



STAFF REPORT

DATE: 8-17-2021

REGULAR

TO: Mayor and City Council
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **Variance Requests - 3100 Lake Elmo Avenue**
REVIEWED BY: Sarah Sonsalla – City Attorney
 Planning Commission

BACKGROUND

The City has received two variance requests from applicant Dale Dorschner, for the property located at 3100 Lake Elmo Avenue. The first request is for a variance from the minimum lot width requirement of 125 feet for properties in the Rural Single Family (RS) zoning district. The second variance request is to have a front yard setback of 30 feet from the County Road right-of-way instead of 50 feet as required for properties within the Shoreland District. The proposed building would meet the allowed size for the property and should meet all other setbacks and impervious surface requirements. Please see the attached narrative and maps for more information about these requests.

ISSUES BEFORE THE CITY COUNCIL

The City Council is being asked to review and make a determination on:

1. The variance request that would allow for the property to be subdivided into two lots resulting in a one lot that would meet all zoning requirements (there is an existing home on the lot) and one lot that would not meet the zoning district's minimum lot width requirement of 125 feet.
2. The proposed front yard setback variance of 20 feet that would allow for the construction of the new house on the vacant lot with a front yard of 30 feet instead of 50 feet as required by the City Code.

REVIEW/ANALYSIS:

Address: 3100 Lake Elmo Ave.
PID: 13.029.21.33.0019
Existing Land Use/Zoning: Single-family zoned as Rural Single Family
Surrounding Land Use/ Single family homes
Zoning:
History: The property's use has been a residential dwelling.
Deadline for Action: Application Complete – 5/30/2021
 60 Day Deadline – 7/29/2021
 120 Day Deadline – 9/27/2021
Applicable Regulations:

- Article V - Zoning Administration and Enforcement
- Article XI – Rural Districts
- Article XX – Shoreland Management

PROPOSED VARIANCES

Variance Requests. The applicant is requesting to split the property into two lots with one lot having a reduced lot width of 13 feet (to 112 feet) and having a reduced front yard setback of 20 feet (to have a 30 foot front setback) from the right-of-way on the vacant (new) parcel.

Standard	Required	Proposed
Lot Width. <i>Table 9-2</i>	125 ft.	112 ft.
Setback – Rural District	30 ft.	30 ft.
Setback – Shoreland District	50 ft.	30 ft.

Because this property is within the Shoreland District, both the Rural Single-Family District and Shoreland District standards apply. A unique aspect with these requests is the fact that the setback variance being requested is from the front lot line instead of the rear, which is often the subject of discussion for properties in the Shoreland District.

Applicable code provisions explained:

Rural Single Family District Lot Size - The Rural Single Family Zoning District normally requires a minimum lot size of 1.5 acres. However, because this property has and will inevitably be connected to City sanitary sewer, a provision within the Code allows a minimum size of 24,000 square feet for the lots. As it is being requested both lots will meet the minimum lot size requirement.

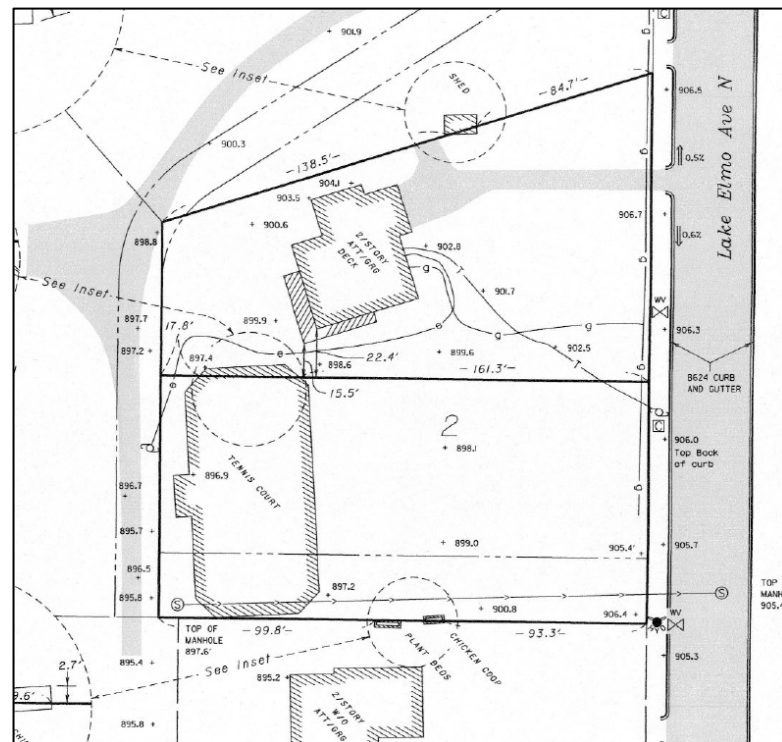
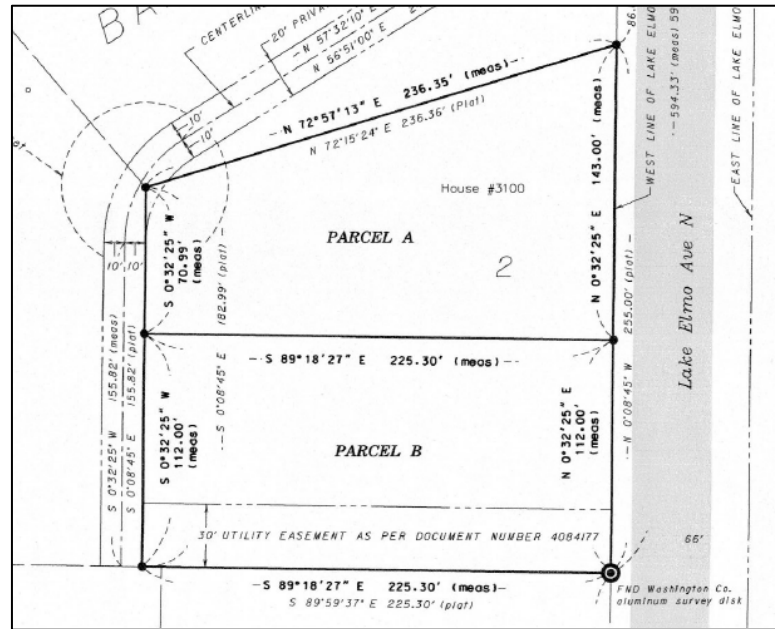
Rural Single Family District Setbacks – The required setback from the front lot line is 30 feet in the Rural Single Family District which can be achieved on the property. However, because the property also is in the Shoreland District which has stricter setback requirements (explained below), the minimum setback from Lake Elmo Avenue (a County Road) is 50 feet.

