



BOARD OF ADJUSTMENT & APPEALS AGENDA

Date: March 18, 2024

Time: 7:00 p.m. (doors open at 6:45)

Location: Emergency Operations Center (EOC) - Government Center, 501 S. Minnesota Ave., St. Peter

Copies of the meeting agenda and packet are available on the Nicollet County website at:
co.nicollet.mn.us/AgendaCenter

Questions or comments regarding the meeting can be directed to the Nicollet County Property Services Department by calling 507-934-7070 or by emailing niccopermitapps@co.nicollet.mn.us.

1. Call to Order
2. Roll Call
3. Silence Your Cell Phone
4. Review of Cancellations and Additions
5. Approval of Minutes: *February 26, 2024*
6. Public Appearances
7. **PUBLIC HEARING: PLN24-03 (Continuance)**
 - Applicant: Leon Matties
 - Landowner: Leon Matties
 - Request: Reduction of the bluff setback from 30 feet to 23 feet and reduction of Ordinary High Water (OHW) setback from 200 feet to 55 feet for the purpose of constructing an expanded replacement garage
 - Location: Part of Government Lot 3 of Section 2-111-31 in West Newton Township
 - Parcel Number: 13.002.0300
8. Old Business
9. Other Business
10. Communications
11. Adjourn

Mission Statement

Providing efficient services with innovation and accountability.

Vision Statement

Setting the standard for providing superior and efficient county government services through leadership, accountability and innovation to a growing and diverse society.

Core Values

Leadership. Integrity.
Accountability.
Efficiency. Innovation.

BOARD OF ADJUSTMENT & APPEALS REGULAR MONTHLY MEETING MINUTES

FEBRUARY 26, 2024	7:00 PM	COUNTY BOARD ROOM
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ROLL CALL	COMMISSIONERS PRESENT	COMMISSIONERS ABSENT EXCUSED	NICOLLET COUNTY STAFF PRESENT
	☒ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☒ Randy Schwab, <i>Chair</i> ☒ Jon Thoreson ☒ Dave Ubel	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☒ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☐ Dave Ubel	☒ Spencer Crawford, Zoning Specialist (ZS) ☒ John Zehnder, Zoning Specialist (ZS) ☒ Michelle Zehnder Fischer, County Attorney (CA) ☒ Crystal Madden, Recording Secretary ☐ Other Staff:

REVIEW OF CANCELLATIONS & ADDITIONS	None.
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APPROVAL OF JANUARY 22, 2024 MINUTES	MOTION	SECOND
APPROVE	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☒ Jon Thoreson ☐ Dave Ubel	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☒ Dave Ubel
VOTE TO APPROVE MINUTES	☒ PASS ☐ FAIL	VOTE: 4 - 0

FINDINGS OF FACT PLN24-01, NORSELAND LUTHERAN CHURCH	MOTION	SECOND
APPROVE	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☒ Dave Ubel	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☒ Jon Thoreson ☐ Dave Ubel
VOTE TO APPROVE THE FINDINGS OF FACT	☒ PASS ☐ FAIL	VOTE: 4 - 0

PUBLIC APPEARANCES	None.
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VARIANCE PUBLIC HEARINGS	
PLN24-03	APPLICANT/LANDOWNER: Leon J. Matties
DESCRIPTION OF REQUEST	Reduction of the bluff setback from thirty (30) feet to twenty-three (23) feet, and reduce the Ordinary High Water (OHW) setback from two-hundred (200) feet to fifty-five (55) feet, for the purpose of constructing an expanded replacement garage, on property owned by the Applicant. PID: 13.002.300
CONFLICT OF INTEREST	None.
SITE VISIT & PUBLIC CONTACT	Chair Schwab and Vice-Chair Hoffmann visited the site. There was no contact with Board Members from members of the public.
STAFF REPORT PRESENTED BY	ZS Zehnder
APPLICANT TESTIMONY	Present to represent the application was Leon J. Matties located at 62579 346th Lane, Gibbon.
PUBLIC TESTIMONY	No one was present to provide public testimony. Comment was received Friday, February 23, and was entered into the Record from Al Gleisner – Area Hydrologist, with the Minnesota Department of Natural Resources (DNR).

BOARD DISCUSSION	Further discussion between the Applicant, Board, and Staff took place.		
BOARD ACTION - MOTION	MOTION		SECOND
Motion for a continuance to allow for all Board Members to visit the site, and continue the hearing at the next regular Board of Adjustment & Appeals meeting held on March 18, 2024 at 7:00 pm located in the Nicollet County Government Center.	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☒ Dave Ubel		☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☒ Jon Thoreson ☐ Dave Ubel
VOTE TO APPROVE A CONTINUANCE	☒ PASS	☐ FAIL	VOTE: 3 - 1
Minnesota Statute §15.99 Waiver	Mr. Matties signed a Minn.Stat. §15.99 Waiver.		

