



STAFF REPORT

DATE: 2/4/2025

**REGULAR
MOTION**

TO: City Council
FROM: Sophia Jensen, Senior City Planner
AGENDA ITEM: **Variance Requests – Chavez Property**
REVIEWED BY: Jason Stopa, Community Development Director
Sarah Sonsalla, City Attorney

INTRODUCTION/BACKGROUND:

Joe and Joan Chavez (the “Applicants”) submitted a variance application for seven (7) deviations from the City’s Shoreland Management Overlay District Code (Section 105.12.1260) for the property located at 14.029.21.24.0004 (“Chavez Parcel”) and 14.029.21.13.0023 (“Northstar 1st Addition Outlot B”). The property is 11.2 acres in size with ~1.37 acres above the Ordinary High-Water Level (“OHWL”). The site is currently undeveloped with heavily vegetated steep slopes down to Sunfish Lake. The Applicants have owned the Chavez Parcel since 1993. The Northstar Outlot B parcel was platted as part of Northstar 1st Addition in 2024. The Chavez Parcel and Northstar Outlot B parcel will receive access and utility stubs through the Northstar 2nd Addition. Access to public streets, public water, and public sanitary sewer will not be available to the property until Northstar 2nd addition is platted, conditions have been met, the plat has been recorded, and site construction built out and approved by the City.

The City Council approved a comprehensive plan amendment and zoning map amendment in 2024 (Ordinance 2024-10 and Resolution 2024-059) to allow the Chavez Parcel and the Northstar Outlot B parcel to be combined without split zoning (RR and V-LDR). In that report, City Staff advised the Applicants work with the Northstar developer to create an outlot shape that would reduce or eliminate the need for variances. The Applicants are requesting to proceed with the existing outlot shape which is requiring seven variances.

The Applicants are looking to receive land use approvals so they can list the property for sale as a buildable single family residential lot. Per Section 105.12.320 of the City Code, variances expire if work does not commence within 12 months of the date of granting the variance. If approved, the variances may expire due to the timing of infrastructure and sale of the property. Also, since the Applicants are not the proposed builder, the site design may be subject to change which may necessitate additional variances or changes to the variances that have been granted.

Below is a table outlining the required criteria, the existing conditions, and what the Applicants are proposing:

Request	Required	Proposed
105.12.1260 Table 17-3 - OHWL Structure Setback	150’	120’
105.12.1260 Table 17-3 - Structure Setbacks from Bluff	30’	In Bluff
105.12.1260 (7)(a) - Principal Structure In Bluff Area	Not Permitted	In Bluff

105.12.1260 (7)(c) - Vegetative Clearing In Bluff Impact Zone/Steep Slopes	Not Permitted	Proposed
105.12.1260 (5)(a) – Subdivision Standards, Suitable Lot	Not Permitted	Proposed
105.12.1260 (5)(b) Subdivision Standards, Variances Required	Not Permitted	Proposed
105.12.1260 (7)(e) - Grading In Shoreland Areas	Not Permitted	Proposed

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being asked to review and make a determination on the variance requests.

VARIANCE REQUEST DETAILS/ANALYSIS:

<i>Applicant:</i>	Joe and Joan Chavez
<i>Owner:</i>	Joe and Joan Chavez (PID 14.029.21.24.0004) and GWSA Craig Allen (Outlot B)
<i>Address/PID:</i>	(PID 14.029.21.24.0004)
<i>Requests:</i>	The Applicants are seeking seven deviations from the City's shoreland standards (LEC 105.12.1260)
<i>Existing Zoning:</i>	Village Low Density Residential (VLDR), Shoreland Overlay District, VBWD
<i>Surrounding Zoning:</i>	North: Open Space Planned Unit Development (OP PUD) Hamlet on Sunfish South: Sunfish Lake East: Village Low Density Residential (V LDR) Northstar West: Sunfish Lake
<i>Deadline for Action:</i>	Application Complete – 11/26/2024 60 Day Deadline – 1/25/2025 City Council Date – 1/21/2025 Applicant and City Agreed to a deadline extension to 2/28/2025
<i>Applicable Regulations:</i>	Article V - Zoning Administration and Enforcement Article XII – Urban Districts Article XIX – Shoreland Overlay District

DRAFT FINDINGS:

An applicant for a variance must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 105.12.320 before the City may grant an exception or modification to City Code requirements. These criteria are listed below, along with comments from City Staff about the applicability of these criteria to the Applicants' 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.

FINDINGS: *The practical difficulties criteria is about what is reasonable given the purpose of the ordinance, not what is reasonable to the applicant. The request should be the minimum necessary to achieve the purpose of the ordinance. Enjoyment of the parcel in its natural state, building a smaller house, moving the house further from the lake, or even using the property as an access to Sunfish Lake, are sufficient and reasonable uses of the property. Staff finds that constructing a large single family home is not a necessity in this sensitive natural area. **Practical Difficulties Criteria is not met.***

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

FINDINGS: *Staff understands that the Applicants have owned this property for many years and did not create their parcel. While the bluff setback requirements and shoreland overlay restrictions may have not been in place when the property was purchased, any future development is required to adhere to them. In addition, the Applicants have the ability to acquire additional property by revising the outlot shape within NorthStar to create a site design that requires minimal or no variances. The Applicants may also change the location of the house or decrease its size. The Applicants have not demonstrated any attempts to avoid variances based on the size or placement of the home or attempts to acquire more property. Unique Circumstances Criteria is not met.*

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

FINDINGS: *The Applicants are proposing to develop their property that is situated within a natural bluff and shoreland area citing that there are existing adjacent residential homes. Staff finds that the existing homes along the South and West were built many years ago, likely under different less restrictive requirements. Development on the North and East side of the lake, adjacent to this parcel, such as Hamlet on Sunfish Lake and Northstar were developed to avoid these sensitive areas. This request directly conflicts with the bluff and shoreland regulations that were implemented to protect these sensitive areas. Character of Locality Criteria is not met.*

- 4) **Adjacent Properties and Traffic.** The proposed variance must 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: *Although no streets or infrastructure are currently in place to accommodate this request, the request would only add one single family home. Given that the request only consists of the construction of one home, there should not be an increase in congestion on a public street or will the proposed home substantially diminish adjacent property values. Adjacent Properties and Traffic Criteria is met.*

CITY AGENCY REVIEW:

This request was distributed to several departments and agencies for review on December 2nd 2024. The following departments and agencies provided comments on the variance requests.

- Landscape Architect Memo 12/13/24 – The LSA provided a memo *recommending denial* of the variance requests outlining concerns with the vegetative clearing and grading in the shoreland impact zones and erosion of the area. The proposed development of the parcel is inconsistent with the intent of the shoreland overlay and bluff setback zones. Any development would require major grading, tree removals, and topographic changes to very sensitive slopes.
- City Engineer Memo 12/16/24– Provided a memo *recommending denial* of the variances. The City Engineer outlined concerns with the requests being premature because none of

the public infrastructure that would serve the property (water, sewer, street) has been approved by the City or constructed at this time and they are subject to change. The memo also provided 10 findings related to the infrastructure installation, stormwater management, and numerous off-site easement requirements (these easements have not been secured by the Applicants).

- MN DNR Memo 12/16/24- Provided a memo *recommending denial* of the variances. The memo cites concerns with the requests not meeting the statutory practical difficulties or essential character criteria. The memo outlines the DNR's concerns with the variances' impacts to the natural area including the lake and the water quality of the lake.
- Valley Branch Watershed District Email 12/16/24- Provided a comment that a VBWD permit would be required.
- Fire Department- Did not provide comments on the request.

PUBLIC COMMENT:

A hearing notice was sent to surrounding properties on January 6th, 2025. A hearing notice was published in the local newspaper on January 10th, 2025. The item was tabled by the Planning Commission on January 13th, 2025.

A new public hearing notice was sent to surrounding property owners on January 14th, 2025, and published in the local paper on January 17th, 2025. Below is a summary of the comments received:

1. Craig Allen (Gonyea Companies) provided written public comment that, while he signed off on the variance application as the owner of Northstar Outlot B and has provided access to the lot with the development of the Northstar subdivision to help Mr. Chavez, he would like to put on the record he is not supporting the current design and encroachment onto his property. It is his position that any drainage structures should be fully contained within Northstar Outlot B. He is indifferent to the outlot design.
2. Bill Friederichs (3691 Kelvin) spoke at the public hearing noting they did not receive a mailed notice. They are in support of the request citing that they received a similar variance back in 1993.

PLANNING COMMISSION:

The Planning Commission voted to table this request at their 1/13/2025 meeting (Vote 6-0).

The Commission reviewed the variance requests at their 1/27/2025 meeting and voted to follow staffs recommendation and deny the requests with the findings listed in the staff report. The Commission cited concerns with the site design, house size, variance criteria, and DNR review letter (Vote 4-0).

FISCAL IMPACT:

- None

RECOMMENDED CONDITIONS – IF RECCOMENDING APPROVAL

1. The Applicants must obtain all other necessary City, State, VBWD, and other governing body permits and approvals prior to construction.
2. The property must be connected to sanitary sewer and water with Northstar 2nd Addition once it is made available and pay applicable connection fees.

3. There must be access to an improved public street prior to construction.
4. The Applicants must record the approval resolution with the Washington County Property Records Department to inform future buyers of the approval and the expiration date of the variances.
5. The property must dedicate the necessary drainage and utility easements and the Applicants must acquire any required off-site easements to the satisfaction of the City Engineer and Public Works Director.
6. If approved, all variances shall expire if work does not commence within 12 months of the date of granting the variances.

OPTIONS:

The City Council may:

- Approve the variances with conditions citing recommended conditions and findings of fact for approval.
- Deny the variances, citing recommended findings of fact for denial.

RECOMMENDATIONS:

Staff recommends that the City Council deny the variance requests since they do not meet all four of the required criteria outlined above and based upon agency review comments. Suggested motions:

“Move to approve Resolution 2025-13 denying all of the seven shoreland variance requests from Joe and Joan Chavez for the property located at 14.029.21.24.0004 and Outlot B of Northstar 1st Addition based on the findings listed in the Staff report.”

