



GREEN LAKE COUNTY

571 County Road A, Green Lake, WI 54941

The following documents are included in the packet for the *Green Lake County Board of Adjustment* business meeting/public hearing that is scheduled for Friday, February 21, 2020. The business meeting begins at 9:00 a.m. The public hearing will begin at 10:30 a.m.

Packet Pages:

1 Agenda

2-3 Minutes

4 2020 Calendar

5 Public Hearing Notice

6-18 Item I: Owners: Melanie Cole Petrasek, Diane Lisa Cole Applicant: Attorney Steven R Sorenson, von Briesen & Roper, SC Site Description: N4162 S Lakeshore Dr, Parcel #016-01217-0000, Located in part of Government Lot 3, Section 10, T15N, R12E, Town of Princeton Request: Variance from Sections 338-32A and 338-59 of the Shoreland Zoning Ordinance to construct a new deck within the shoreland setback area & expand the footprint of a variance-authorized structure within the shoreland setback area.

19-32 Item II: Owners: Bauer Haus, LLC and George P Bauer Applicant: Attorney Steven R Sorenson, von Briesen & Roper, SC Site Description: N5316 Shore Dr, Parcels #004-00934-0200 & 004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728, Located in part of Government Lot 1, Section 36 & the SE1/4 of Section 25, T16N, R12E, Town of Brooklyn Request: Variance from Section 350-18 of the County Zoning Ordinance to create a lot with an average lot width of ± 66 feet.



GREEN LAKE COUNTY
Board of Adjustment
571 County Road A, Green Lake, WI 54941

Office: (920) 294-4156 FAX: (920) 294-4198

Email: zoning@co.green-lake.wi.us

Board of Adjustment Meeting Notice

Date: February 21, 2020 Time: 9:00 AM

Green Lake County Government Center, Room #0902
571 County Road A, Green Lake, WI 54941

AGENDA

***Board of
Adjustment
Members:***

Janice Hardesty
Board Chair

Ron Triemstra
Board Vice Chair

Ben Moderow

Michael Lehner
Alternate

Rick Dornfeld
Alternate

1. Call to order
2. Roll call
3. Pledge of Allegiance
4. Certification of open meeting law
5. Agenda
6. Approve 09/20/19 minutes
7. Approve 2020 calendar
8. Adjourn for field inspection

Public hearing matters will not begin before 10:30 a.m.

9. Public hearing matters

Item I: Owners: Melanie Cole Petrasek, Diane Lisa Cole **Applicant:** Attorney Steven R Sorenson, von Briesen & Roper, SC **Site Description:** N4162 S Lakeshore Dr, Parcel #016-01217-0000, Located in part of Government Lot 3, Section 10, T15N, R12E, Town of Princeton **Request:** Variance from Sections 338-32A and 338-59 of the Shoreland Zoning Ordinance to construct a new deck within the shoreland setback area & expand the footprint of a variance-authorized structure within the shoreland setback area.

- a. Public Hearing
- b. Board Discussion & Deliberation
- c. Board Decision

Item II: Owners: Bauer Haus, LLC and George P Bauer **Applicant:** Attorney Steven R Sorenson, von Briesen & Roper, SC **Site Description:** N5316 Shore Dr, Parcels #004-00934-0200 & 004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728, Located in part of Government Lot 1, Section 36 & the SE1/4 of Section 25, T16N, R12E, Town of Brooklyn **Request:** Variance from Section 350-18 of the County Zoning Ordinance to create a lot with an average lot width of ± 66 feet.

- a. Public Hearing
- b. Board Discussion & Deliberation
- c. Board Decision

10. Adjourn

Please Note: Meeting area is accessible to the physically disabled. Anyone planning to attend who needs visual or audio assistance should contact Carole DeCramer at 920-294-4156 the day before *the meeting no later than noon.*

**GREEN LAKE COUNTY
BOARD OF ADJUSTMENT
Meeting Minutes – Thursday, September 20, 2019**

CALL TO ORDER

The meeting of the Board of Adjustment was called to order by Vice Chair Ron Triemstra at 9:02 a.m. in County Board Room 0902 of the Government Center, Green Lake, WI. The requirements of the open meeting law were certified as being met.

Present: Michael Lehner (Alternate), Ben Moderow, Ron Triemstra
Absent: Jannice Hardesty, Rich Dornfeld (Alternate),
Also present: Matt Kirkman, Land Use Planning and Zoning Director
Carole DeCramer, Board Secretary
Caleb Edwards, Land Use Specialist
Krista Kamke, Land Use Specialist
Kate Worth, Court Reporter, Worth Court Reporting

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Motion by Lehner/Moderow, unanimously carried, to approve the corrected agenda.

APPROVAL OF MINUTES

Motion by Triemstra/Moderow, unanimously carried, to approve the 07/19/19 minutes.

RECESS FOR FIELD INSPECTION

Time: 9:05 a.m.

PUBLIC HEARING MATTERS

Board reconvened at 10:11 a.m.

Vice Chair Triemstra read the Rules of Order.

Item I: Owner/Agent: Sandra Lynn Sargent Revocable Living Trust **Site Description:** N3047 E Little Green Rd, Parcel #006-00542-0200 (±.5 acres), Located in part of Government Lot 3, Section 29, T15N, R13E, Town of Green Lake **Request:** Variance from Section 338-59 to expand the footprint of a variance-authorized structure.

- a. Public hearing

Sheb Heissner, True Built Construction, representing the owner, 1717 Smith Street, New London, WI – Spoke in favor of the request and addressed the three criteria.

Sandra Lynn Sargent, N3047 E. Little Green Road – Spoke in favor of the request.

Public hearing closed.

Motion by Triemstra/Moderow to approve the variance request as presented.

Motion by Triemstra/ Moderow to amend the motion to include the following five conditions as listed in the staff report:

- 1. Prior to land use permit issuance, the unpermitted and illegal patio shall be removed and land be revegetated. Aerial photos indicate this was installed between 2011 and 2015.**
- 2. A landscape plan shall be submitted to this department and an enforceable obligation filed in the County Register of Deeds office for shoreline restoration along the lake frontage.**
- 3. The restoration plan shall meet the standards of NRCS Interim Standard # 643A, Shoreland Habitat and NRCS Wisconsin Biology Technical Note 1: Shoreland Habitat. The restoration plan shall extend a minimum of 35ft from the ordinary high water mark along the entire length of the lot frontage on Little Green Lake, excepting a viewing and access corridor as allowed under 338-37 B, and the existing shoreland buffer along the channel frontage.**
- 4. A management plan to treat the stormwater runoff from the principal structure for a two-year storm event shall be filed with the Land Use Planning & Zoning Department.**
- 5. The stormwater management device or area shall be installed and maintained, as evidenced by an enforceable obligation filed with the Register of Deeds office, to run with the land.**

b. Board discussion and deliberation to include relevant correspondence.

The Board also discussed the following:

- a. Criteria 1 – Unnecessary Hardship
- b. Criteria 2 – Unique Property Limitations
- c. Criteria 3 – No Harm to Public Interest

Triemstra called for a roll call vote:

Lehner - nay, Moderow - aye, Triemstra – nay. Motion denied.

NEXT MEETING DATE

To be determined.

ADJOURN

Motion by Moderow/Lehner to adjourn.

Time: 10:50 a.m.

RECORDED BY:

Carole DeCramer

Board of Adjustment Secretary

APPROVED:

Green Lake County Board of Adjustment - 2020

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NOTICE OF PUBLIC HEARING

The Green Lake County Board of Adjustment will hold a Public Hearing in County Board Room #0902 of the Green Lake County Government Center, 571 County Road A, Green Lake, Wisconsin, on **Friday, February 21, 2020, at 9:00 a.m.** The meeting will adjourn for site inspection of the following item:

Item I: Owners: Melanie Cole Petrasek, Diane Lisa Cole **Applicant:** Attorney Steven R Sorenson, von Briesen & Roper, SC **Site Description:** N4162 S Lakeshore Dr, Parcel #016-01217-0000, Located in part of Government Lot 3, Section 10, T15N, R12E, Town of Princeton **Request:** Variance from Sections 338-32A and 338-59 of the Shoreland Zoning Ordinance to construct a new deck within the shoreland setback area & expand the footprint of a variance-authorized structure within the shoreland setback area.