Shoreland District Lot Size – The Shoreland District regulations require a minimum lot size of 15,000 square feet for non-riparian lots within the Shoreland District. Again, both proposed lots can easily meet this requirement.

Shoreland District Setbacks – Because the property fronts onto a County Road (Lake Elmo Avenue), the Shoreland District Regulations state that the “minimum structure setback from County, State or Federal road right-of-way” – must be a minimum of 50 feet. Parcel A already has an existing home on the property (shown on the complete survey) which meets this requirement and all other code requirements. The applicant is requesting the front yard setback variance of 20 feet for proposed Parcel B. As proposed, the new house would only have a 30-foot setback from Lake Elmo Avenue instead of the required 50 foot setback.

The graphic to the right shows a more complete depiction of what the lot split would look like. Temporarily excluding the discussion of the variance, Staff would have difficulty or the outright inability to approve a lot split of this nature *(because it would create a nonconformity)*. The primary reason for this is the existing tennis court that is on the property would not meet setback requirements from the proposed new property line. However, the applicant has indicated the tennis court will be “cut back” in order to meet zoning district setbacks and will not cross over the proposed property line.

A quick discussion about impervious surface does need to be considered when one reviews the current impervious surface number that is being proposed. Parcel A is below the allowed limit, but Parcel B will exceed the allowed amount of impervious surface for the property, if it is built out as shown. The applicant is not requesting a variance for an increase above the maximum allowed impervious surface at this time. It is likely that a variance will not be required given there are several things the property owner can do to bring this number down to the maximum allowed 25% impervious surface limit for properties in the RS district.



Variance: Section 154.109 of the Zoning Code:

Section 154.109 is the variance section of the City’s zoning code which has the “practical difficulties” standard. The City also has a different variance standard in its code for variances from the City’s subdivision regulations (the “unusual hardship” standard), but that standard is not applicable in this case because the applicant is requesting a

variance from required setbacks and lot size requirements that are in the City's zoning code (and not in the subdivision ordinance).

Section 154.109 of the zoning code states as follows:

F. *Required Findings.* Any action taken by the Board of Adjustment to approve or deny a variance request shall include the following findings:

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.

a. *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.

Essentially the City needs to determine if the proposed variance request is reasonable. This can often be a difficult to apply since what is and is not reasonable can vary from person to person. The request in itself may be reasonable, but the conditions of the request may not be reasonable. For example, it is generally reasonable for a property to ask for an accessory building, but it may not be reasonable for a property to request an accessory building that is 2 feet from the property line when a 10-foot setback can be achieved. In this request, is it reasonable for the City to grant the variances with respect to the minimum lot width and reduced front yard setback?

2. ***Unique Circumstances.*** The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.

This is a two-part question. Did you (as property owner) cause the "issues" on site/are they the reason a variance is required? If you did not create the "problem", then what is unique about the property that variance approval is warranted? For example, compared to other lots or requests, why does it make sense to allow a reduced setback? This standard could be interesting to address because the decision cannot be dependent upon something that was done by the property owner.

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

a. *Definition of Locality.* For purposes of this subsection, "locality" shall be defined as all that property within 350 feet of the property proposed for the variance; however, in all events, it shall include all parcels abutting the affected parcel, including those immediately across a public street, alley or other public property.

Will approval of the request lead to a site, structure, etc. that does not blend in with the surrounding and nearby properties? This standard is definitely contextual and is very site specific. For example, a reduced setback of 10% is going to look a lot different than 40%. In this instance, the reduced lot width will likely have a marginal impact on the surrounding properties but the proposed reduced front yard setback of 30 feet instead of 50 feet will likely be visibly different.

4. ***Adjacent Properties and Traffic.*** The proposed variance will not impair an adequate supply of light and air to property 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.

Will approval have a negative impact on property values, increase traffic, or prevent air or light from getting to neighboring properties? As proposed, adding one lot for one additional house should not impair light and air from getting to adjacent properties and will not measurably increase traffic.

AGENCY REVIEW

Washington County: No comments from the County about the request, only that driveway access for the new lot(s) would not be granted until after the City approved the lot split.

Neighboring Comments: City staff notified all the property owners within 350 feet of this property about the variance requests. City staff received three comments:

- 3160 Lake Elmo Ave – Not Supportive.
- 3078 Lake Elmo Ave. – Not Supportive.
- 3025 Lake Elmo Ave. – Supports the lot split but does not support the setback variance request.

RECOMMENDED FINDINGS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Section 154.109 of the Zoning Code before the City grants a variance from the Zoning Code requirements. These criteria are listed below, along with comments from City staff about applicability of these criteria to the applicant's requests.

- 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 Lot Width:** *With respect to the proposed variance for the reduced lot width, strict enforcement of the City's zoning regulations, it will cause practical difficulties because the applicant is proposing to use the property in a reasonable manner (single family residences). The request to use the property as a single family residential dwelling unit is not an unreasonable request. The desire to have the new lot line parallel to the existing lot lines instead of an angled property line is preferred and it is believed that the variance is warranted in this respect. Furthermore, it is expected that strictly following the code to have the new lot be 125 feet wide would result in a less desirable outcome than if the City approves a variance to have the new lot be 112 feet wide with a new lot line parallel to existing property lines.*
 - **Variance for Front Yard Setback:** *With respect to the proposed variance for a 20-foot reduction from the required 50-foot front yard setback of the City's zoning regulations, it will cause practical difficulties because the applicant is proposing to use the property in a reasonable manner (single family residences). The request to abide by the Rural Single Family zoning district setback of 30 feet is a reasonable request given that is the applicable standard for the property's Zoning District when the Shoreland District regulations do not apply (although in this case, they do apply).*
- 2) **Unique Circumstances.** The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.

