



## STAFF REPORT

DATE: 5/15/2018

**REGULAR**

ITEM #: 20

**MOTION**

**TO:** City Council

**FROM:** Ben Prchal, City Planner

**AGENDA ITEM:** Shoreland Variance Request to Allow Construction Of A Non-Conforming Structure/s Which Does Not Meet Minimum Structure Setbacks from Ordinary High Water Level, Required Sideyard and Front Yard Setbacks, and Maximum Impervious Surface Standards - 9369 Jane Road North

**REVIEWED BY:** Emily Becker, Planning Director

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### **BACKGROUND:**

The City has received a variance application from David and Heide Offord of 9369 Jane Road North to allow construction of a non-conforming structure/s which does not meet the required minimum structure setback from the Ordinary High Water Level (OHWL), required sideyard and front yard setbacks, and maximum impervious surface standards of the City's shoreland district. The property had received a previous variance to build the home that currently sits on the property. The variance was approved in 2001, contingencies with the approval were: the home could not exceed the footprint of the old home which was 1,350 sq.ft. and maintain a 30ft set back from Jane Rd (more details on page 5, previous variance request).

### **ISSUE BEFORE THE COMMISSION:**

The City Council is being asked consider the above-mentioned variance requests and approve or deny the requests.

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

*Applicant:* Adam Bender of ISPIRI LLC

*Property Owners:* David and Heide Offord

*Location:* 9369 Jane Road North, PID# 10.029.21.24.0007, Subdivisionname Berschen's Shores Lot 11 Subdivisioncd 37090, Washington County

*Request:* Variance from Shoreland Standards – Expansion of a Non-Conforming Structure and Maximum Impervious Surface

*Existing Land Use:* Single-Family Detached Residential Dwelling

*Surrounding Land Use:* Surrounded by other single-family detached residential dwellings and abuts Lake Jane on the east side of the lake.

*Existing Zoning:* Rural Single Family/Shoreland Overlay District

*Comprehensive Plan:* Rural Single Family

*History:* Variance application for home construction was approved in May 14, 2001. The Variance allowed for a maximum house footprint of 1,350 square feet to be constructed over a prior foundation. As well as a 30-foot setback from Jane

Road; with a corresponding approximate 6-foot increase on the setback from the Ordinary High Water level of Lake Jane.

*Deadline for Action:* Application Complete – 4/19/2018  
60 Day Deadline – 6/18/2018  
Extension Letter Mailed – N/A  
120 Day Deadline – N/A

*Applicable Regulations:* Article V – Zoning Administration and Enforcement  
Article XIX – Shoreland Management Overlay District  
Article XI – Rural Districts

**Request Details.** The applicant is proposing to make an addition off the front of their home by adding a side loading garage and reconfiguring the driveway for better access onto Jane Rd. The current garage for the home is attached and faces directly towards the street, the size is 24'x36'. The justification for this is to provide safer access onto Jane Road by creating a turnaround for cars to enter “nose” first. The new attached garage is planned to be 24'x29'. Also included in the application is the addition of a deck. The deck is being requested for quick access to the lake if needed for safety purposes.