Item II: Owners: Bauer Haus, LLC and George P Bauer **Applicant:** Attorney Steven R Sorenson, von Briesen & Roper, SC **Site Description:** N5316 Shore Dr, Parcels #004-00934-0200 & 004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728, Located in part of Government Lot 1, Section 36 & the SE1/4 of Section 25, T16N, R12E, Town of Brooklyn **Request:** Variance from Section 350-18 of the County Zoning Ordinance to create a lot with an average lot width of ± 66 feet.

The Board of Adjustment will reconvene at approximately **10:30 a.m.** to consider the items listed above. All interested persons wishing to be heard at the public hearing are invited to be present. Please note that *it is not uncommon for an owner/applicant to withdraw a request at the last minute.* Call the Green Lake County **Land Use Planning and Zoning Department at (920) 294-4156** for further detailed information concerning this notice and to verify that the agenda item you may be interested in has not been withdrawn from the agenda.

*Publish: February 6, 2020,
February 13, 2020*

BOARD OF ADJUSTMENT STAFF REPORT

February 21, 2020

PUBLIC HEARING

ITEM I: VARIANCE

OWNER/APPLICANT: Melanie Cole Petrasek, Diane Lisa Cole

APPLICANT: Steven R. Sorenson, von Briesen & Roper, s.c.

REQUEST: The owners and applicant are requesting a variance from Sections 338-32A and 338-59 of the Shoreland Zoning Ordinance, to construct a new deck within the shoreland setback area and expand the footprint of a variance-authorized structure within the shoreland setback area.

PARCEL NUMBER / LOCATION: Parcel #016-01217-0000 is located in the SW¼ of Section 10, T15N, R12E, Town of Princeton. The property is located at N4162 S. Lakeshore Drive.

EXISTING ZONING AND USES OF ADJACENT AREA: The subject site is unzoned, but is subject to the state-mandated Shoreland Zoning Ordinance. The surrounding properties are also not zoned but subject to the jurisdiction of the Shoreland Zoning Ordinance. There is mapped flood-fringe on this property but it is outside the scope of the project site.

ADDITIONAL INFORMATION/ANALYSIS: According to permit file records, a variance was granted in September 1985 for an open deck to be constructed at 69ft from the waterline, with 11ft setbacks from the north lot line and an 8ft setback from the south lot line. This structure was proposed to be 10ft x 31ft, with an additional 7ft x 15ft along the south face of the home. Per current Shoreland Ordinance standards (§338-59), this 1985 variance authorization allows the reconstruction of the variance-authorized structure by permit, with the sole condition that the footprint not expand.

The owners and applicant are requesting a variance from this ordinance standard, to increase the footprint of the deck structure by approximately 9ft, being an additional 4ft x 32ft of deck plus 5ft x 4ft of stairs. The previous configuration of deck (from 1985) appears to have had the stairs incorporated within the variance-authorized footprint, instead of outset from the deck area.

According to the variance application, the owners and applicant say the deck must be authorized at a larger footprint because of a well pump failure, which necessitated removal of the previous deck to replace the well pump and fix the flooding from that failure. The property survey on file shows the well existed in its current location at time of survey in 1995, with the only observable change in 2020 is the deck now has been expanded closer toward the well, with stairs closer still to the ordinary high water mark of Green Lake. Even if the Coles can explain, through testimony, how the well failure produced the need to expand their deck, the well location could have been relocated to alleviate any limitation to rebuilding the existing deck. The Board of Adjustment (BOA) must deny the variance application if the Coles are requesting a variance for personal conveniences to avoid incurring additional costs (financial hardship) to remove the unauthorized portions of deck expansion.

The application lists the hardship as loss of some of the authorized deck area through the process to replace the well pump, and that in order to maintain the same useable square footage as authorized under the 1985 variance, expansion beyond the authorized footprint had to occur. Interestingly, the whole of the deck space appears useable, with no space of the deck impeded by any portion of the well system. As stated above, the well was not relocated on the property; only the pump portion of the well system was replaced.

Case law and statutes direct the Board of Adjustment only to approve requests where there is a demonstrated hardship in following the ordinance, where the hardship must derive from the unique

property feature(s), and where no harm to the public interest can be found. The application lists the unique property feature as being part of the Green Lake Terrace. Staff does not believe this is a unique property feature, and no uniqueness caused a hardship in following the ordinance as adopted.

VARIANCE CRITERIA: To qualify for a variance, it must be demonstrated that the property meets the following 3 requirements: (Wisconsin Act 67 (2017) codified Case Law as applied to variance criteria, §59.694(7)(c)2., with No Harm To Public Interest already codified and now renumbered to §59.694(7)(c)3.)

- 1) Unnecessary Hardship
 - ☐ compliance with standards would be unreasonably burdensome (Snyder)
 - ☐ hardship may not be self-created (State ex rel. Markdale Corp. v. Board of Appeals)
 - ☐ circumstances of the applicant, such as a growing family or the need for a larger garage, are not a factor in considering variances (Snyder)
 - ☐ property, as a whole, must be considered, not just a portion (State v. Winnebago County)
 - ☐ economic or financial hardship is not a justification (State v. Winnebago County)
- 2) Unique Property Limitations
 - ☐ limitations such as steep slope, wetland, shape or size that are not shared by other properties and prevent compliance with ordinance (State v. Kenosha BOA)
 - ☐ limitations common to a number of properties are not a justification (Arndorfer v. Sauk County BOA)
 - ☐ alternative designs and locations on the property have been investigated (State v. Winnebago County)
- 3) No Harm to Public Interest
 - ☐ ordinance purpose and intent, variance may not harm public interest (State v. Winnebago County)
 - ☐ short-term, long-term, and cumulative effects on public interest in neighborhood, community, and even the state (Ziervogel)
 - ☐ only allow minimal relief for use of property, may include conditions (Robert M. Anderson, American Law of Zoning)

STAFF COMMENTS:

1) Unnecessary Hardship

- ☐ With the existing variance to encroach into the shoreland setback area, it does not seem unreasonably burdensome that the owners could have rebuilt the deck in the same footprint as allowed in the ordinance. The hardship does appear to be self-created by the current owners.
- ☐ The circumstances of the applicant do appear to be a factor in that they are claiming the need for a larger deck stems from the replacement of a part contained within the well sleeve. The well was not moved as part of the part replacement. Staff does understand the need to remove the deck to access portions of the well system, but the ordinance as written does allow for replacement of what was authorized by variance. This request seems to be driven by the specific desires of the owners/applicant and not through a common need that any owner of this property would encounter.
- ☐ The property, as a whole, is supposed to be a factor when considering variance applications. However, in this situation, this structure has been authorized by variance and Section 338-59 prohibits the expansion of the structure's footprint. Consequently, any proposed expansion of the footprint of this structure would require a variance.

- The owners are not claiming an economic/financial hardship in their application but have lamented how the costs to change their completed, unauthorized structure would accrue.

2) Unique Property Limitations

- The applicants attempted to identify a unique property feature by saying the lot is consistent with the neighborhood. This argument disqualifies the property as unique if adjacent properties share a 'limiting factor'.
- This parcel shares identical setback requirements with most homes along South Lakeshore Drive.
- Alternative locations have been reviewed but based on the standard for variance-authorized structures, no expansion of the footprint may be allowed without a new variance. There is no alternate location to expand the footprint without a variance.

