



STAFF REPORT

DATE: 06/12/2023

REGULAR

ITEM#: 4a – PUBLIC HEARING

MOTION

TO: Planning Commission
FROM: Sophia Jensen, City Planner
AGENDA ITEM: **Impervious Surface Variance Request - 4708 Larkspur Lane N**

INTRODUCTION:

Bob Appert (Applicant) submitted an application for a shoreland impervious surface coverage variance for the property located at 4708 Larkspur Lane North (Subject Property). The applicant is looking to purchase the property from the developer, Robert Engstrom Companies, and construct a new single-family home on the existing lot within the Fields of St Croix subdivision adjacent to Goetschel's Pond. The original Goetschel's farmstead is located on this lot and the adjacent HOA owned lot. This lot has 4 existing agricultural buildings and existing HOA and neighbor encroachments. The applicant is proposing to remove the largest structure to make room for the home but is dedicated to preserving the existing features. The maximum impervious surface coverage for an unsewered lot in a Shoreland District is 15%. To achieve the preservation of the farm structures, accommodate the existing encroachments, and build a single family home the applicant is asking the City Council for a 3.8% variance to 18.8% impervious surface.

ISSUE BEFORE PLANNING COMMISSION:

The Planning Commission is being asked to hold a public hearing, review, and make a recommendation on the request to allow the applicants to exceed the maximum 15% impervious surface coverage for an unsewered lot at 4708 Larkspur Ln N.

VARIANCE REQUEST DETAILS/ANALYSIS:

Address: 4708 Larkspur Lane North
PID: 12.029.21.14.0009
Variance Request: The applicant is seeking deviations from LEC 105.12.1260 Table 17-3 which allows unsewered lots a maximum impervious surface coverage of 15%
Existing Zoning: Open Space PUD, Shoreland Overlay District, Valley Branch Watershed District
Surrounding Zoning: North: Open Space PUD
South: Open Space PUD
East: Open Space PUD
West: Goetschel's Pond
Deadline for Action: Application Complete – 5/12/2023
60 Day Deadline – 7/11/2023
Applicable Regulations: Article V - Zoning Administration and Enforcement
Article XVII – Open Space Planned Unit Developments
Article XIX – Shoreland Overlay District

REVIEW AND ANALYSIS/DRAFT FINDINGS:

An applicant 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 Staff about the 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 applicant is proposing to construct a single family home on a platted lot. The proposed house would only add up to 11% impervious surface but due to the existing farm buildings and neighbor/HOA encroachments the property is pushed over the maximum impervious surface allowance of the Shoreland Overlay District.

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

FINDINGS: The property is a part of the original Goetschels farmstead. The applicant is not responsible for the existing encroachments or farm buildings that are currently on the property but has the intent to preserve these improvements. The applicant has made efforts to avoid the variance process to no avail.

- 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 construction of a single family home and preservation of the existing farm buildings would not alter the essential character of the neighborhood. The removal of the existing farm buildings would negatively alter the essential character given the neighborhood was built around this farmstead.

- 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 single family home meets all required setbacks and would be spaced adequately from adjacent residences. The addition of a single family home would not significantly increase congestion on the public street or impair property values.

CITY AGENCY REVIEW:

This request was distributed to several departments and agencies for review on May 15th 2023. The following departments provided comments on the variance request.

- Fire Department Email (5/16/2023) provided comments regarding the address numbers of the new house. A condition regarding address numbers has been added based on this commentary.
- City Engineer Email (5/25/2023) did not have comments on the impervious surface request.
- MN DNR Email (5/24/2023) provided comments regarding mitigation and stormwater best management practices. A condition regarding stormwater runoff has been added based on this commentary.
- Valley Branch Watershed District (5/24/2023) provided comments that due to the amount of impervious surface being added a VBWD permit would be required. A condition regarding the watershed permit has been added based on this commentary.

PUBLIC COMMENT:

A hearing notice was sent to surrounding properties on May 26th 2023. A hearing notice was published in the local newspaper on June 2nd 2023.

FISCAL IMPACT:

None

RECOMMENDED CONDITIONS OF APPROVAL

1. The applicant must obtain all other necessary City, State, and other governing body permits and approvals prior to construction.
2. Building address numbers shall be plainly visible from the street fronting the property and shall contrasting color from the background.
3. All stormwater runoff from the site shall be contained on the applicant's property. Stormwater shall not be directed onto adjacent properties or to Goetschels Pond.
4. This variance approval is only for increased impervious surface coverage to 18.8%.
5. If approved, this variance shall expire if work does not commence within 12 months of the date of granting the variance.