ADDITIONAL ITEMS			
OLD BUSINESS	None.		
OTHER BUSINESS	None.		
COMMUNICATIONS	None.		
ADJOURN MEETING	MOTION		SECOND
07:44 PM	☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☐ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☒ Dave Ubel		☐ Lloyd Hoffmann, <i>Vice Chair</i> ☐ Justin Laven ☒ Randy Schwab, <i>Chair</i> ☐ Jon Thoreson ☐ Dave Ubel
VOTE TO ADJOURN MEETING	☒ CARRIED	☐ FAILED	VOTE: 4 – 0

JOHN ZEHNDER, ZONING SPECIALIST		DATE	3/18/2024
RANDY SCHWAB, CHAIR		DATE	3/18/2024



VARIANCE

**REDUCTION OF THE BLUFF SETBACK
TO 23 FEET AND REDUCTION OF OHWL
SETBACK TO 55 FEET FOR THE
PURPOSE OF CONSTRUCTING A
REPLACEMENT GARAGE**

LEON J. MATTIES

PLN24-03

**NICOLLET COUNTY
BOARD OF ADJUSTMENT AND APPEALS**

SUBJECT	Variance PLN24-03
APPLICANT	Leon J. Matties
LANDOWNER	Leon J. Matties
LOCATION	Part of Government Lot 3 of Section 2-111-31 in West Newton Township
PARCEL NO	13.002.0300
EXISTING ZONING	Shoreland
HEARING DATE	02/26/2024, <i>continued to 04/15/2024</i>
60 DAYS FROM REQUEST	03/25/2024, <i>extended to 04/16/2024</i>
PREPARED BY	John Zehnder, Zoning Specialist

REQUEST

For the purpose of constructing a replacement garage, the applicant is submitting a variance request to:

- Reduce the ordinary high water level (OHWL) setback from 200 feet to 55 feet, placing structure within the Shore Impact Zone (SIZ);
- Reduce the bluff setback from 30 feet to 23 feet.

ORDINANCE

Nicollet Shoreland Management Ordinance 501.2 (C & E) *Setback Regulations* specifies a:

- Minimum setback from ordinary high water mark of two hundred (200) feet
- Minimum setback from bluff of thirty (30) feet

A Bluff is defined in the ordinance as:

The area between the bluff top and the bluff toe. A natural topographic feature with a slope of twelve (12) percent or greater.

The Shore Impact Zone is defined in the ordinance as:

Land located between the ordinary high water level of a public water and a line parallel to it at a setback of fifty (50) percent of the structure setback.

SHORE IMPACT ZONE (NEW INFORMATION)

The Shore Impact Zone is a naturalistic area around a lake that helps prevent erosion and preserves aesthetic values by limiting construction and vegetation removal. The concept was developed by the Minnesota DNR in 1989 to help preserve lake amenities while maintaining public access.

EXISTING LAND USE

The 162 acre lot contains bluff, shoreline, forest, cropland, and a farmstead that includes a residence and several farm-related storage buildings of varying sizes. The farmstead is located on the eastern side of the property on a promontory above the western shore of Clear Lake, which forms the property line. The site also previously included the shed this application seeks to replace, as well as a barn to the east along the bluff line. The nearest corner of the previous shed was 64 feet from the ordinary high water level of Clear Lake and 30 feet from the adjacent bluff

The soil type for the site is known as Clarion-Swanlake Complex, according to the Nicollet County Soil Survey prepared by the Soil Conservation Service of the United States Department of Agriculture. Slopes are 2 to 6 percent. The USDA considers this type of soil to be *moderately well drained*, and it is suitable for supporting above-grade structures. However, it is erodible, creating certain limitations for shallow excavations.

SURROUNDING LAND USE

The surrounding area includes Clear Lake to the east, with wetlands extending to the southwest. To the north and west, the vicinity includes extensive croplands as well as occasional farmsteads.

PROJECT DESCRIPTION (REVISED)

The site of the current project was previously the site of 40 by 38-foot storage shed. In November of 2023, the shed was demolished. The applicant wishes to construct a larger 40 by 60-foot garage on the same site for storage. The previous shed was already nonconforming because it fell within the county's specified setback of 200 feet from the ordinary high water level. Approximately 75 percent of the garage's footprint also fell within the 100-foot Shore Impact Zone. The proposed larger structure would require a variance as it further decreases the ordinary high water level setback from 64 feet to 55 feet and also decreases the bluff setback from a permitted 30 feet to 23 feet, as shown in the survey submitted by the applicant. The reduced setbacks would also place the expanded footprint entirely within the SIZ.

