

**LINCOLN COUNTY ZONING BOARD OF ADJUSTMENT**

**Thursday, September 28, 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.

**MEETING AGENDA**

*Action where applicable and necessary*

1. Call Meeting to Order
2. Roll Call
3. Adopt Agenda
4. August 24, 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 Thomas Purnell from sections 21.12(3)(b) and (c) of Lincoln County Shoreland Ordinance to allow for the building of a structure which is less than the minimum required side yard setback from the property line.
  - b) A request for variance by Levi Denton from sections 17.4.10 and 17.7.01(3) of Lincoln County Zoning Ordinance to allow for the building of a structure which is less than the minimum required street yard setback and is a modification of a non-conforming structure outside of it original footprint.
  - c) A request for variance by Michael and Barbara Kleen from section 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, August 10, 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): Jim Beaumont, 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), Karry Johnson (Corporation Counsel), and Elizabeth Peronto (Program Assistant)

Department Heads/Staff (Virtual): none

Visitors (In Person): Kim Brixius (recused prior to meeting), Jackie Leonhard, and Robert Leonhard

Visitors (Virtual): none

1. Call Meeting to Order – Meeting was called to order by Chair Rausch at 9:00am
2. Roll Call - Quorum present.
3. Adopt Agenda – M/S Powell/Beaumont to adopt the agenda as presented. Motion carried on a voice vote.
4. June 22, 2023 BOA Meeting Minutes -

M/S Powell/Beaumont to approve the minutes from the 6/22/2023 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 Jackie L Leonhard And Robert A Leonhard Jr Joint Revocable Trust from section 21.07(4)(b) of Lincoln County Shoreland Ordinance to allow for the building of a structure which is less than the minimum required side yard setback from the property line.

Rausch asked if there were any proponents for the request. Jackie Leonhard was present, sworn in, and explained her request. 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. A narrated video providing an overview/tour of the property was shown as prepared by Land Services Staff. 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/Beaumont to APPROVE THE REQUEST for a variance 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 to include staff recommendations.

Motion carried on a roll call vote:

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

ANNOUNCEMENTS

6. Next Meeting Date and Time – The next meeting will be on September 28<sup>th</sup> at 9:00am.
7. Adjourn – No further business, meeting adjourned at 9:17am.

Minutes prepared by Elizabeth Peronto

## NOTICE OF PUBLIC HEARING

The Lincoln County Board of Adjustment will hold a Public Hearing on Thursday September 28, 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>).

### APPEAL OF LAND SERVICES COMMITTEE CUP DECISION

1. An appeal by Skanawan Property Owners Association, U.A. for an Appeal of Administrative Decision of the Land Services Committee which approved a Conditional Use Permit (CUP-96-1075) for Milestone Materials a division of Mathy Construction Co. regarding an expansion of a non-metallic mineral (NMM) extraction use (sand and gravel pit) on parcels 02634072129996 and 02634072129999 located in the E½ NW¼ of Section 21, T34N, R7E, in the Town of Skanawan at W4021 County Rd S. The appeal request is being heard under section 17.8.12(2)(b) of the Lincoln County Ordinance.

### VARIANCE

2. A request for variance by Thomas Purnell from sections 21.12(3)(b) and (c) of Lincoln County Shoreland Ordinance to allow for the building of a structure which is less than the minimum required side yard setback from the property line. The property is located in Section 15, T34N, R8E, and has a parcel number of 01034081549873 with an address of N8653 County Rd B in the Town of Harrison.
3. A request for variance by Levi Denton from sections 17.4.10 and 17.7.01(3) of Lincoln County Zoning Ordinance to allow for the building of a structure which is less than the minimum required street yard setback and is a modification of a non-conforming structure outside of its original footprint. The property is located in Section 35, T31N, R5E, and has a parcel number of 00631053529995 with an address of N312 State Rd 107 in the Town of Corning.
4. A request for variance by Michael and Barbara Kleen from section 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 32, T35N, R6E, in the Town of Bradley and has a parcel number of 00435063249978, with an address of N10008 Sunset Point 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

**NOTICE OF PUBLIC HEARING**

**\*AMENDED\***

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**VARIANCE**

1. A request for variance by Thomas Purnell from sections 21.12(3)(b) and (c) of Lincoln County Shoreland Ordinance to allow for \*lateral expansion of an existing principal structure within the shoreland setback. The property is located in Section 15, T34N, R8E, and has a parcel number of 01034081549873 with an address of N8653 County Rd B in the Town of Harrison.
2. A request for variance by Levi Denton from sections 17.4.10 and 17.7.01(3) of Lincoln County Zoning Ordinance to allow for the building of a structure which is less than the minimum required street yard setback and is a modification of a non-conforming structure outside of it original footprint. The property is located in Section 35, T31N, R5E, and has a parcel number of 00631053529995 with an address of N312 State Rd 107 in the Town of Corning.
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Kim Brixius, Secretary

RECEIVED

AUG 11 2023

# PETITION FOR VARIANCE

LINCOLN COUNTY BOARD OF ADJUSTMENT

Receipt: 16758(1159) Fee: \$450

VAR- 23 - 006

APPLICATION WILL BE RETURNED/DISMISSED IF NOT COMPLETED IN FULL

### Property Owner Information

Name: Thomas Purnell Daytime Phone: (815) 482-4675

Mailing Address: N 2163 Hafs Rd City, State ZIP Genoa WI 53128

### Petitioner Information (if other than property owner)

Name: \_\_\_\_\_ Daytime Phone: (\_\_\_\_) \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City, State ZIP \_\_\_\_\_

Site Address: N 8653 County Rd B Genoa WI 54435 Zoning District: SH

Legal Description Summary: \_\_\_\_\_ Acres: .6500

Section: 15 Township: T34 North Range: R8 East

Gov Lot: 1 OR Quarter/Quarter: \_\_\_\_\_

Lot Number: \_\_\_\_\_ Subdivision/CSM: \_\_\_\_\_

Current use and improvements: Family Home (Residential)

Proposed use and improvements: Family Home overhang roof on 2 sides to divert water from <sup>(Residential)</sup>

Ordinance section relating to variance request: Lateral Expansion of Non-Conforming Structure 21.12(3)

Relief is requested to allow: overhang roof on East side of Home and South side wall facing garage wall to divert water away from foundation

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

1) Unnecessary hardship is present because... Additional Pages

2) Unique features of this property prevent compliance with the terms of the ordinance; they include... Additional Pages

3) A variance will not be contrary to the public interest because... Additional Pages

Owner: Purnell Last Name  
First Name: Thomas  
Tax Parcel #: 01034081549873 Town: Haviland



Names of adjoining property owners: A 8651 County Rd 3  
Carol Claesges - Darin Mrachek, Claesges Trust,  
Lincoln County Forestry

**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: [Signature] Date: 8-8-23  
Property Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR OFFICE USE ONLY**

Date Application Received: 8-11-23 By (Staff): CP Date of Hearing: 9-28-23

Unnecessary hardship is present because: the property has water drainage issues that causes the basement to mildew on the walls and floor. The damage had to be repaired from years of moisture damage that was found during our home inspection upon our purchase in 2020. Without major excavations or a small add on roof to divert rainwater and snow fall and melt away from the foundation on the south wall towards County Rd B and the west wall towards the garage.

