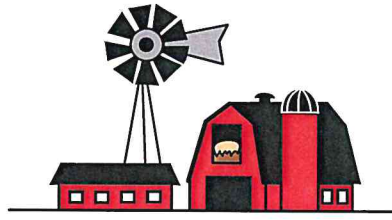


# TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

4111 11<sup>th</sup> Avenue SW Room 10  
Rochester, MN 55902

Phone: (507) 529-0774  
Fax: (507) 281-6821



David Meir, Administrator  
Jered Staton, Administrator  
Ethan Kaske, Administrator  
david@tcpamn.org  
jered@tcpamn.org  
ethan@tcpamn.org

-- TCPA --

Date: 05/01/2024

To: Oronoco Township Board of Adjustment  
Drew & Dana DeWitz

Re: Variance Request - Section 2 – Oronoco Township

Public Hearing: On Monday, May 13th, 2024, after 5:30 p.m. the Oronoco Township Board of Adjustment will hold a public hearing at the Oronoco City Hall, 115 2nd Street NW, Oronoco, MN 55960 regarding:

Request: An application for variances to the criteria for the construction of an accessory building in an R-1; Low Density Residential District. The applicant wishes to replace an existing accessory structure with a new structure that is both larger and taller than allowed by the ordinance as well as being closer to the road than allowed by the ordinance.

Proposed Accessory Building Size:  
1,920 sq.ft. – 1,500 sq.ft. allowed – 420 sq.ft. variance

Proposed Accessory Building Height:  
22.5’ – 15’ allowed – 7.5’ variance

Proposed Distance to Center of Road:  
75’ – 80’ required distance to COR – 5’ variance

This proposal will also require a variance to the OHWM. (Ordinary High-Water Mark) That variance will be handled by Olmsted County as the Floodplain/Shoreland Administrator.

Owner/Applicant: Drew & Dana DeWitz – 15 125th Street NE – Rochester, MN 55906

Legal Description: Parcel #: 840244040380  
SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

Zoning: R-1; Low-Density Residential District.

Ordinance: Oronoco Township Zoning Ordinance

Section 6.02 R-1; LOW DENSITY RESIDENTIAL DISTRICT:

C. General District Regulations:

3. Front Yard Regulations:

- a) A minimum front yard depth of not less than forty-five (45) feet shall be provided on all lots adjoining federal, state, and county roads.
- b) A minimum front yard depth of not less than thirty (30) feet shall be provided on lots adjoining local roads and streets.

4. Side Yard Regulations:

- a) A minimum side street yard width of not less than forty-five (45) feet shall be provided on all lots adjoining federal, state, and county roads.
- b) A minimum side street yard width of not less than thirty (30) feet shall be provided on all lots adjoining local roads and streets.
- c) A minimum interior side yard width of not less than eight (8) feet shall be provided.

5. Rear Yard Regulations:

- a) A minimum rear yard depth of not less than twenty-five (25) feet shall be provided.

Section 10.22 ACCESSORY BUILDINGS:

B. Accessory Building Regulations Applicable to the RSD, R-1, and R-2, ARC – Residential Area Districts and Non-Farm Parcels in the A-4 District:

1. In the R-1, ARC – Residential Area, and RSD Districts, accessory buildings may be located in the buildable area or within the rear yard. In the case of an accessory building located in the rear yard, such building may be located not less than five (5) feet from an interior side lot line and not less than eight (8) feet from a rear lot line. The maximum cumulative gross floor area (measured on the largest floor and including interior parking spaces) for accessory structures shall be according to the following schedule:
  - For lots with a lot area of less than one (1) acres -- One thousand (1,000) square feet.
  - For lots with a lot area of at least one (1) acre but less than two (2) acres -- twelve hundred (1,200) square feet.
  - For lots with a lot area of two (2) acres or greater -- fifteen hundred (1,500) square feet.
4. No accessory building shall be located closer to a right-of-way than allowed in the front yard or side street yard regulations of the district wherein located.
5. In the R-1 District, R-2 District, and ARC – Residential Area, and any residential property in an RSD District, no accessory structure shall exceed a building height of 15 feet.

Review List: Olmsted County Planning  
Olmsted County Health Department  
Minnesota Pollution Control  
Olmsted County Public Works  
Olmsted County Soil and Water  
Minnesota Department of Natural Resources  
GGG Engineering

Attachments:

- |                                |               |
|--------------------------------|---------------|
| 1. Staff Report                | pages 1 - 8   |
| 2. Letter of Town Board Action | page 9        |
| 3. Application                 | page 10 - 11  |
| 4. Applicant's Site Maps       | pages 12 - 13 |
| 5. Setback Maps                | page 14       |
| 6. Location Map                | page 15       |
| 7. Aerial Photo Map            | page 16       |
| 8. Zoning Map                  | page 17       |
| 9. Elevation Map               | page 18       |
| 10. Flood Maps                 | page 19       |
| 11. Previous Recorded Variance | pages 20 - 22 |
| 12. Reviewer Comments          | pages 23 - 33 |

#### SECTION 4.08 VARIANCES

A. Criteria for Granting a Variance: A variance may be granted only when the applicant for the variance establishes that there are practical difficulties in complying with the official control. Economic considerations do not constitute practical difficulties. The Oronoco Board of Adjustment must find evidence that all of the following facts and conditions exist:

1. There are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district;
2. The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner;
3. The variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that the property can be used in a reasonable manner not permitted by the ordinance;
4. The variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, and will not alter the essential character of the locality;
5. The variance is in harmony with the general purpose and intent of this ordinance; and
6. The terms of the variance are consistent with the comprehensive plan.

Analysis:

The owner/applicant wishes to construct an accessory structure that, per their application, requires the following variances:

**A variance for the size of the structure.** The property is zoned R-1; Low Density Residential District and is over two acres in size. Section 10.22 of the ordinance limits accessory building size, on a parcel of two acres or more, to 1,500 sq.ft.. The proposed structure would be 1,920 sq.ft. (30' x 64') requiring a variance of 420 sq.ft..

**A variance to the proposed height of the structure of 22.5'.** Again, Section 10.22 of the ordinance limits accessory building height in the R-1 District to no more than 15'. However, the height of a building with a gable style roof, as proposed, is determined as the distance halfway between the eave and peak. I.e. if the eave height from the ground is 10' and the peak of the roof from the ground is 20' the height of the building is considered to be 15'. The applicant was unaware of this and did not have final plans for his structure. Before granting a variance for height the Board may want to consider requiring the applicant to provide construction plans showing the actual final proposed height of the accessory structure to determine the exact height variance required.

**A variance to the required front yard setback.** On a local road any structure must be set back 30' from the edge of the road right-of-way. The road right-of-way is somewhat subjective in this area. To the east of the subject property 125<sup>th</sup> Street has a typical 66' Township Road right-of-way. In the approximate center of the subject property, Shorewood Lane joins 125<sup>th</sup> Street at a roughly 30-degree angle. From this point to the dead-end of the road, at the edge of Lake Zumbro, the mapped right-of-way is 100' wide; with most of that right-of-way on the south side of the physical roadway. The setback from the center of the actual physical road and the setback from the middle of the road right-of-way are nearly the same. For the purpose of this variance, we have used the center of the mapped right of way to calculate the required front yard setback.

Shoreland Variance: The applicant was also of the assumption they would need a variance to the OHWM – Ordinary High-Water Mark in the Shoreland District. Based on comments from Nicole Lehman at the DNR it would appear the applicant could easily meet the 75' setback to the OHWM by adjusting the proposed location of the accessory structure. The DNR is of the opinion that the ordinance required distance to the OHWM should be maintained, if at all possible, to preserve the natural resource. Staff agrees with the DNR but that is not our call.

Shoreland Variance First or Road/Height/Size Variance First:

Staff apologizes for the confusion regarding this new variance process.

It was the opinion of Olmsted County – as the Floodplain/Shoreland Ordinance Administrator - that the Township should first consider the variances for structure size, height, and road setback and at the same time petition the Township for a Letter of Town Board Action asking the County to consider the OHWM setback.

The DNR was of the opinion that the process should be reversed giving the Township the ability to adjust the road setback variance based on the approved or denied variance to the



OHWM.

In hindsight, Staff is (now) of the opinion that the applicant should withdraw their OHWM variance application and adjust the proposed siting of the accessory structure to eliminate the need for that variance thereby helping to preserve the natural resource.

Considering that this variance proposal will likely be tabled at the May 13<sup>th</sup>, 2024, Town Board meeting the following analysis of the variance criteria will consider only the variance for accessory building size and setback to the road right-of-way.