3) Harm to Public Interest

- There does appear to be a harm to public interest, as an adopted purpose of the Shoreland Ordinance is to control placement of structures to preserve shoreland vegetation and natural scenic beauty. Preventing shoreline encroachment by structures is one way to promote and protect the public trust in navigable waters. The applicants' packet claims that a 9ft expansion toward the water into a state-mandated setback area is not a significant increase in encroachment.
- The effects of granting a variance of this nature are that similar requests will also be heard by the BOA. No precedent is set and no harm to public interest is observed *as long as each future request meets the variance criteria*. If the BOA approves a variance for a property that does not meet all three statutory criteria, then the short- and long-term effects will be significant.
- When a hardship has been proven, resolution comes through minimal relief from the ordinance. This property was granted a variance for deck structure in the shoreland setback area in 1985. The Coles are now requesting additional "minimal relief" to further expand the deck structure footprint, as the deck configuration that they purchased in 1995 is no longer sufficient. It is always staff's opinion that minimal relief should be balanced with protection of the public interest.

Variance Conditions:

1. A landscape plan shall be submitted to this department and an enforceable obligation filed in the County Register of Deeds office for shoreline restoration along the lake frontage.
2. The restoration plan shall meet the standards of NRCS Interim Standard # 643A, Shoreland Habitat and NRCS Wisconsin Biology Technical Note 1: Shoreland Habitat. The restoration plan shall extend a minimum of 35ft from the ordinary high water mark along the entire length of the lot frontage on Little Green Lake, excepting a viewing and access corridor as allowed under 338-37B.
3. A management plan to treat the stormwater runoff from the principal structure for a two-year storm event shall be filed with the Land Use Planning & Zoning Department.
4. The stormwater management device or area shall be installed and maintained, as evidenced by an enforceable obligation filed with the Register of Deeds office, to run with the land.

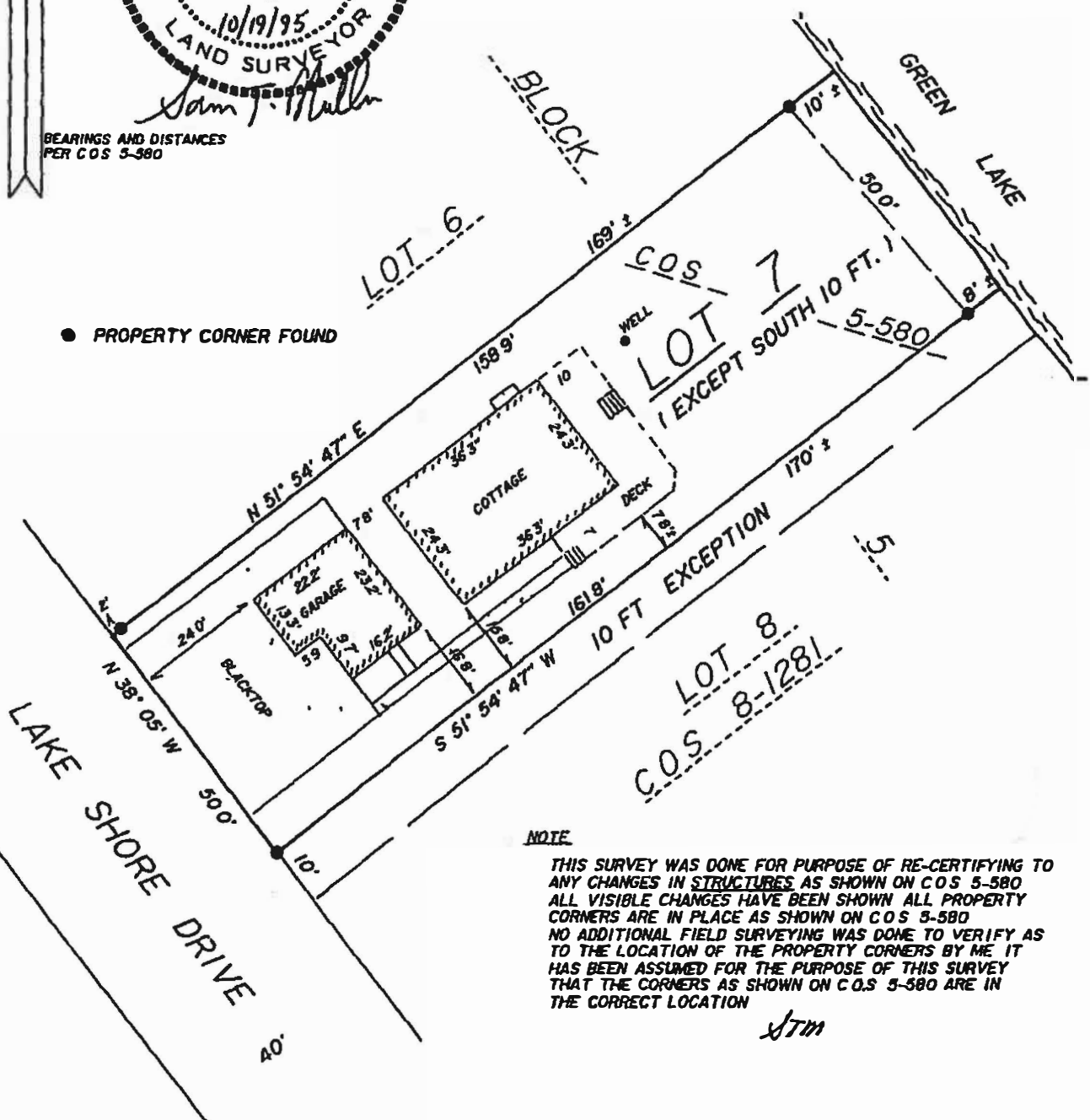
CERTIFICATE OF SURVEY

CERTIFICATE OF SURVEY FOR JEROME A. AND CARYL J. COLE,
BEING PART OF LOT 7, BLOCK 5 OF THE PLAT OF "GREEN LAKE
TERRACE", LOCATED IN PART OF GOVERNMENT LOT 3 OF
SECTION 10, T15N, R12E, TOWN OF PRINCETON, GREEN LAKE
COUNTY, WISCONSIN.



BEARINGS AND DISTANCES
PER C.O.S. 5-580

● PROPERTY CORNER FOUND



NOTE

THIS SURVEY WAS DONE FOR PURPOSE OF RE-CERTIFYING TO
ANY CHANGES IN STRUCTURES AS SHOWN ON C.O.S. 5-580
ALL VISIBLE CHANGES HAVE BEEN SHOWN ALL PROPERTY
CORNERS ARE IN PLACE AS SHOWN ON C.O.S. 5-580
NO ADDITIONAL FIELD SURVEYING WAS DONE TO VERIFY AS
TO THE LOCATION OF THE PROPERTY CORNERS BY ME IT
HAS BEEN ASSUMED FOR THE PURPOSE OF THIS SURVEY
THAT THE CORNERS AS SHOWN ON C.O.S. 5-580 ARE IN
THE CORRECT LOCATION

STM



GREEN LAKE SURVEYING CO.

P.O. Box 131

Green Lake, Wisconsin 54941

Phone: (414) 294-6666

VARIANCE APPLICATION – GREEN LAKE COUNTY

Provide the following information and any other detailed information related to the variance.

Date Received: 12/2/2019

Fee Received: 12/2/2019

Melanie Cole Petrasek

Diane Lisa Cole

Steven R. Sorenson

Owner Name

Applicant Name

Owner Signature

Date

Applicant Signature

Date

1680 Deerfield Rd.

von Briesen & Roper, s.c.

2905 Universal St., Suite 2

Mailing Address

Mailing Address

Deerfield

IL

60015

City

State

Zip

Oshkosh

WI

54904

City

State

Zip

847-710-1680

Home Phone

Work/Cell Phone

920-232-4846

Home Phone

Work/Cell Phone

melanie@radiomd.com

Email address

ssorenson@vonbriesen.com

Email address

Site Address N4162 S. Lakeshore Dr., Town of Princeton, Green Lake County, WI

Tax Parcel ID # 016 - 01217 - 0000

Lot 7 Block 5 Subdivision/Plat Green Lake Terrace

Lot CSM # Town of Princeton

A variance is not a convenience to the property owner and should not be granted routinely. For the Board of Adjustment to grant a variance, the owner/applicant must clearly demonstrate that there is an unnecessary hardship present when strictly applying an ordinance standard; that the hardship is due to unique site limitations; and in granting a variance the public interest is being protected. The burden of proof rests upon the property owner to show all 3 criteria are being met.