OPTIONS:

The Planning Commission may:

- Recommend approval of the variance.
- Recommend approval of the variance with conditions.
- Recommend denial of the variance, citing recommended findings of fact for denial.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the request with conditions.

“Move to recommend approval of the request from Bob Appert for a variance to allow an impervious surface coverage of 18.8% at 4708 Larkspur Lane North with the conditions listed in the staff report.”

ATTACHMENTS:

- 1) Location Map
- 2) Land Use Application
- 3) Written Statement
- 4) Certificate of Survey
- 5) Existing Conditions Site Photos
- 6) Fire Department Email 5/16/2023
- 7) City Engineer Email 5/25/2023
- 8) MN DNR Email 5/24/2023
- 9) VBWD Email 5/24/2023
- 10) Public Comment

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



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

VARIANCE APPLICATION

Applicant: ROBERT AND JOELLE APPERT
Address: 10095 TAPESTRY ROAD, LAKE ELMO, MN
Phone #: 612-490-5963
Email Address: BAPPERT@REDSTONEBUILDERS.NET

Fee Owner: ROBERT ENGSTROM COMPANIES
Address: 4501 WEST 51ST STREET, MPBS MN
Phone #: 952-893-1001
Email Address: Tom@ENGSTROM.CO.COM

Engineer: CORNERSTONE SURVEYING
Address: 1970 NORTHWESTERN AVE, STILLWATER, MN
Phone #: 651-275-8969
Email Address: DAN@CSSURVEYING.NET

Property Location (Address): 4706 LARKSPUR LANE
Complete Legal Description: TAN FIELDS OF ST CROIX LOT 14 BLOCK 1

PID#: 12.029.21.14.0081

Detailed Reason for Request: SEE WRITTEN RESPONSE

*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: SEE WRITTEN RESPONSE

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:  Date: 5/11/2023

Signature of fee owner: Robert Engstrom Date: 5/11/2023

The City of Lake Elmo
3900 Laverne Avenue North
Lake Elmo, MN 55042

To Whom It May Concern:

As property owners of 4708 Larkspur Lane, Lake Elmo MN, we are submitting a Variance Application to assist with the permitting process for a new construction project. During the plan development process, it was determined that we will exceed the impervious surface allotment. With the Variance Application and supplemental documentation, we want to highlight the reasons why we are over our allotment of impervious surface and show our considerations to date

Please reach out to the following team members with any questions during your review:

Home Owners:

Bob and Joelle Appert
612.490.5963
bappert@redstonebuilders.net

General Contractor:

Redstone Builders, LLC
Bob Appert
bappert@redstonebuilders.net
612.490.5963

Surveyor:

Cornerstone Surveying
Dan Thurmes
dan@cssurvey.net
651.275.8969

Thank you for your consideration,

Bob & Joelle Appert

Variance Application Responses – Written Statement

Documents

Variance Application (see attached)
Survey (see attached)
House Plans (see attached)

Detailed Reason for Request: The reason for the Variance Request is to complete the permitting process for the new construction home located at 4708 Larkspur Lane. The existing conditions of the lot are creating an overage of our allotted impervious surface area. The lot has three nonconforming historic farmstead out buildings we are committed to preserving in an effort to maintain the historical farmstead setting in partnership with The Fields of St. Croix Home Owners Association (HOA) controls.

Variance Requests: The practical difficulty to reduce impervious surface area is that we need to keep three historic out buildings in place. Our lot is contiguous to the beautifully restored historical Goetschel Barn, currently owned and operated by the HOA. The three out buildings in question are the original Milk House, the original Chicken Coup and the original Horse Stable. These three structures complement the restored HOA Barn/Event Center and create an historical farmstead experience that is extremely important to our HOA, to our Seller Robert Engstrom Companies and to us.

Our hope is to build a very modest and reasonable home very much in kind with neighborhood next to the HOA's coveted Event Center with minimal aesthetic impact to the HOA's Common Areas.