Unique features of this property prevent compliance with the terms of the ordinance; they include:

Our property must grant access to the neighbors to get to their cottage. They share our driveway and a drive that we maintain around the garage at the edge of the property and over the drain line to our septic. This would make excavation to create compliance with the Wisconsin uniform dwelling code SPS 321.12 Drainage almost impossible the grade for the septic drain line from the house is only 4 inches below the driveway surface now and the garage is set to high for this to have any type of drainage pitch from the home. The issues above were not caused by us but rather previous work that was completed prior to us owning the property.

A Variance will not be contrary to the public interest because:

The addition will not be lakeward facing or make the dwelling any closer to the water. The roof will be visible from the lake on the East side, the south facing addition will not be visible from the lake. There will be minimal public view from most points unless said public is on the property in direct view of the home. The water shed from the roofs will be absorbed via the driveway gravel.

I don't believe the public would have any issue with the overhang being installed it will be part of the dwelling and noy be unsightly.

**SPS 321.12 Drainage.**

- (1) GRADE.** The finished grade of the soil shall slope away from the dwelling at a rate of at least 1/2 inch per foot for at least 10 feet, except as provided in subs. (2) and (3).
- (2) OTHER SURFACES.** Where the finished surface is impervious, it shall slope away from the dwelling for at least 10 feet at a rate that ensures equivalent drainage.
- (3) OBSTRUCTIONS.** Where lot lines, walls, slopes, or other barriers prevent having the 10-foot distance in sub. (2), swales or other means shall be provided to ensure equivalent drainage away from the dwelling.

**History:** Cr. Register, November, 1979, No. 287, eff. 6-1-80; CR 02-077: am. Register May 2003 No. 569, eff. 8-1-03; CR 15-041: renum. 321.12 to 321.12 (1) and am., cr. 321.12 (title), (2), (3) Register December 2015 No. 720, eff. 1-1-16.





Road side view County Rd B



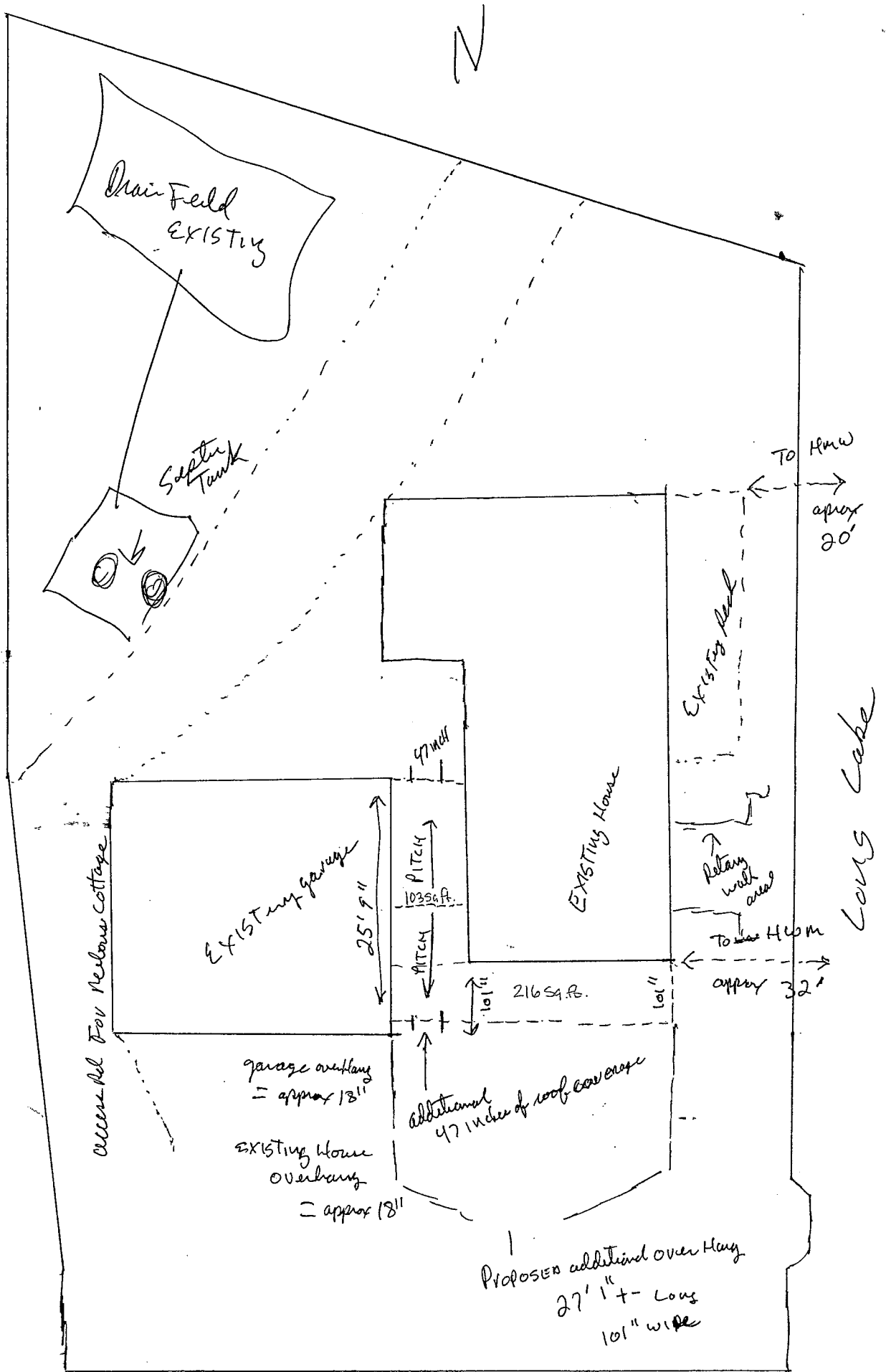


From Deck Lakeside









County A.B

< Lincoln county board



July 6, 2023

To the members of the Lincoln County Board,

I wish to inform you that I am in full favor of the overhang and enclosed entryway that Tom Purnell has made to his Long Lake cottage next to the boat landing. . The renovation work he has done has increased the value as well as the eye appeal of the property.

A handwritten signature in cursive script that reads "Carol Claesges".

Carol Claesges  
N8651 Cty Rd B (cottage)  
Gleason

N5624 County Rd B  
Montello, Wis





Lincoln County, WI

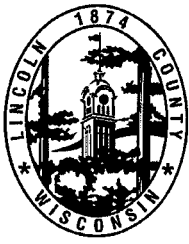
Author: Public

Date Printed: 8/28/2023



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: September 20, 2023  
Hearing Date: September 28, 2023  
Property Owner: Thomas Purnell and Brenna Purnell  
Property Address: N8653 County Rd. B  
Town of: Harrison  
Tax Parcel Numbers: 010-3408-154- 9873  
Zoning District: Unzoned  
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 Thomas Purnell from sections 21.12(3)(b) & 21.12(3)(c) of the Lincoln County Shoreland Zoning Ordinance, to allow for lateral expansion of an existing nonconforming principal structure within the shoreland set-back.

The property is located in Section 15, T34N, R8E, and has a parcel number of 01034081549873 with an address of N8653 County Rd B in the Town of Harrison.

Section 21.12(3)(b) of the Lincoln County Shoreland Zoning Ordinance states the existing principal structure must be at least 35 feet from the Ordinary High Water Mark (OHWM) of the Lake to be eligible for a lateral expansion allowance within 75 feet of the OHWM of the Lake, the shoreland set-back. The existing nonconforming principal structure footprint is less than 35 feet from the OHWM of the Lake.

Section 21.12(3)(c) states Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. The lateral expansion is 319 sq. ft. in size, per the plan provided by the Landowner.

