



## **PLANNING COMMISSION AGENDA**

**February 3, 2020**

**7:00 pm**

- 1. CALL TO ORDER -**
- 2. PLEDGE OF ALLEGIANCE –**
- 3. ROLL CALL -**
  - a) Scott Patten
  - b) Sally Doherty
  - c) Kris Kopitzke (Chair)
  - d) Jim Langan
  - e) Roger Bowman
  - f) Justin Sykora
  - g) Christian Dawson
  - h) Doug Parker
  - i) Kuchen Hale
- 4. APPROVAL OF AGENDA –**
- 5. APPROVAL OF MINUTES –**
  - A. January 6, 2020 Meeting Minutes
- 6. REPORTS AND PRESENTATIONS – None**
- 7. PUBLIC HEARINGS –**
  - A. Lisa Buck Variance Application at 15740 Upper 34<sup>th</sup> Street
  - B. Five Oaks Farm Subdivision and Variance Application at 120 and 502 Stagecoach Trail
  - C. Brooks Variance Application at 14186 Valley Creek Trail
- 8. NEW BUSINESS –**
  - A. Election of Officers
  - B. Development of a schedule of non-compliance fees and other enforcement tools to assist the City in gaining adherence to ordinances, regulations, rules and conditions placed on zoning applications.
- 9. OLD BUSINESS -**
  - A. Draft Short Term Residential Rentals Ordinance
  - B. Update on City Council Actions – Council Highlights from the December 17, 2019 Council meeting - attached.
- 10. ADJOURN –**

**A quorum of the City Council or Other Commissions may be present to receive information.**

- 1  
2  
3  
4  
5 1. **CALL TO ORDER** – Chair Kopitzke called the meeting to order at 7:00 PM  
6  
7 2. **PLEDGE OF ALLEGIANCE** – was recited.  
8  
9 3. **ROLL CALL** – Present: Chair Kris Kopitzke, Scott Patten, Doug Parker, Christian Dawson, Justin Sykora,  
10 Kuchen Hale, Sally Doherty, Roger Bowman. Absent was James Langan (excused).  
11 **ALSO IN ATTENDANCE** – Council member Wroblewski, City Administrator Ron Moore  
12  
13 4. **APPROVAL OF AGENDA** –  
14 Add item: 2020 meeting schedule  
15 **Motion/Second Patten/Parker To approve the Agenda of the January 6, 2020 Planning Commission**  
16 **meeting with addition of 2020 meeting schedule. Passed 8-0.**  
17  
18 5. **APPROVAL OF MINUTES** –  
19 A. December 2, 2019  
20 **Motion/Second Hale/Parker To approve minutes of December 2, 2019 Planning Commission meeting.**  
21 **Passed 6-0-2 (Dawson, Doherty abstain).**  
22  
23 6. **REPORTS AND PRESENTATIONS** - None  
24  
25 7. **PUBLIC HEARINGS** –  
26 A. **Sue Biagini Variance Application**  
27 Chair Kopitzke opened the Public Hearing at 7:05 PM.  
28 The Biagini's (applicants) explained there is a new sewer pipe alongside of the house next to area where  
29 they want to place garage. Therefore they are requesting variance to move garage over an extra two feet.  
30 No other comments were received  
31 **Motion/Second Hale/Patten to close public hearing. Passed 8-0.**  
32 Public Hearing closed at 7:07 PM  
33 Hale asked if two extra feet is enough space? (Applicant said yes)  
34 Parker asked what utilities will be in the building? (only electric and gas for heater).  
35 Drainage on the site and the location of the entry to house were discussed.  
36 Kopitzke asked about the location of sewer pipes – who determined where they would go? (City Engineer  
37 worked with home owners based on current location of pipes and access to sewer line in street)  
38 Patten stated if the variance is not granted the other building on site has to be removed.  
39 Hale stated the variance request is caused by sewer pipe location, the city created hardship.  
40 Doherty asked if the garage could be moved over to other side?  
41 Hale stated that would create more impervious surface.  
42 Doherty stated if the sewer line wasn't there, they could do this. Question is how to write the findings for  
43 the variance. Is there a minimum setback for sewer clean out?  
44 **Motion/Second Bowman/Hale To recommend approval of the variance with findings and conditions**  
45 **recommended by staff:**  
46 **Findings**  
47 1. **The subject property is located in the VHS-C zone, as are the surrounding properties.**  
48 2. **The lot size is 22,677 sq. ft., which is greater than the required lot size of 22,500 sq. ft.**  
49 3. **The property has an existing detached garage with legally nonconforming side and**  
50 **rear yard setbacks.**  
51 4. **The property has a legally nonconforming driveway through the Afton Marketplace**  
52 **property.**  
53 5. **The proposed garage would be accessed by the existing driveway**  
54 6. **The property has an existing sanitary sewer line running along the rear of the house,**  
55 **six feet north of the house. The line runs beyond the east end of the house and patio,**  
56 **then turns south toward the street.**

- 57 7. **The proposed garage is proposed to be located eight feet from the rear of the house to**  
58 **retain access to the sewer line for maintenance/repair purposes.**  
59 8. **Sec. 12-187 E of the City Code provides that “A building shall be considered an**  
60 **integral part of the principal building if it is located six feet or less from the principal**  
61 **building.”**  
62 9. **The lot would be in compliance with the impervious surface requirements with the**  
63 **construction of the proposed garage.**

64 **Conditions**

- 65 1. **The garage shall be located and constructed according to the plans submitted with the**  
66 **variance application, subject to revisions as required or approved by the City.**

67 Discussion

68 Hale recommended revision to Finding # 6: **The property has an existing sanitary sewer private**  
69 **connection line running along the rear of the house, six feet north of the house. As required by the**  
70 **City, the line location runs from the rear of the house beyond the east end of the house and patio,**  
71 **then turns south toward the street.**

72 The Commission added an Additional Finding as #7: **The plight of the landowner is due to**  
73 **circumstances unique to the property not created by the landowner, but caused by the**  
74 **requirement to connect to the new sanitary sewer line located in Afton Boulevard.**

75 Findings will be renumbered.

76 **Motion Vote: Passed 7-1 (Parker nay)**

77  
78 **B. PLCD Ordinance Amendment**

79 Chair Kopitzke opened the Public Hearing opened at 7:26 PM.

80 No comments were received

81 **Motion/Second Sykora/Parker to close public hearing. Passed 8-0.**

82 Hearing closed at 7:29 PM.

83 Parker asked about enforcement and the ability to charge fines. (item #A5)

84 Moorse replied that on the preserved land the City and MN Land Trust would monitor and enforce.

85 **Motion/Second Sykora/Doherty to recommend approval of the PLCD Ordinance Amendment by the**  
86 **City Council.**

87 Kopitzke stated that after going through the process he sees better ways to do this rather than a PLCD.

88 Dislikes HOAs. Feels there are so many restrictions an individual land owner can't do on their own. If  
89 shared driveways and roads were allowed a landowner could develop on their own.

90 Patten stated the Carlson property could have been up to 10 houses on bigger lots.

91 Sykora stated he likes the preservation of land in perpetuity.

92 Discussion was held on the value of PLCDs.

93 **Motion Vote: Passed 7-1 (Kopitzke nay)**

94  
95 **8. NEW BUSINESS –**

96 **A. Request the Council for direction**

97 Bowman stated that non-compliance to conditions and unintended consequences brought this idea. Would  
98 like direction from the city council to develop a fee schedule for non-compliance.

99 Kopitzke stated this would be for CUPs, Variances

100 Hale stated that we would need legal input on this.

101 Doherty stated she is uneasy about the Planning Commission defining these.

102 Bowman stated these are all in areas under our purview.

103 Parker agreed the city needs way to be clearer on this. How do other cities enforce?

104 Moorse replied that zoning codes have enforcement mechanisms such as administrative fines. Afton doesn't  
105 have good process for violations.

106 Bowman stated it could be a condition of permits issued.

107 Parker would like to strengthen the cities abilities.

108 **Motion/Second Sykora/Hale to request the Council to direct the Planning Commission to propose a**  
109 **schedule of non-compliance fees and other enforcement tools for zoning violations, etc. Passed 7-1**  
110 **(Doherty nay).**

111  
112 B. 2020 Meeting Schedule

113 Since Labor Day falls on Sept. 7<sup>th</sup>, the September Planning Commission meeting will be held on August 31.  
114 The Commission will discuss July 6 meeting availability in May to check for a quorum.

115  
116 **9. OLD BUSINESS –**

117 A. Draft Short Term Residential Rentals Ordinance

118 Moose provided information on Stillwater's ordinance.

119 Kopitzke likes the event clause on the 3<sup>rd</sup> page.

120 Hale felt there should be discussion on the number of guests

121 Bowman suggested for an event, one guest plus the registered guest.

122 Sykora likes requiring a CUP for non-homestead property for septic compliance

123 Hale is against item "d" in the draft; Not constrained to VHS-C.

124 Doherty asked what is the background on that? (Investment property)

125 Kopitzke asked about fire inspection as part of process?

126 Hale stated there should be required detectors and extinguishers.

127 Parker stated if it is run as a business, then inspect.

128 Sykora asked of Fire Dept. has capacity to inspect? There are State codes.

129 Hale stated the home owner is responsible.

130 Moose stated the Building inspector would coordinate for Fire code inspection and building code inspection.

131 Dawson stated that CUP language could cover.

132 Bowman asked about requiring a water test

133 Doherty asked what is background on why we want to regulate?

134 Hale replied there could be an issue of nuisance properties, how do we prevent or limit to be sure they are  
135 operated safely.

136 Doherty suggested focusing on if they are allowed and do they need to check in with us every year?

137 Kopitzke asked at what point is it a public issue?

138 Dawson asked about state regulations on rental property

139 Dawson would recommend a CUP regardless of district

140 The draft will be discussed again in February.

141  
142 B. Update on City Council actions

143 Council member Wroblewski provided a summary of the December City Council meeting.

144  
145 **10. ADJOURN**

146 **Motion/Second Doherty/Patten To adjourn. Passed 8-0.**

147 Meeting adjourned at 8:54 PM.

148  
149  
150  
151 Respectfully submitted by:

152  
153 \_\_\_\_\_  
154 Julie Yoho, City Clerk

155  
156  
157 **To be approved on February 3, 2020 as (check one): Presented: \_\_\_\_\_ or Amended: \_\_\_\_\_**

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: February 3, 2020

To: Chair Kopitzke and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: January 27, 2020  
Re: Lisa Buck Variance Application at 15740 Upper 34<sup>th</sup> Street

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Lisa Buck has submitted a variance application to enable the construction of a detached garage with a front yard setback of 56 feet vs. the required 105 feet to limit impacts on steep slopes, use an area of flatter land and align the garage with the house. In addition to containing steep slopes to the west, the subject property has an irregular shape, due to a curving public road that encroaches into the southeast corner of the property where the garage is proposed to be located.

The property is zoned Rural Residential, as is the property to the north, south and west. The property to the east is zoned VHS-R, which has substantially different zoning requirements, including a front yard setback of 65 feet. The subject property is 1.87 acres, which is nonconforming to the Rural Residential minimum lot size of 5 acres.

The detached garage would replace an existing deteriorated outbuilding that is built into a steep slope. The existing outbuilding has a front yard setback (to the centerline of Upper 34<sup>th</sup> Street) of 76 feet, and the existing house has a front yard setback of 69 feet. The detached garage is proposed to be located 20 feet from the side yard property line, which conforms to the required 10 foot setback.

The property is in the Lower St. Croix Bluffland and Shoreland Management District, which does not allow grading in areas of slopes 12% or greater.

### Variances Required

The proposal requires a variance to the front yard setback to allow the garage to be located 56 feet from the centerline of Upper 34<sup>th</sup> Street vs. the required 105 foot setback. The proposal also requires a variance to allow grading in an area with a slope greater than 12%.

### **Findings**

The following are recommended findings. The Planning Commission may revise or add findings.

1. The subject property is located in the Rural Residential zone, as are the properties to the west, north and south. The property to the east is zoned VHS-R.
2. The subject property contains steep slopes to the west
3. The subject property contains an existing outbuilding built into a steep slope area
4. The subject property has an irregular shape, due to a curving public road that encroaches into the southeast corner of the property where the garage is proposed to be located.
5. The proposed garage requires grading in an area with a slope of 12% or greater.
6. The proposed garage and driveway utilize an area of flatter land on the property.
7. The proposed garage location aligns with the existing house location.

**Conditions**

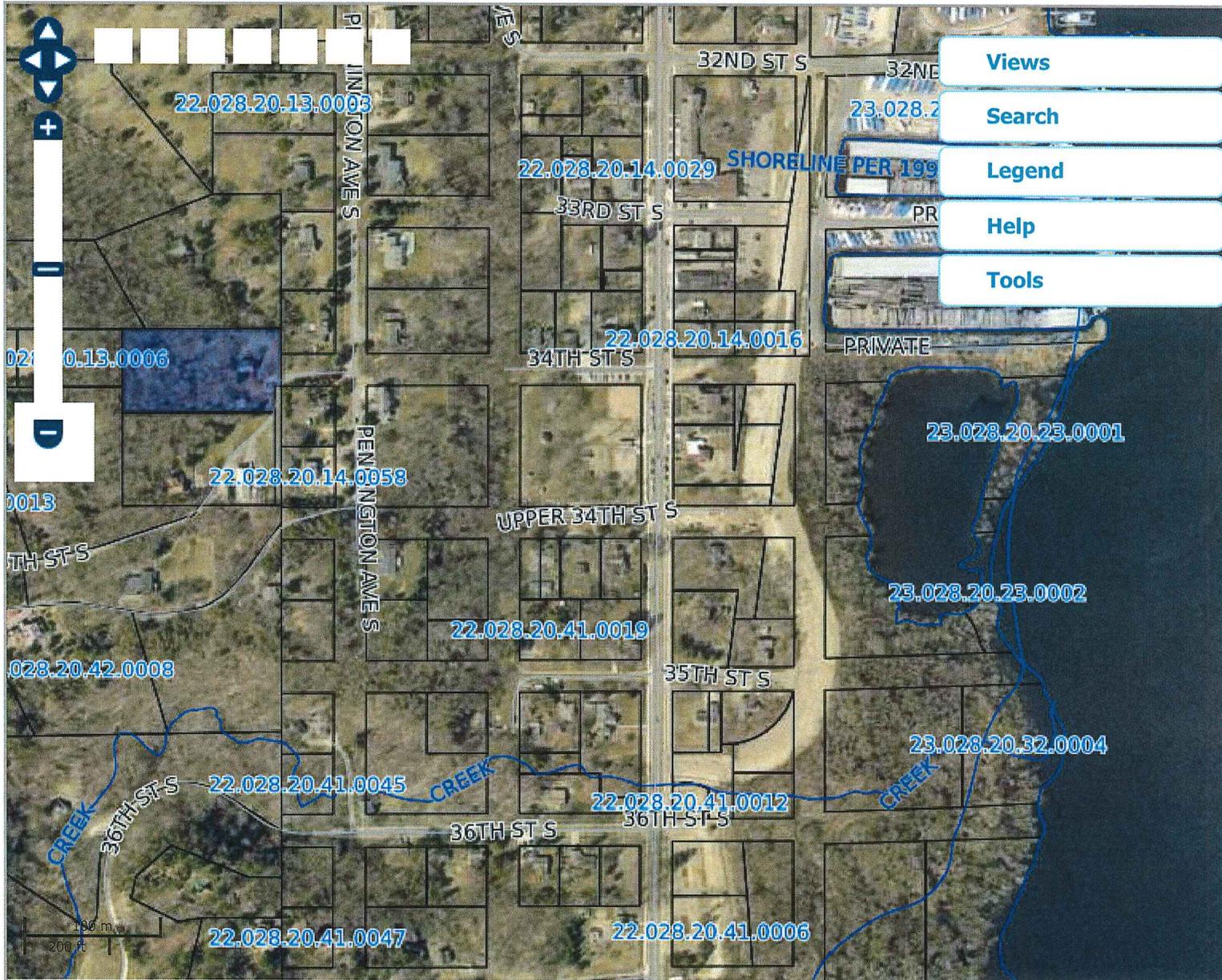
If the Planning Commission recommends approval of the subdivision application, it is recommended that the following conditions be placed on the approval, as well as additional conditions the Planning Commission may include.

1. The garage shall be constructed according to the plans submitted with the variance application, except as the plans may be revised by the Council or as revisions of plans may be approved by the Council.
2. All grading, drainage and erosion control plans, including the retaining wall plans, shall be subject to review and approval by the Zoning Administrator and City Engineer, and by the Valley Branch Watershed District if they meet permit thresholds.
3. The existing outbuilding shall be removed from the property prior to the issuance of a building permit.