Variance Criteria:

An analysis of the criteria for granting a variance is as follows;  
*(staff comments in italics)*

1. There are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district;

*There's no question the subject parcel is irregular and narrow and also limited by its proximity to the shore of Lake Zumbro and the Shoreland District. An irregular lot line would be typical of any lot that borders a water source – whether it's a lake or a river. At least one property line typically follows a shoreline. The subject property is somewhat unique when compared to other parcels within this area. Many, if not most of the shoreline lots in this area are situated perpendicular to the lake whereas the subject property parallels the lake. A 2.5-acre lot that is perpendicular to the lake has the benefit of more land area that is not immediately adjacent to the water. Because the subject parcel parallels the lake the entire parcel is affected by the lakeshore.*

*This criterion is met.*

2. The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner;

*Was the size and shape of the lot and its proximity to the lakeshore and the road – in other words the extraordinary conditions or circumstances described above – created by the owner? No. Then again, it's not as though the size, shape, and proximity of the parcel has changed since the owner purchased the property.*

*This criterion is met.*

3. The variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that the property can be used in a reasonable manner not permitted by the ordinance;

***Size Variance:***

*This criterion is more complicated as it can be subjective. Being able to use the property in a reasonable manner depends on any one person's opinion of what is reasonable. To someone, i.e. with a boat, and a jet ski or two, a motor home, lawn furniture, need for a workshop, etc... the proposed shed at 30' x 64' may not be nearly big enough. Someone who uses this property as a weekend home may not need any more space than already exists within the current structures.*

*The ordinance, in criteria #1 and #2 talks about the subject lot and the area – is it like other lots in the area. The intent of the ordinance is to determine reasonableness by a comparison of what is reasonable for the area and other similar properties. A brief analysis of other dwelling parcels in the immediate area and across the lake to west revealed only a couple of other parcels with similar (total) size of accessory building space.*

*This criterion is not met.*

***Setback Variance:***

*As described previously this variance is based on the proposed accessory structure meeting the 75' setback from the OHWM and keeping the structure in the same general location as proposed by the applicant. The setbacks and building location were determined by Staff utilizing the County GIS measuring tools.*

*But this could change and is the reason, for practical purposes, that the applicant should either a.) withdraw his variance application and meet the required 75' setback to the OHWM, or b.) if the OHWM setback variance request is not withdrawn that variance should first be considered by the County as it may or may not change the needed setback to the road variance.*

*There may be other potential locations for the proposed structure and the siting of the structure (possibly at a different angle) may change the needed setback variance. However, based on the setbacks and proposed location on the attached map the proposed structure would require a variance of five feet to the front yard setback which is reasonable.*

*This criterion is met.*

***Height Variance:***

*Construction plans for the proposed accessory building may eliminate the need for this variance. The applicant should provide said plans before the Township can consider this portion of the variance.*

4. The variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, and will not alter the essential character of the locality;

*The majority of dwelling parcels in this area have detached accessory structures. In addition, there are agriculturally zoned properties intermixed*

*within this area with larger accessory structures. The presence of an accessory structure that is 420 sq.ft. larger and that is somewhat closer to the road right-of-way will not be materially detrimental to the public welfare or materially injurious to other property in the area.*

*This criterion is met.*

5. The variance is in harmony with the general purpose and intent of this ordinance; and

*The purpose and intent of the Oronoco Township ordinance reads in part;*

*“This Zoning Ordinance is enacted . . . by lessening congestion in the public right-of ways; securing safety from fire, panic and other dangers; providing adequate light and air; facilitating the adequate provision of water, sewerage and other public facilities; conserving the value of properties and encouraging the most appropriate use of the land; and to protect the environment . . .”*

*It would seem the proposed variances fall short of being in harmony with the general purpose and intent of the ordinance. Allowing a structure to be closer to the front yard setback than is allowed by the ordinance could be construed to be adding to the congestion of public rights-of-way. Providing adequate sewerage may also be affected with a larger than allowed accessory structure potentially inhibiting the location of a secondary septic (sewerage) field. Conversely, the proposed structure that is larger, closer to the road, and potentially taller than allowed, likely has no adverse effect on the potential for fire or panic and other dangers, nor would it adversely affect light and air.*

*The Board should consider public comments as well as any reviewer comments before determining whether this criterion is met.*

6. The terms of the variance are consistent with the comprehensive plan.

*The surrounding area is either within the Resource Protection or Suburban Subdivision Area(s) of the Olmsted County Land Use Plan. The subject property being within the Suburban Subdivision area of the LUP. The proposed accessory structure does not conflict with the comprehensive plan.*

*This criterion is met.*

Conclusion: This variance request should be tabled until the following have been completed:

1. The applicant should either withdraw his variance application to the setback from the OHWM criterion. Or, if the applicant does not withdraw his OHWM variance application the Township should complete a Letter of Town Board action requesting that Olmsted County consider the variance to the OHWM.

2. The applicant should provide construction plans for the proposed structure to determine whether a height variance is required and if so, how much of a height variance is needed.

COUNTY OF OLMSTED, MINNESOTA

LETTER OF TOWNBOARD ACTION

DATE: 05/13/2024

TO: County of Olmsted  
Rochester – Olmsted Planning Department  
2122 Campus Dr. SE, Suite 100  
Rochester, Minnesota 55904

RE: Report of Action by the Townboard of Oronoco Township on the  
Application by Drew and Dana DeWitz (Applicant),  
Located in the SE1/4 of the SE1/4 Quarter of Section 02.

TYPE OF APPLICATON: Variance to OHWM

The Townboard of Oronoco Township met on 05/13/2024 (date) and  
considered the application of Drew and Dana DeWitz (applicant)  
on the above referred property.

The Townboard has reviewed this application and makes the following comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sincerely,

\_\_\_\_\_  
Clerk of Oronoco Township (Signature Required)

Townboard Members (Signature Required)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DISTRIBUTION:**  
Planning Department: (white copy)  
Townboard (canary copy)  
Applicant (pink copy)



07V-24-01

TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

TCPA
4111 11th Avenue SW
Room 10
Rochester, MN 55902

VARIANCE APPLICATION

PH: 507-529-0774
FX: 507-281-6821
EM: mail@tcpamn.org
WEB: www.tcpamn.org

TOWNSHIP: Oronoco

DATE: 4/15/2024

PROPERTY OWNER: Drew & Dana DeWitz

PHONE #: 507-251-7902

PROPERTY ADDRESS: 15 125th St NE

CITY: Rochester

STATE: MN

ZIP: 55906

PROPERTY PARCEL #: 84.02.44.040380

DDDEWITZ@BEVCOMM.NET

VARIANCE DESCRIPTION & REASON FOR VARIANCE REQUEST:

Replacement of an existing 26' x 28' accessory building with a larger shed type 64' x 30' accessory building. Square feet will exceed ordinance (1920 sq Ft), Accessory building height will exceed ordinance (22.5' instead of 15'). Shore land setback will need to be varied to 30' from water edge. Setback from road will need to be varied to approximately 80' from centerline of road.

EXISTING USE OF PROPERTY:

Single Family Homestead

HAS A VARIANCE BEEN SOUGHT FOR THIS PROPERTY BEFORE?:

[checked] - YES [ ] - NO

IF SO WHEN?: 1999

APPLICANT SIGNATURE:

FILING FEE: 582.00

SIGNATURE DATE:

4/15/2024

APPLICATION COMPLETE DATE:

04.15.24 (TCPA)

60-DAY DATE:

06.14.24 (TCPA)

VARIANCE QUESTIONS: (Answer all of the following questions. Use a separate sheet if necessary.)

A variance may be granted only when the you can establish that there are practical difficulties in complying with the zoning ordinance. Economic considerations do not constitute practical difficulties. For the Board of Adjustment to grant your variance you must provide evidence that all of the following facts and conditions exist;

- 1) Explain and illustrate that there are extraordinary conditions or circumstances, like an irregular or especially narrow or shallow lot, or exceptional topographical or physical conditions, which are peculiar to your property and that do not exist on other lots or land in your same neighborhood or zoning district. Provide an aerial map/drawing to illustrate.

Our lot is approximately 2.6 acres located between 125th street dead end road and the shores of Lake Zumbro. The lot was a compilation of 20 individual lots that were each 50' wide. Although we own 1000' of shoreline, the lot varies in depth from approximately 120' to 190'. This would be considered irregular shaped and narrow in certain areas of the property. The setback of 100' from waters edge and road would make building on this site impossible. The variance for the construction of my home in 1999 allowed for building up to 27' from waters edge. So, there is a structure on the SW side of this lot with established water setback of 27'. This would be no different than that variance. In addition, the topography would allow us to build closer to the water without and increase in flood risk - as the elevation of the building site is approximately 24' above normal water level with relatively steep banks to the water. Please see including aerial map of existing and propose accessory buildings and site.

COMPLETE BOTH SIDES OF THIS APPLICATION

VARIANCE QUESTIONS: - continued

2) Explain and provide reasoning that the above extraordinary conditions or circumstances are unique to your property and that the circumstances or conditions were not created by you.

This is a unique lot that was created when lot requirements were not as they are today. The varying depth of lot along the shores of Lake Zumbro are nature's work and not created by me or previous owners.

3) Explain why the variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that your property can be used in a reasonable manner not permitted by the ordinance.

It is physically impossible to fit a building of any size on this narrow (130' wide) section of land and meet the 100' shore land setback and the road setback. In the Oronoco Township Zoning Ordinance Sec 4.08 B. 6 it states "In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property". In addition, the height of the building inside ceiling height is required for the automotive lift that will occupy the mechanic stall in the building.

4) Explain how the variance will not be detrimental to the general public welfare or negatively affect your neighbors property value or their enjoyment of their property and that the variance will not alter the character of your neighborhood or area.

This variance will have no adverse affect on the character of the neighborhood. It is simply the replacement of one older building with another esthetically pleasing new constructed building. If anything, it will increase values in the neighborhood.

5) Explain why there is no alternative to your request. And if there are alternatives explain why those alternatives are not worthy of consideration.

There is no alternative for the distance variance requested from the shoreline or the road setback. Additionally, a smaller building would not allow for the minimum storage required by our possessions and height is required for the automotive lift being installed. Storing recreational vehicles and boats outdoors on my property has proven to be a documented theft risk. Interior lockable storage is required for our RVs, vehicles, lawn equipment & other possessions.