The construction has already been completed without a land-use permit. A variance is needed to obtain an "after the fact" land-use permit approval.

#### **SITE CHARACTERISTICS**

The Town of Harrison is unzoned. Shoreland zoning requirements still apply to lands within the shoreland overlay zone pursuant to section 21.05 of Lincoln County Code. This includes land located within 300 feet of Rivers and Streams and land located within 1,000 feet of lakes and flowages. This water-front parcel is located on Long Lake. It is within the shoreland overlay zone and is subject to shoreland zoning requirements. N8653 County Rd. B is assessed at .65 acres or roughly 28, 314 sq. ft. in size. The lot is

considered legal nonconforming (substandard), as it is below the current minimum lot size requirement of 30,000 sq. ft. per shoreland zoning requirements. The parcel was created before applicable ordinance requirements for minimum lot size. The property does not contain DNR mapped wetlands or FEMA floodplain. There are steep grades /topography on the lake-side (east) of the existing development to the water and along the western lot line. The grade is relatively flat in the area of existing development.

There is an easement located on the parcel on the west side of the existing development, for access to the lot to the north at N8651 County Rd. B.

The existing principal structure footprint is nonconforming to the required shoreland set-back and is located within 75 feet of the ordinary high water mark (OHWM) of the lake (either legal nonconforming because of being constructed prior to zoning regulations or through variance approvals, see below).

Impervious surface coverage is about 24% of the assessed lot area, per permit records and coverage measurements on the County GIS mapping. This includes a gravel driveway and parking area, easement access road, and the existing development.

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

The initial development of the parcel occurred in 1977. A variance was granted in 1977 to construct a cottage at a reduced set-back of 40 feet from the OHWM of the Lake. The land-use permit was obtained in 1977 for a 20' x 28' cottage. A privy permit was also obtained this same year in conjunction with the initial development of the lot.

In 1993, a land-use permit was obtained for a 9' x 16' addition on the West side of the existing dwelling, opposite of the Lake. The addition was built within the shoreland set-back of 75 feet but did not require a variance, per ordinance requirements at that time. The addition included a bathroom and storage area. A conventional septic system was permitted and installed on the lot in 1993.

In April of 2000, a variance was granted for a 20' x 24' addition on the south side of the existing dwelling at 32 feet from the OHWM of the Lake. The addition included a living room and a basement with bathroom and storage areas. A land-use permit was obtained in July of 2000 for the construction of the dwelling addition as well as a 32' x 24' garage, which was proposed at 75 feet from the OHWM of the Lake on the Land-use permit application. Another variance was requested and granted in August of 2000 for the garage construction to be located within the 75 ft. shoreland set-back. The variance was granted for garage construction at a reduced set-back of 66 feet from the OHWM of the Lake. The shoreland set-back was not able to be met for the garage, due to the easement located on the parcel, west of the dwelling, for access to the adjacent lot to the North.

There are no permit records associated with the deck on the dwelling, which is located about 20 feet from the OHWM of the Lake. It is unclear exactly when the deck was constructed on the lot. However, per section 21.17(1) of the Lincoln County Shoreland Ordinance, if the structure has been in place for more than 10 years before an enforcement action is initiated, such building or structure shall not be pursued as a violation or require removal from the parcel. The deck has been on the lot for over 10 years per aerial records available on the County GIS mapping. Therefore, the deck may remain on the parcel as is in the non-conforming location.

In October of 2022, staff observed the construction of retaining walls on the lot in close proximity to the Lake, while conducting site visits nearby. A letter was sent to the Landowners on October 4<sup>th</sup>, 2022 outlining soil disturbance permit requirements associated with the construction of retaining walls within the 75 foot shoreland set-back and restrictions on soil disturbing activities within 35 feet of the OHWM of the Lake. Laura Boquist met with the landowner on the property on October 21<sup>st</sup>, 2022 to discuss the on-going work and permit requirements. Per discussion, there were existing retaining walls on the landscape, located in the same footprint, as the retaining walls that were being constructed. This was evidenced on photos provided by the landowner, records from the prior sale of the lot, and GIS aerial photos. A retaining wall is a structure, by definition, in shoreland codes. New retaining walls must be constructed at least 75 feet from the OHWM of the Lake. Shoreland code allows for existing non-conforming retaining walls, located within the 75 foot shoreland set-back, to be replaced within the same footprint. It was determined



that the retaining wall construction was occurring within the same footprint as the existing retaining walls. It is unknown when the initial construction of the retaining walls was completed or what code requirements were at the time of the initial construction of the retaining walls. An after the fact soil disturbance permit was obtained by the property owner on November 2<sup>nd</sup> 2022 for the retaining wall construction. The permit also covered replacement of an existing stairway to the lake and existing patio replacement lake-side of the dwelling. All of these regulated structures were determined to have been existing on the property , prior to their construction, and therefore were approved to be replaced in the same footprint with the after the fact soil disturbance permit. Permit approval conditions also include replanting shoreland buffer vegetation which was existing within 35 feet of the OHWM of the Lake on this lot, beyond the existing view/access corridor clearing, that had been removed during the construction activities.

During the visit on October 21<sup>st</sup>, 2022, Laura Boquist also documented a porch addition constructed on the south side of the dwelling and a structural addition connecting the existing detached garage to the dwelling, both located within 75 feet of the OHWM of the Lake. These additions were completed without county land-use permit approval and were not able to be permitted/ approved as they do not meet code requirements for lateral expansion allowances within the shoreland set-back. Therefore the landowner is requesting a variance for these new structural additions in order to obtain after the fact permit approval.

Section 21.12(3)(b) of the Lincoln County Shoreland Zoning Ordinance states the existing principal structure must be at least 35 feet from the Ordinary High Water Mark (OHWM) of the Lake to be eligible for a lateral expansion allowance within 75 feet of the OHWM of the Lake. The existing nonconforming principal structure is less than 35 feet from the OHWM of the Lake. The existing deck is located roughly 20 feet from the OHWM of the Lake, with the enclosed portions of the dwelling located at 32 feet from the OHWM of the Lake. Section 21.12(3)(c) states Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. The lateral expansion is 319 sq. ft. in size, per the plan provided by the Landowner. Mitigation is required to be implemented on the lot, when proposing a lateral expansion of a nonconforming principal structure. Mitigation will be needed in conjunction with the permit approval, if approved. Landowners are provided 2 years to implement a mitigation plan, consistent with Section 21.14 of the Lincoln County Shoreland Ordinance.

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. Current codes allow for 15% impervious surface coverage of the lot area without condition. Maximum impervious surface coverage is allowed up to 30% of the lot area with mitigation. If existing impervious surface coverage on the lot already exceeds 15% of the lot area, the existing coverage percentage is considered a lawful nonconforming feature. Provided the proposed work does not further increase the impervious surface coverage of the lot, there are no regulatory issues with the current impervious surface coverage on the lot. The existing impervious surface coverage is calculated at about 24% per permit records and coverage measurements on the County GIS mapping. Much of the area where the additions took place was previously covered with an impervious surface. Therefore, there is no measurable impervious surface coverage increase taking place on the parcel and therefore, there will be no mitigation requirements associated with the impervious surface coverage, only the requested lateral expansion/ additions completed within the shoreland set-back.