**Planning Commission Direction Requested:**

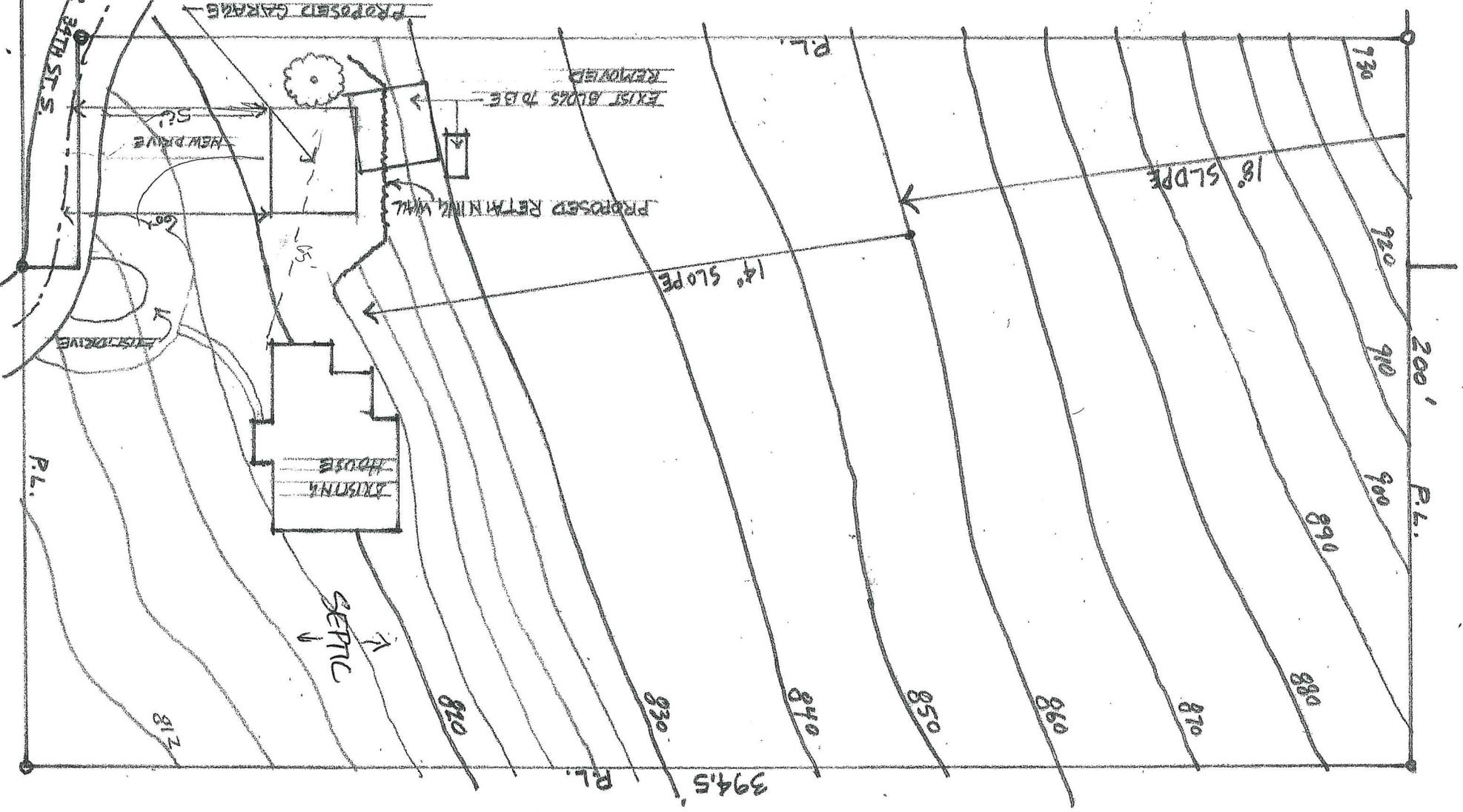
Motion regarding a recommendation concerning the Lisa Buck variance application at 15740 Upper 34<sup>th</sup> Street, including findings, and conditions if applicable.

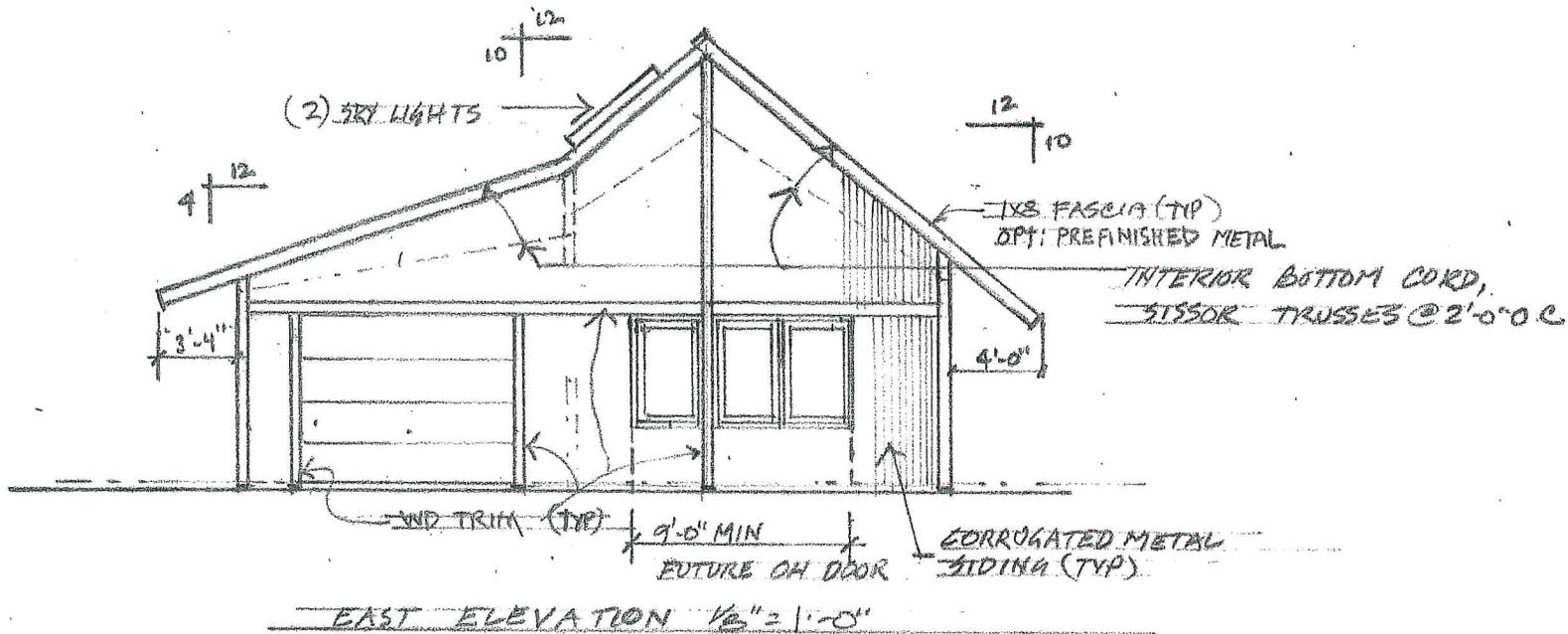
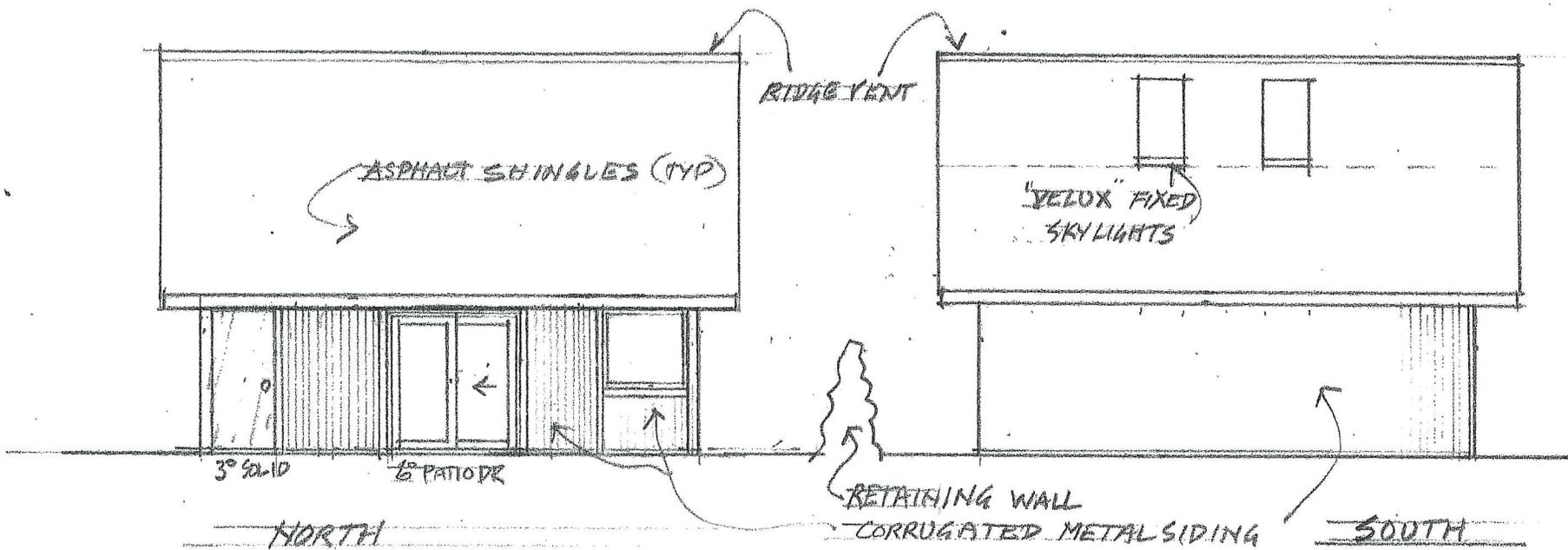




LISA BUCK GARAGE - 12.1.19

SITE PLAN - 1" = 40'





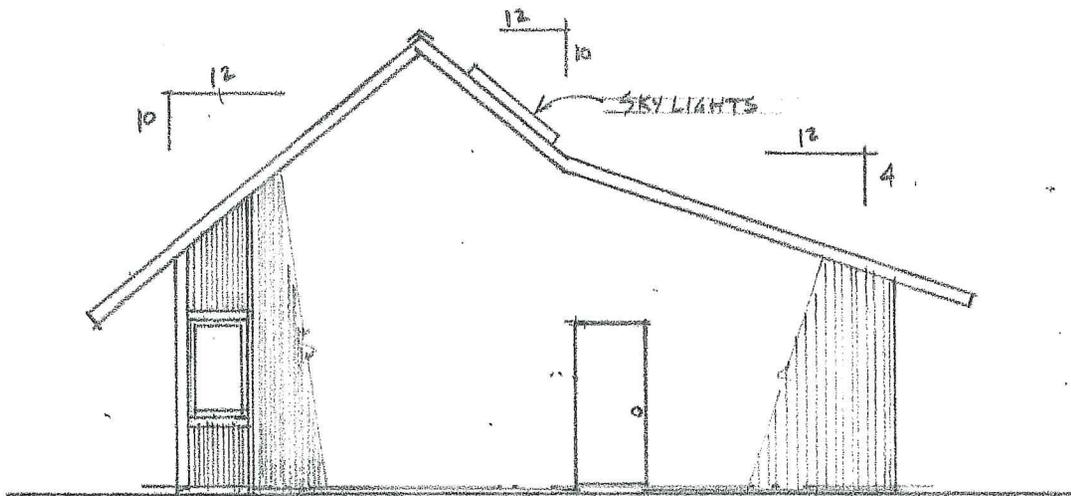
LISA BUCK - GARAGE

"PRELIMINARY"

9-26-19

WB

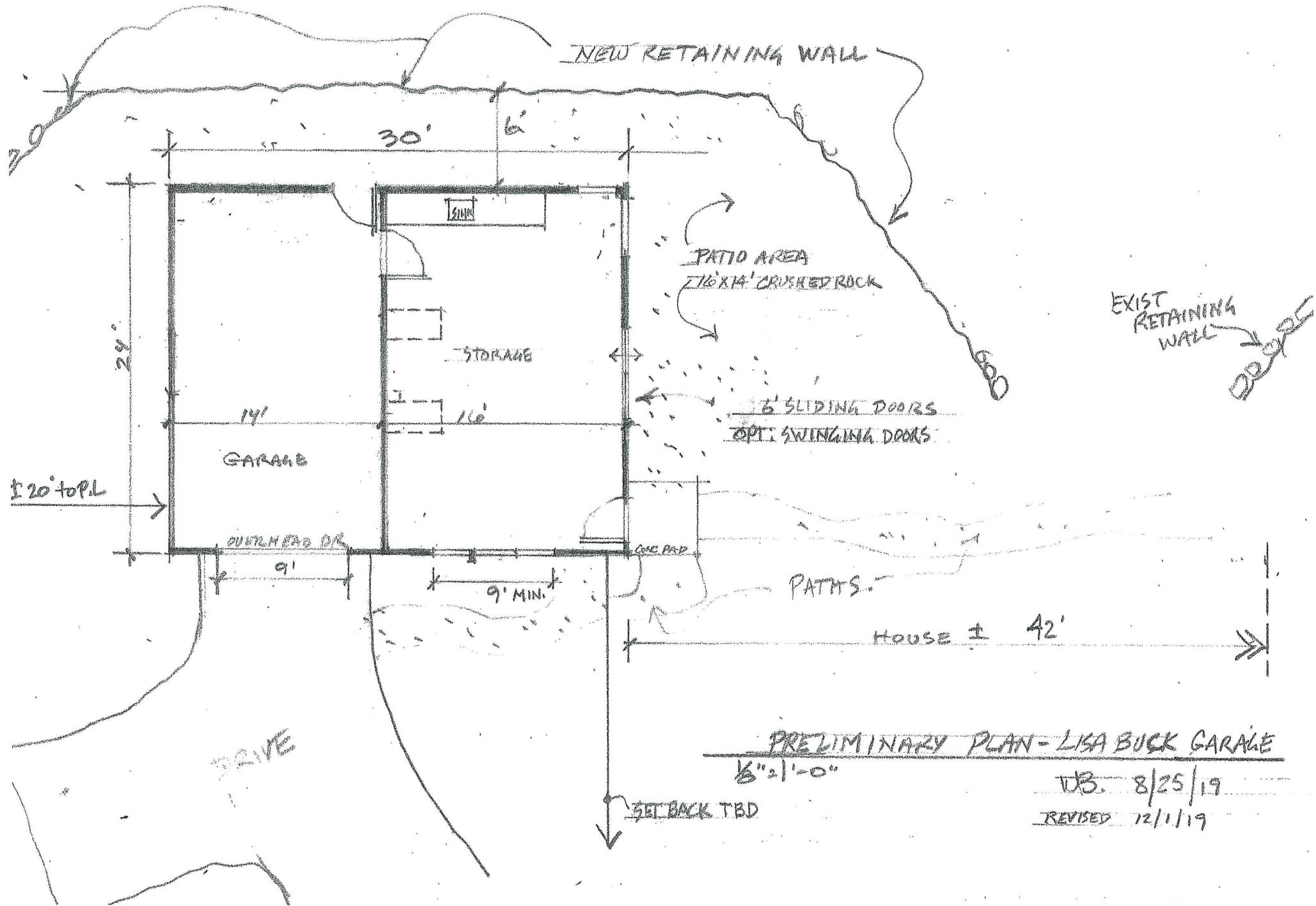
REVISED 12-1-19



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

LISA BUCK GARAGE - AFTON, MN

12-1-19



PRELIMINARY PLAN - LISA BUCK GARAGE

1/8" = 1'-0"

WB. 8/25/19

REVISED 12/1/19

Lisa Buck

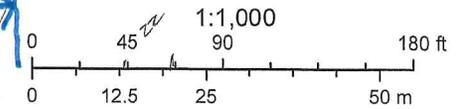


December 18, 2017

SETBACKS  
SIDES/REAR = 10'  
MIN LOT 2 AC  
105' FRONTAGE ~~IN STREET~~  
SET BACK  
TO  $\phi$  OF ST.

CONSERVANCY OVERLAY  
IN SHORELAND MANAGEMENT AREA

RR.



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Applicant(s): Lisa Buck  
 Phone: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Property Address for variance: Please see attached.

Variance request description: \_\_\_\_\_  
 \_\_\_\_\_

City Ordinance Section number(s), that variance is requested for: \_\_\_\_\_

Answer the following questions to the best of your ability - based on the criteria found in section 12-77 of Afton's Code (Land Use, Appeals and Variances). Completing this questionnaire will help the Planning Commission and the City of Afton evaluate your application in light of the requirements of Afton's Variance Ordinance. It does not guarantee that your variance request will be approved. If needed use a separate page.

Background: This questionnaire is designed to help you and the City of Afton determine whether a variance should be granted. Please consult with the City Administrator who can help you with your variance application and explain the Variance Ordinance to you. The City Administrator will work with you to ensure that the variance you request is the minimum variance required to provide the same rights commonly enjoyed by other properties in the same zoning district. Because of special provisions for certain types of construction, the City Administrator will also determine whether the property is in the Flood Plain District. There are also special provisions for earth-sheltered construction.