You must provide a site plan for your proposed variance showing the following:

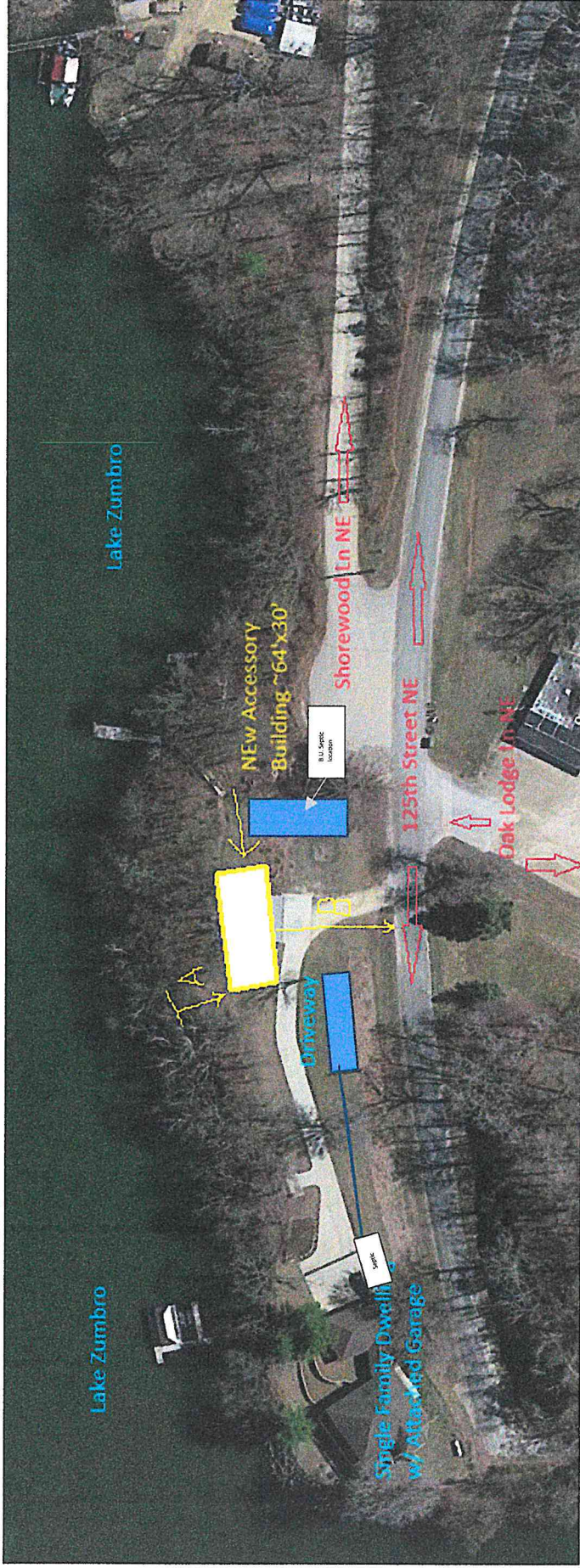
- Entrance and exit driveway(s).
- All structures on your property showing distances from lot lines, septic and well and other structures.
- If this a setback variance—show where the proposed structure will be located.

This Variance application will be considered incomplete and no action will be taken until the TCPA office is in receipt of; a.) this completed application form; b.) the site plan; c.) the filing fee.

**COMPLETE BOTH SIDES OF THIS APPLICATION**



D. DeWitz – Variance request



### New Site Plan.

Approximate elevation of new building above Lake level ~ 24FT

New Building 64'X30' = 1920 ft<sup>3</sup>

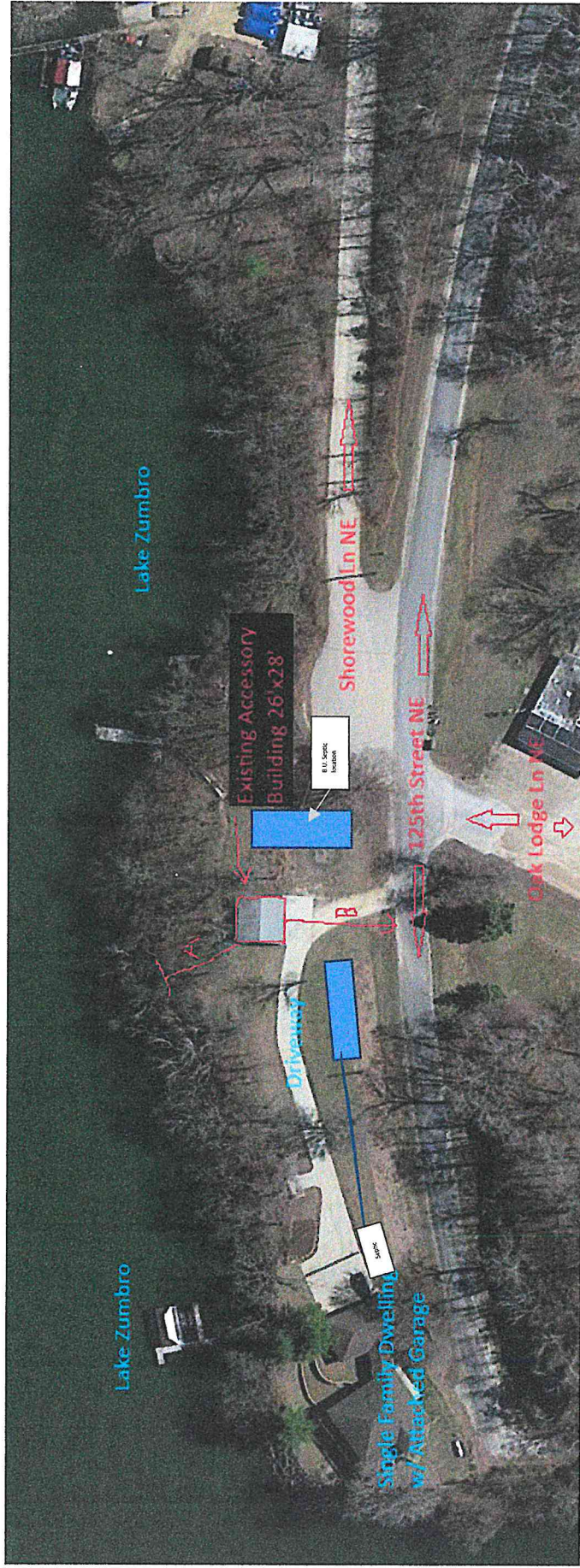
Distance A from building to Lake Zumbro waters' edge = Requesting Variance to allow 30 Ft

(Sec 4.08 B. 6. "In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property")

Distance B from building to 125<sup>th</sup> St - centerline of existing road = Requesting Variance to allow 75 Ft



D. DeWitz – Variance request



**Existing Site.**

Approximate elevation of existing building above Lake level ~ 24Ft

Existing Accessory building 26'x28" = 728 ft<sup>3</sup>

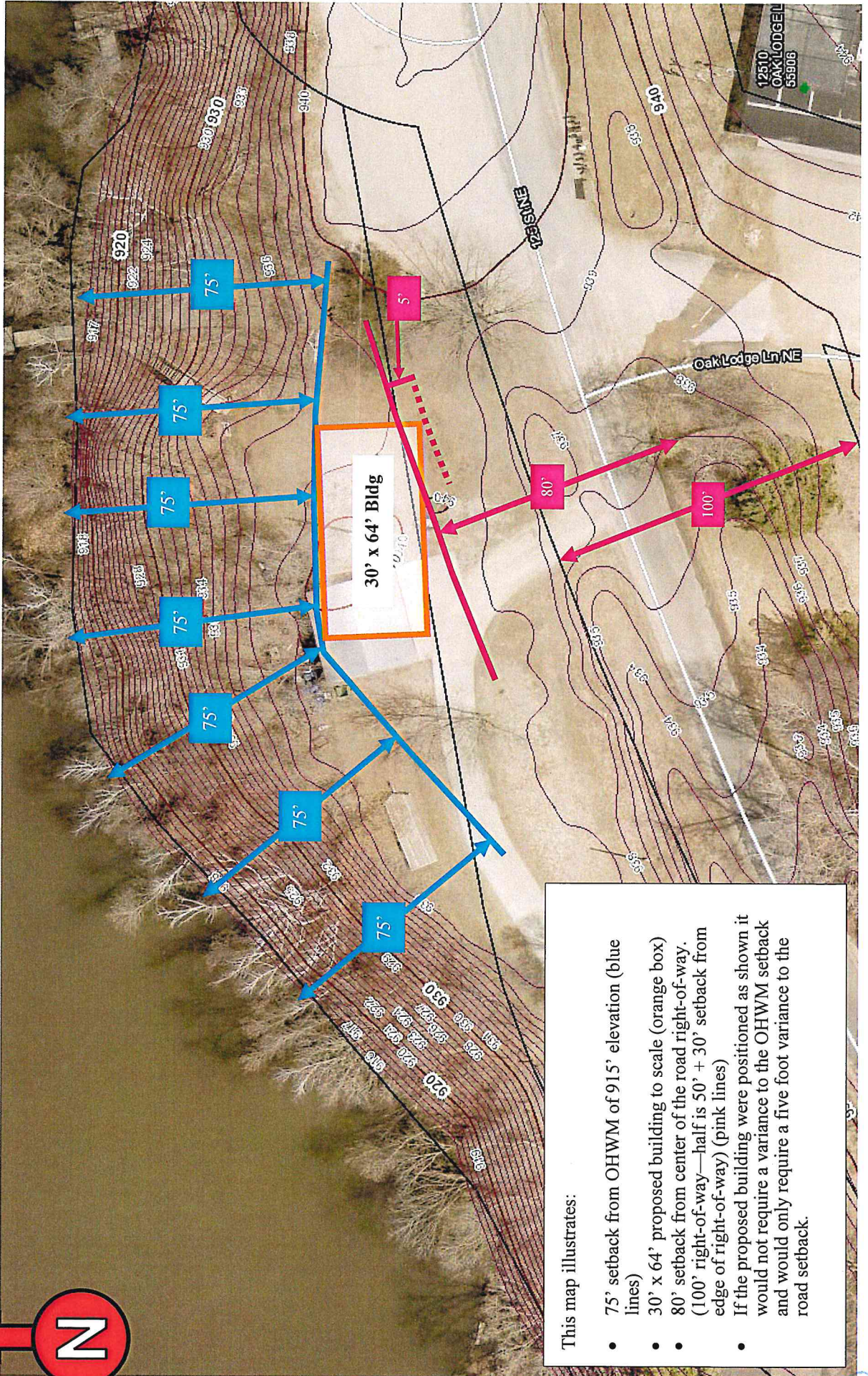
Distance A from building to Lake Zumbro waters' edge = 50 Ft