Attach additional sheets, if necessary, to provide the information requested.

1. Explain your proposed plans and how they vary from the required dimensional standards:

SEE ATTACHED

2. Explain the hardship imposed by the Ordinance:

SEE ATTACHED

3. Describe unique property feature(s) that create the hardship:

SEE ATTACHED

4. Explain why the proposed variance will not harm the public interest:

SEE ATTACHED

ATTACHMENT TO APPLICATION FOR VARIANCE

TAX PARCEL #016-01217-0000

MELANIE COLE PETRASEK & DIANE LISA COLE

1. Explain your proposed plans and how they vary from the required dimensional standards:

To restore and rebuild a deck that was damaged due to a well pump situation which caused flooding and damage. The situation required that the pump be rebuilt and reinstalled in such a way as the deck, as previously configured, could no longer be used as it was in the past. Said usage having been a previously granted variance consistent with the neighborhood and property. The purpose therefore is to re-establish the deck at the approximate square footage it was previously which does require a movement of the deck closer than previously set to the high water mark.

The proposal is to build a 14 x 16 deck. The construction conflicts with ordinance standards in 338-32A and 338-59 which prohibits the construction of a deck within the shoreline setbacks. The previous variance granted was for a deck that was approximately 69' feet from the shoreline. The proposed deck would be established approximately 60' from the shoreline. The 9' difference is being sought due to the flooding caused by the well failure and necessity of rebuilding the well that caused a loss of footage for the previously existing deck.

2. Explain the hardship imposed by the Ordinance:

The hardship is that with the current location of the well and the area consumed by the well, the previous deck square footage and configuration could not be restored as previously permitted. Therefore, in order to gain the approximate same usage area, it became necessary to extend the deck closer to the high water mark. There is no other way to effectively configure the deck to maintain a reasonable square footage consistent with the previously granted variance without extending the deck toward the high water mark.

3. Describe the unique property feature(s) that create the hardship:

The unique property feature is that the entire Green Lake Terrace area creates a previously recognized justification for the construction of a deck area closer than the requisite 75' setback. This is a unique area on Green Lake and given the lot size and the location of the house as well as the previously granted variance consistent with the Green Lake Terrace area, signifies the uniqueness of the property.

4. Explain why the proposed variance will not harm the public interest:

This variance would not be against public interest because it does not significantly increase the encroachment on the public's interest in a uniform setback from the waterfront. The existence of the extra 9' towards the waterfront does not in any way impair the public's use of the water nor does it create any type of visual or usage obstruction for the neighbors or the public. There is no significant impact on the public other than the generic basis of the setback of 75' which is predicated upon the normal 100' x 200' lot which variance has been recognized in numerous other situations in the Green Lake Terrace area.

Cole Variance Exhibit *MEK 1-6-20*

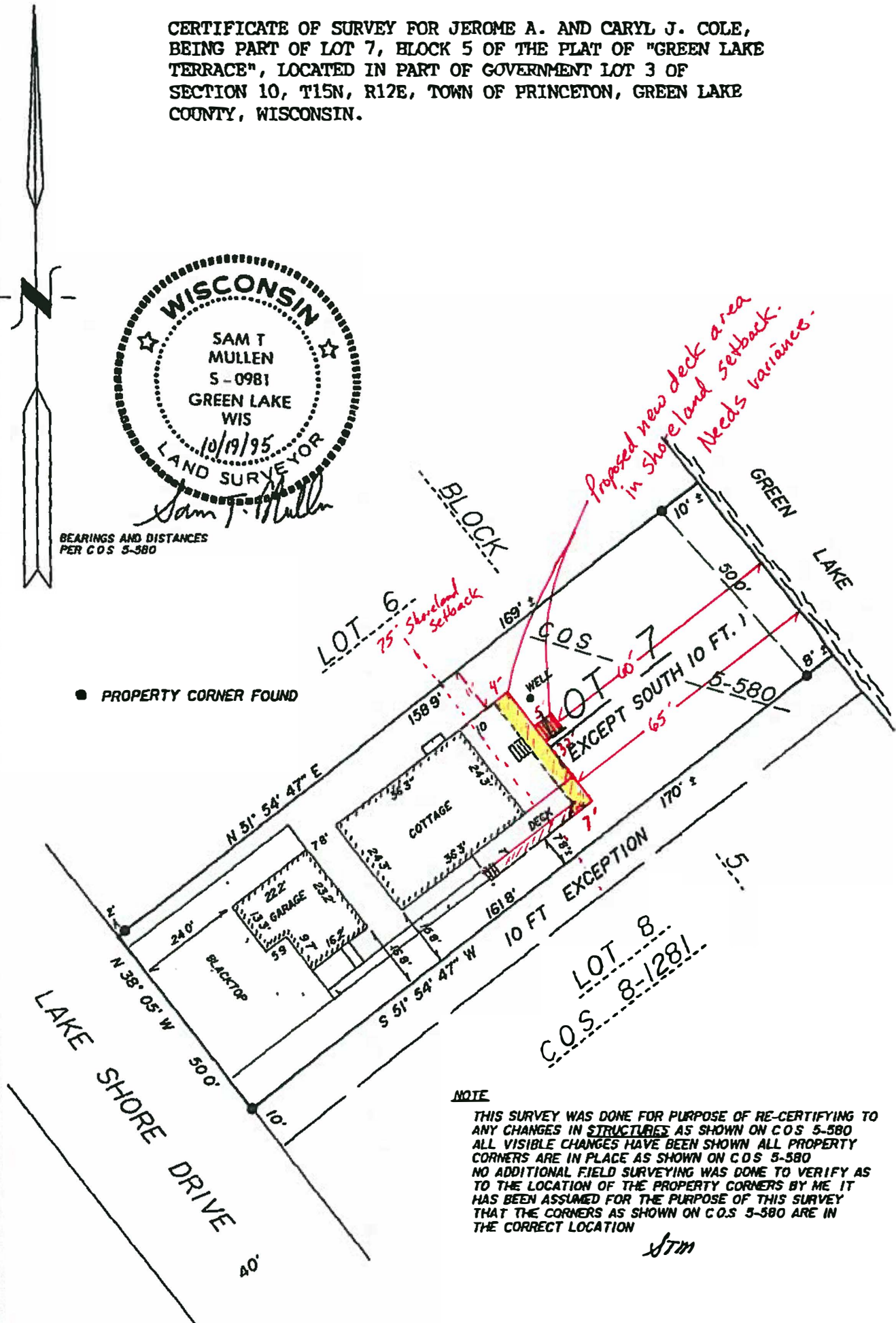
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NOTE