**Criteria #1** *The requested use, must be a reasonable use in order to receive a variance. Applicant - Please explain why the proposed use which requires a variance is a reasonable use for this property?*  
 \_\_\_\_\_  
 \_\_\_\_\_

**Criteria #2** *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the property owner, since enactment of this Ordinance, have had no control. Applicant - What exceptional or extraordinary circumstances related to the property do not apply generally to other properties in the same zone or vicinity? Extraordinary circumstances would include lot size, irregular lot shape or topography. Are there other circumstances over which you, as the property owner, have no control?*

Explain? \_\_\_\_\_  
 \_\_\_\_\_

**Criteria #3** *That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.*

**Applicant** - How does the literal interpretation of the provisions of the Afton ordinance (from which you are requesting a variance) deprive you of rights commonly enjoyed by other properties in the same zoning district? Explain: \_\_\_\_\_

**Criteria #4** *The special conditions or circumstances do not result from actions of the applicant.*

**Applicant** - How did these exceptional circumstances related to the property come about? Did actions by you create these circumstances? Explain: \_\_\_\_\_

**Criteria #5** *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district.*

**Applicant** - Will the granting of the requested variance confer on you, the applicant, any special privilege that is denied by this ordinance to owners of other lands, structures, or buildings in the same zoning district? Explain: \_\_\_\_\_

**Criteria #6** *The variance requested is the minimum variance which would alleviate the hardship.*

**Applicant** - Is the variance you are requesting the minimum variance which would alleviate the practical difficulty or hardship for your property? Explain: \_\_\_\_\_

**Criteria #7** *The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone.* **Applicant (Optional)** - Will the variance be materially detrimental to the purposes of this Ordinance, or to property in the same zone? How would the use of the property, if allowed by the variance, affect other properties in the vicinity?

Explain: \_\_\_\_\_

**Criteria #8** *Economic conditions or circumstances alone shall not be considered in the granting of a variance request if a reasonable use of the property exists under the terms of the ordinance.* **Applicant** -

Is the requested variance for economic reasons?

Explain: \_\_\_\_\_

**Criteria #9** *In the Flood Plain District, no variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by state law.* **Applicant (optional), PC** - Is the property in a Flood Plain District?  Yes  No

**Criteria #10** *Variations shall be granted for earth-sheltered construction by state statutes when in harmony with this Ordinance.* **Applicant** - Is the variance for earth-sheltered construction?  Yes  No

***ADDITIONAL CRITERIA THAT MAY BE CONSIDERED BY THE PLANNING COMMISSION (PC) AND/OR CITY COUNCIL(CC)- Applicant responses to criteria #11 and criteria #12 are optional.***

**Criteria #11** *Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton ordinances and code? How will this variance if granted (and the proposed use of the property allowed) affect the essential character of the area?

Explain: \_\_\_\_\_

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**Criteria #12** *Variances shall only be permitted when they are in harmony with the general purposes and intent of the Afton Comprehensive Plan.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton comprehensive plan?

Explain: \_\_\_\_\_

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**Variance Questionnaire:**

Lisa Buck  
651-436-1860

15740 Upper 34<sup>th</sup> St So, Afton, MN 55001

**Variance request description:**

Variance to build a garage at 60'-56'\* setback from non-conforming Upper 34<sup>th</sup> St South to avoid 14% slope, align with existing house, utilize flatter area of land and create minimal disturbance to topography of hillside. \*Please see site plan for clarity.

**City Ordinance Section number:**

12-132 (B) E. Setbacks

**Criteria #1- (Why is the use (e.g. garage) reasonable for this property?)**

This request is reasonable because the property does not have a garage. The property's unique location, topography and zoning make it reasonable to request a garage be built in a location that aligns with the house on the property.

This new structure would replace an existing deteriorated outbuilding that was built on the property by the original landowners as a farm animal shed and workshop, and prior to current land ordinances, division of lots and zoning.

**Criteria #2-**

The exceptional or extraordinary circumstances include:

Topography with slope of 14% to the west of the building, an irregular lot size that includes the convergence of 34<sup>th</sup> St and Upper 34<sup>th</sup> St South at a sharp turn with a non-conforming road that has minimal maintenance. Zoning to the east property line is VHS/R up to the end of 34<sup>th</sup> St and to the west is RR overlapping the curved road that cuts through the edge of the property.

**Criteria #3-**

The literal interpretation of 105' set-back (RR) from road center would place the proposed garage at an angle to the house and deep within the steep slope of the hillside of 14% +.

**Criteria #4-**

I have not created this circumstance.

**Criteria #5-**

No. This gives me no special privileges, rather it allows my home to align with others in having a garage. Precedent has been set by the following addresses which have buildings that are less than 105' from center of road within the area:

4303 Pennington Ave S

3297 Pennington Ave S

15606 Upper 34<sup>th</sup> St S

Criteria #6-

Yes. We have looked at what is best for the property to align the garage building to the existing home and meet the needs of the unique demands of the landscape.

Criteria #7-

No.

Criteria #8-

No.

Criteria #9-

No.

Criteria #10-

No.

Criteria #11-

Absolutely. It will restore the land/topography to achieve minimal impact and create a garage building that is in an aesthetic relationship with the home, adding beauty and keeping it in harmony with other properties of the area.

Criteria #12-

Yes, please see #11.

RECEIVED

DEC 30 2019

CITY OF AFTON

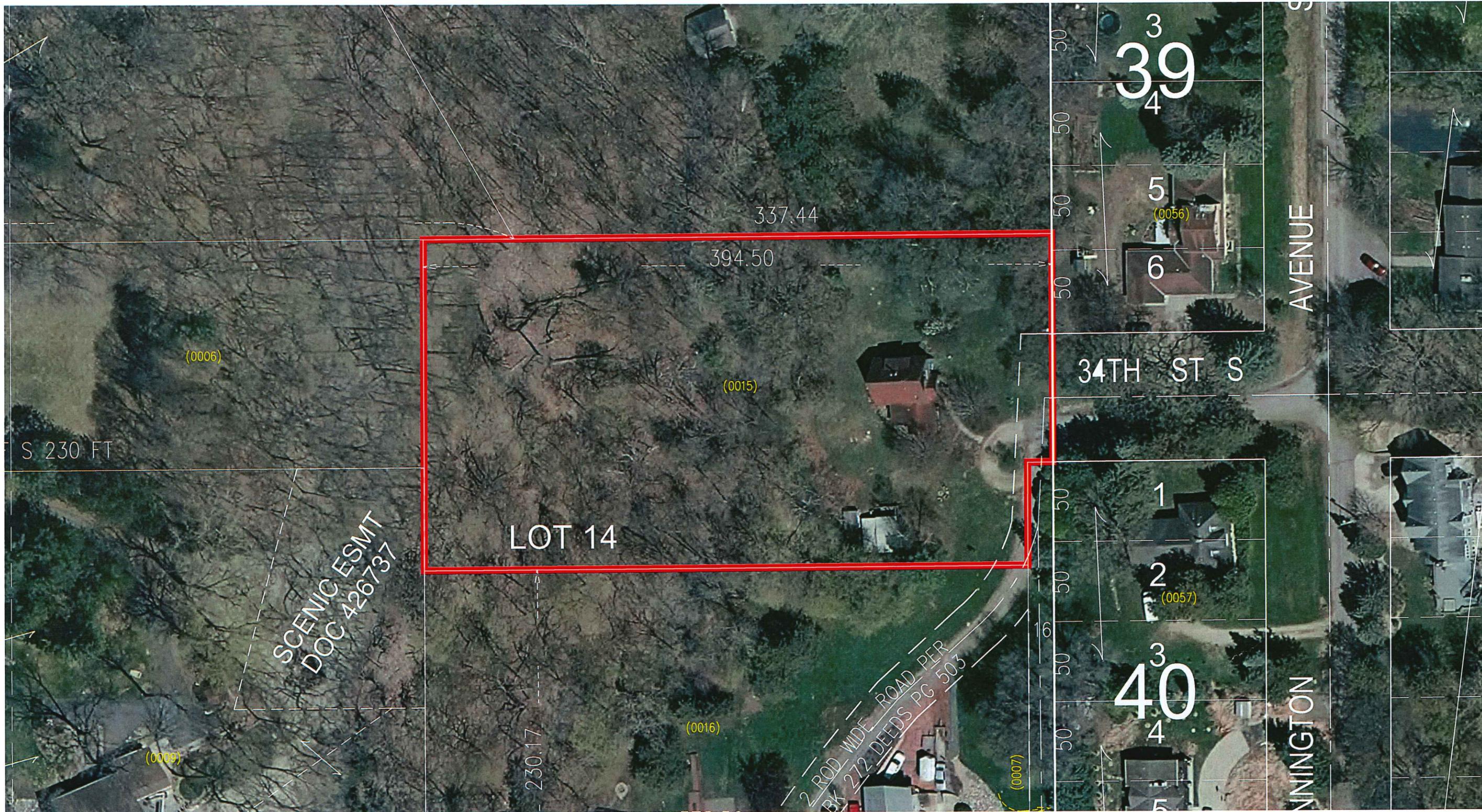
Z20-02

CITY OF AFTON

VARIANCE APPLICATION

(Reference Sections: 12-55, 12-77, 12-328 12-835, 12-1020, 12-1266, 12-1955, 12-2228)

Owner	Address	City	State	Zip	Phone
Lisa	Buck	Afton	MN	550	651-436-1860
Applicant (if different than owner)	Address	City	State	Zip	Phone
Project Address	AFTON		MN	55001	
15740 Upper 34th St S					
Zoning Classification	Existing Use of Property	PID# or Legal Description			
RR	Home	22.028.20.13.0015			
Please list the section(s) of the code from which the variance(s) are requested.					
12-132 (B) E. Setbacks					
Description of Request					
<small>Variance to build a garage at 20'-56" setback from non-conforming Upper 34th St S to avoid 14% slope, align with existing house, utilize flatest area of land and create a minimal disturbance to the topography of the hillside. * Please see site plan for clarity.</small>					
By signing this application, the applicant agrees to pay all expenses incurred by the City of Afton. In connection with this request, your signature constitutes permission for a representative of the City of Afton to enter your property, during business hours, to evaluate this request. This may involve minor excavating or soil borings. If you would like to be present during this evaluation, please contact the City.					
Signature of Owner/Applicant			Date		
Lisa L. [Signature]			12.30.19		
Make checks payable to: <b>City of Afton</b>					
If multiple variances are necessary from the applicant only <b>one</b> fee is required. However, the deposit fee must be multiplied by the number of variances sought.					
<b>FEES:</b>	<b>ESCROWS:</b>				
Variance	\$250	\$600	TOTAL:	\$850.00	
Renewal/Extension	\$250	\$350	DATE PAID:	\$850.00	
			CHECK #:	4194	
			RECVD BY:	[Signature] 12-30-19	



**Washington County**  
 PUBLIC WORKS DEPARTMENT  
 SURVEY DIVISION  
 11660 Myron Road North  
 Stillwater, Minnesota 55082  
 (651) 430-4300  
 publicworks@co.washington.mn.us  
 www.co.washington.mn.us/surveyor

**LEGEND**

- DNR PROTECTED WATERS
- DNR PROTECTED WETLAND
- DNR PROTECTED WATERCOURSE
- MUNICIPAL BOUNDARY
- PARK BOUNDARY



**NORTH**

SCALE: 1 inch = 60 feet

**SECTION-TOWNSHIP-RANGE INDEX**

1602820	1502820	1402820
2102820	2202820	2302820
2802820	2702820	2602820



\* = LOCATION OF THIS MAP

**SECTION VICINITY MAP**

22	21	12	11
NW	+	NE	
23	24	13	14
32	31	42	41
SW	+	SE	
33	34	43	44

**PROPERTY IDENTIFICATION NUMBER FORMAT (GEOCODE)**

SECTION NUMBER	TOWNSHIP NUMBER	RANGE NUMBER	QUARTER	SPECIFIC PARCEL
##	###	##	##	####
(0001)				LAST FOUR DIGITS OF PROPERTY IDENTIFICATION NUMBER

THIS DRAWING IS THE RESULT OF A COMPILATION AND REPRODUCTION OF LAND RECORDS AS THEY APPEAR IN VARIOUS WASHINGTON COUNTY OFFICES. WASHINGTON COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES.  
 PROPERTY LINES AS SHOWN ARE FOR REFERENCE PURPOSES AND MAY NOT REPRESENT ACTUAL LOCATIONS.  
 MAP LAST UPDATED: August 19, 2019  
 NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE  
 DATE OF CONTOURS: November, 2011 DATE OF PHOTOGRAPHY: April, 2019

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: February 3, 2020

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: January 29, 2020

Re: Five Oaks Family Farm Application for a Minor Subdivision and Variance at 120 and 502 Stagecoach Trail

Five Oaks Family Farm has applied for a Minor Subdivision and Variance at 120 and 502 Stagecoach Trail to subdivide the two existing parcels to create three parcels. The two existing parcels are 148 acres and 92 acres respectively, and each has an existing house. The proposed subdivision would create three parcels 1) 73 acres; 2) 28 acres; 3) 139 acres. The two smaller parcels are planned to remain residential parcels. The large parcel is planned to be donated to the Belwin Conservancy.

The property is zoned Rural Residential, as are the adjacent properties to the west and south. The properties to the east are zoned Agricultural. There is no access to a public road to the north, south or west. The only public road serving the property is Stagecoach Trail, which runs along the east boundary of the property. The Rural Residential zoning would allow the property to be subdivided to create a large number of 5-acre lots, through the construction of new public roads serving the lots from Stagecoach Trail.

### Surveys and Figures

Attached are surveys showing the existing parcels on the property and the proposed parcels. In addition, two figures were created to more simply show the before and after parcels. One figure includes the buildings and septic sites, the other shows only the property lines.

### Minimum Requirements

Each of the three proposed lots meets the following minimum requirements

1. Five acre lot size
2. 2.5 acres of contiguous buildable area
3. Suitable soils for septic systems
  - a. (Proposed Parcels 1 and 2 have existing compliant septic systems. Parcel 3 very likely has suitable soils for septic sites, but soil borings to confirm suitable soils will not be completed until the week of February 3)
4. The existing structures would continue to meet the required setbacks

### Minimum Requirement Not Met

The one requirement that is not met (by proposed Parcels 1 and 2) is 300 feet of frontage on a public road to provide direct access to the parcels. The existing parcels A and B both extend to Stagecoach Trail and are served by two existing driveways that access Stagecoach Trail. The proposed subdivision would continue the use of the two existing driveways to serve proposed Parcels 1 and 2. However, the proposed subdivision creates Parcel 3 as a large, contiguous parcel running north/south along the entire eastern portion of the existing property. The eastern boundary of this large parcel is Stagecoach Trail. The purpose of this lot layout is to provide one large contiguous parcel to be donated to the Belwin Conservancy. This layout does not provide frontage along, and direct access to, Stagecoach Trail for proposed Parcels 1 and 2.

If the subdivision was designed to provide direct access to Stagecoach trail for Parcels 1 and 2 by providing 300 feet of frontage on Stagecoach Trail to each of the lots, the configuration of all three of the proposed parcels would be substantially different and there could not be a lot resembling the proposed large contiguous parcel.

One option for providing 300 feet of frontage for Parcels 1 and 2 would require the parcels to be substantially larger to extend to Stagecoach trail, which would substantially reduce the size of Parcel 3. A similar alternative would be to extend Parcels 1 and 2 to Stagecoach Trail with 300 foot wide “flagpole” extensions to Stagecoach Trail, which would create irregularly-shaped lots and would also substantially reduce the size of Parcel 3.

Another option would be to construct a new public cul de sac street large enough to provide both Parcels 1 and 2 with 300 feet of frontage. This option would cause substantial new impacts to the property, would be difficult due to steep slopes, and would create a new public street for which the City would be responsible to provide on-going maintenance.

### **Variance Requested**

The applicant is requesting a variance to allow proposed Parcels 1 and 2 to be created without 300 feet of frontage on a public road to provide direct access to the parcels.

### **Access**

As indicated above, the existing parcels are both served by two existing driveways that access Stagecoach Trail. The proposed subdivision would continue the use of the two existing driveways to serve Parcels 1 and 2. The subdivision includes private driveway easements over the two existing driveways where they are located within the proposed Parcel 3.

### **Septic System Sites**

Parcels 1 and 2 each have compliant septic systems. The septic system for the main house was replaced in 1999. At that time, both a primary and secondary septic site were identified. The septic system for the guest house was replaced in 1998. Parcel 3 very likely has suitable soils for septic sites, but soil borings to confirm suitable soils will not be completed until the week of February 3. Additional soil testing, percolation tests and a septic design would be required before a septic permit could be granted for Parcel 3.

### **Park Dedication**

It is staff’s recommendation that, if Parcel 3 is donated to Belwin and no dwelling is built on the parcel, the park dedication fee should be waived. However, if Parcel 3 is not donated to Belwin within 24 months of the approval of the subdivision, the park dedication fee should be paid immediately upon the expiration of the 24 month period.