#### **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 Harrison.

#### **APPLICABLE ORDINANCE SECTIONS**

The general purpose of the Lincoln County Shoreland Ordinance is "For the purpose of promoting the public health, safety, convenience, and welfare, and protect the public trust in navigable waters". Areas

regulated by chapter 21 shall include all the lands (referred to herein as shorelands) in the unincorporated areas of Lincoln County, which are Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages and lands Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater, must comply with the requirements specified under general provisions for Lincoln County.

- *21.12(3) LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SHORELAND SETBACK.*
- *21.13 - IMPERVIOUS SURFACE STANDARDS.*
- *21.14 - MITIGATION.*
- *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 provides some reasoning why the denial of the variance would unreasonably prevent them from using the existing dwelling on the property. This is due to water drainage issues that had been occurring in the structure causing the basement to mildew on the walls and floor. The structural addition connecting the dwelling to the detached garage to the west and the porch addition on the south side of the dwelling was constructed to divert stormwater run-off further away from the foundation without having to do major excavation on the property to address the issues.

**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. The applicant outlines unique features of the property which prevent compliance, including the easement located on the west side of the property for access the lot to the North. There is shared driveway access that the landowner maintains around the garage at the edge of the property and over the drain line to the septic. That would make excavation to create compliance with Wisconsin Uniform Dwelling Code, SPS 321.12 regarding drainage, almost

impossible due to the grade for the septic drain line from the house is only 4 inches below the driveway surface now and the garage is set too high for this to have any drainage pitch away from the home. These issues were not caused by the current landowner but rather previous work that was completed on the lot, prior to the current landownership.

**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 overall intent of the shoreland ordinance. Since the adoption of current shoreland codes in 2015, resulting from Act 55 legislation, all approved lateral expansions proposed to non-conforming principal structures have met the requirements of section 21.12(3). This is the first request to waiver from this section of code to laterally expand a nonconforming principal structure greater than 200 sq. Ft. in size, that is located less than 35 feet from the OHWM.

The applicant states the variance will not be contrary to the public interest because the addition will not be lake side or make the dwelling any closer to the water. The variance requested would not harm the public interest or be contrary to the intent of the Shoreland ordinance.

**STAFF RECOMMENDATION**

Based on the evidence available in the application and the three variance standards, staff recommends **Approval** of the variance to sections 21.12(3)(b) & 21.12(3)(c) of the Lincoln County Shoreland Zoning Ordinance, to allow for lateral expansion of the existing nonconforming principal structure within the shoreland set-back, in order for the applicant to obtain an after the fact land-use permit for the completed work.

*Laura Boquist*

Laura Boquist, Lincoln County Shoreland and Land Use Specialist  
Date 9/5/23



## Looking North



## Looking East





# Looking South





# Property Overview





AUG 22 2023

# PETITION FOR VARIANCE

LINCOLN COUNTY BOARD OF ADJUSTMENT

Receipt: 16796(2602) Fee: \$450

VAR- 23 - 004

APPLICATION WILL BE RETURNED/DISMISSED IF NOT COMPLETED IN FULL

### Property Owner Information

Name: Levi Denton Daytime Phone: (715) 539-3604 / 715-536-6076  
Mailing Address: N 312 State Hwy 107 City, State ZIP Merrill WI 54452

### Petitioner Information (if other than property owner)

Name: \_\_\_\_\_ Daytime Phone: (\_\_\_\_\_) \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ City, State ZIP \_\_\_\_\_

Site Address: N312 State Rd 107 Zoning District: RL-4

Legal Description Summary: \_\_\_\_\_ Acres: 2.2

Section: 35 Township: 31 North Range: 5 East

Gov Lot: \_\_\_\_\_ OR Quarter/Quarter: SW/NW

Lot Number: \_\_\_\_\_ Subdivision/CSM: \_\_\_\_\_

Current use and improvements: Residential

Proposed use and improvements: Residential Addition (non-bedroom)

Ordinance section relating to variance request: 17.4.10 - Minimum required streetyard  
17.7.01(3) - modification of non-conforming structure

Relief is requested to allow: expansion of non-conforming structure outside of its original  
foot print and exceeding the original livable floor area within the encroachment area.

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

1) Unnecessary hardship is present because... The road is to the west, septic to the  
North and well to the south.

2) Unique features of this property prevent compliance with the terms of the ordinance; they include... The age of the house built 1900-1990 (so close to the road)  
also the road, septic and well.

3) A variance will not be contrary to the public interest because... we would be going  
away from the road, not closer

Town Conning

Tax Parcel # 006-3105-352-9995

First Name Levi

Last Name Denton

Owner



Names of adjoining property owners: Bradley Juedes, Jeff Klug, Edward Welch,  
and Schmidhaus LLC

**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: Sean J. Doster Date: 8-22-23

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

**FOR OFFICE USE ONLY**  
Date Application Received: 8-22-23 By (Staff): AP Date of Hearing: 9-28-23



00631053419996

BRADLEY  
JUEDES

00631053529996

SWNW

00631053529995

T31N R5E

Town of  
Corning

LEVI DENTON

SENE

JEFF KLUG

17

N312

Greendale Dr

00631053449999

NESE

ROW

SCHMIDTHAUS

LLC

00631053539998

NWSW

EDWARD WELCH

MJS INCOME  
TRUST

Lincoln County, WI

Author: Public

Date Printed: 8/28/2023



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.





Elizabeth Peronto <elizabeth.peronto@co.lincoln.wi.us>

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## Land use variance

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rpmelander@gmail.com <rpmelander@gmail.com>  
To: elizabeth.peronto@co.lincoln.wi.us

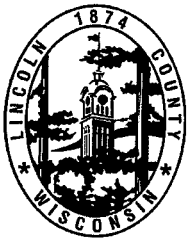
Fri, Sep 22, 2023 at 7:12 AM

To who this may concern:

On the agenda of the monthly meeting of the Town of Corning board the variance request from Levi Denton was listed as an item of business. The variance request was discussed and being the addition to the house was going to be on the back side of the house away from Highway 107. A motion was made and passed to allow Mr. Denton to build the addition to his house.

Ray Melander

Town of Corning, Chairman



## **PETITION FOR VARIANCE REQUEST**

### **STAFF REPORT**

Report Date: September 21, 2023  
Hearing Date: September 28, 2023  
Property Owner: Levi Denton  
Property Address: N312 State Rd 107  
Town of: Corning  
Tax Parcel Numbers: 00631053529995  
Zoning District: RR1-Rural Residential  
Zoning District Overlay: None  
Staff Reviewer: Mike Huth – Land Services Administrator and Zoning Program Manager  
Submitted Materials: Request for Variance Application and supporting documents

### **OVERVIEW**

#### **REQUEST**

A request for variance by Levi Denton from sections 17.4.10 and 17.7.01(3)(a) of the Lincoln County Ordinance to allow for the expansion of a structure within the minimum required street yard set-back from the State road centerline as well as to allow for an increase in the livable floor area of a non-conforming structure, partially located within the required road set-back.

#### **SITE CHARACTERISTICS**

The approximate 2.2 acre parcel is located along State Road 107 in Section 35 Town of Corning. Access to the existing dwelling and accessory structures is gained by an existing driveway. The property is located in the Rural Lands (RL4) zoning district with the property principally being used as a residential dwelling and considered by ordinance as a legal nonconforming structure.

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

Aerial photos indicate that the principle structure has been located in its current location since at least 1938. Below are noteworthy parcel items:

- 1975- Land Use Permit approved for the construction of a garage.
- 1975- Sanitary Permit issued for a replacement septic system (tank only).
- 1979- Sanitary Permit issued for a privy.
- 1980- Land Use Permit approved for the construction of a lean-to.
- 2009- Land Use Permit approved for the construction of a garage.
- 2010- Land Use Permit approved for replacement of basement fieldstone wall with poured concrete wall in same footprint.

