 feet or less from the surface., Pressurized laterals can be no further apart than 36 inches and require accessible cleanouts at the end of each lateral., Rope off and protect tested area from all vehicle traffic., This system must be installed by a certified/licensed sewage treatment system installer holding a current license with the Minnesota Pollution Control Agency. , Use of tanks registered with the Minnesota Pollution Control Agency required.

Required Inspections: Final, Rough-Up, Soil Treatment Area, Tank Inspection

Permit Issuance Date: 08/06/2019

Permit Expiration Date: 08/05/2020

bce191b19fa8c23965c034c2eaac6805

e21d10750ee723ce86cff7cdfd1b0775

Joe Sanders 08/06/2019 - Issued

From: [Kathy Weeks](#)
To: [Ben Prchal](#); [Ken Roberts](#)
Subject: Fwd: objection to variance request - Did you guys get copied on this email?
Date: Monday, September 9, 2019 1:33:57 PM

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

Hi Ben and Ken - I just received this email from a neighbor objecting to the Variance(s) request for a home on HILL Trail.

I was not sure if you guys were copied on this, so thought I'd forward it to you (see below) just in case.

See you tonight!

Kathy Weeks
Weeks-End Signs
651.269.3035 (cell)

-----Original Message-----

From: Amy Gustafson <ajrgus@gmail.com>
To: jeff.e.holtz <jeff.e.holtz@gmail.com>; kyle.risner <kyle.risner@gmail.com>; stellbrian <stellbrian@gmail.com>; weeksendsigns <weeksendsigns@aol.com>
Sent: Mon, Sep 9, 2019 11:46 am
Subject: objection to variance request

September 9, 2019

Dear Planning Commission Members,

I'm writing in opposition to the request for multiple variances to the recreational lot between my home at 8120 Hill Trail N. and the Pavek home to the south at 8130.

I oppose this request for many reasons. First, doing so effectively invalidates the authority of The City. I would like to believe that before adopting ordinances, the City vets them carefully, obtains unbiased and expert opinions, and carefully weighs the multi-faceted implications of each and every ordinance it considers. Further, The City has been hard at work, creating its Comprehensive Plan for 2040, which puts forth the rationale for its ordinances. To grant exceptions, especially to multiple related variances essentially indicates that you don't believe in the integrity of your own work.

Secondly, the burden for justifying these variances has not been met in terms of proving hardship. The current owners purchased and used this property for recreational purposes, and had full access to City ordinances, DNR regulations carefully laid out in "A Guide for Buying and Managing Shoreland" prior to their purchase not many years ago. Therefore, neither the owners nor the potential purchasers have any grounds to claim a reasonable expectation except that this is recreational property, is not a buildable lot, and could only reasonably expect the same upon its transfer to new ownership. It was, and is, a recreational lot. Therefore, *there is no hardship*.

Further, allowing this large structure on such a small lot would adversely affect adjacent properties. This tall structure would block natural light and air to both adjacent properties and cast undesirable

artificial light and noise to both properties. This is especially clear in the septic design, which shows that the structure is angled to direct both light and noise directly into my home and yard.

In addition, The City's septic ordinances were changed just a few years ago, significantly reducing the required area, which had been 10,000 square feet. This request asks for a variance from the already greatly reduced requirement. I believe the Septic "OSTP Preliminary Evaluation Form" contains inaccurate information, as it indicates the home is for two adults only, and I understand there are also two children who will be in residence. This error leads me to believe that there may very well be other inaccuracies as well. While the report is on University of Minnesota stationery, I do not see that Washington County indicates approval of a septic on such an undersized lot.

The DNR states that residential lots on unsewered lakes *must have at least 150' of lakeshore and a minimum of 40,000 square feet in lot area*. The request for these variances goes against DNR requirements as well as city ordinances for lot size. While I see that the new Comprehensive Plan indicates that there may be some building along shoreland, it does not imply that lot sizes would be severely reduced, which would alter the character of this neighborhood, as well as the ecology of the natural lake environment.

Because the structure *will significantly alter the character of the neighborhood*, these variances are further unjustified. This neighborhood is designated by The City as "Rural Residential." The current draft of the City's Comprehensive Plan states the following (underlining added):

"Rural Residential designated areas have residential patterns characterized by large lots... Many of these communities have topographical development limitations and a development pattern with lot sizes that generally range from 1-2.5 units per acre. Rural Residential communities are expected to discourage future development of rural residential patterns with lots less than 2.5 acres and, where opportunities exist, plan for rural development at densities that are not greater than 1 unit per 10 acres."