### **Drainage and Utility Easements**

The City Engineer has indicated that 10 foot wide drainage and utility easements are required along the perimeter of each parcel. These easements will need to be reflected in the subdivision survey, and dedication of drainage and utility easements as required by the City Engineer should be a condition of approval.

### **Scenic Easements**

The property to be subdivided includes areas of land with slopes of 18% or greater. To protect these areas with steep slopes, they are required to be placed into scenic easements as part of the subdivision process.

### **Findings**

The following are recommended findings. The Planning Commission may revise or add findings.

1. The subject property is located in the Rural Residential zone, as are the properties to the west and south. The property to the east is zoned Agricultural.
2. The Rural Residential zone allows residential use with five-acre minimum lot size.
3. The Rural Residential zoning would allow the property to be subdivided to create a large number of 5-acre lots, through the construction of new public roads serving the lots.
4. All lots in the subdivision meet the minimum five acre lot size
5. All lots meet the minimum 2.5 acres of contiguous buildable area
6. The property owner intends to donate Parcel 3 to Belwin
7. The property has sufficient frontage on Stagecoach Trail to provide at least 300 feet of frontage for three separate lots
8. Proposed Parcels 1 and 2 do not have 300 feet of frontage on a public road
9. There is no access from the subject property to a public road to the north, south or west. The only public road serving the 240-acre property is Stagecoach Trail, which runs along the east boundary of the property.
10. The property includes substantial areas of steep slopes
11. The two existing parcels are served by two existing driveways that provide access to Stagecoach Trail, and Parcels 1 and 2 are proposed to continue to be served by the same two driveways
12. Providing 300 feet of frontage for the three proposed lots would require extending Parcels 1 and 2 to Stagecoach Trail, which would substantially reduce the size of Parcel 3; or would require the construction of a cul de sac street from Stagecoach Trail to Parcels 1 and 2.

### **Conditions**

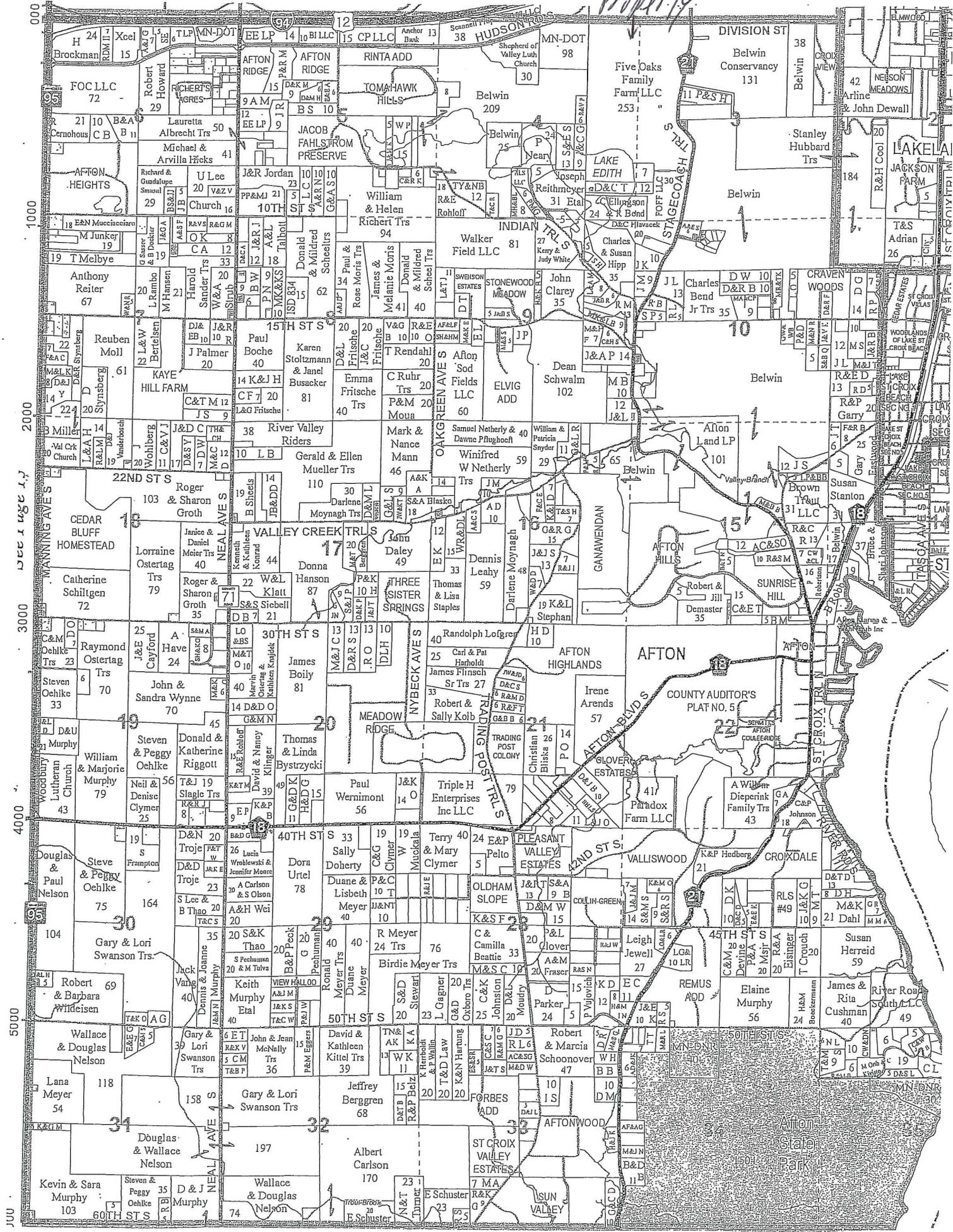
If the Planning Commission recommends approval of the subdivision application, it is recommended that the following conditions be placed on the approval, as well as additional conditions the Planning Commission may include.

1. Easements as required by the City Engineer, including private driveway easements and utility and drainage easements, shall be granted
2. All easements shall be subject to the review and approval of the City Engineer.
3. Scenic easements shall be placed on all slopes greater than 18%
4. The applicant shall execute a scenic easement agreement and shall record the scenic easement concurrent with the subdivision
5. If Parcel 3 is donated to Belwin and no dwelling is to be built on the parcel, the park dedication fee shall be waived. However, if Parcel 3 is not donated to Belwin within 24 months of the approval of the subdivision, the park dedication fee shall be paid immediately upon the expiration of the 24 month period.
6. Any new driveway(s) to serve Parcel 3 shall comply with Section 12-84 of the Zoning Ordinance and be subject to review and approval by the City Engineer.

### **Planning Commission Direction Requested:**

Motion regarding a recommendation concerning the Five Oaks Family Farm Minor Subdivision and Variance application at 120 and 502 Stagecoach Trail, including findings, and conditions if applicable.

subject property

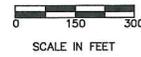


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H 24 Xcel  
FOCLLC 72  
AFTON RIDGE  
RINTAADD  
TOMAHAWK HILLS  
Belwin 209  
LAKE EDITH  
INDIAN TRAILS  
Walker Field LLC 81  
Stonewood Meadow  
Afton Sod Fields LLC  
ELVIG ADD  
Belwin  
Afton Land LP  
Belwin  
Afton Hills  
SUNRISE HILL  
AFTON HIGHLANDS  
AFTON  
COUNTY AUDITOR'S PLAT NO. 5  
Afton Highlands  
VALLISWOOD  
CROIXDALE  
REBUS ADD  
Afton State Park

# FIVE OAKS FAMILY FARM

CITY OF AFTON, WASHINGTON COUNTY MINNESOTA



W1/2 SECTION 3 & E1/2 SECTION 4, T28N, R20W



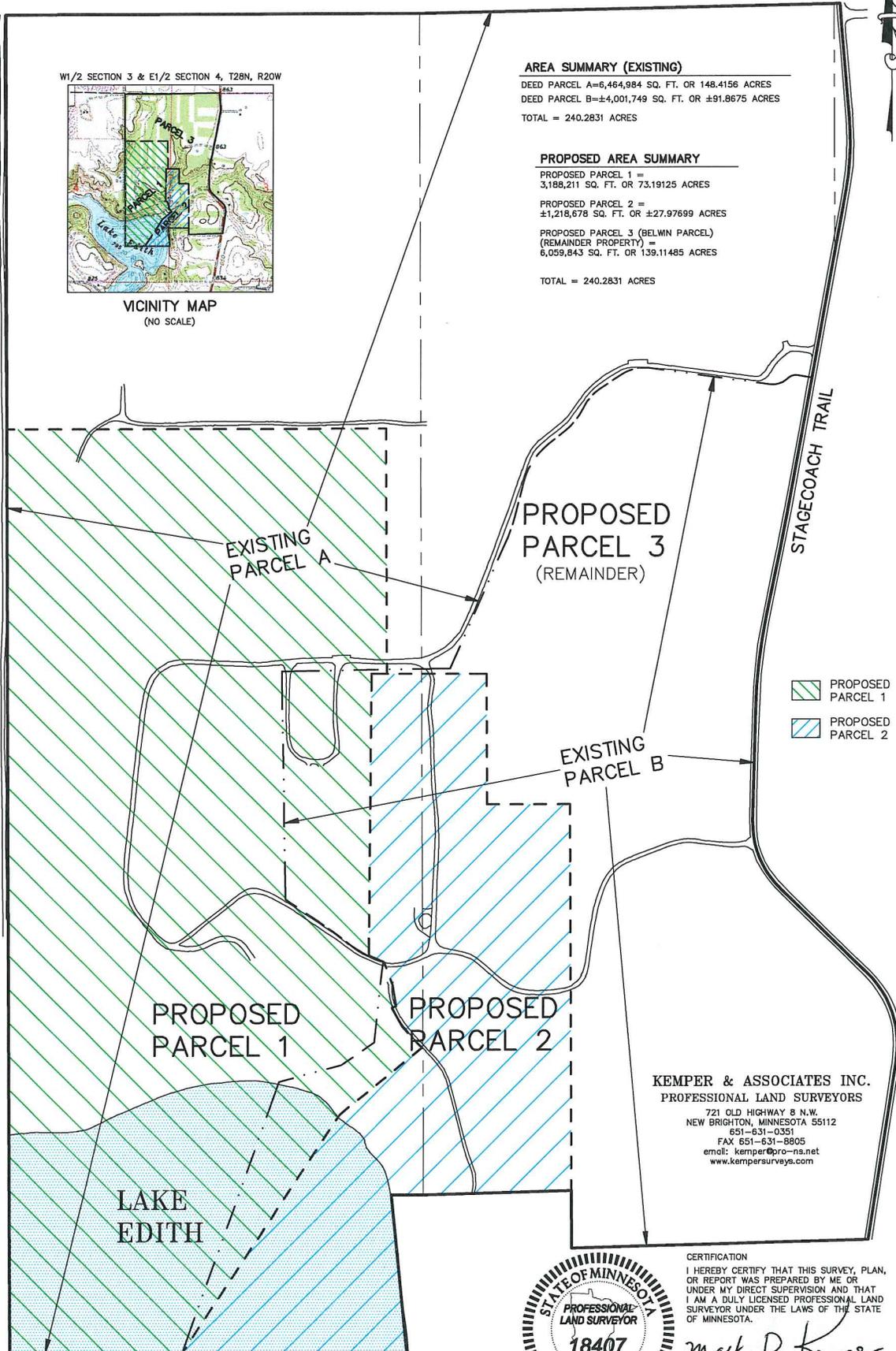
VICINITY MAP  
(NO SCALE)

### AREA SUMMARY (EXISTING)

DEED PARCEL A=6,464,984 SQ. FT. OR 148.4156 ACRES  
DEED PARCEL B=±4,001,749 SQ. FT. OR ±91.8675 ACRES  
TOTAL = 240.2831 ACRES

### PROPOSED AREA SUMMARY

PROPOSED PARCEL 1 =  
3,168,211 SQ. FT. OR 73.19125 ACRES  
PROPOSED PARCEL 2 =  
±1,218,678 SQ. FT. OR ±27.97699 ACRES  
PROPOSED PARCEL 3 (BELWIN PARCEL)  
(REMAINDER PROPERTY) =  
6,059,843 SQ. FT. OR 139.11485 ACRES  
TOTAL = 240.2831 ACRES



KEMPER & ASSOCIATES INC.  
PROFESSIONAL LAND SURVEYORS

721 OLD HIGHWAY 8 N.W.  
NEW BRIGHTON, MINNESOTA 55112  
651-631-0351  
FAX 651-631-8805  
email: kemper@pro-ns.net  
www.kempersurveys.com



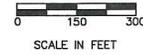
CERTIFICATION  
I HEREBY CERTIFY THAT THIS SURVEY, PLAN,  
OR REPORT WAS PREPARED BY ME OR  
UNDER MY DIRECT SUPERVISION AND THAT  
I AM A DULY LICENSED PROFESSIONAL LAND  
SURVEYOR UNDER THE LAWS OF THE STATE  
OF MINNESOTA.

*Mark D. Kemper*  
MARK D. KEMPER, PLS 18407

DATED THIS 15TH DAY OF JANUARY, 2020

# FIVE OAKS FAMILY FARM

CITY OF AFTON, WASHINGTON COUNTY MINNESOTA



DIVISION STREET

W1/2 SECTION 3 & E1/2 SECTION 4, T28N, R20W



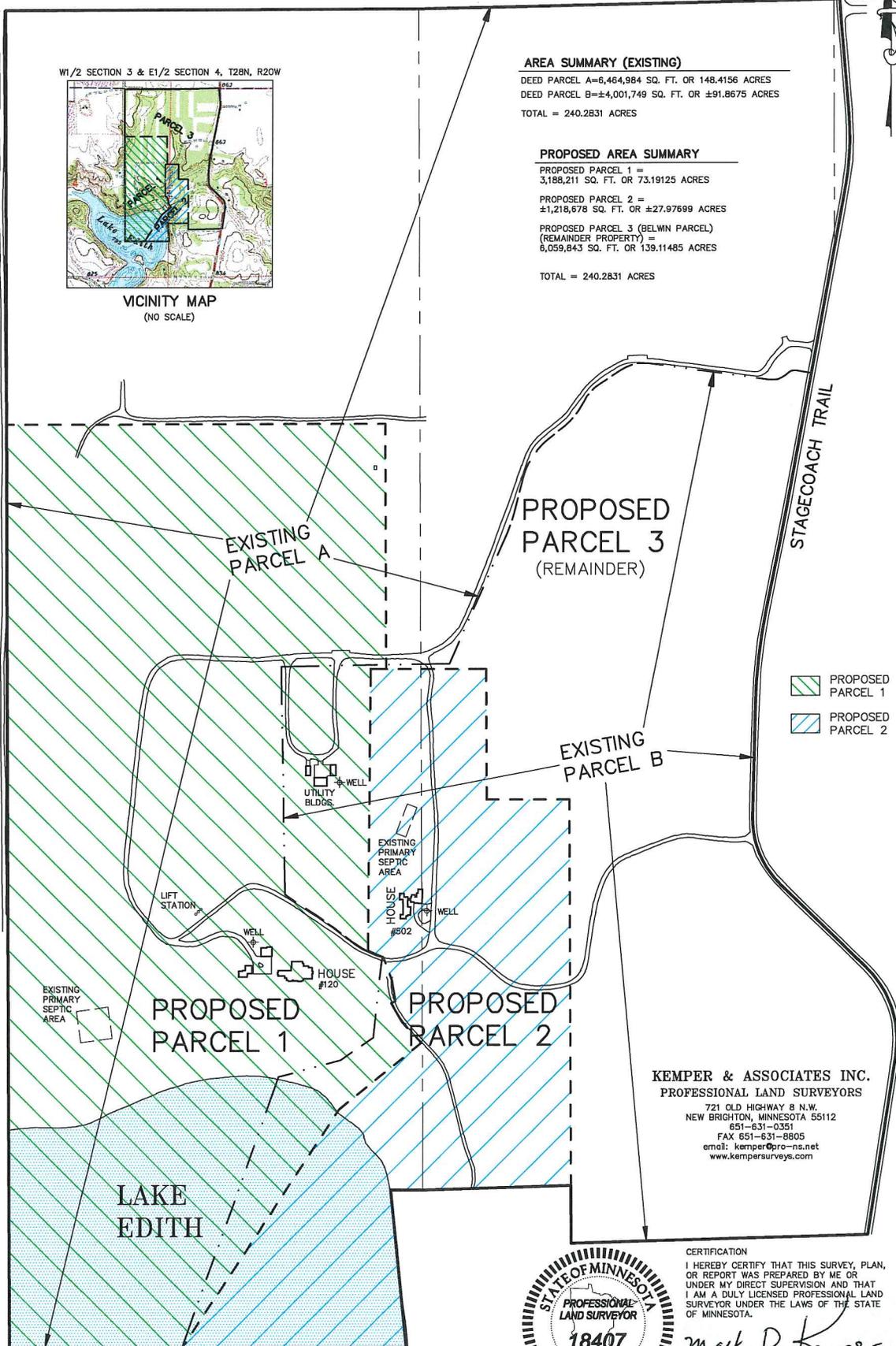
VICINITY MAP  
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 PROPOSED PARCEL 3 (REMAINDER)  
 (REMAINDER PROPERTY) =  
 6,059,843 SQ. FT. OR 139.11485 ACRES  
 TOTAL = 240.2831 ACRES



- PROPOSED PARCEL 1
- PROPOSED PARCEL 2

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CERTIFICATION  
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 OR REPORT WAS PREPARED BY ME OR  
 UNDER MY DIRECT SUPERVISION AND THAT  
 I AM A DULY LICENSED PROFESSIONAL LAND  
 SURVEYOR UNDER THE LAWS OF THE STATE  
 OF MINNESOTA.