Per Chapter 17.4.10(1) of Lincoln County Zoning Ordinance, the required street yard set-back from a State Road is a minimum of 110 feet from the centerline and 50 feet from the edge of the right-of-way (ROW), whichever is greater for any new structures. ROW records in this part of the state roadway indicate that the ROW is 66' wide. The proposed addition/expansion will still be within the required ROW set-back but will not be going closer to the State road centerline or ROW than the existing structure.

Chapter 17.7.01(3) outlines the allowances for the modification of an existing non-conforming structure. A modification, by definition, includes an addition to an existing structure. Per code, modifications to nonconforming structures shall be permitted if they do not encroach into the minimum street yard as required in Section 17.4.10, unless such modification involves the rebuilding of a nonconforming structure within its original footprint and to the original livable floor area specifications within the encroachment area. The proposed building addition includes an increase in the livable floor area for the portion of the existing structure, currently located within the state road centerline set-back.

### **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, the Town of Corning, and the WISDOT. At the date of this report, staff has not received any formal comments from neighboring property owners or the WISDOT.

### **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 rural lands districts, where the property is located, is to preserve rural character and promote continued low-intensity and open space uses in areas of the County not envisioned for intensive agricultural or commercial forestry use. Appropriate uses include continued low-impact farming and forestry where viable, single family residences up to a density not exceeding 4 dwelling units per 40 acres owned, and associated home occupations and other limited compatible business opportunities. In the RL4 zoning district, setback lines from State roads must comply with the requirements specified under general provisions for Lincoln County.

- *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.
- *17.7.01(3)(a) MODIFICATION OF A NONCONFORMING USE OR STRUCTURE.* Modifications or additions to nonconforming structures or uses shall be permitted provided that they do not encroach into the minimum side yard in the zoning district or the minimum street yard as required in Section 17.4.10, unless such modification involves the rebuilding of a nonconforming structure within its original footprint and to the original livable floor area specifications within that encroachment area.
- *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 provide clear evidence that denial of the variance would unreasonably prevent them from using this property for a permitted purpose. The existing development on the lot was created prior to the county zoning ordinance at the current set-backs. The prior development in close proximity to the state road and dwelling utility placement (septic to the north of dwelling and well to the south of the dwelling) presents unique factors to the subject property and the proposed expansion/addition. Thus, preventing compliance with the ordinance standards for applicable road set-backs and expansion outside of the building footprint would be unnecessarily burdensome.

- 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. This property does have unique characteristics which create a hardship in the fact that the existing legal non-conforming structure is located within the state road right of way and road centerline setback area and any expansion of the livable area would require a variance.

- 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 expansion is to be located closer to the road centerline than the existing structure. By expanding outside of the original building footprint to the east; still within the setback to the state road centerline and ROW; the proposed structure would not impede driver visibility or reduce public safety.

### STAFF RECOMMENDATION

Based on the evidence available in the application and meeting the three variance standards, staff recommends **approval** of the variance to allow for the expansion of a structure within the minimum required street yard set-back from the State road centerline as well as to allow for an increase in the livable floor area of a non-conforming structure, partially located within the required road set-back. Staff recommends the following conditions be placed upon a favorable approval:

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



Lincoln County - Zoning Program Manager

9/21/23

Date





**Looking North**



**Looking East**





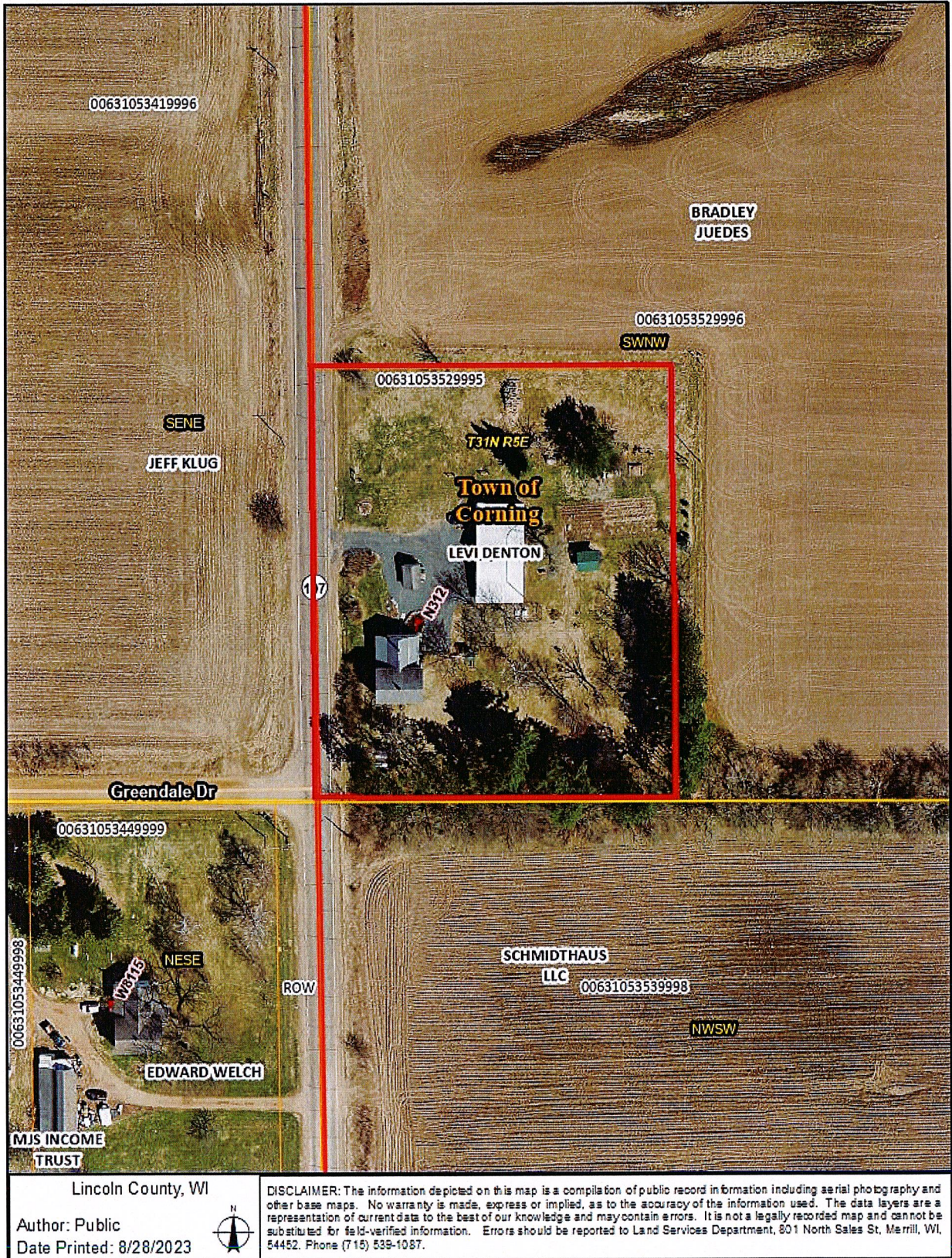
**Looking South**



**Looking Southeast**



# Property Overview



Lincoln County, WI  
 Author: Public  
 Date Printed: 8/28/2023



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.