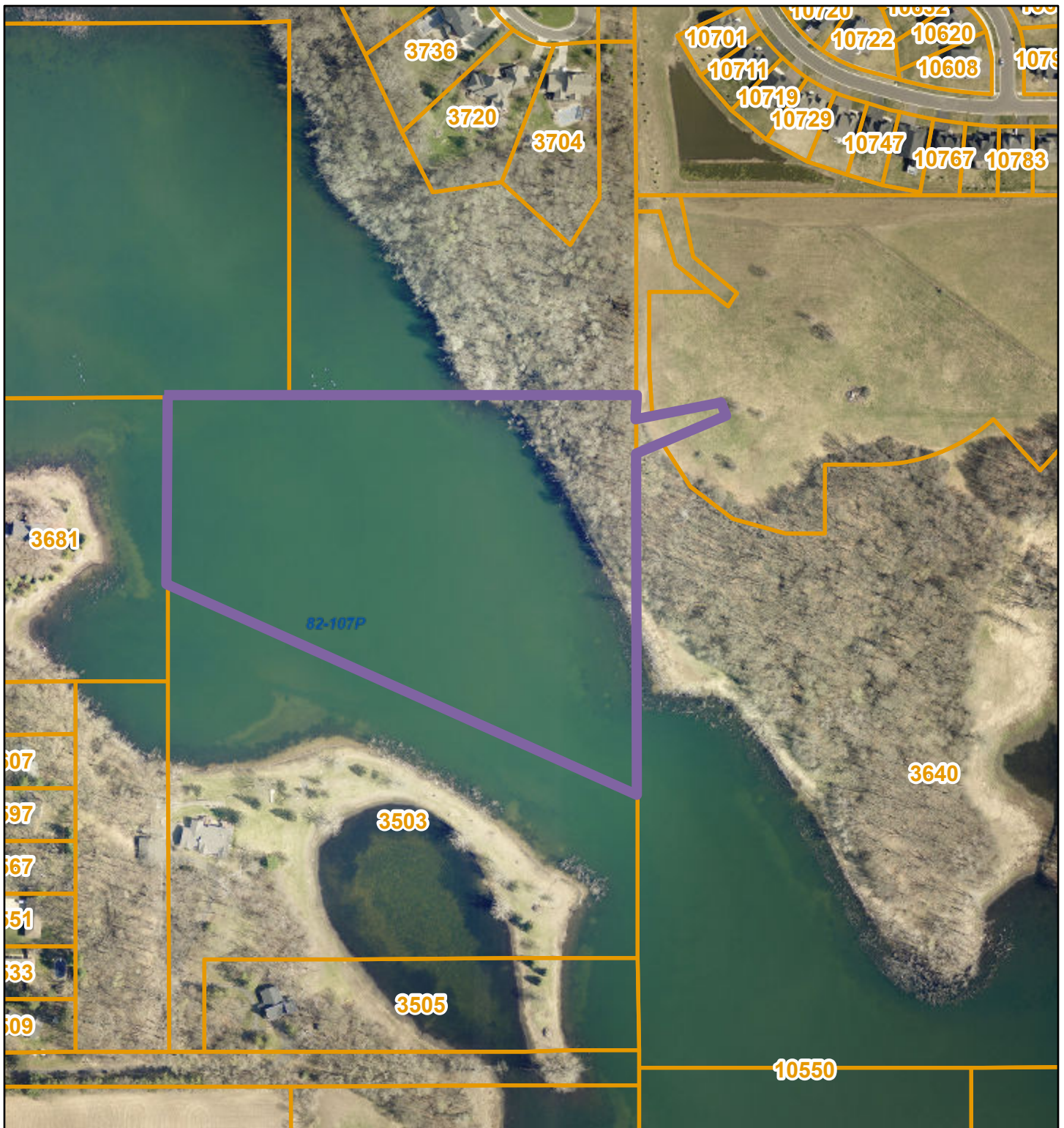
If the City Council would like to approve the requests, staff recommends the Council provide findings of fact for approval and has proposed the following motion:

“Move to direct staff to bring forward a resolution for approval of all of the seven shoreland variance requests from Joe and Joan Chavez for the property located at 14.029.21.24.0004 and Outlot B of Northstar 1st Addition with the conditions listed in the Staff report.”

ATTACHMENTS:

- 1) Location Map
- 2) Land Use Application and Plans
- 3) LSA Memo (12/13/24)
- 4) DNR Memo (12/16/24)
- 5) City Engineer Memo (12/16/24)
- 6) VBWD Email (12/16/24)
- 7) Public Comment
- 8) Applicant Letter to Planning Commission 1/27/2025
- 9) Resolution 2025-13

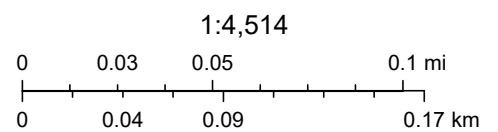
ArcGIS Web AppBuilder



12/18/2024, 10:14:58 AM

-  Parcels
-  Municipals

DNR Protected Waters ID



Date Received: _____
Received By: _____
Permit #: _____



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

VARIANCE APPLICATION

Applicant: Jose & Joan Chavez

Address: 3505 Kelvin Avenue North, Lake Elmo, MN 55042

Phone # 612-801-6360

Email Address: jzchavez@hotmail.com

Fee Owner: Jose & Joan Chavez

Address: 3505 Kelvin Avenue North, Lake Elmo, MN 55042

Phone # 612-801-6360

Email Address: jzchavez@hotmail.com

Engineer: Cornerstone Land Surveying, Inc., Dan Thurmes

Address: 1970 Northwestern Ave - Suite 200, Stillwater, MN 55082

Phone # 651-275-8969

Email Address: dan@cssurvey.net

Property Location (Address): See Exhibit A1

Complete Legal Description: _____

PID#: PID14.029.21.24.0004

Detailed Reason for Request: See Exhibit A

*Variance Requests: As outlined in LEC Section 103.00.110 (c), the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows: Please refer to the responses in 2c thru 2h and Exhibit A regarding all of practical difficulties and history regarding the reasons for the request.

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning ordinance and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Signature of applicant: Jose Chavez

Date: 11/22/24

Signature of fee owner: Joan S. Chavez

Date: 11-22-24

Signature of Developer: [Signature]

Date: 11/21/24

Variance Application

Item:

1. Land use application form
2.
 - a. Jose & Joan Chavez are owners of PID 14.029.21.24.0004 and Outlot B which is the access is owned by the developer Gonyea Company represented by Craig Allen
 - b. Section 14 Township 029 Range 021 PT OF E1/2-NE1/4 DESC AS FOLL BEG:AT SE COR OF N 83 RODS OF SD E1/2 NW1/4 THN W ALONG S LINE OF SD N 83 RODS FOR 890FT THN S & PAR WITH E LINE OF SD E1/2-NW1/4 FOR 350FT THN SELY IN DIRECT LINE TO PT ON SD E LINE OF 31/2-NW1/4 SD PT BEING 750FT S

Additionally Outlot B is owned by the developer Gonyea Company represented by Craig Allen

105.12.1260 Table 17-3 OHWL Setback

*The plan shows the home well above the 100-year flood level of the lake. The survey also illustrates the DNR 150' Natural Environmental Lake OHWL setback line. **Most of the homes on the west side of Sunfish did not meet this standard and this requirement which more than likely was created after the creation of this parcel.** I have attached a map of the homes on the west side of the lake (See Exhibit B) that were all clearly built on bluffs and slopes. There was only one home site that I am aware of that required a variance (3681 Kelvin Ave N).*

105.12.1260 Table 17-3 30' Bluff Setback

According to an assessment by the VBWD, the plan shows the home well above the 100 year-year flood level of the lake. VBWD requires an AVERAGE vegetative buffer of 100 feet and a MINIMUM vegetative buffer of 25 feet upland from the DNR's OHW (896.4), which appears achievable (see Exhibit C). To construct this proposed home, driveway, walls and the storm water management features we will be grading within the 30' bluff setback and the 150' natural environmental lake setback

105.121260.(7)(a) Principal Structure in Bluff Zone

Although the proposed principal structure is in the bluff zone the survey illustrates several proposed improvement areas (i.e., house, deck, entrance, driveway and walls). The survey also includes a site/grading plan to demonstrate a house can be built on this parcel.

12.1260(7)(c) Vegetative clearing in bluff impact zone/steep slopes

The survey clearly illustrates a silt fence above the OHW and also above the Bluff line 18% slope along with a rain garden to prevent any erosion into the lake, preserve shoreland aesthetics, preserve historic values to maintain it's pristine condition.

105.12.1260(5)(a) Subdivision standards suitable lot

The Variance request will require to combine Outlot B and the Chavez parcel into 1 lot.

105.12.1260(5)(b) Subdivision of lots that require 1 or more variances

Nothing I, or my predecessors did created the need for a variance—the later imposition of bluff land setbacks that interfere with placement of a house on a lot that was lawfully created. We did not change the surface of the land or the position of any bluff or steep slopes, did not erect any structures and the lot it exists in its natural state, not to mention its approved subdivided state. This is precisely the situation where variances are strongly compelled.

105.12.1260(7)(e) Grading in shoreland areas

The survey clearly depicts Sod or Seed with approved mixture or sod all disturbed areas after grading is completed. Additionally, Rain Garden #2 has been strategically located that will provide management practice that will provide treatment needed to conform to the VBWD Rules and Regulations.

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

Please refer to the above 2c response that specifically address the Lake Elmo Code.

d. Narrative of discussion with staff

I have met with the City Planner and the Community Development Director initially on October 12, 2024 and November 20, 2024 to discuss the Variance Requirements before submitting the request. In both meeting I shared the various documents I intended to submit which included the parcel survey and other related documents. The City Planner responded with the specific Variances that would be required in the Variance submission.

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

There are no viable solutions other than to request a variance. This is a lot of record prior to the 1980's before the current regulations were in affect.

Nothing I, or my predecessors did create the need for a variance—the later imposition of bluff land setbacks that interfere with

placement of a house on a lot that was lawfully created. We did not change the surface of the land or the position of any bluff or steep slopes, did not erect any structures and the lot it exists in its natural state, not to mention its approved subdivided state

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

The landowner's problem is due to circumstances unique to the property and not created by the landowner. The variance will not alter the essential character of the neighborhood.

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

By granting the variance the survey includes considerations that would not alter the essential character of the planned North Star Phase I development project, which is currently underway. We have worked closely with the developer to integrate Outlot B to provide access to the parcel that does not alter the character of the neighborhood. The actual placement of the proposed home site is setback so that it provides a high level of privacy that does not distract from the neighborhood or the shoreline.

The proposed home site plan will obviously not alter the essential character of the neighborhood. Currently, the neighborhood is slated to be developed with substantial housing, roads and other infrastructure.

As it relates to the lake—there are numerous houses that exist or were built or were expanded on lots like that and within bluff land and other setbacks. Simply put, historical creation and development of homes and outbuildings has been allowed extensively in this area. It will not change the essential character of the neighborhood in any way to use this lot for its intended purpose-development of a single-family lakeshore home.

Examples of pre-existing lots where homes were built are illustrated in the map provided in this packet. All of those homes were built in the 70's, 80's and even early 90's. Depictions of these homes are shown in Exhibit B.

3. Verification of ownership

- a. See attached Warranty Deed & Quick Claim Deed (Exhibit D)*

4. Address Labels

- a. See attached labels*

5. Three (3) plan size copies

- a. See attached Survey, Slope Exhibit and electronic copies*

6. Other Information for the City

Exhibit A

Detailed Reason For Request

The primary reason for requesting a Variance(s) is to demonstrate a home can be built on this parcel. My intent is not to build a home on this parcel but to confirm the parcel is a buildable lot for resale purposes.

The parcel for which seek variance approvals to build was created in 1980. The property was confirmed by deed on January 16, 1980 and the conveyance specifically confirmed as "entitled to recording and subdividing" by the City of Lake Elmo (See Exhibit A1 – Stamp bearing approval on deed). Because parcel property is a pre-existing of record and it would not be reasonable or lawful for it to be denied all variances necessary to allow it to be reasonably built upon in the future

We are requested multiple variances for this parcel. We have owned the parcel since 1993 (See verification of ownership on Exhibit D). This parcel has been land locked until the recent NorthStar Phase I and Phase II developments were approved. The developer has designated Outlot B to access the parcel and has co-signed the Variance Request. The parcel has been rezoned to Low Density Residential (V-LDR) and a Metropolitan Council plan amendment has been approved.

