



## STAFF REPORT

DATE: 12/3/2019

**REGULAR**

**TO:** City Council  
**FROM:** Ben Prchal, City Planner  
**AGENDA ITEM:** Variance Request to Allow Expansion of A Non-Conforming Structure  
**REVIEWED BY:** Ken Roberts, Planning Director

---

### **BACKGROUND:**

The City has received a variance application from Vance and Haupheng Vang of 2038 Inwood Ave. to allow an expansion of a legal non-conforming structure. The applicants would like to construct an addition onto the existing home that is on the property. The proposed addition would conflict with the required front and side yard setback(s). With the home being legal non-conforming, the proposed improvements from a dimensional standpoint would more than likely trigger the need for a variance.

### **ISSUE BEFORE THE CITY COUNCIL:**

The City Council is being asked to approve or deny the variance requests.

### **PROPOSAL DETAILS/ANALYSIS:**

*Applicant:* Vance and Haupheng Vang  
*Property Owners:* Haupheng Vang  
*Location:* 2038 Inwood Ave. PID# 21.029.21.34.0013, Subdivision name Torre Pines 2<sup>nd</sup> Addition Block 1 Lot 3  
*Request:* Variance for Expansion of a Non-Conforming Structure for Front and Side Yard Setbacks  
*Existing Land Use:* Single-Family Detached Residential Dwelling  
*Surrounding Land Use:* Surrounded by other single-family detached residential dwellings. Lake Elmo Park Reserve is to the East of the property.

*Existing Zoning:* RE – Residential Estate  
*Comprehensive Plan:* Rural Single Family  
*History:* This property holds an old home that currently does not meet the front yard setback. The Torre Pines development established around the home.

*Deadline for Action:* Application Complete – 10-15-2019  
60 Day Deadline – 12-14-2019  
Extension Letter Mailed – N/A  
120 Day Deadline – N/A

*Applicable Regulations:* Article V – Zoning Administration and Enforcement  
Article XI – Rural Districts

**Request Details.** The applicant is proposing to build an addition off the north side of the existing structure. At this point the existing setback from the side lot line (north line) is 64 ft. 6 inches. and the setback from the front lot line is 50 ft. 9 inches. There is no issue with the side setback as a 50 ft. side yard setback is required but the front yard setback falls short by 50 ft. (100 ft. required). The applicant would like to invest and improve the property so that it will become more accommodating for the family's needs. There is language in the Zoning Code that would allow certain improvements without the need for a variance. However, the language is not flexible enough to assist with obtaining the addition. (See Code Reference Below)

154.151 Non-Conforming Uses, Buildings and Structures

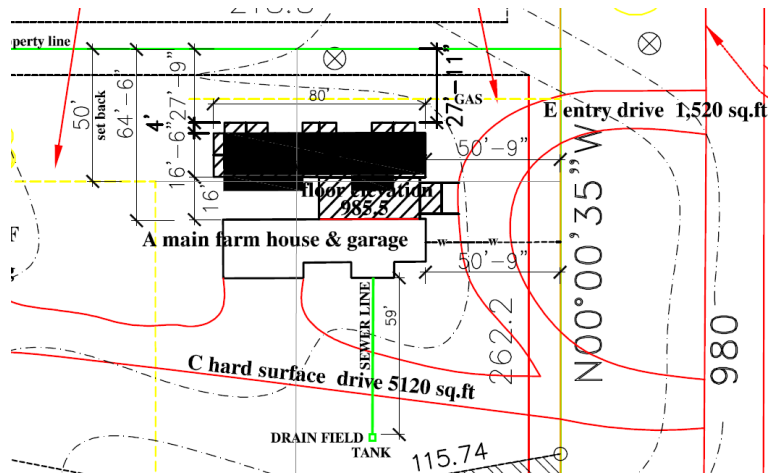
*C. Preservation of Dimensionally Substandard Buildings or Structures.* Except as provided in this chapter, buildings structures lawfully existing on the effective date of this chapter or on the effective date of any amendment to this chapter may be maintained although the building or structure does not conform to the dimensional standards of this chapter. However, any such building or structure shall not be altered or improved beyond normal maintenance, except that any lawful dimensional substandard residential building, accessory building, or structure may be altered or improved if the existing substandard dimension relates only to setback requirements and does not exceed the 10% of the minimum setback requirements. Additionally, the alteration or improvement shall conform to all of the provisions of this chapter and shall not increase the existing substandard dimensions.

**The Applicant is seeking variances on the following items**

Code Location	Code Setbacks	Proposed Setbacks
Front yard setback (garage) 154.402 table 9-2	100 ft.	50 ft. 9 in. <b>not compliant</b>
Side yard setback (garage) 154.402 table 9-2	50 ft.	27 ft. 11. <b>not compliant</b>

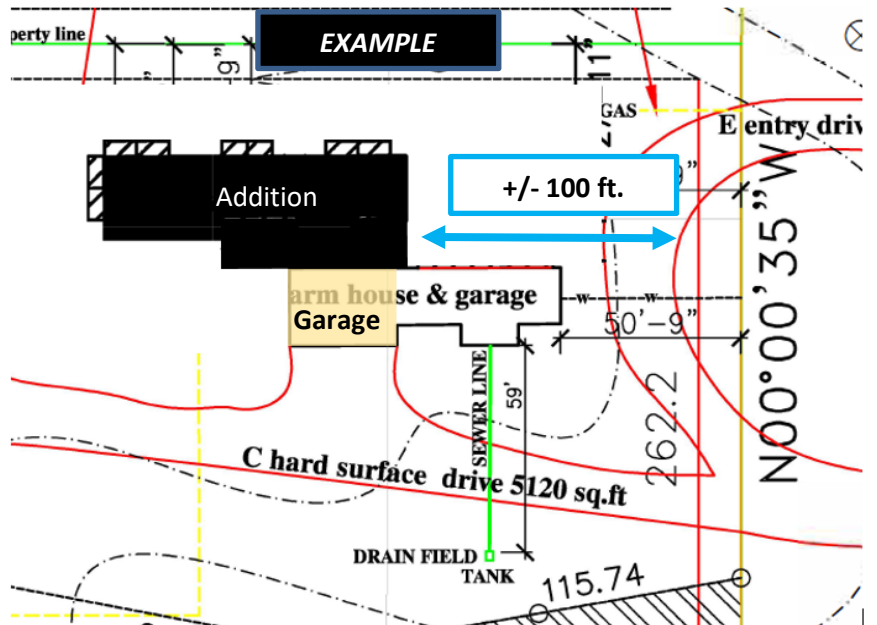
**Structure Setbacks:**

There is language in place that would allow the home to be altered. However, the code only allows for construction if the setback is 10% or less of the existing requirements. The current side yard setback is conforming but the proposed addition will conflict with the required 50 ft. side yard setback and 100 ft. front yard setback becomes difficult to comply with.