The Tri-Lakes area is specifically mentioned as an example of a "conventional rural residential neighborhood" which has large lots" stating (underlining added),

"...many of the neighborhoods are organized around natural features such as the City's many lakes. For example, the neighborhoods of the Tri-Lakes were developed to capitalize on access to Lakes Jane, Olson and DeMontreville in the northwest corner of the community... Oftentimes it is difficult for large-lot areas to have a strong sense of neighborhood and character, but Lake Elmo has successfully created a sense of place within these neighborhoods by carefully developing areas with intrinsic values."

Further, allowing excessive impervious surface by means of permitting these variances would negate The City's intention to "promote best management practices for stormwater management, habitat restoration, and natural resource conservation." This lot is between two lakes, so any runoff would have double the impact of other lots. Many goals under "Balanced Development and Growth" in The City's Comprehensive Plan for 2040 discusses the need for *protecting "open spaces and natural resources from adverse impacts that may result from intensified development."* Under "Housing", the Comprehensive Plan states,

"An important consideration of any future residential developments in these areas should respect past efforts to protect and preserve important open spaces, critical habitats, and water resources."

Increasing the density of housing would have deleterious effects to this natural environment, impact runoff to two lakes, and would significantly alter the character of the neighborhood.

As I see it, granting these variances could only provide one benefit. That benefit would be only to The City in terms of having one more property to bring in tax revenues. However, it would be a

grave mistake to do so, as the deleterious effects of overcrowding the neighborhood and seriously harming the natural resources upon which its character largely depends would actually lessen the taxable value of all properties in the neighborhood, and reduce any short-term benefit.

I urge you to consider how this request falls far short of the requirements for a variance and deny the request. Affirm the authority of The City, uphold City ordinances, adhere to the principles set forth in The City's Comprehensive Plan, and regard the requirements set forth by the Department of Natural Resources.

With gratitude for your consideration,

Amy Gustafson

From: [Gayle Dworak](#)
To: [Ben Prchal](#)
Subject: Variance Request
Date: Wednesday, August 21, 2019 2:54:20 PM

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

Hi Ben,

Dean and I just received the variance request for a new build on the vacant property between 8120 and 8130 Hill Tr. N.

We will be out of the country vacationing on Sept, 9th, but we would like to give our support to both the sellers and the buyers on this variance request.

Dean and I went through a similar process in purchasing our lot. It was not an easy process for us, and we know that it has not been an easy process for this transaction either. We were most fortunate to have the support of the present Mayor and the majority of City Council members.

We are extremely grateful that we persevered as we are very happy with our home, living on Lake Demontreville, and with the many wonderful neighbors on our street.

We offer our full support for this variance request and would heartily welcome our new neighbors.

Warmest Regards,

Gayle and Dean Dworak

8114 Hill Tr. N

Lake Elmo , Mn 56042

Sent from my iPad

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO 2019-071

A RESOLUTION APPROVING VARIANCES TO ALLOW A NEW HOME TO BE CONSTRUCTED ON AN EXISTING LOT THAT NEEDS CITY APPROVAL OF VARIANCES FOR MINIMUM STRUCTURE SETBACK FROM THE OHWL, MINIMUM STRUCTURE SETBACK FROM THE TOP OF BLUFF, MAXIMUM IMPERVIOUS SURFACE, MINIMUM SEPTIC AREA, AND MINIMUM LOT SIZE FOR THE PROPERTY LOCATED AT 8126 HILL TRAIL N.

WHEREAS, Tim and Lacey Mercil (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City”) for a variance(s) to allow the construction of a new home needing a variance for minimum structure setback from the OHWL, Minimum structure setback from the Top of Bluff, Maximum Impervious Surface, Minimum Septic Area, and Minimum Lot Size for the property located at 8126 Hill Trial N, Lake Elmo MN 55042 (09.029.21.22.0008) (the “Property”); and

WHEREAS, notice has been published, mailed, and posted pursuant to the Lake Elmo Zoning Code, Section 154.109; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said variances on September 9th, 2019; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendations with respect to the requested variances to the City Council as part of the City Staff Memorandum dated October 1st, 2019; and

WHEREAS, the City Council considered the variances at its October 1st, 2019 meeting; and

NOW, THEREFORE, based on the testimony elicited and information received, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining a variance are found in the Section 154.109 of the Lake Elmo Zoning Code.
- 2) That all submission requirements of Section 154.109 of the Lake Elmo Zoning Code have been met by the Applicants.
- 3) That the proposed variances include the following components:
 - a) Minimum Structure Setback Requirement from the OHWL – Averaging allows a 2.5 ft. variance
 - b) Minimum Structure Setback from the Top of Bluff – Allowing a 6ft. Variance
 - c) Maximum Impervious Surface – 4.5% Variance
 - d) Minimum Septic Area – 17,000 sq ft. Variance (A mound system does not require as much land area)
 - e) Minimum Lot Size - 1.01 and .43 Acre Variance

