

# LINCOLN COUNTY ZONING BOARD OF ADJUSTMENT

Thursday, June 22, 2023 at 9:00am

Meeting Location: Lincoln County Service Center, 801 N. Sales St, Room #247, Merrill, WI 54452

Via Teleconference and In-Person Attendance

**Electronic Attendance Available:** Persons wishing to attend the meeting electronically may enter the meeting beginning ten minutes prior to the start time indicated above using the following number or web address:

Conference Call: 1 413-998-6178

Access Code: 474 899 921#

Meeting ID: meet.google.com/gbp-owoc-owt

The teleconference cannot start until the host dials in and enters the host password. In the event there is an unforeseen technical difficulty that prevents all or a part of the meeting from being available electronically, the meeting will continue in person and those wishing to attend can appear in person at the location indicated in this agenda.

**Attendance Policy:** Lincoln County encourages all individuals attending in person to follow the most recent CDC guidelines for vaccinated and unvaccinated individuals. All public participants' phones, microphones and chat dialog boxes will be muted or disabled during the meeting. If "public comment" appears on the agenda, before the meeting is called to order, the clerk will ask teleconference attendees whether any public comment is being offered. When called upon by the clerk or chair, any person offering public comment should state their name and comments.

## **MEETING AGENDA**

*Action where applicable and necessary*

1. Call Meeting to Order
2. Roll Call
3. Adopt Agenda
4. April 27, 2023 BOA Meeting Minutes

### **OLD BUSINESS**

none

### **NEW BUSINESS**

5. 9:00am Public Hearing – Testimony will be taken on the appeal hearings as noticed (see public hearing notice). Following each hearing for a variance there will be Discussion, Deliberations, Findings of Fact, conclusions and Determinations.
  - a) A request for variance by James Krueger from sections 21.07(4)(c) of Lincoln County Shoreland Ordinance to allow for the building of a structure which is less than the minimum required street yard setback from the town road right-of-way and the town road centerline.

### **ANNOUNCEMENTS**

6. Next meeting date and time
7. Adjourn

NOTE: Public Hearings published numerically are itemized in agenda alphabetically in the same order.

#### **DISTRIBUTION:**

Zoning Board of Adjustment Members – Kim Brixius, Curtis Powell, & Phillip Rausch

Zoning Board of Adjustment Alternates – Jim Beaumont & vacant

County Board Supervisors

Administrative Coordinator

Department Heads

Posted on \_\_\_\_\_ at \_\_\_\_\_ .m by \_\_\_\_\_

**While there may be a quorum of other Lincoln County committees present at this meeting, no other Lincoln County committee business will be conducted at this meeting.**

**Requests for reasonable accommodations for disabilities or limitations should be made prior to the date of this meeting. Please contact the Lincoln County Clerk at 715-539-1019 as early as possible so that proper arrangements may be made. Requests are kept confidential.**

#### GENERAL REQUIREMENTS:

1. Must be held in a location which is reasonably accessible to the public.
2. Must be open to all members of the public unless the law specifically provides otherwise.

#### NOTICE REQUIREMENTS:

1. In addition to any requirements set forth below, notice must also be in compliance with any other specific statute.
2. Chief presiding officer or his/her designee must give notice to the official newspaper and to any members of the news media likely to give notice to the public.

#### MANNER OF NOTICE:

Date, time, place, and subject matter, including subject matter to be considered in a closed session, must be provided in a manner and form reasonably likely to give notice to the public.

#### TIME FOR NOTICE:

1. Normally, a minimum of 24 hours prior to the commencement of the meeting.
2. No less than 2 hours prior to the meeting if the presiding officer establishes there is a good cause that such notice is impossible or impractical.

#### EXEMPTIONS FOR COMMITTEES AND SUB-UNITS:

Legally constituted sub-units of a parent governmental body may conduct a meeting during the recess or immediately after the lawful meeting to act or deliberate upon a subject which was the subject of the meeting, provided the presiding officer publicly announces the time, place, and subject matter of the sub-unit meeting in advance of the meeting of the parent governmental body.

#### PROCEDURE FOR GOING INTO CLOSED SESSION:

1. Motion must be made, seconded, and carried by roll call majority vote and recorded in the minutes.
2. If motion is carried, chief presiding officer must advise those attending the meeting of the nature of the business to be conducted in the closed session, and the specific statutory exemption under which the closed session is authorized.