**Example:**

For discussion purposes If the addition was placed on the home where a variance would not be required from the front yard setback Staff believes that the home/addition would not be functional (see image below). Staff created a layout that would not conflict with the front yard setback which ends up placing the addition behind the existing garage (not to scale). Furthermore, shifting the addition to a position on the home where neither the front nor the side lot line setbacks would violated then appears to directly interfere with the access to the garage, driveway, and possibly the drain field.



Code Location	Code Setbacks	Proposed or Existing Setbacks
Lot area 154.402 table 9-2	2.5 acres	2.5 acres
Front yard setback 154.402 table 9-2	100 ft.	50 ft. 9 in. – Existing setback 50 ft. 9 in. - Proposed setback
Side yard setback 154.402 table 9-2	50 ft.	64 ft. 6 in. (North) – Existing 27 ft. 9 in. (North) - Proposed
Impervious Surface 154.402 table 9-2	15%	11.5% - Proposed

**Lot Details and Details of the Development**

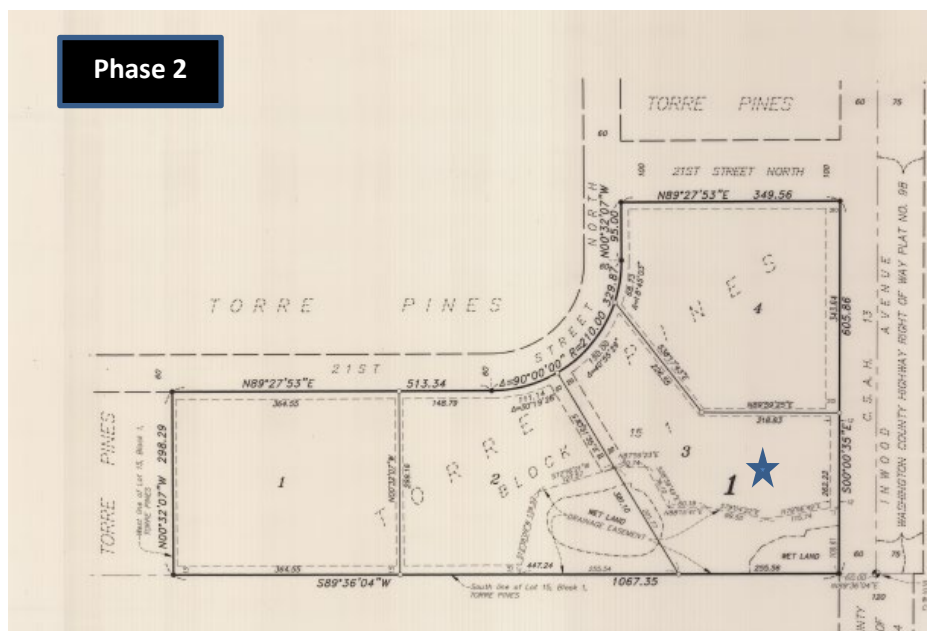
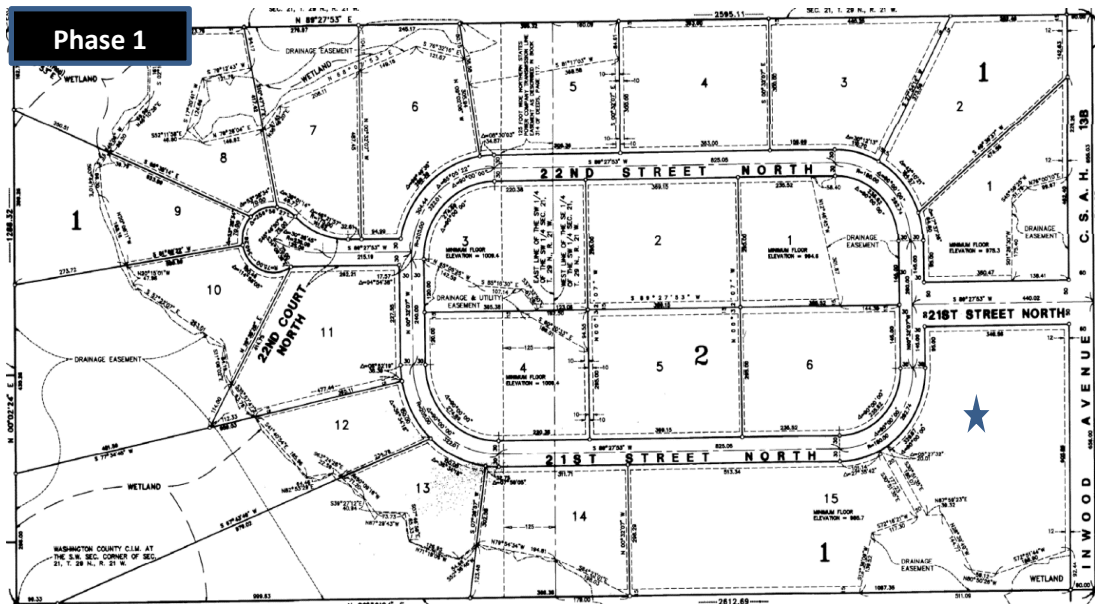
**Lot Details.** The property was established during the development of the Torre Pines Subdivision. The lot itself does not have any issues when it comes to zoning. With the lots being established around the existing home it is not surprising to Staff that the home would become Legal Non-Conforming.

One important aspect worth a discussion is the approving resolutions for the development. Phase 1 of the development consisted of 15 lots with the discussed home being on lot 15. The issue then comes up during the approval for Phase 2. At first there doesn't seem to be any issues and it's a fairly straightforward development with no issues (*except the legal non-conforming home*). The problem that Staff found is condition number 7. Of the approving resolution (2008-038) for Phase 2. The condition states:

“The driveway access from Lot 13, Block 1 shall be moved to 21<sup>st</sup> Street prior to any expansion or replacement of the existing house on this lot.”

The issue here is that there is no lot 13 for block 1 of the second addition. However, there is a lot 13 of block 1 in the first addition (*see phase 1 graphic*). With that said, Staff speculates that there was a mistype and it should have said Block 1 Lot 3 and further believes that the driveway condition was intended for the existing home of the property at 2038 Inwood Ave.

The intent was to redirect the driveway but it was miss-stated. This would be an appropriate time to correct the location of the driveway for the house from Inwood Ave to 21<sup>st</sup> St. but Staff does not believe it is entirely necessary. The driveway enters out onto a County Road and though the driveway connects to a road that is obviously busier than 21<sup>st</sup> St. the existing owner would like to have it remain in place. At the time when Inwood Ave (Hwy 13) is improved the homeowner may want to connect to 21<sup>st</sup> St (Which the County would more than likely require). The City would also need to accept that by requiring the driveway to connect to 21<sup>st</sup> St. it would technically create another non-conformity. With the driveway connecting out to 21 St. the accessory building would then be closer to the front lot line than the principle structure (the home).