*Mark D. Kemper*  
 MARK D. KEMPER, PLS 18407

DATED THIS 15TH DAY OF JANUARY, 2020

City of Afton, Minnesota [VARIANCE QUESTIONNAIRE]

Applicant(s): Five Oaks Family Farm LLC  
Phone: (612) 965-4411  
Mail Address: 220 South Sixth Street, #2200, Minneapolis, MN 55402  
Property Address for variance: 120 & 502 Stagecoach Trail South, Afton, MN 55001

Variance request description: Variance from 300 foot public road frontage requirement

City Ordinance Section number(s), that variance is requested for: Afton City Code 12-132 (A)

Answer the following questions to the best of your ability – based on the criteria found in section 12-77 of Afton’s Code (Land Use, Appeals and Variances). Completing this questionnaire will help the Planning Commission and the City of Afton evaluate your application in light of the requirements of Afton’s Variance Ordinance. It does not guarantee that your variance request will be approved. If needed use a separate page.

Background: This questionnaire is designed to help you and City of Afton determine whether a variance should be granted. Please consult with the City Administrator who can help you with your variance application and explain the Variance Ordinance to you. The City Administrator will work with you to ensure that the variance you request is the minimum variance required to provide the same rights commonly enjoyed by other properties in the same zoning district. Because of special provisions for certain types of construction, the City Administrator will also determine whether the property is in the Flood Plain District. There are also special provisions for earth-sheltered construction.

**Criteria #1** *The requested use must be a reasonable use in order to receive a variance. Applicant – Please explain why the proposed use which requires a variance is a reasonable use for this property?*

**RESPONSE:** The proposed use of the property is to create two large lot rural residential lots and a larger parcel (the “Larger Parcel”). The Larger Parcel would be donated to Belwin Conservancy (“Belwin”), to be managed and used as essentially a nature preserve. These uses are reasonable and entirely consistent with the Rural Residential zoning classification of the property and will continue to preserve the property’s open space, natural resources, water resources, unique floral and forest resources, and wildlife.

The proposed subdivision would allow the creation of a large lot of nearly 140 acres (the “Larger Parcel”) that is intended to be donated to Belwin, which will preserve and enhance the property consistent with its past practices and core values of conservation of natural resources in a thoughtful and long-term manner. The attached map shows the Larger Parcel is surrounded by other properties owned by Belwin, which will allow it to be integrated into the uses and practices that Belwin follows on its other surrounding properties.

The owner of the property, Alida Messinger and David Hartwell, President of the Belwin Conservancy Board, have had extended and substantive discussions about the donation of the Larger Parcel, as well as Belwin holding a conservation easement over the two other lots. The property would be donated to Belwin without restrictions, but with the understanding that Belwin would use, manage, and preserve it according to its conservation-focused programs and experiences. Belwin has committed to maintain and continue the restoration work that Ms. Messinger has started. This would involve removing

the non-native vegetation and adding prairie and oak savannah species over the long term. Because the property was once a tree nursery, Belwin intends to preserve some of the unique species still growing there.

Ms. Messinger and Mr. Hartwell have also discussed Belwin's potential uses of the property, including environmental education programs, a bee lab or other environmental research programs, and a hiking trail system that would possibly connect with the other nearby Belwin properties. As it has done with its properties in Afton and surrounding areas, Belwin would use the property carefully, wisely, and effectively such that the citizens of Afton and the surrounding areas would be benefitted. In the long term, Belwin has committed to look to uses that fit its mission—inspiring the connection to the natural world

Belwin has agreed to hold the two conservation easements over the other two lots that will insure the residential property will never be more than the two lots with homes and appropriate outbuildings and facilities on them. Belwin has agreed to assume the obligation of enforcing the restrictions in the easements to insure the intent of keeping the land relatively undeveloped and as open space.

**Criteria #2** *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the property owner, since enactment of this Ordinance, have had no control.* **Applicant** – What exceptional or extraordinary circumstances related to the property do not apply generally to other properties in the same zone or vicinity? Extraordinary circumstances would include lot size, irregular lot shape or topography. Are there other circumstances over which you, as the property owner, have no control? Explain?

**RESPONSE:** This historic area was once a tree nursery with thousands of trees of many varieties and home to a wide variety of wildlife and plant life. The current owner has preserved and enhanced the property through preservation, conservation, and maintenance for over thirty years since she first purchased the property.

With a donation of the Larger Parcel to Belwin, which would hold conservation easements over the other two lots, the entire 240 acre property would be preserved, which would eliminate the possibility that a major housing development on the property might occur that would destroy its unique and irreplaceable characteristics. A future subdivision of the property would threaten its unique natural features and prohibit the donation and development and of the larger parcel for conservation and educational purposes.

**Criteria #3** *That literal interpretation of the provisions of this Ordinance would deprive the applicant of right commonly enjoyed by other properties in the same district under the terms of the Ordinance.* **Applicant** – How does the literal interpretation of the provisions of the Afton ordinance (From which you are requesting a variance) deprive you of rights commonly enjoyed by other properties in the same zoning district? Explain:

**RESPONSE:** The literal interpretation of the 300 foot road frontage requirement would prohibit the creation of the Larger Parcel that is intended to be donated to Belwin and would require the construction of an unnecessary public road that would require city resources to maintain and repair or undesirable flag lots. Other properties in the same district are not seeking to preserve their property in this unique manner, which includes a substantial gift of 140 acres to a nature preservation organization.

**Criteria #4** *The special conditions or circumstances do not result from actions of the applicant.*  
**Applicant** – How did these exceptional circumstances related to the property come about? Did actions by you create these circumstances? Explain:

**RESPONSE:** The exceptional circumstances came about several decades ago when the original tree nursery was created. The current owner bought that property and preserved and enhanced its special and unique features for over thirty years. The proximity to the Belwin Conservancy is important.

**Criteria #5** *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district.*  
**Applicant** – Will the granting of the requested variance confer on you, the applicant, any special privilege that is denied by this ordinance to owners of other lands, structures, or buildings in the same zoning district? Explain:

**RESPONSE:** Absolutely not. With the granting of the variance, the applicant will be free to donate the Larger Parcel to Belwin, a highly regarded guardian of the natural resources of Afton and the surrounding areas.

**Criteria #6** *The variance requested is the minimum variance which would alleviate the hardship.*  
**Applicant** – Is the variance you are requesting the minimum variance which would alleviate the practical difficulty or hardship for your property? Explain:

**RESPONSE:** The variance being requested is the minimum variance that would alleviate the practical difficulty or hardship for the property. The current location of the two homes and the creation of the Larger Parcel to be donated to Belwin leave no other alternative to the 300 foot public road frontage requirement. The only alternatives are to build a road through the property to be donated to Belwin or created “flag lots” with frontage on a public road. Either of those alternatives would use valuable land for minimal transportation and public safety needs. Additionally, creation of those alternatives might lead future owners to use them as grounds for further subdivision of the properties.

**Criteria #7** *The variance would not materially detrimental to the purposes of this Ordinance, or to property in the same zone.* **Applicant (Optional)** - Will the variance be materially detrimental to the purpose of this Ordinance, or to property in the same zone? How would the use of the property, if allowed by the variance, affect other properties in the vicinity? Explain:

**RESPONSE:** The variance will not be materially detrimental to the purposes of the Ordinance as already outlined in this response. The proposed use of the property would be quite beneficial to surrounding properties by avoiding future subdivision of the property that would substantially diminish the value and amenities of surrounding properties.

**Criteria #8** *Economic conditions or circumstances alone shall not be considered in the granting of a variance request if a reasonable use of the property exists under the terms of the ordinance.* **Applicant** – Is the requested variance for economic reasons? Explain:

**RESPONSE:** No. The main consideration is the charitable donation of a 140 acre parcel to Belwin. If the variance is not granted, the Larger Parcel will not be created and the potential donation will have to be reevaluated. Ultimately, the property's maximum value would be as a residential subdivision, which the applicant is willing to forego to preserve the property.

**Criteria #9** *In the Flood Plain District, no variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by state law.* **Applicant (Optional), PC** – Is the property in a Flood Plain District? No

**Criteria #10** *Variances shall be granted for earth-sheltered construction by state statutes when in harmony with this Ordinance.* **Applicant** - Is the Variance for earth-sheltered construction? No

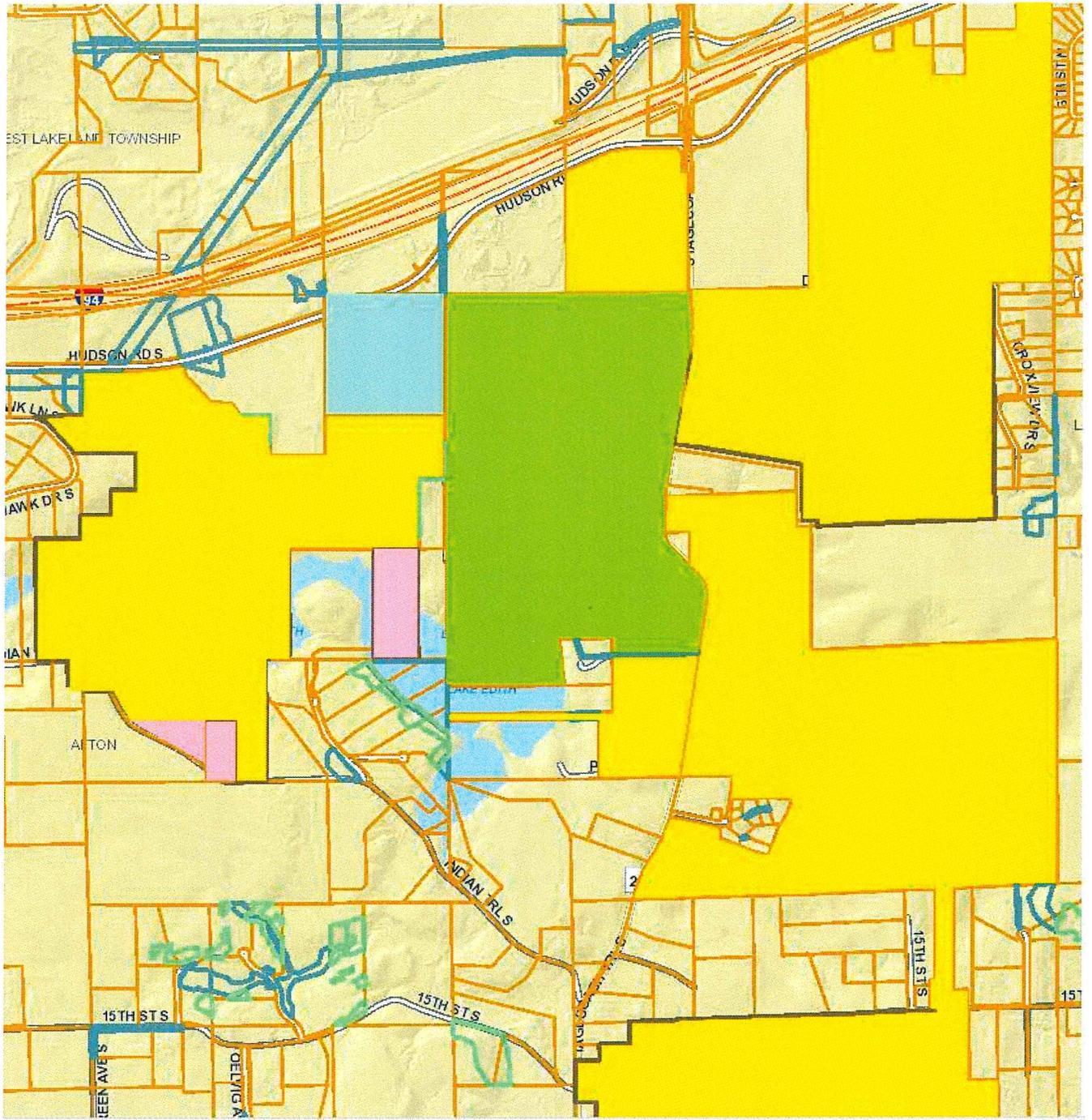
**ADDITIONAL CRITERIA THAT MAY BE CONSIDERED BY THE PLANNING COMMISSION (PC) AND/OR CITY COUNCIL (CC) – Applicant responses to criteria #11 and criteria #12 are optional.**

**Criteria #11** *Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton ordinances and code? How will this variance if granted (and the proposed use of the property allowed affect the essential character of the area? Explain:

**RESPONSE:** The granting of the variance is in unity and harmony with the Ordinance as it will enhance the essential character of the area by maintaining, preserving, and enhancing its open spaces, natural resources, water resources, wildlife, and plant life. The subdivision code seeks to advance those goals through its careful and thoughtful provisions. The road frontage requirement advances those goals by requiring adequate access for public safety purposes and preventing high density development. Here, however, the frontage requirement would have the opposite effect, if implemented. The requirement of 300 feet of road frontage for the two residential lots already served by adequate driveways would actually increase the density and not advance any other legitimate goal.

**Criteria #12** *Variances shall only be permitted when they are in harmony with the general purposes and intent of the Afton Comprehensive Plan.* **Applicant (Optional), PC** - Is the requested variance in harmony with the Afton Comprehensive Plan? Explain:

**RESPONSE:** Yes, the requested variance is in unity and harmony with the Afton Comprehensive Plan and its core values of preserving Afton's rural character, presence of active farms and agriculture, historic features, open spaces and fields, diverse wildlife, dispersed pattern of development, and ground and surface water resources. As discussed, the whole purpose of the variance is to allow the preservation of a 240 acre parcel and its rural character, historic features, open spaces and fields, diverse wildlife, dispersed pattern of development, and ground and surface water resources. This once-in-a-lifetime opportunity to preserve this unique parcel and protect it from more intense and destructive development fulfills every goal enunciated in the Afton Comprehensive Plan and will preserve it for future generations.



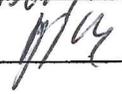
- 
Five Oaks Family Farm
- 
Belwin Conservancy
- 
Belwin Conservancy Conservation Easement
- 
State of MN gravel pit

## CITY OF AFTON VARIANCE APPLICATION

(Reference Sections: 12-55, 12-77, 12-328 12-835, 12-1020, 12-1266, 12-1955, 12-2228)

Owner	Address	City	State	Zip	Phone
Five Oaks Family Farm LLC	120 Stagecoach Trail South	Afton	MN	55001	612-373-8420
Applicant (if different than owner)	Address	City	State	Zip	Phone
Project Address					
120 Stagecoach Trail South; 502 Stagecoach Trail South		AFTON	MN	55001	
Zoning Classification	Existing Use of Property	PID# or Legal Description			
Rural Residential (R)	Rural Residential	04-028-20-11-0002; 03-28-20-32-0004			
Please list the section(s) of the code from which the variance(s) are requested.					
Afton City Code 12-132 (A)					
Description of Request					
Owner is seeking a variance from the 300 foot road frontage requirement to allow a subdivision that will create three parcels, including a 139 acre parcel that will allow it to be better conserved, restored, and used for conservation purposes.					
By signing this application, the applicant agrees to pay all expenses incurred by the City of Afton. In connection with this request, your signature constitutes permission for a representative of the City of Afton to enter your property, during business hours, to evaluate this request. This may involve minor excavating or soil borings. If you would like to be present during this evaluation, please contact the City.					
<u>Alida Messinger</u> Signature of Owner/Applicant			<u>1/23/20</u> Date		
Make checks payable to: <b>City of Afton</b>					
If multiple variances are necessary from the applicant only <u>one</u> fee is required. However, the deposit fee must be multiplied by the number of variances sought.					
<b><u>FEES:</u></b>		<b><u>ESCROWS:</u></b>			
Variance	\$250	\$600	TOTAL: \$750.00		
Renewal/Extension	\$250	\$350	DATE PAID: 1-17-2020		
			CHECK #: 195614, 195615		
			RECVD BY: <u>                    </u>		

**CITY OF AFTON  
MINOR SUBDIVISION PERMIT APPLICATION**

<b>Owner</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Phone</b>
Five Oaks Family Farm LLC	120 Stage Coach Trail South	Afton	MN	55001	612-373-8420
<b>Applicant</b> (if different than owner)	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Phone</b>
<b>Project Address</b>					
120 Stagecoach Trail South; 520 Stagecoach Trail South		AFTON	MN	55001	
<b>Zoning Classification</b>	<b>Existing Use of Property</b>	<b>PID# or Legal Description</b>			
Rural Residential (R)	Rural Residential	04-028-20-11-0002; 03-28-20-32-0004			
<b>Description of Request</b>					
Subdivide two parcels into three: 1 (73.19125 a.); 2 (27.97699 a.); 3 (139.11485 a.)					
<p>By signing this application, the applicant agrees to pay all expenses incurred by the City of Afton. In connection with this request, your signature constitutes permission for a representative of the City of Afton to enter your property, during business hours, to evaluate this request. This may involve minor excavating or soil borings. If you would like to be present during this evaluation, please contact the City.</p>					
 Signature of Owner/Applicant				 Date	
Make checks payable to City of Afton:					
<b><u>FEES:</u></b>		<b><u>Escrow:</u></b>			
Minor Subdivision	\$250.00	Minor Subdivision	\$1,500.00	TOTAL:	\$1,750.00
				DATE PAID:	1-17-2020
				CHECK #:	195616
				RECVD. BY:	
<b>ATTACH COPY OF DEED OR PROOF OF OWNERSHIP TO APPLICATION</b>					







**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: February 3, 2020

To: Chair Kopitzke and members of the Planning Commission  
 From: Ron Moorse, City Administrator  
 Date: January 28, 2020  
 Re: Ken and Heidi Brooks Variance Application at 14186 Valley Creek Trail

Ken and Heidi Brooks have submitted a variance application to enable the existing house and detached garage on the property at 14186 Valley Creek to be replaced with a new house with an attached garage in a similar location. The existing house is located in a narrow area between Valley Creek and Valley Creek Road. The required setbacks to Valley Creek and to Valley Creek Trail overlap, leaving no area for a house that can meet the required setbacks.