#### STATUTORY EXEMPTIONS UNDER WHICH CLOSED SESSIONS ARE PERMITTED:

1. Deliberation of judicial or quasi-judicial matters. Sec. 19.85(1)(a)
2. Considering dismissal, demotion, or discipline of any public employee or the investigation of charges against such person and the taking of formal action on any such matter; provided that the person is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action is taken. The person under consideration must be advised of his/her right that the evidentiary hearing be held in open session and the notice of the meeting must state the same. Sec. 19.85(1)(b).
3. Considering employment, promotion, compensation, or performance evaluation data of any public employee. Sec. 19.85(1)(c).
4. Considering strategy for crime detection or prevention. Sec. 19.85(1)(d).
5. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session. Sec. 19.85(1)(c).
6. Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of specific charges, which, if discussed in public would likely have an adverse effect on the reputation of the person referred to in such data. Sec. 19.85(1)(f).
7. Conferring with legal counsel concerning strategy to be adopted by the governmental body with respect to litigation in which it is or is likely to become involved. Sec. 19.85(1)(g).
8. Considering a request for advice from any applicable ethics board. Sec. 19.85(1)(h).

#### CLOSED SESSION RESTRICTIONS:

1. Must convene in open session before going into closed session.
2. May not convene in open session, then convene in closed session and thereafter reconvene in open session within twelve (12) hours unless proper notice of this sequence was given at the same time and in the same manner as the original open meeting. Sec. 19.85(2).
3. Final approval or ratification of a collective bargaining agreement may not be given in closed session.

#### BALLOTS, VOTES, AND RECORDS:

1. Secret ballot is not permitted except for the election of officers of the body or unless otherwise permitted by specific statutes.
2. Except as permitted above, any member may require that the vote of each member be ascertained and recorded.
3. Motions and roll call votes must be preserved in the record and be available for public inspection.

#### USE OF RECORDING EQUIPMENT:

The meeting may be recorded, filmed, or photographed, provided that it does not interfere with the conduct of the meeting or the rights of the participants.

#### LEGAL INTERPRETATION:

1. The Wisconsin Attorney General will give advice concerning the applicability or clarification of the Open Meeting Law upon request.
2. The municipal attorney will give advice concerning the applicability or clarification of the Open Meeting Law upon request.

#### PENALTY:

Upon conviction, any member of a governmental body who knowingly attends a meeting held in violation of Subchapter IV, Chapter 19, Wisconsin Statutes, or who otherwise violates the said law shall be subject to forfeiture of not less than \$25.00 nor more than \$300.00 for each violation.

**Lincoln County Board of Adjustment**  
**Minutes of Thursday, April 27, 2023 at 9:00 a.m.**  
**Lincoln County Service Center, Meeting room #247**  
Meeting recording available on the Lincoln County website

Members Present for Meeting (In-Person): Kim Brixius, Phil Rausch, and Curtis Powell

Members Absent: none

Department Heads/Staff (In-Person): Mike Huth (Zoning Program Manager/Land Services Administrator), Laura Boquist (Shoreland Specialist), and Elizabeth Peronto (Program Assistant)

Department Heads/Staff (Virtual): none

Visitors (In Person): Tim Schmidt, Mandy Schmidt, and Margaret Powell

Visitors (Virtual): none

1. Call Meeting to Order – Meeting was called to order by Chair Rausch at 9:00am
2. Roll Call- All members present.
3. Adopt Agenda – M/S Brixius/Powell to adopt the agenda as presented. Motion carried on a voice vote.
4. October 27, 2022 BOA Meeting Minutes -

M/S Powell/Brixius to approve the minutes from the 10/27/2022 BOA Meeting. Motion carried on a voice vote.

OLD BUSINESS

None

NEW BUSINESS

5. 9:00am Public Hearing - Testimony will be taken on the appeal hearings as noticed (see public hearing notice). Following each hearing for a variance there will be Discussion, Deliberations, Findings of Fact, conclusions and Determinations.

**Variance**

- a) A request for variance by Tim and Mandy Schmidt from section 17.4.10(1) of Lincoln County Ordinance to allow for the building of a structure which is less than the minimum required street yard setback from the state road right-of-way and the state road centerline.

Rausch asked if there were any proponents for the request. Timothy Schmidt was present, sworn in, and explained that he is requesting a variance for a garage. Discussion occurred.