Though, that would conflict with the code it would not appear to be terribly detrimental to the neighbors. Although some individuals may find it more desirable to connect to 21 St. Staff does not necessarily see a gain in requiring the current owner to re-direct the driveway. Unless the City Council has different thoughts, this may be an appropriate condition to have Washington County enforce as everything is already existing. It is unknown when Inwood will be improved.

**Other Agency Review**

**Washington County Comments.**

Washington County has stated that they would not like to see additional access created onto Inwood Avenue and instead have a new driveway installed for connection to 21<sup>st</sup> St.

Staff Comment - City Staff agrees that additional access should not be created but does not necessarily agree that enforcing a connection to 21<sup>st</sup> St. would need to be required at this time. Instead that connection could/should be required when Inwood Avenue is improved (expanded).



**Valley Branch Watershed Comments.**

The Watershed did respond but was uncertain if a permit would be required.

Staff Comment – It would be appropriate to apply a condition requiring the property owner to reach out to the Watershed District and provide feedback on what will be required.

**City of Lake Elmo Engineer Comments.**

The comment memo from the City’s Engineer is attached.

To summarize the memo, additional encroachment is not recommended in anticipation of the expansion of Highway 13 (Inwood Ave.) and the setback line should be measured from the ROW line with an addition 15 ft. as that is what the County would expect to acquire during the time that Hwy 13 is improved, eliminate one section of the driveway onto Highway 13, acquire an addition 15 ft. of ROW in anticipation of the expansion of Hwy 13.

**Torre Pines HOA.**

The applicant has obtained approval from the HOA architectural advisory board for the addition. The HOA would also require the driveway to be improved beyond gravel. If the City were to require the applicant to move the driveway now there would only be one expenditure for the driveway. However, if the applicant would need to connect to 21<sup>st</sup> St. in the future they would be required establish a new driveway, making the existing a “useless” improvement.

**RECOMMENDED FINDINGS:**

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.109 before an exception or modification to the property can be granted. The criteria is listed below, along with recommended findings from Staff regarding applicability of the 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 For Front Yard Setback:*** *With respect to the proposed variance for a reduced setback from the front lot line, 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 request to expand the existing home on site does appear to be reasonable. Considering that the home is existing and the development was established around the home, property*

owners would be limited when it comes to improvements that could comply with the code. Also, the addition does not further increase the non-conformity to the front lot line, the reduced setback does appear reasonable.

**Variance For Side Yard Setback:** With respect to the proposed variance for a reduced setback from the side lot line, 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. With the Residential Estate requiring a minimum of 50 ft. as a setback from the side lot line, which is the largest of all rural zoning districts only being less restricting than the Agricultural district, which requires a 100 ft. setback. The City must also keep in mind that perhaps there is an alternative to the request to avoid a variance. But placing the addition to the South of the existing home would more than likely infringe on the existing driveway, access to the garage, and possibly the septic system. The addition to the north does appear reasonable and they are still able to maintain a 27 ft. and 9 in. setback from the north property line.

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

**FINDINGS:**

**Variance For Front Yard Setback:** With respect to the proposed variance for the front yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Although the lot is large enough to accommodate the size of home that is desired the applicant was not involved with the construction/placement of the existing house or with the platting process that triggered this home to become legal non-conforming. With the structure being legal non-conforming, additions become difficult especially with when the required setback is 100 ft. The location to the roadway is no fault of the property owner. Furthermore, given the circumstances, approval for the addition on the structure with a setback less than 100 ft. from the front lot line does appear to be reasonable.

**Variance For Side Yard Setback:** With respect to the proposed variance for the side yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Generally speaking property owners do not have to contend with legal non-conforming structures and it appears that there was little anticipation to one day build onto the existing structure. Although the home as existing, is capable of meeting the required setback from the northern side lot line there is limited room and options to expand to the north. Beyond this, it is impractical to expand the structure to the south where the setbacks can be met. This is justified because an expansion would then be to conflict with the driveway, garage, and the driveway would be forced south towards where the drain field is located. The standard appears to be 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 For Front Yard Setback:** With respect to the proposed variance for the front yard setback, the addition would not appear to alter the character of the locality. Though affiliated with the Torre Pines Development the home primarily appears to have a limited impact on the development due to its location in the rear of the lot, as compared to the other homes. Allowing a variance to the front lot line appears to have limited bearing on the character of the locality.





**Variance For Side Yard Setback:**

With respect to the proposed variance for the side yard setback, the addition would not appear to alter the character of the locality. The City recognizes that allowing a reduced setback for the side yard lot line would be different from what has been allowed by the Zoning Code and the Locality. However, understanding that this was the original home in the subdivision and given its location on the property being able reasonably notice the setback form within the development appears stretched.

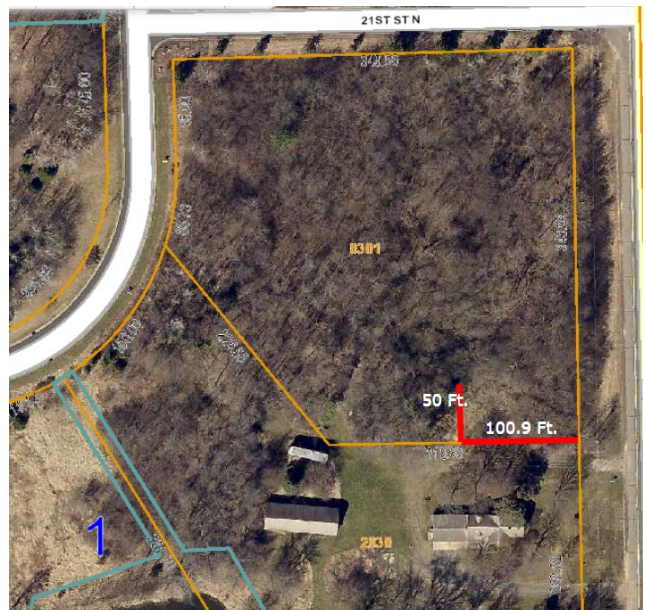


**Adjacent Properties and Traffic.** The proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

**FINDINGS**

**Variance For Front Yard Setback:** With respect to the proposed variance for the front yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. Drawing a conclusion that allowing a variance from the front property line would cause negative impacts appears limited in this situation when reviewed through the required scope. Since the home is on the opposite side of the lot of where the neighborhood road is located the impacts of the proposal would be severely limited.

**Variance For Side Yard Setback:** With respect to the proposed variance for the side yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. The only property that would be perceivably impacted is the property to the north (vacant). However, there would still be an estimated 77 ft. setback (or more) from the proposed home and a new home on the neighboring property to the north (8381 21<sup>st</sup> N.). There is also a strong stand of trees on the northern not that further helps to minimize the visibility of the structure. Although the required setback is being infringed on there still appears to be a sufficient setback to accommodate approval. Furthermore, allowance of the reduced setback appears to have a limited bearing on reducing property values when it comes to the setback.