Itemized Written Application Responses

- A) **All Current Property Owners**
 - a. Robert Engstrom Companies
- B) **Site Data**
 - a. Legal Description
 - i. The Fields of St. Croix Lot 14, Block 1
 - b. Property Identification Number
 - i. 12.029.21.14.0009
 - c. Parcel Size
 - i. 1.33 Acres (57,789 Square Feet)
 - d. Existing Use of Land
 - i. Residential Home
 - e. Current Zoning
 - i. Residential
- C) **Provisions of the City of Lake Elmo Code for which we seek a Variance**
 - a. Lake Elmo City Code Section 105.12.1260 Shoreland Management Overlay District
 - b. Table 17-3 Shore Land Standards
 - c. Maximum Impervious Surface – Unsewered

- D) Written description of the proposal and how it varies from the applicable provisions of Lake Elmo Code**
- a. The recent survey of the property shows total lot square footage of 57,789 square feet
 - b. 15% of 57,789 = 8668 allowable square feet of impervious surface (15%)
 - c. Total impervious surface associated with proposed new home = 6422 (11%)
 - d. Total impervious surface associated with the three existing nonconforming out buildings = 2130
 - e. Total impervious surface areas associated with neighbor's driveway and HOA's amenities = 2285
 - f. In summary, total impervious surface requested for proposed new home (6422), total impervious surface for existing buildings (2130) and total impervious surface for the neighbors' areas (2285) equals a grand total of 10,837 (18.8%)
 - g. We are seeking a Variance of 3.8% (or 2169 square feet)
- E) Narrative regarding any pre-application discussions with Staff and an explanation of how the issue was addressed leading up to the application for a variance**
- a. We don't take the Variance Process lightly - for us it was a last resort.
 - b. We worked with Staff (Sophia) to consider...
 - i. Lot Line Adjustments to reduce impervious surface areas other than the historic out buildings
 1. The calculations don't work because lot lines need to be "straight and minimal in nature," creating a situation where we had to carve off way too much pervious surface, outweighing the benefit of reduced impervious surface areas
 - ii. Easements around neighbors' impervious surface areas other than the historic out buildings
 1. An easement would not reduce the impervious surface burden, which rides with the land/lot on which it resides
 - iii. Doing driveway runners combined with a lot line adjustment for the neighbor's driveway
 1. The city does not credit the grass areas between the driveway runners as pervious, so this option was not an option.
 - iv. Reducing the scope and scale of the New Home Construction project
 1. The original main floor started at 2600 square feet and over the last few months we've reduced the footprint to 2250 square feet
 2. As a result, we need to create finished space in the attic trusses for a 4th bedroom because we could no longer fit a second bedroom on the main level
 - v. Requested a change in classification from "unsewered" to "sewered"
 1. This in a non-starter – the classification will change once Fields of St. Croix is connected to the City Sewer Infrastructure.
- F) Explain why the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration**
- i. Our unique circumstances of the historical out buildings combined with the neighbors encroaching impervious surfaces will put us into a situation where we will need to consider the removal of existing impervious surface areas – we consider this option a significant practical difficulty.

- G) Explain why the plight of the landowner is due to circumstances unique to the property and not created by the homeowner**
- i. We think it's important to understand that having 6442 square feet of impervious surface on a 1.33-acre lot is very reasonable and conservative (11% impervious surface).
 - ii. We have three existing historical out buildings that we are trying to preserve for the overall good and beautification of the entire development – something for everyone to enjoy including the guests who attend the events
 - iii. We are good neighbors and have no interest in removing impervious surfaces that have crept onto our lot over the years
 1. It's our intent to at some point do lot line adjustments and easements, giving these areas back to our neighbors into perpetuity
 - iv. If this were a normal situation without the historical out buildings and the neighbors' impervious surface areas, we would be at 11% impervious surface, well under the 15% max
- H) Justify why the granting of the variance would not alter the essential character of the neighborhood**
- i. Approval of the variance will help to preserve the essential character of the neighborhood by allowing us to keep the historical farmstead intact
- I) Adjacent Properties and Traffic**
- i. The proposed Variance will not impair an adequate supply of light and air to adjacent properties, it will not substantially increase congestion of public streets or substantially increase traffic within the neighborhood

PROPOSED BUILDING ELEVATIONS:
 TOP OF BLOCK = 945.7 (9' POUDED)
 GARAGE FLOOR = 945.3
 BASEMENT FLOOR = 937.0
 LOWEST ALLOWABLE FLOOR ELEVATION = 925.35(OHW) + 3 = 928.35
 THE ABOVE ELEVATIONS WERE DETERMINED BY THE CONTRACTOR.