Rausch asked if there were any additional proponents for the request. There were none present.

Rausch asked if there were any opponents for the request. There were none present.

Mike Huth and Laura Boquist were sworn in. Huth presented the staff report. Laura Boquist gave further insight to the proposed project. Discussion occurred.

Rausch closed the public hearing for the variance request.

The Board reviewed and completed the Findings of Fact, Conclusions of Law, and Order and Determination.

M/S Powell/Brixius to APPROVE THE REQUEST for a variance to allow for the building of a structure which is less than minimum required street yard setback from the state road right-of-way and the state road centerline per Lincoln County Code with the two recommended conditions per the staff report.

Motion carried on a roll call vote:

<b>Member</b>	<b>Vote</b>
Rausch	Aye
Powell	Aye
Brixius	Aye

Rausch read into the record the two conditions as listed in the staff report.

Conditions:

1. The variance must be exercised within 24 months as required by 17.8.60(9).
2. All other applicable regulations shall be met.

ANNOUNCEMENTS

6. Next Meeting Date and Time – The next meeting is to be determined based on variance applications and board business. Call of Chair.
7. Adjourn – M/S Rausch/Brixius to adjourn. Meeting adjourned at 9:16am.

Minutes prepared by Elizabeth Peronto

## NOTICE OF PUBLIC HEARING

The Lincoln County Board of Adjustment will hold a Public Hearing on Thursday June 22, 2023 at 9:00a.m. to take testimony on the items listed below. The public hearing will be held at the Lincoln County Service Center, Meeting room #247/248, at 801 N. Sales St., Merrill, WI. The public may attend either in person or via telephone conference (details may be found in agenda once it is posted at <https://co.lincoln.wi.us/meetings>).

### VARIANCE

1. A request for variance by James Krueger from sections 21.07(4)(c) of Lincoln County Shoreland Ordinance to allow for the building of a structure which is less than the minimum required street yard setback from the town road right-of-way and the town road centerline. The property is located in Section 4, T35N, R6E, in the Town of Bradley and has a parcel number of 00435060449939, with an address of N11842 Rapel Rd.

The above hearings will be held in **Meeting room #247/248 of the Lincoln County Service Center, at 801 N. Sales Street, Merrill, WI.** All parties wishing to be heard are requested to be present. Both written and oral testimony will be entered into the record and considered when making the decisions. All those wishing to testify must be sworn in. Original materials may be viewed in the Lincoln County Zoning office at 801 N. Sales St. Merrill, WI.

NOTE: A final decision on any of the above requests may be made at a later date. Items not acted upon or laid over will come before the Board again as "Old Business." The Board may but is not obligated to take any additional testimony.

Kim Brixius, Secretary

RECEIVED

MAY 18 2023

Receipt: 16518

PETITION FOR VARIANCE

LINCOLN COUNTY BOARD OF ADJUSTMENT

Fee: \$450

VAR- 23 - 002

APPLICATION WILL BE RETURNED/DISMISSED IF NOT COMPLETED IN FULL

Property Owner Information

Name: James M. Krueger Daytime Phone: (715) 612-9010

Mailing Address: P.O. Box 71 City, State ZIP Tomahawk, WI. 54487

Petitioner Information (if other than property owner)

Name: Daytime Phone: ( )

Mailing Address: City, State ZIP

Site Address: N11842 Rapel Rd. Zoning District: RR-1

Legal Description Summary: Acres: 0

Section: 4 Township: 35 North Range: 6 East

Gov Lot: OR Quarter/Quarter: NE SE

Lot Number: 12+13 Subdivision/CSM: Rapel Subd

Current use and improvements: I use it during the summer months

Proposed use and improvements: To make my main residency Ordinance section relating to variance request: CENTER Line of road 2' to the NORTH IT WAS MOVED

Relief is requested to allow: New construction, due to house fire

Address each of the following criteria for granting a variance (please be specific).

1) Unnecessary hardship is present because... The Lot doesn't have the min. sq. ft. in order for me to build a 3 bedroom Ranch home. I did not create this hardship.

L.B. spoke with landowner 5/25/23 They are only requesting reduced road setback line

2) Unique features of this property prevent compliance with the terms of the ordinance; they include... Substandard Lot size, due to lake Nokomis + Rapel Rd. I would like to receive my original variance from 1993 which I believe was 65' from high water + 43' from center line

3) A variance will not be contrary to the public interest because... The public interest will be protected due to me already having a home on this lot. They all know how well it was taking care of.