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

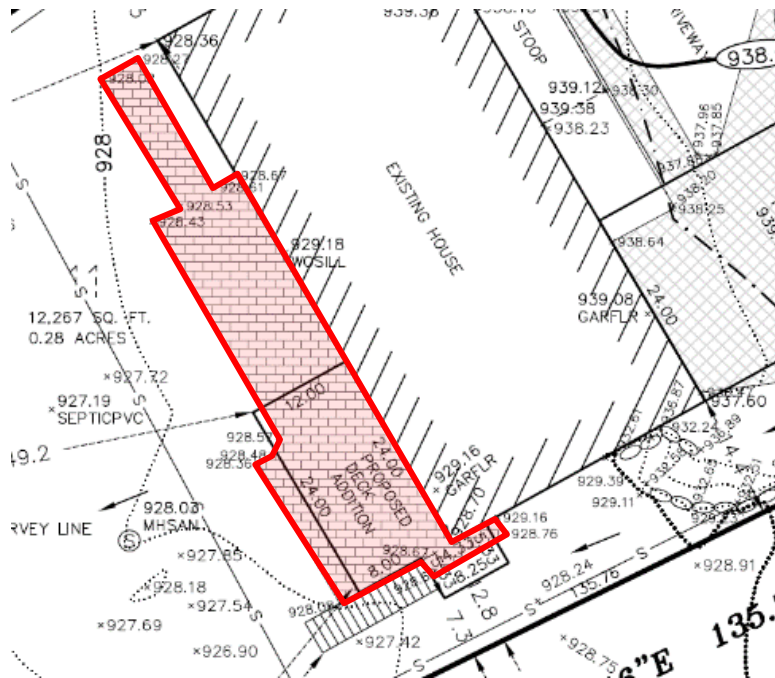
**Structure Setbacks:**

Garage addition - Rural Single Family is the underlying zoning which requires a front yard setback of 30ft be maintained as well as a sideyard setback of 10ft. Due to the configuration of the lots surrounding the lakes it has been difficult for home owners to achieve compliance of the required setback from the OWHL. The setback from the OWHL is 100 ft. for unserved properties and 75 ft. for sewered properties. This home is unique in that it is connected to a 201 sanitary system, and so is considered sewered per shoreland standards, and so the 75 ft. setback applies. The existing home does not conform to this standard (further proven to be non-conforming through past variance).

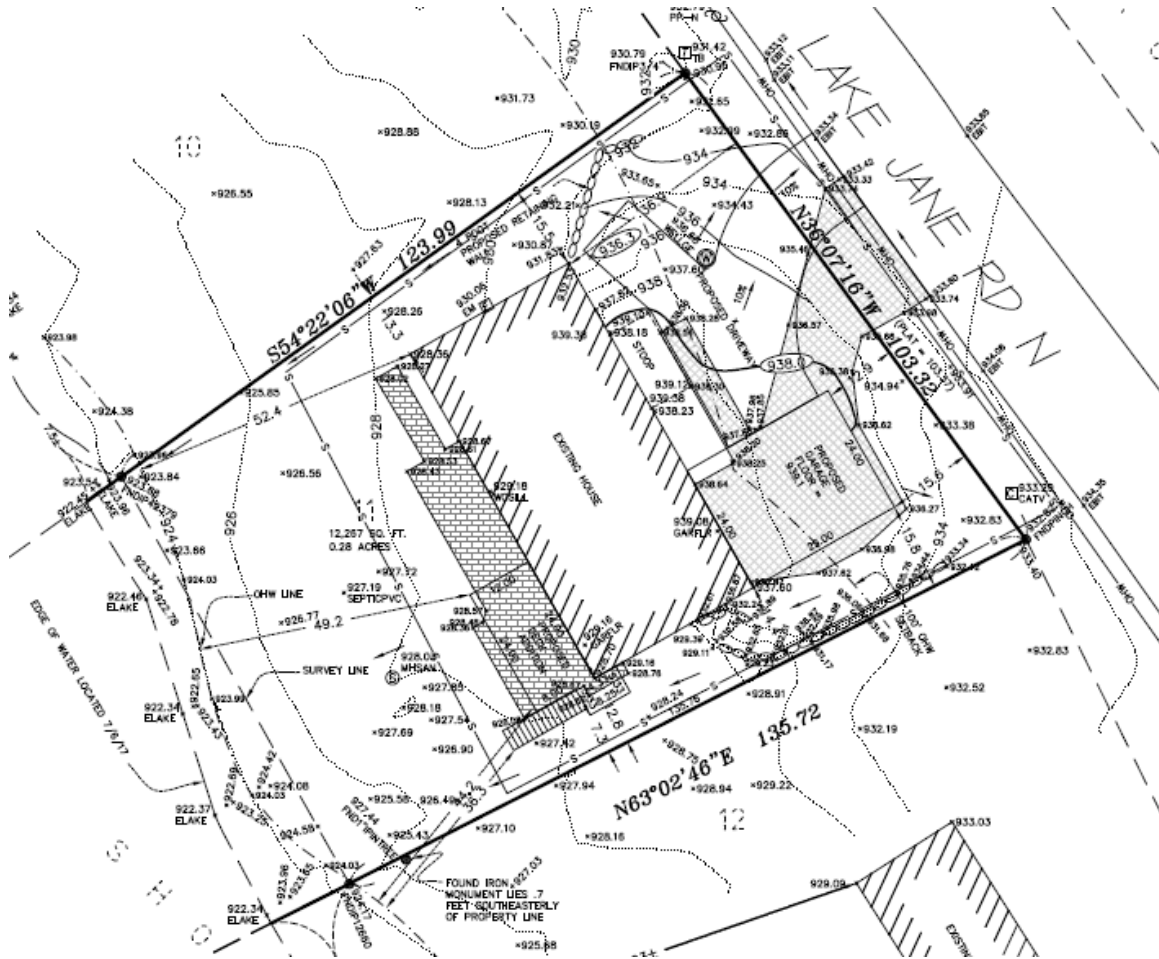
Deck addition – A deck being built in a shoreland district which cannot meet the setback requirements can be done without a variance if 4 points of criteria are met.