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STM

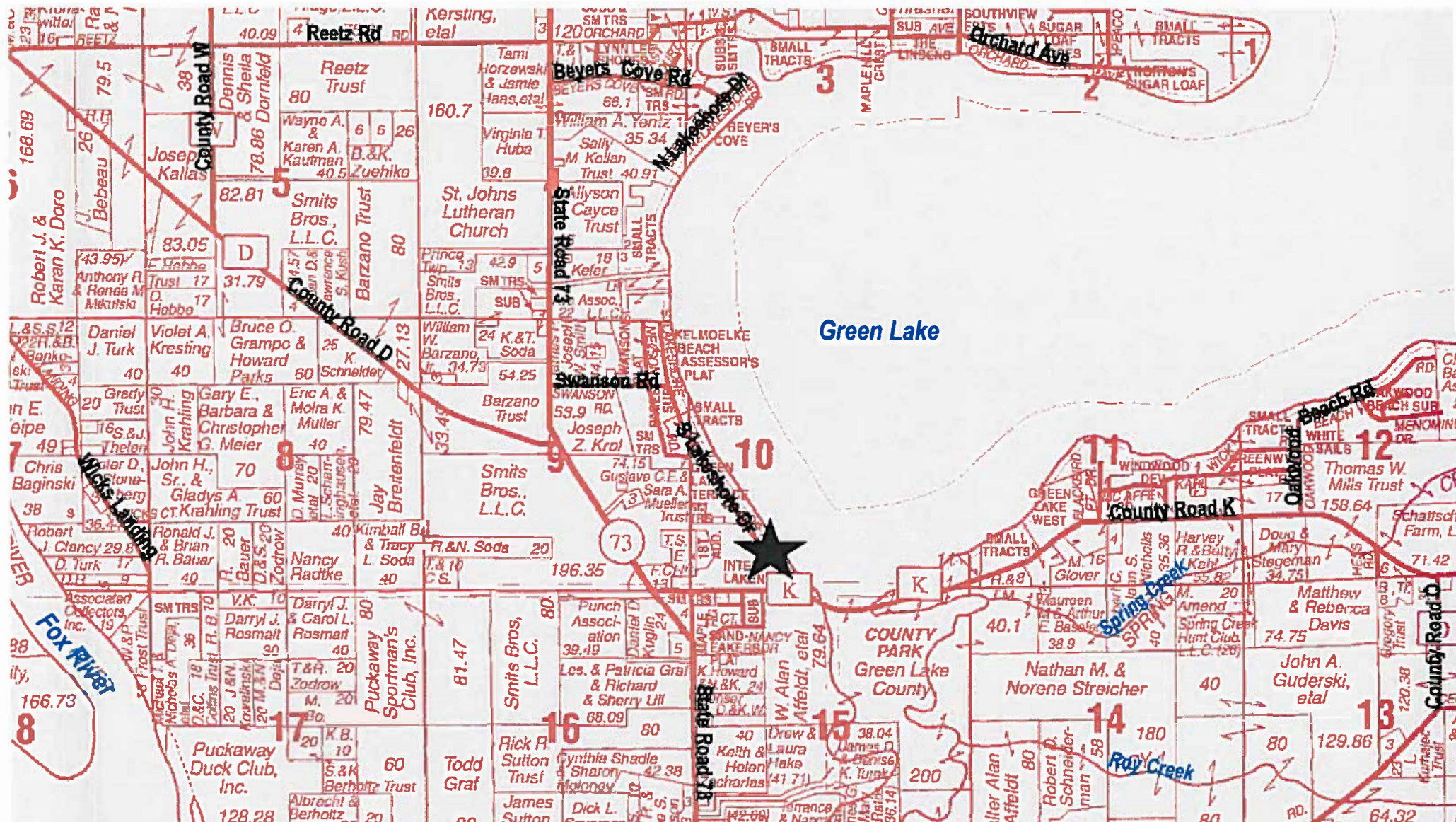


GREEN LAKE SURVEYING CO.

P.O. Box 131
Green Lake, Wisconsin 54941
Phone: (414) 294-6666

Melanie Cole Petrasek & Diane Lisa Cole – Town of Princeton
N4162 S. Lakeshore Dr., #016-01217-0000, Lot 7, Block 5, Green Lake Terrace

Variance request from Shoreland Zoning Ordinance Sections 338-32A and 338-59 to construct and expand the footprint of a deck.



Melanie Cole Petrasek & Diane Lisa Cole – Town of Princeton
N4162 S. Lakeshore Dr., #016-01217-0000, Lot 7, Block 5, Green Lake Terrace

Variance request from Shoreland Zoning Ordinance Sections 338-32A and 338-59 to construct and expand the footprint of a deck.



Melanie Cole Petrasek & Diane Lisa Cole – Town of Princeton

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Variance request from Shoreland Zoning Ordinance Sections 338-32A and 338-59 to construct and expand the footprint of a deck.



Melanie Cole Petrasek & Diane Lisa Cole – Town of Princeton

N4162 S. Lakeshore Dr., #016-01217-0000, Lot 7, Block 5, Green Lake Terrace

Variance request from Shoreland Zoning Ordinance Sections 338-32A and 338-59 to construct and expand the footprint of a deck.



BOARD OF ADJUSTMENT STAFF REPORT

February 21, 2020

PUBLIC HEARING

ITEM II: VARIANCE

OWNERS/APPLICANTS: Bauer Haus, LLC / George P. Bauer, Attorney Steven Sorenson, Agent

REQUEST: The owner/applicant is requesting a variance from Section 350-18 of the County Zoning Ordinance to create a lot with an average lot width of ± 66 feet; whereas, all newly created lots are required to be an average width of 100 feet.

PARCEL NUMBER / LOCATION: Parcels #004-00934-0200 and 004-00933-0101, Lot 2 and Outlot 1 of Certified Survey Map (CSM) 3728, located in part of Government Lot 1, Section 36, and the SE1/4 of the SE1/4 of Section 25, all in Town 16 North, Range 12 East, in the Town of Brooklyn. The property is located at N5316 Shore Drive.

EXISTING ZONING AND USES OF ADJACENT AREA: The subject site is currently zoned R-1, Single-family Residential District. To the east and just north of the subject site are other lands used for single-family dwellings and are zoned R-1, Single-family Residence District. To the west and between the subject parcel and Green Lake are lands used for the golf course and a public walking trail and are zoned RC, Recreational District. Although the subject site is in close proximity to Green Lake, it is not a riparian lot.

ADDITIONAL INFORMATION/ANALYSIS: The variance application explains the proposed plan as a relocation of the west boundary of a parcel owned by George P. Bauer and the east boundary of a lot owned by Bauer Haus, LLC. to eliminate "the nonconforming lack of access" to a public road. The application is explaining a previous condition, prior to CSM 3728 being recorded, where the parcel owned by Bauer Haus, LLC had been cut off from its access to a public road (Old Shore Drive) and merely had a license agreement with its neighbor to the north to use the neighbor's driveway for access.

On October 29, 2019 Certified Survey Map (CSM) 3728 was recorded creating two new lots (and an outlot) from 5 previously existing lots. This CSM had the effect of reconfiguring the lot in a manner that alleviated the access issue being described in the variance application and concomitantly created two code-conforming lots. The new Lot 2 of CSM 3728 has an average lot width of ± 103 feet which includes a flagpole width of 69.99 feet along Shore Drive which narrows to ± 40 feet where the flagpole meets the Bauer Haus, LLC lot. If the variance request before the Board of Adjustment (BOA) were to be approved, the new lot would have an average lot width of ± 66 feet which would include a flagpole width of 40 feet along Shore Drive which narrows to 10 feet where the flagpole meets the Bauer Haus, LLC lot.

Mr. Bauer signed off on CSM 3728, so it is incumbent upon the BOA to try to understand why the CSM that he agreed to, that resolved the access problem, is now a concern. If his answer is that he simply wants to sell his neighbor more land and limit the width of this access, the BOA would have to weigh that answer against the statutory criteria for variance issuance.

VARIANCE CRITERIA: To qualify for a variance, it must be demonstrated that the property meets the following 3 requirements: (Wisconsin Act 67 (2017) codified Case Law as applied to variance criteria, §59.694(7)(c)2., with No Harm To Public Interest already codified and now renumbered to §59.694(7)(c)3.)