CONTACT:
 Bob Appert
 Redstone Builders – Co-Owner
 3432 Denmark Avenue – Suite 440
 Eagan, MN 55123
 Call – 612-490-5963
 Office – 651-454-4297
 www.redstonebuilders.net

COUNTY/CITY:
 WASHINGTON COUNTY
 CITY OF LAKE ELMO

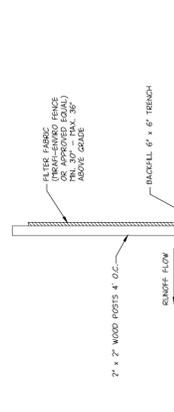
REVISIONS:
 DATE: 11-4-22
 REVISION: PRELIMINARY ISSUE

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 in the State of Minnesota.
 Dan J. W. White, Registration Number: 25718
 Date: 11-4-22

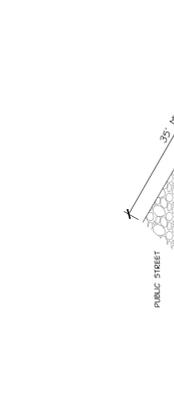
PROJECT LOCATION:
 4708 LARKSPUR LN. N.
 PID#1202921140009

CORNERSTONE LAND SURVEYING, INC.
 Suite #200
 1970 Northwestern Ave.
 Stillwater, MN 55082
 Phone 651.275.8969
 dan@cssurvey.net

FILE NAME: SURVRED02
PROJECT NO.: RED22002
CERTIFICATE OF SURVEY



- SILT FENCE**
 NO SCALE
1. DIG A 6"X6" TRENCH ALONG THE INTERIOR FACE LINE.
 2. DRIVE ALL POSTS INTO THE GROUND AT THE DOWNHILL SIDE OF THE TRENCH.
 3. DRIVE ALL POSTS INTO THE GROUND AT THE UPHILL SIDE OF THE TRENCH.
 4. SHAPE WOOD POSTS UP TO A POINT TO SUPPORT THE FABRIC.
 5. REMOVE SILT FENCES AFTER THE TRENCH IS ESTABLISHED.



- ROCK CONSTRUCTION ENTRANCE**
 NO SCALE
1. GRANITE BLOCK ENTRANCE TO PUBLIC STREET TO BE CONSTRUCTED TO A MINIMUM OF 12" ABOVE FINISHED GRADE.
 2. GRANITE CURB TO BE CONSTRUCTED TO A MINIMUM OF 12" ABOVE FINISHED GRADE.
 3. GRANITE CURB TO BE CONSTRUCTED TO A MINIMUM OF 12" ABOVE FINISHED GRADE.
 4. GRANITE CURB TO BE CONSTRUCTED TO A MINIMUM OF 12" ABOVE FINISHED GRADE.

PROPOSED IMPROVEMENT AREAS:
 (IN SQUARE FEET)
 EXISTING TO REMAIN: BUILDING #1 = 323, BUILDING #3 = 135, BUILDING #3 = 456, BUILDING #4 = 1162, CAZERO = 75, DECKS = 54, DRIVEWAY = 1622, PATH = 222, STAIRS = 288, PATIO = 288, TOTAL = 4415
 PROPOSED IMPROVEMENTS: HOUSE = 3038, PORCH = 350, ENTRANCE = 72, WINDOW WELLS = 30, PATIO = 2885, TOTAL = 6422
 TOTAL IMPROVEMENTS = 10,837 SQ.FT.
 18.8% (% OF LOT AREA)

LEGAL DESCRIPTION:
 (AS SHOWN ON AVAILABLE TAX RECORDS)
 Lot 14, Block 1, THE FIELDS OF ST. CROIX, Washington County, Minnesota.

TITLE NOTES:
 NO TITLE OPINION OR TITLE COMMITMENT WAS PROVIDED THAT WOULD SHOW EASEMENTS OR ENCUMBRANCES ON RECORD. EASEMENTS MAY EXIST THAT ARE NOT SHOWN.
 1. DRAINAGE AND UTILITY EASEMENTS AS SHOWN ON THE RECORD PLAT.
 2. SUBJECT TO DECLARATION PER COMMON INTEREST COMMUNITY NO. 109, DOCUMENT NO. 943145.

AREA:
 TOTAL AREA AS SHOWN = 57,789 SQ.FT.