The parcel is 11.2 acres, although only 1.21 acres are above the Ordinary High-Water Level (OHWL) it is a suitable home site which can be developed regardless of the bluff and slope requirements of the City.

The General Variance Standards are met here and it is a typical scenario where variances should be granted.

As you are aware there are three underlying inquiries:

- The property owner proposes to use the property in a reasonable manner (here a single family home);
- The landowner's problem is due to circumstances unique to the property and not created by the landowner;
- The variance will not alter the essential character of the neighborhood.

All of these criteria are readily met here:

A single family home is reasonable, necessary and common in this area.

Nothing I, or my predecessors did create the need for a variance—the later imposition of bluff land setbacks that interfere with placement of a house on a lot that was lawfully created. We did not change the surface of the land or the position of any bluff or steep slopes, did not erect any structures and the lot it exists in its natural state, not to mention its approved subdivided state. This is precisely the situation where variances are strongly compelled.

Building of this house will obviously not alter the essential character of the neighborhood. Here, the neighborhood is slated to be developed with substantial housing, roads and other infrastructure. As relates to the lake—there are numerous houses that exist or were built or were expanded on lots like that and within bluff land and other setbacks. Simply put, historical creation and development of homes and outbuildings has been allowed extensively in this area. It will not change the essential character of the neighborhood in any way to use this lot for its intended purpose-development of a single-family lakeshore home. Examples of pre-existing lots where homes were built are illustrated in Exhibit B provided in the Variance packet. All of those homes were built in the 70's, 80's and even early 90's.

Exhibit A

Detailed Reason For Request

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Building of this house will obviously not alter the essential character of the neighborhood. Here, the neighborhood is slated to be developed with substantial housing, roads and other infrastructure. As relates to the lake—there are numerous houses that exist or were built or were expanded on lots like that and within bluff land and other setbacks. Simply put, historical creation and development of homes and outbuildings has been allowed extensively in this area. It will not change the essential character of the neighborhood in any way to use this lot for its intended purpose-development of a single-family lakeshore home.

Examples of pre-existing lots where homes were built are illustrated in Exhibit B provided in the Variance packet. All of those homes were built in the 70's, 80's and even early 90's.

Exhibit A1

Property Description

Section 14 Township 029 Range 021 PT OF E1/2-NW1/4
DESC AS FOLL BEG:AT SE COR OF N 83 RODS OF SD
E1/2 NW1/4 OF SEC 14 THN W ALONG S LINE OF SD N 83
RODS FOR 890FT THN S & PAR WITH E LINE OF SD
E1/2-NW1/4 FOR 350FT THN SELY IN DIRECT LINE TO PT
ON SD E LINE OF E1/2-NW1/4 SD PT BEING 750FT S

Exhibit B

Chavez Parcel

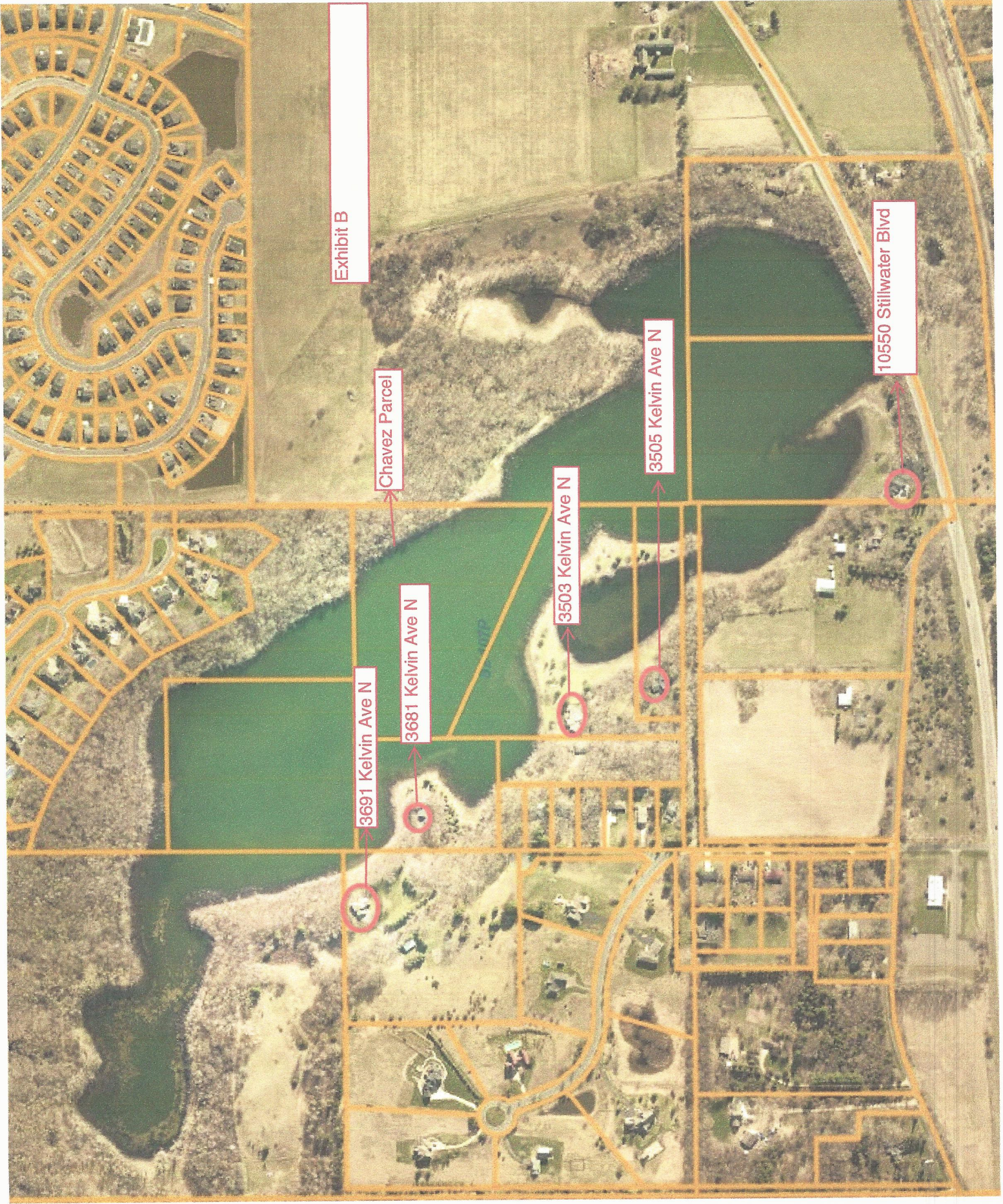
3691 Kelvin Ave N

3681 Kelvin Ave N

3503 Kelvin Ave N

3505 Kelvin Ave N

10550 Stillwater Blvd



RE: Chavez Parcel

John P. Hanson <JHanson@barr.com>

Wed 10/2/2024 4:58 PM

To: 'Dan T' <dan@cssurvey.net>

Cc: Joe Chavez <jzchavez@hotmail.com>

Hi Dan,

Because the project is proposing more than 6,000 square feet of new impervious surface, it will require a VBWD permit.

As with similar individual home projects, something like your drawing is satisfactory for VBWD.

If the entire home footprint drains to rain garden 2, it should capture a larger volume: $2437 \text{ sf} * 1.1 \text{ inches} * 1 \text{ ft}/12 \text{ inches} = 223 \text{ cf}$.

The plan shows the home well above the 100-year flood level of the lake.

VBWD requires an AVERAGE vegetative buffer of 100 feet and a MINIMUM vegetative buffer of 25 feet upland from the DNR's OHW (896.4), which appears achievable.

VBWD encourages (but doesn't require) that buildings be set back 40 feet from the top of natural slopes greater than 18% over a length of 100 feet, in the absence of stricter bluff ordinances.

I think you might need approval from the DNR because I think this is in the "shoreline" district—or perhaps, the City administers those requirements.

John

John P. Hanson, PE

Valley Branch Watershed District Engineer

Barr Engineering Co. | 4300 MarketPointe Drive | Bloomington, MN 55435

office: 952.832.2622 | cell: 612.590.1785

JHanson@barr.com | www.barr.com | www.vbwd.org

resourceful. naturally.

BARR

From: Dan T <dan@cssurvey.net>

Sent: Friday, September 27, 2024 10:46 AM

To: John P. Hanson <JHanson@barr.com>

Cc: Joe Chavez <jzchavez@hotmail.com>

Subject: Chavez Parcel

CAUTION: This email originated from outside of your organization.

John – we are finally getting somewhere with the city and we have put together a plan to apply for the variance. Attached is a site plan that may never be built but the city is requiring it. We will acquire the Outlot from the developer to the Chavez parcel (Lot of Record).

758413

No delinquent taxes and transfer entered; Certificate
of Real Estate Value (☒ filed () not required
Certificate of Real Estate Value No. Sept 3, 19 93

R. H. Stafford County Auditor
by Jo Ann Mc Kenzie Deputy

STATE DEED TAX DUE HEREON: \$ 1.65Date: August 14, 19 93

758413

OFFICE OF
COUNTY RECORDER
WASHINGTON COUNTY
MINN.

SEP 3 3 33 PM '93

DEED 758413

Judy Cameron1950 Taxpayer
(reserved for recording data)

FOR VALUABLE CONSIDERATION,

Everett E. Beaubien and Mary Celine Beaubien, husband and wife, Grantor(s),
(marital status)

hereby convey (s) and warrant (s) to

Joan S. Chavez

, Grantee (s),

real property in Washington County, Minnesota, described as follows:

All that part of the East One-Half of the Northwest Quarter (E1/2 of NW1/4)
of Section Fourteen (14), in Township Twenty-Nine (29) North, of Range
Twenty-One (21) West, City of Lake Elmo, Washington County, Minnesota,
described as follows:

Beginning at the southeast corner of the North Eighty-Three (83.00) rods of
the said East One-Half of the Northwest Quarter (E1/2 of NW1/4) of Section
Fourteen (14), Township Twenty-Nine (29) North, Range Twenty-One (21) West,
Washington County, Minnesota; thence west along the south line of said
North Eighty-Three (83.00) rods for Eight Hundred Ninety (890.00) feet;
thence south and parallel with the east line of said East One-Half of the
(continued on back)

(If more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

SUBJECT TO RESTRICTIONS AND COVENANTS OF RECORD

Seller certifies that Seller does not know of any wells on the described
real property.

The total consideration for this transfer is less than \$500.00.

03-Sep-93 WASHINGTON COUNTY No. 9080
Deed tax hereon of \$1.65 Paid
MN Conservation Fund N.S. 473H \$5.00 Paid
R. H. STAFFORD, Auditor-Treasurer by JO ANN MC KENZIE

Everett E. Beaubien
Everett E. BeaubienMary Celine Beaubien
Mary Celine Beaubien

STATE OF MINNESOTA

COUNTY OF Hennepin

ss.