1) Unnecessary Hardship

- ☐ compliance with standards would be unreasonably burdensome (Snyder)
- ☐ hardship may not be self-created (State ex rel. Markdale Corp. v. Board of Appeals)
- ☐ circumstances of the applicant, such as a growing family or the need for a larger garage, are not the sole factor in considering variances (Snyder)
- ☐ property, as a whole, must be considered, not just a portion (State v. Winnebago County)

- ☐ economic or financial hardship is not a sole justification (State v. Winnebago County)
- 2) Unique Property Limitations
 - ☐ limitations such as steep slope, wetland, shape, or size that are not shared by other properties and prevent compliance with ordinance (State v. Kenosha BOA)
 - ☐ limitations common to a number of properties are not a justification (Arndorfer v. Sauk County BOA)
 - ☐ alternative designs and locations on the property have been investigated (State v. Winnebago County)
- 3) No Harm to Public Interest
 - ☐ ordinance purpose and intent, variance may not harm public interest (State v. Winnebago County)
 - ☐ short-term, long-term, and cumulative effects on public interest in neighborhood, community, and even the state (Ziervogel)
 - ☐ only allow minimal relief for use of property, may include conditions (Robert M. Anderson, American Law of Zoning)

STAFF COMMENTS:

- 1) Unnecessary Hardship
 - ☐ The owners are attempting to convince the BOA that the current Bauer Haus, LLC lot condition is a burden to the owner as there is no deeded access to the parcel. Had CSM 3728 not been recorded, this would be the case, but the access problem was resolved on 10/29/19 when the CSM was recorded. Compliance is unlikely “unreasonably burdensome” to have to maintain a flag lot parcel with a wider flagpole than what is now desired by the owner. On the contrary, the extra wide flagpole better facilitates utilities and access to the property’s improvements.
 - ☐ As stated above, the hardship presented no longer exists on the property as the owner resolved the hardship by recording a new CSM. Any change to this new lot’s boundaries may be seen by the BOA as a self-created hardship.
 - ☐ Since the access concern has been addressed by CSM, there is no other provided reason to reduce the lot’s average lot width. Again, the BOA should weigh carefully any other identified hardship as being a circumstance of the applicant.
 - ☐ The property as a whole is being considered.
 - ☐ Economic or financial hardships have not been presented in this request. Solely economic/financial hardships are not to be considered grounds for variance approval.
- 2) Unique Property Limitations
 - ☐ The subject lot is a flag lot. A flag lot is an area of land composed of a flagpole of land, which is utilized for access and a flag that is utilized as the principal area of development. The subject lot is currently code-compliant.
 - ☐ The subject lot shares its code-compliant condition with all of its neighboring lots. Providing a variance to create the lot as proposed would be inconsistent with the process that created the neighboring lots.
 - ☐ A variance should not be approved if the BOA determines that an alternative lot design(s) exists that would not need a variance and still alleviate the perceived hardship. The current condition of the lot (by CSM 3728) is that alternative lot design.
- 3) Harm to Public Interest
 - ☐ The applicant must present their case for variance enough to convince the BOA that their request meets all three variance criteria. Allowing property owners to subvert the zoning ordinance through the variance process when their request has been proven to not meet the required criteria is not in the public’s interest. Additionally, the proposed 10-foot width,

Variance – Bauer

where the flagpole meets the Bauer Haus, LLC lot, is the absolute minimum for emergency vehicles to pass through. Additional width for this purpose should be required either by ownership or easement.

- Every variance approval stands on its own merits. No precedent is set that would hamstring a future BOA from executing its duties; however, court cases have looked at the impact of variance decisions. The BOA should measure its decisions so as to not create short-term, long-term, or cumulative impacts that can be attributed to variances.
- Only minimal relief from the unnecessary hardship shall be allowed. The applicant's described hardship had been resolved prior to the variance request. With testimony at the public hearing, any newly devised hardship would be held to the same standard. It is always staff's opinion that minimal relief should be balanced with protection of the public interest.

Variance Conditions (suggested by zoning staff):

1. *A certified survey map shall be prepared and approved in accordance with the County's Land Division and Subdivision Ordinance as well as Chapter 236, Wis Stats. The CSM shall be recorded in the Green Lake County Register of Deeds Office as well as submitted to the Green Lake County Surveyor's Office.*

VARIANCE APPLICATION – GREEN LAKE COUNTY

Provide the following information and any other detailed information related to the variance.

Date Received: 11/25/19

Fee Received: \$375

George P. Bauer / Bauer Haus, LLC

Steven R. Sorenson

Owner Name

Applicant Name

Owner Signature

Date

Applicant Signature

Date

206 Dudley Rd.

von Briesen & Roper, s.c.

Mailing Address

Mailing Address

Wilton, CT 06897

2905 Universal St., Suite 2
Oshkosh, WI 54904

City

State

Zip

City

State

Zip

203-210-7434

920-232-4846

Home Phone

Work/Cell Phone

Home Phone

Work/Cell Phone

gpbgroup1@aol.com

ssorenson@vonbriesen.com

Email address

Email address

Site Address N5316 Shore Dr., Green Lake, WI 54941

Tax Parcel ID # 004 - 00934 - 0200
004 - 00933 - 0101

— 1/4, — 1/4, Section 36, T 16 N, R 12 E
CA Lot 1 Block — Subdivision/Plat —
Lot 2 CSM # 3728 Town of Brooklyn

A variance is not a convenience to the property owner and should not be granted routinely. For the Board of Adjustment to grant a variance, the owner/applicant must clearly demonstrate that there is an unnecessary hardship present when strictly applying an ordinance standard; that the hardship is due to unique site limitations; and in granting a variance the public interest is being protected. The burden of proof rests upon the property owner to show all 3 criteria are being met.

Attach additional sheets, if necessary, to provide the information requested.

1. Explain your proposed plans and how they vary from the required dimensional standards:

SEE ATTACHED

2. Explain the hardship imposed by the Ordinance:

SEE ATTACHED

3. Describe unique property feature(s) that create the hardship:

SEE ATTACHED

4. Explain why the proposed variance will not harm the public interest:

SEE ATTACHED

**ATTACHMENT TO
APPLICATION OF VARIANCE
GREEN LAKE COUNTY, WISCONSIN**

1. Explain your proposed plans and how they vary from the required dimensional standards:

A variance to move the west boundary of the one parcel owned by George Bauer and the east boundary of the Bauer Haus, LLC property to eliminate the non-conforming lack of access existing on the Bauer Haus, LLC property. This would be done with the minimum displacement to allow for the creation of a legal driveway to a public or dedicated roadway where the Bauer Haus, LLC currently has only a license agreement to cross the Kreston Property to a dedicated road which license could be extinguished. See Attached Maps.

2. Explain the hardship imposed by the Ordinance:

The property is a non-conforming property because it has no access to a public roadway. In order to obtain access to a public roadway, it is necessary to acquire a driveway from the property to the public roadway. The ordinance would require an additional 40' of unneeded property. All that is needed is a 10' strip that is the minimal size of a driveway and 10' can only exist for a very short area of approximately 3' - 5'. The vast majority of the proposed drive would be a minimum of 40' wide. The hardship is not wasting 40' - 60' of property to simply put in a 10' driveway. The purpose in doing this is to take a non-conforming property, and by use of a variance, making it a conforming property subject to the variance conditions.

3. Describe unique property feature(s) that create the hardship:

The unique property feature that creates the hardship is it had no access to a public roadway. The semi-private roadway owned by the American Baptist Assembly was discontinued. The original owner of the property had an understanding that they could travel through the lot of the neighbors to the north. That agreement was subject to the transfer of title that meant upon the sale by the previous owners to the current owner, Bauer Haus, LLC, the license itself is no longer in effect and there is no legal drive for vehicles to travel from the Bauer Haus, LLC property to Shore Drive. The unique feature is the small triangular piece of property that was inserted by the previous owner at the time they sold the front lot to the Judd Family. The retention was to maintain a shed that now causes a problem given the Green Lake County Zoning Codes methodology used to determine the size of the lot. Other than the small triangular piece, there would be sufficient property and the lot would be sufficiently wide that no variance would be needed. It is the unique shape of the lot to the north that causes the need for the variance.