**RECOMMENDATION/COMMENTS:**

**Planning Commission Comments:**

The Planning Commission recommended approval of the Variances as presented by a 5-0 vote. They also expressed concern for the access onto Inwood Ave. There seemed to be a consensus that if the property were their own they would not like to have their driveway off of Inwood Ave. Further stating that they would not like to have their children enter and exit onto that road but inevitably thought it would be appropriate to allow the property owner to determine their access. The Planning Commission also held a discussion of the existing number of bathrooms and bedrooms in the home. At the time Staff was not aware, but after doing a search Staff determined there are 3 bedrooms and 1 bathroom in the existing home. The addition would be adding 3 bedrooms and 3 bathrooms.

**Staff Comments:**

Staff is recommending approval of the variance requests. Although the lots are larger in the Residential Estate Zoning classification the property owner is at a disadvantage when it comes to making improvements consisting of expansions to the home.

**RECOMMENDED CONDITIONS**

- 1) The applicant shall reduce the number of access points onto Inwood Avenue from two to one.
- 2) The applicant shall follow up with the Valley Branch Watershed District regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to the City prior to issuance of the building permit.
- 3) The applicant shall follow up with Washington County Septic Department regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to City Staff prior to issuance of a building permit.
- 4) Additional internal alterations to the home may require a permit, before altering internal spaces of the home the applicant must follow up with the building department for possible permitting requirements.

**FISCAL IMPACT:**

None.

**MOTION**

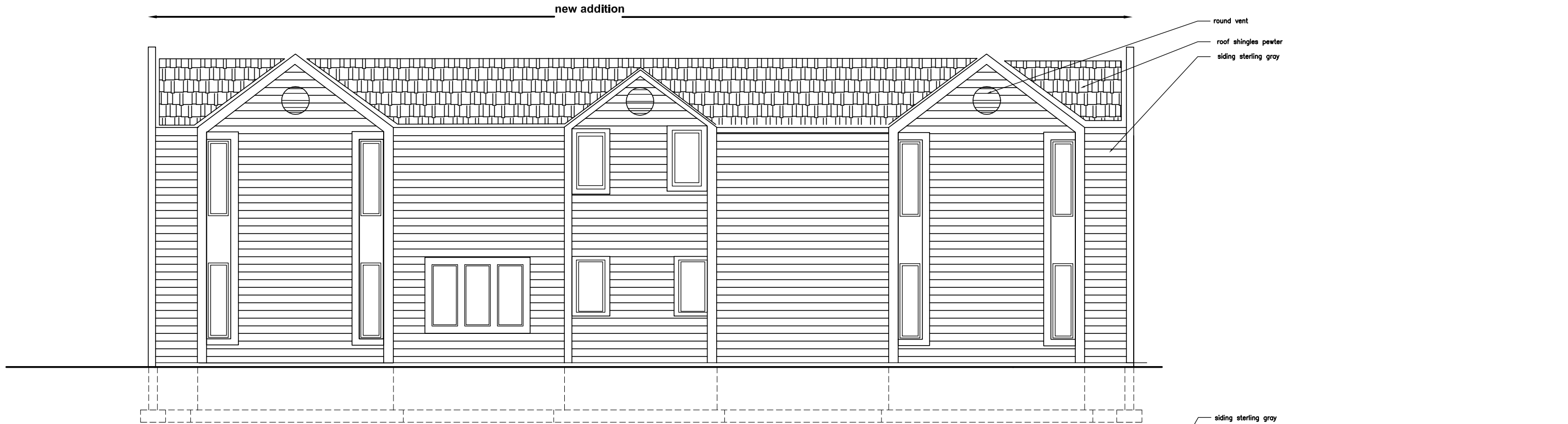
*“Motion to adopt Resolution 2019-093, approving a variance from the front and side yard setback, to allow an addition onto the existing home on the property at 2038 Inwood Ave.”*

**ATTACHMENTS:**

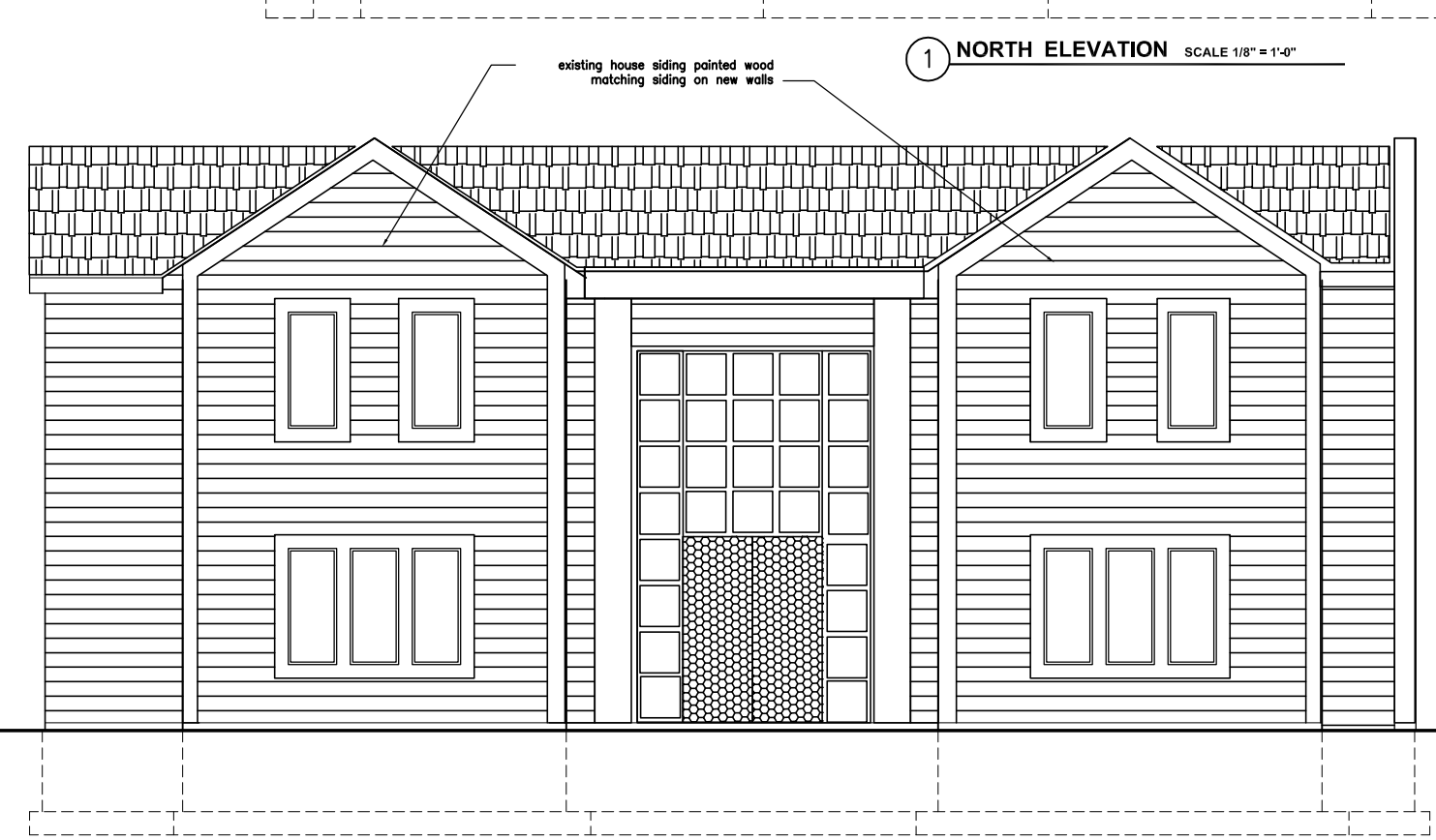
- Applicants narrative and survey/site plan
- HOA Architectural Board Approval
- Lake Elmo Resident Comments
- Resolution 2019-093