The foregoing instrument was acknowledged before me this 14th day of August, 19 93,
by Everett E. Beaubien and Mary Celine Beaubien, husband and wife, Grantor(s).

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



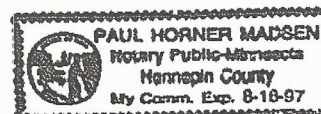
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should
be sent to (include name and address of Grantee):

Joan S. Chavez
3505 Kelvin Avenue North
Lake Elmo, Minnesota
55042

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Paul H. Madsen
Attorney at Law
6200 Excelsior Boulevard,
Suite 103
Saint Louis Park, Minnesota
55416-2730
(612) 927-8744



September 3, 1993

Exhibit D

ROLL 114

37014-3210

Northwest Quarter (E1/2 of NW1/4) for Three Hundred Fifty (350.00) feet; thence southeasterly in a direct line to a point on said east line of the East One-Half of the Northwest Quarter (E1/2 of NW1/4), said point being Seven Hundred Fifty (750.00) feet south of the point of beginning; thence north along said east line of the East One-Half of the Northwest Quarter (E1/2 of NW1/4) for Seven Hundred Fifty (750.00) feet to the point of beginning. Containing 11.237 acres, more or less.

According to the United States Government Survey thereof.

Together with easements for roadway purposes, to-wit:

A non-exclusive easement over and across the West Thirty-Three (33) feet of the South Seven Hundred Thirty-Three (733) feet of the East One-Half of the Northwest Quarter (E1/2 of NW1/4) and over and across the East Thirty-Three (33) feet of the South Seven Hundred Thirty-Three (733) feet of the West One-Half of the Northwest Quarter (W1/2 of NW 1/4) of Section Fourteen (14), Township Twenty-Nine (29) North, Range Twenty-One (21) West, said roadway to be used for ingress to and egress from the subject property or any part thereof.

A non-exclusive easement over and across that part of the South Thirty-Three (33) feet of the East One-Half of the Northwest Quarter (E1/2 of NW1/4) of Section Fourteen (14), Township Twenty-Nine (29) North, Range Twenty-One (21) West, commencing at the West line thereof and running East to the water line of Sunfish Lake as it recedes or rises, said roadway to be used for ingress to and egress from the subject property or any part thereof, and for access to Sunfish Lake.

A non-exclusive easement over and across the North Thirty-Three (33) feet of the Northeast Quarter of the Southwest Quarter (NE1/4 of SW1/4) of Section Fourteen (14), Township Twenty-Nine (29) North, Range Twenty-One (21) West, commencing at the West line thereof and running East to the water line of Sunfish Lake as it recedes or rises, said roadway to be used for ingress to and egress from the subject property or any part thereof, and for access to Sunfish Lake.

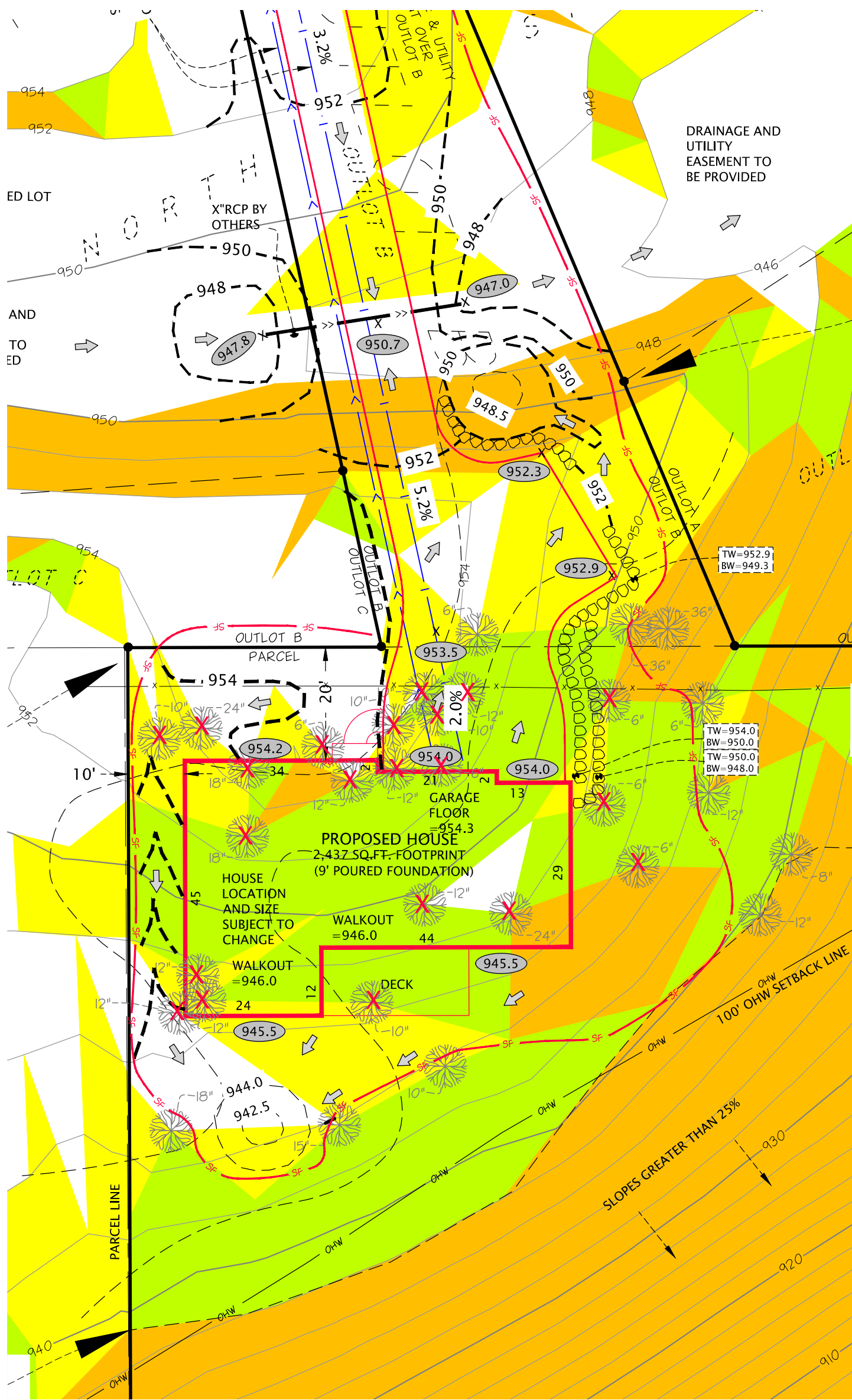
September 3, 1993

Exhibit D

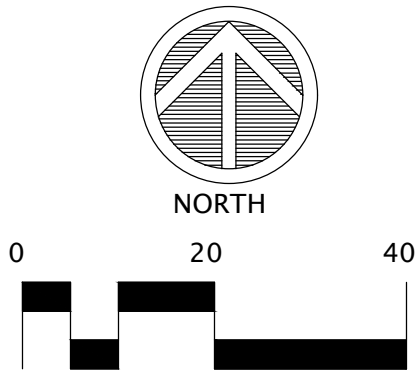
ROLL 114



SLOPE EXHIBIT



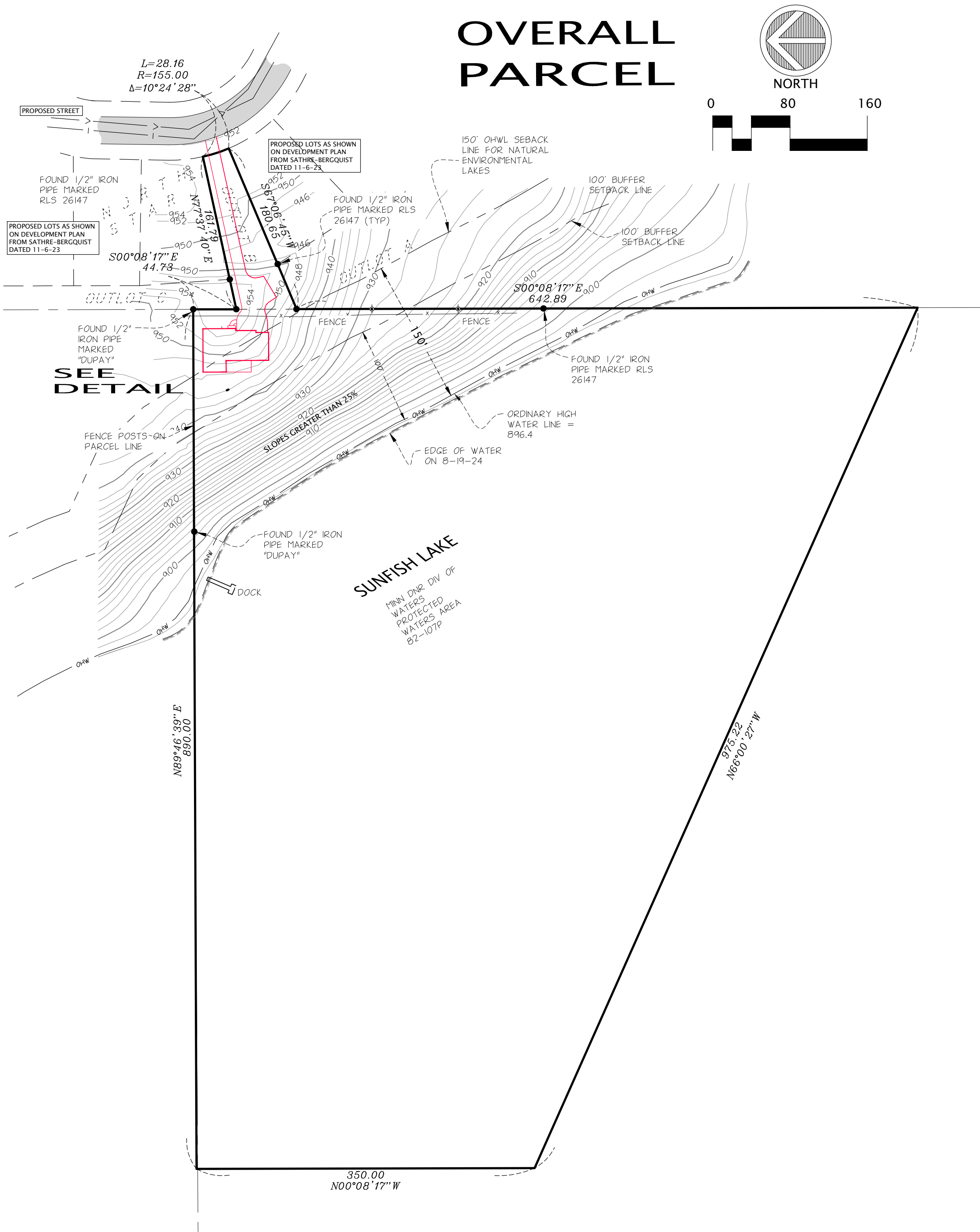
Slopes Table			
Number	Minimum Slope	Maximum Slope	Color
1	12.00%	18.00%	
2	18.00%	25.00%	
32	25.00%	>	



Suite #1
6750 Stillwater Blvd. N.
Stillwater, MN 55082
Phone 651.275.8969
Fax 651.275.8976
dan@cssurvey.net

CORNERSTONE
LAND SURVEYING, INC.