FINDINGS:

- **Variance for Lot Width:** *With respect to the proposed variance for the reduction of the minimum lot width, the applicant did not create the current size of the property, so the applicant did not create the problem. Although the lot can be split and divided in a way that would allow both properties to meet the minimum size and minimum frontage, such a configuration would be awkward. The City concedes that the circumstance is unique in that the general objective can be achieved though it would create an unfavorable layout for the new lot line.*
 - **Variance for Front Yard Setback:** *With respect to the proposed variance for a reduction from the required front yard setback of the City's zoning regulations, the plight of the property was not created by the property owner as discussed above but there is no unique circumstance. The applicant has not established a unique circumstance that would warrant a reducing the front yard setback by 20 feet. Especially when it is taken into consideration the rear yard setback from the high-water level, which is normally the point of discussion is not needed. By all measures it appears the applicant can meet all City-required front and rear yard setbacks on the proposed lot without a variance. Although the Shoreland Regulations are more restrictive than the setback regulations in this zoning district, a unique circumstance has not been noticed or identified on the site that would warrant a reduced front yard setback. Also, there are no contour lines/evidence presented on the site survey to further support the claims being made about geography or water flow.*
- 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 Lot Width:** *With respect to the proposed variance for the reduction of the lot width, the proposed variance will not alter the essential character of the locality. A reduced lot size, width, etc. within this area of Lake Elmo is not uncommon and it is very unlikely that the reduced lot width will change the character of the neighborhood.*
 - **Variance for Front Yard Setback:** *With respect to the proposed variance for a reduction from the required front yard setback of the City's zoning regulations, the proposed variance will alter the essential character of the locality. With the exception of homes on 31st Street, the majority of the homes within 350 feet of the property do appear to have front yard setbacks that are closer to 50 feet than 30 feet. It does appear that the homes immediately east are set back closer to 50 feet than the requested 30 feet. For the area on the west side of Lake Elmo Avenue, it would certainly appear out of character to have a home that is only 30 feet from the front property line when the neighboring properties have homes with setbacks of 100 feet or more.*
- 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 for Lot Width:** *With respect to the proposed variance for the reduction of the front lot width, 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 reduced front lot width would not lead to the shading of the neighboring properties or structures, nor would it impair air flow.*
- **Variance for Front Yard Setback:** *With respect to the proposed variance for the reduction of the front yard setback from the front property line, 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 allowance would not shade the neighboring properties or structures, nor would it impair air flow.*

FISCAL IMPACT:None.

Options:

The City Council may:

- Approve one or both of the proposed variances, with recommended findings and conditions.
- Amend the recommended findings and conditions for approval or denial of the variances.
- Deny both variance requests, citing findings for denial for each request.

RECOMMENDATIONS:

The applicant has achieved positive findings for all points of review for the requested lot width variance but has failed to meet the findings and requirements for “Unique Circumstances” and “Character of Locality” for the proposed front yard setback variance. Staff recommends approval of the lot split by recommending approval of the variance of 13 feet to allow for a new lot with a width of 112 feet. Staff is recommending approval of the lot width variance with the following conditions of approval:

1. That the applicant obtain all applicable permits including but not limited to a City building permit.
2. The applicant update the survey to include accurate impervious surface information.
3. The applicant shall remove a northern section of the tennis court so it will be at least 10 feet from the side property line.
4. That the applicant provide the City with \$3,600 per lot for the satisfaction of park dedication (Total \$3,600)
5. If approved, the variances shall be valid for 1 year and will expire on August 17, 2022 (date set after Council approval). The applicant must record the deeds creating the new lot (Parcel B) by August 17, 2022 or the approval will automatically expire.
6. The applicant must provide the City with any drainage and utility or right-of-way easements that are deemed necessary by the City Engineer.
7. That if approved, the applicant pay the City any required SAC (\$5,485 - 2021 Fee) or WAC (\$3,000 – 2021 Fee) charges before the City issues a building permit for the new lot (Parcel B).
8. Parcel A shall maintain a minimum lot width of 125 feet.

The Planning Commission recommended approval of the lot width variance request.

Staff is recommending the City Council deny the requested variance for a reduced front yard setback of 20 feet (30 feet versus 50 feet).

Suggested Motions:

The suggestion motions for the City Council to take action on the two recommendations are as follows:

“Move to adopt Resolution 2021 - 090, approving a lot width variance to allow for the creation a new lot (Parcel B) that would 112 feet wide for the property located at 3100 Lake Elmo Avenue, subject to conditions of approval as recommended by Staff and the Planning Commission.”

“Move to adopt Resolution 2021 - 091, denying a front yard setback variance of 20 feet that would allow a 30 foot front yard setback instead of the required 50 feet for the property identified as Parcel B, south of the property addressed as 3100 Lake Elmo Avenue with recommended findings for denial.”

ATTACHMENTS:

- 1) Narrative
- 2) Location Map
- 3) Property Line Map
- 4) Survey
- 5) Neighboring Comments

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

RESOLUTION NO 2021 – 090

*A RESOLUTION APPROVING A LOT-WIDTH VARIANCE TO ALLOW THE PROPERTY
IDENTIFIED AS 13.029.21.33.0019 (3100 LAKE ELMO AVENUE), TO BE SUBDIVIDED INTO
TWO LOTS ONE OF WHICH WILL BE SUB-STANDARD IN WIDTH*

WHEREAS, Mr. Dale Dorschner (the “Applicant”) owner of 13.029.21.33.0019 (3100 Lake Elmo Avenue.), Lake Elmo MN 55042 (the “Property”) has submitted an application to the City of Lake Elmo (the “City”) for a variance to allow the creation of a new lot with the subdivision of the Property that does not meet the minimum lot width requirement of 125 feet for residential lots in the Rural Single Family (RS zoning district; 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 July 26, 2021; 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 August 17, 2021; and

WHEREAS, the City Council considered the variance request at its August 17, 2021 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 variance includes the following components:
 - a) That the lot identified as Parcel B of the survey for the division of the property identified as 13.029.21.33.0019 measured at 112 feet in width shall be considered as a buildable lot for the construction of a single family home.
- 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;

Variance for Lot Width: *With respect to the proposed variance for the reduced width of the proposed lot (Parcel B), strict enforcement of the City's zoning regulations, it will cause practical difficulties because the applicant is proposing to use the property in a reasonable manner (single family residences). The request to use the property (Parcel B) for a single family residential dwelling unit is not an unreasonable request. The desire to have the new lot line parallel to the existing lot lines instead of an angled property line is preferred and it is believed that the variance is warranted in this respect. Furthermore, it is expected that strictly following the code to have the new lot (Parcel B) be 125 feet wide would result in a less desirable outcome than if the City approves a variance to have the new lot be 112 feet wide with a new lot line parallel to existing property lines.*