- i. The structure existed on the date the structure setbacks were established. **This standard is not met as setbacks were established in 2001 when the home was reconstructed.**
- ii. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure. **Standard is met. Placing the deck on either side of the home would further encroach into the side yard setback which would then further impact the neighboring property. There is also no other location in the rear that would make it more conforming.**
- iii. The deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive. **Standard not met. This would be applicable if the home were setback the appropriate distance of 75ft. However, the home is only setback 52.4 ft.**
- iv. The deck is constructed primarily of wood, and is not roofed or screened. **Unknown, but is being asked as a condition.**

Code Location	Code Setbacks	Proposed Setbacks
Front yard setback (garage) 154.402 table 9-2	30 ft. <b>also established in past variance</b>	12.87 ft. <b>not compliant</b>
Side yard setback (garage) 154.402 table 9-2	10 ft.	14.4 ft. <b>compliant</b>
Side yard setback (deck) 154.402 table 9-2	10 ft.	7.3 ft. <b>not compliant</b>
Rear yard setback (deck) 154.800 12 (d)	15% of structure setback from OWH or 30ft.	49.2 ft. <b>not compliant</b>
Shoreland Impact Zone	Noting may be within 37.5 ft of the OWH	<b>Compliant</b>



\*However, staff has spoken with the designer and has recommended removal of the rear patio pavers. If they were to be removed, the impervious surface calculation would ultimately be reduced to 34.1%.



**Lot Details.** The property does not meet all setbacks for the Rural Single Family Zoning district and does not meet the minimum lot size requirement of 1.5 acres.

Code Location	Code Setbacks	Proposed or Existing Setbacks
<i>Lot area 154.402 table 9-2</i>	<i>1.5 acres or .5 acres if sewered</i>	.311 acres – Existing non-conforming
<i>Front yard setback 154.402 table 9-2</i>	<i>30 ft.</i>	36.9 ft. – Existing setback 12.87 ft. - Proposed setback
<i>Side yard setback 154.402 table 9-2</i>	<i>10 ft.</i>	13.3 ft. (north) – Existing
<i>Side yard setback 154.402 table 9-2</i>	<i>10 ft.</i>	12.8 ft. (south) – Existing
<i>Setback for deck (side) 154.402 table 9-2</i>	<i>10 ft.</i>	7.31 ft. (south) – Proposed
<i>Setback for home 154.800 table 17-3</i>	<i>75 ft.</i>	52.4 ft. – Existing non-conforming (not within impact zone)
<i>Setback for deck (rear) 154.800 12 (d)</i>	<i>15% (11.25 ft.) of structure setback from OWH or 30ft.</i>	49.2 ft. – Proposed non- conforming
<i>Driveway slope 93.26 (G)</i>	<i>10%</i>	10% proposed

**Nonconformities within a Shoreland.** The City's Shoreland Ordinance states that all additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of the Shoreland Ordinance. Any deviation from these requirements must be authorized by a variance. There is an additional provision that states that where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the OHWL, provided the proposed structure is not located in a shore impact zone or bluff impact zone.

**Previous Variance Requests.** In May of 2001 the Lake Elmo Planning staff reviewed a variance request for 9369 Jane Rd to rebuild the home on the lot. The staff found that the variance should be approved on the conditions that the house be relocated to a point of 30 feet from the Jane Road right-of-way. This reduced the shoreland setback variance approved. The second condition recommended was the reduction of the footprint of the new house not to exceed the footprint of the existing house (which was 1,350 sqft.). The resolution stated that it was allowing a structure to be placed 44.2'-52.7' away from the Ordinary High Water (OHW) level where 100' is normally required. The variance also allowed a lot width of 103.34' where 150 is required. More specifically to the dwelling the house footprint could not be greater than 1,350 square feet. A 30 foot set back from Jane Road needed to be maintained which added a 6 foot increase on the setback from the OHW of Lake Jane.