It should be noted that the applicant can still replace the demolished shed within the previous footprint as long as a building permit application is submitted by May 16th of 2024. For an expanded garage, the site does appear to include other buildable locations (See maps of building restriction zones in attachment) outside of the SIZ. East of the dwelling, there is a relatively flat open area outside of the Shore Impact Zone. However, this area still falls within the 200-foot Shoreland setback. South of the dwelling there is another relatively open area that falls outside

both the setback and Shore Impact Zones. All of these sites also lie outside the 30-foot bluff setback.

The applicant has mentioned that he wishes to maintain the larger garage's distance from his dwelling as he states that he and his wife face significant age-related mobility limitations. He says fears a more distant location along the driveway would decrease accessibility. He states that he considered a site directly to the north of a current storage facility but determined that a new structure there would result in excess drainage, potentially undermining the existing building and property driveway. The applicant has also commented on the historic nature of the farmstead and believes that other potential sites would result in the loss of too many trees.

DEPARTMENT OF NATURAL RESOURCES COMMENT (REVISED)

The DNR has brought attention to the fact that the new structure falls within the DNR's shore impact zone, which lies within a 100-foot setback from the ordinary high water level. In an email (See attachment), the DNR maintains that public resources must not be compromised to satisfy design preferences and that property rights must be balanced with the public's right to clean water and healthy habitats. The DNR notes that the enlarged garage would increase the nonconformity in the Shore Impact Zone. The goal of the Shoreland ordinance is to decrease nonconformities over time. Granting a variance for building in this area would increase stormwater runoff into the lake. This could increase erosion and harm water quality.

The DNR recommends relocating the structure outside of the 100' Shore Impact Zone and believes that alternative sites exist on the property. If the variance is still approved in its original form, the applicant should find ways to slow down the flow of runoff and direct it away from the lake, for example with a rain gardens or rain gutters leading to bulk storage or temporary holding containers. The applicant should work with consultant or engineer to develop such a retention plan.

Additionally, the DNR classifies Clear Lake as a *Natural Environment* lake. These lakes include the following characteristics:

- Generally small, often shallow with limited capacity for assimilating the impacts of development and recreational use.
- Often have adjacent lands with substantial constraints for development such as high water tables, exposed bedrock, and unsuitable soils.
- Usually do not have much existing development or recreational use.

SITE REVIEW

A review of the site was completed by Property Services. Staff observed the proposed construction area and took pictures on 02/12/2024.

NEIGHBOR NOTIFICATION

Property owners were notified of the request per the standards of Section 503 of the Zoning Ordinance and Minnesota Statutes Section 394.26.

VARIANCE CRITERIA *(REVISED)*

A variance to a provision of the Zoning Ordinance may be issued to provide relief to the landowner in those zones where the intent of the official control creates practical difficulties for the property owner in the use of their land. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. No variance shall permit standards lower than those required by state law. A variance may be granted only in the event that the following circumstances exist:

1. The variance is in harmony with the general purposes and intent of the official control?

- The purpose of the Shoreland Management Ordinance Section 501.2(C)'s required 200-foot OHWL setback is to provide a buffer between development and protected water bodies/waterways.
- The proposal requests a 72.5% decrease in the in the OHWL setback from 200 feet to 55 feet.
- The purpose of the Shoreland Management Ordinance Section 501.2(E)'s required 30-foot bluff setback is to steer development away from locations that are especially prone to erosion.
- The proposal requests a 23% decrease in the bluff setback from 30 feet to 23 feet.

2. The variance is consistent with the intent of the comprehensive plan?

- The variance does not increase the potential for land use conflict as the location already serves as a farm site with a number of buildings.
- The comprehensive plan mentions that the Shoreland Management Ordinance is intended to protect lakes that the DNR classifies as *Natural Environment* lakes, which include Clear Lake. Building in the Shore Impact Zone would somewhat decrease the protection for the lake.

3. The variance establishes a practical difficulty in complying with the official controls?

- The property appears to contain reasonable building areas that fall outside the 100-foot Shore Impact Zone, as well as additional areas that fall outside both the Shore Impact Zone and the 200-foot Shoreland setback.

- The property appears to contain reasonable building areas that fall well outside the 30-bluff setback.
- The applicant can build a new garage in the footprint of the demolished shed without a variance.
- A plight is created by the applicant's desire to avoid removing mature trees found at some building sites.
- The applicant has stated that he believes he has practical difficulties with access to more distant sites and drainage from a site north of an existing garage.

4. The plight of the landowner is due to circumstances unique to the property not created by the landowner?

- The farmstead was established more than a century ago with a location unusually close to the lake.
- Many buildable areas on the property include mature trees and a grove that serve as a windbreak.