Town Bradley

Tax Parcel # 00435060449939

Owner James Krueger First Name

Owner James Krueger Last Name

Names of adjoining property owners: \_\_\_\_\_

N11836 - Dave + Kris Anderson

N11852 - Wanye Koptke

**A SCALE DRAWING MUST BE ATTACHED that accurately depicts the following:**

Include on the drawing ALL of the information requested below that applies to the property.

1. Shape of parcel, include all lot line dimensions.
2. Indicate NORTH.
3. Show the location and names of all surrounding roads/highways.
4. Show the location and names of all area water bodies (lakes, rivers, creeks, ponds, etc.)
5. Indicate ALL other existing buildings on parcel with "EB".

Complete the following if the request is for NEW Construction

6. Show the location of the proposed construction on the parcel. Include the following measurements:
  - a) Distance from the centerline of any/all roads.
  - b) Distance from the right-of-way of any/all roads.
  - c) Distance to all lot lines.
  - d) Distance to any/all water bodies adjacent to or within the parcel.
7. Indicate distance from septic tank or holding tank to proposed construction.
8. Indicate distance from sewage system drain field to proposed construction.
9. Indicate distance from well to proposed construction.
10. (IF on water) Indicate proposed clearings within the vegetative buffer zone (please refer to Shoreland Ordinance for limitations on different water classifications).

**APPLICANTS ARE REQUIRED TO CLEARLY MARK THE LOCATION OF:**

1. The proposed change of construction
2. All Property Lines
3. Sanitary System components (Drain fields, tanks, etc.)
4. Well(s)
5. Other physical features pertinent to the decision.

**THESE FEATURES SHOULD BE MARKED WITH HIGH VISIBILITY FLAGS, TAPE, OR STAKES**

*Additional information beyond what has been specifically requested in this application may be required by the Lincoln County Board of Adjustment before rendering a decision. Failure to provide all requested information could result in the dismissal or denial of your application. The Lincoln County Board of Adjustment is governed by Rules of Procedure. A copy of the Rules of Procedure are available to any interested party upon request.*

**To the Lincoln County Zoning Administrator / Lincoln County Board of Adjustment:** The undersigned hereby makes application for a PETITION FOR VARIANCE for work described and located as shown herein. The undersigned agrees that all work shall be done in accordance with the requirements of the Lincoln County Zoning Ordinance and with all other applicable County Ordinances and the laws and regulations of the State of Wisconsin. I declare that the information that I am supplying is true and accurate to the best of my knowledge and I acknowledge that this information will be relied upon for the issuance of this permit. By signing this application I am also granting permission to the zoning department staff to enter my property at any reasonable time for the purpose of inspection to assure compliance with the zoning laws relative to the issuance of this permit.

Property Owner Signature: James M. Krueger Date: 5-17-23

Property Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR OFFICE USE ONLY**

Date Application Received: 5-18-23 By (Staff): EP Date of Hearing: 6-22-23

Rapel Rd.

5/25/23

→ variance request for reduced road setback - 43' From centerline of Rapel Rd. - L.B.

LOT Line 11'

Driveway

Centerline of Road  
43'

32' Garage  
24'

8'

House

14' Septic

DRAIN Fields 5'

13' Well 13'

50'

6' C.P. 18'

12' E.B. 24' L.L. 11'

28' Covered Deck  
12'

Shoreland Set Back 75'?

5/25/23  
Landowner Stated minimum setback of 75' From OHWM can be met. No relief requested from Shoreland setback - L.B.

24' 24' Steps  
28' E.B./B.H.  
10' SET BACK

Shoreland Buffer Zone 35'

120'

Lake Nokomis

↓ N





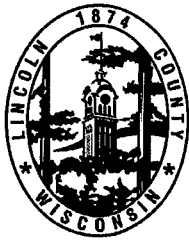
Lincoln County, WI

Author: Public

Date Printed: 5/18/2023



DISCLAIMER: The information depicted on this map is a compilation of public record information including aerial photography and other base maps. No warranty is made, express or implied, as to the accuracy of the information used. The data layers are a representation of current data to the best of our knowledge and may contain errors. It is not a legally recorded map and cannot be substituted for field-verified information. Errors should be reported to Land Services Department, 801 North Sales St, Merrill, WI, 54452. Phone (715) 539-1087.