**PETITION FOR VARIANCE**

LINCOLN COUNTY BOARD OF ADJUSTMENT

Receipt: 16811 (9888)

Fee: \$450

VAR- 23-005

AUG 25 2023

**APPLICATION WILL BE RETURNED/DISMISSED IF NOT COMPLETED IN FULL**

Property Owner Information

Name: Michael Kleen and B. Barbara Kleen Daytime Phone: (303) 358-7451 / 303-907-8656

Mailing Address: 8 Balmiere Pkwy., Granford, NJ 07016

B. Barbara 2817 Colorado Ave. S., St. Louis Park, MN 55416

Petitioner Information (if other than property owner)

Name: Kate Kleen Daytime Phone: (920) 344-4242

Mailing Address: 3925 Oxbow Drive City, State ZIP Waukesha, WI 53189

Site Address: N10008 Sunset Point Rd., Bradley Zoning District: RR-1

Legal Description Summary: 54487 Acres: .25 acres

Section: 32 Township: T35North Range: R6 East

Gov Lot: \_\_\_\_\_ OR Quarter/Quarter: part of NW 1/4 of the NW 1/4 and part SW 1/4 of the NW 1/4

Lot Number: \_\_\_\_\_ Subdivision/CSM: \_\_\_\_\_

Current use and improvements: Cottage on slab (Residential)

Proposed use and improvements: Cottage on slab (Residential)

Ordinance section relating to variance request: Chapter 21 Shoreland Ordinance, Section 21.07

Relief is requested to allow: an addition at 51 feet from the road centerline. (4)(c).  
21.07(4)(c)

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

- 1) Unnecessary hardship is present because the requested additional 8'x8' expansion is at 51' from the centerline. Even though it meets the criteria of minimum 30' from the edge of the right-of-way (being at 30' per survey). The hardship is created by the regulations and the variance is requested in order to add a utility room to bring the new cottage into the 21st Century.
- 2) Unique features of this property prevent compliance with the terms of the ordinance; they include... Shoreline code allows for 200 sq. ft. lateral expansion. However, due to the irregular shape of the lot and location of existing cottage, it's impossible to add these 200 square ft. We ask for 64 sq. feet laterally (8'x8' section) addition to the current footprint. Our wetlands slope down toward the lake and are unbuildable as well. We plan to remove 2 EB and plan drainage system around New Cottage for
- 3) A variance will not be contrary to the public interest because the added 8'x8' section does not protrude toward the road set-back. Nor, will it impact the distance of the cottage toward the lake, due to a lateral expansion. The new cottage will be built with drains/gutters to address concerns of drainoff. As well as we will meet further water mitigation concerns by taking out non-conforming structures thus addressing mitigation criteria for an expansion within the Shoreland set-back.

Owner: Kleen Last Name  
First Name: Michael / B. Barb Kleen  
Tax Parcel #: 004-35063249978  
Town: Bradley

Further mitigation



① Pamela Gojmerac (N10016 SPR) ② Carol Vallely N9998 SPR

Names of adjoining property owners: W4480 Birch Hill Lane

③ Chris Opal (N10011 SPR) Merrill, WI 54452  
5499 264th St.  
Wyoming, MN 55092

④ Debra/Terry Haglund (N10003 SPR) 4225 Hwy JJ  
Black Earth, WI 53515

⑤ Scott O'Co N9999 SP

**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: See attached sheet Date: 8-23-2023

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

**FOR OFFICE USE ONLY**

Date Application Received: 8-25-23 By (Staff): EP Date of Hearing: 9-28-23



Names of adjoining property owners: Pamela Gjimerac + Carol Valley

**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 "BB".

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**

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Property Owner Signature: [Signature]

Date: 8/20/23

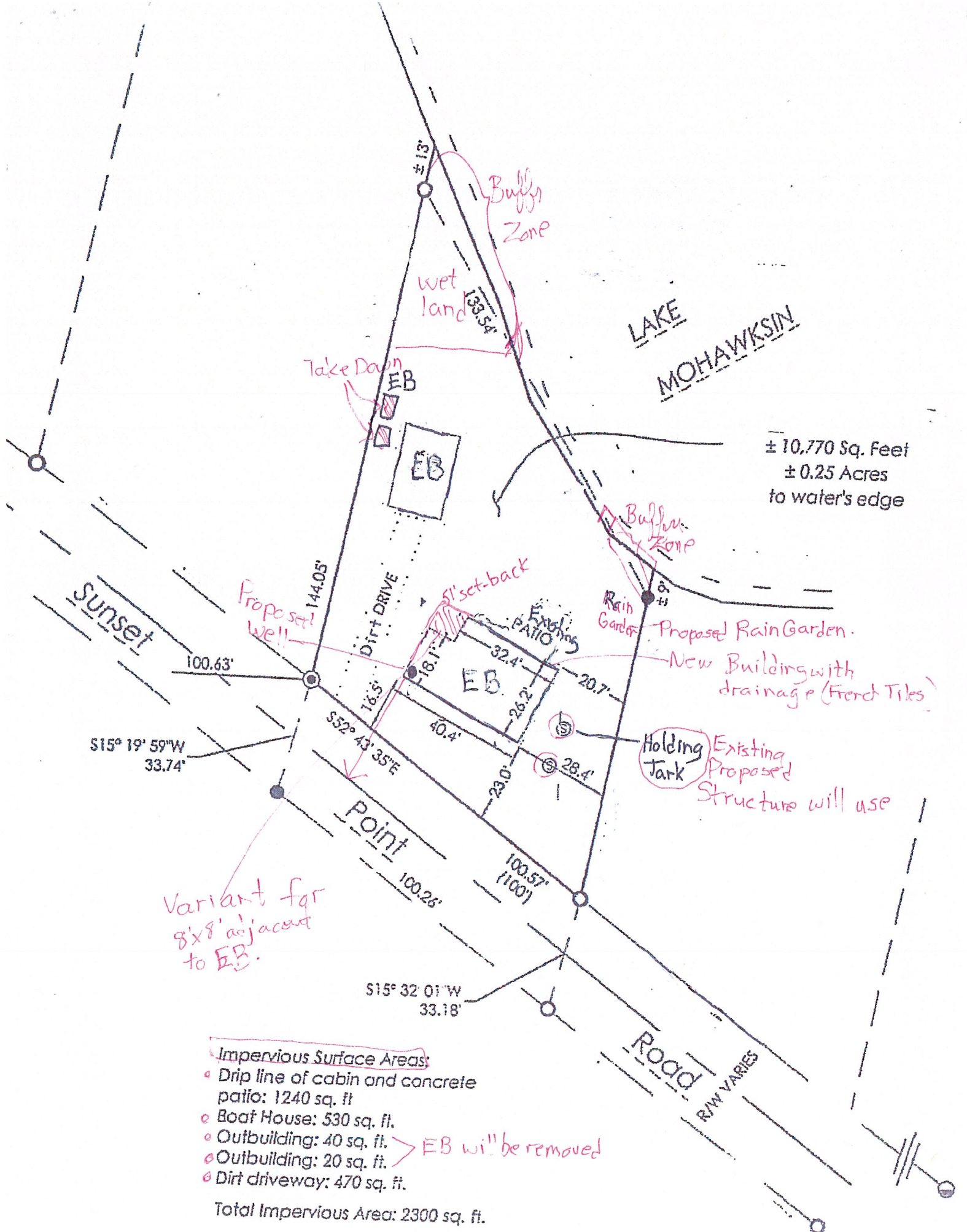
Property Owner Signature: [Signature]

Date: 8/20/23

**FOR OFFICE USE ONLY**

Date Application Received: 8-25-23 By (Staff): EP Date of Hearing: 9-28-23





± 10,770 Sq. Feet  
 ± 0.25 Acres  
 to water's edge

Variant for  
 8'x8' adjacent  
 to EB.