Prior to 2001 there had not been planning, zoning, or building action except a porch addition in 1978 and then connection to the 201 system in 1985.

**Adjacent Property Variances.** The City granted similar variances to adjacent properties. This should not be a basis for granting an additional variance for the subject property, but it does show that the granting of the variance may not change the character of the surrounding area.

- 9359 Jane Rd – applied for a variance in 2001 to allow the expansions of their structure 22 feet from the ordinary high water level where 100 feet is required. That request was approved and later denied by the Board of Adjustment and Appeals. This property also has had variance requests to expand the deck on the home which have been denied (no hardship presented).
  - In 2017 the homeowner requested a variance for the addition 685 sqft. so that all bedrooms could be on the same level and to increase the impervious surface amount to 29.7%. The addition was a lateral extension which did not further increase the encroachment of 45.5 ft but was still non-conforming.
- 9287 Jane Road North was granted a variance in the year 2000, to permit two additions to the primary structure consisting of a 16' X 26' garage addition to the north side; and a 14' X 24' addition to the south side; both additions less than the required 100 foot setback from the OHWL.
- 9429 Jane Rd N was granted a variance in 2006 to construct a garage which needed to encroach into the front and side yard setbacks. The established front yard setback was 2 ft. and the side yard setback for the garage was 4.3 ft. The imposed conditions consisted of rain gutters along the south property line to redirect water away from the adjacent property and the eaves shall not be less than the side yard setback of the existing detached garage.

**Engineering Review.** The City Engineer has reviewed the proposed variance for 9369 Jane Road and there were no comments or concerns related to grading.

Sanitary 201 system: The 201 system which this property discharges sewage to was reviewed by Washington County on July 28, 2014 and it was deemed to be non-compliant. The City hired a consultant to review the system in the field and based on the field inspection and report it was found to be compliant. The system was not found to have excess capacity (per the report) and engineering does not recommend added demand on the system.

**Planning Response:** The submitted plans indicate a bathroom and washer and dryer unit will be added to the main level of the home. Though these additions may seem like it would increase demand on the system, staff does not feel the addition of a bathroom will necessarily increase use nor would the amount of laundry expect to increase. Rather, addition of bedrooms would add demand to the system, and this is not being proposed at this time.

**DNR Review:** No comments have been received. Historically they have not been in favor impervious surface amounts over the allowed percentage (30%). They have in the past recommended certain mitigation measures, such as raingardens, reducing the footprint of the building, etc.

### **RECOMMENDED FINDINGS:**

An applicant must establish and demonstrate compliance with the variance criteria set forth in Lake Elmo City Code Section 154.109 before an exception or modification to city code requirements can be granted. These criteria are listed below, along with recommended findings from Staff regarding applicability of these criteria to the applicant's request.

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

***FINDINGS:** The subject property was platted prior (presumed before 1985) to current standards established for the current Ordinary High Water Level. Many homes, this one included, were platted without today's OHWL in mind. Because of this, property owners have had difficulty complying to the establish setback requirements of today. It does not seem reasonable to think homes will comply with both the front (30ft) and OWHW (75-100ft) setbacks. Compliance with both seems to be unlikely given the configuration of the lots created prior to current standards. Pertaining to the garage there seems to be no other location for it to be reasonably placed to reduce intrusion into setbacks. The deck also seems to be reasonably placed as any other location will put it closer to the OHWL and only a small section of the deck (steps) encroaches into the side yard. Another item to note is the impervious surface calculations will be reduced with the proposed project. Because of this, staff feel this criteria is met.*

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

***FINDINGS:** As mentioned above, the property is unique in that the plat was created in a way which did not provide adequate distance for compliance with today's setbacks from the OHWL. Due to the nature of the lot there seems to be limited improvements which a homeowner can make to their property without variance approval. Because of this staff feel this criteria is met.*

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

**FINDINGS:** *The proposed addition would encroach further in to the front yard setback than other homes within the area. However, it does not drastically change the character of the locality, as the addition of the garage does not in and of itself change the function of the home. Side loaded garages are not a unique feature to homes, nor are decks. This also would not be the first homes in the area to have limited front yard space. Because of this staff feel this criteria is met.*

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

**FINDINGS.** *The proposed additions will not alter or impair supply of light or air to adjacent properties. The garage will not block an amount of wind or air from neighboring properties so that their use would be disrupted. The garage is also being proposed to increase traffic safety. Reconfiguration of the garage and driveway will allow motor vehicles to maneuver themselves in a way to pull out nose first onto the Jane road, which would increase safety. The addition is also not expected to diminish property values. Because of this staff feel this criteria is met.*

**Results of Planning Commission and Public Hearing**

The Planning Commission held a public hearing on the night of May 7<sup>th</sup>, 2018. There were no written comments submitted and there were no verbal comments beyond staff and the applicant. There were minimal questions/comments from the commission. The variance passed with no amendments 7-0.