5. The variance will not alter the essential character of the locality?

- The site already contains a number of structures close to the lake.
- The new garage would be replacing a previous structure rather than creating an entirely new structure.
- The proposed structure would be screened from the lake by existing trees.

6. The practical difficulty includes more than economic considerations alone?

- The applicant believes potential sites are too distant from residence.
- The applicant wants to maintain mature trees on property.

RECOMMENDED CONDITIONS *(REVISED)*

Staff recommends the attachment of the following conditions if the variance request is approved:

1. The Applicant will undertake the project according to the plans and specifications submitted to the County with the application.
2. The Applicant will employ silt fences to prevent runoff during construction.

3. The Applicant will apply soil stabilizing covers and begin seeding to reestablish vegetation when construction is complete.
4. The Applicant will not develop any areas over 12% grade.
5. The Applicant will include gutters that direct water westward away from Clear Lake and out of the Shore Impact Zone.
6. The Applicant will include some kind of infiltration system for absorbing and slowing water from the gutters and will work with a water use consultant or engineer to select the most suitable system for the building site.
7. The County may enter onto the premises at reasonable times and in a reasonable manner to ensure the permit holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.
8. The Applicant must obtain the appropriate zoning permits prior to construction.
9. The zoning permit is invalid if the permit holder has not substantially completed the project within the period of time allowed on the zoning permit connected with this variance.

**Applicant/Property Owners:
Leon J. Matties**

PLN24-03

ATTACHMENT A	Application
ATTACHMENT B	Location Map
ATTACHMENT C	Aerial Map
ATTACHMENT D	Site Plan
ATTACHMENT E	Site Photographs
ATTACHMENT F	Neighbor Notification List
ATTACHMENT G	Criteria for a Variance
ATTACHMENT H	Public Comment
ATTACHMENT I	Minn.Stat. 15.99 Waiver
ATTACHMENT J	Bluff Setback Map
ATTACHMENT K	Shore Impact Zone Map



PROPERTY SERVICES DIVISION
501 S MINNESOTA AVENUE, SAINT PETER, MN 56082
507-934-7070

BOARD OF ADJUSTMENT & APPEALS APPLICATION

TOTAL FEES: \$496.00

Parcel#: 13.002.0300

Permit#: PLN24-003

Date: 1/25/2024

Hearing Date: 2/26/2024

Hearing Time: 7:00 PM

Applicant: LEON MATTIES

Telephone: 507-304-1508

Owner: LEON MATTIES

Property Address: 62579 346TH LN, GIBBON, MN 53335

Abbreviated Legal Description: GL 1 ACRES 46.10 GL 2 ACRES 55.70 GL 3 ACRES 60.10

Township: West Newton Township

Zoning District(s): SHORELAND

Record Type: Variance

Subtype: Replace

Category: RES Garage

Description: SETBACK VARIANCE FOR LARGER REPLACEMENT GARAGE

G.C. Licence#: TBD

Job Cost: TBD

ATTACHMENT A
Application

PERMIT EXPIRATION DATE: N/A

Leon J Matties
APPLICANT SIGNATURE

1-25-24
DATE

[Signature]
PROPERTY SERVICES

01/25/24
DATE



VARIANCE APPLICANT QUESTIONNAIRE PROJECT DESCRIPTION

APPLICANT NAME: Leon J. Matties DATE: 1-25-24
REQUEST: Reduction of setbacks for replacement garage

Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

Project Details:

1. Reduction of bluff setback from 30 feet to 23 feet
2. Reduction of OHW setback from 200 feet to 55 feet

Applicant wishes to replace recently demolished garage with larger facility to meet storage needs. Applicant has stated that mobility issues mean he and his wife cannot easily access sites located at greater distance on the site. Site directly to the north of existing larger shed would cause drainage issues for shed and driveway.



VARIANCE APPLICANT QUESTIONNAIRE

APPLICANT NAME: Leon J Matties DATE: 1-22-24
REQUEST: Build 40460 shed to replace 40440
that is old & dilapidated

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

WHY DO YOU FEEL THE REQUESTS MEETS THE FOLLOWING CRITERIA?