Distance B from building to 125<sup>th</sup> St - centerline of existing road = 80 Ft



TCPA  
 4111 11th Avenue SW  
 Rochester, MN 55902  
 www.icpamn.org  
 507-529-0774

# AERIAL MAP

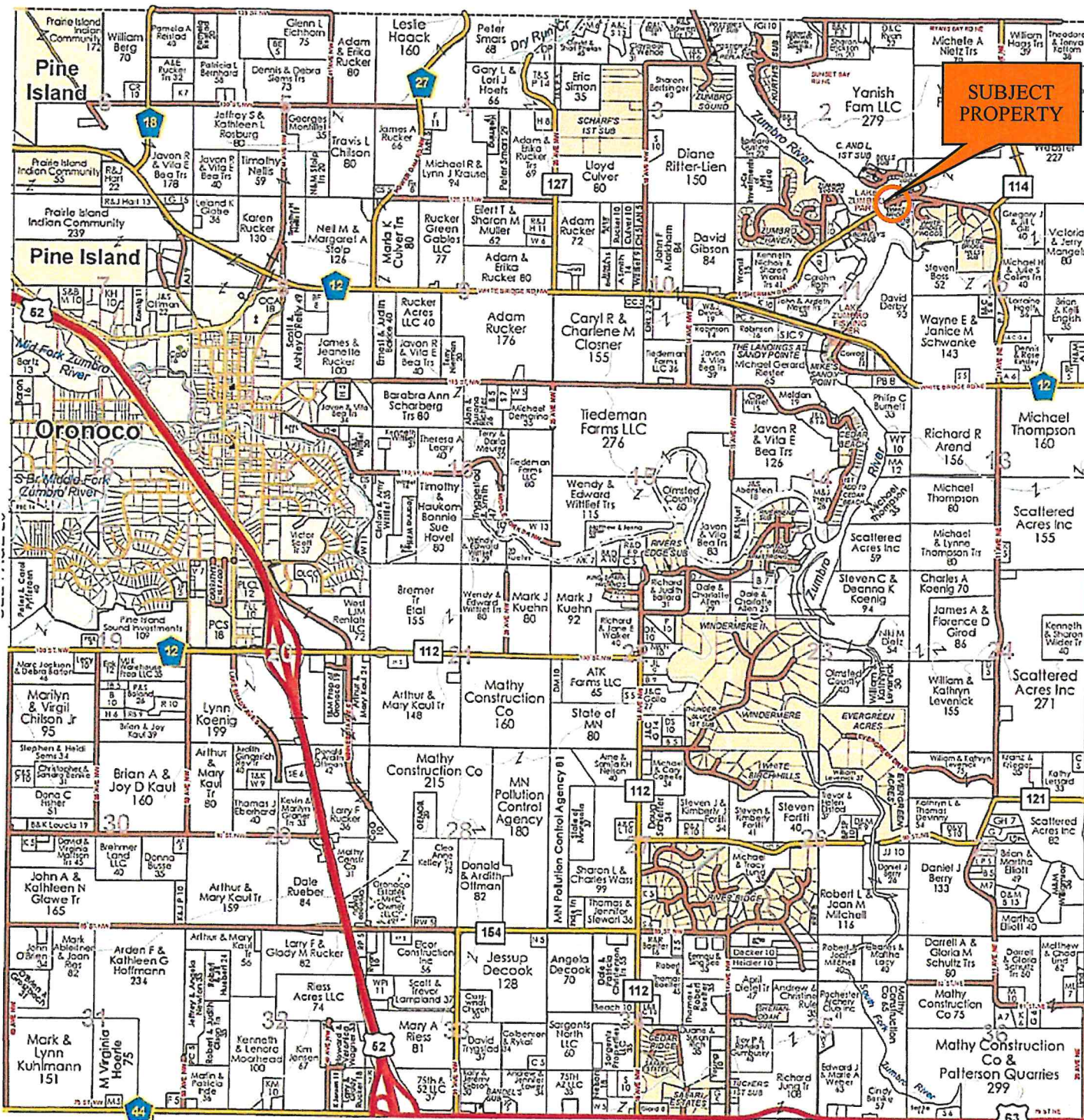


This map illustrates:

- 75' setback from OHWM of 915' elevation (blue lines)
- 30' x 64' proposed building to scale (orange box)
- 80' setback from center of the road right-of-way. (100' right-of-way—half is 50' + 30' setback from edge of right-of-way) (pink lines)
- If the proposed building were positioned as shown it would not require a variance to the OHWM setback and would only require a five foot variance to the road setback.



# PLAT MAP



**LEGAL DESCRIPTION:**

Parcel #: 840244040380

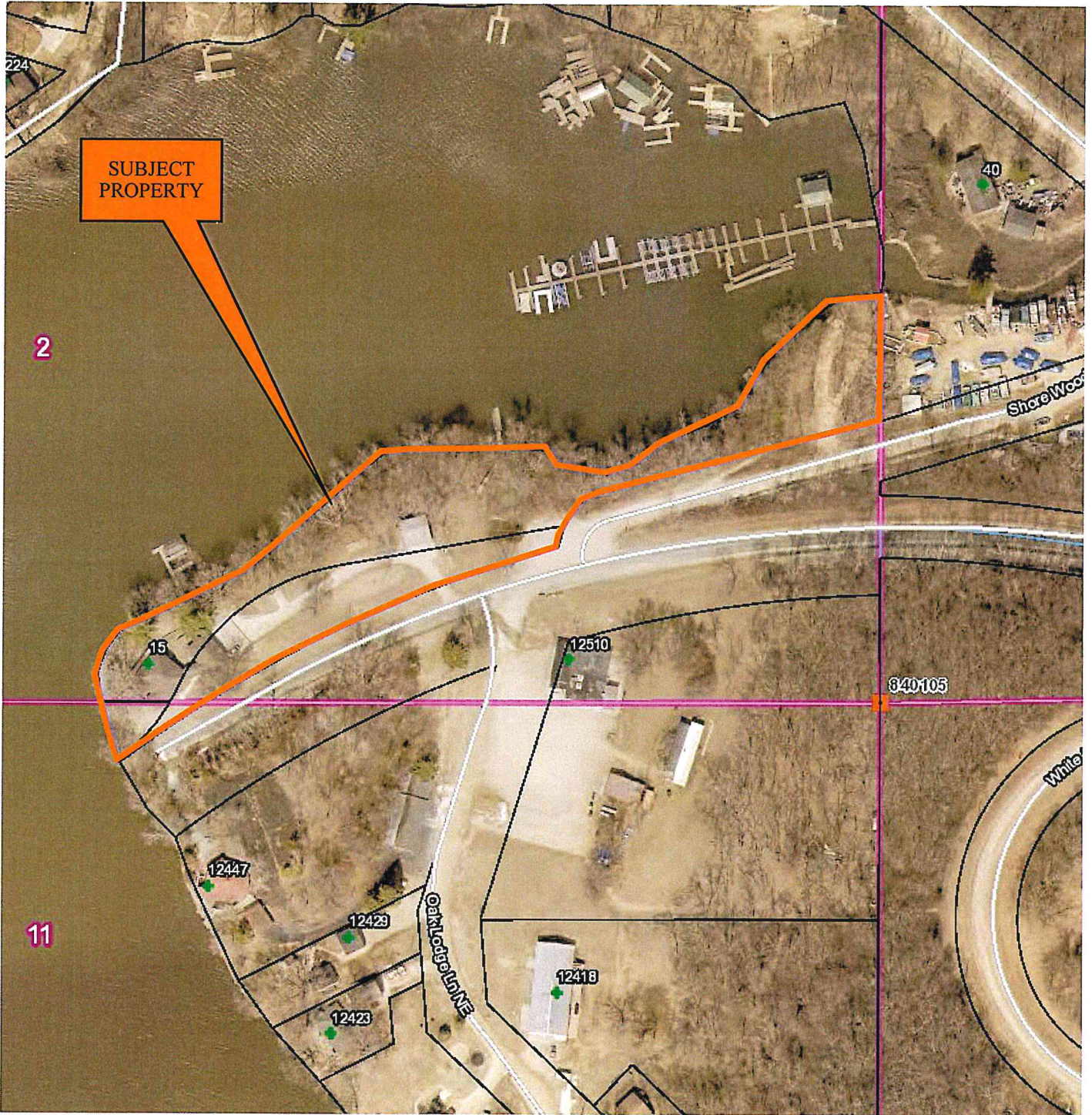
SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