**Recommended Conditions of Approval.** Staff and the Planning Commission are recommending approval of the variance request for 9369 Jane Rd based on the findings noted in 1, 2, 3, and 4 with the following conditions:

- 1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.
- 2) Grading, erosion control, and stormwater management plans shall be submitted in conjunction with a building permit for the property and shall be approved by the City engineer.
- 3) The proposed retaining wall, if over four feet in height, shall be constructed by plans prepared by a professional engineer.
- 4) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.
- 5) The deck shall be constructed of wood and not roofed.
- 6) The rear patio pavers shall be removed to reduce impervious surface.

**FISCAL IMPACT:**

None.

**OPTIONS:**

The Council may:

- Approve the variance requests, subject to conditions of approval as recommended by Staff and the Planning Commission.
- Amend conditions of approval and approve the variance requests, subject to amended conditions of approval.
- Direct Staff to prepare a Resolution for denial of the variance requests to bring to a future Council meeting.

**RECOMMENDATION:**

The suggestion motion for taking action on the Staff and Planning Commission recommendation is as follows:

***“Move to adopt Resolution 2018-052 approving the request for shoreland variances from the minimum structure setback from the Ordinary High Water Level, side yard setback, front yard setback, and maximum impervious surface standards, subject to conditions of approval as identified by Staff”***

**ATTACHMENTS:**

- Applicants narrative and survey
- Resolution 2018-052



### DETAILED REASON FOR REQUEST:

David & Heide Offord, hereafter referred to the "Clients", purchased the home in April of 2015.

The Client's existing garage and driveway require a vehicle to back directly out onto Jane Road N. The current paver driveway is very steep and is not perpendicular to the road. No portion of the driveway is flat. In the winter months, this steep driveway gets very slippery with snow & ice. The Clients have on numerous occasions slid down the driveway backwards into the road. Jane Road is a very narrow road, and the Clients were surprised upon moving in just how busy it actually is. Cars drive down it with much more frequency than anticipated & at higher than posted speeds.

At time of application, the Clients have two children, a daughter (8) & a son (6). The Clients are less than 8 years from adding a new driver to their home. They are concerned about the safety of the existing situation. The addition of a side loading garage is needed so they could include an area on the driveway that would allow for a vehicle to turn around and enter the road in a forward direction. Also, when our Clients have visitors, they park on the street, as the existing driveway is unsuitable for parking. The narrow width of the street causes additional hazards when vehicles are parked on street.

The Clients currently have no direct access from their main level to the back yard (lake side). They consider this to be a safety hazard. To access the rear yard, they are required to go through the entire home, down to the lower level, and out a back door. The other option is to go out the front door and around the house on the North side. The South side of the home is not passable due to trees and retaining walls that were there prior to the Clients purchasing the home.

Safety with regard to the lake is of paramount importance to the Clients. While the Clients have established rules with their children pertaining to the lake, they know that children do not follow rules 100% of the time. This year there was a fatal drowning on Lake Jane. The Clients saw firsthand the multiple rescue boats aiding the rescue. There could have been an additional fatality that day had it not been for a quick-acting homeowner who was able to access the lake quickly. Our Clients know accidents happen in an instant, and should there be a need for fast action, they absolutely need access from their main level to the lake. A deck as proposed would provide such access.

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**LIST OF CURRENT PROPERTY OWNERS:**

OFFORD DAVID R & HEIDE M  
9369 JANE RD N  
LAKE ELMO MN 55042

**CURRENT SITE DATE:**

P.I.D.:	10.029.21.24.0007
LOT SIZE:	13,542 SQ. FT.
LOT SIZE:	0.311 ACRE
LEGAL:	SUBDIVISIONNAME BERSCHEN'S SHORES LOT 11 SUBDIVISIONCD 37090
CURRENT ZONING:	RS
EXISTING USE:	SINGLE FAMILY DETACHED

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#### PROPOSAL:

We are proposing to construct a garage addition to the front of the existing home, measuring 24 feet by 29 feet. The garage will be accessed from the side (north). This change in access will provide the Owners the ability to provide parking off-street for guests. It will also allow the Owners to enter Jane Road N. forward facing and perpendicular to the road, which is safer than their current situation. The 29 foot dimension is required so that a vehicle accessing the proposed garage can pass in front of the existing front entry stoop which projects from the front of the home. The garage addition shall be built atop an area already covered with pavers. The code requires a minimum front setback of 30 feet. With the proposed design, the front setback would be 12.9 feet at the closest point.