**LINCOLN COUNTY**  
**LAND SERVICES DEPARTMENT**  
**Office of Zoning and Conservation**  
**Lincoln County Service Center**  
**801 N Sales Street-Suite 103**  
**Merrill, WI 54452**  
**Phone (715) 539-1087 Fax (715) 539-8325**

## **PETITION FOR VARIANCE REQUEST**

### **STAFF REPORT**

Report Date: June 8, 2023  
Hearing Date: June 28, 2023  
Property Owner: James Krueger  
Property Address: N11842 Rapel Road  
Town of: Bradley  
Tax Parcel Numbers: 004-3506-044-9939  
Zoning District: RR1-Rural Residential  
Zoning District Overlay: Shoreland  
Staff Reviewer: Laura Boquist- Shoreland Specialist  
Submitted Materials: Request for Variance Application and supporting documents

### **OVERVIEW**

#### **REQUEST**

A request for variance by James Krueger from section 21.07 (4)(c) of the Lincoln County Shoreland Zoning Ordinance to allow for the construction of a Principal structure (Dwelling) within the minimum required street yard set-back from the Town road centerline and minimum required set-back from the Town road right-of-way (ROW).

The property is located in the NE ¼ SE ¼ of Section 4, T35N, R6E, in the Town of Bradley, has a parcel number of 004-3506-044-9939 and an address of N11842 Rapel Road.

Section 21.07 (4)(c) of the Lincoln County Shoreland Zoning Ordinance references the required road set-backs outlined in Chapter 17.4.10(1) of Lincoln County Zoning Ordinance. The required street yard set-back from a Town Road is a minimum of 63 feet from the centerline and 30 feet from the edge of the right-of-way (ROW), whichever is greater.

Rapel road is platted at 50 foot wide, including the right-of ways. Each side of the road being 25 feet wide from the platted centerline. Therefore the Town road centerline set-back is more restrictive. To meet 63 feet from the centerline of the road, the structures must be at least 38 feet from the edge of the ROW. The request is to reduce this required set-back by 20 feet and place the structures at 43 feet from the centerline of the road and 18 feet from the ROW.

## **SITE CHARACTERISTICS**

The Rapel subdivision Plat was recorded in 1938. N11842 Rapel Road consists of lots 12 & 13 of the Rapel Subdivision and is calculated at .35 acres or roughly 15, 300 sq. ft. in size.

The lot is considered substandard, as it is below the minimum size requirement of 30,000 sq. ft. for the RR-1 zoning district. The lot was created before applicable ordinance requirements for minimum lot size. The lot is located within the shoreland overlay zone and is subject to all shoreland zoning requirements but is not considered riparian/water-front, as the land within 30 feet of the Ordinary High Water Mark (OHWM) of Lake Nokomis is owned by Wisconsin Valley Improvement Company (WVIC). The property does not contain mapped wetlands or floodplains.

A fire damaged the prior principal structure/dwelling on the parcel. Due to the structural damage from the fire, the existing dwelling was demolished and removed from the property in 2017 -2018.

There is an existing septic system on the parcel, permitted in 1996, suitable for a 3 bedroom dwelling. There is an existing accessory use storage building on the lot and a boathouse on the land within 30 feet of the OHWM, owned by WVIC. This lot is currently being used for seasonal camper/RV use.

While this lot is substandard in size, it does appear there is sufficient space on the parcel to build a new 3 bedroom dwelling at applicable set-backs, including 63 feet from the centerline of Rapel Road. The configuration of the proposed development can be revised, so that all required zoning set-backs are met. Chapter 17 zoning code does allow for the encroachment of an eave /overhang up to 2.5 feet in width within the road set-back and within lot line set-backs. The existing septic tank could likely be relocated to a different area on the lot, if needed, to accommodate new structure placement.

## **PROPERTY HISTORY AND SUMMARY OF NOTEWORTHY TOPICS**

A land-use permit was obtained in 1993 for the construction of the boathouse and an 8' x 12' accessory storage building on the lot.

A variance approval was granted in 1996 for the construction of a dwelling on the lot at a reduced set-back of 65 feet from the OHWM of the Lake, including the deck, and a reduced set-back of 42 feet from the centerline of Rapel Road. The septic permit was obtained in 1996 for a conventional septic system, sized for a 3 bedroom dwelling. The land-use permit was issued in 1997 for the dwelling construction.