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# AERIAL PHOTO MAP



**LEGAL DESCRIPTION:**

Parcel #: 840244040380

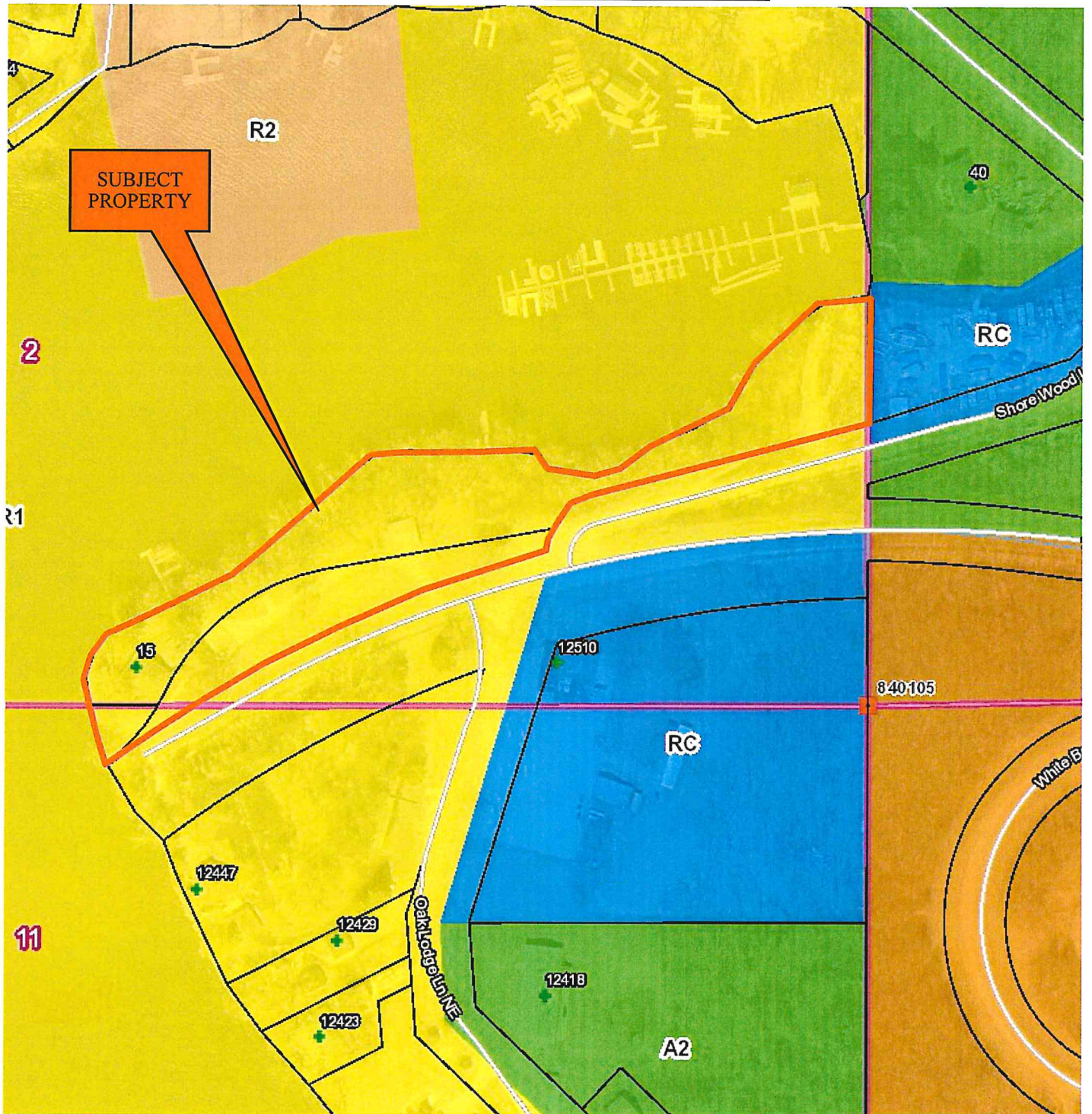
SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

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# ZONING MAP



**LEGAL DESCRIPTION:**

Parcel #: 840244040380

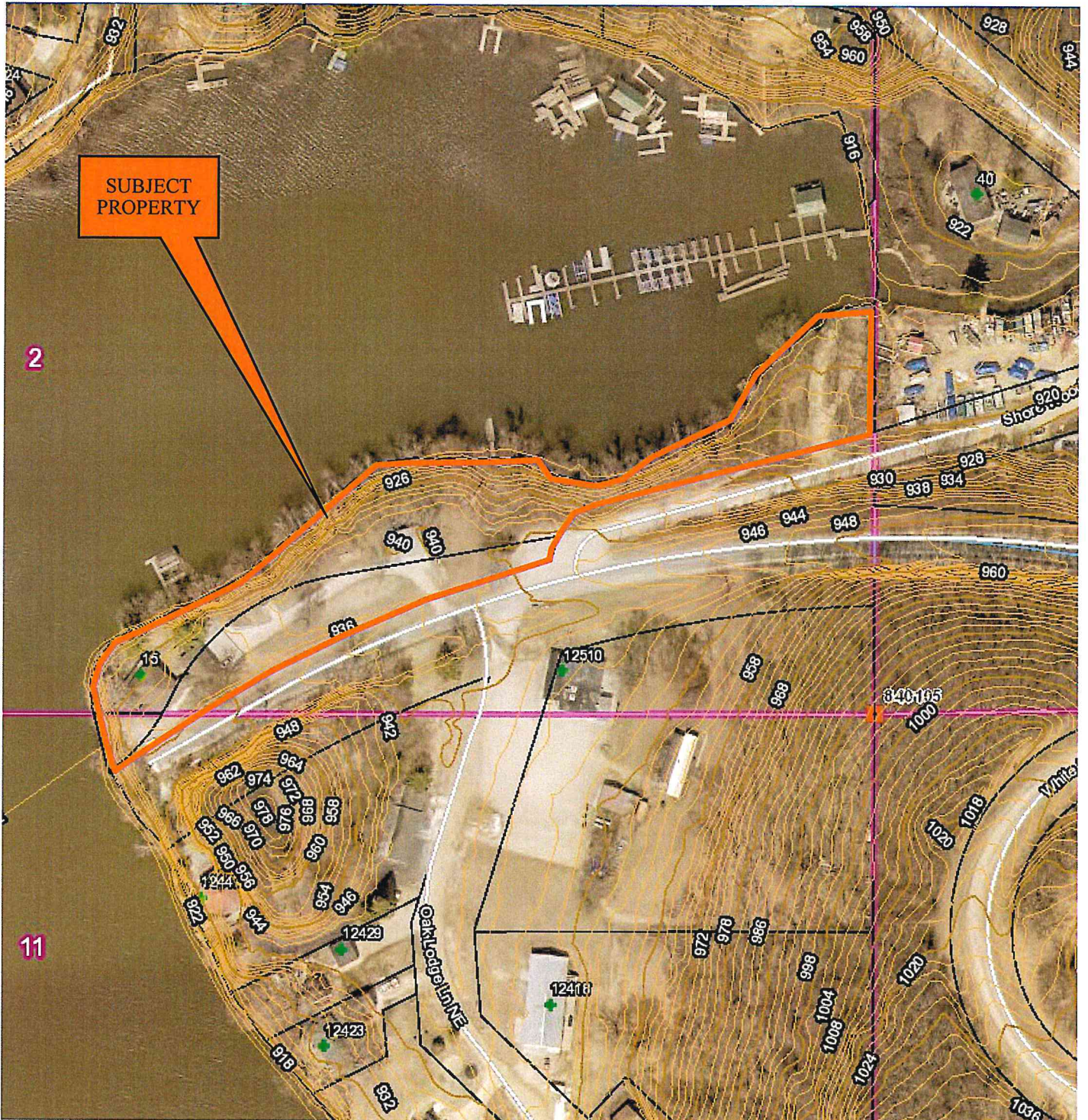
SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

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507-529-0774





# Elevations Map



LEGAL DESCRIPTION:

Parcel #: 840244040380

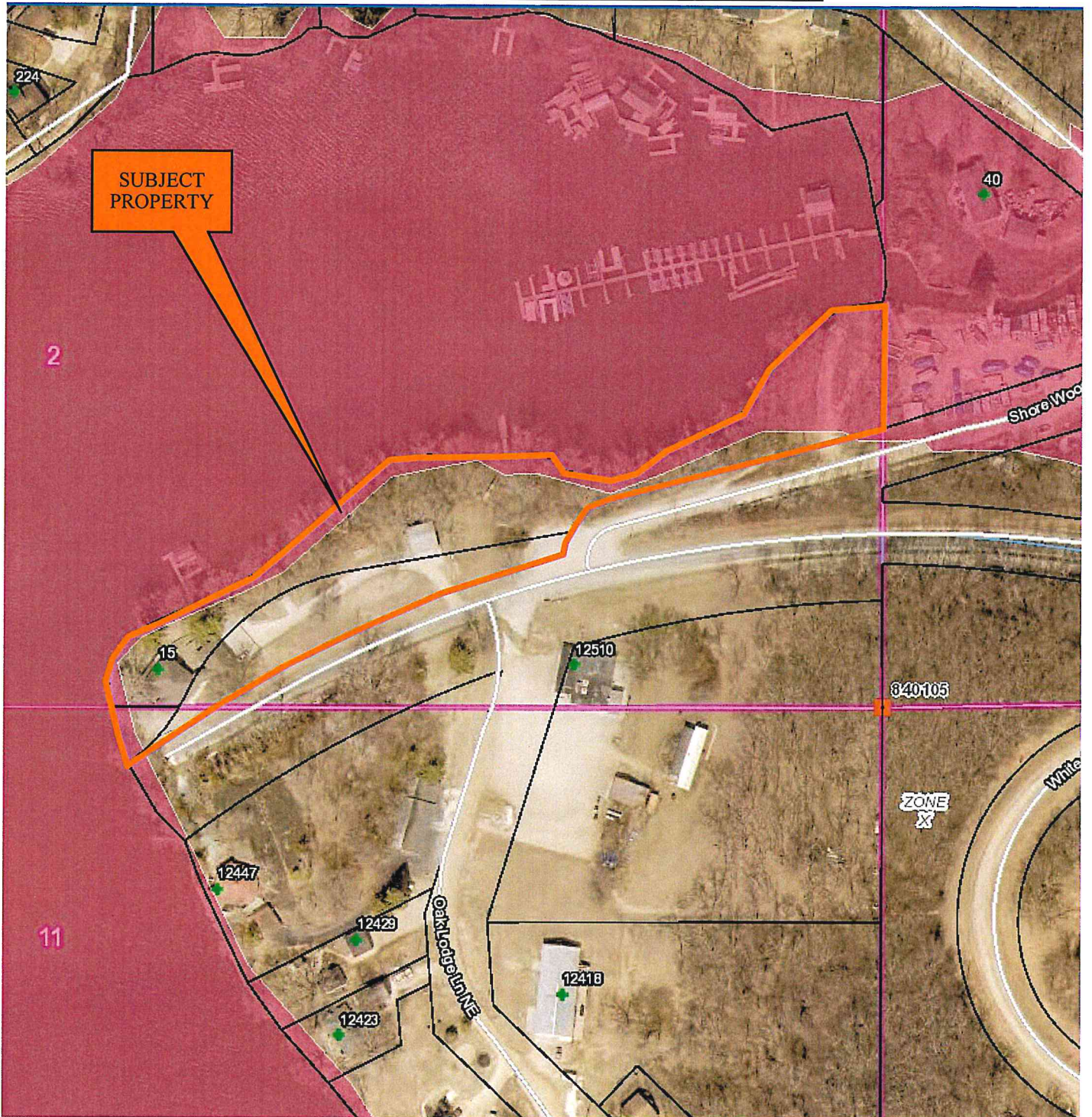
SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

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# FLOOD MAP



**LEGAL DESCRIPTION:**

Parcel #: 840244040380

SECT-02 TWP-108 RANGE-014 OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S OF S LINE SEC 2 108-14

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4111 11th Avenue SW  
Rochester, MN 55902  
www.tcpamn.org  
507-529-0774

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OFFICE OF COUNTY RECORDER  
Olmsted County, Minnesota

I hereby certify that this document was filed in this office  
on 1/20/2000 at 2:30:00 PM and was duly  
recorded as document number A-833796  
DANIEL J. HALL - County Recorder, by \_\_\_\_\_ Deputy.