OVERALL PARCEL



EXISTING LEGAL DESCRIPTION

CHAVEZ PARCEL - PID#1402921240004
(AS SHOWN ON WARRANTY DEED DOC. NO. 758413
All that part of the East One-Half of the Northwest Quarter (E 1/2 of NW 1/4) of Section Fourteen (14), in Township Twenty-Nine (29) North, Range Twenty-One (21) West, Washington County, Minnesota; thence west along the south line of said North Eighty-Three (83.00) rods for Eight Hundred Ninety (890.00) feet; thence south and parallel with the east line of said East One-Half of the northwest Quarter (E1/2 of NW 1/4) for Three Hundred Fifty (350.00) feet; thence southeasterly in a direct line to a point on said east line of the East One-Half of the Northwest Quarter (E 1/2 of NW 1/4), said point being Seven Hundred Fifty (750.00) feet south of the point of beginning; thence north along said east line of the East One-Half of the Northwest Quarter (E 1/2 of NW 1/4) for Seven Hundred Fifty (750.00) feet to the point of beginning. Containing 11.237 acres, more or less. According to the United States Government Survey thereof.

NORTH STAR PARCEL
(AS SHOWN ON AVAILABLE TAX RECORDS)
PID#1402921130023
Outlot B, NORTHSTAR, Washington County, Minnesota.

AREAS:

CHAVEZ PARCEL AREA = 489,500 SQ.FT. / 11.24 ACRES
NORTHSTAR OUTLOT B FROM DEVELOPER = 7,448 SQ.FT. / 0.17 ACRES
TOTAL AREA = 496,948 SQ.FT. / 11.41 ACRES
AREA ABOVE OHW = 59,467 SQ.FT./1.37 ACRES

SURVEY NOTES:

1. BEARINGS ARE BASED ON WASHINGTON COUNTY COORDINATES (NAD83).
2. 2' CONTOURS SHOWN PER DNR LIDAR DATA OBTAINED FROM THE MNTPO WEBSITE. NOT FIELD VERIFIED. FIELD TOPOGRAPHY DATED 8-19-24 IN AREAS OF TREE LOCATION AND SPOT ELEVATIONS.
3. EASEMENTS LIMITED TO THOSE SHOWN ON COUNTY PARCEL MAPPING AND THE PLAT OF NORTSTAR ARE SHOWN. NO TITLE OPINION OR TITLE COMMITMENT WAS PROVIDED THAT WOULD SHOW EASEMENTS OR ENCUMBRANCES OF RECORD.
4. UNDERGROUND UTILITIES NOT SHOWN.

LEGEND:

● FOUND MONUMENT	⚡ FIRE DEPT. CONNECTION	— UK — UNDERGROUND ELECTRIC
○ SET 1/2" IRON PIPE MARKED RLS NO. 25718	⚡ HYDRANT	— UTV — UNDERGROUND CABLE TV
Ⓜ CABLE TV PEDestal	Ⓜ CURB STOP	— UF — UNDERGROUND FIBER OPTIC
Ⓜ AIR CONDITIONER	Ⓜ WATER WELL	— UT — UNDERGROUND TELEPHONE
Ⓜ ELECTRIC MANHOLE	Ⓜ WATER METER	— OU — OVERHEAD UTILITY
Ⓜ ELECTRIC METER	Ⓜ POST INDICATOR VALVE	— UG — UNDERGROUND GAS
Ⓜ ELECTRIC PEDESTAL	Ⓜ WATER VALVE	— SS — SANITARY SEWER
Ⓜ ELECTRIC TRANSFORMER	Ⓜ BOLLARD	— S — STORM SEWER
Ⓜ LIGHT POLE	Ⓜ FLAG POLE	— W — WATERMAIN
Ⓜ CUY WIRE	Ⓜ MAIL BOX	— F — FENCE
Ⓜ POWER POLE	Ⓜ TRAFFIC SIGN	— C — CURB (TYPICAL)
Ⓜ GAS MANHOLE	Ⓜ UNKNOWN MANHOLE	— — — CONCRETE SURFACE
Ⓜ GAS METER	Ⓜ SOIL BORING	— — — BITUMINOUS SURFACE
Ⓜ TELEPHONE MANHOLE	Ⓜ TRAFFIC SIGNAL	
Ⓜ TELEPHONE PEDestal	Ⓜ CONIFEROUS TREE	
Ⓜ SANITARY CLEANOUT	Ⓜ DECIDUOUS TREE	
Ⓜ SANITARY MANHOLE		
Ⓜ CATCH BASIN		
Ⓜ STORM DRAIN		
Ⓜ FLARED END SECTION		
Ⓜ STORM MANHOLE		

PROPOSED IMPROVEMENT AREAS:

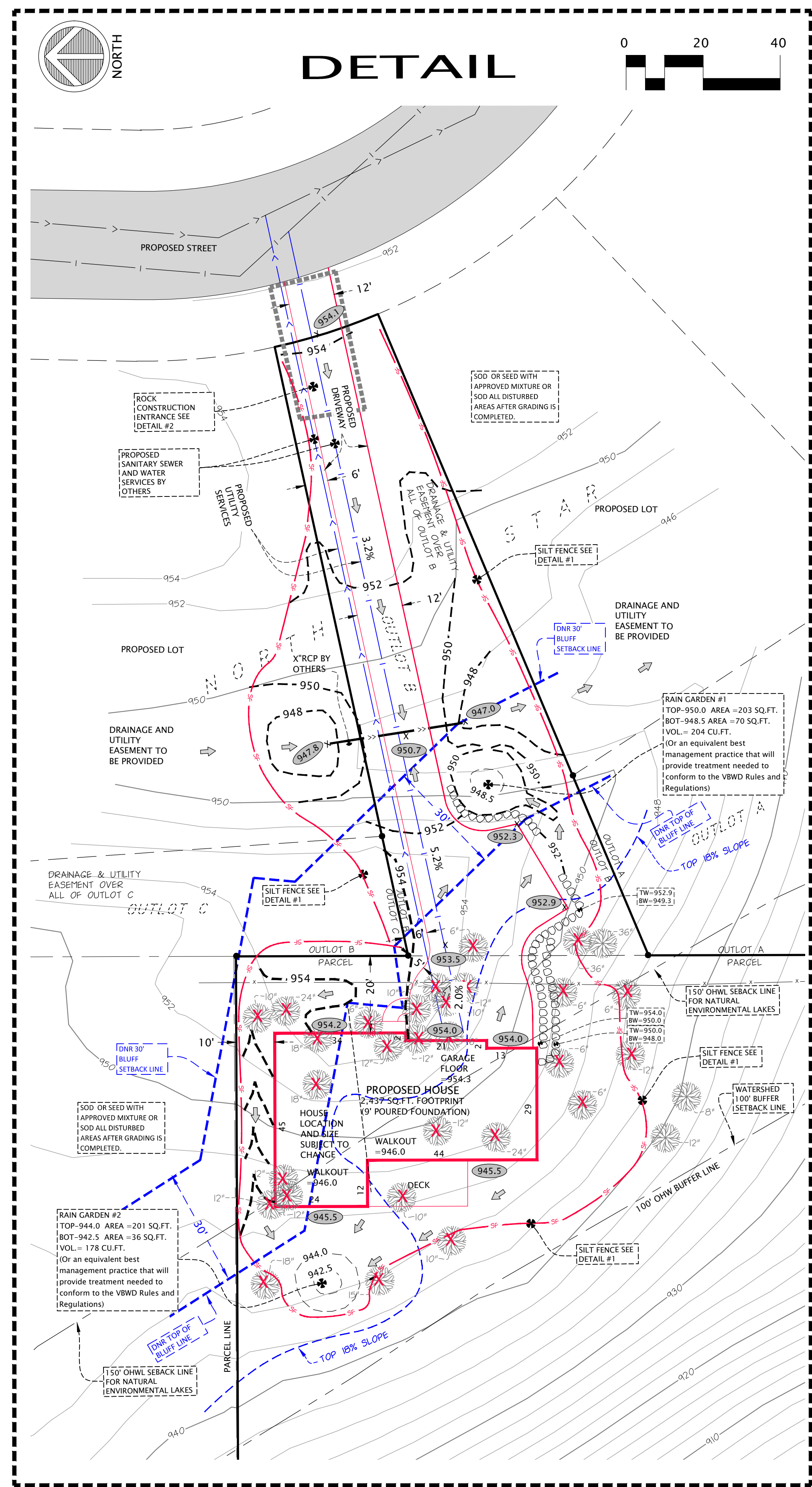
1. HOUSE = 2438
2. DECK = 312
3. ENTRANCE = 53
4. DRIVEWAY = 3352
5. WALLS = 200

TOTAL IMPROVEMENTS = 6155 SQ.FT.
10.4 % (% OF OHW AREA)

PROPOSED BUILDING ELEVATIONS:

TOP OF BLOCK = 954.7 (9' POURED)
GARAGE FLOOR = 954.3
BASEMENT FLOOR = 946.0
THE ABOVE ELEVATIONS MAY BE MODIFIED.

Ⓜ SET OFFSET HUB	Ⓜ PROPOSED ELEVATION
Ⓜ PROPOSED CONTOUR	Ⓜ PROPOSED DRAINAGE
Ⓜ DENOTES EXISTING ELEV.	Ⓜ DENOTES SILT FENCE
Ⓜ EXISTING CONTOURS	



CHAVEZ PARCEL

CONTACT:

JOE CHAVEZ
3505 KELVIN AVE. N.
LAKE ELMO, MN 55072
Phone: 612-801-6360
JZCHAVEZ@HOTMAIL.COM

COUNTY/CITY:

WASHINGTON
COUNTY
CITY OF
LAKE ELMO

REVISIONS:

DATE	REVISION
9-25-17	INITIAL ISSUE
10-9-17	AREAS
10-25-23	REVISED
12-26-23	PROPOSED GRADES FROM DEVELOPER
9-16-24	SURVEY, REVISE SITE PLAN/GRADING PLAN
10-24-24	CITY COMMENTS
11-17-24	ADD SETBACK
11-20-24	MODIFY BLUFF SETBACK

CERTIFICATION:

I hereby certify that this plan 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.
Dan J. Thurnes Registration Number: 25718
Date: 9-25-17

PROJECT LOCATION:

PID#1402921240004

Suite #1
6750 Stillwater Blvd. N.
Stillwater, MN 55082
Phone 651.275.8969
Fax 651.275.8976
dan@cssurvey.net

CORNERSTONE LAND SURVEYING, INC.

FILE NAME
PROJECT NO.