SURVEY NOTES:
 1. BEARINGS ARE BASED ON THE RECORDED PLAT OF THE FIELDS OF ST. CROIX.
 2. UNDERGROUND UTILITIES NOT SHOWN.
 3. CONTOURS BELOW THE "BLUFF" LINE AND OUTSIDE OF THE LOT BOUNDARIES SHOWN PER LIDAR DATA OBTAINED FROM THE DNR MNTPO WEBSITE. NOT FIELD VERIFIED.

EXISTING IMPROVEMENT AREAS:
 (IN SQUARE FEET)
 BUILDING #1 = 323, DECKS = 135, BUILDING #2 = 1957, BUILDING #3 = 456, BUILDING #4 = 1162, CAZERO = 75, DECKS = 54, DRIVEWAY = 1622, STAIRS = 288, PATIO = 288, TOTAL IMPROVEMENTS = 6,372 SQ.FT.
 11.0% (% OF LOT AREA)



CALL BEFORE YOU DIG!
 Gopher State One Call
 TOLL FREE: 1-800-252-1166





Sophia Jensen

From: Dustin Kalis
Sent: Tuesday, May 16, 2023 8:52 AM
To: Sophia Jensen
Cc: Anthony Svoboda
Subject: RE: Lake Elmo Land Use Review - May 2nd Batch

Fire Department comments:

- 1) Building address numbers shall be plainly visible from the street fronting the property and shall contrasting color from the background. Addresses may be required to be posted adjacent to driveways or other access ways.

Dustin Kalis | Fire Chief
Lake Elmo Fire Department

From: Sophia Jensen
Sent: Monday, May 15, 2023 9:41 AM
To: Dustin Kalis <DKalis@lakeelmo.org>; Jack Griffin <Jack.Griffin@focusengineeringinc.com>; 'John P. Hanson' <JHanson@barr.com>; Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>
Cc: Jenni Faulkner <jenni.faulkner@bolton-menk.com>
Subject: Lake Elmo Land Use Review - May 2nd Batch

You are being asked to review the following application as a stakeholder in the area of a pending land use application. Please see link below.

4708 Larkspur Variance: PID 12.029.21.14.0009 . Bob Appert has submitted a variance application to request deviations from LEC 105.12.1260 Table 17-3 which allows unsewered lots a maximum impervious surface coverage of 15%. To achieve the preservation of the old Goetschel's farm agriculture structures, accommodate the existing encroachments, and build a new single family home the applicant is asking for a variance. Zoning: Open Space Planned Unit Development (OP-PUD) Reviewers: City Engineer, Fire Department, MN DNR, VBWD. **Please have feedback to Sophia Jensen by Thursday May 25th 2023.** [https://drive.google.com/drive/folders/1Fd9klfcqHGDW2vwV32TiSR8wdC_cvKhv?usp=share link](https://drive.google.com/drive/folders/1Fd9klfcqHGDW2vwV32TiSR8wdC_cvKhv?usp=share_link)

Thank you,
Sophia Jensen
City Planner

City of Lake Elmo
651-747-3911

Sophia Jensen

From: Jack Griffin <Jack.Griffin@focusengineeringinc.com>
Sent: Thursday, May 25, 2023 11:01 AM
To: Sophia Jensen
Subject: Re: 4708 Larkspur Variance

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

Sophia,
I did not have any other comments on this. If there is something specific you need me to review, please let me know.

Thanks ~Jack

John (Jack) W. Griffin, P.E.
Principal / Sr. Municipal Engineer

FOCUS ENGINEERING, INC.
651.300.4264
jack.griffin@focusengineeringinc.com

Sophia Jensen

From: Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>
Sent: Wednesday, May 24, 2023 12:31 PM
To: Sophia Jensen
Subject: RE: Lake Elmo Land Use Review - May 2nd Batch
Attachments: shoreland_variance_guidance_isc_rev_10_10_12.pdf

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

Hello Sophia,

4708 Larkspur Variance: If the City determines that the findings support granting the variance in accordance with the statutory criteria in [Minn. Statutes 462.357, Subd. 6](#), impacts from increased impervious surface to Goetchel's Pond and the watershed should be considered in developing appropriate conditions to mitigate them. State law requires that conditions be directly related and roughly proportional to the impacts created by the variance. The attached guidance on impervious surface variances in DNR's [Shoreland & Floodplain Variance Guidance Series](#) provides example conditions for the City's consideration, including directing rain gutter discharges away from Goetchel's Pond and into an infiltration basin or other stormwater Best Management Practice (BMP).