We are also proposing to construct a rear deck (lake side) on the west wide of the home. This deck would provide another means of egress from the main level. This deck would allow the Owners to quickly access the back yard and lake should the need arise. The proposed deck shall be built atop an area already covered with pavers. The code requires a minimum side yard setback of 10 feet. With the proposed design, the side setback would be 7.3 feet at the closest point.

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PROVISIONS OF THE CODE FOR WHICH WE ARE SEEKING A VARIANCE:

§ 154.402 LOT DIMENSIONS AND BUILDING BULK REQUIREMENTS.

Minimum Principal Building Setbacks (Feet)

Front Yard	30
Interior Side Yard	10
Rear Yard	40

Proposed Actual Setbacks

Front Yard	12.9
Interior Side Yard	7.31

Strict enforcement of this chapter would prevent the Owners from altering how the garage is accessed. It would also inhibit the opportunity to improve the overall safety of the driveway, as well as ingress, egress and visibility.

§ 154.800 SHORELAND MANAGEMENT OVERLAY DISTRICT.

Minimum Structure Setback From OHWL (Unsewered)	100 feet
<b>Currently non-conforming 52.4 feet</b>	
Proposed Actual Setback From OHWL	44.2 feet (as measured from nearest corner)
Maximum Impervious Lot Coverage (Unsewered)	15%
<b>Currently non-conforming 36.7%</b>	
Proposed Impervious Lot Coverage	41.2%

Strict enforcement of this chapter would inhibit the Owners desire to add a deck to the home so as to improve egress to the rear yard.

Strict enforcement of this chapter would also prohibit the Owners from ever replacing the currently deteriorating driveway.

The plight of the landowner is due to circumstances unique to the property and not created by the landowner. The Owners purchased the property in 2015, and all structures and features of the property were in place at that time.

The garage floor is elevated approximately 6 feet above the street. This means the narrow, angled driveway is very steep, which poses danger in the winter months. It also poses a hazard for vehicles entering and exiting the driveway.

Granting of the variance would not alter the essential character of the neighborhood.

The proposed garage addition has features and elements to beautify the home. Elements such as shake siding, trim boards, brackets, planter boxes and stone work to enhance the curb appeal and overall aesthetics. Windows and doors are architecturally placed so as to not look out of place.

The addition, once completed and landscaped, would enhance the neighborhood. It also would boost the value of the property and those that surround it.

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(Top 3 inches reserved for recording data)

**WARRANTY DEED**  
**Individual(s) to Joint Tenants**

**Minnesota Uniform Conveyancing Blanks**  
**Form 10.1.5 (2013)**

eCRV number: \_\_\_\_\_

DEED TAX DUE: 2,244.00

DATE: March 26, 2015  
(month/day/year)

FOR VALUABLE CONSIDERATION, Lucy Golish, a single woman ("**Grantor**"), hereby convey(s) and warrant(s) to David R. Offord and Heide M. Offord ("**Grantee**"), as joint tenants, real property in Washington County, Minnesota, legally described as follows:

Lot 11, Berschen's Shores, Washington County, Minnesota.

*Check here if all or part of the described real property is Registered (Torrens)* ☐

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

*Check applicable box:*

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: \_\_\_\_\_.)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.



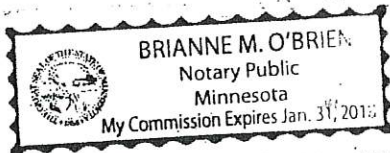
Grantor

Lucy Golish  
Lucy Golish

State of Minnesota, County of Washington

This instrument was acknowledged before me on March 26, 2015, by Lucy Golish, a single woman.