1. The variance is in harmony with the general purposes and intent of the official control.

yes

2. The variance is consistent with the intent of the Comprehensive Plan.

yes

3. The variance establishes a practical difficulty in complying with the official controls.

yes

4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.

yes

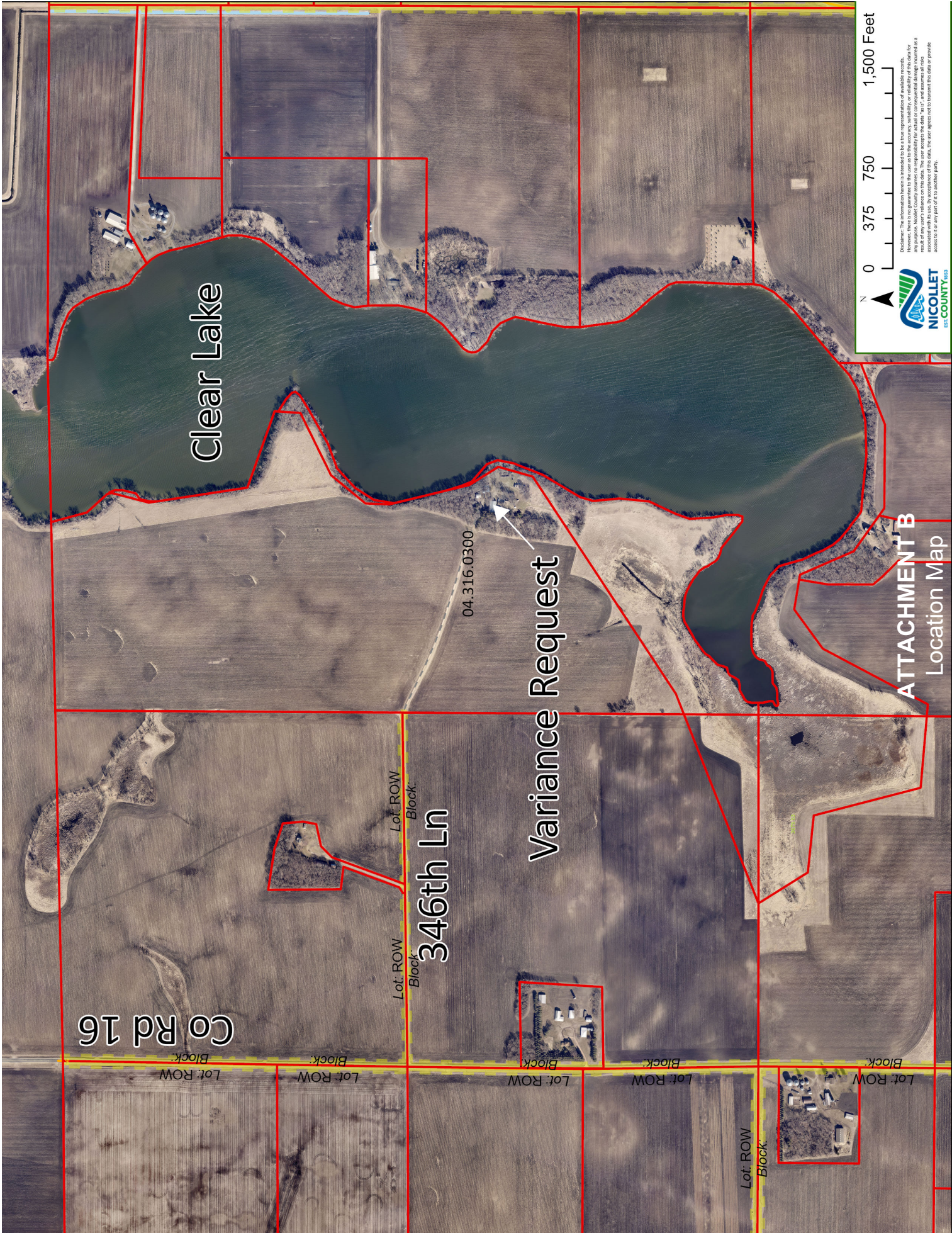
5. The variance will not alter the essential character of the locality.

No

6. The practical difficulty includes more than economic considerations alone.

yes TO Far TO walk anThru 7's Partner
has bad back to walk Ferther

ALL SIX VARIANCE CRITERIA MUST BE MET IN ORDER FOR THE REQUEST TO BE APPROVED.



Clear Lake

Co Rd 16

346th Ln

Variance Request

04.316.0300

N

0 375 750 1,500 Feet

NICOLLET
EST. COUNTY 1843

Document: This information is intended to be a true representation of available records. It is not a warranty, representation, or guarantee of accuracy. The user assumes all responsibility for any use of this information. The user agrees to hold the County harmless for any use of this information. The user agrees to hold the County harmless for any use of this information. The user agrees to hold the County harmless for any use of this information.