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

Variance for Lot Width: *With respect to the proposed variance for the reduction of the minimum lot width for proposed Parcel B, the applicant did not create the current size of the property, so the applicant did not create the problem. Although the lot can be split and divided in a way that would allow both proposed lots to meet the minimum lot size and minimum frontage, such a configuration would be awkward. The City concedes the circumstance is unique in that the general objective can be achieved though it would create an unfavorable layout for the new lot line and an awkward shape for the new lot.*

- 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 Lot Width: *With respect to the proposed variance for the reduction of the lot width for proposed Parcel B, the proposed variance will not alter the essential character of the locality. A reduced lot size, width, etc. within this area of Lake Elmo is not uncommon and it is very unlikely that the reduced lot width to 112 feet will change the character of 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;

- **Variance for Lot Width:** *With respect to the proposed variance for the width of the proposed lot (Parcel B), 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 reduced front lot width to 112 feet would not lead to the shading of the neighboring properties or structures, nor would it impair air flow.*

CONCLUSIONS AND DECISION

- 1) The City Council hereby approves the requested variance for a reduced lot width of 13 feet for the creation of a new lot that will be 112 feet wide in RS zoning district for the property identified as 13.029.21.33.0019 located at (3100 Lake Elmo Avenue). The conditions for approval for variance approval are outlined below:
 1. That the applicant obtain all applicable permits including but not limited to a City building permit.

2. The applicant update the survey to include accurate impervious surface information.
3. The applicant shall remove a northern section of the tennis court so it will be at least 10 feet from the side property line.
4. That the applicant provide the City with \$3,600 per lot for the satisfaction of park dedication (Total \$3,600)
5. If approved, the variance shall be valid for 1 year and will expire on August 17, 2022 (date set after Council approval). The applicant must record the deeds creating the new lot (Parcel B) by August 17, 2022 or the approval will automatically expire.
6. The applicant must provide the City with any drainage and utility or right-of-way easements that are deemed necessary by the City Engineer.
7. That if approved, the applicant pay the City any required SAC (\$5,485 - 2021 Fee) or WAC (\$3,000 – 2021 Fee) charges before the City issues a building permit for the new lot (Parcel B).
8. Parcel A shall maintain a minimum lot width of 125 feet.

Passed and duly adopted this 17th day of August, 2021 by the City Council of the City of Lake Elmo, Minnesota.

Mayor Charles Cadenhead

ATTEST:

Julie Johnson, City Clerk

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

RESOLUTION NO 2021 – 091

A RESOLUTION DENYING A 20-FOOT FRONT YARD SETBACK VARIANCE TO ALLOW THE PLACEMENT OF A SINGLE FAMILY DWELLING ON PROPOSED PARCEL B OF THE PROPERTY IDENTIFIED AS 13.029.21.33.0019 (3100 LAKE ELMO AVENUE) WITH A 30-FOOT FRONT YARD SETBACK INSTEAD THE REQUIRED 50-FOOT FRONT YARD SETBACK

WHEREAS, Mr. Dale Dorschner (the “Applicant”) owner of 13.029.21.33.0019 (3100 Lake Elmo Avenue.), Lake Elmo MN 55042 (the “Property”) has submitted an application to the City of Lake Elmo (the “City”) for a 20-foot front yard setback variance to allow the placement of new single dwelling on a new lot with the subdivision of the Property (Parcel B) that would not meet the minimum front yard setback requirement from Lake Elmo Avenue of 50 feet; 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 July 26, 2021; 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 August 17, 2021; and

WHEREAS, the City Council considered the variance request at its August 17, 2021 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 variance includes the following components:
 - a) That the front yard setback for a single family dwelling on the lot identified as Parcel B of the survey for the division of the property identified as 13.029.21.33.0019 be 30 feet thus requiring approval of a 20 foot front yard setback 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;

Variance for Front Yard Setback: *With respect to the proposed variance for a 20-foot reduction from the required 50-foot front yard setback of the City's zoning regulations, it will cause practical difficulties because the applicant is proposing to use the property in a reasonable manner (single family residences). The request to abide by the Rural Single Family zoning district setback of 30 feet is a reasonable request given that is the applicable standard for the property's Zoning District when the Shoreland District regulations do not apply (although in this case, they do apply).*

- 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 a reduction from the required front yard setback of the City's zoning regulations, the plight of the property was not created by the property owner as discussed above but there is no unique circumstance. The applicant has not established a unique circumstance that would warrant a reducing the front yard setback by 20 feet. Especially when it is taken into consideration the rear yard setback from the high-water level, which is normally the point of discussion is not needed. By all measures it appears the applicant can meet all City-required front and rear yard setbacks on the proposed lot without a variance. Although the Shoreland Regulations are more restrictive than the setback regulations in this zoning district, a unique circumstance has not been noticed or identified on the site that would warrant a reduced front yard setback. Also, there are no contour lines/evidence presented on the site survey to further support the claims being made about geography or water flow.*

- 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 a reduction from the required 50 foot front yard setback of the City's zoning regulations, the proposed variance will alter the essential character of the locality. With the exception of homes on 31st Street, the majority of the homes within 350 feet of the property do appear to have front yard setbacks that are closer to 50 feet than 30 feet. It does appear that the homes immediately east are set back closer to 50 feet than the requested 30 feet. For the area on the west side of Lake Elmo Avenue, it would certainly appear out of character to have a home that is only 30 feet from the front property line when the neighboring properties have homes with setbacks of 100 feet or more.*

- 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 reduction of the front yard setback from the front property line, 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 allowance would not shade the neighboring properties or structures, nor would it impair air flow.*

CONCLUSIONS AND DECISION

- 1) The City Council hereby denies the applicant's variance request for a 20 foot reduction of required 50 foot front yard setback that would allow a 30 foot front yard setback for a new lot (Parcel B) in RS zoning district and in the Shoreland Management Zone for the property identified as 13.029.21.33.0019 to be located at 3100 Lake Elmo Avenue.

Passed and duly adopted this 17th day of August, 2021 by the City Council of the City of Lake Elmo, Minnesota.