The Brooks parcel is irregularly shaped, partially due to the adjacent property to the east extending north to a point near the existing house and garages, and well within the setback of Valley Creek, which substantially limits the buildable area of the Brooks parcel. The adjacent property to the east is a part of a much larger parcel that is located on the south side of Valley Creek Trail and has been developed with one house. The portion north of Valley Creek Trail is approximately 3.5 acres. Because it is not currently a separate parcel, and is significantly less than the 5-acre minimum lot size, it would be difficult to subdivide this property from the larger parcel to create a buildable lot. The Brooks have offered to purchase the adjacent property, but the owner is not interested in selling.

The Brooks parcel is zoned Rural Residential, as are the surrounding properties.

### Required, Existing and Proposed Setbacks

#### Required Setbacks

- The required setback from Valley Creek is 200 feet
- The required setback from the centerline of Valley Creek Trail is 105 feet.
- The required side yard setback is 50 feet.
- The required sideyard setback for the driveway is 10 feet

#### Existing Structure Setbacks vs. Proposed Structure Setbacks

The two attached site plans show the setbacks of all structures on the property. An outline of existing and proposed structure setbacks, including variances required, is as follows:

<u>Structure</u>	<u>Valley Creek Setback</u>	<u>Valley Creek Trail Setback</u>	<u>Side Yard Setback</u>
Existing House	61.2 feet	74.3 feet	74.3 feet
Degree of Noncompliance	138.8 feet	30.7 feet	Compliant
Proposed House	62.2 feet	74.3 feet	18.9 feet
Variances Required	137.8 feet	30.7 feet	31.1 feet
Existing Detached Garage	58.9 feet	135 feet	38.1 feet
Degree of Noncompliance	141.1 feet	Compliant	11.9 feet

Proposed Attached Garage	91 feet	92 feet	18.9 feet
VariANCES Required	109 feet	13 feet	31.1 feet
Existing driveway	NA	NA	0 feet
Proposed driveway	NA	NA	0 feet
Existing single stall garage	109 feet	93 feet	12.5 feet
Existing Gazebo	27.1 feet	NA	50+ feet
Existing Patio for Gazebo	17.8 feet	NA	50+ feet

Both the existing gazebo/patio and the existing single stall garage are proposed to remain as-is.

**VariANCES Requested**

The proposal would result in a house located one foot farther from Valley Creek than the existing house, and the same distance from Valley Creek Trail as the existing house. The attached garage portion of the house would be located 91 feet from Valley Creek vs. the 58.9 foot setback of the existing detached double garage. The attached garage portion of the house would be located 18.9 feet from the side property line vs. the 38.1 foot setback of the existing detached double garage.

The northern portion of the existing driveway that runs back to the existing detached double garage is located 2 feet from the side property line vs. the required 10 feet. This portion of the driveway is to be removed. The southern portion of the driveway is located at an angle to the adjacent property to the east such that a small portion of the driveway crosses the property line 5.5 feet north of the public street right-of-way. The applicant would prefer not to reconstruct the driveway connection to Valley Creek Trail. Staff recommends that, at minimum, the portion of the driveway located on the adjacent property north of the street right-of-way line be removed.

The proposal requires the following variANCES:

- A 31.1 foot variance to the side yard setback to allow the attached garage portion of the house to be located 18.9 feet from the side property line vs. the required 50 foot setback
- A 137.8 foot variance to the setback to Valley Creek to allow a 62.2 foot setback vs. the required 200 foot setback
- A 30.7 foot variance to the setback to Valley Creek Trail to allow a setback of 74.3 feet vs. the required 105 foot setback
- A 10 foot variance to the sideyard setback to allow a portion of the driveway to be located at the property line.

**Findings**

The following are recommended findings. The Planning Commission may revise or add findings.

1. The subject property is located in the Rural Residential zone, as are all surrounding properties.
2. The property contains several existing structures, including a house and detached double garage, all of which have nonconforming setbacks.
3. The required setbacks to Valley Creek and to Valley Creek Trail overlap, leaving no area for a house that can meet the required setbacks.
4. The proposal would eliminate a detached double garage with a setback from Valley Creek of 58.9 feet, in favor of an attached double garage with a setback from Valley Creek of 91 feet.
5. The proposal would retain an existing gazebo and patio with setbacks of 27.1 feet and 17.8 feet respectively from Valley Creek.
6. The proposal would retain an existing detached single stall garage with a side yard setback of 12.5 feet.

7. The proposal would remove the northern portion of the driveway that is located 2 feet from the side property line.
8. The Brooks parcel is irregularly shaped, partially due to the adjacent property to the east extending north to a point near the existing house and garages, and well within the setback of Valley Creek, which substantially limits the buildable area of the parcel.

**Conditions**

If the Planning Commission recommends approval of the variance application, it is recommended that the following conditions be placed on the approval, as well as additional conditions the Planning Commission may include.

1. The house shall be constructed according to the plans submitted with the variance application, except as the plans may be revised by the Council or as revisions of plans may be approved by the Council.
2. All grading, drainage and erosion control issues shall be subject to review and approval by the City Engineer, and by the Valley Branch Watershed District if they meet permit thresholds.
3. The existing detached garage shall be removed from the property prior to issuance of the building permit for the house.
4. The portion of the driveway located on the property to the east, north of the street right-of-way line, shall be removed.

**Planning Commission Direction Requested:**

Motion regarding a recommendation concerning the Ken and Heidi Brooks variance application at 14186 Valley Creek Trail, including findings, and conditions if applicable.

***ADDITIONAL CRITERIA THAT MAY BE CONSIDERED BY THE PLANNING COMMISSION (PC) AND/OR CITY COUNCIL(CC)- Applicant responses to criteria #11 and criteria #12 are optional.***

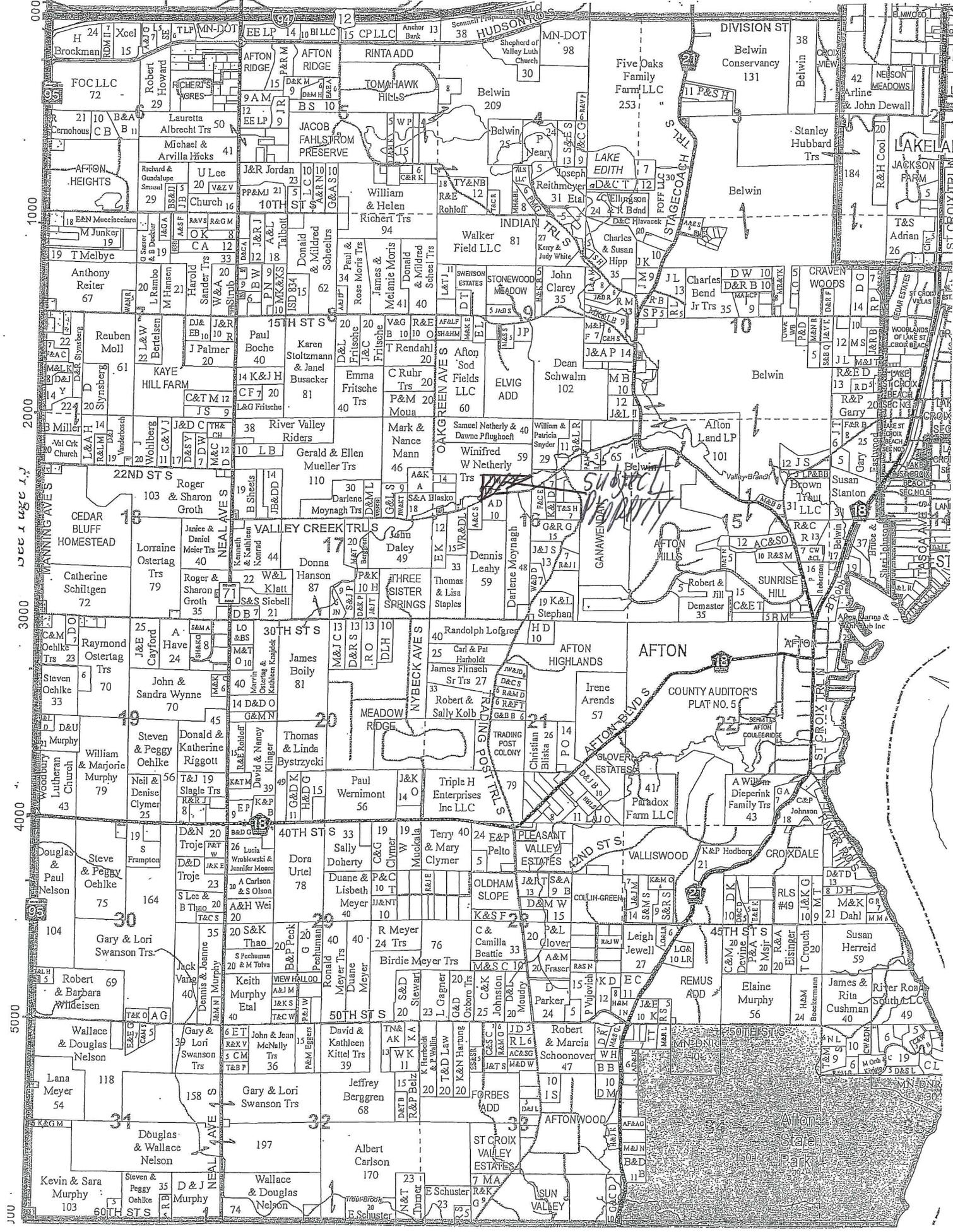
**Criteria #11** *Variations shall only be permitted when they are in harmony with the general purposes and intent of the ordinance. Applicant (Optional), PC* - Is the requested variance in harmony with the Afton ordinances and code? How will this variance if granted (and the proposed use of the property allowed) affect the essential character of the area?

Explain: We are requesting variances to help us make this property less non-conforming than it currently is by moving the west and north ends of the existing structure as well as the garage farther away from the creek while remaining within 60% of the setback from the centerline of the road. The structure that we are proposing will be sided with maintenance free siding in natural colors that will demonstrate the charm and character of a home located on a stream and accentuate the beauty of this property and neighborhood.

**Criteria #12** *Variations shall only be permitted when they are in harmony with the general purposes and intent of the Afton Comprehensive Plan. Applicant (Optional), PC* - Is the requested variance in harmony with the Afton comprehensive plan?

Explain: The requested variance will allow us to transform this property into one that will be in harmony with the Afton comprehensive plan. We have lived on 4.8 wooded acres in West Lakeland Township for the last 28 years and extremely value and enjoy the rural lifestyle it has offered. Our intent is to develop this property in a way that would allow us to continue to enjoy the rural, low-density lifestyle that Afton offers. Our goal is to leave this property as natural as possible while improving it by removing the invasive buckthorn and replacing it with native plants outlined in the DNR's Native Plant Encyclopedia as well as cleaning up the shoreline and planting native, aquatic plants to secure the shoreline in accordance with the DNR's recommendations/guidance. We are planning geothermal heating/cooling, and we are currently researching different options to manage rainwater runoff from the structure such as rain gardens, first flush diverters, rain harvesting systems, etc. Ultimately, our plan is to protect the natural beauty of this property and in keeping with the rural character of the area.





SEE PAGE 17

JUU

*Handwritten note:* SUBJECT PROPERTY

**AFTON**

**AFTON HIGHLANDS**

**MEADOW RIDGE**

**VALLEY CREEK TRLS**

**POPLAR BLVD**

**ST CROIX TRAIL**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**SUN VALLEY**

**PLAT NO. 5**

**PLEASANT VALLEY ESTATES**

**OLDHAM SLOPE**

**REBUS ADD**

**FORBES ADD**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**SUN VALLEY**

**AFTON**

**VALLEY WOOD**

**CROIXDALE**

**REBUS ADD**

**FORBES ADD**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**SUN VALLEY**

**AFTON**

**VALLEY WOOD**

**CROIXDALE**

**REBUS ADD**

**FORBES ADD**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**ST CROIX VALLEY ESTATES**

**SUN VALLEY**

January 3, 2020

Afton Planning Commission/City Council  
Afton, MN 55110

Re: Variance Request for Property Located at 14186 Valley Creek Trail South, Afton, MN 55001

**Written Statement Explaining Requested Use of the Property**

This property currently is zoned as RR and contains a single-family home with a detached two-car garage, second detached garage, and a gazebo with deck. The existing home on the property was constructed in three parts as we understand it—part one was placed on the property in the late 1800's and was a train car; part two was a cabin that was constructed and attached to the train car in the early 1900's; and part three was a one and half story construction add in the 1940's. The home is a non-conforming structure as it does not meet current code setbacks from the stream and/or centerline of road.

Upon purchase of this property, we had a structural engineer inspect the home, and found that building materials and electrical are not in current code and in some cases not safe. The inspector found a structural support beam in the cellar cut and not supporting the home, electrical is not grounded, etc. The inspector also found the foundation to be unstable and unable to support renovations within the existing footprint which is why we are requesting these variances, so we can demolish and build a home that structurally safe and built to current building code.

We are proposing the same use of the property RR with a single-family home. We would like to remove the existing home and detached two-car garage, and build a new home with attached two-car garage that would be farther from the stream on the west and north. While this would not make the property a conforming property, it would be less non-conforming than the current property with materials that would be in keeping with the aesthetic feel and character of the area—stone and fiber cement or composite siding that looks like wood in natural colors.

The only impact to adjacent properties that we have identified is the need for a variance from 50' to 18'10" to the property line. The existing driveway runs directly adjacent to this property line, and the plan that we are proposing will add greater distance between the driveway and the property vs. the existing condition. Overall, we believe this plan is less infringing on the adjacent property line and while we are taking measures to be less infringing on the adjacent property, not much more is necessary as the adjacent property is a little over 3 acres and is the only section of the adjacent property located on the north side of Valley Creek Trail South. The remainder of the lot and the lot owners' home is located on the 40-acre section of their lot located on the south side of Valley Creek Trail South, and, therefore, should not have too negative of impact on the adjacent property.

Applicant(s): Ken & Heidi Brooks  
Phone: 651-260-0359  
Mailing Address: 1599 Park Ave N, Stillwater, MN 55082  
Property Address for variance: 14186 Valley Creek Trail S, Afton, MN 55001

Variance request description: This request is for three (3) set-back variances—one from the Valley Creek, one from the center of the road, and one from the property line

City Ordinance Section number(s), that variance is requested for: 12.132 and 12.402

Answer the following questions to the best of your ability - based on the criteria found in section 12-77 of Afton's Code (Land Use, Appeals and Variances). Completing this questionnaire will help the Planning Commission and the City of Afton evaluate your application in light of the requirements of Afton's Variance Ordinance. It does not guarantee that your variance request will be approved. If needed use a separate page.

Background: This questionnaire is designed to help you and the City of Afton determine whether a variance should be granted. Please consult with the City Administrator who can help you with your variance application and explain the Variance Ordinance to you. The City Administrator will work with you to ensure that the variance you request is the minimum variance required to provide the same rights commonly enjoyed by other properties in the same zoning district. Because of special provisions for certain types of construction, the City Administrator will also determine whether the property is in the Flood Plain District. There are also special provisions for earth-sheltered construction.