ATTACHMENT B
Location Map



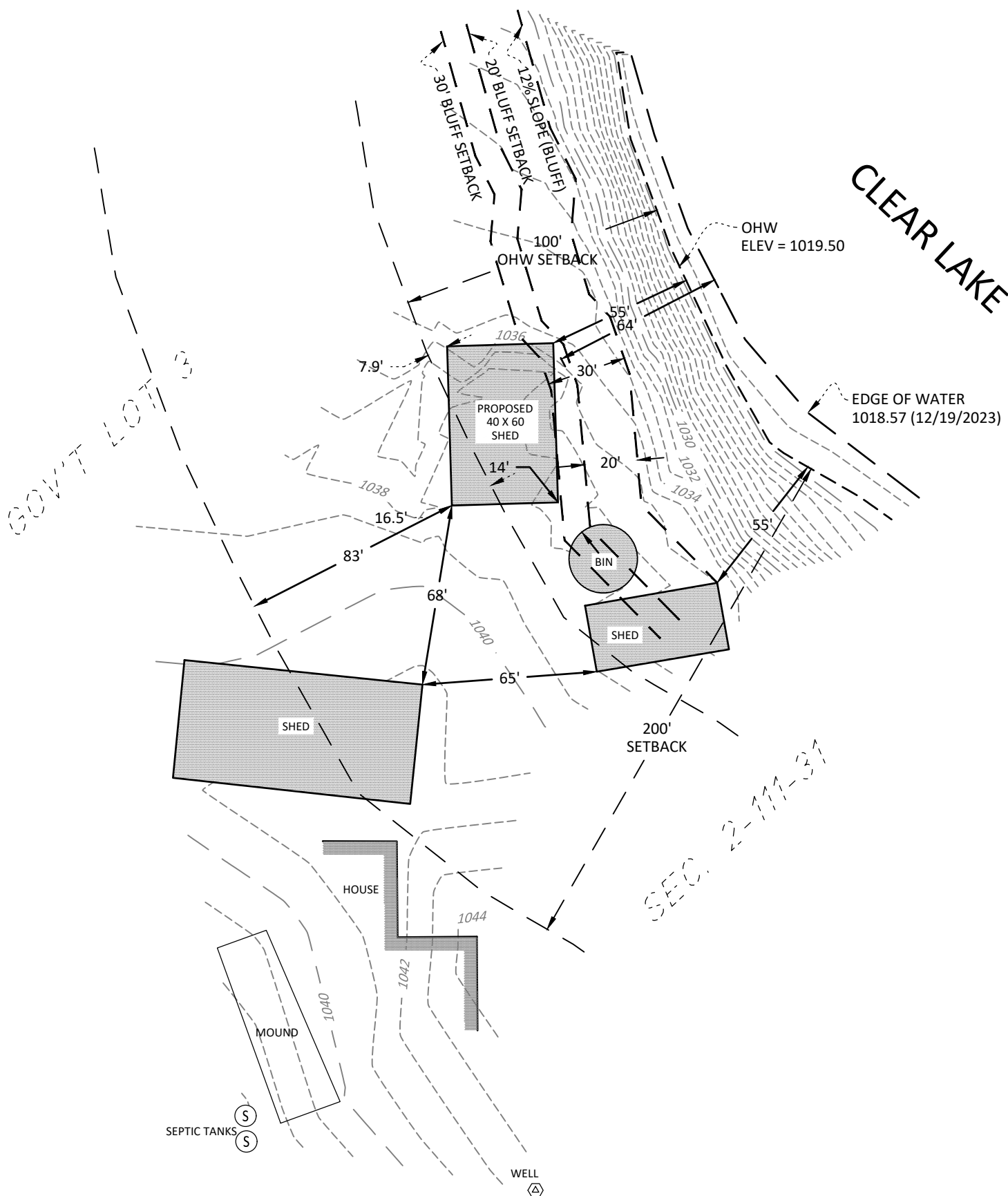
Clear Lake

Variance Request
04.316.0300



ATTACHMENT C
Aerial Map

Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of the data for any purpose. Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of the use of the information herein. By acceptance of this data, the user agrees not to transmit this data or provide access to it or any part of it to another party.



ATTACHMENT D
Site Plan

LEGEND

- WELL
- MANHOLE-SANITARY SEWER

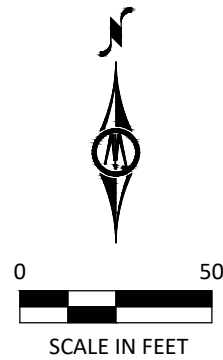
SURVEYOR'S CERTIFICATION

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

Michael M. Eichers

Michael M. Eichers
License Number 46564

01/10/2024
Date



PID 130020300
PROPERTY ADDRESS
62579 346TH LANE
GIBBON, MN 55335
OWNERS ADDRESS
LEON MATTIES
62579 346TH LANE
GIBBON, MN 55335

VARIANCE SURVEY WEST NEWTON TOWNSHIP, NICOLLET COUNTY, MINNESOTA		THAT PART OF GOV'T LOT 3 OF SECTION 2, TOWNSHIP 111 NORTH, RANGE 31 WEST, WEST NEWTON TOWNSHIP, NICOLLET COUNTY, MN FOR: LEON MATTIES
	1960 PREMIER DRIVE MANKATO, MN 56001 (507) 625-4171	