Mayor Charles Cadenhead

ATTEST:

Julie Johnson, City Clerk

memo

DATE: 6/11/2021

TO: Ken Roberts

FROM: Dale Dorschner

SUBJECT: Minor Sub-Division – Variance Application Addendum (Narrative)

RE: Variance Request for allowance of 112 linear vs. 125 feet of frontage and 30 vs 50 foot setback from road.

This memo serves to justify the necessity of the variance to have 112 vs 125 feet of frontage:

- a) Why the strict enforcement of the code would cause practical difficulties because of circumstances unique to the individual property.

To comply with the strict enforcement of the code would require the lot line to the north to be non-perpendicular to the lot line to south. Although the lot could be configured to meet the strict interpretation of the code, it would create confusion in the future and possible cause disputes of landowners. The proposed variance would allow the proposed parcel to be uniform in nature and easy to distinguish property boundaries. It would also preserve a century old tennis clay court which is a very rare amenity for any property and one that should be preserved if possible.

- b) Why the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

The plight of the property is unique and has not been caused by the current owner. The current owner did not have a hand in influencing the configuration of the minor subdivision or the plotting of an irregular shaped lot or its size nor the placement of the residential structure near the century old clay tennis court. The issue only appears to exist because the property failed to be split before the RS ordinance requiring 125 feet of frontage came into effect, therefore restricting the new owner's ability to conform to the strict enforcement of the ordinance in a manner that is consistent with neighboring lots and within the character of the neighborhood. Although the property could meet all aspects of the ordinance it would create an unnecessary burden to the landowner(s), county and the city to properly distinguish where the north property line is located. This potentially would cause disputes and complaints that the city would have to deal with in the future.

- c) How the granting of the proposed variance will not alter the character of the area in which the property in question is located.

Granting this variance will only serve to align the property to the character of the neighboring properties by having symmetrical lot lines and similar linear frontage. This variance would certainly not alter the existing character of the area because many of the neighboring lots have less than the current requirement of 125 feet of frontage. The proposed property meets all required square footage and side and rear setback requirements and is larger than the majority of neighboring lots to the east.

- d) How the granting of the proposed variance will not impair the supply of light and air to adjacent properties or would substantially increase congestion of the public streets or substantially diminish or impair property values.

The proposed structure placement allows for all the city setbacks with plenty of room to spare. This property is located on a county road in which a single residential lot will not substantially increase the congestion of the public streets. A new residential property will not diminish or impair neighboring property values, but could arguable increase property values by having new residential structure in the neighborhood.

This memo serves to justify the necessity of the variance to allow 30 foot setback vs 50 from frontage (road):

- a) Why the strict enforcement of the code would cause practical difficulties because of circumstances unique to the individual property.

The natural contours and drainage of the property are such that complying with the strict enforcement of the ordinance would require significant fill to be brought in and disrupting the natural drainage of the property. This variance also minimizes visual impacts of the new residential structure to the properties to the north and south.

- b) Why the plight of the landowner is due to circumstances unique to the property and not created by the landowner.

As previously stated the natural contours of the property were not created by the property owner rather is a product of the natural landscape. The property meets all lot square footage and side and rear setback requirements and is larger than neighboring lots to the east.

- c) How the granting of the proposed variance will not alter the character of the area in which the property in question is located.

This variance request does not alter the character of the area but rather allows the property to better align with the existing character of the neighboring

properties to the east where the setbacks are less than 50 feet and maintain the rural visual feel of the properties to the north and south. The variance also reduces any potential impact to the lake by increasing the distance from the lake that the shore land ordinance serves to protect. The property meets all lot square footage and side and rear setback requirements and is larger than neighboring lots to the east.

- d) How the granting of the proposed variance will not impair the supply of light and air to adjacent properties or would substantially increase congestion of the public streets or substantially diminish or impair property values.

This variance request does not alter the supply of light or air to neighboring properties and again actually abates any potential impacts to neighboring properties by off-setting the setback from the street from the neighboring properties to the north and south. The property is located on a county road in which a single residential property will not significantly increase congestion.

Parcel Viewer - Quick Access

Beta

Washington Co.