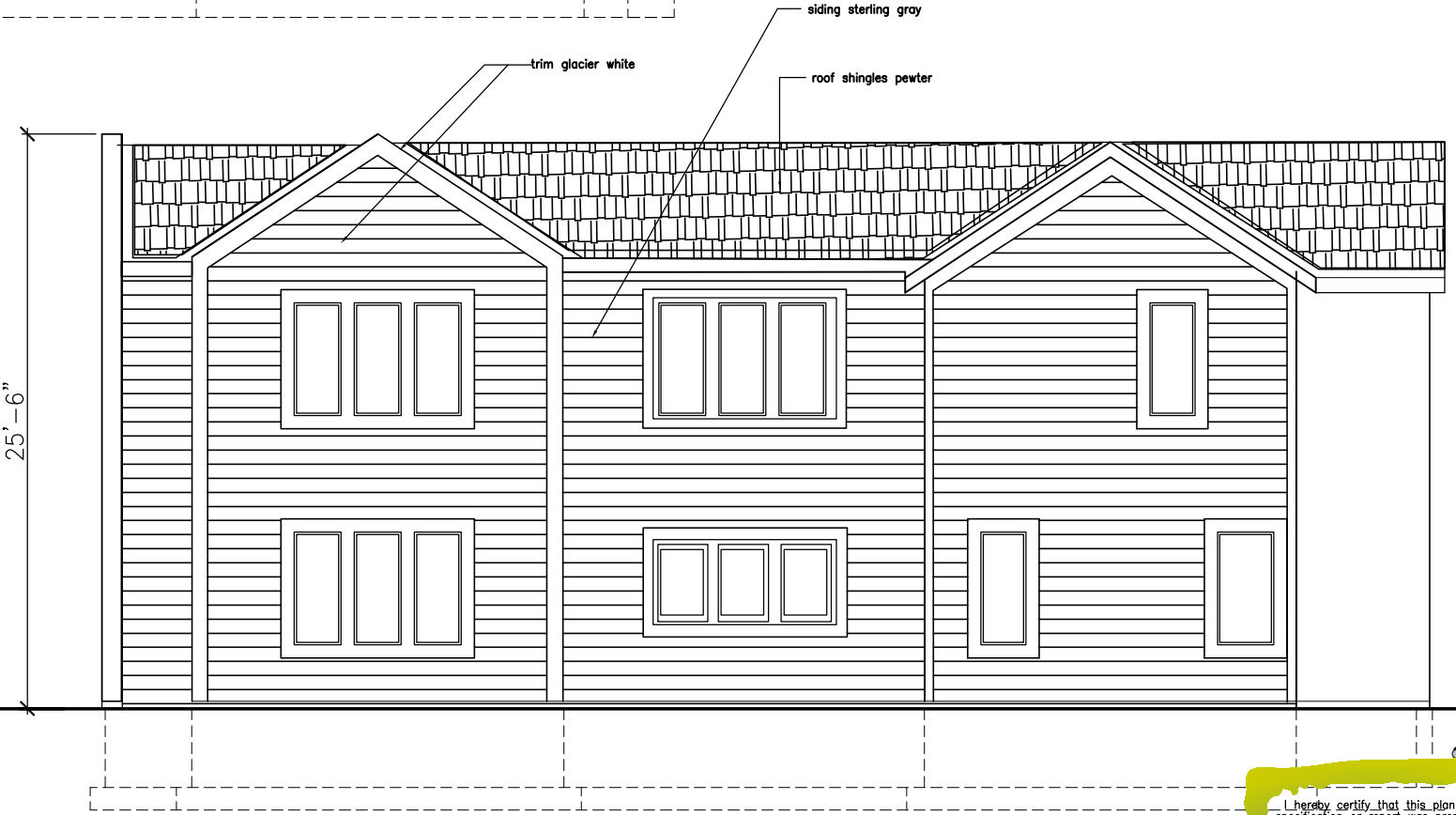




1 NORTH ELEVATION SCALE 1/8" = 1'-0"



3 EAST ELEVATION SCALE 1/8" = 1'-0"



2 WEST ELEVATION SCALE 1/8" = 1'-0"

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly registered architect under the laws of the state of Minnesota.