SURVZZ472
ZZ17472

SITE PLAN

Memorandum

12/13/24

TO: SOPHIA JENSEN
FROM: SARAH EVENSON, PLA
RE: CHAVEZ VARIANCES: CITY LANDSCAPE ARCHITECT REVIEW

SUBMITTALS

1. Site Plan Submittal, dated 9-25-17, received 12-2-2024

REVIEW HISTORY

1. Chavez Variances: City Landscape Architect Review, dated 12-13-24

LOCATION: 14.029.21.24.0004 (Chavez Parcel) and 14.029.21.13.0023 (Northstar Outlot B)

CURRENT LAND USE CATEGORY: Village Low density Residential (VLDR)

ADJACENT AND SURROUNDING LAND USE: VLDR

SPECIAL LANDSCAPE PROVISIONS: DNR Bluff Setback Zone, Shoreland Overlay

GENERAL NOTES:

- Bluff setbacks and shoreland overlays were instituted for good reason. The slope diagram shows that the property exceeds maximum recommended slopes for development for most of its land. Any development would require major grading, tree removals, and topographic change. These slopes are typically sensitive and highly susceptible to erosion if cleared. While these restrictions may not have been in place when the property was purchased, any future development will be required to adhere to them.
 - Vegetative clearing within shore and bluff impact zones and on steep slopes is not permitted 105.12.1260 (c)(2)
 - 105.12.1260 (7) a) *Bluff or shore impact zones*. No principal or accessory structure or use shall be placed within bluff or shore impact zones other than agricultural activities as permitted by subsection (c)(6)b of this section.

RECOMMENDATION:

The proposed development of this parcel is inconsistent with the intent of the shoreland overlay and bluff setback zones, and I do not believe the variances should be granted.



Sarah Evenson, PLA (MN)

P: (262) 391-7653 E: sarah@hkgi.com

December 16, 2024

Sophia Jensen
Senior City Planner
3880 Laverne Ave N
Lake Elmo, MN 55042

Re: Chavez Bluff and OHWL Setback Variance – PID 14.029.21.24.0004, Sunfish Lake

Members of the Board of Adjustment,

Thank you for the opportunity to comment on this application requesting bluff and ordinary high water level (OHWL) setback variances. My comments and recommendation are based on an evaluation of the facts presented in the application against the criteria in Minn. Statute [§462.357](#). Based on this evaluation, the **DNR recommends denial** of the variance.

Summary of variance request

The applicant has requested a variance to construct a new, large home (2,437 sq. ft. footprint) on the face of the bluff on Sunfish Lake. The home would be located below the top of the bluff as delineated on the site plan. This is an extreme deviation from the required setback of 30 feet from the top of the bluff.

In addition, the applicant has requested a variance to place the new home at approximately 125 feet from the ordinary high water level (OHWL) of Sunfish Lake. This is a significant deviation of approximately 25 feet from the required setback of 150 feet.

We note that the application states that the house location and size are subject to change, and that the applicant has no intention of constructing a home on this lot. In this letter, we have evaluated the request given the limited facts available. However, we believe the city should not entertain granting a variance until an actual building plan that can properly be evaluated is submitted.

Evaluation Criteria and Approach

The role of the Board of Adjustment (BOA) is to objectively evaluate whether the facts meet the statutory criteria for approving a variance. Under Minn. Statute §462.357, variances can only be approved when they are in harmony with the general purposes and intent of the zoning code and when they are consistent with the comprehensive plan. Specifically, variances can only be granted when the applicant proves there are practical difficulties in complying with the zoning code. State law only allows variances if all three practical difficulties criteria are met:

- There are unique circumstances to the property not created by the landowner.
- The property owner proposes to use the property in a reasonable manner not permitted by the ordinance.
- Granting the variance will not alter the essential character of the locality.

If any of these criteria are not met, then the variance must be denied. State law also does not allow approving variances solely for financial reasons. The decision to approve or deny a variance requires a rational explanation, based on facts, not on proposed conditions of approval. Conditions may be considered, but only after a decision is made to approve. Additionally, opinions of support or opposition, without supporting evidence, from neighbors or the public are not facts and should not be considered.

This property is in the shoreland of a public water, an area that the state has identified as a sensitive area where special laws are needed to protect scenic character; aquatic and riparian vegetation; habitat; and to reduce the flow of nutrients into surface waters preventing excessive algae and plant growth to maintain safe recreational opportunities. This context

is critical for properly evaluating the facts against the practical difficulties criteria whether the Board of Adjustment is deciding, or a district court is reviewing such a decision on appeal.

Analysis of Facts and Recommendation

The Board of Adjustment should **deny** this variance because:

The property owner DOES NOT propose to use the property in a reasonable manner given the purpose of the bluff and OHWL setback requirements.

This criterion is about what is reasonable given the purpose of the ordinance, NOT what is reasonable to the property owner. Variance requests should only be the minimum necessary to achieve the purposes of the ordinance.

The purpose of the bluff setback standard is to keep land alterations, impervious surface, and vegetation removal out of the sensitive bluff impact zone (BIZ). Home construction typically requires grading and vegetation removal within 10 feet of the foundation and a 30-foot top of bluff setback helps to ensure that grading and tree removal do not occur in the bluff impact zone. Vegetation removal is prohibited in the BIZ. Given the steepness of the slope, the BIZ is particularly vulnerable to erosion and potential slumping, especially when vegetation is removed. Increasing precipitation and more frequent intense rain events increase the risk of slope failure, and slopes without protective vegetation are at even greater risk. Soil erosion carries phosphorus nutrients into lakes which causes algae to grow and with Minnesota's warming lake waters, any additional phosphorus further accelerates algae growth. Setbacks from the top of the bluff also protect scenic views from the lake.

The purpose of the ordinary high water setback standard is to keep land alterations and vegetation removal at a safe distance from the water to protect water quality, near-shore habitat, and visual character of the shoreland.

The potential for soil erosion is more significant given the fact that Sunfish Lake is listed as an impaired waterbody by the MPCA due to excessive nutrients. Fortunately, water quality monitoring by Valley Branch Watershed District in the most recent 10-year period shows statistically significant trends of improving water quality, including chlorophyll and transparency. The proposed variance request runs counter to the city's ongoing efforts to improve the water quality of Sunfish Lake.

The applicant has not demonstrated why it is necessary to build so excessively large a home (2,437 sq. ft. footprint) on the face of the bluff and within the OHWL setback, a significant deviation from the regulations, when they have alternatives that would minimize impacts, such as a home with a smaller footprint and a home located closer to the northeast lot corner, furthest from the lake. The variance appears to be driven by the design preferences of the property owner, and not by what is reasonable given the purpose of the ordinance to protect this highly sensitive area.

The variance WILL ALTER the essential character of the area.

Essential character is about how the resulting structure, improvement, and disturbance will alter the hydrology, nutrient flow into waters, soil stability, vegetation, habitat, shoreland character, or be out of scale with the capacity of the land and water resource to tolerate the impacts.

The proposed variance would allow construction of a home, land alteration, and vegetation removal in a sensitive bluff impact zone (BIZ). Removing the vegetation in the BIZ and adding impervious surfaces within the BIZ reduces the ability of vegetation to slow and filter runoff, thus accelerating potential for slope erosion, sedimentation, and flow of phosphorus into the lake. This increases the risk of algae growth affecting the quality and character of the lake.

The vast majority of the near-shore area of Sunfish Lake, including the entirety of the north and east sides of the lake, is characterized by densely wooded, steep bluffs. Without this vegetation, the water quality of Sunfish Lake is put at risk of degradation. Recent development on the north and east sides of the lake, including Northstar, Hamlet on Sunfish Lake, and Tapestry at Charlotte's Grove have been designed with residential lot lines drawn outside of the bluff impact zone, and with the sensitive bluff area set aside for permanent protection. Such designs protect the hydrology, scenic values,

and natural character of the shoreland of Sunfish Lake. Construction of an excessively large home (2,437 sq. ft. footprint) on the face of the bluff, as requested here, will alter the essential character of the area.

Conclusion

The limited facts available do not support a decision to approve and show that the design preferences are driving the variance request. A decision to approve the variance would therefore be arbitrary and capricious. **The DNR recommends denial.**

State rule and your ordinance requires that final variance decisions, including findings, be sent to the DNR within 10 days of the decision. The DNR monitors local government variance decisions and may appeal decisions we believe do not meet the statutory criteria and result in negative impacts to shorelands and public waters.

Please send the decision to me within ten days of making the decision, including "findings of fact." If you have any questions, please call, or email me.

Sincerely,

A handwritten signature in cursive script that reads "Dan Scollan".

Dan Scollan
East Metro Area Hydrologist
daniel.scollan@state.mn.us
(651) 259-5732

c: John (Jack) Gleason, Hydrologist Supervisor
Dan Petrik, Shoreland Program Manager

MEMORANDUM



Date: December 16, 2024

To:	Sophia Jensen, City Planner	Re:	Chavez Variance Application
Cc:	Chad Isakson, P.E., Assistant City Engineer		PID 14-029-21-42-0002 (Northstar Outlot B)
From:	Jack Griffin, P.E., City Engineer		Engineering Review Comments

An engineering review has been completed for the Chavez Variance Applications for PID 14-029-21-42-0002.

STATUS/FINDINGS: It is recommended that the application for variances be denied on the basis that the application is premature. All site plan improvements are shown based on future conditions for street access, access to city water and sewer, adjacent residential lots and lot lines, and proposed subdivision grading, all of which does not exist today. The Northstar 2nd Addition Final Plat and Plans must be submitted, reviewed and approved by the City, the Plat must be recorded at Washington County. The subdivision improvements must also be constructed and accepted by the City. Until these conditions are met, the existing conditions represented in the Chavez variance applications are subject to change and may alter the Chavez application submittal requirements.

1. At this time there is no public street access, and there is no public water and sanitary sewer access to this property. Access to public streets, public water and public sanitary sewer will not be available to this parcel until future phases of the Northstar subdivision are platted and recorded. Until such time the existing conditions are subject to change.
2. The application materials remain incomplete.
 - a. A Stormwater Management Plan must be submitted meeting VBWD permit requirements.,
 - b. All drainage and utility easements must be fully shown and identified on the site plans, including drainage and utility easements along adjacent lots and over the proposed lot.
3. The area of impervious surface for the home and driveway must be provided and if greater than 6,000 SF, a stormwater management plan meeting VBWD permit requirements must be submitted to verify proposed on-site BMPs. The Site plan proposes two rain gardens to meet VBWD permit requirements. The designs are only conceptual as submitted and subject to change. There is limited room for the installation of these BMPs and no soil borings have been submitted to demonstrate conducive soil characteristics being present. The plan may be feasible as proposed but also may not be feasible, all dependent on final design parameters.
4. Off-site grading/construction easements. The proposed grading and culvert installation requires work to be completed on the adjacent property to the north. The home construction as proposed will require permanent and/or temporary off-site drainage and utility easements.
5. Additional drainage and utility easements are required to ensure all 100-year storm event high-water-level (HWL) contours are fully contained within an existing or expanded drainage and utility easement over the adjacent lot to the north.
6. The proposed lot grading shows a driveway culvert to facilitate positive drainage for the rear yards of the two adjacent lots (draining north to south under the driveway). The driveway culvert pipe size and material must be specified. The upstream 100-year HWL must be determined and shown on the grading plans and the 100-year HWL contour must be fully contained within a drainage and utility easement.
7. A driveway emergency overflow elevation must be established and protected by easement.
8. The existing drainage and utility easement over all of Outlot B must be maintained and not vacated.