(Stamp)



[Signature]  
(signature of notarial officer)

Title (and Rank): Escrow Officer

My commission expires: January 31, 2018

THIS INSTRUMENT WAS DRAFTED BY:  
(insert name and address)

Brianne O'Brien  
Partners Title - Woodbury  
659 Bielenberg Drive  
Suite 100  
Woodbury, MN 55125

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN  
THIS INSTRUMENT SHOULD BE SENT TO:  
(insert legal name and residential or business address of Grantee)  
David R. Offord  
9369 Jane Rd. N  
Lake Elmo, MN 55042

CERTIFICATE OF SURVEY

~for~ ISPIRI / DAVID AND HEIDI OFFORD  
~of~ 9369 Lake Jane Rd. N.  
Lake Elmo, MN

EXISTING PROPERTY DESCRIPTION

(Per Washington County Tax Record)

Lot 11, BERSCHEN'S SHORES, Washington County, Minnesota.

NOTES

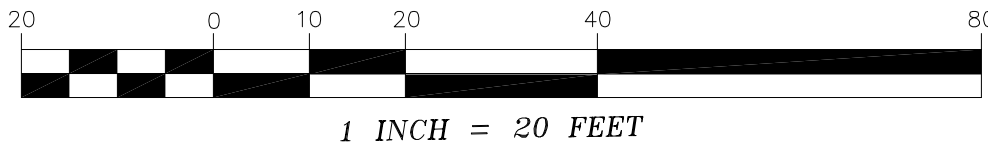
- Field survey was completed by E.G. Rud and Sons, Inc. on 07/06/17.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.
- Approximate fill needed for project: 70-100 cubic yards

LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 41578
- ▣ DENOTES CABLE PEDESTAL
- ▤ DENOTES ELECTRICAL BOX
- ⊙ DENOTES POWER POLE
- ⊗ DENOTES SANITARY SEWER MANHOLE
- ⊕ DENOTES WELL
- DENOTES DRAINAGE ARROW
- ▬ DENOTES RETAINING WALL
- ▬ DENOTES EXISTING CONTOURS
- ▬ DENOTES PROPOSED CONTOURS
- S DENOTES SILT FENCE
- OHW — DENOTES OVERHEAD WIRE
- ▬ DENOTES BITUMINOUS SURFACE
- ▬ DENOTES PAVER SURFACE
- ▬ DENOTES IMPERVIOUS SURFACE REMOVAL

NORTH

GRAPHIC SCALE



IMPERVIOUS COVERAGE

EXISTING:

AREA ABOVE OHW: 12,261 SQ. FT.  
EXISTING HOUSE: 2,302 SQ. FT.  
PAVER AREA: 2,198 SQ. FT.  
4,500 SQ. FT. / 12,261 SQ. FT. = 36.7 %

PROPOSED:

PROPOSED GARAGE: + 696 SQ. FT.  
PROPOSED DRIVE: + 1,192 SQ. FT.  
PAVER REMOVALS: - 1,508 SQ. FT.  
4,880 SQ. FT. / 12,261 SQ. FT. = 39.8 %

BENCHMARK

MNDOT GSID STATION #33636  
MNDOT NAME: MICHAEL MN163  
ELEVATION: 919.421 (NGVD29)

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.

JASON E. RUD  
Date: 4/16/18 License No. 41578

**E. G. RUD & SONS, INC.**  
Professional Land Surveyors  
6776 Lake Drive NE, Suite 110  
Lino Lakes, MN 55014  
Tel. (651) 361-8200 Fax (651) 361-8701

JOB NO: 17504BT		DATE: 7/14/17	SCANNED <input type="checkbox"/>
REVISIONS		DRAWN BY: CMB	CHECK BY: JER
1	8/22/17	ADD PROPOSED GARAGE	CMB
2	11/7/17	CITY COMMENTS	CMB
3	4/16/18	CITY COMMENTS	CMB
NO.	DATE	DESCRIPTION	BY



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

**RESOLUTION NO 2018-052**

*A RESOLUTION APPROVING A VARIANCE TO ALLOW THE EXPANSION OF A NON-CONFORMING STRUCTURE NOT MEETING THE MINIMUM SETBACKS FROM THE ORDINANCY HIGH WATER LEVEL, FRONT AND SIDE YARD SETBACKS, AND IMPERVIOUS SURFACE REQUIREMENTS FOR THE CITY'S SHORELAND DISTRICT AT 9369 JANE RD N.*

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

**WHEREAS**, Adam Bender of ISPIRI LLC on behalf of David and Heide Offord, 9369 Jane Rd N, Lake Elmo MN 55042 (Applicant/Owner), has submitted an application to the City of Lake Elmo (the "City") for a variance to allow the expansion of a non-conforming structure not meeting the minimum structure setback from the Ordinary High Water Level (OHWL), front and side yard setbacks, and impervious surface requirements for the shoreland district. The proposed garage addition does encroach further into the front yard leaving a 12.9 ft. setback from Jane Rd, the new side yard setback from the deck will be 7.3 ft., and the setback from the OHWL for the deck will be 49.2 ft. However, the project will lower the impervious surface calculation from its current percentage of 36.7 to 34.1.