2024. 1.25 12:06



2024. 1.25 12:09

ATTACHMENT E
Site Photographs



DISPLAYNAME	MAILINGADDR	MAILINGCITYSTATEZIP
KIECKER MARK T & DENISE KIECKER TRUST	20 DEER RIDGE RD	MANKATO MN 56001
JOHNSON RANDAL V & PAMELA JOHNSON	34130 615TH AVE	GIBBON MN 55335
BLACK JOEL R	34470 615TH AVE	GIBBON MN 55335
KRAUS TYLER SHANE & KAYLEN EVE KRAUS	34803 631ST AVE	GIBBON MN 55335
WENDINGER DAVID E REVOCABLE LIVING TRUST	37848 631ST AVE	NEW ULM MN 56073
KIENLEN MARIE	3911 ARROW WOOD RD	CEDAR PARK TX 78613
BEYER MARION R COMMON TRUST	409 CENTER ST	NORTH MANKATO MN 56003
MATTIES MARLYS G	622 PAYNE ST N	NEW ULM MN 56073
BRUNNER CHARLES V	62378 350TH ST	GIBBON MN 55335
MATTIES LEON J	62579 346TH LN	GIBBON MN 55335
OAK RIDGE HOLDINGS LLLP	62609 330TH ST	GIBBON MN 55335
BASTIAN RONALD B & BARBARA A BASTIAN	65626 320TH ST	GIBBON MN 55335
BONNIE BRANDEL - W NEWTON TWP CLERK	63152 388TH LN	NEW ULM MN 56073
ALAN GLEISNER - DNR AREA HYRDOLOGIST	20596 HIGHWAY 7	HUTCHINSON MN 55350

ATTACHMENT F
Neighbor Notification List



BOARD OF ADJUSTMENTS AND APPEALS CRITERIA FOR GRANTING A VARIANCE

Name of Applicant	Leon Matties	Hearing	2/26/2024
Property Owner	Leon Matties	Continuation	3/18/2024
File	PLN24-03	Board Member	_____
Variance Request	Reduction of the bluff setback from 30 feet to 23 feet and reduction of Ordinary High Water (OHW) setback from 200 feet to 55 feet for the purpose of constructing an expanded replacement garage		

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute 394.27, subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

YES ☐ NO ☐ REASON: _____

2. The variance is consistent with the intent of the Comprehensive Plan.

YES ☐ NO ☐ REASON: _____

3. The variance establishes a practical difficulty in complying with the official controls.

YES ☐ NO ☐ REASON: _____

AATTACHMENT G
Criteria for a Variance

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

YES ☐ NO ☐ REASON: _____

5. The variance will not alter the essential character of the locality.

YES ☐ NO ☐ REASON: _____

6. The practical difficulty includes more than economic considerations alone.

YES ☐ NO ☐ REASON: _____

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS

☐ **APPROVES THE REQUESTED VARIANCE** ☐ **DENIES THE REQUESTED VARIANCE**

THIS DECISION WAS BASED UPON

☐ Application ☐ Site visit ☐ Staff Report ☐ Photographs
☐ Information received at public hearing

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD.

FACTS SUPPORTING THE ANSWER TO EACH QUESTION ABOVE ARE HEREBY CERTIFIED AS THE FINDINGS OF THE NICOLLET COUNTY BOARD OF ADJUSTMENT & APPEALS.

Date: _____ Member: _____

John Zehnder

From: Gleisner, Alan (DNR) <Alan.Gleisner@state.mn.us>
Sent: Friday, February 23, 2024 4:54 PM
To: John Zehnder
Cc: Spencer Crawford
Subject: Nicollet County Variance Request Comments - PLN24-03 Matties

Caution! This message was sent from outside your organization.

[Allow sender](#) | [Block sender](#)

Good Afternoon John,

Thank you for the opportunity to review the application presented as a part of this public hearing. Here are comments I would have regarding the variance request to reduce the ordinary high water level (OHWL) setback from 200' to 55' for Leon Matties on Parcel number 13.002.0300 in section 2 of West Newton TWP for the purpose of constructing a larger replacement garage. A new 40'x 60' garage is proposing to replace a prior 40' x 38' garage. The current design proposal utilizes the prior sheds footprint but extends further to the north and closer to the OHWL of Clear Lake. This new garage would have a larger footprint, closer proximity to OHWL and bluff, and increased impervious surface areas with higher risk of erosion and stormwater amount increases.