4. Explain why the proposed variance will not harm the public interest:

Moving the southern boundary 30' to the west will provide public road access, which is a zoning requirement. Essentially, this is a request for a less obtrusive variance from the zoning code than currently exists as a result of the conference center's decision to discontinue the previous Shore Drive. By cutting off the minimal amount needed for the George Bauer lot and adding it to the Bauer Haus lot there will be created a legal driveway for Bauer Haus and also a strip that the Sanitary District can legally use to access the Bauer Haus residence.

The variance in no way interferes with any public interest. The purpose of the ordinance is to make sure that substandard lots are not created along the shoreline. The shoreline lot in this case will be over 100' in the area that would be referred to as the building envelope area. The remainder of the parcel which will be used for the driveway, does not constitute a buildable area but does constitute the minimum width necessary for the creation of a driveway to provide access from the buildable lot area to the public roadway. Additionally, by limiting the area being attached to the Bauer Haus, LLC lot, the public is being served in that it protects the remaining land and does not devalue or lessen the potential use of the remaining land as a legally compliant, buildable lot. Anything less than this amount would result in a potentially non-conforming buildable lot. This could create the need for a further variance. The attempt here is to utilize the requested variance at a level necessary to accomplish the purpose of providing access, while not interfering with the other potential use of the remaining property. This is in the County's best interest, the property owner's best interest, and in no way interferes with any public interest that is protected by the ordinance in that the building envelope is not in any way expanded or contracted.



CSM3728

RECORDED ON:
10/29/2019 02:30AM

REC FEE: \$30.00

VOL. 22 OF CSM PG. 3728

SARAH GUENTHER
REGISTER OF DEEDS
GREEN LAKE, WI
TRANSFER FEE:**CERTIFIED SURVEY MAP**

CERTIFIED SURVEY MAP BEING A REDIVISION OF LOT 1 OF CERTIFIED SURVEY MAP NO. 1326, THE EAST 30 FEET OF LOTS 1 AND 3 OF CERTIFIED SURVEY MAP NO. 2231, LOT 1 OF CERTIFIED SURVEY MAP NO. 3027 AND LOTS 1 AND 2 OF CERTIFIED SURVEY MAP NO. 3048 LOCATED IN PART OF GOVERNMENT LOT 1 OF SECTION 36 AND THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 25, ALL IN TOWN 16 NORTH, RANGE 12 EAST, TOWN OF BROOKLYN, GREEN LAKE COUNTY, WISCONSIN.

OWNER'S
GEORGE P. BAUER
206 DUDLEY RD
WILTON, CT 06897-3513

PROPERTY ADDRESS
N5322 SHORE DRIVE
GREEN LAKE, WISCONSIN 54941

OWNER'S
THOMAS W. KIMEN JR. TRUST
611 OCEAN DR UNIT 3E
KEY BISCAYNE, FL 33149

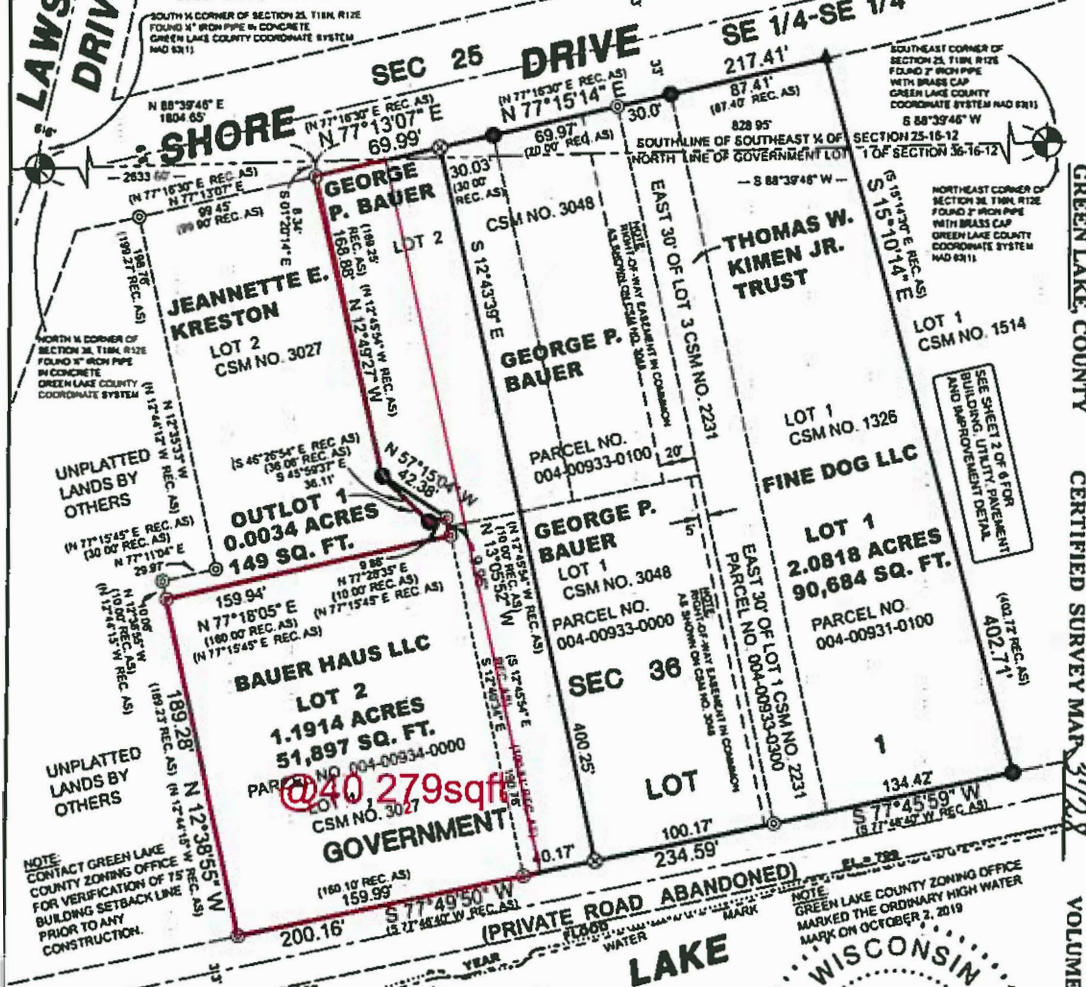
OWNER'S
FINE DOG LLC
2435 N WASHTENAW
CHICAGO, IL 60647

OWNER'S
BAUER HAUS LLC
206 DUDLEY RD
WILTON, CT 06897-3513

PROPERTY ADDRESS
SITUATED ALONG SHORE DRIVE
GREEN LAKE, WISCONSIN 54941

PROPERTY ADDRESS
N5330 SHORE DRIVE
GREEN LAKE, WISCONSIN 54941

PROPERTY ADDRESS
N5316 SHORE DRIVE
GREEN LAKE, WISCONSIN 54941

**LEGEND:**

SECTION CORNER
MONUMENT FOUND
2" DIA. IRON PIPE
WITH BRASS CAP
UNLESS NOTED

- 1" DIA. IRON PIPE FOUND
- ⊙ ½" DIA. CAPPED REBAR FOUND
- ▲ SURVEY MARKER NAIL FOUND
- ⊗ ½" X 18" DIA. REBAR SET
1.50 LBS PER LINEAL FOOT

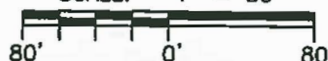
Job Number: G1910-361612-66

GREEN LAKE SURVEYING COMPANY

P.O. BOX 131
Green Lake, Wisconsin 54941
Phone: (920) 294-6666
survey@greenlakesurveyingcompany.com
www.greenlakesurveyingcompany.com

THE PURPOSE OF THIS CERTIFIED SURVEY MAP IS
TO COMBINE A 6 LOT CERTIFIED SURVEY MAP IN
TO A TWO LOT AND ONE OUTLOT CERTIFIED
SURVEY MAP TO CONFORM TO GREEN LAKE
COUNTY ZONING REQUIREMENTS.