STEVEN EDWARD ERBAN, PA, AA, MN REG. #10035  
 DATE SIGNED  
 DATE DRAWN  
 DATE REVISED



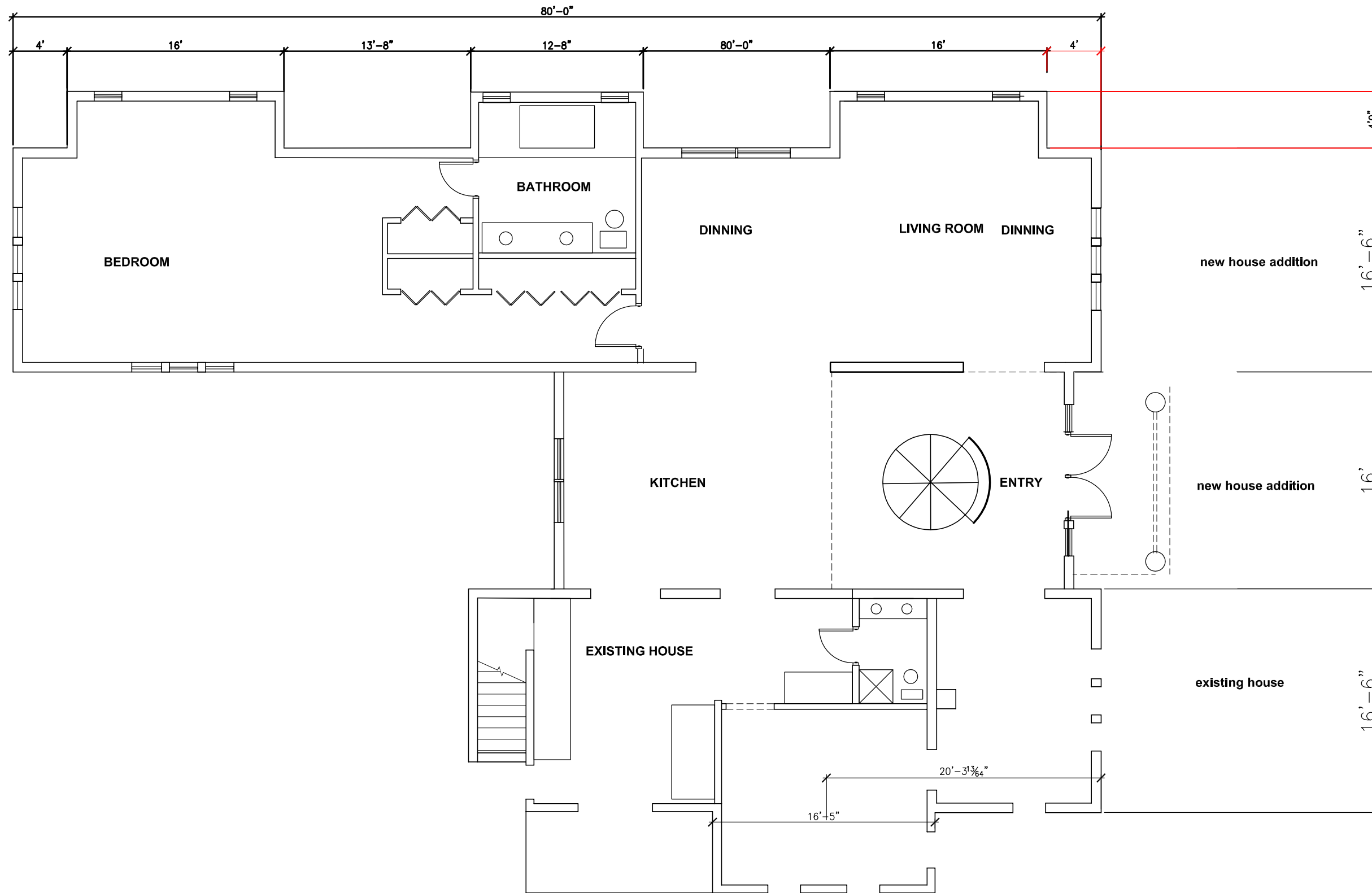
**out of the box architecture**  
 suite 103, 11200 stillwater blvd lake elmo, minnesota 55042  
 phone: 651 748 1078 fax: 651 748 1272



**VANCE VANG ADDITION** 2038 Inwood Ave. N.

october 10, 2019  
**ELEVATION & SECTION** SCALE 1/8" = 1'-0"





1 FIRST FLOOR PLAN SCALE 1/8" = 1'-0"



**out of the box architecture**  
 suite 103, 11200 stillwater blvd lake elmo, minnesota 55042  
 phone: 651 748 1078 fax: 651 748 1272



**VANCE VANG ADDITION** 2038 Inwood Ave. N.

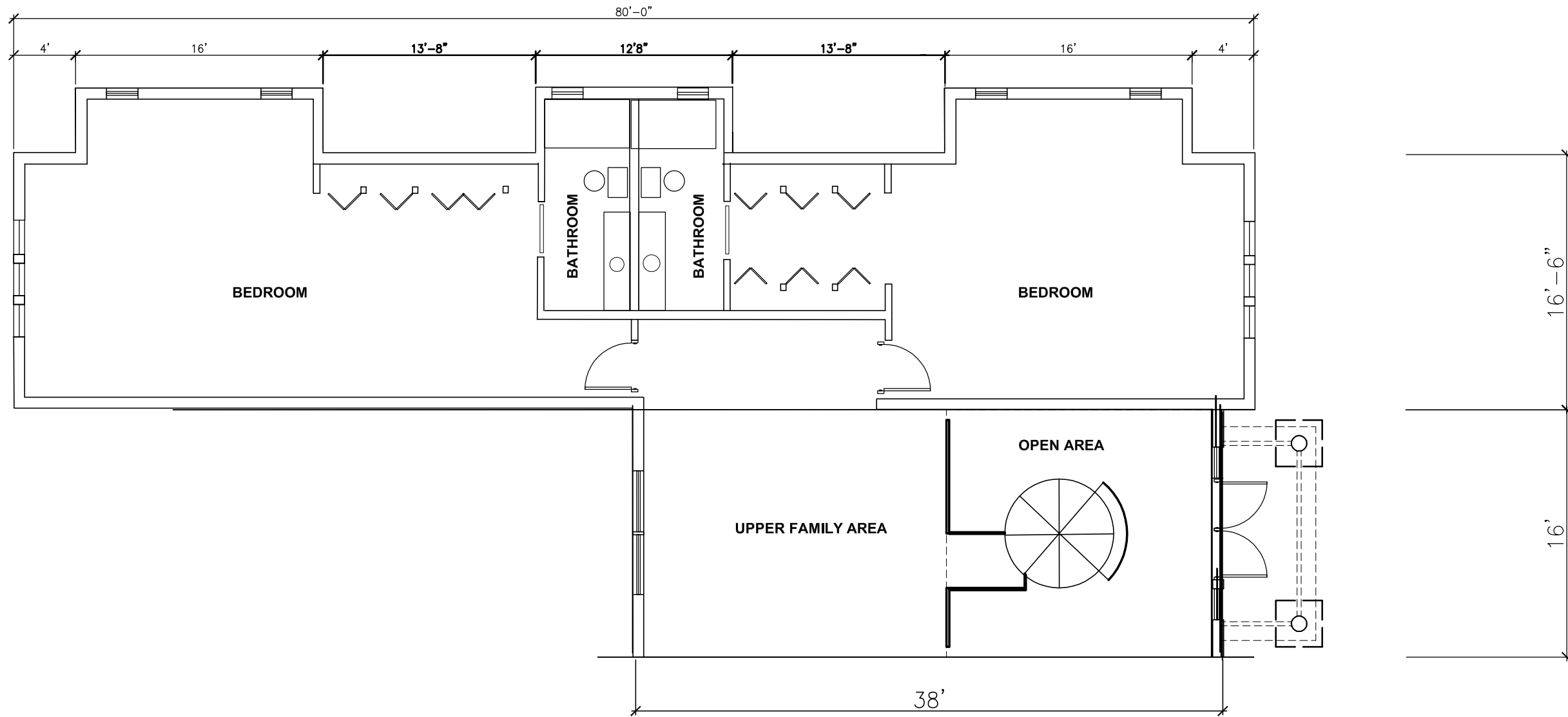
october 10, 2019  
**FIRST FLOOR PLAN** SCALE 1/8" = 1'-0"

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly registered architect under the laws of the state of Minnesota.