Well Certificate:  Received  Not Required  
Abstr. - yes  no   
Fees: \_\_\_\_\_ Total: \$19.50

Received from/return to:  
PLANNING

**ZONING BOARD OF ADJUSTMENT**  
County of Olmsted, Minnesota

**VARIANCE RESOLUTION**

WHEREAS, an application has been filed on behalf of Drew DeWitz, owner(s) of the premises  
(described as: OAK LODGE LOTS 46 TO 58 INCL AND LOTS 62 AND 70 EX TH PT OF LOT 62 LYING S  
OF S LINE SEC 2 108-14

and

WHEREAS, the applicant(s) are asking the Zoning Board of Adjustment of the County of Olmsted to  
grant a variance to the provisions of the Olmsted County Zoning Ordinance to allow for construction of a single  
family home that does not meet the minimum front, side and rear yard setback requirements for properties in  
the R-1 (Low Density Residential) Zoning District.

and

WHEREAS, the matter of such variance has been reviewed by the Zoning Administrator and he has  
submitted his report to the Zoning Board of Adjustment concerning the requested variance,

and

WHEREAS, a public hearing on the proposed variance was duly noticed and held by the Zoning Board  
of Adjustment in the Rochester-Olmsted Department of Planning Conference Room A & B, located at 2122  
Campus Drive SE, at 7:30 p.m. on December 22, 1999, at which hearing all interested persons were given the  
opportunity to be heard.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of Olmsted County as follows:

**FINDINGS OF FACT AND CONDITIONS:**

Located in an R-1 (Low Density Residential) Zoning District.

Mr. Suhler made the motion to approve Variance Request #99-23 by Drew and Dana DeWitz,  
with the following findings. Mr. Flores seconded the motion. The motion carried 5-0.

**FINDINGS:**

**EXCEPTIONAL CIRCUMSTANCES:** There are exceptional and extraordinary circumstances  
that would apply to this parcel of property that would not apply generally to other property in

*Planning*

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the R-1 zoning district or vicinity. The deteriorated condition of the existing structure does not allow for the property to be rehabilitated.

**PRESERVATION OF PROPERTY RIGHTS:** The granting of this variance request would be necessary to preserve the applicant's property rights. The applicant is proposing to replace the existing structure with a house of approximately the same size and building a detached garage on the east side of the proposed house.

**ABSENCE OF DETRIMENT:** The granting of this variance request would not be detrimental to the surrounding properties.

**GENERAL NATURE:** This variance request would not appear to be general or recurrent in nature to require an amendment to the zoning ordinance.

**MINIMUM VARIANCE:** The minimum variance that would be necessary to alleviate the alleged hardship would be a variance to the minimum front yard depth on the south side and a variance to the minimum setback from the Ordinary High Water Level on the west and north sides.

**SHORELAND DISTRICT REGULATIONS:** No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State Law: A compliance inspection of the septic system will need to be completed to determine if it meets State law.

**In areas where development exists on both sides of a proposed building site, water and road setbacks may be varied to conform to the established setbacks:** There is no development on either side of the proposed development. The applicant is proposing to replace the existing structure with a new single family dwelling of similar size and building a detached garage.

**In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property:** Does not apply in this request.

**Where homes incorporate a method of sewage disposal other than soil absorption, water setbacks may be reduced by one-third (1/3):** Does not apply to this project.

**For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system:** The applicant has spoken to the Olmsted County Sanitarian Department concerning the proposed project and has been made aware of the requirements that need to be met.

**CONCLUSION:**


The provisions of the Olmsted County Zoning Ordinance are hereby varied as to the aforesaid premises to the extent necessary to allow for construction of a single family home that does not meet the minimum front, side and rear yard setback requirements for properties in the R-1 (Low Density Residential) Zoning District, according to the plans therefore dated "Received October 22, 1999, Rochester-Olmsted Department of Planning, Olmsted County".

(21)


Passed and adopted by the Zoning Board of Adjustment of Olmsted County, Minnesota, this 22<sup>nd</sup> day of December, 1999.

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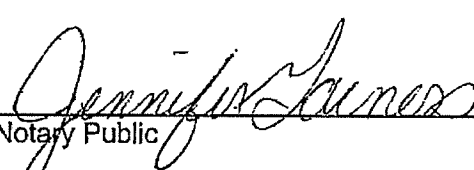
  
Chairperson, Zoning Board of Adjustment

  
Affiant's signature

Attest:

  
Zoning Administrator

Subscribed and sworn to before me this 13 day of January, 2000.

  
Notary Public



**DISTRIBUTION:**

- County Recorder
- Zoning Administrator
- Applicant

Decision Zoning Board of Adjustment-Variance Resolution

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## David

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**From:** Gross Kristi <kristi.gross@olmstedcounty.gov>  
**Sent:** Friday, April 19, 2024 10:46 AM  
**To:** dddewitz@bevcomm.net  
**Cc:** David  
**Subject:** Variance Request  
**Attachments:** Variance Process-County -Packet.pdf

Drew & Dana,

It has been brought to my attention that you need a variance to the Ordinary High Water mark for an accessory building. The Township is able to act on the building size variance and location to the right of way, however the County must act on the variance to the Ordinary High Water Mark. The first part of the application process is to gain a Letter of Town Board Action. The Township may complete this form when they act on the other two variances. Once you have that form completed you may apply to the County Board of Adjustment for the Ordinary High Water Mark variance.

In your application please indicate mitigation measures you are willing to do to offset the OHWM variance such as rain garden, reducing impervious surface, additional vegetative plantings, you may wish to speak to the DNR area hydrologist for mitigation recommendations for your lot, Nicole Lehman can be reached at 507-206-2854 or via e-mail at [Nicole.lehman@state.mn.us](mailto:Nicole.lehman@state.mn.us)

Please also indicate if any other options exist to eliminate the need for the variance.

The fee for the request is: \$615

Attached is the application information. Please let me know if you have any questions.

**Kristi Gross, AICP, CFM**  
Senior Planner-Floodplain Administrator  
Olmsted County Planning Department  
2122 Campus Drive SE, Suite 100  
Phone: (507)328-7102



My email has changed: [kristi.gross@olmstedcounty.gov](mailto:kristi.gross@olmstedcounty.gov)

**David**

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**From:** Gross Kristi <kristi.gross@olmstedcounty.gov>  
**Sent:** Friday, April 19, 2024 10:34 AM  
**To:** David  
**Subject:** RE: Variance Application in Shoreland

The Township is permitted to act on the variance to the accessory size and location to the public road. The applicant will need to apply to the County separately for the variance to the Ordinary High Water Mark. This is not a bluff if it doesn't drop 25 feet or more to the water, reading the application materials it seems that it drops 24 feet to the water. I have confirmed it is not a bluff using lidar data.

I will follow up with the applicant for the county process.

Thank you,  
Kristi

**From:** David <david@tcpamn.org>  
**Sent:** Tuesday, April 16, 2024 2:23 PM  
**To:** Gross Kristi <kristi.gross@olmstedcounty.gov>  
**Subject:** Variance Application in Shoreland

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kristi,

I have a variance application in Shoreland in Oronoco Township. (see attached)

This landowner applied for and received a variance for his new dwelling back in 1999. I've attached that resolution.

This request requires a variance for:

- Accessory structure size in R-1
- Accessory structure height in R-1
- Setback from road right-of-way
- Potential Bluff setback variance
- Structure setback variance from lake

Am I understanding this correctly in that you and the County Board would consider the Bluff and lake setback variance(s)? And then the Town Board would consider the items particular to the R-1 District – the size and road setback variance(s)?

If my understanding is correct, how would you like me to proceed?



## David

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**From:** Lehman, Nicole (DNR) <nicole.lehman@state.mn.us>  
**Sent:** Wednesday, May 1, 2024 2:53 PM  
**To:** Gross Kristi; David  
**Cc:** Bauman, Matthew (DNR); Petrik, Daniel (DNR); Jered Staton  
**Subject:** FW: 15 125th St NE Rochester, MN/DeWitz - TCPA Variance for Accessory Structure and Township Road Setback  
**Attachments:** 2024-05-01DeWitz\_Reviewer\_Pkt.pdf

Hi Kristi and David,

I talked to David at TCPA about the DeWitz variance application I just received for the accessory structure that would encroach on both OWHL and road setbacks. This is certainly a unique lot and would agree that it probably can't get built as proposed without a variance. With both road and OHWL setback requirements, a shed such as this can't be built without a variance from one or both. However, with two different permitting authorities - TCPA and the County should discuss the best placement of the structure well ahead of application submittal. We feel that the OHWL setback is the more important of the two and should be met to the greatest extent possible.