In 2005, a land-use permit was obtained for the construction of a larger 12 x 24 storage building, to replace the smaller 8 x 12 storage building, originally permitted in 1993.

In 2008, a variance approval was granted and a land-use permit obtained for the construction of a 3 season room built on the existing deck, located at 68 feet from the OHWM of the Lake, within the regulated shoreland set-back. At that time, shoreland zoning ordinance language was generally different than current shoreland code allowances for structural modification and construction within an existing nonconforming structure footprint. Therefore, at the time, obtaining a variance approval for this work was needed. The variance approval included a condition to restore the shoreland buffer within 35 feet of the OHWM of the Lake, excepting a 30 foot wide corridor, as allowed per the shoreland ordinance at the time.

In 2012, a soil disturbance permit was issued for a stairway to be constructed within 75 feet of the OHWM of the Lake, for pedestrian access to the Lake. This permit was issued, with the condition that the shoreland buffer area is restored, as stated on the variance approval conditions outlined in 2008, which had not yet been completed.

The landowner completed the required shoreland buffer restoration in 2014, as outlined in zoning records.

In 2015, a land-use permit was denied for the placement of a patio structure proposed within 75 feet of the OHWM of the Lake. Because of the other structures already built/ located within the 75 ft. shoreland set-back, Chapter 21.06(b)(b) of the Lincoln County shoreland code, state administrative code NR 115, and State Statute 59.692 provided no allowance for another structure to be placed within the shoreland set-back.

The existing dwelling was demolished and removed from the property, sometime between 2017-2018, because the structure was significantly damaged in a fire. Chapter 21 and Chapter 17 both provide a 12 month window to obtain approvals to re-build a structure located in a non-conforming footprint. Permitting was not obtained within this time-frame, therefore new permitting and compliance with current ordinance standards would be required to meet applicable set-backs without a new variance approval.

In 2018, a Conditional Use permit (CUP) was approved for the placement of a camper on the parcel to be occupied on the lot for a duration of 60 days or more in a calendar year. No other permit records are available for the lot. It does not appear the landowner obtained a sanitary re-connect or a land-use permit, after the CUP approval, for the placement of the camping unit on the lot. If the lot is developed with a new principal structure/dwelling, it should be noted that camper use on the lot, thereafter, is not permitted to exceed 60 days cumulative in one calendar year, per Chapter 17.3.03(9).

Impervious surface coverage is regulated on riparian lots (water-front) and lots completely located within 300 feet of the OHWM of a water-body. This lot is subject to the impervious surface coverage limitations, outlined in section 21.13 of the Lincoln County Shoreland Ordinance. A land-use affidavit has already been recorded and mitigation implemented in the form of shoreland buffer, per the prior permitting history on the parcel. This existing land-use affidavit and completed restoration plan, will satisfy the current ordinance mitigation requirements related to impervious surface coverage on the lot. Current codes allow for impervious surface coverage up to a maximum limit of 30% of the lot area, with mitigation. This lot will be allowed to have up to the maximum limit of 30% impervious surface coverage, as the shoreland buffer mitigation plan has been completed.

Pursuant to ordinance section 21.13(4), the total impervious surface coverage of the parcel cannot exceed the 30% limit and this will be reviewed through the land-use permit request that will need to be submitted for the construction of the new dwelling and overall re-development of the lot. The maximum impervious surface coverage of the lot area is allowed up to 4,590 sq. ft. (30% of the 15,300 sq. ft. lot area). The shoreland buffer restoration mitigation implemented on the lot should satisfy current codes requirements outlined in 21.13(4)(a) for impervious surface coverage exceeding 15% of the lot area. Therefore, the existing shoreland buffer restoration and recorded land-use affidavit remains in effect and can be used to satisfy the current code requirement for impervious surface coverage exceeding 15% of the lot area.

It should be noted, prior to Act 55 and major shoreland ordinance amendments, The Lincoln County zoning office often allowed mitigation to be applied to the land owned by WVIC, located within 30 feet of the OHWM of the Lake. All affidavits outlining mitigation requirements on land within 30 feet of Lake Nokomis have been honored and allowed to remain in effect on the landscape and/or be used to satisfy current code requirements for mitigation. The shoreland buffer restoration was a condition of prior approvals for the variance and walkway on the lot.