Impervious Surface Areas:

- Drip line of cabin and concrete patio: 1240 sq. ft.
- Boat House: 530 sq. ft.
- Outbuilding: 40 sq. ft.
- Outbuilding: 20 sq. ft.
- Dirt driveway: 470 sq. ft.

EB will be removed

Total Impervious Area: 2300 sq. ft.



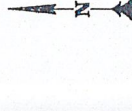
**Part of the  
NW 1/4 OF THE NW 1/4  
and part of the  
SW 1/4 OF THE NW 1/4  
SECTION 32, T35N, R6E,**

**Town of Bradley  
Lincoln County, Wisconsin**

I, Emily K. Pierce, Professional Land Surveyor No. S-2728, hereby certify that I have surveyed the property shown hereon; that this map represents an accurate survey of said property to the best of my knowledge and belief; that I have performed this survey by order of Michael and Karle Kleen; and that I have complied with the requirements of Wisconsin Administrative Code A-E-7.  
**STEIGERWALDT LAND SURVEYING, LLC**

*Emily K. Pierce*

Professional Land Surveyor No. S-2728  
Dated October 11th, 2019  
Field work completed on October 8, 2019



Bearings Lincoln Co grid  
referenced to the West line of  
the Northwest Quarter, bearing  
301°03'16"W.

**LEGEND**

- = Found 1.0" Iron Pipe
  - = Found 1.25" Iron Pipe
  - ⊙ = Found 1.5" Iron Pipe
  - ⦿ = Found 2.0" Iron Pipe
  - ⊕ = Septic Vent/Manhole
  - ⊖ = Computed Position
  - ( ) = Recorded Dimension
- Monument sizes are outside diameter.  
Other corner monuments are as noted.

**STEIGERWALDT LAND SURVEYING, LLC**

855 NORTH 4TH STREET, TOMAHAWK, WI 54487  
PHONE #: (715) 453-3274 FAX #: (715) 453-8325  
www.steigerwaldt.com

JOB #: 6438 DWG #: 6438 Kleen Sheet 1 of 1

**DOCUMENT #473407**  
A survey of a parcel described in Doc. #473407, as recorded in the Lincoln County Register of Deeds, being located in the Northwest Quarter of the Northwest Quarter, and the Southwest Quarter of the Northwest Quarter, all in Section 32, Township 35 North, Range 6 East, Town of Bradley, Lincoln County, Wisconsin, more particularly described as follows:

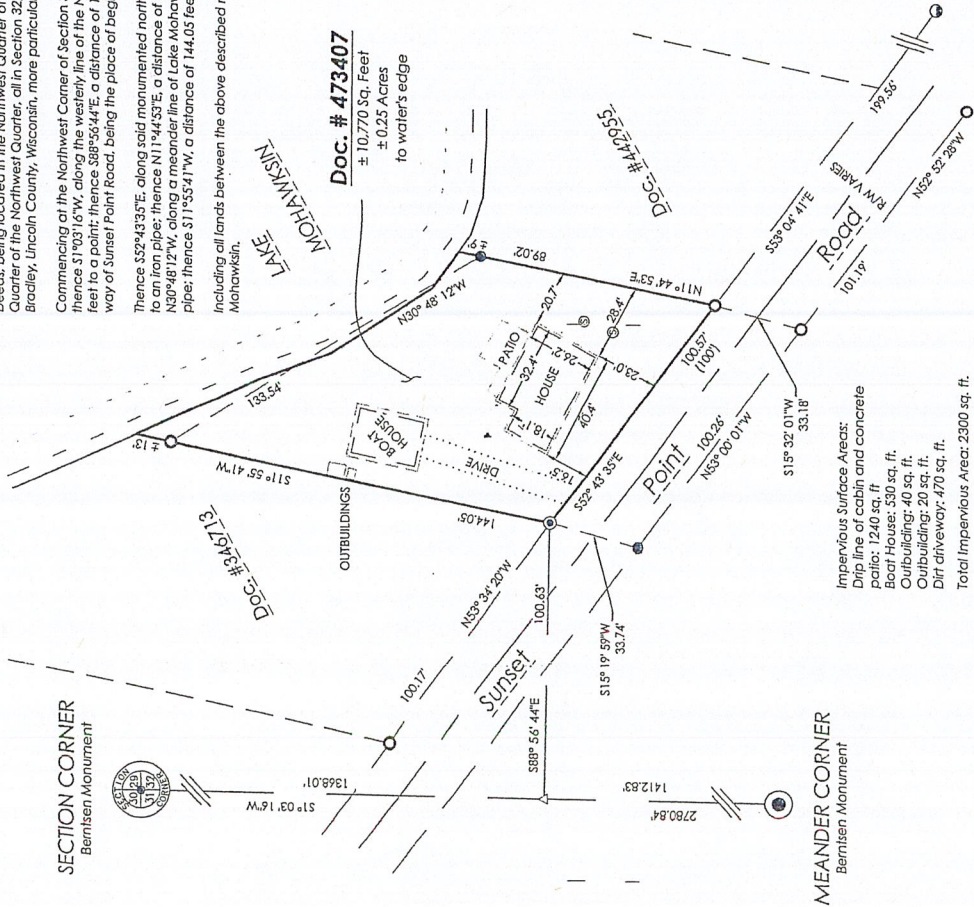
Commencing at the Northwest Corner of Section 32, marked by a Bemisen Monument, thence S1°03'16"W, a distance of 1369.01 feet to an iron pipe; thence S88°56'44"E, a distance of 100.63 feet to monumented northerly right of way of Sunset Point Road, being the place of beginning, marked by an iron pipe.

Thence S29°43'57"E, along said monumented northerly right of way, a distance of 100.57 feet to an iron pipe; thence N11°44'53"E, a distance of 89.02 feet to an iron pipe; thence N30°48'12"W, along a meander line of Lake Mohawksin, a distance of 133.54 feet to an iron pipe; thence S11°55'54"W, a distance of 144.05 feet to the place of beginning.

Including all lands between the above described meander line and the water's edge of Lake Mohawksin.

**Doc. # 473407**

± 10,770 Sq. Feet  
± 0.25 Acres  
to water's edge



**Impervious Surface Areas:**  
Drip line of cabin and concrete patio: 1240 sq. ft.  
Boat House: 330 sq. ft.  
Outbuilding: 40 sq. ft.  
Outbuilding: 20 sq. ft.  
Drift driveway: 470 sq. ft.  
Total Impervious Area: 2300 sq. ft.







Lincoln County, WI

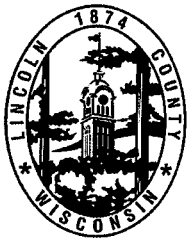
Author: Public

Date Printed: 8/28/2023



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.





**PETITION FOR VARIANCE REQUEST**  
**STAFF REPORT**

Report Date: September 5, 2023  
Hearing Date: September 28, 2023  
Property Owner: Michael Kleen and Batya Barbara Kleen  
Property Address: N10008 Sunset Point Rd.  
Town of: Bradley  
Tax Parcel Numbers: 004-3506-324-9978  
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 Kate Kleen, on behalf of the landowners Michael Kleen and Batya Barbara Kleen, from section 21.07 (4)(c) of the Lincoln County Shoreland Zoning Ordinance, to allow for an addition to the Principal structure (Dwelling) footprint within the minimum required street yard set-back from the Town road centerline.