300ft

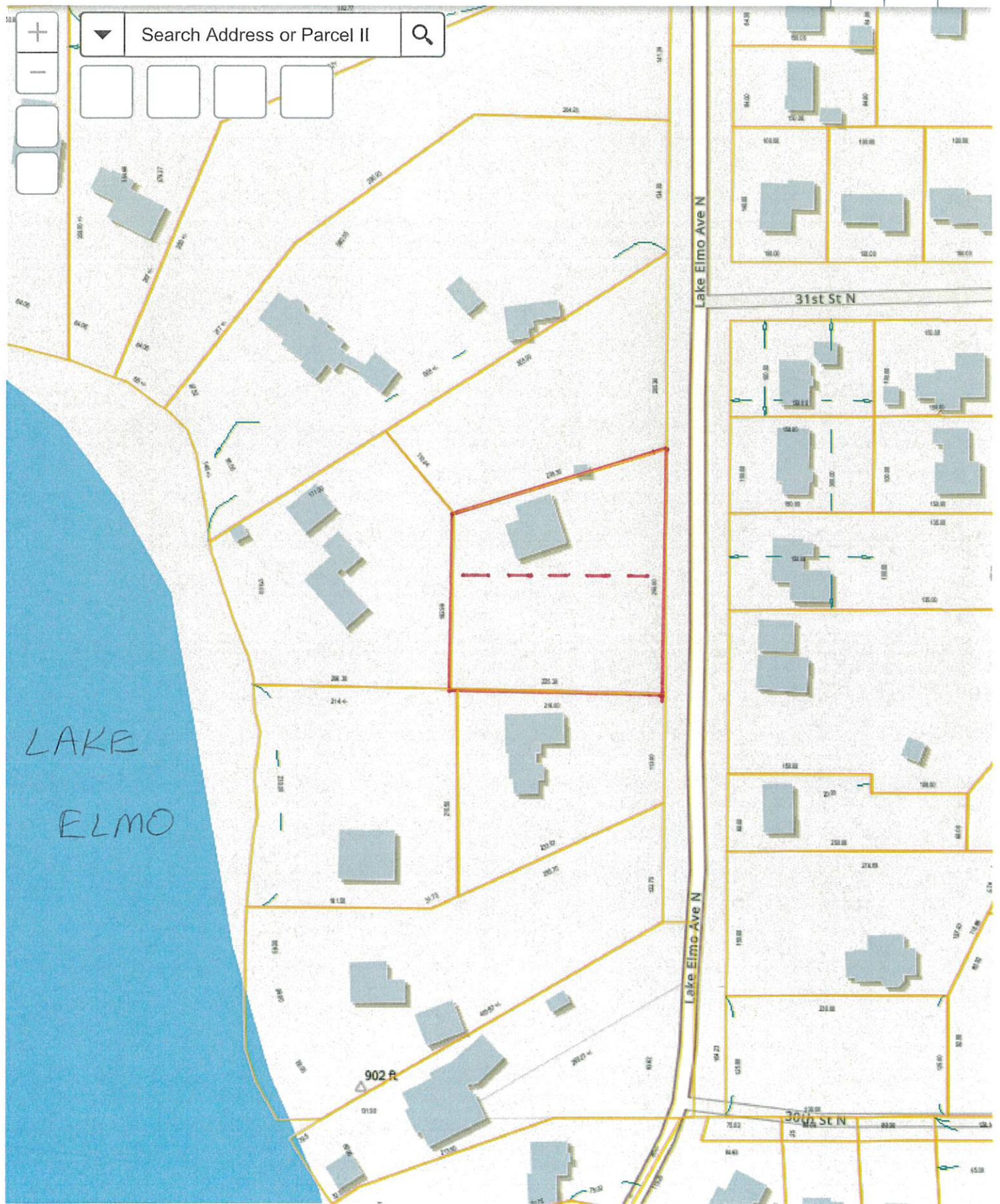
-92.864 44.997 Degrees

LOCATION MAP

Parcel Viewer - Quick Access

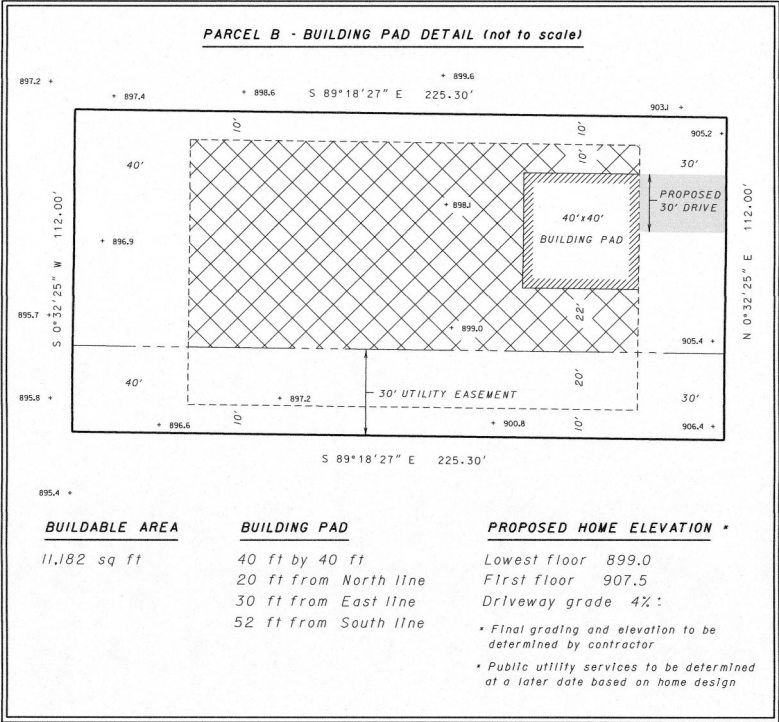
Beta

Washington Co., NY



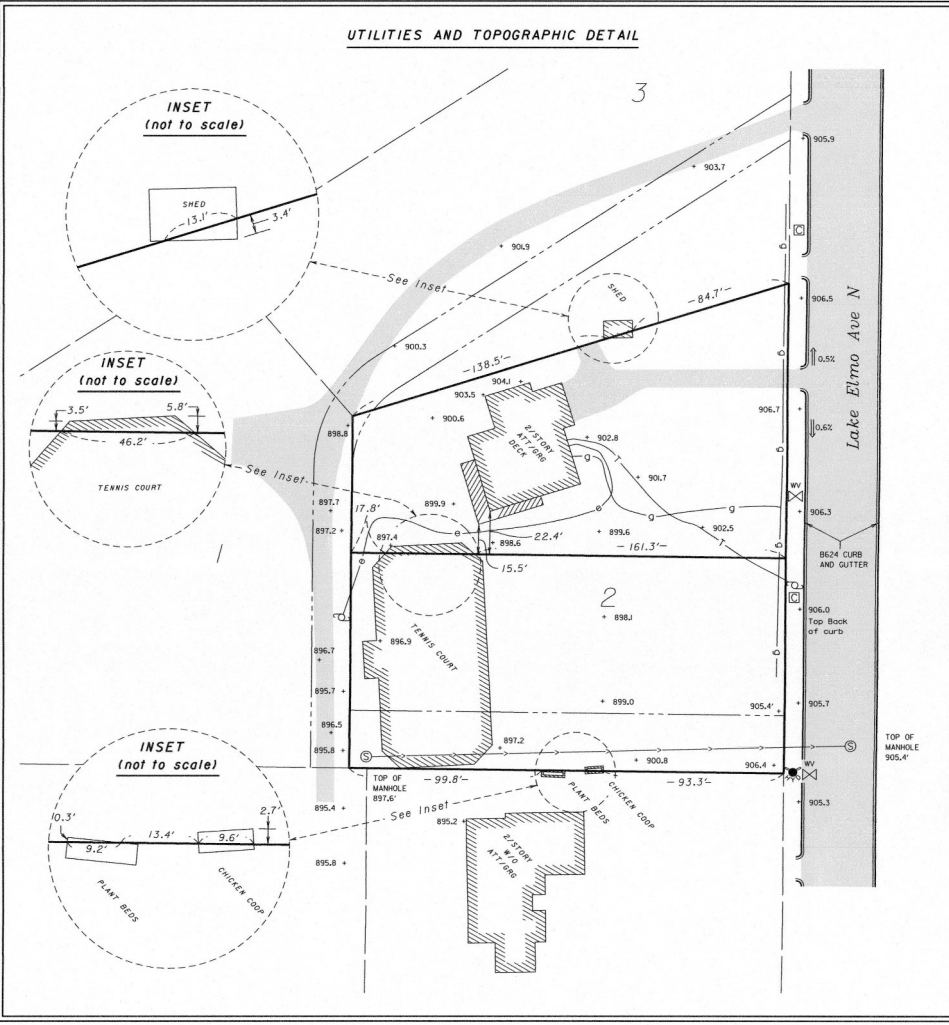
PROPERTY LINE MAP

MINOR SUBDIVISION
for
DALE DORSCHNER



PERMEABLE SURFACE QUANTITIES (sq ft)	
PARCEL A	
LOT SIZE	24,106
EXISTING STRUCTURES	
HOUSE/GARAGE	2,666
SHED	29
* TOTAL NONPERMEABLE SURFACES	2,695
PERCENTAGE (total nonpermeable/lot size)	11 %
PARCEL B	
LOT SIZE	25,234
EXISTING STRUCTURES	
GAZEBO	148
** TOTAL NONPERMEABLE SURFACES	148
PERCENTAGE (total nonpermeable/lot size)	0.6 %