#### **PUBLIC NOTIFICATION**

The legal notice of the request was noticed in the proper manner. Staff mailed notices of the petitioner's request to neighboring property owners within 300' from the property boundary and the Town of Bradley.

## APPLICABLE ORDINANCE SECTIONS

The general purpose of the Lincoln County Ordinance is to “of protect the public health, safety, morals, comfort, convenience and general welfare of the residents of Lincoln County”. The intent of the residential districts, where the property is located, is “for single-family and two-family dwellings on relatively small rural lots.” In the RR1 zoning district, setback lines from town roads must comply with the requirements specified under general provisions for Lincoln County.

- 21.07 (4)(c) Road Setback. Refer to Section 17.4.10 of the Lincoln County Ordinances
- 17.4.10(1) *MINIMUM REQUIRED STREET YARDS*. Minimum required street yards, also known as "highway setbacks," shall apply to all yards which abut public roads. Such minimum required yards shall vary depending on the type of public road.
- 17.8.60 (1) - *VARIANCE REVIEW AND APPROVAL PROCEDURE. PURPOSE*. The purpose of this section is to provide regulations which enable the Board of Adjustment to hear and decide requests for permitted variation from the terms of this chapter as will not be contrary to the public interest; where owing to special factors, a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done; as provided for by Wisconsin Statutes and applicable case law.
- 17.8.60 (9) *TIME LIMITS ASSOCIATED WITH VARIANCES*. An approved variance shall expire 24 months from the date issued if the work described in the permit is not commenced, unless a one-time, one-year extension is applied for, without fee, from the Board of Adjustment prior to the expiration date.

## EVALUATION

### APPROVAL CRITERIA

The Board of Adjustment shall review all variance petitions against the standards provided under Wisconsin Statutes and applicable case law, and with the consideration to the following three legal standards of the Lincoln County Zoning Ordinance. The petitioner has submitted responses to the variance standards outlined in the variance application (see variance application in packet) and below is the staff analysis of the request.

- 1) **Unnecessary Hardship – Compliance with variance standards would unreasonably prevent the owner from use of the property for a permitted purpose, or would be unnecessarily burdensome.**

**Staff Analysis:** In the case of the standard “Unnecessary Hardship”, the applicant does not provide clear evidence that denial of the variance would unreasonably prevent them from using this property for a permitted purpose. The existing principal structure (dwelling) on the lot was removed and the lot is able to accommodate a new dwelling / principal structure footprint at a configuration meeting applicable set-backs. While the lot is substandard in size, it was legally created and it is able to be developed. A hardship has previously been proven through the prior variance approvals for the lot but there does not appear to be enough evidence that the denial of the prior variances on the lot, would have unreasonably prevented the construction of a principal structure (dwelling) on the lot and use of the property for permitted purposes.

- 2) **Unique Property Features - this hardship is created because of unique qualities of the property, not the circumstances of the owner.**

**Staff Analysis:** To meet this standard, the hardship must be because of unique property features, rather than the circumstances of the owner. Examples of unique property features could include a legal substandard lot size, steep slopes, existing building configurations, or existing septic layout/location which prevent building in compliance with the ordinance. This property does have unique characteristics which could create a hardship in the fact that lot is

substandard in size, compared to current code requirements for minimum lot size in this zoning district. However, per code 21.07(2), a legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site. The 50 foot wide roadway and the more restrictive centerline set-back is a unique quality of the property which may create a hardship.

**3) Public Interest – the variance would not harm the public interest, which is the purposed and intent of the ordinance.**

**Staff Analysis:** Under standard three, the variance cannot be contrary to public interest or the intent of the zoning district. This standard is met by this application. No portion of the proposed structures would be located closer to the road centerline than the existing structures, previously removed from the parcel. Existing development along Rapel road is non-conforming to applicable Town road set-backs.

**STAFF RECOMMENDATION**

Based on the evidence available in the application and the three variance standards, staff recommends **denial** of the variance from section 21.07 (4)(c) of the Lincoln County Shoreland Zoning Ordinance to allow for the construction of a Principal structure (Dwelling) within the minimum required street yard set-back from the Town road centerline and minimum required set-back from the Town road right-of-way (ROW).

*Laura Boquist*

Laura Boquist, Lincoln County Shoreland Specialist

Date 6/8/23

## Looking North



## Looking East



# Looking South



# Looking West





# Property Overview