The property is located in the NW ¼ NW ¼ and part of the SW ¼ of the NW ¼ of Section 32, T35N, R6E, in the Town of Bradley, has a parcel number of 004-3506-324- 9978 and an address of N10008 Sunset Point Rd.

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.

The width of Sunset Point Rd. varies depending on the location. Per the Plat of survey on file for this parcel, Sunset Point Road is just over 33 feet wide from ROW to ROW in this location with each side of the road being just over 16 feet wide from the road centerline. Therefore the Town road centerline set-back is more restrictive. The request is to reduce the required road set-back to 51 feet from the centerline of the road for a 64 sq. ft. addition to the existing principal structure footprint. The addition will meet the required road ROW set-back, being proposed at 34.5 feet from the Town Road ROW. The addition will be located within the required shoreland set-back at about 40 feet from the OHWM of the Lake. Lateral expansion of the existing principal structure footprint is allowed up to 200 sq. ft. in size, per section 21.12(3) of the Shoreland Ordinance.



## **SITE CHARACTERISTICS**

The parcel is located within the shoreland overlay zone and is subject to shoreland zoning requirements. An updated survey plat for this parcel was filed on October 11<sup>th</sup>, 2019. N10008 Sunset Point Road is calculated at .25 acres or roughly 10,770 sq. ft. in size. The lot is considered substandard, as it is below the minimum lot size requirement of 30,000 sq. ft. for the RR-1 zoning district. The parcel was created before applicable ordinance requirements for minimum lot size. The property does not contain mapped wetlands or floodplain. The parcel is relatively level with an average slope of 5%, per topography information available on County GIS mapping. Existing Impervious surface coverage is calculated at 21% of the listed lot area per the survey on file for the lot.

The existing principal structure footprint is nonconforming to the required shoreland set-back and is located within 75 feet of the ordinary high water mark (OHWM) of the lake. The closet portion of the existing principal structure footprint measures 39 feet from the OHWM of the Lake. This structure is also nonconforming to the required road setbacks with the closest portion of the existing principal structure footprint located at 16.5 feet from the Town Road ROW and 33.37 feet from the centerline of Sunset Point Rd. Per section 17.7.01(3)(a) of the Lincoln County Zoning ordinance, vertical expansion within the existing structure footprint for additional livable area is not permissible due to the required road set-backs. The current principal structure footprint is just under 1,000 sq. ft. with no basement or second story livable area(s). There is an existing boathouse, two nonconforming outbuildings, and a non-conforming patio also located on the parcel within the shoreland set-back.

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

The parcel was initially created and conveyed in 1947. The initial development of the parcel occurred prior to 1969, before Lincoln County Zoning ordinances were adopted and prior to permit requirements. Therefore, there are no permit records available for the initial construction of the principal structure (dwelling) on the lot. The oldest zoning permit record available is a permit request from July of 1973 for the construction of a garage. A variance was requested in August of 1973 for the construction of the garage at a reduced shoreland set-back of 58 feet from the OHWM of the Lake and 3 feet from the side lot line. The variance was approved in September of 1973 for the construction of a garage at 50 feet from the OHWM of the Lake and 10 feet from the side lot line. The variance request for a 3 foot side lot line set-back was not approved. In October of 1973, the garage permit request was revised to a 16 x 24 ft. boathouse.

A 2,000 gallon holding tank was permitted and installed on the lot in 1999. In 2022, a land-use permit was approved to reconstruct/ rebuild the existing principal structure in the same footprint, as allowed per Section 21.12(2) of the Lincoln County Shoreland Ordinance. No lateral addition/ expansion of the existing principal structure footprint was proposed. A sanitary reconnect permit was also obtained to reconnect the new dwelling to the existing holding tank on the parcel. This work has not yet taken place on the lot. These permits are valid until September 14<sup>th</sup>, 2024. A one year extension on the approvals can be provided, if requested.

Lateral expansion of an existing principal structure footprint is allowed up to 200 sq. ft. in size, per section 21.12(3) of the Shoreland Ordinance when an existing principal structure footprint is at least 35 feet from the OHWM of the Lake and mitigation is implemented on the lot. The current principal structure footprint is 39 feet from the OHWM of the Lake. Two non-conforming outbuildings located within the shoreland set-back are planned to be removed from the parcel as well as the installation of a rain garden. Mitigation is defined as balancing measures that are designed, implemented, and work to restore natural functions and values that are otherwise lost through development and human activities. Mitigation is required for some shoreland development proposals by state and county shoreland regulations. These practices meet the mitigation criteria outlined in applicable shoreland ordinance sections.

Per section 17.7.01(3)(a) of the Lincoln County Zoning ordinance, Vertical expansion within the existing structure footprint for additional livable area(s) is not permissible due to the required road set-backs.



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. Current codes allow for 15% impervious surface coverage of the lot area without condition. Maximum impervious surface coverage is allowed up to 30% of the lot area with mitigation. If existing impervious surface coverage on the lot already exceeds 15% of the lot area, the existing coverage percentage is considered a lawful nonconforming feature. Provided the proposed work does not further increase the impervious surface coverage of the lot area, there are no regulatory issues with the current impervious surface coverage on the lot. The existing impervious surface coverage is listed at 21% of the lot area, per the survey on file. The proposed addition is small, at only 64 sq. ft. in size. With the removal of the two outbuildings totaling 60 sq. ft. in size, there is only a very minor increase in coverage proposed of 4 sq. ft. The overall impervious surface coverage of the lot area will remain at 21% of the lot area per calculations.

### **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.
- *21.12(3) LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURE WITHIN THE SHORELAND SETBACK.*
- *21.13 - IMPERVIOUS SURFACE STANDARDS.*
- *17.7.01(3)- MODIFICATION OF A NONCONFORMING USE OR STRUCTURE.*
- *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 provides reasoning why the denial of the variance would unreasonably prevent them from using this property for a permitted purpose. As stated, there is an existing principal structure (dwelling) on the lot that is permitted to be re-built in the same structure footprint and configuration as existing. The existing principal structure footprint is just under 1,000 sq. ft. in size and relatively small compared to modern dwelling sizes typically constructed. Vertical expansion of the existing dwelling for a second story livable area or basement is prohibited due to the road ROW and centerline set-back requirements. Shoreland code does allow for the lateral expansion / addition, as proposed, but is prohibited due to the required road centerline set-back. This presents an unnecessary hardship. While the lot is substandard in size, it was legally created and developed, prior to applicable regulations. A hardship is present that unreasonably prevents the lateral expansion allowance proposed on the lot.

**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 create a hardship in the fact that existing building configuration has been existing on the lot since before the adoption of zoning codes. Current code requirements related to road set-backs are preventing any lateral expansion or vertical expansion opportunities.

**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 structure. Much of the existing development along Sunset Point road is non-conforming to applicable Town road set-backs. The lateral expansion/addition within the shoreland set-back is permissible per shoreland code and mitigation practices will be implemented on the lot through the removal of other nonconforming accessory structures (outbuildings) and the installation of a rain garden.

### STAFF RECOMMENDATION

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

*Laura Boquist*

Laura Boquist, Lincoln County Shoreland and Land Use Specialist

Date 9/5/23



# Looking North





# Looking East





# Looking South





# Looking West





# Property Overview