SCALE: 1" = 80'



Sheet 1 of 6 Sheets



Donald W. Lenz, P.L.S. 2003
Dated this 25th day of October, 2019

BEARINGS ARE REFERENCED TO THE
NORTH LINE OF GOVERNMENT LOT 1
OF FRACTIONAL SECTION 36-16-12 PER
GREEN LAKE COUNTY COORDINATE
AND BEARING SYSTEM WITH A
BEARING OF S 88°39'46" W NAD 83(91).

FILE NAME: G1910-66scm.dwg

George P. Bauer, Bauer Haus, LLC – Town of Brooklyn

N5316 Shore Drive, Parcel #004-00934-0200 & #004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728

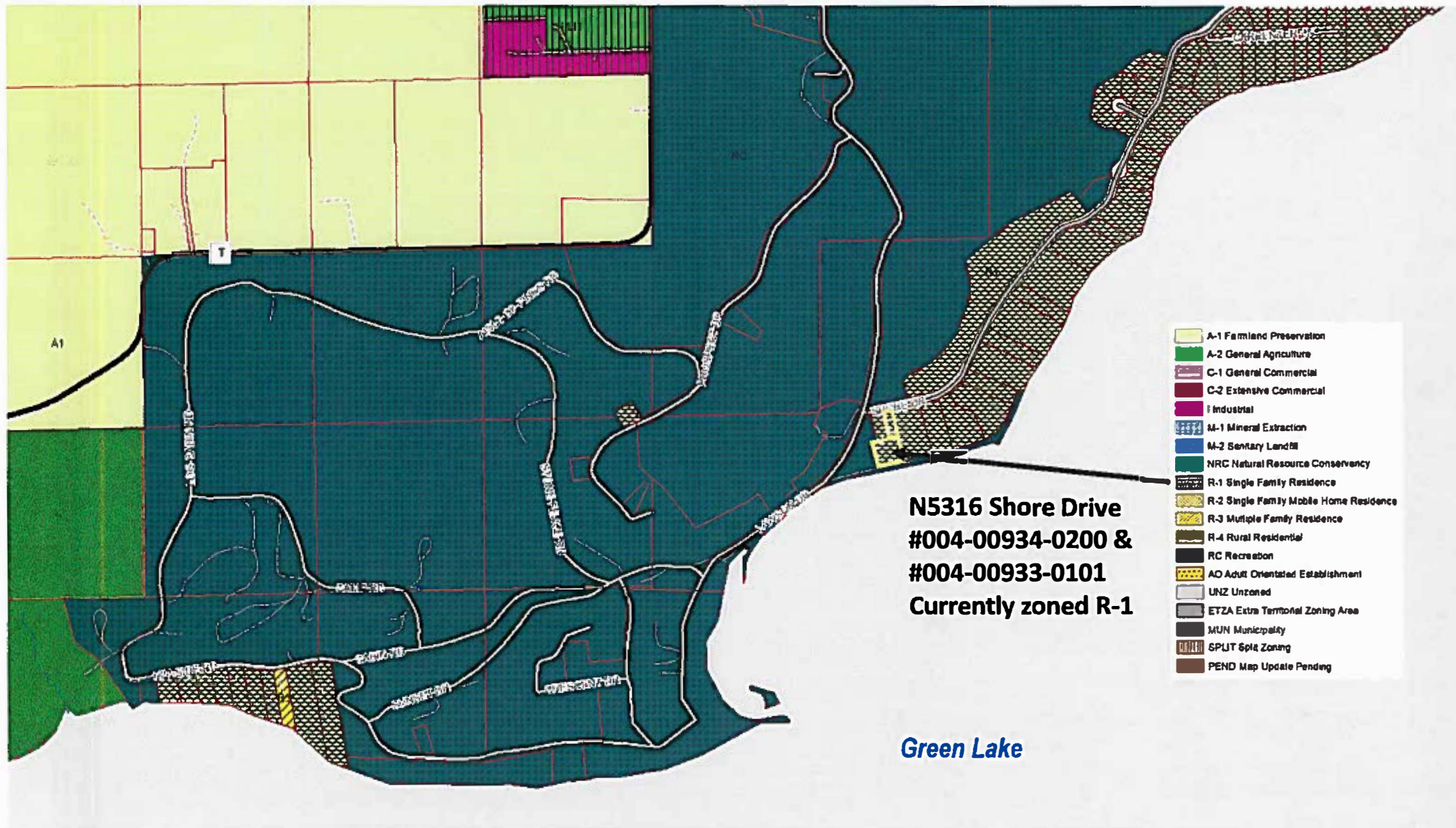
Variance request to create a lot with an average lot width of ± 66 feet; whereas, all newly created lots are required to be an average width of 100 feet.



George P. Bauer, Bauer Haus, LLC – Town of Brooklyn

N5316 Shore Drive, Parcel #004-00934-0200 & #004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728

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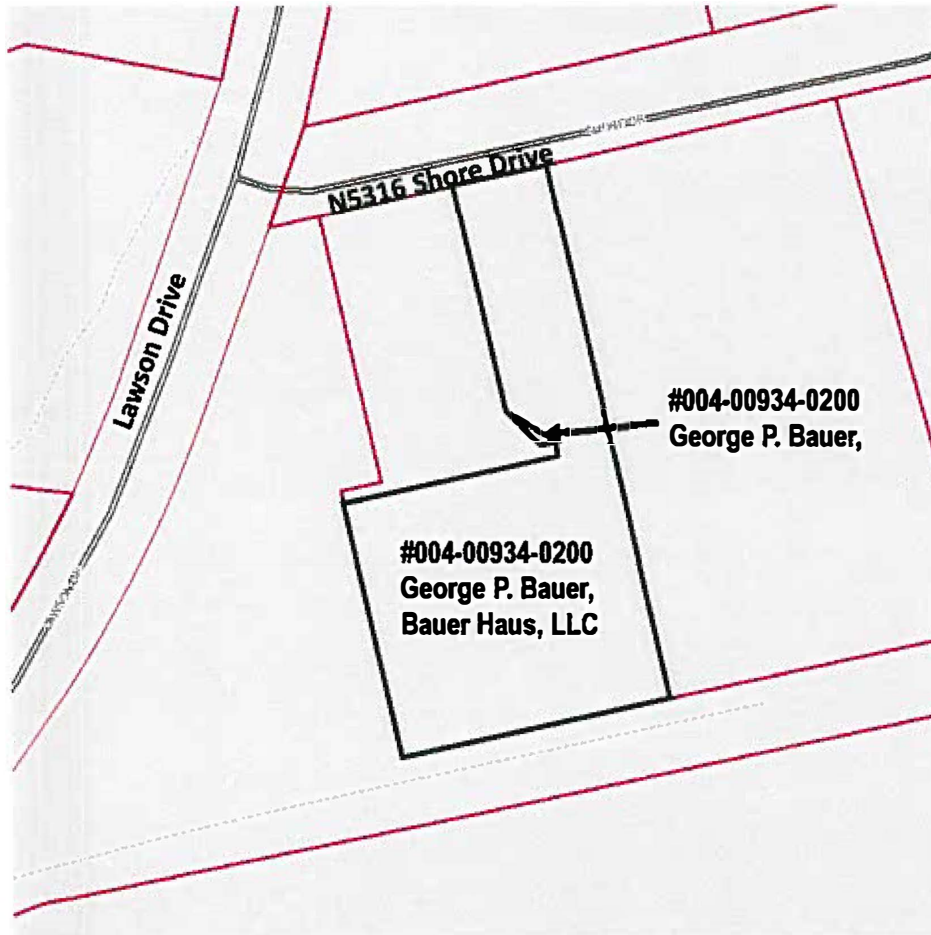


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N5316 Shore Drive, Parcel #004-00934-0200 & #004-00933-0101, Lot 2 & Outlot 1 of Certified Survey Map 3728

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Existing Configuration



Proposed Configuration