Best Regards,

Dan Scollan

East Metro Area Hydrologist – Ramsey and Washington Counties
Division of Ecological and Water Resources

Minnesota Department of Natural Resources

1200 Warner Road
St. Paul, MN 55106
Phone: 651-259-5732
Fax: 651-772-7977
Email: daniel.scollan@state.mn.us
mndnr.gov



From: Sophia Jensen <SJensen@lakeelmo.org>
Sent: Monday, May 15, 2023 9:41 AM
To: Dustin Kalis <DKalis@lakeelmo.org>; Jack Griffin <Jack.Griffin@focusengineeringinc.com>; 'John P. Hanson' <JHanson@barr.com>; Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>
Cc: Jenni Faulkner <jenni.faulkner@bolton-menk.com>
Subject: Lake Elmo Land Use Review - May 2nd Batch

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You are being asked to review the following application as a stakeholder in the area of a pending land use application. Please see link below.

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Thank you,
Sophia Jensen
City Planner

City of Lake Elmo
651-747-3911

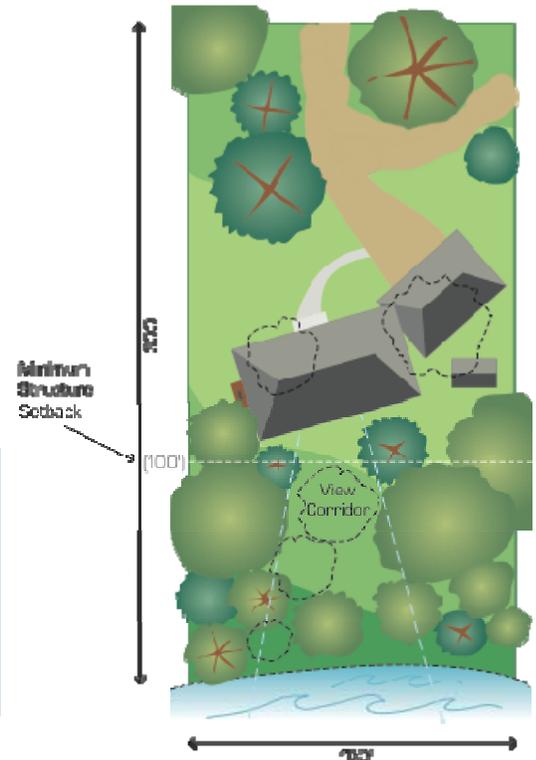
This is one of a series of examples developed as guidance for considering variance requests along lakes and rivers. Consult your local shoreland and floodplain ordinances.

Why are impervious surface coverage limits important?

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

Example Impervious Surface Variance Request

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



Considerations for Findings

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

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

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

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

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

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

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

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

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

Range of Outcomes

Based on the findings, several outcomes can occur:

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

Conditions on Variances

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

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

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

From: [John P. Hanson](#)
To: [Sophia Jensen](#)
Subject: RE: Lake Elmo Land Use Review - May 2nd Batch
Date: Wednesday, May 24, 2023 3:07:38 PM
Attachments: [image001.png](#)

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

Sophia,

Cornerstone's Certificate of Survey lists 6,422 square feet of new impervious surface area for the parcel. The Valley Branch Watershed District (VBWD) requires a permit and stormwater management for projects creating 6,000 square feet or more of new impervious surface. The owner should apply for VBWD permit. Cornerstone is aware of the VBWD permit requirements and process and should be able to help their client.

Thank you,

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



Sophia Jensen

From: Dawn Mohr <dawnmohr@comcast.net>
Sent: Sunday, June 11, 2023 8:12 PM
To: Sophia Jensen
Subject: Variance 4708 Larkspur Lane

[You don't often get email from dawnmohr@comcast.net. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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

Dear Sophia,

My husband and I read the letter sent out May 26. We were never aware of this area being a lot for sale. There has never been a "Lot for Sale" sign anywhere near that area in last 21 years that our family has lived in this neighborhood. This lot has mature trees and old farm buildings that add to the country feel.

Bob Engstrom, who developed this neighborhood, did not take or return calls last year when this was first brought to our attention.

My husband & I both feel that this is a "done deal" between two builders and to hell with what residents of the Fields of St Croix say - the lot will be used to put up a house. We cannot imagine Mr. Appert wants the old farm buildings on his new property & the variance he is requesting, he will build whatever structure he wants. This will take away a lot of appeal from the barn usage and overall feel of our neighborhood.

Sincerely,

Dawn & Bill Mohr