Based on the sequencing section of the County's ordinance ([Section 3.04C1](#)), the County should be approving the Shoreland Development permit or any associated variances before the township gives final approval. The township should postpone this hearing until after the county has given a Shoreland Development Permit/variance. If the township were to approve this variance first (the road setback variance specifically), it would essentially lock in the location of the shed as proposed - tying the county's hands when it came time to approve their Shoreland Development Permit/variance. If the County approves this application first – consistent with the sequencing section of their ordinance – these issues are avoided.

There's also the question of reasonableness. A smaller shed looks as though it may be able to meet setbacks. Or the driveway can be redesigned. It seems unnecessarily long as is. This shed is a design preference, and not constrained entirely by the unique shape of the lot alone. If this would later be presented to the County for a OHWL variance as proposed, we would strongly recommend denial.

Please let me know how you plan to proceed with this application before the TCPA application deadline closes on May 10th.

Thank you,

**Nicole E. Lehman**

Area Hydrologist – Fillmore, Houston & Olmsted Counties  
Ecological and Water Resources Division

**Minnesota Department of Natural Resources**

2118 Campus Dr. SE, Suite 100

Rochester, Minnesota 55904

Phone: 507-206-2854

Email: [nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)

[mndnr.gov](http://mndnr.gov)

**David**

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**From:** Jered Staton  
**Sent:** Friday, May 3, 2024 11:32 AM  
**To:** David  
**Subject:** FW: D DeWiltz variance 15 125th St NE Rochester, MN - shoreland mitigation planning

Dave,

Here is a thread between the property owner and Nicole. It looks like you were not copied for whatever reason.

-Jered

**From:** Drew Dewitz <dddewitz@bevcomm.net>  
**Sent:** Friday, May 3, 2024 11:27 AM  
**To:** nicole.lehman@state.mn.us  
**Cc:** Gross Kristi <kristi.gross@olmstedcounty.gov>; Jered Staton <Jered@tcpamn.org>; Petrik, Daniel (DNR) <daniel.petrik@state.mn.us>  
**Subject:** Re: D DeWiltz variance 15 125th St NE Rochester, MN - shoreland mitigation planning

Hi Nicole,

Thank you very much for your analysis. First of all - I was under the impression that the setback requirement was 100 ft. Also my measurements were not from the 915 ft elevation. I was measuring from the highest water mark I was aware of. So the existing garage built prior to me obtaining the property is actually about 65 ft or maybe a little more from the OHWL. I am open to considering alternatives. The one you proposed with the shed on the SW side of the driveway is not a possibility as it would be on top of the current drain field. The option you drew in with the shed nearly in the same spot as existing but slid to the NE is a realistic possibility. If I slide it a little further, I could get the rotation I desire and meet at least the existing setback. So one question to you would be - if I go no closer to the OHWL than the existing building, would I still have to go through the Olmsted Zoning board of adjustment for a variance? I will also do some additional measurements today and look at the geometry and alteration of the driveway path to see if I can indeed stay 75' from OHWM. In which case, I would redact my request for a shoreline variance.

As for the other structures: The house was a rebuild of an existing dilapidated structure that was allowed by variance. The main garage is actually not an accessory structure. I had to build it attached to the same footings as the home since I wanted to connect the roofline. This caused it to become an attached garage and is therefore one structure with the house.

You had a question about my dock - That fits the description of a floating structure. This dock system is entirely floating and attached to shore only by a pin to a walkway. It does not meet the definition of a watercraft canopy for the reason you pointed out (metal roof) and it is not placed on the bed of the public water

Here are the descriptions that accurately describe the structure:

Subp. 13.

**Floating structure.**

"Floating structure" means any structure, except for boathouses, watercraft, and seaplanes, that is supported entirely by its own buoyancy and can be removed from public waters before winter freeze-up by skidding intact or by disassembly with hand tools.

and further defined as a structure:

Subp. 37.

**Structure.**

"Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, dock, bridge, culvert, or any other object extending over or under, anchored to, or attached to the bed or bank of a public water.

Regards,  
Drew DeWitz

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**From:** "Nicole Lehman" <[nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)>  
**To:** "Home" <[dddewitz@bevcomm.net](mailto:dddewitz@bevcomm.net)>  
**Cc:** "Gross Kristi" <[kristi.gross@olmstedcounty.gov](mailto:kristi.gross@olmstedcounty.gov)>, "Jered Staton, TCPA Administrator" <[Jered@tcpamn.org](mailto:Jered@tcpamn.org)>, "Petrik, Daniel (DNR)" <[daniel.petrik@state.mn.us](mailto:daniel.petrik@state.mn.us)>  
**Sent:** Monday, April 29, 2024 3:29:17 PM  
**Subject:** RE: D DeWitz variance 15 125th St NE Rochester, MN - shoreland mitigation planning

Hi Drew,

Lake Zumbro is a DNR public water basin with a shoreland classification of "recreational development," so the structure and septic system setback is 75 ft from the Ordinary High Water Level (OHWL). The OHWL elevation for Lake Zumbro is 915-ft NAVD888.

Based upon aerial photo review it appears the existing house is located 35-ft from the OHWL and the garage (accessory structure) is located ~40-ft from the OHWL, which is a 35-40-ft deviation of the OHWL setback required. I understand you are now proposing a 3<sup>rd</sup> request to place a structure closer to Lake Zumbro's OHWL than allowed by the ordinance. You are proposing an oversized structure 64'x30' that is larger than allowed in the underlying zoning to be located 30-ft from the OHWL for a 45-ft deviation to the OHWL setback.

The existing shed near the driveway entrance is located ~64ft from the OHWL. It is possible the existing shed is considered a legal non-conforming structure and repairs are allowed without a variance, but please check with zoning staff to confirm. Any new structures constructed on the property must comply with the structure setbacks and any building dimensions allowed in the underlying zoning. Since the property already has one accessory structure (main garage) located closer to the water's edge the DNR would strongly recommend the applicant reconsider the proposal, so the new structure meets all setbacks.

**Existing Structure**

26'x28' (728 sq ft)  
~64' from the OHWL (A)



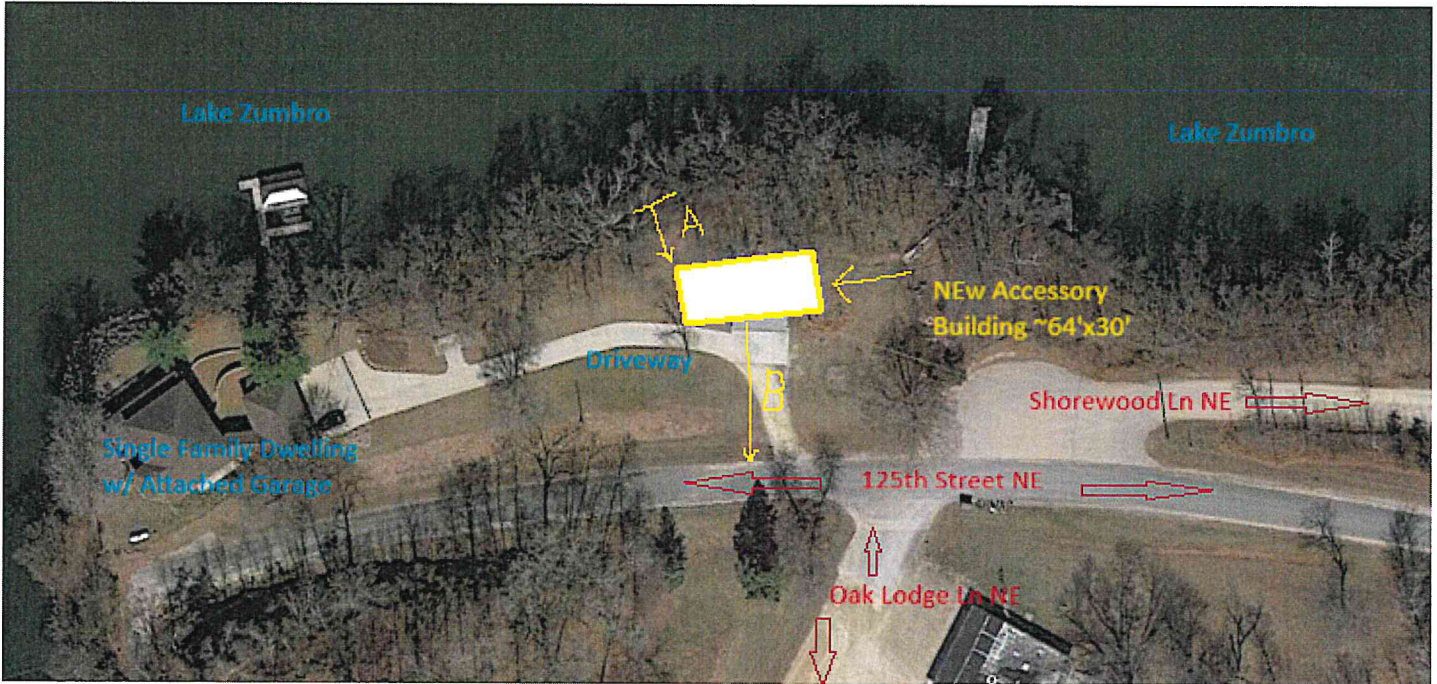




**Proposed Structure**

64'X30' (1,920 sq ft)

~50 ft from the OHWL (A)



Variations shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variations are consistent with the comprehensive plan. Variations may be granted when the applicant for the variation establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variation, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variation, if granted, will not alter the essential character of the locality. Economic considerations alone do not



constitute practical difficulties. Variance requests driven by the design preference of the owner is not documentation there is a “practical difficulty” associated with this property.

The variance request must consider all alternatives to your proposal and clearly outline why the alternatives were considered but rejected. The alternatives analysis should look at options that minimize the deviation to the setback standard, minimize runoff and erosion into public waters, minimize impervious surface areas, or mitigate the effects of the proposal proportionate to the impacts. Alternatives include:

1. Repair the existing structure without a variance,
2. Construct the new structure to meet all setbacks and underlying zoning requirements. See the image below. It appears there are at least 2 alternative building options (or more) that would meet the OHWL setback of 75ft. Slight modifications to the existing driveway may be necessary, but it’s very clear there are options to build on the site that would meet the shoreland setback standards without the need for a variance to the shoreland structure setback.