**Criteria #1** *The requested use, must be a reasonable use in order to receive a variance. Applicant - Please explain why the proposed use which requires a variance is a reasonable use for this property?*

N/A – property is zoned RR, and we are not requesting a variance for a different reasonable use other than RR – single family home.

**Criteria #2** *Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size, shape, topography, or other circumstances over which the property owner, since enactment of this Ordinance, have had no control. Applicant - What exceptional or extraordinary circumstances related to the property do not apply generally to other properties in the same zone or vicinity? Extraordinary circumstances would include lot size, irregular lot shape or topography. Are there other circumstances over which you, as the property owner, have no control?*

Explain? This property is located on Valley Creek and the existing living structure does not meet the current setbacks outlined by current Afton Code from the creek, center of the road, and/or the adjacent property line. We have no control over any of these items.

**Criteria #3** *That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.*

**Applicant** - How does the literal interpretation of the provisions of the Afton ordinance (from which you are requesting a variance) deprive you of rights commonly enjoyed by other properties in the same zoning district? Explain: Other properties in this zoning district are non-conforming properties and they able to reside safely in the living structures located on their properties. If we abide by the literal interpretation of the provisions of this Ordinance, we would have to reside in a residence with an unstable foundation.

**Criteria #4** *The special conditions or circumstances do not result from actions of the applicant.* **Applicant**

- How did these exceptional circumstances related to the property come about? Did actions by you create these circumstances? Explain:

Existing Structure:

- As we understand it, the existing living structure was built in three segments beginning in the late 1800's with a train car that was roofed and sided; then in the early 1900's a cabin addition was attached to the train car; and finally in the 1940's the final section of the house was added on. When we purchased the property, we had an engineer inspect the living structure, and it was determined that the existing foundation is unstable which would require us to remove the current living structure and replace it with a safe foundation and structure.
- Wiring in the existing living structure is not grounded and up to current electrical code.
- Building materials of first two structures are not built to current building code standards.

We did not take any actions to create these circumstances.

**Criteria #5** *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district.*

**Applicant** - Will the granting of the requested variance confer on you, the applicant, any special privilege that is denied by this ordinance to owners of other lands, structures, or buildings in the same zoning district? Explain: Not that we are aware of.

**Criteria #6** *The variance requested is the minimum variance which would alleviate the hardship.*

**Applicant** - Is the variance you are requesting the minimum variance which would alleviate the practical difficulty or hardship for your property? Explain: The only way that we could minimize the variance being requested would be to remove the existing living structure and rebuild in the same footprint. By requesting this variance, however, we are reducing the overall structural footprint of the property by moving the west and north ends of the proposed structure as well as the garage farther from the creek. We believe that the variance requested is the minimum variance that would alleviate the practical difficulty or hardship for this property.

**Criteria #7** *The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the same zone.* **Applicant (Optional)** - Will the variance be materially detrimental to the purposes of this Ordinance, or to property in the same zone? How would the use of the property, if

allowed by the variance, affect other properties in the vicinity? Explain: We do not think this variance will be materially detrimental to the purposes of this ordinance. We believe that the variances we are requesting will allow us to create a more conforming and visually appealing property as given the available building site location to the creek, center of the road and adjacent property will not allow for a completely conforming property to current Afton code. This property will be used as a single-family home with two-car garage and will not affect any other properties in the vicinity as the existing living structure is a single-family home with a detached two-car garage.

**Criteria #8** *Economic conditions or circumstances alone shall not be considered in the granting of a variance request if a reasonable use of the property exists under the terms of the ordinance.* **Applicant -** Is the requested variance for economic reasons?

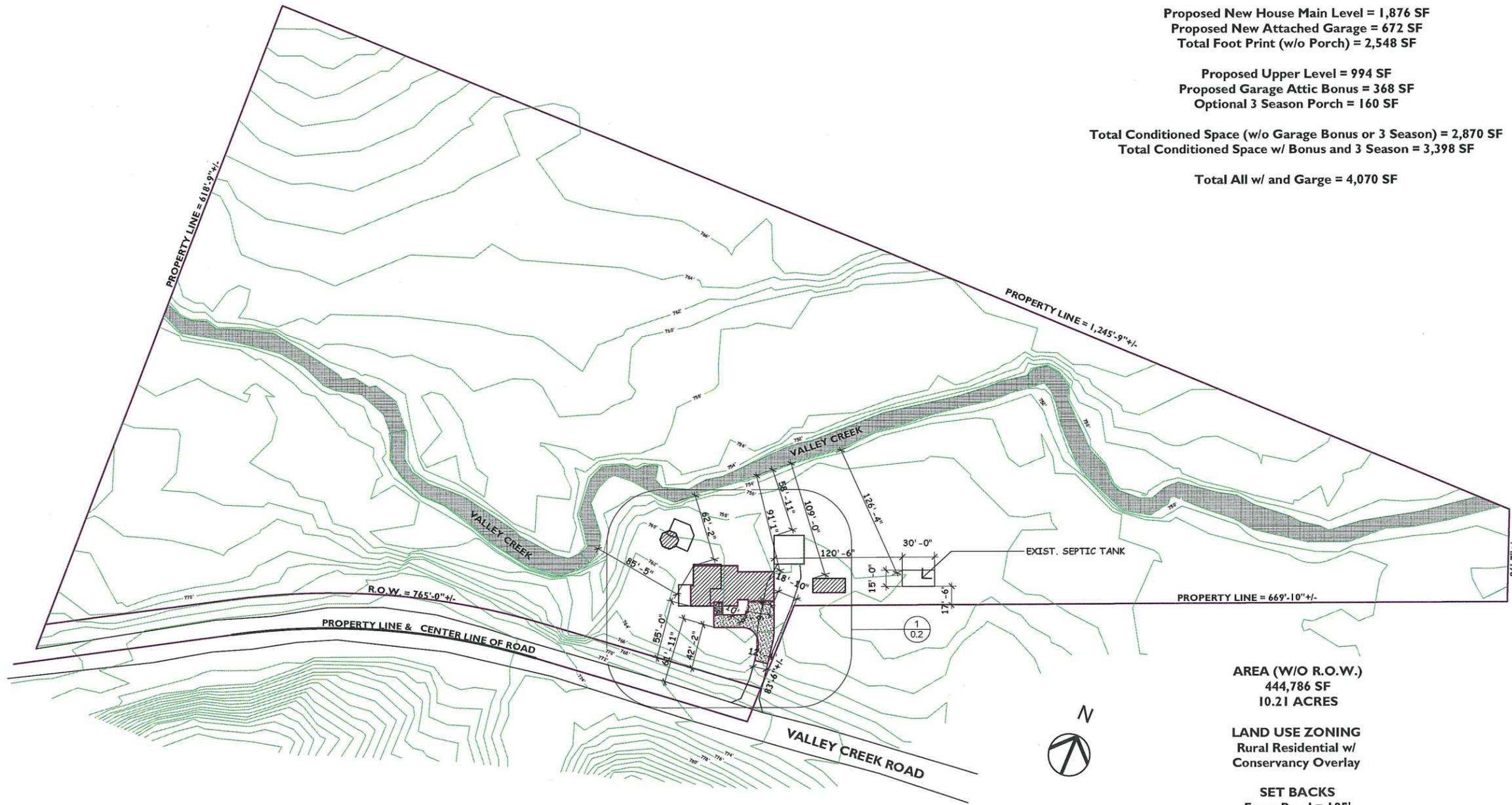
Explain: Variance is not for economic reasons.

**Criteria #9** *In the Flood Plain District, no variance shall be granted which permits a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permits standards lower than those required by state law.* **Applicant (optional), PC -** Is the property in a Flood Plain District?  Yes  No

Yes, a portion of this is property located in the Flood Plain District; however, both the existing and proposed building structure are not located in the FEMA, 100 year, 500 year Flood Plan according to John P. Hanson, PE, ENV SP; Valley Branch Watershed District Engineer; Barr Engineering.

**Criteria #10** *Variations shall be granted for earth-sheltered construction by state statutes when in harmony with this Ordinance.* **Applicant -** Is the variance for earth-sheltered construction?  Yes  No

SCALE INDICATED BASED UPON PRINTED 24" X 36" (ARCHITECTURAL D) SHEET.



Proposed New House Main Level = 1,876 SF  
 Proposed New Attached Garage = 672 SF  
 Total Foot Print (w/o Porch) = 2,548 SF

Proposed Upper Level = 994 SF  
 Proposed Garage Attic Bonus = 368 SF  
 Optional 3 Season Porch = 160 SF

Total Conditioned Space (w/o Garage Bonus or 3 Season) = 2,870 SF  
 Total Conditioned Space w/ Bonus and 3 Season = 3,398 SF

Total All w/ and Garge = 4,070 SF

AREA (W/O R.O.W.)  
 444,786 SF  
 10.21 ACRES

LAND USE ZONING  
 Rural Residential w/  
 Conservancy Overlay

SET BACKS  
 From Road = 105'  
 Rear = 50'  
 Interior (side) = 50'  
 Structures Unsewered from Creek = 200'

BUILDING HEIGHT  
 Max Allowable = 35'



4918 S. Tri Oak Circle NE  
 East Bethel, MN 55092  
 Phone  
 651-245-2346

Email  
 mjtallc2520@gmail.com

Web  
 mkhadjthomasarchitect.com

Project No:  
 19004

Date Last Revised:  
 10-27-19, 11-06-19, 11-17-19,  
 01-02-20, 01-23-20, 01-24-20,  
 01-27-20

File Name:  
 19004 Brooks House 01-27-  
 20.pln

Drawn By:  
 mjt

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1 Site Plan  
 SCALE: 1" = 50'



Sheet

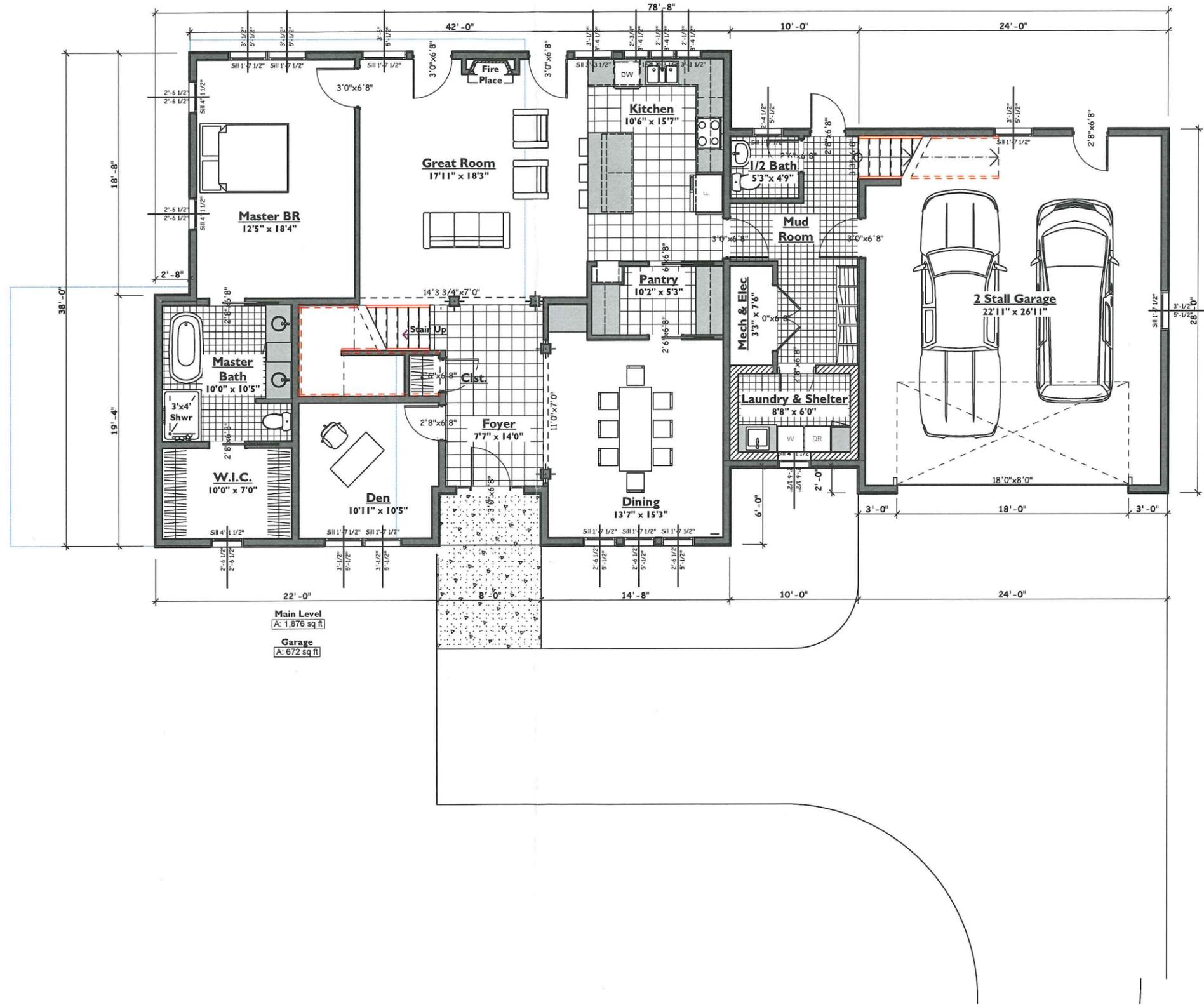
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Of 4

New House  
 Ken & Heidi Brooks  
 -14186 Valley Creek Trail  
 Afton, MN 55001



SCALE INDICATED BASED UPON PRINTED 24" X 36" (ARCHITECTURAL D) SHEET.



1 Mian Level  
SCALE: 1/4" = 1'-0"

5924 Forest Boulevard Trail  
Wyoming, MN 55092  
Phone 651-408-9044  
Cell 651-245-2346  
Fax 651-408-9044

Project No:  
19004  
Date Last Revised:  
10-27-19, 11-06-19, 11-17-19

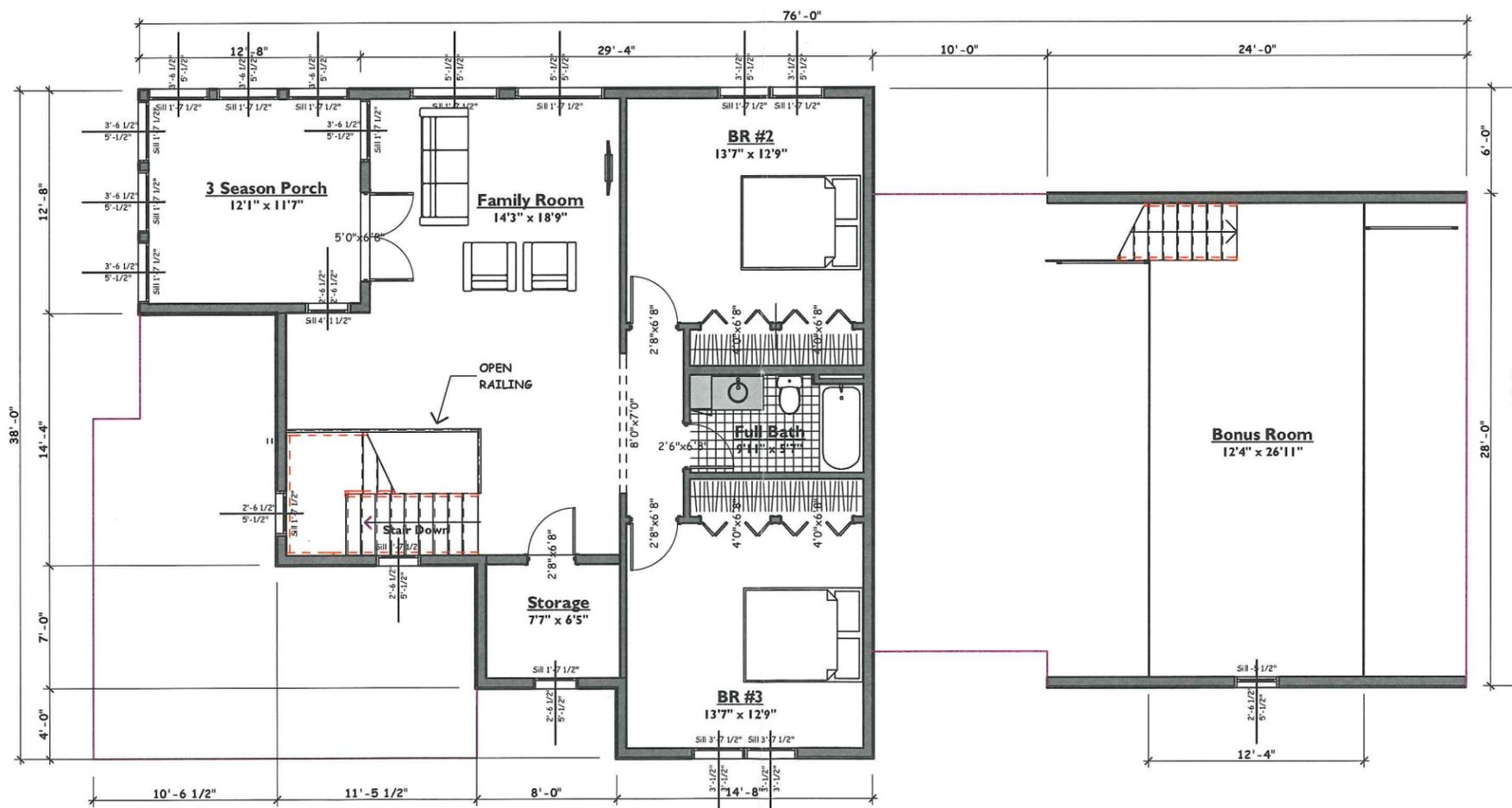
File Name:  
19004 Brooks House 11-17-19.pln  
Drawn By:  
mjt

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New House  
Ken & Heidi Brooks  
-14186 Valley Creek Trail  
Afton, MN 55001

Sheet

SCALE INDICATED BASED UPON PRINTED 24" X 36" (ARCHITECTURAL D) SHEET.