A question regarding this application is whether the variance request is reasonable. Minnesota Statute provides that variances should only be granted when they are in harmony with the general purposes and intent of the official control (in this case the County's shoreland ordinance) and are consistent with the comprehensive plan. Minn. Stat. § 394.27, subd. 7. In addition, variances may only be granted when the applicant establishes there are practical difficulties in complying with the official control. Practical difficulties, as defined in statute, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted will not alter the essential character of the locality. Economic considerations and design preferences do not constitute practical difficulties. Reasonable manner criterion requires the zoning authority to determine whether the variance request is reasonable given the purpose of the ordinance, not what's reasonable for the property owner. Public resources should not be compromised solely to accommodate an applicant's design preferences and/or economic considerations. Variance requests to intrude into the sensitive shore impact zone should only be considered when no other alternatives exist -that is only when the property could not be developed without intruding into the shore impact zone. Variances to shoreland ordinance standards are an important tool for balancing property rights with the public's right to clean water and healthy habitats. However, variances to shoreland standards should be rare and only for exceptional situations.

Overdevelopment of lakeshore property can drastically alter the runoff properties, resulting in erosion from excess stormwater. Are there unique circumstances to the property that should be considered for the structure as proposed to proceed? As a general response to variance requests, the applicant must demonstrate a unique circumstance that would allow for the creation of a non-conforming condition. One goal of shoreland zoning is to decrease nonconformity over time. If this application were to be approved, it would be for the reconstruction of a larger nonconforming structure within the shoreland district of a Natural Environment Lake like Clear Lake. For these reasons, the DNR asks that the Board of Adjustment consider this decision regarding precedence, and how similar applications will have to be considered.

In this case, DNR recommends that the application be revised to allow for construction that more closely conforms to ordinance standards. Nicollet County Shoreland Ordinance calls for a structure setback of 200' from the OHWL, thus dictating the size of the Shore Impact Zone (SIZ) at 100' from the OHWL. This proposed variance request is for a reduction from 200' to 55', which would place this proposed structure within the SIZ according to Shoreland

ATTACHMENT H
Public Comment

Ordinance. Therefore, DNR would recommend reevaluating the proposed structure placement to encourage placement outside of the SIZ. After review of the parcel on aerial imagery, it appears it may be possible to position the proposed structure to satisfy these requirements. If this variance request were to be approved, considerations should be made regarding stormwater discharge and treatment from this site appropriate to mitigate impacts to receiving waters especially due to the significant increase in impervious surface and proximity to the water basin. A few examples of stormwater retention are the installation of rain gardens to catch impervious surface runoff, rain gutter bulk storage containers to catch excess roof runoff, or temporary holding barrels. These types of practices, a combination of them, or others not listed, allow for the temporary storage, in turn, allowing the settlement of nutrients, solids, sediments, etc. and preventing them from entering the water body. It is recommended the water retention method be sized accordingly to the amount of impervious surface proposed onsite. Due to the site conditions and limitations, it may be challenging to fit certain water retention practices in preferable locations, therefore it may be beneficial for the landowner to work with a water use consultant/engineer to develop a satisfactory stormwater retention practice.

Thank you for the consideration of these comments, and I look forward to working on similar issues with you in the future.

Sincerely,

Alan Gleisner

Area Hydrologist | Division of Ecological and Water Resources

Minnesota Department of Natural Resources

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Minn.Stat. §15.99 Waiver

Applicant Name and Address:

LEON MATILES

62579 346TH LANE

GIBBON MN 55335

Application Type and No.:

PLN 24-03 VARIANCE

The undersigned hereby knowingly, intelligently and voluntarily waives the time frames imposed by Minn.Stat. §15.99 [indefinitely] [until April 16, 2024] for reaching a decision on the above-referenced application. The reason for this waiver is

1. The applicant has requested a continuance _____
2. Additional information is needed _____
3. Other BOARD REQUESTED X
CONTINUANCE

The applicant acknowledges and agrees that it is to the mutual benefit of the applicant and Nicollet County for applicant to waive the aforementioned time frames imposed by law for reaching a decision on this matter. The undersigned represents that he or she has actual authority to sign the waiver and bind the above-referenced applicant to its terms. The undersigned acknowledges that Nicollet County, its boards, commission, staff, employees and agents are relying on this representation in accepting this waiver.

Dated: 9-26-2024

Leon J Matiles
Applicant or Authorized Representative

ATTACHMENT I
Minn.Stat. 15.99 Waiver

Bluff Setbacks



Clear Lake

30' Bluff
Setback

200' Shore
Setback

30' Bluff
Setback

13.002.0300

S 02-111-31

Approximate Property Line

ATTACHMENT J
Bluff Setback Map



Shore Impact Zone



Clear Lake

100' Shore
Impact Zone

200' Shore
Setback

13.002.0300

S 02-111-31

Approximate Property Line

ATTACHMENT K
Shore Impact Zone Map