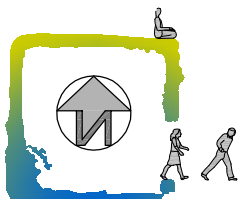
STEVEN EDWARD ERBAN, P.A., M.A., M.N. REG. #10035

DATE SIGNED \_\_\_\_\_  
 DATE DRAWN \_\_\_\_\_  
 DATE REVISED \_\_\_\_\_

**A1**



1 SECOND FLOOR PLAN SCALE 1/8" = 1'-0"



**out of the box architecture**  
 suite 103, 11200 stillwater blvd lake elmo, minnesota 55042  
 phone: 651 748 1078 fax: 651 748 1272



**VANCE VANG ADDITION** 2038 Inwood Ave. N.

october 10, 2019  
**FIRST FLOOR PLAN** SCALE 1/8" = 1'-0"

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly registered architect under the laws of the state of Minnesota.

STEVEN EDWARD ERBAN, P.A., M.A., M.N. REG. #10035

DATE SIGNED \_\_\_\_\_  
 DATE DRAWN \_\_\_\_\_  
 DATE REVISED \_\_\_\_\_

**A2**



# MEMORANDUM

# FOCUS ENGINEERING, inc.

Cara Geheren, P.E. 651.300.4261  
Jack Griffin, P.E. 651.300.4264  
Ryan Stempski, P.E. 651.300.4267  
Chad Isakson, P.E. 651.300.4285

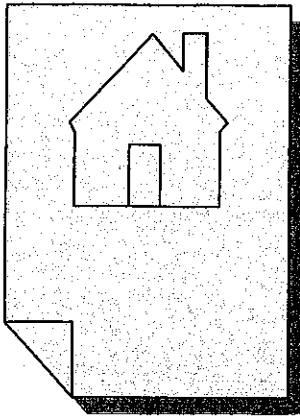
Date: November 5, 2019

To: Ben Prchal, City Planner  
From: Jack Griffin, P.E., City Engineer

Re: 2038 Inwood Avenue  
Inwood Avenue setback variance

A variance request was received for the site plans for an addition to the home at 2038 Inwood Avenue, received on October 31, 2019. Engineering has the following review comments:

1. Additional encroachment toward CSAH13 is not recommended. The County has identified a future 150-foot right-of-way width along CSAH13, or 75 feet from the current centerline. The current right-of-way is 60 feet from centerline. It should be anticipated that the County will seek to acquire an additional 15-foot minimum for the future expansion of Inwood Avenue. Any housing setbacks should be measured using the future right-of-way condition. Setbacks should also consider that Inwood Avenue is designated as a high-volume County roadway with emphasis placed on mobility.
2. The secondary access to Inwood Avenue should be eliminated. Residential property should always be encouraged to access lower hierarchy roadways. In the case of 2038 Inwood Avenue, the lower hierarchy road is 21st Street North. Since the existing access is already in place to Inwood Avenue the access can be allowed to remain, however, the property should be required to eliminate the secondary access. Inwood Avenue is a Washington County roadway designated as an "A Minor Arterial" roadway in the 2040 Comprehensive Plan. The road is intended as a high-volume roadway with an emphasis on mobility and controlled access.
3. Should any variances be granted for this property, consideration should be made to require the dedication of an additional 15-foot right-of-way along Inwood Avenue and the requirement to remove the secondary access.



Jake McGee, Chairman  
Architectural Control Committee  
Torre Pines Homeowners Assn.  
8263 22<sup>nd</sup> Street North  
Lake Elmo, MN 55042

Home: 651-770-3332  
Cell: 612-889-3463  
Email: [jakemcgee@comcast.net](mailto:jakemcgee@comcast.net)

October 8th, 2019

Vance & Echao Vang  
2038 Inwood Ave.  
Lake Elmo, MN 55042

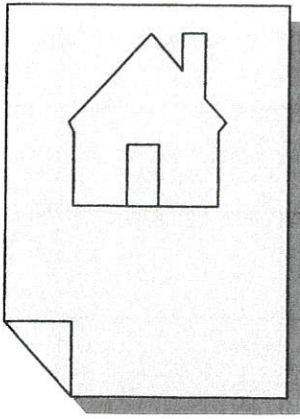
Regards: Addition to your residence at 2038 Inwood Ave.

Good afternoon Vance;

On behalf of the Torre Pines Homeowners Association, I'm pleased to inform you that the Architectural Control Committee has reviewed the attached plans you submitted dated 9-23-19 for the addition to your residence at 2038 Inwood Ave. in Lake Elmo, MN and finds the design meets the architectural standards established by our association. In addition, we have reviewed the exterior product samples provided by your architect, Mr. Steve Erban. The exterior particle board siding in the textured, rough sawn "Sterling Gray" finish is approved and the "Glacier White" textured, rough sawn particle board trim is also approved. The Landmark Designer CertainTeed Shingles in the "Pewter" finish is also approved.

Your site and grading plan dated 9-23-19, which was also submitted, indicates a wraparound driveway accessed from Inwood Avenue. For that construction and prior to submitting it for review by your ACC, please review Page 8, Section IV, Paragraph B of the First Amendment To Article VI of the Architectural Control Of the Declaration of Protective Covenants that was sent to you and Mr. Erban earlier. In particular, it notes that: "The approved materials for the driveway are concrete, masonry, bituminous or other hard surface products, No gravel or crushed rock will be permitted." And "Driveways must be installed within one year of the date a Certificate of Occupancy is issued for any dwelling constructed upon a lot."

As noted on Page-3, Sect. 1-E of the First Amendment to Article VI, your city construction permit must be issued and construction commenced within six (6) months of this approval. If the City of Lake Elmo does not issue a building permit within six (6) months or modifies the



Jake McGee, Chairman  
Architectural Control Committee  
Torre Pines Homeowners Assn.  
8263 22<sup>nd</sup> Street North  
Lake Elmo, MN 55042

Home: 651-770-3332  
Cell: 612-889-3463  
Email: [jakemcgee@comcast.net](mailto:jakemcgee@comcast.net)

attached plans, please resubmit them to your ACC for approval prior to commencing construction.

The Architectural Control Committee (ACC), your association and board of directors want to thank you for consulting with the ACC to maintain the beauty of Torre Pines. Our committee and association look forward to working with you and the Vang family on any of your future projects. If there are any questions or assistance we may offer during the construction process, please don't hesitate to contact me (612-889-3463).

Thanks again Vance.

Very best regards,

A handwritten signature in black ink that reads "Jake McGee". The signature is written in a cursive, flowing style.