3 Season Porch	A: 160 sq ft
Bonus	A: 368 sq ft
Upper Level	A: 994 sq ft

1 Upper Level  
SCALE: 1/4" = 1'-0"



5924 Forest Boulevard Trail  
Wyoming, MN 55092  
Phone 651-408-9044  
Cell 651-245-2346  
Fax 651-408-9044

Project No:  
19004  
Date Last Revised:  
10-27-19, 11-06-19, 11-17-19

File Name:  
19004 Brooks House 11-17-19.pln  
Drawn By:  
mjt

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New House  
Ken & Heidi Brooks  
-14186 Valley Creek Trail  
Afton, MN 55001

Sheet

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: Feb. 2, 2020

To: Chair Kopitzke and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: January 29, 2020  
Re: Election of Officers

---

### Background

The ordinance setting out the purpose and operation of the Planning Commission calls for an annual election of officers. The offices and current incumbents are as follows:

Chair: Kris Kopitzke  
Vice-Chair: Sally Doherty  
Secretary: Doug Parker

The election process includes the nomination of members and a vote regarding those nominated, for each position.

### PLANNING COMMISSION ACTION REQUESTED:

**Election of the following Officers:**

**Chair**  
**Vice-Chair**  
**Secretary**

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: February 3, 2020

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: January 28, 2020

Re: Non-Compliance Fees and Other Enforcement Tools

---

At its January 6, 2020 meeting, the Planning Commission discussed the need to establish non-compliance fees and other enforcement tools to assist the City in gaining adherence to ordinances, regulations and rules, as well as conditions placed on zoning applications such as Conditional Use Permits and Variances. The Commission requested the Council provide authorization and direction regarding the development of a set of proposed non-compliance fees and other enforcement tools.

The Council, at its January 21, 2020 meeting, authorized the Planning Commission to develop proposed non-compliance fees and other enforcement tools, particularly related to zoning and land use, but potentially with broader applicability. The process of developing proposed non-compliance fees and enforcement tools will involve the City Attorney, as well as surveying other cities regarding their non-compliance fees and enforcement tools.

### **Planning Commission Direction Requested:**

Motion regarding moving forward with the process of developing a set of proposed non-compliance fees and other enforcement tools.

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: February 3, 2020

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: January 27, 2020

Re: Short Term Home Rental Ordinance

---

The Council, at its November 19 meeting, referred a draft short term home rental ordinance to the Planning Commission for review and comment. The Planning Commission provided feedback regarding a number of performance standards and requested staff to research other short term home rental ordinances. The City of Stillwater has a very comprehensive short term home rental ordinance that was provided to the Council and then to the Planning Commission.

The Planning Commission discussed the Stillwater ordinance, as well as additional performance standards. The Commission also discussed the option of allowing a homesteaded property to have a small number of short term rentals, such as two weeks per year, without a license. The Planning Commission requested staff to redraft the ordinance to reflect a substantial portion of the Stillwater ordinance, as well as the additional feedback from the Planning Commission, for the Planning Commission's review in February.

### Redrafted Ordinance

As requested by the Planning Commission, staff redrafted the ordinance and provided it to the Council for feedback. The Council's feedback included concerns about allowing non-homesteaded parcels to be used for short term rentals. The concerns included the greater potential for negative impacts with an absentee landlord and the use being a commercial use vs. a residential use. The feedback also included the requirement that, if it is found that a property is being used for short term rentals without the required license, the property will not be allowed to obtain a license for two years.

Subsequent to the Council's review of the redrafted ordinance, a number of revisions were made by staff to reflect the Council's feedback and to add language to clarify and/or improve the workability of a number of elements of the ordinance. The revisions are shown as bold and underlined. The redrafted ordinance, reflecting the feedback from the Council and the additional revisions, is attached for the Planning Commission's review and feedback.

### Public Hearing to be Held at the March 3, 2020 Planning Commission Meeting

To obtain feedback from the general public regarding the proposed short term home rental ordinance, a public hearing will be held at the March 3 Planning Commission meeting. The proposed ordinance to be considered at the hearing will reflect feedback to be provided by the Planning Commission regarding the redrafted ordinance.

### Planning Commission Recommendation Requested

**Motion regarding feedback regarding the redrafted short term home rental ordinance.**

ORDINANCE 0X-2020

CITY OF AFTON

WASHINGTON COUNTY, MINNESOTA

**AN ORDINANCE AMENDING CHAPTER 12, LAND USE OF THE CITY CODE TO ADD SECTION 12-232 RELATED TO SHORT TERM HOME RENTALS**

THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:

The following language shall be added as Section 12-232 of Chapter 12 of the Afton Code of Ordinances.

Sec. 12-232. Short-Term Home Rentals

A. *Scope*. This section applies to all short-term home rentals in the City of Afton.

B. *Purpose*. The City of Afton has adopted this ordinance for the purpose of allowing short-term home rentals consistent with Rural Residential, Agricultural and Village Historic Site zone uses where appropriate while mitigating impacts upon surrounding properties by implementing balanced regulations, and to protect the general public health, safety and welfare.

C. *Definitions*. For the purposes of this section (12-232) the following terms, phrases, words and their derivations shall have the meanings as given here. When consistent with the context, words in the plural include the singular and words in the singular include the plural.

**Certificate of Septic System Compliance.** A compliance certificate that was issued on a new septic system installed within the past five years or a copy of a compliance inspection which was performed within the past three years.

**City.** City of Afton.

**Dwelling.** A principal structure that contains one dwelling unit, intended or designated to be used, rented, leased, let or hired out to be occupied for living purposes.

**Dwelling Unit.** A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**Guest.** **A person who is registered as staying at the property as part of a short term home rental**

**Owner.** Any person who, alone or with others, has title or interest in any building, property, dwelling, dwelling unit or portion thereof, with or without accompanying actual possession thereof, including any person who as tenant, agent, executor, administrator, trustee, or guardian of an estate has charge, care, control of any -dwelling or dwelling unit.

**Person.** Any individual, firm, corporation, association, governmental entity, or partnership and its agents or assigns.

**Primary residence,** means the dwelling unit within which a person lives for six months plus a day during a calendar year.

*Primary resident* , means a person living on a property where the property is the person's primary residence.

Short Term Home Rental, Type A. Short term home rentals in a homesteaded property with less than 14 days of rentals per year. Type A short term home rental does not require a license, but must operate in accordance with the performance standards in this section.

Short Term Home Rental, Type B. (Hosted short term rental) means a dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where a primary resident of the property is present while the transient guests are present.

Short term Home Rental, Type C. (Unhosted short term rental) means a dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where the property serves as a person's primary residence but a primary resident of the property is not present while the transient guests are present.

Short term home rentals, Type D. (dedicated short term rental). means a dwelling unit that is offered to transient guests for a period of less than 30 consecutive days, where the property does not serve as a person's primary residence

Short-term rental. A dwelling unit, or a portion of a dwelling unit, rented for a period of less than thirty (30) days. No more than one (1) rental of a short-term rental dwelling unit or portion thereof shall be permitted per day.

D. *License required* . No property may be used for Type B, C or D short term home rental unless a license is granted by the city.

*Term* . The initial short-term rental license shall expire one year from the date the license is issued, unless revoked. Subsequent renewals shall not be for a period of more than three years.

*Renewal* . A renewal license must be applied for every three years. The renewal license application may only be submitted after the property has passed a city inspection as required and appropriate fees have been paid.

*Non-Transferable* . Licenses are non-transferable and shall expire upon change of ownership of the property.

E. *License application* . Any property owner desiring to undertake short term home rentals must apply to the city for a short term home rental license. A license must be approved prior to operating within the city. The license application request must be submitted on the form provided by the city and must include all the information requested on the application form. A criminal background check consistent with Minn. Stat. §299C will be conducted on managers (as defined by Minn. Stat. §299C.67, Sub. 4) as part of the license application review.

F. *License fee* . The license application form must be accompanied by payment in full of the required license application fee. The license application fee will be determined by the city council in the city fee schedule.

G. *License issuance* . Licenses shall be issued exclusively for principal structures with one dwelling unit, with the exception of a duplex with a valid conditional use permit, which has two dwelling units. The process for review and issuance of a license will vary depending upon the type of short term home rental as follows:

Type A - Short term home rentals in a homesteaded property with less than 14 days of rentals per year. Type A short term home rental does not require a license, but must operate in accordance with the applicable performance standards in this section.

Type B – Hosted short term home rentals in a homesteaded property with more than 14 days of rentals per year. Type B short term home rental licenses will be issued administratively if all the terms and conditions of this section are met.

Type C - Unhosted short term home rentals in a homesteaded property. Type C short term home rental licenses will be issued administratively if all the terms and conditions of this section are met.

Type D - Unhosted, dedicated short term rental. Type D short term home rental licenses require a conditional use permit and will be issued administratively if all the terms and conditions of this section are met and a conditional use permit (CUP) is granted. The conditional use permit application will be reviewed according to the CUP process established in the City Code section 12-78.

H. *Performance standards* . Type A, B, C and D short term home rentals shall be subject to the performance standards identified below, except where a performance standard is specifically applicable to only specific types of rentals.

1. *Parking* .

In residential zoning districts, all guest parking must be accommodated on improved driveways and improved parking surfaces on the premises. No on-street parking is allowed for guests.

2. *Length of guest stay*. The minimum length of stay is one day. The maximum length of stay is 30 days.

3. *Number of guests* . The maximum number of guests will be limited to two times the number of bedrooms, or sleeping areas, plus one.

4. *Annual water testing*. The licensee for Type B, C, and D short term rentals shall test the water serving the dwelling for coliform bacteria, nitrates and lead on an annual basis, **and the water must meet health-based standards for these items.**

5. *Guest records* . The licensee for Type C and D short term rentals must keep a guest record including the name, address, phone number, and vehicle license plate information for all guests and must provide **this information in a report to the city upon 48 hours' notice, if requested by the City. The request for a report will include how and to whom the report shall be provided.**

6. *Manager information*. For Type C and D short term home rentals, the licensee must provide the name, phone number and address of the owner, operating lessee or managing agent/representative to **the City, along with mailing labels for all property owners within 150 of the property lines. The City will then send the information to the adjacent property owners.** The licensee shall provide any changes to this information, **along with additional mailing labels,** to the **City Clerk** community development department and to the neighboring properties within ten days of any such changes. **The City Clerk will then send the information to the adjacent property owners.**

7. *Guest disclosures* . The licensee must disclose in writing to their guests the following rules and regulations and must submit a copy of the disclosure to the city with the license application and renewal applications. In addition, the disclosures must be conspicuously

displayed in the home. The disclosures must include the following:

- For Type D short term home rentals, the name, phone number and address of the owner, operating lessee or managing agent/representative;
  - The maximum number of guests allowed at the property;
  - The maximum number of vehicles allowed at the property and the approved parking areas, **as indicated on the site plan provided with the license application**;
  - Property rules related to use of outdoor features, such as decks, patios, grills, recreational fires, saunas and other recreational facilities;
  - That City nuisance ordinances will be enforced by the Washington County Sheriff's Department, including reduced noise levels between 10:00 p.m. and 8:00 a.m.;
  - That no events are allowed to be hosted by a guest on the premises.
8. *Posting of license number.* The licensee must post the city license number at the property and on all print, poster or web advertisements.
9. *Proximity of assistance .* For Type D short term home rentals, the property owner or a manager/representative must be located within 30 minutes travel time of the property.
10. *Signage .* For Type A, B C and D short term home rental no signage is allowed on the property.
11. *Events .* Events are not allowed to be hosted by guests on the premises. For purposes of this section, an event means a gathering on the premises of more than three un-registered guests. Events hosted by the property owner are allowed but must comply with all applicable city ordinances and policies, including the prohibition on renting out private residential property for events.
12. *Insurance .* The licensee must provide proof of sufficient and suitable property insurance with the license application and must be able to confirm that the coverage remains in place within 24 hours of a request by the city.
13. There shall be no change in the exterior appearance of the home or premises, or other visible evidence of the conduct of a short term home rental, except that additional on-site city code compliant parking may be provided.

*I. Required health and safety inspections.*

Type B and C license applications will not be accepted without an approved inspection report signed by the city's fire department and building department. The inspection must have been completed no more than 60 days prior to submission of the license application. The list of health and safety items that will be inspected will be included in license application materials so that the licensee will know in advance what items will be inspected. If the inspection identifies items that must be corrected, all corrections must be completed and verified by the city before the license will be issued.

Any property licensed under this section shall be subject to lawful inspection by the zoning administrator and the zoning administrator's authorized representatives upon a schedule determined by the zoning administrator or upon complaint.

*J. Site Plan and Floor Plan for Type C and D short term home rentals.*

The applicant must submit a site plan of the property drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire, or sauna.

The applicant must submit a floor plan of the residence drawn to scale identifying which rooms are proposed to be used as guest bedrooms or sleeping areas.

*K. Interchangeability of License Types.* A licensee may use the license to operate any short term home rental type equal to or less restrictive than the one for which the license was issued. For example, if an owner is issued a Type C license, the property is permitted to operate as a Type C, B or A. If a Type B license is issued, the property is permitted to operate as a Type B or A.

*L. Enforcement .*

1. *Injunctive relief .* In the event of a violation or threatened violation of this ordinance, the city, in addition to other remedies, is entitled to seek injunctive relief or proceedings to prevent, restrain, correct or abate such violations or threatened violations.
  2. *Misdemeanor .* The penalty for a violation of this ordinance shall be a misdemeanor.
  3. *Fines .* In addition to penalty provisions in (1) and (2) above, the administrative fines for violations of this section shall be as established by the city council in the annual fee schedule.
  4. *Suspension or revocation .* Any short term home rental license may be suspended or revoked for one or more of the following reasons upon notice and the provision of an opportunity for hearing for good cause,
    - a. Violation of, or noncompliance with, any license requirement or standard, or any applicable law, statute or ordinance
    - b. It is the third substantiated and relevant complaint within a 12-month period.
    - c. The licensee has failed to pay all of the appropriate fees related to the license, or is delinquent on any other city fees;
    - d. The licensee has made fraudulent statements, misrepresentations, not fully disclosed information or made false statements in the application for or in the course of the licensee's business;
    - e. The licensee has been convicted of any crime or offense in the previous five years involving or relating to the short term home rental business and the licensee has failed to show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business;
    - f. The licensee has acted in an unauthorized manner or beyond the scope of the license granted.
- If a license is revoked, the owner is prohibited from making application for another license for any type of short-term home rental for a period of six months.
  - **If a property is found to be providing short term home rentals without the required license, the owner shall be prohibited from using the property for short term home rentals, or making application for a license for any type of short term home rental, for a period of two years.**

*M. Severability.* If any portion of this section is determined to be invalid or unconstitutional by a court of competent jurisdiction, that portion shall be deemed severed from the section, and such determination shall not affect the validity of the remainder of the section.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

**SIGNED:**

\_\_\_\_\_  
Bill Palmquist, Mayor

**ATTEST:**

\_\_\_\_\_  
Ronald J. Moorse, City Administrator

Motion by:  
Second by:  
Perkins:  
Wroblewski:  
Ross:  
Nelson:  
Palmquist:

## January 18, 2020 City Council Meeting Highlights

### ***The Council:***

- Viewed a presentation on the St. Croix Utility Box Mural Project.
- Approved the Preservation and Land Conservation Development (PLCD) Ordinance Amendment.
- Reviewed the Draft Short Term Rentals Ordinance.
- Approved the 2020 Meeting schedule.
- Approved Annual Committee Appointments for City Council members.
- Designated the official depository, newspaper, signatories, city engineer and city attorney.
- Appointed election judges for 2020 elections.
- Approved replacement of City Hall fluorescent lights with LED lights.
- Approved meeting video storage proposal from Afton Historical Museum.