The DNR would prefer a variance is requested to the road or yard setbacks versus the shoreland structure setbacks from the ordinary high water level (OHWL). If a variance is necessary we’d recommend the variance deviation is minimized to the maximum extent practicable. The current proposal is requesting a 45-ft variance deviation, and this seems unreasonable given there are other alternatives on the site that could meet the OHWL setbacks.



When considering mitigation strategies, the Olmsted Co Zoning Ordinance Section 3.08 outlines a few options (See below). Please note, rain gardens, replacing mowed grass with native vegetation to maintain a more natural riparian buffer near the water's edge or at the top of a steep slope and/or tree plantings are also considered good mitigation strategies to help offset runoff from development (See the attached factsheets).

**Section 3.08**     **MITIGATION**

(A) In evaluating all variances, conditional uses, and Floodplain/Shoreland Development permit applications in the

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shoreland district, the Zoning Administrator shall consider and may require the property owner to address the following conditions, when related to and proportional to the impact, to meet the purpose of this ordinance and, to protect adjacent properties, and the public interest:

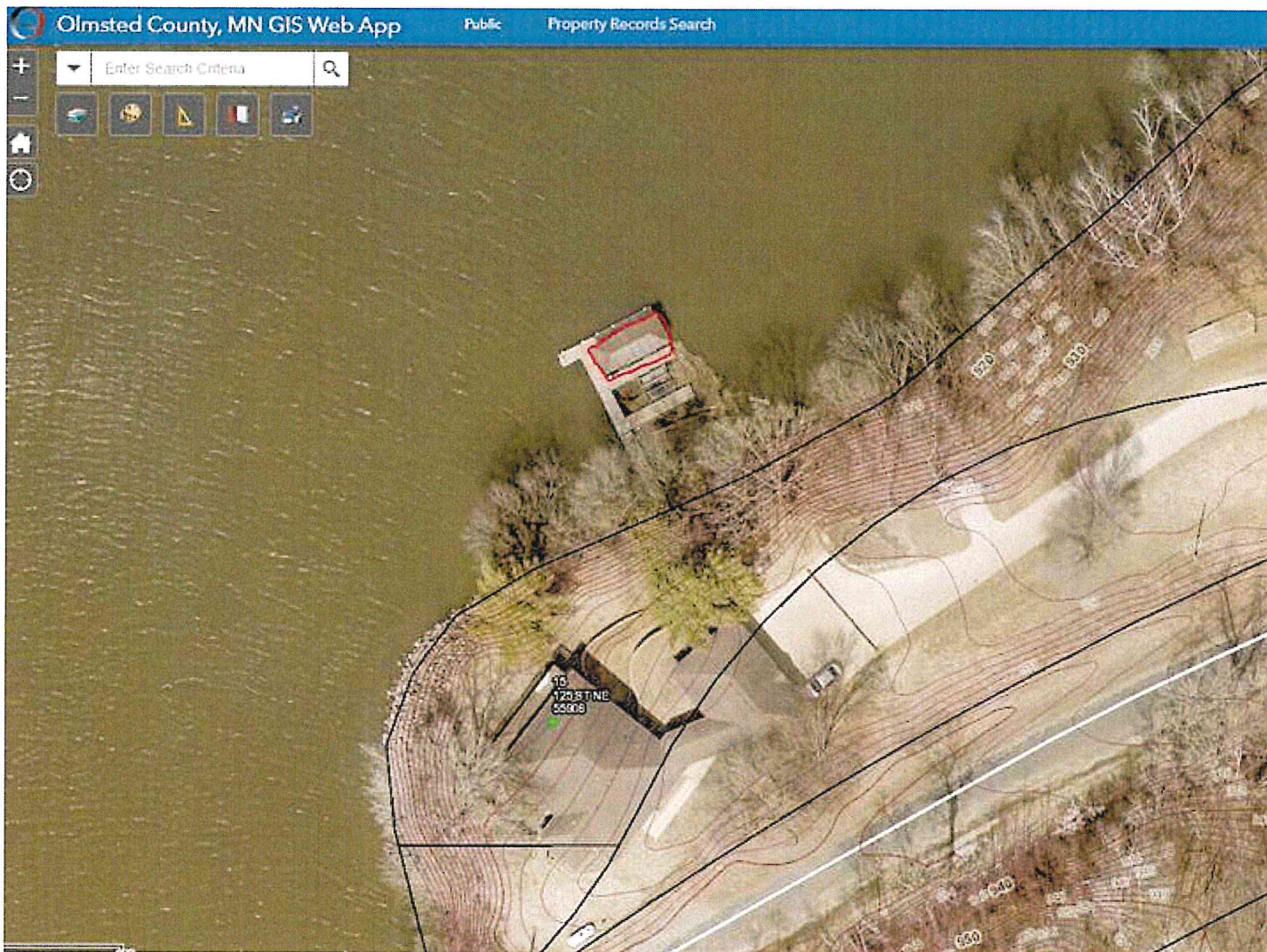
- (1) Advanced storm water runoff management treatment.
  - (2) Reducing impervious surfaces.
  - (3) Increasing setbacks from the ordinary high-water level.
  - (4) Restoration of wetlands.
  - (5) Limiting vegetation removal and/or requiring riparian vegetation restoration.
  - (6) Provisions for the location, design, and use of structures, sewage treatment systems, water supply systems, watercraft launching and docking areas, and parking areas.
  - (7) Other conditions the Zoning Administrator deems necessary.
- (B) In evaluating plans to construct sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes, conditions to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters assuming summer, leaf-on vegetation shall be attached to permits.

**Question:**

What is the structure on the water near your dock area that measures 10' wide by 24' long? It appears this structure has a metal roof and would not meet the definition of a watercraft canopy per Minnesota Rules 6115.0170, Subp. 42a since it has a metal roof. To comply with the public water requirements, we'd



recommend the metal roof is replaced with a fabric or other canvas material. Please send photos of this structure so we can discuss further how to resolve this matter.



Please reach out with any questions you may have.  
Thank you,

**Nicole E. Lehman**  
Area Hydrologist – Fillmore, Houston & Olmsted Counties  
Ecological and Water Resources Division

**Minnesota Department of Natural Resources**  
2118 Campus Dr. SE, Suite 100  
Rochester, Minnesota 55904  
Phone: 507-206-2854  
Email: [nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)  
[mndnr.gov](http://mndnr.gov)







**From:** Drew Dewitz <[dddewitz@bevcomm.net](mailto:dddewitz@bevcomm.net)>  
**Sent:** Monday, April 29, 2024 10:02 AM  
**To:** Lehman, Nicole (DNR) <[nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)>  
**Subject:** Re: D DeWitz variance - shorland mitigation planning

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Hi Nicole,  
Please see attached site plan that shows existing and proposed with dimensions. The location of the center of the building is pretty much the same as existing. I just want to slightly rotate the new building.

Let me know if you have questions or what our next steps should be.

Thanks & Regards,  
Drew

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**From:** "Nicole lehman" <[nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)>  
**To:** "Home" <[dddewitz@bevcomm.net](mailto:dddewitz@bevcomm.net)>  
**Sent:** Friday, April 26, 2024 1:08:06 PM  
**Subject:** RE: D DeWitz variance - shorland mitigation planning

Hi Drew,  
Can you send me a map of the existing garage (with dimensions) and show where you are proposing to construct the new shed and provide dimensions?  
Thanks

**Nicole E. Lehman**  
Area Hydrologist – Fillmore, Houston & Olmsted Counties  
Ecological and Water Resources Division

**Minnesota Department of Natural Resources**  
2118 Campus Dr. SE, Suite 100  
Rochester, Minnesota 55904  
Phone: 507-206-2854  
Email: [nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)  
[mndnr.gov](http://mndnr.gov)

 **DEPARTMENT OF  
NATURAL RESOURCES**



**From:** Drew Dewitz <[dddewitz@bevcomm.net](mailto:dddewitz@bevcomm.net)>  
**Sent:** Monday, April 22, 2024 12:50 PM  
**To:** Lehman, Nicole (DNR) <[nicole.lehman@state.mn.us](mailto:nicole.lehman@state.mn.us)>  
**Subject:** D DeWitz variance - shorland mitigation planning

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Hi Nicole,

I hope you are doing well! I was given your name by Kristi Gross in the zoning department. I am going through the township process for a variance to replace a garage with a shed, however I live on Lake Zumbro and one of the setbacks that I'm requesting variance to involves the building distance to the high water mark. What I'm looking for with you - is any mitigation strategies I can implement to minimize the shoreland impact and alleviation of future rainwater runoff impacts along with any additional recommendations you may have. My particular lot is pretty unique in topography and shape. I have around 1000 ft of shoreline. My elevations vary pretty greatly from one end to the other. On the SW end of the lot where my home is built - the basement is approximately 15 ft above normal water level and the corner of the home is situated within 27ft of high water mark. The far NE end of the lot is actually floodplain and only elevated a few feet above normal water level and includes a private boat launch for water access. In the middle of the lot where I currently have a detached stand alone garage - that is getting replaced, the elevation above normal water level is approximately 24 ft. In addition, the depth of my lot is also variable. On the NE end it is approximately 200 ft from the road to the waterline and on the other end where my home is - its only around 110 ft from road to shoreline. The shoreline is not a straight line, it undulates a few times. Essentially I have a strip of land between 125th St NE and Lake Zumbro.

Anyway, I was wondering how you would like to go about assisting me to plan mitigations for this project? Is it best to meet at my property to get a visual of the topography or can we get enough info from looking at it from Google Earth? Or do I make an appointment to come in and see you?

Please advise? Thanks ahead!

Sincerely,  
Drew DeWitz

15 125th ST NE  
Rochester, MN 55906

C -507-251-7902