- 4) **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;
- *With respect to the proposed variance for setback from the OHWL, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 due to geographic constraints, neighboring wells, and the required site for a septic. 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.*
 - *With respect to the proposed variance for the setback from the top of bluff, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 of bluff. The situation of the home does seem reasonable when factoring in all other conditions on site.*
 - *With respect to the proposed variance for the requested increase in impervious surface, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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.*
 - *With respect to the proposed variance for the reduction in septic area, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 septic permits from Washington County, 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.*
 - *With respect to the proposed variance for a reduction in lot size, strict enforcement of the City's zoning regulations will cause practical difficulties and the applicant is proposing to use the property in a reasonable manner. 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 lake, impact zones, septic size requirements 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.*

5) **Unique Circumstances** the plight of the landowner is due to circumstances unique to the property not created by the landowner;

- *With respect to the proposed variance for setback from the OHWL of the structure, the plight of the Applicant is not unique and has been caused by the applicant. 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.*
- *With respect to the proposed variance for the setback from the top of bluff, the plight of the Applicant is unique and has not been caused by the applicant. The property was platted and purchased by the Applicant's family prior to current development and setback standards. Again, because of the topography, limited size, and septic requirements the development elsewhere on the parcel becomes difficult.*
- *With respect to the proposed variance for the requested increase in impervious surface, the plight of the Applicant is unique and has not been caused by the applicant. 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 wells to the north and south the septic is required to be pushed to the west side of the 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 western side of the lot a longer driveway is required which helps push the property over the allowed 15%.*
- *With respect to the proposed variance for the reduction in septic area, the plight of the Applicant is unique and has not been caused by the applicant. The expectation for this standard is impossible to meet as the required size is more than the property itself. To that, the City does not permit or perform compliant inspections. If the permitting authority has granted approval through their process, the expectation to maintain 20,000 sqft. of area for the septic system appears unnecessary.*
- *With respect to the proposed variance for a reduction in lot size, the plight of the Applicant is unique and has not been caused by the applicant. The property is below the 60% threshold for being considered as a buildable lot (without additional approvals). However, the lots that were created with the original development were very small and over the years, though very minimally, have become more conforming from 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.*

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

- *With respect to the proposed variance for setback from the OHWL of the structure, the proposed variance will not alter the essential character of the locality. Some homes in the area meet the setback from the HOWL but many neighboring homes do not meet the required setback. Using averaging the home is only 2.5 ft. closer to the OHWL than what is allowed. It seems unreasonable to think a difference of 2.5 ft. could be sensibly noticed. For better or worse the setback is not unusual to the area.*
- *With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not alter the essential character of the locality. 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 if the setback could be met.*

- *With respect to the proposed variance for the increase in impervious surface, the proposed variance will not alter the essential character of the locality. 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 developed properties exceed the impervious requirements.*
- *With respect to the proposed variance for the reduction in septic area, the proposed variance will not alter the essential character of the locality. The size of the septic area will not visually alter the essential character of the locality.*
- *With respect to the proposed variance for the reduction in lot size, the proposed variance will not alter the essential character of the locality. 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.*

7) **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;

- *With respect to the proposed variance for the setback from the OHWL, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*
- *With respect to the proposed variance for the setback from the top of bluff, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*
- *With respect to the proposed variance for the increase in impervious surface, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*
- *With respect to the proposed variance for the reduction in septic area, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*
- *With respect to the proposed variance for the reduction in lot size, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase the congestion of the public streets or substantially diminish property values. 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.*

CONCLUSIONS AND DECISION

- 1) Based on the above findings, the City Council approves the requested variances associated with the construction of the new home at 8126 Hill Trail N. The City Council hereby approves the requested variances for the new home subject to the conditions of approval outlined below:
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. (Already Satisfied)
 4. Decrease the amount of impervious surface on site or mitigate the amount of run off that would come from the amount of impervious surface that is over the allowed 15%.
 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).
 6. The applicant must redesign the drainfields so that a 50 ft. setback from neighboring wells can be maintained for both the primary and secondary drainfields.
 7. City Approval of the variances will expire on October 1st, 2020.

Passed and duly adopted this 1st day of October, 2019 by the City Council of the City of Lake Elmo, Minnesota.

Mayor Mike Pearson

ATTEST:

Julie Johnson, City Clerk