* The deck is deck board construction with a 1/4" or greater gap and was not included in this quantity
* The driveway material is dirt and was not included in this quantity
** The tennis court material is clay and was not included in this quantity



RS - RESIDENTIAL SINGLE FAMILY REQUIREMENTS

24,000 sq ft lot with sanitary sewer
Lot width 125 feet (both PARCEL A and B require a variance)
Nonpermeable surface 25% max lot coverage
House pad 24 feet minimum width

Principal Structure	Accessory Building
Front 50 ft *	Front 30 ft
Interior side 10 ft	Interior side 10 ft
Corner side 25 ft	Corner side 25 ft
Rear 40 ft	Rear 10 ft

* Housepad shown at 30 ft. PARCEL B will require a variance

PROPERTY ADDRESS

3100 Lake Elmo Avenue North, Lake Elmo, MN

PARENT TRACT PROPERTY DESCRIPTION
(1.13 acres - 49,340 square feet)

Lot 2, Block 1, Gay S. Banister
Washington County, MN

PARCEL A (0.55 acre - 24,106 square feet)

That part of Lot 2, Block 1, Gay S. Banister, according to the recorded plat thereof on file and of record in the office of the County Recorder, Washington County, Minnesota, lying northerly of the south 112.00 feet of said Lot 2.

Subject to a perpetual easement for drainage and utility purposes, over, under, and across said part of Lot 2. Said easement being 10.00 feet in width and adjoining all lot lines.

Subject to a perpetual private driveway easement as per Book 149 Deeds Page 42. Said easement being 20.00 feet in width and the centerline is described and shown on the plat Gay S. Banister.

PARCEL B (0.58 acre - 25,234 square feet)

The south 112.00 feet of Lot 2, Block 1, Gay S. Banister, according to the recorded plat thereof on file and of record in the office of the County Recorder, Washington County, Minnesota.

Subject to a perpetual easement for drainage and utility purposes, over, under, and across said part of Lot 2. Said easement being 10.00 feet in width and adjoining all lot lines.

Subject to a perpetual easement for utility purposes as per Document number 4084117, as of record in the office of County Recorder, Washington County, Minnesota, over, under, and across the southerly 30.00 feet of said Lot 2.

LEGEND:

- Denotes found iron monument
- ⊙ Denotes found Wash. Co. monument
- Denotes 1/2 inch by 18 inch metal pipe set and marked by license number 48975
- W Denotes water valve
- ⚡ Denotes hydrant
- ⚡ Denotes utility pole
- ⊙ Denotes sanitary sewer
- ⊙ Denotes cable box
- ← Denotes direction of drainage
- 899.0 Denotes spot ground elevations

- ▨ Denotes buildable area
- Denotes parent tract boundary
- Denotes property line
- - - Denotes easement boundary
- - - Denotes easement centerline
- - - Denotes contour line
- - - Denotes building setback line
- Denotes underground gas
- Denotes underground electric
- Denotes underground telephone
- Denotes sanitary sewer

DATUM REFERENCE

For the purposes of this survey, the basis of bearing is the Washington County Coordinate System (1986 adjustment). The survey was calibrated to existing Washington County PLS corners of record.

Elevations are based on the North American Vertical Datum of 1988 (NAVD88). Survey calibrated to MNDOT Geodetic station "C 349".

Field work for this survey was conducted on October 11, 2020.

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota

Nathan Anderson, MN License No. 48975

Date 04-27-2021

Comments on Variance request by Dale Dorschner, to be heard by the Planning Commission on June 28, 2021

I will be out of town on June 28 and will not be able to appear in person at the public hearing. Please accept this letter and have it become part of the official record of the hearing.

I have no objections to the lot split variance. The resulting lots will be close enough to the zoning code requirements. However, I totally reject the applicant's arguments in his submission about "disputes and complaints" in the future if the new lot did not have nice, straight and parallel lot lines. The maps the applicant submitted himself clearly show that none of the nearby lots have such lot lines and have not had them for decades. Yet, the City has not suffered from "disputes and complaints" regarding where the lot lines are. The applicant's arguments in this regard are unconvincing.

However, I object to the building setback variance being requested. The applicant has produced no real evidence that such a variance is warranted or needed. I reject his comment that "the natural drainage of the property" would be disrupted if the house were a full 50 feet back, rather than the 30 feet requested. The land does not change that much in elevation over the lot. The applicant does not provide any contour diagram to justify his claim. The applicant does provide a "Survey Detail" map which shows a total of 10 feet (or so) change over the whole lot east-west dimension. One can estimate an elevation change from a 50 foot setback of 6-8 feet. Many people would welcome such a change in elevation in order to build a home with a nice walkout basement.

Also, in the same "Survey Detail" map and in the supplied "Property Line Map" the neighboring homes are clearly shown as in line with a setback of approximately 100 feet from Lake Elmo Avenue. If the applicant's new structure were built at a setback of only 30 feet, it would be conspicuously out of line and very much disruptive of the neighborhood character. The setbacks of the homes on the east side of the road are not really an issue, since they are in line with each other and would not be viewed simultaneously with the proposed new structure. Finally, there is more than enough room to build a 40 x 40 foot home with a 50 foot road setback and no impingement on the tennis court.

I ask the Planning Commission and the City Council to grant the lot split variance but reject the road setback variance.

Respectfully submitted,

Todd Williams
3025 Lake Elmo Ave N
Lake Elmo, MN 55042
June 21, 2021

Letter in opposition to granting variances to allow the subdivision of 3100 Lake Elmo Avenue North.