Jake McGee  
Chairman  
Torre Pines Architectural Control Committee

Copy:

Mr. Steve Erban, Architect for out of the box architecture  
Kathy Bourne, Torre Pines Board President  
Cindy McGee, Torre Pines Secretary  
Lisa Setterstrom, Torre Pines Treasurer  
Tony Yocum, Torre Pines Architectural Control Committee  
Jeff Caswell, Torre Pines Architectural Control Committee  
Mike Bourn, Torre Pines Architectural Control Committee  
Joe Schara, Torre Pines Architectural Control Committee



To: Ben Prchal – Lake Elmo City Planner

From: M. Selby – Home owner 8311, 21<sup>st</sup> N, Lake Elmo, MN 55042

Subject: Variance request 2038 Inwood Ave. N

In response to your notice of November 13<sup>th</sup>, 2019 I am forwarding 7 concerns related to the variance request:

- 1) Concerns for a reduced property value of the lot being impacted by the variance which is not owned by the 2038 Inwood Ave property owners
- 2) Concerns for the other property values in the Torres Pines Association given the new structure's visibility from Inwood Ave due to the set back of 50FT vs the required 100FT
- 3) Concerns for the impact on wildlife habits and movement from the new structure during construction with removal of vegetation, use of heavy equipment and disturbance of soil
- 4) Concerns for the environmental impact of changes to the landscape from the new structure that would impact natural drainage into the pond impacting wildlife in the area
- 5) Concerns for the ability for the city to safely expand the road if traffic increases in the area
- 6) Concerns that the house will be used for more than a single-family dwelling. The family and several adult children live in the house today. How can we verify that the new structure will not be used for more than a single family dwelling which would impact property values in the area
- 7) Linked to the single-family dwelling issue is the concern that there are already several vehicles on the property that do not have sufficient garage space and visually impacts the neighborhood property values

I would appreciate consideration from the council on the negative impact of this variance on the neighborhood, safety and wildlife.

Thank you.

M. Selby

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

**RESOLUTION NO 2019-093**

*A RESOLUTION APPROVING VARIANCES TO ALLOW AN ADDITION WHICH WOULD NOT MEET THE FRONT AND SIDE YARD SETBACKS, ON A LEGAL NON-CONFORMING STRUCTURE, FOR THE PROPERTY LOCATED AT 2038 INWOOD AVE.*

**WHEREAS**, Haupheng Vang and Vance Vang (the “Applicant”) has submitted an application to the City of Lake Elmo (the “City“) for a variance(s) to allow the construction of an addition onto a legal non-conforming structure which will not meet the front and side yard setback within the Residential Estate Zoning District for the property located at 2038 Inwood Ave, Lake Elmo MN 55042 (21.029.21.34.0013) (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 November 13<sup>th</sup>, 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 December 3<sup>rd</sup>, 2019; and

**WHEREAS**, the City Council considered the variances at its December 3<sup>rd</sup>, 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 there is an existing legal non-conforming structure on site which the property owners would like to construct an addition onto. The proposed addition requires variances consisting of the following:
  - a) Minimum Structure Setback from the front property line – Allowing a 50 ft. 9 in. setback
  - b) Minimum Structure Setback from the North side lot line – Allowing a 27 ft. 11 in. setback

- 4) **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”
- **Variance For Front Yard Setback:** *With respect to the proposed variance for a reduced setback from the front lot line, 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 request to expand the existing home on site does appear to be reasonable. Considering that the home is existing and the development was established around the home, property owners would be limited when it comes to improvements that could comply with the code. Also, the addition does not further increase the non-conformity to the front lot line, the reduced setback does appear reasonable.*
  - **Variance For Side Yard Setback:** *With respect to the proposed variance for a reduced setback from the side lot line, 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. With the Residential Estate requiring a minimum of 50 ft. as a setback from the side lot line, which is the largest of all rural zoning districts only being less restricting than the Agricultural district, which requires a 100 ft. setback. The City must also keep in mind that perhaps there is an alternative to the request to avoid a variance. But placing the addition to the South of the existing home would more than likely infringe on the existing driveway, access to the garage, and possibly the septic system. The addition to the north does appear reasonable and they are still able to maintain a 27 ft. and 9 in. setback from the north property line.*
- 5) **Unique Circumstances** the plight of the landowner is due to circumstances unique to the property not created by the landowner;
- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Although the lot is large enough to accommodate the size of home that is desired the applicant was not involved with the construction/placement of the existing house or with the platting process that triggered this home to become legal non-conforming. With the structure being legal non-conforming, additions become difficult especially with when the required setback is 100 ft. The location to the roadway is no fault of the property owner. Furthermore, given the circumstances, approval for the addition on the structure with a setback less than 100 ft. from the front lot line does appear to be reasonable.*
  - **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the plight of the Applicant is unique and has not been caused by the applicant. Generally speaking property owners do not have to contend with legal non-conforming structures and it appears that there was little anticipation to one day build onto the existing structure. Although the home as existing, is capable of meeting the required setback from the northern side lot line there is limited room and options to expand to the north. Beyond this, it is impractical to expand the structure to the south where the setbacks can be met. This is justified because an expansion would then being to conflict with the driveway, garage, and the driveway would be forced south towards where the drain field is located. The standard appears to be met.*



- 6) **Character of Locality** the proposed variance will not alter the essential character of the locality in which the property in question is located;
- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the addition would not appear to alter the character of the locality. Though affiliated with the Torre Pines Development the home primarily appears to have a limited impact on the development due to its location in the rear of the lot, as compared to the other homes. Allowing a variance to the front lot line appears to have limited bearing on the character of the locality.*
  - **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the addition would not appear to alter the character of the locality. The City recognizes that allowing a reduced setback for the side yard lot line would be different from what has been allowed by the Zoning Code and the Locality. However, understanding that this was the original home in the subdivision and given its location on the property being able reasonably notice the setback form within the development appears stretched.*
- 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;
- **Variance For Front Yard Setback:** *With respect to the proposed variance for the front yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. Drawing a conclusion that allowing a variance from the front property line would cause negative impacts appears limited in this situation when reviewed through the required scope. Since the home is on the opposite side of the lot of where the neighborhood road is located the impacts of the proposal would be severely limited.*
  - **Variance For Side Yard Setback:** *With respect to the proposed variance for the side yard setback, the proposed variance will not impair an adequate supply of light and air to the adjacent property or substantially increase congestion of the public streets or substantially diminish property values. The only property that would be perceivably impacted is the property to the north (vacant). However, there would still be an estimated 77 ft. setback (or more) from the proposed home addition and a new home on the neighboring property to the north (8381 21<sup>st</sup> N.). There is also a strong stand of trees on the northern not that further helps to minimize the visibility of the structure. Although the required setback is being infringed on there still appears to be a sufficient setback to accommodate approval. Furthermore, allowance of the reduced setback appears to have a limited bearing on reducing property values when it comes to the setback.*

CONCLUSIONS AND DECISION

1. The applicant shall reduce the number of access points onto Inwood Avenue from two to one.
2. The applicant shall follow up with the Valley Branch Watershed District regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to the City prior to issuance of the building permit.
3. The applicant shall follow up with Washington County Septic Department regarding permitting and provide their conclusion to City Staff. If a permit is required then an approved permit shall be provided to City Staff prior to issuance of a building permit.
4. Additional internal alterations to the home may require a permit, before altering internal spaces of the home the applicant must follow up with the building department for possible permitting requirements.

Passed and duly adopted this 3<sup>rd</sup> day of December, 2019 by the City Council of the City of Lake Elmo, Minnesota.

\_\_\_\_\_  
Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk