



PLANNING COMMISSION MEETING AGENDA  
TUESDAY MAY 17, 2022

**7:30 PM REGULAR MEETING**

1. Call to Order
2. Roll Call
3. Approval of Minutes:
  - a. April 19, 2022, Planning Commission Meeting
  - b. May 3, 2022, City Council Meeting Minutes (For Information Only)
4. **PUBLIC HEARING:** Tony Post (Applicant/Owner) is requesting that the City consider the following action for the property located at 2791 Copeland Road (PID No. 18-118-24-41-0002) in Independence, MN:
  - a. A variance and conditional use permit to allow an accessory dwelling unit to be located within the existing accessory building that exceeds the maximum size.
5. **PUBLIC HEARING:** Dan Vanderheyden (Applicant) and Michael Crees (Owner) are requesting that the City consider the following action for the properties located off of Maple Street with an unassigned address (PID No.s 24-118-24-11-0007 and 24-118-24-11-0006) in Independence, MN:
  - a. A minor subdivision to allow a lot combination of the two subject properties.
  - b. A variance seeking reduced building setbacks to allow the construction of a new home on the combined properties.
6. Open/Misc.
7. Adjourn.

MINUTES OF A MEETING OF THE  
INDEPENDENCE PLANNING COMMISSION  
MARCH 15, 2022 – 7:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Gardner at 7:30 p.m.

2. ROLL CALL

PRESENT: Commissioners Gardner, Dumas, Volkenant (virtual), Thompson (virtual) and Alternate Story  
STAFF: City Administrator Kaltsas, Assistant to Administrator Horner  
ABSENT: None  
VISITORS: Marty Chelstrom

3. APPROVAL OF MINUTES:

- a. March 15, 2022, Planning Commission Meeting
- b. April 5, 2022, City Council Meeting Minutes (For Information Only)

**Motion by Gardner to approve the March 15, 2022 Planning Commission minutes, second by Dumas. Ayes: Gardner, Dumas, Volkenant, and Thompson. Alternate Story. Nays: None. Absent: None. Abstain: None. Motion Approved.**

**4. PUBLIC HEARING:** Jeffrey Arendt (Applicant/Owner) is requesting that the City consider the following action for the property located at 1665 Copeland Road (PID No. 19-118-24-44-0004) in Independence, MN:

- c. A conditional use permit to allow a detached accessory structure that is larger than 5,000 SF. The applicant is proposing to construct a new private indoor riding arena.

***Request:***

Jeffrey Arendt (Applicant/Owner) is requesting that the City consider the following action for the property located at 1665 Copeland Road (PID No. 19-118-24-44-0004) in Independence, MN:

- a. A conditional use permit to allow a detached accessory structure that is larger than 5,000 SF. The applicant is proposing to construct a new private indoor riding arena.

***Property/Site Information:***

City of Independence  
Planning Commission Special Meeting Minutes  
7:30 Tuesday, March 15, 2022

The property is located on the west side of Copeland Road and south of Dean Lane. The property has an existing home and two additional detached accessory structures. The property is primarily comprised of tillable acreage and a wooded area in the southeast corner. The property has the following characteristics:

**Property Information: 1665 Copeland Road**

*Zoning: Agriculture*

*Comprehensive Plan:*

*Agriculture Acreage:*

*65.05 acres*

***Discussion:***

The applicant approached the City with plans to add an indoor riding arena onto the existing barn located on the subject property. It was noted that the proposed 21,000 square foot addition that would be connected to the existing structure would exceed the maximum square footage permitted of 5,000 without a conditional use permit. The existing barn is approximately 7,800 SF. The applicant would like the City to consider granting a conditional use permit to allow the proposed 21,000 SF building addition to be added to the property.

All accessory structures greater than 5,000 square feet require a conditional use permit

*530.01 Agricultural District established.*

*Subd. 3. Accessory uses.*

*(d) Detached agricultural storage buildings, barns, or other structures, accessory to an existing single-family dwelling and subject to the following criteria:*

3. *The maximum square footage of any individual accessory building or structure shall be 5,000 square feet.*

The proposed indoor riding arena is 21,000 square feet in size (100' x 210'). There is an existing ~7,800 square foot detached accessory structure already on the property. The proposed addition would be connected to the existing building via an enclosed breezeway. For properties greater than 10 acres, there is no maximum total allowable detached accessory structure square footage limitations. The proposed building would be used solely for the applicant's personal use and own horses. There would be no commercial use or commercial boarding of horses allowed within the proposed accessory structure. The proposed detached accessory structure would be constructed using materials and colors that would correspond with the existing accessory structure.

The applicant has provided the City with a site survey, floor plan and building elevations of the proposed building.

The proposed site and buildings have the following characteristics:

Site Area: 65.05 acres

Required Setbacks:

Front Yard: 85 feet from centerline  
Side Yard: 30 feet principal structure  
15 feet accessory structure  
Rear Yard: 40 feet

Proposed Setbacks:

Front Yard: 190 feet from CL of Copeland Road  
Side Yard: N/A - far exceeds requirements  
Rear Yard: N/A - far exceeds requirements

The proposed detached accessory structure would meet all applicable building setbacks.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

The City has visited the site and discussed the proposed detached accessory structure with the applicant. The conditional use permit would allow an accessory structure larger than 5,000 SF. The City is being asked to determine whether or not the proposed accessory structure larger than 5,000 SF would meet the criteria for granting a conditional use permit.

*Additional Notes/Considerations:*

The applicant is proposing to construct an indoor riding arena for their own personal use.



The applicants live on the subject property. The applicant has not submitted any information pertaining to building lighting. All building lighting will need to comply with the City's lighting standards. The City typically reviews building lighting during the building permit review process. No additional building screening is proposed given the proximity of all structures on adjacent properties combined with the existing vegetation and general screening provided by the placement of the building. The location and size of this property and the character of the surrounding properties aids in mitigating any potential impacts of the proposed arena.

The applicant has prepared a site plan, grading plan and building plans for the proposed site improvements.

The following conditions should be considered:

1. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
2. The applicant shall provide the City with information and details pertaining to any and all building and site lighting. All lighting will be required to comply with the City's applicable lighting standards.
3. No commercial use of the proposed detached accessory structure shall be permitted.
4. No future expansion of the detached accessory structure shall be permitted without the further review and approval by the City through the conditional use permit amendment process.

***Neighbor Comments:***

The City has not received any written or oral comments regarding the proposed conditional use permit.

***Recommendation:***

Staff is seeking a recommendation from the Planning Commission pertaining to the request for a conditional use permit with the following findings and conditions:

1. The proposed conditional use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
3. The applicant shall provide the City with information and details pertaining to any and all building and site lighting. All lighting will be required to comply with the City's applicable lighting standards.

4. No commercial use of the proposed detached accessory structure shall be permitted.
5. No future expansion of the detached accessory structure shall be permitted without the further review and approval by the City through the conditional use permit amendment process.
6. The applicant shall pay for all costs associated with reviewing the application and recording the resolution.

Kaltsas explained that this property is South of Dean Lane, West of Copeland Road. It is primarily tillable acreage and zoned Agricultural. The property is 65 acres overall. The detached accessory building would require a CUP if they exceed 5,000sqft in overall size. The applicant currently has an existing AG building, but would like to add an indoor riding area on the building. The existing building is 7,800sqft now but with the addition it would be around 21,000sqft. The city adopted a provision 10 years ago relating to accessory buildings greater than 5000 for surrounding property owners. These have the potential to impact surrounding properties. For properties over 10 acres in size, we have no maximum size limitations, but 5,000sqft per individual building. The connectivity between buildings, site for roads, setbacks all meet our requirements. The closest setback is the front yard setback which far exceeds that setback. The wooded area and over size of the property at 65 acres makes this a good site for this riding arena. There are similar properties with these buildings in the area. If the building is constructed, we look at lighting and the overhead door needs to comply with applicable standards. We would look at that at the time of the building permit. They will re-side the entire building, so it all matches. He said if someone wanted to purchase and board horses, they could come in to go through the CUP steps.

### **Open public hearing**

Gardner asked Jeff what he wants to do with the building. Jeff Arendt said he has been there since 1994 and he wants to ride his horses. He got back into it a couple years ago and just wants to enjoy it.

Tearse said it's great. It looks great. He asked what the waste disposal requirements are. Kaltsas said there is a plan in place to make sure it is taken care of. Frozen application is not permitted in the city.

**Motion by Tearse to approve the CUP to allow a detached accessory structure larger than 5,000sqft, second by Gardner. Ayes: Gardner, Dumas, Volkenant, and Thompson. Alternate Story. Nays: None. Absent: None. Abstain: None. Motion Approved.**

**5. PUBLIC HEARING:** Jon Dailing/Windsong Farm Golf Club (Applicant) and David Meyer (Owner) are requesting the following action for the property generally located at and adjacent to 8590 County Road 92 N (PID No.s 32-118-24-23-0001, 32-118-24-22-0003, 32-118-24-22-0002, 32-118-24-13-0002, 32-118-24-12-0003 and 32-118-24-12-0004) in the City of Independence, MN:

- d. Review of an EAW (Environmental Assessment Worksheet) associated with the proposed development of a new 18-hole golf course on the subject properties. The EAW is required as a result of the conversion of the property from agriculture to a new land use.

***Request:***

Jon Dailing/Windsong Farm Golf Club (Applicant) and David Meyer (Owner) are requesting the following action for the property generally located at and adjacent to 8590 County Road 92 N (PID No.s 32-118-24-23-0001, 32-118-24-22-0003, 32-118-24-22-0002, 32-118-24-13-0002, 32-118-24-12-0003 and 32-118-24-12-0004) in the City of Independence, MN:

- a. Review of an EAW (Environmental Assessment Worksheet) associated with the proposed development of a new 18-hole golf course on the subject properties. The EAW is required as a result of the conversion of the property from agriculture to a new land use.

***Property/Site Information:***

The subject property is located on the south side of County Road 6, just west of County Road 92. The property is a golf course. The properties have the following characteristics:

Property Information: (PID No.s 32-118-24-23-0001, 32-118-24-22-0003, 32-118-24-22-0002, 32-118-24-13-0002, 32-118-24-12-0003 and 32-118-24-12-0004))

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: *~125 total acreage of six (6) properties*

***Discussion:***

The applicant approached the City about the possibility of constructing an 18-hole private golf course on the subject properties. The properties are currently owned by the same ownership group that also owns Windsong Farm Golf Club. The City initially reviewed the request to determine if an environmental review was required by Minnesota statute. There are certain land use conversions that trigger a mandatory environmental review. In this case, it was determined that the conversion of more than 80 acres of agriculture land to a golf course initiated a mandatory environmental assessment worksheet (EAW). The purpose of the EAW is to consider information about a project that may have the potential for significant environmental impacts.

The EAW – Environmental Assessment Worksheet – document is designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether further environmental review is necessary. The EAW is not meant to approve or disapprove a project, but is simply a source of information to guide other approvals and permitting decisions

An EAW review is initiated and administered by the City or what is referred to as the responsible government unit (RGU). The EAW is not approved or denied, but rather allows the City as well as other agencies to review the proposed land conversion to determine if/what environmental impacts could occur as a result of the change in use. This process does not alter or circumvent the City's other processes and required approvals. Golf Courses are a conditional use in the AG- Agriculture zoning district and any proposed new golf course will require the review and approval of the City.

Full details of the proposed golf course, grading, structures, parking, etc.

have not been provided and will be reviewed at the time of a submittal for a conditional use permit.

The City is not obligated to hold a public hearing on the EAW but felt that it would provide constituents an opportunity to provide any comments or ask questions relating to the conversion of the property to a golf course and any potential environmental impacts associated with that conversion. There will also be a public hearing and more formal review of the actual golf course at the time a conditional use permit application is submitted to the City to consider approval of the golf course and associated improvements.

The City's engineer has reviewed the EAW and provided several comments to the applicant relating to the application. The next step in this process will be for the City to submit the EAW to the Minnesota Environmental Quality Board (EQB). The Environmental Quality Board is made up of 9 agency heads and 8 citizen members. The EQB will formally review and comment on the application submitted and allow for additional public input pertaining to the proposed change in land use.

### ***Recommendation:***

No action is required at this time. The City is providing the public with an opportunity to provide comments and ask questions relating to the EAW specifically for the subject properties.

Kaltsas explained that the existing zoning is AG. This would be a conversion of more than 80 acres of AG to golf course. Once you hit those 80 acres it's a mandatory regulatory worksheet. They used much of this for parking and have utilized this property as an 18-hole golf course. Once this assessment is completed and there are no further actions required, the golf course could come forward with their course plans. It would require a CUP amendment to include the North acreage. Water resources and civil engineering has reviewed this. There is quite a bit of wetlands on this property and they are working to see what the strategies are to mitigate. Jon is here tonight to represent Windsong.

Tearse asked if there is another golf course there now. Kaltsas said that there is the Pioneer Creek Golf Course on Copeland Road.

Story asked if there are any other concerns, or anything regarding irrigation.

Jon said for irrigation they will use groundwater and wells. It won't come out of Fox Lake. Dumas asked if that is covered in here. Kaltsas said that is something that will be fully looked at. Dumas asked about the fertilization. Jon said it is less fertilization. The dark green part on the map is prairie grass. There is no irrigation or fertilizer.

Jeff Arendt asked about a plan for overflow parking. Jon said it is just moved East of the existing tunnel.

### **Closed public hearing**

Kaltsas said there is no formal action required, it is to hear from the public.

**6. PUBLIC HEARING:** Derek Onischuk (Applicant/Owner) is requesting that the City consider the following action for the property located at 190 County Road 92 N. (PID No. 32-118-24-44-0003) in Independence, MN:

- e. A variance for a reduced side yard setback to allow the construction of an addition to the existing home located on the property.

***Request:***

Derek Onischuk (Applicant/Owner) is requesting that the City consider the following action for the property located at 190 County Road 92 N. (PID No. 32-118-24-44-0003) in Independence, MN:

- a. A variance for a reduced side yard setback to allow the construction of an addition to the existing home located on the property.

***Property/Site Information:***

The subject property is located at 190 County Road 92 N. The property is on the east side of County Road 92 N., south of County Road 6 and just south of the Luce Line Trail. There is an existing home on the subject property.

Property Information: ***190 County Road 92 N.***

Zoning: *AG – Agriculture*

Comprehensive Plan: *AG*

- *Agriculture Acreage:*

*11.25 acres*

***Discussion:***

The applicant is seeking approval to construct a four-season porch on the north side of the existing home. The applicant approached the City about the potential to encroach into the side yard setback along the north property line. The existing home is currently located approximately 30 feet off of the north property line. The City requires a side yard setback of 30 feet for properties zoned AG-Agriculture. The proposed four-season porch addition would encroach into the side yard setback approximately 22 feet with a remaining building setback of 8 feet from the property line.

The resulting variance to the side yard setback would be 22 feet. The required setbacks for properties zoned AG-Agriculture are as follows:

**Front Yard Setback:**

Required: 85 feet from centerline or 51 feet  
from the ROW Existing: ~200 from front  
property line

Rear Yard Setback:

Required: 40 feet

Existing:  $\pm 775$  feet

Side Yard Setback (South

Side): Required: 30  
feet

Existing:  $\pm 395$  feet

Side Yard Setback (North

Side): Required: 30  
feet

Existing: 30 feet

**Proposed: 8 feet (variance of 22 feet)**

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

*520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)*

*Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:*

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

*Economic considerations alone do not constitute practical difficulties.*

*Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)*

*Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)*

*520.23. Conditions and restrictions. The board of adjustments may recommend, and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created*

*by the variance. (Amended, Ord. 2011-08)*

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the AG-Agriculture District.
- b. The character of the surrounding area is residential. The proposed screen porch addition is generally in keeping with the residential uses on properties in the surrounding area.
- c. The property is located south of the Luce Line Trail. There is a sliver of private property located north of the subject property; however, it is likely not buildable as there would be no way to locate a structure on the portion of property directly north due to requisite setbacks. The area north of the existing structure is wooded and generally screened from the view of any surrounding structures.
- d. The applicant is noting that the interior configuration of the existing home better accommodates the expansion of a four-season porch to the south as proposed.

There are several additional items that could be considered by the City:

1. Staff discussed alternative options for locating the screen porch in compliance with applicable setbacks with the applicant. The applicant noted that the general interior configuration of the home would best support the proposed porch location.
2. The applicant could locate a detached accessory structure on this property in the general location of the proposed screen porch up to the requisite setbacks (15 feet).

Ultimately the City will need to find that the criteria for granting a variance have been met by the applicant. The existing home is located against the south property line setback with no room to expand to the north. Due to the configuration of the house on the property and the interior layout there are some limitations to add this type of addition without impacting function of the existing structure/use. The setback of the proposed porch from County Road 92 N. and the natural screening and buffering that exists between this and the surrounding properties appear to help mitigate the potential impacts.

***Public Comments:***

The City has not received any written or verbal correspondence at the time this report was prepared.

***Recommendation:***

Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions should be considered.

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
  - a. Residential use of the property is consistent with the AG-Agriculture District. The applicant is seeking a variance to allow a four-season porch addition to be added onto the existing home.
  - b. The alignment of the proposed porch with the rear of the home and the proposed building architecture and exterior finishes appears to mitigate some of the potential impacts resulting from the addition.
  - c. The character of the surrounding area is agriculture. The proposed four-season porch addition and would be in keeping and consistent with the surrounding uses found in this area of the City.
3. The variance will permit a 22-foot reduction (from 30 feet to 8 feet) to the north side yard setback to allow the proposed four-season porch to be added onto the existing structure as depicted on the site plan and building plans attached hereto as Exhibit A. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.

Kaltsas explained that the applicant is planning to build a 4-season porch. The property is located on the East side of 92, South of Luce Line in the Ox Yoke area. It is zoned as AG and is approximately 11.25 acres. The property is behind another property that has a driveway access that leads back to it. The house is on the very North side of the parcel near the property line. Applicant asked about constructing the 4-season porch on the North side of the house since this is the best location. It will impact the setbacks. It currently has a setback of exactly 30 feet. They would need the variance to allow reduced side yard setback which would encroach the set back by 22 feet. This would be a 22 ft variance leaving it 8ft from the North property line. The property directly North is unbuildable in the location it would impact. On the East side of the house, there is a mound system so they would have limitations if they tried to do it that way and other side of the house is where the garage is. It makes sense why they are looking for that particular location. A detached accessory building can be up to 15 ft from a side yard setback. That doesn't get to 8ft, but it makes sense. This is a hardship since the existing house is up against the property line, the location of the septic system, and the overall house layout.

The property that it touches at the corner did not respond to the public hearing notice.



Mrs. Onischuk said they bought the house 4 years ago with the intention of something being there, but it never got developed from previous owners. She doesn't know who the landowners are that own the property to the North.

Close public hearing

**Motion by Tearse to approve the variance to allow a reduced side yard setback to allow a 4-season porch, second by Dumas. Ayes: Gardner, Dumas, Volkenant, and Thompson. Alternate Story. Nays: None. Absent: None. Abstain: None. Motion Approved.**

**7. PUBLIC HEARING:** Hennepin County (Applicant) is requesting the following minor subdivision relating to the Highway 12/County Road 92 improvement project in Independence, MN:

- a. 2510 County Road 92 N. (PID No. 16-118-24-33-0003)

***Request:***

Hennepin County (Applicant) is requesting the following minor subdivisions relating to the Highway 12/County Road 92 improvement project in Independence, MN:

- a. 2510 County Road 92 N. (PID No. 16-118-24-33-0003)

***Property/Site Information:***

The subject property is generally located at the intersection of County Road 92 N. and Highway 12. The property has the following site characteristics:

Property Information: 2510 County Road 92 N.

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

***Discussion:***

Hennepin County has been working on the acquisition of properties associated with the Highway 12/CSAH 92 realignment and overpass project. The properties have now been acquired by the County, but a formal approval of the actual subdivision is still required by the City. The City reviewed and approved a number of properties in the fall of 2021. There was one additional property that was identified that was left out of the previous approvals and is required to be formally approved by the City. The subdivision is unique in that the property being broken off will be used for right of way (combined with the existing right of way) for the state highway or county road. No new property is being created as a result of the requested subdivision.

A portion of parcel at 2510 County Road 92 N. was acquired in fee through condemnation as part of the safety improvements at County Road 92 where it intersects with U.S. Highway 12. MnDOT requires that property that abuts their highways be acquired in fee. Hennepin County did the acquisition, Independence is also a partner in the project.

The City has reviewed the requested subdivision and found it to be in keeping with the reviewed property acquisitions necessary to construct the new road improvements. The detail of the subdivision is provided on the attached survey.

***Other Considerations:***

1. The City does not have an administrative or other process for considering the subdivision of property. All subdivisions are required to go through the requisite process.
2. No new parcels are being created as a result of the proposed subdivisions.
3. No new non-conformities are being created as a result of the proposed subdivision. The frontage requirements, applicable setbacks and minimum lot sizes are not being compromised in the after condition as a result of the proposed subdivisions.

***Summary:***

The requested minor subdivision of the subject property does not appear to create any adverse conditions in the after condition. The proposed subdivision appears to meet all of the applicable standards of the City's zoning and subdivision ordinance.

***Neighbor Comments:***

The City has not received any written or verbal comments regarding the proposed subdivisions.

***Recommendation:***

Staff is seeking a recommendation from the Planning Commission for the requested Minor Subdivision. Should the Planning Commission recommend approval to the City Council, the following findings and conditions should be included:

1. The proposed Minor Subdivision meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning and Subdivision Ordinance.

2. City Council approval of the Minor Subdivision is subject to the following:
  - a. The Applicant shall address all comments and applicable requirements pertaining to the proposed subdivisions which includes the following:
    - Prepare the requisite documents and legal descriptions needed to record all documents with Hennepin County.
3. The Applicant shall execute all applicable documents to allow recording of the minor subdivision within six months from the date of the City Council approval.

Kaltsas said that Hennepin County acquired properties during this road construction project for Highway 12 and 92. It is zoned AG. Hennepin County is requesting a subdivision of the property that is unbuildable. Property is set, they took eminent domain. This should be the last one but there could be more. This is straightforward.

Open public hearing  
Close public hearing

**Motion by Story to approve the minor subdivision, second by Volkenant. Ayes: Gardner, Dumas, Volkenant, and Thompson. Alternate Story. Nays: None. Absent: None. Abstain: None. Motion Approved.**

7. Open/Misc.

8. Adjourn.

**Adjourned at 8:27 p.m.**

Respectfully Submitted,

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Amber Simon / Recording Secretary

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY MAY 3, 2022–6:30 P.M.  
City Hall Chambers

*Interviews were held for the Planning Commission Alternate prior to the Council Meeting*

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Betts, McCoy and Grotting

ABSENT: None

STAFF: City Administrator Kaltsas, Assistant to Administrator  
Horner, and City Attorney Bob Vose

VISITORS: Marty Chelstrom, Jeffrey Arendt, Derek Onischuk

4. \*\*\*\*Consent Agenda\*\*\*\*

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council Minutes from the April 19, 2022, Regular City Council Meeting.
- b. Approval of City Council Minutes from the April 19, 2022, Board LBAE City Council Meeting
- c. Approval of Accounts Payable (Batch # 1; Checks Numbered 21192-21195 and Batch #2; Checks Numbered 21196-21221).
- d. Large Assembly Permit for a Wedding to be Held on September 17, 2022, on the Following Property:
  - i. 7165 Turner Road (Requested by Brian and Renee Gilbertson)

**Motion by McCoy, seconded by Betts to approve the Consent Agenda. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

## 6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

### **Grotting attended the following meetings:**

- Planning

### **Spencer attended the following meetings:**

- Stand in for Joe Baker for PSCWMC
- LSIA
- Federated Women's Group - Delano
- Personnel Committee Meeting
- Planning

### **McCoy attended the following meetings:**

- Loretto Fire Breakfast

### **Betts attended the following meetings:**

- Sensible Land Use

### **Johnson attended the following meetings:**

- Card from David Eisinger thanking the City
- Planning
- National League of Cities Webinar
- Metro Cities annual Meeting (virtual)
- WH Cooperative annual meeting
- Loretto Fire Breakfast
- Governor's State of the State
- Delano School Board Meeting
- Metro Conference for TZD
- Personnel Committee meeting
- Orono Spring Play
- Long Lake Fire breakfast
- Rep. Kristin Robbins meeting at City Hall
- Planning Commission Alternate Interviews

### **Horner attended the following meetings:**

- Planning

### **Kaltsas attended the following meetings:**

- Hennepin County Turnback

7. Jeffrey Arendt (Applicant/Owner) is requesting that the City consider the following action for the property located at 1665 Copeland Road (PID No. 19-118-24-44-0004) in Independence, MN:

- a. **Resolution 22-0503-01:** considering a conditional use permit to allow a detached accessory structure that is larger than 5,000 SF. The applicant is proposing to construct a new private indoor riding arena.

Kaltsas explained that the applicant is requesting a CUP for an accessory structure larger than 5,000sqft. The property is located near Dean Lane and zoned Ag on approximately 65 acres. The applicant would like to construct an indoor riding area that would attach to existing building. Roughly 21,000sqft would be added to the existing building or 100ft x 210ft . We want to make sure there are no impacts to any of the surrounding properties. The city requires a CUP for anything greater than 5,000sqft to make sure it doesn't affect health, safety and welfare. We take a look at the drainage, grading, and possible lighting to see what impacts might be mitigated by the proposal. The property and building are in a position that has little impact on surrounding properties. Other properties in the area are very similar with large structures for horses. The location is Ag in nature. This riding area is for private and personal use only. There is no boarding that is being requested or considered at this time. The structure would also be re-sided so that all material and color would match. The manure management policy was noted and included in the condition and recommendations. Applicants will follow all requirements. The Planning Commission recommended approval and the applicant is here tonight.

Johnson asked Arendt if everything was covered. Arendt said it was.

**Motion by Spencer, seconded by Grotting to approve RESOLUTION 22-0503-01 for a CUP to construct an accessory structure larger than 5,000sqft. Consent Agenda. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

8. Derek Onischuk (Applicant/Owner) is requesting that the City consider the following action for the property located at 190 County Road 92 N. (PID No. 32-118-24-44-0003) in Independence, MN:

- b. **RESOLUTION 22-0503-02:** considering a variance for a reduced side yard setback to allow the construction of an addition to the existing home located on the property.

The applicant is requesting a variance for a reduced side yard setback on the North side of their parcel near the property line, just South of the Luce line. It is zoned Ag on 11 acres in overall size. The applicant wants to build a 4-season porch off the North side of their home. There is a 30-yard setback which is right where the house is. There is no room for expansion besides to the North. This would bring the setback from 30ft down to 8ft. The city looks at if there are other options on the site for the expansion and if there hardships. In this case there is an existing septic field on the East side of the home. The front of the house is facing the S direction and garage is on the West. With how this house is laid out, this is logical. There are no other options to expand any other way. There is a sliver of private property between this property and the Luce Line. No one would be able to build on the small piece of property that this expansion would affect. The location of this house has surrounding

properties and the use would be for residential. The request is consistent for granting a variance. Planning asked about the property to the North and it was noted that it was limited. There are no building options on that sliver. The conditions of the home were not created by the applicants, and it was supported to approve the variance by the planning commission.

Johnson asked if everything was explained well. Derek said yes, Mark did a great job.

**Motion by McCoy, seconded by Betts to approve RESOLUTION 22-0503-02 granting a variance for a reduced side yard setback. Consent Agenda. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

9. Michael Mitchell (Applicant/Owner) is requesting the following action for the property located at 5398 Lake Sarah Heights Dr. (PID No. 01-118-24-23-0002) in the City of Independence, MN:

- a. **RESOLUTION 22-0503-03:** considering approval of a minor subdivision to allow the combination of the subject property with the adjacent property to the northwest (PID No. 01-118-24-22-0010).

Kaltsas explained that this request came in January, and it was approved, but applicant needed to provide a revised survey. This is to allow a lot combination. The applicant is looking to acquire an outlot adjacent to property to clean up it up. The property is located at 5398 Lake Sarah Heights Dr. It backs up to the railroads, and is zoned RR. The lot is just over 1 acre and outlot is .44 bringing it to 1.5 acres overall. There is 66' that was intended to be a ROW to get to the railroad tracks. It was never transferred to the city and it has been maintained by the original owner. There was a lot of calls on this property about building on it and this is the better option and makes the most sense. The house is a legal nonconforming structure and he barely has enough room to drive out of his driveway without going into this outlot. All survey and drainage and utility easements have been provided. Planning Commission recommended approval.

Johnson asked if this property was still owned by the owners across from there. Kaltsas said the railroads don't allow a cut across and we have an access point off of Eagle Ridge. This is not a great connection point, and this seems to clean it up. Johnson said that the lot to the West is a big one too, so it is making this property about the same size. This makes his house legal and gets rid of the nonconforming status.

Vose asked Mark if it is in the resolution to combine the lots described. Kaltsas said yes.

**Motion by Spencer, second by Betts to approve RESOLUTION 22-0315-03 for a minor subdivision. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. Abstain None. MOTION DECLARED CARRIED.**

10. Hennepin County (Applicant) is requesting the following minor subdivision relating to the Highway 12/County Road 92 improvement project in Independence, MN:

- c. **RESOLUTION 22-0503-04:** considering approval of a minor subdivision for the property located at 2510 County Road 92 N. (PID No. 16-118-24-33-0003).

Kaltsas said there have been a couple of these and there are still more being worked on. It is being acquired due to the Hwy 12 project. Hennepin County is taking over this property. It needs to be split before Hennepin County can take it over.

Johnson said Kimberly really took a hit with this project. Kaltsas said they may not have settled yet. Grotting asked if other property owners have agreed to it. Kaltsas said the state condemned the property and just needs to clean up the title piece of it.

**Motion by Grotting, second by Spencer to approve RESOLUTION 22-0315-03 for a minor subdivision. Ayes: Johnson, Spencer, Grotting, McCoy and Betts. Nays: None. Absent: None. Abstain None. MOTION DECLARED CARRIED.**

11. Council member Brad Spencer – discussion with Council.

Spencer said it is the anniversary of Mayor Johnson's birth. Beth thought we should do something special. There have been several posts to Facebook about Johnson's birthday. Beth Horner made a chocolate cake and we want to wish you a Happy Birthday.

*All Staff sang Happy Birthday to Mayor Johnson.*

12. Open/Misc.

13. Adjourn.

**Mayor Johnson declared the meeting adjourned at 7:10pm.**

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Respectfully Submitted,  
Amber Simon / Recording Secretary



## City of Independence

### ***Request for a Conditional Use Permit and Variance to Allow an Accessory Dwelling Unit in the Existing Principal Structure on the Property Located at 2791 Copeland Road***

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<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	May 17, 2022
<i>Applicant:</i>	Tony Post
<i>Owner:</i>	Tony Post
<i>Location:</i>	2791 Copeland Road

#### ***Request:***

Tony Post (Applicant/Owner) is requesting that the City consider the following action for the property located at 2791 Copeland Road (PID No. 18-118-24-41-0002) in Independence, MN:

- a. A variance and conditional use permit to allow an accessory dwelling unit to be located within the existing building that exceeds the maximum size.

#### ***Property/Site Information:***

The property is located on the west side of Copeland Road and south of Highway 12. The property is comprised primarily of pasture and wetlands. The property has one large and connected building that houses the barn, riding arena, garage and principal residence. The building is really four buildings that have been connected together.

#### **Property Information: 2791 Copeland Road**

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: *52 acres*

### 2791 Copeland Road - Aerial



#### ***Discussion:***

The applicant is seeking a conditional use permit to allow an accessory dwelling unit inside a portion of the existing structure on the property. This property is unique in that there is one large, combined building that houses a series of spaces and uses, including the principal dwelling unit. The applicant approached the City prior to purchasing the property to inquire about building a second home on the property and maintaining the existing dwelling unit located within the combined building. It was noted that the property cannot have two (2) dwelling units so the existing space would need to be converted into something that conforms with applicable provisions of the City's zoning ordinance (i.e. accessory dwelling unit). Accessory dwelling units are a conditional use within the AG-Agriculture zoning district. There was some question relating to the existing residence and whether or not it really appears to look/feel/act as a principal dwelling unit. Staff visited the property and found that the existing space definitely felt and acted as a dwelling unit even though it is connected in a non-traditional manner to the barn and garage.

The space does have the potential to be converted into an ADU; however, the space associated with the existing dwelling unit is larger than the maximum size permitted of 1,200 SF. Staff discussed the possibility of converting a portion of the space and or closing off a portion of the space in order to meet the maximum ADU size of 1,200 SF. The dwelling unit is comprised of a

semi-finished basement (currently is mostly finished with a bedroom, utility room, storage, family room and closet), main level with full kitchen, living and dining areas and an open second floor loft with bathroom and closet. There is also a laundry room and back “office/multipurpose” room that could be associated with the existing barn/arena or the dwelling unit.

The existing dwelling unit square footage is broken down as follows:

- Basement: 1,014 SF
  - First Floor: 1,317 SF
  - Second Floor: 554 SF
- TOTAL: 2,885 SF

The proposed ADU square footage is broken down as follows:

- Basement: 0 SF (closed off from remaining dwelling, closet removed, use as storage)
  - First Floor: 798 SF (add door to close off 519 SF of utility/laundry/office/3/4 bath)
  - Second Floor: 389 SF (City to not count ~165 SF of closet/bathroom with low ceiling)
- TOTAL: 1,187 SF

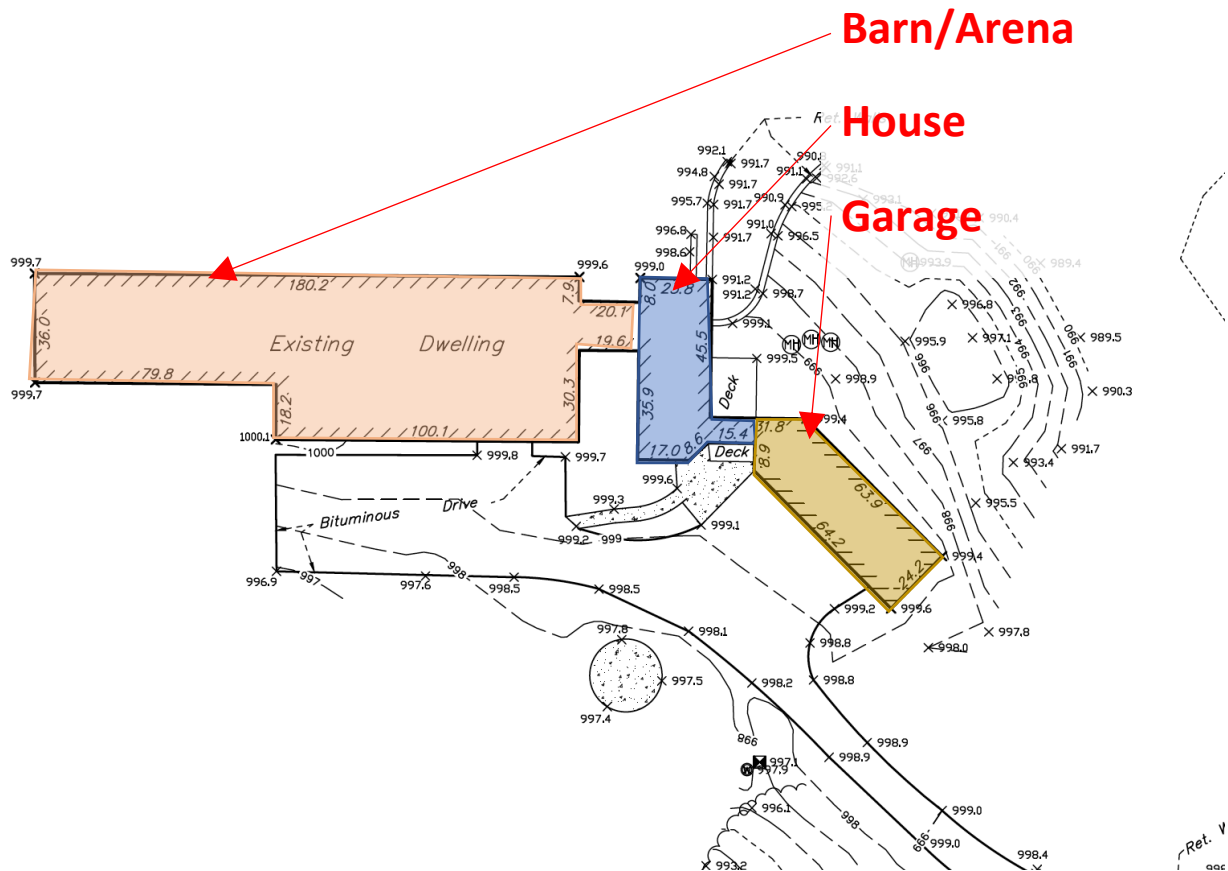
The applicant has provided a plan that indicates their proposed conversion of the space into a conforming ADU (gray areas to not be counted towards ADU square footage calculation). The proposal includes closing off the basement with a lockable door and closing off the laundry and office/multipurpose room and  $\frac{3}{4}$  bath on the first floor with a lockable door. In order for the square footage to drop below 1,200, the City would also have to allow the second floor loft bathroom/closet to be excluded from the total square footage calculation. The applicant noted that this space has a low ceiling height.

The City adopted an ADU ordinance to allow for “mother in law” type units within an existing structure or as a stand-alone structure in the AG-Agriculture zoning district. The criteria established attempted to ensure that ADU’s would be clearly subordinate to the principal structure and not constitute a second home on an existing property. This building and the way it was constructed is definitely not typical of other single-family dwelling units within the City. Ironically, the City is seeing an increase in the number of “barndominiums” being proposed and constructed currently. This type of structure and their future conversion into ADU’s is something that the City may be faced with in the future.

Staff is seeking direction from the Planning Commission relating to this request. The City will need to determine if the proposed conversion of this space meets the intent of the ADU criteria. In addition, the City would need to determine if the square footage calculations (based on the proposed conversion) meet the intent of the ADU ordinance. The City has noticed this application and request as a conditional use permit and variance. The variance would allow the City to consider granting a variance to the maximum size limitations for an ADU (greater than 1,200 SF). The City could determine that the proposed changes do not meet the intent/criteria for granting an ADU based on exceeding the size limitations and could recommend granting a

variance to allow an ADU that is larger than 1,200 SF. The City has not historically granted approval of an ADU that exceeds the size limitations.





In order to grant approval for an accessory dwelling unit, the applicant will need to demonstrate how they meet all applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units.

An accessory dwelling unit must meet the following criteria:

*Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:*

- (a) *Physically attached to or within a single-family dwelling unit or within a detached<sup>a</sup> accessory building that has a principal structure on the parcel; and*

**The applicant is proposing to use the accessory dwelling unit located within the existing detached accessory structure.**

- (b) *Subordinate in size to the single-family dwelling unit; and*

**The proposed accessory dwelling unit would be subordinate in size to the single-family dwelling unit.**



- (c) *Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door; and*

**The proposed accessory dwelling unit would be separated from the single-family home.**

- (d) *Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and*

**The proposed accessory structure is existing.**

- (e) *The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and*

**The proposed new principal structure will have more than 3,640 square feet of above ground space not including the basement.**

- (f) *Not in excess of the maximum square footage for accessory structures as permitted in this code; and*

**There is not a limitation on the total amount of accessory structure square footage for properties zoned Agriculture and greater than 10 acres.**

- (g) *Has permanent provisions for cooking, living and sanitation; and*

**The existing structure has permanent provisions for cooking; living and sanitation (see attached depiction).**

- (h) *Has no more than 2 bedrooms; and*

**The existing structure has one bedroom within the accessory dwelling unit.**

- (i) *Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code; and*

**The applicant is proposing that the accessory dwelling unit be occupied solely by family members.**

- (j) *Uses the existing on-site septic system<sup>b</sup> or an approved holding tank; and*

**The structure is connected to the existing septic system on the property.**

- (k) *Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and*

**The detached accessory building is a conforming structure that is currently in existence.**

- (l) *In compliance with the adopted building code relating to all aspects of the dwelling unit.*

**The proposed accessory structure will meet all applicable building codes and may be required to obtain requisite after-the-fact permits.**

<sup>a</sup> *On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section.*

<sup>b</sup> *The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.*

There are several items that should be noted by the Planning Commission:

- The applicant is proposing to construct a new home on the subject property (see layout proposed). The proposed home has more than 3,640 SF of above ground square footage. The new home would allow for a 1,200 SF ADU on the subject property. Any approval of an ADU would be subject to the construction of a new home on the property.
- Even if the space is modified as proposed, the general living space will have the ability to function in a manner similar to that of a larger dwelling unit.
- The City has both historically and recently received similar conversion requests and or requests for ADU's that are larger than 1,200 SF. This is something that should be further discussed and considered by the City.
- If the City determines that a variance is warranted, the criteria for granting a variance would have to be satisfied.
- The location of the existing accessory building and its proximity to the surrounding properties does mitigate potential impacts of allowing a portion of the space to be used as an accessory dwelling unit. The surrounding properties are similar in character and have similar sized detached accessory buildings.
- The City has received letters of support from two of the adjacent property owners.

In addition to the requirements for allowing an accessory dwelling unit, the City has additional criteria which need to be considered for granting a conditional use permit

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

Consideration for the proposed conditional use permit should weigh the impact of having an accessory dwelling unit located on this property. The location of the proposed accessory dwelling unit and its compliance with all applicable setbacks does help to mitigate potential impacts resulting from the construction of the accessory dwelling unit. The City will need to consider if the accessory dwelling unit meets the requirements and criteria for granting a conditional use permit.

There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

*520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)*



*Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, “practical difficulties” means:*

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

*Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)*

*Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)*

*520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)*

Given the unique nature of the existing dwelling unit, its overall size, original intent to be a principal residence and the applications that have been submitted, staff is seeking more direction from the Planning Commission. The Planning Commission will need to determine if the proposed ADU as modified meets the intent of the City’s zoning ordinance. If the intent is not satisfied as proposed, the Planning Commission can make a determination that the criteria for granting a variance have been met by the applicant and could recommend approval of a variance to allow an ADU that exceeds the maximum size of an ADU (larger than 1,200 SF).

***Neighbor Comments:***

The City has received written comments supporting the request for the proposed conditional use permit/variance to allow an accessory dwelling unit.

***Recommendation:***

The Planning Commission can make a recommendation relating to the requested Accessory Dwelling Unit by granting approval of a CUP/Variance. Should the Planning Commission make positive a recommendation to the City Council, the following findings and conditions should be considered:

1. The proposed Conditional Use Permit/Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.

2. The conditional use permit is to allow an accessory dwelling unit to be located within the existing accessory structure on the property. The criteria for permitting an accessory dwelling unit shall be perpetually satisfied by the owner of the property. Any change in the use of the accessory dwelling not in compliance with the applicable criteria for the accessory dwelling unit will cause the conditional use permit to be revoked by the City.
3. The conditional use permit will be issued subject to the following items being completed:
  - a. The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit following all applicable procedures.
  - b. Approval of the CUP allowing the accessory dwelling unit is subject to the construction of a new home on the property.
4. The Applicant shall pay for all costs associated with the City's review of the requested conditional use permit/variance.

***Attachments:***

1. Application
2. Narrative
3. Site Survey
4. Proposed Accessory Dwelling Unit Floor Plan
5. Interior Pictures



**CITY OF  
INDEPENDENCE  
MINNESOTA**

**Applicant Information**

Name: Tony Post  
Address: 2791 Copeland Rd  
Independence, Minnesota  
55359  
Primary Phone: 5074810546  
Email: tonypost@gmail.com

**Owner Information**

Name: Tony Post  
Address: 2791 Copeland Rd  
Independence, Minnesota  
55359  
Primary Phone: 5074810546  
Email: tonypost@gmail.com

Property Address:

PID:

Planning Application Type: Conditional Use Permit, Accessory Building Review

Description:

Supporting Documents: Preliminary/Final Plan

Signature:

17917 Highway 7  
Minnetonka, Minnesota 55345  
Phone (952) 474-7964  
Web: www.advsur.com

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

Thomas M. Bloom

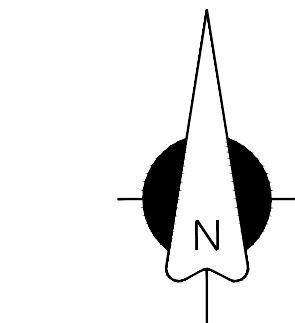
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LICENSE NO.

AUGUST 9, 2021

DATE:

DRAWING ORIENTATION & SCALE



SCALE - 1" = 100'  
0 100 200

CLIENT NAME / JOB ADDRESS

HALEY POST

2791 COPELAND ROAD

INDEPENDENCE, MN

DATE	REVISION	DESCRIPTION

DATE SURVEYED: AUGUST 5, 2021

DATE DRAFTED: AUGUST 9, 2021

SHEET TITLE

EXISTING  
CONDITIONS  
SURVEY

DRAWING NUMBER

211441 TB

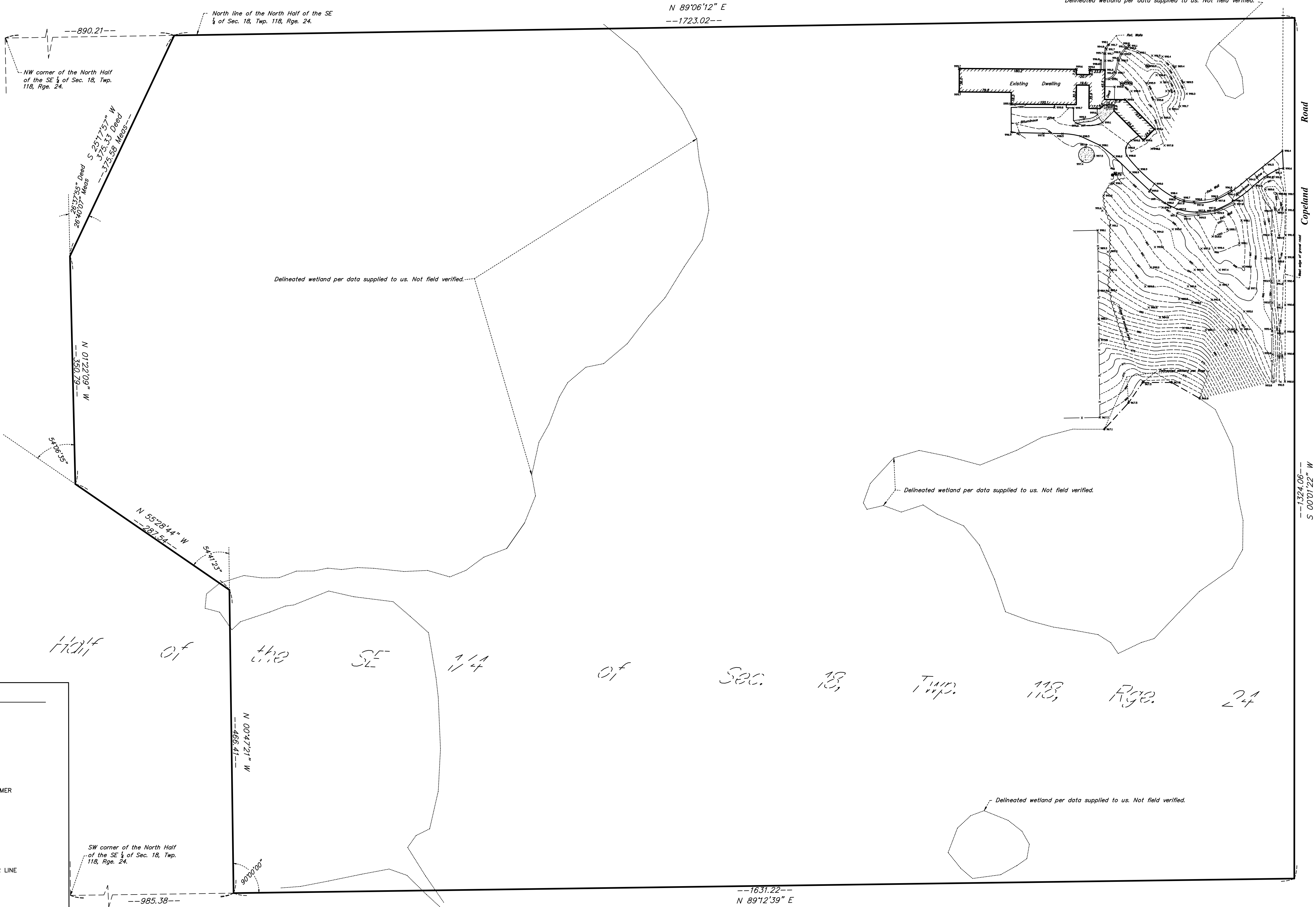
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22 X 34

SHEET NUMBER

S2

SHEET 2 OF 2



LEGEND

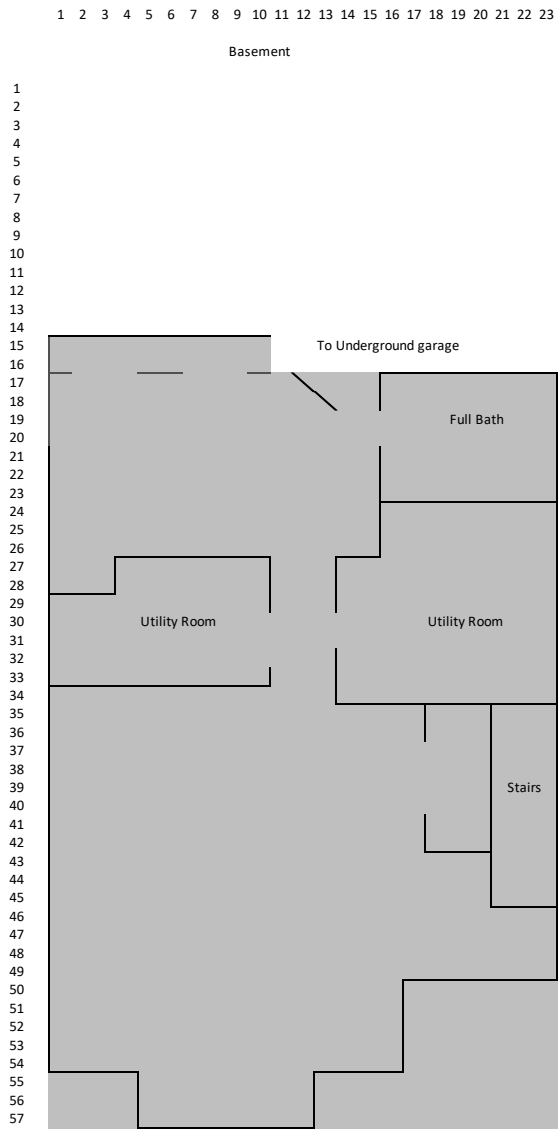
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- GAS METER
- FIRE HYDRANT
- POWER POLE
- MANHOLE
- TELEPHONE PED.
- ELEC. TRANSFORMER
- WELL
- GATE VALVE
- LIGHT POLE
- TREE
- FENCE LINE
- SANITARY SEWER LINE
- WATER LINE
- GAS LINE
- STORM DRAIN LINE
- OVERHEAD UTILITY LINE



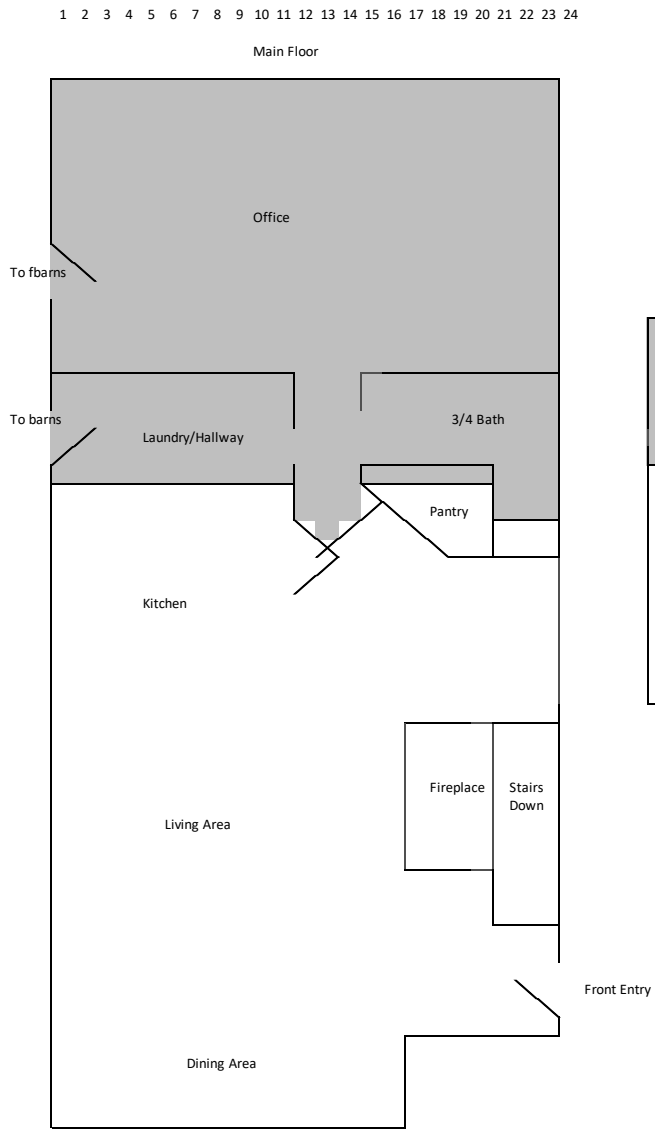
CONCRETE SURFACE

- Remove the closet and entry door from basement bedroom, have it be a storage room and thereby the basement is not considered square footage. We could also add a locking door at the top of the stairs, but our understanding of the MN MLS and normal real estate measuring guidelines is that without a bedroom, such below-grade square footage is not to be included in the overall square footage with or without a door at the top of the stairs.
- The closet and bathroom in the loft area have ceilings lower than seven feet, so those spaces should not count toward overall square feet either.
- If we put in a locking door in the hallway to limit the ADU to the front space on the main floor, and reserve the back space as separate non-dwelling space (with its own ingress/egress), the ADU would then have a size of approximately 1187 sq. ft. This is the white space shown on the floor plans.

Please be assured that all measurements are accurate (and in good faith) and extend fully to the exteriors of the building, both staircases are included in the square footage, and all numbers are rounded up, per architectural standards and MLS guidelines. The drawing and square footage are each calculated from the actual measurements (the square footage is not based off of the drawing).

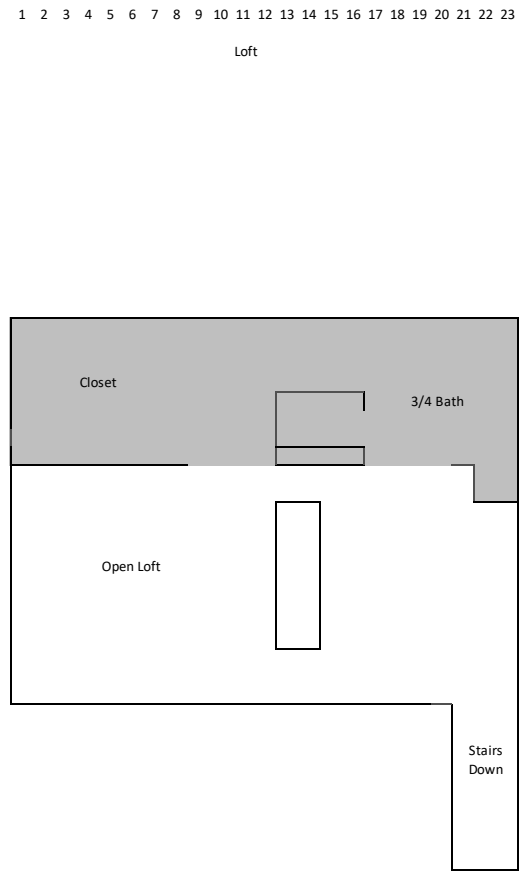


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389



POST RESIDENCE



## City of Independence

### ***Request for a Minor Subdivision and Subsequent Variance to Allow the Construction of a New Home on the for the Property Located at 4944 South Lake Shore Drive***

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To:	Planning Commission
From:	Mark Kaltsas, City Planner
Meeting Date:	May 17, 2022
Applicants:	Dan Vanderheyden
Owners:	Michael Crees
Location:	4944 South Lake Shore Drive (New Address if Combined)

#### ***Request:***

Dan Vanderheyden (Applicant) and Michael Crees (Owner) are requesting that the City consider the following action for the properties located off of “Maple Street” (PID No.s 24-118-24-11-0007 and 24-118-24-11-0006) in Independence, MN:

- a. A minor subdivision to allow a lot combination of the two subject properties.
- b. A variance seeking reduced building setbacks to allow the construction of a new home on the combined properties.

#### ***Property/Site Information:***

The subject properties are located along the south side of Lake Independence off of South Lake Shore Drive. The property is mostly wooded with a wetland and no structures. The property has the following site characteristics:

##### **Property Information: 4944 South Lakeshore Drive**

Zoning: *Rural Residential (Shoreland Overlay)*

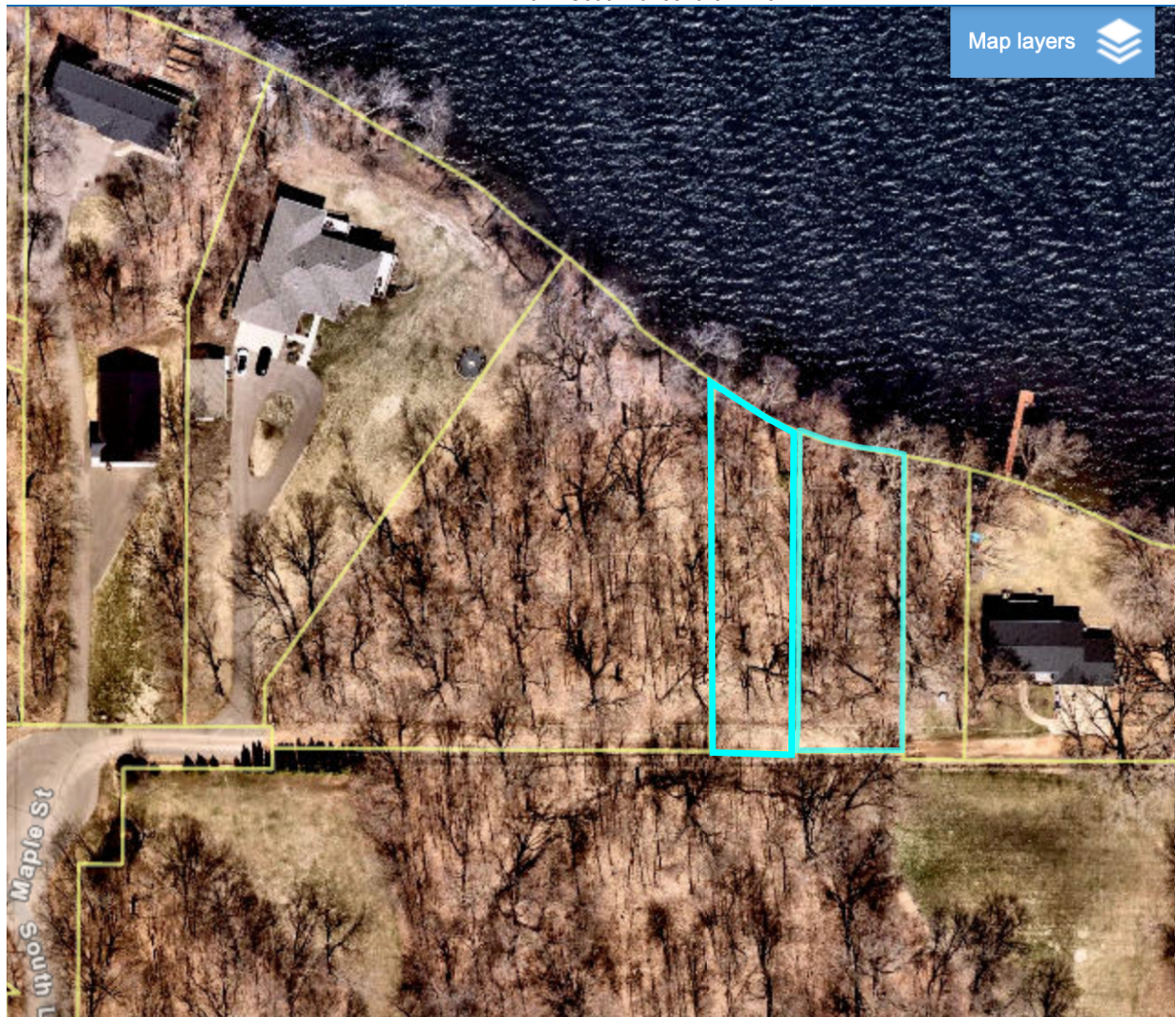
Comprehensive Plan: *Rural Residential*

Acreage (Before):     *Lot 5 (East Lot) - .22 acres*

*Lot 5 (West Lot) - .21 acres*

Acreage (After): *.43 acres*





***Discussion:***

The applicant approached the City about the possibility of constructing a new home on the subject properties. The City noted that both lots independently, have building eligibilities and are considered lots of record in the City. The City also noted that a structure cannot be constructed across a property line and combining the lots would be possible. One aspect of this property that creates additional challenges relating to its development, is an existing wetland in the northeast corner. The applicant delineated the wetland and determined that the wetland plus applicable wetland buffer would significantly limit the ability to construct a home on the property.

After discussing possible solutions that would facilitate the construction of a home, the applicant applied to the Minnesota Board of Water and Soil Resources to allow a reduction in the applicable wetland buffer from 20' to 10'. This application was considered and approved (see attached). The reduction in the requisite wetland buffer will help facilitate the construction of a new home. Even when combined, the applicable building setbacks limit the construction of a typical single-family

home on the properties. There are several considerations that should be noted by the Planning Commission:

- The lots in their current condition would be able to take advantage of the 60% setback provisions permitted for lots located within the S-Shoreland overlay district for properties in existence prior to December 31, 1982. If the lots are combined, they would constitute a new lot and would not qualify for the 60% setback provision.

- The applicable building setbacks without the 60% provision are as follows:

Front Yard Required:	85 ft from centerline or 50 ft. from right-of-way, whichever is greater
Side Yard Required:	30 feet
OWHL Required:	100 feet
Wetland Buffer:	10 feet

- The applicable building setbacks with the 60% provision are as follows:

Front Yard Required:	51 ft from centerline or 30 ft. from right-of-way, whichever is greater
Side Yard Required:	18 feet
OWHL Required:	60 feet
Wetland Buffer:	10 feet

- The applicant is proposing to construct a new home on the property that would meet the 60% setback provisions and take advantage of the reduced wetland buffer setback.

- The proposed building setbacks are as follows:

Front Yard:	50 ft from centerline (1 foot variance)
East Side Yard:	30 feet (no variance)
West Side Yard:	18 feet (12-foot variance)
OWHL:	67 feet (33-foot variance)
Wetland Buffer:	0 feet (10-foot variance)

Based on the requirements of the City's current zoning ordinance, the applicant will need a variance from the setback requirements in order to construct the proposed home on this property.

*520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)*

*Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:*

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*

*(b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*

*(c) the variance, if granted, will not alter the essential character of the locality.*

*Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)*

*Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)*

*520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)*

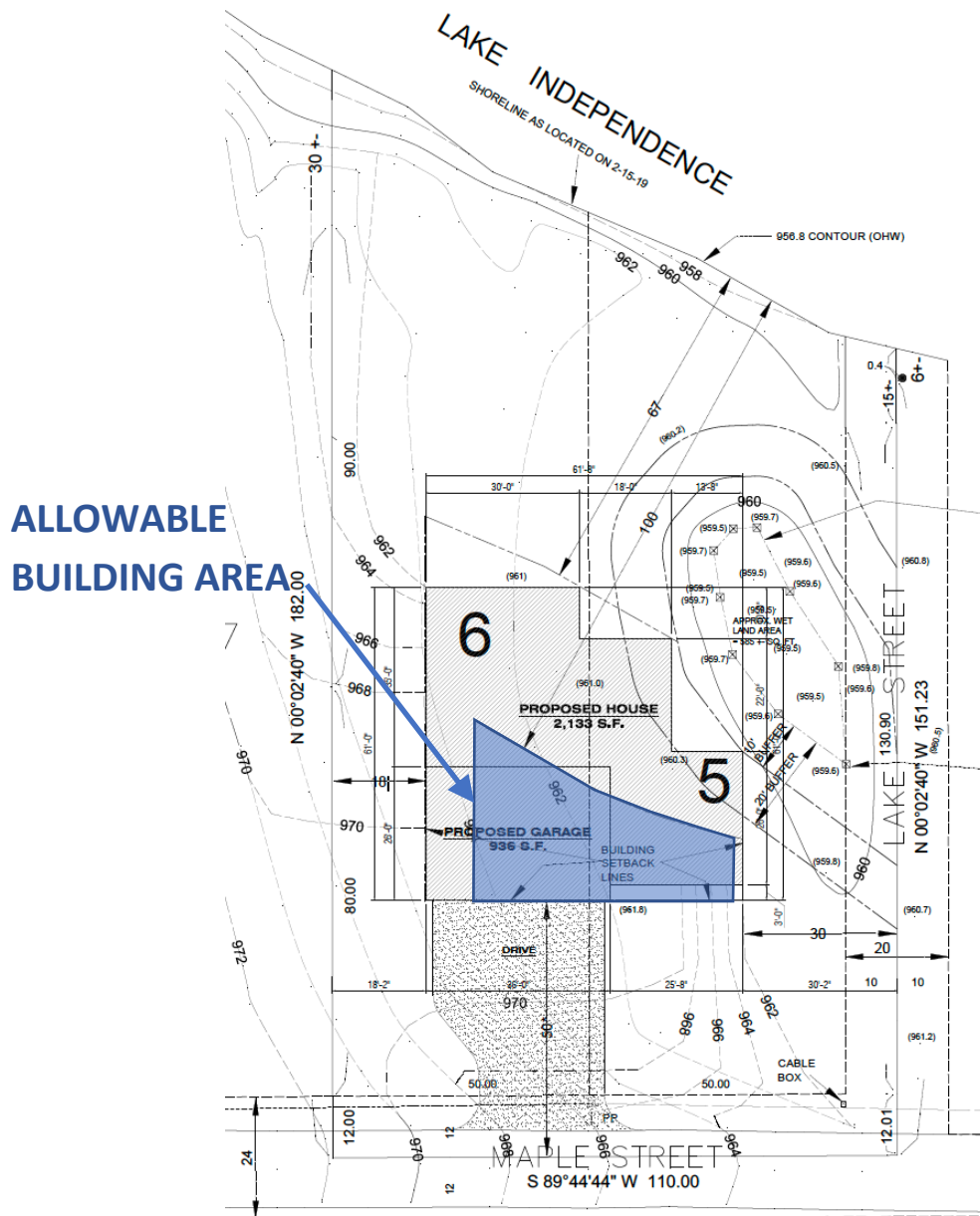
Consideration of the criteria for granting a variance:

- a. The applicant is proposing to use the property in a manner consistent with the Rural Residential District.
- b. The combination of the properties into one lot will reduce the overall and allowable coverage permitted if it was to remain as two (2) properties. The applicant has demonstrated that the proposed site development will not exceed the maximum 25% impervious surface coverage limitation (22.54%)
- c. The character of the surrounding area is residential. The applicant is proposing to construct a principal structure which is similar to that found on the surrounding properties.
- d. "Maple Street" is not a public right of way or road. It is considered a private driveway. The applicant has the ability to utilize the private driveway through a shared driveway agreement with the surrounding properties. The City allows up to three (3) lots on a private driveway. The combined lot would aid in maintaining no more than three lots on this private driveway.
- e. The proposed home would be connected to City sewer.
- f. Once combined, the proposed lot has a width of 100 feet. If the applicable 30 foot side yard setbacks were applied, the remaining width would be 40 feet. This is less than a typical lot in this area. Similarly, if you applied the 100 foot setback from The OHWL along with the 50' front yard setback, there would be very little width remaining (see exhibit).
- g. The property located to the east of the subject lots does not meet all applicable setbacks. It can be seen from aerial photographs, and it is otherwise known that many lake properties do not fully comply with all applicable zoning requirements.



- h. The applicant has provided the City with the initial building plans and elevations. The proposed home is a rambler-walkout style home (see attached).

The applicant has been working with the City to construct a reasonable home on the subject property. The existence of the wetland somewhat complicates the development of the property. The combination of the two lots into one lot should mitigate development impacts compared to the development of both of the subject properties. The Planning Commission will need to determine if the requested variance meet the requirements for granting a variance. The minor subdivision to allow a lot combination appears to meet all applicable requirements. The applicant will need to provide the City with the requisite 10' perimeter drainage and utility easements.



***Neighbor Comments:***

The City has not received any written or verbal comments regarding the proposed variance and minor subdivision.

***Recommendation:***

Staff is seeking a recommendation from the Planning Commission for the requested variance and minor subdivision. If recommended for approval to the City Council, the following findings should be considered:

1. The proposed variance and minor subdivision meets all applicable criteria and conditions stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.
2. Prior to the City executing the minor subdivision to be recorded at the County, the applicant shall provide the City with the following items:
3. The Applicant shall provide a revised exhibit indicating the requisite perimeter drainage and utility easements and legal descriptions. The Applicant shall execute all documents to convey the easements to the City.
4. The Applicant shall provide the City with a more detailed grading plan in the area adjacent to the wetland.
5. The requested variances will allow the construction of the proposed home in accordance with the associated building plans (approved plans only - plans will become an exhibit of the resolution). The variances will allow the following setbacks:
  - Front Yard: 50 feet (1-foot variance)
  - West Side Yard: 18 feet (12-foot variance)
  - OWHL: 67 feet (33-foot variance)
  - Wetland Buffer: 0 feet (10-foot variance)
6. The newly created lot will be required to connect to the City's sewer at the time a building permit application for a new home is submitted to the City.
7. The Applicant shall pay for all costs associated with the City's review of the requested variance and minor subdivision.
8. The Applicant shall record the minor subdivision and City Council Resolution with the county within six (6) months of approval.

***Attachments:***

Application  
Existing Survey  
Proposed Survey  
House Plans/Elevations  
Wetland Exception Application



**CITY OF  
INDEPENDENCE  
MINNESOTA**

**Applicant Information**

Name: Dan Vanderheyden

Address: 1905 Wayzata Blvd. E.,  
Suite 100  
Wayzata, Minnesota  
55391

Primary Phone: 763-228-8555

Email: dan@blackdoghomes.com

**Owner Information**

Name: Michael Crees

Address: Parcel ID 2411824110006,  
2411824110007  
Independence, Minnesota  
55359

Primary Phone: 763-639-3022

Email: Michaelcrees11@gmail.com

Property Address:

PID:

Planning Application Type: Subdivision, Variance, Planning / Building, Other

Subdivision Type: Lot Line Rearrangement

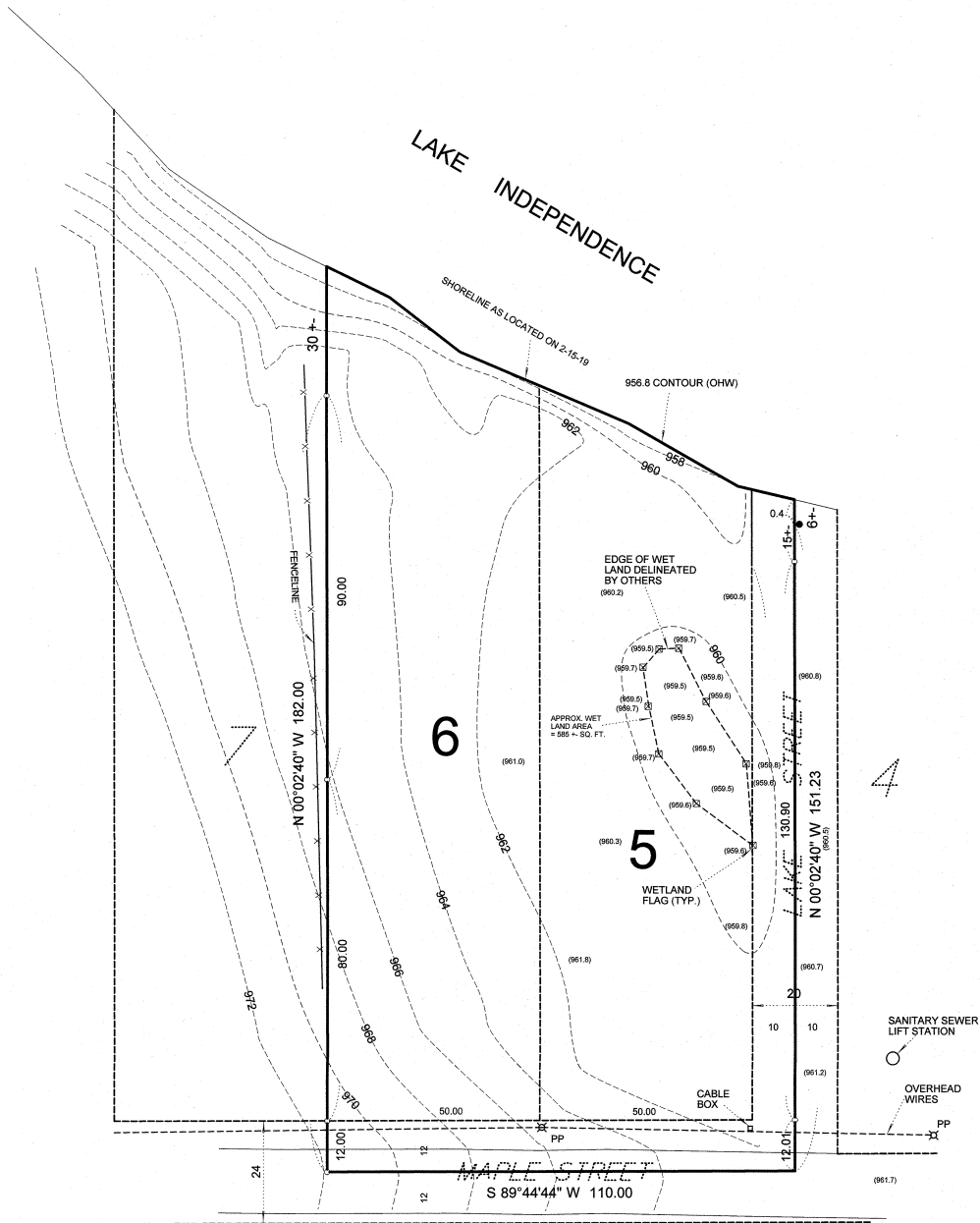
Description:

Supporting Documents: Site Survey (Existing Conditions), Site Survey (Proposed Conditions), Building Plans

Signature:

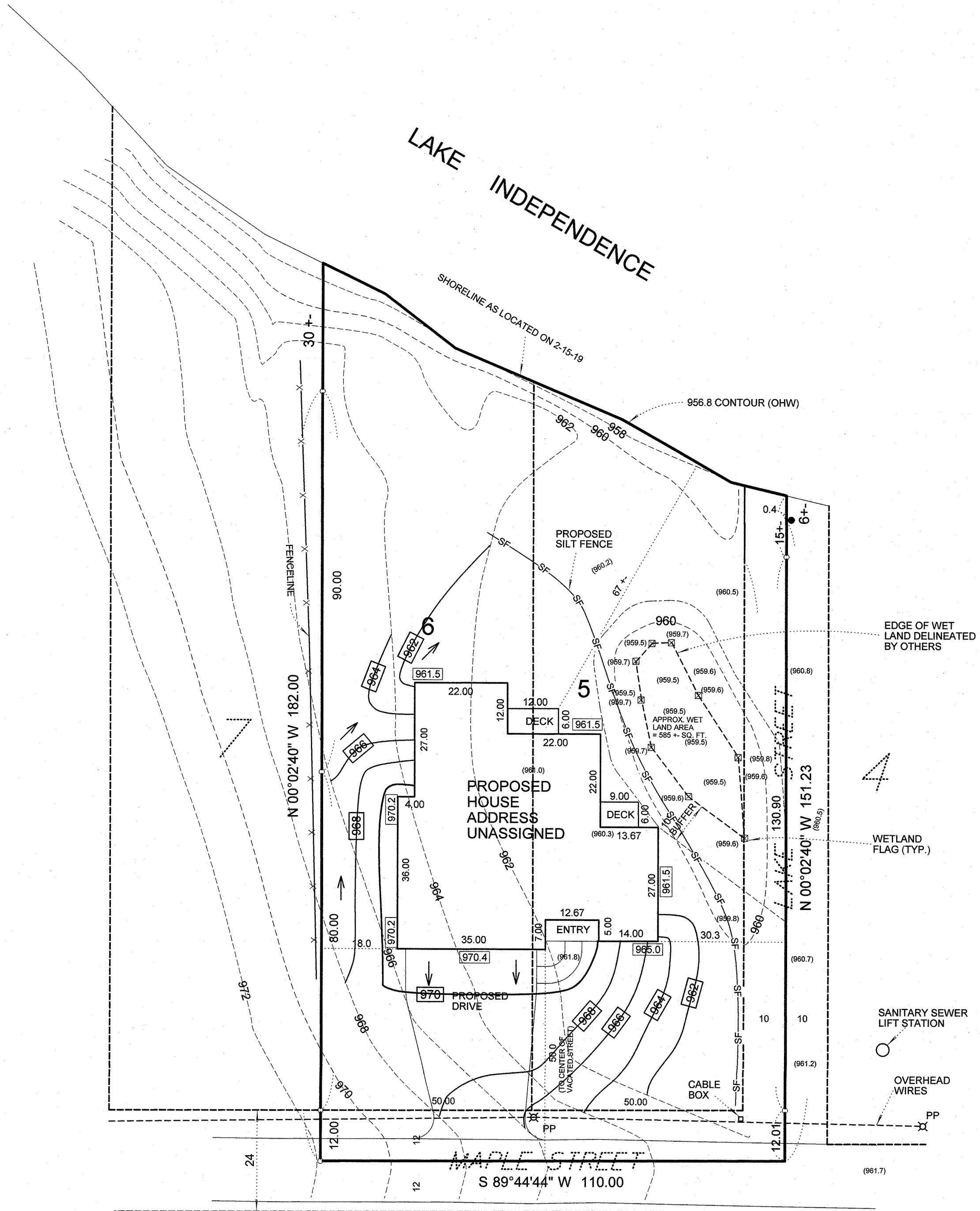
Daniel Q. Van

BOUNDARY AND TOPOGRAPHIC SURVEY FOR  
**MICHAEL CREES**  
OF LOTS 5&6, FRED W. ANDERSON'S ADDITION  
HENNEPIN COUNTY, MINNESOTA





# BOUNDARY AND TOPOGRAPHIC SURVEY FOR MICHAEL CREES OF LOTS 5&6, FRED W. ANDERSON'S ADDITION HENNEPIN COUNTY, MINNESOTA



## LEGAL DESCRIPTION (From Deed Document No. 6656549):

Lots Five (5) and Six (6), "FRED W. ANDERSON'S ADDITION" according to the recorded plat thereof, being a part of the Northeast Quarter (NE 1/4) of Section Twenty-Four (24), Township One Hundred Eighteen (118), Range Twenty-Four (24), according to the Government Survey thereof.

- : Denotes found iron marker
- : Denotes set iron marker
- 970- : Denotes existing contour
- (960.3) : Denotes existing spot elevation
- 962- : Denotes proposed contour
- (970.4) : Denotes proposed spot elevation

This survey intends to show the boundaries of the above described property and topography thereon. It does not purport to show any other encroachments or improvements.

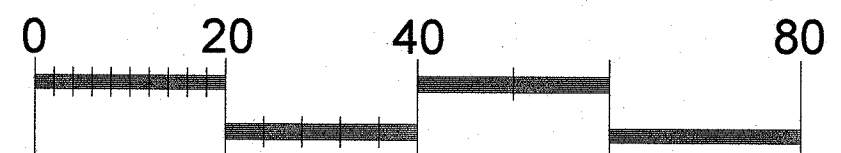
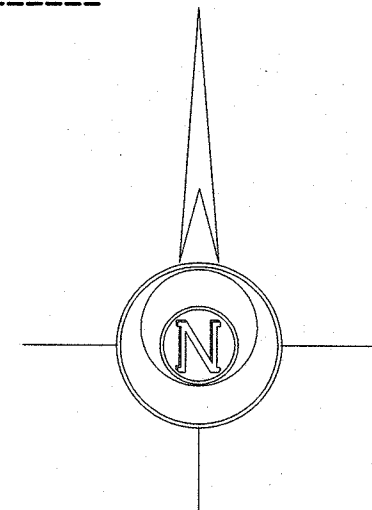
NOTE: The Hennepin County Tax Maps shows ownership to the centerlines of the adjoining vacated streets.

## PROPOSED HARDCOVER

LOT = 18776 ± S.F.  
HOUSE = 2932 ±  
DRIVE = 1056 ±  
ENTRY = 63 ±  
DECKS = 126 ±  
WALK = 56 ±  
TOTAL = 4233 ±  
4233 / 18776 = 22.54%

## PROPOSED ELEVATIONS (VERIFY):

GARAGE = 970.4  
TOP OF FDN. = 970.7  
MAIN FLOOR = 972.4  
BASEMENT = 962.0



SCALE IN FEET

## REVISIONS

DATE	REMARKS
12-7-20	ADDED SPOT ELEVATIONS
1-20-21	WETLAND FLAGS LOCATED
2-15-22	BUILDING SETBACKS ADDED
4-14-22	ADDED PROPOSED HOUSE

## DESIGNED

DRAWN

CHECKED

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

DATE 4-14-22 MINN. LICENSE NUMBER 12755

## DATE

10-21-20

SCALE

1"=20'

JOB NO.

22-026

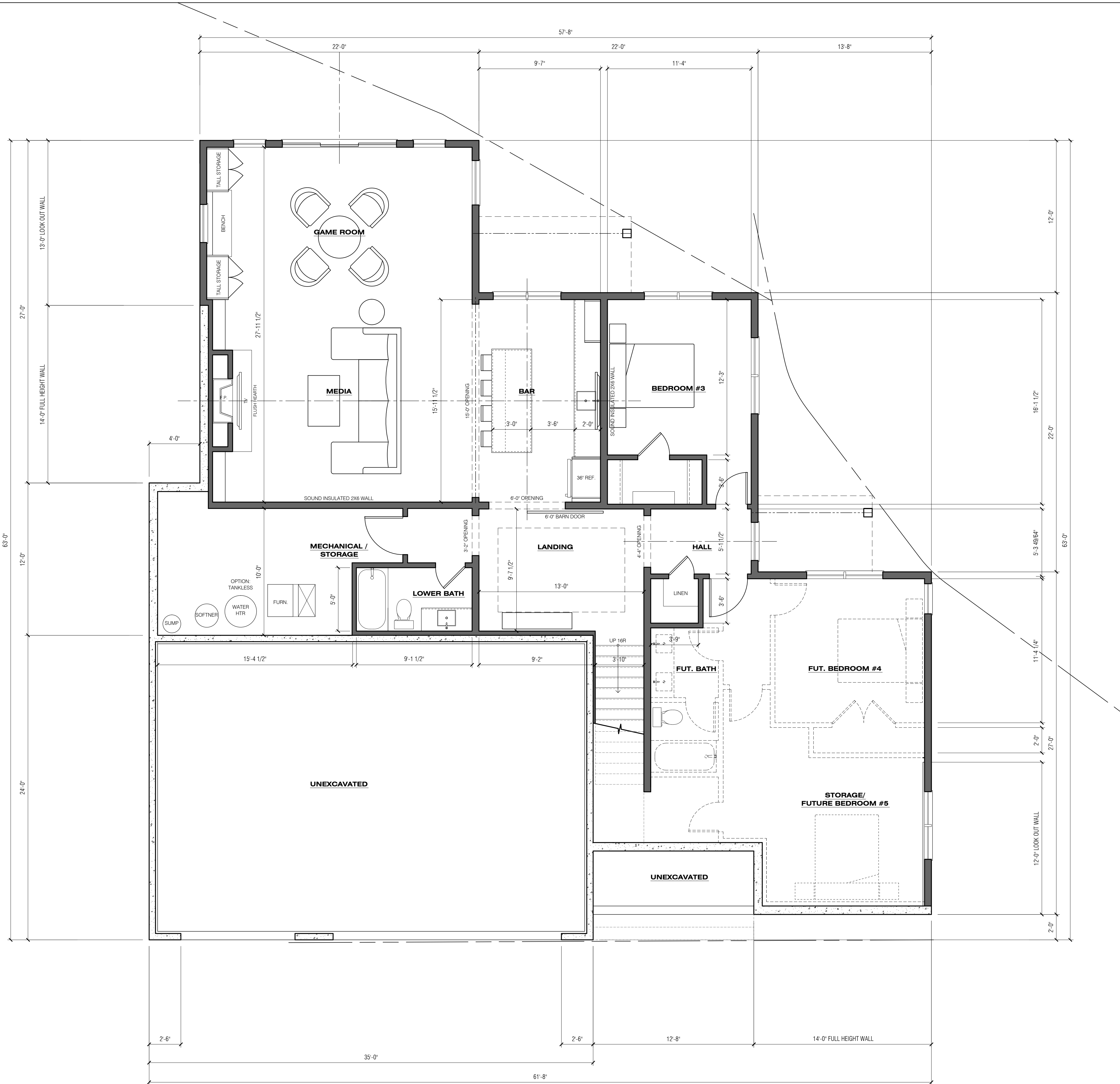
SHEET

OF

SHEETS



**GRONBERG & ASSOCIATES, INC.**  
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
445 N. WILLOW DRIVE LONG LAKE, MN 55356  
PHONE: 952-473-4141 FAX: 952-473-4435



1 Floor Plan 1,551 S.F.  
A1.0 1/4" = 1'-0"

NOT FOR CONSTRUCTION

952.250.1941  
WHALLERESCHSTUDIO.COM

C R E E S R E S I D E N C E

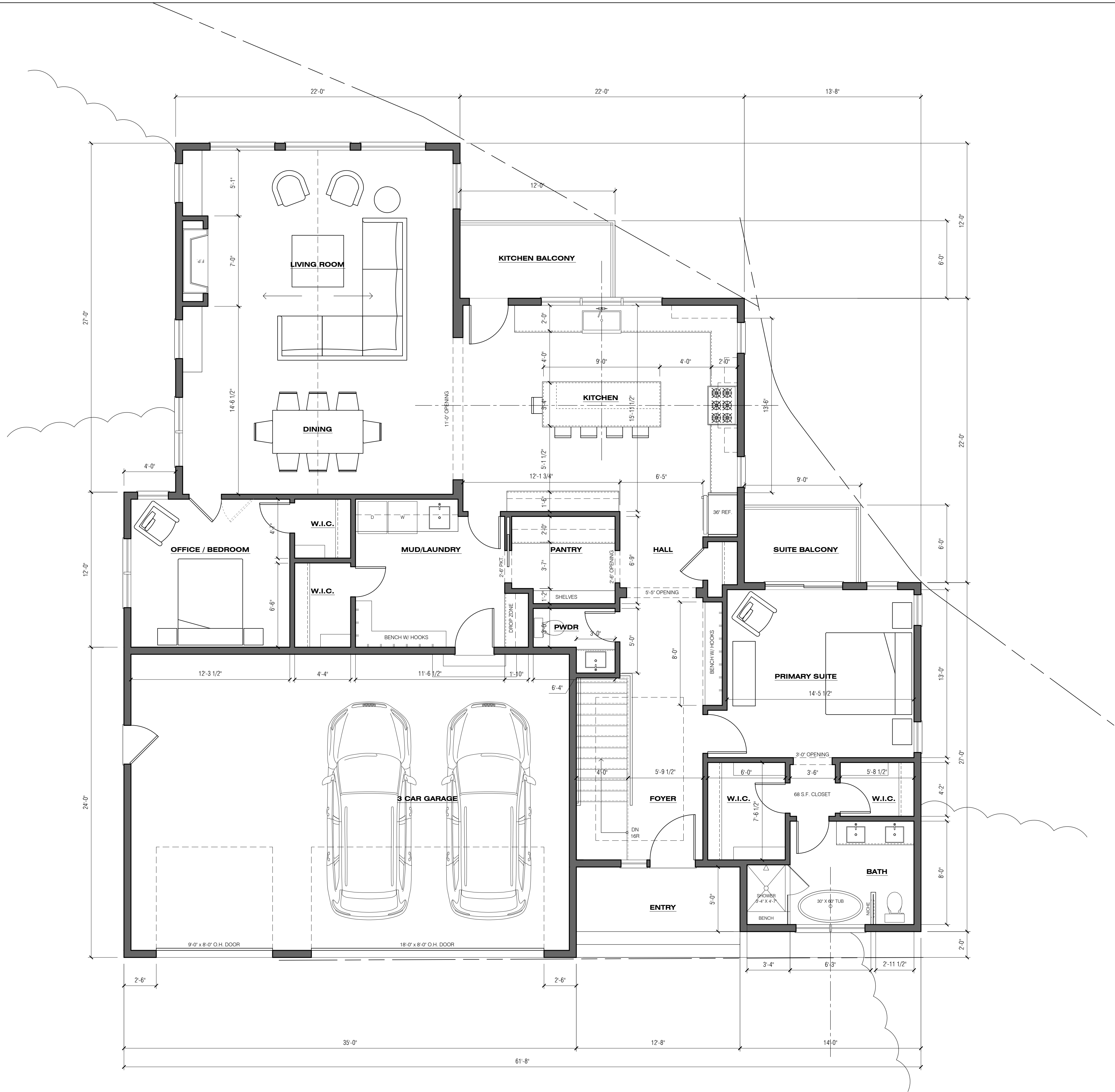
PARCEL ID AND/OR ADDRESS: 2411824110006, 2411824110007  
LOTS 5 & 6, FRED W. ANDERSON'S ADDITION  
INDEPENDENCE, MN

NOTES:

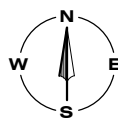
1. THIS FLOOR PLAN IS A PRELIMINARY DESIGN AND IS NOT A CONTRACT DOCUMENT. IT IS SUBJECT TO CHANGE WITHOUT NOTICE. THE OWNER AGREES TO HOLD THE ARCHITECT HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM THE USE OF THIS FLOOR PLAN, WHETHER OR NOT SUCH CLAIMS, DAMAGES, LOSSES AND EXPENSES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, ACTIVE OR PASSIVE, OF THE ARCHITECT.

ISSUE DATE
4.14.22

A1.0  
LOWER FLOOR  
PLAN



1 Floor Plan 2,130 S.F.  
A1.1 1/4" = 1'-0"



NOT FOR CONSTRUCTION



C R E E S R E S I D E N C E  
PARCEL ID AND/OR ADDRESS: 2411824110006, 2411824110007  
LOTS 5 & 6, FRED W. ANDERSON'S ADDITION  
INDEPENDENCE, MN

NOTES:  
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
2. FINISHES TO BE DETERMINED BY THE OWNER.  
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MINNESOTA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.  
4. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSURANCE.  
5. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY THE OWNER OR ANY OTHER PARTY.  
6. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY ANY OTHER PARTY.  
7. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY ANY OTHER PARTY.

ISSUE DATE
4.14.22

A1.1  
MAIN FLOOR  
PLAN



1 Exterior Elevation  
A2.0 1/4" = 1'-0"



2 Exterior Elevation  
A2.0 1/4" = 1'-0"

NOT FOR CONSTRUCTION



C R E E S R E S I D E N C E  
PARCEL ID AND/OR ADDRESS: 2411824110006, 2411824110007  
LOTS 5 & 6, FRED W. ANDERSON'S ADDITION  
INDEPENDENCE, MN

NOTES:  
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
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9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

ISSUE DATE
4.14.22

A2.0  
ELEVATIONS

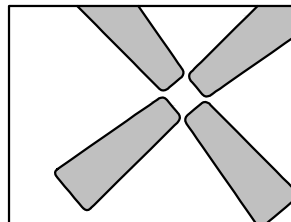


1 Exterior Elevation  
A2.1 1/4" = 1'-0"



2 Exterior Elevation  
A2.1 1/4" = 1'-0"

NOT FOR CONSTRUCTION



932.250.1941  
WCHALLENGERSTUDIO.COM



C R E E S R E S I D E N C E  
PARCEL ID AND/OR ADDRESS: 2411824110006, 2411824110007  
LOTS 5 & 6, FRED W. ANDERSON'S ADDITION  
INDEPENDENCE, MN

**NOTES:**  
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
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9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

ISSUE DATE  
4.14.22

A2.1  
ELEVATIONS

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Beth and Mark-

We are sending this email in support of Tony Post's application/variance request for his property at 2791 Copeland Road.

We are the three sets of neighbors that live immediately across the street from the Post property. We all believe the application is reasonable and appropriate as the property is quite large and can easily accommodate an additional structure that is still well spaced from others. The proposal also allows the Post family or future owners to have multi-generational relatives on the same property.

The proposed new structure is of high quality. The project will improve both the Post property and surrounding house values.

Thank you

Sally and Jerry Simpson 2840 Copeland

Jenna and Cory Christensen 2686 Copeland

JoAnn and Marsh Halberg 2752/2696 Copeland

Dear Mark and Beth:

Please forward the following information onto the planning commission on behalf of my wife, Melissa, and myself, who live at 2855 Copeland Rd. We are the neighbors directly to the north of Tony and Hayley who have a pending application before the planning commission to approve a CUP and variance for an ADU.

We as neighbors are fully in support of the Post's application. They are improving the value and usability of the property and it's a large lot that can accommodate their plans. We hope the Planning Commission and City Council will approve these applications.

If you have any questions, please do not hesitate to contact me at 651-895-9332.

Thanks!  
Mark (and Melissa)

## Minnesota Wetland Conservation Act Notice of Application

<b>Local Government Unit:</b> City of Independence	<b>County:</b> Hennepin
<b>Applicant Name:</b> Michael and Chanel Crees	
<b>Applicant Representative:</b>	
<b>Project Name:</b> Crees Property	<b>LGU Project No. (if any):</b> IN401-22-04
<b>Date Complete Application Received by LGU:</b> 3/18/2022	
<b>Date this Notice was Sent by LGU:</b> 3/21/2022	
<b>Date that Comments on this Application Must Be Received By LGU<sup>1</sup>:</b> 4/11/2022	

<sup>1</sup> minimum 15 business day comment period for Boundary & Type, Sequencing, Replacement Plan and Bank Plan Applications

### WCA Decision Type - check all that apply

<input type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)		<input type="checkbox"/> Exemption (8420.0420)	
Part: <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

### Replacement Plan Impacts (replacement plan decisions only)

<b>Total WCA Impact Area Proposed:</b>
--

### Application Materials

<input checked="" type="checkbox"/> Attached <input type="checkbox"/> Other <sup>1</sup> (specify):
---

<sup>1</sup> Link to ftp or other accessible file sharing sites is acceptable.

### Comments on this application should be sent to:

<b>LGU Contact Person:</b> Matt Danzl
<b>E-Mail Address:</b> Mattd@haa-inc.com
<b>Address and Phone Number:</b> 3601 Thurston Ave., Anoka, MN 55303      Ph: (763) 852-0496
<b>Decision-Maker for this Application:</b>
<input checked="" type="checkbox"/> Staff <input type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other (specify):

### Notice Distribution (include name)

*Required on all notices:*

<input checked="" type="checkbox"/> SWCD TEP Member: Stacey Lijewski (Stacey.lijewski@hennepin.us)	<input checked="" type="checkbox"/> BWSR TEP Member: Ben Carlson (Ben.carlson@state.mn.us)
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Wes Saunders-Pearce, Wes.Saunders-Pearce@state.mn.us	
<input checked="" type="checkbox"/> Watershed District or Watershed Mgmt. Org.: Andrew Vistad (Andrewv@haa-inc.com)	
<input checked="" type="checkbox"/> Applicant (notice only):	<input checked="" type="checkbox"/> Agent/Consultant (notice only):

### Optional or As Applicable:

<input checked="" type="checkbox"/> Corps of Engineers: TBD
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):
<input type="checkbox"/> Members of the Public (notice only): <span style="float: right;"><input type="checkbox"/> Other:</span>

<b>Signature:</b> 	<b>Date:</b> 3/21/22
--	----------------------

This notice and accompanying application materials may be sent electronically or by mail. The LGU may opt to send a summary of the application to members of the public upon request per 8420.0255, Subp. 3.



# Joint Application Form for Activities Affecting Water Resources in Minnesota

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

## Regulatory Review Structure

### Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

### State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

## Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

## Submission Instructions

Send the completed joint application form and all required attachments to:

**U.S Army Corps of Engineers.** Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

**Section 401 Water Quality Certification:** Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

**Wetland Conservation Act Local Government Unit:** Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site ([www.bwsr.state.mn.us](http://www.bwsr.state.mn.us)) to determine the appropriate LGU.

**DNR Public Waters Permitting:** In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

## PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

**Applicant/Landowner Name:** Michael and Chanel Crees

**Mailing Address:** 5054 S. Lakeshore Dr., Maple Plain, MN 55379

**Phone:** 763-639-3022

**E-mail Address:** Michaelcrees11@gmail.com

**Authorized Contact (do not complete if same as above):** N/A

**Mailing Address:**

**Phone:**

**E-mail Address:**

**Agent Name:** N/A

**Mailing Address:**

**Phone:**

**E-mail Address:**

## PART TWO: Site Location Information

**County:** Hennepin

**City/Township:** Independence

**Parcel ID and/or Address:** 2411824110006, 2411824110007

**Legal Description (Section, Township, Range):** Lots 5 and 6, Fred W. Anderson's Addition

**Lat/Long (decimal degrees):** Lat. 45.0203, Long. -93.6491

**Attach a map showing the location of the site in relation to local streets, roads, highways.**

**Approximate size of site (acres) or if a linear project, length (feet):** 0.46 Acres

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform\\_4345\\_2012oct.pdf](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf)

## PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted **prior to** this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

Description: The proposed project is to build a residential home and driveway on consolidated lots 5 and 6 in the area identified (see attached). The structure itself, or any disturbance during construction will not occur within 10' of the delineated

wetland. A delineation was conducted in the fall of 2020 with a Notice of Decision received by the applicant on 2/5/2021. This approved boundary is shown in the attached site plan.

**Purpose and Need:** The purpose of this project is to allow for landowners and their family to build a home on their property. This home will act as their main place of residence.

**Schedule for Implementation and Completion:** If approved, this project is scheduled to begin construction approximately July 2022 with completion approximately April 2023.

## PART FOUR: Aquatic Resource Impact<sup>1</sup> Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) <sup>1</sup>	Size of Impact <sup>2</sup>	Overall Size of Aquatic Resource <sup>3</sup>	Existing Plant Community Type(s) in Impact Area <sup>4</sup>	County, Major Watershed #, and Bank Service Area # of Impact Area <sup>5</sup>

<sup>1</sup>If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

<sup>2</sup>Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

<sup>3</sup>This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

<sup>4</sup>Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3<sup>rd</sup> Ed. as modified in MN Rules 8420.0405 Subp. 2.

<sup>5</sup>Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

## PART FIVE: Applicant Signature

☐ Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature:  Date: 5/17/22

I hereby authorize \_\_\_\_\_ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

<sup>1</sup> The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

## Attachment A

### Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

☐ **Wetland Type Confirmation**

☐ **Delineation Concurrence.** Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

☐ **Preliminary Jurisdictional Determination.** A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

☐ **Approved Jurisdictional Determination.** An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

## Attachment B

# Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part **if** you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR **if** you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

The no-loss provision for which this project is believed to qualify under can be found in "Section 8420.0415 NO-LOSS CRITERIA" item "A. an activity that will not impact a wetland."

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

Mike and Chanel Crees have communicated with the TEP Committee via the "pre-application" process to gain a better understanding of what a "no-loss" application means. With this "no-loss" application, it is the Applicant's intention to build their new home without disruption to the wetland on the property. This will be done by installing a high visibility orange silt fence (4-5' high) around the wetland and keeping all construction machinery, workers, fill, etc. from the wetland while the new home is being built. The proposed location of the newly constructed home will not be closer than 10' from the wetland and the grading plan shows minimal change to the existing grading on the property (see attached). It is assumed that indirect impacts will not alter the type of wetland or its functionality and will retain being a Type I wetland.

Mike and Chanel Crees have communicated with the City of Independence Planner, Mark Kaltsas, and are following his recommendation regarding keeping two of the setbacks in order (south and east sides of the lot). They have also discussed buffer averaging in order to satisfy the City of Independence's ordinance of buffering as it relates to a wetland.