Submitted by Mark Zdechlik

City of Lake Elmo

ATT: Planning Director Ken Roberts and Planning Commission

Dear Mr. Roberts,

Per our telephone conversation, I strongly oppose Mr. Dorschner's effort to subdivide the property adjacent to mine, which Mr. Dorschner recently acquired from my neighbors of nearly 30 years.

Mr. Dorschner's argument that dividing the property and building another home would not "alter the character of the area" and would "better align" the property "with the existing character of the neighboring properties to the east" is nonsensical.

All the homes in this unique enclave, which I would define as the west side of Lake Elmo Avenue North and south of 32nd Street North, are located on large lots. In general, the characteristics of these properties are very different from those on the east side of Lake Elmo Avenue North Mr. Dorschner references. A simple scan of the included property line map clearly demonstrates that.

I believe granting multiple variances to subdivide and to add another home to the property would significantly change the dynamic of the area.

A major reason I decided to buy my home in the early 1990s was the open space adjacent to it. I trusted that zoning codes would be enforced, not set aside to accommodate the type of development Mr. Dorschner is proposing.

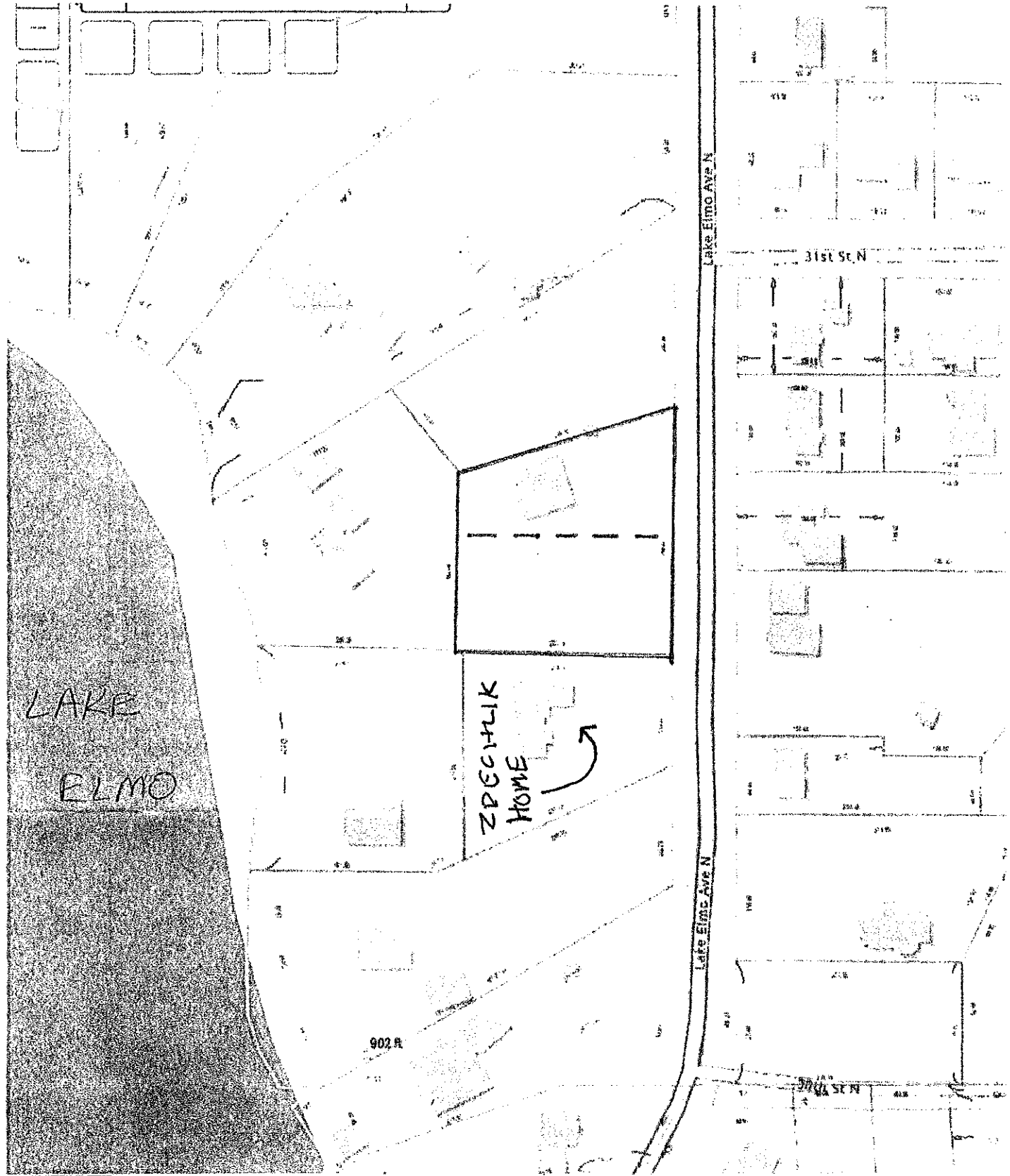
Thanks for taking my concerns into consideration.

Please contact me if anything is unclear.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Zdechlik', with a long, sweeping horizontal line extending to the right.

Mark Zdechlik
3078 Lake Elmo Ave North
Tel 651-214-7019



PROPERTY LINE MAP

Ben Prchal

From: Ken Roberts
Sent: Tuesday, June 22, 2021 8:16 AM
To: Ben Prchal
Subject: FW: Planning Meeting

Ben –

Regarding Dales request.

Ken

From: ted kohn [mailto:xitchie@yahoo.com]
Sent: Monday, June 21, 2021 5:43 PM
To: Ken Roberts <KRoberts@lakeelmo.org>
Subject: Planning Meeting

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

Ted and I are opposed to granting the requested variances for 3100 Lake Elmo Avenue North. Dale Dorschner needs to use his own property to install a driveway to his 1st property at 3150 Lake Elmo Avenue North. We see no reason for using our property. The current driveway is an easement through the middle of our property at 3160 Lake Elmo Avenue North. Dale Dorschner needs to take this into account when making plans on his properties. The city should enforce current property lines because of his encroachment onto our property already. Everything in his plans to the city needs inclusion of this.

Ted and I would appreciate communication as to the outcome of this matter.

Ted and Ellen Kohn
3160 Lake Elmo Avenue North