9. Water and Sewer services. Additional permanent utility easements may be required over the proposed water and sewer service lines.
10. The sewer service line is shown 5-ft. from the property line. Depending upon the depth of the sewer, future maintenance and replacement access to the sewer service should be preserved. As shown, future sewer service repair/replacement would require encroachment and impacts onto the adjacent property to the north, potentially for the full length of the lot. This service layout is not recommended.

From: [John P. Hanson](#)
To: [Sophia Jensen](#)
Cc: [Ashley Monterusso](#)
Subject: Chavez Parcel
Date: Monday, December 16, 2024 10:33:34 AM
Attachments: [image002.png](#)

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

Hi Sophia,

A Valley Branch Watershed District permit is needed for the construction of the Chavez parcel at the northeastern side of Sunfish Lake. A permit application has not been submitted.

John

John P. Hanson, PE

Valley Branch Watershed District Engineer

Barr Engineering Co. | 4300 MarketPointe Drive | Bloomington, MN 55435

office: 952.832.2622 | cell: 612.590.1785

JHanson@barr.com | www.barr.com | www.vbwd.org



From: Craig@gonyeacompany.com
To: [Sophia Jensen](#)
Cc: [Jason Stopa](#)
Subject: Chavez
Date: Friday, November 22, 2024 3:29:24 PM

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

Hi Sophia and Jason,

Please insert this email as public comment for the Chavez variance application.

As part of our North Star preliminary plat, we agreed to provide Mr. Chavez access to his landlocked parcel if he obtains the necessary variance requests needed for a buildable lot. I have been in contact with Mr. Chavez for years and have agreed to work with him by providing an outlot with certain deed restrictions and obligations to protect the land values of the adjacent lots/homes in the North Star development. I have also agreed to sign his variance application, which I understand is only to request variances to build a home on his parcel. By signing, I am not agreeing to the outlot design as shown on the survey attached to his request. As one example, we have asked that any drainage structures (pipe inlets, outlets, etc.) be fully contained on the outlot provided so it doesn't further diminish the lot values of the North Star lots. The driveway and home placement, as shown, will be a hurdle for our builders so we have asked that everything be contained on the outlot and off the adjacent lots, if in fact, it is determined he has a buildable lot.

To help Mr. Chavez start the process to see if he has a buildable lot, I have signed the application, but I am not in agreement with the access and outlot design as shown.

Please let me know if you have any questions.

Thanks,

Craig Allen

Please note our NEW address effective September 13, 2022.

Craig Allen
Gonyea Company
10850 Old County Road 15, Ste 200
Plymouth, MN 55441

January 27, 2025

Lake Elmo Planning Commission
3880 Laverne Avenue North
Lake Elmo, MN 55042

Re: Planner Report Re Chavez Property

Dear Planning Commission:

I am writing in response to the statements in the Staff Report dated 1/13/2025.

We have previously corresponded with a staff to illustrate why the request for a single-family house on the Chavez parcel is a necessary and reasonable and a necessary companion to the Northstar 2nd Addition which is planned for development imminently. By pointing that out, we were able to illustrate why it makes common sense to proceed with the application for the building of a single-family home on this lot at this time.

I. A Couple Of Background Facts Not Referenced In The Staff Report:

No understanding of the facts would be complete without noting that:

*This parcel is a lawfully preexisting lot of record.

*Which was expressly approved for subdivision by the City of Lake Elmo as long ago as January 16, 1980 (see attachment).

*Like many lakeshore lots, this was before the adoption of many, if not all, of the regulations present here.

*The lot was subdivided without road frontage by others but with City approval.

*It now has the opportunity to receive road frontage and municipal utilities-which can be done through simple and routine requirements for coordination by and with an adjacent intensive residential development as would be the case for any adjacent parcel development.

*The house footprint is consistent with and smaller than houses in the locality planned or existing.

So strong is the presumption that preexisting shoreland lots like this can be used for a house that Minnesota Statute S. 462.357 indicates that a variance for such a substandard lot, regardless of size is not even needed if it can have a sewer or septic and can meet setback requirements. This is because it was common to create smaller lakeshore lots—which should not be rendered practically useless by later

regulations. Here, this lot needs a minor setback variance of about 25 feet but it would otherwise be presumptively buildable without a variance under Minnesota Statutes.

II. The Lack Of Road Frontage-A Mutual Interest in Cure:

Though cities, these days, avoid subdivisions of lots without road frontage, when they do exist from past approvals, *cities generally act (for reasons which can be explained) to ensure that they can receive road frontage and then be built upon rather than identify obstacles or block corrective road frontage and reasonable construction for single family use.*

That is doubly true (and helpfully so) where the adjacent property is being platted and has the opportunity to furnish needed road frontage. In such cases-developers are typically required to furnish frontage to eliminate the problem—*so that the City does not have to*-and so that an efficient cure is applied.

To be sure, in cases where lawful preexisting lots were subdivided or platted without road frontage, *both* the city and the owner share an interest in securing road frontage and a reasonable residential development of the lot. These are not cases (and this is not a case) where the owner has created some problematic lot without city approval and now cannot ask for the joint cooperation of the City in resolving matters of mutual interest.

III. The Basic Variance Inquiries:

I wish to address the statements offered about basic variance findings. The Minnesota Practical Difficulties standard simply asks whether:

- *The landowner proposes to use the property in a reasonable manner:**
- *The plight is due to circumstances unique to the (physical characteristics of the property)-not caused by the landowner;**
- *The variance will not alter the essential character of the locality:¹**

Even leaving aside the fact that this is a lawfully preexisting lot of record, those standards are easily met here and this is precisely the type of situation where variances are granted.

A deeper review of some statements may be helpful:

- A. At Paragraph 1, claims: “Constructing a *large* single family home is *not a necessity* in this sensitive natural area.”**

¹ League of Minnesota Cities Zoning Decisions, June 24, 2021.

Here, the home is branded with the term “large.” There is no stated criteria for what “large” is. Objectively speaking, the home will measure only 2,437 square feet while the houses near it in the Northstar development are approximately 2,400-2,900 square feet and other homes around the lake are approximately 3,100-4,000 square feet. In other words, it appears that this would be the smallest of homes in the vicinity by roughly 500-1,500 square feet. It is a modest, even small, single family home. Impervious surface is merely 6,155sf or 10.4% of OHW area. It’s significantly smaller than the existing houses in the Hamlet on Sunfish lake development to the north.

B. Staff report; “a house is *“not a necessity”*.”

The staff report actually says “a house is not a necessity”. This is not the standard at all.

C. The claim that the house could be “moved...further from the lake...or even using the property as an access to Sunfish Lake.”

Not so. The house cannot be moved further from the lake and the surveying professionals have confirmed this. It is not reasonable to suggest that the lot would simply serve as an access to Sunfish Lake. If that was the case, then any small, lawfully preexisting lakeshore lot would be left to “serve as an access” to the lake.

The Planner’s report speaks about later regulations and claims: “any future development is required adhere to them,”. Typically, that is not possible. Actually, this is the very reason for variances. If that claim were accurate, then most residential development on preexisting smaller lots would be foreclosed, precluded and impossible and it is the very reason for the variance and nonconforming/grandfathering status of a lot.

IV. The Suggestion That The Owner Buy His Neighbors Property:

The report states that “the applicants have the ability to acquire additional property by revising the outlot shape within Northstar to create a site design that requires minimal or no variances. The applicants may also change the location of the house or decrease its size. The applicants have not demonstrated any attempts to avoid variances based on the size or placement of the home or attempts to acquire more property.”

None of that is accurate. First, it is not part of variance consideration to say that the applicant must go to a third-party and buy their property. If it was, then every variance that related to lot size or setbacks from adjoining structures would be subject to scrutiny about who was willing to sell or buy what and for what amount. But even if that inaccurate standard were applied, we can assure you that we have explored acquisition of additional property but it is not feasible under the circumstances.

Though the report seems to suggest denial is somehow warranted because of the location of the house, the house location is in its only reasonable spot-as far away from the lake as can be done. Similarly, because the lot was created without road frontage and in a smaller size-variances are unavoidable here.

The unique circumstances include that the City permitted creation of a lot and its subdivision at a time when it was lawful to do so and did not require, at that time, the provision of road frontage. Though today standards may be different, this is precisely the reason variances exist.

V. Essential Character Of Locality Is Not Changed:

The report claims that “this request directly conflicts with the bluff and shoreland regulations that were implemented to protect these sensitive areas.”

If there were not some disparity-then we wouldn’t need a variance. The potential for conflicts with bluff and shoreland regulations which are adopted later are the very reason for the grant and issuance of a variance with reasonable conditions attached. They are not a reason for denial of it in the first place. If they were, then every variance would be denied since, by their terms, the request is not in compliance with bluff and shoreland regulations.

The inquiry here is whether this modest house on an approved, subdivided lot would change the essential character of the locality. Development of the modest house on this lot will not change the essential character of the neighborhood. Land adjacent to it is being intensively developed for single family homes-in most or all cases-much larger, more conspicuous and on small lots. Other homes, docks and other structures have been built on the lake in these areas including with variances. Most other homes are much larger and more intensive than this discrete home. This lot is consistent with previous and future development on Sunfish Lake that maintains the essential character of the locality. The locality includes the land around the lake and the subdivisions north and east of it.

As it relates to the lake—there are numerous houses that exist or were built or were expanded on lots like that and within bluff land and other setbacks. Simply put, historical creation and development of homes and outbuildings have been allowed extensively in this area. It will not change the essential character of the neighborhood in any way to use this lot for its intended purpose-development of a single- family lakeshore home.

Finally, the need for cooperation and coordination with the adjacent development is not a reason to deny the variance—in fact it is typical that a city will compel the large,

intensive development to accommodate road frontage and utility placement needs for adjacent parcels which may develop simultaneously or later.

I must express concern too about an attempted suggestion that the variance will not involve development on the lot within 12 months and, for that reason, should be denied. It is natural, necessary and reasonable to expect that the construction of the house will follow the eventual placement of a roadway and utilities in the intensive adjacent development. This lot and the small house which will go upon it will serve as a good buffer to that area. Since the Northstar 2nd Addition construction may very well occur within 12 months. However, even if it didn't, this proposal has the effect of extending City water and sewer to a subdivided parcel which was created at the approval of the City without road frontage. Whether it actually gets built upon within six months or thirteen months, for example, it is of no practical effect. It nevertheless leads to the resolution of proper development at this preexisting, lawful lot.

Second, there is some statement in the Staff Report that the City Engineer's memo "recommends" denial of the variances. Stated differently, because the creation of the lot without adequate road frontage is now poised to be cured, conditions associated with temporary offsite drainage easements and the provision of a road are addressed simply by requiring them as part of this development and the adjacent Northstar subdivision. In other words, it is not at all uncommon that adjacent subdivisions need to coordinate with an adjacent property, it is only notable here because the Chavez property is comparatively much smaller than the intense development going on next door.

We will submit a stormwater management plan, we will show all drainage and utility easements on the plans, we will provide areas of impervious surface, and offsite grading/construction easements for temporary uses can be imposed and coordinated with the development of the intensive development adjacent to it-Northstar 2.