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

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said matter on May 7<sup>th</sup>, 2018; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated May 15<sup>th</sup>, 2018; and

**WHEREAS**, the City Council considered said matter at its May 15<sup>th</sup>, 2018 meeting.

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

**FINDINGS**

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.109.
- 2) That all the submission requirements of said Section 154.109 have been met by the Applicant.
- 3) That the proposed variance includes the following components:
  - a) A variance to allow for the expansion and renovation of an existing single-family detached home which does not meet the minimum structure setback requirements of the OHWL, front and side yard setbacks, and impervious surface allowance.
- 4) That the Variance will be located on property legally described as follows:  
SUBDIVISIONNAME BERSCHEN'S SHORES LOT 11 SUBDIVISIONCD 37090, 9369 Jane Rd North, Washington County, Minnesota with the following PID: 10.029.21.24.0007.

- 5) That the strict enforcement of Zoning Ordinance would cause practical difficulties and that the property owner proposes to use the property in a reasonable manner not permitted by an official control. ***Specific Finding: The subject property was platted prior (presumed before 1985) to current standards established for the current Ordinary High Water Level. Many homes, this one included, were platted without today's OHWL in mind. Because of this, property owners have had difficulty complying to the establish setback requirements of today. It does not seem reasonable to think homes will comply with both the front (30ft) and OWHW (75-100ft) setbacks. Compliance with both seems to be unlikely given the configuration of the lots created prior to current standards. Pertaining to the garage there seems to be no other location for it to be reasonably placed to reduce intrusion into setbacks. The deck also seems to be reasonably placed as any other location will put it closer to the OHWL and only a small section of the deck (steps) encroaches into the side yard. Another item to note is the impervious surface calculations will be reduced with the proposed project.***
- 6) The plight of the landowner is due to circumstances unique to the property not created by the landowner. ***Specific Findings: As mentioned above, the property is unique in that the plat was created in a way which did not provide adequate distance for compliance with today's setbacks from the OHWL. Due to the nature of the lot there seems to be limited improvements which a homeowner can make to their property without variance approval.***
- 7) The proposed variance will not alter the essential character of the locality in which the property in question is located. ***Specific Findings: The proposed addition would encroach further in to the front yard setback than other homes within the area. However, it does not drastically change the character of the locality, as the addition of the garage does not in and of itself change the function of the home. Side loaded garages are not a unique feature to homes, nor are decks. This also would not be the first homes in the area to have limited front yard space.***
- 8) 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. ***Specific Findings: The proposed additions will not alter or impair supply of light or air to adjacent properties. The garage will not block an amount of wind or air from neighboring properties so that their use would be disrupted. The garage is also being proposed to increase traffic safety. Reconfiguration of the garage and driveway will allow motor vehicles to maneuver themselves in a way to pull out nose first onto the Jane road, which would increase safety. The addition is also not expected to diminish property values.***

### CONCLUSIONS AND DECISION

Based on the foregoing, the Applicant's application for a Variance is granted, subject to the following conditions.

- 1) The Applicant shall secure any required permits and plan approvals from the City and other applicable jurisdictions.
- 2) Grading, erosion control, and stormwater management plans shall be submitted in conjunction with a building permit for the property and shall be approved by the City engineer.
- 3) The proposed retaining wall, if over four feet in height, shall be constructed by plans prepared by a professional engineer.
- 4) The applicant shall secure any required permits from the Valley Branch Watershed District prior to commencing any grading or construction activity on the site.
- 5) The deck shall be constructed of wood and not roofed.
- 6) The rear patio pavers shall be removed to reduce impervious surface.

Passed and duly adopted this 15<sup>th</sup> day of May, 2018 by the City Council of the City of Lake Elmo, Minnesota.

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Mayor Mike Pearson

ATTEST:

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Julie Johnson, City Clerk