Examples of pre-existing lots where homes were built are illustrated in the map provided in this packet. All of those homes were built in the 70's, 80's and even early 90's. Depictions of these homes are shown in Exhibit B.

The parcel for which we seek variance approvals to build was created in 1980. The property was confirmed by deed on January 16, 1980 and the conveyance specifically confirmed as "entitled to recording and subdividing" by the City of Lake Elmo (See Exhibit A1 – Stamp bearing approval on deed). Because parcel property is a pre-existing of record and it would not be reasonable or lawful for it to be denied all variances necessary to allow it to be reasonably built upon in the future

VI. 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.

This inquiry is easily met here. This lot was approved for subdivision by the city, it is large but has some submerged lands, it is practically difficult to place a house upon the land without setback issues and the lot shape and topography create similar difficulties.

Both the City and the applicant have an interest in curing the existence of a substandard lot developed without road frontage years ago and the lot meets the basic and general inquiries of the Practical Difficulties standards.

VII. Unique Circumstances:

The plight of the landowner must be due to circumstances unique to the property not created by the landowner.

As noted above, this criteria is easily met. This is a unique, approved for subdivision shoreland lot which has some of its usable space affected by steep slopes, inundation, a narrow configuration at its highest points and the need for road frontage.

Sincerely,

Joe Chavez
3505 Kelvin Avenue North
Lake Elmo, MN 55042

CC: Mr. Dan Thurmes, Cornerstone Land Surveying, Inc.
David K. Snyder, Esq.

This Indenture, Made this January 16, 1980,
between Everett E. Beaubien, a single man,

of the County of Washington and State of Minnesota, part Y
of the first part, and John J. Cannell and Judith A. Cannell, husband
and wife, of the County of
Washington and State of Washington, parties of the second part,

Witnesseth, That the said part Y of the first part, in consideration of the sum of
One Dollar and other good and valuable consideration - - - - - DOLLARS,
to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowl-
edged, do es hereby Grant, Bargain, Quitclaim, and Convey unto the said parties of the second part as
joint tenants and not as tenants in common, their assigns, the survivor of said parties, and the heirs and
assigns of the survivor, Forever, all the tract or parcel of land lying and being in the County of
Washington and State of Minnesota, described as follows, to-wit:

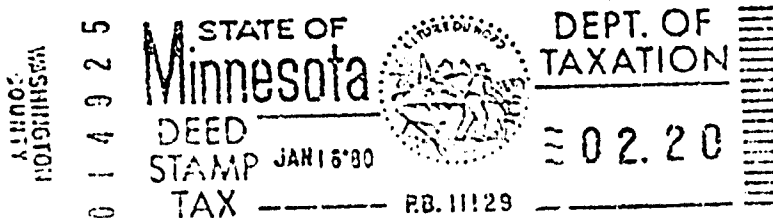
All that part of the East one-half (E½) of the Northwest Quarter (NW¼) of Section 14, Township 29 North, Range 21 West, City of Lake Elmo, Washington County, Minnesota, described as follows; beginning at the Southeast corner of the North 83 rods of said East one-half (E½) of the Northwest Quarter (NW¼) of Section 14, Township 29 North, Range 21 West, Washington County, Minnesota, thence West along the South line of said North 83 rods for 890.0 feet; thence South and parallel with the East line of said East one-half (E½) of the Northwest Quarter (NW¼) for 350.0 feet; thence Southeasterly in a direct line to a point on said East line of East one-half (E½) of the Northwest Quarter (NW¼), said point being 750.0 feet South of the point of beginning; thence North along said East line of East one-half (E½) of Northwest Quarter (NW¼) for 750.0 feet to the point of beginning. Containing 11.237 acres, more or less.

THE PURPOSE OF THIS DEED IS TO REPLACE A PREVIOUS DEED BETWEEN THE SAME PARTIES WHICH WAS EXECUTED ON OR ABOUT THE 15TH DAY OF JUNE, 1976, AND HAS BEEN LOST.

Conveyance of land described by this instrument is hereby approved and is entitled to recording and subdividing.

CITY OF LAKE ELMO

BY Lawrence E. Whittaker
City Clerk



State Deed Tax Due Hereon is \$2.20.

To Have and to Hold the Same, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said parties of the second part, their assigns, the survivor of said parties, and the heirs and assigns of the survivor, Forever, the said parties of the second part taking as joint tenants and not as tenants in common.

In Testimony Whereof, The said part Y of the first part ha S hereunto set his hand the day and year first above written.

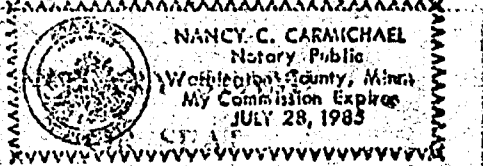
Everett E. Beaubien
Everett E. Beaubien

State of Minnesota,

County of WASHINGTON

The foregoing instrument was acknowledged before me

this 16th day of January, 1980,



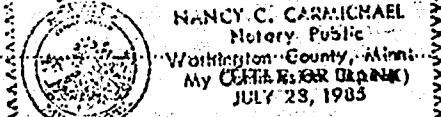
THIS INSTRUMENT WAS DRAFTED BY
LAWSON, RALEIGH & MARSHALL, P.A.
3825 Lake Elm Avenue North
Lake ELmo, Minnesota 55042
777-6960

by Everett E. Beaubien, a single man,

(NAME OF PERSON ACKNOWLEDGED)

Nancy C. Carmichael

(SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT)



Doc. No. 400824

QUIT CLAIM DEED

Individual to Joint Tenants

TO

Office of County Recorder

State of Minnesota

County of WASHINGTON

I hereby certify that the within Deed
was filed in this office for record on the
16th day of January
1980, at 9:00 o'clock A.M.,
and was duly recorded in Book

XXXXXX or

☐ Copied ☒ Microfilmed

and was duly recorded as instrument
No. 400824, WASH. CO. RECORDS '80

JOHN A. FRANZEN
County Recorder.

By Deputy.

No Delinquent Taxes and Transfer
entered this 16th day of Jan.
1980.

T. R. Greder
County Auditor.
By Bausie Mehta Deputy.

Tax statements for the real property
described in this instrument should be
sent to:

John Carmichael
18204 E B Street
Shoreview, Washington
ZIP 98387 Address

\$3.00

Exhibit B

Sunfish Lake Map



3691 Kelvin Ave N

Chavez
Parcel

3681 Kelvin Ave N

3503 Kelvin Ave N

3505 Kelvin Ave N

10550 Stilwater Blvd

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

RESOLUTION NO. 2025-13

***A RESOLUTION DENYING THE SEVEN SHORELAND VARIANCE REQUESTS FOR
CONSTRUCTION OF A SINGLE FAMILY HOME ON THE PROPERTY LOCATED AT:
PID 14.029.21.24.0004 AND OUTLOT B OF NORTHSTAR 1ST ADDITION***

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Joe and Joan Chavez (the “Applicants”), owners of the property located at PID # 14.029.21.24.0004, Lake Elmo, MN 55042 and Craig Allen (Gonyea Companies), owner of Outlot B of Northstar 1st Addition PID # 14.029.21.13.0023 Lake Elmo, MN 55042 (collectively, the “Property”) have submitted an application to the City of Lake Elmo (the “City”) to request seven variances for the construction of a single family home in a shoreland and bluff zone; and

WHEREAS, notice of a public hearing has been published, mailed, and posted pursuant to the Lake Elmo Zoning Code, Section 103.00.120; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on January 27th 2025; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation of denial of the variance to the City Council as part of a Staff memorandum dated February 4th 2025; and

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

FINDINGS

1. The Applicants propose to construct a new house and driveway on the Property which would require seven variances, listed below:

Request	Required	Proposed
105.12.1260 Table 17-3 - OHWL Structure Setback	150’	120’
105.12.1260 Table 17-3 - Structure Setbacks from Bluff	30’	In Bluff
105.12.1260 (7)(a) - Principal Structure In Bluff Area	Not Permitted	In Bluff
105.12.1260 (7)(c) - Vegetative Clearing In Bluff Impact Zone/Steep Slopes	Not Permitted	Proposed
105.12.1260 (5)(a) – Subdivision Standards, Suitable Lot	Not Permitted	Proposed
105.12.1260 (5)(b) Subdivision Standards, Variances Required	Not Permitted	Proposed
105.12.1260 (7)(e) - Grading In Shoreland Areas	Not Permitted	Proposed

2. That the procedures for obtaining a variance are set forth in Section 105.12.320 of the Lake Elmo Zoning Code. Any action taken by the City Council to approve a variance request must meet all the following findings:

- a. **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:** *The practical difficulties criteria is about what is reasonable given the purpose of the ordinance, not what is reasonable to the applicant. The request should be the minimum necessary to achieve the purpose of the ordinance. Enjoyment of the parcel in its natural state, building a smaller house, moving the house further from the lake, or even using the property as an access to Sunfish Lake, are reasonable and sufficient uses of the property. Staff finds that constructing a large single family home is not a necessity in this sensitive natural area. **Practical Difficulties Criteria is not met.***
- b. **Unique Circumstances** - the problem for the landowner/applicant which the intended variance is intended to correct is unique to the property in question that were not created by the land owner/applicant. **FINDINGS:** *Staff understands that the Applicants have owned this property for many years and did not create their parcel. While the bluff setback requirements and shoreland overlay restrictions may have not been in place when the property was purchased, any future development is required to adhere to them. In addition, the Applicants have the ability to acquire additional property by revising the outlot shape within NorthStar to create a site design that requires minimal or no variances. The Applicants may also change the location of the house or decrease its size. The Applicants have not demonstrated any attempts to avoid variances based on the size or placement of the home or attempts to acquire more property. **Unique Circumstances Criteria is not met.***
- c. **Character of Locality** - the proposed variance will not alter the essential character of the locality in which the property in question is located: **FINDINGS:** *The Applicants are proposing to develop their property that is situated within a natural bluff and shoreland area citing that there are existing adjacent residential homes. Staff finds that the existing homes along the South and West were built many years ago, likely under different less restrictive requirements. Development on the North and East side of the lake, adjacent to this parcel, such as Hamlet on Sunfish Lake and Northstar were developed to avoid these sensitive areas. This request directly conflicts with the bluff and shoreland regulations that were implemented to protect these sensitive areas. **Character of Locality Criteria is not met.***
- d. **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:** *Although no streets or infrastructure are*

*currently in place to accommodate this request, the request would only add one single family home. Given that the request only consists of the construction of one home, there should not be an increase in congestion on a public street or will the proposed home substantially diminish adjacent property values. **Adjacent Properties and Traffic Criteria is met.***

DECISION

NOW, THEREFORE, BE IT FURTHER RESOLVED, and based upon the information received and the above Findings, that the City Council of the City of Lake Elmo hereby denies the Applicant's seven variance requests to construct a new home on the Property.

Passed and duly adopted this 4th day of February 2025 by the City Council of the City of Lake Elmo, Minnesota.

Mayor Charles Cadenhead

ATTEST:

Julie Johnson, City Clerk